

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)**

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

**MOTION RECORD
(INSPECTOR ELIGIBILITY MOTION
returnable August 3, 2012)**

July 24, 2012

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Skyservice Airlines Inc.

TO: Service List

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

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TAB 1

Court File No. 31-OR-207744-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)**

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

**NOTICE OF MOTION
(INSPECTOR ELIGIBILITY MOTION)**

FTI CONSULTING CANADA INC., in its capacity as Trustee in Bankruptcy of Skyservice Airlines Inc., (the “**Trustee**”) will make a motion to a judge presiding over the Commercial List on Friday, August 3, 2012 at 10 a.m., at 330 University Avenue, Toronto.

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

THE MOTION IS FOR:

1. advice and directions as to whether Mr. Mark Williams, a representative of Sunwing Airlines Inc. and Sunwing Tours Inc. (“**Sunwing**”), is eligible to be appointed as an inspector in the bankruptcy proceeding of Skyservice Airlines Inc. (“**Skyservice**”); and
2. such further and other relief as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

1. FTI Consulting Canada Inc. was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Skyservice on March 31, 2010.

2. An order lifting the stay of proceedings was obtained on June 16, 2010 to allow the commencement of a bankruptcy application against Skyservice (the “**Bankruptcy Application**”), which was expressly commenced for the purpose of establishing the date of the initial bankruptcy event for the purposes of the *Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”). The Bankruptcy Application was adjourned *sine die* and the administration of the Skyservice estate continued in the receivership proceedings (the “**Receivership Proceedings**”).
3. The Receiver has been conducting a claims process in the Receivership Proceedings (the “**Claims Process**”). The Receiver has also responded to an allegation by Sunwing that certain funds provided by Sunwing to Skyservice as prepayments for flights not actually provided as a result of the receivership “are subject to Sunwing’s interest, including without limitation a proprietary or trust interest, do not form part of the Skyservice estate and are not subject to any court ordered charges or other security” (the “**Sunwing Trust Claim**”).
4. In response to the Sunwing Trust Claim, the Receiver brought a motion in the Receivership Proceedings for, among other things, an order determining that the amounts claimed in the Sunwing Claim are not subject to a proprietary or trust interest as alleged by Sunwing. Sunwing brought a cross-motion alleging that certain funds are held in an “actual” trust for the benefit of Sunwing and other funds are subject to a constructive trust for the benefit of Sunwing. Sunwing relies on affidavit evidence from Mr. Williams in support of its motion.
5. Both the Receiver’s motion and Sunwing’s cross-motion in relation to the Sunwing Trust Claim are outstanding and continue to be actively litigated by the parties.
6. On March 29, 2012, the Court issued an order adjudging Skyservice bankrupt (the “**Bankruptcy Order**”) and, among other things:

- (a) vesting the assets of Skyservice in the Trustee subject to the rights, powers and authority of the Receiver; and
 - (b) ordering that the determination of claims in accordance with the Claims Procedure Order in the Receivership Proceedings is effective and binding in the Bankruptcy Proceedings as if allowed by the Trustee and finally determined in the Bankruptcy Proceedings on such basis.
7. At the first meeting of creditors on April 19, 2012 (the “**First Meeting of Creditors**”), Mark Williams was nominated as an inspector.
8. Section 116(2) of the BIA provides that “No person is eligible to be appointed or to act as an inspector who is a party to any contested action or proceedings by or against the estate of the bankrupt.”
9. There is uncertainty as to whether the ongoing litigation in the Skyservice receivership between the estate and Sunwing in relation to the Sunwing Trust Claim constitutes a “contested action or proceedings against the estate of the bankrupt” such that Mr. Williams is ineligible to act as an inspector.
10. At the First Meeting of Creditors, Mr. Williams was appointed as an inspector subject to confirmation from the Court as to his eligibility to act as inspector. The Trustee indicated to the creditors that it would seek the advice and directions of the Court in this regard.
11. The Trustee also relies on:
- (a) sections 34(1) and 116(2) of the BIA; and

(b) 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. First Report of the Trustee (Inspector Eligibility Motion); and
2. Such further and other material as counsel may advise and this Court may permit.

July 20, 2012

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IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

B E T W E E N :

THOMAS COOK CANADA INC.

- and -

SKYSERVICE AIRLINES INC.

Court File No. 31-OR-207744-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

NOTICE OF MOTION

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

#11402022

TAB 2

Court File No. 31-OR-207744-T

Skyservice Airlines Inc.

FIRST REPORT TO THE COURT OF THE TRUSTEE

July 20, 2012

Court File No. 31-OR-207744-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

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

**FIRST REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS TRUSTEE**

INTRODUCTION

1. On March 31, 2010 (the “**Date of Receivership**”), FTI Consulting Canada Inc. (“**FTI Consulting**”) was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of Skyservice 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) (the “**Receivership Proceedings**”).

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2. On June 16, 2010, Sunwing Airlines Inc. and Sunwing Tours Inc. (together “**Sunwing**”) obtained an order lifting the stay of proceedings imposed by the Receivership Order for the purpose of allowing Sunwing to commence a bankruptcy application against Skyservice (the “**Bankruptcy Application**”) and to adjourn the hearing of the Bankruptcy Application *sine die*. The Bankruptcy Application was expressly commenced for the purpose of establishing the date of the initial bankruptcy event for the purposes of the BIA and to make available the rights and remedies under the BIA.
3. By Order dated June 30, 2010, the Court authorized the amendment of the Bankruptcy Application to add Thomson Airways Limited (“**Thomson**”) as a creditor.
4. On March 26, 2012, Sunwing advised the Receiver that it was not prepared to proceed with the Bankruptcy Application at that time. Another creditor, International Lease Finance Corporation (“**ILFC**”), sought and obtained an order substituting it for Sunwing and Thomson in the Bankruptcy Application pursuant to section 43(13) of the BIA.
5. Pursuant to an Order of the Honourable Mr. Justice Morawetz granted March 29, 2012 (the “**Bankruptcy Order**”), Skyservice was adjudged bankrupt and a Bankruptcy Order was made against Skyservice. FTI Consulting was appointed as trustee of the bankruptcy estate of Skyservice (the “**Trustee**”). The bankruptcy proceedings of Skyservice are hereinafter referred to as the “**Bankruptcy**”. A copy of the Bankruptcy Order is attached hereto as Appendix A.
6. Paragraph 4 of the Bankruptcy Order states:

“4. THIS COURT ORDERS that the assets, undertakings and properties of Skyservice acquired for, or used in relation to a business carried on by Skyservice, including all proceeds therefrom (the “Receivership Property”) shall

- 3 -

vest in the Trustee subject to the rights, powers and authority of FTI Consulting Canada Inc. in its capacity as receiver (the "Receiver") in respect of the Receivership Property pursuant to the Order of the Honourable Justice Gans dated March 31, 2010 (as may be amended from time to time, the "Receivership Order"), made pursuant to section 243(1) of the BIA and section 101 of *the Courts of Justice Act* (Ontario), and all other Orders made in Court File No. CV-10-8647-00CL (the "Receivership Proceedings") and, without limitation to the foregoing, the Receivership Property will continue to be subject to the court-ordered charges created pursuant to the Receivership Order in accordance with its terms and any further Orders in the Receivership Proceedings."

7. Paragraph 7 of the Bankruptcy Order states:

"7. THIS COURT ORDERS that, notwithstanding this Order and the Bankruptcy Proceedings, all steps and actions taken by the Receiver in the Receivership Proceedings pursuant to any Orders granted therein (including without limitation soliciting, reviewing, evaluating, allowing and disallowing Claims and sales of the Receivership Property) be and hereby are deemed to be effective against the Trustee and against the creditors of Skyservice as if such steps and actions were taken by the Trustee."

8. The First Meeting of Creditors of Skyservice was held pursuant to section 102(1) of the BIA on April 19, 2012 (the "Creditors' Meeting"). The appointment of the Trustee was affirmed by the creditors present and voting in person or by proxy at the Creditors' Meeting.

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9. Nominations for the appointment of Inspectors in the Bankruptcy were sought and obtained at the Creditors' Meeting. Three people, including Mr. Mark Williams, were appointed as Inspectors, with the appointment of Mr. Williams being explicitly subject to the Trustee obtaining confirmation from the Court as to his eligibility to serve as an Inspector.
10. The purpose of this, the Trustee's First Report to the Court, is to provide information to the Court in respect of a motion by the Trustee for advice and directions as to whether Mr. Williams, a representative of Sunwing, is eligible to act as an Inspector in the Bankruptcy or whether he is ineligible pursuant to section 116(2) of the BIA as a result of motions pending before the Court involving Sunwing and the Receiver.
11. The information and advice described in this Report as being provided to the Trustee by McCarthy Tétrault LLP (the "**Trustee's Counsel**") has been provided to the Trustee to assist it in considering its course of action and is not intended as legal or other advice to, and may not be relied upon by, any other stakeholder.

THE SUNWING MOTIONS

12. Early in the Receivership Proceedings, Sunwing asserted a claim that, prior to the Date of Receivership, certain funds had been provided by Sunwing to Skyservice, which "are subject to Sunwing's interest, including without limitation a proprietary or trust interest, do not form part of the Skyservice estate and are not subject to any court ordered charges or other security" (the "**Sunwing Trust Claim**").
13. In response to the Sunwing Trust Claim, the Receiver brought a motion in the Receivership Proceedings for an order that it may spend or distribute all funds in the Skyservice estate without regard to the Sunwing Claim and an order determining that the amounts claimed in the Sunwing Claim are not subject to a proprietary or trust interest as alleged by Sunwing.

14. In response to the Receiver's motion, Sunwing brought a cross-motion alleging that:
- (a) \$2,329,473 was paid by Sunwing to Skyservice prior to the Date of Receivership in respect of flights scheduled for after the Date of Receivership that were not ultimately provided, which funds were segregated by Skyservice and, therefore, such funds were held in an "actual" trust for the benefit of Sunwing; and
 - (b) \$3,513,450.08 (which amount includes and is duplicative of the claim for \$2,329,473, described above), is held in a constructive trust for the benefit of Sunwing, with the constructive trust imposed to remedy an alleged unjust enrichment as follows: Skyservice was enriched by receiving these amounts for flight services that it did not provide, Sunwing was correspondingly deprived, and there was no juristic reason for the enrichment due to the appointment of the Receiver and Skyservice's failure "to provide the flights pre-paid for."
15. Sunwing delivered a motion record in support of its motion on the Sunwing Trust Claim in which it relies on affidavit evidence of Mr. Williams. A copy of the Sunwing motion record is attached hereto as Appendix B.
16. Both the Receiver's motion and Sunwing's cross-motion in relation to the Sunwing Trust Claim are outstanding and continue to be actively litigated by the parties.

THE APPOINTMENT OF MR. WILLIAMS AS AN INSPECTOR

17. Section 116(2) of the BIA states:

"No person is eligible to be appointed or to act as an Inspector who is a party to any contested action or proceedings by or against the estate of the bankrupt."

18. Given that Sunwing is likely one of the major creditors in the Bankruptcy¹, the Trustee anticipated that Sunwing was likely to nominate a representative to serve as an Inspector in the Bankruptcy. Accordingly, cognizant of the restriction of section 116(2), the Trustee sought the advice of its counsel prior to the Creditor's Meeting in respect of the eligibility of a Sunwing representative to serve as an Inspector in the event that a Sunwing representative was nominated at the Creditor's Meeting. Counsel to the Trustee advised that there was no clear case-law specifically on point.
19. The Trustee also discussed the matter with the Official Receiver prior to the Creditors' Meeting. The Official Receiver informed the Trustee that in its view it was unclear whether a Sunwing representative could act as an Inspector in the circumstances. The Trustee proposed to the Official Receiver that an approach be adopted at the Creditors' Meeting whereby if a Sunwing representative was nominated as an Inspector at the Creditors' Meeting, the Trustee would inform the creditors of the potential issue with respect to section 116(2) and that if the Sunwing representative was elected by those creditors present and voting, such election would be subject to advice and directions from the Court which would be sought by the Trustee following the Creditors' Meeting. The Official Receiver concurred with this approach.

¹ Sunwing has filed a proof of claim in the amount of approximately \$21 million, including the amounts subject to the Sunwing Trust Claim (the "Sunwing Claim"). The Sunwing Claim has not yet been finally adjudicated.

20. At the Creditors' Meeting, Mr. Williams was nominated as an Inspector. Before a vote on Inspectors was held, the Trustee explained that section 116(2) of the BIA prohibits parties who are subject to any contested action or proceedings by or against the estate from being an Inspector and that consequently Mr. Williams may not be eligible to act as an Inspector as a result of the motions described earlier in this report. The Trustee also advised the creditors of the advice received from Trustee's Counsel and the approach agreed with the Official Receiver that any appointment of Mr. Williams would be subject to advice and directions from the Court.
21. The Trustee also provided counsel to Sunwing the opportunity to address the Creditors' Meeting and articulate its position that:
- (a) The dispute in the Receivership Proceedings does not constitute a contested action or proceeding against the bankruptcy estate since it is taking place in the Receivership Proceedings;
 - (b) The disallowance or other challenge of a creditor's claim by a trustee in bankruptcy is not grounds for disqualification, but rather, only results in that Inspector having to refrain from participating in decisions relating to the claim; and
 - (c) The existence of a possible action against Sunwing in the future is not grounds for disqualification at this time.
22. In voting on the appointment of Mr. Williams as an Inspector, 8 creditors with claims of approximately \$70.8 million in aggregate voted in favour of Mr. Williams' appointment and no creditors voted against Mr. Williams' appointment. The Trustee, holding proxies of 72 creditors with aggregate claims of approximately \$2.2 million, abstained from voting. Accordingly, Mr. Williams was appointed as an Inspector, subject to confirmation from the Court as to his eligibility to act as Inspector.

23. The Trustee notes that two other individuals were appointed as Inspectors at the Creditors' Meeting, being Mr. Dean Moore, a representative of Thomas Cook Canada Inc., and Ms. Rita Reid, a representative of CAW-Canada. In the event that the Court determines that Mr. Williams is ineligible to serve as an Inspector, it would be the Trustee's intention to seek to fill the vacancy in accordance with the provisions of section 116 of the BIA.

THE TRUSTEE'S REQUEST FOR ADVICE AND DIRECTIONS

24. As described earlier in this report, based on the advice of its counsel and its discussions with the Official Receiver, it is unclear to the Trustee whether Mr. Williams is ineligible to act as an Inspector of the estate of Skyservice by virtue of section 116(2) of the BIA, and respectfully seeks the advice and direction of the Court in that regard.

The Trustee respectfully submits to the Court this, its First Report.

Dated this 20th day of July, 2012.

FTI Consulting Canada Inc.
In its capacity as Trustee of
The Estate of Skyservice Airlines Inc., a bankrupt



Nigel D. Meakin
Senior Managing Director

APPENDIX A

Court File No. 31-OR-207744-T



**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE

JUSTICE MORAWETZ

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)
)

THURSDAY, THE 29TH DAY

OF MARCH, 2012

**IN THE MATTER OF THE BANKRUPTCY OF
SKYSERVICE AIRLINES INC.**
of the City of Toronto, in the Province of Ontario

ORDER

THIS APPLICATION of International Lease Finance Corporation, of the City of Los Angeles, in the Country of the United States of America (the "**Applicant**"), as substituted applicant creditor, pursuant to the March 29, 2012 Order of the Honourable Justice Morawetz, wherein it replaced Sunwing Tours Inc. (now Sunwing Vacations) ("**Sunwing**") and Thomson Airways Limited ("**Thomson**") as the applicant creditors in the bankruptcy application issued on June 16, 2010 as against Skyservice Airlines Inc. ("**Skyservice**") (as amended) (the "**Application**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion dated March 28, 2012, the Motion Record and the Affidavit of Margaret L. Epstein sworn March 27, 2012; on hearing the submissions of counsel for the Applicant, FTI Consulting Canada Inc. and such other counsel on the Service List who appeared on this Application; and it appearing to the Court that the following acts of bankruptcy have been committed:

- (a) Skyservice has ceased to meet its liabilities generally as they become due.

Bankruptcy Order

1. THIS COURT ORDERS that Skyservice, of the City of Toronto in the Province of Ontario, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against Skyservice.
2. THIS COURT FURTHER ORDERS that FTI Consulting Canada Inc. of the City of Toronto, in the Province of Ontario, be appointed as trustee of the estate (the “Trustee”) of the said bankrupt.
3. THIS COURT FURTHER ORDERS that, subject to any further order of the Court, the Trustee shall not be required to give security to the Official Receiver pursuant to section 16 of the BIA.

Coordination with Receivership Proceedings

4. THIS COURT ORDERS that the assets, undertakings and properties of Skyservice acquired for, or used in relation to a business carried on by Skyservice, including all proceeds therefrom (the “Receivership Property”) shall vest in the Trustee subject to the rights, powers and authority of FTI Consulting Canada Inc. in its capacity as receiver (the “Receiver”) in respect of the Receivership Property pursuant to the Order of the Honourable Justice Gans dated March 31, 2010 (as may be amended from time to time, the “Receivership Order”), made pursuant to section 243(1) of the BIA and section 101 of *the Courts of Justice Act* (Ontario), and all other Orders made in Court File No. CV-10-8647-00CL (the “Receivership Proceedings”) and, without limitation to the foregoing, the Receivership Property will continue to be subject to

the court-ordered charges created pursuant to the Receivership Order in accordance with its terms and any further Orders in the Receivership Proceedings.

5. THIS COURT ORDERS that, in connection with the claims against Skyservice:
- (a) any person that filed a proof of claim in compliance with the Claims Procedure Order dated July 27, 2010 in the Receivership Proceedings (the “**Claims Procedure Order**”) in respect of a Claim (as defined in the Claims Procedure Order), or in compliance with any subsequent Order in the Receivership Proceedings that permitted such person to file a proof of claim after the Claims Bar Date (as defined in the Claims Procedure Order), is not required to file a proof of claim in respect of such Claim in the bankruptcy of Skyservice (the “**Bankruptcy Proceedings**”);
 - (b) the Receiver will continue to allow, disallow or otherwise adjudicate or settle Claims in accordance with the Claims Procedure Order, and the final determination of each Claim in accordance with the Claims Procedure Order will be effective and binding in the Bankruptcy Proceedings as if allowed by the Trustee and finally determined in the Bankruptcy Proceedings on such basis; and
 - (c) any obligation of the Receiver in respect of any Excluded Claim (as defined in the Claims Procedure Order) will continue in accordance with and subject to the terms of the Receivership Order and the other Orders in the Receivership Proceedings, and any person with an Excluded Claim is not required to file a proof of claim in the Bankruptcy Proceedings.

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6. THIS COURT ORDERS that, for the purposes of section 102 of the BIA:

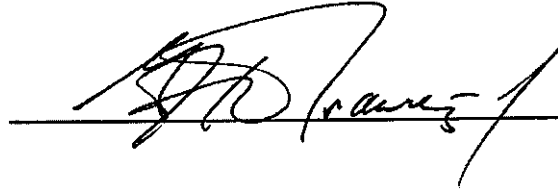
- (a) the Trustee is only required, in the case of the notice to be sent to creditors of Skyservice pursuant to section 102(1), to send such notice to those creditors who filed a proof of claim in compliance with the Claims Procedure Order (or any subsequent Order in the Receivership Proceedings that permitted such creditor to file a proof of claim after the Claims Bar Date), and such notice may be sent in any manner permitted under the Claims Procedure Order, including without limitation paragraph 32 thereof; and
- (b) the Trustee is not required to include a proof of claim form in the materials to be sent to creditors pursuant to section 102(2).

7. THIS COURT ORDERS that, notwithstanding this Order and the Bankruptcy Proceedings, all steps and actions taken by the Receiver in the Receivership Proceedings pursuant to any Orders granted therein (including without limitation soliciting, reviewing, evaluating, allowing and disallowing Claims and sales of the Receivership Property) be and hereby are deemed to be effective against the Trustee and against the creditors of Skyservice as if such steps and actions were taken by the Trustee.

8. THIS COURT ORDERS that each of the Trustee and the Receiver shall be entitled to seek the advice and direction of this Court as to the implementation of this Order and, in the case of the Trustee, the discharge of the powers and duties of the Trustee under the BIA in connection with this Order, and/or each of them may apply for such further Order or Orders as may be appropriate.

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9. THIS COURT FURTHER ORDERS that the costs of the Applicant of and incidental to this Application and this Order be paid to the Applicant out of the assets of the bankrupt upon taxation thereof.

A handwritten signature in black ink, appearing to read "J. H. [unclear]", is written over a horizontal line. The signature is stylized and cursive.

Court File No. 31-OR-207744-T
IN THE MATTER OF THE BANKRUPTCY OF SKYSERVICE AIRLINES INC. OF THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY

Proceeding commenced at Toronto

ORDER

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APPENDIX B

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

**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

CROSS-MOTION RECORD

(Motion regarding the Sunwing Trust Claim, returnable February 13, 2012)

January 27, 2012

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

**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

NOTICE OF CROSS-MOTION

(Motion for an Order declaring that the amounts claimed in the Sunwing Claim are subject to a trust interest)

Sunwing Tours Inc. (now Sunwing Vacations Inc.) ("**Sunwing**") will make a motion on February 13, 2012 at 10:00 a.m. or as soon thereafter as the Court can accommodate, at 330 University Ave., Toronto, Ontario, to the judge presiding over the motion that has been brought by FTI Consulting Canada Inc., in its capacity as court-appointed receiver (the "**Receiver**") of the property, assets and undertaking of Skyservice Airlines Inc. ("**Skyservice**") by notice of motion dated June 3, 2011.

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

THE MOTION IS FOR:

- a) an order:
 - i) declaring that funds in the amount of \$2,329,473.00, held by the Receiver in a segregated account, are subject to a trust in favour of Sunwing, do not form part of the Skyservice estate and are not subject to any other court ordered charges or security interests; and
 - ii) directing the Receiver to pay \$2,329,473.00 to Sunwing forthwith;
- b) in addition to (a) above, an order
 - i) imposing a constructive trust over funds in the amount of \$1,183,977.08, held by the Receiver in connection with the within receivership proceedings, in favour of Sunwing, declaring that such funds do not form part of the Skyservice estate and are not subject to any other court ordered charges or security interests; and
 - ii) directing the Receiver to pay \$1,183,977.08 to Sunwing forthwith;
- c) in the alternative to (a) and (b) above, an order:
 - i) imposing a constructive trust over funds in the amount of \$3,513,450.08, held by the Receiver in connection with the within receivership proceedings, in favour of Sunwing, declaring that such funds do not form part of the Skyservice estate and are not subject to any other court ordered charges or security interests; and
 - ii) directing the Receiver to pay \$3,513,450.08 to Sunwing forthwith;
- d) costs of this cross-motion on a partial indemnity basis; and
- e) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:**Background**

1. Skyservice was a provider of charter flight services to two main customers, Thomas Cook Canada Inc. ("**Thomas Cook**") and Sunwing. Sunwing, an operator of package tours and charter flights in Canada, purchased charter flight services from Skyservice.
2. On March 31, 2010, Thomas Cook, in its capacity as a secured creditor of Skyservice, and with the foreknowledge and co-operation of Skyservice, brought an application for the appointment of a receiver over the assets of Skyservice. No advance notice of such application was given to Sunwing.
3. As a result of that application, the Receiver was appointed and Skyservice abruptly ceased all operations on March 31, 2010.
4. The insolvency of Skyservice and this abrupt shutdown were complete surprises to Sunwing.
5. As required by legislation, Sunwing paid for charter flights at least seven days in advance of when such flights were scheduled to be provided by Skyservice.
6. Just days before the receivership and abrupt halt in services, Skyservice sent two invoices to Sunwing, requesting payment for flights scheduled on and after March 31, 2010. Sunwing paid these invoices in full and as a result, paid over \$3.5 million on the eve of insolvency for flights that would never be provided.
7. Skyservice requested and accepted these payments when it knew that such flights would never be provided.
8. Two days before the appointment of the Receiver, Skyservice identified and segregated payments it received entirely for future flights that would never be provided, including \$2,329,473.00 paid by Sunwing. Skyservice segregated and held these funds, evidencing its intention to create a trust with respect thereto.

Express or Implied Trust

9. In segregating the \$2,329,473.00 received from Sunwing on account of future flights, Skyservice effectively created a trust over these assets for the benefit of Sunwing.
10. All three certainties required for the creation of a trust are present in respect of these assets. There is no uncertainty as to the subject matter of such trust (the \$2,329,473.00 which was identified and segregated) or the object of such trust (Sunwing).
11. Certainty of intention can and should be inferred from the circumstances and conduct of Skyservice. Skyservice's actions in identifying and segregating these funds, on the eve of its impending receivership, can only be explained as evidencing Skyservice's intention to hold these funds for the benefit of Sunwing. The explanations given by Skyservice's management are consistent with and further demonstrate this intention.
12. A trust therefore exists with respect to the segregated \$2,329,473.00 and such funds must be paid over to Sunwing.

Constructive Trust

13. Whether or not the Court finds an express or implied trust in respect of the segregated \$2,329,473.00, the Skyservice estate would be unjustly enriched if it were permitted to retain the \$3,513,450.08 it collected from Sunwing in respect of flights that Skyservice did not intend to provide and did not in fact provide.
14. There is no juristic reason for Skyservice to retain the monies it received from Sunwing in these circumstances. Skyservice sought and received the monies in question under the pretext that flights would be provided between March 31 and April 9, when it was apparent to Skyservice that this would not be the case.
15. Sunwing had no choice but to pre-pay Skyservice for flights, as payment at least seven days in advance was mandated by federal legislation. In this context, Sunwing was not voluntarily a creditor of Skyservice.

16. Skyservice's enrichment was not authorized by contract, statute, or any other common law or equitable obligation. An examination of the conduct of the parties and their legitimate expectations favour the imposition of a constructive trust.
17. Absent the imposition of a constructive trust, Sunwing will have no effective remedy for its unjust enrichment claim and other creditors of Skyservice will reap a windfall at Sunwing's expense.

Rules and provisions relied upon

18. Sunwing relies upon:

- a) The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- b) The *Air Transportation Regulations*, S.O.R./88-58 made pursuant to the *Canada Transportation Act*, S.C. 1996, c.10, as amended;
- c) The provisions of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- d) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- a) A compendium of documents as follows:
 - i) The Affidavit of Mark Williams, sworn April 27, 2010 and the Exhibits attached thereto, filed;
 - ii) The Supplemental Affidavit of Mark Williams, sworn October 11, 2011 and the Exhibits attached thereto, filed;

- iii) The Pre-Appointment Report to the Court submitted by FTI Consulting Canada Inc., in its capacity as Proposed Receiver dated March 31, 2010, filed;
 - iv) The Second Report of the Receiver dated June 10, 2010 (without appendices), filed;
 - v) The Tenth Report of the Receiver dated June 2, 2011 (without appendices other than Appendix "I"), filed;
 - vi) The Answers to Written Questions for the Receiver, received December 22, 2011, filed;
 - vii) The Affidavit of Karim Nensi sworn March 31, 2010 and the Exhibits attached thereto, filed; and
 - viii) The Affidavit of Steven Golick, sworn September 15, 2011 and the Exhibits attached thereto, filed;
- b) A compendium of the Reports of the Receiver filed in these proceedings to date;
 - c) The pleadings and proceedings herein; and
 - d) Such further and other materials as counsel may advise and this Honourable Court may permit.

January 27, 2012

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Lawyers for FTI Consulting Canada Inc.

AND TO: THE SERVICE LIST

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

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC. -and- SKYSERVICE AIRLINES INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF CROSS-MOTION

(Motion regarding the Sunwing Trust Claim,
returnable February 13, 2012)

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Lawyers for Sunwing Tours Inc.

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

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC. -and- SKYSERVICE AIRLINES INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

CROSS-MOTION RECORD

(Motion regarding the Sunwing Trust Claim,
returnable February 13, 2012)

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SUNWING COMPENDIUM

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

**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

COMPENDIUM OF DOCUMENTS

(Motion regarding the Sunwing Trust Claim, returnable February 13, 2012)

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

**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

COMPENDIUM OF DOCUMENTS

(Motion regarding the Sunwing Trust Claim, returnable February 13, 2012)

I N D E X

TAB NO.	
1.	Affidavit of Mark Williams, sworn April 27, 2010
A.	Exhibit "A" – Correspondence from GTAA to Sunwing
B.	Exhibit "B" – Invoice REV-005130 and Credit Note
C.	Exhibit "C" – Invoice REV-005146
2.	Supplemental Affidavit of Mark Williams, sworn October 11, 2011
A.	Exhibit "A" – Letter from Sunwing's counsel to the Receiver dated April 2, 2010
B.	Exhibit "B" – Letter from Sunwing's counsel to the Receiver dated December 24, 2010
C.	Exhibit "C" – Invoice REV-005130, Credit Note and Invoice REV-005146

- 2 -

TAB NO.	
D.	Exhibit "D" – Example Charter Transportation Agreement
3.	Pre-Appointment Report to the Court submitted by FTI Consulting Canada Inc., in its capacity as Proposed Receiver dated March 31, 2010
4.	Second Report of the Receiver dated June 10, 2010 (without appendices)
5.	Tenth Report of the Receiver dated June 2, 2011 (without appendices, other than Appendix "F")
A.	Appendix "T" – Commercial Agreement dated June 11, 2006 between Skyservice and First Choice Canada Inc. (now Sunwing)
6.	Answers to Written Questions for the Receiver, received December 22, 2011
7.	Affidavit of Karim Nensi, sworn March 31, 2010
A.	Exhibit "A" – Article, <i>Tourisme Plus</i> , March 12, 2010
B.	Exhibit "B" – Assignment and Assumption Agreement
C.	Exhibit "C" – Amended and Restated Credit Agreement
D.	Exhibit "D" – Skyservice GSA
E.	Exhibit "E" – Building Debenture
F.	Exhibit "F" – Hangar Debenture
G.	Exhibit "G" – First Amending Agreement
H.	Exhibit "H" – Gibralt Demand Letter
I.	Exhibit "I" – Gibralt Notice of Intent to Enforce Security
J.	Exhibit "J" – TCCI Demand Letter
K.	Exhibit "K" – TCCI Notice of Intent to Enforce Security
L.	Exhibit "L" – Skyservice acknowledgement and consent to earlier enforcement of security
M.	Exhibit "M" – Consent of FTI Consulting Canada Inc. to act as receiver

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TAB NO.	
8.	Affidavit of Steven Golick, sworn September 15, 2011
A.	Exhibit "A" – Order of the Honourable Mr. Justice Gans, dated March 31, 2010
B.	Exhibit "B" – Invoices of Osler, Hoskin & Harcourt LLP to Thomas Cook (redacted)

**TAB 1 OF
SUNWING COMPENDIUM**

Court File No.: CV-10-8647-00CL
Court File No.: CV-10-8651-00CL
Court File No.: CV-10-8657-00CL
Court File No.: CV-10-8658-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.,
Of the City of Toronto, in the Province of Ontario

AND IN THE MATTER OF AN APPLICATION pursuant to Section 9 of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c. 5 (Application by the Greater Toronto Airports Authority)

AND IN THE MATTER OF AN APPLICATION pursuant to Section 9 of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c. 5 (Application by the Ottawa Macdonald-Cartier International Airport Authority)

AND IN THE MATTER OF AN APPLICATION pursuant to Section 56 of the *Civil Air Navigation Services Commercialization Act*, S.C. 1996, Chapter 20, as amended (Application by NAV Canada)

AFFIDAVIT OF MARK WILLIAMS

Sworn April 21, 2010

I, Mark Williams, of the Town of Oakville, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of Sunwing Airlines Inc., a wholly owned subsidiary of Sunwing Travel Group Inc. ("Sunwing Group"), which is also the 100% shareholder of Sunwing Tours Inc. ("Sunwing") and, as such, have knowledge of the matters hereinafter deposed to, except where such knowledge is based on information and belief in which case I verily believe it to be true.

2. I have read the Affidavit of Thomas Chandler, filed in connection with these proceedings (the “Chandler Affidavit”).

A. Sunwing Tours Inc.

3. Sunwing is a corporation organized under the laws of Ontario, carrying on business at 27 Fasken Drive, Etobicoke, Ontario.

4. TUI Canada Holdings Inc. (“TUI Canada”) (an indirect wholly-owned subsidiary of TUI Travel PLC (“TUI Travel”)) owns a 25% voting interest and 49% economic interest in Sunwing Group. Sunwing therefore shares an indirect common equity holder with Thomson Airways Limited (“Thomson”), which is also a wholly owned subsidiary of TUI Travel.

5. Sunwing was formed, effective February 5, 2010, as a result of an amalgamation of First Choice Canada Inc. (“First Choice”) and Red Seal Tours Inc. Sunwing’s divisions include “Signature Vacations” and “Sell Off Vacations,” which were formerly divisions of First Choice.

6. At all material times, Sunwing carried on business as an operator of package tours and charter flights and a retail travel business in Canada, and was in that capacity a customer of Skyservice Airlines Inc. (“Skyservice”). Sunwing supplies package holidays (comprised of flights, accommodations and ground transportation, with the option to purchase other rated services) from 30 cities in Canada to over 42 destinations in Mexico, the Dominican Republic, Cuba, the Caribbean and Central America. Sunwing also provides various travel agency services for leisure and business travellers.

B. Sunwing’s & Thomson’s Relationship with Skyservice

7. Skyservice and Sunwing are party to a commercial agreement dated June 11, 2006, (as amended, including amendments dated November 21, 2008, November 25, 2008 and December 1, 2008, the “Commercial Agreement”), and First Choice Airways Limited and Skyservice are

party to an agreement dated August 28, 2006, (as amended and novated from time to time, the "FCA Commercial Agreement"). Pursuant to a novation agreement, dated September 30, 2008, between First Choice Airways limited and Thomson (formerly, Thomsonfly Limited) all rights and obligations of First Choice Airways Limited under the FCA Commercial Agreement were novated to Thomson.

8. The Commercial Agreement sets out the terms and conditions pursuant to which Sunwing and Skyservice enter into individual agreements (such agreements, the "Charter Agreements") for the charter of flight services during the term of the Commercial Agreement. The Commercial Agreement and the Charter Agreements are not attached to this Affidavit, however they will be made available to the Court and the other parties to these proceedings upon request, together with a request from Sunwing that such agreements be sealed and kept confidential

9. In November 2008, the parties agreed to an amendment to the Commercial Agreement, effective November 1, 2008, which extended the term of the Commercial Agreement until October 31, 2013.

10. Pursuant to the Charter Agreements, Sunwing agrees to charter a fleet of aircraft from Skyservice for a specified time period, and Skyservice agrees to operate the chartered aircraft.

11. Pursuant to the Commercial Agreement and the Charter Agreement, the charters are a cost-plus arrangement under which Sunwing pre-pays Skyservice a "Charter Fee" that includes "Overhead Charges", "Operating Costs" and "Profit Charges."

12. Clause 5.1.2 of the Commercial Agreement provides:

The Charter Fee applicable to each Charter Agreement in any Holiday Year shall be calculated in accordance with a Budget for such Holiday Year agreed between the Parties pursuant to Clause 11.4 and invoiced weekly in advance on a fixed and a perseat mile

basis as set out in Appendix 8 according to the planned flying programme set out in the relevant Charter Agreement (the "Tariff") subject to [reconciliation].

13. The "Operating Costs" that Sunwing prepays to Skyservice include:

(a) Aircraft lease costs, including without limitation:

- Rental;
- Maintenance reserves (to the extent that these are not recovered at the end of the lease term);
- Insurance;
- Taxes and indemnities payable by Skyservice pursuant to the lease; and
- All charges associated with the return of the Aircraft in accordance with the lease terms;

(b) Aircraft maintenance and repair costs;

(c) Fuel and oil costs;

(d) Ground handling costs, including without limitation:

- Aircraft, passenger, baggage and cargo handling;
- De-icing;
- Aircraft cleaning and catering;
- Security;

(e) Airport, government and navigation fees;

(f) Flight and cabin crew salaries and expenses; and

(g) Irregular operations, welfare costs and sub-chartering of replacement aircraft (irregular operations and subservice)

Collectively, the "Operating Costs".

14. Both the Commercial Agreement (at section 15.1(e)) and the Charter Agreements (at section 5.1(e)) contain representations from Skyservice that for the term of the respective agreements, Skyservice will have the financial resources, management and technical expertise and the human resources to carry out and perform the services contemplated in the respective agreements.

B. Skyservices' "Cost-Plus" Funding Structure**(i) Ordinary Course Funding**

15. In the ordinary course of business, Skyservice would submit invoices to Sunwing reflecting the aggregate overhead and Operating Costs, plus the profit charges, for scheduled charter flights. These invoices would typically cover flight services for a weekly period, and the amount charged would generally be in accordance with an annual budget negotiated between Skyservice and Sunwing.

16. Accordingly, before Skyservice incurs a cost to any of the Airport Authorities (as defined below), Sunwing has already paid Skyservice an amount to fund the liability.

(ii) Irregular Funding

17. Sunwing also provides Skyservice with funds for Operating Costs apart from the amounts regularly invoiced by Skyservice, such as for certain deposits required by fuel suppliers, airport authorities or other third party suppliers and service providers.

18. For example, on October 7, 2009, Percy Guyara, Controller of Skyservice, requested CDN\$678,000 for a deposit and prepayment of airport improvement fees, landing fees and general terminal charges incurred in connection with the operation of Skyservice aircraft to the Greater Toronto Airport Authority (the "GTAA"). The email request, sent to Jolanta Bialy, Sunwing Group's Vice President, Finance, attached a letter dated March 20, 2009, from the GTAA to Skyservice advising that the GTAA was "implementing new financial security requirements in respect of airport improvement fees ("AIF"), landing fees and general terminal charges ... to reduce the financial risk to the GTAA and to the air carriers operating at Toronto Pearson." The letter required that Skyservice provide a prepayment of an estimate of the fees, or a provision of a security deposit to the GTAA, and indicated that such prepayments were due

five business days before each successive 30 day period for AIF and 15 day period for landing fees and general terminal charges. A copy of the GTAA's letter and the email from Percy Guyara to Jolanta Bialy, together with proof of payment of the amount to Skyservice by wire transfer, are attached hereto as Exhibit A.

C. Prepayments made by Sunwing

(i) Prepayments on Account of "Claimed Unpaid Amounts"

19. As discussed in detail in the Chandler Affidavit, the GTAA, the Ottawa MacDonald-Cartier International Airport Authority, the Winnipeg Airports Authority and NAV Canada (collectively, the "Airport Authorities") have made claims against Skyservice for amounts charged in respect of certain leased aircraft, including aircraft leased by Skyservice from Thomson. These claims are referred to in the Thomson Affidavit as the "Claimed Unpaid Amounts", and I understand from the Chandler Affidavit that the Claimed Unpaid Amounts are with respect to Skyservice operations in February and March.

20. Sunwing has paid Skyservice CDN\$34,943,732.70 since January 22, 2010, on account of February and March charter flights. I do not have a breakdown of what proportion of this amount can be allocated to Skyservice liabilities incurred to the Airport Authorities, however by virtue of the Commercial Agreement and Charter Agreements, all Skyservice liabilities incurred to the Airport Authorities in relation to Sunwing-chartered flights were paid in advance by Sunwing. Accordingly, any Claimed Unpaid Amounts allocated to aircraft operated by Skyservice to provide Sunwing chartered flights have already been paid by Sunwing to Skyservice.

21. Sunwing did not receive any notice or information from Skyservice or the Airport Authorities that Skyservice had failed to pay any amount owing to the Airport Authorities. This is notwithstanding that Sunwing obtained a covenant from Skyservice at section 4.2 of the

Charter Agreements that Skyservice would “pay its debts in connection with the operation of the Aircraft, including applicable surcharges and departure taxes, on a timely basis.”

(ii) Prepayments for Services Not Provided

22. As set out in the Chandler Affidavit, on March 31, 2010, the Ontario Superior Court of Justice granted an Order (the “Receivership Order”) appointing FTI Consulting Canada Inc. as National Receiver (the “Receiver”) of Skyservice and all assets, undertakings and properties, and imposing a blanket stay of proceedings in respect of Skyservice. As a result of the Receivership Order, Skyservice ceased all operations as of March 31, 2010.

23. Sunwing did not receive any notice or information from Skyservice that Skyservice would not be operating after March 31, 2010, nor did it receive any notice or warning from Thomas Cook Canada Inc. (“Thomas Cook”), the company that brought the application for the Receivership Order.

24. Indeed, Skyservice invoiced Sunwing on March 17, 2010 for flights for the period of March 27 to April 2, 2010 (Invoice number REV-005130), and invoiced Sunwing on March 23, 2010 for flights for the period of April 3 to 9, 2010. The aggregate amount prepaid by Sunwing pursuant to the Commercial Agreement and Charter Agreements prior to Skyservice’s March 31, 2010 receivership for flights that Skyservice was chartered to provide after March 31, 2010 is approximately CDN\$3,500,000.

25. Invoice number REV-005130, dated March 17, 2010, is for the amount of CDN\$3,189,731.34, representing flights for the period of March 27, 2010 to April 2, 2010. CDN\$1,064,367.04 of this amount is on account of prepayment for flight services that Skyservice was required, but failed, to provide from March 31, 2010 to April 2, 2010, taking into

account a credit note issued by Skyservice for this period. A copy of Invoice REV-005130 and the Credit Note are attached hereto as Exhibit B.

26. Invoice REV-005130 was paid in full by wire transfer, and to the best of my knowledge, following my inquiry of Sunwing staff involved with accounts payable, at no time before or after payment was made did anyone from Skyservice advise that the flights pre-paid for would not be provided.

27. Invoice number REV-005146, dated March 23, 2010, is for the amount of CDN\$2,449,083.04, representing flights for the period of April 3, 2010 to April 9, 2010. Skyservice did not provide any of the services for which this invoice was issued. A copy of Invoice REV-005146 is attached hereto as Exhibit C.

28. Invoice REV-005146 was paid in full by wire transfer on March 26, 2010, and to the best of my knowledge, following my inquiry of Sunwing staff involved with accounts payable, at no time before or after payment was made did anyone from Skyservice advise that the flights pre-paid for would not be provided.

D. Negotiations between Skyservice and Sunwing, Thomson & TUI Travel

29. Since on or around at least January, 2010 and continuing until March 2010, Sunwing, Thomson, TUI Travel and Skyservice have been involved in negotiations and discussions in order to reach a mutually agreeable settlement of certain pending litigation initiated by Skyservice against Sunwing and others, and in order to come to terms and schedule of termination of the Commercial Agreement, the FCA Commercial Agreement and certain other agreements among the parties. I have been the primary representative of Sunwing, Thomson and TUI Travel in these negotiations.

30. I have met with representatives of Skyservice numerous times face to face, had numerous discussions over the telephone and exchanged a number of emails in connection with these negotiations.

31. Any terms of settlement would have confirmed the continuation of the Thomson Lease Agreements (as defined in the Chandler Affidavit) to their contractual termination dates, and provided for the termination of the Commercial Agreement and FCA Commercial Agreement according to a schedule that would have minimized the service disruption and financial harm to all parties involved. Managing the termination of the arrangements between Sunwing, Thomson and Skyservice requires the cooperation of all parties to effect an orderly, scheduled wind down, which was rendered impossible by Skyservice's abrupt receivership.

32. At no time during the ongoing negotiations did Skyservice indicate to me that it would be unable to do perform services or obligations consistent with continuing the Thomson Lease Agreements, the Commercial Agreement and Charter Agreements, and at no time was I given any indication that Skyservice was or was close to becoming insolvent or that it had been advised that Thomas Cook intended to appoint a receiver. Neither was I advised that Thomas Cook intended to return all of its aircraft previously leased to Skyservice to Europe on or before March 31, 2010 (as detailed in the Chandler Affidavit).

33. Indeed, given that Skyservice operates a "cost-plus" business in which all of its expenses are paid in advance by its customers (as discussed above), its insolvency was a complete surprise when I learned of it after Thomas Cook's receivership application.

34. As a result of the affidavit of Karim Nensi, Chief Financial Officer for Thomas Cook, sworn March 31, 2010 and filed together with Thomas Cook's receivership application (the "Nensi Affidavit"), I am now aware that the Amended and Restated Credit Agreement between

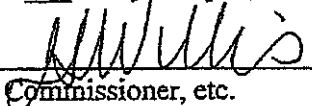
Skyservice and Thomas Cook dated February 12, 2010 (Exhibit C to the Nensi Affidavit),
provided:

... The Borrower [Skyservice] agrees that it will advise the Lender [Thomas Cook] of any action taken by or on behalf of the Borrower, directly or indirectly, to encourage, initiate or engage in discussions or negotiations with, or provide any information to Tui [which is defined as including Sunwing], or any affiliate of Tui, concerning the business or affairs of the Borrower other than in the ordinary course of business.

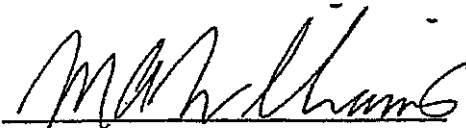
35. Prior to receiving the Nensi Affidavit, I was not aware that Skyservice had agreed with Thomas Cook to advise the latter of negotiations with them. Indeed, I understood that our negotiations with Skyservice were confidential, and I explicitly requested that our conversations not be recorded. I was also not aware that Skyservice had agreed with Thomas Cook not to provide to TUI Travel, Thomson or Sunwing any information concerning its business or affairs outside the ordinary course of business without first advising Thomas Cook.

36. Had Sunwing been notified of Skyservice's inability to perform the obligations contemplated in the settlement discussions, including an orderly, scheduled wind down of the arrangements between Sunwing and Skyservice, Sunwing would have taken steps to minimize its losses, both financially and operationally, including by way of limiting its outlay of the prepayments to Skyservice for charter flights that would not be provided.

SWORN BEFORE ME at the
City of Etobicoke, in the Province of Ontario,
this 27th day of April, 2010


A Commissioner, etc.

JENNIFER SHANNON WILLIS,
A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO,
WHILE A STUDENT-AT-LAW.
EXPIRES APRIL 16, 2011.


Mark Williams

This is Exhibit "A" referred to in
the Affidavit of
MARK WILLIAMS

sworn before me this 27th day of April, 2010

A handwritten signature in cursive script, appearing to read "M. Williams", is written over a horizontal line.

A Commissioner, etc.

Jolanta Blajy

From: Percy Gyara [Percy_Gyara@Skyservice.com]
Sent: Wednesday, October 7, 2009 3:23 PM
To: Jolanta Blajy
Cc: Barbara Syrek
Subject: RE: Skyservice Airlines - Air Carrier: Security Deposit Or Prepayment Requirement

Hi Jolanta

As per my email in Apr09, GTAA requires deposit and prepayment for AIF and landing fees \$ 678,000. We have to prepay 30 days of AIF and 15 days of landing fees. Please arrange to transfer this funds by 22nd October as I need to pay by 25th October.

Thanks in advance for all your help.

Percy Gyara , CGA, CPA
Controller



31 Fasken Drive
Toronto, Ontario M9W 1K6
Phone: (416) 679-5879
Fax: (416) 679-5913
E-mail: percy_gyara@skyservice.com

P Please consider the environment before printing this email

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From: Percy Gyara
Sent: April 2, 2009 5:04 PM
To: Jolanta Blajy
Cc: Barbara Syrek
Subject: FW: Skyservice Airlines - Air Carrier: Security Deposit Or Prepayment Requirement

Hello Jolanta

Attached please find a letter from GTAA which states that they will requiring a deposit for AIF and landing fees. As you don't have any operations in the summer, this will not affect you but I just wanted to inform you that we will need some kind of deposit from you in the winter season. Amount to be determined based on the schedule.

Please let me know if you have any questions or concerns.

Thanks

Percy Gyara , CGA, CPA
Controller





Greater Toronto Airports Authority

Finance

March 20, 2009

Silena Betti, CGA

Percy Gyara
Skyservice Airlines Inc
31 Fasken Drive
Toronto ON M9W 1K6

Manager, Accounting Operations

Tel: 416.776.7114

Fax: 416.776.5551

Dear Mr. Gyara:

**Re: Toronto Pearson International Airport
Financial Security for Airport Improvement Fees and Aeronautical Fees**

The Greater Toronto Airports Authority (GTAA) in consultation with the Air Carrier Consultative Committee (ACC) at Toronto Pearson International Airport ("Toronto Pearson") is implementing new financial security requirements in respect of airport improvement fees ("AIF"), landing fees and general terminal charges (all such fees and charges are collectively referred to as the "Fees") to reduce the financial risk to the GTAA and to the air carriers operating at Toronto Pearson. Attached for your information is an extract from the Minutes of the ACC meeting held on February 24, 2009 relating to this matter.

The financial security consists of the air carriers either prepaying an estimate of the Fees or providing a security deposit to the GTAA. Each air carrier operating at Toronto Pearson must either prepay an estimate of the Fees for each payment period or provide a security deposit. The attached Schedule "A" to this letter describes the prepayment and security deposit requirements in more detail. Air carriers providing security deposits may provide the required amount by a letter of credit or cash, or a combination of letter of credit and cash. The GTAA will pay interest on the cash portion of a security deposit as provided in the attached Schedule "A". We ask that you complete the attached Schedule "A" (indicate the option you have selected with a check mark) and return it to the GTAA by April 30, 2009.

Initially, after the GTAA receives the completed Schedule "A" from the air carrier, the GTAA will determine and advise the air carrier of the actual prepayment amount or security deposit, as applicable, based on its anticipated summer 2009 operational schedule. The GTAA may revise the applicable prepayment amount or security deposit from time to time depending on changes in the air carrier's operational schedule.

Greater Toronto Airports Authority
Toronto Pearson International Airport

P.O. Box 6031, 3111 Conair Drive
Toronto AMF, Ontario, Canada L5P 1B2

P (416) 776-3000
F (416) 776-7748
www.GTAA.com



March 20, 2009
Page 2 of 3



It is important to note the following dates when the financial security requirements become effective:

A. Prepayment of Fees

For air carriers prepaying the Fees, the first prepayment is due on May 25, 2009. With respect to AIF, the first prepayment amount covers the period June 1 – June 30, 2009 and for landing fees and general terminal charges the first prepayment amount covers the period June 1 - June 15, 2009. Thereafter, the prepayments are due five (5) business days before each successive 30 day period for AIF and 15 day period for landing fees and general terminal charges.

B. Security Deposit

For air carriers paying security deposits (either letter of credit, cash, or combination), the GTAA must receive the applicable amount by May 29, 2009.

An air carrier may request to switch from prepayment to providing a security deposit, and vice versa, once per calendar year. If the GTAA approves such request it will inform the air carrier of the amount of the prepayment or security deposit, as applicable. However, at all times the air carrier must either be prepaying the Fees or have provided a security deposit to the GTAA.

Should you have any questions or require clarification please contact Teresa Fielding at teresa.fielding@gtaa.com.

Yours truly,

A handwritten signature in black ink that reads "Silena Betti". The signature is written in a cursive, flowing style.

Silena Betti, CGA
Manager, Accounting Operations

c: Jackie Smalec – Skyservice
Larry Shack - Skyservice



Schedule "A"

Air Carrier _____

Aeronautical Revenue (Landing Fees and General Terminal Charges)

Option	Details*	Indicate Option Selected
1. Security Deposit (a) Cash Deposit **	45 days	
(b) Letter of Credit	45 days	
2. Prepayment***	15 days	

AIF Revenue

Option	Details	Indicate Option Selected
1. Security Deposit (a) Cash Deposit **	30 days	
(b) Letter of Credit	30 days	
2. Prepayment***	30 days	

*Based on the average daily forecasted activity for each season: Winter (November 1 to March 31) and Summer (April 1 to October 31). The GTAA may revise the prepayment amount or security deposit if there are changes in the air carrier's forecasted operational activity.

** GTAA to pay interest as set by the 180 day CIBC Bank deposit rate

*** Carrier pays an estimate of the aeronautical activity 5 business days prior to the activity period and balance of invoice within 30 days of invoice date. The GTAA will periodically review and reconcile actual flight operations at Toronto Pearson with the prepayment amounts and security deposit and reserves the right to change the prepayment amounts and security deposit accordingly.

This is Exhibit "B" referred to in
the Affidavit of
MARK WILLIAMS

sworn before me this 27th day of April, 2010


A Commissioner, etc.



31 Fasken Drive
 Etobicoke Ontario M9W 1K6
 CANADA

INVOICE

Invoice Number REV-005130
 Date 3/17/2010
 Payment Terms NET0
 Customer ID SIGVAC1C

Signature Vacations - Revenue
 1685 Tech Ave
 Mississauga ON L4W 0A7

G.S.T. Registration: 13529 1458 RT0002
 H.S.T. Registration: 13529 1458 RT0002
 Q.S.T. Registration: 1012236286 TQ0001

Attention: Susana McCullough

Description	Quantity	Amount
Flights for the period of Mar 27 - Apr 2, 2010 This invoice includes meals for \$19,237.88	1	\$3,189,731.34

Thank you for choosing Skyservice Airlines

Subtotal	\$3,189,731.34
GST	\$0.00
TOTAL CAD	\$3,189,731.34

Any questions or concerns, please call:

Shavir Mistry
 Phone: (416) 679 5893
 Email: shavir.mistry@skyservice.com

Please make cheques payable to Skyservice Airlines Inc.
 Wire transfer funds to: c/o HSBC Bank Canada
 885 West Georgia Street, Suite 200, Vancouver, BC V6C 3G1

Transit: 0270, Account: 217436-001



31 Fasken Drive
 Etobicoke Ontario M9W 1K6
 CANADA

CREDIT NOTE

Credit Note No. REVCRD-001472
 Date 3/23/2010
 Payment Terms
 Customer ID SIGVAC1C

Signature Vacations - Revenue
 1685 Tech Ave
 Mississauga ON L4W 0A7

 Attention: Susana McCullough

G.S.T. Registration: 13529 1458 RT0002
 H.S.T. Registration: 13529 1458 RT0002
 Q.S.T. Registration: 1012236286 TQ0001

Description	Quantity	Amount						
Credit for YYZ-CUN-YYZ flights on Mar 26 & Apr 2, 2010	1.00	\$119,609.86						
<table style="margin-left: 20px;"> <tr> <td>March 26</td> <td>59,804.93</td> </tr> <tr> <td>Apr 2</td> <td>59,804.93</td> </tr> <tr> <td></td> <td><u>119,609.86</u></td> </tr> </table>	March 26	59,804.93	Apr 2	59,804.93		<u>119,609.86</u>		
March 26	59,804.93							
Apr 2	59,804.93							
	<u>119,609.86</u>							

Thank you for choosing Skyservice Airlines

Subtotal	\$119,609.86
GST	\$0.00
TOTAL CAD	\$119,609.86

Any questions or concerns, please call:


Shavir Mistry
 Phone: (416) 679 5893
 Email: shavir_mistry@skyservice.com

Please make cheques payable to Skyservice Airlines Inc.
 Wire transfer funds to: c/o HSBC Bank Canada
 885 West Georgia Street, Suite 200, Vancouver, B.C., V6C 3G1

Transit: 16279 Account: 247430-861

This is Exhibit "C" referred to in
the Affidavit of
MARK WILLIAMS

sworn before me this 27th day of April, 2010


A Commissioner, etc.



31 Fasken Drive
 Etobicoke Ontario M9W 1K6
 CANADA

INVOICE

Invoice Number REV-005146
 Date 3/23/2010
 Payment Terms NET0
 Customer ID SIGVAC1C

Signature Vacations - Revenue
 1685 Tech Ave
 Mississauga ON L4W 0A7

G.S.T. Registration: 13529 1458 RT0002
 H.S.T. Registration: 13529 1458 RT0002
 Q.S.T. Registration: 1012236286 TQ0001

Attention: Susana McCullough

Description	Quantity	Amount
Flights for the period of Apr 3-9, 2010 This invoice includes meals for \$14,770.73	1	\$2,449,083.04
Subtotal		\$2,449,083.04
GST		\$0.00
TOTAL CAD		\$2,449,083.04

Thank you for choosing Skyservice Airlines

Any questions or concerns, please call:

Shavir Mistry
 Phone: (416) 679 5893
 Email: shavir_mistry@skyservice.com

Please make cheques payable to Skyservice Airlines Inc.
 Wire transfer funds to: c/o HSBC Bank Canada
 885 West Georgia Street, Suite 200, Vancouver, BC V6C 3G1

Transit 10270 Account 247495-001

Court File No. CV-10-8647-00CL
Court File No. CV-10-8651 00CL
Court File No. CV-10-8657-00CL
Court File No. CV-10-8658-00CL

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC., of the City of Toronto, in the Province of Ontario
AND IN THE MATTER OF AN APPLICATION pursuant to Section 9 of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c.5 (Application by the Greater Toronto Airports Authority)
AND IN THE MATTER OF AN APPLICATION pursuant to Section 9 of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c.5 (Application by the Ottawa Macdonald-Cartier International Airports Authority)
AND IN THE MATTER OF AN APPLICATION pursuant to Section 56 of the *Civil Air Navigation Services Commercialization Act*, S.C. 1996, Chapter 20, as amended (Application by NAV Canada)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding Commenced at Toronto

AFFIDAVIT of MARK WILLIAMS

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
Box 25, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

Steven J. Weisz, LSUC #32102C
Tel: 416-863-2616

Catherine Beagan-Flood LSUC #43013U
Tel: 416-863-2269

Christopher Burr, LSUC #55172H
Tel: 416-863-3301
Fax: 416-863-2653

Lawyers for Sunwing Tours Inc.

**TAB 2 OF
SUNWING COMPENDIUM**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.,
Of the City of Toronto, in the Province of Ontario**

SUPPLEMENTAL AFFIDAVIT OF MARK WILLIAMS

Sworn October 11, 2011

I, Mark Williams, of the Town of Oakville, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of Sunwing Airlines Inc., a wholly owned subsidiary of Sunwing Travel Group Inc. (“**Sunwing Group**”), which is in turn the 100% shareholder of Sunwing Tours Inc. (“**Sunwing**”). Prior to working for Sunwing, I was the President of the debtor, Skyservice Airlines Inc. (“**Skyservice**”), from January, 2003 until April, 2004. As such, I have knowledge of the matters hereinafter deposed to, except where such knowledge is based on information and belief, in which case I verily believe it to be true and have stated the source of such information.

2. This affidavit is sworn in response to the Tenth Report of the Receiver, dated June 2, 2011 (the “**Tenth Report**”) and as a supplement to my Affidavit sworn April 27, 2010 (the “**April Affidavit**”), both of which have been filed in connection with these proceedings.

A. Sunwing’s Trust Claim

3. Sunwing is an operator of package tours and charter flights in Canada, and was in that capacity a customer of Skyservice. The details of Sunwing’s business and its relationship to Skyservice are set out in paragraphs 3 through 28 of the April Affidavit.

4. As discussed in the April Affidavit, the Skyservice insolvency and ensuing receivership came as a complete surprise to Sunwing, not least because Sunwing believed that it was funding Skyservice's operating costs in advance. At its core, the business relationship between Sunwing and Skyservice was a "cost plus, no risk" arrangement, allocating all economic risk to Sunwing. This is the same arrangement that Skyservice had with its other major customer, Thomas Cook.
5. In the first hours and days following the appointment of the Receiver, Sunwing was forced to take extraordinary steps to ensure its business was interrupted as minimally as possible by Skyservice's surprise insolvency, which required the full attention of Sunwing's personnel.
6. Recognizing that Sunwing had pre-paid substantial amounts to Skyservice for flights that Skyservice would not provide, Sunwing notified the Receiver on April 2, 2010, two days after its appointment, of its proprietary trust claim to funds held by the Receiver (the "**April 2 Letter**"). A copy of the April 2 Letter is attached hereto as **Exhibit "A"**, and is attached to the Tenth Report as Appendix B.
7. Once Sunwing's immediate operational interruptions caused by Skyservice's receivership were mitigated, Sunwing was able to focus its attention on the trust claim it had originally made in the April 2 Letter. This included the negotiation and execution of the Sunwing Letter Agreement (as defined in Paragraph 12 of the Tenth Report, and attached thereto as Appendix D).
8. After correspondence back and forth between Sunwing, its counsel, the Receiver and the Receiver's counsel, Sunwing's trust claim was ultimately refined and crystallized in a letter to the Receiver's counsel dated December 24, 2010 (the "**December Letter**"). A copy of the December Letter is attached hereto as **Exhibit "B"**, and is attached to the Tenth Report as Appendix H.

9. As set out in the December Letter, Sunwing has made a proprietary trust claim to the following amounts:

- (a) \$2,329,473.00, pursuant to an actual trust (the “**Actual Trust Claim**”);
- (b) \$3,513,450.08, pursuant to a constructive trust (including the above amount) (the “**Constructive Trust Claim**”); and
- (c) any amounts paid by Sunwing on account of obligations Skyservice owed to third parties that were not in fact used for such purpose, or Sunwing’s proportionate share thereof, pursuant to a Quistclose trust (the “**Quistclose Trust Claim**”).

10. Following subsequent correspondence with the Receiver, it became clear that there were no amounts that would fall into the Quistclose Trust Claim category, and Sunwing accordingly no longer makes such claim. The Actual Trust Claim and the Constructive Trust Claim are therefore the only trust claims being made by Sunwing at this time.

B. Sunwing and Skyservice Ordinary Course Operations and Payments

The Commercial Agreement

11. As discussed in paragraph 7 of the April Affidavit, Sunwing and Skyservice are party to a commercial agreement dated June 11, 2006 (as amended, the “**Commercial Agreement**”), which sets out the terms and conditions pursuant to which Sunwing and Skyservice enter into individual charter agreements for charter flight services (each, a “**Charter Agreement**”). The Commercial Agreement, lightly redacted, is attached to the Tenth Report as Appendix I.

12. The Commercial Agreement was originally between First Choice Canada Inc. (“**First Choice**”) and Skyservice, and was inherited by Sunwing when Sunwing merged with First Choice. Accordingly, I was not involved with the negotiation or execution of the Commercial Agreement, however I am very familiar with it as a result of dealings between Sunwing and

Skyservice after my appointment as President of Sunwing. I am also very familiar with the general structure of the Commercial Agreement as a result of serving as President of Skyservice.

13. The mechanics of the Commercial Agreement are set out in paragraphs 10 through 18 of the April Affidavit. Generally speaking, the Commercial Agreement allocates all of the financial risk of the Sunwing/Skyservice business relationship to Sunwing by providing that all of Skyservice's costs *and* its profit are paid in advance by Sunwing.

Payments on account of specific flights

14. The Receiver has characterized the weekly payments made by Sunwing under the Commercial Agreement as though they are instalment payments made against the fixed annual budget. At paragraph 27 of the Tenth Report, the Receiver states that "Sunwing agrees that the invoice amounts were determined based on a formula... and not based on specific costs for specific flights, and that costs invoiced included costs not divisible by flight."¹ This is not a correct statement of the payment structure between Sunwing and Skyservice.

15. As set out in the April Affidavit at paragraphs 15 through 18, it is correct that invoices for each weekly period of flying were calculated in accordance with an annual budget, however this is not at all inconsistent with payments being made on account of individual flights. Indeed, as the Commercial Agreement specifically provides, the monthly invoiced amounts were invoiced "on a fixed and a per seat mile basis as set out in Appendix 8 according to the planned flying programme set out in the relevant Charter Agreement."² The Commercial Agreement provided for this payment structure so that Skyservice could allocate its anticipated costs between its customers – not because payments were disconnected from flights provided.

¹ Tenth Report, para. 27

² Commercial Agreement, s. 5.1.2

16. The Charter Agreements also provide that the weekly payments owed by Sunwing “shall be based on the ‘Charter Fee’ (as defined therein) for the number of ‘Rotations’ (as defined therein) scheduled to be flown in the ensuing week,”³ and then adjusted the following month to reflect actual Rotations, to the extent that the scheduled Rotations did not match the actual Rotations. Accordingly, the amounts invoiced were tied to the flights anticipated. If an amount was invoiced and paid for an anticipated flight that did not actually fly, the amount would be credited to Sunwing in the next following adjustment.

17. The invoiced weekly amounts therefore varied from week to week, depending on the seat miles anticipated for the week invoiced. Fewer seat miles would result in lower invoices, and vice versa – this is because the amounts paid by Sunwing were directly linked to the flights provided.

18. Moreover, the invoices relevant to Sunwing’s Actual Trust Claim and Constructive Trust Claim are explicit in the “description” field that they are for “Flights for the period of Mar 27 – Apr 2, 2010” and “Flights for the period of Apr 3-9, 2010”. The invoices, originally attached to the April Affidavit as Exhibits B and C are reattached to this Affidavit as **Exhibit “C”**.

19. Nevertheless, the Receiver argues in paragraph 26(iv) of the Tenth Report, and elsewhere, that because the weekly amounts paid included certain costs that could not be allocated to specific flights, such as ground crew costs and overhead costs, the entire payment cannot be characterized as a payment for the specific flights. This position does not make commercial sense to me. To the contrary of the Receiver’s characterization, the pricing and payment arrangement was in place so that Skyservice could appropriately allocate all of its costs of operating flights to its customers and to ensure that payments from its customers were adequate to cover its risks and costs.

³ Charter Agreement, s. 4.2

20. Sunwing was buying flights from Skyservice. The way in which Skyservice applied the weekly “purchase price” to its own in-house costs – be they ground crew costs for specific flights or paper for Skyservice’s printers – was of no consequence to Sunwing, and does not change the fact that invoices were rendered and payments were made for specific flights.

21. In addition, payments were made in advance for specific flights in order to satisfy regulatory requirements. Section 43(3) of the Regulations Respecting Air Transportation (SOR/88-58), made under the *Canadian Transportation Act* (the “**Regulations**”) requires that Sunwing, a “tour operator”, pay Skyservice, an “air carrier” (as such terms are defined in the Regulations), the full contract price for air transportation at least seven days before the commencement of a tour flight.

22. In order to comply with the Regulations, there must be a price attributable to a flight.

23. The Charter Transportation Agreements entered into between Skyservice and First Choice (now Sunwing), as filed with the Canadian Transport Agency by Skyservice (each a “**Charter Transportation Agreement**”), state that the contract was made subject to, among other things, section 43(3) of the Regulations, and provide that “payment for each rotation will be payable (7) days prior to departure.”

24. Each Charter Transportation Agreement provides a schedule of flights to a particular destination for a particular time period. One such Charter Transportation Agreement (lightly redacted) is attached hereto as **Exhibit “D”**.

25. Each Charter Transportation Agreement provides the price payable for the flights scheduled therein and such price is a direct result of the flights scheduled. The payment for each scheduled flight was required by the Regulations to be made at least seven days in advance of the departure of the flight, however in practice it was often paid more than seven days in advance.

C. Losses Incurred by Sunwing as a Result of Receivership

26. Sunwing suffered numerous and varied damages and loss as a direct result of Skyservice's receivership and corresponding breach of the Commercial Agreement and Charter Agreements, among other things.

27. As set out in detail in the Proof of Claim filed with the Receiver by Sunwing in Skyservice's claims process, Sunwing has determined that its aggregate losses as a result of Skyservice's receivership total CDN\$18,997,905 and US\$1,956,188 (these amounts include the amounts in respect of which Sunwing claims a trust). These amounts have not yet been finally assessed by the Receiver.

D. The Letter of Credit

28. The Receiver posits at Paragraph 112 of the Tenth Report that it appears the Commercial Agreement and certain regulations were structured to provide Sunwing with a remedy for the failure of Skyservice to provide pre-paid flights, in the form of the "Skyservice LC" (as defined in paragraph 107 of the Tenth Report).⁴ The implication made by the Receiver appears to be that the Skyservice LC was put in place instead of or to the exclusion of a trust remedy. This entirely mischaracterized the purpose of the Skyservice LC.

29. As the Tenth Report correctly sets out, the Skyservice LC was required to be posted by Skyservice in order for it to operate pursuant to the Regulations. The Skyservice LC is a consumer protection device mandated by regulation to ensure that if an airline like Skyservice becomes insolvent and the charterer cannot finance the emergency remedial steps (as Sunwing did, in fact, do), there is sufficient liquidity available to protect passengers who may be caught in the middle. The Skyservice LC is for the benefit of the travelling public, not Sunwing.

⁴ Tenth Report, at para. 112

30. Skyservice provided the Skyservice LC as required by law, however posting such security on Skyservice's own credit would be fundamentally contrary to the cost-plus, no risk business relationship between Skyservice and Sunwing. The Skyservice LC was accordingly backstopped by a second letter of credit, drawn on the credit of First Choice and subsequently on the credit of TUI Travel PLC ("TUI Travel"), Sunwing's 49% shareholder (the "FCC LC", as also referred to in the Tenth Report at paragraph 109). The FCC LC ensured that Skyservice was never exposed to economic risk as a result of a drawdown on the Skyservice LC.

31. Were Sunwing to have drawn down on the Skyservice LC, as the Receiver seems to suggest it should have, it would have triggered a corresponding drawdown on the FCC LC; a drawdown for which TUI Travel would ultimately be liable. Accordingly, taking Sunwing and TUI Travel as a single economic unit, Sunwing drawing on the Skyservice LC would have been economically equivalent to paying itself with its own money – which is effectively what Sunwing did anyway when it financed the mitigation of its own losses with its own cash.

32. At the time of Skyservice's receivership, Sunwing and TUI Travel's partnership was in its early stages. Sunwing would never have drawn down on the Skyservice LC – triggering a liability for TUI Travel and poisoning the young partnership – unless there was no way it could otherwise finance the remedial steps necessary to protect its passengers.

33. The Skyservice LC was not optional or voluntary, it was not negotiated security, and but for the FCC LC backstop, the Skyservice LC was inconsistent with the cost-plus, no risk business model of Skyservice. The Skyservice LC existed to satisfy regulatory requirements under the *Canada Transportation Act*, and was effectively put into place by First Choice and subsequently TUI Travel, at TUI Travel's risk.

E. Alleged Unpaid Invoices Issued by Skyservice to Sunwing

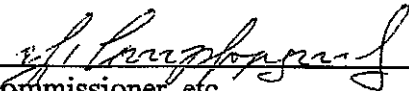
34. At paragraph 63 of the Tenth Report, the Receiver sets out four invoices issued to Sunwing by Skyservice that have not been paid. I note that all four of these invoices are dated March 31, 2010, the date that the Receiver was appointed. Sunwing does not admit the amounts claimed by the Receiver, but Sunwing was historically billed for travel taxes after the period of flying for which the taxes relate. Sunwing disputes that it owes anything on account of March fuel differential, and disputes these invoices in full.

35. To the extent these invoices have anything to do with Sunwing's trust claim – and I do not believe that they do – the appropriate amounts owing would have to be determined before such trust claim could be resolved and Sunwing reserves its rights to present additional evidence on this point.

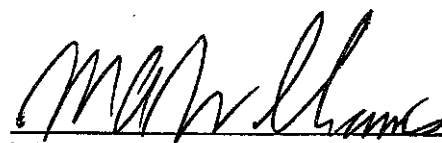
* * * * *

36. I make this affidavit solely in support of Sunwing's response to the Receiver's motion regarding Sunwing's trust claim, and for no other or improper purpose.

SWORN BEFORE ME at the
City of Etobicoke, in the Province of Ontario,
this 11th day of October, 2011


A Commissioner, etc.

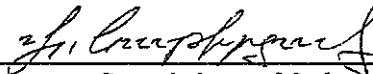
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Mark Williams

VLADIMIR SHATIRYAN
A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO,
WHILE A STUDENT-AT-LAW.
EXPIRES MAY 10, 2013.

This is Exhibit "A" referred to in
the Affidavit of
Mark Williams

sworn before me this 11th day of October, 2011



Commissioner of Oaths

**VLADIMIR SHATIRYAN
A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO,
WHILE A STUDENT-AT-LAW.
EXPIRES MAY 10, 2013.**



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

April 2, 2010

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto Dominion Centre
66 Wellington Street West
Toronto, ON M5K 1E6

Linc Rogers
Dir: 416-863-4168
linc.rogers@blakes.com

Reference: 76074/2

Re: Receivership of Skyservice Airlines Inc. ("Skyservice")

Attention: James Gage

As you are aware, we are counsel to Sunwing Tours Inc. ("Sunwing").

This letter is to advise you that the Receiver is holding funds, in its capacity as Receiver of Skyservice, over which Sunwing asserts an interest, including without limitation a proprietary interest.

Sunwing's business relationship with Skyservice historically involved Sunwing making certain prepayments and deposits to Skyservice for charter services, fuel costs, airport and landing fees and levies, Serviceair services and tourist card charges. The aggregate paid by Sunwing in this regard on account of services not provided by Skyservice is at least CDN\$7,200,000, subject to further confirmation by Sunwing.

Prepayments for services were received by Skyservice for the express purpose of funding the applicable flights and associated costs. The prepayment funds are subject to Sunwing's interest, including without limitation a proprietary or trust interest, do not form part of the Skyservice estate and are not subject to any court ordered charges or other security. Any interest in the prepayments and deposits that has passed to the Receiver is irrevocably impressed with Sunwing's interest.

As a result of Skyservice's receivership, the March 31 - April 9 flight services for which the prepayments were made cannot and will not be provided by Skyservice. Sunwing will seek the necessary relief to assert its interest and the return of these funds. We trust that you will not take any steps to disburse these funds without first obtaining a court order on at least seven days notice to Sunwing, so that we can seek appropriate direction from the Court. We are currently seeking instructions with respect to bringing a motion for the return of the funds, and will be in contact with additional information in furtherance of this claim.

Sunwing's claim to the funds set out herein is without prejudice to, and shall not limit, any other claims it may have to such funds.


Yours very truly,

per Linc Rogers

cc: N. Meakin, FTI Consulting Canada Inc.
H. Mendelth, McCarthy Tétrault
S. Weisz, Blakes
C. Cerguelra, Blakes

This is Exhibit "B" referred to in
the Affidavit of
Mark Williams

sworn before me this 11th day of October, 2011



Commissioner of Oaths

**VLADIMIR SHATIRYAN
A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO,
WHILE A STUDENT-AT-LAW.
EXPIRES MAY 10, 2013.**



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto, ON, M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2553

December 24, 2010

Steven J. Weisz
Dir: 416-863-2516
steven.weisz@blakes.com

Reference: 76074/2

Via Email

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto Dominion Centre
66 Wellington Street West
Toronto, ON M5K 1E6

Dear Ms. Meredith:

Re: Receivership of Skyservice Airlines Inc. ("Skyservice")
Re: Claims to funds by Sunwing Tours Inc. ("Sunwing")

Further to our letter of May 12, 2010, and your letter of December 7, 2010, this letter is to advise you of the particulars of Sunwing's claims to the funds held by FTI Consulting Canada Inc., in its capacity as receiver of Skyservice (the "Receiver").

1. Background

As you know, Sunwing and Skyservice are party to a commercial agreement dated June 11, 2006 (as amended, the "Commercial Agreement"). The Commercial Agreement sets out the terms and conditions pursuant to which Sunwing and Skyservice enter into individual agreements (the "Charter Agreements") for the charter of flight services during the term of the Commercial Agreement.

As you also know, the charter flights are a cost-plus arrangement under which Sunwing pre-pays Skyservice a "Charter Fee". In the ordinary course of business, Skyservice would submit invoices to Sunwing reflecting charges for scheduled charter flights in a subsequent weekly period. In addition to the ordinary course scheduled prepayments for charter flights, at Skyservice's explicit request, Sunwing would provide Skyservice with funds for amounts owing to third parties including fuel suppliers, airport authorities and other third party suppliers and service providers.

When Skyservice ceased operations on March 31, 2010, without notice to Sunwing, Sunwing had made prepayments to Skyservice in respect of charter flights scheduled on and after March 31, 2010. Such flights were not provided by Skyservice, and Sunwing claims a proprietary interest in all such payments. Further, to the extent that the payments made by Sunwing to Skyservice on the basis that they would be forwarded to third parties were not actually forwarded to the appropriate third parties, or such payments were made to third parties and have been or will be refunded to Skyservice because they were not applied by such third parties as they were intended, such funds should rightfully be returned to Sunwing and Sunwing claims a proprietary interest in such unremitted or refunded amounts. As set out in detail below, Sunwing's proprietary interest in such payments is based on the existence of (a) an actual trust, (b) a constructive trust, and/or (c) a quasi-trust.

Page 2

2. Actual Trust: March 29 Segregation Of Funds - \$2,329,473.00

Invoice REV-005146, dated March 23, 2010 (the "March 23 Invoice"), was issued by Skyservice to Sunwing in the amount of \$2,449,083.04, and on its face represents the charter fee for flights for the period of April 3 to April 9, 2010. Sunwing paid the March 23 Invoice on March 26, 2010. As a result of Skyservice's receivership, none of the charter flights pre-paid for under the March 23 Invoice were provided.

We understand from correspondence with the Receiver that on March 26, 2010, Skyservice applied \$2,329,473.00 in "partial" payment of the March 23 Invoice. As discussed in part 3 of this letter, Sunwing disputes that only "partial" payment was made on account of the March 23 Invoice; however for the purposes of this Part 2, it appears clear that Sunwing and Skyservice are in agreement that payment of at least \$2,329,473.00 was made.

We further understand from correspondence with the Receiver that on March 29, 2010, in anticipation of the receivership, Skyservice identified payments that had been made to it that related entirely to future flying that Skyservice was contracted to perform but that its management knew it would not provide. We understand that this review identified four amounts, totalling \$2,731,802.76, made up of: (a) \$2,329,473.00 in respect of the payment Sunwing made on March 26, 2010 on account of the March 23 Invoice (the "Trust Monies"); and (b) three other amounts paid to Skyservice by third parties. We understand that Skyservice then transferred all of these amounts to a separate bank account known internally as the "In Flight Collections Account".

We have not been provided with details of the other amounts, in addition to the amounts paid by Sunwing, that were identified by Skyservice management and segregated in the In Flight Collections Account. Further information about these amounts is material to Sunwing's claim, and accordingly we hereby request (a) an accounting of all amounts deposited into the In Flight Collections Account, and (b) to the extent any funds were paid out of the In Flight Collections Account to third parties, details of the quantum and recipient of such payments, together with an explanation for the distribution(s).

The identification and segregation of the Trust Monies by Skyservice on March 29, 2010, in anticipation of the receivership, evidences the intention of Skyservice to establish a trust for the benefit of Sunwing. Case law is clear that certainty of intention to establish a trust need not be evidenced by a trust document or oral communication; the intention of the settlor to create a trust can be inferred from conduct and surrounding circumstances.¹ The actions of Skyservice in identifying and segregating the Trust Monies demonstrate that from March 29, 2010 forward, Skyservice's intention was to not use those funds for its own purposes, but to hold them in trust for Sunwing. Moreover, such manifest intention to hold the Trust Monies in trust supercedes any provisions of the Commercial Agreement or Charter Agreements to the contrary; Skyservice's act of segregating the Trust Monies created greater duties on Skyservice to Sunwing than those provided for in the agreements.

Further, with respect to the "three certainties" necessary to found a trust, the beneficiary or object of the trust, being Sunwing, and the quantity of the Trust Monies or subject of the trust, being \$2,329,473.00, were manifest by Skyservice by virtue of its segregation of the Trust Monies on March 29, 2010.

¹ D.W.M. Waters, *Law of Trusts in Canada*, 3rd ed., (Toronto: Carswell, 2005) at 133; *Arkay Casino Management & Equipment (1985) v. Alberta (Attorney General)*, 1998 Carswell Alta 771 (Alta. Q.B.) at para. 43; *McEachren v. Royal Bank*, [1991] 2 W.W.R. 702 (Alta. Q.B.) at para. 104; *Randall v. Nicklin*, 1984 Carswell NB 216 (N.B. C.A.) at paras. 23-24.



Page 3

The requisite elements of a trust, being certainty of intention, object and subject, are therefore evident with respect to the Trust Monies. A trust exists, and we hereby request that the Receiver pay over \$2,329,473.00 to Sunwing forthwith.

3. Constructive Trust: Payments For Flights That Were Not Provided - \$3,513,450.08

As outlined above, in accordance with the Commercial Agreement and the Charter Agreements, Skyservice invoiced Sunwing in relation to each one-week period in which Sunwing flights were to take place. Such invoices were delivered to Sunwing and payment was due from Sunwing the week before the corresponding flights took place.

On March 17, 2010, invoice REV-005130 was issued to Sunwing in the amount of \$3,189,731.34 (the "March 17 Invoice") and was explicitly for flights in respect of the period March 27 to April 2, 2010. \$1,064,367.04 of the amount charged was for flights on March 31 to April 2, as accounted for below. The March 17 Invoice was paid in full by Sunwing on March 19, 2010. The March 23 Invoice was issued to Sunwing on March 23, 2010 in the amount of \$2,449,083.04 for flights in respect of the period April 3 to April 9, 2010. The March 23 Invoice was paid in full by Sunwing on March 26, 2010.

As a result of Skyservice's receivership, none of the charter flights scheduled on and after March 31, 2010, were provided. Sunwing therefore claims the aggregate amount of \$3,513,450.08, being the total amount paid by Sunwing for flights that were not provided, on the grounds that such amount is impressed with a constructive trust for Sunwing's benefit as a result of Skyservice being unjustly enriched in the same amount.

Unjust Enrichment

As a result of Skyservice's acceptance of Sunwing's payments under the March 17 Invoice and March 23 Invoice, Skyservice was clearly enriched by \$3,513,450.08. Skyservice, having paid the money and received nothing in return, was correspondingly deprived of the same amount. In the ordinary course Sunwing would not be deprived for having made payment to Skyservice because Sunwing would receive the flights that it paid for.

Due to the March 31 appointment of the Receiver and, more specifically, the resulting failure of Skyservice to provide the flights pre-paid for, however, Skyservice's enrichment and Sunwing's corresponding deprivation lack all juristic reason or justification. It is Sunwing's position that Skyservice invoiced Sunwing and accepted payment from Sunwing knowing that it would not provide the flights for which the two invoices were rendered. Indeed, based on the Affidavit of Karim Nensi filed by Thomas Cook Canada, Ltd. ("Thomas Cook") with the receivership application, Skyservice's officers and directors had informed Skyservice's counsel of their intention to resign on March 29, 2010 (at the latest). That is just six days after the issuance of the March 23 Invoice and three days after receipt of payment for the March 23 Invoice. Sunwing's position is that Skyservice was not caught unaware by Thomas Cook's action, and that it had knowledge of the impending receivership well in advance of March 31, 2010, including on March 17, March 19, March 23 and March 26, 2010, when the March 17 Invoice was issued and paid and the March 23 Invoice was issued and paid, respectively. Moreover, by knowingly invoicing and accepting payment for flights that Skyservice knew it would not be able to provide, Skyservice cannot rely on the adjustment mechanism that would



Page 4

rectify, in the normal course, Skyservice's enrichment and Sunwing's corresponding deprivation; Skyservice cannot point to remedial contractual provisions that it knew would be of no effect to avoid liability for its unjust enrichment.

Issuance of invoices and acceptance of "pre-payments" with the undisclosed certainty that the flights for which the invoices and pre-payments relate would not be provided is inequitable and vitiates any juristic reason for an enrichment that would in the ordinary course exist by virtue of the Commercial Agreement and Charter Agreements.

The case law is clear that a remedy for unjust enrichment is restitution via the imposition of a constructive trust.²

Quantification of Constructive Trust Claim

The amounts paid by Sunwing pursuant to the March 17 invoice and the March 23 invoice are clearly attributable to certain, specific flights and indeed, in the case of the amounts claimed herein by Sunwing, to the flights that were not provided. Pursuant to the relationship between Sunwing and Skyservice, the amounts of invoices were determined based on a complex formula involving an annual budget, and in all likelihood the amounts received by Skyservice on account of such invoices were used by Skyservice for costs incurred, some of which are not divisible by flight by Skyservice after their receipt (such as general overhead costs). However, how the charges for flights were calculated and how Skyservice handled the funds after receipt are matters of internal management and are irrelevant to the determination of whether or not the amounts paid are attributable to specific flights.³ Whether Skyservice used money received from Sunwing to operate the specific flights for which it was paid, or applied some or all of such amounts to general costs, such as the overhead costs of Skyservice's office, has no bearing on whether or not the money was paid in respect of specific flights – In this case, the specific flights that were not provided.

The March 17 invoice and the March 23 invoice are explicitly, on their face, for flights scheduled March 27 to April 2 and April 3 to April 9, respectively. In the ordinary course, where flights actually provided in a given week did not match the scheduled number of flights, adjustments were made to subsequent invoices; this would only be possible to the extent that actual amounts are allocable to certain, specific flights. Furthermore, it appears that Skyservice was able to and did attribute charges to particular flights; we understand from previous correspondence, for example, that Skyservice records show that the invoiced amount relating to the period from March 31 to April 2, 2010, is \$944,949.84. Therefore, it is Sunwing's position that the amounts paid with respect to the flights scheduled for March 31 to April 9, 2010, can be easily identified and allocated to the flights not provided.

We understand that there may be some dispute as to the amount that Sunwing paid for the flights not provided. It is Sunwing's position that the amount relating to flights that were not provided for the period March 31 to April 2, 2010 is \$1,064,367.04. The attached spreadsheet illustrates how Sunwing's allocation is determined.

² *Becker v. Pettus*, (1980), 117 D.L.R. (3d) 257 (S.C.C.).

³ For example, see *R. v. Lowden*, (1981) 15 Alta. L.R. (2d) 250; aff'd [1982] S.C.R. 60, where a travel agent received funds from a client for purchasing an airline ticket but used such funds for other purposes.



Page 5

Regarding payment for the March 23 Invoice, we understand that Skyservice received a single payment from Sunwing on March 26, 2010 in the amount of \$2,685,435.58 (the "March 26 Payment").

The March 26 Payment related to two invoices; the March 23 Invoice and invoice SALES000000817 dated March 26, 2010 for passenger taxes between March 8 and March 14, 2010 in the amount of \$255,959.25 (the "Passenger Tax Invoice"). We understand that Skyservice applied the March 26 Payment as full payment of the Passenger Tax Invoice and the remainder of \$2,329,466.33 as partial payment of the March 23 Invoice. However, we understand that a credit note, REVCRD-001472, in the amount of \$119,609.86 (the "Credit Note") was applied in payment of the difference between the amount of the March 26 Payment and the total amount due under the March 23 Invoice and the Passenger Tax Invoice.

The Credit Note was issued to Sunwing from Skyservice to account for previous overpayments made by Sunwing to Skyservice. The Credit Note represented a cash amount of \$119,609.86, to be applied by Sunwing against any amount owing to Skyservice, and was in fact applied against amounts owing under the March 23 Invoice. For the purposes of establishing a constructive trust, Sunwing's payment of \$2,685,435.58 in addition to Sunwing's application of the Credit Note is no different than if Sunwing had paid \$2,805,045.44 in cash.

Therefore, it is Sunwing's position that the March 26 Invoice was paid in full, in the amount of \$2,449,083.04.

Requested Remedy

We hereby request that the Receiver pay over \$3,513,450.08 to Sunwing forthwith. This amount reflects the payments made by Sunwing on account of flights that were not provided, specifically: (i) the portion of the payment made on account of the March 17 Invoice that is attributable to flights scheduled March 31 to April 2, 2010, being \$1,064,367.04; and (ii) the payment made on account of the March 23 Invoice, attributable to flights scheduled April 3 to April 9, 2010, being \$2,449,083.04.

We note that this \$3,513,450.08 requested is duplicative of the \$2,329,473.00 (being the Trust Monies) requested in Part 2 of this letter, which are subject to both an actual trust, as discussed in Part 2 of this letter, and to a constructive trust, as discussed in this Part 3.



4. Quistclose Trust: Third Party Payments – Unknown Quantum

In addition to the prepayments made under the Commercial Agreement and the Charter Agreements in respect of flights to be provided by Skyservice, Sunwing also provided substantial payments to Skyservice, at Skyservice's explicit request, to be paid over by Skyservice to specific third parties. In this regard, the following payments (the "Sunwing Third Party Payments") were made by Sunwing to Skyservice on the following specified dates:

Intended Third Party Payee	Amount of Payment	Date Paid
GTA	\$678,000	October 22, 2009
Imperial Oil	\$2,400,000	November 25, 2009
Servisair deposit	\$390,000	December 23, 2009
Tourist Cards (CAN)	\$237,000	October 9, 2009
Tourist Cards (US)	US\$213,000	October 9, 2009

As demonstrated by the attached correspondence between Skyservice and Sunwing, each of the above payments were made by Sunwing for a specific purpose, which purpose was explicitly set out in the request from Skyservice. Skyservice therefore had notice of such purpose, and the purpose was abundantly clear: the money was to be paid over to the specified third party. It can furthermore be gathered from the attached correspondence that the intention of the parties was for Skyservice to hold the Sunwing Third Party Payments and apply them only to the specified third party debts or obligations for which they were requested. Purpose of payment, knowledge of such purpose by the recipient and an intention that the money be used only for such purpose are the three requirements for a quistclose trust, and the Sunwing Third Party Payments were therefore subject to a quistclose trust immediately upon their delivery to Skyservice.⁴

We understand from your letter of December 7, 2010, that Skyservice made payment to the Intended Third Party Payees listed above in amounts in excess of the amount of the Sunwing Third Party Payments within a reasonable time after such amounts were received by Skyservice from Sunwing.

In addition to the Sunwing Third Party Payments, we assume that Skyservice received funds for the purpose of making payments to the Intended Third Party Payees listed above from parties other than Sunwing, including from Thomas Cook (the "Other Third Party Payments"). To the extent that Skyservice failed to pay the sum of such Other Third Party Payments and the Sunwing Third Party Payments to the third parties for whom they were intended, some or all of the unpaid amounts are held by Skyservice in trust, and Sunwing's portion thereof is hereby requested by Sunwing. Sunwing is not able to quantify this claim at this time because the amount of the claim is dependant upon records of Skyservice revealing the amount of the Third Party Payments received by Skyservice. Such information is not available to Sunwing; however, we trust it is available to the Receiver and hereby request the details thereof.

⁴ See, for example, *Coffs Over Maps Day Investments Ltd., Re*, 2010 CarswellBC 726 (B.C.S.C.), which reviews the Canadian jurisprudence on quistclose trusts generally.



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In addition, to the extent that Skyservice has received or is owed a refund from the Intended Third Party Payees on account of the Sunwing Third Party Payments made by Sunwing to Skyservice and thereafter paid by Skyservice to the Intended Third Party Payee, the portion of such Sunwing Third Party Payments refunded is held by Skyservice in trust, and is hereby requested by Sunwing. Sunwing is not able to quantify this claim at this time because the amount of the claim is dependent upon records of Skyservice revealing the amount of the refunds, if any. Such information is not available to Sunwing; however, we trust it is available to the Receiver and hereby request the details thereof.

5. Damages Claim

In our letters to you dated May 12, 2010 and April 2, 2010, wherein we assert certain financial and trust claims on behalf of Sunwing, claims for costs and damages, including costs of replacing flight services, inventory write-offs, customer protection and compensation and loss of revenues were included. Our May 12, 2010 letter estimated these claims to be CDN\$4,900,000, and they have since been determined to substantially exceed that amount as set out in the proof of claim filed with the Receiver on behalf of Sunwing on August 27, 2010 (the "Proof of Claim").

Without limiting the claims made in this letter, and without prejudice to anything in the Proof of Claim; we wish to clarify Sunwing does not claim a trust with respect to these miscellaneous damages and costs, except to the extent there is any overlap between the damages and the trust claims set out in this letter, in which case Sunwing asserts its trust claim in full over any overlapping amount.

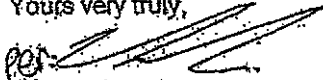
6. Determination of Trust Claim

We understand that the Receiver may seek the assistance of the Superior Court of Justice in determining Sunwing's trust claim. Sunwing does not object to the inclusion of this letter and its attachments and in any materials filed by the Receiver with the Court for that purpose, and reserves the right to include this letter and its attachments in any responding materials filed by Sunwing.

The facts underlying Sunwing's claim do not appear to be materially in dispute. We trust that in the event the Receiver seeks the Court's assistance to determine Sunwing's claim, we will be given an opportunity to develop an agreed statement of facts to expedite and focus any issue that may remain following your consideration of this letter.

Please do not hesitate to contact me should you have any questions.

Yours very truly,



Steven J. Weisz

12434733.2

Jolanta Bialy

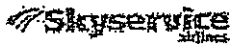
From: Percy Gyara [Percy_Gyara@Skyservice.com]
Sent: Wednesday, October 7, 2009 3:23 PM
To: Jolanta Bialy
Cc: Barbara Syrek
Subject: RE: Skyservice Airlines - Air Carrier: Security Deposit Or Prepayment Requirement

Hi Jolanta

As per my email in April, GTAA requires deposit and prepayment for AIF and landing fees \$ 678,000. We have to prepay 30 days of AIF and 15 days of landing fees. Please arrange to transfer this funds by 22nd October as I need to pay by 25th October.

Thanks in advance for all your help.

Percy Gyara , CGA, CPA
Controller



31 Pasken Drive
Toronto, Ontario M9W 1K6
Phone: (416) 679-5879
Fax: (416) 679-5913
E-mail: percy_gyara@skyservice.com

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From: Percy Gyara
Sent: April 7, 2009 5:04 PM
To: Jolanta Bialy
Cc: Barbara Syrek
Subject: FW: Skyservice Airlines - Air Carrier: Security Deposit Or Prepayment Requirement

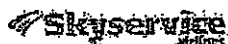
Hello Jolanta

Attached please find a letter from GTAA which states that they will requiring a deposit for AIF and landing fees. As you don't have any operations in the summer, this will not affect you but I just wanted to inform you that we will need some kind of deposit from you in the winter season. Amount to be determined based on the schedule.

Please let me know if you have any questions or concerns.

Thanks

Percy Gyara , CGA, CPA
Controller





Greater Toronto Airports Authority

Finance

March 20, 2009

Silena Baur, CCA

Manager, Accounting Operations

Tel: 416.776.7114

Fax: 416.776.5551

Ferey Gyara
Skyservice Airlines Inc
31 Easken Drive
Toronto ON M9W 1K6

Dear Mr. Gyara:

Re: Toronto Pearson International Airport
Financial Security for Airport Improvement Fees and Aeronautical Fees.

The Greater Toronto Airports Authority (GTAA) in consultation with the Air Carrier Consultative Committee (ACC) at Toronto Pearson International Airport ("Toronto Pearson") is implementing new financial security requirements in respect of airport improvement fees ("AIF"), landing fees and general terminal charges (all such fees and charges are collectively referred to as the "Fees") to reduce the financial risk to the GTAA and to the air carriers operating at Toronto Pearson. Attached for your information is an extract from the Minutes of the ACC meeting held on February 24, 2009 relating to this matter.

The financial security consists of the air carriers either prepaying an estimate of the Fees or providing a security deposit to the GTAA. Each air carrier operating at Toronto Pearson must either prepay an estimate of the Fees for each payment period or provide a security deposit. The attached Schedule "A" to this letter describes the prepayment and security deposit requirements in more detail. Air carriers providing security deposits may provide the required amount by a letter of credit or cash, or a combination of letter of credit and cash. The GTAA will pay interest on the cash portion of a security deposit as provided in the attached Schedule "A". We ask that you complete the attached Schedule "A" (indicate the option you have selected with a check mark) and return it to the GTAA by April 30, 2009.

Initially, after the GTAA receives the completed Schedule "A" from the air carrier, the GTAA will determine and advise the air carrier of the actual prepayment amount or security deposit, as applicable, based on its anticipated summer 2009 operational schedule. The GTAA may revise the applicable prepayment amount or security deposit from time to time depending on changes in the air carrier's operational schedule.

Greater Toronto Airports Authority
Toronto Pearson International Airport

P.O. Box 5001, 9111 Carleton Drive
Toronto, Ontario, Canada M5P 1B2

☎ (416) 776-6000
☎ (416) 776-7114
www.gtAA.com



March 20, 2009
Page 2 of 3



It is important to note the following dates when the financial security requirements become effective:

A. Prepayment of Fees

For air carriers prepaying the Fees, the first prepayment is due on May 25, 2009. With respect to AIF, the first prepayment amount covers the period June 1 - June 30, 2009 and for landing fees and general terminal charges the first prepayment amount covers the period June 1 - June 15, 2009. Thereafter, the prepayments are due five (5) business days before each successive 30 day period for AIF and 15 day period for landing fees and general terminal charges.

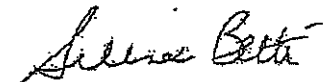
B. Security Deposit

For air carriers paying security deposits (either letter of credit, cash, or combination), the GTAA must receive the applicable amount by May 29, 2009.

An air carrier may request to switch from prepayment to providing a security deposit, and vice versa, once per calendar year. If the GTAA approves such request it will inform the air carrier of the amount of the prepayment or security deposit, as applicable. However, at all times the air carrier must either be prepaying the Fees or have provided a security deposit to the GTAA.

Should you have any questions or require clarification please contact Teresa Fielding at teresa.fielding@gtaa.com.

Yours truly,


Silena Betti, CGA
Manager, Accounting Operations

c Jackie Smalec - Skyservice
Larry Shack - Skyservice



Schedule "A"

Air Carrier _____

Aeronautical Revenue (Landing Fees and General Terminal Charges)

Option	Details*	Indicate Option Selected
1. Security Deposit (a) Cash Deposit**	45 days	
(b) Letter of Credit	45 days	
2. Prepayment***	15 days	

AIF Revenue

Option	Details	Indicate Option Selected
1. Security Deposit (a) Cash Deposit**	30 days	
(b) Letter of Credit	30 days	
2. Prepayment***	30 days	

*Based on the average daily forecasted activity for each season: Winter (November 1 to March 31) and Summer (April 1 to October 31). The GTAA may revise the prepayment amount or security deposit if there are changes in the air carrier's forecasted operational activity.

** GTAA to pay interest as set by the 180 day CIBC Bank deposit rate

*** Carrier pays an estimate of the aeronautical activity 5 business days prior to the activity period and balance of invoice within 30 days of invoice date. The GTAA will periodically review and reconcile actual flight operations at Toronto Pearson with the prepayment amounts and security deposit and reserves the right to change the prepayment amounts and security deposit accordingly.

Jolanta Bialy

From: Jolanta Bialy
Sent: Monday, November 23, 2009 2:50 PM
To: Percy Gyara
Cc: Abdul Khan; Deborah D'Souza; Giulia Geraci
Subject: RE: Imperial Oil deposit

Hello Percy,

Please note that we will provide you with \$2.4m Cad funds to cover Imperial Oil Deposit for WQ9/10 season on Nov 25.
Thanks, Jolanta

From: Percy Gyara [mailto:Percy_Gyara@Skyservice.com]
Sent: Thursday, November 12, 2009 2:33 PM
To: Jolanta Bialy
Subject: Imperial Oil deposit

Hi Jolanta

I have to provide this deposit on or before 30th Nov. Can you please transfer US\$ 2.2M being your portion of the deposit by 26th Nov so that I have enough turnaround time.

Thanks

Percy Gyara, CMA, CPA
Controller



31 Fasken Drive
Toronto, Ontario M9W 1K6
Phone: (416) 679-5879
Fax: (416) 679-5913
E-mail: percy_gyara@skyservice.com

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Jolanta Bialy

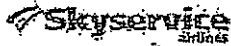
From: Percy Gyara [Percy_Gyara@Skyservice.com]
Sent: Monday, December 21, 2009 12:08 PM
To: Jolanta Bialy
Subject: Deposit for Services

Hi Jolanta

As discussed can you please transfer \$390K as deposit by this Wednesday. I will return the deposit at the end of our winter flying possibly in the first week of May10.

Thanks

Percy Gyara, CGA, CPA
Controller



31 Fasker Drive
Toronto, Ontario M9W 1K6
Phone: (416) 679-5879
Fax: (416) 679-5913
E-mail: percy_gyara@skyservice.com

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Jolanta Bialy:

From: Percy Gyara [Percy_Gyara@Skyservice.com]
Sent: Wednesday, October 7, 2009 3:04 PM
To: Jolanta Bialy
Cc: Barbara Syrak
Subject: Tourist Card Deposit

Hi Jolanta

We need to place the order for Tourist card for the upcoming season and would request the following deposit from you as soon as possible.

€\$ - 237,000
US\$ - 213,000

Please let me know once the transfer of funds take place.

Thanks

Percy Gyara, CGA, CPA
Controller




31 Fasken Drive
Toronto, Ontario M9W 1K5
Phone: (416) 679-5879
Fax: (416) 679-5913
E-mail: percy.gyara@skyservice.com

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This is Exhibit "C" referred to in
the Affidavit of
Mark Williams

sworn before me this 11th day of October, 2011



Commissioner of Oaths

**VLADIMIR SHATIRYAN
A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO,
WHILE A STUDENT-AT-LAW.
EXPIRES MAY 10, 2013.**



31 Fasken Drive
 Etobicoke Ontario M9W 1K6
 CANADA

INVOICE

Invoice Number REV-005130
 Date 3/17/2010
 Payment Terms NET0
 Customer ID SIGVAC1C

Signature Vacations - Revenue

1685 Tech Ave
 Mississauga ON L4W 0A7

Attention: Susana McCullough

G.S.T. Registration: 13529 1458 RT0002
 H.S.T. Registration: 13529 1458 RT0002
 Q.S.T. Registration: 1012236286 TQ0001

Description	Quantity	Amount
Flights for the period of Mar 27 - Apr 2, 2010 This invoice includes meals for \$19,237.68	1	\$3,189,731.34

Thank you for choosing Skyservice Airlines

Subtotal	\$3,189,731.34
GST	\$0.00
TOTAL - GAD	\$3,189,731.34

Any questions or concerns, please call:

Shavir Mistry
 Phone: (416) 679 5893

Email: shavir_mistry@skyservice.com

Please make cheques payable to Skyservice Airlines Inc.
 Wire transfer funds to: c/o HSBC Bank Canada

885 West Georgia Street, Suite 200, Vancouver, BC V6C 3G1

Transit: 0270, Account: 217236-001



31 Fasken Drive
 Etobicoke Ontario M9W 1K6
 CANADA

CREDIT NOTE

Credit Note No. REVCRD-001472
 Date 3/23/2010
 Payment Terms
 Customer ID SIGVAC1C

Signature Vacations - Revenue

1685 Tech Ave
 Mississauga ON L4W 0A7

Attention: Susana McCullough

G.S.T. Registration: 13529 1458 RT0002
 H.S.T. Registration: 13529 1458 RT0002
 Q.S.T. Registration: 1012236286 TQ0001

Description	Quantity	Amount						
Credit for YYZ-CUN-YYZ flights on Mar 26 & Apr 2, 2010	1.00	\$119,609.86						
<table style="margin-left: 20px;"> <tr> <td>Mar 26</td> <td>54,804.43</td> </tr> <tr> <td>Apr 2</td> <td>54,804.43</td> </tr> <tr> <td></td> <td><u>119,609.86</u></td> </tr> </table>	Mar 26	54,804.43	Apr 2	54,804.43		<u>119,609.86</u>		
Mar 26	54,804.43							
Apr 2	54,804.43							
	<u>119,609.86</u>							
Thank you for choosing Skyservice Airlines								
		Subtotal \$119,609.86						
		GST \$0.00						
		TOTAL CAD \$119,609.86						

Any questions or concerns, please call:

Shavir Mistry
 Phone: (416) 679 5893
 Email: shavir_mistry@skyservice.com

Please make cheques payable to Skyservice Airlines Inc.
 Wire transfer funds to: c/o HSBC Bank Canada
 885 West Georgia Street, Suite 200, Vancouver, B.C. V6C 3G1

Transit: 10270 Account: 217430-001



31 Fasken Drive
 Etobicoke Ontario M9W 1K6
 CANADA

INVOICE

Invoice Number REV-005146
 Date 3/23/2010
 Payment Terms NET0
 Customer ID SIGVAC1C

Signature Vacations - Revenue
 1685 Tech Ave
 Mississauga ON L4W 0A7

 Attention: Susana McCullough

G.S.T. Registration: 13529 1458 RT0002
 H.S.T. Registration: 13529 1458 RT0002
 Q.S.T. Registration: 1012236286 TQ0001

Description	Quantity	Amount
Flights for the period of Apr 3 -9, 2010 This invoice includes meals for \$14,770.73	1	\$2,449,083.04
Subtotal		\$2,449,083.04
GST		\$0.00
TOTAL CAD		\$2,449,083.04

Thank you for choosing Skyservice Airlines

Any questions or concerns, please call:


Shavir Mistry
 Phone: (416) 679 5893
 Email: shavir_mistry@skyservice.com

Please make cheques payable to Skyservice Airlines Inc.
 Wire transfer funds to: c/o HSBC Bank Canada
 885 West Georgia Street, Suite 200, Vancouver, BC V6C 3G1

Francis 16878 - Account 247490-001

This is Exhibit "D" referred to in
the Affidavit of
Mark Williams

sworn before me this 11th day of October, 2011



Commissioner of Oaths

**VLADIMIR SHATIRYAN
A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO,
WHILE A STUDENT-AT-LAW.
EXPIRES MAY 10, 2013.**

CHARTER TRANSPORTATION AGREEMENT

TYPE OF CHARTER: ABC/ITC

**AIRCRAFT: A320
SEATING CAPACITY: 180**

CONTRACT NO. FC.CDN #3074

This Agreement made this 25th DAY OF January, 2010

BETWEEN Skyservice Airlines Inc.
(hereinafter called "Carrier")

AND First Choice Canada Inc./ Premier Choix Canada Inc., 1685 Tech Ave Unit #02, Mississauga, Ontario
(hereinafter called "Charterer") (Name & Address of Charterer)

WHEREAS the Carrier shall provide and the Charterer shall hire aircraft with crew, as hereinafter described, in accordance with and subject to the terms and conditions of this Agreement, and any appendices hereto, all of which shall be governed by the applicable tariffs of the Carrier filed pursuant to law with the Canadian Transportation Agency, the Aeronautics Act, the Canada Transportation Act and other regulations pertinent thereto.

NOW THEREFORE in consideration of the mutual covenants hereinafter set forth, the parties hereto agree:

DATES	ORIGIN	DESTINATIONS	TRAFFIC STOPS	LIVE/FERRY	CONTRACTED SEATS
2/5/2010	YYZ	CUN			
TO			(SEE FLIGHT	SCHEDULE)	
4/23/2010					

BAGGAGE ALLOWANCE: 20 KG

**TARIFF REF:
SPECIAL ARRANGEMENTS/REMARKS
MANDATORY CONDITION TO BE INCLUDED IN**

EACH CONTRACT

This contract is made subject to the terms and conditions stated in section 43(3), and section 51, 55, 56, 57, 59 of The Air Transportation Regulations. This contract is also subject to approval from Foreign Civil Aviation. This agreement is pursuant to existing Tariff CTA (A) No.3 as varied by CTA order No. 2000-a-156 dated May 12, 2000. Payment for each rotation will be payable (7) days prior to departure.

TOTAL OF CHARTER PRICE: [REDACTED]
TOTAL VALUE PER ROTATION: [REDACTED]

This Agreement shall be interpreted in accordance with the laws of Canada

ON BEHALF OF THE CARRIER

ON BEHALF OF THE CHARTERER

SIGNATURE _____

SIGNATURE _____

PER: Ann Sybdio
TITLE: Manager, Government & Regulatory Affairs
Skyservice Airlines Inc.

PER: Christina Groth
TITLE: Vice President of Aviation and Operations
First Choice Canada Inc./ Premier Choix Canada Inc.

WITNESS _____

WITNESS _____

CONTRACT NO. FC CUN #3074

APPENDIX "A"

This Appendix is made pursuant to a Charter Agreement between:

SKYSERVICE AIRLINES INC. & First Choice Canada Inc./ Premier Choix Canada Inc.
c/o/b SKYSERVICE (hereinafter called "Charterer")
(hereinafter called "Carrier")


The terms and conditions hereinafter set out shall be considered to be part of the said Agreement.

PAYMENT REQUIREMENTS


- a) Payments for a charter flight made to any person to whom the Carrier, directly or indirectly, has paid a commission or has agreed to pay a commission with respect to such flight, shall be considered payment to the Carrier.
- b) After the charter contract has been signed by the Charterer and accepted by the Carrier, payment of the charter price and other charges shall be made in accordance with the following:
 - i) the charter price for each return flight in a contract will be paid 7 days before the departure of the outbound portion of each flight in that series.
 - ii) All airport taxes and other taxes applicable to the complete capacity contracted by the Charterer shall be paid by the Charterer to the Carrier 7 days before the departure of each return flight. The Carrier will refund to the charterer all taxes that may have been overpaid, 7 days after each return flight completed.

NOTE: For the purpose of definition, the word "series" as it relates to this rule, shall mean all charter contracts outstanding, at any point in time, entered into between the Charterer and the Carrier.


IN WITNESS WHERE OF, the parties hereto have executed this appendix to the Charter Agreement described above on this 25th day of January, 2010



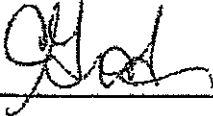
Witness



Skyservice Airlines Inc.
c/o/b Skyservice
Ann Sybydo, Manager, Government & Regulatory Affairs



Witness



First Choice Canada Inc./ Premier Choix Canada Inc.
Christina Groth, Vice President of Aviation and Operations

SKYSERVICE AIRLINES LTD
CHARTER TRANSPORTATION AGREEMENT (SCHEDULE A)

Contract #: FC CUN #3074
 Routing: YYZCUNYYZ

Charter Type: ABC / ITC
 Day of Operation: Fridays

Date	Flight Itinerary	FC	# seats contracted	TTL	ROTATION
03-Feb-10	YYZCUN		180	180	1
05-Feb-10	CUNYYZ		180	180	
12-Feb-10	YYZCUN		180	180	1
12-Feb-10	CUNYYZ		180	180	
19-Feb-10	YYZCUN		180	180	1
19-Feb-10	CUNYYZ		180	180	
26-Feb-10	YYZCUN		180	180	1
26-Feb-10	CUNYYZ		180	180	
05-Mar-10	YYZCUN		180	180	1
05-Mar-10	CUNYYZ		180	180	
12-Mar-10	YYZCUN		180	180	1
12-Mar-10	CUNYYZ		180	180	
19-Mar-10	YYZCUN		180	180	1
19-Mar-10	CUNYYZ		180	180	
26-Mar-10	YYZCUN		180	180	1
26-Mar-10	CUNYYZ		180	180	
02-Apr-10	YYZCUN		180	180	1
02-Apr-10	CUNYYZ		180	180	
09-Apr-10	YYZCUN		180	180	1
09-Apr-10	CUNYYZ		180	180	
16-Apr-10	YYZCUN		180	180	1
16-Apr-10	CUNYYZ		180	180	
23-Apr-10	YYZCUN		180	180	1
23-Apr-10	CUNYYZ		180	180	
					12

Proposed Arrival and Departure Times
 Feb.05 - Apr.23/10

SEAT ALLOCATION: ABC: 20
 ITC: 180
 TOTAL: 180

5G3074	YYZ	0620
	CUN	0930
5G3075	CUN	1020
	YYZ	1606

CHARTER TRANSPORTATION AGREEMENT -- SCHEDULE B

CHARTERER: First Choice Canada Inc./ Premier Choix Canada Inc.
#3074

CONTRACT NO.: FC CUN

CALCULATION OF CHARTER PRICE

TARIFF REFERENCE

CTA NO. <u>1</u>	Page(s)	<u>86</u>	(ABC) <u>20</u>	(ITC) <u>160</u>	(2/5/2010 To 4/23/2010)
		<u>92</u>	(ABC)	(ITC)	(To)
		<u>94</u>	(ABC)	(ITC)	(To)

MILEAGE REFERENCE

IAL MANDAL: YYZ/CUN/YYZ 3232 miles

LIVE:

YYZ/CUN/YYZ 38784 miles

SEAT ALLOCATION:

ABC 240
ITC 1920
TOTAL 2160

COMPUTATION (ITC)

<u>R/T MILEAGE</u>			<u>RATE</u>		<u># OF SEATS</u>		<u>ROTATIONS</u>	=	<u>TOTAL</u>
(Live)	3232	X	██████ cents	X	180	X	12	=	██████
	3232	X	██████ cents	X		X		=	

TOTAL CHARTER PRICE
██████████

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC., of the City of Toronto, in the
Province of Ontario

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding Commenced at Toronto

SUPPLEMENTAL AFFIDAVIT of
MARK WILLIAMS

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
Box 25, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

Steven J. Weisz, LSUC #32102C
Tel: 416-863-2616

Chris Burr, LSUC #55172H
Tel: 416-863-3301
Fax: 416-863-2653

Lawyers for Sunwing Tours Inc.

**IN THE MATTER OF THE BANKRUPTCY OF SKYSERVICE AIRLINES INC. OF THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

Court File No. 31-OR-207744-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding Commenced at Toronto

**MOTION RECORD
(returnable August 3, 2012)**

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

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E-mail: ghall@mccarthy.ca

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

Kelly D. Peters LSUC#: 59914W
Tel: 416 601-8281
E-mail: kpeters@mccarthy.ca
Fax: 416 868-0673

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

#11655252