

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.

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,

³ 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. Moreover, the Debtors believe that the restructuring of their existing debt and

capital structure is unlikely to be practicable outside the chapter 11 process. Accordingly, 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.

The Debtors' Net Operating Losses ("NOLs")

11. As more fully described above, the Debtors have had significant operating losses in the recent past. Since calendar tax year 2001, the Debtors have not incurred significant federal income tax liability and in fact have incurred substantial net operating losses and net built-in losses and a significant tax asset associated with goodwill (collectively, the "NOLs").⁴ The Debtors' NOLs are an extremely valuable asset because under the Internal Revenue Code (the "IRC"), the Debtors can carry forward their NOLs to offset their future taxable income for up to twenty (20) taxable years and thereby reduce their future aggregate tax obligations.⁵

12. The Debtors' NOLs are currently estimated to be approximately \$409 million, which, based on the applicable 38.7% corporate tax rate now in effect, represent approximately \$158 million in potential tax savings to be utilized in future years. These tax savings -- and the accompanying increase in the Debtors' cash flow -- will greatly facilitate the Debtors' successful reorganization. As one bankruptcy court has recognized, "[W]hat is certain is that the NOL has a potential value, as yet undetermined, which will be of benefit to creditors and will assist [the debtors] in their reorganization process. This asset is entitled to protection while [the debtors] move forward toward their reorganization." See In re Phar-Mor, Inc., 152 B.R. 924, 927 (Bankr. N.D. Ohio 1993).

⁴ NOLs can be used as either "carrybacks" (where the corporation uses the NOLs to offset taxable income for up to two previous taxable years) or "carryovers" (where the corporation uses the NOLs to offset taxable income for up to twenty taxable years into the future).

⁵ See 26 U.S.C. § 172.

13. A corporation's ability to use its NOLs may be reduced under certain circumstances.⁶ This Motion focuses on two of those circumstances:

- (a) If the Corporation Experiences an "Ownership Change." A corporation that undergoes an "ownership change" may be limited in the amount of NOLs that it can offset against its taxable income.⁷ Pursuant to IRC Section 382(g), an "ownership change" occurs if, immediately after a "testing date," and as measured during a rolling 3-year "testing period,"⁸ the percentage of the corporation's stock (measured by value) held by certain significant shareholders (i.e., shareholders owning 5% or more) increases by 50 percentage points or more. For example, if a 10% shareholder purchased additional stock and became a 61% shareholder, the percentage of stock owned by 5% stockholders would have increased by 51 percentage points, thereby causing an "ownership change."⁹ A "significant shareholder" also includes an entity that becomes a significant shareholder by virtue of one or more purchases. Thus, for example, if a 2% shareholder purchased additional stock and became a 53% shareholder, then the percentage of stock owned by such shareholder would have increased by 51 percentage points, thereby causing an "ownership change."
- (b) "Changes of Ownership" When Debt Is Converted to Stock Under a Chapter 11 Plan. If a debtor's chapter 11 plan of reorganization provides for creditors to receive stock in the reorganized debtor's business, a "change of

⁶ See 26 U.S.C. §§ 269, 381, 382, 383 and 384.

⁷ In general, under IRC § 382, if a corporation undergoes an "ownership change," the amount of NOLs that the corporation can use in any given year to reduce its taxable income is limited to an amount equal to (a) the value of the corporation's equity on the date that the "ownership change" occurs multiplied by (b) the tax-exempt bond rate on that date. Currently, the tax-exempt bond rate is approximately 4.24%. As a result, if a debtor's equity had a total market value of \$150 million on a date that an "ownership change" occurred, the amount of NOLs that the corporation could use to offset its taxable income would be limited to approximately \$6.36 million per year (i.e., \$150 million x 4.24%). If the debtor later had \$50 million of taxable income in a future year, it would be able to offset \$6.36 million of such taxable income, but would have to pay tax on the remaining \$43.64 million. Because the Debtors have approximately \$40.9 million of NOLs but negligible equity value, an ownership change would effectively eliminate the Debtors' ability to use NOLs to offset future taxable income. If the Debtors were to lose the use of \$409 million of NOLs to offset future taxable income, the Debtors would lose approximately \$158 million in potential future tax savings to be utilized in future years (based on the applicable 38.7% corporate tax rate now in effect).

⁸ Generally, a "testing date" occurs when there is a change in the percentage of stock owned by a 5% shareholder before or after the change, or when an option to purchase the stock of the corporation is granted by the corporation. The "testing period" generally consists of the 3-year period prior to any testing date.

⁹ Under IRC § 382(g)(4)(A), all stockholders who individually hold less than 5% of the shares of stock of a company are generally deemed to be a single 5% stockholder throughout the 3-year testing period, and transfers between such stockholders are disregarded for purposes of determining whether an "ownership change" has occurred (the "Public Group Rule"). Thus, so long as half or more of the debtor's stock is owned by less than 5% stockholders throughout the 3-year testing period, there will be no "ownership change" under IRC § 382. Accordingly, the Debtors do not seek to impose the requested notice and hearing procedures on transactions by stockholders holding less than 5% of the Debtors' stock, provided that such stockholders do not intend to accumulate a 5% or greater block of stock or add or sell shares to or from such a block.

ownership” may occur that may limit the amount of NOLs that can be offset against income. However, if the debtor’s shareholders and/or “Qualified Creditors”¹⁰ own at least 50% of the value and voting power of the debtor’s stock after reorganization, the Debtor’s NOLs will be preserved despite the “ownership change.”¹¹

14. Once all or part of a NOL is disallowed under IRC Section 382, its use is limited forever, and once a claim or equity interest is transferred, the transfer generally cannot be nullified. Thus, unrestricted transfers of equity securities in and of, and claims against, the Debtors could hinder the Debtors’ reorganization efforts by causing them to lose their ability to use NOLs to offset future taxable income.

¹⁰ Under IRC § 382(l)(5)(E), a creditor whose debt is being converted into stock pursuant to a chapter 11 plan is a “Qualified Creditor” if either: (a) the claim has been owned by the same beneficial owner since 18 months before the commencement of the bankruptcy case, or (b) the claim arose in the ordinary course of the Debtors’ business and has been owned at all times by the same beneficial owner. Examples of ordinary course debt include trade debt; a liability arising from a past or present employment relationship; and a past or present business relationship with a customer, supplier or competitor. See Treas. Reg. § 1.382-9(d)(2)(iv). A creditor who receives stock under the Debtors’ chapter 11 plan of reorganization may also be a “Qualified Creditor” if it ultimately owns less than 5% of the reorganized business, despite not being able to satisfy the continuous ownership requirements. This is termed the “De Minimis Rule.” Treas. Reg. § 1.382-9(d)(3).

¹¹ See 26 U.S.C. § 382(l)(5)(A). A corporation that has not previously had an ownership change is not subject to the limitations imposed by IRC § 382 with respect to an ownership change resulting from the consummation of a chapter 11 plan of reorganization, provided that under the plan the debtor’s pre-ownership change shareholders (i.e. persons who owned the debtor’s equity immediately before the relevant ownership change) and/or “Qualified Creditors” emerge from the reorganization owning at least 50% of the total value and voting power of the debtor’s stock immediately after the ownership change. This is termed the “Safe Harbor.” Although there can be no assurance that the Safe Harbor ultimately will be available to the Debtors, it is important that the Debtors preserve their ability to propose a plan or reorganization that could take advantage of the Safe Harbor. Because the status of a creditor as “qualified” depends on whether such creditor has held its claim until the effective date of a plan of reorganization, transfers of claims by creditors before such date pose a threat to the Debtors’ ability to satisfy the requirements of the Safe Harbor. Similarly, because transfers of equity interests by or to 5% stockholders before the effective date of a plan of reorganization can trigger an ownership change that could impose a severe annual limitation on the Debtors’ use of their NOLs, even if the Debtors later satisfied the Safe Harbor requirements in connection with a second ownership change resulting from a plan of reorganization, such transfers also pose a threat to the value of their NOLs. The requested relief will ensure that the Debtors have maximum flexibility to structure a plan of reorganization that meets the requirements of the Safe Harbor, and thus preserves their NOLs to the fullest extent.

Even if it is ultimately determined that the Safe Harbor is unavailable to the Debtors, it is in their best interests to restrict equity transactions which could result in an “ownership change” prior to consummation of a plan of reorganization for two additional reasons. First, an “ownership change” must not occur prior to consummation of a plan of reorganization for the Debtors to qualify for the “Favorable Valuation Rule” in 26 U.S.C. § 382(1)(6). IRC Section 382(1)(6) provides that if a corporation undergoes an “ownership change” pursuant to a plan of reorganization in chapter 11 and the Safe Harbor does not apply (either because the corporation elects out of it or because its requirements are not satisfied), then the appropriate consolidated value of the Debtors for purposes of calculating the § 382 limitation will reflect the increase in the Debtors’ value resulting from any surrender or cancellation of creditors’ claims in the transaction. Thus, assuming the Debtors’ consolidated value increases as a result of the reorganization, § 382(1)(6) will provide for a higher annual limitation than would result under the general rules of § 382, thereby preserving the Debtors’ ability to use a greater portion of their NOLs to offset any post-ownership change income.

15. Because of the significant potential tax savings (approximately \$158 million to be utilized over future years) that will be lost if an “ownership change” occurs, it is necessary to restrict the trading of the claims against, and equity interests in and of, the Debtors to facilitate a successful restructuring.

Relief Requested

16. By this Motion, the Debtors request that this Court order that certain notice and waiting periods govern certain significant transfers of equity interest in and of, and claims against, the Debtors. This will provide the Debtors with advance notice of certain transfers that may jeopardize their NOLs, and will enable the Debtors, if necessary, to obtain substantive relief from this Court to protect their NOLs. The limited relief requested in this Motion will enable Debtors to closely monitor certain transfers of equity and claims, and ensure that the Debtors are in a position to act expeditiously to prevent such transfers if necessary, and thus allow the Debtors to protect and preserve their NOLs. Specifically, the Debtors request that the Court enter an Order approving the procedures set forth on Exhibit B hereto (the “Notice and Hearing Procedures”).

Basis for Relief

A. NOLs are Property of a Debtor’s Estate Entitled to Protection

17. Courts have uniformly held that a debtor’s NOLs constitute property of the estate under section 541 of the Bankruptcy Code. Courts also have uniformly held that they have the authority to impose measures intended to protect and preserve a debtor’s NOLs. The seminal case articulating this rule is In re Prudential Lines, Inc., 107 B.R. 832 (Bankr. S.D.N.Y. 1989), aff’d, 119 B.R. 430 (S.D.N.Y. 1990), aff’d, 928 F.2d 565 (2d Cir. 1991), cert. denied 502 U.S. 821 (1991). In Prudential Lines, the Court enjoined a parent corporation from taking a worthless stock deduction with respect to its equity in a bankrupt wholly-owned subsidiary, on the grounds that allowing the parent to take such a deduction would destroy its debtor-subsiary’s NOLs. In issuing the injunction, the Court held that the “debtor’s potential ability to utilize NOLs is property of an estate,” and that “the taking of a worthless stock deduction is an exercise of control over a debtor’s NOLs” that was properly subject to the automatic stay. Prudential Lines, 107 B.R. 832,

838-42; see also In re Southeast Banking Corp., Case No. 91-14561-BKC-PGH (Bankr. S.D. Fla., July 21, 1994) (debtor's interest in their NOLs "constitutes property of the estate within the scope of [11 U.S.C. § 541(a)(1)] and is entitled to the protection of the automatic stay"); In re Phar-Mor, Inc., 152 B.R. 924, 926 (Bankr. N.D. Ohio 1993) ("the sale of stock is prohibited by § 362(a)(3) as an exercise of control over the NOL, which is property of the estate"); In re Grossman's, Inc., Case No. 97-695 (PJW) (Bankr. D. Del. Oct. 9, 1997) (the debtors' net operating loss carryforward is property of the debtors' estates and is protected by the automatic stay).

18. Because the Debtors' NOLs are property of their estates, this Court has the authority under section 362 of the Bankruptcy Code to enforce the automatic stay by restricting the transfer of the Debtors' equity securities in and of, and claims against, the Debtors which could reduce the value of the NOLs.

B. Propriety of Relief Requested

19. Courts have commonly granted the relief requested herein (i.e., the restriction or enjoining of transfers of claims or equity securities in order to protect a debtor against the possible loss of its NOLs). See, e.g., In re PG&E National Energy Group, Inc., et al., Case Nos. 03-30459 (PM) and 03-30461 through 03-30464 (PM) (Bankr. D. Md. July 10, 2003) (debtor provided fifteen (15) days notice to object to proposed transfers of claims against the debtor that would increase the transferee's holding to or above \$183 million in the aggregate face amount of claims); In re US Airways Group, Inc., et al., Case No. 02-83984 (SSM) (Bankr. E.D. Va. Oct. 2, 2002) (debtor provided ten (10) days notice to object to proposed transfers of claims against the debtor that would increase the transferee's holdings to or above \$100 million in the aggregate face amount; \$100 million in claims was the lowest amount that could reasonably be expected to lead to a distribution of 5% of the stock in the reorganized debtor); In re UAL Corporation, et al., Case No. 02-B-48191 (ERW) (Bankr. N.D. Ill. Feb. 24, 2003) (debtors provided fifteen (15) days notice to object to transfers of claims or equity securities by persons who were, or would become as a result of the proposed transfer, 4.5% stockholders or holders of claims in excess of \$200 million); In re Williams Comm. Group, Inc., Case No. 02-11957 (BRL) (Bankr. S.D.N.Y. July 24, 2002) (debtor

provided thirty (30) days notice to object to proposed transfers of claims against the debtor that would increase the transferee's holdings to or above \$200 million in the aggregate face amount; \$200 million in claims was the lowest amount that could reasonably be expected to lead to a distribution of 5% of the stock in the reorganized debtor); In re Metrocall, et al., Case No. 02-11579 (RB) (Bankr. D. Del. June 6, 2002) (debtor provided five (5) business days notice to object to proposed transfers of stock that would result in the transferee holding 5% or more of the debtor's stock or a reduction in the ownership interest of an existing 5% or greater shareholder); In re Casual Male Corp., Case No. 01-41404 (REG) (Bankr. S.D.N.Y. May 18, 2001) (enjoining transfers of common stock and convertible notes that would result in the transferee's holdings increasing to or beyond 4.99%; debtor provided thirty (30) days notice to object to proposed transfers of senior subordinated notes or other general unsecured claims against the debtor); In re Worldtex, Inc., Case No. 01-785 (MFW) (Bankr. D. Del. Apr. 2, 2001) (debtor provided thirty (30) days notice to object to proposed transfers that would result in the transferee holding 5% or more of the debtor's common stock or decrease the ownership interest of an existing 5% or greater shareholder); In re Reliance Acceptance Group Inc., Case No. 98-288 (PJW) (Bankr. D. Del. Apr. 28, 1998) (debtor provided thirty (30) days notice to object to proposed transfers that would result in the transferee holding 5% or more of debtor's common stock); In re First Merchants Acceptance Corp., 1998 Bankr. LEXIS 1816 (Bankr. D. Del. 1998) (debtor provided thirty (30) days notice to object to proposed transfers of stock in the debtor that would increase the transferee's holdings to or above 300,000 shares of the debtor's stock and to any proposed transfers of 1995 subordinated reset notes or general unsecured claims against the debtor); In re Grossman's, Inc., Case No. 97-695 (PJW) (Bankr. D. Del. Oct. 9, 1997) (debtor provided 30 days notice to object to proposed transfers of stock that would increase the transferee's holdings to or above 1,350,000 shares of debtor's stock and to proposed transfers of general unsecured claims that would increase the transferee's the holdings to or above an aggregate face amount of \$3,500,000); In re Southeast Banking Corp., Case No. 91-14561-BKC-PGH (Bankr. S.D. Fla. July 21, 1994) (enjoining 5% trades of common stock); In re Phar-Mor, Inc., 152 B.R. 924 (Bankr. N.D. Ohio

1993) (enjoining shareholders from selling stock in the debtor unless they obtained relief from the automatic stay); In re McLean Indus. Inc., Case Nos. 86-B-12238-12241 (Bankr. S.D.N.Y. Feb. 16, 1989) (requiring an application to the court for authority to transfer any claims).

20. Courts ordering such relief generally have done so by imposing notice and hearing requirements on any proposed transfer of claims or stock to or by a person whose holdings of such claims or stock exceeds, or would exceed as a result of the proposed transfer, a certain threshold amount. The order in First Merchants Acceptance, 1998 Bankr. LEXIS 1816 (Bankr. D. Del. 1998), was typical in this regard. There, the Court entered an order imposing on any party a duty to provide notice to the Court and to debtor's counsel if such party intended to (a) acquire, accumulate or sell more than a prescribed number of shares of the debtor, or to add additional shares to such a block, or (b) acquire or sell any subordinated reset notes or unsecured claims against the debtors. The debtor then was afforded 30 days to object to such transaction, at which point a hearing would be held so that the court could decide whether to allow any such transfer to be consummated. See also In re Williams Comm. Group, Inc., Case No. 02-11957 (BRL) (Bankr. S.D.N.Y. July 24, 2002) (claims trading restrictions applied to certain claimholders); In re Worldtex, Inc., Case No. 01-785 (MFW) (Bankr. D. Del. Apr. 2, 2001) (stock trading restrictions applied to persons who were, or would become as a result of the proposed transfer, 5% stockholders).

C. The Relief Sought Is Narrow in Scope

21. The requested relief has been narrowly tailored to apply only to: (a) those persons who own (or would own as a result of the proposed transfer) equity in the Debtors of 4.5% of total shares outstanding or more; and (b) those holders who own (or would own as a result of the proposed transfer) claims against the Debtors with an aggregate principal amount of \$3,000,000 or more. The Debtors believe that these levels are the highest amounts that can be reasonably expected to lead to a distribution of less than 5% of the equity in the Debtors as reorganized. Thus, the Debtors only seek to impose the notice and hearing requirements on transfers of equity interests and claims by or to a relatively small group of persons.

22. Although the Debtors' proposed procedures are similar to those approved in First Merchants Acceptance and UAL, supra, the Debtors have excluded from their proposed notice and hearing procedures those transfers by holders of claims and interests expected to fall under the so-called "De Minimis Rule" (i.e., persons who beneficially own or would own, after giving effect to any proposed transfer, claims with an aggregate principal amount of less than \$3,000,000 or equity interests constituting less than 4.5% of the outstanding common stock of the Debtors). Thus, the Debtors' proposed procedures are less burdensome than those approved in First Merchants Acceptance.

23. Also, similar to the notice and hearing procedures approved in First Merchants Acceptance and UAL, supra, the Debtors' proposed notice and hearing procedures provide that significant claimholders and equity holders (including entities that would become significant claimholders or equity holders after a proposed purchase transaction) must give the Debtors 30 days notice of a proposed transfer of such claims or equity interest before such holders could move the court for relief from the automatic stay should the Debtors object to such transaction.

24. It is imperative that the Debtors closely scrutinize any transactions that would increase the risk of an "ownership change" because the very low consolidated value of the Debtors' equity makes acquiring large blocks of such equity relatively inexpensive (and therefore likely), and there may be a significant delay until current significant equity holders have to disclose their stock transactions to the Debtors or to the Securities and Exchange Commission. For the Debtors to adequately evaluate whether a particular transaction would materially increase the risk of an "ownership change" occurring, the Debtors need to conduct a thorough investigation to determine the identity of their stakeholders and the size of such stakeholders' holdings before and after such proposed transaction. Once the Debtors determine the identity of their current stakeholders, the Debtors must make a very complicated legal determination of whether the proposed transfer of claims or stock would likely trigger an "ownership change" for purposes of IRC Section 382. The Debtors believe that they cannot conduct a necessarily thorough and diligent investigation and analysis in much less than 30 days.

25. The Debtors' NOLs are valuable assets of their estates that will facilitate the Debtors' reorganization and benefit all of their stakeholders. If the Debtors are unable to monitor and object to the above-referenced transfers, the Debtors' future use of their NOLs may be jeopardized. The Debtors have proposed notice and hearing procedures that impose minimal burdens on affected entities to achieve a substantial benefit to the Debtors' estate, and the Debtors believe that granting the relief requested in this Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest.

Memorandum of Law

26. 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

27. 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; (d) the holders of record of the Debtors' 9% Senior Subordinated Notes due 2008; and (e) each of the Debtors' top twenty (20) unsecured creditors.

No Prior Request

28. No previous request for the relief sought herein has been made to this or any other Court.

Conclusion

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order, substantially in the form attached hereto, implementing the Notice and Hearing Procedures set forth on Exhibit A hereto and (b) grant such other and further relief as the Court deems appropriate.

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

Respectfully submitted,

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Proposed Counsel for the Debtors and Debtors in
Possession

EXHIBIT A

Proposed Order

**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-_____ (____))
* * * * * *	*	* * * * *

ORDER GRANTING EMERGENCY MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105(a), 362(a)(3) AND 541 OF THE BANKRUPTCY CODE (A) LIMITING CERTAIN TRANSFERS OF EQUITY INTERESTS IN THE DEBTORS AND CLAIMS AGAINST THE DEBTORS AND (B) APPROVING RELATED NOTICE PROCEDURES

Upon the Debtors’ Emergency Motion for Entry of an Order Pursuant to Sections 105(a), 362(a)(3) and 541 of the Bankruptcy Code (A) Limiting Certain Transfers of Equity Interests in the Debtors and Claims Against the Debtors and (B) Approving Related Notice Procedures, dated October 16, 2005;² 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

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 Capitalized terms used but not defined herein shall have the meaning set forth in the Motion.

to the Motion having been withdrawn or overruled 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 Motion is set for hearing on [_____, 2005 at ____m.]. Any objections to the Motion shall be filed prior to 4:00 p.m. prevailing Eastern Time on [_____, 2005] and any responses shall be filed prior to 4:00 p.m. prevailing Eastern Time on [_____, 2005].
3. Pending the Court's further ruling on the Motion, all sales or other transfers of claims against or equity securities in the Debtors by Substantial Equityholders and Substantial Claimholders or that results in an entity becoming a Substantial Equityholder or Substantial Claimholder are prohibited and shall be void ab initio.
4. 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

Containerport 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

Fixture Resource Group
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Cincinnati, OH 45212

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H.G. Rotz Associates Inc.
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PO Box 77
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J.B. Hunt Transport, Inc.
File 98545
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Kelsan, Inc.
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Kinsley Construction Inc.
2700 Water Street
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Knoxville News - Sentinel Co.
Department 888583
Knoxville, TN 37995-8583

Kuehne & Nagel, Inc.
P.O. Box 33100
Newark, NJ 07188-0100

Lumpkin Oxner & Stacy PA
90 Wall Street
Pawleys Island, SC 29585

Mallmed Mall Media Inc.
PMB 4416
Blair, WA 98230

Merchandise Testing Lab, Ltd.
NO. 105, Guang Zhong Road
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409 Main Street
McSherrystown, PA 17344

Neel's Wholesale Produce Co.
2308 Forest Avenue
Knoxville, TN 37916

Oki Wear Inc.
9109 Bachman Road
Orlando, FL 32824

PA Department of Community
Commonwealth Keystone Building
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Harrisburg, PA 17120-0225

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Pelican Bay, Ltd.
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Dunedin, FL 34698-7908

Pickard Distributing Corp.
6900 Strawberry Plane Pike
Knoxville, TN 37914

QA International Ltd.
446 North Seymour Ave.
Mundelein, IL 60060

Reliable Printing
3425 Teaster Lane
Sevierville, TN 37876

Resource Global Professionals
File 55221
Los Angeles, CA 90074-5221

Roden
Box 440417
Nashville, TN 37244-0417

Sevier County Electric System
315 East Main Street
PO Box 4870
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Sevier County Utility District
420 Robert Henderson Road
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Holland, MI 49424

Small Small World Enterprises
185 South Dean Street
Englewood, NJ 07631

Smoky Mountain Discount Service
912 Parkway
Gatlinburg, TN 37738

Strine Printing Company
PO Box 149
York, PA 17405-0149

Sunny Day Guide
800 Seahawk Circle, #106
Virginia Beach, VA 23452

Sysco Food Services
Robert Orr-Sysco
PO Box 305138
Nashville, TN 37230

Sysco Foods
PO Box 3641
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Taiwan Merchants
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Tennessee Florist Supply Inc.
2713 John Deere Drive
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The Herald Newspaper
500 Maryvill Highway
Seymour, TN 37865

The Lamar Companies
TP Composites, Inc.
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The Tennessean
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Atlanta, GA 30326