

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)**

<p><b>In re</b></p> <p><b>The Boyds Collection, Ltd., et al.</b><sup>1</sup></p> <p style="text-align: center;"><b>Debtors.</b></p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>Case No. 05-____ (____) through 05-____ (____)</p> <p>Chapter 11 (Jointly Administered under Case No. 05-____ (____))</p>
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**DEBTORS’ MOTION FOR ORDER AUTHORIZING THE DEBTORS TO (A)  
MAINTAIN EXISTING INSURANCE POLICIES, (B) PAY PREPETITION  
INSURANCE PREMIUMS AND (C) ENTER INTO POSTPETITION  
PREMIUM FINANCING AGREEMENTS**

The Boyds Collection, Ltd., et al., the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), by counsel, file this Motion For Order Authorizing the Debtors To (A) Maintain Existing Insurance Policies, (B) Pay Pre-Petition Insurance Premiums and (C) Enter Into Post-Petition Premium Financing Agreements (the “Motion”), and in support thereof states:<sup>2</sup>

**Jurisdiction**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 361, 363, 364, and 503 of title 11 of the United States Code (the “Bankruptcy Code”).

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<sup>1</sup> The Debtors in the proposed jointly administered cases include: The Boyds Collection, Ltd.; The Boyds Collection, Ltd., LP; Boyds Operations Inc.; The Boyds Collection - Pigeon Forge, LLC; The Boyds Collection - Myrtle Beach, LLC; The Boyds Collection - Branson, LLC; J&T Designs and Imaginations, Inc.; HC Accents & Associates, Inc.; and Boyds Bear and Company, LP.

<sup>2</sup> The facts and circumstances supporting this Motion are set forth in the Affidavit of Jan L. Murley in Support of First Day Motions filed contemporaneously herewith.

## **Background**

3. On the date hereof (the “Commencement Date”), the Debtors each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (collectively, the “Reorganization Cases”). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Contemporaneously herewith, the Debtors requested an order for the joint administration of the Reorganization Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

4. The Boyds Collection, Ltd. (“Boyds”) is a leading designer, marketer and distributor of high-quality, hand-crafted collectibles, gift and other specialty products. Boyds was founded in 1979 and is the parent company, holding direct or indirect ownership interests in eight (8) domestic subsidiaries and four (4) foreign subsidiaries.<sup>3</sup>

5. Boyds operates in two segments: a wholesale gift business and a retail gift/entertainment business. Boyds’ wholesale business designs, imports and distributes plush animals, resin figurines and other specialty giftware via a global network of independent retailers and distributors. Boyds imports substantially all of its products from manufacturers in China through buying agencies. Boyds’ retail business sells plush animals, resin figurines and specialty giftware products and provides a unique interactive entertainment experience at its Gettysburg, Pennsylvania and Pigeon Forge, Tennessee retail stores.

6. As set forth in the Form 10-Q filed by Boyds on August 12, 2005, as of June 30, 2005, the Debtors’ consolidated books and records reflected assets totaling approximately \$66.9 million and liabilities totaling approximately \$101.7 million. For the three months ended June 30, 2005, Boyds reported revenues of approximately \$17.1 million and net losses of approximately \$101.3 million.

7. The significant indebtedness of Boyds consists of: (i) approximately \$56.5 million in aggregate principal amount under a senior secured credit agreement, dated as of February 23,

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<sup>3</sup> None of the foreign subsidiaries are Debtors.

2005 (the “Pre-Petition Credit Agreement”) and (ii) approximately \$34.4 million in aggregate principal amount pursuant to certain 9% senior subordinated notes due in 2008.

8. During 2001, Boyds’ financial results began to deteriorate significantly as a consequence of industry-wide and company-specific factors. Over a period of several years, retail sales of plush toys shifted from small independent retailers, in which Boyds had a leading presence, to large regional and national retailers and mass merchandisers, in which Boyds did not have a meaningful presence. Moreover, the large retailers competed with Boyds’ product line at lower price points. This shift in distribution channels coincided with a general cooling of consumer demand for “collectible” products. As a result, the retail sales of Boyds and its direct industry competitors were negatively affected.

9. In response, during 2004 Boyds began to implement various operational restructuring and cost reduction programs. Such programs focused on (i) redirecting sales efforts towards larger regional and national channels, (ii) developing products specifically targeted to these channels, (iii) selectively expanding distribution to include direct in-home marketing initiatives and (iv) developing co-branding campaigns with well-recognized brands such as NASCAR, Coca-Cola, Crayola and M&Ms. Unfortunately, despite the efforts of Boyds’ management to reposition the business in response to the changing industry sales dynamics, Boyds was not able to increase sales in the new channels quickly enough to offset the decline in sales from the company’s traditional core-market of independent retailers.

10. By the fall of 2005, it had become apparent that Boyds could not avoid a financial restructuring. From September to the Commencement Date, Boyds engaged in discussions with the lenders (the “Pre-Petition Lenders”) under the Pre-Petition Credit Agreement regarding the terms of a comprehensive plan to restructure Boyds’ operations and existing debt obligations. Though Boyds and the Pre-Petition Lenders made substantial progress in these negotiations, as of the Commencement Date, negotiations were still ongoing. The Pre-Petition Lenders were unwilling to extend the waiver or commit to providing any further liquidity outside of a reorganization. On the Commencement Date, the Debtors, in the exercise of their prudent

business judgment, determined that it was in the best interest of all their stakeholders to commence the Reorganization Cases, continue negotiations with the Debtors' creditor constituencies and consummate a restructuring under the auspices of this Court.

### **Relief Requested**

11. In the ordinary course of the Debtors' businesses, the Debtors maintain numerous insurance policies providing coverage for, *inter alia*, general liability, workers' compensation and employers liability directors and officers liability, umbrella liability, automotive liability, crime, special risk fiduciary liability, legal liability, employment practices liability, marine/war cargo liability, and foreign general liability. A detailed listing of the policies that are currently maintained by the Debtors is attached hereto as Exhibit A (the "Policies"). These Policies are essential to the preservation of the Debtors' businesses, property and assets, and, in many cases, such coverages are required by various regulations, laws and contracts that govern the Debtors' business conduct.

12. The Debtors do not believe that they need Court approval to maintain their existing Policies. Moreover, they do not believe that they owe any pre-petition amounts for their policies. Out of an abundance of caution, however, the Debtors, by this Motion, seek entry of an order by the Court authorizing them to pay pre-petition insurance premiums, if any, necessary to maintain insurance coverage in current effect and, at their sole discretion, revise, supplement or change their coverage as needed. The Debtors also seek authority to pay any unpaid pre-petition premiums related thereto to the extent that the Debtors determine in their discretion that any such payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse or any form of impairment to the coverage. Finally, the Debtors seek authority to enter into post-petition premium financing agreements ("PFAs") without the need for further approval by the Court.

13. The total annual premium paid for the Policies is \$995,999.00.

14. In view of the importance of maintaining insurance coverages with respect to its business activities and the preservation of the Debtors' cash flow and estates by financing the

insurance premiums, the Debtors believe it is in the best interests of their estates to authorize the Debtors to enter into PFAs. Any other alternative would likely require considerable additional cash expenditures and would be detrimental to the Debtors' reorganization efforts.

15. The Debtors will need to continue their insurance coverage throughout the entire duration of these Reorganization Cases. The Debtors respectfully suggest that the negotiation of PFAs falls squarely within their ordinary course of business, and but for the constraints of section 364 of the Bankruptcy Code, the Debtors would not need the Court's prior approval to enter into new premium financing agreements. To reduce the administrative burden of these Reorganization Cases, as well as the expense of operating as debtors in possession, the Debtors seek the Court's authority to enter into premium financing agreements.

#### **Basis for Relief**

16. Section 105(a) of the Bankruptcy Code provides the legal basis for the Court to grant the authority to pay pre-petition claims out of necessity. Section 105(a) states, in part, "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Many courts, including this one, have recognized the need for debtors in possession to pay pre-petition obligations to protect the value and assets of the estate and to ensure a smooth continuation of the debtor's business, and courts consistently have authorized such payments pursuant to 11 U.S.C. § 105(a) under the "doctrine of necessity." See In re Railworks Corp., Case No. 01-64463 (SD) (Bankr. D. Md. 2001); In re Startec Global Commc'ns Corp., Case No. 01-25013 (DK) (Bankr. D. Md. 2001); see also In re Just For Feet, Inc., 242 B.R. 821, 826 (Bankr D. Del. 1999); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) (the court noted that use of equitable powers by a bankruptcy court to authorize the payment of pre-petition debts when such payment is needed for the debtor's restructuring is a commonplace concept).

17. Moreover, the Court may authorize the Debtors to pay pre-petition premiums to maintain insurance coverage under section 363(b) of the Bankruptcy Code. Section 363(b)

provides that “[t]he trustee, after notice and an hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Thus, under this section, a court may authorize a debtor to pay certain pre-petition claims. See Ionosphere Clubs, 98 B.R. at 175 (affirming lower court order authorizing payment of pre-petition wages pursuant to section 363(b) of the Bankruptcy Code); In re UAL Corp., Case No. 02-48191, at 91-93 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of pre-petition claims under section 363 of the Bankruptcy Code as an out-of-the-ordinary-course transaction); In re Jillian’s Entm’t Holdings, Inc., Case No. 04-33192 (Bankr. W.D. Ky. June 22, 2004). In order to do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” Ionosphere Clubs, 98 B.R. at 175. As discussed herein, the maintenance of the Debtors’ insurance coverage to their businesses is of the utmost importance.

18. Furthermore, pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. See, e.g., In re Simasko Prod. Co., 47 B.R. 444, 448-9 (D. Colo. 1985) (authorizing interim financing agreement where debtor’s best business judgment indicated financing was necessary and reasonable for benefit of estate); In re Ames Dept. Stores Inc., 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to post-petition credit, courts “permit debtor-in-possession to exercise their basic business judgment consistent with their fiduciary duties.”); see also 3 Collier on Bankruptcy ¶ 364.03, at 364-7 through 364-18 (15th ed. Rev. 1999).

19. Courts have routinely granted debtors the authority to enter into post-petition PFAs to finance insurance premiums for reasons similar to those of the Debtors in these Reorganization Cases. See, e.g., In re United Artist Theatre Co., Case No. 00-3514 (SLR) (Bankr. D. Del. September 7, 2000); In re AmeriServe Food Distrib., Inc., Case No. 00-358 (PJW) (Bankr D. Del. February 16, 2000); In re Goss Graphic Sys., Inc., Case No. 99-2756 (PJW) (Bankr. D. Del. July 30, 1999). The Debtors may determine during the course of these Reorganization Cases that it is not economically advantageous to pay some or all of the

premiums on the Policies on a lump sum basis. The Debtors may therefore enter into PFAs with nondebtor third parties in the ordinary course of their businesses as a means of paying these premiums.

20. To reduce the administrative burden of these Reorganization Cases on the Court, the Debtors, their creditors and other parties in interest and to minimize expenses incurred during the course of the Reorganization Cases, the Debtors seek the Court's authority to enter into post-petition PFAs to the extent that the Debtors determine in their discretion that to do so would be in the best interests of their estates. As the Debtors will incur secured debts by entering into PFAs, under which the creditor will have a security interest in related insurance contracts held by the Debtors, section 364(c) of the Bankruptcy Code would apply and provide a basis for the Court to grant the Debtors the authority to enter into post-petition PFAs.

#### **Memorandum of Law**

21. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to Rule 9013-2 of the Local Bankruptcy Rules for the District of Maryland.

#### **Notice**

22. Notice of this Motion has been given to (a) the office of the United States trustee; (b) counsel to the Agent to the Debtors' Pre-Petition Lenders; (c) counsel for the indenture trustee for the Debtors' 9% Senior Subordinated Notes due 2008; and (d) each of the Debtors' top twenty (20) unsecured creditors.

#### **No Prior Request**

23. No prior motion for the relief requested herein has been made to this or any other Court.

**Conclusion**

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form attached hereto as Exhibit B, authorizing Debtors (i) to maintain existing insurance policies, (ii) to pay pre-petition insurance premiums, if any, (iii) to enter into post-petition financing of insurance premiums and (iv) grant such further relief as is just and proper.

Washington, D.C.  
Dated: October 16, 2005

Respectfully submitted,

**SWIDLER BERLIN LLP**

/s/ Monique D. Almy  
Monique D. Almy (Bar No. 04479)  
Kimberly E. Neureiter (Bar No. 27167)  
The Washington Harbour  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Phone: (202) 424-7500  
Fax: (202) 424-7643  
mdalmy@swidlaw.com  
keneureiter@swidlaw.com

-and-

**KIRKLAND & ELLIS LLP**  
Richard M. Cieri (NY RM 6062)  
Matthew A. Cantor (NY MC 7727)  
(*Pro hac vice* admissions pending)  
Citigroup Center  
153 East 53<sup>rd</sup> Street  
New York, New York 10022-4611  
Phone: (212) 446-4800  
Fax: (212) 446-4900  
rcieri@kirkland.com  
mcantor@kirkland.com

Proposed Counsel for the Debtors and Debtors in Possession

**EXHIBIT A**

**List of Insurance Policies**

**List of Insurance Policies**

<i>Type of Policy</i>	<i>Insurance Co.</i>	<i>Term</i>	<i>Amount of Annual Premium</i>	<i>Expiration Date</i>
Auto	Federal Insurance Company	12 mo.	\$1,505.00	October 1, 2006
Auto	Selective Insurance Company	12 mo.	\$8,707.00	October 1, 2006
Cargo	Hartford Fire Insurance Company	12 mo.	\$21,120.00	September 30, 2006
Director & Officer Liability	Federal Insurance Company	12 mo.	\$189,000.00	March 25, 2006
Umbrella Director & Officer Liability	Axis Specialty Insurance Company	12 mo.	\$20,000.00	October 11, 2006
Excess Director's & Officer's Liability	ACE American Insurance Company.	12 mo.	\$112,000.00	March 25, 2006
Excess Umbrella Director & Officer Liability	XL Specialty Insurance Company	12 mo.	\$20,000.00	October 11, 2006
General Liability	Selective Insurance Company	12 mo.	\$16,869.00	October 1, 2006
General Liability/ Property	Federal Insurance Company	12 mo.	\$85,016.00 \$7,383.00	March 16, 2006
Inland Marine	Selective Insurance Company	12 mo.	\$46,233.00	October 1, 2006
International	Great Northern Insurance Company	12 mo.	\$11,059.00	October 1, 2006
Property	Selective Insurance Company	12 mo.	\$100,152.00	October 1, 2006
Umbrella	Federal Insurance Company	12 mo.	\$41,834.00	October 1, 2006
Worker's Compensation	Selective Insurance Company	12 mo.	\$81,474.00	October 1, 2006
Worker's Compensation	Selective Insurance Company	12 mo.	\$273,647.00	October 1, 2006

**EXHIBIT B**  
**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)**

<b>In re</b>  <b>The Boyds Collection, Ltd., et al.<sup>1</sup></b>  <b>Debtors.</b>	* * * * * * *	Case No. 05-____ (____) through 05-____ (____)  Chapter 11 (Jointly Administered under Case No. 05-____ (____))	* * * * * * *
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**ORDER AUTHORIZING DEBTORS (A) TO MAINTAIN  
POSTPETITION FINANCING OF INSURANCE PREMIUMS, (B) TO  
PAY PREPETITION PREMIUMS NECESSARY TO MAINTAIN  
INSURANCE COVERAGE IN CURRENT EFFECT  
AND (C) ENTER INTO POSTPETITION PREMIUM FINANCING AGREEMENTS**

Upon the Debtors' Motion for Order Authorizing the Debtors to (A) Maintain Existing Insurance Policies, (B) Pay Pre-Petition Insurance Premiums and (C) Enter Into Post-Petition Premium Financing Agreements, dated October 16, 2005;<sup>2</sup> upon consideration of the supporting papers and the files and records in these cases and upon the arguments and testimony presented at a hearing before the Court; any responses to the Motion having been withdrawn or overruled

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<sup>1</sup> The Debtors in the proposed jointly administered cases include: The Boyds Collection, Ltd.; The Boyds Collection, Ltd., LP; Boyds Operations Inc.; The Boyds Collection - Pigeon Forge, LLC; The Boyds Collection - Myrtle Beach, LLC; The Boyds Collection - Branson, LLC; J&T Designs and Imaginations, Inc.; HC Accents & Associates, Inc.; and Boyds Bear and Company, LP.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning set forth in the Motion.

on the merits; it appearing that the Court has jurisdiction over the subject matter of the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b); it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; it appearing that notice of the Motion was sufficient, and no other or further notice need be provided; and after due deliberation and cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted.
2. The Debtors are authorized, but not directed, in their sole discretion, to maintain the existing Policies as set forth in the Motion.
3. The Debtors are authorized, but not directed, in their sole discretion, to pay any unpaid pre-petition premiums set forth in the Motion as are necessary to avoid, cancellation, default, alteration, assignment, attachment, lapse or any form of impairment to the coverage, benefits or proceeds provided under such policies and to maintain the policies in current force and effect.
4. The Debtors are authorized, but not directed, in their sole discretion to enter into post-petition premium financing agreements as set forth in the Motion.
5. Notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

**END OF ORDER**

**ORDER SERVICE LIST**

Admobile of Knoxville  
10217 Lynn Chase Lane  
Knoxville, TN 37932

AFC Worldwide Express  
P.O. Box 965549  
Marietta, GA 30066

All-Size Corrugated Products  
P.O. Box 92973  
Cleveland, OH 44194-2973

Alpha Marketing Resources LLC  
10 Hilltop Drive  
Mount Holly Springs, PA 17065

AmericaSmart Real Estate LLC  
P.O. Box 933005  
Atlanta, GA 31193-3005

Appalachia Business Comm Corp.  
PO Box 30517  
Knoxville, TN 37930-0517

Banta Direct Marketing Group  
PO Box 78201  
Milwaukee, WI 53278-0201

Best Read Guide  
Touring Publications  
PO Box 4580  
Sevierville, TN

Bo Whaley Music, Inc.  
Jimbo Whaley  
686 Lloyd Huskey Road  
Pigeon Forge, TN 37863

Brochure Distribution Services  
PO Box 4065  
1881 County Meadows Drive  
Sevierville, TN 37864

Calico Cottage Inc.  
210 New Highway  
Amityville, NY 11701-1116

Capital Blue Cross  
P.O. Box 779516  
Harrisburg, PA 17177-9516

Chart Media  
PO Box 1379  
Murfreesboro, TN 37133-1379

C.I.T. Group/Commercial Services Inc.  
PO Box 1036  
Charlotte, NC 28201-1036

Cintas Corporation # 407  
340 Dunavant Drive  
Rockford, TN 37853

Cody Kramer  
200 Corporate Drive  
Blauvelt, NY 10913

Countainerport Group, Inc.  
P.O. Box 827506  
Philadelphia, PA 19182-7506

County of Sevier  
125 Court Avenue, Suite 202e  
Sevierville, TN 37862

Dolly Inc.  
PO Box 931174  
Cleveland, OH 44193

Effem Direct. Incorporated  
PO Box 406678  
Atlanta, GA 30384-6678