

# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

MICHAEL IANNONE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
	)	
v.	)	Case No.2:19-cv-02779
	)	
AUTOZONE, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DECLARATION OF JAMES H. WHITE**

Pursuant to 28 U.S.C. § 1746, James H. White IV, hereby declare as follows:

1. I offer this declaration in support of Plaintiffs’ and Class Counsel’ motion for attorney’s fees, reimbursement of expenses and incentive awards.

2. Like co-counsel, I have considerable experience handling complex ERISA class litigation similar to this action and am knowledgeable in the applicable law. I have served as counsel in the following excessive fee ERISA class action cases:

- *Ferguson v. BBVA*, N.D. Ala., 4:21-cv-00015 (Birmingham, Alabama) (excessive fee case involving \$1 billion plan sponsored by national bank; \$6.1 million settlement).
- *Goodman v. Columbus*, 4:21-cv-00015-CDL (Columbus, Georgia) (excessive fee case involving \$178 million plan sponsored by regional hospital; \$2 million settlement).

- *Disselkamp v. Norton*, W.D. Ky., 3:18-cv-048 (Louisville, Kentucky) (excessive fee case involving \$1.1 billion plan sponsored by healthcare provider, settled during discovery phase for \$5.75 million);
- *Brown v. Daikin America, Inc.*, 21-cv-1289 (New York) (pre-*Hughes v. Northwestern* excessive fee case, motion to dismiss granted, settled on appeal).

I was appointed as class counsel in each of the cases other than *Daikin* (which was a loss).

3. My educational background is: Princeton University, A.B., 1993; King's College, University of London, M.A., 1994; University of Alabama, School of Law, 1997. I have been a member in good standing of the State Bar of Alabama since 1997. I practiced with the AmLaw 100/200 firms Bradley and Baker Donelson for 20 years before starting a plaintiff's practice in 2017.

4. ERISA claims, claims for investment underperformance in particular, typically involve mixed questions of law and finance. This necessitates participation by counsel familiar both with the legal standards and financial analysis required to satisfy them.

#### **DESCRIPTION OF WORK PERFORMED**

5. I have reviewed my firm's billing records in this matter through December 18, 2023. Those records are available for in camera review at the Court's request, to protect privileged information contained therein. In total, my firm spent 5,345 hours prosecuting this case through December 18, 2023. Consistent with our Response to Court's Order Directing Supplemental Briefing (Doc. 431), we are providing figures for work performed through October 22, 2023, a total of 4,953

hours.<sup>1</sup> 392 additional hours of work were recorded for work performed from October 22, 2023 to December 18, 2023.

6. I typically perform work on ERISA class action cases on a contingency basis. The typical fee for these cases in this jurisdiction, as it is in every other jurisdiction in which I have practiced, is one-third of the recovery. This is, of course, consistent with this Court's preliminary approval order, which provides that an award of one-third of the gross recovery is an appropriate attorney's fee.

7. Although I typically do not bill by the hour on ERISA class action cases, I do provide information on hourly rates for the purpose of a lodestar check, depending on the circumstances. Here, I am providing this information for the purpose of a lodestar check and to comply with local rules to support the requested contingency fee. I bill for ERISA class action work at the rate of \$650 per hour. This is a regional rate, a compromise between the higher national rates and local rates. I believe this approach is appropriate, given that the ERISA class actions cases in which I have filed fee petitions to date were Louisville, Kentucky; Birmingham, Alabama; Columbus, Georgia, and now Memphis, Tennessee. The regional rate approach was approved in the *Norton* case in Louisville, Kentucky. (*See* Dkt. 133 in *Disselkamp v. Norton*, W.D. Ky., 3:18-cv-048 *supra* at p. 2). Financial analysis work by Deepti Ramani is billed at \$400 per hour. This also is a regional rate, a compromise between higher national rates and local rates.

---

<sup>1</sup> As of December 18, 2023, my firm had recorded a total of 5,345 hours – 3,422 hours for me (James White) and 1,923 hours for Deepti Ramani (financial analyst). This represents 392 hours of post-settlement work through December 18, 2023.

8. The categories of work in this case include the following: (i) claim preparation, pleading and motion practice; (ii) defendant, plaintiff, and third-party document discovery; (iii) defendant, plaintiff, and third-party depositions; (iv) expert reports and depositions; (v) summary judgment and *Daubert* motions; and (vi) trial preparation.

9. The following is a breakdown of the hours spent per timekeeper with my firm for each of the periods identified above:

Timekeeper	Claim Preparation, Pleading & Motion Practice	Document Discovery	Fact Witness Depositions & Class Certification	Expert Reports, Depositions & Motions to Exclude (Daubert)	Dispositive Motions	Trial Prep.
James White	343.8	653.4	1,135	174.8	290	590
Deepti Ramani	182	355	501	114	210	404

10. There were three firms working on this case: my firm; Mr. Pantazis’ firm (Wiggins Childs); and, Mr. Clark’s firm. Mr. Clark and Mr. Pantazis also have submitted declarations regarding the time spent by their firms. An estimate of the time devoted to each category of work, by firm, by timekeeper is shown on **Exhibit 1** hereto. The total number of hours of time devoted to this case through October 22, 2023 was 11,294 hours.

**A. Complaint, Pleading and Motion Practice, September 2019 to September 2020**

11. On November 13, 2019, Plaintiffs filed a Class Action Complaint against AutoZone, Inc. for breach of fiduciary duty under ERISA. (Doc. 1). This case was filed only after a lengthy and extensive evaluation of the plan and its investment options

based upon (i) the Plan's Form 5500 filings; (ii) information such as 404(a)(5) participant disclosures and summary plan descriptions obtained from plan participants; (iii) investment performance information; and, (iv) input from outside consultants. This evaluation included a review of (i) fund balances and allocations; (ii) expense ratios; (iii) fund performance compared to applicable benchmarks and peer groups; (iv) risk adjusted returns; and, (v) the Plan's short-duration fixed income options. The preparation of the Complaint involved several hundred hours of financial analysis. By way of example, to prepare the original and amended complaints, counsel had to pull and check the expense ratios (broken down into 12b-1, sub-TA, investment management, and other components) contained in the prospectuses of each of the mutual funds, each of which issued prospectus at regular intervals over the class period. Consultation with outside experts was necessary to confirm the information and the methodology. The analysis reflected in the original complaint was updated periodically as additional information became available.

12. Plaintiffs subsequently filed a First Amended Class Action Complaint that named several additional Defendants, including Northern Trust, which was the investment advisor to AutoZone. (Doc. 85). AutoZone filed a lengthy motion to dismiss (Doc. 25, 36), to which Class Counsel responded (Doc. 33), and which the Court denied. (Doc. 54).

13. The motion to dismiss was resolved prior to *Hughes v. Nw. Univ.*, 141 S. Ct. 2882 (2021), in which the U.S. Sup. Ct. clarified the pleading standard in ERISA cases. Pre-*Hughes*, motions to dismiss in ERISA cases were often treated more as

dispositive motions, with heightened pleading standards. The heightened pleading standard tends to make cases such as Autozone more time consuming to prosecute than other cases.

14. The total number of hours devoted to this task was 1,004.5 hours. The breakdown by timekeeper is shown in **Exhibit 1**.

**B. Document Discovery, October 2020 to December 2021.**

15. The parties conducted document discovery from October 2020 to December 2021. In all, more than 120,000 pages of documents were produced in discovery.<sup>2</sup> To obtain document discovery, Plaintiffs served interrogatories and requests for production on the AutoZone and Northern Trust Defendants and subpoenas on third-party recordkeepers (Fidelity and Prudential) and investment advisors (Willis Towers Watson and Segal Marco). A spreadsheet identifying the main document productions in this case is attached hereto as **Exhibit 2**.

16. A substantial portion of the documents produced consisted of financial documents, containing information on the cost structure and performance of the Plan and its investment options. This included investment advisor reports, recordkeeping agreement and amendments with associated expense schedules, fund prospectus, service provider disclosures, and the like. Document review tied up a substantial amount of in-house resources and also required input from subject matter experts.

---

<sup>2</sup> Plaintiffs' exhibit list for the trial of this case – consisting of 730 joint exhibits, 774 unopposed exhibits, and 906 exhibits to which defendants objected – was only a subset of the documents that were originally produced.

17. Discovery was complicated by the fact that Defendants and third parties both considered the documents in this case to be sensitive and confidential. (Doc. 65). As a result, a great many of the documents in this case were filed under seal, a process which took time and which made the documents less accessible. There also were a number of disputes over the scope of document discovery, deposition discovery, and supplementation of discovery. (Doc. 112, 133, 140, 151, 178).

18. The total number of hours devoted to this task was 2,028.6 hours. The breakdown by timekeeper is shown in **Exhibit 1**. This estimate covers only the formal document review process that occurred following the motion to dismiss and prior to the commencement of depositions. In a document intensive case such as this, document collection and review begins before the case is filed and continues throughout the case. For example, Plaintiffs were still in the process of obtaining and reviewing key documents relating to the transition from the 2023 Prudential to Fidelity transition during the first two days of trial.

**C. Fact Witness Depositions and Class Certification,  
January 2022 to July 2022**

19. A total of more than 20 depositions were taken in this case. A spreadsheet listing the depositions by (i) deponent; (ii) deposition date; and, (iii) location is attached as **Exhibit 3**. This was one of the most-labor intensive aspects of this case. Plaintiffs took the fact witness depositions of the following entities and related individuals: (1) Defendant AutoZone; (2) Defendant Northern Trust; (3) third-party investment advisor Willis Towers Watson; and, (4) third-party plan recordkeeper Prudential. The depositions were taken in Memphis, Tennessee



(AutoZone); Atlanta, Georgia (Willis Towers); Chicago, Illinois (Northern Trust); and, Hartford, Connecticut (Prudential). Defendants took the depositions of Plaintiffs Michael Iannone and Nicole James in Birmingham, Alabama. Every one of the depositions was an out of town deposition for one or more of the parties or counsel, requiring travel by automobile or airplane and stays at hotels.

20. While discovery was ongoing, counsel moved for and obtained certification of the Class, over Defendants opposition. On February 18, 2022, Plaintiffs moved for class certification (Doc. 173) which Defendants opposed. (Doc. 183). On August 12, 2022, the magistrate recommended class certification (Doc. 205). On December 7, 2022, the Court, over defendants objection (Doc. 205), certified a class of plan participants. (Doc. 205; Doc. 239).

21. This phase of the case was one of the most labor intensive aspects of the case, resulting in approximately 3,214.4 hours of work. The breakdown by timekeeper is shown in **Exhibit 1**.

**D. Expert Reports, Depositions, and Motions to Exclude (*Daubert*), August 2022 to January 2023.**

22. In the Summer and Fall of 2022, the parties prepared and exchanged expert reports. On July 29, 2022, Plaintiffs produced initial expert reports prepared by Wendy J. Dominguez, a fiduciary process consultant (a 66 page report supported by Schedules A-D); Chris Tobe, CFA, CAIA, a stable value consultant (a 28 page report supported by Schedules A-E); and Robert Brooks, Ph.D., a finance professor (a 6 page report supported by a financial model). On August 29, 2022, Defendants produced the rebuttal expert reports of Russell Wermers, Ph.D., an economist and finance professor

(56 page report supported by two schedules with financial data); Phil Suess, a consultant specializing in stable value investments (a 71 page report supported by Exhibits 1-2 and Schedules A-B); and, Steve K. Gissiner (an 85 page reports supported by Schedules A-D). On September 28, 2022, Plaintiffs produced their supplemental expert reports.

23. Each of Plaintiffs' experts was deposed in this case more than once. Mr. Tobe sat for deposition twice in Louisville, Kentucky. Dr. Brooks sat for deposition twice in Birmingham, Alabama. Ms. Dominguez sat for deposition three times in Denver, Colorado. This required counsel not only to assist in the preparation of the deponents, but, in the case of Mr. Tobe and Ms. Dominguez, to travel to the site of the depositions.

24. Defendants filed *Daubert* motions with respect to each of Plaintiffs' three expert witnesses (Doc. 247, 249, and 251), which were granted in part and denied in part. (Doc 338). Plaintiff filed one *Daubert* motion (Doc. 251), which was denied. (*Id.*).

25. The total number of hours devoted to this task was 1,371.7 hours. The breakdown by timekeeper is shown in **Exhibit 1**.

**E. Dispositive Motions, February 2023 to April 2023**

26. Each of the parties — AutoZone (267-78), Northern Trust (279-88), and Plaintiffs (289-90) — filed separate motions for summary judgment, briefs, and statements of material fact; to which separate responses (Doc. 297-322) and replies (Doc. 313-22) were filed. As is evident from the docket entries themselves, the filings,

the statements of material fact in particular, where lengthy, detailed, and involved citations to hundreds of documents, depositions, and other materials. The magistrate's report and recommendation – which denied Defendants' motions for summary judgment – was 149 pages long. (Doc. 380).

27. The total number of hours devoted to this task was 1,196.75 hours. The breakdown by timekeeper is shown in **Exhibit 1**.

**F. Trial Preparation and Settlement, May 2023 to October 2023**

28. This case was scheduled for mediation twice. The first mediation was unsuccessful; the second was aborted. Immediately prior to trial, there were a series of settlement discussions between counsel for Plaintiffs and counsel for Northern Trust that resulted in a settlement agreed to the day before trial and announced on the first day of trial.

29. The process of preparing the case for trial was long, time-consuming, and expensive. The Northern Trust settlement occurred the day before trial and was announced the first day of trial, which meant that Plaintiffs had to prepare a case against two sets of defendants. As to each, there was a pre-trial order, pre-trial briefs (Doc. 344, 390); trial briefs (Docs. 357, 367, 358), multiple motions in limine (Doc. 359-366, 370-80), deposition designations and objections (Doc. 385) motions to continue the trial (Doc. 381-382, 384). The exhibit list for trial included: 730 joint exhibits (JE); 774 unopposed plaintiffs' exhibits; 906 plaintiffs' exhibits objected to. The trial began Monday, October 23, 2023 and lasted until Tuesday, October 31, 2023.

30. The total number of hours devoted to this task was 2,481.2 hours. The breakdown by timekeeper is shown in **Exhibit 1**.

### **FINANCE SPECIFIC TASKS**

31. The finance and document review tasks in ERISA excessive fee cases such as this are particularly difficult and time consuming. Not only does this case involve more than a hundred thousand pages of documents, but a substantial portion of the documents contained figures (*e.g.*, returns, expense ratios, Sharpe ratios, benchmarks, revenue sharing, and the like) and financial documents (*e.g.* fact sheets, prospectus, advisor reports) that are difficult to interpret without the assistance of financial professionals. As stated in the Court's preliminary approval order, "This case is now over four years old and, as represented in their Motion, Plaintiffs 'obtained hundreds of thousands of pages of documents comprised of meticulous financial data, contracts, and correspondence' throughout this process." (Doc. 437). My firm not only regularly consults with subject matter experts (*e.g.* recordkeeping, fixed-income / stable value, and loss computation), but has its own dedicated financial analyst Deepti Ramani. Ms Ramani is an equity analyst with an M.B.A. degree whose prior work experience included Goldman Sachs (2014 to 2016); Symphony Services (2011-2012); and Thomson-Reuters (Aug. 2004 to May. 2010). She has ten years of industry experience and five additional years of experience (2018-present) working as an analyst on ERISA excessive fee class action cases. In reviewing documents with financial concepts, we make a considerable effort to understand the financial information and data made available in discovery and to verify the figures

presented in court filings. Attached as **Exhibit 4** is a chart summarizing the finance tasks performed in this case by category, primarily by Ms. Ramani.

### **LODESTAR**

32. As indicated in my co-counsel's previously submitted declaration (Doc. 431-3, at 8), Class Counsel's lodestar based upon Sixth Circuit precedent in similar ERISA Class Actions as well as high level employment litigation in the Western District of Tennessee, contains the following range: \$9,179,425.00 to \$6,695,365.00 to \$5,224,028.75.

33. Thus, Class Counsel's request for one-third of the gross settlement here (\$833,333.33), is more than reasonable.

### **EXPENSES**

34. Attached as **Exhibit 5** is a spreadsheet with the total expenses in this case through the first day of trial. The expenses have not been apportioned between the AutoZone and Northern Trust defendants. Plaintiffs' counsel had total expenses through October 22, 2023 of \$435,956.42. This figure is supported by this declaration and the declarations of Mr. Clark and Mr. Pantazis.

35. My firm's contribution to the expenses in this case, consisting primarily of out-of-pocket expert fees, was \$136,012.06. Analyst expenses are included in my firm's overhead. If requested, an itemization of expenses and documentation can be provided. All of the expenses were advanced before a settlement was agreed to and were, therefore, substantially at risk.

## PLAINTIFFS

36. The information provided by Plaintiffs Iannone and James was helpful in putting a claim together and prosecuting this case. In the pre-suit stage, Class Counsel does not have access to a full set of the information necessary to prosecute a case. Information provided by the class representatives – the 404(a) five participant disclosures in particular – is very helpful in evaluating a claim. For example, the Department of Labor does not require plan sponsors to report the tickers necessary to identify the share class of the mutual funds. This needs to be verified by reference to the 404(a)(5) disclosures and, later, the 408(b)(2) service provider disclosures and advisor reports. This is a sensitive matter because the plan participant must obtain information from their employer to bring a claim against their employer.

37. Iannone and James both were fully engaged and invested in the case. I met with both remotely before their depositions to prepare. Iannone and James both traveled to Birmingham, Alabama to sit for their depositions. One of the more interesting financial discussions I had in this case was with Plaintiff James who, after being questioned by counsel for AutoZone about benchmarks, wondered why, if not falling short of the benchmarks was so important, the Plan didn't simply invest in the benchmarks.

Executed on October 24, 2024  
in Birmingham, Alabama.

*James H. White*

---

JAMES H. WHITE IV

# EXHIBIT 1

**Exhibit 1**

<b>Work Performed</b>	<b>Time line</b>	<b>James White</b>	<b>Lange Clark</b>	<b>D.G.Pantazis Jr.</b>	<b>Eric Shiefield</b>	<b>Tammy</b>	<b>Deepti Ramani</b>	<b>Total Hours Spent</b>
Claim Preparation, Pleading and Motion Practice	Sep. 2019 to Sep. 2020	343.8	252.7	185.6		40.4	182	1004.5
Document Discovery	Oct. 2020 to Dec. 2021	653.4	552	323.4	7.4	137.4	355	2028.6
Fact Witness Depositions and Class Certification	Jan. 2022 to July 2022	1135	927.1	265	70.7	317.5	501	3216.3
Expert Reports, Depositions and Motions to Exclude (Daubert)	Aug. 2022 to Jan. 2023	174.8	480.9	296.9		305.1	114	1371.7
Dispositive Motions	Feb. 2023 to Apr. 2023	290	281.3	191.95		218	210	1191.25
Trial Preparation	May. 2023 to Oct.22, 2023	590	438.1	412.95	46	590.15	404	2481.2
<b>Total</b>		<b>3,187.00</b>	<b>2,932.10</b>	<b>1,675.80</b>	<b>124.10</b>	<b>1,608.55</b>	<b>1,766.00</b>	<b>11,293.55</b>



# **EXHIBIT 2**

# **EXHIBIT 3**

**Exhibit 3**

<b>Name of Deponent</b>	<b>Location</b>	<b>Deposition Date</b>
Steven "Steve" Beussink	Memphis, Tennessee	02/16/2022
Kristen Wright	Memphis, Tennessee	03/11/2022
William T. "Bill" Giles	Memphis, Tennessee	03/02/2022
Richard.C "Rick" Smith	Memphis, Tennessee	02/23/2022
Pamela Samuels-Kater	Memphis, Tennessee	03/15/2022
Autozone 30(b)(6)	Memphis, Tennessee	01/20/2022
Matt. Harmon	Memphis, Tennessee	07/13/2022
Brian Campbell	Memphis, Tennessee	01/21/2022
Northern Trust 30(b)(6)	Chicago, Illinois	05/10/2022
Richard C. "Rick" Campbell, Jr.	Chicago, Illinois	05/10/2022
WTW 30(b)(6)	Atlanta, Georgia	04/07/2022
Beau Morrison	Atlanta, Georgia	04/07/2022
Prudential 30(b)(6)	Hartford, Connecticut	07/06/2022
Anton Tansil	Hartford, Connecticut	07/07/2022
Wendy Dominguez	Denver, Colorado	09/28/2022
Wendy Dominguez	Denver, Colorado	10/26/2022
Wendy Dominguez	Denver, Colorado	1/11/2023
Chris Tobe	Louisville, Kentucky	10/20/2022
Robert Brooks	Birmingham, Alabama	10/21/2022
Robert Brooks	Louisville, Kentucky	09/22/2022
Chris Tobe	Louisville, Kentucky	09/19/2022
Michael Iannone	Birmingham, Alabama	01/24/2022
Nicole James	Birmingham, Alabama	01/25/2022

**Exhibit 2**

Document Source	Production Date(s)	Bates Range	Number of Pages	Number of Documents
Autozone	12/21/2020	AZ_000001 - AZ_000037	37	1
Autozone	1/1/2021	AZ_000038 - AZ_000135	98	1
Autozone	1/1/2021	AZ_000136 - AZ_034077	33942	2024
Autozone	1/11/2021	AZ_002496 - AZ_003734	238	38
Autozone	2021-Mar-3	AZ_013013 - AZ_016167	3154	549
Autozone	4/1/2021	AZ_016169 - AZ_034077	17908	2498
Autozone	6/3/2022	AZ_036400 - AZ_055313	18913	27
Autozone	1/8/2022	AZ_034078 - AZ_051807 (re-production)	17729	
Autozone	1/14/2022	AZ_051808 - 051815	8	1
Autozone	1/18/2022	AZ_051816 - AZ_053407	1593	5
Autozone	1/25/2022	The above ^ reproduced with metadata		
Autozone	02/08/2022	AZ_53408 - AZ_53669	261	8
Autozone	Feb 2022	AZ_53670 - AZ_055056	1,386	51
Autozone	03/28/2022	AZ_055057 - AZ_055825	768	233
Autozone	05/17/2022	AZ_055826 - AZ-058032	2206	
Autozone	06/03/2022	The above ^ Re-produced to replace blank pages		
Northern Trust	2022-January	NT_00000001 - 7985	7985	1095
Northern Trust	04.12.2022	NT_00007986 - 15574	7589	2406
Northern Trust	04.28.2022	NT_00015575 - 18434	2860	677
Northern Trust	05.11.2022	NT_00018434 - 18536	102	1
Prudential	02/18/2022	003083 - 003461	388	49
Prudential	Feb 2022	003510 - 035820	32,310	6473
Prudential	03/08/2022	035821 - 036189	369	70
Prudential	03/16/2022	036190 - 037624	1434	109
Prudential	07/18/2022	037628 - 648	21	32
WTW		No bates		
VSP		VSP0000506 - VSP0014389	14389	392
Iannone		Various		
James		Various		

# **EXHIBIT 4**

Exhibit 4

Category	Task
<b>A. Preparation of Claim</b>	
<b>Preparation of Claim (Continued)</b>	1. <b>Plan Documentation.</b>
	<b>a. Fund Chart:</b> Prepare chart of funds (Autozone plan investment options), designated benchmarks, and asset values. Chart includes identifying plan funds and asset value as per Form 5500 reports on file with the Department of Labor, later verified by the 404(a)(5) participant disclosures, and advisor reports.
	<b>b. Asset Weights:</b> Prepare schedule of funds, benchmarks, and asset weights for later use in evaluating fund performance and investment losses. Review fund literature and consult with outside experts.
	<b>c. GIC:</b> Identified the type of stable value fund and conducted research on its crediting rates using information from Form 5500. As stable value funds do not file a prospectus with the SEC, market research was performed to identify comparable funds. This process involved gathering and reviewing relevant product factsheets.
	<b>d. Share Class:</b> Pull prospectus for each of plan mutual funds. Research on existence of lower share class for each fund from Prospectus and industry information. Research EDGAR database to verify availability of funds. We checked the inception date of funds, to verify that the alternative share class could have been selected by plan. Add the tickers of the lower share class fund. Share classes are not static and change over time. Consequently, the share class review was conducted over the entire class period.
	<b>e. Turnover Ratio:</b> Conducted research on the transaction costs of each fund using the prospectus.
	2. <b>a. Performance Evaluation and Loss Calculation.</b> Loss Calculation includes three components: (a) Total damage estimate from excessive GIC-related spread fees. (b) Total damage estimate from excessive investment fees. (c) Total damage estimate from excessive recordkeeping fees
	<b>b. Performance:</b> Construct performance evaluation model using the plan data and benchmarks. Performance information was as reported by the mutual funds to Bloomberg. Model requires downloading fund prices from Bloomberg, calculating returns. For the Stable value fund, an index was created to calculate periodic returns of the prudential GIC and comparators.
	<b>c. Contributions:</b> We review the contribution by the employer and employee as per form 5500. Adjust the cash inflows and outflows to come up with the approximate monthly contributions.
	<b>d. GIC Spread Fees:</b> We calculate the difference between the GIC returns and Investable Benchmark returns. This involved gathering and reviewing product factsheets. We also researched plans with comparable GIC products to assess the performance of Prudential's GIC.
<b>Preparation of Claim (Continued)</b>	<b>e. Investment Fees:</b> Research on the fund and investable benchmark expense ratio from prospectus and calculate the excess fees.
	<b>f. Recordkeeping Fees:</b> Verified the direct and indirect recordkeeping fees from the 408(b)(2) disclosure. Calculated the total recordkeeping fees and compared them with the reasonable fee benchmarks provided by experts. Subsequently, calculated any excessive recordkeeping fees.
	<b>g.</b> The damages were modeled to account for the lost opportunity cost. This involved frequent consultation with outside experts. The resulting damage model was prepared by a finance professor. The model was prepared in excel format and was also verified with a computer model (programmed in the R-code language). The loss model went through multiple versions and updates.
	<b>h.</b> The results were recorded in a spreadsheet, fund-by-fund, period by period, with a calculation of the fee differential.
	3. <b>Charts for Complaint.</b> Prepare graphs and charts for Complaint. (a) We conducted a summary analysis of the expense ratio compared to low-cost investable benchmarks for each year of the class period and calculated an weighted average to estimate the potential loss. (b) We created a bar chart illustrating the excessive spread fees as a percentage for each year of the class period, along with a summary of the total dollar damages. (c) Chart summarising the difference in the investment management fees of funds compared to the investable benchmark. (d) Chart summarising the turnover ratios of AZ funds as compared to investable benchmark. (e) Bar chart summarising Fees chasing excess returns over the class period. (f) Chart summarising the turnover ratio of funds as compared to investable benchmark (g) Chart summarising the difference in the investment management fees and returns of the funds and the investable benchmark. (h) Bar chart summarising the payments made to Prudential from each fund. (i) Exhibit B had 8 charts summarising share class loss for the fund.
	4. <b>Benchmark List.</b> Prepare master fund benchmark list for use by consulting experts. We maintained a common Master Benchmark Fund list to verify that each of the consulting experts had approved the benchmarks and to insure consistency. Benchmark list was periodically updated during the course of the case as additional plan and financial information became available.
	5. <b>GoalMaker Plan Allocation Model.</b> Identify funds allocated to the GoalMaker asset allocation service. These funds paid investment management fees and kickbacks to prudential.
	6. <b>Capital Preservation / Stable Value.</b> Evaluate asset allocation service and reliance on stable value. Because stable value funds are not mutual funds and do not have a designated benchmark, there is a separate process for evaluating stable value funds. This involves an assessment of the funds transparency, features, structure, management, value, and performance.
	7. <b>Consultation with Outside Experts.</b> The subject matter of the work required regular consultation with fixed income and retirement plan advisory experts. The expert materials in this
	8. <b>Legal Analysis.</b> The work required review of the evolving case law in the ERISA space on burdens of proof, benchmarks, and legal standards applicable to finance based claims. The case law in ERISA class actions can be fairly specific with regard to the use of meaningful benchmarks for the evaluation of mutual funds, recordkeeping comparables (not at issue in BBVA), and the methodology for calculating rates of return and losses.
<b>Preparation of Claim (Continued)</b>	9. <b>Information.</b> Organize information for loss calculation, including, master fund benchmark list, input from other experts, Form 5500 reports (used to estimate monthly contributions and asset weights), estimate of investment management fees, recordkeeping fees, spread fees, comparator product pricing information, and Bloomberg price information. Analysing 404(a)(5) filings for loss due to excessive fees. Analysing 408(b)(2) for direct and indirect recordkeeping compensation.
	10. <b>Estimate Loss.</b> Prepare rough model in Excel and R-code (for verification purposes) to estimate total loss.
	11. <b>Coordination with Experts.</b> Work with experts to prepare loss model consistent with applicable legal standards. Check model against Excel and R code estimate.
	12. <b>Legal Analysis.</b> Review model against legal framework for proof of loss in ERISA cases (Brotherston v. Putnam).
<b>B. Document Discovery</b>	1. <b>Document Review.</b> A substantial part of the documentation in this case consisted of financial information (investment policy statement, fund literature, factsheets, advisor reports, part of committee meeting minutes) that benefitted from a review by a financial analyst. 2. We reviewed quarterly advisor reports to assess the performance of the funds and investment options relative to their benchmarks. Additionally, we evaluated the performance of the GoalMaker funds against investable benchmarks, which assisted in estimating potential losses. 3. Reviewed documents to gather additional information on the performance of stable value funds, facilitating a fair comparison of their performance against prevailing market rates. 4. The document production was organized and indexed for easy reference when needed. 5. We also reviewed and indexed VSP documents focusing on renegotiation process for stable value products. 6. <b>Update Loss Model.</b> The loss model was updated periodically with additional information.
<b>C. Depositions</b>	Substantial amount of effort was dedicated to assembling and labelling documents for the depositions.
<b>D. Expert Reports ...</b>	The documents were carefully assembled and organized to be made available for expert analysis and the preparation of their reports. Considerable work went into organizing, preparing, and labeling the documents.
<b>E. Dispositive Motions</b>	The statement of material facts was extensive and detailed, incorporating citations to hundreds of documents, depositions, and other materials. It also included summaries of financial analyses conducted at various stages of the case.
<b>F. Mediation and Settlement</b>	1. Loss models were updated in connection with each of the mediations.
	2. The details of settlement administration are handled, for the most part, by a third-party settlement administrator.
	3. Keeping track of the financial information itself is labor intensive.

# **EXHIBIT 5**

### Exhibit 5

	<b>Wiggins Childs</b>	<b>White Firm</b>	<b>Clark Firm</b>	<b>Total</b>
<b>Expenses</b>	288,964.75	136,012.06	10,979.61	435,956.42