

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

In Re:	*	
	*	
THE BOYDS COLLECTION, LTD., et al.	*	Case No. 05-43793DK
	*	05-43805DK
	*	05-43816DK
	*	05-43824DK
	*	05-43833DK
	*	05-43838DK
	*	05-43848DK
	*	05-43857DK
Debtors.	*	05-43863DK
	*	
	*	Chapter 11
	*	(Jointly Administered under
	*	Case No. 05-43793DK)

* * * * *

**DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING DEBTORS'
KEY EMPLOYEE RETENTION PROGRAM**

The Boyds Collection, Ltd., *et al.*, the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), by counsel, hereby file the Debtors’ Motion for Entry of an Order Approving the Debtors’ Key Employee Retention Program (the “Motion”), and in support thereof state:¹

Introduction

1. By this Motion the Debtors’ are requesting approval of a key employee retention program (the “Retention Program”), which has been considered and approved by the Debtors’ Board of Directors in consultation with Houlihan Lokey Howard & Zukin Capital, Inc. (“Houlihan”), the Debtors’ financial advisors in these chapter 11 cases. The Retention Program presented is carefully designed and narrowly tailored to ensure that the Debtors’ seven key employees (the “Key Employees”) remain with the Debtors through the confirmation of a plan of

¹ The facts and circumstances supporting this Motion are set forth in the Affidavit of Jan L. Murley in support of the Motion (the “Murley Affidavit”) attached hereto and incorporated herein as Exhibit A and the Affidavit of Saul E. Burian in support of the Motion (the “Burian Affidavit”) attached hereto and incorporated herein as Exhibit B.

reorganization. Consequently, the Retention Plan is supported by the Debtors' post-petition secured lenders (the "DIP Lenders") and the Debtors' most significant pre-petition creditor, D.E. Shaw Laminar Portfolios ("D.E. Shaw").

2. In addition, approval of the Retention Plan is consistent with the Debtors' budget. The Debtors' post-petition secured financing (the "DIP Financing") contemplated the Retention Program and includes a carve-out for payments to be made under the Retention Program, subject to Court approval.² Further, the Debtors have informed the Committee (as defined below) of the Retention Program and the filing of this Motion and expect to meet with representatives of the Committee the week of November 28, 2005 to discuss the specific components of the Retention Program.³

3. The Retention Program has three tiers of employees and includes two components - provisions for a retention payment and a severance payment for each Key Employee if they are ultimately terminated for good cause. The retention payment, as discussed below, is a cash payment to be made in three installments and based on a percentage of the base salary of each of the Key Employees. The severance arrangements will replace any severance benefits that the Key Employees currently have and will be in the amount of twelve months of each Key Employees' respective current salary. Importantly, to the extent a Key Employee is to be paid severance under the Retention Program, 75% of the retention payments received by each Key Employee will be credited against the severance payment, thereby lowering the total severance amount available to the Key Employee. Additionally, in the case of the Debtors' Chief Executive Officer, the proposed severance payment is only 50% of what she would otherwise have been entitled to under her employment agreement, which value shall be shifted to those Key Employees who did not have a severance benefit in place pre-petition. Moreover, as discussed in the Burian Affidavit, the proposed Retention Program is a reasonable attempt to incentivize and

² The Debtors' consulted with their DIP Lenders in determining the components of the Retention Program and worked with such lenders to revise the Retention Program into the version presented to the Court today.

³ Due to the time sensitive nature of the Motion, the Debtors are filing it in advance of meeting with the Committee.

retain the Debtors' key employees, and is fair and reasonable. See Burian Affidavit, at ¶¶ 8 and 9. As such, the Debtors believe that the Retention Program is in the best interest of their estates and, for the reasons set forth in the Motion, should be approved.

Jurisdiction

4. 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.

5. The statutory bases for the relief requested herein are sections 363 and 105 of title 11 of the United States Code (the "Bankruptcy Code").

Background

6. On October 16, 2005 (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 be authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. The Boyds Collection Ltd. ("Boyds") is a leading designer, marketer and distributor of high-quality, hand-crafted collectibles, gifts, and other specialty products. Boyds was founded in 1979 and is the parent company, holding direct or indirect ownership interests in eight domestic subsidiaries and four foreign subsidiaries.

8. On October 24, 2005, the United States Trustee appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee").

The Key Employee Retention Program

9. The Retention Program includes retention payments and severance arrangements designed to retain the Key Employees through the confirmation of a plan of reorganization.⁴

⁴ The specific amounts to be paid to each Key Employee under the Retention Program are set forth on the Retention Program summary attached hereto and incorporated herein as Exhibit C.

Participation in the Retention Program is limited to seven Key Employees, divided into three tiers as set forth below.⁵

10. The severance benefits payable under the Retention Program replace any other severance benefits to which these employees may otherwise be entitled. As structured, the Retention Program will enhance the retention of the Key Employees. The Retention Program is both an economical and carefully tailored means of retaining critical employees in an attempt to ensure a successful reorganization.

11. In light of other court approved retention programs and the current market for such programs outside of chapter 11, the Debtors' believe that the Retention Program is fair and reasonable. See Burian Affidavit, at ¶ 8. The Debtors also submit that the terms and conditions of the Retention Program were arrived at in good faith. The Retention Program has been reviewed and approved by the Debtors' Board of Directors as an exercise of their sound business judgment, has been approved by the DIP Lenders, and has been included in the budget for the DIP Financing. See Murley Affidavit, at ¶ 6.

(a) **Retention Payments**

12. Under the Retention Program, each participating employee will have the opportunity to earn a fixed percentage of their base salary to be paid at various intervals during these Reorganization Cases (as set forth in the chart below) (the "Retention Payments"). In total, \$1,022,000 may be paid out under the Retention Program on account of the Retention Payments. The chart below summarizes the Retention Payments available to each tier of employees under the Retention Program:

⁵ These employees are generally identified on Exhibit C hereto and in the Murley Affidavit attached hereto as Exhibit A.

Tiers	Number of Employees	Base Salary Range (\$)	Retention Program (%)	Aggregate Retention Payment Amount (\$)
Tier I	3	200,000 -500,000	70-75	150,000 - 350,000
Tier II	1	125,000	61	125,000
Tier III	3	88,600 -154,500	50	44,300 - 77,200

(b) **Severance Benefits**

13. In addition to the payments described above, the Key Employees would receive severance benefits under the Retention Program (the “Severance Benefits”). The Severance Benefits are designed to serve as security for, and to relieve the anxiety of, these key management personnel. Further, the Debtors believe that the Severance Benefits will stem attrition and incentivize these employees to remain employed by the Debtors throughout the pendency of these Reorganization Cases.

14. Under the Retention Program, the Key Employees shall be paid severance if any such employee is terminated without cause. In that event, the terminated Key Employee shall receive Severance Benefits totaling an amount equal to twelve months of such individuals’ base salary, provided, however, that 75% of any Retention Payments received by the Key Employee will be credited against any Severance Benefits to be paid. Severance Benefits owed pursuant to the Retention Program shall be paid to the Key Employee in equal monthly installments commencing on the date of termination. Receipt of the Severance Benefits shall be in lieu of any other severance amounts or arrangements to which a Key Employee may otherwise be entitled.

15. Given the credit arrangement described above, the aggregate amount of Severance Benefits that the Debtors may incur under the Retention Program is \$806,000. Thus, if all seven Key Employees are terminated without cause, the maximum potential payout by the Debtors under the Retention Program (including both the Retention Payments and potential Severance Benefits) is \$1,828,000. Were the Debtors *not* to implement the Retention Program and instead assume the current employment agreements (most of which include severance arrangements) with the seven Key Employees, the Debtors could face exposure for up to \$1,614,000 for

severance payments alone.⁶ As such, and for the reasons set forth below, the Debtors' have determined in their business judgment that the Retention Program is in the best interests of the Debtors' estates.

Relief Requested

16. By this Motion, the Debtors respectfully request that the Court enter an order, pursuant to section 363 of the Bankruptcy Code, approving the Retention Program.

Basis for Relief

A. Legal Basis for Relief.

17. Key employee retention programs are generally approved pursuant to section 363 of the Bankruptcy Code. Under section 363(b) of the Bankruptcy Code, a debtor may use property of the estate, other than in the ordinary course of business, after notice and a hearing. In evaluating such uses, courts in the Fourth Circuit have applied the business judgment rule. See In re U.S. Airways, Inc., 329 B.R. 793, 798 (Bankr. E.D. Va. 2005) (“It is common . . . for bankruptcy courts to approve the adoption of post-petition KERPs . . . if the debtor has used ‘proper business judgment’ in adopting the plan, and the plan is ‘fair and reasonable.’”) (citing In re Aerovox, Inc., 269 B.R. 74, 81 (Bankr. Mass. 2001)). A debtor satisfies the “business judgment” test when it decides, in good faith, that the proposed action will benefit the estate and is fair and reasonable under the circumstances. See, e.g., Aerovox, 269 B.R. at 81 (“Bankruptcy courts will approve key employees retention programs if the Debtor has used proper business judgment in formulating the program and the court finds the program to be “fair and reasonable”). The debtor in possession’s application of its business judgment is subject to great judicial deference. See, e.g., Id. (“[A] debtor’s business decision “should be approved by the court unless it is shown to be ‘so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice’”); accord In re Global Crossing Ltd., 295 B.R. 726, 742 (Bankr. S.D.N.Y. 2003).

⁶ Indeed, the Debtors’ CEO is currently entitled to 24 months severance under her employment agreement, or \$1 million severance. Thus, the Retention Program actually *reduces* the Debtors’ exposure as applied to the CEO.

18. Many courts authorize key employee retention programs because it is recognized that key employees are an essential component of a debtor's continued operations and successful reorganization. See In re Dornier Aviation (N.A.), Inc., 2002 WL 31999222, at * 8 (Bankr. E.D. Va. 2002) (“[I]t is not at all unusual for chapter 11 debtors in possession to seek specific court approval . . . to enter into new severance or retention agreements, particularly for executives or other key employees.”); see e.g., In re Georgetown Steel Co., LLC, 306 B.R. 549, 557-59 (Bankr. S.C. 2004) (approving KERP which included retention fees and success fees); In re PG&E Nat'l Energy Group, Inc., Case No. 03-30459 (PM) (jointly administered) (Bankr. Md. Sept. 25, 2003) (approving debtors' retention plan, which included amended severance benefits and bonuses for key employees). As such, debtors generally have a rational basis for implementing key employee retention programs and for deciding that these programs are in the best interest of the estate.

19. To maintain cohesive and motivated management and support teams during the chapter 11 process, particularly in large chapter 11 cases, debtors frequently implement various combinations of incentive compensation, retention and/or severance programs. Without such programs, essential employees will often leave a debtor's employ if other employment opportunities arise offering greater financial rewards that are without the uncertainties inherent in a debtor's reorganization process. Recognizing these risks, similar employment and incentive plans have been authorized within this Circuit. See, e.g., In re PG&E Nat'l Energy Group, Inc., Case No. 03-30459 (PM) (jointly administered) (Bankr. Md. Sept. 25, 2003) (approving debtors' retention plan, which included amended severance benefits and bonuses for key employees); Cf., In re Convenience USA, Inc., 2003 WL 21459559, at *4 (Bankr. M.D.N.C. 2003) (denying certain employees' requests for additional payments under approved KERP); In re Dornier Aviation (N.A.), Inc., 2002 WL 31999222, at * 8 (Bankr. E.D. Va. 2002) (denying the request of management level employee for post-petition severance benefits where no KERP was adopted in the case).

B. The Employees Covered by the Retention Program are Essential to Maximizing the Value of the Debtors' Estates.

20. The Key Employees have been identified by the Debtors' management, in consultation with the Debtors' Board of Directors, as the most critical to maintaining and improving the Debtors financial and operational performance. Additionally, these employees are key to maximizing the value of the Debtors' estates and successfully completing the reorganization process.

21. The Key Employees are also individuals that have business relationships that are essential to the successful operation of the Debtors as they progress through these Reorganization Cases. As discussed in the Murley Affidavit, in evaluating which employees to include in the Retention Program, the Debtors considered a number of criteria. In reaching the conclusion that the Key Employees should be included in the Retention Program, the Debtors determined that:

- Each Key Employee has relationships critical to the Debtors' business operations that would be put at risk if the Key Employee were to leave.
- If any of the Key Employees were to leave, none of the Key Employees have clear successors that would be able to continue to drive the Debtors' day-to-day operations and build the Debtors' businesses.
- If any of the Key Employees were to leave, the Debtors would not likely be able to replace the departing Key Employees in a timely manner with new hires possessing the necessary skills to avoid significant disruption to the business, particularly given the chapter 11 environment.
- The amounts allocated to the Retention Program, are in the Debtors' business judgment, reasonable for the retention of the Key Employees.

22. For the reasons stated above and described herein, the Debtors believe that the seven Key Employees included in the Retention Program are crucial to maintaining ongoing operations. Each of the Key Employees performs a vital function in the Debtors' business operations.

23. Tier I of the Retention Program includes the Debtors' Chief Executive Officer (the "CEO"), Chief Financial Officer (the "CFO"), and the Group Vice President of the Debtors'

global wholesale business (the “Wholesale VP”). The CFO, CEO and Wholesale VP are responsible for the management of the Debtors’ overall business operations, the financial planning and operational reporting for the Debtors and their retail locations, and the supply chain and customer service relationships for the Debtors’ global enterprise, respectively. These three individuals are the most crucial of the Key Employees to the Debtors’ operations. In addition, these individuals are primarily responsible for maintaining the stability of the business and overall employee morale given the significant uncertainty with regard to the Reorganization Cases and the potential future of the Debtors’ operations.

24. Similarly, the individual in Tier II of the Retention Program, is the Senior Vice President of Product Development for the Debtors (the “Product VP”). The Product VP drives the Debtors’ product design and innovation. She is the representative of the Debtors’ brand to collectors throughout the United States and has a significant long term relationship with the owner of the Debtors’ two key suppliers. The Product VP is vital to the maintenance of the Debtors’ customer and supplier relationships, as well as product development.

25. Finally, the individuals in Tier III of the Retention Program include the Debtors’ Senior Vice President of Marketing (the “Marketing VP”), National Account Manager (the “Account Manager”) and Finance Manager (the “Finance Manager”). Each of these individuals provides key services to the Debtors that are essential for the Debtors’ success in these Reorganization Cases. The Marketing VP is responsible for the Debtors’ retail and wholesale marketing plans and has key relationships with the Debtors’ licensees. Similarly, the Account Manager has responsibility for all of the Debtors national accounts, and has been the driving force behind the Debtors’ acquisition of several new major accounts. Finally, the Finance Manager is the individual primarily responsible for all of the Debtors’ financial reporting throughout these Reorganization Cases.

26. In sum, all of the Key Employees have skills and experience necessary to reorganize the Debtors’ business. Absent this Court’s authorization of the Retention Program, there is a significant risk that the Key Employees would begin seeking other employment,

potentially increasing attrition and distracting the Debtors from accomplishing critical restructuring tasks. Indeed, the Debtors have already lost several mid-level managers as a result of the uncertainty created by the chapter 11 filing. Loss of any one of these employees would severely disrupt the Debtors' operations and efforts to reorganize the business and their ability to attract new customers. The Debtors have concluded that hiring replacements would be expensive, time consuming and disruptive to the organization, especially given that the Debtors are in chapter 11 proceedings. Moreover, recruiting fees paid to find replacements could easily be substantial, indeed they are often 50% to 100% of the replacement's first year base salary.

27. Accordingly, the value of the Debtors' estates are best preserved and maximized by keeping the existing team of critical employees together and in place to ensure the uninterrupted functioning of the Debtors' business. The Retention Program is designed to accomplish these goals.

C. The Retention Program Should be Approved as an Exercise of the Debtors' Sound Business Judgment.

28. The Debtors, in their sound business judgment and based on the advice of Houlihan, have determined that the Retention Program should be implemented. The Debtors believe that the Retention Program provides an effective and economical means of securing the continued services of the Key Employees. As described above, these Key Employees perform vital functions in the Debtors' operations and the loss of any one of these employees would hinder the Debtors efforts to reorganize. Implementation of the Retention Program will aid in maximizing the value of the Debtors' estates.

29. The Key Employees are experienced and talented individuals who are intimately familiar with the Debtors' businesses. If any of these Key Employees are lost, it would be time consuming, expensive and disruptive for the Debtors to attract and train qualified replacements. Moreover, if such employees leave the Debtors, the Debtors' operations would suffer greatly. Remaining employees will be burdened by additional responsibilities, making it more likely that they too would explore other employment opportunities. Moreover, it is unlikely that the personal business relationships that these Key Employees have developed with the Debtors' key

vendors, customers and suppliers could be replaced. The loss of these employees would likely lead to more losses, either as a result of additional employees following a departing Key Employee to a new employer, or because of the instability resulting from the departure.

30. The Debtors currently lack a process by which they can retain and reward those Key Employees who will remain in the Debtors' employ during the bankruptcy process. The Key Employees have continued to perform indispensable services for the Debtors during this process to date; however, the Debtors must provide them with the financial incentive to remain with the Debtors through these Reorganization Cases. The Retention Program is designed to provide incentives sufficient to retain the Key Employees and motivate them to maximize the value of the Debtors' estates. At the same time, keeping in mind the financial constraints under which the Debtors operate, the Retention Program has been carefully structured to avoid unnecessary or excessive incentives.

31. For the foregoing reasons, the Court should approve the Retention Program pursuant to section 363(b) of the Bankruptcy Code.

Memorandum of Law

32. 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.

Request for Hearing

33. The Debtors' do not anticipate any objection to the Motion in light of the consents already obtained from most of the major constituencies in these Reorganization Cases, and in light of the scheduled meeting with the Committee. Upon approval of the Retention Program, the Debtors would like to consummate the initial Retention Payments by the end of the calendar year for both tax and employee morale purposes. Therefore, in the event that the Court finds it

necessary to hold a hearing on the Motion, the Debtors' respectfully request that such hearing be held prior to December 31, 2005.

Notice

34. Notice of this Motion has been given to the Service List as defined by the Complex Case Order.

No Prior Request

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

Conclusion

WHEREFORE, the Debtors respectfully request that this Court enter an order, in the form attached hereto as Exhibit D, authorizing the Debtors to implement the Retention Program and granting such other and further relief as this Court deems appropriate.

Washington, D.C.
Dated: November 23, 2005

Respectfully submitted,

SWIDLER BERLIN LLP

/s/ Monique D. Almy

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Counsel for the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered to and served by Garden City Group, Inc. on the attached service list, via regular United States mail on this 23rd day of November 2005.

/s/ Monique D. Almy

Service List

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d/b/a Taction)

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Attn.: Shelly Allen

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

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THE BOYDS COLLECTION, LTD., et al.	*	Case No. 05-43793DK
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	*	(Jointly Administered under
	*	Case No. 05-43793DK)

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING
DEBTORS' KEY EMPLOYEES RETENTION PROGRAM**

PLEASE TAKE NOTICE that on November 23rd, 2005, The Boyds Collection, Ltd., *et al.*, the debtors and debtors in possession in the above-captioned cases, filed the following motion:

Debtors' Motion for Entry of an Order Approving Debtors' Key Employees Retention Program

A HEARING MAY BE CONDUCTED ON THIS MATTER AT THE DISCRETION OF THE COURT AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND, 101 W. LOMBARD STREET, BALTIMORE, MARYLAND 21201. YOU WILL RECEIVE SEPARATE NOTICE IF SUCH A HEARING WILL BE HELD.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY STATING YOUR OBJECTION AND ALL FACTS AND LAW YOU BELIEVE SUPPORT YOUR OBJECTION. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT **WITHIN TWENTY (20) DAYS** FROM THE DATE THIS PLEADING WAS SERVED, AS INDICATED ON THE CERTIFICATE OF SERVICE AT THE END OF THIS PLEADING. IN ADDITION TO FILING YOUR RESPONSE WITH THE CLERK, YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS PLEADING AND TO THE PARTIES ON THE SERVICE LIST. ABSENT A TIMELY

OBJECTION, THE COURT MAY TREAT THIS PLEADING AS UNOPPOSED
AND GRANT THE RELIEF REQUESTED WITH OR WITHOUT A
HEARING.

Washington, D.C.
Dated: November 23, 2005

Respectfully submitted,

SWIDLER BERLIN LLP

/s/ Monique D. Almy
Monique D. Almy (Bar No. 04479)
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-and-

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Counsel for the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered to and served by Garden City Group, Inc. on the attached service list, via regular United States mail on this 23rd day of November 2005.

/s/ Monique D. Almy _____

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Touring Publications
PO Box 4580
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(Counsel to New England 800 Company
d/b/a Taction)

JB Hunt Transport Inc.
306 JB Hunt Corp. Dr.
Lowell, AR 72745
Attn.: Shelly Allen

EXHIBIT A
Murley Affidavit

manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Boyds is a leading designer, marketer and distributor of high-quality, hand-crafted collectibles, gifts, and other specialty products. Boyds was founded in 1979 and is the parent company, holding direct or indirect ownership interests in eight domestic subsidiaries and four foreign subsidiaries.

4. On October 24, 2005, the United States Trustee appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee").

5. As structured, I anticipate that the key employee retention program (the "Retention Program") that the Debtors' are requesting be approved by the Court will greatly aid in retaining the seven key employees (the "Key Employees") included in the Retention Program. I believe the Retention Program is both an economical and carefully tailored means of retaining critical employees in an attempt to ensure a successful reorganization.

6. I believe that the Retention Program is fair and reasonable. I also submit that the terms and conditions of the Retention Program were arrived at in good faith. The Retention Program has been reviewed and approved by the Debtors' Board of Directors as an exercise of their sound business judgment, has been approved by the Debtor's DIP Lenders,¹ and has been included in the budget for the DIP Financing.

7. The Key Employees have been identified by the Debtors' management, in consultation with the Debtors' Board of Directors, as the most critical to maintaining and improving the Debtors financial and operational performance. I believe that these employees are key to maximizing the value of the Debtors' estates and successfully completing the reorganization process.

8. The Key Employees are each individuals that have business relationships that are essential to the successful operation of the Debtors as they progress through these

¹ Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the motion.

Reorganization Cases. In evaluating which employees to include in the Retention Program, the Debtors considered a number of criteria. In reaching the conclusion that the Key Employees should be included in the Retention Program, the Debtors determined that:

- Each Key Employee has relationships critical to the Debtors' business operations that would be put at risk if the Key Employee were to leave.
- If any of the Key Employees were to leave, none of the Key Employees have clear successors that would be able to continue to drive the Debtors' day-to-day operations and build the Debtors' businesses.
- If any of the Key Employees were to leave, the Debtors would not likely be able to replace the departing Key Employees in a timely manner with new hire possessing the necessary skills to avoid significant disruption to the business, particularly given the chapter 11 environment.
- The amounts allocated to the Retention Program, are in the Debtors' business judgment, reasonable for the retention of the Key Employees.

9. For the reasons stated above and described herein, I believe that the seven Key Employees included in the Retention Program are crucial to maintaining ongoing operations. Each of the Key Employees performs a vital function in the Debtors' business operations.

10. Tier I of the Retention Program includes the Debtors' Chief Executive Officer (the "CEO"), Chief Financial Officer (the "CFO"), and the Group Vice President of the Debtors' global wholesale business (the "Wholesale VP"). The CFO, CEO and Wholesale VP are respectively responsible for the management of the Debtors' overall business operations, the financial planning and operational reporting for the Debtors and their retail locations, and the supply chain and customer service relationships for the Debtors' global enterprise. The Wholesale VP has significant relationships with the Debtors' top 50 customers globally and the Debtors' global distribution network, while the CFO maintains relationships with many of the Debtors' critical vendors, including Yankee Candle Company and SYSCO Food Services. Furthermore, these individuals are responsible for the oversight of the largest groups of employees. In particular, I am directly responsible for the oversight and management of approximately 500 full-time employees and the Wholesale VP is directly responsible for the oversight and management of approximately 140 full-time employees. I believe that the CFO

and the Wholesale VP are the most crucial of the Key Employees to the Debtors' operations, and the Board of Directors has requested that I include myself in this Tier of the Retention Program. The Tier I employees are the individuals primarily responsible for maintaining the stability of the business and overall employee morale given the significant uncertainty with regard to the Reorganization Cases and the potential future for the Debtors' operations.

11. Similarly, the individual in Tier II of the Retention Program, is the Senior Vice President of Product Development for the Debtors (the "Product VP"). The Product VP drives the Debtors' product design and innovation. She is the representative of the Debtors' brand to collectors throughout the United States and has a significant long term relationship with the owner of the Debtors' two key suppliers as well as QVC, Inc. I believe that the Product VP is vital to the maintenance of the Debtors' customer and supplier relationships, as well as product development.

12. The individuals in Tier III of the Retention Program include the Debtors' Senior Vice President of Marketing (the "Marketing VP"), National Account Manager (the "Account Manager"), and Finance Manager (the "Finance Manager"). I believe that each of these individuals provides key services to the Debtors that are essential for the Debtors success in these Reorganization Cases. The Marketing VP is responsible for the Debtors' retail and wholesale marketing plans and has key relationships with the Debtors' licensees, including Coca-Cola Co., NASCAR, M&Ms and Crayola. Similarly, the Account Manager has responsibility for all of the Debtors national accounts, and has been the driving force behind the Debtors' acquisition of several new major accounts. Finally, the Finance Manager is the individual primarily responsible for all of the Debtors' financial reporting throughout these Reorganization Cases.

13. I believe that all of the Key Employees provide the Debtors with the skills and experience necessary to reorganize the Debtors' business. Absent this Court's authorization of the Retention Program, I believe there is a significant risk that the Key Employees would begin seeking other employment, potentially increasing attrition and distracting the Debtors from

accomplishing critical restructuring tasks. The Key Employees are experienced and talented individuals who are intimately familiar with the Debtors' businesses. I believe that the loss of any one of these employees would severely disrupt the Debtors' operations and efforts to reorganize the business and continue to attract new customers. Hiring replacements would be expensive, time consuming and disruptive to the organization, especially given that the Debtors are the subject of chapter 11 proceedings. Moreover, in my experience, recruiting fees paid to find replacements are often 50% to 100% of the replacement's first year base salary.

14. In my opinion, if any of the Key Employees leave the Debtors, the Debtors' operations would suffer greatly. Remaining employees will be burdened by additional responsibilities, making it more likely that they too would explore other employment opportunities. I believe that the loss of these employees could lead to more losses, either as a result of additional employees following a departing Key Employee to a new employer, or because of the instability resulting from the departure. Furthermore, I believe that any losses would be bad for employee morale. Such losses and reduced employee morale would be detrimental to both the Debtors' business operations and their reorganization efforts.


15. Further, personal relationships that each of the Key Employees have cultivated within their unique area of responsibility in the Debtors' businesses are vital to the Debtors successful reorganization. As I have discussed herein, these relationships range from the National Account Manager's relationships with key account holders such as Target Corporation, Walgreen Co., and CVS/pharmacy, to the Wholesale VP's relationships with the Debtors' top 50 customers globally. In my opinion, it is unlikely that the personal business relationships that the Key Employees have developed with the Debtors' key vendors, customers and suppliers could be replaced in a reasonable period of time. Accordingly, the loss of these Key Employees could put these business relationships at risk over a 12 to 24 month period.

16. In my business judgment and based on the advice of Houlihan, who considered the reasonableness of the amount being paid to the Key Employees under the Retention Program

once such employees were identified, the value of the Debtors' estates is best preserved and maximized by keeping the existing team of critical employees together and in place to ensure the uninterrupted functioning of the Debtors' business. I believe that the Retention Program provides an effective and economical means of securing the continued services of the Key Employees.

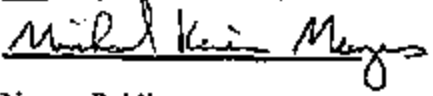
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 23, 2005.

By: 
Jan L. Murley, CEO
The Boyds Collection, Ltd.

Sworn to before me this

23rd day of November, 2005



Notary Public
State of _____ County of _____
Registration Number:
My Commission Expires:



MICHAEL KEVIN MOYERS
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Date. Section 147.03 O.R.C.

EXHIBIT B

Burian Affidavit

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

In Re:

THE BOYDS COLLECTION, LTD., et al.

Debtors.

*
*
* Case No. 05-43793DK
* 05-43805DK
* 05-43816DK
* 05-43824DK
* 05-43833DK
* 05-43838DK
* 05-43848DK
* 05-43857DK
* 05-43863DK
*
* Chapter 11
* (Jointly Administered under
* Case No. 05-43793DK)

**AFFIDAVIT OF SAUL E. BURIAN, IN SUPPORT OF DEBTORS' MOTION
FOR ENTRY OF AN ORDER APPROVING DEBTORS' KEY EMPLOYEES
RETENTION PROGRAM**

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, Saul E. Burian, hereby affirm under penalty of perjury:

1. I am a managing director of Houlihan Lokey Howard & Zukin Capital, Inc. (together with its wholly owned subsidiaries, agents, independent contractors and employees "Houlihan Lokey"), an investment banking firm that maintains offices at 245 Park Avenue, New York, NY 10167. I submit this Affidavit in support of the Debtors' Motion for Entry of an Order Approving Debtors' Key Employees Retention Program (the "Motion").¹

2. Except as otherwise indicated, all facts set forth in this Affidavit are based on my personal knowledge, information supplied to me by members of the Debtors' management, employees of Houlihan Lokey, information learned from my review of relevant documents or upon my opinion based upon my experience and knowledge of the Debtors' operations and

¹ Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Motion.

financial condition. If I were called upon to testify, I would testify competently to the facts set forth herein.

3. Houlihan Lokey is a nationally recognized investment banking/financial advisory firm with ten offices worldwide and more than three hundred (300) professionals. On November 21, 2005, the Court entered its Order Authorizing the Debtors to Employ and Retain Houlihan Lokey Howard & Zukin Capital, Inc. as Financial Advisors and Investment Bankers [Docket No. 165].

4. In my career with Houlihan Lokey I have worked with financially distressed companies and clients both in and out of bankruptcy in the establishment of employee retention programs. I have been involved in formulating, negotiating and reviewing employee retention programs and counseling companies and my clients thereon. As a result of my experience, I am familiar with the elements of employee retention programs and how they are applied in different circumstances.

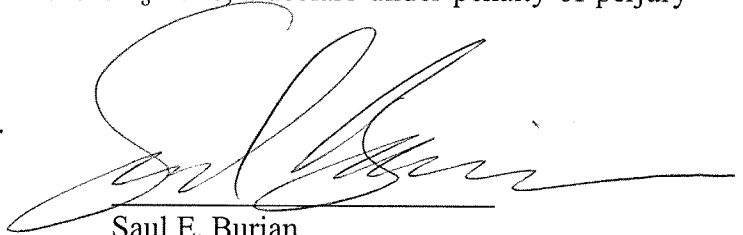
5. I have advised the Debtors in connection with the formulation of the Retention Program, consulting with the Debtors' management and Board of Directors, and the Debtors' DIP Lender. The Retention Program includes retention payments and severance arrangements designed to retain key employees through the consummation of a plan in these Reorganization Cases. In my opinion, the Retention Program is an economical and carefully tailored means of retaining critical employees in an attempt to support a successful reorganization.

6. I believe that the Debtors' proposed Retention Program, as described in the Motion, is a reasonable attempt to incentivize and retain the Debtors' key employees, thereby reducing the risk of harmful turnover. I further believe, based on my frequent exposure to key employee retention programs in other restructuring situations, that the terms of the Debtors' KERPs are well within the parameters of key employee retention programs utilized by other distressed companies.

7. I believe that the Retention Program is fair and reasonable. The Retention Program has been reviewed and approved by the Debtors' Board of Directors as an exercise of their sound business judgment. I believe that the terms and conditions of the Retention Program

were arrived at in good faith. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

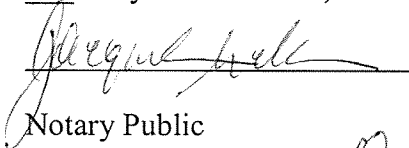
Executed this 23 day of November, 2005.



Saul E. Burian
Managing Directory
Houlihan Lokey Howard & Zukin
Capital, Inc.

Sworn to before me this

23rd day of November, 2005



Notary Public

State of NY, County of Queens

Registration Number:

My Commission Expires:

JACQUELINE SINCLAIR
Notary Public, State of New York
No. 01SI6021470
Qualified in Queens County
Commission Expires 10-31-07

EXHIBIT C

RETENTION PROGRAM SUMMARY

(\$ in 000s)	Annual Salary	Proposed KERP Participation					Severance				75% KERP Credit	Total Potential Payout
		Pymt 11/15/05 ^(*)	Pymt 2/15/06	Upon Exit	Total	% of Salary	Current		Proposed			
							Period	Cost	Period	Cost		
<u>Tier I:</u>												
Murley	\$ 500.0	\$ 87.5	\$ 87.5	\$ 175.0	\$ 350.0	70%	24 mos.	\$ 1,000.0	12 mos.	\$ 500.0	\$ (262.5)	\$ 587.5
Prager	275.0	50.0	50.0	100.0	200.0	73%	12 mos.	275.0	12 mos.	275.0	(150.0)	325.0
Macharsky	200.0	37.5	37.5	75.0	150.0	75%	6 mos.	100.0	12 mos.	200.0	(112.5)	237.5
<u>Tier II:</u>												
Smith	204.4	\$ 31.3	\$ 31.3	\$ 62.5	125.0	61%	None	-	12 mos.	204.4	(93.8)	235.7
<u>Tier III:</u>												
Miller	154.5	19.3	19.3	38.6	77.2	50%	None	-	12 mos.	154.5	(57.9)	173.8
Kerns	149.9	18.7	18.7	37.5	75.0	50%	12 mos.	149.9	12 mos.	149.9	(56.2)	168.7
Kiick	88.6	11.1	11.1	22.2	44.3	50%	12 mos.	88.6	12 mos.	88.6	(33.2)	99.7
	\$ 1,572	\$ 255	\$ 255	\$ 511	\$ 1,022	65%		\$ 1,614		\$ 1,572	\$ (766)	\$ 1,828

(*) Or upon approval of the KERP by the Court, whichever is later.

EXHIBIT D

Proposed Order

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

In Re:

THE BOYDS COLLECTION, LTD., et al.

Debtors.

*
*
* Case No. 05-43793DK
* 05-43805DK
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* 05-43838DK
* 05-43848DK
* 05-43857DK
* 05-43863DK
*
* Chapter 11
* (Jointly Administered under
* Case No. 05-43793DK)

* * * * *

ORDER APPROVING THE DEBTORS' KEY EMPLOYEE RETENTION PROGRAM

Upon consideration of Debtors' Motion for Entry of an Order Approving the Debtors' Key Employee Retention Program; it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors, and other parties in interest; 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)(2); it appearing that the venue of this proceeding and this Motion in this District is

proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion was sufficient and that 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 required, to implement the Retention Program.
3. The Debtors are authorized and empowered to take all actions and execute all documents or refrain from any actions necessary or appropriate to implement the relief granted in this Order.
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.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.
6. Debtors' counsel or noticing agent shall serve a copy of this Order upon the below attached Order Service List.

END OF ORDER

Order Service List

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