

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

STATE OF RHODE ISLAND

)

)

)

)

v.

) C.A.NO. PC-2024-04526

)

)

)

AECOM TECHNICAL SERVICES, INC.,

)

AETNA BRIDGE COMPANY,

)

ARIES SUPPORT SERVICES, 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.

)

HEARD BEFORE

THE HONORABLE BRIAN P. STERN, ASSOCIATE JUSTICE,

ON JANUARY 21, 2025

(APPEARANCES LISTED ON NEXT PAGE)

GINA GIANFRANCESCO GOMES
COURT REPORTER

APPEARANCES:

FOR THE STATE:

STEPHEN PROVAZZA, ESQUIRE.....FOR THE STATE
MICHAEL ROBINSON, ESQUIRE.....FOR THE STATE
THEODORE LEOPOLD, ESQUIRE.....FOR THE STATE
DIANA MARTIN, ESQUIRE.....FOR THE STATE
LESLIE KROEGER, ESQUIRE.....FOR THE STATE
ADNAN TORIC, ESQUIRE.....FOR THE STATE
JONATHAN SAVAGE, ESQUIRE.....FOR THE STATE
EDWARD PARE, ESQUIRE.....FOR THE STATE
ALYSSA LEMIRE, ESQUIRE.....FOR THE STATE

FOR THE DEFENDANTS:

LAWRENCE PROSEN, ESQUIRE.....FOR AECOM
AMANDA PROSEK, ESQUIRE.....FOR AECOM
JEFFREY BLEASE, ESQUIRE.....FOR BARLETTA AND
THE JOINT VENTURE
CHRISTOPHER MELLADO, ESQUIRE.....FOR BARLETTA AND
THE JOINT VENTURE
JACKSON PARMENTER, ESQUIRE.....FOR AETNA BRIDGE
SUSAN SILVA, ESQUIRE.....FOR COMMONWEALTH
ENGINEERS
CATHERINE KENNEY, ESQUIRE.....FOR COMMONWEALTH
ENGINEERS
JAMES D'AMBRA, ESQUIRE.....FOR TRANSYSTEMS
CORPORATION
WARREN HUTCHINSON, ESQUIRE.....FOR STEERE
ENGINEERING
JOHN KELLEHER, ESQUIRE.....FOR AIRES SUPPORT
SYSTEMS
CHRISTOPHER WHITNEY, ESQUIRE.....FOR MICHAEL BAKER
INTERNATIONAL
JOHN BLESSINGTON, ESQUIRE.....FOR JACOBS
ENGINEERING
MICHAEL FILBIN, ESQUIRE.....FOR JACOBS
ENGINEERING
BRIAN NEWBERRY, ESQUIRE.....FOR VANESSE
HANGEN BRUSTLIN
SAMUEL COTE, ESQUIRE.....FOR PRIME A.E.

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 127, inclusive, are a true and accurate transcript of my stenographic notes.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 TUESDAY, JANUARY 21, 2025

2 MORNING SESSION

3 THE COURT: Good morning. Madam Clerk, if you would
4 please call the case.

5 THE CLERK: Your Honor, the matter before the Court
6 is Case Number PC-2024-04526, State of Rhode Island v.
7 AECOM Technical Services, Inc., et al. This is on for
8 multiple motions to dismiss. Would counsel please
9 identify themselves for the record.

10 MR. PROVAZZA: Good morning, your Honor. Assistant
11 Attorney General, Stephen Provazza on behalf of the State
12 of Rhode Island.

13 MR. ROBINSON: Good morning, your Honor. Michael
14 Robinson for the State of Rhode Island.

15 MR. LEOPOLD: Good morning, your Honor. Ted Leopold
16 on behalf of the State.

17 MR. PROSEN: Good morning, your Honor. Lawrence
18 Prosen, Cozen O'Connor, on behalf of AECOM Technical
19 Services in light of the pro hac vice counsel, Ms.
20 Prosek.

21 THE COURT: Very good. Good morning.

22 MR. BLEASE: Good morning, your Honor. My name is
23 Jeff Blease. I'm a partner with Foley & Lardner. I
24 represent the Joint Venture, Barletta, and also Barletta
25 Heavy Division, Inc. With me also is my associate Chris

1 Mellado, who, with the Court's permission, will argue
2 point number three when the time comes.

3 THE COURT: Thank you. That's fine.

4 MR. PARMENTER: Good morning, your Honor. Jackson
5 Parmenter on behalf of Aetna Bridge and the Joint
6 Venture.

7 THE COURT: Very good. Go right ahead, counsel,
8 please.

9 MS. SILVA: Good morning, your Honor. Susan Silva
10 on before of Commonwealth Engineers. This is my
11 co-counsel Catherine Kenney.

12 THE COURT: Thank you.

13 MS. KENNEY: Good morning.

14 MS. MARTIN: Good morning, your Honor. Diana Martin
15 from the State of Florida.

16 MS. KROEGER: On behalf of the State of Rhode
17 Island, Leslie Kroeger.

18 MR. TORIC: Adnan Toric from Cohen Milstein on
19 behalf of the State of Rhode Island.

20 MR. SAVAGE: Jonathan Savage on behalf of the State
21 of Rhode Island.

22 MR. D'AMBRA: Jim D'Ambra on behalf of TranSystems
23 Corporation.

24 MR. HUTCHINSON: Good morning, your Honor. Warren
25 Hutchinson on behalf of Steere Engineering.

1 MR. KELLEHER: Good morning, your Honor. John
2 Kelleher on behalf of the Aires Support Services.

3 MR. WHITNEY: Your Honor, Christopher Whitney on
4 behalf of Michael Baker International.

5 MR. BLESSINGTON: Good morning, your Honor. John
6 Blessington on behalf of Jacobs Engineering and with me
7 is Michael Filbin.

8 MR. NEWBERRY: Good morning, your Honor. Brian
9 Newberry on behalf of Vanesse Hangen Brustlin.

10 MR. COTE: Good morning, your Honor. Samuel Cote
11 for Prime A.E.

12 THE COURT: Anyone else?

13 MR. PARE: Good morning. Edward Pare on behalf of
14 the State of Rhode Island.

15 MS. LEMIRE: Good morning, your Honor. Alyssa
16 Lemire on behalf of the State of Rhode Island.

17 THE COURT: Okay. Very good. First of all, the
18 Court received earlier this morning an e-mail from
19 Attorney Jeff Pine who is currently on trial upstairs
20 before Judge Krause and the Court has waived his
21 appearance for today.

22 We're here today for a number of Motions to Dismiss
23 that were filed, Motion for Judgment on the Pleadings,
24 and Motion for More Definite Statement. As everyone is
25 aware, the Court on the Motion to Dismiss and the Motion

1 for Judgment on the Pleadings must accept the allegations
2 or the well-pled allegations as true. Prior to the
3 hearing itself, the Court communicated with the parties
4 because there has been a lot of ink spilled over these
5 motions in terms of what would be best for the Court to
6 hear arguments in the case itself. And the Court will be
7 hearing first arguments related to the negligence counts
8 and arguments related to breach of contract, then
9 arguments related to the contractual indemnity,
10 noncontractual and contribution, the declaratory judgment
11 counts, and arguments related to breach of fiduciary
12 duty. The Court has also advised the parties in terms of
13 the order at least with respect to two of the defendants
14 and the Defendants have met and conferred and provided a
15 Court with a list of the others.

16 Before we get to the negligence count, there is one
17 thing that seemed to come out in a lot of the papers,
18 which is kind of what set of glasses the Court should use
19 when looking at this in terms of what is the standard.
20 It's fine to do it in the same order either starting with
21 AECOM or Barletta. But I would like to hear what the
22 position is in terms of standing the Court should apply.

23 What I would just ask, because the court reporter
24 has a very difficult job, if you're addressing the Court,
25 if you can just do it from the lectern. So whoever is

1 going to proceed first on that issue may address the
2 Court.

3 MR. PROSEK: Lawrence Prosek for AECOM. Good
4 morning, your Honor, may it please the Court. Your
5 question jumps right into where my initial discussion is
6 going to be. Your Honor is correct that the standard of
7 review is you must look to the four corners of the
8 pleading. I notice the graphics over there, which we
9 were not aware of before today, which has some argument
10 in them and some additional facts, which were not set
11 forth in the original complaint that was before the Court
12 and that is part of the problem we have here. If we do a
13 side-by-side comparison to the complaint to the
14 opposition, I'll call it a synonymous opposition that the
15 State filed, if it's all right with the Court, I'll point
16 to the opposition. There are references in that document
17 to the complaint, paragraph X, paragraph Y. However,
18 there are numerous instances where the complaint is not
19 cited where additional facts, new facts --

20 THE COURT: I guess, counsel, we'll get into that in
21 a second. My question is more there is a lot of talk in
22 some of the Defendant's papers about the plausibility
23 standard in *Twombly and Iqbal* and the State responds to
24 that and the Court has addressed that in the *CharterCare*
25 case. What is your client's position in terms of what's

1 kind of the overlay of all this? What should the Court
2 be applying?

3 MR. PROSEN: Sure, your Honor. So the Court should
4 be looking to the four corners of the complaint and the
5 Court, obviously, as your Honor has recognized, has to
6 take the facts as well pled in the light most favorable
7 to the non-movant in this case, not all the Defendants in
8 this case, the Plaintiff, the State. But as the Court
9 has ruled in *Rhode Island Recycled Materials v. Conway*,
10 884 A.2d 406, 2005, Rhode Island Supreme Court case, the
11 mere recitation of an essential fact and without more
12 factual allegations, to quote the Court, misses the boat.
13 What you've got here is --

14 THE COURT: I'm sorry. But am I using a
15 plausibility standard or am I using something less?

16 MR. PROSEN: Well, the standard is the Court will
17 look in our favor from the standpoint of beyond a
18 preponderance of the evidence, beyond a reasonable doubt
19 is what the Court would look to. In this case we argue
20 that, in fact, that is the case that even looking at the
21 four corners -- in the four corners of the complaint, you
22 don't have any citation in the case, for example, of
23 breach of contract case. There is no citation of any of
24 the provisions of any of the contracts. There's not even
25 exhibits attached that the Court can look to as part of

1 the four corners to determine whether or not any of the
2 provisions in there are applicable to the particular
3 circumstance.

4 THE COURT: But overall, am I looking to make sure
5 that there is a plausible claim or am I just making sure
6 that there's fair notice?

7 MR. PROSEN: Well, it's a notice standard. We
8 recognize that, your Honor. Obviously, the Rhode Island
9 rules and the federal rules are very similar. It's
10 notice, but notice is not simply -- to use a simple,
11 there was a contract. There was a breach. There were
12 damages. It's got to be more than that. You have to
13 give the Defendants the opportunity to be able to respond
14 and you can't do that in this case. And interestingly
15 enough, we've heard a lot of defendants showed up today.
16 There's 13 of them. The whole complaint is about 42
17 pages long. That averages about three and a half pages
18 dedicated, if you look abstractly, to each of the
19 defendants. There's no way that -- we're not sure, and
20 as your Honor saw in our motion for more definite
21 statement attached, you sent us what contracts are you
22 talking about? What provisions are you talking about?
23 It is not possible at this point in time and not getting
24 even into the fact that we don't think that the counts
25 and the facts were sufficiently pled in this case. It's

1 not possible for any of the Defendants to respond to
2 this. It's a notice pleading standard but notice is not
3 we had a contract, there was a breach, or the party had
4 some sort of in the case of negligence that there was
5 conduct and the conduct was --

6 THE COURT: And I completely understand that when we
7 get into these counts, there's going to be a discussion
8 about whether the notice pleading was adequate or not. I
9 guess my question is really we have a very different
10 standard arguably under *Twombly and Iqbal* if we were in
11 federal court.

12 MR. PROSEN: Yes.

13 THE COURT: And I just want to see whether it's your
14 client or any of the other defendants' position that what
15 this Court should be applying is the *Trombly and Iqbal*
16 standard instead of a notice pleading, which we're going
17 to have plenty discussion about.

18 MR. PROSEN: Yes, your Honor, it is a notice
19 pleading standard.

20 THE COURT: Thank you very much. Does the Joint
21 Venture which to be heard?

22 MR. BLEASE: Thank you, your Honor.

23 THE COURT: Good morning.

24 MR. BLEASE: Good morning, your Honor. Jeff Blease
25 from Foley & Lardner on behalf of Barletta Aetna Joint

1 Venture. I think the standard is correct. Counsel
2 stated, obviously, we accept the facts in the complaint
3 as true. I think the rub becomes when those facts are
4 inconsistent with the contract documents, what do we do?
5 And our position in the papers, obviously, it's
6 dismissed, right? So whether that's a plausibility
7 standard from federal court, which we didn't brief and it
8 wasn't part of our argument, I would address it simply as
9 inconsistent with the allegations in the contract that
10 are included in the complaint and it can't be cured by
11 amendment because it's inconsistent.

12 THE COURT: Thank you very much.

13 MR. BLEASE: Thank you.

14 THE COURT: Would any of the other defendants like
15 to be heard on this issue? Thank you. Does the
16 Plaintiff's counsel wish to be heard on this issue?

17 MR. PROVAZZA: Your Honor, Stephen Provazza on
18 behalf of the State of Rhode Island. I'll be very brief.
19 It's Black Letter Law in Rhode Island that our notice
20 pleading standard provides a conceivability standard by
21 the plausibility standard, and the Rhode Island Supreme
22 Court ruled again last week in the *CVS Securities* case
23 that a motion to dismiss survives if the Plaintiff can
24 proceed under Rule 16 under any conceivable set of facts.

25 THE COURT: The *CVS* class action, unfortunately,

1 I've lived for five years. It's finally done.

2 MR. PROVAZZA: I'm glad we could bring it up again,
3 your Honor.

4 THE COURT: Okay. Thank you. I appreciate that. I
5 wanted to get that out of the way. Why don't we begin
6 with the argument related to the negligence counts,
7 including the Economic Loss Doctrine.

8 MR. PROSEN: Your Honor, again. Lawrence Prosen for
9 AECOM. If that's alright, I'll say AECOM.

10 THE COURT: Perfect.

11 MR. PROSEN: To try to help Madam Reporter as much
12 as possible. Your Honor, may it please the Court, I
13 would like to start with a little bit of background as to
14 sort of how we got here. In dealing with the negligence
15 count, the background is pretty important. And the way
16 we look at this, your Honor, is AECOM is a government
17 contractor like most of the other defendants or
18 subcontractors depending on the circumstances. They
19 perform to a contract that is drafted and established and
20 awarded by the State in this case, Rhode Island
21 Department of Transportation. They set the rules.

22 And interestingly enough and critical here is from
23 the four corners of the complaint. You can read the fact
24 that what AECOM did was they did some design work, they
25 did some inspection work per the scope of work, which are

1 not before the Court because the complaints aren't there
2 and there is no allegations with regard to that,
3 including inspecting. I've got a picture over there of
4 the bridge. I assume everyone here has driven over.
5 I've walked across it. I have not had the pleasure of
6 personally driving over it, but certainly I've become
7 quite familiar with it. And, your Honor, what is not
8 pled in the complaint and it's because it can't be is
9 AECOM did not design the bridge. They did not perform
10 any construction work on the bridge. They didn't
11 maintain the bridge. They didn't do any sort of repair
12 work to the bridge. They had very limited scope. Their
13 touching the bridge is limited to visual inspections.
14 They were not hired by the State.

15 Again, there is no allegations in the complaint to
16 do any sort of forensic or what we call destructive
17 testing, cutting out concrete, seeing what's in the
18 concrete, or doing other work. The State had that
19 option. They could have said AECOM under this contract
20 we want you to do X, Y, or Z constructive testing. That
21 didn't happen. As the State has acknowledged in their
22 complaint, we did visual inspections of the bridge, along
23 with other Defendants in this case, visual inspections.
24 The allegations deal with, amongst other things, stuff
25 that was happening inside the concrete that you would

1 need either an x-ray machine or what is called ground
2 penetrating radar and that never happened.

3 As a result of that, your Honor, you can't hold
4 someone responsible for something that they have no
5 involvement with. And the State, by the way, would have
6 this Court believe, and for that matter, the public
7 believe that it is pure as the driven snow. It had no
8 obligation to do anything. We got these inspection
9 reports, as they allege in their complaint, and
10 supposedly the AECOM Defendants didn't say anything about
11 the degradation of the bridge or its condition.

12 A review of the facts and the non-argument of the
13 timeline reveals that on multiple occasions the State
14 received the reports, and, interestingly enough, what
15 they didn't say in there is we deny the reports, we
16 reject the reports, which all said that the bridge
17 condition, and not just by AECOM, but Jacobs and other
18 defendants, were in poor condition. Poor condition is
19 the lowest standard from the Federal Highway
20 Administration. Having walked the bridge, it's
21 abundantly obvious the bridge needed repair and the State
22 knew that, by the way. As they allege in their complaint
23 they hired a concrete company to do some preliminary
24 design work. They hired the Joint Venture to do some
25 other work. There was a contract in the mid 20 teens

1 that they were going to do some repair work. As their
2 own timeline said, it would impact the traffic too much
3 and they terminated that contract for their convenience.

4 That's all fine and dandy, but to think that the
5 State just shows up -- and, by the way, this bridge, as
6 your Honor knows, is less than a mile from RIDOT
7 headquarters. Anyone that drives over the bridge, anyone
8 that looks at the bridge, they were the only party that
9 was actually in place to regularly look at the bridge and
10 maintain it. They were responsible to maintain it. It
11 was the State over many years that could have and did not
12 take the action to repair this bridge.

13 As critically, the State would have the Court and
14 the public believe that somehow the company that does
15 inspections or preliminary design work is now somehow in
16 the book to replace a bridge completely, whatever that
17 cost is. We've heard different numbers. That's not in
18 the record before the Court. There certainly have been
19 plenty of press conferences and the like. A design
20 contract does not extend one's liability from here are
21 some drawings, or nowadays they call them computed aid
22 drafts, CAD drawings, which are electronic drawings to,
23 hey, we get a whole new bridge out of this thing. So I
24 think it's important with that context that we kind of
25 jump into this.

1 Before the Court are a whole bunch of motions and a
2 whole bunch of actions. With regard to AECOM, we're
3 dealing with the motion to dismiss Counts I, II, IV, V, X
4 and then XVII to XX, the declaratory judgment counts.
5 And, with regard specifically to the negligence -- and,
6 your Honor, I can get more into the standard of review,
7 if you want me to. It sounds like your Honor certainly
8 knows what they are. I'm happy to address those. No
9 problem. The negligence count -- by the way, our motion
10 to dismiss we also think extends to the contractual and
11 common law indemnity actions to the extent the Court is
12 prepared to take that into consideration.

13 THE COURT: And we will. I'm just going to leave
14 that.

15 MR. PROSEN: I just wanted, not to be overly
16 repetitive, but to be able to address it now. We think
17 the negligence count as a preliminary matter is purely
18 duplicative of a breach of contract case. We think that
19 as a result of that they rely on the same operative
20 facts. Whatever the damages we don't really know from
21 the four corners of the complaint. Those are also
22 identical, likewise the bases for those two arguments for
23 the counts are the same.

24 As your Honor has read numerous times now, because I
25 know I certainly have read it, the Economic Loss Doctrine

1 are important documents. I recognize in this state as
2 well as some of the other states they start off in
3 application with regard to specific construction out of
4 Washington State and it has spread across the country,
5 Ohio, Illinois, my home state of Maryland, Pennsylvania.
6 They all recognized it. And what that doctrine holds is
7 a party cannot recover in a tort theory, including
8 negligence, where a contract exists, and you haven't seen
9 the contract. You haven't seen any allegations or the
10 provisions in them. But it's undisputed there was at
11 least one contract. In the case of AECOM there was a
12 couple of them, and only economic damages are claimed and
13 there is no damage to person or property. That damage to
14 person or property is important. It has to be other than
15 the project itself, your Honor.

16 And that's *Hexagon Holdings v. Carlisle Syntec*, 199
17 A.3d 1035. And, specifically, that case also said at
18 page 1042, "Where there are damages in the construction
19 context between commercial entities" -- and, your Honor,
20 the State has an argument on sovereignty that I'll get
21 into. Their contract is barred. They've waived
22 sovereign immunity through the code, through the proper
23 Rhode Island code. It's a government contract, but
24 there's two commercial parties here, two sophisticated
25 commercial parties here, which we'll get into a little

1 more about that as well. But, "The Economic Loss
2 Doctrine will bar any tort claims for purely economic
3 damages."

4 Now, the concern in the doctrine, again, I don't
5 know how far you want me to get into the history of the
6 Economic Loss Doctrine.

7 THE COURT: I've read it and I think the best quote
8 I read was from California to the U.S. Supreme Court, the
9 breach of contract being swallowed up in tort.

10 MR. PROSEN: Thank you very much. You beat me to
11 one of my citations, your Honor, and also recognition
12 that sophisticated commercial parties -- and I would be
13 surprised the State argues it's not a sophisticated
14 commercial party in this case. They have their own
15 architects, they have their own engineers, they have
16 their own construction professionals, they have their own
17 lawyers. They certainly have everything that any
18 traditional, if you will, private business entity would
19 have in order to negotiate a contract.

20 And, again, looking at the scope of work that we
21 had, we didn't do the construction. We didn't do
22 maintenance. We didn't do repair. We didn't do any sort
23 of physical work other than walking the bridge, taking
24 some measurements. Your Honor has seen on some of the
25 other pleadings some of the inspection reports,

1 photographs. It was a visual inspection for the most
2 part. As critical in this case, your Honor, the damages
3 claims, again, whatever they may be, in both the
4 opposition and in the complaint itself most critically,
5 they are unspecified, but there is no claim that the
6 bridge has caused any damage to any third parties as much
7 as the declaratory judgment side of our argument.
8 There's no claims, and, in fact, in the opposition the
9 State recognizes that no third parties have alleged any
10 physical damage to persons or property that was caused,
11 you know, something fell, God forbid, and hit somebody,
12 whatever the case maybe. The Economic Loss Doctrine
13 falls squarely right where we're supposed to be here and
14 it's intended to allow the parties to contract freely as
15 your Honor recognized.

16 THE COURT: So just saying property damage isn't
17 enough?

18 MR. PROSEN: Property damage no, it's not enough.
19 What kind of property damage? To who? To what? And
20 some of the cases that the State cites to try to get
21 around the Economic Loss Doctrine are based on very
22 limited exceptions, which this State has not recognized
23 I'll add, by the way, and/or creative interpretations of
24 how those cases were decided. There is no allegation
25 that anything -- that anybody else caused damage. And

1 there is case law out there.

2 There is *American Towers Owners Association v. CCI*
3 *Mechanical*. It's a Utah case, 1996, 930 P.2d 1182, and
4 that case talked about a condominium being built, the
5 entire condominium. So you've got mechanical,
6 electrical, plumbing, maybe woodwork, I don't know,
7 whatever the case may be. In that case there were
8 mechanical defects, and this gets into the whole issue of
9 the bridge -- the damage to be something other than the
10 bridge itself. And in that case the condo association
11 had argued and alleged that the property -- sued on
12 negligence because there were issues to the plumbing and
13 the mechanical, the air conditioning system. And that
14 court ruled that the argument failed that the Economic
15 Loss Doctrine was noncontrolling or not applicable
16 because the property in that case included all the
17 components that went into the building. So not just in
18 that case the plumbing and mechanical system, but the
19 roofing, the flooring, the door locks, the hinges,
20 everything else about that.

21 And in that *American Towers* case, and this will get
22 into some of the other case law that the State relies on,
23 that case also talked about an exception for a sudden
24 calamitous event or some danger that was alleged. That
25 hasn't happened here. The State has said this bridge

1 could collapse. The State has said it's possible that
2 someone will sue us in the future. The State shut the
3 bridge down of their own volition before any of that
4 happened. So right now what we've got is a situation
5 where we've got -- the only damage that's alleged that we
6 can glean from the complaint is physical and economic
7 that these different variations of that as you read in
8 the opposition is limited to the bridge itself, and the
9 Economic Loss Doctrine says you can't assume negligence.
10 You can't do it.

11 With regard to the sovereign side of the argument,
12 your Honor, they claim that the Economic Loss Doctrine
13 does not apply to sovereign, and they don't cite to any
14 case law that actually says that. They do cite to some
15 other cases, the first of which is a Pennsylvania case
16 that talks in the doctrine in a little bit of Latin.
17 Sorry for that, Court Reporter. *Parens patriae*.

18 THE COURT: Is that the one that's more a standing
19 issue?

20 MR. PROSEN: You got it, your Honor. That is a
21 standing issue. It doesn't get into the Economic Loss
22 Doctrine directly, and they're predominantly
23 environmental tort type cases, large scale, where we see
24 this standing issue basically enacting the governmental
25 quasi sovereign type of scenario. So, yes, your Honor,

1 that does deal with that. In *State v. Lead Industry*
2 *Association* before this court's Judge Silverstein talked
3 about that doctrine being narrowly construed and does not
4 apply to the State, quote, "conducting a business
5 venture." This is a business venture here. This is not
6 a situation where, I don't know, one of the defendants is
7 alleged to have dumped lead paint or, God forbid, some
8 sort of other environmental disaster. Again, citing to
9 Rhode Island Statute Section 37-13.1-1, the State waives
10 sovereign immunity. They can sue and be sued under
11 contract as commercial parties.

12 The cases cited that they rely on the Pennsylvania
13 case and the Maryland case actually support the
14 proposition that they're talking about. In *Commonwealth*
15 *v. Monsanto*, which is the Pennsylvania case that they
16 cite to. For the record, that's 269 A.3d 623. That was
17 the PCB case going back some years where *Monsanto* was the
18 chemical manufacturer that made that chemical and was
19 sued in that guise. There was a limited exception in
20 that case that the court recognized to the enforceability
21 of the Economic Loss Doctrine, and that said that where
22 there is a duty independent of the contract, some other
23 duty, whatever it is, it's outside the contract, then
24 there may be a cause of action that allowed survival of
25 the Economic Loss Doctrine. Rhode Island, to the best of

1 my ability reading cases, are not about that limited
2 exception and, frankly, it doesn't apply here. We have a
3 contract. All the allegations are within the four
4 corners of that contract. Again, in that case there were
5 allegations of damage to other people's property.
6 Potentially physical damage to, you know, personal injury
7 as a result of PCBs and so we don't have that here so
8 that case is distinguishable.

9 Now, *Morris v. Osmose Wood Preserving*, 667 A.2d 624,
10 which is a '95 case under what was then known as the
11 Maryland Court of Appeals with a recent constitutional
12 amendment, which I did vote for. It's out of the Supreme
13 Court of Maryland. That case involved special -- well,
14 plywood that had a fire protective treatment that was
15 applied to roofs. It was used predominantly in
16 residential construction. I can actually remember when
17 these cases were coming about. In that case a group of
18 plaintiffs, homeowners, sued this company, *Osmose Wood*
19 *Preservation*, saying that in both contract and they sued
20 in negligence. In the negligence cause of action they
21 allege, amongst other things, that it was possible, and
22 I'm paraphrasing, sometime in the future that either
23 someone would walk across the roof and because of the
24 degradation of the plywood underneath the roofing
25 material someone could fall through or a storm could come

1 and rip the roof off and cause damage.

2 The Court in Maryland, there is a case called, *Condo*
3 *Association v. Whiting Turner*. There is a limited
4 expectation that I'm sure you'll hear about from the
5 State where it says that, "If there is serious
6 possibility of risk, the risk must be imminent and rise
7 to a level of risk of death or personal injury." That's
8 discussed at page 532 of that decision. Interestingly,
9 the court went on and said, "It's the serious nature of
10 the risk that persuades us to recognize the cause of
11 action in the absence of actual risk. Accordingly,
12 conditions that present a risk of general health, wealth,
13 or comfort, but fall short of presenting a clear danger
14 of death or personal injury will not suffice." That is
15 page 532, and again it's citing the *Whiting Turner*
16 decision. In that particular case the court found that
17 while there are allegations of potential future damage,
18 which we have here, by the way, that did not rise to the
19 level of that limited exception. By the way, I'm not
20 aware of any decision in this state that this state has
21 recognized that limited exception.

22 THE COURT: We're probably one of the most liberal
23 states in terms of exceptions exempting all consumers,
24 and I think the case you mentioned was more of a consumer
25 issue.

1 MR. PROSEN: And, again, your Honor, you're
2 clairvoyant. Yes, I was going there next. It's a
3 consumer decision, which gets into the fact, again, we've
4 got two sophisticated -- well, on each side of the V,
5 sophisticated parties on both sides of the V. I know my
6 client is sophisticated. Again, I think the State is
7 more than sophisticated given the amount of
8 infrastructure, bridges, highways, and the like that they
9 operate and they're supposed to maintain. Interestingly,
10 in that Maryland case, I think Cohen Milstein was also
11 counsel of record in that decision, so it's a small world
12 after all, I guess.

13 On a related note, your Honor, I just want to close
14 out with citing some cases. There are a number of
15 instances where the courts, I haven't found one in this
16 state, but Illinois, Ohio, held that sovereign, in this
17 case the City of Chicago and City of Cleveland to the
18 letter of the law on the Economic Loss Doctrine, that
19 they cannot claim negligence where there is an existing
20 contract on facts much more similar than the cases the
21 State cites. That's the *City of Chicago v. Beretta*, 213
22 Ill. 2d 351. It's a 2004 decision. And then *City of*
23 *Cleveland v. Ameriquest Mortgage*, 621 F.Supp 2d 513.
24 That's an Ohio decision.

25 So, your Honor, given the foregoing, given the

1 allegations inside the complaint that your Honor has read
2 have been reinforced to that extent with regard to the
3 lack of any third-party damage, the lack of any damage to
4 any person or property outside, I guess, of the bridge
5 itself, we believe the Economic Loss Doctrine clearly
6 requires that the negligence counts -- and, again, to the
7 extent we get into it later, I'll try not to be too
8 duplicative on the indemnity related cases as well. We
9 think that the Economic Loss Doctrine, which is very much
10 alive and well in this state, bars recovery and those
11 counts should be dismissed, your Honor.

12 THE COURT: Thank you very much. Counsel, you may
13 proceed.

14 MR. BLEASE: Thank you, your Honor. Again, Jeff
15 Blease, Foley & Lardner, on behalf of Barletta, Joint
16 Venture. I like to start with something we actually
17 haven't talked about yet, I don't think, which is the
18 duty. Is there an independent tort here that creates the
19 duty for which our client should be held responsible, and
20 I would suggest there isn't. And the reason is there was
21 no accident causing property damage. So, for example, if
22 we had employed a barge that broke loose that hit the
23 bridge and caused damage to the substructure, accident,
24 property damage, economic loss wouldn't apply. If we had
25 a crane that was operating on the bridge that collapsed

1 and damaged the bridge, we would be talking about an
2 independent tort of negligence. If there was a tanker
3 that came along that we happened to own took down the
4 bridge, independent tort. We would be potentially
5 responsible.

6 But here, there is no independent tort. In fact,
7 the only reason the Joint Venture is anywhere near that
8 bridge is because they had a contract to rehabilitate it
9 with a single rod. In the absence of that contract, the
10 Joint Venture would owe no duty to the State. In the
11 absence of an accident causing property damage, the
12 damages alleged are economic losses and, in fact, the
13 State pleads that in the complaint, in the introduction.
14 They say this case is about recovering economic losses.
15 It's the last sentence in the introduction. I would
16 submit, your Honor, that we have a sophisticated partner
17 as well, but I don't think that's really the test. I
18 think it's equally bargaining power at best and that's
19 why consumers, obviously, were not subject to the
20 Economic Loss Doctrine. Here, there's no question there
21 is equal bargaining power with the State and our client
22 through the RFP process. The State, in fact, controlled
23 that process and also offered the contract documents. We
24 should not lose sight of that.

25 So this case falls squarely within the rule that has

1 been here in the State of Rhode Island for 30 years, the
2 Economic Loss Doctrine. It started when the District
3 Court certified the question to the Rhode Island Supreme
4 Court in the *Burman* case in 1995. The court, of course,
5 we talked about it earlier, I won't repeat Mr. Prosen's
6 comments, but quoting from Washington, looking at New
7 Jersey, looking at other states and clearly they adopted
8 the Economic Loss Doctrine. In 2007 in *Franklin Grove*,
9 the court took it a step further and said that the
10 Economic Loss Doctrine applies. Not only does negligence
11 go out the window but so does contribution and so does
12 indemnity.

13 And, finally, in *Hexagon Holdings*, which we cited in
14 our papers. It's a 2019 case. That brings it forward in
15 the construction context and the Court clearly cites the
16 Economic Loss Doctrine bars the general contractor's
17 claim against the subcontractor because it's a privileged
18 contract. Here, there is no recovery in tort. We have
19 clearly economic losses and the negligence count can't
20 stand on its own, can't be modified by amendment. The
21 cases Mr. Prosen talked about from the other
22 jurisdictions --

23 THE COURT: What do you mean by can't be modified by
24 amendment?

25 MR. BLEASE: So we can't change the fact that we

1 have a contract with the State and all of the duties and
2 responsibilities of the contracting parties are set forth
3 in that document. There can be no independent tort
4 because there wasn't anything that happened independent
5 of what happened under the contract. So the work that we
6 performed was by contract. The State's direction to us
7 was by contract. There was nothing outside of the
8 contract that could be cured by amendment.

9 THE COURT: But with respect to property damage, if
10 the State was to amend and there was, in fact, property
11 damage to something other than the bridge, couldn't that
12 possibly be a viable cause of action?

13 MR. BLEASE: Well, that gets into the pleading
14 standard of these not inconceivable facts.

15 THE COURT: Okay. We'll get to it.

16 MR. BLEASE: Which I understand the very liberal
17 pleading standard we have here in the State of Rhode
18 Island. It has to be beyond a reasonable doubt. But
19 here, I haven't heard anything with respect to the
20 property damage to the bridge itself or even other
21 property that hasn't already been pled in the complaint.
22 So I'm not sure what additional facts there would be or
23 are we purely speculating as to what those facts would
24 be. But, again, when the duties that arise under the law
25 are purely in contract, I can't conceive of any facts

1 that would arise that would be outside of that contract
2 and the duties set forth in that contract. So I think
3 that economic loss rule applies and I don't think there
4 is any way around that.

5 THE COURT: Okay.

6 MR. BLEASE: The two cases that were cited from out
7 of state by the State of Rhode Island to try to create an
8 exception of *Commonwealth* and *Morris*. We talked about
9 both of those, but just so we have a clear record,
10 neither one of those cases have been accepted by the
11 Supreme Court in the State of Rhode Island. Neither one
12 of those are the laws of this state. Those are laws of
13 other states. Also, the *Morris* case, by the way, the
14 Maryland case said, "Mere possibilities are legally
15 insufficient to allege the existence of fear, danger,
16 death, or serious personal injury." That's similar to
17 the question the Court just posed to counsel.

18 I'll talk for just a minute about the notice
19 pleading. Speculative property damage doesn't satisfy
20 the process. So if I file a single sheet of paper with
21 the Court that says tort, I'm pretty sure that's not
22 enough. If I file a piece of paper that says breach of
23 contract, that's not enough. You have to have some
24 allegation to put the defendant on fair notice of what
25 was alleged. And here what is alleged, of course it's

1 inconsistent with the duties set forth in the contract,
2 which creates a problem and those inconsistencies can't
3 be cured.

4 THE COURT: But isn't that one of the issues with
5 the notice pleading standard is that we don't have in
6 front of us at this point, at least in some of these, the
7 contract. So the Court is required to accept as true the
8 allegations, and I understand they may be speculative or
9 others, so it may go in another direction. That's the
10 problem. The Court doesn't have side by side the
11 complaint and all the contracts.

12 MR. BLEASE: When we get to topic number two, your
13 Honor, I'll talk about the contract --

14 THE COURT: That's perfect.

15 MR. BLEASE: -- being incorporated into the pleading.

16 THE COURT: I think that's the best time to do it.

17 MR. BLEASE: Okay. Great. So the last point I want
18 to make, your Honor, is if this Court were to exempt the
19 State from the Economic Loss Doctrine from the public
20 contract in context, it would create a -- actually, it
21 would create chaos for the contractors, because
22 contractors would then be responsible, essentially on
23 the strict liability cases, they would be exposed to
24 damages that aren't contemplated by the current insurance
25 or surety programs, and I think it would lead to higher

1 bid costs, which would lead to a lack of bidders because
2 the risk is too high, and, ultimately, the taxpayers
3 would bear the burden of that.

4 In conclusion, your Honor, the Economic Loss
5 Doctrine has been settled law in Rhode Island for 30
6 years, and the admissions in the complaint seeking the
7 economic loss can be overcome.

8 THE COURT: Thank you very much. Does Commonwealth
9 Engineers wish to be heard?

10 MS. SILVA: Yes, your Honor.

11 THE COURT: You may proceed.

12 MS. SILVA: Good morning. Susan Silva on behalf of
13 Defendant Commonwealth Engineers. The State has made
14 four claims against Commonwealth Engineers that all sound
15 in negligence. There was no contract between
16 Commonwealth and the State, so for now I'll just focus on
17 Count III and Count XVI, which are the two negligence
18 claims. In Count III the State argues that Commonwealth
19 Engineers assisted AECOM with inspections of the
20 westbound bridge on specific dates in 2019 and 2023.
21 Inspection reports documenting those inspections show
22 that Commonwealth Engineers did not assist AECOM with
23 those inspections. In Count XVI the State relies on a
24 design bill proposal that was submitted by the Joint
25 Venture for proposed work that it might have Commonwealth

1 Engineers perform if it were to be awarded the project.
2 There is no allegation that Commonwealth Engineers
3 performed that work, contracted to perform the work,
4 agreed to perform the work, or was involved in any way in
5 the submission and drafting of the joint proposal.

6 The negligence claims against Commonwealth Engineers
7 fail for two reasons. First, the Economic Loss Doctrine
8 bars the claims, and second, the claim fails to plausibly
9 allege on each of the counts that there was wrongful
10 conduct or omission on behalf of Commonwealth Engineers
11 that would satisfy the count of negligence.

12 THE COURT: Okay. I asked if anyone could be heard
13 before. When I hear plausibly, it's *Twombly Iqbal*. So
14 what's the standard?

15 MS. SILVA: It is a notice standard.

16 THE COURT: Okay.

17 MS. SILVA: And this gets into the second PCR
18 argument. For Count III, the AECOM inspections, it's our
19 position that you have to look at the inspections
20 themselves, that they're sufficiently referred to in the
21 complaint, that the authenticity of them is not disputed,
22 and that's essential to the allegations in the complaint.

23 THE COURT: Okay. I understand.

24 MS. SILVA: When you look at those inspection
25 reports, those govern over the bare conclusory

1 allegations that are in the complaint.

2 THE COURT: So it's not necessarily plausibility,
3 it's the fact that the Court should be looking at the
4 inspection reports as well and could make a finding based
5 on that?

6 MS. SILVA: Relative to Count III, that's correct.
7 I'm not going to talk too much about the Economic Loss
8 Doctrine. That has been covered. But I just want to
9 touch on one point having to do with it. Your Honor
10 pointed out that the exceptions to the Economic Loss
11 Doctrine have all focused on consumer exceptions and some
12 of those cases have been talked about just briefly.

13 The *Russo* case, which is a 1999 case, that case
14 really talks about the importance of protecting the
15 consumers. That same rationale, obviously, does not apply
16 to an agency like the State. The same sentiment in the
17 *E.W. Burman* case, 1995, focusing on whether there is a
18 discrepancy in bargaining parties, and, most importantly,
19 is the *Franklin* case, which is in 2007. And that case
20 focuses on entities that are acting in a business
21 capacity, and in that case the parties were arguing that
22 they weren't sophisticated commercial entities. They
23 were something different. And the court said, no, the
24 issue the trial judge should have looked at is whether
25 one of the parties is a consumer. One of the parties was

1 not a consumer so the Economic Loss Doctrine doesn't
2 apply.

3 Moving to the second argument and focusing first on
4 Count III, which is the AECOM inspections. The State
5 alleges that the Commonwealth assisted AECOM with
6 inspections of the westbound bridge on July 24, 2019 and
7 July 21, 2023. It's unclear what is meant by assisted.
8 It's got to be something less than performed. They
9 didn't perform the inspections. They didn't agree to
10 perform the inspections. But what exactly is meant?
11 It's unclear because it's not set forth in the pleadings.
12 We don't have fair notice of what that means. But, in
13 any event, the inspection reports that document the
14 inspections, which are attached as Exhibit 1 and 2 to our
15 motion to dismiss, show that AECOM alone performed those
16 inspections. The State asks the Court to ignore those
17 inspection reports, but it's appropriate for the Court to
18 consider them because the State doesn't dispute their
19 authenticity. Their reports document the very
20 inspections that are being complained about and that is
21 specifically referred to in the complaint. The case
22 that's on point for that is *Mokwenyei v. Rhode Island*
23 *Hospital*, which is a 2018 case.

24 THE COURT: Yes, and I know we're going to get into
25 this with others when we get to the contract claim. The

1 general rule the Court converts it to a Rule 56 motion.
2 There is those limited exceptions.

3 MS. SILVA: And this falls squarely within those
4 exceptions. First, the State doesn't dispute the
5 authenticity of the documents. In fact, they're pulled
6 directly from the State's website having to do with the
7 bridge. Second, the inspection reports are clearly
8 central to the State's claims and the State is
9 complaining about the findings that were reported in the
10 inspection report. And, third, the inspection reports
11 are actually specifically referred to in the complaint,
12 and I would point the Court to paragraph 68 and 74 of the
13 complaint. Both reference the report. Paragraph 74
14 specifically says, "After completing the inspection of
15 the Washington bridge, each engineering firm reported its
16 findings to RIDOT through an inspection report," and
17 that's what we're asking the Court to look at here
18 without converting it to a Rule 56 motion.

19 Where the inspection reports directly contradict the
20 allegations in the complaint, those govern. And that's
21 the *Fitch* case that's cited in the papers.

22 Alternatively, the State argues that the inspection
23 reports do not contradict the allegations in the
24 complaint, but the inspection reports literally set out
25 right on the report who performed the inspections, who

1 reported the findings that the State is complaining
2 about. That would be *Commonwealth*.

3 The uncontradicted exhibits shows that Commonwealth
4 Engineers did not perform the inspections and it's not
5 entirely clear what is meant by assisted. It's a word
6 used for Count III, but the report shows that didn't
7 happen. Because Commonwealth Engineers didn't assist
8 AECOM with the inspections, Count III should be
9 dismissed. They could not have owed a duty to the State
10 with regard to inspections, agree to perform, contract to
11 perform.

12 Turning to Count XVI, which is a separate count,
13 negligence count that focuses on the Joint Venture
14 proposal. The complaint alleges that in 2021, Joint
15 Venture submitted proposals to the State for a project to
16 rehabilitate the bridge. There is no allegation that
17 Commonwealth Engineers participated in drafting,
18 submitting that proposal. It's all representations made
19 by the Joint Venture. The proposal makes certain
20 representations of proposed work that it might have
21 Commonwealth Engineers perform if it were to be awarded
22 the project. Absent from the complaint is any allegation
23 that Commonwealth Engineers actually performed the
24 rehabilitation work, agreed to perform it, or otherwise
25 had a duty to perform the rehabilitation work.

1 Commonwealth Engineers cannot be liable for failing to
2 perform the work that it never performed and never agreed
3 to perform.

4 The State argues in its opposition that the only
5 reasonable inference to draw from the allegations is that
6 Commonwealth Engineers did, in fact, perform the
7 rehabilitative work. But reading the allegations in the
8 complaint, staying within the four corners of the
9 complaint, that is far from the only reasonable
10 inference. The State could have alleged that
11 Commonwealth Engineers contracted to perform the work or
12 actually performed the work. But the State is careful
13 not to do that because it could not make those
14 allegations in the complaint. Instead the State relies
15 solely on representations made by the Joint Venture in
16 its proposal, and those representations alone do not
17 create a duty on behalf of Commonwealth Engineers.
18 Without a duty to perform the work, Count XVI as to
19 Commonwealth Engineers should be dismissed. Thank you.

20 THE COURT: Thank you very much. Does counsel for
21 Steere Engineering wish to be heard?

22 MR. HUTCHINSON: Good morning, your Honor. May it
23 please the Court. Addressing just briefly the standard,
24 Steere agrees the standard is not the federal standard of
25 plausibility. Your Honor, the case law is clear that

1 there is a constitutional due process component of even
2 the notice pleading standard. For my client in
3 particular, I think for most defendants, the problem with
4 this complaint is that we are not being put on notice of
5 what -- particularly, my client, what my client did
6 wrong, the basis on which my client should be liable to
7 the State, and that is the core that overrides any
8 concept of notice, and the Court being able to indulge
9 the Plaintiff with any set of facts that might give rise
10 to the claim.

11 THE COURT: So you're basically saying if we apply
12 the standard for the State of Rhode Island, there's not
13 fair notice given and, therefore, there's that
14 constitutionally?

15 MR. HUTCHINSON: Absolutely. Absolutely.

16 THE COURT: I understand.

17 MR. HUTCHINSON: And, of course, the State also has
18 the opportunity and your Honor can order a more definite
19 statement in this complaint, which I think one of the
20 defendants have requested. That's sort of the middle
21 ground here, but, again, from my client's point of view
22 we submit even a more definite statement isn't going to
23 get them over the rail.

24 I'd like to take the argument just a little bit out
25 of order. We started with the scope of our initial

1 brief. I would like to start briefly with the Economic
2 Loss Doctrine. Again, my client Steere was a
3 sub-consultant to AECOM. So if AECOM prevails in the
4 defense of the Economic Loss Doctrine, my client
5 necessarily would too. There is no concept in the law
6 that would allow -- we don't even have a purchaser here
7 of a product. Let's take it to that extent. Even if
8 they had bought this bridge from AECOM, they don't get to
9 avoid the Economic Loss Doctrine by finding an employee
10 or somebody, a sub-consultant, who had done the work and
11 say that scope of work was somehow negligent and,
12 therefore, we get to recover in negligence. The Economic
13 Loss Doctrine makes it clear that even if you're
14 purchasing a product from someone the contract is what
15 controls. And here, we don't even have the purchase of a
16 product, nothing even close. This bridge was built 30,
17 40 years ago, and AECOM was brought in to attempt to
18 salvage the bridge, make it last longer, and my client
19 had a very small scope under that larger contract to
20 design certain repairs to this bridge. And so there is
21 no claim whatsoever that could give rise to recovery
22 against my client for the deterioration of a bridge that
23 was already deteriorated.

24 The concept that the State isn't a sophisticated
25 purchaser of these services is just absurd. They're

1 probably the most sophisticated one, certainly in Rhode
2 Island, the most market control and power in terms of
3 dictating what the terms of their contract would be with
4 those with whom they contracted. So this is a prime
5 example where the Economic Loss Doctrine should apply
6 because the State had it within its sole control and
7 ability to dictate through its contract with whatever
8 defendants. Again, it wasn't my client in the contract.
9 It had an opportunity to dictate what the recovery would
10 be under what circumstances, and it didn't extend to
11 negligence in this case. So the Economic Loss Doctrine
12 should answer any questions.

13 But, again, for my client in particular in this
14 case, we have an additional, very significant and
15 fundamental defense that our scope of service simply had
16 nothing to do with what this complaint is about. We
17 submitted as part of our materials the contract between
18 my client's theory and AECOM. And the first argument the
19 State makes is that's not part of the complaint, but they
20 concede and the law is undeniable that if the complaint
21 either expressly relies on or is absolutely dependent on
22 a contract or some other document, that document can be
23 considered. My client can't be in this case without the
24 contract because they don't have a contract with the
25 State. The only reason we are even in this case is

1 because we have a contract with AECOM. So for that claim
2 to be asserted by this Court, the Court has to be aware
3 of and take judicial notice of what that notice says.

4 And the contract in this case between Steere and
5 AECOM, there are two of them, the first one in 2014
6 involved certain design repairs to completely different
7 areas of this bridge that's involved in this matter,
8 spans 15 through 18, which was separate from piers six
9 and seven and spans one through 13 with a structural
10 divide, different design, nothing related whatsoever with
11 what the State is complaining about and that contract was
12 abandoned because of traffic problems. So we come back
13 to 2019 and we are asked to provide a concept or an RFP
14 that was going to go forward with a design build
15 contractor. So then we weren't even defining what was to
16 be built, simply defining what the contractor would be
17 considering in designing its own repairs.

18 So that, your Honor, again, takes my client out of
19 this case because the only thing the State can say in
20 response to that is that they quote this generalized
21 allegation that they use for everybody saying that after
22 the pier six and seven problem arose and they shut down
23 the bridge and started demolishing it because of that.
24 And they use the phrase, "Later investigation revealed
25 the existence of unaddressed voids, poor grout, moisture,

1 and corrosion resulting in widespread deterioration of
2 the post-tensioning system critical to the safety and
3 structural integrity of the bridge."

4 That's a nice catchall phrase but it doesn't tell my
5 client anything. It doesn't tell my client whether there
6 was even any issue, post-structural defect in the tendons
7 and grout that involved spans 15 through 18. And that
8 issue gets back to basic due process requirements. My
9 client has to be put on notice of what a claimant is
10 supposed to do and what it didn't do, and that is not in
11 this case, your Honor. And so by taking notice of and
12 applying the contract terms, even giving the State all of
13 the benefits of the doubt in terms of pleadings, it still
14 doesn't get them over the rail for my client because my
15 client had nothing to do with any parts of this bridge
16 involving pier six and seven or any other component parts
17 of pier six and seven tied into. There is nothing in the
18 complaint that I suggest fairly puts my client on notice
19 that this ought to be a void in the grout or moisture was
20 at all a problem with piers that span 15 through 18 and
21 the State hasn't come forward in its opposition to
22 suggest that and it had an opportunity to do so and it
23 didn't.

24 And, finally, the overlay, again, this ties into --
25 this isn't even the purchase of a bridge that hasn't

1 performed. This is a bridge that was basically on its
2 last breath that the State was attempting to rehabilitate
3 and they're now seeking from my client and other
4 defendants essentially a new bridge, and that's a classic
5 betterment. You don't get to recover against a punitive
6 defendant money if you would have had to spend it any way
7 for losses that aren't the result of any contract of that
8 defendant.

9 So, your Honor, for those reasons and the reasons we
10 have addressed in our papers, I ask that you dismiss this
11 case as to Steere.

12 THE COURT: Thank you very much, counsel. Would
13 Jacobs Engineering wish to be heard?

14 MR. BLESSINGTON: Good morning, your Honor. John
15 Blessington. As a long-time listener and first-time
16 caller, I'm not sure what the rules of engagement are
17 here, but I want to make sure that the record is clear
18 that we basically agree with everything that Mr. Blease,
19 Prosen, Hutchinson, and Ms. Silva said. If you're only
20 looking for us to add anything new, we stand on our
21 papers.

22 THE COURT: Thank you very much. Prime AE Group.

23 MR. COTE: Good morning, your Honor. Sam Cote for
24 Prime AE Group. I just reiterate everything my brother
25 just said. Nothing new to add.

1 THE COURT: Thank you. And, finally, Aries Support
2 Services.

3 MR. KELLEHER: Good morning, your Honor. John
4 Kelleher for Aries Support Services. We also adopt all
5 the arguments previously made. I want to point out,
6 Judge, that the doctrine of privity doesn't void the
7 Economic Loss Doctrine. And then one brief point, the
8 reference in our papers to the contract does not turn
9 this into a Rule 56 motion. The allegation in the
10 complaint is that Aries had a duty. That duty arises
11 from the contract so it's central to the Plaintiff's
12 claim and the motion should be denied. Thank you.

13 THE COURT: Thank you. There's a bunch to unpack.
14 The Plaintiff may be heard.

15 MR. PROVAZZA: Thank you, your Honor. Stephen
16 Provazza on behalf of the State of Rhode Island. With
17 the Court's permission I'll address the negligence
18 argument, and Adnan Toric will address the contract
19 argument and my colleague Diana Martin will address the
20 indemnity provisions.

21 THE COURT: Very good. We're on negligence, so
22 you're up.

23 MR. PROVAZZA: Your Honor, we talked at length
24 already about the pleading standard. I think it's really
25 important to look at what the State has pled. If you

1 look at page one of the complaint, the final paragraph,
2 "The State of Rhode Island brings this complaint to hold
3 those liable for the physical damage to its property and
4 for the economic losses it has and will in the future
5 suffer." In addition, each of our negligence counts we
6 plead a duty, a breach, and causation damages. We've
7 plead all required elements. We have given the
8 Defendants fair notice of what we're seeking to do here
9 and that's where the inquiry should end.

10 I do want to address the Defendants' arguments about
11 the Economic Loss Doctrine, and I think first and
12 foremost our pleadings put the Defendants on notice that
13 we may have damages beyond the scope of the work
14 contract. In Rhode Island there is no requirement that
15 any plaintiff pled damages with particularity when
16 bringing a negligence claim. And even under the
17 Defendant's proposed application of the Economic Loss
18 Doctrine, we would still be entitled to pursue a
19 negligence claim for damage to other property, other than
20 what we're contracted for.

21 Our brief lays out alternative examples of what
22 property damages that falls outside of the Economic Loss
23 Doctrine would look like. For example, wear and tear on
24 the alternative roadways. We all know Governor McKee
25 held a press conference just last week to address

1 questions about the wear and tear on the east span of the
2 Washington bridge. There is also a question about
3 whether there is any property damage to State property
4 caused by the demolition. We also raised that in our
5 brief. I think these are live questions. These are
6 appropriate to develop over the course of the case and
7 adequately meet Rhode Island's notice standard. We put
8 the Defendants on notice.

9 THE COURT: You're saying those were in your papers.
10 What the Court is focused on is the complaint. If that's
11 the case, are you looking to amend your complaint to
12 include some of these things that weren't in there
13 initially?

14 MR. PROVAZZA: Your Honor, I only raise those as
15 examples of the type of conceivable facts that we can
16 succeed upon. We do plead property damage. We purposely
17 plead property damage in each negligence count and we
18 include it on the first page of the complaint, so we met
19 our pleadings standard here.

20 The second overarching issue I want to raise with
21 respect to the Defendants' argument is that it's far too
22 early in the litigation to make a determination regarding
23 the Economic Loss Doctrine. Most cases that apply the
24 Economic Loss Doctrine do so at a motion for summary
25 judgment, that includes *Hexagon Holdings*. It includes the

1 *Franklin Grove* case. And the Court really needs the full
2 record, the full set of facts before it to make that
3 determination and that would include all relevant
4 contracts, all relevant changes to contracts, all the
5 relevant documents that govern the contractual
6 relationship between the parties to understand what the
7 scope of those contracts are.

8 And I think the case we cited in our brief, it's
9 called *Inland American Retail Management*, a 2011 case by
10 Judge Silverstein explains on a motion for summary
11 judgment that parties can contract for different types of
12 liability. And if you looked at a lease agreement and
13 saw that the plaintiffs and defendants carved out the
14 ability to pursue negligence --

15 THE COURT: And I understand that. But if that was
16 the case wouldn't you have plead that there is an
17 exception within your contract for negligence claims? I
18 mean, to a certain extent, you know, we get to what's
19 fair notice of the claims against someone. Please
20 continue.

21 MR. PROVAZZA: Your Honor, I think we have given
22 fair notice regarding the property damage, and in
23 addition, we put the Defendants on notice of the duty to
24 breach. I just note we do not think it's properly
25 incorporated into the motions, but we do have Steere

1 Engineering filed as an exhibit their contract with
2 AECOM, which also included a copy of AECOM's contract
3 with the State. We don't believe this is appropriately
4 incorporated at the motion to dismiss stage, but just as
5 an example of why we need additional discovery. If you
6 look at that exhibit, I believe it's page 33 of the
7 exhibit, page 17 of the contract states under the
8 liability section, "The consultant should be liable for
9 all damage caused by its negligent acts." So although we
10 haven't had discovery on this. We haven't actually --

11 THE COURT: That's the contract between AECOM and
12 Steere?

13 MR. PROVAZZA: AECOM and State.

14 THE COURT: State. Okay. I'm sorry. I thought you
15 were saying Steere.

16 MR. PROVAZZA: It's attached as Exhibit 1 to
17 Steere's motion to dismiss.

18 THE COURT: Understood.

19 MR. PROVAZZA: So while again we don't believe that
20 it's time to look at every contract in the motion to
21 dismiss stage and interpret what's in them. There needs
22 to be more discovery. This is the type of argument that
23 is decided at a motion for summary judgment.

24 THE COURT: Well, let's talk about some of the
25 things that you raise. Is there anything in Rhode Island

1 case law that has a sovereign exception to the Economic
2 Loss Doctrine?

3 MR. PROVAZZA: Your Honor, that's where we're
4 turning next.

5 THE COURT: Perfect.

6 MR. PROVAZZA: We raised a number of issues, very
7 valid issues, in our motion to dismiss objection. I
8 don't think it's the appropriate time to rule on those.
9 We still have to develop the full record. The Court does
10 not have to reach those before denying the Defendants'
11 motion to dismiss. But there is no case cited by the
12 Defendants. We have never seen a case where a state
13 sovereign is held to have a claim for negligence claims
14 through the Economic Loss Doctrine. There is no case on
15 the other side interpreting that we would never apply for
16 state sovereign, but there is no case applying to state
17 sovereign. So an application here would extend it beyond
18 the bounds that it's been extended before, beyond
19 commercial entities, understanding State may act in its
20 commercial capacity when contracting for bridge
21 inspections and repairs but it would be an extension
22 nonetheless. We also raise in our brief, that the claims
23 sound in negligent misrepresentation. Again, we believe
24 that we have adequately put the Defendants on notice
25 given the facts we plead.

1 THE COURT: Well, there's no count on negligence.
2 It kind of reads, and some of the people here won't
3 understand, Johnny Carson as Carnac the Magnificent. I
4 can somehow look at the words and it comes up, but there
5 is no count. I understand there is an exception.

6 MR. PROVAZZA: We argue, your Honor, that our
7 negligence count encompasses such a claim, but I think
8 even more importantly -- oh, Mr. Prosen also brought up
9 the serious risk situation. Again, that's the type of
10 factual situation that would need to be developed for a
11 motion for summary judgment. I think one of the --
12 another one of these issues is there is still questions
13 in Rhode Island law about how the Economic Loss Doctrine
14 applies to certain contracts. There is cases, Judge
15 Silverstein -- Judge Silverstein decided multiple cases
16 where at the motion for summary judgment stage the Court
17 analyzed the relationship between the service contract
18 and the type of entity entering into such contract.

19 And that was the *38 Studios case, Rhode Island*
20 *Economic Development Corp. v. Wells Fargo, 2013*, and
21 *Ciccone v. Pitassi*, a 2004 case looked at whether there
22 is an additional duty outside of the contractual duty.
23 For example, in the *Ciccone* case, that dealt with a bank.
24 Somebody had a C.D. at a bank, and the bank issued a
25 check from the principal of the C.D. without notifying

1 the person that owned the C.D., and it appeared that
2 someone else cashed it. And there the Court analyzed the
3 contractual relationship, the facts and circumstances of
4 that relationship history of the parties, and the role
5 the bank was taking in that relationship to determine the
6 bank had an additional duty outside of the C.D.
7 agreement.

8 In *Rhode Island Economic Development Corp.*, which
9 dealt with negligent misrepresentation, Judge Silverstein
10 noted, "The test is not simply whether an injury is an
11 economic loss arising from a breach of contract, or
12 rather the injury is traceable also to a breach of a tort
13 law duty of care arising independent to the contract."
14 Here, we allege negligent duty outside of the four
15 corners of the contract.

16 And just to address a few arguments raised in
17 particular by Defendants to Commonwealth Engineers.
18 Counsel referred to inspection reports, and we addressed
19 this in our brief that this is outside of the scope of
20 the complaint and they're not expressly incorporated.
21 The Plaintiff is not dependent on those. Again, we don't
22 believe they're appropriately before the Court at this
23 time. But even in the inspection reports it's unclear as
24 to the Commonwealth's participation. They rely on
25 ambiguous notice that we have to develop through

1 discovery.

2 And, finally, to address Steere Engineering's
3 arguments, again, they seek to introduce documents
4 outside of the record, outside of the four corners of the
5 complaint, and they note that we -- in our complaint we
6 allege that there are damages to the bridge, issues of
7 the bridge beyond piers six and seven. They point the
8 Court to fact that they may not have worked on six and
9 seven, but our complaint goes beyond that. No further
10 questions, your Honor?

11 THE COURT: No, thank you very much. Do any of the
12 Defendants wish to reply?

13 MR. PROSEN: Briefly, your Honor.

14 THE COURT: Go right ahead.

15 MR. PROSEN: That's the problem with construction
16 cases, too much paperwork. Your Honor, Lawrence Prosen
17 for AECOM again. Your Honor, I appreciate my co-counsel,
18 defense counsels' positions. We make a good team, but
19 what we heard today is the State is on a fishing
20 expedition. They're lead counsel represented that we,
21 State, may have damages, may have damages. And the State
22 has talked about its need to further develop the case.
23 The State developed -- at least at the Prime contractor
24 level. I'm not going to talk about the subcontractors.
25 Counsel can do that. But the State drafted the contract.

1 The State developed the scopes of work. The State put
2 these out for RFP public bidding. The State has the
3 scopes of work. Your Honor doesn't have the scopes of
4 work. As we sit here now, we don't know exactly -- we
5 have an idea, but we don't know what contracts they're
6 talking about. We don't know what contracts they claim
7 we breached. We don't know any of that.

8 So instead of the State developing this case
9 further, they pulled the trigger and filed suit and are
10 going to go after those that they think anyway and want
11 the public to think are at fault. Again, without the
12 State recognizing any of its own culpability in this
13 case.

14 The State talked about Rhode Island Economic
15 Development. I've heard a lot about that case since
16 getting involved in this case. Judge Silverstein
17 actually had some interesting discussions about the
18 standing inquiry that the Court had to go through, and
19 I'm trying to find the right page number here. It's a
20 Westlaw citation. It's at page ten. The Court stated in
21 part, "That the standing inquiry is satisfied when the
22 Plaintiff has suffered some injury in fact, economic or
23 otherwise." And then, "Injury in fact has been defined
24 as, quote, an invasion of a legally protected interest
25 that is A, concrete and particularized, and B, actual or

1 imminent, not conjectural or hypothetical."

2 As a general rule a claim is not ripe for
3 adjudication if it rests upon contingent future events
4 that may not occur as anticipated or indeed may not occur
5 at all. That's the Rhode Island case. There is
6 protracted citations, which I'll skip for your and the
7 court reporter's benefit. And here that Studio case, all
8 the Defendants were involved in that case. The liability
9 is pretty much set I think the Court found. It was
10 really a question of damages. Here, as counsel, as my
11 friend has said that we may have damages in the future,
12 we may not. We heard about a press conference last week.
13 Well, that certainly is not in the four corners of what
14 the Court has before it now. As a result of that it's
15 not for the Court's consideration and, again, it's
16 conjecture. We don't know. It's rare in my experience
17 to have a complaint that doesn't have any addendum with
18 any particularity, reduced X dollars or reduced Y
19 dollars, whatever the case is.

20 I actually did fail one thing. I did not mention
21 negligent misrepresentation, but just so the record is
22 clear, as they admitted in their brief, it's not pled.
23 There is no notice. Negligent misrepresentation, the
24 first time I saw it was in their opposition brief and
25 again that's outside of the four corners of the document,

1 of the pleading before the Court. Wear and tear, not
2 mentioned anywhere in the complaint.

3 The State would have the Court effectively rule that
4 under a negligence count, and I sort of start with this,
5 that there was a duty. They literally can say there was
6 a duty, the duty was breached, and there's damage and not
7 particularize that at all. I could do that. I could
8 probably have my kids do that pretty quickly, pretty
9 easily. It might not look as pretty as our complaint.
10 The bottom line here is, your Honor, we need more. The
11 Court needs more. And there's certainly many conceivable
12 methods and ways in which they can claim using some
13 simple words, duty, breach, and damage. They have to
14 give us the opportunity as other learned counsel talked
15 about with the due process rights here. They haven't met
16 their burden here, your Honor. Thank you.

17 THE COURT: Thank you. Again, Attorney Newberry,
18 which client do you represent?

19 MR. NEWBERRY: VHB. I would just like to be heard
20 on the negligence issue briefly.

21 THE COURT: Okay. That's fine.

22 MR. NEWBERRY: Thank you, your Honor. I did not
23 file a motion to dismiss. I would like to make an oral
24 motion. I want to point out two things to the Court.
25 One, VHB was a sub-consultant to the Joint Venture.

1 There's no contract with the State. The irony of being
2 the party that discovered the problem and prevented a
3 catastrophe is being sued is incredible. But depending
4 on how the Court rules, I will be looking to file a
5 me-too motion down the road because we would join in all
6 the arguments.

7 THE COURT: Okay. That can be dealt with down the
8 road. Counsel.

9 MR. BLEASE: Thank you, your Honor. Jeff Blease,
10 Foley & Lardner. Also my ears perked up when I heard we
11 may have damages that are outside of the contract. I'm
12 still -- conceptually, I can't even understand what those
13 would be. Also it's inconsistent with what we talked
14 about at the press conference last week about the
15 eastbound span that apparently was built on substructure.
16 It was in poor condition then and it's still in poor
17 condition now, but the bridge is fine. So if that's the
18 case, how is it possible even beyond a reasonable doubt
19 to allege there has been damage to that span when the
20 State's own statements are contrary.

21 And the only piece -- well, two other quickly.
22 There is no carveout in the Joint Venture agreement for
23 the negligence claims. The complaint was filed five
24 months ago. They certainly would have read the contract
25 by now and brought that to the Court's attention.

1 And then lastly, the Economic Loss Doctrine test is
2 equal bargaining power. It's not public versus private.
3 There is no sovereign exception. It's equal bargaining
4 power.

5 THE COURT: Can you just respond to one thing that
6 the State had said. Is this something that I can't
7 decide on a motion to dismiss? It's kind of not the
8 words, but what I got out of part of the papers.

9 MR. BLEASE: I did hear that, your Honor, but I
10 think it's incumbent upon the Court to rule on the motion
11 to dismiss because, quite honestly, this is a massive
12 piece of litigation that our client will need to defend
13 and there are practical expenses involved with that, and
14 it's just not fair to my client to continue on this
15 negligence claim when it's clearly barred from the
16 Economic Loss Doctrine.

17 THE COURT: Thank you.

18 MR. BLEASE: Thank you.

19 THE COURT: Would any of the other Defendant's wish
20 to reply?

21 MS. SILVA: Just briefly. Just two quick points,
22 your Honor, on behalf of Commonwealth Engineers. The
23 first was a little bit of a discussion about the
24 negligent misrepresentation claim. One, it's not in the
25 complaint, but, two, page 38 of the opposition talks

1 about that being a potential claim that the State could
2 bring against AECOM and the Joint Venture. There is no
3 allegation that applied to Commonwealth Engineers.

4 On the second point is I would turn the Court to
5 footnote two of our reply brief, and we cite two cases,
6 Rhode Island cases. One from Superior Court, which is
7 *Triton Realty Limited Partnership*. The other is a
8 federal court case *Owen Building, LLC*. Both of those
9 apply the Economic Loss Doctrine at the motion to dismiss
10 stage, so it's appropriate for the Court to do so here.

11 Thank you.

12 THE COURT: Thank you. Attorney Hutchinson.

13 MR. HUTCHINSON: Thank you, your Honor. Just
14 briefly on the other property damage argument that the
15 State has made. First of all, the wear and tear argument
16 again is the State's effort to get something for nothing.
17 Because if cars don't drive on I95 by 195, they got to
18 drive somewhere. So either they're doing wear or tear on
19 another street or they're doing wear and tear on the
20 bridge. The State is saying somehow miraculously that it
21 should have been saved by some --

22 THE COURT: Counsel, let me must be quick. I think
23 I was pretty clear that the State does not account. I
24 don't want to start going down the road of what they may
25 or may not put here because I'm not going to be able to

1 rule on that.

2 MR. HUTCHINSON: The other issue is the property
3 damage from other third parties. They wouldn't know that
4 claim. Again, if they won it by contract to get
5 indemnity that's a result of a claim by some third-party
6 property owner, but for the simple fact that there may be
7 property damage to some third party does not take this
8 out of the Economic Loss Doctrine. Thank you.

9 THE COURT: Do any of the other defendants wish to
10 be heard? Very good. We've now completed part one.
11 It's a little after 11:00. We're going to resume at
12 11:15. The Court will be in recess.

13 (R E C E S S)

14 THE COURT: Okay. We're going to move on now to
15 arguments related to the breach of contract claim.
16 Counsel, you made proceed.

17 MR. PROSEN: Thank you, your Honor. Your Honor,
18 again Lawrence Prosen for AECOM. And, your Honor, this
19 should be hopefully a more streamlined discussion than
20 the Economic Loss Doctrine.

21 THE COURT: Perfect.

22 MR. PROSEN: Your Honor, there's three breach of
23 contract claims against AECOM, all of which are vague,
24 conclusory, lack of damages, lack of what we would argue
25 sufficient notice. Count I is a breach of what is called

1 the 2014 contract. Count IIII is a breach of the 2019, I
2 call it a conceptual design contract, and then Count X
3 what is called breach of the 2017, 2019, 2020, and 2023
4 inspections, which as I understand were basic purchase
5 orders under a government contract called an in-depth and
6 deliberate definite quantity contract or an umbrella
7 contract.

8 THE COURT: I think they're master price agreements
9 or something along those lines.

10 MR. PROSEN: Something like that. Master purchase
11 agreement or whatever the case may be, yes, your Honor.
12 I'm going to package those all up together. The
13 arguments are the same. As we heard earlier, there is no
14 description of damages whatsoever and, again, without
15 revisiting it, may have damages, might have damages, any
16 sort of future perspective damages, it's not notice
17 pleading, your Honor. It's no pleading at all. It's
18 simply saying this might be there somewhere in the
19 future.

20 I certainly appreciate counsel's earlier argument
21 with regards to, well, we need to develop the case more.
22 But pleading a cause of action, particularly where we're
23 talking, I guess, conceptually worse case scenario of
24 bridge replacement, which again we don't agree with.
25 We're not just playing fast and loose. This isn't like

1 an auto purchase agreement or a lease dispute or an
2 eviction notice of some residence or whatever. It's a
3 higher standard than the standpoint of the sophistication
4 of the parties and the sophistication and the complexity
5 of the dispute that's involved here. There is not a
6 single citation to any contract whatsoever in the
7 complaint. The State does cite to regulation under the
8 indemnity provision, but regulation is separate and
9 apart. Interestingly enough, and I have been doing this
10 a while. I do a lot of government contracts too. There
11 is no allegation that any notice to cure was ever
12 provided. There is no allegation that any notice of
13 default was ever provided which are fundamental
14 provisions in the contract, which interestingly enough
15 are not cited.

16 However, again, there was nothing. There was A, we
17 shut the bridge down in December, and then the lawsuit
18 commences shortly thereafter with a litigation hold in
19 the middle sort of. Interestingly enough, what is not
20 pled is if there is any issues with the inspection
21 reports, not just AECOM's but all these different
22 inspection reports. They were produced. They were
23 reviewed. Well, I don't want to get into too much
24 conjecture, again, out of the four corners, but there is
25 no allegation ever that the State rejected or had any

1 issues with these inspection reports. The State never
2 alleges or claims that they raised any issues, which
3 would be presumably a default under a contract. That
4 never happened.

5 And critically too, AECOM, and, again, I don't want
6 to get too far into the other Defendants, did what they
7 were told to do under the terms of the contract. There
8 is no identification of any -- again, here we go again,
9 simply saying there was a duty or there was a contract or
10 there was a breach without something more, how does one
11 respond to that? There's a contract and these contracts
12 can be very lengthy. Again, we're not talking about a
13 two-page lease or whatever the case may be or a carriage
14 agreement or a purchase order, whatever. It's much more
15 involved than that.

16 THE COURT: So do you need to reference a section of
17 the contract? Our Supreme Court seemed to deal with this
18 and said there is also good faith and fair dealing and
19 you don't necessarily, but it's not entirely clear.

20 MR. PROSEN: Obviously, I've certainly read
21 contracts where it says each party agrees to act in good
22 faith and fair dealing. However, as the Court knows
23 that's an implied duty as opposed to an explicit duty.
24 It would seem to me in a hypothetically multi-dozen page
25 contract that if there were six breaches, I know how I

1 would draft a complaint, your Honor. I would be much
2 more specific. I would, frankly, include those documents
3 as part of it. You know why? To avoid this kind of
4 motion, to be honest with you.

5 And, again, you heard earlier about betterments.
6 Contracturally, there is no theory where the State gets a
7 new bridge on the entities that it contracted with.
8 There is no reference to causation. They say there's a
9 breach. Okay. Let's assume, as the Court must, that
10 there was some sort of breach. What was the breach and
11 what was causation? How did what AECOM did or didn't do,
12 errors, omissions, or whatever, which is a negligence
13 sort of discussion, what did they breach? What didn't
14 they breach? How did that result in whatever the damage
15 or the we-may-have-future-damage scenario in the future.
16 We don't know.

17 The facts do also state in the complaint that there
18 is this ongoing back and forth with the different
19 defendants. There were inspections. The inspection
20 count goes back through 2017 to 2023 in the case of
21 AECOM. Jacobs did inspections. Other parties did
22 inspections. Originally they were semi-annual per the
23 FHA requirements. Because the bridge was in such
24 disrepair, it went to annual contracts -- excuse me,
25 annual inspections, and different people, by the way. It

1 wasn't like AECOM did every inspection of the bridge.
2 They rotated around to different bridges. One year you
3 may have AECOM. The next year you may have Jacobs. The
4 next year you may have Bill Smith, you know, inspectors,
5 whoever was under contract. It has been known for at
6 least eight years that the bridge had issues. As alleged
7 in the complaint, they went through different iterations
8 of defense and consideration of the contract.

9 Again, I mentioned in my opening where work was
10 being done. They stopped it. They terminated for
11 convenience. So it's not like this happened all of a
12 sudden. That December of 2020 -- sorry. I'm getting my
13 years mixed up with New Year's -- 2023, all of a sudden
14 this happened. The State was on notice. The record is
15 completely silent on any prior notice of default, any
16 notice to secure. Those sorts of conditions precede.
17 There is no allegations. There is nothing in the record
18 that supports that. With that in mind, we don't know
19 what has been breached or alleged, other than some
20 generic statements what provisions have been breached.
21 How is one expected to be able to respond? Again, this
22 is a complex potentially large dollar amount case here
23 and none of those fundamental requirements were met.

24 As importantly, there is no allegation as to what,
25 if any, damages, not even getting into the actual dollar

1 amounts associated with this. Again, I would expect in
2 an amount to be determined at trial but at least X
3 dollars or something like that to be the case. They have
4 not alleged how AECOM as inspector and limited designer
5 appears responsible for the wholesale removal and
6 replacement of the bridge. They have not identified what
7 conduct AECOM did or didn't do. They've done nothing.
8 Again, it's a 42-page complaint. Again, on average three
9 pages dedicated if you average it out to the Defendants.

10 We talked about about notice pleadings. I'm not
11 going to revisit it. It's something more than again in
12 this case saying there was a contract, there was
13 consideration, offer, acceptance, breach, and damages.
14 You can't just put in -- I mean, if that was the case,
15 again using my kid as an example, anybody could put a
16 complaint together, bring it before the Court and spend
17 those precious resources as well as the resources of all
18 these parties, State included, by the way. Your Honor, I
19 have nothing further unless you have any questions.

20 THE COURT: No. Thank you very much. Counsel.

21 MR. BLEASE: Thank you, your Honor. Jeff Blease
22 once again for Barletta/Aetna Joint Venture. The key to
23 any contract are the terms and conditions, and the key
24 here is what was the Joint Venture actually supposed to
25 do. And we have alleged in our -- not alleged, but we

1 have written in our motion papers that we were told what
2 to do by the State. We'll talk about that in a little
3 bit with the Base Technical Concept.

4 But, more importantly, we need to start with the
5 question of can the contract be considered for purposes
6 of this motion, and the answer is yes. I believe there
7 are two bases for that. First, it's central to the
8 claim. It's referred to throughout the contract, and
9 clearly the contract -- strike that. Referred to
10 throughout the complaint, and clearly the contract
11 controls the rights and obligations of the parties here.
12 I also think it's probably an official public record when
13 its an executed agency agreement, probably subject to
14 whoever requests that exception probably applies as well,
15 although I can't represent to the Court that I found
16 authorization on that.

17 Clearly the *EDC* case provides guidance here. The
18 *EDC* case is 275 A.3d 537. The jump cite is 542 to 543.
19 It involved a lease agreement and the Plaintiff referred
20 to the lease agreement in the complaint, and the Court
21 found that the lease merged into the complaint and could
22 be considered, and appropriately dismissed that case
23 based upon the terms of the contract. So no conversion
24 of Rule 56 is necessary for the Court to consider the
25 contract between the Joint Venture and the State.

1 When reviewing the contract, we talked about the
2 standard of review on negligence when reviewing this
3 claim. *Botelho* and *Chariho* give guidance on that, and
4 *Chariho* the terms are given the plain meaning. So what
5 do the terms say? The RFP in part three defines the
6 contract documents, and there are a number of documents
7 that comprise the contract here between the parties. One
8 is the BTC, which is the Base Technical Concept that was
9 provided to the Joint Venture and other bidders as do
10 this when you respond with your proposal. The RFP
11 contract documents also include part two of the RFP,
12 part three of the RFP, and the proposal as accepted by
13 the Joint Venture among other documents.

14 The interesting thing is the State's claims, and the
15 only real paragraph that alleges any facts is paragraph
16 165, are all inconsistent with the contract terms, and
17 for that reason they can be disregarded. The Base
18 Technical Concept defines the scope, and I'm now
19 referring to Exhibit 3, which is the RFP part one on page
20 12. The Joint Venture as well as the other bidders were
21 required to follow the BTC. The language is mandatory.
22 It says -- first of all, the general description of the
23 Base Technical Concept is the major features of the BTC
24 design are as follows, and number three is the
25 rehabilitation of the Washington bridge number 700. So

1 there wasn't an option to provide a design from a random
2 bridge. That is not what the State asked for. It asked
3 for it to be rehabilitated. And further it goes on to
4 say the documents submitted by a proposer shall be based
5 upon the BTC, shall be, mandatory, must. All proposals
6 shall meet the requirements of the RFP and incorporate
7 the BTC without any exceptions to or deviations from the
8 BTC.

9 Now, I know the State is taking the position in
10 their objections that we didn't have to file a BTC, but
11 that language is mandatory. And can you imagine -- can
12 you even imagine if we hadn't followed the BTC and we
13 found the inconsistencies with the structural integrity
14 of the bridge later on, they would be saying you must
15 follow. You should have followed the BTC. You had to.
16 It's mandatory. Instead, we followed the BTC and now
17 it's, oh, you shouldn't have followed that. So you can't
18 make an argument or plead the facts to plea a claim which
19 is inconsistent with the contract which you signed with
20 us that told us what to do.

21 Importantly, the scope of work under Section 3.13.1,
22 which is in Exhibit Number 1, which is part two of the
23 RFP, on page 45 it says, "The general scope of the work
24 shall include the following anticipated work included in
25 the BTC." And the first item is rehabilitation widening

1 Washington bridge north 700. Shall. Mandatory.

2 Now, it's important to note that the Joint Venture
3 had no role in the preparation of the BTC. The State
4 accept the Joint Venture's proposal, which advanced the
5 BTC from it's roughly 30 percent design or so to the
6 final drawings as required to show the 25-year design
7 life. That was all absolutely part of what we performed
8 as the Joint Venture constructor. And it was only after
9 the closure and after the extraordinary investigation
10 that happened after the closure that everyone found out
11 for the very first time that this bridge could not be
12 rehabilitated and needed to be demolished and replaced,
13 which is why the State determined to terminate our
14 contract for convenience. It did not ask us to come up
15 with a new redesign under the Base Technical Concept
16 because the Base Technical Concept was no longer
17 feasible. As stated in the papers, whether it's a case
18 of mutual mistake, or possibility, or failure of
19 consideration, clearly this type of damage was not
20 contemplated by the parties when they entered into the
21 contract.

22 Now, it's important for the Court to consider the
23 terms of the agreement under the *Spearin* document. We
24 talked about that a little bit in our reply, but *Spearin*
25 is very important, especially in this case. *Spearin* is a

1 United States Supreme Court case from 1918. It has been
2 adopted pretty much throughout the country.

3 Unfortunately, in Rhode Island it's only adopted in an
4 unpublished case. In that case the contractor, whose
5 name is *Spearin*, was conducting a dry dock and following
6 government plans and it turned out there was a dam that
7 crossed where the contractor was supposed to perform its
8 work. They couldn't proceed because the dam made it
9 unfeasible so the government terminated the contract.
10 Sounds familiar so far. *Spearin* sued for contract
11 balance and lost profit, and the U.S. Supreme Court said,
12 "The contractor is required to follow the plans and
13 specifications. There is an implied warranty that it
14 will work." Sounds like fundamental fairness.

15 The Rhode Island -- I should say District Court
16 adopted the *Spearin* doctrine in the *Fanning* case, which
17 we cited to the court as well in our reply, and that
18 recognized *Spearin* as the majority rule across the United
19 States. If the contractor follows the plans and
20 specifications, that contractor is not responsible for
21 the result. That's been the law of the land for a very
22 long time. Here, J.V. is entitled to rely on that Base
23 Technical Concept. The fact that the Base Technical
24 Concept couldn't be accomplished is not J.V.'s
25 responsibility. That falls upon the contractor entity

1 known as the State of Rhode Island.

2 So the pleading fails because the State can't
3 contradict the terms of its own agreement, and that's the
4 *Fuller Mill Realty* case and the *Chase* case, which we
5 cited in our papers. The contract documents simply don't
6 support the State's case as written in paragraph 165. In
7 fact, those obligations in paragraph 165 are mirrored in
8 the cause of action against AECOM. They don't appear
9 anywhere in our contract. There are no conceivable facts
10 consistent with those contract terms that were provided
11 in the requesting relief. When there is an unambiguous
12 contract, the terms are to be applied as written. That's
13 the *Fuller* case at 383. If the plain language of the
14 contract doesn't support the claim, dismissal is
15 warranted. That's the *Chase* case under F974.

16 Here, the amendment isn't possible because the
17 timing issue can't be overcome. There are no prior
18 reports included GPR in the current testing of the
19 bridge. The post-closure GPR disclosed the true
20 condition of the pendants and that lead to the decision
21 to terminate the rehabilitation project, demolish, and
22 rebuild, and all of those decisions were made by the
23 State on its own with these new engineering firms that
24 they retained. There is no possible set of facts that
25 implicate the J.V. work done prior to the GPR. That was

1 new information. Unless perhaps they can allege that my
2 client has x-ray vision, then I would say perhaps there
3 is a cause of action. But until that x-ray was performed
4 on those beams, no one knew the true condition.

5 So to summarize, your Honor, the breach of contract,
6 the Joint Venture is being sued for work that it wasn't
7 asked to perform. The contract documents are controlling
8 and the allegations contradict the contract and should be
9 disregarded. Thank you.

10 THE COURT: Thank you very much. Would any of the
11 other Defendants that have contract claims against them
12 like to be heard? Okay. Very good.

13 MR. BLESSINGTON: Hello again, your Honor. John
14 Blessington on behalf of Jacobs. Your Honor, so again
15 we're asking that Count XVIII be dismissed. It's a
16 breach of contract claim. Our first beef with the claim,
17 your Honor, is that it does not identify the contract
18 other than to say that there was a 2019 inspection
19 contract. Now, we're aware of purchase orders and
20 proposals, but we're not aware of what the contract
21 they're asking is actually referring to. At a minimum
22 if we're talking in terms of notice, in order for us to
23 fairly put up a defense, they should be required to
24 identify the contract, more specifically, the provisions
25 they're alleging that we breached. It's not much of an

1 ask, your Honor, given especially the amount of damages
2 they're seeking.

3 Also by way of background, your Honor, a little bit,
4 for context. Jacobs did one inspection. That was in
5 2021. That was it. There are no allegations that
6 anything they did in the inspection caused any of the
7 damages that's part of the problem. Yet, here we find
8 ourselves. I would also add, your Honor, that we have
9 only been mentioned once in the fact section of a 43-page
10 complaint. They take exception, your Honor, with the
11 fact we attached or referred to two documents in our
12 motion to dismiss and the reply. Those are the
13 inspection reports itself as a grant application. Both
14 meet the exception, the limited exception, that the Court
15 recognizes without converting to a motion for summary
16 judgment. The grant application is clearly a public
17 record. And as per the inspection report itself, I mean
18 talk about slicing the salami awfully thin. They argue
19 that, well, they're not stating that there was anything
20 that breached the inspection report but that we breached
21 the inspection contract. But in doing so, they're saying
22 that the contract itself was breached by what we put in
23 the report. So to me, it's a distinction without a
24 difference, your Honor.

25 For all intents and purposes, it's part and parcel

1 of the complaint and it's referenced in the complaint,
2 which gets me to the last point, your Honor, which is
3 that they take exception with the fact that we use the
4 term poor as being vague. Now, again, that's a term that
5 is required by the Federal Highway and the National
6 Bridge Inspection Standards and also their own manual.
7 That's basically the lowest we can go. And to claim that
8 somehow they were not put on notice that there were
9 issues with this bridge, when again they submitted a
10 federal grant two years prior to when we performed our
11 inspection in which they acknowledged that the bridge is
12 in very bad shape, and then our inspection report is two
13 and a half years before they actually closed the bridge.
14 How could Jacobs legally be liable or how that report
15 somehow caused the proximate harm to the State. That's
16 pretty much it, your Honor, unless you have have any
17 questions.

18 THE COURT: No. Thank you very much, counsel.

19 MR. BLESSINGTON: Thank you.

20 THE COURT: Any other Defendant wish to be heard?
21 Hearing none, the State may be heard. Good morning.

22 MR. TORIC: Good morning, your Honor. Adnan Toric
23 on behalf of the State of Rhode Island. Your Honor, the
24 arguments related to the State's breach of contract claim
25 really boil down to two questions. One, does the State

1 have to allege breach of a specific contractual
2 provision to adequately allege a breach of contract
3 claim? And, two, to what level of specificity do the
4 damages have to be tied to that breach of contract claim
5 as to each Defendant? The State's position is that, one,
6 it need not allege breach of a specific contractual
7 provision, and, two that it has adequately alleged
8 damages stemming from each of the Defendant's breach of
9 this contract.

10 Now, there has been some question on what is breach
11 of contract in Rhode Island. I'm sure your Honor knows,
12 but just to make sure we're on the same page, the *Fogarty*
13 case, which is a Rhode Island Supreme Court case, is
14 pretty straightforward. The elements of breach of
15 contract claim are, one, the existence of a contract,
16 which no one really disputes here. At best, you're
17 getting from Jacobs that they don't know which contract
18 we're referring to. Two, that the contract had been
19 breached. And, three, the damages have to flow from that
20 breach of the contract. Fair enough.

21 On the first point, on the breach, the State does
22 not have to allege breach of a specific contractual
23 provision. It just has to in the notice pleading
24 standard provide fair and adequate notice of the claim
25 under which the State plans to proceed under any set of

1 conceivable facts, which you previously referenced in the
2 *CharterCare* case. That's your Honor's own opinion. Any
3 set of conceivable facts, as previously discussed by Mr.
4 Provazza and the other attorneys here, is a lower
5 pleading standard. Conceivability just lends itself to
6 is it something that could potentially happen? Is it
7 conceivable in the world that if someone breaches their
8 contract that these alleged damages are going to stem
9 from that breach?

10 Now, interestingly *Hexagon Holdings* came up a lot in
11 the negligence section of this argument, but no one is
12 talking about it now in the breach of contract context
13 even though it's really the only Rhode Island Supreme
14 Court case or Rhode Island case law. And the Rhode
15 Island Supreme Court in that case says that the Plaintiff
16 has sufficiently alleged breach of contract under a
17 third-party beneficiary contract theory, even though, and
18 this is very important, the Plaintiff didn't even
19 reference the contract in the complaint, must less a
20 provision. Because the Plaintiff referenced the
21 transaction for which the breach of contract claim was
22 proceeding, that was sufficient. And the Court made
23 clear under the notice pleading standard, the Plaintiff
24 need not proceed under the specific facts alleged in the
25 complaint or the legal theory alleged in the complaint.

1 We just have to provide fair and adequate notice.

2 So the buck stops with *Hexagon Holdings*. You can
3 look and see that all we have to do is give them the
4 notice of the transaction in relation to the breaches
5 occurred. We don't have to site specific contractual
6 agreement. Even if you look at the case law cited by the
7 Defendants, let's start with Jacobs. Jacobs cites to a
8 lot federal juris prudence saying you've got to rely on a
9 specific contractual provision. One, those aren't
10 binding on this Court. Jacobs acknowledges that in the
11 reply.

12 And, two, the only case they rely on in this
13 jurisdiction is *Burt v. Board of Trustee* and *The*
14 *University of Rhode Island*, and that's a District of
15 Rhode Island case, again applying the federal pleadings
16 standard. Even if that case were to apply here because
17 it's a District of Rhode Island case, if you look to the
18 language in *Burt*, which is cited by Jacobs and the Joint
19 Venture, and AECOM does not cite to any precedent on
20 contractual provision, it's saying that Plaintiff must
21 describe with substantial certainty the contractual
22 promise breached. It's not saying specific contractual
23 provision. It's saying a promise, which the State would
24 argue is in line with what *Hexagon* is saying. You need
25 to reference the promise, the transaction, that underlies

1 the breach of contract claim.

2 And in that case the issue the Court took with
3 Plaintiff's allegations were they relied on generally
4 University statements about the differences between
5 in-person and online tuition and the quality of the
6 programs and advertisement and brochures. So the
7 Plaintiffs were struggling when they were suing the
8 University to actually provide a contract, a contractual
9 promise other than general advertising or statements by
10 the University or just distinctions made on line about
11 the difference between online degree programs and
12 in-person programs.

13 Here, we have formalized the contract. Clearly the
14 promises were based on the allegations in the complaint.
15 So even if your Honor were to rely on *Burt* as the choice
16 of authority from the District of Rhode Island, we still
17 meet that burden by alleging facts in the complaint. For
18 example, I think these allegations both meet the
19 transactional requirement under *Hexagon* or let's see say
20 the higher pleading standard under *Burt* for a
21 contractual promise. If you look at paragraph 157 in
22 the complaint, we allege that Jacobs failed under the
23 inspection contract to research and review the file for
24 the bridge, to research and review the plans for the
25 bridge, to adequately conduct an inspection or recommend

1 needed repairs, and that is a clear contractual promise
2 that is being referenced that was breached that puts them
3 on notice of the transaction that we're talking about an
4 inspection and where they failed to do that inspection.
5 That is sufficient to allege the breach.

6 As to AECOM if you look at paragraph 98, similar
7 allegations, sure. But it says that AECOM, and it lists
8 an example, research and review the file, evaluate the
9 bridge, report its evaluation to the State, and recommend
10 necessary repairs. And even more so, if you look at
11 paragraph 52, it says the contract between AECOM and the
12 State specifically requires AECOM to look at previous
13 inspections. That was a specific contractual promise
14 that the State alleges was breached by AECOM when it
15 failed to look at those inspection reports.

16 And then for the Joint Venture, paragraph 165
17 alleges that the Joint Venture failed to again review the
18 bridge's previous inspections and its file and recommend
19 repairs as necessary. But also importantly with the
20 Joint Venture, if you look at paragraphs 80 and 81 of the
21 complaint, it discusses the necessity of the minimum
22 25-year design life of the bridge, and it says that the
23 Joint Venture was obligated to repair, notice, and tell
24 the State about the cracks in the concrete and seal those
25 cracks that ultimately lead to the bridge's failure.

1 That, again, those specific contractual promises, that
2 transaction, those obligations that are in the complaint
3 referenced as being breached that's sufficient to put the
4 employees on notice that there's been a breach. Mr.
5 Blease doesn't talk about those specific provisions at
6 all, even within the State's papers and the records in
7 the complaint itself. He focuses on the Base Technical
8 Concept.

9 Another point on that is if you look at the briefing
10 by the Joint Venture, Mr. Blease discussed *Chariho* and
11 *Fuller*. Importantly, those cases say if you look to the
12 plain language of the contract and go -- and the Court
13 should do so. It also says if there is any ambiguity as
14 to the interpretation of that concept, then you can't and
15 a motion to dismiss would be inappropriate to be granted
16 because there is ambiguity. Here, if you look at the
17 contract that the Joint Venture has attached, we're
18 citing to different provisions. They're saying we needed
19 to follow the Base Technical Concept. We're saying,
20 well, no, the Joint Venture actually proposed an
21 Alternate Technical Concept, the ATC, and also had to
22 propose its own design in that way, but it still accorded
23 with the Base Technical Concept but it couldn't bear it
24 as long as it followed those technical requirements.

25 We're also citing different provisions saying you

1 need a new design life of 25 years and the Joint Venture
2 was also obligated under the contract to repair cracks in
3 the concrete and seal those issues, et cetera. Those are
4 competing contractual provisions that require
5 interpretation. Just based on that, that's an
6 independent reason to deny their motion to dismiss
7 because if you did look at the contract, which we don't
8 actually think you should, but even if you did, there are
9 competing interpretations of what should be considered by
10 the Court. Therefore, a motion to dismiss on that count
11 would be inappropriate.

12 Next, as to causation, the State's position is that
13 it has sufficiently alleged that each Defendant's conduct
14 breached, caused its damages under the conceivability
15 standard. Now, the key language there is conceivability.
16 Is it conceivable based on the allegations in the
17 complaint that the things alleged, assuming they're true,
18 under the pleading standard because that is the standard
19 that those damages would flow from that breach. Let's
20 look at AECOM. As the State says in its papers, AECOM
21 failed repeatedly to identify critical structural issues
22 of the bridge over multiple contracts. It inspected the
23 bridge more than other other defendant in this case and
24 not once did it bring up some of these very important
25 issues that ultimately led to the demolition of the

1 bridge, shutdown of the bridge. It's very logical under
2 the conceivability standard that that would lead to the
3 property damage, economic loss, et cetera. From a
4 consumability perspective it's very straightforward.

5 AECOM relies on a bunch of New York cases to say we
6 have to link causation with specific facts, et cetera.
7 Those aren't binding, and then it relies on *Petrarca*,
8 which is another Rhode Island Supreme Court case, but
9 that's a motion for summary judgment case in which the
10 Court held that the Plaintiff didn't sufficiently prove
11 damages as it relates to the contract breach, not
12 alleged. That's a completely different standard that
13 requires evidence, weighing that evidence. Something
14 that hasn't happened here.

15 Jacobs, same arguments made. They failed to
16 inspect. Sure they conducted one inspection but that was
17 an inspection that was contracted for and paid for by
18 taxpayer dollars. It's very plausible to think if they
19 failed to conduct an inspection as it relates to what was
20 obligated in the contract, that the damages of the bridge
21 being unrepairable or not being repaired soon enough or
22 eventually being unsalvageable would flow from that
23 breach.

24 Joint Venture doesn't explicitly make this argument,
25 but the Joint Venture was also on notice that its failure

1 to conduct concrete repairs or report issues, the things
2 that we previously just talked about, are a breach of
3 this contract and are causally linked to the bridge
4 failure. If we are alleging voids in the grout and a
5 bunch of concrete in the post tensioning system, the
6 Joint Venture is responsible for addressing those things.
7 It flows that that ultimately can lead to the bridge
8 being unsalvageable or money being wasted on trying to
9 repair it. People should have noticed sooner that there
10 were issues with the bridge that they didn't report.
11 That covers the substance of the contract claim.

12 The only other argument I would like to address is
13 the documents external to the complaint that I
14 referenced. It seems clear that all parties agree that
15 generally those documents weren't considered unless
16 they're explicitly referenced in the complaint or relied
17 upon or the allegations in the complaint expressly relied
18 upon the concept of the documents. Then there's the
19 alternative argument of judicial notice and whether or
20 not something is an official public record. What is
21 important in the judicial notice concept, which is not
22 being talked about by the defense is, it's for official
23 public records. For example, under Rhode Island Rule of
24 Evidence 201, things that aren't reasonably up to
25 dispute. It's for factual premises. For example, the

1 sky is blue or we're located in Rhode Island right now.
2 It's not those things that are matters of opinion. The
3 cases cited on the premises corroborate that argument.

4 If you look at *Goodrow*, which is a Rhode Island
5 Supreme Court case, it makes a distinction between based
6 on a court docket. It says that not everything on the
7 docket is something you can take judicial notice of.
8 It's final judgments or pleadings, things that constitute
9 admissions. Those are the things that are appropriate
10 for the Court to take judicial notice of, and then if you
11 look at what *Goodrow* is relying on, it's *Freeman*. It's a
12 First Circuit case. And even more there the First
13 Circuit makes a lot of nuances in the judicial notice
14 concept that in that case the Plaintiff referred to
15 depositions that took place. The Defendants tried to
16 bring in deposition excerpts of those things referenced
17 in the complaint and the Court held, no, you can't do
18 that because the excerpts themselves had nothing to do
19 with the things referenced in the complaint, right? So
20 just because something is referred to does not mean it's
21 something that's adequately something that should be
22 taken judicial notice of. It has to actually relate to
23 the matter.

24 And the Court goes on make a distinction between 911
25 call transcripts and police reports saying that those are

1 things that are not appropriate to take judicial notice
2 of because they state opinions. They state things that
3 aren't factual, like the example the Court gives of
4 something that wouldn't appropriately be judicial notice
5 of, birth or death certificates, which are official
6 records of vital statistics that don't lack judicial
7 reliability. I think that's a very important framework
8 to discuss the admissibility of these documents and how
9 they should be considered at a motion to dismiss stage,
10 specifically to Jacobs and the Joint Venture.

11 And one last point, the *Wells Fargo* case, the *38*
12 *Studios* case, that Mr. Provazza talked about, there is a
13 key distinction there from Judge Silverstein too in which
14 he says he didn't allow the EDC to bring in its financial
15 statements at the motion to dismiss stage because they
16 were up to a reasonable dispute. Even though they
17 contain financial statements, the contents therein could
18 be questioned, but he did allow judicial notice of Rhode
19 Island public laws, which accords with exactly the
20 framework that I'm talking about, things that are public
21 record that come in because they're things that aren't up
22 for dispute.

23 With that framework in mind, let's discuss Jacobs.
24 Now, Jacobs in its reply says that it's not a public
25 record. The State goes much further than that and says

1 it's not a public record just because it's maintained on
2 the public website. Just like in *Goodrow*, just because
3 it's on the court docket, doesn't mean it comes in. So
4 the inspection report doesn't come in as a public record
5 because it's filled out by Jacobs. It's arguably a
6 self-serving document. It doesn't come in either as
7 something relied upon explicitly in the complaint. It's
8 just referenced in the complaint. It's something like
9 the deposition excerpts in *Freeman*, where it's something
10 that's said, but it's relating to a breach of contract
11 claim against Jacobs. It's not a negligence claim
12 against Jacobs. It's just saying they had to do an
13 inspection under this contract. It's just being
14 referenced. It's not saying this is the totality of what
15 the claim is contingent upon.

16 It may be helpful evidence to see what Jacobs did in
17 its inspection. Even if you look at the report, it's
18 filled with numbers and technical terms, things that are
19 required in factfinding discovery, but wouldn't on its
20 own be dispositive just because Jacobs uses the term poor
21 condition. We have no idea what Jacobs underwent in its
22 actual inspection to figure out what poor condition
23 meant. Interestingly, Jacobs cites to the fact that in
24 its reply from 2007 to 2021 all the same rates were given
25 to the sub-contractor. That doesn't necessarily mean that

1 Jacobs did a good job, it means it did a bad job or it
2 could even mean that Jacobs was reincorporating the
3 findings of these other people without necessarily
4 validating these findings. Those are just factual
5 questions that have to be developed here. And it's not
6 appropriate for the Court to just take those findings in
7 Jacobs' report and apply them to the complaint.

8 THE COURT: Back to the contract itself issue, just
9 help me understand why that isn't sufficiently referenced
10 when it's making allegations in terms of breach of
11 contract. I understand you're argument on the inspection
12 report and some of the others, but the contract itself.

13 MR. TORIC: Jacobs' contract?

14 THE COURT: Yes.

15 MR. TORIC: So Jacobs' contract if it was the
16 authentic document and it was attached to the motion,
17 which it's not, could arguably be something that would be
18 considered.

19 THE COURT: You're just saying they didn't hit the
20 right steps to get there for the Court to even reach that
21 issue?

22 MR. TORIC: Yeah, Jacobs did not even attach its
23 contract. It's a just a matter of when the inspections
24 report came in. If Jacobs had done so, there could be an
25 argument as to whether that contract was authenticated.

1 And if it was authenticated, arguably, yes, the State's
2 claims do rely on breach of that contract.

3 THE COURT: Thank you.

4 MR. TORIC: And then the State grant application
5 previously referenced, I mean, that isn't referred to in
6 the complaint at all. It doesn't come in under any of
7 those two exceptions. The closer argument is whether
8 it's a public record. When you look at the statement
9 Jacobs is relying on, the bridge was in a near permanent
10 state of disrepair. If Jacobs is going to take the
11 position that the term poor is ambiguous, and could mean
12 different things, then this phrase also could mean a lot
13 of different things. Furthermore, it's not a birth
14 certificate or a death certificate. It includes an
15 opinion, like a 911 transcript or a death certificate.
16 I'm sorry, like a 911 transcript or a police report.
17 For that reason, it's a matter of being -- it's not
18 something that just states a fact. It doesn't need to be
19 considered by the Court in deciding the motion to
20 dismiss.

21 And then as to the Joint Venture, it's unclear if
22 the contract attached as exhibits to the Joint Venture's
23 motion are the authenticated documents. Because even if
24 you look at Joint Venture's motion, its brief, one of the
25 excerpts says all the documents referenced, the RFP

1 reports, all addenda, all other documents also requires
2 factfinding as to what totally encompasses the contract.
3 So it's debatable whether that contract is authenticated
4 and should be considered. It's seven or 600 pages of the
5 contract documents and it could be more. So even if the
6 Court were to look at that contract, the State believes
7 that it's adequately addressed in competing provisions
8 under a motion to dismiss standard and incorporated to
9 adjudicate, just competing interpretations of what Joint
10 Venture's obligations were.

11 As to the Defendant's arguments just raised, Mr.
12 Prosen makes the argument that there was no notice of
13 default or notice to cure. Those arguments aren't made
14 in their briefing. Those are brand new arguments. I
15 don't think those should be considered. But even so,
16 that would require discovery as well as to when those
17 notices were issued or any conversations surrounding
18 those. Just because it's not factually alleged in the
19 complaint, does not mean that it did not happen.

20 As to the Joint Venture, I think a lot of the
21 arguments were addressed in what I just said.
22 Importantly, Mr. Blease makes a lot of argument around
23 the Base Technical Concept. It's important to consider
24 that the Joint Venture could pursue an Alternate
25 Technical Concept. It did so. It submitted those plans.

1 It was liable for concrete repair, sealing concrete,
2 we've alleged voids in the grout. That's an independent
3 reason outside of those technical concepts to consider
4 these competing provisions.

5 As to the *Spearin* doctrine, now in that case, the
6 premise is that the contractor follows the specifications
7 of the contracting party. Then if there is an implied
8 warranty, they've essentially lived up to its part. Here,
9 we're saying they didn't follow the specification, the
10 alternate specification. Alternatively, they failed to
11 repair the concrete as required by the contract. They
12 fail to recommend necessary repairs. They failed to
13 value the bridge. There are things they did not do and
14 they did not live up to the design as promulgated by the
15 State. I think that covers everything, unless your Honor
16 has questions.

17 THE COURT: No, thank you very much.

18 MR. TORIC: Absolutely.

19 THE COURT: We'll go back to the Defendant.

20 MR. PROSEN: Lawrence Prosen for AECOM. I'm going
21 to jump around a little bit, your Honor, try to be as
22 pinpoint as possible. I'm going to start with the last
23 item that counsel talked about regarding the JV contract.
24 Part of the allegations are that AECOM as a designer
25 provided some sort of design that were, my term, bridging

1 documents but that were given to the JV, and the JV used
2 those designs. It's not in the brief and it's not in the
3 complaint. In fact, the first time it was raised was
4 just now. JV had a separate design. If that's the case
5 and it didn't follow AECOM's design, then how is AECOM on
6 the hook for those result of damages?

7 Secondly, the elements that were discussed by
8 counsel were from a breach of contract action, contract
9 breach and damage. Causation is not mentioned anywhere
10 in there. I bring that to the Court's attention. And,
11 interestingly enough, and I appreciate counsel pointing
12 to various provisions in the complaint, and he referenced
13 -- bear with me for a second here, your Honor, paragraph
14 52 at page 13, and it talks about the initial 2014
15 contract where AECOM did some design services for the
16 State. Again, this is all under the guides that somehow
17 AECOM or the inspectors or any of the Defendants are in
18 this black box and the State has no cognitive ability
19 apparently to review these documents and provide feedback
20 or discussions or whatever the case may be or acceptance.
21 Again, it's an allegation that the inspection reports had
22 any problem with them at the time. In fact, it's all
23 post-talk allegations at best after the bridge is
24 discovered to have the problems.

25 But in paragraph 61 to 65 the complaint talks about

1 AECOM inspecting the bridge and transmitting the
2 evaluation report back in 2015. This is on the 2014
3 contract. There's some allegations under subsections F
4 and G, and then under H, which is paragraphs 66 and 67,
5 it's entitled the Cardi, C-A-R-D-I, Corporation Contract.
6 And it states that on, I'm paraphrasing, "January 30th,
7 2017 the State and Cardi entered into a contract to
8 perform construction on the 2016 Rehabilitation
9 contract," and that the design and plans of AECOM and its
10 subconsultants were involved in that.

11 Paragraph 67 states, "As a result of Cardi
12 Corporation's work adhering to the traffic management
13 requirements, for which AECOM was responsible,
14 unacceptable levels of traffic, congestion, and delays
15 resulted. Consequently, the contract was terminated."

16 So little, if any, work was done under that
17 contract. And I would argue, your Honor, and it is a new
18 argument based on multiple defendants today and citations
19 that with that contract being terminated whatever work
20 AECOM may or may not have done in 2014 and 2015 is of no
21 affect. The agency agreed and voluntarily cancelled or
22 terminated that contract in its sort of frustration, I
23 think, your Honor.

24 And, lastly, your Honor, there is discussions of
25 allegations and, yes, your Honor has to take those as

1 pled. There is no allegations that anything in AECOM's
2 scope of contract, and counsel is talking about pockets
3 inside the beams and corroded tendons, which it, you
4 know, referenced. There is nothing in the record,
5 nothing, nothing in the allegations that describes
6 AECOM's contract as having any ability for performing the
7 work, which I mentioned before, of either GPR, ground
8 penetrating radar, or x-raying or digging, cutting out
9 portions of these beams to see what the actual condition
10 was, and to me that ties in to causation. You have to
11 have a breach. You can allege there is a breach, but you
12 have to have more than just saying you breached a
13 contract. I don't think that serves judicial economy. I
14 don't think that's the intention behind motion pleading,
15 your Honor, and as a result we would ask the Court to
16 grant our motion to dismiss. I already cited the
17 different counts, your Honor. Thank you.

18 THE COURT: Thank you very much, counsel.

19 MR. BLEASE: Your Honor, Jeff Blease again for
20 Barletta and the Joint Venture. I will be brief but I
21 did want clear up a couple of things that have been
22 spoken to. I did have a little difficulty hearing
23 counsel, so if I heard something differently, let me
24 know.

25 I think the first point was any set of conceivable

1 facts for pleading motions, and I would agree with that
2 except it's inconsistent with the contract because that's
3 the *Chase* case which we cited earlier. I believe that
4 the jump cite is 970. Paragraph 165 is, in fact,
5 inconsistent with the contract terms. We weren't required
6 to do what was listed there. That's the first point.

7 Secondly, the reason why "shall" is so important is
8 because conveniently it's no longer mandatory that we
9 follow the BTC. But at the time our proposal was
10 submitted it was one hundred percent mandatory, which is,
11 of course, set forth in the RFP that I described or cited
12 from earlier. It gets more confusing when folks start
13 talking about the ATC.

14 So let me talk a little about what that Alternate
15 Technical Concept was. What was presented to the
16 proposers in the RFP was one way to rehabilitate
17 Washington bridge. But if you have a better way with
18 regard to any subcategory of the work that is being
19 performed, let us know by submitting what's called an
20 Alternate Technical Concept. And if the State reviewed
21 that and if they agree with that, that's a better way to
22 proceed. They'll incorporate that in the BTC. So that's
23 what happened with this tie down of pier number four. We
24 put the diagram in our papers. It's probably easier to
25 view as a diagram than it is to express in words. But

1 there was a new tie down proposed at pier number four.
2 That was part of the BTC. What my client said was why
3 would you want to do another tie down at pier number
4 four? So we proposed an alternative that would basically
5 eliminate the proposed new tie down. It had nothing to
6 do with the tie downs at piers six and seven. And the
7 reason that's important is because the State keeps
8 equating our APC on pier number four, which eliminated
9 the new tie down with the existing tie down of six and
10 seven, which were not addressed in the BTC. That is a
11 critical distinction.

12 So, again, we're being accused of doing work that we
13 weren't required to do. We're being accused of breaching
14 a contract that we followed fully, and the same thing
15 with the voids in the grout. We can generalize and say
16 there were voids in the grout that need to be addressed.
17 Of course, they were in our proposal. Those were the
18 ones that the inspection reports cover that could be
19 seen. The reason why the decision was ultimately made to
20 be demolished and build a new bridge is because of the
21 void that couldn't be seen and that information was not
22 available until March, 2024 report came out from DOT,
23 based on the DM report that is outside of the record for
24 purposes of this pleading. However, I raise that to the
25 Court simply because amendment will be futile because the

1 true facts will not support a breach of contract claim
2 against my client.

3 I think the last point I would make, your Honor, is
4 just a simple one. That under *Spearin*, we have a right
5 to rely on those contract documents. We have a right to
6 rely on the BTC. It was a mandatory provision to us. So
7 those are the terms and conditions we should be held to
8 and that's in the contract. By the way, this is the
9 first time I've had to sue for breach of contract where
10 the contract wasn't part of the pleading or attached.
11 Being criticized for not attaching the entire contract to
12 my opposition is a new one. However, I will note for the
13 Court that we did not include each and every section of
14 the documents because it is voluminous. We ultimately
15 included an attachment and provided to the Court those
16 provisions that we were citing in our papers.

17 THE COURT: Thank you very much. Counsel.

18 MR. BLESSINGTON: Thank you, your Honor. Just a few
19 points in response to the State's argument.

20 THE COURT: Just so the court reporter can get it,
21 if you could just put your name and who you represent.

22 MR. BLESSINGTON: I'm sorry. John Blessington
23 again for Jacobs Engineerig.

24 THE COURT: Thank you.

25 MR. BLESSINGTON: First, Plaintiff's counsel

1 referred to *Goodrow v. Bank of America* for the standard
2 that these are the exceptions, if you will, to when the
3 Court may look to documents outside of the four corners
4 of the complaint. To quote his first document the
5 authenticity of which are not disputed by the parties,
6 are official public records, are documents central to
7 Plaintiff's claim or for documents sufficiently referred
8 to in the complaint. Plaintiff's counsel argues that
9 because it's not attached, therefore, we can't rely upon
10 it, but actually the standard in the cases they actually
11 cite is a little broader than that. If the allegations
12 in the complaint are expressly linked to and admittedly
13 depend on the document, the Court may consider it without
14 converting to a motion for summary judgment. That's what
15 we're arguing here. That's number one.

16 Number two, in the context of the *Hexagon* case,
17 which Plaintiff's counsel referred to and pointed out
18 that we did not officially attach or refer to the
19 complaint in the third-party claim. The distinction
20 there, your Honor, is Plaintiff's counsel again talks in
21 terms of notice of the transaction, if you will, was
22 enough, and then also spoke in terms of promise. That is
23 exactly what we're asking for here. What's the promise?
24 They refer to paragraph 157 in the complaint. That's the
25 breach, but what's the promise that we breached? That's

1 what we don't know, and I think again it's not much of an
2 ask given what they're asking for by way of damages and
3 alleging.

4 Lastly, your Honor, this gets a little bit into the
5 standard. We're going a little bit back to what
6 constitutes property damage but also in the context of
7 breach of contract. Again, this is a point that both Mr.
8 Blease and Mr. Prosen pointed out, specifically, Mr.
9 Blease, but if you could simply just say, hey, it was a
10 contract, we breached it, and there were damages, you
11 could never get past a 12(b)6 and you could never file a
12 12(b)6. What belies that, there's plenty of case law out
13 there that the Court should not accept or adopt anything
14 like conclusory or bald assertions. And we would argue
15 that something like there was a contract, that's a bald
16 assertion. There was property damage, that's a
17 conclusory allegation. There's got to be more than that.
18 That's what *John Doe v. East Greenwich School Department*
19 and the *Palazzo* case affirming dismissal of the claim
20 because the Plaintiff's complaint only contain
21 unsupported and conclusory allegations. That's what
22 we're arguing here, your Honor. Do you have any
23 questions?

24 THE COURT: No. Thank you very much.

25 MR. BLESSINGTON: Thank you you very much.

1 THE COURT: Are there any other Defendants that were
2 heard on the motion that wish to be heard at this point?
3 Okay. Hearing none, we're going to move on to arguments
4 related to contractual indemnity, non-contractual
5 indemnity, and contribution. Counsel for the Defendant,
6 you may proceed.

7 MR. PROSEN: Lawrence Prosen again for AECOM. Your
8 Honor, Count XVII is a contractual indemnity clause and
9 I hope I cover it all for the most part. The others can
10 just sort of jump on and off board, but the indemnity
11 action in this case, it's contractual indemnity is how
12 it's styled. It seeks indemnity for the first-party
13 economic loss. It's not third-party economic loss.
14 Frankly, I think all the arguments have been well briefed
15 so I'm going to try to keep things as short as possible.

16 Indemnification by its very nature is seeking
17 recovery from one party for damages that in this case the
18 State claims it will have to -- well, it should have paid
19 and it's seeking recovery from a third party. The State
20 now in its reply brief and its complaint cites to 220
21 Rhode Island Code of Regulation, 30-00-13.21A and that is
22 an indemnification clause. It's cited in the briefs, and
23 from our plain reading of it, and, obviously, the Court
24 will do its statutory and regulatory interpretation
25 says, "The vendor," we'll just call that Defendants for

1 purposes of this, "Shall defend, indemnify, release, and
2 hold harmless the State and its agencies together with
3 their respective officers, agents, and employees from and
4 against any and all third-party claims demands,
5 liabilities, causes of action, lawsuits, damages,
6 judgments, and other costs and expenses arising out of or
7 related to."

8 I'm sure as your Honor read the clause, it comes
9 down to third party. Our reading is third party
10 modifies. There is no comma between thirty party and
11 claims or demands. It's third-party claims demands, so
12 forth and so on. It's conjunctive. So from our reading
13 and, again, hopefully your reading, your Honor, the
14 language is limited upon third-party claims, demands, and
15 the like. There are none here. There are none. And in
16 the reply brief they said it's speculative. It may
17 happen at some point in the future.

18 The counts, as I mentioned earlier, is also
19 derivative of the State's negligence action and this will
20 again tie into the Economic Loss Doctrine argument that
21 you heard before. The complaint on what, if any, claims
22 any third party may or may not have at some point in the
23 future. Like I said, at page 56 to their opposition they
24 acknowledge that third-party claims may be asserted
25 against the State.

1 Again, without getting into the notice side of
2 things, I think the language is quite clear and the
3 allegations or lack thereof scream quite loudly. The
4 State has not paid any damages to any third parties. My
5 understand is that typically indemnity has to happen or
6 can be claimed typically only after in this case the
7 State has paid it off to third-party liability.

8 The *A & B Construction v. Atlas Roofing* case, which
9 is a U.S. District Court, Rhode Island, '94 case,
10 867 F.Supp. 100 at page 105 says, "Indemnity may arise
11 when one party, quote, has conferred a benefit upon
12 another as when it is compelled to discharge a legal
13 obligation to a third."

14 *Muldowney v. Weatherking Products*, 509 A.2d 441, a
15 1986 Rhode Island Supreme Court states at page 443, "If
16 another party has been compelled to pay damages,"
17 compelled, meaning I've already done it, "that should
18 have been paid by the wrongdoer," we're not admitting
19 we're a wrongdoer, of course, but "the latter becomes
20 liable to the former."

21 There have been no damages paid that we know of or
22 alleged in the complaint by the State or any third
23 parties. We're not aware of any claims even that have
24 been alleged. Again, looking at that regulatory
25 provision, we think that third parties -- there are none.

1 So that clause has not been triggered. That condition
2 precedent of a third-party claim, demand liability, cause
3 of action, and the like would have to trigger and happen
4 before that happened.

5 From our perspective, your Honor, the contract
6 indemnity provision in Count XVII -- first of all, the
7 contract provision is not identified, not referenced, and
8 then the regulatory provision doesn't apply. And as a
9 result, we think Count XVII, your Honor, on a couple of
10 different bases should be dismissed, your Honor. Any
11 questions, your Honor?

12 THE COURT: No. Thank you very much.

13 MR. MELLADO: Good morning, your Honor. Christopher
14 Mellado for Barletta and the Joint Venture. May it
15 please the Court. I will be addressing Count XVII
16 through XX of the State's complaint. Count XVII,
17 contractual indemnity, Counts XVIII, XIX, XX
18 respectively are declaratory relief actions with respect
19 to the contractual indemnity, non-contractual
20 indemnity, as well as contribution. I'm going to start
21 first with Counts XIX and XX that are contractual in
22 nature.

23 THE COURT: Could you just try and speak into the
24 microphone.

25 MR. MELLADO: Sorry. Your Honor, I would also like

1 to get into areas that are not in dispute. The State in
2 reading its objection to the Joint Venture's motion
3 seemingly admits that to the extent that Joint Venture
4 prevails on its motion to dismiss with respect to Count
5 XV, Counts XVII and XVIII are derivative of such cause of
6 action and should similarly fail. If your Honor is
7 inclined to grant Joint Venture's motion with respect to
8 Count XV, the State takes the position that XVII and
9 XVIII have to go as well.

10 Additionally, as Mr. Prosen pointed out, the Rhode
11 Island General Conditions of Purchase, sub 13.1 is
12 additionally incorporated to the Joint Venture's separate
13 contract. I'm not going to read the provision that Mr.
14 Prosen did, but the third-party language in that
15 provision is unequivocal. It is predicated and
16 conditioned upon third-party claims, losses, liabilities
17 here. We argue they're not present.

18 So, your Honor, with respect to Counts XVII and
19 XVIII, because they're derivative of the State's Count
20 XV, as Mr. Blease indicated earlier -- argued earlier,
21 that claim fails. Count XVII and XVIII additionally
22 fail. Likewise, the plain reading that we ask the Court
23 to engage in with respect to 13.1 adopt indemnification
24 of the Rhode Island Conditions of Purchase mandates this
25 Court's dismissal of Counts XVII, XVIII.

1 Turning next, your Honor, to Counts XIX and XX,
2 these counts are not ripe for adjudication in accordance
3 with the Rhode Island Declaratory Judgment Act. Here,
4 the State takes the position that to the extent in the
5 future it may suffer some third-party claims,
6 liabilities, damages, losses, the State does not plead it
7 has actually incurred any of these acts. That's plain on
8 the face. They said, quote, in the future. And I'm
9 foreshadowing here, but they rely on the *Fleetwood Boston*
10 matter. It's an unpublished case for the support of
11 Counts XVIII and XIX respectively, all the declaratory
12 relief claims. Again, I'll foreshadow that in a moment,
13 but that case does not concern contribution. That case
14 does not concern non-contractual indemnity, and it's
15 limited only to declaratory relief for the contract.

16 As it relates to Count XIX specifically, the
17 non-contractual indemnity cause of action, the State
18 seemingly waives any arguments in defense of that cause
19 of action. The State takes the position with respect to
20 Joint Venture's allegations and more specifically the
21 Joint Venture laid out the elements for non-contractual
22 indemnity cause of action, which the first element reads,
23 "The party seeking indemnity must be liable to a third
24 party," end quote, the *Wampanoag Group*, page 524. Again,
25 not addressed by the State. The state law states the

1 elements for a non-contractual indemnity claim and we
2 argue today that they waived a response to that.

3 Similarly, with Count XX, the State likewise glosses
4 over Count XX with respect to Joint Venture's argument.
5 Contribution in and of itself is not the original cause
6 of action. It is derivative of the underlying tort, an
7 underlying tort that we don't have today that the State
8 concedes may happen in the future. That is not enough.
9 The State may contend, and it likely will, the
10 reliability conceivability analysis that they recalled
11 this morning. What they're asking the Court to do though
12 is engage in compound conceivability, to read the words
13 in the future and then apply the conceivability analysis
14 to a future quote. That is not enough to pass muster on
15 the declaratory act.

16 With respect to the contribution being derivative of
17 underlying tort, we direct the Court to *Franklin Grove*
18 page 1277 for this proposition. And, your Honor, to
19 address specifically the State's position in its
20 briefing, again Counts XVIII, XIX, XX they cite to *Fleet*
21 *Boston*. *Fleet Boston* does not support the State's
22 claims. *Fleet Boston* is widely distinguished from the
23 facts we have here. By way of background, it's important
24 to understand that *Fleet Boston* concerned complicated
25 taxes between the Plaintiff and Defendant who submitted

1 separate tax filings and had different results that then
2 lead to an IRS audit of both of the parties, and there is
3 a subsequent parallel IRS litigation against the plaintiff
4 and Defendant, so there's an underlying action. The
5 plaintiff then sued for declaratory relief, sued the
6 defendant, requesting indemnification pursuant to the
7 plaintiff and defendant's contract. And paramount in
8 that matter was the Court's analysis of the underlining
9 case in controversy. The Court looked specifically to
10 the tax court and indicated, yes, this ripened the State
11 court's adjudication of the principal litigation between
12 the plaintiff and the defendant in light of the
13 underlying tax action.

14 Here, in comparison, there is no underlying
15 litigation. There is no underlying third-party claim.
16 There is no underlying third-party damages. The State
17 looks to this conceivable future third-party claims.
18 That is not enough to pass muster on the Declaratory
19 Judgment Act, and, accordingly, Counts XVIII, XIX, and XX
20 should fail.

21 THE COURT: Thank you very much, counsel. Do any of
22 the other Defendants wish to be heard before we move on
23 to the State? Please.

24 MS. SILVA: Susan Silva on behalf of Commonwealth
25 Engineers. Most of the arguments were covered as to the

1 declaratory judgment counts. There is only counts XIX
2 and XX against Commonwealth Engineers. One argument that
3 wasn't made yet, it's briefed in our papers, is the
4 failure to join the hypothetical third parties. The
5 Uniform Declaratory Judgment Act requires that, "When
6 declaratory party relief is sought, all persons shall be
7 made parties who have or claim any interest which would
8 be affected by the declaration and no declaration shall
9 prejudice the rights of persons to the proceeding."

10 According to the Supreme Court of Rhode Island the
11 requirement to join all interested parties is mandatory
12 and failure to do so is fatal to the declaratory judgment
13 count. Here, the State has failed to join all interested
14 parties. The interested third parties are the unnamed
15 third parties who the complaint alleges could potentially
16 bring claims sometime in the future. These third parties
17 are interested parties because the judgment sought by the
18 State would impact the rights of those unnamed third
19 parties by determining the relative degree of fault of
20 Commonwealth Engineers as well as the relative fault of
21 the State for purposes of the contribution claim. So for
22 that additional reason, those two DJ counts should be
23 dismissed. Thank you.

24 THE COURT: Thank you very much. Anyone else on the
25 defense?

1 MS. MARTIN: For the State, your Honor, Diana
2 Martin. Good afternoon.

3 THE COURT: Good afternoon.

4 MS. MARTIN: Beginning with Count XVII, for
5 contractual indemnity, you heard AECOM's counsel focus
6 on our reference for that count to the regulatory
7 provision about indemnity and make reference that should
8 be interpreted to only apply when third parties are
9 involved. We've made argument in our brief that we
10 believe it's a little broader than that. You can
11 interpret it, but it's really not relevant to the Court's
12 consideration because we're going here by what we have
13 pled, and what we have pled in that count is not
14 referenced by AECOM's counsel. It is the State alleged,
15 and that's in paragraph 174 and 175 of its complaint,
16 that the parties expressly agreed that AECOM and Joint
17 Venture agreed to defend, indemnify, and hold harmless
18 the State for all damages, losses, or expenses arising
19 out of any acts or omissions. There is no reference in
20 those allegations to any third-party requirement, and
21 what governs here on the pleadings on the motion to
22 dismiss by our allegations.

23 The cases that AECOM cited and mentioned up here
24 deal with the concept of equitable indemnity, the *A & B*
25 *Construction case* and *Muldowney case*. Equitable

1 indemnity is defined by law. Contractual indemnity,
2 which is at issue here in Count XVII, is defined by the
3 contract, by the parties and their agreement. And here,
4 on this motion to dismiss, it's defined by what we have
5 alleged the contract says, and that's in the agreement
6 that we have alleged. For that simple reason, without
7 getting into the instruction of that regulation, we think
8 that you should deny the motion to dismiss Count XVII.

9 Turning to Counts XVIII to XX, they're all for
10 declaratory judgment. Those are the final three counts
11 of our complaint. We asking for declaratory judgment
12 regarding contractual indemnity against AECOM and Joint
13 Venture, Declaratory judgment regarding non-contractual
14 or equitable indemnity against all the Defendants and
15 declaratory judgment regarding contribution against all
16 the Defendants.

17 Now, the Defendants are arguing how their claims do
18 rely on these potential, and as we allege that we would
19 like certification of our rights as to potential
20 third-party claims brought against the State based upon
21 those wrongful acts or omissions of the Defendants, that
22 that makes our claims premature, they lack financial case
23 of controversy, or they seek an advisory opinion. But we
24 believe under the law that there is enough there for
25 there to be a justiciable controversy.

1 In Count XVIII, the State is specifically seeking a
2 judicial evaporation regarding AECOM's and the Joint
3 Venture's contractual indemnity obligations under the
4 contract, and that would be specifically permitted by the
5 Uniform Declaratory Judgment Act, which gives the Court
6 the powers to declare rights and obligations under the
7 contract even when there has not been a breach of the
8 contract. The purpose of that Act as expressed by many
9 courts throughout the State is to rely certainty and
10 security to the parties with regard to their rights.
11 That Act is liberally construed both -- actually, both
12 liberally construed and liberally administered in this
13 State to effectuate its purpose and that's what we're
14 asking the Court to do here.

15 THE COURT: Just so I understand because I was a
16 little confused reading some of this. So that there is
17 an obligation not necessarily who may make claims, but
18 that provision in the contract when the regulation is
19 enforceable?

20 MS. MARTIN: Right. So there's a few different
21 arguments going on but, yes, first there is a
22 contractual obligation that does not require third-party
23 claims and that's in Count XVII, and then Counts XVIII,
24 XIX and XX, eventually they want an assessment of the
25 State's rights now with regard to the potential

1 third-party claims. So if there are third-party claims
2 down the road, that we have already done the work to
3 understand the different parties' rights and
4 responsibilities regarding these claims, which we hope
5 will not be streamlined to reduce mutual potential
6 proceedings litigating over those issues.

7 You heard counsel mention the *Fleet Boston* case, and
8 we do think that's a case that is in support of our
9 position. There the Court looked at the breath of the
10 Declaratory Judgment Act and how it is to be liberally
11 applied. There the Court said it should be applied even
12 in a situation where it's the party wanting to be
13 indemnified and not vice versa, and the Court applied the
14 same pleading standard we have been talking about
15 throughout the day, the conceivability standard. That a
16 claim under the Declaratory Judgment Act is sufficient if
17 the facts give rise to some conceivable legal hypothesis,
18 which would entitle it to some relief and we believe we
19 have met that standard.

20 In that case the Court did deny the motion to
21 dismiss the claim where there was a potential of the tax
22 assessment years down the road and there were allegations
23 of indemnification that the parties make the same
24 arguments the Defendants are. There is nothing for you
25 to determine now because we don't know that there will be

1 a tax assessment and the Court said, no, I can determine
2 that right now based on the contracts. So we think that
3 certainly applies here and that Count XVIII, looking at
4 the liberal construction of the Act and the way that that
5 Act has been applied in Rhode Island courts demonstrated
6 by the *Fleet Boston* case where the Court should deny
7 Count XVIII. I mean deny the motion to dismiss Count
8 XVIII.

9 And we think that same reasoning should be extended
10 to Counts XIX and XX and those are the counts for
11 non-contractual indemnity and contribution. We think
12 again that it will help all parties if we have the
13 certainty and surety of defining our rights at this time
14 even though those third-party claims are not yet in
15 existence. We just want to clarify the rights and
16 responsibilities at this time.

17 You heard the Defendants say that we have failed to
18 join -- I think Commonwealth's counsel said we failed to
19 join because we haven't joined those third parties. We
20 don't know who they are yet. For that basis, the counts
21 must be dismissed. And that's based on argument from
22 Rhode Island General Laws 9-3-11, which requires all
23 persons shall be made parties who have any claim or
24 interest that would be affected. But that has been
25 interpreted to require joinder of only those parties who

1 have an actual present adverse and antagonistic interest.
2 That's from the *Town of Warren*, the *Bristol* case. And
3 unnamed third parties will not get to file claims if we
4 don't think they fit in that definition. They could not
5 be and we don't think need to be named at this time to
6 have our rights determined under that count of the
7 complaint.

8 The Defendants also argue that Count XIX should be
9 dismissed because the State has not alleged that it has
10 already been held liable to a third party, obviously,
11 because there were potential for third-party claims, and
12 they say that is an element of the count for equitable
13 indemnity. And Count XX should be dismissed because the
14 State has not alleged that they actually engaged in a
15 common wrong of the Defendants for which it can be held
16 liable, which is an element for the claim for
17 contribution. We believe that the complaint allegations
18 satisfies those standards and Section 184, paragraph 184
19 in Count XIX, we allege -- we're asking determination of
20 the State's rights if it is held liable to one or more
21 third parties as a result of the Defendant's conduct.
22 That would satisfy that requirement of third-party
23 liability for equitable indemnity.

24 In Count XX of paragraph 188 we allege that the
25 State asks for determination of its rights if it's held

1 liable for one or more third parties as a tortfeasor,
2 thereby satisfying the elements of the claim for
3 contribution, satisfying the elements of that claim.

4 So we think under the global liberal construction,
5 and application of the Declaratory Judgment Act that
6 there is enough here to withstand a motion to dismiss
7 under any set of conceivable facts that we're traveling
8 under at this juncture. Your Honor, unless there are
9 questions.

10 THE COURT: No. Thank you very much. Counsel.

11 MR. PROSEN: Lawrence Prosen again for AECOM. I'm
12 trying to divide and conquer a little bit on some counts
13 but I'm going to have to jump into a few of the arguments
14 brought by the State. First and foremost, counsel
15 pointed to paragraph 176 of the complaint. This is under
16 Count XVII. And they said that they adequately allege
17 based on the contract that there was an indemnity
18 obligation and I guess a duty to defend. The provision
19 says, "Such contractual obligations owed by AECOM and
20 the Joint Venture arise out of the express contract
21 between such Defendants and the State and by virtue of
22 220 R.I. Code R. 30-00-13.21." The allegation references
23 that section, and I'm not going to get back into the
24 whole argument of the third party, but I think, your
25 Honor, I think when you read the provision, you'll see

1 certainly where we're coming from.

2 With regard to Counts XVIII, XIX, XX, I would like
3 to supplement a little of what counsel said, but also
4 respond to the State's specific argument. I actually
5 feel bad for you, your Honor. I have no idea how on
6 God's green earth you will be able to interpret now what
7 somebody may or may not sue the State for at some point
8 in the future under some hypothetical theory that may or
9 may not involve one of the other parties here or that may
10 actually result in the State having any culpability or
11 liability. It's one thing to get to third-party argument
12 of all of the parties involved and there's sufficient
13 number of facts if enough information in the cases are
14 pretty complete, the ones cited by the different parties.
15 You have to have a justiciable controversy that's
16 available for the Court to decide. It can't be some
17 future non-specific, hypothetical event that may or may
18 not happen in the future.

19 *38 Studios* talked about that certainly, which prior
20 counsel for the State was actually involved with Mr.
21 Wistow. And the Court in that case said, and they were
22 talking about standing, "The standing query is satisfied
23 when the plaintiff has suffered some injury in fact,
24 economic or otherwise. Injury in fact has been defined
25 as, quote, "An invitation of a legally protected

1 interest, which is a concrete and particularized and be
2 actual or imminent, not conjectural or hypothetical." As
3 a general rule a claim is not ripe for adjudication if it
4 rests upon, quote, "Contingent future events that may not
5 occur as anticipated or indeed may not occur at all," end
6 quote. That's *Rhode Island Economic Development*
7 *Corporation* at star ten.

8 It's got to be a real thing. It can't be some
9 future -- I don't know how possibly, and maybe your Honor
10 will be able to do it if you rule against our motion, you
11 can say today or tomorrow something that may or may not
12 happen in possibly a decision today or tomorrow possibly
13 encompass all possible outcomes at some future,
14 hypothetical point in the future. I don't how your Honor
15 will do it.

16 Everything that's alleged in these different
17 declaratory actions is contingent. It's not specific.
18 It's non-existent in a lot of ways. It's unclear will
19 the third-party action come. What will be the basis for
20 it? No one has touched this bridge from the Defendant's
21 side in quite a long time. The bridge was shut down a
22 year ago in December. If a piece of stone or God knows
23 what falls off it now, that bridge has been partially
24 demolished, are we somehow on the hook for that? I have
25 no idea. I know it's a rhetorical question. It's not

1 ripe for the Court's consideration. At some point in the
2 future maybe it is, maybe it's not. I don't know, but
3 for right now, your Honor, I don't see how that can
4 possibly be.

5 THE COURT: So, counsel, let me ask you a question.
6 In that case, you know if I agree with what you're
7 saying, do I dismiss them or do I stay them? Because
8 there is probably a real good likelihood once answers get
9 filed and claims, I don't know what federal highway is
10 doing, this may become ripe.

11 MR. PROSEN: I think dismissal is the way to go,
12 your Honor. I can certainly see a hypothetical potential
13 where at some point in the future a separate action is
14 brought. Honestly, your Honor, it would seem to me that
15 if some third party brought an action against the State,
16 that case would really be where a termination by the
17 Court, whether it's your Honor or one of the judges,
18 wherever it's assigned, or federal, who knows, that would
19 be where the appropriate place would be for perhaps a
20 third-party complaint seeking indemnification or
21 contribution whatever at that point in time. But now, we
22 don't have all the parties. We don't know -- well, most
23 all of the arguments you heard today, but certainly with
24 these -- Greg Preston, you know, John V. Parson is not
25 here. I didn't know how your Honor could possibly do it

1 today. It would seem to me and I'm hoping it never
2 happens, I think we probably all are, that the State
3 never runs into another action, but at that point in time
4 is where, I think, this sort of situation should be ripe.

5 And with regard to the indemnity related stuff,
6 again, we don't have the contracts and everything else.
7 Whether there is a duty to defend and it happens at the
8 time of the complaint being filed or the State goes and
9 resolves something and then seeks contribution -- excuse
10 me, indemnity at a later point after some moneys is paid
11 if, in fact, there are any, I would note there is no
12 allegations, like I said, in the complaint that anyone
13 has been hurt or any third-party complaints have
14 happened.

15 THE COURT: Thank you very much.

16 MR. PROSEN: Thank you, your Honor.

17 THE COURT: Go right ahead.

18 MR. MELLADO: Christopher Mellado on behalf of
19 Barletta and Joint Venture. Your Honor, I want to go
20 back to your question you posited to Mr. Prosen, and I
21 think the answer here is clear. Dismissal is warranted
22 here, not a stay and that's because the State's complaint
23 is void of factual predicate which gives rise for
24 indemnification. The State needs to reallege
25 indemnification consistent with the facts as alleged by a

1 third party. So if a count was stayed today, we would
2 have the same baseless devoid hollow obligation as stated
3 in the State's claim, which simply allege in the future
4 these claims may occur. So, your Honor, I ask the Court
5 to dismiss those claims and have the State reassert them
6 when they are ripe.

7 That brings me to my next point with respect to the
8 State's argument. The State pointed to federal condition
9 13.21. Mr. Prosen went over that, but the State simply
10 argued, well, we cited that provision. That triggers
11 indemnity, therefore, the cause of action is sufficiently
12 pled. Again, your Honor, there is no factual predicate
13 which triggers the indemnification. That's what's
14 missing. It's not conceivable to allege in the future
15 these events may occur. That is not the standard. That
16 is compounded conceivability and that is not appropriate
17 under any notice pleading standard.

18 And to briefly go back to *Fleet Boston*, the State
19 did the same thing they did in the brief. They simply
20 conglomerated Counts XVIII, XIX, and XX for the
21 proposition that, well, if we meet the *Fleetwood* test,
22 we've sufficiently pled those causes of action. XVIII,
23 XIX, XX respectively are different causes of action,
24 albeit declaratory relief. One is non-contractual
25 indemnity, one is contribution, and one is contractual

1 indemnity. Very different causes of action with very
2 underlying different elements that the Court must look to
3 that the State has not analyzed or attempted to defend
4 even today in oral argument.

5 And again to reiterate with respect to *Fleet Boston*,
6 the case in controversy was ripe for the Court's
7 consideration. Why? Because we had a state court action
8 in front of the court, but we also had a parallel
9 litigation in front of IRS appeals court. Very different
10 here. We do not have a third-party claim, liability,
11 cause of action. No further comment, your Honor.

12 THE COURT: Thank you very much. Would any of the
13 Defendants who were heard before like to be heard further
14 on this? Okay. Seeing none, counsel, how long do you
15 think your presentation on the last issue, which is
16 breach of fiduciary duty?

17 MR. PROSEN: Very short, your Honor.

18 THE COURT: What about the State? Same thing?

19 MR. PROVAZZA: Very short, your Honor.

20 THE COURT: Because originally I had said we would
21 break at 1:00 for lunch. With the thanks to the court
22 reporter if we can go a few minutes over, we could
23 probably bang out the rest of this.

24 MR. PROSEN: Your Honor, the only other thing out
25 there is the motion for alternative and more definite

1 statement. Are you going to want argument on that?

2 THE COURT: Actually, I have enough on the plate.

3 MR. PROSEN: I figured as much.

4 THE COURT: Please proceed, counsel.

5 MR. PROSEN: Thank you, your Honor. Your Honor,
6 Lawrence Prosen for AECOM. Your Honor, Count V, last but
7 certainly not least, your Honor, is the breach of
8 fiduciary duty claim against AECOM. The State claims
9 that there was some heightened duty that AECOM owed the
10 State a fiduciary duty and it does so without sighting to
11 anything. Its briefing is also relatively short with
12 regard to that. A fiduciary duty relationship, as the
13 Court knows, is a special relationship. We talked
14 earlier today about both parties being sophisticated,
15 both sitting in a commercial capacity, both parties
16 having a contractual relationship.

17 We cited cases such as *EDC Investment v. UTGR*, 275
18 A.3 537. It's a 2022 case. And the Court in that case
19 said at page 534, "The fiduciary relationship is based
20 upon the relative business capacities or lack thereof
21 between the parties and readiness among the parties that
22 follow the others guidance in complicated transactions."
23 And, again, I'll be surprised if the State says that they
24 are not a sophisticated party, that they have some sort
25 of disproportionate negotiation power, or whatever the

1 case may be. Again, briefly, they track the RPs. They
2 track the contracts. I think it's pretty common
3 knowledge. Again, outside the four corners they have
4 architects, engineers, and construction people, and all
5 of that sort of stuff that do their side of the work.
6 They have the AG that represents them contractually.
7 This isn't a case where -- the cases cited by the State
8 deal with some sort of disproportionality. One of them
9 was an attorney/client relationship, which, obviously is
10 a special relationship. My wife doesn't always get it,
11 but I tell her that that's the case. There is no simple
12 contractual relationship. It is a simple contractual
13 relationship. There is no heightened requirement here.

14 The State may argue, well, AECOM, you're a designer.
15 You've got architects and engineers. You've got
16 professional licensing seals and all those sorts of
17 things. They do, but so does the State. The State had
18 access to the same documents, same inspection reports,
19 same design, same everything. They were given and,
20 ultimately, the State took them, and again there is no
21 allegations in the complaint that any revisions were
22 necessary, any cures were needed, anything like that. To
23 us, the fiduciary duty claim should be dismissed just
24 because there isn't one. It's a claim, run-of-the-mill
25 contract between the parties' relationship and it

1 certainly does not rise to the level, your Honor, of a
2 fiduciary relationship. Thank you, your Honor.

3 THE COURT: Thank you very much. Counsel, do you
4 wish to be heard on this?

5 MR. BLEASE: Thank you, your Honor, but we don't
6 have anything for that.

7 THE COURT: Any other Defendants? Very good. The
8 State may proceed.

9 MS. MARTIN: Thank you. Diana Martin again for the
10 State. The only Defendants we have sued for breach of
11 fiduciary duty is Defendant AECOM. There are no other
12 defendants with this cause of action pending against
13 them. So we believe that we have sufficiently pled a
14 count for breach of fiduciary duty by alleging the
15 existence of the fiduciary duty, breach of that duty,
16 causation, and damages.

17 You heard AECOM take issue with whether there is or
18 can be a fiduciary duty between the State and one of its
19 engineers or designers working on the bridge. And they
20 cited to the *Chain Store Maintenance* case that we believe
21 speaks to why there is a fiduciary duty that we've
22 alleged in this case. That case, and that was decided in
23 this court by Judge Silverstein, was on a motion for
24 summary judgment. Whether there is a fiduciary duty is
25 generally a very fact intensive inquiry. There a

1 business was suing its competitor and one of its
2 employees for providing information to its competitor,
3 proprietary customer information, and it sued both for
4 breach of fiduciary duty.

5 And the Court said, I'm entering summary judgment as
6 to the competitor because there there was no special
7 relationship. The Plaintiff was not imposing confidence
8 or trust or faith in the competitor. The Plaintiff
9 wasn't relying on advice given by the competitor. But
10 with regard to the employee, it denied the motion for
11 summary judgment and noted that the employee can act as
12 an agent of the employer in which case they owe a
13 fiduciary duty with regard to that relationship. So we
14 believe that the allegations in the complaint demonstrate
15 similar placing of trust and rely on advice of AECOM.

16 In paragraph 46 the State alleges that RIDOT was
17 looking for a consultant to provide structural
18 engineering services. Paragraph 53, the RFP called for
19 the consultant to provide advice and guidance to RIDOT.
20 In Paragraph 54 we allege again that the consultant was
21 to advise and guide RIDOT. Paragraph 77 specifies that
22 AECOM was to act as RIDOT's representative. So these
23 allegations are similar to the cases cited by AECOM that
24 there was that trust, there was that confidence and
25 reliance in the relationship between the State and AECOM.

1 We also allege that AECOM demonstrated and had special
2 experience or expertise.

3 In paragraph 56 we allege that AECOM demonstrated
4 extensive knowledge of the bridge history by referencing
5 repairs and rehabilitation efforts taken between 1996 and
6 1998. And in the following paragraph, number 57, we
7 allege that in AECOM's letter of interest to the State
8 explained the design of the bridge, previous repairs to
9 the bridge, and previous inspections to the bridge
10 demonstrating that it had knowledge of the bridge history
11 and special unique design and characteristics and
12 features.

13 These allegations are sufficient to state a
14 fiduciary duty. They show the State placed trust and
15 confidence in AECOM and they show that the State relied
16 on the judgment and advice of AECOM and that is
17 specifically addressed in paragraph 117. So we believe
18 that we have satisfied the pleading standard for that
19 count, your Honor.

20 THE COURT: Thank you very much.

21 MS. MARTIN: Thank you, your Honor.

22 THE COURT: Counsel.

23 MR. PROSEN: Lawrence Prosen again, your Honor, for
24 AECOM. Luckily, I will be brief. Your Honor,
25 allegations are one thing but as a matter of law, your

1 Honor, can certainly make the determination now as to
2 whether or not there is a fiduciary duty here. I would
3 be hard pressed to find any entity that enters into a
4 contract with another party that doesn't expect that
5 other party and trusts the other party. Your Honor and I
6 discussed briefly the implied duty of fair dealing and
7 good faith. It's in every contract. Making those
8 allegations does not mean that all of a sudden because I
9 say it in a complaint that I am now a fiduciary. If that
10 were the case then one might argue that everybody is a
11 fiduciary and everybody under any contract.

12 THE COURT: Well, I guess I sua sponte said that the
13 Joint Venture was a fiduciary so my apologies.

14 MR. PROSEN: I would never disagree with, your
15 Honor. It's a heightened requirement, your Honor. It's
16 not enough to say -- it's the old I know you are but what
17 am I or Justice Frankfurter, I know it when I see it.
18 It's more than that. Your Honor, as a matter of law
19 should be able to make the determination, particularly
20 amongst two sophisticated parties. Again, it's not like
21 AECOM comes in and says to your Honor, your Honor, you
22 own a bridge? I will fix it for you. And maybe your
23 Honor has a lot more construction experience or whatever
24 the case is or anyone else in this room. It's different.
25 It's a heightened promise. A new fiduciary obligation

1 that rises to the level, even at the pleading stage right
2 now, that changes that.

3 Again, as the Court in the *EDC* decision said, "The
4 fiduciary duty is one of trust and confidence imposes a
5 duty of the fiduciary to act with the utmost good faith."
6 The State, makes allegations that AECOM in its proposal
7 said, hey, we know the bridge well. It's a proposal.
8 I'm sure, and I have not seen -- I guess at some point in
9 discovery we'll see all the proposals for all these jobs.
10 I'm sure there's comparable statements made by other
11 bidders that said, hey, we have tons of bridge
12 experience, and we built the biggest bridge in the world
13 or, hey, this or that. I don't want to use the term
14 puffery. It's part of selling yourself. I can say I've
15 got 30 years of construction building contract experience
16 and you don't. I may win the competition with the
17 client. I may not, but that doesn't create on to itself
18 a fiduciary duty, your Honor, and as a result,
19 respectfully, we think that count should be dismissed.
20 Thank you for your time, your Honor.

21 THE COURT: Thank you very much. First of all, I
22 want to thank the parties for their oral arguments today.
23 The papers were very good, but this helps focus in on a
24 number of issues. I want to be able to turn around the
25 decision relatively quickly. I have a jury trial dealing

1 with a helicopter crash with some of these same issues.
2 I want to see if it's possible to get it done beforehand.
3 So I would ask the Plaintiff and the Defendant to please
4 order a transcript from the court reporter. It will just
5 make things move along a little more quickly. The record
6 is now closed on the motion to dismiss. Thank you to
7 everyone. Those who booked two days here hopefully can
8 cancel your hotel and book flights back to where you come
9 from. Thank you all very much.

10 (R E C E S S)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25