

A restaurant owner sued its supplier in a federal district court for breach of contract and trademark infringement. The owner sought \$80,000 in damages and a permanent injunction. The supplier filed an answer in which he denied the allegations set forth in the complaint and demanded a jury trial.

The district court denied the supplier's jury-trial demand on the ground that the equitable claim predominated the case. The supplier filed a motion to reconsider, laying out all the precedents clearly requiring a jury in the case. The court entered an order denying the supplier's motion.

What should the supplier do to best protect his right to a jury trial?

- A. File a motion for a protective order.
- B. File a motion for recusal.
- C. File a motion to correct the mistake.
- D. File a petition for a writ of mandamus.

Explanation:

Absent limited exceptions, a party cannot seek appellate review of a district court's order until a final judgment has been entered. A petition for a **writ of mandamus** is one such exception. It requests that an appellate court direct a district court to do or refrain from doing something when **exceptional circumstances** clearly exist and **no other adequate remedy** is available. As a result, this writ is appropriate only in *extremely* limited situations—eg:

- when a district court clearly exercises unlawful jurisdiction
- when a district court clearly usurps another branch's power and threatens [separation of powers](#)
- to protect a party's Seventh Amendment [right to a jury trial](#)

The supplier should therefore file a petition for a writ of mandamus to protect his jury-trial right.

(Choice A) Protective orders are primarily issued to protect a party from annoyance, embarrassment, or undue expense during discovery. A protective order would not protect the supplier's right to a jury trial.

(Choice B) A motion for recusal requests that the judge presiding over the case excuse him/herself from the case due to bias or prejudice against a party—neither of which is seen here.

(Choice C) A motion to correct a mistake is appropriate when a judgment or order contains a clerical mistake or a mistake arising from an oversight or omission—not an erroneous interpretation of law. Therefore, this is not a basis for the supplier to protect his right to a jury trial.

Educational objective:

An appellate court may grant a petition for a writ of mandamus prior to entry of a final judgment when exceptional circumstances clearly exist—eg, denial of the right to a jury trial—and there is no other adequate remedy.

References

- 28 U.S.C. § 1651 (writ of mandamus).
- *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 472 (1962) (stating that appellate courts have an obligation to "grant mandamus where necessary to protect the constitutional right to trial by jury").

Final-judgment rule

