Case No. 14-25-00063-CV

IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS
AT HOUSTON

MARIA L. RINCON, ROBERTO RINCON, AND JOSE RINCON,

Appellants,

v.

ACE AMERICAN INSURANCE COMPANY; ASPEN SPECIALTY INSURANCE COMPANY, ET AL.,

Appellees.

APPELLEE LEXINGTON INSURANCE COMPANY'S BRIEF

Appeal from the 164th Judicial District Court
of Harris County, Texas
Trial Court No. 2023-04154

Amy B. Boyea
Counsel of Record
Justin R. Chapa
Janie Rios
McDowell Hetherington LLP
1000 Ballpark Way, Suite 209
Arlington, Texas 76011

Counsel for Appellee
Lexington Insurance Company

Oral Argument Not Requested

February 6, 2026

IDENTITY OF PARTIES AND COUNSEL

Under Texas Rules of Appellate Procedure 38.1(a) and 52.3(a), the following is a complete list of all parties, their attorneys, and any other person with any interest in the outcome of this lawsuit:

Appellee/Defendant: Lexington Insurance Company

Counsel to Appellee in this Court:

Amy B. Boyea
Texas Bar No. 24026910
amy.boyea@mhllp.com
Justin R. Chapa
Texas Bar. No. 24074019
justin.chapa@mhllp.com
Janie Rios
Texas Bar No. 24126600
janie.rios@mhllp.com
McDowell Hetherington LLP
1000 Ballpark Way, Suite 209
Arlington, Texas 76011
T: (817) 635-7300

Appellants/Plaintiffs: Maria L. Rincon, Roberto Rincon, and Jose Rincon

Counsel to Appellants/Plaintiffs:

Scott Nichols
Texas Bar No. 14994100
snichols@nwtlaw.com
Zachary W. Thomas
Texas Bar No. 24070739
zthomas@nwtlaw.com
Nichols Weitzner Thomas LLP
2100 Ross Avenue, Suite 2000
Houston, Texas 77006
T: (713) 405-7096

Trial Court:

Hon. Cheryl Elliott Thornton
164th Judicial District Court
Harris County, Texas

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Other Authorities

Rules

STATEMENT OF THE CASE

Appellants' Statement of the Case accurately and adequately describes "the nature of the case . . . , the course of proceedings, and the trial court's disposition of the case." Tex. R. App. P. 38.1(d). Appellee therefore does not provide a separate Statement of the Case. *See* Tex. R. App. P. 38.2(a)(2).

STATEMENT OPPOSING ORAL ARGUMENT

This appeal implicates none of the reasons that typically justify oral argument. It arises from the denial of a motion to dismiss under Rule 91a and raises no novel issues of law. It requires only that the Court consult a limited record (primarily Appellants' operative pleading and three commercial property insurance policies) and confirm that longstanding insurance-law precedent and the unambiguous text of the first-party policies precludes Appellants from seeking coverage under third-party standing doctrines.

Because all dispositive issues raised by this appeal have been authoritatively decided by existing precedent, and the facts and legal arguments are adequately presented in the briefs and record, oral argument would not meaningfully aid the Court in deciding this appeal. *See* Tex. R. App. P. 39.1(b)–(d).

ISSUE PRESENTED

Appellants frame this appeal around four questions, but it presents only one overarching dispositive issue: Did the district court correctly conclude that Appellants lack ***third***-party standing to enforce ***first***-party commercial property insurance policies that were issued to Appellee's insured and that do not expressly or impliedly reference Appellants?

PRELIMINARY STATEMENT

Appellants stored wine at a country club operated by an affiliate of Appellee's insured. Some wine bottles disappeared for reasons unknown, and Appellants obtained an arbitration award and judgment against the affiliate. Also, for reasons unknown, Appellants then opted to seek coverage from (and eventually sue) the insured's commercial ***property*** insurers on their own behalf under derivative-standing principles usually applicable in the general ***liability*** insurance context.

Appellants fundamentally misunderstand the distinction between ***first-party*** property insurance and ***third-party*** liability insurance. The latter may afford third parties like Appellants the ability to sue insurers to recover on judgments obtained against insureds. But because Texas law views first-party policies like those here as personal contracts between an insured and its insurer, longstanding precedent recognizes third-party standing under such policies only if they expressly reflect an intention to confer benefits or rights on a third-party, such as listing the third party as an additional insured or a loss payee.

None of the indicia for third-party standing exists here. Appellants appear nowhere in the policies. The policies cover only "***the interest of the Insured***" in the wine, and among other things, they give solely ***the insured*** the rights to make coverage claims, pick loss-valuation methods, receive loss payments, and sue Lexington. The Court should summarily affirm the district court's judgment.

I. STATEMENT OF FACTS

Appellee Lexington Insurance Company ("Lexington") issued three separate annual commercial property insurance policies to The Howard Hughes Corporation ("Howard Hughes" and the "Insured") that collectively extended coverage to certain Howard Hughes entities from April 1, 2013 to April 1, 2016 (the "Policies"). *See* 1CR 1643–1714 (the "2013 Policy"); 2CR 1873–1936 (the "2014 Policy"); 2CR 2063–2119 (the "2015 Policy"). The covered entities included Carlton Woods Holdings, LLC ("CWH"), which operated a country club near The Woodlands. Appellants were members of the country club and stored bottles of wine in the club's lockers. *See, e.g.*, 1CR 1349.

A. Appellants Sue Lexington's Insured in Arbitration.

Appellants allegedly discovered bottles missing from their collection in 2016. *See, e.g.*, 1CR 1349. The resulting dispute between Appellants and CWH landed in protracted arbitration proceedings. An arbitrator ultimately issued a final award in Appellants' favor in November 2021, 2CR 2838–65, and a state court rendered the award to judgment two months later, 2CR 2867. The award includes $311,265 for the lost wine, $742,306.70 for ***Appellants'*** incurred attorneys fees, pre- and post-judgment interest, and fees and expenses in connection with the arbitration. 2CR 2841–42. Lexington was neither a party to the arbitration proceeding nor a subject of the judgment.

Allegedly unable to collect from CWH because it purportedly distributed its primary assets before arbitration, *see, e.g.*, 2CR 2842, 2858, Appellants then filed claims with certain of CWH's commercial property insurers, contending that Appellants "stood in the shoes" of CWH and could assert claims under commercial property insurance policies to satisfy the damages, fees, and interest assessed against CWH, *see, e.g.*, 1CR 1353–55. The various property insurers denied the claims, *id.*, and Appellants filed the underlying lawsuit in January 2023 based on derivative standing as either judgment creditors of CWH or third-party beneficiaries of the property insurance policies. *See, e.g.*, 1CR 9–10 (Pet.), 1346–47 (Second Am. Pet.).

The insurers variously filed motions to dismiss and for summary judgment, contending in relevant part that Appellants lack standing to enforce the property insurance policies. Relevant here, the district court granted Lexington's motion to dismiss. 2CR 3013. It eventually dismissed Appellants' claims in full via a final judgment entered on December 31, 2024. 2CR 3016. Appellants appealed. 2CR 3017–18.

B. The Policies Provide First-Party Property Coverage Solely to CWH.

Each of the Policies identify themselves as a "Commercial Property Policy" and the "Insured" as "The Howard Hughes Corporation." 1CR 1643; 2CR 1874–76; 2CR 2064–66. They define "Insured" to also encompass Howard Hughes and "its affiliated, subsidiary, and associated companies and/or corporations" and "any party

in interest which the Insured is responsible to insure." 1CR 1653; 2CR 1891; 2CR 2068. None of the Policies list Appellants as named insureds or otherwise indicate they fall within the scope of "Insured."

Although the Policies state that each is an "All Risks" policy, they also specify that the insured "Risks of Direct Physical Loss or Damage" to "Real and Personal Property" are "further described in the" Policies. *See, e.g.*, 1CR 1643. To that end, the Policies limit coverage in relevant part to the "***interest of the Insured*** in real and personal property of others in the Insured's care, custody, or control." 1CR 1660; 2CR 1897; 2CR 2074 (emphasis added). The Policies also expressly ***exclude*** coverage for "theft by employees" and "any fraudulent or dishonest act or acts committed by the Insured or any of the Insured's employees." 1CR 1672; 2CR 1896; 2CR 2073. The 2014 and 2015 Policies also exclude losses due to "[u]nexplained or mysterious disappearance of any property, or shortage disclosed by audit or upon taking inventory." 2CR 1897; 2CR 2073.

The Policies give the Insured the sole authority to submit claims, select a loss-valuation method, and receive payment. The 2013 Policy provides that "the Insured shall report such loss or damage," 1CR 1682, and that any loss "shall be adjusted with and payable to The Howard Hughes Corporation or their order," 1CR 1660. The 2014 Policy also authorizes only the Insured to submit "notice" and "proof of loss," 2CR 1884, 1915–16, with any payment again to "be adjusted with and payable

to [the Insured] or as may be directed by" the Insured, 2CR 1914, 1916, per one of four methods selected "at the Insured's option" when the loss involves the "[p]roperty of others in the Insured's care, custody or control," 2CR 1911. The 2015 Policy contains similar provisions. 2CR 2089, 2092–94. None of these provisions envision a third-party independently seeking recovery under the Insured's Policies.

The Policies address dispute resolution in the event Lexington does not "pay any amount claimed to be due." *See, e.g.*, 1CR 1651. For example, Lexington agrees in each of the Policies—"at the request of the Insured"—to "submit to the jurisdiction of a court of competent jurisdiction," *see* 1CR 1651, 1685; 2CR 1917–19; 2CR 2095–97. The Policies, however, bar any lawsuit against Lexington "***unless the Insured*** shall have fully Complied with all the requirements" of the Policies and the lawsuit is timely commenced (for the 2013 Policy) or "after ***the Insured*** provides notice to the Insurer" (for the 2014 and 2015 Policies). 1CR 1714; 2CR 1916–17, 1919; 2CR 2094, 2096–97 (emphasis added).

None of the Policies mention the ability of a third party to sue Lexington directly or on behalf of the Insured, and Appellants nowhere allege or otherwise explain how CWH complied with all terms of the Policies. Indeed, Lexington has no record that CWH ever submitted a claim for coverage in connection with its dispute with Appellants about the lost wine.

II. STANDARD OF REVIEW

Texas Rule of Civil Procedure 91a obligates courts to dismiss claims that lack a basis in law or fact and thus cannot "entitle the claimant to the relief sought." Texas appellate courts apply de novo review to pleading-stage dismissals under Rule 91a, using essentially the same standards applicable to analogous rulings in federal court under Federal Rule of Civil Procedure 12(b)(6). *See, e.g.*, *Wooley v. Schaffer*, 447 S.W.3d 71, 75–76 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Under both standards, courts must dismiss claims if a pleading fails to allege facts that "demonstrate a viable, legally cognizable right to relief" or if the alleged facts "affirmatively negate [a plaintiff's] right to relief." *Guillory v. Seaton, LLC*, 470 S.W.3d 237, 240 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

III. SUMMARY OF THE ARGUMENT

Appellants believe that their judgment against CWH gives them the unfettered right to sue Lexington on claims that otherwise belong solely to the Insured. But obtaining a judgment against an insured is only the first element of establishing third-party standing under any insurance contract. Appellants still must show that the Policies provide them—as third-party strangers to the contracts—with rights, benefits, or enforcement powers.

They cannot do so. The Policies are first-party contracts between the Insured and Lexington; they are not third-party general liability policies. They expressly

limit coverage to "the interest of the Insured," and they say nothing about Appellants or any other third party. It makes no difference that the Policies each contain a single passing reference to a loss limit for "Bailee Coverage." *See, e.g.*, 1CR 1655. Appellants' own cited authorities explain that common-law bailee principles give way to express contract language—like that in the Policies—that limits a putative bailee's interest in bailed property.

Appellants assert (at 12) that their out-of-context parsing of phrases advances at least a "reasonable interpretation[]" of the Policies and thus their "construction that affords coverage" must be adopted. But that rule of construction is inapposite here. Appellants source it to ***first***-party lawsuits between insureds and their insurers about ***exclusions*** in homeowners policies. Br. at 12 n.47. In the context of ***third***-party standing to enforce policy ***coverage***, Texas law imposes a "presumption against finding third-party beneficiaries to contracts," such that courts "resolve all doubts ***against*** conferring third-party-beneficiary status." *See, e.g.*, *Alvarado v. Lexington Ins. Co.*, 389 S.W.3d 544, 552 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (emphasis added) (collecting cases).

Without third-party standing, Appellants' claims necessarily fail, and precedent independently forecloses their claims under the Texas Insurance Code as a matter of law. Appellants seemingly know this: They suggest (at 31–32, 44) that they could perhaps obtain first-party standing by assignment "in the trial court via a

turnover order," but represent that "enforcing the Policies directly against Lexington simply introduces an unnecessary step in the process." Yet just three months ago—and after filling their opening brief—Appellants did exactly that. They filed a turnover-order application, and then withdrew it after obtaining a purported assignment of rights under the Policies from CWH and informing Lexington that they intend to submit a claim in CWH's stead. *See* App. at 2–11. Appellants' belated attempt to obtain first-party standing further confirms that the Court should affirm the district court's judgment.

IV. ARGUMENT AND AUTHORITIES

Appellants raise multiple arguments centered on the same theme: They contend that they can recover from Lexington the full amount of their judgment against CWH because they have derivative standing to do so as either third-party beneficiaries under the Policies, judgment creditors of CWH, or bailors of the wine. Appellants aver (at *e.g.*, 17–27) that the Policies provide both first-party property and third-party liability insurance coverage and that the Policies contain no language that affirmatively negates their ability to seek recovery from Lexington. These arguments defy the law and the Policies.

A. The Policies Provide Only First-Party Property Insurance.

Appellants contend (at *e.g.*, 15–18) that the Policies cannot be first-party contracts because they "provide both property and liability coverage" and because

they use the term "Insured's liability" in various places. For example, Appellants point out (at 16) that the Policies "cover vendors' and contractors' interest in property 'to the extent of the Insured's liability imposed by law or assumed by written contract.'" They also observe (at 16)—while omitting critical language that limits defense indemnity to ***the Insured***—that the Policies "'insure the costs and fees to defend any claim or suit . . . alleging physical loss or damage as insured against the property of others in the care, custody or control of the Insured.'" But neither of these provisions (nor any others) transform the Policies into third-party liability and indemnification contracts.

Texas law distinguishes first-party from third-party contracts based on the written allocation of benefits and obligations between the parties. First-party policies obligate insurers to indemnify ***their insureds***. *See, e.g.*, *Debes v. General Star Indem. Co.*, 2014 WL 3384679, at *10–11 (Tex. App.—Beaumont 2014, no pet.) (canvassing Texas precedents). Third-party policies, on the other hand, impose an express duty on insurers to indemnify ***third parties*** on an insured's behalf. *Id.* Parties cannot convert a first-party contract into a third-party contract "by implication." *See, e.g.*, *Lexington Ins. Co.*, 389 S.W.3d at 552 (collecting Texas Supreme Court authority).

The critical difference between first- and third-party policies therefore is not whether they generically reference an insured's "liability," but rather what the

policies' express language requires the insurer to do given that liability. If the policies obligate insurers to fulfill duties made (and honor benefits given) to ***their insureds***, they are first-party policies. If the policies instead require insurers to fulfill duties or honor benefits to ***someone else***, they are third-party policies. Quintessential third-party policy language granting judgment creditors a direct right of action against an insurer thus might read: "Any person or organization or legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy." *Debes*, 2014 WL 3384679, at *10.

The Policies contain no such language and impose no such obligations on Lexington; they are classic first-party policies, which "'are intended solely to indemnify the insured.'" *See United Nat'l Ins. Co. v. Mundell Terminal Servs.*, 915 F. Supp. 2d 809, 815 (W.D. Tex. 2012) (quoting *Highlands Ins. Co. v. City of Galveston*, 721 S.W.2d 469, 471 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.)), *aff'd*, 740 F.3d 1022 (5th Cir. 2014). The Policies limit coverage in relevant part to "the interest of the Insured" in the "property of others" or "the Insured's liability for such property." *See, e.g.*, 2CR 2074. They grant only the Insured the right to engage in dispute resolution and enforce their terms vis-à-vis Lexington, and they specify that losses shall only be adjusted and payable to the Insured or as directed by the Insured. *See supra* at 6–8.

The language cited by Appellants changes none of this. Appellants were not "vendors and contractors" to CWH, and Appellants identify no vendor or contractor "interests in property" that were "imposed" on CWH "by law" or that it "assumed by written contract." *See, e.g.*, 2CR 2074. And even if they had, the Policies still lack any language granting vendors or contractors rights of action directly against Lexington or requiring Lexington to engage with such non-parties in any way. The Policies ***do*** indemnify the Insured for ***its*** "costs and fees" incurred in defending against lawsuits involving covered property, but that benefit flows solely to ***the Insured***. The Policies say nothing about indemnifying the Insured for any costs and fees incurred by its ***litigation opponents***—which Appellants seek to do here—let alone directly paying such third parties.

Whatever duties and benefits might attach to the Policies' use of the term "Insured's liability," they are between only Lexington and its Insured—not third parties. Accordingly, the Policies are first-party contracts, and Appellants cannot claim standing merely by characterizing them generally as third-party policies. *See Tellepsen Builders, L.P. v. Kendall/Heaton Assocs.*, 325 S.W.3d 692, 698 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) ("'Unlike [Commercial General Liability] coverage—which protects the insured against claims of third parties arising out of its acts or omissions, resulting in bodily injury or property damage—property damage is first-party coverage.'" (citation omitted)).

B. No Derivative Standing Theory Allows Appellants to Enforce the Policies.

Appellants' other arguments fail for essentially the same reasons. They insist third-party standing exists here because they are judgment creditors to CWH, Br. at 18–22, 27–32; the "Policies do not limit [their] right to bring this suit" (at 23–27); and CWH held the wine as their bailee. But over the nearly 20 pages of argument devoted to these points, Appellants fail to identify a single provision that grants them any rights or benefits under the Policies. The lack of any such authorizing contractual language is fatal to their appeal.

As an initial matter, judgment creditors do ***not*** gain "the right to enforce [insurance] policies as third-party beneficiary . . . by operation of law." Br. at 23; *see also* Br. at 18 ("By obtaining a judgment against the insured, the third party eliminates the concerns that give rise to the no-direct-action rule."). It may appear that way as a practical matter as to third-party general liability policies. But that is because ***such policies*** (by definition) expressly grant indemnity benefits or enforcement rights to third parties like judgment creditors. "[I]n the absence of a ***clear and unequivocal*** expression of the contracting parties' intent to ***directly benefit*** a third party, courts will not confer third-party beneficiary status by implication" ***regardless*** of the type of contract or policy. *See, e.g.*, *Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex. 2011) (emphasis added).

To satisfy that standard and overcome the "presumption against" third-party-beneficiary status, ***the putative third-party beneficiary*** must demonstrate "(1) the obligation of the bargain-giver is fully spelled out, (2) it is unmistakable that a benefit to the third party was within the contemplation of the contracting parties, and (3) the contracting parties contemplated that the third party would be vested with the right to sue for enforcement of the contract." *Lexington Ins. Co.*, 389 S.W.3d at 552. Even with a judgment in hand, a third-party cannot obtain relief from an insurer unless the relevant policy specifically "provides a third party who has secured a judgment against an insured for a covered loss with a right to enforce the policy against the insurer to recover the amount of the judgment up to the policy limits." *Debes*, 2014 WL 3384679, at *11.

The Policies here do precisely the opposite. The ***only*** party authorized to submit coverage claims, obtain defense indemnity, receive loss payments, and sue Lexington—even as to "liability" for "the property of others"—is ***the Insured***. It is true that the Policies do not expressly state that third parties lack indemnity benefits or enforcement rights. *See, e.g.*, Br. at 18. But again, the presumption against third-party standing eliminates any need to do so because third-party rights cannot be created by implication. *See, e.g.*, *Debes*, 2014 3384679, at *4. Nor can they be bestowed on an "incidental beneficiary"—no matter how much of an interest they may have in the subject matter of the contract—without language unmistakably

reflecting that intent. *See, e.g.*, *MCI Telecommc'ns Corp. v. Tex. Utilities Elec. Co.*, 995 S.W.2d 647, 652 (Tex. 1999); *see also Tawes*, 340 S.W.3d at 425 ("'An incidental beneficiary acquires no right either against the promisor or the promisee by virtue of the promise.'" (quoting 13 Williston on Contracts § 37:19, at 124–25 (4th ed. 2000))).

Courts routinely decline to find third-party standing to enforce insurance policies in cases where a third party has a clear interest in obtaining benefits under the contracts, but lack an unambiguous textual basis for doing so. In *Debes*, for example, the Beaumont Court of Appeals held that a landlord had no third-party standing to enforce his tenant's property-insurance policy after a fire because the policy identified only one named insured—who was neither the landlord, the tenant, nor an officer or director of the tenant—and despite the landlord's forthcoming judgment against the insured. *See* 2014 WL 3384679, at *1–2.

The Dallas Court of Appeals reached the same conclusion even in a case where the alleged third-party beneficiary was listed as a "loss payee" in a policy, and the policy expressly provided for joint payment to the insured and the loss payee. *See Ostrovitz & Gwinn, LLC v. First Specialty Ins. Co.*, 393 S.W.3d 379, 388–92 (Tex. App.—Dallas 2012, no pet.). The policy authorized only the insured to submit claims and participate in their adjustment, and the insured had not submitted a claim. The court therefore held that the policy did not "clearly and fully demonstrate an

intention by [the insured] and [the insurer] to contract for the direct benefit of [the alleged third-party beneficiary]." *Id.*

Appellants here are no different. That they would benefit from Lexington's payment for loss of the wine does not mean that the Policies between Lexington and Howard Hughes unmistakably grant them indemnity benefits and enforcement rights. The only language in the Policies pertaining to such matters discusses only the Insured. *See supra* at 6–8. Appellants accordingly lack an enforceable interest in the Policies. *See, e.g.*, *First Union Nat'l Bank v. Richmont Cap. Partners I*, 168 S.W.3d 917, 930 (Tex. App.—Dallas 2005, no pet.) (The third-party's "interpretation does not 'clearly appear' on any of the documents and the documents do not 'clearly and fully spell out' that [the contracting parties] intended the Guaranty to be directly and primarily for the benefit of" the third party. (citations omitted)); *see also Baldwin v. Mortgage Elec. Regis. Sys.*, 2020 WL 4227591, at *2–5 (S.D. Tex. June 8, 2020) (holding that homeowner could not claim third-party benefits as to ***his own home*** under a property insurance policy that neither was issued to nor mentioned the homeowner), *adopted*, 2020 WL 4227468 (S.D. Tex. July 23, 2020).

Bailment principles provide Appellants no succor. Setting aside that the Policies each mention "Bailee Coverage" only once and never define the term or its contours: Appellants point to a half-century-old case that ostensibly "allowed [a]

third party bailor to proceed directly against [an] insurance company on what appeared to be primarily a property policy even though the policy contained 'no express provision one way or the other' and 'no language expressly stating that the loss is payable to the owner [of the lost property, i.e., the bailor] or that the contract is made for his benefit.'" Br. at 33 (quoting *Cumis Ins. Co. v. Republic Nat'l Bank*, 480 S.W.2d 762, 763–67 (Tex. App.—Dallas 1972, writ ref'd n.r.e.)). To the extent *Cumis* stands for the proposition urged by Appellants, decades of Texas Supreme Court and appellate court precedent have since abrogated the idea that common-law bailment principles—or any other derivative-standing doctrine—can create third-party standing by implication.

The Court need not decide whether *Cumis* remains good law, however, because *Cumis* itself acknowledges that alleged bailees may—as the Insured did here—contractually limit their interest in bailed property to "insure ***only the bailee's*** interest." *Id.* at 764 (emphasis added). Although the *Cumis* court found no limiting language in the contract in that case, other courts also have explained that a "bailee, if it wishes, may also insure only ***its limited interest in the bailed goods*** by employing express language in the contract of insurance to that effect." *United Nat'l Ins. Co.*, 915 F. Supp. 2d at 824 (emphasis added) (noting that "***absent*** policy language to the contrary" bailees are "presumed" "to have insured" their "interest as well as that of the bailor in the goods" (emphasis added)).

This closely comports with the Policies' limitation of coverage to "the interest of the Insured." *See* 1CR 1660; 2CR 1897; 2CR 2074. By using such language, Lexington and its Insured expressly cabined any interest CWH had in the wine as bailee solely to its own interest, and not that of Appellants. Appellants thus lack any clear Policy language to support their third-party standing theories, and their claims cannot survive otherwise.

C. Precedent Forecloses Appellants' Insurance-Code Claims.

Without standing, Appellants' claims necessarily fail, but their claims under the Texas Insurance Code independently should be dismissed as barred by precedent. Appellants argue in a single paragraph (at 41) that they "may pursue their claims against Lexington under Chapter 541 of the Texas Insurance Code." But "Texas law prohibits third-party claimants"—including judgment creditors—from alleging common law or "statutory claims for bad faith under the Texas Insurance Code." *Travelers Lloyds Ins. Co. v. Cruz Contracting of Tex., LLC*, 2017 WL 5202890, at *3–4 (W.D. Tex. Mar. 17, 2017); *see also Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 659 S.W.3d 424, 439 (Tex. 2023) (Plaintiffs "can never prevail on the [541.060] claim they have pleaded because it requires "a claim by an insured or beneficiary,'" nor can such claims be assigned. (citation omitted)); *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 384 n.1 (Tex. 2000) (noting that a third-party claimant has no contract with the insurer or the insured, has no legal relationship to

the insurer, and has no basis upon which to expect or demand the benefit of the extra-contractual obligations imposed on insurers under Texas Insurance Code § 541); *Reule v. Colony Ins. Co.*, 407 S.W.3d 402, 413 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) ("[I]n her current posture as a third-party claimant, [insurer] did not owe her duties under sections 541.060 and 542.051 and the duty of good-faith and fair dealing.").

D. Appellants Purport to Now Have First-Party Standing.

Tellingly, Appellants have tried to remedy their standing defect during the pendency of this appeal. Twelve days after filing their opening brief, on November 14, 2025, Appellants filed an "Application for Turnover Order" in the closed state court proceeding that ended with the arbitration judgment. *See* App. at 2–6 ("Turnover Application"). In it, Appellants asked the state court to order CWH to "turn over its rights to enforce" the Policies issued by Lexington and to appoint a receiver to take physical possession of the Policies. *Id.*

Appellants withdrew the Turnover Application three days later based on a purported assignment of rights to them by CWH. *See* App. 9–11 ("Assignment"). The Assignment contains a signature allegedly from CWH's General Counsel and Secretary, *id.* at 11, but provides no information about CWH's corporate existence, a potentially material omission because an underlying assumption of the arbitration proceeding was that CWH had shed almost all of its assets during the arbitration. It

also states that Appellants withdrew the Turnover Application in exchange for an assignment of

> (1) all of CWH's rights, title, and interest in the Policies with respect to the claims and judgment against it by [Appellants]; (2) the right to make a claim under and enforce the Policies on CWH's behalf and in its name; and (3) all of CWH's causes of action arising out of or related to the Policies and the right to bring any appropriate cause of action against Lexington, on CWH's behalf and in its name, arising out of or related to the Policies, including without limitation claims for breach of contract, bad faith insurance practices, and violations of the Texas Deceptive Trade Practices Act.

Id. at 10. In the event Lexington declines to recognize the validity of the Assignment or it is declared invalid, the Assignment purports in the alternative to make Appellants CWH's "agent and attorney-in-fact," invested with the same authority as the Assignment. *See id.* at 10–11.

Appellants now contend they have ***direct*** standing to assert claims against Lexington for the same loss as already asserted in this proceeding based on ***derivative*** standing. But that is of no moment for the purposes of this appeal. Standing depends on the facts as they exist when a lawsuit is filed. Because Appellants lacked third-party standing when they filed the underlying lawsuit, they cannot use the Assignment—assuming *arguendo* it is valid—to confer themselves standing in this proceeding. *See, e.g.*, *Kirkpatrick v. Kirkpatrick*, 205 S.W.3d 690, 703-04 (Tex. App.—Fort Worth 2006, pet. denied) ("Because he lacked standing at the time the action was filed, the suit must be dismissed even if he later acquired an

interest sufficient to support standing."); *see also Doran v. Clubcorp USA, Inc.*, 2008 WL 451879, at *2 (Tex. App.—Dallas Feb. 21, 2008, no pet.) (holding that assignment of membership interests did not create standing because it was made after plaintiff filed suit).

CONCLUSION

The district court correctly concluded that Appellants lacked third-party standing to enforce first-party commercial property insurance policies, and Lexington respectfully asks the Court to affirm the district court's judgment in full.

Dated: February 6, 2026

Respectfully submitted,

/s/ Amy B. Boyea
Amy B. Boyea
Texas Bar No. 24026910
amy.boyea@mhllp.com
Justin R. Chapa
Texas Bar. No. 24074019
justin.chapa@mhllp.com
Janie Rios
Texas Bar No. 24126600
janie.rios@mhllp.com
MCDOWELL HETHERINGTON LLP
1000 Ballpark Way, Suite 209
Arlington, Texas 76011
T: (817) 635-7300
F: (817) 635-7308

Counsel for Appellee
Lexington Insurance Company

CERTIFICATE OF SERVICE

I certify that, on February 6, 2026, the foregoing Appellee's Brief was filed via the Court's electronic case filing system and notice and service of filing were therefore made upon all counsel of record, including

Appellants' Counsel:

Scott Nichols
Texas Bar No. 14994100
snichols@nwtlaw.com
Zachary W. Thomas
Texas Bar No. 24070739
zthomas@nwtlaw.com
NICHOLS WEITZNER THOMAS LLP
2100 Ross Avenue, Suite 2000
Houston, Texas 77006
T: (713) 405-7096

/s/ Amy B. Boyea
Amy B. Boyea

CERTIFICATE OF COMPLIANCE

I certify that this Appellee's Brief complies with the length, form, and typeface requirements of Texas Rules of Appellate Procedure 9.4(e), 9.4(i)(2)(b), and 9.4(i)(3), as it is drafted in proportionally-spaced, 14-point Times New Roman font and contains 4,869 words, as determined by the word-processing application used to produce the Brief.

/s/ Amy B. Boyea
Amy B. Boyea

Case No. 14-25-00063-CV

IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS
AT HOUSTON

MARIA L. RINCON, ROBERTO RINCON, AND JOSE RINCON,

Appellants,

v.

ACE AMERICAN INSURANCE COMPANY; ASPEN SPECIALTY INSURANCE COMPANY, ET AL.,

Appellees.

APPENDIX TO APPELLEE LEXINGTON INSURANCE COMPANY'S BRIEF

Appeal from the 164th Judicial District Court
of Harris County, Texas
Trial Court No. 2023-04154

TAB A

Cause No. 202180028

MARIA L. RINCON, *et al.*,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
vs.	§	189TH JUDICIAL DISTRICT
	§	
CARLTON WOODS HOLDINGS, LLC;	§	
THE WOODLANDS LAND	§	
DEVELOPMENT COMPANY, LP;	§	
AND THE HOWARD HUGHES	§	HARRIS COUNTY, TEXAS
CORPORATION	§	
	§	
Defendants.	§	

APPLICATION FOR TURNOVER ORDER

Judgment Creditors Maria L. Rincon, Roberto Rincon, and Jose Rincon respectfully move this Court for an order requiring Judgment Debtor Carlton Woods Holdings, LLC to turn over its rights to enforce three insurance policies and assert causes of action against the insurance company in order to satisfy a judgment obtained against Judgment Debtor by Judgment Creditors in this Court. Judgment Creditors bring this Application for Turnover Order pursuant to Texas Civil Practice & Remedies Code § 31.002, and in support state as follows:.

1. On January 19, 2022, this Court entered a Final Judgment in favor of Judgment Creditors and against Judgment Debtor for the amount awarded Judgment Creditors in a Final Award in arbitration.[1] The Final Judgment followed

[1] *See* Exhibit 1, Final Judgment with Final Award in arbitration.

a full adjudication of the matter in the arbitration proceedings.[2] The amount of the award was $1,110,411.70 plus pre- and post-judgment interest on Judgment Creditors' actual damages of $293,025 at the rate allowed by law.

2. The judgment remains unsatisfied by $757,911.7, exclusive of pre- and post-judgment interest. Judgment Creditors have made reasonable attempts to collect on the judgment through ordinary legal process.

3. Judgment Debtor owns the three following insurance policies issued by Lexington Insurance Company (the "Policies").

- Policy No. 038421982, with a Policy Period of April 1, 2013 through April 1, 2014.[3]
- Policy No. 021469162, with a Policy Period of April 1, 2014 through April 1, 2015.[4]
- Policy No. 021469162, with a Policy Period of April 1, 2015 through April 1, 2016.[5]

4. These Policies cover Judgment Debtor's liability under the Final Judgment.[6] Such policies are not exempt from attachment, execution, or seizure but cannot be readily attached or levied on by ordinary legal process.

5. Under the Texas Turnover Statute, a judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor

---

[2] *See id.* at attached Final Award.
[3] *See* Exhibit 2.
[4] *See* Exhibit 3.
[5] *See* Exhibit 4.
[6] *See* Exhibit 1 at attached Final Award.

owns property that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.[7]

6. The Turnover Statute authorizes this Court to order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property; to otherwise apply the property to the satisfaction of the judgment; or to appoint a receiver with the authority to take possession of the nonexempt property.[8]

7. Under the Turnover Statute, the judgment creditor may move for the court's assistance in the same proceeding in which the judgment was rendered or in an independent proceeding. Tex. Civ. Prac. & Rem. Code § 31.002(d). Judgment Creditors are filing this Application for Turnover Order in this Court at the instruction of the Civil Intake division of the Harris County District Clerk.

8. Insurance policies and their proceeds are property interests that may be subject to turnover orders when they are not exempt under Texas law.[9] They are assets of the insured.[10] Causes of action are property that may be the subject of turnover orders.[11]

---

[7] Tex. Civ. Prac. & Rem. Code § 31.002(a).
[8] *See* Tex. Civ. Prac. & Rem. Code § 31.002.
[9] *See D&M Marine v. Turner*, 409 S.W.3d 853, 858 (Tex. App.—Fort Worth 2013, no pet.) (affirming trial court's granting of turnover order of claims under the judgment debtor's insurance policy that could possibly satisfy the judgment creditors' judgment).
[10] *In re Ill. Nat'l Ins. Co.*, 685 S.W.3d 826, 837 (Tex. 2024).
[11] *D&M Marine*, 409 S.W.3d at 857; *In re Haz Mat Special Servs.,* No. 14-23-00320-CV, 2023 Tex. App. LEXIS 8501, at *6-7 (Tex. App.—Houston [14th Dist.] Nov. 9, 2023) (orig. proceeding) (citations omitted) (stating that "[a]n unadjudicated cause of action is generally considered 'property' subject to turnover by a court").

9. The fact that a case is on appeal does not prevent a judgment creditor from seeking a turnover order.[12]

10. The Policies at issue are nonexempt property subject to Judgment Debtor's control and should be turned over to satisfy the Final Judgment. If a judgment debtor claims that property is exempt, the judgment debtor has the burden to prove exemption.[13]

11. Judgment Creditors request that this Court appoint a receiver with authority to take possession of the Policies so that the Receiver may in turn assign the rights to enforce the Policies to Judgment Creditors to the extent required to satisfy the judgment. Judgment Creditors request that the Court appoint Peter C. Ruggero, 1411 West Avenue, Suite 200, Austin, TX 78701, (512) 473-8676, peter@ruggerolaw.com as receiver to receive the Policies from Judgment Debtor.

12. Pursuant to the Texas Turnover Statute, Judgment Creditors further request that the Court order Judgment Debtor to pay them $2,500 as their reasonable costs, including attorney's fees, incurred in obtaining this turnover order.[14]

13. The trial court may enforce the turnover order by contempt proceedings.[15]

---

[12] *Wrigley v. First Nati'l Sec. Corp.*, 104 S.W.3d 259, 265 (Tex. App.—Beaumont 2003, no pet.) (citing *Anderson v. Lykes,* 761 S.W.2d 831, 833-34 (Tex. App.--Dallas 1988, orig. proceeding)).
[13] *Jacobs v. Adams,* 874 S.W.2d 166, 167-68 (Tex. App.—Houston [14th Dist.] 1994, no writ.).
[14] *See* Tex. Civ. App. Rem. Code § 31.002(e).
[15] *Id.* at § 31.002(c)

Prayer

For the reasons set out above, Judgment Creditors Maria L. Rincon, Roberto Rincon, and Jose Rincon respectfully ask this Court to

1. Appoint Peter C. Ruggero as a receiver with authority to take possession of the insurance policies and assign all rights in them, including the right to enforce them and pursue a recovery from Lexington Insurance Company to Judgment Creditors Maria L. Rincon, Roberto Rincon, and Jose Rincon;
2. Enter an order requiring Judgment Debtor Carlton Woods Holdings, LLC to turn over the above-described insurance policies and all related documents to the receiver;
3. Award Judgment Creditors Maria L. Rincon, Roberto Rincon, and Jose Rincon their reasonable costs, including attorney's fees, incurred in obtaining this turnover order in the amount of $2,500; and
4. Grant such other and further relief to Judgment Creditors to which they may be justly entitled.

Respectfully submitted,

NICHOLS WEITZNER THOMAS LLP

/s/ Zachary W. Thomas
Zachary W. Thomas
Texas Bar No. 2470739
zthomas@nwtlaw.com
(713) 405-7096
Scott Nichols
Texas Bar No. 14994100
snichols@nwtlaw.com
(713) 405-7094

2402 Dunlavy Street
Houston, Texas 77006

Counsel for Plaintiffs/Judgment Creditors

Certificate of Service

This document was served on all counsel of record via the Court's electronic filing system on this 14th day of November, 2025.

/s/ Zachary W. Thomas
Zachary W. Thomas

TAB B

Cause No. 202180028

MARIA L. RINCON, *et al.*,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
vs.	§	189TH JUDICIAL DISTRICT
	§	
CARLTON WOODS HOLDINGS, LLC;	§	
THE WOODLANDS LAND	§	
DEVELOPMENT COMPANY, LP;	§	
AND THE HOWARD HUGHES	§	HARRIS COUNTY, TEXAS
CORPORATION	§	
	§	
Defendants.	§	

ASSIGNMENT OF RIGHTS AND REMEDIES UNDER INSURANCE POLICIES AND ALTERNATIVE LIMITED POWER OF ATTORNEY

Judgment Creditors Maria L. Rincon, Roberto Rincon, and Jose Rincon have a final judgment against Carlton Woods Holdings, LLC ("CWH") for $1,110,411.70 plus pre- and post-judgment interest on Judgment Creditors' actual damages of $293,025 at the rate allowed by law.

CWH owns three insurance policies issued by Lexington Insurance Company ("Lexington"), which Judgment Creditors allege cover CWH's liability under the judgment: (1) Policy No. 038421982, with a Policy Period of April 1, 2013 through April 1, 2014; (2) Policy No. 021469162, with a Policy Period of April 1, 2014 through April 1, 2015; and (3) Policy No. 021469162, with a Policy Period of April 1, 2015 through April 1, 2016 (the "Policies").

Judgment Creditors filed an application for turnover order pursuant to Texas Civil Practice & Remedies Code § 31.002. Their application asks the Court to: (1)

appoint a receiver to receive the Policies for the purpose of assigning all rights under them, including the rights to enforce them or bring a cause of action against the insurer, to Judgment Creditors; (2) order CWH to turn over the Policies, along with all legal and beneficial rights, title, and interest in the policies, to the receiver; and (3) award Judgment Creditors $2,500 in attorneys' fees for services rendered in connection with their application for turnover order.

In exchange for Judgment Creditors' agreement to withdraw their application for turnover order and request for attorneys' fees, and other consideration, the receipt and sufficiency of which are hereby acknowledged, CWH agrees to and does hereby assign and convey to Judgment Creditors, to the fullest extent permitted by law: (1) all of CWH's rights, title, and interest in the Policies with respect to the claims and judgment against it by Judgment Creditors; (2) the right to make a claim under and enforce the Policies on CWH's behalf and in its name; and (3) all of CWH's causes of action arising out of or related to the Policies and the right to bring any appropriate cause of action against Lexington, on CWH's behalf and in its name, arising out of or related to the Policies, including without limitation claims for breach of contract, bad faith insurance practices, and violations of the Texas Deceptive Trade Practices Act.

In the event that Lexington does not accept or recognize the aforementioned assignment or conveyance to Judgment Creditors, or the assignment or conveyance is deemed invalid for any reason, CWH hereby appoints and authorizes Judgment Creditors, as its agent and attorney-in-fact, to take any of the following actions only

on CWH's behalf and in its name: (1) to assert all of CWH's rights, title, and interest in the Policies with respect to the claims and judgment against it by Judgment Creditors; (2) to make a claim under and enforce the Policies; and (3) to bring any appropriate cause of action against Lexington arising out of or related to the Policies, including without limitation claims for breach of contract, bad faith insurance practices, and violations of the Texas Deceptive Trade Practices Act.

AGREED effective November 17, 2025:

NICHOLS WEITZNER THOMAS LLP

/s/ Zachary W. Thomas
Zachary W. Thomas
Texas Bar No. 2470739
zthomas@nwtlaw.com
(713) 405-7096
2402 Dunlavy Street
Houston, Texas 77006

Counsel for Judgment Creditors

And

CARLTON WOODS HOLDINGS, LLC

BY: Joseph Valane
Joseph Valane, General Counsel and Secretary

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Justin Chapa on behalf of Amy Boyea
Bar No. 24026910
justin.chapa@mhllp.com
Envelope ID: 110975359
Filing Code Description: Brief Not Requesting Oral Argument
Filing Description: Appellee Lexington's Brief
Status as of 2/6/2026 4:47 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jerrod Rinehart		jrinehart@belaw.com	2/6/2026 4:42:59 PM	SENT
Rhonda JThompson		rthompson@thompsoncoe.com	2/6/2026 4:42:59 PM	SENT
Amy BBoyea		amy.boyea@mhllp.com	2/6/2026 4:42:59 PM	SENT
Joni Sullivan		jsullivan@thompsoncoe.com	2/6/2026 4:42:59 PM	SENT
Vicki Duhon		vduhon@thompsoncoe.com	2/6/2026 4:42:59 PM	SENT
Shelby G.Hall		shall@thompsoncoe.com	2/6/2026 4:42:59 PM	SENT
Brannon Dillard	24043634	bdillard@shackelford.law	2/6/2026 4:42:59 PM	SENT
Tony Draper	798156	tdraper@walkerwilcox.com	2/6/2026 4:42:59 PM	SENT
Charles Walther	24005125	bwalther@walkerwilcox.com	2/6/2026 4:42:59 PM	SENT
Jerrod Rinehart	24060494	jrinehart@belaw.com	2/6/2026 4:42:59 PM	SENT
Mukul Kelkar	24063682	mukul.kelkar@dentons.com	2/6/2026 4:42:59 PM	SENT
Lisa Henderson	24025423	lisa.henderson@clydeco.us	2/6/2026 4:42:59 PM	SENT
Savannah Benac		sbenac@shackelford.law	2/6/2026 4:42:59 PM	SENT
Scott Nichols		snichols@nicholsbrar.com	2/6/2026 4:42:59 PM	SENT
Scott Nichols		snichols@nicholsbrar.com	2/6/2026 4:42:59 PM	SENT
Scott Nichols		snichols@nicholsbrar.com	2/6/2026 4:42:59 PM	SENT
Susan Royall		sroyall@belaw.com	2/6/2026 4:42:59 PM	SENT
Zachary Thomas		zthomas@nicholsbrar.com	2/6/2026 4:42:59 PM	SENT
Zachary Thomas		zthomas@nicholsbrar.com	2/6/2026 4:42:59 PM	SENT
Zachary Thomas		zthomas@nicholsbrar.com	2/6/2026 4:42:59 PM	SENT
Kimberly Marino		kmarino@shackelford.law	2/6/2026 4:42:59 PM	SENT
Monserrat Aguilar		monserrat.aguilar@mhllp.com	2/6/2026 4:42:59 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Justin Chapa on behalf of Amy Boyea
Bar No. 24026910
justin.chapa@mhllp.com
Envelope ID: 110975359
Filing Code Description: Brief Not Requesting Oral Argument
Filing Description: Appellee Lexington's Brief
Status as of 2/6/2026 4:47 PM CST

Case Contacts

Monserrat Aguilar		monserrat.aguilar@mhllp.com	2/6/2026 4:42:59 PM	SENT
Maria Torres		mtorres@nwtlaw.com	2/6/2026 4:42:59 PM	SENT
Michelle Brockway		mbrockway@nwtlaw.com	2/6/2026 4:42:59 PM	SENT
Ameera Hallaq		ahallaq@belaw.com	2/6/2026 4:42:59 PM	SENT
Tina Roosth		troosth@walkerwilcox.com	2/6/2026 4:42:59 PM	SENT
Glenn Ballard	1650200	glenn.ballard@dentons.com	2/6/2026 4:42:59 PM	SENT
April Paez		apaez@belaw.com	2/6/2026 4:42:59 PM	SENT
Janie Rios		janie.rios@mhllp.com	2/6/2026 4:42:59 PM	SENT
Dillon Minick		dminick@belaw.com	2/6/2026 4:42:59 PM	SENT
Justin R.Chapa		justin.chapa@mhllp.com	2/6/2026 4:42:59 PM	SENT