

## Deloitte Aims To Shift Blame In \$100M Ameriquest Suit

By Jonathan Randles

*Law360, Los Angeles (July 18, 2012, 8:40 PM ET)* -- Deloitte & Touche LLP won approval Wednesday to file counterclaims against SBP Capital Corp. seeking to minimize its potential liability in a \$100 million lawsuit accusing the accounting firm of providing bad tax advice related to SBP precursor Ameriquest Capital Corp.'s sale of mortgage-backed securities.

Attorneys representing Deloitte told Los Angeles Superior Court Judge Ronald M. Sohigian that they will file a cause of action against SBP Capital and ACC Capital Holdings Corp. for equitable indemnity. Deloitte claims Ameriquest is solely responsible for the tax liability at issue in the underlying complaint.

SBP Capital, formerly known as Ameriquest, sued Deloitte in June 2011, alleging the auditing firm failed to report hundreds of millions of dollars of taxable income "imputed to Ameriquest under the tax laws", according to the complaint.

The faulty advice allegedly exposed Ameriquest to tens of millions of dollars in additional taxes, interest and penalties that could have been avoided had Deloitte provided adequate tax advice, the lawsuit said.

Ameriquest entered into a consent agreement with the IRS in October 2009 requiring the company recognize almost \$100 million in additional income through the 2007 tax year and tens of millions of dollars in additional "phantom income" in subsequent tax years.

Deloitte was accused of negligence, negligent misrepresentation, breach of contract and breach of fiduciary duty in its role in handling Ameriquest's tax preparations

But in its counterclaims against SBP Capital and ACC Capital Holdings, Deloitte says Ameriquest made business decisions that led to its own tax liability. Ameriquest made billions of dollars issuing subprime mortgages, pooling those loans and selling them to investors as mortgage-backed securities using a structure known as a real estate mortgage investment conduit, Deloitte said.

Ameriquest "made all of the strategic business decisions that led to the alleged tax liability at issue here" Deloitte said. Ameriquest also chose the method for issuing residual interest that created the alleged tax liability, according to the counterclaims.

Attorneys representing Deloitte declined to comment following the hearing. An attorney representing SBP Capital and ACC Capital Holdings did not immediately return a message seeking comment.

SBP Capital and ACC Capital Holdings are represented by J. Michael Hennigan, Laura Lindgren, Michael Swartz and David M. Ross of McKool Smith Hennigan P.C.

Deloitte is represented by Miles N. Ruthberg, Robert W. Perrin and Brian T. Glennon of Latham & Watkins LLP.

The case is SBP Capital Corp. et al. v. Deloitte & Touche USA LLP et al., case number BC463198, in the Superior Court of California, County of Los Angeles.

--Editing by Richard McVay.

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