Hearing Date: January 21, 2025

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC PC-2024-04526

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.	)

REPLY OF DEFENDANT STEERE ENGINEERING, INC. TO OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant Steere Engineering, Inc. ("Steere") hereby submits this Reply to the Opposition of the State of Rhode Island (the "State") to Steere's Motion for Judgment on the Pleadings.

I. INTRODUCTION

The State's claims against Steere do not withstand scrutiny despite the liberal pleading standard under Rhode Island law. That pleading standard does not permit this Court to make up facts contrary to the record. Here, based on the record before this Court, it is "beyond a reasonable doubt" that Steere's alleged conduct—entering into a contract to provide limited structural engineering services on areas of the Washington Bridge unrelated to the conditions referred to in

the Complaint—does not state a claim on which the State can recover. Speculation to the contrary does not justify denial of Steere's motion for judgment on the pleadings.

The State also asks this Court to ignore the settled law of Rhode Island on the Economic Loss Doctrine and create new exceptions to permit a legally deficient claim to proceed past this pleading stage. This Court must decline the State's invitation to ignore settled law and recognize new exceptions to the Economic Loss Doctrine. Based on settled Rhode Island law, the State cannot proceed against Steere in this lawsuit.

II. ARGUMENT

A. The Economic Loss Doctrine Bars the Claim Against Steere

The State asks this Court to create new law in the State of Rhode Island and abandon the doctrine of s*tare decisis*. "*Stare decisis*—in English, the idea that today's Court should stand by yesterday's decisions—is a foundation stone of the rule of law." Kimble v. Marvel Ent., LLC, 576 U.S. 446, 455 (2015). Without legal precedent, and indeed contrary to it, the State asks this Court to rule that the economic loss doctrine, a long-standing rule of law, does not apply to the State or this lawsuit. As the Supreme Court stated, *stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process … it also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation." Id. *Stare decisis* should not be ignored by this Court.

"The economic loss doctrine provides that a plaintiff is precluded from recovering purely economic losses in a negligence cause of action." Hexagon Holdings, Inc. v. Carlisle Syntec Inc., 199 A.3d 1034, 1042 (R.I. 2019). "[A] plaintiff may not recover damages under a negligence claim when the plaintiff has suffered no personal injury or property damage." Id. "Contract principles,

on the other hand, are generally more appropriate for determining claims for consequential damage that the parties have, or could have, addressed in their agreement." Bos. Inv. Prop. No. 1 State v. E.W. Burman, Inc., 658 A.2d 515, 518 (R.I. 1995) (quoting Spring Motors Distributors, Inc. v. Ford Motor Co., 98 N.J. 555, 579-80 (1985).

Rhode Island's "rationale for abiding by the economic loss doctrine centers on the notion that commercial transactions are more appropriately suited to resolution through the law of contract, than through the law of tort." Franklin Grove Corp. v. Drexel, 936 A.2d 1272, 1275 (R.I. 2007). Rhode Island "has looked to the Supreme Court of Washington for guidance on this issue: '[w]hen parties have contracted to protect against potential economic liability, as is the case in the construction industry, contract principles override … tort principles … and, thus, purely economic damages are not recoverable.'" Id. (quoting Berschauer/Phillips Construction Co. v. Seattle School District, 124 Wash.2d 816, 881 (1994)). "Indeed, the construction industry in particular would suffer, for it is in this industry that we see most clearly the importance of the precise allocation of risk as secured by contract. The fees charged by architects, engineers, contractors, developers, vendors, and so on are founded on their expected liability exposure as bargained and provided for in the contract." Berschauer, 124 Wash. 2d at (1994).

As such, the only carve out under Rhode Island law to the economic loss doctrine is in the context of consumer transactions. Rousseau v. K.N. Const., Inc., 727 A.2d 190, 193 (R.I. 1999). It is the sophistication of the entity acting in a business capacity that lies at the heart of the economic loss rule. Franklin Grove Corp., 936 at 1276. The State of Rhode Island certainly has the sophistication of a commercial entity, making the exception for the average consumer inapplicable. The controlling policy considerations underlying Rhode Island's economic loss rule is the sophistication of the contracting parties which applies to the State in this situation.

1. There Is No "Sovereign Exception" to the Economic Loss Doctrine

The State cites to no case in Rhode Island or elsewhere that actually stands for the proposition that the economic loss doctrine does not apply because the plaintiff is a sovereign entity. The State's reliance on Commonwealth v. Monsanto Co., 269 A.3d 623, 673 (Pa. Commw. Ct. 2021) is, at best, misplaced and misleads this Court. The Penssylvania court in Monsanto addressed a different issue of property damage, without ruling that a state was immune from the economic loss doctrine:

> In fact, like Plaintiffs, this Court failed to locate any caselaw in which the economic loss rule has been applied to preclude a state, as trustee/*parent patriae*, from seeking damages for harm to its natural resources, or limited its recovery to only those natural resources the state owns. Therefore, it **does not appear with certainty** that Plaintiffs' damage claims are precluded by the economic loss doctrine.

Id. at 678 (emphasis added).

To the contrary, the economic loss rule has been applied in other jurisdictions to preclude a government entity from recovering in the absence of damages to person or property. See City of Chicago v. Beretta U.S.A. Corp., 213 Ill. 2d 351, 424 (2004) (holding the economic loss rule does not permit an award of solely economic damages to the plaintiff public entity); and City of Cleveland v. Ameriquest Mortg. Sec., Inc., 621 F. Supp. 2d 513, 521 (N.D. Ohio 2009), aff'd sub nom. City of Cleveland v. Ameriquest Mort. Sec., Inc., 615 F.3d 496 (6th Cir. 2010) ("The economic loss doctrine bars the City's claim").

Here, the State's argument that the economic loss doctrine is inapplicable to a governmental entity has no support in the law and misses the policy considerations behind Rhode Island's implementation of the economic loss rule. The State for purposes of contracting for major construction projects is essentially acting as a commercial entity. The State asks this Court to ignore the fact that the State has engaged in commercial activities with the defendants: it has

entered into a contract for design and construction services, and as such, it allocated its risk when it did so. Rhode Island jurisprudence regarding commercial entities and the economic loss doctrine is driven by the ability of sophisticated parties to allocate risk through contracts. Franklin Grove Corp., 936 A.2d at 1277. The State is undoubtedly a sophisticated enough entity to fully appreciate the complexity of its own contracts.

Accordingly, the State's argument that the economic loss doctrine is inapplicable to the plaintiff because the State is a sovereign entity is unsupported and fails.

2. Rhode Island Does Not Recognize the "Unreasonably Dangerous" Exception to the Economic Loss Doctrine

The State also asks this Court to create new law in finding an exception to the economic loss doctrine because it alleges the "Defendants created a public safety hazard requiring emergency closure of the Bridge." Again, the State cites no Rhode Island case, and Steere has found none, to support its position that Rhode Island has adopted the "unreasonably dangerous" exception to the economic loss doctrine. Indeed, the weight of authority contravenes the State's proposition, and "the overwhelming majority of decided cases have rejected the adoption of an 'unreasonably dangerous,' 'unduly hazardous' or 'sudden and calamitous event' exception." Sebago, Inc. v. Beazer E., Inc., 18 F. Supp. 2d 70, 94 (D. Mass. 1998) (quoting Bay State–Spray, 404 Mass. at 107, 533 N.E.2d 1350 ("when economic loss is the only damage claimed, recovery is not allowed in tort-based strict liability ... or negligence")).[1]

The State relies (albeit erroneously) on Morris v. Osmose Wood Preserving, 340 Md. 519 (1995) to support its argument for adoption of the "unreasonably dangerous" exception. The Supreme Court of Maryland does not define Rhode Island law, and even there cautioned regarding

[1] See also Bocre Leasing Corp. v. General Motors Corp., 645 N.E.2d 1195 (N.Y. 1995); Detroit Edison Co. v. NABCO, Inc., 35 F.3d 236, 242 (6th Cir.1994) (Michigan does not recognize "unduly dangerous" exception); and Dakota Gasification Co. v. Pascoe Bldg. Systems, 91 F.3d 1094, 1097–1100 (8th Cir.1996).

the implementation of such an exception: "To lower the threshold to encompass ***mere possibilities of injury*** … is to cheapen the legitimacy of the exception to the economic loss rule and thereby invite an avalanche of such tort claims in future cases." Id., at 536 (internal quotations omitted) (emphasis added). Indeed, the Morris court rejected the plaintiffs' contention that "an immediate threat of injury from walking on the roof, and also the threat of the roofs collapsing and injuring the occupants within, and that the roofs [could not] support any weight"—created rights of recovery and dismissed of those claims under the economic loss doctrine. Id. Applying Morris to the State's claim here that there was a risk of collapse by vehicles driving over the Washington Bridge requires ***application*** of the economic loss rule and dismissal of the claims.

Accordingly, the economic loss doctrine bars the State's claims against Steere.

3. There is No "Damage to Other Property" Taking the State's Claim Out of the Economic Loss Doctrine

As to personal injury or damage to "other" property, this Court can find "beyond a reasonable doubt that the plaintiff will be unable to prove his right to relief, that is to say, unless it appears to a certainty that he will not be entitled to relief under any set of facts which might be proved in support of his claim." Bragg v. Warwick Shoppers World, Inc., 102 R.I. 8, 12 (1967). Because "the sole function of a motion to dismiss is to test the sufficiency of the complaint," consideration of the State's alleged facts is confined to the four corners of that pleading. Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009).

Here, the State has alleged that is has suffered "property damage," but it is plain, obvious, and "beyond a reasonable doubt" that the complaint only seeks recovery against Steere in negligence for economic losses. Despite the way the State has dressed its allegations, they substantively fail to allege any damage to property other than the bridge itself. "Since all but the very simplest of machines have component parts, [a contrary] holding would require a finding of

'property damage' in virtually every case where a product damages itself. Such a holding would eliminate the distinction between warranty and strict products liability." E. River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 867 (1986).

The economic loss rule excludes as recoverable property damage the damage to the product itself: "Obviously, damage to a product itself has certain attributes of a products-liability claim. But the injury suffered—the failure of the product to function properly—is the essence of a warranty action, through which a contracting party can seek to recoup the benefit of its bargain." Id. 867–68. "We realize that the damage may be qualitative, occurring through gradual deterioration or internal breakage. Or it may be calamitous." Id. at 870. "But either way, since by definition no person or other property is damaged, the resulting loss is purely economic." Id. "Even when the harm to the product itself occurs through an abrupt, accident-like event, the resulting loss due to repair costs, decreased value, and lost profits is essentially the failure of the purchaser to receive the benefit of its bargain—traditionally the core concern of contract law." Id. "[W]e see no reason to intrude into the parties' allocation of the risk." Id. at 873.

Rhode Island has echoed the reasoning of the other courts, including the United States Supreme Court, in holding that commercial entities, particularly in the construction industry, can allocate risk and contract to protect against potential economic liability, and that "contract principles override tort principles, and thus, purely economic damages are not recoverable." Bos. Inv. Prop. No. 1 State v. E.W. Burman, Inc., 658 A.2d 515, 517 (R.I. 1995). Rhode Island recognizes that allowing "tort and contract remedies … to overlap, particularly in the construction industry, certainty and predictability in allocating risk would decrease and impede future business activity." Id.

"Injury to the product itself or recovery for disappointment in the product's performance invoke[s] not tort law, but contract-based warranty law." Canal Elec. Co. v. Westinghouse Elec. Corp., 756 F. Supp. 620, 630 (D. Mass. 1990) (citing East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858 (1986). "Such losses, unlike those in tort actions, involve economic considerations such as the value of the product, displeasure of customers, increased costs, and the like." Id. "Tort law was not designed for the recovery of pecuniary losses; warranty law, conversely, guarantees the benefit of the bargain." Id. The claim here is even stronger than in those seminal cases where a party delivered a defective item that later caused significant damage to "itself."

Here, Steere did not design, construct, or deliver anything related to the bridge. Its scope of services was to investigate and design repairs or improvements to some other aspect of the bridge not involved in this litigation. Nothing Steere did or failed to do gave rise to property damage. The complaint against all parties is that the bridge continued in its natural decline over the years and nothing more. Accordingly, the State has not alleged any act or omission attributable to Steere giving rise to other property damage.

The State's reliance on the allegation that "[l]ater investigation revealed the existence of unaddressed voids, poor grout, moisture, and corrosion, resulting in widespread deterioration of the post-tensioning system…" (Comp. ¶ 95) does not change the result. The allegations in paragraph 95 of the State's complaint do little more than allege the bridge was, as in Westinghouse and East River Steamship, defective due to its original design and construction. The State's complaint lacks any allegations that Steere had any role in the ***causing*** the "voids, poor grout, moisture, and corrosion" it contends render the bridge unusable.

In its opposition, not the Complaint, the State asks this Court to stretch the boundaries of logic to consider that it ***could*** suffer "wear and tear" to streets used while the Bridge is closed as an example of other "property damage" to remove the bar of the economic loss rule. Indeed, this Court is to examine "the allegations ***contained in the plaintiff's complaint***, assume them to be true, and view them in the light most favorable to the plaintiff." Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009) (emphasis added). The Court cannot assume facts not pled.

Not only is the State's "wear and tear" argument not contained in its complaint, but it is also precisely the type of claim that the economic loss doctrine is aimed at preventing. Bos. Inv. Prop. No. 1 State v. E.W. Burman, Inc., 658 A.2d 515, 518 (R.I. 1995) (quoting Spring Motors Distributors, Inc. v. Ford Motor Co., 98 N.J. 555, 579-80 (1985) ("Contract principles … are generally more appropriate for determining claims for consequential damage that the parties have, or could have, addressed in their agreement."); see also E. River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 872 (1986) ("The increased cost to the public that would result from holding a manufacturer liable in tort for injury to the product itself is not justified.").

Moreover, the "beyond reasonable doubt" test is met because there is no conceivable way to prove "wear and tear" damages to an unidentified and unknown motorway because it is impossible to determine who or what may be the cause of another highway's deterioration that is traveled on by millions of people every year. See Moran Towing Corp. v. M. A. Gammino Const. Co., 363 F.3d 108, 114 (1st. Cir. 1966) ("Wear and tear means normal depreciation."). This argument is far too speculative, even under the liberal standard for surviving a motion for judgment on the pleadings, because the State could never prove the necessary element of proximate cause. Selwyn v. Ward, 879 A.2d 882 (R.I. 2005) ("To prevail on a claim of negligence, a plaintiff must

establish … proximate causation between the conduct and the resulting injury, and the actual loss or damage.").

To allow the State recover for normal depreciation would open a pandora's box of claims for the wear and tear incurred by a "replacement," "substitute" or "alternative" to avoid the economic loss doctrine. Even in Moran Towing Corp., the wear and tear complained of was a negotiated contract term, which places it squarely ***within*** the economic loss doctrine. Id. One could take the State's position here to its logical extreme and argue that a worker who tore his work pants working on the bridge would represent "property damages," making hollow the bar of the economic loss doctrine.

The State contends further that damage to "its property" could also include damages from construction activities that it ***may sustain in the future*** to "adjacent roadways" and "surrounding land and structures." Not one case is cited for this untenable position that damage by unrelated construction crews removing the bridge would be recoverable against Steere. The State is again asking the Court to do more than the law permits to save the legally deficient claim from the dismissal it deserves.

First, those damages to adjacent roadways have not occurred. Therefore, it is "beyond a reasonable doubt" impossible to prove causation for any potential damages that may or may not occur in the future. See Morris, supra. This offends the long-recognized principle that a plaintiff's damages must be proximately caused by the defendant's negligence. See Selwyn, 879 A.2d at 882. Moreover, any damage to other State property will necessarily be caused by an intervening and superseding cause because any act which proximately causes damage to such property will have occurred later in time to Steere's involvement with the Washington Bridge and will become the sole proximate cause of any injury that may or may not happen. See Oden v. Schwartz, 71 A.3d

438, 450–51 (R.I. 2013) ("Intervening cause exists when an independent and unforeseeable intervening or secondary act of negligence occurs, after the alleged tortfeasor's negligence, and that secondary act becomes the sole proximate cause of the plaintiff's injuries.").

Accordingly, the State has failed to state a claim against Steere.

B. Steere's Scope of Services As Defined By Its Contract Requires Steere Be Dismissed

1. Steere's Contract Should Be Considered In Deciding the Motion For Judgment on the Pleadings

The State also incorrectly asks this Court to ignore Steere's contract with defendant AECOM Technical Services, Inc. ("AECOM") and contends the State's complaint does not incorporate that contract. "While ordinarily a court may not consider documents outside of the pleadings when ruling on a motion for judgment on the pleadings, there is a narrow exception for documents the authenticity of which are not disputed by the parties, for official public records, for documents central to plaintiffs' claim, or for documents sufficiently referred to in the complaint." Vries v. Gaudiana, 318 A.3d 1035 (R.I. 2024).

Here, the State has sufficiently referred to the contract in the complaint because the complaint alleges that Steere breached a duty of care to the State which was created by the contract with AECOM. Without the Contract with AECOM, there is simply no duty. Thus, the contract also meets the test of being "central to the [State's] claim" against Steere. Id. Moreover, nowhere in the State's opposition to Steere's motion for judgment on the pleadings is the authenticity of the contract disputed or contested.

Thus, this Court must consider the contract and its significant limitation of Steere's scope of services.

2. Steere's Scope of Services Preclude Recovery

Steere cannot be liable for failing to perform services it had no duty to perform. Rhode Island law is well settled. In Corrado v. Pizza Hut of America, 683 A.2d 367 (R.I. 1996), the Court held that summary judgment was properly awarded in favor of the designer of a ramp causing the plaintiff's injuries when the designer offered unrebutted evidence that the ramp was not built according to the plans the designer submitted and the designer had no role in the actual construction of the ramp. Id. at 367-68.

Again, asking this Court to use its imagination and consider facts not alleged in its complaint, the State wrongly asserts that the complaint is sufficient because, "even if" Steere's scope of services was limited to spans 15-18, it would not demonstrate that Steere "could not have caused or contributed to the other problems with the bridge." The State confuses its burden, for it is not for Steere to establish it "could not have caused" problems to the bridge. Rather, the State failed to plead facts, which if proven, would establish that Steere ***did cause*** "the other problems with the Bridge."

Here, Steere's services were limited to parts of the bridge mentioned nowhere in the complaint. The State's complaint alleges damage to piers 6 and 7 of the bridge. Steere performed services on spans 15-18. For the reasons stated in section A3, *supra*, the State has failed to allege property damage, much less damage to any part of the bridge which fell within Steere's scope of services.

The State's reliance on allegations that "[l]ater investigation revealed the existence of unaddressed voids, poor grout, moisture, and corrosion, resulting in widespread deterioration of the post-tensioning system…" to establish liability against Steere is unavailing. (Comp. ¶ 95). The State asks this Court to make up facts not contained in the Complaint. Hyatt v. Vill. House Convalescent Home, Inc., 880 A.2d 821, 824 (R.I. 2005) is instructive. In Hyatt, the Court

affirmed dismissal of counts of Hyatt's complaint because ***facts*** were missing to state a claim. Id. For example, Count II of that complaint was for breach of contract, which was dismissed, because the complaint, while otherwise stating a cause of action for breach of contract, had no allegation that "defendant Dr. Rudolph was a party to any contractual relationship with plaintiff, and therefore he should not be a defendant under that count—even if it otherwise states a cause of action." Id.

Also, for example, in Barrette, 966 A2d at 1236, the Court did not simply make up facts to show how the discovery rule, if it had been plead, would save the plaintiff's claim from a three-year statute of limitations. The Barrette Court held the Plaintiff was required to plead the discovery rule ***in the complaint***. Id.

The Hyatt Court did not "conceive" or "conjure" up allegations ***not plead*** in the complaint just to make it so, even if the allegations not pled were conceivable facts. That is because the court is to assume that ***the allegations in the complaint*** are true. Id. (citing Estate of Sherman v. Almeida, 747 A.2d 470, 473 (R.I.2000) (emphasis added). Indeed, the court in determining the sufficiency of the complaint, is confined to the four corners of the complaint in doing so.

Here, the State has asked this Court to essentially make up whatever "conceivable facts" it must for the State to survive the defendants' motions to dismiss and motions for judgment on the pleadings. What the State fails to fully apprehend is that it asks this Court to assert new theories of recovery not asserted in its complaint on its behalf. While the standard for surviving a motion to dismiss is not a high hurdle, the Court must nonetheless be restricted to the claims averred to in the complaint, and due process standards does not permit it to use its limitless imagination. Hyatt, 880 A.2d at 824 ("due process considerations are implicated, and we require that the complaint

give the opposing party *fair and adequate notice* of the type of claim being asserted.") (emphasis in original).

Finally, the State's reliance on Inland American Retail Management v. Cinemaworld of Florida, 2011 WL 121647 (R.I. Super. Jan. 7, 2011) is misplaced. Justice Silverstein recognized the economic loss doctrine, but did not apply it to bar the plaintiff's claims in that case because, as the State put it: "found the parties agreed to allow negligence actions for the recovery of economic damages." (Opp. p. 37). That is not the case here. The State asserts that the Court is unable to make such a determination at this stage because Steere's contract is unavailable for review. However, the State's position is compromised by the fact that the Steere contract with AECOM is central to the State's claim and must be considered by this Court at this juncture.

Accordingly, the Court must consider the contract attached to Steere's motion for judgment on the pleadings.

CONCLUSION

For the foregoing reasons and those stated in Steere's memorandum in support of its motion for judgment on the pleadings, Steere's motion for judgment on the pleadings should be granted and the State's complaint dismissed with prejudice.

Respectfully submitted,
Steere Engineering, Inc.,
By and through its attorney,

/s/ Warren D. Hutchison

Warren D. Hutchison, #5571
Freeman Mathis & Gary, LLP
10 Dorrance Street, Suite 700
Providence, RI 02903-2014
T: (401) 519-3724
Warren.Hutchison@fmglaw.com

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CERTIFICATE OF SERVICE

I, Warren D. Hutchison, hereby certify that on this day, December 14, 2025, a true copy of the foregoing has been filed and served on all parties of record through the Rhode Island electronic filing system. The document electronically filed and/or served is available for viewing and/or download from the Rhode Island Judiciary's Electronic Filing System.

/s/ Warren D Hutchison
Warren D. Hutchison