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

Skyservice Airlines Inc.

SIXTH REPORT OF THE RECEIVER

September 30, 2010

FTI

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

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

INTRODUCTION

1. On March 31, 2010 (the "**Date of Receivership**"), FTI Consulting Canada Inc. was appointed as receiver (the "**Receiver**") of all of the assets, undertakings and properties (the "**Property**") of Skyservice Airlines Inc. ("**Skyservice**" or the "**Company**") pursuant to the order of the Honourable Mr. Justice Gans (the "**Receivership Order**") granted upon the application of Thomas Cook Canada Inc. ("**TCCI**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act R.S.C. 1985 c. B-3 as amended* (the "**BIA**") and section 101 of the *Courts of Justice Act R.S.O. 1990 c.43 as amended*.

2. To date the Receiver has filed a number of reports on various aspects of the Receivership. The purpose of this, the Receiver's Sixth Report, is to inform the Court of the following:

(i) The completion of the sale of the Fasken Property pursuant to the Fasken Sale Agreement approved by the Court on August 12, 2010;

(ii) The progress of the Hangar Marketing Process;

(iii) The results of the sale of assets pursuant to the Liquidation Services Agreement approved by the Court on June 16, 2010;

(iv) Receipts and disbursements for the period from March 31 through September 24, 2010;

(v) The progress of the Claims Procedure approved by the Court on July 27, 2010;

and to request the granting by this Honourable Court of:

(vi) An order approving an interim distribution of $5 million to Thomas Cook Canada Inc. ("**TCCI**") on account of the Roynat Principal Claim, as hereinafter defined (the "**Interim Distribution**").

TERMS OF REFERENCE

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

4. The information and advice described in this Report as being provided to the Receiver by McCarthy Tétrault LLP (the "**Receiver's Counsel**") has been provided to the Receiver 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.

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

SALE OF THE FASKEN PROPERTY

6. As noted above, the sale of the Fasken Property, the location of Skyservice's chief executive office, pursuant to the Fasken Sale Agreement was approved pursuant to an order of the Court granted on August 12, 2010 (the "**Fasken Sale Order**"). The sale was completed on August 17, 2010. Net proceeds of sale were $5,240,320.16.

PROGRESS OF THE HANGAR MARKETING PROCESS

7. As detailed in the Receiver's First report, Skyservice owns a building located at 2450 Derry Road in the city of Mississauga, Province of Ontario (the "**Hangar**").

8. In its Fourth Report, the Receiver set out the intended steps for the Hangar Marketing Process. The Hangar Marketing Process has now been carried out and the Receiver is in exclusive negotiations with the aim of entering into an agreement of purchase and sale, subject to Court approval, for the sale of the Hangar. Details of the Hangar Marketing Process will be provided in conjunction with a motion for such approval, to be brought by the Receiver once an agreement has been executed.

ASSET SALES PURSUANT TO THE LIQUIDATION SERVICES AGREEMENT

9. The liquidation of assets pursuant to the Liquidation Services Agreement is close to completion with net realizations to the estate being $2,806,886.33 to date. That amount is $102,886.33 higher than the net minimum guarantee under the Liquidation Services Agreement.

RECEIPTS AND DISBURSEMENTS FOR MARCH 31 TO SEPTEMBER 24, 2010

10. The excess of receipts over disbursements for the period from March 31, 2010 to September 24, 2010 (the "**Period**"), totalled approximately $11.8 million, excluding amounts held by the Receiver pending determination of entitlement (the "**Restricted Cash**"), as summarized below:

	$000
Receipts:	
Cash on hand	9,023.0
Accounts receivable	1,353.2
Sale of assets	8,115.6
Collections under Aircraft Return Agreements	856.0
Tax refunds	894.0
Other	186.5
Total Receipts	**20,428.3**
Disbursements:	
Occupancy costs	338.5
Employee related costs	1,696.3
Operating costs	445.7
Legal & professional	3,366.4
Transfer to Segregated Account	2,329.5
GST/HST	245.4
Other	157.5
Total Disbursements	**8,579.3**
Excess of Receipts over Disbursements	**11,849.0**
Restricted Cash:	
ARA Deposit Account	1,464.7
Segregated Account	2,334.6
Airport Security Account[1]	2,488.5
Total	**18,136.8**

[1] Will be paid to airport authorities or returned to aircraft lessors depending on Court determination

11. In addition to the foregoing, the Receiver currently estimates that it has incurred approximately $200,000 in accrued obligations, primarily in respect of payroll-related costs, legal and professional fees and other miscellaneous operating costs.

PROGRESS OF THE CLAIMS PROCEDURE

12. The Claims Procedure is being carried out in accordance with the Claims Procedure Order. Claims filed by the Claims Bar Date of August 27, 2010, are summarized as follows:

	Number	Value
Secured/Priority claims	77	$43,313,336
Unsecured claims[1]	304	$126,389,493
Total[2]	**381**	**$169,702,829**

[1]Includes approximately $33.5 million of claims that were also filed as secured/priority claims

[2]Claims subject to review; not yet allowed or disallowed

13. A further 12 claims totalling approximately $2.1 million were filed after the Claims Bar Date. Pursuant to the Claims Procedure Order, the Receiver has no discretion to extend the Claims Bar Date to allow the filing of these claims.

14. Included in the secured/priority claims are trust or property claims made by TCCI and the Skyservice Cabin Crew Association ("**SCCA**"). In addition, Sunwing Tours Inc. ("**Sunwing**") and the Skyservice Pilots' Association of Canada ("**SkyPAC**"), have asserted a trust or property claim. Each of the foregoing parties has asserted a claim of trust or property interest in cash and other assets of Skyservice (the "**Sunwing Trust Claim**", the "**TCCI Trust Claim**", the "**SCCA Trust Claim**" and the "SkyPAC Trust Claim" respectively; collectively, the "**Trust Claims**"). The Sunwing Trust Claim is in the amount of $7.6 million, plus additional unquantified amounts. The TCCI Trust Claim is in the amount of $23.9 million, the SCCA Trust Claim is in the amount of approximately $6,000 and the SkyPAC Trust Claim is in the amount of approximately $35,000. The Receiver is reviewing these claims and, in each case, may seek to reach a consensual resolution of the claim or have it determined in accordance with the Claims Procedure.

15. The Receiver is also in the process of reviewing and adjudicating the other claims filed in accordance with the Claims Procedure. Given the complexity of many of the claims, it is likely that the adjudication of claims may take a significant period of time.

REQUEST FOR AN ORDER AUTHORIZING THE INTERIM DISTRIBUTION

16. Prior to the Claims Bar Date, TCCI filed a secured claim in the amount of $9,190,720.39 (the "**TCCI Secured Claim**"). Included in the TCCI Secured Claim is a claim for $8,598,919.95 relating to the principal amount (the "**Roynat Principal Claim**") owing in respect of the debt assigned to TCCI by Roynat Inc. and Integrated Private Debt Fund LP in February 2010, as described at paragraphs 16 to 34 of the affidavit of Karim Nensi sworn March 31, 2010 and filed in support of the receivership application (the "**Nensi Affidavit**"). For ease of reference, a copy of the Nensi Affidavit (without exhibits) is attached hereto as Appendix A.

17. The Receiver has reviewed the Roynat Principal Claim and is satisfied as to its validity. The Receiver has not yet completed its review of the balance of the TCCI Secured Claim, but the outcome of that review has no bearing on the Receiver's motion for authorization to make the Interim Distribution.

18. As described in the Pre-Appointment Report to the Court of FTI Consulting Canada Inc. in its capacity as proposed receiver dated March 31, 2010 (the "**Pre-Appointment Report**"), Receiver's Counsel has reviewed certain of the security held by TCCI and is of the opinion that, subject to the customary opinion assumptions and qualifications:

    (i) The general security agreement held by TCCI (the "**TCCI GSA**") is properly registered in Ontario, British Columbia and Alberta pursuant to the applicable PPSA Legislation, creates a valid security interest in the personal property of Skyservice located in those provinces and is enforceable against Skyservice under Ontario law (the law stated to be governing law of the TCCI GSA); and

    (ii) The Office Building Debenture, as defined in the Pre-Appointment Report, created a valid charge of Skyservice's interest in the Fasken Property in favour of TCCI, enforceable against Skyservice under Ontario law. Pursuant to the Fasken Sale Order, the net proceeds from the sale of the Fasken Property stand in place of the Fasken Property with the same priority

19. TCCI has requested that the Receiver make an immediate distribution on account of the Roynat Principal Claim. The Receiver has no authority to make such a distribution without an Order of the Court.

20. TCCI has informed the Receiver that it consents to the Interim Distribution notwithstanding the TCCI Trust Claim. Based on discussions with Sunwing's counsel, the Receiver understands that Sunwing does not oppose the Interim Distribution.

21. Excluding the Trust Claims and claims against the Restricted Cash, claims totalling approximately $0.5 million have been filed in the Claims Process asserting a security or priority interest that may or may not rank in priority to the Roynat Principal Claim, summarized as follows:

	$000
Governmental Agencies	134
Employees (Wages and Vacation Pay)[1,2]	111
Other	234
Total[3]	**479**

[1]Severance and termination claims filed as secured claims have been excluded on the basis that such claims do not have priority in law.

[2]Net of amounts held in trust by third parties for payment of such amounts

[2]Claims subject to review; not yet allowed or disallowed

22. As noted earlier in this report, receipts to date exceed disbursements by approximately $11.8 million, excluding Restricted Cash. The Interim Distribution, if authorized and made, would therefore leave approximately $6.8 million of cash in the estate, with additional realizations to come from the sale of the Hangar, the finalization of the sale of inventory and chattels and the collection of accounts receivable. Additional amounts may also be realized from the Restricted Cash and from funds held in escrow by third parties, depending on the resolution of the competing claims to these funds.

23. Accordingly, the Receiver is satisfied that there are sufficient funds on hand to make the Interim Distribution, that TCCI has a valid and enforceable secured claim in respect of the Roynat Principal Claim and that no creditor should be prejudiced by the Interim Distribution. The Receiver therefore respectfully requests that this Honourable Court grant an Order authorizing the payment of the Interim Distribution.

The Receiver respectfully submits to the Court this, its Sixth Report.

Dated this 30th day of September, 2010.

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

Nigel D. Meakin
Senior Managing Director

Jamie T. Engen
Managing Director

Appendix A

The Nensi Affidavit (without exhibits)

Court file # CV-10-8647-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

B E T W E E N:

THOMAS COOK CANADA INC.

Applicant

\- and -

SKYSERVICE AIRLINES INC.

Respondent

(Application under s. 243(1) of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act* for a national receiver)

AFFIDAVIT OF KARIM NENSI
(sworn March 31, 2010)

I, Karim Nensi, of the City of Brampton, in the Region of Peel, MAKE OATH AND SAY:

1. I am the Chief Financial Officer for Thomas Cook Canada, Inc. ("TCCI") and have been personally involved in the contractual relationship between TCCI and Skyservice Airlines Inc. ("Skyservice"), a provider of chartered aircraft service. I therefore have personal knowledge of the matters hereinafter deposed to. Where my information is stated to be on information and belief, I believe this information to be true.

2. This affidavit is sworn in support of an application requesting an order to appoint a receiver of the assets, property, and undertakings of Skyservice under section 243(1) of the *Bankruptcy and Insolvency Act* ("BIA") and section 101 of the *Courts of Justice Act* ("CJA").

TCCI and Skyservice

3. TCCI is a company incorporated under the laws of Ontario and is headquartered in Toronto. It is an indirect subsidiary of Thomas Cook Group, PLC ("Thomas Cook"), a publicly held company with head offices in London, England. Thomas Cook is a leading international leisure travel group and is organized into five geographical divisions: the UK and Ireland, Continental Europe, Northern Europe, German Airlines, and North America.

4. TCCI is responsible for the Canadian operations of the North American division of Thomas Cook. It is a Canadian tour operator licensed under the *Travel Industry Act*. It has more than 1,000 employees in Canada and a network of tour operators, wholesalers and travel agencies throughout Canada operating under several brands. TCCI offers its customers a "one-stop shopping" experience for holidays and leisure travel: it charters flights under the Sunquest brand, arranges accommodations, travel insurance, and rental cars, and provides a complete array of related services. For the year 2009, TCCI made holiday arrangements for approximately 1.3 million customers for travel to destinations around the world. Approximately 305,000 of these customers flew on planes operated by Skyservice under the Sunquest brand during TCCI's winter season.

5. Skyservice is a Canadian commercial charter airline that operates principally out of Toronto. TCCI uses Skyservice to charter flights for TCCI's Sunquest customers; Skyservice leases commercial aircraft and provides the personnel to operate the aircraft. Skyservice has more than 1,000 employees and operates approximately 20 commercial aircraft for destinations

to Canada, the United States, the Caribbean, Mexico, and Europe. Because the industry is seasonal, the planes used by Skyservice during TCCI's winter season for Sunquest passengers departing from North America are used in Europe by Thomas Cook during the summer season.

6. Skyservice's majority shareholder is Gibralt Capital Corporation ("Gibralt"), which indirectly acquired a majority interest in the Skyservice chartered airline business on October 19, 2007. Gibralt is a private investment company headquartered in Vancouver, British Columbia.

7. In addition to being one of Skyservice's two primary customers, TCCI is also a significant secured creditor of Skyservice. As such, it has two roles: customer and lender.

Contracts between TCCI and Skyservice

(a) Term Sheet

8. TCCI has various contractual relationships with Skyservice to meet the travel requirements of TCCI's Sunquest customers. A term sheet dated February 6, 2002, (the "Term Sheet") sets out the objectives of the relationship between TCCI and Skyservice. The Term Sheet is signed by Skyservice and My Travel Canada Holidays Inc., a predecessor company of TCCI. It became effective on November 1, 2002, and terminates in accordance with its terms on April 30, 2011. The Term Sheet is not attached to this affidavit because it contains commercially sensitive information relating to the role of TCCI as Skyservice's customer.

9. The Term Sheet contemplates the parties entering into Charter Agreements whereby, subject to certain exceptions, Skyservice would be TCCI's air carrier for the operation of dedicated aircraft, with a right of first refusal for any additional aircraft. Skyservice is entitled to three principal sources of compensation under the Term Sheet including: (i) an aircraft tail fee

(base compensation and aircraft months); (ii) commission on ad hoc flights on dedicated aircraft; and (iii) bonuses for achieving certain performance objectives.

(b) Aircraft Sublease Agreements and Charter Agreements

10. To meet its obligations to TCCI, Skyservice entered into Aircraft Sublease Agreements with various parties including Thomas Cook Airlines Limited ("Thomas Cook Airlines"), a related TCCI company. Skyservice and TCCI then entered into a Charter Agreement for each plane subleased by Skyservice and chartered by TCCI.

11. Thomas Cook Airlines and Skyservice entered into six Aircraft Sublease Agreements for three A320 Aircraft and three B757 Aircraft. They also entered into a number of agreements related to the Aircraft, such as Engine Sub-Lease Agreements, Airframe Sub-Lease Agreements, Intermediate Aircraft Lease Agreements, and Maintenance Agreements. Under the Maintenance Agreements, all of which are substantially similar, Skyservice, as the sub-lessee, agreed to be responsible for certain maintenance costs.

12. The parties entered into seven Charter Agreements, six corresponding to the Aircraft Sublease Agreements with Thomas Cook Airlines and one related to an aircraft subleased from another party. With the exception of the latter Charter Agreement, which was effective as November 1, 2001, and expires March 7, 2011, the remaining Charter Agreements were effective as of November 4, 2009, and expire between March 27 and April 26, 2010. The material terms of the Charter Agreements are as follows:

(a) TCCI agreed to pay Skyservice a Charter Fee on a weekly basis at least seven days in advance of each flight;

(b) Skyservice agreed to operate the Aircraft in accordance with the winter and summer programs set out in Schedule C of the Charter Agreement;

(c) Skyservice agreed to deploy the Aircraft as may be requested by TCCI for flights to any destinations that may be served by such Aircraft type from Toronto or other Canadian departure points as may be agreed;

(d) Skyservice agreed to provide all of the personnel, services and facilities associated with flights under the Charter Agreement and agreed to be responsible for placing hull and liability insurance for the subject Aircraft; and

(e) Skyservice agreed to pay: (i) all costs related to operation of the Aircraft; (ii) all costs related to any interruption of any flight once the Aircraft was airborne; and (iii) salaries and all other expenses, including lodging and transportation to and from airports, for the flight crew and other personnel furnished in respect of the Aircraft.

13. The monies payable by TCCI to Skyservice under the Term Sheet and Charter Agreements fluctuate over the course of the year because the travel industry is seasonal. As of the date of the swearing of this affidavit, TCCI has made all payments owing to Skyservice under the various contractual arrangements.

(c) Charter Transportation Agreements

14. TCCI and Skyservice formalized the requirements for the winter and summer flight programs in various charter transportation agreements (the "Charter Transportation Agreements"). Each Charter Transportation Agreement sets out the data, origin, destination, number of seats, baggage allowance, and Charter Fee for the flight(s). The Agreements can relate to a flight that takes place once or to a flight that repeats over multiple rotations.

15. Skyservice concurrently followed a similar process with its other primary customer, Signature Vacations (the former Canadian subsidiary of TUI Travel PLC that is now amalgamated with Sunwing Vacations), to ensure that it had the ability to meet both TCCI's and Signature Vacations's needs. I estimate that TCCI and Signature Vacations represent 52% and 48% respectively of Skyservice's business.

Skyservice's financial problems and TCCI's purchase of Skyservice's secured debt

16. Over the past few months, Skyservice encountered financial problems and therefore approached TCCI with a view to amending the existing financial arrangements. In September 2009, one of Skyservice's principal customers, Signature Vacations, announced a proposed combination with Sunwing Vacations (an entity that has access to a fleet of Sunwing planes) that was completed in January 2010. Furthermore, I am informed by ~~Skyservice~~ Rob Giguere (President and CEO of Skyserv that Skyservice believed that Signature Vacations would likely seek to exit the relationship with Skyservice as a result of this combination.

17. This possibility was also implied to the public. In an article published in a French-language trade magazine, Colin Hunter, President of Sunwing, when speaking about the future of Signature Vacations and Sunwing in Quebec, said:

> I don't believe this will take place in the context of harmonious business relationships. Continuing my reply to your question, Signature is still contractually bound to Skyservice for two years, in the rest of Canada. We were contacted by this carrier's management to explore our intentions. We will see what will come out of these discussions [translated].

The article is attached hereto as Exhibit "A".

18. In January 2010, Skyservice's principal secured lenders were Roynat Inc. and Integrated Private Debt Fund LP (the "Lenders") under a credit agreement (the "Credit Agreement"). Skyservice notified the Lenders that it was or would be in breach of certain financial covenants under the Credit Agreement. The Lenders took the view that the Signature Vacations merger with Sunwing Vacations called into question Skyservice's ability to remain a going concern over the long term such that there was an event of default under the Credit Agreement. I am also informed by Johnny Ciampi (Director of the Board of Directors of Skyservice) that there were further events of default.

19. In and around February 1, 2010, I was advised by Johnny Ciampi in a meeting attended by Rob Giguere (President and CEO of Skyservice) and Johnny Ciampi (Director on the Board of Skyservice) (together, the "Skyservice Representatives") and Jamie Farrar (Executive Vice President of Gibralt) that Skyservice would likely not be in a position to continue operations beyond February 5, 2010, without some financial assistance from TCCI. mp

20. I am informed by ~~the Skyservice Representatives~~ Johnny Ciampi that Skyservice told the Lenders that it was engaging in negotiations with TCCI whereby TCCI would provide funding to Skyservice. I am also informed by Johnny Ciampi that on January 29, 2010, the Lenders and Skyservice entered into a forbearance agreement to provide Skyservice with time to restructure its business and affairs. mp

21. TCCI is a significant stakeholder and would have been seriously impacted if Skyservice's financial position deteriorated to the point that it stopped providing services to TCCI for its Sunquest charters mid-season. For example, TCCI had more than 165,000 seats allocated for Sunquest passengers scheduled to travel between February 5 and April 30, 2010. TCCI's primary objectives were, therefore, to protect these passengers from any Skyservice operational disruption, to allow Skyservice and TCCI the opportunity to consider new arrangements for a working relationship that would mutually benefit both parties, and to give Skyservice time to restructure the operations and find alternative financing.

22. TCCI therefore purchased the debt obligations (the "Secured Debt") owed by Skyservice to the Lenders and all security granted by Skyservice in connection therewith through an Assignment and Assumption Agreement effective February 12, 2010. Approximately $8.6 million is due and payable under the Secured Debt on March 30, 2010. A copy of the Assignment and Assumption Agreement is attached as Exhibit "B".

23. Simultaneously, TCCI and Skyservice entered into an Amended and Restated Credit Agreement reflecting the change in TCCI's role to secured lender. A copy of the Amended and Restated Credit Agreement, excluding commercially sensitive schedules, is attached as Exhibit "C".

24. Article 2.07 of the Amended and Restated Credit Agreement states that all guarantees and security granted by Skyservice listed in Schedule A to the Agreement would continue in full force and effect as security for the Secured Debt. In Article 2.11, Skyservice confirms that the security remains in place.

25. Schedule A of the Amended and Restated Credit Agreement sets out the security granted by Skyservice in favour of TCCI in respect of the Secured Debt (the "Security Documents"). These include:

(a) A General Security Agreement given by Skyservice granting a security interest in all of Skyservice's property and assets (the "Skyservice GSA"). A copy of the Skyservice GSA is attached as Exhibit "D";

(b) A Debenture (the "Building Debenture") granting security over a low-rise building in an industrial complex near Pearson International Airport in the GTA ("Pearson") that Skyservice purchased from the estate of Canada 3000 Airlines Ltd. A copy of the Building Debenture is attached as Exhibit "E";

(c) A Debenture (the "Hangar Debenture") granting security over real and leasehold property at two hangars Skyservice leases from the Greater Toronto Airports Authority. A copy of the Hangar Debenture is attached as Exhibit "F";

(d) An Intellectual Property Security Agreement given by Skyservice granting security over Skyservice's intellectual property (the "IP Security Agreement");

(e) Guarantees of all obligations given by (i) 6761551 Canada Inc. ("676"), the shareholder of Skyservice, (the "676 Guarantee"); and (ii) 6806929 Canada Inc. ("680"), a predecessor by amalgamation to Skyservice (the "680 Guarantee"), among others; and

(f) General Security Agreements given by (i) Skyservice's predecessor (the "675 GSA") granting a security interest in all of Skyservice's property and assets; (ii)

676 granting a security interest in all of 676's property and assets; and (iii) 680 granting a security interest in all of 680's property and assets, among others.

26. The Lenders registered their security documents under the PPSA. The registration dates are September 26 and October 9, 2007. TCCI preserved the dates of registration when it assumed the Secured Debt and the related security; it also registered the change in secured party under the PPSA.

27. One of the remedies of TCCI under the Skyservice GSA and other Security Documents is to apply to any court of competent jurisdiction for the appointment of a receiver for all or any portion of the Skyservice property and assets charged.

28. The Amended and Restated Credit Agreement is governed by the laws of Ontario and Canada as applicable (Article 3.07). In Article 3.08, the parties irrevocably attorn to the jurisdiction of the courts of Ontario, which will have non-exclusive jurisdiction over any matter arising out of the Agreement.

29. The Amended and Restated Credit Agreement contains a strict confidentiality provision that prevented TCCI from disclosing the fact that the agreement had been entered into as well as the terms of the agreement. In addition, as a significant secured creditor of Skyservice, TCCI could not disclose that Skyservice was experiencing financial difficulties: to do so would have been a breach of the lender-borrower confidential relationship. Also, such a disclosure would have the potential of seriously destabilizing Skyservice's existing operations and its attempts to structure its affairs with a view to continuing in the long term.

30. The Amended and Restated Credit Agreement required Skyservice to continue to retain FTI Consulting Canada Inc. ("FTI") to monitor the cash and payables position of Skyservice. FTI had been retained by Skyservice in January to report to the Lenders and provide

weekly monitoring of cash and payables. The scope of FTI's retainer included providing financial, strategic, and restructuring advice; assisting Skyservice in negotiating with customers and creditors; and providing a weekly report to TCCI, among others.

31. In addition, TCCI agreed to pay its tariffs to Skyservice without any set-off against the Secured Debt (article 2.05 of the Amended and Restated Credit Agreement). The parties entered into the First Amending Agreement on March 12, 2010, adjusting the tariff payable on March 23, 2010, to reflect a change to the flight schedule. The First Amending Agreement, excluding commercially sensitive schedules, is attached as Exhibit "G".

32. Finally, TCCI agreed to subordinate (the "Subordination Agreement") its security to that of Gibralt to a cap of $7,087,500 plus enforcement expenses. Both parties agreed that Skyservice would not repay either Gibralt or TCCI before March 30, 2010, without prior written consent.

33. On March 30, 2010, Skyservice had a positive cash position with more than sufficient funds to repay the amount owing to Gibralt in full. I am informed by Jamie Farrar (Executive Vice President of Gibralt), that on March 30, 2010, as it was clear that Skyservice would not be able to reach an agreement with any other party to secure the necessary working capital or to achieve the cost structure required for a long-term viable model for continued operations, Gibralt sent a demand letter and a notice of intent to enforce security ("NOI") under section 244 of the BIA to Skyservice. The demand letter and NOI are attached hereto as Exhibits "H" and "I", respectively. I am informed by Graham Bailey, Skyservice's CFO, that on March 30, 2010, Skyservice transferred $7,151,311.62 to Gibralt to repay the secured indebtedness owing to Gibralt.

34. Through these arrangements, TCCI supported Skyservice and not only permitted Skyservice to continue business in the short term but also afforded Skyservice more time to look for a longer term solution to its financial difficulties.

Skyservice's efforts to preserve its business

35. Article 2.09 of the Amended and Restated Credit Agreement required Skyservice and TCCI to "negotiate in good faith toward a long-term renewal of the existing business relationship between [Skyservice] and [TCCI]". Skyservice and TCCI have engaged in good faith negotiations and various proposals have been tabled; however, no agreement establishing a long-term renewal of the business has been reached.

36. Unfortunately, over the past few weeks, it became increasingly clear that Skyservice would not be able to reach an agreement with any other party to secure the necessary working capital or to achieve the cost structure required for a long-term viable model for continued operations.

Appointing a Receiver

37. TCCI was confronted with some very difficult decisions arising from Skyservice's financial problems. TCCI was dependent on Skyservice for its chartered aircraft requirements to satisfy existing Sunquest travel commitments and was advised that Skyservice could cease operations as early as February 5, 2010, unless TCCI was prepared to transition from the role of Skyservice's customer to Skyservice's lender. The eventual agreement to do so was only made after considerable deliberation and after concluding that the proposed agreement represented the only opportunity for Skyservice to make new arrangements that would allow continued operations on a longer term basis.

38. The urgency of this situation is illustrated by the fact that TCCI negotiated and concluded the Assignment and Assumption Agreement and related documentation within a two-week period. Had these negotiations failed, Skyservice would have stopped operating at a much earlier date with the resulting adverse consequences to its customers and other stakeholders.

39. TCCI continued its negotiations with Skyservice following completion of the revised lending documentation; both parties recognized that a lot was at stake including the continuing employment of Skyservice's employees. Regrettably, Skyservice could not secure the additional working capital or requisite cost structure for continued operations that might have facilitated the negotiations of revised agreements with TCCI and possibly other customers. However, I believe that TCCI and Skyservice exhausted all potential avenues to address Skyservice's financial problems, including that TCCI has not withdrawn any capital from Skyservice other than payments in the ordinary course of business. Unfortunately, Skyservice's economic and financial hurdles were ultimately too great to overcome.

Robert Thornton, counsel to Skyservice

40. On March 29, 2010, I was informed by ~~Skyservice~~ that all of Skyservice's directors and officers intended to resign on March 30, 2010. I am informed by my counsel, Mary Paterson, that the directors and officers resigned at approximately 5:30 p.m. on March 30, 2010. MP

41. TCCI sent a demand letter and a NOI under section 244 of the BIA to Skyservice dated March 30, 2010. The demand letter and NOI are attached hereto as Exhibits "J" and "K", respectively.

(Rob Giguere and Johnny Ciampi)

42. The Skyservice Representatives informed me that it will not be able to both repay the Secured Debt and continue operations after March 30, 2010, as it will not have sufficient working capital. I believe that Skyservice is insolvent. It no longer has directors or officers. A Court-appointed receiver is necessary to ensure an orderly wind-down of Skyservice's business MP

and to protect stakeholders as well as to properly and efficiently dispose of Skyservice's real and leasehold property and other assets for the benefit of Skyservice's creditors.

43. Skyservice has acknowledged receipt of the demand and NOI, that the Secured Debt is due and owing, that it is unable to make payment of the Secured Debt, and has consented to the immediate enforcement of the security described in the NOI, and waived the 10-day period referred to in section 244(2) of the BIA. This acknowledgement and consent to earlier enforcement of security is attached hereto as Exhibit "L".

Impact of the Receivership

44. Skyservice currently has two primary customers: TCCI and Signature Vacations. If a receiver is appointed, then the operations of Skyservice will cease and passengers on TCCI's and Signature Vacations's tours must travel to and from their destinations on planes operated by a different provider.

45. When service is disrupted mid-season and travellers are stranded at their destination, the *Travel Industry Act* and regulations obliges tour operators like TCCI to offer the customer the choice of a full and immediate refund or comparable alternate travel services acceptable to the customer. TCCI does not have a fleet of aircraft to transport its Sunquest customers and therefore has purchased capacity on other providers' aircraft to ensure that travellers will return home with minimal disruption. As of the date of swearing this affidavit, comparable alternatives have been located for all TCCI Sunquest travellers, including the 3,050 travellers who will be at their holiday destination on March 31 and the approximately 7,000 travellers leaving for vacation after March 31, 2010.

46. I am not aware of the extent, if any, of discussions between Signature Vacations and Skyservice relating to Skyservice's financial problems and the fact that Skyservice is

financially unable to continue operations beyond March 30, 2010. If Signature Vacations is not aware of these circumstances, it will be confronted with a 'hard stop' and will have to immediately take steps to address the travel requirements of its customers. The tour operation business often has to confront operational issues such as this as the economic prospects of airline carriers have been uncertain in recent years and tour operators have gained experience in dealing with this type of situation, including the 'hard stop' of Jetsgo, CanJet, and Canada 3000. The recent merger between Signature Vacations and Sunwing Vacations will likely assist in providing solutions to Signature Vacations through Sunwing Airlines. Otherwise, Signature Vacations will have to access the available capacity of other Canadian airlines as its destinations are served by multiple carriers.

47. I have been advised by Rob Giguere (President and CEO of Skyservice) that Skyservice is scheduled to operate one flight for another tour operator on Wednesday, March 31, with approximately 180 outbound passengers and 190 inbound passengers. I have also been advised that Skyservice is scheduled to operate five flights on Thursday and seven flights on Friday for another tour operator. TCCI has arranged for the availability of selected flight capacity that will be made available to assist other tour operators, if they so choose, in the ordinary course of making arrangements for alternative transportation for passengers in the 48 hours after the Receiver is appointed (or longer if necessary and possible).

48. Skyservice also has other European customers that use Skyservice during the summer months, including the European related company of TCCI. As far as I am aware, none of those customers have passengers currently at their destination; thus, no passengers will be stranded. In addition, as far as I am aware, these European customers will have some time to find a different service provider so the travellers may go on their vacations with minimal disruption.

49. Notwithstanding that TCCI has been able to transition the travel requirements of its customers, TCCI will suffer financially when Skyservice ceases operations. TCCI pays Skyservice in advance for flights based on estimates of costs. However, costs change and, by the end of the flight season, there is a variance between the amount the tour operator paid to Skyservice and the amount that should have been paid. This variance can be owed by or to Skyservice. As of the date of swearing this affidavit, Skyservice owes TCCI approximately $12 million.

Role of the Receiver[1]

(a) Preserving and realizing on assets

50. The role of the Receiver will be to realize on Skyservice's assets and manage creditor and stakeholder concerns in an efficient and orderly fashion. The Receiver will not operate Skyservice's business. A court-ordered stay will be necessary to assist the Receiver in ensuring that creditors are paid in the proper priority. Furthermore, I have been informed by Graham Bailey, the Chief Financial Officer of Skyservice, and Jamie Farrar ~~Skyservice~~ that they will have in excess of $8 million in cash as of the close of business on March 30, 2010. The appointment of a Receiver is therefore required to ensure that no creditors of Skyservice take precipitous steps to get control of the cash to the prejudice of other stakeholders who may also have claims to such monies. In this manner, the rights of the stakeholders will be safeguarded and the Receiver will have some breathing space to assess any competing claims asserted against Skyservice's assets.

51. As mentioned above, Skyservice owns a low-rise industrial building near Pearson. In addition, Skyservice owns hangar(s) at Pearson on land subleased from the Greater Toronto Airports Authority. Skyservice may have other physical assets and certainly leases space at

[1] Much of the information I set out in this affidavit about Skyservice's financial affairs I learned from FTI's reports. See paragraph 27 above.

airports across the country and around the world. The Receiver will also realize on Skyservice's accounts receivable and any other assets, including intellectual property.

(b) Managing stakeholder concerns

52. Skyservice has five categories of operationally important stakeholders: navigation fees, handling fees, fuel, landing fees, and other.

53. Skyservice pays navigation fees to Nav Canada and the Federal Aviation Administration for overflight fees. As of March 22, 2010, the accrual account payable is $1,426,404. In addition, Skyservice pays handling fees to GlobeGround, Ogden Aviation Mexico, and others for other services received at the respective airports. As of March 22, 2010, the accrual account payable is $700,716.

54. Skyservice prepays Imperial Oil and World Fuel Services Inc. for its fuel. Skyservice prepays landing fees to the Greater Toronto Airports Authority. It also prepays ground handling and passenger taxes in Cuba, Mexico, and the Dominican Republic and for tourist cards in Cuba and the Dominican Republic. As a result, I believe that none of these stakeholders are creditors.

55. As described above, Skyservice leases certain of its planes from Thomas Cook Airlines. In the ordinary course of Skyservice's business, the planes would return to Europe to provide flights in Europe during the summer. Thomas Cook Airlines requested that the planes be returned to Europe by the end of March to prepare for the summer season; I believe that all of Thomas Cook Airlines' planes will be in Europe on or before March 31. Thomas Cook Airlines was also aware of Skyservice's financial difficulties and the likelihood that Skyservice would not have the funds to operate after March 30, 2010.

56. I have no information about the location of the other planes leased by Skyservice and the Receiver will have to co-ordinate any issues with the lessors of such planes.

57. I am informed by Rob Giguere ~~Skyservice~~ and believe that Skyservice has paid all of its employees' wages, vacation pay and overtime, as well as employee overtime and employee/employer deductions on payroll and vacation pay such that no money is currently owing to any of the employees. Skyservice also paid other statutory priority payables, including GST and PST. Skyservice made these payments with money that it set aside approximately three months ago. I understand that this step was taken by the officers and directors of Skyservice to ensure that all such obligations were satisfied in full in the event that Skyservice was ultimately unable to continue operations after March 30, 2010.

Requirements in section 243(1) of the BIA

58. TCCI is a secured creditor of Skyservice. Although due and payable, Skyservice has not paid the amount owing to TCCI under the Amended and Restated Credit Agreement. Skyservice's failure to pay is an event of default under article 2.06(a) of the Amended and Restated Credit Agreement.

59. TCCI is committed to ensuring that the best steps are taken for the benefit of all stakeholders in a situation that is recognized as being difficult and, because of the nature of Skyservice's business, urgent. In this regard, it has approached FTI, which already has an understanding of Skyservice's assets and obligations, to act as Receiver and a copy of the executed consent of FTI is attached as Exhibit "M". FTI is a licensed trustee.

Receiver's Charge

60. I am informed by my counsel, Mary Paterson, that the model order for receiverships grants the Receiver a charge on the Property as security for fees and disbursements

incurred before and after the Court appoints the Receiver (the "Receiver's Charge"). I am informed by her MP that the Court can order that the Receiver's charge be in priority to other validly attached and perfected security interests subject to the Court being satisfied that such a priority is appropriate in the circumstances.

61. This application for an order appointing FTI as Receiver of Skyservice is being brought without notice to several secured creditors. I am informed by my counsel, Mary Paterson, that the PPSA search for Skyservice (and its French names) fills a banker's box. I am informed by her MP that the summary of this PPSA search is 757 pages long. The vast majority of the registrations relate to specific assets (such as aircraft or aircraft leases).

62. TCCI does not intend to seek a Court order that would place the Receiver's Charge ahead of any validly registered mortgage, lien or charge on the real property of the Debtor or ahead of any validly attached and perfected security interest in a specific identified asset of the Debtor identified on the PPSA register.

63. Only four secured creditors have registrations set out in the PPSA Register that do not appear to relate to a specific asset. On March 29, 2010, I was informed by Sabah Mirza, Skyservice's former general counsel, that, to the best of her knowledge, she believes that one of these secured creditors (PNC Bank, National Association) in fact only has security over specified aircraft components and not general security. Another secured creditor (IOS Financial Services) only has security over specific photocopiers and printers that are leased by Skyservice and not general security. The third registration, that of CBSC Capital, relates to a lease of photocopier and printing equipment that is no longer in place such that the PPSA registration should have been discharged. The final secured creditor (Royal Bank of Canada) registered security related to letters of credit; however, I am informed by her MP that these letters of credit are cash collateralized.

Confidential information

64. The tour operator industry is a highly competitive industry. Some of the schedules to the exhibits attached to this affidavit contain sensitive pricing information. TCCI and its senior management have developed significant expertise in negotiating agreements that are particular to its operating business model and are always kept confidential. Disclosing the sensitive pricing information contained in the exhibits would therefore be prejudicial to TCCI's future operations as competitors will know TCCI's pricing sensitivities and will gain unfair advantage in negotiations with airline carriers and customer pricing. TCCI therefore did not include these schedules in the exhibits to this affidavit and, if requested, will produce them for inspection by this Honourable Court together with a request for a sealing order.

Conclusion

65. A receiver appointed under section 243(1) of the BIA will be able to ensure an orderly wind-down of Skyservice's operations: it will address the concerns of passengers, tour operators, and other stakeholders and creditors and ensure fair treatment of all such stakeholders.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on March 31, 2010. Commissioner for Taking Affidavits (Mary Paterson)	Karim Nensi