

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

Skyservice Airlines Inc.

**THIRTEENTH REPORT OF THE RECEIVER
(RE: SUNWING TRUST)**

January 31, 2012

**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

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

I. 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 of Skyservice Airlines Inc. (“**Skyservice**”) pursuant to the order of the Honourable Mr. Justice Gans (the “**Receivership Order**”) granted upon the application of Thomas Cook Canada Inc. pursuant to section 243(1) of the *Bankruptcy and Insolvency Act (Canada)* and section 101 of the *Courts of Justice Act (Ontario)*.
2. On June 2, 2011, the Receiver filed its tenth report (the “**Tenth Report**”) in relation to the claim advanced by Sunwing Tours Inc. (now Sunwing Vacations Inc.) (“**Sunwing**”), including possible proprietary or trust claims, in respect of funds held by the Receiver (the “**Sunwing Claim**”). In the Tenth Report, the Receiver provided its analysis of the validity of the trust aspect of the Sunwing

Claim, and sought an order, among other things, declaring that the amounts claimed in the Sunwing Claim are not subject to a proprietary or trust interest as alleged by Sunwing.

3. Since delivering the Tenth Report, the Receiver has engaged in further discussions with Sunwing and has responded to questions posed to it by Sunwing. The purpose of this report is to provide the Court with an update of the current position of the parties in relation to the trust aspect of the Sunwing Claim and to provide the Court with the Receiver's responses to the written questions posed to it by Sunwing.

II. TERMS OF REFERENCE

6. 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 except as specifically set out herein. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation.
7. 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.
8. This report discusses the proprietary or trust aspect of the Sunwing Claim. The Receiver reserves the right to disallow and contest the validity and quantum of any amount claimed by Sunwing, including the Sunwing Claim, separate and apart from the proprietary or trust aspects. The discussion in this report does not

constitute acceptance by the Receiver that Sunwing has a claim against Skyservice for any amounts whatsoever as part of the claims process.

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

III. THE SUNWING CLAIM

10. As set out in the Receiver's Tenth Report, Sunwing initially alleged that at least \$7,200,000 had been provided by Sunwing to Skyservice on account of services that had not been provided by Skyservice before the receivership and alleged that such 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."
11. As an interim measure, to ensure there was money available to fund the continuing activities in the receivership (given the amount of the Sunwing Claim relative to the funds on hand in the receivership), the Receiver and Sunwing entered into a letter agreement dated April 8, 2010 (executed by counsel to Sunwing on behalf of Sunwing on April 9, 2010) in which Sunwing and the Receiver agreed, among other things, that:
 - (i) notwithstanding the Sunwing Claim, the Receiver could continue to spend Skyservice funds held or received in the future by the Receiver unless and until Sunwing obtained a final court order on not less than seven days notice to the Receiver declaring Sunwing's ownership interest in all or some of the funds; and
 - (ii) until further order of the Court, the Receiver would keep segregated \$2,329,473 of the funds of Skyservice and segregate any deposits recovered from suppliers or service providers that were held by such

12. As set out in the Tenth Report, the Sunwing Claim was divided into four categories: General Invoice Amounts, Third Party Invoice Amounts, Third Party Deposits, and Damages.
13. As a result of various discussions and the exchange of information between the Receiver and Sunwing, Sunwing has now narrowed its claim to the amounts previously claimed in the General Invoice Amounts category. Specifically, Sunwing claims it pre-paid for services that were not delivered prior to the receivership and that those funds were held in trust for Sunwing. Sunwing claims \$2,329,473 is subject to an “actual” trust and \$3,513,450.08 (which includes and is duplicative of the amount claimed in the “actual” trust) is subject to a constructive trust.
14. Sunwing’s claim includes (i) \$1,064,367.04 relating to Skyservice invoice REV-005130; and (ii) \$2,449,083.04 relating to Skyservice invoice REV-005146, amounts that Sunwing says were “paid to Skyservice for a specific purpose, being the charter flight services between March 27 and April 2, 2010” and “between April 3 and April 9, 2010”.
15. Sunwing clarified that its trust claim relating to these general invoice amounts is two-fold:
 - (a) Sunwing claims that \$2,329,473 of the above-described invoice amounts were segregated by Skyservice and therefore held in an “actual” trust for the benefit of Sunwing;
 - (b) Sunwing claims that \$3,513,450.08 (which amount includes and is duplicative of the claim for \$2,329,473 in (a), 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 the above-described amounts, 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".

IV. ANSWERS TO SUNWING QUESTIONS

16. Sunwing delivered a series of questions to the Receiver in relation to the narrowed Sunwing Claim. Attached hereto as Schedule "A" is a copy of the response delivered by the Receiver to Sunwing.

V. SUMMARY

17. The Receiver's discussion of the Sunwing Claim, including the portions of the Sunwing Claim still at issue, is found in the Tenth Report. In summary, Sunwing has asked the Receiver to conclude that Sunwing has a trust or other ownership interest in the \$2,329,473 that has been segregated and in the additional \$1,183,977.08 over which it claims a constructive trust; however, based on its review of the available information to date, and discussions with Receiver's Counsel, the Receiver is unable to do so. As a result, the Receiver seeks an order that, as provided in the Sunwing Letter Agreement, it may spend or distribute all funds 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.
18. Sunwing recently delivered a Cross-Motion Record seeking a declaration that the \$2,329,473 is subject to an actual trust in favour of Sunwing and an order imposing a constructive trust in the amount of \$1,183,977.08 and directing the Receiver to pay that amount to Sunwing. In the alternative, Sunwing seeks an order imposing a constructive trust over the entire \$3,513,450.08 and directing the Receiver to pay that amount to Sunwing.

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

Dated this 31st day of January, 2012.

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

11113234

Appendix A

RECEIVER'S ANSWERS TO WRITTEN QUESTIONS FROM SUNWING

Written Questions for Receiver

- 1. What is the total amount of allowed secured and unsecured claims as of this date? What is the total amount of claims that remain undetermined, other than the Sunwing claim?**

The Receiver (capitalized terms as defined in the Tenth Report of the Receiver) continues to review and adjudicate the outstanding secured and unsecured claims filed in accordance with the Skyservice claims procedure (the "Claims Procedure"), including certain alleged trust and property claims. Many of the claims that have been submitted are complex and require significant accounting and legal analysis. In addition, a number of the claims were filed without providing sufficient information or supporting evidence. After reviewing such claims the Receiver identified missing information and has either disallowed such claims or followed up with many of these claimants to request the information required for the Receiver to adjudicate these claims. The Receiver has reviewed and continues to review the additional information and evidence when provided. The Receiver has also undertaken its own inquiries of former Skyservice personnel and a review of Skyservice information and documentation as required to respond to certain claims. For all of these reasons, adjudication of claims has been time consuming and remains ongoing. Based on the current information, however, which is subject to change as claims are resolved and/or adjudicated, the total amount of allowed secured and unsecured claims and the total claims that remain undetermined are set out in the attached Schedule A.

- 2. What are the estimated cent/dollar realizations for creditors if Sunwing's trust motion is successful?**
- 3. What are the estimated cent/dollar realizations for creditors if Sunwing's trust motion is unsuccessful?**

At this stage, it is difficult to provide an answer to questions #2 and #3 with any degree of accuracy. Accordingly, the Receiver has prepared a schedule of four different scenarios based on the current information, including that there remain a number of claims that have not been resolved and/or adjudicated, as set out above, such that the size of the claims and amount available for distribution may vary significantly. Please see the attached Schedule B.

- 4. Who are Skyservice's 10 biggest creditors, what is the amount of each of these creditors' claims, and what percentage of the total claims do each of these creditors represent?**

Since not all of the claims filed in accordance with the Claims Procedure have been resolved and/or adjudicated, there has not been a final determination of Skyservice's 10 biggest creditors. Attached at Schedule C is a list of the claimants with the 10 biggest claims whose claims have been accepted to date and the claimants with the 10 biggest claims whose claims remain unadjudicated.

- 5. Were any advance payments scheduled to be made to Skyservice by any party other than Sunwing for charter flight services or other services scheduled to be provided on or after March 31, 2010? If so, who were they? Were any advance payments received by Skyservice from any parties other than Sunwing in the two weeks prior to March 31, 2010 for charter flight services scheduled to be provided on or after March 31, 2010 ? If so, what were the dates of the related invoices, dates of payment(s) and who made the payment(s)? What happened to those payments?**

As set out in the Receiver's Tenth Report, Skyservice employees identified four separate amounts that related entirely to future flying that Skyservice was contracted to perform. In addition to Sunwing, the parties and relevant details are as follows:

- Canag Travel: \$270,000 was received by Skyservice from Canag Travel via three separate payments receive on February 4, 2010, February 24, 2010 and March 10, 2010, respectively;
- RN International Travel: \$15,000 was received by Skyservice from RN International Travel on March 4, 2010; and
- Canadian Broomball Association: \$117,329.76 was received by Skyservice from Canadian Broomball Association on March 29, 2010.

In each case, these amounts were transferred from the Skyservice Canadian General Account to the In-Flight Collections Account and no portion has been distributed to those third parties to date. The Receiver is not aware of any other payments received (or, subject to the discussion below, scheduled to be received) by Skyservice in the two weeks prior to March 31, 2010 that related to flying to be provided on or after March 31, 2010.

- 6. In particular, was Thomas Cook scheduled in the month prior to March 31, 2010 to provide any advance payments to Skyservice for flights after March 31, 2010, pursuant to Charter Agreements, Charter Transportation Agreements, or otherwise? If so, were such payments made? If such payments were scheduled but were not made, why not? What is the date of the last payment made by Thomas Cook to Skyservice with respect to charter flight services? What flights were related to these payments? Were changes made to the scheduled payments as a result of the cancellation of flights scheduled after March 31, 2010?**

To the best of the Receiver's knowledge, in February 2010 Thomas Cook did have some limited flights scheduled to take place in April 2010 and the charter tariff payments for those flights would have been due approximately seven days prior to the flights. However, the schedule was revised in or about February, 2010 such that no April flying was scheduled and therefore no charter tariff payments were due after March 23, 2010. The last charter tariff payment was made by Thomas Cook on March 23, 2010 in respect of flights to occur after that date and up to March 30, 2010. The Receiver understands that the March 23, 2010 invoice issued by Skyservice included amounts calculated with reference to flights previously scheduled for April, 2010, that the full invoice was paid by

Thomas Cook, and that Skyservice corrected the invoice on March 25, 2010 by the issuance of a credit note to Thomas Cook. The Receiver understands that no cash was paid by Skyservice to Thomas Cook in relation to that credit note.

- 7. The affidavit of Karim Nensi sworn March 31, 2010 states at paragraph 31 that Skyservice and Thomas Cook agreed to enter into the First Amending Agreement to the Credit Agreement dated March 12, 2010 in order to adjust the tariff payable by Thomas Cook to Skyservice “to reflect a change in the flight schedule”. Was the “change in the flight schedule” referred to in the affidavit a cancellation of all flights subsequent to March 31, 2010? Please produce a copy of the schedule to First Amending Agreement to the Credit Agreement dated March 12, 2010 and any correspondence between Skyservice and Thomas Cook regarding the reasons for these changes. Is there any other record of an agreement or arrangement to cancel flights for Thomas Cook subsequent to March 31, 2010, and when was such agreement or arrangement made?**

Given the confidentiality provisions in the contractual arrangements between Thomas Cook and Skyservice, the Receiver wrote to Thomas Cook to determine if Thomas Cook had any objection to the Receiver producing the requested schedule to Sunwing. Thomas Cook’s counsel advised that the requested schedule - Exhibit ‘1’ to the First Amending Agreement - replaced Schedule ‘C’ of the February 12, 2010 Amended and Restated Agreement (also attached to the Karim Nensi March 31, 2010 affidavit) and that, in each case, the schedule in question was not disclosed because it references commercially sensitive information, which information Thomas Cook’s counsel asserts continues to be commercially sensitive. For this reason, Thomas Cook has objected to the Receiver providing a copy of the schedule. However, Thomas Cook does not object to the disclosure of the scheduled payment dates under both schedules provided that no information is disclosed regarding the quantum of such payments. Accordingly, please find attached as Schedule D a list of the scheduled payment dates under both schedules.

The Receiver did not participate in drafting or negotiating the amending agreement. As set out above, the Receiver understands that the Thomas Cook Flight schedule was revised in or about February, 2010 such that no Thomas Cook flights were scheduled for April, 2010. The Receiver is not aware of any correspondence or written agreements that reflect that change to, or that outline the reasons for, the Thomas Cook flight schedule in relation to flights previously scheduled for dates after March 31, 2010.

- 8. It appears that preparations for the appointment of a Receiver by Thomas Cook commenced at least as early as March 9, 2010. What is the earliest date on which Skyservice management knew of the impending receivership? What documentation evidences this? Please provide copies of such documents.**

The Receiver cannot speak definitively to knowledge held by Skyservice management prior to the receivership. However, it is the Receiver’s understanding that the receivership remained only one of several possibilities right up to the Date of Receivership or shortly before, with Skyservice attempting to negotiate alternatives to the receivership.

- 9. Aside from knowledge of the fact of a receivership, when was Skyservice management aware that there was a risk that Skyservice would not be continuing to operate and providing flights after March 31, 2010?**

See above.

- 10. At paragraph 93 of the Receiver's Tenth Report, it is indicated that the Receiver sought to obtain evidence of parties as to their recollection of why certain funds were isolated. Who decided to and who gave the instructions to segregate the funds? Who advised the Receiver that the funds were transferred (1) out of an abundance of caution, and (2) because they related solely to future flying and should therefore have been refundable? Is there any documentation of these responses? Please provide names and contact information.**

Paragraph 93 of the Receiver's Tenth Report states:

93. The Receiver further sought to obtain evidence of parties as to their recollection of why the funds were isolated. Various rationales were provided -the funds were transferred to another account out of an abundance of caution, they were transferred to ensure the funds were protected from misuse or misappropriation, and they were transferred because they related solely to future flying and should therefore have been refundable (although note this latter view does not appear to coincide with the operation of the Agreements as described above). Rob Giguere, a former Skyservice principal who was involved at the time the funds were moved to the In-Flight Collections Account, informed the Receiver that these funds were transferred to keep track of the funds as they were not certain if there would be a receivership (and any associated timing) and there was never any intention on the part of Skyservice to create a trust. Mr. Giguere further advised that they had created trusts for other monies at the same time, understood the difference between establishing a trust and simply transferring the funds to a different account (recognizing that by moving the funds to a different account rather than creating a trust, the funds remained in the control of Skyservice to be used by Skyservice, without restriction), and made a decision to not create a trust with these funds. The Receiver confirms there were trusts created by Skyservice in favour of Skyservice employees, the Worker's Compensation Board of Manitoba, and the Receiver General of Canada (in relation to an Air Traveller's Security Charge) as well as a trust in relation to a Key Employee Retention Plan. Each such trust was established at around the time the funds were transferred, which trusts were documented and which trust funds were held in a trust account with external legal counsel.

The Receiver understands from Rob Giguere, the President of Skyservice from October 17th, 2007 to March 31, 2010, that he and his management team were of the view that it would be prudent to keep track of the funds received by Skyservice that related entirely to future flying that Skyservice was contracted to perform. According to Mr. Giguere, in order to keep track of these funds, the Skyservice accounting staff (Barb Syrek & Percy Gyara) were instructed: a) to identify payments that had been made to Skyservice that related entirely to future flying that Skyservice was contracted to perform; and b) to

transfer any such amounts to a separate Skyservice account so Skyservice could keep track of those funds.

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

The source of the information that the funds were transferred because they related solely to future flying and should therefore have been refundable was provided to the Receiver by Graham Bailey, who was the Skyservice CFO prior to the receivership. Mr. Bailey provided this statement to the Receiver in a written memorandum requested in contemplation of this litigation. Without waiving any privilege relating thereto, the relevant portion of the memorandum stated as follows: "The rationale [sic] for isolating these amounts was that no part of the deposits would have been consumed in preparation for future flying and should therefore have been refundable in their entirety." As noted in the Receiver's Tenth Report, this view does not appear to coincide with the operation of the Agreements. The Receiver does not have Mr. Bailey's current contact details.

11. Is there any record that Skyservice made Sunwing aware of its financial difficulties or that it might not have financing to continue operations after March 31, 2010?

Skyservice commenced an application against Sunwing in 2009 in which Skyservice made clear that its continued existence was threatened by the proposed amalgamation of First Choice Canada Inc. with a subsidiary of Sunwing Travel Inc., which amalgamation was ultimately completed. For instance, in the affidavit of Robert Giguere, sworn on December 14, 2009, in relation to the application, Mr. Giguere stated as follows at paragraph 33:

"Skyservice's business model is dependent on its relationship with tour operators. In point of fact, Skyservice has only two main clients, Thomas Cook and First Choice, representing 47% and 44%, respectively, of Skyservice's total revenues. If First Choice is able to consummate the transaction with Sunwing Travel without Skyservice's consent, the result will be the loss of a significant portion of Skyservice's business, thus ultimately threatening Skyservice's continued existence."

Schedule A – Current Secured and Unsecured Claims

CAD \$000's

Claim Adjudication Summary	Number	Value
Secured/Trust/Property:		
Accepted	14	\$ 110.68
Under Review ²	3	37,095.19
	17	37,206
Unsecured:		
Accepted	1,081	11,784.25
Under Review	23	52,230.75
	1,104	64,015
Total^{1,3}	1,121	\$ 101,220.87

¹ Former employee claims have been separated out from their union and association groupings and into individual claims

² In the event that a claim was submitted as both secured and unsecured, the amounts have been presented in the Secured/Trust/Property claim category only to avoid duplication of claimed amounts.

³ Skypac marker claim not included

Schedule B – Possible Distribution Scenarios

Scenario	1a	1b
CAD \$000's		
Distribution Range Estimate¹	Min	Max
Estate Funds ²	\$ 8,801	\$ 8,801
Completion Cost (Est.) ³	1,000	500
Funds Available to Secureds ⁴	7,801	8,301
Secured/Trust/Property:⁵		
Accepted	111	111
Under Review	37,095	-
	37,206	111
Distributions to Secureds(%)	21%	100%
Funds Available to Unsecureds	-	8,190
Unsecured:		
Accepted	11,784	11,784
Under Review ⁶	52,231	14,786
	64,015	26,570
Distributions to Unsecureds(%)	0%	31%

¹ Excludes potential payments from Trust and any potential additional realizations that are not quantifiable at this time.

² Includes \$47K transferred to a segregated estate account from the Trust for potential distributions.

³ Actual costs could be greater than or lower than estimate range.

⁴ Additional realizations could have a positive impact on distributions.

⁵ Relative security amongst the secured/trust/property claims has yet to be assessed.

⁶ SkyPAC marker claim not included

Scenario Assumption Legend:

Scenario 1a

	Per Creditor	Per Receiver
Priority of claim	✓	
Quantum of claim	✓	

Scenario 1b

	Per Creditor	Per Receiver
Priority of claim	✓	
Quantum of claim		✓

Scenario	2a	2b
CAD \$000's		
Distribution Range Estimate¹	Min	Max
Estate Funds ²	\$ 8,801	\$ 8,801
Completion Cost (Est.) ³	1,000	500
Funds Available to Secureds ⁴	7,801	8,301
Secured/Trust/Property:⁵		
Accepted	111	111
Under Review	-	-
	111	111
Distributions to Secureds(%)	100%	100%
Funds Available to Unsecureds	7,690	8,190
Unsecured:		
Accepted	11,784	11,784
Under Review ⁶	89,326	14,786
	101,110	26,570
Distributions to Unsecureds(%)	8%	31%

¹ Excludes potential payments from Trust and any potential additional realizations that are not quantifiable at this time.

² Includes \$47K transferred to a segregated estate account from the Trust for potential distributions.

³ Actual costs could be greater than or lower than estimate range.

⁴ Additional realizations could have a positive impact on distributions.

⁵ Relative security amongst the secured/trust/property claims has yet to be assessed.

⁶ SkyPAC marker claim not included

Scenario 2a

	Per Creditor	Per Receiver
Priority of claim		✓
Quantum of claim	✓	

Scenario 2b

	Per Creditor	Per Receiver
Priority of claim		✓
Quantum of claim		✓

Schedule C - Claimants

Top Ten Claims In Dispute
Receivership of Skyservice Airlines Inc.

Name of Claimant	Amount Claimed ¹	Accepted To Date ²	Disallowed and Agreed	To Be Determined
1 Thomas Cook Canada Inc.	\$ 42,508,772.99	\$ -	\$ -	\$ 42,508,772.99
2 Sunwing Tours Inc. c/o Blake, Cassels & Graydon LLP	\$ 20,984,609.53	\$ -	\$ -	\$ 20,984,609.53
3 International Lease Finance Corporation	\$ 12,321,223.10	\$ -	\$ -	\$ 12,321,223.10
4 Thomson Airways Limited c/o Blake, Cassels & Graydon LLP	\$ 11,631,509.14	\$ -	\$ -	\$ 11,631,509.14
5 MCAP Europe Limited	\$ 5,383,115.96	\$ 650,044.72	\$ -	\$ 4,733,071.24
6 Thomas Cook Airlines Limited and subsidiary companies	\$ 3,510,047.40	\$ -	\$ -	\$ 3,510,047.40
7 IAI V, Inc.	\$ 1,719,675.91	\$ 91,232.34	\$ -	\$ 1,731,830.43
8 CIT Leasing Corporation	\$ 2,041,759.88	\$ 237,434.90	\$ 1,759,019.54	\$ 45,305.44
9 Robert Read	\$ 257,674.42	\$ 165,997.27	\$ -	\$ 257,674.42
10 Thomas Cook Airlines Scandinavia A/S	\$ 154,696.19	\$ -	\$ -	\$ 154,696.19

¹ Total amount of claims do not include duplicated amounts (ie. claims made as secured and as unsecured)

² Amounts accepted by the Receiver may still be in dispute by the Claimant

Top Ten Accepted and Agreed to Claims
Receivership of Skyservice Airlines Inc.

Name of Claimant	Amount Claimed	Accepted and Agreed
1 Robert G. Giguere	\$ 941,260.51	\$ 702,043.00
2 SITA INC NV	\$ 11,095,609.25	\$ 633,296.34
3 Servisair Inc.	\$ 586,701.27	\$ 582,726.97
4 XL Airways France SA	\$ 566,704.80	\$ 566,704.80
5 DINERS CLUB INTERNATIONAL	\$ 401,526.14	\$ 336,788.51
6 Air Canada	\$ 290,783.09	\$ 275,741.97
7 CanAg Travel Services Ltd	\$ 252,924.12	\$ 252,657.74
8 Air Transat A.T. Inc. ¹	\$ 249,634.13	\$ 238,249.13
9 Sun Life Financial	\$ 250,606.92	\$ 237,327.41
10 Dryden Air Services	\$ 247,154.57	\$ 229,285.77

¹ Set off to claim still in dispute

Schedule D – Thomas Cook Scheduled Payment Dates

Payment schedule from the First Amending Agreement to the Credit Agreement, dated as of March 12, 2010 – Exhibit 1 – Agreed Payments

- Tue Feb 16
- Tue Feb 23
- Tue Mar 09
- Tue Mar 16
- Tue Mar 23

Payment schedule from the Amended and Restated Credit Agreement dated February 12, 2010, Schedule “C” – Agreed Payments

- Tue Feb 16
- Tue Feb 23
- Tue Mar 02
- Tue Mar 09
- Tue Mar 16
- Tue Mar 23

Schedule E – Giguere E-mails

-----Original Message-----

From: robertgiguere@rogers.com [mailto:robertgiguere@rogers.com]

Sent: Friday, June 25, 2010 7:52 AM

To: Engen, Jamie

Cc: Sabah Mirza

Subject: Signature Deposits

Jamie,

Signature (and all others) paid their deposits into our general accounts.

There was NO segregation or trust contemplated. This was the same for all customers.

The monies were paid out of general funds for almost all items with no breakdown or specific allocation; Nav Fees, Ground Handling, Overheads, Hangar costs, Labour including Pilot, Mntc and Cabin. Crew, Catering, etc etc.

These items were then reconciled at a much later date (months) to break down costs between customers based on formulas related to aircraft months or seat miles actually flown.

At time of payment the only items I can think of that were paid for specifically allocated to a customer might be aircraft leases that were paid generally the 1st of every month.

I wouldn't accept any argument that these funds were trust accounts put aside for a specific purpose.

If you need more let me know.

Rob.

Sent from my BlackBerry device on the Rogers Wireless Network

From: ROBERT GIGUERE [<mailto:robertgiguere@rogers.com>]
Sent: Thursday, July 29, 2010 8:55 PM
To: Engen, Jamie
Subject: Re: Sunwing Expenses

Jamie,

I have reviewed the document. From my perspective it is very well written, completely accurate and correctly reflects our practice in regard to our relationship with Signature/Sunwing.

I have no recommendations for revisions in style or accuracy. Excellent points throughout which capture the essence of the business relationship and day to day practice.

Rob

From: "Engen, Jamie" <Jamie.Engen@fticonsulting.com>
To: robertgiguere@rogers.com
Sent: Thu, July 29, 2010 11:09:24 AM
Subject: RE: Sunwing Expenses

Thanks

Could you read through this report for accuracy.

Thanks

Jamie

From: robertgiguere@rogers.com [mailto:robertgiguere@rogers.com]
Sent: Tuesday, December 07, 2010 10:57 AM
To: Engen, Jamie
Subject: Re: Separate Funds

Jamie.

Your understanding is correct.

A trust was created for some funds however these deposits were isolated for tracking as we were not certain of timelines with the receivership.

Rob.

Sent from my BlackBerry device on the Rogers Wireless Network

From: "Engen, Jamie" <Jamie.Engen@fticonsulting.com>
Date: Tue, 7 Dec 2010 13:14:18 -0500
To: <robertgiguere@rogers.com>
Subject: Separate Funds

Rob,

Following up on our phone conversation. I understand that the Sunwing funds for flights that were to have taken place after the receivership were moved into a separate account, along with three other deposits for flying that had not taken place. This was done so that you could keep track of those monies separately, but it was not your intention to create a trust. As you were creating trusts for other monies you understood the difference and made a decision to not create a trust with these funds.

Please let me know if my understanding is accurate.

Thanks,

Jamie T. Engen
Managing Director
FTI Consulting
604.673.6025 direct
604.417.7375 cell
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