

# IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

GENERAL RESOURCE CORPORATION, §  
Individually and in its representative  
capacity, §

Plaintiff, §

v. §

CIVIL ACTION

CITICORP VENDOR FINANCE, INC., §  
CITICORP VENDOR FINANCE, INC. as  
Successor in Interest to COPELCO CAPITAL, §  
INC., COPELCO CREDIT CORPORATION  
and COPELCO LEASING CORPORATION, §  
CITICORP VENDOR FINANCE, INC.  
as Successor in Interest to FIDELITY §  
LEASING, INC., PREMIER LEASE AND  
LOAN SERVICES INSURANCE AGENCY, §  
INC., GREAT AMERICAN ASSURANCE  
COMPANY, GAI INSURANCE COMPANY §  
LTD. and COPELCO REINSURANCE  
COMPANY, LTD., §

Defendants. §

NO. CV-2001-4204-JSJ

*John J. Miller*  
CITICORP VENDOR FINANCE, INC.

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STATE OF AL. MOBILE CO.  
I CERTIFY THIS  
PLEADING WAS FILED ON

## AMENDED COMPLAINT (6th)

COMES NOW Plaintiff, General Resource Corporation ("General Resource") and  
amends its Complaint as follows:

### ALLEGATIONS CONCERNING THE PARTIES

1. General Resource Corporation is incorporated in the State of Alabama with its  
principal place of business in Mobile County, Alabama.

2. Citicorp Vendor Finance, Inc. ("Citicorp") provides leasing programs through vendors of equipment, including vendors in Mobile County, Alabama. Citicorp is also the successor in interest to Copelco Capital, Inc., Copelco Credit Corporation, and Copelco Leasing Corporation (collectively "Copelco") and Fidelity Leasing, Inc. ("Fidelity"), companies that provided leasing programs through vendors of equipment. Citicorp, Copelco and Fidelity are collectively referred to herein as "Citicorp."

3. Premier Lease and Loan Services Insurance Agency, Inc. ("Premier") is an insurance broker and agent providing services and insurance products to Citicorp. Premier is the equipment insurance manager and agent for Citicorp with the power and authority to place and cancel insurance coverage for equipment covered by Citicorp leases and to bill and collect insurance charges in connection with the insurance. As equipment insurance manager and agent, within the line and scope of its authority, Premier managed and administered nationwide Citicorp's insurance program covering equipment leased to Citicorp customers, including customers in Mobile County, Alabama.

4. Great American Assurance Company (a/k/a Agricultural Insurance Company) ("Great American") is Premier's parent or affiliated company. Premier places insurance coverage with and Great American insures equipment leased to Citicorp customers, including customers in Mobile County, Alabama.

5. GAI Insurance Company, Ltd. ("GAI") is a subsidiary or affiliate of Great American. GAI is said to insure or reinsure equipment leased to Citicorp customers, including customers in Mobile County, Alabama.

6. Copelco Reinsurance Company, Ltd. ("Copelco Reinsurance") is a subsidiary or affiliate of Citicorp. Copelco Reinsurance is said to reinsure equipment leased to Citicorp customers, including customers in Mobile County, Alabama.

#### **ALLEGATIONS CONCERNING BACKGROUND FACTS**

7. Citicorp owns leases covering various types of equipment or other kinds of personal property. Since before January 1, 1997, Premier has assisted Citicorp in connection with an insurance program covering leased property.

8. Substantially similar provisions in the Citicorp leases require lessees to provide property insurance, but, if the lessees do not do so, give Citicorp the right to buy the insurance and charge the lessee in question.

9. The substantially similar provisions are analytically identical for purposes herein.

10. Citicorp contracts with Premier to provide administrative services for the insurance program and to place insurance coverage for those Citicorp lessees who do not provide their own insurance. For those lessees, Premier charges Citicorp grossly excessive premiums (paid to Great American) and fees. Citicorp then passes through and invoices

these amounts with interest to its lessees itemized on the invoice only as "insurance." However, upon receipt of the proceeds from the "insurance" charges, Citicorp retains a substantial portion.

11. This is done under the guise of a "subcontracting" relationship between Premier and Citicorp whereby Premier subcontracts with Citicorp for Citicorp to service Citicorp's own lessees. The amount retained by Citicorp from proceeds of the insurance charges is said to be for services performed under the subcontract and for interest not disclosed to Citicorp lessees.

12. Citicorp or its affiliate also receives substantial "profit sharing" payments from Great American funneled through offshore "shell" reinsurance companies (GAI and Copelco Reinsurance) that were set up by Citicorp, Great American and Premier for this improper purpose. By using the legal fiction of separate corporate entities through which profits from the insurance charge could be paid, Citicorp, Great American and Premier sought to conceal the excessive insurance charges. The "profits" are paid under the guise of payment by Great American of reinsurance premiums through GAI and to Copelco Reinsurance for nominal reinsurance of a portion of the risk of loss, when in fact the risk of a reinsured loss is so remote as to be nonexistent. In fact, Copelco Reinsurance has never paid a loss under the reinsurance agreement, although it has received millions of dollars in "reinsurance" premiums.



13. After an equipment lease is in place, Citicorp (through Premier) communicates with the lessees concerning the insurance through substantially similar form letters. Citicorp also communicates with lessees through substantially similar invoices setting forth the charge described as "insurance." No communication reveals that the charge to the lessee includes amounts for other than insurance and amounts received by Citicorp for nominal reinsurance.

14. As a result of the actions of Citicorp, Premier, Great American, GAI and Copelco Reinsurance, they have received substantial amounts over those amounts the Citicorp lessees contracted to pay.

**ALLEGATIONS CONCERNING TRANSACTIONS**  
**WITH GENERAL RESOURCE**

15. On or about June 19, 2001, General Resource entered into a lease agreement with Citicorp.

16. Under terms of the lease agreement, Citicorp leased to General Resource a used Minolta copier and document feeder for a period of 36 months at a monthly payment of \$65.00.

17. Under terms of the lease, General Resource agreed that, if it did not have property insurance covering the copier, Citicorp had the right, but not the obligation, to obtain such insurance and charge General Resource for all costs thereof.

18. The lease has a merger clause that provides that only written agreements signed by both parties are binding.

19. After the lease was in place, Citicorp (through Premier) sent General Resource a standard form letter saying that:

If your agent or broker does not confirm property insurance coverage on the equipment within thirty (30) days of the date of this letter, the equipment will continue to be insured under our property insurance policy. The insurance charge of \$9.58, which includes the premium and other related charges, will be added to each of your lease invoices.

20. General Resource never signed such a letter or agreed to pay more than the costs of insurance required under the lease.

21. Subsequently Citicorp sent standardized form invoices to General Resource that included an itemized charge of \$9.58 for insurance.

22. General Resource paid the insurance charges for a time, but then objected to them.

### **RULE 23 ALLEGATIONS**

#### **Definition of the Class**

23. Pursuant to Rule 23(b)(2) and (b)(3) of the Alabama Rules of Civil Procedure, General Resource brings this Complaint individually and on behalf of all persons or entities who paid an insurance charge to Citicorp from December 10, 1997 through June 25, 2004, which has not been fully refunded and whose last known address obtainable from the records of Citicorp is not located in California, excluding those persons or entities who became subject to a bankruptcy or similar proceeding during the terms of their leases, or whose leases

have become more than three hundred sixty (360) days delinquent or have otherwise been deemed uncollectible or charged off in full in accordance with Citicorp's standard business practices.

#### **Other Class Allegations**

24. This class action meets all the requirements of Rule 23(a) and Rule 23(b) of the Alabama Rules of Civil Procedure in that:

- a. The class is so numerous that joinder of all class members is impractical.
- b. The interest of the named Plaintiff and of all class members are identical. Plaintiff knows and appreciates its duties and responsibilities to the entire class pursuant to Rule 23 of the Alabama Rules of Civil Procedure. Plaintiff is committed to protect vigorously the rights of the class and will do so fairly and adequately. Plaintiff has been charged, and has paid, the insurance charge.
- c. Plaintiff's counsel are experienced in class action litigation.
- d. Plaintiff is an adequate representative.

- e. Plaintiff's claims are typical of those of the class members.
- f. Common questions of law and fact predominate over any individual issue.
- g. A class action will be superior to any other available method for fair and efficient adjudication of this controversy.
- h. No class member has a substantial interest in controlling prosecution of a separate claim.
- i. Class members who may have an individual interest may exclude themselves from the class upon receipt of notice under Rule 23(c)(2) of the Alabama Rules of Civil Procedure.
- j. Potential class management difficulties are insignificant weighed against the impossibility of affording adequate relief to the Plaintiff and class members. It is not apparent to class members and Defendants conceal that the amount of the insurance charges greatly exceeds an appropriate



amount. The amounts at issue for each class member are relatively small.

- k. The Defendants have acted or refused to act on grounds generally applicable to the class.

**COUNT 1 (Against Citicorp)**

25. General Resource adopts by reference Paragraphs 1 through 24 hereinabove.
26. The insurance provision in the leases limits the insurance charge to an amount for insurance.
27. Citicorp breached the leases in that the insurance charges to lessees are for amounts other than for insurance and/or for amounts that are greater than an appropriate charge for insurance set in good faith.

**COUNT 2**

**(Against Premier, Great American, GAI and Copelco Reinsurance)**

28. General Resource adopts by reference Paragraphs 1 through 27 hereinabove.
29. By counseling and assisting Citicorp to charge lessees excessive amounts for insurance, Premier, Great American, GAI and Copelco Reinsurance tortiously interfered with the contracts between Citicorp and its lessees.
30. Defendants' conduct was malicious, oppressive or willful.

**COUNT 3 (Against Citicorp and Premier)**

31. General Resource adopts by reference Paragraphs 1 through 30 hereinabove.
32. Citicorp and Premier negligently structured, managed and administered the insurance program so as to result in excessive insurance charges to the Plaintiff class.

**COUNT 4 (Against Citicorp and Premier)**

33. General Resource adopts by reference Paragraphs 1 through 32 hereinabove.
34. Citicorp and Premier wantonly structured, managed and administered the insurance program so as to result in excessive insurance charges to the Plaintiff class.
35. Defendant's conduct was malicious, oppressive or willful.

**COUNT 5 (Against Citicorp and Premier)**

36. General Resource adopts by reference Paragraphs 1 through 35 hereinabove.
37. Citicorp and Premier, under a duty to speak, suppressed material facts from the Plaintiff class - that Citicorp's insurance charges included amounts for other than insurance and/or amounts in excess of an appropriate charge for insurance set in good faith.
38. Without knowledge, the Plaintiff class acted on the omission by paying grossly excessive charges, although the Plaintiff class was not obligated to do so.
39. Citicorp and Premier's conduct was malicious, oppressive or willful.

**COUNT 6 (Against Citicorp and Premier)**

40. General Resource adopts by reference Paragraphs 1 through 39 hereinabove.

41. The actions of Citicorp and Premier caused General Resource and the class members to wrongfully pay money or to pay money by mistake to Citicorp and/or Premier in the amount that the insurance charges to lessees included amounts for other than insurance and/or exceeded an appropriate charge set in good faith.

**COUNT 7****(Against Citicorp, Premier, Great American, GAI and Copelco Reinsurance)**

42. General Resource adopts by reference Paragraphs 1 through 41 hereinabove.

43. Citicorp, Premier, Great American, GAI and Copelco Reinsurance have conspired to charge Citicorp lessees grossly excessive insurance charges and to conceal the excessive charges from lessees.

44. Defendants' conduct was malicious, oppressive or willful.

**COUNT 8 (Against Citicorp, Great American, GAI and Copelco Reinsurance)**

45. General Resource adopts by reference Paragraphs 1 through 44 hereinabove.

46. General Resource, individually and on behalf of the class members, petitions the Court to declare that the insurance charge is grossly excessive, to declare the amount of the excess charges, to order restitution of the excess charges to General Resource and the

Plaintiff class, and to enjoin and restrain Defendants from their practice of charging and collecting amounts other than an appropriate amount for insurance only.

WHEREFORE, General Resource, individually and on behalf of the class described above, pray for judgment against Citicorp, Premier, Great American, GAI and Copelco Reinsurance and in favor of General Resource and class members, certifying this action as a class action, pursuant to Rule 23 of the Alabama Rules of Civil Procedure, with the class identified above, and that the court enter judgment in favor of the Plaintiff and class members and against Defendants on the class issues, pre-judgment interest, costs, equitable relief, and attorneys' fees from the Common Fund, and for such further relief that is due in equity or under contract, statute and law.

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**PLAINTIFFS AND CLASS MEMBERS DEMAND A TRIAL BY JURY AS TO ALL CLAIMS.**



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on:

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by U.S. Mail, postage prepaid and properly addressed, this 22 day of July, 2004.

