

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

SLOCUM PROPERTIES, INC.,

Plaintiff,

vs.

CASE NO. CV-02-1133

KYOCERA MITA AMERICA, INC.,  
QUALITY BUSINESS SYSTEMS,  
INC., and GENERAL ELECTRIC  
CAPITAL CORP.,

Defendants.

AMENDED COMPLAINT

Plaintiff Slocum Properties, Inc., individually and on behalf of all other persons and entities similarly situated, brings this Amended Class Action Complaint against Defendants and alleges as follows:

THE PARTIES

1. Plaintiff Slocum Properties, Inc. ("Slocum") is a corporation qualified under the laws of the State of Alabama doing business in Baldwin County Alabama. Plaintiff, in its individual and representative capacity, brings this case against Defendant Kyocera Mita America, Inc. ("Kyocera") and General Electric Capital Corp. (GECC) to recover excessive insurance charges improperly and wrongfully imposed by Defendants.

2. Defendant Kyocera is a leasing company which transacts business in a number of states, including Alabama. Kyocera has thousands of leasing customers ("Customers") who lease copiers from them, or from affiliated entities where Kyocera services the accounts.

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3. Defendant GECC receives an assignment of the leases between Kyocera and customers, and is responsible for the imposition of the insurance charges as the representative and/or agent of Kyocera.

4. Defendant Quality Business Systems, Inc. ("Quality") is an Alabama corporation with its principle place of business in Mobile County, Alabama. Quality sold the subject copier to Plaintiff.

#### FACTUAL ALLEGATIONS

5. In the normal course and scope of its business, and pursuant to substantially uniform agreements with its customers, Defendant Kyocera itself or through GECC on its behalf, imposes insurance charges for a class of its lease customers. Defendant Kyocera and/or GECC on its behalf, imposed insurance charges on Plaintiff, without providing sufficient opportunity for Slocum to prove that the copier leased to him had been insured. Further, the insurance charges imposed on Slocum and the class as a whole, greatly exceed the cost of insurance and any cost associated with procuring the same as provided for under the contract of lease with the Plaintiff and the class.

6. In obtaining insurance for its customers, Defendants Kyocera and GECC are under the duty to obtain on behalf of its customers the most appropriate and best rate and coverage available to them, having assumed the duty to insure said property. Defendants Kyocera and GECC breached its duty to Slocum, and to the class as a whole, by failing to discharge its duty to provide only appropriate and applicable insurance coverage, and to obtain coverage at the best possible rate for its customers.

7. Instead of obtaining the best rate possible, the Defendants Kyocera and GECC impose upon their customers unreasonable, unnecessary, improper and excessive charges. Defendants' uniform practice of charging excessive and reasonable charges for the placement of insurance is intended to generate increased profits for the Defendants at the expense of its customers. This practice and course of conduct is not disclosed in or authorized by the terms of the lease between the Defendant Kyocera and its customers, including the Plaintiff. Moreover, Defendant Kyocera intentionally concealed and fails to disclose its insurance practices from its customers including the Plaintiff.

8. Plaintiff leased a copier from Quality acting as agent for the Defendant Kyocera. The Plaintiff entered into a lease agreement which is substantially the same agreement used by other customers of the Defendant which does not disclose or authorize the insurance charge practices as described above. As such, the Plaintiff has been sued for and charged for insurance charges which he did not agree to, and acted upon by his detriment by executing a lease agreement and potentially becoming obligated under the same.

9. Defendant Quality misrepresented the features and abilities of the subject copier and Plaintiff agreed to lease the copier in reliance on these representations.

#### CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action as a class action individually and on behalf of all other Customers of Defendant Kyocera who are similarly situated. The proposed class which Plaintiff seeks to represent is defined as follows:

All persons and entities who have or have had a lease agreement with Kyocera, or its predecessors, and who have incurred excessive insurance charges for the last six years (the "Class").

11. Excluded from the Class are the Defendants, any subsidiaries and any affiliated entities; any entity in which any of them has a controlling interest; any employees, officers, or directors of any of them, and any of their legal representatives, heirs, successors and assigns; and Plaintiffs' class counsel.

12. This action may properly be maintained as a class action pursuant to Rule 23 of the Alabama Rules of Civil Procedure.

13. The members of the Class are so numerous that joinder of the individual claims is impractical. Plaintiff believes that there are thousands of Customers who have incurred these forced insurance charges. The precise number of Class members and their addresses are presently unknown to the Plaintiffs, but can be easily obtained from Defendant Kyocera's files, records and data bases. Class members can be notified of the pendency of this action by mailed and/or published notice.

14. Common questions of law and fact exist as to all members of the Class. These questions predominate over questions affecting only individual Class members. These common legal and factual questions include, but are not limited to:

- (a) whether Defendants Kyocera and GECC breached its contractual agreement with its Customers by forcing insurance charges when none were called for under the agreement;

- (b) whether Defendants Kyocera and GECC failed to disclose and/or suppressed from its Customers the existence and nature of its practice of forcing excessive insurance charges to increase its revenues;
- (c) whether Defendants Kyocera and GECC had a duty to disclose material facts concerning this forced overdraft practice to its customers;
- (d) whether Defendants Kyocera and GECC should be enjoined from engaging in such forced insurance practices with respect to its Customers;
- (e) the nature and amount of compensatory and punitive damages;
- (f) whether Defendants Kyocera and GECC should be required to disgorge the benefit it has obtained from its wrongful conduct.

15. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and each of the members of the Class have incurred forced, improper insurance charges, which practice was suppressed and concealed from Customers by Defendants Kyocera and GECC. Plaintiff and each of the members of the Class have sustained monetary damages resulting from Defendants' forced insurance practices.

16. Plaintiff is an adequate representative of the Class because (a) its interests do not conflict with the interests of the individual members of the Class it seeks to represent; (b) it has retained counsel who are competent and experienced in complex class action litigation; and (c) it intends to prosecute this action vigorously. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and its counsel.

17. The class action device is superior to other available means for the fair and efficient adjudication of the claims of the Plaintiff and the Class. Absent a class action, most members of

the Class would find the cost of litigating their claims to be prohibitive and would not have an effective remedy at law. Because of the size of the individual Class members' claims, few could afford to seek legal redress for the wrongs alleged herein. Without a class action, the Class members will continue to suffer losses and Defendants' violations of the law will have occurred and will continue without remedy. Hence, class treatment is the only method by which all of the Class members' common claims can be economically and expeditiously adjudicated in one proceeding, thus precluding the possibility of multiple trials and inconsistent judgments.

### COUNT ONE

#### Breach of Contract

18. Plaintiff, individually and on behalf of all others similarly situated realleges each and every allegation above as if fully set forth in this cause of action.

19. Defendant Kyocera and GECC have substantially uniform agreements or contracts with Class members, including Plaintiff, and has breached the contract with each and every Class member, including Plaintiff, by assessing excessive and improper insurance charges. Defendant is not authorized under the terms of its agreements with the Plaintiff and Class members to force and impose said excessive charges, and Defendants failed to disclose adequately its practice to the Plaintiff and Class members.

20. As a proximate result of said breach by Defendant, the named Plaintiff and the Class members have suffered injuries consisting of improperly assessed insurance charges and other consequential damages.

WHEREFORE, Slocum Properties, Inc., individually and as a member of the Class and on behalf of all Class members, demands judgment against Defendants Kyocera and GECC and seeks general compensatory damages in excess of the jurisdictional limits of this Court, plus interest and costs, but in all events less than \$75,000.00 per class member.

## COUNT TWO

### Fraudulent Suppression

21. Plaintiff, individually and on behalf of all others similarly situated, realleges each and every allegation above as if fully set forth in this cause of action.

22. Defendants fraudulently concealed from and/or failed to disclose to Plaintiff and the Class its practice of imposing additional and excessive insurance charges.

23. Defendants were under a duty to Plaintiff and the Class to disclose its practices because (a) Defendants were in a superior position to know the true state of the facts; (b) Defendants made uniform incomplete and misleading disclosures about its practices to Plaintiff and the Class; and (c) Defendants fraudulently and actively concealed its practices from Plaintiff and the Class.

24. The facts concealed and/or not disclosed by Defendants to Plaintiff and the Class are material facts in that a reasonable person would have considered each of these facts to be important in deciding whether to open or to maintain an account with Defendants and in accepting as justified and paying the imposed charges.

25. Defendants intentionally concealed and/or failed to disclose the true nature of its practices for the purpose of inducing Plaintiff and the Class members to open and maintain lease accounts with Defendants, and Plaintiff and the Class justifiably acted or relied upon to their

detriment the concealed and/or nondisclosed facts as evidenced by their opening and maintaining of accounts with Defendant and their acceptance of insurance charges as justified and their payment of the same.

26. As a proximate result of Defendants' misconduct, Plaintiff and the Class have suffered actual damages in that they have incurred excessive insurance charges.

WHEREFORE, Plaintiff Slocum Properties, Inc., individually and on behalf of all other Class members, demands judgment against Defendants and seeks general compensatory and punitive damages in excess of the jurisdictional limits of this Court, but in all events less than \$75,000.00 per class member.

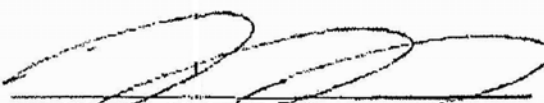
### COUNT THREE

#### **Fraud**

27. In addition to misrepresentation regarding the insurance and coverage, Defendants misrepresented the features and abilities of the subject copier.

WHEREFORE, Plaintiff Slocum Properties, Inc. demands judgment against Defendants and seeks general compensatory and punitive damages in excess of the jurisdictional limits of this Court but in all events less than \$75,000.00.

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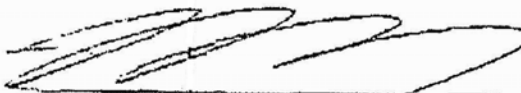
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(NIC012)



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PLAINTIFF RESPECTFULLY REQUEST  
A TRIAL BY JURY.

  
STEVEN L. NICHOLAS

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 20 day of July, 2002, served a copy of the foregoing pleading on all counsel listed below by mailing same by United States mail, properly addressed, and first class postage prepaid.

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