# EXHIBIT B

**Part 4**

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**Q. And that consists of two investments made; one being a $997,000 investment made in December of 2010; correct?**
A. Correct.
**Q. And another $200,000 investment made, I think, what was it; October?**
A. Yeah, it was -- they were pretty close together.
**Q. September, October --**
A. Yeah.
**Q. -- something like that. Both of them investments in Freddie Mac; correct?**
A. Correct. Correct.
**Q. Okay. And you made the decision to make those investments?**
A. Correct.
**Q. Based on the fact that, for example, the Gen operating inventory was -- it consists of idle funds; right?**
A. Yeah.
**Q. Per the policy; correct?**
A. Yes.
**Q. You wouldn't take monies that the company needed -- that the County needed for operating, and put them in an investment; right?**



A. No.
**Q. Because, in fact, if you did that with the Freddie Mac, the Freddie Mac Gen operating investment account ties up those funds for quite some time; correct?**
A. Four years.
**Q. Four years?**
A. Yes.
**Q. So four years. And so if you needed those funds for operating the County, you wouldn't tie them up for four years; correct?**
A. Not intentionally, no.
**Q. Well, and I am only asking what you would intend to do, ma'am. Thank you.**
**So the investments accounts are added up on the second line of the totals toward the bottom of this portion of the document; correct?**
A. Uh-huh.
**Q. It says, total of investment accounts; right?**
A. Uh-huh.
**Q. You have to answer audibly for the --**
A. Yes, right.
**Q. Thank you.**
A. Sorry.



**Q. And it says, total investment accounts 4,178,744.76; is that correct?**
A. That's correct.
**Q. Okay. So on February 28th, the day before bankruptcy was filed, there were investment accounts that consisted of idle funds totaling over four million dollars; is that correct?**
A. There is. But can I explain something?
**Q. Well, I'll tell you what, let me ask a few more questions, then I'll let you explain something. Okay?**
**Now, those investment accounts create interest?**
A. Correct.
**Q. And the interest in those accounts then goes to another fund; correct?**
A. Yes.
**Q. And what is the name of that fund?**
A. I believe that they are going to the --
**Q. County improvement fund?**
A. County improvement fund, yes.
**Q. All right. Now, do you know what the County's position is with respect to the interest**



**earned on the investments, as to whether or not they were encumbered or unencumbered?**
A. I don't know.
**Q. You don't know. Okay. Now, going back, and then I'm going to let you explain.**
A. Okay.
**Q. After this next question. Okay?**
**The investment accounts that make up the 4,178,744.74 are coming from all sorts of funds; correct?**
A. That's correct.
**Q. General operating funds could be?**
A. General operating funds could be, but I doubt it.
**Q. You don't know?**
A. No, I don't know.
**Q. It could be general funds, could be other funds; correct?**
A. That's correct.
**Q. So those -- the monies from those funds, that make up that 4 million 178 are commingled; right?**
A. Yes.
**Q. Okay. And you can't identify them to any particular fund, because they are commingled.**

**And you've tried, at the request of the Commission, to trace each of those funds; correct?**

A. There is no way I can trace those funds.

**Q. Right. And the reason you can't do it is, because they are in the policy that the Boise County has? There isn't anything that they told you to do at the time you were empowered to invest, that told you that you really needed to be sure to trace before you invested; right?**

A. I talked to other treasurer's about this, and the treasurers don't know where those funds --

**Q. Okay.**

A. -- which funds go into investments.

**Q. But this County, at one point in earlier this year, talked about revising the investment policy; right?**

A. I heard talk of it.

**Q. You heard talk of it. Did you understand what the talk was about?**

A. Identifying funds.

**Q. Identifying funds. Okay. Now, one last question -- one last question. I'm sorry.**



**I've asked you more questions, and I haven't let you explain it. But I'll ask you one more question about general operating inventory.**

**The general operating inventory, the basically, 1.2 million dollars is untraceable. You were the one who actually invested that money; right?**

A. Yes, I did.

**Q. And so you would have been the one at -- probably, the best one in the County to be able to trace this money back to particular funds; right?**

A. No.

**Q. You just can't do it; can you?**

A. No.

**Q. It's impossible?**

A. Like I said, all the money goes into the general account.

**Q. Yeah. Well, with the way that the Boise County system is set up, there is just no way you could do that; right?**

A. Correct.

**Q. All right. Now, I cut you off. I apologize. I just wanted to make sure I got that going. Now, please, explain.**



A. Okay. One thing I want to say about the diversified bond. I was told that was done way before I took over. But I was chief deputy treasurer before I became treasurer. And it was my understanding that the diversified bond was made up of solid waste funds and, road and bridge funds.

**Q. And that came to you from?**

A. The previous treasurer.

**Q. Just the previous treasurer; just discussion?**

A. Well, she told me that's where --

**Q. Who is she?**

A. Barbara Balding.

**Q. Barbara Balding, is she still around?**

A. Oh, yeah.

**Q. Okay. All right. I've been handed notes, and I'm compelled to ask the questions on these notes.**

**There is a savings account, or it's an account with an "S" next to it. And in its name, it uses the word "investment." It's the State of Idaho local government investment pool. Do you see that?**

A. Uh-huh, yes.



**Q. And this just says, "PO"; right? The full name is pool?**

A. Yes, correct.

**Q. All right. Now, is there any duration of time when you put money in the pool, that it must stay there before you can get it back?**

A. No.

**Q. Is this -- do you consider the local government investment pool to be an investment covered by the investment policy?**

A. Well, yeah.

**Q. You do? In other words -- well, the reason I'm asking that, and I want you to be mindful of this. I'm wondering whether what's in the investment pool is also idle funds?**

A. I don't think any of the funds are idle. I mean, they are --

**Q. I --**

A. They are access funds that are sitting there right now.

**Q. Okay. Let's use, sitting there. Funds that are sitting there, they are not being used. They are not being used for the operations of the County; right?**

A. Uh-huh.

**Q. You have to answer audibly.**
A. Yes.
**Q. Okay. So my -- and I'm only using the words in the County's policy; isn't that correct, ma'am?**
A. Yes.
**Q. It says, "surplus or idle"; right?**
A. Yes.
**Q. Okay. So my question to you is, do you -- when you put money in the government investment pool, do you consider those monies to be also idle or surplus, as that term is used, in the investment policy?**
A. At that moment?
**Q. At that moment, yes. Is the answer to my question, yes?**
A. Yes.
**Q. Okay. So if we were looking at money that was invested on February 28th, and that snapshot in time, the idle or surplus funds, according to the way that term was used by Boise County, would include not only the 4,178,744.74. But also 1,549,618.34; correct?**
A. Correct.
**Q. All right.**



MR. BANDUCCI: I'm going to reserve the rest, Your Honor.
THE COURT: Very well. Thank you.
Mr. Clark, anything you would like to inquire at this time?
MR. CLARK: Well, I do have a couple.
THE COURT: Go ahead.
REDIRECT EXAMINATION
QUESTIONS BY MR. CLARK,
**Q. Ms. Hutchings, I don't think Mr. Banducci ever let you answer your question.**
A. Well, he did. The diversified bond, I just wanted to make it known, that I was told, that a million of that was road and bridge funds, and a million of that was solid waste funds. And for all I know, all that other money that I have out there, invested, are exactly that, other funds that belong to other departments.
**Q. But you don't know?**
A. That's right, I don't know.
**Q. And you didn't really trace what you were told?**
A. No, I did not.
**Q. All right.**
A. There is no way to trace it.



**Q. Okay. All of these investments, the 4 million 178, they are all liquid, though; aren't they?**
A. The only ones that aren't liquid, is the general operating investment. The 1,198, those two are not.
**Q. The Freddie Mac?**
A. Correct, those ones.
**Q. Other than that, have you had a problem, you can go down and call up the State, or call up whoever, and get that money put back into your general account immediately?**
A. Yes, I can. And that's why it's done the way it is.
**Q. Okay. What's the penalty if you have to get the Freddie Mac funds?**
A. The last time I checked, it was about a $25,000 penalty.
**Q. And that's all?**
A. Well --
**Q. And you could get that money out of that account --**
A. Yes. Yes.
**Q. -- immediately --**
A. Yes.



**Q. -- if you wanted to pay that penalty?**
A. Yes.
MR. CLARK: Thank you, Your Honor.
THE COURT: Okay. Thank you.
You may step down. Thank you very much for coming.
THE WITNESS: Thank you.
(Witness excused.)
THE COURT: Mr. Clark, next witness.
MR. CLARK: Mr. Woodard, please.
THE COURT: Mr. Woodard.
WADE WOODARD,
first duly sworn to tell the truth relating to said cause, testified as follows:
THE CLERK: Would you, please, state your name, and spell your last name for the record.
THE WITNESS: Wade Lawrence Woodard, W-o-o-d-a-r-d.
THE CLERK: Thank you.
DIRECT EXAMINATION
BY MR. CLARK:
**Q. Mr. Woodard, could you state your occupation, please?**
A. I'm an attorney.

**Q. With what firm?**
A. Banducci Woodard Schwartzman.
**Q. And how long have you been with that firm?**
A. Since October of 2007.
**Q. Okay. You are one of the attorneys for Alamar?**
A. I am.
**Q. Okay. Are you also here today representing yourself?**
A. In -- I have no idea, Mr. Clark. I haven't given that a thought.
**Q. Okay. Your firm owns 40 percent of this case; do they not?**
MR. HINDLEY: Your Honor, this is irrelevant. The Court has already ordered and decided on the motion already made.
MR. CLARK: I'm not talking about the motion, Your Honor.
THE COURT: Well --
MR. HINDLEY: It's still irrelevant to this motion about whether or not the County is entitled to Chapter 9.
THE COURT: Well, generally, I can evaluate relevancy after I hear what the



testimony is. I am interested in you tying it together, Mr. Clark, because of its relationship with the motion I have ruled on.
So go ahead and ask your question again, and we'll see where we go.
MR. CLARK: Okay. I can represent to the Court that I'm not intending to renew the motion. You've ruled on it. That's a done issue.
THE COURT: Well, all right.
MR. CLARK: All right.
**Q. (BY MR. CLARK) You were involved with Mr. Banducci in pursuing the litigation to collect -- recover the judgment; is that right?**
A. I was one of the attorneys for Alamar that tried the Alamar case, correct.
**Q. And after the judgment was entered, were you one of the attorneys for Alamar, who was in charge of collecting it?**
A. I continued to represent Alamar, including collection efforts after the judgment.
**Q. Okay. Between yourself and Mr. Banducci, which one would you say, was probably more involved in the actual collection?**
A. I have, you know, I -- I don't know how



you want to quantify that. We work together. We work as a team.
**Q. All right.**
A. Sometimes it depends on our schedules. He does things. Sometimes I do things.
**Q. Do you confer back and forth between yourselves, I assume?**
A. Yes.
**Q. If there is a letter written, whether it's on your signature, or his signature, the other one has look at it, and you've gone over it?**
A. Not necessarily.
**Q. Okay. All right.**
MR. CLARK: Put 204 up; would you?
**Q. (BY MR. CLARK) You recognize that document; do you not?**
A. I do.
**Q. And what is that?**
A. That's the February 22nd settlement offer from Boise County.
**Q. Okay. And that was presented to you, when?**
A. As I recall, on February 22nd.
**Q. Okay. Physically?**



A. Yes, it was hand delivered, as I recall.
**Q. Was it --**
A. It might have also been mailed. But I remember copies being given to us at the meeting.
**Q. All right. And who was at that meeting?**
A. On the Alamar side, as I recall, it was myself, Mr. Banducci, Mr. Oaas, and Mr. Laney. From the County, as I recall, there was Susan Buxton, Mike Moore, Andy Brassey, Cherese McLain, Mary Prisco, Jamie Anderson, and, you know, I can't remember if Mr. Day, or any other Commissioners were there.
**Q. Mr. who?**
A. Day; Terry Day.
**Q. Okay.**
A. I can't remember if he was there or not.
**Q. Very good. Now, did you respond to that one?**
A. Did I respond directly to that letter?
**Q. To Exhibit 204, are you the one that made the response?**
MR. HINDLEY: Objection, Your Honor.

THE COURT: Okay.
THE WITNESS: I guess I'm unclear of what you mean by, a response to that letter.
**Q. (BY MR. CLARK) Well, let me rephrase it.**
A. I sent a letter after that letter, but I don't think it was directly responding to that letter.
**Q. Is that the response letter that you just mentioned?**
A. Well, I sent two letters on February 24th.
**Q. Okay. That one specifically answers the offer; does it not?**
A. Well, yeah, it says, that we did not believe that that offer is reasonable, correct.
**Q. Right. And it specifically says that, in the second paragraph of that?**
A. That's correct.
**Q. All right. And the last paragraph of that letter, you indicate that there may be personal liability to the County and individuals?**
A. What our concern was, is that the County might engage in fraudulent transfers to keep us from collecting on the judgment.



**Q. Did you see anything that led you to believe that would happen?**
A. At that point, no.
**Q. Okay. And then in the first paragraph of that letter, there is a discussion about funds belonging to Boise County are exempt from execution.**
**Now, what did you mean when you wrote that letter using the word, "funds"?**
A. I was referring to the funds in the sense of cash, monies.
**Q. Funds, generally, in respect to cash generically, or specifically, such as the road and bridge fund or the solid waste fund?**
A. I was referring to monies.
**Q. Money. Okay. Had you, in fact, had a discussion with Ms. Buxton about funds? And I'm using the word specifically now, not money, funds being exempt?**
A. Well, I think, Mr. Clark, that we were two ships passing in the night on the funds. And when I was speaking of funds, I was referring to monies. I understand now what Ms. Buxton was referring to. But what we had specifically asked for at that meeting, was the authority, the legal



authority for her position, that what I understood to be the monies were exempt from execution, because funds, or, monies however you want to use that, were restricted.
**Q. Okay. And when you are talking about exemptions, are you talking, and were you talking then, about any other statute except 11-605?**
A. I wasn't speaking about a particular statute at all. I was asking Ms. Buxton to show us the legal authority that demonstrates that the monies of the counties are exempt from execution. I did not refer to a specific section.
**Q. Okay. So, Mr. Woodard, you understand the concept of the word "exception"; do you not?**
A. I do.
**Q. All right. And do you understand that that's governed by a specific set of statutes?**
A. I do.
**Q. And would that statute be 11-605?**
A. As I recall -- I don't have the statute in front of me.
**Q. Fair enough.**
A. But if I recall the number, 11-605, if there is one provision in there that talks about what is exempt and wasn't exempt from execution



for a municipality.
**Q. Public buildings, courthouses?**
A. School houses, that kind of stuff?
**Q. Yes.**
A. Yes.
**Q. That's 11-605. All right. You say, you wrote a second letter on February 24th?**
A. Yeah, I can't tell you which one came first, but I wrote two letters. I wrote another letter.
**Q. Is that the other one?**
A. That is it.
**Q. Okay. So between those two letters, did you write any other letters with regard to Exhibit 204, which was the offer?**
A. Well, I wrote an email, I believe, on March 1st, with the settlement offer. Do you consider that responsive to the February 26th letter, then that is --
**Q. That email was actually written after the bankruptcy petition was filed; wasn't it?**
A. You know, as I recall, that email was sent before I received the bankruptcy -- I remember receiving the notice after I sent that email.

**Q. Okay. At the time you wrote the email, you were not aware that the filing had already occurred?**
A. That's true.
**Q. All right.**
A. I think it happened real close in time to me sending that letter, or email.
**Q. I think if you check the timestamps, you'll see that they actually crossed.**
A. Okay. That could be true.
**Q. Now, in this letter, which is --**
THE CLERK: 206.
**Q. (BY MR. CLARK) -- 206. Okay. You were talking about proceeding with an execution; is that right?**
A. Correct.
**Q. All right. What were you going to execute?**
A. Whatever nonexempt assets the County had.
**Q. What were you specifically going to do? You applied for the writ?**
A. Yeah, I believe it's set forth in the writ. I haven't looked at the writ lately. But it was our reading of the statute, and if it's



11-605, then that's the one. I shouldn't say, ours. I'll speak only for myself. It was my reading. I did not see anywhere on that statute where cash was exempt from execution. As you mentioned, the things that were exempt in there, were things like their equipment, their school houses, that kind of stuff. And so we were --
**Q. So you couldn't take their Kenworth, but you could take their bank account?**
A. Yeah, we couldn't take the school house, but we could take the bank account.
**Q. Okay. And that was your intention?**
A. Our intent at that point was to go down a dual track.
**Q. Was it your intention to give the writ to the U.S. Marshal?**
A. Yes.
**Q. And to tell him to proceed to the bank accounts and the levy on them?**
A. Correct.
**Q. As a matter of fact, you told that to the reporter of The Statesman; didn't you?**
A. I do not recall talking to -- ever talking to a reporter at The Statesman. I recall talking to a reporter at the Idaho World.



**Q. Okay. Did you say in that interview, that you were going to take all the County's cash?**
A. I do not recall saying that. I recall talking to the Idaho World reporter, that we believe that the County had enough surplus cash to staff the judgment.
**Q. To pay it all?**
A. Pay it all.
**Q. All right. And that was your goal, wasn't it, to proceed to get it all?**
A. Well, that wasn't our first goal. But at that point in time, yes.
**Q. Yes. When did you, yourself, Mr. Woodard, realize that the County was going to file for Chapter 9?**
A. Not until I saw the notice of March 1st. Was that the day?
**Q. You didn't know that they were going to file before then?**
A. No, I had no idea.
**Q. Did you suspect that they were going to file before then?**
A. No. That actually caught me by surprise.



**Q. Well, let me ask you about that, then, Mr. Woodard, because without getting into any names or specifics. You, yourself, referred a client over to me; did you not?**
A. Yes.
**Q. And the original meeting was going to be on March 1st; wasn't it?**
A. It was.
**Q. And it was canceled?**
A. As I recall, it was canceled.
**Q. And you told our office manager that you bet you knew why, and it was Boise County; didn't you?**
A. As I recall, I did. But I did not know that you were going to file for bankruptcy. We already knew that they were talking to people.
**Q. Sure. My involvement wasn't a secret, either; was it?**
A. No.
**Q. All right. Mr. Woodard, are you aware that there are other debts outstanding for the County except yours?**
A. I have no personal knowledge of any of the County's debts.
**Q. Have you been advised of the existence**

**of the indigent claims that weren't handled right?**

A. I believe the County has raised that on several occasions.

**Q. You were aware of that?**

A. Like I said, we have never -- at that point in time -- I guess you've got to ask me what time, Mr. Clark.

**Q. All right. On February 22nd, were you aware of it?**

A. As I recall, on February 22nd, somebody from the County, it may have been Cherese McLain talked about, or Mary Prisco -- I can't remember -- talked about indigent claims.

**Q. To the tune of half a million dollars?**

A. I believe it was in that range.

**Q. Okay. And you then would have known about it on the 24th?**

A. Yes.

**Q. Okay. Do you know what a preference is?**

A. I do.

**Q. Okay. Would you say that your judgment was an antecedent debt?**

MR. HINDLEY: It calls for a legal



conclusion, Your Honor.

MR. CLARK: He's a lawyer.

THE COURT: Overruled.

You can answer the question.

THE WITNESS: It was a debt that was incurred pre-petition.

**Q. (BY MR. CLARK) All right. And it was incurred several months before the actual filing; wasn't it?**

A. The judgment was entered several months before the filing.

**Q. Right. Okay. When is the judgment due?**

A. You know, that's -- legally, that question, I am not sure.

**Q. Would you say -- would you disagree, I should say, with the general provisions that a judgment is due when the writ of execution is entered?**

A. You know, I have not done the research. So I don't know if it's due when the judgment is entered, if it's due when efforts are taken to execute on it. I mean --

**Q. Is there any doubt in your mind as you sit here today, Mr. Woodard, that that judgment**



**is due now?**

A. I understood at the time, that we had the ability to execute on that judgment.

**Q. All of it?**

A. All of it.

**Q. Okay. You were asking Mr. Fry about leverage?**

A. Yep.

**Q. Is it your habit, Mr. Woodard, to when you write a letter, to say what you mean?**

A. I don't usually mince words, Mr. Clark.

**Q. I didn't think you did.**

A. I don't.

**Q. And if you tell me something, or if you tell anybody something, they are entitled to take that at face value; aren't they?**

A. They are.

**Q. Okay. So would it be safe to say, that neither of the letters of February 24th, could be construed as running a bluff?**

A. As far as the intent to --

**Q. As far as your intentions.**

A. As far as our intent to go, and execute on the judgment, that was not a bluff.

**Q. Okay. And isn't that why you want this**



**case dismissed?**

A. So we -- what I want, is for my clients to get paid.

**Q. All of it?**

A. All of it.

**Q. Right now?**

A. Actually, my clients would prefer to be paid over time.

**Q. But as far as you are concerned, you want it right now?**

A. No, I want whatever my clients want. And they would prefer to be paid over time.

**Q. Okay. Under the fee agreement, you are entitled -- when I say, "you," I mean your firm generically.**

A. It would be great if it was me.

**Q. -- to be paid first dollar coverage, first dollar payments; is that right?**

A. We are entitled --

**Q. You are entitled to that?**

A. No, we are entitled to -- and it depends. I mean, there is certain circumstances, whether it's 33-and-a-third, or whether it's 40 percent. But we're entitled to whatever is recovered. We are entitled to 33-and-a-third

percent or 40 percent, depending on various factors.

**Q. Right. And you are entitled to be paid first; are you not?**

A. You know, I can't remember what the fee agreement's in that regard.

**Q. You can't?**

A. I mean, we are entitled to be -- if it's not, then we don't get paid. So it's a third of whatever is recovered.

**Q. If it's an installment obligation, didn't your fee agreement say that you got paid first?**

MR. HINDLEY: Your Honor, objection; best evidence.

MR. CLARK: I can take care of that.

MR. HINDLEY: Okay.

**Q. (BY MR. CLARK) All right. Do you see the part about, if you are paid in part by installment payments?**

A. Yes.

**Q. And it says further on that, your fee is, basically, reduced to present value at a six percent factor?**

A. Correct.



**Q. And then your attorneys' fees are paid from the cash paid at the time of settlement; would that be right?**

A. That's what it -- that's what it says.

**Q. All right. So you guys get paid before Alamar; is that right?**

A. You know, Mr. Clark, I don't want to --

**Q. I'm just asking. Do you know whether that's true?**

MR. HINDLEY: Your Honor, I will lodge an objection. I'm not quite sure what the relevance is. I'll object on relevance grounds, again. I mean --

MR. CLARK: The relevancy, Your Honor, is the terms of the down payment that was requested.

MR. HINDLEY: Your Honor --

MR. CLARK: And the rejection of the offer.

MR. HINDLEY: Your Honor, the down payment has absolutely no relevance as to whether or not this particular -- or Boise County is entitled to Chapter 9.

THE COURT: I understand. But the



whole conduct of the discussions between the two parties immediately before filing is something that both sides have addressed in their briefing. And so I'm going to allow this to continue. But quickly, Mr. Clark, it's all rather -- to me, it's all rather a matter of legal argument based upon facts, which have not been disputed by either party. And I don't see the utility, even if there is relevance, of much more inquiry on the subject.

So you can answer the question.

THE WITNESS: Yes. I've forgotten the question now, Your Honor.

THE COURT: Rephrase, and ask your last question, again.

**Q. (BY MR. CLARK) Okay. So according to that document, would it be correct, that if there is a settlement over time, you are entitled to be paid first?**

A. We've had negotiations with our clients since that document.

**Q. All right.**

A. And we have not worked out how any of that would happen.

**Q. Okay. Now, one further question.**



**Hopefully, it's only one.**

**Assuming this case is dismissed, are you going to proceed to collect the entirety of the judgment from the entirety of the cash in Boise County immediately?**

A. I don't know at this point in time, what we're going to do if this case is dismissed. But our goal is to get our clients paid. So what avenue we take to do that, that's what we're going to do.

MR. CLARK: Okay. I have no further questions, Your Honor.

MR. HINDLEY: Your Honor, I will be very brief.

CROSS-EXAMINATION

BY MR. HINDLEY:

**Q. Mr. Woodard, Mr. Clark showed you Exhibits 205 and 206. Those are the two letters that you sent after the February 22nd meeting?**

A. Right.

**Q. When you sent those letters, did Alamar consider the settlement negotiations to be over?**

A. No.

**Q. When you sent those letters, did Alamar fully intend to get all of the cash at once? Was**

**that the only avenue by which -- that would satisfy your clients, Alamar?**
A. No, as I indicated, our clients would have preferred to take the money over time.
**Q. And because that was your clients' preference, that was something that you intended to try to get for them; is that correct?**
A. Yes.
**Q. Okay. Now, you filed the writ. The question that was not asked, though, was: Why did Alamar file the writ?**
A. Like I said, we were planning on going down a dual track. And really what this takes, is it takes some backing up to the history of the negotiations. And the history of the negotiations with Boise County have been very frustrating. We had tried to settle the case before it went to trial, but never received an offer from Boise County.
And although, we've tried and tried to come up with different proposals that we've worked, that did not happen. Finally, the entry of the judgment, we made it known that, look, we are interested in settling. We understood that, Mr. Andy Brassey, was going to give us a phone



call on December 30th. And I remember this well, because it was the Thursday before the New Year's holiday. And Tom and I were arguing about who gets to stay in the morning, on Thursday, to wait for Mr. Brassey's phone call, and who gets to stay in the afternoon. But, you know, we made sure that one of us was staying there at the office, so that we could receive the phone call.
The phone call never came. In fact, we never got a call, or any indication from the County, that they were interested in settlement for over a month after the judgment was entered.
And it continued at that kind of lackadaisical pace, our negotiations with the County. And we couldn't -- because of the financial straits our clients were in, we could not afford to engage in negotiations at that glacial speed.
**Q. And is that why you filed the writ?**
A. Yes.
**Q. To try to move things along?**
A. And if things didn't get moved along, then executing on the judgment.
**Q. And at the time that you were writing those letters, Alamar was also preparing its own**



**potential settlement offer; is that right?**
A. Yes.
**Q. Which you conveyed on March 1st?**
A. Yes.
**Q. And that was over time; correct? That would have been payment over time?**
A. That would have been a payment over time.
**Q. And was it your intent, or Alamar's intent, to the extent you know, that they wanted to close down the County?**
A. No. I think even in those February 24th letters, I can't remember which one, I indicated that we did not want to disrupt the County's operations any more than necessary.
**Q. Okay. And Mr. Clark asked you a question: When you say something in the letter, do you mean it?**
A. Yes.
**Q. And you meant that; correct?**
A. Yes.
MR. HINDLEY: No further questions, Your Honor.
THE COURT: Thank you.
Anything else?



MR. CLARK: Yes, Your Honor.
REDIRECT EXAMINATION
BY MR. CLARK:
**Q. Did either of your letters on February 24th make a counterproposal?**
A. No, but one of them said that we were still open to negotiations. I believe it was the one Ms. Buxton sent.
**Q. So in other words, you wanted them to make another offer?**
A. Yes, I mean, we had already bid against ourselves, so...
**Q. Well, that's been your position throughout; hasn't it? You are not going to make a counteroffer; is that right?**
A. Well, we did -- well, I did make -- we did make a counteroffer on March 1st.
**Q. You made one counteroffer, or how many more?**
A. Well, you want me to make an argument to you? I can start at the beginning.
**Q. No, I'm just asking.**
A. Oh.
**Q. After the February 22nd letter, how many counteroffers were there?**

A. We made one on March 1st.
**Q. Okay.**
A. And I know we countered, again, on another time later in history. I was not as involved in those negotiations, as I was in the pre-petition negotiations.
**Q. All right. Now, you never said in your letters of February 24th, in any place, that you were only going to levy on part of the County's cash; did you?**
A. No, I did not say that.
**Q. It wasn't your intention to?**
A. As I said, we had not determined whether we would seek partial satisfaction of the judgment, through an attachment, or full.
**Q. In 2006, your statement is, "Consequently, if the County will commit by March 2, 2011 to pay the full amount of the judgment on or before March 25th, 2011, we will not proceed with efforts to collect the judgment by way of writ of execution or other authorized procedures."**
A. Yes, I said that.
**Q. How did you think that Boise County was going to pay 4 plus million dollars in 30 days?**



A. Because the February 22nd settlement offer that they gave to us showed that the County, for fiscal year 2011, was projecting to have 6.2 million dollars in excess cash, after meeting all their expenses.
**Q. Even though some of these were in dedicated funds?**
A. Well, we had asked Ms. Buxton for a memo about that, but never received it.
**Q. All right. So I guess, Mr. Woodard -- and I understand that I should probably never ask a question like this, but I've got to.**
**Why do you think that taking you at your word, and relying on your writ, is bad faith?**
MR. HINDLEY: Objection. That assumes facts. I don't know if that allegation is made.
MR. CLARK: They are the ones that objected, Your Honor, and moved to dismiss this case on bad faith, based on the filing of the Chapter 9 as a response to the collection efforts being brought by the County. I'm entitled to ask that question.
MR. HINDLEY: Okay. Maybe the question



is just vague and ambiguous.
THE COURT: Well --
MR. HINDLEY: If he wants to say it, again.
THE COURT: I find it unduly argumentative, and totally capable, Mr. Clark, of being addressed by you, in your summations, based upon the letters that were issued during the negotiation, without extending the dialog between you and Mr. Woodard on this subject.
MR. CLARK: I will take that as your statement.
THE COURT: I'm going to sustain the objection as being unduly argumentative, even for cross.
Any more questions?
MR. CLARK: No, Your Honor.
THE COURT: Any more?
MR. HINDLEY: Your Honor, just one housekeeping matter, and that is, Mr. Woodard had his -- his declaration has been submitted as our direct. As we had talked about before, this is -- you know, what I would like to do is just make sure that that gets in. And, you know, I don't have any questions on it.



THE COURT: Well, assuming if you have no questions. Mr. Clark has already had the opportunity to examine. I assume that we're done.
MR. HINDLEY: We're done, as far as I'm concerned.
MR. CLARK: I think we're done.
THE COURT: All right. You may step down.
(Witness excused.)
THE COURT: Actually, Mr. Clark, let's take a short mid afternoon recess, and then I'll allow you to call your next witness.
MR. CLARK: Very good, Your Honor.
THE CLERK: All rise, please.
(A recess was had.)
THE COURT: Have a seat, please.
The next witness, Mr. Clark.
MR. CLARK: Mr. Terry Day, please.
THE COURT: Mr. Day, if you will come forward and be sworn?
TERRY DAY,
first duly sworn to tell the truth relating to said cause, testified as follows:
THE CLERK: And, please, state your

name, and spell your last name for the record.
THE WITNESS: Terry, middle initial C, Day, D-a-y.
THE CLERK: Thank you.
DIRECT EXAMINATION
BY MR. CLARK:
**Q. Mr. Day, what is your occupation, currently?**
A. I'm a Commissioner for Boise County.
**Q. How long have you been?**
A. A little over four years.
**Q. And what was your background prior to that?**
A. I was a retired deputy sheriff in Boise County, and I served time in the military; retired from that.
**Q. At one time, you were the chair of the County Commission; is that right?**
A. Yes, I was.
**Q. Okay. Were you familiar with the Alamar judgment, and the offer back and forth to settle it?**
A. I'm familiar with it from way back, from day one.
**Q. Are you the only Commissioner that was**



**actually a Commissioner when the matter was tried?**
A. No, Commissioner Anderson was on the board when it was tried.
**Q. Okay. When it was filed?**
A. When it was filed, I'm the only one, yes.
**Q. Okay. Now, as far as the settlement offer that was made, the February 22nd settlement offer, did you work on coming up with that offer?**
A. Yes, I participated in all the discussions to include it with that offer.
**Q. Okay. Did you think that was a viable offer?**
MR. HINDLEY: Objection; vague.
THE COURT: I'll allow him to answer.
**Q. (BY MR. CLARK) Do you think that offer -- let me rephrase it.**
**Was that offer something that the County could have done?**
A. Yes. In retrospect, it might have been a little more cash than I would have liked in retrospect, a month or so after I got to thinking about it. But it was well studied, well thought of, where we got the money from, and how we



offered the payment. I thought it was a good offer.
**Q. Okay. Part of the proposal in that offer was the remittance on property taxes on various parcels that were owned by, not only Alamar, but other Oaas and Laney entities. Are you familiar with that?**
A. Yes.
**Q. Where did that idea come from?**
A. That idea had been broached during the mediation sessions prior to the federal law- -- or during the federal lawsuit filings, and during the period before the trial. That had been broached every time that we had met with the parties.
**Q. Broached by whom?**
A. Broached by Alamar.
**Q. Broached by them?**
A. Yes.
**Q. Okay. So is that why that was included in the offer?**
A. I believe that that's -- that was the -- I don't think it's -- we -- we put that in as to sweeten the offer. We realized our cash might not have been, you know, three or four



million dollars. But that would definitely help offset our lack of cash, yes.
**Q. And did you see the responses to the February 22nd offer?**
A. Yes, I did.
**Q. Did you believe them?**
A. Are you talking about the two letters?
**Q. Yes, 205 and 206.**
A. I --
**Q. She's got them.**
A. Okay.
**Q. Have you seen -- specifically, did you see that letter, Exhibit 205?**
A. Yes.
**Q. Okay. Did you believe that?**
A. I took that very -- to rephrase, I took it as serious as a heart attack. I took it serious.
**Q. Which part of it?**
A. The thing that really caught me, was the personal liability of individuals involved in such efforts. That means me, personally.
**Q. That does mean you?**
A. Yes.
**Q. Okay. Did you believe it?**

A. Yes, I did.
**Q. Okay. Let's go to the next one. And then you've also seen this one, Exhibit 206?**
A. Yes. Give me just a minute here to --
**Q. Okay.**
A. Yes.
**Q. Okay. Mr. Day, in your opinion, was there any way the County could have paid the full judgment by March 25th?**
A. I -- I had two concerns about this. The last concern being, the March 25th deadline. The first is by March 2nd. This was five days, I believe, before March -- before the March 2nd.
**Q. Right.**
A. Things can't happen that fast in county government. I don't care what you do -- or any government entity.
**Q. Okay.**
A. So those two things concerned me.
**Q. So if -- did you believe the statement in that letter, that if you could not make that commitment by March 2nd, they would proceed to try collection?**
A. Yes, I did.
**Q. Okay. Did you think you were still**



**negotiating?**
A. I -- I knew they would probably, from the 1.9, and the other things attached to it, I knew they probably would want more cash. I didn't expect the absolute -- the attitude, basically, that it was over. We want this, and that's bottom line. So I didn't feel it was a negotiation.
**Q. You thought the negotiations were done?**
A. I figured they were done.
**Q. Okay.**
A. Especially, after -- after reading those two letters.
**Q. Very good, sir.**
MR. CLARK: No further direct, Your Honor.
THE COURT: Thank you.
Cross-examination.
CROSS-EXAMINATION
BY MR. BANDUCCI:
**Q. Good afternoon, Mr. Day.**
A. Good afternoon.
**Q. I think the last time we talked, we were in this relationship; weren't we?**
A. On the other side of the room.



**Q. Slightly different. A little bit further, and one floor up.**
A. Right, sir.
**Q. You were in the courtroom when the verdict was rendered?**
A. No, I was not. No, I was not.
**Q. When did you hear about the verdict?**
A. Commissioner Zimmer and I communicated by telephone that evening.
**Q. The evening the verdict was rendered?**
A. Say that again, please.
**Q. The same -- the evening the verdict was rendered, you got a phone call from Ms. Zimmer?**
A. Yes.
**Q. Okay. And when you learned that a jury had awarded $4,000,000 against Boise County for violating the Fair Housing Act, you thought they were wrong; didn't you?**
A. I -- of course, I thought they were wrong.
**Q. Okay.**
A. Because I was on the other side.
**Q. Well, you didn't think that Boise County was liable for the $4,000,000; right?**
A. After the verdict was rendered, I



believe in the jury system, 100 percent.
**Q. Okay. So after the jury rendered the verdict, you decided, well, that judgment has got to get paid; right?**
A. That was our first thing to do, is to try to figure out how to pay the judgment.
**Q. And in your view, that jury verdict ought to be paid in full; right?**
A. Or settlement agreement.
**Q. Well, whether by settlement, or otherwise, the verdict should be paid in full; should it not?**
A. Correct.
**Q. All right. And you were in the courtroom when Ms. Hutchings testified; right?**
A. Yes, I was.
**Q. And you heard her testify, that as of the date of the petition, there was over $4,000,000 of idle funds at the County; correct?**
A. That's almost any given day on any month, there is probably that much money.
**Q. In surplus, in idle funds?**
A. Yes.
**Q. Okay. So they could have paid that judgment with those idle funds; correct?**

A. Negative; no, sir.
**Q. Okay. All right. Now, you said that the 1.9 million dollar offer, which is a part of the February 22nd letter, was well studied and well thought out; correct?**
A. Correct.
**Q. Did Mr. Fry object to the 1.9 offer?**
A. No. The only discussion -- we had a lot of general discussion, a consensus banking on it. We were all worried about funds that may not be able to be used. And we came to a joint conclusion that, that 1.9 would be utilizing funds that weren't encumbered.
**Q. Well, you were here when Mr. Fry testified; correct?**
A. Yes, I was.
**Q. And I believe Mr. Fry said -- or while he was testifying, that that was an argument that he lost. Do you remember his testimony to that effect?**
A. I remember testimony.
**Q. Okay. So --**
A. I did not --
**Q. He said, I lost -- excuse me. He said, I lost that argument. Did he argue with you and**



**Ms. Anderson, about the propriety of using some of these funds to pay the 1.9 million dollars?**
A. I wouldn't classify it as an argument, no.
**Q. Okay. And ultimately, he voted with you?**
A. On the final decision to make the offer, yes.
**Q. Okay. What did you understand Mr. Fry's concern to be?**
A. Expending funds that were designated for a specific purpose. He thought possibly some of this money, like out of the Freddie, Fannie was possibly road money, possibly solid waste money. If I recall, the conversations we were having, that was his concern.
**Q. Okay. And, specifically, you say Fannie, but you are referring to the Freddie Mac, 1.2 million investment; right?**
A. Right.
**Q. And that 1.2 million dollar investment you heard Ms. Hutchings say, she didn't know what that was. It was just, she couldn't trace it; correct?**
A. Correct.



**Q. And so Mr. Fry was concerned that some of these untraceable funds might be restricted funds; correct?**
A. That's the gist of it, yes.
**Q. And did you agree with that possibility?**
A. It was possible.
**Q. Okay. Then why did you vote to offer 1.9 million dollars that consisted of funds that were restricted?**
A. They were not. I said, it was possible.
**Q. Oh, I see. Is it fair to say then, that as far as you are concerned, one can use money that isn't clearly restricted, to pay settlement?**
A. I'm not going to answer that. Sir, you are trying to put words in my mouth.
**Q. No, I'm not, sir. I'm asking you a question. You just basically told this court, that you voted for payment of 1.9 million dollars, because it was only possibly that some of the 1.9 million dollars was restricted funds. That was your testimony; was it not?**
A. Yes, it was, sir. And anything is



possible.
**Q. Okay. So are you saying that this settlement, or the amounts paid to resolve this judgment, could be paid by funds federally possibly restricted?**
A. If -- I would never commit funds that I knew beyond a doubt were dedicated for another purpose.
**Q. Okay. But as in the 1.9, if there were funds that you only knew a possibility that they were restricted, as far as you are concerned, like the 1.9, you could use those funds?**
A. It depends on the level of possibility. I thought it was very low.
**Q. Okay. Very good.**
A. Or --
**Q. Thank you.**
A. Or I never would have agreed to it.
**Q. Tell me, do you know the level of possibility of restricted funds existing in any of the investment accounts as of February 28th, 2011?**
A. I don't understand.
MR. BANDUCCI: Can we bring up Exhibit 206 -- no, actually 106?

**Q. (BY MR. BANDUCCI) Could you mark that, please?**
MR. BANDUCCI: And could you go to the fourth page right there; enlarge?
**Q. (BY MR. BANDUCCI) There are three investment accounts. The first is a diversified bond fund. Do you see that?**
A. Yes.
**Q. All right. I'm actually hoping I could use this. Right there. Do you see that 2,479,620.80? Do you see that?**
A. Yes.
**Q. What is the level of possibility that these are restricted funds?**
A. I have no idea.
**Q. The same question with respect to the CD, which is the second investment on the list. It's the 501,077.83.**
A. I have no idea.
**Q. Thank you.**
**And you already answered the question with respect to the general operating inventory investment fund, which is the 1,198,000; correct?**
A. Correct.
**Q. You have no idea as to any of those.**



**It's possible that it's certainly not for certain; correct?**
A. Correct.
**Q. So if you follow the same approach that you use with the 1.9, you could use any of those investment funds to pay the judgment; correct?**
A. I don't think so.
**Q. Well, didn't you testify just a few minutes ago, that the reason you thought it was okay to include the Freddie Mac investments, which are in the general operating inventory is, because you weren't sure that they had restricted funds?**
A. Because I know for a fact.
MR. CLARK: Objection, Your Honor; asked and answered, and argumentative.
THE COURT: Overruled.
Go ahead and answer.
**Q. (BY MR. BANDUCCI) Didn't you just say a few minutes ago, sir, that the reason it was okay to use the general operating investment fund to fund the 1.9 million, was because you weren't sure that it had restricted funds? Didn't you say that?**
A. That's what I said.



**Q. All right. And it's the same case with the other two investment funds; correct?**
A. In it's entirety.
**Q. Please, answer the question.**
A. I can't answer the question the way it's asked.
**Q. Isn't it -- don't you have the same level of uncertainty with respect to restricted funds, in those other two investment funds?**
A. No.
**Q. And what more do you know about those other two investment funds?**
A. I know that this account here shows over 10 million dollars.
**Q. All right.**
A. And I know for a fact, that within that 10 million dollars, there is probably four or five million dollars that are restricted.
**Q. Okay. And so the other five to six are unrestricted?**
A. They are unrestricted operating capital.
**Q. Thank you. Now, was the February 22nd letter, a take it, or leave it for the County?**
A. Was it taking, what?



**Q. Was it a take it, or leave it offer by the County?**
A. I never gave it much thought, if whether it was take it, or leave it. I just took it as, that's it.
**Q. You know, I'm talking about your offer.**
A. Oh, was our offer?
**Q. Your offer. You are the ones --**
A. I'm sorry. I was on the wrong date, sir.
**Q. That's okay. Let's go -- actually, let's -- I'm not trying to confuse you with that.**
A. All right.
**Q. Let's pick up Exhibit 204.**
A. I was thinking about Mr. Woodard's letter.
**Q. Sure, I can tell by your answer. Let's see if we can get on the same sheet of music.**
A. Okay.
**Q. Here's the February 22nd letter, that is actually to me from Kami. That's your 1.9 offer, plus some other amount; correct?**
A. Correct.
**Q. All right. Was that a take it, or leave it offer?**

A. I don't know, unless I read the final lines in that. I have no idea.

**Q. Well, you worked on the offer; right?**

A. I worked on that. Was it three months ago, and I don't remember what I -- what even the intent was, when we wrote that.

**Q. Okay. So you don't remember whether there was an intent that this was the final offer by the County; take it, or leave it?**

A. I can't answer that.

**Q. Okay. You testified, on direct, that you thought that the folks from Alamar might find the cash component of the offer a little low. Do you remember testifying to that effect?**

A. Yes.

**Q. Now, were you of the view that if the folks from Alamar saw this as a little low, and came back and counteroffered, that you would consider a higher counteroffer from Alamar?**

A. I would have definitely considered, you know, to try to -- I wanted this thing done.

**Q. Okay. So you would have continued the negotiations?**

A. Yes.

**Q. Okay. But you are saying, that because**



**of the letters written on February 24th by Mr. Woodard, that that was the end of the negotiation as far as you are concerned?**

A. That's what it appeared. It was pretty final.

**Q. Did you read the letters to say anywhere in them, that Alamar folks were open to further negotiations?**

A. Yes.

**Q. Okay. Did you understand that to mean that they were open to further negotiations?**

A. I considered that after our bank accounts were emptied of however much the judgment was for, that we wouldn't be able to operate. And it would take us months to recoup that money. I thought we'd be shutdown.

MR. BANDUCCI: I'm sorry. I'm going to move to strike that answer.

**Q. (BY MR. BANDUCCI) My question to you was: When you read Mr. Woodard's letter of February 24th, that said that we're open to further negotiations, did you take him at his word?**

A. Yes, I would have to see the letter. I think -- I believe that was the language in the



letter towards the last --

MR. BANDUCCI: 205 -- 206. Will you enlarge that? Are you sure that's right? No, the other one; 205.

**Q. (BY MR. BANDUCCI) It says in the second paragraph -- why don't you read that to yourself?**

A. (Witness complying.)

**Q. So Mr. Woodard was saying in that letter, that Alamar was still considering a reasonable offer to settle, even though they were commencing efforts to collect; correct?**

A. Right.

**Q. You took him at his word?**

A. Yes.

**Q. Okay. So would it be fair to say then, that on February 22nd, the County made a proposal to Alamar, and the response to that really was two fold. First, there was a letter that said that we were still willing to communicate, but also, that we were going to pursue writ of execution; correct?**

A. I don't know which letter came first. I believe this letter came first. This letter is to Susan Buxton. So I'm not sure which you would



know came first or second? But that's the one that -- this is the one that I just -- I just waited for first.

**Q. All right. And then the exhibit counteroffer by Alamar on March 30th; correct?**

A. I --

**Q. I'm sorry. March 1st; correct? Do you remember that?**

A. I --

**Q. The day that you filed bankruptcy, Alamar made an offer; and, apparently, made almost contemporaneously?**

A. And we voted to file, I believe, on February 28th.

**Q. Okay. But you filed on the 1st?**

A. Or whenever it was filed.

**Q. Okay. Were you made aware of an offer, a counteroffer being made by Alamar around that time?**

A. I am aware of -- I am not aware of the specifics of it. I don't remember the specifics of it.

**Q. Well, okay. You don't remember specifics. Let's look at Exhibit 215. This is a letter that you were copied on. Let's take a**

**look at the top of the letter, or email, I should say, from Mr. Clark to Mr. Hindley. And you see your name there as a cc; correct?**
A. Correct.
**Q. All right. So whether or not you were concerned about the efforts to pursue the writ of execution, the negotiations continued; correct?**
A. According to this.
**Q. Okay. And let's go to the third page. And in this March 30th email, the County offered 1.5 million upon confirmation in bankruptcy, and 3.5 million, over 15 years, in installments of three percent; correct?**
A. Correct.
**Q. Would you have made that offer if you thought that would bankrupt the County?**
A. Would I have made that offer if I thought it would bankrupt the County?
**Q. Yes, sir.**
A. I'm not aware of the particulars of this offer.
**Q. Take a look at it. It's right there in front of you. You've got a copy of the email. My question to you is: Looking at that, on that day, March 30th, when that email**



**was sent, would you have made that sort of offer if that offer would have bankrupted the County?**
A. I don't know about this offer. I can't analyze it, if I don't know how they come up with -- I know how the 1.5 million came up. 3.5 million over 15 years installments of three percent that -- I don't think that -- I don't know that.
**Q. Was this email unauthorized?**
A. I think if you -- if I recall reading that email at one time, it also has language in there on discussion and approval of the County Commissioners.
**Q. Well --**
A. And this was never -- this was never --
**Q. So was Mr. -- was Mr. Clark making this offer, and there was no basis for him to make this sort of suggestion that that would be the ballpark of the negotiations?**
A. I would say, no. I would say, there was no absolute consensus among the board.
**Q. No absolute consensus?**
A. To --
**Q. Were there certain people on the board**



**that felt that this was an offer that should be made?**
A. I can't answer that.
**Q. You don't know?**
A. I don't know.
**Q. Okay. Let's take a look at Exhibit 216. This is another email that you received?**
A. That I was routed. Whether I received it, I don't know.
**Q. Are you saying, you don't read your emails?**
A. I can't just glance at this and tell you if I read this email, Mr. Banducci.
**Q. Do you not read your emails, Mr. Day?**
A. I read my emails, sir.
**Q. Okay. Very good. So let's take a look at Exhibit 216. Now, 216, also, is a continuation of the negotiations; correct?**
A. I have no idea. I haven't read it.
**Q. Well, it's -- take your time and read it, please.**
A. I will. Take your pack off. (Witness reading.) Okay.
**Q. All right. Now, you at least are copied on this email; correct?**



A. Correct.
**Q. Okay. And what this is, you would agree, is a continuation of the negotiations; correct?**
A. That's what it appears to be.
**Q. And would you agree with me, that what this appears to do, is to reduce the initial payment to 1.2 million, plus $427,000 per year, with one of those $427,000 payments occurring in this year. So that in 2011, Alamar would receive 1.627 million dollars. Do you see that?**
A. Yes.
**Q. All right. Now, would you allow this sort of communication to go on in connection with this case, if you believed that that communication carried terms that would bankrupt the County?**
A. No.
**Q. Thank you. Or render the County insolvent?**
A. No.
**Q. Thank you. Thank you, sir.**
THE COURT: Mr. Clark?
///
REDIRECT EXAMINATION

BY MR. CLARK:
**Q. Mr. Day, regardless of what happened after the bankruptcy petition was filed, did you believe, when you voted to file it on the 28th, that Alamar was going to garnish all of the bank accounts of the County?**
A. Yes, I did.
MR. CLARK: Okay. I have no further questions, Your Honor.
THE COURT: Anything else?
MR. BANDUCCI: I don't think so, Your Honor.
THE COURT: All right. Very well. You may step down. Thank you, sir.
(Witness excused.)
THE COURT: The next witness, please.
MR. CLARK: Jamie Anderson, please.
THE COURT: Come forward and be sworn.
JAMIE ANDERSON,
first duly sworn to tell the truth relating to said cause, testified as follows:
THE CLERK: Please have a seat. And please, state your name, and spell your last name for the record.
THE WITNESS: Jamie Alene Anderson,



A-n-d-e-r-s-o-n.
THE CLERK: Thank you.
DIRECT EXAMINATION
BY MR. CLARK:
**Q. Ms. Anderson, what is your current profession?**
A. I am a Boise County Commissioner.
**Q. How long have you been a Boise County Commissioner?**
A. For almost two-and-a-half years.
**Q. And are you currently the Chair?**
A. I am currently the Chair.
**Q. Okay. Were you a County Commissioner at the time the litigation with Alamar was filed?**
A. No.
**Q. You were a Commissioner when the judgment was entered?**
A. Yes.
**Q. And you were definitely involved in trying to negotiate this document, this settlement?**
A. Yes.
**Q. All right. You have the exhibit books up there; do you not?**
A. Okay.



**Q. Okay. Take a look and find, if you would; 121?**
A. In the white book?
**Q. Yes, please.**
A. (Witness complying.) Okay.
**Q. Is that your affidavit?**
A. Yes, it is.
**Q. And you read it?**
A. Yes.
**Q. And you had a lot of input in writing it; did you not?**
A. Yes, I did.
**Q. Okay. You signed it?**
A. Yes.
**Q. Okay. And as you sit here today, is that document still true and correct, to the best of your knowledge?**
A. Yes.
**Q. Okay. A couple of follow-up questions, just maybe, to flesh it out a little bit. Whose idea was it to write off the property tax arrearages on South Fork?**
A. We were approached by Alamar during negotiation for settlement; pretrial.
**Q. Who by; do you remember, specifically?**



A. Not, specifically.
**Q. Okay. Secondly, after you made the February 22nd settlement proposal, did you receive copies of the two responses on February 24th?**
A. I knew about the two responses on February 24th.
**Q. How did you find out about it?**
A. I had -- I was advised by Counsel, that they had been received. I don't remember if I received them that day.
**Q. Did you receive them, subsequent?**
A. Yes, I did.
**Q. All right. So you know the two documents I'm talking about; 205 and 206?**
A. Yes.
**Q. All right. Did you believe it?**
A. Yes.
**Q. Okay. When you voted on February 28th, 2011 to file this Chapter 9, did you have a doubt as to whether negotiations were still ongoing or not?**
A. At that point in time, my understanding was, all negotiations had failed.
**Q. Okay. And what was the next step then,**

**according to your understanding?**
A. We were -- we were unable to pay the judgment at that time, and our duty to the citizens of Boise County was to continue to operate the County. And with the resources at hand, we did not feel we could do both.
**Q. Okay. So as you sit here today, Ms. Anderson, have you received a counteroffer from Alamar after February 24th?**
A. I did not receive a counteroffer, personally. I heard there was a counteroffer, which was withdrawn within one hour, my understanding.
**Q. Do you recall which counteroffer that was?**
A. The March 1st counteroffer.
**Q. You understand that was withdrawn?**
A. Yes.
**Q. Okay. Based on your knowledge of County finance, Ms. Anderson, what is your definition of surplus cash?**
MR. BANDUCCI: Your Honor, I think some foundation needs to be laid with respect to --
MR. CLARK: Okay.
THE COURT: I agree.



**Q. (BY MR. CLARK) Ms. Anderson, do you understand, from your knowledge of working with the County Commission for two-and-a-half years, if there is a definition of either of the terms, excess cash or surplus cash?**
A. My understanding in the investment policy, is a surplus is for idle, beyond what is expected to operate the County for 12 months.
**Q. Okay. And are you the one who primarily authored the investment policy?**
A. No.
**Q. Who did?**
A. Ms. Hutchings.
**Q. Okay. Did you assist her in that?**
A. I participated in the review of the policy --
**Q. All right.**
A. -- with the other Commissioners.
**Q. And during that review, that's the way you understood the term, excess cash to mean?**
A. Yes.
**Q. Are you legally authorized, in your opinion, to manage, to your best efforts, the funds and finances of your county?**
A. I provide an approval of the budget.



**Q. Okay. And is the budget something that you and the rest of the Commissioners work on very hard?**
A. Yes.
**Q. Over quite a period of time?**
A. Yes.
**Q. You don't just hip shoot it?**
A. No.
**Q. Okay. Are you working on the budget process right now?**
A. Yes.
**Q. Okay. Based on what you know now, as a Commissioner, from the time of the prior offers, from the February 22nd offer, where these were made after the filing of the case, do you think, from what you know about County revenues, that you could still pay the amounts that were made in those proposals?**
A. I believe that the February 22nd offer was our best faith effort at analyzing the funds, and analyzing what we considered to be funds that were not otherwise specified for specific use, that we could believe we could do the cash -- I was always under the -- I always thought that committing the three percent would have to be by



a judicial confirmation that we -- so the 1.9, which was a combination of funds property tax foregone amount, but still be accomplished.
**Q. Okay.**
MR. CLARK: Put up 216.
**Q. (BY MR. CLARK) Okay. Ms. Anderson, I'm showing you a document, which has already been admitted into evidence, as Exhibit 216, which is an email from me, to Mr. Hindley and Mr. Kelly, and a copy says it went to you. Do you remember that one?**
A. Yes.
**Q. Okay. And that one says that, I still have to go to Idaho City and meet with the Commissioners to get their vote; is that right?**
A. Yes.
**Q. Based on what you know currently in the budget process of County revenue, an anticipated County revenue, is that offer to make that amount of money viable? In other words, could you afford that today?**
A. I do not believe we could afford $427,365 per year without reducing County services.
**Q. Is there much room to reduce County**

**services?**
A. No.
**Q. Have you already gone through budget cuts before?**
A. We have.
**Q. How far -- how recently?**
A. When I took office in January of 2009, by March we had seen such reduction in revenues, that we met with all departments. And, though, I think we cut more, by the end of the year, we had immediately taken a few hundred thousand out of that budget, which I was not party to approving. And when we started the budget process the following year, we started at those reduced levels. We continued to work at those reduced levels.
**Q. Okay.**
MR. CLARK: I have no further questions, with the understanding that the affidavit is part of her record.
THE COURT: Thank you, Mr. Clark. Cross-examination?
MR. BANDUCCI: Yes, thank you, Your Honor.
THE COURT: Mr. Banducci.



CROSS-EXAMINATION
BY MR. BANDUCCI:
**Q. Did you just say, Ms. Anderson, that you modified the budget mid year?**
A. In 2009, we -- we reduced expenditures.
**Q. Did you modify the budget?**
A. Yes.
**Q. You modified the budget mid year?**
A. Yes.
**Q. You heard Ms. Prisco testify, that she said the budget was cast in stone, once it was set. Did you hear her say that?**
A. I heard her say a lot of things. There is a process.
**Q. There is a process. My question is: Did you hear Ms. Prisco say, that the budget is set in stone, after it's set?**
A. I don't remember those exact words.
**Q. Okay. You were asked about excess funds, your definition of excess funds. I heard the word "surplus," and I heard the word "idle." But I think you finally defined excess funds as funds not needed for a year. Do you remember that testimony?**
A. Yes.



**Q. How would you define surplus funds?**
A. I don't have any definition beyond that. I believe the investment policy and state statute calls the ability to have investments surplus for idle funds.
**Q. I'm not asking for that. I'm asking for your definition of surplus funds. What's your definition of surplus funds? Let me see if I can help you.**
A. In excess -- did you want excess funds, or did you want surplus?
**Q. Well, let me see if we can --**
A. Do you want surplus?
**Q. Let me see if I can refresh your recollection. Let's publish the deposition of Jamie Anderson, taken March 30th, 2011. I believe that a copy is found in Exhibit 209.**
MR. CLARK: I believe it's already in, Your Honor.
THE COURT: I think so.
MR. BANDUCCI: Thank you, Your Honor.
And is this cut four ways? Okay. This is -- we don't have to. Okay. Then what I would like to do, Kathy, is go to page 197.
**Q. (BY MR. BANDUCCI) And let me draw your**



**attention, Ms. Anderson, to line 8. Now, you recall that you were deposed by Mr. Hindley; correct?**
A. Yes.
**Q. And on page 197, he says, on Exhibit No. 22, "Just tell me what the surplus funds are. What do you mean by that?" Your answer was, "Funds not needed for operating expenses"; correct. Is that your answer?**
A. That was my answer.
**Q. Okay. And let's go down to the bottom of that same page, line 22. Apparently, Mr. Hindley felt he needed to repeat the question. And said, "I'm trying to understand what 'surplus funds' means." What was your answer?**
A. "My lay interpretation is not needed for operating expenses."
**Q. Okay. Now, when you were testifying a few minutes ago on direct examination, I believe you testified that you believed that the surplus, excess, idle funds, whatever they were, as referred to in the investment policy, were funds that were not needed for a year; correct?**
A. I believe that's what the policy says.

**Q. All right. Well, let's go to the policy. And perhaps, you can cover that with me. And we are at Exhibit No. 229.**
A. 229?
**Q. Page 29 of 229.**
MR. CLARK: 229.
**Q. (BY MR. BANDUCCI) All right.**
MR. CLARK: Which one?
MR. BANDUCCI: It's page 29 of that exhibit. It's a 47 page exhibit.
**Q. (BY MR. BANDUCCI) All right. Now --**
A. It's on the screen?
**Q. Yes, it is.**
A. Okay. Thank you.
**Q. All right. And what I would like you to do, is take a look at that, and tell me where it says what you just testified to. That investments -- that surplus funds are funds that don't -- aren't needed for a year?**
A. I need the next page.
**Q. Okay.**
MR. BANDUCCI: Okay. Let's go to the next page, Kathy. Thank you.
THE WITNESS: Okay. Maybe it's the first page.



MR. CLARK: Section 6.
THE WITNESS: Okay. Can we go to section 6?
**Q. (BY MR. BANDUCCI) Now, refer to 6(a), and we'll blow that up.**
A. So it says, under section 6, "operating funds are defined as those funds, which are reasonably expected during a current budget year or within 12 months of receipt."
**Q. All right.**
A. So my --
**Q. Well, let's keep reading. Let's keep reading. "All investments authorized in section 4 are further subject to the following investment maturity limitations in order to manage risks. The treasurer may invest funds of Boise County, which are not identified as operating funds in investments with maturities longer than 365 days, but not to exceed 1,460 days"; correct? Is that what it says?**
A. That's what it says.
**Q. So in fact --**
A. In fact, that are consistent with the needs and use of the County. So I would say, that, from memory, that I should have been



looking at the investment documents, specifically. I was making a --
**Q. That's okay.**
A. So I apologize. Since I used the opposite of 12 months of receipts, so...
**Q. That's all right.**
A. So I made a mistake.
**Q. Ms. Anderson --**
A. I made a mistake.
**Q. Ms. Anderson, it's fine. I just wanted to make sure I understood what you were talking about, because I really wasn't quite sure.**
**Okay. Now, with the document in front of you, in fact, the rules that are set out in this policy would require the treasurer to make an investment much longer than a year, but shorter than whatever 1,460 days is in annualized terms; right?**
A. Treasurer may invest.
**Q. Four years. So would you agree with me, that the treasurer -- if the treasurer is following this policy, they are not making short-term investments much less than a year, they are making investments longer than a year, and shorter than four years?**



A. No, I disagree.
**Q. You do?**
A. It says, the treasurer may invest funds.
**Q. Uh-huh, right. It says, he may invest funds that are not identified as operating funds in investments with maturities. Are you saying that this clause doesn't give the treasurer a time frame for the investment maturity?**
A. Yes.
**Q. You are?**
A. I would need to look back. But my first glance is that that's true.
**Q. Okay. Let's make sure that we're on the same sheet of music. You are saying now, that this policy authorizes the treasurer to make investments short of a year?**
A. Yes.
**Q. You are? And that's based on your reading of 6(A)?**
A. No.
**Q. Okay. What's it based on?**
A. Let's go back to the whole document.
**Q. Sure. Sure, let's do that. I simply want to know what you are relying on, because**

**this is rather significant, whether it's less than a year, or more than a year. So I would suggest that you take as much time as you need to find whatever is in this policy, that supports the contention that the policy is intended to have the treasurer invest in investments with shorter than 365 day maturity?**

A. I would like to have the document in front of me.

**Q. Oh, absolutely.**

A. And the pages are -- I'm not in a position.

**Q. That's fine. That's fine.**

A. I can flip to it.

THE COURT: You will get some help there to get that document up.

**Q. (BY MR. BANDUCCI) And it's the 29th page of the exhibit.**

A. So I'm ready to --

**Q. Yes, ma'am.**

A. Okay. I believe this is an investment policy.

**Q. Uh-huh.**

A. And that -- that the statement, the Boise County Treasurer is further permitted to



invest in authorized securities of primary original dealers investments shall be made with banks. That it is a policy that the treasurer is to follow. I would also add that the policy requires an empowering resolution, and that State law and County policy requires Boise County Commissioner approval. I have the resolution in front of it.

**Q. Okay.**

A. And I would like legal interpretations. I don't believe that's an empowering document. So any investment, according to County policy, can be made by the treasurer, according to policy.

**Q. Okay. And that policy says, that an investment pursuant to this policy should be longer than 365, and shorter than four years; right? That's what it says in 6(A); correct?**

A. It also says in Section 3, the treasurer shall consider the role that the investment deposit plays in the portfolio of Boise County, and the investment objectives stated in this policy.

I do not believe that Section 6 says, they must be greater than one year or less than



four years.

**Q. You just disagree with my reading of that?**

A. Yes, I do.

**Q. Okay. Then let's see if we can agree on the first paragraph, under Section 6. Under Section 6, it says, "Operating funds shall be identified and distinguished from all other funds available for investment. Operating funds are defined as those funds which are reasonably expected to be expended during a current budget year, or within 12 months of receipt."**

**Do you see that?**

A. Yes, I see that.

**Q. Okay. And would it be fair to say then, that when the treasurer is making her decision on whether to invest funds in an investment, that she needs to look at what the County is going to need for its operating budget for a 12-month period, and distinguish those operating funds from the funds that can be used for investment?**

A. That's what it says.

**Q. Thank you. And you have no reason to believe that that's not what -- oh, I've**



**forgotten her name -- and I'm sorry.**

UNIDENTIFIED SPEAKER: April.

**Q. (BY MR. BANDUCCI) -- April Hutchings did; correct? She performed, according to the terms of the policy; correct, when she made various investments in 2010?**

A. I don't know that.

**Q. You don't know that. Are you saying that Ms. Hutchings violated policy?**

A. I'm saying, she did it --

**Q. And that's not the question I asked you.**

A. -- my interpretation of this policy.

**Q. I'm asking --**

A. I would say that, I was unaware of their investment on December 10th, until we had a need to start scrutinizing this. And I did not know that that had been made.

**Q. That's not the question I'm asking, ma'am.**

A. Did she violate policy? I think that's a question for a legal interpretation.

**Q. Well, ma'am, I'm asking you for your interpretation. She reports to you as a Commissioner; correct?**

A. She has autonomy of office.
**Q. Okay. Good. Well, then let me ask you this: Is there anything in this policy that you think April Hutchings violated, when she made the 1.2 million dollar Freddie Mac investments between September of 2010 and December of 2010? And if you do, please, show that to me.**
A. In my lay opinion, I believe, Section 2, treasurer to invest surplus or idle funds and instruments presented Idaho Code, Section 71-210 of the approval of the Board of County Commissioners.
**Q. So you believe that she did not get your approval?**
A. I have no recollection of her coming in with -- with that investment.
**Q. It was reported to you, however; correct?**
A. I don't remember.
**Q. Was it -- has it ever been reported to you, the Freddie Mac investments in quarterly reports?**
A. The -- as near as I can remember, the actual quarterly report that came to the County Commissioners was in December.



**Q. Uh-huh.**
A. And then not approved. And it was in December, when I requested information, that I learned of it.
**Q. Well --**
A. At my personal request.
**Q. So is the report submitted by the treasurer not approved?**
A. Not until later.
**Q. But it was approved?**
A. It was approved.
**Q. Okay.**
A. I knew of the investment. We had -- her report was approved.
**Q. So you knew the investment, and you approved it; correct?**
A. Yes.
**Q. All right. So you are not saying today, to this Court, that you think what Ms. Hutchings did when she took 1.2 million dollars of surplus funds, and invested it at the end of 2010?**
A. Would you repeat that?
**Q. Sure.**
MR. CLARK: I'm not sure that was a



sentence.
MR. BANDUCCI: You know, there are many times I ask questions that are not a sentence. I've found that that's a problem I have. I'll ask it, again.
**Q. (BY MR. BANDUCCI) Is it fair to say, that you approved the investment, the Freddie Mac investment, when you approved the quarterly report?**
A. Yes.
**Q. Thank you. And you are not telling the Court today, that there was some violation of this investment policy?**
A. I don't think that's my job.
**Q. The $900,097 investment was made in early December; correct?**
A. That's my understanding.
**Q. Okay. Roughly, three months before bankruptcy was filed; correct?**
A. Roughly, yes.
**Q. Now, you made mention of the fact that you made inquiry into funds and accounting -- fund management and accounting, I think, in December of 2010 and January 2011; is that true?**



A. Yes.
**Q. Okay. And, in fact, you kind of spearheaded the effort to get the County's arms around its finances; correct?**
A. I think that was everyone. I asked for information immediately for my personal research.
**Q. Okay. So you did some of your own personal research in order to determine what condition financial reporting the County was in; correct?**
A. No, I did personal research to ascertain how we could pay the judgment.
**Q. All right. In the course of doing that research, did you come upon certain things relative to -- come upon certain information relative to the financial reporting of Boise County?**
A. Yes.
**Q. Did you, in the course of your research, read the financial statement for the year ending 2010, or I guess it would be, year ending 2009?**
A. I think I was looking at documents, details of documents. I was advised of summary documents throughout my tenure. I looked at

detailed documents. And I believe the first documents were the fiscal year that had ended, which would be 2010.

**Q. All right. Let's take a look at Exhibit 228, page 74.**

A. 228, page 74?

**Q. Yes. And we have that right here in front of you. If you could read that?**

MR. BANDUCCI: I think if you could blow it up.

THE WITNESS: The exhibits are not numbered. They are not numbered.

**Q. (BY MR. BANDUCCI) All right. Well, Ms. Anderson --**

A. That I'm looking at the --

**Q. We can blow up what I want you to take a look at right here. Did you create a memorandum for the record, to Boise County elected officials and department heads on January 3rd, 2011?**

A. Yes, I did.

**Q. Okay. And the subject was financial reports; correct?**

A. Right.

**Q. Okay. You say, "I want to thank**



**everyone who has been assisting me with furthering my understanding of the financial reporting detail I was unaware of until last week. I now have a greater appreciation of what was described by Bailey & Company in the audit ending September 30th, 2009, as a significant deficiency in internal control over financial reporting as important enough to merit attention by those charged with governance." Do you see that?**

A. I do see that.

**Q. Okay. So you read the September 30th, the audit of Boise County's financials performed by Bailey & Company for the year ending September 30th, 2009. And you noted a report in that financial statement, indicating a significant deficiency in internal control; correct?**

A. I did use that statement in that memo. And I subsequently learned that the significant deficiency was a very specific item. And this is probably overstating what I was looking for at the time.

**Q. And the way -- can you take a look at Exhibit 116?**

A. (Witness complying.)



**Q. And, again, I have it on the screen here, if you need it. But, hopefully, you can find it in the paper.**

A. All right. I got it okay.

**Q. Have you got it there?**

A. I've got it.

**Q. And let's go to the fourth page of the document, which is the independent auditor's report.**

MR. BANDUCCI: And, Kathy, if you would blow up the bottom paragraph?

**Q. (BY MR. BANDUCCI) Are you there with me?**

A. I am.

**Q. It says, "In accordance with government auditing standards, we have also issued our report, dated May 21st, 2010, on our consideration of Boise County Idaho's internal control over financial reporting, and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and results of that**



**testing."**

**Do you see that?**

A. I see that.

**Q. Okay. Now, go back a page. And under the section, how federal reports, the second item is report on internal control over financial reporting, and on compliance in other matters based on audit financial statements performed in accordance with the government auditing standards. Do you see that?**

A. I see that.

**Q. Now, could you flip to page 39, and show me that report?**

A. My page ends at 28.

**Q. So does mine. Do you know why Boise County has failed to provide a complete copy of its financial statements?**

A. I had the complete copy in hand at the deposition, and I believe Mr. Hindley made a copy of it, or he certainly had an opportunity to.

**Q. Well, ma'am, these are the documents that were produced to us. And they are also the documents that have been placed as exhibits by -- this is 116. This is one of Boise County's exhibits. I take it, you don't know why we don't**

**have a full copy of that?**
A. They took it from me at the deposition.
**Q. They?**
A. Mr. Hindley took it, and Mr. Woodard took it.
**Q. So -- well, ma'am, I'm not --**
A. And entered it into the record, was my understanding, in the deposition.
**Q. Okay. Well, I will tell you that the financial statements that we have for 2009 are incomplete. I'll make that representation to you.**
**Now, do you remember what the significant deficiency was, that Bailey & Company was talking about?**
A. I can't recall at this time.
**Q. Okay. Did it have to do with the inability to trace funds?**
A. I don't remember at this time.
**Q. Since you were warned by Bailey & Company, in a 2009 financial statement, of significant deficiencies in financial reporting, what steps has Boise County taken to cure those deficiencies?**
A. I can't answer that question.



I -- because I don't know, specifically, what that significant deficiency was. But it is -- it's something -- what steps are we taking? I believe it may -- I can't see it right now. It's a very specific accounting term.
**Q. Okay. As you sit here today, you don't know if you've taken steps to cure the deficiency; correct?**
A. No, I don't know if we have. And I also don't know that we haven't.
**Q. All right. Now, you were already a Commissioner when the Alamar case was tried; correct?**
A. Yes.
**Q. And how long before trial did you become a Commissioner? The trial was in December of 2010.**
A. I was sworn into the office for my first term, four days after it was filed in federal court.
**Q. Okay. And at the time that the case was filed, Boise County was engaged in discussions with its carrier relative to coverage; correct?**
A. Yes.



**Q. And there was a point in time when ICRIMP, Boise County's carrier for these areas of claims, did not cover; correct?**
A. Yes.
**Q. And so the Commission -- before the case went to trial, the Commission knew that Boise County, if there was a judgment, would have to pay with Boise County funds; correct?**
A. No.
**Q. Why is that?**
A. Because Boise County challenged the interpretation of ICRIMP.
**Q. And that challenge is ongoing; correct?**
A. Yes.
**Q. But you could lose that challenge; correct?**
A. Yes.
**Q. Okay. So with things where they stood, with the denial of coverage, there was certainly a potential that any judgment would have to be paid with Boise County money; correct?**
A. Yes.
**Q. So are you familiar with the practice of setting up reserves?**
A. In the intuitive sense, yes.



**Q. You understand, when I say reserve, I mean, a litigation reserve, whereby Boise County would set aside funds to pay for a judgment, if, in fact, ICRIMP prevailed on its claim that there was no coverage. Do you understand that?**
A. I understand what you are saying, yes.
**Q. Okay. Now, with that definition of a reserve, did Boise County Commission talk about setting up a reserve?**
A. We did not expect to lose, no.
**Q. Well, I didn't ask you about your projection on the outcome. My question is: Did you talk about setting up a reserve?**
A. No.
**Q. Okay. Now, you attended the trial?**
A. No -- excuse me. I was allowed to attend jury selection, opening, and closing arguments.
**Q. Okay. So you attended portions of the trial?**
A. Portions of the trial.
**Q. Okay. And you understood that when the verdict was rendered, judgment was entered the next day; correct?**
A. Yes.

**Q. Okay. And you would agree with me, that prior to the time the judgment was entered, Boise County was able to pay its debts?**
A. Yes.
**Q. Okay. Now, let's talk about the steps taken by the Commission to find funds to pay the judgment. At the time -- at any time after the judgment was entered, has any effort been made to revise the budget?**
A. No.
**Q. Now, you revised the budget previously, so you had the power to revise the budget; correct?**
A. Yes.
**Q. You just didn't revise it; correct?**
A. Correct.
**Q. Do you know if anyone from the Commission went to lending institutions, to see if a loan could be procured to help pay the judgment?**
A. I believe that there were some contacts made on behalf of the County to lending institutions.
**Q. Relative to a loan?**
A. Relative to a loan.



**Q. And who made those contacts?**
A. Counsel, during negotiations, I believe, Mr. Moore made contacts on our behalf.
**Q. Now, Ms. Prisco testified that Mr. Moore contacted lending institutions relative to bonds. Do you remember that testimony?**
A. And I am using the word broadly, loan and equals bond.
**Q. No, and that's not the -- we need to --**
A. That's not the question. I --
**Q. We need to redefine, then. Set aside bonds. Did anyone from Boise County go to any lending institutions, to see if a loan could be procured?**
A. Not to my knowledge.
**Q. And at the time that Boise County -- at the time the judgment was entered, Boise County had investment funds of several million dollars; correct, in investments; correct? That could have collateralized the loan; correct?**
A. Well, a loan -- a county is not allowed to incur long-term debt without a loan debt, without a two-thirds majority vote of the electorate.



**Q. So you are saying that as far as you know, no loan could be procured for more than a year?**
A. Yes.
**Q. Okay. Now, did you explore whether the provision regarding expenditures to meet an emergency applied here? And I'm referring, specifically, to Section 31-1608 of the Idaho Code.**
A. We brought in outside counsel to do an evaluation of options available to the County Commissioners, and --
**Q. Did you -- I'm sorry. My question to you was: Did you explore whether 31-1608, which refers to expenditures to meet emergencies, in order to pay for, or assist in paying for this judgment?**
A. Part of privileged documents from counsel.
**Q. So you are asserting a privilege here?**
A. I would say, yes.
**Q. But I need to know what your position is with respect to this, ma'am, because I certainly don't want to step on any privilege here. Are you asserting a privilege to**



**communications you had with counsel regarding exploration of options to pay the judgment?**
A. No, I'll answer your question.
**Q. All right. Then the question was: Did you explore use of Section 31-1608 relating to expenditures to meet emergencies?**
A. Yes.
**Q. You did? And you would agree with me, that 31-1608 covers emergencies, as that term is used, arising out of -- and I want to quote it correctly here, "mandatory in order to meet mandatory expenditures required by law." Do you remember that language?**
A. That is part of the language.
**Q. Okay. And you would agree with me that this judgment was a mandatory -- the payment of this is a mandatory expenditure required by law; right?**
A. No.
**Q. And you are saying that this judgment is not a mandatory expenditure required by law?**
A. I believe that it is a Court ordered liability.
**Q. Okay. How is it not a mandatory expenditure required -- let me stop there.**

**Did someone advise you that a judgment is not a mandatory expenditure required by law?**

A. No.

**Q. Okay. So is your opinion relative to the applicability of 31-1608, as a means of satisfying this judgment, your own personal opinion?**

A. My own -- yes, that would -- well, my own personal opinion is, that we need to read the entire statute. Because my own personal opinion is, I believe that it's associated with fire, flood emergencies.

**Q. Okay.**

A. And then if that emergency is required to pay those debts, then, that it's associated with the emergency.

**Q. Okay. Now, did you get an opinion letter from counsel telling you that your interpretation was accurate?**

A. I don't remember.

**Q. Did you get any written advice from counsel telling you that your interpretation of mandatory expenditure required by law, was what made this judgment outside of the reach of this statute?**



A. I can't recall at this time.

**Q. Did any lawyer ever tell you that 31-1608 can be used to pay for this judgment?**

A. Did you say can or can't?

**Q. Can without a "t".**

A. Not to the best of my knowledge.

**Q. Did any lawyer tell you that 31-1608 cannot be used to satisfy the judgment?**

A. I don't remember.

**Q. Okay.**

A. There has been a lot of communication.

**Q. I understand that.**

A. And there are some privileged communications from counsel. And I'm not recalling right now if that particular statute that relates to the fire and flood.

**Q. Well, Ms. Anderson, let me just see if we can't move this along a little bit. Was there a point in time where the Commission decided that 31-1608 applied, or did not apply in the context of a judgment?**

A. Not, specifically, to the best of my knowledge.

**Q. Okay. So the Commission never really decided, one way or the other, whether they could use 31-1608; correct?**



A. The Commission works through counsel, and I don't -- and if you are saying, did the Commission specifically make that decision, or not make that decision?

**Q. Well, you are the final decider. You are, as one of our former presidents, you are the decider here; aren't you?**

A. I don't know the answer to that question. I don't have it.

**Q. Doesn't the Commission make these decisions?**

A. Well, within a realm of options.

**Q. Okay. That's right. And I want to know whether or not this option was decided upon, or whether or not it was simply looked at, and then no decision was made, and other options might have been considered?**

A. There was no specific decision by the Commission on that specific statute --

**Q. Okay.**

A. -- that I remember.

**Q. Okay. So what I want to make sure is clear for the Court, is that as far as 31-1608 is concerned, Boise County has not really decided whether this statute could be used to satisfy the judgment; correct?**



A. I can't remember.

**Q. Well, do you remember them making such a decision?**

A. No, I don't remember them making such a decision.

**Q. All right. Thank you. Did you explore the Tort Claims Act as a means of levying attacks?**

A. I believe that's in our brief, yes.

**Q. Did you get an opinion letter from anyone representing Boise County, that the tort claims levy, which is Section 692-A could be used to help pay the judgment?**

A. I believe that the discussion with Boise County is that the tort levy would be a part of the entirety of the statute, and that the total obligation under that would be 500,000.

**Q. That's not my question, Ms. Anderson. My question is: Have you ever been advised by anybody, you know, a lawyer, or some other person familiar with the Tort Claims Act, that the tort claims levy could be used to pay the judgment?**

A. No.

**Q. Okay. And isn't it true, that you've claimed privilege on those discussions as well?**
A. I did on my deposition.
**Q. Thank you. I'm going to jump around here a little bit, because I think we've covered an awful lot of these issues with these other witnesses. So bear with me just for a second.**
MR. BANDUCCI: Your Honor, if I might, I would like to use the easel. I talked with the clerk, and she informed me that I could move it over here and stand by it. And is that all right? I don't want to --
THE COURT: Just as long as you stay by a microphone, so we can get a good recording.
MR. BANDUCCI: Is that mic live?
THE CLERK: It should be.
**Q. (BY MR. BANDUCCI) Now, Ms. Anderson, what I would like to do is see if we can't use a chart to clarify how monies move in and out of accounts in the County. Okay?**
A. All right.
**Q. Now, we start about sources of money. And about, for example, we have property tax; correct?**
A. That's one source.



**Q. We have -- let's -- give me some other sources.**
A. Revenue sharing, sales tax, revenue sharing.
**Q. Sales tax. What else?**
A. Highway user fees.
**Q. Highway users. One more, liquor?**
A. Liquor.
**Q. Okay.**
A. Grants, contracts.
**Q. Okay. I just want some examples. We don't have to do a complete analysis of all the sources. I just want to have some we can work with. Okay?**
A. Okay.
**Q. All right. Now, for purposes of our discussions, we know that property tax is unencumbered or unrestricted; correct?**
A. Correct.
**Q. So we'll call that "UR," unrestricted. Okay?**
A. Until appropriated.
**Q. Well, okay. Yes, we're talking right now at the source.**
A. Okay.



**Q. Okay. I'm not going to get into a battle with you about that issue. Okay? Highway users, I think you would take the view that that's restricted; correct?**
A. Yes.
**Q. Okay. And I really (inaudible) sales; is that restrictive?**
A. No.
**Q. Okay. So that's UR. What about liquor?**
A. Liquor, I believe, has a 50 percent requirement to go into the community college fund. So it's half and half.
**Q. But as a source, is it restricted?**
A. Yes, it has to be used in a community college fund.
**Q. Okay. So why don't we put U/R; is that accurate? 50/50 is that what you are saying?**
A. At least 50/50.
**Q. Well, and, again, I'm not going to hold you to that percentage. That's not my purpose for asking these questions. Okay? So you don't need to be concerned about being precise on that particular issue.**
**These monies go into a checking**



**account; correct?**
A. Correct.
**Q. Well, that's what April Hutchings said?**
A. Yes.
**Q. She said they went into, I think, it was the Wells Fargo account; isn't that right?**
A. Yes.
**Q. Okay. So they all go into a Wells Fargo account. So here we have property taxes here. And we've got sales tax. And we have highway users, and liquor. Okay. They are all in that one account.**
**Now, what moves these monies out of this account?**
A. The -- and that would have been a better question for the treasurer. My understanding is, that those monies are then turned into the clerk as a turn in.
**Q. As a turn in. Okay. So actually moved out of an account into another account?**
A. Well, it moves out of the treasurer's office. He maintains accounts in bank accounts and you will -- gets turned into the clerk's office, who then puts them in the appropriate fund.

**Q. Well, now, money isn't put into the fund; is it? The fund is usually just an accounting -- an accounting exercise; correct? There aren't separate accounts per fund; right?**
A. Because that's not how government accounting works.
**Q. That's what I'm trying to --**
A. It goes, and is recorded, and is recorded, and is accounted for in the funds.
**Q. In the funds. I'm not talking about accounting. I'm talking about money. The money comes into this Wells Fargo account. And the question is: Where does it go? How does it move out of there; do you know?**
A. It moves out when checks are cut.
**Q. Okay. So when an expenditure occurs?**
A. Right.
**Q. So, for example --**
A. But it's accounted for immediately into a fund.
**Q. I understand, ma'am. That's not what I'm talking about right now. We'll talk about accounting in just a minute; okay?**
**I'm asking you about money movement. I'm talking about cash management, not**



**accounting. Okay. So what I want -- so when you pay an expenditure, some of this money comes out, and it may go to a bridge; right?**
A. No, not directly, because it won't be expended until it's been dedicated into the fund it belongs to. And when the clerk writes a check to spend that cash, of course, it's a double accounting system, comes back to the treasurer is my understanding. So these questions are really more appropriate for the treasurer.
But then when it comes back through after the expenditure has been approved via a fund, then cash comes out of the account to pay the expense.
**Q. Okay. I'm still -- we're having a -- I'm not trying to say there isn't a whole bunch of accounting, and fund accounting here. I'm not asking those questions right now, Ms. Anderson. I'm just asking, when money moves out of this Wells Fargo account? And you said, when it's paid for an expenditure; right? That's what you testified to; right?**
A. Well, and/or invested.
**Q. Okay. That's another one. Okay. So we have one way that the money might go out is**



**for an expenditure; right?**
A. Right.
**Q. And, also, another way money might go out is for an investment; right?**
A. Right.
**Q. Okay. And this is what happened, it went out as investment when we're talking about the Freddie Mac; correct? The Freddie Mac investment; correct, that was done by April Hutchings in December of 2010; correct?**
A. My assumption is, she took some available cash. There are multiple accounts. She took some available cash, and moved it out, yes.
**Q. Right. Okay. So she was looking at all this money in this account, and making a decision according to the policies of Boise County before she met that investment, which was approved by the Commission; correct?**
A. No.
**Q. Why not?**
A. We are -- I already testified to that. I have no knowledge of that actual investment, until it came through a quarterly report.
**Q. Right, and then it was approved;**



**correct?**
A. The quarterly report was approved, yes.
**Q. Okay. So getting back to the point of it. This was -- Ms. Hutchings was looking jumble of the money that was coming from these various sources, when she decided that some of it was surplus, according to the policy, and she invested it; correct?**
A. I can't speak for her.
**Q. You don't know?**
A. It doesn't -- it's not a jumble of money that came from these sources.
**Q. It's the budgeted money that comes into this account; right? And it comes from these various sources. And it's in that account. And Ms. Hutchings decides that some of that money is not needed for operations, and she invests it; correct?**
A. I would agree with that.
**Q. All right. Thank you.**
**Now, let's talk about bookkeeping or accounting. All right? Now, let's talk about a fund --**
MR. BANDUCCI: Can we have 101 put up, please? Go to the third page, I think, of 101.

Is that the third page?
MS. SAVELL: Yes.
MR. BANDUCCI: How about the fourth page, then? How about the bottom of the fourth page?
**Q. (BY MR. BANDUCCI) Can you see that, Ms. Anderson, on the --**
A. Yes.
**Q. Okay. Now, and we're just going to use an example here. And I think, let's use the justice fund. Okay. The justice fund, their fiscal budget for 2011 was 1.6 million dollars; correct?**
A. Yes.
**Q. And the justice fund has an unencumbered fund balance of 258. $258,000 is coming from this thing called the unencumbered fund balance, but you don't know what that is; right?**
A. Right.
**Q. Okay. Then there is other revenue. $210,000 coming from other revenue; right?**
A. That's what it says.
**Q. Now, what's "other revenue"?**
A. I don't have -- I don't know.



**Q. You don't know?**
A. No.
**Q. Okay. And then there is one -- excuse me -- yeah, 1.167 that comes from property tax; right?**
A. Yes.
**Q. Okay. Now, setting aside for a minute this notion that once something is budgeted, it is restricted. Are there any of the funds that you are looking at here, either encumbered fund, other revenue, and not property tax, that are restricted by the source? Do you know what I mean by -- do you know what I mean when I say that, "restricted by the source"?**
A. Yes.
**Q. What does that mean?**
A. It means it's for a specified purpose.
**Q. Okay. So, for example, to use an example, we've got road and bridge. If the federal government says, this fund can only be used for road and bridge. And they then -- they give that fund -- that proposed money, I should say, those monies to Idaho -- or excuse me, Boise County. Then that's restrictive; right?**
A. Yes.



**Q. Okay. So let's -- maybe what I want to do is, I want to make any -- keep it kind of a hypothetical. We've got fund here. And let's just, instead of maybe calling it the justice fund, because you don't know what the unencumbered balance is, let's just call it the "Fund X." Okay? Let's just call it Fund X; all right? And Fund X, if we were -- the way we're going to describe these source monies going in, are as restricted and unrestricted.**
**So let's propose, for example, that Fund X gets $200,000 of restricted funds, because they are coming from the federal government. The federal government says, you've got to use it for this particular fund. Okay? Am I correct so far?**
A. Yes.
**Q. Okay. So then let's suppose that there is another 220 of unrestricted. Because what has happened is, Boise County has decided that Fund X needs a total of $420,000 to operate that year, and they are going to put in property taxes. Okay? Are you with me so far?**
A. I -- I see where you are going.
**Q. Okay.**



A. But it's much too simplistic, the government funding.
**Q. All right. You know, I'm a simple guy. So let me see if I can work with this.**
A. And I would like to answer the question on the unencumbered fund balance on the other revenue.
**Q. Well, we'll come back to that. We'll give you a chance to do that. Okay?**
**So here we have Fund X, and it's got 200,000 of restricted, and 220 of unrestricted. Now, you are going to use it to build -- I don't know. We're going to use it to build a water tower. And the first bill to build that water tower comes in, and it's for $100,000; the first bill for labor and materials. Okay?**
**Is there a way that the County Commissioners draw down on this fund? Do they expend their money in a particular order? Do they spend their restrictive funds first, and their unrestricted funds second?**
A. So if you are calling Fund X, a fund that's appropriated through the budget process, and the budget process -- the water tower would have been identified during the budget process on

the source of revenue that it would have been used?
**Q. Right.**
A. So if it was a federal grant for a water tower --
**Q. Right.**
A. -- then 200,000 would have come -- oh, there wasn't enough. We -- that wouldn't have -- you know, if it -- if it was a budget appropriated and approved.
**Q. Uh-huh.**
A. Then 200 -- it's 420. Got 420 on one side, and 420 on the other side. How much is the water tower?
**Q. Well, the water tower is going to cost you $420,000. Okay?**
A. Well, then that looks like a wash.
**Q. Well, I don't think you are understanding my question. And it's really a question having to do with the order of expenditure of monies, based on whether they are restricted or unrestricted. Okay?**
A. And I don't think you are understanding my answer.
**Q. Well, let me ask the question again,**



**and maybe I didn't understand your answer. Maybe I can rephrase the question plainer. Okay? I want to know as that water -- these funds, this is appropriated property tax money of $200,000, and federal money -- excuse me -- property tax of 220, and federal money of 220 have been earmarked for this water tower. And you need both -- both bags of cash to build that water tower.**
**The first bill -- because they don't put the water tower up in a day. It takes time. The first bill comes in for $100,000. As an accounting matter, do you know whether the County spends the restricted funds first, or the unrestricted funds first?**
A. No.
**Q. You don't know? Okay. Thank you.**
**Do you know whether there is a state of practice relative to the expenditure of monies, where the restricted funds are spent first, and the unrestricted funds are spent second?**
A. I have a vague recollection of a particular type of grant that is in one particular fund, that the grant has a requirement that those funds are spent first.
**Q. The grant monies?**



A. So there is -- I know of no policy specific to that answer.
**Q. All right. Well, let's take a look at the financial statements of Boise County. Okay? And let's take a look at the draft for Boise County, which is -- oh, where is it? Do you have that? I'm sorry. 226. And why don't you pull that out?**
A. All right.
**Q. Okay. And I would like you to go to -- let's go to page 15. Thank you. I was on the wrong exhibit. That's why I'm having so much trouble here. 226?**
A. 226.
**Q. All right. Now, you are ahead of me. Okay. Let's go to page 15. At the bottom of page 15, there is a section entitled, "Fund Balance Reporting Governmental Funds." Do you see that?**
A. I see that.
**Q. It says, "different measurements, focuses and bases of accounting are used in government wide statements, and in governmental fund financial statements. The County uses the following fund balance categories in the**



**governmental fund financial statements: non-spendable, balances, for example, in permanent funds, prepaid expenses, and inventories that are permanently precluded from conversion to cash. Restricted balances constraint to a specific purpose by enabling legislation, external parties, or constitutional provisions. Committed balances that are constrained by the highest level of decision making authority of the entity, constraints can only be removed by taking the same type of action that imposed the constraints. Assigned balances intended for specific purpose by the County's management, and unassigned balances available for any purpose." Do you see that?**
A. Unassigned is not on my page.
**Q. Next page. I'm sorry.**
A. Okay.
**Q. And the next page down below, it says, "The board of Commissioners is the highest level of decision-making authority, and is also the same body authorized to assign balances to a specific purpose. There is no formal policy regarding the use of committed, assigned, or unassigned fund balances. However, when both**

**restricted and unrestricted resources are available for use, it is the County's intent to use restricted resources first, then committed unrestricted resources, then unassigned unrestricted sources." Do you see that?**

A. I see that.

**Q. Do you believe that's a correct statement?**

A. I believe that -- I don't know. I would think that would be a policy of the clerk when they spend the money.

**Q. It says here, the County's intent.**

A. And it says, there is no formal policy. So I've never seen a formal policy that states that.

**Q. Well, it says, "There is no formal policy regarding the use of committed, assigned, and unassigned fund balances." But they said, "as it relates to restricted and unrestricted resources, it is the County's intent to use restricted resources first, then unrestricted after that." Would you agree with that statement?**

A. I don't -- I don't agree to some of this document that wrote intent. Because I think

it's more specific to the type of expenditure that it is. It says, "unapproved document." But is that a good prudent policy? I probably wouldn't disagree with that. I would like to study this more. I have not seen this before. We have no formal policy on this. It's coming through an outside audit.

**Q. Thank you.**

MR. BANDUCCI: Your Honor, I probably -- I mean, I could go on, and I could break here, also. It's entirely up to you. I can --

THE COURT: It's going to happen within the next few minutes anyway, Mr. Banducci. So we'll break for the day.

MR. BANDUCCI: Okay.

THE COURT: And I'll see you tomorrow morning for continuation of the matter.

(Whereupon the deposition was concluded at 4:50 p.m.)

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REPORTER'S CERTIFICATE

STATE OF IDAHO )
) SS.
County of Ada )

I, COLLEEN P. ZEIMANTZ, CSR, a Notary Public in and for the State of Idaho, do hereby certify:

That said hearing was taken down by me from CDs; and thereafter reduced to typewriting, and that the foregoing transcript contains a full, true and verbatim record of the said hearing from the CDs.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this _____ day of _____, _____.

_____
COLLEEN P. ZEIMANTZ, CSR #345
Notary Public in and for
the State of Idaho.

My commission expires September 17, 2011.