

PORZIO, BROMBERG & NEWMAN, P.C.

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Attorneys Appearing: John S. Mairo (JM-0670)
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Attorneys for Warren J. Martin Jr., Assignee for the
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 AN ORDER SUPPLEMENTING THE
COURT'S JULY 8, 2008 ORDER AUTHORIZING THE
ASSIGNEE'S SALE OF CERTAIN ASSETS AND RETENTION OF
SPECIAL COUNSEL**

TO: ALL CREDITORS ON ATTACHED SERVICE LIST

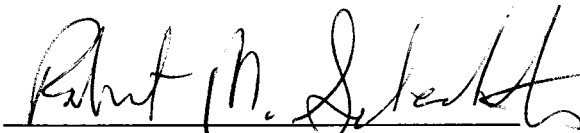
PLEASE TAKE NOTICE that Warren J. Martin Jr. (the "Assignee"), Assignee for the benefit of creditors of Fleer/Skybox International LP, by and through his counsel, Porzio, Bromberg & Newman, P.C., shall move before the Honorable Ronald E. Bookbinder, J.S.C., a Judge of the Superior Court of the State of New Jersey, on the 14th day of November, 2008 at 10:00 a.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 Supplementing the Court's July 8, 2008 Order Authorizing the Assignee to Sell Certain Assets and Retain Special Counsel (the "Motion").

PLEASE TAKE FURTHER NOTICE that in support of the Motion, the Assignee shall rely upon the Assignee's Verified Application for an Order Supplementing the Court's July 8, 2008 Order Authorizing the Sale of Certain Assets and Retention of Special Counsel annexed hereto, 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: October 28, 2008

PORZIO, BROMBERG & NEWMAN, P.C.

By: 
Robert M. Schechter

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

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

DOCKET NO: P-2005-1394

**ASSIGNEE'S VERIFIED APPLICATION FOR AN ORDER
SUPPLEMENTING THE COURT'S JULY 8, 2008 ORDER
AUTHORIZING THE SALE OF CERTAIN ASSETS AND
RETENTION OF SPECIAL COUNSEL**

Warren J. Martin Jr. (the "Assignee"), Assignee for the Benefit of Creditors of Fleer/SkyBox International LP ("Fleer/Skybox" or "Assignor"), by and through his counsel, Porzio, Bromberg & Newman, P.C. ("Porzio"), by way of Verified Application for an Order Supplementing the Court's July 8, 2008 Order Authorizing the Sale of Certain Assets and Retention of Special Counsel (the "Supplemental Application"), respectfully states as follows:

Background

1. I am the Assignee for the Benefit of the Creditors of Fleer/SkyBox International LP ("Fleer/Skybox"), having been so designated pursuant to the Deed of Assignment for the Benefit

of Creditors recorded and filed on June 10, 2005, as amended July 14, 2005 (the "Assignment Date").

2. Fleer/Skybox was primarily in the business of producing and selling a wide variety of sport and entertainment trading cards, autographs of professional athletes, game-used equipment and photographs of professional athletes. The businesses of Fleer/Skybox had ceased operating prior to the Assignment Date.

3. Prior to the Assignment for the Benefit of Creditors, Fleer/Skybox maintained in the ordinary course of its business, books and records that reflected, *inter alia*, the Assignor's liabilities and the amounts owed and paid to its creditors.

4. In order to properly complete my duties as Assignee, I have reviewed and investigated transfers of property made by the Assignor during the four-month period prior to the Assignment Date (the "Preference Period") and identified certain transfers made during the Preference Period as preferential transfers (the "Preferential Transfers"), the return of which I must pursue under N.J.S.A. 2A:19-1 *et seq.* (the "Assignment Statute"), and specifically N.J.S.A. 2A:19-3, as part of my fiduciary obligations as Assignee (the "Preference Actions").

5. In connection with my pursuit of the return of the Preferential Transfers, on June 6, 2008, I filed a motion (the "Retention Motion") for an order (the "Retention Order") authorizing the Assignee's sale of certain assets and retention of special counsel, Mitnick & Malzberg, P.C. ("M&M"). The Court entered the Retention Order on July 8, 2008.

6. Shortly after entry of the Retention Order, M&M began pursuing recovery of the Preferential Transfers for the benefit of Fleer/Skybox's creditors. Pursuant to the Retention Order, M&M is not requiring the Assignee to pay any disbursements whatsoever in connection with

the Preference Actions and is paying 100% of all receivables to the Assignee, less M&M's 33 1/3% contingency fee.

7. Since M&M's commencement of negotiations with Preferential Transfer recipients, and depending upon the particular circumstance, certain Preferential Transfer recipients have proposed that the Assignee accept a waiver or assignment of their claims against Fleer/Skybox in exchange for some discount of their payment to the Assignee in settlement of the Assignee's Preference Action against them. By accepting such proposals, when appropriate, the Assignee adds value for Fleer/Skybox's creditors by decreasing the claims which may ultimately share in the Assignee's distribution to creditors. That is, by reducing creditor claims against the Fleer/Skybox estate the Assignee increases distribution to creditors who are entitled to share in the Assignee's distribution. Thus, the Assignee achieves a positive result for Fleer/Skybox's creditors even while discounting cash payments made by Preferential Transfer recipients to the Assignee in settlement of the Preference Actions.

8. Since M&M's compensation pursuant to the Retention Order is a 33 1/3% contingency fee of M&M's recoveries on behalf of the Assignee, the Assignee's acceptance of reduced cash payments from Preferential Transfer recipients in exchange for waivers of claims against Fleer/Skybox or assignments of such claims to the Assignee also reduces M&M's commission, despite the added value such resolutions bring to Fleer/Skybox's creditors. As a result, the Assignee seeks entry of a supplemental Retention Order (the "Supplemental Retention Order") authorizing the following equitable supplemental fee arrangement between the Assignee and M&M:

In the event that M&M negotiates a Preference Action settlement which incorporates an assignment to the Assignee of a Preferential Transfer recipient's claim against Fleer/Skybox, the Assignee shall pay, upon distribution to Fleer/Skybox's creditors, 66 2/3% of the

distribution on the assigned claim, pro rata, to Fleer/Skybox's creditors holding allowed claims and 33 1/3% of the distribution on the assigned claim to M&M.

Entry of an order permitting such an arrangement will ensure the continued alignment of the interests of the Assignee, M&M and Fleer/Skybox's creditors, and fairly compensate M&M with no out of pocket expense to the Assignee.

Legal Argument

I. The Assignee has Broad Discretion to Resolve Claims

9. 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.... He 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.

10. As noted above, M&M can bring value to Fleer/Skybox's creditors by negotiating assignments, to the Assignee, of claims against Fleer/Skybox, which the Assignee will then hold for the benefit of Fleer/Skybox's creditors. Since such claim assignments will generally be accompanied by reduced cash payments to the Assignee, the Assignee submits that paying 66 2/3% of the distribution on assigned claims, pro rata, to Fleer/Skybox's creditors holding allowed claims and 33 1/3% of the distribution on assigned claims to M&M will fairly compensate M&M with no out of pocket expense to the Assignee and also achieve the greatest value for the benefit of Fleer/Skybox's creditors.

11. By way of example, if M&M obtains an assignment to the Assignee of a \$10,000 claim against the Fleer/Skybox estate, and the Assignee thereafter makes a 10% distribution to Fleer/Skybox's creditors, each Fleer/Skybox creditor holding an allowed claim at that time would receive their pro rata share of an additional \$666.66 available for creditor distribution and M&M would receive a \$333.33 contingency fee.

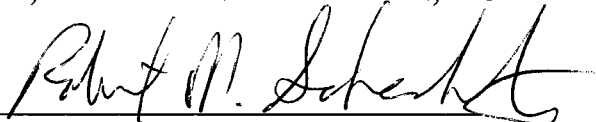
12. The Assignee submits that the proposed contingency fee arrangement will benefit Fleer/Skybox's creditors by facilitating additional Preference Action settlements, increasing distribution to creditors and fairly compensating M&M with no out of pocket expense to the estate.

Conclusion

WHEREFORE, Warren J. Martin Jr., Assignee for the Benefit of Creditors of Fleer/SkyBox International LP respectfully prays for entry of an Order Supplementing the Court's July 8, 2008 Order Authorizing the Sale of Certain Assets and Retention of Special Counsel, authorizing the foregoing supplemental fee arrangement.

DATED: October 28, 2008

PORZIO, BROMBERG & NEWMAN, P.C.

By: 
Robert M. Schechter

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

VERIFICATION

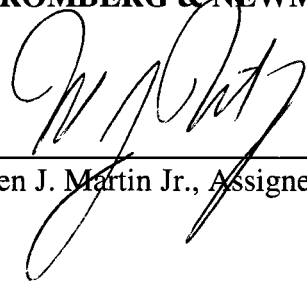
I, Warren J. Martin Jr., the Assignee named in the foregoing Application, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me as contained therein are willfully false, I am subject to punishment.

DATED: October 13, 2008

PORZIO, BROMBERG & NEWMAN, P.C.

By: _____

Warren J. Martin Jr., Assignee



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

DOCKET NO: P-2005-1394

**ORDER SUPPLEMENTING THE COURT'S JULY 8, 2008
ORDER AUTHORIZING THE ASSIGNEE TO SELL
CERTAIN ASSETS AND RETAIN SPECIAL COUNSEL**

This matter having been opened to the Court upon the Assignee's Verified Application For an Order Supplementing the Court's July 8, 2008 Order Authorizing the Assignee to Sell Certain Assets and Retain Special Counsel (the "Supplemental Retention Application"), filed by Porzio, Bromberg & Newman, P.C., attorneys for Warren J. Martin Jr., Esq., Assignee for the Benefit of Creditors of Fleer/SkyBox International LP (the "Assignee"), and the Court having considered the Supplemental Retention Application and all opposition thereto, if any, and a hearing having been held before the Honorable Ronald E. Bookbinder, J.S.C. on _____; and for good cause having been found;

IT IS on this _____ day of _____, 2008,

ORDERED that in the event that Mitnick & Malzberg, P.C. ("M&M") negotiates a Preference Action¹ settlement which incorporates an assignment to the Assignee of a Preferential Transfer recipient's claim against Fleer/Skybox, the Assignee shall pay, upon distribution to Fleer/Skybox's creditors, 66 2/3% of the distribution on the assigned claim, pro rata, to Fleer/Skybox's creditors holding allowed claims and 33 1/3% of the distribution on the assigned claim to M&M.

, J.S.C.

¹ Capitalized terms used but not defined herein shall have the meanings set forth in the Supplemental Retention Application.