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November 2, 2005

**VIA HAND DELIVERY**

Surrogate, Burlington County  
Burlington County Courts Facility  
1st Floor  
49 Rancocas Road  
P.O. Box 6000  
Mount Holly, NJ 08060

Re: In the Matter of the General Assignment for the Benefit of Creditors of  
Fleer/SkyBox International, LP to Warren J. Martin, Jr. -  
Docket No. P-2005-1394

In the Matter of the General Assignment for the Benefit of Creditors of Fleer  
Collectibles, LLC to Warren J. Martin, Jr. -  
Docket No. P-2005-1408

Dear Sir/Madam:

Enclosed for filing please find an original and two copies of Response of Major League  
Baseball Players Association to Assignee's First Verified Omnibus Exceptions to Claims of  
Creditors for filing in the above matter.

Very truly yours,

COZEN O'CONNOR

  
By: Jerrold N. Poslusny, Jr.

JNP:le  
Enclosure

Surrogate, Burlington County

November 2, 2005

Page 2

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cc: The Honorable Ronald E. Bookbinder, J.S.C.  
John S. Mairo, Esquire  
Hal L. Baume, Esquire

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Attorneys Appearing: Neal D. Colton (*admitted pro hac vice*)

Jerrold N. Poslusny

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

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

**RESPONSE OF MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION TO  
ASSIGNEE'S FIRST VERIFIED OMNIBUS EXCEPTIONS TO CLAIMS OF  
CREDITORS**

The Major League Baseball Players Association ("MLBPA"), through its undersigned counsel, hereby files its response to the Assignee's First Verified Omnibus Exceptions to Claims of Creditors (the "Claims Objections"), 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. Pursuant to the terms and conditions set forth in the License Agreement dated January 1, 2003 between Fleer/SkyBox International LP (“SkyBox”) and Fleer Collectibles LLC (“Collectibles”) (collectively, “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 and certain logos, names and symbols of MLBPA 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 by Fleer. See License Agreement, Section 1(A).<sup>1</sup>

3. On May 23, 2005 (the “Termination Date”), MLBPA sent a written termination notice to Fleer, thus terminating the License Agreement immediately.

4. Warren J. Martin Jr. is the Assignee for the Benefit of Creditors of Fleer, having been so designated pursuant to Deeds of Assignment for the Benefit of Creditors recorded and filed on June 10, 2005, as amended July 14, 2005 (the “Assignment Date”).

5. On or about September 14, 2005, MLBPA filed its Proof of Claim (the “MLBPA Claim”) in the amount of \$5,706,312.00, a copy of which is attached as Exhibit A hereto. On or about October 21, 2005, the Assignee filed his Claims Objections, listing the MLBPA Claim among the alleged “Claims Lacking Verification or Documentation” on Schedule B thereto.

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<sup>1</sup> Copies of the License Agreement have been previously filed under seal with this Court and provided to the Assignee.

6. As a preliminary matter, MLBPA respectfully submits that the Court should require the Assignee to litigate his objections to the various claims of the Grass family (the "Grass Claims") fully before any other claims are addressed, because payment of the Grass Claims, if allowed in full or in substantial part, will leave no money to distribute to unsecured creditors. The claims allowance process will be a frivolous exercise if all proceeds of the Fleer estates are permitted to flow to the Grass family. The Assignee and his professionals should not be compensated for an endeavor that may prove meaningless to creditors.

7. Further, at such time, if any, that the Assignee has funds he intends to distribute to anyone other than the Grass family, the Assignee should be instructed to demonstrate to each claimant what he did in good faith to evaluate claims as filed and why on substantive grounds he objects, rather than knocking out a "pro forma" statement that he objects because the books and records of the companies owned and managed by the Grass family do not comport with claims as filed.

8. The MLBPA Claim, as filed, has three components: (i) \$3,225,000 in royalties and other marketing contributions that were due and owing as of the Assignment Date, including a Guaranteed Minimum Royalty as of the Termination Date pursuant to Section 10 of the License Agreement; (ii) \$1,955,146 due to MLBPA resulting from Fleer's unspent promotional contribution funds under Section 10 of the License Agreement; and (iii) \$526,166 owed to individual players pursuant to Highlight Agreements executed by Fleer and the players.

9. As of the Assignment Date, Fleer owed a Guaranteed Minimum Royalty ("GMR") in the total amount of \$3,025,000 to MLBPA. The GMR, although originally subject to a payment schedule that extended beyond the Assignment Date, became due and payable in

full immediately upon termination of the License Agreement by MLBPA. Section 19(B) of the License Agreement is clear and unambiguous in stating: "Upon expiration of this Agreement or upon termination by MLBPA, notwithstanding anything to the contrary herein, all Actual Royalty and Guaranteed Minimum Royalty shall become immediately due and payable and no Guaranteed Minimum Royalty paid to MLBPA shall be refunded." This language properly ensures that MLBPA receives the benefit of its bargain in return for providing a valuable license to Fler. Since the Termination Date preceded the Assignment Date, the GMR is properly included in the MLBPA Claim.

10. Upon further review of the License Agreement, it is apparent that the portion of the GMR owed by Skybox is \$3,015,000, and the portion of the GMR owed by Collectibles is \$10,000.

11. In addition to the GMR, the MLBPA Claim includes a required contribution of \$100,000 directly to an MLBPA co-op marketing fund, and a separate required contribution of \$100,000 to the official web site of MLBPA.

12. On April 6 and 7, 2005, MLBPA conducted an audit of the royalty reports provided by Fler to MLBPA for the period beginning in the second quarter of 2002 through 2004 (the "Audit Period"). Based on these reports, as well as back-up documentation which MLBPA reviewed at Fler's offices, MLBPA discovered that Fler had underpaid MLBPA in the amount of \$1,750,206, reflecting unspent promotional contribution funds for the Audit Period.

13. Pursuant to Section 10 of the License Agreement, Fler was to spend the lesser of \$1,200,000 or 5% of net sales annually on marketing MLBPA-licensed trading cards to trade

vendors and consumers and/or on the promotion of Major League Baseball players. For the 2002 year, pursuant to the then-applicable License Agreement, Fleer's promotional contribution spending requirement was \$1,400,000. Fleer spent \$220,876 in 2002, \$604,001.70 in 2003 and \$632,096 in 2004 on marketing MLBPA-licensed trading cards to trade vendors and consumers and/or on the promotion of Major League Baseball players.

14. Pursuant to Section 10 of the License Agreement, if Fleer failed to make expenditures satisfying its annual marketing commitments, Fleer was required to pay any shortfall directly to the MLBPA. As of the Assignment Date, Fleer owed MLBPA a promotional contribution spending shortfall pursuant to Section 10 of the License Agreement of \$1,179,124 in 2002, \$217,353 in 2003 and \$353,729 in 2004, for a total of \$1,750,206.

15. Under Section 4(f) of the License Agreement, MLBPA was also entitled to receive interest on the overdue promotional expenditures, as well as reimbursement for all costs and expenses associated with the audit, bringing the total for this portion of the claim to \$1,955,146.

16. The third and final component of the MLBPA Claim is the amount due to individual players under Highlight Agreements, in the amount of \$526,166. As MLBPA indicated on its Proof of Claim, this amount may be reduced to the extent that individual players have filed their own Proofs of Claim, but MLBPA is without information which would permit it to make such a determination.

WHEREFORE, MLBPA respectfully requests that the Court overrule the Assignee's objection to the MLBPA Claim and allow the MLBPA Claim against SkyBox in the amount of **\$5,696,312**, as well as a separate claim against Collectibles in the amount of **\$10,000**.

Dated: November 2, 2005

COZEN O'CONNOR

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

Neal D. Colton  
Jerrold N. Poslusny

Attorneys for The Major League Baseball  
Players Association



**Fleer/SkyBox International, L.P.  
Breakdown of Audit Amounts Owed to Major League Baseball Players Association (MLBPA) for  
2<sup>nd</sup> Quarter 2002 – 2005**

<u>Item</u>	<u>Underpayment by Year</u>				<u>Underpayment</u>
	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Total</u>
<b><u>I. Audit Underpayments</u></b>					
1. Underpayment resulting from Fleer's unspent promotional contribution funds or failure by Fleer to provide documentation in support of funds spent (See Paragraph 10 of License Agreement)	\$1,179,124 <sup>1</sup>	\$217,353	\$353,729		\$1,750,206
2. <u>Interest on:</u> Item 1 above (See Paragraph 4(f) of License Agreement)					\$193,540
3. Audit Costs and Expenses (See Paragraph 5(a) of License Agreement)					\$11,400
<b>TOTAL Audit Underpayment and Interest for Audit Period on Items 1, 2 and 3 above</b>					<b><u>\$1,955,146</u></b>

<sup>1</sup> This amount is owed to MLBPA pursuant to the License Agreement that was in effect in 2002.  
1728699.1

**II. Additional Amounts Owed**

1. Additional royalties owed MLBPA in 2005 from January 1, 2005 through June 10, 2005	\$3,225,000 <sup>2</sup>	\$3,225,000
2. Payment of all outstanding amounts owed MLB players pursuant to Highlight Agreements executed with MLB players. <sup>3</sup>	\$526,166	\$526,166
<b>Section II Total</b>		<b><u>\$3,751,166</u></b>
<b>TOTAL AMOUNT OWED TO MLBPA</b>		<b><u>\$5,706,312</u></b>

<sup>2</sup> This is the amount owed by Fleer to the MLBPA for all Licensed Products, including trading cards, die-cast car products and puzzle cards, and includes Guaranteed Minimum Royalties and amounts owed pursuant to Paragraph 10 of the License Agreement for Fleer's MLBPA coop fund and website commitments.

<sup>3</sup> A statement of amounts known to be due to individual players for the above-referenced years pursuant to Highlight Agreements is attached. Due to Fleer's failure to provide documentation required by the License Agreement, other amounts may be due and unknown to the MLBPA. Individual players reflected on the attached list may have submitted their own proofs of claim to the Assignee - in such event, the amount of the MLBPA claim would be adjusted accordingly.

MLB	FLEER	AGENT	PA	Days Late	Due	Agent	Notes	
Bay	Jason	X	X	48	18000	Octagon		
Beltre	Adrian			50	4800	Boras	30 signatures (\$15 ea. --> \$450) remaining on deal	
Berkman	Lance	X	X	X	20000	Mike Moyer		
Berroa	Angel	-	-	-	1780	Paul Krzner		
Bonderman	Jeremy	X	X		8000	Moorad		
Burnett	Sean	on-hand w/o sigs		68	4000	Jim Munsey	Signed 500 of 1,000 cards - has not been paid	
Cameron	Mike			58	14000	Mike Nicobera		
Cedeno	Ronny			204	1500			
Chavez	Eric	-	-	-	10500	Scott Leventhal		
Crawford	Carl		X	86	5000	Legacy		
Crawford	Carl	X	X		17000	Legacy		
Crosby	Bobby	X	X	n/a	33	TWC Sports		
Damon	Johnny	X	X	X	24	Boras	Provided 200 req'd sigs but only paid \$3,060 of \$13,000	
Drew	JD	X	X		50	Boras	Completed req'd 400 sigs --> no payment	
Eckstein	David	X	X	X	34	Glechowski	Completed 680 of 840 sigs - no payment - owed \$8,160 of \$10,080	
Edmonds	Jim	-	-	-	51	TWC Sports		
Estrada	Johnny			22	14000	CSMG		
Everett	Adam			84	10560	SFX/Tellem		
Figgins	Chone			72	5900	CSMG		
Floyd	Gavin			69	4160	Goldin		
Ford	Lew			78	5994			
Francis	Jeff			69	2120			
Gerut	Jody			72	1800			
Giles	Marcus			304	2000			
Gonzalez	Luis	X	X	X	260	CSMG		
Gosling	Mike			68	2080	Boras	Completed req'd 520 sigs --> no payment	
Hafner	Travis	X	X		19500	Moorad		
Halladay	Roy			121	8000			
Hill	Koyie			308	1188			
Hillenbrand	Shea			63	7600			
Huff	Aubrey			30	1560	ACES		
Kazmir	Scott	X	X		10595	Moorad		
Konerko	Paul			70	4800			
Leone	Justin			376	1200			
Maddux	Greg			91	6600	Boras	Paid for 112 sigs - no payment on 120 sigs - 68 sigs remain on deal	
Martinez	Victor			20	20800	CSMG		
McPherson	Dallas	X	X		50	Boras	Completed req'd 800 sigs --> no payment	
Miller	Wade			257	3000			
Mussina	Mike	-	-	-	237	SFX/Tellem		
Nix	Layne	X	X	n/a	404	GAAMES		
Nomo	Hideo			206	40000	KDN		
Olerud	John			30	7600	Joe McIntosh		
Ordonez	Magglio	X	X	X	43	Boras	Completed req'd 500 sigs --> no payment	
Ortiz	David			44	8000	SFX/Tellem	Packaging Deal	
Otsuka	Akinori	-	-	-	6446	KDN		
Overbay	Lyle	-	-	-	115	Octagon		
Piazza	Mike	X	X	X	259	BHSC	Signed 1/2 req'd sigs - Paid \$50,000 of \$100,000 for provided sigs	
Salmon	Tim	-	-	-	205	2500	Tru Sport	
Swisher	Nick			54	7550			
Tebelra	Mark	X	X		54	Boras	Completed req'd 1,000 sigs --> no payment	
Thomas	Frank	-	-	-	222	12565		
Vartek	Jason	X	X		20	18000	Boras	Completed req'd 400 sigs --> no payment
Wakefield	Tim				2530			
Wells	Vernon			268	3000			
Wilson	Craig	-	-	-	69	5000	Steve Hilliard	
Wilson	Jack			60	4485			
Youkilis	Kevin	-	-	-	245	480	Joe Bick	
Young	Michael			48	5100	BHSC		
<b>TOTAL</b>					<b>494166</b>			
Dunn	Adam	X			12500	Legacy		
Kazmir	Scott	X			19500	Legacy		

Agreements (no services or payments exchanged)

Shawn Chacon - \$2,000 for 500 signatures

Mike Gonzalez - \$1,000 for 500 signatures

Ty Wigginton - \$2,000 for 500 signatures

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<b>Tracking number</b>	681884160952	<b>Reference</b>	168008.000
<b>Signed for by</b>	J.VANDERVEER	<b>Destination</b>	Morristown, NJ
<b>Ship date</b>	Sep 14, 2005	<b>Delivered to</b>	Receptionist/Front Desk
<b>Delivery date</b>	Sep 15, 2005 9:51 AM	<b>Service type</b>	Standard Envelope
		<b>Weight</b>	1.0 lbs.

**Status** Delivered

Date/Time	Activity	Location	Details
Sep 15, 2005	9:51 AM	Delivered	Morristown, NJ
	8:30 AM	On FedEx vehicle for delivery	EAST HANOVER, NJ
	7:58 AM	Departed FedEx location	NEWARK, NJ
	7:11 AM	At local FedEx facility	EAST HANOVER, NJ
Sep 14, 2005	12:55 AM	Arrived at FedEx location	NEWARK, NJ
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