

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SCOTTSDALE INSURANCE COMPANY; MENTAL HEALTH
RISK RETENTION GROUP,

Plaintiffs-Appellees,

v.

SEVEN COUNTIES SERVICES, INC.,

Defendant-Appellant.

Nos. 25-5806/6059

Appeal from the United States District Court for the Western District of Kentucky at Louisville.
No. 3:23-cv-00357—David Jason Hale, District Judge.

Argued: July 23, 2026

Decided and Filed: September 9, 2026

Before: DAVIS, MATHIS, and RITZ, Circuit Judges.

COUNSEL

ARGUED: Sean G. Williamson, BRICKER GRAYDON WYATT, LLP, Louisville, Kentucky, for Appellant. Palmer G. Vance II, STOLL KEENON OGDEN PLLC, Lexington, Kentucky, for Appellees. **ON BRIEF:** Sean G. Williamson, David A. Calhoun, Victoria Boland Fuller, WYATT, TARRANT & COMBS, LLP and BRICKER GRAYDON WYATT, LLP, Louisville, Kentucky, for Appellant. Palmer G. Vance II, Lilian W. Ball, STOLL KEENON OGDEN PLLC, Lexington, Kentucky, for Appellees.

OPINION

RITZ, Circuit Judge. Seven-year-old J.T. choked to death after behavioral care workers physically restrained him. The child's estate sued the care center where J.T. lived and its

management company, Seven Counties Services, Inc., which asked its insurers for defense and indemnity. The insurers refused coverage. At summary judgment, the district court held that the insurers had a duty to defend Seven Counties in the wrongful death action but had no duty to indemnify.

Seven Counties appeals the district court's indemnification decision. It disputes that the restraint used on J.T. qualified as emergency services intervention (ESI) and argues that, regardless, ESI does not fall within the insurance contract's exception to coverage for professional services. We reject these arguments and affirm.

I.

A.

Seven-year-old J.T. lived at a behavioral care center in Kentucky. On July 17, 2022, J.T. began to misbehave. Annoyed, shift supervisor Deborah Francis complained that J.T. "had ruined her church day," and she threatened to "restrain" the child to make him "throw up." RE 33-5, OIG Report, PageID 1210. Francis confined J.T. to his room where he soiled himself, prompting Francis to mock J.T. in front of other residents.

J.T.'s misbehavior apparently escalated later in the day. For instance, the child tried to leave his room without permission. And a post-incident report states that J.T. attempted to "assault" staff, "charg[ing]" and "yelling" at them, which caused both J.T. and a care worker to fall to the floor. RE 33-6, Incident Report, PageID 1329. Two care workers, Jillian Parks and Amanda Whitlow, then tried to secure J.T. in a physical hold called a "kneeling cradle." *Id.* Parks held J.T.'s arms and torso in a "cradle position" and Whitlow held J.T.'s legs, while they attempted to calm him. *Id.* Francis then entered the room and took over the upper-extremity restraint from Parks, pushing J.T.'s face almost to the floor and telling J.T. to "[g]o ahead [and] throw up, throw up!" RE 33-5, OIG Report, PageID 1216, 1284. J.T. vomited and attempted to struggle out of the restraint but fell unconscious. Staff attempted CPR and called 911, but, tragically, J.T. died.

The state Office of the Inspector General (OIG) conducted a review of the incident. OIG's interview with care worker Whitlow reveals that she "did not think the [kneeling cradle] hold was even necessary" because J.T. had threatened to hit Whitlow and Parks but never acted on his threat. *Id.* at PageID 1227. Indeed, Whitlow thought that J.T. was "de-escalating" because he was "laughing with her," and that Parks "escalated the situation by getting involved." *Id.* According to the OIG report, the care workers also failed to call the "Clinical-on-Call Therapist at the beginning of [the] hold" to determine if the restraint should be continued, as required by their training. *Id.* at PageID 1230. The report concluded that "the facility failed to protect [J.T.] from experiencing an unnecessary" ESI hold, because J.T. did "not place[] himself" or others "in harm[']s way" before staff administered the hold. *Id.* at PageID 1233-34.

B.

Seven Counties is a non-profit corporation that provides "mental and behavioral health services" across Kentucky. RE 34-1, Post Decl., PageID 1370. The corporation maintained a primary insurance policy with Mental Health Risk Retention Group (MHRRG) and an excess policy with Scottsdale Insurance Company. The only coverage at issue here is the Commercial General Liability Coverage (CGL) part of the MHRRG policy. That part covered claims for "bodily injury," subject to several exceptions. RE 1-3, MHRRG Policy, PageID 393. The two relevant exceptions to coverage are: (1) an exclusion for injury arising from "professional service[s]" and (2) MHRRG's right to decline liability coverage where Seven Counties had "available" other "valid and collectible insurance" covering the same incident. *Id.* at PageID 398, 405.

Seven Counties partnered with a non-profit corporation called Uspiritus to operate the behavioral care center where J.T. resided. In 2018, Uspiritus and Seven Counties contracted for Seven Counties to "provide overall management services for and on behalf of Uspiritus." RE 34-1, Post Decl., PageID 1379. As part of this agreement, Uspiritus also had to obtain insurance coverage and name Seven Counties as an additional insured under that policy. Uspiritus maintained such independent coverage with the Hanover Insurance Group. The Hanover policy permitted Uspiritus to add Seven Counties as an additional insured by "written

contract, written agreement or permit.” RE 1-2, Hanover Policy, PageID 257. The written agreement between Uspiritus and Seven Counties expired on December 31, 2021, but the companies continued operating under the terms of the agreement without a written extension.

C.

After J.T. died, his estate sued Uspiritus, Seven Counties, and several other defendants in state court for wrongful death and negligence. Hanover agreed to defend and indemnify Uspiritus in the action but refused to defend or indemnify Seven Counties, explaining that Seven Counties was “NOT named as an additional insured” on the Hanover policy. RE 34-1, Post Decl., PageID 1433. MHRRG and Scottsdale, too, declined coverage.

As the case proceeded to mediation, the insurers affirmed their denial of coverage to Seven Counties. The insurers explained that it was Hanover’s responsibility to provide primary coverage to Seven Counties, with MHRRG providing excess coverage only. A few days prior to the mediation, the insurers further informed Seven Counties that the restraint used on J.T. was an excluded professional service but reassured Seven Counties that “Hanover [would] reach the right decision” and cover Seven Counties “as an additional insured.” RE 34-5, Insurers’ Corr., PageID 1481. Hanover, however, continued to deny coverage, and Seven Counties participated in the mediation without confirmed insurance.

Later, the insurers filed the present lawsuit against Seven Counties seeking a declaration of rights under the two insurance policies. Seven Counties countersued for breach of contract, alleging that the insurers violated their duties to defend and indemnify Seven Counties in the underlying wrongful death suit. Both sides moved for summary judgment.

The district court granted summary judgment to Seven Counties on the duty to defend and granted summary judgment to the insurers on the duty to indemnify. As to the duty to defend, the court found that neither the professional services exclusion nor the other-insurance exclusion in the MHRRG policy absolved the insurers of their broad duty to defend Seven Counties. The court gave the term “professional service” its “ordinary and usual” meaning and found that even if ESI was a professional service “for purposes of the duty to defend,” the underlying complaint did “not contain sufficient facts for the insurers to determine that the act

was in fact not covered by the policy.” RE 45, Op. & Order, PageID 1656-57 (citation modified). Further, the court found that no “other . . . insurance”—for example, under the Hanover policy—was “available” to Seven Counties. *Id.* at PageID 1660. The agreement between Uspiritus and Seven Counties had expired about six months before J.T.’s death, and the parties’ oral extension did not satisfy Hanover’s requirement of a “written” contract. *Id.*

But the district court determined that the insurers had no duty to indemnify Seven Counties pursuant to the professional services exclusion in the CGL part of the MHRRG policy. The court held that although Kentucky law requires an insurer to defend its policyholder if there is “any allegation which potentially, possibly or might come within” the policy’s coverage, the insurer “has a duty to indemnify only if liability for which indemnification is sought is actually covered” by the policy—a narrower scope of liability. *Id.* (first quoting *Aetna Cas. & Sur. Co. v. Commonwealth*, 179 S.W.3d 830, 841 (Ky. 2005); and then quoting *KSPED LLC v. Va. Sur. Co.*, 567 F. App’x 377, 384 (6th Cir. 2014)). The court reasoned that even though the hold on J.T. was “performed incorrectly, the employees drew upon (or at least should have drawn upon) their training and specialized knowledge when they” restrained J.T. *Id.* at PageID 1665. Accordingly, it concluded that the hold was subject to the professional services exclusion of the insurance contract. *Id.* at PageID 1667.

Seven Counties now appeals the district court’s indemnification ruling. It argues that ESI is not a professional service under Kentucky law and that genuine issues of material fact preclude summary judgment in the insurers’ favor.

II.

We review de novo the district court’s grant of summary judgment. *Kubala v. Smith*, 984 F.3d 1132, 1137 (6th Cir. 2021). Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact” and “is entitled to judgment as a matter of law.” *Id.* (quoting Fed. R. Civ. P. 56(a)). “In reviewing a motion for summary judgment, this court must view the evidence in the light most favorable to the nonmoving party.” *Barton v. Martin*, 949 F.3d 938, 947 (6th Cir. 2020).

As the parties agree, Kentucky law governs the interpretation of a liability insurance contract. *See Bituminous Cas. Corp. v. J & L Lumber Co.*, 373 F.3d 807, 815 (6th Cir. 2004). When we address a state law claim and jurisdiction is based on diversity of citizenship, we must “anticipate how the relevant state’s highest court would rule in the case and are bound by controlling decisions of that court.” *In re Dow Corning Corp.*, 419 F.3d 543, 549 (6th Cir. 2005).

III.

The central issue in this case is whether the restraint used on J.T. was a “professional service” that placed the conduct beyond the insurers’ contractual indemnification duties. Seven Counties argues that the ESI hold used on J.T. was not a professional service because it was a manual task performed by low-wage workers with negligible training. Seven Counties also argues, in the alternative, that the hold was not ESI at all, but rather assault. We reject these arguments and affirm the district court’s grant of summary judgment to the insurers.

A.

Seven Counties first argues that the district court “erred in applying the professional services exclusion to Seven Counties’ indemnity claims,” because “the use of ESI restraints by low-wage, minimally trained custodial care workers is not an excluded professional service.” CA6 R. 24, Appellant Br., at 25-26 (citation modified). The CGL part of the MHRRG policy does not define “professional services,” so this court must determine how Kentucky law defines the term. *See Auto-Owners Ins. Co. v. Veterans of Foreign Wars Post 5906*, 276 S.W.3d 298, 301 (Ky. Ct. App. 2009).

Kentucky caselaw addressing this issue is meager, but we start with a few clear principles. In general, Kentucky law instructs that exclusions in insurance contracts “are to be narrowly interpreted and all questions resolved in favor of the insured.” *St. Paul Fire & Marine Ins. Co. v. Powell-Walton-Milward, Inc.*, 870 S.W.2d 223, 227 (Ky. 1994). And undefined terms in an insurance policy must be afforded their “ordinary meaning.” *Cincinnati Ins. Co. v. Motorists Mut. Ins. Co.*, 306 S.W.3d 69, 73 (Ky. 2010). Moreover, the duty to indemnify is limited and exists “only if liability for which indemnification is sought is actually covered by the

insurance contract.” *KSPED*, 567 F. App’x at 384. But “Kentucky has consistently recognized that an ambiguous policy is to be construed against the drafter” in order “to effectuate the policy of indemnity.” *Bituminous Cas. Corp. v. Kenway Contracting, Inc.*, 240 S.W.3d 633, 638 (Ky. 2007). So unlike the duty to defend, a court determining indemnification duties “can consider all facts in the record that go to the issue of coverage even if the insurer was not aware of them prior to making the decision whether to defend.” *KSPED*, 567 F. App’x at 384.

1.

Even though Kentucky has seldom defined “professional services” for purposes of an insurance contract, two foundational cases guide our analysis. First, in *Ratliff v. Employers’ Liability Assurance Corp.*, 515 S.W.2d 225 (Ky. 1974) (per curiam), the Kentucky Court of Appeals held that a nurse who failed to walk a patient back to his bed after administering medication was engaging in a professional service, because “[d]etermining whether [the patient] was capable of returning safely from the nurses’ station to his bed required the nurses to exercise their expert professional ability.” 515 S.W.2d at 230. The appeals court—then Kentucky’s highest court—synthesized precedent from other jurisdictions to rule that when “negligent act[s] d[o] not involve any professional training or experience,” professional services are not at play. *Id.* at 229. For example, a nurse’s aide who left a child unattended in a bath, resulting in radiator burns, was not rendering professional services because bathing children is a task performed by any parent and requires no professional skill. *See id.* (citing *Keepes v. Drs. Convalescent Ctr., Inc.*, 231 N.E.2d 274, 275-76 (Ill. Ct. App. 1967)). Similarly, in another case, a nurse failed to execute a doctor’s orders to raise the rails on a patient’s bed, resulting in injuries to the patient. *See id.* at 228 (citing *D’Antoni v. Sara Mayo Hosp.*, 144 So. 2d 643, 646-47 (La. Ct. App. 1962)). The court found that the doctor’s order was the only professional service rendered—the nurse’s medical training aside—because any layperson could perform the “purely mechanical” act of raising bed rails. 144 So. 2d at 647.

In *DiBeneditto v. Medical Protective Co.*, this court applied *Ratliff*. 3 F. App’x 483, 486-87 (6th Cir. 2001) (per curiam). There, a doctor requested defense and indemnity from his liability insurer against sexual harassment claims brought by his former employees. We found

that the doctor's professional liability insurance did not cover the claims because his conduct "did not relate to the rendering of professional services." *Id.* at 487. We relied on *Ratliff*'s interpretation of "professional services" in Kentucky insurance law, which the state court "defined as requiring an exercise of judgment or training." *Id.* at 486 (citing *Ratliff*, 515 S.W.2d at 230). Notably, we held that "we must look not to the title or character of the party performing the act, but to the act itself" to determine whether a particular act was "of a professional nature." *Id.* (first quoting *Marx v. Hartford Accident & Indem. Co.*, 157 N.W.2d 870, 872 (Neb. 1968); and then quoting *Ratliff*, 515 S.W.2d at 226). And we cited approvingly *Marx*'s language defining "professional" acts as involving "[s]omething more than an act flowing from mere employment or vocation" and that "exacts the use or application of special learning or attainment of such kind." *Id.* at 486-87 (quoting *Marx*, 157 N.W.2d at 871-72). Although unpublished, *DiBeneditto* is instructive as the only instance in which we have applied Kentucky's definition of "professional services" for purposes of insurance contracts governed by Kentucky law.

2.

Armed with *Ratliff* and *DiBeneditto*, the district court distilled factors for determining whether a service is "professional" under Kentucky insurance law. And we think the district court reached the right result. But our reading of the relevant caselaw leads us to an analytical framework that is slightly different than the district court's. As the *Ratliff* court explained, precedent across jurisdictions "reache[s] exactly opposite results upon similar factual situations." 515 S.W.2d at 228. So we examine the relevant caselaw anew to ascertain Kentucky's definition of a "professional service."

First, as the district court noted, it is important to consider whether an act could be performed by a layperson or if it requires specialized training. Indeed, the cases discuss "special learning or attainments." *Marx*, 157 N.W.2d at 871-72. But we do not consider that learning to require a license, degree, or higher education. The existing Kentucky cases suggest that licensure is persuasive, but not necessary, to the finding of a professional service. RE 45, Op. & Order, PageID 1662 (surveying cases). At a minimum, in Kentucky, a "professional service" requires "an exercise" of on-the-job "training." *DiBeneditto*, 3 F. App'x at 486. But that raises

another issue: nearly all jobs require some sort of training, and it does not follow that every implementation of on-the-job training constitutes a professional service.

So another factor the district court reasonably considered is whether a particular activity requires an exercise of judgment or whether it is a rote or routine task, particularly a manual one. For example, the nurse in *D'Antoni* did not perform an activity that required her own judgment or training in raising hospital bed rails, because a doctor had already instructed her to take that step. 144 So. 2d at 646-47. And in *Marx*, an employee's act of mistakenly filling a hot water sterilizer with a chemical did not involve a professional act or service, as the court likened it to "sterilizing baby bottles or canning jars" at home. 157 N.W.2d at 872. Seven Counties relies on *Marx's* definition of a "professional service" as one that "is predominantly mental or intellectual, rather than physical or manual," *id.*, but nowhere did the *Ratliff* or *DiBeneditto* courts adopt such a bright-line qualification. And nowhere do those cases make the rudimentary manual-versus-intellectual divide dispositive. We, too, decline to do so.

Third, the district court properly considered that the act itself—here, the physical restraint—is regulated by the state. Although the *Ratliff* and *DiBeneditto* courts never explicitly contemplated regulation, it follows logically that activities tightly controlled by a state are more likely to require an exercise of training or judgment. This is also in harmony with *DiBeneditto's* recognition that the nature of the act itself is the most important consideration for determining whether a service is "professional." 3 F. App'x at 486.

Not all the district court's factors, however, are supported by relevant precedent. For example, the district court also "considered how much the employee [performing the challenged action] was paid." RE 45, Op. & Order, PageID 1662 (citing *Md. Cas. Co. v. Crazy Water Co.*, 160 S.W.2d 102, 105 (Tex. Ct. App. 1942)). But that factor is cherry-picked from *Crazy Water*, a Texas appeals case from 1942 mentioned once by the *Ratliff* court when describing the inconsistent nature of the existing caselaw. *See Ratliff*, 515 S.W.2d at 228. The clearest guidance from *Ratliff* and *DiBeneditto*, instead, is to "look not to the title or character of the party performing the act, but to the act itself." *DiBeneditto*, 3 F. App'x at 486 (citation omitted); *see also Ratliff*, 515 S.W.2d at 229-30. So to the extent the district court relied on the title or pay

of the custodial care workers, we decline to endorse that reliance. Those factors should be considered minimally, or not at all. *See, e.g., Mass. Bay Ins. Co. v. Preferred Safety, LLC*, No. 5:19-cv-00048, 2020 WL 4040367, at *4-5 (W.D. Ky. July 17, 2020) (“[T]he Court in both cases looked at the specific act that allegedly caused injury and not the job title.” (referring to *Ratliff*, 515 S.W.2d at 228, and *Orchard, Hiltz & McCliment, Inc. v. Phoenix Ins.*, 676 F. App’x 515, 520 (6th Cir. 2017))).

To sum up, the essential factors for defining a professional service in Kentucky insurance contracts include whether: (1) the action can be performed by a layperson or if it requires specialized learning; (2) the task at issue requires an exercise of judgment or is routine or rote, including if it is predominantly manual; and (3) the act itself is subject to regulation.

3.

Applying these factors to this case, we affirm the district court’s conclusion that the care workers rendered a professional service when they performed a kneeling cradle hold on J.T.

The first factor considers whether the action at issue could be performed by a layperson or if it required learning or attainment of some kind. As the district court found and the insurers emphasize, the restraint used on J.T. “demanded specialized knowledge and training to be performed safely on a child.” RE 45, Op. & Order, PageID 1664. To illustrate, Seven Counties care workers completed a 40-hour training curriculum pursuant to Kentucky regulation. *See* 902 Ky. Admin. Regs. 20:320 § 7(4)(b)(2). The curriculum included training on “[e]mergency and safety procedures.” *Id.* § 7(6)(c)(2). This included when and how to perform a physical restraint; which restraint was best suited to the episode at hand; how to prevent a child from choking during the restraint; how to de-escalate an emergency situation; when to contact a doctor or therapist to receive “initial and continuing authorization” for the restraint; and more. RE 33-5, OIG Report, PageID 1238-40, 1269-70. And the care workers involved in the incident with J.T. had been trained and re-trained on physical restraints. In fact, Francis had been re-trained on physical restraints four times in less than two years leading up to the incident.

To the extent Seven Counties argues the restraint used on J.T. was not a professional service because the care workers were not professionally licensed, that argument fails.

The insurers persuasively argue that Seven Counties' focus on its workers' low pay and lack of professional degrees "incorrectly focuses on the *individual* and not the *act*." CA6 R. 29, Appellee Br., at 43. Seven Counties works hard in this litigation to make its workers sound untrained and incompetent, repeatedly highlighting their purportedly small paychecks and lack of professional acumen. But the record reveals that the care workers received considerable instruction on how to respond to behavioral emergencies and execute ESI restraints safely. Although some actions that the care workers regularly performed—like helping to feed and wash children—may be examples of non-professional services, the *particular* act at issue here undoubtedly required an exercise of "professional training or experience." *Ratliff*, 515 S.W.2d at 229.

And that conclusion makes sense. As a practical matter, it is difficult to imagine that a layperson would be able to safely and competently perform a kneeling cradle hold on a child without proper training. Indeed, the restraint performed on J.T. is easily distinguishable from the kinds of actions that courts have held up as examples of lay conduct. *See, e.g., D'Antoni*, 144 So. 2d at 646-47 (raising bed rails); *Marx*, 157 N.W.2d at 871 (refilling a sterilizer with hot liquid); *Keepes*, 231 N.E.2d at 275-76 (bathing a child). So the first factor strongly favors the insurers.

Next, we consider whether performing the bodily restraint required an act of judgment or if it was a rote task. Analysis of this factor also indicates that the care workers' ESI hold was a professional service. True, the hold used on J.T. was inarguably manual. But that is hardly dispositive. Staff performed the restraint in response to an ostensible emergency. The care workers had to assess and respond to an evolving behavioral incident with J.T. before they decided if, and how, to physically restrain the child. As the district court explained, then, a kneeling cradle hold like the one used on J.T. "is neither a 'mechanical' nor a 'routine' act that 'any unskilled person could perform' safely." RE 45, Op. & Order, PageID 1665 (citation omitted). There is no evidence that children at the Uspiritus facility were regularly placed into ESI holds; rather, the facts suggest that the restraint used on J.T. was an unusual, real-time response to an unpredictable situation.

Third, we consider that the hold used on J.T. is subject to extensive regulation in Kentucky. *See* 902 Ky. Admin. Regs. 20:320 § 15(1)-(20). Indeed, the Kentucky regulations govern ESI restraints at a nearly molecular level. Kentucky requires that “[s]taff who implement [ESI]” in behavioral care centers receive thorough training, and these staff members are subject to significant restrictions in the time, manner, and duration of ESI application. *Id.* § 15(7), (12). The state monitors ESI restraints explicitly for the purpose of ensuring that the holds do not “result in harm or injury” and are not used as “punishment” or “retaliation,” as Seven Counties believes happened here. *Id.* § 15(1), (3). The state’s granular level of control illustrates that specialized training and knowledge is mandatory for workers who use these techniques. So this factor, too, demonstrates that the restraint implemented—even improperly—on J.T. is a professional service in Kentucky.

In conclusion, the relevant factors support the district court’s finding that J.T.’s care workers engaged in a professional service when they placed him into an ESI restraint. So the court correctly determined that the restraint fell within the professional services exception of the insurance policy.

Seven Counties’ arguments to the contrary are unavailing. First, Seven Counties argues that Kentucky’s definition of “professional services” for malpractice statutes of limitations should be adopted for insurance purposes, too. The Kentucky malpractice statute of limitations defines “professional services” as “any service rendered in a profession required to be licensed, administered and regulated as professions in the Commonwealth of Kentucky.” Ky. Rev. Stat. Ann. § 413.243. And “originally,” the only professions included in that definition were “law, medicine, and theology or divinity.” *Plaza Bottle Shop, Inc. v. Al Torstrick Ins. Agency, Inc.*, 712 S.W.2d 349, 351 (Ky. Ct. App. 1986) (citation modified). So, according to Seven Counties, “whether services rendered are professional depends on ‘the status of the person performing the particular activity.’” CA6 R. 24, Appellant Br., at 29 n.5 (quoting *Monroe Guar. Ins. Co. v. TEE Eng’g Co.*, No. Civ.A. 04-58, 2005 WL 1503219, at *2 (E.D. Ky. June 23, 2005)). That argument, though, explicitly contradicts the *Ratliff* and *DiBeneditto* courts’ instruction to “look not to the title or character of the party performing the act, but to the act itself.” *DiBeneditto*, 3 F. App’x at 486 (citation omitted). Applying this principle, a district court in the Western

District of Kentucky has persuasively rejected the use of § 413.243 to define professional services in an insurance contract. *See Mass. Bay*, 2020 WL 4040367, at *4-5.

Next, Seven Counties argues that, because the professional liability part of the MHRRG contract defines “professional services” in the healthcare context, that “same definition . . . should be applied to the CGL Part.” CA6 R. 24, Appellant Br., at 27. But, as the insurers explain, “the unrelated ‘professional health care services’ phrase” used in the professional services part “does not somehow impart meaning” to the CGL part, because the two parts “provide coverage that is distinct, each with its own set of exclusions, conditions, and definitions.” CA6 R. 29, Appellee Br., at 37. Although neither party provides any citation for these arguments, Kentucky courts have found that “[i]t is logical that terms [in an insurance contract] may have different definitions depending upon the policy provision involved.” *Sutton v. Shelter Mut. Ins. Co.*, 971 S.W.2d 807, 809 (Ky. Ct. App. 1997).

Finally, Seven Counties surveys a range of non-binding caselaw that purportedly supports its interpretation of “professional services.” But the *Ratliff* court explicitly acknowledged that caselaw across the country has “reached exactly opposite results upon similar factual situations” before the court waded into the mire for Kentucky itself. 515 S.W.2d at 228. Seven Counties does not move the needle merely by pointing out conflicting caselaw from other jurisdictions.

B.

Seven Counties also argues that even if ESI applied by custodial care workers is a professional service under Kentucky law, the care workers here were not performing ESI at all but instead assaulted J.T. Therefore, Seven Counties argues, the contractual professional services exception does not apply.

1.

As a threshold matter, the insurers contend that Seven Counties waived this argument. We have “repeatedly held that an argument not raised before the district court is waived on appeal.” *Kitchen v. Whitmer*, 106 F.4th 525, 536 (6th Cir. 2024) (citation modified).

Seven Counties raised this argument, albeit obliquely, in the district court. Opposing the insurers' motion for summary judgment, Seven Counties "disputed" the insurers' "characterization of J.T.'s death as the result of negligently performed ESI." CA6 R. 31, Reply Br., at 13 (citing RE 39, MSJ Resp., PageID 1576-77). It devoted one paragraph to the argument that the underlying wrongful death complaint did not discuss ESI and concluded, without case support, that the incident "was not the use of ESI" but "an inappropriate attempt to discipline that went horribly wrong." RE 39, MSJ Resp., PageID 1577. In any event, we are content to assume that Seven Counties preserved this argument for appeal.

2.

Seven Counties argues that the restraint used on J.T. was assault, not ESI, and that the district court sanitized the record and failed to consider material facts in its favor. This argument fails. The salient question is not whether the care workers restrained J.T. in accordance with Kentucky ESI regulations; after all, no party believes that the care workers properly executed ESI. The question is whether the workers subjected J.T. to a physical restraint pursuant to their professional training, excepting the insurers from any duty to indemnify under the professional services exclusion. On that point, Seven Counties does not offer evidence that creates a dispute of material fact sufficient to reach a jury.

As a preliminary matter, Seven Counties' argument suffers from the same purported flaw of which it accuses the district court: it disregards adverse facts. And "[c]onstruing the evidence in the light most favorable to the non-moving party does not require a court to ignore unfavorable evidence." *Dehning v. Globe Life Am. Income Div.*, Nos. 24-1982/1983, 2025 WL 3200183, at *3 (6th Cir. Aug. 22, 2025) (order).

Seven Counties begins by downplaying the incident with J.T. It argues that J.T. posed "no immediate safety threat" to himself or others when he attempted to leave his room and threatened staff members, one of whom fell to the ground while trying to control him—the action that prompted application of the kneeling cradle restraint. CA6 R. 24, Appellant Br., at 39. Seven Counties also makes no attempt to contend with the OIG report's determination that the hold used on J.T. constituted incorrectly performed ESI. Perhaps most glaringly, Seven Counties

ignores the fact that Francis—who made the apparently punitive comments to J.T. earlier in the day—was the *third* care worker to hold J.T. and only began to restrain the child after two other workers had already placed him in the kneeling cradle hold.¹

Similarly, Seven Counties argues that the underlying wrongful death complaint from J.T.’s estate never described the restraint as ESI. But that argument itself suffers from two flaws. First, the underlying complaint described the hold as a “technique” used by the care workers, even if it did not use technical terminology for the hold. RE 34-2, Underlying Compl., PageID 1441. And second, a court determining indemnification duties “can consider all facts in the record that go to the issue of coverage.” *KSPED*, 567 F. App’x at 384. In other words, the district court was not confined to the four corners of the underlying complaint but could consider all facts relevant to the insurers’ duty to indemnify.

Regardless, Seven Counties fails to explain why even an improperly-motivated kneeling cradle hold involved no “specialized knowledge.” CA6 R. 24, Appellant Br., at 38. Its argument focuses entirely on whether the act constituted ESI under Kentucky regulations. But for purposes of the CGL professional services exclusion, the question is not whether the restraint used was ESI, but whether the restraint was a professional service. The restraint used on J.T. could still have been a professional service without meeting the definition of ESI. The district court declined to reach Seven Counties’ argument for exactly this reason, explaining that it “need not determine whether th[e] incident qualifies as an ESI under the Kentucky regulations because, irrespective of whether it is ESI, the court must examine the act itself.” RE 45, Op. & Order, PageID 1664. And returning to the above factor-based analysis, even if the final factor—regulation of ESI in Kentucky—was inapplicable, the other factors still support the conclusion that the care workers were rendering a professional service.

¹Shortly before oral argument, Seven Counties moved this court to take judicial notice of the criminal indictment of the three care workers involved in J.T.’s death. *See* CA6 R. 41, Motion. Federal Rule of Evidence 201 permits us to “take judicial notice of developments in related proceedings in other courts of record.” *Chase Bank USA, N.A. v. City of Cleveland*, 695 F.3d 548, 553 n.2 (6th Cir. 2012) (citation modified); *see also* Fed. R. Evid. 201(b). We grant Seven Counties’ motion, but it does not change our substantive reasoning on this issue.

Seven Counties’ case citations in support of its argument are similarly unpersuasive. Seven Counties primarily relies on *DiBeneditto* and cases like it, which involved sexual harassment or assault in medical contexts. For example, Seven Counties argues that the restraint of J.T. was like the *DiBeneditto* doctor’s sexual harassment of his employees, because “a physician’s sexual harassment of his employees [does] not relate to a professional service.” CA6 R. 24, Appellant Br., at 40. But that ignores *DiBeneditto*’s ultimate conclusion that the physician’s “conduct at issue . . . did not relate to the rendering of professional services, because it bore no connection to his education and training as a physician.” 3 F. App’x at 487. The same cannot seriously be said of the restraint used on J.T. The record clearly shows that the care workers held J.T. in a kneeling cradle hold “technique” in response to his supposed erratic behavior. As discussed, the workers then held J.T. in a specialized restraint that was not the kind of service a layman would be trained or equipped to execute.

Seven Counties does not provide a definition of assault or explain its elements. Nor does it attempt to explain to the court how ESI and assault should be distinguished. That is problematic because even a properly performed ESI restraint of a child likely resembles assault. Seven Counties never engages in line-drawing to explain when the event transformed from ESI into assault, or anything else that would allow a jury to find that the hold was not an incorrectly performed professional service, as discussed above. And Seven Counties’ distorted description of the incident is in direct tension with this court’s instruction to “look not to the title or character of the party performing the act, but to the act itself.” *DiBeneditto*, 3 F. App’x at 486 (citation omitted).

For these reasons, we find no genuine dispute of material fact regarding whether the physical restraint used on J.T. constituted an excluded professional service. The district court properly granted summary judgment to the insurers on the duty to indemnify.

C.

In arguing for affirmance, MHRRG and Scottsdale also contend that Seven Counties was insured on a primary basis under the Hanover policy, limiting the insurers' indemnification obligations to excess coverage only. Because we affirm summary judgment to the insurers on other grounds, we decline to reach this argument.

IV.

For these reasons, we affirm.