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Benefit of Creditors of Fleer/Skybox International, LP

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: 2005-1394

**VERIFIED APPLICATION IN SUPPORT OF VERIFIED COMPLAINT
ON ASSIGNEE'S FINAL ACCOUNT PURSUANT TO N.J.R. 4:83-1 et seq.
APPROVING AND ALLOWING (I) ABANDONMENT/DESTRUCTION
OF BOOKS, RECORDS AND REMAINING MISCELLANEOUS
PROPERTY, SETTLEMENT WITH IRON MOUNTAIN AND SALE OF
REMAINING DE MINIMIS ASSETS, (II) ESTABLISHMENT OF
ADMINISTRATIVE ESCROW AND (III) DISTRIBUTIONS ON
REMAINING CREDITOR CLAIMS, FINAL ACCOUNTING AND
REDUCTION OF BOND**

Warren J. Martin Jr. (the "Assignee"), Assignee for the Benefit of Creditors of
Fleer/Skybox International, LP ("Fleer/Skybox"), by and through his counsel, Porzio, Bromberg
& Newman, P.C. ("Porzio"), by way of Verified Application in Support of Verified Complaint
on Assignee's Final Account Pursuant to N.J.R. 4:83 et seq. Approving and Allowing
(I) Abandonment/Destruction of Books, Records and Remaining Miscellaneous Property,

Settlement with Iron Mountain and Sale of Remaining *De Minimis* Assets, (II) Establishment of Administrative Escrow and (III) Distributions on Remaining Creditor Claims, Final Accounting and Reduction of Bond (the "Application"), 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/Skybox was primarily in the business of producing and selling a wide variety of sport and entertainment trading cards through a staff of approximately sixty (60) full-time employees. Prior to the Assignment Date, Fleer/Skybox had ceased all operations and terminated all employees.

3. This Application is filed in support of the relief sought by the Assignee in his Verified Complaint on Assignee's Final Accounting Pursuant to N.J.R. 4:83-1 *et seq.* Approving and Allowing (I) Abandonment/Destruction of Books, Records and Remaining Miscellaneous Property, Settlement with Iron Mountain and Sale of Remaining *De Minimis* Assets, (II) Establishment of Administrative Escrow and (III) Distributions on Remaining Creditor Claims, Final Accounting and Reduction of Bond (the "Verified Complaint"). By way of the Verified Complaint and this Application, the Assignee seeks judgment on his final accounting and all other counts contained in the Verified Complaint. The Assignee's final accounting (the

“Final Accounting”) and Fleer/Skybox Index of Account are annexed to the Verified Complaint¹ as **Exhibit A**.

Status of Estate Funds

4. On the Assignment Date, Fleer/Skybox’s assets were less than ten percent of its liabilities. The following paragraphs exhibit the status of estate funds and how, under the direction of the Assignee, Fleer/Skybox drastically improved this asset-to-liability ratio.

5. On July 14, 2005, about six weeks after the Assignment Date, the Assignee held a court-approved auction of all intellectual property assigned to the Assignee by Fleer/Skybox, together with the assets assigned to the Assignee in a separate, previously administered Fleer Collectibles, LLC (“Fleer Collectibles”) matter. (The Fleer Collectibles matter was closed on April 5, 2007 following a 100% distribution to all creditors.)

6. The winning bidder at the First Auction was FSB Acquisition Company, LLC, an entity related to the Upper Deck Company, which purchased the combined Fleer Assets for \$6.1 million (the “Winning Bid”). This amount exceeded the pre-assignment contract price for these assets by \$3.0 million. In connection with the Winning Bid for both entities, \$3.5 million was allocated for the Fleer/Skybox estate.²

7. On September 9 and September 30, 2005, the Assignee held a second court-approved auction of certain tangible assets of Fleer/Skybox, including sports memorabilia and office equipment, in which he recovered a total of \$969,592.00.³ This amount exceeded the appraised value of the same assets by more than 35%.

¹ Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Verified Complaint.

² The 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 Auction Proceeds Between the Fleer/Skybox and Fleer Collectibles Estates Based on the Fair Market Values of the Assets Sold from Each Estate (the “Allocation Motion”), dated November 30, 2005.

³ This amount includes a 10% buyer’s premium that was later paid out as part of the compensation to the Auctioneer, so the net proceeds to the Assignee were \$872,632.80.

8. Pursuant to Order dated January 13, 2006, the Assignee entered into an agreement with Flight Options, LLC ("Flight Options") whereby Flight Options was required to repurchase Fleer/Skybox's fractional interest in two aircraft for a total of \$234,982.00. The Assignee has received those funds.

9. Pursuant to Order dated January 17, 2006, the Assignee sold the "Redemption Card Program," including the remaining redemption card inventory, to ARA Collectibles, thereby bringing \$400,000.00 into the estate.

10. Pursuant to Order dated August 31, 2007, the Assignee settled the claims of Fleer/Skybox's senior secured creditor (the "Senior Secured Creditor Settlement") who posed a potential risk of consuming all funds that might otherwise be available for distribution to Fleer/Skybox's unsecured creditors. The Senior Secured Creditor Settlement achieved an approximately \$3.65 million reduction of the senior secured creditor's secured claim and a release and discharge of all remaining claims of the senior secured creditor against Fleer/Skybox, including a waiver of an unsecured claim in excess of \$13 million. The Senior Secured Creditor Settlement did, as a *quid pro quo*, require a distribution of \$1.85 million to the senior secured creditor, which was made at the time of the Senior Secured Creditor Settlement, and is reflected in the Final Accounting. See Verified Complaint, **Exhibit A**, ¶ 5(G).

11. Pursuant to Order dated June 6, 2008, the Assignee retained Mitnick & Malzberg, P.C. ("M&M") on a contingency fee basis to pursue recovery of preferential transfers from parties that in total received \$10,000.00 or more in preferential transfers from Fleer/Skybox. The Assignee also sold for \$5,000.00 to SM Financial Corporation ("SMFC"), of which Steven Mitnick is a principal, the right to pursue recovery of preferential transfers from parties that in

total received less than \$10,000.00 in preferential transfers from Fleer/Skybox (the "SMFC Sale I").

12. Through the work performed by M&M and by Porzio with respect to the recovery of preferential transfers and/or settlement of preference litigation, the Assignee has received \$845,017.10 in cash payments, waivers of \$4,928,904.17 in claims against the Fleer/Skybox estate, and the assignment of \$14,631,825.74 in claims to the Fleer/Skybox estate.

13. Pursuant to Order dated December 12, 2008, the Court authorized the Assignee to earmark \$800,000.00 for an interim distribution to Fleer/Skybox's unsecured creditors (the "Interim Distribution"). The Interim Distribution provided for a pro rata distribution to creditors holding allowed and undisputed claims with reserves from the Interim Distribution set for (i) creditors holding claims subject to unresolved exceptions; (ii) creditors that the Assignee had been pursuing for the return of preferential transfers received in the four months prior to the Assignment Date; and (iii) creditors holding claims which are entitled to a pro rata interim distribution which totals less than \$35.00.

14. In addition to the foregoing reserves, a share of the Interim Distribution was redistributed back into the Fleer/Skybox estate as a result of settlements between the Assignee and such creditors; such proceeds can now be allocated into the Assignee's second distribution to unsecured creditors (the "Additional Unsecured Creditor Distribution Amount") for the benefit of all participating creditors. Further, a portion of the Interim Distribution was returned to the Fleer/Skybox estate as unclaimed/undeliverable, or such checks have not been cashed by certain creditors (the "Returned/Uncashed Checks"). Thus, the Assignee seeks to distribute Interim Distribution funds, which could not yet be distributed, in accordance with his Additional Unsecured Creditor Distribution Amount as described in the Verified Complaint.

15. On September 10, 2009, the Assignee moved the Court to reduce the bond maintained by the Assignee to save the estate approximately \$4,000.00 per annum in premium costs. On October 1, 2009, the Court entered an order authorizing a reduction of the bond.

16. In December 2009, the Assignee entered into an agreement in principal with Iron Mountain (the "Iron Mountain Agreement"), which is in the process of being finalized in writing. See Proposed Form of Iron Mountain Agreement annexed to the Verified Complaint as **Exhibit B**. The key terms of the Iron Mountain Agreement require Iron Mountain to waive its asserted claim against Fleer/Skybox in the amount of \$125,338.07 for post-Assignment Date storage fees, in exchange for the Assignee to waive his claim to recover \$21,106.43 in preferential transfers received by Iron Mountain. Pursuant to the Iron Mountain Agreement, the Assignee will also retain Iron Mountain at its standard contract rate of \$34,899.99 to destroy all Fleer/Skybox books, records and materials remaining at Iron Mountain's facilities (the "Stored Materials"), which includes, among other things, documents containing confidential personal information of former Fleer/Skybox employees.

17. Finally, the Assignee, in an effort to maximize the estate of Fleer/Skybox, agreed to forego his statutory right to receive a 20% (maximum) commission for services, and instead requested a commission of less than 7.5% approved by the Court on December 12, 2008. Further, no commission is being charged on collections made after December 12, 2008. This reduction of commissions has saved the Fleer/Skybox estate approximately \$800,000.00.

Distributions to Creditors

18. On or about June 17, 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"). Notwithstanding, in an effort to accommodate

creditors and pursuant to the terms of N.J.S.A. 2A:19-24, the Assignee continued to accept completed POC Forms past the POC Deadline.

19. Through October 2005, the Assignee received and accounted for approximately four hundred and twenty (420) completed POC Forms seeking a combined total of over \$45 million against the estate. The Assignee successfully objected to many of the completed POC Forms through Omnibus Exceptions to Claims of Creditors dated October 21, 2005 and October 28, 2008, and the Assignee successfully negotiated waivers and/or assignments of creditor claims through his pursuit to resolve preference litigation favorably to the estate. As a result of the Assignee's work, the allowed claims against Fleer/Skybox were reduced to \$22,615,756.17 (the "Allowed Claims").

20. On December 12, 2008, the Assignee was authorized to make the Interim Distribution to Fleer/Skybox's unsecured creditors and to reserve the issuance of payment for certain unresolved, preferential or negligible claims. As stated above, the Assignee continues to hold funds from Returned/Uncashed Checks arising out of the Interim Distribution. Upon approval of the Assignee's Final Accounting, as explained below, the Assignee will incorporate such Returned/Uncashed Checks from the Interim Distribution into the Additional Unsecured Creditor Distribution Amount.

21. As described in the Assignee's Verified Complaint and subsequent to the hearing held to settle the Assignee's Final Accounting, a supplemental accounting will be prepared (the "Supplemental Accounting") detailing all disbursements in accordance with this Court's rulings. Additionally, certifications of the Assignee's professionals will be submitted detailing the work performed on behalf of the Assignee and paid for by the Assignee during the Final Compensation Period.

22. Upon this Court's approval for funding the Administrative Escrow (defined below) and paying for any prioritized administrative expenses ahead of payments for non-administrative claims, *see In re General Assignment for the Benefit of Creditors of Holly Knitwear*, 115 N.J. Super. 564, 570 (Essex County Ct. 1971), in addition to the Assignee's requests contained in the Verified Complaint, the Assignee seeks court approval to issue the Additional Unsecured Creditor Distribution Amount.

Payment of Administrative Expenses

23. In addition to making the Interim Distribution, the Assignee has used estate funds to pay such administrative expenses as insurance premiums, filing fees, auctioneer costs, professional fees and consulting services.

24. On September 29, 2005, the Assignee filed a Verified Petition Authorizing Assignee to Pay Continental Auction Group, Inc. with respect to the Second Auction. On October 26, 2005, the Court entered an Order Authorizing Assignee to Pay Continental Auction Group, Inc., which approved the auctioneer's commission of 10% through collection of a buyer's premium charged to successful bidders at auction. Accordingly, the auctioneer was paid the 10% buyer's premium totaling \$91,129.30.

25. On April 6, 2006, the Assignee filed a verified Petition Authorizing Assignee to pay Continental Auction Group, Inc. (the "Second Continental Fee Application") with respect to the Redemption Card Sale. The Second Continental Fee Application was approved by this Court on April 28, 2006 and Continental's fees totaling \$40,000.00 were paid accordingly.

26. On November 21, 2008, the Assignee filed a Motion for Entry of an Order Authorizing 2008 Interim Distribution on Creditors' Claims, Presenting Interim Accounting and Awarding Assignee's Commission. On December 12, 2008, the Court entered an Order

Authorizing 2008 Interim Distribution on Creditors' Claims and Awarding Assignee's Commission in the amount of \$400,000. The Assignee's commission of \$400,000.00 was paid accordingly.

27. Over the pendency of this proceeding, the Assignee filed—on October 21, 2005, March 29, 2006, October 17, 2006, November 20, 2007, November 21, 2008 and October 1, 2009—applications for payment of professional fees and expenses (the “Professional Fee Applications”) totaling \$2,199,370.21 to pay the professional fees and expenses of all attorneys and accountants through the period covering the Assignment Date through August 31, 2009. The Professional Fee Applications were approved by this Court and awarded professional fees and expenses were paid totaling \$1,878,739.04 to Porzio, \$223,332.41 to Fox Rothschild and \$97,298.76 to The Stetz Firm. *See* Orders Authorizing Assignee to Provide Compensation for Services Rendered and Reimbursement of Expenses to Professionals, dated November 18, 2005, May 2, 2006, November 27, 2006, December 20, 2007, December 12, 2008 and October 30, 2009.

28. The remaining disbursements made by the Assignee on account of other administrative expenses are detailed in the Assignee's Final Accounting annexed to the Verified Complaint as **Exhibit A**.

Assignee's Pending Disbursements

29. As of December 31, 2009, the Fleer/Skybox estate currently has a cash balance of \$633,868.24. Assuming the relief requested herein is granted, the remaining account balance will be reduced in connection with paying administrative expenses and issuing the “Additional Unsecured Creditor Distribution Amount.”

30. Through this Application, the Assignee seeks authority to make a complete distribution of the Additional Unsecured Creditor Distribution Amount, allocating a pro rata share of the Additional Unsecured Creditor Distribution Amount to each of the Allowed Claims. Assuming this Court grants the relief requested in this Application, the Assignee will file the Supplemental Accounting, which will account for all distributions of the Additional Unsecured Creditor Distribution Amount made hereafter, as well as for any administrative expenses paid as provided in the Verified Complaint and requested Final Judgment.

31. The Assignee estimates that the total fees and expenses of Porzio, Fox Rothschild and The Stetz Firm combined following the period covered in the September 2009 Fee Application through the close of this case will not exceed \$225,000.00, which includes approximately \$125,000.00 already incurred from September 1, 2009 to date. Thus, the Assignee requests authorization to establish an administrative escrow (the "Administrative Escrow") in the amount of \$225,000.00. In the Supplemental Accounting to be submitted hereafter by the Assignee, the Assignee will include a detailed description of administrative fees and expenses incurred by the estate through the close of this assignment case.

32. As reflected in the Assignee's Verified Complaint, since this case involved considerable consumer claims and the capable involvement of the Burlington County Office of Consumer Affairs, the Assignee seeks further authority to donate any unused portion of the Administrative Escrow at the close of the case to the Consumer Education Fund of the Burlington County Office of Consumer Affairs.

LEGAL AUTHORITY

I. The Assignee Should be Granted Authority to Abandon/Destroy Books, Records and Assets, Enter into the Iron Mountain Agreement and Sell *De Minimis* Remaining Assets

Abandoning/Destroying Books, Records and Assets.

33. The Assignee has preserved the books, records and other remaining assets of Fleer/Skybox, including the Stored Materials, necessary to carry out his obligations as Assignee. The Assignee now seeks authorization to destroy and/or abandon the Stored Materials and other books, records and remaining assets of Fleer/Skybox. Destruction of the Stored Materials and other books, records and assets at this time will assist the Assignee in his effort to ensure that, *inter alia*, estate assets are not expended for continued storage charges for assets that are no longer of value to the Assignee or Fleer/Skybox's creditors and will also guard against any unnecessary release of personal confidential information of former Fleer/Skybox employees.

34. The New Jersey statute governing an assignment for the benefit of creditors (the "Assignment Statute") provides that:

Every assignee shall have 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. Thus, under the Assignment Statute, the Assignee is explicitly provided with broad latitude to dispose of assets.

35. The Assignee has analyzed the Stored Materials and other books, records and assets and determined that further review, valuation and/or marketing of the same will result in greater expense to the estate than the value likely to be recovered by the estate for such efforts. Rather than causing delay, incurring unnecessary costs and exposing former Fleer/Skybox employees to the risk of release of their personal information, the Assignee seeks authority to dispose of the Stored Materials as well as other books, records and assets. This

abandonment/destruction will optimize efficiency by expediting the final settlement of accounts of the estate and ultimately result in the Additional Unsecured Creditor Distribution Amount.

The Iron Mountain Agreement.

36. The Assignee has broad discretion to resolve claims. The Assignment Statute provides that:

Every assignee . . . may compromise, settle and compound all claims, disputes and litigations of the assignor, refer the same to arbitration, agree with any person concerning the same, redeem all mortgages and conditional contracts, and generally act as and do whatsoever the assignor might have lawfully done in the premises.

N.J.S.A. 2A:19-13. Thus, under the Assignment Statute, the Assignee is explicitly provided with broad latitude to resolve and settle claims and disputes.

37. In the instant case, the Assignee has reached an agreement in principal with Iron Mountain and therefore seeks authority to enter into the Iron Mountain Agreement substantially in the Proposed Form of Iron Mountain Agreement annexed to the Verified Complaint as **Exhibit B**, which includes, *inter alia*, Iron Mountain waiving its asserted claim against Fleer/Skybox in the amount of \$125,338.07 for post-Assignment Date storage fees, in exchange for the Assignee waiving his claim to recover \$21,106.43 in preferential transfers received by Iron Mountain and for the Assignee agreeing to retain Iron Mountain to destroy all Stored Materials at Iron Mountain's standard rate for such record destruction services in the amount of \$34,899.99.

Sale of Remaining De Minimis Assets.

38. Under the Assignment Statute, an assignee has the power to marshal and sell assets for the benefit of creditors of the estate. N.J.S.A. 2A:19-1 *et seq.* When conveying assets pursuant to the Assignment Statute, the assignee is required to show "reasonable care" regarding

the manner of conveyance. *Ely, et al. v. Credit Men's Adjustment, et al.*, 106 N.J. Eq. 472, 474 (N.J. Ch. 1930).

39. In Count I of the Verified Complaint, the Assignee seeks authority to sell the remaining *de minimis* assets of the Fleer/Skybox estate, including the Assignee's interest in unresolved preference litigation, unpaid default judgments pursuant thereto and miscellaneous records, agreements and materials (the "Remaining *De Minimis* Assets") to SMFC for \$10,000.00 (the "SMFC Sale II"). The Assignee, after exercising reasonable care and due diligence, has considered the status, value and cost of continued pursuit of recovery and/or liquidation of the Remaining *De Minimis* Assets, and has determined that the SMFC Sale II to SMFC for \$10,000.00 will relieve the Assignee and Fleer/Skybox's estate from the continued cost of maintaining and the expenses associated with liquidating the Remaining *De Minimis* Assets, which outweigh the value of these assets to the Assignee and to Fleer/Skybox's creditors.

40. The Assignee notes that only one creditor, California Sports Investments ("CSI"), is presently not entitled to share in distributions from the Assignee as a result of a pending preference action against CSI. Pursuant to N.J.S.A. 2A:19-2 & 19-3; N.J.S.A. 14A:14-4; 11 U.S.C. § 502(d); and N.J. R. 4:54, CSI may not receive a distribution while such preference action is unresolved. The amount of CSI's withheld distribution is approximately \$1,300.00. Accordingly, the Assignee proposes to transfer any distribution amounts owed to CSI to be held in M&M's trust account until further court order.

II. The Assignee Should be Granted Authority to Establish an Administrative Escrow

41. It is well-settled that administrative expenses take precedence over all non-administrative claims in an assignment for the benefit of creditors proceeding. *Spark v. La Reine Hotel Corp.*, 112 N.J. Eq. 398 (Ch. 1933); *Seindler v. Branford Rest.*, 97 N.J. Eq. 531 (1925).

As articulated by the *Holly Knitwear* court:

[A] substantial line of cases has held that administrative expenses must take priority over all other claims. These general expenses of receivership⁴ may be paid out of the funds in a receiver's hands before the payment of debts, whether the latter be secured or unsecured. *Laudan v. ABC Travel Sys. Inc.*, 64 N.J. Super. 204 (Ch. 1960); *Pemberton Lumber and Millwork Indus. v. William G. Ridgway Co.*, 38 N.J. Super. 383 (Ch. Div. 1955); *Albert and Kernahan v. Franklin Arms*, 107 N.J. Eq. 468 (E. & A. 1931).

In re Gen. Assignment for the Benefit of Creditors of Holly Knitwear, 115 N.J. Super. 564, 570 (Essex County Ct. 1971). See also *In re Kampelman*, 165 N.J. Super. 352 (Ch. Div. 1979) (under New Jersey state insolvency law, administrative expenses come first in the distribution of proceeds derived from estate property); *In re Holly Knitwear, Inc.*, 140 N.J. Super. 375 (N.J. Super. Ct. 1976) (administrative claims to be paid ahead of all other claims including federal tax claims); *Martini v. Passaic Men's Shop, Inc.*, 114 N.J. Eq. 194 (Ch. 1933) ("uniform practice of this court to make distribution among creditors . . . after payment of expenses of administration"); *Albert & Kernahan v. Franklin Arms*, 107 N.J. Eq. 468 (1931) (where there is a "single fund subject to successive liens" the administrative expenses should be paid first, followed by the claims in their order of priority).

⁴ Although the *Holly Knitwear* case itself was an assignment for the benefit of creditors proceeding, the court referenced the much more prevalent receivership line of cases because New Jersey Court Rule 4:54 provides: "The practice relating to assignments for the benefit of creditors under N.J.S.A. 2A:19-1 *et seq.* shall conform as nearly as practicable to the procedure relating to insolvent corporations." N.J. R. 4:54; see also *Rosner v. Plaza Hotel Associates, Inc.*, 146 N.J. Super. 447, 455 (App. Div. 1977).

42. Administrative expenses include attorneys' fees and accountants' fees.⁵ *Holly Knitwear*, 140 N.J. Super. at 380 (administrative expenses include legal fees); *Pinewood Estates v. Barnegat Twp.*, 261 N.J. Super. 357, 360 (Law Div. 1992) (administrative expenses include legal fees); *Maurer v. Spearin*, 121 N.J. Eq. 113 (N.J. 1936) (administrative expenses include accountants' fees); *Lawrence Assoc. v. Lawrence Twp.*, 5 N.J. Tax 481, 528 (N.J. Tax Ct. 1983) (administrative expenses include accountants' fees).

43. Through the Verified Complaint and this Application, the Assignee seeks authority to establish an Administrative Escrow sufficient to compensate the Court-approved professionals—Porzio, Fox Rothschild and The Stetz Firm—for their services performed for and provided to the Assignee from September 1, 2009 forward to the date upon which the instant case is closed (the “Final Compensation Period”).⁶ Services performed during the period of September 1, 2009 through present, as well as the services anticipated to be rendered through the close of the case, include, but are not limited to, legal strategy, case administration, provision of public notice, creditor relations, creditor distributions, negotiating, preparing and conducting sale and/or settlement agreements, readying the estate for distributions to creditors, preparing fee applications and/or certifications, and preparing and filing a final estate tax return.

44. The Assignee proposes this allocation and segregation of estate funds in advance to compensate the professionals for work conducted after the period covered by the last Professional Fee Application approved by the Court on October 30, 2009. The Assignee believes that \$225,000.00, which includes approximately \$125,000.00 already incurred from

⁵ Prior to 1963, there was some confusion among the Courts as to whether as Assignee's professional fees were to be paid in addition to, or as part of, his statutory commission. An amendment to N.J.S.A. 2A:19-43 in 1963 resolved the issue by unequivocally providing that payment of the commission was to be in addition to professional fees. *Xaviers, Inc.* 66 N.J. Super. at 578 (citing *Atlas Fence Co. v. West Ridgelawn Cemetery*, 135 N.J. Eq. 87 (Ch. 1944).

⁶ The Final Compensation Period for Fox Rothschild is December 16, 2008 through the close of the case and September 12, 2009 through the close of the case for The Stetz Firm.

September 1, 2009 to date, will sufficiently cover the administrative costs from September 2009 through the closing of the case.

45. As to the amount of compensation courts should allow professionals in an assignment case:

The compensation allowed should be measured by the reasonable value of the services. What is reasonable compensation may and often does vary, depending upon a variety of circumstances in each case. It should bear some fair proportion to the services actually rendered, which is not the case in the order or decree under review. Many circumstances doubtless must be considered, such as the labor and time involved, the nature of the litigation, the responsibility imposed, the amount involved and the like.

Franklin Lumber v. Anderson, 105 N.J. Eq. 542, 544 (1930); see *In re New Jersey Refrigerating Co.*, 106 N.J. Eq. 526, 528 (Ch. Div. 1930) (professional fees should be based on “the quality of their work, the quantity of it, and the quantum of the property administered”). The Assignee intends to submit for approval his Supplemental Accounting detailing the work of his retained professionals during the Final Compensation Period.

III. The Court Should Approve Distributions on Remaining Creditors’ Claims, the Final Accounting and Reduction of the Bond

Distribution On Remaining Creditor Claims.

46. 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.

47. 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.

48. In this case, having already distributed more than \$2.6 million to creditors (less escrow and returned checks), the Fleer/Skybox estate has a cash balance in the amount of \$633,868.24. Based upon a review of the claims filed, Fleer/Skybox's books and records and the age of this assignment proceeding, the Assignee does not expect any additional legitimate claims to be filed against the Fleer/Skybox estate. Therefore, upon the approval of the Administrative Escrow, the Assignee respectfully requests that he be given authority to distribute the Additional Unsecured Creditor Distribution Amount, pro rata, to holders of allowed claims. A Supplemental Accounting will likewise be filed by the Assignee reflecting such distributions.

49. Before issuing any further distributions, however, the Assignee must comply with state and federal tax laws when distributing estate assets to creditors. Thus, the Assignee intends to forward W-9 forms to all creditors entitled to distribution to either (i) their last known addresses per the Assignee's records or (ii) forwarding addresses provided by the United States Postal Service or by creditors themselves. Further, the Assignee proposes to request that creditors return completed W-9 forms to the Assignee within 30 days of receipt of same. With respect to creditors who fail to comply with the Assignee's request to return completed W-9

forms within 30 days of the Assignee's request (or within any further time period expressly agreed to in writing between the Assignee and such creditor), the Assignee requests that the Court disallow such creditors to share in any portion of the Interim Distribution, which continues to be held by the Assignee, nor any further distribution by the Assignee. Any added obligation to continue searching for creditors will result in further administration expenses which, in turn, reduces the amount available for complying creditors in the Additional Unsecured Creditor Distribution Amount.

50. As for creditors who have not provided the Assignee with a current last known address or whose mailings and W-9 forms are returned to the Assignee unclaimed, the Assignee seeks permission to redistribute the proceeds from such creditors from the Interim Distribution and/or the Additional Unsecured Creditor Distribution Amount, as individually applicable, back into the Fleer/Skybox estate and allow participating creditors who have complied with the Assignee's request to receive such proceeds.

51. Further, under the Assignee's proposed approach, creditors to who Interim Distribution payments were sent but whose payments were returned as undeliverable or who have failed to cash their Interim Distribution checks, will have another opportunity to redeem funds from the Interim Distribution before such proceeds are redistributed to participating creditors with the Additional Unsecured Creditor Distribution Amount, so long as such creditors timely return their completed W-9 forms to the Assignee. This cost-effective and equitable procedure will ensure that all Returned/Uncashed Checks from the Interim Distribution are either paid to the appropriate creditor or, if necessary, redistributed into the Fleer/Skybox estate for the benefit of all participating unsecured creditors. Such information will be reflected in the Assignee's Supplemental Accounting.

52. Finally, creditors who timely return W-9 forms shall receive their pro rata portion of the reserved Interim Distribution and/or Additional Unsecured Creditor Distribution Amount, as individually applicable.

53. As for creditors who have returned W-9 forms, but:

a. whose checks containing reserved Interim Distribution funds and/or Additional Unsecured Creditor Distribution Amount are returned as undeliverable; or

b. who fail to cash their Interim Distribution and/or Additional Unsecured Creditor Distribution Amount checks within 90 days of issuance

(collectively, the “Unreachable Creditors”), such distributions made on their behalf shall be donated to the Consumer Education Fund of the Burlington County Office of Consumer Affairs.

This Court Should Approve the Final Accounting of the Assignee.

54. The Assignee presents the Final Accounting regarding the administration of estate funds for the Court’s approval. The Final Accounting reflects an opening balance of \$12,500.00, total receipts of \$6,259,715.29, total cash disbursements of \$5,638,347.05 and a total cash balance on hand of \$633,868.24. *See* Verified Complaint, **Exhibit A**.

55. 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 additional distributions on the Allowed Claims and payment of any necessary administrative costs. In the Supplemental Accounting, the Assignee will include a detailed description of all payments made on account of Allowed Claims and from the Administrative Escrow.

Reduction of the Bond.

56. After the relief requested herein is granted, the Assignee will have distributed substantially all of the assets of this estate and will be holding limited cash proceeds remaining from his liquidation efforts in a money-market account (the "Account").

57. On September 22, 2005, the Assignee filed a bond dated September 9, 2005 with the Court in the amount of \$2,450,000.00 (the "Bond").

58. As funds were distributed to creditors and/or consumed in administration expenses, the Assignee has repeatedly obtained orders reducing the penal sum of the Bond. Most recently, on September 10, 2009, the Assignee requested entry of an Order reducing the Bond amount to \$800,000.00. On October 1, 2009, the Court entered an order authorizing the Assignee to reduce the Bond to \$800,000.00, thereby saving premium costs.

59. Since a grant of the relief requested herein will authorize the Assignee to make final distributions and pay administrative expenses, thereby further reducing estate assets, the Assignee seeks approval to reduce the Bond following his distributions to an amount no less than the balance of the money market account (the "Account") in which the Assignee is holding the cash proceeds from his liquidation efforts, including authority to reduce the Bond to zero once the final cash remaining in the Account is distributed to the Consumer Education Fund of the Burlington County Office of Consumer Affairs.

NOTICE

60. Notice of this Motion has been served on: (i) all known creditors of Fleer/Skybox, (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 Hearing to Settle Account.

WHEREFORE, your Petitioner, Warren J. Martin Jr., Assignee for the Benefit of Creditors of Fleer/Skybox International, LP, respectfully prays for the entry of an Order Approving and Allowing (I) Abandonment/Destruction of Books, Records and Remaining Miscellaneous Property, Settlement with Iron Mountain and Sale of Remaining *De Minimis* Assets, (II) Establishment of Administrative Escrow and (III) Distributions on Remaining Creditor Claims, Final Accounting and Reduction of Bond, and to closing the case in accordance with all counts of the Assignee's Verified Complaint dated May 11, 2010.

DATED: May 11, 2010

PORZIO, BROMBERG & NEWMAN, P.C.

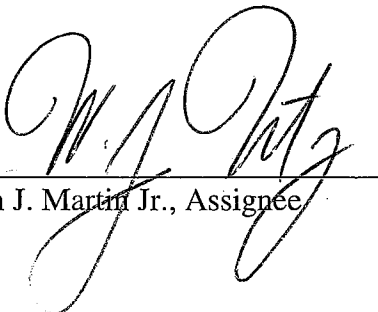
By: 
Robert M. Schechter

Attorneys for Warren J. Martin Jr., Assignee for the Benefit of Creditors of Fleer/Skybox International, 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 are wilfully false, I am subject to punishment.

DATED: May 11, 2010

By: 
Warren J. Martin Jr., Assignee