

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

Skyservice Airlines Inc.

EIGHTH REPORT OF THE RECEIVER

October 19, 2010

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

Between

THOMAS COOK CANADA INC.

Applicant

- and -

SKYSERVICE AIRLINES INC.

Respondent

**EIGHTH 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 Eighth Report, is to request the granting by this Honourable Court of an approval and vesting order in respect of the sale of trademarks, tradenames, websites, logos, internet domain names and addresses referred to in Schedule "A" annexed to the IP Agreement, as hereinafter defined, plus any software, firmware, source code and object code owned by Skyservice and used in relation to the foregoing websites, and all other trademarks, tradenames, websites, logos and internet domain names used at anytime by Skyservice in connection with its businesses (collectively the "**Intellectual Property**").

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. 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 in previous Reports of the Receiver.

THE IP MARKETING PROCESS

5. During the course of the receivership, a number of parties contacted the Receiver with respect to the potential acquisition of some or all of the Skyservice intellectual property; however no specific offers were forthcoming.
6. The potential value of the Intellectual Property does not appear to justify the cost of an extensive marketing process. Moreover, given the nature of the Intellectual Property and the fact of an existing licence for the use of certain of the Intellectual Property (as described below), the potential market appears to be limited. The Receiver therefore concluded that, in its business judgment, a formal marketing process would not be likely to produce a materially better offer for the Intellectual Property. Accordingly the Receiver did not undertake a specific advertising campaign in respect of the Intellectual Property. The Receiver notes, however, that the receivership and the availability of the Skyservice assets generally is well known within the industry and has been widely publicized.
7. In the week ending October 1, 2010, Skyservice Investments Inc. (the “**Purchaser**”) provided the Receiver with a proposal for the acquisition of the Intellectual Property which the Receiver believed could form the basis of negotiations. A corporate entity that the Receiver understands to be affiliated with the Purchaser has an existing perpetual, exclusive, royalty-free licence to use certain of the Intellectual Property in connection with services around the world (the “**Existing Licence**”) and the Purchaser is therefore a logical purchaser.
8. In order to ensure that the marketing efforts would maximize realizations and provide fairness and transparency amongst interested parties, the Receiver contacted the parties that had previously indicated a potential interest in the Skyservice intellectual property to determine whether they were prepared to submit an offer.

9. Each of the parties contacted informed the Receiver that they would not submit an offer. Accordingly, the Purchaser appeared to be the only party with continuing interest in the acquisition of the Intellectual Property. Consequently, the Receiver entered into exclusive negotiations with the Purchaser in respect of a definitive agreement of purchase and sale.

THE IP AGREEMENT

10. Capitalized terms used hereinafter not otherwise defined are as defined in the IP Agreement.
11. On October 1, 2010, the Receiver and the Purchaser executed an agreement of purchase and sale in respect of the Intellectual Property (the “**IP Agreement**”).
12. The IP Agreement, a copy of which is attached hereto as Appendix A, provides for a purchase price of \$40,000, which has been paid to the Receiver.
13. The IP Agreement is subject to a number of conditions in favour of the Purchaser, the Receiver or both, including the following:
 - (i) The accuracy of representations on the Closing Date; and
 - (ii) The granting of the Approval and Vesting Order by no later than November 1, 2010.

REQUEST FOR THE APPROVAL AND VESTING ORDER

14. The Receiver respectfully submits that the steps taken to market the Skyservice intellectual property (the “**IP Marketing Process**”), having regard to the Existing Licence and the nature of the Intellectual Property, were reasonable in the circumstances. As such, in the Receiver's view the process followed in this case was appropriate having regard to the principles of the decision in *Royal Bank of Canada v. Soundair Corp.*, 4 O.R. (3d) 1 (Ont. C.A.).

15. The Receiver further submits that the purchase price provided for in the IP Agreement is the highest and best price that has resulted from the IP Marketing Process and that the granting of the Approval and Vesting Order is in the best interests of the estate and its stakeholders.
16. Accordingly, the Receiver respectfully requests the granting of the Approval and Vesting Order by this Honourable Court.

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

Dated this 19th day of October, 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 IP Agreement

AGREEMENT OF PURCHASE AND SALE

This agreement (this "Agreement") dated September 30, 2010 between **Skyservice Investments Inc.** (the "**Purchaser**") and **FTI Consulting Canada Inc.**, in its capacity as court-appointed receiver of all the assets, undertakings and properties of **Skyservice Airlines Inc.** ("**Skyservice**") acquired for or used in relation to a business carried on by Skyservice (the "**Vendor**"), provides for the purchase of the Purchased Assets (as defined herein). For good and valuable consideration, the receipt and adequacy of which are acknowledged, the Purchaser and Vendor agree as follows:

1. **Definitions.** For the purposes of this Agreement:

"**Approval and Vesting Order**" means an order of the Court approving this Agreement, exempting this Agreement from the application of the Bulk Sales Act (Ontario) and vesting in the Purchaser all right, title and interest of Skyservice in the Purchased Assets on closing free and clear of all Liens (save and except for the Permitted Encumbrances).

"**Business Day**" means and includes Monday to Friday, and excludes Saturdays, Sundays, and statutory holidays in the Province of Ontario.

"**Court**" means the Ontario Superior Court of Justice.

"**Excluded Software**" means the software, programming code, source code and applications referred to in Schedule "C" hereto.

"**Liens**" means and includes any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation.

"**Permitted Encumbrances**" means only those encumbrances referred to in Schedule "B" hereto.

"**Purchased Assets**" means Skyservice's interest in the trademarks, tradenames, websites, logos, internet domain names and addresses referred to in Schedule "A" annexed hereto, including any software, firmware, source code and object code owned by Skyservice and used in relation to the foregoing websites, and all other trademarks, tradenames, websites, logos and internet domain names used at anytime by Skyservice in connection with its businesses, but does not include the Excluded Software or any other intellectual property, software, firmware, source code and object code.

"**Receiver**" means FTI Consulting Canada Inc., the Court-appointed receiver of the assets, property and undertaking of Skyservice and not in its personal capacity and without personal or corporate liability.

2. **Purchase, Purchase Price and Closing Date.**

Subject to the terms of this Agreement, the Purchaser agrees to purchase and the Vendor agrees to sell, transfer, convey and assign to the Purchaser all of Skyservice's right, title and interest in and to the Purchased Assets on the terms and conditions set out in this Agreement and for the purchase price (the "**Purchase Price**") of \$40,000, payable by bank draft to be delivered to the Vendor in trust, by the Purchaser within 72 hours after the execution of this Agreement by the Vendor and delivery of an originally executed copy of this Agreement to the Purchaser, to be held by the Vendor in trust. If this Agreement is not completed because: (i) as of the Closing Date, the representations of the Vendor set out in Section 7 of this Agreement are materially untrue or any of the terms, covenants or conditions of this Agreement to be complied with or performed by the Vendor on or prior to the Closing Date have not been complied with or performed in all respects; (ii) the conditions in this Agreement for the benefit of the Purchaser have not been satisfied; or (iii) the Vendor is unable to obtain the Approval and Vesting Order by the date set out in this Agreement, the Purchase Price, without interest and without abatement or deduction, will be returned to the Purchaser within 3 Business Days. If this Agreement is not completed as a result of the breach of the Purchaser of the Purchaser's obligations in this Agreement, the Purchase Price shall be retained by the Vendor, and such forfeiture of the Purchase Price shall be the sole remedy of the Vendor as against the Purchaser, and the Vendor hereby releases the Purchaser of and from any other claims hereunder. This transaction will be completed on the date (the "**Closing Date**") which is 7 Business Days after the date on which the Approval and Vesting Order is issued or such other date as the Purchaser and Vendor may agree.

3. **Vendor's Continued Use of Purchased Assets.** Notwithstanding anything else in this Agreement, before and after the Closing Date, the Receiver and any of its agents, may refer to and continue to use, any of the Purchased Assets for the purpose of carrying on its activities as receiver of all the assets, undertakings and properties of Skyservice, and, without limiting the generality of the foregoing, the Receiver will not be required to change the corporate name of Skyservice at any time.

4. **Purchaser's Conditions.** The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to the satisfaction or waiver by the Purchaser of each of the following conditions by the date specified, which conditions are for the sole benefit of the Purchaser and which may be waived by the Purchaser in its sole discretion:

- (a) **Closing Date.** As of the Closing Date, the representations and warranties of the Vendor set out in this Agreement will be true and accurate and of the same effect as if made on and as of the Closing Date, and all the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor on or prior to the Closing Date will have been complied with or performed in all material respects; and
- (b) **Approval and Vesting Order.** On or before November 1, 2010, the Court shall have granted the Approval and Vesting Order, and the operation and effect of the Approval and Vesting Order shall not have been stayed, reversed or dismissed at the time of closing and no appeals of such Approval and Vesting Order shall be pending.

If the condition set out in Section 4(b) is not satisfied or waived on or before November 1, 2010, the Purchaser may terminate this Agreement by notice in writing to the Vendor, in which event the Purchase Price, without interest and without deduction or abatement, shall, be returned to the Purchaser and the Vendor's and the Purchaser's obligations under this Agreement shall be null and void and of no further force or effect whatsoever.

5. **Vendor's Conditions.** The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the satisfaction or waiver by the Vendor of each of the following conditions by the date specified, which conditions are for the sole benefit of the Vendor and which may be waived by the Vendor in its sole discretion:

- (a) **Closing Date.** As of the Closing Date, the representations and warranties of the Purchaser set out in this Agreement will be true and accurate and of the same effect as if made on and as of the Closing Date, and all the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or prior to the Closing Date will have been complied with or performed in all material respects; and
- (b) **Approval and Vesting Order.** On or before November 1, 2010, the Court shall have granted the Approval and Vesting Order, and the operation and effect of the Approval and Vesting Order shall not have been stayed, reversed or dismissed at the time of closing and no appeals of such Approval and Vesting Order shall be pending.

If the condition set out in Section 5(b) is not satisfied or waived on or before November 1, 2010, the Vendor may terminate this Agreement by notice in writing to the Purchaser, in which event the Purchase Price, without interest shall, subject to Section 2 of this Agreement, be returned to the Purchaser and Vendor's and Purchaser's obligations under this Agreement shall be null and void and of no further force or effect whatsoever.

6. **Liability of FTI.** The Purchaser acknowledges that, notwithstanding any provision to the contrary herein, FTI Consulting Canada Inc. ("FTI") has entered into this Agreement solely in its capacity as a court appointed receiver of all of the assets, undertakings and properties of Skyservice and not in its personal or corporate capacity and that FTI shall in no circumstances incur any personal liability whatsoever in connection with this Agreement.

7. **As Is, Where Is.** The Purchaser acknowledges and agrees that:

- (a) in entering into this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Purchased Assets, and the Purchaser acknowledges that it is not relying on any information furnished by the Vendor or any other person or entitles on behalf of or at the direction of the Vendor in connection therewith; and

- (b) the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date and no adjustments shall be made for any changes in the condition of any Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not warrant, covenant or guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets, and the nature and quantum of the claims against the Purchased Assets, in each case as it deemed appropriate and has satisfied itself with regard to these matters; no representation, warranty or condition is expressed or can be implied as to title, description, fitness for purpose, merchantability, condition, assignability, collectability, quantity, outstanding amount, value or quality of, or in respect of any Purchased Assets or any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell same, save and except as expressly represented or warranted herein; and without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the Sale of Goods Act (Ontario) do not apply hereto and are hereby waived by the Purchaser.

The Vendor shall have no obligations or responsibility to the Purchaser after the Closing Date with respect to any matter relating to the Purchased Assets or the condition thereof save as otherwise expressly provided in this Agreement. The provisions of this Section 7 shall not merge on, but shall survive, closing on the Closing Date.

8. **Vendor's Representations.** The Vendor covenants, represents and warrants to and in favor of the Purchaser that:

- (a) **Section 116.** Skyservice is not now, and will on the Closing Date not be, a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada); and
- (b) **Authority of the Receiver.** Subject to the terms of the receivership order dated March 31, 2010 appointing the Receiver and upon the making of the Court of Approval and Vesting Order: i) the Receiver will have all necessary power and authority to enter into this Agreement, to perform its obligations under this Agreement and all other documents contemplated hereby and thereby and to convey all right, title and interest of Skyservice in and to the Purchased Assets to the Purchaser as contemplated hereby; and (ii) this Agreement will constitute a legal, valid and binding obligation of the Receiver, enforceable against it in accordance with the terms hereof.

9. **Purchaser's Representations.** The Purchaser covenants, represents and warrants to and in favor of the Vendor that the Purchaser has all necessary power and authority to perform its obligations under this Agreement and all other documents contemplated hereby and thereby and this Agreement constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with the terms hereof.

10. **Taxes.** No goods and services tax or harmonized sales tax will be paid by the Purchaser to the Vendor with respect to the purchase by the Purchaser of the Purchased Assets if the Purchaser provides to the Vendor on or prior to the Closing Date a certificate and indemnity of the Purchaser (a) indicating the Purchaser's registration number for the purposes of the Goods and Services Tax or Harmonized Sales Tax imposed under the Excise Tax Act (Canada) and (b) indemnifying the Vendor for failure of the Purchaser to pay such applicable taxes in connection with the purchase of the Purchased Assets (whether arising from a reassessment or otherwise) and failure to file any returns or other documents required to be filed by the Purchaser with the relevant taxing authorities in connection with the purchase of the Purchased Assets.

11. **Closing Arrangements and Vendor's Deliveries.** Subject to the terms and conditions of this Agreement, this Agreement will be completed at 10:00 a.m. (Toronto time) on the Closing Date at the offices of McCarthy Tetrault LLP in Toronto, Ontario. On the Closing Date, the Vendor will deliver to the Purchaser the following documents:

- (i) **Approval and Vesting Order.** The Approval and Vesting Order; and
- (ii) **General Conveyance.** A general conveyance of the Purchased Assets.

12. **General.** Time will in all respects be of the essence of this Agreement. Any tender of documents or money may be made upon the Vendor or the Purchaser or upon their respective solicitors and money may be tendered by certified cheque or bank draft. This Agreement will be binding upon and enure to the benefit of the Vendor and the Purchaser and their respective successors and assigns. The Purchaser shall not have the right to

assign this Agreement to any corporation or person without the consent of the Vendor which consent may be unreasonably withheld, provided the Purchaser shall be entitled to assign this Agreement to an Affiliate (as defined in the Business Corporations Act (Ontario)) of the Purchaser; if such assignment is consented to by the Vendor or is made to an Affiliate of the Purchaser, such assignee shall agree in writing with the Vendor to be bound by the Purchaser's obligations under this Agreement; provided that upon such assignment, the Purchaser will not be released from its obligations under this Agreement. This Agreement shall merge on Closing except for Sections 2, 3, 6, 7, 8, 9, 10 and 11. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement. Counterparts may be executed either in an original, email or fax form and the parties agree to adopt any signature received by facsimile as original signatures, provided however that any party providing its signature in such manner promptly forwards to the other party an original of the signed copy of this Agreement which was so emailed or faxed. This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and will be treated in all respects as an Ontario contract. The use of headings in this Agreement is for convenience of reference only and will not affect the meaning or construction of this Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, warranties or representations, discussions and negotiations with respect to this Agreement, whether oral or written. If the time limited for the performance or completion of any matter in this Agreement does not fall on a Business Day, the time so limited will extend to the next following Business Day. The parties will promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things to carry out the true intent of this Agreement. The parties hereto have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumptions or burdens of proof shall arise favoring any party hereto by virtue of the authorship of any of the provisions of this Agreement. As used in this Agreement, the word "including" means without limitation. The headings and captions used in this Agreement or in any Schedule or Exhibit hereto are for convenience of reference only. Except as expressly set forth herein, all amounts payable hereunder and set forth in this Agreement are expressed in Canadian dollars. No waiver of or amendment to any provision of this Agreement, or any rights or obligations of any party hereto, will be effective except pursuant to a written instrument signed by all of the parties hereto. Any waiver will be effective only for the specific purpose stated in such writing. If any provision of this Agreement is held to be unenforceable, in whole or in part, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.

13. **Notice.** Any notice, certificate, consent, waiver, amendment or other written communication required or permitted to be given under the Agreement will be in writing made by the parties or their respective solicitors and will be effectively given and made if delivered personally or by facsimile communication:

(i) in the case of the Vendor, addressed to it at:

c/o FTI Consulting Canada Inc.
 TD Waterhouse Tower
 79 Wellington Street
 Suite 2010
 Toronto, ON M5K 1G8
 Attention: Nigel Meakin
 Facsimile No. (416) 649-8101

and at:

c/o FTI Consulting Canada Inc.
 Suite 500
 900 West Hastings Street
 Vancouver, BC V6C 1E5
 Attention: Jamie Engen
 Facsimile No. (604) 696-5571

with a copy to:

McCarthy Tétrault LLP
 Box 48, Suite 5300
 Toronto Dominion Bank Tower
 Toronto, ON M5K 1E6
 Attention: Jamey Gage and Jonathan See

Facsimile No. (416) 868-0673

(ii) and in the case of the Purchaser, addressed to it at:

Skyservice Investments Inc
6120 Midfield Road
Mississauga, Ontario
L5E 1B1

Attention: Marshall Myles

Facsimile No. (905) 677-1469

with a copy to:

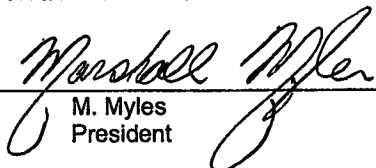
Aylesworth LLP
P.O. Box 124 18th Floor
222 Bay Street
Toronto, Ontario
M5K 1H1
M6C 2E3

Attention: Martine Ordon
Facsimile No.: (416) 865-1398


Any communication given or made will be deemed to have been given or made on the day it was received unless (i) it was received after 5 p.m., or (ii) if such day is not a Business Day, in each of which cases it will be deemed to have been given and made and to have been received on the next following Business Day.

IN WITNESS WHEREOF the parties have executed this Agreement.

SKYSERVICE INVESTMENTS INC.

By: 
Name: M. Myles
Title: President

FTI CONSULTING CANADA INC., in its capacity as court-appointed receiver of all the assets, undertakings and properties of Skyservice Airlines Inc. and not in its personal or corporate capacity

By: 
Name: Nigel D. Meakin
Title: Senior Managing Director

- Schedule A – Purchased Assets
- Schedule B – Permitted Encumbrances
- Schedule C – Excluded Software

SCHEDULE A

Purchased Assets

Canadian and US Trade-Marks:

Skyservice Serial No 1,311,668

Skyservice Reg. No. 2,225,935

Website Addresses/Domain Names:

Skyservicefbo.com

Skyservicelifeguard.com

Skyservicebusinessaviation.com

Skyservicemaintenance.com

Skyserviceairambulance.com

Skyservice.com

Skyservice.net

Skyserviceaviation.com

Skyserviceairlines.com

Skyservice.ca

Skyserviceairlines.ca



SCHEDULE B

PERMITTED ENCUMBRANCES

All licenses of the Purchased Assets existing at the Closing Date.

All rights of third parties to use the Purchased Assets existing at the Closing Date.

A handwritten signature or set of initials in black ink, located in the bottom right corner of the page.

SCHEDULE C

EXCLUDED SOFTWARE

Applications / programming code libraries:

- (a) Tour operator interface (java app on server YYZAIRFTP02);
- (b) Skyservice.Utilities (C# class library checked into SourceSafe);
- (c) Skyservice.Data (C# class library checked into SourceSafe);
- (d) Skyservice.Liaison / Skyservice.Sita.Liaison (C# class library checked into SourceSafe);
- (e) Sitatex_to_Email (C# app checked into SourceSafe);
- (f) Sitatex_to_SqlServer (C# app checked into SourceSafe);
- (g) Email_to_Sitatex (C# app checked into SourceSafe);
- (h) SitaRes_to_SqlServer (C# app checked into SourceSafe);
- (i) SitaDcs_to_SqlServer (C# app checked into SourceSafe);
- (j) SitaRes_to_WebCheckInXml (C# app checked into SourceSafe);
- (k) NoFlyUpload (C# app checked into SourceSafe);
- (l) ECATS (C# app checked into SourceSafe);
- (m) www.skyserviceairlines.com (C# ASP.net app checked into SourceSafe); and
- (n) SkyWeb Reporting (classic ASP apps; basically a full backup of C:\inetpub on server YYZWEB01).