

**IN THE UNITED STATES DISTRICT COURT  
FOR SOUTHERN DISTRICT OF NEW YORK**

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PENSION BENEFIT GUARANTY CORPORATION,	)	
	)	
1200 K Street, NW	)	
Washington, DC 20005	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
DEWEY & LEBOEUF LLP,	)	Case No.
as plan administrator of the	)	
Dewey & LeBoeuf LLP Retirement Plan,	)	
the Dewey & LeBoeuf Cash Balance	)	
Retirement Plan, and the Dewey & LeBoeuf	)	
2007 Partners Cash Balance Plan	)	
	)	
1301 Avenue of the Americas	)	
New York, New York 10019-6092	)	
	)	
Defendant.	)	
	)	
	)	

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**COMPLAINT**

1. This action arises under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), *as amended*, 29 U.S.C. §§ 1301-1461 (2000 & Supp. IV 2010). Plaintiff, the Pension Benefit Guaranty Corporation ("PBGC"), brings this action pursuant to 29 U.S.C. §§ 1342 and 1348(a) and seeks a decree (A) terminating the Dewey & LeBoeuf LLP Retirement Plan, the Dewey & LeBoeuf Cash Balance Retirement Plan, and the Dewey & LeBoeuf 2007 Partners Cash Balance Plan (each the "Plan" and collectively, the "Plans"); (B) appointing PBGC as statutory trustee of the Plans; (C) establishing May 11, 2012, as the termination date for each of

the Plans; and (D) requiring that defendant Dewey & LeBoeuf LLP (“Dewey” or “Defendant”) – its agents and any other person or entity having possession, custody or control of any of the records, assets, property, and documents relating to the Plans – to transfer, convey and deliver all such records, assets, property and documents to PBGC.

### **Jurisdiction and Venue**

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

3. Venue properly lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g). The Defendant conducts business at 1301 Avenue of the Americas, New York, New York 10019-6092, among other locations in the United States and abroad.

### **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 under Title IV of ERISA. When an underfunded pension plan terminates, PBGC pays statutorily guaranteed pension benefits to plan participants. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

5. Defendant Dewey is a limited liability partnership, organized under the laws of New York, with its principal place of business located in New York, New York. Dewey has employed over 1,100 attorneys in twenty-six offices worldwide. Dewey was created as a result of the 2007 merger of law firms Dewey Ballantine and LeBoeuf, Lamb, Green, & MacRae.

### **Liquidation of Dewey**

6. Dewey is liquidating and winding up its affairs outside bankruptcy. Dewey expanded in recent years by recruiting high revenue-generating partners from other firms and

offering large guaranteed pay packages. Dewey also borrowed approximately \$75 million in secured bank debt and \$150 million in secured bond debt. Declining revenues in a weak economy led to cuts and deferrals of partner compensation, which has led to significant partner departures. The continuing loss of revenue-generating partners and Dewey's debt load has culminated in the imminent demise of Dewey.

7. On or about April 27, 2012, Dewey's former Chairman, Steven H. Davis, came under the initiation of a criminal investigation by the Manhattan District Attorney's Office.<sup>1</sup>

8. On or about May 1, 2012, the *Wall Street Journal* reported that Dewey leadership sent a memorandum to Dewey's partners encouraging each one of them to seek out alternative employment opportunities.<sup>2</sup>

9. On May 4, 2012, Dewey sent a Federal Worker Adjustment Retraining and Notification Act ("WARN") notice to all employees, advising them of the possible closure of Dewey and the termination of their employment.<sup>3</sup>

10. On May 8, 2012, Dewey informed PBGC over the telephone that a significant portion of Dewey's administrative staff were notified that they will be terminated within weeks and that Dewey would not continue to operate much longer.

11. On May 9, 2012, Dewey informed PBGC over the telephone that over 100 Dewey partners, out of a total of approximately 280, had resigned from Dewey since January 2012.

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1 Ashby Jones, Jennifer Smith & Steve Eder, *Woes at Law Firm Deepen*, April 27, 2012, available at <http://online.wsj.com/article/SB10001424052702304811304577370351184074994.html>.

2 Nate Raymond, *Dewey Encourages Partners to Seek New Jobs: Memo*, Reuters, May 1, 2012, available at <http://www.reuters.com/article/2012/05/01/us-dewey-jobs-idUSBRE84011820120501>.

3 Nick Brown & Nate Raymond, *Law Firm Dewey Warns of Possible Closure*, Reuters, May 5, 2012, available at <http://www.reuters.com/article/2012/05/05/us-dewey-idUSBRE8431GZ20120505>.

12. On May 10, 2012, the *Wall Street Journal* reported that a large group of Dewey's associates were told that May 15, 2012 would be their last day with Dewey.<sup>4</sup>

13. On May 10, 2012, twenty-seven additional partners resigned from Dewey including two partners who were serving on Dewey's four-person Office of the Chairman.<sup>5</sup>

14. On May 10, 2012, *Reuters* reported that Dewey terminated the employment of approximately 450 additional employees at its New York offices, effective May 10, 2012.<sup>6</sup>

15. On May 9, 2012, Dewey informed PBGC via a phone conference, that between May 11, 2012 and May 14, 2012, Dewey intends to close two or three transactions. These transactions involve the sale of Dewey's interests in members of its "controlled group" within the meaning of ERISA § 4001(a)(14) (Dewey or any other such member, a "Controlled Group Member"). Total sales proceeds from these transactions are estimated to be \$7.2 million to \$9.7 million. Under 29 U.S.C. § 1362(a), a contributing sponsor of a pension plan and a member of such contributing sponsor's controlled group shall incur joint and several liability under ERISA ("Employer Liability"). The amount of Employer Liability is the "total amount of unfunded benefit liabilities as of the termination date." 29 U.S.C. § 1362(b)(1)(A).

16. On information and belief, the assets of these Controlled Group Members are not encumbered by liens of any of Dewey's secured lenders, but would be subject to PBGC's claims under ERISA.

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4 Ashby Jones & Jennifer Smith, *Dewey Departures Accelerate*, Wall St. J., May 10, 2012 at B3, available at <http://online.wsj.com/article/SB10001424052702304543904577394523974774062.html>.

5 Ashby Jones & Jennifer Smith, *Dewey Departures Accelerate*, Wall St. J., May 10, 2012 at B3, available at <http://online.wsj.com/article/SB10001424052702304543904577394523974774062.html>.

6 Nate Raymond, *Dewey fires 450 people in New York – Lawsuit*, May 10, 2012, available at <http://www.reuters.com/article/2012/05/10/dewey-idUSL1E8GAJWO20120510>.

### **The Plans**

17. Each of the Plans is a single-employer defined benefit pension plan and is covered under Title IV of ERISA. 29 U.S.C. §§ 1002(35), 1301(a)(15), 1321(a).

18. Dewey is the sponsor of each of the Plans, as defined by 29 U.S.C. § 1002(16)(B), and the plan administrator of each of the Plans, as defined by 29 U.S.C. §§ 1002(16)(A) and 1301(a)(1).

19. As of May 11, 2012, the Plans are estimated to be collectively underfunded by over \$80 million. The Plans have 1,776 participants combined.

### **Termination and Trusteeship of the Plan**

20. PBGC is authorized to apply to a United States District Court for an decree terminating a pension plan covered under Title IV of ERISA if it determines, inter alia, (i) pursuant to 29 U.S.C. § 1342(a)(2), the plan will be unable to pay benefits when due under the terms of the plan;<sup>7</sup> or (ii) pursuant to 29 U.S.C. § 1342(a)(4), the possible long-run loss of PBGC with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

21. A district court may grant the relief sought and appoint PBGC as statutory trustee if termination is necessary to protect the interests of plan participants or to avoid an unreasonable increase in the liability of the PBGC insurance fund, pursuant to 29 U.S.C. § 1342(c).

22. A district court is authorized to establish a termination date of a pension plan under 29 U.S.C. § 1348(a)(4).

23. On May 10, 2012, PBGC issued a Notice of Determination (“Notice”) for each of the Plans to the Plan administrator, the Retirement/Investment Committee of Dewey LeBoeuf

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<sup>7</sup> See also *PBGC v. Republic Techs. Int'l, LLC*, 386 F.3d 659, 661 (6th Cir. 2004) (“[i]nvoluntary termination procedures may be instituted when PBGC determines that the plan is unable to pay benefits when due”).

LLP.

24. The Notice for the Dewey & LeBoeuf LLP Cash Balance Retirement Plan stated that PBGC had determined that under 29 U.S.C. § 1342(a)(2) and (4), the Plan should be terminated because it will be unable to pay benefits when due and that the possible long-run loss of PBGC may reasonably be expected to increase unreasonably if the Plan is not terminated. The Notice also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Plan must be terminated in order to protect the interests of the Plan's participants, and that the Plan must be terminated in order to avoid any unreasonable increase in the liability of the PBGC insurance fund. The Notice further stated that PBGC intended to proceed to seek termination of the Plan, have PBGC appointed as trustee of each of the Plan, and establish March 11, 2012, as the date of plan termination for each Plan. See Exhibit 1.

25. The Notice for the Dewey & LeBoeuf LLP Pension Plan stated that PBGC had determined that under 29 U.S.C. § 1342(a)(2) and (4), the Plan should be terminated because it will be unable to pay benefits when due and that the possible long-run loss of the PBGC may reasonably be expected to increase unreasonably if the Plan is not terminated. The Notice also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Plan must be terminated in order to protect the interests of the Plan's participants, and that the Plan must be terminated in order to avoid any unreasonable increase in the liability of the PBGC insurance fund. The Notice further stated that PBGC intended to proceed to seek termination of the Plan, have PBGC appointed as trustee of each of the Plan, and establish March 11, 2012, as the date of plan termination for each Plan. See Exhibit 2.

26. The Notice for the Dewey & LeBoeuf 2007 Partners Cash Balance Plan stated that PBGC had determined that the Plan should be terminated under 29 U.S.C. § 1342(a)(2), because it

will be unable to pay benefits when due, and under 29 U.S.C. § 1342(c) to protect the interests of the Plan's participants. The Notice further stated that PBGC intended to proceed to seek termination of the Plan, have PBGC appointed as trustee of each of the Plan, and establish March 11, 2012, as the date of plan termination for each Plan. See Exhibit 3.

27. On May 10, 2012, PBGC sent to the Retirement/Investment Committee of Dewey & LeBoeuf LLP, c/o Stephen J. Horvath III, Dewey partner and member of the Dewey Office of the Chairman, a copy of all three Notices, via email and overnight mail, to the address of its New York City law office.

28. On May 10, 2012 PBGC published press releases and postings on its website that stated that it had determined that each of the Plans should be terminated.

### **Claims for Relief**

#### **Count I**

29. PBGC repeats and re-alleges paragraphs 1 through 28.

30. PBGC has determined that the Plans should be terminated in accordance with ERISA § 4042(a)(2) because the Dewey & LeBoeuf LLP Cash Balance Retirement Plan and the Dewey & LeBoeuf LLP Pension Plan will be unable to pay benefits when due as a result of underfunding and abandonment, and because abandonment of the Dewey & LeBoeuf 2007 Partners Cash Balance Plan is imminent. In addition, PBGC has determined that the Dewey & LeBoeuf LLP Cash Balance Retirement Plan and the Dewey & LeBoeuf LLP Pension Plan should be terminated in accordance with ERISA § 4042(a)(4), because the possible long-run loss of PBGC with respect to those plans may reasonably be expected to increase unreasonably if the Plans are not terminated. In addition, PBGC has determined that the Dewey & LeBoeuf LLP Cash Balance Retirement Plan and the Dewey & LeBoeuf LLP Pension Plan should be terminated

in accordance with ERISA § 4042(c) to protect the interests of participants as well as PBGC, and the Dewey & LeBoeuf 2007 Partners Cash Balance Plan should be terminated in accordance with ERISA § 4042(c) to protect the interests of participants.

31. On information and belief, Dewey is causing the sale of certain Controlled Group Members, where the proceeds of such sale will be paid to entities whose interests in such proceeds, if any, are junior to PBGC's statutory claims. Accordingly, for PBGC to avoid a long-run loss, the Plans must be terminated before any such sale occurs.

32. After PBGC determines that a pension plan must be terminated, 29 U.S.C. § 1342(c) provides that a district court may order the termination of a pension plan to protect the interests of the plan's participants or to avoid an unreasonable increase in the liability of the PBGC insurance fund and may appoint a trustee for a plan upon a decree of termination.

33. PBGC has determined that termination of each of the Plans is necessary to protect the interests of the Plans' participants and to avoid an unreasonable increase in the liability of the PBGC insurance fund.

### **Count II**

34. PBGC repeats and re-alleges paragraphs 1 through 33.

35. PBGC is ready, willing and able to serve as trustee for each of the Plans. If appointed as trustee of the terminated Plans, PBGC will pay benefits under the Plans in accordance with the provisions of Title IV of ERISA, and will fulfill all obligations of a trustee under 29 U.S.C. § 1342(c).

### **Count III**

36. PBGC repeats and re-alleges paragraphs 1 through 35.



37. A termination date of May 11, 2012 is appropriate because as of that date the Plans' participants no longer had any reasonable expectation of the Plans continuing due to PBGC's public notice.

#### **Count IV**

38. PBGC repeats and re-alleges paragraphs 1 through 37.

39. Under 29 U.S.C. § 1342(d), the trustee appointed by the court is authorized, among other things, to manage the assets of the Plans. In order to carry out its statutory duties with respect to the Plans, the trustee appointed by the Court must receive all documents relating to the Plans and the assets of the Plans.

#### **Relief Requested**

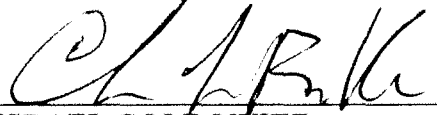
WHEREFORE, PBGC respectfully requests that the Court grant judgment and issue a decree granting the following relief:

- A. Adjudicating that each of the Plans is terminated pursuant to 29 U.S.C. § 1342(c);
- B. Appointing PBGC trustee of each of the Plans pursuant to 29 U.S.C. § 1342(c);
- C. Establishing May 11, 2012, as the termination date for each of the Plans pursuant to 29 U.S.C. § 1348(a)(4);
- D. Ordering Dewey, its agents and all other persons or entities having possession, custody, or control of any records, assets, or other property regarding each Plan and any documents required to determine the benefits payable to participants of each Plan, to transfer, convey, and deliver all such records, assets, property, and documents to PBGC pursuant to 29 U.S.C. § 1342(d)(1); and

E. Granting any and all other relief that this Court deems just and proper.

Dated: May 11, 2012

Respectfully submitted,



ISRAEL GOLDOWITZ

Chief Counsel

CHARLES L. FINKE

Deputy Chief Counsel

JOEL W. RUDERMAN

Assistant Chief Counsel

SCOTT V. WAGNER

ERIN C. KIM

Attorneys

PENSION BENEFIT GUARANTY  
CORPORATION

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Washington, D.C. 20005-4026

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Attorneys for Plaintiff

Pension Benefit Guaranty Corporation

# EXHIBIT 1



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

MAY 10 2012

Retirement/Investment Committee of Dewey & LeBoeuf LLP  
C/o Stephen J. Horvath III, Partner  
Dewey & LeBoeuf LLP  
1301 Avenue of the Americas  
New York, NY 10019

Plan Names (EIN/PN):

Dewey & LeBoeuf LLP Cash Balance Retirement Plan (135608594/003)

**NOTICE OF DETERMINATION**

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC") has determined under section 4042(a)(2) and (4), of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1342(a) (2), and (4), that the Dewey & LeBoeuf LLP Cash Balance Retirement Plan ("Plan") will be unable to pay benefits when due and that the possible long-run loss of the PBGC with respect to the Plan may reasonably be expected to increase unreasonably if the Plan is not terminated. 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, and that the Plan must be terminated in order to avoid any unreasonable increase in the liability of the PBGC insurance fund. 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 May 11, 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

Joshua Gotbaum  
Director

# EXHIBIT 2



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

MAY 10 2012

Retirement/Investment Committee of Dewey & LeBoeuf LLP  
C/o Stephen J. Horvath III, Partner  
Dewey & LeBoeuf LLP  
1301 Avenue of the Americas  
New York, NY 10019

Plan Names (EIN/PN):

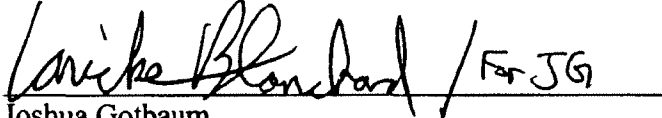
Dewey & LeBoeuf LLP Pension Plan (135608594/002)

**NOTICE OF DETERMINATION**

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC") has determined under section 4042(a)(2) and (4), of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1342(a) (2), and (4), that the Dewey & LeBoeuf LLP Pension Plan ("Plan") will be unable to pay benefits when due and that the possible long-run loss of the PBGC with respect to the Plan may reasonably be expected to increase unreasonably if the Plan is not terminated. 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, and that the Plan must be terminated in order to avoid any unreasonable increase in the liability of the PBGC insurance fund. 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 May 11, 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

  
Joshua Gotbaum

Director

# EXHIBIT 3



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

MAY 10 2012

Retirement/Investment Committee of Dewey & LeBoeuf LLP  
C/o Stephen J. Horvath III, Partner  
Dewey & LeBoeuf LLP  
1301 Avenue of the Americas  
New York, NY 10019

Plan Names (EIN/PN):

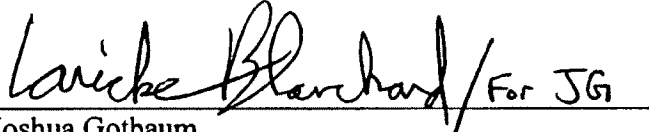
Dewey & LeBoeuf 2007 Partners Cash Balance Plan (135608594/009)

**NOTICE OF DETERMINATION**

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC") has determined under section 4042(a)(2), of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1342(a) (2), that the Dewey & LeBoeuf 2007 Partners Cash Balance Plan ("Plan") 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 May 11, 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

/For JG

Joshua Gotbaum  
Director