

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

In re	*	Case No. 05-____ (____) through
	*	05-____ (____)
The Boyds Collection, Ltd., et al.¹	*	
	*	Chapter 11
Debtors.	*	(Jointly Administered under
	*	Case No. 05-____ (____)
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**DEBTORS’ MOTION FOR ENTRY OF AN ADMINISTRATIVE ORDER
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS AND OFFICIAL
COMMITTEE MEMBERS**

The Boyds Collection, Ltd., *et al.*, the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), by counsel, file this Motion for Entry of an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Official Committee Members (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.
2. The statutory bases for the relief requested herein are sections 105(a), 328, 331 of title 11 of the United States Code (the “Bankruptcy Code”) and Administrative Order No. 02-03

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.

from the Bankruptcy Court for the District of Maryland. Order Implementing Procedures for Complex Chapter 11 Cases, Admin. Order No. 02-03 (Bankr. D. Md. July 31, 2002).

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 request entry of an order pursuant to sections 105(a), 328 and 331 of the Bankruptcy Code establishing an orderly, regular process for the allowance and payment of compensation and reimbursement for attorneys and other professionals whose retentions are approved by this Court pursuant to sections 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code. In addition, the Debtors request entry of an order establishing a procedure for reimbursement of reasonable out-of-pocket expenses incurred by members of any statutory creditors' committee (the "Committee") appointed in these Reorganization Cases.

Retention of Professionals

12. Contemporaneously herewith, the Debtors have filed applications to retain (a) Kirkland & Ellis LLP as their lead bankruptcy counsel, (b) Houlihan Lokey Howard Zukin Capital, Inc. ("Houlihan") as their financial advisors and investment bankers, (c) The Garden City Group, Inc. as their notice, claims and balloting agent and (d) Swidler Berlin LLP, as their local bankruptcy counsel (collectively, the "Estate Professionals").⁴ The Debtors anticipate that they may also retain other professionals in these Reorganization Cases as the need arises.

⁴ Houlihan's retention letter provides for specific procedures for payments to Houlihan and if approved by this Court, Houlihan will be paid a fixed amount as set forth in its retention letter. Notwithstanding that Houlihan is requesting fixed payments, Houlihan shall keep detailed daily time entries in 1.0 hour increments which entries may be lumped to reflect actual time expended on multiple related tasks.

Moreover, a Committee may be appointed in these Reorganization Cases, and such Committee, when appointed, will likely retain counsel and may retain other professionals to represent it (collectively, the “Committee Professionals,” and together with the Estate Professionals, the “Professionals”).

Proposed Procedures

13. Pursuant to section 331 of the Bankruptcy Code, all Professionals are entitled to submit applications for interim compensation and reimbursement of expenses every 120 days, or more often if the court permits. In addition, section 105(a) of the Bankruptcy Code authorizes the court to issue any order “necessary or appropriate to carry out the provisions of [the Bankruptcy Code],” thereby codifying the bankruptcy court’s inherent equitable powers. 11 U.S.C. § 105(a).

14. Pursuant to sections 105(a), 328 and 331 of the Bankruptcy Code, the Debtors request issuance of an order in accordance with Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2016-1 of the Local Bankruptcy Rules for the District of Maryland (the “Local Bankruptcy Rules”), establishing procedures for monthly compensation and reimbursement of expenses of the Professionals.

15. Specifically, the Debtors propose that the monthly payment of compensation and reimbursement of expenses of the Professionals (the “Compensation Procedures”) be structured as follows:

- a. No earlier than the fifteenth day, and no later than the last day, of each month following the month for which compensation is sought, each Professional will file with the Court and serve via facsimile, e-mail, overnight mail, or hand delivery, a monthly statement (the “Monthly Statement”), (**Form CCP-5**), together with (1) the cover page referenced in paragraph (1) below and (2) as an exhibit to each Monthly Statement, the detailed daily time entries and summaries of time normally submitted with an interim fee application (redacted as may be necessary and appropriate), as well as a detailed summary of all disbursements and expenses for which the Professional is seeking reimbursement (said detailed summary of all disbursements and expenses to be in conformity with paragraph C of Appendix D of the Local Bankruptcy Rules

for the District of Maryland) on the following: (A) Debtors' counsel, Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York, 10022-4611, Attn.: Lisa G. Laukitis; (B) Office of the United States Trustee, District of Maryland, Baltimore Division, 300 West Pratt Street, Suite 350, Baltimore, Maryland 21201, Attn.: Mark A. Neal; (C) counsel for the Committee, when appointed; (D) counsel to the Agent to Debtors' Pre-Petition Lenders; (E) Counsel to D.E. Shaw Laminar Portfolios, LLC, Wilkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Steven Wilamowsky; and such other parties as the Court may direct, (collectively, the "Reviewing Parties").

- b. In the event any of the Reviewing Parties has an objection to any portion of the Fees or Expenses sought in a particular Monthly Statement, based on a preliminary view that such fees and expenses are not properly allowable, they or it shall, on or before the fifteenth calendar day after the date of the filing of the Monthly Statement at issue, serve by facsimile, overnight mail or hand delivery upon the Professional whose Monthly Statement is objected to, and the other Reviewing Parties, a written "Notice of Objection to Fee Statement" setting forth, at a minimum, the specific items and amount of Fees and Expenses to which the Reviewing Party objects and the basis for the objection. Thereafter, the Professional can seek payment of objected to Fees and Expenses through the Professional's next interim fee application, as described below;
- c. If no objection to any respective Professional's Monthly Statement is served by the deadline set forth in paragraph (b) above, the Debtors shall pay the amount of such Fees and Expenses less a 20% Holdback of the Fees, not later than the fifteenth calendar day after the last day on which any objections to the Monthly Statement were to be served and filed in accordance with paragraph (b) above;
- d. If an objection to any respective Professional's Monthly Statement is served by the deadline set forth in paragraph (b) above, the Debtors shall pay the amount of such Fees and Expenses requested in the Monthly Statement less any amount objected to and less a 20% Holdback of the Fees not objected to, by not later than the fifteenth calendar day after the last day on which any objections to the Monthly Statement were to be served and filed in accordance with paragraph (b) above. If following the service of an objection to a Monthly Statement the Professional and the party serving the objection are able to resolve their dispute in whole or in part, the Professional may serve on the Reviewing Parties a notice describing the terms of the resolution and the Debtors shall pay the

balance of the Fees and Expenses no longer objected to (still applying a 20% Holdback as to Fees not subject to an objection) not later than the fifteenth calendar day after the date of service of the notice of resolution provided that such notice is served by facsimile, e-mail, overnight mail or hand delivery;

- e. The first Monthly Statement submitted by a Professional under this Order shall cover all periods from the Commencement Date through November 30, 2005, and it may be filed no earlier than the 15th of the following month and no later than the end of the following month. Other than the first Monthly Statement submitted by each of the Professionals pursuant to this Order, each Monthly Statement will cover a single calendar month;
- f. Neither an objection nor a failure to object shall prejudice a party's right to object to an interim or final fee application on any ground. Resolution of an objection shall not constitute a waiver of a party's right to object to an interim or final fee application, nor shall it prejudice the right of a Professional to seek full allowance of the balance of all fees and expenses in an interim or final fee application;
- g. The monthly Fees and Expenses paid pursuant to Monthly Statements under this Order shall not be deemed allowed or disallowed for purposes of sections 330 or 331 of the Bankruptcy Code. Rather, for each "Fee Period" set forth in paragraph (i) below, each Professional shall file with the Court and serve on the Reviewing Parties an application for interim approval and allowance of the Fees and Expenses requested pursuant to section 331 of the Bankruptcy Code (the "Interim Fee Applications") and in conformity with Appendix D to the Local Bankruptcy Rules for the District of Maryland; and serve notice of the filing of such Interim Fee Application on those parties set forth in paragraph (a) above as well as parties who have requested notice pursuant to Bankruptcy Rule 2002;
- h. If a Professional fails to serve a Monthly Statement timely, said Professional may not incorporate it into the next Monthly Statement, but the Professional may seek said fees in the next Interim Fee Application;
- i. Each professional shall file its first Interim Fee Application covering the period from the Commencement Date through and including December 31, 2005 on or before January 31, 2006. Thereafter, each Interim Fee Application will cover one of three Fee Periods in each calendar year. An Objection to an Interim Fee Application shall be filed on or before the 25th day on the month following the filing and serving of the Interim Fee Application.

The three Fee Periods (following the first Fee Period) and the deadlines for filing, or objecting to an Interim Fee Application for each such Fee Period are as follows:

Fee Period	Deadline to File Interim Fee Application	Deadline to File Objection to Interim Fee Application
January 1 - April 30	May 31	June 25
May 1 - August 30	September 30	October 25
September 1 - December 31	January 31	February 25

- j. If a Professional fails to file and serve an Interim Fee Application timely, then said Professional may incorporate said fees into the next Interim Fee Application, but the Professional may not receive payment on any intervening Monthly Statements until the next Interim Fee Application is filed;
- k. Each Professional's Monthly Statement and Interim Fee Application shall be divided into discrete service categories in conformity with Appendix D to the Local Bankruptcy Rules for the District of Maryland or as otherwise agreed upon by the United States Trustee and the Professional;
- l. Each Monthly Statement and Interim Fee Application shall be accompanied by a summary sheet (**Form CCP-6**);
- m. To the extent that any deadline set forth herein would fall on a Saturday, Sunday or "legal holiday," as that term is defined by Bankruptcy Rule 9006, such deadline shall be extended to the next day that is not a Saturday, Sunday or legal holiday;
- n. If a Professional's application to be employed is pending but has not yet been granted by the Court, said Professional shall nonetheless timely submit all Monthly Statements and Interim Fee Applications during such pendency; however, all payments under said Monthly Statements and Interim Fee Applications shall be held back by the Debtors pending approval by the Court of the employment of said Professional;
- o. Upon the collective written agreement of the Debtors, any Committee and the U.S. Trustee, a deadline with respect to submitting a Monthly Statement or an Interim Fee Application may be extended with respect to one or more Professionals without further Order of the Court. The deadline for objecting to a Monthly Statement or an Interim Fee Application of a particular Professional may be extended upon the written consent of said Professional without further Order of the Court. However, any

amendments to the general procedures set forth herein require further Order of the Court; and

- p. Where the Professionals utilize the services of a third party copy service to reproduce and/or serve pleadings or other papers in these proceedings, the Debtor may directly pay (in advance or upon invoice) said third parties for said services, including among other things, any associated postage, overnight delivery or other charges, and thereafter report said expense on the Debtors' monthly reports. Alternatively, said third party copy service charges may be paid by the Debtors' Professionals and included for reimbursement in their next Monthly Statement or Interim Fee Application; and
- q. Pursuant to section 503(b)(3)(F) of the Bankruptcy Code, official members of any Committee may receive 100% reimbursement of all reasonable expenses associated with their work on Committee matters, and may seek such reimbursement through counsel to such Committee via the counsel's Monthly Statements or Interim Fee Applications.

16. All fees and expenses paid to Professionals under the Compensation Procedures are subject to disgorgement until final allowance by the Court.

17. The Debtors further request that the Court limit service of interim fee applications and the final fee application (collectively, the "Applications") to the Notice Parties. The Debtors further request that all other parties that have filed a notice of appearance with the Clerk of this Court and requested notice of pleadings in these Reorganization Cases shall be entitled to receive only notice of hearings on the Applications (the "Hearing Notices"). Serving the Applications and the Hearing Notices in this manner will permit the parties most active in these Reorganization Cases to review and object to the Professionals' fees and will save unnecessary duplication and mailing expenses.

Basis For Relief

18. Section 328 of the Bankruptcy Code authorizes the employment of professionals "on any reasonable terms and conditions of employment, including a retainer." 11 U.S.C. § 328. Section 330 of the Bankruptcy Code authorizes payment to such professionals of "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330. Although the ultimate allowance of professional compensation is

governed by section 330, section 331 of the Bankruptcy Code expressly allows courts to authorize, prior to final allowance of compensation or expense reimbursements, interim payments to professionals every 120 days, or more often, including on a monthly basis when warranted. 11 U.S.C. § 331. See, e.g., In re Bennett Funding Group, Inc., 213 B.R. 227, 231 (Bankr. N.D.N.Y. 1997) (authorizing monthly payments of professional fees); In re Kaiser Steel Corp., 74 B.R. 885, 892 (Bankr. D. Colo. 1987) (same); In re Int'l. Horizons. Inc., 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) (same).

19. When Reorganization Cases are as large and complex as these Reorganization Cases, Congress intended that courts would establish procedures to compensate professionals more frequently so that unpaid professional fees would not amount to substantial debts owed by the debtors' estates to the professionals retained in the cases:

Section 331 permits trustees and professional persons to apply to the court not more than once every 120 days for interim compensation and reimbursement payments. The court may permit more frequent applications if the circumstances warrant, such as in very large cases where the legal work is extensive and merits more frequent payments.

H.R. Rep. No. 95-595, 5th Cong., 1st Sess. 330 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. 41-2 (1978).

20. Section 331 of the Bankruptcy Code requires no specific procedures for professionals to obtain interim payments of compensation or expense reimbursement, other than providing that “. . . the court may allow and disburse to such applicant such compensation or reimbursement after notice and a hearing.” 11 U.S.C. § 331. Section 102(1) of the Bankruptcy Code defines “after notice and a hearing” broadly to mean such notice and opportunity for a hearing “as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1). Section 102(1) also states that in title 11 the phrase “after notice and a hearing . . . authorizes an act without an actual hearing” in certain circumstances, as long as “notice is given properly.” 11 U.S.C. § 102(1). Because section 331 requires only notice and a hearing, and that phrase is broadly