STATE OF RHODE ISLAND
PROVIDENCE, S.C.

SUPERIOR COURT
CIVIL ACTION NO. PC-2024-04526

HEARING DATE: August 5, 2025

STATE OF RHODE ISLAND,

Plaintiff,

v.

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

Defendants.

REPLY OF DEFENDANT COMMONWEALTH ENGINEERS & CONSULTANTS, INC. IN SUPPORT OF MOTION TO DISMISS PLAINTIFF STATE OF RHODE ISLAND'S AMENDED COMPLAINT

INTRODUCTION

The State of Rhode Island (the "State") raises several arguments in its opposition to the motion to dismiss filed by Commonwealth Engineers & Consultants, Inc. ("Commonwealth Engineers"), purporting to show that the economic loss doctrine does not bar the State from recovering in negligence any damages for the alleged harm to the Eastbound Washington Bridge (the "Eastbound Bridge"). As will be shown below, all the State's arguments are without merit.

ARGUMENTS IN REPLY TO THE STATE'S OPPOSITION

I. THE ECONOMIC LOSS DOCTRINE APPLIES HERE BECAUSE THE STATE IS USING THE EASTBOUND BRIDGE AS A "REPLACEMENT" FOR THE WESTBOUND BRIDGE

The State argues that costs relating to harm to the Eastbound Bridge are not "associated with the repair or replacement of the Washington Bridge" because 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." (Opposition, p. 10).

The State's argument here fails to address Commonwealth Engineers' primary argument. Damages relating to the Eastbound Bridge are "costs associated with the repair or replacement" of the Westbound Bridge because the State is using the Eastbound Bridge *as a replacement* for the Westbound Bridge. (See Amended Complaint, ¶ 101). As the economic loss doctrine bars recovery in negligence for the "costs associated" with the purchasing of a replacement product, see Hart Engineering Co. v. FMC Corp., 593 F.Supp. 1471, 1481 n.11 (D.R.I. 1984) (applying Rhode Island law), it must also bar recovery in negligence for the costs of using and maintaining a replacement product. The State fails to even attempt to rebut this argument.

Moreover, the State's claim—that the increased traffic on the Eastbound Bridge "result[ed] directly from Defendants' negligence"—contradicts its own Amended Complaint. The Amended Complaint states that "[t]o compensate for the emergency closure of the Washington Bridge, westbound traffic was rerouted onto the Eastbound Washington Bridge, substantially increasing its traffic volume." (Amended Complaint, ¶ 101). Thus, according to the Amended Complaint, the State's decision to reroute westbound traffic was the *direct cause* of the increased traffic flow on the Eastbound Bridge, not the closure of the Westbound Bridge. The State is effectively therefore requesting reimbursement not for immediate physical property

damage but for an alleged increased cost in providing a general public service—a way for vehicles to cross the water. The State cites no authority permitting recovery for such damages.

As the State is using the Eastbound Bridge as a replacement for the Westbound Bridge, the economic loss doctrine bars the recovery of any costs relating to such use.

II. THE WESTBOUND AND EASTBOUND BRIDGES WERE PART OF AN INTEGRATED SYSTEM

The State makes two arguments as to why the integrated system rule should not apply, both of which are without merit.

The State first argues that the integrated system rule is "inapplicable in Rhode Island." (Opposition, p. 12). However, no Rhode Island court has held that the rule *should not* apply in Rhode Island. Moreover, "[s]ince the Supreme Court's endorsement of the integrated system theory and its adoption by the Restatement (Third) of Torts: Products Liability, section 21, most jurisdictions (roughly 34) recognize some form of this theory," including Maine, Massachusetts, New Hampshire, and Vermont. Jeffrey L. Goodman et al., A Guide to Understanding the Economic Loss Doctrine, 67 Drake L. Rev. 1, 39–40 n.280 (2019). Given that most States, including all other New England States (except Connecticut), have adopted the integrated system rule, the Court may properly apply the rule here. The mere fact that Rhode Island has not yet had the opportunity to address the issue is not dispositive.

The State then argues that even if the integrated system rule applies in Rhode Island that it should not apply to this case because the Amended Complaint alleges that the Eastbound and Westbound Bridges are "entirely separate structures," "independently constructed at different times and are independently maintained, each with distinct structural components, foundations, and operational purposes." (Opposition, p. 12).

The State implies that purported "other property" is part of an "integrated system" with the defective product only if it is physically connected with and built at the same time as the defective product. This is not the correct test. Rather, purported "other property" is "integrated" with the defective product when they together function as "a single unit or system," such that "it is foreseeable that a component part could damage the finished product." Goodman, 67 Drake L. Rev. at 37. In other words, it must be foreseeable that the defective product (that is, the "component part") could damage the entire system, including the purported "other property." See id. Whether the purported "other property" is physically connected to the defective product is irrelevant. See Fishman v. Boldt, 666 So.2d 273, 274 (Fla. 1996) (holding that a homeowner's seawall was integrated with the pool, patio, and house that the seawall protected).

Here, applying the proper test, the Westbound and Eastbound Bridges were part of an integrated system. The State expressly concedes that the Westbound Bridge was built to "reduce the traffic volume and avoid structural deterioration on the Eastbound Washington Bridge," at which point the Eastbound Bridge "was reconfigured exclusively for eastbound traffic." (Amended Complaint, ¶¶ 98–99). Given that each bridge only accommodated one direction of traffic, the bridges together functioned as a "single unit." Additionally, because the Westbound Bridge was built to reduce traffic on and deterioration to the Eastbound Bridge, it is certainly foreseeable that closing the Westbound Bridge would increase traffic on and deterioration to the Eastbound Bridge.

As the Bridges were part of an integrated system, the economic loss doctrine bars the State from recovering in negligence for any alleged harm to the Eastbound Bridge.

III. THE "INDEPENDENT DUTY" EXCEPTION TO THE ECONOMIC LOSS DOCTRINE CANNOT APPLY TO COMMONWEALTH ENGINEERS

The State argues that the economic loss doctrine does not apply to Commonwealth Engineers because it owed the State "independent duties to render professional services that are separate and apart from any duties flowing from the applicable contracts." (Opposition, p. 15).

The State's argument complicates a concept which is actually quite simple. Under the economic loss doctrine, generally, a party cannot recover in negligence for purely economic harm. Hexagon Holdings, Inc. v. Carlisle Syntec Incorporated, 199 A.3d 1034, 1042 (R.I. 2019). However, a "prominent exception," adopted by many jurisdictions, "is the action to recover for professional negligence (also known as malpractice)." Restatement (Third) of Torts: Liab. for Econ. Harm § 4 (2020). That is, as an exception to the economic loss doctrine, most states permit negligence actions against certain professionals, including those to recover purely economic damages. See id. Legal malpractice actions are the most common example. See id.

Some jurisdictions base the above exception on the idea that certain professionals, such as attorneys or others, have "independent" duties to the client, in addition to those explicitly outlined in the contract. See id. For example, in the case cited by the State, Ciccone v. Pitassi, 2004 WL 2075120, at *6–*7 (Sup.Ct.R.I. 2004) (unpublished), the court held that the "relationship between a bank and its customers resembles that between accountant and client or attorney and client," that "a bank makes decisions independent of its customers and the contracts it executes with its customers," and thus, that a bank owes an "independent duty" to its customers such that the economic loss doctrine does not apply. Notably, the court explicitly identified architects as an example of a professional that would not owe an "independent duty." See id. at *6 ("the relationship between a bank and customer, ***unlike*** that between, for instance, ***an architect and his or her client***, results in an intangible product.") (emphasis added).

In sum, most jurisdictions, including Rhode Island, recognize a limited "independent duty" exception to the economic loss doctrine that applies nearly always to attorneys, and occasionally, to other professionals like accountants or banking professionals.

By referencing the concept of an "independent duty," the State is essentially arguing here that the Court should consider Commonwealth Engineers to be within that class of "professionals" for which the independent duty exception applies. However, there is no need to explore this argument in depth because Rhode Island courts have already resolved this question and held that the economic loss doctrine applies to professionals in construction disputes. See e.g., Franklin Grove Corp v. Drexel, 936 A.2d 1272, 1277 (R.I. 2007) (applying the doctrine to a suit by a homeowner against a construction firm); Hexagon Holdings, Inc., 199 A.3d at 1043 (applying the doctrine to a suit by a developer against a roof installer); see also Ciccone, 2004 WL at *6 (distinguishing accountants and attorneys from architects). Moreover, the Ciccone case, cited by the State, held that the question of whether the "independent duty" exception applies "constitutes a question of law." Ciccone, 2004 WL at *5. Therefore, as a matter of law, the "independent duty" exception cannot apply here to Commonwealth Engineers.

Finally, the State's argument—that the exact language of the purported contracts with the Defendants is not before the Court, that such contracts might contain language supporting an independent duty, and therefore, that dismissal at this stage is premature—is incoherent and inapposite. (See Opposition, p. 15). If the purported duty to the State exists *independent* of the contract and purely *by nature* of the parties' relationship, then the contracts' terms are irrelevant. Moreover, according to the Amended Complaint, there was no contract between the State and Commonwealth Engineers, rather Commonwealth Engineers was a subconsultant of VHB. (See Amended Complaint, ¶ 88). Finally, as previously noted, whether the "independent duty"

exception to the economic loss doctrine applies to a specific class of professionals is an issue of law for the court, see Ciccone, 2004 WL at *5, and Rhode Island courts have already found that the economic loss doctrine applies to professionals acting in a construction context, see e.g., Franklin Grove Corp., 936 A.2d at 1277; Hexagon Holdings, Inc., 199 A.3d at 1043.

Therefore, as a matter of law, Commonwealth Engineers could not have owed the State any "independent duty" such that the economic loss doctrine would not apply.

IV. THE AMENDED COMPLAINT DOES NOT ALLEGE THE EXISTENCE OF ANY CONTRACTUAL PROVISION PERMITTING RECOVERY AGAINST COMMONWEALTH ENGINEERS IN NEGLIGENCE

The State's final argument for the negligence claims is that contracts existed between the State and certain Defendants that, the State argues, explicitly permit the State to recover against such Defendants for their negligence. (See Opposition, p. 16–17).

The State's opposition, however, identifies only two contracts: one between the State and AECOM, (Opposition, p. 16), and another between the State and the Joint Venture, (Opposition, p. 17). The State does not claim that any contract existed with Commonwealth Engineers. Moreover, according to the Amended Complaint, there was no contract between the State and Commonwealth Engineers, rather Commonwealth Engineers was a subconsultant of VHB. (See Amended Complaint, ¶ 88). Notably, the State has also not brought a breach of contract claim against Commonwealth Engineers as it has against several other co-Defendants.

The quoted contractual provisions also *do not* state that Commonwealth Engineers (or any subcontractor or subconsultant) could be liable to the State. In fact, quite the opposite. The alleged contract with AECOM states that *AECOM* is liable to the State for any harm caused by its subcontractors. (See Opposition, pp. 16–17 (AECOM "shall be responsible for all damage or injury. . . resulting from any act of either [AECOM's] or its subcontractors' manner or method of

executing the work.")). The State's alleged contract with VHB includes an identical provision. (See Opposition. p. 17). Therefore, the quoted contracts do not permit the State to recover against Commonwealth Engineers, who according to the Amended Complaint was a subconsultant of VHB, (see Amended Complaint, ¶ 88).

But even if there were a contractual provision permitting recovery by the State against Commonwealth Engineers (which the State does not argue or allege), any such provision would not be enforceable, as Commonwealth Engineers was not a party to the contracts with AECOM and VHB. See 17B C.J.S. Contracts § 862 ("An individual cannot be liable for breach of a contract to which he or she is not a party.").

Therefore, the Amended Complaint fails to allege the existence of any contractual provision that could even potentially permit the State to recover in negligence against Commonwealth Engineers.

CONCLUSION

The Amended Complaint alleges that the State has used the Eastbound Bridge as a "replacement" for the Westbound Bridge. For this reason alone, the economic loss doctrine bars the State from recovering in negligence against Commonwealth Engineers for any alleged harm to the Eastbound Bridge. Additionally, the East and Westbound Bridges functioned as a "single unit" with each Bridge only accommodated one direction of traffic, making it foreseeable that harm to one Bridge would increase traffic flow on the other. Thus, the two bridges were part of an "integrated system." The Court must also apply the economic loss doctrine on this basis. Moreover, contrary to the State's claim, Commonwealth Engineers did not owe any "independent duty" to the State. There was no contract between them, and Rhode Island courts have already applied the economic loss doctrine to professionals acting in a construction context. Finally, the

two contracts referenced in the opposition between the State and AECOM and the Joint Venture could not impact whether the economic loss doctrine applies to Commonwealth Engineers because Commonwealth Engineers was not a party to those contracts.

For all the above reasons, as well as those raised in the papers filed by co-Defendants, the Court must grant Commonwealth Engineers' motion to dismiss the State's amended complaint.

THE DEFENDANT,
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CERTIFICATE OF SERVICE

I, Timothy O. Egan, hereby certify this 28th of July, 2025, that the foregoing document was electronically filed and served electronically upon all parties on record.

Timothy O. Egan, Esq.

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