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## Lynette Charpentier v. Ortco Contractors United States Court of Appeals for the Fifth Circuit 480 F.3d 710 (Decided February 28, 2006)

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## **EMPLOYER NOT REQUIRED TO PAY BENEFITS PENDING FINAL DECISION.**

**The Court of Appeals for the Fifth Circuit held that employer was not required to pay benefits under Longshore and Harbor Workers Compensation Act pending denial of writ of certiorari by the Supreme Court when the Court of Appeals had already vacated an award of benefits.**

Lynette Charpentier v. Ortco Contractors  
United States Court of Appeals for the Fifth Circuit  
480 F.3d 710  
(Decided February 28, 2006)

After Lynne Charpentier's husband, a painter for Ortco, died of a heart attack, Lynne Charpentier petitioned the court for a compensation award. Her objective was to obtain an order directing the payment of death benefits and funeral expenses pursuant to the Longshore and Harbor Workers' Compensation Act ("LHWCA"). After the Administrative Law Judge ("ALJ") denied Charpentier's application, the Benefits Review Board ("BRB") vacated the ALJ's decision and remanded the case. On remand, ALJ awarded benefits and the BRB affirmed.

Ortco appealed the decision and, on May 21, 2003, the Court of Appeals for the Fifth Circuit vacated the BRB's decision and remanded the case. On that date, Ortco stopped paying benefits to Charpentier. Charpentier, arguing that Ortco was required to continue paying benefits until the time the Supreme Court denied her petition for a writ of certiorari, moved to obtain compensation for the time between May 21, 2003 and December 1, 2003 under 33 U.S.C. § 921(c). Although the RLJ denied the claim and the BRB affirmed, Charpentier appealed.

Since this was an issue of first impression for the Fifth Circuit, both parties based their arguments on a plain meaning interpretation of the LHWCA. According to LHWCA § 21(c), "the payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court."<sup>1</sup> Charpentier claimed that Ortco should have to make the payments until the Court of Appeals decision is "final," which, according to her, would not be until the time for filing an appeal had expired or until her petition for a writ of certiorari was denied by the Supreme Court. Ortco countered that it did not have to make the payments because after the court vacated the BRB decision there was no longer an award upon which Ortco was obligated to pay benefits.

The court denied Charpentier's argument that Ortco was required to pay benefits until the time the Supreme Court denied Charpentier's petition for a writ of certiorari. The court based its decision on the fact that LHWCA § 921(c) refers to the date that the decision becomes final, as opposed to the language of § 921(d) which refers to the date that the award becomes final. The court held that Congress would have drafted section (c) similar to section (d) if its intent was to compel the payment of benefits upon the final decision of the award.

The court also rejected Ortco's argument that there was no award on the date the court issued its opinion. The Court of Appeals has the ability to modify or alter its judgment on an appeal until the time a mandate is issued. The court's decision is not final until the issuance of such a mandate. Accordingly, Ortco had to pay benefits until the court issued a stay order or final decision affirming, modifying, or setting aside the BRB's order. Since the court issued its mandate on July 10, 2003, Ortco was required to pay benefits to Charpentier until that date. The court reversed and remanded to the BRB.

**Lauren Kantor**  
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<sup>1</sup> 33 U.S.C. § 921(c) (2000).