

10-1399 ROBERTS V. SEA-LAND SERVICES

DECISION BELOW: 625 F.3d 1204

LOWER COURT CASE NUMBER: 08-70268

QUESTION PRESENTED:

The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-50 ("Longshore Act") provides generally for compensation for total disability in periodic payments at a rate of two-thirds of the "average weekly wage of the injured employee at the time of the injury," and for most *partial* disabilities the same fraction of the difference between that weekly wage and the worker's residual "wage-earning capacity." *Id.* §§ 8-10, 33 U.S.C. §§ 908-10. But it has always imposed upper and lower limits on the rate payable as so determined. Section 6(b) of the Act, 33 U.S.C. § 906(b), provides that the compensation rate cannot be more than twice "the applicable national average weekly wage," as determined for each fiscal year; nor can compensation for total disability be less than the lesser of half the "applicable national average weekly wage" so determined and the worker's full pre-injury earnings. The question which fiscal year's limits are the "applicable" ones is addressed by § 6 (c):

Determinations under subsection (b)(3) of this section with respect to a [fiscal year] shall apply to employees or survivors *currently receiving compensation* for permanent total disability or death benefits *during* such period, as well as those *newly awarded compensation* during such period.

33 U.S.C. § 906(c). The identity of the years whose limits are "applicable" under this provision has divided the two courts of appeals with the heaviest Longshore Act dockets.

The questions presented are simple and straightforward:

1. Whether the phrase "those *newly awarded* compensation during such period" in Longshore Act § 6(c), applicable to all classes of disability except permanent total, can be read to mean "those first *entitled* to compensation during such period," regard-less of when it is *awarded*.

2. Whether the phrase "employees or survivors *currently receiving* compensation for permanent total disability or death benefits during such period" in § 6(c) can likewise be read to mean those "*entitled* to [such] compensation during such period," without reference to when it is *received*.

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION
CERT. GRANTED 9/27/2011