

VIRGINIA

FAIRFAX COUNTY CIRCUIT COURT

BEST MEDICAL INTERNATIONAL, Inc.  
A Virginia Corporation

Plaintiff,

V

AMERICAN SOCIETY FOR RADIATION  
ONCOLOGY a/k/a ASTRO, a Virginia  
Corporation,

Defendant.

Ruth Bergin  
Attorney for Plaintiff, Best Medical International, Inc.  
7343 Fullerton Rd.  
Springfield, VA 22153  
703 451 2378

Serve: CT Corporation System, (Resident Agent)  
4701 Cox Road  
Suite 301  
Glen Allen, VA 23060

COMPLAINT

Now comes the Plaintiff, by and through its attorney and hereby states for its  
Complaint as follows:

THE PARTIES

1. The Plaintiff, Best Medical International, Inc. (heretofore known as  
'Best') is a Virginia Corporation doing business on a regular basis in Fairfax County,  
Virginia. Plaintiff develops, manufactures and sells advanced, state of the art medical  
technologies used in the diagnosis and treatment of serious illnesses.

FILED  
CIVIL INTAKE

2010 OCT 22 AM 11:45

JUDITH E. WILEY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

File No.

2010-15007

2. The Defendant, The American Society for Radiation Oncology (heretofore known as ASTRO) is a Virginia Corporation assigned corporate identification number F 101961-3 by the Virginia State Corporation Commission that does business on a regular basis in Fairfax County, Virginia as a trade association.

### **JURISDICTIONAL ALLEGATIONS**

3. The transactions and occurrences that are the subject matter of this lawsuit occurred in Fairfax County, Virginia.

4. The amount in controversy is over \$500,000.00.

5. Fairfax County Circuit Court has jurisdiction over the controversy outlined in this Complaint.

6. Fairfax County Circuit Court is the proper venue for this cause of action.

### **FACTUAL ALLEGATIONS**

7. Plaintiff hereby incorporates by reference prior paragraphs 1-6.

8. The Parties entered into a contract relative to the ASTRO annual meeting that is to take place in San Diego CA from October 31, 2010 to November 4, 2010.

9. The aforementioned annual meeting also included a trade show for which the Plaintiff paid Defendant for space to place 12 booths of various sizes in an exhibition hall. The Plaintiff purchased the booths to sell its various specialty medical products, make contacts for future sales and to advertise their products to potential customers in the industry (See Contract at Exhibit 1).

10. Plaintiff provided payment of \$117,500.00 for the space to construct booths throughout the exhibit.

11. The Defendants' promotional materials relative to the trade show provided a provision that stated 'By making your reservations through ASTRO's Exhibitor Housing Web site, your company will receive **four** complimentary registrations **per 10 foot by 10 foot exhibit space**', (emphasis added) Exhibitors who choose to make their reservations outside the ASTRO Housing Web site on or **before** October 2, 2010 will be charged \$200.00 per registrant. (See promotional materials at Exhibit 2). The Plaintiff purchased 3500 square feet of exhibit space which is equal to 35 10 foot x 10 foot booths. The plaintiff would therefore be eligible for 140 registration tickets.

12. There is no provision in the Contract allowing for this \$200.00 per exhibitor penalty.

13. Plaintiff did in fact reserve event rooms through the ASTRO system for all four (4) days of the conference.

14. Plaintiff attempted to register for a room through the ASTRO system on or about October 20, 2010 however no rooms were available.

15. Plaintiff did register 15 rooms in a hotel that is affiliated with the ASTRO system. The occupants of these rooms are attending or working at the exhibit area so therefore these rooms would be credited to the ASTRO system pursuant to any reasonable attrition contract in effect between ASTRO and the hotel.

16. Defendant's agent represented to the Plaintiff in an e-mail sent on or about June 24, 2010 at about 10:58 am from Stacey Burrows that rooms reserved through the ASTRO Housing Center had the **"advantage of preferred hotel rates"**.

17. In fact, there is no 'advantage' or 'preferred hotel rate' when reserving a room through ASTRO. The rate for the Sophia Hotel was \$125.00 per night when reserved directly. The ASTRO booking agent charged Plaintiff \$185.00 per night.

18. ASTRO then manufactures a \$200.00 charge to admit the plaintiff's exhibitors despite the fact plaintiff already paid \$117,000.00 to rent the space.

19. In 2009 the Plaintiff complained about the extra registration charge as being unconscionable and as a result received the complimentary registration badges.

20. Plaintiff, through its president Krishnan Suthanthiran, purchased 12 booths for the 2010 ASTRO trade exhibition that totaled 3,500 square feet for approximately \$117,500.00.

21. Obtaining housing through the ASRO web site would cost Plaintiff an extra \$20,235.00.

22. That on or about October 15, 2010 the Plaintiff learned from Defendant that their exhibitors would not be permitted in the exhibition hall unless each person paid a \$200.00 registration fee.

23. Plaintiff immediately informed the Defendant that he wished to rescind the Contract and have his \$117,500.00 returned.

24. The \$200.00 registration fee, and forfeiture of the four complimentary registrations, amount to an invalid liquidation damage clause that is in reality an unreasonable penalty for not reserving housing through the Defendant's web site.

## **COUNT I**

### **ANTICIPATORY BREACH OF CONTRACT**

25. Plaintiff incorporates by reference prior paragraphs 1-24.

26. On or about October 15, 2010 Defendant notified the Plaintiff that their exhibitors would have to pay \$200.00 each to enter the exhibition hall and would not receive their complimentary registration badges as required in the promotional materials.

27. Plaintiff intended to bring 85 exhibitors to the meeting in order to work in the 3,500 square feet of exhibit space the Plaintiff rented.

28. As a result of the Defendant's aforementioned breach of contract Mr. Suthanthiran notified defendant that he was repudiating and/or rescinding the contract and demanded return of his money already spent to rent the space.

29. On or about October 18, 2010 the Defendant informed Plaintiff that they would not return the \$117,500.00 in booth registration fees already paid.

30. Defendant has committed an anticipatory breach of the contract by not allowing the Plaintiff's exhibitors to enter the exhibition hall without paying the \$200.00 per person penalty.

31. Defendants attempted to force Plaintiff into reserving housing for the conference through their website which would result in needless extra costs to the Plaintiff.

32. As a direct and proximate cause of the Defendant's breach of contract the Plaintiff suffered damages in at least the following particulars (1) \$117,500.00 in registration fees already paid; (2) Plaintiff has expended considerable hours and funds preparing for construction of the exhibits; (3) marketing materials specific to the exhibit;

(4) travel costs for transportation to the site and (5) Plaintiff will lose business opportunities and future sales.

33. In reality the Defendant is not harmed in any way by the Plaintiff arranging for housing outside the ASTRO website.

34. If the Defendant is harmed it is a result of its own negligence relative to their negotiations that resulted in reserving blocks of hotel rooms for the conference.

35. Plaintiff should not be compelled to pay an inequitable penalty to compensate Defendant for its own negligence.

WHEREFORE, Plaintiff requests this Honorable Court to enter judgment in favor of the Plaintiff and against the Defendant to compensate the Plaintiff for its damages as result of the aforementioned breach and attempt to collect the unreasonable penalty fee. *Or, in the alternative*, to compel the Defendant to allow the Plaintiff's 85 exhibitors to enter the exhibition hall without having to pay the unreasonable penalty.

## **COUNT II**

### **BREACH OF CONTRACT**

36. Plaintiff hereby incorporates by reference prior paragraphs 1-35.

37. Plaintiff reserved event rooms for three days through the ASTRO reservation system and also reserved 15 rooms in the Sophia hotel that is affiliated with the ASTRO reservation system.

38. There can be no penalty, loss or damage to ASTRO relative to any reasonable contract with the hotels reserving blocks of rooms.

39. Plaintiff attempted to reserve rooms through the ASTRO system but was unable to do so.

40. The Contract between the parties is attached as Exhibit 1 relative to the rental of the Exhibit space.

41. There is no mention in the Contract that the Plaintiff would be charged extra to allow their own employees entry into the exhibit hall to work in the booths for which Plaintiff had already paid \$117,500.00.

42. Defendant breached the contract in at least the following ways:

1. Requiring the Plaintiff to pay \$200.00 for each exhibitor.
2. Refusing to provide the Plaintiff with 140 complimentary registration badges despite the fact Plaintiff performed their obligations under the Contract by spending approximately \$117,500.00 for rental space; reserving event rooms through ASTRO; attempting to register for a room through the ASTRO system and in fact reserving 15 rooms in a hotel that has contracted with ASTRO for supposedly 'preferred rates.

43. Any generic provisions in the Contract allowing Defendant to unilaterally add or alter material provisions of the agreement are void and/or unenforceable as overly vague and lack mutuality.

44. The infliction of a \$200.00 per exhibitor penalty applied to at least 85 exhibitors is a material provision.

45. As a direct and proximate cause of the Defendant's breach of contract the Plaintiff suffered damages in at least the following particulars (1) \$117,500.00 in registration fees already paid; (2) Plaintiff has expended considerable hours and funds preparing for construction of the exhibits; (3) marketing materials specific to the exhibit; (4) travel costs for transportation to the site and (5) Plaintiff will lose business opportunities and future sales.

WHEREFORE, Plaintiff requests this Honorable Court to enter judgment in favor of the Plaintiff and against the Defendant to compensate the Plaintiff for its damages as result of the aforementioned breach and attempt to collect the unreasonable penalty fee. *Or, in the alternative*, to compel the Defendant to allow the Plaintiff's 85 exhibitors to enter the exhibit hall without having to pay the unreasonable penalty.

### **COUNT III**

#### **VIOLATION OF THE VIRGINIA CONSUMER PROTECTION ACT**

46. Plaintiff incorporates by reference prior paragraphs 1-45.
47. The Virginia Consumer Protection Act forbids certain misleading practices in any transaction occurring in Virginia.
48. Such practices are found in Va Code 59.1-200 (13) which forbids:  
  
Using in any contract or lease any liquidated damage clause, penalty clause or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, and damages or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations.
49. That the additional fee requested for not securing housing through the ASTRO website constitutes an unenforceable penalty in violation of the Act.
50. The Virginia Consumer Protection Act further forbids at Va. Code 59.1-200(14) the following actions:  
  
Using any other deception, fraud, false pretense, false promise or misrepresentation in connection with a consumer transaction.



51. On or about Thursday, June 24<sup>th</sup>, 2010 at 10:58 am Ms. Stacey Burrows representing the ASTRO Housing Center sent an e-mail to the Plaintiffs asking that Plaintiff 'reserve an exclusive 'Exhibitor Block' through the ASTRO Housing Center **"and take advantage of the preferred hotel rates and location'**.

52. This representation is not true in that the rates provided by the ASTRO Housing Center were not 'preferred' to other rates provided the Plaintiff at other hotels.

53. Defendant used the above deception to induce the Plaintiff to book hotel rooms through their service and charged a penalty if the Plaintiff refused to do so

54. The aforementioned sales practices are in violation of the Virginia Consumer Protection Act, specifically Va. Code 59.1-200(13) and (14).

55. As a direct and proximate cause of the Defendant's violation of the Virginia Consumer Protection Act the Plaintiff suffered damages in at least the following particulars (1) \$117,500.00 in exhibition booth fees already paid (2) Plaintiff has expended considerable hours and funds preparing for construction of the exhibits; (3) marketing materials specific to the exhibit; (4) travel costs for transportation to the site and (5) Plaintiff will loose business opportunities and future sales.

WHEREFORE, Plaintiff requests this Honorable Court to enter Judgment in favor of the Plaintiff and against the Defendant to compensate the Plaintiff for its damages as result of the aforementioned breach and attempt to collect the unreasonable penalty fee.

*Or, in the alternative*, to compel the Defendant to allow the Plaintiff's 85 exhibitors to enter the exhibit hall without having to pay the unreasonable penalty.

## **COUNT IV**

### **ESTOPPEL**

56. Plaintiff hereby incorporates prior paragraphs 1-55 by reference.

57. Defendant provided exhibitor registration badges without charge in all past ASTRO conventions and/or trade shows.

58. Plaintiff's manner of registration for the 2010 ASTRO trade Show was not materially different than the past trade shows.

59. Plaintiff relied upon the Defendants past practice of providing complimentary exhibitor badges.

60. The complimentary badges and the avoidance of the unreasonable \$200.00 penalty for each exhibitor was a material consideration for agreeing to purchase the exhibition floor space for approximately \$117,500.00.

61. Defendant has now changed its position and is requiring payment of the \$200.00 penalty for each of Plaintiff's 85 exhibitors.

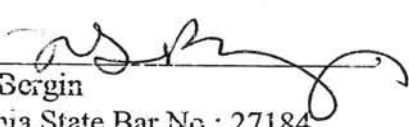
62. This change in position is inequitable and Defendant should be estopped from attempting to enforce the penalty payment.

### **JURY DEMAND**

Plaintiff hereby respectfully demands a trial by jury.

**BEST MEDICAL INTERNATIONAL:**

BY:

  
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