

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

In re	*	Case No. 05-____ () through
	*	05-____ ()
The Boyds Collection, Ltd., et al.¹	*	
	*	Chapter 11
Debtors.	*	(Jointly Administered under
	*	Case No. 05-____ ()
	*	
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**APPLICATION BY THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING
THE EMPLOYMENT AND RETENTION OF KIRKLAND & ELLIS LLP AS
ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION**

The Boyds Collection, Ltd., *et al.*, the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), by counsel, file this Application by the Debtors for Entry of an Order Authorizing the Employment and Retention of Kirkland & Ellis LLP as Attorneys for the Debtors and Debtors in Possession (the “Application”), and in support thereof state:²

Jurisdiction

1. The Court has jurisdiction over this Application 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 Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.
2. The statutory bases for the relief sought herein are section 327(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

¹ 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.

² The facts and circumstances supporting this Application are set forth in the Affidavit of Jan L. Murley in Support of First Day Motions filed contemporaneously herewith and the Affidavit of Matthew A. Cantor in support of this Application (the “Cantor Affidavit”), attached hereto as Exhibit B.

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.³

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.

³ None of the foreign subsidiaries are Debtors.

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, 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. By this Application, the Debtors respectfully request the Court to enter an order pursuant to section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) authorizing the Debtors to employ and retain Kirkland & Ellis LLP ("K&E") as their bankruptcy counsel file and prosecute the above-captioned Reorganization Cases and all related matters, effective as of the Commencement Date.

Services to be Provided

12. The terms and conditions of K&E's engagement are set forth in the retention letter, dated September 9, 2005 (the "Retention Agreement"), a copy of which is attached hereto as Exhibit A.

13. The professional services that K&E will render to the Debtors may include, but are not limited to, the following:

- (a) advise the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their businesses and properties;
- (b) attend meetings and negotiate with representatives of creditors and other parties in interest;
- (c) take all necessary actions to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors and representing the Debtors' interests in negotiations concerning all litigation in which the Debtors are involved, including, but not limited to, objections to claims filed against the estates;
- (d) prepare all motions, applications, answers, orders, reports and papers necessary to the administration of the Debtors' estates;

- (e) take any necessary action on behalf of the Debtors to obtain approval of a disclosure statement and confirmation of a plan of reorganization;
- (f) represent the Debtors in connection with obtaining post-petition financing;
- (g) advise the Debtors in connection with any potential sale of assets;
- (h) appear before this Court, any appellate courts and the office of the United States trustee (the "U.S. Trustee"), and protect the interests of the Debtors' estates before those Courts and the U.S. Trustee;
- (i) consult with the Debtors regarding tax matters; and
- (j) perform all other necessary legal services and provide all other necessary legal advice to the Debtors in connection with the Reorganization Cases.

14. The Debtors seek to retain K&E as their attorneys because K&E has extensive experience and knowledge in the field of debtors' and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code. In addition, K&E possesses extensive expertise, experience and knowledge practicing before bankruptcy courts.

15. K&E has been actively involved in major Reorganization Cases, and has represented debtors in many cases, including In re Collins & Aikman Corp., Case No. 05-55927 (Bankr. E.D. Mich. 2005); In re Tower Automotive, Inc., Case No. 05-10578 (Bankr. S.D.N.Y. 2005); In re Jillian's Entm't Holdings, Inc., Case No. 04-33192 (W.D. Ky. 2004); In re Techneglas, Inc., Case No. 04-63788 (Bankr. E.D. Ohio 2004); In re Conseco, Inc., et al., 02-B49672 (CAD) (Bankr. N.D. Ill 2002); In re UAL Corp., et al., 02-B-48191 (ERW) (Bankr. N.D. Ill. 2002); In re Dade Behring Holdings, Inc., Case No. 02-B-29020 (EOD) (Bankr. N.D. Ill. 2002); In re Humphrey's Inc., Case No. 01-13742 (REG) (Bankr. N.D. Ill. 2001); In re Chiquita Brands Int'l, Inc., Case No. 01-18812 (Bankr. S.D. Ohio 2001); In re Trans World Airlines, Inc., Case No. 01-00056 (PJW) (Bankr. D. Del. 2001); In re Teligent, Inc., Case No. 02-12974 (SMB) (Bankr. S.D.N.Y. 2001); In re Quality Stores, Inc., Case No. GG-01-10662 (W.D. Mich. 2001); In re AmeriServe Food Distrib., Inc., Case No. 00-00358 (PJW) (Bankr. D. Del. 2000); In re The Babcock & Wilcox Co., Case No. 00-10992 (Bankr. E.D. La. 2000); and In re United Artists Theatre Co., Case No. 00-3514 (JLR) (D. Del. 2000).

16. Additionally, in preparation for the Reorganization Cases, K&E has become familiar with the Debtors' businesses and affairs and many of the potential legal issues that may arise in the context of the Reorganization Cases. Accordingly, the Debtors believe that K&E is both well-qualified and uniquely able to represent them in the Reorganization Cases in an efficient and timely manner.

Terms of Retention

17. K&E intends to apply for compensation for professional services rendered in connection with the Reorganization Cases, subject to this Court's approval and in compliance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the Local Bankruptcy Rules for the District of Maryland, this Court's orders and the guidelines established by the U.S. Trustee, on an hourly basis, plus reimbursement of actual and necessary expenses and other charges that K&E incurs in connection with the representation. The hourly rates and corresponding rate structure utilized by K&E in the Reorganization Cases are equivalent to the hourly rates and corresponding rate structure predominantly used by K&E for restructuring, workout, bankruptcy, insolvency and comparable matters, and similar complex corporate, securities and litigation matters (collectively, the "Complex Matters") whether in court or otherwise, regardless of whether a fee application is required. These rates and rate structure reflect that such restructuring and other Complex Matters are often national in scope and typically involve great complexity, high stakes and severe time pressures. In addition, at times K&E negotiates bonuses and special fee arrangements payments that can make the effective "rate" substantially lower or higher depending on the particular arrangement and outcome of the underlying action.

18. K&E operates in a complicated, national marketplace for legal services in which rates are driven by multiple factors relating to the individual lawyer, his or her area of specialization, the firm's expertise, performance and reputation, the nature of the work involved and other factors. Because the sub-markets for legal services are fragmented and are affected by a variety of individualized and interdependent factors, K&E has no one rate for an individual

biller that applies to all matters for all clients. K&E rates for an individual biller may vary as a function of the type of matter, geographic factors, the nature of certain long-term client relationships and various other factors, including those enumerated above.

19. K&E's hourly rates are set at a level designed to fairly compensate K&E for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions and are consistent with the rates charged elsewhere. In particular, K&E hourly rates for matters implicated in the Reorganization Cases range as follows:

<u>Billing Category</u>	<u>Range</u>
Partners	\$425 to \$950 an hour
Of Counsel	\$325 to \$740 an hour
Associates	\$235 to \$540 an hour
Paraprofessionals	\$90 to \$280 an hour

20. The following professionals are presently expected to have primary responsibility for providing services to the Debtors: Richard M. Cieri (current billing rate \$825.00); Matthew A. Cantor (current billing rate \$745.00); Michael I. Gottfried (current billing rate \$675.00); Edward O. Sassower (current billing rate \$595.00); Lisa G. Laukitis (current billing rate \$520.00); Evan Gartenlaub (current billing rate \$455.00); Javier Schiffrin (current billing rate \$455.00); and Katherine Piper (current billing rate \$420.00). In addition, from time to time, it may be necessary for other K&E professionals and paraprofessionals to provide services to the Debtors.

21. It is K&E's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is also K&E's policy to charge its clients only the amount actually incurred by K&E in connection with such items. Examples of such expenses are postage, overnight mail, courier delivery, transportation, overtime expenses,

computer assisted legal research, photocopying, outgoing facsimile transmissions, airfare, meals and lodging.

22. In order to ensure the compliance with all applicable deadlines in these highly complex Reorganization Cases, K&E utilizes the services of overtime secretaries. K&E charges fees for these services pursuant to the pre-petition engagement letter between K&E and the Debtors, which permits K&E to bill the Debtors for overtime secretarial charges that arise out of business necessity. In addition, K&E professionals also may charge their overtime meals and overtime transportation to the Debtors consistent with pre-petition practices.

23. K&E charges (a) \$0.10 per page for standard duplication and (b) \$0.75 per page for outgoing facsimile transmissions (plus related toll charges). K&E does not charge its clients for incoming facsimile transmissions. K&E has negotiated a discounted rate for Westlaw computer assisted legal research, which is approximately \$125/hour of online use of the standard Westlaw databases. Computer assisted legal research is used whenever the researcher determines that using Westlaw is more cost effective than using traditional (non-computer assisted legal research) techniques.

24. As set forth in the Cantor Affidavit, attached hereto as Exhibit B, to date, K&E has received \$100,000 from the Debtors as retainer and \$350,000 as advance payment for professional services performed by K&E in the 90 days prior to the Commencement Date and to be performed by K&E in connection with these Reorganization Cases.

25. As of the Commencement Date, the Debtors do not owe K&E any amounts for legal services rendered before the Commencement Date.

K&E's Disinterestedness

26. To the best of the Debtors' knowledge, and except as disclosed in the Cantor Affidavit, K&E does not hold or represent any interest adverse to the Debtors' estates. K&E is a "disinterested person," as that phrase is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and K&E's employment is necessary and in the best interests of the Debtors and the Debtors' estates.

Memorandum of Law

27. This Application includes citations to the applicable authorities and a discussion of their application to this Application. 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 Application pursuant to Rule 9013-2 of the Local Bankruptcy Rules for the District of Maryland.

Notice

28. Notice of this Application 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

29. No prior application 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 C, (i) authorizing the Debtors to employ and retain K&E as attorneys for the Debtors effective as of the Commencement Date and (ii) granting such further relief as the Court deems appropriate.

Respectfully submitted,

THE BOYDS COLLECTION, LTD.

Dated: October 16, 2005

By: /s/ Jan. L. Murley
Jan L. Murley, Chief Executive Officer
350 South Street
McSherrystown, PA 17344
(717) 633-9898

Debtors and Debtors in Possession

EXHIBIT A

K&E Retention Agreement

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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September 9, 2005

Jan L. Murley
Chief Executive Officer
The Boyds Collection Ltd.
350 South Street
McSherrystown, PA 17344

Re: *Retention of Kirkland & Ellis LLP to Provide Legal Services*

Dear Jan:

We are very pleased that you have asked us to represent The Boyds Collection Ltd. and certain of its subsidiaries (collectively, "you" or "your") in connection with a possible restructuring. Please note that we do not represent your officers, directors or employees.

General Terms. This retention letter (the "Agreement") sets forth the terms of your retention of Kirkland & Ellis LLP and Kirkland & Ellis International LLP (collectively "K&E LLP") to provide legal services and constitutes an agreement between us. The Agreement sets forth our entire agreement for rendering professional services for the current matter, as well as for all other existing or future matters, except where we otherwise agree in writing (e.g., by signing a different retention letter).

Personnel. I will be primarily responsible for this engagement. Other attorneys and legal assistants also will perform services during the course of this engagement. We will involve such other lawyers and legal assistants in K&E LLP to the extent that your needs make such involvement desirable and acceptable to you.

Fees. Hourly rates vary with the experience and seniority of the individuals assigned, and the type of matter being handled, and may be adjusted by us from time to time. Our attorney billing rates presently range from \$245 to \$485 per hour for certain associates and from \$425 to \$950 per hour and up for our most experienced partners. Other legal billers include legal assistants, project assistants, and certain specialized personnel (e.g., investigators, technical specialists, and the like). We reserve the right to change these rates from time to time.

Chicago

London

New York

San Francisco

Washington, D.C.

