UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, GALVESTON DIVISION

Andrew J. Mitchell v. Allstate Insurance Company

Mitchell v. Allstate · No. 3:26-cv-00088 · Decided April 30, 2026

SUMMARY

The memorandum and recommendation addresses whether Andrew J. Mitchell, proceeding pro se, may prosecute claims assigned to him by Mitchell Adjusting International LLC against Allstate Insurance Company. The court recommends conditional dismissal without prejudice unless Mitchell appears through licensed counsel within 30 days after adoption, reasoning that the LLC is the real party in interest and may appear in federal court only through counsel. The parties are granted 14 days from service to file objections.

CASE DETAILS

COURT	United States District Court for the Southern District of Texas, Galveston Division
WRITING FOR THE COURT	Andrew M. Edison
JURISDICTION	United States District Court for the Southern District of Texas, Galveston Division
DECIDED	April 30, 2026
DOCKET	3:26-cv-00088
DISPOSITION	other
PROCEDURAL POSTURE	A pro se incarcerated plaintiff brought state and federal claims against Allstate, asserting them individually and as an assignee of receivables and business claims belonging to Mitchell Adjusting International LLC. The matter was referred to a magistrate judge for pretrial purposes, who sua sponte issued a Memorandum and Recommendation recommending conditional dismissal without prejudice unless the plaintiff appeared through licensed counsel.
STANDARD OF REVIEW	For sua sponte dismissal, the procedure must be fair, including notice of the court's intention and an opportunity to respond. Objections to a magistrate judge's recommendation are governed by 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b)(2).
PRECEDENTIAL VALUE	nonprecedential

TOPICS

civil procedure · limited liability companies · standing · pleadings · commercial litigation

PRACTICE AREAS

civil procedure · limited liability companies · commercial litigation · insurance

QUESTIONS PRESENTED

1. Whether a sole member of a limited liability company may prosecute the company's claims in federal court pro se after receiving an assignment of those claims.
2. Whether the court may sua sponte recommend conditional dismissal without prejudice while providing notice and an opportunity to respond.

HOLDINGS

1. Mitchell could not prosecute claims belonging to MAI in federal court without licensed counsel, even assuming that MAI validly assigned its claims to him.
2. Conditional dismissal without prejudice could be recommended sua sponte if Mitchell received notice of the proposed dismissal and an opportunity to respond.

KEY QUOTATIONS

> *"Artificial business entities—such as limited liability companies, corporations, and partnerships—may appear in federal court only through counsel."*

> *"MAI is free to assign its claims to Mitchell, but such assignment still does not authorize Mitchell to appear on MAI's behalf."*

> *"A district court may dismiss a claim on its own motion as long as the procedure employed is fair."*

FACTUAL BACKGROUND

Mitchell, an incarcerated former public adjuster, sued Allstate concerning settlement checks and disbursements connected with claims he adjusted. He provided his services through Mitchell Adjusting International LLC, a Texas limited liability company of which he was the sole member. The documents attached to the complaint identified MAI as an additional payee, and Mitchell attempted to pursue the claims individually and as an assignee of MAI's receivables and business claims.

PROCEDURAL HISTORY

Mitchell filed the lawsuit on March 15, 2026. The magistrate judge concluded that the claims belonged to MAI, a limited liability company, and that Mitchell could not prosecute those claims pro se even assuming a valid assignment. The recommendation gives Mitchell an opportunity to object and, if adopted, 30 days to appear through counsel before dismissal without prejudice.

DISPOSITION

other

CASES CITED

- Alt. Materials, LLC v. TCH Constr. Grp., Inc., 339 F.R.D. 322, 324 (N.D. Fla. 2021)
- Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02 (1993)
- Stark v. Kohrs, No. 1:19-cv-041, 2020 WL 734480, at *3 (W.D. Tex. Feb. 12, 2020)
- Heiskell v. Mozie, 82 F.2d 861, 863 (D.C. Cir. 1936)
- M2 Tech., Inc. v. M2 Software, Inc., 589 F. App'x 671, 675 n.2 (5th Cir. 2014)
- Davoodi v. Austin Indep. Sch. Dist., 755 F.3d 307, 310 (5th Cir. 2014)
- Palazzo v. Gulf Oil Corp., 764 F.2d 1381, 1386 (11th Cir. 1985)
- Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 23 (2d Cir. 1983)

OPINION

Andrew J. Mitchell v. Allstate Insurance Company
PER CURIAM.
UNITED STATES DISTRICT COURT April 30, 2026
SOUTHERN DISTRICT OF TEXAS Nathan Ochsner, Clerk
GALVESTON DIVISION
ANDREW J MITCHELL, §
§ Plaintiff, § §
V. § CIVIL ACTION NO. 3:26-cv-00088
§
ALLSTATE INSURANCE COMPANY, §
§ Defendant. §
MEMORANDUM AND RECOMMENDATION
This case has been referred to me for all pretrial purposes. See Dkt. 9. I am sua sponte issuing this memorandum and recommendation to suggest that the court order the conditional dismissal of this lawsuit without prejudice unless Plaintiff Andrew Mitchell appears through licensed counsel within 30 days from the date this memorandum and recommendation is adopted. On March 15, 2026, Mitchell, an incarcerated person proceeding pro se, instituted this lawsuit against Defendant Allstate Insurance Company. Mitchell was a licensed public adjuster. Mitchell provided his public adjusting services through Mitchell Adjusting International LLC (“MAI”), a Texas limited liability company. At all times, Mitchell has been the sole member of MAI. Mitchell claims that Allstate “willfully and/or negligently failed to include [his] name on settlement checks and disbursements issued in connection with [claims that Mitchell adjusted].” Dkt. 1 at 3. Mitchell asserts Texas state law claims for breach of contract, violation of state public adjuster statutes, bad faith/unfair claims settlement practices, unjust enrichment, and federal claims. Mitchell purports to bring this lawsuit

"individually and as assignee of MAI's receivables." Id. at 2. Mitchell cannot do this. "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654. The right to conduct one's own cases personally is limited to one's own interests. "Artificial business entities—such as limited liability companies, corporations, and partnerships—may appear in federal court only through counsel." Alt. Materials, LLC v. TCH Constr. Grp., Inc., 339 F.R.D. 322, 324 (N.D. Fla. 2021) (citing Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201–02 (1993)). Mitchell attempts "to re-characterize claims brought on behalf of [MAI] as individual claims belonging to him—this time asserting assignment of the claims— so that he may proceed pro se." Stark v. Kohrs, No. 1:19-cv-041, 2020 WL 734480, at *3 (W.D. Tex. Feb. 12, 2020). I assume, for the sake of argument, that the purported assignment of MAI's accounts receivables and business claims to Mitchell is valid. See Dkt. 6. Even so, MAI is the real party in interest, and to prosecute MAI's claims, Mitchell must appear through counsel. The Notice/Authorization to Insurance Company that Mitchell attaches to his complaint shows that the payee on the settlement checks at issue was MAI. See Dkt. 1-2 at 8 ("To include 'Mitchell Adjusting International, LLC ' as an additional payee on all settlement checks, drafts and/or payments made on this Insurance Claim."). Thus, MAI is the real party in interest. MAI is free to assign its claims to Mitchell, but such assignment still does not authorize Mitchell to appear on MAI's behalf. "Courts faced with this question routinely hold that an individual who has been assigned claims from a corporation cannot proceed pro se." See Stark, 2020 WL 734480, at *3 & n.1 (collecting cases). As the Court of Appeals for the District of Columbia explained more than 90 years ago: We think the words 'the parties,' as used in [28 U.S.C. § 1654], mean the parties in interest—the real, beneficial owners of the claims asserted in the suit[], and by implication that it excludes agents and attorneys in fact and confines the representation, where the party whose rights are actually involved does not appear in person, to attorneys and counselors at law. It cannot be doubted, we think, that an assignment of a claim against another, made solely for the purpose of permitting the assignee—not an attorney—to conduct the litigation in proper person, would be colorable only and, therefore, insufficient to accomplish the purpose; and this, for the reason that such an assignment would transfer only the naked legal title or, perhaps more accurately, no more than an agency—a power without an interest;— and in such case there would be lacking that element of personal interest which alone permits the management of an action at law in a court by some one other than an attorney at law. Petitioner is not an attorney at law, nor is he the real party in interest, and hence had no standing to commence or to prosecute the action. Heiskell v. Mozie, 82 F.2d 861, 863 (D.C. Cir. 1936) (emphasis added).1 It appears that Mitchell's "sole reason for pursuing the assignment . . . was so that [MAI] could protect its [contractual] rights in federal court without retaining counsel." M2 Tech., Inc. v. M2 Software, Inc., 589 F. App'x. 671, 675 n.2 (5th Cir. 2014). This is not allowed. In sum, the claims here belong to MAI, the company with whom the insured contracted. Even if MAI validly assigned its claims to

Mitchell—an issue I need not address—said assignment merely allows Mitchell to stand in MAI's shoes. But MAI can only appear in federal court through an attorney. Mitchell is not an attorney. Thus, Mitchell cannot prosecute MAI's claims on his own, even if they are validly assigned to him. "A district court may dismiss a claim on its own motion as long as the procedure employed is fair." Davoodi v. Austin Indep. Sch. Dist., 755 F.3d 307, 310 1 See also Palazzo v. Gulf Oil Corp., 764 F.2d 1381, 1386 (11th Cir. 1985) ("We see no reason to permit any evasion of the general rule [of corporate representation by counsel] by the simple expedient of the assignment of corporate claims to the pro se plaintiff. Nor is any injustice done to plaintiff by this holding."); Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 23 (2d Cir. 1983) ("In light of the[] policy reasons for preventing a lay person from representing a corporation in litigation, the federal courts have, in cases governed by federal law, disapproved any circumvention of the rule by the procedural device of an assignment of the corporation's claims to the lay individual."). (5th Cir. 2014) (cleaned up). Fairness "requires both notice of the court's intention and an opportunity to respond." Id. (quotation omitted). Here, Mitchell has both the opportunity to object to this memorandum and recommendation and, in the event it is adopted, 30 days to appear through counsel before this action is dismissed without prejudice. That is fair.

CONCLUSION

For the reasons discussed above, I recommend that the court order the conditional dismissal of this lawsuit without prejudice unless Mitchell appears through licensed counsel within 30 days from the date this memorandum and recommendation is adopted. The parties have 14 days from service of this Memorandum and Recommendation to file written objections. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). Failure to file timely objections will preclude appellate review of factual findings and legal conclusions, except for plain error. SIGNED this ___ day of April 2026.

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ANDREW M. EDISON
UNITED STATES MAGISTRATE JUDGE