PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 25-1699 & 25-1702

BRIAN O'CONNOR, Administrator of the Estate of Hyo Jung Kim; SUNG-CHUL JUNG,

Plaintiffs – Appellants,

v.

FAIRFAX TAXI, INC.; EVELYN KENIN, Administrator of the Estate of Amoah Gyimah,

Defendants – Appellees.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:23-cv-01756-CMH-WEF; 1:23-cv-01758-CMH-WEF)

Argued: May 7, 2026 Decided: August 19, 2026

Before RICHARDSON, QUATTLEBAUM, and RUSHING, Circuit Judges.

Affirmed by published opinion. Judge Richardson wrote the opinion, in which Judges Quattlebaum and Rushing joined.

ARGUED: Steven M. Garver, GARVERLAW, PLLC, Reston, Virginia, for Appellants. John D. McGavin, MCGAVIN, BOYCE, BARDOT, THORSEN & KATZ, P.C., Fairfax, Virginia, for Appellees. **ON BRIEF:** Deborah Mayer, GARVERLAW, PLLC, Reston, Virginia, for Appellants. Gifford V. Hampshire, MCGAVIN, BOYCE, BARDOT, THORSEN & KATZ, P.C., Fairfax, Virginia, for Appellees.

RICHARDSON, Circuit Judge:

On an April afternoon in 2019, a northbound taxicab and a southbound Volkswagen collided head-on along the George Washington Memorial Parkway. The crash killed the taxi's driver, Amoah Gyimah, and one of his passengers, Ms. Hyo Jung Kim. It gravely injured the other passenger, Dr. Sung-Chul Jung, and left both Jung and the Volkswagen's driver, Eric Jewett, with no memory of the event. Although one witness saw the collision, no witness could identify which vehicle crossed the center line, when it crossed, or how much time remained before impact. The United States Park Police investigated and concluded that Jewett was at fault for crossing into oncoming traffic. Jung and the administrator of Kim's estate nonetheless sued Gyimah's estate for negligence. They also sued Fairfax Taxi—the company under whose county-issued certificate Gyimah operated—on theories of derivative liability. Three district-court rulings ended the litigation before trial: judgment on the pleadings for Fairfax Taxi, exclusion of Plaintiffs' accident-reconstruction expert, and summary judgment for Gyimah's estate.

We affirm. Start with jurisdiction. Section 1332(c)(2) deems a decedent's representative a citizen of the decedent's "State." Kim was a citizen of a "foreign state," not a "State," so the provision does not apply. That returns us to the settled law of this circuit: When a wrongful-death representative is a nominal conduit, the citizenship of the statutory beneficiaries controls. The beneficiaries here are South Korean, the Defendants Virginian, and the amount in controversy is met. So the district court had diversity jurisdiction under § 1332(a)(2).

On the merits, the district court acted well within its discretion in excluding the expert, both because Plaintiffs failed to comply with the court-ordered report deadline and because his testimony was inadmissible under Federal Rule of Evidence 702. And because Virginia law requires a negligence plaintiff to show "why and how" an accident happened—not merely *that* it happened—Plaintiffs' circumstantial fragments cannot carry their claims past summary judgment.

I. BACKGROUND

On April 29, 2019, Dr. Sung-Chul Jung and Ms. Hyo Jung Kim, South Korean citizens visiting the United States for a conference, hailed a Red Top taxicab driven by Amoah Gyimah, a domiciliary of Virginia. Fairfax Taxi, Inc. does business as Red Top Cab. Around 4:00 p.m., as the taxi traveled northbound on the George Washington Memorial Parkway, it collided head-on with a southbound Volkswagen Beetle driven by Eric Jewett. Gyimah and Kim died. Jung survived, but a serious head injury erased his memory of the collision and of an indeterminate period before it. Jewett survived but also has no memory of the crash. No witness could describe the moment of impact.

The United States Park Police investigated. Their file included photographs of the vehicles' post-collision positions, a scaled diagram reflecting no skid or tire marks on the northbound side of the Parkway, and data from the airbag control module of Gyimah's vehicle. That data showed that Gyimah was traveling between 50 and 53 miles per hour in a posted 45-mile-per-hour zone five seconds before impact—a speed the report characterized as "moving with traffic on the parkway and not excessive." J.A. 314.

Gyimah's toxicology was negative. The report concluded that "Jewett was at fault for crossing into oncoming traffic striking Gyimah's vehicle causing Kim's death." J.A. 304.

The depositions of the surviving witnesses added little about how the collision occurred. Jung—the only occupant of the cab who survived to testify—recalled that the cab was traveling at its "usual speed," that his last memory placed it in the *right* northbound lane, and that he was watching the trees and the river out the right-side window. J.A. 337. He was deposed in English, which is not his native language. It is undisputed that the collision occurred in the left lane. Jung testified that the last thing he remembers Gyimah doing was "[h]olding the phone," but when asked whether Gyimah was on a call, he answered, "Actually, I don't know but he speak something, but at that time my English was not good . . . . I did not realize and still I don't know." J.A. 341–42. He said that at one point Gyimah "looks like type on the phone," J.A. 348; elsewhere he described the phone as simply held "down" at Gyimah's side, J.A. 341. Jung did not know how long the gap in his memory was—whether his last memory preceded the crash by seconds or by minutes—and he never saw the other vehicle. Months after his deposition, Jung submitted an errata sheet stating that Gyimah "was using his phone with his right hand and was paying attention to the phone, not the road," and that Gyimah "could have moved to the right to avoid the collision." J.A. 350–51.

Timothy Bracken, driving northbound in what he described as "light" traffic, did not see the collision but was the first person to reach Gyimah's vehicle—after making two trips back to his own truck for tools. J.A. 359–60, 362, 368. He saw a phone in Gyimah's lap but did not "remember seeing any light on the screen," could not say when he first noticed it, and could not tell which vehicle had crossed the line. J.A. 367–69. Gyimah "came to" while Bracken rendered aid, but Gyimah soon died at the scene. J.A. 364–65. John McDonald, a retired police captain driving southbound with his windows down, heard "a huge explosion" but no skidding sounds beforehand—sounds he testified he would have recognized. J.A. 384–88. He did not know which vehicle crossed the line: "I don't know who crossed over. I don't know if they both crossed over." J.A. 387. Roger Oswalt, traveling one car behind Jewett, saw the collision but could not say which car crossed the line or whether anyone braked, observing only that "[i]t appeared that both cars were very close to the center." J.A. 394–98, 400–01. Ray Bombac testified that Jewett's Volkswagen must have been speeding as he knew he "was going the speed limit and [Jewett's] car passed [him]." J.A. 259–60. A final witness, Kyle Huelsman, remembered no details.

Plaintiffs first sued in the Circuit Court of Fairfax County, asserting negligence against Gyimah's estate and three theories of derivative liability against Fairfax Taxi: respondeat superior, a non-delegable duty under Restatement (Second) of Torts § 428 (1965), and joint venture. On the parties' cross-motions, the state court sustained Fairfax Taxi's partial demurrer without leave to amend and dismissed the joint-venture/joint-enterprise claim with prejudice; it separately denied Plaintiffs' motion for a pretrial declaration of vicarious liability under § 428, concluding that operating a taxicab is not an activity posing an unreasonable risk of harm and thus is not a non-delegable duty. The court made no ruling on the respondeat superior theory. Plaintiffs then took a voluntary nonsuit under Va. Code § 8.01-380.

In December 2023, Plaintiffs recommenced their actions in the Eastern District of Virginia. *See* Va. Code § 8.01-229(E)(3). After the district court ordered a more definite statement, Plaintiffs reasserted all three derivative-liability theories—including the joint-venture theory dismissed with prejudice in state court. Their More Definite Statement alleged that either or both vehicles crossed the double-yellow line; that "[a]t the said time of the collision and immediately prior thereto, Gyimah was using and looking at his electronic device(s) . . . and not at the road"; and that, had Gyimah been paying attention, he could have avoided the collision by braking or moving into the right lane. J.A. 77–78. As to Fairfax Taxi, it alleged a series of regulatory and operational facts: that Gyimah held a county-issued "hacker's" license; that Fairfax Taxi held a Certificate of Public Convenience and Necessity; that Gyimah was required to use Fairfax Taxi's color scheme and assigned vehicle number; and that drivers were required to use Fairfax Taxi's dispatch system, including a dashboard tablet and credit-card processor.

Plaintiffs attached to the More Definite Statement the Taxicab Operator Agreement between Gyimah and Fairfax Taxi, along with its Equipment Rental Agreement. The Operator Agreement provides that "[t]he parties intend to create by this Agreement the relationship of an Independent Contractor and not an employer-employee relationship," that "[a]ny doubt as to the construction of this Agreement shall be resolved in order to maintain the Operator's status as an independent contractor," and that "[n]othing contained in this Agreement shall be deemed to create an agency, joint venture, partnership, franchise or any other legal relationship except that of principal and independent contractor." J.A. 84. The Equipment Rental Agreement likewise recites that Gyimah operated "as an independent contractor" and reflects that Gyimah paid Fairfax Taxi a fixed weekly fee. J.A. 96. And as the More Definite Statement acknowledged, Gyimah owned the vehicle he drove and bore the obligation to insure it.

On June 28, 2024, the district court granted Fairfax Taxi's Rule 12(c) motion. It held that the joint-venture theory was barred by res judicata. As to the § 428 and respondeat superior theories, the court ruled on the merits: "Though the Fairfax court did not dismiss with prejudice these claims against Fairfax Taxi based on unreasonable risk or vicarious liability, the Fairfax court's reasoning was sound, and the Court again rejects those claims." J.A. 105. On the respondeat superior theory in particular, the court relied on the Operator Agreement's terms and on the allegations that Gyimah owned and insured his own vehicle. The court denied reconsideration and declined to certify an interlocutory appeal.

The district court's Rule 16(b) scheduling order required Plaintiffs' expert disclosures by September 16, 2024. Plaintiffs timely filed a "Designation of Expert Witnesses" naming nine experts, including Michael Miller, an accident reconstructionist "expected to testify consistent with his attached report, which is hereby attached and incorporated herein." J.A. 134–61. But no report was attached—then or for months afterward. Discovery closed on February 13, 2025. At the final pretrial conference on February 20, 2025, the court authorized video depositions of out-of-town witnesses in lieu of trial testimony but did not authorize any further discovery depositions of testifying experts. Only on February 25, 2025—five months and nine days after the deadline—did Plaintiffs move for leave to file Miller's affidavit out of time, with trial set for June 23, 2025. Miller's affidavit opined that Gyimah was not paying attention; that "[i]t appears that there were not any vehicles to the right of the Red Top Cab," so Gyimah "more probably than not . . . could have swerved to the right to avoid the collision"; and that "Gyimah did not attempt to brake or slow down in the seconds prior to the collision," such that braking would have avoided the collision or lessened its severity. J.A. 211–12.

On May 19, 2025, the district court denied the motion. Applying the five factors from *Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596–97 (4th Cir. 2003), it concluded that the late disclosure was neither substantially justified nor harmless. In the alternative, the court excluded Miller's opinion under Federal Rule of Evidence 702 as unsupported by the record. Taking notice of the stopping-distances tables in Va. Code § 46.2-880, the court observed that two vehicles lawfully approaching one another at 45 miles per hour close at 90 miles per hour. At that closing speed, a standard one-and-a-half-second perception-reaction interval would mean that the distance separating them would shrink by roughly 198 feet before either driver could react. So, on this record, the district court concluded that it would be "speculative to say that Gyimah would have been able to take any action to prevent the crash." J.A. 406–07, 412.

Defendant Kenin, administrator of Gyimah's estate, then moved for summary judgment, which the district court granted. The court reasoned that Jung could not place Gyimah's phone-holding at any particular time—"he does not know if it was ten minutes before the crash or ten seconds," J.A. 410–11; that "a phone on Gyimah's leg after a violent car crash is not evidence Gyimah was using the phone before the accident," J.A. 411–12; that the absence of skidding noises and tire marks is not evidence of negligence absent proof that Gyimah had an opportunity to avoid the collision; and that Plaintiffs' concurrentnegligence theory required record evidence of *each* alleged tortfeasor's negligence, which was lacking. The court entered final judgment dismissing both cases on May 21, 2025. Plaintiffs timely appealed, and we consolidated the appeals.[1]

II. DISCUSSION

A. The District Court Had Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction, possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). And "every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede it." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)) (internal quotation marks omitted); *see also Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006).

While our appellate jurisdiction under 28 U.S.C. § 1291 is secure, whether the district court had subject matter jurisdiction is another matter, and we may not assume that it did in order to reach the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). Harboring doubts on that score, we directed the parties to file supplemental

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[1] The complaints initially named Red Top Cab, LLC as a defendant, but before any defendant was served, each Plaintiff filed an amended complaint that named only Fairfax and Kenin as defendants. The amended complaint superseded the original and became the operative pleading. *Young v. City of Mount Ranier*, 238 F.3d 567, 573 (4th Cir. 2001). So Red Top is considered to have never been a party to this action, and its citizenship is immaterial to the question of diversity jurisdiction. We have amended the case caption accordingly.

briefs addressing whether diversity jurisdiction lies under 28 U.S.C. § 1332. Those doubts concern only the appeal in Kim's case (brought by the administrator). Jung is himself a citizen of South Korea suing Virginia defendants, so his case satisfies § 1332(a)(2) on its own terms. The question here is whether the district court had jurisdiction over the action brought by Kim's administrator.

The parties both agreed that jurisdiction exists. But agreement cannot confer it. *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinée*, 456 U.S. 694, 702 (1982). And the parties' agreement rests on a reading of § 1332(c)(2) that the text will not bear. Jurisdiction exists all the same—just not for the reason the parties give.

The jurisdictional facts are not in dispute.[2] Kim, a citizen of South Korea domiciled in South Korea, died of injuries she sustained while riding as a passenger in an automobile collision in Virginia. Her son, DongJoo Lee, and her mother, Kyo Jo—the only possible statutory beneficiaries of any recovery in this action, *see* Va. Code § 8.01-53—are likewise citizens of South Korea domiciled in South Korea. Virginia law provides that an action for wrongful death "shall be brought by and in the name of the personal representative" of the decedent. Va. Code § 8.01-50(C). Kim died with no representative in the Commonwealth. So the state court qualified Brian M. O'Connor—a Virginia lawyer and a professional colleague of Plaintiffs' counsel—as ancillary administrator of her estate "for the sole purpose of a personal injury or wrongful death suit." No. 25-1699, Dkt. No. 42-2

[2] Plaintiffs, as the parties invoking federal jurisdiction, bear the burden of establishing these facts. *See McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936).

(Certificate of Qualification); *see* Va. Code § 64.2-454 (formerly Va. Code § 64.1-75.1). O'Connor then filed this negligence action against the Defendants, all of whom are citizens of Virginia.[3]

The dispositive question is whose citizenship counts on the plaintiff's side of the case. If the answer is O'Connor's, then this is an action between two citizens of Virginia, and it must be dismissed. If the answer is the citizenship of Kim or of the statutory beneficiaries, this is an action "between . . . citizens of a State and citizens or subjects of a foreign state," 28 U.S.C. § 1332(a)(2), and it may proceed. Answering it takes two steps. First, does § 1332(c)(2) reach the estate of a decedent who was a citizen of no State? Second, if not, do our prior decisions on nominal representatives still control?

The parties both point to § 1332(c)(2), which provides that "the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent." 28 U.S.C. § 1332(c)(2). On their shared theory, O'Connor is "deemed" a citizen of South Korea, Kim's country of citizenship, and the action proceeds under § 1332(a)(2) as one between a deemed South Korean citizen and a Virginian. For that reading—under which the word "State" in § 1332(c)(2) embraces foreign states—the parties rely principally on *Kato v. County of Westchester*, 927 F. Supp. 714, 716 (S.D.N.Y. 1996), and *Geler v. National Westminster Bank USA*, 763 F. Supp. 722, 726 (S.D.N.Y.

[3] Kenin's citizenship poses no puzzle. Gyimah was a citizen of Virginia, so § 1332(c)(2) deems his estate's representative a Virginian—whatever Kenin's own citizenship may be. The provision thus operates without strain on defendants' side of this case. It fails only on plaintiff's side, where the decedent was a citizen of no State. That contrast confirms what the text says: the deeming rule presupposes a decedent with State citizenship.

1991), which reasoned that it would be irrational for Congress to have made representatives jurisdictionally transparent for domestic decedents but not for foreign ones. The question is one we have not previously decided, and no other court of appeals appears to have resolved it.

We reject the parties' construction. Within § 1332, "State" and "foreign state" are expressly distinguished terms. Subsection (a) grants jurisdiction over controversies between "citizens of different States," § 1332(a)(1); between "citizens of a State and citizens or subjects of a foreign state," § 1332(a)(2); and between "citizens of different States and in which citizens or subjects of a foreign state are additional parties," § 1332(a)(3). The section's definitional provision confirms the point: "The word 'States', as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico"—an enumeration that extends the term beyond the fifty States but stops short of foreign nations. 28 U.S.C. § 1332(e). And when Congress wished to reach foreign states within § 1332(c) itself, it specifically said so. In 2011, it amended § 1332(c)(1) to provide that a corporation is a citizen of "every State *and foreign state* by which it has been incorporated and of the State *or foreign state* where it has its principal place of business," 28 U.S.C. § 1332(c)(1) (emphases added),[4] while leaving the adjacent paragraph—§ 1332(c)(2)—untouched. To read "State" in paragraph (c)(2) to include South Korea, we would have to give a *defined* term two different meanings in adjoining paragraphs of the same subsection, where one of those meanings is what the rest of the

[4] *See* Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, § 102, 125 Stat. 758, 758–59.

section consistently—and explicitly—assigns to a different term: "foreign state." That is a step we cannot take. *See Ratzlaf v. United States*, 510 U.S. 135, 143 (1994) ("A term appearing in several places in a statutory text is generally read the same way each time it appears.").

Nor does *Kato*'s appeal to rationality persuade. The consequence of giving effect to the plain reading is not absurd. Section 1332(c)(2), enacted in 1988 to curb the manufacture and destruction of diversity through the selection of representatives, *see* Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, § 202(a), 102 Stat. 4642, 4646, operates by deeming the representative a citizen of "the same State as the decedent." 28 U.S.C. § 1332(c)(2). Where the decedent was a citizen of no State, the deeming rule's antecedent fails and the provision simply has no application, leaving the law as it stood before 1988. *Cf. Tank v. Chronister*, 160 F.3d 597, 599–600 (10th Cir. 1998) (declining to extend § 1332(c)(2) beyond its "plain terms" to persons outside its coverage). That Congress, legislating against the familiar problem of manufactured interstate diversity, did not advert to the estates of foreign nationals is unremarkable. And such an unremarkable *casus omissus* is a reason to apply the background law, not to rewrite the enacted text.[5] *United States v. Texas*, 507 U.S. 529, 534 (1993); *Astoria Fed. Sav. &*

[5] Because we conclude that § 1332(c)(2) does not reach the estate of a decedent who was not a citizen of any State, we need not decide the analytically distinct question of whether a Virginia wrongful-death personal representative—who sues as the statutorily designated plaintiff but for the exclusive benefit of the statutory beneficiaries—is a "legal representative of the estate of a decedent" under § 1332(c)(2) at all. *Cf. Tank*, 160 F.3d at 599–601; *Steinlage ex rel. Smith v. Mayo Clinic Rochester*, 435 F.3d 913, 917–920 (8th Cir. 2006).

Loan Ass'n v. Solimino, 501 U.S. 104, 108 (1991); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952); *see also Pond v. United States*, 69 F.4th 155, 164 (4th Cir. 2023).

Section 1332(c)(2) therefore does no work here. It displaced background representative-citizenship rules only for decedents who were citizens of a State, a Territory, the District of Columbia, or Puerto Rico. Because Kim belonged to none of those categories, the existing circuit precedent governing the uncovered situation remains controlling.

Before § 1332(c)(2), the general rule—articulated in *Mecom v. Fitzsimmons Drilling Co.*—was that a duly appointed representative's own citizenship controls: "[T]he federal courts have jurisdiction of suits by and against executors and administrators if their citizenship be diverse from that of the opposing party, although their testators or intestates might not have been entitled to sue or been liable to suit in those courts for want of diversity of citizenship." 284 U.S. 183, 186 (1931). But in this circuit, that rule was subsequently qualified in a long line of published decisions. *See, e.g.*, *Lester v. McFaddon*, 415 F.2d 1101, 1104–06 (4th Cir. 1969); *Miller v. Perry*, 456 F.2d 63, 64–67 (4th Cir. 1972); *Bishop v. Hendricks*, 495 F.2d 289, 293–95 (4th Cir. 1974); *Vaughan v. S. Ry. Co.*, 542 F.2d 641, 643–44 (4th Cir. 1976); *Mullins v. Seals*, 562 F.2d 326, 327–28 (4th Cir. 1977); *Sadler v. New Hanover Mem'l Hosp., Inc.*, 588 F.2d 914, 915–17 (4th Cir. 1978); *Messer v. American Gems, Inc.*, 612 F.2d 1367, 1374–75 (4th Cir. 1980); *Krier-Hawthorne v. Beam*, 728 F.2d 658, 660–62 (4th Cir. 1984).

Beam summarized the framework that the Fourth Circuit developed in the wake of *Mecom*. In wrongful-death cases, this Court's

> determination of diversity jurisdiction . . . [was] based on two factors. First, although not formally named as plaintiffs, the real parties in interest are the statutory beneficiaries who are entitled to recover damages if the defendant is liable for the death of their decedent. Second, although formally named as plaintiff, the administrator of the decedent's estate has no assets to administer in connection with the litigation and no stake in the outcome of the controversy.

728 F.2d at 660. From those premises followed the rule that resolves the question of jurisdiction in this case: "[W]hen the statutory beneficiaries and the defendant are citizens of different states, the district court has jurisdiction regardless of the common citizenship of the plaintiff administrator and the defendant." *Id.* (citing *Messer*, 612 F.2d 1367; *Miller*, 456 F.2d 63). "Conversely, the court lacks jurisdiction when the statutory beneficiaries and the defendant have identical citizenship even though the plaintiff administrator and the defendant are citizens of different states." *Id.* (citing *Mullins*, 562 F.2d 326; *Vaughan*, 542 F.2d 641; *Bishop*, 495 F.2d 289; *Lester*, 415 F.2d 1101).

These decisions did not repudiate *Mecom*; they construed it. *Mecom* held that the representative's citizenship controlled because that representative—a general domiciliary administrator—was the real party in interest. His citizenship counted, we later explained, because he was "clothed with such responsibilities and authority" that—"under federal standards"—the controversy was his. *Miller*, 456 F.2d at 65. That premise was "greatly undermined" by *Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823 (1969), which "free[d] [this Court] from a blind invocation of *Mecom*'s result." *Miller*, 456 F.2d at 65–66. Where the representative bears real duties and holds a genuine stake, such as an administrator who manages the decedent's entire estate, *Mecom* still governs and the representative's own citizenship controls. *See, e.g.*, *Sadler*, 588 F.2d at 915–17. But where he is an ancillary representative—named after death, by operation of law, only to satisfy a pleading rule—we look through his to the citizenship of the real parties to the controversy. We have thus "not departed altogether from the jurisdictional precept of *Mecom*." *Beam*, 728 F.2d at 661. Rather, we have simply marked its edge.

Whether the *Lester–Beam* line represents the best reading of *Mecom* is not for us to decide today. They are published decisions of this Court, and one panel cannot overrule another; that prerogative belongs to the en banc court or the Supreme Court alone. *McMellon v. United States*, 387 F.3d 329, 333 (4th Cir. 2004) (en banc). One might think that *Mecom* itself is the Supreme Court decision that displaces them—that *Mecom* "has direct application in [this] case," and that we must "follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). But *Rodriguez de Quijas*'s command directs only that we must follow Supreme Court precedent that has direct application to the case at hand. Whether *Mecom* directly applies to a stakeless administrator appointed solely to prosecute a wrongful-death action is the very question that this Court has answered—repeatedly, and in the negative. And it has done so by construing *Mecom*—particularly in light of what *Beam* took to be *Kramer*'s "reservation of the jurisdictional issue pertaining to the citizenship of a personal representative"—as controlling only where the representative is a real party to the controversy, but as inapplicable where he is merely a formal conduit for the statutory beneficiaries. *See* 728

F.2d at 660–61; *see also Messer*, 612 F.2d at 1374–75. That determination of *Mecom*'s scope is the law of this circuit, entitled to the same inter-panel respect as any other holding. To "return" to a non-obvious construction of *Mecom* now would constitute the impermissible overruling—by a single panel—of a long line of decisions of this Court. If those decisions misread *Mecom*—a position we need not accept—the correction lies with the en banc court or the Supreme Court, not with us.

But even where a Supreme Court decision lacks direct applicability, it can still displace circuit precedent. And that is true whether the Supreme Court decision came before or after that circuit decision. *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 503–05 (4th Cir. 2023) (declining to follow two circuit precedents, one predating and one postdating the relevant Supreme Court decision). When a panel decision predates Supreme Court precedent, it is enough to show that the Supreme Court precedent renders the panel decision untenable. In such a case, the irreconcilable Supreme Court decision straightforwardly takes precedence. *Id.* But when circuit precedent *postdates* the Supreme Court decision, an extra step is required: Not only must the Supreme Court decision make it untenable, but the circuit precedent must also give no indication that it recognized or considered the relevant Supreme Court decision. *Id.*

Here, the only Supreme Court precedent that could render our decisions untenable is *Mecom* (1931). And our decisions postdate *Mecom*. Thus, we may consider setting aside our decisions only if they gave no sign of having reckoned with *Mecom*. But they gave every sign of doing so, construing *Mecom* at length. Indeed, they relied, in part, on a later Supreme Court decision: *Kramer* (1969). Later Supreme Court decisions—most notably *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458 (1980)—seem consistent with our line of cases.[6] *Navarro* applied the same real-party-to-the-controversy framework, counting the citizenship of trustees who possessed "customary powers to hold, manage, and dispose of assets," *id.* at 464, while reaffirming that purely nominal parties are disregarded. So the *Lester–Beam* line remains intact.

Nor did the 1988 enactment of § 1332(c)(2) sweep this line away root and branch. A statute displaces judge-made law only to the extent it speaks. For instance, in *Pond*, we

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[6] Two decisions from the intervening years require a word. *Carden v. Arkoma Associates* held that a limited partnership's citizenship depends on all of its members, refusing to make that determination turn on which members exercise control. 494 U.S. 185, 195–96 (1990). *Americold Realty Trust v. ConAgra Foods, Inc.* applied the same rule to a real-estate-investment trust. 577 U.S. 378, 381–82 (2016). Read broadly, those cases might be thought to forbid any functional inquiry into who really has a stake in a controversy—and our *Lester–Beam* line is functional. If that were their teaching, our reasoning could not stand beside it. *See Rose*, 80 F.4th at 503–05.

But that is not their teaching. *Carden* and *Americold* answer a question about artificial entities: whether an association suing in its own name may claim the citizenship of some members rather than all. *Carden* set that question apart from the one *Navarro* had decided—"whether parties that were undoubted 'citizens' (viz., natural persons) were the real parties to the controversy." 494 U.S. at 191. *Navarro*, the Court explained, "had nothing to do with the citizenship of the 'trust,' since it was a suit by the trustees in their own names." *Id.* at 192–93. Put differently, *Navarro* had nothing to do with the citizenship of any artificial entity. *Americold* confirmed the point, describing *Navarro* as a "separate rule" that "coexists" with the all-members rule governing artificial entities. 577 U.S. at 382–83. And in articulating that separate rule, *Navarro* embraced the very sort of functional inquiry that the *Lester–Beam* line performs: "[A] trustee is a real party to the controversy for purposes of diversity jurisdiction *when* he possesses certain customary powers to hold, manage, and dispose of assets for the benefit of others." 446 U.S. at 464 (emphasis added). In other words, the basic question in non-artificial-entity cases is the same one that this circuit's cases ask: Which natural persons have an actual stake in the controversy? In answering *that* question, the Supreme Court has disregarded merely nominal parties since *Browne v. Strode*, 9 U.S. (5 Cranch) 303 (1809), and *McNutt v. Bland*, 43 U.S. (2 How.) 9 (1844). *See Navarro*, 446 U.S. at 465. Neither *Carden* nor *Americold* disturbs that principle.

held that 26 U.S.C. § 7502 altogether supplanted the common-law mailbox rule with regard to mailed tax filings: Because the statute prescribes its own rules for when those filings count as delivered, it "speaks directly to the question addressed by the common law." *Pond*, 69 F.4th at 165 (quoting *Texas*, 507 U.S. at 534). By contrast, § 1332(c)(2) says nothing at all about decedents who were citizens of no State. Indeed, its deeming rule presupposes a decedent with State citizenship.

So, for decedents who had State citizenship, § 1332(c)(2) now supplies the rule: a decedent-citizenship rule drawn from the American Law Institute's proposal, which *Messer* and *Beam* had expressly declined to adopt by "judicial pronouncement" and had commended to Congress. *See Messer*, 612 F.2d at 1375 n.11; *Beam*, 728 F.2d at 661 n.*. Congress accepted that invitation in 1988, but only for the category its text describes. In the residual category—decedents who were citizens of no State—this Court's precedents were never displaced, and they continue to bind of their own force. Applying those precedents leaves every word of § 1332(c)(2) fully operative in the domain in which it speaks. To depart from those precedents by extending the statute's deeming rule to decedents who were citizens of no State would be to legislate where Congress has remained silent.

We recognize that the *Lester–Beam* line of cases involved beneficiaries who were citizens of a sister State rather than of a foreign state. But the doctrine's operative inquiry—whose controversy is this?—never depended on the real parties' passports. Once the statutory beneficiaries are identified as the parties in interest, § 1332(a) supplies the matching grant of jurisdiction: paragraph (a)(1) if they are citizens of another State, and paragraph (a)(2) if they are citizens or subjects of a foreign state.

Applying that framework, this case is materially indistinguishable from *Messer* and *Miller*, save that the beneficiaries reside across an ocean rather than across a state line. O'Connor is a nominal party. He was appointed after Kim's death, at counsel's instance, for the sole purpose of prosecuting this action; he has no relationship with the statutory beneficiaries; the estate has no assets in Virginia to gather, apply, or distribute apart from this claim; and any recovery will not become an asset of the estate but will pass directly to the statutory beneficiaries. *See* Va. Code §§ 8.01-52 to -54. His duties, should the action succeed, are "limited to receipt of the funds and their disbursement." *Lester*, 415 F.2d at 1103. O'Connor "has no stake in the litigation," *id.*, so his Virginia citizenship does not count. The real parties in interest are the statutory beneficiaries, and they are citizens of South Korea domiciled in South Korea.

So counted, this is an action between citizens of a foreign state (South Korea) on one side, and citizens of a State (Virginia) on the other. Thus, § 1332(a)(2) confers jurisdiction. Because the administrator's citizenship is disregarded, there are foreign-state citizens on only one side of the controversy and State citizens on the other, so the action presents neither a foreign-versus-foreign problem nor any failure of complete diversity.[7]

[7] The proviso to § 1332(a)(2), which withdraws jurisdiction over actions between citizens of a State and foreign citizens "lawfully admitted for permanent residence in the United States" and "domiciled in the same State," does not apply: Neither beneficiary is a lawful permanent resident of the United States, and neither one is domiciled in Virginia.

Nor does § 1359—which denies jurisdiction where a party "has been improperly or collusively made or joined *to invoke*" it—stand in the way. *See* 28 U.S.C. § 1359 (emphasis

We accordingly hold that § 1332(c)(2) is inapplicable because Kim was not a citizen of any State; that under the settled law of this circuit the citizenship of the statutory beneficiaries, not of the nominal administrator, is determinative; and that because the beneficiaries are citizens of South Korea and the Defendants are Virginians, the district court had subject matter jurisdiction under 28 U.S.C. § 1332(a)(2). So we proceed to the two central merits rulings: the expert exclusion and summary judgment.

B. The District Court Properly Excluded Plaintiffs' Expert

We review a district court's decision to exclude expert testimony, and its enforcement of the discovery rules through the sanction of exclusion, for abuse of discretion. *Le Doux v. W. Express, Inc.*, 126 F.4th 978, 983 (4th Cir. 2025); *Wilkins v. Montgomery*, 751 F.3d 214, 220 (4th Cir. 2014). That standard is deferential. We "do[] not reverse merely because [we] would have come to a different result in the first instance." *Evans v. Eaton Corp. Long Term Disability Plan*, 514 F.3d 315, 322 (4th Cir. 2008); *see also United States v. Mason*, 774 F.3d 824, 828 (4th Cir. 2014). A district court abuses its discretion only when it acts under a misapprehension of the governing law, rests its

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added). O'Connor's appointment was not a device to reach a federal forum; it was the consequence of Virginia's requirement that a wrongful-death action be prosecuted by a personal representative, and of the practical reality that the beneficiaries reside in South Korea. In this circuit, "[t]he relevance of collusion for diversity jurisdiction purposes is only that its presence will serve to defeat jurisdiction if, otherwise on the facts presented, diversity jurisdiction would be said to exist." *Messer*, 612 F.2d at 1373. It supplies no warrant for manufacturing a jurisdictional defect, because "§ 1359 attaches no consequences to steps taken to defeat diversity jurisdiction." *Id.* at 1375. There being no collusion here, "nothing inhibits referral to the citizenship of the beneficiaries rather than to the citizenship of a purely nominal administrat[or] with no stake in the matter." *Id.* at 1373.

decision on a clearly erroneous assessment of the evidence, or reaches a conclusion that is clearly unreasonable. *See United States v. Delfino*, 510 F.3d 468, 470 (4th Cir. 2007).

The district court denied Plaintiffs leave to file Michael Miller's accident-reconstruction report more than five months after the court-ordered deadline. In the alternative, it excluded Miller's opinions under Federal Rule of Evidence 702 as unsupported by the record. Each ruling was well within the court's discretion, and each one independently supports the exclusion.

Federal Rule of Civil Procedure 26(a)(2) requires a party to disclose a retained expert's written report containing "a complete statement of all opinions the witness will express and the basis and reasons for them." Fed. R. Civ. P. 26(a)(2)(B)(i). The disclosure must be made by the deadline that the court sets. Fed. R. Civ. P. 26(a)(2)(D). When a party fails to comply, Rule 37(c)(1) supplies a default exclusion. *Southern States*, 318 F.3d at 595. The delinquent party may use that witness to supply evidence only if the failure was substantially justified or is harmless. *See id.* The burden of establishing substantial justification or harmlessness rests on the party that failed to disclose. *Wilkins*, 751 F.3d at 222.

Here, the record leaves no doubt that Plaintiffs did not comply with the district court's September 2024 expert-disclosure deadline. Plaintiffs filed a designation naming Miller and stating that he was "expected to testify consistent with his attached report, which is hereby attached and incorporated herein." But no report was attached. Discovery closed in February 2025, and the final pretrial conference was then held later that month. Only then, on February 25, 2025—five months and nine days after the deadline, and after the close of discovery—did Plaintiffs seek leave to file Miller's required report out of time.

In assessing whether that failure was substantially justified or harmless, the district court was guided by the five factors set out in *Southern States*: "(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party's explanation for its failure to disclose the evidence." 318 F.3d at 597. The first four factors "relate primarily to the harmlessness exception, while the last factor . . . relates mainly to the substantial justification exception." *Bresler v. Wilmington Tr. Co.*, 855 F.3d 178, 190 (4th Cir. 2017). The district court need not expressly "tick through each [factor,]" and its balancing is entitled to substantial deference. *Wilkins*, 751 F.3d at 222.

Here, the district court weighed these factors and reasonably found they did not warrant excusing the failure to comply with the court's deadline.

The first two factors—the surprise to Defendants and their ability to cure it—are best taken together. True, Plaintiffs' designation named Miller as an accident reconstructionist and (erroneously) represented that his report was attached, so Defendants can hardly claim to have been ambushed by the prospect of reconstruction testimony. But the surprise here lies not in the fact that Miller might offer testimony, but in the testimony's substance. Rule 26 requires more than mere notice that an expert exists; it requires "a complete statement of all opinions the witness will express and the basis and reasons for them." Fed. R. Civ. P. 26(a)(2)(B)(i). Defendants did not receive that statement until five months later, after the close of discovery and the final pretrial conference. By that time, a defendant is entitled to know the substance and bases of the opposing reconstructionist's opinions, especially when that witness supplies the plaintiff's entire theory of negligence. *See Southern States*, 318 F.3d at 598 (explaining that the importance "factor must be viewed from the perspective of both parties") (cleaned up). Furthermore, the surprise was not reasonably curable by then, for reasons that also explain why allowing the affidavit would have disrupted trial preparation. The defense had no opportunity to depose Miller, to test his methodology, or to retain and disclose a responsive expert without reopening discovery and potentially disturbing the trial schedule. *See Deque Sys., Inc. v. Browserstack, Inc.*, 177 F.4th 585, 596 (4th Cir. 2026). And the fact that the court had authorized limited video depositions of out-of-town fact witnesses in lieu of live trial testimony did not open the door to belated expert discovery.

Plaintiffs' explanation fares no better. They made no showing that the report was unavailable earlier, that the omission was caught and promptly corrected, or that anything beyond their control accounted for the delay. Their only account was their own counsel's clerical error. But a clerical error left uncorrected for five months—through the close of discovery and the final pretrial conference—is neglect, not justification. The district court permissibly concluded that the late disclosure was neither harmless nor substantially justified.

Plaintiffs' contention that exclusion was too harsh a consequence misapprehends the nature of the sanction. Rule 37(c)(1) makes exclusion the default, not a discretionary penalty reserved for bad faith. *See Southern States*, 318 F.3d at 596–98. Because the district court applied the correct legal framework, grounded its decision in the record, and reached a conclusion within the range of reasonable outcomes, it did not abuse its discretion in refusing the untimely affidavit. *See Deque Sys.*, 177 F.4th at 595–96.

The district court alternatively excluded Miller's opinions on the merits, and that ruling independently sustains the exclusion. Rule 702 charges the district court with a gatekeeping duty—"ensur[ing] that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Sardis v. Overhead Door Corp.*, 10 F.4th 268, 281 (4th Cir. 2021) (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993)). The rule was amended effective December 1, 2023, and the amended version governed the district court's 2025 ruling and governs our review. It now provides that an expert may testify only "if the proponent demonstrates to the court that it is more likely than not" that each of the rule's conditions is met—among them, that the testimony "is based on sufficient facts or data" and "reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702(b), (d). The burden of that showing rests on the party offering the expert. An expert opinion connected to existing data "only by the *ipse dixit* of the expert" does not carry it, and may be excluded where "there is simply too great an analytical gap between the data and the opinion proffered." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).

The district court identified precisely such a gap. Miller opined that Gyimah "more probably than not . . . could have swerved to the right to avoid the collision" because "[i]t appears that there were not any vehicles to the right of the Red Top Cab," and that Gyimah's failure to brake caused or aggravated the collision because braking "would have avoided the collision" or lessened its severity. J.A. 211–12. But Miller's opinions depended on facts that the record did not supply: a clear right lane, enough time for Gyimah to perceive danger, and enough distance for braking or steering to matter. Miller's assertion that Gyimah could have braked or swerved to avoid the collision was, as the district court found, "speculative." J.A. 407. An opinion that supplies through assumption the very facts the record omits is not "based on sufficient facts or data," Fed. R. Evid. 702(b), and a district court does not abuse its discretion by excluding it. *See Joiner*, 522 U.S. at 146.

Either ground—the untimely disclosure or the Rule 702 deficiency—independently supports the district court's decision, and neither reflects an abuse of discretion. We therefore affirm the exclusion of Miller as an expert witness.

C. The District Court Properly Granted Summary Judgment for Gyimah's Estate

We review the grant of summary judgment de novo, applying the same standard as the district court. *Carter v. Fleming*, 879 F.3d 132, 139 (4th Cir. 2018). Summary judgment is required where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is "genuine" only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and a fact is "material" only if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). We view the record and draw all reasonable inferences in the light most favorable to Plaintiffs as the nonmovants. *Carter*, 879 F.3d at 139. But the nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986), and may not rest on "conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence," *United States v. 8.929 Acres of Land*, 36 F.4th 240, 252 (4th Cir. 2022) (quoting *Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013)) (internal quotations omitted). "[W]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting *Matsushita*, 475 U.S. at 587).[8]

To recover for negligence under Virginia law, a plaintiff must establish a legal duty, a breach of that duty, and a proximate causal connection between the breach and the resulting injury. *See Atrium Unit Owners Ass'n v. King*, 585 S.E.2d 545, 548 (Va. 2003). The governing principle is dispositive:

> Negligence cannot be presumed from the mere happening of an accident. The burden is on the plaintiff who alleges negligence to produce evidence of preponderating weight from which the jury can find that the defendant was guilty of negligence which was a proximate cause of the accident. The evidence produced must prove more than a probability of negligence and any inferences therefrom must be based on facts, not on presumptions. It is incumbent on the plaintiff who alleges negligence to show why and how the accident happened, and if that is left to conjecture, guess or random judgment, he cannot recover.

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[8] The substantive law that supplies the elements of the claim, and thus identifies which facts are material, is the law of Virginia. The collision occurred on the George Washington Memorial Parkway, land administered by the National Park Service, and the applicable federal regulation adopts the traffic and vehicle laws of the State in which the park area is located. 36 C.F.R. § 4.2(a). The parties agree that Virginia negligence law governs, and a federal court sitting in diversity would apply that same law in any event. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Whether the evidence suffices to create a triable issue, however, is a question of federal law. *See Anderson*, 477 U.S. at 248–50.

Weddle v. Draper, 130 S.E.2d 462, 465 (Va. 1963); *see also Doe v. Terry*, 639 S.E.2d 197, 200 (Va. 2007); *Waters v. Holloman*, 222 S.E.2d 549, 552–53 (Va. 1976); *McFadden v. Garrett*, 179 S.E.2d 482, 484–85 (Va. 1971). Thus, where the proof leaves the cause of the collision to speculation—where it is equally consistent with the defendant's negligence and with its absence—the plaintiff cannot reach a jury. *See Anderson*, 477 U.S. at 248–50.

Plaintiffs cannot carry that burden. It is undisputed that no witness could say which vehicle crossed, when it crossed, or how much reaction time existed. The sole surviving occupant of the taxi has no memory of the collision or of an indeterminate period before it. The driver of the other vehicle likewise remembers nothing. And the investigating agency, the United States Park Police, concluded that "Jewett was at fault for crossing into oncoming traffic striking Gyimah's vehicle causing Kim's death." J.A. 304. Against that record, Plaintiffs offer two categories of circumstantial evidence to show that Gyimah was independently negligent. None, alone or together, would permit a reasonable jury to find why and how the accident happened without resort to speculation.

Plaintiffs first contend that Gyimah was distracted by his cell phone. But the evidence does not bear that out. Jung testified that the last thing he saw Gyimah doing was "[h]olding the phone," but he could not say whether Gyimah was using it. Asked directly, he answered, "Actually, I don't know but he speak something, but at that time my English was not good . . . . I did not realize and still I don't know." J.A. 341–42. More importantly, Jung could not place that observation at any particular point in time. He did not know whether his last memory preceded the crash by seconds or by minutes, and, by his own account, his final memory locates the cab in the right northbound lane, even though the collision occurred in the left lane.

Bracken's testimony does not fill the gap. He saw a phone in Gyimah's lap, but the screen was dark; he had made two trips back to his own truck for tools before he reached Gyimah; and he could not say when he first noticed the phone. As the district court observed, "a phone on Gyimah's leg after a violent car crash is not evidence Gyimah was using the phone before the accident." J.A. 411–12. The problem is not merely that other explanations are conceivable. It is that no evidence connects the phone to the critical seconds before impact. Bracken saw the phone only after the collision. So he has not supplied a basis to find that phone use caused the crash. A jury could therefore find distraction at the relevant moment, and a causal connection between that distraction and the collision, only by conjecture.[9]

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[9] Plaintiffs cite *Tennant v. Peoria & Pekin Union Railway*, 321 U.S. 29 (1944), and *Norfolk Southern Railway Co. v. Sumner*, 822 S.E.2d 809 (Va. 2019), for the proposition that circumstantial evidence may suffice to prove negligence in unwitnessed cases. True. But that does not disrupt the fact that a plaintiff still must produce *enough* of such evidence to permit a reasonable jury to find a "why and how" rather than merely that the accident occurred. Evidence that shows only that negligence was theoretically possible will not do. *Waters* illustrates the point. The plaintiff there could offer little about the collision itself: His passenger had fallen asleep, and he first told the investigating officer only that he thought a tire had blown before later admitting that he had been making a U-turn across the highway. 222 S.E.2d at 551–52. The evidence that the defendant had been drinking, by contrast, was considerable: The investigating officer smelled a strong odor of alcohol on him, observed that he was unsteady on his feet and had to be restrained, and testified that he fell from the seat of the patrol car. *Id.* at 550. Still, the Virginia Supreme Court reversed the plaintiff's verdict, reasoning that "while the jury would have been justified in finding from the evidence that the defendant was under the influence of alcohol, that fact does not, *in the absence of some evidence of why and how the accident occurred*, support an inference that [the defendant's] intoxication was a proximate cause of the accident." *Id.* at 553 (emphasis added). Likewise, here, Plaintiffs offer some evidence that Gyimah *may*

Plaintiffs attempt to shore up this theory with an errata sheet that Jung submitted months after his deposition, transforming his equivocal testimony into the assertion that Gyimah "was using his phone with his right hand and was paying attention to the phone, not the road." J.A. 350. Whether Rule 30(e), which permits "changes in form or substance," allows a witness to recast sworn testimony in this fashion is a question that we have not decided, and one on which other circuits have taken varying approaches.[10] We need not decide that question here, because the errata fails for an independent reason: A witness may testify to a matter only if he has personal knowledge of it, Fed. R. Evid. 602,

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have been distracted at *some* point, but no evidence of "why and how" the collision occurred.

[10] Our sister circuits that have addressed the question agree that Rule 30(e) does not license a deponent to rewrite unfavorable answers, but they have policed such changes by different means. *See Thorn v. Sundstrand Aerospace Corp.*, 207 F.3d 383, 389 (7th Cir. 2000) (holding that "a change of substance which actually contradicts the transcript is impermissible unless it can plausibly be represented as the correction of an error in transcription," while requiring that the original answer be retained "so that the trier of fact can evaluate the honesty of the alteration"); *Hambleton Bros. Lumber Co. v. Balkin Enters., Inc.*, 397 F.3d 1217, 1225–26 (9th Cir. 2005) (treating a contradictory errata as akin to a sham affidavit, and holding that a district court does not abuse its discretion in refusing to consider substantive changes that materially contradict earlier testimony); *Burns v. Bd. of Cnty. Comm'rs*, 330 F.3d 1275, 1281–82 (10th Cir. 2003) (holding that deposition corrections are subject to a "sham affidavit" analysis); *EBC, Inc. v. Clark Bldg. Sys., Inc.*, 618 F.3d 253, 270 (3d Cir. 2010) (finding "no principled reason to distinguish between [contradictory] affidavits and [contradictory] errata sheets," and holding "that the proper analysis for each is the same"); *Podell v. Citicorp Diners Club, Inc.*, 112 F.3d 98, 103 (2d Cir. 1997) (permitting amendment while noting that "the original answer to the deposition questions will remain part of the record and can be read at the trial") (cleaned up); *Pina v. Children's Place*, 740 F.3d 785, 792 (1st Cir. 2014) ("Rule 30(e) does not limit a party to the correction of stenographic errors," but "permits changes 'in form *or substance*,'" such that "[w]hen witnesses make substantive changes to their deposition testimony, the district court . . . has the discretion to order the depositions reopened so that the revised answers may be followed up on and the reasons for the corrections explored.") (quoting Fed. R. Civ. P. 30(e)).

and Jung lacked such knowledge. Jung's amended answer—that Gyimah was "paying attention to the phone, not the road"—purports to describe Gyimah's conduct at the moment of the collision. But Jung testified that he did not know how much time separated his last memory from the crash, and that last memory placed the cab in the right lane, not the left lane where the collision occurred. Jung was in no position to observe what Gyimah was doing when the crash happened. His errata thus asserts a fact he never perceived, and Rule 602 forbids it. Nor would reading the errata as describing only Jung's last memory help Plaintiffs. That memory still floats loose in time before impact.

Second, Plaintiffs argue that the physical evidence—the lack of skid or tire marks on the northbound side, and testimony from witnesses who heard no screeching before impact—shows that Gyimah negligently failed to brake or take evasive action. The Supreme Court of Virginia rejected that same inference in *Lucas v. Riverhill Poultry, Inc.*, 860 S.E.2d 361, 370 (Va. 2021). There, too, a fatal collision went unwitnessed. There, too, the plaintiff reasoned backward from what the driver did not do to a conclusion about what he must have been doing beforehand. The court held that while evidence ruling out mechanical failure might support inferences about what did *not* cause the vehicle to leave the roadway, "it does not reasonably follow that the only remaining reason would be because the driver may have fallen asleep." *Id.* So too with the absence of evasive action: "[T]he lack of evasive maneuvers is insufficient to permit jurors to infer, without improper speculation, that the driver may have fallen asleep." *Id.* Plaintiffs' theory suffers from the same defect.

The absence of braking or evasive action is not itself negligence. It becomes negligence only if Gyimah had time and distance and yet carelessly failed to act. Consider what a jury would need to know to so find. Virginia's statutory tables fix the average driver's perception-reaction interval at one-and-a-half seconds. Va. Code § 46.2-880. Even on the assumption most favorable to Plaintiffs—that both drivers held to the 45-mile-per-hour limit—two cars approaching each other close at 132 feet every second. Roughly 198 feet of the gap between them would vanish before either driver could begin to respond at all. We do not offer these figures as proof of anything. But they fix the scale of the question, and they show that the answer turns on a single fact: the distance between the two vehicles when Jewett crossed the double-yellow line. Plaintiffs offer no evidence of that distance. Without it, a jury could not say whether Gyimah had one-and-a-half seconds to react or one-tenth of a second. It would have to pick a number. Picking a number without an evidentiary basis is not finding a fact.[11]

Taken together, Plaintiffs' evidence establishes that a tragic head-on collision occurred and that its cause is unknown. That is not enough. Virginia law does not permit a jury to infer a driver's negligence "from the mere happening of an accident," *Weddle*, 130 S.E.2d at 465, and a plaintiff cannot survive summary judgment by relying on one

[11] Plaintiffs raise two objections, neither of which withstands scrutiny. They first contend that the district court improperly invoked the § 46.2-880 calculation on its own initiative. But the statute expressly commands judicial notice of the speed-and-stopping-distance tables, Va. Code § 46.2-880, so the court needed no invitation from the parties to consult them, and it did not treat them as raising any presumption. They next point to deposition testimony from Robert Ahlers that placed southbound traffic speeds between 15 and 30 miles per hour. But Ahlers's testimony is not part of the summary-judgment record, as Plaintiffs concede, and evidence outside the record cannot defeat summary judgment.

inference upon another. *8.929 Acres*, 36 F.4th at 252. Because no reasonable jury could find, without resort to conjecture, that Gyimah breached a duty of care that proximately caused the collision, the district court correctly entered summary judgment for his estate.[12]

* * *

The district court possessed subject matter jurisdiction. Because Kim was a citizen of no "State," 28 U.S.C. § 1332(c)(2) does not apply, and the citizenship of the statutory beneficiaries controls under the settled law of this circuit. They are citizens of South Korea and the Defendants are citizens of Virginia, so jurisdiction lies under 28 U.S.C. § 1332(a)(2).

On the merits, Kim's death and Jung's injuries were undeniably tragic. But tragedy is not a substitute for proof. Under Virginia law, the fact of a collision does not establish a driver's negligence. A plaintiff must show why and how the accident happened, and he cannot recover where the answer is left to conjecture. Here, Plaintiffs failed to offer testimony showing why or how the accident happened. And the district court acted within its discretion in excluding the untimely and unsupported affidavit of Plaintiffs' accident reconstructionist. On the admissible record that remained, Plaintiffs offered only speculation in place of the evidence that their claims required, and no reasonable jury could

[12] Because Plaintiffs' claims against Gyimah's estate fail, so too do their claims against Fairfax Taxi. Each theory of Fairfax Taxi's liability—respondeat superior, non-delegable duty, and joint venture—is derivative of Gyimah's underlying negligence. *See Sanchez v. Medicorp Health Sys.*, 618 S.E.2d 331, 334 (Va. 2005). Absent a triable issue as to that predicate negligence, there is no negligent act for which Fairfax Taxi could be held vicariously liable, and its liability need not be separately addressed. We therefore do not reach the district court's alternative grounds for entering judgment on the pleadings in Fairfax Taxi's favor.

find that Gyimah was negligent. Because the claims against Gyimah's estate fail, the derivative claims against Fairfax Taxi fail as well. The judgment of the district court is

AFFIRMED.