

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

In re:	:	Chapter 11
	:	
TRANS WORLD AIRLINES, INC., et al.,	:	Case No. 01-00056 (PJW)
	:	(Jointly Administered)
	:	
Debtors.	:	<b>Objection Deadline: February 6, 2002</b>
	:	<b>Hearing Date: February 13, 2002 @ 11:30 am</b>

**MOTION OF HEALTHNET, INC.  
TO COMPEL DEBTORS TO PAY CERTAIN CURE COSTS**

Healthnet, Inc., (hereinafter “Healthnet”), by and through undersigned counsel, hereby files this Motion to Compel Debtors to Pay Certain Cure Costs and in support thereof states as follows:

**BACKGROUND**

1. On January 10, 2001, Trans World Airlines, Inc. (“TWA”) and its affiliates (collectively “Debtors”) filed a voluntary petition under Chapter 11 of Title 11. Debtors are continuing to operate as debtors-in-possession pursuant to 11 U.S.C. §1108.

2. Healthnet has two contracts with the Debtors, a Network Access Agreement and a preferred Provider Organization Agreement (hereinafter the “Healthnet Contracts”).

3. On April 9, 2001, this Court entered its *Order Approving (A) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (B) Rejection of Certain Executory Contracts and Leases* [D.I. #1334] (the “April 9 Order”). The April 9 Order allowed Debtors to assume and assign certain contracts and leases to American Airlines, Inc. Attached to the April 9 Order was a list of Assumed Contracts and each such Assumed Contract’s Undisputed and/or Disputed Cure Amount. TWA originally scheduled Heathnet’s cure amount at \$0.

4. On or about April 18, 2001, Healthnet filed a Motion to Vacate or Motion for Reconsideration of the April 9 Order [D.I. #1494]. On May 21, 2001, the Court granted a Stipulation and Agreed Order Between Healthnet, Inc. and the Debtors to Modify the Order Regarding Debtors' Assumption and Assignment of Executory Contracts Re: Docket No. 1334 [D.I. #1657] (hereinafter the "Stipulation"). The Stipulation modified the April 9 Order to reflect Healthnet's cure claim in the amount of \$351,695.58 for the Healthnet Contracts. The cure amount in the amount of \$351,695.58 was to be treated as a disputed cure in accordance with the April 9 Order.

5. Pursuant to ¶3 of the April 9 Order, the Debtors "shall pay all cure amounts payable to the counterparties to the Assumed Contracts..." As of the April 9 Order, the cure amount owed to Healthnet was \$351,695.58. A copy of the Invoice/Payment Reconciliation Worksheet is attached hereto as Exhibit 1. The April 9 Order also required the Debtors to fund an escrow account from the proceeds of the sale of assets to American Airlines to satisfy all of the disputed and undisputed cure amounts for the assumed contracts. As a result, the Debtors were required to set aside a reserve of \$351,695.58 to cover their liabilities arising out of the Healthnet Contracts.

6. The April 9 Order also set forth procedures for resolving the Disputed Cure Amounts, which included: (a) the Debtors and the Assumed Contract counter-parties resolving the Disputed Cure Amounts in good faith; (b) the Debtors filing a notice of intent to disburse monies upon resolution of the Disputed Cure Amounts and serving such notice on the Official Committee of Unsecured Creditors (the "Committee") and the U.S. Trustee; (c) the Debtors disbursing funds if the Committee and U.S. Trustee do not object to the notice of disbursement within five (5) days. If the Debtors and the relevant counter-parties were unable to resolve the

Disputed Cure Amounts by July 8, 2001, the Debtors were required to file a motion seeking judicial determination of the exact amount of the Disputed Cure Amounts. The Debtors requested and received an indefinite extension of time in order to continue negotiations with the affected parties.

7. Healthnet has made numerous good faith attempts to negotiate and resolve the disputed cure amount with Debtors but to no avail. On May 9, 2001, counsel for Healthnet forwarded an Invoice/Payment Reconciliation Worksheet to Debtors outlining the amounts owed from December of 1998 through December of 2000. A copy of the letter to Debtors is attached hereto as Exhibit 2. Healthnet also sent numerous Account Summaries and Account Details to Debtors with the May 9, 2001 letter in the hopes of resolving the cure dispute.

8. On August 16, 2001, counsel for Healthnet again contacted Debtors to move the disputed cure claim up through the process. A copy of the facsimile coversheet to Debtors is attached hereto as Exhibit 3.

9. On September 28, 2001, Healthnet again wrote to Debtors requesting efforts be made toward resolution of the cure dispute. A copy of the September 28, 2001 letter is attached hereto as Exhibit 4.

10. In November of 2001, counsel for Healthnet attended an Omnibus Hearing in this matter to address his concerns regarding the cure amount. He also sent correspondence to Debtors' counsel on November 12, 2001 to follow-up regarding these inquiries. Healthnet was promised that the Debtors would address the issue "ASAP." See correspondence attached hereto as Exhibit 5.

11. Counsel for Healthnet again forwarded the Invoice/Detail supporting the Healthnet cure claim on December 5, 2001, and followed up with numerous telephone calls to

counsel for Debtors to expedite and assist the reconciliation. See copy of December 5, 2001 letter attached hereto as Exhibit 6.

12. As of January 9, 2001, Debtors have made no progress toward reconciling the cure dispute. More than eight (8) months have passed since the Invoices and supporting documentation was originally sent to Debtors. In fact, the supporting documentation has been re-supplied to Debtors on several occasions. During those eight (8) months, despite Healthnet's numerous telephone calls and correspondence, Debtors have made no indication that resolution of the cure dispute is expected. Healthnet submits that Debtors have not acted in good faith and that *eight months* is long enough to wait for resolution of this issue. As such, Healthnet has been forced to file the instant Motion and to incur significant attorneys fees in pursuing the cure amounts which must be paid pursuant to the April 9 Order and 11 U.S.C. §365.

#### **ARGUMENT**

13. Pursuant to sections §365(b) and §503(b) of the United States Code, the Debtors are required to immediately pay all outstanding cure costs owed under the assumed contracts as administrative expense claims of the Debtors' estate, upon assumption of the contracts.

14. Pursuant to 11 U.S.C. §365(b)(1), if there has been a default under the Contract, the Debtor may not assume and assign the contract unless, at the time of assumption of the contract, the Debtor:

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. §365(b)(1) (A-C).

15. It is black letter law that a pre-assumption default must be cured by the Debtors. *See, e.g., In re Building Block Child Care Centers, Inc.*, 234 B.R. 762, 765 (9<sup>th</sup> Cir. BAP 1999) (“The language of §365(b)(1) clearly and unambiguously requires the cure of all defaults before a lease may be assumed.”) Moreover, the April 9 Order required the Debtor to make such cure payments.

16. As of the date of this Motion, although Debtor has assumed the Healthnet Contracts, Debtors have failed to make payment in the amount of \$351,695.58 to Healthnet to cure the defaults arising under the contracts.

17. Cure costs payable under 11 U.S.C. §365(b) are payable as administrative expense claims under 11 U.S.C. §503 (and such cure has, as represented by the Debtor, been escrowed). As such, Healthnet requests that Debtors be compelled to make immediate payment to Healthnet in the amount of \$351,695.58 as an administrative expense claim.

**WHEREFORE**, Healthnet, Inc. respectfully requests this Court enter an order compelling Debtor to make immediate payment to Healthnet in the amount of \$351,695.58, plus attorney fees in seeking such payment, and grant such other and further relief as deemed just and proper.

MCCARTER & ENGLISH, LLP

OF COUNSEL:

Richard M. Beheler, Esquire  
Blackwell Sanders Peper Martin LLP  
Two Pershing Square  
2300 Main Street, Suite 1000  
Kansas City, Missouri 64108  
(816) 983-8000  
(816) 983-8080 Facsimile

Dated: January 10, 2002



William F. Taylor, Jr. (DE Bar I.D. #2936)  
Katharine L. Mayer (DE Bar I.D. #3758)  
919 North Market Street, Suite 950  
Post Office Box 111  
Wilmington, Delaware 19899  
(302) 654-8010  
(302) 654-0795 Facsimile  
*Attorneys for Healthnet, Inc.*