

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

<p><b>In re</b></p> <p><b>The Boyds Collection, Ltd., et al.<sup>1</sup></b></p> <p style="text-align: center;"><b>Debtors.</b></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 (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY CERTAIN PREPETITION (I) WAGES, SALARIES, AND OTHER COMPENSATION, (II) EMPLOYEE MEDICAL AND SIMILAR BENEFITS AND (III) REIMBURSABLE EMPLOYEE EXPENSES; (B) TO MAKE DEDUCTIONS FROM EMPLOYEES' PAYCHECKS; AND (C) AUTHORIZING AND DIRECTING BANKS AND FINANCIAL INSTITUTIONS TO PAY ALL CHECKS AND ELECTRONIC PAYMENT REQUESTS MADE BY THE DEBTORS RELATING TO THE FOREGOING**

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 of the Debtors for Entry of an Order (A) Authorizing, But Not Directing, the Debtors to Pay Certain Pre-Petition (I) Wages, Salaries, and Other Compensation, (II) Employee Medical and Similar Benefits and (III) Reimbursable Employee Expenses; (B) to Make Deductions from Employees' Paychecks; and (C) Authorizing and Directing Banks and Other Financial Institutions to Receive, Process, Honor, and Pay All Checks Presented for Payment and Electronic Payment Requests Relating to the Foregoing; and in support thereof state:<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

### **Jurisdiction**

1. The 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), 363(b), 507(a)(4) and 507(a)(5) of title 11 of the United States Code (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.<sup>3</sup>

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.

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<sup>3</sup> None of the foreign subsidiaries are Debtors.

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

7. The significant indebtedness of Boyds consists of: (i) approximately \$56.5 million in aggregate principal amount under a senior secured credit agreement, dated as of February 23, 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. As of the Commencement Date, the Debtors employ approximately 491 employees (the “Employees”), of whom approximately 340 are full-time employees (the “Full-Time Employees”) and approximately 151 are part-time employees (the “Part-Time Employees”). Of the Full-Time Employees, approximately 201 are hourly Employees and approximately 139 are salaried Employees.

12. The Employees perform a variety of critical functions, including sales, design, marketing, shipping, administrative, accounting, supervisory, management, maintenance, cashier, food preparation, systems, human resources and other tasks. The Employees’ skills and their knowledge and understanding of the Debtors’ infrastructure, operations and customer relations are essential to the effective reorganization of the Debtors’ businesses. Without the continued services of the Employees, an effective reorganization of the Debtors will not be possible.

13. Therefore, to minimize the personal hardship that the Employees will suffer if pre-petition employee-related obligations are not paid when due or as expected, and to maintain morale and an essential workforce during this critical time, the Debtors, by this Motion, seek

authority, in their sole discretion, to pay and honor certain pre-petition claims for, among other items, wages, salaries, commissions, bonuses and other compensation, federal and state withholding taxes and other amounts withheld (e.g., garnishments, Employees' share of insurance premiums, taxes and 401(k) contributions), Employee health benefits, insurance benefits, workers' compensation benefits, vacation time, life and accidental death and dismemberment insurance, short- and long-term disability coverage and all other Employee benefits that the Debtors have historically provided in the ordinary course of business (collectively, and as more fully described below, the "Employee Wages and Benefits") and to pay all costs incident to the foregoing. The Debtors also seek authority, in their sole discretion, to pay the Reimbursable Expenses (as defined below). In addition, the Debtors request the right to modify, change and discontinue any of the Employee Wages and Benefits, and the policy related to the Reimbursable Expenses, and to implement new Employee Wages and Benefits in the ordinary course of business during these Reorganization Cases in their sole discretion without the need for further Court approval.

14. Finally, the Debtors request that banks and other financial institutions be authorized and directed to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing.

### **Employee Obligations**

#### **A. Unpaid Compensation**

15. In the ordinary course of business, the Debtors incur payroll obligations to the Employees for the performance of services. Such obligations generally comprise wages and salaries, but also include incentive bonuses and commissions awarded for sales productivity and goal attainment. All Employees are paid in arrears on a bi-weekly basis, with direct deposits or checks issued every fourteen days (each a "Pay Day").<sup>4</sup> On October 6, 2005, the Debtors paid wages and salaries to the Employees for the period September 18, 2005 to October 3, 2005. The

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<sup>4</sup> Where a Pay Day falls on a weekend or holiday, Employees will receive their direct deposits or checks on the preceding business day.

next Pay Day is on October 20, 2005, which will cover the period October 3, 2005 to October 16, 2005. Approximately 87% of payroll is made by direct deposit through electronic transfer of funds directly to Employees, and the remaining 13% of Employees are paid via checks. The Debtors' total bi-weekly compensation for Employees (including wages, salaries, bonuses and commissions) ranges from approximately \$575,000 to approximately \$625,000.<sup>5</sup>

16. Because all of the Employees are paid in arrears, as of the Commencement Date, some the Employees have not been paid all of their pre-petition wages. Additionally, compensation may be due and owing as of the Commencement Date because:

- (i) some discrepancies may exist between the amounts paid and amounts Employees or others believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees; and
- (ii) some payroll checks issued to Employees prior to the Commencement Date may not have been presented for payment or cleared the banking system and, accordingly, have not been honored and paid as of the Commencement Date.

17. The Debtors believe that, as of the Commencement Date, approximately \$566,000 in accrued wages, salaries, commissions and other compensation (but excluding reimbursable expenses, vacation pay, deferred compensation and incentive bonus pay) earned prior to the Commencement Date (the "Unpaid Compensation") remains unpaid to Employees. The Debtors are unaware of any Employee being owed more than \$10,000 for any Unpaid Compensation, vacation pay,<sup>6</sup> and, if this Motion is granted, the Debtors will not pay any Employee more than \$10,000 for such Unpaid Compensation and vacation pay accrued prior to the Commencement Date. See 11 U.S.C. §§ 507(a)(4) and 507(a)(5). The Debtors seek authority to pay such Unpaid Compensation to the Employees together with all costs incident thereto.

18. In addition, the Debtors from time to time procure the services of "temporary" workers who work on an hourly basis and whose services are procured through employment

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<sup>5</sup> These amounts vary depending upon the number of payroll periods in a calendar month and the seasonality of the Debtors' retail and shipping operations.

<sup>6</sup> The Debtors do not provide paid sick-leave to any Employees.

agencies. The Debtors remit compensation (the “Temporary Compensation”) for the temporary workers’ services directly to the applicable employment agencies. Historically, the Debtors have incurred \$25,000 to \$30,000 in Temporary Compensation expenses per month and expect to continue incurring such expenses in approximately such amounts into the foreseeable future. As of the Commencement Date, the Debtors owed approximately \$39,000 (the “Unpaid Temporary Compensation”) to employment agencies, and estimate that monthly Temporary Compensation will range from \$25,000 to \$30,000 per month. The Debtors seek authority to pay the Unpaid Temporary Compensation to the employment agencies and all costs incident thereto. In addition, the Debtors seek authority, but not direction, to continue to pay the Temporary Compensation in the ordinary course of business, as routinely done prior to the Commencement Date.

**B. Remitting and/or Paying Appropriate Deductions and Withholdings**

19. During each applicable pay period, the Debtors routinely deduct certain amounts from paychecks, including, without limitation, (a) credit union deposits and payments, (b) garnishments, child support, and similar deductions and (c) other pre-tax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein (such as the Employee’s share of health care benefits and insurance premiums, 401(k) contributions, legally ordered deductions and other miscellaneous deductions) (collectively, the “Deductions”) and forward those amounts to various third party recipients. On average, the Debtors have historically deducted approximately \$198,000 from the Employees’ paychecks per applicable payroll period. However, due to the commencement of the Reorganization Cases, these funds were deducted from Employees’ earnings, but may not have been forwarded to the appropriate third-party recipients prior to the Commencement Date. Accordingly, the Debtors seek authority to continue to forward these pre-petition Deductions to the applicable third-party recipients on a post-petition basis, in the ordinary course of business, as routinely done prior to the Commencement Date.

20. Further, the Debtors are required by law to withhold from an Employee’s wages amounts related to federal, state and local income taxes, social security and Medicare taxes

(collectively, the “Withheld Amounts”) for remittance to the appropriate federal, state or local taxing authority. The Debtors must then match from their own funds for social security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the “Employer Payroll Taxes,” and together with the Withheld Amounts, the “Payroll Taxes”). The Payroll Taxes, including both the employee and employer portion, for 2004 were approximately \$6.71 million. On average, the Debtors historically have withheld approximately \$135,000 in the aggregate from the Employees’ paychecks each payroll period. Before the Commencement Date, the Debtors withheld the appropriate amounts from Employees’ earnings for the Payroll Taxes, but such funds may not have been forwarded to the appropriate taxing authorities prior to the Commencement Date. As a result, the Debtors seek authority, but not direction, to continue to honor and process the pre-petition obligations with respect to the Payroll Taxes on a post-petition basis, in the ordinary course of business, as routinely done prior to the Commencement Date.

**C. Honoring Checks for and Payment of Reimbursable Expenses**

21. Prior to the Commencement Date, and in the ordinary course of their businesses, the Debtors reimbursed Employees (principally field and national sales teams and a limited number of corporate associates) for certain expenses incurred on behalf of the Debtors in the scope of their employment (the “Reimbursable Expenses”). The Reimbursable Expenses are reimbursed on a bi-weekly basis to Employees and include, without limitation, expenses for business supplies and travel-related expenses for meals, parking, automobile mileage and other business-related travel expenses. The Debtors spend approximately \$87,000 on Reimbursable Expenses per month, but it is believed that, as of the Commencement Date, approximately \$16,100 in Reimbursable Expenses remained unpaid.

22. The Reimbursable Expenses were all incurred on the Debtors’ behalf and with the understanding that they would be reimbursed. Accordingly, to avoid harming Employees who incurred the Reimbursable Expenses, the Debtors request authority, in their sole discretion, to (a) continue reimbursing the Reimbursable Expenses in accordance with pre-petition practices, (b)

modify their pre-petition policies relating thereto as they deem appropriate and (c) pay all Reimbursable Expenses that (i) accrued pre-petition and (ii) accrued post-petition but relate to the pre-petition period.

**D. Bonuses**

23. All Full-Time Employees that were employed by the Debtors as of July 1, 2004 and were still employed by the Debtors as of February 1, 2005 are eligible to receive annual bonuses (“Annual Bonuses”) paid either as a percentage of their salary base or in a flat amount. Bonuses typically are paid in mid-February. As of the Commencement Date, the Debtors do not owe any pre-petition amounts with respect to Annual Bonuses. In addition, the Debtors award monthly bonuses (“Monthly Bonuses”) to sales and other field associates based upon the attainment of sales and other performance objectives. As of the Commencement Date, the total estimated amount of Monthly Bonuses that remain unpaid is approximately \$34,000.

24. The Debtors hereby seek authority, but not direction, to continue paying Annual Bonuses and Monthly Bonuses in the ordinary course of business and to pay any pre-petition amounts related to Monthly Bonuses.

**E. Employee Benefits**

25. In the ordinary course of business, the Debtors provide Full-Time Employees with a number of employee benefits, including, but not limited to (a) medical, dental and vision insurance, (b) workers’ compensation, (c) vacation and personal time and (d) a 401(k) plan.

**(a) Medical, Dental and Vision Insurance**

26. The Debtors offer the following insurance policies to their Full-Time Employees for medical, dental and vision coverage (the “Medical and Dental Insurance”):

- (i) **Medical Plans.** The Capital Blue Cross ADV PPO High Plan (the “ADV Plan”) and the Capital Blue Cross Twin 250 Base Plan (the “Twin 250 Plan” and, together with the ADV Plan, the “Medical Plans”) are the Debtors’ two medical and prescription drug plans, which the Debtors offer to all Full-Time Employees. The Medical Plans provide coverage to approximately 272 of the Debtors’ Full-Time Employees. Under the Medical Plans, the Debtors and the

Full-Time Employees contribute to the payment of premiums for insurance provided by Capital Blue Cross, a third-party insurer. This coverage costs the Debtors approximately \$163,142 per month in premiums, which represents approximately seventy (70) to eighty-three (83) percent of the total cost of coverage, depending upon the specific plan and coverage level chosen. The remainder is deducted from participating Full-Time Employees' payroll wages.

- (ii) **Dental Plan.** The Debtors provide their Full-Time Employees with the option to participate in a dental plan (the "Dental Plan") with Delta Dental of Pennsylvania, a third-party insurer. Approximately 254 Full-Time Employees (including two COBRA participants) participate in the Delta Dental Plan. Under the Dental Plan, the Debtors and the Full-Time Employees contribute to the payment of premiums for insurance provided by the insurer. This coverage costs the Debtors approximately \$8,000 per month in premiums, which represents approximately 50 percent of the total cost of coverage. The remainder is deducted from participating Full-Time Employees' payroll wages.
- (iii) **Vision Plan.** The Debtors provide their Full-Time Employees with the option to participate in the Pennsylvania Blue Shield OptiChoiceVision Plan, under which Full-Time Employees contribute 100 percent of the premiums in exchange for coverage. Approximately 204 Full-Time Employees participate in this plan, which they fully fund. Therefore, the costs to the Debtors are *de minimis*.

27. By this Motion, the Debtors seek authority, but not direction, to (a) continue the Medical and Dental Insurance for their Full-Time Employees in the ordinary course of business, (b) continue making the above-described contributions to such benefit programs and (c) pay any amounts related thereto, including any premiums and claim amounts, to the extent that they remain unpaid on the Commencement Date.

**(b) Workers' Compensation**

28. The Debtors provide workers' compensation benefits to their Employees (the "Workers' Compensation Program"). These benefits currently are provided through a program administered by Selective Insurance Company of America ("Selective Insurance"), a property and casualty insurer, in twenty-two of the twenty-nine states where the Debtors are required to maintain workers' compensation and employer liability insurance. In such states, Selective

