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13 UNITED STATES BANKRUPTCY COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 OAKLAND DIVISION

16 In Re  
17 PREDIWAVE CORPORATION,  
18 Debtor.

CASE NO. 06-40547-RJN

Chapter 11

**NEW WORLD TMT LIMITED'S  
OBJECTION TO MOTION OF  
THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS FOR ORDER  
APPROVING INFORMATION ACCESS  
PROTOCOL UNDER SECTION  
1102(b)(3) OF THE BANKRUPTCY CODE**

**Hearing:**

Date: TBD  
Time: TBD  
Place: Courtroom 220  
1300 Clay Street  
Oakland, California

I.

**PRELIMINARY STATEMENT**

Section 1102(b)(3) of the Bankruptcy Code requires the official committee of unsecured creditors appointed in this case (the “Committee”) to:

(A) provide access to information for creditors who (i) hold claims of the kind represented by the committee; and (ii) are not appointed to the committee;

(B) solicit and receive comments from the creditors described in subparagraph (A); and be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).

11 U.S.C. § 1102(b)(3) (2005).

By the Motion (defined below), the Committee seeks to disenfranchise New World TMT Limited (“New World”), this estate’s largest unsecured creditor and a constituent whose interest the Committee is tasked with representing. While New World’s claims are contingent, disputed and unliquidated, at least \$380 million of New World’s approximately \$800 million claim arises from PrediWave Corporation’s (the “Debtor”) sale to New World of non-conforming goods. As such, under Section 1102(b)(3) of the Bankruptcy Code, this Committee is required to provide access to information to New World as a creditor who holds claims of the kind represented by the Committee even though New World is not appointed to the Committee. Any attempt to limit New World’s access to information gathered by the Committee in connection with its representation of the unsecured creditors in this case violates Section 1102(b)(3) of the Bankruptcy Code and should not be permitted.

Additionally, New World objects to the Committee’s proposal to spend any of this estate’s assets to establish a website as a means of sharing information with its constituents because the number and extent of the claims against this estate do not require the operation of a website. As this Court has noted, there are fewer than one-hundred (100) creditors in this case, many of which hold very small claims, assuming the Debtor’s schedules accurately represent the creditor body.

1 Finally, to the extent the Committee is seeking to embark upon an investigation of  
2 the Debtor, such investigation is premature. This is particularly true given the Debtor's stated  
3 intention to employ X-Roads Solutions Group ("X-Roads").<sup>1</sup> Moreover, given New World's  
4 status as this estate's largest creditor, it is arguably New World's money being used to finance the  
5 administration of this case. Consequently, to the extent expenditures are ultimately borne by the  
6 Debtor, they will reduce the potential distribution to all creditors, including New World. As a  
7 result, each such expenditure should be subject to the greatest scrutiny by this Court and only  
8 approved where necessary.

## 9 II.

### 10 PROCEDURAL BACKGROUND

11 On April 14, 2006 (the "Petition Date"), the PrediWave Corporation (the  
12 "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States  
13 Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") with the United States Bankruptcy  
14 Court for the Northern District of California (the "Case"). Pursuant to Sections 1107 and 1108 of  
15 the Bankruptcy Code, the Debtor allegedly continues to operate its business and manage its  
16 properties as a debtor-in-possession.

17 On May 26, 2006, the Committee filed the *Motion of the Official Committee of*  
18 *Unsecured Creditors for Order Approving Information Access Protocol Under Section*  
19 *1102(b)(3) of the Bankruptcy Code* [Docket No. 136] (the "Motion").

20 This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and  
21 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue  
22 is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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27 <sup>1</sup> On June 8, 2006, the Debtor filed its *Withdrawal of Opposition to New World TMT Limited's Motion for Relief*  
28 *From Stay and Consent to Relief* [Docket No. 164] (the "Withdrawal"), indicating, among other things, its intention  
to separate its reorganization efforts from the litigation of the Santa Clara and Los Angeles Actions (defined below)  
and its proposed retention of X-Roads as its financial advisor.

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**III.**

**DISCUSSION**

Section 1102(b)(3) of the Bankruptcy Code provides in relevant part that a creditors' committee appointed pursuant to Section 1102(a) of the Bankruptcy Code shall "provide access to information for creditors who (i) hold claims of the kind represented by that committee; and (ii) are not appointed to the committee" and "solicit and receive comments from [such] creditors." 11 U.S.C. § 1102(b)(3) (2005). Section 1102 of the Bankruptcy Code, however, neither delineates the means by which a committee is to provide such access to information, nor how to "solicit and receive comments" from creditors.

Consistent with the information dissemination requirement provided for under Section 1102(b)(3) of the Bankruptcy Code, the Committee, by the Motion, seeks to (i) limit access to Confidential Information<sup>2</sup> and Privileged Information<sup>3</sup> in a way designed to disenfranchise New World and (to any creditor that the Committee represents; and (ii) modify the Committee's obligations under Section 1102(b)(3) of the Bankruptcy Code. Because the Motion is not consistent with the disclosure obligations set forth in Section 1102(b)(3) of the Bankruptcy Code, this Court should deny the Motion.

**A. New World is Among the Constituents Represented by the Committee and is Entitled to Receive All Information Gathered by the Committee in Connection With Its Representation of this Estate's Unsecured Creditor Constituency**

The Motion is designed to disenfranchise New World, this estate's largest creditor. Approximately \$380 million of the contingent, unliquidated claim held by New World against the Debtor arises from its sale of non-conforming goods to New World. As such, New World is an unsecured creditor and part of the creditor constituency represented by the Committee. Accordingly, the Committee has a statutory obligation to provide all unsecured creditors,

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<sup>2</sup> The Motion defines "Confidential Information" as any non-public or proprietary information of the Debtor or Committee, including, without limitation, information concerning the Debtor's assets, liabilities, business operations, projections or analyses. However, such information made available to New World in connection with the 2004 Examination of Vincent Lin shall not be deemed "Confidential Information."

<sup>3</sup> The Motion defines "Privileged Information" as any information that is subject to the attorney-client or attorney work product privilege, whether such privilege is solely controlled by the Committee or is a joint privilege with the Debtor or some other party.

1 including New World, with access to such information. To the extent that the Committee obtains  
2 information related to either the Santa Clara Action<sup>4</sup> and the Los Angeles Action<sup>5</sup> and arguably  
3 subject to some assertion of privilege, this information may only be withheld from New World  
4 upon production of a privilege log that sufficiently describes the information so that a  
5 determination can be made as to the applicability of the privilege. Wholesale exclusion of New  
6 World from the statutory required information sharing process is overbroad and violates Section  
7 1102(b)(3) of the Bankruptcy Code.

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9 **The Proposed Expenditure of this Estate's Assets to Establish and Maintain a**  
10 **Website to Disseminate Information to Unsecured Creditors Is Unnecessary and**  
11 **Should be Denied**

12 By the Motion, the Committee is proposing to establish a website for the purpose  
13 of sharing information with its constituents, however given the number of claimants in the case,  
14 such an expenditure is unnecessary and will only serve to unjustifiably deplete the assets of this  
15 estate, while conferring little to no benefit upon the estate. While such means for sharing  
16 information has previously been approved in other bankruptcy cases, those cases are readily  
17 distinguishable from this case, as those cases involved thousands of unsecured creditors. See e.g.,  
18 In re Refco, et al., Case No. 05-60006 (Bankr. S.D.N.Y.). This case involves less than one  
19 hundred (100) creditors. The Committee can effectively manage the dissemination of information  
20 to this constituency, including New World, through the establishment of a listserv or other  
21 electronic mail distribution.

22 Admittedly, Section 1102(b)(3) of the Bankruptcy Code saddles the Committee  
23 with a responsibility to provide information to its constituents. However, providing such  
24 information should not come at a cost to this bankruptcy estate that is prohibitive, especially  
25 where the benefit to be reaped by the estate is marginal, at best. Unlike most debtors in  
26 possession, the Debtor is not currently operating its business and is therefore not currently

27 <sup>4</sup> The "Santa Clara Action" shall mean New World TMT Limited v. PrediWave Corp., et al., Case No. 104 CV  
020369, Santa Clara Superior Court.

28 <sup>5</sup> The "Los Angeles Action" shall mean PrediWave Corp. v. Fu and Li, Case No. BC 315799, Los Angeles County  
Superior Court.

1 receiving profits from its operations. See 5/10/06 Transcript<sup>6</sup> at 18:23-19:2; see also 5/15/06  
2 Transcript<sup>7</sup> at 43:25-28. As such, all costs associated with the administration of the bankruptcy  
3 estate will be paid from the Debtor's current cash reserves and any additional monies recovered  
4 by the Debtor during the pendency of the bankruptcy. This alone should give the Court pause  
5 when approving the expenditure of estate assets, especially when the return to the estate on  
6 account of such expenditure is uncertain and minimal at best. Accordingly, given the limited  
7 number of creditors in this case and the availability of alternate means to which the Committee  
8 may avail itself to comply with its statutory obligation to share information with unsecured  
9 creditors in this case, including New World, the request to expend this estate's assets to establish  
10 a website should be denied.

11 **C. Any Investigation of the Debtor by the Committee Prompted by the Receipt of**  
12 **Information Pursuant to the Motion Should Be Limited in Scope So as Not to**  
13 **Duplicate the Efforts of the Debtor's Proposed Financial Advisors**

14 It is clear by the Motion, that the Committee, consistent with the duties imposed  
15 upon it by the Bankruptcy Code, will be soliciting certain information from the Debtor, some of  
16 which may be confidential and privileged. It is also clear that the Committee contemplates  
17 "assess[ing] and analy[zing], among other things, [its] strategies in the case, the prospects for the  
18 Debtor's business, and the alternatives that are available to maximize returns to unsecured  
19 creditors." (Motion, p. 3, 11-13.) New World does not dispute the Committee's right to receive  
20 such information, as such information is clearly within the purview of that information to which a  
21 statutory committee is entitled. While the information may be asserted to be confidential and/or  
22 privileged, New World should not be excluded from all information provided. New World is not  
23 a competitor of the Debtor. It is a creditor seeking recovery on the largest claim asserted against  
24 the estate. Only information involving the Santa Clara Action or the Los Angeles Action should  
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27 <sup>6</sup> The "5/10/06" Transcript shall mean the transcript of the hearing held before this Court on May 10, 2006 [Docket  
No. 113].

28 <sup>7</sup> The "5/15/06 Transcript" shall mean the transcript of the 341 Meeting as produced by Paul, Hastings, Janofsky &  
Walker upon our receipt of an audio recording of the 341 Meeting from the Office of the United States Trustee.

1 be withheld from New World, and then only to the extent appropriate procedures are utilized,  
2 including notice of assertion of privilege and production of a privilege log.

3 Moreover, as to the Committee's proposed assessment and analysis, in its  
4 Withdrawal, the Debtor indicated its intention to retain a chief financial officer ("CFO"), a chief  
5 restructuring officer ("CRO"), and X-Roads to facilitate its reorganization efforts. Following the  
6 approval of the proposed retention, the CFO and CRO will be tasked with, among other things,  
7 managing the Debtor's cash, reporting to the Court and other parties in interest with respect to the  
8 Debtor's cash position, and reviewing the Debtor's relationship with affiliated companies and the  
9 status of inter-company charges and allocation. To fulfill such responsibilities, the proposed X-  
10 Roads CFO and CRO are expected to engage in a thorough investigation of the Debtor's finances  
11 and operations. To that end, any investigation that the Committee would propose to conduct  
12 would be duplicative of that undertaken by the Debtor's financial advisor and should not be  
13 permitted at this time.  
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16 **V.**

17 **CONCLUSION**

18 Accordingly, by this Objection, New World respectfully requests this Court to  
19 deny the Motion in its entirety and grant such other and further relief as the Court deems  
20 necessary and appropriate.

21 Dated: June 14, 2006

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