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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 In re:
12 **PREDI WAVE CORPORATION**, a California
Corporation,
13
14 Debtor.

Case No.: 06-40547 RJN

Chapter 11

**COMMITTEE’S REPLY IN SUPPORT
OF MOTION FOR ORDER
APPROVING INFORMATION
ACCESS PROTOCOL UNDER
SECTION 1102(B)(3) OF THE
BANKRUPTCY CODE**

Hearing Date/Time :

Date: July 27, 2006
Time: 10:00 a.m.
Place: Courtroom 215
1300 Clay Street
Oakland, CA 94612

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22 Everyone agrees that creditor New World TMT Limited (“New World”) possesses an
23 extremely large claim in this case. However, that claim is the subject of an intense dispute. To the
24 extent New World’s claim has validity, it is also subject (at least in part) to subordination.

25 As the only objecting party, New World has advanced three arguments against the
26 Committee’s motion to establish an information access protocol. First, New World argues that New
27 World should learn everything that the Committee learns and, where it learns something privileged,
28 it should prepare a privilege log. Next, New World argues that an expense of as much as \$3,000 is

1 too great for this estate to bear. Finally, New World seeks to circumscribe in advance the authority
2 of the Committee with regard to any future examination of the Debtor’s business and prospects.

3 A. **The Committee Shares a Common Interest With The Debtor in Maximizing the**
4 **Distribution to the Greatest Number of Unaffiliated Unsecured Creditors.**

5 Despite New World’s suggestions that it is “part of the creditor constituency represented by
6 the Committee,”¹ it is not at this time clear that New World stands in the same shoes as those of
7 unaffiliated general unsecured creditors. For instance, New World held \$35 million worth of equity
8 in the Debtor. New World also controlled two of the Debtor’s board seats. Moreover, as the
9 Committee understands it, the Debtor disputes New World’s alleged claims and argues that it owes
10 New World nothing.

11 As the court explained in *In re Mortgage & Realty Trust*, 212 B.R. 649 (Bankr. C.D. Cal.
12 1997):

13 The debtor in possession and the committee of creditors share a duty to
14 maximize the debtor's estate. *In re Kaiser Steel Corp.*, 84 B.R. 202, 205
15 (Bankr.D.Colo.1988). The committee performs many important roles in
16 the reorganization process. It is the official organized voice of the
17 unsecured creditors. It provides needed checks and balances in the
18 reorganization process. Within this context, it investigates, it appears, it
19 negotiates, it may litigate, and it is at all times intimately involved in the
20 reorganization. *Id.* In order to permit the committee to carry out these
21 duties, the debtor must be able to provide information to the committee
22 free of the risk that the committee may be forced to disgorge such
23 information to adverse third parties. *Id.* A communication in furtherance
24 of this common legal interest with that of the debtor is entitled to the
25 protection of the attorney-client privilege, unless its confidentiality has
26 been waived.

21 212 B.R. at 654. Here, there can be little doubt that New World is the very same sort of “adverse
22 third party” from whom confidential communications among the Debtor and the Committee could
23 fairly be kept confidential from New World.

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28 ¹ See New World TMT Limited’s Objection to Motion of the Official Committee of Unsecured Creditors Committee
for Information Access Protocol Under Section 1102(b)(3) of the Bankruptcy Code (the “New World Opposition”), p. 3,
line 23.

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Dated: July 20, 2006

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By /s/ John D. Fiero
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