

OPINION BANK – DISTRICT JUDGE  
ABSTRACTS OF NEW DECISIONS IN IKMS  
Jan 25, 2012

**BRISCOE V. BLOOMQUIST - NYE - BANNOCK CV-2008-2591-OC - OCTOBER 2011.** A portion of this decision deals with a question of first impression in Idaho: whether a plaintiff may maintain a cause of action for conversion of a check. The court followed cases from Missouri and California and decided that there is no persuasive reason to disallow, as a matter of law, a claim for conversion of checks when the checks are describable and identifiable.

**DAY V. WAL-MART - NYE - BANNOCK CV-2009-1497-OC - MAY 2011.** Summary: A portion of this decision addresses a question which has not been specifically addressed by any Idaho Appellate courts: whether Idaho's collateral source rule contained in I.C. s 6-1606 should include Social Security Disability payments to be made in the future. This district court decided that the collateral source rule should include future Social Security Disability payments because the plaintiff has received the entitlement to the benefits for the remainder of his life. This decision disagreed with Idaho Fourth District Court Judge Deborah A. Bail's decision on this issue in Carrillo v. Boise Tire Co., Inc., Case No. CV PI 07-18437 (Ada County, Decision and Order Re: Post Trial Motions, filed September 15, 2009).

**HOLLADAY BANK V. ARAVE BROTHERS LLC ET AL - NYE - BINGHAM CV-2010-1969 - DECEMBER 2011.** This decision addresses an issue of first impression in Idaho, and in Utah. The issue is whether an original debtor or obligor may raise the defense that an assignment of the contract or debt from the assignee to the assignor was made without consideration when sued by the assignee on the debt or contract. This court decided that, according to Am Jur, the best position is that an assignee may recover in an action against the original debtor or obligor even if there was no consideration for the transfer between the assignor and the assignee. The obligor cannot challenge the consideration involved in the assignment.

**LOSEE V. PIONEER TITLE OF ADA COUNTY - NYE - BANNOCK CV-2011-2662-OC - SEPTEMBER 2011.** This decision addresses a question of first impression in Idaho. The issue is whether the colloquially-named "show-me-the-note" defense to real estate foreclosure should be accepted as a valid defense in Idaho. The theory behind this defense is that only the holder of the original wet-ink signature has the lawful power to initiate a non-judicial foreclosure of a deed of trust. This decision cites many other jurisdictions in the country which have rejected the show-me-the-note defense, and agrees with their reasoning—rejecting the defense. This decision also departs from and somewhat criticizes a U.S. District Court of Idaho Bankruptcy case decision from U.S. Magistrate Judge Larry Boyle—*Armacost v. HSBC Bank USA*, No. 10-CV-274-EJL-LMB, 2011 WL 825151 (D. Idaho Feb. 9, 2011) report and recommendation adopted, No. 1:10-CV-00274-EJL-LMB, 2011 WL 809166 (D. Idaho Mar. 2, 2011).

**WELDON - WETHERELL - ADA - CR-FE-2011-6997 - DEC 2011.** The Court denied State's motion to reconsider and motion for permissive appeal. The Court found that the State's practice of redacting witness addresses in discovery responses without filing an objection with the Court to be in violation of I.C.R. 16. The Court denied the motion for permissive appeal because there were not substantial grounds for disagreement, nor would an interlocutory appeal advance the resolution of the case before the Court.