

# ORIGINAL

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

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<b>In re:</b>	)	
	)	<b>Chapter 11</b>
<b>AMES HOLDING CORP., et al.,<sup>1</sup></b>	)	
	)	<b>Case No. 09-14406 (CSS)</b>
	)	
<b>Debtors.</b>	)	<b>Joint Administration Pending</b>
	)	
<hr/>	)	<b>Re: Docket No. 5</b>

**ORDER PURSUANT TO 28 U.S.C. § 156(c), FED. R. BANKR.  
P. 2002, AND LOCAL RULE 2002-1(f) AUTHORIZING THE  
RETENTION AND EMPLOYMENT OF DELAWARE CLAIMS AGENCY  
LLC AS CLAIMS, NOTICING, AND BALLOTING AGENT FOR DEBTORS**

Upon the Application (the “Application”)<sup>2</sup> of Ames Holding Corp., Axia Incorporated, TapeTech Tool Co., Inc., and Ames Taping Tool Systems, Inc. (each a “Debtor” and collectively, the “Debtors”) for entry of an Order, pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002, and Local Rule 2002-1(f), authorizing the retention and employment of Delaware Claims Agency LLC (“DCA”) as the Debtors’ Claims and Noticing Agent; and upon consideration of the Agreement and the King Declaration; and the Debtors having estimated that there are approximately 2,600 creditors in these chapter 11 cases; and the Court having jurisdiction to consider the Application and the relief requesting therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Ames Holding Corp. (6130), Axia Incorporated (5251), TapeTech Tool Co., Inc. (7106), and Ames Taping Tool Systems, Inc. (6440). The Debtors’ corporate offices are located at 3350 Breckinridge Boulevard, Suite 100, Duluth, Georgia 30096.

<sup>2</sup> Capitalized terms used, but not otherwise defined, herein shall have the meaning ascribed to them in the Application.

been provided; and the Court having held a hearing with respect to the Application; and it appearing the no other or further notice need be provided; and the Court having determined that the relief sought in the Application is in the best interests of the Debtors and all parties-in-interest; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Application is granted; and it is further

ORDERED that, pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002, and Local Rule 2002-1(f), Debtors are authorized to retain and employ DCA to perform the services requested in the Application pursuant to the terms of the Agreement; and it is further

ORDERED that the fees and expenses of DCA incurred in the performance of the services described in the Application shall be treated as an administrative expense of the Debtors' chapter 11 cases and shall be paid by the Debtors in the ordinary course of business under the terms of the Agreement, provided, however, that at the time invoices are delivered to the Debtors, DCA shall also serve a copy of the invoices upon the Office of the U.S. Trustee and any official committee(s) appointed in the cases; and it is further

ORDERED that the terms of the Agreement are approved; and it is further

ORDERED that the Debtors and DCA are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application; and it is further

ORDERED that in the event DCA is unable to provide the services set out in this Order, DCA will immediately notify the Clerk's Office and the Debtors' attorneys and cause to have all original proofs of claim and computer information turned over to another claims agent with the

advice and consent of the Clerk's Office and Debtors' attorneys provided, however, notwithstanding anything to the contrary set forth in the Agreement or this Order, DCA may not unilaterally terminate its retention and employment absent further order of the Court; and it is further

ORDERED that the indemnification obligations of the Debtors set forth in the Agreement are approved, subject during the pendency of these chapter 11 cases to the following:

1. DCA shall not be entitled to indemnification, contribution or reimbursement pursuant to the Agreement for services, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;
2. The Debtors shall have no obligation to indemnify DCA, or provide contribution or reimbursement to DCA, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from DCA's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtors allege the breach of DCA's contractual obligations unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to DCA's gross negligence, willful misconduct, breach of fiduciary duty, or bad faith or self-dealing but determined by this Court, after notice and a hearing to be a claim or expense for which DCA should not receive indemnity, contribution or reimbursement under the terms of the Agreement as modified by this Order;
3. If, before the earlier 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 chapter 11 cases, DCA believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Agreement (as modified by this Order), including without limitation the advancement of defense costs, DCA must file an application therefore in this Court, and the Debtors may not pay any such amounts to DCA before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by DCA for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify DCA. All parties in interest shall retain the right to object to any demand by DCA for indemnification, contribution or reimbursement; and

4. Any limitation of liability or limitation on any amounts to be contributed by the parties to the Agreement under the terms of the Agreement shall be eliminated.

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: December 16, 2009  
Wilmington, Delaware



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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE