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6 for The Tulving Company, Inc.

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re:
12 THE TULVING COMPANY, INC., a
California corporation,
13 Debtor.

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

Chapter 7

**APPLICATION OF R. TODD NEILSON,
CHAPTER 7 TRUSTEE, TO EMPLOY
BERKELEY RESEARCH GROUP, LLC, OF
WHICH HE IS A MEMBER, AS
ACCOUNTANTS AND FINANCIAL
ADVISORS, *NUNC PRO TUNC* TO MAY 22,
2014**

[No Hearing Required Per L.B.R. 2014-1(B)]

[Declaration of Adam Tenenbaum filed
concurrently herewith]

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20 R. Todd Neilson, the duly appointed chapter 7 trustee ("Trustee") in the above-captioned
21 chapter 7 case of The Tulving Company, Inc. hereby files this application (the "Application") to
22 employ Berkeley Research Group, LLC ("BRG"), of which the Trustee is a member, as accountants
23 and financial advisors for the Trustee in this chapter 7 case (the "Estate") *nunc pro tunc* to May 22,
24 2014.

25 This Application is brought pursuant to section 327(a) of title 11 of the United States Code,
26 11 U.S.C. §101 et seq. (the "Bankruptcy Code"), Federal Rule of Bankruptcy Procedure 2014, and
27 Local Bankruptcy Rule 2014-1. In support of the Application, the Trustee respectfully represents as
28 follows:

I.

BACKGROUND

The Debtor commenced this case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. 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 the Debtor 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 (“Chapter 11 Trustee”) of the Debtor’s estate [Docket No. 22].

On April 10, 2014, the Chapter 11 Trustee filed his motion to employ BRG as his financial advisors in the Debtor’s Chapter 11 Case [Docket No. 44].

On April 30, 2014, the Trustee filed a motion to convert the case to chapter 7 [Docket No. 74]. On May 22, 2014 a hearing was held and the Court granted the Trustee’s motion to convert the case to a Chapter 7 and approved the Chapter 11 Trustee’s application to employ BRG as his accountants and financial advisors.

On May 29, 2014, the Court entered an order approving the employment of BRG as accountants and financial advisors to the Chapter 11 Trustee [Docket No. 107]. Also on May 29, 2014 the Court entered an order converting this Case to chapter 7 [Docket No. 108]. A *Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Interim Trustee* was filed on June 10, 2014 [Docket No. 126], appointing R. Todd Neilson as Trustee.

II.

RELIEF REQUESTED

By this Application, the Trustee seeks to employ and retain BRG as his accountants and financial advisors effective *nunc pro tunc* to May 22, 2014 the date upon which the case was converted to a case under Chapter 7 of the Bankruptcy Code.

Based on the complexities associated with administering this case and the estate, the Trustee has determined that he requires the assistance of a financial advisor and accountant with specialized

1 experience in bankruptcy, fraud and taxation consulting services. Accordingly, the Trustee desires
2 to employ BRG.

3 The Trustee is a member of BRG, the financial services firm he is seeking to employ.
4 "Cause," as outlined in *In re Butler Industries, Inc.*, 101 B.R. 194 (Bankr. C.D. Cal. 1989), *aff'd*,
5 114 B.R. 694 (C.D. Cal. 1990), exists in this case for the Trustee to retain the services of the firm
6 with which he is professionally affiliated. The Trustee has determined that the retention of his own
7 firm is necessary and appropriate to discharge his duties as Trustee and is in the best interests of the
8 Debtor's estate, due to BRG's expertise and qualifications in performing the analyses required in this
9 particular bankruptcy case and for the reasons enumerated herein.

10 BRG provides expert services, including economic and financial analyses, expert testimony,
11 litigation support, and strategic management consulting to a range of public and private enterprises.
12 It delivers independent expert testimony, original authoritative studies and strategic advice to
13 legislative, judicial, regulatory and business decision makers. BRG's other services include factual
14 and statistical analyses, report preparation and presentation and data collection. BRG employs more
15 than 400 persons in the United States and the United Kingdom, and has been engaged by thousands
16 of clients, including many Fortune 500 companies.

17 The Trustee has delineated the following terms regarding BRG's employment: (1) Nicholas
18 R. Troszak and David Judd are the persons at BRG who will be primarily responsible for the
19 services provided by BRG, (2) They will supervise BRG's associates and staff working on this
20 matter, (3) the estate will be the source of funds for compensating BRG for services and reimbursing
21 BRG for expenses, and (4) BRG will be paid from funds of the estate for its fees and expenses for
22 services pursuant to the same terms by which other professionals employed by the estate in this case
23 will be paid.

24 The Trustee is informed and believes BRG's professionals have on many occasions
25 performed similar services to the ones required in this case for numerous receivers, trustees,
26 examiners and creditors' committees in other non-related cases under receivership, bankruptcy and
27 other insolvency proceedings in the State of California and elsewhere. In addition, BRG's
28 professionals have experience working on cases with similar fact scenarios in which they were

1 presented with issues and performed analyses similar to the work at hand in this case.

2 The Trustee is further informed and believes that this employment shall aid in conserving the
3 estate's resources. The professional services that BRG will render to the Trustee may include, but
4 are not limited to the following:

- 5 a) to assist with the operations of the Debtor,
- 6 b) to analyze the books and records of the Debtor to investigate the status and
7 values of the assets of the estate,
- 8 c) to analyze and liquidate claims against the estate,
- 9 d) as determined appropriate and necessary, to reconstruct financial transactions of
10 the Debtor,
- 11 e) to complete tax work and other financial analyses that is required by the Trustee
12 to properly administer the estate and conclude this case,
- 13 f) to assist in the identification and pursuit of any causes of action,
- 14 g) to assist the Trustee in preparing the necessary income tax returns for the estate,
- 15 h) to communicate with taxing authorities on behalf of the estate; and
- 16 i) other accounting services as required by the Trustee.

17 **B. Proposed Compensation**

18 Subject to Court approval in accordance with section 330(a) of the Bankruptcy Code,
19 compensation will be payable to BRG on an hourly basis, plus reimbursement of actual, necessary
20 expenses and other charges incurred by BRG. The schedule of BRG's 2014 billing rates are as
21 follows:

| Professional | Position | Rates |
|------------------|----------------------------|--------|
| Judd, David H. | Director | \$ 600 |
| Calder, Vernon | Director | 570 |
| Shields, Paul | Director | 510 |
| Strong, Ray S. | Director | 510 |
| Jeremiassen, Tom | Director | 510 |
| Babcock, Matthew | Senior Managing Consultant | 410 |
| Larsen, Leif | Senior Managing Consultant | 390 |
| Troszak, Nick | Senior Managing Consultant | 385 |
| Shaw, Jeff | Managing Consultant | 350 |

| Professional | Position | Rates |
|------------------|-------------------|-------|
| Dahl, Garrit | Consultant | 285 |
| Armstrong, James | Consultant | 280 |
| Ferrero, Spencer | Consultant | 280 |
| Laura Kramer | Associate | 210 |
| Allred, Connie | Para-Professional | 180 |
| Greenan, Susan | Para-Professional | 160 |
| Dizon, Rowen | Para-Professional | 145 |
| Perry, Evelyn | Para-Professional | 145 |

The resumes of the professionals anticipated to have primary responsibility for this case are attached as **Exhibit A** to the *Declaration of Adam Tenenbaum* (“Tenenbaum Declaration”).

The Trustee is informed and believes that BRG’s hourly rates are comparable to other firms in the Central District of California offering similar services. BRG has not received any retainer in contemplation of its proposed employment. However, it is contemplated that BRG will seek interim compensation during the case as permitted by sections 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2016. BRG understands that its compensation in the case is subject to the prior approval of this Court. No compensation will be paid except upon application to and approval by this Court after notice and a hearing in accordance with sections 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2016.

III.

DISINTERESTEDNESS

BRG and/or principals of BRG who will be involved in this case, have served in numerous matters where Pachulski Stang Ziehl and Jones LLP (“PSZJ”), proposed counsel to the Trustee, has served, including, but not limited to, the following:

- a) BRG was employed as accountants and financial advisors to the Chapter 11 Trustee in this case and PSZJ was employed as the Chapter 11 Trustee’s general counsel.
- b) *In re R. Esmerian, Inc., and Ralph Esmerian* (S.D.N.Y. 10-12719 (RDD)) (R. Todd Neilson serves as examiner; BRG serves as financial advisors/accountants to the examiner; PSZJ is counsel to the examiner);

1 c) *In re Society of Jesus, Oregon Province* (D. Or. 09-30938-elp11) (BRG is
2 financial advisor to the Official Committee of Unsecured Creditors; PSZJ is counsel to the Official
3 Committee of Unsecured Creditors);

4 d) *In re Catholic Diocese of Wilmington, Inc.* (D. Del. 09-13560 (CSS)).(LECG
5 was financial advisor to the Official Committee of Unsecured Creditors; PSZJ is counsel to the
6 Official Committee of Unsecured Creditors)¹

7 e) *In re The Harris Agency, LLC* (E.D. Pa. 09-10384) (Mr. Neilson served as
8 chapter 11 trustee; PSZJ was counsel to Mr. Neilson).

9 f) *In re Galleria USA, Inc.* (C.D. Cal. 8:09-bk-20651 TA) (R. Todd Neilson of
10 BRG was the Chapter 11 Trustee; PSZJ was Mr. Neilson's counsel);

11 g) *In re BDB Management, LLC* (N.D. Cal. 08-31001 (TEC)) (Mr. Neilson is
12 Chapter 11 Trustee; PSZJ represents Mr. Neilson);

13 h) *In re BDB Management III, LLC* (N.D. Cal. 08-31002 (TEC)) (Mr. Neilson is
14 Chapter 11 Trustee; PSZJ represents Mr. Neilson);

15 i) *In re Estate Financial, Inc.* (C.D. Cal. 9:08-bk-11457-RR) (Thomas
16 Jeremiassen of BRG is Chapter 11 Trustee; BRG serves as accountants to him; PSZJ represents Mr.
17 Jeremiassen);

18 j) *In re Le-Nature's* (W.D. Penn. 06-25454 (MBM)) (Mr. Neilson was the
19 Chapter 11 Trustee and was represented by PSZJ);

20 k) *In re Death Row Records, Inc.* (LA 06-11205 EC) (Mr. Neilson was the
21 Chapter 11 Trustee; PSZJ represented the Committee);

22 l) *In re Michael G. Tyson* (S.D.N.Y. 03-41300) (Mr. Neilson is currently the
23 trustee of the MGT Liquidating plan trust and PSZJ is his counsel; BRG serves as accountants to Mr.
24 Neilson);

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28 ¹ During each of these engagements, the BRG advisors were part of LECG, LLC. Effective on or about March 1, 2011,
this group of advisors transferred its practice from LECG, LLC to BRG.

1 m) *In re Adelphia Communications Corporation* (S.D.N.Y. 02-41729 RG) (BRG
2 serves as forensic accountants to the Creditors' Committee and PSZJ represents a separate ad hoc
3 committee);

4 n) *In re Reed E. Slatkin* (C.D. Cal. 01-11549 RR) (PSZJ represented the Debtor
5 and Mr. Neilson was the Chapter 11 Trustee and now the Liquidating Agent; BRG serves as
6 accountants to Mr. Neilson);

7 o) *In re Focus Media, Inc.* (C.D. Cal. 00-38197 VZ);

8 p) *In re JMS Automotive Rebuilders, Inc.* (C.D. Cal. 2:98-56224-EC) (Current
9 BRG employees handled tax issues; PSZJ represented Dana Holdings Corporation, indirect parent of
10 CP Product Inc. as successor to Ace Electric Company, Inc., a claimant);

11 q) *In re Magic Ford* (CD Cal. SV 96-20969-GM) (Mr. Neilson served as the
12 chapter 11 trustee; PSZJ was his counsel);

13 r) *In re Hiuka America Corporation* (CD Cal. 95-27964) (Mr. Neilson was the
14 Chapter 11 Trustee, then the Disbursing Agent; PSZJ represented Mr. Neilson in both capacities);
15 and

16 s) *In re Bruce McNall* (LA 94-48351 TD) (Mr. Neilson was the Chapter 11
17 Trustee; PSZJ represented the purchaser of the estate's interest in the Los Angeles Kings hockey
18 team).

19 Notwithstanding the foregoing, the Trustee does not believe that any of these relationships
20 will in any way impair BRG's independence or ability to perform the required services for the
21 Trustee.

22 To the best of the Trustee's knowledge and based upon the attached Tenenbaum Declaration,
23 BRG is not a creditor, equity security holder, or an "insider" of the Debtor as that term is defined in
24 section 101(31) of the Bankruptcy Code.

25 To the best of the Trustee's knowledge and based upon the attached Tenenbaum Declaration,
26 BRG is not nor was, within two years before the date of the filing of the petition, a director, officer,
27 or employee of the Debtor.

28 To the best of the Trustee's and BRG's knowledge, BRG has no interest adverse to the estate.

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IV.

NOTICE

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

Notice of filing of this Application was provided to the Debtor and its counsel, the Office of the United States Trustee, and any party who filed and served a request for special notice as of the date of service of the Notice.

WHEREFORE, the Trustee requests that the Court approve the employment of Berkeley Research Group, LLC effective as of May 22, 2014 to render services as described above, with compensation to be paid by the estate as an administrative expense in such amounts as this Court may hereafter determine and allow.

Dated: June 11, 2014

By



R. Todd Neilson
Chapter 7 Trustee for the Tulving Company,
Inc.

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 R. TODD NEILSON, CHAPTER 7 TRUSTEE, TO EMPLOY BERKELEY RESEARCH GROUP, LLC, OF WHICH HE IS A MEMBER, AS ACCOUNTANTS AND FINANCIAL ADVISORS, NUNC PRO TUNC TO MAY 22, 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 June 12, 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 June 12, 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 June 12, 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.

June 12, 2014
Date

Janice G. Washington
Printed Name

/s/ Janice G. Washington
Signature

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

1 **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 Candice Bryner on behalf of Interested Party Candice Bryner
5 candice@brynerlaw.com

6 Philip Burkhardt on behalf of Other Professional Karen Duddleston
phil@burkhardtandlarsen.com, stacey@burkhardtandlarsen.com

7 Stephen L Burton on behalf of Attorney Stephen L. Burton
8 steveburtonlaw@aol.com

9 Linda F Cantor, ESQ on behalf of Other Professional Pachulski Stang Ziehl & Jones LLP
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10 Linda F Cantor, ESQ on behalf of Trustee R. Todd Neilson (TR)
11 lcantor@pszjlaw.com, lcantor@pszjlaw.com

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23 Nanette D Sanders on behalf of Creditor Levon Gugasian
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24 United States Trustee (SA)
25 ustpreion16.sa.ecf@usdoj.gov

1 **2. SERVED BY UNITED STATES MAIL**

2 ***Debtor***

3 **The Tulving Company Inc**
4 P.O. Box 6200
5 Newport Beach, CA 92658

6 ***Counsel for Debtor***

7 **Andrew S Bisom**
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9 8001 Irvine Center Drive, Ste. 1170
10 Irvine, CA 92618

11 ***Trustee***

12 **R. Todd Neilson (TR)**
13 BRG, LLP
14 2049 Century Park East
15 Suite 2525
16 Los Angeles, CA 90067

17 ***U.S. Trustee***

18 **United States Trustee (SA)**
19 411 W Fourth St., Suite 9041
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21 ***Counsel for U.S. Trustee***

22 **Nancy S Goldenberg**
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24 Santa Ana, CA 92701-8000

25 ***Laurence P Nokes on behalf of Interested Party John Frankel***

26 Nokes & Quinn
27 410 Broadway St Ste 200
28 Laguna Beach, CA 92651

Accountants for Landlord

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Interested Party

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