

SCHMITT DRU A
Form SC 13D/A
February 02, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

(Amendment No. 2)¹

Under the Securities Exchange Act of 1934

SUNAIR SERVICES CORPORATION

(Name of Issuer)

Common Stock, \$0.10 par value

(Title of Class of Securities)

867017105

(CUSIP Number)

Michael Brauser

595 S. Federal Highway

Suite 600

Boca Raton, FL 33432

(561) 544-2450

Dru Schmitt

13 Twin Springs Lane

St. Louis, MO 63124

(314) 401-6887

Michael Herman

c/o Heat Waves

1160 Lake Plaza Drive

Suite 210

Colorado Springs, CO 80906

(719) 475-7775

Joseph Q. DiMartini

4 Carrswold

Clayton, MO 63105

(314) 517-5571

Leon Brauser

7218 Ayrshire Lane

Boca Raton, FL 33496

(954) 907-1945

With copies to:

Harris Cramer LLP

1555 Palm Beach Lakes Blvd., Suite 310

West Palm Beach, FL 33401

Attention: Michael D. Harris, Esq.

(561) 689-4441

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

September 29, 2008

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.

ü

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

(Continued on following pages)

(Page 2 of 12 Pages)

¹ The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

1 NAME OF REPORTING PERSONS

I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)

Michael Brauser

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7 SOLE VOTING POWER

**NUMBER OF
SHARES**

1,403,300⁽¹⁾
8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY

EACH	9	SOLE DISPOSITIVE POWER
REPORTING		
PERSON		1,403,300 ⁽¹⁾
WITH	10	SHARED DISPOSITIVE POWER

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

5,557,038

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

[]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

39.6%⁽²⁾

14 TYPE OF REPORTING PERSON

IN

(1)

Represents (i) 600,000 shares underlying warrants (ii) 748,400 shares jointly owned with wife (iii) 51,000 shares held individually and (iv) 3,900 shares held in trust of which Mr. Brauser is the trustee. Although the Issuer's Proxy Statement filed on January 28, 2009 states the shares of Common Stock are subject to a proxy in favor of Coconut Palm Capital Investors II, Ltd, the Issuer's counsel has not produced a copy in spite of two requests. The Reporting Person contends that any proxy, if it exists, is unenforceable.

(2)

Based upon 13,091,088 shares of Common Stock outstanding as of January 28, 2009.

1 NAME OF REPORTING PERSONS

I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)

Michael Herman

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7

SOLE VOTING POWER

**NUMBER OF
SHARES**

8

2,180,600
SHARED VOTING POWER

BENEFICIALLY

**OWNED BY
EACH**

9

SOLE DISPOSITIVE POWER

REPORTING

PERSON		2,180,600
WITH	10	SHARED DISPOSITIVE POWER

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

5,557,038

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

39.6%⁽¹⁾

14 TYPE OF REPORTING PERSON

IN

(1)

Based upon 13,091,088 shares of Common Stock outstanding as of January 28, 2009.

1 NAME OF REPORTING PERSONS

I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)

Dru A. Schmitt

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7 SOLE VOTING POWER

1,486,014⁽¹⁾

**NUMBER OF
SHARES**

8 SHARED VOTING POWER

BENEFICIALLY

**OWNED BY
EACH**

9 SOLE DISPOSITIVE POWER

REPORTING

PERSON		1,486,014 ⁽¹⁾
WITH	10	SHARED DISPOSITIVE POWER

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

5,557,038

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

[]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

39.6%⁽²⁾

14 TYPE OF REPORTING PERSON*

IN

(1)

Includes 285,714 shares underlying warrants.

(2)

Based upon 13,091,088 shares of Common Stock outstanding as of January 28, 2009.

1 NAME OF REPORTING PERSONS

I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)

Joseph Q. DiMartini

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7

SOLE VOTING POWER

407,124⁽¹⁾

**NUMBER OF
SHARES**

8

SHARED VOTING POWER

BENEFICIALLY

**OWNED BY
EACH**

9

SOLE DISPOSITIVE POWER

REPORTING

PERSON		407,124 ⁽¹⁾
WITH	10	SHARED DISPOSITIVE POWER

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

5,557,038

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

[]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

39.6%⁽²⁾

14 TYPE OF REPORTING PERSON*

IN

(1)

Includes 50,000 shares underlying warrants. Also includes (i) 264,400 shares held in two trusts of which Mr. Schmitt is the trustee and (ii) 92,724 shares held in a limited liability company of which he is the sole manager.

(2)

Based upon 13,091,088 shares of Common Stock outstanding as of January 28, 2009.

1 NAME OF REPORTING PERSONS

I.R.S. IDENTIFICATION NO. OF ABOVE PERSONS (ENTITIES ONLY)

Leon Brauser

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7

SOLE VOTING POWER

**NUMBER OF
SHARES**

8

80,000
SHARED VOTING POWER

BENEFICIALLY

**OWNED BY
EACH**

9

SOLE DISPOSITIVE POWER

REPORTING

PERSON		80,000
WITH	10	SHARED DISPOSITIVE POWER

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

5,557,038

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

[]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

39.6%⁽¹⁾

14 TYPE OF REPORTING PERSON

IN

(1)

Based upon 13,091,088 shares of Common Stock outstanding as of January 28, 2009.

Item 1.

Security and Issuer

Common Stock, \$0.10 par value. The principal address of the issuer is 595 S. Federal Highway, Suite 500, Boca Raton, FL 33432.

Item 2.

Identity and Background

a.

Michael Brauser

b.

595 S. Federal Highway, Suite 600, Boca Raton, FL 33432

c.

Investor

d.

The Reporting Person has not been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) within the last five years.

e.

The Reporting Person has not been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws within the past five years.

f.

The Reporting Person is a United States citizen.

a.

Dru Schmitt

b.

13 Twin Springs Lane, St. Louis, MO 63124

c.

Investor

d.

The Reporting Person has not been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) within the last five years.

e.

The Reporting Person has not been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws within the past five years.

f.

The Reporting Person is a United States citizen.

a.

Michael Herman

b.

c/o Heat Waves, 1160 Lake Plaza Drive, Suite 210, Colorado Springs, CO 80906

c.

Oil & Gas Services Manger

d.

The Reporting Person has not been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) within the last five years.

e.

The Reporting Person has not been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws within the past five years.

f.

The Reporting Person is a United States citizen.

a.

Joseph Q. DiMartini

b.

4 Carrswold, Clayton, MO 63105

c.

Investor

d.

The Reporting Person has not been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) within the last five years.

e.

The Reporting Person has not been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws within the past five years.

f.

The Reporting Person is a United States citizen.

a.

Leon Brauser

b.

7218 Ayrshire Lane, Boca Raton, FL 33496

c.

Investor

d.

The Reporting Person has not been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) within the last five years.

e.

The Reporting Person has not been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws within the past five years.

f.

The Reporting Person is a United States citizen.

Item 3.

Source or Amount of Funds or Other Consideration.

Each of the Reporting Persons used personal funds to purchase their shares of Common Stock of Sunair Services Corporation (Sunair). This Schedule 13D is being filed to report an oral agreement to vote together solely as to certain matters referred to in Item 4. Each Reporting Person expressly disclaims any beneficial ownership in the Common Stock of Sunair owned by the others, and the reporting of joint beneficial ownership shall not be deemed to be an admission that he beneficially owns the Common Stock owned by the other Reporting Persons.

Item 4.

Purpose of the Transaction.

The Reporting Persons have orally agreed to act together to seek to cause Sunair to be sold with the net proceeds being distributed to its shareholders including the Reporting Persons. Their purpose is to increase shareholder value. Recently one company, which had offered to acquire Sunair or its assets (and assume its liabilities) which would have resulted in a cash payment to shareholders of approximately \$3.00 per share, has withdrawn the offer. The assumed liabilities are believed to be in excess of \$29,600,000 and amount to approximately \$2.26 per share. Just prior to the withdrawal, Sunair issued a press release announcing it had retained an investment banking firm to explore a range of strategic alternatives, including a possible sale of Sunair. The Reporting Persons believe the current Board of

Directors has not acted in good faith and is supporting Sunair's chairman who has strong personal interests not to sell. Since it appears that both RPC Financial Advisors, LLC (RPC) and its affiliates have no interest in selling Sunair and ending their continuing management fee and salary, as applicable, the Reporting Persons are considering all available options and expect to seek removal of the Sunair Board of Directors and replacing them with persons who either are not self-interested or not willing to overlook the track record of Richard Rochon, Sunair's Chairman, and his associates. Additionally, Sunair's principal lawyer is listed as part the Team headed by Mr. Rochon on one of his company's websites. Thus, the Reporting Persons believe that Sunair and its special committee of the Board of Directors need to be advised by independent advisors.

The Reporting Persons believe that Sunair's management and its Chairman of the Board and another director who provide management services through RPC have utterly failed to produce shareholder value as evidenced by the decline in its Common Stock price from \$14.05 in early 2005 to \$1.53 (on very low volume) as of January 30, 2009. RPC has provided management services since February 8, 2005, which is the date when an affiliate of RPC purchased 5,000,000 units (including 5,000,000 shares of Common Stock) at \$5.00 per unit. The following financial information reflects the lack of success from the efforts of RPC and the management team:

Year ended					
September 30,	2008	2007	2006	2005	2004
Net income (loss) from continuing operations	\$ (4,637,000)	\$ (3,761,000)	\$ (3,753,000)	\$ (849,000)	\$ 269,000
Working capital	\$ (5,658,000)	\$ (862,000)	\$ 1,860,000	\$ 8,871,000	\$ 13,157,000

The deterioration of the Sunair business and its financial condition since the RPC affiliates took control is palpable. What is equally alarming is that long term debt at September 30, 2008 was approximately \$14,182,000. Sunair's principal asset is approximately \$62,112,000 of goodwill.

At the same time, Sunair paid RPC management fees of \$1,038,012 in Fiscal 2008. In January 2008, this management fee was amended to be 1% of revenues and the management agreement was extended for an additional three years.

The management fee for Fiscal 2007 was \$1,488,219. In addition, Sunair agreed to pay RPC 2% of any consideration received from the merger or sale of Sunair. What is disturbing is that at all times Sunair had a complete management team which was fairly compensated. It is hard to discern why an affiliate of two directors and

its principal shareholder was and is being paid a large management fee. Certainly, they were not paid for success. As an example of how the interests of Sunair's shareholders are placed behind the interests of RPC and its affiliates, in July 2008 Sunair appointed another affiliate of RPC, Mr. Jack I. Ruff, as its new Chief Executive Officer at an annual salary of \$350,000. When it did so, it did not reduce RPC's management fee even though Mr. Ruff owns 25% of RPC's equity interests and is a director of it.

For all of its failures, the Board rewards itself a grossly excessive compensation. In Fiscal 2007, each director received \$28,000 directors fees for their service on the Board. This does not include cash payments for being on a committee and additional payments for simply attending a meeting. Based on Sunair's recently filed Proxy Statement, the Board received over \$493,000 in cash compensation and option awards in Fiscal 2008. As the financial condition of the Company continues to deteriorate, the Board decided it was entitled to an increase in its compensation.

Effective October 1, 2008, each director receives \$45,000 in cash compensation. What kind of process did the Board use to determine that they deserved a 62% raise after another year of net losses over \$4,000,000? How can a troubled company with a failing business justify paying over \$330,000, not including stock option grants, to its Board of Directors.

RPC is controlled by Messrs. Richard Rochon and Mario Ferrari, as well as Mr. Ruff. Mr. Rochon has been Chairman of the Board of Sunair and Mr. Ferrari has been a director at all relevant times. They structured another investment in the same manner, and it has been an abject failure. That investment was an \$18,000,000 investment in Devcon International Corp. Messrs. Rochon and Ferrari became directors at the time of the investment. In January 2006, Mr. Rochon was elected Chairman of the Board and in January 2007 he became acting Chief Executive Officer. At the time of the investment, Devcon was a strong and profitable company trading on the highest level of the Nasdaq Stock Market. It has been delisted. On October 14, 2008, it filed a Form 15 with the Securities and Exchange Commission, which means it was delisted from the Over-the-Counter Bulletin Board. As of February 2, 2009, no quotes for its common stock are available anywhere. When Messrs. Rochon and Ferrari's limited partnership invested \$18,000,000 in units at an effective price of \$9.00 per share, the actual price was \$12.05. It last traded at \$0.14 per share. Just prior to the investment, it had shareholders' equity of approximately \$45,555,000; its shareholders' deficit at June 30, 2008 was \$(5,815). Moreover, at December 31, 2006 just before Mr. Rochon became Chief Executive Officer shareholders' equity was \$34,423,000. Working capital at December 31, 2006 was approximately \$94,670; at June 30, 2008 it was \$(40,854).

Equity Media Holdings Corp. is a public company organized by Messrs. Rochon and Ferrari in 2005. At the time of its initial public offering as a blank check company, Mr. Rochon was Chairman of the Board and Chief Executive Officer, Mr. Ferrari was a Vice President and a director and Mr. Ruff was Vice President and a director. An affiliate of Messrs. Rochon and Ferrari received a \$7,500 per month administrative fee while the company looked to acquire an operating business. The acquisition of a television and media company occurred on March 19, 2007, and Messrs. Rochon, Ferrari and Ruff resigned except as disclosed below. The results have paralleled Sunair and Devcon with a sharp decline in operations and financial condition, although Equity Media has been directly managed by an independent management team with assistance from the Rochon/Ferrari group which receives a \$1,500,000 annual management fee. Payment of the fee has been deferred by the terms of the company's Credit Agreement. In December 2008, Equity Media filed a bankruptcy petition under Chapter XI. Mr. Ferrari became Chief Strategic Officer following the acquisition of the television company. Moreover, another affiliate of Messrs. Rochon and Ferrari, Robert Farenhem, has been a director since inception and also was an interim Chief Financial Officer of Devcon for about eight months in 2005. Mr. Rochon was re-appointed to the Board of Directors in May 2008. For 2006, just prior to its acquisition, the television company had net income of approximately \$11,656,000. In 2007, it lost approximately

Edgar Filing: SCHMITT DRU A - Form SC 13D/A

\$(6,900,000). For the first nine months of 2008, the net loss increased to approximately \$(39,408,000). With these growing losses, working capital decreased from approximately \$9,695,000 to a negative of approximately \$(99,200,000) at September 30, 2008. Positive shareholders' equity of \$41,267,000 decreased to a shareholders' deficit of approximately \$(37,458,000). The stock price has declined dramatically as the operating results and financial condition worsened. The initial public offering price in 2005 was \$6.00, the high in 2007 was \$5.71 and the low was \$1.95. The closing price on January 30, 2009 was \$0.007. On January 16, 2009, the Nasdaq Capital Market filed a Form 25 for Equity Media for removal from listing on the Nasdaq. Equity Media is now traded on the Pink Sheets.

Item 5.**Interest in Securities of the Issuer.**

(a)

Michael Brauser beneficially owns 1,403,300 shares of Sunair Common Stock, which includes Warrants to purchase 600,000 shares. This amounts to approximately 10.2% of outstanding shares based upon the outstanding shares reported in Sunair's Proxy Statement at the record date of January 28, 2009 (the Record Date). Michael Herman beneficially owns 2,180,600 shares of Sunair Common Stock. This amounts to approximately 16.7% of outstanding shares based upon the outstanding shares on the Record Date. Dru A. Schmitt beneficially owns 1,486,014 shares of Sunair Common Stock, which includes Warrants to purchase 285,714 shares. This amounts to approximately 11.1% of outstanding shares based upon the outstanding shares on the Record Date. Joseph Q. DiMartini beneficially owns 407,124 shares of Sunair Common Stock, which includes Warrants to purchase 50,000 shares. This amounts to approximately 3.1% of the outstanding shares based upon the outstanding shares on the Record Date. Leon Brauser, the father of Michael Brauser, beneficially owns 80,000 shares of Sunair Common Stock. This amounts to approximately 0.6% of outstanding shares based upon the outstanding shares on the Record Date.

Item 6.**Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.**

Michael Brauser has entered into a 180-day Consulting Agreement with Massey Services, Inc. (Massey) dated September 19, 2008. Mr. Brauser agreed to assist Massey in its attempt to acquire Sunair on terms acceptable to Massey. If Massey is successful, it agreed to pay Mr. Brauser a \$1,000,000 cash fee. Previously, Massey offered to purchase Sunair. Based on a Schedule 13D/A filed on January 23, 2009, Massey has withdrawn that offer.

Item 7.**Material to be filed as Exhibits.**Exhibit 1.

Joint Filing Agreement

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: February 2, 2009

By: /s/ MICHAEL BRAUSER
/s/ MICHAEL HERMAN
/s/ DRU A. SCHMITT
/s/ JOSEPH Q. DIMARTINI
/s/ LEON BRAUSER

Attention. Intentional misstatements or omissions of fact constitute federal criminal violations (see 18 U.S.C. 1001).