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OPINION OF THE SUPREME COURT OF TEXAS
(DECEMBER 12, 2018)

IN THE SUPREME COURT OF TEXAS

RSL FUNDING, LLC AND RSL SPECIAL-IV
LIMITED PARTNERSHIP,

Petitioners,

v.

RICKEY NEWSOME,

Respondent.

No. 16-0998

On Petition for Review from the Court of Appeals
for the Fifth District of Texas

Before: John P. DEVINE, Justice

JUSTICE DEVINE delivered the opinion of the Court.

The Structured Settlement Protection Act requires court approval to validate the transfer of a payee's structured-settlement-payment rights to another. TEX. CIV. PRAC. & REM. CODE § 141.004. The court here approved the transfer but did so in two different orders, creating a dispute between the parties over which order should control. One of the parties moved to compel arbitration of this dispute and others under an arbitration provision included in their transfer agreement. The trial court denied the motion, and

the court of appeals affirmed, concluding that the dispute over which order controlled was not an arbitrable issue despite the existence of an arbitration agreement that assigned issues of arbitrability to the arbitrator. 559 S.W.3d 169, 175 (Tex. App.—Dallas 2016) (mem. op.). Because the parties agreed to have the arbitrator decide issues of arbitrability, we conclude that the court of appeals erred in determining that the dispute here was one that could not be arbitrated.

Accordingly, we reverse the court of appeals' judgment and remand the case to the trial court with instructions to grant the motion to compel arbitration.

I

Rickey Newsome settled a personal injury suit several decades ago and has since received structured settlement payments from Allstate Insurance Company. RSL Funding and its related entities offer lump-sum payments to purchase structured-settlement agreements from recipients like Newsome. Newsome assigned 120 monthly payments of varying amounts to RSL in exchange for a payment of \$53,000. Their contract included a mandatory arbitration clause that identified the Federal Arbitration Act as the controlling law. The clause delegates to an arbitrator not only contractual disputes but also whether a dispute is arbitrable. The relevant part reads:

Disputes under this Agreement of any nature whatsoever . . . shall be resolved through demand by any interested party to arbitrate the dispute. . . . The parties hereto agree that the issue of arbitrability shall likewise be decided by the arbitrator, and not by any

other person. That is, the question of whether a dispute itself is subject to arbitration shall be decided solely by the arbitrator and not, for example by any court.

Under the Structured Settlement Protection Act, a court must approve a transfer of structured-settlement payments before the transfer is effective. TEX. CIV. PRAC. & REM. CODE § 141.004. The court that approves the transfer is the court of original jurisdiction that authorized the settlement. *Id.* § 141.002(2)(A). But if the original court no longer has jurisdiction, approval must be sought from a district court or other designated court in the payee's county. *Id.* § 141.002(2)(B). Because the original court signed the judgment on the structured settlement decades before this transfer, it no longer retained jurisdiction, and so RSL petitioned a district court in Newsome's resident county to approve the agreement.

The district court signed an order approving the transfer that included the requisite statutory findings. *See id.* § 141.004 (stating the "express findings" the court must make to approve the transfer). The order, however, included an additional requirement in a handwritten note by the judge that provided: "Transferee to pay Mr. Newsome the sum of \$53,000 in 10 days from this order being signed or transferee will be required to pay Mr. Newsome \$106,000." The transferee did not pay the \$53,000 within the allotted ten days.

Seven months later, Newsome wrote a letter to the judge complaining that he had not been paid. The district court responded by ordering the parties to mediation, which resulted in an agreed motion to remove the ten-day payment penalty from the order

approving the transfer. The court granted the motion and issued a corrected order nunc pro tunc.

After several more months passed without payment, Newsome filed a new pleading in the district court, titled “Original Petition for Bill of Review and Application for Injunctive Relief.” This pleading attacked both the original and nunc pro tunc approval orders. Newsome argued the nunc pro tunc order was void because it corrected a judicial error after the expiration of the court’s plenary power. He further asserted that the court’s original transfer order therefore remained in full force and effect and subject to enforcement. But Newsome also asked the district court, in the alternative, to vacate the original approval order, although he did not assert a basis for doing so or specifically request that relief in the bill of review’s prayer. A subsequent motion for summary judgment elaborated on the basis for Newsome’s alternative request, asserting that the original transfer order should be vacated because RSL had not complied with it. RSL responded that it had not yet paid Newsome because of his refusal to accept the agreed purchase price of \$53,000 and his failure to cooperate in transferring the settlement payments to RSL. RSL moved to compel arbitration of the dispute under the parties’ contract, while Newsome pursued his motion for summary judgment.

The district court granted Newsome’s summary judgment motion in part, declaring the nunc pro tunc order void, but the court did not decide whether the original transfer order should also be set aside. Instead, the court reserved judgment on Newsome’s alternative claim for future proceedings. The court also denied RSL’s motion to compel arbitration.

RSL took an interlocutory appeal from the district court's order denying arbitration. *See* TEX. CIV. PRAC. & REM. CODE § 51.016 (authorizing interlocutory appeal). In a divided decision, the court of appeals affirmed the district court's order, reasoning that Newsome's bill of review, which challenged the approval orders' validity, offered "nothing for an arbitrator to determine" because approval of such transfers under the Structured Settlement Protection Act was a "purely judicial function." 559 S.W.3d at 175. A dissenting justice disagreed, arguing that the parties had agreed to arbitrate all matters raised in Newsome's bill of review, including whether the nunc pro tunc order was effective and whether the penalty added by the trial court properly altered the parties' transfer agreement. *Id.* at 176 (Schenck, J., dissenting).

RSL petitioned this Court to review the order denying arbitration, and we granted its petition.

II

The U.S. Supreme Court has explained that there are three types of disagreements in the arbitration context: (1) the merits of the dispute; (2) whether the merits are arbitrable; and (3) who decides the second question. *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942 (1995). The default rule for the third question is that arbitrability is a threshold matter for the court to decide. *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 61 (Tex. 2008). But a contractual agreement to submit the arbitrability question to an arbitrator is valid and must be treated like any other arbitral agreement. *First Options*, 514 U.S. at 943. Arbitration clauses that assign gateway questions such as the arbitrability of the dispute are an established feature

of arbitration law. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010). This Court, too, has held that courts must enforce a valid arbitration agreement that places arbitrability with the arbitrator rather than a court. *Forest Oil*, 268 S.W.3d at 61.

RSL contends that the court of appeals impermissibly decided arbitrability itself in the face of a valid arbitration clause that explicitly assigns arbitrability disputes to the arbitrator. Newsome does not challenge the validity or effect of the arbitration clause itself. He contends that the arbitration clause is inapplicable here because this dispute must be decided by a court due to the bill of review and Structured Settlement Protection Act context. He also submits that under the Structured Settlement Protection Act no binding agreement (including an arbitration provision therein) exists until a court resolves the present dispute regarding the validity of the approving court's order.

The dispute thus presents two legal questions for us to decide. First, does an arbitral delegation clause in a court-approved structured settlement transfer agreement apply when the validity of the approving court order is at issue? The court of appeals held it does not. 559 S.W.3d at 175. Second, does a dispute about the validity of approving court orders under the Structured Settlement Protection Act affect the existence of an enforceable arbitration agreement? The court of appeals did not answer this question. Our review of these legal determinations is, of course, *de novo*. *Forest Oil*, 268 S.W.3d at 55 & n.9.

III

We first consider the court of appeals' conclusion and Newsome's arguments that the case should not be sent to arbitration because of its unique circumstances—a bill of review attacking approving court orders under the Structured Settlement Protection Act. RSL argues that because the parties agreed to delegate arbitrability to the arbitrator the weight of authority required the dispute be sent to arbitration. We agree.

A

A valid arbitration agreement creates a strong presumption in favor of arbitration. *Rachal v. Reitz*, 403 S.W.3d 840, 850 (Tex. 2013). Both Texas and federal law require the enforcement of valid agreements to arbitrate. 9 U.S.C. § 2; TEX. CIV. PRAC. & REM. CODE § 171.021. Arbitrators are competent to decide any legal or factual dispute the parties agree to arbitrate. *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 268-69 (2009); *Shearson/American Exp., Inc. v. McMahon*, 482 U.S. 220, 232 (1987). Generally, a court may consider an arbitration agreement's terms to determine which issues must be arbitrated. *Forest Oil*, 268 S.W.3d at 61. But as parties have a right to contract as they *see fit*, they may agree to arbitral delegation clauses that send gateway issues such as arbitrability to the arbitrator. *Rent-A-Ctr.*, 561 U.S. at 68-70; *Forest Oil*, 268 S.W.3d at 61 & n.38. When faced with such an agreement, courts have no discretion but to compel arbitration unless the clause's validity is challenged on legal or public policy grounds. *Forest Oil*, 268 S.W.3d at 61. So the proper procedure is for a court to first determine if there is a binding arbitration agreement that delegates arbitrability to the

arbitrator. If there is such an agreement, the court must then compel arbitration so the arbitrator may decide gateway issues the parties have agreed to arbitrate. *See id.*

The court of appeals, however, did not limit its inquiry to the existence of a valid arbitration agreement; it instead refused arbitration based on its own determination of the arbitrability of the dispute. It did this apparently because “the unique facts of this case” permitted it to disregard the parties’ agreement. *See* 559 S.W.3d at 175.

Newsome defends the court of appeals’ decision, contending that the court must decide the issues presented in his bill of review because the court has exclusive jurisdiction to hear this direct attack on its prior final judgment. *See Richards v. Comm’n for Lawyer Discipline*, 81 S.W.3d 506, 508 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (dismissing a bill of review because it was not filed in the court that rendered the judgment under attack). He further relies on authorities explaining that a court’s subject matter jurisdiction comes from operation of law and cannot be created by consent. *See Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000); *Fed. Underwriters Exch. v. Pugh*, 174 S.W.2d 598, 600 (Tex. 1943). Combining these disparate authorities, Newsome concludes that the district court’s jurisdiction is not only to the exclusion of other courts, but also to the exclusion of arbitration.

Unlike *Richards*, Newsome’s bill of review was not filed in the wrong court, and none of Newsome’s authorities concern arbitration or have any apparent application here. That a court has jurisdiction over a bill of review to the exclusion of all other courts does

not speak to the issue of arbitrability. Arbitrators derive their jurisdiction over disputes from parties' consent and the law of contract. *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 479 (1989); *Americo Life, Inc. v. Myer*, 440 S.W.3d 18, 21 (Tex. 2014). The Federal Arbitration Act preempts any state law that would interfere with parties' freedom to contract to arbitrate their disputes. *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1426 (2017); *In re Olshan Found. Repair Co.*, 328 S.W.3d 883, 888 (Tex. 2010). Reading grants of exclusive jurisdiction over a matter to a court to prohibit delegation of the matter to an arbitrator misunderstands arbitration and the preemptive effect of the Federal Arbitration Act.

Moreover, we have held that parties may contract to arbitrate issues even when the law vests some related exclusive power in a court. For example, in *CVN Group, Inc. v. Delgado* the parties signed an expansive arbitration agreement as part of a contract for construction of a home. 95 S.W.3d 234, 235 (Tex. 2002). After the buyers breached the contract, an arbitrator awarded the home builder damages and a mechanic's lien on the home. *Id.* The trial court refused to allow foreclosure on the lien and the court of appeals affirmed, reasoning the Constitution and Property Code's requirement that mechanic's liens be foreclosed by judicial action also required judicial review and approval of mechanic's liens. *Id.* at 236-37. We reversed, holding the arbitrator-awarded lien could be enforced because it did not contravene constitutional and statutory protections. *Id.* at 239. The dissent reasoned the mechanic's lien statute's requirement that "[a] mechanic's lien may be foreclosed only on judgment of a court" meant

arbitrators could not decide disputes on underlying issues involving a lien's existence. *Id.* at 247-48 (Hankinson, J., dissenting). The Court disagreed, however, concluding this requirement did not prevent arbitration of issues related to the existence of a mechanic's lien. *See id.* at 239-40.

Newsome's argument echoes the dissent in *CVN Group*. Newsome contends that because the Structured Settlement Protection Act requires a court to approve the transfer of structured-settlement-payment rights, and because only the original court has jurisdiction to decide a bill of review attacking its final approval order, the issues raised in this context cannot be decided by an arbitrator. But as with the mechanic's lien in *CVN Group*, we find no inconsistency here between the statute's requirement that courts approve structured-settlement transfers and the arbitration of issues related to that approved transfer. Just as in *CVN Group* where the statute assigned foreclosure on mechanic's liens to a court, here the Legislature has assigned approval of structured-settlement transfers to the courts. TEX. CIV. PRAC. & REM. CODE § 141.004. As was the case with the mechanic's liens statute in *CVN Group*, the Structured Settlement Protection Act does not speak to arbitration at all. *See id.* §§ 141.001-007. While the statute requires a court to approve a settlement-payment transfer, it is silent as to who should decide disputes that arise after such approval, including disputes that require application of the court order itself. *See id.* In the face of such silence, we must apply the general rule that arbitrators are competent to decide any type of dispute. *See 14 Penn Plaza LLC v. Pyett*, 556 U.S. 246, 268-69 (2009). Even if the statute prohibited

arbitration of certain disputes that would arise from the approval of structured-settlement transfers, the Federal Arbitration Act would preempt such a restraint on the freedom of contract in arbitration. *See Olshan*, 328 S.W.3d at 888.

Here, the courts below have not questioned the validity of parties' arbitration clause. We thus have no choice but to send this dispute to arbitration for the arbitrator to at least decide arbitrability. Accordingly, the court of appeals erred in affirming the trial court's refusal to compel arbitration on the grounds that the dispute in this case was not arbitrable.

B

RSL urges us to go further and read the court of appeals' decision as applying the "wholly groundless" exception and to explicitly reject such an exception in Texas. The wholly groundless exception is a doctrine applied by some federal appellate courts to deny arbitration even in the face of an arbitral delegation clause.¹ Under the wholly groundless exception, the court may decline to enforce an arbitral delegation clause when no reasonable argument exists that the parties intended the arbitration clause to apply to the claim before it. *Turi v. Main St. Adoption Servs., LLP*, 633 F.3d 496, 507 (6th Cir. 2011). Here, the court of appeals concluded that the dispute over the

¹ The Fifth, Sixth and Federal Circuits apply the exception. See, e.g., *Douglas v. Regions Bank*, 757 F.3d 460, 462 (5th Cir. 2014); *Turi v. Main St. Adoption Servs., LLP*, 633 F.3d 496, 507 (6th Cir. 2011); *Qualcomm Inc. v. Nokia Corp.*, 466 F.3d 1366, 1371 (Fed. Cir. 2006). The Tenth and Eleventh Circuits have explicitly rejected it. *Jones v. Waffle House, Inc.*, 866 F.3d 1257, 1269 (11th Cir. 2017); *Belnap v. Iasis Healthcare*, 844 F.3d 1272, 1286 (10th Cir. 2017).

validity of the court's approval orders was "not relevant" and "had no bearing" on the parties' arbitrable disputes. 559 S.W.3d. at 175. RSL contends that this was in effect an adoption of the wholly groundless exception.

But the court of appeals does not mention the exception or discuss the federal cases that apply it. Nor has Newsome asked us to adopt the exception or any similar "relevance test" to deny enforcement of an otherwise valid arbitration agreement. The court of appeals did not refuse to enforce arbitration because it thought there was no reasonable argument that the arbitration agreement covered the parties' dispute. It refused to enforce arbitration because it decided this case offered "nothing for an arbitrator to determine." *Id.* In other words, the court decided the nature of the dispute made it non-arbitrable. It erred by skipping the first step in which it should have considered whether it could decide arbitrability in the face of the arbitral delegation clause. This skipped step is where the wholly groundless exception would come into play if the court of appeals had intended to apply it. We conclude the validity of a wholly groundless exception or similar relevance test is not properly before us. We need not go any further than to hold the court of appeals erred by deciding arbitrability itself.

IV

Because it decided the case on arbitrability grounds, the court of appeals did not address Newsome's arguments that the agreement and thus the arbitration clause never came into effect or was unenforceable. As explained above, this was error; the court should have first decided whether a valid arbitration agreement exists. When presented with an issue the court

of appeals could have but did not decide, we may either remand the case or consider the issue ourselves. TEX. R. APP. P. 53.4. We choose to decide this issue.

Newsome argues no enforceable arbitration agreement exists here because both of the district court's approval orders were void. In doing so, he relies on two cases that hold structured-settlement-transfer agreements are not validly formed or enforceable without court approval. *See Wash. Square Fin., LLC v. RSL Funding, LLC*, 418 S.W.3d 761, 770 (Tex. App.—Houston [14th Dist.] 2013, pet. denied); *In re Rapid Settlements, Ltd.*, 202 S.W.3d 456, 461 (Tex. App.—Beaumont 2006, orig. proceeding [mand. denied]) (per curiam). Under this logic, Newsome argues that he cannot be compelled to arbitrate under the agreement either because the agreement never took effect without a valid court order or because the agreement cannot be enforced for some other reason such as being contrary to public policy.

There are three distinct ways to challenge the validity of an arbitration clause: (1) challenging the validity of the contract as a whole; (2) challenging the validity of the arbitration provision specifically; and (3) challenging whether an agreement exists at all. *In re Morgan Stanley & Co.*, 293 S.W.3d 182, 187 (Tex. 2009). These distinctions arise from the U.S. Supreme Court decision *Prima Paint Corp. v. Flood & Conkling Manufacturing Co.*, which held that arbitration clauses are separable from the contracts in which they are embedded. 388 U.S. 395, 404 (1967). Because an arbitration clause is separable from the rest of the contract, the arbitrator decides the first type of challenge. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70 (citing *Prima Paint*, 388 U.S. at 403-

04). Classic contract defenses such as unconscionability, illegality and fraudulent inducement fall under this first type of challenge; the arbitrator decides them if they are alleged only against the contract as a whole. *E.g., id.* at 66 (unconscionability); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (illegality); *Prima Paint*, 338 U.S. at 402-04 (fraudulent inducement). But *Prima Paint* does not encompass contract-formation challenges. *Morgan Stanley*, 293 S.W.3d at 187-88 & nn. 5-6. Contract formation defenses—such as whether a party ever signed a contract, whether a signor had authority to bind a principal, or whether the signor had capacity to assent—are thus threshold issues to be decided by the court. *Id.* at 189. This is because the Federal Arbitration Act requires a court to be “satisfied that the making of the agreement for arbitration . . . is not in issue” before compelling arbitration. 9 U.S.C. § 4. The Texas Arbitration Act, too, requires that the existence of an agreement to arbitrate be proven to the court before the court must compel arbitration. TEX. CIV. PRAC. & REM. CODE § 171.021(b).

Here, Newsome does not challenge the arbitration clause specifically. Rather, he contends that no enforceable arbitration agreement exists because the entire transfer agreement never came into existence or is not enforceable. Under the Structured Settlement Protection Act, “[n]o direct or indirect transfer of structured settlement payment rights shall be effective . . . unless the transfer has been approved in advance in a final court order” based on specified express findings. TEX. CIV. PRAC. & REM. CODE § 141.004. Assuming for the sake of argument that this provision requires the court to approve the parties’ contract

and not merely the structured-settlement-payment transfer, the effect of this provision on the arbitration clause depends on whether the challenge is to the contract's enforceability or its existence. Newsome cites cases that discuss the statute's effect on both the structured-settlement-transfer agreement's existence and its enforceability. *See, e.g., Wash. Square*, 418 S.W.3d at 770 (enforceability); *Rapid Settlements*, 202 S.W.3d at 461 (formation).

For example, in *Washington Square*, the court of appeals held that contracts to transfer structured-settlement-payment rights are unenforceable as contrary to public policy unless court-approved. 418 S.W.3d at 770. The court, however, did not decide whether court approval is a condition precedent to the formation of the contract. *Id.* at 771 & n.8. The case did not involve a motion to compel arbitration; the issue was whether an unapproved contract could support a tortious-interference claim. *Id.* at 770-71. *Washington Square* is not helpful here because the court did not consider whether the lack of court approval rendered the transfer agreement a nullity.

In the arbitration context, the *Prima Paint* separability doctrine provides that the arbitrator is to decide any challenge to the enforceability of an existing contract. 388 U.S. at 404. Any contract defense that attacks the contract as a whole but does not go to the issue of contract formation must be decided by the arbitrator. *See, e.g., Rent-A-Ctr.*, 561 U.S. at 66 (unconscionability); *Buckeye*, 546 U.S. at 443 (illegality); *Prima Paint*, 338 U.S. at 402-04 (fraudulent inducement). Voidness on public policy grounds as in *Washington Square* may provide a basis for revoking an existing contract but does not mean the agreement

never formed in the first place. *See In re Poly-America, L.P.*, 262 S.W.3d 337, 348 (Tex. 2008) (orig. proceeding). Because voidness on public policy grounds, like illegality, is a defense to the contract's enforcement, it falls into the category that the *Prima Paint* line of cases delegates to the arbitrator. *See Buckeye*, 456 U.S. at 446. Consequently, when a party resisting arbitration argues the whole contract is void for violation of public policy, the arbitrator, not a court, decides the issue. We thus cannot decide here whether a transfer agreement lacking court approval under section 141.004 is void on public policy grounds or unenforceable for any other reason that does not go to contract formation because the doctrine of separability reserves such decisions for the arbitrator.

Newsome, however, also argues that section 141.004 of the Structured Settlement Protection Act creates a condition precedent to contract formation. That indeed was the holding of a court of appeals in another case Newsome cites. *See Rapid Settlements*, 202 S.W.3d at 461. Assuming that holding to be correct, a court would have an opportunity to decide at the outset whether a valid court order approved a structured-settlement-transfer agreement because the existence of the court order goes to contract formation, which the court decides before compelling arbitration. *See Morgan Stanley*, 293 S.W.3d at 187. Whether we may decide in this appeal if court approval is an issue of the underlying contract's formation depends on whether Newsome properly raised that issue below.

The primary thrust of Newsome's bill of review was for the trial court to declare the nunc pro tunc order void so Newsome could enforce the original approval order. Because Newsome's bill of review pleads that

the approval order is valid and created an enforceable contract, the possible voidness of the nunc pro tunc order does not affect the existence of the agreement to arbitrate. The contract containing the agreement to arbitrate exists even if a question exists about whether the nunc pro tunc order corrected only a clerical error. Newsome seeks to enforce a contract approved by a court that contains an arbitration agreement and thereby concedes the existence of the agreement to arbitrate.

But Newsome's bill of review contains an "alternative" allegation that both the nunc pro tunc order and the original approval order are void, and Newsome mentions that possibility again in his appellate briefing without explanation. In fact, Newsome has no theory to support his conclusory attack on the original order. He did not even raise the issue in his trial court brief opposing RSL's motion to compel arbitration. Indeed, Newsome's petition for bill of review barely mentions the possibility, and his briefing in this Court is no better. A brief must provide citations or argument and analysis for the contentions and failure to do this can result in waiver. TEX. R. APP. P. 38.1(i), 38.2(a)(1); *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 500 (Tex. 2015). Newsome has failed to present any theory, analysis, or authority that puts the validity of the original approval order and thus formation of the contract to arbitrate in issue, and we conclude that the doctrine of separability reserves to the arbitrator all other questions raised in the district court. The court of appeals therefore erred in affirming the trial court's order denying arbitration.

* * * * *

Having found the court of appeals erred and no merit in Newsome's alternative grounds to affirm, we reverse the court of appeals' judgment and remand the case to the trial court with instructions to grant the motion to compel arbitration.

John P. Devine
Justice

Opinion Delivered: December 21, 2018

**MANDATE OF THE SUPREME COURT OF TEXAS
(MARCH 29, 2019)**

IN THE SUPREME COURT OF TEXAS

RSL FUNDING, LLC AND RSL SPECIAL-IV
LIMITED PARTNERSHIP,

Petitioners,

v.

RICKEY NEWSOME,

Respondent.

No. 16-0998

To the Trial Court of Dallas County, Greetings:

Before our Supreme Court on December 21, 2018, the Cause, upon petition for review, to revise or reverse your Judgment.

No. 16-0998 in the Supreme Court of Texas

No. 05-15-00718-CV in the Fifth Court of Appeals

No. DC-14-14580-L in the 193rd District Court of Dallas County, Texas, was determined; and therein our said Supreme Court entered its judgment or order in these words:

THE SUPREME COURT OF TEXAS, having heard this cause on petition for review from the Court of Appeals for the Fifth District, and having considered

the appellate record, briefs, and counsels' argument, concludes that the court of appeals' judgment should be reversed.

IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that:

- 1) The court of appeals' judgment is reversed;
- 2) The cause is remanded to the trial court for further proceedings consistent with this Court's opinion; and
- 3) Petitioners RSL Funding, et al. shall recover, and Respondent Rickey Newsome shall pay, the costs incurred in this Court and in the court of appeals.

Copies of the Court's judgment and opinion are certified to the Court of Appeals for the Fifth District and to the District Court of Dallas County, Texas, for observance.

Wherefore we command you to observe the order of our said Supreme Court in this behalf, and in all things to have recognized, obeyed, and executed.

BY ORDER OF THE SUPREME COURT OF THE STATE OF TEXAS,

with the seal thereof annexed,
at the City of Austin, this the
29th day of March, 2019.

/s/ Blake A. Hawthorne
Clerk

By Monica Zamarripa
Deputy Clerk

**MEMORANDUM OPINION
OF THE COURT OF APPEALS OF
FIFTH DISTRICT OF TEXAS OF DALLAS
(AUGUST 30, 2016)**

IN THE COURT OF APPEALS FIFTH DISTRICT
OF TEXAS AT DALLAS

RSL FUNDING, LLC AND RSL SPECIAL-IV
LIMITED PARTNERSHIP,

Appellants,

v.

RICKEY NEWSOME,

Appellee.

No. 05-15-00718-CV

On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-14580-L

Before: LANG-MIERS, BROWN, and SCHENCK,
Justices

In this interlocutory appeal, RSL Funding, LLC and RSL Special-IV, Limited Partnership (collectively RSL) appeal the trial court's orders denying their motions to compel arbitration and granting a temporary restraining order (TRO). In two issues, RSL contends the trial court abused its discretion by refusing to

compel arbitration and by granting the TRO. We affirm the trial court's orders.

Legal and Factual Background

In 1985, appellee Rickey Newsome settled a personal injury claim. Pursuant to the terms of a structured settlement agreement, Newsome was entitled to receive monthly payments from Allstate Insurance Company beginning in September 1986 for the duration of his life. Allstate purchased an annuity from Allstate Life Insurance Company to fund the payments. In September 2013, RSL and Newsome entered into a Transfer Agreement under which Newsome agreed to transfer and assign portions of his future periodic payments to RSL in exchange for a lump-sum payment of \$53,000. The Transfer Agreement contained an arbitration clause providing that “[d]isputes under this Agreement of any nature whatsoever . . . shall be resolved through demand by any interested party to arbitrate the dispute.” The agreement further stated, “[T]he question of whether a dispute itself is subject to arbitration shall be decided solely by the arbitrator and not, for example by any court.” A promissory note signed by Newsome also contained an arbitration clause.

In the trial court, RSL filed an application for approval of the transfer, as required by the Texas Structured Settlement Protection Act (SSPA). *See* TEX. CIV. PRAC. & REM. CODE ANN. § 141.006 (West 2011). The purpose of the SSPA is to protect recipients of structured settlement payments who are in need of cash from exploitation by “factoring companies,” companies that purchase structured settlements from personal injury victims by paying immediate cash for

the right to future payments. *Johnson v. Structured Asset Servs., LLC*, 148 S.W.3d 711, 729 (Tex. App.—Dallas 2004, no pet.). The SSPA requires disclosures and court approval before any transfer of structured settlement payment rights. *Id.*; *Transamerica Occidental Life Ins. Co. v. Rapid Settlements, Ltd.*, 284 S.W.3d 385, 392 (Tex. App.—Houston [1st Dist.] 2008, no pet.); *see* TEX. CIV. PRAC. & REM. CODE ANN. § 141.003. No transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee unless the transfer has been approved in advance in a final court order based on express findings that (1) the transfer is in the best interest of the payee; (2) the payee has been advised in writing to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived it in writing; and (3) the transfer does not contravene any applicable statute or an order of any court or governmental authority. TEX. CIV. PRAC. & REM. CODE ANN. § 141.004; *see Washington Square Fin., LLC v. RSL Funding, LLC*, 418 S.W.3d 761, 769-70 (Tex. App.—Houston [14th Dist.] 2013, pet. denied).

On October 23, 2013, the trial court signed an order approving the transfer. Among other things, the order recited that the transfer was in Newsome’s best interest, RSL had provided Newsome with a disclosure statement required by the SSPA, and Newsome had been advised in writing to seek independent professional advice regarding the proposed transfer and had either received the advice or knowingly waived it. The order included the following handwritten note: “Transferee to pay Mr. Newsome the sum of \$53,000

in 10 days from this order being signed or transferee will be required to pay Mr. Newsome \$106,000.” Neither party made any complaint at that time to the trial court that the handwritten terms improperly modified their agreement.

In May 2014, the trial court received a pro se letter from Newsome indicating RSL had failed to pay him for the transfer. The court ordered RSL to appear to determine whether a subsequent contempt hearing should occur. At a June 2014 hearing, counsel for RSL represented Newsome had made prior transfers of portions of his annuity to other parties and that Allstate could not be required to split payments. Counsel represented that RSL had not paid Newsome because it had been working with Allstate and the other parties to ensure that RSL would get the money it bought. The trial court ordered the parties to mediation.

In August 2014, RSL filed an agreed motion for entry of a corrected order nunc pro tunc. RSL asserted that the handwritten language in the court’s October 2013 order approving the transfer modified the parties’ Transfer Agreement without their consent. The motion further asserted that the parties sought entry of a corrected order to remove the handwritten language, which had required RSL to pay Newsome \$106,000 instead of \$53,000 if it did not pay him in ten days. Newsome himself signed the agreed motion. On September 15, 2014, the trial court signed a corrected order approving the transfer nunc pro tunc that omitted the handwritten language found in its earlier order.

In December 2014, Newsome filed a petition for bill of review and application for injunctive relief in the trial court. By way of bill of review, Newsome sought

to set aside the court's nunc pro tunc order. He asserted that the nunc pro tunc order was void because the court improperly corrected a judicial error, as opposed to a clerical error, after its plenary power had expired. He asked the trial court to vacate the nunc pro tunc order and confirm that the original order approving the transfer is the final judgment. As an alternative, Newsome asked the trial court to set aside both the original order approving the transfer and the nunc pro tunc order and confirm that none of Newsome's annuity payments were transferred to RSL. Newsome further alleged that RSL was liable for his attorney's fees incurred as a result of the bill of review.

Newsome's petition for bill of review also contained allegations that RSL had still not paid him despite the fact that RSL was being paid the portion of his monthly annuity he had transferred to it. He asserted RSL had filed a suit against him in Harris County seeking declaratory relief and attached a copy of RSL's Harris County petition. In it, RSL alleged that a dispute had arisen regarding the amount to be paid to RSL under the parties' contract for the transfer of settlement payments. RSL asserted it had filed a demand for arbitration in Houston and sought a declaration that the parties had a valid arbitration agreement and that the pending dispute was subject to the arbitration agreement. In his petition, Newsome sought a temporary injunction prohibiting RSL from taking any action in the Harris County lawsuit, which the trial court granted.

Newsome amended his petition for bill of review in March 2015. The amended petition sought the same relief as the original petition, but no longer contained the request for injunctive relief. After Newsome

amended his petition, RSL filed a motion to compel arbitration under the Federal Arbitration Act and to abate the proceedings pending arbitration. RSL asserted that a dispute had arisen under the parties' written agreement that contained an arbitration clause. RSL alleged Newsome refused to execute a necessary stipulation and refused to accept the amounts set out in the Transfer Agreement. RSL also noted that Newsome claimed he signed the agreed motion for entry of the corrected order nunc pro tunc under duress and detrimentally relied on RSL's promises to pay him. RSL disputed Newsome's claims of duress and detrimental reliance and thus asserted that these issues should be submitted to arbitration. In its motion, RSL also asserted that an arbitrator should determine whether Newsome had met the three prerequisites for a bill of review.

RSL later filed a supplement to its motion to compel arbitration in which it asked the court, in the event it denied the motion to compel, to stay the proceedings pending an appeal to this Court. After a hearing, on May 28, 2015, the trial court denied RSL's motion to compel arbitration and also denied RSL's request to stay the proceedings.

That same day, the trial court granted in part and denied in part a motion for summary judgment filed by Newsome. The court ruled that summary judgment was proper on Newsome's claim that the corrected order approving the transfer nunc pro tunc should be vacated. The court denied summary judgment on Newsome's alternative request to vacate the original transfer order and his claim for attorney's fees. The court vacated its nunc pro tunc order and ruled that it was void when entered.

A few days later, RSL filed a corrected motion to compel arbitration. In its brief, RSL states it filed the corrected motion to attach the most recent version of the Transfer Agreement. In an order signed June 2, 2015, the trial court denied RSL's original motion to compel arbitration, its supplemental motion, and its corrected motion. The court again denied RSL's request to stay the proceeding pending appeal.

Also on June 2, 2015, Newsome filed an application for injunctive relief. He asked the court to enter a TRO and temporary injunction ordering RSL to remit the monthly assigned payments to him until resolution of the litigation and sought \$8,000 for the monthly payments RSL had already received. That same day, the trial court granted a TRO and ordered RSL to pay Newsome the amount of all the assigned payments it had received from February 2014 to the present as well as any future payments. The court set a temporary injunction hearing for June 11, 2015. Before the hearing date, on June 8, 2015, RSL filed its notice of interlocutory appeal from the court's May 28 and June 2, 2015 orders denying RSL's motions to compel arbitration and the June 2, 2015 TRO. This Court stayed the trial court proceedings pending further order from this Court.

Motion to Compel Arbitration

In its first issue, RSL contends the trial court abused its discretion in denying RSL's motions to compel arbitration. RSL maintains it met its threshold burden to prove a valid arbitration agreement existed in the Transfer Agreement. It asserts the parties agreed to arbitrate arbitrability and only the arbitrator

could decide if RSL presented a valid claim for arbitration.

We review an order denying a motion to compel arbitration under an abuse of discretion standard. *Bonded Builders Home Warranty Ass'n of Tex., Inc. v. Smith*, 488 S.W.3d 468, 476 (Tex. App.—Dallas 2016, no pet.). We defer to the trial court's factual determinations if they are supported by the evidence, but we review the trial court's legal determinations de novo. *Id.*

Generally, a party seeking to compel arbitration under the Federal Arbitration Act must establish (1) the existence of a valid, enforceable arbitration agreement and (2) that the claims at issue fall within that agreement's scope. *Id.* A court has no discretion and must compel arbitration if these two requirements are met. *Id.*

In its motions to compel, RSL contended that various disputes existed under the Transfer Agreement which were subject to arbitration. Its real complaint seems to be that the trial court did not have the authority to modify the parties' Transfer Agreement. RSL refers to several disputes, including whether it owes Newsome \$53,000 or \$106,000 and when it must pay him, whether Newsome breached the parties' contract, and whether he was under duress when he signed the agreed motion to correct the nunc pro tunc and detrimentally relied on RSL's promises. In his petition for bill of review, Newsome primarily sought relief on grounds that the trial court's nunc pro tunc order was void because it was signed after the court's plenary power had expired. None of the alleged disputes RSL contends require arbitration is relevant to the issue of whether the court corrected a clerical error

or a judicial error when it signed its nunc pro tunc order. *See Tex. Dep't of Transp. v. A.P.I. Pipe & Supply, LLC*, 397 S.W.3d 162, 167 (Tex. 2013) (judgment nunc pro tunc can correct clerical error in original judgment, but not judicial error).

RSL also contends the elements of a bill of review — a meritorious defense or ground for appeal, which Newsome was unable to present due to RSL's fraud, accident, or wrongful act, unmixed with any fault or negligence on Newsome's part—are fact issues that should be decided by an arbitrator. But Newsome was using the bill of review to attack an allegedly void judgment, not to establish that he had a meritorious defense he was unable to present. A claim that a judgment is void because the trial court lacked jurisdictional power to render it constitutes a collateral attack on the underlying judgment. *Walker v. Walker*, No. 05-13-00481-CV, 2014 WL 4294967, at *2 (Tex. App.—Dallas Aug. 21, 2014, no pet.) (mem. op.). When a petitioner uses a bill of review to collaterally attack a judgment on grounds it is void because the court lacked jurisdiction, it is not required to prove the three elements of a bill of review. *Id.*; *see Middleton v. Murff*, 689 S.W.2d 212, 213 (Tex. 1985). Thus, these issues were also not relevant to the relief Newsome sought.

As alternative relief, Newsome asked the trial court to vacate both the nunc pro tunc order and the original order approving the transfer and confirm that none of the annuity payments were ever properly transferred to RSL. The legal basis on which Newsome contends in the alternative that the original transfer order should be vacated is unclear. If there is a legal basis for vacating the court's transfer orders, these

issues are purely for the trial court to decide. Under the SSPA, a court had to be involved in the process of approving the parties' Transfer Agreement. The agreement was not effective without the trial court's approval. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 141.004. An arbitrator has no role in determining whether to, or the terms on which to, approve a transfer agreement. *See id.* § 141.002(2) (defining "court" as used in SSPA).

We recognize that the arbitration provision in the Transfer Agreement is broad in scope. We further recognize that once a valid arbitration agreement is established, there is a strong presumption favoring arbitration and we resolve doubts as to the agreement's scope in favor of arbitration. *See Rachal v. Reitz*, 403 S.W.3d 840, 850 (Tex. 2013). Under the unique facts of this case, however, we conclude there was nothing for an arbitrator to determine. The disputes asserted by RSL in its motions to compel had no bearing on Newsome's claim that the nunc pro tunc order was void. Further, the alternative relief Newsome sought from the trial court was in the province of the trial court under the SSPA, not an arbitrator. Approving transfers of structured settlement payment rights is a purely judicial function. We conclude the trial court did not abuse its discretion in denying RSL's motions to compel arbitration. We overrule RSL's first issue.

Temporary Restraining Order

In its second issue, RSL contends the trial court abused its discretion in granting the TRO. A trial court's ruling on a TRO is generally not appealable. *In re Tex. Nat. Res. Conservation Comm'n*, 85 S.W.3d 201, 205 (Tex. 2002). RSL maintains the TRO was

essentially a temporary injunction because it altered, rather than preserved, the status quo. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (West Supp. 2015) (person may appeal interlocutory order that grants temporary injunction). But at oral argument, Newsome represented, without contradiction, that no payments were made pursuant to the TRO. The TRO was signed on June 2, 2015, and expired fourteen days from that date. *See* TEX. R. CIV. P. 680. Accordingly, this issue is moot. We overrule RSL's second issue.

We affirm the trial court's orders.

/Ada Brown/
Ada Brown
Justice

**DISSENTING OPINION
OF THE JUSTICE SCHENCK
(AUGUST 30, 2016)**

IN THE COURT OF APPEALS FIFTH DISTRICT
OF TEXAS AT DALLAS

RSL FUNDING, LLC AND RSL SPECIAL-IV
LIMITED PARTNERSHIP,

Appellants,

v.

RICKEY NEWSOME,

Appellee.

No. 05-15-00718-CV

On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-14580-L

Before: LANG-MIERS, BROWN, and SCHENCK,
Justices

I commend the majority for its fine opinion. I regret that I am unable to join it in full. The approved transfer agreement includes an arbitration clause which states:

Disputes under this Agreement of any nature whatsoever including but not limited to those sounding in constitutional, statutory,

or common law theories as to the performance of any obligations, the satisfaction of any rights, and/or the enforceability hereof, including any claims that the Assignor has breached this Agreement, shall be resolved through demand by any interested party to arbitrate the dispute under the laws of Assignee's domicile to the maximum extent possible (including the Federal Arbitration Act which shall be controlling) The parties hereto agree that the issue of arbitrability shall likewise be decided by the arbitrator, and not by any other person. That is, the question of whether a dispute itself is subject to arbitration shall be decided solely by the arbitrator and not, for example, by any court. In so doing the intent of the parties is to divest any and all courts of jurisdiction in disputes involving the parties, except for the confirmation of the award and enforcement thereof.

The United States Supreme Court has been very clear in stating that disputes, be they factual or legal in nature, arising out of contracts containing an arbitration provision are to be decided by an arbitrator, not a court. *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 268-69 (2009). This is especially true when, as here, the parties have committed to arbitrate the question of arbitrability. *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).

To be sure, we have not previously addressed the question of whether parties might validly agree to arbitrate a legal dispute over the effect of a prior court order. In applying the Federal Arbitration Act,

however, the Supreme Court has stressed that legal disputes of all kinds are within the presumed competence of an arbitrator and should be so decided where the parties have contracted to avoid a judicial disposition. *See Pyett*, 556 U.S. at 268-69; *see also Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 481 (1989).

The parties' arguments here concerning whether the nunc pro tunc order is effective and whether the trial court's additional payment term properly altered their transfer agreement can be made to an arbitrator just as well as a court. Likewise, any claim Newsome may have as to the delay and receipt of beneficial payments under the transfer agreement may also be raised before an arbitrator. As all of these claims arise either directly from the agreement or from their dispute over its proper reach, I would leave them to their commitment to arbitrate those questions alongside any dispute over the proper reach of the arbitration clause. *Continuum Health Serv., LLC v. Cross*, No. 05-11-01520-CV, 2012 WL 5845367, at *1 (Tex. App.—Dallas Nov. 19, 2012, no pet.) (mem. op.); *Roe v. Ladymon*, 318 S.W.3d 502, 512-14 (Tex. App.—Dallas 2010, no pet.).

/David J. Schenck/
David J. Schenck
Justice

**JUDGMENT OF THE COURT OF APPEALS
(AUGUST 30, 2016)**

IN THE COURT OF APPEALS FIFTH DISTRICT
OF TEXAS AT DALLAS

RSL FUNDING, LLC AND RSL SPECIAL-IV
LIMITED PARTNERSHIP,

Appellants,

v.

RICKEY NEWSOME,

Appellee.

No. 05-15-00718-CV

On Appeal from the 193rd Judicial District Court
Dallas County, Texas

Trial Court Cause No. DC-14-14580-L

Before: LANG-MIERS, BROWN, and SCHENCK,
Justices

In accordance with this Court's opinion of this date, the orders of the trial court are AFFIRMED.

It is ORDERED that appellee Rickey Newsome recover his costs of this appeal from appellants RSL Funding, LLC and RSL Special-IV, Limited Partnership.

Judgment entered this 30th day of August, 2016.

**ORDER DENYING RESPONDENTS'
JOINT MOTION TO COMPEL ARBITRATION,
SUPPLEMENT TO JOINT MOTION TO COMPEL
ARBITRATION AND JOINT CORRECTED
MOTION TO COMPEL ARBITRATION &
VERIFIED MOTION TO ABATE PROCEEDINGS
PENDING ARBITRATION
(JUNE 2, 2015)**

IN THE DISTRICT COURT 193RD JUDICIAL
DISTRICT OF DALLAS COUNTY, TEXAS

IN THE MATTER OF:
A TRANSFER OF STRUCTURED SETTLEMENT
PAYMENT RIGHTS BY RICKEY NEWSOME

Cause No. DC-14-14580-L

Came on for consideration the Joint Motion to Compel Arbitration filed by Respondents RSL Funding, LLC and RSL Special-IV, Limited Partnership (the "Motion to Compel") on April 4, 2015, Respondent's Supplement to Joint Motion to Compel Arbitration and Verified Motion to Abate Proceedings Pending Arbitration (the "Supplemental Motion") filed on May 5, 2015, and Respondents' Joint Corrected Motion to Compel Arbitration & Verified Motion to Abate Proceedings Pending Arbitration filed on May 29, 2015 ("Corrected Motion") (collectively, all three will be regarded as the "Motion to Compel Arbitration").

The Court, having considered the Motion to Compel Arbitration and the responses and opposition thereto filed by Petitioner Rickey Newsome (“Newsome”), finds that the Motion to Compel Arbitration filed by Respondents RSL Funding, LLC and RSL Special-IV, Limited Partnership (collectively, “Respondents”) should be denied.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Respondents’ Motion to Compel, Supplemental Motion and the Corrected Motion are DENIED in their entirety.

In the Supplemental Motion and in the Corrected Motion, Respondents have requested that the Court stay the proceedings in this matter if the Court were to deny the Motion to Compel/Supplemental Motion/Corrected Motion so that Respondents could appeal this Court’s ruling relating to the Motion to Compel/Supplemental Motion/Corrected Motion to the Dallas Court of Appeals, that request of Respondents is also denied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Respondents request to stay proceeding in this case, pending an appeal of the Court’s ruling on the Motion to Compel/Supplemental Motion/Corrected Motion to the Dallas Court of Appeals is DENIED.

SIGNED this 2nd day of June, 2015.

/s/
Judge Presiding

**ORDER GRANTING IN PART AND DENYING IN
PART PETITIONER RICKEY NEWSOME'S
MOTION FOR SUMMARY JUDGMENT
(MAY 28, 2015)**

IN THE DISTRICT COURT 193RD JUDICIAL
DISTRICT OF DALLAS COUNTY, TEXAS

IN THE MATTER OF:
A TRANSFER OF STRUCTURED SETTLEMENT
PAYMENT RIGHTS BY RICKEY NEWSOME

Cause No. DC-14-14580-L

On the 26th day of May, 2015, came on for consideration the Motion for Summary Judgment (“Petitioner’s MSJ”) filed by Petitioner Rickey Newsome (hereafter “Petitioner”). Counsel for Petitioner appeared at the hearing, as did Petitioner himself. Respondents RSL Funding, LLC (“RSL Funding”) and RSL Special-IV, Limited Partnership (“RSL Special”), having previously appeared and answered in this case and having previously filed a Response to the Petitioner’s MSJ, appeared through their counsel at the summary judgment hearing.

The Court has read and considered the (i) Petitioner’s MSJ, including the appendix of documents and exhibits filed with said motion; (ii) Respondents RSL Funding and RSL Special’s (collectively, “Respondents”) Response to Rickey Newsome’s Motion for Summary Judgment (“Respondents’ MSJ Response”);

(iii) the letter brief filed with the Court by counsel for Petitioner on May 20, 2015 (“Petitioner’s Letter Brief”); and (iv) Respondents’ Response and Objections to Rickey Newsome’s May 20, 2015 Letter to the Court (the “Respondents’ Response to Petitioner’s Letter Brief”), as well as all of the other pleadings, documents, and summary judgment evidence properly filed and/or before the Court,

Having read and considered the motions/responses set forth above and having heard the arguments of counsel and having further considered the summary judgment evidence filed by both Petitioner and Respondents in support of, and/or in opposition to, Petitioner’s MSJ, the Court finds that Petitioner’s MSJ should be granted in part and denied in part.

There are no genuine issues of material fact as to certain of Petitioner’s contentions and arguments in this bill of review proceeding, such that Petitioner is entitled to summary judgment as a matter of law as follows:

1. Summary judgment is proper and should be granted in favor of Petitioner relative to Petitioner’s claim that the Corrected Order Approving Transfer Nunc Pro Tunc (the “Nunc Pro Tunc Order”) signed and dated by this Court on September 15, 2014 should be, and hereby is, vacated and set aside.

With respect to certain of Petitioner’s contentions and arguments made in this bill of review proceeding and addressed in Petitioner’s MSJ, the Court finds that Petitioner is not entitled to summary judgment relative to certain of Petitioner’s issues, contentions and claims because (i) there are genuine issues of

material fact, (ii) Petitioner failed to establish his right to judgment as a matter of law on such issues, contentions, and arguments; and/or (iii) further development of the parties' (Petitioner's and Respondents') legal arguments and authorities are warranted. Specifically, the Court finds as follows:

2. With respect to Petitioner's contentions and arguments that the Order Approving Transfer signed by this Court on October 23, 2013 (the "Transfer Order") should be vacated and set aside as a matter of law and that RSL be ordered to return and/or repay or reimburse to Petitioner all of the structured settlement/annuity payments which RSL has received and collected since the Transfer Order was signed, the Court denies Petitioner's MSJ. Should Petitioner still desire to seek said relief—to have the Transfer Order set aside and vacated and/or seek to have the Court order RSL to repay to Petitioner all of the monthly structured settlement/annuity payments which have been paid to and retained by RSL since the Transfer Order was signed (plus interest on said payments)—as requested by Petitioner in the Petitioner's MSJ, Petitioner may pursue said claims in this matter, but is not entitled to summary judgment on said claims.
3. With respect to Petitioner's claim for attorneys' fees, either as a sanction for RSL's actions and conduct in this matter and/or in accordance with Tex. Civ. Prac. & Rem. Code Ann. 141.001 *et. seq.*, Petitioner shall not be entitled to summary judgment

on said claims. Should Petitioner still desire to seek attorneys' fees, Petitioner may pursue said claims in this matter, but is not entitled to summary judgment on said claims.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Petitioner's MSJ is GRANTED in part and DENIED in part.

IT IS ORDERED, ADJUDGED AND DECREED THAT THE NUNC PRO TUNC ORDER IS HEREBY set aside and vacated and shall have no further force and effect. Said Nunc Pro Tune Order was void when it was entered and is a nullity. The Nunc Pro Tune Order may not be enforced by Respondents and is not binding on Petitioner.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

- Petitioner shall not have summary judgment relative to its contention that the Order Approving Transfer should be vacated and set aside and have no further force and effect as a matter of law, as that claim will be subject to further proceedings in this Court.
- Petitioner may not, by way of summary judgment, secure an order from this Court directing and requiring Respondents to repay, remit, and/or reimburse Petitioner all of the structured settlement/annuity payments which were the subject of the Order Approving Transfer and which have been received and recovered by Petitioner since the Order Approving Transfer was signed by this Court, as that claim will be subject to further proceedings in this Court.

- Petitioner shall not have summary judgment relative to his claim for attorneys' fees against Respondents, as that claim will be subject to further proceedings in this Court.

IT IS, FURTHER, ORDERED that the proceedings in the above-referenced matter shall continue in the 193rd Judicial District Court of Dallas County, Texas.

SIGNED this 28 day of May, 2015.

/s/

Judge Presiding

**CORRECTED ORDER APPROVING
TRANSFER NUNC PRO TUNC
(SEPTEMBER 15, 2014)**

IN THE DISTRICT COURT 193RD JUDICIAL
DISTRICT OF DALLAS COUNTY, TEXAS

IN THE MATTER OF:
A TRANSFER OF STRUCTURED SETTLEMENT
PAYMENT RIGHTS BY RICKEY NEWSOME

Cause No. DC-13-10132-L

AND NOW, this 15th day of September, 2014, upon the amended application of RSL Funding, LLC (“Transferee”), which appeared through counsel, and Rickey Newsome (“Mr. Newsome”), who appeared in person, and upon consideration of the pleadings on file, and the evidence presented, the Court hereby corrects and amends its previous Order, nunc pro tune, and finds as follows in connection with concluding that there has been full compliance with the Texas Structured Settlement Protection Act, Tex. Civ. Prac. & Rem. Code § 141.001 *et seq.* (the “Texas Transfer Act”) in connection with this matter:

1. Mr. Newsome is entitled to receive certain life-contingent payments (the “Life-Contingent Payments”) under a structured settlement agreement and related annuity contract no. 90506877. The Life-Contingent Payments are not due and payable unless

Mr. Newsome is alive at the time each such payment is due.

2. On or about September 24, 2013, Mr. Newsome entered into a Transfer Agreement and Addendum to Transfer Agreement (collectively, the “Transfer Agreement”) with Transferee, pursuant to which Mr. Newsome agreed to receive certain funds from RSL Special-IV, Limited Partnership (“Assignee”) in exchange for transferring his right to receive certain structured settlement proceeds, specifically monthly Life-Contingent Payments each in the amount of \$550.00, commencing on December 13, 2013 through and including August 13, 2015; monthly Life-Contingent Payments each in the amount of \$150.00, commencing on September 13, 2015 through and including May 13, 2018; and monthly Life-Contingent Payments each in the amount \$1,350.00, commencing on June 13, 2018 through and including November 13, 2023 (collectively, the “Assigned Life-Contingent Payments”).

3. The transfer of the Assigned Life-Contingent Payments by Mr. Newsome to Transferee as described in the amended application in this matter and in the Transfer Agreement and in the disclosure statement (collectively, the “Proposed Transfer”) (i) complies with the requirements of the Texas Transfer Act, and does not contravene any applicable federal or state statute or regulation or the order of any court or responsible governmental or administrative authority, (ii) wholly satisfies the requirements for a “qualified order” under Internal Revenue Code, Section 5891(b), and (iii) is in the best interest of Mr. Newsome, taking into account the welfare and support of Mr. Newsome’s dependents, of which there are none.

4. Venue and jurisdiction are appropriate in this Court because this is a District or County Court in the county in which Mr. Newsome resides, as permitted under 26 U.S.C. § 5891 and Tex. Civ. Prac. & Rem. Code §§ 141.006(a) and 141.002(2)(B).

5. At least three (3) days before the date on which Mr. Newsome signed the Transfer Agreement, Transferee provided to Mr. Newsome a separate disclosure statement in accordance with the requirements of Tex. Civ. Prac. & Rem. Code § 141.003 and 215 ILCS 153/10.

6. Mr. Newsome has been advised in writing by Transferee to seek independent professional advice regarding the Proposed Transfer and has either received the advice or knowingly waived the advice in writing.

7. Mr. Newsome's spouse has consented in writing to the Proposed Transfer.

8. Transferee provided notice of the hearing date and Proposed Transfer to all interested parties, including the annuity issuer, Allstate Life Insurance Company ("Allstate Life"), and the annuity owner, Allstate Insurance Company, as successor corporation to Northbrook Excess & Surplus Insurance Co. (collectively, "Allstate"), as required by Tex. Civ. Prac. & Rem. § 141.006(b).

9. As stated by 26 U.S.C. § 5891(d), if the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a transfer shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a

qualified assignment under section 130) in any taxable year.

10. The Transfer Agreement between Mr. Newsome and Transferee provides that, if Mr. Newsome is domiciled in Texas, any disputes between the parties will be governed in accordance with the laws of Texas and that the domicile state of Mr. Newsome is the proper venue to bring any cause of action arising out of a breach of the Transfer Agreement.

11. Allstate, Transferee, Assignee, and all of their successors and assigns have presented no evidence that the Assigned Life-Contingent Payments have been previously sold, assigned, encumbered, or otherwise pledged, and Mr. Newsome represents and warrants that Mr. Newsome has all right, title, and interest in the Assigned Life-Contingent Payments with full authority to make this Proposed Transfer to Transferee and Assignee and that Mr. Newsome has not otherwise sold assigned, encumbered or pledged the Assigned Life-Contingent Payments.

12. Transferee assigned all of its interest in and to the right to purchase the Assigned Life-Contingent Payments to Assignee.

Based upon the foregoing findings, and being satisfied that the Proposed Transfer satisfies all applicable statutory requirements as set forth in the Texas Transfer Act, the Proposed Transfer is hereby APPROVED. It is therefore ORDERED, ADJUDGED, and DECREED that:

A. Subject to all of the conditions set forth herein and in the parties' Stipulation ("Stipulation"),¹ All-

¹ As further set forth in the parties' Stipulation, due to prior

state Life will forward the Assigned Life-Contingent Payments, when and if due, in accordance with the parties' Stipulation, including the Servicing Arrangement (the "Servicing Arrangement") and the RSL Servicing Arrangement (the "RSL Servicing Arrangement") set forth therein. Under no circumstances shall Allstate be obligated to make the Assigned Life-Contingent Payments in any manner other than as provided for in the parties' Stipulation.

B. The obligation to make any of the Life-Contingent Payments ceases on Mr. Newsome's death. Nothing in the subject amended application, the Proposed Transfer, the parties' Stipulation or any other matter changes the fact that each of the Life-Contingent Payments, including the Assigned Life-Contingent Payments, is owed only if Mr. Newsome is alive at the time each such payment is due.

C. Mr. Newsome has a continuing obligation at all times relevant to the Proposed Transfer to immediately inform Assignee of any name and/or address change and to cooperate in confirming his survival, all as Assignee shall reasonably request.

transfers by Mr. Newsome and pursuant to a Servicing Arrangement and subsequent agreements regarding said Servicing Arrangement, the portion of the Life-Contingent Assigned Payments each in the amount of \$550.00 beginning December 13, 2013 through and including August 13, 2015 (the "Feinberg Trust Serviced Payments") shall be remitted to Assignee by The Elliot Sidell Trust of 1996, and any of its assignees, such as Harriet A. Feinberg Revocable Trust UAD 09-06-1995 (collectively, "Servicer"), as custodian and not as principal for the benefit of RSL Special-IV, Ltd. Transferee and Assignee shall look solely to Servicer for the Feinberg Trust Serviced Payments.

D. Transferee shall provide to Allstate Life, at the time this Order is submitted to Allstate Life, the parties' Stipulation, contemporaneously signed by Mr. Newsome and notarized, as evidence that Mr. Newsome is alive (the "Initial Required Confirmation"). Beginning ninety (90) days after the date of the Initial Required Confirmation and annually thereafter, and upon request of Allstate where Allstate has a reasonable belief that Mr. Newsome has died, until the due date of the last Assigned Life-Contingent Payment, Transferee shall provide Allstate with written confirmation, contemporaneously signed by Mr. Newsome and notarized, that Mr. Newsome is alive (the "Required Confirmation"). Each Required Confirmation will be sent by Transferee to Robin Gay, at Allstate Life Insurance Company, 3100 Sanders Road, N3A, Northbrook, IL 60062 (or a successor designated in writing by Allstate Life), Mr. Newsome and Transferee shall cooperate with one another and with Allstate for purpose of providing each Required Confirmation. In the event Transferee, Assignee or Allstate acquires information indicating Mr. Newsome has died, each shall immediately provide the other with this information in writing at the addresses provided herein.

E. In the event Transferee fails to provide the Required Confirmation that Mr. Newsome is alive, or if Allstate has a reasonable basis to believe that Mr. Newsome has died, Allstate shall forward to Assignee the information in writing, including any documentation, on which Allstate bases its determination that Mr. Newsome has died and may suspend making any of the Life-Contingent Payments, including the Assigned Life-Contingent Payments and Remainder Payments, until Allstate has received either: (i) the

Required Confirmation or (ii) other evidence reasonably acceptable to Allstate, such as a search performed by Transferee and Assignee on Westlaw or Lexis/Nexis or a review of the Social Security Administration's Master Death File that does not produce evidence of the death of Mr. Newsome, along with a written statement by Transferee or Assignee detailing the results of the search. Upon receipt of either (i) or (ii), the suspended payments will be made to Assignee.

F. At all times during which Transferee and/or Assignee has an obligation to provide the Required Confirmation, Mr. Newsome shall provide to Transferee and/or Assignee, at the address stated herein or any other address provided by Transferee and/or Assignee in writing to Mr. Newsome, any change of name and/or address by Mr. Newsome, and Mr. Newsome's issue, heirs, beneficiaries, administrators, executors, executrixes, and/or any other representative of the estate of Mr. Newsome shall have the duty to immediately notify Transferee and/or Assignee regarding the survivorship of Mr. Newsome. Nothing contained in this paragraph shall alter or modify Mr. Newsome's responsibilities to cooperate with Allstate regarding survivorship.

G. To the extent any of the Assigned Life-Contingent Payments are made to Assignee by Allstate after the death of Mr. Newsome, Transferee shall reimburse Allstate in the amount of such Life-Contingent Payments, plus simple interest at 6% per annum from the date the funds were paid through the date reimbursement is tendered.

H. Nothing in the Proposed Transfer, the parties' Stipulation or this Order changes the parties' rights

with respect to the Life-Contingent Payments, if any, that are not the subject of the Proposed Transfer.

I. In the event Assignee further assigns or otherwise transfers the Assigned Life-Contingent Payments (or any portion thereof or interest therein) to any other person or entity, or in the event Mr. Newsome seeks to assign the unassigned portion of the Life-Contingent Payments to be remitted to Mr. Newsome pursuant to the Servicing Arrangement and the RSL Servicing Arrangement (a "Reassignment"), Allstate will not be obligated to redirect the Life-Contingent Payments that include the Assigned Life-Contingent Payments (or any portion thereof) to any person or entity other than as specified in the parties' Stipulation, and Transferee, Assignee, and Mr. Newsome shall remain obligated to comply with all terms and conditions herein and in the parties' Stipulation. However, if for reasons beyond the control of Assignee or for traditional address change purpose the Designated Address (as defined in the parties' Stipulation) is no longer valid (*i.e.* if Assignee moves or the Designated Address is no longer a viable address for Assignee to receive payments), Allstate agrees to make the Assigned Life-Contingent Payments due under paragraph 3(b) of the parties' Stipulation only to a new payment address. Similarly, if Assignee moves or the Designated Address is no longer a viable address for Assignee to receive payments, Servicer shall forward the Feinberg Trust Serviced Payments to Assignee at Assignee's new address. Notwithstanding the foregoing, this Order and the parties' Stipulation, including but not limited to the Servicing Arrangement and the RSL Servicing Arrangement, will remain binding and fully enforceable against Transferee, Assignee, and Mr.

Newsome, and under no circumstances will Transferee, Assignee, or Mr. Newsome seek to compel Allstate, nor shall Allstate be required, to modify the Servicing Arrangement or the RSL Servicing Arrangement so as to redirect any portion of the affected Life-Contingent Payments to any person or entity other than as set forth in the parties' Stipulation.

J. All remaining Life-Contingent Payments (and /or portions thereof), if any, that are not the subject of the Proposed Transfer or the Servicing Arrangement or the RSL Servicing Arrangement and not previously assigned, shall be made payable to Mr. Newsome and will be forwarded by Allstate Life, if and when due, to Mr. Newsome's most recent known address or any payment address designated by Mr. Newsome, subject to Allstate's consent.

K. Transferee shall defend, indemnify, and hold harmless Allstate and its directors, shareholders, officers, agents, employees, servants, successors, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, employees, servants, successors, and assigns, past and present, from and against any and all liability, including reasonable attorneys' fees and costs, for any and all claims asserted by any person or entity, including but not limited to any claims asserted by any person or entity not a party hereto, claiming an interest in the Assigned Life-Contingent Payments, and any and all other claims made in connection with, related to, or arising out of the Transfer Agreement, the Assigned Life-Contingent Payments, the Servicing Arrangement, the RSL Servicing Arrangement, the Feinberg Trust Serviced Payments, any Reassignment, the Proposed Transfer, or Allstate's compliance with

the parties' Stipulation or this Order, except with respect to claims by Transferee or Assignee against Allstate to enforce Allstate's obligations to Transferee or Assignee under the parties' Stipulation and this Order.

L. Allstate's lack of opposition to this matter, or its or the other parties' stipulation hereto or compliance herewith, shall not constitute evidence in this or any matter, and is not intended to constitute evidence in this or any matter, that:

- (a) payments under a structured settlement contract or annuity or related contracts can be assigned or that "anti-assignment" or "anti-encumbrance" provisions in structured settlement contracts or annuities or related contracts are not valid and enforceable;
- (b) or other transactions entered into by Transferee and/or Assignee and their customers constitute valid sales and/or loans; or
- (c) Allstate has waived any right in connection with any other litigation or claims; or
- (d) Transferee or Assignee has waived any right other than as expressly set forth in the parties' Stipulation and/or this Order.

M. Transferee, Assignee, and Mr. Newsome, for themselves and for their respective directors, shareholders, officers, agents, employees, servants, successors, heirs, beneficiaries, contingent beneficiaries, executors, administrators, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, employees, servants, successors, heirs, beneficiaries, contingent beneficiaries,

executors, administrators, and assigns, past and present (the "Releasors"), hereby remise, release, and forever discharge Allstate and its directors, shareholders, officers, agents, employees, servants, successors, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, employees, servants, successors, and assigns, past and present (the "Releasees"), of and from any and all manner of actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, settlements, damages, claims, and demands whatsoever, in law or in equity, in connection with, related to, or arising out of any claim or allegation that was or could have been asserted in connection with, related to, or arising out of the Transfer Agreement, the Assigned Life-Contingent Payments, the Servicing Arrangement, the RSL Servicing Arrangement, the Proposed Transfer, the Feinberg Trust Serviced Payments, any Reassignment or the parties' Stipulation, which the Releasors have or had from the beginning of the world through and including the date of this Order, except for claims of the Releasors against the Releasees to enforce the Releasees' obligations to the Releasors, if any, under the parties' Stipulation and this Order.

N. Transferee or Assignee shall send a signed copy of this Order to the Servicer. Upon receipt thereof, if Servicer, Transferee and Assignee do not enter into a mutually agreed Stipulation within ten (10) days of the entry of this Order, Servicer shall issue a formal acknowledgment letter to Transferee and Assignee of the transfer within ten (10) days of the date of receipt of this Order that the Feinberg Trust Serviced Payments will be made to RSL Special-IV, Ltd. at 1980

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Post Oak Blvd., Suite 1975, Houston, Texas 77056
(unless a change of address has been provided by
Transferee or Assignee). The formal acknowledgment
letter shall be delivered to RSL Special-IV, Ltd. at
the address set forth below, Attn: President

O. Within seven (7) days following receipt of a
final certified copy of this Order, Transferee shall
circulate copies of this Order to counsel for Allstate
at the following address: Ingrid B. Hopkinson, Drinker
Biddle & Reath LLP, One Logan Square, Ste. 2000,
Philadelphia, PA 19103-6996.

P. Unless communications are by attorneys, any
notice or other communication required or permitted
by the terms of this Order shall be in writing and
shall be mailed by first-class, registered or certified
mail, return receipt requested, postage prepaid or
sent prepaid via a national overnight courier service,
addressed as follows (unless otherwise designated
elsewhere herein):

If to Transferee or Assignee

Two Post Oak Central
1980 Post Oak Blvd., Suite 1975
Houston, TX 77056-3899

If to Allstate Insurance

Allstate Insurance Company
3100 Sanders Road, N3A
Northbrook, IL 60062

If to Allstate Life

Allstate Life Insurance Company
3100 Sanders Road, N3A
Northbrook, IL 60062

If to Rickey/ Newsome

316 Parakeet Drive
Desoto, TX 75115

or to such other address as may be designated by any of such parties by prior written notice to the other parties in accordance with this paragraph.

JUDGMENT READ, RENDERED AND SIGNED
this 15th day of September, 2014.

/s/
Judge Presiding

APPROVED AND ENTRY
REQUESTED:

/s/ Rickey Newsome
316 Parakeet Drive
Desoto, TX 75115
Payee, pro se

/s/ L. Andy Peredes
State Bar No. 00788162
Two Post Oak Central
1980 Post Oak Blvd., Suite
1975
Houston, Texas 77056-3899
Phone: (713) 850-0700
Fax: (713) 850-8530
*Attorney for Applicant RSL
Funding, LLC*

**ORDER APPROVING TRANSFER
(OCTOBER 23, 2013)**

IN THE DISTRICT COURT 193RD JUDICIAL
DISTRICT OF DALLAS COUNTY, TEXAS

IN THE MATTER OF:
A TRANSFER OF STRUCTURED SETTLEMENT
PAYMENT RIGHTS BY RICKEY NEWSOME

Cause No. DC-13-10132-L

AND NOW, this 23 day of October, 2013, upon the amended application of RSL Funding, LLC (“Transferee”), which appeared through counsel, and Rickey Newsome (“Mr. Newsome”), who appeared in person, and upon consideration of the pleadings on file, and the evidence presented, the Court hereby finds as follows in connection with concluding that there has been full compliance with the Texas Structured Settlement Protection Act, Tex. Civ. Prac. & Rem. Code § 141.001 *et seq.* (the “Texas Transfer Act”) in connection with this matter:

1. Mr. Newsome is entitled to receive certain life-contingent payments (the “Life-Contingent Payments”) under a structured settlement agreement and related annuity contract no. 90506877. The Life-Contingent Payments are not due and payable unless Mr. Newsome is alive at the time each such payment is due.

2. On or about September 24, 2013, Mr. Newsome entered into a Transfer Agreement and Addendum to Transfer Agreement (collectively, the “Transfer Agreement”) with Transferee, pursuant to which Mr. Newsome agreed to receive certain funds from RSL Special-IV, Limited Partnership (“Assignee”) in exchange for transferring his right to receive certain structured settlement proceeds, specifically monthly Life-Contingent Payments each in the amount of \$550.00, commencing on December 13, 2013 through and including August 13, 2015; monthly Life-Contingent Payments each in the amount of \$150.00, commencing on September 13, 2015 through and including May 13, 2018; and monthly Life-Contingent Payments each in the amount \$1,350.00, commencing on June 13, 2018 through and including November 13, 2023 (collectively, the “Assigned Life-Contingent Payments”).

3. The transfer of the Assigned Life-Contingent Payments by Mr. Newsome to Transferee as described in the amended application in this matter and in the Transfer Agreement and in the disclosure statement (collectively, the “Proposed Transfer”) (i) complies with the requirements of the Texas Transfer Act, and does not contravene any applicable federal or state statute or regulation or the order of any court or responsible governmental or administrative authority, (ii) wholly satisfies the requirements for a “qualified order” under Internal Revenue Code, Section 5891(b), and (iii) is in the best interest of Mr. Newsome, taking into account the welfare and support of Mr. Newsome’s dependents, of which there are none.

4. Venue and jurisdiction are appropriate in this Court because this is a District or County Court in the county in which Mr. Newsome resides, as permitted

under 26 U.S.C. § 5891 and Tex. Civ. Prac. & Rem. Code §§ 141.006(a) and 141.002(2)(B).

5. At least three (3) days before the date on which Mr. Newsome signed the Transfer Agreement, Transferee provided to Mr. Newsome a separate disclosure statement in accordance with the requirements of Tex. Civ. Prac. & Rem. Code § 141.003 and 215 ILCS 153/10.

6. Mr. Newsome has been advised in writing by Transferee to seek independent professional advice regarding the Proposed Transfer and has either received the advice or knowingly waived the advice in writing.

7. Mr. Newsome's spouse has consented in writing to the Proposed Transfer.

8. Transferee provided notice of the hearing date and Proposed Transfer to all interested parties, including the annuity issuer, Allstate Life Insurance Company ("Allstate Life"), and the annuity owner, Allstate Insurance Company, as successor corporation to Northbrook Excess & Surplus Insurance Co. (collectively, "Allstate"), as required by Tex. Civ. Prac. & Rem. § 141.006(b).

9. As stated by 26 U.S.C. § 5891(d), if the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a transfer shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

10. The Transfer Agreement between Mr. Newsome and Transferee provides that, if Mr. Newsome is domiciled in Texas, any disputes between the parties will be governed in accordance with the laws of Texas and that the domicile state of Mr. Newsome is the proper venue to bring any cause of action arising out of a breach of the Transfer Agreement.

11. Allstate, Transferee, Assignee, and all of their successors and assigns have presented no evidence that the Assigned Life-Contingent Payments have been previously sold, assigned, encumbered, or otherwise pledged, and Mr. Newsome represents and warrants that Mr. Newsome has all right, title, and interest in the Assigned Life-Contingent Payments with full authority to make this Proposed Transfer to Transferee and Assignee and that Mr. Newsome has not otherwise sold assigned, encumbered or pledged the Assigned Life-Contingent Payments.

12. Transferee assigned all of its interest in and to the right to purchase the Assigned Life-Contingent Payments to Assignee.

Based upon the foregoing findings, and being satisfied that the Proposed Transfer satisfies all applicable statutory requirements as set forth in the Texas Transfer Act, the Proposed Transfer is hereby APPROVED. It is therefore ORDERED, ADJUDGED, and DECREED that:

A. Subject to all of the conditions set forth herein and in the parties' Stipulation ("Stipulation"),¹ All-

¹ As further set forth in the parties' Stipulation, due to prior transfers by Mr. Newsome and pursuant to a Servicing Arrangement and subsequent agreements regarding said Servicing Arrangement, the portion of the Life-Contingent Assigned

state Life will forward the Assigned Life-Contingent Payments, when and if due, in accordance with the parties' Stipulation, including the Servicing Arrangement (the "Servicing Arrangement") and the RSL Servicing Arrangement (the "RSL Servicing Arrangement") set forth therein. Under no circumstances shall Allstate be obligated to make the Assigned Life-Contingent Payments in any manner other than as provided for in the parties' Stipulation.

B. The obligation to make any of the Life-Contingent Payments ceases on Mr. Newsome's death. Nothing in the subject amended application, the Proposed Transfer, the parties' Stipulation or any other matter changes the fact that each of the Life-Contingent Payments, including the Assigned Life-Contingent Payments, is owed only if Mr. Newsome is alive at the time each such payment is due.

C. Mr. Newsome has a continuing obligation at all times relevant to the Proposed Transfer to immediately inform Assignee of any name and/or address change and to cooperate in confirming his survival, all as Assignee shall reasonably request.

D. Transferee shall provide to Allstate Life, at the time this Order is submitted to Allstate Life, the parties' Stipulation, contemporaneously signed by Mr. Newsome and notarized, as evidence that Mr.

Payments each in the amount of \$550.00 beginning December 13, 2013 through and including August 13, 2015 (the "Feinberg Trust Serviced Payments") shall be remitted to Assignee by The Elliot Sidell Trust of 1996, and any of its assignees, such as Harriet A. Feinberg Revocable Trust UAD 09-06-1995 (collectively, "Servicer"), as custodian and not as principal for the benefit of RSL Special-IV, Ltd. Transferee and Assignee shall look solely to Servicer for the Feinberg Trust Serviced Payments.

Newsome is alive (the “Initial Required Confirmation”). Beginning ninety (90) days after the date of the Initial Required Confirmation and annually thereafter, and upon request of Allstate where Allstate has a reasonable belief that Mr. Newsome has died, until the due date of the last Assigned Life-Contingent Payment, Transferee shall provide Allstate with written confirmation, contemporaneously signed by Mr. Newsome and notarized, that Mr. Newsome is alive (the “Required Confirmation”). Each Required Confirmation will be sent by Transferee to Robin Gay, at Allstate Life Insurance Company, 3100 Sanders Road, N3A, Northbrook, IL 60062 (or a successor designated in writing by Allstate Life). Mr. Newsome and Transferee shall cooperate with one another and with Allstate for purpose of providing each Required Confirmation. In the event Transferee, Assignee or Allstate acquires information indicating Mr. Newsome has died, each shall immediately provide the other with this information in writing at the addresses provided herein.

E. In the event Transferee fails to provide the Required Confirmation that Mr. Newsome is alive, or if Allstate has a reasonable basis to believe that Mr. Newsome has died, Allstate shall forward to Assignee the information in writing, including any documentation, on which Allstate bases its determination that Mr. Newsome has died and may suspend making any of the Life-Contingent Payments, including the Assigned Life-Contingent Payments and Remainder Payments, until Allstate has received either: (i) the Required Confirmation or (ii) other evidence reasonably acceptable to Allstate, such as a search performed by Transferee and Assignee on Westlaw or Lexis/Nexis or a review of the Social Security Admin-

istration's Master Death File that does not produce evidence of the death of Mr. Newsome, along with a written statement by Transferee or Assignee detailing the results of the search. Upon receipt of either (i) or (ii), the suspended payments will be made to Assignee.

F. At all times during which Transferee and/or Assignee has an obligation to provide the Required Confirmation, Mr. Newsome shall provide to Transferee and/or Assignee, at the address stated herein or any other address provided by Transferee and/or Assignee in writing to Mr. Newsome, any change of name and/or address by Mr. Newsome, and Mr. Newsome's issue, heirs, beneficiaries, administrators, executors, executrices, and/or any other representative of the estate of Mr. Newsome shall have the duty to immediately notify Transferee and/or Assignee regarding the survivorship of Mr. Newsome. Nothing contained in this paragraph shall alter or modify Mr. Newsome's responsibilities to cooperate with Allstate regarding survivorship.

G. To the extent any of the Assigned Life-Contingent Payments are made to Assignee by Allstate after the death of Mr. Newsome, Transferee shall reimburse Allstate in the amount of such Life-Contingent Payments, plus simple interest at 6% per annum from the date the funds were paid through the date reimbursement is tendered.

H. Nothing in the Proposed Transfer, the parties' Stipulation or this Order changes the parties' rights with respect to the Life-Contingent Payments, if any, that are not the subject of the Proposed Transfer.

I. In the event Assignee further assigns or otherwise transfers the Assigned Life-Contingent Pay-

ments (or any portion thereof or interest therein) to any other person or entity, or in the event Mr. Newsome seeks to assign the unassigned portion of the Life-Contingent Payments to be remitted to Mr. Newsome pursuant to the Servicing Arrangement and the RSL Servicing Arrangement (a "Reassignment"), Allstate will not be obligated to redirect the Life-Contingent Payments that include the Assigned Life-Contingent Payments (or any portion thereof) to any person or entity other than as specified in the parties' Stipulation, and Transferee, Assignee, and Mr. Newsome shall remain obligated to comply with all terms and conditions herein and in the parties' Stipulation. However, if for reasons beyond the control of Assignee or for traditional address change purpose the Designated Address (as defined in the parties' Stipulation) is no longer valid (*i.e.* if Assignee moves or the Designated Address is no longer a viable address for Assignee to receive payments), Allstate agrees to make the Assigned Life-Contingent Payments due under paragraph 3(b) of the parties' Stipulation only to a new payment address. Similarly, if Assignee moves or the Designated Address is no longer a viable address for Assignee to receive payments, Servicer shall forward the Feinberg Trust Serviced Payments to Assignee at Assignee's new address. Notwithstanding the foregoing, this Order and the parties' Stipulation, including but not limited to the Servicing Arrangement and the RSL Servicing Arrangement, will remain binding and fully enforceable against Transferee, Assignee, and Mr. Newsome, and under no circumstances will Transferee, Assignee, or Mr. Newsome seek to compel Allstate, nor shall Allstate be required, to modify the Servicing Arrangement or the RSL Servicing Arrangement so as to redirect any portion of the affected Life-Contingent

Payments to any person or entity other than as set forth in the parties' Stipulation.

J. All remaining Life-Contingent Payments (and/or portions thereof), if any, that are not the subject of the Proposed Transfer or the Servicing Arrangement or the RSL Servicing Arrangement and not previously assigned, shall be made payable to Mr. Newsome and will be forwarded by Allstate Life, if and when due, to Mr. Newsome's most recent known address or any payment address designated by Mr. Newsome, subject to Allstate's consent.

K. Transferee shall defend, indemnify, and hold harmless Allstate and its directors, shareholders, officers, agents, employees, servants, successors, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, employees, servants, successors, and assigns, past and present, from and against any and all liability, including reasonable attorneys' fees and costs, for any and all claims asserted by any person or entity, including but not limited to any claims asserted by any person or entity not a party hereto, claiming an interest in the Assigned Life-Contingent Payments, and any and all other claims made in connection with, related to, or arising out of the Transfer Agreement, the Assigned Life-Contingent Payments, the Servicing Arrangement, the RSL Servicing Arrangement, the Feinberg Trust Serviced Payments, any Reassignment, the Proposed Transfer, or Allstate's compliance with the parties' Stipulation or this Order, except with respect to claims by Transferee or Assignee against Allstate to enforce Allstate's obligations to Transferee or Assignee under the parties' Stipulation and this Order.

L. Allstate's lack of opposition to this matter, or its or the other parties' stipulation hereto or compliance herewith, shall not constitute evidence in this or any matter, and is not intended to constitute evidence in this or any matter, that:

- (a) payments under a structured settlement contract or annuity or related contracts can be assigned or that "anti-assignment" or "anti-encumbrance" provisions in structured settlement contracts or annuities or related contracts are not valid and enforceable; or
- (b) other transactions entered into by Transferee and/or Assignee and their customers constitute valid sales and/or loans; or
- (c) Allstate has waived any right in connection with any other litigation or claims; or
- (d) Transferee or Assignee has waived any right other than as expressly set forth in the parties' Stipulation and/or this Order.

M. Transferee, Assignee, and Mr. Newsome, for themselves and for their respective directors, shareholders, officers, agents, employees, servants, successors, heirs, beneficiaries, contingent beneficiaries, executors, administrators, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, employees, servants, successors, heirs, beneficiaries, contingent beneficiaries, executors, administrators, and assigns, past and present (the "Releasers"), hereby remise, release, and forever discharge Allstate and its directors, shareholders, officers, agents, employees, servants, successors, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents,

employees, servants, successors, and assigns, past and present (the "Releasees"), of and from any and all manner of actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, settlements, damages, claims, and demands whatsoever, in law or in equity, in connection with, related to, or arising out of any claim or allegation that was or could have been asserted in connection with, related to, or arising out of the Transfer Agreement, the Assigned Life-Contingent Payments, the Servicing Arrangement, the RSL Servicing Arrangement, the Proposed Transfer, the Feinberg Trust Serviced Payments, any Reassignment or the parties' Stipulation, which the Releasers have or had from the beginning of the world through and including the date of this Order, except for claims of the Releasers against the Releasees to enforce the Releasees' obligations to the Releasers, if any, under the parties' Stipulation and this Order.

N. Transferee or Assignee shall send a signed copy of this Order to the Servicer. Upon receipt thereof, if Servicer, Transferee and Assignee do not enter into a mutually agreed Stipulation within ten (10) days of the entry of this Order, Servicer shall issue a formal acknowledgment letter to Transferee and Assignee of the transfer within ten (10) days of the date of receipt of this Order that the Feinberg Trust Serviced Payments will be made to RSL Special-IV, Ltd. at 1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056 (unless a change of address has been provided by Transferee or Assignee). The formal acknowledgment letter shall be delivered to RSL Special-IV, Ltd. at the address set forth below, Attn: President.

O. Within seven (7) days following receipt of a final certified copy of this Order, Transferee shall circulate copies of this Order to counsel for Allstate at the following address: Ingrid B. Hopkinson, Drinker Biddle & Reath LLP, One Logan Square, Ste. 2000, Philadelphia, PA 19103-6996.

P. Unless communications are by attorneys, any notice or other communication required or permitted by the terms of this Order shall be in writing and shall be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid or sent prepaid via a national overnight courier service, addressed as follows (unless otherwise designated elsewhere herein):

If to Transferee or Assignee

Two Post Oak Central
1980 Post Oak Blvd., Suite 1975
Houston, TX 77056-3899

If to Allstate Insurance

Allstate Insurance Company
3100 Sanders Road, N3A
Northbrook, IL 60062

If to Allstate Life

Allstate Life Insurance Company
3100 Sanders Road, N3A
Northbrook, IL 60062

If to Rickey/ Newsome

316 Parakeet Drive
Desoto, TX 75115

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or to such other address as may be designated by any of such parties by prior written notice to the other parties in accordance with this paragraph.

JUDGMENT READ, RENDERED AND SIGNED
this 23 day of October, 2013.

/s/ _____
Judge Presiding

* Transferee to pay Mr. Newsome the sum of \$53,000.00 in 10 days from this Order being signed or transferee will be required to pay Mr. Newsome \$103,000.00.

**ORDER OF THE TEXAS SUPREME COURT
DENYING MOTION FOR REHEARING
(MARCH 29, 2019)**

IN THE SUPREME COURT OF TEXAS

RSL FUNDING, LLC,

Petitioners,

v.

NEWSOME,

Respondent.

RE Case No. 16-0998

COA: 05-15-00718-CV

TC: DC-14-14580-L

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced cause

**MOTION FOR SUMMARY JUDGMENT
RELEVANT EXCERPTS
(APRIL 28, 2015)**

IN THE DISTRICT COURT 193RD JUDICIAL
DISTRICT OF DALLAS COUNTY, TEXAS

IN THE MATTER OF:
A TRANSFER OF STRUCTURED SETTLEMENT
PAYMENT RIGHTS BY RICKEY NEWSOME

Cause No. DC-14-14580-L

TO THE HONORABLE COURT:

Rickey Newsome (“Newsome” or “Petitioner”) files this Motion for Summary Judgment and Brief in Support Thereof relating to Newsome’s Bill of Review and would respectfully show the court as follows:

I. Summary Judgment Evidence

Petitioner Rickey Newsome is simultaneously filing an Appendix in Support of Motion for Summary Judgment, which contains all of the summary judgment evidence relied on by Petitioner in this Motion for Summary Judgment and Brief in Support Thereof (the “Motion”). The documents and materials submitted and relied on as summary judgment evidence are listed below. References to exhibit or “Ex.” in the Motion shall be to the corresponding numbered exhibit in the Appendix.

- Exhibit 1: Affidavit of Rickey Newsome

- Exhibit 2: Transfer Agreement
(dated August 1, 2013)
- Exhibit 3: Application for Approval of a Transfer
(filed by RSL on August 29, 2013)
- Exhibit 4: Transfer Agreement and Addendum
to Transfer Agreement (dated September 24,
2013)
- Exhibit 5: Amended Application for Approval
of Transfer (filed October 2, 2013)

[. . .]

. . . court granted a temporary injunction, enjoining RSL from pursuing arbitration in the Harris County Lawsuit.

III. Argument and Authorities

36. Being frustrated in his attempts to conclude his transaction with RSL and having not been paid either purchase price set forth in the Order Approving Transfer (neither the \$ 53,000 nor the \$106,000), and having been ignored when he attempted to initiate conversations with RSL to try and resolve this matter, Mr. Newsome filed this bill of review to set aside and vacate the Nunc Pro Tunc Order.

37. A bill of review is an independent equitable action brought by a party to a previous suit who seeks to set aside a judgment that is no longer subject to a motion for new trial or appealable. *Wembley Inv. Co. v. Herrera*, 11 S.W.3d 924, 926-927 (Tex. 1999); *Caldwell v. Barnes*, 975 S.W.2d 535, 537 (Tex. 1998); *In re D.S.*, 76 S.W.3d 512, 518 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (after time for appeal expires, bill of review is exclusive remedy to vacate judgment, or provision of judgment). A void judgment

may be attacked directly by bill of review. *Kollman Stone Industries, Inc. v. Keller*, 574 S.W.2d 249, 251 (Tex. Civ. App.—Beaumont 1978, no writ). As a matter of law, the Nunc Pro Tunc Order is void and must be set aside and vacated.

A. The Nunc Pro Tunc Order Should be Set Aside and the Court Should Enforce the Order Approving Transfer

i. Courts' Plenary Power

38. Every district and county level court of general jurisdiction has the jurisdictional power to vacate, modify, correct, or reform a final judgment or to grant a new trial at any time before its plenary power expires. *Check v. Mitchell*, 758 S.W.2d 755, 755-756 (Tex. 1988).

[. . .]

. . . hand-picked arbitrator would ignore the law and not only permit RSL to avoid its legal obligations under the Order Approving Transfer, but also award it attorneys fees and damages against Newsome. And, in a move that was exceedingly telling about RSL's underlying motivation and understanding about its problematic legal issues, RSL ran to another District Court to try and compel arbitration, rather than presenting issues to the only court (this Court) that could legitimately rule as to whether the Order Approving Transfer, the Nunc Pro Tunc Order, or either was effective and enforceable.

50. Thus, RSL is in violation of both orders and should be held in contempt of court and sanctioned for refusing to honor and comply with the orders

which it secured in this Court and for retaining Mr. Newsome's monthly payments.

51. Alternatively and/or in addition, the Court should set aside and vacate both the Nunc Pro Tunc Order and the Order Approving Transfer, confirm that none of Mr. Newsome's structured settlement/annuity payments have been transferred and assigned to RSL or RSL/Special, order RSL/RSL Special to immediately remit to Mr. Newsome all such monthly structured settlement payments that they have received from Allstate since January of 2014, plus pay Mr. Newsome interest on the payments that Mr. Newsome have not received from Allstate, and order RSL/RSL Special to pay Mr. Newsome's attorneys' fees incurred as a sanction for RSL's improper and inappropriate actions and conduct in this matter and in filing the Harris County Lawsuit. An appropriate sanction in the case would be to order RSL to repay to Newsome the monthly payments RSL has receive since February of 2015, pay Newsome interest on the diverted payments, and pay Newsome's attorneys fees in the amount of \$ 31,500 and/or sanction RSL for its failure to honor the underlying court orders and for their conduct in this case in trying . . .

[. . .]

. . .Supreme Court, Newsome seeks an additional award of \$15,000 to participate in the appeal to the Texas Supreme Court should RSL lose. All such fees and expenses are recoverable by Newsome in accordance with Tex. Civ. Prac. & Rem. Code Ann. § 141.005 (Section 141.005).

IV. Prayer

WHEREFORE, PREMISES CONSIDERED, Rickey Newsome prays that the Court grant this motion for summary judgment; that this Court issue an order finding the Nunc Pro Tunc Order void and vacating and setting aside and nullifying same; that the Court rule that the Order Approving Transfer is valid, enforceable and effective in all respects against RSL; that RSL must pay Newsome's attorneys fees as set forth herein, under Section 141.005 due to RSL's violations of the Texas Transfer Statute and/or as a sanction for RSL's actions and conduct in this case. Alternatively, Newsome would request that the Court set aside and vacate both the Order Approving Transfer and Nunc Pro Tunc Order due to RSL's failure to comply with the Texas Transfer Statute and order RSL to remit and pay to Newsome all of the monthly payments which RSL has received since January 2014 and pay Newsome his attorneys fees incurred in this matter in the amount of \$ 31,500 plus an additional \$20,000 as a sanction for failing to comply with the Texas Transfer Statute and as a result of RSL's actions and conduct in this case. Newsome further prays for such other and further relief, at law or in equity, to which Newsome may show himself justly entitled.

Respectfully submitted,

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App.75a

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**RICKEY NEWSOME'S FIRST AMENDED
PETITION FOR BILL OF REVIEW
(MARCH 2, 2015)**

IN THE DISTRICT COURT 193RD JUDICIAL
DISTRICT OF DALLAS COUNTY, TEXAS

IN THE MATTER OF:
A TRANSFER OF STRUCTURED SETTLEMENT
PAYMENT RIGHTS BY RICKEY NEWSOME

Cause No. DC-14-14580-L

TO THE HONORABLE COURT:

Rickey Newsome (“Newsome” or “Petitioner”), complains of RSL Funding, LLC (“RSL Funding”) and RSL Special-IV, Limited Partnership (“RSL Special”), and for cause of action shows:

I. Parties

1. Petitioner Newsome is a resident of Dallas County, Texas.

2. Respondent RSL Funding is a Texas limited liability company that can be served with this amended pleading through its counsel of record who has appeared in this case.

3. Respondent RSL Special is a limited partnership and may be served with this amended pleading by serving its counsel of record who has appeared in this case.

4. Newsome, RSL Funding, and RSL Special were parties in Cause No. 13-10132, *In re: A Transfer of Structured Settlement Payment Rights by Rickey Newsome*, initially filed by RSL Funding in this, the 193rd District Court of Dallas, County, Texas (the “RSL-Newsome Transfer Case”) in 2013.

5. Respondent RSL Funding is based in Houston, Harris County, Texas, but routinely does business in Dallas County, Texas. As set forth below (§14), RSL Funding initiated the RSL-Newsome Transfer Case in Dallas County by filing pleadings in this court seeking judicial approval of a transfer of structured settlement payment rights by Rickey Newsome to RSL Funding in accordance with Tex. Civ. Prac. & Rem. Code Ann. § 141.001 *et. seq.* (the “Texas Transfer Statute”). Thus, RSL Funding invoked the jurisdiction of this court.

6. Respondent RSL Special was named by RSL Funding as an assignee of certain structured settlement/annuity payments in the judgments/orders rendered by this court in the RSL-Newsome Transfer Case, which judgments and orders are the subject of this bill of review proceeding. Upon information and belief, RSL Special has its principal place of business in Harris County, Texas and is an affiliate of RSL Funding. RSL Special is, and was, a party in the RSL-Newsome Transfer Case by virtue of being named in the judgments/orders rendered in that case as RSL Funding’s designated assignee.

7. Newsome pleads that discovery should be conducted in accordance with a discovery control plan under TEX. R. CIV. P. 190.3.

II. Background Facts

8. In 1985, Newsome settled a personal injury claim in California whereby he became entitled to receive structured settlement payments from Allstate Insurance Company (“Allstate Insurance”) in accordance with a settlement agreement (the “Settlement Agreement”).

9. The Settlement Agreement provided for Mr. Newsome to receive structured settlement payments (the “Settlement Payments”) as follows: (i) monthly payments of \$3,065.00, increasing 3% every September 13th, beginning on September 13, 1986 and continuing through and including August 13, 2005, and (ii) one lump sum payment of \$250,000 due on April 14, 2020 (the “Newsome Guaranteed Payments”), plus (iii) monthly payments of \$5,535.74 commencing on September 13, 2005 and continuing for the duration of Mr. Newsome’s life, increasing 3% annually in September of each year (the “Newsome Life Contingent Payments”).

10. Allstate Insurance purchased an annuity, contract no. 90506877 (the “Allstate Annuity”), from Allstate Life Insurance Company to fund the obligation to make the Settlement Payments to Mr. Newsome. The payments due under the Annuity (the “Annuity Payments”) correspond, in terms of the amount and timing of same to the Settlement Payments.

11. Over the course of several years, Mr. Newsome completed several structured settlement transfer transactions with different funding companies/transferees in Arizona, Mississippi, and Texas. All of those transactions were court-approved in accordance with applicable state transfer statutes.

12. In the summer of 2013, RSL Funding contacted Newsome in Dallas County, Texas and solicited him to enter into a transaction with RSL Funding involving the transfer/assignment of certain of Newsome's structured settlement/annuity payments. Prior to being contacted by RSL Funding, Mr. Newsome had never done business with or heard of RSL Funding.

13. RSL Funding and Newsome eventually entered into a contract for the transfer and assignment to RSL Funding of certain of Mr. Newsome's future structured settlement/annuity payments. RSL Funding filed for court approval of the proposed transfer in Dallas County District Court in accordance with the Texas Transfer Statute.

14. Specifically, on or about August 1, 2013, Newsome and RSL Funding signed a Transfer Agreement (For Transfer of Structured Settlement Payment Rights), prepared by RSL Funding and submitted to Newsome, whereby Newsome agreed to transfer and assign to RSL Funding the right to receive a portion of the future Newsome Life Contingent Payments as follows: sixty (60) monthly payments in the amount of \$400.00 each beginning on September 13, 2013 and continuing through and including August 13, 2018, and sixty-six (66) monthly payments in the amount of \$1,200.00 each beginning on September 13, 2018 and continuing through and including February 13, 2024 (the "Initial RSL-Newsome Transaction"). In consideration for the transfer/assignment of these payments, RSL Funding was to pay Newsome the sum of \$53,000.00. On or about August 29, 2013, RSL Funding filed an Application for Approval of a Transfer with the Dallas County District Clerk seeking approval of the Initial RSL-Newsome Transaction in accord-

ance with the Texas Transfer Statute. The case was assigned to this court and styled *In the Matter of: A Transfer of Structured Settlement Payment Rights by Rickey Newsome*; Cause No. DC-13-10132-L—the “RSL-Newsome Transfer Case”.

15. On or about September 24, 2013, Newsome and RSL Funding entered into a revised contract, a Transfer Agreement (For Transfer of Structured Settlement Payment Rights) and Addendum to Transfer Agreement (the “Transfer Agreement”) whereby Newsome agreed to transfer and assign to RSL Funding the right to receive certain of the Newsome Life Contingent Payments as follows: twenty-one (21) monthly payments in the amount of \$550.00 each beginning on December 13, 2013 and continuing through and including August 13, 2015; thirty-three (33) monthly payments in the amount of \$150.00 each beginning on September 13, 2015 and continuing through and including May 13, 2018; and sixty-six (66) monthly payments in the amount of \$1,350.00 each beginning on June 13, 2018 and continuing through and including November 13, 2023¹ (the “RSL-Newsome Transaction”). In consideration for transferring and assigning to RSL Funding the right to receive the Assigned Payments pursuant to the Transfer Agreement, Newsome was to be paid the sum of \$53,000.00 by RSL Funding.

16. On or about October 2, 2013, RSL Funding filed its Amended Application for Approval of a Transfer

¹ The structured settlement/annuity payments which RSL Funding proposed to acquire from Newsome in connection with the RSL-Newsome Transaction will hereinafter sometimes be referred to as the “Assigned Payments”.

in the RSL-Newsome Transfer Case seeking court approval of the RSL-Newsome Transaction (the “RSL Application”)². A hearing on the RSL Application was scheduled for October 23, 2013. Counsel for RSL attended that hearing and Mr. Newsome appeared and attended the hearing *pro se*. At the conclusion of that hearing, an Order Approving Transfer was presented to the court by counsel for RSL Funding. The court signed the Order Approving Transfer on October 23, 2013 (the “Order Approving Transfer”), approving the RSL-Newsome Transaction and the transfer of the Assigned Payments from Newsome to RSL’s designated assignee, RSL Special. A true and correct copy of the Order Approving Transfer is attached hereto as Exhibit B. The Order Approving Transfer found that jurisdiction and venue were proper in this Court; that the RSL-Newsome Transaction was in Newsome’s best interest; and that the payments which were the subject of the RSL-Newsome Transaction were to be paid in accordance with the stipulation of the parties.

17. Importantly, in the Order Approving Transfer (p. 11), this court expressly ordered as follows: “Transferee [RSL] to pay Mr. Newsome the sum of \$53,000.00 in 10 days from this Order [the Order Approving Transfer] being signed or transferee [RSL] will be required to pay Mr. Newsome \$106,000.00”. Judge

² A true and correct copy of the RSL Application is attached hereto as Exhibit A. The Transfer Agreement is attached to the RSL Application as Exhibit 1. RSL Funding purportedly provided notice of the RSL-Newsome Transaction, the Transfer Agreement, and the RSL Application to, among others, Allstate Life Insurance Company, as the annuity issuer, and Allstate Insurance Company, as the structured settlement obligor/annuity owner (collectively, hereafter referred to as “Allstate”).

Ginsberg hand-wrote this language into the Order Approving Transfer. Following the court's approval of the RSL-Newsome Transaction and the RSL Application, and the signing of the Order Approving Transfer on October 23, 2013, Mr. Newsome ceased receiving the Assigned Payments in February 2014. Those monthly payments, in the amount of \$ 550.00 per month, are now being paid and remitted to RSL Funding's designated assignee, RSL Special, apparently pursuant to the Order Approving Transfer, which was presumably delivered to Allstate and/or Security Title Agency, a servicing entity/payment agent which had been designated to receive certain payments from Allstate and service and distribute those payments pursuant to a servicing arrangement referenced and approved in a prior court order.

18. Despite entry of the Order Approving Transfer and the diversion of the monthly Assigned Payments from Mr. Newsome, neither RSL Funding nor RSL Special (hereafter sometimes collectively referred to as "RSL"), have paid Mr. Newsome the purchase price ordered and approved by the 193rd District Court – neither the \$53,000.00 that RSL was ordered to pay to Mr. Newsome within ten (10) days of the Order Approving Transfer being signed, nor the \$106,000.00 RSL was ordered to pay to Mr. Newsome if the transaction was funded more than ten (10) days after the Order Approving Transfer was signed. Since the Order Approving Transfer was signed, RSL has not paid Mr. Newsome anything in connection with the contemplated transaction/transfer, but has received the monthly payments in question (the Assigned Payments) since February of 2014, which as of January 30, 2014, totals \$ 6,600.00. In short, RSL has refused to close

and fund the transaction by paying the purchase price due Mr. Newsome AND has continued to receive and retain the monthly Assigned Payments.

19. As of the date of the filing of this petition, Newsome has not received any more money from RSL other than an initial \$1,000.00 advance paid to Newsome by RSL Funding upon execution of the Transfer Agreement as an inducement to persuade Newsome to enter into the transaction with RSL Funding in the first place.

20. On or about May 22, 2014, seven (7) months after the Order Approving Transfer had been signed by the court and three (3) months after Newsome had ceased receiving the monthly payments, Newsome sent a letter to the Judge of the 193rd District Court, Judge Carl Ginsberg, confirming that Newsome had not received the money he was entitled to pursuant to the Order Approving Transfer and that he was experiencing financial hardship as a result of RSL's failure to comply with the Order Approving Transfer (the "May 22 Letter"). A true and correct copy of the May 22 Letter is attached hereto as Exhibit C.

21. Upon receipt of the May 22 Letter, this court signed an Order to Appear wherein the court took note of the Order Approving Transfer and the May 22 Letter (the "Order to Appear"). A true and correct copy of the Order to Appear is attached hereto as Exhibit D. The Order to Appear ordered Derek Kopacz and L. Andy Paredes to appear in this Court on June 4, 2014 to:

determine whether the Court should set a future show cause hearing to determine whether the Court should hold RSL Funding,

LLC and Derek Kopacz in contempt of Court for allegedly failing to comply with the [Order Approving Transfer].

22. On June 4, 2014 this court conducted a hearing pursuant to the Order to Appear. At this hearing, which Mr. Newsome and counsel for RSL attended, the court indicated its concern about the failure of RSL to conclude and fund the transaction pursuant to the Order Approving Transfer rendered over nine (9) months prior and ordered the parties to mediation.

23. On or about July 31, 2014, Newsome sent another letter to the court, again complaining of RSL's failure to abide by the RSL-Newsome Transaction and comply with the Order Approving Transfer (the "July 31 Letter"). A true and correct copy of the July 31 Letter is attached hereto as Exhibit E. The July 31 Letter confirms Newsome's understanding that the Order Approving Transfer required RSL to pay him \$53,000.00 if Newsome was paid within ten (10) days of the Order Approving Transfer or \$106,000.00 if RSL did not pay Newsome within ten (10) days of the Order Approving Transfer. The July 31 Letter further confirms that Newsome was not receiving the Assigned Payments, and had not been paid any monies relating to the closing/funding of the RSL-Newsome Transaction as required by the Order Approving Transfer.

24. Neither RSL Funding nor RSL Special appealed the Order Approving Transfer or filed a motion for new trial or motion to modify, amend, or correct the order within the time periods required by Texas law for doing so, which was 30 days from the date the Order Approving Transfer was signed in October of 2013. Thus, the Order Approving Transfer became final and non-appealable thirty days after

the date of same and the 193rd District Court lost plenary power over the case, and therefore the power to amend, modify, correct, set aside, vacate, correct, or change the Order Approving Transfer, on November 23, 2013.

25. Following the June 4, 2014 hearing, the parties did participate in at least two mediations. Ultimately, Mr. Newsome, who had not received any of the Assigned Payments since January of 2014 and who had not received any money from RSL since the Order Approving Transfer had been signed by the Court, reluctantly agreed, under duress, to accept the original \$53,000.00 purchase price from RSL Funding, after RSL informed Mr. Newsome him that they would never pay him the \$106,000.00 required by the Order Approving Transfer, BUT promised and represented to him that they would pay him the \$53,000.00 within ten (10) days after the court signed a new order.

26. Thereafter, on August 29, 2014, RSL filed an Agreed Motion for Entry of Corrected Order Nunc Pro Tunc (the “Nunc Pro Tunc Motion”) complaining that:

During the October 23, 2013 hearing, and without the consent of the parties, hand-written language was added to the [Order Approving Transfer] by the Court, which altered the agreed upon monetary terms, and such added language directly contradicts many of the provisions in the agreed Transfer Agreement and Disclosure Statement.

27. RSL requested entry of a Corrected Order Nunc Pro Tunc to remove the hand-written language from the Order Approving Transfer. Mr. Newsome, acting under duress and in reliance on RSL’s promises

and agreements and representations that it could and would secure an amended order and would comply with same and promptly pay to Mr. Newsome the original \$53,000.00 purchase price, consented to RSL's actions in trying to secure a Corrected Order Nunc Pro Tunc. A true and correct copy of the Nunc Pro Tunc Motion filed by RSL is attached hereto as Exhibit F.

28. On September 15, 2014, this Court signed a Corrected Order Approving Transfer Nunc Pro Tunc (the "Nunc Pro Tunc Order"). A true and correct copy of the Nunc Pro Tunc Order is attached hereto as Exhibit G. Thereafter, RSL Funding and RSL Special still failed and refused to pay Mr. Newsome any funds and to this date have not paid or tendered to him any additional funds relative to the transaction, yet RSL still continues to receive, collect, and retain his monthly payments. RSL has attempted to acquire and seize the Assigned Payments from Mr. Newsome without paying for them.

29. Via letter dated November 21, 2014, the undersigned attorneys, representing Newsome, sent correspondence to RSL demanding that RSL honor the Order Approving Transfer and pay Newsome the sum of \$106,000, as ordered by the Court (Exhibit H). The November 21, 2014 letter informed RSL that the Nunc Pro Tunc Order was void and indicated that Newsome's attorneys would take action on his behalf to set aside the improper and void nunc pro tunc order, recover Mr. Newsome's structured settlement payments, and/or seek attorneys' fees if RSL did not fund the transaction as ordered by the court. Prior to sending this letter, counsel for Mr. Newsome called counsel for RSL and informed them that he was representing Mr. Newsome and that RSL should be expecting the letter. Although

this correspondence and counsel's phone call invited RSL's attorneys to review the letter and discuss a possible resolution of this matter, RSL took no such action to try and resolve the matter with Newsome. Instead, RSL filed a new (and improvident and improper) lawsuit in Harris County, Texas against Mr. Newsome. RSL took this action in order to avoid having to explain itself to this Court.

30. On November 26, 2014, RSL Funding filed Plaintiff's Original Petition in *RSL Funding, LLC v. Rickey Newsome*. That petition, which was filed solely and exclusively to provide RSL a vehicle in RSL's home county to try and force Mr. Newsome into arbitration in a hasty, inherently unfair proceeding in an inconvenient location, was assigned cause number 2014-69639 and assigned to the 61st District Court of Harris County, Texas (the "Harris County Lawsuit"). (A copy of the petition, without exhibits, filed by RSL Funding is attached as Exhibit I).

31. In the Harris County Lawsuit, despite knowledge of the Order Approving Transfer and the Nunc Pro Tunc Order and despite having initiated and appeared and sought affirmative relief from this court on several occasions, RSL Funding sought improper declaratory relief against Mr. Newsome and demanded arbitration with Mr. Newsome via an Expedited Motion to Compel Arbitration included with the improper claim for declaratory relief and sought an order compelling Mr. Newsome to arbitrate with RSL in Houston on an expedited basis. RSL Funding filed the Harris County Lawsuit as a pretext to trying to compel arbitration with Newsome in what RSL likely perceived to be a friendlier forum and in an effort to avoid the 193rd District Court. RSL Funding obtained a December 12,

2014 hearing on its Expedited Motion to Compel Arbitration in the Harris County Lawsuit, even though Mr. Newsome had not even been served in the Harris County Lawsuit and well before any answer date for Mr. Newsome. (A copy of RSL Funding's Notice of Hearing relating to its Expedited Motion to Compel Arbitration is attached as Exhibit J.)

32. Having been rejected by RSL in his efforts to pursue a resolution of this matter, and in the face of improper, hasty and aggressive actions by RSL in Harris County, Newsome filed this bill of review in this court, as this court is the only court with the power, jurisdiction, and authority to set aside, vacate, and/or enforce the Nunc Pro Tunc Order and/or Order Approving Transfer. (RSL's proposed arbitration was improper because only this court had the jurisdiction and authority to decide and determine whether the Nunc Pro Tunc Order or the Order Approving Transfer [or either] was effective and/or would stand and RSL was seeking to enforce, through arbitration, the Nunc Pro Tunc Order only. Arbitration will be unnecessary and moot, once this court rules on the bill of review and arbitration could not proceed until the issue of which judgment/final order, if any, is valid by this Court.)

III. Argument and Authorities

33. Mr. Newsome files this bill of review to set aside and vacate the Nunc Pro Tunc Order. A void judgment may be attacked directly by bill of review. *Kollman Stone Industries, Inc. v. Keller*, 574 S.W.2d 249, 251 (Tex. Civ. App.—Beaumont 1978, no writ). A bill of review is an independent equitable action brought by a party to a previous suit who seeks to set

aside a judgment that is no longer subject to a motion for new trial or appealable. *Wembley Inv. Co. v. Herrera*, 11 S.W.3d 924, 926-927 (Tex. 1999); *Caldwell v. Barnes*, 975 S.W.2d 535, 537 (Tex. 1998); In re D.S., 76 S.W.3d 512, 518 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (after time for appeal expires, bill of review is exclusive remedy to vacate judgment, or provision of judgment).

A. The Nunc Pro Tunc Order Should be Set Aside and the Court Should Enforce the Order Approving Transfer

i. Courts' Plenary Power

34. Every district and county level court of general jurisdiction has the jurisdictional power to vacate, modify, correct, or reform a final judgment or to grant a new trial at any time before its plenary power expires. *Check v. Mitchell*, 758 S.W.2d 755, 755-756 (Tex. 1988). Within the periods during which the trial court has the plenary power to vacate, modify, correct, or reform its judgment, its jurisdictional power to modify the judgment in accordance with the law and the evidence is virtually absolute. *Garza v. Serrato*, 671 S.W.2d 713, 714 (Tex. App.—San Antonio 1984, no writ). The date a judgment is signed starts the post-judgment periods of plenary power. TEX. R. CIV. P. 306a; *see also Burrell v. Cornelius*, 570 S.W.2d 382, 383 (Tex. 1982).

35. The trial court has plenary power to modify, correct, or reform a judgment within 30 days after the judgment is signed, regardless of whether an appeal has been perfected. TEX. R. CIV. P. 329b(d). A judgment becomes final when the trial court loses

plenary power. TEX. R. CIV. P. 306a(1). The date the trial court loses plenary power depends on the date the judgment was signed, whether one of the post-judgment motions extending the court's plenary power was filed, and if filed, whether the motion was overruled or granted. If no post-judgment motions are filed, the trial court loses plenary power and the judgment becomes final 30 days after it was signed. *Lane Bank Equip. Co. v. Smith S. Equip., Inc.*, 10 S.W.3d 308, 310 (Tex. 2000).

36. As a general rule, a trial court has no jurisdiction to consider a request for relief after it loses plenary power over its judgment. *First Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984). Provided, however, after it loses plenary power, the trial court does continue to have the power to make only clerical changes to the judgment. TEX. R. CIV. P. 316.

ii. Scope of Nunc Pro Tunc Remedy

37. The purpose of a judgment nunc pro tunc is to correct a clerical error in the judgment after the court's plenary power has expired. *Jenkins v. Jenkins*, 16 S.W.3d 473, 482 (Tex. App—El Paso 2000, no pet.); *Ferguson v. Naylor*, 860 S.W.2d 123, 126 (Tex. App.—Amarillo 1993, writ denied); *West Tex. State Bank v. General Res.*, 723 S.W.2d 304, 306 (Tex. App.—Austin 1987, writ ref'd n.r.e.). Further, the only ground for a motion for judgment nunc pro tunc is to correct a clerical error made in entering the judgment. *Escobar v. Escobar*, 711 S.W.2d 230, 231 (Tex. 1986) (contrasted with judicial error made in the judgment).

38. If the court attempts to correct a judicial error by signing a judgment nunc pro tunc after its plenary power expires, the judgment is void. *See*

Dikeman v. Snell, 490 S.W.2d 183, 186 (Tex. 1973); *Barton v. Gillespie*, 178 S.W.3d 121, 126 (Tex. App.—Houston [1st Dist.] 2005, no pet.); *In re Rollins Leasing, Inc.*, 987 S.W.2d 633, 638 9Tex. App.—Houston [14th Dist.] 1999, orig. proceeding); *Wood v. Griffin & Brand*, 671 S.W.2d 125, 132 (Tex. App.—Corpus Christi 1984, no writ). After the court’s plenary power expires, the court cannot change the judgment by calling the correction of a judicial error a “judgment nunc pro tunc.” *Dikeman*, 490 S.W.2d at 186.

39. A judicial error in a judgment is one arising from a mistake in law or fact that determines the outcome of the case and that requires the exercise of judicial reasoning or determination to correct. *Andrews v. Koch*, 702 S.W.2d 584, 585 (Tex. 1986); *see also West Tex. State Bank*, 723 S.W.2d at 306. A judicial error is one made by the court in rendering judgment, as opposed to an error made in entering judgment in the record. *Escobar*, 711 S.W.2d at 231; *see also Samples Exterminators v. Samples*, 640 S.W.2d 873, 875 (Tex. 1982). Thus, a correction that changes the terms of the judgment actually rendered involves the correction of judicial error, and cannot be made after the expiration of the trial court’s plenary power. *Dikeman*, 490 S.W.2d at 186 (final judgment cannot be corrected after expiration of plenary power to change decretal portion of judgment as rendered); *see also Comet Aluminum Company v. Dibrell*, 450 S.W.2d 56, 59 (Tex. 1970) (inclusion of prejudgment interest constituted judicial mistake, not clerical error).

40. The distinction between clerical and judicial errors does not depend on the seriousness of the error or whether the error was made by the judge, the clerk, or counsel, but on whether it was the result of judicial

reasoning and determination. *Andrews*, 702 S.W.2d at 585. Accordingly, erroneous substantive recitations and provisions are generally held to be judicial errors that cannot be corrected after the judgment is final. *See Finlay v. Jones*, 435 S.W.2d 136, 138-139 (Tex. 1968) (incorrect recital of due service of citation).

41. RSL has refused to comply with and honor the Order Approving Transfer and has refused to comply with and honor the Nunc Pro Tunc Order. The Nunc Pro Tunc Order was not a *Nunc Pro Tunc Order* as allowed and recognized by Texas law. The Nunc Pro Tunc Order was an improper attempt by RSL to substantively modify, correct, and amend this court's true final judgment, the Order Approving Transfer, after this court had lost plenary power over the RSL-Newsome Transfer Case. The errors which RSL purportedly sought to correct by virtue of the Nunc Pro Tunc Order were not clerical errors. The only reason that RSL sought the Nunc Pro Tunc Order was to have the court purport to delete the language whereby the court had ordered RSL to pay Mr. Newsome the \$106,000 purchase price if RSL failed to pay Mr. Newsome the \$53,000.00 purchase price within ten (10) days from the date of the order. The "error" of which RSL complained with regarding RSL to pay Mr. Newsome \$106,000.00 is clearly not a clerical error. If fact, Newsome would submit that it is not an error at all. It was language specifically inserted by this Court, most likely to provide an incentive to RSL to make prompt payment of the purchase price to Mr. Newsome and to enable this Court to enforce RSL's obligation to pay Mr. Newsome.

42. RSL sought to retroactively and improperly alter, amend, reform, correct, and change the Order

Approving Transfer because it failed and refused to comply with said order. RSL was able to coerce Mr. Newsome in to going along in RSL's efforts to secure the void and improper Nunc Pro Tunc Order by refusing to pay him any purchase price (the \$53,000.00 or the \$106,000.00), by receiving and keeping his monthly payments, by representing to him that they would never pay him on the Order Approving Transfer, and by falsely promising and representing to him that they would promptly pay him once the new order was signed. RSL acted improperly and illegally in securing the Nunc Pro Tunc Order.

43. RSL's pleadings seeking the Nunc Pro Tunc Order acknowledge that the error was substantive, not clerical. RSL alleged that the court improperly altered the agreed-upon terms of the parties relative to proposed transfer by inserting the language relating to the alternate purchase price of \$106,000.00. RSL's own pleadings confirm that RSL was seeking to correct a "judicial error" in the Order Approving Transfer. The Nunc Pro Tunc Order is therefore void and must be set aside via this bill of review.

44. Ultimately, once this Court confirms, via this bill of review proceeding, that the Nunc Pro Tunc Order is void, and vacates and sets aside same, the Order Approving Transfer becomes the final judgment of this court and would remain in full force and effect and should be promptly enforced by the court. In fact, since the Nunc Pro Tunc Order is void, the Order Approving Transfer is the final judgment of this Court and must be enforced.

45. RSL has failed and refused to honor either order or pay Mr. Newsome any of the money Newsome is entitled to receive. Even after securing its void

Nunc Pro Tunc Order, RSL has failed and refused to pay Mr. Newsome any portion of the purchase price agreed to by RSL and/or ordered by this court to be paid to him. As such, RSL has violated the court's judgment (either or both of them) and has violated the Texas Transfer Statute, which clearly contemplates and provides that when a transferee, such as RSL, applies to the court for, and secures court approval of, a transfer of structured settlement payment rights, representing and agreeing that the transferee will pay the agreed-upon purchase price to the payee (here Mr. Newsome), that the transferee will actually do so. Thus, when the transferee fails and refuses to honor and comply with the court order approving the transfer, the transferee has violated the Texas Transfer Statute.

46. Furthermore, RSL has indicated no intention of paying Mr. Newsome what he is owed—whether it is the \$ 106,000 or \$ 53,000—yet continues to receive, collect, and retain Mr. Newsome's monthly payments. Either way, RSL is in violation of this court's orders and should be held in contempt of court and sanctioned for (i) refusing to honor and comply with the orders which it secured improperly, illegally, and/or under false pretenses; (ii) for diverting and retaining Mr. Newsome's monthly payments; and (iii) for filing groundless, specious pleadings seeking to delay Newsome's attempts to rectify the situation and enforce the proper court order—the Order Approving Transfer—in the proper court.

47. This court should therefore grant Newsome's bill of review and set aside and vacate the Nunc Pro Tunc Order and confirm that the Order Approving

Transfer is the true, final judgment of this court in the RSL-Newsome Transfer Case.

48. Alternatively and/or in addition, the court should, by way of this bill of review, set aside and vacate both the Nunc Pro Tunc Order and the Order Approving Transfer, confirm that none of Mr. Newsome's structured settlement/annuity payments have been or ever were properly transferred and assigned to RSL, order RSL to immediately remit and pay to Mr. Newsome all of Mr. Newsome's monthly structured settlement payments that RSL has received, and pay Mr. Newsome interest on the Assigned Payments that RSL diverted and retained. RSL also violated the Texas Transfer Statute by including prohibited provisions in its contractual documents with Mr. Newsome. Additionally, this court should order RSL to pay Mr. Newsome's attorneys' fees incurred as a result of this bill of review and Newsome's efforts to enforce the court's transfer order, due to RSL's failure to comply with the Texas Transfer Statute as a sanction for RSL's improper and inappropriate actions and conduct in this matter and in filing the Harris County Lawsuit, and/or pursuant to this court's equitable powers.

B. RSL is Liable to Newsome for Costs, Including Attorneys' Fees, Pursuant to TEX. CIV. PRAC. & REM. CODE § 141.005

49. As a result of RSL's failure to comply with the Texas Transfer Statute in securing and honoring the Order Approving Transfer and the Nunc Pro Tunc Order, and in failing and refusing to pay any monies to Mr. Newsome (neither the purchase price set forth in the Transfer Agreement or the purchase price

ordered by the Court in the Order Approving Transfer) in connection with the proposed transfer, RSL is liable to Mr. Newsome for all liabilities and costs incurred by Mr. Newsome as a result of RSL's conduct and actions and inactions. RSL has failed to comply with the Texas Transfer Statute, the Order Approving Transfer and the Nunc Pro Tunc Order. Mr. Newsome has been damaged as a result of RSL's actions and conduct by not having received the monthly Assigned Payments which are the subject of the proposed transaction since February of 2014. Furthermore, Mr. Newsome has incurred attorneys' fees and costs and expenses, as a result of RSL's actions and conduct, both in having to file this matter and in having to deal with the Harris County Lawsuit, which was improperly and improvidently filed. RSL is liable to Mr. Newsome for such attorneys' fees and costs.

IV. Conditions Precedent

All conditions precedent have occurred or have been performed by Newsome or have been waived by RSL to entitle Newsome to all of the relief sought herein.

V. Prayer

WHEREFORE, PREMISES CONSIDERED, Rick-ey Newsome prays that a bill of review be granted and issue as requested herein; that this court issue an order vacating and setting aside and nullifying the Nunc Pro Tunc Order, which was improperly and unlawfully procured by RSL, and confirming the Order Approving Transfer as the final judgment of this court in the RSL-Newsome Transfer Case; and that the court proceed with enforcement of the Order Approving

Transfer in all respects against RSL Funding and RSL Special. Additionally and/or in the alternative, Newsome prays that this court order that RSL must promptly reimburse, pay, and remit to Newsome an amount equal to all of the monthly payments which RSL has received (which were anticipated to be included in the Assigned Payments) and/or interest on same or interest on the purchase price since the date the court's judgment in the RSL-Newsome Transfer Case became final. Additionally and/or in the alternative, Newsome prays that the court grant and issue a bill of review finding and ordering that both the Nunc Pro Tunc Order and/or the Order Approving Transfer be set aside and vacated and that no payments have been transferred and assigned to RSL and ordering that RSL immediately remit, return, and pay all of the monthly payments that RSL has received (relative to the Assigned Payments) and pay interest on the diversion and retention of same by RSL. Additionally, Newsome prays that the court find and order that RSL should pay Newsome the attorneys fees and expenses and costs incurred by Newsome in connection with filing and prosecuting this bill of review and/or in enforcing the Order Approving Transfer and/or pursuing a TRO and injunctive relief against RSL and in responding to the motion to recuse, pursuant to the statutory provisions cited herein (including the Texas Transfer Statute), under the Texas Rules of Civil Procedure, and/or as a sanction, pursuant to the inherent equitable powers of this court in the context of a bill of review, and/or pursuant to other principles of the law and award Newsome attorneys fees, expenses, and court costs. Newsome further prays for such other and further relief, at law or in equity, to which Newsome may show himself justly entitled.

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Respectfully submitted,

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**AMENDED APPLICATION FOR
APPROVAL OF A TRANSFER
(OCTOBER 13, 2013)**

IN THE DISTRICT COURT 193RD JUDICIAL
DISTRICT OF DALLAS COUNTY, TEXAS

IN THE MATTER OF:
A TRANSFER OF STRUCTURED SETTLEMENT
PAYMENT RIGHTS BY RICKEY NEWSOME

Cause No. DC-13-10132-L

Applicant RSL Funding, LLC (“RSL Funding” or “Transferee”) files this Application for Approval of a Transfer pursuant to the Texas Structured Settlement Protection Act and requests that the Court approve the transfer by Rickey Newsome of his rights as set out in the attached Amended Transfer Agreement (“Transfer Agreement”), Amended Addendum to Transfer Agreement and Amended Disclosure Statement (“Disclosure Statement”). In support of this Amended Application (“Application”), Transferee respectfully shows the Court as follows:

Discovery Control Plan

1. Pursuant to Texas Rule of Civil Procedure 190.4, Applicant moves that the Court issue a Discovery Control Plan tailored to the specific circumstances of this matter. Transfers under Chapter 141 of the Texas Civil Practice & Remedies Code are generally unopposed and do not require discovery. However,

Interested Parties may file objections. Applicant asks the Court to reserve issuance of a Discovery Control plan until such time as an objection by an Interested Party is filed.

2. Transferee is a Texas limited liability company authorized to and doing business in the State of Texas.

Interested Parties

3. Rickey Newsome (“Payee”) is single individual, residing in Dallas County, Texas. Payee is receiving tax-free payments under a structured settlement. Payee proposes to Transfer certain life-contingent payment rights under the structured settlement to Transferee pursuant to Chapter 141 of the Texas Civil Practice & Remedies Code (“Act”).

4. The other parties interested in this Application are listed as follows:

- A. Annuity Issuer: Allstate Life Insurance Company, 3100 Sanders Road, N3A, Northbrook, IL 60062;
- B. Structured Settlement Obligor/Annuity Owner: Allstate Insurance Company, 3100 Sanders Road, N3A, Northbrook, IL 60062; and
- C. Payee’s Beneficiary(ies); LaTonya, Rickey, Eric, Richard, and James Winfred.

Venue and Jurisdiction

5. Venue and jurisdiction are proper in this court under 26 U.S.C. § 5891 and § 141.002(2) of the Act because this is a court located in the county in which the Payee resides.

Statement of Facts

6. On information or belief, Payee settled all claims asserted by him or on his behalf as resulted in personal injuries or sickness, in a settlement agreement or final judgment. The settlement agreement constitutes a Structured Settlement Agreement as that term is defined under § 141.002(14) of the Act. On information or belief, the Structured Settlement Agreement obligated the Annuity Owner to make periodic payments to Payee. The terms of the Structured Settlement Agreement constitute a Structured Settlement as that term is defined under § 141.002(13) of the Act.

7. On information or belief, the underlying defendant made a qualified assignment to the Annuity Owner under § 130(c) of the Internal Revenue Code in order to fulfill its obligations to Payee under the Structured Settlement Agreement. Annuity Owner purchased Annuity Contract No. 90-506-877/878 from Annuity Issuer naming Payee as Annuitant. Under this annuity, Annuity Issuer makes the Periodic Payments required of the Annuity Owner directly to Payee although Annuity Owner guarantees the Periodic Payments.

The Transfer

8. Subject to this Court's approval, Payee desires to sell, *inter alia*, certain rights, as set forth in the Transfer Agreement and Disclosure Statement, including all or a portion of the life-contingent periodic payments, to Transferee, its successors and/or assigns (collectively including the Assigned Payments, as defined below, being the "Transfer"), with such monetary life-contingent payments being:

Twenty-One (21) monthly payments each in the amount of \$550 beginning on December 13, 2013 through and including August 13, 2015; thirty-three (33) monthly payments each in the amount of \$150 beginning on September 13, 2015 through and including May 13, 2018; and sixty-six (66) monthly payments each in the amount of \$1350 beginning on June 13, 2018 through and including November 13, 2023 (collectively the “Assigned Payments”).

Applicant RSL requests that this Court conclude that (i) Annuity Owner, Annuity Issuer, Transferee, its successors and/or assigns, and Payee do not have evidence that these Assigned Payments have been previously sold, assigned, conveyed, encumbered, transferred, or pledged, (ii) each was affirmatively obligated to come forth with any information to the contrary; and (iii) Payee has all rights, title and interest in the Assigned Payments with full authority to make this transfer to Transferee. Transferee reserves the right to assign its rights under this application to another person or entity, which will be included in the Order of Transfer.

9. More specifically, Payee received a Disclosure Statement and Transfer Agreement, and Payee executed the Transfer Agreement more than three (3) days after Payee received the Disclosure Statement. Under the Transfer Agreement, Payee agreed to Transfer to Transferee the Assigned Payments. This document constitutes a Transfer Agreement as defined by § 141.002(19) of the Act¹ and is attached

¹ Transferee redacted the social security number of the Payee

hereto as Exhibit 1 and is incorporated herein by reference as if fully set forth at length. The Disclosure Statement satisfies the requirements of § 141.003 of the Act and is attached hereto as Exhibit 2 and incorporated herein by reference as if fully set forth at length.

10. The Transfer is in the best interests of Payee, taking into account the welfare and support of Payee's dependents, if any, as required by 26 USC § 5891 and § 141.004(1) of the Act. Payee is selling his payments in order to expand his own trucking business. *See* Declaration of Rickey Newsome attached as Exhibit 3 hereto and incorporated herein as if fully set forth at length.

11. Further, the current conditions in the financial marketplace affecting the long term viability of annuity issuers additionally support the appropriateness of Payee's sale of the Assigned Payments. Documentation to support such current marketplace conditions is attached hereto as Exhibit 4, and further explained under "State of Capital Markets" below.

12. Payee has been advised in writing to seek Independent Professional Advice regarding the financial, legal, and tax implications of the Transfer has either obtained that advice or has knowingly waived that right in writing as provided in the Act at § 141.004. Payee's statement concerning Independent Professional Advice is attached hereto as Exhibit 5 and incorporated herein by reference as if fully set forth at length.

from the Transfer Agreement to protect the privacy of the Payee from disclosure through public documents.

13. More than twenty days prior to the hearing for approval of the Transfer, Transferee will send written notice of the hearing, along with Transferee's name, address, and taxpayer identification number to the Annuity Issuer, Annuity Owner, and all other, if any, Interested Parties, and will file same with the Court as provided in the Act at § 141.006. An exemplar of such notice is attached hereto as Exhibit 6 and is incorporated herein as if fully set forth at length. Specifically, Annuity Owner and Annuity Issuer and all interested parties will be provided with the following documents:

- i. A copy of this Application for Approval of a Transfer;
- ii. A copy of the Transfer Agreement;
- iii. A copy of the Disclosure Statement;
- iv. A list of Payee's dependent(s), together with each dependent's age;
- v. Notification that any interested party is entitled to support, oppose, or otherwise respond to this Application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and
- vi. Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the Application must be filed in order to be considered by the court.

14. The Transfer is in the best interest of the Payee, taking into account the welfare and support of the Payee's dependents, if any, and the Transfer

does not contravene any applicable statute or an order of any court or other governmental authority as required under § 141.004 of the Act; the Transfer also satisfies the Internal Revenue Code § 5891. Applicant attaches § 5891 of the United States Code for the Court's easy reference.

15. Payee also desires to change the beneficiary for the Assigned Payments to Transferee or its assigns for the Assigned Payments.

16. As required under § 141.007(a) of the Act, the Payee has not waived any provisions that are not expressly allowed by the Act.

17. As required under § 141.007(b) of the Act, the Transfer Agreement states that if the Payee is a resident of the State of Texas, any disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. The Transfer Agreement does not authorize the Transferee or any other party to confess judgment or consent to entry of judgment against the Payee.

18. The Annuity Issuer, Annuity Owner, and Payee will not incur any adverse tax consequences because Congress clarified the law on this issue in § 5891(d) of the United States Code by stating that "If the applicable requirements of §§ 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a

qualified assignment under § 130) in any taxable year.” Thus, no adverse tax ruling is in effect regarding this transfer.

State of Capital Markets

19. The current conditions in the financial marketplace affecting the long term viability of annuity issuers additionally supports the appropriateness of Payee’s sale of the Assigned Payments. As this Court is aware from recent press reports (see examples attached as Exhibit 4), the disastrous effects of the world’s precarious financial markets have negatively impacted, and in some cases ruined, many financial institutions, including life insurance and annuity issuers. Few have escaped unscathed. It is for this reason, among others, that Payee desires to sell a portion of his future payments, as described in the Transfer Agreement and Disclosure Statement, so as to diversify his financial dependence.

Prayer

Based upon the foregoing, Transferee respectfully requests that the court grant this Application and approve the transfer, *inter alia*, of the Assigned Payments and other rights as set forth in the Transfer Agreement and Disclosure Statement to Transferee, its successors and assigns.

Respectfully Submitted

/s/ L. Andy Peredes

State Bar No. 00788162

Two Post Oak Central

1980 Post Oak Blvd., Suite 1975

Houston, Texas 77056-3899

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Attorney for Applicant RSL Funding, LLC

**TRANSFER AGREEMENT
(FOR TRANSFER OF STRUCTURED PAYMENTS)
(SEPTEMBER 24, 2013)**

This TRANSFER AGREEMENT (“Transfer Agreement” or sometimes “Agreement”) is entered into by and between RICKEY NEWSOME (“Assignor”), an individual; and RSL FUNDING, LLC, a Texas limited liability company (“RSL Funding” or “Assignee”) whose address is 1980 Post Oak Boulevard, Suite 1975, Houston, Texas 77056-3899.

a. *Whereas* Assignor is entitled to structured settlement payments (collectively referred to as the “Periodic Payments”) as a result of a structured settlement dated on or about _____. (the “Settlement Agreement”).

b. *Whereas* Allstate insurance Company (the “Annuity Owner” and “Structured Settlement Obligor”) has the continuing obligation to make the Periodic Payments to the Assignor under the Settlement Agreement and pursuant to annuity contract No. 90-506/877/878 (the “Annuity Contract”).

c. *Whereas* the Periodic Payments are currently being paid by Allstate Life Insurance Company (the “Annuity Issuer”).

d. *Whereas* Assignor desires to sell, assign, and transfer to RSL Funding, and RSL Funding desires to purchase and accept such transfer and assignment from Assignor, the following entirety or portion of the Periodic Payments (hereinafter the “Assigned Payments”):

Twenty-One (21) monthly payments each in the amount of \$550 beginning on December

13, 2013 through and including August 13, 2015; thirty-three (33) monthly payments each in the amount of \$150 beginning on September 13, 2015 through and including May 13, 2018; and sixty-six (66) monthly payments each in the amount of \$1350 beginning on June 13, 2018 through and including November 13, 2023.

NOW THEREFORE IN CONSIDERATION THEREOF, SUBJECT TO THE OTHER TERMS AND CONDITIONS STATED HEREIN, RSL FUNDING AGREES TO PAY TO ASSIGNOR, AND ASSIGNOR AGREES TO ACCEPT AS FULL AND COMPLETE PAYMENT FROM RSL FUNDING, THE "ASSIGNMENT PRICE" (SEE SECTION 2 BELOW).

Preliminary: A court must approve Assignor's sale, assignment, and transfer to RSL Funding of the Assigned Payments before such payments can be transferred and the Assignment Price, set forth in Section 2 below, paid to Assignor. The Final Order shall state that the court at least has made all findings required by applicable law, and that Annuity Owner and Annuity Issuer are authorized and directed to pay the Assigned Payments to RSL Funding, its successors and/or assigns. Assignor and RSL Funding agree to proceed in good faith to obtain court approval of the transfer of the Assigned Payments.

IN CONSIDERATION OF THE COVENANTS, WARRANTIES, AND REPRESENTATIONS SET FORTH HEREIN, ASSIGNOR AND RSL FUNDING AGREE AS FOLLOWS:

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1. Assignment. Assignor hereby sells, assigns, and transfers to RSL Funding all of Assignor's right, title, and interest (including all benefits and rights relating thereto) in end to the Assigned Payment(s). RSL Funding hereby purchases and accepts such assignment and transfer of the Assigned Payment(s).

2. Assignment Price. The Assignment Price is FIFTY-THREE THOUSAND AND NO/100 (\$53,000.00) DOLLARS, RSL Funding's obligation to pay the Assignment Price is subject to the terms, conditions, and offsets described herein and, in the Disclosure Statement. In consideration for this assignment, and subject to these terms, conditions, and offsets, RSL Funding shall pay Assignor the Assignment Price.

3. Payment of the Assignment Price. Payment of the Assignment Price shall be made by RSL Funding's (or, as provided in paragraph 13d., its assignee's) check payable to Assignor and mailed to the address shown above, unless otherwise directed in writing by the Assignor. The parties understand that a reasonable time may pass from the date the Final Order is obtained until the date that Annuity Issuer and Annuity Owner acknowledge to RSL Funding their obligation to comply with the Final Order resulting in the following:

- a. In the event that the parties hereto and the Annuity Issuer and the Annuity Owner enter into an agreement or stipulation agreeing to this Transfer, then RSL Funding shall promptly pay 100% of the Assignment Price to Assignor following its receipt of a certified copy of the Final Order; or

- b. Otherwise, following RSL Funding's receipt of the certified copy of the Final Order following the Annuity Issuer's confirmation that the Assigned Payments have not otherwise been assigned, transferred, sold or hypothecated, RSL Funding shall pay 75% of the Assignment Price to Assignor, with the 25% balance payable promptly upon RSL Funding's receipt of written notice from Annuity Issuer and Annuity Owner acknowledging their obligations under the Final Order.

Payment of the Assignment Price is subject to all the terms and conditions set forth herein and in the Disclosure Statement. In particular, Sections 5, 6, 7 and 8 of this Agreement may affect RSL Funding's obligation to pay the Assignment Price to Assignor where, for example, there are tax liens, judgments or other encumbrances on the Periodic Payments.

4. Servicing Arrangement. Assignor agrees that to the extent that payments due from the Annuity Issuer or its affiliates must be split among various payees (including the Payee and its assigns) RSL Funding shall receive the full payment and in turn will undertake to pay to Payee or Payee's assigns any residual amount due such person as such comes due.

5. Assignor agrees to instruct the Structured Settlement Obligor and Annuity Issuer to deliver all Assigned Payments to RSL Funding received after the date this Transfer Agreement is executed by all parties and agrees to forward all Assigned Payments to RSL Funding Assignor receives after the execution of this Transfer Agreement. RSL Funding shall deposit the forwarded payments into an escrow account

and hold such forwarded payments until the court considers the matter (hereinafter “held payments”). After the hearing, RSL Funding shall account for the held payments, subject to any lawful offsets and credits, and forward the amount of the held payments due and owing to Assignor in the usual course of business. Payment of the Assignment Price is subject to all the terms and conditions set forth herein in the Disclosure Statement.

6. Representations and Warranties. Assignor hereby makes the following unconditional representations and warranties, each of which is agreed to be material to this Agreement and which form the basis of RSL Funding’s obligations under this Agreement and for whose breach Assignor agrees to unconditionally indemnify RSL Funding:

- a. Assignor’s name is Rickey Newsome with a social security number of _____. Assignor has never been known by or used any other name or social security number.
- b. Assignor is the sole holder of the entire right, title, and interest in and to the Assigned Payments and under the above referenced Servicing Arrangement, the Assignor may be the sole holder of the remainder of the difference between the Assigned Payments and Periodic Payments with full power and authority to enter into and perform an of Assignor’s obligations under this Agreement, without the need to obtain the consent of any third party to do so. It is Assignor’s sole responsibility promptly to obtain any consents, waivers, or releases needed.

- c. Assignor is entitled to the Assigned Payments, free and clear of any right, interest, lien, charge, encumbrance, or claim of any other person. Assignor has not previously conveyed, sold, assigned, pledged, or otherwise encumbered any portion of the Assigned Payments, to any person or entity. No other person, with or without Assignor's knowledge or consent, has previously conveyed, sold, assigned, pledged, or otherwise encumbered any portion of the Assigned Payments, to any person or entity. Assignee and its affiliates are authorized by Assignor, and Assignor has obtained and/or provided all required authorizations to obtain and file any document as Assignee deems appropriate to effect the sale of the Assigned Payments.

* Assignor affirms that Assignor is not married _____
"Assignor's initials, if applicable"

** Assignor is married and Assignor's Spousal Consent Form is attached and incorporated into this Transfer Agreement RN
"Assignor's initials applicable"

d. No lawsuits or claims are pending or threatened against Assignor or Assignor's property and Assignor does not know of any basis for any such lawsuit or claim.

e. Assignor has no unpaid obligation to any former spouse for support, maintenance or similar obligations. Assignor has no unpaid child support or similar payment obligation.

f. Assignor has paid all federal, state and local taxes due and owing through and including the date of Assignor's signing of this Agreement (including current estimated obligations). Assignor has no

outstanding or unsatisfied judgments of federal, state, or local tax or other liens against Assignor or the Assigned Payments. Assignor has previously filed all required income and other tax returns. Assignor has not filed for bankruptcy within the last five (5) years. Assignor agrees to provide all documentation in support thereof to RSL Funding to facilitate and expedite the court approval process.

g. Assignor is not in arrears or default on any student loan. Assignor has not received Aid to Families with Dependent Children, food stamp benefits, or low income energy assistance benefits.

h. Assignor has been advised by RSL Funding to seek independent professional advice regarding this transfer. Assignor has had the opportunity to obtain such independent professional advice and has either received that independent advice or freely chosen to waive obtaining such. In entering into this Agreement and considering the ongoing consequences thereof, Assignor has not relied in any way on RSL Funding or any person employed by or associated or affiliated with RSL Funding or its lawyers for advice concerning, among other things, the legal, tax or financial consequences of the transaction contemplated by this Agreement.

i. Assignor is an adult of sound mind, is not acting under duress, and at the time of signing both this Agreement and the Disclosure Statement is not under the influence of alcohol or any other substance or drug or impaired try any condition that would prevent Assignor from fully consenting to this Agreement as evidenced by Assignor's signature below. Assignor has inquired of third-parties as to other financial options available, including solicitation of

offers from other structured settlement purchasers, and has concluded that entering into this Agreement is in the best interest of the Assignor and Assignor's dependents so that Assignor shall work exclusively with RSL Funding to the exclusion of all other potential purchasers to complete the Transfer.

j. Assignor does not need or depend on the Assigned Payments for payment of Assignor's current or future living expenses (food, housing, clothing, medical care, etc.) and Assignor has other means of providing for Assignor's living expenses and the living expenses of Assignor's dependents.

k. Assignor acknowledges and stipulates that damages arising from Assignor's breach of the Transfer Agreement by Assignor are fifteen percent of the Assigned Payments or actual damages whichever is greater; however, in the case of a breach of the right of first refusal, the liquidated damages are fifteen percent of the Periodic Payments transferred by Assignor in breach of the right of first refusal.

i. The representations and warranties are true, correct, and not misleading as of the date of Assignor's execution of this Agreement and Assignor has not failed to disclose any information to RSL Funding which a reasonable person might consider to be material or relevant to a purchaser in considering whether to enter into this Agreement. Assignor shall not take any action (and shall refrain from taking any action) that might cause the representations and warranties to become untrue, incorrect, or misleading. Further, Assignor shall immediately notify RSL Funding of any event, fact or circumstance that would render any of the representations and warranties untrue, incorrect, or misleading. All of Assignor's repre-

sentations and warranties made herein regarding the Assigned Payments also apply in full to the Periodic Payments except for those prior transfers disclosed in writing to RSL Funding prior to Assignor's execution of this Transfer Agreement. The foregoing representations and warranties are made by Assignor with the full knowledge and expectation that RSL Funding is placing complete reliance thereon.

7. Covenants: Conditions Precedent to RSL Funding's Obligations. Assignor covenants that each of the representations and warranties made herein continue to be true as and of the date(s) of payment of the Assignment Price by RSL Funding. Except as may be expressly waived in writing by RSL Funding, RSL Funding's obligation to pay all or any portion of the Assignment Price is subject to: (i) the representations and warranties made herein being true when made as and of the date(s) the Assignment Price is paid; and (ii) RSL Funding having received the approval of a court for the sale and assignment contemplated in this Agreement. Assignor acknowledges that RSL Funding has no obligation to pay Assignor until Assignee obtains the Final Order. Additionally, Assignee's obligations to pay the Assignment Price hereunder are subject to the receipt and approval by Assignee of all documentation related to: (i) the Periodic Payment (*e.g.*, the annuity contract, the settlement agreement and the related court order); and (ii) any prior transfer by Assignor of any Periodic Payments.

8. Agreed Offsets to Assignment Price

a. Assignment Price Eeduction. The Assignment Price shall be reduced by any legal/attorneys' fees set

forth in the Disclosure Statement and by any Assigned Payments received by Assignor.

b. Certain Debts Paid. If Assignor owes back taxes, past due child support or has garnishments, recorded judgments or liens or similar encumbrances, RSL Funding shall determine which debts, claims, or liabilities must be paid at closing. RSL Funding may, in its sole discretion, pay those debts for Assignor's account, and deduct the amounts from the Assignment Price. In order to obtain full right, title and interest in the Assigned Payments, RSL Funding may pay any amounts necessary to discharge any liens or other claims adverse to the Assigned Payments, whether or not such adverse claims were disclosed by Assignor and regardless of the nature of the claim. Upon written notice to Assignor of payment of such an adverse claim, the Assignment Price shall be reduced by such payment. In the event that any reduction of or obligation effecting the Assigned Payments arises after the Purchase Price is paid to Assignor, Assignor shall indemnify RSL Funding for any such amounts paid or payable by RSL Funding or which result in a reduction of the Assigned Payments received by RSL Funding.

c. Other Possible Deductions from the Assignment Price. If some of the Assigned Payments are paid or payable to Assignor or third-parties (and/or will not ultimately be paid to RSL Funding or its successors or assigns) before or after the Assignment Price is paid, the Assignment Price shall be reduced "dollar for dollar" (that is, without time value adjustment) for the payments to Assignor and/or third-parties and/or which RSL Funding will not be receiving. As well, if any advances are made to Assignor by RSL

Funding, such advances similarly shall be deducted from the amount due Assignor hereunder also on a “dollar for dollar” basis plus any accrued interest due thereon.

d. “Holdbacks” While Address Change is Processed. After being notified of the Final Order, it may take some time for the Annuity Issuer to process the change of address. If the Assigned Payments include monthly payments that are scheduled to be paid within three months of the issuance of the Final Order, RSL Funding will withhold a portion of the Assignment Price equal to three monthly payments until such time as the Annuity Issuer actually begins to redirect payments to RSL Funding pursuant to the Final Order.

e. Misrouted Payments. Even after a Final Order, an Assigned Payment may be misrouted or mislabeled by Annuity Issuer. In the event that Assigned Payments are instead sent to Assignor, Assignor agrees to hold these payments in trust for RSL Funding and immediately turn over these Assigned Payments to RSL Funding. Similarly, in the event that Assigned Payments are sent to RSL Funding but made payable to Assignor, Assignor hereby grants to RSL Funding an irrevocable limited power of attorney authorizing RSL Funding to cash any such checks and deposit them to RSL Funding’s collection account.

9. Security Agreement. To secure the prompt and complete payment, performance and observance of all of the obligations of Assignor under this Transfer Agreement and regardless of whether such transfer and assignment is consummated and in furtherance of the right of first refusal set forth in this

Agreement, Assignor hereby grants, assigns, conveys, mortgages, pledges, hypothecates and transfers to RSL Funding, a security interest (lien) upon all of Assignor's right, title and interest in, to and under all the Periodic Payments (hereinafter the "Collateral"), to secure payment of the Assigned Payments to RSL Funding and Assignor's other obligations hereunder. Additionally, Assignor hereby irrevocably authorizes RSL Funding at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and amendments thereto covering payments due from the Annuity Issuer to secure RSL Funding's rights hereunder and containing any other information required by Article 9 of the Uniform Commercial Code or its equivalent for the filing office's acceptance of any financing statement or amendment. This Agreement shall function as a security agreement. RSL Funding is authorized to direct Annuity issuer and/or Settlement Obligor to forward any and all of the Assigned Payments directly to RSL Funding in furtherance of this Agreement.

10. Power of Attorney. Assignor hereby grants to RSL Funding an Irrevocable Power of Attorney with full powers of substitution to do all acts and things that Assignor might do regarding the Assigned Payments and any and all rights Assignor has under the Settlement Agreement, including, without limitation, the power to endorse checks, drafts or other instruments, the power to alter, edit and change payment instructions and/or beneficiary designation and any other act which, in the sole discretion of RSL Funding as Assignor's Attorney-in-Fact, is necessary or expedient for RSL Funding to obtain all of the benefit of the bargain contemplated by this Agreement.

This power of attorney is coupled with an interest and shall survive Assignor's death or disability.

11. Further Assurances. Assignor shall fully cooperate with RSL Funding, including making any court appearances as reasonably requested by RSL Funding in obtaining the court order and/or acknowledgment referred to above and in the taking of or performing any and all acts necessary to facilitate the objectives of this Agreement. Assignor shall execute any additional documents as RSL Funding may reasonably request. Assignor shall immediately endorse and forward to RSL Funding, as applicable, any Assigned Payment which may be made out to Assignor or which Assignor receives.

12. In consideration of the Transfer Agreement's execution, Assignor hereby grants and conveys to RSL Funding a ten (10) day right of first refusal beginning upon RSL Funding's receiving actual written notification of an offer to purchase or otherwise acquire any Periodic Payments, as follows: If Assignor receives an oral or a written offer to sell, assign, borrow against, pledge or otherwise encumber any Periodic Payments and Assignor desires to enter into a transaction involving the sale, assignment, borrowing against, pledging, or other encumbrance thereof, Assignor agrees to immediately notify RSL Funding in writing: (a) that Assignor has received an offer; and (b) describing in detail all terms of said offer along with providing all writings evidencing such. Assignor agrees to direct any other purchaser to directly pay over to RSL Funding fifteen percent of the amount of Periodic Payments transferred by Assignor to a person in breach of this paragraph. *See also* the Disclosure Statement.

13. Other Provisions.

a. Choice of Law Arbitration: Waiver of Jury Trial. Disputes under this Agreement of any nature whatsoever including but not limited to those sounding in constitutional, statutory, or common law theories as to the performance of any obligations, the satisfaction of any rights, and/or the enforceability hereof, including any claims that the Assignor has breached this Agreement, shall be resolved through demand by any interested party to arbitrate the dispute under the laws of Assignee's domicile to the maximum extent possible (including the Federal Arbitration Act which shall be controlling) and shall submit the same to a neutral arbitration association (including but not limited to Conflict Resolution Solutions, PLLC of Houston) or arbitrator for resolution pursuant to its single arbitrator, expedited rules. Notwithstanding anything else to the contrary herein or elsewhere, the arbitrator shall award attorneys' fees and costs against the breaching, defaulting or repudiating party. If the first arbitration organization or arbitrator which receives a written demand for arbitration of the dispute from any interested party does not complete the arbitration to finality within four months of the written demand, any interested party then may file a written demand for arbitration of the dispute with another neutral arbitration association or arbitrator, with the prior arbitration association or arbitrator then being immediately divested of jurisdiction, subject to a decision being rendered by the replacement arbitration association within four months of the written demand being filed with the replacement arbitration group. The arbitration decision shall be final and binding in all respects and shall be non-

appealable. Any person may have a court of competent jurisdiction enter into its record the findings of such arbitrators for all purposes, including for the enforcement of the award. In any event, the parties to this Agreement hereby waive the right to trial by jury in any action or proceeding instituted with respect to this Agreement. The aforementioned provisions contained in this paragraph shall be effective notwithstanding any actions that may take place after the execution of this Agreement, and regardless of whether such transfer and assignment is consummated. The parties hereto agree that the issue of arbitrability shall likewise be decided by the arbitrator, and not by any other person. That is, the question of whether a dispute itself is subject to arbitration shall be decided solely by the arbitrator and not, for example by any court. In so doing the intent of the parties is to divest any and all courts of jurisdiction in disputes involving the parties, except for the confirmation of the award and enforcement thereof.

b. Priority of Periodic Payments. To the extent that, after the date hereof, the Annuity Issuer or the Annuity Owner is placed in receivership, rehabilitation, liquidation, or is subject to any other proceeding or action of any kind whatsoever where the Periodic Payments are reduced, delayed or otherwise impaired, Assignor agrees to and upon entry of an order of transfer shall be deemed to subordinate Assignor's rights to receive any Periodic Payments not included in the Assigned Payments, so that (i) any reduction, delay or impairment in Periodic Payments is first applied against the Periodic Payments not included in the Assigned Payments, so as to leave the

Assigned Payments whole and unaffected by any such reduction, delay or impairment; (ii) any Periodic Payments made after a reduction, delay or impairment has occurred are first applied to the Assigned Payments; and (iii) any insurance fund benefit or other similar payment will be applied in the following order: First, to the Assigned Payments until the Assigned Payments have been made whole and current; Second, any remaining balance is then applied to make whole the holder of the Assigned Payments as to Assigned Payments which are not yet due and payable, but which may possibly be delayed, reduced, or impaired; Third, any remaining balance is then applied to make whole and current the Periodic Payments which are not included in the Assigned Payments; Fourth, any remaining balance is then applied with respect to any unpaid, but not yet due, Periodic Payments.

c. Counterparts; Headings; Recitals. This Agreement may be executed in multiple counterparts as originals or as faxes, each of which shall be deemed an original and all of which together when executed by all parties below shall constitute a single instrument. The Agreement's headings are for reference only and shall not affect in any way the meaning or interpretation of this Agreement. The recitals herein shall be construed as Assignor's representations and warranties.

d. Effect; Severability; Amendment; Waiver; Assignment; Other. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and permitted assigns. If any provision of this Agreement is found to be invalid or

unenforceable, the validity or enforceability of any other provision of this Agreement shall not be affected thereby. This Agreement may not be amended or modified, or any provision deemed waived, except by written instrument signed by all of the parties hereto, and as to RSL Funding, only with the signature of its Chief Executive Officer. The waiver or modification by a party of performance or breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other performance or breach thereof, RSL Funding may assign the right to receive the Assigned Payments to all or any portion of its right, title, and interest in and to this Agreement, the Settlement Agreement, the Annuity, and the Assigned Payments without the consent of any other person. If and when RSL Funding assigns the right to receive the Assigned Payments to RSL Funding's assignee, the references herein to the right to receive the Assigned Payments only shall be understood to mean RSL Funding's assignee.

e. Notices. All notices, demands, and other communications required or permitted hereunder shall be made in writing and shall be effective upon actual or constructive receipt at the address shown above or otherwise for the parties,

f. No Rule of Construction; Entire Agreement; Independent Representation. The parties hereto have participated in negotiating and drafting this Agreement, and no rule of construction shall apply to this Agreement which construes any language, whether ambiguous, unclear, or otherwise, in favor of either party. This Agreement constitutes the entire agreement and understanding of the parties with respect to the

matters and transactions contemplated hereby and supersedes any and all prior agreements end understandings with respect thereto. All prior agreements of the parties, whether written or oral, have been merged into and incorporated herein. No statements have been made, or relied upon, by either party except those set forth in this Agreement. This Agreement shall take effect on the date on which it is last executed by either party. ASSIGNOR SHALL HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS OF ASSIGNOR'S EXECUTION.

IN WITNESS WHEREOF, this Agreement is last executed the 24th day of Sept., 2013

ASSIGNOR:

/s/ Rickey Newsome

RSL FUNDING, LLC,
a Texas limited liability company

By:

/s/ Stewart A. Feldman
CEO

RELEVANT STATUTES

PORTIONS OF FEDERAL ARBITRATION ACT

- **9 U.S.C. § 2**
Validity, Irrevocability, and Enforcement of Agreements to Arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

- **9 U.S.C. § 3**
Stay of Proceedings Where Issue Therein Referable to Arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

- **9 U.S.C. § 4**

Failure to Arbitrate Under Agreement; Petition to United States Court Having Jurisdiction for Order to Compel Arbitration; Notice and Service Thereof; Hearing and Determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28 [28 USCS §§ 1 et seq.], in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure [USCS Rules of Civil Procedure]. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the

matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure [USCS Rules of Civil Procedure], or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

- **9 U.S.C. § 16**

- **Appeals**

- (a) An appeal may be taken from—

- (1) an order—

- (A) refusing a stay of any action under section 3 of this title [9 USCS § 3],
- (B) denying a petition under section 4 of this title [9 USCS § 4] to order arbitration to proceed,
- (C) denying an application under section 206 of this title [9 USCS § 206] to compel arbitration,

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- (D) confirming or denying confirmation of an award or partial award, or
 - (E) modifying, correcting, or vacating an award;
- (2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or
 - (3) a final decision with respect to an arbitration that is subject to this title.
- (b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order-
- (1) granting a stay of any action under section 3 of this title [9 USCS § 3];
 - (2) directing arbitration to proceed under section 4 of this title [9 USCS § 4];
 - (3) compelling arbitration under section 206 of this title [9 USCS § 206]; or
 - (4) refusing to enjoin an arbitration that is subject to this title.

INTERNAL REVENUE CODE, 26 U.S.C. § 5891

STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

- (a) Imposition of tax. There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.
- (b) Exception for certain approved transactions.

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- (1) In general. The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a qualified order.
- (2) Qualified order. For purposes of this section, the term “qualified order” means a final order, judgment, or decree which—
 - (A) finds that the transfer described in paragraph (1)—
 - (i) does not contravene any Federal or State statute or the order of any court or responsible administrative authority, and
 - (ii) is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents, and
 - (B) is issued—
 - (i) under the authority of an applicable State statute by an applicable State court, or
 - (ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.
- (3) Applicable State statute. For purposes of this section, the term “applicable State statute”

means a statute providing for the entry of an order, judgment, or decree described in paragraph (2)(A) which is enacted by—

- (A) the State in which the payee of the structured settlement is domiciled, or
 - (B) if there is no statute described in subparagraph (A), the State in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130 [26 U.S.C. § 130]) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business.
- (4) Applicable State court. For purposes of this section—
- (A) In general. The term “applicable State court” means, with respect to any applicable State statute, a court of the State which enacted such statute.
 - (B) Special rule. In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.
- (5) Qualified order dispositive. A qualified order shall be treated as dispositive for purposes of the exception under this subsection.
- (c) Definitions. For purposes of this section—
- (1) Structured settlement. The term “structured settlement” means an arrangement—

- (A) which is established by—
 - (i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2) [26 U.S.C. § 104(a)(2)], or
 - (ii) agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1) [26 U.S.C. § 104(a)(1)], and
- (B) under which the periodic payments are—
 - (i) of the character described in subparagraphs (A) and (B) of section 130(c)(2) [26 U.S.C. § 130(c)(2)], and
 - (ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130 [26 U.S.C. § 130].
- (2) Structured settlement payment rights. The term “structured settlement payment rights” means rights to receive payments under a structured settlement.
- (3) Structured settlement factoring transaction.
 - (A) In general. The term “structured settlement factoring transaction” means a transfer of structured settlement pay-

ment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

- (B) Exception. Such term shall not include—
 - (i) the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or
 - (ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.
- (4) Factoring discount. The term “factoring discount” means an amount equal to the excess of—
 - (A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over
 - (B) the total amount actually paid by the acquirer to the person from whom such

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structured settlement payments are acquired.

- (5) Responsible administrative authority. The term “responsible administrative authority” means the administrative authority which had jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.
- (6) State. The term “State” includes the Commonwealth of Puerto Rico and any possession of the United States.
- (d) Coordination with other provisions.
- (1) In general. If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) [26 U.S.C. §§ 72, 104(a)(1), 104(a)(2), 130, and 461(h)] were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130 [26 U.S.C. § 130]) in any taxable year.
- (2) No withholding of tax. The provisions of section 3405 [26 U.S.C. § 3405] regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

TEXAS STRUCTURED SETTLEMENT PROTECTION ACT

- **Sec. 141.001. Short Title**

This chapter may be cited as the Structured Settlement Protection Act.

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.

- **Sec. 141.002. Definitions**

In this chapter:

(1) ‘Annuity issuer’ means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) ‘Court’ means:

(A) the court of original jurisdiction that authorized or approved a structured settlement; or

(B) if the court that authorized or approved the structured settlement no longer has jurisdiction to approve a transfer of payment rights under the structured settlement under this chapter, a statutory county court, a statutory probate court, or a district court located in the county in which the payee resides.

(3) ‘Dependents’ includes a payee’s spouse, minor children, and all other persons for whom the payee is legally obligated to provide support, including alimony.

(4) ‘Discounted present value’ means the present value of future payments determined by discounting the payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as

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issued by the United States Internal Revenue Service.

(5) 'Gross advance amount' means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration.

(6) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(7) 'Interested party' means, with respect to any structured settlement:

(A) the payee;

(B) any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;

(C) the annuity issuer;

(D) the structured settlement obligor; and

(E) any other party that has continuing rights or obligations under the structured settlement.

(8) 'Net advance amount' means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 141.003(5).

(9) 'Payee' means an individual who is receiving tax-free payments under a structured settlement and proposes to transfer payment rights under the structured settlement.

(10) 'Periodic payments' includes both recurring payments and scheduled future lump-sum payments.

(11) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of Section 130, Internal Revenue Code of 1986 (26 U.S.C. Section 130), as amended.

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement.

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim.

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) 'Structured settlement payment rights' means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if:

(A) the payee is domiciled in or the domicile or principal place of business of the structured

settlement obligor or the annuity issuer is located in this state;

(B) the structured settlement agreement was authorized or approved by a court located in this state; or

(C) the structured settlement agreement is expressly governed by the laws of this state.

(17) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of the court.

(18) 'Transfer' means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration, except that the term does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to the insured depository institution, or its agent or successor in interest, or to enforce the blanket security interest against the structured settlement payment rights.

(19) 'Transfer agreement' means the agreement providing for a transfer of structured settlement payment rights.

(20) 'Transfer expenses' means all the expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including court filing

fees, attorney's fees, escrow fees, lien recording fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary, except that the term does not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(21) 'Transferee' means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 578, § 1, eff. Sept. 1, 2003.

● **Sec. 141.003. Required Disclosures to Payee**

At least three days before the date on which the payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type at least 14 points in size, that states:

- (1) the amounts and due dates of the structured settlement payments to be transferred;
- (2) the aggregate amount of the payments;
- (3) the discounted present value of the payments to be transferred, which shall be identified as the 'calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities,' and the amount of the Applicable Federal Rate used in calculating the discounted present value;
- (4) the gross advance amount;

- (5) an itemized listing of all applicable transfer expenses, other than attorney's fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of those expenses;
- (6) the net advance amount;
- (7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.

● **Sec. 141.004. Approval of Transfers of Structured Settlement Payment Rights**

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

- (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.

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.

● **Sec. 141.005. Effects of Transfer of Structured Settlement Payment Rights**

Following a transfer of structured settlement payment rights under this chapter:

- (1) the structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;
- (2) the transferee shall be liable to the structured settlement obligor and the annuity issuer:
 - (A) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the parties as a consequence of the transfer; and
 - (B) for any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with this chapter;

- (3) the transferee shall be liable to the payee:
 - (A) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the payee as a consequence of the transfer; and
 - (B) for any other liabilities or costs, including reasonable costs and attorney's fees, arising as a consequence of the transferee's failure to comply with this chapter;
- (4) neither the structured settlement obligor nor the annuity issuer may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and
- (5) any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.

● **Sec. 141.006. Procedure for Approval of Transfers**

- (a) An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in the court.
- (b) At least 20 days before the date of the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 141.004, the transferee shall file with the court and serve on all interested parties

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a notice of the proposed transfer and the application for authorization, including with the notice:

- (1) a copy of the transferee's application;
 - (2) a copy of the transfer agreement;
 - (3) a copy of the disclosure statement required under Section 141.003;
 - (4) a listing of each of the payee's dependents, together with each dependent's age;
 - (5) notice that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and
 - (6) notice of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed to be considered by the court.
- (c) Written responses to the application under Subsection (b)(6) must be filed on or after the 15th day after the date the transferee's notice is served.
- (d) If the application under this chapter for approval of a transfer of structured settlement payment rights includes a written request by the payee to conceal from public inspection the personally identifiable information of the payee and the court and each interested party required to receive notice under Subsection (b) receive complete, unredacted copies of the application, other

pleadings, and any order in the time provided by Subsection (b), as applicable:

- (1) in any application, other pleadings, or any order filed or submitted, the court shall permit the full redaction of the name of the payee, the address of the payee, and other information that could reasonably be used to determine the identity or address of the payee, including the names of dependents, family members, and beneficiaries; and
- (2) with respect to any order issued approving or denying the transfer of structured settlement payment rights:
 - (A) a copy of the order, with the information described by Subdivision (1) redacted, shall be filed as part of the public record;
 - (B) at the same time as the filing under Paragraph (A), an unredacted copy of the order shall be issued under seal and shall be provided to the transferee and each interested party entitled to notice under Subsection (b); and
 - (C) not earlier than six months after the date the order is issued, the court on its own initiative may, or on the motion of any person including a member of the general public shall, unseal the unredacted order and make the order part of the public record.
- (e) Except as provided by this subsection, Rule 76a, Texas Rules of Civil Procedure, applies to all court proceedings and filings under this chapter.

A party is not required to comply with that rule in order to redact the payee's personally identifiable information under Subsection (d)(1) or for the purpose of issuing an unredacted copy of the order under seal under Subsection (d)(2).

Enacted by Acts 2001, 77th Leg., ch. 96 (S.B. 277), § 1, effective September 1, 2001; am. Acts 2017, 85th Leg., ch. HB3356 (H.B. 3356), § 1, effective June 15, 2017.

● **Sec. 141.007. General Provisions; Construction**

(a) The provisions of this chapter may not be waived by any payee.

(b) Any transfer agreement entered into by a payee who resides in this state must provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. The transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) Transfer of structured settlement payment rights may not extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and agreed to maintain procedures reasonably satisfactory to the structured settlement obligor and the annuity issuer for:

(1) periodically confirming the payee's survival;
and

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- (2) giving the structured settlement obligor and the annuity issuer prompt written notice in the event of the payee's death.
- (d) A payee who proposes to make a transfer of structured settlement payment rights may not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of this chapter.
- (e) Nothing contained in this chapter may be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into before the effective date of this chapter is valid or invalid.
- (f) Compliance with the requirements in Section 141.003 and fulfillment of the conditions in Section 141.004 are solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

Added by Acts 2001, 77th Leg., ch. 96, § 1, eff. Sept. 1, 2001.