

EXHIBIT B

Part 3

Pages 232 - 359

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 29, 2011

Boise, Idaho

Volume II - Pages 232 - 482

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 Wednesday, the 29th day of June, 2011, commencing at the hour of 9:30 a.m. in the above-entitled matter.

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1 alerting us to the issue, Mr. Banducci, this
 2 morning.
 3 MR. BANDUCCI: Thank you, Your Honor.
 4 THE COURT: Anything else that we need
 5 to be considering?
 6 MR. BANDUCCI: Not on this end, Your
 7 Honor.
 8 THE COURT: Okay.
 9 MR. CLARK: No, Your Honor.
 10 THE COURT: All right. It appears that
 11 we're ready to continue with the testimony.
 12 If you would like to come back up to
 13 the witness stand, please.
 14 MARY PRISCO,
 15 previously, first duly sworn to tell the truth
 16 relating to said cause, testified as follows:
 17 THE COURT: Remind you, Ms. Prisco,
 18 that you are still under oath in these
 19 proceedings, and won't swear you in again. If
 20 you are ready, we'll let Counsel continue with
 21 his examination.
 22 THE WITNESS: I am.
 23 THE COURT: All right.
 24 ///
 25 ///

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1 PROCEEDINGS
 2 THE COURT: Counsel, do we have
 3 anything preliminarily that we need to address
 4 this morning before we continue with the
 5 evidence?
 6 MR. BANDUCCI: Yes, Your Honor.
 7 THE COURT: All right.
 8 MR. BANDUCCI: And I actually did not
 9 have a chance to mention this to Mr. Clark. We,
 10 based on the testimony yesterday, we see the need
 11 to subpoena Ms. Swearingen to the proceedings to
 12 testify. Apparently, there are some terms in the
 13 budget that are unexplained, that are unknown to
 14 Boise County, or at least Ms. Prisco,
 15 specifically, referenced to the unencumbered
 16 balance that's in Exhibit 101.
 17 For that, and other reasons, we see a
 18 need to add her as a rebuttal witness. And we
 19 will be sending out a paid subpoena for her
 20 today.
 21 THE COURT: Well, I'm not going to pass
 22 on it, one way or the other. If you and
 23 Mr. Clark want to discuss it, that's fine. If
 24 you want to have an issue later for me, then
 25 that's fine as well. But I appreciate you

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1 CROSS-EXAMINATION (Continued)
 2 BY MR. HINDLEY:
 3 Q. Good morning.
 4 A. Good morning.
 5 Q. Ms. Prisco, would you please turn to
 6 Exhibit 101?
 7 A. (Witness complying.)
 8 Q. On the first page, there is a fund that
 9 is called the current expense fund, that is also
 10 listed on the fourth page, which is the summary
 11 of all the different funds. Just for
 12 clarification, is the current expense fund the
 13 same thing as the general fund?
 14 A. It is.
 15 Q. Okay. Now, I would like you to start
 16 today, by going back and talking about a couple
 17 of things about the County's funds, generally.
 18 Yesterday, I believe that you told me that the
 19 County believes that all of the money in its
 20 funds is restricted, other than the general fund;
 21 is that correct?
 22 A. That is correct. And I also believe,
 23 there are some restrictions within the general
 24 fund.
 25 Q. Okay. And you also told me, I believe,

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1 that the County's understanding, is that the
2 money becomes restricted when the County
3 Commission budgets that money into any of the
4 funds again, other than portions of the general
5 fund; is that correct?
6 A. Correct.
7 Q. Okay. And once it's budgeted, I
8 believe that you told me, that it essentially
9 becomes untouchable; is that right?
10 A. Correct.
11 Q. Okay. And the source for that
12 understanding is what, or who?
13 A. Well, I couldn't cite you the statute.
14 But I mean, everything we do is statute driven,
15 so...
16 Q. So --
17 A. Once we have a formal authorized
18 appropriated -- what we refer to as an
19 appropriated budget, we must abide by that
20 appropriated budget. And any material deviances
21 from that would have to be -- there is a formal
22 process in which the whole entire budget would
23 have to be opened up.
24 Q. All right. And I think I asked you,
25 also, this: If there was a mechanism for the

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1 A. Yes.
2 Q. Okay. And the Commissioners you are
3 referencing are the three Commissioners from
4 Boise County?
5 A. Yes.
6 Q. And you also mentioned that you spoke
7 with County representatives -- of representatives
8 from other counties. And who are those people?
9 A. There are numerous ones. We actually
10 have quite a few conferences with other counties,
11 primarily, the Idaho Association of Counties
12 administers those conferences. I've spoken with
13 Betty Dressen from Owyhee -- excuse me Payette
14 County; Charlotte Shurburn from Owyhee County;
15 the Abbie Mace from Fremont County. I mean,
16 those are specific individual names I can give
17 you, as well as other clerks at those
18 conferences.
19 Q. Okay.
20 MR. HINDLEY: Your Honor, if I may, for
21 just one moment? Mr. Clark and I have discussed
22 several exhibits. They would be new exhibits
23 marked, and Mr. Clark has stipulated to their
24 entry into evidence. And they would be 248
25 through --

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1 County Commission to reallocate money into
2 various funds, and I think you told me, no; is
3 that right?
4 A. That's correct.
5 Q. All right. So is it your understanding
6 then, that if there is some sort of judgment in
7 excess of the general fund, or those portions of
8 the general fund that are not restricted, that
9 the County has no other way under Idaho law, as
10 you understand it, to pay that judgment, unless
11 there is a -- the County has budgeted for it in a
12 particular judgment fund, if you will; is that
13 correct?
14 A. Correct, that's my understanding.
15 Q. And, again, the source for your
16 understanding is your own reading of the
17 statutes?
18 A. It is based on the -- I would say, more
19 discussions with other clerks from other
20 counties, as well as discussions with
21 Commissioners, who have more experience than I
22 do.
23 Q. Okay. And the Commissioners?
24 A. And my own reading of the statutes.
25 Q. And your own reading of the statutes?

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1 THE CLERK: 275?
2 MR. HINDLEY: Can I take a moment, Your
3 Honor?
4 (Pause in the proceeding.)
5 MR. HINDLEY: We have a numbering issue
6 for the moment. So I will move on.
7 THE COURT: Okay.
8 Q. (BY MR. HINDLEY) You mentioned the
9 Idaho Association of Counties. What is that
10 association?
11 A. They are the association that
12 represents all of the counties within the State
13 of Idaho.
14 Q. Okay. And is Boise County a member of
15 the association?
16 A. We are.
17 Q. Okay. And they have certain trainings?
18 A. They often administer the trainings and
19 the conferences.
20 Q. All right.
21 MR. HINDLEY: If it pleases the Court,
22 I would like to hand up to the witness a
23 document, if I could, or to the county clerk?
24 THE COURT: Have they been marked?
25 MR. HINDLEY: Not yet. It will not be

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6 (Pages 240 to 243)

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1 marked quite yet. I want to find out what her
2 understanding of the document is, before I move
3 it into evidence. But it will be document
4 number, or Exhibit No. -- what's the next one?
5 THE CLERK: 248.
6 MR. HINDLEY: After the last one.
7 What's the next one?
8 THE CLERK: Just a second. 253.
9 MR. HINDLEY: May I, Your Honor?
10 THE COURT: Give Ms. Patrick the
11 document, so she can make a record of it. Once
12 it's marked, then I'll let you start inquiring of
13 the witness about it. And we'll keep a much
14 clearer record that way.
15 MR. HINDLEY: Thank you, Your Honor.
16 MR. CLARK: Your Honor, for the record,
17 I have not seen the document.
18 THE COURT: All right. I'll have
19 Counsel bring it by you, before we get started
20 with the examination.
21 (Exhibit 253 marked.)
22 **Q. (BY MR. HINDLEY) Ms. Prisco, do you**
23 **understand that the Idaho Association of Counties**
24 **has put out a Uniform Accounting and Budgeting**
25 **Manual?**

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1 A. Yes, I have seen this on their website.
2 **Q. You have seen this on the website?**
3 A. Uh-huh.
4 **Q. Have you downloaded it?**
5 A. I attempted to download it previously,
6 and it was not in a downloadable format at that
7 time.
8 **Q. And is this -- but you have read this?**
9 A. I have read through parts of it. There
10 is quite a few pages here that I would need to
11 look through, to tell you if I've read through
12 everything.
13 **Q. Would it be accurate to describe this**
14 **as a reference for you in your duties as a -- as**
15 **the County Auditor?**
16 A. Most, definitely.
17 MR. HINDLEY: Your Honor, I would like
18 to move for the admission of Exhibit 253?
19 MR. CLARK: I have a tentative
20 objection, Your Honor, on foundation. Because I
21 don't believe the -- there has been a showing of
22 where it came from.
23 THE COURT: Well --
24 MR. HINDLEY: Well, let me ask that
25 follow-up question.

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1 **Q. (BY MR. HINDLEY) Where did you see**
2 **this document?**
3 A. At the IAC website.
4 **Q. Okay. And you already mentioned that**
5 **Boise County is a member of the IAC, the Idaho**
6 **Association of Counties?**
7 A. Yes.
8 **Q. Okay. And you read the document on the**
9 **IAC's website?**
10 A. I've read portions of the document.
11 MR. HINDLEY: Okay, Your Honor, I move
12 for the admission of Exhibit 253.
13 MR. CLARK: May I ask, Mr. Hindley,
14 just to make this statement, that this is the
15 most current version?
16 MR. HINDLEY: It is the most current
17 version, Your Honor.
18 THE COURT: Mr. Hindley, here is the
19 problem, as I see it, is this witness hasn't laid
20 a foundation that this document is exactly the
21 document that's on the website. She's not
22 capable of laying the appropriate foundation. If
23 you and Mr. Clark are willing to agree to the
24 provenance of the document, then I'm willing to
25 go along with that.

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1 MR. HINDLEY: All right.
2 THE COURT: And it --
3 MR. CLARK: I can probably do that.
4 THE COURT: It sounds like, that
5 Mr. Clark's concern is just that it be the most
6 current version.
7 MR. HINDLEY: If you want to look that
8 up, Blair, or else I can give you my
9 representation, that it's from the website that
10 we looked at from 6/28/11 last night.
11 MR. CLARK: May I ask him one quick
12 question?
13 THE COURT: Do you want to go off the
14 record, and do that?
15 MR. HINDLEY: It doesn't matter.
16 THE COURT: All right.
17 MR. CLARK: Are these versions that are
18 attached, are they part of the manual?
19 MR. HINDLEY: So this is all part of
20 the manual.
21 MR. BANDUCCI: It's all part of the
22 manual.
23 MR. CLARK: All right. That's fine,
24 Your Honor. Thank you.
25 THE COURT: Without objection, 253 is

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7 (Pages 244 to 247)

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1 admitted.
2 (Exhibit 253 admitted into evidence.)
3 MR. HINDLEY: All right, Your Honor,
4 now I have 248 through 252 that have been marked.
5 And these already have been stipulated to by the
6 parties; is that correct?
7 MR. CLARK: It is.
8 THE COURT: All right. 248 through 252
9 are admitted by agreement of the parties.
10 Ms. Patrick, have you seen those yet?
11 THE CLERK: I have not, Your Honor.
12 MR. HINDLEY: I'll mark it.
13 (Exhibit 248 through 252 marked and
14 admitted into evidence.)
15 MR. HINDLEY: Blair, let me get you
16 copies.
17 THE CLERK: Mr. Hindley. Thank you.
18 **Q. (BY MR. HINDLEY) All right.**
19 **Ms. Prisco, I've handed you what has been marked**
20 **as 248 through 252. They've been stipulated to**
21 **as resolutions -- or as they are the official**
22 **resolutions of Boise County.**
23 **Have you seen these before? Let's just**
24 **go through each one, individually. 248 is a**
25 **resolution of Boise County to transfer revenues**

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1 **from the highway trust fund to other County**
2 **funds. Have you seen that resolution before?**
3 A. I have not.
4 **Q. Okay. Let's look --**
5 A. May I comment on the date?
6 **Q. You may.**
7 A. It was created in 2001, and it's
8 Resolution No. 33 of 2001.
9 **Q. Okay. Let's look at the next one.**
10 **Resolution No. 92-12.**
11 A. So that would be 1992.
12 **Q. Okay.**
13 A. The 12th resolution of that year.
14 **Q. Have you seen this resolution before?**
15 A. I have not.
16 **Q. Do you see that it's a resolution that**
17 **directs \$20,000 to be transferred from the**
18 **indigent fund to other funds?**
19 A. I do see that.
20 **Q. All right. Let's look at the next**
21 **resolution, 98-5?**
22 A. 1998, is that resolution.
23 **Q. Right. And this is a resolution**
24 **appropriating money from the road and bridge fund**
25 **to the justice fund. Do you see that?**

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1 A. I do.
2 **Q. All right. Look at the next one. It**
3 **is a Boise County Resolution 98-5, which would be**
4 **from 1998; correct?**
5 A. Uh-huh.
6 **Q. And it's a resolution, also,**
7 **transferring monies from one fund to the next; is**
8 **that right?**
9 A. It looks to me, this one is
10 establishing fees.
11 **Q. You are right. You are correct on that**
12 **one.**
13 **Let's look at the next one. This is**
14 **Resolution No. 2655?**
15 A. Yes.
16 **Q. Do you see that?**
17 A. Yes.
18 **Q. And it's a resolution from Boise County**
19 **transferring the fund balance from the LID funds**
20 **to the current expense fund. Do you see that?**
21 A. I do.
22 **Q. And what's the LID fund?**
23 A. We do not have, currently, an LID fund.
24 **Q. What does "LID" stand for?**
25 A. Here it says, local improvement fund.

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1 **Q. Okay. And in your research and**
2 **investigation into determining whether or not**
3 **funds could be transferred from one fund to the**
4 **next, did you go back historically and look at**
5 **prior resolutions of Boise County?**
6 A. I did not. That would assume that they
7 were correctly done.
8 **Q. Do you know of any change, or the basis**
9 **for your statement that it was your understanding**
10 **that monies could not be transferred from fund to**
11 **fund, was that based on an understanding of**
12 **yours, that the law has changed since any of**
13 **these resolutions were passed?**
14 A. It is my understanding, based on
15 current law.
16 **Q. Okay. Nothing more than that?**
17 A. Nothing more.
18 **Q. All right. Thank you.**
19 **Yesterday, we also talked about the**
20 **fact that all of the cash allocated to the**
21 **various funds are actually held up -- are**
22 **actually held in commingled accounts; right?**
23 A. Yes.
24 **Q. Okay. And just to sum up that whole**
25 **discussion. Will you agree with me, the County**

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8 (Pages 248 to 251)

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1 cannot trace the fund money, the money that has
 2 been apportioned to various funds, to any
 3 particular account or accounts?
 4 A. I agree -- bank accounts, I agree.
 5 Q. Okay. Now, after the judgment was
 6 rendered, were there any budget cuts made by the
 7 County to try to free up money to help pay the
 8 judgment?
 9 A. No cuts were made. The budget was
 10 examined, however, in terms of, by line item, by
 11 category. And I feel comfortable saying, that in
 12 that analysis, we did not find areas to cut the
 13 expenses in.
 14 Q. Not any areas?
 15 A. No, especially, when faced with much
 16 higher fuel charges, which we have three
 17 departments that are high users of fuel, as well
 18 as the increasing health insurance costs.
 19 Q. So it's your testimony, then, that
 20 there is no money that could be cut from the
 21 budget to help the judgment?
 22 A. My testimony is, that we did review the
 23 budget in detail, and we did not locate anything
 24 that we could cut.
 25 Q. Now, you mentioned that in your attempt

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1 to try to find a way to pay the judgment, you
 2 considered borrowing from the solid waste fund?
 3 A. Yes.
 4 Q. Is that correct?
 5 A. Yes. Yes.
 6 Q. And I take it from that, that you did
 7 not consider borrowing from some of the other
 8 funds?
 9 A. That is correct.
 10 Q. Looking at 253, which is the budgeting
 11 manual.
 12 A. Yes.
 13 Q. Do you know, by chance, who the authors
 14 of that are?
 15 A. I do not, no.
 16 Q. Okay. Has it ever been used in -- I
 17 think you mentioned yesterday, that you took a
 18 class, perhaps, in late 2010?
 19 A. Yes.
 20 Q. Okay. And was that a class or a
 21 seminar put on by the Idaho Association of
 22 Counties?
 23 A. Yes.
 24 Q. And who were your instructors there?
 25 A. We had a number of instructors: Dan

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1 Chadwick, who is the associate director for the
 2 Idaho Association of Counties, was the lead
 3 instructor; as well as his chief deputy, Tony
 4 Panelli, both of whom have been with IAC
 5 for -- I'm not sure how many years, but quite a
 6 long time. We also had Jim McNaull, who is -- I'm
 7 not sure what his position is. It's possibly
 8 director, but with ICRIMP, which is the
 9 insurance, the pooled insurance for the counties.
 10 I think we had an individual from the
 11 Gem Plan, which is a pooled concept health
 12 insurance plan that some counties participate in,
 13 Boise County being one. Abbie Mace from Fremont
 14 County, did also a presentation on budgeting, the
 15 budget process.
 16 Q. All right. And Abbie Mace was one of
 17 your instructors, and she taught on what, again?
 18 A. The, I think, it was -- I can't recall
 19 the exact title. It was the budget process or
 20 along those lines. Also, the State Tax
 21 Commission did a presentation, I think, it was
 22 Gary Houd from the State Tax Commission.
 23 Q. In reference to the instruction that
 24 was provided by Ms. Mace, can you give me
 25 anything more definitive about what the topics

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1 were that she covered, other than just the
 2 budgeting process?
 3 A. It was -- it was fairly general on the
 4 budgeting process. It was areas that I was
 5 already familiar with, because of my experience
 6 preparing budgets for the fire district.
 7 Q. All right. And do you remember whether
 8 or not, at that meeting, at that conference, did
 9 they hand Exhibit No. 253 out?
 10 A. It's not in my documents from that
 11 conference.
 12 Q. All right.
 13 A. And so I do not recall receiving it.
 14 Q. Okay. If you'd turn to Exhibit 111 for
 15 me, please?
 16 A. (Witness complying.)
 17 Q. And again, turn to the last page, page
 18 18 of 18.
 19 A. (Witness complying.) Okay.
 20 Q. Which is the summary page; correct?
 21 A. Uh-huh, yes.
 22 Q. All right. Now, for each of the funds,
 23 there is a cash balance beginning for the fiscal
 24 year 2011; is that right?
 25 A. Correct.

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9 (Pages 252 to 255)

1 Q. And that is the beginning balance -- is
2 shown as the beginning -- the beginning balance
3 for the fiscal year, is the beginning balance for
4 October 2010; is that right?
5 A. Correct, October 1st, 2010.
6 Q. All right. Now, if you look at each
7 one of the individual funds, so, for example,
8 turn back to page 1 of the exhibit.
9 A. (Witness complying.)
10 Q. That same idea holds true for the
11 individual funds. So, for example, if we're
12 looking at the general fund, the beginning
13 balance for fiscal year 2011 is \$1,398,000.53?
14 A. Yes.
15 MR. CLARK: 53 cents?
16 MR. HINDLEY: I'm sorry.
17 Q. (BY MR. HINDLEY) \$1,398,053.
18 A. Yes.
19 Q. Okay. And that same figure is the
20 ending balance for the general fund for fiscal
21 year 2009?
22 A. 2010.
23 Q. Right, 2010.
24 A. So September 30th of 2010 from the
25 accounting system.

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1 Q. Right. So the ending balance for
2 fiscal year 2010 for the general fund, then
3 becomes the beginning balance for the general
4 fund for fiscal year 2011?
5 A. Correct.
6 Q. Okay. And that's true for all of these
7 funds, whether it be the general fund, or the
8 road and bridge fund, or the sheriff's fund, or
9 all the rest of them?
10 A. That's correct.
11 Q. All right. So at the end of the fiscal
12 year, September, how is it that the ending
13 balance for a particular fund for the County,
14 carries over to become the beginning balance for
15 that same fund? Does that happen automatically?
16 A. It's the nature of the accounting
17 system.
18 Q. Okay. So it just happens
19 automatically?
20 A. Yes.
21 Q. All right.
22 A. I mean, it's the end of one month and
23 the beginning of the next month.
24 Q. The County Commission doesn't have to
25 take any kind of action to have that carryover,

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1 as the beginning balance of the fund for the next
2 fiscal year?
3 A. Well, the clerk would have to have
4 closed the books, if that's what you are
5 referring to?
6 Q. I'm talking about if the County
7 Commission has to do anything?
8 A. They would have to, at some point in
9 time. And I'm sorry. I don't know at what point
10 in time. But they would have to make sure that,
11 to the extent that, you know, there are any
12 changes within funds, in terms of within account
13 categories, et cetera, that the budget be opened
14 as to public hearing, and to make those changes
15 as part of that public hearing.
16 Q. And that's just through the budgeting
17 process; right?
18 A. Correct.
19 Q. Okay.
20 A. And I'm referring to, you know, one
21 year being complete versus another one starting.
22 Q. All right. And I just want to make
23 sure that we're talking about the same thing. So
24 the end of the fiscal year, there is an ending
25 balance for any particular fund; right?

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1 A. Correct.
2 Q. And for it to carryover, to be the
3 beginning balance of that same fund for the next
4 fiscal year, does that happen automatically?
5 A. Within the accounting system, yes.
6 It's just that's how the accounting system works.
7 It's one month end balance, is this balance that
8 begins at the next day, at, you know, 12:01 a.m.
9 is the same balance.
10 Q. Okay.
11 A. As it was at 11:59 p.m. the day before.
12 Q. And nothing else has to happen; right?
13 A. Not that I'm aware of.
14 Q. Okay.
15 MR. HINDLEY: Your Honor, I'm done with
16 this witness. And I'll turn her back over for
17 redirect.
18 THE COURT: Thank you.
19 Mr. Clark?
20 REDIRECT EXAMINATION
21 BY MR. CLARK:
22 Q. Ms. Prisco, is it accurate that within
23 each fund, there are levy restrictions, in
24 addition to the three percent?
25 A. That is true.

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1 MR. HINDLEY: Your Honor, that calls
 2 for a legal conclusion. She can testify as to
 3 her understanding.
 4 THE COURT: I'll sustain it.
 5 Rephrase, so that I'm clear what you
 6 are talking about, Mr. Clark.
 7 MR. CLARK: Well, it's actually going
 8 to be covered by the next witness. So I'll just
 9 move on to the next area, Your Honor.
 10 THE COURT: As you wish.
 11 THE WITNESS: Excuse me, I think in
 12 Exhibit 250 --
 13 **Q. (BY MR. CLARK) Hold on. As far as the**
 14 **interface between you and the treasurer, who**
 15 **actually writes the check? If there is a bill**
 16 **that comes in, which office writes the check?**
 17 A. The clerk's office.
 18 **Q. What account do you write the check on?**
 19 A. We put the check to -- we look at what
 20 the nature of the expense is, and determine,
 21 first of all, what fund the expense is associated
 22 with.
 23 **Q. Okay.**
 24 A. Secondly, if there is a specific
 25 department within a fund, that it's associated

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1 with. And thirdly, what category of expense it
 2 is associated with. A voucher payable is
 3 completed, and then submitted to the department
 4 head -- well, if it's a different department
 5 outside the clerk's office, then we already have
 6 that information.
 7 **Q. Sure.**
 8 A. We do check to see that we have coded
 9 the appropriate fund department and account
 10 category. If it's coming from my office, then
 11 someone in my office prepares that voucher, which
 12 identifies the fund, department, and expense
 13 category.
 14 **Q. Okay. And then what happens?**
 15 A. The check is produced after the
 16 Commission approves those bills.
 17 **Q. Okay. So the Commission has to approve**
 18 **the bills once --**
 19 A. Every single expenditure has to be
 20 approved by the Board of Commissioners.
 21 **Q. How often do they have meetings to do**
 22 **that?**
 23 A. They meet generally on the Monday of
 24 each week; bills are paid twice per month.
 25 **Q. Okay. So after they approve it, then**

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1 **what?**
 2 A. Once it's approved, then the checks are
 3 actually issued. They require my signature, as
 4 well as the treasurer's signature. And with the
 5 collection comes a summarized report of the
 6 individuals, or organizations, vendors, what have
 7 you, that the checks are written out to, with the
 8 amount and the check number for us to review,
 9 along with our signing of those checks.
 10 **Q. Okay. So if we're going to take a**
 11 **bill, for example, from Trebar, Kenworth on one**
 12 **of your trucks, the bill comes to you as the**
 13 **clerk, or does it go to the department head**
 14 **first?**
 15 A. To the department head.
 16 **Q. All right. And then the department**
 17 **head writes a voucher?**
 18 A. The department head, typically, has
 19 someone in their department, either the chief
 20 deputy, or someone else within their department,
 21 complete that voucher for the information on the
 22 fund department in account category. It is
 23 required to be signed by the department head.
 24 **Q. Okay.**
 25 A. As giving authorization to the Board of

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1 County Commissioners that they have -- the
 2 department head has approved the document.
 3 **Q. And then it comes to your office?**
 4 A. It comes to my office, yes.
 5 **Q. And you check the road and bridge fund**
 6 **in this case?**
 7 A. For other departments outside of my
 8 own, I review that, once it's actually input into
 9 the system. So I simply review it prior to the
 10 County Commissioners providing authorization.
 11 **Q. And the Commissioners vote to approve**
 12 **it?**
 13 A. Yes.
 14 **Q. And then it comes back to you?**
 15 A. Yes, my department. Yes.
 16 **Q. And at that point, the check written;**
 17 **the actual check to Trebar?**
 18 A. Is then written.
 19 **Q. What bank account do you write it on?**
 20 A. I don't know which account. Kristen
 21 Vadross, from my office, and Bea Walker from my
 22 office actually prepare the checks. They do work
 23 with the treasurer on determining what account,
 24 amounts are going to be taken out of. So I am
 25 not -- I don't -- I couldn't tell you exactly

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1 what account is used for each different item.
2 **Q. Okay. And then you and the treasurer**
3 **sign the check?**
4 A. Yes.
5 **Q. Are indigent claims growing in Boise**
6 **County, besides just the \$550,000 oversight?**
7 A. They are. I think I mentioned in my
8 testimony yesterday, I attended a Health and
9 Welfare conference, I think, in April, which was
10 attended by numerous county representatives. And
11 the statement was made at that conference that
12 all --
13 MR. HINDLEY: Hearsay, Your Honor.
14 THE WITNESS: I was there.
15 THE COURT: Well, don't argue with the
16 lawyer. That's not your role.
17 I'm going to overrule it. I don't
18 think it goes to the truth of it. It goes to the
19 information that she has, and it was her
20 testimony. So I'm going to let it in.
21 Go ahead and complete your answer.
22 THE WITNESS: Thank you, Your Honor.
23 At that conference, it was -- the statement was
24 made, that the majority of counties have
25 experienced an extreme increase in indigent

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1 claims. The example of Ada County was given by
2 Sharon Ulman, who is one of the Commissioners for
3 Ada County. In Ada County their number of
4 claims, at the time of the Health and Welfare
5 conference in April, had already equaled or
6 exceeded the amount of claims for the entire
7 fiscal year of 2010 for Ada County.
8 **Q. As early in the year as it was?**
9 A. Yes.
10 **Q. Okay.**
11 A. So with five months remaining. After
12 hearing that, I actually looked at our claims
13 activity for the indigent program. As I said
14 yesterday, I don't remember what month I started
15 with. I think it was the fall of 2010, or maybe
16 January of 2011, and looked at the number of
17 claims. Generally, in a given month, it looked
18 like there was about two -- one -- I'll say, one
19 to three claims per month.
20 **Q. Okay.**
21 A. The end of April -- for April, and the
22 first week of May, that had jumped up to ten
23 claims in that five-week period.
24 **Q. There was a lot of discussion, too,**
25 **yesterday about bond issues, whether you properly**

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1 **looked at taking out a bond. Have there been**
2 **bond elections this year in Boise County?**
3 A. There has been.
4 **Q. How many?**
5 A. Well, I was thinking that there was
6 two. One was actually a bond, and one was a
7 levy, a two-year levy. So not under definition
8 of a bond.
9 **Q. Both those, are both the type of bonds**
10 **that are payable through property taxes?**
11 A. Yes.
12 **Q. Okay. And how often, incidentally, can**
13 **the County do bond elections?**
14 MR. HINDLEY: Objection; legal
15 conclusion, Your Honor.
16 MR. CLARK: If she knows?
17 THE COURT: I'll overrule it.
18 If you have an understanding.
19 THE WITNESS: I should, as the
20 elections officer. They just changed the law to
21 a consolidated election process. And I can't
22 remember. It depends on the type of entity, and
23 so the type of election, type of entity. I think
24 it's March, May, I want to say, August, and
25 November.

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1 **Q. (BY MR. CLARK) All right.**
2 A. But I'm not as familiar with that, as I
3 could be --
4 **Q. Okay. What was the result of the two**
5 **bond issues that were in the County so far this**
6 **year?**
7 MR. HINDLEY: Asked and answered.
8 MR. CLARK: I didn't ask that question,
9 whether they passed or not.
10 MR. HINDLEY: Yes, you did.
11 THE COURT: No, I'll sustain it. I
12 heard it yesterday.
13 MR. HINDLEY: Yesterday.
14 THE COURT: Go on.
15 MR. CLARK: Okay.
16 **Q. (BY MR. CLARK) Was it a close vote?**
17 A. No, on either.
18 **Q. Do you still have Exhibit 250 up there?**
19 A. Yes.
20 **Q. Is that a borrowing resolution?**
21 A. May I read the resolution title?
22 **Q. You certainly can.**
23 A. "Resolution ordering transfer of
24 appropriations from the road and bridge fund to
25 justice fund to meet expenditures until property

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12 (Pages 264 to 267)

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1 taxes are collected."
2 **Q. Okay. And then reading on further,**
3 **look at the last two paragraphs. And what do**
4 **they say?**
5 A. Basically, it says, that it's going to
6 transfer \$80,500 from the road and bridge fund to
7 the justice fund. And once the property taxes
8 are collected, that the transfer will be made
9 back from the justice fund, to the road and
10 bridge fund of 80,500.
11 **Q. With interest?**
12 A. Yes, with interest.
13 **Q. Okay. Is Boise County's populations,**
14 **from what you are seeing, declining?**
15 A. It has declined. The 2010 census has
16 come in at 7,000. It was at 7,550,
17 approximately. And I know that, because from the
18 2010 census, and it does affect some of the
19 funding that we receive from the state, in terms
20 of the sales tax distributions.
21 **Q. So the reduction in the population has**
22 **a direct financial impact in your budget?**
23 A. It does.
24 MR. CLARK: I have no further questions
25 on redirect, Your Honor.

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1 MR. HINDLEY: No further questions,
2 Your Honor.
3 THE COURT: Okay. Thank you. You may
4 step down.
5 (Witness excused.)
6 THE WITNESS: Am I to leave all these
7 exhibits here?
8 THE COURT: Yes. Go ahead and leave
9 all the exhibits. I know at one point you had a
10 concern about something in one of the documents.
11 Talk to Mr. Clark about it, and they can address
12 it at one of the breaks. All right?
13 THE WITNESS: Thank you.
14 THE COURT: Thank you.
15 MR. HINDLEY: Your Honor, if I might?
16 There was one additional housekeeping matter.
17 THE COURT: All right. Go ahead.
18 MR. HINDLEY: Mr. Danny Kelly is also
19 going to be making an appearance today on behalf
20 of Alamar. He's in the courtroom.
21 THE COURT: He's a lawyer with your
22 firm; right?
23 MR. HINDLEY: He is, Your Honor. Thank
24 you.
25 THE COURT: All right.

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1 MR. CLARK: He was also on their
2 pro hoc application, Your Honor.
3 THE COURT: That's what I recall.
4 Okay. Very good.
5 The next witness, please.
6 MR. CLARK: I would like to call
7 Mr. Dornfest, please, Alan Dornfest.
8 THE COURT: Mr. Dornfest, if you'll
9 come forward and be sworn, please, sir.
10 ALAN DORNFEST,
11 first duly sworn to tell the truth relating to
12 said cause, testified as follows:
13 THE CLERK: If I could have you state
14 your name, and spell your last name for the
15 record, please.
16 THE WITNESS: My name is Alan Dornfest.
17 That's D-o-r-n-f-e-s-t.
18 THE CLERK: Thank you.
19 THE COURT: Mr. Clark?
20 DIRECT EXAMINATION
21 BY MR. CLARK:
22 **Q. Good morning, Mr. Dornfest. Could you**
23 **please tell me your occupation?**
24 A. I work for the Idaho State Tax
25 Commission.

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1 **Q. And how long have you worked for the**
2 **Idaho State Tax Commission?**
3 A. Since 1977.
4 **Q. And what is your position?**
5 A. My position is property tax policy
6 supervisor.
7 **Q. And as the property tax policy**
8 **supervisor, could you describe what your duties**
9 **are?**
10 A. My duties are quite broad with respect
11 to property tax administration, which is a charge
12 of our agency. For one thing, I chair the
13 committee that writes administrative rules, and
14 then bring the -- I bring those rules before the
15 legislature, to complete the promulgation of the
16 rules. And the rules that I work on are
17 exclusively in the area of property tax. So that
18 includes a lot of different policy areas.
19 I directly supervise the staff to
20 administer the property tax reduction, also on a
21 circuit breaker program. I directly supervise
22 another staff member who works on policy and
23 rules-type issues, and general questions that we
24 get and try to answer, in general, administrative
25 concerns. And I directly supervise the process

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<p>1 by which the Tax Commission reviews, or 2 ultimately approves or disapproves all of the 3 property tax levies for every taxing district 4 throughout the State of Idaho. 5 In addition, I review the work done by 6 the counties in their annual reappraisal and 7 reassessment programs, to ensure that they are in 8 compliance with certain standards that have been 9 developed. And I advise the Commission regarding 10 that issue. 11 Q. Okay. How long have you been involved 12 with reviewing county budgets? 13 A. I've been involved with reviewing the 14 property tax portion of county budgets, one way 15 or another, since the early 1990s. I don't have 16 the exact date. The responsibilities of it were 17 originally in a different unit, and around 1991 18 or so, were transferred over to my area. 19 Q. Have you also looked at property tax in 20 general, and specifics in various other states? 21 A. Yes, I have. 22 Q. Have you also written procedure 23 manuals? 24 A. Well, we've written -- I need some 25 clarification there.</p> <p style="text-align: right;">Page 272</p>	<p>1 both? 2 A. Yes. 3 Q. How often? 4 A. Well, as far as the legislature is 5 concerned, I'm testifying every year on 6 something. Well, usually -- well, every year on 7 rules, sometimes on other proposed statutory 8 changes, and the effects of them, and so forth. 9 Regarding court appearances, I have a 10 limited number of those that I have done. I'm 11 trying to recall within Idaho, I'm not coming up 12 with anything right offhand. But nationally and 13 internationally, I've been involved in several 14 different property tax related cases as either 15 throughout the day, or as a direct witness. 16 MR. KELLY: Your Honor, and, Mr. Clark, 17 I'll try and clarify the nature of my appearance. 18 First, it's a general appearance. And I'm sorry, 19 Mr. Dornfest, for interrupting. But I will be 20 taking Mr. Dornfest on cross-examination. 21 THE COURT: Yes. 22 MR. KELLY: And so I would just like to 23 indicate that, so I could interpose objections to 24 anything that's going on. 25 THE COURT: I understand you have an</p> <p style="text-align: right;">Page 274</p>
<p>1 Q. Okay. 2 A. Within Idaho? 3 Q. Yes. 4 A. Okay. I supervise a staff member who 5 works with the assessors on a manual that helps 6 provide guidance there. I've also written 7 various -- more in the line of presentations. 8 Q. Okay. 9 A. But some procedures manuals regarding 10 the studies we do to analyze the work of the 11 assessors, to see if it comports to standards, 12 I've written a manual there. 13 Regarding the budget, and one of the 14 oversight process, we don't actually have a 15 procedure manual, although it's a product we're 16 working on. But we've -- I've 17 written -- annually, we do training for several 18 hundred taxing districts and counties. All the 19 counties participate in this training as well. 20 And, myself, and my staff are the presenters at 21 this training. So I've written the training 22 materials associated with that training. 23 Q. Have you been a witness previously? 24 A. Yes. 25 Q. In courts and legislative committees,</p> <p style="text-align: right;">Page 273</p>	<p>1 objection at this time? 2 MR. KELLY: Yes. And what I would just 3 like to clarify, is that through these questions 4 that he's asking Mr. Dornfest, that Mr. Clark is 5 not attempting to qualify him as an expert 6 witness here today. 7 THE COURT: I have no idea what 8 Mr. Clark is doing just yet. Why don't you save 9 the objection, until we get to that point. 10 Mr. Clark, continue. 11 Q. (BY MR. CLARK) Now, as far as your 12 specific duties with the counties, do property 13 tax levies come to you and your office? 14 A. Yes. 15 Q. From whom? 16 A. They come from either the county 17 clerks, or the county commissioners, usually the 18 clerks accounting on behalf of the county 19 commissioners, who actually set the tax levies. 20 But the counties are required to submit all of 21 the tax levies, and the associated property tax 22 budgets for every taxing district in the state, 23 and for every county in the state that chooses to 24 levy property tax. 25 Q. Every districts, every counties budget</p> <p style="text-align: right;">Page 275</p>

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1 comes through your office?
 2 A. That's correct, yes. Excuse --
 3 **Q. Why is that?**
 4 A. Excuse me. It's not necessarily the
 5 complete budget.
 6 **Q. Okay.**
 7 A. I need to correct that. It's sort of
 8 an abstract, the summary of the complete budget.
 9 But then our administrative responsibilities
 10 focus on the portion of the budget that's going
 11 to be raised with property tax revenue.
 12 **Q. Your sole job is to review the property**
 13 **tax determination part of the budget?**
 14 A. Well, it's hard to say, it's our sole
 15 job. But because leading up to that, we do
 16 things ministerially that tax districts and
 17 counties have subtracted certain things that have
 18 to come out before the property tax can be
 19 levied, and things like that. So there are other
 20 facets to it, that the majority is confirming
 21 that the property tax amount does not exceed
 22 various limits under state law.
 23 **Q. And do you know what those limits are**
 24 **under state law?**
 25 A. Well, I know conceptually, and

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1 policy-wise what they are. There are literally
 2 hundreds of them, so I can't say that I have
 3 every limit memorized, no.
 4 **Q. Okay. Do you have a policy guideline**
 5 **that you, in fact, put out with the Tax**
 6 **Commission on this point?**
 7 A. No.
 8 **Q. Take a look, if you would, please,**
 9 **there are two sets of binders up there.**
 10 A. Okay. (Witness complying.)
 11 **Q. And one of them is the 100 Series. And**
 12 **if you look at 141. Actually, if you take a look**
 13 **at the camera, because we've got to scroll back a**
 14 **little bit.**
 15 A. Okay.
 16 **Q. Do you recognize that document?**
 17 A. Yes, I do.
 18 **Q. Did you furnish me that document?**
 19 A. Yes, I did.
 20 **Q. What is this -- that document?**
 21 A. That is a list of the levy rate
 22 maximums, or levy rate limits that various funds
 23 are permitted to levy from property tax, provided
 24 they don't exceed the dollar limits. This
 25 is -- there are two separate types of limits in

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1 Idaho law. There are rate limits. These are
 2 rates that you are looking at next. The rate to
 3 the airport 1004, and so forth. And my staff
 4 prepares this document after researching the
 5 various codes, the hundreds of them that affect,
 6 or put in effect these various rates.
 7 In addition, there is an overall limit
 8 on the amount of dollars, and the amount that the
 9 dollars can increase from year to year from
 10 property tax. That's not found in this
 11 particular document. That's found in Idaho Code
 12 63-802, and various associated rules that have
 13 been promulgated by our agency.
 14 **Q. So the document 141, is the rate levy**
 15 **limit broken out by fund?**
 16 A. That's correct.
 17 **Q. Okay. Is that a document that is used**
 18 **in your office?**
 19 A. Yes.
 20 **Q. Do you use it often?**
 21 A. Continually, during the period of the
 22 year, during our -- you know, when we're
 23 reviewing the levies, that's usually in September
 24 and October. However, there are other periods
 25 during the year where we get questions from

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1 taxing districts. And there is the May period,
 2 where we go on the road, and do these workshops.
 3 So we use it during various times of the year.
 4 **Q. Okay. And you use it, yourself?**
 5 A. Yes, I do.
 6 MR. CLARK: I would move the admission
 7 of 141.
 8 MR. KELLY: Okay. Yes, no objection.
 9 THE COURT: No objection. 141 is
 10 admitted.
 11 (Exhibit 141 admitted into evidence.)
 12 **Q. (BY MR. CLARK) Now, a minute ago, you**
 13 **were talking about the dollar cap, besides the**
 14 **max rates on this sheet. What's the dollar cap?**
 15 A. Well, it's not dollars, per se, but
 16 it's an amount that the budget, the apportion of
 17 the budget that's being raised from property tax,
 18 by any district, is allowed to grow from year to
 19 year. That's what the -- that's what the budget
 20 limitation is. There are various exceptions
 21 spelled out in the statute. But our policy is,
 22 basically, derived from Idaho Code 63-802, with
 23 some major exceptions for school districts,
 24 however.
 25 **Q. Okay. And what is that limitation?**

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1 A. Excuse me. I may have misspoke.
 2 63-802, if I said the wrong code.
 3 **Q. Okay.**
 4 A. But the limitation is, basically, a
 5 three percent maximum that taxing districts, as a
 6 whole, not individual line items funds, like are
 7 in evidence on the screen in front of me.
 8 **Q. Okay.**
 9 A. But that a district as a whole, like a
 10 county, or a city, or a library district, may
 11 increase its property tax portion of its budget,
 12 the portion of its budget being raised from
 13 property tax on an annual basis.
 14 Now, it's a little more complicated
 15 than that, because it's three percent over the
 16 highest of the prior three years, and then there
 17 are certain additions that are allowed beyond
 18 that. There is an additional amount allowed in
 19 the budget for new construction. There is an
 20 additional amount allowed for annexation, which
 21 wouldn't apply to a county, since they can't
 22 change their boundaries that way. There is an
 23 additional amount allowed if they've chosen to
 24 not take their full increase in prior years.
 25 **Q. Is that what's commonly known as the**
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1 **foregone amount?**
 2 A. Yes, that's correct.
 3 **Q. So if they didn't take their three**
 4 **percent last year, they could take the difference**
 5 **this year, and then three more percent of that?**
 6 A. Well, it would work it the opposite
 7 way, because that would compound the three
 8 percent in a way that we would not accept. We
 9 would say, if they -- let's say, they had a
 10 budget of \$100,000, for the sake of discussion
 11 here. And they were allowed to grow it to
 12 \$103,000. And they only grew it to \$102,000 a
 13 year ago.
 14 **Q. Okay.**
 15 A. Then it was a thousand that they could
 16 have had. We would start at the 102,000 for sake
 17 of calculating next years three percent limit.
 18 But then we would allow to add that \$1,000 onto
 19 that as far as determining.
 20 **Q. Afterwards?**
 21 A. Afterwards, yes.
 22 **Q. Okay. What happens if the County sends**
 23 **you a budget with a levy that's higher than three**
 24 **percent?**
 25 A. If the amount being requested is higher
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1 than three percent, plus these other assorted
 2 allowances that I've just mentioned, like new
 3 construction, and so on, our first step is an
 4 informal step. We would notify -- after we would
 5 review, we would notify the county or the taxing
 6 district, if it's a taxing district, of the
 7 problem, of our perception of the problem. That
 8 they have exceeded the three percent limit, for
 9 example, and tell them what the maximum amount
 10 that we would approve would be.
 11 We do that routinely as part of our
 12 processing. In all instances, the county or
 13 affecting taxing district has chosen then to, you
 14 know, comport with our recommendation. We don't
 15 have any, you know, particular requirement about
 16 what fund. If they have ten funds, you know, and
 17 they want to reduce one as opposed to another.
 18 That's not under our domain. So that's our
 19 business. But we would require the reduction to
 20 that appropriate amount to be made.
 21 Now, if the -- and there has never been
 22 a case in my history that goes back to the
 23 beginning of this particular law, that we operate
 24 under, which is 1995, there has never been a case
 25 where a county, or a tax district simply refused
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1 to make that adjustment. So we haven't -- there
 2 are several other remedies listed in other laws,
 3 and we have not employed those, because it has
 4 not been necessary.
 5 **Q. This isn't just a suggestion on your**
 6 **part, though; is it? Legally, the counties**
 7 **cannot send out the tax levy without your**
 8 **approval?**
 9 A. Well, the statute doesn't actually say
 10 that, but it does require our agency to approve
 11 or disapprove, based on these different limits,
 12 to make sure that no levy rate, or no levy amount
 13 exceeds the various limits that we've been
 14 talking about.
 15 If we did get into a situation where a
 16 county chose to send out, you know, bills based
 17 on a higher amount, we would then be -- again,
 18 mandated by law, to notify the Idaho Attorney
 19 General's Office, either if it were a county in
 20 violation, or the county prosecutor, if it were a
 21 taxing district, not other than the county in
 22 violation. So, again, we have never had to go to
 23 that step. But that's the remedy in the statute.
 24 **Q. Okay. Now, if a budget came to your**
 25 **office, and was within the three percent, but if**
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1 you look at the last two items on that sheet on
 2 the screen, those two funds had higher levies
 3 than the rates allowed, would you approve it?
 4 A. If an individual fund -- I'm looking,
 5 for instance, at the justice fund?
 6 **Q. Right.**
 7 A. That's listed on this sheet. So you
 8 are suggesting that the total budget was just
 9 fine, it's within the cap?
 10 **Q. Right.**
 11 A. But the .02, the justice fund went over
 12 .02 for whatever reason.
 13 **Q. Right.**
 14 A. No, we would not approve that. We look
 15 at the tighter of the two constraints. And we
 16 would notify the county that while their overall
 17 budget had not exceeded a particular limit, the
 18 amount they are raising for the justice fund
 19 resulted in a rate that's in excess of the
 20 maximum rate for that fund.
 21 MR. CLARK: Thank you very much,
 22 Mr. Dornfest. I have no further questions on
 23 direct.
 24 THE COURT: Inquiry?
 25 MR. KELLY: Yes. May we take a brief

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1 break before cross-examination?
 2 THE COURT: All right. It's about that
 3 time of morning. We'll go ahead and take a
 4 recess.
 5 (A recess was had.)
 6 CROSS-EXAMINATION
 7 BY MR. KELLY:
 8 **Q. Upfront, the questions I'm going to ask**
 9 **relate to just your understanding of the things,**
 10 **as opposed to any legal conclusions as to what**
 11 **the law requires; is that fair enough?**
 12 A. Fair.
 13 **Q. Okay. Now, it sounds as though you are**
 14 **very familiar with Idaho Code, Section 63-802?**
 15 A. That's correct.
 16 **Q. Okay. Is it that statute that contains**
 17 **the three percent cap? And I'll just call it the**
 18 **three percent cap.**
 19 A. Yes.
 20 **Q. Now, that three percent cap doesn't**
 21 **apply to all levies; does it?**
 22 A. That's correct, it does not.
 23 **Q. Okay. And the levy that we're talking**
 24 **about here, that I'll clarify. The levy that is**
 25 **subject to the three percent cap is just the levy**

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1 **required to fund the annual budget; is that**
 2 **correct; annual operating budget?**
 3 A. I would not use the word annual
 4 operating budget. But let me clarify, if I
 5 could. Is the levy, with the exception of
 6 certain expressed exceptions, found in the
 7 statute in 63-802, such as bonds are exempted
 8 from it, overrides, or supplemental levies are
 9 exempted from it, most, but not all, school
 10 levies are exempted from it. There are several
 11 explicit exceptions that are not governed by the
 12 three percent cap.
 13 **Q. Thank you. And that's my**
 14 **understanding, also. And I should have**
 15 **limited -- I should have not used the word**
 16 **"operating" when I said annual. But the statute**
 17 **refers to annual budget that the three percent**
 18 **cap applies to; is that correct?**
 19 A. That's correct.
 20 **Q. Okay. Are you aware, or is it your**
 21 **understanding of anything in Idaho law that**
 22 **requires that a judgment, the debt or the taxes**
 23 **necessary to pay the judgment be included in the**
 24 **annual budget?**
 25 A. The way we view 63-802, is that unless

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1 it is expressly accepted, it is included. So we
 2 would not find anything that expressly said,
 3 included. We don't find anything that says,
 4 expressly include the county's current expense of
 5 road and bridge, either. But yet, we include
 6 those, because they are not expressly excluded.
 7 **Q. All right. So that is just the**
 8 **practice or understanding of the Commission,**
 9 **then?**
 10 A. That's a policy the Commission has
 11 administered, the statutes and our oversight
 12 authority regarding the budgets and levies ever
 13 since the inception of this law.
 14 **Q. Is it then the practice to exclude**
 15 **payment of judgments from the annual budget?**
 16 A. Only for school districts, because
 17 there is an expressed provision under 33-802
 18 Idaho Code for school district judgments to be
 19 exempted. Other than that, there are no
 20 judgments that I'm aware of that -- and it has
 21 not been our policy to exclude judgments.
 22 **Q. Okay. But just to clarify. Is it your**
 23 **understanding that -- oh, is there anything, to**
 24 **the best of your knowledge, in Idaho law that**
 25 **affirmatively requires a judgment to be included**

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1 **in the annual budget?**
2 A. Again, there is nothing that
3 affirmatively requires any of these funds,
4 including judgments to be included. I do need to
5 correct one thing, if I could, please?
6 **Q. Yes.**
7 A. I misspoke about judgments. There is a
8 special subset of judgments that are considered
9 exempt from the annual budget inclusion. And
10 those are judgments found under Idaho Code
11 63-1305. And they relate to property tax
12 valuation cases.
13 So in other words, some taxpayers value
14 is not completely repaid -- you know,
15 established, because it's still going under
16 appeal at the time the budgets have to be set.
17 And there may be restitution to that taxpayer.
18 Those specific cases under 1305 are allowed to be
19 exempt from this particular 33-802 cap.
20 **Q. And 63-802, itself, contains certain**
21 **exclusions; is that correct?**
22 A. That's correct, yes.
23 **Q. And one of them is for -- and there are**
24 **several override levies, I think, you've already**
25 **testified. So many levies are not covered by the**
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1 A. That's not under our purview, because
2 we don't get into that issue.
3 **Q. Or whether they can be paid from**
4 **non-property taxes?**
5 A. No, that's not our issue. We don't
6 administer that.
7 **Q. All right. It's somewhat hypothetical.**
8 **But if the County were to choose to pay the**
9 **judgment by issuing a bond, so that the proceeds**
10 **of the bond were used to pay the judgment. The**
11 **payments under the bond would be not subject to**
12 **the three percent cap; is that correct?**
13 A. I'm assuming that we're talking about
14 the type of bond that's addressed in 63-802,
15 which requires a two-thirds voter approval, and
16 that sort of thing. If that's the type of bond
17 that we're talking about, then, yes, that's
18 correct.
19 **Q. All right. Are you familiar with any**
20 **legal doctrine that says, in some cases for**
21 **bonds, voter approval is not required?**
22 A. I'm not familiar with those, no. But I
23 will just add, that it would have to be a bond
24 for which voter approval -- so, you know --
25 **Q. Either voter approval, or something**
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1 **three percent cap?**
2 A. Excuse me. I didn't understand that.
3 **Q. Isn't it true, that there are many**
4 **types of levies that are not subject to the three**
5 **percent cap?**
6 A. No, I wouldn't agree with that in
7 the --
8 **Q. Go over it next.**
9 A. There are few, and they are very
10 specific.
11 **Q. And in the statute, for example, the**
12 **override levies?**
13 A. Yes.
14 **Q. Okay. So those are the only ones in**
15 **your view, or practice that would be excluded?**
16 A. Those, and in addition, certain school
17 funds. Because there is a sort of semi-general
18 exclusion for school districts, with the
19 exception of school tort funds that are included.
20 **Q. Okay. Is it within the purview of your**
21 **commission to determine from what sources a**
22 **judgment may be paid? In other words, do you**
23 **have a view as to whether -- well, practice as to**
24 **whether judgments can be paid by borrowing money**
25 **from a third source?**
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1 **accepted from -- a bond accepted from voter**
2 **approval?**
3 A. For example, urban renewal districts
4 have bonding authority. Okay? And those bonds
5 are not voter approved. So there are examples
6 out there. And that's a separate thing entirely.
7 **Q. In Exhibit 141, do you have that in**
8 **front of you?**
9 A. I -- I'm sorry?
10 MR. CLARK: It's --
11 THE WITNESS: No.
12 MR. CLARK: Your Honor, may she help
13 you find it?
14 THE WITNESS: I'm sorry.
15 THE COURT: That's fine.
16 THE WITNESS: I'm not sure where to
17 look. I see the 200 Series.
18 THE CLERK: That one.
19 THE WITNESS: Thank you.
20 **Q. (BY MR. KELLY) Yes, it's the one last**
21 **discussed. Now, would you turn to the third page**
22 **of that exhibit?**
23 A. The third page, yes.
24 **Q. Now, there is a reference to tort?**
25 A. Yes.
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18 (Pages 288 to 291)

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1 **Q. And one of those, under tort, is claims**
2 **or judgment; is that correct?**
3 A. Yes, that's correct.
4 **Q. And off on the far right-hand column,**
5 **it says, there is no limit on judgments; is that**
6 **correct?**
7 A. That means that there is no rate limit,
8 yes, that's correct.
9 **Q. Does that mean it's not subject to a**
10 **three percent cap?**
11 A. No, it does not mean that. It is
12 subject to it. But individual line item funds
13 are not subject to the three percent cap.
14 Understand the difference, please. The taxing
15 district in question, is what's subject to the
16 three percent cap. So in this instance, it's the
17 county, for example.
18 You'll notice from page 1 through page
19 3 of this exhibit, there are -- I don't know how
20 many -- 20, 30, whatever number of different
21 funds that counties levy in. They all have their
22 own rate limits. Some of them don't. The tort
23 fund doesn't have a rate limit. Okay? Fine.
24 The three percent cap does not apply to a line
25 item, like one of those funds.

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1 THE COURT: Okay. You can be excused.
2 You can stay and observe, or you can go back, as
3 you wish.
4 THE WITNESS: Thank you very much, Your
5 Honor.
6 THE COURT: Thank you.
7 MR. CLARK: Thank you.
8 MR. KELLY: Thank you.
9 (Witness excused.)
10 THE COURT: The next witness, please.
11 MR. CLARK: Okay. I would like to call
12 Mr. Fry, please.
13 THE COURT: Okay. Mr. Fry, if you
14 would come forward and be sworn, please?
15 ROBERT FRY,
16 first duly sworn to tell the truth relating to
17 said cause, testified as follows:
18 THE CLERK: Please, have a seat.
19 THE WITNESS: (Witness complying.)
20 THE CLERK: And, please, state your
21 name, and spell your last name for the record.
22 THE WITNESS: My name is Robert Alan
23 Fry, F-r-y.
24 THE CLERK: Thank you.
25 ///

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1 **Q. And what does it --**
2 A. The three percent cap applies to the
3 sum of all they can, including the tort fund.
4 **Q. And that's based on your policy or**
5 **practice; is that correct?**
6 A. That is correct.
7 **Q. Okay. But to clarify, a few minutes**
8 **ago we, I believe, established that payment of**
9 **bonds, for example, is one that is excluded from**
10 **the three percent cap?**
11 A. That's correct, because it's expressly
12 excluded in 63-802.
13 MR. KELLY: Thank you very much. Those
14 are the only questions I have.
15 THE COURT: Thank you.
16 Mr. Clark, further inquiry?
17 MR. CLARK: I do not, Your Honor.
18 THE COURT: Okay. Thank you very much,
19 sir. You may step down.
20 THE WITNESS: Okay.
21 MR. CLARK: Your Honor, may the witness
22 be excused?
23 THE COURT: Mr. Kelly?
24 MR. KELLY: I have no further
25 questions. Yes, he may.

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1 DIRECT EXAMINATION
2 BY MR. CLARK:
3 **Q. Mr. Fry, you've previously submitted an**
4 **affidavit in the case, as well, have you not?**
5 A. Yes, I did.
6 **Q. Okay. Are you familiar with that**
7 **affidavit?**
8 A. Certainly.
9 **Q. You helped write it, headed it, and you**
10 **know what's in it?**
11 A. Well, most of the content I actually
12 wrote.
13 **Q. It makes sense to me. And will you**
14 **take a look, just in case you need it up there,**
15 **during direct or cross. If you can take a look**
16 **at Exhibit 122?**
17 A. Mr. Clark, I have a copy in my pocket.
18 Can I use that?
19 **Q. It doesn't matter to me, just as long**
20 **as you know what's in it.**
21 MR. HINDLEY: Your Honor?
22 THE COURT: Mr. Hindley?
23 MR. HINDLEY: I don't know if there is
24 other notes, or helps for him with his testimony,
25 on this one that he has in his pocket.

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19 (Pages 292 to 295)

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1 THE COURT: I agree.
 2 MR. HINDLEY: All right.
 3 THE COURT: Mr. Clark, if you need to,
 4 you could have your assistant locate the
 5 affidavit in the exhibit book.
 6 MR. CLARK: We can certainly do that,
 7 Your Honor.
 8 THE WITNESS: I just don't know how
 9 to -- I'm sorry, Your Honor, I just don't
 10 understand.
 11 THE COURT: Not a problem.
 12 THE WITNESS: Thank you very much.
 13 **Q. (BY MR. CLARK) Now, a couple of things**
 14 **that aren't in your affidavit. Can you tell us**
 15 **your education background?**
 16 A. Yes, I am a graduate from the
 17 University of Idaho. And I graduated in 1969
 18 with a BS in agricultural economics. I was then
 19 appointed as a research associate for the
 20 University of Idaho, and did economic modeling,
 21 trying to test economic theory.
 22 **Q. Okay. And how long did you do that?**
 23 A. Four years from my bachelorette, and
 24 then about 20 months of graduate school when I
 25 was working on another project.

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1 MR. CLARK: I understand, Your Honor.
 2 THE WITNESS: Yes, I can explain that.
 3 I had served, of course, on the County Commission
 4 before. And people knew of me, and knew of my
 5 abilities. I had 20 or 30 of my friends and
 6 neighbors who individually came to me, and asked
 7 me to run for County Commissioner, because they
 8 were concerned about the financial operations of
 9 the County at that time, and were concerned about
 10 the possible impact in terms of increasing taxes.
 11 **Q. (BY MR. CLARK) When did you get**
 12 **elected?**
 13 A. Well, I was elected in November of
 14 2010.
 15 **Q. Okay. Did you start going to County**
 16 **Commissioner meetings before you took office in**
 17 **January?**
 18 A. Yes, I started attending meetings about
 19 the middle of November.
 20 **Q. Okay. Now, as far as the Alamar**
 21 **judgment, in particular, is concerned, what did**
 22 **you look at, to determine how it could be paid;**
 23 **you, yourself?**
 24 A. Well, the first thing one would look
 25 at -- the thing I first looked at, myself, was

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1 **Q. Were you ever affiliated with the Idaho**
 2 **Association of Counties?**
 3 A. Yes, sir, I was.
 4 **Q. And what position did you hold with**
 5 **them?**
 6 A. At one point, I had a vice presidency
 7 in that thing. But the most significant role I
 8 played in the Idaho Association of Counties was
 9 as the legislative chair for that association.
 10 **Q. Okay. Now, you weren't on the**
 11 **Commission when the Alamar judgment was being**
 12 **tried; right?**
 13 A. That's correct.
 14 **Q. But were you on the Commission when the**
 15 **decision was handed down, and the judgment was**
 16 **entered?**
 17 A. No, I was not.
 18 **Q. Okay. So can you tell us part of why**
 19 **you ran for office?**
 20 MR. WOODARD: Objection to relevancy.
 21 THE COURT: Well, I appreciate that.
 22 But I'll take the relevancy issue into
 23 consideration later on.
 24 Let's move forward as quickly as we can
 25 on the subject, Mr. Clark.

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1 sources of available cash. I checked with the
 2 treasurer to determine what the cash position of
 3 the County was. Then I went through, in detail,
 4 the County budget to see what was available, and
 5 would be able to use for that purpose.
 6 **Q. Okay. Were you one of the people who**
 7 **actually authored, or worked on the February**
 8 **22nd, 2011 offer that was made to Alamar?**
 9 A. Yes.
 10 **Q. Okay. And had you been in attendance**
 11 **at any settlement discussions with Alamar,**
 12 **themselves, before that?**
 13 A. No, sir, I was not.
 14 **Q. All right. So you weren't at the**
 15 **meeting on February 15th?**
 16 A. No, I was not.
 17 **Q. From your viewpoint, Mr. Fry, where did**
 18 **the County come up with the 1.9 million dollars**
 19 **that it offered?**
 20 A. My understanding of that, of the source
 21 of funding, was from the clerk's trust fund.
 22 **Q. Okay.**
 23 A. From -- I can't remember, under one
 24 other fund that we -- I think it was a loan from
 25 the solid waste fund.

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20 (Pages 296 to 299)

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1 **Q. Okay.**
2 A. And then in addition, it had a portion
3 of that was, essentially, drawn from the
4 long-term investment that the County had in the
5 treasurer's office.
6 **Q. Which long-term investment, in**
7 **particular; do you remember?**
8 A. I believe it was the Fannie Mae.
9 **Q. Freddie Mac?**
10 A. Freddie Mac, whichever it was. I can't
11 recall.
12 **Q. Did you look at incurring long-term**
13 **debts such as a bond?**
14 A. Certainly, that was one of the
15 solutions that we had been in discussion -- that
16 the Board of Commissioners had been discussing
17 since mid December.
18 **Q. Okay. Was there any doubt in your mind**
19 **that the Alamar judgment was a debt that needed**
20 **to be resolved?**
21 A. No, there was no doubt. It needed to
22 be paid.
23 **Q. Sure. So what was your feeling as to**
24 **why you didn't think a bond issue was the right**
25 **thing to do?**

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1 A. Well, Mr. Clark, I just spent a period
2 from March until November, as a candidate for
3 office, with opposition. Meeting with groups of
4 people all around the County, probably, hundreds
5 of people. And one message that I got loud and
6 clear in listening to the people, was that they
7 actually would like to have their property -- the
8 tax reduced. And given that sentiment that was
9 expressed, it seemed to me highly unlikely that
10 we could ever pass a two-thirds majority election
11 in order to bond for that purpose.
12 **Q. And, again, there have been two recent**
13 **elections; bond elections?**
14 MR. WOODARD: Your Honor, cumulative.
15 We've already talked about the bond election.
16 THE COURT: Well, I'll allow it on the
17 assumption that the question leads to something
18 that I haven't already heard, Mr. Clark.
19 THE WITNESS: Could you repeat the
20 question, please?
21 **Q. (BY MR. CLARK) Yes. There have been**
22 **two bond elections that have failed this year; is**
23 **that right?**
24 A. Well, Mr. Clark, they were actually an
25 override levy for that school district, and a

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1 revenue bond for the City of Crouch. Both of
2 which failed, which of both required a simple
3 majority vote. And they didn't get even close to
4 a simple majority vote. Something in the
5 neighborhood of 25 to 30 percent affirmative.
6 **Q. Okay. At the time that the Chapter 9**
7 **bankruptcy was filed, did you have a concern in**
8 **your capacity as a County Commissioner, that**
9 **Alamar would attempt to garnish or seize the**
10 **County's cash deposits?**
11 A. Yes. Actually, we had written
12 notification that they intended to do that.
13 **Q. You saw those letters?**
14 A. Yes, I did.
15 **Q. Did you believe them?**
16 A. Yes, I did.
17 **Q. Okay. Has the County been working on a**
18 **budget for this year, the upcoming fiscal year?**
19 **Has that process started, in other words?**
20 A. Yeah, the budgeting process for the
21 coming fiscal year?
22 **Q. Yes.**
23 A. Has been started, yes.
24 **Q. Okay. Do you have knowledge or facts**
25 **that have been presented to you, that the County**

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1 **revenue may, in fact, decline?**
2 A. Yes, I do. We were informed by the
3 assessor that property values generally were
4 going to be going down. Some funds would meet
5 levy limits under those circumstances; and
6 therefore, we would be able to levy that.
7 Also, we had some action in Congress
8 with respect to some of the federal funding that
9 the County enjoys, especially payment in lieu of
10 taxes. And the secure rural schools, or those
11 previously known as the Craig widen funds, both
12 of those were proposed to be eliminated. And I
13 think the payment in lieu of taxes, actually, was
14 extended through 2012, and then was going to be
15 reduced from that point.
16 **Q. Okay. I'm editing some out.**
17 MR. CLARK: Your Honor, if I could have
18 just a second?
19 (Pause in the proceeding.)
20 MR. CLARK: I have no further questions
21 on direct examination, with the understanding
22 that this testimony is supplemental to his
23 affidavit.
24 THE COURT: Thank you.
25 Mr. Woodard?

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21 (Pages 300 to 303)

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1 MR. WOODARD: Thank you, Your Honor.
2 CROSS-EXAMINATION
3 BY MR. WOODARD:
4 Q. Mr. Fry, my name is Wade Woodard. I'm
5 one of the attorneys for Alamar.
6 And I think I just heard you say, that
7 one of the reasons that Boise County filed for
8 bankruptcy protection, is that they were
9 concerned that their cash would be attached; is
10 that correct?
11 A. That is correct.
12 Q. Okay. And is it your understanding,
13 that Boise County's cash, the cash that's in
14 these bank accounts, is not exempt from
15 execution, from attachment?
16 A. Would you repeat the question? I'm not
17 quite sure.
18 Q. Sure. Let me get -- maybe to help you
19 understand, I'm going to give you a little
20 background.
21 So Alamar filed for writ of attachment;
22 correct?
23 A. As I understand, yes.
24 Q. Okay. Do you understand what a writ of
25 attachment is?

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1 Q. That's your understanding?
2 A. Yes.
3 Q. But that's not what I'm asking. I'm
4 not talking about the County voluntarily taking
5 money from the bridge and road fund, and using
6 that to pay the Alamar judgment.
7 What I'm asking you is, are you aware
8 of any law that would prevent the sheriff from
9 going in, and attaching the cash in the County's
10 bank accounts?
11 A. Well, Mr. Woodard, I'm not an attorney,
12 and I'm not aware of a specific code section that
13 might do that.
14 Q. Okay. But you were concerned that that
15 might happen; right? That the sheriff might come
16 and take the cash?
17 A. Certainly.
18 Q. Okay.
19 A. I was not gravely concerned.
20 Q. And I think when you are talking with
21 Mr. Clark -- when Mr. Clark was asking you
22 questions, you talked about, you reviewed the
23 cash position of the County when you first became
24 a commissioner, and looked at ways of paying the
25 judgment; is that correct?

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1 A. Yes, generally.
2 Q. And a writ of attachment if it's
3 issued, it will allow the sheriff to go out and
4 execute, or attach funds in a bank account;
5 correct?
6 A. Yes, as I understand it.
7 Q. Okay. Now, my question is: Is it your
8 understanding that cash, the County's cash, is
9 not exempt from execution?
10 A. It's my understanding, that the funds
11 that make up those cash accounts, certain of
12 those funds are not eligible to be used for any
13 purpose, except for the purpose under which they
14 were appropriated for. So, in effect, a portion
15 of the cash accounts would, in fact, be exempt.
16 Q. Okay. I mean, what you are talking
17 about is, there are certain funds that are
18 restricted; right? They are restricted in the
19 uses that the County can use them for? That's
20 what Mary Prisco testified about; correct?
21 A. Yes.
22 Q. Okay. And so the County can't
23 voluntarily, in your mind, go out and use bridge
24 and road fund money to pay a judgment; correct?
25 A. I believe that's true, yes.

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1 A. That -- yes, it is correct. It's one
2 of the first things I looked at.
3 Q. Okay. And Mary Prisco, when she was
4 testifying, there were exhibits brought out that
5 were cash flow summaries. Do you remember;
6 recall those?
7 A. Yes, I do.
8 Q. Okay. Have you reviewed the cash flow
9 summaries for the fiscal year 2011, and then the
10 projections for 2012?
11 A. In detail, over and over.
12 Q. Okay. Good.
13 MR. WOODARD: Kathy, if we could put up
14 page 18 of 111. Actually, if you want to put up
15 the first page, so that we can make sure that
16 we're on the same page.
17 Q. (BY MR. WOODARD) And I know it's a
18 little hard to read the numbers with the whole
19 page there on the screen, Mr. Fry. But is that
20 one of the summaries, one of the cash flow
21 summaries, that you looked at and reviewed?
22 A. I believe it is, yes.
23 Q. Okay.
24 MR. WOODARD: Now, Kathy, if we could
25 turn to page 18? And, actually, Kathy, if you

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22 (Pages 304 to 307)

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1 can just highlight the bottom grand total cash
2 balance ending. Is there any way we can get the
3 numbers a little bigger for Mr. Fry?
4 KATHY: It should zoom.
5 THE WITNESS: I'm able to see it okay.
6 **Q. (BY MR. WOODARD) Are you? Okay. You**
7 **can see those numbers?**
8 A. Uh-huh.
9 **Q. Okay. So the numbers there, those are**
10 **the cash ending balances. And at the top of the**
11 **page up there, it starts with --**
12 MR. WOODARD: Let's go back to the full
13 page. I'm sorry, Kathy.
14 **Q. (BY MR. WOODARD) It starts with**
15 **October 10th. Do you see that on the top, the**
16 **first column --**
17 A. Yes.
18 **Q. -- is October 10th, and it goes through**
19 **September 11th; correct?**
20 A. Yes.
21 **Q. Okay. Now, let's go back to the grand**
22 **total. Okay. So as I understood Ms. Prisco's**
23 **testimony, this grand total cash balance ending.**
24 **That is the amount of cash that the County has,**
25 **for each of those months, after it's paid out its**

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1 **expenses for that month; correct?**
2 A. That's my understanding.
3 **Q. Okay.**
4 A. I'm not certain, however, of
5 the -- there were several different analyses
6 similar to this. I'm not sure which iteration
7 this was. Because each time we gain additional
8 knowledge, we put that into that.
9 **Q. Okay.**
10 A. So I really don't know if this was the
11 one that actually being --
12 **Q. Well, I believe Ms. Prisco testified**
13 **yesterday, that this one that we have the latest**
14 **version that's Exhibit 111. But we can let her**
15 **testimony stand on that.**
16 Now, if you look at the cash ending
17 balance for each of these months, for fiscal year
18 2011. At any period through that entire fiscal
19 year, after the County has paid all its budget,
20 there is cash available in the County's accounts
21 that could be attached to pay the judgment;
22 correct?
23 A. No. I don't believe so.
24 **Q. Well, didn't you just say earlier, that**
25 **you believe that the sheriff could come in and**

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1 **take the County's cash?**
2 A. Mr. Woodard, we're talking about two
3 different times. When the first discussion
4 started, I started looking at the treasurer's
5 cash. I've come to understand, after giving it
6 some thought, and reading statutes, and listening
7 to advice from Counsel, that some of those
8 funds -- or some of those funds are untouchable,
9 in terms of using that to settle the judgment.
10 So it would depend on which funds made up these
11 total balances, as to whether it was available or
12 not.
13 **Q. Well, if the funds were untouchable, if**
14 **the sheriff could not go and get the funds, you**
15 **wouldn't have needed bankruptcy, would you?**
16 MR. CLARK: Argumentative, Your Honor.
17 THE COURT: Sustained.
18 THE WITNESS: Pardon me. Would you
19 repeat the question?
20 THE COURT: You don't have to answer
21 that one. He has to ask another one now.
22 MR. WOODARD: The Judge told me it's a
23 bad question.
24 THE WITNESS: Oh, I'm sorry. I
25 couldn't hear that.

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1 THE COURT: Sorry.
2 **Q. (BY MR. WOODARD) Let me change that a**
3 **little bit. And let's go back, because I thought**
4 **the premise was -- one of the major premises for**
5 **filing for bankruptcy is that the sheriff could**
6 **come in, and take the County's cash; is that**
7 **accurate?**
8 A. Yes.
9 **Q. Okay. So the reason the County filed**
10 **for bankruptcy, is it didn't want the sheriff**
11 **coming in and taking the cash; right?**
12 A. That's correct.
13 **Q. Okay. So we got that established. So**
14 **let's keep that over here.**
15 Now, what I want you to look at is you
16 have this grand total cash balance ending. So if
17 you look at it for any of the months -- let's
18 take March 11th, which is the month where this
19 shows there is -- it's the one, two, three, four,
20 five -- no, it's the seventh column over. If you
21 see the total cash ending balance for March 2011;
22 right? It's 9.3 million dollars; is that
23 accurate?
24 A. That's what's on the page, yes.
25 **Q. Okay. So in March of 2011, after the**

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23 (Pages 308 to 311)

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1 County's met all these expenses, it has 9.3
 2 million dollars in its bank account; correct?
 3 A. That's correct.
 4 Q. Okay. Which is money that the sheriff
 5 could go attach? Because that's why you filed
 6 bankruptcy. You didn't want the sheriff to go
 7 and attach that money; correct?
 8 A. It's my belief, that the sheriff could
 9 not attach those monies that were -- that were
 10 exempt. However, all of the property tax funds,
 11 the general fund amounts would be subject to
 12 being attached.
 13 Q. Okay.
 14 A. If you didn't do that, you would not be
 15 able to continue functioning.
 16 Q. Okay. I'm not going to argue with you
 17 about what the law says on exemption or not
 18 exemption. You said you are not a lawyer, and
 19 you are not familiar with what's exempt, and
 20 what's not exempt, so --
 21 A. Well, Mr. Woodard --
 22 Q. Mr. --
 23 THE COURT: No. No. I don't need a
 24 dialog, or a back and forth. I need you to ask a
 25 question, rather than make statements. And then

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1 you can answer the questions, if I think they are
 2 appropriate.
 3 All right. Go ahead. Ask another one.
 4 Q. (BY MR. WOODARD) Okay. So let's go to
 5 the end of the year, the end of the fiscal year
 6 September 2011. So for September 2011, we note
 7 that the County, after all its expenses for that
 8 year have been paid, it has 5.5 million dollars
 9 in cash; correct?
 10 A. That's what it says, yes.
 11 Q. Okay. Let's go to Exhibit 112, and
 12 let's look at the first page.
 13 A. (Witness complying.)
 14 Q. Now, Mr. Fry, is this also in the cash
 15 flow summaries that you reviewed?
 16 A. Yes, it is.
 17 Q. Okay. And you see it's for -- it's a
 18 projection; right? For the fiscal year 2012,
 19 which goes from October through -- October 2011
 20 through September 2012; correct?
 21 A. That's correct, yes.
 22 Q. Okay.
 23 MR. WOODARD: And, Kathy, if we can now
 24 go to page 18.
 25 Q. (BY MR. WOODARD) Okay. And if we look

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1 at page 18, at the grand total cash balance
 2 ending at the end of this year. So at the end of
 3 the fiscal year for 2012, in September of 2012,
 4 the ending cash balance is 5.87, five million
 5 dollars; correct?
 6 A. Yes.
 7 Q. And if we look at the change from
 8 October 2011, when the fiscal year started, there
 9 is about 5.5 million dollars in cash; correct?
 10 A. Yes.
 11 Q. So over the year, after the County paid
 12 all its expenses, its cash grew from where it
 13 ended in fiscal year 2011, by over \$300,000;
 14 correct?
 15 A. Would you repeat the question? I kind
 16 of lost it.
 17 Q. Sure. So when the County ended fiscal
 18 year 2011, and began fiscal year 2012, its cash
 19 position after meeting all its expenses for that
 20 month, was 5.515 million dollars; right? That's
 21 what we see under October 2011?
 22 A. We have yet to reach that point. That
 23 is coming.
 24 Q. Right. That's the projection; right?
 25 A. The projection from the balance of FY

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1 '11?
 2 Q. Right.
 3 A. And so --
 4 Q. And what the projection shows is the
 5 cash for the County, its cash position is
 6 expected to grow over fiscal year 2012 by over
 7 \$300,000. Because you start with 5.515 million,
 8 and you end with 5.875 million; correct?
 9 A. That is correct.
 10 Q. Okay. Let's turn to Exhibit 118, and
 11 let's go to the first page. Mr. Fry, have you
 12 seen this document?
 13 A. Yes, I have.
 14 Q. Okay. Did you participate in preparing
 15 this document?
 16 A. I didn't do the actual drafting, but,
 17 certainly, I was a part of the discussion that
 18 led to this.
 19 Q. Okay. And now, let's turn to page 8.
 20 MR. WOODARD: And, Kathy, if you'll
 21 expand item No. 3.
 22 Q. (BY MR. WOODARD) Do you remember
 23 reading this section, Mr. Fry, on restricted
 24 funds and exemptions?
 25 A. Yes.

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24 (Pages 312 to 315)

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1 Q. Okay. Now, I want to direct you to the
 2 second paragraph, the one that starts with,
 3 "however," and let's start with the third
 4 sentence in that paragraph, that starts with the
 5 word, "Rather." This is talking about how the
 6 funds were split-up into accounts.
 7 And it says, "Rather the funds were
 8 split-up and put into various accounts, which
 9 also contain general fund monies, surplus funds,
 10 and other nonrestricted funds. While this is
 11 common in the administration of county
 12 government, it may well take the restrictions
 13 away from funds" -- I think that's from -- "those
 14 funds due to the lack of ability to trace. A
 15 major factor in a decision to file this case, and
 16 the plan, is to preserve the sanctity of as many
 17 funds as possible for the proper use of county
 18 government."
 19 Did you see that?
 20 A. Yes.
 21 Q. And did you have discussion about that
 22 statement?
 23 A. I believe so, yes.
 24 Q. Okay. And what discussion did you
 25 have?

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1 because it may have lost the sanctity of some of
 2 these funds, and they could be attached by the
 3 sheriff. And at the -- isn't it true, that at
 4 the time that settlement negotiations were going
 5 on in February of 2011, that the County was
 6 concerned, because if an agreement wasn't
 7 reached, then these funds were going to -- then
 8 the sheriff is going to go out and attach these
 9 funds? And that gave Alamar leverage in the
 10 settlement negotiations; is that accurate?
 11 A. No. No.
 12 Q. Okay. You didn't think that was the
 13 leverage, that they could just go out and attach
 14 your funds?
 15 A. Could you repeat the question, again?
 16 Q. Well, the ability of Alamar Ranch to go
 17 and attach the County's funds, that gave them
 18 leverage in the settlement negotiations. Do you
 19 agree or disagree with that?
 20 A. Their ability to secure a writ?
 21 Q. Yes.
 22 A. Certainly, would have. And they did,
 23 in fact, get a writ, and did, in fact, give us
 24 written notification that they intended to do
 25 that. And subsequently, did it.

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1 A. I don't recall, specifically, word for
 2 word. But we had discussions with our counsel
 3 with respect to those -- those funds that were
 4 not allowed to be used for other -- for other
 5 uses.
 6 Q. Okay. And it says, though, "a major
 7 factor in the decision to file this case was to
 8 preserve the sanctity of as many of the funds."
 9 Now, by -- do you understand what was being used
 10 when the word "sanctity" was being used?
 11 A. Not precisely in this context.
 12 Q. Okay. Is it your understanding, that
 13 what is being said here, is that we believe that
 14 there are funds. And that these funds have
 15 restrictions. But these restrictions may have
 16 been lost due to the inability to trace. And so
 17 we needed to file for bankruptcy to protect the
 18 sanctity of these funds that we believe are
 19 restricted? Is that --
 20 A. Okay. Yeah, I understand what that
 21 says.
 22 Q. Is that accurate? Is that what
 23 happened? Is that why you filed?
 24 A. Yes, it is.
 25 Q. Okay. And so the County was concerned,

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1 Q. Well, did they get a writ, or did they
 2 just apply for a writ?
 3 A. I'm really uncertain as to the answer
 4 to that.
 5 Q. Okay. Isn't it true that what the
 6 County did to take away that leverage in the
 7 negotiations, so that the cash accounts could not
 8 be attached, is the County filed for bankruptcy?
 9 MR. CLARK: Is that a question?
 10 THE WITNESS: Could you repeat that
 11 question? I'm not sure I understand it.
 12 THE COURT: I'll ask you to rephrase
 13 the question so I can follow it as well.
 14 MR. WOODARD: Okay. Let me see if I
 15 can.
 16 Q. (BY MR. WOODARD) Isn't it true, that
 17 what the County decided to do to eliminate the
 18 leverage that Alamar had in these settlement
 19 negotiations, is to file for bankruptcy
 20 protection, so that that ability to attach funds
 21 was taken away?
 22 A. No, I don't believe that's correct.
 23 Q. Isn't that the effect of it? The
 24 bankruptcy prevented Alamar from attaching funds,
 25 correct?

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25 (Pages 316 to 319)

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1 A. You are describing a motivation for the
 2 County to do something. Our motivation was to
 3 maintain the County in operation. And had
 4 the -- had the writ been executed, and pulled the
 5 cash from the County, we would essentially be in
 6 the situation where we would have to close the
 7 doors. We would no longer have the court. We
 8 would no longer have a road and bridge system.
 9 We would no longer have the County constitutional
 10 offices operation. It would essentially put a
 11 situation where we would not be able to function
 12 as a County, and meet our statutory obligations.
 13 That's the reason.
 14 **Q. Okay. Well, let's talk about that.**
 15 **Because didn't we just look at the 2012 cash flow**
 16 **summaries? And didn't those show that after you**
 17 **met all your expenses, you provided for all these**
 18 **services you just talked about, the County had**
 19 **their projected in 2012 to have 5.5 million**
 20 **dollars in cash; isn't that true?**
 21 A. That's true.
 22 **Q. Okay. Thank you.**
 23 **Do you have -- do you still have your**
 24 **affidavit in front of you?**
 25 A. Yes, I do.

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1 **Q. Okay. Let's turn to paragraph 7 of**
 2 **your affidavit.**
 3 A. (Witness complying.)
 4 **Q. And I want to direct you to the**
 5 **sentence that starts with the offer of February**
 6 **22nd, which is towards the bottom third of that**
 7 **paragraph.**
 8 A. Okay.
 9 **Q. Do you see that?**
 10 A. Yes.
 11 **Q. Okay. It says, the offer of February**
 12 **22nd was based on available cash, and legal**
 13 **usable funds, plus the carryover cash in various**
 14 **funds.**
 15 **And I just want to ask you, what do you**
 16 **mean by carryover cash?**
 17 A. In every fund in the County's budget,
 18 by law, any money that's not expended in that
 19 fund, transfers over into the next fiscal year's
 20 budget. And in the budgeting process, we
 21 explicitly make that transfer.
 22 **Q. Okay. Let me ask you about that.**
 23 **Because I think there some questions asked**
 24 **about -- to Ms. Prisco about that. So it's your**
 25 **understanding that by operation of law, without**

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1 **the County doing anything, if there is like, say,**
 2 **a road and bridge fund. At the end of the year,**
 3 **there is money leftover in the road and bridge**
 4 **fund, that automatically transfers over for the**
 5 **next year's use for the road and bridge fund?**
 6 A. Yes, but particularly, with respect to
 7 something like the road and bridge fund. Because
 8 the inflow of revenue into that account comes
 9 from sources that, by statute, may not be used
 10 for any other purpose, except road and bridge.
 11 And it makes up a portion of this amount that
 12 you've indicated a surplus.
 13 **Q. Yes. But then my question was: It**
 14 **just automatically transfers from year to year?**
 15 A. Yes.
 16 **Q. In your mind?**
 17 A. Yes.
 18 **Q. Okay. Now, a carryover, that's excess;**
 19 **right? That's stuff that wasn't used the year**
 20 **before? Cash, "stuff" is not the word. But**
 21 **that's cash. So you've got a fund, like the road**
 22 **and bridge fund, and if after all your expenses**
 23 **at the end of the year, there is money in that**
 24 **fund, excess money that wasn't used that year,**
 25 **it's carried over? That's what you mean by**

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1 **carryover money?**
 2 A. That's correct.
 3 **Q. Okay. Let's go with the next sentence.**
 4 **It says, "using carryover cash from the funds, as**
 5 **well as the amount available from the treasurer's**
 6 **account, actually, amounts to a double counting**
 7 **of a portion of the cash."**
 8 **What do you mean by that?**
 9 A. Every nickel that shows up in the
 10 treasurer's cash accounts, also appears in one
 11 fund or another. In other words, the accounting
 12 of where that money is, where it's going, is done
 13 by fund. It's the same system the State uses.
 14 **Q. Okay. Let me see, because I think I**
 15 **understand now. So you've got your fund**
 16 **accounting, and you've got your accounts. And if**
 17 **you're counting money from the accounts, you are**
 18 **actually counting money from the fund, because**
 19 **the money in the account is actually attributed**
 20 **to funds?**
 21 A. Exactly.
 22 **Q. Okay. Thank you.**
 23 **Let's go to the last sentence, now, in**
 24 **that paragraph. It says, "moreover, I was and am**
 25 **afraid that using carryover in the various funds**

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26 (Pages 320 to 323)

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<p>1 may not be legal as those funds can only be used 2 for stated purposes." 3 Is that what you were talking about 4 before, when you were talking about your belief 5 that certain funds can only be used for certain 6 purposes? 7 A. Yes. 8 Q. Okay. When did you come to believe 9 that -- well, let me back up. 10 What this paragraph 7 is talking about, 11 in the February 22nd offer, is the 1.9 million 12 cash upfront that was offered; correct? 13 A. Uh-huh. 14 Q. Is that a yes? 15 A. Yes. 16 Q. Thank you. 17 And you were afraid that using the 18 carryover, this excess money that's in these 19 funds at the -- these funds that you believe are 20 restricted at the end of the year, that that may 21 not be legal; is that what you were saying? 22 A. Yes, that was one of my concerns. 23 Q. Okay. There is this 1.9 million dollar 24 offer made. And you were afraid that it had 25 illegal funds -- that it may be made up of</p> <p style="text-align: right;">Page 324</p>	<p>1 that were being used to do that, could not 2 legally be used to make that offer? 3 A. Mr. Woodard, that was an argument that 4 I lost. 5 Q. Okay. But did you make that known to 6 the other Commissioners, then? 7 A. Yes. 8 Q. Okay. And you essentially were 9 outvoted? 10 A. I don't know that it ever actually came 11 to a vote, except at that point. It was -- it 12 was discussed, and it became sort of a consensus. 13 And it was to the point that no matter how much 14 time I spent, I would not have persuaded the 15 other Commissioners to change their view on this; 16 and therefore, I just said, well, okay. Let it 17 happen. 18 Q. Okay. 19 A. I was kind of under the impression 20 that, you know, it would eventually work its way 21 out some way, you know. 22 Q. Okay. You were hopeful? 23 A. I was optimistic. 24 Q. You testified earlier, that you were a 25 Commissioner in the past. That this is your</p> <p style="text-align: right;">Page 326</p>
<p>1 illegal funds? 2 A. Made up of funds that could not be used 3 for that purpose. 4 Q. Thank you. You stated a better 5 question than I did. 6 When did you come to believe that the 7 offer made in February, by Boise County, may be 8 using funds that weren't -- that you were afraid 9 weren't legally usable? 10 A. You are asking me, when? 11 Q. Yes, a timing question. When did you 12 come to that conclusion? 13 A. I'm not certain I can give you a 14 specific time. It's something that, you know, I 15 had in my memory from my previous service as a 16 Commissioner, and my service as a Tax 17 Commissioner, it was, you know, commonly known. 18 Q. Okay. 19 A. In those -- in those circles, at least, 20 that those monies could not be used for any other 21 purpose. 22 Q. Okay. So it was commonly known. So at 23 the time that you made the offer, the County 24 Commissioners made that offer on February 22nd to 25 use 1.9 million, you were afraid that the funds</p> <p style="text-align: right;">Page 325</p>	<p>1 second time serving as a Commissioner; is that 2 correct? 3 A. That's correct. 4 Q. Okay. And when you were a Commissioner 5 in the past, you were a Commissioner for Boise 6 County? 7 A. Yes, I was. 8 Q. Okay. And when was that? 9 A. I was elected in -- let's see -- 1981, 10 I believe it was. I'm not sure with certainty. 11 But, no, I was -- no, it was in the election of 12 '80 that I was -- that I went in. And then I was 13 sworn in the following January. 14 Q. Okay. In 1981? 15 A. Yes. 16 Q. Okay. Thank you. 17 A. And, incidentally, that was a time when 18 the County was also suffering from financial 19 difficulties. 20 Q. Okay. 21 MR. WOODARD: Kathy, can we put up 22 Exhibit 215? 23 MR. CLARK: 2- -- which one? 24 MR. WOODARD: 215. 25 And, Kathy, if you can, first off, if</p> <p style="text-align: right;">Page 327</p>

27 (Pages 324 to 327)

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1 you can expand the first part.
2 **Q. (BY MR. WOODARD) Mr. Fry, this is an**
3 **email, dated March 30th, 2011. And it's from**
4 **Mr. Clark, to Mr. Hindley, and myself. And there**
5 **is a copy to you; correct?**
6 A. Yes.
7 **Q. Okay.**
8 MR. WOODARD: Kathy, now expand it
9 back.
10 **Q. (BY MR. WOODARD) Do you remember**
11 **seeing this email? You can take a moment to read**
12 **over it.**
13 A. Yes, I remember receiving that email.
14 **Q. You know, I apologize. Did you say,**
15 **you remember it?**
16 A. Yes.
17 **Q. Okay.**
18 A. I did remember --
19 **Q. Through --**
20 A. -- seeing this email.
21 **Q. Thank you.**
22 MR. WOODARD: Can we turn to the next
23 page? And, actually, the page after that.
24 **Q. (BY MR. WOODARD) Now, this email**
25 **contains a proposal from the County; correct, to**
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1 Alamar?
2 A. Yes.
3 **Q. Okay. And part of the proposal was a**
4 **1.5 million dollar upfront payment, and then 3.5**
5 **million dollars of money paid over time; correct?**
6 A. Yes.
7 **Q. For a total of 5 million dollars?**
8 A. Yes.
9 **Q. Now, the 1.5 million dollars that's**
10 **mentioned in this settlement offer, where did**
11 **that come from?**
12 A. That was based upon some of the
13 same -- the same sources that we had looked at
14 previously in the offer of 1.9, without the cash
15 account component of that.
16 **Q. Okay. Would the debt -- in that 1.5,**
17 **did it include any funds that you were afraid**
18 **were not legally usable to pay the judgment?**
19 A. There were no funds in there that I
20 thought were legally unusable for paying the
21 judgment.
22 **Q. Okay. So the concerns that you had**
23 **with the prior offer, you didn't have with this**
24 **one, about illegally using funds?**
25 A. No, I did not.
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1 **Q. Okay. So do you recall which funds**
2 **were going to be used, to make up that 1.5**
3 **million?**
4 A. I really don't recall, precisely.
5 **Q. It's just your recollection that it**
6 **wasn't the ones that you were afraid of before?**
7 A. That's correct.
8 **Q. Okay. Now, is it your belief that what**
9 **the County offered on February 22nd, was the**
10 **most -- that the County could reasonably be**
11 **expected to pay?**
12 A. At that time, I believe that was the
13 amount the County could reasonably expect to be
14 able to pay.
15 **Q. Okay. And that was just not based on**
16 **any notion of the merits of the case, or**
17 **anything? But that was just based on how much**
18 **money the County had available, and you believe**
19 **they had the ability to pay with; correct?**
20 A. Mr. Woodard, had the County been able,
21 we would have paid the judgment the day it came
22 due.
23 **Q. Okay. Good. Okay. Now, I think you**
24 **said, at the time of February 22nd, that was the**
25 **most that the County could reasonably be expected**
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1 **to pay. And that was based on the information**
2 **that you had at that time; correct?**
3 A. Yes.
4 **Q. Okay. Exhibit 215, which is still up**
5 **in front of you, which was a March -- let's go**
6 **back to the date. I believe it was March 30th?**
7 **Yes, March 30th, 2011. So a little over a month**
8 **after the February offer. This proposal that was**
9 **made in March, was it reasonable for the County**
10 **to pay that amount?**
11 A. In retrospect, it was not. Because at
12 that time, we had some -- some accounts that were
13 due and payable, we did not know about as a
14 board, neither did the clerk. It wasn't until
15 the flood of indigent claims came through, that
16 we had to pay in total, that we realized that
17 there wasn't going to be adequate funding even to
18 have --
19 **Q. Okay. So it was the indigent claims**
20 **that made this no longer reasonable?**
21 A. That's correct.
22 **Q. Okay. Are you aware of how much the**
23 **County proposes to pay on the judgment in its**
24 **plan of reorganization? Its proposed plan of**
25 **reorganization?**
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28 (Pages 328 to 331)

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1 A. Yes, I am.
2 **Q. And that amount is 500,000; correct?**
3 A. That is correct.
4 **Q. Okay. Do you believe that 500,000 is**
5 **all the County could reasonably be expected to**
6 **pay?**
7 A. Mr. Woodard, if the -- if Alamar is
8 going to rely on the Tort Claim Act to give
9 authority for the County to levy, to pay this
10 amount, then they are also bound by the Tort
11 Claim Act, in terms of the limits within that
12 Tort Claim Act.
13 **Q. Okay. Well, let me see if you are**
14 **opposing my question. So you believe that's the**
15 **most that the County could reasonably be expected**
16 **to pay at this time?**
17 A. I believe that's -- that's the amount
18 that we would legally be obligated to pay.
19 **Q. Do you know if that was an issue that**
20 **the County raised in its appeal to the Ninth**
21 **Circuit?**
22 A. I don't believe it was.
23 **Q. Okay.**
24 A. I don't believe the Tort Claims Act
25 came in until quite late in this process.

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1 A. That's true, I haven't.
2 **Q. Okay.**
3 A. Gone back to 2009 in the County
4 minutes? That's, no.
5 **Q. While you were a Commissioner in 1981,**
6 **your first term of service, were you ever**
7 **involved in the County, issuing warrants?**
8 A. Yes, indeed.
9 **Q. Okay. And what is your understanding**
10 **of what a warrant is?**
11 A. Well, a demand -- or not a demand
12 warrant, but a -- I can't think of the term --
13 registered warrant?
14 **Q. Yes.**
15 A. Is a means by which, essentially, the
16 County is promising to pay, and issuing -- issues
17 these warrants, and then they can be -- they can
18 be -- when the revenue becomes available, they
19 can be turned into the County, and the County
20 would pay those.
21 **Q. Okay. So the one means that the County**
22 **has to pay for things, is to issue a warrant?**
23 A. It's one of the last resort things that
24 a County would do.
25 **Q. Yes. But it is something they can do?**

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1 **Q. After the judgment was issued, did the**
2 **County Commissioners get together to revise the**
3 **budget, to add the judgment into the budget?**
4 A. The judgment was entered prior to my
5 being on the Commission. I attended all, but a
6 few of the meetings, since after that time. I'm
7 not aware of any instance that the budget was
8 re-opened. I don't believe it was.
9 **Q. Okay. Are you aware whether the**
10 **County, upon the filing of the Alamar lawsuit in**
11 **2009, ever began budgeting a reserve for a**
12 **potential judgment in that case?**
13 A. I'm sorry. I don't understand your
14 question.
15 **Q. Well --**
16 A. The timing, what --
17 **Q. The timing was 2009. I understand that**
18 **you are not that Commissioner. That's why I'm**
19 **asking if you are aware in the budgeting process,**
20 **once the lawsuit was filed in 2009, whether a**
21 **reserve was ever set aside for payment of the --**
22 A. I have no way of knowing that.
23 **Q. Okay. You could go back and look**
24 **through the records, it's just you haven't done**
25 **that; is that accurate?**

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1 A. Yes, I -- yes, I can, within reasonable
2 limits. Yes.
3 **Q. Okay. And your time as a Commissioner,**
4 **did you ever have an opportunity to issue**
5 **warrants for an emergency expenditure?**
6 A. I don't recall an emergency
7 expenditure. There may have been, but I don't
8 recall one.
9 **Q. Okay. Did you ever have an opportunity**
10 **to issue a warrant for a debt mandated by law?**
11 A. Well, I believe all the -- all the
12 payments made were due to mandates that they be
13 paid.
14 **Q. Okay.**
15 A. Everything, just in the normal course
16 of business. If you would like further
17 explanation, the situation was, the County found
18 itself in a cash poor position, where it had no
19 cash, no carryover from previous funds, previous
20 years in the funds, in order to operate those
21 funds. Particularly, disasters declined in
22 timber harvest, which reduced the money for road
23 and bridge.
24 It also was a reflection of the economy
25 at that time was not good. That was reflected in

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1 terms of tax collections. So the County was
2 forced, in order to fund the first quarter or so,
3 from October until mid January, when the first of
4 the tax revenues started coming in. We were
5 forced to issue these registered warrants, in
6 order to stay in operation.
7 **Q. Okay. And these registered warrants,**
8 **the way that they can be paid, is through that**
9 **tax levy; right? To pay the warrants subject to**
10 **what Mr. Dornfest talked about?**
11 A. Yes.
12 **Q. But that's one of the means; correct?**
13 A. Yes.
14 **Q. Okay. Are you familiar with the**
15 **warrant redemption fund?**
16 A. That's the fund from which you pay
17 those registered warrants.
18 **Q. Okay. So when you have outstanding**
19 **warrants, the County then sets up a warrant**
20 **redemption fund; correct?**
21 A. That's correct.
22 **Q. Okay. Now, the County hasn't issued**
23 **warrants for the Alamar judgment; correct?**
24 A. No.
25 **Q. Was that even considered?**

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1 **redemption fund?**
2 A. No, it may not. The funds that go into
3 the road and bridge fund are restricted. They
4 are only to be used for those purposes of
5 building roads and bridges.
6 MR. WOODARD: Okay. Just one second.
7 I may be done.
8 (Pause in proceeding.)
9 MR. WOODARD: You know what? I think
10 I'm done.
11 THE COURT: Okay. Thank you.
12 Mr. Clark, do you have further inquiry?
13 MR. CLARK: I have a few.
14 THE COURT: Will you be able to take
15 care of them in the next five minutes?
16 MR. CLARK: I actually think, probably.
17 THE COURT: Okay. Go ahead.
18 REDIRECT EXAMINATION
19 QUESTIONS BY MR. CLARK:
20 **Q. Mr. Fry, when you filed the bankruptcy,**
21 **you had seen documents from Mr. Woodard's office**
22 **that they were going to levy on the County's**
23 **cash?**
24 A. Yes, I had.
25 **Q. Did you take this as leverage in**

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1 A. It was considered.
2 **Q. And rejected?**
3 A. Yes.
4 **Q. And why?**
5 A. It was rejected, because had we done
6 that, then all of the property tax revenue that
7 came in, would have been subject to -- to use to
8 payoff that -- those warrants. In which case, we
9 would not have cash to operate the County. We
10 would have to close down the County offices. We
11 would no longer have police protection. We would
12 no longer have the other services that the County
13 provides.
14 **Q. Isn't it true, though, that the County**
15 **can use carryover cash, on, say, like the road**
16 **and bridge fund, it can use funds too many times,**
17 **but to put money into the warrant redemption**
18 **fund?**
19 A. I lost you in that question. Could you
20 repeat that?
21 **Q. Doesn't the County have the ability to**
22 **use carryover cash from, say, a number of funds,**
23 **with the list -- let's pick out the road and**
24 **bridge fund. It can take carryover cash from the**
25 **road and bridge fund to fund the warrant**

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1 **negotiations?**
2 MR. WOODARD: Leading, Your Honor.
3 **Q. (BY MR. CLARK) Or did you take it at**
4 **face value?**
5 THE COURT: Overruled. You asked him
6 about the leverage question. I'll allow the
7 examination to continue.
8 THE WITNESS: I did not consider that
9 we were in negotiations at that point. We had
10 made the best offer that we could make. The
11 leverage didn't matter. We couldn't have paid
12 more than what we offered in that offer. So, no,
13 it was a question of our ability to pay that, you
14 know.
15 **Q. (BY MR. CLARK) As far as Exhibit 215,**
16 **which is the email that I've sent to**
17 **Mr. Woodard's office.**
18 A. Uh-huh, yes.
19 **Q. From what you know now of the budgets,**
20 **since you've been working on the County budget,**
21 **since this document was written, do you think**
22 **that the County could pay that, currently?**
23 A. If Alamar had accepted that offer, the
24 County would be back in court, in bankruptcy
25 court, because we couldn't -- we couldn't have

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1 fulfilled that offer.
2 **Q. You thought you could have fulfilled**
3 **it?**
4 A. Absolutely.
5 **Q. But you don't think you can now?**
6 A. Correct.
7 **Q. Why?**
8 MR. WOODARD: Asked and answered.
9 THE WITNESS: Because one thing, we
10 found numerous situations in the records of the
11 County that were not necessarily correctly
12 reflecting the cash position of the County or the
13 fund balances. We found a year, and a little bit
14 more, worth of indigent claims that had not been
15 processed, and not being processed. They
16 automatically had to be paid without any
17 kind -- without any further litigation or
18 discussion in there.
19 **Q. (BY MR. CLARK) Paid in face value?**
20 A. Yeah, we have to pay it for face value.
21 Yes.
22 **Q. Not with the Medicaid reduction or**
23 **anything?**
24 A. That's correct.
25 **Q. Okay. Where do the idea of the tort**

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1 **claims -- that come from? Did we raise them, or**
2 **did they raise them?**
3 A. No, that was raised by Alamar. They
4 quoted one section of that -- that chapter.
5 **Q. Okay.**
6 A. So that came from them.
7 **Q. So, finally, payment on registered**
8 **warrants. Are those part of the three percent**
9 **limitation, in your opinion?**
10 A. Yes, they are.
11 **Q. So even if it's a registered warrant**
12 **situation, you've still got to comply with**
13 **Mr. Dornfest, his mandates?**
14 A. Yes, the state law mandates the legal
15 mandate.
16 MR. CLARK: All right. I have nothing
17 else, Your Honor.
18 THE COURT: Anything else?
19 MR. WOODARD: Just one question.
20 THE COURT: Go ahead.
21 RE-CROSS-EXAMINATION
22 QUESTIONS BY MR. WOODARD:
23 **Q. Mr. Fry, are you aware that federal law**
24 **preempts any Idaho Statute, statutory caps on**
25 **damages?**

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1 A. No, I'm not aware.
2 MR. WOODARD: Okay. No further
3 questions.
4 THE COURT: Very well. Thank you, sir.
5 You may step down.
6 (Witness excused.)
7 THE COURT: We'll take our lunch
8 recess. I'll look for you around 1:30, or so,
9 this afternoon.
10 (A lunch recess was had.)
11 THE COURT: Good afternoon. Have a
12 seat, please.
13 Anything before we continue, Mr. Clark?
14 MR. CLARK: I do have a preliminary
15 matter, Your Honor.
16 THE COURT: Go ahead.
17 MR. CLARK: At the close of the
18 cross-examination yesterday of Ms. Prisco,
19 Mr. Hindley made, I believe, two remarks that we
20 need the treasurer. Well, we've got the
21 treasurer. She is here. We had her come down
22 this afternoon. She is present in court.
23 I understand that if we call her, they
24 are going to object to that, even though they are
25 the ones who requested her. We do intend to

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1 present her for probably no more than a half a
2 dozen questions. And I would, therefore, request
3 leave to supplement the witness list by adding
4 the name of April Hutchings.
5 THE COURT: All right. The debtor
6 wants to call Ms. Hutchings. Does somebody on
7 the Alamar side want to speak to it?
8 MR. BANDUCCI: Yes, Your Honor, thank
9 you. First of all, we did not request
10 Ms. Hutchings. The comment that was made, I
11 heard the comment as well, was in relation to a
12 response made by Ms. Prisco that she didn't know
13 what the unencumbered funds column meant. And
14 that this was a designation for that budget
15 column made by Ms. Swearingen when she was the
16 treasurer.
17 We have not asked for Ms. Hutchings.
18 We're not prepared for Ms. Hutchings. And if
19 they are going to call someone in their case in
20 chief, I think that would be inappropriate given
21 we haven't had a chance to prepare for that
22 testimony.
23 THE COURT: Okay. I understand. I
24 listened to the testimony as well, and I had a
25 sense of certain areas of inquiry, from both

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31 (Pages 340 to 343)

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1 sides to Ms. Prisco, which were really issues
2 that should have been addressed to the treasurer.
3 And that both sides wanted answers to those
4 questions.
5 I'm going to grant the request, allow
6 her to be called, six questions, or thereabout,
7 can be asked. If at the conclusion, Alamar feels
8 they need additional time to prepare in response
9 to Ms. Hutchings testimony, then I'll consider an
10 appropriate request at that point. We'll see if
11 it's necessary.
12 MR. BANDUCCI: Thank you, Your Honor.
13 THE COURT: Are we going to deal with
14 it right now?
15 MR. CLARK: We can, Your Honor. It
16 certainly won't take very long.
17 THE COURT: All right. Let's do it,
18 and then we'll move on.
19 MR. CLARK: I'm sure she would like
20 that, so she can get back to work.
21 THE COURT: All right. Ms. Hutchings.
22 The witness stand is up here. I'm sorry. I
23 didn't mean to scare you. I'm not near as scary
24 as they say.
25 APRIL HUTCHINGS,

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1 A. I take care of the County's money. I
2 take the money in, and I have to account for all
3 the monies to the clerk, and put it in the bank,
4 and keep track of it.
5 **Q. Okay. One of the forms that you**
6 **generate with your accounting system is called a**
7 **statement of treasurer's case; is that right?**
8 A. That's right.
9 **Q. Okay. We're putting that up.**
10 MR. CLARK: Okay. Put it down just a
11 little bit, please. Thanks.
12 **Q. (BY MR. CLARK) Do you recognize this**
13 **as the last page of a document?**
14 A. Yes, I do.
15 **Q. Is it one of your documents?**
16 A. Yes.
17 MR. CLARK: Your Honor, for the record,
18 I'm referring to the last page of Exhibit 106.
19 THE COURT: Thank you.
20 **Q. (BY MR. CLARK) Ms. Hutchings, when a**
21 **check is written, what account is used to write**
22 **the check?**
23 A. It would be the Wells Fargo treasurer's
24 general account.
25 **Q. Is that where all the checks are**

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1 first duly sworn to tell the truth relating to
2 said cause, testified as follows:
3 THE CLERK: And, please, state your
4 name, and spell your last name for the record.
5 THE WITNESS: April D. Hutchings,
6 H-u-t-c-h-i-n-g-s.
7 THE CLERK: Thank you.
8 DIRECT EXAMINATION
9 BY MR. CLARK:
10 **Q. Okay. Thank you. Ms. Hutchings?**
11 A. Yes.
12 **Q. What is your office in Boise County?**
13 A. Boise County Treasurer.
14 **Q. How long have you been the Boise County**
15 **Treasurer?**
16 A. I was -- I took office after the
17 previous treasurer resigned -- or resigned, or
18 whatever, you know -- I'm really
19 nervous -- in November of 2009.
20 **Q. Okay.**
21 A. And then I was elected this last term.
22 **Q. Okay. So you've been on the job now**
23 **for a little over a year-and-a-half?**
24 A. Yeah.
25 **Q. Okay. And what are your duties?**

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1 **written?**
2 A. Yes, it is.
3 **Q. Okay. Are you one of the signers on**
4 **the checks?**
5 A. Yes, I am.
6 **Q. And who is the other?**
7 A. Mary.
8 **Q. Mary Prisco?**
9 A. Mary Prisco, yes. I'm sorry.
10 **Q. Now, do you see all these bank**
11 **accounts?**
12 A. Yes.
13 **Q. Okay. The last one Gen operating in,**
14 **is that what's commonly referred to as the**
15 **Freddie Mac?**
16 A. It is.
17 **Q. Okay. What fund money is in there?**
18 A. I have no idea.
19 **Q. What fund money is in the Wells Fargo**
20 **account?**
21 A. All money that comes in goes into the
22 Wells Fargo general.
23 **Q. And money comes in from all different**
24 **revenue sources?**
25 A. All different revenue sources, yes.

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32 (Pages 344 to 347)

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1 **Q. And how do you move it around to the**
2 **different accounts that are shown here?**
3 A. To the different accounts, I can put it
4 in the -- you know, the diversified bond has been
5 there since way before I took office.
6 **Q. Okay.**
7 A. But I can move it to the local
8 government investment pool, or Mountain West
9 Bank, general, and wherever.
10 **Q. Okay. As part of your job, is it any**
11 **of your duties to determine what fund the money**
12 **comes from?**
13 A. No, it is not.
14 **Q. Is it your duty to determine what fund**
15 **any money goes into?**
16 A. No, it is not.
17 **Q. Do you reconcile your bank accounts**
18 **with the fund balances?**
19 A. No -- well, except for this right here.
20 I mean, these two balances have to come out to
21 the same at the end of each month.
22 **Q. Okay. So --**
23 A. But that's not individual funds or
24 anything, no.
25 **Q. Okay. So what you are saying, is the**

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1 **total of all sum balances?**
2 A. Uh-huh.
3 **Q. And the total of the cash have to**
4 **equal?**
5 A. Correct.
6 **Q. And other than that, you don't have to**
7 **do anything?**
8 A. No.
9 **Q. All right. One final question:**
10 **Mr. Banducci mentioned in his statement a few**
11 **minutes ago, the last treasurer, Connie**
12 **Swearingen, she wasn't the treasurer; was she?**
13 A. No, she was not. She was the clerk.
14 MR. CLARK: Okay. I have no further
15 questions on direct.
16 THE COURT: Thank you.
17 MR. CLARK: One moment, Your Honor.
18 THE COURT: Certainly.
19 MR. BANDUCCI: Your Honor, we would
20 like leave of the court to recall Ms. Hutchings.
21 I think that we may not need to ask questions of
22 her, but will know better after we examine the
23 other witnesses, who had been designated.
24 THE COURT: Well, since I let Mr. Clark
25 come in. If we need to deal with it in

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1 furtherance, then I'll give you an opportunity to
2 make that request, and tell me what it is. All
3 right?
4 I have a question before we let you go,
5 and it may form something that Mr. Clark may want
6 to ask you a question, or Mr. Banducci may later.
7 EXAMINATION
8 BY THE COURT:
9 **Q. You said that all money that comes in**
10 **goes into the Wells Fargo treasurer's general**
11 **account?**
12 A. Correct.
13 **Q. And that you have the authority to move**
14 **it to other of the accounts?**
15 A. Right.
16 **Q. But you don't direct the movement of**
17 **the funds, independently?**
18 A. Well, funds are different. I mean, I
19 don't --
20 **Q. Let me say, monies, instead of funds.**
21 A. Okay.
22 **Q. The money in the account, why would you**
23 **move it from one account to another?**
24 A. For investment purposes. And, also, by
25 Idaho Code, I am not allowed to keep more than 50

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1 percent of the total budget -- total monies in
2 one account, or in one bank.
3 **Q. So you would make the decision, if you**
4 **were reaching that threshold, to move the monies**
5 **into a different bank account?**
6 A. Correct.
7 **Q. Does anyone else have the authority to**
8 **tell you to move money, and when to move money?**
9 A. Well, I suppose the Commissioners
10 could.
11 **Q. And is that one of the reasons that you**
12 **would move funds from the various accounts? Do**
13 **you get instructions from the Commissioners to do**
14 **that?**
15 A. Actually, no, I don't. I move the
16 monies, you know, try to collect the interest
17 that we can collect.
18 **Q. So your movement is based on**
19 **investments and collecting the interest?**
20 A. Correct.
21 THE COURT: All right. Any further
22 questions in light of the Court's inquiry,
23 Mr. Clark?
24 MR. CLARK: Not from us, Your Honor.
25 THE COURT: Anything at this time,

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1 Mr. Banducci, or do you want to reserve?
 2 MR. BANDUCCI: Again, I'm sorry, Your
 3 Honor. Just one more second.
 4 THE COURT: Yes.
 5 MR. BANDUCCI: Your Honor, I don't want
 6 to waive my right to ask her further questions.
 7 But your question has actually -- and her
 8 responses, I think the timing is right to ask
 9 some particular questions.
 10 THE COURT: I'll let you ask a couple.
 11 And then I'll still let you make an argument
 12 later that you need her back.
 13 MR. BANDUCCI: All right. Thank you
 14 very much, Your Honor.
 15 THE COURT: Go ahead.
 16 MR. BANDUCCI: Your Honor, may the
 17 witness be shown Exhibit 229?
 18 THE COURT: There is a large binder
 19 there, with numbered tabs.
 20 MR. BANDUCCI: And, Kathy, if you could
 21 go to page 29?
 22 MR. CLARK: Can I?
 23 THE COURT: Yes, you may go up and
 24 assist her in finding the correct number and
 25 page. Was it 29?

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1 MR. BANDUCCI: Yes, 29 of Exhibit 229.
 2 THE WITNESS: All right. Thank you.
 3 MR. BANDUCCI: Are we there?
 4 THE WITNESS: Uh-huh.
 5 MR. BANDUCCI: Okay. Great.
 6 CROSS-EXAMINATION
 7 QUESTIONS BY MR. BANDUCCI:
 8 **Q. Ms. Hutchings, my name is Tom Banducci.**
 9 **And I'm an attorney that represents Alamar.**
 10 A. Uh-huh.
 11 **Q. Let me be sure I understand your time**
 12 **in office. You have been the treasurer of Boise**
 13 **County since November of 2009; is that correct?**
 14 A. Yes.
 15 **Q. And you replaced someone who,**
 16 **apparently, resigned; is that true?**
 17 A. Well, she actually retired.
 18 **Q. Okay. All right. Now, you have been,**
 19 **hopefully, provided a document entitled "Boise**
 20 **County Investment Policy"?**
 21 A. Uh-huh.
 22 **Q. Is that correct?**
 23 A. Yes.
 24 **Q. And this investment policy came into**
 25 **effect after you became the treasurer; is that**

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1 correct?
 2 A. That is correct.
 3 **Q. And if, in fact, if we look at the last**
 4 **page of the policy, which is page 5, there is a**
 5 **short paragraph on that last page entitled**
 6 **"Effective Date"; correct?**
 7 A. Yes.
 8 **Q. And it says, this policy is hereby**
 9 **adopted, and made effective, blah, blah, blah,**
 10 **dated March 8th, 2010; correct?**
 11 A. Correct.
 12 **Q. Was there a policy before that time for**
 13 **investments?**
 14 A. There -- it was very old policy, but
 15 there was.
 16 **Q. Okay. Now, his Honor asked you some**
 17 **questions about when you moved funds from one**
 18 **account to another account?**
 19 A. Uh-huh.
 20 **Q. Do you remember those questions?**
 21 A. Yes.
 22 **Q. And I think you mentioned something**
 23 **about investments; is that correct?**
 24 A. Yes.
 25 **Q. Would you agree with me that the Boise**

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1 **County Investment Policy empowers you, as the**
 2 **treasurer, to move funds?**
 3 A. Yes.
 4 **Q. Okay. If, in fact, we look at section**
 5 **2, the first page of the document. It says, "In**
 6 **accordance with Idaho Title 57, Chapter 1,**
 7 **Sections 57 and 101, et seq., provides that a**
 8 **county treasurer shall deposit and invest money**
 9 **with the approval of the Board County**
 10 **Commissioners. Idaho Code, Sections 57-127,**
 11 **57-127A, and 57-128 empower the County treasurer**
 12 **to invest surplus or idle funds in instruments**
 13 **and investments provided by Idaho Code, Section**
 14 **67-1210."**
 15 **Did I read that correctly?**
 16 A. Yes.
 17 **Q. So you have the power to invest what is**
 18 **referred to in this policy as surplus or idle**
 19 **funds?**
 20 A. Yes.
 21 **Q. Now, do you have an understanding what**
 22 **that means; surplus or idle?**
 23 A. Idle funds are money that are just
 24 sitting there, you know, I mean...
 25 **Q. It's just sitting there. You are not**

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1 using it for operations; right?
 2 A. Well, not at that time, yeah, right.
 3 **Q. Right. So in other words, in some**
 4 **checking account, not an investment account,**
 5 **there is just a bunch of money sitting there**
 6 **that's not being used; right?**
 7 A. Well, it's not being used at that
 8 moment. That doesn't mean to say, that we won't
 9 have to pull money from that account.
 10 **Q. My question is: When you are defining**
 11 **"idle funds," you are looking for money that's**
 12 **not being used at that time; correct?**
 13 A. Okay. In the general account, it is
 14 not -- that account cannot be guaranteed by the
 15 bank.
 16 **Q. FDIC?**
 17 A. If it's over a thousand -- or a
 18 100,000 --
 19 **Q. Right.**
 20 A. -- or a million dollars. That's what
 21 it is, over a million dollars. So if we have
 22 over a million dollars in that account, I've got
 23 to move that money out of there, because --
 24 **Q. Now, first of all, Ms. Hutchings, take**
 25 **a deep breath. It's okay. All right?**

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1 **Let's -- I want to make sure I**
 2 **understand. And what I'm trying to find out is,**
 3 **how the County decides what's idle? How do you**
 4 **decide what's idle?**
 5 A. It's to me, it's money that we're not
 6 using at that particular time.
 7 **Q. Okay. Is the decision as to what is**
 8 **idle and what is not, yours, and yours alone to**
 9 **make?**
 10 A. Basically.
 11 **Q. Okay. And so you know what's in the**
 12 **accounts; right?**
 13 A. Uh-huh.
 14 **Q. And so you are looking at funds that**
 15 **are not being used. And you decide, huh, these**
 16 **funds aren't being used, so I'm going to put them**
 17 **in an investment; right?**
 18 A. Correct.
 19 **Q. Okay. Now, let's take a look at**
 20 **Exhibit 106.**
 21 A. Okay. The statement of cash?
 22 **Q. Yes. And we're going to look, instead**
 23 **at page 12, we're going to look at the one for**
 24 **January 28th -- or excuse me -- February 28th,**
 25 **2011.**

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1 A. Okay.
 2 MR. BANDUCCI: I think it starts on
 3 page 4. And, Kathy, let's go back one more. One
 4 more, still. There we go. And if you'll blow up
 5 the top half of that page.
 6 **Q. (BY MR. BANDUCCI) So this is --**
 7 A. Okay.
 8 **Q. -- a snapshot; right, of the**
 9 **accounts --**
 10 A. Uh-huh.
 11 **Q. -- on February 28th, 2011; right?**
 12 A. Oh, I can't see the date on it.
 13 **Q. You know -- and Ms. Savell will help**
 14 **you with that.**
 15 A. Okay.
 16 **Q. There we go. And I use the word**
 17 **"snapshot," because that's all we can do on a**
 18 **particular day, is show what activity has gone on**
 19 **in a particular account; correct?**
 20 A. Right.
 21 **Q. Okay. Now, one of the mysteries in**
 22 **this hearing, is what do those initials mean in**
 23 **the first columns "OICS"?**
 24 A. Uh-huh.
 25 **Q. Can you tell that to the Court?**

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1 A. Yes. "O" is other. If you look down
 2 at the bottom of that report, it says, total of
 3 checking accounts, total of investment accounts,
 4 total of savings accounts, and other accounts.
 5 And that's what those stand for.
 6 **Q. Okay. So there are -- on this**
 7 **particular snapshot, there are three investment**
 8 **accounts identified in particular?**
 9 A. Uh-huh.
 10 **Q. Correct?**
 11 A. Correct.
 12 **Q. The diversified bond fund, which was**
 13 **initiated in the 2005, 2006 time frame; correct?**
 14 A. 2007, I looked it up before I came.
 15 **Q. 2007. Very good. Thank you. That**
 16 **helps.**
 17 **Then there is a CD that was at Mountain**
 18 **West Bank. It's listed there as MWB Cedars;**
 19 **right?**
 20 A. Uh-huh.
 21 **Q. And you bought that as well; correct?**
 22 A. Right.
 23 **Q. And then there is the Gen op investment**
 24 **fund; correct?**
 25 A. Right.

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