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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, PROBATE PART
BURLINGTON COUNTY
Friday, July 8, 2005

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF THE GENERAL
ASSIGNMENT FOR THE BENEFIT OF
CREDITORS OF FLEER/SKYBOX
INTERNATIONAL, LP,

Assignor DOCKET NUMBER
to P-2005-1394
WARREN J. MARTIN JR.,
Assignee

IN THE MATTER OF THE GENERAL
ASSIGNMENT FOR THE BENEFIT OF
CREDITORS OF FLEER
COLLECTIBLES, L.L.C.,

Assignor DOCKET NUMBER
to P-2005-1408
WARREN J. MARTIN JR.,
Assignee

B E F O R E:

THE HONORABLE RONALD E. BOOKBINDER

R E P O R T E D B Y:

SUSAN D. GUNELSON, Certified Shorthand
Reporter (License No. 763) and Notary Public of New
Jersey, on the above date, commencing at 11:01 a.m.,
in the Burlington County Court House, 49 Beverly -
Rancocas Road, Mount Holly, New Jersey.

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1 (The following was taken out of the
2 presence of Mr. Threston:)

3 THE COURT: Flear, we're set up?
4 Counsel, please enter your
5 appearances.

6 MR. MAIRO: John Mairo of Porzio,
7 Bromberg & Newman on behalf of the assignee, Warren
8 J. Martin for Flear Collectibles, as well as Flear
9 5SkyBox International.

10 MR. MARTIN: Warren J. Martin,
11 Junior, Assignee.

12 MR. MEKLINSKY: Ian Meklinsky, Fox
13 Rothschild, for Chris Tobia and Flear SkyBox's
14 general partner, Golden Cards, L.L.C.

15 THE COURT: Now, we have some people
16 on the telephone. Any attorneys on the telephone
17 please enter your appearances.

18 MS. COHEN: Yes, Leslie --

19 THE COURT: Whoa, whoa, whoa. You
20 have to talk a lot louder. Hold on one second.

21 MS. COHEN: Leslie Cohen --

22 THE COURT: Hold on.

23 MS. COHEN: -- and Sam Kozhaya, and
24 we are from Liner, Yankelevitz, Sunshine and
25 Regenstreif, and we are representing Upper Deck.

1 THE COURT: Okay. Are you admitted
2 in New Jersey?

3 MS. COHEN: We're trying to find this
4 out now through local counsel.

5 THE COURT: And who's your local
6 counsel?

7 MS. COHEN: We are engaging Doug
8 Tabatchnik.

9 THE COURT: And who's he with?

10 MS. COHEN: He's on his own.

11 THE COURT: And where is he?

12 MS. COHEN: I'm sorry, I'm not -- oh,
13 it's Manalpan. Manalpan, I believe.

14 THE COURT: Okay. Okay. Now, I just
15 want to mention one thing before anybody else enters
16 an appearance.

17 Unusual in a civil proceeding, we
18 actually have a court reporter, and not only do we
19 actually have a court reporter but this is a
20 privately retained court reporter.

21 Now, who retained the court reporter?

22 MR. MAIRO: The assignee did, your
23 Honor.

24 THE COURT: Okay. And it's my
25 understanding that the court reporter has met with

1 the people from the Trial Court Administrator's
2 Office, specifically Lee Eastty, the Director of
3 Operations, and having been in consultation with the
4 Administrative Office of the Courts it's been
5 approved that we're going to have a court reporter
6 in this case.

7 And also having met the court
8 reporter she reminds me that a few years ago she
9 used to work in Burlington County.

10 But anyway, leaving that aside, who
11 else is on the phone?

12 MR. ROSENBLATT: You have Keith
13 Rosenblatt from Kaye Scholer on behalf of 4-Kids.

14 THE COURT: Okay. Are you admitted
15 in New Jersey?

16 MR. ROSENBLATT: No, your Honor, I am
17 not.

18 THE COURT: Do you have -- well, let
19 me ask both of you, first of all, who's the first
20 lady, what's your name?

21 MS. COHEN: Leslie Cohen, C-O-H-E-N.

22 THE COURT: Okay. Ms. Cohen, do you
23 plan to ask any questions?

24 MS. COHEN: Not today, your Honor, I
25 don't think so.

1 THE COURT: Okay. Mr. Rosenblatt, do
2 you plan to ask any questions?

3 MR. ROSENBLATT: No, your Honor,
4 simply monitoring.

5 THE COURT: Okay. Any other lawyers
6 on the telephone? Anybody else at all on the
7 telephone?

8 Okay. We're going to turn to counsel
9 and let's try and figure out what we're doing first
10 before we call our first witness.

11 Interestingly enough, apparently on
12 the Internet there's already a summary of what the
13 plan is for today, but I want to try and translate
14 it into legally what we're trying to do today.

15 Basically I think, and correct me if
16 I'm wrong so we get to the same place, I think that
17 the assignee is trying to have a sale next Thursday,
18 and when I had a preliminary meeting last week with
19 the lawyers I asked if we couldn't wait a little
20 while. Why are we having this sale so quickly?

21 And the assignee explained to me that
22 certain of these products are going to drastically
23 be reduced in value and if we wait it's just going
24 to be a lot less money that we may realize.

25 And we then agreed that we would have

1 a hearing today on which there would be some support
2 in the record for the assignee's position.

3 Then even afterwards -- that's
4 basically just logistically to have the sale, but
5 even afterwards it will still have to be approved,
6 and obviously people can object at this time.

7 One of the other concerns I brought
8 up at that time and I brought up again here today
9 was notice to the Attorney General and to the
10 U.S. Attorney.

11 Did we get any more information on
12 that?

13 MR. MARTIN: Yes, we did, your Honor.
14 Warren J. Martin, Assignee. I'm going to speak to
15 that issue alone and then I'm going to turn the
16 proceedings over to Mr. Mairo to call the witness.

17 With respect to the -- let me sort of
18 speak generally about notice.

19 THE COURT: Right.

20 MR. MARTIN: Every creditor in this
21 case was notified at the outset of this case, which
22 was in early June, every interested party has been
23 notified, everyone we know that had an interest in
24 bidding. The IRS, the U.S. Attorney, and the
25 Attorney General were notified. Your Honor raised

1 that last Friday.

2 We got the long weekend. It was done
3 earlier this week. I wouldn't suspect that they
4 really had an opportunity to focus on the matter, so
5 what I did outside of the courtroom is I called and
6 I spoke to in the Attorney General's office, Rachel
7 Lehr, who I know is active in insolvency and
8 bankruptcy matters. I gave her the detail. I gave
9 her the Web site.

10 I did the same with Patricia
11 Delzotti, of the IRS.

12 THE COURT: Let's just stop. Can you
13 please, if -- you might not be able to do this,
14 spell Lehr.

15 MR. MARTIN: L-E-H-R.

16 THE COURT: Okay. Go ahead.

17 MR. MARTIN: And I did the same with
18 Patricia Delzotti of the IRS, D-E-L-Z-O-T-T-I --

19 THE COURT: Right.

20 MR. MARTIN: -- and my colleague Beth
21 Martin called Christopher Christie and spoke to one
22 of the folks in his office.

23 So rather than simply getting a
24 notice in the mail, besides doing that, we basically
25 hit them over the head with it. We've told them

1 about the Web site. They can look at all the
2 pleadings, decide whether or not they have any
3 issues to pursue, and my, you know, phone number is
4 up there and available, and I'm sure if we have any
5 concerns from the IRS, the U.S. Attorney, or the
6 Attorney General we'll hear about it.

7 THE COURT: I am going to ask before
8 next Friday, that's our next hearing, that you have
9 contact with them again and if they can state a
10 formal position, in other words, we're for it,
11 against it, we have no interest, we haven't had
12 enough time, whatever they want to state, something
13 ideally in writing or on a conference call that we
14 can put on the record just so we can make sure that
15 they know, because quite honestly we have talked
16 about this also last week because we had a lengthy
17 management conference last week is one of the goals
18 is there's a couple goals.

19 Number one, is to get the maximum
20 amount of money for the creditors.

21 Number two, is to insure finality.
22 And my concern about finality is if somebody raises
23 the fact that they did not receive notice and an
24 opportunity to be heard and quite honestly, we all
25 discussed this, which is this is not actually a

1 technical requirement, this is something that we're
2 doing that's a little above and beyond, but we're
3 just trying to get some finality.

4 Before we start is there anything
5 else? Okay, so the purpose of this hearing is to
6 basically not even get a final approval but at least
7 a tentative approval with going forward on Thursday,
8 final approval coming forth on Friday. The burden
9 would be on the assignee and it would be by a
10 preponderance of the evidence.

11 Now, if anybody thinks that's
12 anything wrong tell me.

13 Okay. We're going to take a one
14 minute break, we're going to meet with Ms. Earl, and
15 we're going to have our first witness called.

16 (Brief recess.)

17 THE COURT: So please call your first
18 witness.

19 MR. MAIRO: Your Honor, just before
20 we call our first witness I would just like to
21 clarify something.

22 THE COURT: Yes.

23 MR. MAIRO: In connection with the
24 assignee reaching out to the governmental
25 entities --

1 THE COURT: Yes.

2 MR. MAIRO: -- is that solely with
3 respect to the retention applications and their
4 position with that or was it also in connection with
5 the sale motion?

6 THE COURT: Well, it's definitely
7 with reference to the sale motion, and quite
8 honestly it's with reference to everything, because
9 I just want them to be aware and I think it's really
10 with reference to everything.

11 Now, they may not be able to answer
12 everything, but probably -- as far as the retention
13 motions go, if they want to say something, I say
14 most respectfully, after the fact they're invited to
15 do so.

16 But the sale is -- this would be
17 before the fact and if they want to say something I
18 would really hope that we would get them involved
19 sooner rather than later, what I'm talking about is
20 specifically Monday, and I would hope that we would
21 get their positions.

22 My recollection is the sale is
23 Thursday and the approval is Friday, so I mean I --
24 and I know this may sound like it's quick, but I'd
25 like to have them talk to them Monday and if they

1 have something to say say it on Wednesday.

2 Okay. Anything else?

3 MR. MAIRO: No, your Honor.

4 THE COURT: Okay. Please proceed.

5 MR. MAIRO: Your Honor, I'd like to
6 call Christopher Tobia to the witness stand.

7 THE COURT: Okay. Please come
8 forward. Right up here. Here's your spot. Please
9 place your left hand on the Bible. Please raise
10 your right hand.

11

12 -----

13

14 CHRISTOPHER JOHN TOBIA, 1120 Route
15 73, Mount Laurel, New Jersey, having been
16 duly sworn, was examined and testified as
17 follows:

18 THE COURT: What's your name?

19 THE WITNESS: Christopher J. Tobia.

20 THE COURT: Okay. Just please be
21 seated. You've got to talk a little louder now.

22 By the way, the people from
23 California and New York, if you can't hear something
24 you know let us know. Okay?

25 MS. COHEN: Thank you.

1 THE COURT: Okay. Go on.

2 MR. MARTIN: If I may, Judge.

3 THE COURT: Yes.

4 MR. MARTIN: If we pull that
5 little -- we have the same system in our office, we
6 can put this over here.

7 THE COURT: Oh, okay. I hope you're
8 right. Go ahead.

9 DIRECT EXAMINATION

10 BY MR. MAIRO:

11 Q. Mr. Tobia, why are you here today?

12 A. I'm here today to discuss the marketing
13 efforts that Fleer SkyBox undertook over the last
14 two years to sell the assets of the business, as
15 well as to discuss the reason why I believe that it
16 is imperative the sale here take place next Friday.

17 Q. When you talk about the sale hearing what
18 assets are being put up for sale for the 15th?

19 A. The trademarks, the intellectual property of
20 the trading card business, which is Fleer SkyBox,
21 International, LP, as well as certain assets of the
22 die cast business, which is Fleer Collectibles.

23 Q. Now, before getting into the marketing
24 efforts and the particulars of the sale motion let's
25 get your educational background as well as your

1 employment history.

2 Where did you go to college, Mr. Tobia?

3 A. I went to college at Catholic University of
4 America.

5 Q. What degree did you graduate with?

6 A. A B.A., bachelors of arts in accounting.

7 Q. Following graduation from Catholic University
8 where did you go to work?

9 A. Price Waterhouse in Philadelphia.

10 Q. What time period did you work with Price
11 Waterhouse?

12 A. From September of 1991 through September of
13 1996.

14 Q. What were your responsibilities at Price
15 Waterhouse?

16 A. I primarily worked in the audit department.
17 I -- I'm was in charge of the audit functions for
18 both privately held and publicly traded firms, as
19 well as worked with the mergers and acquisitions
20 department within Price Waterhouse.

21 Q. Do you hold a CPA, Mr. Tobia?

22 A. Yes.

23 Q. What does CPA stand for?

24 A. Certified public accountant.

25 Q. When did you get that degree?

1 A. 1993.

2 Q. Now, when you left Price Waterhouse where did
3 you go from there?

4 A. I went to work for Fleer SkyBox
5 International.

6 Q. Okay. What time period was that that you
7 started with Fleer?

8 A. It was October of 1996.

9 Q. And when you first went to Fleer what was
10 your job title?

11 A. My first job there was finance manager.

12 Q. And how long did you work at Fleer with that
13 title?

14 A. Until roughly June of mid -- June of '98 I
15 was the finance manager, and then I was promoted to
16 controller.

17 Q. As the finance manager what did you do?

18 A. I was responsible for all the day-to-day
19 accounting functions, closing on the books,
20 reporting to the controller and CFO.

21 Q. Okay. After being the controller what was
22 the next position you held at Fleer?

23 A. After controller I became senior vice
24 president and chief financial officer.

25 Q. How long did you hold that position?

1 A. January of 1999 through December of -- sorry,
2 January of 2004.

3 Q. What were your responsibilities in that
4 position?

5 A. As the senior vice president/chief financial
6 officer my responsibilities were of all the
7 financial accounting functions of the business, as
8 well as human resource functions, and I reported
9 directly to the CEO and president of the company, as
10 well as interacting with both the marketing and
11 production operations departments.

12 Q. Now, following that role with Fleer what was
13 your next role with Fleer?

14 A. I became executive vice president and chief
15 financial officer.

16 Q. And what time period did you hold that title?

17 A. Roughly February of 2004 'til the business
18 shut down in June of this year.

19 Q. And what functions did you fulfill in that
20 role?

21 A. I reported directly to ownership at the time,
22 I -- all day-to-day operations, sales, marketing,
23 finance, human resources, production operations, all
24 reported in through me.

25 Q. Now, in that role if there was an entity that

1 was interested in purchasing the assets of the Fleer
2 companies would you have been contacted?

3 A. Yes.

4 Q. Now, let's talk about just the general nature
5 of the Fleer SkyBox business as well as the Fleer
6 Collectibles business.

7 Let's begin by just explaining the
8 relationship between Fleer SkyBox and Fleer
9 Collectibles.

10 A. Fleer SkyBox International, LP was a -- is
11 the trading card company. We were manufacturer --
12 marketer, designer and manufacturer of trading cards
13 of sports and entertainment licenses.

14 Fleer Collectibles, LLC, a separate entity,
15 was formed in 1999 -- I'm sorry, 2001, to acquire
16 the assets of White Rose Collectibles, which was the
17 die cast -- die cast operation.

18 So Fleer Collectibles, we -- even though
19 they're two separate legal entities internally we
20 refer to them as two divisions, Fleer SkyBox, being
21 the trading card division, Fleer Collectibles being
22 our die cast vehicle division.

23 Q. Okay. And just to I guess better describe
24 the relationship between the two entities Fleer
25 SkyBox is the owner of Fleer Collectibles, is that

1 the relationship?

2 A. Yes, Fleer Collectibles is a limited
3 liability company in Delaware. Fleer SkyBox,
4 International, LP is the sole member of Fleer
5 Collectibles, LLC.

6 Q. Okay. Now, let's go to the Fleer SkyBox, the
7 trading card business.

8 Do you need to have licensing agreements with
9 professional and college entities to run that
10 business?

11 A. Yes, we do.

12 Q. Okay. What licenses were held by the Fleer
13 SkyBox entity?

14 A. Fleer SkyBox held licenses with Major League
15 Baseball, Major League Baseball Players Association,
16 National Football League, National Football League
17 Players Association, and the National Basketball
18 Association.

19 Q. Now, what companies have license agreements
20 with those licensors regarding the trading card
21 business?

22 A. I'm sorry, I was -- can you repeat that?

23 Q. Sure. You just described the different
24 licensing agreements that the trading card business
25 had. I'm just asking what companies have licensing

1 agreements with those respective professional
2 leagues.

3 A. Those are the sports licensing agreements
4 that we had. Other companies that have those are
5 the Upper Deck Company, the Topps Company, and
6 Donruss Playoff.

7 Q. Would it be --

8 THE COURT: Where is Donruss Playoff?

9 THE WITNESS: They're located in
10 Texas.

11 THE COURT: How do you know that
12 those are the only three that have them?

13 THE WITNESS: They're the only --
14 those three, plus the other sporting card
15 manufacturers that produced sports trading cards,
16 actually licensed sports trading cards.

17 THE COURT: And you just know this
18 from your experience?

19 THE WITNESS: In talking with the
20 leagues, in talking with the other companies, sales
21 in the marketplace.

22 You need a league license to use the
23 logos and the team names. You need a players
24 association license to use the player's image and
25 the players' names on the cards, so if someone put a

1 card out there without those licenses they --

2 THE COURT: So let me just try and
3 understand this. You're telling me that only four
4 people make baseball cards?

5 THE WITNESS: Currently today,
6 correct.

7 THE COURT: Currently today he said.

8 MR. MARTIN: Three.

9 THE COURT: Three. Fleer --

10 THE WITNESS: Fleer's no --

11 THE COURT: So three people make
12 baseball cards. That's it?

13 THE WITNESS: Correct, licensed
14 baseball cards.

15 THE COURT: Are there unlicensed
16 baseball cards?

17 THE WITNESS: I don't believe there
18 are. I -- to my knowledge I do not believe they
19 are.

20 THE COURT: It's just Upper Deck,
21 Topps, and who's the other one?

22 THE WITNESS: Donruss Playoffs.

23 THE COURT: Donruss, that's the
24 three. Did there used to be more?

25 THE WITNESS: There used to be more.

1 THE COURT: How many did there used
2 to be?

3 THE WITNESS: I came into the
4 business in 1996, and at that time there were
5 just -- there was five. There was another company
6 called Pacific. They've been out of business. And
7 I think prior to that there were two or three other
8 companies.

9 THE COURT: Do the leagues
10 themselves, do they make -- does the Major League
11 Baseball make their own baseball cards?

12 THE WITNESS: No, they're in the
13 business of licensing the properties to us.

14 THE COURT: I see. That's it. What
15 would happen if somebody bought this who didn't have
16 a license?

17 THE WITNESS: Somebody bought the
18 trademarks?

19 THE COURT: Well, somebody bought
20 your -- the -- whatever you're trying to sell.

21 THE WITNESS: Well, they would need
22 to go to the leagues and the players association
23 respectively to acquire a license, to fill out an
24 application.

25 THE COURT: Have you ever been part

1 of that?

2 THE WITNESS: Acquiring a license? I
3 have.

4 THE COURT: How hard is that?

5 THE WITNESS: On the trading card
6 side it's -- it's very difficult.

7 The trading card marketplace has been
8 declining from a revenue standpoint really since
9 1996 as an industry. There's too much -- there's
10 been the opinion there's too much supply out there
11 and the market has been deteriorating, so there's a
12 lot of talk in the last 12 months about reducing
13 licenses, and potentially leasing other products in
14 the marketplace, as well as potentially the
15 licensor. That's been very recent talk.

16 So I think on the trading card side
17 it would be very difficult to obtain a license if
18 you don't already have one.

19 On the die cast side that business is
20 a little different. It's not as saturated with
21 product in the marketplace. I believe that the
22 acquirer would need to go and show financial
23 wherewithal and --

24 THE COURT: What is die cast?

25 THE WITNESS: It's miniature replica

1 die cast vehicles, similar to Matchbox cars.

2 THE COURT: Right.

3 THE WITNESS: We do them in various
4 sizes with team logos on them. We'll do them in the
5 Matchbox size, which is 160 --

6 THE COURT: So there's like a little
7 car that says the Phillies?

8 THE WITNESS: Correct, it's decorated
9 in the Phillies logos.

10 THE COURT: Okay. Please continue.

11 BY MR. MAIRO:

12 Q. So in light of those licensing issues is it
13 fair to say that it's a relatively small universe of
14 potential purchasers?

15 A. For the trading card business I believe so.

16 Q. And is that different with the die cast
17 business; that's a little bit larger pool but still
18 relatively limited?

19 A. I believe so.

20 Q. Okay. Now, let's turn to the marketing
21 efforts of the Fleer companies. When did the Fleer
22 companies decide to explore sale options?

23 A. We initially explored -- began to explore in
24 September of 2003, we hired investment banking firm
25 Legg Mason.

1 Q. What was Legg Mason hired to do?

2 A. They were hired to help us put together an
3 offering memorandum, contact potential perspective
4 buyers, and basically walk us through that process
5 of potentially selling both trading cards and die
6 cast businesses.

7 Q. As a result of those efforts were offers made
8 for the Fleer companies?

9 A. Yes, they were.

10 Q. Who made the offers?

11 A. There were three companies that made written
12 offers; the Upper Deck Company, RC-2, which is
13 formerly known as Racing Champions, as well as
14 Donruss Playoff.

15 THE COURT: How much did they offer?
16 How much did Upper Deck offer?

17 THE WITNESS: I believe at the time
18 the initial offer was 25 million.

19 THE COURT: So Upper Deck offered
20 25 million. What about everybody else, Playoff and
21 RC-2?

22 THE WITNESS: I believe RC-2 was in
23 the range of 17 million --

24 THE COURT: Right.

25 THE WITNESS: -- seventeen to 19, and

1 Playoff Donruss was 9 million, and that was just for
2 one part, the trading card portion of the business.

3 THE COURT: So why didn't you sell it
4 to somebody?

5 THE WITNESS: Ownership decided --
6 sales had increased in the first quarter of '04 and
7 ownership felt that at that time that they were
8 going to stay in the business.

9 THE COURT: Upper Deck, how far did
10 you go with Upper Deck?

11 THE WITNESS: We began the due
12 diligence process between December of '03 and
13 January of '04. Negotiations stalled at the end of
14 January of '04 on the asset purchase agreement.

15 THE COURT: When you say stalled,
16 they offered 25 million. What were you asking?

17 THE WITNESS: They -- the price was
18 agreed upon, however in negotiating certain terms of
19 the asset purchase agreement there became some
20 issues.

21 THE COURT: What terms? Give me
22 three terms that they refused to agree to that you
23 demanded.

24 THE WITNESS: There was a -- one of
25 the -- one of the terms -- one of the negotiating

1 points was a closing date. Another one was
2 potential contingencies, just all that -- what they
3 would find during the due diligence.

4 I believe those are the major issues,
5 basically contingencies.

6 THE COURT: Please continue.

7 BY MR. MAIRO:

8 Q. So once the Upper Deck deal did not go
9 through what happened next?

10 A. Ownership decided to move on to the next
11 highest bidder, which was RC-2.

12 Q. And what happened with that bid?

13 A. RC-2 began their due diligence process in
14 February of '04 and to the beginning of March of '04
15 they decided -- ownership decided that the -- again,
16 the first quarter sales had picked up from '03 and
17 the financial projections going forward looked good,
18 so they wanted to stay in the business, and they
19 took it off the sale block.

20 THE COURT: Who is ownership?

21 THE WITNESS: Well, it's a
22 partnership. There are two trusts that are limited
23 partners.

24 THE COURT: Who's the one who's --
25 who's making all these decisions? What's the name

1 of the human being who decided all this?

2 THE WITNESS: Alexander Grass and his
3 son, Roger Grass.

4 THE COURT: Back then did they ever
5 come over here?

6 THE WITNESS: Yes.

7 THE COURT: They were in Mount
8 Laurel?

9 THE WITNESS: Roger held an office in
10 the Mount Laurel office.

11 THE COURT: How often was he in Mount
12 Laurel?

13 THE WITNESS: He was here daily.

14 THE COURT: So he's here every day
15 and this is the decision. And how are they related,
16 you say father/son?

17 THE WITNESS: Father/son.

18 THE COURT: This is the decision they
19 came up with?

20 THE WITNESS: Correct.

21 THE COURT: Okay. Please continue.

22 BY MR. MAIRO:

23 Q. Before we move on to when the company decided
24 to pull the companies off the market, just to go
25 back to RC-2, can you better describe who RC-2 is?

1 A. RC-2 has a -- is very large in the NASCAR die
2 cast industry. They also hold other entertainment
3 properties and licensing properties, but they --
4 they were an interested party from the die cast
5 standpoint.

6 THE COURT: Let me understand this.
7 This is back on these licenses.

8 Now, what you just said about RC-2,
9 RC-2 doesn't have a license. So how were they going
10 to buy a year ago and now they can't buy it?

11 THE WITNESS: Currently RC-2 has a --
12 has certain sports licenses for their die cast
13 business. They also have a trading card business
14 that is for NASCAR only. They do not participate in
15 the sports trading card business.

16 THE COURT: They were going to buy
17 part of it?

18 THE WITNESS: A year ago they were
19 looking to buy the entire thing.

20 THE COURT: Even though they didn't
21 have a license?

22 THE WITNESS: Even though they didn't
23 have a license they set up some meetings to talk
24 with the licensors, expect the licensors.

25 THE COURT: What changed in the last

1 year that's so hard now to get a license?

2 THE WITNESS: Well, I think the
3 leagues and the players associations respective
4 unions, I believe that they realize that all of the
5 trading card manufacturing partners are -- are
6 suffering financially because there are too much
7 product in the marketplace and therefore, all of our
8 all companies all -- speak for myself, and it's
9 everybody's pretty much privately held, with the
10 exception of Topps, sales have been declining over
11 the last couple years. I believe that they found
12 they need to do something about it and maybe clean
13 up the market place a little bit.

14 That's my opinion.

15 THE COURT: Please continue.

16 BY MR. MAIRO:

17 Q. Just to pick up on the timeframe, Mr. Tobia,
18 I think it was March '04 that the companies decided
19 to pull themselves off the market, is that correct?

20 A. Correct.

21 Q. Around that time period did the company
22 terminate its agreement with Legg Mason?

23 A. Yes, it did.

24 Q. Okay. Now, did there --

25 THE COURT: Did you ever employ

1 anybody else after Legg Mason?

2 THE WITNESS: No, we did not.

3 THE COURT: Well, there had to come a
4 time when you realized things -- that somebody made
5 a mistake, you weren't getting \$25 million any more.
6 Why didn't you employ somebody new, you know --

7 THE WITNESS: Ownership --

8 MR. MAIRO: We're going to go into
9 that next stage, your Honor.

10 THE COURT: Go ahead. Okay.

11 MR. MAIRO: The judge is leading
12 right into the next phase of the sale process.

13 BY MR. MAIRO:

14 Q. At what point or did there come a time when
15 the company decided to put themselves back on the
16 market?

17 A. Yes. It was late January, early February of
18 '05.

19 Q. And what happened during that time period?

20 A. I spoke with Alex Grass, as Roger had been
21 out of the business for a couple months, and he
22 instructed me to contact Upper Deck, Topps, and
23 Playoff to see if there was any interest in
24 purchasing the company.

25 THE COURT: Why not RC-2?

1 THE WITNESS: He wanted to go with
2 the three trading card manufacturers first because
3 of the -- 'cause of the trading card licenses.

4 THE COURT: Why'd Roger leave the
5 business?

6 THE WITNESS: Personal reasons.

7 THE COURT: Okay.

8 BY MR. MAIRO:

9 Q. Did you contact those entities, Mr. Tobia?

10 A. Yes, I did.

11 Q. What happened following your contact with
12 them?

13 A. I had several meetings, meetings with Topps
14 and Playoff Donruss. They were not interested at
15 the time. However Upper Deck had showed interest,
16 so we continued talking with Upper Deck, and they
17 came in and had performed some due diligence.

18 THE COURT: Why was Playoff no longer
19 interested?

20 THE WITNESS: I don't know. I
21 believe that the meetings he had with their owner
22 they felt that there was too much going on in the
23 marketplace with the prospective reduction in
24 licenses and decline in trading card industry, that
25 they didn't think they were interested in purchasing

1 Fleeer at the time.

2 THE COURT: Please continue.

3 BY MR. MAIRO:

4 Q. With your negotiations with Upper Deck did
5 that culminate into an agreement?

6 A. We had a verbal offer, but it never
7 culminated into an agreement.

8 THE COURT: What was the verbal
9 offer?

10 THE WITNESS: At the time they had
11 offered \$10 million plus a \$5 million earnout
12 potentially, but there are a lot of contingencies
13 that we were unable to negotiate.

14 THE COURT: What's an earnout?

15 THE WITNESS: For instance, if we hit
16 a projected sales number for the rest of this year
17 then they would pay up to an additional 5 million.

18 THE COURT: When did that verbal
19 offer occur?

20 THE WITNESS: May 6th of '05.

21 THE COURT: We went from \$15 million
22 on May 6th to \$2 million on May -- on July 14th,
23 is that what you're telling me?

24 THE WITNESS: The business ownership
25 elected to shut down the business operations in mid

1 May.

2 THE COURT: Why?

3 THE WITNESS: 'Cause there needed to
4 be financial -- there needed to be a competent
5 capital contribution to see this through the sale
6 and ownership wasn't ready to make that.

7 THE COURT: So in other words, to get
8 15 million you had to put something in?

9 THE WITNESS: Right. Well, the offer
10 was for ten plus potential \$5 million, but yes.

11 THE COURT: How much did you have to
12 put in?

13 THE WITNESS: Probably about another
14 \$2 million to see it through to sale.

15 THE COURT: Okay. So it's put in
16 2 million, get 10 million, but on this way you put
17 in nothing, right? I mean ownership puts in no
18 capital so -- well, let me ask you this: Again, I'm
19 sure it's clear that your experience is much greater
20 than the Court's but, if it was 10 million and they
21 wanted 2 million why didn't you just say 8 million?
22 You understand what I'm saying? We'll sell it to
23 you for 8 million but we're not giving you the \$2
24 million capital contribution? Why didn't that
25 happen?

1 THE WITNESS: It was -- I did have
2 discussions with Upper Deck's business people at the
3 time about doing something like that.

4 Unfortunately, ownership just decided
5 to shut the business down and instructed me to
6 inform Upper Deck that it would be suspending
7 operations of the business until they -- they closed
8 in the deal and I believe that's when Upper Deck
9 walked away from the deal.

10 I'm not -- the word I got from the
11 Upper Deck business people was they were interested
12 in buying a operating entity but not one that was
13 shut down.

14 THE COURT: So when did you shut
15 down?

16 THE WITNESS: The trading card
17 business officially mid May, May 13th, roughly is
18 when it -- May 13th is when I had to lay the trading
19 card employees off.

20 THE COURT: Now, you might not be
21 able to answer this: How hard is it going to be to
22 start this thing back up?

23 THE WITNESS: Well, from the trading
24 card standpoint someone that acquires the trademarks
25 would be able to, if they roll that into their

1 existing licenses and continue moving forward there.

2 The die cast business, we've been
3 suspended now since May 31st. We need someone to
4 acquire the business relatively quickly, and that's
5 why -- part of the reason why I'm here today,
6 because the sale needs to happen soon, because it's
7 a seasonal business.

8 Since we sell sports licensed product
9 we are in the prime selling season for our football
10 card right now, which may -- last year, for
11 instance, football was approximately 3 million to
12 5.6 million in total sales for the business. We
13 sell football product in May, June, July, and August
14 and then reorders once the season kicks in and
15 that's with every sport. You sell right before the
16 season.

17 So we've started to sell football
18 product the end of May. We are -- unfortunately
19 we're not selling football product in June or now
20 and it's hurting the business. We have
21 approximately \$1 million of products on the water or
22 at the port that is waiting to be purchased to
23 fulfill orders we have in the system.

24 Now we have right now in the system
25 that we stopped entering on May 31st we had over

1 \$750,000 of orders in the system ready to be
2 fulfilled for football.

3 So not only do we have what we're
4 losing out on football sales right now, potentially
5 we could be losing out down the road on hockey and
6 if the acquired businesses is successful in
7 obtaining the NBA license we'll be losing out on
8 potential NBA sales, so there's -- which would
9 further devalue the business.

10 THE COURT: Well, I mean suppose the
11 sale happens Thursday, gets approved on Friday.
12 When is this new person taking over? On Friday? On
13 Saturday? On Sunday? On Monday? What's going to
14 happen?

15 THE WITNESS: I'm not sure how long
16 it is for the closing.

17 THE COURT: Okay.

18 MR. MARTIN: We expect the closing to
19 follow shortly thereafter, your Honor.

20 THE COURT: Approximately?

21 MR. MARTIN: Ten days.

22 THE COURT: Okay. So ten days from
23 Friday is around July 25th, the closing happens,
24 and then these people -- the buyer gets to deliver
25 and collect the money on that \$1 million of items,

1 is that right?

2 MR. MARTIN: Correct.

3 THE COURT: So that's part of what
4 you're selling, you're selling the purchase orders?

5 MR. MARTIN: Just to clarify, there's
6 \$750,000 in pending orders, call it backlog, ready
7 to go and then the people will pay their 750,000,
8 but there's a million dollars of product on the dock
9 that has to be purchased. Much of that product will
10 be used or not much of that, some of that product on
11 the dock will be used to fill those 750,000 in
12 orders.

13 So there is a -- the purchaser has to
14 make a layout of cash in addition to what they pay
15 this estate in order to be able to fulfill those
16 orders.

17 THE COURT: Let me ask you this part:
18 Back when things were going well did you have a
19 factory? Did you have something that you made th
20 cars and you made the baseball cards?

21 THE WITNESS: No. We outsourced all
22 of our manufacturing. We -- the vehicles, the die
23 cast vehicles are all made over in China --

24 THE COURT: Okay.

25 THE WITNESS: -- so there's

1 third-party manufacturers over there.

2 THE COURT: So the cars are made in
3 China. Where are the cards made, baseball cards?

4 THE WITNESS: The cards are made in
5 the United States.

6 THE COURT: Where's that?

7 THE WITNESS: Between Pennsylvania
8 and Texas, we have two -- there's two facilities
9 that we use, third parties.

10 THE COURT: But somebody else,
11 somebody else makes them?

12 THE WITNESS: Correct.

13 THE COURT: Now, you may not know the
14 answer to this. This is sort of like a totally
15 different area. You may not know the answer to
16 this.

17 It would seem to me that there would
18 be an advantage to Upper Deck for somebody else not
19 to own this business, because basically this is a
20 way to kill a competitor. What value is there for
21 that?

22 THE WITNESS: I think there's an
23 advantage for Upper Deck, Topps, or Donruss --

24 THE COURT: Right.

25 THE WITNESS: Just because --

1 THE COURT: Right.

2 THE WITNESS: -- to own the business,
3 because Fleer's the second oldest trading card
4 company.

5 THE COURT: Right.

6 THE WITNESS: There's also the
7 advantage of buying the die cast business and
8 diversify their trading card product.

9 THE COURT: Well, let me ask you
10 this: You may not be qualified to answer this
11 question and anybody can certainly object.

12 What do you think a fair price is?

13 MR. MARTIN: Well, you know, I might
14 object, the assignee, and I'll tell you why, your
15 Honor.

16 THE COURT: Okay.

17 MR. MARTIN: I think the fair price,
18 if we put together a proper auction and a decent
19 auction and we have two or three players there the
20 fair price is the highest price we get.

21 THE COURT: Okay.

22 MR. MARTIN: Because I think the
23 market is going to drive that.

24 THE COURT: We're going to take a one
25 minute break and we're stopping at 12:15 and I can

1 see right now we're going to be going into the
2 afternoon, so we're going to go.

3 MR. MAIRO: I don't have that much
4 more, your Honor.

5 THE COURT: Okay. We'll see what
6 happens. We'll take a one minute break. We'll see.

7 MR. MAIRO: Thank you, your Honor.
8 (Brief recess.)

9 THE COURT: Please continue.

10 MR. MARTIN: Your Honor, if I could
11 just correct my own testimony when I stood up.

12 THE COURT: Okay.

13 MR. MARTIN: Section 4.1A of the sale
14 agreement provides for the closing on the second
15 business day following court approval, which would
16 be July 19th --

17 THE COURT: Okay.

18 MR. MARTIN: -- with you know, a
19 couple other contingencies if something unexpected
20 happens, but generally it's two days after the --
21 two days after the court hearing, two business days.

22 THE COURT: Okay. Please continue.

23 BY MR. MAIRO:

24 Q. Mr. Tobia, I'd now like to talk about the
25 sale efforts that occurred post the assignment.

1 A. Okay.

2 Q. Did there come a time when the assets of
3 Fleer SkyBox and Fleer Collectibles were assigned to
4 Warren Martin?

5 A. Yes, on June 10th of this year.

6 Q. Following the assignment and prior to the
7 sale motion being filed on June 29th were there
8 offers and discussions made about buying the assets
9 of the Fleer companies?

10 A. Yes, I was contacted by several companies,
11 interested parties.

12 Q. What parties were they?

13 A. I was contacted by Liss Global, which was our
14 importer for die cast business, contacted by the
15 Topps Company, RC-2, Donruss Playoff. I was
16 contacted by venture capitalist firm BroadMark
17 Capital.

18 THE COURT: Where are they,
19 BroadMark?

20 THE WITNESS: I believe BroadMark is
21 out of New York.

22 THE COURT: Go on.

23 BY MR. MAIRO:

24 A. I was contacted by a distributor of ours,
25 Beckett Associates, actually two distributors,

1 another one Sammy USA, also known as Sega.

2 Q. With respect to those entities were there
3 draft contracts that were drafted up with any of
4 them?

5 A. We moved forward with Liss Global for the
6 purchase of the die cast assets and Donruss Playoff
7 with the purchase of the trademarks and intellectual
8 properties of Fleer SkyBox.

9 THE COURT: How much were those for?

10 THE WITNESS: The Playoff, Donruss
11 Playoff was a half a million dollars for the
12 trademarks, and Liss Global was a million dollars
13 for the die cast assets.

14 Q. Did there come a time when Upper Deck
15 submitted an offer during this time period as well?

16 A. Yes.

17 Q. What was their offer?

18 A. They offered \$2 million for the entire
19 business, for its trademarks and the assets.

20 Q. So at that time period we had an offer from
21 Donruss, we had an offer from Liss, and we had an
22 offer from Upper Deck?

23 A. Correct.

24 Q. What happened thereafter?

25 A. The assignee decided to go back to all three

1 with the -- so they could all be a potential
2 stalking horse. They were given an opportunity to
3 review the agreement, come back to the table on the
4 date, certain date with the agreement, the
5 revisions, and final price.

6 Q. Let's take a step back. What is a stalking
7 horse?

8 A. The ability to be the lead purchaser going
9 into this auction hearing.

10 Q. And when you mentioned an agreement was that
11 an agreement for both the die cast business as well
12 as the Fleer SkyBox intellectual property?

13 A. Yes.

14 Q. So each of these entities were given the
15 opportunity to submit their highest and best offer,
16 is that correct?

17 A. Correct.

18 Q. What happened thereafter?

19 A. Upper Deck came back with their offer of
20 \$2 million and their revisions at the deadline,
21 Donruss Playoff did not come back with an offer, and
22 Liss Global came back with an offer but I believe it
23 was just for the die cast business and it was after
24 the deadline.

25 THE COURT: For how much?

1 THE WITNESS: I believe Liss --
2 Liss's offer remained at a half a million dollars.
3 MR. MARTIN: A million.
4 THE WITNESS: It was a million.
5 THE COURT: Okay. So right now Upper
6 Deck has made an offer of \$2 million. What do they
7 get for that?
8 THE WITNESS: They get certain assets
9 of the die cast business.
10 THE COURT: No, no, but I mean they
11 made this offer but they still have to go to the
12 auction?
13 THE WITNESS: Correct.
14 THE COURT: So they didn't really get
15 anything for it?
16 THE WITNESS: They get to be the
17 lead.
18 THE COURT: What does that mean, to
19 be the lead? What does that mean?
20 THE WITNESS: Well, I believe they
21 would be entitled to a breakup fee.
22 THE COURT: What's a breakup fee?
23 THE WITNESS: If someone comes in and
24 outbids --
25 THE COURT: Yeah.

1 THE WITNESS: -- the -- if someone
2 comes in and outbids Upper Deck, I believe by more
3 than a hundred thousand, Upper Deck has the
4 opportunity to continue to bid in hundred -- in
5 hundred thousand dollar increments, and if Upper
6 Deck is outbid then they would I guess get to
7 receive a \$60,000 breakup fee from the estate.

8 THE COURT: So if they lose they get
9 \$60,000 anyway? Is that what you're saying?

10 THE WITNESS: Yes, sir, yes.

11 THE COURT: So that's what they got?

12 THE WITNESS: That's what -- that's
13 what they got.

14 MR. MARTIN: Your Honor --

15 THE COURT: Yes.

16 MR. MARTIN: -- the assignee, Warren
17 Martin speaking.

18 These -- this is a common -- a
19 breakup fee is a common device in selling companies
20 both inside and outside of bankruptcy, and the
21 concept of it is that this -- the stalking horse
22 bidder, who you've signed the contract with, they
23 got to do a lot of homework.

24 They have to do their due diligence.
25 They have to spent money on lawyers. We have some

1 on the phone right now. In order to get themselves up
2 to speed and make sure that they want to buy this,
3 this asset or these assets.

4 What happens, what's difficult for
5 bidders in that situation is having somebody else
6 show up at the sale and say, hey, you know what?
7 Upper Deck likes it. It must be good. Kind of use
8 all the due diligence that's been done in the effort
9 and bid a dollar higher.

10 So breakup fees are designed that
11 when you do get outbid that you get compensated for
12 that kind of extra homework that you've had to do.

13 THE COURT: Is that correct, they're
14 only getting \$60,000 for that?

15 MR. MARTIN: Correct, it's three per
16 cent of 2 million is \$60,000.

17 THE COURT: But if it's 3 million is
18 it \$90,000?

19 MR. MARTIN: I have to look in the
20 contract.

21 THE COURT: Okay. You don't have to
22 answer.

23 Okay. So Upper Deck gets to be --
24 they do --

25 MR. MARTIN: Mr. Mairo is telling me

1 it's 60,000 no matter what.

2 MR. MAIRO: \$60,000.

3 THE COURT: Okay.

4 BY MR. MAIRO:

5 Q. So with respect to the asset purchase
6 agreement with Upper Deck for the 2 million, was
7 that then the subject of the assignee's motion to
8 sell that's now scheduled for July 15th?

9 A. Yes.

10 Q. Now, following the filing of that motion have
11 parties continued to contact you about potentially
12 buying the assets of Fleer Collectibles as well as
13 the intellectual property of Fleer SkyBox?

14 A. Yes, they have.

15 Q. What entities are they?

16 A. Liss Global, Playoff Donruss, Topps Company,
17 RC-2, the venture capital firm BroadMark Capital.
18 Those are the ones that have contacted me.

19 Q. Is it fair to say that based upon your
20 experience that all the parties are likely to make
21 the highest and best offer are aware of the sale
22 motion?

23 A. Yes, I believe so.

24 MR. MAIRO: Thank you. I have no
25 further questions, your Honor.

1 THE COURT: Okay. Why is -- I still
2 don't understand. Why does this have to be done so
3 quickly? Explain this to me in a little more
4 detail.

5 THE WITNESS: Well, the business
6 is -- is seasonality. It is very seasonal sales.

7 THE COURT: Right.

8 THE WITNESS: We are losing potential
9 orders by not being in operation today. Football is
10 the main focus right now, but hockey and basketball
11 would be right around the corner, so every day that
12 this business remains nonoperating we are losing
13 potential sales, potential customers of --

14 THE COURT: How did the ownership
15 decide in May to kill this? I mean why didn't they
16 do it in April or in March --

17 THE WITNESS: We were --

18 THE COURT: -- or in June or July?

19 THE WITNESS: We were moving forward
20 with Upper Deck at the time and in April --

21 THE COURT: Right.

22 THE WITNESS: -- and in May.

23 But when things stalled in May and
24 the ownership just decided they did not want to put
25 any more money to see it through and just shut the

1 business down until we do. Their hope was to shut
2 it down, suspend it, and still sell it without
3 having to go into a proceeding like this.

4 THE COURT: Well, what changed that?

5 THE WITNESS: There was nobody to
6 sell it to once it was shut down and we're not
7 interested in -- enough for the value that we
8 needed.

9 THE COURT: What was the value that
10 you needed?

11 THE WITNESS: Well, I'm saying if
12 the -- with the amount of debt that was on the books
13 and then they didn't have -- they did not -- you
14 know, I can't speak for ownership. They just felt
15 that at that point in time that, you know, they do
16 not want to put the money in and that they were
17 going to shut the business down and sell as best as
18 they could.

19 THE COURT: And do what?

20 THE WITNESS: Sell it off as best as
21 they could.

22 THE COURT: Well, in the end are they
23 getting any money out of this?

24 THE WITNESS: No. There's a --
25 secured creditor and there's a lot of creditors. I

1 don't believe based on the price we're talking about
2 now, no.

3 THE COURT: How much is the secured
4 creditor for?

5 THE WITNESS: \$6 million.

6 THE COURT: Are there personal
7 guarantees on any of this?

8 THE WITNESS: Yes, there are.

9 THE COURT: By -- what are the names
10 of these people?

11 THE WITNESS: Alex Glass.

12 THE COURT: He has a personal
13 guarantee?

14 THE WITNESS: Correct.

15 THE COURT: Of how much?

16 THE WITNESS: Of the full amount,
17 \$6 million.

18 THE COURT: So it still sounds like
19 to me he would have done better if he would have
20 done the thing for the \$10 million. What happened
21 to that?

22 You don't know?

23 THE WITNESS: I don't know.

24 THE COURT: Okay.

25 MR. MARTIN: Judge, just two comments

1 from Warren Martin, Assignee, about the expediency,
2 and it's two phone calls that my office has been
3 working through.

4 One is from Sega, Sega Company, which
5 buys these die cast vehicles and called up and said
6 I owe you \$240,000. In other words, Sega owes the
7 estate \$240,000. But you're holding 40,000 in your
8 warehouse or on the docks or a combination of the
9 two, vehicles that I need. I'm not paying you the
10 240 until I get my 40.

11 That's actually a good deal for the
12 estate or for Upper Deck, but they want their
13 vehicles now, they want to get them into the market,
14 and if they don't get them timely you're going to be
15 destroying a good will.

16 The second call was from the
17 Pennsylvania State Police. They actually make die
18 cast vehicles, it's a small part of the business,
19 they make antique police cars. And the state
20 police, I don't know what the organization is,
21 Mr. Tobia could help me but --

22 THE WITNESS: There's the
23 Pennsylvania State Police Centennial Group and the
24 Pennsylvania State Police Historical and Educational
25 Memorial Society.

1 MR. MARTIN: But they're banging
2 their fists on the table asking for their vehicles
3 as well, and the last people that I want to
4 disappoint are the Pennsylvania State Police.

5 But in any event, in my experience of
6 doing this type of work for 20 years any time you
7 have an interruption in business value plummets
8 dramatically, and if that interruption lasts more
9 than a month or two people go elsewhere. People are
10 going to go elsewhere to find their product.
11 They're not going pay on their receivables.
12 Collection is going to be rendered difficult.

13 We have a opportunity here where the
14 business just shut down on May 31. We've got
15 vehicles shrink wrapped in the warehouse ready to
16 get delivered, no people to deliver them or fulfill
17 the orders until somebody buys us, and by doing it
18 now we'll be able to preserve that value and I
19 submit get the highest price at the auction next
20 week.

21 THE COURT: Who else is making the
22 vehicles?

23 THE WITNESS: RC-2 has just jumped
24 into the business this year of making sports license
25 logo vehicles.

1 Danbury Mint makes them. They've
2 been making them, but they sell in a different
3 marketplace. They sell them direct now, much higher
4 priced vehicles. We never saw them as a competitor
5 because they were in a direct -- direct mail
6 marketing, much higher priced vehicles.

7 We sort of had our own niche
8 business. But this year RC-2 has just obtained a
9 license for football and baseball die cast vehicles.
10 I'm not sure about the other sports.

11 THE COURT: Well, why wouldn't RC-2
12 bid on this?

13 THE WITNESS: They are interested.
14 They're involved in the due diligence process right
15 now.

16 THE COURT: Who's involved in the due
17 diligence process, RC-2, Upper Deck, and who else?

18 THE WITNESS: RC-2, Upper Deck, Topps
19 Company --

20 THE COURT: Topps is doing due
21 diligence?

22 THE WITNESS: Yes, Donruss Playoff.

23 THE COURT: Donruss is doing --

24 THE WITNESS: Liss Global.

25 THE COURT: Who's Liss Global?

1 THE WITNESS: Liss Global.

2 THE COURT: Oh, Liss, okay.

3 THE WITNESS: L-I-S-S.

4 THE COURT: Yeah.

5 THE WITNESS: Liss Global, BroadMark
6 Capital, which is the venture capitalist firm. I'm
7 not sure of anybody else.

8 MR. MARTIN: There's one other I sent
9 the package to. That's one, two, three, four, five
10 six, seven, there's one more, an eighth, Merrill
11 Lynch, that I sent the package to. There's a
12 individual there who I believe he used to work for
13 Fler way back when.

14 THE WITNESS: Correct.

15 THE COURT: Are you talking to
16 Merrill Lynch at all?

17 THE WITNESS: I have not talked to
18 them, but I have talked to an attorney at Wolf Block
19 who's friends with that individual who called me and
20 asked me if the -- this is about three, four weeks
21 ago, if the assets were for sale and this individual
22 would be interested.

23 So I spoke with Warren and got him in
24 touch so this way he could be in the process as
25 well.

1 THE COURT: Other than this I guess
2 two times before you tried to sell this, correct?

3 THE WITNESS: One time in -- one time
4 in '03, '04, early '04 and then just before we
5 entered into the assignment.

6 THE COURT: Did you work there before
7 the Grasses bought it?

8 THE WITNESS: Yes, I did.

9 THE COURT: Were you involved with
10 the sale to the Grasses?

11 THE WITNESS: Yes, I was.

12 THE COURT: How much did they pay for
13 it?

14 THE WITNESS: 26 million.

15 THE COURT: And when was that?

16 THE WITNESS: It was January of 1999.
17 It was owned by Marvel Entertainment Group at the
18 time.

19 THE COURT: And you're private,
20 right?

21 THE WITNESS: Correct.

22 THE COURT: And when does your fiscal
23 year end?

24 THE WITNESS: December 31.

25 THE COURT: And for your last fiscal

1 year did you have a profit or loss?

2 THE WITNESS: We had a loss.

3 THE COURT: How much was your loss?

4 THE WITNESS: 3.5 million operating
5 loss.

6 THE COURT: And how many years have
7 you been running at a loss?

8 THE WITNESS: The last three years
9 we've run a loss.

10 THE COURT: And what were the losses
11 before, about?

12 THE WITNESS: 3.3 million in '02, 11
13 and a half million in 0 -- '03, and then 3.5 in '04
14 operating loss.

15 THE COURT: What do you think about
16 and, again, this is a question you may want to
17 object to, what do you think about Mr. Martin's idea
18 that whatever the auction brings out that's what
19 it's worth? What's your view of that?

20 THE WITNESS: I agree, because of
21 the -- because of the licensing issue it really --
22 there are -- there's a limited scope of individual
23 corporations that could buy the business from a
24 trading card standpoint.

25 So I think that, you know, I think

1 we've seen the decline in the trading card market
2 over the last two or three years. Even -- we've
3 seen the decline in our business value just from
4 last year to this year alone, offers that were made
5 prior to the assignment.

6 So I believe that all the -- all the
7 players are -- that would be viable buyers to this
8 business have been notified. I think they're all
9 been given the opportunity to do the due diligence,
10 which also includes talking with the leagues to see
11 if they could buy the trademarks or buy the die cast
12 business, will they be able to obtain licenses,
13 because without the licenses you're not -- you
14 really don't have much of a business in the trading
15 card or the die cast side.

16 THE COURT: So the die cast is little
17 cars?

18 THE WITNESS: Correct.

19 THE COURT: And the only little cars
20 that you make are ones that have like the Phillies
21 on them? You don't make little cars which are just
22 yellow or --

23 THE WITNESS: No, that's -- we don't
24 compete in that market place. That's -- that's the
25 Matchbox Hot Wheels.

1 THE COURT: Right.

2 THE WITNESS: All of our sales have
3 logos on them, with the exception of the police
4 vehicles that we deal with. Those are logo'd to any
5 particular state that we do business with. We'll
6 occasionally do custom order jobs for businesses,
7 but put the business logo on but most of them, 99
8 per cent of the businesses have sports logo
9 business.

10 THE COURT: Okay. Explain again
11 about the specifics of -- let me -- I didn't really
12 ask you this question. What would happen if you
13 divided up? In other words, just sell the things
14 that you are having problems with, the ones that you
15 need to do this quick delivery for the football
16 season? Football season is your only problem, isn't
17 it, or are you having a problem with basketball
18 season or hockey season? What problems are you
19 having?

20 THE WITNESS: We've have problems
21 with potentially all of those because --

22 THE COURT: But not baseball?

23 THE WITNESS: Baseball as well,
24 because we should be selling the reorders of
25 baseball business right now and we're missing out

1 on. We've only sold half of our projections for
2 baseball this year because we shut down in May. The
3 rest of the baseball season particular sell June,
4 July, August, September.

5 So all the sports present a problem.
6 Some because we have inventory that we can't sell
7 right now and the season will soon end and some
8 because we have inventory but the season's getting
9 ready to begin so we're missing the window, which
10 would be football, and then others like hockey and
11 basketball where if you acquire would be able to
12 obtain a license we still have a three to four month
13 turn around potential from China to make the
14 product, get it approved by the leagues, bring it
15 over here and get it out the door.

16 We were -- in May we should have been
17 sending the leagues for approvals, the NBA, at least
18 being in the NHL, what we were going to be selling
19 in September. Since we were shut down those haven't
20 gone over so that's a process.

21 Once everything's approved if it's
22 approved on the first shot then it needs to go over
23 to China, it takes 30 days to make over there.
24 There's another approval process by the leagues.
25 And then if everything is good at that point in time

1 then it takes four to six weeks to ship over here by
2 boat. It's too -- it's not cost effective at all to
3 fly things over here, 'cause it's just too heavy,
4 too much weight.

5 So right now we are pushing up
6 against a -- not only football but lending our
7 hockey and basketball sales and if we have to sell
8 basketball and hockey in November, we're not --
9 definitely not we're going to make half the sales,
10 if that, that we normally would have had.

11 MR. MARTIN: Judge -- I'm sorry.

12 THE WITNESS: One more thing, and
13 with again, RC-2 coming into the picture this year
14 has not only a potential buyer but a competitor. If
15 we lose our customers because they've been canceled,
16 some of these orders that are in the system, they
17 may go to RC-2 and buy a product from them. Even
18 though it's a slightly different product, it's still
19 a Philadelphia Phillies product or a Dallas Cowboys
20 product.

21 MR. MARTIN: Your Honor, there's an
22 additional legal problem with separating out the
23 two, which became apparent to us in our initial --
24 in my initial sales discussions with Donruss and
25 Liss.

1 Donruss wanted to buy the trade name
2 Fleer, which arguably that could wait. Okay? And
3 Liss wanted to buy the die cast business, which
4 we've I think made evidently abundantly clear can't
5 wait.

6 The problem is that the Fleer name is
7 owned by the Fleer SkyBox Company, the trading card
8 company. And if you were to sell the -- the die
9 cast vehicles to somebody else and try to sell the
10 Fleer name later, well, the die cast vehicle side of
11 the business wouldn't be able to put out vehicles
12 with the name Fleer on it, unless it negotiated a
13 license agreement.

14 And that became very complicated and
15 was one of the reasons why, in my discretion, the
16 offer from Upper Deck which bought both sides at the
17 same time, we didn't have to worry about two
18 different companies and license -- negotiating
19 licensing agreements between them was a -- well,
20 first of all, it was \$500,000 higher than the other
21 two combined and secondly, it didn't have those
22 issues.

23 THE COURT: Now, when you say offer
24 you mean to be the stalking horse or --

25 MR. MARTIN: Yes. Yes.

1 Just to follow up on that further,
2 the two folks who Liss -- who had the offer of a
3 million dollars on the Collectibles side and Donruss
4 had the \$500,000 offer on the Fleer side, on the
5 trade name side, have both come to me since and I've
6 invited -- they've shared due diligence, invited
7 them to bid but said you folks have to work out
8 between you all licensing issues, don't come to the
9 auction and tell me you're going to close but you
10 still have to pick up -- it's contingent upon
11 working out a license.

12 THE COURT: Let me ask you, I'm going
13 to leave you alone for a little while.

14 Right now then do you have a
15 guaranteed bid from Upper Deck of 2 million? In
16 other words, when I say guaranteed you, they have
17 the -- they -- let me understand this: They have
18 the right to say we're not bidding, they have a
19 right to bid no less than \$2 million, if they say
20 we're not bidding do they still get \$60,000?

21 MR. MARTIN: No.

22 THE COURT: Okay. So they can't bid
23 less than 2 million?

24 MR. MARTIN: Correct.

25 THE COURT: Okay.

1 MR. MARTIN: Correct.

2 THE COURT: So --

3 MR. MARTIN: They do have a due --

4 THE COURT: They get it for 2 million
5 for the next --

6 MR. MARTIN: They have a due
7 diligence period, which expires next Wednesday.
8 Okay?

9 THE COURT: What time is this
10 auction?

11 MR. MARTIN: The auction is Thursday
12 at 2:30.

13 THE COURT: Thursday at 2:30. And
14 where is it?

15 MR. MARTIN: It's at my office, 100
16 Southgate Parkway, Morristown.

17 THE COURT: And what time does the
18 due diligence period expire?

19 MR. MARTIN: It expires I believe at
20 the close of business Wednesday.

21 THE COURT: Okay. Let's say five
22 o'clock Wednesday. Five o'clock Wednesday they say
23 we've done our due diligence. We're not bidding.
24 They do not get the \$60,000. Is that the way it
25 works? Do they tell the world we're not bidding or

1 do you ever have to walk away and walk in at 2:30 on
2 Thursday?

3 MR. MARTIN: That's up to Upper Deck.

4 THE COURT: Okay.

5 MR. MARTIN: They've got to tell me
6 by the close of business Wednesday.

7 THE COURT: And you don't have to
8 tell anybody else, if they ask you? I'm not going
9 to ask you. I'm just wondering.

10 Okay. I think we are going to
11 come -- let's come back at 1:30 and we'll see where
12 we're going to go. Okay. Anything else?

13 MR. MAIRO: Nothing further, your
14 Honor.

15 THE COURT: Okay. Okay.

16 Yeah, we'll hang up and we'll start
17 you guys back up more or less 1:30, sometime between
18 1:30 and two o'clock.

19 MS. COHEN: Thank you.

20 THE COURT: Okay. Thank you.

21 (Luncheon recess from 12:07 p.m. to
22 2:05 p.m.)

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C E R T I F I C A T E

I, SUSAN D. GUNELSON, Certified Shorthand Reporter, License No. 763, and Notary Public of New Jersey, do hereby certify that prior to the commencement of the examination, the witness was duly sworn by me.

I DO FURTHER CERTIFY, that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the date, time, and place aforementioned.

I DO FURTHER CERTIFY that I am neither a relative nor employee, nor attorney or counsel to any parties involved; that I am neither related to, nor employed by any such attorney or counsel, and that I am not financially interested in the action.

I DO FURTHER CERTIFY that this transcript has been prepared in accordance with NJ ADC 13:43-5.9.

SUSAN D. GUNELSON, C.S.R., R.P.R.
A NOTARY PUBLIC OF THE STATE OF NEW JERSEY
My Commission Expires: January 20, 2007

Date: July 9, 2005