

No. 25-

IN THE
Supreme Court of the United States

BRADLEY J. CHILELLI,

Petitioner,

v.

SIGNIFY NORTH AMERICA CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the judgment should be vacated and remanded where a federal court of appeals, sitting in diversity, affirmed summary judgment on an unsettled Kansas no-duty rule without addressing the Kansas Supreme Court's most relevant decision defining a landowner's duty to an independent contractor's employee, and without considering certification of that state-law question.

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 14.1(b), the parties to this proceeding are Petitioner Bradley Chilelli and Respondent Signify North America Corporation, formerly known as Philips Lighting North America Corporation. Respondent's corporate disclosure identifies The Genlyte Group Incorporated and Signify N.V. as the entities required to be disclosed under Federal Rule of Appellate Procedure 26.1.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 14.1(b)(iii), the related proceedings are: *Chilelli v. Signify North America Corp.*, No. 5:23-cv-04053-HLT (D. Kan.), final judgment entered January 30, 2025; *Chilelli v. Signify North America Corp.*, No. 24-3250 (10th Cir.), judgment entered February 25, 2026; and *Bradley J. Chilelli v. Signify North America Corporation*, No. 25-3031 (U.S.), docketed May 22, 2026, in which Justice Gorsuch entered an order on May 26, 2026, extending the time to file a petition for a writ of certiorari to June 25, 2026.

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OPINIONS BELOW

The order and judgment of the United States Court of Appeals for the Tenth Circuit (Pet. App. 1a–7a) is unpublished and is reported at 2026 WL 522562. The memorandum and order of the United States District Court for the District of Kansas granting summary judgment (Pet. App. 8a–25a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 25, 2026. On May 26, 2026, Justice Gorsuch, Circuit Justice for the Tenth Circuit, extended the time to file a petition for a writ of certiorari to and including June 25, 2026. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

The district court had subject-matter jurisdiction under 28 U.S.C. § 1332(a)(1). At the time the complaint was filed, petitioner was a citizen of Ohio, and respondent was a citizen of Delaware—its State of incorporation—and New Jersey—its principal place of business; the amount in controversy exceeded \$75,000. See Pet. App. 4a–5a. Because the accident and injury occurred in Kansas, Kansas substantive law governs. The court of appeals had jurisdiction under 28 U.S.C. § 1291. The case has at all times proceeded in the federal courts; it was never filed in or reviewed by the courts of Kansas.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Rules of Decision Act, 28 U.S.C. § 1652, provides: “The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.”

Kansas’s Uniform Certification of Questions of Law Act, K.S.A. § 60-3201, provides in relevant part that the Kansas Supreme Court “may answer questions of law certified to it by . . . a court of appeals of the United States . . . if there are involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court and the court of appeals of this state.”

STATEMENT OF THE CASE

This diversity action arises from catastrophic injuries sustained by petitioner Bradley Chilelli, who was rendered paraplegic when he fell approximately forty feet through an unguarded opening in a second-level catwalk while working at respondent Signify North America Corporation’s manufacturing facility in Salina, Kansas. See Chilelli App. 88–89. Under Kansas law, a landowner owes an independent contractor’s employee a duty of reasonable care under the circumstances. *Herrell v. National Beef Packing Co.*, 292 Kan. 730, 747, 259 P.3d 663, 675 (2011). The courts below held Signify owed no

such duty. The district court granted summary judgment to Signify on the ground that it owed Chilelli no duty of care, and the court of appeals affirmed. That duty holding rested on a rule, drawn from dictum in a 1970 decision of the Kansas Supreme Court, that a premises owner owes no duty to protect an independent contractor's employee from risks "intimately connected" with the contracted work. The record, viewed in the light most favorable to Chilelli, presents genuine disputes of material fact bearing on each premise of that ruling—and the duty question it answers is an unsettled question of Kansas law that the Kansas Supreme Court has never resolved.

A. The Facility, the Demolition, and the Fall

Signify owned and operated a glass-manufacturing facility in Salina, Kansas, that housed a gas-oxy furnace standing approximately sixty feet tall. When the furnace was decommissioned in connection with the sale of the facility, Signify retained Hosea Project Movers to demolish and remove it. Petitioner was employed by Hosea and was covered by workers' compensation; he settled a workers'-compensation claim through his employer's carrier and was never paid by Signify. Resp't Supp. App. Vol. 2, 106 (Chilelli Dep.); Resp't Supp. App. Vol. 3, 127 (Chilelli Dep.).

The furnace had operated across several elevated levels connected by catwalks. Molten glass had flowed from troughs positioned on an upper catwalk down through openings to the levels below; there were four such openings on the mezzanine where petitioner was working. Chilelli App. 185–86 (Ellis Dep.). Petitioner fell through one of those openings to the level below, sustaining injuries that left him paralyzed. No witness observed the fall. Resp't Supp. App. Vol. 4, 144–45 (Ellis Dep.).

B. The Origin of the Opening

The demolition required Hosea to remove the troughs, which left the underlying openings exposed. Pet. App. 2a. Whether the opening through which petitioner fell was itself created by Hosea’s work, or was instead a pre-existing structural feature of the furnace that the work merely exposed, is genuinely disputed. The Hosea foreman, Kevin Ellis, testified that the crew did not create the openings on the mezzanine: “We didn’t make no holes in there.” Chilelli App. 186–87 (Ellis Dep.). Asked whether the opening was already present, Ellis testified, “the hole was there. I know we didn’t make the hole,” and could not recall whether it had been covered. *Id.* The openings were original passages built into the furnace for the flow of molten glass. Resp’t Supp. App. Vol. 4, 145–46 (Ellis Dep.). On this record, a reasonable jury could find that the opening was a structural condition of Signify’s premises that the demolition exposed, rather than a defect Hosea was retained to repair.

C. Signify’s Retained Safety Control

Signify did not delegate jobsite safety without reservation. Its mandatory On-Site Contractor Safety Minimum Requirements (SOCSMR), a company-wide policy in effect since February 2019, imposed on Signify itself the responsibility to qualify contractors, to conduct “workplace inspections on contractors’ working area and their service tasks,” and to implement “proactive injury prevention measures.” Chilelli App. 114–15 (SOCSMR ¶¶ 4.5, 5); Pl. SOF ¶¶ 140–41. The policy designated a Signify “Contract Administrator”—here, David Goldammer—“responsible for daily supervision of contractor work

on Signify site premises,” and a “Site Safety Officer” “responsible for injury prevention activities.” Chilelli App. 108–09 (SOCSMR ¶ 3). Goldammer checked in with the Hosea crew each morning, asked about the day’s planned work, and observed their activities. *Id.* at 135 (Goldammer Dep.). Signify possessed and exercised authority to stop unsafe work: after the fall, it removed the Hosea crew and barred its return until Hosea implemented corrective measures Signify prescribed. *Id.* at 200–01 (McKenzie Dep.); Pl. SOF ¶¶ 143–47.

It is undisputed that no Signify employee had actual knowledge of the particular exposed opening before petitioner’s fall. Pl.’s Resp. to Mot. for Summ. J., Doc. 56, ¶ 6; Pet. App. 5a–6a. Petitioner contended below that Signify’s asserted lack of knowledge was itself the product of its failure to perform the inspection and supervision its own policy required. Doc. 56 ¶ 69; Chilelli Reply Br. 20.

D. Proceedings Below

Petitioner brought a common-law negligence action against Signify in the United States District Court for the District of Kansas, jurisdiction resting on diversity of citizenship. The district court granted summary judgment for Signify, concluding that Signify owed petitioner no duty of care because no Signify employee knew or had reason to know of the exposed opening; that the opening was open and obvious; and that, drawing on *Aspelin v. Mounkes*, 206 Kan. 132, 476 P.2d 620 (1970), Signify’s hiring of a demolition contractor “cut[] against the finding of a duty.” Pet. App. 20a–21a. The district court treated *Aspelin* as one factor in the duty analysis rather than as a categorical bar. *Id.* at 19a–21a.

The court of appeals affirmed in an unpublished order and judgment. It rested its no-duty holding on two grounds: that petitioner conceded no Signify employee actually knew of the exposed opening and presented no evidence any employee was aware of it, Pet. App. 6a–7a; and that, under *Aspelin*, “an owner of premises is under no duty to protect an independent contractor from risks arising from or intimately connected with defects in the premises which the contractor has undertaken to repair,” so that the exposed hole was “intimately connected with Hosea’s work,” id. 6a. The panel declined to reach the open-and-obvious ground. Id. 7a.

In treating *Aspelin*’s no-duty language as dispositive, the panel did not ask whether that language was holding or dictum. It did not address *Herrell v. National Beef Packing Co.*, 292 Kan. 730, 259 P.3d 663 (2011)—a decision of the Kansas Supreme Court that petitioner presented in both courts below, and that holds a landowner owes an independent contractor’s employee “the same duty it owed to other entrants onto its property—a duty of reasonable care under the circumstances,” id. at 747, 259 P.3d at 675. And it did not consider certifying the controlling question of Kansas law to the Kansas Supreme Court under K.S.A. § 60-3201. This petition followed.

REASONS FOR GRANTING THE PETITION

This case should be vacated and remanded because the court of appeals affirmed a Kansas no-duty judgment without addressing the Kansas Supreme Court’s most relevant modern decision. In *Herrell v. National Beef Packing Co.*, the Kansas Supreme Court held that a landowner owes an independent contractor’s employee

the same duty owed to other entrants: reasonable care under the circumstances. 292 Kan. 730, 747, 259 P.3d 663, 675 (2011). The Tenth Circuit’s unpublished order never mentioned *Herrell*. Instead, it treated *Aspelin*’s older “intimately connected” language as dispositive. That unexplained choice matters because *Herrell* and *Aspelin* point in different directions on this record. The error is correctable now, without this Court resolving the underlying question of Kansas law, by a vacatur and remand directing the court of appeals to engage *Herrell* or to consider certification under K.S.A. § 60-3201.

I. The Decision Below Did Not Engage the Kansas Supreme Court’s Most Relevant and Modern Authority.

Congress has told the federal courts, by statute, whose law governs a diversity case. The Rules of Decision Act provides that “[t]he laws of the several states . . . shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.” 28 U.S.C. § 1652. The content of those laws is fixed by the State, not the federal forum. In diversity, a federal court is “in effect, only another court of the State,” and Congress “afforded out-of-State litigants another tribunal, not another body of law.” *Guaranty Trust Co. v. York*, 326 U.S. 99, 108–109 (1945). The federal courts were never given the power to “create substantive rights denied by State law.” *Id.* at 105.

That limit is constitutional, not merely prudential. “There is no federal general common law,” and “the authority and only authority is the State, and . . . if that be so, the voice adopted by the State as its own (whether it be of its Legislature or of its Supreme Court) should

utter the last word.” *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78–79 (1938) (citation omitted). A federal court sitting in diversity “cannot give that which [the State] has withheld.” *Angel v. Bullington*, 330 U.S. 183, 192 (1947).

This allocation of authority is not a historical relic; it is the operative law today. This Term, the Court reaffirmed that the Rules of Decision Act “directs federal courts to apply state substantive law, leaving federal law to cover the rest.” *Berk v. Choy*, 607 U.S. 187, 192 (2026). The question here lies on the substantive side of that line, where the State’s authority is at its zenith: no Federal Rule is on point. There is only an unsettled question of Kansas common law—which a federal court resolved by enlarging a Kansas no-duty rule beyond anything the Kansas Supreme Court has recognized.

The panel did not engage the most relevant Kansas authority in two related ways. First, it treated *Aspelin*’s no-duty sentence as dispositive without asking whether it was holding or dictum. *Aspelin* was decided on two independent grounds—that the plaintiffs were independent contractors rather than employees, and that they had assumed the risk of a known defect they were hired to repair. 206 Kan. at 136–37, 476 P.2d at 623–24. The no-duty language, supported only by a secondary treatise and an annotation, was unnecessary to either holding, and is therefore dictum. A federal court predicting state law may weigh state-court dictum as a datum, but it may not convert that dictum into a categorical rule the State’s highest court has never adopted. To do so is to supply substantive Kansas law that Kansas has withheld. *Angel*, 330 U.S. at 192.

Second, the panel resolved the duty question without addressing *Herrell*, a decision of the Kansas Supreme Court that petitioner presented in both courts below. *Herrell* held that a landowner owes an independent contractor's employee "the same duty it owed to other entrants onto its property—a duty of reasonable care under the circumstances," 292 Kan. at 747, 259 P.3d at 675, and confined *Dillard v. Strecker*, 255 Kan. 704, 877 P.2d 371 (1994), to two categories—nondelegable statutory duties and inherently dangerous activities—neither of which is at issue here. 292 Kan. at 744, 259 P.3d at 672. *Herrell* was itself a covered-hole case: the plaintiff, an employee of an independent contractor receiving workers' compensation, was injured by a hole on the landowner's premises, and the Kansas Supreme Court held the landowner owed her the ordinary duty of reasonable care. A federal panel that rests a no-duty holding on a fifty-year-old dictum, while passing over the State's most relevant and modern decision on the same question, did not engage the Kansas Supreme Court's controlling authority—and so cannot be said to have predicted Kansas law at all.

II. The Controlling Question of Kansas Law Is Genuinely Unsettled, Is Outcome-Determinative, and Should Have Been Certified to the Kansas Supreme Court.

Kansas has authorized its Supreme Court to answer questions of Kansas law certified by a federal court. K.S.A. § 60-3201. When state law is unsettled and dispositive, certification is the course this Court has repeatedly endorsed, because it "in the long run save[s] time, energy, and resources and helps build a cooperative judicial federalism," *Lehman Bros. v. Schein*, 416 U.S. 386, 391

(1974), and avoids the “friction-generating error” that attends a federal court’s construction of novel state law its highest court has not reviewed, *Arizonans for Official English v. Arizona*, 520 U.S. 43, 79 (1997). Certification is the mechanism that spares the federal courts from making unnecessary and potentially erroneous guesses about a State’s tort law. The Tenth Circuit’s own rule is to certify when a question “may be determinative of the case at hand” and “is sufficiently novel that we feel uncomfortable attempting to decide it without further guidance.” *Pino v. United States*, 507 F.3d 1233, 1236 (10th Cir. 2007). Both conditions are satisfied here.

A. The Aspelin/Herrell question is genuinely unsettled in Kansas.

The Kansas Supreme Court has never decided whether *Aspelin*’s no-duty rule survives *Herrell* as a categorical bar, as a duty-defeating factor, or not at all. As the district judge whose judgment was affirmed here put it, “[t]he Kansas Supreme Court has not addressed the interplay between *Aspelin* and *Herrell*.” *Kelly v. Morton Salt, Inc.*, No. 6:20-cv-01352-TC, 2023 WL 172129, at *6 n.10 (D. Kan. Jan. 12, 2023). That silence has left the lower courts to improvise. The same judge read *Herrell*’s reasoning to mean that *Aspelin* “no longer operates as a categorical bar to absolve a landowner of his duty to an employee of an independent contractor,” *id.* at *5—yet treated *Aspelin*’s principle as a factor that could still defeat duty, and granted summary judgment for the landowner on that basis. The only state-court authority to address the question, *Didde v. City of Chapman*, No. 106,090, 2012 WL 3822735 (Kan. Ct. App. Aug. 31, 2012), is unpublished and non-precedential, yet it is the case

on which this improvised synthesis rests; *Kelly* itself described *Didde* as “the only Kansas appellate case that has considered and attempted to harmonize the holdings in” *Aspelin* and *Herrell*. *Kelly*, 2023 WL 172129, at *6 n.10.

The result is precisely the disuniformity that certification exists to prevent. The federal district court treated *Aspelin* as a non-categorical factor; the Tenth Circuit panel here treated the same language as a categorical bar, see Pet. App. 6a; and the only state-court guidance is a single unpublished opinion the Kansas Supreme Court has never reviewed. When federal courts and one non-precedential state decision are left to build a State’s premises-liability immunity doctrine from the ground up—reaching the merits in different ways and without the State’s highest court ever having spoken—the question is not being predicted. It is being made. That is the strongest possible case for asking Kansas to answer it.

B. The question is outcome-determinative, because the knowledge ground is not independent of it.

Respondent may urge that the no-duty judgment stands on the independent ground that no Signify employee knew of the exposed opening, so the *Aspelin/Herrell* question would not affect the result. The two grounds are not independent.

Under Kansas law, a landowner’s knowledge of a hazard does not depend on what its managers knew; the knowledge of any employee is imputed to the landowner where the fact is material to that employee’s duties. Applying that rule, the district court in *Kelly* held that a reasonable jury could find the landowner had the requisite

knowledge—rejecting the very “no employee knew” defense Signify presses here—and granted summary judgment only on the separate question of duty. *Kelly*, 2023 WL 172129, at *4. The knowledge inquiry and the duty inquiry are therefore distinct, and the knowledge inquiry is not the obstacle Signify suggests: petitioner contended below that Signify’s asserted lack of knowledge was itself the product of its failure to perform the inspection and supervision its own mandatory safety policy required. Doc. 56 ¶ 69; Chilelli Reply Br. 20. Whether a landowner that retained such inspection authority may disclaim a duty of reasonable care is governed by *Herrell*, not foreclosed by *Aspelin*—the very question the panel resolved without engaging.

The § 324A discussion does not provide an independent basis for affirmance. Petitioner’s primary duty theory is not that Signify gratuitously undertook Hosea’s safety duties and thereby induced reliance; it is that Signify, as landowner, owed ordinary premises-liability duties under *Herrell* and *Jones*, including reasonable inspection and warning obligations, and that Signify’s retained safety authority is evidence bearing on breach, foreseeability, and constructive knowledge. The panel’s § 324A analysis therefore does not answer the *Herrell* question.

The knowledge holding thus rests on the same unresolved premise as the *Aspelin* holding: that this was a hazard the contractor, and not the owner, was bound to manage. That premise is, at a minimum, contestable on this record—which is what makes the state-law question dispositive rather than academic. *Aspelin*’s no-duty rule, by its terms, reaches only “defects in the premises which the contractor has undertaken to repair.” 476 P.2d at

623. Petitioner was retained to demolish a furnace, not to repair the catwalk opening through which he fell; he argued below that the opening was “a separate condition on the premises” that he “was not hired to repair.” *Chilelli Br.* 31. Whether encountering—or exposing—a pre-existing structural feature of the owner’s premises in the course of unrelated demolition work is “intimately connected with” the contracted work under *Aspelin*, or instead falls within *Herrell*’s duty of reasonable care, is the precise question Kansas has never answered. The Kansas Supreme Court should decide it.

C. No party sought certification—but that does not excuse the failure, and it is best cured by a remand.

Petitioner candidly acknowledges that no party moved to certify this question in either court below. That does not defeat the point. A federal court may certify a question of Kansas law on its own motion, see *Hodges v. Walinga USA Inc.*, 640 F. Supp. 3d 1085, 1092 (D. Kan. 2022) (“A federal court may certify a state-law issue sua sponte.”), and this Court has admonished that a court of appeals “should not have ventured into so uncertain an area of tort law” without first seeking guidance on the potentially controlling question of Kansas law. *McKesson v. Doe*, 592 U.S. 1, 5–6 (2020) (per curiam). The controlling consideration—that an unsettled, outcome-determinative question of Kansas law was resolved against the injured party by a federal court, without the guidance of the State’s highest court—does not turn on the form of a motion. And because the question was never put to the panel as a certification request, the appropriate course is not for this Court to resolve the Kansas question in the

first instance, but to vacate and remand so that the court of appeals may engage *Herrell* and consider certification with that decision in view—the relief addressed in Reason III.

III. At a Minimum, the Judgment Should Be Vacated and Remanded for Engagement With *Herrell* or for Certification.

This Court may grant, vacate, and remand where “intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration,” and where “it appears that such a redetermination may determine the ultimate outcome of the litigation.” *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam). The decisive feature of that standard is not the vintage of the overlooked authority but whether the court below “did not fully consider” it. Indeed, this Court has rejected the narrower view that a lower court’s mere “opportunity” to consider an authority forecloses a remand. *Id.* at 174 & n.5. What the panel here “did not fully consider” is *Herrell* as it bears on this record; the relevant development is not *Herrell*’s issuance but the panel’s resolution of the duty question in a manner that cannot be squared with it.

The predicate is satisfied here, and starkly. Petitioner briefed *Herrell* in both courts. The panel’s opinion is silent on it. That silence makes it impossible to determine whether the panel considered and rejected the conflict between *Herrell* and its categorical reading of *Aspelin*, or simply overlooked it—the very circumstance in which a remand is warranted. See *Wellons v. Hall*, 558 U.S.

220, 225 (2010) (per curiam) (GVR appropriate where the court below gave a question “at most, perfunctory consideration” and the Court “cannot be sure” its reasoning was independent of the error). Because the panel folded its knowledge and *Aspelin* rationales together without holding that knowledge alone would sustain the judgment, this Court cannot be sure the judgment rests on a premise that survives engagement with *Herrell*.

A remand also respects the ordinary order of decision. This Court is “a court of review, not of first view,” and where the court of appeals has not passed on a controlling question, the appropriate course is to vacate and let it do so. *Retirement Plans Comm. of IBM v. Jander*, 589 U.S. 49, 52 (2020) (per curiam). That principle has special force in diversity: the question the panel skipped is one of Kansas law, on which the Kansas Supreme Court—not this Court, and not a federal panel in the first instance—should “utter the last word.” *Erie*, 304 U.S. at 79.

A vacatur and remand—for reconsideration in light of *Herrell*, or for certification of the controlling question to the Kansas Supreme Court under K.S.A. § 60-3201—would allow the court of appeals to apply Kansas law as the State’s highest court has declared it, or to obtain that declaration if the question is genuinely in doubt. That is the course this Court has prescribed when a court of appeals’ construction of state law cannot be squared with a recent decision of the State’s highest court. See *Lords Landing Vill. Condo. Council of Unit Owners v. Continental Ins. Co.*, 520 U.S. 893, 896–97 (1997) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment vacated, and the case remanded with instructions that the court of appeals address *Herrell v. National Beef Packing Co.* in the first instance or certify the controlling question of Kansas law to the Kansas Supreme Court under K.S.A. § 60-3201.

Respectfully submitted,

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**APPENDIX A — ORDER AND JUDGMENT OF THE
UNITED STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT, FILED FEBRUARY 25, 2026**

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 25-3031
(D.C. No. 2:23-CV-02165-TC)
(D. Kan.)

BRADLEY J. CHILELLI,

Plaintiff-Appellant,

v.

SIGNIFY NORTH AMERICA CORPORATION,

Defendant-Appellee.

Before **HARTZ**, Circuit Judge, **LUCERO**, Senior Circuit
Judge, and **PHILLIPS**, Circuit Judge.

ORDER AND JUDGMENT*

Bradley Chilelli appeals the district court's grant of
summary judgment to Signify North America Corporation

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

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(Signify) in his civil suit alleging negligence resulting in severe personal injury. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND¹

Signify manufactures and sells lights. It operated a manufacturing facility in Salina, Kansas, which manufactured conventional lighting, such as light bulbs. The facility had an electric furnace and a gas oxy furnace. The gas oxy furnace, used to make fluorescent tubing, was some 60 feet tall from the factory floor to the top. In 2020 the furnaces needed to be demolished because of the sale of the facility. Signify contracted with Hosea Project Movers (Hosea) to demolish and remove the furnaces. Mr. Chilelli worked for Hosea.

When the gas oxy furnace was in operation, liquid glass poured through funnels that sat on top of and covered holes on a catwalk. The demolition by Hosea required removal of the funnels, exposing the holes. While working on the demolition of that furnace, Mr. Chilelli fell through an exposed hole on the second-level catwalk, causing severe injuries, including paralysis.

After the accident, Signify drafted a postaccident narrative recommending the implementation of Signify On-site Contractor Safety Minimum Requirements (SOCSMR) at the Salina plant. The narrative reported

1. The record presents no genuine dispute of material fact, and the facts are viewed in the light most favorable to Mr. Chilelli, the summary-judgment nonmovant, *see Markley v. U.S. Bank Nat'l Ass'n*, 59 F.4th 1072, 1080 (10th Cir. 2023).

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that the Salina facility had not previously used the SOCSMR “due to lack of local resources and experience to effectively implement” them. *Id.* at 36 (internal quotation marks omitted).

Mr. Chilelli sued Signify in federal court, alleging common-law negligence. Signify moved for summary judgment. Before responding, Mr. Chilelli moved for leave to exceed the district court’s standing page limit (then set at 40 pages) by up to 25 pages in his response to the motion. The district court denied the motion, and Mr. Chilelli then filed a 37-page response.

The district court granted the motion for summary judgment, concluding, among other things, that Signify did not owe a duty of care to Mr. Chilelli because it did not know about the exposed hole.

DISCUSSION**1. Denial of Motion to Exceed Page Limits**

Mr. Chilelli first argues the district court erred when it denied his motion for permission to exceed its standing limit of 40 pages² in his response to Signify’s motion for summary judgment. “The district court’s refusal to allow . . . additional pages of briefing is best characterized as a

2. The court set the page limit by local rule. *See* D. Kan. Local R. 7.1(d)(2). “Local rules are primarily housekeeping rules; their purpose is to facilitate operation of the court.” *Hernandez v. George*, 793 F.2d 264, 266 (10th Cir. 1986). “Considerable deference is accorded to the district courts’ interpretation and application of their own rules of practice and procedure.” *Smith v. Ford Motor Co.*, 626 F.2d 784, 796 (10th Cir. 1980).

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supervision of litigation decision, which we review for an abuse of discretion.” *Timmerman v. U.S. Bank, N.A.*, 483 F.3d 1106, 1112 (10th Cir. 2007) (internal quotation marks omitted). “A district court abuses its discretion when it (1) fails to exercise meaningful discretion, such as acting arbitrarily or not at all, (2) commits an error of law, such as applying an incorrect legal standard or misapplying the correct legal standard, or (3) relies on clearly erroneous factual findings.” *Stenson v. Edmonds*, 86 F.4th 870, 877 (10th Cir. 2023) (internal quotation marks omitted).

The district court did not abuse its discretion. It applied the same page limitation to both parties in their summary-judgment briefing, and Mr. Chilelli points to no error of law or clearly erroneous factual findings in the court’s denial. Moreover, Mr. Chilelli does not articulate any specific argument or issue of material fact he was unable to advance because of the page limit. It would be difficult for him to do so, since his ultimate response left him two pages to spare.

2. Summary judgment

Mr. Chilelli contests the district court’s grant of summary judgment to Signify. “We review the district court’s grant of summary judgment de novo, applying the same legal standard that the district court is to apply.” *New Hampshire Ins. Co. v. TSG Ski & Golf, LLC*, 128 F.4th 1337, 1344 (10th Cir. 2025). Summary judgment is appropriate “if the movant shows that 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).

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“On appeal, we examine the record and all reasonable inferences that might be drawn from it in the light most favorable to the non-moving party.” *Markley v. U.S. Bank Nat’l Ass’n*, 59 F.4th 1072, 1080 (10th Cir. 2023) (brackets and internal quotation marks omitted).

The district court in this case had diversity jurisdiction under 28 U.S.C. § 1332(a)(1) because, at the time of filing, Mr. Chilelli was a citizen of Ohio and Signify was a Delaware corporation with its principal place of business in New Jersey. Because the accident and injury occurred in Kansas, Kansas law applies. *See Anderson v. Com. Constr. Servs., Inc.*, 531 F.3d 1190, 1194 (10th Cir. 2008).

Under Kansas law, “[i]n order to establish negligence, a plaintiff must prove the existence of a duty, a breach of that duty, an injury, and proximate cause. . . .” *D.W. v. Bliss*, 279 Kan. 726, 112 P.3d 232, 238 (Kan. 2005) (internal quotation marks omitted). “The necessity of establishing existence of a duty is essential, for without a duty there can be no breach” *Id.*

To hold a landowner liable for injury resulting from a dangerous condition, “the plaintiff generally must show that the defendant had actual knowledge of the condition or that the condition had existed for such a length of time that in the exercise of ordinary care the landowner should have known about it.” *Brock v. Richmond-Berea Cemetery Dist.*, 264 Kan. 613, 957 P.2d 505, 511 (Kan. 1998). But Mr. Chilelli conceded in district court that there was no evidence that David Goldammer, the Signify Project Leader for removal of the gas oxy furnace, actually

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knew about the exposed hole before the accident. And Mr. Chilelli did not present evidence that *any* Signify employee was aware of the exposed hole before he fell.

In addition, “an owner of premises is under no duty to protect an independent contractor from risks arising from or intimately connected with defects in the premises which the contractor has undertaken to repair.” *Aspelin v. Mounkes*, 206 Kan. 132, 476 P.2d 620, 623 (Kan. 1970) (owner not liable when independent contractors fell from barn they were reroofing). Mr. Chilelli argues that the district court erred in applying this rule to his accident because “the hazard which caused the June 29, 2021 fall — the unguarded opening in the catwalk — was not unique to demolition work but is common to all construction and industrial sites.” Aplt. Opening Br. at 31. But Signify contracted with Hosea to deconstruct the funnels at the Salina plant. The resulting risk—the exposed hole through which Mr. Chilelli fell—was intimately connected with Hosea’s work, so Signify did not owe a duty to protect him from it.

Mr. Chilelli argues that Signify could still be liable because it “retain[ed] control over the activities of contractors performing services at the Salina . . . facility as it related to safety,” Aplt. Opening Br. at 24, and in fact exercised that control when it stopped work after the accident. In support of this argument, he points to deposition testimony from Mr. Goldammer that he had the authority to stop any unsafe acts or operations he observed. Mr. Chilelli further argues that the SOCSMR were, by their plain terms, in effect at the Salina facility before the accident.

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But even if the SOCSMR applied to the facility when Mr. Chilelli fell, Signify's own internal safety policies, absent some showing that there was reliance on Signify's implementing them, do not create a tort duty. Kansas follows Restatement (Second) of Torts § 324A in this context. *Honeycutt ex rel. Phillips v. City of Wichita*, 251 Kan. 451, 836 P.2d 1128, 1137 (Kan. 1992). "For a defendant to meet the threshold requirements of § 324A, the defendant must not only take affirmative action to render services to another, but the person to whom the services are directed must accept such services in lieu of, or in addition to, such person's obligation to perform the services." *Gooch v. Bethel A.M.E. Church*, 246 Kan. 663, 792 P.2d 993, 1002 (Kan. 1990). Mr. Chilelli did not argue that he, or even Hosea, relied on, or even knew of, the SOCSMR, so the SOCSMR did not create a tort duty.

Because we agree with the district court that Signify did not owe a duty to Mr. Chilelli, we agree that the grant of summary judgment was correct. We need not consider its alternative ground for doing so: that the hole he fell through was open and obvious.

CONCLUSION

We affirm the judgment of the district court.

Entered for the Court

Harris L. Hartz
Circuit Judge

**APPENDIX B — MEMORANDUM AND ORDER OF
THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS, FILED JANUARY 30, 2025**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Case No. 23-cv-2165-TC

BRADLEY J. CHILELLI,

Plaintiff,

v.

SIGNIFY NORTH AMERICA CORPORATION,

Defendant.

MEMORANDUM AND ORDER

Plaintiff Bradley Chilelli sued Defendant Signify North America Corporation after he fell at Signify's facility. Doc. 1. Signify has filed two motions, one to strike Chilelli's expert witness, Doc. 49, and another for summary judgment, Doc. 51. Chilelli opposes both motions. Docs. 55 & 56. For the following reasons, Signify's motion for summary judgment is granted, and its motion to exclude Chilelli's expert is denied as moot.

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Summary judgment is proper under the Federal Rules of Civil Procedure when the moving party demonstrates “that 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 fact is “material” when it is necessary to resolve a claim. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998). And disputes over material facts are “genuine” if the competing evidence would permit a reasonable jury to decide the issue in either party’s favor. *Id.* Disputes—even hotly contested ones—over facts that are not essential to the claims are irrelevant. *Brown v. Perez*, 835 F.3d 1223, 1233 (10th Cir. 2016). Indeed, belaboring such disputes undermines the efficiency Rule 56 seeks to promote. *Adler*, 144 F.3d at 670.

At the summary judgment stage, material facts “must be identified by reference to affidavits, deposition transcripts, or specific exhibits incorporated therein.” *Adler*, 144 F.3d at 671; *see also* D. Kan. R. 56.1(d). To determine whether a genuine dispute exists, the court views all evidence, and draws all reasonable inferences, in the light most favorable to the nonmoving party. *See Allen v. Muskogee, Okla.*, 119 F.3d 837, 839-40 (10th Cir. 1997). That said, the nonmoving party cannot create a genuine factual dispute by making allegations that are purely conclusory, *Adler*, 144 F.3d at 671-72, 674, or unsupported by the record. *See Scott v. Harris*, 550 U.S. 372, 378-81, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

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The moving party bears the initial burden of showing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Savant Homes, Inc. v. Collins*, 809 F.3d 1133, 1137 (10th Cir. 2016). Once the moving party meets its burden, the burden shifts to the nonmoving party to demonstrate that genuine issues as to those dispositive matters remain for trial. *Celotex*, 477 U.S. at 324; *Savant Homes*, 809 F.3d at 1137.

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Signify provides “quality light products, systems, and services.” Doc. 52 at 5.¹ It owned a facility in Salina, Kansas wherein it manufactured light bulbs until it sold the facility in 2021. *Id.* at ¶¶ 2, 5. As part of that sale, two furnaces at the facility’s glass plant had to be demolished. *Id.* Signify shut down the furnaces so they could cool before demolition. *Id.* at ¶ 3. After the shutdown, there were roughly 100 Signify employees left in the facility, with only ten of them working at the gas plant. *Id.* at ¶¶ 4, 5.

Signify conducted a bidding process for the demolition work. Doc. 52 at ¶ 7. Hosea Project Movers won the bid. *Id.* at ¶ 21. Hosea is a “full-time industrial relocation expert” that provides services for the moving and closing of factories, including demolition. *Id.* at ¶¶ 9, 10, 13. Signify

1. All document citations are to the document and page number assigned in the CM/ECF system.

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and Hosea contracted for the demolition of the furnaces. *Id.* at ¶ 21. As part of the contract, Hosea accepted responsibility for safety in the project. *Id.* at ¶ 33.

Signify had a safety policy, the Signify On-Site Contractor Safety Standards (SOCSMR), that governed independent contractors at Signify sites. Doc. 56-2. The SOCSMR set out various safety requirements that independent contractors had to follow. *Id.* And it noted that Signify's Site Safety Officer was responsible for "injury prevention" at Signify's sites. *Id.* at 2.

Chilelli, who worked for Hosea, was part of Hosea's four-man crew that was demolishing the furnaces at Signify's plant. Doc. 52 at ¶¶ 35-37. Kevin Ellis was the crew's foreman. *Id.* Signify had no employees working to demolish the furnaces. *Id.* at ¶ 38. Only one Signify employee, David Goldammer, was around the Hosea crew. Goldammer was Signify's manufacturing manager. *Id.* at ¶ 84. He would check in on the Hosea crew each morning to see their progress. *Id.* at ¶¶ 95, 96. Goldammer never entered Hosea's immediate work area. *Id.* at ¶ 97. Instead, he would "look from the perimeter, and he never got close enough to observe Hosea's work." *Id.*

One of the two furnaces, a gas oxy furnace, had four funnels (also called troughs or bowls). Doc. 52 at ¶ 71. Each trough was connected to a hole on the second-floor catwalk. During the manufacturing process, glass would pass through the trough and through the hole on the catwalk down to the floor below. *Id.* at ¶ 71. In early June, the Hosea crew removed some troughs as part of

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the demolition, thereby leaving the holes exposed. *Id.* at ¶¶ 72, 73. Removal of the troughs was part of what Signify hired Hosea to do. *Id.* at ¶¶ 19, 72. After they removed the troughs, the Hosea crew used the holes as trash chutes to dump debris from the second-floor catwalk to the ground floor. *Id.* at ¶¶ 79, 80, 81. The crew would throw debris through the hole down to the ground floor as it worked on the second-floor catwalk. *Id.*

On June 29, Chilelli fell through an exposed trough hole. Doc. 52 at ¶ 104. He was gravely injured and rendered paraplegic. Doc. 56 at 22. After the fall, Signify created an accident narrative that recommended—despite the fact that the facility had been shut down as part of a sale—implementing the SOCSMR at the Salina facility. *Id.* at ¶¶ 113, 116.

Chilelli filed suit claiming that Signify was negligent because it “failed to exercise reasonable care in its oversight, supervision, training, inspection and enforcement of the mandatory safety requirements it created and imposed on contractors.” Doc. 48 at ¶ 4.a. Signify filed a motion for summary judgment, arguing it did not owe Chilelli a duty under Kansas law. Doc. 51.

II

There is no dispute that Signify was unaware of the hole, that the hole was open and obvious, that Chilelli knew about it, and that Signify did not retain control of the project. Under Kansas law, Signify owed Chilelli no duty of care. As a result, Chilelli’s claim against Signify fails as a matter of law and Signify’s motion for summary judgment is granted.

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To recover for negligence, Kansas law requires a plaintiff to prove a duty owed, a breach of that duty, injury, and a causal connection between the duty breached and the injury suffered.² *Thomas v. Cty. Comm'rs of Shawnee Cty.*, 293 Kan. 208, 262 P.3d 336, 346 (Kan. 2011). Whether a duty exists is a question of law. *Elstun v. Spangles, Inc.*, 289 Kan. 754, 217 P.3d 450, 453 (Kan. 2009) (citing *Nero v. Kansas State Univ.*, 253 Kan. 567, 861 P.2d 768, 772 (Kan. 1993)). A negligence claim fails if the defendant had no duty to act in a certain manner toward the plaintiff. *Id.*

There can be no duty where the probability of harm is not foreseeable. *Berry v. Nat'l Med. Servs., Inc.*, 292 Kan. 917, 257 P.3d 287, 290 (Kan. 2011). Although ordinarily a question of fact, foreseeability may be determined as a matter of law if there is no genuine dispute of material fact. *See Cullip ex rel. Pitts v. Domann ex rel. Domann*, 266 Kan. 550, 972 P.2d 776, 785 (Kan. 1999). To establish a duty, the plaintiff must show that the defendant knew about the condition or that the condition existed for so long that the defendant should have known about it. *Corazzin v. Edward D. Jones & Co., L.P.*, 63 Kan. App. 2d 489, 494, 530 P.3d 445 (Kan. 2023); *Brock v. Richmond-Berea Cemetery Dist.*, 264 Kan. 613, 957 P.2d 505, 511 (Kan. 1998).

1. Signify argues it did not owe Chilelli a duty of care because it did not know about the exposed trough

2. A federal court sitting in diversity applies the substantive law of the state in which it sits, as enacted by the state legislature and interpreted by the state's highest court. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S. Ct. 817, 82 L. Ed. 1188 (1938).

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hole. Doc. 52 at 27. Signify insists that “[b]ecause no Signify employees knew or had reason to know about the uncovered and unguarded hole in use by the Hosea crew, the probability of a fall through the hole was not foreseeable to Signify.” *Id.*

There is no evidence to suggest that Signify knew about the exposed trough hole. Signify had shut down the Salina facility before the sale, and only 100 employees remained. Doc. 52 at ¶¶ 4, 5. Of those, only ten worked in the area where the Hosea crew was demolishing the glass oxy furnace. *Id.* at 6. The only Signify employee who was near the furnace, and therefore the only one who could have been able to notice the exposed trough hole, was Goldammer. But there is no dispute that Goldammer did not know about the trough hole until after Chilelli’s fall. *Id.* at ¶ 101. Goldammer did not enter the Hosea crew’s immediate work area. *Id.* He never got close enough to observe the crew’s work and would only “occasionally” walk by to ask the foreman how the work was progressing. *Id.* at ¶¶ 95, 96, 97.

Chilelli’s attempt to controvert these facts is unavailing. He argues that, pursuant to the SOCSMR, Goldammer “was the person responsible for performing safety inspections and supervision over the Hosea [] crew.” Doc. 56 at ¶¶ 97, 98. This fact does not bear on whether Signify owed Chilelli a duty of care vis-à-vis Goldammer’s knowledge of the trough hole. *See Christy v. Travelers Indem. Co. of Am.*, 810 F.3d 1220, 1233 (10th Cir. 2016) (quoting *Travis v. Park City Mun. Corp.*, 565 F.3d 1252, 1257-58 (10th Cir. 2009) (“To survive summary

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judgment, a nonmoving party must set forth specific facts showing that there is a genuine issue for trial as to those dispositive matters for which he carries the burden of proof.”). Even assuming that Chilelli’s reading of the SOCSMR is correct, that Goldammer was supposed to perform safety inspections and supervise the Hosea crew does not mean he knew about the trough hole. Indeed, the record is clear that Goldammer found out about the trough hole after Chilelli’s fall. Doc. 52 at ¶ 100. Chilelli does not dispute this fact. Doc. 56 at ¶ 100. As a result, Chilelli fails to raise a genuine dispute that Signify knew about the trough hole. This entitles Signify to summary judgment because “[i]f no duty exists, there can be no negligence.” *Fountain v. Se-Kan Asphalt Servs., Inc.*, 17 Kan. App. 2d 323, 837 P.2d 835, 838 (Kan. Ct. App. 1992); see *Corazzin*, 530 P.3d at 452 (affirming the trial court’s grant of summary judgment where the plaintiff failed to create a genuine issue of material fact that the defendant knew about the defect that injured him).

2. Signify further argues that, even assuming *arguendo* it knew about the trough hole, it did not owe Chilelli a duty because the hole was a known and obvious risk. Doc. 52 at 30. It posits that the hole was known and obvious to the Hosea crew because “they uncovered it and/or because they were aware of it and used it.” *Id.*

In Kansas, landowners have no duty to warn or make safe dangerous conditions that are known or obvious to the plaintiff. *Bonnette v. Triple D. Auto Parts Inc.*, 55 Kan. App. 2d 130, 409 P.3d 865, 871 (Kan. Ct. App. 2017); *Miller v. Zep. Mfg. Co.*, 249 Kan. 34, 815 P.2d 506,

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514 (Kan. 1991) (“[A] possessor of land is under no duty to remove known and obvious dangers.”). Kansas law dictates an objective test to determine whether a danger is known and obvious. *Wellhausen v. Univ. of Kansas*, 40 Kan. App. 2d 102, 189 P.3d 1181, 1184 (Kan. 2008). The word “known” denotes both knowledge of the condition and appreciation of its danger. Restatement (Second) of Torts ¶ 343A (1965); see *Bonnette*, 409 P.3d at 871 (using the Restatement’s definition). And “obvious” means that the condition and the risk are apparent to and would be recognized by a reasonable man in the plaintiff’s position who exercised ordinary care, intelligence, and judgment. *Bonnette*, 409 P.3d at 871.

There is no dispute that the hole was known and obvious. Signify hired Hosea to demolish the gas oxy furnace, which included removing the troughs. Doc. 52 at ¶ 72. It is undisputed that the holes were covered by troughs. *Id.* at ¶ 71; Doc. 56 at ¶ 71. The Hosea crew removed the troughs, thereby exposing the holes. Doc 52 at ¶¶ 72, 73. They walked by the holes “almost daily.” *Id.* at ¶ 77. Subsequently, the fourman crew, of which Chilelli was a member, began to use the holes as chutes to dump trash down to a dumpster on the ground floor. *Id.* at ¶¶ 79, 80, 81. When asked if he knew about the holes, Chilelli noted that he had previously filmed the hole through which he fell while it had a trough on it. *Id.* at ¶ 78. The hole was conspicuous, measuring roughly three squared feet. *Id.* at ¶ 75. And as Chilelli admits, he knew that “there was danger.” Doc. 52 at ¶ 58. A reasonable person in his position would have been aware of the peril of falling through the holes. Accordingly, Signify owed

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Chilelli no duty of care with respect to a hole that, because he and his crew had exposed and used it, was known and obvious to him. *See Manley v. Hallbauer*, 53 Kan. App. 2d 297, 387 P.3d 185, 188 (Kan. Ct. App. 2016) (finding no duty where the danger of approaching an obstructed intersection was known and obvious to the plaintiff); *Wilson v. Daytec Constr. Co.*, 22 Kan. App. 2d 401, 916 P.2d 72, 74 (Kan. Ct. App. 1996) (finding no duty where the plaintiff slipped on paint without injury and then walked through the area again and slipped a second time); *see also Knowles v. Klase*, 204 Kan. 156, 460 P.2d 444, 446 (Kan. 1969) (“When a dangerous condition is neither created by the proprietor or those for whom he is responsible, nor traceable to their actions, proof of negligence with respect to a floor condition requires some showing they had actual or constructive notice of the dangerous condition.”).

Chilelli’s attempts to controvert that the trough hole was known and obvious are unpersuasive. He contends that Ellis testified that the Hosea crew “did not make the hole through which Chilelli fell . . .” Doc. 56 at ¶ 72. When asked at his deposition whether the hole was already there, Ellis responded: “Yeah. We didn’t make no holes in there, no.” Doc. 56-7 at 13-14. This much is true, and there is no argument to the contrary. Signify does not contend that the Hosea crew created the trough hole. The issue is not whether they created the hole but rather whether they exposed it by removing the trough that had previously covered it. Chilelli does not dispute that the hole was covered by a trough, Doc. 52 at ¶ 71; Doc. 56 at ¶ 71, and there is no genuine dispute that the Hosea crew, as part of their demolition work, removed the

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troughs and exposed the holes. Doc. 52 at ¶ 72. Both Ellis and Chilelli admitted in their depositions that the Hosea crew removed the troughs. *See* Doc. 56-7 at 11 (“And is it your testimony today that Hosea disassembled or removed those bowls? Eventually, yes, we did.”); Doc. 52-9 at 13 (“[W]e started to disassemble some troughs that were all steel and firebrick.”).

Chilelli also argues that Ellis testified that Signify workers covered some of the trough holes. Doc. 56 at ¶ 72. After Chilelli’s fall, Ellis told an OSHA representative that “[t]hey covered one of the other holes but cannot remember if the hole where the accident occurred was exposed.” Doc. 56-7 at 4. When questioned in his deposition about who “they” were, Ellis replied: “Signify workers.” *Id.* But counsel’s very next question to Ellis was whether he “[spoke] to Signify workers to determine that.” *Id.* Ellis replied: “No, just assumed.” *Id.* This unsupported assumption does not controvert the fact that the trough hole was known and obvious. At best, it indicates that Signify covered the trough holes and therefore knew about them. Chilelli points to no evidence in the record that raises a dispute of material fact that the trough hole was not known and obvious.

Finally, Chilelli refutes that the Hosea crew used the trough holes to dump trash. Doc. 56 at ¶ 72. He notes that when Ellis confirmed this fact he referred to “them holes” rather than the specific hole through which Chilelli fell. *Id.*; *see* Doc. 52-11 at 7 (“[W]e would just use them holes to get it down to the next floor to keep working.”). This mischaracterizes Ellis’s testimony. Counsel specifically asked Ellis whether the Hosea crew used the hole through

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which Chilelli fell. *See* Doc. 52-11 at 7 (“[T]here was some testimony . . . that crew members were using that hole to toss debris down.”). Ellis’s use of the pronoun “them” does not negate his assent to counsel’s question, and he did not clarify that the crew did not use the specific hole through which Chilelli fell. Furthermore, Todd Hosea, Hosea Project Movers’s president, testified that the crew used the holes to dump debris. Doc. 52 at ¶ 81.³ And Chilelli himself said in his statement to OSHA that the hole “may have been used to toss debris down to the level below for cleanup.” *Id.* at ¶ 80. There is no genuine dispute that the Hosea crew used the trough hole to dump trash. Even if there were, it remains undisputed that the crew exposed the hole by removing the trough.

3. Finally, Signify argues that it did not owe Chilelli a duty because Hosea was a demolitions expert that

3. Chilelli objects to the admissibility of Todd Hosea’s testimony because he “was not present at the facility on the day of the fall” and so his testimony was not based on personal knowledge. Doc. 56 at ¶ 73. Todd Hosea was noticed as Hosea Project Movers’s corporate representative. Doc. 35. Pursuant to Federal Rule of Civil Procedure 30(b)(6), a corporate representative must “testify about information known or reasonably available to the organization.” Fed. R. Civ. P. 30(b)(6). When giving such testimony, Todd Hosea’s personal knowledge is “of no consequence.” *Sprint Commc’ns Co., L.P. v. Theglobe.com, Inc.*, 236 F.R.D. 524, 528 (D. Kan. 2006); *see Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co.* 497 F.3d 1135, 1146-47 (10th Cir. 2007) (quoting Roger Fendrich & Kent Sinclair, *Discovering Corporate Knowledge and Contentions*, 50 ALA. L. REV. 651, 665 (1999) (“[I]n one common scenario, corporations designate individuals who lack personal knowledge of the events giving rise to the litigation but who have otherwise been educated about it.”)).

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Signify hired specially for the job. Doc. 52 at 32. Signify maintains that it had no control over the Hosea crew's work or the premises wherein they worked. *Id.*

“In a premises liability case, in order to be liable, the party charged must have had control over the premises in question.” *Gragg v. Wichita State Univ.*, 261 Kan. 1037, 934 P.2d 121, 130 (Kan. 1997) (quoting *Rogers v. Omega*, 20 Kan. App. 2d 1, 883 P.2d 1204, 1207 (Kan. Ct. App. 1994)); *see also Rogers*, 883 P.2d at 1208 (finding that the defendant had no duty because its agreement with the plaintiff placed no responsibility or control over the dangerous condition on the defendant). “To put it another way, a party may not be held responsible for a condition which he or she did not cause and which he or she has no ability to remedy.” *Gragg*, 934 P.2d at 130.

There is no dispute that Signify had no control over the Hosea crew's work. Signify did not supervise the crew. Doc. 52 at ¶¶ 33, 38, 44. Goldammer was supposed to supervise the crew only if he noticed any unsafe behavior. *Id.* at ¶ 94. Chilelli points to nothing in the record that suggests Goldammer had noticed such unsafe behavior prior to this incident. And Hosea was a demolitions expert. *Id.* at ¶¶ 9, 13. The fact that Signify hired Hosea specially for the demolition work cuts against the finding of a duty. *See Aspelin v. Mounkes*, 206 Kan. 132, 476 P.2d 620, 623 (Kan. 1970) (noting that “an owner of premises is under no duty to protect an independent contractor from risks arising from or intimately connected with defects in the premises which the contractor has undertaken to repair”); *Didde v. City of Chapman*, 283 P.3d 840, 2012

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WL 3822735, *5 (Kan. Ct. App. 2012) (quoting *Guignet v. Lawrence Paper Co., Inc.*, 859 F. Supp. 515, 519 (D. Kan. 1994)) (finding no duty where an independent contractor was injured by a pipe that he was hired to install).

Chilelli's attempt to controvert these facts fails. His only argument points to Goldammer's title of "Project Leader." He argues that, as project leader, Goldammer "was the person who was supposed to meet with the HPM crew prior to any work beginning to review various aspects of safety . . ." Doc. 56 at ¶ 26. And he notes that Goldammer admitted to having the authority to stop "unsafe acts or operations." *Id.* But it is uncontroverted that Signify was not supervising the Hosea crew. Doc. 52 at ¶¶ 33, 38, 44. Goldammer was to stop work only if he saw any unsafe behavior, and there is nothing in the record to suggest that he noticed anything of the sort.

4. Chilelli insists that Signify owed him a duty. He makes two points: that the SOCSMR imposed a duty on Signify and that, if Signify had implemented its subsequent corrective actions before Chilelli fell, the accident would not have occurred. Neither of these arguments suffices to create a duty under Kansas tort law.

Chilelli first argues that the SOCSMR imposed a duty on Signify. Doc. 56 at 26, 33. That policy set out "mandatory safety requirements to be met by contractors performing their services on Signify premises." Doc. 56-2 at 1. Signify was supposed to police its independent contractors to ensure they were complying with the SOCSMR. *Id.*

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The parties vigorously dispute whether the SOCSMR applied to the Salina plant. Chilelli points to the plain language of the policy, which states that the SOCSMR applies to “[a]ll Signify sites.” Doc. 56-2 at 1; Doc. 56 at ¶ 116. Signify retorts that the SOCSMR was not implemented in the Salina facility due to diminished manpower. Doc. 52 at ¶¶ 114, 115, 116; Doc. 58 at 3-4.

It is immaterial whether the SOCSMR applied to the Salina facility because, even if it did, Signify’s failure to abide by its own internal safety policies does not create a duty under Kansas tort law. *See South ex rel. S. v. McCarter*, 280 Kan. 85, 119 P.3d 1, 10-11 (Kan. 2005) (finding that a landlord’s failure to follow its rental agreement and community guidelines did not impose a duty to protect its tenants); *Cunningham v. Braum’s Ice Cream & Dairy Stores*, 276 Kan. 883, 80 P.3d 35, 37 (finding no duty where a store failed to abide by its tornado emergency plan); *Beshears ex rel. Reiman v. Unified Sch. Dist. No. 305*, 261 Kan. 555, 930 P.2d 1376, 1383 (Kan. 1997) (finding no duty where a school failed to abide by its own suspension policies); *see also Glynos v. Jagoda*, 249 Kan. 473, 819 P.2d 1202, 1211 (Kan. 1991) (finding no duty where a landlord failed to update his premises to comply with changing building codes). And Chilelli has not argued that he relied on the SOCSMR. *Cf. Sall v. T’s, Inc.*, 281 Kan. 1355, 136 P.3d 471, 482 (Kan. 2006) (finding liability where the plaintiff relied on the defendant’s policy of using air horns to signal bad weather). Thus, Chilelli fails to raise an issue of material fact that Signify owed him a duty because of the SOCSMR.

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5. Chilelli also argues that Signify should have implemented its corrective actions earlier. He notes that “if, as required by Signify following [his] injury, Signify had insisted on [the corrective actions] . . . the opening in the catwalk would have been identified as a safety hazard and it would have been corrected.” Doc. 56 at 29-30.

This has no bearing on the duty analysis. For one, both Kansas law and the Federal Rules of Evidence prohibit the use of subsequent remedial measures to show negligence or culpability. F.R.E. 407; Kan. Stat. Ann. § 60-451; *see also Henning v. Union Pacific R. Co.*, 530 F.3d 1206, 1220 (10th Cir. 2008) (affirming the district court’s exclusion of subsequent remedial measures under Rule 407). And in any event, the question is whether Signify owed Chilelli a duty when he fell. The argument that Signify owed him a duty before the accident based on actions that it took after the accident turns tort law on its head—chronologically, it places the breach of a duty before the birth of that duty. Signify’s behavior after Chilelli’s accident cannot retroactively impose a duty on Signify. *See* Restatement of Torts § 4 (1934) (“[T]he actor’s duty in tort is often to conduct himself in a manner, the propriety of which is to be determined ex post facto by the jury in their determination as to whether the actor has or has not used reasonable care.”). “Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right. Proof of negligence in the air, so to speak, will not do.” *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99, 99 (N.Y. 1928). The legally protected interest must exist at the time of the actionable conduct. *See Cansler v. State*, 234 Kan. 554, 675 P.2d 57, 61 (Kan.

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1984) (quoting *Hanna v. Huer, Johns, Neel, Rivers & Webb*, 233 Kan. 206, 662 P.2d 243, 254 (Kan. 1983) (“For negligence to exist there must be a duty and a breach thereof before the conduct becomes actionable.”). Chilelli cites no authority to the contrary.

III

For the foregoing reasons, Signify’s Motion for Summary Judgment, Doc. 51, is GRANTED, and its Motion to Strike Plaintiff’s Expert, Doc. 49, is DENIED as moot.

It is so ordered.

Date: January 30, 2025

/s/ Toby Crouse
Toby Crouse
United States District Judge

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**APPENDIX C — JUDGMENT OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS,
FILED JANUARY 30, 2025**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Case No. 2:23-cv-02165-TC

BRADLEY J. CHILELLI,

Plaintiff,

v.

SIGNIFY NORTH AMERICA CORPORATION,

Defendant.

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a jury trial. The issues have been tried and the jury has rendered its verdict.

☒ Decision by the Court. This action came before the Court. The issues have been considered and a decision has been rendered.

Pursuant to the Court's Memorandum and Order filed on January 30, 2025, this case is dismissed in favor of Defendant.

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Date: January 30, 2025

SKYLER B. O'HARA
CLERK OF THE DISTRICT COURT

By: s/ Traci Anderson
Deputy Clerk