

Tulving Company Inc. - Trustee Report #3

September 12, 2014

R. Todd Neilson, as the duly appointed chapter 7 trustee (“Trustee”) for the bankruptcy estate of the Tulving Company, Inc. (“Tulving”) provides this third Trustee report regarding the status of the Tulving chapter 7 bankruptcy case (“Case”).

I apologize that I was unable to provide a report for July and August. The lack of a report during that period was not due to the fact that I was not attending to this Case. On the contrary, it was because events were continually changing, almost daily, on a broad range of issues in the Case and each time I started to write a report to hopefully provide clarity on some issue, another Tulving issue would emerge further changing the landscape and requiring my time. Things have now calmed down and it is my hope that the Case administration will go forward in a more streamlined manner and I can provide you with updated reports on a more regular basis.

Claims in the Estate

There has been much discussion about the ultimate level of claims that will be asserted against Tulving in the bankruptcy. Estimated claim numbers have been as high as \$40 million. Following a relatively detailed analysis of the Tulving records by BRG, our financial advisors, we believe the final amount of claims will be in the approximate amount of \$18 million. We do not expect the total level of claims to materially exceed that number.

As noted in prior communications, the Clerk of the Court set a claims ‘bar date’ of September 30, 2014, which means that all those parties who believe they have a claim against Tulving must file that claim with the Bankruptcy Court by September 30th. In order to be inclusive and allow every possible claimant the opportunity to participate in the Case, we sent a communication to every claimant who comprised the \$18 million that had not yet filed a claim. In that communication we provided directions/instructions as to how they could file their Proof of Claim. Creditors were also advised that any information set forth in a Proof of Claim filed with the Bankruptcy Court would be public information, as the Bankruptcy Court’s claims register is open for review by third parties. We further advised such creditors that if they chose not to file a claim in accordance with the procedures established by the Bankruptcy Court,

whatever claim they might have had against Tulving would be most likely disallowed and they will not be allowed to participate in any monetary distributions to be made in the Case. We have been sensitive to the fact that most creditors are not experienced in the area of bankruptcy and accordingly we have sought to facilitate their involvement in the claims filing process.

The claims which have been filed in the case have been steadily increasing, especially following our notification to all claimants as referenced above. In the last report in June I noted that the Proofs of Claims which had been filed totaled just under \$4 million. As of the date of this Report, there are 243 filed claims totaling \$10,323,040.92 in unsecured claims. There are possible duplicates in the claim totals and a number of new claims are filed daily. Some of the claims may require some adjustments prior to reconciliation. However, the financial consultants at BRG have noted that in many instances there is a strong correlation between the amounts filed by respective creditors in the Proofs of Claim and the internal records of Tulving. In other words, most (but not all) of the claims which have been filed appear to comport to Tulving's records, which are now maintained by BRG. The total Proofs of Claim currently filed with the Court are a little over 50% of the claims that are listed in the books and records of Tulving.

We have updated the claims schedule on the website. If you filed a Proof of Claim, please review the schedule to make certain you are accurately listed upon the schedule.

Assets of the Estate

It appears, based on our analysis to date, that the majority of Tulving's assets consist of possible assets in four primary areas:

- The coins which were seized by the Secret Service and the Department of Justice
 - I have discussed the possible value of the coins in prior Trustee letters. The coins and bullion are presently in the possession of the Department of Justice and the Secret Service and it is their stated intention to liquidate those coins. While it has not been finalized, it is our sincere hope that those funds flowing from the sale of coins and bullion will ultimately flow into this estate and be distributed pursuant to the provisions of the Bankruptcy Code. The value ascribed to the coins and

bullion is approximately \$3 million although nothing is guaranteed and the value could be materially lower, or possibly much higher, than that sum. The decision and timing of any such auction is in the province of the Justice Department and I have no control over that process.

- Accounts Receivables
 - As I have stated previously, the books and records of Tulving list accounts receivables of approximately \$1,000,000 owing from various parties. Our financial analysts have reviewed the underlying supporting documentation and our legal counsel has sent various demand letters for the payment of those obligations. It now appears that the \$1,000,000 in accounts receivable is an inaccurate amount. Tulving followed a rather unconventional method of accounting which created a receivable whenever coins or other valuables were shipped to a client. The receivable was reversed when the client made the payment. However, in the final frantic days of Tulving's existence many of the funds which flowed into Tulving were not accurately recorded. Thus, many of the receivables were not valid and customers provided the evidentiary documentation attesting to the payments. Thus, the \$1,000,000 quickly was reduced to \$600,000. The remaining \$600,000 number represents a valid receivable but many of the customers owing the \$600,000 are pleading inability to pay. As Trustee, I must make the decision as to the appropriate effort and expenditure of resources from our pool of assets to apply to the pursuit of these receivables. Currently, our legal counsel is continuing to discuss payment terms.

- Customer Lists, URL Websites and Other Intellectual Property
 - In prior Trustee letters I advised you of our intention to pursue the sale of various customer lists, URL's, websites and other intellectual property to an interested buyer. Over the past couple of months, I have fielded a great deal of inquiries concerning these assets from a number of interested parties. Following a period of relatively intense discussions I was able to negotiate a sale of the above

referenced assets to a company known as Great Collections for the opening bid of \$150,000.

- We filed a sales motion with Bankruptcy Court detailing the \$150,000 offer from Great Collections to buy the assets noted above and outlining the procedures for an auction process which could potentially generate a significantly higher price than \$150,000. Although the sale contemplated the newly acquiring party to maintain the confidentiality of all customer lists, we received a small number of e-mails stating that the sale of such files to third parties violated notations in the Tulving website. Prior to accepting the offer from Great Collections we had reviewed the Tulving homepage and had found no such restrictions. We had also spoken with former employees of Tulving and were assured that no such restriction existed. However, following a more detailed review of all of the Tulving website pages we noticed a restriction on certain website pages for the sale of specific types of coins. Notwithstanding the fact that we intended that any acquiring party maintain customer confidentiality, we chose to request the appointment of an Ombudsman to independently assess whether the sale of these assets comported with the requirements of the Bankruptcy Code. A stipulation with the Office of the United States Trustee for the appointment of an Ombudsman has been submitted to the Bankruptcy Court for approval. Once appointed, the Ombudsman will submit a report to the Bankruptcy Court making recommendations as to the appropriate procedure for selling Tulving's customer lists. The Bankruptcy Court will consider the Ombudsman report but ultimately will make its own determination as to proper sale process, and we will proceed accordingly.

- Possible Recoveries from Funds Paid in Anticipation of Bankruptcy
 - Our financial advisors and legal counsel are still reviewing the books and records of Tulving in the period preceding bankruptcy. We have not drawn any conclusions on the recoverability of any funds.

Bankruptcy Schedules and Statements

In a typical bankruptcy case, Schedules listing the assets and liabilities of the debtor and a Statement of Financial Affairs of the debtor are either filed concurrently with, or shortly after the filing of the bankruptcy case. As I have previously stated, the closure of Tulving's operations and the termination of accounting personnel made that filing problematic. We have been working over the past couple of months to file the Schedules and Statements and we filed those with the Court yesterday on September 10th. We have also posted a copy of the Schedules and Statements on the Tulving Bankruptcy website.

In light of the desire to maintain the confidentiality of customer lists I have listed the total of approximately \$18 million in unsecured creditor claims but I have not provided individual creditor names. The Bankruptcy Court granted us permission to file those names under seal, which means they cannot be made public. As part of the Statement of Financial Affairs, it is also required to list all payments made to parties within the 90 days preceding bankruptcy. We have listed only those payments to non-customers (such as credit card companies) and the Court granted our motion to file the 90 day list of payments to customers (which is a substantial number) under seal to maintain confidentiality.

Thank you.

R. Todd Neilson
Chapter 11 Trustee