

STATE OF RHODE ISLAND
 PROVIDENCE, SC.

SUPERIOR COURT

STATE OF RHODE ISLAND,

Plaintiff,

v.

AECOM TECHNICAL SERVICES, INC.,

AETNA BRIDGE COMPANY,

ARIES SUPPORT SERVICES, INC.,

BARLETTA HEAVY DIVISION, INC.

BARLETTA/AETNA I-195 WASHINGTON

BRIDGE NORTH PHASE 2 JV,

COLLINS ENGINEERS, INC.,

COMMONWEALTH ENGINEERS &

CONSULTANTS, INC.,

JACOBS ENGINEERING GROUP, INC.,

MICHAEL BAKER INTERNATIONAL, INC.,

PRIME AE GROUP, INC.,

STEERE ENGINEERING, INC.,

TRANSYSTEMS CORPORATION, and

VANASSE HANGEN BRUSTLIN, INC.,

Defendants.

C.A. NO. PC-2024-4526

Hearing Date: TBD by Judge Stern

**DEFENDANT JACOBS ENGINEERING GROUP, INC.'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS**

Pursuant to Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure, Defendant Jacobs Engineering Group, Inc. (“Jacobs”) submits this Memorandum of Law in Support of its Motion to Dismiss. Jacobs seeks dismissal of the negligence claim (Count XIV) brought against it by the State of Rhode Island (the “State”) in its Amended Complaint.

The economic loss doctrine bars a negligence claim when the only alleged property damage involves damage to the property at the center of the dispute. In its original complaint, the State failed to adequately allege any property damage apart from deterioration of the Westbound

Washington Bridge itself.¹ Now, after being given an opportunity to amend its complaint and correct this fundamental pleading deficiency, the State still fails to sufficiently allege damage to “other property” that would allow it to escape the economic loss doctrine’s preclusive effect. Unable to satisfy this basic requirement, the State’s negligence claim against Jacobs must be dismissed.

I. BACKGROUND

On August 16, 2024, the State filed its Complaint, which included the following four claims against Jacobs: (1) breach of contract (Count XIII); (2) negligence (Count XIV); (3) declaratory judgment regarding non-contractual indemnity (Count XIX); and (4) declaratory judgment regarding contribution (Count XX). On October 31, 2024, Jacobs moved to dismiss these claims and argued, among other things, that the economic loss doctrine barred the State’s negligence claim. After holding a hearing on January 21, 2025, the Court subsequently issued a decision on February 27, 2025 (the “Decision”). In its Decision, and as it pertains to Jacobs, the Court held that the breach of contract claim could proceed, the State would be given leave to amend its negligence claims, and the declaratory judgment claims would be “stayed pending amendment or action by a third-party.” Decision at 39–40.

In connection with the negligence claim, the Court rejected a number of arguments raised by the State as defenses to the economic loss doctrine’s application. Specifically, the Court “decline[d] to create a sovereign exception to the economic loss doctrine,” “decline[d] to create a public safety exception to the economic loss doctrine,” and held that the State had failed to allege

¹ For ease of reference, the bridge formally known as Washington Bridge North No. 700, which carried westbound traffic over the Seekonk River and is the focal point of this lawsuit, will be referred to as the “Westbound Washington Bridge.” The bridge formally known as Rhode Island Bridge No. 200, which carried eastbound traffic over the Seekonk River, will be referred to as the “Eastbound Washington Bridge.”

that any of its contracts with Defendants “specifically allow[] the State to sue for negligence.” *Id.* at 12–13, 15. In addition to these holdings, the Court also concluded that “the State ha[d] not provided the Defendants with adequate notice of [the alleged] property damage” and that “[i]f the property damage is the bridge itself, then the negligence claims would be barred by the economic loss doctrine.” *Id.* at 14–15. In light of this pleading deficiency, the Court “grant[ed] the State leave to amend its Complaint to give the Defendants adequate notice of what property has been damaged.” *Id.* at 15.

On April 14, 2025, the State filed its Amended Complaint, which includes the same four claims against Jacobs as the original Complaint.² In an apparent effort to address its failure to adequately allege damage to “other property,” the State now contends that there has been wear and tear to the Eastbound Washington Bridge. In particular, the State alleges that “[t]o compensate for the emergency closure of the [Westbound] Washington Bridge, westbound traffic was rerouted onto the Eastbound Washington Bridge, substantially increasing its traffic volume.” Am. Compl. ¶ 101. According to the State, “[d]ue to the increased traffic volume on the Eastbound Washington Bridge since the emergency closure of the [Westbound] Washington Bridge, there has been wear and tear to the Eastbound Washington Bridge that would not have occurred otherwise.” *Id.* ¶ 103. Despite suggesting in its opposition to Jacobs’ first motion to dismiss that “[i]t was not inconceivable that demolishing the [Westbound Washington] Bridge resulted in property damage to surrounding land and structures” (Opposition at 36–37), the State has not alleged any such

² Jacobs does not move to dismiss the State’s breach of contract claim and will file an answer after the Court has issued a decision on this Motion.

damage in its Amended Complaint. To the contrary, the State's new allegations of supposed property damage are limited to the purported wear and tear to the Eastbound Washington Bridge.

II. LEGAL STANDARD

Pursuant to Rule 12(b)(6), a complaint must be dismissed if it fails to state a claim upon which relief can be granted. The purpose of a motion to dismiss is to “test the sufficiency of the complaint.” *Pontarelli v. Rhode Island Dep’t of Elementary & Secondary Educ.*, 176 A.3d 472, 476 (R.I. 2018) (internal quotation marks omitted). A motion to dismiss “allows a court to dispose of a proceeding at an early stage if the complaint fails to set forth provable facts under which relief can be granted.” *Leone v. Mortg. Elec. Registration Sys.*, 101 A.3d 869, 873 (R.I. 2014). In assessing a motion to dismiss, “the Court need not credit conclusory allegations, bald assertions or unsupportable conclusions.” *Doe ex rel. his Parents, Nat. Guardians v. E. Greenwich Sch. Dep’t*, No. C.A. PC. 2004-0697, 2004 WL 2821639, at *8 (R.I. Super. Dec. 3, 2004); *see Palazzo v. Alves*, 944 A.2d 144, 154–55, n.17 (R.I. 2008) (affirming dismissal of claim based on “unsupported and conclusory allegations”).

III. ARGUMENT

Given that the Court has already rejected nearly all of the State's defenses to the economic loss doctrine, the central issue to decide in connection with the State's negligence claim is whether the State has adequately alleged damage to “other property.” The answer is clearly no and the State's negligence claim should be dismissed for three reasons. First, under well-established law, alleged wear and tear to the Eastbound Washington Bridge constitutes, at best, loss of use damages that are economic in nature, and not physical property damage. Second, to the extent that the alleged wear and tear is not loss of use damages (it is), the wear and tear is foreseeable, which prevents it from qualifying as damage to “other property” for purposes of the economic loss

doctrine. Third, even if the economic loss doctrine does not apply, the State has nonetheless failed to sufficiently allege that it suffered any harm due to purportedly increased wear and tear to the Eastbound Washington Bridge.

a. At most, wear and tear to the Eastbound Washington Bridge is an economic loss arising from the loss of use of the Westbound Washington Bridge.

Alleged wear and tear to the Eastbound Washington Bridge is, at most, an economic loss arising from the loss of use of the Westbound Washington Bridge. The State does not allege that an accident caused damage to the Eastbound Washington Bridge, that demolition work damaged the Eastbound Washington Bridge, or any other similar physical act that could potentially result in property damage. Instead, the State's negligence claim is premised entirely on its inability to use the Westbound Washington Bridge for its intended purpose (carrying traffic across the Seekonk River) and the alleged added cost of being deprived of this use (the alleged wear and tear to the Eastbound Washington Bridge). Loss of use damages, however, are a textbook example of economic losses that are barred by the economic loss doctrine. *E.g., KeraLink Int'l, Inc. v. Geri-Care Pharms. Corp.*, 60 F.4th 175, 184 (4th Cir. 2023) ("Economic losses include such things as the loss of value or use of the product itself, the cost to repair or replace the product, or the lost profits resulting from the loss of use of the product.") (emphasis added and quotations omitted); *Isla Nena Air Servs., Inc. v. Cessna Aircraft Co.*, 449 F.3d 85, 86–88 (1st Cir. 2006) (affirming dismissal of tort claims on economic loss doctrine grounds despite allegations of loss of use of an aircraft); *Trans States Airlines v. Pratt & Whitney Canada, Inc.*, 86 F.3d 725, 729 (7th Cir. 1996) (under the economic loss doctrine, "economic loss" refers to the costs of repairing or replacing a defective product and consequent loss of use of the product") (emphasis added).³

³ See also *Glob. Hunter, LLC v. Des Moines Flying Serv., Inc.*, No. 1:18-CV-062-C, 2019 WL 7757888, at *3 (N.D. Tex. June 18, 2019) (holding that "damages resulting from the loss of use of

If the State were allowed to proceed with a negligence claim based on nothing more than alleged wear and tear to the Eastbound Washington Bridge, the economic loss doctrine would be rendered meaningless. It is widely recognized that “a party may not recover in tort when a defective product harms only the product itself.” Decision at 10 (quoting *Isla Nena Air Servs.*, 449 F.3d at 87); see *Wyman v. Ayer Props., LLC*, 11 N.E.3d 1074, 1080 (Mass. 2014) (“Essentially, where the negligent design or construction of a product leads to damage only to the product itself, the recovery for economic loss is in contract, and the economic loss rule bars recovery in tort.”). Clearly any time that there is a defective product the user of the product may need to use a replacement product, and the replacement product may incur additional wear and tear as a result of increased use. To provide a basic example, if you had two cars and one cannot be used because it is defective, the second car will incur added wear and tear simply because it is now being used more frequently. If such a scenario—which is all that the State alleges here (i.e., one bridge needs to be used more frequently because another bridge cannot be used)—was enough to circumvent the economic loss doctrine, one would be hard pressed to find any cases where the doctrine still applies. In the words of the U.S. Supreme Court, “contract law would drown in a sea of tort.” *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 866 (1986).

Unable to allege anything beyond loss of use damages (at best), the State’s negligence claim is barred by the economic loss doctrine.

[an] aircraft, amount[ed] to purely economic losses”); *Pac. Indem. Co. v. Whaley*, 572 F. Supp. 2d 626, 628 (D. Md. 2008) (“economic losses include such things as the loss of value or use of the product itself”) (internal quotations omitted); *Kestrel Holdings I, L.L.C. v. Learjet Inc.*, 316 F. Supp. 2d 1071, 1075 (D. Kan. 2004) (“economic loss includes damages for ... loss of use of a defective product”); *Fireman’s Fund Ins. Co. v. Childs*, 52 F. Supp. 2d 139, 142 (D. Me. 1999) (defining “economic losses” to include “loss of use”).

b. Foreseeable wear and tear to the Eastbound Washington Bridge does not constitute damage to “other property” under the economic loss doctrine.

In the context of the economic loss doctrine, the Rhode Island Supreme Court has repeatedly recognized that “tort principles, such as negligence, are better suited for resolving claims involving unanticipated physical injury, particularly those arising out of an accident” and that “[c]ontract principles, on the other hand, are generally more appropriate for determining claims for consequential damage that the parties have, or could have, addressed in their agreement.” *Hexagon Holdings, Inc. v. Carlisle Syntec Inc.*, 199 A.3d 1034, 1042–43 (R.I. 2019) (internal quotations omitted and emphasis added)); *Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1276 (R.I. 2007) (same); *Bos. Inv. Prop. No. 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I. 1995) (same). Indeed, “[t]he economic loss doctrine was created specifically to induce commercial entities to allocate their foreseeable financial risks through the utilization of contract law rather than tort law.” *Triton Realty Ltd. P’ship v. Almeida*, No. C.A. PC04-2335, 2006 WL 2089255, at *4 (R.I. Super. July 25, 2006) (emphasis added) (citing *Bos. Inv. Prop. No. 1 State*, 658 A.2d at 516–18).

In line with the goal of using tort law to address unanticipated harms and contract law for addressing foreseeable harms, numerous courts across the country have held that foreseeable damage does not qualify as damage to “other property” under the economic loss doctrine. *E.g.*, *Gail Frances, Inc. v. Alaska Diesel Elec., Inc.*, 62 F. Supp. 2d 511, 517–18 (D.R.I. 1999) (dismissing a negligence claim under the economic loss doctrine because the alleged injury was financial and should have been allocated for by contract, and noting that “[i]n considering the [economic loss] doctrine, Rhode Island courts have emphasized ... the type of damages that a plaintiff incurs” and “distinguish between economic loss due to disappointing product performance and other injuries resulting from unforeseeable product danger”) (emphasis added); *Palmetto*

Linen Serv., Inc. v. U.N.X., Inc., 205 F.3d 126, 129–30 (4th Cir. 2000) (“In the context of a commercial transaction between sophisticated parties, injury to other property is not actionable in tort if the injury was or should have been reasonably contemplated by the parties to the contract.”); *Dakota Gasification Co. v. Pascoe Bldg. Sys., a Div. of Amcord, Inc.*, 91 F.3d 1094, 1101 (8th Cir. 1996) (holding that “the economic loss doctrine extends to preclude liability in tort for physical damage to other nearby property of commercial purchasers who could foresee such risks at the time of purchase”); *Detroit Edison Co. v. NABCO, Inc.*, 35 F.3d 236, 241 (6th Cir. 1994) (stating that “tort claims for damage to other property are barred by the economic loss doctrine if those losses are direct and consequential losses that were within the contemplation of the parties and that, therefore, could have been the subject of negotiations between the parties”).⁴

Here, redirecting traffic to the Eastbound Washington Bridge if the Westbound Washington Bridge is closed is entirely foreseeable. In fact, given that the two parallel bridges both span the Seekonk River, redirecting westbound traffic to the Eastbound Washington Bridge is the most obvious and likely solution for a closure of the Westbound Washington Bridge. Unsurprisingly, just a few days after the Westbound Washington Bridge’s closure, the State announced that the

⁴ See also *Westfield Ins. Co. v. Birkey’s Farm Store, Inc.*, 924 N.E.2d 1231, 1243 (Ill. App.2010) (“[T]he economic loss doctrine also bars tort recovery for any type of damage that one would reasonably expect as a direct consequence of, or incidental to, the failure of the defective product.”); *Veldhuizen v. A.O. Smith Corp.*, 839 F. Supp. 669, 677 (D. Minn. 1993) (holding that damages to silage and cattle due to faulty silo that failed to work as expected were economic damages not exempted as “other property”); *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F. Supp. 1027, 1061 (D.S.C. 1993) (holding that cleanup costs and damages from pipeline component that caused a spill were economic because they were foreseeable and within the contemplation of the parties); *Neibarger v. Universal Cooperatives, Inc.*, 486 N.W.2d 612, 621 (Mich. 1992) (damage to cattle herd due to faulty milking system was economic loss because economic expectations were not met); *Nelson v. Todd’s Ltd.*, 426 N.W.2d 120, 125 (Iowa 1988) (“When, as here, the loss relates to a consumer or user’s disappointed expectations due to deterioration, internal breakdown or non-accidental cause, the remedy lies in contract.”).

Eastbound Washington Bridge would be used as an alternative route.⁵ Further, prior to the Westbound Washington Bridge's opening in 1968, the Eastbound Washington Bridge was used for "both eastbound and westbound traffic" for decades. Am. Compl. ¶¶ 96, 99. Any wear and tear to the Eastbound Washington Bridge caused by increased traffic due to the shutdown of the Westbound Washington Bridge falls squarely within the category of "consequential damage that the parties have, or could have, addressed in their agreement." See *Hexagon Holdings*, 199 A.3d at 1042–43; *Franklin Grove Corp.*, 936 A.2d at 1276; *Bos. Inv. Prop. No. 1 State*, 658 A.2d at 517.

In short, increased wear and tear to the Eastbound Washington Bridge does not constitute actionable damage to "other property" because such damage is foreseeable and could have been addressed in the State's various contracts related to the bridges, including its inspection contract with Jacobs. Because there was nothing preventing the State from using contract law to protect itself from foreseeable risks related to a bridge closure, the State's negligence claim against Jacobs must be dismissed.

c. The State has failed to adequately allege that increased wear and tear to the Eastbound Washington Bridge has caused it any harm.

Last, the State contends that "[d]ue to the increased traffic volume on the Eastbound Washington Bridge since the emergency closure of the [Westbound] Washington Bridge, there has been wear and tear to the Eastbound Washington Bridge that would not have otherwise occurred." Am. Compl. ¶ 103. Critically, however, the State fails to allege that the current wear and tear to the Eastbound Washington Bridge exceeds the combined wear and tear that the Westbound and

⁵ See RIDOT's publicly available "Washington Bridge Update Archives," https://www.dot.ri.gov/projects/WashingtonBridgeClosure/update_archives.php (stating that, on December 14, 2023, just three days after the Westbound Washington Bridge's closure, there was "[r]ound the clock work on creating two lanes on the eastbound side of the bridge" and that, on December 15, 2023, "RIDOT opened two bypass lanes on the eastbound side of the Washington Bridge").

Eastbound Washington Bridges would have experienced had the Westbound portion continued in use. To put it differently, accepting all of the State's allegations as true, there is nothing in the Amended Complaint to suggest anything other than the fact that expected, routine wear and tear to the Westbound Washington Bridge was transferred to the Eastbound Washington Bridge. The State was always going to incur wear and tear on its bridges due to traffic and it has not been harmed just because that wear and tear is now occurring on the Eastbound Washington Bridge instead of the Westbound Washington Bridge.⁶

Because the State has failed to allege that it has suffered a net increase in wear and tear between the two bridges, it has failed to adequately plead any harm and its negligence claim must be dismissed. *See Medeiros v. Sitrin*, 984 A.2d 620, 625 (R.I. 2009) (holding that "actual loss or damage" is an element of a negligence claim).

IV. CONCLUSION

For the foregoing reasons, Jacobs respectfully requests that the Court (1) grant Jacobs' Motion to Dismiss; (2) dismiss the State's negligence claim against Jacobs (Count XIV) with prejudice and without leave to amend; and (3) grant any other relief as the Court deems just and necessary.

⁶ Notably, the State has publicly confirmed, on multiple occasions, that the Eastbound Washington Bridge is structurally sound and does not present any safety concerns. For example, on January 13, 2025, State officials stated that the Eastbound Washington Bridge had "not experienced any significant deterioration despite carrying twice the normal traffic since it was pressed into an expanded role" and that a monitoring report completed in November 2024 only showed the need for "routine improvements, refreshes and minor repairs." <https://www.ripbs.org/the-publics-radio/state-officials-say-eastbound-washington-bridge-remains-safe>. Thus, it is unclear whether the State could ever allege that the current wear and tear to the Eastbound Washington Bridge exceeds the expected net wear and tear of the Westbound and Eastbound Washington Bridges.

Michael R. Creta

Michael R. Creta (#9535)

michael.creta@klgates.com

John C. Blessington, *pro hac vice*

john.blessington@klgates.com

K&L GATES LLP

One Congress Street

Suite 2900

Boston, MA 02114

Telephone: (617) 951-9101

Fax: (617) 261-3175

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CERTIFICATE OF SERVICE

I hereby certify that, on the 13th day of June 2025, I filed and served this document through the electronic filing system on all registered users. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's electronic filing system.

/s/ Michael R. Creta

Michael R. Creta