

Dated: September 3, 2013



Brenda Moody

Brenda Moody Whinery, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
ARMORWORKS ENTERPRISES, LLC,
TECHFIBER, LLC,

Debtors.

Chapter 11 Proceedings
Case No. 2:13-bk-10332-BMW
Case No. 2:13-bk-10333-BMW
(Jointly Administered)

This Filing Applies to:

- Both Debtors
- Specified Debtor

**RULING RE: DEBTORS’
APPLICATION TO EMPLOY ARNOLD
& PORTER LLP AS AN ORDINARY
COURSE PROFESSIONAL**

This matter having come before the Court pursuant to the *First Application to Employ Professionals and Consultants Used by the Debtors in the Ordinary Course of Business* (the “Application”) (Docket No. 143), filed by ArmorWorks Enterprises, LLC and TechFiber, LLC (the “Debtors”), as modified and supplemented by the *Reply in Support of Application to Employ Professionals and Consultants Used by the Debtors in the Ordinary Course of Business* (the “Reply”) (Docket No. 166), and upon consideration of the *Objection to First Application to Employ Professionals and Consultants Used by the Debtors in the Ordinary Course of Business* (the “Objection”) (Docket No. 151) filed by C Squared Capital Partners, LLC (“C Squared”) and Anchor Management LLC (“Anchor”) (collectively the “C Squared Parties”),

1 the *Declaration of Christopher R. Yukins in Support of Debtors' Application to Employ Arnold*
2 *& Porter LLP as an Ordinary Course Professional* (the "Yukins Declaration") (Docket No.
3 166-2), a hearing having been conducted on August 29, 2013, the Court having considered the
4 pleadings referenced above, the arguments of counsel, and having ruled approving the
5 employment of all except one of the proposed Ordinary Course Professionals, and having taken
6 the issue of employment of Arnold & Porter LLP ("Arnold & Porter") as an ordinary course
7 professional under advisement,

8 THE COURT HEREBY FINDS THAT:

9 The C Squared Parties object to the retention of Arnold & Porter as an Ordinary Course
10 Professional on the basis that:

11 (a) the scope of work to be performed by Arnold & Porter is not sufficiently
12 defined to determine whether the retention is appropriate pursuant to 11 U.S.C. §327(e);

13 (b) the retention of Arnold & Porter is inappropriate because Arnold &
14 Porter has represented Mr. Perciballi and his interests in other matters and at a minimum, more
15 disclosure is required; and

16 (c) Anchor does not agree to the retention of Arnold & Porter and the
17 Debtors therefore lack authority to retain the firm.

18 The Debtors have represented that the scope of work to be performed by Arnold &
19 Porter will be limited to providing legal counsel to the Debtors with respect to government
20 contracts, including bidding and procurement, export controls and other related matters.

21 The Yukins Declaration provides:

22 (a) that Christopher Yukins has represented ArmorWorks Enterprises, LLC
23 with respect to "government contracts, government contract bidding and procurement law,
24 export controls, and certain other related matters" since its inception in 2001. Mr. Yukins
25 joined Arnold & Porter in 2007 and Arnold & Porter has represented ArmorWorks Enterprises,
26 LLC since that date;

27 (b) that neither Christopher Yukins nor Arnold & Porter have represented
28 William Perciballi individually; and

1 (c) that neither Mr. Yukins nor Arnold & Porter represented Mr. Perciballi
2 or ArmorWorks, Inc. in state court matters involving the C Squared Parties, although Mr.
3 Yukins did provide testimony regarding certain work performed on behalf of ArmorWorks
4 Enterprises, LLC.

5 There is no dispute that the Debtors require specialized legal counsel in matters relating
6 to government contract law, export control and related matters. The C Squared Parties argue
7 that Debtors should retain a firm other than Arnold & Porter.

8 The Committee has negotiated with the Debtors and agreed to the terms of employment,
9 the budget, and an agreed upon form of order for the employment of the Ordinary Course
10 Professionals. The C Squared Parties have agreed to the form of order, with the exception of
11 Arnold & Porter.

12 The proposed budget provides for monthly fees of \$5,000 for Arnold & Porter.

13 The proposed order provides that the invoices for each of the Ordinary Course
14 Professionals will be provided to the Committee and the C Squared Parties at least ten (10)
15 days prior to payment. The Committee and the C Squared Parties will have the right to object to
16 such invoices.

17 Based upon the foregoing, the Court hereby concludes that the Debtors have
18 sufficiently disclosed and defined the scope of representation to be provided by Arnold &
19 Porter.

20 Further, the connections disclosed between Mr. Yukins, Arnold & Porter, the Debtors
21 and Mr. Perciballi do not disqualify Arnold & Porter from continuing to represent the Debtors
22 post-petition as an Ordinary Course Professional.

23 In addition, there is no dispute that the services to be provided by Arnold & Porter are
24 necessary for the Debtors' ongoing operations. Given the limited budget and provisions for
25 review of all fee invoices by the Committee and C Squared Parties prior to payment, and the
26 Court's continuing jurisdiction over all matters relating to these Ordinary Course Professionals,
27 it is not in the best interests of the Debtors, Creditors or the Estate to require Debtors to retain
28 new government contract counsel at this stage of the case.

1 Therefore, for good cause appearing,

2 IT IS HEREBY ORDERED overruling the Objection of the C Squared Parties and
3 approving the Application to employ Arnold & Porter as an Ordinary Course Professional
4 subject to the Application, as amended by the Reply, and as set forth on the record at the
5 August 29, 2013 hearing. Counsel for the Debtors is to include Arnold & Porter in the agreed
6 upon form of order approving Ordinary Course Professionals and to upload the same.

7 DATED AND SIGNED ABOVE.

8 To be NOTICED by the BNC ("Bankruptcy Noticing Center") to:

9
10 Todd A. Burgess
11 John R. Clemency
12 Lindsy M. Weber
13 Gallagher & Kennedy
14 2575 E Camelback Rd, #1100
15 Phoenix, AZ 85016
16 Email: todd.burgess@gknet.com
17 Email: john.clemency@gknet.com
18 Email: lindsy.weber@gknet.com
19 Attorneys for Debtors

20 Denise Faulk
21 U.S. Attorney's Office
22 405 W Congress St, Ste 4800
23 Tucson, AZ 85701-5040

24 Steven D. Jerome
25 Evans O'Brien
26 Jill H. Perrella
27 Snell & Wilmer, L.L.P.
28 One Arizona Center
29 Phoenix, AZ 85004-2202
30 Email: sjerome@swlaw.com
31 Email: eobrien@swlaw.com
32 Email: jperrella@swlaw.com
33 Attorneys for C Squared Capital Partners, LLC and Anchor Management, LLC

34 ///

35 ///

1 S. Cary Forrester
2 Forrester & Worth, PLLC
3 3636 N Central Ave, Ste 700
4 Phoenix, AZ 85012
5 Email: scf@forresterandworth.com
6 *Attorneys for Unsecured Creditors' Committee*

7 D. Lamar Hawkins
8 Heather A. Macre
9 Aiken Schenk Hawkins & Ricciardi P.C.
10 2390 E Camelback Rd, Ste 400
11 Phoenix, AZ 85016
12 Email: dlh@ashrlaw.com
13 Email: ham@ashrlaw.com
14 *Attorneys for MS Guadalupe, LLC*

15 Renee Sandler Shamblin
16 Jennifer A. Giaimo
17 Office of the US. Trustee
18 230 North First Ave, Ste 204
19 Phoenix, AZ 85003-1706
20 Email: renee.s.shamblin@usdoj.gov
21 Email: Jennifer.A.Giaimo@usdoj.gov
22
23
24
25
26
27
28