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## Suit Over Flood Insurance Premium Taxes Sent To SC

By **Morgan Bettex**

Law360, New York (July 07, 2009) -- A federal judge in Pennsylvania has transferred to the South Carolina district court a case challenging the Municipal Association of South Carolina's practice of collecting business license taxes on flood insurance premiums, ruling that the public interest favors transfer to the state that authorizes the tax at issue.

Although Judge Timothy J. Savage of the U.S. District Court for the Eastern District of Pennsylvania refused to dismiss the suit brought by the Harleysville Mutual Insurance Co. against MASC, he agreed to transfer the case to federal court in South Carolina where MASC and the municipalities it represents are located, according to an opinion signed July 2.

The Harleysville, Pa.-based insurer filed the suit in April, seeking declaratory judgment that MASC's practices of assessing, imposing and collecting business license taxes on flood insurance premiums paid on policies insuring properties in South Carolina pursuant to the National Flood Insurance Program is prohibited by federal law and the U.S. Constitution.

As mandated by South Carolina law, the nonprofit MASC administers the insurance tax collection program on behalf of municipalities and collects taxes from insurance companies that write property and casualty policies in those municipalities.

Among the premiums taxed are those paid on flood insurance policies issued as part of the program underwritten by the Federal Emergency Management Agency.

According to Harleysville, federal law preempts the state law that enables the imposition of the tax.

In addition to declaratory judgment, Harleysville seeks a refund of all business taxes it paid to MASC on NFIP premiums for the tax years 2005 through 2007.

The suit does not mark the first dispute over the tax.

In April 2007, Judge Matthew J. Perry Jr. of the U.S. District Court for the District of South Carolina ruled that an insurance company issuing policies in the flood insurance program is not exempt from the tax.

Because municipal license taxes and fees are not a tax on the federal government, federal law does not preempt the claim for such taxes, the court held.

Since that ruling, MASC has launched various actions, all of which have been consolidated before Judge Perry, against insurance companies to collect taxes on premiums for flood insurance.

Seeking dismissal of Harleysville's complaint, MASC argued that there was neither general nor specific jurisdiction over it.

In lieu of deciding the personal jurisdiction issue, Judge Savage concluded that private and public interest factors weighed in favor of transferring the suit to South Carolina, where the state law central to the dispute is enforced.

It appears that the motivating factor in Harleysville's selection of the Pennsylvania forum is to avoid Judge Perry's 2007 ruling, Judge Savage wrote.

"Harleysville understandably perceives Judge Perry's ruling as an impediment to its prevailing," the opinion said.

Because counsel for Harleysville indicated that little testimony from witnesses would be necessary, factors regarding the ease of access to the sources of proof, convenience of the parties, availability of compulsory process and convenience of the witnesses are not implicated in the transfer analysis, Judge Savage said.

The court also pointed out that judicial economy and consistency favored the

transfer because the issue has already been decided by Judge Perry.

"To have another district court, which is not a circuit of appeals, consider the same issue is inconsistent with principles of comity and economy," Judge Savage concluded, adding that if Harleysville wants a "fresh look" at the issue in the suit, it can do that from the circuit court.

Rob Tyson, an attorney for MASC, said he was pleased with the ruling.

Counsel for Harleysville did not return requests for comment Tuesday.

Harleysville is represented by Blank Rome LLP.

MASC is represented by Sowell Gray Stepp & Laffitte LLC and Pepper Hamilton LLP.

The case is Harleysville Mutual Insurance Co. v. Municipal Association of South Carolina, case number: 09-cv-01712, in the U.S. District Court for the Eastern District of Pennsylvania.