

Before: SILER and COOK, Circuit Judges;
BERTELSMAN, District Judge.

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

COB CLEARINGHOUSE
CORPORATION, also known as
Digital Healthcare, Inc.,
Plaintiff-Appellant,

v.

AETNA U.S. HEALTHCARE,
INC.; GREAT WEST LIFE AND
ANNUITY INSURANCE CO.;
BLUE CROSS & BLUE SHIELD
OF KANSAS CITY;
CONNECTICUT GENERAL LIFE
INSURANCE COMPANY,
Defendants-Appellees.

No. 02-3645

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 02-00020—Patricia A. Gaughan, District Judge.

Argued: December 12, 2003

Decided and Filed: April 5, 2004

COUNSEL

ARGUED: Steven M. Ott, OTT & ASSOCIATES, Cleveland, Ohio, for Appellant. Andrew S. Pollis, HAHN, LOESER & PARKS, Cleveland, Ohio, for Appellees. **ON BRIEF:** Steven M. Ott, OTT & ASSOCIATES, Cleveland, Ohio, for Appellant. Andrew S. Pollis, Robert J. Fogarty, HAHN, LOESER & PARKS, Cleveland, Ohio, Mark J. Schwemler, ELLIOTT, REIHNER, SIEDZKOWSKI & EGAN, Blue Bell, Pennsylvania, Christopher S. Williams, Henry G. Grendell, CALFEE, HALTER & GRISWOLD, Cleveland, Ohio, Shaunda A. Patterson-Strachan, Stephen H. Goldberg, Waldemar J. Pflepsen, Jr., JORDEN BURT LLP, Washington, D.C., for Appellees.

OPINION

COOK, Circuit Judge. Plaintiff-Appellant, COB Clearinghouse Corp. (COB), appeals the district court's dismissal of its claims against Aetna U.S. Healthcare, Inc., Great West Life and Annuity Insurance Company, Blue Cross and Blue Shield of Kansas City, and Connecticut General Life Insurance Co. (collectively the Insurers). We affirm.

* The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

Belwith Int'l, Inc., 3 Fed. Appx. 363, 364 (6th Cir. 2001). It is undisputed that COB was neither a participant, a beneficiary, nor a fiduciary according to the dictates of the statute. COB argues, nevertheless, that the Employers whom it represented were fiduciaries and that as the agent of the Employers, it could bring suit.

Whether an employer who is also an ERISA plan sponsor is a fiduciary of the plan generally requires a detailed analysis of the employer's actions and whether those actions were performed in the employer's fiduciary capacity. *See Hunter v. Caliber Sys., Inc.*, 220 F.3d 702, 718 (6th Cir. 2000). “[W]e must examine the conduct at issue to determine whether it constitutes ‘management’ or ‘administration’ of the plan, giving rise to fiduciary concerns, or merely a business decision that has an effect on an ERISA plan not subject to fiduciary duties.” *Id.* (citations and internal quotations omitted). But even assuming that the Employers were fiduciaries who had a right to file suit pursuant to 29 U.S.C. § 1132(a)(3), that assumption does not confer standing on COB to sue in its own name as the Employers’ agent. Restatement (Second) of Agency § 372(2) (1958) provides that “an agent does not have such an interest in a contract as to entitle him to maintain an action at law upon it in his own name merely because he is entitled to a portion of the proceeds as compensation for making it or because he is liable for its breach.”

III. CONCLUSION

Given COB's lack of standing, we affirm the decision of the district court.