

Starr Russia Invs. III B.V. v Deloitte Touche Tohmatsu Ltd.
2019 NY Slip Op 33166(U)
October 23, 2019
Supreme Court, New York County
Docket Number: 652251/2017
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 53EFM-----X
STARR RUSSIA INVESTMENTS III B.V.,

INDEX NO. 652251/2017

Plaintiff,

MOTION DATE 10/23/2019

- v -

DELOITTE TOUCHE TOHMATSU LIMITED, DELOITTE
LLP, DELOITTE CIS LIMITED, DELOITTE CIS HOLDINGS
LIMITED, ZAO DELOITTE & TOUCHE CIS013 014 016
MOTION SEQ. NO. 017 018 019

Defendant.

DECISION + ORDER ON
MOTION-----X
HON. ANDREW BORROK:The following e-filed documents, listed by NYSCEF document number (Motion 013) 245, 246, 247, 248,
249, 250, 251, 252, 253, 254, 255, 256, 257, 314, 428, 429, 430, 431, 432, 433, 434, 435, 490, 491,
492

were read on this motion to/for

DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 014) 259, 260, 261, 262,
263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282,
283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302,
303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 315, 316, 448, 449, 450, 451, 452, 453, 454,
455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474,
475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489

were read on this motion to/for

DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 016) 402, 403, 404, 405,
406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 424, 427, 436, 437, 438, 439, 440, 441, 442,
443, 444, 445, 446, 447, 497

were read on this motion to/for

DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 017) 323, 324, 325, 326,
327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346,
347, 348, 422, 425, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520,
521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540,
541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 554, 555

were read on this motion to/for

DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 018) 349, 350, 351, 352,
353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372,
373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392,
393, 394, 395, 396, 397, 398, 399, 400, 401, 423, 426, 499, 500, 501, 502, 503, 553

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 493, 494, 495, 496, 498

were read on this motion to/for SEAL.

For the reasons set forth on the record (10/23/19) and as otherwise provided herein, motion sequence numbers 013, 014, 016, 017, 018, and 019 are decided as set forth below.

RELEVANT FACTS AND CIRCUMSTANCES

This is a fraud action brought by plaintiff Starr Russia Investments III B.V. (**Starr Russia**) against Deloitte LLP, Deloitte CIS Limited (**DCL**), Deloitte CIS Holding Limited (**DCH**, and together with Deloitte LLP and DCL, collectively, the **UK Deloitte Defendants**), Deloitte Touche Tohumatsu Limited (**DTTL**), and ZAO Deloitte & Touche CIS (**Deloitte-ZAO**). Starr Russia alleges that the UK Deloitte Defendants, DTTL, Deloitte-ZAO, and Russian national Vladimir Vladimirovich Gudkov fraudulently induced Starr Russia to invest in Investment Trade Bank (**ITB**), a Russian joint stock company allegedly controlled by Mr. Gudkov (Amended Complaint ¶ 1).

Star Russia claims that in reliance on the reputation of the Deloitte entities and on their continuing assurances regarding the financial condition of ITB, it invested approximately \$110 million in ITB between 2008 and 2010 (*id.*, ¶¶ 3-5). Starr Russia further alleges that it began formulating an exit strategy to get out of its ITB investments in June 2012 but based on the defendants' reassurances and misrepresentations, Starr Russia did not implement its exit strategy (*id.*, ¶¶ 8-16). Starr Russia claims that it lost the entire value of its investment when, in 2015, the

Central Bank of Russia revealed that ITB was insolvent, with its liabilities exceeding its assets by RUB 23 billion (\$418 million) and ordered another Russian bank to take it over (*id.*, ¶ 14).

Starr Russia commenced this action asserting, in its Amended Complaint, causes of action for fraud, aiding and abetting fraud, aiding and abetting breach of fiduciary duty, and negligent misrepresentation against the UK Deloitte Defendants, Deloitte-ZAO, and DTTL. The defendants moved to dismiss the Amended Complaint (mtn. seq. nos. 007, 008, and 009). By Orders, entered May 23, 2018 and July 2, 2018, the court (Charles E. Ramos, J.), denied the defendants' motions to dismiss the Amended Complaint, and the defendants appealed.

Pursuant to an Order, dated December 27, 2018, the Appellate Division, First Department stayed discovery in this matter pending the hearing and determination of the defendants' appeal (NYSCEF Doc. No. 458, Dameron aff, exhibit 9). By Decision and Order, entered February 7, 2019, the First Department unanimously modified the Orders of Justice Ramos, to (i) grant the motions to dismiss as to the claims alleging fraudulent inducement of Starr Russia's 2008 investment as against the UK Deloitte Defendants, (ii) order jurisdictional discovery as to the UK Deloitte Defendants solely with respect to the claim regarding conduct from 2010 on, and (iii) grant the motion as to the claims against DTTL premised on agency theory, and otherwise affirmed (*Starr Russia Invs. III B.V. v Deloitte Touche Tohumatsu Ltd.*, 169 AD3d 421, 421 [1st Dept 2019]).

The First Department held that Starr Russia "has standing to pursue its claims based on allegations that it was fraudulently induced to invest in and maintain its investment in [ITB], as

these claims allege direct rather than derivative harm, *i.e.*, injuries to plaintiff, rather than to ITB” (*id.* at 422). The First Department further held that:

[t]he court has personal jurisdiction over defendant [Deloitte-ZAO] under CPLR 302 (a) (2) with respect to all the claims. It does not have jurisdiction over the UK Deloitte [D]efendants with respect to the alleged fraudulent inducement of plaintiff’s 2008 investment, because the complaint does not adequately allege that these defendants dominated ZAO as its alter egos in connection with that claim (*see GEM Advisors, Inc. v Corporacion Sidenor, S.A.*, 667 F Supp 2d 308, 319 [SD NY 2009]). However, ***plaintiff has made a sufficient showing that there are facts that might give rise to alter ego jurisdiction*** (*see Avilon Auto. Group v Leontiev*, 168 AD3d 78 [1st Dept 2019]), and that its position is not frivolous (*see Peterson v Spartan Indus.*, 33 NY2d 463 [1974]), such that jurisdictional discovery as to the UK Deloitte [D]efendants with respect to the claim that plaintiff did not exercise its exit option after 2010 based on misrepresentations is warranted [emphasis added] (*id.*).

Following the First Department’s decision, the discovery stay was lifted and the parties met and conferred concerning the re-initiation of discovery. The UK Deloitte Defendants and DTTL served amended responses and objections, seeking to narrow the scope of discovery based on the First Department’s decision. Deloitte-ZAO, in a series of letters, objected to the disclosure sought by Starr Russia, asserting that such disclosure would result in possible violations of Russian law. Notwithstanding the foregoing, certain discovery disputes as set forth in the instant motions.

DISCUSSION

CPLR § 3101 requires “full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by [for example]: (1) a party, or the officer director, member, agent or employee of a party; [or] (2) a person who possessed a cause of action or defense asserted in the action.” (CPLR § 3101 [a] [1], [2]). As a guiding principle,

“the words ‘material and necessary’ are ‘to be interpreted liberally to require disclosure of . . . any facts bearing on the controversy’ (*Rivera v NYP Holdings Inc.*, 63 AD3d 469, 469 [1st Dept 2009], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). A party seeking to avoid disclosure bears the burden of showing that the disclosure sought is improper (*Roman Catholic Church of the Good Shepherd v Tempco Systems*, 202 AD2d 257, 258 [1st Dept 1994], citing *Koump v Smith*, 25 NY2d 287, 294 [1969]).

Mtn. Seq. No. 013

In motion sequence number 013, Starr Russia moves to compel DTTL to search for and produce documents responsive to Starr Russia’s First Set of Requests for the Discovery and Inspection of Documents to Deloitte Touche Tohmatsu Limited (except Request No. 19). The Requests identify 40 categories of documents that can be summarized as: (i) communications between DTTL and other persons relating to the issues and parties in this action (Request Nos. 1-9, 11-13), (ii) “documents concerning any effort by DTTL or any other entity to identify or target for investment in ITB Starr, JC Flowers & Co., Gennadiy Platanov or any other actual or potential investor in ITB” (Request No. 10), (iii) documents concerning to any work performed by DTTL related to ITB, including documents concerning a certain Valuations Considerations memorandum and a Project Mont Blanc document, both dated 2008 (NYSCEF Doc. No. 81, 98), (Request Nos. 35-37, 39-40). To date, DTTL has not produced any responsive documents (NYSCEF Doc. No. 257, Pl’s Mem. of Law in Support at 1).

In a letter, dated March 11, 2019, from DTTL to Starr Russia (and in subsequent communications), DTTL indicated that “DTTL believes it has no responsive non-privileged

documents” with respect to Request Nos. 1-13, 35-37, and 39-40 (NYSCEF Doc. No. 250, Dameron aff., exhibit B at 2). The letter further states that, “[f]or the remainder of Starr’s requests, DTTL does not intend to search for or produce any documents it may have on the basis of its objections set forth in its Amended Responses and Objections” (*id.*). DTTL’s objections generally assert that all of the remaining requests seek documents that are not relevant to Starr Russia’s claims in light of the First Department’s decision. DTTL has also expressed that it is simply unwilling to produce documents that may be relevant to Starr Russia’s claims against the other defendants (Dameron aff., ¶ 12). Notably, DTTL has not conducted any searches of electronic files for relevant communications and bases its conclusion that it has no relevant documents in its possession on an internal survey of its current employees and certain former employees who are now employed by other Deloitte entities in which DTTL inquired as to whether anyone had knowledge of any relevant documents or information (*id.*, ¶ 13).

Although the First Department granted DTTL’s motion to dismiss the claims against it premised on an agency theory, the claims premised on allegations of DTTL’s direct role in fraudulently inducing Starr Russia to invest in ITB survive. As such, DTTL shall produce any documents in its possession responsive to Request Nos. 1-13, 35-37, and 39-40, because these Requests seek information that is potentially relevant to Starr Russia’s direct liability claims against DTTL. Specifically, Request Nos. 1-13 relate to any communications between DTTL and other persons and entities relating to the issues and parties in this case. Request Nos. 35-37 and 39-40 seek documents concerning work performed by DTTL relating to ITB. These Requests may include documents relating to DTTL’s work on the Valuation Considerations memorandum (NYSCEF Doc. No. 81), the Project Mont Blanc document (NYSCEF Doc. No. 98), and auditing work

performed by DTTL, all of which may evidence DTTL's direct involvement, if any, in the alleged fraudulent scheme to induce Starr Russia to invest in ITB. Although DTTL argues that it does not perform client services work and therefore would not have any involvement with Starr Russia and would not have any responsive documents in its possession or control, the Valuation Considerations memorandum contains the name of DTTL's predecessor on more than half of the pages, and the Project Mont Blanc document indicates that it was authored by Deloitte, which DTTL acknowledges includes DTTL. These documents alone suggest that a broader and more pointed search may reveal additional responsive documents.

Moreover, to the extent that DTTL argues that it should not be compelled to produce documents that may not relate to the remaining claim against DTTL alleging direct liability but are potentially relevant to the claims against the other defendants, this argument is unavailing. CPLR § 3101 authorizes a party to obtain discovery from "a party, or the officer, director, member, agent or employee of a party," or "any other person" (CPLR § 3101 [a] [1], [4]). The discovery sought from DTTL by Starr Russia relating to the other defendants in this case is no different from a case in which a party seeks discovery from a third party. In such a case, "so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty" (*Kapon v Koch*, 23 NY3d 32, 38 [2014]). Similarly, the discovery sought by Starr Russia is relevant to its other claims in the case and must be provided.

Because the disclosure sought by Starr Russia is material and necessary to its direct claims against DTTL and is otherwise relevant to claims against the other defendants, Starr Russia's motion to compel (mtn. seq. no. 013) is granted and DTTL shall produce any documents

responsive to Request Nos. 1-13, 35-37, and 39-40. The survey conducted by DTTL did not encompass all potentially relevant documents such as licensing agreements, practice reviews, and any other memoranda from Deloitte-ZAO, and would not have yielded any communications that might exist with relevant parties including Deloitte-ZAO or the UK Deloitte Defendants regarding Starr Russia or ITB. Therefore, DTTL is directed to conduct a broader search to determine whether it is in possession of any responsive documents, including searching any relevant databases and conducting all appropriate electronic searches. Request Nos. 3, 6, and 9 shall be limited in scope to communications with other investors in ITB solely to the extent that such communications concern ITB. Starr is directed to provide search terms by November 1, 2019. DTTL is directed to conduct its searches within thirty days after receipt of the search terms and shall produce a list of additional custodians, and a list of survey participants, to the extent necessary, a privilege log. The deposition of DTTL's custodian shall take place on or before December 31, 2019.

Mtn. Seq. No. 014

In motion sequence 014, the UK Deloitte Defendants move for an order (i) precluding Starr Russia from deposing the UK Deloitte Defendants or, in the alternative, directing that such depositions take place in London, (ii) precluding Starr Russia from obtaining further documents from the UK Deloitte Defendants, and (iii) compelling Starr Russia to produce its witness and documents in jurisdictional discovery forthwith or be barred from opposing a motion to dismiss for lack of personal jurisdiction.

Starr Russia served its document requests and deposition notices on the UK Deloitte Defendants on May 18 and June 18, 2018 (NYSCEF Doc. Nos. 450, 451, Dameron aff, exhibits 1, 2). The depositions of the UK Deloitte Defendants were to take place on July 11, 12, and 13, 2018 at the offices of Starr Russia's counsel in New York unless otherwise agreed by the parties (NYSCEF Doc. No. 451, Dameron aff, exhibit 2). But the parties subsequently agreed via email not to go forward with document production and depositions until the First Department's stay was denied or, if granted, until it expired (NYSCEF Doc. No. 452, Dameron aff, exhibit 3). On February 25, 2019, following the issuance of the First Department's decision and upon the resumption of discovery, the UK Deloitte Defendants served its First Set of Document Requests and a deposition notice on Starr Russia (NYSCEF Doc. Nos. 461, 462, Dameron aff, exhibits 12, 13). The deposition of Starr Russia was to take place on June 5, 2019, at the UK Deloitte Defendants' counsel's office in New York (NYSCEF Doc. No. 462, Dameron aff, exhibit 13). On March 21, 2019, after numerous communications over a period of nearly three months after the discovery stay was lifted—a period during which the UK Deloitte Defendants failed to produce any documents—the UK Deloitte Defendants served amended responses and objections to Starr Russia's discovery requests (NYSCEF Doc. No. 473, Dameron aff, exhibit 24). To date, the depositions have not occurred, the UK Deloitte Defendants have not produced any documents, and Starr Russia has begun producing documents on a rolling basis, including 79 documents on June 14, 2019, 510 documents on July 3, 2019, and 6,031 documents on August 1, 2019 (NYSCEF Doc. No. 483, Dameron aff, exhibit 34).

The UK Deloitte Defendants move for discovery sanctions, alleging that Starr Russia engaged in dilatory tactics in delaying depositions and document production. A court may impose discovery

sanctions on a party for refusing to obey its court-ordered discovery obligations or failing to disclose information that the court finds should have been disclosed (CPLR § 3126). Such a draconian sanction is unwarranted, however, where, as here, there is no evidence that any missed discovery deadlines were the result of willful or contumacious misconduct on the part of Starr Russia (*Thomas v McGuire Service Corp.*, 251 AD2d 148, 148 [1st Dept 1998]).

With respect to the first branch of the UK Deloitte Defendants' motion seeking an order precluding Starr Russia from deposing the UK Deloitte Defendants or, in the alternative, directing that such depositions take place in London, there is no evidence that the delays in taking the depositions of the UK Deloitte Defendants was the result of any dilatory tactics or any willful or contumacious behavior by Starr Russia. To the contrary, if anything, the delay has been caused by the failure of the UK Deloitte Defendants to produce any relevant documents, including documents that may contain information concerning the deposition topics. Moreover, to the extent that the UK Deloitte Defendants argue that discovery sanctions are appropriate because depositions were not completed by the July 19, 2019 deadline set by the court at the compliance conference on February 28, 2019, this argument is equally unpersuasive. Starr Russia sent a letter to the UK Deloitte Defendants proposing deposition dates of July 10-12 (*i.e.*, before the court's deadline), but the UK Deloitte Defendants rejected the proposed dates and insisted on dates after the July 19 deadline (NYSCEF Doc. Nos. 481, 485, Dameron aff, exhibits 32, 36).

In addition, the branch of the UK Deloitte Defendants' motion seeking a protective order preventing the depositions from proceeding in New York is denied as moot as the parties have

agreed to conduct the depositions of the UK Deloitte Defendants in London, provided that no additional notices or commissions will be required and provided that the document discovery is completed.

Likewise, the portion of the UK Deloitte Defendants' motion seeking to impose sanctions on Starr Russia to preclude Starr Russia from obtaining any further discovery from the UK Deloitte Defendants is also denied, as any delays in responding to the UK Deloitte Defendants' discovery requests have not been willful or contumacious and the circumstances do not warrant the drastic remedy that the defendants seek. Starr Russia is entitled to the jurisdictional discovery that it seeks because the Appellate Division held that Starr Russia "has made a sufficient showing that there are facts that might give rise to alter ego jurisdiction" and expressly authorized jurisdictional discovery as to the UK Deloitte Defendants (*Starr Russia Invs. III B.V.*, 169 AD3d at 422).

With respect to the third prong of the UK Deloitte Defendants' motion, the motion is granted and Starr Russia shall produce its witness for deposition and shall produce any outstanding relevant documents, to the extent that they exist, in jurisdictional discovery.

Mtn. Seq. No. 016

In Motion Sequence 016, Deloitte-ZAO moves to compel Starr Russia to produce certain documents responsive to Deloitte-ZAO's First Set of Requests for the Discovery and Inspection of Documents to Starr Russia. Specifically, Deloitte-ZAO seeks: (a) documents and

communications relating to Starr Russia or other Starr entities' investments in Russia (Request Nos. 61, 64, and 67), (b) documents and communications relating to any Starr entity's investments in financial institutions or banks outside of Russia, including the impact of the global financial crisis on the value of such investments (Request Nos. 59, 60, and 73), and (c) documents and communications related to Maria Butina, Alexander Torshin, and the Center for the National Interest (Request Nos. 65 and 68).

Starr Russia has refused to produce the documents sought by Deloitte-ZAO, asserting that Deloitte-ZAO has failed to demonstrate that these documents are "actually relevant" to its defenses. This argument is unavailing as it misses the point of New York's general policy to encourage "open and far-reaching pretrial discovery" (*Kavanagh v Ogden Allied Maintenance Corp.*, 105 Ad3d 594, 595 [1st Dept 2013]) and the broad mandate of CPLR § 3101 that there shall be "full disclosure of all matter material and necessary in the prosecution or defense of an action."

The first part of Deloitte-ZAO's document requests seeking documents and communications relating to Starr Russia or other Starr entities' investments in Russia is relevant to Starr Russia's claim that it was induced to invest in ITB in reliance on Deloitte-ZAO's misrepresentations and suffered damages as a result (NYSCEF Doc. No. 411, Gimmel aff, exhibit G). These documents may provide information relating to Starr Russia's allegations that it detrimentally relied on Deloitte-ZAO's representations in investing in ITB in 2008 and any exit decisions – i.e., holding its investment through 2015. They are therefore material and necessary to Deloitte-ZAO's defenses with respect to Starr Russia's fraud and negligent misrepresentation claims. However,

the production shall be limited to documents relating to Starr Russia or other Starr entities' investments in Russia from 2006 through 2015. The remaining document requests are overly broad and unduly burdensome and are not material and necessary to Deloitte-ZAO's defenses.

With respect to documents and communications relating to Maria Butina, Alexander Torshin, and the Center for the National Interest, Starr Russia asserts that it has no responsive documents in its possession. Starr Russia is directed to provide an affidavit setting forth custodians and search terms used in connection with its efforts to locate responsive documents by November 7, 2019.

Mtn. Seq. No. 017

In Motion Sequence Number 017, Starr Russia moves by order to show cause for an order compelling Deloitte-ZAO to produce information, documents, and materials responsive to Starr Russia's First Set of Requests for Discovery and Inspection of Documents to Deloitte-ZAO, and precluding Deloitte-ZAO from asserting Russian laws or privileges as grounds for withholding or resisting Starr Russia's discovery requests and demands. The discovery sought by Starr Russia relates to information about Deloitte-ZAO's relationship to ITB, Deloitte-ZAO's relationships to its co-defendants, Deloitte-ZAO's relationship to Starr Russia, and Deloitte-ZAO's other business-activities.

Deloitte-ZAO states that it has five Russian lawyers—three at the Moscow-based law firm Padva & Partners and two in house at Deloitte-ZAO—assisting with the production of responsive documents in compliance with Russian law, and that it has made six document productions and produced 1,195 documents, totaling nearly 11,000 pages. However, Deloitte-ZAO asserts that

certain document production is restricted under Russian law. Specifically, Deloitte-ZAO cites three Russian laws that it argues preclude the production of certain documents and information: (i) Federal Law of the Russian Federation No. 307-FZ “On Auditing Activities,” dated December 30, 2008 (as amended) (the **Auditing Law**), (ii) Federal Law of the Russian Federation No. 395-1 “On Banks and Banking Activities,” dated December 2, 1990 (as amended) (the **Banking Law**), and (iii) Federal Law of the Russian Federation No. 152-FZ “On Personal Data,” dated July 27, 2006 (as amended) (the **Personal Data Law**) (Sergeeva aff, ¶ 4). Each law contains provisions that prevent disclosure of confidential information, subject to limited exceptions. With respect to the Audit Law, Eleonora E. Sergeeva, an expert retained by Deloitte-ZAO to advise it regarding the applicability of Russian laws to the production of documents in this action, states that the instant proceedings likely fall within an exception for disclosure attendant to court proceedings (*id.*, ¶ 11). With respect to the Banking Law and the Personal Data Law, Ms. Sergeeva states that the documents and information sought by Starr Russia may be produced in redacted form in accordance with Russian law except documents concerning bank “operations” received by audit firms in the course of rendering audit services, for which there are no applicable exemptions (*id.*, ¶ 12 [ii]). The documents may be produced in accordance with Russian law, however, if the custodians of the documents consent to their disclosure.

Accordingly, Starr Russia’s motion is granted. Deloitte-ZAO shall continue production, to the extent allowed by Russian law, on a rolling basis, and shall continue to seek the consent of ITB (and any other parties from whom consent is required under Russian law) as to investment documents and audit work by December 1, 2019. And, if Deloitte-ZAO is unable to obtain

consent by December 1, 2019, it shall produce all remaining responsive documents, including investment documents and audit work, with appropriate redactions, by January 31, 2020.

Mtn. Seq. No. 018

Starr Russia moves to compel the UK Deloitte Defendants to (i) produce information, documents, and materials responsive to Starr Russia's First Set of Requests for Discovery and Inspection of Documents to Deloitte LLP, DCL, and DHL, (ii) produce corporate representatives for depositions in New York pursuant to Notices of Video Depositions previously served by Starr Russia in this matter, and (iii) produce documents pursuant to the Notices of Video Depositions.

As discussed above, the documents requested by Starr Russia are material and necessary to its remaining claims relating to the UK Deloitte Defendants' conduct in allegedly inducing Starr Russia to maintain its investment in ITB from 2010 on and forego implementation of its exit strategy to get out of the investment. This discovery is authorized by the decision and order of the First Department. Accordingly, Starr Russia's motion is granted and the UK Deloitte Defendants shall produce the requested documents and produce corporate representatives for depositions, which, as set forth above, shall occur in London without need for further notices or commissions as mutually agreed by Starr Russia and the UK Deloitte Defendants.

Mtn. Seq. No. 019

The Deloitte UK Defendants move for an order sealing a document produced by Deloitte LLP pursuant to the Stipulated Confidentiality Order (NYSCEF Doc. No. 243). Pursuant to Part 216

of the Uniform Rules for Trial Courts, a court may seal a filing “upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (22 NYCRR § 216.1 [a]).

The document at issue here is marked highly confidential as it contains proprietary business information, sensitive information, or other disclosure which would be detrimental to the conduct of Deloitte LLP’s business if it were to become public. Therefore, in accordance with Part 216 of the Uniform Rules for the Trial Courts, for good cause shown, motion sequence number 019 is granted without opposition.

Accordingly, it is

ORDERED that Starr Russia’s motion to compel (mtn. seq. no. 013) is granted and DTTL is directed to conduct a broader search to determine whether it is in possession of any documents responsive to Request Nos. 1-13, 35-37, and 39-40, including searching any relevant databases and conducting all appropriate electronic searches. Request Nos. 3, 6, and 9 shall be limited in scope to communications with other investors in ITB solely to the extent that such communications concern ITB. Starr is directed to provide search terms by November 1, 2019. DTTL is directed to conduct its searches within thirty days after receipt of the search terms and shall produce a list of additional custodians, if any, and a list of survey participants, to the extent necessary, a privilege log. The deposition of DTTL’s custodian shall take place by December 31, 2019; and it is further

ORDERED that the UK Deloitte Defendants' motion (mtn. seq. no. 014) is granted in part solely to the extent that Starr Russia shall produce its witness for deposition and shall produce any outstanding relevant documents, to the extent that they exist, in jurisdictional discovery, and is otherwise denied; and it is further

ORDERED that Deloitte-ZAO's motion (mtn. seq. no. 016) is granted in part solely to the extent that the Starr Russia is directed to produce responsive documents and communications relating to Starr Russia or other Starr entities' investments in Russia from 2006 through 2015 by December 2, 2019, and Starr Russia is directed to provide an affidavit setting forth custodians and search terms used in connection with its efforts to locate responsive documents and communications relating to Maria Butina, Alexander Torshin, and the Center for the National Interest by November 7, 2019, and the motion is otherwise denied; and it is further

ORDERED that Starr Russia's motion (mtn. seq. no. 017) is granted and Deloitte-ZAO is directed to continue production, to the extent allowed by Russian law, on a rolling basis, and is directed to seek the consent of ITB (and any other parties from whom consent is required under Russian law) as to investment documents and audit work by December 1, 2019. If Deloitte-ZAO is unable to obtain consent by December 1, 2019, it shall produce all remaining responsive documents, including investment documents and audit work, with appropriate redactions, by January 31, 2020; and it is further

ORDERED that Starr Russia's motion (mtn. seq. no. 018) is granted and the UK Deloitte Defendants are directed to produce the requested documents by December 2, 2019 and to produce corporate representatives for depositions, which, as set forth above, shall occur in London without need for further notices or commissions as mutually agreed by Starr Russia and the UK Deloitte Defendants; and it is further

ORDERED that the court, having determined, in accordance with Part 216 of the Uniform Rules for the Trial Courts, that good cause exists for the sealing in part of the file in this action and the grounds therefor having been specified, it is now

ORDERED that the Clerk of the Court is directed, upon service on him (60 Centre Street, Room 141B) of a copy of this order with notice of entry, to seal any of the following documents identified by Bates number that will be filed in this action:

Beginning Bates

End Bates

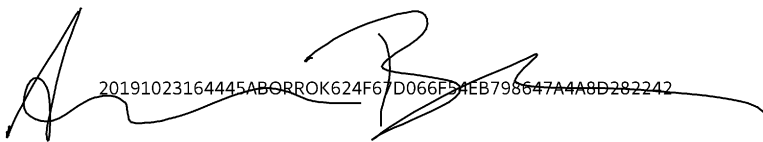
DLLP_0000274

DLLP_0000289

and to separate these documents and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

<u>10/23/2019</u>			
DATE		ANDREW BORROK, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☐ GRANTED ☐ DENIED	☒ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE