

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 14-1105**

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BARRY MALLEK,

Plaintiff - Appellant,

v.

ALLSTATE LIFE INSURANCE COMPANY,

Defendant - Appellee,

ALICE MALLEK,

Third Party Defendant - Appellee.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Statesville. Richard L.  
Voorhees, District Judge. (5:11-cv-00031-RLV-DCK)

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Submitted: June 20, 2014

Decided: August 13, 2014

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Before WILKINSON, MOTZ, and THACKER, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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Barry Mallek, Appellant Pro Se. Hillorie A. Leaman, Lisa D.  
Stern, DRINKER, BIDDLE & REATH, Philadelphia, Pennsylvania;  
Jeffrey Phillips Macharg, Heather C. White, SMITH MOORE  
LEATHERWOOD LLP, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Barry Mallek appeals the district court's order granting summary judgment to Allstate Life Insurance Co. in Mallek's action alleging North Carolina breach of contract and constructive fraud claims. The district court's jurisdiction was founded on diversity. We note that the district court did not engage in an explicit choice-of-law analysis to determine what law applied to the case; the district court inconsistently applied North Carolina and federal common law to the dispute, which had significant ties to other jurisdictions. The question of what law governs this case is best addressed by the district court in the first instance. Therefore, we grant leave to proceed in forma pauperis, vacate the district court's judgment, and remand to allow the district court to perform a choice-of-law assessment for each of Mallek's claims, and to analyze the claims and defenses at issue in this action applying the law of the appropriate jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED