

JURISDICTION AND VENUE

2. This Court has exclusive jurisdiction of this action, without regard to the amount in controversy, pursuant to 29 U.S.C. §§ 1303(e)(3) and 1342(c) and (f).

3. Venue properly lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g) because the Defendant was headquartered in Sayville, New York, and the Pension Plan was administered in Sayville, New York.

PARTIES

4. Plaintiff PBGC is a wholly owned United States government corporation established under 29 U.S.C. § 1302(a) to administer and enforce the defined benefit pension plan termination insurance program created by Title IV of ERISA. When an underfunded pension plan terminates, PBGC provides the timely and uninterrupted payment of pension benefits to plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

5. Defendant Gallagher was a corporation organized under the laws of New York, with its principal place of business located in Sayville, New York. Gallagher is the administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A). On information and belief, Gallagher's last known address is at 156 Greeley Avenue, Sayville, New York 11782.

THE PENSION PLAN

6. The Pension Plan is a tax-qualified, single-employer, defined benefit pension plan that is covered by Title IV of ERISA. 29 U.S.C. § 1321(a).

7. Gallagher is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13).

8. The Pension Plan provides pension benefits to certain former employees of Gallagher and their beneficiaries.

9. On information and belief, the Pension Plan has 16 participants. Using the assumptions set forth in 29 U.S.C. § 1344 and the regulations thereunder, PBGC estimates that the Pension Plan has liabilities of \$1,222,559.00, assets of \$275,806.00, and therefore is underfunded by \$946,753.00.

10. The sponsor of a pension plan and members of its controlled group, within the meaning of 29 U.S.C. § 1301(a)(14), are financially responsible for the pension plan. The liabilities of the plan sponsor and controlled group members with regard to the pension plan are joint and several. 26 U.S.C. §§ 412(b)(1) & (2); 29 U.S.C. §§ 1307(e)(2), 1362(a).

COMPANY BACKGROUND AND CESSATION OF BUSINESS

11. Established in 1945, Defendant Gallagher was a contracting firm offering sandblasting and painting services for residential and commercial clients.

12. Michael Gallagher is the President of Gallagher and an official authorized to act on behalf of Gallagher. On information and belief, he resides at 26 Barteau Avenue, Blue Point, NY 11715.

13. As of June 30, 2012, Gallagher had ceased all business operations and terminated all of its employees.

PBGC DETERMINATION

14. On July 12, 2013, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination to Gallagher as plan administrator of the Pension Plan (“Notice”), notifying Gallagher that PBGC had determined that the Pension Plan had not met the minimum funding standard required under section 412 of the Internal Revenue Code and will be unable to pay

benefits when due. The Notice also stated that PBGC determined, under 29 U.S.C. § 1342(c), that the Pension Plan must be terminated in order to protect the interests of Pension Plan's participants. The Notice further stated that PBGC intended to proceed to seek termination of the Pension Plan, have PBGC appointed as trustee of the Pension Plan, and establish June 30, 2012, as the date of termination for the Pension Plan. A copy of the Notice is attached as Exhibit 1.

COUNT 1

15. Paragraphs 1 through 14 are incorporated by reference as if set forth fully herein.

16. PBGC is authorized by 29 U.S.C. § 1342 to apply to a U.S. District Court for a decree terminating a plan whenever PBGC determines, *inter alia*, that the plan has not met the minimum funding standard required under 26 U.S.C. § 412 or the plan will be unable to pay benefits when due. 29 U.S.C. §§ 1342(a)(1), (2).

17. PBGC has determined, pursuant to 29 U.S.C. §§ 1342(a)(1) and (2), that the Pension Plan has not met the minimum funding standard required under 26 U.S.C. § 412 and that the Pension Plan will be unable to pay benefits when due.

18. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if, *inter alia*, termination is necessary to protect the interests of participants.

19. PBGC has determined, pursuant to 29 U.S.C. § 1342(c), that termination of the Pension Plan is necessary to protect the interests of participants.

COUNT II

20. Paragraphs 1 through 19 are incorporated by reference as if set forth fully herein.

21. As described above, on July 12, 2013, PBGC issued the Notice to Gallagher, notifying Gallagher that PBGC had determined that the Pension Plan should be terminated because it has not met the minimum funding standard, will be unable to pay benefits when due,

and that the Pension Plan must be terminated in order to protect the interests of participants. The Notice further stated that PBGC intended to proceed to seek termination of the Pension Plan, have PBGC appointed as trustee of the Pension Plan, and establish June 30, 2012, as the date of termination for the Pension Plan.

22. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan covered by Title IV when PBGC and the plan administrator have not agreed on a date of plan termination.

23. As of the date of the filing of this Complaint, PBGC and the Defendant, the administrator of the Pension Plan, have not agreed on a date of plan termination for the Pension Plan.

24. June 30, 2012, should be established as the date of termination of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4) because as of that date, the Pension Plan's participants received constructive notice of the Pension Plan termination and no longer had any justifiable expectations of the Pension Plan's continuation. Establishment of that date also furthers the interests of PBGC by preventing an unreasonable increase in the liability of the PBGC insurance fund.

COUNT III

25. Paragraphs 1 through 24 are incorporated by reference as if set forth fully herein.

26. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(b)(1) provides that PBGC "may request that it be appointed as trustee of a plan in any case."

27. PBGC is ready, willing and able to serve as statutory trustee of the Pension Plan.

REQUEST FOR RELIEF

WHEREFORE, PBGC respectfully requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating that the Pension Plan is terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C. § 1342(c);
3. Establishing June 30, 2012, as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Directing Gallagher and any other person or entity having possession, custody or control of any records, assets or other property of the Pension Plan, to transfer, convey and deliver all such records, assets, and property to PBGC as statutory trustee upon request under 29 U.S.C. § 1342(d)(1); and
5. Granting any and all other relief that this Court deems just and proper.

Dated: November 6, 2014
Washington, D.C.

Respectfully submitted,

/s/ Desiree M. Amador

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EXHIBIT 1



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

JUL 12 2013

Mr. Michael Gallagher
President
Thomas O'Rourke Gallagher, Inc.
26 Barteau Ave
Blue Point, NY 11715

EIN/PN: 111517681/002
PBGC Case Number: 22189000
Plan Name: Thomas O'Rourke
Gallagher, Inc., Defined Benefit
Pension Plan

NOTICE OF DETERMINATION

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC") has determined under section 4042(a)(1) and (2) of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), 29 U.S.C. § 1342(a)(1) and (2) that the Thomas O'Rourke Gallagher, Inc. Defined Benefit Pension Plan ("Plan") has not met the minimum funding standard required under section 412 of the Internal Revenue Code and will be unable to pay benefits when due. PBGC has further determined, under ERISA § 4042(c), 29 U.S.C. § 1342(c), that the Plan must be terminated in order to protect the interests of the Plan's participants. Accordingly, PBGC intends to proceed under ERISA § 4042, 29 U.S.C. § 1342, to have the Plan terminated and PBGC appointed as statutory trustee, and under ERISA § 4048, 29 U.S.C. § 1348, to have June 30, 2012, established as the Plan's termination date.

PBGC has completed its decision-making process in this matter; accordingly, this determination is effective on the date it is issued.

PENSION BENEFIT GUARANTY CORPORATION

Andrea E. Schneider
Chairperson, Trusteeship Working Group