

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

STATE OF RHODE ISLAND,)
)
Plaintiff,)
)
v.)
)
AECOM TECHNICAL SERVICES, INC.,)
AETNA BRIDGE COMPANY,)
BARLETTA HEAVY DIVISION, INC.)
BARLETTA/AETNA I-195 WASHINGTON)
BRIDGE NORTH PHASE 2 JV,)
COLLINS ENGINEERS, 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

**DEFENDANTS’ OBJECTION TO PLAINTIFF’S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Defendants AETNA Bridge Company, Barletta/Aetna I-195 Washington Bridge North Phase 2 JV (the “JV”) and Barletta Heavy Division, Inc. (“Barletta” and, collectively with AETNA Bridge Company and the JV, the “JV Defendants”), by and through their undersigned counsel, hereby object to the State of Rhode Island’s (the “State”) Motion for Leave to File Second Amended Complaint (the “State’s Motion”). In support, the JV Defendants state as follows:

INTRODUCTION

On October 8, 2026, with twenty-three days left before the scheduled end of fact discovery, the State filed a motion to amend its complaint to add a new claim under the “Emergency Repair

Contract” against the JV Defendants.¹ The new claim (such as it is) is based on no new information not known to the State when it filed this action. More remarkably, it isn’t a claim at all. The State does not allege that the JV Defendants breached the Emergency Repair Contract. Nor does it allege that it has been damaged in any respect by conduct associated with the JV Defendants’ performance of the Emergency Repair Contract. Instead, the State merely alleges the following:

If and to the extent that the VN Report was or is found to be, in whole or in part, inaccurate, deficient, or otherwise noncompliant with applicable statutes, rules, regulations, and/or the General Conditions of Purchase, **then** the Joint Venture has breached the Emergency Repair Contract

PSAC ¶ 231 (emphasis added).

Simply put, these “if” “then” allegations do not state a claim for breach of contract because they do not factually allege that the JV Defendants actually breached the Emergency Repair Contract. Nor is this a pleading “in the alternative.” The State does not allege facts that if proven would constitute an actionable claim under one of two alternative legal theories. Instead, it alleges that the finder of fact might find a hypothetical state of facts which, if proven, might constitute a breach of contract. The State’s Motion should be denied as futile.

¹ As defined by the State in its Proposed Second Amended Complaint (the “PSAC”), the “Emergency Repair Contract” is Contract No. 2024-CB-012 for “emergency repairs to the Washington Bridge” entered “[f]ollowing the emergency closure of the Washinton Bridge.” PSAC ¶ 105. The State further alleges that in connection with the Emergency Repair Contract the JV indirectly retained VN Engineering, Inc. (“VN”) to conduct an assessment of the Type D Cantilever Beam Post-Tensioning System for the Washington Bridge “which included a ‘qualitative review of repair and strengthening options.’” PSAC ¶ 111. Finally, the State alleges that on or about **February 26, 2024**, VN issued a report (the “VN Report”) with the findings from its assessment. PSAC ¶ 112. To date, all of the State’s contract claims against the JV Defendants in this litigation have been based on alleged breaches of the “2021 Design-Build Contract.” This is the first time in the now long history of this litigation that the State has suggested, much less actually claimed, that the JV Defendants may have breached the Emergency Repair Contract.

Alternatively, the Motion should be denied as untimely and prejudicial. The State does not claim that it has discovered any new facts about the JV Defendants' performance of the Emergency Repair Contract in discovery in this action.² The State has surely known of the "if" "then" allegations it now makes in the PSAC since before the State filed its original Complaint. Nor has the State offered any explanation for its delay in seeking to amend the Amended Complaint to put these "if" "then" allegations at issue in this action. But one thing is certain: if the proposed amendment is allowed, it will require the Court to extend fact discovery well beyond the time period the State has proposed in its pending motion to extend the existing schedule, further delaying trial of this action. That is so because without significant additional discovery, the JV cannot adequately prepare a defense to this new claim and will accordingly be severely prejudiced if the Court allows the Motion. For these independent reasons, the Court should deny the Motion.

BACKGROUND

This litigation has been pending before this Court since August 16, 2024, when the State filed its original Complaint. After various motions to dismiss, the State's "consolidated response" to those motions, and a hearing, the State filed its Amended Complaint on April 14, 2025. Since then, the parties have devoted enormous time and resources to pleadings, written discovery, document collection and production, motions to compel, and other case-management proceedings addressing the claims in the State's Amended Complaint. Discovery has been ongoing and extensive: the State alone has made 46 document productions to date, encompassing more than 2,000,000 pages. And unless this Court grants the State's pending Motion for an Extension of the

² The State claims that it learned of its hypothetical claim because of remarks made by counsel for JV at a hearing before Special Master Vogel on September 2, 2026. As is discussed in detail below, no party, including the JV, has ever alleged that the VN Report was incorrect in any respect, and the JV's counsel made no such assertions at the September 2, 2026 hearing.

Scheduling Order, in which the JV Defendants joined, albeit for different reasons than those the State offered, fact discovery will close on November 1, 2026.³

Against that backdrop, the State now seeks to add a brand-new count against the JV Defendants, purportedly brought “in the alternative.” Proposed Count XXII rests on no newly discovered facts. Instead, it relies on the Emergency Repair Contract (executed in 2023), the VN Report (produced in 2024), and comments the JV’s and Barletta’s counsel made at a September 2, 2026 hearing before the Special Master. *See* State’s Motion at 2-3; PSAC ¶¶ 226-33. The State strips those comments of their context. The hearing concerned the JV’s July 29, 2026 Motion to Compel Production of Documents Concerning the Jamestown Bridge. That motion sought RIDOT’s own records – its inspection contracts, inspection reports, directives to its consultants, evaluations of inspection findings, and non-destructive and destructive testing of post-tensioning ducts for voids – from the period when RIDOT owned and managed the Jamestown Bridge, a comparable post-tensioned structure. *See* JV’s Mem. of Law ISO Mot. to Compel (July 29, 2026), at 2, 7-8.

The purpose of those requests was to test what RIDOT knew, and what it was capable of doing, *before* it procured the 2021 Design-Build Project. The records are likely to show that RIDOT had already investigated, identified, and repaired the same post-tensioning conditions on a comparable bridge, without closing it, yet elected not to perform that testing on the Washington Bridge before it designed the scope of, solicited, and awarded the 2021 Design-Build Project. *Id.* at 2-3, 6-7. The records likewise test the State’s litigation narrative that RIDOT is a passive project manager lacking engineering capability. *Id.* at 6-7. That motion – and counsel’s comments in

³ The scope of the prejudicial effect the State’s discovery tactics has had on the JV Defendants are outlined in greater detail in the JV Defendants’ Joinder and Supplemental Request to Extend Deadlines in the Scheduling Order filed on October 7, 2026.

support of it – thus concerned RIDOT’s pre-procurement knowledge, capability, and decision-making on the 2021 Design-Build Project. It had nothing to do with the 2023 Emergency Repair Contract or the VN Report.

When the State evaluated the Jamestown Bridge, it performed the very testing the Lichtenstein Report recommended for the Washington Bridge. With respect to the 2021 Design-Build Project, the State skipped that testing and limited the JV Defendants’ repair scope, which indisputably did not direct repairs to the elements that led to the 2023 Emergency Repair Project. Had the State performed the testing before procuring the 2021 Design-Build Project, it would have learned that the Washington Bridge could not be rehabilitated (exactly as the VN Report later determined). That is all pre-closure knowledge and conduct. The State conflates that pre-procurement argument with the post-closure Emergency Repair Project in an apparent attempt to create an avenue to amend its complaint. The State’s proposed amendment is a red herring designed to distract from what the State hired the JV Defendants to do and to divert attention from the State’s own failings.

In its Proposed Second Amended Complaint, the State alleges that after the emergency closure of the Washington Bridge on December 11, 2023, it issued the Emergency Repair Contract to the JV. PSAC ¶ 105. The State further alleges that VN, as a sub-subcontractor of the JV, issued a report on or about February 26, 2024, and that “[b]ased on the VN Report, the State determined that the Washington Bridge could not viably be repaired.” *Id.* ¶¶ 111, 112, 115. Notably, the State does not allege that the VN Report was defective or that the JV Defendants breached the Emergency Repair Contract. Instead, the State’s new theory is that “if and to the extent that the VN Report was or is found to be in whole or in part, inaccurate, deficient, or otherwise noncompliant with applicable statutes, rules, regulations, and/or the General Conditions of

Purchase, then the Joint Venture is and remains directly liable to the State therefor.” *Id.* ¶ 230 (emphasis added). The State advances this theory even as it maintains that the VN Report was correct and that its decision to demolish the bridge was reasonable based on the VN Report’s recommendations. *See* State’s Motion at 3 & 4.

The State’s new claim is a deficient pleading dressed up as an “alternative” claim. It is conditional: it is premised on the triggering of a condition – a deficient VN Report – that the State denies and that neither the JV nor any other party has ever alleged. In other words, the claim depends on a condition that no party alleges has occurred or will occur in this litigation. This Court should reject the State’s latest attempt to pin hypothetical, meritless allegations on companies whose work undeniably protected the lives and safety of Rhode Island’s residents.

LEGAL STANDARD

Pursuant to Rule 15(a) of the Rhode Island Superior Court Rules of Civil Procedure, after a party has amended its complaint once, “a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Although Rhode Island courts may take a liberal approach to amendment, that standard is not without limits: “[t]he question of prejudice to the party opposing the amendment is central to the investigation into whether an amendment should be granted.” *Harodite Indus., Inc. v. Warren Elec. Corp.*, 24 A.3d 514, 531 (R.I. 2011) (internal quotation marks omitted).

Delay alone may not suffice, but undue and unexplained delay that causes substantial prejudice is a proper basis to deny leave. *See Gallop v. Adult Corr. Insts.*, 218 A.3d 543, 548-49 (R.I. 2019); *Faerber v. Cavanagh*, 568 A.2d 326, 329-30 (R.I. 1990). Rhode Island’s courts recognize that substantial prejudice exists where the amendment would require “a significant amount of new discovery,” *Gallop*, 218 A.3d at 549, or where the movant delayed without offering

a reasonable explanation and the opposing party would be forced to alter litigation strategy late in the case. *Harodite*, 24 A.3d at 532-33.

Additionally, “the decision as to whether to allow a party to amend its pleadings rests within the discretion of the court, and leave may be denied if the amendment would be futile.” *Gannon v. City of Pawtucket*, 200 A.3d 1074, 1080 (R.I. 2019); *see also IDC Properties, Inc. v. Goat Island South Condominium Association, Inc.*, 128 A.3d 383, 393 (R.I. 2015) (“[A] number of reasons – such as . . . futility of the amendment – may nonetheless warrant the denial of a motion to amend.”).

ARGUMENT

The Court should deny the State’s Motion for two independent reasons. First, the State’s proposed new count is futile because it fails on its face to state a claim under Rhode Island law. It is a conditional claim, cloaked as an “alternative” one, that depends on a condition the State denies and no party has alleged. Second, the State waited years to seek a second amendment, and that undue and excessive delay substantially prejudices the JV Defendants. The only “new” development the State identifies – counsel’s remarks at a hearing on the JV’s Jamestown motion to compel – concerned the State’s pre-procurement decision-making on the 2021 Design-Build Project, not the VN Report, and supplies no excuse for that delay.

I. Proposed Count XXII Is Futile Because it Does Not State a Viable Breach of Contract Claim.

The Court should deny the State’s Motion because proposed Count XXII is futile on its face. As pleaded, the new breach of contract claim falls well short of the “close call” and “near tie” that narrowly preserved the State’s original breach of contract claim against the JV Defendants.⁴

⁴ See February 27, 2025 Decision on various Defendants’ Motions to Dismiss and for Judgment on the Pleadings.

Rhode Island’s courts may decline to grant a party leave to amend a pleading if the proposed pleading is futile. *See 1100 North Main LLC v. Shoreby Hill Properties, Inc.*, 348 A.3d 799, 805 (R.I. 2026) (affirming a trial court’s decision to decline to allow a plaintiff to amend its complaint because the plaintiff’s amended complaint was “futile”); Wright & Miller, *Amendments with Leave of Court – When Leave to Amend May Be Denied*, 6 Fed. Prac. & Proc. Civ. § 1487 (3d ed.) (“[S]everal courts have held that if a complaint as amended could not withstand a motion to dismiss or summary judgment, then the amendment should be denied as futile.”).

That is the case here. The State labels Count XXII a claim for breach of contract, but it never alleges that the JV breached the Emergency Repair Contract. Instead, the State alleges only that “if and to the extent that the VN Report was or is found to be in whole or in part, inaccurate, deficient, or otherwise noncompliant,” then the JV is liable to the State. PSAC ¶ 230 (emphasis added); *see also id.* ¶ 231 (repeating the same reasoning).

That is not a breach allegation. A breach of contract claim requires, among other things, allegations and proof that defendant breached a contractual obligation. *See Vincente v. Pinto’s Auto & Truck Repair, LLC*, 230 A.3d 588, 592 (R.I. 2020) (explaining that, with respect to a breach of contract claim, “the plaintiff must prove both the existence and breach of a contract, and that the defendant’s breach thereof caused the plaintiff’s damages”) (*quoting Fogarty v. Palumbo*, 163 A.3d 526, 541 (R.I. 2017)).

Count XXII does not allege that the JV breached the Emergency Repair Contract. It alleges only that a factfinder may someday find a breach if it makes some future determination about the VN Report. No party claims the VN Report was wrong. The State affirmatively maintains that the VN Report was correct and that its reliance on it was reasonable. And the JV Defendants have never alleged that the VN Report was deficient. The State’s own Motion confirms the conditional

nature of the claim: it is triggered only “if and to the extent that the Joint Venture, or any other defendant, contends that the report . . . was wrong[.]” State’s Motion at 5. An allegation that depends entirely on a hypothetical future finding that may never occur cannot support a presently viable cause of action. *See, e.g., State v. Gaylor*, 971 A.2d 611, 614-15 (R.I. 2009) (“As a general rule, a claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’”) (quoting *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-81 (1985)).

Labeling Count XXII a claim brought “in the alternative” does not cure that defect. Alternative pleading permits inconsistent legal theories based on facts actually alleged. R.I. Super. Ct. R. Civ. P. 8(e). The State’s pleading does not qualify. Count XXII is not an alternative claim at all; it is a conditional one, cloaked in alternative-pleading language. An alternative claim rests on the pleader’s own factual allegations; Count XXII rests on a contention the State attributes to the JV that the JV has never made. The State pleads, on the one hand, that its reliance on the VN Report was reasonable and justified demolishing the bridge, and, on the other, that if the VN Report later proves deficient, the JV should be liable for some hypothetical breach the State does not even identify.

Further, the State twice represents that it “does not concede” that the VN Report was wrong. State’s Motion at 3-4. A party cannot state a presently cognizable breach claim on a premise it affirmatively disavows. Rule 8(e)’s authorization of hypothetical pleading reaches only a claim that presents an actual controversy and that “will become cognizable upon” the resolution of a live claim in the same action; it does not permit a party “to sue for a hypothetical injury.” *See Crum & Forster Indem. Co. v. Sidelines Tree Serv., LLC*, 557 F. Supp. 3d 616, 624-25 (W.D. Pa. 2021) (construing the materially identical Fed. R. Civ. P. 8(d) and quoting 5 *Wright & Miller, Federal*

Practice & Procedure § 1282). In other words, Count XXII pleads an “if” with no cognizable “then.”

That is not a coherent contract theory pled in the alternative. It is a hedge – a speculative fallback the State wants to hold in reserve in case its current litigation position (in short, that the JV Defendants should have somehow identified and addressed the issues in the VN Report while performing work under the 2021 rehabilitation contract, or that other defendants should have addressed them during prior inspections and repairs of the bridge) later becomes inconvenient. *See* Hedge, Meriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/hedge> (last visited October 12, 2026) (defining “hedge” as “to protect oneself from losing or failing by a counterbalancing action.”). Rhode Island law does not permit such a claim, and it cannot succeed.

II. The State’s Undue and Inexplicable Delay Requires Denial of Leave Under Rule 15.

Even if the State’s Proposed Second Amended Complaint were not plainly futile (and it is), the State’s Motion should be denied for a second, independent reason – granting leave would substantially prejudice the JV Defendants.

Rhode Island law does not allow a party to amend its complaint simply because it asks. The central inquiry is prejudice. *See Harodite*, 24 A.3d at 531. Rhode Island courts have repeatedly held that leave may properly be denied where the moving party unduly delayed without a reasonable explanation and the proposed amendment would require significant new discovery or otherwise disrupt the litigation at a late stage. *See Gallop*, 218 A.3d at 549; *Harodite*, 24 A.3d at 532-33; *Faerber*, 568 A.2d at 329-30.

That is exactly what the State has done here. Proposed Count XXII rests on no newly discovered facts. By the State’s own allegations, the claim rests on the Emergency Repair Contract and the VN Report. PSAC ¶¶ 105, 112, 115. The State further alleges that it relied on that report

in deciding to demolish and replace the bridge. *Id.* ¶¶ 116-117. The State has thus known every fact underlying Count XXII since early 2024.

Yet the State omitted the claim from its original Complaint. It omitted the claim from its Amended Complaint. And it never sought leave during the many months of intensive discovery that followed. Instead, it waited until the close of fact discovery – after years of litigation and the expenditure of enormous party and judicial resources – to assert a new claim based on facts it possessed all along.

That is not ordinary delay. It is precisely the “undue and excessive” delay that Rhode Island law recognizes as a proper basis to deny amendment. *Harodite*, 24 A.3d at 531-32.

Worse, the State offers no reasonable explanation for its delay. The supposed “revelation” behind the State’s Motion apparently came on September 2, 2026, at a discovery hearing where the JV argued that it was entitled to documents the State holds regarding the Jamestown Bridge.

As the very transcript the State cites confirms, the JV sought those documents to determine what information the State had – and what decisions it made with that information – *prior to* the closure of the Washington Bridge. State’s Motion at 3. More specifically, the JV sought to show that RIDOT knew how to investigate, identify, and repair post-tensioning conditions on a comparable structure, yet elected not to perform that testing on the Washington Bridge before it scoped, solicited, and awarded the 2021 Design-Build Project. *See* JV’s Mem. of Law ISO Mot. to Compel (July 29, 2026), at 2-3, 6-7. In other words, the JV never contended that the VN Report was flawed. The State’s attempt to convert counsel’s discovery argument about the scope of

RIDOT's prior knowledge and decision-making into a justification for a new claim is puzzling.⁵

Arguments of counsel are not evidence. There is no new evidence.

Granting the State's Motion would cause substantial prejudice. The claims now pending against the JV Defendants concern alleged pre-closure conduct – specifically, the JV's performance of the 2021 Design-Build Contract within the limited scope the State itself directed. Proposed Count XXII does not. The PSAC would inject a new post-closure contract theory concerning the Emergency Repair Contract and the later work of the JV's alleged sub-subcontractor, VN. Litigating that theory would require a different body of proof, including additional discovery into post-closure communications, engagements, supervision, testing, methodology, contractual compliance, and the preparation and sufficiency of the VN Report. It would also demand new witness discovery, likely third-party discovery, and additional expert analysis on issues wholly different from those that have driven this case to date.

The State waves away these issues, arguing that the JV Defendants would suffer no prejudice because “the Emergency Repair Contract is already part of the ongoing discovery in this case” and citing several of the JV Defendants' 30(b)(6) topics that mention the Emergency Repair Contract and VN. State's Motion at 4. That some topics mention the Emergency Repair Contract proves nothing. Those topics probe the State's own decision-making and reliance on VN; they do not put at issue whether the JV breached the Emergency Repair Contract. The State is simply trying to dress up its new claim as intertwined with the existing litigation strategy of the State or the JV Defendants. It is not. Proposed Count XXII abandons the question of what the JV Defendants

⁵ Moreover, the State's new allegations and arguments necessarily depend on the remarkable premise that the State only now realized it should have critically reviewed the VN Report rather than relying on it blindly in deciding to destroy the bridge.

allegedly should have done before the closure and instead targets what VN allegedly did wrong after the closure, under a completely separate contract, on a different factual record.

Compounding that prejudice, the State destroyed the very bridge the VN Report addressed, making it extremely difficult – if not impossible – to evaluate the VN Report’s findings after the fact. That decision undercuts the State’s claim that Count XXII is a real claim worth bringing at this late stage. It also magnifies the prejudice the JV Defendants would face in defending the State’s latest theory for avoiding blame for its own decisions – when the State itself destroyed the evidence needed to test that theory.

The Court should not let the State upend the existing discovery record with an eleventh-hour claim built on facts it has known for years and a report about a bridge that no longer exists. The prejudice the JV Defendants would suffer is exactly the kind Rhode Island courts recognize as fatal to a late amendment. Under the governing Rule 15 factors, the State’s undue delay, its failure to offer any coherent explanation, and the resulting prejudice to the JV Defendants require denial of the State’s Motion.

CONCLUSION

For these reasons, this Court should deny the State’s Motion in full and refuse the State leave to file its futile Proposed Second Amended Complaint.

Dated: October 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2026, 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/ Jeffrey B. Pine
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