

**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	*	
Debtors.	*	Chapter 11
	*	(Jointly Administered under
	*	Case No. 05-____ ()
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**APPLICATION OF THE DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO
28 U.S.C. § 156(C) AUTHORIZING AND APPROVING THE RETENTION OF THE
GARDEN CITY GROUP, INC. AS NOTICE, CLAIMS AND BALLOTING AGENT TO
THE DEBTORS AND DEBTORS IN POSSESSION**

The Boyds Collection, Ltd., et al., the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), by counsel, file this Application of the Debtors for Entry of an Order Pursuant to 28 U.S.C. § 156(c) Authorizing and Approving the Retention of The Garden City Group, Inc. as Notice, Claims and Balloting Agent to the Debtors and Debtors in Possession (the “Application”), and in support thereof states²:

Jurisdiction

1. This Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.
2. The statutory bases for the relief sought herein are 28 U.S.C. § 156(c) and Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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

² The facts and circumstances supporting this Motion are set forth in the Affidavit of Jan L. Hurley in Support of First Day Motions filed contemporaneously herewith and the affidavit of Michael J. Sherin in support of the Application (the “Sherin Affidavit”), attached hereto as Exhibit A.

Background

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

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

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

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

³ None of the foreign subsidiaries are Debtors.

7. The significant indebtedness of Boyds consists of: (i) approximately \$56.5 million in aggregate principal amount under a senior secured credit agreement, dated as of February 23, 2005 (the “Pre-Petition Credit Agreement”) and (ii) approximately \$34.4 million in aggregate principal amount pursuant to certain 9% senior subordinated notes due in 2008.

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

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

10. By the fall of 2005, it had become apparent that Boyds could not avoid a financial restructuring. From September to the Commencement Date, Boyds engaged in discussions with the lenders (the “Pre-Petition Lenders”) under the Pre-Petition Credit Agreement regarding the terms of a comprehensive plan to restructure Boyds’ operations and existing debt obligations. Though Boyds and the Pre-Petition Lenders made substantial progress in these negotiations, as of the Commencement Date, negotiations were still ongoing. The Pre-Petition Lenders were

unwilling to extend the waiver or commit to providing any further liquidity outside of a reorganization. On the Commencement Date, the Debtors, in the exercise of their prudent business judgment, determined that it was in the best interest of all their stakeholders to commence the Reorganization Cases, continue negotiations with the Debtors' creditor constituencies and consummate a restructuring under the auspices of this Court.

Relief Requested

11. By this Application, the Debtors seek to employ and retain The Garden City Group, Inc. ("GCG") as their notice, claims and balloting agent pursuant to 28 U.S.C. § 156(c).

12. The Debtors have approximately 1000 potential creditors. Upon information and belief, the office of the Clerk of the Bankruptcy Court for the District of Maryland (the "Clerk's Office") is not equipped to efficiently and effectively serve notice on the large number of creditors and parties in interest and administer claims during these Reorganization Cases. The sheer size and magnitude of the Debtors' creditor body makes it impracticable for the Clerk's Office to undertake that task.

Basis for Relief

13. 28 U.S.C. § 156(c), which governs the staffing and expenses of bankruptcy courts, states in pertinent part:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

14. GCG specializes in noticing, claims processing, balloting and other administrative tasks in Reorganization Cases. The Debtors wish to engage GCG to send out certain designated

notices and to collect and monitor claims and perform certain ballot-related functions with respect to these Reorganization Cases. GCG has provided identical or substantially similar services in other Reorganization Cases in a variety of jurisdictions. Among the large Reorganization Cases in which GCG is or was retained, as noticing, claims and/or balloting agent to debtors are: In re S-Tran Holdings, Inc., Case No. 05-11391 (RB) (Bankr. D. Del. May 13, 2005), In re The Flintkote Company, Case No. 04-11300 (JKF) (Bankr. D. Del. May 1, 2004), In re HQ Global Holdings, Inc., Case No. 02-10760 (MFW) (Bankr. D. Del. March 13, 2002), In re Federal-Mogul Global, Inc., Case No. 01-10578 (AMW) (Bankr. D. Del. October 1, 2001), In re ACandS, Inc., Case No. 02-12687 (RJN) (Bankr. D. Del. September 16, 2002), In re Omne Staffing Inc., Case No. 04-22316 (RG) (Bankr. D. N.J. April 9, 2004), In re NorVergence, Inc., Case No. 04-32079 (RG) (Bankr. D. N.J. June 30, 2004), In re Muralo Company, Case No. 03-26723 (MS) (Bankr. D. N.J. May 20, 2003), In re AremisSoft Corporation, Case No. 02-32621 (RG) (Bankr. D. N.J. March 15, 2002), In re Sure Fit, Inc., Case No. 04-11495 (BRL) (Bankr. S.D.N.Y. March 7, 2004), In re General Media, Inc., Case No. 03-15078 (SMB) (Bankr. S.D.N.Y. August 12, 2003), In re Dice Inc., Case No. 03-10877 (BRL) (Bankr. S.D.N.Y. February 14, 2003), In re Interbank Funding Corp., Case No. 02-41590 (BRL) (Bankr. S.D.N.Y. June 7, 2002), In re Nations Flooring, Inc., Case No. 01-16342 (CB) (Bankr. S.D.N.Y. December 20, 2001), In re Galey & Lord, Inc., Case No. 02-40445 (ALG) (Bankr. S.D.N.Y. February 19, 2002), In re PSINet Consulting Solutions Holdings, Inc., Case No. 01-14916 (REG) (Bankr. S.D.N.Y. September 10, 2001), In re NTL Incorporated, Case No. 02-41316 (ALG) (Bankr. S.D.N.Y. May 8, 2002), In re Regus Business Centre Corp., Case No. 03-20026 (ASH) (Bankr. S.D.N.Y. January 13, 2003), In re Allou Distributors Inc., Case No. 03-82321 (MLC) (Bankr. E.D.N.Y. April 14, 2003), In re CyberRebate.com, Inc., Case No. 01-16534 (CEC) (Bankr. E.D.N.Y. May 16, 2001), In re United Producers, Inc., Case No. 05-55272 (CMC) (Bankr. S.D.OH April 1, 2005), In re Gateway Home Care Inc., Case No. 03-17457 (JPC) (Bankr. N.D.IL April 18, 2003) and In re Hawaiian Airlines, Inc., Case No. 03-00817 (RJF) (Bankr. D. HI March 21, 2003).

15. The Debtors respectfully submit that the most effective and efficient manner of noticing these creditors and parties in interest of the filing of these Reorganization Cases, and to transmit, receive, docket, maintain, photocopy and scan claims, is for the Debtors to engage an independent third party to act as the Debtors' notice and claims agent. The Debtors may also require the services of an agent to administer votes pursuant to a plan of reorganization. Accordingly, the Debtors propose to employ GCG as notice, claims and balloting agent, *inter alia*, to assist the Debtors in distributing notices, as necessary, and to process other administrative information pertaining to these Reorganization Cases. The Debtors believe that GCG is well-qualified to serve in this capacity and that GCG's retention is in the best interests of the Debtors' estates and their creditors. The Debtors chose GCG based on both its experience and the competitiveness of its fees.

Terms of Retention

16. The Debtors propose to retain GCG on substantially the terms and conditions set forth in the Bankruptcy Administration Agreement (the "Retention Agreement") attached hereto as Exhibit B. The scope of services to be provided by GCG and the fees to be charged by GCG are set forth on Schedule A to the Retention Agreement.

GCG's Disinterestedness

17. To the best of the Debtors' knowledge, and as disclosed in the Sherin Affidavit, attached hereto as Exhibit A, the officers and employees of GCG: (a) do not have any adverse connection with the Debtors, the Debtors' creditors or any other party in interest or their respective attorneys and accountants, the office of the United States trustee (the "U.S. Trustee") or any person employed in the office of the U.S. Trustee; and (b) do not hold or represent an interest adverse to the Debtors' estates.

18. To the best of the Debtors' knowledge, GCG is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that its officers and employees:

- (a) are not creditors, equity security holders, or insiders of the Debtors;
- (b) are not and were not investment bankers for any outstanding security of the Debtors;
- (c) have not been, within three (3) years before the date of filing of the Debtors' chapter 11 petitions, (i) investment bankers for a security of the Debtors, or (ii) an attorney for such investment banker in connection with the offer, sale, or issuance of a security of the Debtors; and
- (d) were not, within two (2) years before the date of filing of the Debtors' chapter 11 petitions, a director, officer, or employee of the Debtors or of any investment banker as specified in subparagraph (b) or (c) of this paragraph.

19. Upon information and belief, GCG represents, among other things, that:

- (a) it is not and will not be employed by any federal or state agency (the "Government") and will not seek any compensation from the Government;
- (b) by accepting employment in these Reorganization Cases, it waives any right to receive compensation from the Government;
- (c) it is not an agent of the Government and is not acting on behalf of the Government;
- (d) it will not misrepresent any fact to the public; and
- (e) it will not employ any past or present employees of the Debtors for work involving these Reorganization Cases.

20. Prior to the Commencement Date, GCG performed certain professional services for the Debtors. The Debtors do not owe GCG any amount for services performed or expenses incurred prior to the Commencement Date.

21. GCG will conduct an ongoing review of its files to ensure that no conflict or other disqualifying circumstances exist or arise. If any new facts or relations are discovered, GCG will supplement its disclosure to the Court.

Services To Be Provided

22. Pursuant to the Retention Agreement, GCG, at the Debtors' or the Clerk's Office's request, may provide the following services:⁴

- (a) Prepare and serve required notices in these Reorganization Cases.
- (b) Receive proofs of claim at a post office box, if directed to do so by the Court, and maintain copies of all proofs of claim and proofs of interest filed in these Reorganization Cases.
- (c) Maintain official claims registers in these Reorganization Cases by docketing all proofs of claim and proofs of interest in a claims database.
- (d) Implement necessary security measures to ensure the completeness and integrity of the claims registers.
- (e) Transmit to the Clerk's Office a copy of the claims registers on a monthly basis unless requested more or less frequently by the Clerk's Office.
- (f) Maintain an up-to-date mailing list for all entities that have filed proofs of claim or proofs of interest and make such list available upon request to the Clerk's Office or any party in interest.
- (g) Provide access to the public for examination of copies of the proofs of claim or proofs of interest filed in these Reorganization Cases without charge during regular business hours.
- (h) Record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide notice of such transfers as required by Bankruptcy Rule 3001(e).
- (i) Comply with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders and other requirements.
- (j) Provide temporary employees to process claims as necessary.
- (k) Provide a website to provide information about the cases.

⁴ The description of the Retention Agreement in this Application is a summary. To the extent that this Application and the terms of the Retention Agreement are inconsistent, the terms of the Retention Agreement shall control.

- (l) Provide a toll-free “800” number to provide information about the cases and receive questions about the cases.
- (m) Promptly comply with such further conditions and requirements as the Clerk’s Office or the Court may at any time prescribe.
- (n) Provide such other claims processing, noticing, balloting and related administrative services as may be requested from time to time by the Debtors.
- (o) Act as balloting agent, which may include some or all of the following services:
 - (i) printing of ballots including the printing of creditor and shareholder specific ballots;
 - (ii) preparing voting reports by plan class, creditor, or shareholder and amount for review and approval by the client and its counsel;
 - (iii) coordinating the mailing of ballots, disclosure statement and plan of reorganization to all voting and non-voting parties and provide affidavit of service; and
 - (iii) receiving ballots at a post office box, inspecting ballots for conformity to voting procedures, date stamping and numbering ballots consecutively, and tabulating and certifying the results.

23. In addition to the foregoing, upon the Debtors’ request, GCG will assist the Debtors with, among other things, (a) preparing and mailing customized proofs of claim to the creditors listed on the Debtors’ Schedules of Liabilities; (b) preparing, mailing and tabulating ballots of certain creditors for the purpose of voting to accept or reject the plan or plans of reorganization; and (c) any other additional services requested by the Debtors.

24. By this Application, the Debtors also request that the Court allow creditors to file their claims directly with GCG.

25. The Debtors believe that the notice, claims and balloting services provided by GCG will not duplicate the services that, subject to this Court entering or having entered appropriate orders, other retained professionals would provide to the Debtors in these

Reorganization Cases. GCG will carry out unique functions and will use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid the unnecessary duplication of services.

26. The fees to be charged by GCG as notice, claims and balloting agent are set forth on Schedule A to the Retention Agreement. The Debtors respectfully submit that the rates to be charged by GCG for its services in connection with the notice, claims processing and balloting efforts are competitive and comparable to the rates charged by its competitors for similar services. Furthermore, the Debtors submit that the fees and expenses incurred by GCG are administrative in nature and thus are not subject to standard fee application procedures of professionals. As such, and as has been authorized in other chapter 11 engagements of GCG, the Debtors request authorization to compensate GCG without further order of this Court for services rendered upon the submission of GCG to the Debtors of monthly invoices that summarize in reasonable detail the services for which compensation is sought.

Indemnification Provisions

27. The Retention Agreement also provides that the Debtors will indemnify GCG and its officers, directors, employees, affiliates and agents (collectively, the "Indemnified Parties") against any and all losses incurred by GCG arising out of or in connection with or related to (a) any gross negligence or willful misconduct by any of the Debtors, their employees, agents or representatives, or any misrepresentations made by such persons to third parties in connection with GCG's acts or omissions in connection with its rendition of the services; (b) any breach of the Retention Agreement by any of the Debtors; or (c) any erroneous instructions or information provided to GCG by any of the Debtors for use in providing the services. Notwithstanding any provision of the Retention Agreement to the contrary, the Debtors shall have no obligation to indemnify any Indemnified Party, or to provide contribution or reimbursement to any Indemnified Party, for any losses, claims, damages, liabilities, or expenses that are (i) finally judicially determined to have resulted from, or (ii) agreed by such Indemnified Party to have

resulted from, the reckless or willful misconduct, gross negligence, breach of fiduciary duty, bad faith, or self-dealing of any Indemnified Party.

28. The preceding indemnification procedures are a “market” term of consideration for professional services provided to chapter 11 debtors and the procedures are in substantially the same form as the indemnification procedures that were negotiated with certain United States Trustees and approved by courts in this Circuit and in other courts in the following cases: See, e.g., In re National Energy & Gas Transmission, Inc., Case No. 03-30459 (Bankr. D. Md. July 9, 2003); In re Startec Global Communications Corp., Case No. 01-25013 (Bankr. D. Md. Jan. 8, 2002); In re Enron Corp., No. 01-16034 (Bankr. S.D.N.Y. Jan. 30, 2002); In re Global Crossing Ltd., No. 02-40188 (Bankr. S.D.N.Y. Jan. 28, 2002); In re Worldcom, Inc., No. 02-13533 (Bankr. S.D.N.Y. July 24, 2002); In re Hayes Lemmerz Int’l, Inc., No. 01-11490 (Bankr. D. Del. Dec. 6, 2001).

29. The terms and conditions of the Retention Agreement, including the indemnification provisions contained therein, were negotiated by the Debtors and GCG at arm’s length and in good faith. The Debtors respectfully submit that the indemnification provisions contained in the Retention Agreement, viewed in conjunction with the other terms of GCG’s proposed retention, are reasonable and in the best interests of the Debtors, their estates and creditors.

Memorandum of Law

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

Notice

31. Notice of this Application has been given to (a) the office of the United States trustee; (b) counsel to the Agent to the Debtors’ Pre-Petition Lenders; (c) counsel for the

