

**Reversed and Rendered and Memorandum Opinion filed August 28, 2025**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-24-00224-CV**

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**PILOT TRAVEL CENTERS LLC, Appellant**

**V.**

**M FELDER TRUCKING, LLC AND MARK FELDER, Appellee**

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**On Appeal from the 269th District Court  
Harris County, Texas  
Trial Court Cause No. 2020-74420**

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**MEMORANDUM OPINION**

This lawsuit arises from Appellant Pilot Travel Centers LLC’s (“Pilot”) alleged failure to facilitate the provision of nonsubscriber insurance for M Felder Trucking, LLC (“Felder Trucking”) to cover its driver Mark Felder (“Felder”) for an on-the-job injury. By four issues on appeal, Pilot challenges the trial court’s judgment against it on Felder Trucking’s claims for “breach of contract and/or fraud,” and the trial court’s award of exemplary damages to Felder and Felder Trucking. Felder and Felder Trucking raise four issues by cross-appeal.

The record shows that, as a matter of law, Felder’s injury would not have been covered by the nonsubscriber insurance policy in question. Thus, there is no evidence of the causation element of a fraud or contract-breach claim against Pilot. As a result, it is unnecessary for this Court to reach the merits of the four issues Felder and Felder Trucking raise by cross-appeal against Pilot. Accordingly, we reverse the trial court’s judgment and render a take-nothing judgment in favor of Pilot.

## I. FACTUAL AND PROCEDURAL BACKGROUND

### Felder’s Contractor Agreement with Pilot

Felder was a Pilot employee who worked as a truck driver but wanted greater control over his daily work and schedule. So, he contracted with Pilot to drive and deliver crude oil as an independent contractor. The parties dispute whether the Independent Contractor Operator Agreement (“Contractor Agreement”) between Pilot and Felder Trucking required Pilot to obtain nonsubscriber insurance<sup>1</sup> that covered Felder, and whether Pilot fraudulently entered into Contractor Agreements with Felder and Felder Trucking, respectively, without intent to perform a promise

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<sup>1</sup> A nonsubscriber is an employer who elects not to obtain workers’ compensation insurance coverage as permitted under the Texas Workers’ Compensation Act. *See* Tex. Lab. Code § 406.002 (providing that “an employer may elect to obtain workers’ compensation insurance coverage” and thus be “subject to” the Texas Workers’ Compensation Act). Nonsubscriber status subjects the employer to common-law negligence claims and precludes certain defenses that would otherwise be available under the Act. *See Kroger Texas, L.P.*, 465 S.W.3d 193, 200 (Tex. 2015) (citing Tex. Lab. Code § 406.033(a)). In this case, “nonsubscriber insurance” refers to an employer’s liability insurance policy a nonsubscriber offers its employee that may have similarities to workers’ compensation insurance, but which is a different type of policy. *See e.g., Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 656 (Tex. 2008) (recognizing workers’ compensation insurance and employer’s liability insurance are different types of insurance policies); *ExxonMobil Corp. v. Alvarez*, 693 S.W.3d 794, 804 (Tex. App.—Houston [14th Dist.] 2024, no pet.) (same). The Texas Occupational Injury/Employer’s Liability Policy in the record provided certain coverage benefits for “Covered Persons” under the categories of accidental death and dismemberment, medical expense, weekly indemnity, and limited employers liability.

to obtain nonsubscriber insurance that covered Felder. Felder and Felder Trucking also maintain that Pilot breached their respective Contractor Agreements by its failure to obtain nonsubscriber insurance.

At a new-contractor orientation in September 2019, Pilot's representative Laurel Harwood described insurance coverages Pilot offered to facilitate for its independent contractors including an occupational-accident insurance policy and a Texas nonsubscriber insurance policy. The Contractor Agreement provided that if a Texas-based Pilot contractor waived workers' compensation insurance, the contractor could provide occupational-accident insurance for contractors who were owner-drivers and occupational-injury/employer's liability (i.e., nonsubscriber) insurance coverage for the contractor's employees.<sup>2</sup>

Next to each policy listed on the sample or template Contractor Agreement, there was space for the contractor to "[i]nitial 'Yes' to request coverage." The page further showed that coverage under the nonsubscriber insurance policy, if issued, would be charged on a "per employee" basis, whereas coverage under the Occupational Accident Policy would be charged at a rate irrespective of the number of employees.

According to Felder, in addressing this section of the Contractor Agreement form at the orientation, Pilot's representative Harwood stated, "if you check the box you can get it," but "you [cannot] come back and change it." Harwood testified that she did not recall saying this at the orientation.

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<sup>2</sup> Specifically, the Contractor Agreement stated a Pilot contractor who elected to waive workers' compensation coverage (using the specified waiver procedure in the Contractor Agreement) was required to either (a) obtain and maintain occupational accident insurance coverage for the contractor's owner-driver(s) and occupational injury/employer's liability insurance for all of the contractor's employees; or (b) occupational injury/employer's liability coverage for both contractor's owner-driver(s) and all of contractor's employees, if any.

The slide deck used during the orientation also addressed Appendix E to the template Contractor Agreement, which included a consent form that, once signed, would authorize Pilot to accept coverage under the nonsubscriber insurance policy on behalf of the contractor. In reference to Appendix E, the slide deck read, “Sign if you ever intend to add drivers.”

The day after the orientation, acting individually, Felder executed a Contractor Agreement with Pilot without reading the Contractor Agreement. However, under the express terms of the Contractor Agreement, Felder “recognize[d] that [Pilot] is not in the business of selling insurance,” and that “any insurance coverage requested by [Felder] from [Pilot] is subject to all of the terms, conditions, and exclusions of the actual policy.” In weekly pay statements Pilot issued to Felder, it subtracted premiums for the occupational-accident insurance, but not the nonsubscriber insurance for which it listed a zero premium. Felder testified that he did not read the weekly statements, though he received them.

### **Felder Trucking’s Contractor Agreement with Pilot**

Several months after becoming an independent contractor, in March 2020, Felder assigned his Contractor Agreement to Felder Trucking so that Felder Trucking became a contractor for Pilot. Felder and his wife Myra Felder created and co-owned Felder Trucking. They planned to eventually hire other drivers, but they never did.

The initial Contractor Agreement between Pilot and Felder was ultimately terminated and Pilot and Felder Trucking executed an updated Contractor Agreement. The initial and updated Contractor Agreements did not differ materially in any respect at issue in this appeal.

Felder executed the updated Contractor Agreement on behalf of Felder

Trucking as its managing member. Again, Felder selected occupational-accident and nonsubscriber insurance on the Contractor Agreement form without reading the Contractor Agreement, and without reading his weekly statements. The weekly statements showed no premium was collected from Felder's wages for nonsubscriber insurance.

### **Mark Felder's Accident and the Caldwell County Lawsuit**

In May 2020, Felder stood on the wet tire of his work truck to clean bugs off the front windshield. He fell backward and was injured. Pilot initiated a claim under the occupational-accident insurance which covered Felder's medical bills and paid him \$60,000 in disability benefits.

In a separate lawsuit filed in Caldwell County, Texas Felder sued his own company, Felder Trucking, for not providing him a long-handled squeegee to clean his windshield without standing on the tire. The parties to that suit reached an agreed judgment on damages. Myra testified she could not say who she wanted to win that lawsuit and admitted the suit was filed to establish damages for this lawsuit.

### **The Present Lawsuit and Coverage under the Nonsubscriber Policy**

Felder and Felder Trucking sued Pilot and Pilot's insurance broker Willis Towers Watson SE, Inc. ("Willis") alleging fraud, breach of fiduciary duty, and breach of contract for failure to obtain the nonsubscriber insurance elected on the Contractor Agreement form.

A sample copy of the nonsubscriber policy was admitted in evidence at trial. It is titled Texas Occupational Injury/Employer's Liability Policy and it provided certain benefits for a "Covered Person" who was accidentally injured while working.

The Named Insured under the policy would be an employer who obtained the policy and whose name was listed on the policy Declarations. A Covered Person

would be a Named Insured's employee defined as follows:

**Covered Person** means a person who is employed in your regular business and receives his or her pay on a regular basis by means of a salary or wage directly from you and whose salary or wage is subject to all applicable state and federal income taxes. A **Covered Person** must be employed by you in your regular business at the time and place of the **Accident** causing **Bodily Injury** and must be acting within his or her **Scope of Employment**. A **Covered Person** does not include sub-contractors or independent contractors, whether they are employed by you on an occasional, part-time or full-time basis. A **Covered Person** does not include a third-party agent.

Felder testified that Felder Trucking did not pay anyone directly and agreed that as a result, there would not be a "Covered Person" under the above definition. Felder testified further that Felder Trucking paid no employment taxes and never paid any Social Security or Medicare tax on Felder's behalf. As shown on Felder's Internal Revenue Service Form 1040, Schedule C for 2020 ("Profit or Loss from Business"), Felder Trucking did not pay anyone any wages in 2020. Felder testified that Pilot paid him by depositing funds into his personal bank account and a bank statement corroborating this for May and June 2020 was admitted in evidence. Felder added that Pilot paid him "by a 1099 and not [as] a W-2 employee."

### **Outcome of the Trial in this Lawsuit**

After a three-week trial, a jury returned a verdict in favor of plaintiffs-appellees on their claims against Pilot. The trial court entered judgment on the jury's verdict awarding Felder \$0 actual damages and \$300,000 in exemplary damages for fraud; awarding Felder Trucking \$1,252,303.56 for "fraud/breach of contract" and \$500,000 in exemplary damages for fraud.

The trial court entered judgment on December 31, 2023, based on the jury's verdict. Willis prevailed at trial and a take-nothing judgment was entered in favor of Willis on plaintiffs-appellees claims against Willis. The trial court also overruled

Pilot's motion for new trial. On February 8, 2024, the trial court modified the final judgment with regard to costs, assessing Willis's taxable costs against Felder and Felder Trucking. This appeal and cross-appeal followed.

## **II. ISSUES PRESENTED**

Pilot raises the following four issues on appeal:

1. Did the trial court err as a matter of law by entering judgment on "fraud/breach of contract" when these were inconsistent theories of relief and appellees failed to make an election of remedies?
2. Should this Court reverse and render judgment on Felder Trucking's fraud claim against Pilot? As sub-issues, Pilot asks:
  - a. Did the trial court err by awarding Felder exemplary damages when the jury did not find Pilot's fraud caused him any actual damages?
  - b. Does Felder Trucking lack standing to assert a fraud claim against Pilot because the claimed misrepresentations were made to Felder individually, several months before Felder Trucking was formed as a business entity?
  - c. Does Felder Trucking's fraud claim fail because there is no evidence of a false representation?
  - d. Does Felder Trucking's fraud claim fail because there is no evidence of justifiable reliance?
  - e. If Felder Trucking's fraud claim fails, must the jury's award of \$500,000 in exemplary damages to Felder Trucking be reversed?
3. Should this Court reverse and render judgment on Felder Trucking's breach-of-contract claim against Pilot?
4. Do each of Felder Trucking's claims fail for lack of causation and/or damages because
  - a. None of Felder's injuries would have been covered under a nonsubscriber insurance policy even if coverage under that policy would have extended to Felder Trucking (because Felder was an independent contractor)?

- b. Felder Trucking did not owe a legal duty to protect its independent contractor Felder from obvious risks by providing him a long-handled squeegee to safely reach and clean bugs from the windshield of his truck?
- c. There is no evidence of Felder Trucking's damages and alternatively, the trial court erred by admitting testimony about Felder Trucking and Felder's collusive agreed judgment on damages, such that, at a minimum, a new trial is required?

As cross-appellants, Felder and Felder Trucking raise the following four issues:

1. When the trial court signed its modified final judgment had its plenary power expired and if so, was the trial court's change to the judgment—making Felder and Felder Trucking liable to pay Willis's court costs—a clerical change, or a judicial change to the judgment?
2. Did the trial court err by ordering successful plaintiffs-appellees Felder and Felder Trucking to bear any taxable costs in the final judgment?
3. Did the trial court reversibly err by not giving a spoliation instruction regarding evidence Felder and Felder Trucking believe Pilot destroyed?
4. Did the trial court reversibly err by refusing to admit evidence of other Pilot owner-drivers who elected nonsubscriber insurance Pilot facilitated but who did not receive the coverage because they did not have truck drivers they employed?

### **III. ANALYSIS**

We begin our analysis with Pilot's Issue 4.a. on appeal because it is dispositive. Pilot argues that because Felder's injuries would not have been covered under the nonsubscriber policy Pilot would have facilitated, Pilot's alleged fraud and breach of contract in not procuring the insurance policy could not have caused Felder or Felder Trucking any harm. Pilot argues there is no evidence in the record of a vital fact—that Felder was an employee of Felder Trucking whom Felder Trucking paid directly, as was necessary to be a "Covered Person" under the nonsubscriber

policy. Pilot takes the position that the evidence at trial proved the opposite of a vital fact—that Felder was not a Felder Trucking employee to whom Felder Trucking paid wages directly. We agree.

### **A. Error Preservation**

At the outset, we note that Pilot preserved this issue for appellate review. After the close of evidence before the jury was instructed, Pilot moved for a directed verdict on the basis that the plaintiffs did not prove coverage because Felder was not a “Covered Person” under the nonsubscriber policy. Pilot argued that Felder Trucking did not pay Felder wages directly. Although the record does not show that Pilot objected to jury question three which asked the jury whether Felder and his injury would have been covered under the nonsubscriber policy, Pilot did move for judgment notwithstanding the verdict after the jury answered this question affirmatively.

In its motion for judgment notwithstanding the verdict, Pilot asked the trial court to disregard the answer to question three because the evidence proved as a matter of law that Felder was not a Covered Person under the nonsubscriber policy. It is well settled that an attack based on legal sufficiency of evidence to support a jury finding may be preserved for appeal in any of five ways: (1) objection to the charge; (2) motion for directed verdict; (3) motion to disregard the finding; (4) motion for judgment notwithstanding the verdict; or (5) motion for new trial. *Hutchison v. Pharris*, 158 S.W.3d 554, 562 (Tex. App.—Fort Worth 2005, no pet.) (citing Tex. R. Civ. P. 279; *Cecil v. Smith*, 804 S.W.2d 509, 510–11 (Tex. 1991)); *see also Powell v. Grijalva*, No. 14–19–00080–CV, 2020 WL 4097274, at \*3 (Tex. App.—Houston [14th Dist.] July 21, 2020, no pet.) (mem. op.) (citing *Cecil* and holding a no-evidence point in a motion to disregard the jury’s answer to a vital fact issue preserves the complaint for appeal). Thus, we will review Pilot’s Issue 4.a. on

appeal.

## **B. Standards of Review**

When a finding is challenged for legal sufficiency or no evidence, we review the evidence in the light most favorable to the finding and indulge every reasonable inference that would support it. *Khechana v. El-Wakil*, 661 S.W.3d 425, 431 (Tex. App.—Houston [14th Dist.] 2023, no pet.) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005)). We credit favorable evidence if a reasonable fact finder could, and disregard contrary evidence unless a reasonable fact finder could not. *Id.* The evidence is legally sufficient if it would enable reasonable and fair-minded people to reach the verdict under review. *Id.* The evidence is legally insufficient to support a jury finding when ‘(1) the record discloses a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence establishes conclusively the opposite of a vital fact.’ *United Rentals N. Am., Inc. v. Evans*, 668 S.W.3d 627, 640 (Tex. 2023) (quoting *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018)).

The existence of coverage under an insurance policy is a question of law which this Court reviews de novo. *Walker v. Travelers Indem. Co.*, No. 14–07–00238–CV, 2008 WL 123869, at \*3 (Tex. App.—Houston [14th Dist.] Jan. 15, 2008, pet. denied) (mem. op.) (citing *Utica Nat’l Ins. Co. v. Am. Indem. Co.*, 141 S.W.3d 198, 202 (Tex. 2002)). The general rules of contract construction govern insurance-policy interpretation. *Id.* (citing *State Farm Life Ins. Co. v. Beaston*, 907 S.W.2d 430, 433 (Tex.1995)).

### C. Felder was not a Covered Person under the Nonsubscriber Policy

To prove common-law fraud and breach of contract, a plaintiff must prove causation-in-fact which includes but-for causation. *Khechana*, 661 S.W.3d at 431; *see also Signature Indus. Servs., LLC v. Int'l Paper Co.*, 638 S.W.3d 179, 187 (Tex. 2022) (discussing the direct causal link that must be proven to recover contract damages); *Sasson on behalf of 78 Acres, LP & Inwood Partners, LP v. Schatte*, No. 01–14–00633–CV, 2015 WL 1967526, at \*3 (Tex. App.—Houston [1st Dist.] Apr. 30, 2015, pet. denied) (mem. op.) (discussing the cause-in-fact element of a fraud claim). In the context of a claim for failure to obtain insurance, to prove cause in fact, the plaintiff must prove that its injury would have been covered under the insurance policy in question had the policy been obtained. *Metro Allied Ins. Agency, Inc. v. Lin*, 304 S.W.3d 830, 836 (Tex. 2009) (citing *Stinson v. Cravens, Dargan & Co.*, 579 S.W.2d 298, 299–300 (Tex. App.—Dallas 1979, no writ)); *see also TotalEnergies Petrochemicals & Ref. USA, Inc. v. Kinder Morgan Petcoke, LP*, 658 S.W.3d 647, 678 n.81 (Tex. App.—Houston [14th Dist.] 2022, pet. denied).

Here, assuming without deciding Pilot had a duty to procure the nonsubscriber insurance policy, the evidence shows as a matter of law that Felder was not a Covered Person under the nonsubscriber policy. The definition of a Covered Person under the nonsubscriber policy unambiguously required Felder to be employed by Felder Trucking and receive his pay on a regular basis by means of a salary or wage Felder Trucking paid directly to Felder:

**Covered Person** means a person who is employed in your regular business and receives his or her pay on a regular basis by means of a salary or wage directly from you and whose salary or wage is subject to all applicable state and federal income taxes. . . .

No insurance-industry expert offered an expert opinion on coverage at trial, and

there was no expert testimony on whether Felder was a Covered Person.<sup>3</sup> The jury heard testimony from appellees' expert Caldwell Fletcher, an attorney with a background in workers' compensation cases. Fletcher testified based on a definition from the Social Security Administration that a wage is all payment for services one performs for his employer.

But the undisputed evidence from Felder and Felder Trucking showed Felder Trucking paid no one directly and Felder was not a Covered Person under the nonsubscriber policy. The testimony shows this is how Mark and Myra Felder chose to set up their business, Felder Trucking. In his testimony, Felder agreed that as a result of Felder Trucking not paying anyone, there would not be a "Covered Person" under the above definition.

Felder testified further that Felder Trucking paid no employment taxes and never paid any Social Security or Medicare tax on Felder's behalf. As shown in Felder's Internal Revenue Service Form 1040, Schedule C for 2020 ("Profit or Loss from Business"), Felder Trucking did not pay anyone any wages in 2020. Instead, in May 2020, when the accident occurred, Pilot paid Felder by depositing funds into his personal bank account. Therefore, as a matter of law, the evidence proved Felder could not have been a Covered Person under the nonsubscriber policy and Felder and Felder Trucking could not prove the causation element of their fraud and contract claims. *See Lin*, 579 S.W.2d at 299–300.

The evidence is legally insufficient to support the jury's answer to question three and we sustain Pilot's Issue 4.a. on appeal. *See City of Keller*, 168 S.W.3d at 810; *see also CDI Eng'g Grp., Inc. v. Admin. Exch., Inc.*, 222 S.W.3d 544, 551 (Tex.

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<sup>3</sup> The trial court excluded Caldwell Fletcher's opinions on whether Felder was a Covered Person under the nonsubscriber policy and whether Felder Trucking paid Felder directly because these are questions of law. Likewise, appellees' other expert witness Joela Sanchez, a certified rehabilitation counselor, did not offer opinion testimony on these points.

App.—Houston [14th Dist.] 2007, pet. denied) (reversing and rendering judgment because legally insufficient evidence supported jury’s finding and undisputed evidence proved the opposite of a vital fact). In light of our disposition of this issue, it is unnecessary<sup>4</sup> for this Court to reach the merits of all of the other issues raised in this appeal and cross-appeal and we overrule those issues.

#### IV. CONCLUSION

Having sustained Pilot’s Issue 4.a. on appeal, and having overruled all of the other issues raised in this appeal and cross-appeal, we reverse the trial court’s judgment and render judgment the Mark Felder and M Felder Trucking, LLC take nothing by way of their lawsuit against Pilot Travel Centers LLC.

/s/ Chad Bridges  
Justice

Panel Consists of Chief Justice Christopher and Justices Hart and Bridges.

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<sup>4</sup> “If the issues are settled, the court should write a brief memorandum opinion no longer than necessary to advise the parties of the court's decision and the basic reasons for it.”  
Tex. R. App. P. 47.4