

05-02-2000

FORM PTO-1594
(Rev. 6/93)

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

REC



T

4.14.00

101343642

Attorney's Docket No. 032837-001

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Medical Air Technology Corporation

- Individual(s)
- General Partnership
- Corporation-State MA
- Association
- Limited Partnership

Other: _____

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Merger
- Change of Name

Other: _____

Execution Date: January 26, 1996

2. Name and address of receiving party(ies):

Name: Marwan Investment, Inc.

Address: 44 Canal Center Plaza, Suite 303

Alexandria, VA 22314

- Individual(s) Citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State DE
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

(1972985)

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Michael B. Chernoff, Esquire

Address: BURNS, DOANE, SWECKER & MATHIS, L.L.P.

P.O. Box 1404

Alexandria, Virginia 22313-1404

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$ 40.00

Enclosed

Authorized to be charged to deposit account, if necessary

8. Deposit account number:

02-4800

05/01/2000 BCORTES 00000227 1972985
01 FC:481 40.00 OP

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Michael B. Chernoff
Name of Person Signing

Signature

April 14, 2000
Date

Total number of pages including cover sheet, attachments, and document: 17

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

TRADEMARK
REEL: 002062 FRAME: 0872

(09/99)

COLLATERAL, PATENT AND TRADEMARK ASSIGNMENT

THIS COLLATERAL, PATENT AND TRADEMARK ASSIGNMENT ("Assignment") made as of the 22nd day of January, 1996 by MEDICAL AIR TECHNOLOGY CORPORATION, a Massachusetts corporation having its chief executive office at 80 Cedar Street, Canton, Massachusetts 02021 ("Assignor"), and Marwan Investment Inc., a Delaware corporation having its offices at c/o Multifinance Holding Corporation, 44 Canal Center Plaza, Suite 303, Alexandria, Virginia 22314 ("Marwan" or "Assignee"):

WITNESSETH

WHEREAS, Assignor and Assignee are parties to an Investment and Stockholders Agreement (the "Agreement") of even date herewith and a Promissory Note of even date herewith and a Security Agreement of even date herewith (collectively the "Loan Agreements"), which Loan Agreements provide (i) for Assignee to extend credit to or for the account of Assignor and (ii) for the grant by Assignor to Assignee of a security interest in substantially all of the Assignor's assets, including, without limitation, its patents and trademarks, if any, and patent and trademark applications;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Assignor agrees as follows:

1. Incorporation of Loan Agreements. The Loan Agreements and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

2. Collateral Assignment of Patents and Trademarks. To secure the complete and timely satisfaction of all of Assignor's "obligations" to Assignee, Assignor hereby grants to Assignee a security interest (having priority over all other security interests, with power of sale, to the extent permitted by law), in, and upon the occurrence of an event of default under Section 11.1(a) or (b) of the Agreement (an "Event of Default"), all of Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

(i) patents and patent applications, if any, including, without limitation, the inventions and improvements described and claimed therein, and those patents and patent applications listed on Schedule A, attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and patent applications, together with the items described in clauses (a) - (d), are sometimes hereinafter, individually or collectively, referred to as the "Patents");

(ii) trademarks, trademark registrations, trademark applications and trade names, including, without limitation, the trademarks, trademark applications and trade names listed on Schedule B, attached hereto and made a part hereof, and (a) any renewals thereof, (b) all income, royalties, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trademark registrations, trademark applications and trade names, together with the items described in clauses (a) - (d), are sometimes hereinafter, individually or collectively, referred to as the "Trademarks"); and

(iii) the good will of Assignor's business connected with, and symbolized by, the Patents and Trademarks.

Notwithstanding anything contained in this Assignment to the contrary, Assignee agrees that there shall be no assignment of the Patents, Trademarks or goodwill described in clauses (i) - (iii), other than the collateral assignment described in the first sentence of this paragraph 2, unless and until there shall occur an Event of Default.

3. Restrictions on Future Agreements. Assignor agrees that until Assignor's Obligations shall have been satisfied in full and all financing arrangements between Assignor and Assignee shall have been terminated, Assignor will not, without Assignee's prior written consent, not to be unreasonably withheld or delayed, enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations under this Assignment from the date of the Agreement or which in any way creates a first security interest in the Patents, Trademarks or goodwill and Assignor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would materially affect the validity or enforcement of the rights transferred to Assignee under this Assignment.

4. New Patents and Trademarks. Assignor represents and warrants that, to the best of its knowledge and belief, the Patents and Trademarks listed on Schedules A and B, respectively, constitute all of the material patents and trademarks and applications therefor now owned by Assignor. If, before Assignor's Obligations shall have been satisfied in full, Assignor shall (i) obtain ownership rights to any new patentable inventions, trademarks, trademark registrations or trade names, or (ii) become entitled to the benefit of any trademark, trademark registration or trademark application, or any patent, patent application, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of paragraph 2 above shall automatically apply thereto. Assignor hereby authorizes Assignee to modify this Assignment by amending Schedule A or B as applicable, to include any future patents, patent applications, trademarks, trademark registrations, trademark applications and trade names which are Patents or Trademarks, as applicable, under paragraph 2 above or under this paragraph 4.

5. Royalties, Terms. Assignor hereby agrees that the use by Assignee of all Patents and Trademarks after the occurrence of an Event of Default, shall be without any liability for royalties or other related charges from Assignee to the Assignor. In the event that there is no event of default and therefore an assignment other than the collateral assignment described in the first sentence of Section 2 then the term of the collateral assignment granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents and Trademarks assigned hereunder, or (ii) Assignor's Obligations shall have been satisfied in full.

6. Termination of Assignee's Security Interest. In the event that there is no Event of Default and therefore an assignment other than the collateral assignment described in the first sentence of Section 2, then upon satisfaction in full of Assignor's Obligations Assignee shall execute and deliver to Assignor all termination statements, assignments and other instruments as Assignor deems may be reasonably necessary or proper to terminate Assignee's security interest in the Patents and Trademarks, subject to any disposition thereof which may have been made by Assignee pursuant hereto or pursuant to the Loan Agreements.

7. Duties of Assignor. Assignor shall, in the exercise of its reasonable business judgment, use reasonable efforts (i) to prosecute diligently any patent application of the Patents and any trademark application of the Trademarks pending as of the date hereof or thereafter until Assignor's Obligations shall have been satisfied in full, (ii) to make application on unpatented but patentable inventions and on trademarks, as appropriate, and (iii) to preserve and maintain all rights in patent applications and patents of the Patents and in trademark applications, trademarks, and trademark registrations of the Trademarks. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a patent application or trademark application, or any pending patent application, trademark application, patent, or trademark without the consent of Assignee, which consent shall not be unreasonably withheld or delayed.

8. Assignee's Right to Sue. Immediately following the occurrence of an Event of Default, Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents and Trademarks, and any licenses thereunder, and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement. If Assignor does not bring such suit and Assignor continues to use the Patents and Trademarks pursuant to paragraph 2 hereof, Assignee shall permit Assignor to bring suit.

9. Waivers. No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Loan Agreements shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

10. Severability. The provisions of this Assignment are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Assignment in any jurisdiction.

11. Modification. This Assignment cannot be altered, amended or modified in any way, except as specifically provided in paragraph 4 hereof or by a writing signed by the parties hereto.

12. Cumulative Remedies; Power of Attorney; Effect on Loan Agreements. All of Assignee's rights and remedies with respect to the Patents and Trademarks, whether established hereby or by the Loan Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. From and after the occurrence of an Event of Default, Assignor shall authorize Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with power (i) at any time, to endorse Assignor's name on all applications, documents, papers and instruments necessary or desirable for the Assignee in the use of the Patents and Trademarks, and (ii) (a) to grant or to issue any exclusive (to the extent it does not conflict with the outstanding licenses) or nonexclusive license under the Patents and Trademarks to anyone, (b) to assign, pledge, convey or otherwise transfer title in or dispose of the Patents or Trademarks to anyone, or (c) to take any other actions with respect to the Patents and Trademarks as the Assignee deems in the best interest of the Assignee. This power of attorney shall be irrevocable from such time until Assignor's Obligations shall have been satisfied in full. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Loan Agreements but rather is intended to facilitate the exercise of such rights and remedies. Assignee shall have, in addition to all other rights and remedies given it by the terms of this Assignment, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents or Trademarks may be located.

13. Expenses. Any and all fees, cash and expenses of whatever kind or nature, including reasonable attorneys' fees and disbursements of counsel, incurred by Assignee in connection with the enforcement of this Agreement and all other documents relating hereto or for otherwise protecting, maintaining, or preserving the Patents and Trademarks, or in defending or prosecuting any actions arising out of or relating to the Patents and Trademarks shall be borne and paid by Assignor on written demand by Assignee and until so paid shall be deemed to be an obligation under this Agreement.

14. Binding Effect; Benefits. This Assignment shall be binding upon the Assignor and its respective successors and assigns, and shall inure to the benefit of Assignee, its nominees and assigns.

15. Governing Law. This Agreement has been made and delivered in the Commonwealth of Massachusetts and shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts and the Assignor submits to the jurisdiction of Massachusetts for all purposes with respect to this Agreement and its relationship with the Assignee.

16. Conflict in Language. In the event of any conflict between this Agreement and the Security Agreement, the Security Agreement shall control.

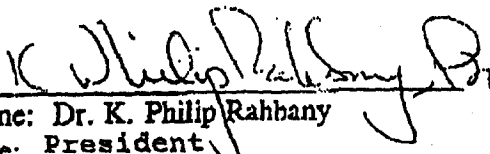
17. Remedies. The parties to this Agreement agree that a remedy at law may be inadequate as to any breach of this Agreement, and that in the case of any breach the non-breaching party shall be entitled to preliminary and permanent injunctions or other equitable remedies (in addition to legal remedies) in any court of competent jurisdiction.

[THIS SPACE INTENTIONALLY LEFT BLANK]

ACCEPTANCE

The undersigned, Marwan Investment Inc. accepts the foregoing Collateral Patent and Trademark Assignment by Medical Air Technology Corporation a Massachusetts corporation.

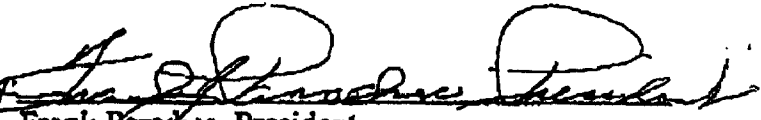
MARWAN INVESTMENT INC.

By: 
Name: Dr. K. Philip Rahbany
Title: President

245144.e1

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their duly authorized officers as of the day and year first written above.

MEDICAL AIR TECHNOLOGY CORPORATION

By 
Frank Paradise, President

ATTEST:

Corporate Seal

Commonwealth of Massachusetts

County of Suffolk

On this 20th day of January, 1996, before me appeared Frank Paradise to me personally known, who, being by me duly sworn, did say that he is the President of Medical Air Technology Corporation, a Massachusetts corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said Frank Paradise acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Kristin L. Antall
Notary Public Kristin L. Antall

My term expires: 8/24/01

SCHEDULE A

to

Collateral Patent and Trademark Assignment

dated as of January 22, 1996

PATENT AND PATENT APPLICATIONS

PATENT APPLICATIONS

<u>Application No.</u>	<u>Date Filed</u>
U.S. 08/213,606 - Source Capture Air Filtering System	March 15, 1994

PATENTS

<u>Number</u>	<u>Date Filed</u>
---------------	-------------------

SCHEDULE B

to

Collateral Patent and Trademark Assignment

dated as of January 22 1996

TRADEMARKS

Registered Trademark

Unregistered Trademark

HEPA-Plus
74/687,386 - MedAir (has been applied for)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEDICAL AIR TECHNOLOGY,
CORP.,
Plaintiff,

v.

MARWAN INVESTMENT, INC.,
MARWANI HOLDING COMPANY,
N.V., MULTIFINANCE HOLDING
CORPORATION, and K. PHILIP
RAHBANY, M.D.,
Defendants.

*
*
*
*
*
*
*
*
*
*
*

CA No. 97-10764-JLT

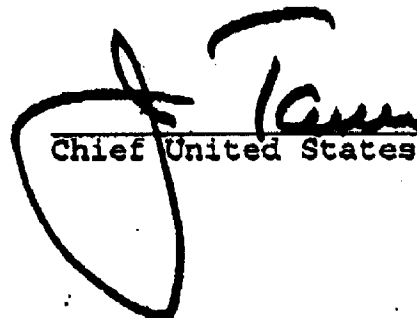
ORDER

DOCKETED

January **26**, 1998

For the reasons stated in the accompanying memorandum,
Defendants' Motion for Partial Summary Judgment on Count I is
hereby ALLOWED and Plaintiff's Cross-Motion for Partial Summary
Judgment is DENIED.

IT IS SO ORDERED.



Chief United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEDICAL AIR TECHNOLOGY,
CORP.,

Plaintiff,

v.

MARWAN INVESTMENT, INC.,
MARWANI HOLDING COMPANY,
N.V., MULTIFINANCE HOLDING
CORPORATION, and K. PHILIP
RAHBANY, M.D.,
Defendants.

*
*
*
*
*
*
*
*
*
*
*

CA No. 97-10764-JLT

MEMORANDUM

January 26, 1998

DUCKETED

TAURO, Ch.J.,

This lawsuit arises out of Defendants' investment in Plaintiff, Medical Air Technology, Corp. ("Medical Air"). In January, 1996, Marwan Investment, Inc. and Marwani Holding Company, N.V. (collectively, "Marwan") invested a total of \$1,375,000 in Medical Air. Complaint, ¶ 13. That investment was secured by a credit agreement (the "Investment Agreement"), which required Plaintiff to comply with several financial covenants. See Complaint, Ex. B.

The parties' cross-motions for summary judgment present a very narrow legal issue -- did Plaintiff breach its contractual obligations under the Investment Agreement. At issue is the interpretation of Sections 4.8 and 4.9 of the agreement.

Section 11.1 of the Investment Agreement provides that Plaintiff shall be in "default," if Plaintiff violates certain of the agreement's covenants, including the covenants contained in

Sections 4.8 and 4.9. Complaint, Ex. B, at § 1.11. Section 11.1 also grants Defendants certain rights, the effects of which Plaintiff seeks to avoid by obtaining a judicial declaration that it was not in default. Id.

Plaintiff admits, however, that, in May 1996, its "Net Worth" and "Net Working Capital" fell below the minimums required by Sections 4.8 and 4.9 of the agreement. Pl.'s Opp. Memo., p.6. Plaintiff's only defense to summary judgment is, therefore, to argue that the terms of the agreement are ambiguous.

I.

ANALYSIS

A. Standard of Review

The interpretation of an unambiguous agreement presents a question of law for the court. Boston Edison Co. v. FERC, 856 F.2d 361, 365 (1st Cir. 1988). Questions of law are often decided on summary judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). That the parties dispute the meaning of a contract does not render it ambiguous. Boston Helicopter Charter, Inc. v. Augusta Aviation Corp., 767 F. Supp. 363, 370 (D. Mass. 1991). Generally, contract language is only ambiguous "where an agreement's terms are inconsistent on their face or where the phraseology can support reasonable differences of opinion." Fashion House, Inc. v. K-Mart Corp., 892 F.2d 1076, 1083 (1st Cir. 1989) (citing In re Navigation Technology Corp., 880 F.2d 1491, 1495 (1st Cir. 1989)). Sections 4.8 and 4.9 are susceptible, however, to only one reasonable interpretation.

B. Interpretation of Sections 4.8 and 4.9

Section 4.8 provides in full:

4.8 Maintenance of Net Worth. Medical shall cause its Consolidated Net Worth during each "Test Period" set forth below to equal or exceed the amount set forth opposite such Test Period below:

<u>Test Period</u>	<u>Minimum Consolidated Net Worth</u>
Closing Date to 6/30/96	\$500,000
7/1/96 to 12/31/96	\$600,000
1/1/97 to 6/30/97	\$1,000,000
7/1/97 to 12/31/97	\$1,400,000
1/1/98 and thereafter	\$1,800,000

If Medical's Consolidated Net Worth in any Test Period is less than the amount set forth opposite such Test Period multiplied by One and Two-Tenths (1.2) (the "Acceptable Net Worth"), then Medical shall notify the Investors and Medical's senior officers shall meet with representatives of the Investors and, in consultation with such representatives, shall promptly, but in any event within thirty (30) days after Medical's Consolidated Net Worth fell below the Acceptable Net Worth for such period, develop a plan to improve Medical's Consolidated Net Worth.

Complaint, Ex. B, at § 4.8. The language of Section 4.9 parallels that of Section 4.8, simply substituting "Net Working Capital" for "Net Worth" and "Acceptable Net Working Capital" for "Acceptable Net Worth."¹ The analysis is, therefore, the same for both sections and will not be repeated.

Plaintiff suggests that Section 4.8 contemplates a remedy for those instances in which "Net Worth" falls below the minimum level established in the section, namely that Medical Air notify Marwan and develop a plan for remedying the shortfall. Pl.'s Opp. Memo., p.6. According to Plaintiff, once the "Net Worth"

¹ Neither party disputes the method for calculating "Net Worth" or "Net Working Capital." These terms are unambiguously defined elsewhere in the agreement, and no further discussion of the terms is necessary for the purposes of this dispute. See Complaint, Ex. B, at § 12.1.

falls below an "acceptable" level, consultation is necessary.

Id. The aim of the consultation is to keep the figure from falling below the "minimum" level, but the actual occurrence of a drop below the "minimum" level is without effect, except possibly to require further consultation. Id.

Plaintiff argues, therefore, that it was not in default in May 1996, because its senior management met with representatives from Marwan and agreed upon a plan for improving Medical Air's financial condition. Id. at p.7-8. Plaintiff's interpretation of Section 4.8 ignores, however, several basic principles of contract interpretation.

"It is a canon of [contract] construction that every word and phrase of an instrument is, if possible, to be given meaning, and none is to be rejected as surplusage if any other course is rationally possible." FDIC v. Singh, 977 F.2d 18, 22 (1st Cir. 1992) (quoting Tupper v. Hancock, 319 Mass. 105, 108, 64 N.E.2d 441, 443 (1946)). "A contract should be construed in such a way that no word or phrase is made meaningless by interpreting another word or phrase." Lexington Ins. Co. v. All Regions Chem. Labs, Inc., 419 Mass. 712, 713, 647 N.E.2d 399, 400 (1995).

Moreover, a court's goal in interpreting a contract is to give it a construction "which will make it a rational business instrument and will effectuate what appears to have been the intention[s] of parties." Berkal v. M. DeMatteo Constr. Co., 327 Mass. 329, 332, 98 N.E.2d 617, 620 (1951). "Justice, common sense and the probable intent of the parties are guides in the court's construction of written instruments." Fried v. Fried, 5

Mass. App. Ct. 660, 664, 368 N.E.2d 1222, 1225 (Mass. App. 1977).

Plaintiff's proposed interpretation blurs the distinction between "Minimum Net Worth" and "Acceptable Net Worth," rendering the later term meaningless. To adopt Plaintiff's interpretation would be to construe "Minimum Net Worth" in such a way as to make "Acceptable Net Worth" superfluous.

Additionally, Plaintiff's proposed interpretation of the agreement leads to absurd results. According to Plaintiff, each time Medical Air's "Net Worth" fell below the "minimum" level set in Section 4.8, Medical Air could remedy that default by simply meeting with Marwan and agreeing to a new, lower limit. Given that investors place financial covenants in a credit agreement for their protection, this interpretation is irrational. See JRY Corp. v. LeRoux, 18 Mass. App. Ct. 153, 159-60, 464 N.E.2d 82, 87-88 (Mass. App. Ct. 1984).

Defendants, for their part, offer a much more coherent reading of the section. As Defendants correctly suggest, the plain language of the agreement unambiguously contemplates a two-tiered approach to protecting Marwan's investment. First, Section 4.8 sets a "minimum" below which Medical Air's "Net Worth" cannot fall without triggering the default provisions of Section 11.1. If "Net Worth" falls below the "minimum," default is absolute and immediate, and consultation is unnecessary.

But, in order to forestall an unnecessary default, the agreement also establishes a safeguard. The safeguard, "Acceptable Net Worth," which is twenty-percent higher than the "minimum" level, is meant to act as an alarm, triggering a

coordinated effort by both parties to stave-off the imminent default.

Besides its rationality and the high likelihood that this interpretation is precisely what the parties intended, Defendants' interpretation has a second advantage. Defendants are careful to distinguish between the "minimum" and "acceptable" levels of "Net Worth." In short, Defendants' interpretation is the only one which gives meaning to all of the provision contained in Section 4.8.

II.

CONCLUSION

For all of the foregoing reasons, I find the language of the Investment Agreement to be unambiguous and Defendants' interpretation of it to be persuasive. Section 4.8 establishes minimum levels of "Net Worth" below which Medical Air's "Net Worth" cannot fall without triggering a default. Medical Air was in "default," pursuant to Section 11.1 of the agreement, in May 1996, when its "Net Worth" fell below the established limits.

Because Medical Air's obligations are clear and unambiguous under the terms of the Investment Agreement, and because Medical Air admits that, in May 1996, it failed to meet the Net Worth and Working Capital requirements established by Sections 4.8 and 4.9 of the agreement, the court hereby **ALLOWS** Defendants' Motion for Partial Summary Judgment on Count I and **DENIES** Plaintiff's Cross-Motion for Partial Summary Judgment.



Chief United States District Judge