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9 UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

11 In re:

12 THE TULVING COMPANY, INC.,

13
14 Debtor.

Case Number 8:14-bk-11492-ES

CHAPTER 11

OPPOSITION OF THE UNITED STATES
TRUSTEE TO APPLICATION FOR ORDER
AUTHORIZING DEBTOR TO EMPLOY THE
BISOM LAW GROUP AS ATTORNEY FOR
THE DEBTOR; DECLARATION OF
ELIZABETH A. LOSSING AND REQUEST
FOR HEARING

Date: [Hearing Requested]

Time:

Ctrm:

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20 Peter C. Anderson, the United States Trustee for Region 16 (the "U.S. Trustee"), objects to
21 approval of the Application (the "Employment Application") of the Bisom Law Group, (the "Firm")
22 Andrew Bisom attorney, to act as general counsel for the Tulving Company, Inc, the Debtor and Debtor in
23 Possession (the "Debtor"). The U.S. Trustee further requests that the Debtor set the Application for
24 hearing pursuant to the Local Bankruptcy Rule 9013-1(o)(4).

25 The Debtor filed the Application¹ and the Notice of the Application² on March 21, 2014. The
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¹ See docket no. 25.

1 Application and Notice of Application are deficient for the following reasons:

2 **I. SUMMARY OF ARGUMENT**

3 The Firm seeks to be employed as Debtor's general counsel. Procedurally, the Application and the
4 Notice of the Application fail to meet the required disclosures and notices imposed by the Federal Rules of
5 Bankruptcy Procedure (FRBP) and Local Bankruptcy Rules (LBR).

6 **II. ARGUMENT**

7 **A. The Application Is Procedurally Defective.**

8 **1. The Application does not provide full discussion of disinterestedness.**

9 FRBP 2014 provides:

10
11 The application shall state the specific facts to the best of the applicant's knowledge, all of
12 the person's connections with the debtor, creditors, any other party in interest, their
13 respective attorneys and accountants, the United States trustee, or any person employed in
14 the office of the United States trustee. The application shall be accompanied by a verified
15 statement of the person to be employed setting forth the person's connections with the
16 debtor, creditors, any other party in interest, their respective attorneys and accountants, the
17 United States trustee, or any person employed in the office of the United States trustee.

18 The Employment Application fails to provide the complete disclosure required by FRBP 2014.

19 The Applicant offers some information on its disinterestedness in the declaration of Andrew S. Bisom, yet
20 fails to fully discuss the specific information required by the FRBP. Absent amendment or supplement to
21 the Employment Application, insufficient testimony exists to support approval of the application.

22 **2. The Firm does not specifically elect payment of compensation under 11 U.S.C.**
§§ 328 or 330.

23 Local Bankruptcy Rule 2014-1(b)(1)(A) outlines the content of an application to employ counsel,
24 requiring:

25 (1) Application for Employment.

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28 ² See docket no. 24.

1 (A) An application seeking approval of employment of a professional person pursuant to 11 U.S.C.
2 §§ 327, 328, 1103(a), or 1114 must comply with the requirements of FRBP 2014 and 6003(a) and
3 be filed with the court. The application must specify unambiguously whether the professional seeks
4 compensation pursuant to 11 U.S.C. § 328 or 11 U.S.C. § 330.

5 LBR 2014-1 requires an unambiguous statement whether the Applicant will seek compensation
6 under 11 U.S.C. §§ 328 or 330. On page 2, paragraph 5, lines 17 – 19 of the Employment Application the
7 applicant elects both Sections 328 and 330. The Applicant has not properly unambiguously identified the
8 Bankruptcy Code section under which compensation is sought. Unless the Employment Application is
9 amended with a specific election, the requirements of LBR 2014-1 have not been met and the Employment
10 Application must be denied.

11 **B. The Notice of the Application is procedurally defective.**

12 LBR 2014-1(3) requires that a notice of the estate's intent to employ professional persons must
13 contain certain information. The Notice of the Employment Application does not meet the requirements of
14 the LBR.

15 LBR 2014-1(3)(B) requires that the Firm state whether the professional seeks compensation
16 pursuant to 11 U.S.C. § 328 or 11 U.S.C. § 330. The Notice of the Employment Application does not
17 contain the required election.

18 LBR 2014-1(3)(C) requires the Firm to describe the arrangements for compensation, including the
19 hourly rate of each professional to render services, source of the fees, the source and amount of any
20 retainer, the date on which it was paid, and any provision regarding replenishment thereof.” The Notice of
21 the Employment Application does not include the required description.
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23 LBR 2014-1(3)(E) requires notice to the recipient that a response to the Employment Application
24 must be filed and served not later than fourteen (14) days from the date of the service of the notice. The
25 Notice of the Employment Application directs anyone opposing the Application to file the opposition
26 within fifteen (15) days.
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1 **III. CONCLUSION**

2 For these reasons, the U.S. Trustee respectfully requests that the Court sustain these objections and
3 deny the Employment Application, or in the alternative, require an amendment to cure the deficiencies
4 noted hereinabove.

5 DATED: April 4, 2014

PETER C. ANDERSON
UNITED STATES TRUSTEE

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8 By: /s/Elizabeth A. Lossing
9 Elizabeth A. Lossing
Trial Attorney

DECLARATION OF ELIZABETH A. LOSSING

I, Elizabeth A. Lossing, hereby declare and state as follows:

1. I make this declaration based upon my own personal knowledge. I am employed as a Trial Attorney by the United States Trustee for Region 16 (“U.S. Trustee”). My duties and responsibilities include the review and analysis of Chapter 11 cases including the case of *In re the Tulving Company, Inc.*, (the “Debtor”) case number 8:14-bk-11492-ES (the “Bankruptcy Case”). This declaration is filed in support of the U. S. Trustee’s Opposition To Application For Order Authorizing Debtor To Employ The Bisom Law Group As Attorney For The Debtor filed on March 21, 2014 (the “Application”).

2. The Bankruptcy Case was commenced by the filing of a voluntary Chapter 11 bankruptcy petition on March 10, 2014 captioned *In re The Tulving Company, Inc.* and was assigned case number 8:14-bk-11492-ES.

3. The Debtor filed its Application for approval of employment of the Firm on March 21, 2014 along with notice of the Application under Local Bankruptcy Rule (“LBR”) 2014-1 and 9013-1.

4. I reviewed the Application and the Notice of the Application. Neither the Application nor the Notice of Application meets the most essential requirements imposed by the FRBP and the LBR.

I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed by me on April 4, 2014 at Santa Ana, California.

/s/ Elizabeth A. Lossing
By: Elizabeth A. Lossing

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:

OFFICE OF THE U.S. TRUSTEE, 411 W. 4th St., #9041, Santa Ana, CA 92701

A true and correct copy of the foregoing document entitled (*specify*): **OPPOSITION OF THE UNITED STATES TRUSTEE TO APPLICATION FOR ORDER AUTHORIZING DEBTOR TO EMPLOY THE BISOM LAW GROUP AS ATTORNEY FOR THE DEBTOR; DECLARATION OF ELIZABETH A. LOSSING AND REQUEST FOR HEARING** 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 4, 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:

- Andrew S Bisom abisom@bisomlaw.com
- Linda F Cantor lcantor@pszjlaw.com, lcantor@pszjlaw.com
- Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- Lawrence J Hilton lhilton@oneil-llp.com, ssimmons@oneil-llp.com;kdonahue@oneil-llp.com
- Matthew B Learned bknotice@mccarthyholthus.com
- R. Todd Neilson (TR) tneilson@brg-expert.com, sgreenan@brg-expert.com;tneilson@ecf.epiqsystems.com;ntroszak@brg-expert.com
- Gary A Pemberton gpemberton@shbllp.com, tlenz@shbllp.com
- Robert J Pfister rpfister@ktbslaw.com
- Michael B Reynolds mreynolds@swlaw.com, kcollins@swlaw.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL: On **April 4, 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.

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

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 4, 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.

Honorable Erithe Smith—bin on 5th fl.

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

4/4/14
Date

Tari King
Printed Name

/s/ Tari King
Signature