

**SIDLEY AUSTIN LLP**

787 Seventh Avenue  
New York, New York 10019  
(212) 839-5300 (tel.)  
(212) 839-5599 (fax)  
Andrew P. Propps

**Hearing Date: December 5, 2019 at 10:00 a.m.**

*Counsel to Deloitte Touche Tohmatsu Limited*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re:</b>	:
	:
<b>AEGEAN MARINE PETROLEUM NETWORK</b>	:
<b>INC., <i>et al.</i>,</b>	:
	:
<b>Debtors.<sup>1</sup></b>	:
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Chapter 11  
Case No. 18-13374 (MEW)  
(Jointly Administered)

**JOINDER OF DELOITTE TOUCHE TOHMATSU LIMITED TO  
DELOITTE GREECE'S LIMITED OPPOSITION TO APPLICATION BY THE  
AEGEAN LITIGATION TRUST FOR ENTRY OF AN ORDER PURSUANT TO  
FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004 AUTHORIZING  
EXAMINATION AND RELATED DISCOVERY OF DELOITTE**

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of each Debtor's tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://dm.epiq11.com/aegean>.

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Deloitte Touche Tohmatsu Limited (“DTTL”), by and through its undersigned counsel, hereby files this Joinder (the “Joinder”) to Section II of Deloitte Certified Public Accountants, S.A.’s (“Deloitte Greece”) *Limited Opposition* [Dkt. No. 633] (the “Deloitte Greece Opposition”)<sup>2</sup> to Application by the Aegean Litigation Trust for Entry of an Order Pursuant to Federal Rule of Bankruptcy Procedure 2004 Authorizing Examination and Related Discovery of Deloitte (Dkt. No. 616) (the “Application”).<sup>3</sup> In support hereof, DTTL respectfully represents as follows:

### **INTRODUCTION**

1. By the Application, Peter Kravitz, Litigation Trustee (the “Trustee”) for the Aegean Litigation Trust, seeks a broad swath of documents from three entities—Deloitte Greece, Deloitte & Touche LLP (“Deloitte U.S.”), and DTTL (together, the “Deloitte Parties”)—based on Deloitte Greece’s role as auditor for Aegean Marine Petroleum Network Inc. (“Aegean”) for fiscal years 2006 through 2015. The Trustee also seeks similar discovery from PricewaterhouseCoopers S.A. (“PwC-Greece”), PricewaterhouseCoopers LLP (“PwC-US”), and PricewaterhouseCoopers International Limited (“PwCIL”) (together, the “PwC Parties”), based on PwC-Greece’s role as auditor for Aegean for fiscal years 2016 and 2017. *See* Dkt. No. 617 (the “PWC Application”).

2. DTTL, a UK private company limited by guarantee, is not an accounting firm, does not provide services to clients, and does not issue audit opinions.<sup>4</sup> Instead, it coordinates the

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<sup>2</sup> In addition to joining the Deloitte Greece Opposition as to Section II thereof, in an effort to reduce duplicative briefing and the accompanying burden on the Court, DTTL below joins in and incorporates certain arguments advanced by the PwC Parties (as defined herein) in opposition to the PwC Application (as defined herein). *See PricewaterhouseCoopers International Limited’s Objection to the Aegean Litigation Trust’s Rule 2004 Application* [Dkt. No. 637] (the “PwCIL Objection”); *Objection of PricewaterhouseCoopers LLP to Application by the Aegean Litigation Trust for Entry of an Order Pursuant to Federal Rule of Bankruptcy Procedure 2004 Authorizing Examination and Related Discovery of PwC* [Dkt. No. 635] (the “PwC-US Objection”); *Limited Opposition of PricewaterhouseCoopers Auditing Company S.A. to Application by the Aegean Litigation Trust for Entry of an Order Pursuant to Federal Rule of Bankruptcy Procedure 2004 Authorizing Examination and Related Discovery of PwC* [Dkt. No. 630] (the “PwC-Greece Opposition” and, together, the “PwC Objections”).

<sup>3</sup> Capitalized terms not defined herein have the meanings ascribed to them in the Application.

<sup>4</sup> *See* <https://www2.deloitte.com/global/en.html> (“Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (‘DTTL’), its global network of member firms, and their related entities. DTTL (also referred to as ‘Deloitte

relationships among individual firms within the Deloitte network. That Deloitte network includes Deloitte Greece and Deloitte U.S. Each of DTTL, Deloitte Greece, and Deloitte U.S. are legally separate and independent entities. DTTL was never party to an engagement letter with Aegean or any of the other Debtors. *See Declaration of Thomas N. Kidera in Support of the Deloitte Greece Opposition* [Dkt. No. 633-1] (the “Kidera Declaration”), Ex. A [Dkt. No. 633-2].<sup>5</sup> Indeed, Aegean never had any relationship with DTTL; any relationship that Aegean had with any Deloitte Party was with Deloitte Greece. DTTL is not a creditor, nor is it otherwise a party, in these chapter 11 cases.

3. For the reasons stated below and in the Deloitte Greece Opposition and the PwC Objections as incorporated herein, the Application should be denied.

### **JOINDER**

4. **No Post-Confirmation Jurisdiction.** By the Application, the Trustee, trustee of a post-confirmation trust existing alongside the reorganized Debtors, seeks to obtain discovery relating to prepetition causes of action.<sup>6</sup> Such causes of action exceed this Court’s post-confirmation jurisdiction because they do not affect the administration of the Debtors’ estates, such that an examination pursuant to Federal Rule of Bankruptcy Procedure 2004 (“Rule 2004”) is inappropriate. DTTL joins the arguments in that regard made in Section II(a) of the Deloitte Greece

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Global’) and each of its member firms are legally separate and independent entities. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.”)

<sup>5</sup> DTTL understands that Exhibit A is consistent with the other engagement letters between Deloitte Greece and Aegean.

<sup>6</sup> DTTL believes that many of the Trustee’s specific document requests directed to and topics for examination of, DTTL are overbroad or otherwise improper. *See, e.g.*, App. Ex. 1, Doc. Req. No. 10 (demanding “[a]ll Documents and/or Communications relating to REMAT FZE and/or Tamer Marei”). DTTL reserves any such objections to the scope of these requests and topics and will object as appropriate to any subpoena that might be issued to DTTL pursuant to the Application.

Opposition and in Section I of the PwC-US Objection, Section I of the PwCIL Objection, and Section II(B) of the PwC-Greece Opposition.

5. **Pending Proceeding Rule.** The discovery requested from DTTL in the Application could also be sought in litigation commenced by the Trustee against certain former officers and directors of Aegean and pending in federal district court. *See Kravitz v. Tavlarios*, No. 19 Civ. 08438 (S.D.N.Y. Sept. 12, 2019) (the “SDNY Trustee Action”). In that regard, much of the discovery sought in the Application relates directly to the Trustee’s claims in the SDNY Trustee Action. *Compare, e.g.*, App., Exs. 1, 3, 5, Doc. Req. No. 9 to DTTL, Deloitte U.S., and Deloitte Greece, respectively (seeking all documents relating to OilTank Engineering & Consulting Ltd.) *with* S.D.N.Y. Trustee Action Compl. ¶ 31-34, 38 (attached as Ex. 2 to the *Declaration of Jason C. Hegt in Support of the PwC-US Objection* [Dkt. No. 636]). The relief requested in the Application is therefore barred by the so-called “pending proceeding” rule. DTTL joins the arguments made in Section II of the PwC-US Objection, paragraphs 15-16 of Section II(A) of the PwCIL Objection, and paragraphs 40-48 of Section II(B) of the PwC-Greece Opposition.

6. **No Good Cause.** The Trustee separately has not demonstrated—nor can he demonstrate—“good cause” for obtaining Rule 2004 discovery from DTTL. The requested discovery is not “necessary” for the Trustee’s pursuit of claims (*see* Deloitte Greece Opp. § II(b), ¶¶ 39-41; PwCIL Obj. § II(A); PwC-US Obj. § III, ¶¶ 34-35; PwC-Greece Opp. § II(B), ¶¶ 36-39), nor has the Trustee established that any incremental benefit he may obtain through Rule 2004 discovery outweighs the burden on DTTL (*see* Deloitte Greece Opp. § II(b), ¶¶ 39-40; PwCIL Obj. § II(B); PwC-US Obj. § III, ¶ 36).

7. Indeed, the Trustee has made no showing *at all* of “good cause” with respect to DTTL itself. DTTL is not a creditor of, and has no other relationship with, the Debtors. DTTL was

never engaged as Aegean's auditor, never audited or otherwise issued any opinion on Aegean's financial statements, and never assumed any duties or obligations to the Debtors.

8. The Trustee relies solely on a purported "May 4, 2014 engagement letter" that the Trustee claims "specifically contemplates services to be provided by Deloitte U.S. and DTTL and sets forth estimated fees related to those entities." App. ¶ 12. This is simply inaccurate. As Deloitte Greece has set forth, no such engagement letter exists. *See* Deloitte Greece Opp. ¶ 10 n.4. And the engagement letters that *do* exist do not identify DTTL as an entity that was expected to provide audit services. *See, e.g.,* Kidera Decl., Ex. A (May 25, 2015 engagement letter). To the contrary, that letter makes clear that the entities providing audit services are Deloitte Greece, Deloitte Belgium, "Deloitte USA or Deloitte UK." Deloitte UK is the Deloitte network firm that provides audit services in the United Kingdom. It is *not* DTTL, which does not provide client services at all.

9. Therefore, the entire basis of the Trustee's request for discovery from DTTL collapses: even if the Trustee could obtain the requested Rule 2004 discovery from "[a]ny third party who has a relationship with a debtor," App. ¶ 27 (quoting *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004)), DTTL had no "relationship with a debtor" and Rule 2004 discovery is inappropriate. DTTL respectfully directs the Court to further arguments in Section II(B) of the PwCIL Objection, particularly paragraphs 17 and 20 thereof.

#### **RESERVATION OF RIGHTS**

10. DTTL does not waive, and hereby reserves, any and all rights with respect to (a) the Application, including the right to advance additional arguments before or during the hearing on the Application, (b) any subpoena that may be issued as to DTTL pursuant to any order approving the Application, and (c) any action by the Trustee naming or otherwise implicating

DTTL. Without limitation to the foregoing, by filing this Joinder, DTTL does not waive, and hereby reserves, all arguments regarding this Court's jurisdiction over DTTL and any action by the Trustee, DTTL's right to trial by jury, any right to arbitration, and DTTL's right to have any matter decided by the District Court to the extent this Court lacks statutory and/or constitutional authority to decide such matter absent DTTL's consent.

**CONCLUSION**

For all of the foregoing reasons, the Application should be denied.

Dated: New York, New York  
November 27, 2019

SIDLEY AUSTIN LLP

By: Andrew P. Propps  
Andrew P. Propps  
(apropps@sidley.com)  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599

*Counsel to Deloitte Touche Tohmatsu Limited*