

CLEARY GOTTlieb STEEN & HAMILTON LLP
One Liberty Plaza
New York, New York 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999
Thomas J. Moloney
Sean A. O’Neal

*Proposed Counsel for the Debtors
and Debtors in Possession*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
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Truvo USA LLC, *et al.* : Case No. 10- _____ (___)
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Debtors. : Joint Administration Pending
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**APPLICATION FOR AN ORDER AUTHORIZING THE EMPLOYMENT
AND RETENTION OF CLEARY GOTTlieb STEEN & HAMILTON LLP
AS COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION
NUN PRO TUNC TO THE PETITION DATE**

(“CLEARY GOTTlieb RETENTION APPLICATION”)

Truvo USA LLC (“TUSA”), Truvo Parent Corp. (“Truvo Parent”), Truvo Intermediate LLC (“PIK Borrower”), Truvo Subsidiary Corp. (“HY Notes Issuer”) and Truvo Acquisition Corp. (“TAC”, and together with TUSA, Truvo Parent, PIK Borrower and HY Notes Issuer, the “Debtors”), hereby move this Court (the “Motion” or the “Application”), pursuant to sections 327(a) and 330 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014(a), 2016, and 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court

for the Southern District of New York (the “Local Bankruptcy Rules”) authorizing the employment and retention of Cleary Gottlieb Steen & Hamilton LLP (“Cleary Gottlieb” or the “Firm”) as counsel for the Debtors and debtors in possession in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) *nunc pro tunc* to the Petition Date (defined herein). In support of this Application, the Debtors rely on the Declaration of Marc C. F. Goegebuer in support of First Day Motions and Applications and in Compliance with Local Rule 1007-2 (the “First Day Declaration”). In further support of this Application, the Debtors respectfully represent as follows:

Jurisdiction

1. The Court has jurisdiction over this matter 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 the Debtors’ Chapter 11 cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 327(a) and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016 and Local Bankruptcy Rules 2014-1 and 2016-1.

Background

3. On the date hereof, the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the date and time of such filing, the “Petition Date”).

4. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in the Debtors’ cases.

5. Simultaneously with the filing of this Motion, the Debtors have sought an order of joint administration pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the

“Bankruptcy Rules”) that would provide for the joint administration of these cases and for consolidation for procedural purposes only.

6. A description of the Debtors’ corporate structure and business and the events leading to the Chapter 11 Cases are set forth in the First Day Declaration. Capitalized terms used but not defined herein have the meanings ascribed to them in the First Day Declaration.

Relief Requested

7. By this Application, the Debtors seek the entry of an order substantially in the form attached hereto as Exhibit B, pursuant to sections 327(a) and 330 of the Bankruptcy Code, Rules 2014(a) and 2016 of the Bankruptcy Rules and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules: (i) authorizing the Debtors to employ and retain Cleary Gottlieb as their attorneys to file and prosecute the Chapter 11 Cases and all related matters, *nunc pro tunc* to the Petition Date; (ii) directing that all copies of all notices, pleadings, and other documents filed in these cases and any and all adversary proceedings be served upon Cleary Gottlieb; and (iii) granting them such other and further relief as the Court deems just and proper.

Basis for Relief

8. The Debtors have determined that it will be necessary to engage counsel with knowledge and experience in the areas of bankruptcy, reorganization, litigation, securities, tax, corporate governance and other matters. Such legal counsel will enable the Debtors to carry out their duties in the Chapter 11 Cases and to assist in the reorganization of the estates. The Debtors, therefore, propose to retain and employ the law firm of Cleary Gottlieb as counsel in all phases of the Chapter 11 Cases.

9. Cleary Gottlieb is a law firm, which employs more than 1000 attorneys. The Firm maintains offices for the practice of law at One Liberty Plaza, New York, New York, as well as offices in Brussels, Belgium; London, England; Washington, D.C.; Beijing, China; Frankfurt,

Germany; Cologne, Germany; Paris, France; Rome, Italy; Milan, Italy; Moscow, Russia; and Hong Kong.

10. Beginning in the summer of 2009, Cleary Gottlieb has represented the Debtors regarding various matters such as bankruptcy, restructuring, corporate law, litigation, securities law, employee benefits and corporate governance matters. Since the Firm's engagement, the Debtors have paid Cleary Gottlieb approximately \$5,559,169 in fees and approximately \$202,382 in disbursements in the aggregate (based on current exchange rates).¹ Cleary Gottlieb holds no claim against the Debtors for amounts owing in respect of the rendering of prepetition services.

11. Over the course of its relationship with the Debtors, Cleary Gottlieb has become thoroughly familiar with the Debtors' businesses and affairs, as well as the Debtors' capital structure. The Debtors now desire to employ and retain, pursuant to section 327(a) of the Bankruptcy Code, Cleary Gottlieb as counsel to perform the extensive legal services that will be necessary during the Chapter 11 Cases, as more fully described below. The Debtors have been informed that Thomas J. Moloney and Sean A. O'Neal of Cleary Gottlieb, the lead partners who will be engaged in the Chapter 11 Cases, are members in good standing of, among others, the Bar of the State of New York and the United States District Court for the Southern District of New York.

12. The Debtors have selected Cleary Gottlieb as section 327(a) counsel because of the Firm's knowledge of the Debtors, including a variety of cross-border aspects of their operations, as well as the Firm's extensive experience and knowledge in the field of business reorganizations under chapter 11 of the Bankruptcy Code and other related matters. The Firm is

¹ In addition to the amounts the Debtors paid, Cleary Gottlieb received approximately \$1,924,265 in fees and approximately \$129,438 in disbursements in the aggregate (based on current exchange rates) from non-debtor subsidiaries of the Debtors.

both well qualified and uniquely able to represent it as debtors in possession in the Chapter 11 Cases in an efficient and timely manner. If the Debtors were required to retain counsel other than Cleary Gottlieb in connection with the prosecution of the Chapter 11 Cases, the Debtors, their estates and all parties in interest would be unduly prejudiced by the time and expense necessarily required by such new attorneys to familiarize themselves with the intricacies of the Debtors' businesses, operations and capital structure.

13. Because the Debtors' and their European subsidiaries interests are united in an integrated, co-dependent business relationship, the Debtors' ability to successfully reorganize is dependent on the reorganization of the businesses in Europe and in the U.S. Therefore, the Debtors and their European subsidiaries desire to have the Firm continue to provide advice to the European subsidiaries regarding issues that affect their joint interests and their respective reorganization efforts in order to facilitate a joint and harmonious approach to the Truvo Group's restructuring in all relevant jurisdictions.

14. The services of Cleary Gottlieb are necessary and essential to enable the Debtors to execute faithfully their duties as debtors and debtors in possession. Subject to the control and further order of this Court, Cleary Gottlieb will be required to render various services to the Debtors, including the following professional services:

- a. providing advice to the Debtors with respect to their powers and duties as debtors in possession in the continued operation of their businesses and the management of their properties;
- b. taking necessary or appropriate action to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any actions commenced against the Debtors, conducting negotiations concerning litigation or other disputes in which the Debtors are involved, and filing and prosecuting objections to claims filed against the Debtors' estates;

- c. preparing, on behalf of the Debtors, applications, motions, answers, orders, reports, memoranda of law and other papers in connection with the administration of the Debtors' estates;
- d. representing the Debtors in negotiations with creditors, equity holders, and parties in interest, including governmental agencies and authorities;
- e. representing the Debtors in negotiations regarding possible dispositions of assets;
- f. negotiating and preparing on behalf of the Debtors one or more plans of reorganization and all related documents; and
- g. performing other necessary or appropriate legal services in connection with the Chapter 11 Cases.

15. Cleary Gottlieb has indicated a willingness to act on behalf of the Debtors to render the foregoing professional services

16. In addition to Cleary Gottlieb, the Debtors seek by separate application the retention of Jenner & Block LLP ("Jenner & Block") as conflicts counsel in these Chapter 11 Cases. Cleary Gottlieb and Jenner & Block intend to work cooperatively to provide effective and cost-efficient representation for the Debtors in their reorganization.

Cleary Gottlieb's Disinterestedness

17. To the best of the Debtors' knowledge, and except as set forth herein and as otherwise disclosed in the Declaration of Sean A. O'Neal, executed on July 1, 2010 (the "O'Neal Declaration"), annexed hereto as Exhibit A, the members, counsel and associates of Cleary Gottlieb have not represented, and do not have any connection with, the Debtors, their creditors, equity security holders or any other parties in interest in any matters relating to the Debtors or their estates.

18. As disclosed in the O'Neal Declaration, the Firm currently represents certain of the Debtors' creditors and other parties in interest in matters wholly unrelated to these

proceedings. Cleary Gottlieb has fully informed the Debtors of its ongoing representation of such entities, and the Debtors have consented to the Firm's continued representation of these entities in matters unrelated to these proceedings. The Debtors believe that Cleary Gottlieb's current and future representation of these entities in unrelated matters will not in any way adversely affect the Firm's representation of the Debtors, especially given that the Debtors intend to retain Jenner & Block as counsel pursuant to section 327(a) of the Bankruptcy Code who can act as conflicts counsel with respect to certain creditors.

19. To the best of the Debtors' knowledge and as disclosed in the O'Neal Declaration, Cleary Gottlieb does not hold or represent any interest adverse to the Debtors or their estates, Cleary Gottlieb is a "disinterested person" as that phrase is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and Cleary Gottlieb's employment and retention is necessary and in the best interests of the Debtors and their estates. Given the size of the Debtors and the extent of their creditor and interest holder constituencies, the Debtors believes that it is unlikely that any major law firm with the expertise necessary for the Chapter 11 Cases could be found that is not currently representing some of the Debtors' major creditors or interest holders in unrelated matters. In the event that matters should arise over the course of these Chapter 11 Cases to which Cleary Gottlieb may be precluded from acting by reason of an actual or potential conflicts of interest, the Debtors will rely on Jenner & Block (if retained) to handle such matters.

20. Cleary Gottlieb will periodically review its files during the pendency of the Chapter 11 Cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Cleary Gottlieb will use

reasonable efforts to identify such further developments and will file promptly a supplemental declaration, as required by Bankruptcy Rule 2014(a).

Professional Compensation

21. The Debtors understand that Cleary Gottlieb intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and orders of the Court. Subject to such provisions and Court orders, compensation will be payable to Cleary Gottlieb on an hourly basis at its customary hourly rates for services rendered that are in effect from time to time, plus reimbursement of actual, necessary expenses incurred by the Firm. Cleary Gottlieb’s hourly rates for New York office timekeepers applicable in the Chapter 11 Cases, subject to periodic adjustments to reflect economic and other conditions, are:

Partners	\$765 – 1020
Counsel	\$675 – 835
Senior Attorney	\$660 – 770
Associates	\$375 – 630
International Lawyers	\$340
Law Clerks	\$305
Summer Associates	\$305
Paralegals	\$215 – 295

Cleary Gottlieb’s hourly rates for London office timekeepers applicable in the Chapter 11 Cases, subject to periodic adjustments to reflect economic and other conditions, are:

Partners	\$975 – 1190
Counsel	\$950

Consultant	\$1190
Senior Attorney	\$890
Associates	\$460 – 830
European Stagiaire	\$310
Trainee Solicitor	\$325 – 345
Summer Associate	\$310
Paralegal	\$265 – 310

Cleary Gottlieb’s hourly rates for Brussels office timekeepers applicable in the Chapter 11 Cases, subject to periodic adjustments to reflect economic and other conditions, are:

Partners	\$810 – 1130
Counsel	\$750 – 920
Consultant	\$1120
Senior Attorney	\$720
Associates	\$370 – 680
European Stagiaire	\$270
Summer Associates	\$320
Paralegals	\$270 – 320

The Firm’s standard hourly rates are set at a level designed to compensate fairly the Firm for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses.²

22. In connection with the reimbursement of actual, necessary expenses, the Debtors have been informed that it is the Firm’s policy to charge its clients in all areas of practice for expenses incurred in connection with the clients’ cases. The expenses generally charged to

² While it is not anticipated that timekeepers from Cleary Gottlieb offices other than New York, London and Brussels will be involved to a significant extent in the Chapter 11 Cases, any such timekeeper will be charged at hourly rates then in effect in such offices.

Cleary Gottlieb's clients include, among other things, photocopying charges, long distance telephone calls, facsimile transmissions, messengers, courier mail, computer and electronic research time, word processing, secretarial and temporary employees, overtime meals, overtime and late night transportation, travel, lodging, food charges for business meetings, postage, printing, transcripts, filing fees and document retrieval. The Debtors have been informed that the Firm believes it is fairer to charge these expenses to the clients incurring them than to increase the hourly rates and spread the expenses among all its clients. The Debtors have been assured that Cleary Gottlieb will charge the Debtors for these expenses in a manner and at rates consistent with charges generally made to the Firm's other clients.

23. Cleary Gottlieb received a cash retainer in the amount of \$500,000 (as set forth in the O'Neal Declaration) from the Debtors in connection with the potential restructuring of the Debtors' capital structure and financial obligations, the commencement and prosecution of the Chapter 11 Cases and for the reimbursement of reasonable and necessary expenses incurred in connection therewith. A portion of the retainer was drawn down immediately before the Petition Date. Under the terms of the engagement, Cleary Gottlieb may apply a portion of this retainer to unpaid fees and expenses at the conclusion of this engagement.

24. Cleary Gottlieb has received compensation from the Debtors for its prepetition services, including compensation paid during the 90 days before the Petition Date. The Debtors submit that such payments are not recoverable preferences and that the receipt of such payments does not constitute an interest adverse to the Debtors.

25. No promises have been received by either the Firm or any member, counsel, associate or other employee thereof as to compensation or payment in connection with the Chapter 11 Cases other than in accordance with the provisions of the Bankruptcy Code. Cleary

Gottlieb has no agreement with any other entity to share with such entity any compensation received by the Firm in connection with these Chapter 11 Cases.

Notice

26. Notice of the Motion has been given via facsimile, electronic transmission, hand delivery or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York; (ii) each of the Debtors' twenty (20) largest unsecured creditors; (iii) counsel to J.P. Morgan Europe Limited as Security Agent under the Intercreditor Agreement and as Senior Agent under the Senior Facility Agreement, (iv) Bank of New York as Trustee under the Notes Indenture; (v) Wilmington Trust (London) Limited as Administrative Agent under the PIK Loan Agreement; (vi) counsel to the Coordinating Committee of Senior Lenders; (vii) counsel to the Elliott Lender (as defined in the Plan Support Agreement); (viii) the Securities and Exchange Commission; (ix) the Internal Revenue Service; and (x) the United States Department of Justice. In addition, the Chambers of the Judge assigned to preside over these cases is being served by hand. In light of the exigencies of the circumstances and the potential harm to the Debtors, their estates, and other parties in interest that will ensue if the relief requested herein is not granted, the Debtors submit that no other notice need be given.

No Prior Request

27. No prior request for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court (i) grant this Application and the relief requested herein; (ii) enter the proposed Order attached hereto as Exhibit B; (iii) schedule a final hearing on the Application twenty-one (21) days after the date hereof, or as soon thereafter as counsel may be heard; and (iii) grant such other and further relief as it deems just and proper.

Dated: July 1, 2010
New York, New York

TRUVO USA LLC and certain of its affiliates

/s/ Marc C. F. Goegebuer
Marc C. F. Goegebuer
Manager and Chief Financial Officer, Truvo USA LLC