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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PATRICIA ADAMS and LARRY ADAMS (25-3930/3934); MACKENZIE BENDER (25-3930/3935); CHERYL MARIE POTTS, individually and as the Executrix of the Estate of Jeffrey Potts (25-3930/3936); HEATHER MCCANN (25-3930/3937),

Plaintiffs-Appellants,

v.

THE MEDICAL PROTECTIVE COMPANY, et al.,

Defendants-Appellees.

Nos. 25-3930/3934/3935/3936/3937

Appeal from the United States District Court for the Southern District of Ohio at Cincinnati.
Nos. 1:20-cv-00170 (25-3930); 1:24-cv-00207 (25-3934); 1:25-cv-00067 (25-3935); 1:24-cv-00507 (25-3936); 1:24-cv-00208 (25-3937)—Michael R. Barrett, District Judge.

Decided and Filed: August 27, 2026

Before: CLAY, MURPHY, and BLOOMEKATZ, Circuit Judges.

COUNSEL

ON BRIEF: Alan J. Statman, STATMAN HARRIS LLC, Cincinnati, Ohio, for Appellants. Richard D. Porotsky, Sarah E. Abbott, DINSMORE & SHOHL LLP, Cincinnati, Ohio, for Appellees.

OPINION

BLOOMEKATZ, Circuit Judge. These cases arise from a surgeon's performance of hundreds of unnecessary and harmful surgeries, and the ensuing disputes between the harmed patients and the surgeon's insurer, the Medical Protective Company (MedPro). Because the

cases have significant factual and legal similarities, we consider them together. The plaintiffs appeal the district court's dismissal of their complaints, which we group into two sets of claims.

The first set of claims seeks to force MedPro to pay the plaintiffs' malpractice judgments against the surgeon. But the juries in the underlying suits found the surgeon liable for both negligence and fraud, so MedPro disputes its duty to pay based on a provision of the governing insurance policy that excludes coverage for damages "in consequence of" fraud. Interpreting the policy exclusion in accordance with Ohio law, we conclude that it bars the plaintiffs' recovery from MedPro when the damages directly stem and are inseparable from the surgeon's intentional fraud. Under that standard, we affirm the district court's decision that the plaintiffs have failed to plausibly state a claim that MedPro must pay their jury verdicts.

The second set of claims consists of a direct action against MedPro and MedPro's vice president of claims, Robert Ignasiak, for their conduct throughout the malpractice litigation and subsequent denials of the plaintiffs' requests for payment. In large part, the complaint sounds in allegations that MedPro is liable for breaching a duty of good faith. But in Ohio, MedPro's duty of good faith runs only to the insured party—the surgeon—and not to the surgeon's patients who later assert insurance coverage. So the plaintiffs cannot assert a bad faith claim here. Nor have the plaintiffs plausibly stated any freestanding tort claim. Therefore, we affirm the district court's dismissal of the direct action too.

GENERAL FACTUAL OVERVIEW

We begin with a general factual overview that is relevant to both sets of claims. Because these cases arise on motions to dismiss, we take the plausible facts pleaded in the complaints as true. *See Bates v. Green Farms Condo. Ass'n*, 958 F.3d 470, 480 (6th Cir. 2020). We also draw from the uncontested state court records referenced in the complaints. *See Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980); *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008).

These cases arise from the wrongdoing of Abubakar Atiq Durrani, M.D., a former spinal surgeon who practiced medicine in Ohio and Kentucky.[1] Throughout his time as a surgeon, Durrani operated on hundreds of patients. Given the nature of Durrani's work, patients frequently came to him in desperate straits, seeking relief from chronic pain or limitations on their daily life.

Unfortunately, many of Durrani's patients left his care worse off than when they arrived. Durrani commonly performed spinal surgeries that were medically unnecessary because less invasive interventions would have sufficed or because the surgery was not the right fix for the patient's condition. These surgeries were not innocent mistakes. Durrani frequently exaggerated the severity of patients' conditions and downplayed the risks of surgery in order to convince patients into operations so that he could bill for these costly procedures. He even told one patient that "her head could fall off" if he did not operate on her. 25-3934 (Adams), Ohio Trial Tr., R. 8-4, PageID 713. A good number of Durrani's surgeries turned out to be harmful, aggravating patients' spinal issues instead of ameliorating them.

The authorities eventually took notice. The federal government indicted Durrani for an array of crimes, including health care fraud, scheming to defraud health care benefits programs, and making false statements related to patients' care. But while on bond, Durrani fled to his home country of Pakistan.

Civil litigation proceeded in Durrani's absence. Hundreds of plaintiffs sued Durrani, largely in state court. Pursuant to Durrani's insurance policy, his medical malpractice insurer, MedPro, retained counsel for Durrani to defend the suits. After initially not participating in the malpractice suits, Durrani eventually gave a handful of remote depositions from Pakistan. But he was not present at any of the trials. The majority of trials resulted in a judgment for the plaintiff. The jury verdicts in many suits found that Durrani had fraudulently misrepresented the necessity of surgery and acted negligently in operating on the plaintiffs because a reasonable

[1]Although Durrani holds an M.D. degree and was once a doctor, his license to practice medicine has been permanently revoked. We therefore refer to Durrani by his name only, without the "Dr." prefix.

doctor would not have performed the unnecessary surgeries. The verdicts generally indicated that both Durrani's intentional and negligent conduct contributed to the plaintiffs' damages.

Despite prevailing at trial, the plaintiffs did not receive payment from Durrani—likely in part due to his international flight, but also because of the staggering sum of the verdicts against him, which totaled over $297,000,000. The plaintiffs contend that MedPro was obligated to pay only a fraction of that figure, about $50,000,000, but that MedPro still insisted on a "scorched earth defense" and refused to pay or settle any of their individual claims. No. 25-3930 (Direct Action), 3d Am. Compl., R. 134-1, PageID 6827. MedPro, however, maintained that it had no duty to indemnify Durrani. It pointed to the governing insurance policy's exclusion for damages that are "in consequence of" intentional torts (including fraud) or criminal acts, and it argued that the plaintiffs' damages were not covered due to Durrani's fraudulent misrepresentations about the necessity of surgery. No. 25-3934 (Adams), Policy, R. 13-1, PageID 3497.

In these appeals, we consider two sets of claims stemming from five complaints filed by several hundred plaintiffs regarding Durrani's malpractice and MedPro's actions in its wake. *First*, four of Durrani's former patients bring enforcement actions against MedPro, seeking to compel MedPro to pay their verdicts against Durrani. *Second*, over 250 former patients bring a direct action against MedPro and MedPro's vice president of claims, contending that MedPro's conduct throughout the malpractice litigation and subsequent denials of the plaintiffs' requests for payment constituted fraud and a variety of other torts. We consider each set of claims in turn.

ENFORCEMENT CLAIMS (Nos. 25-3934, 25-3935, 25-3936, 25-3937)

The plaintiffs in these actions seek to enforce their state court verdicts against MedPro. We must determine whether the plaintiffs' judgments fall within the insurance policy's exclusion for damages that are "in consequence of" intentional torts such as fraud. We conclude that the plaintiffs have not stated a claim because the exclusion applies to their damages awards and thus, they are not plausibly entitled to recover from MedPro.

I. Additional Background—Enforcement Claims

Some additional background sets the stage for the issues presented in these cases.

The Plaintiffs. Each of the plaintiffs in these four appeals suffered at Durrani's hands. Plaintiff Patricia Adams first saw Durrani for neck and back pain. Durrani performed vertebrae fusion surgery on Adams, but her condition got worse. She lost mobility in her neck and began suffering constant, debilitating pain. Plaintiff Mackenzie Bender received a surgery that she thought would fix her scoliosis but instead left her with greater spinal curvature than before. Durrani's lumbar surgery on Plaintiff Jeff Potts—now represented by his executrix Cheryl Potts—not only failed to fix Potts's back problems, but also led to severe complications including sepsis, a perforated colon, a collapsed lung, and a bone infection. Finally, Durrani implanted rods and screws into Plaintiff Heather McCann's spine during a medically unnecessary vertebrae fusion surgery, which aggravated her condition. McCann's pain later improved when another surgeon removed the materials that Durrani had implanted.

Underlying State Cases. Following medical malpractice trials in Ohio state court, each of the four plaintiffs obtained a verdict against Durrani. Their cases sketched similar trajectories. In each case, the jury found Durrani liable for negligent medical care and fraudulently misrepresenting the necessity of surgery. The jury interrogatories clarified that both Durrani's negligence and fraudulent misrepresentation about the surgeries were proximate causes of the plaintiffs' injuries. In some cases, the jury also found Durrani liable for battery or for failure to obtain informed consent. The juries awarded compensatory damages in amounts ranging from about $200,000 to over $9,000,000, although statutory caps and other adjustments reduced some of the awards.

In three of the cases—Adams's, Bender's, and Potts's—the trial court did not ask the jury to apportion damages between the negligence and fraud claims. Indeed, the plaintiffs in these cases opposed apportionment, contending that there was only one injury—the harmful surgery—and that it was not possible to disentangle the harm caused by Durrani's negligence from the harm caused by his fraudulent misrepresentation. The trial court agreed, and, over MedPro's objections, refused to give an interrogatory asking the jury to distinguish between the harms.

That meant the juries in Adams's, Bender's, and Potts's cases each returned an unallocated verdict: one that did not distinguish between the damages caused by negligence versus fraud. In McCann's case, however, the jury did return an allocated verdict. It found that 50% of McCann's injury was due to Durrani's negligence, and the other 50% was due to his fraudulent misrepresentation.

Durrani, through the representation MedPro retained for him, challenged each verdict in the Ohio Court of Appeals. The Court of Appeals ruled in Durrani's favor on some issues, but in each case the court affirmed Durrani's liability.

Because the plaintiffs were unable to recover from Durrani directly, they sought payment from MedPro. Although MedPro had settled two other medical malpractice judgments against Durrani, it refused to pay each of these four plaintiffs' verdicts.

The Policy. MedPro grounded its refusal to pay in the terms of the applicable insurance policy. The same policy governs each of these appeals. The policy obligates MedPro to pay "claim[s] for damages" against Durrani that are "based on professional services rendered or which should have been rendered." No. 25-3934 (Adams), Policy, R. 13-1, PageID 3497. But, crucially, the policy excludes from coverage damages caused by intentional torts or criminal activity. The text of the exclusion provides that the "policy does not cover" "payment of damages . . . in any claim for damages if said damages are in consequence of the performance of a criminal act or willful tort or sexual act." *Id.* Thus, as relevant here, the policy covers Durrani's liability stemming from his medical services, except when the damages are "in consequence of" his fraud or other intentional harmful acts.

Procedural History. Because MedPro refused to pay, each plaintiff filed suit in the U.S. District Court for the Southern District of Ohio to enforce their judgments against MedPro. The plaintiffs sued under Ohio Revised Code § 3929.06, which provides a private right of action for judgment creditors (e.g., the plaintiffs) to directly sue insurers if, thirty days after judgment, they are unable to recover from the insured. *See Est. of Heintzelman v. Air Experts, Inc.*, 931 N.E.2d 548, 551 (Ohio 2010); *Benahmed v. Houston Cas. Co.*, 486 F. App'x 508, 512–13 (6th Cir.

2012). The district court dismissed each case under Rule 12(b)(6) for failure to state a claim, and the plaintiffs timely appealed.

II. Analysis—Enforcement Claims

The dispositive question for the enforcement claims is whether the insurance contract between Durrani and MedPro covers the damages at issue here. The initial step is interpreting the scope of the policy exclusion, and specifically, the "in consequence of" language. The district court's opinions noted that Durrani's fraud was both a but-for and proximate cause of the plaintiffs' damages awards. Accordingly, the district court reasoned that the damages from Durrani's fraud and negligence were not independent and thus were "in consequence of" Durrani's fraud. We review de novo the district court's interpretation of the policy exclusion. *Bondex Int'l, Inc. v. Hartford Accident & Indem. Co.*, 667 F.3d 669, 676 (6th Cir. 2011). Under the causation standard that we articulate below, a but-for or proximate cause finding is not necessarily sufficient to conclude that the exclusion applies. Yet ultimately, we agree with the district court's disposition.

A. Meaning of the Policy Exclusion

These cases arise under diversity jurisdiction, so, as all agree, Ohio law governs the interpretation of the insurance contract. *United States v. A.C. Strip*, 868 F.2d 181, 184 (6th Cir. 1989). Our role when interpreting the policy is "to give effect to the intent of the parties." *Westfield Ins. Co. v. Galatis*, 797 N.E.2d 1256, 1261 (Ohio 2003). We presume that the plain and ordinary meaning of the policy language reflects the parties' intent. *Id.* MedPro has the burden to prove that an otherwise-covered claim falls within an exclusion to coverage. *Bondex Int'l*, 667 F.3d at 677 (citing *Cont'l Ins. Co. v. Louis Marx & Co.*, 415 N.E.2d 315, 317 (Ohio 1980)). We construe any ambiguity in the language of the exclusion in favor of coverage. *Perry v. Allstate Indem. Co.*, 953 F.3d 417, 421 (6th Cir. 2020) (citing *Andersen v. Highland House Co.*, 757 N.E.2d 329, 332–33 (Ohio 2001)); *King v. Nationwide Ins. Co.*, 519 N.E.2d 1380, 1383 (Ohio 1988). That means if there is any reasonable interpretation of the policy that leads to coverage, we must adopt it. *See id.*

The text of the exclusion lays the ground for the interpretive question here. Recall the text of the exclusion: the "policy does not cover" "payment of damages . . . in any claim for damages if said damages are in consequence of the performance of a criminal act or willful tort or sexual act." No. 25-3934 (Adams), Policy, R. 13-1, PageID 3497. This exclusion has two elements: (1) the excluded event: a "willful tort," "criminal act," or "sexual act"; and (2) a causation element: the requirement that the damages award is "in consequence of" the excluded event. *Id.* In this case, defining the excluded event is simple. All agree that Durrani's fraudulent misrepresentation falls within the meaning of "willful tort," as "willful" means "intentional" and fraudulent misrepresentation requires intent. *Becker v. Direct Energy, LP*, 112 N.E.3d 978, 999–1000 (Ohio Ct. App. 2018); *Funk v. Durant*, 799 N.E.2d 221, 224 (Ohio Ct. App. 2003). So too for the verdicts finding that Durrani committed battery. *Anderson v. St. Francis-St. George Hosp., Inc.*, 671 N.E.2d 225, 227 (Ohio 1996). But defining the second element is the more involved question. While "in consequence of" clearly establishes a causation requirement, causation has "many meanings and shades of meanings." *State Mut. Life Assurance Co. of Worcester v. Heine*, 141 F.2d 741, 746 (6th Cir. 1944). For example, consider a few possible types of causation, which run the gamut from expansive to strict: de minimis causation, indirect causation, but-for causation, proximate causation, most direct causation, and sole causation. *Cf. Linneman v. Vita-Mix Corp.*, 970 F.3d 621, 625–26 (6th Cir. 2020). We must determine what kind of causation the policy exclusion demands.

We start with the touchstone of Ohio insurance contract interpretation: the intent of the parties. *See Galatis*, 797 N.E.2d at 1261. The parties who formed the insurance contract are Durrani and MedPro, so we must interpret the policy from their perspective. Indeed, in these enforcement actions under Ohio Revised Code § 3929.06, the plaintiffs seeking to collect from MedPro assert Durrani's rights to coverage. *See Bennett v. Swift & Co.*, 163 N.E.2d 362, 364 (Ohio 1959). The plaintiffs' rights "cannot rise above" Durrani's—their claims to payment are coextensive with the claims Durrani would have if he himself had brought an action against MedPro seeking indemnification. *Id.*; *see also Est. of Heintzelman*, 931 N.E.2d at 551.

With this framing in mind, basic principles in Ohio insurance law show that the policy exclusion for damages "in consequence of" fraud applies to damages that directly stem from and

are inseparable from Durrani's intentional fraud. In other words, if no damages occurred that were independent from Durrani's intentional fraud, there is no coverage. *See U.S. Fid. & Guar. Co. v. St. Elizabeth Med. Ctr.*, 716 N.E.2d 1201, 1205–06 (Ohio Ct. App. 1998). This interpretation effectuates the parties' intent because it provides coverage for mistakes and good faith decisions that fall below the standard of care, yet excludes damages from intentional conduct. After all, Ohio courts have explained that the "very purpose for which insurance is purchased" is often to cover "negligence resulting in bodily injury." *Havel v. Chapek*, No. 2004-G-2609, 2006 WL 3833871, at *6 (Ohio Ct. App. Dec. 29, 2006); *see also Gallagher Sharp, L.L.P. v. Miller Goler Faeges Lapine, L.L.P.*, 137 N.E.3d 647, 657 (Ohio Ct. App. 2019). Yet insurance coverage is not intended to reach intentional conduct. Indeed, in Ohio, it cannot. Ohio public policy generally prohibits coverage for damages caused by intentional torts. *Harasyn v. Normandy Metals, Inc.*, 551 N.E.2d 962, 965 (Ohio 1990); *Chiquita Brands Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 988 N.E.2d 897, 900 (Ohio Ct. App. 2013). That rule seeks to prevent doctors from intentionally harming patients and then relying on indemnification to escape monetary liability. *See Harasyn*, 551 N.E.2d at 965; *Gearing v. Nationwide Ins. Co.*, 665 N.E.2d 1115, 1118–19 (Ohio 1996). Given that the parties contracted against this backdrop, and absent any indication that they intended to displace standard principles of insurance law, we determine that the policy bars coverage for damages directly stemming from fraud but allows coverage for independent damages directly stemming from negligence.

Ohio Court of Appeals cases on causation in insurance contracts mandate this standard. In Ohio, insurance companies must pay for damages incurred from both a covered and an excluded cause when the covered event is an "independent" cause of loss. *St. Elizabeth Med. Ctr.*, 716 N.E.2d at 1205–06. Moreover, Ohio cases recognize that the "general rule of insurance law" is that causation refers to "proximate cause." *Florea v. Nationwide Mut. Fire Ins. Co.*, No. 7908, 1983 WL 5030, at *6 (Ohio Ct. App. Jan. 28, 1983). But unlike in tort cases, where proximate cause sometimes means simple foreseeability, *see Sizemore v. Deemer*, 174 N.E.3d 5, 10 (Ohio Ct. App. 2021), proximate cause in insurance cases requires a closer link between the cause and the injury, *see Florea*, 1983 WL 5030, at *6; *Standard Oil Co. of N.J. v. United States*, 340 U.S. 54, 57–58 (1950); 1 New Appleman Ohio Insurance Law § 2.05(2)(e)(i)(F)(III) (2026).

Proximate cause in the insurance context asks about "the nature of the injury and how it happened," *Florea*, 1983 WL 5030, at *6, in order to determine whether the harm is of the type that the parties intended to be covered or excluded, *see Midwest Specialties, Inc. v. Westfield Ins. Co.*, No. 14027, 1994 WL 107192, at *9 (Ohio Ct. App. Mar. 30, 1994); *see also Bird v. St. Paul Fire & Marine Ins. Co.*, 120 N.E. 86, 87 (N.Y. 1918) (Cardozo, J.); 7 Couch on Insurance § 101:40 (3d ed. 2026). We follow that approach here.[2]

Notably, the fact that an excluded event may be a tort proximate cause of loss does not necessarily mean that the exclusion applies. *See Midwest Specialties*, 1994 WL 107192, at *9; Peter Nash Swisher, *Insurance Causation Issues: The Legacy of* Bird v. St. Paul Fire & Marine Ins. Co., 2 NEV. L.J. 351, 370–71 (2002). For example, a surgeon accidentally leaving a sponge in a patient's body during a surgery that was fraudulently induced may be covered under a policy designed to protect against damages from negligence, even if the fraudulent inducement would be a proximate cause of that negligence under standard tort law. *See Gray v. Grange Mut. Cas. Co.*, No. 05AP-1199, 2006 WL 3491861, at *8 (Ohio Ct. App. Dec. 5, 2006) (citing *Bendner v. Carr*, 532 N.E.2d 178, 183 (Ohio Ct. App. 1987)) (tortfeasor proximately causes later negligent medical care); *Jones v. Butler*, 52 N.E.2d 347, 351 (Ohio Ct. App. 1942) (same). For similar reasons, the fact that an excluded event is a but-for cause of loss does not necessarily suffice for the exclusion to apply. *Cf. Blaine Richards & Co. v. Marine Indem. Ins. Co. of Am.*, 635 F.2d 1051, 1054 (2d Cir. 1980). Indeed, instead of any "slight[]" causal connection, causation under Ohio insurance law generally requires "a direct consequence or responsible condition." *Westfield Ins. Co. v. Hunter*, 948 N.E.2d 931, 936 (Ohio 2011) (quoting *Eyler v. Nationwide Mut. Fire Ins. Co.*, 824 S.W.2d 855, 857 (Ky. 1992)).

Lastly, we recall the rule that we construe ambiguity in exclusions against the insurer. *Am. Fin. Corp. v. Fireman's Fund Ins. Co.*, 239 N.E.2d 33, 35 (Ohio 1968). Here, that means we should construe ambiguity in the term "in consequence of" to require a stricter view of

[2]Our approach is also consistent with our court's opinion in *Medical Protective Co. v. Duma*, 478 F. App'x 977 (6th Cir. 2012). In *Duma*, we did not address a precise causation standard, but we concluded, as here, that injuries that directly stemmed from an excluded cause fell within a policy exclusion for damages "in consequence of" the excluded cause. *See id.* at 978, 982 (discussing injuries incurred when a doctor drunkenly rendered medical care).

causation: one that sweeps fewer claims into the exclusion's orbit. *See id.*; *King*, 519 N.E.2d at 1383. Even with that interpretive canon, we determine that the exclusion clearly applies to damages directly stemming from intentional conduct. But to the extent MedPro contends that any but-for or tort proximate clause is enough to trigger the exclusion, we disagree. Given the purpose of malpractice insurance and the language of the policy, we cannot say that the parties "clearly intended" that any excluded but-for or proximate cause would mean no coverage. *See Hybud Equip. Corp. v. Sphere Drake Ins. Co.*, 597 N.E.2d 1096, 1102 (Ohio 1992) (emphasis omitted). Furthermore, if the parties had intended "a broader bar to coverage," they easily could have defined causation more expansively in the contract. *Hunter*, 948 N.E.2d at 938; *e.g.*, *Hartman v. Erie Ins. Co.*, 85 N.E.3d 454, 462 (Ohio Ct. App. 2017); *Front Row Theatre, Inc. v. Am. Mfr.'s Mut. Ins. Cos.*, 18 F.3d 1343, 1347 (6th Cir. 1994).

For these reasons, we conclude that the policy exclusion applies when the plaintiffs' damages directly stem and are inseparable from Durrani's fraud.

B. The Plaintiffs' Complaints

With this standard, we review de novo whether the plaintiffs state plausible claims to relief. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Perry*, 953 F.3d at 421. We ask whether on the facts as pled by the plaintiffs, as well as the uncontested state court records, it is plausible that the policy covers the plaintiffs' damages awards. *See Richelson v. Liberty Ins. Corp.*, 796 F. App'x 277, 281 (6th Cir. 2020). The district court's dismissal was proper if the only plausible interpretation of the complaints is that the plaintiffs' damages directly stem from Durrani's fraud and are thus excluded from coverage. *See id.*

1. Adams & Bender (Nos. 25-3934, 25-3935)

We consider Adams's and Bender's appeals together because their verdicts share two relevant features: both juries found Durrani liable for negligence because he performed a medically unnecessary surgery, and neither verdict allocated damages between this negligence and fraud. Because these plaintiffs' damages stem directly from and are not independent from Durrani's fraudulent misrepresentation, we conclude that their complaints do not plausibly establish that their damages are covered under the policy.

The precise jury findings establish that the plaintiffs' damages awards stem directly from Durrani's fraud. In both Adams's and Bender's cases, the jury found Durrani liable for negligence because he performed a surgery that was not medically necessary. Indeed, in response to a jury interrogatory asking the jury in Adams's case to state "in what respects [Durrani] was negligent," the jury found that "Durrani was negligent and breached the standard of care due to the fact that he performed a C1-C2 fusion surgery that was not medically indicated." No. 25-3934 (Adams), Verdict, R. 10-5, PageID 3440. Similarly, in Bender's case, the jury found that Durrani was negligent because "[a] reasonable and prudent spine surgeon would not have performed surgery on Mackenzie Bender at that time." No. 25-3935 (Bender), Verdict, R. 15-6, PageID 2352. These interrogatories prove that the harm caused by Durrani's negligence was the very fact that Durrani performed the procedure at all, which is the exact same harm as that from Durrani's fraudulent inducement.

We acknowledge that the juries did also find that Durrani's negligence caused the harmful surgeries and contributed to the plaintiffs' damages. But the negligence in these cases is akin to a lesser-included offense of Durrani's fraud, and the plaintiffs cannot secure coverage by reframing their injuries as caused by negligence rather than as directly stemming from intentional conduct. *See Snowden v. Hastings Mut. Ins. Co.*, 894 N.E.2d 336, 338 (Ohio Ct. App. 2008). For example, in *DeWitt v. Jensen*, the plaintiff secured a negligence verdict against a tortfeasor who had struck the plaintiff in the face. No. 25768, 2014 WL 604336, at *2 (Ohio Ct. App. Feb. 14, 2014). Yet when the insurance company was able to show that the conduct was intentional, coverage was excluded per a policy exclusion analogous to the one at issue here. *Id.* at *4–5. The result in *DeWitt* accords with our determination that Durrani's intentional fraud is not covered because it was not the kind of inadvertent mistake that we believe the parties intended the policy to protect. *See Galatis*, 797 N.E.2d at 1261; *Florea*, 1983 WL 5030, at *6; 7 Couch on Ins. § 101:40.

Additionally, there are no independent damages from negligence in these cases. Crucially, as to the procedures themselves, the plaintiffs do not contend, either now or in the underlying proceedings, that Durrani was somehow negligent beyond the fact that the surgeries should not have occurred in the first place. For example, they do not contend that Durrani

negligently executed the unnecessary surgeries. Undoubtedly, the plaintiffs suffered harm due to the prescribed procedures being unnecessary, unhelpful, and even damaging. But that harm directly stems from the fact that Durrani convinced the plaintiffs to get the ill-advised procedures in the first place. The key point is not that Durrani's fraud was a but-for or tort proximate cause of the plaintiffs' injuries. It is that there is no separate harm from Durrani's negligence versus his fraud.

Although not necessary to our conclusion, the lack of an allocated verdict exemplifies the point. An allocated verdict, depending on the language in the verdict form, could be evidence that the jury found that both fraudulent and negligent conduct were independent causes for different parts of the plaintiffs' injuries. But Adams and Bender opposed allocation on the ground that there was one inseparable injury, which, as Bender contended, was "the fact that she went through a surgery that was not medically indicated." No. 25-3935 (Bender), Trial Tr., R. 8-2, PageID 1586. In Bender's case, the trial judge even warned Bender's counsel that an unallocated verdict coupled with a fraud determination could result in Bender "get[ting] no coverage" under the insurance policy. *Id.* at PageID 1661. Bender's counsel went so far as to say that "it [didn't] matter to [him]" whether MedPro or Durrani paid because Durrani was "liable for [the] full verdict." *Id.* at PageID 1665. The discussion of allocation in Adams's case was not as extensive, but Adams's counsel agreed that the damages could not be separated between fraud and negligence. While not dispositive to our determination, these arguments highlight that, in the plaintiffs' own views, they suffered only one injury that directly stemmed from Durrani's fraud.

We sympathize with Adams's and Bender's desire to be made whole, particularly considering the life-altering harm that Durrani's surgeries inflicted on them. And we understand the plaintiffs' frustration with obtaining substantial verdicts yet being unable to fully recover. Nevertheless, we conclude that their damages awards are inseparable from Durrani's fraud. As such, their complaints do not state a plausible claim that their damages are covered under the

policy, and they cannot sustain a claim under Ohio Revised Code § 3929.06. *See Richelson*, 796 F. App'x at 281.[3]

The plaintiffs raise a variety of arguments to the contrary, but we find none convincing.

St. Elizabeth. The plaintiffs contend that they state a claim under the standard from *St. Elizabeth Medical Center*, 716 N.E.2d 1201. *St. Elizabeth* addressed how to determine whether damages covered by an insurance policy are independent from damages resulting from an excluded cause. *Id.* at 1205–06. But it did so in the context of vicarious liability claims of negligent hiring, *see id.*, so it is not quite analogous. Here, there is only one tortfeasor at issue: Durrani. This distinction matters because the Ohio Court of Appeals has explicitly declined to apply cases on insurance causation in the vicarious liability context to cases with a single actor. *Chiquita*, 988 N.E.2d at 901. Moreover, disentangling fraud and negligence in the vicarious liability context has been the subject of debate in Ohio insurance cases and presents distinct questions about causation not at issue here. *See Safeco Ins. Co. of Am. v. White*, 913 N.E.2d 426, 430–36 (Ohio 2009) (notably not even mentioning *St. Elizabeth*); 7 Couch on Insurance § 101:58 (3d ed. 2026). In any event, *St. Elizabeth* reinforces our conclusion, given its focus on whether covered damages are independent from an excluded cause. For the reasons explained above, in Adams's and Bender's cases the damages from Durrani's fraud and negligence were "intertwined," "directly connected," "not remote from each other," and accordingly "not independent." *Danis v. Great Am. Ins. Co.*, 823 N.E.2d 59, 69 (Ohio Ct. App. 2004) (applying *St. Elizabeth*).

Burden to Allocate. The plaintiffs also maintain that MedPro had the burden to allocate their verdicts yet failed to do so. This argument falters on three fronts. *First*, because our analysis does not rest on the plaintiffs' unallocated verdicts, *see supra* at 13, even if the plaintiffs are correct about the burden it would not change our conclusion. *Second*, it is unclear whether Ohio law currently places a burden to allocate on the insurer in this context. Although such a rule might be wise policy, *see Magnum Foods, Inc. v. Cont'l Cas. Co.*, 36 F.3d 1491, 1498–99

[3]Because we resolve the coverage disputes based on the policy exclusion for intentional torts, we do not reach MedPro's argument that the policy exclusion for criminal acts separately precludes coverage.

(10th Cir. 1994), the only Ohio case the plaintiffs cite was reversed on other grounds by the Ohio Supreme Court, *World Harvest Church v. Grange Mut. Cas. Co.*, No. 13AP-290, 2013 WL 6843615 (Ohio Ct. App. Dec. 24, 2013), *rev'd on other grounds*, 68 N.E.3d 738 (Ohio 2016). *Third* and finally, even if we assume MedPro had the burden to allocate the verdict, under *World Harvest Church* its burden was to "seek" allocation. *Id.* at *5. On these records, MedPro satisfied its burden, as it extensively argued for allocation only to be countered by the plaintiffs' opposing arguments.

Waiver. Finally, Adams alone argues that by settling two similar cases, MedPro has waived its right to assert that her verdict falls within the policy exclusion. But Adams has forfeited this argument by failing to raise it in response to MedPro's motion to dismiss, and instead raising it only in a supplement to her motion for reconsideration. *Evanston Ins. Co. v. Cogswell Props., LLC*, 683 F.3d 684, 692 (6th Cir. 2012). Moreover, even if we reached the merits, Adams's argument fails because "the doctrine of waiver" generally "cannot be employed to expand the coverage of a policy." *Collins v. Grange Mut. Cas. Co.*, 706 N.E.2d 856, 859 (Ohio Ct. App. 1997) (quoting *Hybud Equip. Corp.*, 597 N.E.2d at 1103). This rule is subject to limited exceptions, but Adams has not identified any plausible exceptions here. Nor are her forfeited equitable estoppel or course-of-performance arguments plausible. In short, on this record, the fact that MedPro settled two other cases against Durrani does not force MedPro to indemnify Durrani and pay Adams's verdict.

Overall, we find Adams's and Bender's arguments unconvincing and affirm the district court's dismissal of their complaints.

2. Potts (No. 25-3936)

We next address Potts's complaint. Like Adams and Bender, the jury in Potts's medical malpractice trial found that Durrani negligently and fraudulently performed an unnecessary surgery. The jury also found that Durrani failed to obtain Potts's informed consent for the procedure and thus committed battery.

We consider Potts's appeal separately from Adams's and Bender's because a particularity about his case bears mention. Significant complications arose from Potts's surgery.

Expert testimony at Potts's medical malpractice trial contended that Durrani had perforated Potts's colon during surgery and then attempted to cover up the mistake. As a result of the perforation, Potts developed sepsis and underwent emergency surgery to remove part of his colon. Then, Potts suffered a collapsed lung and developed a bone infection.

Given these facts, it might be possible that Potts incurred damages from negligence that were independent from damages caused by Durrani's fraud. In other words, if Durrani had been negligent in the *execution* of Potts's surgery, that might mean Potts incurred accidental injuries beyond the object of Durrani's fraud, which is the type of injury the policy was designed to cover. *See* 7 Couch on Ins. § 101:40. Potts's jury verdict seems to leave room for this possibility, as the jury found Durrani negligent for failing to "meet the standard of care" and not using "customary" methods in Potts's "treatment or procedure." No. 25-3936 (Potts), Verdict, R. 7-3, PageID 1379. That verdict is broader than Adams's or Bender's, which found Durrani negligent only because he performed a surgery that was not medically necessary.

At the same time, however, some of the state court records undercut the idea that Potts's surgical complications signify independent damages from negligence. For example, Potts's own expert in his medical malpractice action stated that Durrani's execution of the surgery might have been within the standard of care. In such a case, Potts's surgical complications would not have been independently actionable as negligence, and so Potts could not have independent negligence damages from the surgical complications.

Regardless of how these potential arguments would play out at the motion to dismiss stage, ultimately we do not reach them. Both in the district court and on appeal, Potts raises no argument about his surgical complications. Said differently, Potts makes no attempt to disaggregate damages that were potentially incurred from negligence in the execution of the surgery versus damages from the fact that the surgery occurred at all. Accordingly, Potts has forfeited an argument that he had independent negligence damages from the surgical complications. *See Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019).

That leaves Potts in the same situation as Adams and Bender: he contends that the entirety of the harm incurred was inseparable from Durrani fraudulently inducing him into

getting the surgery in the first place. Indeed, Potts's reply brief states that Potts's injury "from fraud and negligence" is "a single indivisible harm." No. 25-3936 (Potts), Reply Br. at 3–4. And it reiterates that Potts does not take issue simply with "a portion of the procedure performed." *Id.* at 3. Faced with that presentation of Potts's case, Durrani's liability for negligence is again akin to a lesser-included offense of his liability for battery or for fraudulently inducing Potts into the surgery. *Cf. DeWitt*, 2014 WL 604336, at *4–5. So we cannot say that Potts has plausibly pleaded that any of his damages were independently caused by negligence as opposed to Durrani's fraud. We therefore affirm the district court's dismissal of Potts's complaint.

3. McCann (No. 25-3937)

The last enforcement appeal is McCann's, which also has some distinctive features. The jury in McCann's case found that Durrani was negligent "due to a lack of diligence," "poor reporting and record keeping," and "disregard of the suggested, modified corrective care." No. 25-3937 (McCann), Verdict, R. 15-1, PageID 1688. These jury findings might suggest that Durrani was negligent in ways that extended beyond performing an unnecessary surgery. Moreover, McCann's jury returned an allocated verdict that attributed half of her damages to fraud and half to negligence. That could be evidence that some of her damages stem directly from Durrani's negligence and are independent from the damages from fraud. Notwithstanding the allocated verdict, however, MedPro contends that all of McCann's damages are inextricably intertwined with Durrani's fraud and so are excluded from coverage.

We need not decide whether McCann has plausibly stated a claim that any of her damages directly stem from negligence and are separable from Durrani's fraud. Instead, we resolve McCann's appeal on narrower grounds. The district court determined that, due to some particularities with her damages award, McCann had no outstanding damages for negligence. It thus concluded that McCann's only remaining damages had been expressly allocated to Durrani's fraud and, as such, were excluded from coverage. We agree.

The history of McCann's damages award shows why she has no outstanding damages for negligence. The jury in McCann's case awarded a total verdict of $208,076 in compensatory

damages. It apportioned half to Durrani's negligence and half to his fraud. However, McCann had received $157,530 in a settlement with the hospital where her surgery was performed, so the Ohio Court of Appeals offset her verdict against Durrani by that amount. *See* Ohio Rev. Code § 2307.28 (offset for joint tortfeasors). Yet the Court of Appeals declined to offset "the portion of the jury's award for . . . [an] intentional tort." No. 25-3937 (McCann), Ohio Ct. App., R. 9-5, PageID 1555–57 (citing *Adams v. Durrani*, 183 N.E.3d 560, 575 (Ohio Ct. App. 2022)); *see also* Ohio Rev. Code § 2307.25(A). Accordingly, the offset from the settlement applied only to McCann's negligence damages. Because the hospital settlement exceeded the negligence damages award, the offset reduced to $0 the portion of McCann's damages allocated to negligence.

The upshot is that McCann's only outstanding damages verdict against Durrani is the half of her total award that the jury explicitly allocated to Durrani's fraudulent misrepresentation. Based on the jury's allocation finding, we conclude that McCann's complaint does not raise a plausible claim that any remaining portion of her damages award is independent from Durrani's fraud. We therefore also affirm the district court's dismissal of McCann's complaint.

* * * * *

We affirm the district court's dismissal of the four plaintiffs' complaints seeking to enforce their medical malpractice judgments against MedPro.

DIRECT CLAIMS (No. 25-3930)

We now turn to the direct action against MedPro. In this case, a group of over 250 plaintiffs bring fraud and other claims against MedPro and one of its vice presidents based on the way MedPro navigated the underlying litigation and refused to settle the plaintiffs' judgments. The plaintiffs allege a variety of causes of action and raise numerous issues on appeal. But many of the plaintiffs' claims boil down to alleging that MedPro breached a duty of good faith towards the plaintiffs, and such claims are not actionable under Ohio law. We further observe that even though the conduct alleged in the complaint is reprehensible and concerning from a policy standpoint, our job in this case is to apply Ohio law, not develop new causes of actions to fit the

situation here. We agree with the district court that the plaintiffs have not plausibly stated a claim.

I. Additional Background—Direct Claims

As with the enforcement actions, we begin with some additional factual background. The history underlying this appeal spans over a decade and involves hundreds of lawsuits. We take the facts pled in the complaint as true, *see Twombly*, 550 U.S. at 556, and recount only the background necessary to understand and resolve the claims that the plaintiffs present on appeal.

The crux of the plaintiffs' allegations is that MedPro schemed with the counsel it paid to defend Durrani in order to thwart any insurance coverage for Durrani's patients. As alleged, the scheme began with Durrani's flight to Pakistan in 2013. The plaintiffs say that MedPro encouraged Durrani to flee the United States. MedPro then hired and paid Durrani's counsel for the Ohio malpractice actions. When some of the plaintiffs in the malpractice actions attempted to take Durrani's deposition remotely, Durrani's counsel and MedPro refused to communicate those deposition requests to Durrani and lied—both to the plaintiffs and to courts—that Durrani was unavailable, unreachable, would not agree to any depositions, and would not cooperate in his defense.

The motive for the scheme arises from Durrani's insurance contract. The contract provides that Durrani has a duty to cooperate in the defense of the malpractice actions. So, according to the complaint, MedPro engineered Durrani's absence from trial to ensure that in the event a jury found Durrani liable, MedPro could escape indemnifying Durrani by pointing to his failure to fulfill his obligations under the policy.

Indeed, MedPro has consistently pressed this potential defense. For example, after several of the medical malpractice trials had returned verdicts for the plaintiff, MedPro sought to wash its hands of the Durrani cases for good. It brought a lawsuit in federal court attempting to certify a defendant class of Durrani's harmed patients and obtain a class-wide declaratory judgment that Durrani's failure to cooperate in defending the medical malpractice cases meant that MedPro owed Durrani no coverage. Mot. for Class Certification at 1–4, R. 155, *Med. Protective Co. v. Ctr. for Advanced Spine Techs., Inc.*, No. 1:14-cv-005 (S.D. Ohio Sep. 26,

2014). But the court ultimately held that MedPro's so-called "lack of cooperation" defense to coverage could be adjudicated only on a case-by-case basis. Order at 10, R. 266, *Med. Protective Co. v. Ctr. for Advanced Spine Techs., Inc.*, No. 1:14-cv-005 (S.D. Ohio Oct. 21, 2016). The court reasoned that to revoke coverage, MedPro needed to show it was prejudiced by Durrani's absence in each particular case. *Id.*

Things took a suspicious turn after this ruling. Once it was established that MedPro needed to prove prejudice on a case-by-case basis, Durrani quickly became available for depositions—for the first time in five years—and testified by recorded deposition in several malpractice trials. In a smoking-gun deposition in 2018, Durrani testified that he had always wanted to participate in defending his own actions. The plaintiffs assert that Durrani's 2018 deposition testimony proves that MedPro and Durrani's counsel had lied when they represented that Durrani was unreachable and unwilling to participate in depositions.

The plaintiffs further take issue with MedPro's refusal to settle. The plaintiffs allege that from the initial medical malpractice suit until the present, MedPro has categorically refused to settle any of their cases even though it made financial sense for MedPro to do so. MedPro instead vigorously disputed coverage at each turn. It maintains that the plaintiffs' damages are not covered under the policy exclusion for damages in consequence of willful torts (as discussed in the enforcement actions); that Durrani's lack of cooperation precludes coverage; and that Durrani misrepresented information on his policy application, rendering the policy void ab initio. But the plaintiffs view the lack of cooperation defense as a sham contrived by MedPro, so, in their view, MedPro declining to settle on that basis constitutes fraud.

From this factual background, the plaintiffs brought a plethora of claims, ranging from fraud to intentional infliction of emotional distress. The district court ultimately dismissed almost all of them, holding that some claims were precluded by previous lawsuits, some were impermissible attempts to create novel causes of action or assert bad faith claims, and some simply failed to state a claim.[4]

[4]The district court did not dismiss the plaintiffs' claim for spoliation of evidence, but entered judgment on the dismissed claims under Rule 54(b), allowing the plaintiffs to immediately appeal.

The plaintiffs now appeal the district court's dismissal of their claims, the district court's denial of their motion for leave to file a Fifth Amended Complaint that asserts a single new claim (so-called rescission fraud), and the district court's handling of several discovery disputes.

II. Analysis—Direct Claims

We review de novo whether the complaint contains "sufficient factual matter" to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 8(a). We construe the record in the light most favorable to the plaintiffs. *Robert N. Clemens Tr. v. Morgan Stanley DW, Inc.*, 485 F.3d 840, 845 (6th Cir. 2007). We demand heightened particularity for the plaintiffs' fraud claims. *See* Fed. R. Civ. P. 9(b). As to those claims, the complaint must "state with particularity the circumstances constituting fraud," *id.*, including specifying "the allegedly fraudulent statements," identifying "when and where the statements were made," and explaining "what made the statements fraudulent." *Republic Bank & Tr. Co. v. Bear Stearns & Co.*, 683 F.3d 239, 247 (6th Cir. 2012).

As we proceed with our review, we explain that many of the plaintiffs' arguments are forfeited. The plaintiffs' appeal raises numerous issues (on our count, fifteen) in what appears to be a scattershot attempt to see if any may prove meritorious. But the plaintiffs' opening brief often does little more than repeat the facts in the complaint and "regurgitate[]" conclusory statements that the district court erred without responding to the district court's reasoning. *See Blick v. Ann Arbor Pub. Sch. Dist.*, 105 F.4th 868, 873 (6th Cir. 2024). As such, the plaintiffs have forfeited their challenges to many of the district court's rulings. *See id.* And as to the rest, they have shown no error.

A. Claim Preclusion

We first consider the plaintiffs' challenges to the district court's claim preclusion ruling, which held that the plaintiffs were barred from bringing several of their instant claims. The plaintiffs can only proceed in this action on claims—and factual bases—that were not pursued or available in previous litigation. *Grava v. Parkman Township*, 653 N.E.2d 226, 229 (Ohio 1995). So resolving preclusion defines the scope of the claims we review on appeal.

The previous suit raising a preclusion problem for the instant plaintiffs is *Aaron v. Medical Protective Co.*, No. 1:15-cv-691 (S.D. Ohio). In *Aaron*, a group of plaintiffs that included a majority of the instant plaintiffs sued MedPro for fraud based on collusion with Durrani's counsel, lying about Durrani's availability for depositions, and scheming to keep Durrani from participating in the malpractice trials in order to assert a lack of coverage defense. Compl. ¶¶ 54–55, 64, 73–74, 76, R. 1, *Aaron v. Med. Protective Co.*, No. 1:15-cv-691 (S.D. Ohio Oct. 23, 2015). But after the *Aaron* plaintiffs moved to voluntarily dismiss their complaint, in 2018 the court dismissed their claims "with prejudice." Order, R. 45-1, *Aaron v. Med. Protective Co.*, No. 1:15-cv-691 (S.D. Ohio Aug. 24, 2018).

In determining whether *Aaron* precluded the plaintiffs' instant lawsuit, the district court applied the claim preclusion rules of the forum state—Ohio. Under Ohio law, claim preclusion requires four elements: (1) a "final judgment on the merits," that (2) "involve[s] the same transaction" as the initial suit, (3) "assert[s] legal theories that were or could have been raised in the first suit," and (4) "involve[s] the same parties or those in privity." *Bus. Dev. Corp. of S.C. v. Rutter & Russin, LLC*, 37 F.4th 1123, 1129 (6th Cir. 2022) (internal quotations omitted). Here, the dismissal with prejudice in *Aaron* operates as a final judgment on the merits. *See Wheeler v. Dayton Police Dep't*, 807 F.3d 764, 766 (6th Cir. 2015); *see also Aaron v. Sup. Ct. of Ohio*, 258 N.E.3d 687, 692 (Ohio Ct. App. 2024).

The district court reasoned that all requirements for preclusion were satisfied. It therefore held that the instant plaintiffs could not bring any claims that were brought or could have been brought in *Aaron*. That means the district court barred claims that could have been brought based on the facts that were available to the plaintiffs at the time of the *Aaron* dismissal. Those facts include Durrani's flight to Pakistan, as well as the 2018 deposition in which Durrani testified he wanted to participate in the defense of the medical malpractice actions.

As best we can discern, the plaintiffs contend that the district court erred in three respects. *First*, there are a few plaintiffs in this suit who were not plaintiffs in *Aaron*. The plaintiffs argue that the new plaintiffs cannot be precluded from bringing this suit because there is no privity between them and the *Aaron* plaintiffs. In this context, "privity" is the general

requirement that the instant plaintiffs must have a "mutuality of interest" and desire the "identical . . . results" as the *Aaron* plaintiffs. *Newman v. Univ. of Dayton*, 172 N.E.3d 1122, 1133 (Ohio Ct. App. 2021); *Banks v. Toledo*, 216 N.E.3d 96, 105 (Ohio Ct. App. 2023) (quotation omitted); *see also O'Nesti v. DeBartolo Realty Corp.*, 862 N.E.2d 803, 806–07 (Ohio 2007). The district court reasoned that the "privity issue" was "pretty clear," because the few non-overlapping plaintiffs had "a common interest" with those in *Aaron* and the suits were "controlled" by the same counsel. No. 25-3930 (Direct Action), Hr'g Tr. re Mot. Jgmt on Pleadings, R. 213, PageID 10002, 10006. On appeal, the plaintiffs raise no argument challenging this reasoning beyond baldly stating that "there is no privity." No. 25-3930 (Direct Action), Appellant Br. at 24. With no attempt at argumentation or engagement with the governing law, the plaintiffs have forfeited their challenge to the district court's privity analysis. *See Blick*, 105 F.4th at 873, 881–82.

Second, the plaintiffs argue that a "manifest injustice" would result from applying claim preclusion here. *See AJZ's Hauling, L.L.C. v. TruNorth Warranty Programs of N. Am.*, 236 N.E.3d 176, 183 (Ohio 2023) (quotation omitted). We disagree. The plaintiffs had a "full and fair opportunity to litigate" their claims in the prior case, *id.*, and Ohio courts have already applied res judicata to similar cases arising from litigation about Durrani's medical malpractice, *see Aaron*, 258 N.E.3d at 692. To the extent the plaintiffs suggest that MedPro tricked or coerced their voluntary dismissal in *Aaron v. Medical Protective Co.*, we note, as the district court did, that the proper pathway to seek relief from the dismissal with prejudice is under Federal Rule of Civil Procedure 60 for fraud on the court. *See Rodriguez v. Honigman Miller Schwartz & Cohn LLP*, 465 F. App'x 504, 508 (6th Cir. 2012).

Third and finally, the plaintiffs contend that the district court erred by applying claim preclusion despite the plaintiffs' claims of ongoing fraud. Under Ohio law, claim preclusion does not bar "previously undiscovered claim[s] arising from newly discovered facts." *Montgomery v. Vargo*, 107 N.E.3d 799, 803 (Ohio Ct. App. 2018). The plaintiffs may not, however, escape preclusion by repleading their previous claims with "a few additional facts that occurred after the initial suit." *Dubuc v. Greek Oak Township*, 312 F.3d 736, 751 (6th Cir. 2002). The district court applied these rules properly here, as it barred only claims that "were or

could have been raised" based on the evidence available in *Aaron*, *see Rutter & Russin*, 37 F.4th at 1129, but allowed the plaintiffs to plead fraud and conspiracy claims based on evidence originating after that suit. It even encouraged the plaintiffs to specify their fraud allegations that were based on post-*Aaron* conduct and accordingly not precluded. Therefore, we determine that the plaintiffs have not shown error in the district court's preclusion analysis.

B. Third Amended Complaint

We now consider the plaintiffs' arguments concerning whether their Third Amended Complaint states a plausible claim to relief, with the backdrop that the plaintiffs may not state claims that were or could have been brought in *Aaron*.

1. Fraud Claims

The heart of the plaintiffs' complaint consists of fraud claims. To state a claim for fraud, the plaintiffs must plead with particularity that MedPro knowingly made a false representation that was material, that MedPro had the intent to mislead the plaintiffs into relying on the representation, that the plaintiffs justifiably relied on the representation, and that the representation proximately caused the plaintiffs injury. *Graham v. Am. Cyanamid Co.*, 350 F.3d 496, 507 (6th Cir. 2003) (citing *Russ v. TRW, Inc.*, 570 N.E.2d 1076, 1083 (Ohio 1991)).

Notably, Ohio law distinguishes between claims that an insurer committed fraud versus claims that an insurer acted in bad faith. To understand the distinction, start with the fact that Ohio law places upon insurers a duty to act in good faith, including when "defending and settling claims against the insured." *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 404 N.E.2d 759, 761 (Ohio 1980). An insurer may be liable if they breach this duty, such as by refusing to pay a claim without "reasonable justification," *Hoskins v. Aetna Life Ins. Co.*, 452 N.E.2d 1315, 1320 (Ohio 1983) (quoting *Hart v. Republic Mut. Ins. Co.*, 87 N.E.2d 347, 349 (Ohio 1949)), or by acting with an "arbitrary," *Gerken v. State Auto Ins. Co. of Ohio*, 20 N.E.3d 1031, 1045 (Ohio Ct. App. 2014), or "dishonest purpose," *Centennial Ins. Co.*, 404 N.E.2d at 762. Actions alleging that an insurer breached their duty are commonly referred to as "bad faith claim[s]." *See Gerken*, 20 N.E.3d at 1034. In contrast to bad faith claims, the generic tort of fraud is a narrower type of claim that, as described above, consists of a material misrepresentation that

induced justifiable reliance. While an insurer committing fraud typically entails the insurer acting in bad faith, not all bad faith actions by an insurer constitute fraud.

The distinction between fraud and bad faith is crucial because it affects who may sue an insurer. Anyone may state a generic fraud claim against an insurance company as long as they satisfy the necessary elements. But in Ohio, only the insured party may bring a claim alleging that an insurer acted in bad faith. *Gillette v. Est. of Gillette*, 837 N.E.2d 1283, 1287 (Ohio Ct. App. 2005); *Pasipanki v. Morton*, 572 N.E.2d 234, 235 (Ohio Ct. App. 1990). That means a "third-party claimant" who is not a party to the insurance contract cannot assert bad faith claims against an insurer. *Gillette*, 837 N.E.2d at 1287. Third-party claimants may, of course, sue the insurer if they plausibly state a freestanding tort, but they may not attempt to smuggle bad faith claims into their complaint under the cover of a different label. *See Kamnikar v. Fiorita*, No. 16AP-736, 2017 WL 2817467, at *4 (Ohio Ct. App. June 29, 2017).

The fact that Ohio law does not allow third parties to bring bad faith claims proves fatal to many of the plaintiffs' claims here. The plaintiffs are third-party claimants, as they are not parties to the insurance contract between Durrani and MedPro. (Unlike the enforcement actions under Ohio Revised Code § 3929.06, the plaintiffs do not stand in Durrani's place.) Thus, although MedPro has plausibly acted in bad faith, the plaintiffs may not sue MedPro on that ground alone. Instead, the plaintiffs must state the elements of a freestanding fraud claim. And we agree with the district court that their complaint fails to do so.

Fraud Claim: Depositions and Lack of Cooperation Defense. One of the complaint's central allegations is that MedPro committed fraud when it lied about Durrani's availability for depositions and schemed to manufacture a lack of cooperation defense. Because of preclusion, as we have explained, the complaint must plead sufficient facts post-2018 or that were not available at the time that the plaintiffs dismissed the *Aaron* suit.

The plaintiffs have not sufficiently pled a freestanding fraud claim arising from these facts. They have not pled with particularity, for example, how they justifiably relied on any of MedPro's post-2018 statements concerning Durrani's availability and cooperation. To the contrary, the plaintiffs have vigorously contested MedPro's representations on these subjects

ever since Durrani's 2018 deposition testimony. That "ongoing and aggressive opposition of [MedPro's] representations . . . defeats any claim of justifiable reliance." *Morrow v. Reminger & Reminger Co., L.P.A.*, 915 N.E.2d 696, 707 (Ohio Ct. App. 2009).

Furthermore, the plaintiffs' arguments on appeal suggest that these claims impermissibly attempt to circumvent Ohio's bar on third-party bad faith claims. *See Kamnikar*, 2017 WL 2817467, at *4. The plaintiffs direct us to a portion of their complaint that asserts their injuries arose from MedPro's unreasonable "Refusal to Make [Settlement] Offers." No. 25-3930 (Direct Action), 3d Am. Compl., R. 218, PageID 10478 (citation modified). As the complaint makes clear, the plaintiffs' cited injuries arose from MedPro's refusal to settle their claims based on a defense that allegedly lacked "reasonable justification." *See Hoskins*, 452 N.E.2d at 1320 (citation omitted). That sounds like a bad faith claim that, under Ohio law, the plaintiffs may not bring. *Gillette*, 837 N.E.2d at 1287. The fact that the plaintiffs' argument focuses solely on an unreasonable refusal to settle—instead of identifying material misrepresentations that the plaintiffs justifiably relied on—bolsters our confidence that this claim is really a bad faith claim in disguise, rather than being actionable as fraud. *See Kamnikar*, 2017 WL 2817467, at *4. Therefore, we conclude that the plaintiffs have not shown the district court erred in dismissing these fraud claims.

Fraud Claim: Settlement & Algorithm Fraud. The plaintiffs next appeal the dismissal of their claims for "settlement fraud" and "algorithm fraud." No. 25-3930 (Direct Action), Appellant Br. at 17, 25. We treat these claims as standard fraud claims because the plaintiffs have not identified a separate cause of action. The gist of the plaintiffs' argument is that MedPro unreasonably declined to settle claims, did not follow its own algorithm for deciding when to settle claims, and failed to report the plaintiffs' settlement proposals to MedPro's internal decisionmakers. But, as the district court held, these claims fail for two reasons. *First*, the plaintiffs have not pled with particularity any injury from or reliance on MedPro's statements concerning the algorithm or other statements regarding settlement. *See Republic Bank & Tr. Co.*, 683 F.3d at 247; *Yuhasz v. Brush Wellman, Inc.*, 341 F.3d 559, 563 (6th Cir. 2003). *Second*, these claims again may not circumvent Ohio's bar on third-party bad faith claims by relabeling the plaintiffs' core allegation that MedPro unreasonably refused to settle. *See Gillette*, 837

N.E.2d at 1287; *Kamnikar*, 2017 WL 2817467, at *4. As such, the plaintiffs have not shown an error in the district court's analysis.

Fraud Claim: Public Policy Fraud & Tri-Partite Fraud. The plaintiffs also raise claims of "public policy fraud" and "tri-partite" fraud. No. 25-3930 (Direct Action), Appellant Br. at 42. To the extent these claims simply take issue with Durrani unreasonably refusing to settle their claims, they are again impermissible bad faith claims. *See Gillette*, 837 N.E.2d at 1287; *Kamnikar*, 2017 WL 2817467, at *4. Moreover, although the plaintiffs' reply brief denies that these claims are standard fraud claims under Ohio tort law, the plaintiffs have identified no causes of action allowing them to sue for a freestanding violation of public policy or so-called tri-partite fraud.

That failure to point to any existing Ohio law forecloses the plaintiffs' arguments on appeal. Ohio state courts may develop Ohio common law. Or the Ohio legislature may pass statutory law allowing third-party claimants to sue insurance companies for conduct as alleged here. Some other states have. *See, e.g.*, Mass. Gen. Laws ch. 93A, § 9(1); *id.* ch. 176D, § 3(9); Mont. Code Ann. § 33-18-242(1); Ky. Rev. Stat. § 304.12-230; *State Farm Mut. Auto. Ins. Co. v. Reeder*, 763 S.W.2d 116, 118 (Ky. 1988). But in this case, which arises under our diversity jurisdiction, our role is to apply Ohio law—not create new causes of action. *See US Framing Int'l LLC v. Cont'l Bldg. Co.*, 134 F.4th 423, 435 (6th Cir. 2025). Accordingly, the plaintiffs have shown no error in the district court's dismissal of their "public policy fraud" and "tri-partite fraud" claims.

We agree with the plaintiffs that MedPro's conduct as pled is reprehensible. But the plaintiffs have not successfully pled freestanding fraud claims, and many of their arguments amount to bad faith. The plaintiffs themselves recognized while litigating in the district court that many of their arguments concern bad faith or would require making new law. *E.g.*, No. 25-3930 (Direct Action), Hr'g Tr. re MTD, R. 60, PageID 1077 ("[T]he Ohio causes of action . . . are about bad faith."); *id.* at PageID 1038–39 (arguing for "a certain expansion" of the law by taking Kentucky law "and applying it to these cases"); No. 25-3930 (Direct Action), Hr'g Tr. re MTD, R. 276, PageID 11787 (returning to MedPro's "affirmative duty to negotiate in good

faith"). Applying Ohio law as it currently stands, we decline to overturn the district court's rejection of those arguments.

2. Remaining Claims

Having discussed the plaintiffs' generic fraud claims, we now address the remaining claims in the Third Amended Complaint.

Kentucky Unfair Claims Settlement Practices Act. The plaintiffs appeal the dismissal of their claims under the Kentucky Unfair Claims Settlement Practices Act (KUCSPA), which provides a cause of action for third-party bad faith claims in Kentucky. *See* Ky. Rev. Stat. § 304.12-230; *Reeder*, 763 S.W.2d at 118. The district court dismissed this claim after conducting a multi-factor choice of law analysis and concluding that Kentucky law does not apply to this case. On appeal, the plaintiffs state that half of the plaintiffs are Kentucky residents and MedPro processed some components of the plaintiffs' claims out of its Louisville office. But the district court acknowledged those facts in its choice of law analysis. And the plaintiffs do not meaningfully challenge or engage with the district court's reasoning or the potential choice of law questions in this case. They do not even refer to the governing choice of law rules. Because the appellants have raised the KUCSPA claim in only a "skeletal" manner with no attempt at "developed argumentation," they have forfeited it. *United States v. Hendrickson*, 822 F.3d 812, 829 n.10 (6th Cir. 2016) (quoting *United States v. Robinson*, 390 F.3d 853, 886 (6th Cir. 2004)).

Constructive Fraud. The plaintiffs appeal the dismissal of their constructive fraud claim, which applies when there is a breach of a legal duty that "the law declares fraudulent[] because of its tendency to deceive others, to violate public or private confidence, or to injure public interests." *Schmitz v. Nat'l Collegiate Athletic Ass'n*, 67 N.E.3d 852, 869 (Ohio Ct. App. 2016) (quoting *Cohen v. Est. of Cohen*, 491 N.E.2d 698, 699–700 (Ohio 1986)). The district court dismissed this claim because the plaintiffs did not plead with particularity a "fiduciary relationship" between them and MedPro—a required element of a constructive fraud claim. *See id.*; Fed. R. Civ. P. 9(b). On appeal, the plaintiffs state that the district court "misapplied [the] law to the facts pled" without even attempting to argue that they actually pled a fiduciary

relationship, much less with particularity. No. 25-3930 (Direct Action), Appellant Br. at 43. Even setting aside the potential forfeiture for lack of any argumentation, we see no fiduciary relationship pled in the plaintiffs' complaint. *Cf. Suver v. Murphy*, No. 79AP-669, 1980 WL 353350, at *5 (Ohio Ct. App. Mar. 25, 1980) ("A fiduciary relationship does not exist between an insurer and a third-party claimant."). So we affirm the district court's dismissal of this claim.

Intentional and Negligent Infliction of Emotional Distress. The plaintiffs appeal the dismissal of their claim for intentional infliction of emotional distress (IIED) based on MedPro's allegedly outrageous and emotionally damaging conduct throughout the underlying litigation and settlement attempts. *See Morrow*, 915 N.E.2d at 713–14. However, we agree with the district court that MedPro's conduct as pled by the plaintiffs, albeit condemnable, is not sufficiently "outrageous" to be actionable. *See id.* at 714. Crucially—because of preclusion—MedPro encouraging Durrani to flee, the initial lies about Durrani's deposition availability, and the pre-2018 collusion to deceitfully avoid paying Durrani's patients cannot form the basis of the plaintiffs' IIED claim. Although that conduct might plausibly "go beyond all possible bounds of decency" and be "utterly intolerable in a civilized community," the plaintiffs' post-2018 allegations primarily concern MedPro seeking to assert defenses to coverage, and MedPro cannot be liable for "an act they were legally entitled to perform." *Id.* The plaintiffs' negligent infliction of emotional distress (NIED) claim fails for the same reason and because they never pled that claim below. *See Yackshaw v. John Carroll Univ. Bd. of Trs.*, 624 N.E.2d 225, 230 (Ohio Ct. App. 1993) (outrageousness requirement); *Greco v. Livingston County*, 774 F.3d 1061, 1064 (6th Cir. 2014) (forfeiture). We affirm the dismissal of the plaintiffs' IIED claim, and reject the plaintiffs' NIED claim.

Ohio Civil Conspiracy. The plaintiffs also appeal the district court's dismissal of their Ohio civil conspiracy claim. The district court dismissed this claim because, among other things, it requires "an underlying tort that is actionable without the conspiracy." *Morrow*, 915 N.E.2d at 711–12; *see also Aetna Cas. & Sur. Co. v. Leahey Constr. Co.*, 219 F.3d 519, 534 (6th Cir. 2000). For the reasons explained above, the plaintiffs have not pled a plausible freestanding tort claim, so their conspiracy claim falls as well.

Ohio § 2307.60 Claims. The plaintiffs appeal the district court's dismissal of their claims under Ohio Revised Code § 2307.60, which allows "[a]nyone injured in person or property by a criminal act" to recover monetary damages. Ohio Rev. Code § 2307.60(A)(1). The plaintiffs' sole argument on appeal is that "[t]he district court failed to rule" on their § 2307.60 claim. No. 25-3930 (Direct Action), Appellant Br. at 45. But the district court did rule on this claim. In its order granting in part MedPro's motion to dismiss the Second Amended Complaint, it ticked through every crime that the plaintiffs had alleged and concluded that none supported the § 2307.60 claim. It reaffirmed its ruling as to the new facts pled in the Third Amended Complaint. The district court even informed the plaintiffs in a hearing on the motion to dismiss the Third Amended Complaint that it had "already" "kicked out" the § 2307.60 claims and clarified as such when the plaintiffs' attorney asked the court to repeat itself. No. 25-3930 (Direct Action), Hr'g Tr. re MTD 3d Am. Compl., R. 276, PageID 11764. Accordingly, we conclude that the plaintiffs have shown no error in the district court's dismissal of this claim.

Ohio Corrupt Practices Act. The last issue the plaintiffs challenge stemming from the Third Amended Complaint is the district court's dismissal of their claim under the Ohio Corrupt Practices Act, also known as Ohio Civil RICO. *See* Ohio Rev. Code § 2923.32(A); *Morrow*, 915 N.E.2d at 708. To plead a plausible claim, the plaintiffs were required to show, among other things, that MedPro's conduct "involve[d] the commission of two or more specifically prohibited state or federal criminal offenses." *Morrow*, 915 N.E.2d at 708 (quotation omitted). As with the plaintiffs' § 2307.60 claims, the district court dismissed this claim for failure to plead a plausible criminal offense. The plaintiffs' instant challenge to the district court's ruling is conclusory, simply stating that the "district court misapplied [the] law to the facts pled." No. 25-3930 (Direct Action), Appellant Br. at 46. The plaintiffs' failure to meaningfully challenge the district court's ruling, coupled with their failure to show a plausible criminal offense, means they have not proved the district court erred in dismissing this claim.

C. Leave to File a Fifth Amended Complaint

We next turn to the plaintiffs' appeal of the district court's denial of their motion for leave to file a Fifth Amended Complaint. Federal Rule of Civil Procedure 15(a)(2) provides that

the court "should freely give leave when justice so requires." But the district court properly denied the plaintiffs' motion for leave to amend if their proposed amendment would be futile, i.e., if it does not raise a new claim that could survive a Rule 12(b)(6) motion to dismiss. *Riverview Health Inst. LLC v. Med. Mut. of Ohio*, 601 F.3d 505, 512 (6th Cir. 2010). As with our analysis of the district court's Rule 12(b)(6) rulings, we review de novo the district court's decision to deny leave to amend on futility grounds. *Id.*

The plaintiffs bring a single novel claim in their proposed Fifth Amended Complaint. They plead a "recission [sic] fraud claim," alleging that MedPro committed fraud by pursuing a state court lawsuit seeking to rescind the insurance contract with Durrani. No. 25-3930 (Direct Action), Proposed 5th Am. Compl., R 281-1, PageID 11925. In that lawsuit, MedPro alleged that its contract with Durrani was void ab initio because Durrani had "misrepresented material facts" when he applied for insurance coverage. Order at 2, *Med. Protective Co. v. Ctr. for Advanced Spine Techs., Inc.*, No. A2304696 (Ham. Cnty. C.P. June 30, 2025). But the court granted summary judgment to the defendants on the grounds that laches, waiver, and equitable estoppel barred MedPro's argument. *Id.* at 17, 27.

The district court correctly determined that granting leave to amend to add the plaintiffs' rescission fraud claim would have been futile. As an initial matter, the plaintiffs have identified no cause of action in support of their claim. If we treat their cause of action as standard fraud, it would still fail because the plaintiffs have not pled with particularity any justifiable reliance or injury. *See Yuhasz*, 341 F.3d at 563. And, as with many of the other fraud claims, this rescission fraud claim is an attempt to hold MedPro liable for asserting that the policy does not cover the plaintiffs' verdicts, and is again an impermissible third-party bad faith claim. *See Gillette*, 837 N.E.2d at 1287; *Kamnikar*, 2017 WL 2817467, at *4. Finally, to the extent the plaintiffs seek to hold MedPro liable for the statements it made in the rescission lawsuit, Ohio litigation privilege renders those statements nonactionable. *See Reister v. Gardner*, 174 N.E.3d 713, 715 (Ohio 2020). So the district court did not err by denying leave to file a Fifth Amended Complaint.

D. Discovery Issues

The plaintiffs lastly argue that the district court erred both by failing to rule on motions to compel and by not giving the plaintiffs access to privileged documents under the exception to privilege for "communication[s]" made "for the purpose of committing . . . a crime or fraud." *See State ex rel. Nix v. Cleveland*, 700 N.E.2d 12, 16 (Ohio 1998). We review the district court's handling of these discovery issues for an abuse of discretion. *United States ex rel. Williams v. Renal Care Grp., Inc.*, 696 F.3d 518, 525–56 (6th Cir. 2012).

The district court did not abuse its discretion here. The plaintiffs received significant discovery, and indicated to the court that it was sufficient. After filing their motion to compel and asserting their right to discover the privileged documents, the plaintiffs later filed a status report where they stated: "Despite the few loose ends, Plaintiffs do not require anymore [sic] discovery. They are ready for trial." No. 25-3930 (Direct Action), Status Report, R. 256, PageID 11036. Because the plaintiffs received significant discovery, represented to the district court that they did not need more discovery, and have failed to plead a viable claim, we decline to disturb the district court's judgment on account of these discovery disputes. *See Mitchell v. McNeil*, 487 F.3d 374, 379 (6th Cir. 2007).

* * * * *

For these reasons, we affirm the district court's dismissal of the plaintiffs' direct claims.

CONCLUSION

We affirm the district court in Nos. 25-3930, 25-3934, 25-3935, 25-3936, and 25-3937. MedPro's motion for leave to file a sur-reply in No. 25-3930 is denied as moot.