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March 29, 2006

**VIA MESSENGER**

Surrogate's Office  
Burlington County Superior Court  
49 Rancocas Road, Room 102  
Mount Holly, NJ 08060

Re: *Fleer/Skybox International, LP – Assignment for the Benefit of Creditors*  
Docket No. P-2005-1394

Our File No.: 00553.66065

Dear Sir/Madam:

Enclosed please find the following documents in connection with the above-referenced matter:

1. Notice of Motion for Order Authorizing Assignee To Provide Compensation For Services Rendered And Reimbursement Of Expenses To Professionals For The Period From October 1, 2005 Through January 31, 2006;
2. Assignee's Application For Authorization To Provide Compensation For Services Rendered And Reimbursement Of Expenses To Professionals For The Period From October 1, 2005 Through January 31, 2006; and
3. Proposed Order

Kindly file same and return one copy marked "filed" to me in the envelope provided.

If you have any questions or concerns, please feel free to contact me.

Very truly yours,



Elizabeth M. McKeever

EMM/jmg  
Enclosure

cc: Honorable Ronald E. Bookbinder, J.S.C. (Via Messenger)  
All Parties on Attached Core Service List

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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: P-2005-1394

**NOTICE OF MOTION FOR ORDER AUTHORIZING ASSIGNEE TO  
PROVIDE COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES TO PROFESSIONALS FOR THE  
PERIOD FROM OCTOBER 1, 2005 THROUGH JANUARY 31, 2006**

**TO: ALL PARTIES ON ATTACHED CORE SERVICE LIST**

**PLEASE TAKE NOTICE** that 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., shall move before the Honorable Ronald E. Bookbinder, J.S.C., a Judge of the Superior Court of the State of New Jersey, on the 20<sup>th</sup> day of April, 2006 at 1:30 p.m., or as soon thereafter as counsel may be heard, at the Superior Court of New Jersey, Chancery Division, Probate Part, Burlington County, 49 Rancocas Road, Mt. Holly, New Jersey 08060, for entry of an Order Authorizing Assignee to Provide Compensation for

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

**PLEASE TAKE FURTHER NOTICE** that the Assignee will rely upon the attached Assignee's Application to Provide Compensation for Services Rendered and Reimbursement of Expenses to Professionals for the Period from October 1, 2005 through January 31, 2006 (the "Motion"), together with the argument of counsel and any testimony that the Court may require on the return date of the Motion.

**PLEASE TAKE FURTHER NOTICE** that if you fail to oppose the Motion, the Court may enter an Order Approving the Motion without further notice to you. A proposed form of Order is submitted herewith.

DATED: March 29, 2006

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

By: *Elizabeth M. McKeever*  
Elizabeth M. McKeever (EM-9715)

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

**FLEER/SKYBOX INTERNATIONAL LP  
ASSIGNMENT FOR THE BENEFIT OF CREDITORS  
CORE SERVICE LIST**

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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: 2005-1408

**ASSIGNEE'S APPLICATION FOR AUTHORIZATION TO PROVIDE  
COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES TO PROFESSIONALS FOR THE  
PERIOD FROM OCTOBER 1, 2005 THROUGH JANUARY 31, 2006**

WARREN J. MARTIN, JR. (the "Assignee"), Assignee for the Benefit of Creditors of  
Fleer/Skybox LP ("Fleer/Skybox"), by and through his counsel, Porzio, Bromberg & Newman,  
P.C. ("Porzio"), by way of Application For Authorization to Provide Compensation for Services  
Rendered and Reimbursement of Expenses to Professionals for the Period from October 1, 2005  
through January 31, 2006 (the "Fee Application"), respectfully states as follows:

## General 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. On October 21, 2005, the Assignee filed an Application for Payment of Professional Fees to Attorneys and Accountants (the "First Fee Application"), in which he sought authority to provide compensation for services rendered and reimbursement of expenses to attorneys and accountants from the Assignment Date through September 30, 2005. In the First Fee Application, the Assignee sought compensation for attorneys and accountants in the overall amount of \$854,528.38, and reimbursement of expenses in the overall amount of \$81,607.42. This Court approved the First Fee Application on November 30, 2005 and awarded \$936,135.80 (100% of fees and reimbursable expenses) to the firms of Porzio, Fox Rothschild, LLP ("Fox Rothschild"), and Stetz, Belgiovine & Manwarren, PC (the "Stetz Firm").

4. Accordingly, this Fee Application covers the period from October 1, 2005 through January 31, 2006 (the "Compensation Period") and represents the Assignee's second request to provide compensation for services rendered and reimbursement of expenses to attorneys and accountants.

### Status of Estate Funds

5. A court-approved auction (the "First Auction") was held on July 14, 2005 for all of the intellectual property assigned to the Assignee by Fleer/Skybox, together with the assets assigned to the Assignee by Fleer Collectibles, LLC, a subsidiary company of Fleer/Skybox (collectively, the "Fleer Assets").

6. The winning bidder at the Auction was FSB Acquisition Company, LLC, an entity related to the Upper Deck Company ("Upper Deck"), which purchased the combined Fleer/Skybox and Fleer Collectibles Assets for \$6,100,000.00 (the "Winning Bid"). In connection with its Winning Bid, Upper Deck allocated \$3.5 million to the Fleer/Skybox estate, leaving \$2.6 million for the Fleer Collectibles estate.<sup>1</sup>

7. On September 9 and September 30, 2005, the Assignee held a second court-approved auction (the "Second Auction") of certain tangible assets of Fleer/Skybox, including sports memorabilia and office equipment, in which he recovered a total of \$969,592.<sup>2</sup> This amount exceeded the appraised value of the same assets by more than 35%. The Assignee has since received the sale proceeds into the estate.

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 (the "Flight Repurchase Agreement"). The Assignee has since received these funds into the estate.

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<sup>1</sup> 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.

<sup>2</sup> This amount includes a 10% buyer's premium that was paid out as part of the compensation to the Auctioneer.

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

10. In addition to the over \$5.0 million the Assignee has brought into the estate through the First and Second Auctions, the Flight Repurchase Agreement and the Redemption Card Sale, the Assignee has garnered additional monies for the benefit of Fleer/Skybox creditors by negotiating various repurchase agreements, collecting outstanding accounts receivable and selling estate assets through private sale.

#### **Fee Application Adjustments and Improvements**

11. In connection with the First Fee Application, the Court expressed some concern with fully allowing fees incurred for professionals' travel time to and from Fleer/Skybox's executive offices and storage sites, as well as the Courthouse (the "Travel Fees").

12. In addition, after further reviewing Porzio's billing statements, the Assignee has concluded that certain fees for filing services allowed in connection with the First Fee Application should be discounted to more accurately reflect the volume and complexity of filing services performed.

13. Accordingly, in this Fee Application, the Assignee has applied a 50 percent discount to all Travel Fees requested in the First Fee Application and this second Fee Application and a 52 percent discount to certain filing services requested in connection with the First Fee Application. Specifically, the Assignee has applied a \$32,805.00 discount for Travel Fees and a \$3,249.00 discount for filing services in the First Fee Application and a \$1,200.00 discount for Travel Fees in this second Fee Application (collectively, the "Discounts"). The Discounts total \$37,254.00.

14. Furthermore, in this Fee Application, the Assignee has more fully described disbursements made on behalf of the estate (the "Disbursements") to comply with the Court's request in connection with the First Fee Application that he provide detailed descriptions of the Disbursements.

**Services of Porzio, Bromberg & Newman, P.C.**  
**on Behalf of Fler Skybox Estate**

15. On July 1, 2005, the Court entered an Order Authorizing Retention of Porzio *nunc pro tunc* to June 8, 2005, as attorneys to represent the interests of the Assignee.

16. During the Compensation Period, Porzio expended a total of 2,695.2 hours in performing its duties as counsel to the Assignee, and is seeking fees in the amount of \$372,117.33, less the Discounts of \$37,254.00, for a total of \$334,863.33 for these services. *See* Certification of John S. Mairo, Esq. in Support of Second Request for Compensation for Services Rendered and Reimbursement of Expenses to Porzio, Bromberg & Newman, P.C. for the Period from October 1, 2005 through January 31, 2006 ("Mairo Certification"), ¶9, attached hereto as **Exhibit "A"**. Porzio's blended hourly rate for these services (attorney and paraprofessional time) is \$124.24 per hour ( $\$334,863.33/2,695.2$ ). Porzio also seeks reimbursement of its out-of-pocket expenses in the amount of \$26,409.38 for a total award of \$361,272.71. *Id.* at ¶9.

17. By way of summary, the nature of services rendered by Porzio attorneys and paraprofessionals are as follows:

**a) Redemption Card Project**

16. By far, the largest project undertaken by the Assignee and his counsel during this Compensation Period was the "Redemption Card Project." *Id.* at ¶12.

17. In order to best serve the redemption card creditors, Porzio's attorneys and paraprofessionals created and implemented the Redemption Card Project, which outlined and

executed a plan to fulfill the offers associated with the redemption cards that Fleer/Skybox issued prior to the Assignment. Counsel and paraprofessionals responded to voluminous emails and telephone calls from redemption card holders regarding the status of their redemption cards, created and updated the collector telephone log to ensure timely responses to all collectors, monitored trading card forums to track and respond to misinformation regarding the redemption card program, and coordinated a mass mailing of approximately 50,000 postcards in order to notify all redemption card holders of the pending Motion to approve the Redemption Card Project (the "Redemption Card Motion"). Counsel also conferred frequently with the Burlington County Office of Consumer Affairs regarding the complaints filed with that office from various redemption card holders. *Id.* at ¶13.

18. Paraprofessionals cataloged all redemption card requests, including requests submitted after the posted deadline, into a redemption card holder database, stored the cataloged requests, reviewed proof of claim forms for additions to the redemption card holder database, and updated the database with new addresses received from new redemption card requests and correspondence sent to Fleer's Collectors Support Department. Paraprofessionals also reviewed postcards noticing redemption card holders about the Redemption Card Motion that were returned due to bad addresses and researched and updated the database with correct addresses. *Id.* at ¶14.

19. In addition, paraprofessionals reformatted the layout of Fleer/Skybox's redemption card holder database to accommodate redemption card requests received by Fleer/Skybox prior to the Assignment and identified the city of the redemption card holder's residence and the sport associated with each request. *Id.* at ¶15.

20. Furthermore, paraprofessionals organized and counted all redemption cards in preparation for eventual distribution, confirmed the redemption card count for specific portions of available redemption cards, created a redemption card inventory analysis, and prepared for and conducted a trial run of fulfilling the Redemption Card Project in order to obtain a time/cost analysis. *Id.* at ¶16.

21. Porzio's attorneys and paraprofessionals also managed redemption card fraud issues. Counsel conferred with paraprofessionals regarding counterfeit redemption cards, reviewed such cards and investigated their senders. In addition, Porzio's attorneys and paraprofessionals advised the Burlington County Department of Consumer Affairs of fraudulent redemption requests. *Id.* at ¶17.

22. In order to implement the program and coordinate its sale to a third party, the Assignee's counsel sought approval of the program from the Court as well as the professional sports leagues. Counsel reviewed statutory and case law regarding the Assignee's discretion to act equitably and whether a fiduciary in an Assignment would be required to sell the Redemption Card Project at auction or through competitive bidding or whether private auction would be acceptable. Counsel then drafted the Redemption Card Motion, filed it with the Court, reviewed objections to it, negotiated settlements with objectors, and prepared for and participated in the hearing on the Redemption Card Motion. *Id.* at ¶18.

23. With respect to the Redemption Card Program and associated sale, counsel reached settlements with NBA Properties, Inc., Major League Baseball Players' Association ("MLBPA") and NFL Properties, LLC ("NFL") after reviewing licenses and negotiating royalty issues. Counsel and paraprofessionals drafted stipulations with each league regarding royalties

for the sale of redemption cards, calculated royalty payments for each league and coordinated payment of royalties after the Redemption Card Program was sold. *Id.* at ¶19.

24. In order to garner the highest revenues for the estate, Porzio's attorneys and paraprofessionals prepared a redemption card program cost analysis to facilitate the potential sale of the Redemption Card Program to a private party. Counsel discussed the potential sale with the Burlington County Office of Consumer Affairs, potential buyers of the Redemption Card Program and the Assignee's auctioneer. Counsel and paraprofessionals oversaw the review of the redemption card inventory by potential buyers and investigated the potential buyers of the Redemption Card Program. *Id.* at ¶20.

25. Counsel negotiated with potential purchasers of the Redemption Card Program in order to reach a sale price that would be the most profitable for the estate. After reaching an agreement with a potential purchaser, counsel drafted and filed a supplement to the Redemption Card Motion, including a purchase and sale agreement seeking the Court's approval of the sale. Counsel and paraprofessionals reviewed objections to the sale and reviewed statutory and case law regarding whether a disgruntled or unsuccessful bidder has standing to object to the sale of property to another party in an assignment. They also participated in a hearing on this matter. *Id.* at ¶21.

26. After the Court approved the sale, Porzio's attorneys and paraprofessionals confirmed the card counts, prepared a bill of sale to ARA Collectibles, prepared materials to be forwarded to the buyer, assisted with the transfer of redemption cards and materials, and prepared a letter for redemption card holders to receive with their redemption cards. *Id.* at ¶22.

27. The successful formation and execution of the Redemption Card Program enabled redemption card holders to receive some compensation from the insolvent estate. Several redemption card holders expressed their appreciation to the Assignee and Porzio. *Id.* at ¶23.

28. The services described in this Section "a" covered approximately 125 hours of attorney time and 1,585 hours of paraprofessional time, representing approximately \$234,435.00 in legal fees, which is approximately 63 percent of the total fees requested in the Porzio Fee Application. However, in addition to providing the three card non-cash distribution to all redemption card holders, the \$400,000.00 sale of the redemption card program resulted in revenues to the estate substantially exceeding the cost of the project. *Id.* at ¶24.

**b) Analyses of Unsecured Claims**

29. Porzio's attorneys and paraprofessionals conducted intensive investigations with regard to the validity of all claims submitted against the estate. Paraprofessionals created a database for claimants and logged all creditor proof of claim information into this database. Counsel, paraprofessionals and the former Fleer Chief Financial Officer reviewed and analyzed all claims, accounts receivable records and accounts payable records, as well as other pertinent records available to determine the validity of these claims. *Id.* at ¶25.

30. Counsel also reviewed statutory and case law regarding contingent claims by creditors in an assignment case and claims for damages that accrued post-assignment. *Id.* at ¶26.

31. After substantially reviewing the claims, counsel drafted the Assignee's First Verified Omnibus Exceptions to Claims of Creditors to allow, modify or expunge each claim (the "Claims Motion"). Counsel and paraprofessionals detailed the Assignee's objections and findings regarding numerous claims and submitted these to the Court. *Id.* at ¶27.

32. Porzio's attorneys noticed all creditors and conferred with a number of those creditors against whose claims objections were raised. Counsel reviewed and analyzed creditors' objections to the Claims Motion and corresponded with all creditors whose claims were being adjourned. *Id.* at ¶28.

33. The services described in this Section "b" covered approximately 65 hours of attorney time and 65 hours of paraprofessional time, representing approximately \$18,605.00 in legal fees, which is approximately 5 percent of the total fees requested in the Porzio Fee Application. *Id.* at ¶29.

**c) Gathering Additional Assets/Readying Estate for Distributions to Creditors**

34. In addition to the auctions of Fleer/Skybox's tangible and intangible assets, Porzio's attorneys coordinated the repurchase and release of certain Fleer/Skybox assets. Counsel researched liens on aircraft interests, analyzed the agreement with Flight Options to ascertain the type of interest owned by Fleer/Skybox, negotiated repurchase agreements of Fleer/Skybox's interests in aircraft leases with Flight Options, prepared a motion to enter into repurchase agreements with Flight Options, and conferred with Flight Options regarding the transfer of funds from the repurchase of aircraft interests. This work resulted in the estate's sale of aircraft interests to Flight Options for \$234,982.00. *Id.* at ¶30.

35. Counsel, paraprofessionals and information technology specialists also obtained information on the value of the SAP financial system, investigated the sale of software licenses, finalized the transfer of Fleer/Skybox's software licenses, analyzed a chart outlining proceeds obtained by Unique Entertainment Distributors' liquidation of Fleer/Skybox inventory, investigated maintenance agreement for MediaBin and conferred with Interwoven regarding the possible sale of the MediaBin server. *Id.* at ¶31.

36. Additionally, Porzio's attorneys conducted preference analyses in order to potentially recover money for the estate. Counsel researched statutory and case law with regard to the proceeds of avoidance actions and assignment issues. Counsel also researched potential defenses to preference actions in an assignment. *Id.* at ¶32.

37. The Assignee's information technology specialists recreated Fleer/Skybox's financial records system in order for counsel to review these records and investigate preferential transfers. *Id.* at ¶33.

38. Porzio's attorneys also investigated the proper allocation of funds between Fleer/Skybox and Fleer Collectibles. Specifically, counsel conducted research and prepared a brief regarding administrative and substantive consolidation, the valuation of the entities and the assets, and the allocation of funds recovered in the Assignee's auction. Additionally, Porzio's attorneys and paraprofessionals participated in hearings regarding the substantive consolidation motion. *Id.* at ¶34.

39. The services described in this Section "c" covered approximately 95 hours of attorney time, 5 hours of paraprofessional time, and 10 hours of information technology specialist time, representing approximately \$14,885.00 in legal fees, which is approximately 4 percent of the total fees requested in the Porzio Fee Application. *Id.* at ¶35.

**d) Post-Auction Issues**

40. Following the auction sale of photographic slides, Porzio's attorneys and paraprofessionals addressed various post-auction issues including gaining Court approval of the sale. Counsel drafted a motion in support of the sale and applications to pay the auctioneer and appraiser. *Id.* at ¶36.

41. Counsel also addressed the concerns of the MLBPA and the NFL. Porzio's attorneys contacted the NFL's approved purchasers to promote the NFL slides, coordinated a relationship between the NFL and the purchaser of the slides, conferred with the NFL regarding the potential purchase of the slides and drafted a stipulation with the NFL barring the sale of the NFL slides to any unapproved bidder. Counsel reviewed the MLBPA's objection to the sale, drafted pleadings in opposition to the objection, reviewed the proposed acknowledgement form for prospective bidders, negotiated the payment of royalties to the MLBPA, and distributed royalties from the auction sale pursuant to the Assignee's negotiated agreement. *Id.* at ¶37.

42. Additionally, counsel, paraprofessionals and information technology specialists identified data on the digital image server in order to comply with license agreements, obtained the fair market value of MediaBin software for use in determining the winning bid, and participated in a hearing regarding the slide auction. *Id.* at ¶38.

43. After determining a winning bidder, counsel researched the background of the potential purchaser of the slides, administered the use of the MLBPA's acknowledgement form, prepared the slides to be turned over to the auction winner and delivered the slides to the purchaser. Counsel also conferred with the slide purchaser regarding the discrepancy between the posted number of slides prior to the auction and the actual number delivered post-auction. *Id.* at ¶39.

44. Finally, Porzio's attorneys and paraprofessionals addressed the needs and concerns of the Upper Deck Company, which purchased Fleer/Skybox's intellectual property at the first auction. Counsel, paraprofessionals and information technology specialists investigated the hardware, software and images requested by Upper Deck and developed responses to these requests, investigated the potential transfer of the MediaBin server, provided Upper Deck with

website data from [www.fleer.com](http://www.fleer.com), effected transfers of Fleer/Skybox's "800" telephone number, held numerous discussions with Upper Deck and Sprint regarding the transfer of these numbers, transferred electronic data and intellectual property to Upper Deck, and continued to negotiate with Upper Deck concerning the transfer of Fleer's financial systems and data to Upper Deck. Counsel drafted a stipulation and consent order regarding a settlement with Upper Deck. *Id.* at ¶40.

45. The services described in this Section "d" covered approximately 55 hours of attorney time, 15 hours of paraprofessional time and 30 hours of information technology specialist time, representing approximately \$13,025.00 in legal fees, which is approximately 3.5 percent of the total fees requested in the Porzio Fee Application. *Id.* at ¶41.

**e) Public Notice And Creditor Relations/Photographers and Collectors**

46. In compliance with noticing requirements, Porzio's attorneys and paraprofessionals notified creditors and other parties-in-interest of various Court hearings, conferred with creditors regarding various issues and addresses their concerns, advised the Assignee with respect to conducting media interviews and reviewed media articles for accuracy. *Id.* at ¶42.

47. Counsel and paraprofessionals also assisted the Assignee with maintaining and updating a special web site, [www.fleerabc.com](http://www.fleerabc.com), to update creditors on the progress of the case, to answer creditors' numerous frequently asked questions and to make the Assignee's contact information available to creditors. In order to maintain the Assignee's web site and to comply with the Asset Purchase Agreement reached with Upper Deck, counsel responded to concerns related to intellectual property rights and the use of the Assignee's web site. *Id.* at ¶43.

48. In addition, Porzio's attorneys and paraprofessionals addressed other creditor-related issues. Specifically, counsel corresponded with former Fleer photographers and reviewed their proofs of claim, as well as all supporting documentation submitted to the Assignee regarding their slides, digital images, and autographed cards and photographs that were left in Fleer's possession at the time of the assignment. Counsel and paraprofessionals arranged for the photographers to review approximately 200,000 slides by relocating them and preparing them for review in order for the photographers to retrieve those that could be identified as their personal property. Counsel drafted releases, affidavits and indemnifications related to copyrights and other claims for execution by each photographer. Counsel and paraprofessionals oversaw the photographers' review of the slides and conferred with them regarding access to the Fleer computer servers for deletion of any images being stored. *Id.* at ¶44.

49. The Assignee's counsel and paraprofessionals also reviewed all collectors' correspondence forwarded to the Assignee, including correspondence regarding damaged cards sent in to Fleer for replacement. Paraprofessionals returned all damaged cards to their original owners and informed them about the assignment proceeding. In addition, the Assignee's information technology specialists reviewed archived Fleer financial systems data to locate payment information requested by Vince Carter's attorney and counsel drafted a Stipulation with Vince Carter regarding Fleer products related to him. *Id.* at ¶45.

50. Finally, Porzio's attorneys conferred with various taxing authorities to discuss the assignor's tax liability, and researched and prepared a memorandum regarding the Assignee's duty with respect to pre-assignment tax claims and the relative priority of taxing authorities for distribution purposes. *Id.* at ¶46.

51. The services described in this Section "e" covered approximately 60 hours of attorney time, 50 hours of paraprofessional time, and 10 hours of information technology specialist time, representing approximately \$16,745.00 in legal fees, which is approximately 4 percent of the total fees requested in the Porzio Fee Application. *Id.* at ¶47.

**f) Analysis of Alex Grass's Claims**

52. In order to protect the assets of the estate for distribution to unsecured creditors, Porzio's attorneys and paraprofessionals investigated secured creditor Alex Grass's claims against the estate. *Id.* at ¶48.

53. The Assignee's information technology specialists relocated Fleeer's financial system's hardware, assisted with the extraction and review of archived financial data from Fleeer's SAP database, and assisted with the preparation of reports in relation to the same. *Id.* at ¶49.

54. Counsel, paraprofessionals and Fleeer's former Chief Financial Officer reviewed Alex Grass's claims against the estate, reviewed records of financial payments to Alex Grass and Roger Grass, reviewed the general ledger accounts in regards to Alex Grass and Roger Grass, and conferred with the Assignee's accountants concerning Alex Grass and Roger Grass's bank accounts and wire transfers. *Id.* at ¶50.

55. Moreover, counsel conducted research regarding guarantor distribution issues, with an eye towards objections to the Grass claims. *Id.* at ¶51.

56. Counsel also analyzed security documents issued by PNC Bank in order to ascertain the extent of collateral secured under the loan agreement between Fleeer and PNC Bank, reviewed the assignment of the loan between Alex Grass and PNC Bank, and reviewed the

agreement regarding the \$6 million committed line of credit between Fleer/Skybox and PNC Bank with Alex and Roger Grass as guarantors. *Id.* at ¶52.

57. The services described in this Section "f" covered approximately 15 hours of attorney time, representing approximately \$3,720.00 in legal fees, which is approximately 1 percent of the total fees requested in the Porzio Fee Application. *Id.* at ¶53.

**g) Review and Organization of Corporate Records**

58. In order to support the Assignee's resolution of issues related to the cessation of Fleer/Skybox's business, as well as performing his statutory duties under the Assignment Statute, Porzio's attorneys and paraprofessionals developed a protocol for the review of all corporate records retrieved from Fleer's corporate headquarters. *Id.* at ¶54.

59. Porzio's paraprofessionals reviewed Fleer's voluminous financial, marketing and administrative records, identified information pertinent to the assignment proceedings and prepared an index for the records requiring retention. *Id.* at ¶55.

60. The services described in this Section "g" covered approximately 315 hours of paraprofessional time, representing approximately \$44,655.00 in legal fees, which is approximately 12 percent of the total fees requested in the Porzio Fee Application. *Id.* at ¶56.

**h) Legal Strategy and Case Administration**

61. In order to move the Assignment forward in the most efficient and economic manner, Porzio's attorneys and paraprofessionals assisted the Assignee in resolving issues related to the cessation of Fleer/Skybox's business, as well as performing his statutory duties under the Assignment Statute. Porzio's attorneys and paraprofessionals managed incoming invoices, notices and other business-related documents forwarded to the Assignee, terminated phone, broadband and other service-related accounts formerly held by Fleer and worked with the

Assignee's accountants to issue appropriate tax forms to those former employees of Fleer who generated income from Fleer post-assignment. *Id.* at ¶57.

62. Additionally, counsel evaluated the status of various insurance policies obtained by the Assignee for the protection of the estate, determined the need to continue these policies, and oversaw the cancellation of certain policies. Counsel also managed the payment of these policies, including reconciling premium payments and earned premium calculations and reviewing correspondence regarding payments not made. *Id.* at ¶58.

63. Finally, Porzio's attorneys and paraprofessionals maintained the files of Fleer/Skybox and scheduled appearances before the Court. *Id.* at ¶59.

64. The services described in this Section "h" covered approximately 5 hours of attorney time and 70 hours of paraprofessional time, representing approximately \$11,165.00 in legal fees, which is approximately 3 percent of the total fees requested in the Porzio Fee Application. *Id.* at ¶60.

**i) Fee Applications**

65. Porzio's attorneys and paraprofessionals prepared the First Fee Application and this second Fee Application.<sup>3</sup> Counsel researched Assignment procedures for obtaining reimbursement of fees and standards for awarding an Assignee's commission. In addition, attorneys and paraprofessionals reviewed billing records and prepared the application papers, not only for Porzio, but for all professionals retained by the Assignee in this case. *Id.* at ¶61.

66. Furthermore, Porzio's attorneys responded to the Court's concerns regarding the cost of the Travel Fees, as well as more complete descriptions of the Disbursements. Paraprofessionals calculated a 50 percent discount for all Travel Expenses associated with the

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<sup>3</sup> Additional fee application preparation time took place after the Compensation Period and is, therefore, not covered by this Fee Application.

First Fee Application and revised the descriptions of the Disbursements to more accurately explain the expenses incurred by Porzio on behalf of the estate. In addition, paraprofessionals applied a 52 percent discount to certain filing fees pursuant to the Assignee's request that such fees more accurately reflect the volume and complexity of services rendered. *Id.* at ¶62.

67. The services described in this Section "i" covered approximately 50 hours of attorney time and 75 hours of paraprofessional time, representing approximately \$16,745.00 in legal fees, which is approximately 4.5 percent of the total fees requested in the Porzio Fee Application. *Id.* at ¶63.

**Services of Fox Rothschild, LLP on Behalf of the Fleer/Skybox Estate**

68. Fox Rothschild was retained as special corporate counsel to the Assignee *nunc pro tunc* to June 8, 2005, pursuant to an Order entered by this Court on July 1, 2005.

69. During the Compensation Period, Fox Rothschild's attorneys expended approximately 86.6 hours in their capacity as special corporate counsel to the Assignee. *See* Certification of Services in Support of Motion for First Interim Allowance of Compensation and Reimbursement of Expenses to Fox Rothschild, LLP, Special Counsel to Assignee for the Benefit of Creditors. ("Fox Rothschild Certification"), ¶5, attached hereto as **Exhibit "B"**. For its legal services, Fox Rothschild is seeking \$34,384.00 in fees and \$728.00 in other expenses for a total award of \$35,112.00. *Id.* at ¶3. At the Court's request, work performed by Fox Rothschild was substantially reduced during this second Compensation Period and the Assignee used Fox Rothschild's service only when its particular expertise and past history with Fleer would provide savings the Assignee could not obtain through use of the Porzio firm.

70. Prior to the Assignment, Fox Rothschild served as general counsel to Fleer/Skybox for several years and for a variety of matters, including the potential sale of the

company, various creditor actions, license disputes and defaults, and possible filing for federal bankruptcy protection or other type of insolvency proceeding. *Id.* at ¶9-10.

71. During the early part of June, 2005, while negotiations with three or four separate parties over a sale of Fleer/Skybox dragged on without closure and while Fleer's funds to continue operations dwindled, Fox Rothschild advised Fleer/Skybox with respect to filing the Assignment. *Id.* at ¶12.

72. Because none of the potential sales of Fleer/Skybox under negotiation had been finalized prior to the Assignment Date and because Fox Rothschild had extensive knowledge of the issues involved in any such sale, the Assignee asked Fox Rothschild to serve as his special counsel for purposes of representing him with respect to the sale of Fleer/Skybox's assets and all matters and issues related thereto or impacting thereupon, as well as certain other miscellaneous services as requested by the Assignee. *Id.* at ¶13.

73. By way of summary, Fox Rothschild's work during this second Compensation Period has included, without limitation, the following:

- a) Addressing and advising the Assignee with regard to the numerous impediments arising from terminated licenses, and Assignee's ability to sell remaining assets in light thereof. This included, without limitation, working with the Assignee to address numerous issues and objections raised by Major League Baseball Players Association, Major League Baseball Properties and Upper Deck with respect to intellectual property and contract issues related to the sale of baseball items including, but not limited to, trading cards, photographs, photographic slides and digital images and certain disputes with various parties with respect to sale of remaining property;

- b) Assisting with the sale of remaining assets, including addressing and advising the Assignee with respect to objections and issues raised by license holders with respect to the redemption card program;
- c) Assisting the Assignee generally with respect to the structure and mechanics of the redemption card program, based on Fox Rothschild's historical knowledge of the trading card industry; and
- d) Assisting and advising the Assignee with regard to various claims filed against the estate.

*Id* at ¶

**Services of Stetz, Belgiovine & Manwarren, PC on Behalf of the Flee/Skybox Estate**

74. The Stetz Firm was retained as accountants to the Assignee *nunc pro tunc* to June 8, 2005, pursuant to an Order entered by this Court on July 1, 2005.

75. During the Compensation Period, the Stetz Firm expended a total of 99.5 hours of professional time in the performance of services rendered on behalf of the Assignee and seeks payment in the amount of \$23,584.38 for these services. *See* Certification of Robert Manwarren, CPA, in Support of Compensation and Reimbursement of Services to Stetz, Belgiovine and Manwarren, P.C. ("Manwarren Certification"), ¶ 8, attached as **Exhibit "C"**.

76. By way of summary, the Stetz Firm rendered the following services on behalf of the Assignee:

**a) Fee Application**

77. The Stetz Firm's accountants spent time organizing data, summarizing information and preparing the first Fee Application in accordance with court mandated procedures. The time spent on this task was 7.75 hours resulting in \$2,131.25 in fees. *Id* at ¶

**b) Preference Items, Tax Issues and Accounts Receivable**

78. The Stetz Firm's accountants spent time preparing for and attending meetings with the Assignee relative to preference items, insider payments, tax compliance and administration of accounts receivable. Further information relative to insider/preference payments was requested and provided. The time spent on this task was 26.00 hours resulting in \$7,262.50 in fees. *Id* at ¶

**c) Insolvency, Capital Contributions, Cash Flow Requirements and Cash Balances**

79. The Stetz Firm's accountants spent time identifying the date at which insolvency occurred, and the timing, utilization and proper classification of loans/capital contributions. Time was also spent preparing for testimony relative to the aforementioned by verifying cash balances, obtaining supporting documentation and reviewing with counsel. The time spent on this task was 36.125 hours resulting in \$9,590.63 in fees.

**d) Financial Statement Preparation**

80. The Stetz Firm's accountants spent time preparing a 2005 financial statement which is to be utilized by the accounting firm engaged to prepare the 2005 tax return. This involved the combination of the computerized records located in the SAP accounting system with the accounting transactions occurring off-line, locating and obtaining access to depreciation records and analysis and classification of offline activity. The time spent on this task was 24.875 hours resulting in \$3,143.75 in fees.

**e) Review of Motions**

81. The Stetz Firm's accountants spent time reviewing various motions and advising counsel on the tax and financial impact. The time spent on this task was 4.75 hours resulting in \$1,456.25 in fees.

**LEGAL AUTHORITY**

## I. Administrative Expenses Must be Paid Prior to Other Non-Administrative Claims.

82. It is well-settled that administrative expenses take precedence over all non-administrative claims in an assignment for the benefit of creditors proceeding. See *Spark v. La Reine Hotel Corp.*, 112 N.J. Eq. 398 (Ch. 1933); *Seindler v. Branford Restaurant*, 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 receivership<sup>4</sup> 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 Systems Inc.*, 64 N.J. Super. 204 (Ch. 1960); *Albert and Kernahan v. Franklin Arms*, 107 N.J. Eq. 468 (E. & A. 1931); *Pemberton Lumber and Millwork Industries v. William G. Ridgway Co.*, 38 N.J. Super. 383 (Ch. Div. 1955).

*In re General Assignment for the Benefit of Creditors of Holly Knitwear*, 115 N.J. Super. 564, 570 (Essex County Ct. 1971); See *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).

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<sup>4</sup> 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 *Rosner v. Plaza Hotel Associates, Inc.*, 146 N.J. Super. 447, 455 (App. Div. 1977).

83. Administrative expenses include attorneys' fees and accountants' fees.<sup>5</sup> *Holly Knitwear*, 140 N.J. Super. at 380 (administrative expenses include legal fees); *Pinewood Estates v. Barnegat Township*, 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 Township*, 5 N.J. Tax 481, 528 (N.J. Tax Ct. 1983) (administrative expenses include accountants' fees).

84. Through this motion, the Assignee is seeking authority to pay the professional legal fees of Porzio and Fox Rothschild and the professional accounting fees of the Stetz Firm.

85. These professional fees are clearly administrative expenses entitled to priority above all other claims.

**II. The Court Should Allow The Professional Fees of Porzio, Fox Rothschild and the Stetz Firm in the Amounts Requested Herein.**

86. 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 Company*. 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").

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<sup>5</sup> 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)).

87. As detailed above, Porzio's and Fox Rothschild's attorneys and paraprofessionals, as well as the Stetz Firm's accountants, have spent a collective 4,579.43 hours working on behalf of the Assignee during the Compensation Period. The hourly rates requested by these professionals are their regular and usual hourly rates and represent fair compensation for their services.

88. In this matter, the professionals have grappled with such complex and time consuming issues as the numerous licensing and intellectual property issues, the sale of an entire business, creditor claims, accounts receivable, purchase and sale agreements, the Redemption Card Program and numerous other services, as detailed above and in the Mairo, Fox Rothschild and Manwarren Certifications.

89. The professionals' legal and accounting services substantially contributed to the successful liquidation of assets and efficient administration of the estate.

**WHEREFORE**, your Petitioner, Warren J. Martin Jr., Assignee for the Benefit of Creditors of Fleer/Skybox LP, respectfully prays for the entry of an Order Authorizing Assignee to make the following payments on account of professional fees and reimbursement of expenses:

- a) Porzio's fees in the amount of \$334,863.33 and expenses in the amount of \$26,409.38 for the Compensation Period;
- b) Fox Rothschild's fees in the amount of \$34,384.00 and expenss in the amount of \$728.00 for the Compensation Period; and

- c) The Stetz Firm's fees in the amount of \$23,584.38 for the Compensation Period.

DATED: March 29, 2006

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

By: Elizabeth M. McKeever  
Elizabeth M. McKeever

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