

Dated: October 7, 2013



*Brenda Moody*

Brenda Moody Whinery, Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE 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

**ORDER GRANTING JOINT MOTION  
FOR APPROVAL OF GOVERNANCE  
PROTOCOL FOR SALE AND NON-  
ORDINARY COURSE  
TRANSACTIONS, AND RETENTION  
GRANT LYON AS INDEPENDENT  
DEBTOR REPRESENTATIVE**

This matter came before the Court pursuant to the *Joint Motion for Approval of Governance Protocol for Sale and Non-Ordinary Course Transactions, and Retention of Grant Lyon as Independent Debtor Representative* (the “**Joint Motion**”) [DE 226] filed by debtors ArmorWorks Enterprises, LLC (“**ArmorWorks**”) and TechFiber, LLC and the Official Committee of Unsecured Creditors. An initial hearing on the Joint Motion was held on September 19, 2013, and continued hearings were held on October 1, 2013 and October 4, 2013. Appearances of counsel are as noted on the record at each hearing. The

1 Court has reviewed and considered the Joint Motion, the objection filed by C Squared  
2 Capital Partners, LLC and Anchor Management, LLC on September 27, 2013 (the  
3 “**Objection**”) [DE 254], the response filed by the debtors on September 30, 2013 [DE  
4 257], the Declaration of Grant Lyon filed on October 1, 2013 [DE 259], the arguments of  
5 counsel at the hearings, and the entire record before it in these cases. Based upon the  
6 foregoing, and good cause appearing,

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8 **THE COURT FINDS AND CONCLUDES as follows:**

- 9 1. The Court has jurisdiction over these cases pursuant to 28 U.S.C. §§ 157  
10 and 1334;
- 11 2. This is a core proceeding under 28 U.S.C. § 157(b)(2);
- 12 3. Adequate notice of the Joint Motion was provided to all parties entitled to  
13 receive such notice and no further notice is necessary or required under the  
14 circumstances;
- 15 4. The relief requested in the Joint Motion is in the best interests of the  
16 debtors and their estates; and,
- 17 5. The foregoing findings and conclusions are in addition to those stated on  
18 the record at the hearing on October 4, 2013.

19 Based upon these findings and conclusions,

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:**

- 21 A. The Joint Motion is granted;
- 22 B. The Objection is overruled;
- 23 C. The Governance Protocol for Sale and Non-Ordinary Course Transactions,  
24 as revised in the attached Exhibit “A” (the “**Protocol**”), is approved;
- 25 D. The retention of Grant Lyon as the Independent Debtor Representative is  
26 approved in accordance with the terms and conditions set forth in the Joint Motion, and  
Mr. Lyon is authorized to retain Odyssey Capital Group, LLC (“**Odyssey**”) to assist him

1 in the performance of his duties, with the following provisos:

2 i. All compensation to be paid to Mr. Lyon and Odyssey is subject to  
3 approval of the Court under 11 U.S.C. §§ 330 and 331;

4 ii. Mr. Lyon may utilize the services of only one other member of Odyssey;  
5 and,

6 iii. In addition to the other exceptions set forth in Paragraph 21 of the Joint  
7 Motion, the Court approves the limited indemnification of Mr. Lyon subject  
8 to the following:

9 a. The Debtors will not indemnify Mr. Lyon for losses, claims, or  
10 damages arising from negligence or misconduct in the performance  
11 of his duties under the Protocol.

12 b. Mr. Lyon shall not be entitled to indemnification other than as  
13 authorized in this Order, unless such indemnification is approved  
14 upon further Order of the Court.

15 c. The Debtors shall have no obligation to indemnify Mr. Lyon for any  
16 claim or expense that is either (i) judicially determined (the  
17 determination having become final) to have arisen from Mr. Lyon's  
18 or Odyssey's negligence or misconduct, (ii) for a contractual dispute  
19 in which the Debtors allege the breach of Mr. Lyon's contractual  
20 obligations unless the Court determines that indemnification is  
21 permissible or (iii) settled prior to a judicial determination as to Mr.  
22 Lyon's negligence or misconduct, but determined by this Court, after  
23 notice and a hearing, to be a claim or expense for which Mr. Lyon  
24 should not receive indemnity under the terms of this Order or a  
25 subsequent Order of the Court.  
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d. If, before the later of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these cases, Mr. Lyon believes that he is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification under this Order, including without limitation the advancement of defense costs, Mr. Lyon must file an application therefore in this Court, and the Debtors may not pay any such amounts to Mr. Lyon before the entry of an order by this Court approving the payment.

E. This order shall be effective and enforceable immediately upon its entry.

F. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**DATED AND SIGNED ABOVE.**

# EXHIBIT “A”

# ArmorWorks Enterprises, LLC and TechFiber, LLC

## Governance Protocol for Sale Transaction and Non-Ordinary Course Transactions

September 18, 2013

### 1. Introduction

This Governance Protocol for Sale Transaction and Non-Ordinary Course Transactions (this “**Protocol**”) sets forth certain parameters relating to:

(a) the potential disposition of all or substantially all of the assets of ArmorWorks Enterprises, LLC and TechFiber, LLC (collectively, with their respective direct and indirect debtor and non-debtor subsidiaries, “**ArmorWorks**”), each as a Debtor and Debtor-In-Possession in Chapter 11 cases jointly administered as Case No. 2:13-bk-10332-BMW (the “**Bankruptcy Case**”) currently pending in the United States Bankruptcy Court for the District of Arizona (the “**Bankruptcy Court**”), or a transaction in which all or substantially all of the existing equity interests in ArmorWorks are cancelled in exchange for the right to receive cash proceeds received from a sale to a third-party of new equity interests in ArmorWorks; and

(b) any transaction or course of action of ArmorWorks outside the ordinary course of business (a “**Non-Ordinary Course Transaction**”).

### 2. Sale Transaction

(a) ArmorWorks has filed with the Bankruptcy Court an *Application for an Order Approving the Employment of Houlihan Lokey Capital, Inc. as Debtors’ Investment Banker* (the “**HL Application**”), which contemplates that Houlihan Lokey Capital, Inc. (“**HL**”) would be retained on an exclusive basis to provide investment banking services to ArmorWorks in connection with pursuing the potential disposition of all or substantially all of the assets, or a transaction in which all or substantially all of the existing equity interests in ArmorWorks are cancelled in exchange for the right to receive cash proceeds upon sale to a third-party of new equity interests in ArmorWorks. In the event that the HL Application is not approved by the Bankruptcy Court and another investment banker is ultimately employed by ArmorWorks, all references herein to “**HL**” shall be deemed to apply to such investment banker.

(b) The Sale Transaction (as defined below) is expected to result in the payment in full of all creditor claims in the Bankruptcy Case and, in addition, produce significant recoveries for the equity members of ArmorWorks. In order to ensure that the process leading to a Sale Transaction is conducted in a manner that provides fairness and transparency to all creditors and equity members of ArmorWorks, this Protocol requires that an Independent Debtor Transaction Representative (the “**Independent Debtor Representative**”) shall be appointed to perform the duties described herein.

(c) For purposes of this Protocol, a “**Sale Transaction**” shall mean:

(i) Any transaction or series of related transactions that constitute the disposition to one or more third parties (including, without limitation, any person, group of persons, partnership, corporation or other entity, and also including, among others, any of the existing owners,

shareholders, employees, or creditors of any entity comprising ArmorWorks and/or the affiliates of each) in one or a series of related transactions of (a) all or a material portion of the equity securities of any entity comprising ArmorWorks or any interest held by any entity comprising ArmorWorks, any direct or indirect subsidiary or affiliate in any joint venture or partnership or other entity formed by any of them and/or (b) any significant portion of the assets (including the assignment of any executory contracts) or operations of any entity comprising ArmorWorks or any joint venture or partnership or other entity formed by any of them, in either case, including, without limitation, through a sale or exchange of capital stock, options or assets with or without a purchase option, a merger, consolidation or other business combination, an exchange or tender offer, a recapitalization, the formation of a joint venture, partnership or similar entity, or any similar transaction, including without limitation, any sale transaction under Sections 363, 1129 or any other provisions of Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*) (the “**Bankruptcy Code**”); or

(ii) The confirmation of a Plan of Reorganization in the Bankruptcy Case pursuant to which there is any change in the ownership of the equity interests in ArmorWorks.

(d) Notwithstanding anything to the contrary set forth above, any Sale Transaction recommended or otherwise supported by the Independent Debtor Representative will be, in the reasonable professional judgment of the Independent Debtor Representative, fair and equitable to all members of ArmorWorks. In addition, the Independent Debtor Representative will not recommend or otherwise support a Sale Transaction that does not pay in full allowed claims of creditors unless such creditors consent to such alternative treatment.

### **3. Appointment of Independent Debtor Representative**

(a) Independent Debtor Representative – Grant Lyon shall be appointed as the Independent Debtor Representative under this Protocol, and pursuant to such appointment shall have the duties and responsibilities described herein. The compensation arrangements for the Independent Debtor Representative shall be set forth in a separate motion, and may include provisions for indemnification and limitations of liability as approved by the Bankruptcy Court.

(b) Assistance from Other Members of Odyssey Capital - In performing the duties described herein, the Independent Debtor Representative may obtain assistance from one other member of Odyssey Capital Group, LLC (“**Odyssey Capital**”). The motion seeking approval of this Protocol and appointment of the Independent Debtor Representative shall set forth the compensation arrangements applicable to Odyssey Capital for providing assistance to the Independent Debtor Representative in connection with the matters described in this Protocol.

(c) Fiduciary Duty. The Independent Debtor Representative shall owe the estate, its creditors, and the equity holders a fiduciary duty in regard to the performance of the duties described herein.

### **4. Duties of the Independent Debtor Representative with respect to a Sale Transaction**

(a) Duties - The Independent Debtor Representative shall represent ArmorWorks and the ArmorWorks bankruptcy estate in all material facets of initiating, negotiating and closing a potential Sale Transaction. Set forth in this Protocol are certain specific duties of the Independent Debtor Representative in connection with a potential Sale Transaction; provided, however, that this is not intended to be an exclusive list and the Independent Debtor Representative may, unless expressly

prohibited in this Protocol, in addition, undertake such additional duties consistent with the duties set forth herein as in the Independent Debtor Representative's reasonable professional judgment may be necessary or appropriate in connection therewith. Prior to making a decision on any proposed Sale Transaction, the Independent Debtor Representative shall consult with and seek input from the equity holders.

(b) Preliminary Matters – Prior to proceeding with the HL Application, the Independent Debtor Representative will confer with Armorworks, its equity holders, and the Committee to determine whether proceeding with the HL Application is in the best interests of the estate, its creditors, and the equity holders. The Independent Debtor Representative will advise the Bankruptcy Court at the hearing set for October 10, 2013, of his recommendations in this regard.

(c) HL Related Matters - During the initial stages of the Sale Transaction process, the Independent Debtor Representative will provide assistance to HL to:

(i) assist HL with determination of a likely valuation range for the assets and/or equity interests which would be the subject of a potential Sale Transaction;

(ii) create a process to facilitate due diligence review by prospective buyers;

(iii) formulate a proposed timeline for the Sale Transaction, which timeline may include definitive deadlines for the receipt of letters of interest, the submissions of offers, the execution of definitive documents, and such other matters as the Independent Debtor Representative, in consultation with HL, may deem appropriate under the circumstances; and

(iv) consult with representatives of ArmorWorks to determine appropriate processes and procedures relating to a potential Sale Transaction that will minimize potential disruption to the business operations of ArmorWorks.

(d) Preparation for Sale Transaction Process

(i) Marketing Materials Preparation. The Independent Debtor Representative will provide assistance to HL with respect to creating all marketing materials for the sale process, including "teasers," Confidential Information Memoranda, and management presentations.

(ii) Confidentiality Agreements. The Independent Debtor Representative will confirm that a confidentiality agreement is executed by each prospective buyer prior to the dissemination to such party (or its representatives) of any confidential information. The form of confidentiality agreement will be approved in advance by ArmorWorks' legal counsel and shall be in form and substance acceptable to HL. The Independent Debtor Representative shall be advised of any material variances from the form of confidentiality agreement requested by prospective buyers and shall consult with HL and counsel for ArmorWorks prior to the approval of any such requested variance.

(iii) Marketing Materials Approval. The Independent Debtor Representative shall ensure that a management representative designated by ArmorWorks has reviewed the content of all marketing documents prior to their distribution to prospective buyers. This review will be evidenced by a written confirmation from such designated representative of ArmorWorks which shall expressly



state that the information presented in the marketing materials is accurate and complete in all material respects (the “**Marketing Materials Approval**”).

(iv) Marketing Materials Distribution. The Independent Debtor Representative will ensure that a final draft of all marketing materials, together with the Marketing Materials Approval, is distributed to all equity members of ArmorWorks, and that such members and their professional advisors have had a reasonable opportunity to review and comment on such materials prior to distribution to prospective buyers.

(e) Marketing and Due Diligence

(i) Coordination. The Independent Debtor Representative will assist HL with respect to coordinating all contacts with approved prospective buyers.

(ii) Bidder Qualification. The Independent Debtor Representative with input from HL will formulate appropriate qualifying criteria for prospective buyers, which may include requirements for evidence of financial capability, and will determine such additional qualifying criteria as may be appropriate in light of ArmorWorks’ contracts with various governmental bodies. The Independent Debtor Representative will review qualifying data submitted by prospective buyers and will consult with HL to determine which prospective buyers will be permitted to continue to the due diligence review stage.

(iii) Due Diligence. The Independent Debtor Representative will assist HL, as required, in facilitating a due diligence review by each prospective buyer that has satisfied the relevant qualification standards. In particular, it is anticipated that HL, with the Independent Debtor Representative’s assistance, as required, will supervise the creation of a data room for the sale process. The Independent Debtor Representative will consult with HL and counsel for ArmorWorks to resolve any questions that may arise regarding the inclusion of relevant materials in the data room.

(iv) Meetings. The Independent Debtor Representative will assist HL in facilitating all due diligence meetings and facility tours that may occur during the sale process. Without limiting the foregoing, the Independent Debtor Representative will be informed of all such tours and meetings not less than 48 hours in advance thereof.

(f) Solicitation and Negotiation of Offers

(i) Review of Offers. The Independent Debtor Representative will review with HL the terms and conditions of all offers regarding a potential Sale Transaction, whether in the form of indications of interest, letters of intent, or definitive proposals.

(ii) Evaluation of Offers. The Independent Debtor Representative will consult with HL to evaluate the terms and conditions of all offers regarding a potential Sale Transaction, which evaluation may include consideration of the financial capability of the proposed purchaser(s) and any other risks or contingencies that may, in the Independent Debtor Representative’s reasonable professional judgment, be relevant to a particular offer.

(iii) Negotiations. The Independent Debtor Representative will consult with HL to formulate negotiating positions and responses to prospective buyers, to communicate with prospective buyers, and to negotiate modifications to any offers.

(iv) Determining Highest and Best Offer. Based on input from HL and such other data and analyses as the Independent Debtor Representative may deem appropriate under the circumstances, the Independent Debtor Representative will determine which of the received offer(s), in the opinion of the Independent Debtor Representative, represents the “highest and best” offer(s) with respect to a potential Sale Transaction

(v) Definitive Documentation. The Independent Debtor Representative will direct counsel for ArmorWorks and consult with HL and the equity holders regarding the preparation and negotiation of definitive documentation relating to the Sale Transaction. Without limiting the foregoing, the Independent Debtor Representative shall be provided a reasonable opportunity to review and comment on all drafts of material Sale Transaction documents prior to their finalization.

(g) Bankruptcy Court Approval

(i) The Independent Debtor Representative, with the assistance of HL and counsel for ArmorWorks, as directed by the Independent Debtor Representative, will be responsible for compiling such documents and data, and preparing such filings, as may be required in order to seek Bankruptcy Court approval of any recommended Sale Transaction.

(ii) The Independent Debtor Representative will be reasonably available to provide testimony in Bankruptcy Court, on behalf of ArmorWorks, if requested in connection with the approval of any proposed Sale Transaction.

(iii) Notwithstanding anything contained in this Protocol to the contrary, no interested party will be deemed to have waived any right that it may have to object to any proposed Sale Transaction, and all interested parties will have the opportunity to contest the approval of any Sale Transaction recommended by the Independent Debtor Representative in proceedings in the Bankruptcy Case.

(h) Instruction to Counsel. The Independent Debtor Representative shall be exclusively authorized to instruct counsel for ArmorWorks with respect to any Sale Transaction, any part of the process related to any proposed Sale Transaction, and all Non-Ordinary Course Transactions, and no one else shall be entitled to instruct counsel for ArmorWorks with respect to such matters.

## 5. **Related Party Participation in a Potential Sale Transaction**

(a) Holders of equity interests in ArmorWorks and their respective affiliates (collectively, “**Related Parties**”) will be entitled to participate as prospective buyers on the same terms and conditions that are applicable to third-parties, including (without limitation) compliance with all deadlines, execution of confidentiality agreements, submission of qualifying information, compliance with all data room access and use restrictions, full access to all information made available to other prospective buyers, and compliance with any and all such other requirements as may be imposed on prospective buyers at any time by the Independent Debtor Representative.

(b) Because William J. Perciballi is actively involved in the day-to-day management of ArmorWorks’ business and may be personally present at meetings with prospective buyers or their representatives, C Squared Capital Partners, L.L.C. shall receive not less than 72 hours advance notice of any in-person or telephonic meetings with prospective buyers or their representatives in which Mr. Perciballi will participate, and shall be entitled to designate one representative to attend any such

in-person meeting or participate in such teleconference. The Independent Debtor Representative shall also receive not less than 72 hours advance notice of and shall participate in any such in-person or telephonic meetings in person or via teleconference. Unless expressly authorized in advance in writing by the Independent Debtor Representative, with a copy contemporaneously provided to C Squared Capital Partners, L.L.C., William J. Perciballi shall not meet with any prospective buyers or their representatives without participation by the Independent Debtor Representative.

(c) Each Related Party (including, without limitation, William J. Perciballi, C Squared Capital Partners, L.L.C. and ArmorWorks, Inc. and their respective representatives) shall promptly inform the Independent Debtor Representative of any contact they have with a prospective buyer in connection with the Sale Transaction process. To the extent that any Related Party submits an offer, has an intention to submit an offer, or is directly or indirectly involved with, or otherwise acting in concert with, any other person or group of persons that submits an offer or has an intention to submit an offer (even if the involvement of such Related Party is not readily apparent or is not otherwise disclosed to other prospective buyers), such fact shall be disclosed promptly to the Independent Debtor Representative, who shall so advise each of C Squared Capital Partners, L.L.C. and ArmorWorks, Inc. of the fact that a Related Party is, or is otherwise involved with, a prospective buyer; provided, however, that the Independent Debtor Representative shall not disclose the terms of such offer until such time (if any) as the terms are disclosed to all other prospective buyers.

(d) The Independent Debtor Representative, subject to any non-disclosure or confidentiality obligations to which the Independent Debtor Representative may be subject in connection with a particular transaction, will (i) keep the members and managers of ArmorWorks timely apprised of material developments in connection with the Sale Transaction process and any proposed Non-Ordinary Course Transactions, and (ii) communicate openly and candidly with the members and managers of ArmorWorks.

(e) The Independent Debtor Representative may implement such additional procedures or restrictions as may be necessary or appropriate, in the Independent Debtor Representative's reasonable professional judgment, to facilitate transparency and fairness in the process relating to a potential Sale Transaction.

## **6. Approval of Non-Ordinary Course Transactions**

(a) The Independent Debtor Representative must review and approve in writing any Non-Ordinary Course Transaction proposed by or for ArmorWorks. Any Non-Ordinary Course Transaction approved by the Independent Debtor Representative then will be subject in all respects to approval by the Bankruptcy Court. Prior to making a decision on any proposed Non-Ordinary Course Transaction, the Independent Debtor Representative shall consult with and seek input from the equity holders.

(b) Notwithstanding anything contained in this Protocol to the contrary, ArmorWorks is required to seek Bankruptcy Court approval of any Non-Ordinary Course Transaction, and no interested party will be deemed to have waived any right that it may have to object to any proposed Non-Ordinary Course Transaction. All interested parties will have the opportunity to contest the approval of any Non-Ordinary Course Transaction recommended by the Independent Debtor Representative on behalf of ArmorWorks in any proceedings in the Bankruptcy Case (the "**Contested Non-Ordinary Course Transactions**"). In connection with Contested Non-Ordinary Course Transactions

neither the “business judgment rule” nor any other presumption will operate in favor of the Independent Debtor Representative on behalf of ArmorWorks. To the extent that any party contests the approval of a Non-Ordinary Course Transaction, such objecting party must do so utilizing its own counsel, and counsel for ArmorWorks shall not represent the objecting party or participate in any way in pursuing the objection.

## **7. Disclosures to Committee**

(a) Confidentiality Agreement. The Independent Debtor Representative will confirm that a confidentiality agreement is executed by each member of the Official Committee of Unsecured Creditors (the “**Committee**”) prior to the dissemination of any confidential information. The form of confidentiality agreement will be approved in advance by ArmorWorks’ legal counsel.

(b) Equal Access to Information. Subject to execution of a confidentiality agreement, the Committee will have the same access to marketing materials, data rooms, and any other Sale Transaction information provided to potential buyers as part of the sale process. In addition, the Committee will have access to all relevant information concerning any proposed Non-Ordinary Course Transaction.

(c) Meetings with the Independent Debtor Representative. The Independent Debtor Representative, subject to any non-disclosure or confidentiality obligations to which the Independent Debtor Representative may be subject in connection with a particular transaction and subject further to the execution by the recipient of any reasonably required confidentiality agreement, will (i) keep counsel for the Committee and the Committee’s financial advisor timely apprised of material developments in connection with the Sale Transaction process and any proposed Non-Ordinary Course Transactions, and (ii) communicate openly and candidly with counsel for the Committee and the Committee’s financial advisor. The Independent Debtor Representative will meet with the Committee as determined appropriate in the Independent Debtor Representative’s business judgment or as reasonably requested by the Committee.