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In the Matter of the General Assignment for  
the Benefit of Creditors of Fleer/SkyBox  
International LP

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

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

DOCKET NO: P-2005-1394

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

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

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

DOCKET NO.: P-2005-1408

**OBJECTION TO ASSIGNEE'S MOTION FOR ORDER (1) APPROVING AUCTION  
PROCEDURES AND SCHEDULING AUCTION DATE AND (2) AUTHORIZING SALE  
OF SUBSTANTIALLY ALL OF THE REMAINING ASSETS OF FLEER/SKYBOX  
INTERNATIONAL LP**

The Major League Baseball Players Association ("MLBPA"), through its undersigned  
counsel, hereby files its objection to the Motion of Warren J. Martin Jr. (the "Assignee"),  
Assignee for the Benefit of Creditors of Fleer/SkyBox International LP ("Fleer/SkyBox"), and

Assignee for the Benefit of Creditors of Fleer Collectibles, LLC ("Fleer Collectibles"), for Order (1) Approving Auction Procedures and Scheduling Auction Date and (2) Authorizing Sale of Substantially All of the Remaining Assets of Fleer/SkyBox International LLP (the "Motion"), and respectfully represents as follows:

1. MLBPA is the collective bargaining representative for all current Major League Baseball players. MLBPA also serves as the group licensing agent on behalf of the players.
2. Until May 23, 2005, MLBPA licensed certain rights and trademarks (as described more fully below) to Fleer/Skybox and Fleer Collectibles (collectively, "Fleer" or the "Licensee") for use by Fleer/Skybox in its business of producing and selling trading cards and plastic puzzle cards and by Fleer Collectibles in its business of producing and selling die-cast miniature replica vehicles.
3. The Assignee has failed to address intellectual property issues or provide for the pre-qualification of bidders in the Motion or bid procedures. The auction catalog contains certain assets including, *inter alia*, trading cards, player autographs pursuant to the individual players' Highlight Agreements, and digitized images of players (the "Protected Assets"), all of which are subject to the intellectual property rights of MLBPA. MLBPA licensed rights to Fleer for limited uses. The limited license was terminated prior to the appointment of the Assignee. Unless and until the rights of MLBPA in the Protected Assets are resolved, the Assignee's sale of Protected Assets is illegal.
4. MLBPA objects to the sale as described by the Assignee in the Motion. Because MLBPA does not wish to interfere with the sale any more than is necessary to protect its rights, however, MLBPA will not object to the sale if the Assignee, before relinquishing possession of

any Protected Assets, requires every prospective bidder and purchaser of Protected Assets to sign the statement (the "MLBPA Rights Acknowledgement") attached as Exhibit A hereto and performs the additional requirements set forth in paragraph 19 hereof.

5. Pursuant to the terms and conditions set forth in the License Agreement dated January 1, 2003 between Fleer and MLBPA (the "License Agreement"), MLBPA granted to Fleer a non-exclusive, non-transferable, non-assignable license to use the names, numbers, nicknames, likenesses, signatures, pictures, playing records, and/or biographical data of Major League Baseball players (the "Rights") and certain logos, names and symbols of MLBPA (the "Trademarks") for narrowly circumscribed purposes. Specifically, Fleer was authorized to use the Rights and Trademarks in association with the manufacture, offering for sale, sale, advertising, promotion, shipment and distribution of trading cards, die-cast model vehicles, and plastic puzzle cards (the "Licensed Products."). License Agreement, Section I(A). A copy of the License Agreement has been filed under seal as Exhibit B.

6. Fleer only received a license to use the Rights and Trademarks in connection with Licensed Products; ownership of these rights remained vested at all times in MLBPA:

It is understood and agreed that MLBPA is the sole and exclusive holder of all right, title and interest in and to the Rights and/or the Trademarks for the duration of this Agreement. Nothing contained in this Agreement shall be construed as an assignment to Licensee of any right, title and/or interest in or to the Rights and/or the Trademarks, it being understood that all right, title and interest relating thereto are expressly reserved by MLBPA except for the rights being licensed hereunder."

License Agreement, Sections 8(A)-(B).

7. Similarly, MLBPA retained sole ownership of the goodwill associated with use of the Rights and/or the Trademarks:

Licensee recognizes the value of the goodwill associated with the Rights and/or the Trademarks and acknowledges that the Rights and/or the Trademarks, and all rights therein and the goodwill pertaining thereto, belong exclusively to MLBPA....Licensee agrees that its use of the Rights and/or the Trademarks shall inure to the benefit of MLBPA and that Licensee shall not, at any time, acquire any rights in the Rights and/or the Trademarks by virtue of any use it may make of the Rights and/or the Trademarks. Licensee hereby assigns to MLBPA any and all trademarks and trademark rights in the Trademarks and/or Rights created by such use, together with the goodwill of the business in connection with which such trademarks are used.”

License Agreement, Sections 9(A)-(B).

8. On May 23, 2005, MLBPA sent a written termination notice (the “Termination Notice”) to Fler, a copy of which is attached as Exhibit C hereto. The Termination Notice set forth multiple independent grounds upon which MLBPA was authorized to terminate the License Agreement immediately.

9. First, in violation of Section 6 of the License Agreement, Fler failed to submit to MLBPA for approval redemption cards contained within several 2005 products, and distributed such products without having obtained the required approval of MLBPA. Such failure triggered Section 18(A)(i)(a), which provided that MLBPA shall immediately have the right to terminate the License Agreement where Fler “[m]anufactures, offers for sale, sells, advertises, promotes, ships, distributes, and/or uses in any way Licensed Products and/or Promotional and Packaging Material without having the prior written approval of MLBPA.”

10. Second, Fler willfully distributed products containing redemption cards at a time when Fler knew or should have known that it was unlikely to fulfill its redemption obligations. This willful action by Fler resulted in significant customer dissatisfaction, which, in turn, damaged the goodwill associated with the Rights and Trademarks and reflected adversely on

MLBPA as licensor of those products, thereby triggering Section 18(A)(i)(e) of the License Agreement, which authorized immediate termination by MLBPA where Fleer “directly or indirectly...takes any action in connection with the manufacture, offering for sale, sale, advertising, promotion, shipment and/or distribution of the Licensed Products and/or the Promotional or Packaging Material which damages or reflects adversely upon MLBPA, the Rights and/or the Trademarks.”

11. Third, on at least five (5) separate occasions during the past twelve (12) months, Fleer failed to make timely payments of royalties and/or submit royalty statements due to MLBPA, as required by Sections 3 and 4 of the License Agreement. Such delinquencies triggered Section 18(a)(1)(g) of the License Agreement, which authorized immediate termination where Fleer “[t]wo or more times during a twelve-month period fails to make timely payment of royalties when due or fails to make timely submission of royalty statements when due.”

12. In addition to the three aforementioned bases for immediate termination, MLBPA also cited the following material breaches by Fleer: (i) failure to pay a \$100,000 co-op marketing payment by February 15, 2005 as required pursuant to Section 10(b)(iii) of the License Agreement; (ii) failure to remit \$1,750,206 to MLBPA in unspent promotional contribution funds for the years 2002, 2003, and 2004, as is required by Section 10(A) of the License Agreement; and (iii) failure to make payments, totaling over \$550,000, due to numerous players pursuant to Highlight Agreements executed on their behalf by MLBPA pursuant to Section 1(D) of the License Agreement. Pursuant to Section 18(a)(ii) of the License Agreement, if Fleer commits a material breach of any other terms of the License Agreement, and Fleer fails to cure such default and furnish reasonable proof of its cure to MLBPA within fifteen (15) days after

receiving written notice of breach and a demand to cure from MLBPA, MLBPA has the right to terminate the License Agreement by giving written notice to Fleer.

13. Section 18(a)(ii) of the License Agreement sets forth two additional grounds for termination which, although not cited by MLBPA in the Termination Notice, are applicable. This Section authorized termination in the event that Fleer makes an assignment for the benefit of creditors or discontinues its business, both of which have indisputably occurred. As neither of these defects will be cured, they add to the myriad of bases upon which the License Agreement was properly terminated.

14. Following the termination of the License Agreement, Fleer and its assigns were prohibited from selling assets which make use of the Rights and/or the Trademarks. Pursuant to Section 19(A) of the License Agreement:

upon termination of this Agreement, Licensee and its receivers, representatives, trustees, agents, administrators, successors and/or permitted assigns shall have no right to manufacture, offer for sale, sell, ship, advertise, promote and/or distribute Licensed Products or to use in any way the Rights, the Trademarks, or any Promotional and Packaging Material relating to the Licensed Products.

15. Additionally, pursuant to Section 19(D) of the License Agreement, Fleer and its assigns must, after expiration or termination of the License Agreement:

refrain from further use of the Rights and/or the Trademarks or any further claim to the use thereof, either directly or indirectly, in connection with the manufacture, offering for sale, sale, advertising, promotion, shipment and/or distribution of any products, Promotional Material or otherwise. Licensee shall be responsible to MLBPA for any damages caused by the unauthorized use by Licensee or by others of any materials created by or for Licensee and embodying the Rights and/or the Trademarks following expiration or termination of this Agreement. In the event of any such unauthorized use of any such materials by Licensee or others, Licensee shall may MLBPA for liquidated damages and not as a penalty or as damages for any breach of this Agreement or as a substitute for

other payments due to MLBPA and [sic] the sum of Five Hundred Thousand Dollars (\$500,000).

16. Pursuant to these provisions of the License Agreement, as of May 23, 2005, Fleer had no right to sell or assign to others the right to sell any merchandise utilizing the Rights and Trademarks of MLBPA. Indeed, with the exception of the categories of Licensed Products which were specifically identified in the License Agreement, Fleer never had the right to sell merchandise utilizing the Rights and Trademarks.

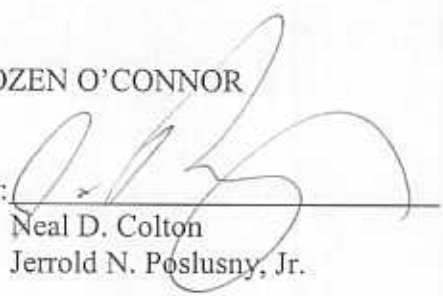
17. Accordingly, the Assignee, who was assigned the rights and interests of Fleer on June 10, 2005, is similarly barred from selling merchandise which makes use of the Rights and the Trademarks. According to the relevant New Jersey statute: "Every assignee shall have as [sic] full power and authority to dispose of all of the assignor's property, except as otherwise may be provided, as the assignor had at the time of the general assignment." N.J.S.A. 2A:19-13.

18. At the time of Fleer's assignment for the benefit of creditors, Fleer had no authority to dispose of assets – of any kind – which bear the names, numbers, nicknames, likenesses, signatures, pictures, playing records, and/or biographical data of Major League Baseball players. As a direct consequence, the Assignee, as successor to Fleer, does not have such authority either. If the Assignee chooses to conduct an unauthorized sale of Protected Assets, MLBPA will pursue any and all legal and equitable remedies against the Assignee, including but not limited to the recovery of liquidated damages.

19. MLBPA only seeks to protect its rights; a modicum of cooperation by the Assignee is all that is required. MLBPA will not seek injunctive relief to prevent the sale of Protected Assets so long as the Assignee does all of the following: (i) cause the MLBPA Rights Acknowledgment to be posted on the auction website beginning no later than September 3, 2005

and continuing through the end of the auction; (ii) announce at the commencement of the auction that each and every purchaser of Protected Assets will be required to sign the MLBPA Rights Acknowledgement; (iii) collect a signed MLBPA Rights Acknowledgment from each and every prospective bidder and purchaser of Protected Assets before relinquishing possession of such assets; and (iv) provide a manually signed copy of each MLBPA Rights Acknowledgement to MLBPA. This is an eminently reasonable compromise on the part of MLBPA, as it will enable the Assignee to obtain value for the Protected Assets while giving MLBPA the means to protect and enforce its intellectual property rights.

Dated: August 26, 2005

COZEN O'CONNOR  
By:   
Neal D. Colton  
Jerrold N. Poslusny, Jr.

Attorneys for The Major League Baseball  
Players Association

In the Matter of the General Assignment for  
the Benefit of Creditors of Fleer/SkyBox  
International LP

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

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

DOCKET NO: P-2005-1394

**ACKNOWLEDGEMENT OF RIGHTS AND INTERESTS OF MAJOR LEAGUE  
BASEBALL PLAYERS ASSOCIATION AND ITS MEMBERS IN BASEBALL  
MERCHANDISE**

I, \_\_\_\_\_, hereby acknowledge that all items subject to the License Agreement and Player Highlight Agreements between Fleer/Sky Box International L.P. and the Major League Baseball Players Association (MLBPA) or members of the MLBPA, such items bearing the names, numbers, likenesses, signatures, pictures, playing records or biographical data of current Major League Baseball players (the "Rights") as well as of certain trademarks owned or registered by the Major League Baseball Players Association (MLBPA) (the "Trademarks"), hereinafter referred to as the "Baseball Merchandise", to be sold at auction on September 9, 2005 by Warren J. Martin, in his capacity as Assignee for the Benefit of Creditors of Fleer/Sky Box International L.P. (the "Assignee"), are being sold without the consent of the MLBPA and its members and are subject to the MLBPA's exclusive ownership of the Rights and Trademarks.

I hereby acknowledge and agree that any of the Baseball Merchandise that I purchase from the Assignee cannot be put to commercial use (including without limitation any sale or transfer for commercial purposes) without the prior written consent of the MLBPA.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

MLBPA  
MLB PLAYERS CHOICE

EVIE C. GOLDSTEIN  
ASSISTANT GENERAL COUNSEL, LICENSING



May 23, 2005

**VIA FACSIMILE & U.S. MAIL**

Fleer/Skybox International LP  
Fleer Collectibles LLC  
1120 Route 73, Suite 300  
Mt. Laurel, NJ 08054  
Attention: Roger Grass

Gentlemen:

This shall serve as formal notice that, pursuant to Sections 18(A)(i)(a), 18(A)(i)(e), 18(A)(i)(g), and 18(B) of the License Agreement between Fleer/Skybox International LP ("Fleer") and the Major League Baseball Players Association ("MLBPA") dated as of January 1, 2003 (the "Agreement"), MLBPA hereby terminates Fleer as a licensee of the MLBPA effective immediately.

Section 18(A)(i)(a) provides that MLBPA shall have the right immediately to terminate the Agreement where Licensee "manufactures, offers for sale, sells, advertises promotes, ships, distributes and/or uses in any way Licensed Products and/or Promotional and Packaging Material without having the prior written approval of MLBPA." Paragraph 18(A)(i)(e) also authorizes immediate termination where Licensee "directly or indirectly . . . takes any action in connection with the manufacture, offering for sale, sale, advertising, promotion, shipment and/or distribution of the Licensed Products . . . which damages or reflects adversely upon MLBPA, the Rights and/or the Trademarks." Section 18(A)(i)(g) authorizes immediate termination where Licensee "two or more times during a twelve-month period fails to make timely payment of royalties when due or fails to make timely submission of royalty statements when due."

MLBPA invokes its right to terminate the License Agreement based on three separate provisions, each of which independently warrants immediate termination. First, in violation of Section 6 of the Agreement, Fleer failed to submit to the MLBPA for approval redemption cards contained within several 2005 products, including without limitation Flair Baseball, and distributed such products containing redemption cards without having obtained the required approval of the MLBPA. Moreover, it is apparent that Fleer willfully distributed these products containing redemption cards at a time when Fleer knew or should have known that it was unlikely to fulfill its redemption obligations. This willful action by Fleer has resulted in significant customer dissatisfaction which, in turn, has damaged the goodwill associated with the Rights and Trademarks and reflects adversely on the MLBPA as licensor of those products.



MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION  
12 E. 49th St. • New York, NY 10017  
(212) 826-0809 (212) 752-4378 fax

Further, on at least five (5) separate occasions during the past twelve (12) months, Fleer has failed to make timely payments of royalties and/or submit royalty statements due to the MLBPA, as required by Sections 3 and 4 of the License Agreement.

In addition to the foregoing violations, Fleer has defaulted on payments owed both to the MLBPA and to numerous Major League baseball players with whom Fleer has entered into Highlight Agreements, specifically as follows:

1. Pursuant to Paragraph 10(B)(iii) of the Agreement, Fleer owes the MLBPA One Hundred Thousand Dollars (\$100,000) for its coop marketing commitment, which payment was due on February 15, 2005, and which Fleer has failed to pay notwithstanding multiple requests for payment.
2. Pursuant to Paragraph 10(A), any portion of the required annual promotional contribution not spent by Fleer in conformity with the Agreement is to be paid directly to the MLBPA at the end of the year. Fleer owes the MLBPA \$1,750,206 in unspent promotional contribution funds for the years 2002, 2003 and 2004 collectively, as revealed by audit conducted on behalf of the MLBPA on April 6-7, 2005. Fleer has failed to pay this obligation notwithstanding multiple requests by the MLBPA and demand therefore pursuant to correspondence from Chad Hansen dated May 16, 2005.
3. Fleer is in default of its obligations to numerous Major League baseball players with respect to payments due such players under Highlight Agreements executed on their behalf by the MLBPA pursuant to Section 1(D) of the License Agreement. It is our understanding that Fleer is delinquent in making payments totaling over \$550,000 in the aggregate, notwithstanding repeated demands for payment made by the MLBPA as well as representatives of the individual players.

Each of the foregoing defaults constitutes a material breach of the License Agreement which Fleer has failed to cure as required, and with respect to which the MLBPA is entitled to terminate the License Agreement pursuant to Section 18(A)(ii) thereof.

In light of MLBPA's termination of the Agreement, we draw your attention to Fleer's obligations under the provisions of Section 19 of the License Agreement, which deals with post-termination rights and obligations. Specifically, as provided in Section 19(A), **effective immediately**, Fleer "shall have no right to manufacture, offer for sale, sell, ship, advertise, promote and/or distribute Licensed Products or to use in any way the Rights, the Trademarks, or any Promotional and Packaging Material relating to the Licensed Products."

Additionally, Fleer must "refrain from further use of the Rights and/or the Trademarks or any further claim to the use thereof, either directly or indirectly, in connection with the manufacture, offering for sale, sale, advertising, promotion, shipment and/or distribution of any products, Promotional Material or otherwise." (See Section 19(D))

Finally, pursuant to the provisions of Section 19(B), all royalties on sales, shipments and/or distributions made by Fleer prior to its receipt of this notice, and all Guaranteed Minimum Royalties due pursuant to the License Agreement are now immediately due and payable to

MLBPA. The MLBPA hereby makes demand for immediate payment of such amounts, and other amounts referenced herein (including without limitation all sums due pursuant to Highlight Agreements with Major League baseball players).

Sincerely,



Evie C. Goldstein

cc: Don Fehr  
Judy Heeter  
Richard White  
Evan Kaplan  
Alex Grass  
Chris Tobia