

## Tulving Company Inc. - Trustee Report #1

May 20, 2014

I am R. Todd Neilson, the duly appointed chapter 11 trustee (“Trustee”) in the Tulving Company Inc. (“Tulving”) bankruptcy case. I am certain, you probably wish you had not heard of me or been unwillingly swept up into this painful and expensive process. Frankly, I could also probably find a more pleasant avenue to spend my time as well. However, neither you nor I caused this financial mess but we will have to work together to clean it up and preserve what little assets are available in order to return a portion to those holding allowed claims in the estate. To that end, I will do my best to prepare you for what lies ahead. In doing so, I am providing herewith my first Trustee Report which will hopefully provide a brief understanding of the bankruptcy process, future actions which will be required and the timing for a possible distribution to those with allowed claims. I will be providing other Trustee Reports in the future in order to keep you as informed as possible.

As you know, Tulving was in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone. Over the past year, customer complaints against Tulving concerning delayed or undelivered orders were increasingly made to the Better Business Bureau as well as to various state and federal law enforcement agencies. These complaints culminated in a class-action lawsuit which was filed in March 2014 against Tulving and Hannes Tulving, Jr. in the United States District Court, Northern District of California. As a result, Tulving ceased operations on or about March 3, 2014. Shortly before the bankruptcy filing, a raid was conducted at the Tulving business offices by the Secret Service and the Department of Justice. As part of the raid, Tulving’s computers, hard drives, various documents and inventory were seized as part of an ongoing criminal investigation, all of which remain in the possession of the Department of Justice.

On March 10, 2014, approximately one week following the raid by the Justice Department, Tulving commenced this case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code. In light of the pending criminal investigation and other ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15] (“Stipulation”), which was signed by both Tulving and its

attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee*, appointing R. Todd Neilson as Trustee of the Tulving estate [Docket No. 22].

A Trustee is appointed by the Court for a number of "causes" and in simplest terms, a Trustee enters the bankruptcy case with the power to marshal the assets of the estate, pursue litigation and other causes of action which belong to the estate in order to bring further assets into the estate and ultimately distribute those assets to those with allowed claims.

I have had substantial experience in cases similar to Tulving. I was an FBI Agent in Los Angeles for a number of years prior to becoming a Trustee in bankruptcies mostly involving alleged fraud. It is important to understand that even though I have had substantial expertise in criminal matters, the roles represented by criminal authorities, such as the Department of Justice and the Secret Service, are entirely separate from my role as Trustee. We both have our duties and while my experience helps me to interface with the Department of Justice, those responsibilities are mutually independent.

In order to fulfill my duties as Trustee, I have petitioned the Court to approve the hiring of professionals. In order to find out what happened to all of the money that may have been given to Tulving I need Financial Advisors and Investigative Accountants. I will also need legal counsel to pursue the assets of the estate which may consist of Accounts Receivable or other coins and inventory. Accordingly, on or about April 3, 2014, I filed an application to employ Pachulski Stang Ziehl & Jones LLP ("PSZJ") as general bankruptcy counsel, which application is pending. On April 10, 2014, I also filed an application seeking to retain Berkeley Research Group, LLC ("BRG"), of which I am a member, as my accountants and financial advisors. Objections were filed to both PSZJ and BRG's retention applications. A hearing has been set for May 22, 2010 at 10:00 a.m. on the PSZJ and BRG retention applications.

There have been some complaints concerning the projected cost of these professionals. Those criticisms are premature. In the first place, the firm of PSZJ is one of the most respected

bankruptcy firms in the nation and primarily agreed to represent me on somewhat of a speculative basis due to my past association with the firm. Secondly, prior to being paid for their services we must bring assets into the estate and those assets will generally not flow into the estate without the threat of legal action. Finally, prior to the final payment of their fees the professionals must file fee applications with the Court and set a hearing at which any interested creditors can object to those fees as unreasonable including the office of the United States Trustee, which also monitors professional fees in bankruptcy cases. Only following such an open hearing, will the Court approve such fees.

I don't want to be the bearer of bad tidings but as I have previously stated, and as enumerated in subsequent paragraphs, the assets presently in the estate, and even those assets which may ultimately flow into the estate, will most likely represent only a fraction of the large amount of claims which may be filed in the bankruptcy. For that reason, it does not appear likely that we will be able to pay a meaningful distribution to allowed claims in the future. I am sorry. I wish I could provide better news. While we have not completed our analysis, it appears there was an ongoing dissipation of assets over an extended period of time. It further appears that in a late-stage desperate attempt to recover funds, Tulving engaged in speculative commodity trading which further depleted the available assets. Again, once we complete our analysis (if we are able to do so) my opinion may change but, at first blush, that is what we believe occurred.

Accordingly, the main remaining assets appear to be Accounts Receivable, which are listed at just over \$1 million on the books, although collecting Accounts Receivable under such conditions is risky at best. When the raid took place at the offices of Tulving there were approximately 100,000 coins which were seized. However, according to the Department of Justice, those coins appear to be of minimal value and have been recently described as "worthless". We recently had a court approved auction of office equipment, one truck and front end loader which resulted in approximately \$27,000, although there are expenses which have to be paid prior to those proceeds being transmitted to the estate. The assets which were sold probably had an initial cost of approximately \$200,000. There were also computer hard drives which were seized by the Department of Justice which will remain with the DOJ for the foreseeable future. In addition, there are some other companies which may have been holding

coin inventory although we have not been able to fully investigate that possibility. Finally, there is the prospect of selling the various URL's, websites and other intellectual property assets to an interested buyer but due to the uncertainty of not being able to deliver unfettered title to those assets they may have questionable value.

We will take reasonable steps to locate and turn the assets listed above into cash for possible distribution to creditors. However, as you can see from the total values as listed above, with the large level of claims being asserted in this bankruptcy, a meaningful distribution simply does not appear to be on the horizon. However, other assets may materialize and should that occur we will do our level best to turn those assets into cash for ultimate distribution.

One of the most important tasks I have as Trustee is to make certain all creditor claims are included in the Bankruptcy process. Attendant to that duty is the compiling of a List of Creditors. In matters similar to Tulving, where the records are often in disarray and incomplete, the preparation of a List of Creditors evolves naturally over a period of time. We commence the process by requesting the Court to set a "bar date" which essentially starts the clock ticking for the filing of allowed claims and provides for a date well into the future at which time all Creditors must file a Proof of Claims with the Court. We then augment that process by preparing the Creditor list from the documents which are available to us and over a period of time we add to the list and occasionally subtract from the list by objecting to claims we believe are not adequately documented. We also augment the Creditor list from as many independent sources as we can, including communications with the individual Creditors and governmental entities which have also maintained the list of "victims". I have already communicated with a number of creditors by suggesting that they start the process by filing a Proof of Claim with the Court and also provide their supporting documentation attesting to the validity of their claim. Should you wish to do so, you may access the Proof of Claim from the Tulving Bankruptcy website at [tulvingbankruptcy.com](http://tulvingbankruptcy.com) or the Court website at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov). There will be a designation entitled 'Forms' and you should be able to print a copy of the Proof of Claim along with instructions concerning filing the claim. I have also assigned a staff person from our firm who receives regular electronic communications from the Court when any new claims are filed in the Tulving Bankruptcy. She keeps an ongoing

schedule which provides a list of all Proofs of Claim filed in the Bankruptcy. Although the schedule is updated regularly and often changes daily, we have approximately 68 proof of claims filed in the Bankruptcy as of today. I am reasonably certain that number will increase substantially over time.

Unfortunately, this methodical and careful process has been mischaracterized as an immediate need by third parties advising some creditors. Regrettably, a number of the Creditors have frantically called me and sent me scores of e-mails (which I will patiently answer) highlighting what they perceive to be a crying and immediate need for a Creditor List. This obsession with the filing of an immediate List of Creditors is both unnecessary and premature. We have not even requested that a “bar date” be set by the Court and will not do so in the immediate future. As I previously stated, we take this duty very seriously. We will oversee the preparation of a precise and fully documented listing of Creditors which will withstand the scrutiny of the Court. As previously described, this process normally takes months to prepare.

As stated above, we conducted an Auction at the business offices of Tulving which was held on May 13, 2014, The Trustee filed a motion to reject the primary office lease located at 150 West 17<sup>th</sup> Street, Unit A, Costa Mesa, California (the “Costa Mesa Motion”). Objections to the Costa Mesa Motion were due by May 20, 2014, and none were received; we will be submitting a proposed Order on that motion to the Court. We have also, by Order entered May 1, 2014 [Docket No. 79], rejected the following two residential real property leases: (i) 2110 ½ W. Oceanfront Boulevard, Newport Beach, California 92663 (the “Home Office Lease”) and (ii) 2112 ½ W. Oceanfront Boulevard, Newport Beach California 92663 (the “Residential Lease”) which were being used by Mr. Tulving for personal and business purposes.

Based on the information provided in this 1<sup>st</sup> Report, I have concluded that ongoing business operations will not be resumed and according I have filed a motion to convert the case to a Chapter 7 under the Bankruptcy Code (the “Conversion Motion”), which is scheduled to be heard on May 22, 2014 at 10:00 a.m. The outcome of the Conversion Motion will determine plan filing matters.

I am available to answer any questions which you may have. I would ask that you e-mail those requests to me at [tneilson@brg-expert.com](mailto:tneilson@brg-expert.com). Please be patient but I will respond to every question in due time.

Thank you