UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARY BELL, et al., Plaintiffs, v. ATH HOLDING COMPANY, LLC, et al., Defendants.	Case No. 1:15-cv-02602-TWP-MPB

SECOND AMENDED COMPLAINT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARY BELL, JANICE GRIDER, CINDY PROKISH, JOHN A. HOFFMAN, AND PAMELA M. LEINONEN, individually and as representatives of a class of similarly situated persons of the Anthem 401(k) Plan (formerly the WellPoint 401(k) Retirement Savings Plan),

Plaintiffs,

v.

ATH HOLDING COMPANY, LLC, BOARD OF DIRECTORS OF ATH HOLDING COMPANY, LLC, PENSION COMMITTEE OF ATH HOLDING COMPANY, LLC, AND JOHN DOES 1–40,

Defendants.

Case No. 1:15-cv-02062-TWP-MPB

SECOND AMENDED COMPLAINT—CLASS ACTION

SECOND AMENDED COMPLAINT

1. Plaintiffs Mary Bell, Janice Grider, Cindy Prokish, John A. Hoffman, and Pamela M. Leinonen, individually and as representatives of the participants and beneficiaries of the Anthem 401(k) Plan (formerly the WellPoint 401(k) Retirement Savings Plan, "Plan"), bring this action under 29 U.S.C. §1132(a)(2) on behalf of the Plan against Defendants ATH Holding Company, LLC, the Board of Directors of ATH Holding Company, LLC, the Pension Committee of ATH Holding

Company, LLC, and John Does 1–40 for breach of fiduciary duties.[1]

2. Today, 401(k) defined contribution plans, in which the employee's retirement assets are at risk of high fees and underperformance, have become America's primary retirement system, departing from traditional defined benefit (pension) plans where the employer assumes the risk.[2] With over $5 billion in assets, the Plan is in the top *0.08%*—less than 1%—of over 620,000 401(k) plans offered to participants based on plan assets.[3] The marketplace for 401(k) retirement plan services is established and competitive. Multi-billion dollar defined contribution plans, like the Plan, have tremendous bargaining power to demand low-cost administrative and investment management services. As fiduciaries to the Plan, Defendants are obligated to act for the exclusive benefit of participants and beneficiaries and ensuring that plan expenses are reasonable. These duties have been defined as the "highest known to the law", which must be done with "an eye single to the interests of the participants and beneficiaries." *Donovan v. Bierwirth*, 680 F.2d 263, 271, 272 n.8 (2d Cir. 1982). Instead of using the Plan's bargaining power to benefit participants and beneficiaries, Defendants allowed unreasonable

[1] In accordance with the Court's Order dated March 23, 2017 [Doc. 80 at 17], Plaintiffs submit this Second Amended Complaint limited to the dismissed money market claim, Count III, and the dismissed portion of Count IV (which is now Count V to this Second Amended Complaint). Count IV to this Second Amended Complaint is an extension of Count III based on new information discovered since the filing of the Amended Complaint. Plaintiffs specifically reserve their right to seek leave from the Court to file further amendments in accordance with the Court's scheduling order, the S.D. Ind. Local Rules and the Federal Rules of Civil Procedure.

[2] Nancy Trejos, *Retirement Wreck,* WASHINGTON POST (Oct. 12, 2008), available at http://www.washingtonpost.com/wp-dyn/content/article/2008/10/11/AR2008101100177.html.

[3] *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans* at 11 (Dec. 2014), available at https://www.ici.org/pdf/ppr_14_dcplan_profile_401k.pdf.

expenses to be charged to participants for administration of the Plan, and selected and retained high-cost and poor-performing investments compared to available alternatives.

3. To remedy these fiduciary breaches, Plaintiffs, individually and as representatives of two classes of participants and beneficiaries in the Plan, bring this action on behalf of the Plan under 29 U.S.C. §1132(a)(2) to enforce Defendants' personal liability under 29 U.S.C. §1109(a) to make good to the Plan all losses resulting from each breach of fiduciary duty and restore to the Plan any profits made through Defendants' use of the Plan's assets. In addition, Plaintiffs seek such other equitable or remedial relief for the Plan as the Court may deem appropriate.

JURISDICTION AND VENUE

4. This Court has exclusive jurisdiction over the subject matter of this action under 29 U.S.C. §1132(e)(1) and 28 U.S.C. §1331 because it is an action under 29 U.S.C. §1132(a)(2).

5. This District and Division are the proper venue for this action under 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1391(b) because it is the district and division in which the subject Plan is administered, where at least one of the alleged breaches took place, and where at least one defendant may be found.

PARTIES

The Anthem 401(k) Plan

6. The Anthem 401(k) Plan is a defined contribution, individual account, employee pension benefit plan under 29 U.S.C. §1002(2)(A) and §1002(34). Effective

December 2, 2014, the Plan changed its name from the WellPoint 401(k) Retirement Savings Plan.

7. The Plan is established and maintained under a written document in accordance with 29 U.S.C. §1102(a), which was last amended and restated effective as of January 1, 2014. The Vice President of Compensation, Benefits and HR Services of Anthem, Inc. was the authorized delegate of ATH Holding Company, LLC, who executed the amended and restated Plan.

8. The Plan provides for retirement income for employees of ATH Holding Company, LLC and any direct or indirect subsidiary of the company that has been offered the Plan. That retirement income depends upon contributions made on behalf of each employee by his or her employer, deferrals of employee compensation and employer matching contributions, and from the performance of investment options net of fees and expenses exclusively controlled by the fiduciaries of the Plan.

9. ATH Holding Company, LLC established a trust ("Trust") under a trust agreement ("Trust Agreement") between ATH Holding Company, LLC, the Pension Committee of ATH Holding Company, LLC, and the Plan's trustee, to hold participant and employer contributions and such other earnings, income and appreciation from Plan investments less payments made by the Plan's trustee to carry out the purposes of the Trust, in accordance with 29 U.S.C. §1103.

10. As of December 31, 2014, the Plan is one of the country's largest 401(k) plans, and is what is known as a jumbo plan with over $5.1 billion in total assets and over 59,000 participants with account balances.

Plaintiffs

11. Mary Bell resides in Fountaintown, Indiana, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are eligible to receive benefits under the Plan.

12. Janice Grider resides in Beech Grove, Indiana, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are eligible to receive benefits under the Plan.

13. Cindy Prokish resides in New Whiteland, Indiana, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are eligible to receive benefits under the Plan.

14. John A. Hoffman resides in Fishers, Indiana, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are eligible to receive benefits under the Plan.

15. Pamela M. Leinonen resides in Virginia, Minnesota, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are eligible to receive benefits under the Plan.

Defendants

16. Anthem, Inc. (formerly WellPoint, Inc.) is a for-profit domestic corporation organized under Indiana law with its principal place of business in Indianapolis, Indiana. WellPoint, Inc. amended its articles of incorporation to change its name to Anthem Inc. on December 2, 2014. Anthem, Inc. administers the Plan through its subsidiaries.

17. ATH Holding Company, LLC is a domestic limited liability corporation organized under Indiana law with its principal place of business in Indianapolis, Indiana. ATH Holding Company, LLC is the Plan Sponsor, and a wholly owned subsidiary of Anthem, Inc. ATH Holding Company, LLC operates through its Board of Directors, members and managers.

18. Under Section 8.1 of the Plan, the Pension Committee of ATH Holding Company, LLC ("Pension Committee") is a named fiduciary under the Plan and 29 U.S.C. §1102(a), and the Plan Administrator under 29 U.S.C. §1002(16)(A)(i). Under Sections 7.2(a), 8.1 and 8.4 of the Plan, except as provided in the Trust Agreement and within applicable investment policies, the Pension Committee is the named fiduciary with the responsibility for the administration and management of the Plan, with all powers necessary to enable it properly to carry out such responsibilities, including the selection and compensation of service providers to the Plan, and the selection, monitoring, and removal of the investment options made available to participants for the investment of their contributions and provision of their retirement income. The Pension Committee may designate its discretionary authority and such other duties and responsibilities as it deems appropriate to facilitate the day-to-day administration of the Plan.

19. Plaintiffs are currently unaware of the identities of the individual members of the Pension Committee. Those individuals are collectively named as John Does 1–20. Plaintiffs will substitute the real names of the John Does when Plaintiffs know them.

20. Under Section 8.1 of the Plan, ATH Holding Company, LLC has the authority to appoint the Pension Committee to serve as the Plan Administrator, with the sole responsibility for the administration of the Plan. Under Sections 2.32 and 8.9 of the Plan, the Board of Directors of ATH Holding Company, LLC has the sole authority to appoint and remove members of the Pension Committee. Plaintiffs are currently unaware of the individual members of the Board of Directors and are identified as John Does 21–40.

21. Prior to the initial filing of this complaint, Plaintiffs requested information from the Plan Administrator under 29 U.S.C. §1024, which requires among other production, furnishing documents or instruments under which the Plan is established or operated. Despite its statutory obligation to respond to requests for information made by participants, the Plan Administrator refused to accept and comply with Plaintiffs' request, which was made on multiple occasions, specifically, on October 5 and October 27, 2015. Because of these refusals and clear statutory violations, including the refusal to provide the Trust Agreement between ATH Holding Company, LLC, the Pension Committee, and the Plan's trustee, and the Plan's investment policies, Plaintiffs cannot fully determine which of the Anthem entities or committee members described above engaged in specific fiduciary breaches described below.

22. Because all of those individual entities have acted as alleged herein as the agents of ATH Holding Company, LLC and/or co-fiduciaries, all defendants are collectively referred to hereafter as Anthem.

FACTS APPLICABLE TO ALL COUNTS

Plan Investments

23. In a defined contribution plan, participants' retirement benefits are limited to the value of their own individual accounts, which is determined solely by employee and employer contributions plus the amount gained through investment in the options made available in the plan less expenses. See 29 U.S.C. §1002(34). Accordingly, poor investment performance and unreasonable fees can significantly impair the value of a participant's account. Over time, even seemingly small differences in fees and performance can result in vast differences in the amount of savings available at retirement. See, e.g., U.S. Dep't of Labor, *A Look at 401(k) Plan Fees* 1–2 (Aug. 2013)(illustrating impact of expenses with example in which a 1% difference in fees and expenses over 35 years reduces participant's account balance at retirement by 28%).[4]

24. Anthem controlled the available investment options in which the participants could invest their retirement assets.

25. As of December 31, 2014, Anthem offered eleven Vanguard mutual funds, Vanguard collective trust target date funds, two non-Vanguard mutual funds, and an Anthem, Inc. common stock fund. Those investment funds and the amount of Plan assets in them are set forth below.[5]

[4] Available at http://www.dol.gov/ebsa/pdf/401kfeesemployee.pdf.
[5] See 2014 Anthem 401(k) Plan Form 5500.

Investment Options[6]	2014
Artisan Midcap Value Fund-Instl	$ 146,282,151
Touchstone Sands Capital Select Growth Fund-Instl	$ 133,320,126
Vanguard Prime Money Market Fund-Instl	$ 461,859,199
Vanguard Institutional Index Fund-Instl Plus	$ 712,889,172
Vanguard Total Bond Market Index Fund-Instl Plus	$ 422,673,640
Vanguard Wellington Fund-Adm	$ 367,536,367
Vanguard Total International Stock Index Fund-Instl Plus	$ 376,245,825
Vanguard PRIMECAP Fund-Adm	$ 371,029,292
Vanguard Extended Market Index Fund-Instl Plus	$ 297,618,761
Vanguard Windsor II Fund-Adm	$ 210,272,166
Vanguard Explorer Fund-Adm	$ 116,025,228
Vanguard Inflation-Protected Securities Fund-Adm	$ 35,784,318
Vanguard International Growth-Adm	$ 3,567,062
Vanguard Target Retirement 2010 Trust Plus	$ 9,436,509
Vanguard Target Retirement 2015 Trust Plus	$ 136,971,831
Vanguard Target Retirement 2020 Trust Plus	$ 64,189,161
Vanguard Target Retirement 2025 Trust Plus	$ 287,328,228
Vanguard Target Retirement 2030 Trust Plus	$ 46,164,963
Vanguard Target Retirement 2035 Trust Plus	$ 217,834,649
Vanguard Target Retirement 2040 Trust Plus	$ 32,571,919

[6] "Instl" refers to the institutional share class, "Instl Plus" refers to the institutional plus share class, and "Adm" refers to the admiral share class.

Investment Options[6]	**2014**
Vanguard Target Retirement 2045 Trust Plus	$ 121,974,410
Vanguard Target Retirement 2050 Trust Plus	$ 18,589,195
Vanguard Target Retirement 2055 Trust Plus	$ 5,674,840
Vanguard Target Retirement 2060 Trust Plus	$ 1,992,567
Vanguard Target Retirement Income Trust Plus	$ 36,697,926
Anthem, Inc. Common Stock	$ 312,328,676

26. With the exception of changes in share classes for mutual funds and replacement of certain mutual funds in favor of collective trusts, Anthem has offered these Vanguard investments and the Touchstone fund throughout the relevant time period. The Artisan Mid Cap Value Fund was added to the Plan during 2012.

Plan Recordkeeper

27. The Vanguard Group, Inc. serves as the recordkeeper to provide administrative and recordkeeping services to the Plan. Vanguard Fiduciary Trust Company serves as the Plan's trustee tasked with certain duties and responsibilities, including but not limited to: investing Plan assets in accordance with the investment directions provided by the Plan Administrator or participants, and paying all benefits and expenses from the Trust upon the written direction of the Plan Administrator. The Vanguard entities are hereafter collectively referred to as "Vanguard". Vanguard has served in these roles throughout the relevant time period.

Unreasonable Investment Management Fees from Excessively High-Priced Investment Options

28. Academic and financial industry literature shows the importance of low fees in selecting investments. Numerous scholars have demonstrated that high expenses are not correlated with superior investment management. Indeed, funds with high fees on average perform worse than less expensive funds even on a *pre-fee basis*. Javier Gil-Bazo & Pablo Ruiz-Verdu, *When Cheaper is Better: Fee Determination in the Market for Equity Mutual Funds*, 67 J. ECON. BEHAV. & ORG. 871, 873 (2009); see also Jill E. Fisch, *Rethinking the Regulation of Securities Intermediaries*, 158 U. PA. L. REV. 1961, 1993 (2010)(summarizing numerous studies showing that "the most consistent predictor of a fund's return to investors is the fund's expense ratio").

> [T]he empirical evidence implies that superior management is not priced through higher expense ratios. On the contrary, it appears that the effect of expenses on after-expense performance (even after controlling for funds' observable characteristics) is more than one-to-one, which would imply that low-quality funds charge higher fees. Price and quality thus seem to be inversely related in the market for actively managed funds.

Gil-Bazo & Ruiz-Verdu, *When Cheaper is Better*, at 883.

29. Many Nobel Prize winners in economics have concluded that virtually no investment manager consistently beats the market over time after fees are taken into account. "Properly measured, the average actively managed dollar must underperform the average passively managed dollar, net of costs." William F.

Sharpe, *The Arithmetic of Active Management,* 47 FIN. ANALYSTS J. 7, 8 (January/February 1991).[7]

30. If an individual high-cost mutual fund exhibits market-beating performance over a short period of time, studies demonstrate that outperformance during a particular period is not predictive of whether a mutual fund will perform well in the future. Laurent Barras et al., *False Discoveries in Mutual Fund Performance: Measuring Luck in Estimated Alphas*, 65 J. FIN. 179, 181 (2010); Mark M. Carhart, *On Persistence in Mutual Fund Performance*, 52 J. FIN. 57, 57, 59 (1997)(measuring thirty-one years of mutual fund returns and concluding that "persistent differences in mutual fund expenses and transaction costs explain almost all of the predictability in mutual fund returns"). However, the *worst-performing* mutual funds show a strong, persistent tendency to continue their poor performance. Carhart, *On Persistence in Mutual Fund Performance*, at 57.

31. To the extent managers show any sustainable ability to beat the market, the outperformance is nearly always dwarfed by mutual fund expenses. Eugene F. Fama & Kenneth R. French, *Luck Versus Skill in the Cross-Section of Mutual Fund Returns*, 65 J. FIN. 1915, 1931–34 (2010); Russ Wermers, *Mutual Fund Performance: An Empirical Decomposition into Stock-Picking Talent, Style, Transaction Costs, and Expenses*, 55 J. FIN. 1655, 1690 (2000).

32. Accordingly, investment costs are of paramount importance to prudent investment selection, and a prudent investor will not select higher-cost actively

[7] Available at http://www.cfapubs.org/doi/pdf/10.2469/faj.v47.n1.7.

managed funds without a documented process to realistically conclude that the fund is likely to be that extremely rare exception, if one even exists, that will outperform its benchmark index over time, net of investment expenses.

33. Anthem selected high-priced share classes of mutual funds, instead of *identical* lower-cost share classes of those same mutual funds which were readily available to the Plan. Anthem also failed to adequately investigate and to offer non-mutual fund alternatives, such as collective trusts and separately managed accounts prior to 2013. Holders of large pools of assets know that these investment vehicles are readily available to them and can be used for the same investment style and with the same portfolio manager, but are much lower priced. Each mutual fund in the Plan charged fees far in excess of the rates Anthem could have obtained for the Plan by using these comparable products.

A. *Excessive fees compared to lower-cost share classes* of *the Plan's identical mutual fund options*

34. It is a simple principle of investment management that the larger the size of an investor's available assets, the lower the investment management fees that can be obtained in the market. Thus, large retirement plans have substantial bargaining power to negotiate low fees for investment management services.

35. Jumbo retirement plans, such as the Plan, have much more bargaining power to negotiate low fees for investment management services than even large plans.

36. Lower-cost institutional share classes of mutual funds compared to high-priced retail shares are readily available to institutional investors, like the

Plan, or even smaller asset holders, that meet minimum investment amounts for these share classes.

37. Until July 22, 2013, for the exact same mutual fund option, instead of using the size of the Plan to benefit participants as required, Anthem provided much higher-cost share classes of Plan investment options than were easily available to the Plan based on its size. It was not until that time that Anthem eliminated the high-priced mutual funds from the Plan. Describing this change, Anthem noted:

> During 2013, the Plan restructured the investments offered to participants. Target Date Retirement mutual funds were moved to similar collective trusts. Other mutual funds were moved from Investor shares to Institutional shares. These moves maintained the underlying investments available to Participants and lowered expense ratios.[8]

38. Lower-cost identical institutional mutual fund alternatives to the Plan's mutual funds included the following:

[8] 2013 Form 5500, Fin. Stmts and Suppl. Sch. at n.3.

Plan Investment Options[9]	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess
Vanguard Prime Money Market Fund (Inv) (VMMXX)	16 bps	VMRXX	9 bps	78%
Vanguard Institutional Index Fund (Instl) (VINIX)	4 bps	VIIIX	2 bps	100%
Vanguard Total Bond Market Index Fund (Inv) (VBMFX)	20 bps	VBMPX	5 bps	300%
Vanguard Wellington Fund (Inv) (VWELX)	26 bps	VWENX	18 bps	44%
Vanguard Total International Stock Index Fund (Inv) (VGTSX)	22 bps	VTPSX	10 bps	120%
Vanguard PRIMECAP Fund (Inv) (VPMCX)	45 bps	VPMAX	36 bps	25%
Vanguard Extended Market Index Fund (Inv) (VEXMX)	24 bps	VEMPX	6 bps	300%
Vanguard Windsor II Fund (Inv) (VWNFX)	36 bps	VWNAX	28 bps	29%
Vanguard Explorer Fund (Inv) (VEXPX)	50 bps	VEXRX	34 bps	47%
Vanguard Inflation-Protected Securities Fund (Inv) (VIPSX)	20 bps	VIPIX	7 bps	186%
Artisan Mid Cap Value Fund (Inv) (ARTQX)	120 bps	APHQX	98 bps	22%

[9] Expense ratios were obtained from Morningstar, a provider of independent investment research. See www.morningstar.com. "Bps" refers to basis points. One hundred basis points is 1.0%. In 2013, Anthem reported to participants that the Touchstone fund charged 118 bps.

Plan Investment Options[9]	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess
Touchstone Select Growth Fund (Y) (CFSIX)	103 bps	CISGX	80 bps	48%

39. These lower-cost share classes of the identical mutual funds were available to the Plan many years before Anthem restructured the investment lineup in 2013. In fact, 7 of the 12 lower-cost options were available since the late 1990s or early 2000s.[10]

Identical Lower-Cost Mutual Fund Option	Inception Date
Vanguard Prime Money Market Fund-Instl	10/3/1989
Vanguard Institutional Index Fund -Instl Plus	7/7/1997
Vanguard Total Bond Market Index Fund-Instl Plus	9/17/1995
Vanguard Wellington Fund-Adm	5/13/2001
Vanguard Total International Stock Index Fund-Instl Plus	11/29/2010
Vanguard PRIMECAP Fund-Adm	11/11/2001
Vanguard Extended Market Index Fund-Instl Plus	1/13/2011

[10] For Vanguard fund inception dates, see https://institutional.vanguard.com. For the Artisan Mid Cap Value Fund-Instl, see the fund's prospectus dated Feb. 1, 2015, available at https://www.sec.gov/Archives/edgar/data/935015/000119312515023706/d838378d485bpos.htm. For the Touchstone Select Growth Fund-Instl, see the fund's prospectus dated Apr. 15, 2015, available at https://www.sec.gov/Archives/edgar/data/1174490/000110465915030050/a15-6498_1485bpos.htm.

Identical Lower-Cost Mutual Fund Option	Inception Date
Vanguard Windsor II Fund-Adm	5/13/2001
Vanguard Explorer Fund-Instl	12/12/2003
Vanguard Inflation-Protected Securities Fund-Instl	12/11/2003
Artisan Mid Cap Value Fund-Instl	2/1/2012
Touchstone Select Growth Fund-Instl	1/21/2005

40. Despite the availability of much lower-cost share classes for the Plan's mutual fund options, Anthem only recently replaced these higher-cost share classes with their lower-cost versions effective July 22, 2013. Plan participants thus paid far higher fees than they should have, which resulted in receiving lower returns on their retirement investments, and fewer retirement assets to build for the future, than they would have obtained had Defendants performed their fiduciary duties.

41. Had the amounts invested in the higher-cost share classes instead been invested in the much lower-cost versions of the Plan's mutual fund options from December 29, 2009 through July 22, 2013, Plan participants would not have lost over $18 million of their retirement savings through unnecessary expenses.[11]

B. *Excessive fees compared to other mutual funds*

42. Besides being much higher than the fees identical institutional share classes of the same mutual funds charge, the fees charged for certain of the Plan's

[11] Plan losses have been brought forward to the present value using the investment returns of the S&P 500 Index to compensate participants who have not been reimbursed for their losses. This is because the excessive fees participants paid would have remained in Plan investments growing with the market.

mutual fund investments are far higher than reasonable investment management fees for such funds. These fees were and are significantly higher than comparable institutional mutual funds available to 401(k) plans, including actively managed and passively managed index Vanguard institutional funds with similar investment styles that were readily available as Plan investment options.

43. For instance, the Artisan Mid Cap Value Fund and the Touchstone Sands Capital Select Growth Fund were and are the most expensive investment options in the Plan, each holding over $130 million in assets. Prior to the July 22, 2013 share class changes, the Plan's Artisan fund and the Touchstone fund were up to *12 times* more expensive than available Vanguard alternatives in the same investment style.

Mutual Fund Investment	**Plan Fee**	**Lower-Cost Mutual Fund**	**Lower-Cost Mutual Fund Fee**	**Plan's Excess**
Artisan Mid Cap Value Fund	120 bps	Vanguard Mid-Cap Value Index (Adm) (VMVAX) (passive)	9 bps	1233%
		Vanguard Selected Value Fund (VASVX) (active)	43 bps	179%
Touchstone Select Growth Fund	103 bps	Vanguard Growth Index (Instl) (VIGIX) (passive)	8 bps	1188%
		Vanguard U.S. Growth (Adm) (VWUAX) (active)	31 bps	232%

44. Even after the share class changes, as of December 31, 2014, the fees for these mutual fund options were up to *9 times* more expensive than available Vanguard alternatives in the same investment style.

Mutual Fund Investment	Plan Fee	Lower-Cost Mutual Fund	Lower-Cost Mutual Fund Fee	Plan's Excess
Artisan Mid Cap Value Fund	95 bps	Vanguard Mid-Cap Value Index (Adm) (VMVAX)	9 bps	956%
		Vanguard Selected Value Fund (VASVX)	41 bps	132%
Touchstone Select Growth Fund	79 bps	Vanguard Growth Index (Instl) (VIGIX)	8 bps	900%
		Vanguard U.S. Growth (Adm) (VWUAX)	30 bps	167%

45. Had the amounts invested in the Plan's mutual fund investments instead been invested in the lower-cost mutual funds offered from other mutual fund providers in the same investment style readily available to the Plan, Plan participants would not have lost millions of dollars in their retirement savings through excessive fees.

C. *Excessive fees compared to separate accounts*

46. Large retirement plans, including those with assets over $500 million, can hire investment advisers directly to manage separate accounts tailored for the plan within plan-specific investment parameters and even using the same investment managers as mutual funds with the same investment style. Use of such accounts greatly reduces the cost of investing with the same adviser through a retail mutual fund.

47. According to the United States Department of Labor, separate accounts, which require a minimum investment of $15 million to $25 million per

account, can "commonly" reduce "[t]otal investment management expenses" by "*one-fourth of the expenses incurred through retail mutual funds*." U.S. Dep't of Labor, *Study of 401(k) Plan Fees and Expenses*, §2.4.1.3 (Apr. 13, 1998)(emphasis added).[12]

48. As the Plan had assets of well over $1 billion at all relevant times, separate accounts were readily available to obtain these economies of scale offered in the marketplace.

49. Separate accounts have numerous advantages over mutual funds in a 401(k) plan, including the ability to negotiate fees, control by the plan sponsor over the investment guidelines, ability to avoid marketing fees built into the cost of mutual funds,[13] and ability to avoid holding significant cash for shareholder redemption.[14] In a mutual fund, all investors are charged the same fee, and investors have no ability to modify the fund's investment guidelines, which are set by the fund's investment adviser. In a separate account, the plan sponsor can negotiate the best possible fee for the plan using its bargaining power, and can tailor the investment guidelines to fit the demographics of the workforce.

50. While certain of the Plan's options after 2013 offered institutional share classes for the mutual funds, they did not, and still do not, capture the lower

[12] On the Department of Labor's website at http://www.dol.gov/ebsa/pdf/401krept.pdf.

[13] Mutual fund expense ratios include fees for marketing costs, which are wholly unnecessary in a 401(k) plan since participants cannot choose funds other than those provided by the plan's fiduciaries. 401(k) participants receive no benefit from paying marketing costs for mutual funds in the plan.

[14] Unlike mutual fund shareholders, 401(k) participants rarely make trades in their account. Olivia Mitchell, Gary Mottola, Stephen Utkus, and Takeski Yamaguchi, *The Inattentive Participant: Portfolio Trading Behaviors in 401(k) Plans*, at 17–18 (June 2006), available at http://www.mrrc.isr.umich.edu/publications/Papers/pdf/wp115.pdf.

expenses available given the size of the Plan's investment in each fund. For instance, the Plan previously offered the retail share class of the Artisan Mid Cap Value Fund, which charged 120 bps, and the "Y" share class of the Touchstone Sands Capital Select Growth Fund, which charged 103 bps. The Touchstone fund also offered a retail share class. Prior to July 22, 2013, had the Plan obtained separate accounts with expenses of one-fourth the costs of the retail shares, the Plan's expenses would have been reduced dramatically.

Retail Share Class of Plan's Mutual Funds	**Retail Fee**	**Separate Account rate as per DOL: 1/4 of the cost of retail**	**Plan's Fee**	**Plan's Excess**
Artisan Mid Cap Value Fund (ARTQX)	120 bps	30 bps	120 bps	300%
Touchstone Sands Capital Select Growth Fund (TSNAX)	137 bps	34 bps	103 bps	203%

51. Even *after* the Plan's transition to institutional share classes for these funds on July 22, 2013, the Plan continued to pay excess fees compared to the DOL separate account fee as of December 31, 2014.

Plan's Institutional Share Class	**Separate Account rate as per DOL: 1/4 of the cost of retail**	**Plan's Fee**	**Plan's Excess**
Artisan Mid Cap Value Fund (APHQX)	30 bps	95 bps	217%
Touchstone Sands Capital Select Growth Fund (CISGX)	34 bps	79 bps	132%

52. Separately, the investment adviser or subadviser of the above-referenced mutual funds also offered lower-cost separate accounts with the same investment strategy.

53. Artisan Partners Limited Partnership, the same investment adviser of the mutual fund Artisan Mid Cap Value Fund, offers separate accounts for domestic mid cap value accounts. The maximum fee schedule, which is subject to negotiation, is as follows: (1) 80 bps on first $50 million in assets; (2) 60 bps on the next $50 million; and (3) 50 bps on assets above $100 million.[15] With over $146 million in assets invested in the Plan's Artisan Mid Cap Value Fund as of December 31, 2014, the published annual fee charged for the Artisan separate account, even before negotiation due to the size of the assets, is well below the expenses charged for the retail and institutional share classes of the Artisan mutual fund. For example, applying the published, pre-negotiation fee schedule to the fund's assets, the retail share class is *over 87% more expensive*, and the institutional share class is *over 48% more expensive*, than the lower-cost Artisan separate account at a maximum fee of 64 bps before negotiation due to asset size.

54. Sands Capital Management, LLC, the same subadviser of the mutual fund Touchstone Sands Capital Select Growth Fund, offers separate accounts for the select growth investment strategy. The maximum fee schedule, which is subject to negotiation, is as follows: (1) 75 bps on first $50 million in assets; and (2) 50 bps

[15] See Artisan Partners Limited Partnership Form ADV at 14 (Mar. 31, 2015), available at http://www.adviserinfo.sec.gov/Iapd/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=306440.

on assets above $100 million.[16] With over $133 million in assets invested in the Plan's Touchstone Sands Capital Select Growth Fund as of December 31, 2014, the published annual fee charged for the Sands Capital separate account, even before negotiation based on the size of the assets, is well below the expenses charged for the retail and institutional share classes of the Touchstone mutual fund. For example, applying the published, pre-negotiation fee schedule to the fund's assets, the "Y" share class is *over 74% more expensive*, and the institutional share class is *over 33% more expensive*, than the lower-cost Sands Capital separate account estimated at a maximum fee of 59 bps before negotiation due to asset size.

55. These separate accounts only represent a fraction of separate accounts that were available to the Plan in similar investment styles from other investment management firms at a much lower cost than the Plan's mutual funds.

56. Had Anthem selected separate accounts for the Plan's investments instead of retail and institutional share class mutual funds, Plan participants would not have lost millions of dollars in their retirement savings due to unreasonable expenses throughout the relevant time period.

D. *Excessive fees compared to collective trusts*

57. Collective trusts also provide much lower investment management fees than the Plan's mutual funds, and in some instances, separate accounts. Collective

[16] See Sands Capital Management, LLC Form ADV at 5 (Mar. 31, 2015), available at http://www.adviserinfo.sec.gov/Iapd/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=305828.

trusts are a common investment vehicle in large 401(k) plans, and are accessible even to midsize plans with $100 million or more in total plan assets.

58. Vanguard offers low-cost collective trust funds to qualified retirement plans in several asset styles, including large cap domestic equities, small cap equities, international equities, and target date funds.

59. For large cap domestic equities, as an example, Vanguard offers the collective trust Vanguard Employee Benefit Index, which is comparable to the Plan's Vanguard Institutional Index mutual fund. Depending on the fee negotiations between the plan fiduciary and Vanguard, and the amount of investable assets for the mandate, the collective trust version has lower fees and better performance than the mutual fund equivalent.[17] This collective trust alternative has been offered since September 30, 1985.

60. With respect to target date funds, Vanguard currently offers five different collective trust funds, including Target Retirement Trust Select, Target Retirement Trust Plus, and Target Retirement Trust I–III. These funds, which are target date funds, have far lower fees than the Vanguard target date mutual funds used in the Plan and are managed by the same investment adviser as those mutual funds.

[17] See Vanguard Employee Benefit Index Fund Fact Sheet as of Sept. 30, 2015, available at https://institutional.vanguard.com/iippdf/pdfs/FS528R.pdf; Vanguard Institutional Index Fact Sheets for institutional plus and institutional shares as of Sept. 30, 2015, available at https://institutional.vanguard.com/iippdf/pdfs/FS854R.pdf (instl. plus), https://institutional.vanguard.com/iippdf/pdfs/FS94R.pdf (instl.).

61. Prior to July 22, 2013, the Plan invested in the higher-cost mutual fund version of the Vanguard Target Retirement Funds, even though much lower-cost collective trust Vanguard target date funds were available to the Plan. The lower-cost collective trust alternatives to the Plan's target date mutual fund options included the following:

Plan's Vanguard Mutual Fund Target Date Funds	Plan's Vanguard Mutual Fund Fee	Vanguard Collective Trust Fund Fee	Plan's Excess
Vanguard Target Retirement 2010 (VTENX)	16 bps	8 bps	100%
Vanguard Target Retirement 2015 (VTXVX)	16 bps	8 bps	100%
Vanguard Target Retirement 2020 (VTWNX)	16 bps	8 bps	100%
Vanguard Target Retirement 2025 (VTTVX)	17 bps	8 bps	113%
Vanguard Target Retirement 2030 (VTHRX)	17 bps	8 bps	113%
Vanguard Target Retirement 2035 (VTTHX)	18 bps	8 bps	125%
Vanguard Target Retirement 2040 (VFORX)	18 bps	8 bps	125%
Vanguard Target Retirement 2045 (VTIVX)	18 bps	8 bps	125%
Vanguard Target Retirement 2050 (VFIFX)	18 bps	8 bps	125%
Vanguard Target Retirement 2055 (VFFVX)	18 bps	8 bps	125%
Vanguard Target Retirement 2060	18 bps	8 bps	125%

Plan's Vanguard Mutual Fund Target Date Funds	Plan's Vanguard Mutual Fund Fee	Vanguard Collective Trust Fund Fee	Plan's Excess
(VTTSX)			
Vanguard Target Retirement Income (VTINX)	16 bps	8 bps	100%

62. The Vanguard lower-cost collective trust funds were available to the Plan well before Anthem restructured the investment lineup in 2013. In fact, 10 of the 12 target date funds were available in 2007.[18]

Vanguard Target Date Collective Trust Fund	Inception Date
Vanguard Target Retirement Trust 2010	6/21/2007
Vanguard Target Retirement Trust 2015	6/27/2007
Vanguard Target Retirement Trust 2020	6/21/2007
Vanguard Target Retirement Trust 2025	6/27/2007
Vanguard Target Retirement Trust 2030	6/27/2007
Vanguard Target Retirement Trust 2035	6/28/2007
Vanguard Target Retirement Trust 2040	6/29/2007
Vanguard Target Retirement Trust 2045	6/30/2007
Vanguard Target Retirement Trust 2050	6/27/2007
Vanguard Target Retirement Trust 2055	10/4/2010
Vanguard Target Retirement Trust 2060	2/29/2012
Vanguard Target Retirement Income Trust	6/21/2007

[18] Collective trust information provided on Vanguard's website for institutional investors, available at https://institutional.vanguard.com/.

63. Despite the availability of far lower-cost collective trust target date funds from the exact same investment manager Vanguard, Anthem only recently replaced these higher-cost mutual funds with their lower-cost collective trust version in 2013.

64. During 2014, Anthem reduced expenses for the target date investors by offering a still lower-cost version of the Vanguard collective trust target date funds, referred to as the Vanguard Target Retirement Trust Plus. The Target Retirement Trust Plus Funds, with an expense ratio of 6 bps, charge 25% lower expenses than the Retirement Trust I Funds with an expense ratio of 8 bps. With the exception of the 2055 and 2060 target date funds, these funds have been in existence since August 14, 2011, and were readily available to the Plan fiduciaries, but were not used for years.

65. Had the amounts invested in the higher-cost target date mutual funds instead been invested in the lower-cost collective trust target date funds, Plan participants would not have lost millions of dollars in their retirement savings due to unreasonable expenses.

66. Overall, had Anthem selected collective trusts for the Plan's investments instead of retail and institutional share class mutual funds, Plan participants would not have lost millions of dollars in their retirement savings due to unreasonable expenses throughout the relevant time period.

Excessive Administrative Fees

67. Recordkeeping is a service necessary for every defined contribution plan. The market for recordkeeping services is highly competitive. There are numerous recordkeepers in the marketplace who are capable of providing a high level of service to a jumbo defined contribution plan, like the Plan, and will readily respond to a request for proposal. These recordkeepers primarily differentiate themselves based on price, and vigorously compete for business by offering the best price. The cost of recordkeeping services depends on the number of participants, not on the amount of assets in the participant's account. Thus, the cost of providing recordkeeping services to a participant with a $100,000 account balance is the same for a participant with $1,000 in her retirement account. Plans with large numbers of participants can take advantage of economies of scale: a plan with 50,000 participants can negotiate a much lower per participant fee for recordkeeping services than a plan with 1,000 participants.

68. Because recordkeeping costs are not affected by account size, prudent fiduciaries of defined contribution plans negotiate recordkeeping fees on the basis of a fixed dollar amount for each participant in the plan rather than as a percentage of plan assets. Otherwise, as plan assets increase through participant contributions or investment gains, the recordkeeping compensation increases without any change in the recordkeeping and administrative services, leading to excessive fees.

69. Mutual funds have thousands of shareholders and the expense ratio for those funds includes within it a portion for recordkeeping those thousands of shareholders' accounts. However, since a mutual fund in a 401(k) plan has only one

aggregate amount in the plan to track, the recordkeeping must be done by the plan for each participant. In these circumstances, some mutual funds engage in a practice known as revenue sharing.

70. In a revenue sharing arrangement, a mutual fund or other investment vehicle directs a portion of the expense ratio—the asset-based fees it charges to investors—to the 401(k) plan's recordkeeper putatively for providing recordkeeping and administrative services for the mutual fund. Because revenue sharing arrangements provide asset-based fees, prudent fiduciaries monitor the total amount of revenue sharing a recordkeeper receives to ensure that the recordkeeper is not receiving unreasonable compensation. A prudent fiduciary ensures that the recordkeeper rebates to the plan all revenue sharing payments that exceed a reasonable, flat per participant recordkeeping fee that can be obtained from the recordkeeping market through competitive bids. Because revenue sharing payments are asset based, they can bear no relation to a reasonable recordkeeping fee and can provide excessive compensation.

71. While revenue sharing payments are ostensibly provided as compensation to the recordkeeper for providing recordkeeping services, the payments can effectively be "kickbacks" for including the fund in a plan's investment lineup. There are vendors readily available that do recordkeeping only and do not sell investment products. These vendors offer pricing on a pure per-participant basis, without any revenue sharing component.

72. To ensure that plan administrative and recordkeeping expenses are and remain reasonable for the services provided, prudent fiduciaries of large defined contribution plans put the plan's recordkeeping and administrative services out for competitive bidding at regular intervals of approximately three years, and monitor recordkeeping costs regularly within that period.

73. In order to make an informed assessment as to whether a recordkeeper is receiving no more than a reasonable fee for the services provided to a plan, the responsible fiduciary must identify *all* fees, including recordkeeping fees and other sources of compensation, paid to the service provider.

74. Anthem must monitor the compensation received by the Plan's recordkeeper, Vanguard. The Plan's recordkeeping fees became excessive in part because Anthem failed to monitor and control the amount of hard dollar and asset-based revenue sharing amounts allocated to Vanguard. A hard dollar fee refers to a direct payment charged to the participant's account rather than an indirect or revenue sharing payment from the mutual fund.

75. Prior to September 30, 2013, Vanguard was compensated based on a combination of both hard dollar fees and asset-based revenue sharing payments rather than a fixed annual recordkeeping fee charged to each participant's account. The Artisan Mid Cap Value Fund shared 7 bps in revenue sharing with Vanguard. Upon information and belief, Vanguard also received internal revenue sharing from the Vanguard investor share class mutual funds—the high-priced share class. These asset-based payments were assessed as a percentage of the assets Plan

participants have invested in each investment option that shares or credits revenue to Vanguard each year.

76. Based on information currently available to Plaintiffs regarding the Plan's features, the nature of the administrative services provided by Vanguard, the Plan's participant level (roughly 60,000), and the recordkeeping market, the outside limit of a reasonable recordkeeping fee for the Plan would have been $30 per participant.

77. Based on the direct and indirect compensation levels shown on the Plan's Form 5500s filed with the Department of Labor, and, upon information and belief, on the internal revenue share allocated to Vanguard as recordkeeper from the Vanguard investor share class mutual funds, the Plan paid approximately $80 to $94 per participant per year from 2010 to 2013, over 210% higher than a reasonable fee for these services, resulting in millions of dollars in excessive recordkeeping fees each year.

78. As of September 30, 2013, Anthem instituted a flat $42 annual recordkeeping fee charged to each participant's account to compensate Vanguard for providing recordkeeping services to the Plan. Even though Anthem instituted a flat annual recordkeeping fee, the Plan's recordkeeping fee continues to exceed a reasonable fee by at least 40% for these services.

79. The Plan has increased in total assets by over 54% from $3.3 billion as of December 31, 2010, to $5.1 billion as of December 31, 2014. Because the revenue sharing payments are asset based, the recordkeeping fees received by Vanguard

increased during this time period even though the administrative services provided to the Plan remained the same. Anthem could have and should have capped the amount of revenue sharing to ensure that excessive amounts were returned to the Plan but failed to do so.

80. Upon information and belief, Anthem also failed to conduct a competitive bidding process for the Plan's recordkeeping services. A competitive bidding process for the Plan's recordkeeping services would have produced a reasonable recordkeeping fee for the Plan. This competitive bidding process would have enabled Anthem to select a recordkeeper charging reasonable fees, to negotiate a reduction in recordkeeping fees, and to rebate any excess expenses paid by participants for recordkeeping services.

81. Anthem failed to prudently monitor and control Vanguard's recordkeeping compensation to ensure that only reasonable fees were charged for recordkeeping and administrative services.

82. Had Anthem ensured that participants were only charged reasonable fees for administrative and recordkeeping services, Plan participants would not have lost millions of dollars in their retirement savings through unreasonable recordkeeping fees.

The Imprudent and Excessively Expensive Vanguard Money Market Fund as the Plan's Single Capital Preservation Investment Option

83. The Plan's Vanguard Prime Money Market Fund (the "Money Market Fund") is a money market mutual fund designed for *retail* investors, not large

defined contribution plans institutional investors or other investors seeking to protect the principal of their investment while maximizing their current income.[19]

84. For over 14 years dating back to at least 2003, Anthem has provided only Vanguard's in-house money market fund to Plan participants as the Plan's single capital preservation investment option.[20] Capital preservation options are conservative investments where the primary investment strategy is to preserve the investor's principal growing with an investment return exceeding inflation. When Vanguard became the recordkeeper of the Plan following the merger with the Anthem 401(k) Long Term Savings Investment Plan effective January 1, 2006, Anthem eliminated the Plan's prior capital preservation investment, a stable value

[19] Vanguard Prime Money Market Fund Prospectus, Form N-1A, at 2 (Dec. 23, 2009), available at https://www.sec.gov/Archives/edgar/data/106830/000093247109001994/mmreserves485b.htm; Vanguard Prime Money Market Fund Prospectus, Form N-1A, at 15 (Dec. 23, 2016), available at https://www.sec.gov/Archives/edgar/data/106830/000093247116015020/final485b.htm; Vanguard, *Money Market Reform and Stable Value: Considerations for Plan Fiduciaries*, VANGUARD COMMENTARY, at 3 (Aug. 2016), available at https://institutional.vanguard.com/iam/pdf/ISGSVMM.pdf?cbdForceDomain=true.

[20] According to SEC filings, Anthem provided the Vanguard Money Market Fund since at least 2003 for the predecessor WellPoint 401(k) Retirement Savings Plan, which was recordkept by Vanguard. See WellPoint 401(k) Retirement Savings Plan, Form 11-K (Dec. 31, 2004), available at https://www.sec.gov/Archives/edgar/data/1156039/000119312505134610/d11k.htm. Effective December 31, 2005, the WellPoint 401(k) Retirement Savings Plan merged into the Anthem 401(k) Long Term Savings Investment Plan, and the Anthem 401(k) Long Term Savings Investment Plan was renamed the WellPoint 401(k) Retirement Savings Plan. See WellPoint 401(k) Retirement Savings Plan, Form 11-K, at 8 (Dec. 31, 2005), available at https://www.sec.gov/Archives/edgar/data/1156039/000119312506135933/d11k.htm. Effective January 1, 2006, Vanguard became the recordkeeper of the merged plan, and all assets were transferred from the Anthem plan's prior recordkeeper, State Street, to Vanguard. *Id.* at 10. The WellPoint 401(k) Retirement Savings Plan was later renamed the Anthem 401(k) Plan effective December 2, 2014. See *supra* ¶6.

fund managed by State Street.[21] Since that time, Anthem has continued to provide *only* Vanguard's money market fund despite the fact that short-term interest rates in the United States—and relatedly the fund's returns—have consistently been at or near zero percent following the global financial crisis of 2008, now nearly a decade ago.[22]

85. As thoroughly demonstrated below, Anthem provided the Money Market Fund in the Plan not based on an analysis of its merits but rather to drive significant revenue to Vanguard, the Plan's recordkeeper. Following the dramatic decline in short-term interest rates, Anthem never considered an alternative or in addition to the Money Market Fund as the Plan's capital preservation option, which would have provided meaningful retirement benefits to Plan participants. Anthem also never employed appropriate methods to investigate the merits of the Money Market Fund or come to a reasoned decision as to why it was in Plan participants' best interest or prudent to provide this Fund as the Plan's sole capital preservation investment after evaluating prudent alternatives that were available in the marketplace.

A. The excessive fees charged by the Money Market Fund drove significant revenue to Vanguard, the Plan's recordkeeper.

86. Prior to July 22, 2013, Anthem provided the retail (or investor) share class of the Money Market Fund (VMMXX) as the Plan's sole capital preservation investment to Plan participants. This retail investment was *78%* more expensive

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[21] WellPoint 401(k) Retirement Savings Plan, Form 11-K, at 13 (Dec. 31. 2005).

[22] Vanguard, *Money Market Reform and Stable Value: Considerations for Plan Fiduciaries*, VANGUARD COMMENTARY, at 5.

than the *identical* lower-cost share class offered by Vanguard (VMRXX). See *supra* ¶38. The expenses charged by the Money Market Fund therefore were excessive when compared to readily available institutional rates based on the massive size of the Plan, let alone the over $400 million invested in the Fund at all relevant times.

87. The Money Market Fund also was a key contributing factor to the excessive recordkeeping and administrative fees paid by the Plan. Unlike the institutional share class, the retail share class of the Money Market Fund provided significant revenue-sharing payments to the Plan's recordkeeper, Vanguard, for services provided to the Plan. See *supra* ¶75. The Money Market Fund was the *largest* Plan investment by total assets that provided revenue sharing to Vanguard, and generated the *most* revenue to Vanguard for recordkeeping and administrative services. The effect of providing the excessively high-cost Vanguard Money Market Fund in the Plan therefore was to drive revenue to the Plan's recordkeeper, further contributing to the excessive administrative fees paid by the Plan.

88. In having the *highest-cost* money market fund paying the *highest* amount of total revenue for recordkeeping and administrative services, Anthem failed to consider that Vanguard had a vested interest when providing this retail-share class mutual fund in the Plan. Plan participants derived no benefit from the excessive charges imposed by this Fund, particularly in comparison to prudent alternatives that were readily available to the Plan. Anthem also failed to adequately consider the steady stream of revenue that the Money Market Fund

funneled to Vanguard for recordkeeping services, which only served to enrich Vanguard at Plan participants' expense.

B. Anthem knew that the Money Market Fund would not provide meaningful retirement income to Plan participants, and it failed to come close to providing even a return that kept pace with inflation.

89. According to the Money Market Fund's prospectus, the Fund's investment returns are subject to "*[i]ncome risk*, which is the chance that the Fund's income will decline because of falling interest rates."[23] The Money Market Fund specifically invests in short-term securities with a dollar-weighted average maturity of 90 days or less. *Id.* Because "the Fund's income is based on short-term interest rates…income risk is expected to be *high*." *Id.* (emphasis added).

90. The Department of Labor explained the short-term nature of money market investments, which are often considered "cash equivalents" or "parking accounts" for assets to be invested in other investments:

> Money market accounts are actually mutual funds that invest in short term (typically 90 days or less), fixed income securities. As such, they are *often considered as cash equivalents…most often used as parking accounts for money waiting to be invested in other instruments*, as sweep accounts for the collection of dividends, or by very risk averse investors.[24]

91. It is therefore not the objective of a money market fund to be held long term or to provide a long-term retirement asset. In fact, 401(k) plan participants overwhelmingly hold funds for the long term, averaging less than one trade per

[23] E.g.,Vanguard Prime Money Market Fund Prospectus, Form N-1A, at 2 (Dec. 23, 2009)(emphasis in original).
[24] U.S. Dep't of Labor*, Study of 401(k) Plan Fees and Expenses*, at §2.4.4 (emphasis added).

year.[25] Rather than being a fund to temporarily park assets, the Money Market Fund was used as a long-term holding in the Plan, and Anthem knew that based on regular reports presented to the Pension Committee. This can be seen from the enormous balance in the Fund. As of December 31, 2009, the Money Market Fund held more than $455 million (or 15%) of Plan assets, and as of December 31, 2015, over $471 million. Prior to year-end 2012, this Fund was the *largest* investment option in the Plan by asset size, and after that date, it had a larger amount of assets than all but *one* fund in the Plan, making it clear to Anthem that the Money Market Fund was not being used as a temporary fund.

92. Unlike the 401(k) Plan, which is the employees' money, when investing pension assets for which Anthem's money was at risk, Anthem did not treat short-term cash equivalent investments as long-term investment vehicles. Rather, it used such investments as temporary parking accounts, consistent with the purpose of those investments. As of March 31, 2012, in contrast to the Money Market Fund, which held over $471.6 million (or 12.8%) of Plan assets, Anthem only invested $13.2 million (or 0.8%) of its pension assets in cash equivalents. The Plan's cash equivalent investment thus represented an amount *1,500% greater* than the pension plans' similar investment based on each investment's relative percentage of plan assets.[26] Similarly, as of March 31, 2015, the Money Market Fund held over $455.9

[25] Mitchell, *The Inattentive Participant: Portfolio Trading Behaviors in 401(k) Plans*, at 18–19.

[26] The cash equivalent investment utilized in the Anthem pension plans is benchmarked to the 91-day Treasury Bill index. This investment is therefore a comparable short-term investment to the Money Market Fund.

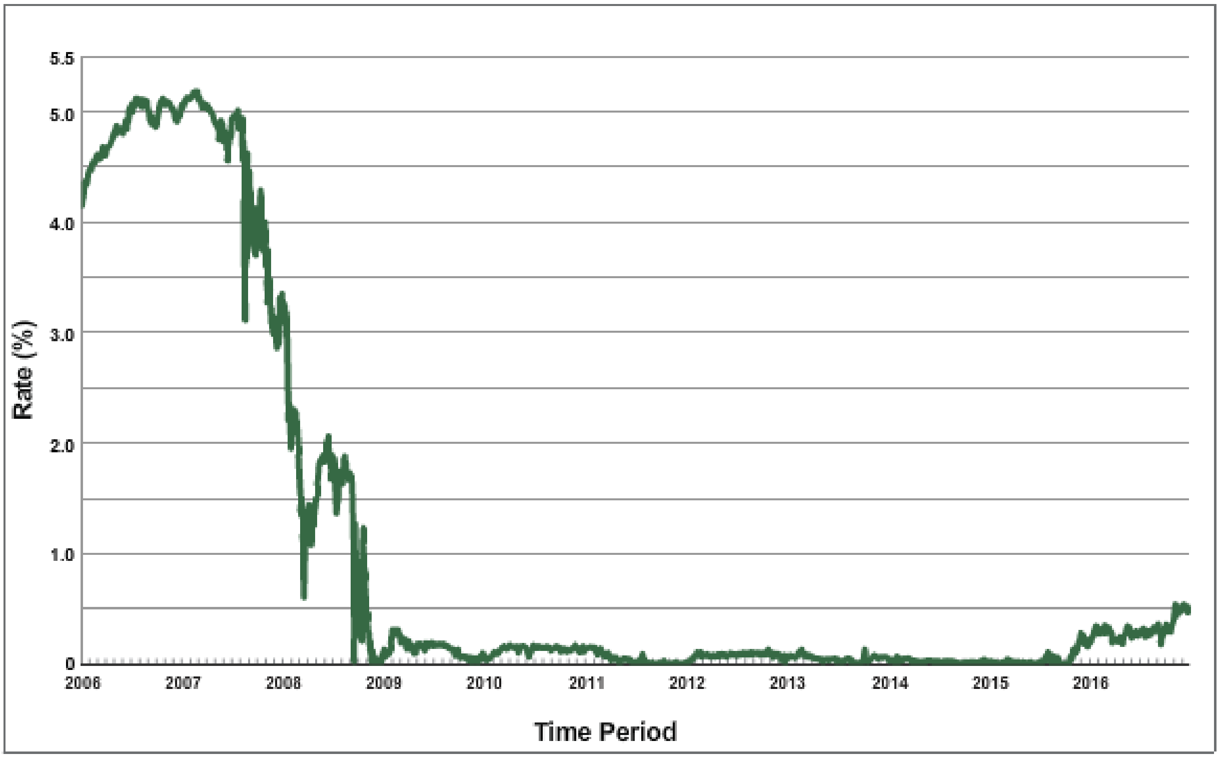
million (or 8.5%) of Plan assets—while Anthem only invested $10.5 million (or 0.6%) of its pension assets in cash equivalents—*over 1,316% greater*. Anthem clearly employed a higher degree of care when investing corporate assets to ensure that it maximized investment income in order to meet its future benefit obligations. No similar actions were taken when investing Plan assets for the exclusive benefit of Plan participants.

93. Predictably, over more than eight years, the Money Market Fund has failed to even come close to providing meaningful retirement income to Plan participants. Yet Anthem has continued to provide this Fund as the Plan's only capital preservation investment option and has continually failed to prudently evaluate the fact that the Fund was not returning, and could not be expected to return, an amount to even come close to the rate of inflation as a result of the microscopically low return from short-term interest rates.

94. The following chart shows the daily three-month nominal federal interest rates as published by the United States Department of the Treasury between January 1, 2006 and December 31, 2016, and graphically illustrates the lack of return suffered by the Money Market Fund.[27] The three-month nominal federal interest rates are an appropriate proxy for investment returns of money market funds, particularly given that the average maturity of the Money Market Fund's underlying investments was 90 days or less. As the three-month nominal

[27] United States Department of the Treasury, Resource Center, available at https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/Historic-LongTerm-Rate-Data-Visualization.aspx.

federal interest rate plummeted to *zero percent* in 2008 (a more than 500 basis point freefall from its peak), the strictly regulated short-term nature of the Money Market Fund's underlying investments guaranteed that Plan participants' retirement savings would be diminished on a net-inflation basis.



95. [redacted] This came after short-term interest rates already had been at extraordinary low rates for years. Thus, the Pension Committee did not

need to rely on hindsight to determine that the Money Market Fund would fail to provide meaningful retirement income to Plan participants for a lengthy, extended period of time. However, the Pension Committee took no action to investigate capital preservation alternatives to the Money Market Fund to benefit Plan participants.

96. Moreover, the Money Market Fund's net investment returns have been consistently dominated by the Fund's expenses. For *five* consecutive years between 2010 and 2014, the expense ratio of the Money Market Fund was *100% to 400% greater* than the actual net investment return of the Fund.[28]

Year	Expense Ratio	Investment Return	% Exceeding the Return
2010	23 bps	6 bps	283%
2011	20 bps	4 bps	400%
2012	16 bps	4 bps	300%
2013	16 bps	2 bps	700%
2014	10 bps	5 bps	100%

This result could have *and* should have been expected given the prevailing short-term interest rate environment and the anticipated net expense ratios reported in the Money Market Fund's prospectus for the upcoming calendar year.

97. Following the dramatic decline in short-term interest rates in 2008, Anthem has not employed appropriate methods to investigate the merits of the Money Market Fund or come to a reasoned decision as to why it was in Plan participants' best interest provide this Fund as the sole capital preservation

[28] Money market data obtained from Morningstar. For 2010 to 2013, VMMXX data was used, and for 2014, VMRXX was used.

investment. In addition, Anthem took no action when it knew and should have known that because of the massive balances in the Money Market Fund that Plan participants were depending on the Money Market Fund as a long-term retirement vehicle. See *supra* ¶¶91–92. Further, despite this, Anthem also never communicated to Plan participants that they should not place substantial assets in this Fund, if any, for the long term, which is directly contrary to its investment strategy when investing pension assets.

98. To protect Plan participants' retirement savings, Anthem could have limited the amount individual participants could invest in the Money Market Fund or the percentage of their assets they could invest in the Fund as many defined contribution plans do for some investment options, like company stock funds. Anthem also failed to limit the aggregate amount of assets that could be invested in the Fund, which many defined contribution plans also do for some investment options.

99. These failures, among others, have detrimentally impacted Plan participants' retirement savings as the Money Market Fund's returns have remained at or near historic lows, including more than *six* years of returns close to *zero* percent.

C. Stable value funds are recognized capital preservation alternatives to money market funds, especially for 401(k) plans, providing enhanced returns with the guaranteed protection of principal and accrued interest.

100. As alternatives to money market funds, stable value funds are recognized capital preservation investments that are common investment vehicles

in large defined contribution plans. Anthem specifically recognized under the Plan's "Investment Policy Statement" (or IPS) that money market funds and stable value funds are classified within the same investment category. Stable value funds are designed specifically for use in such plans as a conservative, capital preservation investment that provides a stable credit rate of interest. Stable value funds are conservatively managed, typically investing in high-quality short- to intermediate-term fixed income investments. And "[b]ecause they hold longer-duration instruments, [stable value funds] generally outperform money market funds, which invest exclusively in short-term securities." *Abbott v. Lockheed Martin Corp*., 725 F.3d 803, 806 (7th Cir. 2013); see also Paul J. Donahue, *Plan Sponsor Fiduciary Duty for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice Between Stable Value and Money Market*, 39 AKRON L. REV. 9, 24 (2006)(In contrast to money market funds, stable value funds "can invest in longer-term financial instruments", and thus, "Stable Value Funds simply outperform Money Market Funds.").[29]

101. A fundamental and critical distinguishing factor of stable value funds is that they provide a stable crediting rate of interest that provides a greater return because they invest in longer-duration securities. Unlike money market funds, stable value funds also provide an extra layer of protection—*a guaranteed interest rate over a fixed period* (usually six months)—whereas money market mutual funds provide no such guarantee.

[29] Mr. Donahue's work has been specifically cited by the Seventh Circuit in *Abbott.* 725 F.3d at 806.

102. Also, unlike money market funds, stable value funds provide a separate guarantee protecting against loss of principal and accrued interest. This protection is provided through a wrap contract issued by a bank, insurance company or other financial institution that guarantees the book value of the participant's investment. In contrast, participants could "lose money by investing" in the Money Market Fund, and Vanguard cannot "guarantee" that the Fund will preserve the value of a participant's investment.[30] Stable value funds thus have been considered "a triumph of financial engineering" by offering "plan participants the *greatest yield consistent with protection of principal possible in the benefit plan environment*." Paul J. Donahue, *Stable Value Re-examined*, 54 RISKS AND REWARDS 26, 26 (Aug. 2009)(emphasis added).[31]

103. Because money market funds are designed for retail investors seeking a liquid, cash equivalent investment vehicle, money market fund portfolios contain large amounts of cash to ensure that they have sufficient funds available to satisfy frequent investor-directed withdrawals. In contrast, stable value funds, which are designed for defined contribution plans whose participants have longer-term investment horizons, are subject to far less frequent investor-directed withdrawals. Consequently, stable value funds can utilize longer-duration investments to provide greater returns than money market funds, combined with the same guarantee of principal and accumulated interest and liquidity. In contrast with money market

[30] Vanguard Prime Money Market Fund Prospectus, Form N-1A, at 3 (Dec. 23, 2009).
[31] Available at http://www.soa.org/library/newsletters/risks-and-rewards/2009/august/rar-2009-iss54-donahue.pdf.

funds, they also provide a guarantee of the return.

104. There are many reputable stable value managers and wrap contract providers available in the marketplace who are capable of providing a stable value fund or similar capital preservation investment option for the Plan, including T. Rowe Price, MetLife, Galliard Capital Management, Inc., Dwight Asset Management (renamed GSAM Stable Value, LLC), and Prudential, among others. In fact, Anthem could have simply inquired with its longtime investment provider, Vanguard, about available alternatives to the Money Market Fund. *Since 1989,* Vanguard has offered stable value funds to defined contribution plan clients.[32] However, use of these, including Vanguard's stable value fund (Retirement Savings Trust II), would have driven less recordkeeping revenue to Vanguard, as the Plan's recordkeeper.

105. Vanguard specifically acknowledged that the Money Market Fund is *only* eligible for retail investors due to SEC regulations and average maturity restrictions, whereas its stable value offerings—with an average maturity over *18 times* that of money market funds—are only eligible to defined contribution plan participants.[33] This clearly demonstrates Anthem's breaches of its duties of loyalty and prudence to Plan participants.

106. Unlike money market funds whose underlying securities must satisfy

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[32] Vanguard Retirement Savings Trust Fund Fact Sheet, available at https://institutional.vanguard.com/iippdf/pdfs/FS34.pdf. The lower-cost Vanguard Retirement Savings Trust II was available as of 2001. See https://institutional.vanguard.com/iippdf/pdfs/FS338.pdf.

[33] Vanguard, *Money Market Reform and Stable Value: Considerations for Plan Fiduciaries*, at 3.

the SEC's short-term maturity and liquidity guidelines, e.g.,17 C.F.R. §270.2a-7, stable value funds are managed without such limitations to short-term investment vehicles and are therefore better suited than money market funds to provide meaningful returns to their investors in any economic environment.

> Unlike money market funds, which are governed by regulations meant to allow them to meet demands for cash that can arise for any reason, unconstrained by the restrictions of a pension plan or tax considerations, stable value shapes its investment policy to recognize the liquidity restraints imposed on DC plan participants by plan design and tax law.

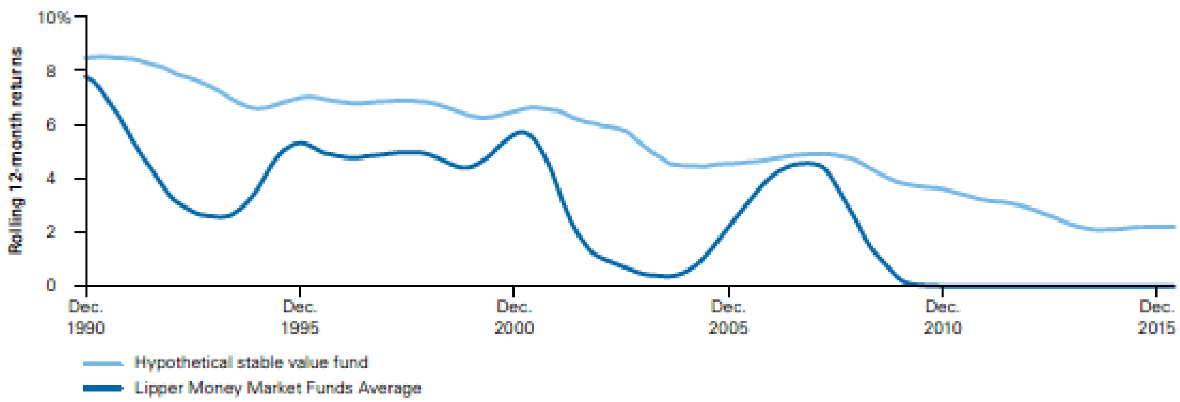
Donahue, *Stable Value Re-examined*, at 26.

107. Focusing on long-term investment returns, stable value funds have outperformed money market funds during *all* economic conditions, including "during economic recessions, low interest rate environments, financial crises and during periods of increased financial stress." Sudheer Chava, *Stable Value Analysis,* at 2 (Feb. 26, 2017);[34] Donahue, *Plan Sponsor Fiduciary Duty for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice Between Stable Value and Money Market*, at 24. Specifically, over the *past 25 years*, from 1990 to March 31, 2016, stable value funds produced significantly more retirement income than money market funds, as recognized by Vanguard.[35]

[34] Available at http://www.prism.gatech.edu/~schava6/SVReport.pdf.

[35] Vanguard, *Money Market Reform and Stable Value: Considerations for Plan Fiduciaries*, at 5.

Figure 3. Hypothetical stable value versus money market fund returns: December 31, 1990, through March 31, 2016



Notes: **Chart presents data from a hypothetical stable value fund for illustrative purposes only.** "Hypothetical stable value fund" represents a wrapped portfolio of 70% Barclays U.S. Intermediate Aggregate ex Baa Bond Index; 25% Barclays 1–3 year U.S. Government/Credit ex Baa Bond Index; and 5% Lipper Money Market Funds Average, gross of all fees.

Sources: Vanguard, based on data from Barclays and Thomson Reuters Lipper.

As can be seen from this chart, money market funds in all interest rate environments underperformed stable value funds throughout the *entire 25-year period*. See also MetLife, *2015 Stable Value Study: A Survey of Plan Sponsors, Stable Value Fund Providers and Advisors,* at 7 (2015)(stable value returns were "*more than double*" the returns of money market funds from 1988 to 2015, and, 100% of stable value providers and almost 90% of financial advisors to defined contribution plans agree that stable value funds "have outperformed money market returns over the last 25 years.").[36]

108. Vanguard further notes: "with interest rates *near zero* since the global financial crisis, the difference between stable value and money market returns has *been significantly exaggerated compared to historical norms*."[37]

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[36] Available at https://www.metlife.com/assets/cao/institutional-retirement/plan-sponsor/stable-value/Stable-Value-Vs-Money-Market/2015_StableValueStudyWebFinal.pdf.

[37] Vanguard, *Money Market Reform and Stable Value: Considerations for Plan Fiduciaries*, at 5 (emphasis added).

D. Money market funds suffer from greater risk (and lower returns) than stable value funds.

109. Even during the period of market turbulence in 2008, "stable value participants received point-to-point protection of principal, with no sacrifice of return[.]" Donahue, *Stable Value Re-examined*, at 28 (emphasis added). The same is not true for money market funds.

110. During the financial crisis during 2007 and 2008, money market funds experienced severe financial difficulties. The United States Government Accountability Office's report *401(k) Plans: Certain Investment Options and Practices that May Restrict Withdrawals Not Widely Understood* indicates, "during 2007 and 2008, many money market funds experienced severe financial difficulties from exposure to losses from debt securities[.]"[38] On September 16, 2008, the oldest money market fund in the United States with over $60 billion in assets, the Reserve Primary Fund, "stopped satisfying redemption requests and formally instituted withdrawal restrictions on all investors[.]" *Id.*

111. In fact, money market funds nearly collapsed due to the financial crisis and required corporate and government intervention to save them. Money Market Fund Reform, 74 Fed.Reg. 32688, 32691–94 (proposed July 8, 2009). The Treasury Department and the Federal Reserve Board of Governors had to intervene repeatedly to stabilize and provide liquidity to the short-term markets in which

[38] Gov't Accountability Office, *401(k) Plans: Certain Investment Options and Practices that May Restrict Withdrawals Not Widely Understood*, Report to the Chairman, Special Committee on Aging, U.S. Senate, at 21 (Mar. 2011), available at http://www.gao.gov/new.items/d11291.pdf.

money market funds invested. *Id.* at 32692–94. The failures of money market funds during this time "precipitated a potentially calamitous failure of the U.S. economy and triggered massive and unprecedented government intervention." William A. Birdthistle, *Breaking Bucks In Money Market Funds*, 2010 WIS. L. REV. 1155, 1180 (2010).

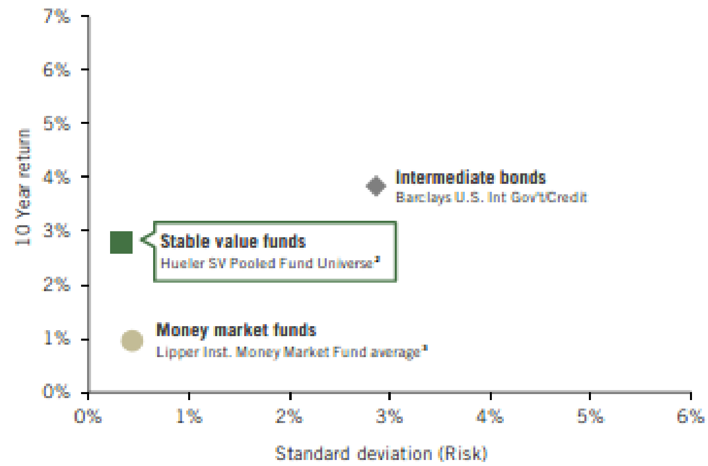
112. Recently, "[i]n an effort to address concerned expressed by regulators that money market funds may contribute to financial instability," the SEC adopted new regulations effective October 14, 2016 that allow money market funds to *prevent* investors from making withdrawals during "times of extreme volatility" or impose fees for such withdrawals.[39] The SEC designed these amendments "to address money market funds' susceptibility to heavy redemptions in times of stress, improve their ability to manage and mitigate potential contagion from such redemptions, and increase the transparency of their risks[.]"[40] The SEC specifically found the "[l]ack of investor understanding and lack of complete transparency concerning the risks posed by particular money market funds can contribute to heavy redemptions during periods of stress."[41]

113. The inferior risk and return profile of money market funds when compared to stable value funds underscores the imprudence of providing the Money Market Fund as the sole capital preservation investment. Over the recent ten-year

[39] Vanguard, *Money Market Reform: What You Need to Know*, VANGUARD COMMENTARY, at 1 (Oct. 2014), available at https://personal.vanguard.com/pdf/VGMMR.pdf.
[40] Securities and Exchange Commission, *Money Market Fund Reform Final Rule*, at 1 (July 23, 2014), available at https://www.sec.gov/rules/final/2014/33-9616.pdf.
[41] *Id.* at 22.

period, stable value funds have experienced lower risk (lower standard deviation) and higher returns compared to money market funds, as set forth below.[42]

RISK/RETURN COMPARISON (4Q'06 to 4Q'16)



Annualized risk and return comparison

2006 - 2016	10 Yr Return	10 Yr Std. Dev.
Hueler Stable Value Pooled Fund Universe avg.[2]	2.77	0.32
Lipper Inst. Money Market Fund avg.[3]	0.95	0.43
Barclays U.S. Intermediate Gov't/Credit Index	3.84	2.86

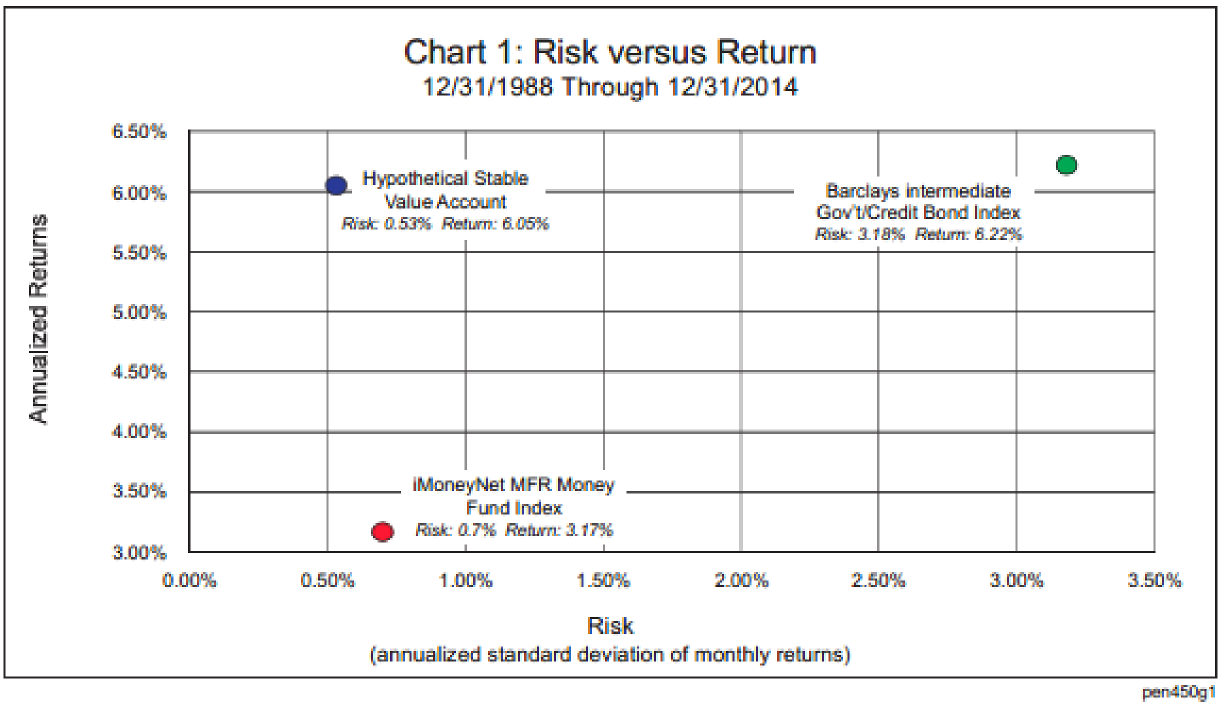
Stable value funds have historically delivered higher returns with less volatility than money market funds.

114. The superior risk/return profile of stable value funds extends well beyond the ten-year period identified above. From January 1989 through December

[42] See Galliard Capital Management, Inc., *How Do Stable Value Fund Compare with Money Market Funds?*, available at www.galliard.com/LiteratureRetrieve.aspx?ID=66271.

2009, stable value returns "exhibited both a higher mean and lower volatility than either money market or intermediate–term government/credit bond returns."[43] Studies demonstrate that the inclusion of a stable value fund in a portfolio both lowers risk and increases investment returns. *Id.*; Chava, *Stable Value Analysis,* at 9–10.

115. Between December 31, 1988 and December 31, 2014, stable value funds have similarly demonstrated *less* risk and much *greater* returns compared to money market funds, as graphically illustrated below.[44]



[43] David F. Babbel and Miquel A. Herce, *Stable Value Funds: Performance to Date*, SSRN WORKING PAPER SERIES, at 12 (Jan. 1, 2011), available at http://www.stern.nyu.edu/sites/default/files/assets/documents/uat_024414.pdf.

[44] Gina Mitchell, *A Guide to Stable Value Funds for Pension Plan Sponsors and Advisors,* BLOOMBERG BNA, at 2 (2015), available at http://stablevalue.org/media/misc/BenefitsArticle.pdf.

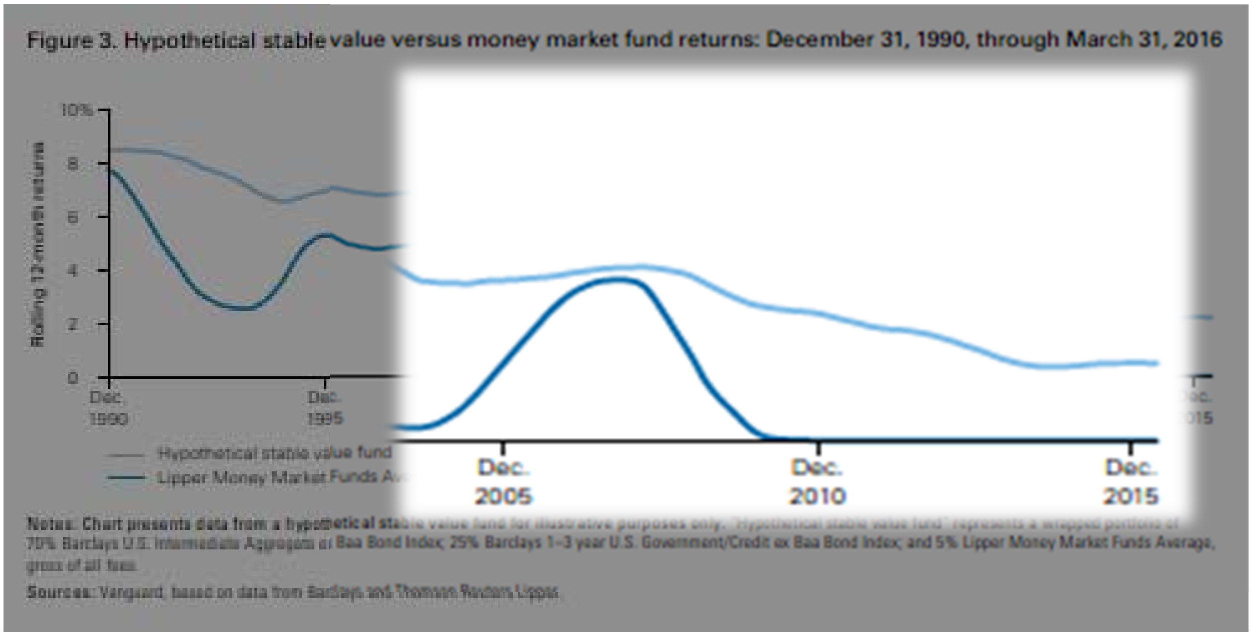
116. Even when compared to *three* other conservative investment options or "possible alternatives for a safe option" (money market, an FDIC-insured account and a short-term bond fund), stable value funds *still* provide greater returns and lower volatility over the fifteen-year period between 2000 and 2015.[45]

117. No hindsight is or has ever been necessary for Anthem to determine that the Money Market Fund was an imprudent capital preservation investment option for the Plan. Quantitative data over the past 25 years has conclusively determined that stable value funds exhibit superior risk/return characteristics compared to money market funds, *supra* ¶¶113–116, and have historically outperformed money market funds, *supra* ¶107.

E. Anthem failed to loyally and prudently discharge its duties when providing the Money Market Fund as the Plan's only capital preservation investment option.

118. Over the preceding eight years, money market funds have failed to provide meaningful retirement income to Plan participants, particularly when compared to prudent capital preservation alternatives, such as stable value funds. The sharp decline in money market returns and their sustained low levels compared to stable value returns is graphically illustrated below. This graph emphasizes the profound difference in income generated by each of these alternatives, which existed *every single day during the prior six years beginning in December 2009.*

[45] Paul Donahue, *Fundamental Investment Principles of DC Option Selection Prove Optimality of Stable Value,* PENSION SECTION NEWS, Issue 88, at 16 (Feb. 2016), available at https://www.soa.org/Library/Newsletters/Pension-Section-News/2016/february/psn-2016-iss-88.pdf.



[46]

119. As an ERISA fiduciary, Anthem is required to act with the "care, skill, prudence and diligence . . . that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character[.]" 29 U.S.C. §1104(a)(1)(B). Anthem is therefore held to the standard of a prudent expert in financial matters. *Katsaros v. Cody,* 744 F.2d 270, 279 (2d Cir. 1984).

120. Charged with acting as a prudent financial expert familiar with such matters, Anthem was required to employ appropriate methods to investigate the merits of providing the Money Market Fund as the Plan's single capital preservation investment option, and the reasonableness of its fees. The duty to conduct an independent investigation of a fund option is "the most basic of ERISA's investment fiduciary duties." *In re Unisys Savings Plan Litig.,* 74 F.3d 420, 435 (3d Cir. 1996). This investigation necessarily includes an analysis of the fees charged

[46] Vanguard, *Money Market Reform and Stable Value: Considerations for Plan Fiduciaries*, at 5.

and the risk and return characteristics of the Money Market Fund in comparison to prudent alternatives under the prevailing market conditions. Such analysis of an investment option or strategy is a fundamental and recognized prudent practice of fiduciaries and investment professionals in the industry. See, e.g., Fiduciary 360, *Prudent Practices for Investment Stewards*, Practice S-2.2.1 (U.S. ed., 2008)("2008 Investment Stewards")(requiring that the "level of risk the portfolio is exposed to is understood, and the quantitative and qualitative factors that were considered are documented"); *id.*, Practice S-3.1 ("investment option's risk-adjusted performance…should be evaluated").[47] This type of due diligence must be conducted because an investment strategy "can fail by being too conservative" when "keeping a portfolio in cash", which results in the "portfolio's purchasing power whither[ing] under inflation." *Id.*, Practice S-2.2.

121. The historically abysmal poor returns and greater risk of the Money Market Fund in comparison to a stable value fund demonstrates, at the most basic level, that the Money Market Fund was an imprudent capital preservation investment and failed to provide meaningful retirement benefits to Plan participants. See *supra* ¶¶94, 107, 113–116. Anthem cannot ignore the conclusive

[47] *Prudent Practices for Investment Stewards* handbook defines the Global Fiduciary Standard of Excellence, initially published in April 2003, that was derived from a prior publication (*Prudent Investment Practices*) co-produced by the Foundation for Fiduciary Studies and the American Institute of Certified Public Accountants. This publication was written by Fiduciary 360, the identity brand for three related entities: the Foundation for Fiduciary Studies, the Center for Fiduciary Studies, and Fiduciary Analytics. The Foundation for Fiduciary Studies defines and substantiates specific investment fiduciary practices for trustees and investment committee members, investment advisors and investment managers and is widely used in the industry.

quantitative data validating the superiority of stable value funds for this Plan option. A fiduciary's "lack of familiarity with investments is no excuse[.]" *Katsaros,* 744 F.2d at 279.

122. Anthem was required to "balance the relevant factors", *George v. Kraft Foods Global, Inc.*, 641 F.3d 786, 796 (7th Cir. 2011), including an independent evaluation of the fact that the retail-share class Money Market Fund was *78%* more expensive than the identical Vanguard institutional share-class money market fund, and the historical performance and microscopically low returns of the Money Market Fund in comparison to other capital preservation investment options. Anthem was then required to make a reasoned decision as to the preferred course of action solely in the interest of Plan participants. *Id.* After conducting the above-referenced independent analysis, Anthem only could have concluded that a stable value fund or similar alternative was the prudent and loyal choice as the Plan's capital preservation investment option compared to a money market fund. No other conclusion could possibly be reached had Anthem appropriately evaluated the conclusive quantitative data and acted solely in the interest of Plan participants when providing the capital preservation investment. [redacted]

123. Any reasonable due diligence investigation conducted by Anthem would have revealed that a stable value fund was superior to the Money Market Fund as the Plan's capital preservation investment option.

> Stable Value Fund or Money Market Fund is a universal example of Plan Sponsor exercise of option selection, because of the requirement of a liquid, low volatility fund. In the context of a DC Plan, Stable Value has an absolute superiority to Money Market, *as any reasonable due diligence investigation would make clear. The choice of a Money Market Fund instead of a Stable Value Fund meaningfully decreases Participant wealth and is a clear violation of a Plan Sponsor's duty to select options as a prudent expert*. Participants who were offered only Money Market Funds have a right to recover the difference in lost income from Plan Sponsors as damages due to a breach of fiduciary duty…Participants with [defined contribution] assets invested stable value *have every reason to be grateful to their employers for making it available*.

Donahue, *Plan Sponsor Fiduciary Duty for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice Between Stable Value and Money Market*, at 25–26 (emphasis added).

124. If Plan participants were only offered a single capital preservation investment option, as here, the merits of offering a stable value fund are abundantly clear.

> The reasons for stable value's growing acceptance are clear; in terms of the risk/return profile, many believe stable value funds are superior to almost any other conservative investment option, particularly money market funds. Historically, the higher yields available from stable value, compared with money market funds, have been of such magnitude as to lead to significant differences in retirement accumulations. If the choice must be made between these two conservative options, then plan sponsors would do well to remember that most anything a money market fund can do, a stable value fund can do better.

Christopher B. Tobe, *The Consultants Guide to Stable Value.* 7 J. INV. CONSULTING 1, 91 (Summer 2004).

125. Apart from placing the Money Market Fund in the Plan as the sole capital preservation investment option, no quantitative analysis exists to support Anthem's *continued retention* of the Money Market Fund as the Plan's sole capital preservation investment option for the last eight years or during the six-year period from December 2009 to the present, particularly given the prevailing interest rate environment. See Donahue, *Fundamental Investment Principles of DC Option Selection Prove Optimality of Stable Value*, at 16 ("There is no plausible quantitative defense for choice of a safe option other than stable value."). Moreover, between 1988 and 2016, "[s]table value funds dominate money market mutual funds and…the prudent choice" in a defined contribution plan "would be stable value funds and not money market mutual funds." Chava, *Stable Value Analysis,* at 47–48.

126. In light of stable value funds' clear advantages and enhanced returns compared to other capital preservation investment options, over 80% of plan sponsors offer a stable value fund. MetLife, *2015 Stable Value Study: A Survey of Plan Sponsors, Stable Value Fund Providers and Advisors,* at 5.

127. In fact, Anthem knew that the Plan's investment offerings were deficient for failing to offer a stable value fund. [redacted]

[redacted]

128. Anthem cannot avoid its stringent fiduciary duties by merely providing the Money Market Fund "alongside a larger menu of investment options" because it has a duty to ensure that *every* investment option offered in a defined contribution plan is and remains prudent.

> A fiduciary cannot avoid liability for offering imprudent investments merely by including them alongside a larger menu of prudent investment options. Much as one bad apple spoils the bunch, *the fiduciary's designation of a single imprudent investment offered as part of an otherwise prudent menu of investment choices amounts to a breach of fiduciary duty*, both the duty to act as a prudent person would in a similar situation with single-minded devotion to the plan participants and beneficiaries, as well as the duty to act for the exclusive purpose of providing benefits to plan participants and beneficiaries.

Pfeil v. State St. Bank & Tr. Co., 671 F.3d 585, 597 (6th Cir. 2012)(emphasis added); *Howell v. Motorola, Inc.*, 633 F.3d 552, 567 (7th Cir. 2011)("It is . . . the fiduciary's responsibility . . . to screen investment alternatives and to ensure that imprudent options are not offered to plan participants.").

129. Even if the Money Market Fund was a prudent selection prior to 2003 or in January 2006 when Vanguard became the recordkeeper following the Plan's merger with the Anthem 401(k) Long Term Savings Investment Plan, Anthem has a continuing duty to monitor all investments and "remove imprudent ones." *Tibble v. Edison, Int'l*, 135 S.Ct. 1823, 1829 (2015).

130. The prevailing market conditions required Anthem to regularly monitor the Money Market Fund. "Ongoing review, analysis, and monitoring" of investments is "just as important as the due diligence implemented" during the initial selection process, and must take into account "prevailing general economic conditions", the "investment strategies employed", and the "investment objectives sought", among other factors. 2008 Investment Stewards, Practice S-4.1. However, Anthem failed to engage in *any* due diligence demanded of plan fiduciaries.

F. Anthem also violated the Plan's Investment Policy Statement by failing to regularly monitor the Money Market Fund.

131. [redacted]

132. [redacted]

133. In accordance with established fiduciary investment monitoring practices and the specific standards adopted by Anthem, a prudent fiduciary monitoring the Money Market Fund's risk-adjusted returns, which were detrimentally impacted by historically low short-term interest rates, would have concluded that the Money Market Fund was imprudent as the Plan's single capital preservation investment option. This determination would have been years ago, since at least 2009.

134. Anthem even periodically *eliminated* stable value funds offered by 401(k) plans that later merged into the Plan, transferring those assets to the Money Market Fund. Removing these investments without engaging in any investigation

or analysis of the merits of providing a stable value fund as the Plan's capital preservation investment option in comparison to the Money Market Fund overwhelmingly confirms that Anthem failed to satisfy its duties of prudence and loyalty when managing Plan participants' retirement savings.

135. For instance, by year-end 2010, Anthem eliminated the Wells Fargo Stable Return Fund, a stable value fund "designed to deliver safety and stability by preserving principal and accumulating earnings."[48] In addition to protecting principal, the Wells Fargo Stable Return Fund seeks to "provide investors with the potential to achieve returns *higher* than other conservative investments such as money market funds."[49] This stable value fund also dramatically outperformed the Money Market Fund. As reported by Vanguard, in 2010, the Wells Fargo Stable Return Fund returned 271 bps—compared to only 6 bps for the Money Market Fund—*4,417% higher* than the Money Market Fund. *Id.*; see *infra* ¶¶140–141. In 2009, when the Wells Fargo Stable Return Fund merged into the Plan, a similar and striking disparity in performance between these two funds existed: the Wells Fargo Stable Return Fund returned 304 bps, compared to only 53 bps for the Money Market Fund—*474% higher*.[50]

136. [redacted]

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[48] WellPoint 401(k) Savings Plan, Form 11-K, at 12 (Dec. 31, 2010), available at https://www.sec.gov/Archives/edgar/data/1156039/000119312511171521/d11k.htm.
[49] Wells Fargo Stable Return Fund Fact Sheet (Dec. 31, 2016)(emphasis added), available at https://retirementplans.vanguard.com/pe/pdfs/F2131.pdf.
[50] See Wells Fargo Stable Return Fund Fact Sheet. The return for the Money Market Fund was obtained from Morningstar.

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

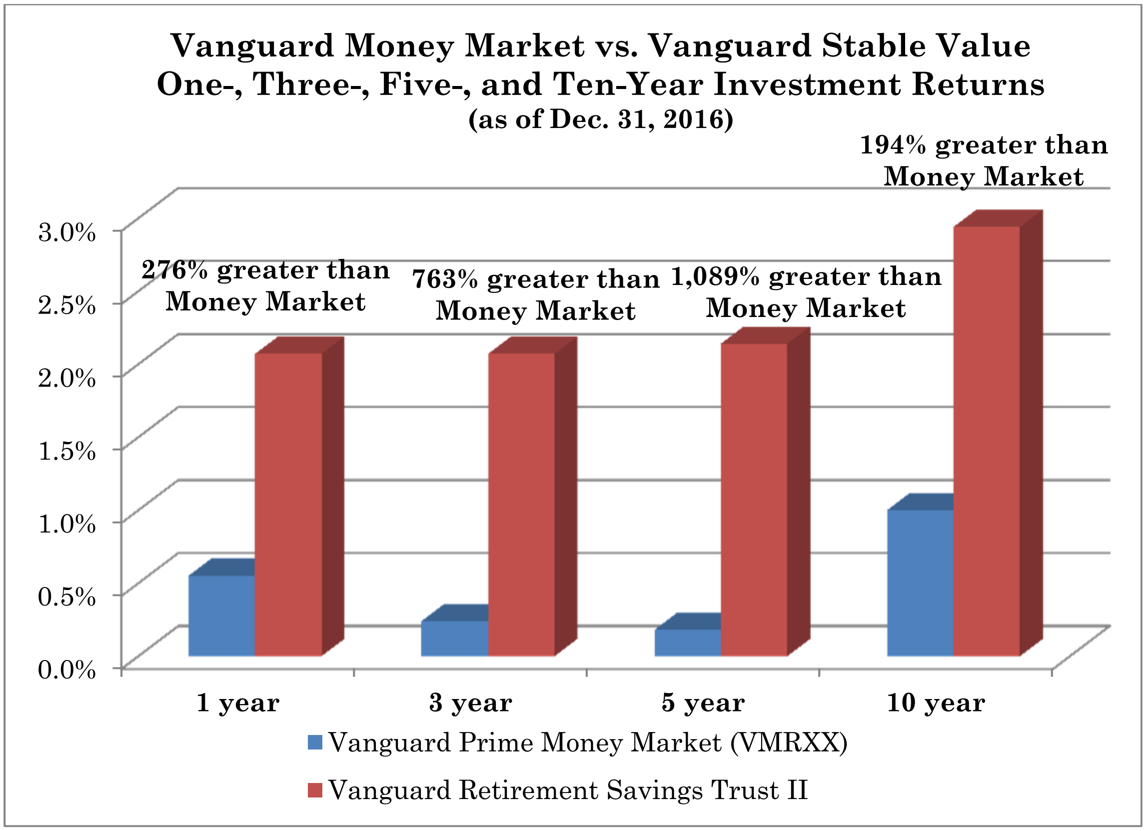
[redacted][51]

138. Anthem's decision to remove these consistently outperforming stable value funds from the Plan and transfer their assets to the Money Market Fund—particularly after the dramatic decline in short-term interest rates—provides direct evidence that Anthem conducted no investigation into the merits of providing the Money Market Fund as the Plan's only capital preservation investment option after weighing the benefits of a stable value fund relative to the Money Market Fund.

139. Anthem's failure to investigate the merits of an alternative to the Money Market Fund for the Plan's capital preservation investment option is further indefensible because identifying such options did not require Anthem to scour the market, as shown by the specific stable value funds presented to the Pension Committee from acquired 401(k) plans. Moreover, Vanguard, the Plan's primary

[51] Invesco stable value fund data available at https://www.invesco.com/static/us/institutions/contentdetail?contentId=06adebb7f6171410VgnVCM100000c2f1bf0aRCRD&dnsName=us.

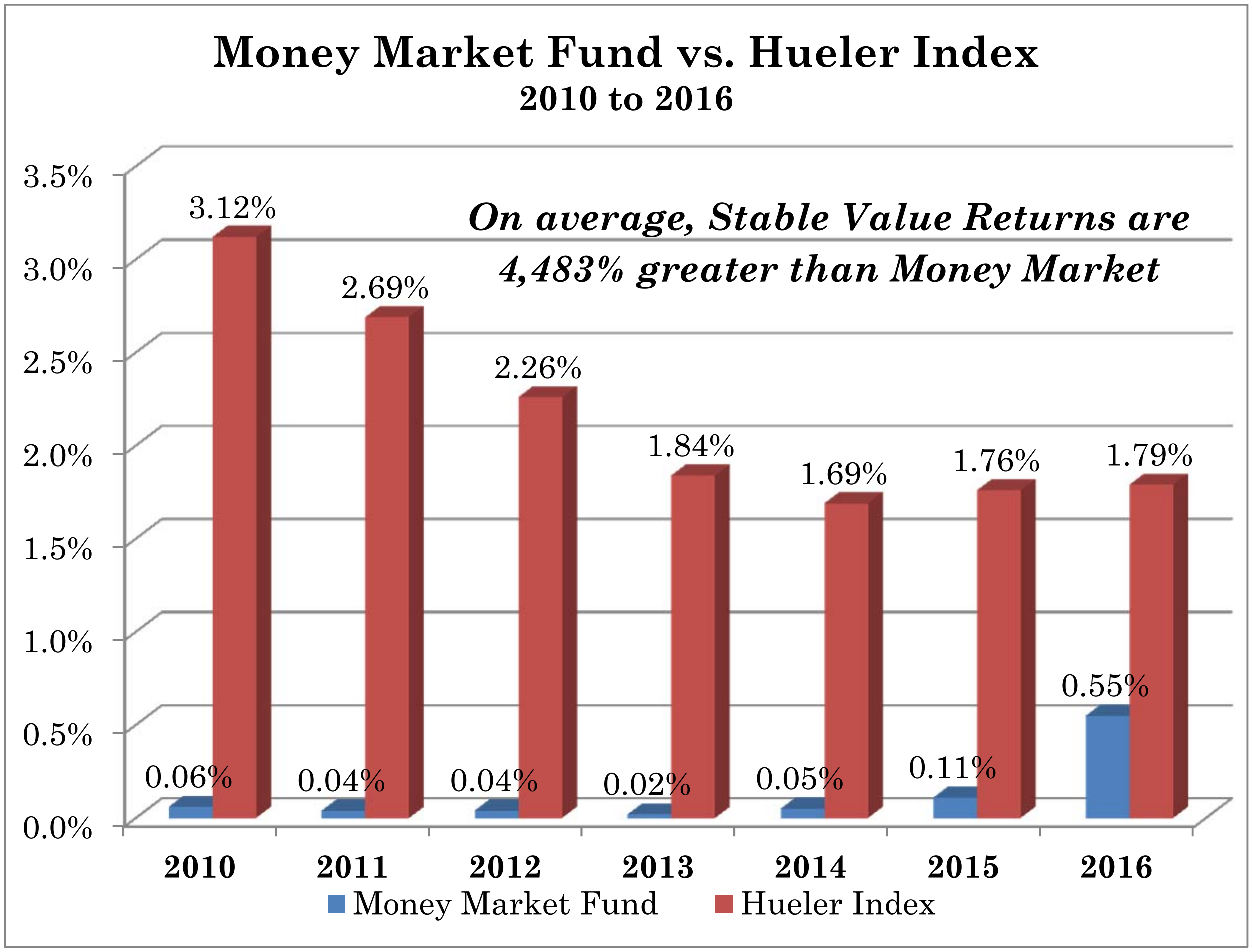
service provider since at least 2006, has offered a stable value fund since 1989. See *supra* ¶104. Vanguard's stable value offering has greatly outperformed the Money Market Fund over one-, three-, five-, and ten-year periods ending December 31, 2016.



140. For the preceding seven years between 2010 and 2016, the Money Market Fund has earned on average 12 bps—twelve one hundredths of one percent—an amount which does not even come close to keeping up with inflation.

141. Hueler Analytics is the industry standard for reporting returns of stable value funds. Hueler data represents a reasonable estimate of the returns of a

typical stable value fund. The returns of the funds in the Hueler universe on average have far exceeded the returns of the Money Market Fund year after year.[52]



142. A comparison of Hueler Index returns over the preceding 10, 15 and 20 years reflect similar disparities between money market funds and stable value investments. See Karin Peterson LaBarge, *Stable value funds: Considerations for Plan Sponsors,* VANGUARD RESEARCH, at 4 (July 2012)(the Hueler Index

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[52] Money market investment returns were obtained from Morningstar. For the Vanguard money market fund from 2010 to 2013, VMMXX investment returns were used. For 2014 to 2016, VMRXX investment returns were used.

demonstrates that stable funds have "outperformed money market funds every year since 1990").[53]

143. Numerous facts amply demonstrate that Anthem failed to conduct a prudent and loyal process for determining whether to provide the Money Market Fund as the Plan's sole capital preservation investment option. Among others referenced herein, these include the following:

a. Money market funds are specifically designed for *retail* investors, not large defined contribution plans with *billions* of dollars in assets seeking to protect their principal while maximizing their current income. See *supra* ¶¶83, 103, 105.

b. The Money Market Fund was provided in the *retail* share class in the Plan for years despite charging *78%* higher expenses than the identical institutional share class mutual fund and also providing the *most* amount of revenue sharing to benefit the Plan's recordkeeper, Vanguard, from which Plan participants derived no benefit. See *supra* ¶¶86–87.

c. The Department of Labor's *Study of 401(k) Plan Fees and Expenses*, *supra* ¶90, stated that money market funds are used as "parking accounts" waiting to be invested in other investments. Since more than $455 million was invested in the Money Market Fund as of December 31, 2009, and over $471 million as of December 31, 2015,

[53] Available at https://pressroom.vanguard.com/nonindexed/7.23.2012_Stable_Value_Funds.pdf.

Anthem knew that Plan participants were using the Money Market Fund for more than parking their retirement savings, and specifically as a long-term investment vehicle.

d. The United States Treasury Department reported that short-term interest rates for money market-like investments have been at historic lows for the last eight-plus years—since 2008. Anthem therefore was on notice that the Money Market Fund would not provide meaningful long-term retirement income to Plan participants. In fact, over this period, the Money Market Fund has consistently returned virtually *zero* percent—far less than inflation—thereby causing participants to *lose* income in real terms year after year. See *supra* ¶¶94, 107, 118, 141.

e. Even if short-term interest rates had not been historically low for the last eight years, it was well established in the industry that money market funds have dramatically underperformed stable value funds for the last 25 years during all economic conditions. See *supra* ¶¶100, 107.

f. For many years, respected investment management literature has conclusively determined that stable value funds are superior in terms of their risk and return profile when compared to money market funds as capital preservation investment vehicles. There also is no quantitative analysis to defend the use of money market funds as the Plan's sole capital preservation investment option. See *supra* ¶¶100, 102, 107, 113–116, 123–125.

g. The near collapse of money market funds in 2008 and the United States Treasury Department and Federal Reserve Board of Governors' intervention to stabilize them amply demonstrated the risk of money market funds. See *supra* ¶¶110–111. Moreover, in contrast to stable value funds, money market funds suffer from *high* income risk as short-term interest rates decline and cannot guarantee that a participant's principal investment will be preserved. See *supra* ¶¶89, 102.

h. Stable value funds protect against loss of principal and accrued interest, and provide an insurance company guaranteed crediting rate of interest, while money market funds do not. See *supra* ¶¶101–102.

i. Anthem removed stable value funds that later merged into the Plan from acquired companies' 401(k) plans. The removal of these outperforming stable value alternatives after the dramatic decline in short-term interest rates in 2008—and without conducting a prudent analysis of the merits of providing a stable value fund—confirms that Anthem conducted no investigation into the merits of providing the Money Market Fund as the Plan's only capital preservation investment option after weighing the benefits of a stable value fund.

144. These facts amply demonstrate that Anthem violated its stringent fiduciary responsibilities when providing the Money Market Fund as the Plan's only capital preservation investment option. A prudent fiduciary would consider using a stable value fund when providing a capital preservation investment option in a defined contribution plan. Anthem failed to investigate the merits of providing the Money Market Fund as the Plan's capital preservation option after the dramatic decline in short-term interest rates and the sustained historically low returns of the Money Market Fund. Anthem also failed to provide or adequately consider a stable value fund or similar investment vehicle after Vanguard became the Plan's recordkeeper, or come to a reasoned decision as to its preferred course of action, weighing the benefits of a stable value fund compared to a money market fund.

145. Had the amounts invested in the Vanguard Prime Money Market Fund instead been invested in a stable value fund returning average benchmark returns, as represented by the Hueler Index, from December 29, 2009 to December 31, 2016, Plan participants would not have lost over $68 million in their retirement savings, and continue to suffer additional losses to the present, as a result of the fund being provided in the Plan.[54]

[54] Plan losses have been brought forward to the present value using the investment returns of the Hueler Index to compensate participants who have not been reimbursed for their losses.

ERISA'S FIDUCIARY STANDARDS

146. ERISA imposes strict fiduciary duties of loyalty and prudence upon the Defendants as fiduciaries of the Plan. 29 U.S.C. §1104(a), states, in relevant part, that:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –
>
> (A) for the exclusive purpose of
>
> (i) providing benefits to participants and their beneficiaries; and
> (ii) defraying reasonable expenses of administering the plan;
> [and]
>
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

147. Under 29 U.S.C. 1103(c)(1), with certain exceptions not relevant here,

> the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

148. Under ERISA, fiduciaries that exercise any authority or control over plan assets, including the selection of plan investments and service providers, must act prudently and solely in the interest of participants in the plan.

149. ERISA's fiduciary duties are "the highest known to the law" and must be done "with an eye single" to the interests of participants. *Bierwirth*, 680 F.2d at 271, 272 n.8.

150. An investment policy statement or IPS is a governing plan document within the meaning of 29 U.S.C. §1104(a)(1)(D). See 29 C.F.R. § 2509.94-2 (1994), replaced by 29 C.F.R. §2509.08-2(2)(2008). Fiduciaries "must comply with the plan's written statements of investment policy, insofar as those written statements are consistent with the provisions of ERISA[,]" *Cal. Ironworkers Field Pension Trust v. Loomis Sayles & Co.*, 259 F.3d 1036, 1042 (9th Cir. 2001), and failure to do constitutes an independent breach of fiduciary duty. *Id.* (citing *Dardaganis v. Grace Capital, Inc.*, 889 F.2d 1237, 1241–42 (2d Cir. 1989)); 29 U.S.C. §1104(a)(1)(D).

151. ERISA also imposes explicit co-fiduciary liabilities on plan fiduciaries. 29 U.S.C. §1105(a) provides a cause of action against a fiduciary for knowingly participating in a breach by another fiduciary and knowingly failing to cure any breach of duty. The statute states, in relevant part, that:

> In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
>
> (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; or
>
> (2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give risk to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
>
> (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

152. 29 U.S.C. §1132(a)(2) authorizes a plan participant to bring a civil action to enforce a breaching fiduciary's liability to the plan under 29 U.S.C. §1109. Section 1109(a) provides in relevant part:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

CLASS ACTION ALLEGATIONS

153. 29 U.S.C. §1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the Plan under 29 U.S.C. § 1109(a).

154. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plan, as an alternative to direct individual actions on behalf of the Plan under 29 U.S.C. §1132(a)(2), Plaintiffs seek to certify this action as a class action on behalf of all participants and beneficiaries of the Plan. Plaintiffs seek to certify, and to be appointed as representatives of, the following classes:

> **Administrative Fee Class and Investment Management Fee Class**
>
> All participants and beneficiaries of the Anthem 401(k) Plan (formerly the WellPoint 401(k) Retirement Savings Plan) from December 29, 2009 through the date of judgment, excluding the Defendants.

Money Market Fund Class

> All participants and beneficiaries of the Anthem 401(k) Plan (formerly with WellPoint 401(k) Retirement Savings Plan) who, from December 29, 2009 through the date of judgment, excluding the Defendants, invested in the Vanguard Money Market Fund.

155. This action meets the requirements of Rule 23 and is certifiable as a class action for the following reasons:

a. The Classes each include as many as 59,000 members or more and are so large that joinder of all members is impracticable.

b. There are questions of law and fact common to these Classes because the Defendants owed fiduciary duties to the Plan and to all participants and beneficiaries and took the actions and omissions alleged herein as to the Plan and not as to any individual participant. Thus, common questions of law and fact include the following, without limitation: who are the fiduciaries liable for the remedies provided by 29 U.S.C. §1109(a); whether the fiduciaries of the Plan breached their fiduciary duties to the Plan; what are the losses to the Plan resulting from each breach of fiduciary duty; and what Plan-wide equitable and other relief the court should impose in light of Defendants' breach of duty.

c. Plaintiffs' claims are typical of the claims of the Administrative Fee Class and Investment Management Fee Class because each Plaintiff was a Plan participant during the time period at issue in this action and all participants in the Plan were harmed by Defendants' misconduct. Those Plaintiffs invested in the Vanguard Money Market Fund have claims that are typical of the claims in the

Money Market Fund Class because all participants invested in the Vanguard Money Market Fund were harmed by Defendants' misconduct.

d. Plaintiffs are adequate representatives of these Classes because they were participants in the Plan and invested in the Vanguard Money Market Fund during the Class period, have no interest that is in conflict with the Classes, are committed to the vigorous representation of the Classes, and have engaged experienced and competent attorneys to represent the Classes.

e. Prosecution of separate actions for these breaches of fiduciary duties by individual participants and beneficiaries would create the risk of (A) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants in respect to the discharge of their fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. §1109(a), and (B) adjudications by individual participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan would, as a practical matter, be dispositive of the interests of the participants and beneficiaries not parties to the adjudication or would substantially impair or impede those participants' and beneficiaries' ability to protect their interests. Therefore, this action should be certified as a class action under Rule 23(b)(1)(A) or (B).

156. A class action is the superior method for the fair and efficient adjudication of this controversy because joinder of all participants and beneficiaries is impracticable, the losses suffered by individual participants and beneficiaries may be small and impracticable for individual members to enforce their rights

through individual actions, and the common questions of law and fact predominate over individual questions. Given the nature of the allegations, no class member has an interest in individually controlling the prosecution of this matter, and Plaintiffs are aware of no difficulties likely to be encountered in the management of this matter as a class action. Alternatively, then, this action may be certified as a class under Rule 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B).

157. Plaintiffs' counsel, Schlichter, Bogard & Denton LLP, will fairly and adequately represent the interests of the Classes and is best able to represent the interests of the Classes under Rule 23(g).

a. Schlichter, Bogard & Denton has been appointed as class counsel in 15 other ERISA class actions regarding excessive fees in large defined contribution plans. As a district court in one of those cases recently observed: "the firm of Schlichter, Bogard & Denton ha[s] demonstrated its well-earned reputation as a pioneer and the leader in the field" of 401(k) plan excessive fee litigation. *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S.Dist.LEXIS 93206 at 4–5 (S.D. Ill. July 17, 2015). Other courts have made similar findings: "It is clear to the Court that the firm of Schlichter, Bogard & Denton is preeminent in the field" of 401(k) fee litigation "and is the only firm which has invested such massive resources in this area." *George v. Kraft Foods Global, Inc.*, No. 08-3799, 2012 U.S.Dist.LEXIS 166816 at 8 (N.D. Ill. June 26, 2012). "As the preeminent firm in 401(k) fee litigation, Schlichter, Bogard & Denton has achieved unparalleled results on behalf of its clients." *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S.Dist.LEXIS 184622 at 8 (C.D.

Ill. Oct. 15, 2013). In another 401(k) fee case, the District Court stated: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination." *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S.Dist.LEXIS 12037 at 8 (S.D.Ill. Jan. 31, 2014).

b. The U.S. District Court Judge G. Patrick Murphy recognized the work of Schlichter Bogard & Denton as exceptional:

> Schlichter, Bogard & Denton's work throughout this litigation illustrates an exceptional example of a private attorney general risking large sums of money and investing many thousands of hours for the benefit of employees and retirees. No case had previously been brought by either the Department of Labor or private attorneys against large employers for excessive fees in a 401(k) plan. Class Counsel performed substantial work…, investigating the facts, examining documents, and consulting and paying experts to determine whether it was viable. This case has been pending since September 11, 2006. Litigating the case required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.

Will v. General Dynamics, No. 06-698, 2010 U.S.Dist.LEXIS 123349 at 8–9 (S.D.Ill. Nov. 22, 2010).

c. Schlichter, Bogard & Denton handled the only full trial of an ERISA excessive fee case, resulting in a $36.9 million judgment for the plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, 746 F.3d 327 (8th Cir. 2014). In awarding attorney's fees after trial, the district court concluded that "Plaintiffs' attorneys are clearly experts in ERISA litigation." *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S.Dist.LEXIS 157428 at 10 (W.D. Mo. Nov. 2, 2012). Following remand, the district court again awarded Plaintiffs' attorney's fees emphasizing the significant contribution Plaintiffs' attorneys have made to ERISA litigation, including educating the Department of Labor and courts about the importance of monitoring fees in 401(k) plans.

> Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations.

Tussey v. ABB, Inc., 2015 U.S.Dist.LEXIS 164818 at 7–8 (W.D. Mo. Dec. 9, 2015).

d. Schlichter, Bogard & Denton is also class counsel in *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1829 (2015), in which the Supreme Court held in a unanimous 9–0 decision that ERISA fiduciaries have "a continuing duty to monitor investments and remove imprudent ones[.]" Schlichter, Bogard & Denton successfully petitioned for a writ of certiorari, and obtained amicus support from the United States Solicitor General and AARP, among others. Given the Court's broad recognition of an ongoing fiduciary duty, the *Tibble* decision will have a broad effect on defined contribution plans.

e. The firm's work in ERISA excessive fee class actions has been covered by the New York Times and Wall Street Journal, among other media outlets. See, e.g., Gretchen Morgenson, *A Lone Ranger of the 401(k)'s*, N.Y. TIMES (Mar. 29, 2014);[55] Liz Moyer, *High Court Spotlight Put on 401(k) Plans*, WALL ST. J. (Feb. 23, 2015);[56] Floyd Norris, *What a 401(k) Plan Really Owes Employees*, N.Y. TIMES

[55] Available at http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?_r=0.

[56] Available at http://www.wsj.com/articles/high-court-spotlight-put-on-401-k-plans-1424716527.

(Oct. 16, 2014);[57] Jess Bravin and Liz Moyer, *High Court Ruling Adds Protections for Investors in 401(k) Plans*, WALL ST. J. (May 18, 2015);[58] Jim Zarroli, *Lockheed Martin Case Puts 401(k) Plans on Trial*, NPR (Dec. 15, 2014);[59] Darla Mercado, *Public Enemy No. 1 to 401(k) Profiteers*, INVESTMENTNEWS (Jan. 26, 2014).[60]

COUNT I

Breach of Duties of Loyalty and Prudence—Unreasonable Investment Management Fees

158. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs as though fully set forth here.

159. This Count alleges breach of fiduciary duties against the Pension Committee and its individual committee members.

160. The scope of the fiduciary duties and responsibilities of these Defendants includes managing the assets of the Plan for the sole and exclusive benefit of Plan participants and beneficiaries, defraying reasonable expenses of administering the Plan, and acting with the care, skill, diligence, and prudence required by ERISA. These Defendants are directly responsible for ensuring that the Plan's fees are reasonable, selecting prudent investment options, evaluating and monitoring the Plan's investments on an ongoing basis and eliminating imprudent

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[57] Available at http://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html?_r=0.
[58] Available at http://www.wsj.com/articles/high-court-ruling-adds-protections-for-investors-in-401-k-plans-1431974139.
[59] Available at http://www.npr.org/2014/12/15/370794942/lockheed-martin-case-puts-401-k-plans-on-trial.
[60] Available at http://www.investmentnews.com/article/20140126/REG/301269992/public-enemy-no-1-for-401-k-profiteers.

ones, and taking all necessary steps to ensure that the Plan's assets were invested prudently.

161. As the Supreme Court recently confirmed, ERISA's "duty of prudence involves a continuing duty to monitor investments and remove imprudent ones[.]" *Tibble*, 135 S. Ct. at 1829.

162. Defendants selected and retained as Plan investment options mutual funds with excessively high fees relative to far less expensive investment options, including lower-cost share class mutual funds with the identical investment manager and investments, separate accounts, and collective trusts that were readily available to this jumbo Plan at all relevant times. In so doing, Defendants failed to make Plan investment decisions based solely on the merits of the investment funds and the interest of participants. Defendants therefore failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan, and therefore in breach of their fiduciary duty of loyalty under 29 U.S.C. §1104(a)(1)(A).

163. Defendants also failed to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like

aims. Defendants therefore breached their fiduciary duty of prudence under 29 U.S.C. §1104(a)(1)(B).

164. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

165. Each Defendant also knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT II

Breach of Duties of Loyalty and Prudence—Unreasonable Administrative Fees

166. Plaintiffs restate and incorporate herein the preceding allegations of this complaint.

167. This Count alleges breach of fiduciary duties against the Pension Committee and its individual committee members.

168. The scope of the fiduciary duties and responsibilities of these Defendants includes discharging their duties with respect to the Plan solely in the

interest of, and for the exclusive purpose of providing benefits to, Plan participants and beneficiaries and defraying reasonable expenses of administering the plan, and acting with the care, skill, prudence, and diligence required by ERISA.

169. If a defined contribution plan overpays for recordkeeping services due to the fiduciaries' "failure to solicit bids" from other recordkeepers, the fiduciaries have breached their duty of prudence. See *George,* 641 F.3d at 798–99. Similarly, "us[ing] revenue sharing to benefit [the plan sponsor and recordkeeper] at the Plan's expense" while "failing to monitor and control recordkeeping fees" and "paying excessive revenue sharing" is a breach of fiduciary duties. *Tussey,* 746 F.3d at 336.

170. Defendants failed to engage in a prudent and loyal process for the selection and retention of a Plan recordkeeper. Defendants failed to solicit competitive bids from vendors on a flat per participant fee, and only effective September 30, 2013, did Defendants institute a flat per participant fee, which, though a lower fee, still remains in excess of a reasonable fee for such services. Defendants allowed and continue to allow the Plan's recordkeeper to receive asset-based revenue sharing and hard dollar fees charged to participants, but failed to monitor those payments to ensure that only reasonable compensation was received for the services provided to the Plan. As the amount of assets grew, the revenue sharing payments to the Plan's recordkeeper grew, even though the services provided by the recordkeeper remained the same. This caused the recordkeeping

compensation paid to the recordkeeper to exceed a reasonable fee for the services provided. This conduct was a breach of the duties of loyalty and prudence.

171. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

172. Each Defendant also knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach, and thus each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT III

Breach of Duties of Loyalty and Prudence—
Providing the Imprudent and Excessively Expensive Money Market Fund as the Plan's Single Capital Preservation Investment Option

173. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs as though fully set forth here.

174. This Count alleges breach of fiduciary duties against the Pension Committee and its individual committee members.

175. The scope of the fiduciary duties and responsibilities of these Defendants includes direct responsibility for evaluating and monitoring the Plan's investments on an ongoing basis and eliminating imprudent ones, and ensuring that the Plan offers prudent investment options that will provide meaningful financial benefits to participants.

176. Defendants violated their duty of prudence and loyalty by providing the Vanguard Prime Money Market Fund as the Plan's single capital preservation investment option. The Money Market Fund, which holds short-term and minimally yielding instruments, was expected to generate and generated only microscopic returns for consecutive years that did not even come close to keeping pace with inflation. As a result, the Money Market Fund did not provide meaningful retirement income to Plan participants, and, in fact, participants in the money market fund lost money on a net-inflation basis each year.

177. Defendants failed to employ appropriate methods to investigate the merits of the Money Market Fund as the Plan's only capital preservation investment option under the prevailing economic circumstances, or adequately investigate alternative capital preservation investments, such as a stable value fund, following the dramatic decline in short-term interest rates. Defendants failed to make a reasoned decision whether it was prudent or solely in the interest of Plan participants to provide the Money Market Fund as the Plan's capital preservation investment option after the Fund failed to provide meaningful retirement benefits to Plan participants for many years. A stable value fund would have provided Plan

participants a lower risk and higher returning capital preservation investment with a guarantee of principal and accumulated interest, without the *high* income risk posed by money market funds. Had Defendants considered and independently investigated a stable value fund for the Plan's capital preservation investment option, and weighed the documented benefits relative to the Money Market Fund, they would have removed the Money Market Fund and provided a stable value fund for that Plan investment option. Providing the Money Market Fund in the Plan, while failing to offer a prudent capital preservation investment, such as a stable value fund, caused the Plan millions of dollars in losses compared to what the assets of the Money Market Fund would have earned if invested in a stable value fund.

178. Apart from the use of the Money Market Fund in the Plan and no stable value alternative, the retail-share class of the Money Market Fund was significantly more expensive than the identical institutional share class that was readily available to the Plan, and also provided the greatest amount of revenue sharing to the Plan's recordkeeper, Vanguard. The retail-share class mutual fund, which was provided in the Plan for years, provided no benefit to Plan participants but only served to enrich Vanguard at Plan participants' expense. The effect of providing the higher-cost share class money market fund was to drive revenue to Vanguard, further contributing to the excessive recordkeeping and administrative fees paid by the Plan, and in breach of Defendants' fiduciary duties.

179. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

180. Each Defendant also knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach, and thus each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT IV

Breach of Fiduciary Duties—29 U.S.C. §1104(a)(1)(D)
Violation of the Plan's Investment Policy Statement

181. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs as though fully set forth here.

182. This Count alleges breach of fiduciary duties against the Pension Committee and its individual committee members.

183. Defendants violated the provisions of the Plan's IPS in violation of 29 U.S.C. §1104(a)(1)(D) by failing to regularly monitor the Plan's capital preservation option, the Vanguard Prime Money Market Fund, to ensure that the Fund satisfied the criteria for initial selection and remained a prudent investment. Among other

mandatory monitoring criteria, Defendants failed to monitor the Fund's performance compared to relevant benchmarks and peer groups, the inferior risk-adjusted returns compared to prudent capital preservation investment options, the ongoing expenses, including the higher-cost retail share class that provided significant revenue to the Plan's recordkeeper, Vanguard, and recent regulatory changes adversely affecting Money Market Fund investors.

184. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

185. Each Defendant also knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach, and thus each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT V

Failure to Monitor Fiduciaries

186. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs as though fully set forth here.

187. This Count alleges breach of fiduciary duties against ATH Holding Company, LLC, the Board of Directors of ATH Holding Company, LLC, the individual directors, the Pension Committee, and its individual committee members.

188. ATH Holding Company, LLC is responsible for the appointment of the Pension Committee to serve as Plan Administrator, with sole responsibility for the administration of the Plan. The Board of Directors of ATH Holding Company, LLC is responsible for appointing and removing members of the Pension Committee. The Pension Committee is the named fiduciary responsible for the administration and management of the Plan, and has authority to delegate its discretionary responsibilities with respect to the Plan.

189. Given that ATH Holding Company, LLC had explicit fiduciary responsibility to appoint the Pension Committee, the Board of Directors had explicit fiduciary responsibility to appoint and remove members of the Pension Committee, and the Pension Committee had authority to delegate its day-to-day responsibilities with respect to the Plan, Defendants had a fiduciary duty to monitor the performance of the other fiduciaries.

190. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the

investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not doing so.

191. To the extent any of ATH Holding Company, LLC's, the Board of Directors' or the Pension Committee's fiduciary responsibilities were delegated to another fiduciary, Defendants' monitoring duty included an obligation to ensure that any delegated tasks were being performed prudently and loyally.

192. Defendants breached their fiduciary monitoring duties by, among other things:

a. failing to monitor their appointees, to evaluate their performance, or to have a system in place for doing so, and standing idly by as the Plan suffered enormous losses as a result of their appointees' imprudent actions and omissions with respect to the Plan;

b. failing to monitor their appointees' fiduciary process, which would have alerted any prudent fiduciary to the potential breach because of the excessive administrative and investment management fees and the Plan's imprudent capital preservation investment option that consistently failed to provide meaningful retirement income to Plan participants in violation of ERISA;

c. failing to ensure that the monitored fiduciaries had a prudent process in place for evaluating the Plan's capital preservation investment option, including a process to investigate the merits of providing the Vanguard Prime Money Market Fund as the single capital preservation investment option after weighing the benefits of available prudent alternatives, for monitoring the Plan's capital preservation investment option in compliance with the IPS, and for evaluating the Plan's administrative fees and ensuring that the fees were competitive, including a process to identify and determine the amount of all sources of compensation to the Plan's recordkeeper and the amount of any revenue sharing payments, a process to prevent the recordkeeper from receiving revenue sharing that would increase the recordkeeper's compensation to unreasonable levels even though the services provided remained the same, and a process to periodically obtain competitive bids to determine the market rate for the services provided to the Plan;

d. failing to ensure that the monitored fiduciaries considered the ready availability of comparable investment options to such a jumbo plan, including lower-cost share classes of the identical mutual funds, still lower cost separate accounts, and even lower cost collective trusts, that charged far lower fees than the Plan's mutual fund options, as well as prudent capital preservation investment alternatives to the Plan's money market fund; and

e. failing to remove appointees whose performance was inadequate in that they continued to maintain imprudent, excessive-cost investments and an imprudent capital preservation investment option that did not even keep up with inflation, and failed to monitor the Plan's capital preservation investment option in compliance with the IPS, all to the detriment of Plan participants' retirement savings.

193. As a consequence of these breaches of the fiduciary duty to monitor, the Plan suffered substantial losses. Had Defendants discharged their fiduciary

monitoring duties prudently as described above, the losses suffered by the Plan would have been avoided. Therefore, as a direct result of the breaches of fiduciary duty alleged herein, the Plan, and the Plaintiffs and the other Class members, lost tens of millions of dollars in their retirement savings.

194. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

195. Each Defendant also knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach, and thus each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT VI

Refusal to Supply Requested Information

196. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs as though fully set forth here.

197. This Count alleges violations against the Pension Committee of ATH Holding Company, LLC.

198. As the Plan Administrator, the Pension Committee is obligated "upon written request of any participant or beneficiary, furnish a copy of the latest updated summary, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated." 29 U.S.C. §1024(b)(4). If the Pension Committee fails to provide the material requested within 30 days, the court may assess a penalty against it in favor of the participant in the amount of $110 a day from the date of such failure or refusal. 29 U.S.C. §1132(c)(1); 29 U.S.C. §2575.502c-1.

199. On October 5, 2015, Plaintiffs' counsel sent a letter to the Pension Committee, as the Plan Administrator, on behalf of Named Plaintiff Bell requesting information under 29 U.S.C. §1024(b). The request for information was directed to the Plan Administrator at 120 Monument Circle, Indianapolis, IN 46204, consistent with the instructions provided by Anthem, Inc. to participants in the Plan's summary plan description. The letter was refused upon delivery and returned to Plaintiffs' counsel.

200. On October 27, 2015, Plaintiffs' counsel sent a second letter to the Plan Administrator at the same address on behalf of Named Plaintiff Bell requesting Plan information under 29 U.S.C. §1024(b). The letter was again refused upon delivery and returned to Plaintiffs' counsel.

201. To date, the Pension Committee has not complied with Named Plaintiff Bell's request for information.

202. Based on the Pension Committee's refusal to comply with Named Plaintiff Bell's request for information, the Pension Committee violated its statutory obligations under 29 U.S.C. §1024(b)(4).

203. The Pension Committee is liable for its violations of 29 U.S.C. §1024(b)(4) as alleged in this Count.

PRAYER FOR RELIEF

For these reasons, Plaintiffs, on behalf of the Plan and all similarly situated Plan participants and beneficiaries, respectfully request that the Court:

- find and declare that the Defendants have breached their fiduciary duties as described above;
- find and adjudge that Defendants are personally liable to make good to the Plan all losses to the Plan resulting from each breach of fiduciary duties, and to otherwise restore the Plan to the position it would have occupied but for the breaches of fiduciary duty;
- determine the method by which Plan losses under 29 U.S.C. §1109(a) should be calculated;
- order Defendants to provide an accounting necessary to determine the amounts Defendants must make good the Plan under §1109(a);
- remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;

- surcharge against Defendants and in favor of the Plan all amounts involved in any transactions which such accounting reveals were improper, excessive and/or in violation of ERISA;
- certify the Classes, appoint Plaintiffs as class representatives, and appoint Schlichter, Bogard & Denton LLP as Class Counsel;
- award to the Plaintiffs and the Classes their attorney's fees and costs under 29 U.S.C. §1132(g)(1) and the common fund doctrine;
- order the payment of interest to the extent it is allowed by law; and
- grant other equitable or remedial relief as the Court deems appropriate.

April 6, 2017

Respectfully submitted,

/s/ Jerome J. Schlichter
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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2017 this document was filed through the ECF system and will be sent electronically to the following registered participants:

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and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

None.

/s/ Jerome J. Schlichter