

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 15th DAY  
 )  
JUSTICE MORAWETZ ) OF APRIL, 2010



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

**BETWEEN:**

**THOMAS COOK CANADA INC.**

**Applicant**

**- and -**

**SKYSERVICE AIRLINES INC.**

**Respondent**

**ORDER**

**(approving Aircraft Return Agreements, Aircraft Return Indemnity Agreements and  
Responsible Party Agreements)**

**THIS MOTION**, made by FTI Consulting Canada Inc. in its capacity as court-appointed receiver (the "**Receiver**") of the assets, properties and undertakings of Skyservice Airlines Inc. ("**Skyservice**") for an order authorizing Skyservice and the Receiver to enter into Aircraft Return Agreements, Aircraft Return Indemnity Agreements and, if applicable, Responsible Party Agreements (as such terms are defined below) with the lessors of aircraft and engines leased to Skyservice and for certain consequential relief related thereto, was heard this day, at 330 University Avenue, Toronto.

**ON READING** the notice of motion and the First Report of the Receiver dated April 14, 2010 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver and counsel for Thomson Airways Limited, counsel for C.I.T Leasing Corporation (“**C.I.T.**”), counsel for ORIX Aviation Systems Limited, MCAP Europe Limited, Jetscape, Inc., Aircastle Advisor LLC and GE Capital Aviation Services, counsel for International Lease Finance Corporation, counsel for the Greater Toronto Airports Authority and Ottawa Airports Authority, counsel for NAV Canada, counsel for Winnipeg Airports Authority, and counsel for Thomas Cook Canada Inc. (“**Thomas Cook**”):

1. **THIS COURT ORDERS** that the time for service of the notice of motion is abridged so that this motion is properly returnable today, service of notice of this motion in the manner described in the First Report is validated, and any requirement for further service is hereby dispensed with.
2. **THIS COURT ORDERS** that the Receiver and Skyservice are hereby authorized and empowered to enter into:
  - (a) an aircraft return agreement, substantially in the form set out in Appendix “B” to the First Report (the “**Aircraft Return Agreement**”);
  - (b) an aircraft return indemnity agreement, substantially in the form set out in Appendix “C” to the First Report (the “**Aircraft Return Indemnity Agreement**”); and
  - (c) if applicable, a responsible party aircraft return and indemnity agreement, substantially in the form set out in Appendix “D” to the First Report (the “**Responsible Party Agreement**”),

with each of the lessors (the “**Lessors**”) and, if applicable, responsible parties (“**Responsible Parties**”), in respect of the aircraft and engines (the “**Aircraft**”) identified in Schedule “A” hereto, in each case with such non-material alterations and amendments as the parties thereto may agree, and the activities and transactions contemplated thereby are hereby approved.

3. **THIS COURT ORDERS** that the Receiver and Skyservice are hereby authorized and empowered:

- (a) to perform all of their respective obligations under the Aircraft Return Agreements, the Aircraft Return Indemnity Agreements and Responsible Party Agreements entered into with Lessors and Responsible Parties;
- (b) to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to executed Aircraft Return Agreements, Aircraft Return Indemnity Agreements and Responsible Party Agreements as the Receiver, in its discretion, considers to be reasonably necessary or advisable; and
- (c) to take such steps, actions and proceedings as are, in the opinion of the Receiver, necessary or incidental to the performance of the obligations of the Receiver and Skyservice pursuant to executed Aircraft Return Agreements, Aircraft Return Indemnity Agreements and Responsible Party Agreements and to the activities and transactions contemplated thereby.

4. **THIS COURT ORDERS** that the return of each Aircraft may be subject to the rights of third parties, including suppliers or others, if any, that own or have an interest in Third Party Parts (as defined in section 6 of the Aircraft Return Agreement) (a “**Third Party**”). If a Third Party is not satisfied that a Lessor is performing its obligations in respect of such Third Party, the Third Party may bring a motion in these proceedings for directions or other relief, on not less than 7 days’ notice to the Receiver and applicable Lessor, including but not limited to seeking an

order directing the Lessor to comply with the Aircraft Return Agreement in respect of the applicable Third Party Parts.

5. **THIS COURT ORDERS** that upon the Lessors complying with the terms of the order of the Honourable Justice Morawetz dated April 9, 2010 (the "**Release Protocol Order**"), the Aircraft shall be released from the Seizure Claims (as such term is defined in the Protocol attached to the Release Protocol Order) on the terms provided for pursuant to the Release Protocol Order and the parties to Aircraft Return Agreement(s) will be free to deal with the Aircraft subject to such Aircraft Return Agreement(s) in accordance with the terms thereof.

6. **THIS COURT ORDERS AND DECLARES** that, following:

- (a) the release of an Aircraft from the Seizure Claims as described in paragraph 5 of this Order;
- (b) the execution and delivery by the parties thereto of an Aircraft Return Agreement, Aircraft Return Indemnity Agreement and, if applicable, Responsible Party Agreement in respect of that Aircraft; and
- (c) the delivery by the applicable Lessor to the Receiver of:
  - (i) the deposit required to be paid by subparagraph 5(b) of such Aircraft Return Agreement; and
  - (ii) the amount, if any, required to be paid by subparagraph 5(f) of such Aircraft Return Agreement, on the terms as set out in Exhibit "C" thereto,

such Lessor shall be entitled to exercise its right under the applicable lease of such Aircraft as set out in schedule "A" hereto (the "**Lease**") to terminate such Lease, to the extent not already terminated by operation of law or otherwise, and to take possession of the Aircraft, in each case in accordance with the terms of such Aircraft Return Agreement, and that the exercise

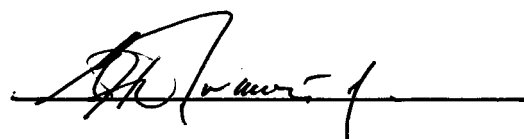
of such rights shall be without prejudice to any other rights or remedies of such Lessor against Skyservice in the receivership of Skyservice or otherwise which by the terms of the Lease are available to the Lessor under the Lease upon termination and that are not inconsistent with the terms of such Aircraft Return Agreement. Nothing in this Order, such Aircraft Return Agreement or such Aircraft Return Indemnity Agreement shall limit such Lessor's right to make further claims against Skyservice in these receivership proceedings or otherwise, in accordance with the terms of such Lease, any other agreement or applicable law to the extent not inconsistent with the terms of such Aircraft Return Agreement or Aircraft Return Indemnity Agreement.

7. **THIS COURT ORDERS** that, with respect to Aircraft MSN 25053 having registration mark C-GMYH leased by C.I.T to Skyservice (the "**C.I.T Aircraft**"), the Receiver and Skyservice are hereby authorized and empowered to enter into the Aircraft Return Agreement, the Aircraft Indemnity Agreement and the Responsible Party Agreement, if applicable (collectively, the "**Return Agreements**") with respect to the C.I.T. Aircraft, if and when agreed by C.I.T and Thomas Cook, or when a final order is made from which all rights of appeal in respect thereof have expired or been exhausted by way of final disposition, ordering the release of the C.I.T Aircraft to the party entitled. Until the Receiver executes the Return Agreements, the C.I.T Aircraft shall remain subject to the provisions of the order of the Honourable Justice Morawetz dated March 31, 2010, subject to such other interim relief in respect of the C.I.T. Aircraft as may be granted by the Court. This paragraph does not affect the requirement of Covering Lessors to be reimbursed their Contributed Amount (as such terms are defined in the Protocol attached to the Release Protocol Order) prior to the release of the C.I.T. Aircraft to the party entitled.

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

APR 15 2010

PER / PAR:





**SCHEDULE "A"**  
**LIST OF LESSORS AND AIRCRAFT**

<u>TAIL #</u>	<u>Type</u>	<u>Serial Number</u>	<u>Engines Currently on Wing</u>	<u>Lessor (Counsel)</u>	<u>Location</u>	<u>Lease Dates</u>
C-FLEU	Boeing 757-200	29941	30821/ 30835	Thomson Airways Limited	Toronto	November 18, 2009
C-FLOX	Boeing 757-200	26158	31651/ 31872	Thomson Airways Limited	Winnipeg	December 15, 2008
C-GTDG	Airbus A320-200	1571	575247/ 779396	Thomson Airways Limited	Toronto	December 3, 2009
C-FOBH	Boeing 757-200	29944	30742/ 30880	Thomson Airways Limited	Winnipeg	November 18, 2009
C-GTDH	Airbus A320-200	1605	575132/779384	Aircraft: Orix Aviation Systems Limited Engines: Thomson Airways Limited	Toronto	July 28, 2005 Engines: May 27, 2009
C-GTDP	Airbus A320-200	1780	575402/ 575403	International Lease Finance Corporation	Toronto	January 11, 2001
C-FRAA	Airbus A320-200	1411	V10905/ V10907	MCAP Europe Ltd.	Toronto	September 28, 2000
C-GTSJ	Boeing 757-236	24772	30734/30739	IAI V, Inc. (Jetscape Inc.)	Toronto	August 4, 2009
C-GTBB	Boeing 757-28A	32447	31868/ 31754	Aircraft: Celestial Aviation Trading 23 Limited Engines: Thomson Airways Limited	Toronto (Millard)	March 16, 2005 Engines: July 2009/November 29, 2009
C-GMYH	Boeing 757-236	25053	30786/ 30785	C.I.T. Leasing Corporation	Toronto	April 5, 2004

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

- and -  
SKYSERVICE AIRLINES INC.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**ORDER**

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**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**

**ENDORSEMENT OF JUSTICE MORAWETZ  
(UNOFFICIAL TRANSCRIPT)**

April 15, 2010

The motion proceeded on an unopposed basis, it being noted that counsel to ILFC advised that she had been unable to obtain instructions from her client who was unavailable. The Receiver filed a comprehensive report which included background details concerning the 3 agreements which were the subject of the motion. The Receiver has, in my view, properly balanced the interests of lessors and third parties in developing these agreements. I am satisfied that in the circumstances it is appropriate to authorize the Receiver to enter into the Aircraft Return Agreement, the Aircraft Return Indemnity Agreement and the Responsible Party Agreement. It is recognized that issues may arise with respect to certain financial calculations arising out of the agreements and all lessors have reserved their rights to bring any such issues back before the Court. It is also recognized that the Receiver and all other parties to the Agreements have worked diligently in arriving at a practical solution to the issues involved. The Court expresses its appreciation to all involved in the negotiations that led to these agreements.

Morawetz J.

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

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- and -

SKYSERVICE AIRLINES INC.

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**ENDORSEMENT OF JUSTICE  
MORAWETZ  
(UNOFFICIAL TRANSCRIPT)**

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15 April 2010

THOMAS COOK CANADA INC

- and -

SKY SERVICE AIRLINES INC

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

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S. Irving for GTAA - 07C1AA

P. ... for CIT

C. ... for ...

J. ... for ...

April 15, 2010

SUPREME COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding Commenced at Toronto

MOTION RECORD

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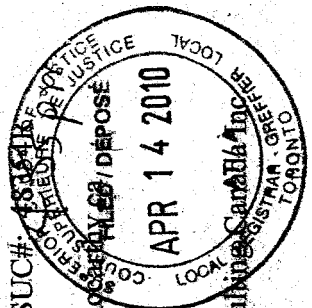
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#1413684



The motion proceeded in an *ex parte* manner to  
date, it being noted that the had  
ILFC is advised that she had  
been unable to obtain ...  
for the check ...

LATE FILING

The Recor filed a comprehensive report which  
included background details concerning  
the 3 agreements which were the subject  
of the note. The Recor has, in my view,  
properly balanced the interests of lessors  
and other parties, in developing these  
agreements. I am satisfied that, in the  
circumstances, <sup>it is appropriate to entitle the Recor to</sup> ~~entitle~~ <sup>enter into</sup> the Aircraft Return  
Agreement; the Aircraft Return Indemnity  
Agreement and the Remittance Party  
Agreement. It is recognized that issues  
may arise with respect to certain  
financial calculations arising out of the  
agreements and all lessors have reserved  
their rights to bring ~~such~~ <sup>such</sup> ~~issues~~ <sup>issues</sup>  
such issues dealt before the Court.  
It is also recognized that the Recor  
and all other parties to the Agreements  
have worked diligently in ~~arriving~~  
arriving at a practical solution  
to the issues involved. The  
Court expenses its appreciation

As all involved in the negotiations that led  
to these agreements.

A. J. Rowland.