

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

**Skyservice Airlines Inc.**

**SUPPLEMENT TO THE SECOND REPORT OF THE RECEIVER**

**June 17, 2010**

**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**

**SUPPLEMENT TO THE  
SECOND REPORT TO THE COURT SUBMITTED BY  
FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS RECEIVER**

**INTRODUCTION**

1. On March 31, 2010 (the “**Date of Receivership**”), FTI Consulting Canada Inc. was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of Skyservice Airlines Inc. (“**Skyservice**” or the “**Company**”) pursuant to the order of the Honourable Mr. Justice Gans (the “**Receivership Order**”) granted upon the application of Thomas Cook Canada Inc. (“**TCCI**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”) and section 101 of the *Courts of Justice Act (Ontario)*.
2. To date the Receiver’s has filed two Reports. The Receiver’s Second Report was filed, inter alia, in support of the Receiver’s motion for an Order approving:

- (i) the payment of the Break-Fee, as defined in the Second Report, in the circumstances set out in the agreement of purchase and sale, as amended, between Skyservice Airlines Inc., acting by its Receiver, and 2157565 Ontario Inc. dated May 25, 2010 (the “**Fasken Agreement**”) in respect of Skyservice’s premises located at 31 Fasken Drive, Toronto (the “**Fasken Property**”); and
  - (ii) the marketing plan and sales process proposed by the Receiver for the sale of Fasken Property and the chattels located therein, as contemplated in the Fasken Agreement (the “**Fasken Marketing Process**”).
3. At the return of the motion, the Court requested that the Receiver file a supplemental report to provide additional commentary in respect of the Break-Fee and commission payable in connection with the Fasken Agreement and Fasken Marketing Process. Accordingly, the Receiver has prepared this supplement to the Receiver’s Second Report.

#### **TERMS OF REFERENCE**

4. In preparing this report, the Receiver has relied upon unaudited financial information of Skyservice, Skyservice’s books and records, certain financial information prepared by Skyservice and discussions with Skyservice’s employees. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

5. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order or the Receiver's previous reports.

#### **THE BREAK-FEE**

6. As described in the Second Report, the Fasken Agreement provides for the payment of a Break-Fee of \$160,000, being 3% of the Purchase Price, in the circumstances set out in the Fasken Agreement. In addition to the Break-Fee, the Fasken Marketing Process approved by the Court on June 16, 2010, provides that a commission of up to 1.5% will be paid to a licensed real estate agent (the "**Agent**") representing the ultimate purchaser of the Fasken Property (the "**Fasken Purchaser**") if a sale proceeds other than under the Fasken Agreement, but only upon the closing of the sale and from the proceeds of sale. Accordingly, the third-party "deal costs" for the sale of the Fasken Property will be:
  - (i) 3% in the event that the Fasken Agreement is completed; or
  - (ii) Between 3% and 4.5% in the event that a sale is completed as a result of a superior offer in the Fasken Marketing Process.
7. As noted in the Second Report, the Receiver obtained a number of listing proposals from real estate brokers. The proposed commission structures ranged from 2.5% to 4% for a sale with the listing agent representing both buyer and seller and from 3.5% to 5% for a sale with a co-operating broker.

8. While no commission or fee would have been payable if the Receiver had agreed to sell the Fasken Property to the Purchaser under the Fasken Agreement with no further marketing efforts, such a sale would not, in the Receiver's view, have been appropriate in the circumstances and would have been unlikely to receive court approval having regard to the applicable principles set out in *Soundair*.<sup>1</sup>
9. Accordingly, in any circumstance, commissions in the range 2.5% to 5% would have been payable on a sale of the Fasken Property as compared to the 3%-4.5% combined Break-Fee and broker commission under the Fasken Agreement and Fasken Marketing Process. Accordingly, in the Receiver's view, the total "deal costs" are not materially different than they would have been if a traditional listing approach had been adopted.
10. In the Receiver's view, having a binding agreement which provides a base-line for the marketing of the Fasken Property removes down-side risk while preserving the upside potential for the benefit of creditors. In addition, given the level of interest expressed in the Fasken Property, the Receiver believes that a competitive bid and auction process has the potential to result in a higher realization than a traditional listing process where individual offers are assessed and dealt with on whatever timeframe they may be submitted.
11. Moreover, the real estate brokers' proposals for a traditional listing approach suggested a 3-6 month timeframe to complete. The Fasken Marketing Process contemplates offers being submitted by July 30, 2010, with an auction to be conducted approximately 3 days later, if required. As such, the Fasken Marketing Process is expected to conclude the sale of the Fasken Property in less time than a traditional listing approach.

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<sup>1</sup> Royal Bank of Canada v. Soundair Corp., 1991 Can LII 2727 (ON C.A.)

12. Finally, the Fasken Purchaser has already undertaken its due diligence and incurred other expenses associated with negotiating the Fasken Agreement. The Fasken Purchaser was only willing to act as the stalking-horse if compensated for such costs in the event that it is not ultimately the purchaser. In order for an auction process to be effective, while providing downside protection, a stalking-horse bid is required. The Break-Fee provided in the Fasken Agreement helps to compensate for costs of acting as a stalking-horse purchaser and, therefore, helps to ensure there is a stalking-horse bid.
  
13. Therefore, the Receiver is satisfied that a “stalking horse” process is appropriate in the circumstances. As noted in the Second Report, the Receiver is of the view that the “stalking horse” Fasken Agreement and Fasken Marketing Process should achieve the highest and best realization of the Fasken Property and related assets in the circumstances.

The Receiver respectfully submits to the Court this supplement to the Second Report.

Dated this 17<sup>th</sup> day of June, 2010.

FTI Consulting Canada Inc.  
in its capacity as receiver of  
Skyservice Airlines Inc.  
and not in its personal or corporate capacity



Nigel D. Meakin  
Senior Managing Director