

1 LEE R. BOGDANOFF (State Bar No. 119542)  
THOMAS E. PATTERSON (State Bar No. 130723)  
2 MICHAEL L. TUCHIN (State Bar No.150375)  
JONATHAN S. SHENSON (State Bar No. 184250)  
3 KLEE, TUCHIN, BOGDANOFF & STERN LLP  
2121 Avenue of the Stars, 33rd Floor  
4 Los Angeles, California 90067-5061  
Telephone: (310) 407-4000  
5 Facsimile: (310) 407-9090  
Email: lbogdanoff@ktbslaw.com  
6 tpatterson@ktbslaw.com  
mtuchin@ktbslaw.com  
7 jshenson@ktbslaw.com

8 Reorganization Counsel for Debtor and Debtor in  
9 Possession

10 Debtor's Mailing Address  
48431 Milmont Drive  
11 Fremont, CA 94538

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

16 In re

17 **PREDIWAVE CORPORATION,**  
18 a California Corporation,

19 Debtor.

20 Fed. Tax I.D. No. 77-0494328  
21

Case No.: 06-40547-RJN

Chapter 11

**APPLICATION OF DEBTOR AND  
DEBTOR IN POSSESSION FOR  
ORDER AUTHORIZING  
EMPLOYMENT OF ALLEN &  
OVERY AS SPECIAL HONG KONG  
LITIGATION COUNSEL (AS OF  
AUGUST 17, 2006); DECLARATION  
OF ANGUS ROSS IN SUPPORT  
THEREOF**

[No Hearing Required]

1 **TO THE HONORABLE RANDALL J. NEWSOME, UNITED STATES**  
2 **BANKRUPTCY JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE AND**  
3 **OTHER PARTIES IN INTEREST:**

4 As permitted by Bankruptcy Code section 327(e) and Federal Rule of Bankruptcy  
5 Procedure 2014(a), PrediWave Corporation, the above-captioned debtor and debtor in  
6 possession (the "Debtor" or "PrediWave"), shall, and does hereby, apply to this Court (the  
7 "Application") for an order authorizing the employment of Allen & Overy ("A&O") as  
8 special Hong Kong litigation counsel, effective as of August 17, 2006. In support of this  
9 Application, the Debtor relies on the accompanying Declaration of Angus Ross (the "Ross  
10 Declaration"). This Application (including the Ross Declaration) and a proposed form of  
11 Order approving the Application (lodged with the Court) have been served on the Office of  
12 the United States Trustee (the "U.S. Trustee") as well as the parties that have requested  
13 special notice in this case. The Debtor respectfully represents and shows as follows:

14 **I.**

15 **INTRODUCTION**

16 On April 14, 2006 (the "Petition Date"), PrediWave commenced this case by filing a  
17 voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to  
18 Bankruptcy Code sections 1107(a) and 1108, the Debtor is now operating its business and  
19 managing its affairs as a debtor and debtor in possession.

20 The Debtor filed this case in order to continue its business operations and preserve its  
21 assets after the Santa Clara Superior Court entered against it a pre-judgment right to attach  
22 order and a writ of attachment (the "Attachment") in the amount of \$117,000,000 in favor of  
23 New World TMT Limited ("New World") in the case of *New World TMT Ltd v. PrediWave*  
24 *Corp. et. al.*, Santa Clara Superior Court Case No. 104 CV020369 (the "Santa Clara Action").  
25 On April 4, 2006, levying officers began executing the Attachment against PrediWave's bank  
26 accounts. Absent a bankruptcy filing, the Debtor would have been forced to terminate  
27 immediately all of its employees and cease entirely its business operations and its defense of  
28 the Santa Clara Action.

1  
2 **II.**

3 **THE STATE COURT LITIGATION AND A&O'S PRE-PETITION ROLE**

4 From September 2004, A&O attorneys have represented the Debtor in connection  
5 with certain matters relating to the case of *PrediWave Corporation v. Jimmy Li and Fu Sze*  
6 *Shing*, in the Los Angeles County Superior Court, Case No. BC319755 (the "Los Angeles  
7 Action") and the Santa Clara Action (together with the Los Angeles Action, the "State Court  
8 Actions").<sup>1</sup> A&O attorneys have assisted the Debtor (and its U.S. litigation counsel) in  
9 obtaining evidence and documents in Hong Kong and for use in the State Court Actions and  
10 represented the Debtor in connection with and in court proceedings in Hong Kong relating to  
11 discovery disputes arising out of the State Court Actions (collectively referred to as the "Pre-  
12 Petition Representation").

13 In the months leading up to the Petition Date, A&O was actively involved in  
14 representing the Debtor in connection with matters arising out of an ex-parte application by  
15 New World (the "New World Application"), made pursuant to a letter of request issued in the  
16 Santa Clara Action, for an order compelling Hongkong and Shanghai Banking Corporation  
17 Limited ("HSBC") to produce documents and bank records relating to Modern Office  
18 Technology Limited ("Modern Office"). On March 3, 2006, Master Lung of the High Court  
19 of Hong Kong Special Administrative Region ("HKSAR"), approved the application and  
20 ordered HSBC (on an ex-parte basis) to produce certain documents and bank records (the  
21 "March 3 Order"). Thereafter, A&O prepared an application for an order setting aside and/or  
22 varying the March 3 Order. As it turned out, the hearing on this application would not place  
23 until after the Petition Date. Reference to the litigation in Hong Kong arising out of or  
24 otherwise relating to the New World Application shall hereinafter be referred to as the "Hong  
25 Kong Proceedings".

26 By way of background, the disputes that gave rise to the Hong Kong Proceedings  
27 relate to the bulk purchase of memory modules by PrediWave for its Set Top Boxes ("STBs")  
28 in 2000 and 2001. In 2000, memory modules were in short supply and the market price was  
very volatile. In order to ensure that PrediWave would be in a position to deliver STBs to  
New World (that were the subject of existing purchase orders made by New World),

<sup>1</sup> More detail concerning the State Court Actions is set forth in the Declaration of Vincent Lin in Support of the Debtor's First Day Emergency Motions [Docket #24].

1 PrediWave entered into a "futures commodities" contract for three (3) million memory  
2 modules with a company called Modern Office in order to "lock in" supply at a fixed price.  
3 New World, in turn, would purchase the memory modules from PrediWave at the same price  
4 paid by PrediWave. Unfortunately, after PrediWave entered into the contract with Modern  
5 Office, the market price of memory modules dropped precipitously. Even though PrediWave  
6 was able to secure a couple of price concessions by Modern Office, Modern Office still  
7 profited from these transactions.

8 New World alleges that Modern Office was a "dummy corporation" run by Jianping  
9 "Tony" Qu, the president of PrediWave and the corporate affiliates that are also defendants in  
10 the Santa Clara Action, to defraud New World, and that Mr. Qu thereby derived the  
11 economic benefit from the Modern Office transactions. These allegations are disputed.  
12 Moreover, PrediWave takes the position that the contract with Modern Office was a "market"  
13 transaction, explicitly approved by PrediWave's board of directors including the two directors  
14 appointed by New World. All of these (and many other) matters currently are at issue and  
15 being litigated in the Santa Clara Action. The Debtor and the other defendants in the Santa  
16 Clara Action (the "Other Defendants"<sup>2</sup>) are seeking to set aside in the Hong Kong  
17 Proceedings the March 3 Order on the grounds that, among other things, in light of the fact  
18 that that the Santa Clara Action will be a jury trial, the probative value of such information, if  
19 any, would be greatly outweighed by its prejudicial impact on the case.

### 20 III.

#### 21 A&O's POST-PETITION ROLE AND RETENTION

22 On April 19, 2006, Deputy Judge L. Chan, High Court of HKSAR conducted a  
23 hearing on the Debtor's application to set aside the March 3 Order. Given the timing of the  
24 hearing, just five days after the Petition Date, A&O represented the Debtor at the hearing and  
25 on related matters leading up to the hearing. At the conclusion of the hearing, Judge L. Chan  
26 took the matter under submission.

27 As a condition to doing any more work or spending any further time on the Hong  
28 Kong Proceedings, including negotiating the terms of a new engagement, A&O required that

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<sup>2</sup> The "Other Defendants" mean and include CyberLancet Corporation, CyberNova Corporation, TechStock Corporation, WarpEra Corporation, Visionaire Technology Corporation, S.T.U.B. SATertainment, Incorporated, Athena Database, Incorporated ("Athena"), Pine Global Marketing Limited and Jianping "Tony" Qu.

1 all outstanding amounts owing to it be paid in full including more than \$42,504.97 and  
2 \$45,886.43 in fees and costs associated with services rendered by A&O pre-petition and post-  
3 petition, respectively (collectively, the "Outstanding Amounts"). Due to its status as a debtor  
4 in possession in bankruptcy, however, PrediWave could not pay the Outstanding Amounts  
5 and, as a result, the Other Defendants -- in light of the necessity of A&O's continued work on  
6 this matter pending action to employ A&O in the chapter 11 cases -- agreed to do so.<sup>3</sup>

7 On August 18, 2006, Judge L. Chan issued a judgment in favor of New World (the  
8 "August 18 Judgment"), dismissing PrediWave's application to set aside the March 3 Order.  
9 The Debtor and the Other Defendants appealed the August 18 Judgment and sought a stay of  
10 said judgment, and A&O (subject to certain terms and conditions (discussed below)) has been  
11 representing the Debtor, as proposed counsel, and the Other Defendants in connection  
12 therewith. On August 25, 2006, Deputy Judge L. Chan of the High Court of HKSAR  
13 conducted a preliminary hearing on the Debtor's application to stay the enforcement of the  
14 March 3 Order pending the appeal, and effectively stayed any enforcement of the March 3  
15 Order to and through September 28, 2006, reserving the right to extend the stay beyond  
16 September 28, 2006, if the Court of Appeal did not hear the appeal on or before September  
17 28, 2006. The Court of Appeal has since indicated that the appeal of the August 18 Judgment  
18 will be heard on September 21, 2006.

19 On August 22, 2006, counsel for New World sent a letter to the Debtor's counsel  
20 contending that A&O's representation of the Debtor is improper on the basis that the March 3  
21 Order is directed at Modern Office, and not PrediWave, and that Modern Office has its own  
22 counsel. A true and correct copy of the August 22, 2006 letter is attached hereto as Exhibit 1.  
23 On August 29, 2006, the Debtor's counsel responded by noting that New World is seeking the  
24 subject discovery in connection with the pending Santa Clara Action against the Debtor, and  
25 that if New World has any objection to the Debtor's standing in connection with this  
26 litigation, it should raise this in the Hong Kong litigation. A true and correct copy of the

27  
28 <sup>3</sup> Pursuant to an agreement reached among the Debtor, the Other Defendants and A&O (ultimately memorialized in the Retention Agreement (defined below)), among other things, each of the Other Defendants agreed to waive any and all claims for payment (including, without limitation, any claims for reimbursement, contribution or indemnification), any and all rights of offset, set-off, recoupment or other rights, and any and all defenses that it has or may have now or anytime in the future against PrediWave and its bankruptcy estate arising out of or otherwise relating to its agreement to pay (directly or indirectly) or payment (directly or indirectly) of any, some or all of the Outstanding Amounts.

1 August 29, 2006 letter is attached as Exhibit 2. The Debtor further advised New World that  
2 an application to employ A&O would be presented to this Court.

3 On September 12, 2006, counsel for New World transmitted yet another letter to  
4 counsel for the Debtor concerning this matter, a true and correct copy of which is attached  
5 hereto as Exhibit 3. The Debtor does not believe it would be productive to engage in  
6 continuing correspondence with New World concerning this matter.<sup>4</sup> All of the issues  
7 addressed in the September 12 and prior letters are currently at issue and being litigated in  
8 either Hong Kong or Santa Clara, and have been the subject of multiple depositions  
9 conducted in conjunction with the Santa Clara Action. The sole question presented by this  
10 Application is whether this Debtor may employ counsel to continue to represent it in  
11 connection with discovery that New World seeks to use against it in connection in the Santa  
12 Clara Action. The Debtor believes that the Court should answer this question in the  
13 affirmative.<sup>5</sup>

14 As set forth in more detail below, on September 15, 2006, the Debtor, the Other  
15 Defendants (collectively, the "Defendants") and A&O entered into a new retention agreement  
16 whereby A&O would represent the Debtor, subject to this Court's approval, and the Other  
17 Defendants in the Hong Kong Proceedings. Through this Application, the Debtor is only  
18 seeking authority to employ A&O, retroactive to August 17, 2006.

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23 <sup>4</sup> New World's letter writing campaign only has served to delay and increase the costs associated with getting this  
24 Application on file. New World's latest letter is misleading and mischaracterizes the relief actually being sought  
25 by New World itself in the Hong Kong Proceedings. In its September 12 letter, New World claims it is seeking  
26 information "regarding assets which [it] believes are or should be part of [this Debtor's] bankruptcy estate" and,  
27 as such, the Debtor should not be opposing the production of such information. It is the Debtor's understanding,  
28 however, that New World has alleged that Tony Qu defrauded it, and, through the subject Hong Kong  
discovery, New World is seeking Modern Office's bank records to help substantiate this allegation by  
establishing that Tony Qu or members of his family had ties to or controls Modern Office and thereby benefited  
economically from the subject transactions. New World has sued Tony Qu, the Debtor and various other parties  
in the Santa Clara Action, and thereby is seeking redress in that nonbankruptcy forum against these parties.  
Even assuming New World prevails as to this aspect of its claims and establishes that Mr. Qu derived the benefit  
from the Modern Office transactions, this will not result in any expansion of the property of this bankruptcy  
estate. New World's efforts to conjure up bankruptcy causes of action and theories in connection with the  
Modern Office matter is similar to its other efforts in this chapter 11 case. These matters do not belong in this  
bankruptcy case because they are being litigated elsewhere.

<sup>5</sup> As this Court is well aware, New World chose to litigate with the Debtor in state court. New World cannot have  
it both ways. The Debtor objects to New World's continuing efforts to use the Debtor's bankruptcy to gain an  
unfair advantage in the Santa Clara Action.

1 IV.

2 RELIEF REQUESTED

3 The Debtor wishes to employ A&O as special Hong Kong litigation counsel in  
4 connection with the Hong Kong Proceedings, effective as of August 17, 2006, pursuant to the  
5 terms of that certain retention agreement dated September 15, 2006, by and among A&O, the  
6 Debtor and the Other Defendants, a true and correct copy of which is attached hereto as  
7 Exhibit 4 (the "Retention Agreement"), as such terms are modified herein.

8 A&O attorneys have extensive experience, knowledge and resources in the area of  
9 complex commercial litigation. Having represented the Debtor in the Hong Kong  
10 Proceedings thus far, A&O's attorneys have become familiar with the complex factual and  
11 legal issues that will have to be addressed going forward. In short, the Debtor believes that  
12 the retention of A&O, with its knowledge of and experience with the Debtor and the Hong  
13 Kong Proceedings will contribute to the efficient administration of the estate thereby  
14 minimizing the expenses to the estate. A summary of the experience and qualifications of  
15 those attorneys who are expected to render services to the Debtor is attached hereto as  
16 Exhibit 5.

17 The Retention Agreement also contemplates that A&O will instruct a barrister (or  
18 Senior Counsel) in connection with the Hong Kong Proceedings, specifically, Senior  
19 Counsel, Mr. Chua Guan-Hock S.C. Mr. Chua is not affiliated with A&O, but has been  
20 engaged by A&O to conduct the hearing on the appeal of the August 18 Judgment. Different  
21 from the United States, the legal profession in Hong Kong Hong is a "split profession" with  
22 solicitors and barristers. Solicitors (such as A&O) act directly for clients and have limited  
23 rights to appear in courts; whereas, barristers (such as Mr. Chua) are instructed by solicitors  
24 to represent the interests of the client before the courts. For any major substantive hearing, it  
25 is the usual practice to instruct a barrister to make the oral submissions and to assist in related  
26 documentation and, accordingly, A&O believes Mr. Chua's services are vital to the  
27 Defendants' ability to successfully prosecute the subject appeal. A&O has and shall continue  
28 to incur the costs associated with retaining Mr. Chua, and shall seek reimbursement from the  
Defendants (as it would for any other expense). A curriculum vitae setting out the experience  
and qualifications of Mr. Chua is attached hereto as Exhibit 6.

1 The Debtor does not expect any duplication in the services to be rendered to it by  
2 different counsel. While Latham & Watkins ("Latham") is special litigation counsel to the  
3 Debtor in the Santa Clara Action, Latham does not (and, indeed, does not have the requisite  
4 staffing in Hong Kong) to represent the Debtor in the Hong Kong Proceedings.

5 The Debtor may request that A&O undertake specific matters beyond the scope of the  
6 responsibilities set forth in the Retention Agreement. Should A&O agree in its discretion to  
7 undertake any such specific matters, the Debtor will seek further order of this Court.

8 **V.**

9 **COMPENSATION AND RULE 2016 DISCLOSURES**

10 With regard to the fees for services rendered and expenses incurred by A&O in  
11 connection with the subject engagement, A&O, the Debtor and the Other Defendants have  
12 agreed that thirty percent (30%) will be billed to PrediWave and the remaining seventy  
13 percent (70%) will be billed to the Other Defendants, with one-ninth (1/9) of that seventy  
14 percent portion billed to each of the Other Defendants.<sup>6</sup>

15 A&O has agreed to accept as compensation from the Debtor only sums as may be  
16 allowed by this Court in accordance with law. No additional compensation will be paid by  
17 the Debtor to A&O except as approved by this Court. A list of the guideline hourly rates for  
18 those members of A&O expected to render services to the Debtor is attached hereto as  
19 Exhibit 7.<sup>7</sup> A&O will file one or more fee applications seeking Court authority to receive  
20 compensation and reimbursement of expenses from the Debtor consistent with any orders of  
21 this Court and applicable procedures established by the U.S. Trustee including, without  
22 limitation, its Guidelines for Compensation and Reimbursement of Professionals and  
23 Trustees (the "Guidelines"). To the extent any fees or expenses paid to A&O are

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25 <sup>6</sup> In conjunction with its supplemental employment application, Latham disclosed an allocation under which the  
26 Debtor would pay 30% of Latham's fees and expenses relating to the Santa Clara Action and the Other  
27 Defendants would pay 70% (with each such affiliated entity paying its ratable share based upon the number of  
28 such entities). The Debtor believes that a 30% allocation to PrediWave is appropriate on a provisional basis,  
subject to further and continuing investigation and analysis, and accordingly, the Debtor has been implementing  
this allocation post-petition solely for purposes of the funding of fees and expenses relating to the Santa Clara  
Action. While an allocation based upon "one entity, one share" would result in PrediWave receiving a smaller  
allocation than the 30% provisional allocation described herein, a fair review of the allegations contained in the  
Santa Clara Action suggests that PrediWave is the locus of many (but by no means all) of the allegations set  
forth therein. However, the Defendants vigorously dispute the liability alleged by New World in the Santa Clara  
Action. Accordingly, it is difficult to utilize the disputed allegations advanced by New World as the basis for an  
allocation. The Debtor is continuing to evaluate this matter, and will propose and implement adjustments as  
appropriate, following consultation with all appropriate representatives.

<sup>7</sup> Mr. Chua's hourly billing rate is US \$770.00.

1 subsequently disallowed by this Court, A&O understands that such disallowed amounts may  
2 be ordered disgorged by A&O and returned to the Debtor.

3 In or around September 2004, the Debtor paid a retainer to A&O in the amount of  
4 US\$19,900 (the "Retainer"). A&O has not drawn down on the Retainer, and the entire  
5 amount of the Retainer remains in a client trust account. Unless this Court orders otherwise,  
6 the Retainer will be held by A&O in the aforementioned account and disbursed only in  
7 accordance with applicable law including, without limitation, the orders and rules of this  
8 Court. Notwithstanding the foregoing, A&O shall apply the Retainer (until it is reduced to  
9 zero) to the payment of any allowed fees and expenses in this case before seeking any other  
10 payment from the Debtor and its estate.

11 As set forth in the Ross Declaration, in the one-year period preceding the Petition  
12 Date (i.e., from April 14, 2005 to April 14, 2006), A&O billed the Debtor US\$173,649.18<sup>8</sup>  
13 for services rendered and costs incurred in connection with the Pre-Petition Representation,  
14 with US\$131,144.21 and US\$42,504.97 collected from the Debtor and Athena (one of the  
15 Other Defendants), respectively. As set forth in the Ross Declaration, post-petition (i.e.,  
16 from and after April 14, 2006), A&O billed the Other Defendants US\$45,886.43 for services  
17 rendered and costs incurred in connection the Hong Kong Proceedings, all of which was paid  
18 by Athena.

19 **VI.**  
20 **A&O DOES NOT HOLD OR REPRESENT AN ADVERSE INTEREST TO THE**  
21 **DEBTOR OR ITS ESTATE WITH RESPECT TO MATTERS UPON WHICH A&O**  
22 **IS TO BE EMPLOYED**

23 To the best of the Debtor's knowledge, based upon the accompanying Ross  
24 Declaration, except as otherwise set forth below and in the Ross Declaration, A&O does not  
25 hold or represent an interest adverse to PrediWave or its estate with respect to matters upon  
26 which it is to be employed, and does not have any connection with the Debtor, its creditors,  
27 or any other party in interest in this case or with their respective attorneys or accountants, or  
28 with the United States Trustee, or any person employed in the Office of the United States  
Trustee, other than the following, that (a) A&O has represented the Debtor pre-petition as

<sup>8</sup> This amount reflects total fees and expenses billed to PrediWave including \$29,492.47 originally billed to PrediWave, though the invoice for such amounts was subsequently re-issued to some of the Other Defendants for payment.

1 discussed in the Application, (b) A&O either represented the Other Defendants (together with  
2 the Debtor) or has represented their interests in connection with its representation of the  
3 Debtor in the Hong Kong Proceedings, but at no time in a manner adverse to the Debtor, (c)  
4 A&O has received payment from Athena (one of the Other Defendants) for services rendered  
5 by A&O in connection with the Hong Kong Proceedings, (d) A&O has worked with and for  
6 certain professionals retained (or likely to be retained) by PrediWave including Anderson  
7 Mori & Tomotsune, Latham, and Lee & Li on matters unrelated to PrediWave and the State  
8 Court Actions, (e) A&O currently advises: Agilent Technologies, American Express, Bank of  
9 America, Bank of American N.A. Trade, DHL Worldwide Express, Dart Express (SFO) Inc,  
10 Dell Computer Corporation, Freehills, Pitney Bowes Inc, Simpson Thacher & Bartlett LLP,  
11 Sprint and United Parcel Service in respect of various matters unrelated to PrediWave and the  
12 State Court Actions, (f) A&O has worked for affiliated and/or associated companies of:  
13 BMW Financial Services, St. Paul's Travelers, Porsche Financial Services, Blue Cross of  
14 California, Verizon Wireless, AIG Life Insurance Company, AT&T Wireless, Hartford Fire  
15 Insurance, Mercedes-Benz Financial, NEC Fielding Ltd, PSC Computer Products, Pasona  
16 Sparkle Inc, Sonitrol, State Farm Insurance and Thales Broadcast & Multimedia on matters  
17 unrelated to PrediWave or to the State Court Actions, and (g) A&O has previously worked  
18 for the following parties but has closed its files in relation to the relevant matters (which were  
19 unrelated to PrediWave and the State Court Actions): PG& E, Comcast, Fasken Martineau,  
20 Qwest Communications and Shisheido Co. Ltd.

21         The Retention Agreement provides, among other things, that A&O will represent all  
22 of the Defendants, though it will take principal direction from the Debtor. This is similar to  
23 the arrangement that Latham has reached with the Debtor and the Other Defendants. In light  
24 of the foregoing and the scope of the representation contemplated herein, A&O does not  
25 believe that its representation of the Other Defendants (in addition to the Debtor) in the Hong  
26 Kong Proceedings is, or could reasonably be expected to result in, a representation of an  
27 interest adverse to the Debtor or its estate.  
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**VII.**

**OTHER DISCLOSURE**

As set forth more fully in the Retention Agreement, as a condition to A&O agreeing to proceed with the subject engagement prior to the Debtor obtaining this Court's authority to employ A&O pursuant to the terms of the Retention Agreement (such terms or on other similar terms not materially different than that which is contemplated in the Retention Agreement, "Bankruptcy Court Authority"), the Other Defendants have agreed to be responsible for paying one hundred percent (100%) of any and all fees for services rendered and expenses incurred by A&O in connection with the subject engagement if the Debtor is unable (through no fault of A&O) to obtain Bankruptcy Court Authority.

**VIII.**

**CONCLUSION**

The employment of A&O as special Hong Kong litigation counsel to the Debtor is in the best interest of creditors of this estate.

**THEREFORE**, the Debtor requests that it be authorized to employ A&O as its special Hong Kong litigation counsel, effective as of August 17, 2006, pursuant to the terms of the Retention Agreement, as such terms are modified by this Application, with compensation that is at the expense of the estate to be in such amount as this Court may hereafter allow in accordance with law.

DATED: September 20, 2006      PrediWave Corporation

/s/ Vincent Lin  
Vincent Lin  
Vice President of Operations and General Counsel

Presented By:

/s/ Jonathan S. Shenson  
Jonathan S. Shenson, a Member of  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
Reorganization Counsel for  
Debtor and Debtor in Possession

## DECLARATION OF ANGUS ROSS

1  
2 1. I am a partner in Allen & Overy ("A&O"), proposed special Hong Kong litigation  
3 counsel to the above-referenced debtor and debtor in possession, which filed a voluntary petition  
4 for relief in the above-captioned case on April 14, 2006 (the "Petition Date"). Capitalized terms  
5 not otherwise defined in this Declaration shall have the meaning ascribed to them in the above  
6 application.

7 2. A&O attorneys have extensive experience, knowledge and resources in the area of  
8 commercial litigation. Having represented the Debtor in the Hong Kong Proceedings thus far,  
9 A&O's attorneys have become familiar with the factual and legal issues that will have to be  
10 addressed going forward in the Hong Kong Proceedings.

11 3. A true and correct copy of the current retention agreement by and among A&O,  
12 the Debtor and the Other Defendants is attached hereto as Exhibit 4 (the "Retention  
13 Agreement").

14 4. A summary of the experience and qualifications of those attorneys who are  
15 currently expected to render services to the Debtor is attached hereto as Exhibit 5.

16 5. The Retention Agreement contemplates that A&O will instruct a barrister (or  
17 Senior Counsel) in connection with the Hong Kong Proceedings, specifically, Senior Counsel,  
18 Mr. Chua Guan-Hock S.C. Mr. Chua is not affiliated with A&O, but has been engaged by A&O  
19 to conduct the hearing on the appeal of the August 18 Judgment. Different from the United  
20 States, the legal profession in Hong Kong Hong is a "split profession" with solicitors and  
21 barristers. Solicitors (such as A&O) act directly for clients and have limited rights to appear in  
22 courts; whereas, barristers (such as Mr. Chua) are instructed by solicitors to represent the  
23 interests of the client before the courts. For any major substantive hearing, it is the usual  
24 practice to instruct a barrister to make the oral submissions and to assist in related  
25 documentation and, accordingly, I believe Mr. Chua's services are vital to the Defendants' ability  
26 to successfully prosecute the subject appeal. A&O has and shall continue to incur the costs  
27 associated with retaining Mr. Chua, and shall seek reimbursement from the Defendants (as it  
28 would for any other expense). Mr. Chua's hourly billing rate is US \$770.00.

1           6.       A curriculum vitae setting out the experience and qualifications of Mr. Chua is  
2 attached hereto as Exhibit 6.

3           7.       In or around September 2004, the Debtor paid a retainer to A&O in the amount of  
4 \$19,900 (plus interest) (the "Retainer"). A&O has not drawn down on the Retainer, and the  
5 entire amount of the Retainer remains in a client trust account. Unless this Court orders  
6 otherwise, A&O agrees that the Retainer will be held by A&O in the aforementioned account  
7 and disbursed only in accordance with applicable law including, without limitation, the orders  
8 and rules of this Court. Notwithstanding the foregoing, A&O agrees to apply the Retainer (until  
9 it is reduced to zero) to the payment of any allowed fees and expenses in this case before seeking  
10 any other payment from the Debtor and its estate.

11           8.       I have caused to be reviewed the amounts A&O has billed the Debtor and the  
12 Other Defendants and the payments received in respect of invoices A&O has issued to the  
13 Debtor and the Other Defendants. Based upon that review, I believe that the following is an  
14 accurate description of amounts billed by A&O to the Debtor and the Other Defendants in the  
15 periods referred to. In the one-year period preceding the Petition Date (i.e., from April 14, 2005  
16 to April 14, 2006), A&O billed the Debtor US\$173,649.18<sup>9</sup> for services rendered and costs  
17 incurred in connection with the Pre-Petition Representation, with US\$131,144.21 and  
18 US\$42,504.97 collected from the Debtor and Athena (one of the Other Defendants),  
19 respectively. Post-petition (i.e., from and after April 14, 2006), A&O billed the Other  
20 Defendants US\$45,886.43 for services rendered and costs incurred in connection the Hong Kong  
21 Proceedings, all of which was paid by Athena.

22           9.       With regard to the fees for services rendered and expenses incurred by A&O in  
23 connection with the subject engagement, A&O, the Debtor and the Other Defendants have  
24 agreed that thirty percent (30%) will be billed to PrediWave and the remaining seventy percent  
25 (70%) will be billed to the Other Defendants, with one-ninth (1/9) of that seventy percent portion  
26 billed to each of the Other Defendants.

27  
28 <sup>9</sup> This amount reflects total fees and expenses billed to PrediWave including US\$24,653.50 originally billed to  
PrediWave, though the invoice for such amounts was subsequently re-issued to some of the Other Defendants for  
payment.

1           10.     A&O has agreed to accept as compensation from the Debtor only sums as may be  
2 allowed by this Court in accordance with law.

3           11.     A&O will file one or more fee applications seeking Court authority to receive  
4 compensation and reimbursement of expenses from the Debtor consistent with any orders of this  
5 Court and applicable procedures established by the U.S. Trustee including, without limitation, its  
6 Guidelines for Compensation and Reimbursement of Professionals and Trustees (the  
7 "Guidelines"). To the extent any fees or expenses paid to A&O are disallowed by this Court,  
8 A&O understands and agrees that such disallowed amounts may be ordered disgorged by A&O  
9 and returned to the Debtor.

10          12.     A list of the guideline hourly rates for those members of A&O currently expected  
11 to render services to the Debtor is attached hereto as Exhibit 7.

12          13.     A&O utilizes a computer program to review its databases to determine its  
13 relationships, if any, to parties that may have connections to a case. In the instant case, A&O  
14 focused its inquiry on ascertaining whether the firm currently represents or otherwise currently  
15 has a relationship with any person or entity listed on Exhibit 8 (the "Conflict List"), which I am  
16 informed by US counsel for the Debtor includes (i) the persons and entities listed on the creditor  
17 matrix maintained by the Court, (ii) the officers, directors and known equity holders of  
18 PrediWave, and (iii) certain professionals and other parties involved in the case. In addition, I  
19 caused to be sent an email enclosing the Conflict List to the partners of A&O, worldwide, to  
20 enquire about possible conflicts.

21          14.     Based on the checking exercise described in the preceding paragraph, and except  
22 as otherwise set forth below, A&O does not hold or represent an interest adverse to the estate  
23 with respect to matters upon which it is to be employed, and, to the best of my knowledge, does  
24 not have any connection either with the Debtor, its creditors, or any other party in interest in this  
25 case or with their respective attorneys or accountants, or the United States Trustee, or any person  
26 employed in the Office of the United States Trustee, in each case (other than the Debtor), to the  
27 extent such persons or entities are mentioned on the Conflict List, other than the following, that:  
28 (a) A&O has represented the Debtor pre-petition as discussed in the Application, (b) A&O either

1 represented the Other Defendants (together with the Debtor) or has represented their interests in  
2 connection with its representation of the Debtor in the Hong Kong Proceedings, but at no time in  
3 a manner adverse to the Debtor, (c) A&O has received payment from Athena (one of the Other  
4 Defendants) for services rendered by A&O in connection with the Hong Kong Proceedings, (d)  
5 A&O has worked with and for certain professionals retained (or likely to be retained) by  
6 PrediWave including Anderson Mori & Tomotsune, Latham, and Lee & Li on matters which, to  
7 the best of my knowledge, are unrelated to PrediWave and the State Court Actions, (e) A&O  
8 currently advises: Agilent Technologies, American Express, Bank of America, Bank of  
9 American N.A. Trade, DHL Worldwide Express, Dart Express (SFO) Inc, Dell Computer  
10 Corporation, Freehills, Pitney Bowes Inc, Simpson Thacher & Bartlett LLP, Sprint and United  
11 Parcel Service in respect of various matters which to the best of my knowledge, based on the  
12 checking process described above, are unrelated to PrediWave and the State Court Actions, (f)  
13 although the specific companies listed below are not clients, to the best of my knowledge, based  
14 on the checking process described above, A&O has worked for affiliated and/or associated  
15 companies of: BMW Financial Services, St. Paul's Travelers, Porsche Financial Services, Blue  
16 Cross of California, Verizon Wireless, AIG Life Insurance Company, AT&T Wireless, Hartford  
17 Fire Insurance, Mercedes-Benz Financial, NEC Fielding Ltd, PSC Computer Products, Pasona  
18 Sparkle Inc, Sonitrol, State Farm Insurance and Thales Broadcast & Multimedia. To the best of  
19 my knowledge, none of the matters involved relate in any way to PrediWave or to the State  
20 Court Action, and (g) A&O has previously worked for the following parties but has closed its  
21 files in relation to the relevant matters: PG& E, Comcast, Fasken Martineau, Qwest  
22 Communications and Shisheido Co. Ltd. To the best of my knowledge, based on the checking  
23 process described above, the said matters are unrelated to PrediWave and the State Court  
24 Actions.

25           15. The Retention Agreement provides, among other things, that A&O will represent  
26 all of the Defendants, though it will take principal direction from the Debtor. In light of the  
27 foregoing and the scope of the representation contemplated herein, A&O does not believe that its  
28 representation of the Other Defendants (in addition to the Debtor) in the Hong Kong Proceedings

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is, or could reasonably be expected to result in, a representation of an interest adverse to the Debtor or its estate.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of September, 2006, at Hong Kong, China.

/s/ Angus Ross

ANGUS ROSS