

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF  
THE  
NORTH AMERICAN FREE TRADE AGREEMENT AND THE  
UNCITRAL ARBITRATION RULES, 1976

PCA CASE NO. 2018-54

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:
In the Matter of Arbitration Between: :
:
TENNANT ENERGY, LLC, :
:
Claimant, :
:
and :
:
GOVERNMENT OF CANADA, :
:
Respondent. :
:
----- -x Volume 3

Wednesday, November 17, 2021

The hearing in the above-entitled matter  
came on at 9:00 a.m. (EST) before:

- MR. CAVINDER BULL SC, President
- MR. R. DOAK BISHOP, Arbitrator
- SIR DANIEL BETHLEHEM, Arbitrator

ALSO PRESENT:

Registry, Permanent Court of Arbitration:

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Legal Counsel

MS. CLARA RUIZ GARRIDO  
Assistant Legal Counsel

MS. DIANA PYRIKOVA  
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Client Representative:

MR. JOHN C. PENNIE

APPEARANCES: (Continued)

On behalf of Respondent:

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MR. MARK KLAVER  
MS. ALEXANDRA DOSMAN  
MR. STEFAN KUUSKNE  
MR. BENJAMIN TAIT  
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Trade, Government of Ontario:

MS. SAROJA KURUGANTY  
MS. MARGARET KIM  
MS. ADRIANNA MILITANO

APPEARANCES: (Continued)

Ministry of Energy, Government of Ontario:

MR. ERIK GULOIEN  
MS. KAREN SLAWNER  
MR. WILLIAM COUTTS

Independent Electricity System Operator:

MS. EVA MARKOWSKI

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P R O C E E D I N G S

1  
2 PRESIDENT BULL: Let's begin, then. This is  
3 Day 3 of Tennant Energy and Government of Canada in the  
4 Jurisdictional Hearing of that matter.

5 Can I check with Parties first, before we kick  
6 off, whether there are any housekeeping matters to raise?

7 MR. MULLINS: None on the Claimant.

8 PRESIDENT BULL: Any housekeeping matters from  
9 Canada?

10 MS. SQUIRES: Can you hear me now?

11 PRESIDENT BULL: Yes, we can.

12 MS. SQUIRES: Okay. Apologies.

13 No, nothing from Canada, other than, I guess,  
14 getting ourselves straightened out with our IT. Thank  
15 you.

16 PRESIDENT BULL: Thank you, Mr. Mullins, and  
17 thank you, Ms. Squires.

18 Then, let's begin with the evidence of Mr. John  
19 Tennant, and if he can be brought into the Main Hearing  
20 room, please.

21 JOHN TENNANT, CLAIMANT'S WITNESS, CALLED

22 PRESIDENT BULL: Mr. Tennant, can you see and  
23 hear me?

24 THE WITNESS: Yes.

25 PRESIDENT BULL: Very good.

1           Mr. Tennant, can I ask you, have you been  
2 attending the proceedings either of the last two days?

3           THE WITNESS: No.

4           PRESIDENT BULL: Right.

5           Then, Mr. Tennant, my name is Cavinder Bull.  
6 I'm the Presiding Arbitrator. You'll see on the screen my  
7 two colleagues on the Arbitral Tribunal, Mr. Doak Bishop  
8 and Sir Daniel Bethlehem. We are the three Arbitrators  
9 hearing this case, and thank you for being here.

10           Can I start by asking you to state for the  
11 record your full name, please.

12           THE WITNESS: Yes. My name is John  
13 Hawley--that's H-A-W-L-E-Y--Tennant--T-E-N-N-A-N-T.

14           PRESIDENT BULL: Thank you, sir.

15           Now, Mr. Tennant, we ask each witness to make a  
16 declaration that they will tell the truth, and you'll see  
17 on the screen a declaration that I would ask you to read  
18 out loud, please.

19           THE WITNESS: Okay.

20           Declaration for a fact witness:

21           I solemnly declare upon my honor and conscience  
22 that I will speak the truth, the whole truth, and nothing  
23 but the truth.

24           PRESIDENT BULL: Thank you very much.  
25 Mr. Tennant.

1 I put you in the hands of Claimant's counsel.

2 DIRECT EXAMINATION

3 BY MR. MULLINS:

4 Q. Do you hear me now, Mr. Tennant?

5 A. Yes.

6 Q. Good morning.

7 Do you have your Witness Statement in front of  
8 you, Mr. Tennant?

9 A. Yes.

10 Q. Is your--do you want to make any corrections or  
11 typographical errors' corrections in your Witness  
12 Statement?

13 A. Yes.

14 Q. Can you identify those for us?

15 A. Yes.

16 On Paragraph 12, the amount 457,500 should be  
17 437,500.

18 Q. All right. Anything else?

19 A. Yes.

20 On Paragraph 19, the amount--number of shares  
21 427,500 should be 437,500.

22 Q. Anything else?

23 A. Yes.

24 On Paragraph 29, second line, the amount  
25 42.5 percent should be 45.2 percent.

1 Q. Any other changes?

2 A. Yes. One more. Paragraph 36.

3 Q. Yep.

4 A. Derek, Jim and I are members of Tennant's  
5 Energy's Board. That's John Pennie, Jim and I are members  
6 of the Tennant Energy Board of Management.

7 Q. Thank you.

8 Does that get all the changes you want to make  
9 in your statement?

10 A. Yes.

11 Q. And just for the record, sometimes you referred  
12 in your statement to "I.Q. Property." Is that the same  
13 company as I.Q. Properties?

14 A. Yes.

15 Q. Other than those changes, do you have--is the  
16 statement that you have signed and submitted the testimony  
17 to you--to the Tribunal?

18 A. Other than that, the statement's accurate.

19 Q. Okay. Thank you so much, Mr. Tennant.

20 I now turn it over to Canada's counsel for  
21 cross-examination.

22 MR. KLAVER: Just to confirm, can you hear me  
23 okay?

24 THE WITNESS: Yes.

25 MR. KLAVER: Excellent.

## 1 CROSS-EXAMINATION

2 BY MR. KLAVER:

3 Q. Good morning, Mr. Tennant. How are you?

4 A. Tired, it's 5 a.m. or 6 a.m. here, but I'm in  
5 California.

6 Q. Fair enough.

7 Well, my name is Mark Klaver. I'm counsel for  
8 the Government of Canada.9 Now, the purpose of our discussion today is to  
10 assist the Tribunal in understanding the testimony that  
11 you submitted in this Arbitration. I will ask you  
12 questions about your Witness Statement and related  
13 documents. My colleague, Gen, will pull up some of the  
14 materials on the screen for you to read.15 Now, your role is to answer my questions with  
16 the complete truth. Please start your answers with "yes"  
17 or "no," and limit your responses to the questions asked.  
18 I will remind that you this Hearing is public and will be  
19 recorded. You understand, sir?

20 A. Yes.

21 Q. Okay. Let's just start by discussing what  
22 happened yesterday. I heard your response to the  
23 President. Just to confirm, you did not discuss  
24 Mr. Pennie's cross-examination afterwards with Mr. Pennie;  
25 correct?

1           A.    No--yes, I did not, cor--I did not discuss--I  
2 did not speak to Mr. Pennie.

3           Q.    Okay.

4           MR. MULLINS: I--could I just make an objection  
5 for the record. Even that last question is not a "yes" or  
6 "no" question, and certainly I--just for the record, if he  
7 asks a question that requires a "yes" or "no," that's  
8 fine, but I think that the--I don't want the record to  
9 show that the Witness is not entitled to explain his  
10 answer and maybe some questions are not entitled to a  
11 "yes" or "no" question. I'm sorry to interrupt, but the  
12 direction was made, and I don't think it's a fair  
13 direction. Thank you.

14           MR. KLAVER: That's reasonable, counsel. I  
15 would just request that he start with "yes" or "no" where  
16 possible, but, of course, we want to enable him to provide  
17 a complete response.

18           PRESIDENT BULL: Go ahead, Mr. Klaver.

19           MR. KLAVER: Okay. Now--

20           THE WITNESS: May I interrupt for just one  
21 second. Am I permitted to have coffee?

22           MR. KLAVER: Yes.

23           THE WITNESS: My throat gets very dry. Thank  
24 you.

25           PRESIDENT BULL: Yes. Please go ahead,

1 Mr. Tennant.

2 MR. KLAVER: I have coffee too, sir.

3 BY MR. KLAVER:

4 Q. Okay, now, just to confirm, sir, yesterday you  
5 did not discuss Mr. Pennie's cross-examination with  
6 Mr. Appleton, Mr. Mullins?

7 A. I did not.

8 Q. Okay. So you are not aware of what Mr. Pennie  
9 said in his cross-examination, are you?

10 A. No.

11 Q. Okay. Now, I have some questions about you and  
12 the Claimant. You are a member of Tennant Energy's  
13 Management Board; correct?

14 A. Yes.

15 Q. When did you become a member of the Management  
16 Board?

17 A. It's 2015, I believe.

18 Can I refer to my Witness Statement?

19 Q. You can. I don't believe the answer is there  
20 but...

21 A. Oh, okay.

22 Q. If you have any more specificity as to a date,  
23 that would be useful.

24 A. I'm sorry, could you repeat that?

25 Q. Just if you know the approximate date, but if

1 not, we can move on.

2 That's okay, sir.

3 A. Okay.

4 Q. We'll take 2015.

5 Now, you mentioned before that Derek Tennant is  
6 not part of the Management Board. Could you just confirm,  
7 is Derek Tennant part of the Management Board or not part  
8 of the Management Board of Tennant Energy?

9 A. He is not.

10 Q. He's not. Okay.

11 Now, sir, Derek states in his Witness Statement  
12 at Paragraph 46 that Jim Tennant, John Tennant and I are  
13 members of Tennant Energy's Management Board.

14 Can you just explain the discrepancy there?

15 A. I--no.

16 Q. Okay. So, it sounds like it was an error in  
17 Mr. Derek Tennant's Witness Statement, as well?

18 Okay. Now you are also a member of Tennant  
19 Energy; correct?

20 A. Correct.

21 Q. As a member, you have an ownership interest in  
22 Tennant Energy; right?

23 A. Yes.

24 Q. And what is your percentage of ownership of  
25 Tennant Energy?

1 A. 45 percent.

2 Q. "45 percent."

3 And who are the other owners of Tennant Energy,  
4 sir?

5 A. My brother Jim, who owns 10 percent; John Pennie  
6 and Marilyn Field each own 22.5 percent.

7 Q. Okay. So, is your brother Derek also a member  
8 of Tennant Energy?

9 A. No.

10 Q. He's not, okay. So, that sounds like another  
11 error in his Witness Statement.

12 Now, Derek Tennant's personal holding company is  
13 I.Q. Properties; correct?

14 A. Yes.

15 Q. And in October 2007, I.Q. Properties held  
16 50 percent of Skyway 127 Shares; correct?

17 A. Yes.

18 Q. Okay. We will now discuss the details of the  
19 loan you made to Derek. So, let's pull up Exhibit C-265.

20 Great. So, this is the Promissory Note (C-265)  
21 between you and I.Q. Properties.

22 You recognize this document, sir?

23 A. Yes.

24 Q. And the document is dated October 19, 2007;  
25 correct?

1 A. Correct.

2 Q. You were identified as the lender; correct?

3 A. Yes.

4 Q. And the borrower was I.Q. Properties?

5 A. Correct.

6 Q. The first paragraph indicates you lent I.Q.

7 Properties \$200,000; correct?

8 A. Yes.

9 Q. The interest on the loan was 10 percent per  
10 year?

11 A. Correct.

12 Q. The term was for three years, due on October 19,  
13 2010; correct?

14 A. Yes.

15 Q. Your brother Derek was the personal guarantor  
16 for the loan; correct?

17 A. Yes.

18 Q. The Promissory Note secured the loan with  
19 11.3 percent of Skyway 127 Shares; correct?

20 A. Yes.

21 Q. And this was 437,500 shares?

22 A. Yes.

23 Q. All right. Now, if Derek did not repay the loan  
24 on time, you had a call option under the Promissory Note;  
25 correct?

1 A. Yes.

2 Q. Now, let's zoom in to the third paragraph, and  
3 it states that you could exercise the call option by  
4 requesting the Shares on demand at any time after the Due  
5 Date or any extension thereof.

6 A. Yes.

7 Q. All right.

8 MR. KLAVER: Now, Gen, if we could highlight the  
9 fourth paragraph, please.

10 BY MR. KLAVER:

11 Q. Now, if Derek did not repay on time, this  
12 fourth paragraph states that you had a number of options:  
13 You could grant a six-month extension of time or other  
14 indulgences, and you could also grant releases and  
15 discharges or otherwise deal with the undersigned borrower  
16 as you saw fit.

17 So, let's just discuss these options. This gave  
18 you discretion if Derek didn't pay to extend the loan;  
19 correct?

20 A. Yes.

21 Q. And you could also grant other indulgences?

22 A. Yes.

23 Q. You could grant release and discharge?

24 A. Yes.

25 Q. And you could also otherwise deal with the

1 borrower as you saw fit?

2 A. Yes.

3 Q. Okay. So, to summarize, just so we're all clear  
4 on how this works, if Derek Tennant defaulted on the loan,  
5 you had a choice between five options: You could grant an  
6 extension, grant other indulgences, grant releases and  
7 discharges, deal with the borrower as you saw fit, or  
8 exercise the call option and request the Shares; correct?

9 A. Yes.

10 Q. All right. Now this would mean that if Derek  
11 defaulted on a loan, the transfer of Shares to you was not  
12 automatic; right? You'd have to--

13 (Overlapping speakers.)

14 A. No, I had to call--yes. It's--

15 Q. Okay. Now, just look at the last paragraph as  
16 well, sir.

17 This states that, in the event of court  
18 proceedings between you and Derek following a default, the  
19 prevailing party would be entitled to its legal fees and  
20 costs; right?

21 A. I'm sorry, I can't see the whole highlighted  
22 portion because I've got the pictures in my way. Okay,  
23 that's--yeah, thank you.

24 Q. Okay.

25 MR. KLAVER: Thanks, Gen.

1 BY MR. KLAVER

2 Q. Now--

3 A. I'm sorry, now, what is--what's the question?

4 Q. So, the question, sir, is just--I just want to  
5 first clarify that this states that in the event of court  
6 proceedings, you and Derek--between and you Derek, the  
7 prevailing party would be entitled to its legal fees and  
8 costs; right?

9 A. Yes.

10 Q. So, by securing the loan with the Skyway 127  
11 Shares and outlining what would happen in the event of  
12 court proceedings, it's fair to say that you were quite  
13 careful to protect your funds that you had lent your  
14 brother; correct?

15 A. That I was quite careful, did you say?

16 Q. Yes.

17 A. What--

18 Q. That you were quite careful over the treatment  
19 of your funds that you had lent your brother.

20 A. Well, I had security, and I had a note.

21 Q. And this demonstrated that you were cautious  
22 with the use of your funds; isn't that right, sir?

23 A. Well, that's your interpretation--

24 Q. It's not yours?

25 A. Well, it's a Promissory Note. Is that overly

1 cautious or underly cautious, I--

2 Q. All right, sir--

3 (Overlapping speakers.)

4 Q. Would you agree that this was a fairly  
5 significant personal loan?

6 A. Yes.

7 Q. Yes. And you documented how you provided the  
8 loan, you retained the documents concerning this loan;  
9 isn't that right?

10 A. No.

11 Q. Sir, we're looking at one of the documents right  
12 here, and we'll also go through a few more.

13 You're denying that you documented the loan?

14 A. We had the Promissory Note.

15 No, you said that I retained the documents. I  
16 didn't retain all the documents.

17 Q. So, who retained the Promissory Note, sir?

18 A. I believe--I believe I did retain a copy of the  
19 Promissory Note.

20 Q. Okay. Now, let's move to some of the other  
21 documents that you retained or someone retained concerning  
22 this loan.

23 And we will enter confidential session.

24 (End of open session. Attorneys' Eyes Only  
25 session begins at 9:20 a.m.)

1 ATTORNEYS' EYES ONLY SESSION

2 THE WITNESS: What does confidential session  
3 mean?

4 BY MR. KLAVER:

5 Q. It just means that the public can't watch the  
6 live feed right now.

7 A. I see.

8 Q. Okay. We'll now pull up Exhibit C-264.  
9 Now, this first page is a bank statement of  
10 yours and Barbara Anderson.

11 Do you see her name at the top there?

12 A. Yes.

13 Q. Who is Barbara Anderson?

14 A. Barbara Anderson's my wife.

15 Q. And you're still married to her?

16 A. Yes.

17 Q. So, the loan for \$200,000 came out of a joint  
18 bank account between you and your wife, Barbara; right?

19 A. That's correct.

20 Q. Did Barbara know that your loan to Derek came  
21 out of the joint bank account?

22 A. Of course, yes.

23 Q. Good.

24 MR. KLAVER: Now, if we just scroll through the  
25 other pages, Gen.

1 BY MR. KLAVER:

2 Q. Sir, you can just see this document also  
3 contains copies of cashed checks.

4 A. Correct.

5 Q. Another one of the bank statements.

6 So, this is another example of some of the  
7 documents concerning your loan.

8 A. Correct.

9 Q. All right. Now, let's pull up Exhibit C-266.

10 This is the acknowledgment of the Promissory  
11 Note between you and I.Q. Properties, dated October 20,  
12 2007.

13 Now, you and I.Q. Properties are called the  
14 "Parties" here; correct?

15 A. Yes.

16 Q. And Skyway 127 is called "the Corporation";  
17 right?

18 A. Yes.

19 Q. And at the bottom you can see John Pennie  
20 signing the acknowledgement on behalf of Skyway 127?

21 A. Yes.

22 Q. In this document, Skyway 127 acknowledged the  
23 Shares that I.Q. Properties used to secure the loan;  
24 right?

25 A. Yes.

1 Q. All right. Now, if we could just look at the  
2 last two lines in the paragraph, and Gen, if you can  
3 highlight the words with starting "may not be" to the end  
4 of the sentence.

5 Now, I will just clarify, sir, this states that  
6 the Shares that were used under the Promissory Note to  
7 secure the loan may not be transferred to any other Party  
8 without the express written consent and direction to the  
9 Corporation by both of the Parties.

10 So, what this meant was that the Parties agreed  
11 that the Skyway 127 Shares could not be transferred to  
12 anyone other than you without written consent and  
13 direction to Skyway 127 from you and I.Q. Properties;  
14 right?

15 A. Yes. We'd have to agree before I could transfer  
16 shares.

17 Q. All right. Now, let's pull up Exhibit C-267,  
18 Page 1. This is the Demand Notice that you sent I.Q.  
19 Properties and Skyway 127 on October 19, 2010.

20 A. Yes.

21 Q. The \$200,000 loan was in default on this date;  
22 right?

23 A. Correct.

24 Q. So, at that point, you had the choice of those  
25 five options we just discussed to grant an extension,

1 other indulgences, releases and discharges, deal with  
2 Derek as you saw fit or request the Shares; correct?

3 A. Yes.

4 Q. And you chose to grant the six-month extension;  
5 right?

6 A. Yes.

7 Q. Repayment of the principal and interest was due  
8 on April 19, 2011., right?

9 A. Yes, for the six-month extension, yes.

10 Q. Right.

11 Had I.Q. Properties paid off the interest on the  
12 loan by October 19, 2010?

13 A. No.

14 Q. So, this would mean that, by April 19, the total  
15 debt that Derek owed you was around \$270,000; is that  
16 right?

17 A. Would be in that vicinity. I haven't calculated  
18 the interest, but yes.

19 Q. Okay. Now, let's move forward in time to  
20 April 2011. Derek again did not repay the loan on  
21 April 19, 2011; correct?

22 A. Yes.

23 Q. And at that point, you again had a choice among  
24 those five options; right?

25 A. Well, in this Demand Notice (C-267), I tell him

1 that I want the Shares, if he does not--he doesn't pay--

2 Q. So, this Demand Notice is from October 19, 2010,  
3 so we've moved forward in time.

4 A. Six months, yes.

5 Q. Yep, to April 19, 2011; right?

6 And so, what I'm asking you is that on April 19,  
7 2011, when Derek defaulted, you again had a choice of five  
8 options that you could take: You could grant an  
9 extension, you could grant other indulgences, you could  
10 grant a release and discharge, deal with Derek as you saw  
11 fit or exercise call option and request the Shares; right?

12 A. Probably.

13 Now, in that--the item you just had up, I'd  
14 already told him that at that point I wanted the Shares,  
15 but anyhow, yes.

16 Q. Okay. Now, you did not file any documents from  
17 April 2011 showing that you requested and obtained the  
18 Shares on April 19, 2011; correct?

19 A. Could you repeat that?

20 Q. Absolutely.

21 So, you did not file any documents from  
22 April 2011 showing that you had requested and obtained the  
23 Shares on April 19, 2011.

24 A. Showing that I requested and obtained the  
25 Shares? No.

1 Q. I can rephrase, sir.

2 We're just looking for documentary evidence from  
3 April 2011 that you've exercised the call option. So, we  
4 understand you had a right to exercise the call option.  
5 What we're wondering is if you have any documentation  
6 showing that you did exercise the call option on April 19,  
7 2011.

8 A. Other than the document you just had up where I  
9 said that's what I wanted to do.

10 Q. Which was from October 2010. So--

11 A. That's correct.

12 Q. We're now talking about April 2011, and what I'm  
13 looking for is if you can identify any documents from that  
14 time to show that you asked for those Shares, you obtained  
15 those Shares?

16 A. No.

17 Q. All right. We will briefly enter--well, we're  
18 still in confidential session.

19 Okay. Now, sir, I would like, if we could just  
20 move to the Claimant's Memorial, this was the first main  
21 submission that the Claimant filed, and we'll go to  
22 Paragraph 115.

23 Now, if we highlight the first sentence, here  
24 the Claimant states: "John Tennant acquired his initial  
25 equity investment in Skyway 127 on June 20, 2011."

1 Do you see that?

2 A. Yes.

3 Q. Now, let's go down to Paragraph 124. We'll  
4 highlight the first two sentences.

5 This states: "John Tennant is an American  
6 citizen. He acquired his brother Derek's 11.3 percent of  
7 Shares in Skyway 127 on June 20, 2011."

8 Now, since the Claimant twice confirms that you  
9 acquired equity in Skyway 127 on June 20, 2011, it would  
10 appear that you did not acquire the Shares on April 19,  
11 2011; isn't that right?

12 A. I--well, I was supposed to get them. I'm not  
13 sure--I haven't seen this document you're showing me right  
14 now. I have no idea what it is.

15 Q. Well, I don't mean to surprise you with it, sir.  
16 This is the Company that you're an owner of, they  
17 submitted a Memorial in this Arbitration, saying that you  
18 acquired your equity investment in Skyway 127 on June 20,  
19 2011, so we're just looking for you to confirm that this  
20 indicates you did not acquire the Shares on April 19,  
21 2011; right?

22 A. According to this, that's correct.

23 Q. All right. Now, let's review some of the other  
24 evidence on the record concerning when you obtained the  
25 Shares, and we'll go to Exhibit C-267, Page 2.

1           This is the direction from you and I.Q.  
2 Properties. Please read the date of this direction, sir.

3           A.     June 20, 2011.

4           Q.     And the direction is addressed to John Pennie,  
5 Corporate Secretary of Skyway 127; correct?

6           A.     Correct.

7           Q.     You and I.Q. Properties signed as the direction  
8 as the lender and the borrower; right?

9           A.     Correct.

10          Q.     You and I.Q. Properties directed Skyway 127 that  
11 the Shares and all rights to the Shares should be  
12 transferred to you on June 20th, 2011; right?

13          A.     Correct.

14          Q.     And just to confirm, you did not send a written  
15 direction like this in April 2011, instructing John Pennie  
16 to transfer the Shares to you then; correct?

17          A.     Yep. Correct.

18          Q.     Okay. Let's review a couple of the Skyway 127  
19 Shareholder Ledgers.

20                 Now, John Pennie was responsible for updating  
21 the ledgers; right?

22          A.     Yes.

23          Q.     And did he share the Shareholder Ledgers with  
24 you when he updated them, such as the June 11, 2011,  
25 ledger, the December 30th, 2011, ledger?

1 A. No.

2 Q. Did he share any subsequent ledgers with you?

3 A. No.

4 Q. "No."

5 A. John Pennie is my cousin. I've known John all  
6 my life.

7 Q. Right.

8 A. No.

9 Q. Okay. So, you never asked to take a look at the  
10 ledgers?

11 A. No.

12 Q. Okay. Now, let's pull up Exhibit C-116, and  
13 this is a Skyway ledger for June 9, 2011.

14 Now, you can see in the second chart there it  
15 indicates that Premier Renewable Energy transferred shares  
16 to GE Energy on this date, June 9, 2011; right?

17 A. Yes.

18 Q. The ledger does not state you held any Shares in  
19 Skyway 127 on June 9, 2011, does it?

20 A. No.

21 Q. Okay. Now, yesterday, Mr. Pennie said that he  
22 did not have the signed Share Certificate from Derek, so  
23 the ledger does not state your name because Mr. Pennie  
24 could not transfer the Shares to you without the  
25 Share--signed Share Certificate and a direction from you;

1 correct?

2 A. I don't--I don't know what he testified.

3 Q. Well, sir, I'm just--I'm telling you now, he  
4 explained that he couldn't transfer the Shares from Derek  
5 to you on this date, June 9, 2011, because Derek hadn't  
6 provided the signed Share Certificates, so I'm just asking  
7 you to confirm that Mr. Pennie couldn't transfer those  
8 Shares to you yet because Derek hadn't completed these  
9 steps to provide the signed Share Certificates?

10 A. I had--I have no knowledge of that.

11 Q. All right. No problem.

12 Let's go to Exhibit C-117. And this is a Skyway  
13 ledger, 127 ledger, for June 20, 2011.

14 Now, we'll look at the second chart at the  
15 bottom first, and it states that on June 20, 2011, I.Q.  
16 Properties transferred 437,500 Shares to you; correct?

17 A. Yes.

18 Q. These were the Shares used to secure that loan;  
19 right?

20 A. Yes.

21 ARBITRATOR BISHOP: I'm sorry. Excuse me just a  
22 moment. What's the exhibit number of this?

23 MR. KLAVER: This is C-117.

24 ARBITRATOR BISHOP: Thank you.

25 BY MR. KLAVER:

1 Q. So, in this first ledger, we can see your name  
2 at the first chart, it indicates that you held  
3 11.3 percent of Skyway 127 Shares on this date?

4 A. Correct.

5 Q. So, the Skyway 127 Shares were first transferred  
6 to you on June 20, 2011; right?

7 A. According to this here, according to this  
8 register, yes.

9 Q. Now, this ledger does not identify Tennant  
10 Travel as a beneficial owner of Skyway 127 Shares, does  
11 it?

12 A. No.

13 Q. All right. Now, let's just briefly pull up your  
14 statement at Paragraph 28. Now, we'll highlight the first  
15 two sentences.

16 And here you explained, sir, that: "I did not  
17 worry about how the Shares were held until sometime in  
18 late 2014. As Trustee, I had assumed that the corporate  
19 records of Skyway 127 reflected the fact that I had the  
20 Investment in Skyway 127 for the benefit of Tennant Travel  
21 Services." So, it's accurate that (drop in audio) you  
22 assumed that the ledgers reflected Tennant Travel's  
23 beneficial ownership in the Shares through a trust; right?

24 A. Yes.

25 Q. Okay. And did you--I understand you're cousins

1 with Mr. Pennie, this is a family business. Did you ever  
2 just ask him, did he make sure that the ledgers reflected  
3 this?

4 A. No.

5 Q. Now, let's pull up Exhibit C-114, and this is  
6 the ledger dated December 30, 2011.

7 And the first chart shows that you held  
8 22.6 percent of Skyway 127 Shares on December 30, 2011;  
9 correct?

10 A. Yes.

11 Q. Now, Premier transferred 11.3 percent of the  
12 Shares to you on this date; right?

13 Thanks, Gen.

14 A. Yes.

15 Q. All right. Now, the ledger also does not  
16 identify Tennant Travel as the beneficial owner of Skyway  
17 127 Shares, does it?

18 A. No.

19 Q. All right. I'd like to confirm a few other  
20 points about the ledger as of December 30, 2011, and the  
21 Shareholders here.

22 GE Energy held 50 percent of the Shares;  
23 correct? You can see that there?

24 A. Yes.

25 Q. And Premier transferred shares to John Pennie

1 and Marilyn Field on this date; right?

2 A. Yes.

3 Q. On December 30, 2011, Derek Tennant and I.Q.  
4 Properties owned no shares in Skyway 127; correct?

5 A. Yes. This is all according to this ledger, yes.

6 Q All right.

7 Now, let's move forward in time up to 2015.  
8 We'll look at the ledger for Exhibit C-115, and this is  
9 the ledger dated January 15, 2015.

10 Now, let's look at the second chart. It  
11 indicates that you transferred your 875,000 shares, or  
12 22.6 percent of Skyway's Shares, to Tennant Travel on  
13 January 15, 2015; right?

14 A. Yes. That's what the ledger says.

15 Q. Right.

16 And this is the first ledger that we've seen,  
17 the first ledger on the record showing that Tennant Travel  
18 was a shareholder in Skyway 127; right?

19 A. This is the first one I've seen.

20 Q. Right.

21 And you cannot point to any other ledgers that  
22 you're aware of on the record showing that Tennant Travel  
23 had acquired shares in Skyway 127 any earlier than  
24 January 15, 2015; right?

25 A. I don't know if there are any or not. I have

1 never seen any of these ledgers other than recently.

2 Q. Okay. Now, the ledger shows that John Pennie  
3 and Marilyn Field together transferred an additional  
4 875,000 shares directly to Tennant Travel; correct? You  
5 can see there it's--

6 (Overlapping speakers.)

7 Q. --437,500 times two?

8 Okay. Now, this ledger does not indicate that  
9 they transferred their Shares to you; right?

10 A. That's correct.

11 Q. Okay. Let's just pull up your Statement to  
12 Paragraph 29.

13 Now, you say on the first line that, "on  
14 January 15, 2015, as Trustee, I received additional shares  
15 in Skyway 127 to bring the Trust ownership stake to  
16 42.5 percent." And I understand you corrected that 42  
17 figure.

18 A. Um-hmm.

19 Q. Now, why do you say here that you received  
20 additional shares on January 15, 2015, as Trustee, when  
21 the ledger showed that John Pennie and Marilyn Field did  
22 not transfer their Shares to you but directly to Tennant  
23 Travel?

24 A. I'm sorry, and what is the question?

25 Q. Sir, you state in your Witness Statement that,

1 as Trustee, on January 15, 2015, you received additional  
2 shares in Skyway 127 to bring the Trust ownership stake  
3 to, I understand the figure is now 45 percent. The ledger  
4 does not show that John Pennie and Marilyn Field  
5 transferred any Shares to you as Trustee. As we just saw,  
6 the ledger shows that they transferred their Shares  
7 directly to Tennant Travel.

8 So, could you explain just why you said in the  
9 statement that you received shares as Trustee?

10 A. Well, I had not seen these ledgers. I've--

11 Q. Okay.

12 A. I've--okay. Perhaps I should have said they  
13 went directly to Tennant Travel, but I depended on John to  
14 enter these things properly, and as far as I know, he did.

15 Q. All right. Okay. We can exit confidential  
16 session now.

17 (Attorneys' Eyes Only session ends at 9:39 a.m.)

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OPEN SESSION

Q. Now, why did you, John Pennie, Marilyn Field, all decide to transfer the Shares to Tennant Travel on January 15, 2015?

A. To keep them all together as a voting bloc.

I think you--I have to ask John and Marilyn why they particularly wanted to do it. I always intended to put my Shares in a trust--or in a holding company, I should say.

Q. And is there a reason that the three of you all did this on the same day?

A. Not that I can recall.

Q. All right.

Now, what did John Pennie and Marilyn Field receive for transferring their Skyway 127 Shares to Tennant Travel?

A. They got 45 percent of the Company.

Q. All right. And they received that from Jim Tennant?

A. No. I owned 90 percent, Jim owned 10 percent, so Jim transferred--

(Overlapping speakers.)

A. --anyhow.

Q. Okay. So, they obtained shares from you in return for them transferring shares to the holding company

1 Tennant Travel?

2 A. Yes.

3 Q. Okay. Now, we'll talk a little bit more about  
4 your ownership in Tennant Travel shortly, but first I  
5 would just like to ask you about Jim Tennant's  
6 relationship with Tennant Travel.

7 Now, you're aware that Jim signed a waiver in  
8 this Arbitration, are you?

9 A. No.

10 Q. Okay. Well, I can tell you he did.

11 And Jim Tennant is the Managing Member of  
12 Tennant Energy; correct?

13 A. He's one, yes.

14 Q. Okay. Has he always been the Managing Member of  
15 Tennant Energy?

16 A. Yes.

17 Q. Okay. Let's pull up your statement,  
18 Paragraph 18, and we'll go to Page 4 and highlight the  
19 remainder of the paragraph starting with "I did not have."

20 A. This is--

21 Q. This is your Witness Statement, sir, it's  
22 Paragraph 18.

23 A. Oh, yes.

24 Q. And could you just read the highlighted script  
25 there.

1 A. Yes.

2 "I did not have a Holding Company, but Jim had a  
3 company, Tennant Travel Services LLC. Jim was not doing  
4 anything with it. He let me have the Company."

5 Q. Okay. Now, Jim did not let you have the full  
6 company; right? It sounds like he gave you 90 percent; is  
7 that right?

8 A. That's correct.

9 Q. Okay. So, he retained 10 percent?

10 A. Yes.

11 Q. Okay. And what date did this Transaction  
12 happen?

13 A. The what--what transaction?

14 Q. The Transaction where Jim let you have  
15 90 percent of the holding company Tennant Travel.

16 A. That was in 2011, I believe.

17 Q. Can you provide more specificity, sir? This is  
18 important.

19 A. Yeah.

20 Geez, I'd have to--do we have the Share Register  
21 from--

22 Q. Well, we have Share Registers for Skyway 127,  
23 but we're talking about Tennant Travel right now.

24 A. Right.

25 Q. And no, we do not have any Share Registers for

1 Tennant Travel on the record, so I'm just trying to ask  
2 for some information from you, sir.

3 A. Right.

4 I have none.

5 Geez, I think it was in June 2011.

6 Q. "In June 2011."

7 And, sir, do you have any documentation of this  
8 transaction where Jim let you have 90 percent of the  
9 holding company Tennant Travel?

10 A. No.

11 Q. Okay. Now, just to confirm, sir, if you owned  
12 this ownership stake in Tennant Travel in 2011, what made  
13 you wait until 2015 to join the Management Board of  
14 Tennant Travel?

15 A. This was--this was all just family things. I--I  
16 was not the Secretary of the company or anything like  
17 that. I didn't--these were not important items to me or  
18 to my brothers and sisters. We did so much just on, well,  
19 basically handshakes and discussions. There was no real  
20 significance to the delay in doing it that I recall.

21 Q. Okay. Okay. Let's turn to Paragraph 17 of your  
22 Statement, and let's highlight the first two sentences.

23 Now, here you say: "My brother, Derek, proposed  
24 that I would agree that the 437,500 Skyway Shares  
25 constituted full repayment of the principal and interest

1 on the loan."

2           Then you say: "I agreed to Derek's condition  
3 that I hold the Skyway 127 Shares in a U.S. Holding  
4 Company that I would designate."

5           Now, as part of this agreement, you agreed that  
6 the Shares in Skyway 127 constituted full repayment of  
7 principal and interest on the loan, and Derek would be  
8 released from personal liability; right?

9           A. That's correct.

10          Q. What was the date of this agreement exactly?

11          A. This was--this was in April 2011 in talking with  
12 Derek about the Shares.

13          Q. Sorry, it was--

14               (Overlapping speakers.)

15          A. This would be--

16          Q. It was before you obtained the Shares, according  
17 to your story, in April 2011?

18          A. It was--yes, it was in anticipation that I would  
19 get the Shares but I did not have them at that time.

20          Q. Okay.

21          A. As far as I can recall, yes.

22          Q. Okay. And was this agreement in writing, or was  
23 it just oral, this agreement with Derek?

24          A. There's--the full repayment is in writing.

25          Q. "The full repayment is in writing."

1 A. Yes.

2 Q. What are you referring to exactly, sir?

3 A. There is some document that shows that I was  
4 accepting the Shares in full payment.

5 Q. Okay. So, sir, I'm just going to clarify, we're  
6 talking about this agreement that you had with your  
7 brother. On the one hand, you had released him from  
8 personal liability, you had received the Shares as full  
9 repayment. This agreement, is that an agreement that was  
10 written down? Is it on the record? Can you point us to  
11 this agreement?

12 A. Well, yes, there is an agreement that's--that  
13 states that I'm accepting the Shares in full--full  
14 payment.

15 Q. Okay.

16 A. It's in the--it's within the documents I believe  
17 that you have.

18 Q. I would invite you now to specify where that  
19 agreement is, sir. If not, you can bring us back to it  
20 later.

21 A. It's in--oh, man. Where is the list of  
22 documents?

23 Q. Sir, if you want to take a little time, we can  
24 move on from this topic, if you want to just reflect on  
25 where that document might be, but it would be very useful

1 to see this agreement with your brother. Counsel can  
2 bring this up for you, all right?

3 A. Okay.

4 Q. Okay. Now, let's just focus on your words here  
5 in Paragraph 17. You said that one of the conditions--a  
6 condition of the agreement with Derek was that you would  
7 put the Skyway 127 Shares into a holding company; right?

8 A. Yes.

9 Q. Now, the agreement that you had with Derek did  
10 not stipulate that you would remain the registered  
11 Shareholder and hold the Shares in Trust for a holding  
12 company; right?

13 A. I'm sorry, could you repeat that?

14 Q. Well, sir, you had an agreement that you specify  
15 here, one of Derek's conditions was that you would hold  
16 the Shares, you would put them in a holding company;  
17 right?

18 A. That's correct.

19 Q. And I'm trying to clarify, the agreement with  
20 Derek never stipulated that you would create a trust and  
21 put the Shares in a trust; right?

22 A. Do I have a written agreement to that effect, or  
23 was that our--our verbal agreement was that I would, yes.

24 Q. You're saying that your verbal agreement was  
25 that you would put the Shares in Trust rather than put

1 them in a holding company?

2 A. No, that I would hold them in Trust until I had  
3 a holding company.

4 Q. Okay. Now, sir, that's not what you state here.

5 So, I would just like to confirm. You see,  
6 there's a major difference between transferring shares to  
7 a holding company versus remaining the registered owner of  
8 the Shares and creating a trust to hold the Shares for a  
9 holding company; right?

10 A. I don't see a big difference there.

11 Q. Well, there is a fairly significant difference  
12 insofar as when you transfer the Shares to the holding  
13 company, legal title goes to the holding company.

14 A. Correct.

15 Q. But in the alternative situation, you kept legal  
16 title and you put just beneficial ownership in a trust, so  
17 do you see that difference?

18 A. I was holding them in Trust until I could put  
19 them in a holding company that I owned. I don't see the  
20 difference. I was just holding them until the holding  
21 company was set up and--

22 Q. Okay.

23 A. --and the Shares were transferred to it.

24 Q. Okay.

25 A. No, I don't see a difference there.

1 Q. Okay. We will move on.

2 Now, let's discuss this creation of the alleged  
3 trust that you just referred to.

4 Now, before going to your Witness Statement, I'd  
5 like to pull up a provision from the California Probate  
6 Code for you to review. This is Exhibit R-090, and we  
7 will go to Section 15205.

8 Now, Gen, if you could highlight (a). I am  
9 going to read this rule for you, sir: "A trust, other  
10 than a charitable trust, is created only if there is a  
11 beneficiary."

12 MR. MULLINS: I have to object to this line of  
13 questioning. Unless the counsel is able to lay a  
14 foundation that Mr. Tennant is a lawyer, I think the line  
15 of questioning is highly inappropriate for him to be  
16 cross-examined on the California Probate Code.

17 MR. KLAVER: I do not see what's inappropriate  
18 at all, counsel, but this is actually very relevant to  
19 whether this alleged trust was created, and so my question  
20 for the Witness is whether he was aware of this provision  
21 when he said he was creating the oral trust.

22 PRESIDENT BULL: Mr. Klaver, you can go ahead  
23 and ask that question.

24 MR. KLAVER: I was just moving towards my  
25 question. I apologize.

1 BY MR. KLAVER:

2 Q. So, Mr. Tennant, were you aware of this  
3 provision in April when you say you were planning to  
4 create a trust?

5 A. No, I'm not familiar with the Probate Code of  
6 California.

7 Q. Okay. Let's go to your Witness Statement at  
8 Paragraph 19.

9 Now, here you say: "On April 26, 2011, I  
10 confirmed with Derek that I would nominate Tennant Travel  
11 Services to hold the Skyway 127 Shares."

12 So, your testimony is that on April 26, 2011,  
13 you told Derek that you would nominate Tennant Travel as  
14 the holding company; right?

15 A. Correct.

16 Q. Now, you filed no documents from April 2011  
17 showing that you designated Tennant Travel as the holding  
18 company; right?

19 A. That's correct.

20 Q. Now, I would like to just pull up part of the  
21 Transcript from yesterday where Mr. Pennie talked about  
22 this subject. So Gen, can you pull up Page 254.

23 Now, sir, I can just give you a little  
24 background here. My colleague, Ms. Squires and Members of  
25 the Tribunal were asking Mr. Pennie a number of times

1 about part of his statement, where he said that the  
2 holding company was still undesignated in December 2011.

3 Now, in this excerpt that we have here, the  
4 President of the Tribunal asked Mr. Pennie to confirm if  
5 Tennant Travel was the designated holding company in  
6 December 2011 or if the holding company was undesignated.

7 Now, let's highlight Lines 16 to 20.

8 Now, you can see here Mr. Pennie said "No, in  
9 December the holding company was undesignated."

10 A. Where--just a minute. Am I supposed to read  
11 this highlighted area?

12 Q. I think that would be useful.

13 A. Yes. So...

14 (Witness reviews document.)

15 A. Okay. Is there a question?

16 Q. Yes.

17 So, sir, Mr. Pennie confirmed that, in  
18 December 2011, the holding company was undesignated. So,  
19 could you please explain the discrepancy between your  
20 statement that you designated the holding company on  
21 April 26, 2011, and your cousin Mr. Pennie's statement the  
22 holding company was undesignated in December 2011.

23 A. I can't explain the difference.

24 Q. Was he incorrect, sir? Were you incorrect?

25 A. I'm--I believe I'm correct.

1 Q. Let us move to Exhibit C-268 for a moment, and  
2 this is going to relate to what we're talking about.

3 Now, I will actually ask you a lot more about  
4 this letter shortly, but for now I just want to bring you  
5 to one part of it.

6 Now, you wrote this letter in 2016; right?

7 A. Correct.

8 Q. Let's go to the second-last paragraph starting  
9 with "at all times."

10 Now, I'm going to read these words--they're your  
11 words from 2016: "At all times, I have held the Shares of  
12 Skyway 127 Wind Energy Inc as a bare trustee for a U.S.  
13 company to be designated in the future. I so informed  
14 John Pennie and Derek Tennant of this Trust when obtaining  
15 the Skyway 127 Shares in 2011, and each subsequent time I  
16 received additional Skyway 127 Shares."

17 So, this letter would appear to confirm that you  
18 did not designate the holding company in April 2011  
19 because, in your own words, you had not designated Tennant  
20 Travel to hold the Shares each subsequent time you  
21 obtained shares, which could include December 2011;  
22 correct?

23 MR. MULLINS: Object to the form. That's a  
24 mischaracterization of the document. That's not what it  
25 says at all. I think it's an unfair question. I don't

1 think--that's not what the document stated--

2 MR. KLAVER: Let's just then look closely at the  
3 words.

4 BY MR. KLAVER:

5 Q. It says (reading): At all times, the holding  
6 company was to be designated in the future, and each time  
7 he received shares, he told Mr. Pennie and Derek about  
8 this. So, he had not designated a holding company on  
9 April 26. Isn't that right, sir?

10 A. No.

11 At all times, I've held the Shares for a U.S.  
12 company to be designated in the future, that's correct. I  
13 so informed John Pennie and Derek Tennant when I first  
14 obtained the Shares, that's correct, any subsequent time.  
15 I don't see any conflict there.

16 Q. Well, sir, you say that each subsequent time you  
17 obtained shares, you obtained shares in December 30, 2011;  
18 right?

19 A. That's correct.

20 Q. So, each subsequent time you obtained shares  
21 including December 30, 2011, you told Mr. Pennie and Derek  
22 you were holding the Shares in Trust for a company to be  
23 designated. That's what this appears to say. I'm just  
24 asking for you to clarify.

25 A. That I--that is to be designated in the future

1 in 2011 when I told him that, when I first obtained the  
2 Shares.

3 Q. And "each subsequent time," what does that refer  
4 to?

5 A. It doesn't mean that it's still undesignated  
6 each subsequent time.

7 Q. All right. Let's move on from that, and I'm  
8 just going to ask you now, sir: The Claimant's Memorial,  
9 we discussed that you--did you read it before it was--it  
10 was submitted?

11 A. The Claimant's Memorial?

12 Q. Yes.

13 This was the First Submission that the Claimant  
14 made about the events of this case?

15 A. I'm not familiar with the Claimant's Memorial.

16 Q. Okay. That's okay.

17 In that case, we'll just move on.

18 Now, on the creation of the alleged trust, this  
19 was an oral trust; right?

20 A. Correct.

21 Q. So, you did not file any documents from  
22 April 2011, showing that you created this oral trust;  
23 right?

24 A. No.

25 Q. And beyond the creation of the oral trust, you

1 did not file any documents from 2011, 2012, 2013, 2014,  
2 2015, showing that this Trust existed; right?

3 A. I think it's right. I can't recall any.

4 Q. All right. Now, let's move to Paragraph 20 of  
5 your statement.

6 Here, you say that you notified John Pennie that  
7 (reading) I had the Skyway 127 Shares and that I was  
8 holding them for Tennant Travel, and then you say: "I  
9 told him that the Shares should be transferred to Tennant  
10 Travel."

11 Did this happen on April 26, 2011 or another  
12 date, sir?

13 A. I believe that was on April 26.

14 Q. Okay. Now, it would appear that you're saying  
15 that you were trying to transfer the Shares to a holding  
16 company rather than create a trust; right?

17 A. I think--telling him that I intended--I wanted  
18 them transferred to Tennant Travel. I was holding them in  
19 Trust until then.

20 Q. Okay. Did you want him to transfer the Shares  
21 to Tennant Travel right away?

22 A. At a reasonable time, yes. I didn't really care  
23 if he get them--there is nothing urgent about it as far as  
24 I was concerned.

25 Q. Okay. But you were wanting him to transfer the

1 Shares to Tennant Travel; right?

2 A. Yes.

3 Q. Reasonably soon.

4 Sir, I'm just trying to clarify, why would you  
5 create the Trust if you were actually instructing  
6 Tennant--

7 MR. MULLINS: I've got to object--I've got to  
8 object. He just mischaracterized the Witness's testimony.  
9 If he could ask the question without mischaracterizing the  
10 testimony, we will get along much better.

11 MR. KLAVER: You're going to have to clarify how  
12 I mischaracterized the testimony.

13 MR. MULLINS: He didn't say "reasonably soon,"  
14 you added that.

15 MR. KLAVER: I believe he did say "reasonable,"  
16 he said "at a reasonable time."

17 MR. MULLINS: You added "soon." Sorry, I  
18 interrupted your question. I wish you would please not  
19 mischaracterize the testimony.

20 MR. KLAVER: I appreciate that.

21 BY MR. KLAVER:

22 Q. So, sir, I'm just trying to understand if you  
23 had instructed your cousin, John Pennie, to transfer the  
24 Shares to the holding company. Why did you allegedly  
25 create this Trust?

1           A.     Well, until--until the Shares were transferred,  
2 as long as I held them, I just--I was holding them in  
3 Trust for the Company.

4           Q.     Just to confirm, sir, this conversation with  
5 Mr. Pennie, it was oral. You did not file any  
6 documentation of it; right?

7           A.     Correct.

8           Q.     Okay. Now, on April 26, 2011, you and I.Q.  
9 Properties did not provide any written consent to transfer  
10 the Shares to Tennant Travel; right?

11          A.     I'm sorry, could you repeat that?

12          Q.     Absolutely. So, on April 26, 2011, you and I.Q.  
13 Properties didn't provide a written consent and a  
14 direction to transfer shares to Tennant Travel; right?

15          A.     I believe--I believe that's correct.

16          Q.     Okay. And in the direction of June 20th, you  
17 and I.Q. Properties did not instruct Mr. Pennie to  
18 transfer beneficial ownership of the Shares to Tennant  
19 Travel; right?

20          A.     On June 20?

21          Q.     Yeah.

22                   We look at--

23                   (Overlapping speakers.)

24          Q.     We looked at the direction a moment ago, C-267,  
25 and you had directed Mr. Pennie to transfer the Shares to

1 you, and I'm just asking you to confirm: You didn't ask  
2 Mr. Pennie to transfer beneficial ownership of the Shares  
3 to Tennant Travel; right?

4 A. I--I wanted John Pennie to transfer the Shares  
5 to Tennant Travel.

6 Q. Okay. Just to confirm, sir, you were holding  
7 the Shares so that they would then be transferred to  
8 Tennant Travel?

9 A. Yes.

10 Q. That seems different than creating a trust; does  
11 it not?

12 A. No, not to me.

13 Q. Not to you?

14 A. I was holding them in Trust.

15 Okay, every time I say I'm holding them, if you  
16 want I will add "in Trust" because that's what I was  
17 doing.

18 Q. Okay. So, just for this interim period before  
19 John Pennie transferred the Shares to Tennant Travel,  
20 that's the time that you were holding them in Trust?

21 A. Until they became--until they were transferred  
22 to Tennant Travel, I was holding them in Trust.

23 Q. All right. Now, let's pull up your statement at  
24 Paragraph 14. And we will highlight the second sentence  
25 starting with "I wanted."

1           Now, could you please read that, sir.

2           A.    "I wanted to be repaid or have ownership in the  
3 Skyway 127 Project."

4           Q.    So, you originally wanted to own shares in  
5 Skyway 127 if Derek Tennant did not pay you for the loan;  
6 right?

7           A.    That's correct.

8           Q.    Now, let's go to Paragraph 35 of your statement.

9                   Now, here you say: "I never owned the Shares in  
10 Skyway 127 for my personal benefit."

11                   For whose personal benefit were you owning those  
12 Skyway 127 Shares, sir?

13           A.    I wanted them in a holding company, and was  
14 holding them for the benefit of the holding company.

15           Q.    And which individual--whose personal benefit  
16 would benefit from the holding company holding those  
17 Shares? Was it you?

18           A.    That would be me.

19           Q.    That would be you.

20                   So, if you were both the beneficial owner of the  
21 Shares, the person that would ultimately benefit from the  
22 Shares, and you were still holding legal title to the  
23 Shares, why did you create this?

24                   MR. MULLINS: I've got to object. It calls for  
25 a legal conclusion, and mischaracterizes the testimony. I

1 apologize if I keep on doing that, but I think it's  
2 completely unfair to him.

3 MR. KLAVER: We're trying to understand the  
4 reason, the purpose for the Trust. So, if Mr. Tennant was  
5 the personal beneficiary of the Trust, that would appear  
6 to contradict his statement.

7 PRESIDENT BULL: So, Mr. Klaver, you can ask the  
8 question, but could you rephrase it to avoid some of the  
9 more legal phrases?

10 MR. KLAVER: Yes.

11 BY MR. KLAVER:

12 Q. So, sir, if you owned 90 percent of Tennant  
13 Travel from 2011 to 2015, you were the ultimate  
14 beneficiary of the Shares held in Trust; right?

15 A. Well, 90 percent, yes.

16 Q. All right. Now, let's go to Paragraph 17 of  
17 your statement.

18 In the last line, you say that you intended to  
19 hold the Shares in a holding company so they would not be  
20 at risk of being tied up in any potential community  
21 property dispute.

22 Now, sir, is it fair to say that you and Derek  
23 were wanting to ensure that your wife Barbara could not  
24 access the Shares if a family law dispute arose?

25 A. No, not at all.

1 Q. Could you clarify this for us?

2 A. Clarify what? The highlighted?

3 Q. Well, when you're expressing concern about a  
4 potential community property dispute and the purpose of  
5 the Trust, if you were not seeking to prevent your wife  
6 Barbara from accessing the Shares, what was your concern  
7 there?

8 A. We did not want the Shares split up, if  
9 something happened to me, we wanted to keep the Shares as  
10 a voting bloc in the family. If you go to the first part  
11 of that sentence that you've highlighted, their value  
12 might form community property. I'm not trying to hide  
13 anything from Barbara. She--the Shares would stay  
14 together in the holding company, but the value of them  
15 would be part of community property if anything happened  
16 to me or if we split up, she would still get her share.

17 No, there is nothing--I've never hidden anything  
18 from Barb, it would be very hard to do.

19 Q. Got it. Fair enough. Fair enough.

20 So, we're just trying to understand then what  
21 the concern about community property is, then, because  
22 you're referring to California family law, and if there  
23 wasn't a concern about Barbara accessing voting rights to  
24 the Shares, what was your concern, sir?

25 A. The concern was that the Shares be split up

1 among--let's say something happened to Barb and me, then  
2 the Shares then get split up among my family.

3 We did what we wanted them as, to stay as a  
4 voting bloc, not be split up. Perhaps I should have left  
5 out the community property family law thing, that was a  
6 concern of Derek's, not of mine.

7 Q. Okay. No problem. No problem at all.

8 I just want to raise for the Tribunal, if now  
9 would be an appropriate time to take a break, happy to or  
10 happy to continue.

11 REALTIME STENOGRAPHER: A break would be good,  
12 please.

13 PRESIDENT BULL: That's fine, Mr. Klaver. We  
14 can take a 15-minute break now and resume after that.

15 MR. KLAVER: Thank you.

16 THE WITNESS: 15 minutes, okay.

17 MR. MULLINS: Mr. Chair, if I could just get a  
18 scheduling, because we have our next witness, does counsel  
19 know how much longer he will be having with Mr. Tennant,  
20 just so we can plan for Derek Tennant? We will also have  
21 redirect as well, the Tribunal may have questions, so we  
22 had scheduled Mr. John Tennant to 10:30, and with the  
23 break, I think we're going to be at 10:30, it sounds like  
24 he's not done, and not to rush him but for time (drop in  
25 audio) for scheduling purposes of Derek Tennant.

1 MR. KLAVER: I think maximum 30 minutes, and I  
2 think we can also plan to cut that down a little.

3 MR. MULLINS: Okay. Again, I don't want to rush  
4 you, just trying to do the planning.

5 PRESIDENT BULL: Okay. Let's take our 15-minute  
6 break now.

7 (Recess.)

8 PRESIDENT BULL: So, Mr. Klaver, whenever you're  
9 ready, you may proceed.

10 MR. KLAVER: Excellent, thank you.

11 BY MR. KLAVER:

12 Q. All right. Let's turn to Exhibit C-268, please.

13 Okay. Now, sir, you directed this letter to the  
14 Management Board of Tennant Energy; correct?

15 A. Yes.

16 Q. Now, before we address some of the content of  
17 this letter, I'd like to discuss a couple dates.

18 Now, your testimony is that you held the Shares  
19 in Trust for Tennant Travel until  
20 January 2015--January 15, 2015; correct?

21 A. Correct.

22 Q. So, you wrote this letter over a year after the  
23 alleged trust was terminated; is that right?

24 A. After the Shares had been transferred, yes.

25 Q. And after the alleged trust no longer existed?

1 A. I'm not sure--

2 REALTIME STENOGRAPHER: I'm sorry. I'm losing  
3 you, sir. Can you come closer to your microphone?

4 THE WITNESS: I'm sorry.

5 I don't know what Shares were transferred. I  
6 guess, the Trust just disappeared so I--

7 BY MR. KLAVER:

8 Q. Okay.

9 A. Anyhow...

10 Q. Now, there's another timing issue I'd like to  
11 discuss relating to this letter and this concerns when you  
12 first met with counsel for this case.

13 Now, the Claimant says that Skyway 127's  
14 representatives first met with Legal Counsel about a  
15 potential NAFTA claim on March 16, 2015.

16 Did you participate in that meeting, sir?

17 A. No.

18 Q. You did meet with Mr. Appleton in mid-June 2015;  
19 correct?

20 A. Just by phone.

21 Q. "By phone."

22 And in this meeting you discussed how Ontario  
23 allegedly unfairly affected Skyway 127; right?

24 A. Yes.

25 Q. What specifically did you discuss about

1 Ontario's actions towards Skyway 127?

2 MR. MULLINS: I think that if you asked a lawyer  
3 who's--potentially might be retained; it's not formally  
4 retained, but the communications could be considered  
5 privileged, and so I don't want to waive any privilege  
6 here that might exist between Mr. Appleton and potential  
7 clients, as I understand how US privilege law goes.

8 MR. KLAVER: So, Counsel, the Claimant waived  
9 privilege by affirmatively using privileged material to  
10 support its case on time bar. Under Article 9(3)(b) of  
11 the IBA Rules, the Tribunal may take into account when a  
12 situation like this happens, where there is an affirmative  
13 use of privileged material to advance the case. So, in  
14 this case, there was waiver due to that affirmative use of  
15 privileged material.

16 MR. MULLINS: There is no waiver of any  
17 attorney-client privilege.

18 MR. KLAVER: There was an implicit waiver, sir.

19 MR. MULLINS: In what context?

20 MR. KLAVER: Through the affirmative use of  
21 solicitor-client privileged information, this constitutes  
22 subject-matter waiver.

23 MR. MULLINS: What affirmative use are you  
24 talking about?

25 MR. KLAVER: By referring to a meeting in

1 support of the Claimant's case on time bar.

2 MR. MULLINS: Just so we're clear, I don't agree  
3 with counsel, but in order to move this along, as long as  
4 the Tribunal will exercise its discretion to determine  
5 that any communication on formal retention is not waived,  
6 then I don't think we have an issue. Otherwise, I think  
7 we're going to have an issue if counsels take the position  
8 that we have no privilege.

9 PRESIDENT BULL: Mr. Klaver, as I understand it,  
10 your position is that any waiver is limited to those  
11 meetings that have been referred to by Claimant.

12 MR. KLAVER: That's correct. This would  
13 constitute subject-matter waiver. We're not saying every  
14 privileged correspondence was waived, but the contents of  
15 this correspondence which the Claimant has used  
16 affirmatively to advance its case is an instance of  
17 subject-matter waiver.

18 PRESIDENT BULL: Right.

19 So, you can go ahead with the question that you  
20 have put to the Witness. You might want to repeat it, and  
21 then he can answer it.

22 MR. KLAVER: Okay.

23 ARBITRATOR BETHLEHEM: Mr. Klaver, before you do  
24 so through our President, may I just request that when  
25 counsel for the Claimant interjects, if he could please

1 turn his screen on. It's difficult to know who is  
2 speaking, so I'd be grateful if you could turn your screen  
3 on when you make any intervention, please. Thank you very  
4 much.

5 MR. MULLINS: Will do (unclear.)

6 MR. KLAVER: Okay. So, I'll just rephrase the  
7 question, sir.

8 BY MR. KLAVER:

9 Q. We're talking about your meeting with Barry  
10 Appleton--with Mr. Appleton in mid-June 2015. You  
11 explained that you discussed how Ontario allegedly  
12 unfairly affected Skyway 127. Could you elaborate on any  
13 details about your discussion on how Ontario's actions  
14 affected Skyway 127?

15 A. Okay. First of all, I was not familiar with  
16 this or not very--just that John had found out that people  
17 had jumped the queue. We were in a position to get one of  
18 the FIT Contracts--I think we were, like, sixth in  
19 line--and there seemed to be plenty of power, plenty of  
20 capacity, but for some reason we did not get--we did not  
21 get our--get it--we did not get a contract. Then we were  
22 put on a priority waitlist. We did not get--which  
23 actually I felt fine about, besides, you know, I was a  
24 little upset that we did not get the original contract.

25 But anyhow, he found out through various means

1 that friends of the Ontario Government had jumped the  
2 queue and had been given these contracts ahead of us.  
3 This that--this meeting with Mr. Appleton was as much  
4 informative to me as it was--I mean, I did not have a lot  
5 to contribute to that. Mr. Pennie is the person you  
6 should talk to. He has all the facts and figures.

7 I'm in California, and I could not get involved  
8 in this--in trying to prove that we'd been wronged. But I  
9 understand there is some--the Breakfast Club was something  
10 that he mentioned. I guess it was a bunch of conservative  
11 or Government supporters and donors who met and changed  
12 rules.

13 And anyhow, that--that's--I learned--well, you'd  
14 have to speak to Mr. Pennie or my brother Derek about--

15 (Overlapping speakers.)

16 A. --you know--

17 Q. No problem. No problem.

18 Just curious, sir, who set up this meeting in  
19 June 2015? Mr. Appleton or you?

20 A. Oh, not me, no. It was--it'd be Mr. Appleton or  
21 Mr. Pennie or my brother Derek.

22 Q. Okay. Now, let's dig into the substance of  
23 Exhibit C-268 here.

24 MR. KLAVER: Gen, can you highlight the  
25 paragraph starting with the (1) in front of it?

1 BY MR. KLAVER:

2 Q. So, here you say that you "confirm your transfer  
3 of all interests and rights under NAFTA that I might have,  
4 as Trustee or personally, relating to the holding of  
5 shares in Skyway 127 to Tennant Travel."

6 So, after you had met with Mr. Appleton to  
7 discuss a NAFTA claim, you wrote this letter about  
8 transferring your rights under NAFTA; right?

9 A. Yes.

10 Q. Did Mr. Appleton suggest that you write this  
11 letter?

12 A. I'm not sure if it was Mr. Appleton or  
13 Mr. Pennie, but I was--I--I just wanted to clarify what I  
14 think was fairly obvious anyhow, but I'm just  
15 confirming--well, you can read it.

16 Q. Well, we'll talk about the content. But, sir,  
17 could you just clarify, did Mr. Appleton suggest that you  
18 write this letter or did he help you prepare it?

19 A. I don't know if it was Mr. Appleton or  
20 Mr. Pennie. I don't recall.

21 Q. Did any other lawyer suggest you write this  
22 letter or help you prepare it?

23 A. I just--I just don't remember. It was--

24 Q. Okay.

25 A. Yeah.

1 Q. No problem.

2 Now, sir, what specifically were you trying to  
3 accomplish with this writing here, this paragraph?

4 A. Well, I think it's fairly obvious. I confirmed  
5 I--that I transferred all interests that I had.

6 Q. Okay. Sir, were you hoping that you might be  
7 able to transfer or assign the ability to bring a  
8 potential NAFTA claim to Tennant Travel?

9 A. I think--I'm saying if there is a NAFTA  
10 claim--if there were grounds for one, then I am giving all  
11 my interests and rights to Tennant Travel to proceed with  
12 it.

13 I'm not familiar with the NAFTA and agreements  
14 and this type of thing. I was (unclear)--

15 (Overlapping speakers.)

16 Q. Okay.

17 A. --the lawyers and to John and management of  
18 Skyway 127.

19 Q. Okay. So, to confirm, a lawyer did or did not  
20 suggest that you might be able to transfer a potential  
21 NAFTA claim?

22 A. I just--I can't--I don't recall.

23 Q. Okay. Let's move to Paragraph 2--

24 A. Okay.

25 Q. --that--the paragraph starting with the (2) in

1 front of it.

2 Here, you say (reading): For greater certainty,  
3 you transferred all share property interests in Skyway  
4 127, both tangible and intangible, including all shares to  
5 Skyway 127 to Tennant Travel.

6 Now, we've already gone over that you  
7 transferred your Shares in Skyway 127 to Tennant Travel on  
8 January 15, 2015. So, you held no Shares in Skyway 127  
9 when you wrote this letter; right?

10 A. Yes.

11 Q. So, you were not trying to assign Skyway 127  
12 Shares through this letter; correct?

13 A. Correct.

14 Q. And what specific date were you referring to in  
15 this letter when you said you had transferred shares to  
16 Tennant Travel?

17 A. I didn't refer to a date.

18 Q. I can see that, sir, so I'm just wondering if  
19 you could clarify what date you're referring to.

20 A. The date that I transferred the Shares. I'm  
21 not--this--so I think this paragraph refers to 2015.

22 Q. Okay. Now, let's highlight--let's go down to  
23 the paragraph with the (3) in front of it. And here you  
24 say (reading): I further confirm that Tennant Energy is  
25 the full successor-in-interest and all my rights, whether

1 they were considered in my capacity as Trustee.

2 Now, we see that you used this phrase  
3 "successor-in-interest," and we've seen this phrase used  
4 throughout the Claimant's pleadings. Could you just  
5 specify what you understand this phrase  
6 "successor-in-interest" to mean, sir?

7 A. That Tennant Energy received all my interests  
8 and rights when they received the Shares, that it's...

9 Q. Okay. Now, let's go down to the second-to-last  
10 paragraph, and we already looked at this, but there is  
11 just one other question I wanted to follow up on.

12 You state here that you told Mr. Pennie and  
13 Derek Tennant about the alleged trust multiple times.

14 A. Yes.

15 Q. Now, to confirm, you have no written record from  
16 2011 showing that you told Mr. Pennie and Derek that you  
17 had created the alleged trust and designated Tennant  
18 Travel as the beneficiary; right?

19 A. Yes.

20 Q. Okay. Now, after the meeting with counsel in  
21 June 2015, the Claimant's name changed from "Tennant  
22 Travel" to "Tennant Energy"; correct?

23 A. Correct.

24 Q. Okay. Let's turn to your statement at  
25 Paragraph 31. It should come up on the screen shortly.

1 A. Okay.

2 Q. We're looking for Mr. Tennant's Witness  
3 Statement, Paragraph 31, Gen.

4 Now, we will highlight the last sentence,  
5 please.

6 And here you say: "The name change of the  
7 Claimant was to effectuate more accurately the limited  
8 liability corporation's purpose."

9 So, you raised the purpose of Tennant Energy.  
10 So, I would like to just ask you about that. Tennant  
11 Energy remains a holding company; right?

12 A. Correct.

13 Q. The Company has never sold any goods or services  
14 to consumers; right?

15 A. That's correct.

16 Q. It has no assets besides the Skyway 127 Shares,  
17 does it?

18 A. No.

19 Q. It has no financial resources in a bank account?

20 A. No.

21 Q. Now, besides holding the Shares in Skyway 127  
22 and suing the Government of Canada, Tennant Energy has no  
23 other purposes; correct?

24 A. Not at the moment, no.

25 Q. So, the name was changed to bring this NAFTA

1 claim; right?

2 A. No. No, Tennant Energy--this reflects more of  
3 what its investments are in. Nothing to do with Travel  
4 anymore. It's not to bring a NAFTA claim, we could have  
5 brought it under Tennant Travel, we did not need a name  
6 change for that.

7 Q. All right. Now, we're going to enter into  
8 confidential session, so we will just pause for a moment.

9 (End of open session. Attorneys' Eyes Only  
10 session begins at 10:47 a.m.)

## ATTORNEYS' EYES ONLY SESSION

1  
2 MR. KLAVER: Okay, we are connected again.

3 BY MR. KLAVER:

4 Q. I would like to discuss some of the other  
5 Shareholders in Skyway 127 on January 15, 2015. So, let's  
6 pull up Exhibit C-115. And the first chart shows that  
7 Derek Tennant and John Pennie both personally held  
8 25 percent of Skyway 127 Shares.

9 Do you see that?

10 A. Yes.

11 Q. And GE Energy owned no shares in Skyway 127 on  
12 January 15, 2015; right?

13 A. Yes.

14 Q. Now, yesterday, Mr. Pennie confirmed that GE  
15 Energy had transferred its 50 percent shareholding to  
16 Derek and John Pennie. Did Derek Tennant and John Pennie  
17 transfer these Shares to GE Energy in 2016?

18 A. Did they transfer the Shares to GE?

19 Q. That's right.

20 A. I don't understand your question, what--

21 Q. Sir, I'm just asking if you recall whether Derek  
22 and John Pennie transferred their 50 percent shareholding  
23 back to GE Energy in 2016.

24 A. Not that I recall, I'm aware of.

25 Q. Okay. We can exit confidential session.

1

(Attorneys' Eyes Only session ends at 10:49

2

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OPEN SESSION

Q. All right. Let's go to your statement at Paragraph 24, please.

Here, you referred to an alleged voting bloc among Shareholders in Skyway 127 between yourself, John Pennie, and Marilyn Field.

You see this?

A. Yes.

Q. Now, you did not file any documents from 2011 such as Shareholder Vote Records, Meeting Minutes, showing that you were in a voting bloc with John Pennie and Marilyn Field; correct?

A. That's correct.

Q. Now, in December 2011, you held 22.6 percent of Skyway 127 Shares; right?

A. Yes.

Q. And Marilyn Field and John Pennie each held 11.6 percent of Skyway 127 Shares; right?

A. Yes.

Q. So, adding your shares together, the three of you, the alleged voting bloc, had around 45 percent of Skyway 127 Shares; right?

A. Yes.

Q. And this was not a voting majority over Skyway 127 Shares, was it?

1           A.     Well, since GE never voted their Shares, and  
2 Premier never voted their Shares, yes, it did.

3           Q.     Sir, you did not file any documents such as  
4 Shareholder Vote Records or Meeting Minutes to help show  
5 that GE Energy never voted its Shares; right?

6           A.     No.

7                     Now, I went--anyway, go ahead.

8           Q.     All right. Let's go to Paragraph 29 of your  
9 statement.

10                    Now, here you say that the Trust Shares were  
11 already controlling the Company's day-to-day activities  
12 and had been since 2011.

13                    Now, sir, you did not file any documents showing  
14 that Tennant Travel held the power to appoint a majority  
15 of the Board of Directors of Skyway 127 from 2011 to 2015;  
16 right?

17           A.     That's correct.

18           Q.     And you filed no documents showing that Tennant  
19 Travel otherwise had rights to direct the actions of  
20 Skyway 127 from 2011 to 2015; right?

21           A.     That's correct.

22           Q.     All right. Now, let's move to Paragraph 37 of  
23 your statement, and here you refer to the Mesa and  
24 Windstream NAFTA arbitrations.

25                    In the last line, you say (reading) when those

1 cases were underway, I was not aware that I would have any  
2 reason to go to those hearings. You were aware of the  
3 Mesa and Windstream arbitrations when they were underway  
4 then; correct?

5 A. Only what John or Derek might have told me.

6 Q. Okay.

7 A. Again, I'm in California. I'm not in Ontario.  
8 I did not keep track of what was going on. The--only what  
9 Derek or John would tell me.

10 Q. Okay. So, just to confirm, if you didn't keep  
11 track of what was going on, you didn't ever reach out to  
12 Mesa Power or Windstream to learn a little bit more about  
13 their cases; right?

14 A. No.

15 Q. Are you aware of the Mesa Award, sir? Did you  
16 read it?

17 A. No.

18 Q. Okay. Are you aware that, in that case, there  
19 was a \$3 million cost order rendered against the  
20 Claimants?

21 A. No.

22 Q. Okay. Let's go to Paragraph 43 of your  
23 statement.

24 Now, in the second sentence you say: "We were  
25 not treated fairly, and this has deprived me of the

1 benefit of my investment in Tennant Energy."

2 Now, in stating that you were deprived of the  
3 benefit of your investment, you're referring to your own  
4 alleged loss here, then; right?

5 A. No, the loss of--the loss of--the value of my  
6 shares in Skyway 127, that I was deprived of any profit we  
7 might have made in Skyway 127, but not just me--all the  
8 Shareholders would be deprived.

9 Q. Right. So, amongst the other Shareholders,  
10 you're referring to your loss as a shareholder; correct?

11 A. Not than--yes.

12 Q. Okay. But you decided that Tennant Energy would  
13 file this NAFTA claim; right?

14 A. It was discussed with management and--yeah--yes.

15 Q. Okay. Did you discuss using the holding company  
16 to be the Claimant rather than bringing the Claim yourself  
17 in order to avoid personal liability for a potential cost  
18 order?

19 A. No.

20 Q. Okay. All right, Mr. Tennant, those are all of  
21 my questions for you. Thank you very much for your  
22 patience.

23 A. Thank you.

24 PRESIDENT BULL: Do my colleagues have any  
25 questions at this stage?

1 ARBITRATOR BETHLEHEM: None from me.

2 ARBITRATOR BISHOP: Yes, I have some.

3 QUESTIONS FROM THE TRIBUNAL

4 ARBITRATOR BISHOP: Mr. Tennant, I'm a  
5 little--I'm sure it's in the record but I'm a little  
6 confused in my own mind as to Derek Tennant's position  
7 with Tennant Energy.

8 THE WITNESS: I'm sorry, who is speaking? I  
9 can't tell from my screen.

10 ARBITRATOR BISHOP: I'm sorry, this is Doak  
11 Bishop, I'm one of the Arbitrators in this case.

12 THE WITNESS: Oh, yes, sir.

13 ARBITRATOR BISHOP: Thank you.

14 I wanted to ask you about Derek Tennant.

15 Has Derek--since 2011, since you acquired shares  
16 in Skyway, has Derek Tennant ever been a shareholder of  
17 Tennant Energy or Tennant Travel?

18 THE WITNESS: No.

19 ARBITRATOR BISHOP: Okay. Now, earlier on you  
20 were asked if Derek was a member of Tennant Travel, and I  
21 took "member" to mean "shareholder." So, you were saying  
22 that Derek is not a shareholder of Tennant Travel and has  
23 never been a shareholder of Tennant Travel; is that  
24 correct?

25 THE WITNESS: That's correct.

1 ARBITRATOR BISHOP: Okay. And that would be  
2 true for Tennant Energy as well?

3 THE WITNESS: Yes.

4 ARBITRATOR BISHOP: Okay. That's helpful.

5 He's a member of the Management Board of Tennant  
6 Energy, however; is that right?

7 THE WITNESS: No.

8 ARBITRATOR BISHOP: Oh, he's not?

9 THE WITNESS: No.

10 ARBITRATOR BISHOP: Okay. So, he has--he has no  
11 position with Tennant Energy and no position previously  
12 with Tennant Travel; is that right?

13 THE WITNESS: That's correct.

14 ARBITRATOR BISHOP: Okay. And I'm a  
15 little--also a little confused about the shareholding  
16 interest in Tennant Energy today.

17 Do I understand that you own 90 percent of the  
18 Shares of Tennant Energy and that Jim Tennant owns  
19 10 percent of the Shares; is that correct?

20 THE WITNESS: I own 45, and Jim owns 10.

21 ARBITRATOR BISHOP: Okay. And then the other  
22 45 percent is owned by John Pennie and his wife?

23 THE WITNESS: That's correct.

24 ARBITRATOR BISHOP: Okay. Now I understand it.  
25 Thank you.

1           Now, if I could ask--if I could take you to  
2 Paragraph 17 of your Witness Statement.

3           THE WITNESS: Okay.

4           ARBITRATOR BISHOP: You say there that "my  
5 brother Derek proposed that I agree that the Skyway Shares  
6 constituted full repayment," and then you go on to say:  
7 "I agreed to Derek's condition that I hold the Skyway  
8 Shares in a U.S. holding company that I would designate.  
9 Derek wanted me to protect the Shares." And then you go  
10 on from there.

11           So, do I understand that when you say that you  
12 held the Skyway Shares as a Trustee for a holding company  
13 to be designated which was later designated as "Tennant  
14 Travel," do I understand that you were doing that because  
15 of a condition that Derek was imposing?

16           THE WITNESS: No.

17           Perhaps "condition" isn't--it was his desire.  
18 We agreed on it. It was more his suggestion, and I agreed  
19 with it.

20           ARBITRATOR BISHOP: Okay. I guess my question  
21 is this: I don't understand why Derek would impose a  
22 condition or ask you to hold the Shares for a holding  
23 company if he did not have any interest in that holding  
24 company. Can you explain that?

25           THE WITNESS: Well, he just didn't want the

1 Shares outside of the family, I guess.

2 No, I can't--no.

3 ARBITRATOR BISHOP: You don't know what the  
4 purpose was, what his purpose was?

5 THE WITNESS: I don't recall that being  
6 discussed. I wanted to put them in a holding company.  
7 This was nothing--this was not a big issue.

8 ARBITRATOR BISHOP: Okay.

9 THE WITNESS: We both wanted the same thing.

10 ARBITRATOR BISHOP: Okay. And who was the  
11 beneficiary of the Trust?

12 THE WITNESS: A company that I would designate  
13 at a later date.

14 ARBITRATOR BISHOP: Okay. And when did you  
15 designate Tennant Travel as that--as that company?

16 THE WITNESS: I believe it was in June 2011.

17 ARBITRATOR BISHOP: Okay. And what was--and can  
18 you explain to us, what was the purpose of the Trust? Why  
19 were you--why were you holding the Shares in Trust for the  
20 Company?

21 THE WITNESS: I--well, so that I wasn't holding  
22 them personally. It was my intention to have them--to put  
23 them into a holding company, and I just was holding them  
24 until that company was set up.

25 ARBITRATOR BISHOP: Okay. If I understand what

1 we've heard in the testimony and seen in the documents,  
2 the Shares weren't actually transferred to Tennant Travel  
3 until 2015; is that correct? Do you remember?

4 THE WITNESS: That's correct. That's correct.

5 ARBITRATOR BISHOP: So, if I understand what you  
6 just said, the only purpose of a trust was simply for you  
7 to hold the companies--hold the Shares for the Company  
8 until they were transferred? I mean, please tell me if I  
9 misunderstand.

10 THE WITNESS: No, that's correct.

11 ARBITRATOR BISHOP: But you didn't transfer them  
12 until 2015?

13 THE WITNESS: That's correct.

14 ARBITRATOR BISHOP: Okay. And there was no  
15 document ever created that would tell us what the terms of  
16 the Trust were; is that correct?

17 THE WITNESS: I believe so, yes.

18 ARBITRATOR BISHOP: What did you understand the  
19 terms of the Trust to be?

20 THE WITNESS: That I was holding the Shares  
21 until they were transferred in Trust for Tennant Energy or  
22 for a company to be named later. I was holding them in  
23 Trust until they could be transferred.

24 ARBITRATOR BISHOP: Okay. It's just that  
25 simple?

1 THE WITNESS: Yes.

2 ARBITRATOR BISHOP: Okay. In the Exhibit C-268,  
3 the February 8, 2016, memo, you say in there "that at all  
4 times I held the Shares in Skyway as a bare trustee for a  
5 company to be designated in the future," and when you used  
6 the term "bare trustee," what does that mean?

7 THE WITNESS: To be honest, I'm not sure. Just  
8 that if I'd left out the "bare," that would mean the same  
9 thing.

10 ARBITRATOR BISHOP: Okay. You said--when that  
11 memo was prepared, was that your term or was that someone  
12 else's term?

13 THE WITNESS: That was someone else's.

14 ARBITRATOR BISHOP: Okay. Thank you. Those are  
15 the only questions I have. Thank you, sir.

16 PRESIDENT BULL: Mr. Tennant, I have a question  
17 for you. This is Mr. Bull, the Presiding Arbitrator.

18 THE WITNESS: Yes.

19 PRESIDENT BULL: So, Mr. Tennant, as I  
20 understand it, when the Skyway Shares were being held by  
21 you and before you designated a company and then  
22 transferred them to the Company, you were holding on to  
23 those Shares, you put it this way, "holding the Shares  
24 until the Company was set up."

25 THE WITNESS: Yes, or designated.

1           PRESIDENT BULL: "Or designated," okay.

2           During that period before the Company was  
3 designated, could you have changed your mind?

4           THE WITNESS: About?

5           PRESIDENT BULL: About--

6           THE WITNESS: Whether to put them into a company  
7 or not?

8           PRESIDENT BULL: Yes.

9           THE WITNESS: I guess I--I could have. I'm sure  
10 that none of my--none of the people involved in this who  
11 were all family would object if I changed my mind, so I  
12 think it would have been possible had I wanted to do that.

13           PRESIDENT BULL: Thank you, Mr. Tennant.

14           Is there any re-examination?

15           MR. MULLINS: No--yeah--sure.

16                           REDIRECT EXAMINATION

17           BY MR. MULLINS:

18           Q.    Good afternoon, Mr. Tennant.

19           A.    Hello. Good morning.

20           Q.    Good morning. I'm sorry, it's not quite 11:00,  
21 but 8:00 a.m. your time.

22                    To follow up on some questions, personally to go  
23 back to the question from Arbitrator Bishop, go to  
24 Paragraph 17 of your Statement.

25           A.    Yeah.

1 Q. We've talked about how your brother Derek was  
2 not a shareholder in Tennant Travel, but did he have a  
3 position with Skyway? At this time period?

4 A. Okay, Paragraph 17?

5 Q. Yeah, we're talking about in the April time  
6 period, was your brother Derek, was he involved with  
7 Skyway? What was his position with Skyway? In  
8 April 2017?

9 A. In April?

10 Q. 2011.

11 A. 2011?

12 Q. 2011.

13 In April 2011, what was Derek's position with  
14 Skyway?

15 A. Derek, well, he was a shareholder, but he was  
16 transferring the Shares to me.

17 Q. Was he an officer?

18 A. I'm not sure. I think--you would have to ask  
19 Mr. Pennie or Derek.

20 I know he was--he was very involved with the  
21 Company, and Skyway 127. Of course, he was--I assume he  
22 was an officer because of the shareholdings that he was  
23 transferring to me.

24 Q. So, if you go to Paragraph 24, you see where it  
25 says, "I told John Pennie around late April 2011 that

1 Derek (drop in audio)," does that refresh your  
2 recollection--

3 A. That's a pretty good refreshment, yes.

4 Q. And so, when you--when Arbitrator Bishop was  
5 asking you why would Derek care about shares of Skyway,  
6 the Shares--were you talking about shares of Tennant or  
7 are talking about shares of Skyway?

8 A. Why he would care?

9 Q. I think Arbitrator Bishop was confused--I won't  
10 speak for him, but I think there was some confusion in the  
11 questioning as to what shares we were discussing that the  
12 time--you're talking about shares in Skyway; correct? In  
13 Paragraph 17?

14 A. Oh, in 17, yes.

15 Q. And we have just seen that, during this time  
16 period, Derek was the President of Skyway at that point?

17 A. Yes.

18 Q. And just so we're clear, on Paragraph 19, can we  
19 go up--

20 A. Derek would have cared about the Shares in both  
21 of those companies because they're all family holding  
22 them.

23 Q. Understood.

24 And Paragraph 19, it says: "On April 26, I  
25 confirmed with Derek that I would nominate Tennant Travel

1 Services to hold the Skyway 127 Shares, and I agreed to  
2 release Derek's personal guaranty under the April 2007  
3 promissory note in exchange for 437,500 Skyway 127 Common  
4 Shares."

5 Is that when you nominated Tennant Travel?

6 A. Yes, that's what I told Derek that I was  
7 nominating them.

8 Q. And just so the record is clear, I did say the  
9 date, so April 26, 2011. That's when you nominated  
10 Tennant Travel?

11 A. That's when I told Derek, yes.

12 Q. Okay. And the next paragraph says: "John  
13 Pennie was a Corporate Secretary of Skyway 127. I  
14 notified him that I had Skyway Shares and I was holding  
15 them for Tennant Travel."

16 Do you remember when that was?

17 A. It was right around April 26.

18 Q. Perfect.

19 And when you were asked--you were shown the  
20 Transcript of some testimony by J.C. Pennie yesterday.  
21 Can we pull up Page 305 from yesterday. Scroll down  
22 to--what counsel did not show you is the testimony when I  
23 was asking questions, that says, where this is quoting  
24 from the Witness Statement of Derek Tennant, it says:  
25 "John Pennie, my brother John and me, got on the

1 phone--"and it says she didn't show you this paragraph  
2 either, meaning counsel. "John Pennie, my brother John  
3 and me, got on the phone to confirm the arrangement on  
4 April 26, 2011."

5 Do you see where I'm reading?

6 A. No, I don't. It's been jumping around. Where  
7 are we looking?

8 Q. I'm reading starting at Line 10.

9 A. Okay, yes.

10 Q. It says--

11 A. Okay.

12 Q. Okay. It says--this is quoting from the Witness  
13 Statement of your brother Derek, and it says: "John  
14 Pennie, my brother John"--that's you--"and me got on the  
15 phone," and I said she didn't show you this paragraph  
16 either--"John Pennie, my brother John and me got on the  
17 phone to confirm the arrangement April 26, 2011."

18 Is that--is that consistent with your memory of  
19 when you told John Pennie that you were nominating the  
20 Tennant Travel? And you see it continues on and talks  
21 about--it mentions Tennant Travel Services. Does that  
22 refresh your recollection of when that happened?

23 A. Yes. That--we had--yes. When I said it  
24 was--April 26, I would not argue that it was on April 26.  
25 I believe that probably is true, if that's how Derek

1 recalls it.

2 Q. And you see that Mr. Pennie actually had the  
3 same testimony. I asked him, "do you have any reason to  
4 believe"--starting at Line 20--"do you have any reason to  
5 believe that that did not happen, Mr. Pennie?" And he  
6 answered, "Well, I know what was described happened, and  
7 since he says that was the date, I have no reason to  
8 believe that wasn't the date."

9 A. I would--I would say exactly the same.

10 Q. Perfect, thank you.

11 MR. KLAVER: I would just like to interject for  
12 a moment. Counsel is quite clearly leading the Witness in  
13 this redirect, so I would appreciate it if that stopped.

14 MR. MULLINS: I appreciate the advice. I will  
15 try to do better.

16 Could we put up 267 on the screen.

17 BY MR. MULLINS:

18 Q. You were asked from Mr. Klaver about what is a  
19 written document about the understanding the Shares that  
20 would be transferred in April 2011 but he didn't provide  
21 you the document, although in fairness to him, he may not  
22 know what you were talking about. This is the Demand  
23 Notice of October 19, 2010?

24 A. Yes.

25 Q. This--I don't want to lead you, but I'm asking

1 you just ask, is this a document you're referring to as to  
2 when you thought the Shares would be transferred upon the  
3 default?

4 A. Yes.

5 Q. And just so the record is clear, there is not a  
6 later document on April 19, but this is the document you  
7 were talking about where you were saying that once there  
8 was a default, shares would actually be transferred; is  
9 that clear? Is my understanding clear?

10 A. Yes.

11 Q. Could you just read for us what it says there in  
12 the last paragraph, or third paragraph.

13 A. Can you make it just a little bigger there?

14 Q. Sure.

15 A. Okay.

16 Q. It says: "The lender hereby demands"--well, you  
17 go ahead and read it for us.

18 A. If you remove the yellow, it would be easier for  
19 me.

20 Okay. "The lender hereby DEMANDS, in the event  
21 of failure to pay on or before April 19, 2011, that the  
22 security pledged by 437,500 Common Shares of Skyway 127  
23 Windrush Energy Inc. (Certificate #COM-14, including but  
24 not limited to any anti-dilution, or other common share  
25 transfer rights from any other shareholder or shareholders

1 by way of agreement, consent, or otherwise) issued to I.Q.  
2 Properties be transferred to the undersigned lender," and  
3 I'm the undersigned lender.

4 Q. In your own words, can you tell us what you  
5 understood that meant?

6 A. That meant if they didn't pay me by April 19,  
7 they should transfer the Shares to me.

8 Q. And did I.Q. Properties pay by April 19, or  
9 Derek Tennant as guarantor--

10 A. No, no.

11 (Pause.)

12 Q. Mr. Klaver asked a lot of questions about this  
13 document.

14 Just so we're clear, Mr. Tennant, do you have  
15 any legal training?

16 A. No.

17 Q. And--but just so we're clear, you were asked  
18 about Paragraph 2, Number 2--are we there?

19 A. Yes.

20 Q. I'm asking my co-counsel to make it larger. It  
21 says, "for greater certainty, I transferred all share  
22 property interest in Skyway 127," and just so the record  
23 is clear, when did that happen?

24 A. When did...

25 Q. When did you transfer your share property

1 interest in Skyway 127, whether as Trustee or personally,  
2 to Tennant Travel, when did that happen?

3 A. Ah, man. When did I--well, I--when I got the  
4 Shares in April 2011, I designated Tennant Travel as--I  
5 was holding them in Trust for Tennant Travel.

6 Q. And for our recollection, I think you testified  
7 this several times, but when did you actually transfer  
8 shares to Tennant Travel where you were--where Tennant  
9 Travel now holds both the legal and beneficiary interests?  
10 What year was that? Do you remember? I'm not trying to  
11 trick you. You talked about--

12 (Overlapping speakers.)

13 A. Ah, man. Is that 2011?

14 Q. I think you said the Share Transfer was in  
15 January 2015. Does that refresh your recollection? When  
16 you and Mr. Pennie and his wife transferred their Shares  
17 to Tennant Travel--

18 (Overlapping speakers.)

19 A. I'm sorry, that's quite correct.

20 Q. Okay. I just want to make sure we're all on the  
21 same page.

22 So, this is after that transfer, he was talking  
23 about that transfer in Number 2. Am I understanding that  
24 correctly?

25 A. Yes.

1 Q. Okay. I'm sorry, it was my fault for making  
2 that confusing.

3 Now, you were asked whether or not Mr. Appleton  
4 or another lawyer was involved in the drafting of this.  
5 Do you have any concrete memory of Mr. Appleton being  
6 involved in the drafting of this document?

7 A. No.

8 Q. And you also were asked about a conversation in  
9 August of 2015 where--well, first off, how many  
10 conversations did you have with Mr. Appleton in 2015 that  
11 you were a part of?

12 A. Just the one that I recall.

13 Q. And was that in August of 2015?

14 A. Yes. That's when we had the joint call, I  
15 believe was August, yes.

16 MR. KLAVER: Let me interject here. This is a  
17 leading question. We also did not talk about a meeting  
18 with counsel on August 2015. We talked about June 2015.  
19 It would not be appropriate for counsel to discuss any  
20 meeting with counsel on August 2015.

21 MR. MULLINS: I apologize. Maybe I got  
22 confused.

23 Oh, I apologize. I misspoke. I misspoke. I  
24 was confused on a date. I am talking about June 2015. Is  
25 that the meeting we're all talking about?

1 (Overlapping speakers.)

2 THE WITNESS: I only recall the one meeting.

3 MR. MULLINS: And I apologize. I had the date  
4 wrong, counsel. It was my fault.

5 BY MR. MULLINS

6 Q. Let's go to Paragraph 39 of your statement.

7 And it says there, "John Pennie and my brother  
8 Derek had a meeting with Barry Appleton in his office in  
9 2015. I remember there was a call which I joined by  
10 phone."

11 And just so the record is clear, when was that  
12 conversation that you attended by phone?

13 A. I think that was June--June 2015.

14 Q. Okay. And sitting here today, do you have a  
15 concrete recollection about anything that Mr. Appleton  
16 told you during that phone call?

17 A. No.

18 Q. And then it talked about--

19 REALTIME STENOGRAPHER: I'm sorry, Mr. Mullins,  
20 could you start your question again? I didn't catch the  
21 first three words.

22 MR. MULLINS: Yes, I was continuing to read on  
23 in the statement.

24 BY MR. MULLINS:

25 Q. "I was astonished when I later was told by John

1 Pennie that he had found information on the internet."

2 So, the information--the conversation with John  
3 Pennie, was that after the conversation you had with  
4 Mr. Appleton in his office--or on the phone?

5 MR. KLAVER: I need to interject here. We have  
6 not discussed on cross that conversation, so it's not an  
7 appropriate line of inquiry on redirect.

8 MR. MULLINS: It's referenced in the same  
9 witness paragraph. I just wanted--I would ask for the  
10 Court--the Tribunal's discretion to make sure that he's  
11 being consistent with what his Witness Statement says, and  
12 it's clear that the information he learned was after the  
13 call. That's all I'm asking, so to correct--

14 PRESIDENT BULL: Go ahead, Mr. Mullins.

15 MR. MULLINS: Okay.

16 BY MR. MULLINS:

17 Q. I'm just trying to make sure the timeline is  
18 clear for the record. The conversation that you had with  
19 Mr. Pennie where he told you he'd found out information on  
20 the internet, was that before or after the conversation  
21 where you had with Mr. Appleton on the telephone?

22 A. I--I--during and after.

23 Q. Well, this Witness Statement says "I was  
24 astonished when I later was told by John Pennie that he  
25 had found information on the internet." Does that help

1 refresh your recollection about that particular  
2 conversation you had with John Pennie?

3 PRESIDENT BULL: So--

4 THE WITNESS: I had several conversations with  
5 Derek and John Pennie regarding the mistreatment.

6 BY MR. MULLINS:

7 Q. Okay. I'm talking specifically about what  
8 Mr. Pennie found on the Mesa Power website.

9 A. Oh, boy.

10 MR. KLAVER: I have to interject. This is not  
11 an appropriate line of questions. He did not discuss  
12 during cross the Mesa Power Videos. This is simply not  
13 something that you can undertake in a redirect.

14 PRESIDENT BULL: Mr. Mullins, that does seem  
15 right to me.

16 MR. MULLINS: Okay. Well, I think the--can I  
17 just ask him to make sure that he confirms that what's in  
18 Paragraph 39 is accurate? I may have messed it up by  
19 asking him questions? Would the Tribunal allow that  
20 question?

21 PRESIDENT BULL: You want to ask him whether--

22 MR. MULLINS: If you want to make any changes in  
23 Paragraph 39 or what's stated there is consistent with his  
24 memory today. That's all I want to know.

25 PRESIDENT BULL: Well, it has to be referable to

1 something he's been asked on cross-examination.

2 MR. MULLINS: Okay. I thought it was because he  
3 had asked about the conversation, but I think it's fine.

4 BY MR. MULLINS:

5 Q. Mr. Klaver asked you about a name change from  
6 "Tennant Travel" to "Tennant Energy." Do you remember  
7 that?

8 A. Yes.

9 Q. Can we go to Paragraph 31 of your statement. It  
10 says in April 2015, it says "Tennant Travel" was renamed  
11 "Tennant Energy," and that change was registered by the  
12 California Secretary of State on April 20, 2015.

13 Do you see that?

14 A. Yes.

15 Q. So, the conversation that you referred to with  
16 Mr. Appleton was in June 2015, do you--is it, now looking  
17 at your statement, what you've said, does that refresh  
18 your recollection that the name change was prior to your  
19 conversation with Mr. Appleton?

20 A. Yes.

21 Q. And do you have any knowledge, sitting here  
22 today about any--if any conversation Mr. Appleton may have  
23 had with your brothers or your cousin prior to June 2015?

24 A. Do I have any knowledge of conversations? No.

25 Q. Okay. Thank you.

1           If I could take a five-minute break, I would  
2 like to discuss with my counsel if I have anything more I  
3 would like to ask?

4           PRESIDENT BULL: Yes. We can take a five-minute  
5 break now.

6           (Recess.)

7           MR. MULLINS: Are we back?

8           PRESIDENT BULL: Yes, we're back. We're back on  
9 the record, Mr. Mullins. Any further questions?

10          MR. MULLINS: I just have a couple of follow-up.  
11 I'm sorry, hold on.

12          Okay. I thought--okay, I'm on.

13          BY MR. MULLINS:

14          Q. Mr. Tennant, do you, sitting here today, have a  
15 concrete memory of when Mr. Pennie learned about the  
16 Breakfast Club?

17          A. Apparently, he learned about it in the--before  
18 the meeting with Mr. Appleton, so--

19          Q. Sorry to cut you off. Are you sure of that,  
20 or--

21          (Overlapping speakers.)

22          MR. KLAVER: I need to interject here. The  
23 cross-examination did not discuss the Breakfast Club.  
24 It's not an appropriate line for redirect.

25          MR. MULLINS: That I know you did. You simply

1 asked that. I want to make sure the record is clear.

2 MR. KLAVER: You used the words "Breakfast  
3 Club," counsel?

4 MR. MULLINS: You did, yes. It came out--you  
5 did not use it, but the Witness mentioned the Breakfast  
6 Club, to my memory, in response to a question, so I want  
7 the rec--I want to make sure the record is clear.

8 MR. KLAVER: Okay, it was in response to a  
9 question. It was not part of the line of  
10 cross-examination, so it's not appropriate for redirect.  
11 It's simply not relevant.

12 PRESIDENT BULL: So, gentlemen, what we'll do is  
13 my memory--and I'm quite sure of this--is that there was  
14 no question about the Breakfast Club, but the Witness did  
15 use that phrase in an answer.

16 Mr. Mullins, if you want to ask questions to  
17 clarify that answer, you may, but it's not a line of  
18 questioning that you can extend too far.

19 MR. MULLINS: That's all I wanted to do.

20 BY MR. MULLINS:

21 Q. Mr. Tennant, let me just ask it this way:  
22 Between yourself and Mr. Pennie, who would have a best  
23 test of knowledge as to when Mr. Pennie learned of the  
24 Breakfast Club, in your opinion?

25 A. You'd have to ask Mr. Pennie. As I mentioned,

1 I'm in California; he's there. I had no knowledge about  
2 any of this until he--he was quite informed about it.

3 Q. Okay. And do you know whether--sitting here  
4 today, do you know for a fact that Mr. Pennie learned of  
5 the Breakfast Club prior to any discussions or even during  
6 discussion with Mr. Appleton?

7 A. No, I don't know that as a fact at all.

8 Q. Okay. That's all I have. Thank you for your  
9 time. I know it's early for you and been a long morning,  
10 and thank you for your time, and I appreciate it.

11 A. Well, you're quite welcome.

12 PRESIDENT BULL: Mr. Tennant, thank you for your  
13 testimony and for answering counsel's questions.

14 We can move on with the Hearing and bring in the  
15 next witness.

16 (Witness steps down.)

17 PRESIDENT BULL: Which is Mr. Derek Tennant.

18 DEREK TENNANT, CLAIMANT'S WITNESS, CALLED

19 (Discussion off the record.)

20 MR. MULLINS: For the Tribunal's knowledge, the  
21 order allowed to be available to assist, and she'd like to  
22 participate, Ms. Oliver is the going to be able to assist,  
23 if she could be allowed in so she can hear...

24 THE WITNESS: Okay. Thank you.

25 So, could we let her in? She's doing it. Oh,

1 somebody's doing it. Okay, thanks very much.

2 MR. MULLINS: No problem.

3 MR. KLAVER: Could I just confirm Ms. Oliver has  
4 signed the undertaking? Confidentiality undertaking?

5 THE WITNESS: Have you signed the undertaking?

6 MS. TRACY OLIVER: I didn't hear what you  
7 asked--what they asked.

8 THE WITNESS: They asked if you had signed the  
9 undertaking.

10 MS. TRACY OLIVER: I didn't see it but I will--I  
11 would.

12 MR. MULLINS: If counsel--

13 MS. TRACY OLIVER: I could give--

14 (Overlapping speakers.)

15 MR. MULLINS: If counsel will allow her to say  
16 on the record that she will sign it at the first  
17 opportunity, I think we can go forward.

18 MR. KLAVER: Yes, that's fine.

19 MS. TRACY OLIVER: Okay. I will sign it at my  
20 first opportunity.

21 ARBITRATOR BETHLEHEM: Can I just say, David, in  
22 case this assists you, it sounds as if Ms. Oliver, when  
23 she speaks there's--she's--the microphone is picking her  
24 voice rather clearly even though she's some distance away,  
25 I wonder whether there's a Bluetooth connection there or

1 something like that. But, as you say, that's a matter for  
2 clarification during the break, but obviously Ms. Oliver  
3 is getting the audio.

4 THE WITNESS: Yes, okay.

5 MS. TRACY OLIVER: I'm going to mute myself  
6 right now.

7 REALTIME STENOGRAPHER: That's the kind of  
8 clarity I'm looking for in the audio.

9 MR. MULLINS: I guess we're scheduled for lunch  
10 at 12:45 today. I mean I guess we can get started and  
11 take a break, or I guess nobody's ready to take an early  
12 lunch. Maybe one thing we can do is do this lunch now and  
13 try--

14 PRESIDENT BULL: No. We are going to proceed  
15 with this Witness now.

16 MR. MULLINS: Okay.

17 (Overlapping speakers.)

18 MR. MULLINS: I'm certainly not going to hijack  
19 the Agenda.

20 PRESIDENT BULL: No, Mr. Mullins, I didn't think  
21 you were doing that. No problem at all. I know you're  
22 trying to be helpful.

23 MR. MULLINS: So, occasionally I serve as an  
24 Arbitrator, and sometimes I forget that I'm not in charge,  
25 so but that's fine.

1 PRESIDENT BULL: Okay. So, Mr. Tennant--

2 THE WITNESS: Yes.

3 PRESIDENT BULL: So, Mr. Tennant, can you see  
4 and hear me?

5 THE WITNESS: Is that Mr. Bull speaking?

6 PRESIDENT BULL: Yes, I'm waving my hand.

7 THE WITNESS: I can see you waving, yes, thank  
8 you.

9 PRESIDENT BULL: And you can hear me?

10 THE WITNESS: Yes, I can hear you.

11 PRESIDENT BULL: Okay, very good.

12 So, Mr. Tennant, can we start by having you  
13 state your full name, please.

14 THE WITNESS: My name is Derek Sanford Tennant.

15 PRESIDENT BULL: Could you spell your middle  
16 name, please.

17 THE WITNESS: It's Sanford, S-A-N-F-O-R-D.

18 PRESIDENT BULL: Thank you.

19 Now, Mr. Tennant, I'm the President of the  
20 Tribunal, as you know--

21 THE WITNESS: Yes.

22 PRESIDENT BULL: --and on the screen you will  
23 also see my fellow Arbitrators, Mr. Doak Bishop and Sir  
24 Daniel Bethlehem.

25 THE WITNESS: Thank you.



1 believe, three times in the Agreement. I'm sorry about  
2 that.

3 Q. In your Statement, you mean? Not Agreement.

4 A. As far as the Statement, yes.

5 Q. Okay.

6 A. Yes.

7 Q. Are there are any other changes you'd like to  
8 make?

9 A. Just a typo. The name of my company is I.Q.  
10 Properties, and it's described in this Statement as  
11 property with a Y, so it's I.Q. Properties INC, and so  
12 that's a typo that was--that happened and--

13 Q. And--go ahead. I don't want to cut you off.  
14 Have you some others?

15 A. Yes, if I remember correctly.

16 Q. If it would help you, I can reflect Paragraph 12  
17 about the--does that refresh your recollection about an  
18 error there on the number?

19 A. Oh, right, right, okay. That was on  
20 Paragraph 12.

21 Q. The amount of Shares? Do you remember?

22 A. Yeah, yeah, the amount of Shares is 457; it  
23 should be 437,500.

24 Q. And I think if you turn to Paragraph 19, you see  
25 the four--you see another number, 427. What's the

1 accurate number there at Paragraph 19, the last sentence?

2 A. The accurate number is 437,500.

3 Q. Thank you.

4 And at Paragraph 29, is there a correction you  
5 need to make about the percentage there? It says 42.5?

6 A. Yeah. Is that in Paragraph 29?

7 Q. Yeah. There's a number there, 42.5.

8 A. Yeah. That should be 45.2.

9 Q. Got it.

10 That's--

11 A. Yes, yes.

12 Q. With those err--corrections be made, both are  
13 typographical errors, are there any other changes you'd  
14 like to make in your Witness Statement?

15 A. No.

16 Q. Thank you very much. I now turn it over to  
17 counsel for Canada for your cross-examination.

18 A. Thank you.

19 CROSS-EXAMINATION

20 BY MR. KLAVER:

21 Q. Thank you.

22 Good afternoon, Mr. Tennant.

23 A. Good afternoon.

24 (Overlapping speakers.)

25 Q. Great.

1           My name is Mark Klaver. I'm counsel for the  
2 Government of Canada.

3           A. I'm trying to be looking at you. Which--could  
4 you wave your hands? Oh, I got you now. Thank you.

5           (Laughter.)

6           Q. Great. Now I just want--

7           A. Okay.

8           Q. You can hear me okay?

9           A. I can hear you fine.

10          Q. Excellent.

11           Now, the purpose of our discussion today is to  
12 assist the Tribunal in understanding the testimony that  
13 you submitted in this Arbitration. I will ask you some  
14 questions about your Witness Statement and some of the  
15 related documents. My colleague, Gen, is going to pull  
16 them up on the screen for you to see.

17          A. Thank you.

18          Q. Absolutely.

19           Now, your role, as indicated, is to discuss and  
20 provide answers to the questions with the complete truth.  
21 Where you can, please start your questions with a "yes" or  
22 a "no," and also please limit your responses to the  
23 questions asked. Of course, I will make sure that you  
24 have an opportunity to respond fulsomely.

25           Now, I will remind you that this Hearing is

1 public and being recorded. Do you understand, sir?

2 A. Yes.

3 Q. All right. Now, let's just start by discussing  
4 what happened yesterday. Did you watch the  
5 cross-examination of John Pennie?

6 A. No, I did not.

7 Q. All right. And you didn't watch the  
8 cross-examination this morning of John Tennant?

9 A. No, I did not.

10 Q. Now, you did not discuss their  
11 cross-examinations afterwards with either John Pennie or  
12 John Tennant?

13 A. That's--that's correct.

14 Q. Okay.

15 A. I didn't talk to either one of them.

16 Q. Okay. Now, we just heard that you did speak  
17 with counsel yesterday; correct?

18 A. Yes, I did.

19 Q. And did you discuss the cross-examination of  
20 Mr. Pennie's counsel?

21 A. No, I did not.

22 Q. All right. So, you're not aware of what  
23 Mr. Pennie or Mr. John Tennant stated in their  
24 cross-examinations; correct?

25 A. No, not at all.

1 Q. Okay. Now, I have some questions about you and  
2 Tennant Energy. I understand that you clarified this  
3 morning that you're not a member of the Management Board.  
4 You're also not a member; is that right? A member of  
5 Tennant Energy?

6 A. No, I'm not. That's correct.

7 Q. Okay. Now, in Paragraph 2 of your statement, it  
8 was quite clearly stated that you were a member--

9 ARBITRATOR BISHOP: Excuse me. Excuse me,  
10 counsel. When you say "not a member," does that mean not  
11 a shareholder?

12 MR. KLAVER: That is my understanding, sir.

13 ARBITRATOR BISHOP: Okay.

14 MR. KLAVER: Why don't I just confirm that with  
15 Mr. Derek Tennant himself.

16 BY MR. KLAVER:

17 Q. Mr. Tennant, you are not a Shareholder of  
18 Tennant Energy; correct?

19 A. That is correct.

20 Q. And you have never been a Shareholder of Tennant  
21 Energy or Tennant Travel; correct?

22 A. Yeah, that's correct.

23 Q. Okay. Now, in your Witness Statement, you did  
24 say that you were a member of Tennant Energy and a member  
25 of the Management Board. I'm just wondering, did you read

1 your Witness Statement before it was filed?

2 A. I did. It was a draft. I didn't read it  
3 carefully that (unclear) obviously, but I did read it.  
4 Yes, I did.

5 Q. Okay. Now, I'd like to just ask a bit about  
6 your experience in the wind energy sector. You worked on  
7 projects with Windrush Energy; correct?

8 A. That's correct, with John Pennie.

9 Q. Right. And Windrush identified and developed  
10 wind development sites in Ontario; correct?

11 A. Well, they did. Yes.

12 Q. Windrush was the wind developer behind the  
13 Skyway 127 Project; right?

14 A. No. John Pennie was. I wasn't aware Windrush  
15 was the entity, but the person I was dealing with was John  
16 Pennie. He's also my cousin and my partner.

17 Q. So, you're saying that Windrush was not the wind  
18 developer behind the Skyway 127 Project?

19 A. No, no, I'm not saying that. I would say I  
20 dealt with John Pennie if he was dealing with Windrush.  
21 It wasn't something I was dealing with.

22 Q. Okay. Now, you are the President of Skyway 127;  
23 is that right?

24 A. That's correct.

25 Q. And you were one of the original Directors of

1 Skyway 127 in 2007; correct?

2 A. That's correct.

3 Q. I.Q. Properties is your personal holding  
4 company?

5 A. It's a family-owned company.

6 Q. In 2007, I.Q. Properties held 50 percent of  
7 Skyway 127 Shares; right?

8 A. That's correct.

9 Q. Now, as President of Skyway 127, and given your  
10 role with Windrush, you had experience in Ontario's wind  
11 energy sector; correct?

12 A. More correctly, John Pennie had experience, and  
13 I approached him to continue projects, to pursue projects  
14 for me, where I would arrange the C capital and he would  
15 do the wind development.

16 Q. So, sir, are you saying that you didn't have  
17 experience in the wind energy sector? Not very--

18 A. Exactly.

19 Q. Even though you were the President of Skyway  
20 127?

21 A. That's correct.

22 Q. All right. Now, let's discuss the loan that  
23 your brother John Tennant lent you, and we'll pull up  
24 Exhibit C-265.

25 Now, this is the Promissory Note between John

1 Tennant and the I.Q. Properties. This--

2 A. Yeah.

3 Q. We'll go through just a few of the features of  
4 this note.

5 John Tennant lent I.Q. Properties \$200,000 at  
6 an Interest Rate of 10 percent a year; correct?

7 A. Yes.

8 Can you make it any bigger?

9 Q. We can, we can. We can highlight the--

10 A. Yeah, that's better, that's much better.

11 Q. So, first of all, I'm just looking for you to  
12 confirm that there was a \$200,000 loan from John Tennant  
13 (unclear) Holding Company.

14 (Overlapping speakers.)

15 A. That's correct, that's correct.

16 Q. All right. 10 percent a year interest?

17 A. Yes.

18 Q. The loan was due on October 19, 2010?

19 A. Yes.

20 Q. It was secured with 11.3 percent of Skyway 127  
21 Shares?

22 A. That's correct.

23 Q. And this was 437,500 shares; right?

24 A. That's correct.

25 Q. Now, if you did not repay the loan on time, John

1 Tennant had a call option under the Promissory Note (C-  
2 265); correct?

3 A. That's correct.

4 Q. Now, in addition to exercising the call option,  
5 if you didn't repay the loan on time, John Tennant had a  
6 number of alternative options; right? He could extend the  
7 loan. He could grant other indulgences. He could release  
8 you; is that right?

9 A. Well, we did--we did go ahead with a six-month  
10 extension.

11 Q. Right. Okay.

12 So, let's move now to Exhibit C-266, which is  
13 the acknowledgment of the Promissory Note.

14 Now, here Skyway 1--

15 (Overlapping speakers.)

16 A. I see that, yes.

17 MR. MULLINS: Not to interrupt, counsel, but  
18 while we have a document, I'll just--it seems like I'd  
19 like just to remind the Witness to make sure that  
20 the--Mr. Klaver asks his question before you answer  
21 because I've seen that you're overlapping a little bit,  
22 and I want to make sure the record is clear.

23 MR. KLAVER: Thank you.

24 BY MR. KLAVER:

25 Q. All right. Now, this is the acknowledgement,

1 sir, of the Promissory Note (C-266) and--

2 A. Yes.

3 Q. --with this document, Skyway 127 acknowledged  
4 the Shares that I.Q. Properties used to secure the loan;  
5 right?

6 A. That's correct. I didn't--I can't see the whole  
7 thing, but that's correct.

8 Q. All right. Now--

9 A. That's better, that's good.

10 Q. --the Shares could not be transferred to anyone  
11 other than John Tennant without John Tennant and I.Q.  
12 Properties providing a written direction to the  
13 corporation; correct?

14 A. Sorry, you're reading that from the--

15 Q. Well, what--I was just looking to see if you  
16 would confirm this, but we can highlight the words at the  
17 bottom starting with "may not be transferred."

18 A. Sorry, okay. Yeah. Yeah, I see that.

19 Okay, yeah. That's correct.

20 Q. So, this indicates, sir, that the Shares could  
21 not be transferred to anyone other than John Tennant  
22 without express written consent and direction to Skyway  
23 127 by both of the Parties; right?

24 A. Correct.

25 Q. All right. Now, let's turn to Exhibit C-267, on

1 Page 1, and we've moved forward in time up to October 19,  
2 2010.

3 A. Okay.

4 Q. Now, the loan was in default on this date;  
5 right?

6 A. Well, no, we extended it, so it wasn't in  
7 default. It was extended.

8 Q. It was extended. Okay.

9 So, just to confirm, you had not repaid the loan  
10 on October 19, 2010; right?

11 A. That's correct.

12 Q. So, at this point, John Tennant had a range of  
13 options he could choose from. He could extend the loan,  
14 he could grant other indulgences, he could exercise the  
15 call option, among other things; right?

16 A. Yes.

17 Q. Okay. And as you just indicated, he chose to  
18 extend the loan by six months; right?

19 A. That's correct.

20 Q. All right. Now let's move forward in time to  
21 April 19, 2011, and you did not repay the loan on this  
22 date; correct?

23 A. That's correct.

24 Q. So, at this point, John Tennant once again had a  
25 choice of different options. He could grant another

1 extension, grant other indulgence, release you, or he  
2 could exercise the call option and request the Shares;  
3 correct?

4 A. Correct.

5 Q. Now, sir, you would agree with me that there is  
6 no documents from April 2011 showing that he did exercise  
7 the call option, request and obtain the Shares on  
8 April 19, 2011; right?

9 A. I'm not aware of a document.

10 Q. All right.

11 Now, let's go to Page 2 of this document, and  
12 we've moved forward in time again to June 20, 2011. This  
13 is the direction from I.Q. Properties and John Tennant (C-  
14 266\_.

15 Now, you signed this direction as the President  
16 of Skyway--I'm sorry, of I.Q. Properties; right?

17 A. Correct.

18 Q. All right. So, you and John Tennant directed  
19 that the Shares should be transferred to John Tennant on  
20 June 20, 2011; right?

21 A. If I read it slower--yeah, that's correct.

22 Q. All right. And, just to confirm, sir, you did  
23 not send a written direction like this on April 19, 2011,  
24 instructing John Pennie to transfer the shares to John  
25 Tennant then; right?

1           A.    You're saying I did not?

2           Q.    That's right.

3                    You did not send a written direction like this  
4 on April 19, 2011, instructing John Pennie to transfer the  
5 Shares to John Tennant; right?

6           A.    Yeah, yeah, I don't recall.

7           Q.    Okay. Let's review a few of the shareholder  
8 ledgers briefly, and we'll enter confidential session.

9                    (End of open session. Attorneys' Eyes Only  
10 session begins at 12:16 p.m.)

1 ATTORNEYS' EYES ONLY SESSION

2 BY MR. KLAVER:

3 Q. All right. Now, let's go to C-117. This is the  
4 Shareholder Ledger for Skyway 127, dated June 20, 2011.

5 Now, the second chart at the bottom indicates  
6 I.Q. Properties transferred 437,500 shares to John  
7 Tennant; correct?

8 A. Correct.

9 Q. These were the Shares used to secure the loan;  
10 right?

11 A. That's correct.

12 Q. So, the Skyway 127 Shares were first transferred  
13 to John Tennant on June 20, 2011; right?

14 A. Yeah--I believe the direction--the instructions  
15 were to John Tennant in Trust, but I don't see that on  
16 there.

17 Q. Right.

18 Just following up on that, sir. The ledger does  
19 not identify Tennant Travel as the beneficial owner of  
20 those Shares; right?

21 A. Well, it was transferred to John Tennant.

22 REALTIME STENOGRAPHER: I'm sorry. Start your  
23 answer again, sir, if you repeat your answer.

24 THE WITNESS: Yeah. That--it was transferred to  
25 John Tennant in Trust for a company that he was going to

1 designate which became--which was--ended up being Tennant  
2 Travel.

3 BY MR. KLAVER:

4 Q. So, sir, we will talk about the alleged trust,  
5 but right now I'm just looking for you to confirm that  
6 this document does not indicate that Tennant Travel had a  
7 "beneficial ownership" interest in Skyway 127 on June 20,  
8 2011; correct?

9 A. That's--that's correct.

10 Q. All right. Let's move to Exhibit C-114.

11 This is the ledger dated December 30, 2011.  
12 Now, once again, this ledger does not identify Tennant  
13 Travel as a beneficial owner of Skyway 127 Shares; right?

14 A. That's correct.

15 Q. All right. Now let's move forward in time to  
16 Exhibit C-115, and this is the ledger for January 15,  
17 2015.

18 Now, on this date, John Tennant transferred all  
19 of his Skyway 127 Shares to Tennant Travel; correct?

20 A. That's correct.

21 Q. And this is the first ledger showing Tennant  
22 Travel was an owner of Shares in Skyway 127; right?

23 A. That's correct.

24 Q. Now, the ledger also shows that Marilyn Field  
25 and John Pennie transferred their Shares to Tennant

1 Travel.

2 Do you see that?

3 A. I do.

4 Q. Now, sir, what is your understanding of why all  
5 three individuals transferred their Shares to Tennant  
6 Travel on this date?

7 A. They wanted to operate as a single entity to  
8 better manage the purposes of the Company. It was a  
9 restructuring that they agreed on.

10 Q. And what was the overall purpose here?

11 A. The overall purpose was to restructure and  
12 continue, looking for projects to develop.

13 Q. Okay. And, sir, I'm just wondering what was the  
14 purpose of Tennant Travel exactly?

15 A. Well, it's a company that John agreed on, which  
16 we agreed when he took the Shares to put them into an  
17 entity, a corporate entity, to handle, and that's the  
18 company he chose.

19 Q. Okay. Now, let's return to 2011, and we'll pull  
20 up Paragraph 19 of your Witness Statement on the screen,  
21 and we can actually leave confidential session now.

22 (Attorneys' Eyes Only session ends at 12:20  
23 p.m.)

## 1 OPEN SESSION

2 BY MR. KLAVER:

3 Q. Now, in this paragraph, you explained that you  
4 entered an agreement with John Tennant in which John  
5 agreed that the Skyway 127 Shares constituted full  
6 repayment of the principal and interest on the loan, and  
7 you would be released from personal liability; right?

8 A. Correct. That's correct.

9 Q. And what was the date of this Agreement, sir?

10 A. I believe it was around April 26, 2011.

11 Q. So, you entered this Agreement after you say  
12 that John Tennant had obtained the Shares on April 19?

13 A. I don't remember. It might been at the same  
14 time.

15 Q. All right. Now, what was the date--I'm sorry,  
16 we discussed that.

17 Now, you had a number of records related to the  
18 loan. We've gone through some of them. You don't have  
19 any recog--written evidence of this Agreement with John  
20 Tennant in April 2011; right?

21 A. We did not do a separate written agreement. We  
22 agreed to do it, and went ahead and did it.

23 Q. All right. Now, on the third line, you state  
24 that, in return--we will just remove the current  
25 highlighting, please, Gen--perfect--and then you say: "In

1 return, my brother John agreed to hold the Skyway 127  
2 Shares in a U.S. holding company that he would designate."

3 Then, in the last line you say: "This was part  
4 of the Agreement, along with the personal release of the  
5 guarantee."

6 So, the Agreement you had with your brother John  
7 was that he would put the Shares in a holding company;  
8 right?

9 A. That is correct.

10 Q. And the Agreement that you had with your brother  
11 John did not stipulate that he would remain the registered  
12 Shareholder and put the Shares in a trust; right?

13 A. The Agreement was limited to--

14 REALTIME STENOGRAPHER: I'm sorry, could you  
15 state that again, sir?

16 THE WITNESS: The Agreement with John is that he  
17 would put the Shares into a holding company, as it says  
18 there.

19 BY MR. KLAVER

20 Q. Right.

21 So, just to follow up on that, sir, the  
22 Agreement did not stipulate that John would hold onto the  
23 Shares himself and create a trust, did it?

24 A. It--the Agreement doesn't say that he was going  
25 to hold them and then create a trust. It says that he

1 would put them in a U.S. holding company that he would  
2 designate. That's right.

3 Q. Okay. Okay. Now, let's move down to  
4 Paragraph 20 of your Statement.

5 A. Okay.

6 Q. And we will highlight the first sentence.

7 Now, here you state that: "On April 19, 2011, I  
8 assumed that John would designate our brother Jim's  
9 existing holding company, Tennant Travel Services, as the  
10 investment Holding Company because my brother John did not  
11 have a holding company like Jim or I had."

12 So, both you and Jim had holding companies;  
13 correct?

14 A. That's correct.

15 Q. And your preference was for John Tennant to hold  
16 the Shares the same way that you did in a holding company;  
17 right?

18 A. Well, yes, as that would be the more wise thing  
19 to do.

20 Q. Right.

21 And just to confirm, sir, you never held your  
22 Skyway 127 Shares in Trust for your holding company I.Q.  
23 Properties; right?

24 A. Well, no, it went directly to the Company which  
25 we--I owned at the time. There was no interim period such

1 as there was here.

2 Q. All right. So, this statement at Paragraph 20  
3 of your Statement is another example of where you say that  
4 John would put the Shares into a holding company, not that  
5 he would hold them in Trust; right?

6 A. Yeah.

7 Q. All right.

8 A. Yes.

9 Q. Now, let's move to Paragraph 24 of your  
10 statement, please.

11 Now, you explained that on April 26, 2011, you  
12 had a phone call with John Tennant and Mr. Pennie, and in  
13 the second sentence you say: "John said he was holding  
14 the Shares in Trust for Tennant Travel."

15 A. Yes.

16 Q. Now, this was an oral trust; correct?

17 A. Well, yes.

18 Q. So, you did not file any documents from 2011  
19 showing that John Tennant had created this oral trust;  
20 right?

21 A. Well, he agreed as part of--when we transferred  
22 the Shares to him, that's what he would do.

23 Q. Sir, I'm just looking for you to confirm, you  
24 can't point to any documents that are on the record  
25 showing that John Tennant had created this Trust; right?

1           A.     Well, there is no separate document to indicate  
2 that the Trust my brother Jim had, had it already and it  
3 didn't have to be created, just John had to get use of it.

4           Q.     All right. Now, just another question along  
5 these lines, sir, beyond the creation of the oral trust,  
6 you're not aware of any documents from 2011 to 2015  
7 showing that this alleged trust existed, are you?

8           A.     Separate agreement showing that John was holding  
9 it in Trust other than the oral agreement? No, there is  
10 no other--no other document.

11          Q.     Okay. Now, I would like to--I'd like to just  
12 discuss a little bit about what happened yesterday, sir.  
13 Can we pull up the Transcript from Page 254 of yesterday's  
14 cross-examination of Mr. Pennie.

15                     Now, to just give you some background, the  
16 Arbitrators had asked Mr. Pennie multiple times about his  
17 statements in his Witness Statement, where he said that  
18 the holding company was still undesignated. Now--in  
19 December 2011. I should clarify that.

20          A.     Can we make that just a bit bigger?

21                     Yeah. Okay, thank you.

22          Q.     So, we were discussing whether the holding  
23 company was designated in December 2011, and the President  
24 of the Tribunal asked Mr. Pennie to clarify whether  
25 Tennant Travel had been designated as the holding company

1 in December 2011.

2 Now, if we can just highlight the Lines 16 to  
3 20, you can see that Mr. Pennie clearly said no, in  
4 December 2011, the holding company was undesignated.

5 A. Okay.

6 Q. Is that your understanding--is that in line with  
7 your understanding, or was he wrong?

8 A. I think we were--we were doing it back in April.  
9 I think--he may be incorrect on what he's saying here.

10 Q. "He may be incorrect."

11 Sir, and he's part of your family. You talked  
12 about how the Shares were held but he was incorrect in  
13 this regard?

14 A. I wouldn't mind reading it again here.

15 (Witness reviews document.)

16 A. So, what he's saying here is--what agreement is  
17 he referring to? It says should read at the end.

18 Q. I'm sorry, sir, I'm not sure I understood--

19 A. Yeah, I'm not understanding what you mean--what  
20 he says here by "full stop." Is there somewhere else  
21 where he says it and makes it incorrect?

22 MR. MULLINS: I have to object because I think  
23 in fairness to the Witness I don't think he's really  
24 understanding what the Witness is being shown, and  
25 certainly I object to the fact that as it was shown

1 earlier that he has not provided a full Transcript to the  
2 Witness. And I further object that the question has been  
3 asked and answered. But with respect to this, I don't  
4 think the Witness fully understands what Mr. Pennie was  
5 being shown in any event.

6 MR. KLAVER: No problem. We'll move on.

7 BY MR. KLAVER:

8 Q. Now, we're going to go to Exhibit C-268, and I  
9 will ask you a little bit more about this document later,  
10 but for now I would just like to bring you to one part of  
11 this letter.

12 Now, for little context, sir, this is a letter  
13 that John Tennant wrote in February 2016 to the Management  
14 Board of Tennant Energy.

15 A. Right.

16 Q. Are you familiar with this document? Have you  
17 seen it? Read it?

18 A. Yes, I have seen it before, and I have read it,  
19 yep.

20 Q. Perfect.

21 Okay. Now, let's just go down to the  
22 second-to-last paragraph, and it states here: "At all  
23 times, I have held the Shares of Skyway 127 Wind Energy  
24 Inc as a bare trustee for a U.S. company to be designated  
25 in the future."

1           And then John Tennant continues: "I so informed  
2 John Pennie and Derek Tennant of this Trust when first  
3 obtaining the Skyway 127 Shares in 2011, and each  
4 subsequent time."

5           So, I'm just wondering, sir, did John Tennant  
6 tell you each time he obtained the Shares, including  
7 June 2011, December 2011, that he was holding the Shares  
8 for a company that was to be designated in the future?

9           A. Well, he received the Shares on the basis of the  
10 Agreement that he and I made that he would get them into  
11 an entity, a company, holding them. And any time he  
12 received shares, that's what the Agreement is.

13           Q. I'll just ask you to clarify that, sir. The  
14 Agreement was that he would put the Shares in a holding  
15 company to be designated in the future; right?

16           A. Correct.

17           Q. And he, John Tennant, told you this, that the  
18 holding company would be designated in the future when  
19 John Tennant obtained shares in Skyway 127 in June--in  
20 December 2011?

21           A. Yeah, at that time the holding company--

22           REALTIME STENOGRAPHER: I'm sorry, sir, start  
23 your answer again.

24           THE WITNESS: The date--what's the date of this  
25 memorandum here?

1 BY MR. KLAVER:

2 Q. This letter was written February 8th, 2016.

3 A. Yes, so Tennant Travel had already been  
4 designated.

5 Q. No, sir, I'm talking about what John Tennant  
6 wrote in these two sentences here that are highlighted  
7 yellow, and he seems to say that he told you that when he  
8 obtained Skyway 127 Shares, he was holding them for a U.S.  
9 company to be designated in the future.

10 A. Yes.

11 Q. So, I would just like confirmation. Did he tell  
12 you in December 2011, when he obtained the Shares, that he  
13 was holding them for a U.S. company to be designated in  
14 the future?

15 A. Yes.

16 Q. All right, sir. Let's move to Paragraph 19 of  
17 your Statement.

18 A. Is it okay if I look at my hard copy that I have  
19 here?

20 Q. Absolutely.

21 A. Sorry?

22 Q. Yes, that's completely fine.

23 A. Paragraph 19?

24 Q. Correct.

25 Now--

1 A. Yes.

2 Q. (Overlapping)--

3 A. I'm just reading it. Is that okay?

4 Q. Absolutely, yes. Take your time.

5 A. Okay.

6 Q. Okay, Gen, if we could highlight on the fourth  
7 line starting with "having the Shares."

8 Here you state that: "Having the Shares in the  
9 company might ensure that while the value of the shares  
10 could be divided, the actual Skyway 127 Shares themselves  
11 might not form community property under California law."

12 Now, could you just explain what your intentions  
13 were here with trying to prevent the Shares from forming  
14 community property under California family law?

15 A. Well, I believe using the Company to hold shares  
16 or anything gives you continuity in the event of death or  
17 in the event of a divorce, the shares are turned into  
18 assets to who owns them, and that's what I mean here, is  
19 that if the company--if the designated company owns the  
20 Shares, his wife certainly knows about them, but they  
21 don't become part of her property if John dies or divorces  
22 or something like that. We all die, you know.

23 Q. Yes, unfortunately.

24 Now, just to confirm, sir, you wanted to ensure  
25 that in the case of a divorce between John Tennant and

1 Barbara Anderson, Barbara Anderson would not access the  
2 Shares then; right?

3 A. Actually, she would have a half-interest in  
4 them, even though they're in--the holding company would be  
5 something she would have an interest in, not directly the  
6 Shares. I'm not sure how California law would work. I'm  
7 not a lawyer, so.

8 Q. Fair enough, sir. I'm just looking for your  
9 confirmation when you said that the concern was that in  
10 the event of a divorce, Barbara Anderson might not access  
11 the Shares. Is that what you were intending to protect  
12 against?

13 A. Yeah, she would become my direct partner--our  
14 direct partner in the company if she were ever interested  
15 in the Company, not the Shares, what you say would be  
16 correct.

17 Q. Now, let's move back to Exhibit C-268, and you  
18 referred to this document, so I just want to discuss a  
19 couple other features.

20 A. Should I get my hard copy of that? I think I  
21 have one here. Oh, I don't have one here.

22 I can work with this. I can see it. No  
23 problem.

24 What am I looking at here?

25 Q. Now, sir, I would just like to discuss a couple

1 of points on dates. You can see the document was written  
2 on February 8, 2016.

3 Now, the Claimant has stated in its written  
4 submissions in this proceeding that Skyway's  
5 representatives first met with Legal Counsel about a  
6 potential NAFTA claim on March 16, 2015.

7 Now, as President of Skyway 127, were you one of  
8 these Skyway 127 representatives that met with counsel on  
9 March 16, 2015?

10 A. I don't remember that. I had one meeting with  
11 counsel which I attended with John Pennie. I'm sorry I  
12 don't remember, if that was the date, I thought it was  
13 more like April or May or even June.

14 Q. Well, we will discuss your June meeting, but the  
15 Claimant has stated that Skyway's representatives met with  
16 counsel on March 2015, so we were just wondering who those  
17 Skyway representatives are, if it was not you?

18 MR. MULLINS: I have to object to form. I think  
19 our submissions say that the meeting was after March 2015,  
20 not as we had a meeting in March 2015, counsel.

21 MR. KLAVER: I will move on from that.

22 BY MR. KLAVER:

23 Q. All right. Let's talk about the June meeting,  
24 sir.

25 Now, you met with Mr. Appleton in June 2015;

1 right?

2 A. That's right.

3 Q. And what specifically did you discuss regarding  
4 Ontario's actions towards Skyway 127 in this meeting?

5 A. We discussed the--some of the things that  
6 happened with the Government, whether they hadn't been  
7 following rules, et cetera. I can't remember that much  
8 about it. What's your question again?

9 Q. What specifically you discussed with counsel  
10 regarding Ontario's actions towards Skyway 127? You  
11 mentioned this meeting--

12 A. Yeah, yeah, yeah.

13 The details on that, I would have to actually  
14 ask John Pennie. I didn't make notes here.

15 Q. Okay. No problem. No problem.

16 Now, we were just discussing with John Tennant  
17 earlier this morning, who set this meeting up. He didn't  
18 recall if it was Mr. Appleton or if it was you. Do you  
19 recall that, sir?

20 A. Yeah--I don't recall who set it up, no, I'm  
21 sorry.

22 Q. No problem.

23 Now, just one last question on this document,  
24 sir, Exhibit C-268, do you recall whether Mr. Appleton or  
25 any other lawyers suggested that John Tennant write this

1 letter?

2 A. No, I don't recall anything like that.

3 Q. All right. Now, after the meeting with counsel  
4 in June 2015, or March 16th or June 2015, the Claimant's  
5 name was changed from Tennant Travel to Tennant Energy;  
6 right?

7 A. Oh, okay. I assume what you're saying is--you  
8 have the document. I don't have the document.

9 Q. Well, it's--it used to be called "Tennant  
10 Travel," now it's called "Tennant Energy." You're aware  
11 of that?

12 A. We did change the name. That's correct.

13 Q. Okay. Now, when you say, "we did change the  
14 name," you were involved in that Decision to change the  
15 name; is that right?

16 A. They decided to change the name. I didn't see  
17 any reason not to. I wasn't involved in selecting the  
18 name or whatever, the--

19 (Overlapping speakers.)

20 Q. Okay. No problem, sir.

21 Now, I would like to ask you about your  
22 shareholding in January 2015.

23 On this--at this time, you held 25 percent of  
24 Skyway 127 Shares; right?

25 We can pull up the ledger, if you'd like--

1           A.    Yeah.  If you could.  I don't recall if my  
2 shares had gone to GE at that time or not.

3           Q.    Sorry, this is confidential.

4                   (Pause.)

5                   (End of open session.  Attorneys' Eyes Only  
6 session begins at 12:42 p.m.)

1 ATTORNEYS' EYES ONLY SESSION

2 BY MR. KLAVER:

3 Q. Okay, now, sir, this indicates that you had  
4 25 percent of Skyway 127 Shares; correct?

5 A. Just looking here.

6 Yes, it does.

7 Q. And you received these Shares from GE Energy?

8 A. That's probably right, yeah.

9 Q. Okay.

10 A. Where does it say "GE," that I got this from GE  
11 Energy.

12 Q. It doesn't say that, sir. I'm just asking you  
13 to confirm because GE Energy no longer held shares on this  
14 date but you and Mr. Pennie held 25 percent each.

15 A. Right. Right. Okay. That's probably correct.

16 Q. Now, you're not aware of any evidence showing  
17 that there was a transfer of shares from GE Energy to  
18 Tennant Energy in 2016, are you?

19 A. I recall that they did something like that, but  
20 related partly to Shares--

21 REALTIME STENOGRAPHER: I'm sorry, you're going  
22 to have to repeat your answer, sir. I'm not following.

23 THE WITNESS: I know they didn't--they did  
24 return some shares to Tennant Energy. I don't recall  
25 when.

1                   Sorry, what's the question again, please?

2                   BY MR. KLAVER

3                   Q.    Sir, I would just like to understand, these  
4 Shares that you had 25 percent of Skyway 127, did you  
5 transfer these Shares directly to Tennant Energy in 2016?

6                   A.    If it shows that, I would say "yes". I don't  
7 remember.

8                   Q.    All right. Now, let's move to Paragraph 38 of  
9 your Witness Statement, please. And we're not too far  
10 from wrapping up.

11                   We can also exit confidential session.

12                   (Attorneys' Eyes Only session ends at 12:44  
13 p.m.)

1 OPEN SESSION

2 MR. KLAVER: Members of the Tribunal, I'm just  
3 wondering, would you like to take the lunch break right  
4 now or shall we take another max 10 minutes and finish  
5 this part of the proceeding, the cross-examination?

6 PRESIDENT BULL: I think, Mr. Klaver, even  
7 though you only need another 10 minutes, why don't we take  
8 the lunch break as scheduled and then come back and you  
9 can finish the cross-examination then.

10 MR. KLAVER: Absolutely. Sounds great.

11 PRESIDENT BULL: So, it's a 45-minute break for  
12 lunch, and then we'll resume after.

13 THE WITNESS: Okay, thank you very much.

14 (Recess.)

15 PRESIDENT BULL: Okay. We can go back on the  
16 record, and Mr. Klaver, whenever you're ready, you can  
17 proceed.

18 MR. KLAVER: Thank you.

19 THE WITNESS: Can you hear me with this headset?

20 MR. KLAVER: Yes, I can. David?

21 REALTIME STENOGRAPHER: It will work for now.

22 THE WITNESS: Thank you.

23 BY MR. KLAVER:

24 Q. All right. Okay, Mr. Tennant, let's discuss  
25 some of the Skyway 127 Shareholder meetings, and you can

1 go to your Statement at Paragraph 38. Can you please read  
2 the first sentence, sir.

3 A. Yes.

4 "The active Skyway 127 Shareholders (John  
5 Tennant, Marilyn Field, John Pennie) had a meeting with me  
6 after the FIT Program was canceled."

7 Q. Now, you did not file any minutes from this  
8 meeting in the Arbitration; right, sir?

9 A. No.

10 Q. Can we move down to Paragraph 40 of your  
11 statement, please.

12 A. "Skyway 127 decided to go along with the Share  
13 Transfer, Skyway 127 had another active Shareholder  
14 meeting with my brother, John, John Pennie, and Marilyn  
15 Field, I was present. They supported acquiring the GE  
16 interest."

17 Q. You did not file any minutes from this meeting;  
18 correct?

19 A. No.

20 Q. Okay. And we will go to Paragraph 25 of your  
21 statement, and I will read a line for you.

22 Now, you say in the second line that John Pennie  
23 and his wife Marilyn Field would pool their votes in  
24 Skyway 127 together with your brother John's trust voting  
25 power in Skyway 127.

1           Now, you did not file any documents, Shareholder  
2 votes from 2011 showing that this voting bloc existed or  
3 voted together; correct?

4           A.    You mean before filing the Arbitration?

5           Q.    Yes.

6           A.    No, we didn't. Not that I'm aware of.

7           Q.    All right. Now we will jump over to  
8 Paragraph 33 of your statement, please. Here on the  
9 second line you state that: "As of December 30, 2011, the  
10 voting bloc led by my brother John established effective  
11 control over the Skyway 127 Project through Tennant Travel  
12 Trust controlling a voting bloc."

13           You did not file documents such as Shareholder  
14 Votes, Meeting Minutes or any other documents from 2011  
15 showing that John Tennant or Tennant Travel effectively  
16 controlled Skyway 127; correct?

17           A.    No--correct.

18           Q.    All right. And you filed no documents showing  
19 that Tennant Travel held the power to appoint a majority  
20 of the Board of Directors of Skyway 127 from 2011 to 2015;  
21 right?

22           A.    No, that's something we did.

23           Q.    And you also filed no documents showing that  
24 Tennant Travel otherwise held rights to direct the actions  
25 of Skyway 127 from 2011 to 2015; correct?

1 A. Correct.

2 ARBITRATOR BISHOP: Counsel, could I ask one  
3 question, when you say "filed," are you talking about  
4 filed documents in this case or file--

5 MR. KLAVER: Yes.

6 ARBITRATOR BISHOP: --documents or what?

7 MR. KLAVER: Yes, I'm referring to filing  
8 documents in this case. I'm just asking if the Witness  
9 can point to any written evidence on the record from 2011  
10 to 2015 on these topics.

11 ARBITRATOR BISHOP: Okay.

12 MR. KLAVER: I can go back and clarify, if that  
13 would help.

14 ARBITRATOR BISHOP: It's fine for me. Thank  
15 you.

16 MR. KLAVER: Okay.

17 BY MR. KLAVER:

18 Q. Now, let's move to Paragraph 35 of your  
19 statement, sir.

20 A. Okay.

21 Q. Now, here you state that Mr. Pennie and Marilyn  
22 Field agreed that your brother John would get the last  
23 word on corporate decisions under the voting bloc.

24 A. Correct.

25 Q. Again, you did not provide any documents or

1 you're not able to point to any written evidence on the  
2 record such as Meeting Minutes from 2011, showing that  
3 Mr. Pennie and Marilyn Field agreed to this arrangement;  
4 right?

5 A. That's correct.

6 Q. Now, at Paragraph 31 of your Statement, you said  
7 that GE did not vote its Shares. Once again, you're not  
8 able to point to any evidence on the record from 2011 to  
9 2015, showing that GE didn't vote its Shares; right, sir?

10 A. Well, because they didn't vote the  
11 Shares--that's correct.

12 Q. All right. Let's just move to another topic  
13 briefly. At Paragraph 47 of your Statement, you referred  
14 to the Mesa and Windstream NAFTA arbitrations; and, in the  
15 last two lines you state: "When those cases were under  
16 way, I was not aware that I would have any reason to go to  
17 those hearings."

18 You were aware of the Mesa and Windstream  
19 arbitrations when they were underway, correct, sir?

20 A. No, I wasn't aware of them.

21 Q. I'm sorry, could you repeat that?

22 A. I said--I was not aware of this--that they were  
23 going on at that moment.

24 Q. You're saying you were not aware that they were  
25 underway?

1 A. I don't recall.

2 Q. All right. Thank you, Mr. Tennant. Those are  
3 all of my questions for you.

4 A. Thank you.

5 PRESIDENT BULL: Can I ask if my colleagues have  
6 any questions for Mr. Tennant?

7 ARBITRATOR BETHLEHEM: None from me at this  
8 point anyway.

9 ARBITRATOR BISHOP: Just a couple.

10 QUESTIONS FROM THE TRIBUNAL

11 ARBITRATOR BISHOP: Mr. Tennant, if I could take  
12 you back to Paragraph 19 of your Witness Statement. You  
13 speak there of an agreement with your brother John about  
14 the transfer of Skyway's Shares to him, and in the second  
15 sentence--I think it's the second sentence or third  
16 sentence--You say: "In return, my brother John agreed to  
17 hold the Skyway 127 Shares in a U.S. Holding Company that  
18 he would designate."

19 Whose idea was it that that be done as part of  
20 this Agreement?

21 (Overlapping speakers.)

22 THE WITNESS: It was my idea.

23 ARBITRATOR BISHOP: It was your idea.

24 Why?

25 THE WITNESS: I felt it was good business

1 practice to hold them in a company for the reasons of  
2 continuity and both Jim and I had holding companies in the  
3 event of a death or whatever, the world doesn't end, the  
4 holding company goes on. So, I believe it's good  
5 planning, but estate planning as well.

6 ARBITRATOR BISHOP: Okay. And you go on to say  
7 that the reason--if I'm understanding your statement,  
8 you're saying that the reason is the actual Skyway Shares  
9 might not form community property under California family  
10 law, and I know earlier you were asked by counsel about  
11 that, and you referred to continuity of the Shares, but I  
12 don't really understand that answer. I wonder if you  
13 could explain it a little bit more elaborately to me.

14 THE WITNESS: In the event of a death or a  
15 divorce, the Shares would be in the Company and not in the  
16 hands of another family, and we would carry on. You  
17 wouldn't have any disruption. That's really what I meant,  
18 by anybody--I'm not familiar with California family law.  
19 I just believe that if there was--John wasn't around for  
20 some reason, the Company would go on, his wife would have  
21 the Shares but not--we would have the--interest in the  
22 Company, the Trust but not directly control the Shares.

23 ARBITRATOR BISHOP: When you said that we would  
24 carry on, you meant Skyway?

25 THE WITNESS: Yes.

1           ARBITRATOR BISHOP: Okay. Thank you. Those are  
2 the only questions I had. Thank you very much, sir.

3           THE WITNESS: Thank you.

4           PRESIDENT BULL: Mr. Mullins, do you have any  
5 redirect?

6           MR. MULLINS: I do.

7                                 REDIRECT EXAMINATION

8           BY MR. MULLINS:

9           Q. Good afternoon, Mr. Tennant. How are you?

10          A. Fine, thank you. Good afternoon.

11          Q. We can look at C-267.

12                         This document was sent to you as of October 19,  
13 2010. Can you read for us what the third paragraph says.

14          A. "The lender hereby DEMANDS in the event the  
15 failure to pay on or before April 19, 2011, that the  
16 security pledged of 437,500 common shares of Skyway went  
17 to (drop in audio) (Certificate #COM-14, including but not  
18 limited to any anti-dilution or other common share  
19 transfer rights from any other shareholder or shareholders  
20 by way of agreement, consent, or otherwise) issued to I.Q.  
21 Properties be transferred to the Undersigned Lender."

22          Q. And this is not the same document that agrees to  
23 the extension to April 19. It says here, after which the  
24 letter is not prepared to provide further extensions, did  
25 Mr. Tennant, John Tennant, provide any further extensions?

1 A. He did one extension.

2 Q. It says there's an extension--there's an  
3 extension in this document, so the October 19, 2010,  
4 extends six months to April 2011.

5 Do you see that? In the first sentence. It  
6 says the lender hereby agrees to extend to six months to  
7 April 19, 2011.

8 Do you see that?

9 A. I'm sorry, we're talking about the same  
10 paragraph?

11 Q. The second paragraph says, the lender--

12 A. Yes, I see--I see that.

13 Q. So, this is an October 19, 2010, the lender,  
14 Mr. Tennant, is agreeing to an extension of six months to  
15 April 19, 2011; am I reading that correctly?

16 A. Yeah, you are correct.

17 Q. Okay. And he goes on to say the lender is not  
18 prepared to provide further extensions to the borrower.  
19 Did Mr. Tennant provide any further extensions after  
20 April 19, 2011?

21 A. No.

22 Q. Did Mr. Tennant provide any further extensions  
23 after October 19, 2010, other than the one he's granting  
24 here?

25 A. There was just the one six-month extension.

1 Q. Did Mr. Tennant ever revoke his demand that if  
2 there was a failure to pay on April 19, 2011, he would  
3 like the Shares be transferred to John Tennant?

4 A. No. That was the Agreement.

5 Q. But did he revoke it after this letter in  
6 October 19, 2010? Did he do anything, either orally or in  
7 writing, to revoke this demand on October 19, 2010?

8 A. Well, I'm not sure what you mean. I made an  
9 agreement with him, which was to return my personal  
10 guarantee, and he would use the holding company and--but  
11 there was a slight change, he agreed to those things, and  
12 that was it.

13 Q. Let me use a legal term, and that's not fair to  
14 you.

15 Did Mr. Tennant ever take back his demand that  
16 he made on October 19 that if there was a failure to pay  
17 in April 19--sorry, let me rephrase the question.

18 Did Mr. Tennant ever take back the demand he  
19 made in October 19, 2010, that if there was a failure to  
20 pay on April 19th, 2011, he would want the Shares of  
21 Skyway 127?

22 A. No, he didn't take that back.

23 Q. Thank you.

24 Now, if we go to the next page--actually, let me  
25 go to a different document. Go to 266 (C-265).

1           This is an acknowledgment of October 20, 2007;  
2 correct?

3           A.    Yes.

4           Q.    Okay.  And the Parties are defined here as John  
5 Tennant and I.Q. Properties, your holding company;  
6 correct?

7           A.    Yes.

8           Q.    And at the bottom--you were asked a question  
9 about this document, and the last sentence, it says "may  
10 not be transferred to any other Party without the express  
11 written consent and direction to the Corporation by both  
12 of the Parties."

13           And the Parties here are John Tennant and I.Q.  
14 Properties; right?

15           A.    Correct.

16           Q.    Okay.  And so, the trans--the acknowledgment (c-  
17 265) here is that--this is back in October 20, 2007, where  
18 the Shares are being put as collateral to Mr. Tennant;  
19 correct?

20           A.    Yes.

21           Q.    Okay.  And was there any, at this time, in 2007  
22 and 2011, was there any attempt, to your knowledge, of  
23 trying to transfer those Shares to any other entity, other  
24 than Mr. Tennant?

25           A.    You mean before he got the Shares?

1 Q. Correct.

2 A. I don't think we transferred to any other  
3 entity, just we transferred them to him, we agreed it was  
4 in Trust for the Corporation that he was going to find.  
5 Is that what you mean?

6 Q. Right.

7 And when that happened, did anybody, either you  
8 or anybody representing I.Q. Properties complain about  
9 Mr. Tennant using a holding company or holding the Shares  
10 in Trust?

11 A. No.

12 Q. Did Mr. Pennie, as Corporate Secretary, complain  
13 or make an objection to Mr. Tennant holding the Shares in  
14 Trust for Tennant Travel?

15 A. No.

16 Q. Now, if you go to paragraph--go to your Witness  
17 Statement. You just testified about Paragraph 19. Let's  
18 go to Paragraph 20.

19 "On April 19, 2011, I assumed that John, that  
20 would be John Tennant, would designate our brother Jim's  
21 existing holding company Tennant Travel as an investment  
22 holding company because my brother John did not have a  
23 holding company like Jim and I had. At the time, John  
24 thought he would use our brother Jim Tennant's existing  
25 California LLC Holding Company but he had not made up his

1 mind."

2 Is that a true statement, Mr. Tennant, about  
3 what happened?

4 A. Yes, that's true.

5 Q. And then the next paragraph says: "One week  
6 later, on April 26, 2011, my brother John informed me of  
7 the decision to designate Tennant Travel to be the holding  
8 company."

9 Is that a true statement, that you--that that  
10 happened on April 26, 2011?

11 A. Yes.

12 MR. KLAVER: Object here. These are clearly  
13 leading questions.

14 MR. MULLINS: These are not leading. I'm asking  
15 for--he's reaffirming his statement in his direct  
16 examination. That's not leading. I will rephrase the  
17 question.

18 MR. KLAVER: You're testifying, counsel.

19 MR. MULLINS: I'm not. I'm asking him, is the  
20 first sentence in this Paragraph 21 a true statement.

21 THE WITNESS: Yes.

22 BY MR. MULLINS:

23 Q. Okay. Now, let me ask another question: When  
24 he identified Tennant Travel to be the holding company,  
25 are you aware of any other holding company that your

1 brother ever designated to use as the holding company for  
2 any Shares that he ever would hold as Trustee of Skyway  
3 127?

4 A. No.

5 Q. Did Mr. John Tennant ever take back his decision  
6 when he told you on April 26 that it was going to be  
7 Tennant Travel that would be that holding company for all  
8 purposes for any Shares going forward?

9 A. No, I said he never took it back.

10 Q. Paragraph 24, if you could read that for us, for  
11 the record. First sentence.

12 A. Yeah, just a minute here.

13 (Pause.)

14 A. "John Pennie, my brother John and me got on a  
15 phone to confirm the arrangement on April 26, 2011."

16 Q. Keep on reading.

17 A. "My brother John said that he was holding the  
18 Shares in Trust for Tennant Travel Services LLC. He  
19 explained the decision to use Jim Tennant's existing  
20 company, Tennant Travel to hold Skyway 127 Investment.  
21 Skyway 127 and I operated on the basis that my brother  
22 John Tennant was acting as a fiduciary in the role of  
23 Tennant--of Trustee for the Tennant Travel Trust and these  
24 Skyway 127 Shares."

25 Q. Is Paragraph 24 accurate, do you remember?

1 MR. KLAVER: I have to interject. This is  
2 extremely inappropriate. The Witness has already affirmed  
3 the accuracy of his statement, absent the corrections.  
4 What is the purpose of just re-reading this into the  
5 record now?

6 MR. MULLINS: I want to make sure that he  
7 reconfirms his statements in case there's any question  
8 that he--that he has not done--that he has done so, so I'm  
9 just asking him if he still agrees that Paragraph 24 is  
10 accurate.

11 PRESIDENT BULL: So, gentlemen, look, I do find  
12 it a little odd, Mr. Mullins, that you're asking the  
13 Witness to confirm something that he's already confirmed  
14 is true. He said so. It's in his Witness Statement.

15 It also does raise the concern that you might be  
16 leading the Witness somewhere. Showing him something that  
17 he said in his Witness Statement can very much be leading,  
18 depending on what's the next question. I'm not going to  
19 stop you actually, Mr. Mullins. I think you can continue  
20 because, Mr. Klaver, to the extent that a question is  
21 leading, and I'm not sure what weight the Tribunal can  
22 give the answer, so the Tribunal will be live to that, and  
23 you can make the submissions that are necessary.

24 I do understand why you have to object and  
25 that's fine, but Mr. Mullins, I think you can continue and

1 ask the questions you want to.

2 MR. MULLINS: Thank you, Mr. Chair. I don't  
3 mean to lead the Witness. I just want to make sure that  
4 he's reconfirming those critical information. I'm simply  
5 asking him to reconfirm it, not to lead him.

6 BY MR. MULLINS:

7 Q. Now, going to 268 (C-268), this is the  
8 memorandum on February 8, 2016. If you scroll down to the  
9 bottom to the signature, it's signed by John Tennant both  
10 as Trustee and in person.

11 Did you write this document or have any  
12 participation in the writing of this document,  
13 Mr. Tennant?

14 A. No. The first time I knew anything about it was  
15 when I saw it completed and signed by my brother.

16 Q. You were asked questions about the meaning of  
17 certain revisions in the document. Do you believe that  
18 your knowledge or your understanding of the document is  
19 superior to John Tennant's interpretation of the document?

20 A. My understanding of the document he wrote is  
21 superior to his?

22 Q. Yes. I'm asking do you believe that?

23 A. No.

24 Q. And when you were shown this document, you were  
25 asked questions about paragraph starting "at all times,"

1 and certain provisions of the paragraph are highlighted.  
2 What was not highlighted was the last sentence of the  
3 paragraph, where it says "that U.S. company receiving the  
4 benefit was always the limited liability company known as  
5 Tennant Travel Services LLC (and now known as Tennant  
6 Energy, LLC)."

7 A. Yes.

8 Q. Now, I'm asking you, is that the same company  
9 that you understood in April of 2011 would be the holding  
10 company that Mr. Tennant, John Tennant, was holding the  
11 Shares as Trustee in favor of?

12 A. Yes.

13 Q. Did that ever change from 2011 to 2015?

14 A. No. It was renamed "Tennant Energy" to "Tennant  
15 Travel."

16 Q. Did you ever have any discussions with Mr. John  
17 Tennant that he was going to use some other company to be  
18 the holding company?

19 A. No. I was happy that he was using my brother's  
20 company. I don't recall discussing any other company with  
21 him.

22 MR. MULLINS: Could we take a five-minute break,  
23 and I will see if there's any other questions and come  
24 back in.

25 (Pause.)

1 BY MR. MULLINS:

2 Q. Mr. Tennant, you were asked about Paragraph 25  
3 of your Statement?

4 A. Yes.

5 Q. And you were asked about the voting pool and  
6 their votes with John Pennie and his wife Marilyn will  
7 pool their votes in Skyway 127 with your brother John's  
8 trust funding power in Skyway 127, and Paragraph 26 says  
9 you were aware of this arrangement.

10 Do you see that?

11 A. Yes.

12 Q. And at the end of the day, during this time  
13 period starting in 2011, who had the last bottom-line word  
14 of corporate decisions for Skyway 127 after--in April 2011  
15 and going forward?

16 A. My brother John Tennant had the final word.

17 MR. MULLINS: I don't have any further  
18 questions.

19 PRESIDENT BULL: Thank you, Mr. Mullins.

20 Just pausing to see if either of my colleagues  
21 have anything arising from redirect? I don't.

22 ARBITRATOR BISHOP: I do not.

23 ARBITRATOR BETHLEHEM: Neither from me.

24 PRESIDENT BULL: Very good. Then, thank you  
25 very much, Mr. Tennant, for being here and answering

1 counsel's questions.

2 THE WITNESS: You're welcome.

3 (Witness steps down.)

4 PRESIDENT BULL: Good. Then it appears we are  
5 done with what we had set out to do today, but there are  
6 some issues. I think I see Mr. Klaver raising his hand,  
7 and I also know that the Tribunal wants to highlight some  
8 issues to the Parties, but Mr. Klaver, if you have  
9 something to raise, you can do so now.

10 MR. KLAVER: Excellent. Canada would be ready  
11 to proceed with the cross-examination of Margaret Grignon  
12 and the Expert presentation by her. We note that it is  
13 the requirement for experts to be prepared to undertake  
14 their cross-examination the day before Schedule, and we  
15 are ready to go.

16 PRESIDENT BULL: I see.

17 Mr. Mullins?

18 MR. MULLINS: Our expert is not available right  
19 now, and we had a Schedule and we were relying on it. We  
20 are now at 2:00 on the Schedule, and, you know, I think we  
21 should start out tomorrow so we could have the opportunity  
22 to have our expert testify in the hot tub, so I would like  
23 the opportunity--first off, our expert is not available in  
24 any event, and she was scheduled for today--yesterday  
25 rather--tomorrow.

1 MR. KLAVER: Would I be able to respond to that  
2 briefly?

3 PRESIDENT BULL: Go ahead, Mr. Klaver.

4 MR. KLAVER: Okay. According to PO 14,  
5 Article 5.3, each Party is responsible for ensuring that  
6 its experts shall hold themselves available to appear the  
7 day before they're scheduled to testify, so she does need  
8 to be ready for cross-examination now.

9 PRESIDENT BULL: Mr. Klaver, you obviously have  
10 a point, but if Mr. Mullins says she's not available, I  
11 doubt there is much we can do about that.

12 MR. KLAVER: Okay.

13 PRESIDENT BULL: And Mr. Mullins, as I  
14 understand it, she's not available right now?

15 MR. MULLINS: That is correct.

16 PRESIDENT BULL: Okay. And no doubt she will be  
17 available tomorrow first thing, and we can proceed that  
18 way.

19 MR. MULLINS: Thank you.

20 PRESIDENT BULL: Now, there is an issue that we  
21 thought we should sensitize the Parties to, and Sir  
22 Daniel, is going to raise that.

23 Sir Daniel, whenever you're ready.

24 ARBITRATOR BETHLEHEM: Thank you.

25 I'm hoping that the issue that I'm going to

1 raise is the one that you anticipate that I will sensitize  
2 the Parties to, but if not, you will remind me.

3           And again, I'm looking at counsel for both  
4 Parties again in the same spirit as I did yesterday with  
5 regards to the question I put at the end of the session.

6           There is a point that I didn't put to Mr. Derek  
7 Tennant because, frankly, it seems that neither Party is  
8 making anything of it, so I didn't want to set hares  
9 running, but in Paragraphs 29 to 31 of his Witness  
10 Statement and again in Paragraphs 39 to 41, there is a  
11 reference to GE, and the GE shareholding that GE did not  
12 vote its Shares and the period of GE participation, and we  
13 heard something of that in the context of  
14 cross-examination, including in the confidential session,  
15 which I won't touch upon.

16           My question to both Parties for you to reflect  
17 on for Friday--and I'm quite happy for you to come back  
18 and say "we've got nothing to say"--I, at least, would  
19 find it a little--I would find it useful to hear a little  
20 bit more about the relevance, if at all, of this GE  
21 shareholding, in particular the scale of its  
22 participation, the fact that it is--that it did not vote  
23 its Shares. And I understand that there is no evidence in  
24 the record to show how it voted, but there is witness  
25 assertion, and the period of its participation, and I

1 note, for example, that in Paragraph 41, Mr. Derek Tennant  
2 is saying this resulted in a delay in GE transferring  
3 shares until 2017.

4 So, my question really is simply one of--to hear  
5 or an invitation to both Parties to hear from you each if  
6 there is anything of relevance that you would have us have  
7 regard to with regards to the GE shareholding.

8 Thank you.

9 I hope that was the point that you were  
10 anticipating that I would raise. There are other points,  
11 but I will leave those to you.

12 PRESIDENT BULL: My mind-reading skills have not  
13 failed me.

14 I did not have anything else to raise, but  
15 Mr. Bishop might have.

16 ARBITRATOR BISHOP: If I might simply supplement  
17 what Sir Daniel has suggested. I think I would also find  
18 it useful to hear from the Parties about what the case is,  
19 the Investment cases have held that "control" means in  
20 this context. I think I would be interested in hearing  
21 something about the law on that issue. That's all I have.  
22 Thank you.

23 ARBITRATOR BETHLEHEM: Perhaps in the light of  
24 Mr. Bishop's comment, I would just crystallize more  
25 clearly then also the linkage between the question that

1 I've asked and the question that he asked from the  
2 question that I put yesterday, which goes to the  
3 definitional section in 1139 and its relationship to 1101  
4 which obviously addresses the issue of ownership and  
5 control for purposes of an Investor and an investment.  
6 So, I think we're all scratching at the issue not knowing  
7 whether there is anything there.

8           PRESIDENT BULL: Good. Then if there is nothing  
9 else that either Party wants to raise to the Tribunal, I  
10 think we can adjourn for the day and resume tomorrow at  
11 the usual time. Good. Thank you, everyone.

12           (Whereupon, at 2:09 p.m. (EST), the Hearing was  
13 adjourned until 9:00 a.m. (EST) the following day.)

## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a horizontal line.

DAVID A. KASDAN