Hearing Date August 5, 2025

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC PC-2024-04526

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.	)

DEFENDNANT STEERE ENGINEERING, INC'S REPLY TO PLAINTIFF'S CONSOLIDATED OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE AMENDED COMPLAINT

Defendant Steere Engineering, Inc. ("Steere") respectfully submits this Reply to the Plaintiff, the State of Rhode Island's (the "State") Consolidated Response in Opposition to Defendants' Motions to Dismiss the Amended Complaint ("Opposition").

INTRODUCTION

The State's Amended Complaint alleges that pursuant to a series of contracts, defendant AECOM Technical Services, Inc. ("AECOM") and its consultants, including Steere, should have identified the existence of serious structural problems with the Westbound Washington Bridge,

but failed to do so. *Amended Complaint at ¶¶ 59-65; 114*. As a consequence of that alleged failure by AECOM and its consultants to perform in accordance with their respective contractual obligations, the State alleges it was not until December 8, 2023, that the State first learned of the existence of those serious problems with the Westbound Washington Bridge. *Id. at ¶¶ 92-94*. The State alleges those problems are so "critical to the safety and structural integrity of the [Westbound Washington] bridge, [] that the only reasonable option is to demolish and replace the existing bridge." *Id. at ¶ 95*. In short, the State alleges that because AECOM and its consultants, including Steere, failed to perform their services in accordance with their contractual duties, the State found out later than it should have that the Westbound Washington Bridge is unsalvageable and needs to be demolished and replaced.

Although the State's claims against Steere arise out of Steere's alleged failure to adequately perform its contractual duties, the State asserts a cause of action against Steere for alleged negligence (Count II). *Id. at ¶¶ 111-118*. Because the State identifies only economic damages - specifically the loss of use of the Westbound Washington Bridge and costs associated with substitution / replacement of that non-performing asset - the State's negligence claim against Steere (Count II) is barred by the economic loss doctrine.

In its February 27, 2025, Decision, this Court held, in accordance with well-established Rhode Island law, that if the "property damage" alleged by the State is damage to the Westbound Washington Bridge itself, the State's "negligence claims would be barred by the economic loss doctrine." *Decision p. 15*. The State now seeks to avoid the economic loss doctrine by characterizing the loss of use of the Westbound Washington Bridge as alleged property damage to the Eastbound Washington Bridge in the form of increased wear and tear due to higher traffic

volumes. *Id. at* ¶¶ 101-105.[1] Unable to cite any case from any jurisdiction which has recognized such a "wear-and-tear-to-substitute asset" exception to the economic loss doctrine, the State asks this Court to create new law. This Court must resist doing so.

As set forth in detail below, the State's alleged wear and tear damages are nothing other than loss of use and resulting substitution / replacement costs, which are economic losses not recoverable in tort. Additionally, the State's contract with AECOM did not grant it the right to bring tort-based causes of action against Steere, to the contrary, the law in Rhode Island is where the duties arise from a contract, the economic loss doctrine is a bar to recovery in tort; this Court can determine as a matter of law that wear and tear to an alternate traffic route was reasonably foreseeable and therefore not recoverable in tort; no "independent duty" from the underlying contract has been identified that would make the economic loss doctrine inapplicable. Furthermore, because there is no viable underlying negligence cause of action against Steere, this court should dismiss Counts XIX and XX. Thus, and for the reasons set forth below and in Steere's principal brief, the State's claims against Steere should be dismissed.[2]

ARGUMENT

1. The Economic Loss Doctrine is Based on the Principle that Parties to Contractual Transactions Should Be Left to Pursue their Bargained-for and Agreed-Upon Contractual Remedies when a Contractual Obligation is not Fulfilled.

The economic loss doctrine – which has been adopted by the Rhode Island Supreme Court as the law of Rhode Island – provides "a plaintiff is precluded from recovering purely economic losses in a negligence cause of action." *Bos. Inv. Prop. No. 1 State v. E.W. Burman,*

[1] Paragraph 106 of the Amended Complaint alleges "[d]ue to the increased traffic volume and increased wear and tear, the State has had to install advanced monitoring systems … to track the structural health and integrity of the Eastbound Washington Bridge…" This allegation concerns an expenditure in the nature of property enhancement / improvement (*i.e.*, betterment), not physical damage to property.

[2] Steere respectively incorporates by reference all arguments made by the other moving parties in support of their respective Motions to Dismiss the Amended Complaint.

Inc., 658 A.2d 515, 517 (R.I.1995). "[U]nder this doctrine, a plaintiff may not recover damages under a negligence claim when the plaintiff has suffered no personal injury or property damage." *Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1275 (R.I. 2007). The economic loss doctrine is based on the important policy principle that the "distinction between the recovery theories underlying tort and contract law ... must remain separate[,] otherwise, 'contract law would drown in a sea of tort.'"[3]

In adopting the doctrine as the law of Rhode Island, the Rhode Island Supreme Court has explained: "when parties have contracted to protect against potential economic liability, as is the case in the construction industry, contract principles override tort principles and, thus, purely economic damages are not recoverable." *Bos. Inv. Prop. No. 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I. 1995) (citation and quotations omitted). "[I]f tort and contract remedies were allowed to overlap, particularly in the construction industry, certainty and predictability in allocating risk would decrease and impede future business activity." *Id*. at 517 (citation and quotations omitted).

The Rhode Island Supreme Court has further instructed in this regard:

> Our rationale for abiding by the economic loss doctrine centers on the notion that commercial transactions are more appropriately suited to resolution through the law of contract, than through the law of tort. ... [I]t is appropriate for sophisticated commercial entities to utilize contract law to protect themselves from economic damages. Indeed, we previously have expressed our agreement with the Supreme Court of New Jersey's decision in *Spring Motors Distributors, Inc. v. Ford Motor Co.*, 98 N.J. 555, 489 A.2d 660, 672 (1985), in which the court stated that '[t]he purpose of a tort duty of care is to protect society's interest in freedom from harm, *i.e*., the duty arises from policy considerations formed without reference to any agreement between the parties. A contractual duty, by comparison, arises from society's interest in the performance of promises.' Generally speaking, tort principles,

[3] Jeffrey L. Goodman et al., A Guide to Understanding the Economic Loss Doctrine, 67 Drake L. Rev. 1, 14 (2019) quoting *East River Steamship Corp., v. Transamerica Delaval, Inc*., 476 U.S. 858, 871 (1986).

> such as negligence, are better suited for resolving claims involving unanticipated physical injury, particularly those arising out of an accident. Contract 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.

Franklin Grove Corp., 936 A.2d at 1275–76 (quoting *Spring Motors Distrib, Inc.*, 489 A.2d at 672).[4] The Rhode Island Supreme Court has held "[t]his rationale is no less applicable" to claims by a project owner against a construction project subcontractor with whom the plaintiff has no direct contract. *Hexagon Holdings, Inc. v. Carlisle Syntec, Inc.*, 199 A.3d 1034, 1042 (R.I. 2019) ("[w]here there are damages in the construction context between commercial entities, the economic loss doctrine will bar any tort claims for 'purely economic damages. In such a context, a party who is injured must resort to contract law for recovery.").

2. Loss of Use and Resulting Costs Associated with Substitution / Replacement of the Non-Performing Principal Asset are Purely Economic Losses for Purposes of the Economic Loss Doctrine.

The State asks this Court to create new law and announce an entirely novel, first-int-the-nation "wear-and-tear-to-substitute-assets" exception to the economic loss doctrine. Such an exception finds no support in the case law; does not align with the purpose and rationale on

[4] Using somewhat more vivid language, Judge Selya has explained the rationale and purpose underlying the economic loss doctrine as follows:

> [i]n those regrettable instances where the product turns sour and proves to be a lemon, dulcification should flow from the terms of the bargain, not from the vagaries of negligence law. To permit recovery of purely economic losses in such circumstances would, unless by happy coincidence such recovery was consistent with the agreement between the contracting parties, undermine the very foundations upon which business transactions have historically been built. Thus, to couple product disappointment with traditional notions of tort recoupment in such a context would be to mix matter and anti-matter; the resultant amalgam would be much too volatile to make sense in a commercial setting.

Hart Eng'g Co. v. FMC Corp., 593 F. Supp. 1471, 1484 (D.R.I. 1984) (holding, where purchaser of machinery sought to recover damages for costs associated with removal, shipment, and reinstallation of defective parts, plaintiff's alleged damages encompassing costs associated with repair / replacement of defective parts were economic losses unrecoverable in tort under the economic loss doctrine).

which the economic loss doctrine is based; and would lead to disparate results and enable plaintiffs to avoid bargained-for risk allocation and agreed-upon contractual remedies in almost all cases simply by ensuring that they have a substitute asset on hand at the time the loss of use of the non-performing principal asset first occurs. The State's request is without merit and should be rejected.

Elevating form over substance, the State characterizes its alleged damage as wear and tear to the Eastbound Washington Bridge due to increased traffic volumes during shutdown, demolition, and replacement of the Westbound Bridge. *Amended Complaint at ¶¶ 101-05*. In reality, however, that allegation is nothing other than a classic example of purely economic losses flowing from the loss of use of the Westbound Washington Bridge.

The case law cited in Steere's and co-defendant Jacobs Engineering Group, Inc's ("Jacobs") principal briefs holds that loss of use and the costs associated with substitution / replacement of a non-performing principal asset are purely economic losses unrecoverable in tort under the economic loss doctrine. For example, in *Kestrel Holdings I, L L.C. v. Learjet Inc.*, 316 F.Supp. 2d 1071 (D.Kan. 2004) the plaintiff-purchaser of an aircraft alleged the defendant failed to deliver an airworthy aircraft and brought suit seeking to recover damages including the "costs of using alternative aircraft." *Id*. at 1074. Granting the defendant's motion to dismiss the plaintiff's negligence claim as barred by the economic loss doctrine, the Court explained:

> In its first amended complaint, plaintiff alleges the following damages: ... costs of using alternative aircraft; ... and lost use of the aircraft. Plaintiff's alleged damages relate to the aircraft itself - not damage to other property or personal physical injuries. ... The damages plaintiff alleges are all economic losses that relate to the allegedly defective aircraft.

Kestrel Holdings, 316 F. Supp. 2d at 1076.[5]

Similarly, in *Isla Nena Air Serv's, Inc. v. Cessna Aircraft, Co.*, 449 F.3d 85 (1st. Cir. 2006), the plaintiff-commercial airline purchased an airplane from the defendant, which the plaintiff alleged was damaged when rivets installed around the engine inlet duct came loose and were ingested into the engine causing serious damage to the subject airplane. The plaintiff "sought to recover damages for ... loss of use of the [a]ircraft" (449 F.3d 85, 86), which the First Circuit held were economic losses barred by the economic loss doctrine. *Id*. at 91.

Global Hunter, LLC v. Des Moines Flying Serv., Inc., No. 1:18-CV-062-C, 2019 WL 7757888 (N.D. Tex. June 18, 2019) also involved a plaintiff seeking to recover damages associated with the loss of use of an aircraft's engine, which allegedly was damaged as a result of the defendant's allegedly deficient installation of other components of the aircraft. The plaintiff, owner of the damaged aircraft, sought to recover alleged damages including "rental costs of the replacement engine ... and damages from loss of use of the aircraft." *Id*. at *2. Granting summary judgment as to the plaintiff's negligence claim, the Court held: "the damages alleged, specifically: ... rental costs of the replacement engine; ... [and] damages resulting from the loss of use of the aircraft amount to purely economic losses." *Id*. at *3.[6]

Faced with abundant case law holding loss of use and the resulting cost of substitution / replacement of a non-functioning principal asset are economic losses for purposes of the economic loss doctrine, the State offers nothing but the distinction that when the loss of use first

[5] The State's own description of the *Kestrel Holdings* case acknowledges that costs for "using alternative aircraft" were economic damages for purposes of the economic loss doctrine. *Opposition at p. 7*.

[6] Steere's principal brief cited numerous other instances in the case law where Courts repeatedly have held costs associated with utilizing a substitute / replacement asset necessitated by loss of use of a non-performing principal asset that is the subject of the parties' contractual arrangements are economic losses unrecoverable in tort. The State makes no serious effort to distinguish that case law apart from its below-discussed, entirely specious contention that this case is different because the State already owned the Eastbound Washington Bridge as opposed to having to rent or purchase a substitute / replacement asset to offset the loss of use of the non-performing principal asset.

occurred, the State already owned the substitute / replacement asset (*i.e.*, the Eastbound Washington Bridge).[7] The State's argument in this regard rests on the happenstance that when it first learned of the unsalvageable condition of the Westbound Washington Bridge, it already owned the Eastbound Washington Bridge, which it is able to use as a substitute / replacement asset to compensate for the loss of use of the non-performing principal asset.

Under the State's novel theory - for which the State cites no authority – the plaintiffs in the *Kestrel Holdings, Isla Nena*, and *Global Hunter* cases (discussed above), who were barred from recovering the costs associated with substitution / replacement of the defective aircraft in those cases, could have recovered the same loss of use damages in the form of increased wear and tear to other aircraft if only those plaintiffs already owned the substitute / replacement aircraft at the time the loss of use first occurred. Indeed, under the State's argument, any plaintiff would be permitted to recover in tort its loss of use damages in the form of increased wear and tear if it owned the replacement asset, while a plaintiff who suffers the exact same loss of use, but who must rent a substitute / replacement alternative asset would be barred from recovering its loss of use damages.[8]

This novel argument, which finds no support in the case law, elevates form over substance and is not aligned with the purpose and rationale of the economic loss doctrine. Sophisticated parties to contractual transactions should be left to pursue their agreed-upon contractual remedies when the object of the parties' contract fails to perform irrespective of

[7] See *Opposition at pp. 8-9* (arguing the State "could not simply lease or purchase a replacement bridge (and subsequently seek repayment of that costs from Defendants)."

[8] Taking the State's argument to its logical extension, "property damage" would also apply to the "wear and tear" on a substitute asset purchased after-the-fact, as no reason exists for distinguishing between an asset in inventory and one acquired for use as a substitute. But that theory runs afoul of the holding in *Canal Elec. Corp*. v. Westinghouse Elec. Corp., 756 F.Supp. 620 (D. Mass. 1990), addressed in Steere's principal brief (p. 9), where the Court held that the cost associated with using a substitute turbine blade for a defective one was "economic loss" and not recoverable.

whether the plaintiff already owns, or must go acquire, a substitute / replacement asset necessitated by the loss of use of the non-performing principal asset. Moreover, the State's proposed "wear-and-tear-to-substitute-asset" exception to the economic loss doctrine would lead to randomly disparate outcomes and enable plaintiffs to displace their agreed-upon contractual remedies with open-ended tort law principles so long as they have substitute / replacement assets on hand before the loss of use of the non-performing primary asset occurs. Such a rule would be irreconcilably at odds with the Rhode Island Supreme Court's rationale and purpose in adopting the economic loss doctrine, and should be rejected.

Additionally, because the source of the alleged wear and tear to the Eastbound Washington Bridge is third-party conduct and not a collision involving the Westbound Washington Bridge itself, the State has not alleged damage to other property proximately caused by the non-performing principal asset itself. Damage caused by an independent third-party vehicle and not by some form of physical contact between the Westbound Washington Bridge and the Eastbound Washington Bridge does not satisfy the proximate cause requirement for recoverable damages. See ***Almonte v. Kurl***, 46 A.3d 1, 18 (R.I. 2012) ("A plaintiff must not only prove that a defendant is the cause-in-fact of an injury, but also must prove that a defendant proximately caused the injury.").

Although "but for" the closure of the Westbound Washington Bridge, additional vehicles allegedly would not be traveling on the Eastbound Washington Bridge, the Westbound Washington Bridge is not the "proximate cause" of the alleged damage where a defective condition of the Westbound Bridge itself is not the direct physical mechanism of damage to the Eastbound Bridge. Absent such physical contact (such as if, for example, a piece of the Westbound Bridge fell off and damaged the Eastbound Bridge) the element of proximate

causation is not satisfied. *See e.g., Kestrel Holdings I, L.L.C. v. Learjet Inc.*, 316 F. Supp. 2d 1071, 1076 (D. Kan. 2004) ("The economic loss doctrine does not preclude recovery for physical damage a product caused to other property.") (emphasis added).

3. The State Cannot Avoid the Economic Loss Doctrine by Claiming - Incorrectly - that it "Retained"[9] the Right to Sue for Negligence in its Contract with AECOM.

The State's contention that its 2014 contract with AECOM (the "2014 AECOM Contract") "explicitly allow[s] for damages from negligence" (*Opposition p. 16*) is unavailing. First, the State does not allege that Steere entered into any agreement whereby Steere agreed to waive the protection of the economic loss doctrine afforded to it under Rhode Island law.

Moreover, the State's argument misconstrues the provisions of the 2014 AECOM Contract on which the State's argument is based. Each of the three provisions on which the State relies expressly references the performance of "the work" and/or of AECOM's "services under th[e contract]" (*Opposition pp. 16-17*), and uses general language to provide that AECOM will be responsible for damages caused by AECOM's sub-standard performance of its work/services under the 2014 AECOM Contract. This general language pertains to the existence of an ordinary duty of care to which AECOM agreed to be bound in the performance of its work/services under the contract. None of these provisions says anything about AECOM - much less AECOM's consultants - waiving the protections of the economic loss doctrine. Indeed, none of these provisions makes any mention of either the economic loss doctrine or of authorizing the assertion of any tort-based causes of action that otherwise would be barred. Plainly, the general language of any of these provisions does not state that notwithstanding the economic loss doctrine under

[9] While the State frames this issue as it having "retained the right" (*Opposition p. 18*) to bring causes of action in tort, that framing is incorrect. Under the economic loss doctrine as adopted by the Rhode Island Supreme Court, the default proposition is that a plaintiff does not have the right to bring negligence claims based on a defendant's alleged breach of contract in the absence of such negligence giving rise to personal injury or property damage, neither of which exists here.

Rhode Island law, the State may bring separate causes of action sounding in tort for AECOM's alleged breach of contract.

For the parties to abrogate AECOM's common law rights/defenses under the economic loss doctrine, they would have to expressly say so using clear, unequivocal language accomplishing that result. No such language exists in the 2014 AECOM contract. The State's contention that general language concerning the standard of care applicable to AECOM's work/services under the contract constitutes a waiver of common law rights and defenses violates both the rules of contract interpretation as well as common sense. See *Perry v. Johnson & Wales Univ.*, 749 A.2d 1101, 1104 (R.I. 2000) ("contracts containing unambiguous language must be construed according to their plain and natural meaning."); *Cheaters, Inc. v. United Nat. Ins. Co.*, 41 A.3d 637, 643 (R.I. 2012) ("we read [a contract] in its entirety, giving words their plain, ordinary, and usual meaning ... mindful that we should refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity into a [contract] where none is present.").[10] "[A] contract should be construed to give it effect as a rational business instrument and in a manner which will carry out the intent of the parties" *Robert & Ardis James Found. v. Meyers*, 474 Mass. 181, 188 (2016) (citation and quotation omitted). Here, in accordance with these governing principles, because the State's 2014 contract with AECOM does not expressly provide that AECOM agreed to relinquish its common law rights/defenses such that the State can assert tort-based causes of action that otherwise would be barred by the economic loss doctrine, the general language on which the State relies should not be interpreted as though it did.[11]

[10] *See also*, *Foremost Ins. Co. v. Pitocco*, 747 A.2d 1009, 1010 (R.I. 2000) ("In construing a [] ... contract[] we read the [contract] literally, ..."); *Kottis v. Cerilli*, 612 A.2d 661, 668 (R.I. 1992) ("... unless a plain and unambiguous intent to the contrary is manifested, the words used in the contract are assigned their ordinary meaning.").

[11] Furthermore, the overly expansive interpretation urged by the State should be rejected because the literal meaning of the language "shall be liable" (*Opposition p. 16 quoting 2014 AECOM Contract at Art. X, § B(2)*) – if construed as allowing the assertion of tort-based causes of action otherwise barred by the economic loss doctrine – would mean that all affirmative defenses otherwise potentially applicable to a negligence cause of action, such as the

Further, significantly in this regard, two of the three provisions on which the State relies for this argument are not, in fact, found in the 2014 AECOM Contract. Rather, they are language contained in the State of Rhode Island Procurement Regulations: Section 12 Rhode Island Department of Transportation Projects, which language the Opposition states has been "incorporated into the 2014 AECOM Contract." *Opposition p. 17*. The Opposition identifies no statement of regulatory intent supporting that the general language of those provisions was adopted for the purpose of abrogating common law rights. The absence of an express indication of such intent is fatal to the State's argument on this point.

> If possible, statutory enactments should be construed by courts as consistent with the common law, and statutes should not be construed to alter common-law principles absent an explicit statement of legislative intent to do so. Indeed, statutes that invade the common law are to be read with a presumption favoring the retention of long-established and familiar principles, except where a contrary statutory purpose is evident. Abrogation of the common law occurs only when the legislative intent to do so is plainly manifested, as there is a presumption that no change was intended.

15A Am. Jur. 2d Common Law § 16 (citing cases). *See also, Com. v. Cabral*, 443 Mass. 171, 176–77 (2005) (it is a "settled rule of statutory construction that '[a] statute is not to be interpreted as effecting a material change in or a repeal of the common law unless the intent to do so is clearly expressed.") quoting *Riley v. Davison Constr. Co.*, 381 Mass. 432, 438 (1980).[12]

statute of limitations, assumption of the risk, contributory/comparative negligence, *et cetera*, also would be waived. It cannot seriously be suggested that this general language - pursuant to which AECOM agreed to perform its work/services under the contract in accordance with an ordinary duty of care - was intended to waive all possible affirmative defenses and effectively operate as a pre-emptive confession of judgment.

[12] *See also, Hatfield v. Palles*, 537 F.2d 1245, 1248–49 (4th Cir. 1976) ("the rules of the common law are not to be changed by implication and are not to be overturned except by clear and unambiguous statutory language evidencing an intent so to do") (applying South Carolina law).

The State's Opposition cites no authority supporting that general language such as found in the 2014 AECOM Contract abrogates the economic loss doctrine. The provisions upon which the State relies say no such thing and cannot be construed as though they did.

4. This Court Can Determine as a Matter of Law that Wear and Tear to an Alternate Traffic Route Was Reasonably Foreseeable – Indeed Inevitable – in the Event the Westbound Washington Bridge Became Unusable.

As set forth in Steere's and Jacob's principal briefs, additional wear and tear to the Eastbound Washington Bridge is not recoverable for the separate reason that wear and tear to an alternate traffic route was reasonably foreseeable and within the State's scope of bargaining at the time of contracting with AECOM. *See Steere's Principal Br. at pp. 9-13; Jacob's Principal Br. at pp. 7-9.* Under the cases cited in defendants' principal briefs, the opportunity the State had at the time of contracting to allocate risk and protect its interests through agreed-upon contractual remedies prevents recovery in tort for alleged wear and tear damage to the Eastbound Washington Bridge, even if that loss of use damage could accurately be described as damage to "other property" for purposes of the economic loss doctrine.

The State argues in response only that foreseeability of additional wear and tear to alternate traffic routes supposedly is a jury issue that cannot be resolved on a Rule 12 motion. *Opposition pp. 10-12.* The State makes no other meaningful effort to argue against this separate reason why the State's alleged wear and tear damages are not recoverable against Steere. *Ibid.*

The State's argument is incorrect. The issue of foreseeability may be decided as a matter of law where, based on the State's own allegations in the Amended Complaint, reasonable minds could not differ. *See e.g., Stalker v. Springfield Donuts, Inc.*, 74 Mass. App. Ct. 1119, 907 N.E.2d 1160 (2009) ("While reasonable forseeability is ordinarily left to the jury, a judge may properly decide the question as a matter of law."); *McKown v. Simon Prop. Grp., Inc.*, No. C-08-

5754-BHS, 2011 WL 1085891, at *1 (W.D. Wash. Mar. 22, 2011) ("Forseeability is normally an issue for the jury, but it will be decided as a matter of law where reasonable minds cannot differ.").[13] The test for foreseeability is an objective one, which asks:

> whether a reasonably prudent person would have anticipated that injury was likely to result from the performance or nonperformance of an act. ... The pertinent inquiry is not whether the precise manner in which the harm occurred was foreseeable but, rather, whether it fell within a general field of danger that should have been anticipated. ... [F]oreseeability ... may be decided as a question of law [] if, under undisputed facts, there is no room for a reasonable difference of opinion.

§ 10:11. Foreseeability—Determining foreseeability, Am. L. Prod. Liab. 3d § 10:11.

Here, the Amended Complaint alleges the State was aware that an inspection back in 1992 had identified multiple, significant "problems" and issues of "concern" with regard to the Westbound Washington Bridge structure (*Amended Complaint at ¶¶ 34-39*), and that in August of 2011, a separate inspection report advised the State that the "superstructure [of the Westbound Washington Bridge] was in poor condition" and "in need of major repair." *Id. at ¶¶ 44-45*. The Amended Complaint further alleges that the Eastbound Washington Bridge runs "parallel" to the Washington Bridge, but has "separate" and "distinct structural components and foundations." *Id. at ¶ 100.* Additionally, the Amended Complaint alleges the Eastbound Washington Bridge previously had been "used to connect Providence and East Providence for both eastbound and westbound traffic" across the Seekonk River. *Id. at ¶ 96.*

Based on these allegations, this Court can rule, as a matter of law, that it was not only reasonably foreseeable - but indeed, inevitable - that a substitute roadway asset would need to be

[13] *See also, Steinberg v. SICA S.P.A.*, No. 7:04-CV-22 (HL), 2006 WL 618593, at *8 (M.D. Ga. Mar. 10, 2006) ("Although the issue of forseeability is ordinarily a jury question, where the relevant evidence is clear and leads to only one reasonable conclusion, ... the issue of forseeability may be decided as a matter of law."). *C.f., Hexagon Holdings, Inc. v. Carlisle Syntec, Inc.*, 199 A.3d 1034, 1038 (R.I. 2019) (motion justice may determine the issue of negligence as a matter of law "if the facts suggest only one reasonable inference").

utilized, and would be subjected to additional wear and tear, if the Westbound Washington Bridge ever became unusable (either in part, or in whole). While only the general harm of additional wear and tear to an alternative asset need have been reasonably foreseeable, it was equally inevitable that in the event the Westbound Washington Bridge became unusable, the Eastbound Washington Bridge would be the asset used as an alternate traffic route.

Accordingly, for this separate and independent reason, the alleged wear and tear to the Eastbound Washington Bridge does not constitute damage to "other property" for purposes of the economic loss doctrine.

5. The Limited "Independent Duty" Exception to the Economic Loss Doctrine Does Not Apply where the State Has Not Identified Any Duty Not Coextensive with Duties Arising from Contractual Obligations.

The State erroneously contends that because professional engineers are subject to a general duty of competence, the economic loss doctrine does not apply when a professional engineer allegedly fails to competently perform its contractual obligations. This is wrong and is contrary to this Court's Decision that the economic loss doctrine does apply to these defendants. The State's argument, if correct, would categorically eviscerate the economic loss doctrine as to all professionals, which is not the law in Rhode Island.

The Supreme Court of Rhode Island declined to announce any such rule when presented with that precise issue in *John Rocchio Corp. v. Pare Eng'g Corp.*, 201 A.3d 316 (R.I. 2019). In that case, an unsuccessful bidder brought suit against the defendant-engineer who had provided pre-bid services, including preparing requests for proposal, to the sewer authority who solicited bids relating to a proposed sewer infrastructure expansion project. After the sewer authority contract was awarded to a different bidder, the unsuccessful bidder brought suit against the engineer asserting multiple claims, including negligence. The unsuccessful bidder alleged "the engineer in the performance of its contract with the [sewer authority], was required to exercise

the ability, skill and care customarily exercised by engineers in similar circumstances." *John Rocchio Corp.,* 201 A.3d at 322.

The engineer argued the negligence claim was barred by the economic loss doctrine. "[I]n opposition, [the unsuccessful bidder specifically] argued that the economic loss doctrine would not bar a negligence claim concerning professional services." *Id.* at 320. The Rhode Island Supreme Court declined to announce any such rule. Instead, the Court held the negligence claim failed as a matter of law because, despite the "independent duty" of competence the State raises in its Opposition, the engineer owed no duty to the unsuccessful bidder. *Id*. at 320. In *dicta*, the Court addressed the economic loss doctrine issue and decided that the economic loss doctrine did not apply to that situation because no contracts had been entered into defining the parties' obligations. *Id*. at 321, n.5. The *John Rocchio* case is instructive because the Court refused to recognize a general duty of "competence" to create a duty in tort to all, and reinforced that if contract terms apply, the economic loss doctrine is a bar to claims in tort.

This reasoning is consistent with the authority cited by this Court in its February 27, 2025, Decision. See Goodman, *A Guide to Understanding the Economic Loss Doctrine*, 67 Drake L. Rev. 1, 31-32 (discussing as an archetypal example of the independent duty rule *Robinson Helicopter Co. v. Dana Corp*., 34 Cal. 4th 979, 102 P.3d 268 (Cal. 2004) (holding economic loss rule did not bar plaintiff-helicopter manufacturer's fraud and intentional misrepresentation claims against defendant-parts supplier because, although generally relating to the parties' commercial transaction, the claims were based upon fraudulent conduct in violation of duties that were independent of the parties' contract.). In the *Robinson Helicopter* case, the Court held the economic loss rule did not apply to plaintiff's tort-based causes of action because the defendant's intentionally fraudulent certification of its products and subsequent active

concealment violated duties the defendant owed separate and apart from its duty of performance under the contract. *Robinson Helicopter,* 34 Cal. 4th at 991.

Ciccone v. Pitassi, No. CIV.A. PB 97-4180, 2004 WL 2075120 (R.I. Super. Aug. 13, 2004) (Silverstein, J.), the principal case the State cites in support of its "independent duty" argument, also reinforces that the State cannot avoid the economic loss doctrine. *Ciccone* concerned a bank customer/trustee beneficiary's claims against a bank for allegedly failing to exercise reasonable care in uncovering bank fraud, self-dealing, and dissipation of trust assets by the trustee of a trust, the corpus of which was held in a deposit account with the bank. In *Ciccone*, Judge Silverstein observed "the Rhode Island Supreme Court has yet to address whether the economic loss doctrine applies to preclude a negligence claim against a bank in connection with its services" (*id.* at *6), and therefore looked to caselaw from other jurisdictions for guidance. Reasoning that"[the bank customer] has alleged the commission of a tort ... that exists independently of the breach of the contract concerning the [bank customer's] account"" (*id.* at *7) , Judge Silverstein ruled that the economic loss doctrine did not apply to preclude the bank customer's negligence claim against the bank where the allegedly actionable conduct did not merely overlap with the bank's contractual duty of performance under the Deposit Account Agreement. Judge Silverstein explained:

> [A] party can maintain an action for breach of contract as well as tort where 'the defendant's conduct constituted a breach of duty separate and distinct from the breach of contract.' In other words, the court must 'compare the claims and determine whether they are based upon the same duty.' **If the claims are based upon the same duty, the plaintiff cannot maintain the tort claim**; however, if they are not, 'the tort claim is not barred.'

Id. at *6 (emphasis added) quoting *Wrench LLC v. Taco Bell Corp*., No. 1:98–CV–45, 2003 U.S. Dist. LEXIS 7607 (W.D. Mich. May 1, 2003)[14]

The Federal District Court's opinion in *Wrench LLC v. Taco Bell Corp*., relied upon by Judge Silverstein in *Ciccone*, explained as follows:

> Whether a tort action may be maintained when the claim is based upon a contractual obligation depends upon whether the defendant's conduct constituted a breach of duty separate and distinct from the breach of contract. In other words, if a legal duty could not be enforced in the absence of the contract, a tort action may not be maintained. Thus, [t]he question is whether the tort action would arise independent of the existence of the contract.

Wrench LLC v. Taco Bell Corp., No. 1:98-CV-45, 2003 WL 21653410, at *1 (W.D. Mich. May 1, 2003) (applying Michigan law). In the *Taco Bell* case, the plaintiffs alleged that in violation of an agreement between the parties, they submitted to the defendant certain ideas to be used in an advertising campaign, and that the defendant used those ideas without paying for them. The plaintiffs asserted tort-based claims including for alleged misappropriation and conversion. Dismissing the plaintiffs' tort-based claims, the Court explained:

> [I]n order to determine whether Plaintiffs may maintain their tort claims, the Court must determine whether those claims arise from the breach of a duty that is separate and distinct from the breach of contract. Based upon its review of the first amended complaint, the Court concludes that Plaintiffs' allegations of unlawful or wrongful acts with regard to their ideas simply restate their breach of contract claim. ... The only duty that Taco Bell allegedly breached was the duty to compensate Plaintiffs for the use of their ideas-a duty imposed by the parties' contract. In other words, if Taco Bell had not breached the contract by failing to pay Plaintiffs for the use of their ideas, there would be no grounds for Plaintiffs to sue Taco Bell in tort.

[14] *See also, id at *7* (explaining the Court's holding in *Ciccone* is consistent with the rule that "[t]he purchaser of services cannot 'recover purely economic loss due to the negligence arising from a breach of contract where the purchaser has not shown the commission of a tort independent of the breach itself.") quoting *Perfumeria Ultra v. Miami Customs Service, Inc*., 231 F.Supp.2d 1218, 1222–23 (S.D.Fla.2002).

Id. at *4.

As the above-quoted passages from *Ciccone* and the *Taco Bell* case make clear, the question under the "independent duty" exception to the economic loss rule is not whether the plaintiff can point to the existence of a general duty of professional competence that the defendant owes to the public. Rather, the question is whether the allegedly actionable conduct that forms the basis of the plaintiff's claim is the breach of a duty that exists separate and apart from the defendant's contract, such that the allegedly actionable conduct is not merely coterminous with breach of a contractual duty of performance.

Here, the State alleges only that Steere should be held liable for conduct allegedly in violation of Steere's contractual obligations to AECOM. The State does not allege commission of any tort independent of Steere's alleged breach of contractual duties. That the State has alleged the existence of general professional duties of competence that govern Steere's contractual obligations. . Indeed, the State does not even allege a breach of any of the general professional duties that it recites in the Amended Complaint, or any causal connection to its

alleged damages.[15] Accordingly, the narrow independent duty exception to the economic loss doctrine does not apply.[16]

The State's argument concerning independent duty is also an improper collateral attack on this Court's February 27, 2025, Decision. The State contends the economic loss doctrine categorically does not apply because Steere is a professional engineer subject to a general duty of competence. That contention is neither a correct statement of the law of Rhode Island, nor of the law of the case. In advancing this argument, the State's Opposition attempts to undo the Court's February 27, 2025, Decision, which correctly ruled the State's negligence claims are subject to the economic loss doctrine if damage to other property has not been alleged. *Decision p. 15*.

[15] Although the State points to the existence of several general duties applicable to engineers practicing in Rhode Island (*Opposition at pp. 13-14 citing Amended Complaint at ¶¶ 113, 122, 175, and 185*), the State does not allege that Steere, in fact, breached any of those duties, much less that alleged breach of any of such general duties caused the alleged damages that the State seeks to recover in this action, which are required elements of a negligence claim. *See, e.g., Caseau v. Belisle*, No. PC 01-4441, 2005 WL 2354135, at *2 (R.I. Super. Sept. 26, 2005) ("In an action for negligence, the plaintiff bears the burden of establishing that the defendant breached a duty of care owed to the plaintiff and this breach proximately caused an injury to the plaintiff resulting in actual damages.") (citation and quotations omitted). Here, the State does not allege, for example, that Steere: performed services beyond its competence or undertook an assignment for which it was not qualified; misrepresented or exaggerated its degree of responsibility in, or the complexity of prior assignments on which it had worked; approved or sealed any design documents that did not conform to accepted engineering standards; or that Steere breached any other general duty applicable to professional engineers, other than the allegation that Steere allegedly failed to perform its contractual obligations in accordance with the professional standard of care. The State has not alleged commission of an independent tort, and thus the limited "independent duty" exception to the economic loss doctrine does not apply.

[16] The out of context language in the State's Opposition quoted from *282 County Road v. AAA S. New Eng.*, 2014 WL 4261925 (2014) (Silverstein, J.), did not concern the economic loss doctrine, and does not support the State's incorrect assertion that because engineers are professionals subject to general duties of competence, the economic loss doctrine does not apply. *282 County Road* involved a boundary dispute and the resulting assertion of claims by the recent purchaser of one of the properties against a land surveyor for alleged failure to provide an accurate legal description of the property boundaries. Judge Silverstein held that under the facts presented where the land surveyor's failure to include certain information in the survey was because he had not discovered that information, the plaintiff's alleged breach of contract claim against the land surveyor was, in fact, "merely a tort claim cloaked in contractual language and not a breach of contract claim" at all. *282 County Road*, 2014 WL 4261925 at *12 (citation and quotation omitted). The case had nothing to do with the economic loss doctrine and is therefore inapposite.

6. Because There Is No Viable Underlying Negligence Cause of Action Against Steere, this Court Should Dismiss Counts XIX and XX, which Seek Declaratory Judgment on the State's Non-Contractual Indemnity and Contribution Claims Against Steere.

This Court held in its February 27, 2025, Decision that the State's counts seeking declaratory judgment on its non-contractual indemnity and contribution claims against Steere were not yet ripe and issued a stay of their prosecution due to the pendency of other claims against Steere. *Decision at p. 40*. As set forth above, under the economic loss doctrine, there is no viable underlying negligence claim against Steere. Accordingly, Steere cannot be liable to the State in either non-contractual indemnity or contribution. As the Rhode Island Supreme Court held in *Franklin Grove Corp. v. Drexel*:

> Because the economic loss doctrine bars a primary negligence claim, plaintiff, ...is unable to recover against both the party seeking contribution and the party from whom contribution is sought. The economic loss doctrine, therefore, will preclude recovery in this case under an indemnification or contribution theory as well. This Court concludes, therefore, that the economic loss doctrine bars the plaintiff from asserting this negligence claim against [the party from whom contribution is sought]. Accordingly, the economic loss doctrine also bars the defendants from recovering against [the party from whom contribution is sought] under either an indemnification or contribution action when the primary cause of action would fail. Thus, the defendants' third-party derivative claims against [the party from whom contribution is sought] for indemnification or contribution also must fail.

Franklin Grove Corp. v. Drexel, 936 A.2d 1272, 1277–78 (R.I. 2007). Likewise here, because there is no viable underlying negligence cause of action against Steere, Counts XIX and XX should be dismissed as to Steere.

CONCLUSION

For the reasons stated herein and in Steere's principal brief, Steere respectfully requests this Honorable Court GRANT its Motion to Dismiss the Amended Complaint, and DISMISS all claims against Steere.

Respectfully submitted,
STEERE ENGINEERING, INC.
By its attorney,

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Dated: July 28, 2025

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that on this day, July 28, 2025, a true copy of the foregoing has been filed and served on all parties of record through the Rhode Island electronic filing system. The document electronically filed and/or served is available for viewing and/or download from the Rhode Island Judiciary's Electronic Filing System.

/s/ Warren D. Hutchison

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Warren D. Hutchison

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