

A man who owned riverfront property sued an upstream factory in federal court for polluting the river, seeking injunctive relief and \$250,000 in damages. The factory moved for summary judgment on the ground of res judicata (claim preclusion), arguing that the man had sued on and lost an identical claim one year before. The court denied the motion.

The factory has asked its attorney's advice as to whether it may appeal the court's denial of summary judgment in order to avoid an expensive trial.

What advice should the attorney give?

- A. The factory may appeal if the appellate court finds that the case involves a controlling question of law upon which the courts are divided.
- B. The factory may appeal if the trial court certifies that there is no just reason for delay.
- C. The factory may not appeal because the denial of summary judgment is a collateral order.
- D. The factory may not appeal until after a trial on the merits or other disposition resulting in a final judgment.

Explanation:

Final-judgment rule

Rule Appeal only allowed after final judgment

- If multiple claims/parties, final judgment as to fewer than all claims/parties appropriate if court expressly determines no justifiable reason for delay

Exceptions Interlocutory appeals* concerning:

- Injunction (grant/denial)
- Certification by district court
- Class action certification
- Appointment of receiver
- Admiralty case
- Collateral-order doctrine
- Bankruptcy cases (certain orders)
- Mandamus (petition for writ)
- Patent infringement order (only accounting left)

Mnemonic: In Certain Circumstances, An Appeal Can Be Made Prematurely

*Appeal from trial court ruling that occurs before entry of final judgment.

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A party may only **appeal**, absent limited exceptions, after the district court has entered a **final judgment**—ie, a decision that **fully resolves a dispute** on the merits and leaves nothing for the court to do but enforce the judgment. This rule is designed to promote judicial efficiency and avoid unnecessary delays in the litigation process.

Here, the court's denial of the factory's motion for summary judgment based on claim preclusion is not a final judgment. That is because the denial did not fully resolve the dispute on its merits by deciding whether the factory polluted the river and what relief (if any) to award the man. Therefore, the attorney should advise the factory that it may not appeal until after a trial on the merits or other disposition resulting in a final judgment.

(Choice A) A *district* court can certify (ie, approve) an issue for appeal before a final judgment when (1) there is a substantial difference of opinion on the controlling question of law and (2) an appeal will materially advance the ultimate termination of litigation. Only then will an *appellate* court decide whether to hear the appeal.

(Choice B) When an action involves *multiple* claims or parties (not seen here), a district court may enter final judgment as to fewer than all claims or parties if it expressly

determines that there is no just reason for delay. A party may then appeal that judgment without waiting for a final judgment to be entered on all claims in the action.

(Choice C) The denial of summary judgment is not a collateral order—ie, a district court order that conclusively resolves an important issue that is (1) separate from the merits of the claim and (2) effectively unreviewable on appeal from a final judgment. That is because an appellate court can easily (and routinely does) review the denial of summary judgment on appeal.

Educational objective:

Absent limited exceptions, an appellate court can only hear appeals from a final judgment—ie, a decision that fully resolves a dispute on the merits.

References

- 28 U.S.C. § 1291 (final-judgment rule).
- *Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 497 (1989) (defining final judgment).
- *Ortiz v. Jordan*, 562 U.S. 180, 184 (2011) (explaining that almost all orders denying summary judgment are interlocutory orders that do not qualify as final judgments subject to immediate appeal).

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