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6 Proposed Counsel for R. Todd Neilson, Chapter 11
Trustee for The Tulving Company, Inc.

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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 11

**REPLY OF PACHULSKI STANG ZIEHL &
JONES LLP TO NOTICE OF OPPOSITION
AND REQUEST FOR HEARING RE:**

**APPLICATION OF THE CHAPTER 11
TRUSTEE FOR THE TULVING COMPANY,
INC., FOR ORDERS APPROVING (A)
EMPLOYMENT OF PACHULSKI STANG
ZIEHL & JONES LLP AS GENERAL
BANKRUPTCY COUNSEL TO THE
TRUSTEE, AND (B) EMPLOYMENT OF
BERKELEY RESEARCH GROUP, LCC AS
ACCOUNTANTS AND FINANCIAL
ADVISORS, *NUNC PRO TUNC* TO MARCH 25,
2014**

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23 R. Todd Neilson, duly appointed chapter 11 trustee (the “Trustee”) for the estate of The
24 Tulving Company, Inc. (the “Debtor”), hereby replies to the *Notice of Opposition and Request for a*
25 *Hearing* (the “Opposition”) [Docket No. 54], filed by Willis Eshbaugh, Kristian & Jennifer Assaley,
26 Radovan Rusinovic and Nelson Espiritu (collectively, the “Interested Parties”) in response to the
27 applications of the Chapter 11 Trustee for The Tulving Company, Inc., for orders approving (a) the
28 employment of Pachulski Stang Ziehl & Jones LLP (“PSZJ”) as general bankruptcy counsel to the

1 Trustee nunc pro tunc to March 25, 2014 [Docket No. 37] and the employment of Berkeley Research
2 Group, LLC, (“Berkeley”), of which the trustee is a member, as accountants and financial advisors
3 [Docket No. 44] (collectively, the “Applications’), as follows:

4 The Interested Parties oppose the Trustee’s retention of his proposed counsel and financial
5 advisors because of their rates. Implicit in the Opposition is that the Trustee and his professionals
6 have no concept of scale, and will burn through all of the estate’s assets with complete disregard for
7 the interests of creditors. On the contrary, the Trustee is well aware of the potential costs of
8 administering this type of estate and, for that reason, is handling a significant portion of the work
9 himself. [See Neilson Declaration at Docket No. 49 in support of reply to application opposition.]
10 And, the Trustee has determined that PSZJ and Berkeley have the expertise to efficiently perform an
11 appropriate level of services in this case.

12 The law is clear that the Trustee’s judgment in selecting professionals is entitled to
13 significant deference. [See Reply to application opposition at Docket No. 48.] Nothing in the
14 Opposition addresses the law or acknowledges the facts already presented to the Court in support of
15 the Applications.

16 The concept that the estate would be better off with contingency counsel at a high rate due to
17 the risks of this case is naïve, at best. The Trustee and his professionals would likely fare far better
18 if they were to pursue claims against third parties on a contingency basis. However, the Trustee’s
19 goal is to limit, not increase, the estate’s exposure to professional fees and the Trustee chose to retain
20 counsel and financial consultants who are able to do so.

21 The Court should overrule the Opposition and approve the Applications on the terms outlined
22 therein without a hearing. However, should the Court determine to set a hearing on the Opposition,
23 the Trustee requests that he and his professionals be allowed to appear telephonically at such hearing
24 in order to limit administrative costs.

1 **WHEREFORE**, for all of the forgoing reasons and those set forth in the record before the
2 Court, the Trustee requests that (a) the Opposition be overruled; (b) the Applications be approved;
3 and (c) the Trustee be granted such other and further relief as may be appropriate under the
4 circumstances.

5 Dated: April 23, 2014

PACHULSKI STANG ZIEHL & JONES LLP

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7 By: /s/ Linda F. Cantor
Linda F. Cantor (SBN 153872)

8 Attorneys for R. Todd Neilson, Chapter 11 Trustee
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PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

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 **REPLY OF PACHULSKI STANG ZIEHL & JONES LLP TO NOTICE OF OPPOSITION AND REQUEST FOR HEARING RE: APPLICATION OF THE CHAPTER 11 TRUSTEE FOR THE TULVING COMPANY, INC., FOR ORDERS APPROVING (A) EMPLOYMENT OF PACHULSKI STANG ZIEHL & JONES LLP AS GENERAL BANKRUPTCY COUNSEL TO THE TRUSTEE, AND (B) EMPLOYMENT OF BERKELEY RESEARCH GROUP, LCC AS ACCOUNTANTS AND FINANCIAL ADVISORS, NUNC PRO TUNC TO MARCH 25, 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 April 23, 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 April 23, 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 April 23, 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.

April 23, 2014

Janice G. Washington

/s/ Janice G. Washington

Date

Printed Name

Signature

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
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7 Stephen L Burton on behalf of Attorney Stephen L. Burton
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11 Linda F Cantor, ESQ on behalf of Trustee R. Todd Neilson (TR)
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8 ***Trustee***

9 **R. Todd Neilson (TR)**
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11 ***U.S. Trustee***

12 **United States Trustee (SA)**
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17 ***Laurence P Nokes on behalf of Interested***

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