

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.**

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

- and -

SKYSERVICE AIRLINES INC.

Respondent

MOTION RECORD

**(motion for substituted service of a summons to witness on Rob Giguere,
returnable on March 27, 2012)**

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
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Lawyers for FTI Consulting Canada Inc., in its
capacity as court-appointed receiver of
Skyservice Airlines Inc.

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**ONTARIO
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**IN THE MATTER OF THE RECEIVERSHIP OF
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BETWEEN:

THOMAS COOK CANADA INC.

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SKYSERVICE AIRLINES INC.

Respondent

**MOTION RECORD
(Motion for Substituted Service, returnable on March 27, 2012)**

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE BANKRUPTCY OF
SKYSERVICE AIRLINES INC.**

BETWEEN:

THOMAS COOK CANADA INC.

Plaintiff

- and -

SKYSERVICE AIRLINES INC.

Defendant

**NOTICE OF MOTION
(motion for substituted service of a summons to witness on Rob Giguere,
returnable March 27, 2012)**

FTI Consulting Canada Inc. in its capacity as court-appointed receiver of Skyservice Airlines Inc. (the "Receiver"), will make a motion to a judge presiding over the Commercial List on Tuesday, March 27, 2012 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. an order for substituted service of a summons to witness on Robert Giguere, in respect of the hearing on May 14, 2012: and

2. such further and other relief as this Court considers just.

2

THE GROUNDS FOR THE MOTION ARE:

1. The Receiver was appointed on March 31, 2010,
2. Shortly thereafter, Sunwing Tours Inc. ("**Sunwing**") advised the Receiver that it was asserting a property claim over certain funds paid by it to Skyservice prior to the Receivership.
3. The Receiver subsequently brought a motion for a declaration that Sunwing has no property interest in the Funds, and Sunwing brought a cross-motion for an order that it is entitled to the recovery of the Funds (the "**Motions**"). The Motions were made returnable on February 13, 2012.
4. Prior to the hearing of the Motions, the Receiver had contacted Rob Giguere, who was the President of Skyservice Airlines Inc. from October 17, 2007 to March 31, 2010, to obtain his evidence in relation to certain issues relevant to determination of the Motions.
5. Mr. Giguere initially agreed to provide an affidavit setting out his knowledge of the matters in issue. However, the Receiver was subsequently unable to contact him to finalize the swearing of the affidavit.
6. Counsel for the Receiver contacted Mr. Giguere on February 10, 2012, and attempted to obtain a sworn affidavit from him setting out his knowledge of the events at issue. However, Mr. Giguere indicated that he did not wish to be in the middle of the dispute, and

did not appreciate that the Receiver had indicated it may subpoena him if he refused to swear an affidavit.

7. On February 13, 2012, at the return of the Motions, the Honourable Mr. Justice Morawetz adjourned the Motions until May 14, 2012. In his endorsement adjourning the Motions, Mr. Justice Morawetz indicated that it would be helpful if Mr. Giguere could meet with counsel for the Receiver and counsel for Sunwing to determine a process by which his evidence could be provided.

8. Counsel for the Receiver made subsequent unsuccessful efforts to contact Mr. Giguere, including by:

- (a) e-mail correspondence to him on February 13, 2012, inviting Mr. Giguere to contact counsel for the Receiver and attaching the endorsement of February 13, 2012;
- (b) telephone calls and voicemails to Mr. Giguere on February 13, 2012, asking Mr. Giguere to contact counsel for the Receiver; and
- (c) letter correspondence to Mr. Giguere on February 15, 2012, enclosing the endorsement and asking Mr. Giguere to contact counsel for the Receiver;

9. A summons to witness (the "**Summons to Witness**") was issued on March 7, 2012 compelling Mr. Giguere to attend at the hearing of the Motions on May 14, 2012.

10. It appears that Mr. Giguere is evading personal service of the Summons to Witness.

11. In the circumstances, an order for substituted service is appropriate. The means of substituted service proposed in the notice of motion are likely to bring the Summons to Witness to the attention of Mr. Giguere.

12. The Receiver relies on Rules 1.04, 2.01, 2.03, 16, 34.04, 37, and 57 of the *Rules of Civil Procedure*.

13. The Receiver also relies on such further and other grounds as counsel may advise and this Court may permit..

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the affidavit of Heather Meredith sworn March 23, 2012;
2. the affidavit of attempted service of Leo Pereira sworn March 19, 2012; and

3. such further and other materials as counsel may advise and this Court may permit..

March 23, 2012

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Lawyers for FTI Consulting Canada Inc., in its
capacity as Trustee in Bankruptcy of Skyservice
Airlines Inc.

IN THE MATTER OF BANKRUPTCY OF SKYSERVICE AIRLINES INC.
BETWEEN:

THOMAS COOK CANADA INC. and SKYSERVICE AIRLINES INC.

Court File No: CV-10-8647-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF MOTION

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Toronto ON M5K 1E6

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Lawyers for FTI Consulting Canada Inc. in its
capacity as court-appointed receiver of
Skyservice Airlines Inc.

#11297390 v.2

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.**

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

- and -

SKYSERVICE AIRLINES INC.

Respondent

AFFIDAVIT OF HEATHER MEREDITH

I, Heather Meredith, of the City of Toronto, in the Province of Ontario, **MAKE OATH**

AND SAY:

1. I am a partner with McCarthy Tétrault LLP, lawyers for FTI Consulting Canada Inc. in its capacity as receiver of Skyservice Airlines Inc. (the "Receiver"). As such, I have knowledge of the matters to which I hereinafter depose, except where I have obtained information from others. In such cases, I expressly so state, I state source of my information, and in all such cases I believe the information I am conveying to be true.

view that it would be prudent to keep track of the funds received by Skyservice that related entirely to future flying that Skyservice was contracted to perform. According to Mr. Giguere, in order to keep track of these funds, the Skyservice accounting staff (Barb Syrek & Percy Gyara) were instructed: a) to indentify payments that had been made to Skyservice that related entirely to future flying that Skyservice was contracted to perform; and b) to transfer any such amounts to separate Skyservice account so Skyservice could keep track of those funds.

Mr. Giguere is also the source of the information set out in paragraph 93 of the Receiver's Tenth Report that the funds were transferred to another account out of an abundance of caution and they were transferred to ensure the funds were protected from misuse or misappropriation. The Receiver notes that, in response to the request by Sunwing, the Receiver asked Mr. Giguere to swear an affidavit setting out these points. While the Receiver understood that Mr. Giguere had agreed to do so, the Receiver has been unable to contact Mr. Giguere in recent weeks to finalize the swearing of the affidavit. Accordingly, we are attaching as Schedule E, copies of the e-mails from Mr. Giguere, or relevant excerpts therefrom, confirming his statements and agreement with the language set out in the Receiver's Tenth Report. Should Sunwing wish to seek to examine Mr. Giguere as a witness in this matter, the Receiver is willing to cooperate in attempts to contact Mr. Giguere, noting of course that Mr. Giguere is no longer employed by Skyservice, not retained or employed by the Receiver and not under the Receiver's control or direction."

Attempts to contact Mr. Giguere in advance of the Motions

8. Jamie Engen of the Receiver had been the primary point of contact between the Receiver and Mr. Giguere. I am advised by Mr. Engen that he attempted to contact Mr. Giguere on numerous occasions prior to the Motions, by both telephone and email.

9. Shortly before the Motions, I personally attempted to contact Mr. Giguere by telephone and email.

10. Mr. Giguere returned my call on February 10, 2012 (the Friday before the Motions were to take place on Monday, February 13, 2012). After speaking with him, I emailed him at his email address: robertgiguere@rogers.com. In my email, I set out the information that he had

previously provided and asked if he would be willing to swear an affidavit to that effect. Mr. Giguere responded to my email and indicated that he would call me back later that day. A copy of this email correspondence is attached as **Exhibit "A"**.

11. Mr. Giguere did call me again later that day (on February 10, 2012) as he had agreed to do, and we discussed revisions to the affidavit, among other things. In one or both of the calls I had with Mr. Giguere, he indicated that he did not wish to be in the middle of this dispute and, among other things, did not appreciate that the Receiver had indicated it may subpoena him if he refused to swear an affidavit.

12. After our telephone conversation, I emailed Mr. Giguere again. In my email, I set out a revised draft affidavit, incorporating the comments he had made to me, and asked if he had decided whether he would be willing to swear an affidavit. Mr. Giguere never responded to this email, or my further attempts to contact him to date. A copy of my email sent at 6:38 pm on February 10, 2012 is attached as **Exhibit "B"**.

Adjournment of the hearing before Honourable Justice Morawetz

13. On February 13, 2012 the parties appeared before the Honourable Mr. Justice Morawetz for the hearing of the Motions. At that time, the Honourable Justice Morawetz adjourned the hearing until May 14, 2012 and noted the following:

"It became apparent at the outset of the hearing that evidence on certain points will be required in order to determine the points at issue in this motion. In this regard, it would be helpful if Mr. Rob Giguere and Mr. G. Bailey could meet with counsel to determine a process by which evidence could be provided."

A copy of the Endorsement of the Honourable Justice Morawetz dated February 13, 2012 (the "Endorsement") is attached as **Exhibit "C"**.

Further attempts to contact Mr. Giguere

14. On February 13, 2012, after the adjournment of the Motions, I phoned Mr. Giguere and left a voicemail describing the Endorsement and asking Mr. Giguere to contact us to set up a meeting. I also sent an email to Mr. Giguere, enclosing the Endorsement and requesting that Mr. Giguere contact us to set up a meeting. To date, Mr. Giguere has not responded to my email or voicemail messages. A copy of my email to Mr. Giguere dated February 13, 2012 is attached as **Exhibit "D"**.

15. On February 15, 2012, I sent a letter to Mr. Giguere at his home address at 1203 Greenoaks Drive, Mississauga, Ontario. In my letter I noted that we had been in touch with him a number of times seeking to obtain evidence relevant to a determination of the Motions. I noted that the last time we spoke was on February 10, 2012 when I had asked Mr. Giguere to swear an affidavit but had never heard back from him. I enclosed the Endorsement of the Honourable Justice Morawetz indicating that it would be helpful if Mr. Giguere could meet with us and counsel for Sunwing to arrange a process by which evidence could be provided and indicated that we would like to arrange such a meeting. A copy of my letter to Mr. Giguere of February 15, 2012 is attached as **Exhibit "E"**.

16. My letter to Mr. Giguere was subsequently returned by Canada Post. A copy of the envelope stamped return to sender and marked "moved" is attached as **Exhibit "F"**.

Attempts to serve Mr. Giguere with a Summons to Witness

17. After repeated failed attempts to contact Mr. Giguere as set out herein, we obtained a summons to witness issued on March 7, 2012 compelling Mr. Giguere to attend at the hearing of the Motions on May 14, 2012 (the "**Summons to Witness**"). A copy of the Summons to Witness is attached as **Exhibit "G"**.

18. By letter dated March 8, 2012, sent by process server, my colleague Geoff R. Hall indicated to Mr. Giguere that we had made repeated attempts to contact him but had been unable to do so, and enclosed the Endorsement and the Summons to Witness. Mr. Hall indicated that if Mr. Giguere was not prepared to meet with us, we will have no choice but to compel him to testify at the May 14, 2012 hearing. Mr. Hall asked that Mr. Giguere contact him to set up a without prejudice, off-the-record meeting. I am advised by Mr. Hall that a cheque for attendance money in the amount of \$64.11 was also enclosed with his letter. A copy of Mr. Hall's letter of March 8, 2012 to Mr. Giguere is attached as **Exhibit "H"**.

19. The repeated attempts to serve Mr. Giguere by the process server are described in the affidavit of attempted service of Leo Pereira sworn March 19, 2012 (the "**Pereira Affidavit**").

20. I confirmed with the Receiver that the address at which the process server attempted to serve Mr. Giguere is the address in the Receiver's records, and it was the address on Mr. Giguere's proof of claim filed in the Skyservice claims process.

21. As set out above, I communicated with Mr. Giguere at the email address:
robertgiguere@rogers.com.

22. Given our efforts to contact Mr. Giguere and personally serve him with the Summons to Witness, as described herein and in the Pereira Affidavit, have been unsuccessful, it is my opinion that Mr. Giguere is likely evading service of the Summons to Witness, and that personal service of the Summons to Witness on Mr. Giguere is impractical.

SWORN BEFORE ME at the City of
Toronto, on March 23, 2012.



Commissioner for taking affidavits

David A. Hainy



Heather Meredith

TAB A

From: Rob Giguere [mailto:robertgiguere@rogers.com]
Sent: Friday, February 10, 2012 3:57 PM
To: Meredith, Heather L.
Subject: Re: Skyservice

I will call before 5.

Rob.
Sent from my BlackBerry device on the Rogers Wireless Network

From: "Meredith, Heather L." <HMEREDITH@MCCARTHY.CA>
Date: Fri, 10 Feb 2012 15:55:26 -0500
To: robertgiguere@rogers.com<robertgiguere@rogers.com>
Subject: RE: Skyservice

My office is 416-601-8342 and my cell is 416-725-4453. I would really appreciate it if you could get back to me before 5 with your initial thoughts, if possible, given the hearing is scheduled for Monday morning and I do need to keep Sunwing's counsel apprised.

Thanks,

Heather

This is Exhibit A referred to in the
affidavit of Heather Meredith
sworn before me, this 23rd
day of March 2012



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

David H. Henry

Heather L. Meredith
Bankruptcy & Restructuring
T: 416-601-8342
McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
PLEASE, think of the environment before printing this message.

From: Rob Giguere [mailto:robertgiguere@rogers.com]
Sent: Friday, February 10, 2012 3:52 PM
To: Meredith, Heather L.
Subject: Re: Skyservice

Heather.

What number can I call you later at.

6. Before the Funds were transferred to the separate account, I had been involved in creating other trusts such as a trust in favour of Skyservice employees and a trust in favour of the Receiver General of Canada (in relation to an Air Traveller's Security Charge). These trusts were documented as trusts and we deposited the trust funds to be held in a trust account with external legal counsel.

7. Having created trusts for other monies at the same time, I understood the difference between establishing a trust and simply transferring the funds to a different account. In this case, we chose to move the Funds to a separate Skyservice account. There was no restriction on Skyservice's ability to use the Funds in this separate account.

McCarthy Tétrault
Heather L. Meredith
Bankruptcy & Restructuring
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PLEASE, think of the environment before printing this message.

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Attachments:
image001.gif (3133 Bytes)

TAB B

This is Exhibit.....¹⁶.....referred to in the
affidavit of...*Heather Meredith*.....
sworn before me, this.....^{23rd}.....
day of.....*March*.....20.....¹².....

.....
A COMMISSIONER FOR TAKING AFFIDAVITS

David A. Hainby

From: Meredith, Heather L.
Sent: Friday, February 10, 2012 6:38 PM
To: 'robertgiguere@rogers.com'
Subject: RE: Skyservice

Hi Rob,

I have revised the affidavit as we discussed. Please let me know if the below is consistent with our discussion or if you have any other changes. Please also let me know your decision as to whether you are willing to swear an affidavit.

Thanks,

Heather

1. I was the President of Skyservice Airlines Inc. ("**Skyservice**") prior to March 31, 2010, the date on which FTI Consulting Canada Inc. was appointed receiver (the "**Receiver**") of all of the assets, undertakings and properties of Skyservice. I therefore have personal knowledge of the matters set out herein.
2. On or before March 29, 2011, I was aware that a receiver may be appointed over Skyservice; however, at the same time, I was working on options to provide alternatives to a receivership.
3. In the circumstances, my management team and I thought it would be prudent to carefully keep track of the funds received by Skyservice at this time. With respect to payments that related entirely to future flying that Skyservice was contracted to perform, we decided that, out of an abundance of caution, it would be prudent to identify payments that had been made to Skyservice that related entirely to future flying and to transfer any such amounts to a separate Skyservice account.
4. The Skyservice accounting staff (Barb Syrek & Percy Gyara) were instructed: a) to identify payments that had been made to Skyservice that related entirely to future flying that Skyservice was contracted to perform; and b) to transfer any such amounts to a separate Skyservice account so we could keep track of those funds.
5. To the best of my knowledge, the funds identified as relating entirely to future flying when received (the "Funds") were transferred pursuant to these instructions to another Skyservice account.
6. In the days prior to the time the Funds were transferred to the separate account [**NTD: the direction to Cassels Brock is dated March 25, 2010**], I had been involved in creating other trusts such as a trust in favour of Skyservice employees and a trust in favour of the Receiver General of Canada (in relation to an Air Traveller's Security Charge). These trusts were documented as trusts and we deposited the trust funds to be held in a trust account with external legal counsel.

7. Having created trusts for other monies at the same time, I understood the difference between establishing a trust and simply transferring the funds to a different account. Among other things, I understood that when a trust is created, it means that Skyservice could not use the trust funds for any other purpose and that, if there has not been a receivership, Skyservice could not use those funds. In this case, we chose to move the Funds to a separate Skyservice account. There was no restriction on Skyservice's ability to use the Funds in this separate account.

Heather L. Meredith

Bankruptcy & Restructuring

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Toronto ON M5K 1E6

PLEASE, think of the environment before printing this message.

TAB C

BETWEEN:

THOMAS COOK CANADA INC.

- and -

SKYSERVICE AIRLINES INC.

Court File No. CV-10-8647-00CL

C.C. Hall + H. Meredith
for Receiver

Feb 13, 2012

S. Weiss + K. T. Eichen for Sunwing

It became apparent at the outset of the hearing that evidence in certain parts will be required in order to determine the point at issue in this matter. In this regard it would be helpful if Mr. Rob before at 11:00. Barry could meet with counsel to determine a process by which evidence could be provided.

In the circumstances an order to provide the parties with adequate time to address this issue, with adjournment to Monday Feb 14, 2012 after me (1 day has been booked.)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at Toronto

MOTION RECORD

(motion for an Order declaring that the amounts claimed in the Sunwing Claim are not subject to a proprietary or trust interest)

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E-mail: hmeredith@mccarthy.ca

Fax: (416) 868-0673
Lawyers for FTI Consulting Canada Inc.
#10429743

This is Exhibit..... referred to in the affidavit of Heather Meredith sworn before me, this 13th day of March 2012

COMMISSIONER FOR TAKING AFFIDAVITS

TAB D

From: Meredith, Heather L.
Sent: Monday, February 13, 2012 3:29 PM
To: Rob Giguere [robertgiguere@rogers.com]
Cc: Hall, Geoff R.
Subject: FW: Skyservice - Morawetz J.'s endorsement

Rob,

I am writing further to my voicemail message. As you know, the motion in relation to the Sunwing payments was scheduled for today. I am attaching the endorsement from the Judge here. As you will see, he adjourned today's motion, having indicated that evidence about Skyservice's knowledge of the impending receivership and its intention in moving the funds to the separate account was required. In the attached endorsement, the Judge states that it would be helpful if you would meet with counsel to determine a process by which your evidence could be provided. He also adjourned the motion to May 14, 2012. The Judge expects the evidence will be before him at the hearing of the motion on May 14th.

I would like to schedule a meeting with you, the Receiver and Sunwing's counsel to discuss these issues in accordance with the Judge's endorsement. Would you please let me know your availability this week for a meeting. The meeting can be held at our offices or another location if more convenient for you.

I will look forward to hearing from you.

Sincerely,


Heather



Heather L. Meredith
Bankruptcy & Restructuring
T: 416-601-8342

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto ON M5K 1E6

"D"
This is Exhibit.....referred to in the
affidavit of...*Heather Meredith*
sworn before me, this...*23rd*
day of...*March*.....20*12*


A COMMISSIONER FOR TAKING AFFIDAVITS
David H. Heiney

PLEASE, think of the environment before printing this message.

TAB E

**mccarthy
tétrault**

McCarthy Tétrault LLP
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Toronto ON M5K 1E6
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Tel: 416-362-1812
Fax: 416-868-0673

21

Heather Meredith
Direct Line: 416.601.8342
Email: hmeredith@mccarthy.ca

Assistant: Emilia Moon-de Kemp
Direct Line: 416-601-7592
Email: emoondek@mccarthy.ca

February 15, 2012

Via Registered Mail

Robert G. Giguere
1203 Greenoaks Drive
Mississauga ON L5J 3A1

Dear Mr. Giguere:

Re: FTI Consulting Canada Inc.

"E"
This is Exhibit.....referred to in the
affidavit of Heather Meredith
sworn before me, this 23rd
day of March 2012


A COMMISSIONER FOR TAKING AFFIDAVITS
David A. Henry

As you know, we represent FTI Consulting Canada Inc. in its capacity as receiver (the "Receiver") of the assets and property of Skyservice Airlines Inc. ("Skyservice"). As you also know, Sunwing Vacations Inc. ("Sunwing") has brought a motion in the Skyservice receivership proceedings claiming a trust or proprietary interest over certain funds paid by Sunwing to Skyservice. Of particular focus has been an amount of money that Skyservice transferred from its general bank account to another bank account prior the receivership, and the reason(s) for that transfer.

We have been in touch with you a number of times, seeking to obtain your evidence in regard to the points at issue on this motion, including the funds transfer. Most recently, I spoke to you on February 10, 2012 and asked you to swear an affidavit but, ultimately, we did not hear back from you. The motion then proceeded on February 13, 2012. At the start of the motion on February 13th, the Judge adjourned the motion because he was of the view that more direct evidence about Skyservice's knowledge of the impending receivership and its intention in moving funds to the separate account was required. The adjournment to May 14, 2012 is to allow the parties to address this evidentiary issue.

To address this issue and satisfy the Court's concern, obtaining your direct evidence on these points is important. In the attached endorsement of Mr. Justice Morawetz, he indicates that it would be helpful if you could meet with counsel [for the Receiver and Sunwing] to determine a process by which this evidence could be provided. We would like to arrange that meeting.

We have already provided you with a copy of Justice Morawetz' endorsement by e-mail and left two voicemail messages for you but we have not heard back from you. We would appreciate it if you could contact us to advise if you are willing to meet with counsel to discuss the manner in which your direct evidence can be provided on the key points at issue. As we have noted, your attendance at such a meeting has been suggested in the Court's endorsement.

Finally, while you have no obligation to do so, I have indicated to you previously that you may wish to retain counsel to represent you. If it would be of interest to you, we would be pleased to provide you with a referral to lawyers who work in this field.

22

Yours very truly,

McCarthy Tétrault LLP

Per:

Heather Meredith

HM/emdk
Attachment

c: Jamey Gage
Geoff Hall
Steven Weisz and Katherine McEachern (Counsel for Sunwing Vacations Inc.)

#11193321

TAB F

This is Exhibit "F" referred to in the affidavit of Heather Meredith sworn before me, this 23rd day of March 2012

23

A COMMISSIONER FOR TAKING AFFIDAVITS
David H. Hair

mccarthy
tetrauit

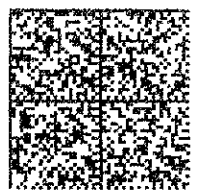
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MEREDITH

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Sender warrants that this shipment does not contain dangerous goods.
L'expéditeur garantit que cet envoi ne contient pas de matières dangereuses.

Signature Required
Signature requise

TAB G

This is Exhibit ^{"6"} referred to in the affidavit of Heather Meredith sworn before me, this 23rd day of March 2012.

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Court File No. CV-10-8647-00CL

A COMMISSIONER FOR TAKING AFFIDAVITS
David M. Hanes

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.**

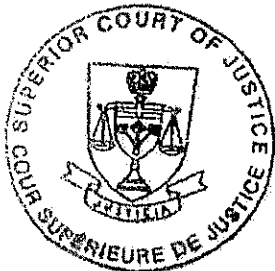
THOMAS COOK CANADA INC.

Applicant

- and -

SKYSERVICE AIRLINES INC.

Respondent



SUMMONS TO WITNESS

TO: **Robert Giguere**
1203 Greenoaks Drive
Mississauga, ON L5J 3A1

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE IN COURT at the hearing of this proceeding on Monday, May 14, 2012, at 10:00 a.m., at 330 University Avenue, 8th floor, Toronto, Ontario and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

All documents (in any form including, but not limited to, data and information in electronic form) which are in your possession, power or control and which relate to the following issues: (i) when did Skyservice Airlines Inc. ("Skyservice") know that a receivership application would be made on March 31, 2010 and that Skyservice consequently would cease operations on that day?; and (ii) why did Skyservice place \$2,329,473 received from Sunwing Tours Inc. in late March 2010 into a separate bank account?

ATTENDANCE MONEY for one day of attendance is served with this summons, calculated in accordance with Tariff A of the Rules of Civil Procedure, as follows:

Attendance allowance of \$ 50.00 daily	\$	50.00
Travel allowance	\$	14.11
Overnight accommodation and meal allowance	\$	N/A
TOTAL	\$	64.11

If further attendance is required, you will be entitled to additional attendance money.

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS REQUIRED BY THIS SUMMONS, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

Date March 7th, 2012

Issued by 
Local Registrar

Address of court office 330 University Avenue
7th Floor
Toronto, ON M5G 1R7
Giuseppe Di Pietro
Registrar

This summons was issued at the request of, and inquiries may be directed to:

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC#: 347010
Tel: 416 601-7856
E-mail: ghall@mccarthy.ca

Heather Meredith LSUC#: 48354R
Tel: 416 601-8342
E-mail: hmeredith@mccarthy.ca
Fax: 416 868-0673

Lawyers for FTI Consulting Canada Inc., in its capacity as court-appointed receiver of Skyservice Airlines Inc.

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

- and -

SKYSERVICE AIRLINES INC.

Court File No. CV-10-8647-00CL

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SUMMONS TO WITNESS

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
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Lawyers for FTI Consulting Canada Inc.,
in its capacity as court-appointed receiver
of Skyservice Airlines Inc.

#1253587

TAB H

**mccarthy
tétrault**

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

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Geoff R. Hall
Direct Line: 416 601-7856
Direct Fax: 416 868-0673
Email: ghall@mccarthy.ca

March 8, 2012

Via Process Server

Mr. Robert Giguere
1203 Greenoaks Drive
Mississauga, ON L5J 3A1

This is Exhibit ^{"H"}.....referred to in the
affidavit of Heather Meredith
sworn before me, this 23rd
day of March.....2012


A COMMISSIONER FOR TAKING AFFIDAVITS

Dear Mr. Giguere:

Re: Skyservice Airlines Inc.

As you are aware, we are counsel for the receiver of Skyservice Airlines Inc. ("**Skyservice**").

As my colleague Heather Meredith has previously advised you, a motion has been brought before the Honourable Justice Morawetz, the judge presiding over the Skyservice receivership proceedings, with respect to a trust claim asserted by Sunwing Tours Inc. ("**Sunwing**") over certain funds. In broad terms, the motion raises two issues: (i) when did Skyservice know that a receivership application would be made on March 31, 2010 and that Skyservice consequently would cease operations on that day?; and (ii) why did Skyservice place \$2,329,473 received from Sunwing Tours Inc. in late March 2010 into a separate bank account?

The motion came on for a hearing on February 13, 2012 but was adjourned because Justice Morawetz was of the view that he required additional evidence to determine the issues on the motion. He adjourned the motion to May 14, 2012 and directed that "it would be helpful if Mr. Rob Giguere and Mr. G. Bailey could meet with counsel to determine a process by which evidence could be provided." I enclose Justice Morawetz's handwritten endorsement of February 13, 2012, along with an unofficial transcription of the endorsement.

We have subsequently attempted to reach you by e-mail and ordinary mail to ask you to have the meeting directed by Justice Morawetz, but we have been unable to contact you.

If you will not meet with us, we will have no choice but to compel you to testify that the May 14, 2012 hearing. While we hope that this step will not be necessary, we enclose a Summons to Witness compelling your attendance at the May 14, 2012 hearing.

However, if we can meet as directed by Justice Morawetz, it may be possible to avoid the need for you to testify in person. At the very least, such a meeting will allow us to devise a process that will inconvenience you as little as possible, and will allow us to prepare you fully for the experience of testifying.

Accordingly, please contact me at your earliest convenience to set up a meeting. Counsel for Sunwing will be in attendance. The meeting will be held on a without prejudice, off-the-record basis. While it is not necessary for you to bring counsel to the meeting, you are of course welcome to bring counsel if you wish.

I thank you for your anticipated cooperation, and look forward to hearing from you.

Yours very truly,



Geoff R. Hall
GRH/kt
Encl.
c: Heather Meredith

#11253402

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

- and -

SKYSERVICE AIRLINES INC.

Court File No. CV-10-8647-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF HEATHER MEREDITH

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
Toronto Dominion Bank Tower
Toronto ON M5K 1E6

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Fax: (416) 868-0673

Lawyers for FTI Consulting Canada Inc. in
its capacity as court-appointed receiver of
Skyservice Airlines Inc.

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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**IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.**

THOMAS COOK CANADA INC.

Applicant

-and-

SKYSERVICE AIRLINES INC.

Respondent

AFFIDAVIT OF ATTEMPTED SERVICE

I, Leo Pereira, Process Server, of the City of Brampton, in the Province of Ontario
MAKE OATH AND SAY AS FOLLOWS:

1. On 8 March 2012, at 6:35 p.m., I attempted to serve Robert Giguere with a Summons to Witness and a Cheque for \$64.11 in Attendance Monies, at 1203 Greenoaks Drive, Mississauga, Ontario.
2. I spoke to two females who identified themselves as the wife and daughter of Robert Giguere. They both stated to me that Robert Giguere was out of town and would not be returning until March 14, 2012.
3. On 14 March 2012, at 6:45 p.m., I again attended at the above address and spoke to the wife of Robert Giguere. She now stated to me that Robert Giguere had returned the night before and he had left today for China with his son. She said he would be returning in two weeks, but she could not say which day exactly.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario
this 19th day of MARCH 2012)

A Commissioner etc.

Leo Pereira

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) **TUESDAY THE 27th**
)
MR. JUSTICE MORAWETZ) **DAY OF MARCH, 2012**

**IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.**

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

- and -

SKYSERVICE AIRLINES INC.

Respondent

ORDER

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as court-appointed receiver of Skyservice Airlines Inc. (the "**Receiver**"), for an order for substituted service of a summons to witness on Rob Giguere, was heard this day, at 330 University Avenue, Toronto.

ON READING the notice of motion, the affidavit of Heather Meredith sworn March 23, 2012 and the affidavit of attempted service of Leo Pereira sworn March 19, 2012, and on hearing the submissions of counsel for the Receiver, no one else appearing:

1. **THIS COURT ORDERS** that the Receiver is granted leave to effect substituted service on Robert Giguere of a summons to witness in respect of the hearing on May 14, 2012 (the "**Summons to Witness**") by the following means:

- (a) by electronic transmission of the Summons to Witness to robertgiguere@rogers.com;
- (b) by leaving a copy of the Summons of Witness, in a sealed envelope addressed to Mr. Giguere, with an adult member of Mr. Giguere's residence at 1203 Greenoaks Drive, Mississauga, ON, L5J 3A1; and
- (c) by mailing a copy of the Summons to Witness to Mr. Giguere's residence at 1203 Greenoaks Drive, Mississauga, ON, L5J 3A1.

2. **THIS COURT ORDERS** that service of the Summons to Witness will be effective two days after all of the foregoing steps have been completed.

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

- and -

SKYSERVICE AIRLINES INC.

Court File No. CV-10-8647-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
Toronto Dominion Bank Tower
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Lawyers for FTI Consulting Canada Inc.
#10366310 v. 2

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

- and -

SKYSERVICE AIRLINES INC.

Court File No. CV-10-8647-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

MOTION RECORD

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Lawyers for FTI Consulting Canada Inc.
#10366310