

1 Linda F. Cantor (CA Bar No. 153762)  
Jason S. Pomerantz (CA Bar No. 157216)  
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5

6 [Proposed] Counsel for R. Todd Neilson, Chapter 7  
Trustee 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  
13 California corporation,  
14 Debtor.

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

Chapter 7

**APPLICATION OF THE CHAPTER 7  
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 MAY 22, 2014**

[No Hearing Required]

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18  
19 R. Todd Neilson, duly appointed chapter 7 trustee (“Trustee”) in the above-captioned  
20 bankruptcy case (the “Case”) hereby applies to the Court (the “Application”) for entry of an order  
21 pursuant to section 327(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule  
22 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local  
23 Bankruptcy Rule 2014-1 (the “Local Bankruptcy Rules”), authorizing the Trustee’s retention and  
24 employment of Pachulski Stang Ziehl & Jones LLP (“PSZJ” or the “Firm”), as his general  
25 bankruptcy counsel in the Case, *nunc pro tunc* to May 22, 2014.  
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I.

**JURISDICTION**

The Court has jurisdiction over the Application pursuant to 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 Application is properly in this District pursuant to 28 U.S.C. §§1408 and 1409.

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

II.

**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 3, 2014, the Chapter 11 Trustee filed his application to employ PSZJ as his counsel in the Debtor’s Chapter 11 case [Docket No. 37].

On April 30, 2014, the Trustee filed a motion to convert this 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 this Case to a chapter 7 and approved the Trustee’s application to employ PSZJ as his counsel in the Debtor’s Chapter 11 case.

On May 29, 2014, the Court entered an order approving the employment of PSZJ as counsel to the Chapter 11 Trustee [Docket No. 106]. 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*

1 of Bond; Acceptance of Appointment as Interim Trustee was filed on June 10, 2014 [Docket No.  
2 126], appointing R. Todd Neilson as Trustee.

3 **III.**

4 **RELIEF REQUESTED**

5 By this Application, the Trustee seeks to employ and retain PSZJ as his general bankruptcy  
6 counsel effective *nunc pro tunc* to May 22, 2014, the date upon which a hearing was held and the  
7 Court granted the Trustee's motion to convert this Case to case under Chapter 7 of the Bankruptcy  
8 Code.

9 **A. Services to be Provided**

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

- 12 a. Advising the Trustee concerning the rights and remedies of the Estate in  
13 regard to the assets of the Estate, and with respect to secured, administrative, priority and general  
14 unsecured claims, including, but not limited to, the review and reconciliation of Claims;
- 15 b. Representing the Trustee in connection with financial and business matters,  
16 including the sale of any assets and potential recovery of assets;
- 17 c. Representing the Trustee in connection with the investigation and prosecution,  
18 to the extent the Trustee deems appropriate, potential causes of action against persons or entities  
19 relating to the Estate, including, but not limited to, potential claims against insiders and related  
20 parties;
- 21 d. Investigating and prosecuting preference, fraudulent transfer and other  
22 actions, if any, arising under the Trustee's avoiding powers;
- 23 e. Representing the Trustee in any proceeding or hearing in the Bankruptcy  
24 Court, and in any action in other courts where the rights of the Estate may be litigated or affected;
- 25 f. Conducting examinations of witnesses, claimants, or adverse parties and  
26 preparing and assisting in the preparation of motions, applications, answers, orders, memoranda,  
27 reports and accounts;
- 28

1 g. Advising the Trustee concerning the requirements of the Bankruptcy Code,  
2 the Bankruptcy Rules, the Local Rules and the requirements of the Office of the United States  
3 Trustee relating to the administration of the estate and assisting, if requested by the Trustee, in the  
4 filing of Schedules, Statement of Financial Affairs and other required documents; and

5 h. Rendering such other advice and service, as the Trustee may require in  
6 connection with this Case.

7 **B. PSZJ's Qualifications**

8 PSZ&J is a firm of approximately 63 attorneys with a practice concentrated on restructurings,  
9 bankruptcy reorganizations and liquidations, litigation and commercial issues. PSZ&J attorneys  
10 have extensive experience representing a wide range of debtors in various industries, chapter 11  
11 trustees, chapter 7 trustees, creditors' committees, creditors, asset purchasers, investors and other  
12 parties in interest in a wide variety of bankruptcy cases and adversary proceedings. More  
13 information about PSZ&J generally and its expertise as counsel to trustees specifically is available  
14 on its website at [www.pszjlaw.com](http://www.pszjlaw.com).

15 The Trustee believes that PSZ&J is well qualified to render the foregoing services. A copy  
16 of the biography of Linda F. Cantor, and Jason S. Pomerantz the PSZ&J attorneys currently expected  
17 to be principally responsible for rendering services to the Trustee in this Case, are attached as  
18 Exhibit 1 to the Declaration of Linda F. Cantor in support hereof (the "Cantor Declaration"), which  
19 is being filed concurrently herewith.

20 To the best of the Trustee's knowledge and based upon the Cantor Declaration attached  
21 hereto, neither PSZJ nor any of its partners, of counsel, or associates has any connection with the  
22 Trustee, the Debtor, any creditors of the estate, any party in interest, their respective attorneys or  
23 accountants, the United States Trustee, or any person employed in the Office of the United States  
24 Trustee, except to the extent set forth in the Cantor Declaration.

25 In particular, the Cantor Declaration discloses the following:

26 a. PSZJ has in the past and/or is presently representing R. Todd Neilson in his  
27 capacity as a court appointed chapter 11 trustee, a court appointed chapter 7 trustee, examiner,  
28 trustee of liquidating trusts, and as plan disbursing agent. PSZJ was employed by the Trustee to

1 represent him in this Case prior to its conversion to chapter 7, as counsel to the Chapter 11 Trustee.  
2 PSZJ has also represented chapter 11 debtors in whose cases Mr. Neilson served as chief  
3 restructuring officer, residual trustee and as a member of the debtor's board of directors as an  
4 independent director. PSZJ has also represented debtors, creditors' committees and parties in  
5 bankruptcy proceedings in which Mr. Neilson's current firm, Berkeley Research Group, LLC, and/or  
6 principals of such firm or Mr. Neilson's prior firms acted as expert witnesses, consultants, financial  
7 advisors, accountants, forensic accountants and valuation experts. Other than PSZJ's representation  
8 of the Trustee in the chapter 11 case of this Debtor, all such other representations are and were in  
9 other cases wholly unrelated to this Case.

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

14 c. PSZJ and certain of its partners, counsel and associates may have in the past  
15 represented, and may currently represent and likely in the future will represent creditors of the  
16 Debtor in connection with matters unrelated to the Debtor and this case. At this time, PSZJ is not  
17 aware of any current representations in unrelated cases of parties who are creditors or other parties  
18 on its conflicts check.

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

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

25 To the best of the Trustee's knowledge and based upon the Cantor Declaration, neither PSZJ  
26 nor any of its partners, of counsel, or associates is or was, within two years before the date of filing  
27 of the petition, a director, officer or employee of the Debtor.  
28

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

7 **C. Terms of Retention**

8 Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local  
9 Bankruptcy Rules and this Court's rules, the Trustee proposes to pay PSZJ its customary hourly rates  
10 in effect from time to time and to reimburse PSZJ according to its customary reimbursement  
11 policies. All services provided by PSZJ will be provided by PSZJ partners, associates, of counsel,  
12 paraprofessionals, and staff working under the direct supervision of Linda F. Cantor. The Trustee  
13 understands that various levels of professionals and paraprofessionals will be utilized to ensure that  
14 billing rates are in line with the level of responsibility and specialization of tasks. A schedule of the  
15 normal hourly rates currently in effect for PSZJ attorneys and paraprofessionals as of January 1,  
16 2014 is attached hereto as **Exhibit A**. PSZJ adjusts its hourly rates from time to time.

17 PSZJ has not received or requested a retainer in contemplation of its proposed employment.  
18 However, it is contemplated that PSZJ will seek interim compensation during the case as permitted  
19 by sections 330 and 3311 of the Bankruptcy Code, Bankruptcy Rule 2016 and the Local Bankruptcy  
20 Rules. PSZJ understands that its compensation in this case is subject to the prior approval of this  
21 Court. No compensation will be paid except upon application to and approval by this Court after  
22 notice and a hearing in accordance with sections 330 and 331 of the Bankruptcy Code, Bankruptcy  
23 Rule 2016, and Local Bankruptcy Rule 2016-1.

24 **IV.**

25 **NOTICE**

26 Pursuant to Local Bankruptcy Rule 2014-1(b)(2)(A), notice of this Application was provided  
27 and filed concurrently herewith to the Debtor, the Debtor's counsel, the United States Trustee, and  
28 parties requesting special notice.

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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)(E), 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 and the United States Trustee no later than fourteen (14) days from the date of service of notice of the filing of the Application.

**WHEREFORE**, the Trustee requests that this Court approve the employment of Pachulski Stang Ziehl & Jones LLP, as his general bankruptcy counsel, 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

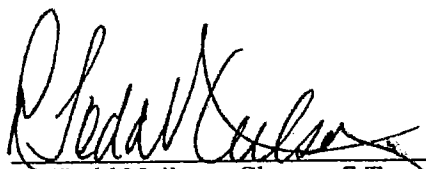
  
\_\_\_\_\_  
R. Todd Neilson, Chapter 7 Trustee for the  
Tulving Company, Inc.

EXHIBIT A

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



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

<b>Partners</b>	<b>Billing Rate</b>
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

<b>Of Counsel</b>	<b>Billing Rate</b>
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

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

<b>Paralegals</b>	<b>Billing Rate</b>
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

<b>Law Library Dir.</b>	<b>Billing Rate</b>
Leslie A. Forrester	\$295.00

<b>Law Clerks/Clerks</b>	<b>Billing Rate</b>
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, 13<sup>th</sup> Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document **APPLICATION OF THE CHAPTER 7 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 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

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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  
4 abisom@bisomlaw.com

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

7 Philip Burkhardt on behalf of Other Professional Karen Duddleston  
8 phil@burkhardtandlarson.com, stacey@burkhardtandlarson.com

9 Stephen L Burton on behalf of Attorney Stephen L. Burton  
10 steveburtonlaw@aol.com

11 Linda F Cantor, ESQ on behalf of Other Professional Pachulski Stang Ziehl & Jones LLP  
12 lcantor@pszjlaw.com, lcantor@pszjlaw.com

13 Linda F Cantor, ESQ on behalf of Trustee R. Todd Neilson (TR)  
14 lcantor@pszjlaw.com, lcantor@pszjlaw.com

15 David L Gibbs on behalf of Creditor Kenneth W Stach  
16 david.gibbs@gibbslaw.com, ecf@gibbslaw.com

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

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

21 John H Kim on behalf of Creditor Ford Motor Credit Company LLC  
22 jkim@cookseylaw.com

23 Elizabeth A Lossing on behalf of U.S. Trustee United States Trustee (SA)  
24 elizabeth.lossing@usdoj.gov

25 R. Todd Neilson (TR)  
26 tneilson@brg-expert.com, sgreenan@brg-expert.com;tneilson@ecf.epiqsystems.com;ntroszak@brg-  
27 expert.com

28 Jason S Pomerantz on behalf of Trustee R. Todd Neilson (TR)  
jspomerantz@pszjlaw.com, jspomerantz@pszjlaw.com

Nanette D Sanders on behalf of Creditor Levon Gugasian  
becky@ringstadlaw.com

United States Trustee (SA)  
ustpregion16.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**  
8 The Bisom Law Group  
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  
20 Santa Ana, CA 92701-4593

21 ***Counsel for U.S. Trustee***

22 **Nancy S Goldenberg**  
23 411 W Fourth St Ste 9041  
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***

Brent Murdoch  
Murdoch & Morris, LLP  
114 Pacifica, Ste. 320  
Irvine, CA 92618

***Interested Party***

Frye & Hsieh  
Douglas J Frye Esquire  
24955 Pacific Coast Highway # A201  
Malibu, CA 90265