

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ESTATE OF COWART *v.* NICKLOS DRILLING CO. ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 91-17. Argued March 25, 1992—Decided June 22, 1992

Floyd Cowart, whose estate is the petitioner, was injured while working on an oil drilling platform owned by Transco Exploration Company (Transco), in an area subject to the Longshore and Harbor Workers' Compensation Act (LHWCA or Act). The Department of Labor gave respondent Compass Insurance Co. (Compass), the insurer for Cowart's employer, respondent Nicklos Drilling Company (Nicklos), an informal notice that Cowart was due permanent disability payments, but none were ever made. In the meantime, Cowart settled a negligence action with Transco, which Nicklos funded under an indemnification agreement with Transco. However, Cowart did not secure from Nicklos or Compass a formal, prior, written approval of the settlement. Subsequently, Cowart filed a claim with the Department of Labor seeking disability payments from Nicklos. Nicklos denied liability on the ground that recovery was barred under §33(g) of the Act, which provides that a "person entitled to compensation" must obtain prior written approval from the employer and its insurer of any settlement of a third-party claim, §33(g)(1), and that the failure of the "employee" to secure the approval results in forfeiture of all rights under the Act, §33(g)(2). The Administrative Law Judge awarded benefits, relying on past Benefits Review Board (BRB) decisions: one in which the BRB held that in an earlier version of §33(g) the words "person entitled to compensation" did not refer to a person not yet receiving benefits; and another in which it held that, since this phrase was not altered in the 1984 amendments to the LHWCA that added §33(g)(2), Congress was presumed to have adopted the BRB's interpretation. The Court of Appeals reversed, holding that §33(g) unambiguously provides for forfeiture whenever an LHWCA claimant fails to meet the written-approval requirement.

ESTATE OF COWART v. NICKLOS DRILLING CO.

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*Held:*Section 33(g)'s forfeiture provision applies to a worker whose employer, at the time the worker settles with a third party, is neither paying compensation to the worker nor subject to an order to pay under the Act. The section's language is plain and cannot support the BRB's interpretation. The normal meaning of entitlement includes a right or benefit for which a person qualifies, regardless of whether the right or benefit has been acknowledged or adjudicated. Thus, Cowart became "entitled to compensation" at the moment his right to recovery under the Act vested. If the language of §33(g)(1) left any doubt, the ambiguity would be eliminated by the statute's structure, especially the addition of subsection (g)(2). This interpretation of §33(g) is reinforced by the fact that the phrase "person entitled to compensation" is used elsewhere in the statute in contexts in which it cannot bear Cowart's meaning, and is not altered by the fact that subsection (g)(2) uses the term "employee" rather than that phrase. Contrary to Cowart's argument, this interpretation of §33(g) gives full meaning to all of subsection (g)(2)'s notification and consent requirements. The question whether Nicklos' participation in the settlement brings this case outside §33(g)(1)'s terms is not addressed, since it was not fairly included within the question on which certiorari was granted. The possible harsh effects of §33(g) are recognized, but it is the duty of the courts to enforce the judgment of the legislature; it is Congress that has the authority to change the statute, not the courts. Pp.5-14.

927 F.2d 828, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, SCALIA, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which STEVENS and O'CONNOR, JJ., joined.