

TRUE COPY  
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Acting Surrogate

**PORZIO, BROMBERG & NEWMAN, P.C.**

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Attorneys Appearing: John S. Mairo (JM-0670)  
Brett S. Moore (BM-0014)

Attorneys for Warren J. Martin Jr., Assignee for the  
Benefit of Creditors of Fler Collectibles, LP

In the Matter of the General Assignment for  
the Benefit of Creditors of FLEER  
COLLECTIBLES, LP

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, PROBATE PART  
BURLINGTON COUNTY

DOCKET NO: 2005-1408

**ORDER TO SHOW CAUSE**

**THIS MATTER** having been brought before the Court by way of the Assignee's Verified Complaint Pursuant to N.J.R. 4:83-1 *et seq.* (the "Verified Complaint") and the Assignee's Verified Application for Entry of Order and Judgment Authorizing Distributions on the Remaining Outstanding Claims, Approving Final Accounting, Discharging Bond and Closing Case in Accordance with Counts III and IV of the Assignee's Verified Complaint Dated October 21, 2005 (the "Verified Application") and, pursuant to New Jersey Court Rules 4:67 and 4:83-1 by Warren J. Martin, and the Court having read and considered the papers submitted in support

of the Assignee's application, including the Assignee's Verified Complaint and the Verified Application;

IT IS on this 3rd day of November, 2006;

**ORDERED** that all creditors and parties-in-interest on the annexed service list shall appear and show cause before the Honorable Ronald E. Bookbinder, J.S.C., a Judge of the Superior Court of the State of New Jersey, at the Superior Court of New Jersey, Chancery Division, Probate Part, Burlington County, 49 Rancocas Road, Mt. Holly, New Jersey 08060, on the 12th day of January, 2007 at 10:00 a.m. (the "Final Accounting Hearing"), or as soon thereafter as counsel may be heard why an Order should not be entered granting the following:

- a. approving the Final Accounting<sup>1</sup> of the Assignee;
- b. approving the distributions to creditors and other parties-in-interest as reflected in the Final Accounting;
- c. approving the discharge of the Assignee's bond;
- d. approving the destruction or abandonment of records and papers;  
and
- e. approving any other relief requested in the Verified Complaint or Verified Application; and it is further

**ORDERED** that, pursuant to New Jersey Rules of Court, a copy of this Order, Verified Complaint, Verified Application and any other pleadings shall be served by Assignee's counsel via first class mail (not registered or certified mail, return receipt requested) upon the interested parties on the annexed service list, within ten (10) days from receipt by Assignee's counsel of

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Verified Complaint and the Verified Application.

this Order and such service shall constitute due and sufficient notice of the Final Accounting Hearing in accordance with New Jersey Court Rule 4:87-4(a) and (b); and it is further

**ORDERED** that any supplemental pleadings relating to professional fees, such as the Supplemental Accounting, shall be filed and served fourteen (14) days prior to the Final Accounting Hearing, with the parties receiving notice being the same as those served with this Order to Show Cause; and it is further

**ORDERED** that any interested person who desires to be heard in this action shall, not later than eight (8) days before the Final Accounting Hearing, serve upon counsel for the Assignee and file with this Court such interested person's Answer and/or opposing certification. This action may proceed *ex parte* with respect to all interested persons so defaulting.

  
\_\_\_\_\_  
Ronald E. Bookbinder, J.S.C.

**PORZIO, BROMBERG & NEWMAN, P.C.**

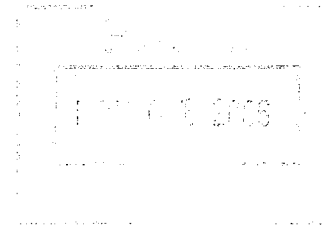
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In the Matter of the General Assignment for  
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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, PROBATE PART  
BURLINGTON COUNTY

DOCKET NO: 2005-1408

**VERIFIED APPLICATION FOR ENTRY OF ORDER AND JUDGMENT  
AUTHORIZING DISTRIBUTIONS ON THE REMAINING OUTSTANDING  
CLAIMS, APPROVING FINAL ACCOUNTING, DISCHARGING BOND  
AND CLOSING CASE IN ACCORDANCE WITH COUNTS III AND IV OF  
THE ASSIGNEE'S VERIFIED COMPLAINT DATED OCTOBER 21, 2005**

Warren J. Martin Jr. (the "Assignee"), Assignee for the Benefit of Creditors of Flear Collectibles, LLC ("Flear Collectibles"), by and through his counsel, Porzio, Bromberg & Newman, P.C. ("Porzio"), by way of Verified Application For Entry of Order and Judgment Authorizing Distributions on the Remaining Outstanding Claims, Approving Final Accounting, Discharging Bond and Closing Case in Accordance with Counts III and IV of the Assignee's Verified Complaint dated October 21, 2005 (the "Motion"), respectfully states as follows:

## **BACKGROUND**

1. The Assignee was designated pursuant to a Deed of Assignment for the Benefit of Creditors (the "Assignment") dated June 8, 2005, registered with the Burlington County Clerk's office on June 10, 2005 (the "Assignment Date"), and an Amended and Restated Deed of Assignment for the Benefit of Creditors dated July 14, 2005, registered with the Burlington County Clerk's Office on July 18, 2005.

2. Fleer Collectibles was primarily in the business of producing and selling die-cast miniature replica vehicles. Prior to the Assignment Date, Fleer Collectibles had ceased all operations and terminated all employees.

3. On October 21, 2005, the Assignee filed his Verified Complaint Pursuant to N.J.R. 4:83-1 *et seq.* Counts I and II of the Complaint have already been adjudicated. By way of this Application, the Assignee seeks judgment on Counts III and IV.

### **Recovery of Estate Funds**

4. On July 14, 2005, the Assignee held a court-approved auction (the "Auction") of substantially all of the assets of Fleer Collectibles, together with certain intellectual property belonging to Fleer/Skybox International, LP ("Fleer/Skybox"), the parent company of Fleer Collectibles.

5. The winning bidder at the Auction was FSB Acquisition Company, LLC, an entity related to the Upper Deck Company ("Upper Deck"), which purchased the combined Fleer/Skybox and Fleer Collectibles Assets for \$6,100,000.00 (the "Winning Bid"). In connection with its Winning Bid, Upper Deck allocated \$3,500,000.00 million to the Fleer/Skybox estate, leaving \$2,600,000.00 million for the Fleer Collectibles estate.<sup>1</sup>

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<sup>1</sup> Upper Deck's allocation was approved by Court Order (1) Affirming the Assignee's Decision to Continue to Administer the Fleer/Skybox and Fleer Collectibles Estates Separately and, (2) Approving an Allocation of the

6. In addition to the \$2.6 million brought in through the Auction, the Assignee has also recovered other sums for the Fleer Collectibles estate through collection of accounts receivable and receipt of interest payments.

7. The aggregate amount of money the Assignee has brought into the Fleer Collectibles estate is \$2,864,863.82 (collectively, the "Estate Funds"). A copy of the Assignee's Cash Reconciliation Report and Final Financial Report (collectively, the "Final Accounting") are annexed hereto as **Exhibit "A"**.

### Distributions to Creditors

8. On June 24, 2005, the Assignee sent proof of claim forms ("POC Forms") to all known creditors advising them to file their claims with the Assignee by no later than September 17, 2005 (the "POC Deadline"). **See Exhibit "B"**.<sup>2</sup> However, the Assignee continued to accept completed POC Forms well past the POC Deadline.

9. Through October 21, 2005, the Assignee received and accounted for 55 completed POC Forms seeking a combined total of over \$5.5 million against the estate. The Assignee successfully objected to many of the completed POC Forms through the First Verified Omnibus Exceptions to Claims of Creditors dated October 21, 2005, and this Court ultimately allowed 26 claims worth a total of \$1,908,267.63 (the "Allowed Claims"). *See* Order Approving Assignee's First Omnibus Exception Motion to Expunge, Reduce and/or Allow Certain Claims in the Fleer Collectibles Case dated November 10, 2005, and the First and Second Supplemental Orders to same dated November 18, 2005 and December 9, 2005, respectively (collectively, the "Claim Allowance Orders").

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Auction Proceeds Between the Fleer/Skybox and Fleer Collectibles Estates Based on the Fair Market Values of the Assets Sold from Each Estate, dated November 30, 2005.

<sup>2</sup> Please note that **Exhibit "B"** includes the original notice sent to Fleer Collectibles creditors, as well as the proof of publication as required in N.J.S.A. 2A:19-25. However, notices and proof of claims forms were also provided to creditors upon request throughout the pendency of this case.

10. Following entry of each of the Claim Allowance Orders, the Assignee filed an Application for Court Authority to Make Distributions to Creditors (the "Distribution Motion"), in which he sought authorization to make 100% distributions on each of the Allowed Claims. The Court approved the Distribution Motion, pursuant to Order dated January 20, 2006. The Assignee made distributions on the Allowed Claims totaling \$1,908,267.63 of Estate Funds on January 23, 2006 (the "Distributions"). *See Exhibit "A"*.

#### **Payment of Administrative Expenses**

11. In addition to making the Distributions, the Assignee has used Estate Funds to pay such administrative expenses as insurance premiums, filing fees, appraisal costs and consulting services. *See Exhibit "A"*.

12. Moreover, on October 21, 2005, the Assignee filed an Application to use Estate Funds totaling \$549,582.83 to pay the professional fees and expenses of attorneys and accountants through the period covering September 30, 2006, and Assignee's commission (the "First Fee Application"). The First Fee Application was approved by this Court on November 30, 2005, and professional fees and expenses and Assignee's commission totaling \$549,582.83 were paid accordingly. *See Order Authorizing Payment of Professional Fees of Attorneys and Accountants and Assignee's Commission, dated November 30, 2005.*

13. On March 29, 2006, the Assignee filed a second application to use Estate Funds totaling \$177,345.07 to pay the professional fees and expenses of attorneys for the period from October 1, 2005 through January 31, 2006 (the "Second Fee Application"). The Second Fee Application was approved by this Court on March 29, 2006, and attorneys' fees and expenses totaling \$177,345.07 were paid accordingly. *See Order Authorizing Assignee to Provide*

Compensation for Services Rendered and Reimbursement of Expenses to Professionals for the Period from October 1, 2005 through January 31, 2006, dated March 29, 2006.

14. On May 8, 2006, the Assignee also filed an application to use Estate Funds totaling \$8,509.38 to pay the professional fees and expenses of accountants (the "Stetz Fee Application"). The Stetz Fee Application was approved by this Court on May 31, 2005, and accountants' fees and expenses totaling \$8,509.38 were paid accordingly. *See* Order Authorizing Assignee to Provide Compensation for Services Rendered and Reimbursement of Expenses to Professionals for the Period from October 1, 2005 through January 31, 2006, dated May 31, 2006.

15. In addition, from February 1, 2006 through September 30, 2006, attorneys and accountants incurred fees and expenses totaling \$54,654.16. The Assignee has recently filed a fee application seeking authority to pay these outstanding professional fees (the "Third Fee Application"). The Final Accounting reflects the projected effect that payments in accordance with the Third Fee Application will have on the Estate Funds. *See Exhibit "A"*. Furthermore, prior to the hearing on this Motion, the Assignee will file a supplemental accounting, which will include details about all disbursements made in accordance with the Court's rulings on the Third Fee Application (the "Supplemental Accounting").

#### **Trustee's Pending Disbursements**

16. The Fleer Collectibles' estate currently has a balance of \$137,666.42. *See Exhibit "A"*. Assuming the Third Fee Application is granted, the account balance will be \$83,012.26, as reflected in the Final Accounting. *See Exhibit "A"*.

17. Following the time when the Distributions were made, the Assignee resolved several outstanding late-filed claims against the estate (the "Outstanding Claims"). *See Exhibit*

"C". Through this Motion, the Assignee seeks authority to make a 100% distribution on each of the Outstanding Claims (the "Outstanding Distributions"), totaling \$70,393.20. The Final Accounting reflects the effect that making the Outstanding Distributions will have on the Estate Funds. See **Exhibit "A"**. In addition, assuming this Court grants the Assignee authority to make the Outstanding Distributions through this Motion, the Assignee will file a second supplemental accounting (the "Second Supplemental Accounting"), which will account for payment of the Outstanding Claims.

18. The Assignee estimates that the fees and expenses of attorneys and accountants following the period covered in the Third Fee Application, i.e., October 1, 2006 through the close of this case (the "Final Compensation Period"), will not exceed \$10,000. In the Supplemental Accounting, the Assignee will include a detailed description of fees and expenses incurred by professionals in the Final Compensation Period. In addition, assuming the Court grants the Assignee authority to pay fees and expenses of attorneys and accountants during the Final Compensation Period, the Assignee will account for these payments in the Second Supplemental Accounting.

19. After payment of the Outstanding Claims and professional fees incurred during the Final Compensation Period, the Assignee proposes that any remaining Estate Funds be transferred to the Fleer/Skybox estate (the parent company of Fleer Collectibles, LLC) for the benefit of its creditors.

## LEGAL AUTHORITY

### I. The Assignee Should be Granted Authority to Make Distributions To Creditors with Outstanding Claims.

20. The New Jersey Statute governing assignments for the benefit of creditors, N.J.S.A. 2A:19 *et seq.*, (the "Assignment Statute"), contains a number of provisions authorizing distributions to creditors. It states:

If no exceptions to any claim or demand are filed, or in case any exceptions are filed, then after they have been adjudicated or settled, the assignee shall proceed to make, from time to time, fair and equal dividends among said creditors from the assets which shall come to hand in proportion to their claims.

N.J.S.A. 2A:19-33.

21. Additional relevant provisions of the Assignment Statute provide as follows:

The court, in its discretion, on the application of the assignee or any person in interest, from time to time, may direct such partial distribution from the assets in hand to those creditors whose claims are not in dispute as may safely be made, reserving at all times sufficient assets to secure, after all the claims shall have been adjudicated and finally settled, an equal and proportionate distribution according to the intent of this chapter.

N.J.S.A. 2A:19-34.

The court may, in its discretion, upon application of the assignee, or of any person in interest, make directions with respect to any or all dividends, including the time when the same shall be made and the amount thereof.

N.J.S.A. 2A:19-35.

22. In this case, the Fleer Collectibles estate contains funds in excess of the amount sought through the Outstanding Claims. Therefore, the Assignee respectfully requests that he be given authority to make 100% distributions on each of the Outstanding Claims, totaling \$70,393.20, to be reported in the Second Supplemental Accounting. Other creditors who filed

claims prior to the initial claims deadline have already received payment of 100% of their claims, in the amount of \$1,908,267.63.

23. Based upon a review of the claims already filed, as well as Fleer Collectibles' books and records, the Assignee does not expect any additional legitimate claims to be filed against the Fleer Collectibles estate. Accordingly, this case is ripe for closure.

**II. This Court should Approve the Final Accounting of the Assignee.**

24. The Assignee presents the Final Accounting regarding the administration of Estate Funds for the Court's approval. The Final Account reflects a beginning balance of \$0.00, total receipts of \$2,864,863.82, total disbursements of \$2,727,197.40 and a total balance on hand of \$137,666.42. See Exhibit "A".

25. As discussed in detail above and included in the Assignee's Final Accounting, the Assignee is seeking authority to use the remaining Estate Funds towards making distributions on the Outstanding Claims and payment of outstanding professional fees. In the Supplemental Accounting, the Assignee will include a detailed description of payments made in connection with the Third Fee Application and additional fees and expenses incurred during the Final Compensation Period. In the Second Supplemental Accounting, the Assignee will account for disbursements made in connection with the resolution of this Motion.

26. In addition, the Assignee requests that he be given authority to transfer any remaining Estate Funds following these disbursements to the Fleer/Skybox Estate, as a distribution to the parent corporation, following payment of all just debts.

**III. Upon Payment of the Outstanding Claims and Outstanding Professional Fees, This Court Should Close the Case.**

27. Pursuant to the Assignment Statute:

As soon as may be after the determination of all claims, the assignee shall render, on oath, a final account to the court...The settlement and judgment of the court shall be conclusive on all parties except for the assets which may afterward come to hand, or except as relief may be had in a final judgment in any action.

N.J.S.A. 2A:19-41.

28. Although there is little case law regarding the closure of assignment proceedings, New Jersey courts have referred to federal bankruptcy laws, supplemented by equitable principles, when administering insolvency proceedings filed in state court. *See, e.g., In re Kampelman*, 165 N.J. Super 352, (N.J. Super Ct. 1979).

29. Section 350 of the Bankruptcy Code provides that the Court shall close a case after the estate has been fully administered. In addition, Bankruptcy Rule 3022 provides:

After an estate is fully administered in a Chapter 11 reorganization case, the Court, on its own motion or a motion of a party in interest, shall enter a final decree closing the case.

Fed. R. Bankr. P. 3022.

30. In the instant case, the estate has been fully administered, except for disbursements related to the Outstanding Claims and outstanding professional fees, which the Assignee expects to make in connection with this Motion and the Third Fee Application. The Final Accounting reflects the effect that making these disbursements will have on the Account Balance, *see Exhibit "A"*, and, the Supplemental Accounting and Second Supplemental Accounting will account for the actual disbursements.

31. Furthermore, the Assignee has vigorously pursued all collection efforts reasonably available to the estate and has made—or, will soon make in connection with the

Order on this Motion— full distributions on all valid claims, as will be reflected in the Second Supplemental Accounting.

32. Finally, the Assignee has preserved the books and records of Fleer Collectibles, and hereby seeks authorization to either destroy and/or abandon them upon the entry of a final judgment in this matter.

**NOTICE**

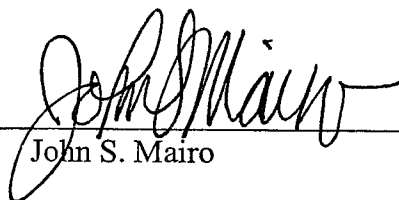
33. Notice of this Motion has been served on: (i) all known creditors of Fleer Collectibles, (ii) the Commissioner of the Internal Revenue Service and (iii) the Treasurer of the State of New Jersey, as more fully described in the accompanying Notice of Motion.

**WHEREFORE**, your Petitioner, Warren J. Martin Jr., Assignee for the Benefit of Creditors of Fleer Collectibles, LLC, respectfully prays for the entry of an Order and Judgment Authorizing Distributions on the Remaining Outstanding Claims, Approving Final Accounting, Discharging Bond and Closing Case in Accordance with Counts III and IV of the Assignee's Verified Complaint dated October 21, 2005.

DATED: October 31, 2006

**PORZIO, BROMBERG & NEWMAN, P.C.**

By: \_\_\_\_\_

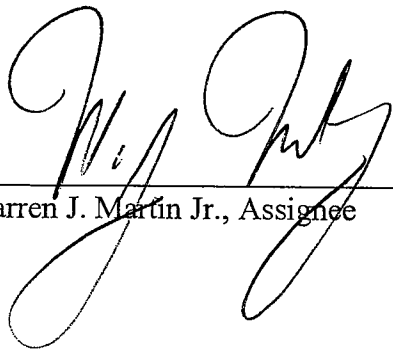
  
John S. Mairo

Attorneys for Warren J. Martin Jr., Assignee for the  
Benefit of Creditors of Fleer/Skybox LP

**VERIFICATION**

I, Warren J. Martin Jr., the Petitioner named in the foregoing Application do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me as contained therein are willfully false, I am subject to punishment.

DATED:      October 31, 2006

By:  \_\_\_\_\_  
Warren J. Martin Jr., Assignee