STATE OF RHODE ISLAND
PROVIDENCE, S.C.

SUPERIOR COURT
CIVIL ACTION NO. PC-2024-04526

HEARING DATE: January 21, 2025

STATE OF RHODE ISLAND,

Plaintiff,

v.

AECOM TECHNICAL SERVICES, INC., AETNA BRIDGE COMPANY, ARIES SUPPORT SERVICES INC., BARLETTA HEAVY DIVISION, INC., BARLETTA/AETNA I-195 WASHINGTON BRIDGE NORTH PHASE 2 JV, COLLINS ENGINEERS, INC., COMMONWEALTH ENGINEERS & CONSULTANTS, INC., JACOBS ENGINEERING GROUP, INC., MICHAEL BAKER INTERNATIONAL, INC., PRIME AE GROUP, INC., STEERE ENGINEERING, INC., TRANSYSTEMS CORPORATION, and VANASSE HANGEN BRUSTLIN, INC.,

Defendants.

DEFENDANT COMMONWEALTH ENGINEERS & CONSULTANTS, INC.'S REPLY BRIEF IN RESPONSE TO PLAINTIFF STATE OF RHODE ISLAND'S CONSOLIDATED RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 12 MOTIONS

The Defendant Commonwealth Engineers & Consultants, Inc. ("Commonwealth Engineers") submits this Reply Brief to address arguments raised by the plaintiff, State of Rhode Island (the "State"), in its Consolidated Response in Opposition to Defendants' Rule 12 Motions.

I. ALL CLAIMS ARE BARRED BY THE ECONOMIC LOSS DOCTRINE

A. There Is No Sovereign Entity Exception to the Economic Loss Doctrine and This Court Should Not Create Such an Exception

Rhode Island's Supreme Court has grappled with the economic loss doctrine numerous times but has never articulated the "sovereign entity exception" proposed by the State.[1] The State argues that because it is not a "commercial entity" engaged in profit-driven activities, it should be exempted from application of the rule. Rhode Island has never adopted such an exception and should not do so here. In fact, the cases limiting the rule to "commercial entities" have done so in the context of contrasting "commercial entities" with consumers, who are acknowledged to have unequal bargaining power and to be entitled to increased protection. See Rousseau v. K.N. Const., Inc., 727 A.2d 190, 192 (R.I. 1999) ("This Court has long adhered to a tradition of providing increased protection and an opportunity for recovery in cases in which consumers deal with commercial entities."); Bos. Inv. Prop. No. 1 State v. E.W. Burman, Inc., 658 A.2d 515, 517 (R.I. 1995) (focused on whether there is a "discrepancy in the bargaining powers of the parties"); Franklin Grove Corp. v. Drexel, 936 A.2d 1272, 1276 (R.I. 2007) ("the doctrine applies to entities acting in a business capacity"; refusing to extend consumer protections to entity experienced in contracts). The same considerations do not apply here. The bargaining power of the parties—RIDOT and the various defendant consultants—is equal. All parties are sophisticated entities that regularly and routinely negotiate contract terms. The State is not without a remedy; but that remedy lies in contract, not in tort.

[1] The State relies on cases from Pennsylvania and Maryland, although neither case created a sovereign entity exception. See Commonwealth v. Monsanto Co., 269 A.3d 623, 673 (Pa. Commw. Ct. 2021) (acknowledging economic loss doctrine has not previously been applied to preclude sovereign proceeding; leaving issue open); Morris v. Osmose Wood Preserving, 340 Md. 519, 534-35, 667 A.2d 624, 632 (1995) (discussing "*serious* risk of death or personal injury" exception to economic loss doctrine; applying economic loss doctrine to dismiss claims).

B. The State Has Not Plausibly Alleged "Other Property Damage"

In its Consolidated Opposition, the State argues that defendants' motions to dismiss should be denied because it is not *inconceivable* that other property damage *might occur in the future*. This argument fails for two reasons. First, the Complaint makes no such allegation, and for purposes of a Rule 12 motion, the Court need look no further than the allegations plausibly alleged in the Complaint. Commonwealth Engineers is entitled to "fair and adequate notice of the plaintiff's claim" and bald unspecified allegations of "damage to its property" falls woefully short of that. See Rhode Island Econ. Dev. Corp. v. Wells Fargo Sec., 2013 WL 4711306, at *14 (R.I. Super. Aug. 28, 2013) (Silverstein, J.). Second, the State's argument regarding damages that *might occur in the future* effectively concedes that the State has in fact not suffered other property damage. All claims should be dismissed pursuant to the economic loss doctrine.[2]

II. ALL CLAIMS ARE BARRED FOR FAILURE TO STATE A CLAIM

A. This Court Can and Should Credit the 2019 and 2023 Inspection Reports Showing Commonwealth Engineers Did Not Conduct Such Inspections

The Complaint alleges that Commonwealth Engineers assisted AECOM with certain inspections, however the reports documenting those inspections expressly contradict those allegations. By complaining about the inspections, the State has sufficiently referred to the reports

[2] The State makes two other arguments regarding the economic loss doctrine. First, it argues that application of the rule is premature. Courts routinely apply the economic loss doctrine to dismiss claims at the Rule 12 stage; doing so is not premature. See, e.g., Owen Bldg. LLC v. Victory Heating & Air Conditioning Co., No. CV 20-00266-WES, 2021 WL 412282, at *2 (D.R.I. Jan. 20, 2021), report and recommendation adopted, No. CV 20-266 WES, 2021 WL 409863 (D.R.I. Feb. 5, 2021) (granting Rule 12 motion to dismiss based on economic loss doctrine); Triton Realty Ltd. P'ship v. Almeida, No. C.A. PC04-2335, 2006 WL 2089255, at *2 (R.I. Super. July 25, 2006) (Gibney, J., unpublished opinion) (same). Second, the State argues that it might have surviving claims for negligent misrepresentation against some defendants. This argument does not apply to Commonwealth Engineers as it is not alleged that Commonwealth Engineers made any representations (negligent or otherwise) to the State.

documenting those inspections. See Mokwenyei v. Rhode Island Hospital, 198 A.3d 17, 22 (R.I. 2018). These reports "govern over inconsistent allegations in the pleading to the extent that they 'render [those allegations] utterly implausible.'" Fitch v. Fed. Hous. Fin. Agency, No. 18-CV-214JJM, 2021 WL 4901909, at *5 (D.R.I. Oct. 21, 2021), report and recommendation adopted, No. CV 18-214-JJM-PAS, 2022 WL 159287 (D.R.I. Jan. 18, 2022). Commonwealth Engineers did not owe a duty (or breach a duty) with respect to inspections that they did not perform. Count III should be dismissed.

B. Representations Made by the JV in the JV Proposal Do Not Create a Duty Running from Commonwealth Engineers to the State

The Complaint alleges that in 2021, the Joint Venture submitted proposals to the State for a project to rehabilitate the bridge. That proposal described certain tasks the Joint Venture might assign to Commonwealth Engineers. Absent from the Complaint is any allegation that Commonwealth Engineers actually performed such tasks, agreed to perform such tasks, or entered into a contract related to performance of such tasks.[3] The State's Opposition does not explain how the Joint Venture's proposal creates a duty running from Commonwealth Engineers to the State. Count XVI must be dismissed as against Commonwealth Engineers.

III. CAUSES OF ACTION FOR DECLARATORY RELIEF (COUNTS XIX & XX) SHOULD BE DISMISSED

Commonwealth Engineer's opening memorandum set forth three reasons why the State's declaratory judgment causes of action must be dismissed: (1) the State failed to join the hypothetical third parties in violation of the Uniform Declaratory Judgment Act ("UDJA"), as they are interested, necessary parties, see R.I. Gen. § 9-30-11, (2) the State lacks standing for these

[3] The absence of these allegations is not surprising given that Commonwealth Engineers in fact did not perform the stated tasks or any other tasks related to the superstructure of the Westbound Bridge where the at-issue components were located.

claims, as the possibility that unidentified third parties might bring a claim is purely "hypothetical" or "conjectural," rather than "actual or imminent," and (3) the Complaint fails to adequately plead a cause of action for equitable indemnity and contribution against Commonwealth Engineers. The State's Opposition raises several counterarguments to the above, all of which are without merit.

First, the State argues that the "unidentified third parties do not (and could not) have a claim or interest that would be affected by the Court's declaration," that the "State only seeks a determination regarding Defendants' obligations to indemnity or contribute to the State in the event of third-party liability." (Opposition, pp. 59-60). This argument fails because a judicial determination as to the State's right to seek contribution or indemnity from Commonwealth Engineers *would* necessarily impact the rights of the unnamed third parties by determining the relative degree of fault of Commonwealth Engineers without the third parties' participation in the lawsuit.

Second, the State cites a single unpublished case, FleetBoston Financial Corp. v. Advanta Corp., 2003 WL 22048742, at *5 (RI. Sup. Ct. 2003), to support the proposition that it has standing to bring the declaratory relief claims. In FleetBoston, there was pending litigation against the parties, which, as the superior court stated, created a "factual predicate" for the indemnification case. Here, there is no pending third-party litigation. Moreover, the State's hypothetical injured third parties are not identified or known, whereas in FleetBoston, the third party was clearly identified as the IRS. For both these reasons, the injury in FleetBoston was actual and imminent, whereas, in our case, it is purely speculative and hypothetical.

Third, the State's Opposition argues that the Complaint sufficiently pleads the elements of equitable indemnity and contribution simply by alleging that Commonwealth Engineers was negligent. (See Opposition, p. 59). But the issue is that the Complaint never alleges that a specific

third party was harmed by Commonwealth Engineer's allegedly negligent acts. Rhode Island has adopted a standard by which a complaint is sufficient if it gives "the opposing party fair and adequate notice of the type of claim being asserted." Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992). This requires at least a "statement of circumstances and occurrences in support of the claim being presented." Id. The relevant "circumstances and occurrences" for the purposes of the declaratory relief causes of action would at the very least include *some indication* as to who the allegedly harmed third parties are. But there is no such indication. Accordingly, the Court must dismiss the declaratory relief causes of action because the Complaint's failure to identify in any way the allegedly harmed third parties deprives Commonwealth Engineers of fair and adequate notice of the claims.

IV. CONCLUSION

For all these reasons and those stated in Commonwealth Engineers' Memorandum in Support of its Motion to Dismiss, this court should grant Commonwealth Engineers' Motion to Dismiss.

THE DEFENDANT,
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By its Attorney,

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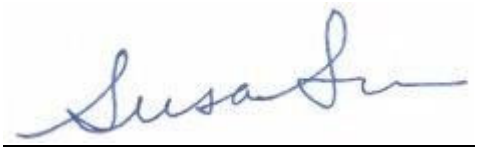
CERTIFICATE OF SERVICE

I, Susan M. Silva, hereby certify this 14th day of January, 2025, that the foregoing document was electronically filed and served electronically upon all parties on record.



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