

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

American Roentgen Ray Society,  
Plaintiff,

v.

Marriott Hotel Services, Inc.  
Defendant.

CASE NO.

**JURY DEMANDED**

**COMPLAINT**

NOW COMES Plaintiff, American Roentgen Ray Society (“ARRS” or “Plaintiff”), by and through the undersigned counsel, complaining of Defendant Marriott Hotel Services, Inc. (“Marriott” or “Defendant”), and alleges as follows:

**INTRODUCTION**

1. In 2017, Marriott signed a contract with ARRS to provide guaranteed rooms and convention services for the ARRS 2023 annual meeting at the Marriott Wardman Park Hotel (the “Hotel”) in Washington, D.C. Exhibit A (filed under seal). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ARRS was satisfied with and relied upon these Marriott promises, it being important to ARRS to plan five-years ahead of time for what would be a significant 2000-member convention event.

2. By mid-2020, Marriott knew that the Hotel would be closing permanently. ARRS saw news reports to this effect, but Marriott told ARRS that the news was false and that the Hotel would reopen. But internally, as early as June 2020, Marriott acknowledged that it would have to honor its contractual promises to groups like ARRS.

3. In early January 2021, when the Hotel owner filed for bankruptcy, Marriott knew that the Hotel would not reopen. Marriott, however, misinformed ARRS that the Hotel would reopen later in 2021 and be available for the 2023 annual meeting.

4. Meanwhile, Marriott litigated with the owner, both before and after the owner's bankruptcy filing. In these court proceedings, Marriott openly acknowledged that with respect to group contracts like the ARRS one, it would be obligated to pay damages.

5. The owner settled with Marriott by paying Marriott \$18 million dollars meant, in part, to pay damages to groups like ARRS, but Marriott failed to make any payment to ARRS.

6. Marriott did not send ARRS any notices under their contract. Marriott denied that it had ever entered into any contract at all with ARRS, refused to pay liquidated damages of \$665,523, and told ARRS it had to take the matter up with the Hotel owner's lawyer. Marriott thereby breached its contract with ARRS.

7. On an accelerated basis, having been misinformed by Marriott for nearly a year, ARRS had to reschedule its 2023 annual meeting at another location. ARRS has incurred incremental costs (relative to the agreed costs for holding the meeting at the Hotel) in excess of the liquidated damages amount of \$665,523. ARRS is entitled to the larger of its actual damages or contractual liquidated damages.

8. ARRS's recoverable damages also include attorneys' fees, costs, and prejudgment interest from January 2021.

### **PARTIES**

9. Plaintiff ARRS is a District of Columbia non-profit corporation, with its principal place of business at 44211 Slatestone Ct., Leesburg, VA 20176.

10. Defendant Marriott is a Delaware corporation, with its principal place of business at 10400 Fernwood Road, Bethesda, Maryland 20817.

**JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1332 because there is complete diversity of citizenship between ARRS and Marriott and the amount in controversy is greater than \$75,000, exclusive of interest and costs.

12. This Court has personal jurisdiction over Marriott by virtue of the fact that Marriott does business in the Commonwealth of Virginia, has made or performed on contracts and promises substantially connected to the Commonwealth of Virginia, and/or has the requisite minimum contacts with the Commonwealth of Virginia.

13. Venue is proper in this district pursuant to 28 U.S.C § 1391(b) because a substantial part of the acts or omissions giving rise to the claims asserted occurred in this district.

14. In the contract at issue, the Parties agreed [REDACTED]

[REDACTED]

[REDACTED]

**FACTUAL BACKGROUND**

**A. The ARRS Annual Meeting for 2023**

15. ARRS, founded in 1900, is the first and oldest radiology society in the United States. The society has been a forum for progress in radiology since shortly after the discovery of the X-ray and is dedicated to the goal of the advancement of medicine through the science of radiology and its allied sciences.

16. The goal of ARRS is maintained principally through an annual scientific and educational meeting, which consists of instructional courses, scientific paper presentations, scientific exhibits, and commercial exhibits. The annual meeting serves as ARRS's primary in-person interface with its members and generates substantial revenue for ARRS.

17. Because of the large number of attendees (approximately 2000) and need for multiple conference rooms and gathering spaces, it is difficult and time-consuming for ARRS to find potential venues for the conference. Thus, ARRS plans each event about five years in advance. Losing a location, especially as the event approaches, can dramatically affect ARRS and its members, forcing ARRS to divert resources and time to find a suitable new venue on short notice.

18. In early 2017, ARRS begin to explore a location for its May 2023 annual meeting, five years in advance.

19. At the time, Marriott sales personnel communicated with ARRS about the prospect of holding the 2023 annual meeting at the Marriott Wardman Park. Marriott represented that the Wardman Park Marriott could provide accommodations for all ARRS needs for the 2023 meeting.

20. At all times in these communications, Marriott purported only to represent itself, one and the same with the “hotel,” and not on behalf of an entity that separately owned the Marriott Wardman Park. ARRS spoke only with Marriott personnel, never with anyone purporting to be or represent the entity that owned the Wardman Park Marriott.

21. ARRS relied on the communications with Marriott personnel in deciding to enter into a contract with Marriott for the 2023 annual meeting.

**B. The Contract Between ARRS and Marriott**

22. On July 27, 2017, ARRS and Marriott entered their contract for a “Group Sales Agreement” (the “Marriott Contract”). Exhibit A (filed under seal).

23. Marriott prepared and provided the Marriott Contract to ARRS for its signature.

24. The Marriott Contract is with Marriott, not any owner entity.







[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. Marriott Cancellation of the Marriott Contract**

45. In March 2020, the Hotel closed temporarily, due to the COVID-19 pandemic, with an announced plan by Marriott to reopen when it was deemed safe.

46. By June 2020, Marriott learned that the owner might close the hotel permanently for business reasons unrelated to the pandemic. This was not public knowledge at the time and Marriott did not share any such information with ARRS, which at that point had a reasonable belief that Marriott would honor the Marriott Contract for the 2023 meeting.



47. ARRS saw June 2020 public news about a possible Hotel closure, but Marriott told ARRS that the news reports were wrong and that the Hotel would be reopening (estimating August 2020), even though Marriott internally knew otherwise.

48. Meanwhile, at that same time in June 2020, Marriott internally assessed what the Hotel closure would mean for its group contracts such as the one with ARRS. In internal emails from June 2020, Marriott recognized its corporate obligation to pay liquidated damages under group contracts like the ARRS Marriott Contract in the event Marriott failed to relocate the group and cover any incremental costs.

49. On September 8, 2020, Marriott sued the owner in Maryland state court, claiming a breach of their long-term hotel management agreement (which ran at least through 2029) due to owner's alleged failure to fund certain working capital. In its complaint against the owner, Marriott characterized its demand of a management agreement termination fee from owner as, in part, Marriott's need "to relocate or terminate large group contracts." Exhibit B at ¶ 50.

50. Marriott continued to fully acknowledge its obligation to pay damages to groups like ARRS if future events had to be cancelled: "Permanent closure of the Hotel would further damage the value of Marriott's brand. When hotels unexpectedly exit the system, it causes *Marriott* to breach contracts with vendors, groups, and companies (among others), risking significant reputational harm (in addition to potentially significant financial harm)." *Id.* ¶ 103 (emphasis added).

51. On September 23, 2020, Marriott filed a Motion for a Preliminary Injunction to achieve specific performance of owner payment of these working capital amounts. In its Motion, Marriott reiterated that it, "*Marriott* . . . books groups and transient business [at the hotel],"

acknowledging that it carries the obligations for group contracts like ARRS. Exhibit C at 3 (emphasis added).

52. And in the transcript of the hearing on its Motion for Preliminary Injunction, Marriott told the Court: “Marriott is suffering irreparable harm to its reputation because of the lack of funds being provided by owner to the hotel to pay employees, to pay vendors, and to refund groups and guests and honor their deposits.” Excerpts attached hereto as Exhibit D at Tr. 12:16-19. “[T]erminating the management agreement and closing the hotel still causes damage to Marriott’s reputation because groups are still [*sic*] their reservations have not been honored, vendors still go unpaid, employees still get laid off. So terminating doesn’t solve the irreparable harm we’re seeking directly. . . . *It would mean paying to move and compensate all the groups that are signed up for events and conferences, weddings at the hotel, and there’s a very high cost to terminating a management agreement, none of which the owner is likely to pay.*” *Id.* at 14:7-21 (emphasis added).

53. The Court asked: “Why is there a cost associated with guest relocation?” To which Marriott replied: “Because these, we, during *the contracts with groups*, when we sign, you know, sign them up and – and this hotel is one that, you know, we have contracts on the books for 2030 at this point – and the contracts are binding on, on both parties. We are to deliver a hotel, you know, or meeting to them and have the space, and the rooms, and all the things we said, and they need to deliver their, you know, they need to deliver the group. . . . So if we are going to try to get out of those contracts, *basically breach those contracts and not deliver the hotel to them, then you know, it’s an anticipation that, in some circumstances, we would need to pay, we would need to pay kind of damages; it’s like, like, or the money to help relocate them to, you know, another hotel.*” *Id.* at 74:16-76:5 (emphasis added).

54. In November 2020, the Marriott sales account executive continued to incorrectly inform ARRS that the Hotel would be reopening, then predicting a March 2021 reopening. Marriott even told ARRS that they could not reschedule the 2023 annual meeting at any other location due to the Marriott Contract.

55. On or about January 11, 2021, the Hotel owner filed a voluntary petition for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code.

56. By that point in time, in early January 2021, Marriott knew that the Hotel would not reopen and that Marriott would not be able to fulfill the Marriott Contract for the 2023 annual meeting. As of January 11, 2021, Marriott had a contractual duty to notify ARRS of this fact and invoke any relevant clauses in the Marriott Contract.

57. Marriott, however, chose not to provide any such notice to ARRS, and instead continued to misinform ARRS about the situation. As late as February 1, 2021, the Marriott account executive told ARRS that ARRS was not allowed to look elsewhere to re-book its 2023 convention, even though Marriott knew that the management contract was terminated and the Hotel would not reopen.

58. In March 2021, increasingly anxious about needing to re-plan its 2023 meeting location, ARRS reached out to Marriott for clarification, and at that point, the account executive simply directed ARRS to contact a lawyer for the *owner*.

59. In late April 2021, ARRS received notices through the owner's bankruptcy proceeding about a deadline to file a Proof of Claim against the owner. To protect its rights, if any, against the owner, on May 21, 2021, ARRS filed a Proof of Claim in the bankruptcy proceeding.

60. On information and belief, during this time frame, Marriott was resolving issues directly with other groups that had contracts for future events at the Hotel. But Marriott decided to leave ARRS to endure the time and expense of seeking recovery in the owner bankruptcy proceeding.

61. On September 2, 2021, the owner (“Debtor” in the context of the bankruptcy proceedings) filed a motion to disallow the ARRS claim against it on the grounds that this was a *Marriott* contract obligation. Not surprisingly, the owner stated the Marriott Contract was made with Marriott, such that the owner did not have privity with, or a direct obligation to, ARRS.

62. The owner also noted that it had entered into a settlement with Marriott during the Chapter 11 case whereby the owner paid Marriott *\$18 million dollars* in full and final satisfaction of all of Marriott’s claims against the owner. The owner explained that the payment of this \$18 million dollars to Marriott *included* amounts Marriott owed to pay affected vendors and customers like ARRS.

63. In an August 31, 2021 motion for the court to approve the owner-Marriott settlement, the owner stated “that pursuant to the terms of the [hotel management agreement], all vendors and service suppliers for Hotel operations entered into contracts with Marriott and that, as a result, the Debtor has few (if any) direct obligations to satisfy the claims of Marriott’s creditors. Marriott disputes these assertions. Specifically, Marriott disputes Debtor’s position that contracts with the Hotel as well as *certain other group contracts* are contracts with Marriott and that creditors of the Hotel are allegedly creditors of Marriott.” (emphasis added). While neither side conceded to the other on this disagreement, the fact that Marriott *received \$18 million* speaks for itself and confirms that some of this money was meant for paying cancelled group contracts exactly like the one with ARRS.

64. In short, Marriott was specifically given money by owner to pay the ARRS damages but instead unlawfully kept and converted that money as its own.

65. On February 25, 2022, ARRS wrote to Marriott and requested payment of the liquidated damages amount of \$665,523, that amount being fixed from the Marriott Contract due to the Marriott cancellation date in the range of January 1, 2021 to December 31, 2022.

66. On March 15, 2022, Marriott declined to make such payment and argued that ARRS had to chase the owner in bankruptcy.

67. Not surprisingly, ARRS was unable to convince the owner to pay the damages arising from the Marriott Contract, as owner held to the point that this was a group contract entered into by *Marriott*. On November 15, 2022, the owner and ARRS signed a settlement agreement whereby ARRS released its claims against owner, in exchange for a relatively small payment, with the two parties agreeing that “nothing herein shall release Marriott from any liability for Claim No. 13 [relating to the Marriott Contract] or any ARRS Released Claims described herein. ARRS reserves all rights to prosecute the ARRS Released Claim in full against Marriott.”

68. Owner and ARRS agreed that it is *Marriott* who carries the obligations under the Marriott Contract, and that Marriott is responsible for payment of damages.

#### **D. ARRS’s Damages**

69. Due to Marriott’s breach of the Marriott Contract, Marriott is obligated to pay ARRS the greater of (a) liquidated damages of \$665,523; or (b) its actual damages in having to relocate and re-plan its 2023 annual meeting (less a setoff for the amount ARRS received in settlement with the owner).

70. The 2023 annual meeting will be held in May 2023 at another location, such that total damages are not yet known precisely, comparing the actual costs at the new hotel venue

versus the costs that had been fixed by the Marriott Contract at the Marriott Wardman Park. On current information and belief, those actual damages will be significantly in excess of the liquidated damages amount of \$665,523, taking into account higher room rates, food and beverage costs, travel amounts, mailings to members, and other costs to be determined at trial.

71. ARRS damages also include the attorney fees and costs incurred in having to pursue owner in the bankruptcy proceeding, in lieu of resolving the issue directly with Marriott under the Marriott Contract.

**COUNT I**  
**(Breach of Contract)**

72. ARRS repeats the allegations of the foregoing paragraphs as if fully set forth herein.

73. ARRS performed or satisfied all conditions and covenants required of it under the Marriott Contract.

74. Marriott breached the terms, covenants, promises, obligations, and provisions of the Marriott Contract.

75. As a direct and proximate result of Marriott's contractual breach, it is legally obligated to pay ARRS the larger of the amount of (a) the stipulated liquidated damages of \$665,523; or (b) because Marriott has failed to pay such liquidated damages on a timely basis, ARRS's actual damages, in an exact amount to be proven at trial.

76. Marriott is further obligated to reimburse ARRS for all of its attorneys fees and costs incurred in the owner bankruptcy proceeding.

77. Marriott intentionally and wantonly breached the Marriott Contract in bad faith, intending to impose its greater resources on a smaller customer, including possibly through

retaliation as to the scheduling of future ARRS meetings at any Marriott-managed or branded property.

78. As a result of the intentional, bad faith breach of contract, Marriott is further liable for extra-contractual damages incurred by ARRS.

**COUNT II**  
**(Unjust Enrichment)**

79. ARRS repeats the allegations of the foregoing paragraphs as if fully set forth herein.

80. Marriott represented that it knew it would be obligated to pay damages to customers like ARRS in light of the Hotel closure.

81. Marriott pursued the owner in litigation and bankruptcy proceedings to recover some amount from the owner to cover the damages that Marriott represented it would be contractually bound to pay customers like ARRS.

82. Marriott successfully recovered \$18 million from the owner to cover amounts owed by Marriott to customers like ARRS.

83. ARRS was one of the customers damaged by Marriott's contractual breach to provide event space at the Hotel for the 2023 ARRS event.

84. To date, Marriott has not paid ARRS any amount. Marriott is therefore unjustly enriched by retaining amounts intended to compensate customers like ARRS either for actual damages or agreed-to liquidated damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, prays that this Honorable Court afford it the following relief:

A. That Plaintiff have and recover of Defendant for all of its actual, consequential, compensatory, general, special, and other like damages, to the greatest extent permitted by law, in an amount no less than \$665,523, and up to the amount of Plaintiff's actual and consequential damages as detailed above, in an exact amount to be proven at trial;

B. That Plaintiff have and recover of Defendant all attorneys' fees and costs, as permitted by law;

C. That Plaintiff have and recover of Defendant pre-judgment interest, at the Virginia state court rate, running from no later than January 11, 2021 plus post-judgment interest at the rate this Court may apply; and

D. That Plaintiff have all other and further relief as may be just and proper, in the discretion of this Court.

Dated: April 18, 2023

Respectfully submitted,



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Kristin C. Davis (Virginia Bar No. 78419)  
Gary S. Thompson (*pro hac vice* application to be submitted)

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