

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

<p>In re</p> <p>The Boyds Collection, Ltd., et al.¹</p> <p style="text-align: center;">Debtors.</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>Case No. 05-____ () through</p> <p>05-____ ()</p> <p>Chapter 11</p> <p>(Jointly Administered under</p> <p>Case No. 05-____ ())</p>
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**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF AN ORDER PURSUANT TO
SECTIONS 363, 364, 1107 AND 1108 OF THE BANKRUPTCY CODE
(A) AUTHORIZING (I) CONTINUED USE OF EXISTING CASH MANAGEMENT
SYSTEM, (II) MAINTENANCE OF EXISTING BANK ACCOUNTS AND
(III) CONTINUED USE OF EXISTING BUSINESS FORMS AND (B) GRANTING
ADMINISTRATIVE PRIORITY STATUS TO POST-PETITION INTERCOMPANY
CLAIMS**

The Boyds Collection, Ltd., et al., the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), by counsel, file this Emergency Motion for Entry of an Order Pursuant to sections 363, 364, 1107 and 1108 of the Bankruptcy Code (A) Authorizing (I) Continued Use of Existing Cash Management System, (II) Maintenance of Existing Bank Accounts and (III) Continued Use of Existing Business Forms; and (B) Granting Administrative Priority Status to Post-Petition Intercompany Claims (the “Motion”), and in support thereof state:²

Jurisdiction

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

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 Motion are set forth in the Affidavit of Jan L. Murley in Support of First Day Motions filed contemporaneously herewith.

2. The statutory bases for the relief requested herein are sections 105(a), 363, 364, 507, 1107 and 1108 of the Bankruptcy Code.

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

³ None of the foreign subsidiaries are Debtors.

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, 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. The Debtors' domestic cash management system (the "Cash Management System") involves the collection, disbursement and movement of funds through a series of bank accounts. The office of the United States trustee (the "U.S. Trustee") has established certain operating guidelines for debtors in possession to supervise the administration of chapter 11 cases, including changes to the debtor's cash management system (the "UST Guidelines"). The UST Guidelines require debtors to, among other things, establish one debtor in possession account for all estate monies required for the payment of taxes (including payroll taxes), close all existing bank accounts and open new debtor in possession accounts, issue post-petition payments by check only, maintain a separate debtor in possession account for cash collateral, obtain checks that bear the designation "debtor in possession" and reference the bankruptcy case number and the type of account on such checks. Enforcement of the UST Guidelines in these Reorganization Cases, however, would severely disrupt the ordinary financial operations of the Debtors. As set forth herein, the Debtors believe that it is appropriate for the Court to excuse the Debtors from strict compliance with the UST Guidelines.

12. Accordingly, by this Motion, the Debtors request authority to continue to use their existing cash management system, maintain their existing bank accounts and continue to use existing business forms. The Debtors further request that administrative priority status be granted to certain of their intercompany claims. Finally, the Debtors request relief from the UST Guidelines to the extent that they require the Debtors to make all disbursements by check. In

particular, the UST Guidelines that require that all receipts and all disbursements of estate funds be by check with a notation representing the reason for the disbursement.

Basis for Relief

A. The Cash Management System

13. The Cash Management System consolidates virtually all funds received by the Debtors, tracks the corporate entities that are the owners of such funds and otherwise allows the Debtors to conduct its banking and cash management activities in an efficient and cost-effective matter. Certain foreign non-Debtor subsidiaries are also occasionally part of the Cash Management System. A schematic of the Cash Management System is attached hereto as Exhibit A.

14. The Cash Management System is separated into two primary areas: (i) collection of receipts through depository accounts and (ii) payment of accounts payable and payroll through a central disbursement account and a payroll account, respectively.

(i) Collection Accounts

15. The Debtors maintain five accounts with various financial institutions in the United States for the collection of receipts (the “Domestic Collection Accounts”) and an additional collection account in Canada utilized by The Boyds Collection, Corp., a non-Debtor subsidiary (the “Canadian Account”, collectively with the Domestic Collection Accounts, the “Collection Accounts”). The Collection Accounts are utilized for the collection of funds, primarily from cash and credit card collections from the Debtors’ retail operations and from payments for invoiced products ordered from the Debtors. A list of the Collection Accounts, their associated financial institutions and account numbers is attached hereto as Exhibit B.

(ii) Disbursement/Concentration Accounts

16. Funds from the Collection Accounts are swept into a central cash concentration account in the name of The Boyds Collection Ltd., LP (Acct. #5180193403) (the “Concentration and Disbursement Account”), which is maintained at PNC Bank, on a weekly basis. The Concentration and Disbursement Account is the central concentration account for all of the

Debtors' funds, as well as the central disbursement account for all of the Debtors' accounts payable. Funds are also transferred from the Concentration and Disbursement Account to the Payroll Account (described below) every 14 calendar days.

17. In addition, the Canadian Account is also utilized as a disbursement account for The Boyds Collection, Corp.'s accounts payable in Canada. This same account is used to fund payroll for The Boyds Collection, Corp. in Canada.

(iii) Payroll Account

18. The Debtors maintain a single payroll account for payment of all of the Debtors' payroll (the "Payroll Account"). The Payroll Account (Acct. #5001935951) is maintained at PNC Bank. The Payroll Account is a zero balance account that receives funding only to meet payroll requirements.

(iv) Letter of Credit Account

19. The Debtors maintain a single bank account associated with their pre-petition letter of credit issuances with Bank of America (Acct. #009415807069). The Debtors are required to maintain certain funds in this account to collateralize their obligations under letters of credit issued in connection with Debtors' businesses.

(v) International Accounts

20. The Debtors' foreign subsidiaries each maintain bank accounts in the country in which they operate (each, a "Foreign Account"). Each of the Foreign Accounts serve collection, disbursement and payroll functions for the Debtors' foreign subsidiaries. On occasion, funds may be transferred from a Foreign Account into the Concentration and Disbursement Account, or from the Concentration and Disbursement Account to a Foreign Account, as the Debtors' business needs dictate.⁴ A list of Foreign Accounts, descriptions thereof and respective account numbers is attached hereto as Exhibit C.

⁴ The Debtors do not use foreign currency hedges of any kind in its operations. International fund transfers are converted to the designated currency at the prevailing exchange rate at the time any transfer is made.

B. Continuing the Debtors' Integrated Cash Management Is in the Best Interests of the Debtors' Estates and Creditors

21. As set forth above, the U.S. Trustee generally requires a debtor in possession to close all pre-petition bank accounts and open new debtor in possession bank accounts. In addition, the U.S. Trustee may require a debtor in possession to maintain separate accounts for cash collateral and taxes. However, in complex chapter 11 cases, such as here, courts in this District often waive these requirements, recognizing that they are often impractical and potentially detrimental to a debtor's post-petition business operations and restructuring efforts. See, e.g., In re Nat'l Energy & Gas Transmission, Inc., Case No. 03-30459 (PM) (Bankr. D. Md. July 9, 2003); In re MCSi, Inc., Case No. 03-80169 (JFS) (Bankr. D. Md. June 4, 2003); In re Startec Global Commc'ns Corp., Case No. 01-25013 (DWK) (Bankr. D. Md. Dec. 28, 2001); See also, e.g., In re NRG Energy, Inc., Case No. 03-13024 (PCB) (Bankr. S.D.N.Y. May 15, 2003); In re Worldcom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. July 22, 2002).

22. The Debtors hereby seek authority to continue utilizing their current integrated cash management system, as described above. It is critical that they continue to be able to consolidate their cash management and centrally coordinate fund transfers in order to efficiently and effectively operate their business operations. Substantially disrupting these cash management procedures would severely impair the Debtors' ability to preserve and enhance their respective going concern values and to successfully reorganize during these Reorganization Cases. Such disruption would also be particularly severe in these cases because of the comparatively small size of the Debtors' accounting staff and the limited resources that the Debtors would have to establish a new cash management system. Moreover, creating an entirely new cash management system would also inevitably have a deleterious effect on the Debtors' recordkeeping -- which would subvert the goal of the UST Guidelines. It is essential, therefore, that the Debtors be permitted to continue to use their current cash management system.

23. The Debtors have utilized their Cash Management System substantially in its current basic structure for more than seven years as a mainstay of their ordinary, usual and

essential business practices. The cash management system is similar in form to those commonly employed by corporate enterprises comparable to the Debtors in size and complexity. Multiple-entity businesses tend to use such systems because of the numerous benefits they provide, including the ability to (a) track and control all corporate funds, (b) ensure cash availability and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information.

24. The continued use of cash management systems employed in the ordinary course of a debtor's pre-petition business has been approved by this Court and has also been approved as a routine matter in cases in other districts. See, e.g., In re Nat'l Energy & Gas Transmission, Inc., Case No. 03-30459 (PM) (Bankr. D. Md. July 9, 2003); In re MCSi, Inc., Case No. 03-80169 (JFS) (Bankr. D. Md. June 4, 2003); see also, e.g., In re Mid-Valley, Inc., Case No. 03-35592 (JKF) (Bankr. W.D. Pa. Dec. 17, 2003) (interim order authorizing debtors to continue use of their pre-existing cash management system); In re North Am. Refractories Co., Case No. 02-20198 (JKF) (Bankr. W.D. Pa. Jan. 9, 2002); In re The Carbide/Graphite Group, Inc., Case No. 01-29744 (MBM) (Bankr. W.D. Pa. Sept. 27, 2001); In re Polymer Group, Inc., Case No. 02-05773 (JEW) (Bankr. D.S.C. July 1, 2002).

25. Consistent with the foregoing authority, it is critical to both continuing to operate the Debtors' businesses and preserving the value of those businesses that the Debtors be allowed to continue to utilize their existing cash management system without disruption. Accordingly, it is appropriate and entirely consistent with applicable provisions of the Bankruptcy Code and case law for the Court to approve the Cash Management System in its current form. The Court should, therefore, authorize the Debtors' continued use of their existing Cash Management System.

C. The Debtors Should Be Granted Authority to Maintain Their Existing Bank Accounts

26. As discussed above, one provision of the UST Guidelines require a chapter 11 debtor in possession to open new bank accounts and close all existing accounts. The UST

Guidelines also require that the new bank accounts only be opened in certain financial institutions designated as authorized depositories by the U.S. Trustee. These requirements are designed to provide a clear line of demarcation between pre-petition and post-petition claims and payments and help protect against the inadvertent payment of pre-petition claims by preventing banks from honoring checks drawn before the Commencement Date.

27. The Debtors seek a waiver of the U.S. Trustee's requirement that the Bank Accounts be closed and that new post-petition bank accounts be opened at depositories authorized by the U.S. Trustee. If enforced in these Reorganization Cases, this requirement would cause enormous disruption in the Debtors' businesses and would impair their efforts to reorganize.

28. Conversely, maintaining the Bank Accounts would greatly facilitate the Debtors' "seamless transition" to post-petition operations. Therefore, to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition into chapter 11 as possible, the Debtors should be permitted to continue to maintain the existing Bank Accounts and, if necessary, to open new accounts and close existing accounts in the normal course of business operations. Otherwise, transferring the Bank Accounts will be tremendously disruptive, time consuming and expensive.

29. In other large cases, this Court has waived the strict enforcement of bank account closing requirements and replaced them with an alternative procedure that provides the same protection. See, e.g., In re Nat'l Energy & Gas Transmission, Inc., Case No. 03-30459 (PM) (Bankr. D. Md. July 9, 2003); In re MCSi, Inc., Case No. 03-80169 (JFS) (Bankr. D. Md. June 4, 2003); In re Startec Global Commc'ns Corp., Case No. 01-25013 (DWK) (Bankr. D. Md. Dec. 28, 2001). To guard against improper transfers resulting from the post-petition honoring of pre-petition checks, instead of requiring debtors to close all of their bank accounts, courts often order banks, with court-approved exceptions, not to honor any checks drawn on the Debtors' accounts before the Commencement Date, unless otherwise ordered by this Court. Id.

30. The Debtors represent that if the relief requested herein is granted, they will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by them before the Commencement Date, other than those authorized by this Court.

31. Accordingly, the Debtors request that this Court waive the strict enforcement of bank account closing requirements and replace them with alternative procedures that provide the same protection. The Debtors further request that the Bank Accounts be deemed debtor in possession accounts and that the Debtors be authorized to maintain and continue using these accounts in the same manner and with the same account numbers, styles and document forms as those employed during the pre-petition period.

D. The Debtors Should Be Granted Authority to Use Existing Business Forms and Checks

32. In the ordinary course of their businesses, the Debtors use a multitude of checks and other business forms. To minimize expenses to the estates, the Debtors request authority to continue to use all correspondence and business forms (including, but not limited to, letterhead, purchase orders, invoices, etc.) as such forms were in existence immediately before the Commencement Date, without reference to the Debtors' status as debtors in possession. The Debtors also request authorization to use their existing check stock, provided, however, that as soon as practicable, the Debtors will imprint the legend "DIP" on such existing checks. Upon depletion of the Debtors' check stock and/or business forms stock, the Debtors will obtain new check stock and/or business forms stock reflecting their status as debtors in possession. Administrative Order Adopting Case Management/Electronic Case Filing Procedures, Admin. Order No. 03-02 (Bankr. D. Md. Apr. 4, 2003).

33. By virtue of the nature and scope of the Debtors' business operations and the large number of suppliers of goods and services with whom the Debtors deal on a regular basis, it is important that the Debtors be permitted to continue to use their existing checks and other business forms without alteration or change, except as requested herein. Indeed, because parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as a debtor in

