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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-2024-04526

PLAINTIFF'S CONSOLIDATED RESPONSE IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

This matter is before the Court on motions to dismiss filed by Defendants Steere Engineering, Inc., Jacobs Engineering Group, Inc., Aries Support Services, Inc., and Commonwealth Engineers & Consultants, Inc. The Court must deny these motions because the State has explicitly alleged tangible, physical harm to independent property, articulated breaches of independent professional duties that exist apart from any contractual obligations, and clearly identified specific contractual provisions allowing recovery for negligence. As such, application of the economic loss doctrine is precluded under Rhode Island law, and the State's claims should proceed.

FACTS & TRAVEL

In this action, the State is suing entities involved in construction projects or inspections of the Washington Bridge North No. 700 ("Washington Bridge"), which it alleges bear responsibility for the Bridge's failure, emergency closure, and ultimate demolition. After a majority of the Defendants moved to dismiss or otherwise dispose of the State's action, the Court entered an order denying the motions to dismiss the State's breach of contract and breach of fiduciary duty claims and staying the State's claims for contractual indemnity and declaratory judgment.

With regard to the State's claims for negligence, which Defendants had moved to dismiss as barred by the economic loss doctrine, the Court gave the State leave to amend its Complaint. Although the Court recognized that the "State ha[d] alleged property damage throughout its Complaint in relation to its negligence claims," and that "[a]lleging damage to other property, in this case property other than the bridge itself, circumvents the economic loss doctrine," it determined "the State ha[d] not provided the Defendants with adequate notice of what this property damage is under the Superior Court Rules of Civil Procedure." (Feb. 27, 2025 Decision at p. 14). Thus, the Court granted the State leave to amend its complaint "to give the Defendants adequate notice of what property has been damaged." (*Id*. at p. 15)

Additionally, the State had argued the Court should not apply the economic loss doctrine because one or more contracts between the parties might specifically permit the State to bring a claim for negligence. Finding the State had not made an allegation to this effect in the Complaint, the Court held the State had "failed to plead that such a clause exists," and gave the State leave to amend its complaint to make such an allegation. (*Id*. at pp. 15-16).

In response, the State filed an Amended Complaint in which it made detailed allegations regarding the damage to other property caused by the Defendants' negligence, as set forth below:

M. Physical Wear and Tear Damage to Eastbound Washington Bridge

96. The Eastbound Washington Bridge, formally known as Rhode Island Bridge No. 200 ("Eastbound Washington Bridge"), was originally constructed between 1928 and 1930 and was used to connect Providence and East Providence for both eastbound and westbound traffic.

97. By the 1960s, the Eastbound Washington Bridge was unable to handle the traffic volume, which had grown significantly since its original construction.

98. To reduce the traffic volume and avoid structural deterioration on the Eastbound Washington Bridge, a second parallel bridge — the Washington Bridge (Washington Bridge North No. 700) — was constructed specifically to handle westbound traffic.

99. After the completion of the Washington Bridge in 1968, the Eastbound Washington Bridge was reconfigured exclusively for eastbound traffic, and subsequently, Rhode Island contract number 2003-CB-061 reconstructed the Eastbound Washington Bridge with a modern steel structure and opened it to the public in 2007.

100. The Eastbound Washington Bridge and Washington Bridge, while parallel, are entirely separate, independent bridges with distinct structural components and foundations.

101. To compensate for the emergency closure of the Washington Bridge, westbound traffic was rerouted onto the Eastbound Washington Bridge, substantially increasing its traffic volume.

102. The traffic volume on the Eastbound Washington Bridge is now significantly greater than it was . . . in the 1960s, and the increased traffic volume has resulted in physical wear and tear damage to the bridge.

103. Due to the increased traffic volume on the Eastbound Washington Bridge since the emergency closure of the Washington Bridge, there has been wear and tear to the Eastbound Washington Bridge that would not have otherwise occurred.

104. Due to this increased traffic volume and increased wear and tear, repairs to physical aspects of the Eastbound Washington Bridge are required on a much more frequent basis than they would have otherwise been required.

105. Due to this increased traffic volume and increased wear and tear, physical maintenance is required on a more frequent basis to keep the Eastbound Washington Bridge in safe operating condition.

106. Due to this increased traffic volume and increased wear and tear, the State has had to install advanced monitoring systems, including real-time sensors and structural health monitoring equipment, to track the structural health and integrity of the Eastbound Washington Bridge in order to ensure ongoing public safety.

(Am. Comp. at pp. 21-23). The State also made amendments to its negligence counts, setting out the Defendants' various professional duties imposed by law and their breach of those duties, (*id*. at ¶¶ 113-115, 122-123, 175-176, 185-186), and the specific contractual provisions allowing the State to pursue claims for negligence. (*Id*. at ¶¶ 116, 187).[1]

STANDARD OF REVIEW

"It is well settled that a Rule 12(b)(6) motion has a narrow and specific purpose: 'to test the sufficiency of the complaint.'" *Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 21 (R.I. 2018) (quoting *Multi-State Restoration, Inc. v. DWS Props., LLC*, 61 A.3d 414, 416 (R.I. 2013)). "When a hearing justice rules on such a motion, he or she is to 'look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff's favor.'" *Id*. (quoting *Multi-State Restoration*, 61 A.3d at 416). "If 'it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim', then the motion to dismiss may be granted." *Id*. (quoting *Rein v. ESS Grp.*, 184 A.3d 695, 699 (R.I. 2018)).

[1] The State made additional amendments, such as adding counts for Negligent Misrepresentation (Am. Comp. Counts XXI & XXII), but they are not relevant to the issues currently before the Court.

ARGUMENT

I. The State has Adequately Alleged Physical Damage to Other Property, Precluding Application of the Economic Loss Doctrine

Defendants Steere Engineering, Commonwealth Engineers & Consultants, Jacobs Engineering Group, and Aries Support Services[2] seek dismissal of the State's negligence claims under the economic loss doctrine. Their motions must be denied because the State has adequately alleged actual physical damage to other property—the Eastbound Washington Bridge—precluding application of the economic loss doctrine.

In its February 27, 2025 Decision, the Court clearly articulated the applicable standard under Rhode Island law – the economic loss doctrine does not apply when the defendant's negligence results in damage to other property:

> "If there is damage to other property, a plaintiff may then plead tort claims to recover economic damages[.]" Jeffrey L. Goodman et al., *A Guide to Understanding the Economic Loss Doctrine*, 67 Drake L. Rev. 1, 34 (2019). "[T]he basic concept is simple[,] [i]f a defective product goes beyond damaging itself and causes damage to other property, then the plaintiff's claim is not barred by the economic loss doctrine." *Id.* at 34-35; *see also Franklin Grove Corp.*, 936 A.2d at 1275 (Under the economic loss doctrine, "a plaintiff may not recover damages under a negligence claim when the plaintiff *has suffered no personal injury or property damage.*") (emphasis added).

(Feb. 27, 2025 Decision at p. 10).

The State's Amended Complaint explicitly alleges direct physical harm to the Eastbound Washington Bridge, a distinct and independently constructed structure separate from the Westbound Bridge. (Am. Comp. at ¶¶ 96-106). Specifically, the Amended Complaint alleges that the Defendants' negligent conduct caused the emergency closure of the Westbound Bridge, forcing traffic to be rerouted onto the Eastbound Bridge. (*Id*. at ¶¶ 101-104). The resultant substantial

[2] Defendant Aries did not advance its own arguments in support of its motion to dismiss—it merely "relies upon and incorporates by reference the memorandum filed by" Defendant Jacobs.

increase in traffic volume directly caused measurable, physical damage in the form of accelerated deterioration and increased wear and tear, and necessitated enhanced repair and maintenance measures. (*Id*. at ¶¶ 104–106). These allegations plainly describe physical harm to other property and go well beyond mere economic consequences or loss of use.

Despite this, Defendants raise myriad arguments regarding why, in their view, the doctrine should still apply. All of these arguments boil down to the same core assertion: since the State is seeking an economic (*i.e.*, monetary) remedy, the economic loss doctrine should bar its negligence claim. However, an application of the Defendants' proposed rule would eviscerate the property damage exception altogether. As the Oregon Supreme Court explained: "Every physical injury to property can be characterized as a species of 'economic loss' for the property owner, because every injury diminishes the financial value of the property owner's assets." *Harris v. Suniga*, 180 P.3d 12, 16 (Or. 2008).[3] The property damage exception comports with the policies underpinning the economic loss doctrine because "[u]nlike economic losses to third parties, which can be indeterminate and potentially unlimited, physical damage to property ordinarily can be ascertained, assessed, and paid. Once a party has paid damages related to the physical injury to property caused by its negligence, its liability is at an end." *Id*. at 18.

Moreover, Defendants fail to cite any authority, either from Rhode Island or other jurisdictions, that categorize physical damage from increased wear and tear on a *separate* product as purely economic loss. Although Defendants cite many cases in their briefing, none of them involve claims for physical damage to property other than the product itself. Therefore, each of the Defendants' arguments, which are addressed in turn below, should be rejected.

[3] *Harris* involved a commercial property owner's claims for negligence against a contractor for failing to install required flashing, which caused water damage and dry rot to the building. *Id*. at 305.

A. Defendants' Mischaracterize the State's Allegations of Direct Physical Damages as Mere Economic Damages from Loss of Use

First, all Defendants argue that the State's allegations of physical damage to the Eastbound Bridge amount to no more than a request for recovery of economic losses due to the "loss of use" of the Westbound Bridge. (Mem. of Law of Defendant Steere Engineering, Inc. in Supp. of Mot. to Dismiss Am. Comp. ("Steere Mem.") at pp. 7-9; Defendant Jacobs Engineering Group, Inc.'s Mem. of Law in Supp. of its Mot. to Dismiss ("Jacobs Mem.") at pp. 5-6; Mem. of Law in Supp. of Defendant Commonwealth Engineers & Consultants, Inc.'s Mot. to Dismiss Plaintiff State of Rhode Island's Am. Comp. ("Commonwealth Mem.") at pp. 3-5). But this characterization of the State's damages as simple economic damages for loss of use misinterprets the allegations set forth in the Amended Complaint. "'Economic loss results from the failure of the product to perform to the level expected by the buyer and the seller.'" *Hart Eng'g Co. v. FMC Corp.*, 593 F. Supp. 1471, 1483 (D.R.I. 1984) (quoting *Jones & Laughlin Steel Corp. v. Johns-Manville Sales Corp.*, 626 F.2d 280, 288-89 (3d Cir. 1980)). "'Such loss is most frequently measured by the cost of repairing the infirmity or by the difference in the value of the product as it exists and the value it would have had if it performed as expected.'" *Id*. In the cases cited by Defendants, damages barred by the economic loss doctrine consisted of the economic costs of repairing or replacing a damaged product itself. *See*, *e.g.*, *Kestrel Holdings I, L.L.C. v. Learjet*, *Inc.*, 316 F. Supp. 2d 1071, 1076 (D. Kan. 2004) (plaintiff who did not allege damage to other property could not recover costs for servicing unusable aircraft or for using alternative aircraft because they were economic damages relating to the aircraft–the product at issue–itself); *Glob. Hunter, LLC v. Des Moines Flying Serv., Inc.*, No. 1:18-CV-062-C, 2019 WL 7757888, *3 (N.D. Tex. June 18, 2019) (plaintiff who did not allege damage to other property could not recover costs for renting alternative aircraft engine, loss

of profit due to lost sale of aircraft, or loss of use of aircraft because they were economic damages relating to the aircraft—the product at issue—itself).

For example, the primary case relied on by all three Defendants in their briefing illustrates the distinction between claims involving damage solely to the "product itself" and those, like the State's, involving damage to other physical property. In *Isla Nena Air Services, Inc. v. Cessna Aircraft Company*, the plaintiff sued an aircraft manufacturer after its aircraft was destroyed in an emergency landing. 449 F.3d 85, 86 (1st Cir. 2006). There, the First Circuit explained that the economic loss doctrine applied because the plaintiff sought damages only for the loss of value of the aircraft, the cost to repair the aircraft and engine, the lost profits from operation of the aircraft, and indemnity from passenger claims – there was no allegation that the accident damaged any other property but the plane itself. *Id*. at 87-88; *see also Isla Nena Air Servs., Inc. v. Cessna Aircraft Co*., 380 F. Supp. 2d 74, 76 (D.P.R. 2005) (District Court decision).[4]

These are not the type of damages sought by the State in its negligence claims, which could not simply lease or purchase a replacement bridge (and subsequently seek repayment of that cost

[4] The other cases relied on by Defendants further illustrate this distinction. *See In re Generac Solar Power Sys. Mktg., Sales Practices, & Products Liab. Litig*., 735 F. Supp. 3d 1047, 1056-57 (E.D. Wis. 2024) (explaining that the economic loss doctrine would not bar recovery for fire damage to a home caused by a faulty component in a solar panel system even if it would apply to negligence claims for damage to the component itself); *Bay State-Spray & Provincetown S.S., Inc. v. Caterpillar Tractor Co*., 404 Mass. 103, 104, 107 533 N.E.2d 1350, 1351, 1353 (1989) (plaintiff filed contract-based claim to recover economic losses for costs of repairs and lost profits after ship engine malfunctioned, disrupting ship's operating schedule); *Marcil v. John Deere Indus. Equip. Co*., 403 N.E.2d 430, 434 (Mass. App. Ct. 1980) (plaintiff sought damages for repair costs and loss of use of excavation loader without suggesting "damage to any property other than to the loader itself"); *Trans States Airlines v. Pratt & Whitney Canada, Inc*., 130 F.3d 290, 291 (7th Cir. 1997) (claim for lost revenues from canceled flights due to airplane engine failure barred by economic loss rule). *Compare Nebraska Innkeepers, Inc. v. Pittsburgh-Des Moines Corp*., 345 N.W.2d 124, 126 (Iowa 1984) (recognizing plaintiff "who sustains economic loss only cannot recover in damages from persons whose negligent conduct damages bridges, regardless of how vital to the claimant be the flow of commerce that is interrupted [unless alleging, *inter alia*,] physical injury or direct damages to the claimant's property or person").

from Defendants). Instead, as is clear from the State's allegations, it is seeking to recover for the actual physical deterioration and tangible property damage caused by the unforeseen surge in traffic volume on the Eastbound Bridge that was necessitated by Defendants' negligence. This physical deterioration and damage, which was an extraordinary consequence directly linked to Defendants' negligent actions, does not amount to unrecoverable economic damages.

B. Defendant Jacobs's Damages Argument Misunderstands the Nature of Physical Harm Alleged

Defendant Jacobs argues that the State has not adequately alleged harm because it does not claim that the wear and tear on the Eastbound Bridge exceeds the combined wear and tear both bridges would have experienced had the Westbound Bridge remained operational. (Jacobs Mem. at pp. 9-10). But Jacobs's comparative wear-and-tear theory, in addition to being unsupported by law or precedent, is unsound: the State *has* alleged specific, identifiable, and accelerated physical deterioration of that preexisting infrastructure that would not have occurred absent Defendants' conduct, constituting actual, measurable physical harm to property. This type of harm is not shielded by the economic loss doctrine.[5]

C. Defendant Steere's Damages Argument Misinterprets the Nature of Physical Harm Alleged

Defendant Steere's argument that the State can measure its damages only by the increased costs associated with accommodating traffic by alternative means, (Steere Mem. at p. 8), misses the critical distinction between consequential economic losses and direct physical damage. The

[5] Jacobs's argument also overlooks the allegations made by the State that the Westbound Bridge was built because the Eastbound Bridge was unable to handle the required traffic volume, which had significantly increased since its construction. (Am. Comp. at ¶¶ 96-98). Inherent in that allegation is the fact that transferring all the traffic volume from the Westbound Bridge to the Eastbound Bridge placed a load on the Eastbound Bridge that would not have occurred under normal dual bridge operations. This is also bolstered by the fact that the Eastbound Bridge was reconstructed and reconfigured exclusively for eastbound traffic in 2007, long after the Westbound Bridge was opened in 1968. (Am. Comp. at ¶ 99).

State's claim is not seeking the increased operational costs or speculative financial losses typically associated with loss-of-use scenarios. Instead, the State specifically alleges identifiable physical harm to a distinct piece of infrastructure—the Eastbound Washington Bridge—separate from the structure whose malfunction necessitated rerouting traffic. Thus, the damages alleged here are directly attributable to the Defendants' negligence in causing tangible, physical deterioration, not merely consequential costs.

D. Defendant Commonwealth Misunderstands the Nature of the State's Physical Damage Allegations

Similarly, Defendant Commonwealth's assertion that the physical damage to the Eastbound Bridge constitutes costs associated with the repair or replacement of the Westbound Bridge, (Commonwealth Mem. at p. 4), fundamentally misunderstands the nature of the State's allegations. The physical deterioration alleged is not an economic consequence of repairs to the Westbound Bridge but distinct and actual physical harm resulting directly from Defendants' negligence. It is a separate, cognizable injury to independent property, precisely the type of harm recognized as actionable under Rhode Island law in a negligence action.

E. Defendants' Foreseeability Argument Fails

Defendants Steere and Jacobs argue that the economic loss doctrine applies because physical damage to the Eastbound Washington Bridge was a foreseeable consequence of Defendants' breach of contract and should have, therefore, been addressed in the applicable contracts. (Steere Mem. at pp. 9-12; Jacobs Mem. at pp. 7-9). They claim that as a result of the State's failure to do so, its negligence claims are barred by the economic loss doctrine. Again, Defendants cite no precent to support their proposed "foreseeability" rule when property has been damaged, but even if such a rule existed, it is not an issue that can be resolved on a Rule 12 motion.

Damages for a "[l]oss may be foreseeable as a probable result of a breach [of contract] because it follows from the breach (a) in the ordinary course of events, or (b) as a result of special circumstances, beyond the ordinary course of events, that the party in breach had reason to know." Restatement (Second) of Contracts § 351(2) (1981).[6] Reviewing the allegations of the Amended Complaint in the light most favorable to the State, however, it is evident that the ultimate finder of fact could conclude that this damage was *not* a reasonably foreseeable consequence. *See Mellow v. Med. Mal. Joint Underwriting*, NO. NC870414, 1991 WL 789775, at *3 (R.I. Super. Apr. 5, 1991) ("the basic, long recognized principle [is] that damages recoverable for breach of contract include the foreseeable consequential damages resulting from the breach") (citations omitted).

The State alleges the damages to the Eastbound Bridge were the result of an extraordinary and unanticipated sequence of events: years of misconduct by those charged with inspecting and maintaining the Westbound Bridge, culminating in its permanent and catastrophic emergency closure, followed by the sudden and unexpected diversion of all traffic onto the Eastbound span, which was not designed or intended to bear such a load for an extended period. Its allegations claim the citizens of the State of Rhode Island were suddenly and unexpectedly forced into a totally unanticipated traffic nightmare that affected the lives of countless individuals and businesses, and that will have repercussions for those dependent on Rhode Island roadways for years to come. This chain of causation is far removed from the type of direct, foreseeable harm that contract law is designed to address. At the motion to dismiss stage, the Court must accept the State's allegations as true and draw all reasonable inferences in the State's favor. Dismissal under Defendants' foreseeability argument would be appropriate only if, under no set of facts, could the State establish

[6] The Rhode Island Supreme Court has looked to the Restatement (Second) of Contracts as guidance. *See*., *e.g.*, *Commerce Park Realty, LLC v. HR2-A Corp.*, 253 A.3d 1258, 1273 (R.I. 2021), *as corrected* (July 1, 2021), *as corrected* (July 6, 2021).

that the harm was not foreseeable—a standard that is not met here because, if the State's allegations are proven at trial, a jury could determine the physical damage to the Eastbound Bridge was not within the reasonable contemplation of the parties at the time of contracting, nor was it a risk that the State should have anticipated when entering the various contracts with Defendants.

F. Commonwealth's Integrated System Theory is Misplaced

Further, Defendant Commonwealth's invocation of the integrated system rule is misplaced. Under this rule, which has not been adopted in Rhode Island,[7] components of a single integrated system cannot be considered "other property" for purposes of the economic loss doctrine. Not only is this rule inapplicable in Rhode Island, but it is inapplicable under the facts of this case. "Integrated systems are products composed of many smaller individual parts but sold as a single package that works all together." Jeffrey L. Goodman et. al., *A Guide to Understanding the Economic Loss Doctrine*, 67 Drake L. Rev. 1, 37 (2019). The State, however, clearly alleges facts—again, which must be taken as true—demonstrating the Eastbound and Westbound Bridges are entirely separate structures. They were independently constructed at different times and are independently maintained, each with distinct structural components, foundations, and operational purposes. The mere fact that both bridges serve related transportation functions over the Seekonk River does not merge them into a single inseparable system.

II. The State Alleges Defendants Steere, Jacobs, and Commonwealth Owed a Professional Duty of Care Independent of any Contractual Duty, Precluding Application of the Economic Loss Doctrine

Licensed engineers in Rhode Island owe an independent duty of care based on their professional status and the public trust inherent in their practice, distinct from any contractual obligations. This independent duty requires engineers to exercise the ordinary care, skill, and

[7] *See* Jeffrey L. Goodman et. al., *A Guide to Understanding the Economic Loss Doctrine*, 67 Drake L. Rev. 1, 40-41 n. 280 (2019) (listing 34 jurisdictions, not including Rhode Island, that recognize the integrated system theory).

diligence typical of their profession, supporting negligence claims even when the economic loss doctrine might otherwise bar purely economic damages.

Here, in the Amended Complaint, the State specifically alleges that Defendants Steere,[8] Jacobs, and Commonwealth, as professional engineers, owed the State and the public an independent professional duty imposed by law, including the duty to:

a. "perform their services only in the areas of their discipline and competence according to current standards of technical competence," 430-RICR-00-00-1.7(B)(1);

b. "recognize their responsibility to the public and . . . represent themselves before the public only in an objective and truthful manner," 430-RICR-00-00-1.7(B)(2);

c. "in the performance of their services for clients, employers, and customers, . . . be cognizant that their first and foremost responsibility is to the public welfare," 430-RICR-00-00-1.7(C)(1);

d. "approve and seal only those design documents that conform to accepted engineering standards and safeguard the life, health, property, and welfare of the public," 430-RICR-00-00-1.7(C)(2);

e. "undertake assignments only when qualified by education or experience in the specific technical fields of engineering involved," 430-RICR-00-00-1.7(D)(1);

[8] Steere claims that it "demonstrated in its motion to dismiss the Original complaint and supported with uncontested documentation [that] Steere's structural design services were limited to a portion of the Washington Bridge" not mentioned in the State's pleadings and unrelated to the structural problems with the Bridge. (Steere Motion at p. 2 n.2). This is not true. As the Court noted in its Decision, Steere *argued* that its duties were limited to different areas of the Bridge and directed the Court to its subcontract with AECOM. (Feb. 27, 2025 Decision at p. 19). But the Court declined to consider the contract because it was not referenced in the Complaint and the State "had no opportunity for discovery on whether this is the complete and only contract between Steere and AECOM." (*Id*.) Thus, the Court denied Steere's motion for judgment on the pleadings on the issue. (*Id*.)

f. "not affix their signatures or seals to any drawings or documents dealing with subject matter in which they lack competence . . . ." 430-RICR-00-00-1.7(D)(2); and

g. "not misrepresent or exaggerate their degree of responsibility in prior assignments or the complexity of said assignments [or] misrepresent pertinent facts concerning . . . past accomplishments" incident to the solicitation of business, 430-RICR-00-00-1.7(E)(1).

(Am. Comp. at ¶¶ 113, 122, 175, and 185).

"Separate counts for breach of contract and tort can be maintained when there are 'separate and distinct' breaches of duties." *282 Cnty. Road v. AAA Southern New England*, 2014 WL 4261925, at *12 (R.I. Super. Aug. 25, 2014) (quoting *Ciccone v. Pitassi*, No. PB 97-4180, 2004 WL 2075120, at *7 (R.I. Super. Aug. 13, 2004) (unpublished)). And, "[c]ourts of different jurisdictions have adopted divergent views concerning the applicability of the economic loss doctrine to the provision of services." *Ciccone*, 2004 WL 2075120, at *4 (citing Reeder R. Fox et al., "Riding the Choppy Waters of East River: Economic Loss Doctrine Ten Years Later," 64 Def. Couns. J. 260, 267 (1997); *Cargill, Inc. v. Boag Cold Storage Warehouse*, 71 F.3d 545, 550 (6th Cir. 1995) (stating that the economic loss doctrine "is associated with 'transactions in goods,' and not with transactions in services"); *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 636 N.E.2d 503, 515 (Ill. 1994) (finding the economic loss doctrine inapplicable to tort claim in accountant malpractice action); *Collins v. Reynard*, 607 N.E.2d 1185, 1186 (Ill. 1992) (declining to apply the economic loss doctrine to tort claim in legal malpractice suit); *Bristol–Myers Squibb, Indus. Div. v. Delta Star*, 206 A.D.2d 177, 181 (N.Y. App. Div. 1994) (stating that "the economic loss rule serves to limit the liability of providers of services as well as providers of products")).

When determining whether the economic loss doctrine applied within the context of bank services, this Court looked to the rule adopted by the Illinois Supreme Court:

> The "doctrine is applicable to the service industry only where the duty of the party performing the service is defined by the contract that he executes with his client. Where his duty arises outside of the contract, the economic loss doctrine does not prohibit recovery in tort for the negligent breach of that duty."

Ciccone, 2004 WL 2075120, at *5 (quoting *Congregation of the Passion*, 636 N.E.2d at 515). The Court then recognized that professional service providers owe duties of ordinary care that exist independently of contractual obligations when holding that "a duty of ordinary care extends from a bank to its customers" that "arises outside of and irrespective of any contract," making the economic loss doctrine inapplicable to preclude negligence claims based on these independent professional duties. *Id.* at *6.

Likewise, here, the State has alleged that Defendants Steere, Jacobs, and Commonwealth owed independent duties to render professional services that are separate and apart from any duties flowing from the applicable contracts. As the Court recognized in its February 27, 2025 Decision, however, at this motion-to-dismiss stage, the exact details of the contracts are not only not before the Court, but may not yet be fully known to the State given the stage of the litigation. (Feb. 27, 2025 Decision at p. 19, 26-27, 29 n.9). The Court cannot, therefore, definitively determine whether the professional duties alleged overlap or are defined exclusively by contract. (*See*, *e.g.*, *id*. at p. 29 n.9) (noting "[w]ithout the benefit of discovery and with a long sprawling contract encompassing multiple documents, it is difficult for the Court to dissect the relevant contract documents under a motion to dismiss"). Because the Court must accept the factual allegations as true and construe them in the light most favorable to the State, *see Mokwenyei*, 198 A.3d at 21, dismissal under the economic loss doctrine would be premature and inappropriate at this juncture

as the Complaint adequately alleges breaches of independent professional duties separate from any contractual obligations.

Thus, the State's allegations sufficiently articulate an independent duty of care owed by Defendants Steere, Jacobs, and Commonwealth. Their breaches of these professional duties support viable negligence claims that cannot be dismissed under the economic loss doctrine.

III. The Negligence Claims Against Defendants Steere, Aries, and Commonwealth Cannot Be Barred by the Economic Loss Doctrine because the Relevant Contracts Explicitly Allow for Damages from Negligence

In opposition to the Defendants' motions to dismiss the Original Complaint, the State argued that, pursuant to this Court's decision in *Inland American Retail Management v. Cinemaworld of Florida*, 2011 WL 121647 (R.I. Super. Jan. 7, 2011) (Silverstein, J.), *vacated on other grounds by Inland Am. Retail Mgmt. LLC v. Cinemaworld of Florida, Inc.*, 68 A.3d 457 (R.I. 2013), the Court lacked a "sufficient basis to determine whether the parties contracted for the right to bring a negligence cause of action" without "review[ing] all applicable contracts and subcontracts." (State's Opp. Brief at pp. 37-38). The Court rejected this argument because the State had not alleged in the Complaint that any of the contracts contained such a provision. (Feb. 27, 2025 Decision at p. 15-16).

In the Amended Complaint, the State has made explicit allegations demonstrating contractual provisions authorizing the State to seek damages for negligence. In Count II, the claim for negligence against Defendants Steere and Aries, the State alleges:

> The State and AECOM are parties to the 2014 AECOM Contract in which AECOM agreed that it:
>
> a. "shall be liable for all damage caused by its negligent acts, or its errors or omissions in its services under this Agreement or any supplements to this Agreement," Contract No. 2014-EB-003, Art. X, § B(2);
>
> b. "shall rebuild, repair, restore, and make good all losses, injuries, or damages to any portion of the work from any cause except those beyond

> the control of and without the fault or negligence of" AECOM, § 12.104.14 – State of Rhode Island Procurement Regulations: Section 12 Rhode Island Department of Transportation Projects (incorporated into the 2014 AECOM Contract); and
>
> c. "shall be responsible for all damage or injury to public or private property resulting from any act, omission, neglect, or misconduct in, of either [AECOM's] or its subcontractors' manner or method of executing the work, or in consequence of the non-execution thereof," § 12.107.11 – State of Rhode Island Procurement Regulations: Section 12 Rhode Island Department of Transportation Projects (incorporated into the 2014 AECOM Contract).

(Am. Comp. at ¶ 116). And in Count XVI, the claim for negligence against the Joint Venture, Barletta, Aetna, VHB, and Commonwealth, the State alleges:

> The State and the Joint Venture are parties to the 2021 Design-Build Contract in which the Joint Venture agreed it: "shall be responsible for all damage or injury to public or private property resulting from any act, omission, neglect, or misconduct in, of either [the Joint Venture's] or its subcontractors' manner or method of executing the work, or in consequence of the non-execution thereof . . . [and] shall be responsible for all damage to property resulting from any act, omission, neglect or misconduct in the [Joint Venture's] manner or method of executing its work, or due to its defective work or materials." 2021 RFP – Bid No. 7611889, Part 3, Terms and Conditions, § 107.11 (incorporated into 2021 Design-Build Contract). Further, it agreed that "[w]hen or where any direct or indirect damage is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Project work, the [Joint Venture] shall restore, at its own expense, such property to a condition as close as possible to that which existed before such damage was done, by repairing, rebuilding or otherwise restoring the property, as may be directed by the Department; or the [Joint Venture] shall make good such damage in another manner acceptable to the Department." *Id*.

(Am. Comp. at ¶ 187).

Defendants seek application of the economic loss doctrine by virtue of the State's contractual agreements regarding the Washington Bridge. For instance, Defendant Steere argues the "State should be held to the remedies it negotiated/imposed by its contracts and should not be permitted to do an 'end run' of its contracts by reliance on tort principles," (Steere Mem. at pp. 11-12), and asserts that the "State has no greater rights against a subcontractor . . . than it would have against the principal or entity with whom it contracted." (*Id*. at p. 12, n.5). As demonstrated above,

however, the State specifically retained the right to sue for negligence in its contracts with AECOM (of which Defendants Steere and Aries were subcontractors) and the Joint Venture (of which Defendant Commonwealth was a subcontractor). Thus, no protection from the economic loss doctrine flows from these contracts to the prime contractors or their subcontractors—Defendants Steere, Aries, and Commonwealth.

IV. The Court Should Deny Defendant Steere Engineering, Inc.'s Motion to Dismiss Counts XIX and XX for Declaratory Judgment

Defendant Steere again seeks dismissal of Counts XIX and XX, seeking declaratory judgment, without offering any new legal or factual basis that was not already presented in its motion to dismiss the Original Complaint. The Court previously rejected Steere's motion to dismiss these counts, and Steere's renewed motion simply rehashes the same points without addressing the Court's reasoning or identifying any intervening change in law or fact. Absent such a showing, there is no basis for the Court to revisit its earlier ruling. Consequently, Steere's motion to dismiss Counts XIX and XX should again be denied.

CONCLUSION

For the foregoing reasons, the Court must deny Defendants' motions to dismiss. The State has adequately alleged physical damage to other property, breaches of independent professional duties, explicit contractual rights for recovery in negligence, and an appropriate basis for declaratory judgment claims. Accordingly, the economic loss doctrine does not apply, and the State's claims should proceed. Should the Court find any deficiencies, any dismissal should be without prejudice, allowing the State an opportunity to amend further. *See Hendrick v. Hendrick*, 755 A.2d 784, 794 (R.I. 2000) (explaining it has been "'consistently held that Rule 15(a) liberally permits amendment absent a showing of extreme prejudice.'") (quoting *Wachsberger v. Pepper*, 583 A.2d 77, 78 (R.I. 1990)).

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2025, I electronically filed and served this document through the electronic filing system on counsel of record. The document is available for viewing and/or downloading from the Rhode Island Judiciary's electronic filing system.

/s/ *Edward D. Pare III*