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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-2024-4526

REPLY IN SUPPORT OF DEFENDANT
JACOBS ENGINEERING GROUP, INC.'S 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 Reply in Support of its Motion to Dismiss (the "Motion"). Jacobs seeks dismissal of the negligence claim (Count XIV) brought against it by the State of Rhode Island (the "State") in its Amended Complaint.

I. INTRODUCTION

Despite now having two chances to plead its claims against Jacobs, the State's negligence claim remains deficient because it fails to allege any property damage beyond damage to the Washington Bridge itself. In an attempt to avoid dismissal, the State argues that wear and tear to the Eastbound Washington Bridge is damage to "other property." The State also argues, for the first time, that the economic loss doctrine should not apply irrespective of whether there has been other property damage because of Jacobs' alleged independent tort duty. These arguments are meritless.

Critically, alleged wear and tear to the Eastbound Washington Bridge constitutes loss of use damages, the recovery of which courts have universally held is barred by the economic loss doctrine. The alleged wear and tear, which was caused by redirecting traffic from one bridge to a directly adjacent bridge, is also highly foreseeable. This foreseeability is a separate, independent basis for applying the economic loss doctrine.

Regarding the State's reliance on a purported independent duty exception, the State's Opposition to Jacobs' Motion (the "Opposition") does not cite any Rhode Island Supreme Court authority recognizing the existence of such an exception. Rather, recent decisions by the Supreme Court demonstrate that an independent duty exception to the economic loss doctrine has not been applied in construction cases. But, even if an independent duty exception could potentially apply, the State nonetheless fails to plead any facts supporting application of such an exception here.

For these reasons, as well as those provided below and in Jacobs' initial memorandum, the State's negligence claim against Jacobs should be dismissed.

II. ARGUMENT

As explained in Jacobs' opening brief, the State's negligence claim should be dismissed because the State has failed to allege damage to "other property" as required by the economic loss doctrine. Nothing in the State's Opposition changes that outcome. Nor does the State's newly raised "independent duty" argument save the negligence claim.[1]

a. Alleged wear and tear to the Eastbound Washington Bridge does not preclude application of the economic loss doctrine.

The State contends that it has satisfied the economic loss doctrine's requirement of "other property damage" for two reasons. First, the State argues that alleged wear and tear to the Eastbound Washington Bridge does not constitute loss of use damages, which are barred by the economic loss doctrine. Opp. at 7–9. Second, the State asserts that the foreseeability of damage to the Eastbound Washington Bridge is irrelevant to application of the economic loss doctrine, and that it is premature to address the question of foreseeability at the motion to dismiss stage. *Id.* at 10–12. As explained below, each of these arguments fails.

i. Alleged wear and tear to the Eastbound Washington Bridge is an economic loss arising from the loss of use of the Westbound Washington Bridge.

The State fails to meaningfully respond to Jacobs' argument that alleged wear and tear to the Eastbound Washington Bridge is, at most, economic loss arising from the loss of use of the

[1] The States also asserts two arguments that are not applicable to Jacobs. First, Section III of the Opposition argues that the State's negligence claims against other defendants should survive because those defendants' contracts allegedly allow for the recovery of negligence damages. Opp. at 16–18. The State does not make this argument in connection with Jacobs (nor could it given that the contract with Jacobs does not include a provision allowing negligence damages). Second, Section IV of the Opposition relates to Steere Engineering, Inc.'s motion to dismiss, which seeks dismissal of the State's declaratory judgment claims (Counts XIX and XX). Jacobs has not moved to dismiss those claims, but respectfully submits that, to the extent the Court concludes dismissal is appropriate, the same reasoning should apply to the State's declaratory judgment claims against Jacobs.

Westbound Washington Bridge. Tellingly, the Opposition does not cite a single case for the proposition that wear and tear to a replacement product resulting from the loss of use of the at-issue product qualifies as physical damage for purposes of the economic loss doctrine. The reason is obvious: such cases do not exist because the State's theory would eviscerate the economic loss doctrine and render it meaningless.

Unable to cite any on-point authority for its position, the State argues that "economic 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 value it would have had if it performed as expected," and that the State is not seeking these types of damages for its negligence claim. Opp. at 7–8 (quotations omitted). This is a strawman argument. While it is true that repair costs and loss of value are both types of "economic loss" for purposes of the economic loss doctrine, they are not the only types of recognized economic loss. Instead, courts have universally held that, in addition to repair costs and loss of value, loss of use damages also constitute economic losses. *See, 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); *Trans States Airlines v. Pratt & Whitney Canada, Inc.*, 86 F.3d 725, 729 (7th Cir. 1996) ("The economic loss doctrine, where 'economic loss' refers to the costs of repairing or replacing a defective product *and consequent loss of use of the product* …") (emphasis added); *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) ("The Court agrees with Defendant and finds that the damages alleged, specifically: (1) rental costs of the replacement engine; (2) loss of the aircraft's engine; (3) lost profit due to a prospective sale of the aircraft; *and (4) damages resulting from the loss of use of the aircraft*,

amount to purely economic losses.") (emphasis added); *Pac. Indem. Co. v. Whaley*, 572 F. Supp. 2d 626, 628 (D. Md. 2008) ("[E]conomic 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); *Kestrel Holdings I, L.L.C. v. Learjet Inc.*, 316 F. Supp. 2d 1071, 1075 (D. Kan. 2004) ("[E]conomic loss includes damages for inadequate value, costs of repair, replacement costs, *and loss of use of a defective product.*") (emphasis added); *Fireman's Fund Ins. Co. v. Childs*, 52 F. Supp. 2d 139, 142 (D. Me. 1999) (defining "economic losses" to include "the cost of repair, replacement, *or loss of use*") (emphasis added).

The State further argues that, 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." Opp. at 7. Again, while that is true, the cases cited by Defendants also involved allegations of loss of use damages, which were found to be precluded by the economic loss doctrine. *See, e.g.*, *Isla Nena Air Servs., Inc. v. Cessna Aircraft Co.*, 449 F.3d 85, 86 (1st Cir. 2006) (affirming dismissal of tort claims on economic loss doctrine grounds despite allegations of loss of use of an aircraft); *see* Jacobs' Mem. at 5–6 (citing cases). Moreover, the State's assertion that it "could not simply lease or purchase a replacement bridge" (Opp. at 8–9) has no relevance to the current analysis. Just because the State did not incur rental or lease costs for a replacement bridge (because it already had a replacement bridge readily available) does not change the fact that the alleged wear and tear to the Eastbound Washington Bridge arises from the loss of use of the Westbound Washington Bridge.

On a final note, Jacobs explained in its opening memorandum that, under the State's theory, one would be hard pressed to find any cases where the economic loss doctrine still applies. Jacobs'

Mem. at 6. The State does not dispute this point or otherwise explain when the doctrine would still apply if its novel position were adopted. Rather than endorsing a new exception that would swallow the rule, this Court should apply controlling precedent and hold that the State's negligence claim is barred by the economic loss doctrine.

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

Assuming *arguendo* alleged wear and tear to the Eastbound Washington Bridge does not qualify as loss of use damages (for all of the previously discussed reasons it does), the State's negligence claim also fails because the alleged wear and tear was foreseeable. As set forth in Jacobs' opening brief, it is well established that contract law should be used to address foreseeable harm, whereas tort law should be used to address unanticipated harm, and that the economic loss doctrine will bar claims for damages that should have been allocated for by contract. *See* Jacobs' Mem. at 7–9. The State offers no compelling basis to ignore this bedrock legal principle. Instead, the State asserts that Jacobs "cite[s] no precent *[sic]* to support [its] proposed 'foreseeability' rule." Opp. at 10. The State's assertion is wrong—Jacobs' opening brief cites binding precedent from the Rhode Island Supreme Court, along with decisions from the Rhode Island Superior Court and numerous decisions from outside Rhode Island. *See* Jacobs' Mem. at 7–9.

Aside from its unsupported contention that Jacobs has failed to cite precedent, the State asserts that foreseeability cannot be determined at the motion to dismiss stage. In making this argument, the State fails to cite a single case in which a court determined that foreseeability in the context of an economic loss doctrine analysis was premature to decide on a motion to dismiss, and the Court can easily make such a determination here. While the Opposition focuses on whether the exact sequence of events that led to the closure of the Westbound Washington Bridge was foreseeable, that is not the relevant inquiry. Opp. at 11 (arguing a lack of foreseeability due to an

alleged "extraordinary and unanticipated sequence of events" and purported "years of misconduct"). Rather, the relevant issue to be decided is whether the specific alleged harm was foreseeable. Jacobs Mem. at 8 (citing cases holding that the foreseeability analysis focuses on whether the alleged damages were foreseeable, and not the precise nature of the alleged breach).

To put it simply, it does not matter if the Westbound Washington Bridge was shut down due to issues with post-tensioned cantilever beams, a natural disaster, a boat collision, or any number of other potential causes. What matters is that, in the event of a bridge shutdown, increased wear and tear to the Eastbound Washington Bridge due to redirected traffic from the Westbound Washington Bridge (i.e., the at-issue harm), was entirely foreseeable. *Id.* at 8–9 (explaining why the alleged harm was foreseeable). Besides conclusory assertions, the State does not, and cannot, explain why redirecting traffic to a directly adjacent, parallel bridge is somehow unforeseeable. Notably, the Eastbound and Westbound Washington Bridges are the only highway bridges connecting East Providence and Providence over the Seekonk River—there is no other avenue for highway traffic to cross the river.[2] The State also routinely diverts traffic on divided highways to one side, including diversions of traffic on I-195 in the immediate area of the Washington Bridge within the last decade. *See, e.g.*, *Traffic Advisory: Accelerated Bridge Construction Continues this Weekend for Replacement of the Pawtucket Avenue Bridge in East Providence*, publicly available at https://www.ri.gov/press/view/30401 (May 17, 2017) (announcing that at various times "all

[2] The Court may take judicial notice of the geographic fact that no other highway bridge crosses the Seekonk River between East Providence and Providence. *See United States v. Bello*, 194 F.3d 18, 23 (1st Cir. 1999) ("[g]eography has long been peculiarly susceptible to judicial notice for the obvious reason that geographic locations are facts which are not generally controversial") (internal quotation omitted).

traffic will shift onto I-195 westbound [or] eastbound travel lanes" in connection with the replacement of the Pawtucket Avenue Bridge, a mere 1.5 miles from the Washington Bridge).[3]

At bottom, because the parties could have allocated the foreseeable risk of closure of the Westbound Washington Bridge, recovery of alleged damages arising directly from that closure is barred by the economic loss doctrine. *See Gail Frances, Inc. v. Alaska Diesel Elec., Inc.*, 62 F. Supp. 2d 511, 518 (D.R.I. 1999) (recognizing that, as between contracting parties, tort claims should be limited to "situations where injury results from unfor[e]seen danger which makes it impossible to take preliminary precautions").

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

In its initial memorandum, Jacobs argued that the State has failed to adequately allege harm because the Amended Complaint does not allege that the current wear and tear to the Eastbound Washington Bridge exceeds the combined wear and tear that the Westbound and Eastbound Washington Bridges would have experienced had the Westbound portion continued in use. Jacobs' Mem. at 9–10. In response, the State contends, in cursory fashion, that Jacobs' "comparative wear-and-tear theory [is] unsupported by law or precedent." Opp. at 9. Setting aside the conclusory, unexplained nature of this assertion, it is not true. Damage is a required element of a negligence claim and, if the net alleged wear and tear that the State has incurred is no different than the net wear and tear it would have incurred if both bridges were operational, then it has not suffered any harm—the wear and tear has just shifted from one bridge to another.

The State's contention that it has "alleged specific, identifiable, and accelerated physical deterioration" (Opp. at 9) also misses the mark. Even if the Eastbound Washington Bridge is

[3] A further explanation of the traffic redirection's foreseeable nature is included in Jacobs' opening brief. Jacobs' Mem. at 8–9.

incurring additional wear and tear at an accelerated rate, the State has not suffered harm if that accelerated wear and tear is no greater than the amount of wear and tear that would have been incurred between the two bridges.[4] Because nothing in the Amended Complaint or Opposition suggests that the State has suffered a net increase in wear and tear, the State's negligence claim should be dismissed for failing to adequately allege damages.

c. The purported independent duty exception does not preclude application of the economic loss doctrine.

In a tacit admission that its physical damage allegations are lacking, the State argues, for the first time, that Jacobs owes an independent duty of care and that allegations of that duty bar any application of the economic loss doctrine.[5] In purported support of this argument, the State primarily relies on a single Rhode Island Superior Court decision—*Ciccone v. Pitassi*, No. CIV.A. PB 97-4180, 2004 WL 2075120 (R.I. Super. Aug. 13, 2004).[6] Notably, however, *Ciccone* is easily distinguishable from the facts at issue here. *Ciccone* involved a consumer-bank relationship and found an independent duty existed, in part, because customers "expect their bank to possess knowledge and expertise in addition to the bank's ability to fulfill its contractual responsibilities." *Id.* at *7. The *Ciccone* court ultimately found that the customer's negligence claim was based on

[4] In a footnote, the State similarly argues 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." Opp. at 9, fn. 5. But assuming that allegation is true, it does not establish that the State has incurred a net increase in wear and tear and therefore been harmed.

[5] Curiously, in the State's opposition to Defendants' Rule 12 motions related to the original complaint, the State did not argue that Jacobs owed an independent duty. While the State argued that certain other Defendants owed an independent duty, it only did so with respect to its negligent misrepresentation claims. State's Consolidated Response to Original Motions to Dismiss at 33, 38.

[6] While the State also cites *282 Cnty. Road v. AAA Southern New England*, No. PB097447, 2014 WL 4261925 (R.I. Super. Aug. 25, 2014), that case does not apply, assess, or consider the economic loss doctrine.

the bank's independent duty to its customers that was distinct from its duty to the plaintiff arising under any contract involving a specific transaction. *Id.* In reaching this conclusion, the court explicitly distinguished the bank-customer relationship from "that between … an architect and his or her client" because the bank-customer relationship "results in an intangible product." *Id.* at *6. *Ciccone's* reasoning is inapplicable here because (1) Jacobs' inspection of a tangible bridge is not akin to intangible banking services; (2) the State is a sophisticated entity with significant industry experience, as opposed to an individual consumer; and (3) the relationship between the State and Jacobs is much more in-line with that of an architect designing a building than a bank performing a consumer transaction.

Further, the State's reliance on *Ciccone* is misplaced given that it is a standalone Superior Court decision, finding its basis in law from other jurisdictions, and is unsupported by more recent Rhode Island Supreme Court authority. Specifically, the Rhode Island Supreme Court has repeatedly applied the economic loss doctrine in similar construction, and related professional services, cases without reference to the independent duty exception. For example, in *Franklin Grove Corp. v. Drexel*, the Supreme Court applied the economic loss doctrine in a case involving surveyors and engineers who assisted in building a home. 936 A.2d 1272, 1275–78 (R.I. 2007). In its analysis, the *Franklin Grove* court listed the "limitations" of the doctrine in Rhode Island, but importantly did not identify an independent duty limitation. *Id.* at 1276–77. The Supreme Court made clear that "a plaintiff may not recover damages under a negligence claim when the plaintiff has suffered no personal injury or property damage." *Id.* at 1275. Even more recently, in *Hexagon Holdings, Inc. v. Carlisle Syntec Inc.*, the Rhode Island Supreme Court applied the economic loss doctrine in a construction case to bar a claim against a subcontractor with whom the plaintiff did not have a contract. 199 A.3d 1034, 1042–43 (R.I. 2019). The Supreme Court

reasoned that the economic loss doctrine is based on the principle that contract law is the appropriate method to address consequential damages, and tort law should address physical damages. *Id.* If the economic loss doctrine can bar claims between parties not in contractual privity under Rhode Island law, certainly no basis exists to allow parties in contractual privity, such as the State and Jacobs, to sidestep the doctrine by pointing to alleged extracontractual duties.

Additionally, applying an independent duty exception in this instance would eviscerate the economic loss doctrine. Rhode Island courts faced with this exact situation have declined to adopt arguments to find an exception to the economic loss doctrine noting that, if such an exception were recognized, then "any commercial transaction could potentially be said to fall into this category – where one party relies upon the expertise of the party with whom they contract." *Owen Bldg. LLC v. Victory Heating & Air Conditioning Co.*, No. CV 20-00266-WES, 2021 WL 412282, at *3 (D.R.I. Jan. 20, 2021), *report and recommendation adopted,* No. CV 20-266 WES, 2021 WL 409863 (D.R.I. Feb. 5, 2021). In *Owen Bldg. LLC*, the district court declined to find an exception to the economic loss doctrine where the plaintiff building owner argued it could maintain a negligence claim against a subcontractor with which the owner was not in privity. *Id.* at *1, 3. The plaintiff argued that the subcontractor "owed a duty to render its services professionally" and therefore a negligence claim could be maintained. *Id.* at *3. The court noted that, while "this argument has some appeal at first blush," the Rhode Island Supreme Court's *Hexagon Holdings* decision foreclosed the argument and the district court could not recognize "an exception [to the economic loss doctrine that] has not been articulated by the Rhode Island Courts and would effectively swallow the rule." *Id.*[7] The Court should not limit application of the economic loss

[7] Other decisions of the U.S. District Court for the District of Rhode Island suggest the same result. *See Robertson Stephens, Inc. v. Chubb Corp.*, 473 F. Supp. 2d 265 (D.R.I. 2007) (analyzing Rhode

doctrine, which the Rhode Island Supreme Court has made clear applies in full force in the construction and professional services context. *See Hexagon Holdings, Inc.*, 199 A.3d at 1042.

Further, even if the independent duty exception was recognized in the construction space (which it is not), under the State's own definition the exception would not prevent application of the economic loss doctrine here. According to the State, "separate counts for breach of contract and tort can be maintained when there are separate and distinct breaches of duties." Opp. at 14 (internal citation and quotation omitted). The State, however, fails to allege any distinct breaches here. The State's breach of contract and negligence claims remain based on the same alleged conduct and supposed breaches of the agreed-upon responsibilities as between the State and Jacobs. Specifically, the State bases both its negligence and breach of contract claims on the same alleged facts and actions relating to Jacobs' 2021 inspection of the Washington Bridge. *See* Am. Compl. ¶¶ 169–171, 174, 176. Without any distinct alleged breaches, and without any claims for physical damage, the State's negligence claim is barred by the economic loss doctrine even if the independent duty exception exists.

Finally, the State argues that it is premature to apply the economic loss doctrine because "the exact details of the contracts" are "not before the Court." Opp. at 15. This purported issue is entirely of the State's own making. Despite having the opportunity to amend its complaint after Jacobs raised the issue of the State's failure to point to specific contractual provisions in its motion to dismiss the initial complaint, the State failed to attach the relevant contracts with Jacobs or even identify them. *See* Jacobs' Mem. in Support of Motion to Dismiss Initial Complaint at 8–9 (raising these pleading deficiencies); Jacobs' Reply in Support of Motion to Dismiss Initial Complaint at 7

Island courts' application of the doctrine, finding damages beyond economic damages are needed for a negligence claim to stand, and distancing the doctrine from any independent duty exception).

("This position is particularly egregious given the State's failure to disclose the alleged inspection contract with Jacobs or what contract terms were supposedly violated."). This continued oversight is notable given the State's reliance on specific contracts with other defendants when it benefits the State. *See* Am. Compl. at ¶¶ 116 (listing specific contractual provisions in contract between State and AECOM), 187 (same with respect to contract between State and Joint Venture). The Court should not condone this legal gamesmanship and allow the State to benefit from its own deliberate pleading deficiencies. Irrespective of this issue, however, the Court does not need the exact contractual language to hold that the economic loss doctrine applies and no independent duty exception exists to save the States's claim. *See Hexagon Holdings, Inc.*, 199 A.3d at 1042–43 (applying economic loss doctrine and not recognizing independent duty exception even where no contract exists between the parties).

Unable to demonstrate that an independent duty exception should apply, the State's negligence claim is barred by the economic loss doctrine.

III. CONCLUSION

For the foregoing reasons, as well as those provided in Jacobs' initial memorandum of law, 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;[8] and (3) grant any other relief as the Court deems just and necessary.

[8] Given the fact that the State has already been afforded an opportunity to amend its negligence claim and any further amendment would be futile, dismissal of the negligence claim should be with prejudice. *See Ferreira v. Child & Fam. Servs.*, 222 A.3d 69, 78 (R.I. 2019) (affirming dismissal with prejudice where the hearing justice concluded that granting leave to amend a complaint a second time would be futile).

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Dated: July 28, 2025

CERTIFICATE OF SERVICE

I hereby certify that, on the 28th day of July 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