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8 Proposed Counsel for R. Todd Neilson, Chapter 11
9 Trustee for The Tulving Company, Inc.

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SANTA ANA DIVISION**

13 In re:

14 THE TULVING COMPANY, INC., a
15 California corporation,

16 Debtor.

17 Case No.: 8:14-bk-11492-ES

18 Chapter 11

19 **APPLICATION OF THE CHAPTER 11**
20 **TRUSTEE FOR THE TULVING**
21 **COMPANY, INC., FOR ORDER**
22 **APPROVING EMPLOYMENT OF**
23 **PACHULSKI STANG ZIEHL & JONES**
24 **LLP AS GENERAL BANKRUPTCY**
25 **COUNSEL TO THE TRUSTEE *NUNC***
26 ***PRO TUNC* TO MARCH 25, 2014**

27 [No Hearing Required]

28 R. Todd Neilson, duly appointed chapter 11 trustee (“Trustee”) in the above-captioned bankruptcy case (the “Case”) hereby applies to the Court (the “Application”) for entry of an order pursuant to section 327(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Bankruptcy Rule 2014-1 (the “Local Bankruptcy Rules”), authorizing the Trustee’s retention and employment of Pachulski Stang Ziehl & Jones LLP (“PSZJ” or the “Firm”), as his general bankruptcy counsel in the Case, *nunc pro tunc* to March 25, 2014.

1 **JURISDICTION**

2 The Court has jurisdiction over the Application pursuant to 28 U.S.C. §§157 and 1334. This
3 matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2). Venue of this proceeding
4 and this Application is properly in this District pursuant to 28 U.S.C. §§1408 and 1409.

5 The statutory bases for the relief sought herein are section 327(a) of the Bankruptcy Code,
6 Rule 2014(a) of the Bankruptcy Rules and Local Bankruptcy Rule 2014-1.

7 **BACKGROUND**

8 This case was commenced on March 10, 2014, by the filing of a voluntary petition for relief
9 under chapter 11 of the Bankruptcy Code by The Tulving Company, Inc. (“the Debtor”).

10 On March 21, 2014, the Court entered an Order appointing the Trustee as Chapter 11 Trustee
11 of the Debtor’s estate [Docket No. 22].

12 **RELIEF REQUESTED**

13 By this Application, the Trustee seeks to employ and retain PSZJ as his general bankruptcy
14 counsel effective *nunc pro tunc* to March 25, 2014, the date upon which the Trustee requested that
15 PSZJ be his general bankruptcy counsel.

16 **Services to be Provided**

17 The professional services that PSZJ will render to the Trustee may include, without
18 limitation, the following:

19 (a.) Advising the Trustee concerning the rights and remedies of the Estate in
20 regard to the assets of the Estate, and with respect to secured, administrative, priority and general
21 unsecured claims, including, but not limited to, the review and reconciliation of Claims;

22 (b.) Representing the Trustee in connection with financial and business matters,
23 including the sale of any assets and potential recovery of assets;

24 (c.) Representing the Trustee in connection with the investigation and prosecution,
25 to the extent the Trustee deems appropriate, potential causes of action against persons or entities
26 relating to the Estate, including, but not limited to, potential claims against insiders and related
27 parties;

28 (d.) Investigating and prosecuting preference, fraudulent transfer and other

1 actions, if any, arising under the Trustee's avoiding powers;

2 (e.) Representing the Trustee in any proceeding or hearing in the Bankruptcy
3 Court, and in any action in other courts where the rights of the Estate may be litigated or affected;

4 (f.) Conducting examinations of witnesses, claimants, or adverse parties and
5 preparing and assisting in the preparation of motions, applications, answers, orders, memoranda,
6 reports and accounts;

7 (g.) Advising the Trustee concerning the requirements of the Bankruptcy Code,
8 the Bankruptcy Rules, the Local Rules and the requirements of the Office of the United States
9 Trustee relating to the administration of the estate and assisting, if requested by the Trustee, in the
10 filing of Schedules, Statement of Financial Affairs and other required documents; and

11 (h.) Rendering such other advice and service, as the Trustee may require in
12 connection with this Case.

13 **PSZJ's Qualifications**

14 PSZ&J is a firm of approximately 63 attorneys with a practice concentrated on restructurings,
15 bankruptcy reorganizations and liquidations, litigation and commercial issues. PSZ&J attorneys
16 have extensive experience representing a wide range of debtors in various industries, chapter 11
17 trustees, chapter 7 trustees, creditors' committees, creditors, asset purchasers, investors and other
18 parties in interest in a wide variety of bankruptcy cases and adversary proceedings. More
19 information about PSZ&J generally and its expertise as counsel to trustees specifically is available
20 on its website at www.pszjlaw.com.

21 The Trustee believes that PSZ&J is well qualified to render the foregoing services. A copy
22 of the biography of Linda F. Cantor, the PSZ&J attorney currently expected to be principally
23 responsible for rendering services to the Trustee in this Case, is attached as Exhibit 1 to the
24 Declaration of Linda F. Cantor in support hereof (the "Cantor Declaration"), which is being filed
25 concurrently herewith.

26 To the best of the Trustee's knowledge and based upon the Cantor Declaration attached
27 hereto, neither PSZJ nor any of its partners, of counsel, or associates has any connection with the
28 Trustee, the Debtor, any creditors of the estate, any party in interest, their respective attorneys or

1 accountants, the United States Trustee, or any person employed in the Office of the United States
2 Trustee, except to the extent set forth in the Cantor Declaration.

3 In particular, the Cantor Declaration discloses the following:

4 (a.) PSZJ has in the past and / or is presently representing R. Todd Neilson in his
5 capacity as a court appointed chapter 11 trustee, a court appointed chapter 7 trustee, examiner,
6 trustee of liquidating trusts, and as plan disbursing agent. PSZJ has also represented chapter 11
7 debtors in whose cases Mr. Neilson served as chief restructuring officer, residual trustee and as a
8 member of the debtor's board of directors as an independent director. PSZJ has also represented
9 debtors, creditors' committees and parties in bankruptcy proceedings in which Mr. Neilson's current
10 firm, Berkeley Research Group, LLC, and/or principals of such firm or Mr. Neilson's prior firms
11 acted as expert witnesses, consultants, financial advisors, accountants, forensic accountants and
12 valuation experts. All such representations are and were in other cases wholly unrelated to this Case.

13 (b.) PSZJ represents many committees whose members may be creditors in the
14 Debtor's chapter 11 case; however, PSZJ is not representing any of those entities in this Case and
15 will not represent any members of those committees in any claims that they may have collectively or
16 individually against the Debtor.

17 (c.) The Official Unsecured Creditors Committee ("Committee"), should one be
18 appointed, and the Trustee may retain various professionals during the pendency of this case. The
19 Trustee or the Committee may retain other professionals in the future. PSZJ has previously worked
20 and will continue to work with certain of such professionals on various representations, at times
21 representing the same parties and at other times representing parties with similar interests or parties
22 with adverse interests.

23 (d.) PSZJ and certain of its partners, counsel and associates may have in the past
24 represented, and may currently represent and likely in the future will represent creditors of the
25 Debtor in connection with matters unrelated to the Debtor and this case. At this time, PSZJ is not
26 aware of any current representations in unrelated cases of parties who are creditors or other parties
27 on its conflicts check.
28

1 Notwithstanding the foregoing, the Trustee does not believe that any of the relationships
2 described herein will in any way impair PSZJ's independence or ability to objectively perform the
3 required services for the Trustee.

4 To the best of the Trustee's knowledge and based upon the attached Cantor Declaration,
5 neither PSZJ nor any of its partners, of counsel, or associates is a creditor, equity security holder, or
6 an "insider" of the Debtor as that term is defined in section 101(31) of the Bankruptcy Code.

7 To the best of the Trustee's knowledge and based upon the Cantor Declaration, neither PSZJ
8 nor any of its partners, of counsel, or associates is or was, within two years before the date of filing
9 of the petition, a director, officer or employee of the Debtor.

10 To the best of the Trustee's knowledge and based upon the Cantor Declaration, neither PSZJ
11 nor any of its partners, of counsel, or associates has any interest materially adverse to the interest of
12 the estate or of any class of creditors or equity security holders, by reason of any direct or indirect
13 relationship to, connection with, or interest in, the Debtor or for any other reason. Accordingly,
14 PSZJ and its partners, of counsel, and associates are "disinterested persons" as that term is defined
15 and used in sections 101(14) and 327 of the Bankruptcy Code.

16 **Terms of Retention**

17 Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local
18 Bankruptcy Rules and this Court's rules, the Trustee proposes to pay PSZJ its customary hourly rates
19 in effect from time to time and to reimburse PSZJ according to its customary reimbursement
20 policies. All services provided by PSZJ will be provided by PSZJ partners, associates, of counsel,
21 paraprofessionals, and staff working under the direct supervision of Linda F. Cantor. The Trustee
22 understands that various levels of professionals and paraprofessionals will be utilized to ensure that
23 billing rates are in line with the level of responsibility and specialization of tasks. A schedule of the
24 normal hourly rates currently in effect for PSZJ attorneys and paraprofessionals as of January 1,
25 2014 is attached hereto as **Exhibit A**. PSZJ adjusts its hourly rates from time to time.

26 PSZJ has not received or requested a retainer in contemplation of its proposed employment.
27 However, it is contemplated that PSZJ will seek interim compensation during the case as permitted
28 by sections 330 and 3311 of the Bankruptcy Code, Bankruptcy Rule 2016 and the Local Bankruptcy

1 Rules. PSZJ understands that its compensation in this case is subject to the prior approval of this
2 Court. No compensation will be paid except upon application to and approval by this Court after
3 notice and a hearing in accordance with sections 330 and 331 of the Bankruptcy Code, Bankruptcy
4 Rule 2016, and Local Bankruptcy Rule 2016-1.

5 **NOTICE**

6 Pursuant to Local Bankruptcy Rule 2014-1(b)(2)(A), notice of this Application was provided
7 and filed concurrently herewith to the Debtor, the Debtor's counsel, the United States Trustee, the
8 Debtor's twenty largest unsecured creditors, and parties requesting special notice.

9 Pursuant to Local Bankruptcy Rule 2014-1(b)(4), a hearing is not required in connection with
10 the Application unless requested by the United States Trustee, a party in interest, or otherwise
11 ordered by the Court. Pursuant to Local Bankruptcy Rule 2014-1(b)(3)(E), any response to the
12 Application and request for hearing must be in the form prescribed by Local Bankruptcy Rule 9013-
13 1(f)(1) and must be filed with the Court and served upon the Trustee and the United States Trustee
14 no later than fourteen (14) days from the date of service of notice of the filing of the Application.

15 **WHEREFORE**, the Trustee requests that this Court approve the employment of Pachulski
16 Stang Ziehl & Jones LLP, as his general bankruptcy counsel, to render services as described above,
17 with compensation to be paid by the Estate as an administrative expense in such amounts as this
18 Court may hereafter determine and allow.

19 Dated: April 2, 2014

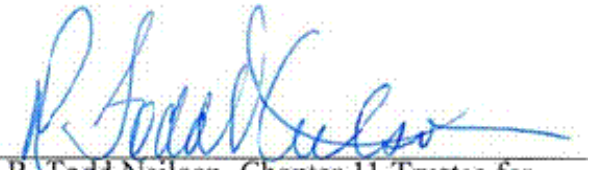
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23 
24 R. Todd Neilson, Chapter 11 Trustee for
25 The Tulving Company, Inc.
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27
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EXHIBIT A

**HOURLY BILLING RATES FOR PROFESSIONALS AND PARAPROFESSIONALS OF
PACHULSKI STANG ZIEHL & JONES LLP
JANUARY 2014 RATES**

Partners	Billing Rate
Richard M. Pachulski	\$1,050.00
James I. Stang	\$995.00
Dean A. Ziehl	\$995.00
Laura Davis Jones	\$995.00
Robert J. Feinstein	\$995.00
Jeremy V. Richards	\$950.00
Robert B. Orgel	\$950.00
Ira D. Kharasch	\$950.00
Alan J. Kornfeld	\$925.00
Andrew W. Caine	\$895.00
Debra Grassgreen	\$895.00
Henry C. Kevane	\$875.00
Jeffrey N. Pomerantz	\$875.00
Linda F. Cantor	\$850.00
John A. Morris	\$850.00
David J. Barton	\$850.00
Stanley E. Goldich	\$850.00
David M. Bertenthal	\$850.00
Iain A.W. Nasatir	\$825.00
Kenneth H. Brown	\$825.00
Samuel R. Maizel	\$795.00
Ellen M. Bender	\$795.00
Bruce Grohsgal	\$775.00
Maxim B. Litvak	\$775.00
Bradford J. Sandler	\$775.00
John D. Fiero	\$765.00
James E. O'Neill	\$725.00
Joshua M. Fried	\$725.00
Jeffrey W. Dulberg	\$695.00
Michael R. Seidl	\$645.00
Nina L. Hong	\$645.00
Timothy P. Cairns	\$645.00
Gillian N. Brown	\$625.00
Ilan D. Scharf	\$625.00

Of Counsel	Billing Rate
Richard J. Gruber	\$895.00
James E. Mahoney	\$795.00
James K.T. Hunter	\$795.00
Steven J. Kahn	\$795.00
Daryl G. Parker	\$795.00
Shirley S. Cho	\$725.00
Harry D. Hochman	\$725.00
Victoria A. Newmark	\$725.00
Maria Bove	\$695.00
Scotta E. McFarland	\$665.00
Gina F. Brandt	\$665.00
Jonathan J. Kim	\$665.00
Jeffrey Kandel	\$665.00
Jason S. Pomerantz	\$665.00
Malhar S. Pagay	\$665.00
Gail S. Greenwood	\$650.00
Robert M. Saunders	\$650.00
Beth E. Levine	\$650.00
Jeffrey P. Nolan	\$650.00
Erin Gray	\$650.00
William L. Ramseyer	\$625.00
Miriam Manning	\$625.00
Elissa A. Wagner	\$625.00
Colin R. Robinson	\$605.00
Cia H. Mackle	\$495.00

Associates	Billing Rate
John W. Lucas	\$595.00
Teddy M. Kapur	\$550.00
Jason H. Rosell	\$475.00
Peter J. Keane	\$475.00

Paralegals	Billing Rate
Kathleen F. Finlayson	\$295.00
Beth D. Dassa	\$295.00
Patricia J. Jeffries	\$295.00
Monica A. Molitor	\$295.00
Felice S. Harrison	\$295.00
Karina K. Yee	\$295.00
Margaret L. McGee	\$295.00
Jorge Rojas	\$290.00
Louise Tuschak	\$290.00
Patricia E. Cuniff	\$290.00
Cheryl A. Knotts	\$290.00
Denise A. Harris	\$285.00
Michael A. Matteo	\$265.00
Thomas J. Brown	\$245.00
Kati L. Suk	\$235.00

Law Library Dir.	Billing Rate
Leslie A. Forrester	\$295.00

Law Clerks/Clerks	Billing Rate
Rita M. Olivere	\$215.00
Sheryle L. Pitman	\$215.00
Beatrice M. Koveleski	\$215.00
Charles J. Bouzoukis	\$215.00
Andrea R. Paul	\$215.00
Karen S. Neil	\$215.00

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document **APPLICATION OF THE CHAPTER 11 TRUSTEE FOR THE TULVING COMPANY, INC., FOR ORDER APPROVING EMPLOYMENT OF PACHULSKI STANG ZIEHL & JONES LLP AS GENERAL BANKRUPTCY COUNSEL TO THE TRUSTEE NUNC PRO TUNC TO MARCH 25, 2014** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On April 3, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On April 3, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE

TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on April 3, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Federal Express

The Honorable Erithe A. Smith
United States Bankruptcy Court
Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 3, 2014

Date

Janice G. Washington

Printed Name

/s/ Janice G. Washington

Signature

1 **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

2 **8:14-bk-11492-ES Notice will be electronically mailed to:**

3 Andrew S Bisom on behalf of Debtor The Tulving Company Inc
abisom@bisomlaw.com

4 Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
5 nancy.goldenberg@usdoj.gov

6 Lawrence J Hilton on behalf of Creditor Jeffrey Roth
lhilton@oneil-llp.com, ssimmons@oneil-llp.com;kdonahue@oneil-llp.com

7 Matthew B Learned on behalf of Interested Party Courtesy NEF
8 bknotice@mccarthyholthus.com

9 R. Todd Neilson (TR)
10 tneilson@brg-expert.com, sgreenan@brg-expert.com;tneilson@ecf.epiqsystems.com;ntroszak@brg-
expert.com

11 Robert J Pfister on behalf of Interested Party Courtesy NEF
rpfister@ktbslaw.com

12 Michael B Reynolds on behalf of Interested Party Courtesy NEF
13 mreynolds@swlaw.com, kcollins@swlaw.com

14 United States Trustee (SA)
15 ustpreion16.sa.ecf@usdoj.gov

16 **2. SERVED BY UNITED STATES MAIL:**

17 ***Debtor***

18 **The Tulving Company Inc**
19 P.O. Box 6200
Newport Beach, CA 92658

20 ***Counsel for Debtor***

21 **Andrew S Bisom**
22 The Bisom Law Group
8001 Irvine Center Drive, Ste. 1170
Irvine, CA 92618

23 ***U.S. Trustee***

24 **United States Trustee (SA)**
25 411 W Fourth St., Suite 9041
Santa Ana, CA 92701-4593

26 ***Counsel for U.S. Trustee***

27 **Nancy S Goldenberg**
28 411 W Fourth St Ste 9041
Santa Ana, CA 92701-8000