

Douglas T. Tabachnik, Esq.  
LAW OFFICES OF DOUGLAS T. TABACHNIK  
37 Greenleaf Drive  
Manalapan, New Jersey 07726-3705  
(732) 792-2760

and

Leslie A. Cohen, Esq. *pro hac vice* (CA Bar #93698)  
LINER YANKELEVITZ SUNSHINE  
& REGENSTREIF LLP  
1100 Glendon Ave., 14th Floor  
Los Angeles, California 90024  
(310) 500-3500

Attorneys for FSB Acquisition Company, LLC,  
Now known as Fleer, LLC

In the matter of the 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 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

**FLEER, LLC'S EVIDENTIARY OBJECTIONS TO THE  
CERTIFICATION OF PAUL C. WITTEKIND**

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT FSB Acquisition Company, LLC ("FSB") (now known as Fleer, LLC), owner of all Fleer/SkyBox International, LP, intellectual property rights ("IP Rights") objects to the Certification of Paul C. Wittekind as follows:

<b><u>EVIDENCE SUBJECT TO OBJECTION</u></b>	<b><u>EVIDENTIARY OBJECTIONS</u></b>
<p>1. Paragraph 3:</p> <p>“At the Assignee’s request, I examined the digital images stored in Fleer’s DAMS. Each digital image is associated with an electronic file that stores textual information, known as “metadata,” relating to the digital image.</p> <p>Using the MediaBin software, I was able to extract certain metadata regarding the digital images on Fleer’s DAMS, including information concerning the copyright status of the digital images. I was able to separate the images into three categories based upon their copyright status, as reflected in the metadata itself: (1) images copyrighted by photographers and other third-party individuals and entities; (2) images within the “public domain” (not containing any copyrights); and (3) images which are neither copyrighted by</p>	<p>1. Objection. Hearsay, <i>New Jersey Evidence Code</i> § 802. Lack of personal knowledge/foundation, <i>New Jersey Evidence Code</i> § 901. Improper opinion testimony from an unqualified witness, <i>New Jersey Evidence Code</i> §§ 701 and 705. Relevance, <i>New Jersey Evidence Code</i> § 401. Specifically, the information contained in the “metadata” is hearsay for which no exception has been or can be laid. Further, the declarant has failed to qualify as an expert regarding copyrights and has failed to provide any foundation for the “metadata”-based conclusions regarding the “copyright status” of the subject photographs. Finally, while the declarant states only that his review and analysis of the “Copyright Status Spreadsheet” was</p>

<b><u>EVIDENCE SUBJECT TO OBJECTION</u></b>	<b><u>EVIDENTIARY OBJECTIONS</u></b>
<p>third-parties nor within the public domain, in which Fleer potentially owned copyrights. Attached hereto as Exhibit A is a true and accurate copy of the spreadsheet I generated, based upon the metadata in Fleer's DAMS, that itemizes the number of images in each of the three categories ("Copyright Status Spreadsheet"). I have reviewed and analyzed the Copyright Status Spreadsheet and have conducted a sampling of the metadata itself, and am confident that the Copyright Status Spreadsheet accurately reflects the metadata associated with the digital images contained in Fleer's DAMS."</p>	<p>solely for the purpose of ensuring that the program was accurately reading the metadata, and not for any substantive copyright purpose, the data contained in Exhibit A is not relevant to determining the actual copyright status of the photographs. Therefore, the Certification and Exhibit should be disregarded for purposes of determining the copyright status of the photographs.</p>

**CONCLUSION**

Based upon the above, as well as the arguments presented by FSB's Brief, and concurrently filed "Response To Assignee's Brief In Support Of The Fleer Estate's Auction Sale Of Photographic Slides & Digital Images" the Court should disregard all attempts by Assignee to introduce any evidence relating to the copyright status of the subject photographs, other than where Assignee has admitted that the photographs were owned by Fleer.

Dated: September 23, 2005

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By 

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1100 Glendon Avenue, 14th Floor, Los Angeles, California 90024-3503. On September 23, 2005, I served the within document(s) described as:

**FLEER, LLC'S EVIDENTIARY OBJECTIONS TO THE  
CERTIFICATION OF PAUL C. WITTEKIND**

on the interested parties in this action as stated below:

**Assignee for the Benefit of Creditors of  
Fleer/SkyBox International LP and Fleer  
Collectibles LLC**  
Warren J. Martin Jr.  
100 Southgate Parkway  
Morristown, NJ 07962-1997  
WJMartin@pbnlaw.com

**Attorneys for the Assignee for the Benefit of  
Creditors of Fleer/SkyBox International LP  
and Fleer Collectibles LLC**  
Brett S. Moore  
100 Southgate Parkway  
Morristown, NJ 07962-1997  
BSMoore@pbnlaw.com

- (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in affidavit.
- (BY E-MAIL) By transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 23, 2005, at Los Angeles, California.

\_\_\_\_\_  
Toni Stewart  
(Type or print name)

\_\_\_\_\_  
  
(Signature)