

# United States Court of Appeals For the First Circuit

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No. 22-1317

MASSACHUSETTS LABORERS' HEALTH AND WELFARE FUND;  
TRUSTEES OF THE MASSACHUSETTS LABORERS'  
HEALTH AND WELFARE FUND, as Fiduciaries,

Plaintiffs, Appellants,

v.

BLUE CROSS BLUE SHIELD OF MASSACHUSETTS,

Defendant, Appellee.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. F. Dennis Saylor, IV, U.S. District Judge]

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Before

Gelpí, Lynch, and Thompson,  
Circuit Judges.

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D. Brian Hufford, with whom Jason S. Cowart, Leila Bijan, Zuckerman Spaeder LLP, Peter K. Stris, John Stokes, and Stris & Maher LLP were on brief, for appellants.

Sarah M. Karchunas, Attorney, Plan Benefits Security Division, Office of the Solicitor, Department of Labor, with whom Seema Nanda, Solicitor of Labor, G. William Scott, Associate Solicitor for Plan Benefits Security, Jeffrey M. Hahn, Counsel for Appellate and Special Litigation, and Robin Springberg Parry, Senior Regulatory Attorney, were on brief, for the Secretary of Labor, amicus curiae.

Jeffrey M. Harris, Steven C. Begakis, and Consovoy McCarthy PLLC on brief for PatientRightsAdvocate.org, Inc. and Families USA, amici curiae.

Evan Miller, with whom David T. Raimer, Joseph P. Falvey, and Jones Day were on brief, for appellee.

Anthony F. Shelley and Miller & Chevalier Chartered on brief for Blue Cross Blue Shield Association, amicus curiae.

Allison S. Egan, Michael E. Kenneally, Deborah S. Davidson, Charles L. Solomont, Henry M. Marley, and Morgan, Lewis & Bockius LLP on brief for ERISA and Trust Law Professors, amici curiae.

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April 25, 2023

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**LYNCH, Circuit Judge.** From 2006 to 2022, Blue Cross Blue Shield of Massachusetts ("BCBSMA") served under contract as a third-party administrator (a "TPA") for the self-funded multiemployer group health plan (the "Plan") administered by the Massachusetts Laborers' Health and Welfare Fund (the "Fund"). BCBSMA was also a TPA for other benefit plans during this period.

By contracting with BCBSMA, the Fund made available to the Plan's participants the discounted rates that BCBSMA negotiates with a network of medical providers. Among other contractual obligations, BCBSMA was responsible for repricing participants' claims according to its provider arrangements and transmitting approved claim payments to providers on behalf of the Fund.

In 2021, the Fund sued BCBSMA, alleging that the Fund had discovered various instances in which BCBSMA paid providers in amounts exceeding the negotiated rates. The Fund brought three claims under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., all of which depended on the assertion that BCBSMA was a fiduciary of the Plan.

The district court granted BCBSMA's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), holding that the Fund had failed to plausibly allege that BCBSMA was an ERISA fiduciary with respect to the actions subject to the Fund's complaint. See Mass. Laborers' Health & Welfare Fund v. Blue Cross

Blue Shield of Mass., No. 21-cv-10523, 2022 WL 952247, at \*1 (D. Mass. Mar. 30, 2022). We affirm.

## I. Background

### A. The Parties and Their Contractual Relationship

When reviewing the grant of a motion to dismiss for failure to state a claim, "we accept as true all well-pleaded facts alleged in the complaint and draw all reasonable inferences therefrom in the [plaintiff]'s favor." Legal Sea Foods, LLC v. Strathmore Ins. Co., 36 F.4th 29, 34 (1st Cir. 2022) (alteration in original) (quoting Alston v. Spiegel, 988 F.3d 564, 571 (1st Cir. 2021)).

The Fund operates the Plan for members of the Laborers' Local Union in Massachusetts and parts of northern New England. Because the Plan is self-funded, the Fund is responsible for paying all covered healthcare claims submitted on behalf of the Plan's participants. The Fund is financed from employer contributions, which in turn are partly funded through deductions from participants' paychecks.

In 2006, the Trustees of the Fund, on behalf of the Fund, entered into a contract with BCBSMA to have BCBSMA help administer the Plan as a TPA. As a preferred-provider organization (a "PPO"), BCBSMA negotiates favorable rates with a network of healthcare providers. This negotiation is independent from the relationship between BCBSMA and the Fund. By contracting with BCBSMA, the Fund

was able to make the discounted rates available to all participants who received covered in-network medical care from BCBSMA's preferred providers.

The terms of the Fund's and BCBSMA's agreement were laid out in an administrative services agreement (the "ASA"),<sup>1</sup> which also referenced a summary plan description (the "SPD")<sup>2</sup> which was prepared by the Fund and distributed to Plan participants. We describe the basic features of the ASA and SPD in turn and refer to further provisions of the documents throughout our legal analysis.<sup>3</sup>

## 1. The ASA

The parties executed the ASA in 2006 to govern the terms of their relationship. The ASA provided that BCBSMA would "perform certain administrative services in connection with" the Plan. "In

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<sup>1</sup> The ASA is titled "Administrative Services Account Agreement."

<sup>2</sup> The SPD is titled "A Summary of Plan Features." ERISA requires the distribution of summary plan descriptions to participants and beneficiaries. See 29 U.S.C. § 1024(b).

<sup>3</sup> Because the ASA and SPD were "cited in the complaint and attached to [BCBSMA's] motion to dismiss," In re Fid. ERISA Float Litig., 829 F.3d 55, 60 (1st Cir. 2016), and because no party challenges their authenticity, the district court properly reviewed the two documents, and we continue to consider them on appeal, see Beddall v. State St. Bank & Tr. Co., 137 F.3d 12, 17 (1st Cir. 1998) ("When . . . a complaint's factual allegations are expressly linked to -- and admittedly dependent upon -- a document (the authenticity of which is not challenged), that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6).").

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