

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

-and-

SKYSERVICE AIRLINES INC.

Respondent

MOTION RECORD

DATE: June 14, 2010

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INDEX

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

-and-

SKYSERVICE AIRLINES INC.

Respondent

MOTION RECORD INDEX

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

-and-

SKYSERVICE AIRLINES INC.

Respondent

NOTICE OF MOTION

Sunwing Tours Inc. ("**Sunwing**") will make a motion to the Court, on June 16, 2010 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR AN ORDER

- a) abridging the time for service of the Notice of Motion and Motion Record, if necessary, and that the motion is properly returnable on June 16, 2010;
- b) lifting the stay of proceedings for the purpose of allowing Sunwing to (i) commence an application to the Court to have Skyservice Airlines Inc. ("**Skyservice**") be adjudged bankrupt (the "**Bankruptcy Application**") pursuant

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to the *Bankruptcy and Insolvency Act* (the “**BIA**”), and (ii) take all steps necessary and incidental to the commencement of the Bankruptcy Application, provided that no further steps shall be taken to obtain a bankruptcy order without the prior written consent of the Receiver (as defined below) or further order of the Court;

- c) adjourning the hearing of the Bankruptcy Application *sine die*; and
- d) such further and other relief as Sunwing may request and this Honourable Court shall deem just.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

- (a) On March 31, 2010, FTI Consulting Canada Inc. (“**FTI**”) was appointed as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Skyservice;
- (b) The receivership of Skyservice is explicitly a liquidation;
- (c) In addition to certain trust or proprietary claims that Sunwing has asserted against Skyservice and in the receivership, Skyservice is indebted to Sunwing in an amount exceeding \$4.9 million for costs and damages incurred as a result of Skyservice’s receivership and its consequent failure to provide certain charter flight services to Sunwing. These costs and damages include, without limitation, costs of securing flight services from other carriers on very short notice, Skyservice inventory write offs, customer protection and compensation costs, loss of revenue and other costs. In addition to the losses occasioned by Sunwing as a direct or indirect result of Skyservice’s failure to provide flight services, Sunwing has incurred significant costs in mitigating its losses;

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- (d) Sunwing seeks a lifting of the stay to commence the Bankruptcy Application in order to establish the date of initial bankruptcy event for the purposes of the BIA and to avail itself of rights and remedies under the BIA;
- (e) The Receiver has acknowledged in its Pre-appointment Report dated March 31, 2010 that its review of various secured parties' security was subject to the usual assumptions and qualifications with respect to preferences and other forms of impeachable transactions and therefore, such review has not been undertaken;
- (f) At this time, the commencement of the Bankruptcy Application is solely for the purpose of establishing the date of initial bankruptcy event and the hearing of the bankruptcy application is to be deferred;
- (g) Sunwing proposes that FTI be designated as the proposed trustee in bankruptcy on the Bankrupt's Application. FTI has consented to act as trustee in bankruptcy of Skyservice, if so appointed by this Honourable Court.
- (h) The Receiver does not oppose the lifting of the stay of proceedings for the purpose of allowing Sunwing to commence the Bankruptcy Application;
- (i) Sunwing is a significant unsecured creditor of Skyservice. The lifting of the stay for the purpose of commencing the Bankruptcy Application is appropriate and equitable in the circumstances, as it establishes the date of initial bankruptcy event and thereby preserves rights and remedies of all unsecured creditors under the BIA. As Skyservice is no longer carrying on business and is in liquidation, the lifting of the stay for the sole purpose of fixing the date of initial bankruptcy event will not be prejudicial to Skyservice or other creditors of Skyservice;
- (j) The grounds set out in the Affidavit of Mark Williams, sworn June 14th, 2010 (the "**Williams Affidavit**");

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- (k) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (l) Section 187(11) of the BIA; and
- (m) Such further grounds as counsel may advise and this Honourable Court may permit.

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

- a) The Williams Affidavit; and
- b) Such further and other materials as counsel may advise and this Honourable Court may permit.

June 14th, 2010

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IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

NOTICE OF MOTION

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Lawyers for Sunwing Tours Inc.

TAB 2

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

AFFIDAVIT OF MARK WILLIAMS

Sworn June 14, 2010

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

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

2. This affidavit is sworn in support of a motion by Sunwing for an order lifting the stay of proceedings for the purpose of allowing Sunwing to (i) commence an application to the Court to have Skyservice Airlines Inc. (“**Skyservice**”) be adjudged bankrupt (the “**Bankruptcy Application**”) pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”), and (ii) take all steps necessary and incidental to the commencement of the Bankruptcy Application, provided that no further steps shall be taken to obtain a bankruptcy order without the prior written consent of the

Receiver (as defined below) or further order of the Court. Sunwing is also seeking an Order adjourning the hearing of the Bankruptcy Application *sine die*.

3. Details of the business relationship between Skyservice and Sunwing are set out in my affidavit sworn in these proceedings on April 27, 2010, a copy of which is attached hereto as **Exhibit "A"**.

4. On March 31, 2010, FTI Consulting Canada Inc. ("FTI") was appointed as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of Skyservice. A copy of the order appointing the Receiver (the "**Receivership Order**") is attached hereto as **Exhibit "B"**.

5. As set out in section 3(d) of the Receivership Order, the Receiver is empowered to wind down but not operate Skyservice's business; the Skyservice receivership is explicitly a liquidation.

6. In addition to certain trust or proprietary claims that Sunwing has asserted against Skyservice in the receivership, Skyservice is indebted to Sunwing in an amount exceeding \$4.9 million for costs and damages incurred as a result of Skyservice's receivership and its consequent failure to provide certain charter flight services to Sunwing. These costs and damages include, without limitation, costs of securing flight services from other carriers on very short notice, Skyservice inventory write offs, customer protection and compensation costs, loss of revenue and other costs. In addition to the losses occasioned by Sunwing as a direct or indirect result of Skyservice's failure to provide flight services, Sunwing has incurred significant costs in mitigating its losses.

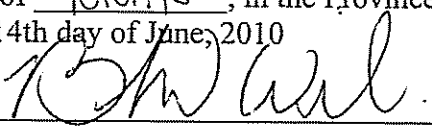
7. Sunwing seeks a lifting of the stay to commence the Bankruptcy Application in order to establish the date of initial bankruptcy event for the purposes of the BIA and to avail itself of rights and remedies under the BIA. The Receiver has acknowledged in its Pre-appointment Report dated March 31, 2010 that its review of various secured parties' security was subject to the usual assumptions and qualifications with respect to preferences and other forms of impeachable transactions and therefore, such review has not been undertaken. At this time, the

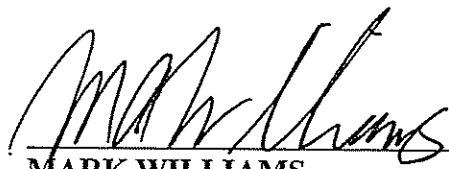
commencement of the Bankruptcy Application is solely for the purpose of establishing the initial date of bankruptcy and the hearing of the bankruptcy application is to be deferred.

8. I am advised that the Receiver does not oppose the lifting of the stay of proceedings for the purpose of allowing Sunwing to commence the Bankruptcy Application.

9. Sunwing proposes that FTI be designated as the proposed trustee in bankruptcy on the Bankruptcy Application. FTI has consented to act as trustee in bankruptcy of Skyservice, if so appointed by this Honourable Court.

10. Sunwing is a significant unsecured creditor of Skyservice. The lifting of the stay for the purpose of commencing the Bankruptcy Application is appropriate and equitable in the circumstances, as it establishes the initial date of bankruptcy and thereby preserves rights and remedies of all unsecured creditors under the BIA. As Skyservice is no longer carrying on business and is in liquidation, pursuant to the Receivership Order, the lifting of the stay for the sole purpose of fixing the date of initial bankruptcy event will not be prejudicial to Skyservice or other creditors of Skyservice.

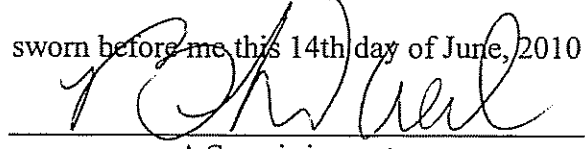
SWORN BEFORE ME at the)
City of Toronto, in the Province of Ontario,)
this 14th day of June, 2010)
)
A Commissioner, etc.)


MARK WILLIAMS

**BRIAN MURRAY WILSON,
A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO,
WHILE A STUDENT-AT-LAW.
EXPIRES APRIL 1, 2013..**

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

sworn before me this 14th day of June, 2010

A handwritten signature in cursive script, appearing to read "R. H. Neal", is written over a horizontal line.

A Commissioner, etc.

H3

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

ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST

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

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

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

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

AFFIDAVIT OF MARK WILLIAMS

Sworn April 27, 2010

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

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

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

A. Sunwing Tours Inc.

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

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

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

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

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

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

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

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

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

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

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

12. Clause 5.1.2 of the Commercial Agreement provides:

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

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

13. The "Operating Costs" that Sunwing prepays to Skyservice include:
- (a) Aircraft lease costs, including without limitation:
 - Rental;
 - Maintenance reserves (to the extent that these are not recovered at the end of the lease term);
 - Insurance;
 - Taxes and indemnities payable by Skyservice pursuant to the lease; and
 - All charges associated with the return of the Aircraft in accordance with the lease terms;
 - (b) Aircraft maintenance and repair costs;
 - (c) Fuel and oil costs;
 - (d) Ground handling costs, including without limitation:
 - Aircraft, passenger, baggage and cargo handling;
 - De-icing;
 - Aircraft cleaning and catering;
 - Security;
 - (e) Airport, government and navigation fees;
 - (f) Flight and cabin crew salaries and expenses; and
 - (g) Irregular operations, welfare costs and sub-chartering of replacement aircraft (irregular operations and subservice)

Collectively, the "Operating Costs".

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

B. Skyservices' "Cost-Plus" Funding Structure

(i) Ordinary Course Funding

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

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

(ii) Irregular Funding

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

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

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

C. Prepayments made by Sunwing

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

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

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

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

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

(ii) Prepayments for Services Not Provided

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TSJ

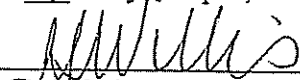
Skyservice and Thomas Cook dated February 12, 2010 (Exhibit C to the Nensi Affidavit),
provided:

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

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

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

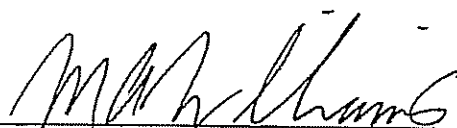
SWORN BEFORE ME at the
City of Etobicoke, in the Province of Ontario,
this 27th day of April, 2010



A Commissioner, etc.

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

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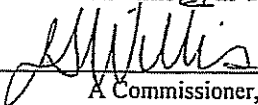


Mark Williams

153 20

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

sworn before me this 27th day of April, 2010


A Commissioner, etc.

154 21

Jolanta Bialy

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

Hi Jolanta

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

Thanks in advance for all your help.

Percy Gyara , CGA, CPA
Controller



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

P Please consider the environment before printing this email

NOTICE OF CONFIDENTIALITY: This material is intended for the use of the individual to whom it is addressed and may contain information that is privileged, proprietary, confidential and exempt from disclosure. If you are not the intended recipient or the person responsible for delivering the material to the intended recipient, you are notified that dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately via e-mail and destroy this message accordingly.

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

Hello Jolanta

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

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

Thanks

Percy Gyara , CGA, CPA
Controller





Greater Toronto Airports Authority

Finance

March 20, 2009

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

Silena Betti, CGA
Manager, Accounting Operations
Tel: 416.776.7114
Fax: 416.776.5551

Dear Mr. Gyara:

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

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

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

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

Greater Toronto Airports Authority
Toronto Pearson International Airport

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

P (416) 778-3000
F (416) 776-7748
www.GTAA.com



March 20, 2009
Page 2 of 3



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

A. Prepayment of Fees

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

B. Security Deposit

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

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

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

Yours truly,

Silena Betti, CGA
Manager, Accounting Operations

c: Jackie Smalec – Skyservice
Larry Shack - Skyservice



Schedule "A"

Air Carrier _____

Aeronautical Revenue (Landing Fees and General Terminal Charges)

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

AIF Revenue

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

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

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

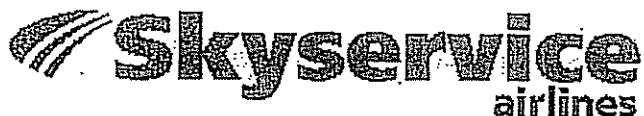
*** Carrier pays an estimate of the aeronautical activity 5 business days prior to the activity period and balance of invoice within 30 days of invoice date. The GTAA will periodically review and reconcile actual flight operations at Toronto Pearson with the prepayment amounts and security deposit and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

158 25

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

sworn before me this 27th day of April, 2010


A Commissioner, etc.



31 Fasken Drive
 Etobicoke Ontario M9W 1K6
 CANADA

INVOICE

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

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

 Attention: Susana McCullough

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

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

Thank you for choosing Skyservice Airlines

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

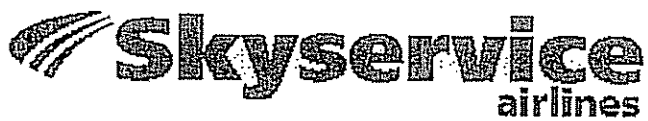
Any questions or concerns, please call:

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

Please make cheques payable to Skyservice Airlines Inc.
 Wire transfer funds to: c/o HSBC Bank Canada
 885 West Georgia Street, Suite 200, Vancouver, BC V6C 3G4

Transit: 0270, Account: 217436-001

to



31 Fasken Drive
Etobicoke Ontario M9W 1K6
CANADA

CREDIT NOTE

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

Signature Vacations - Revenue
1885 Tech Ave
Mississauga ON L4W 0A7

Attention: Susana McCullough

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

Description	Quantity	Amount
Credit for YYZ-CUN-YYZ flights on Mar 26 & Apr 2, 2010	1.00	\$119,609.86
March 26		54,804.93
April 2		54,804.93
		<u>119,609.86</u>

Thank you for choosing Skyservice Airlines

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

Any questions or concerns, please call:

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

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

Transit: 10270 Account: 217430-001

This is Exhibit "C" referred to in
the Affidavit of
MARK WILLIAMS
sworn before me this __th day of April, 2010

A Commissioner, etc.

762



31 Fasken Drive
Etobicoke Ontario M9W 1K6
CANADA

INVOICE

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

Signature Vacations - Revenue

1685 Tech Ave
Mississauga ON L4W 0A7

Attention: Susana McCullough

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

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

Thank you for choosing Skyservice Airlines

Subtotal	\$2,449,083.04
GST	\$0.00
TOTAL CAD	\$2,449,083.04

Any questions or concerns, please call:

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

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

~~Transit: 10270 Account: 247486-001~~

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding Commenced at Toronto

AFFIDAVIT of MARK WILLIAMS

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

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

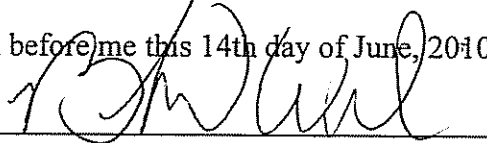
Catherine Beagan-Flood LSUC #43013U
Tel: 416-863-2269

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

Lawyers for Sunwing Tours Inc.

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

sworn before me this 14th day of June, 2010

A handwritten signature in black ink, appearing to be "R. Williams", written over a horizontal line.

A Commissioner, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE *Th.*
JUSTICE *G. May*

)
)

WEDNESDAY, THE 31st
DAY OF MARCH, 2010

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

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

- and -

SKYSERVICE AIRLINES INC.

Respondent

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

ORDER

THIS APPLICATION made by the Applicant, Thomas Cook Canada Inc. ("TCCI"), for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and sections 101 and 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing FTI Consulting Canada Inc. as receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of the Respondent, Skyservice Airlines Inc. (the "Debtor"), acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING the affidavit of Karim Nensi sworn March 31, 2010, and the Exhibits thereto; and on hearing the submissions of counsel for TCCI, the Debtor, Gibralt Capital Corporation ("Gibralt"), and FTI Consulting Canada Inc.; and on reading the Pre-Appointment Report to the Court Submitted by FTI Consulting Canada Inc., in its capacity as proposed Receiver; and on reading the consent of FTI Consulting Canada Inc. to act as the Receiver:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property in respect of the preservation, protection, collection and realization thereof and, without in any way limiting the generality of the foregoing (but subject to the limitations in clause (d) below), the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) in the case of Property consisting of airframes, aircraft engines and related accessories, parts, equipment, manuals, records and other property ("Aircraft Objects"), to permit any owner or lessor of, or other person with an interest in, any such Aircraft Objects to take possession or control thereof, whether the Receiver has or has not taken prior possession or control thereof, on such terms (if any) as the Receiver considers appropriate;
- (d) to wind-down but not operate the business and realize on the Property of the Debtor, including the powers to enter into any agreements, incur and pay any obligations in the ordinary course of winding-down the business and realizing on the Property, cease to carry on the business, or cease to perform any contracts of the Debtor;
- (e) to enter into arrangements to assist employees of the Debtor, who have travelled and remain outside of Canada in the course of their employment, to return to Canada, including the power to incur and pay reasonable accommodation, transportation and meal costs and to reimburse such costs;

- (f) to confirm the continuation of employment by the Debtor of employees pursuant to letters from the Receiver on behalf of the Debtor and of union employees (if any) in respect of whom the applicable union or local has entered into an agreement with the Receiver, in each case on terms satisfactory to the Receiver, all with a view to facilitating a wind-down of the business and realization of the Property;
- (g) to confirm the permanent layoff and/or termination of employment by the Debtor of employees pursuant to letters from the Receiver on behalf of the Debtor;
- (h) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons (including, without limitation, affiliates of the Receiver) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (i) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets as the Receiver considers necessary or desirable to facilitate the wind-down of the business of the Debtor and the realization on the Property;
- (j) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (k) to settle, extend or compromise any indebtedness owing to the Debtor;

- (l) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (m) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (n) to continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (o) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (p) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$750,000, provided that the aggregate consideration for all such transactions does not exceed \$3,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

- 6 -

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (q) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (r) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (s) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, including the real property described in Schedule B hereto;
- (t) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (u) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (v) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- 7 -

- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records,

or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA to the same extent that counterparties are entitled to exercise remedies thereunder pursuant to section 65.1 of the BIA in proposal proceedings, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of any or all such employees. In this regard, the Receiver may confirm the continuation of the employment, by the Debtor, of employees pursuant to a letter from the

Receiver on behalf of the Debtor. The Receiver shall not be liable for any employee-related liabilities, including any successor or other employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay on behalf of the Debtor, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated,

might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed or construed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge

(the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and subject to any validly registered mortgage, lien or charge on the real property of the Debtor (other than any registrations in favour of TCCI or Gibralt) or to any validly attached and perfected security interest in a specific identified asset of the Debtor identified on the PPSA register.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time

as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate to any validly registered mortgage, lien or charge on the real property of the Debtor (other than any registrations in favour of TCCI or Gibralt) or to any validly attached and perfected security interest in a specific identified asset of the Debtor identified on the PPSA register.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

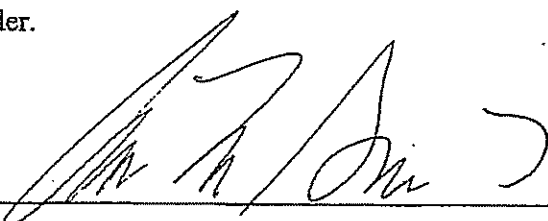
25. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

29. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO..

MAR 31 2010

PER / PAR: TV

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$500,000

THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Skyservice Airlines Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 31st day of March, 2010 (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the Bankruptcy and Insolvency Act, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

FTI Consulting Canada Inc. solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

SCHEDULE "B"**31 Fasken Drive, Toronto, ON**

PIN: 07420-0020 (LT)

PT BLK B, PL 7994, PART 1, 64R8871, T/W EB367331; ETOBICOKE, CITY OF TORONTO.

6932 Vanguard Drive, Mississauga, ON

PIN: 13526-0009 (LT)

LT 9, REGISTRAR'S COMPILED PLAN 1006; T/W EASEMENTS DESCRIBED IN R01129884; BRAMPTON/MISSISSAUGA; T/W EASEMENT AS IN PR361078; T/W EASEMENT OVER PT LOT 5 CON 7 EHS TT, DESG PTS 35 TO 38, PLAN 43R32426, AS IN PR1523019.

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

THOMAS COOK CANADA INC.

Applicant and Respondent

SKYSERVICE AIRLINES INC.

Court file # CV-10-8647-00CL

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER
(Appoint National Receiver)

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

John A. MacDonald (LSUC# 25884R)
(416) 862-5672
Mary Paterson (LSUC# 51572P)
(416) 862-4924
(416) 862-6666 (fax)

Lawyers for the applicant, Thomas Cook Canada
Inc.

F. 112114

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.
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

AFFIDAVIT of MARK WILLIAMS

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Barristers and Solicitors
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199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

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

Katherine McEachern LSUC #38345M
Tel: 416-863-2566

Chris Burr LSUC No.: 55172H
Tel: (416) 863-3301
Fax: (416) 863-2653

Lawyers for Sunwing Tours Inc.

TAB 3

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

CONSENT

FTI CONSULTING CANADA INC. hereby consents and agrees to act as trustee in the
bankruptcy of Skyservice Airlines Inc.

FTI CONSULTING CANADA INC.

By: 

Name: Nigel D. Meakin

Title: Senior Managing Director

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

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

**CONSENT OF FTI CONSULTING
CANADA INC.**

BLAKE, CASSELS & GRAYDON LLP
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Lawyers for Sunwing Tours Inc.

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR) WEDNESDAY, THE 16th
)
JUSTICE MORAWETZ) DAY OF JUNE, 2010

IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

-and-

SKYSERVICE AIRLINES INC.

Respondent

ORDER

THIS MOTION made by Sunwing Tours Inc. (“Sunwing”) for an Order:

- a) abridging the time for service of the Notice of Motion and Motion Record, if necessary, and that the motion is properly returnable on June 16, 2010;
- b) lifting the stay of proceedings for the purpose of allowing Sunwing to (i) commence an application to the Court to have Skyservice Airlines Inc. (“Skyservice”) be adjudged bankrupt (the “Bankruptcy Application”) pursuant to the *Bankruptcy and Insolvency Act* (the “BIA”), and (ii) take all steps necessary and incidental to the making of the Bankruptcy Application; and
- c) adjourning the hearing of the Bankruptcy Application *sine die*,

was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Notice of Motion and the affidavit of Mark Williams sworn on June 9th, 2010, and on hearing the submissions of counsel for Sunwing, counsel for FTI Consulting Canada Inc. in its capacity as the court appointed Receiver of Skyservice (the “**Receiver**”), and on being advised that the parties listed on the service list as of June 14th, 2010 attached to the Motion Record (the “**Service List**”) were served with the Motion Record herein;

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and that the Motion is properly returnable today, and service thereof upon any person other than those on the Service List be and is hereby dispensed with.
 2. **THIS COURT ORDERS** that the stay of proceedings provided for in the order of the Honourable Mr. Justice Gans dated March 31, 2010 is hereby lifted for the purposes of allowing Sunwing to (i) commence an application to the Court to have Skyservice be adjudged bankrupt (the “**Bankruptcy Application**”), and (ii) take all steps necessary and incidental to the commencement of the Bankruptcy Application, but no further steps shall be taken to obtain a bankruptcy order without the prior written consent of the Receiver or further order of the Court.
 3. **THIS COURT ORDERS** that the hearing of the Bankruptcy Application shall be adjourned *sine die*.
 4. **THIS COURT ORDERS** that the Bankruptcy Application in the form attached hereto as Schedule “A” shall be issued and accepted for filing.
-

SCHEDULE "A"
Form of Bankruptcy Application

Court File No.

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

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

APPLICATION FOR BANKRUPTCY ORDER

Sunwing Tours Inc., of the City of Etobicoke, in the Province of Ontario (the “**Creditor**”), hereby applies to the Court that Skyservice Airlines Inc. (“**Skyservice**”), of the City of Toronto, in the Province of Ontario, be adjudged bankrupt and that a Bankruptcy Order be made in respect of the property of Skyservice, of the City of Toronto, in the Province of Ontario, and states:

1. That the said Skyservice has at some time during the six months next preceding the filing of this Application carried on business at 31 Fasken Drive, Toronto, Ontario, M9W 1K6.
2. That the said Skyservice is justly and truly indebted to the Creditor as at June 9, 2010 in excess of CAD\$4.9 million plus interest and other amounts payable.
3. That the Creditor does not, nor does any person on behalf of the Creditor, hold any security on the property of, or any part thereof, for the payment of the said sum.
4. That the said Skyservice within the six months next preceding the date of the filing of this Application has committed the following acts of bankruptcy, namely:
 - (a) It has ceased to meet its liabilities generally as they become due.

5. That FTI Consulting Canada Inc. is qualified to act as Trustee of the property of Skyservice, has agreed to act as such and is acceptable to the undermentioned creditors.

<u>Creditor</u>	<u>Address</u>	<u>Principal Amount of Claim</u>
Sunwing Tours Inc.	27 Fasken Drive, Etobicoke, Ontario	In excess of \$4.9 million

DATED at _____, this 14th day of June, 2010.

SUNWING TOURS INC.

Per: _____
Name:
Title:

ISSUED at the City of Toronto, in the Province of Ontario, this ____ day of June, 2010.

Registrar

Court File No.:

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

TAKE NOTICE that an Application for Bankruptcy Order be made
in respect to your Property will be heard
at 330 University Ave., in the City of Toronto,
on a date to be fixed by the Court.

AND FURTHER TAKE NOTICE that if notice of cause against the Application is
not filed in Court and a copy thereof served on the lawyer for the
applicant at least two days before the hearing and if you do
not appear at the hearing the Court may make a Bankruptcy Order on such
proof of the statements in the Application as the Court shall think sufficient.

DATED at Toronto, this day of , 2010.

TO: Skyservice Airlines Inc.
31 Fasken Drive
Toronto, Ontario
M9W 1K6

Blake, Cassels & Graydon LLP
Lawyers for the Applicant

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

Proceeding Commenced at Toronto

APPLICATION FOR BANKRUPTCY ORDER

BLAKE, CASSELS & GRAYDON LLP
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Toronto, Ontario M5L 1A9

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Lawyers for the Applicant,
Sunwing Tours Inc.

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

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.
THOMAS COOK CANADA INC. - and - SKYSERVICE AIRLINES INC.

Applicant

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

BLAKE, CASSELS & GRAYDON LLP
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Lawyers for Sunwing Tours Inc.

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.
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

MOTION RECORD

BLAKE, CASSELS & GRAYDON LLP
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Lawyers for Sunwing Tours Inc.