

An employee complained to his company's human resources department that the company employed undocumented immigrants. Unbeknownst to the employee, the company was currently engaged in a class action lawsuit in which it stood accused of conspiring to lower its employees' wages by hiring undocumented workers. The company's attorney met with the employee and pressured him to recant his complaint, so it would not be used against the company in the class action lawsuit. The employee refused, and he was subsequently fired.

The employee sued the company in federal court, alleging that his termination violated federal law. During discovery, the employee requested that the company turn over all documents and information concerning the company's decision to fire him. The company refused on the ground that the information was protected by the attorney-client privilege. The employee then filed a motion to compel production. The district court entered an order granting the employee's motion on the ground that the company waived this privilege. The company immediately filed a notice of appeal on the ground that the order constituted a collateral order.

Will the appellate court likely hear the appeal?

- A. No, because the collateral-order doctrine is not expressly authorized by a federal statute.
- B. No, because this issue can be effectively reviewed on appeal from the final judgment.
- C. Yes, because an appellate court decision on this issue will likely resolve the dispute.
- D. Yes, because due process requires that the appellate court immediately hear the appeal.

Explanation:

Absent narrow exceptions, 28 U.S.C. § 1291 limits appeals to **final judgments**—ie, decisions that fully resolve a dispute on the merits and leave nothing for the district court to do but enforce the judgment. One such exception is the **collateral-order doctrine**, which allows an interlocutory appeal when:

- a district court order **conclusively resolves an important issue**
- that issue is **separate from the merits** of the underlying claim *and*
- that order is **effectively unreviewable on appeal** from a final judgment.

In *Mohawk Indus., Inc. v. Carpenter*, the Supreme Court held that a district court's order rejecting a party's attorney-client privilege claim (as seen here) is not a **collateral order**. That is because this important issue, though separate from the merits, can be effectively reviewed on appeal from the final judgment. For example, if the appellate court finds the privilege applicable, it can remand the case for a new trial without the privileged evidence. Therefore, the appellate court likely will not hear the company's appeal under the collateral-order doctrine.

(Choice A) Most exceptions to the final-judgment rule are expressly authorized in 28 U.S.C. § 1292 (eg, district court certification) or other federal statutes (eg, certain orders in bankruptcy cases). Although the collateral-order doctrine is not expressly authorized by a federal statute, it is still a valid exception to the final-judgment rule because it was established by the Supreme Court.

(Choice C) Even if an appellate court decision on the privilege issue would resolve the parties' dispute, it would not provide a basis for an immediate appeal under the collateral-order doctrine.

(Choice D) Due process does not require the appellate court to immediately hear the appeal. Instead, appellate review will be available once the district court enters a final judgment.

Educational objective:

The collateral-order doctrine is an exception to the final-judgment rule. It allows an appeal before final judgment when (1) a district court order conclusively resolves an important issue, (2) that issue is separate from the merits of the underlying claim, and (3) that order is effectively unreviewable on appeal from a final judgment.

References

- 28 U.S.C. § 1291 (final-judgment rule).
- *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545–46 (1949) (establishing the collateral-order doctrine).

- *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 109 (2009) (holding that a district court order denying a party's attorney-client privilege claim is not a collateral order subject to immediate appeal).

Copyright © UWorld. All rights reserved.

Final-judgment rule

