Affirmed as Modified and Memorandum Opinion filed November 13, 2025

In The

Fourteenth Court of Appeals

NO. 14-24-00468-CV

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Appellant / Cross-Appellee

V.

LANCE BELLIS, Appellee / Cross-Appellant

On Appeal from the County Court at Law No. 4 and Probate Court
Brazoria County, Texas
Trial Court Cause No. CI60388

MEMORANDUM OPINION

This suit arises from a dispute between appellee/cross-appellant Lance Bellis and his insurer, appellant/cross-appellee State Farm Mutual Automobile Insurance Company, as to the amount due to Lance Bellis under his underinsured motorist (UIM) coverage. On appeal, State Farm challenges (1) the trial court's award of prejudgment interest in excess of the UIM policy limits and (2) the sufficiency of the evidence to support the jury's awards for past and future lost earning capacity and past medical expenses.

In a single issue on cross-appeal, Bellis argues that the trial court abused its discretion by failing to award attorney's fees.

Because we determine that (1) legally and factually sufficient evidence supports the portions of damages challenged by Bellis; (2) the trial court erred in awarding prejudgment interest; and (3) the trial court properly denied Bellis's request for attorney's fees, we modify the trial court's judgment to remove the award of prejudgment interest and affirm the judgment as modified.

Background

In August 2019, Bellis's truck struck another vehicle driven by Victor Pedraza, Jr. after Pedraza made an unprotected left turn in front of Bellis's vehicle. Bellis alleged that Pedraza's negligence caused the accident and that he suffered property damage and bodily injury as a result. Most relevant here, Bellis claimed that he suffered a left shoulder injury and required surgery.

At the time of the accident, Bellis had a policy of insurance with State Farm. Bellis's policy included UIM coverage with policy limits of $100,000. Bellis filed suit against Pedraza for negligence, and he also asserted claims against State Farm for bad faith and violations of certain provisions of the Texas Insurance Code and Deceptive Trade Practices Act. Bellis further sought declarations concerning Pedraza's fault; the damages incurred by Bellis, including attorney's fees and costs; and issues of coverage.

The trial court ultimately ordered that the case would be tried in two parts: first, a jury trial to determine the amount, if any, that Bellis was legally entitled to recover from Pedraza; and later, a second jury trial to adjudicate Bellis's extracontractual claims against State Farm. After Bellis settled with Pedraza for his policy limits, State Farm and Bellis proceeded to trial on the first phase of the case. State Farm disputed that the subject accident caused Bellis's left shoulder injury and the subsequent surgery, as well as the extent of Bellis's damages.

At trial, Bellis testified about the accident and the nature of his injuries. He stated that the day after the accident, he felt bruised and sore, particularly in his neck and shoulder. He sought treatment with Dr. Robert Killian, who noted that Bellis had a prior rotator cuff injury but recovered with physical therapy. According to Dr. Killian's notes, Bellis's shoulder was "fully functional" before the subject accident. Dr. Killian ordered an MRI of the left shoulder, which showed a retracted subscapularis tear in the left shoulder. He then referred Bellis to a surgeon, who wanted to operate right away.

Concerned with the time he would need to be off work following surgery, Bellis sought another opinion and began treating conservatively with Dr. Marcos Masson. Bellis also saw a chiropractor, received an injection, and tried massage therapy and physical therapy before electing to undergo surgery with Dr. Masson in November 2021. According to Bellis, Dr. Masson originally anticipated that the surgery would take about an hour, but it took much longer. Dr. Masson kept Bellis off work completely for five months before releasing him to return to work light duty. By the time of trial, Dr. Masson had released Bellis to return to work full duty.

Bellis denied suffering any new injuries between the August 2019 accident and November 2021 surgery. Regarding his prior injury, Bellis testified that he injured his left shoulder in 2011. He explained that he completed physical therapy for the shoulder and was cleared to return to full duty work. Bellis stated that he disclosed the prior left shoulder treatment to both Dr. Killian and Dr. Masson.

Bellis's wife Heather also testified about the prior injury, stating that Bellis injured his left shoulder in 2011 when they were involved in a car accident. According to Heather, Bellis's left shoulder was fully functional prior to the August 2019 accident.

The jury also heard deposition testimony from Dr. Masson, an orthopedic surgeon specializing in shoulder surgery. Dr. Masson testified that he was somewhat confused by Bellis's initial MRI results as compared to his physical examination, so he ordered further testing. An MR arthrogram confirmed tearing of the subscapularis tendon, but not a complete tear. The results also noted inflammation of the superior rotator cuff and a biceps tendon tear. Dr. Masson initially felt Bellis could avoid surgery, but when his pain continued, Bellis elected to proceed.

Dr. Masson testified that Bellis's surgery revealed a "massive rotator cuff tear," a different tear than was described in Bellis's prior imaging studies, including MRIs from 2011 and 2012. Dr. Masson testified that the tear was not "a decade old," because he was able to repair it during surgery. He explained that if a rotator cuff is completely torn and retracted, the tendon begins to atrophy and die after about six months. According to Dr. Masson, if the tear had been ten years old, then Bellis would have needed a shoulder replacement instead. Dr. Masson ultimately opined that it was within reasonable medical probability that the August 2019 motor vehicle accident caused Bellis's shoulder injury. Dr. Masson testified that there was "no question" that Bellis's 2019 injury was a new injury, concluding, "I don't think it's related to the [injury] ten years earlier. Not at all."

Following trial, the jury determined that Pedraza was one hundred percent at fault and that Bellis suffered $210,000.01 in damages. The trial court signed a final judgment ordering State Farm to pay Bellis $100,000, plus an unspecified amount of prejudgment and post-judgment interest at a rate of 5.5 percent and denying Bellis's request for attorney's fees. This appeal followed.

State Farm's Appeal

A. Sufficiency Challenges[1]

In its second issue, State Farm argues that the evidence presented at trial was legally and factually insufficient to support the jury's awards for past and future lost earnings capacity and past medical expenses.[2] More specifically, State Farm contends that the evidence confirmed that Bellis had a prior left shoulder injury but did not demonstrate that he suffered a new or different injury to that shoulder in the August 2019 accident.[3]

1. Standard of Review

When reviewing the legal sufficiency of the evidence, we consider the evidence in the light most favorable to the challenged finding and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 821–22, 827 (Tex. 2005); *see also Graham Cent. Station, Inc. v. Peña*, 442 S.W.3d 261, 263 (Tex. 2014) (per curiam). The evidence is legally sufficient if it would enable a reasonable and fair-minded person to reach the verdict under review. *City of Keller*, 168 S.W.3d at 827. "If the evidence at trial would enable reasonable and fair-minded people to differ in their conclusions, then jurors must be allowed to do

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[1] We address State Farm's sufficiency challenges before its challenge to the award of prejudgment interest because these would afford State Farm greater relief. *See Bradleys' Elec., Inc. v. Cigna Lloyds Ins. Co.*, 995 S.W.2d 675, 677 (Tex. 1999) (per curiam) (citing Tex. R. App. P. 43.3).

[2] The jury awarded Bellis $70,000 for past lost earning capacity, $64,687.50 for future lost earning capacity, and $18,510.65 for past medical expenses.

[3] Essentially, State Farm challenges the causal link between the accident and these damages awarded by the jury; State Farm has not challenged the testimony or evidence quantifying Bellis's loss of past and future earning capacity or his past medical expenses.

so." *Id.* at 822. If the evidence falls within this zone of reasonable disagreement, the reviewing court cannot substitute its judgment for that of the factfinder. *Id.*

In conducting a factual sufficiency review, we examine the entire record, considering all the evidence in favor of and contrary to the challenged findings. *See Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 406–07 (Tex. 1998); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam). When a party challenges the factual sufficiency of the evidence supporting a finding for which it did not have the burden of proof, we may set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Ellis*, 971 S.W.2d at 407; *Nip v. Checkpoint Sys., Inc.*, 154 S.W.3d 767, 769 (Tex. App.—Houston [14th Dist.] 2004, no pet.). The amount of evidence necessary to affirm is far less than the amount necessary to reverse a judgment. *GTE Mobilnet of S. Tex. Ltd. P'ship v. Pascouet,* 61 S.W.3d 599, 616 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

The jury is the sole judge of the credibility of witnesses and the weight to be afforded to their testimony. *Id.* at 615–16. As such, we may not pass upon the witnesses' credibility or substitute our judgment for that of the jury, even if the evidence would also support a different result. *Id.* at 616. If we determine the evidence is factually insufficient, we must detail the evidence relevant to the issue and describe how the contrary evidence greatly outweighs the evidence supporting the verdict; we need not do so when affirming a jury's verdict. *Gonzalez v. McAllen Med. Ctr., Inc.*, 195 S.W.3d 680, 681 (Tex. 2006) (per curiam).

2. Applicable Law

To establish causation in a personal injury case, a plaintiff must "prove that the conduct of the defendant caused an event and that this event caused the plaintiff to suffer compensable injuries." *JLG Trucking, LLC v. Garza*, 466 S.W.3d 157, 162

(Tex. 2015) (quoting *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995)). Expert testimony generally is necessary to establish causation of medical conditions that are "outside the common knowledge and experience of jurors." *Guevara v. Ferrer*, 247 S.W.3d 662, 665 (Tex. 2007); *see also, e.g., Jefferson v. Parra*, 651 S.W.3d 643, 650 (Tex. App.—Houston [14th Dist.] 2022, no pet.). To constitute evidence of causation, a medical expert's opinion must rest in reasonable medical probability. *Crye*, 907 S.W.2d at 499. Whether expert testimony on causation rests on a reasonable medical probability must be determined by the substance and context of the testimony rather than semantics or the use of a particular term or phrase. *Smith v. Landry's Crab Shack, Inc.*, 183 S.W.3d 512, 514 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

However, a plaintiff "is not required to establish causation in terms of medical certainty nor is he . . . required to exclude every other reasonable hypothesis." *Bradley v. Rogers*, 879 S.W.2d 947, 954 (Tex. App.—Houston [14th Dist.] 1994, writ denied). Likewise, "a medical causation expert need not disprove or discredit every possible cause other than the one espoused by him." *Transcon. Ins. Co. v. Crump*, 330 S.W.3d 211, 218 (Tex. 2010) (internal quotation omitted). Only if the evidence presents other plausible causes of the claimed injuries or conditions must the plaintiff offer evidence excluding those causes with reasonable certainty. *JLG Trucking*, 466 S.W.3d at 162.

3. Analysis

State Farm argues that Dr. Masson's testimony attributing Bellis's rotator cuff injury and repair to the August 2019 motor vehicle accident is conclusory. State Farm is correct that "[b]are, baseless opinions will not support a judgment even if there is no objection to their admission in evidence." *City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009). An opinion is conclusory if "no basis for the opinion is offered, or the basis offered provides no support." *Id.* at 818. State Farm contends that Dr. Masson summarily concluded that because the new shoulder tear was found in a post-accident surgery, it must have been related to the accident. State Farm argues that Dr. Masson failed to explain how and why the August 2019 accident caused a new injury and failed to rule out other plausible clauses.

The record does not support State Farm's characterization of Dr. Masson's testimony. As detailed above, Dr. Masson provided a factual basis to support his opinion. Specifically, Dr. Masson based his opinion on the history he received from Bellis, his examination of Bellis, his review of Bellis's imaging studies, and what he discovered during surgery. He also relied on Bellis's reports regarding his lack of pain and ability to work without limitations prior to the August 2019 accident.

Dr. Masson also ruled out other causes—particularly, the prior left shoulder injury. Even when presented with records from the prior injury during his deposition, Dr. Masson maintained that the 2011 injury could not have been the cause of Bellis's post-2019 complaints. Again, Dr. Masson opined that the "massive" tear he observed and repaired during surgery could not have occurred in the 2011 injury, because if it had, it would have been beyond repair. Because Dr. Masson provided a factual basis for his opinions, his testimony was not conclusory. *See Fournier v. Fernandez*, No. 14-24-00009-CV, 2025 WL 2355780, at *3–4 (Tex. App.—Houston [14th Dist.] Aug. 14, 2025, no pet.) (sub. mem. op. on reh'g) (holding, in auto accident case, that treating physician's testimony that accident caused plaintiffs' injuries was not conclusory where doctor based opinions on reported histories, temporal proximity of accident to onset of symptoms, and physical examination); *City of Laredo v. Limon*, No. 04-12-00616-CV, 2013 WL 5948129, at *4 (Tex. App.—San Antonio Nov. 6, 2013, no pet.) (mem. op.) (determining, in auto accident case, that treating physician's testimony that accident caused plaintiff's rotator cuff tear was not conclusory because doctor had factual basis for his opinion, including his examination of plaintiff and review of her medical records).

State Farm also argues that Dr. Masson failed to rule out the possibility that Bellis suffered a new injury between the August 2019 accident and November 2021 surgery. But State Farm has not demonstrated that there was some new injury or event that Dr. Masson should have excluded as a possible cause. *See Fournier*, 2025 WL 2355780, at *4 (noting that despite appellant's efforts to challenge physician's causation opinion, nothing in the record suggested another possible cause for plaintiff's injuries). Further, Dr. Masson testified that each time he saw Bellis, he took a history and questioned him about any new complaints or injuries. Based on the foregoing, we conclude that the evidence was legally sufficient and not factually insufficient to support the jury's causation determination.

We overrule State Farm's second issue.

B. Award of Prejudgment Interest

We next consider State Farm's challenge to the trial court's award of prejudgment interest in excess of the UIM policy limits. The trial court's final judgment ordered State Farm to pay Bellis the policy limits of $100,000, plus prejudgment interest at a rate of 5.5 percent. The trial court's judgment did not specify a dollar amount of prejudgment interest to be awarded or the date upon which interest began to accrue. State Farm argues that Texas supreme court precedent is clear that a UIM insurer does not owe prejudgment interest in excess of the stated policy limits. Bellis contends that the trial court did not abuse its discretion because it merely established the rate of the prejudgment interest that State Farm would owe if the judgment was not paid timely, and the record is silent as to whether State Farm has tendered payment. Bellis also asserts that the issue is not ripe because any prejudgment interest State Farm owes will be determined in the second trial.

There are two types of prejudgment interest available in a UIM case: interest based on the tortfeasor's obligations, which Texas courts refer to as *Cavnar*-type prejudgment interest[4]; and interest based on the insurance company's obligations, known as *Henson*-type prejudgment interest.[5] *See generally Menix v. Allstate Indem. Co*., 83 S.W.3d 877, 879–880 (Tex. App.—Eastland 2002, pet. denied).

In *Cavnar*, the court adopted a rule permitting recovery of prejudgment interest in personal injury, wrongful death, and survival actions, which the Legislature later codified in Texas Financial Code section 304.102. *Cavnar v. Quality Control Parking, Inc.*, 696 S.W.2d 549, 552 (Tex. 1985); *see also* Tex. Fin. Code § 304.102. The Texas supreme court addressed *Cavnar*-type prejudgment interest in the UIM context in *Brainard v. Trinity Universal Insurance Co.*, 216 S.W.3d 809 (Tex. 2006), determining that the insured could recover from his insurer the prejudgment interest *that the underinsured motorist would owe* under section 304.102, up to the UIM policy limits. *Id.* at 815, 817.

By contrast, *Henson* addressed "whether an insurer, obligated to pay [UIM] benefits, owes on top of those benefits prejudgment interest." *Henson v. S. Farm Bureau Cas. Ins. Co.*, 17 S.W.3d 652, 652 (Tex. 2000). The court concluded that because UIM carriers do not breach their contractual obligation to pay until the tortfeasor's liability is established, prejudgment interest begins running from the date such liability is established. *Id.* Helpful here, the *Henson* court distinguished the two types of prejudgment interest:

> There is no doubt that if Henson were recovering directly from [the tortfeasor], the judgment would include prejudgment interest. And the insurers do not dispute that had the trial court awarded prejudgment interest against the tort defendants, the insurers would be obligated to

[4] *Cavnar v. Quality Control Parking, Inc.*, 696 S.W.2d 549 (Tex. 1985).

[5] *Henson v. S. Farm Bureau Cas. Ins. Co.*, 17 S.W.3d 652 (Tex. 2000).

> pay the entire judgment including that portion awarded for prejudgment interest, *to the extent of policy limits*. But here, Henson is seeking to recover prejudgment interest based not on the tortfeasor's obligations, but upon the insurance companies' obligations.

Id. at 653 (emphasis added); *see also Brainard*, 216 S.W.3d at 815 (explaining and distinguishing *Henson*). The *Henson* court ultimately concluded that because the insurer paid the UIM claim promptly after the jury made its liability findings, no contractual duty was breached, and the insured was not entitled to prejudgment interest on top of the UIM benefits he received. 17 S.W.3d at 654.

Here, the jury's award of $210,000.01 exceeded the UIM policy limits of $100,000. Thus, any award of *Cavnar*-type prejudgment interest would be improper. *Cavnar*-type prejudgment interest is inapplicable if the jury's award exceeds the UIM policy limits because the UIM contract only obligates the insurer to pay benefits for damages caused by the tortfeasor which are greater than the tortfeasor's policy limits but within the UIM policy limits. *See Brainard*, 216 S.W.3d at 815 (noting that in *Henson*, prejudgment interest which insured could have recovered from tortfeasor was not at issue because jury's award exceeded UIM policy limit); *Menix*, 83 S.W.3d at 880 (same).

This leaves *Henson*-type prejudgment interest as the only possible basis for the trial court's award. In *Henson*, the court held that an insurer owes prejudgment interest on top of the policy benefits *only if* it withheld those benefits in breach of the insurance contract. 17 S.W.3d at 654. Nevertheless, as Bellis acknowledges, the record is silent as to whether State Farm has tendered its policy limits. Without this, we cannot affirm the trial court's award of prejudgment interest on the basis of *Henson*. *See id.*

Because we conclude that the record does not support the trial court's award of prejudgment interest to Bellis, we sustain State Farm's first issue. We modify the trial court's judgment to delete the award of prejudgment interest. *See* Tex. R. App. P. 43.2(b).

BELLIS'S CROSS APPEAL AS TO ATTORNEY'S FEES

On cross appeal, Bellis argues that the trial court abused its discretion in denying his request for attorney's fees, made pursuant to the Uniform Declaratory Judgments Act (UDJA).[6]

A. Standard of Review and Applicable Law

The recovery of attorney's fees is prohibited unless specifically provided by contract or statute. *MBM Fin. Corp. v. Woodlands Operating Co., L.P.*, 292 S.W.3d 660, 669 (Tex. 2009). Under the UDJA, a trial court may award reasonable and necessary attorney's fees "as are equitable and just." Tex. Civ. Prac. & Rem. Code § 37.009; *see also Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 484 (Tex. 2019) (holding that when trial court is authorized by statute or contract to award attorney's fees, "the party seeking a fee award must prove the reasonableness and necessity of the requested attorney's fees").

As Bellis points out, the Texas supreme court recently held that attorney's fees may be available in a declaratory judgment action seeking to establish the parties' status and responsibilities under a UM/UIM policy. *See Allstate Ins. Co. v. Irwin*, 627 S.W.3d 263, 271–72 (Tex. 2021). Nevertheless, "[s]uch awards are committed to the trial court's sound discretion and reviewed for abuse." *Id.* at 270.

B. Background

Following trial, Bellis filed a motion requesting, among other things, that the trial court determine and award Bellis the attorney's fees attributable to the liability

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[6] State Farm did not file a brief addressing Bellis's cross appeal.

portion of the case. The trial court held a hearing on Bellis's motion. At the beginning of the hearing, counsel for Bellis reminded the trial court that Bellis initially submitted an attorney's fee question as part of his proposed charge but later, counsel for State Farm and Bellis "agreed to hold that issue and not send it to the jury."

State Farm responded that pursuant to the parties' agreed order, the only issue before the jury in the first trial was the amount Bellis was "legally entitled to recover," and nothing more. Further, State Farm argued that the issue of "reasonable and necessary" attorney's fees was a fact question that should have been decided by the jury, citing *Bocquet v. Herring*, 972 S.W.2d 19 (Tex. 1998). State Farm contended that as a result, the trial court lacked authority to determine the amount of attorney's fees due to Bellis, if any. However, State Farm acknowledged that the attorney's fees issue could be determined in the second trial. Ultimately, the trial court advised the parties that it would not award attorney's fees in its judgment on the "car-wreck portion" of the case because it "[did] not believe they were proved up at trial in front of the jury." Nevertheless, the court agreed that Bellis would have a chance to prove his attorney's fees as part of his damages in the second part of the case.[7]

C. Analysis

We agree with State Farm and the trial court that the issue of attorney's fees was a question of fact for the jury. *See Bocquet*, 972 S.W.2d at 21 (noting that questions of whether attorney's fees are reasonable and necessary are both questions of fact for the jury's consideration); *Rohrmoos*, 578 S.W.3d at 489 ("When a

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[7] The court stated: "The way I look at it is, well, it could just be part of your damages in that other claim, right? All the things that your client has had to go through and if you prevail, then that would be part of your damages and we'll prove it up then. Okay?"

claimant wishes to obtain attorney's fees from the opposing party, the claimant must prove that the requested fees are both reasonable and necessary. . . . Both elements are questions of fact to be determined by the fact finder[.]").

Bellis does not argue that the trial court refused to submit the attorney's fees question to the jury; instead, he acknowledges that the question was not submitted pursuant to an agreement between the parties. As a result, the trial court did not abuse its discretion in denying Bellis's request for attorney's fees. *See* Tex. R. Civ. P. 279 ("Upon appeal all independent grounds of recovery or of defense not conclusively established under the evidence and no element of which is submitted or requested are waived."); *Allstate Fire & Cas. Ins. Co. v. Harper*, 706 S.W.3d 460, 466 (Tex. App.—Austin 2024, no pet.) (holding, in UM/UIM case, that trial court abused discretion in awarding attorney's fees under UDJA following trial of liability portion of case; plaintiff waived right to recover attorney's fees by failing to present evidence of fees or submit question of fees to jury); *State Farm Mut. Auto. Ins. Co. v. Nicastro*, No. 05-23-00362-CV, 2025 WL 399674, at *13 (Tex. App.—Dallas Feb. 5, 2025, pet. denied) (mem. op.) (same).[8]

We overrule Bellis's sole issue on cross appeal.

[8] In *Nicastro*, the court noted that although the fees issue could have been tried to the bench, State Farm made a jury demand, and thus "had the right to have all disputed fact questions, including questions relative to attorney's fees, determined by the jury." *State Farm Mut. Auto. Ins. Co. v. Nicastro*, No. 05-23-00362-CV, 2025 WL 399674, at *10 (Tex. App.—Dallas Feb. 5, 2025, pet. denied) (mem. op.). The court concluded that because the plaintiff sought recovery of attorney's fees under the UDJA, it was his burden to submit the question to the jury; State Farm had no obligation to point out the omission of the fees question from the charge. *Id.* at *13. State Farm likewise made a jury demand in this case and maintained its objection to any consideration by the trial court of Bellis's attorney's fees.

Conclusion

We affirm the trial court's judgment as modified.

/s/ Ken Wise
Justice

Panel consists of Justices Wise, Bridges, and Antú.