

November 3, 2005

Via telefax and New Jersey Lawyers Service

Honorable Ronald E. Bookbinder, P.J.S.C.

Superior Court of New Jersey

Chancery Division

Burlington Court Courthouse

49 Rancocas Road

Mt. Holly, NJ 08060

**Re: Fler/ SkyBox International LP - Assignment for the Benefit of Creditors
Docket No. P-2005-1394
Fler/ Collectibles, LLC - Assignment for the Benefit of Creditors
Docket No. P-2005-1408**

Dear Judge Bookbinder:

This firm represents secured creditor PSS Warehousing and Transportation, Inc. ("PSS") with respect to the above Assignments for the Benefit of Creditors. Please accept this letter memorandum in lieu of a more formal brief in opposition to the Assignee's Motions for Orders Adjudging that his Exceptions to Claims be Granted and in opposition to the Assignee's Motions for Orders Authorizing Payment of Professional Fees of Attorneys and Accountants and Assignee's Commissions.

The Assignee's Notices of Motion state that the motions will be returnable before Your Honor on Thursday, November 10, 2005 at 2:00 p.m. I will contact Your Honor's Chambers to confirm the actual time of the hearings.

1. **The Assignee's Motions for Orders Adjudging that his Exceptions to Claims be Granted Should Be Denied, at Least with Respect to PSS.**

The Assignee has listed PSS on Schedule B on each of his First Verified Omnibus Exceptions to Claims of Creditors. Schedule B purports to list "Claims Lacking Verification or Documentation."

PSS filed timely Proofs of Claim with respect to both matters. The Proofs of Claim were filed both with the Court and with the Assignee and were supported by invoices describing the services performed by PSS.

Nonetheless, with respect to Fler Collectibles, LLC ("Fler Collectibles"), the Assignee

seeks that PSS's claim of \$20,965.67 be expunged in full, and notes as his Objection to the claim, "This claim has been paid pursuant to Court order."

With respect to Fler/Skybox International, LP ("Fler Skybox"), the Assignee seeks that PSS's claim of \$34,430.08 be expunged in full, and notes as his Objection to the claim, "This claim is being paid pursuant to Court order."

Would that it were so.

However, it is not. PSS's Fler Collectibles claim has not been paid at all. PSS has received only \$25,000.00 toward its Fler Skybox claim, with another \$25,000.00 being held in escrow.

The Assignee indicates in his moving papers that he anticipates a 100% payout on the Fler Collectibles matter. In his earlier filings, the Assignee indicated that PSS is the only secured creditor in the Fler Collectibles matter. Accordingly, PSS's Fler Collectibles claim should be paid in full.

In addition, PSS is entitled to priority payment in the Fler Skybox matter. The remainder of PSS's Fler Skybox claim also should be paid in full.

Accordingly, PSS respectfully requests that the Court deny the Assignee's motion, and instead Order that (1) the Assignee pay PSS's Fler Collectibles claim in the amount of \$20,965.67; and, (2) Maselli Warren, P.C. pay to PSS from the \$25,000.00 being held in escrow on the Fler Skybox matter the sum of \$9,430.08 and return to the Assignee the balance of the escrow.

2. The Court Should Deny the Assignee's Motions for Orders Authorizing Payment of Professional Fees of Attorneys and Accountants and Assignee's Commissions as Being Premature

In his motion with respect to the Fler Skybox matter, the Assignee seeks allowance of approximately \$875,000 for attorney's and accountant's fees and costs. In addition to the approximately \$740,000 for attorney's fees and costs to be allowed to the Assignee's law firm, the Assignee also seeks "an allowance of an appropriate final commission to the Assignee in an amount to be requested and determined at a later date."

In his motion with respect to the Fler Collectibles matter, the Assignee seeks allowance of approximately \$265,000 for attorney's and accountant's fees and costs. In addition to the approximately \$177,000 for attorney's fees and costs to be allowed to the Assignee's law firm, the Assignee also seeks an allowance of an assignee's commission in the amount of \$281,238.02, which represents 10% of the receipts and interest brought into the Fler Collectibles estate.

If PSS's claims were to be paid in full, then PSS would take no position with respect to the reasonableness of the fees and commissions sought by the Assignee.

However, given that there exists some uncertainty as to whether the Assignee intends to honor the full amount of PSS's claims, and given the confusion elicited by the Assignee's inclusion of PSS as claims he seeks to be expunged, PSS objects to the allowance of any professional fees and/or commissions at this time.

If the Assignee's notations in his list of Exceptions that the PSS's claims have been paid and/or are being paid are acknowledgments that PSS's claims *should* be paid in full, then PSS wholeheartedly agrees. In that case, PSS respectfully requests that the motions for Orders authorizing payment of professional fees and assignee's commissions be modified to include an allowance for PSS's claims.

PSS respectfully suggests that it is premature for the Court to assess the reasonableness of the amounts sought by the attorneys, accountants and assignee unless and until a proposed final distribution of the proceeds of the Estate has been completed. If Fler Collectibles creditors are to be paid in full, as the Assignee suggests in his moving papers, then PSS likely would not object to the Assignee's application with respect to Fler Collectibles (except to the extent that it might adversely impact the payment of PSS's Fler Skybox claim).

The Assignee's moving papers are silent, however, as to the proposed payout to Fler Skybox creditors. The Assignee previously has indicated he may take the position that the net proceeds of the Fler Skybox estate all be paid to Fler's principal, Alexander Grass. If that turns out to be the case, then the assignment for the benefit of creditors would end up in fact having been an assignment for the benefit of Alexander Grass. PSS would object to the reasonableness of any professional fees or assignee's commission to the extent that allowance of the fees or commissions impacts upon the distribution to PSS of the full amount of its claim.

No fees or commissions should be allowed to the attorneys, accountants or the Assignee until the Court has the opportunity to review the actual benefit to creditors realized by the assignment for the benefit of creditors.

3. PSS's Pre-Assignment Services Were at Least as Valuable as the Pre-Assignment Services Provided by other Professionals, and PSS is Entitled to Payment for Pre-Assignment Services

Porzio Bromberg & Newman, P.C. ("Porzio") seeks payment for professional services rendered prior to the date of the assignments. John S. Mairo, Esq. certifies in Paragraph 11 of the Fler Skybox Certification (the Fler Collectibles Certification is essentially the same) that "Porzio's attorneys and para-professionals "arranged for mail to be forwarded to the Assignee, closed bank accounts, forwarded remaining assets to the Assignee...resolved outstanding sales and shipment issues [and] maintained the files of Fler/Skybox...."

PSS performed similar pre-Assignment services of similar magnitude. PSS shipped and accepted shipments of goods. PSS was similarly involved in "sales and shipment issues." PSS warehoused, stored, protected and safeguarded the very property that the Assignee seeks payment for having liquidated. Were it not for PSS's services, the Assignee would have had little or no

property to sell.

If Porzio is entitled to payment for pre-Assignment services (and even if it is not), then PSS also is entitled to payment. PSS's services were every bit as critical to the liquidation of Fleeer's assets as were Porzio's. PSS respectfully requests that, if the Court is inclined to grant the Assignee's Motions for Orders Authorizing Payment of Professional Fees of Attorneys and Accountants and Assignee's Commissions, then the proposed order be modified to provide for payment to PSS for its services.

4. Conclusion

For the reasons set forth herein, PSS respectfully requests that the Court:

- (a) Deny the Assignee's Motions for Orders Adjudging that his Exceptions to Claims be Granted, at least with respect to PSS;
- (b) Deny without prejudice the Assignee's Motions for Orders Authorizing Payment of Professional Fees of Attorneys and Accountants and Assignee's Commissions; and/or,
- (c) Order that the Assignee pay PSS's claims in full.

Thank you for the Court's courtesies.

Respectfully submitted,

MASELLI WARREN, P.C.

By: 
PERRY S. WARREN

PSW/kb

cc: Elizabeth M. McKeever, Esquire (via email and New Jersey Lawyers Service)
Warren J. Martin, Jr., Esquire (via email only)
PSS Warehousing and Transportation; Attn: Gary Borne