



Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-21-00110-CV

IN RE GREAT PLAINS MANAGEMENT CORPORATION

From the 73rd Judicial District Court, Bexar County, Texas
Trial Court No. 2020CI19936
Honorable Donna S. Rayes, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Irene Rios, Justice
Beth Watkins, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: July 27, 2022

REVERSED AND REMANDED

In a case of first impression, we determine whether future payments under a structured settlement workers' compensation claim made pursuant to the Longshore and Harbor Workers' Compensation Act ("the LHWCA")¹ can subsequently be transferred to another party under the Texas Structured Settlement Protection Act ("the SSPA").² Specifically, this appeal concerns whether, under the SSPA, the trial court properly approved a transfer agreement between appellees Great Plains Management Corporation ("Great Plains")³ and Cynara Dolphy-Budd, wherein Dolphy-Budd transferred to Great Plains a remaining annuity payment stemming from the

¹ See 33 U.S.C. §§ 901–50.

² See TEX. CIV. PRAC. & REM. CODE ANN. §§ 141.001–007.

³ The Structured Settlement Annuity Sale and Assignment Agreement ("the transfer agreement") was originally between Dolphy-Budd and Genex Capital Corporation ("Genex"). Genex subsequently assigned all its interest in the transfer agreement to Great Plains. We will solely refer to Great Plains as the party to the transfer agreement.

settlement of her workers' compensation claim. On appeal, American General Life Insurance Company ("American General"), the annuity issuer, contends the SSPA prohibited the trial court from approving the transfer. American General also claims it is entitled to reasonable costs and attorney's fees under the SSPA.

We agree and reverse the trial court's final judgment and remand the cause to the trial court for the entry of an order denying the transfer and for the determination of reasonable costs and attorney's fees to be awarded American General from Great Plains.

BACKGROUND

Dolphy-Budd was injured in a work-related accident within the purview of the LHWCA. In 2017, her employer and its workers' compensation carrier negotiated a structured settlement under which Dolphy-Budd was paid an upfront lump sum payment and the right to receive another lump sum payment in 2025. The United States Department of Labor, pursuant to the LHWCA, approved the settlement. *See* 33 U.S.C. § 908(i). In accordance with the settlement, the workers' compensation carrier entered into a reinsurance agreement with American General wherein American General would pay Dolphy-Budd a guaranteed lump sum payment of \$146,094 in 2025.

In 2020, Dolphy-Budd entered into a Structured Settlement Annuity Sale and Assignment Agreement ("the transfer agreement") purporting to transfer to Great Plains the entirety of her 2025 lump sum payment of \$146,094 in exchange for Great Plains's payment to her in the amount of \$82,776. Pursuant to the SSPA, Great Plains sought approval of the transfer by filing its application in the trial court. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 141.004 (Approval of Transfers of Structured Settlement Payment Rights); *id.* § 141.006(a) (Procedure for Approval of Transfers). American General filed its opposition claiming, among other things, the proposed transfer violated the SSPA because it contravened the LHWCA. *See id.* § 141.004(3); *see also* 33 U.S.C. § 916.

After conducting an evidentiary hearing, the trial court approved the transfer agreement. American General appealed arguing in multiple issues the trial court incorrectly approved the transfer under the SSPA.

THE STRUCTURED SETTLEMENT PROTECTION ACT

The SSPA governs the “[t]ransfer” of “[s]tructured settlement payment rights” between a “[p]ayee”—the person receiving tax-free payments under a structured settlement who proposes transferring the right to those payments—and a “[t]ransferee”—the party acquiring or proposing to acquire structured settlement payment rights through a transfer. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 141.002(9), (16), (18), (21); *see also id.* §§ 141.001–.007. To be effective, such transfers of structured settlement payment rights must be approved by the trial court. *See id.* § 141.004.

To obtain the trial court’s approval of a transfer, the transferee initiates a proceeding in the trial court by applying for approval of the transfer. *Id.* § 141.006(a). To approve a transfer, the trial court’s order must include the following findings:

- (1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents;
- (2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and
- (3) the transfer does not contravene any applicable statute or an order of any court or other governmental authority.

Id. § 141.004.

However, before a trial court may approve a transfer, the transferee must provide notice to other “[i]nterested parties,” including an “[a]nnuity issuer” such as American General in this case. *See id.* §§ 141.002(1), (7); 141.006(b). The notice, in turn, entitles interested parties to “support,

oppose, or otherwise respond to the transferee's application" "by submitting written comments to the court or by participating in the hearing[.]" *Id.* § 141.006(b)(5).

MOTION TO DISMISS AMERICAN GENERAL'S APPEAL

First, we address Great Plains's motion to dismiss the appeal asserting we lack jurisdiction to decide this appeal. Great Plains argues American General was not a party to the lower court proceedings, and thus has no standing to appeal.

Because standing is a component of subject-matter jurisdiction, "an appeal filed by an improper party must be dismissed." *State v. Naylor*, 466 S.W.3d 783, 787 (Tex. 2015). "While appellate standing typically extends only to those who were parties before the trial court, party status per se is not controlling—the ultimate inquiry is whether the appellant possesses a justiciable interest in obtaining relief from the lower court's judgment." *Tex. Quarter Horse Ass'n v. Am. Legion Dep't of Tex.*, 496 S.W.3d 175, 184 (Tex. App.—Austin 2016, no pet.). An appealing party lacks standing to challenge trial court errors that "merely affect the rights of others." *Torrington Co. v. Stutzman*, 46 S.W.3 829, 843 (Tex. 2000).

The SSPA does not provide typical party identifications such as plaintiff, defendant, or intervenor. Rather, as explained above, American General, the annuity issuer, is an interested party in the proceedings. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 141.002(1), (7)(C). Great Plains is identified as the transferee seeking approval of the "[t]ransfer agreement" between it and payee Dolphy-Budd, also defined as an interested party. *See id.* § 141.002(7)(C), (9), (19), (21). And while annuity issuer American General may not have any direct financial interest in the transfer, it "does, however, have potential liabilities that could arise in connection with the transfer of a payment obligation, such as making payments to an incorrect or unauthorized payee." *RSL-3B-IL, Ltd. v. Prudential Ins. Co. of Am.*, 470 S.W.3d 131, 136 (Tex. App.—Houston [1st Dist.] 2015, pet. denied); *see also Transamerica Occidental Life Ins. Co. v. Rapid Settlements Ltd.*, 284 S.W.3d

385, 392 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (recognizing annuity issuers “are not merely stakeholders, but rather have a unique interest in ensuring compliance with the statutory restrictions on the transfer of structured settlement rights” to avoid “conflicting payment demands and the consequences of violating” the SSPA).

The SSPA specifically identifies American General as an “interested party” and specifies powers, obligations, and protections afforded to American General as an interested party. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 141.001–007. American General acted on those powers by filing its objection to the trial court’s approval of the transfer agreement and participating in the hearing on the transfer agreement’s approval. *See id.* § 141.006(b)(5). The SSPA provides American General the right to participate in these proceedings. *See id.* §§ 141.001–007.

Moreover, while “[a]n appeal can generally only be brought by a named party to the suit[,]” “the doctrine of virtual representation is an exception to the general rule.” *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 754–55 (Tex. 2003). A litigant can be “party” to a suit either directly because the suit specifically names the litigant, or through the doctrine of virtual representation. *See Naylor*, 466 S.W.3d at 789–90. To benefit from the doctrine of virtual representation, the appellant must show “(1) it is bound by the judgment; (2) its privity of estate, title, or interest appears from the record; and (3) there is an identity of interest between the appellant and a party to the judgment.” *Id.* at 789 (internal quotation marks omitted).

Both the statutes and the record indicate American General is bound by the trial court’s order. Great Plains attempts to minimize American General’s interest in the transfer agreement by claiming American General’s role is limited to simply making a payment in 2025. However, the trial court’s order approving the transfer identifies American General as the “annuity issuer” and then specifically orders American General to recognize and honor the terms of the transfer agreement, while also binding American General with the liability to make the 2025 payment to

Great Plains's assignee.⁴ Moreover, the record is replete with American General's involvement in this matter, both in its filings and counsel's appearance during hearings, indicating American General's interest in the proceedings. *See id.* Additionally, under the reinsurance agreement American General is contractually bound to pay Dolphy-Budd the 2025 lump sum payment, thereby identifying the identity of interest between American General and a party to the judgment. *Id.*

Under the statutory scheme of the SSPA, American General is an interested party to the lower court proceedings and has standing to appeal the trial court's final order approving the transfer agreement. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 141.002(1), (7); 141.006(b). Furthermore, American General also has standing under the doctrine of virtual representation because American General is bound by the trial court's order, the record reveals its interest as the annuity issuer required to make a future payment, and an identity of interest exists between American General and Dolphy-Budd.⁵ *See Naylor*, 466 S.W.3d at 789; *see also City of San Benito*, 109 S.W.3d at 755 (noting the "most important consideration is whether the appellant is bound by the judgment"). We therefore deny Great Plains's motion to dismiss American General's appeal for lack of standing.⁶

MOTION TO TAKE JUDICIAL NOTICE

Next, we address Great Plains's request that we take judicial notice of a letter American General sent to the legislature in 2000 showing its support of proposed legislation codifying the

⁴ The trial court's order approving the transfer agreement appears to indicate Great Plains will reassign its right to receive the 2025 payment back to Genex and directs American General to recognize and honor the assignment by making the 2025 payment to Genex. Any assignment from Great Plains back to Genex is not relevant to this appeal.

⁵ Great Plains argues American General has somehow waived its arguments regarding standing. Because standing is a necessary component of a court's subject-matter jurisdiction, it cannot be waived and can be raised for the first time on appeal. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445–46 (Tex. 1993). American General did not waive its standing to appeal.

⁶ Because we deny Great Plains's motion to dismiss American General's appeal, we also deny Great Plains's motion for attorney's fees on appeal as we conclude American General's appeal is not frivolous. *See* TEX. R. APP. P. 45.

SSPA. While referencing a previous case where it declined to take judicial notice of a document that was not relevant to the controlling issue in the case, the Texas Supreme Court opined “[a]n appellate court is naturally reluctant to take judicial notice of matters . . . when the trial court was not requested to do so and was not given an opportunity to examine the necessary source material.” *See In re J.L.*, 163 S.W.3d 79, 84 (Tex. 2005) (alteration in original) (quoting *Sparkman v. Maxwell*, 519 S.W.2d 852, 855 (Tex. 1975)). Because the letter was not presented to the trial court and has no bearing on the issues in this appeal, we deny Great Plains’s motion to take judicial notice of the letter. *See J.L.*, 163 S.W.3d 84 (“Because the legality of the traffic signal was not a controlling issue in the case, we declined to take judicial notice of the 1967 manual.”).

STATUTORY PROVISION PREVENTING APPROVAL OF THE TRANSFER AGREEMENT

In its first issue, American General argues the trial court erred when it found the proposed transfer did not violate the SSPA because the LHWCA prohibits the assignment of future payments arising from claims settled under the purview of the LHWCA.

Standard of Review

American General’s first issue implicates a matter of statutory construction. “Issues of statutory construction are reviewed de novo.” *ExxonMobile Pipeline Co. v. Coleman*, 512 S.W.3d 895, 899 (Tex. 2017). “We apply federal rules of statutory construction to federal statutes based on considerations of comity and consistency.” *Celadon Trucking Servs., Inc. v. Titan Textile Co., Inc.*, 130 S.W.3d 301, 305 n.4 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). We first determine whether the statutory text is plain and unambiguous. *Carcieri v Salazar*, 555 U.S. 379, 387 (2009). “If it is, we must apply the statute according to its terms.” *Id.* We are obligated to follow decisions of the United States Supreme Court on questions of federal law, but we are not bound by lower federal court decisions. *See Pitts v. Dall. Cnty. Bail Bond Bd.*, 23 S.W.3d 407, 418 (Tex. App.—Amarillo 2000, pet. denied).

Applicable LHWCA Statute When Seeking Approval Under the SSPA

As explained above, structured settlement payment rights cannot be transferred without the approval of the trial court assuring the proposed transfer complies with the SSPA's requirements. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 141.004. Included within those requirements, the transfer must “not contravene any applicable statute or an order of any court or other governmental authority.” *Id.* § 141.004(3).

Section 916 of the LHWCA is titled “Assignment and exemption from claims of creditors” and provides

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

33 U.S.C. § 916.

Parties' Interpretations of the LHWCA Provision

American General contends section 916 forbids any assignment of claims made under the LHWCA. *See id.* Therefore, according to American General, the trial court could not approve the transfer agreement between Dolphy-Budd and Great Plains because the transfer contravenes the LHWCA, which in turn would violate a condition of the SSPA. *See id.*; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 141.004(3).

Great Plains, on the other hand, argues section 916 only forbids assignments to creditors—focusing on the title of the provision—and, since Great Plains is not Dolphy-Budd's creditor, section 916 does not apply.

Additionally, Great Plains argues section 916 does not apply because the remaining lump sum payment is no longer “due or payable under this chapter.” *See* 33 U.S.C. § 916. To support this argument, Great Plains contends once the settlement was made and approved by the

Department of Labor, and Dolphy-Budd's employer and the employer's carrier entered into the reinsurance agreement with American General, Dolphy-Budd's employer and the employer's carrier were no longer the parties liable to make the payment under the LHWCA. Rather, American General, a third-party, not subject to the LHWCA, must make the last payment to Dolphy-Budd. Great Plains asserts, as a result, no "compensation or benefits [are] due or payable under [the LHWCA]." *See id.*

Analysis

After an extensive review, we found no authority from either the Texas Supreme Court or Texas appellate courts addressing whether section 916 of the LHWCA prohibits a transfer of future payments under the SSPA. *See* 33 U.S.C. § 916; TEX. CIV. PRAC. & REM. CODE ANN. § 141.004(3). Even after extending our search beyond Texas, we found little authority from other jurisdictions on the matter. Therefore, we apply the rules of statutory construction and begin by determining whether section 916 of the LHWCA applies only to creditors.

1. Title and Structure of the Statute's Text

First, Great Plains contends the title of section 916—"Assignment and exemption from claims of creditors"—indicates the section only applies to assignments to creditors. While a statute's title may lend assistance when a word or phrase is ambiguous, a title does not limit the plain meaning of the text. *See Pa. Dep't of Corrs. v. Yeskey*, 524 U.S. 206, 212 (1998). Rather, we must be guided by the operative words of the statutory provision, not the common meaning of the statute's title. *See id.* Here, neither the title itself, nor the text supports Great Plains's contention that section 916 only applies to creditors. Both the title and the statute's text include the conjunction "and." *See* 33 U.S.C. § 916. Under basic rules of grammar and statutory construction, the use of the word "and" "link[s] independent ideas[.]" *See Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 236 (2011) (emphasis added). Thus, section 916's title signals the statute addresses two

independent topics: “[*(1)*] Assignments *and* [*(2)*] exemption from claims of creditors[.]” *See* 33 U.S.C. § 916 (emphasis added).

This conclusion is further supported by the structure of the sentence within the statute’s text, which includes the use of the conjunction “and” to link the two independent clauses. Reading the plain text of the statute, while applying basic grammar rules, each clause stands alone with its own subject and predicate. “No assignment . . . of compensation or benefits due or payable . . . shall be valid[;] *and*” “[s]uch compensation and benefits shall be exempt . . .” *Id.* Specifically, the statute provides two categories of restrictions with respect to an employee’s compensation or benefits: (1) no assignment, release, or commutation of compensation or benefits; *and* (2) compensation and benefits are exempt from all claims of creditors and from levy, execution, and attachment, or other remedy for recovery or collection of a debt. *See id.* We reject Great Plains’s assertion that section 916 only applies to creditors.

Because we decide section 916 of the LHWCA addresses two prohibitions of an injured employee’s “compensation or benefits” under the LHWCA, we must determine the scope of the section’s constraint on assignments or transfers.

2. “*Due or Payable*” Language

Section 916 provides “no assignment . . . of compensation or benefits due or payable under [the LHWCA], except as provided by [the LHWCA], shall be valid.” *See id.* The parties dispute the meaning of “due or payable under [the LHWCA].” American General contends the language absolutely prohibits any assignment wherein the employee still stands to be paid as a result of her injury. Great Plains, on the other hand, argues the phrase limits the assignment of compensation or benefits to only those remaining unpaid by the employer or the employer’s carrier, not a third party.

Relying on a case from the United States Court of Appeals for the Eleventh Circuit, Great Plains contends when Dolphy-Budd's employer's carrier entered into the reinsurance agreement with American General, American General became the party liable to pay Dolphy-Budd the 2025 lump sum payment, causing the lump sum to no longer be considered "due and payable under [the LHWCA]." *See In re Sloma*, 43 F.3d 637, 640 (11th Cir. 1995). Great Plains asserts when the payment became an obligation of the third-party, here, American General, the LHWCA no longer applied to Dolphy-Budd's workers' compensation agreement, and Dolphy-Budd could do what she pleased with the future payment as if she were paid the entire amount upfront at the conclusion of the settlement. *See id.*

In *Sloma*, Lawrence Sloma filed a claim under the LHWCA for injuries sustained in a work-related accident. *Id.* at 638. Sloma agreed to a settlement of his claims wherein he received an upfront lump sum payment and the right to receive monthly payments for twenty years and other lump sum payments at specified times. *Id.* Sloma's employer's insurance carrier purchased an annuity from Manufacturers Life Insurance Company ("MLIC") to make the monthly payments and the remaining lump sum payments. *See id.* To secure a loan from a bank to open a business, Sloma, in turn, executed an assignment of the annuity payments to the bank. *Id.* At Sloma's direction, the bank structured the loan's repayment in accordance with the annuity payments. *Id.* MLIC made payments to the bank. *Id.* When his business failed, Sloma instructed MLIC to stop paying the bank and directed MLIC to pay him instead. *Id.* at 639. The bank sued Sloma. *Id.* Sloma filed bankruptcy, asserting an exemption to the annuity payments and arguing the assignment of his future payments violated section 916 of the LHWCA. *Id.* The district court affirmed the bankruptcy court's judgment that the LHWCA prohibited Sloma's annuity assignment to the bank. *Id.* The bank appealed. *Id.*

A divided Eleventh Circuit determined that once Sloma settled his claims with his employer and its carrier, and the carrier in turn paid Sloma \$10,000 and purchased an annuity from MLIC to make annuity payments to Sloma—“[t]he payments received by Sloma under the annuity contract were not *due and payable under the [LHWCA]*; they were payments made to him by a third party[.]” *Id.* at 640. The majority decided the purpose of the “anti-assignability provisions” of the LHWCA was “served and ended” once the obligation to make the future payments to Sloma was contracted to MLIC. *Id.* The court therefore upheld the validity of the assignment. *Id.* The dissent, on the other hand, disagreed contending (1) Sloma’s assignment of the annuity payments was not valid; (2) the bank took a risk when loaning money to Sloma, secured by the annuity payments; and (3) Sloma was still in the process of receiving “compensation or benefits *due or payable.*” *See id.* at 641–42 (Hatchett, J., dissenting).

In contrast—to support its contention that the 2025 settlement payment is due or payable and therefore subject to section 916’s prohibition of assignment—American General relies on *In re Dwyer*, No. 149 WDA 2016, 2017 WL 384113 (Pa. Super. Ct. 2017). The facts in *Dwyer* are strikingly similar to the case at bar. Much like the Texas SSPA at issue here, *Dwyer* involved the Pennsylvania Structured Settlement Protection Act, which prohibited a trial court from approving the assignment of structured settlement payments if the assignment contravened the LHWCA.

In *Dwyer*, a settlement agreement directed future payments be paid to Dwyer pursuant to a reinsurance agreement after he settled his workers’ compensation claim filed under the LHWCA. *See Dwyer*, 2017 WL 384113, at *1. The Department of Labor approved the settlement. *Id.* When the trial court subsequently approved Dwyer’s assignment of his future payments, the annuity issuer responsible for making the payments under the reinsurance agreement appealed, claiming the plain language of the statute prohibits assignments. *Id.* at *2. The *Dwyer* court agreed and construed the words of the statute according to their common and approved usage. *Id.* at *3.

Accordingly, the court held “the LHWCA prohibits the assignment of any compensation or benefits owed or being paid pursuant to a claim under the LHWCA.” *Id.* at *4. The court continued, stating:

Section 916 places no limitation on the type or method of compensation, whether by an annuity or structured settlement payment, that cannot be assigned. Moreover, the plain language of [s]ection 916 does not suggest that the anti-assignment clause only applies to future payments. In fact, the plain language of [s]ection 916 applies to any benefits or compensation, either being paid or owed in the future.

Id. (citation omitted); *see also* 33 U.S.C. § 916.

The court added that the plain language of section 916, the settlement agreement, and the reinsurance agreement support the conclusion that Dwyer’s right to receive future structured settlement payments are “due or payable” and “derive from the settlement of claims arising out of the LHWCA.” *Id.* at *5. The court asserted the interpretation as set forth in *Sloma*, “would effectively render the LHWCA inapplicable, as any form of reinsurance agreement or annuity would be considered a payment of the outstanding claim.” *Id.* Rejecting the *Sloma* court’s reasoning, the *Dwyer* court concluded Dwyer’s “structured settlement payment rights [were] a ‘due or payable’ award under the LHWCA, and [could not] be assigned pursuant to [s]ection 916.” *Id.* The *Dwyer* court held that Dwyer’s assignment violated Pennsylvania’s Structured Settlement Protection Act because the assignment contravened a federal statute, the LHWCA. *See id.*

Neither *Sloma*, nor *Dwyer* are binding authority on this court; however, we agree with the sound reasoning of the *Dwyer* court’s interpretation of section 916’s prohibition on assignments. Therefore, we conclude section 916 of the LHWCA bars Dolphy-Budd from assigning her structured settlement payment rights. *See* 33 U.S.C. § 916. As a result, the transfer of her right to receive her 2025 lump sum payment to Great Plains contravenes a federal statute and the trial court improperly granted Great Plains’s application for approval of the transfer under the SSPA. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 141.004(3).

Accordingly, we sustain American General's first issue.

REASONABLE COSTS AND ATTORNEY'S FEES

American General argues in its fifth issue that the SSPA mandates an award of reasonable costs and attorney's fees from Great Plains. *See id.* § 141.005(2)(B). The SSPA provides that "the transferee [Great Plains] shall be liable to the structured settlement obligor and the annuity issuer [American General]" for "reasonable costs and attorney's fees . . . arising as a consequence of the transferee's failure to comply with this chapter" "[f]ollowing a transfer of structured settlement payment rights[.]" *Id.* (emphasis added). A "[t]ransfer" under the SSPA, "means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration[.]" *Id.* § 141.002(18). American General asserts it is entitled to reasonable costs and attorney's fees from Great Plains because Great Plains failed to comply with the SSPA when it was unable to satisfy the requirements necessary to obtain court approval of the transfer.

Great Plains contends American General reads the statute too broadly. Specifically, Great Plains asserts the statute's application and award of reasonable costs and attorney's fees should be limited to situations in which the transferee seeking approval of its application for the transfer fails to adhere to the procedural requirements of the SSPA. To support its assertion, Great Plains refers to a decision from our sister court, wherein the Eastland Court of Appeals affirmed the award of costs and attorney's fees associated with the transferee's failure to give notice to the annuity beneficiary, payee's daughter, as required by the SSPA. *See RSL Funding, LLC v. Aegon Structured Settlements, Inc.*, 384 S.W.3d 405, 408–10 (Tex. App.—Eastland 2012, pet. denied).

Great Plains reads *RLS Funding* too narrowly, incorrectly focusing solely on the case's facts. While the *RLS Funding* court affirmed the trial court's award of reasonable costs and attorney's fees based on the transferee's failure to provide proper notice to the beneficiary, it also

stated “[t]he entire chapter [of the SSPA] deals with the procedures required for court approval” and “the transferee . . . shall be liable to the . . . annuity insurer for . . . reasonable costs and attorney’s fees ‘arising as a consequence of the transferee’s failure to comply with this chapter.’” *Id.* at 409–10 (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 141.005(2)(B)). Thus, any failure to comply with the SSPA, procedural or otherwise, would trigger the structured settlement obligor or annuity issuer’s right to recover reasonable costs and attorney’s fees.

Moreover, the United States Court of Appeals for the Fifth Circuit, in resolving a case between an annuity issuer and a particular factoring company,⁷ held a successful challenge to the approval of a transfer agreement entitles the challenger to an award of attorney’s fees. *See Symetra Life Ins. Co v. Rapid Settlements, Ltd.*, 775 F.3d 242, 249 (5th Cir. 2014).

Great Plains failed to comply with the SSPA because the transfer agreement contravened a federal statute. Consequently, American General requested its reasonable costs and attorney’s fees. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 141.004(3), 141.005(2)(B). Because Great Plains failed to comply with the SSPA, American General is entitled to recover its reasonable costs and attorney’s fees from Great Plains under the SSPA.

Accordingly, we sustain American General’s fifth issue and remand the cause to the trial court to determine and award American General reasonable costs and attorney’s fees from Great Plains pursuant to section 141.005(2)(B) of the SSPA. *See id.* § 141.005(2)(B).

CONCLUSION

We reverse the judgment of the trial court and remand the cause to the trial court for the entry of an order denying Great Plains’s application for approval of the transfer agreement.⁸ We

⁷ A factoring company is a company “which typically buys future structured-settlement payment in exchange for discounted lump-sum payments.” *See In re Dwyer*, No. 149 WDA 2016, 2017 WL 384113, at *1 (Pa. Super. Ct. 2017).

⁸ Based on our decision, we need not address American General’s remaining issues on appeal.

also remand this cause to the trial court to determine reasonable costs and attorney's fees to be awarded American General from Great Plains pursuant to section 141.005(2)(B) of the SSPA. *See id.*

Irene Rios, Justice