STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: February 27, 2025)

STATE OF RHODE ISLAND ***Plaintiff*,**	:	
v.	:	**C.A. No. PC-2024-04526**
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*.**	:	

DECISION

STERN, J. Before the Court are Defendants', AECOM Technical Services, Inc. ("AECOM"), Prime AE Group, Inc. ("Prime"), Commonwealth Engineers & Consultants, Inc. ("Commonwealth Engineers"), Barletta/Aetna I-195 Washington Bridge North Phase 2 JV, Aetna Bridge Company (the "Joint Venture"), Barletta Heavy Division, Inc. ("Barletta"), and Jacobs Engineering Group, Inc. ("Jacobs Engineering"), Motions to Dismiss Plaintiff's, the State of Rhode Island (the "State" or "Plaintiff"), Complaint seeking damages for negligence, breach of fiduciary duty, breach of contract, indemnity, and declaratory relief. Also before the Court are Defendants', Aries Support Services, Inc. ("Aries") and Steere Engineering, Inc. ("Steere"),

Motions for Judgment on the Pleadings. All of these claims relate to the December 11, 2023 emergency closure of the Washington Bridge.

I

Facts & Travel

To everyone in Rhode Island's dismay, the Rhode Island Department of Transportation ("RIDOT") issued an emergency declaration on December 11, 2023, closing the Washington Bridge. (Compl. ¶ 94.) Now, over a year later, the issues stemming from the closure of the Washington Bridge still remain front and center for many Rhode Islanders, and the only reasonable option is to demolish and replace the existing bridge. *Id.* ¶ 95. The Court first acknowledges the impact this case has had and will continue to have on the Rhode Island populace, whether it be through traffic adding significant time to commutes, small businesses affected by the closure of the Washington Bridge, or a multitude of other issues. On the present motions, the Court is limited to the allegations in the Complaint and does not consider the extensive news coverage stemming from the emergency closure. The Court now recites the facts of the case as alleged by the State of Rhode Island in its Complaint and, for the purposes of these motions, must assume that all of those allegations are true.

The State of Rhode Island brings claims against Defendants, AECOM, Aetna Bridge Company ("Aetna"), Aries, Barletta, the Joint Venture, Collins Engineers, Inc. ("Collins"), Commonwealth Engineers, Jacobs Engineering, Michael Baker International, Inc. ("MBI"), Prime, Steere, TranSystems Corp. ("TranSystems"), and Vanasse Hangen Brustlin, Inc. ("VHB"). *Id.* ¶¶ 1-14. All of these Defendants were involved in construction projects or inspections on the Washington Bridge and the State alleges that these Defendants bear responsibility for the emergency bridge closure.

The Washington Bridge was designed in the late 1960s and opened for traffic in 1968. *Id.* ¶¶ 18-19. The Washington Bridge has an extremely unusual design and may be the only bridge of its kind in the world, with tie-down rods and post-tensioned cantilever beams that are critical to the safety and stability of the bridge. *Id.* ¶¶ 20, 30. The State hired Aetna to construct the Washington Bridge. *Id.* ¶ 31.

Over the years, the Washington Bridge has been inspected a number of times, the first was by A.G. Lichtenstein & Associates, Inc. in 1992. *Id.* ¶¶ 33-34. That inspection found cracks in the bridge but stated that it was unlikely that the cracks would continue to grow. *Id. ¶* 39. A major rehabilitation project of the bridge began in 1996 and was completed in 1998, which discovered significant deterioration in the supports of the cantilever drop-in beam connections and voids in the grout encasing. *Id.* ¶ 40. Retrofit grouting was then performed in an attempt to address these issues. *Id. ¶* 41. After the rehabilitation project, the Washington Bridge continued to be inspected at regular intervals. *Id.* ¶ 42. MBI inspected the bridge on August 3, 2011, and its report stated that the superstructure was in poor condition. *Id.* ¶¶ 43-44. RIDOT then concluded that the Washington Bridge was again in need of repair. *Id.* ¶ 45.

On March 21, 2013, RIDOT issued a Request for Proposals ("RFP") entitled "Complete Design Services for the Rehabilitation of the Washington Bridge North No. 700 – Mainline, Approach and Ramp Bridges Providence and East Providence, Rhode Island." *Id.* ¶ 46. The concept of the RFP was a "Design-Bid-Build" project where the State would hire a consultant to create design and construction documents, which would then be used to solicit bids from contractors. *Id.* ¶ 48. The work was to be completed in three phases. *Id.* ¶¶ 50-54. Phase one required the contractor to inspect the bridge and assess the suitability of the existing elements of the bridge, the contractor would then make recommendations on the types of repairs necessary to

completely rehabilitate the existing structure. *Id.* ¶ 51. Phase two called for the consultant to assist in preparing bid documents and to advance the project out to a bid. *Id.* ¶ 53. Phase three involved providing construction support, attending meetings, and advising and guiding RIDOT in advancing the project to completion. *Id.* ¶ 54.

On July 18, 2013, AECOM was selected as the consultant, the State and AECOM then entered into a contract for complete design services for the rehabilitation of the Washington Bridge on January 29, 2014. *Id.* ¶¶ 58-59. AECOM's subconsultants on the project were Steere, Prime, and Aries. *Id.* ¶ 60. On or about January 21, 2015, AECOM provided its final technical evaluation, and the State alleges that the reports failed to adequately recognize or address critical elements of the bridge's structural safety and integrity. *Id.* ¶ 61. AECOM then sent RIDOT its final construction plans, with design and other work done by AECOM and its subcontractors (Steere, Prime, and Aries) on September 23, 2016. *Id.* ¶¶ 62-64. The State alleges that these plans failed to identify or recommend improvement necessary to completely rehabilitate the existing structure as required by the 2014 AECOM contract. *Id.* ¶ 65.

From 2015 until the emergency closure in December of 2023, five engineering firms oversaw inspections of the Washington Bridge and reported their findings to RIDOT. *Id.* ¶ 68. Routine inspections were conducted every two years and, because of the known deteriorating condition of the Washington Bridge, special inspections began in 2016. *Id.* ¶¶ 70-71. The State alleges that none of the firms conducted the inspections adequately and that they failed to recognize critical elements of the bridge's structural safety and integrity. *Id.* ¶ 69. These inspections included: TranSystems conducting a special inspection in 2016, Collins conducting a routine inspection in 2017, AECOM conducting a special inspection in 2017, MBI conducting a special inspection in 2018, AECOM conducting a routine and a special inspection in 2019,

AECOM conducting a special inspection in 2020, Jacobs Engineering conducting a routine, special, and underwater waterway inspection in 2021, TranSystems conducting a special inspection in 2022, and AECOM conducting a routine inspection in 2023. *Id.* ¶ 73. The State alleges that all of these inspections failed to identify or address critical elements of the bridge's structural safety and integrity. *Id.* ¶ 75.

In 2019, the State entered into an addendum to the AECOM contract where the State would pay AECOM additional funds to create a Design-Build RFP package and for construction phase services. *Id.* ¶ 76. AECOM's work on this project included developing the RFP, Request for Information reviews, and performance of construction phase services for the project as RIDOT's representative throughout the construction work. *Id.* ¶ 77. On March 17, 2021, RIDOT issued another RFP entitled "Best Value Design-Build Procurement for Bridge Group," which would initiate a design-build project based on the 2019 design build solicitation prepared by AECOM. *Id.* ¶¶ 78-79. The RFP requested that the responding entity would design and construct the bridge strengthening and rehabilitation with a minimum design life of twenty-five years. *Id.* ¶ 80.

On July 2, 2021, the Joint Venture submitted their proposal which emphasized that if accepted it would result in a rehabilitated bridge with a twenty-five-year life expectancy. *Id.* ¶ 82. The Joint Venture identified VHB as the lead designer and Commonwealth Engineers as a subconsultant. *Id.* ¶¶ 84, 88. On October 19, 2023, the Joint Venture issued rehabilitation plans; however, these plans did not address the existence of any possible problems related to the tie-down rods at Piers 6 and 7 and did not call for repairs to the post-tensioning systems. *Id.* ¶ 91.

Moving to the part of the story that Rhode Islanders are all too familiar with, on December 8, 2023, VHB identified tie-down rod failures at Pier 7, tie-down rods that were

compromised at Pier 6, and observed evidence of a possible failure of other tie-down rods. *Id.* ¶¶ 92-93. Based on these observations, RIDOT issued an emergency declaration on December 11, 2023 at 3:00 p.m., closing the Washington Bridge. *Id.* ¶ 94. Subsequent investigation revealed a number of issues, including unaddressed voids, poor grout, moisture, and corrosion which resulted in widespread deterioration of the post-tensioning system. *Id.* ¶ 95. Due to these issues, demolishing and replacing the bridge was the only reasonable option. *Id.*

On August 16, 2024, the State filed its Complaint alleging breach of contract, negligence, and breach of fiduciary duty. *Id.* ¶¶ 96-172. The State also asserts contractual indemnity and seeks declaratory judgments pertaining to contractual indemnity, non-contractual indemnity, and contribution. *Id.* ¶¶ 173-190. Seven Defendants have filed Motions to Dismiss: AECOM, the Joint Venture, Barletta, Aetna, Prime, Commonwealth Engineers, and Jacobs Engineering. (Docket.) Two Defendants have filed Motions for Judgment on the Pleadings: Steere and Aries. *Id.* This Court held a hearing on January 21, 2025.

II

Standard of Review

In reviewing a motion to dismiss, the court determines whether it is established beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of conceivable facts. The court makes no determination on the ultimate merits of the claim. '"The sole function of a motion to dismiss is to test the sufficiency of the complaint."' *EDC Investment, LLC v. UTGR, Inc.*, 275 A.3d 537, 542 (R.I. 2022) (quoting *Pontarelli v. Rhode Island Department of Elementary and Secondary Education*, 176 A.3d 472, 476 (R.I. 2018)). In ruling on a motion to dismiss, the trial justice is "confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in plaintiff's favor." *Narragansett*

Electric Co. v. Minardi, 21 A.3d 274, 278 (R.I. 2011). "A Rule 12(b)(6) motion 'does not deal with the likelihood of success on the merits, but rather with the viability of a plaintiff's bare-bones allegations and claims as they are set forth in the complaint.'" *Ferreira v. Child and Family Services*, 222 A.3d 69, 75 (R.I. 2019) (quoting *Hyatt v. Village House Convalescent Home, Inc.*, 880 A.2d 821, 823-24 (R.I. 2005)). '"A motion to dismiss may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim."' *Chase v. Nationwide Mutual Fire Insurance Company*, 160 A.3d 970, 973 (R.I. 2017) (quoting *Tri-Town Construction Co. v. Commerce Park Associates 12, LLC*, 139 A.3d 467, 478 (R.I. 2016)).[1]

"[I]f 'matters outside the pleading are presented to and not excluded by the court, the motion *shall* be treated as one for summary judgment and disposed of as provided in Rule 56[.]'" *Mokwenyei v. Rhode Island Hospital*, 198 A.3d 17, 21 (R.I. 2018) (quoting *Multi-State Restoration, Inc. v. DWS Properties, LLC*, 61 A.3d 414, 417 (R.I. 2013)). "There is, however, a

[1] This Court notes that the Rhode Island Supreme Court has expressly declined to adopt the federal courts' plausibility standard. *Mokwenyei v. Rhode Island Hospital*, 198 A.3d 17, 21 (R.I. 2018) ("But this Court was clear in *Chhun* that it was not adopting the federal courts' recently 'altered' interpretation of the legal standard employed with respect to a Rule 12(b)(6) motion to dismiss."). One commentator says the federal courts' plausibility standard has "eroded the long-standing practice of allowing a plaintiff to take advantage of notice pleading, and then use the discovery process to develop evidence." David A. Logan, *Juries, Judges, and the Politics of Tort Reform*, 83 U. Cin. L. Rev. 903, 937 (2015); *see also* Carl T. Bogus, *Why Indiana Harbor Is the Worst Torts Decision in American History*, 55 Conn. L. Rev. 649, 660-61 (2023) ("Moreover, federal practice requires that plaintiffs set forth in their complaint facts showing that a defendant was negligent; bare conclusory allegations of negligence are not sufficient. Unless plaintiffs can do that, they will not earn the right to discovery. Thus, even before square one, plaintiffs face a steep hurdle[.]");Twombly, Iqbal and the state courts, 1 Section 1983 Litigation in State and Federal Courts § 12:7 ("Neither Twombly nor Iqbal have had a significant impact on state pleading policies. Unlike the federal courts, which have repeatedly applied these cases, only a few state courts have found them sufficiently convincing to justify changes in state pleading policies.").

narrow exception for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint." *Chase*, 160 A.3d at 973 (internal quotation and citation omitted). "To be more precise, if 'a complaint's factual allegations are expressly linked to—and admittedly dependent upon—a document (the authenticity of which is not challenged), [then] that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6).'" *Mokwenyei*, 198 A.3d at 22 (quoting *Jorge v. Rumsfeld*, 404 F.3d 556, 559 (1st Cir. 2005)). Our Supreme Court has looked to the United States Court of Appeals for the First Circuit and explained that "the term 'public records' is overly broad, [the First Circuit] has equated that term with documents susceptible to judicial notice." *Goodrow v. Bank of America, N.A.*, 184 A.3d 1121, 1126 (R.I. 2018) (citing *Freeman v. Town of Hudson*, 714 F.3d 29, 36–37 (1st Cir. 2013)).

"[W]hen a motion for judgment on the pleadings is made by the defendant, such a motion is normally an attack upon the sufficiency of the complaint and is thus, in effect, a Super. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim." *Swanson v. Speidel Corp*., 110 R.I. 335, 338, 293 A.2d 307, 309 (1972). "The allegations of the complaint are taken as true and for the purposes of such a motion to dismiss, the complaint should be viewed in the light most favorable to plaintiff, and no complaint will be deemed insufficient unless it is clear beyond a reasonable doubt that the plaintiff will be unable to prove his right to relief, that is, unless it appears to a certainty that he will not be entitled to relief under any set of facts which might be proved in support of his claim." *Id.* (citing *Bragg v. Warwick Shoppers World, Inc.*, 102 R.I. 8, 12, 227 A.2d 582, 584 (1967)).

III

Analysis

A. Negligence, Counts II, III, XIV, and XVI

The State alleges negligence against multiple Defendants, including all nine Defendants bringing motions to dismiss and motions for judgment on the pleadings. The four enduring elements of negligence are: "(1) a legally cognizable duty owed by defendant to plaintiff; (2) breach of that duty; (3) that the conduct proximately caused the consequent injury; and (4) actual loss, damage, or injury." *Blouin v. Koster*, 319 A.3d 654, 660 (R.I. 2024). At the motion to dismiss stage, the Court must determine whether the State has sufficiently alleged negligence against the various Defendants according to Rhode Island's notice pleading standard. The Court begins its analysis with the economic loss doctrine because, if applicable, the doctrine would bar the State's negligence claims.

1. Economic Loss Doctrine

Defendants asseverate[2] that the State's negligence claims are barred by the economic loss doctrine. The Rhode Island Supreme Court has opined that "it is appropriate for sophisticated commercial entities to utilize contract law to protect themselves from economic damages." *Boston Investment Property No. 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I. 1995). "[U]nder [the economic loss] doctrine, a plaintiff may not recover damages under a negligence claim when the plaintiff has suffered no personal injury or property damage." *Hexagon Holdings, Inc. v. Carlisle Syntec Inc.*, 199 A.3d 1034, 1042 (R.I. 2019) (quoting *Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1275 (R.I. 2007)). "Where there are damages in the construction context between commercial entities, the economic loss doctrine will bar any tort claims for purely economic damages." *Id.* (internal quotations omitted). "In such a context, a party who is

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[2] *See United States v. Ocasio-Cancel*, 727 F.3d 85, 87 (1st Cir. 2013) (Selya, J.).

injured must resort to contract law for recovery." *Id.*

The "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." *Franklin Grove Corp.*, 936 A.2d at 1275. "[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." *E.W. Burman, Inc.*, 658 A.2d at 517 (internal quotations omitted). The Court of Appeals for the First Circuit adds "[u]nder the economic loss rule, a party generally may not recover in tort when a defective product harms only the product itself (instead of a person or other property)." *Isla Nena Air Services, Inc. v. Cessna Aircraft Co.*, 449 F.3d 85, 87 (1st Cir. 2006). Economic loss "encompasses the costs associated with repair and-or replacement of a defective product, or loss of profits consequent thereto, apart from any injury or damage to other property." *Hart Engineering Co. v. FMC Corp.*, 593 F. Supp. 1471, 1481 n.11 (D.R.I. 1984).

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

Additionally, a lack of privity does not bar application of the economic loss doctrine. In

Hexagon Holdings, Inc., the Supreme Court held the plaintiff was "barred from asserting a lack of privity with [the subcontractor] to avoid application of the economic loss doctrine[,]" when "[c]learly the economic loss doctrine would bar [plaintiff], a commercial entity, from bringing a negligence claim against the general contractor[.]" *Hexagon Holdings, Inc.*, 199 A.3d at 1043.

Defendants assert that the State's negligence claims are barred by the economic loss doctrine and must be dismissed. (AECOM's Mem. in Supp. of its Mot. to Dismiss at 12 (AECOM's Mem.).) AECOM states that there is no allegation that the alleged negligence caused any personal injury or physical damage to other property. (AECOM's Mem. at 15.) Instead, Defendants opine that the State is seeking to recover costs to repair or replace the Washington Bridge, which is a purely economic injury and squarely within the economic loss doctrine. *Id.* Therefore, Defendants assert that the negligence claims are barred by the economic loss doctrine and must be dismissed. *Id.*

2. Potential Exceptions to the Economic Loss Doctrine

The Court now reviews the State's arguments that the economic loss doctrine should not apply. First, the State argues that the purpose behind the economic loss doctrine does not support its application in this case. (Pl.'s Mem. in Opp'n to Defs.' Mot. at 34 (Pl.'s Mem.).) The State asserts that it is a sovereign entity, not a commercial entity, and that the lawsuit arose from the State's role as a steward of public resources performing an essential public function of maintaining the Washington Bridge. *Id.* The State adds that the alleged conduct by Defendants has created a public safety hazard resulting in the emergency closure of the bridge. *Id.* The State concludes that the economic loss doctrine is inapplicable to the present case. *Id.*

The Court begins its review with the consumer exception to the economic loss doctrine

and the purpose behind it. Our Supreme Court has previously adopted the consumer exception, limiting the economic loss doctrine "in an effort to provide increased protection to consumers dealing with commercial entities," and concluding that "the economic loss doctrine is not applicable to consumer transactions." *Franklin Grove Corp.*, 936 A.2d at 1276 (internal quotation omitted). "Under the consumer exception, the economic loss doctrine only applies in commercial transactions between merchants and 'not to a consumer who purchases goods for personal [or] residential use.'" Goodman, 67 Drake L. Rev. at 51 (quoting *Richards v. Midland Brick Sales Co.*, 551 N.W.2d 649, 651 n.2 (Iowa Ct. App. 1996)). The rationale behind this exception is that "because consumers lack bargaining power, they are not limited to the contractual remedies provided by the manufacturer." *Id.* The Court notes that Rhode Island already has an expansive view of the consumer exception. *See id.* at 52 ("The economic loss doctrine applies equally to consumers and merchants in Kansas, Michigan, North Dakota, Tennessee, and Wisconsin. Other jurisdictions do not apply the doctrine to the consumer at all (e.g. Rhode Island)[.]").

This Court declines to create a sovereign exception to the economic loss doctrine because the State acted as a business entity and no discrepancy in bargaining power existed between the State and the Defendants. The State fails to point to any caselaw supporting a sovereign exception. Instead, the State merely points to an out of jurisdiction case, primarily pertaining to standing, that found, "this Court failed to locate any caselaw in which the economic loss rule has been applied to preclude a state, as trustee/*parent patriae*, from seeking damages for harm to its natural resources, or limited its recovery to only those natural resources the state owns." *Commonwealth v. Monsanto Co.*, 269 A.3d 623, 678 (Pa. Commw. Ct. 2021). However, in the present case, the State is not acting as a trustee or in *parens patriae*, the State acted fully within a

business capacity. *See Franklin Grove Corp.*, 936 A.2d at 1276 ("The economic loss doctrine does, however, apply to the facts before this Court; the doctrine applies to entities acting in a business capacity."). The purpose of the consumer exception primarily focused on the discrepancy in bargaining power, and no such discrepancy exists between the State and the Defendants. The State acted as a sophisticated business entity in contracting with the Defendants related to the maintenance and repair of the bridge. Therefore, the Court declines to create a sovereign exception because the State acted as a business entity and no discrepancy in bargaining power existed. *See City of Cleveland v. Ameriquest Mortgage Securities, Inc*., 621 F. Supp. 2d 513, 526 (N.D. Ohio 2009), *aff'd sub nom*. 615 F.3d 496 (6th Cir. 2010) ("The City has thus failed to allege any injury to persons or property in which it had an interest, and the damages it seeks to recover are purely economic. As a consequence, its claim is barred by the economic loss doctrine.").

The Court also declines to create a public safety exception to the economic loss doctrine applicable to the Washington Bridge. The State points to a Maryland case stating, "we do not ordinarily allow tort claims for purely economic losses. But when those losses are coupled with a *serious* risk of death or personal injury resulting from a dangerous condition, we allow recovery in tort to encourage correction of the dangerous condition." *Morris v. Osmose Wood Preserving*, 667 A.2d 624, 633 (Md. 1995). In *Morris*, plaintiffs were homeowners seeking to recover "the cost of replacing roofs that contained allegedly defective fire retardant treated plywood." *Id.* at 628. This exception seems to have a strong relationship to a consumer exception, the case involved consumers who are not adequately able to protect their interests under contract law. A

sophisticated entity like the State does not meet the criteria. Therefore, the Court declines to

adopt a new exception to the economic loss doctrine based on the facts of the present case.

3. Property Damage

Alleging damage to other property, in this case property other than the bridge itself, circumvents the economic loss doctrine. Under the 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.*, 936 A.2d at 1275 (emphasis added) (citing *E.W. Burman, Inc.*, 658 A.2d at 517). "[T]he basic concept is simple[,] [i]f a defective product goes beyond damaging itself and causes damage to other property, then the plaintiff's claim is not barred by the economic loss doctrine." Goodman, 67 Drake L. Rev. at 34-35. The State asserts that it has repeatedly alleged property damage throughout its Complaint. (Pl.'s Mem. at 35.) These allegations include multiple statements that "[a]s a direct and proximate result of the negligence of [Defendants], the State has suffered and will continue to suffer both *physical damages to its property* and economic damages[.]" *Id.* (quoting Compl. ¶¶ 104, 110, 162, 171, 177). However, Defendants assert that the State is merely alleging damage to repair or replace the Washington Bridge, which would be purely economic loss and fall squarely within the economic loss doctrine. (AECOM's Mem. at 15.)

The State is correct in arguing that the economic loss doctrine is inapplicable when a plaintiff sufficiently alleges personal injury or property damage. *See Franklin Grove Corp.*, 936 A.2d at 1275. The State has alleged property damage throughout its Complaint in relation to its negligence claims. However, the State has not provided the Defendants with adequate notice of what this property damage is under the Superior Court Rules of Civil Procedure. Our Supreme Court has reasoned "generally mentioning the word 'negligence' in a complaint, without alleging breach of a particular duty, it is not clear whether a defendant must defend a general negligence

claim, a premises liability claim, or a claim for negligent supervision or hiring." *Konar v. PFL Life Insurance Co.*, 840 A.2d 1115, 1119 (R.I. 2004). Similarly, here, the State alleges "property damage" with no explanation as to what property is damaged. This leaves the Defendants to guess what "property damage" may in fact be and whether the stated "property damage" bars the negligence claims based on the economic loss doctrine. If the property damage is the bridge itself, then the negligence claims would be barred by the economic loss doctrine. However, if the State can adequately allege damage to other property, then the claims would not be barred by the doctrine. Presently, the Defendants are without any notice of what the property damage is, and the Defendants have no basis to defend against the claim. Therefore, the Court will grant the State leave to amend its Complaint to give the Defendants adequate notice of what property has been damaged.

4. Insufficient Basis for the Economic Loss Doctrine

The State next argues that the Court lacks a sufficient basis to apply the economic loss doctrine because the contract may have specifically allowed the State to sue for negligence. (Pl.'s Mem. at 37.) The State points to *Inland American Retail Management LLC v. Cinemaworld of Florida, Inc.*, No. PB08-5051, 2011 WL 121647 (R.I. Super. Jan. 7, 2011), where the court stated that "[a]t first glance it would seem that the economic loss doctrine would bar Defendant's claim of negligence[,]" but the court found the parties had "specifically contracted for the right of [defendant] to bring a negligence cause of action[.]" *Inland American*, 2011 WL 121647, at *8 (vacated on other grounds). However, in this case, the State points to nothing in the Complaint that alleges that the parties specifically contracted for the right of the State to bring a negligence cause of action. (Pl.'s Mem. at 37-38.) The State also makes no allegation that such a provision exists in any of the contracts. Therefore, the State has failed to plead that such a clause exists. If

the clause in question is present in one of the contracts, the State may make the appropriate amendment.

5. Negligent Misrepresentation

The State asserts that, although it has not pled negligent misrepresentation, the allegations in the Complaint are sufficient to put Defendants AECOM and the Joint Venture on notice of a claim of negligent misrepresentation. (Pl.'s Mem. at 39.) The Court has already permitted the State to amend its Complaint; therefore, if it has a claim for negligent misrepresentation, it may add a count in the amendment. To say more would be to paint the lily.[3]

6. AECOM and Prime, Count II

AECOM, joined by Prime, next argues that the negligence claim is duplicative of the State's breach of contract claims and does not constitute an independent cause of action. (AECOM's Mem. at 10-11.) AECOM points to our Supreme Court's holding that '"a plaintiff may not get additional bites of the apple by demanding multiple forms of relief for the same injury or by cloaking a single claim in a variety of legal theories."' *Graff v. Motta*, 695 A.2d 486, 492 (R.I. 1997) (quoting *DeCosta v. Viacom International Inc.,* 758 F. Supp. 807, 812 (D.R.I. 1991)). Further, AECOM adds a Massachusetts case for the assertion a party cannot be liable for tort where "liability exists solely because the [party] did not perform a contractual duty[.]" *Anderson v. Fox Hill Village Homeowners Corp.*, 676 N.E.2d 821, 824 (Mass. 1997).

The Court declines to apply AECOM's approach at this stage of litigation. *Graff* involves an appeal from a final judgment, much later in the litigation process than a motion to dismiss. *See Graff*, 695 A.2d at 487. Rule 8(e)(2) of the Superior Court Rules of Civil Procedure permits a party to plead in the alternative, "[a] party may set forth two (2) or more statements of a claim

[3] Borrowed words in honor of the late Judge Bruce M. Selya. *See Valsamis v. Gonzalez-Romero*, 748 F.3d 61, 63 (1st Cir. 2014).

or defense alternately or hypothetically[.]" Super. R. Civ. P. 8(e)(2). Here, at the motion to dismiss stage, the State may plead these two counts in the alternative.

7. Commonwealth Engineers, Counts III and XVI

Commonwealth Engineers asks this Court to refer to inspection reports, mentioned in the Complaint but not attached, and asserts that the inspection reports show that Commonwealth Engineers did not assist AECOM in the inspections of the Washington Bridge. (Commonwealth Engineers Mem. in Supp. of its Mot. to Dismiss at 12-13 (Commonwealth's Mem.).) Commonwealth Engineers argues that the inspection reports are sufficiently referred to in the Complaint and show that Commonwealth Engineers did not actually perform the inspections. *Id.* at 15. It further states that the allegations related to the Joint Venture proposal do not allege that Commonwealth Engineers took any action, and the Complaint should be dismissed. *Id.* at 16.

First, the Court reviews whether the inspection reports can be considered when evaluating Commonwealth Engineer's motion to dismiss, specifically whether the inspection reports fit into the narrow exception for documents sufficiently referred to in the Complaint. *See Chase*, 160 A.3d at 974. Commonwealth Engineers points to language in the Complaint as the smoking gun which states, "[a]fter completing its inspection of the Washington Bridge, each engineering firm reported its findings to RIDOT through an inspection report[.]" (Compl. ¶ 74.) The Court holds that this language is insufficient to fit into the narrow exception of documents sufficiently referred to in the Complaint. The inspection reports are merely mentioned in the Complaint, no additional information is drawn from them. The Court cannot say that the inspection reports are "central to plaintiff's claims or ones that the complaint's factual allegations are 'expressly linked to' or 'dependent upon.'" *See Mokwenyei*, 198 A.3d at 22-23 (internal quotation omitted). Therefore, the Court declines to review them at the motion to

dismiss stage.

Moving to the sufficiency of the negligence claims, the State has adequately pled its negligence claims against Commonwealth Engineers. At the motion to dismiss stage, the Court must assume all of the allegations in the Complaint are true and resolve any doubts in the Plaintiff's favor. Commonwealth Engineers asks this Court to dismiss the State's claim because it fails to allege that Commonwealth Engineers took any wrongful act. However, looking first at Count III, the State alleges in its Complaint that Commonwealth Engineers assisted AECOM in conducting the 2019 and 2023 inspections of the Washington Bridge. (Compl. ¶ 107.) The State goes on to outline how Commonwealth Engineers breached its duty of care by failing to adequately perform its duties inspecting the Washington Bridge. *Id.* ¶ 109. As to Count XVI, the State alleges that "Commonwealth . . . will perform independent steel and camber designs . . . during the design phase" and "will perform independent review of structural steel, prestressed girder, and camber designs as well as additional rehabilitation design tasks." *Id. ¶* 89. The State further alleges that Commonwealth Engineers failed to perform those duties with reasonable care, which caused harm to the State. *Id.* ¶¶ 170-71.

Assuming these facts are true and resolving any doubts in the State's favor, the State has sufficiently alleged negligent acts by Commonwealth Engineers. Put simply, the State has alleged that Commonwealth Engineers had a duty to use reasonable care while assisting AECOM and in developing its design tasks, and Commonwealth Engineers failed to do so causing damages to the State. At this stage, it is not established beyond a reasonable doubt that the State is not entitled to recovery under any set of facts.

8. Steere, Count II

Steere first argues that its duties were "limited to parts of the bridge nowhere mentioned in the [C]omplaint." (Steere's Mem. in Supp. of its Mot. for J. on the Pleadings at 5 (Steere's Mem.).) Steere directs the Court to its subcontract with AECOM and asserts that its conduct "related to spans 15-18" and did not relate to "the failures of Piers 6 and 7." *Id.* Steere opines that this contract is sufficiently referred to in the Complaint because any alleged duty is created by the contract. (Steere's Reply to Opp'n to Mot. for J. on the Pleadings at 11.)

The Court first looks to whether Steere's contract with AECOM fits into one of the narrow exceptions for documents the authenticity of which are not disputed by the parties, official public records, documents central to the State's claim, or documents sufficiently referred to in the Complaint. *See Chase*, 160 A.3d at 974. This contract between Steere and AECOM is not referenced in the Complaint, and at this time the Court is reluctant to review a contract between two Defendants that is not mentioned in the Complaint. The State has had no opportunity for discovery on whether this is the complete and only contract between Steere and AECOM. Based on these factors, the Court determines that the contract does not fit into the narrow exception for documents sufficiently referred to in the Complaint. Therefore, the Court declines to grant Steere's Motion for Judgment on the Pleadings on this basis.

Steere also asserts that any damages requested by the State are betterments and are not recoverable. (Steere's Mem. at 6.) Again, assuming all allegations are true and resolving any doubts in Plaintiff's favor, the State has sufficiently alleged damages related to the emergency closure of the Washington Bridge. (Compl. ¶ 102.) This may be due to expending resources in vain while the bridge was already beyond repair or by failing to notify the State before the bridge was past the point of no return. Some of the damages the State alleges may ultimately be in the form of betterments, but at this stage of litigation the State has alleged conceivable damages that

are not betterments. The Court is not convinced beyond a reasonable doubt that the State is not entitled to recovery against Steere under any set of facts.

9. Aries, Count II; Jacobs Engineering, Count XIV; and the Joint Venture, including Aetna and Barletta, Count XVI

The Joint Venture's argument that Count XVI for negligence should be dismissed focuses solely on the economic loss doctrine. (Joint Venture's Mem. in Supp. of its Mot. to Dismiss at 11-14 (JV's Mem.).) Jacobs Engineering argues the same related to Count XIV. (Jacobs's Mem. in Supp. of its Mot. to Dismiss at 5-8 (Jacobs's Mem.).) Aries argues the same pertaining to Count II. (Aries's Mem. in Supp. of its Mot. for J. on the Pleadings at 3-4 (Aries's Mem.).) At this time, the Court will not dismiss these Counts subject to an amendment by the State.

B. Breach of Contract, Counts I, IV, X, XIII, and XV

The State also alleges breach of contract against multiple Defendants, relevant here are AECOM, Jacobs Engineering, and the Joint Venture which includes Barletta and Aetna. "In 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." *Fogarty v. Palumbo*, 163 A.3d 526, 541 (R.I. 2017). "[A] plaintiff is not required to plead the ultimate facts that must be proven to succeed on the complaint, nor must the plaintiff set out the legal theory upon which the claim is based." *Berard v. Ryder Student Transportation Services, Inc.*, 767 A.2d 81, 83 (R.I. 2001). '"All that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted."' *Id.* at 83-84 (quoting *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992)).[4] None of the relevant Defendants argue that a contract does not exist

[4] Based on the Defendants' arguments, this Court again notes that the Rhode Island Supreme Court has expressly declined to adopt the federal courts' plausibility standard. *Mokwenyei*, 198 A.3d at 21 ("But this Court was clear in *Chhun* that it was not adopting the federal courts'

between themselves and the State.

Defendants argue that the State has not adequately pled breach of contract because none of the Breach of Contract Counts cite to a specific contractual provision that the Defendants failed to perform or breached. (AECOM's Mem. at 7.) Instead, the State merely makes bald allegations without reference to any contractual provision. *Id.* at 7-8. Defendants further opine that the damages allegations are similarly vague and non-specific, and fail to state how the alleged contract breaches caused damages. *Id.* at 8-9. Defendants remark that the State certainly is not entitled to a new bridge simply because an inspection failed to identify a deteriorated structural element that would have needed repairs anyways. *Id.* at 9. Finally, Defendants argue the State has not alleged that the bridge conditions worsened as a result of the Defendants' failure to discover the deteriorated bridge conditions sooner. *Id.* The State counters that it has sufficiently alleged breach of contract against each Defendant at issue. (Pl.'s Mem. at 18-32.) The Court first addresses the contracts generally.

"Rule 8(a) requires a complaint to contain: '(1) A short and plain statement of the claim showing that the pleader is entitled to relief; and (2) A demand for judgment for the relief the pleader seeks.'" *Hexagon Holdings, Inc.*, 199 A.3d at 1039 (quoting Super. R. Civ. P. 8(a)). "Applying the liberal pleading rule, [our Supreme Court] has recognized the sufficiency of complaints even when the claims asserted within those complaints lack specificity." *Konar*, 840 A.2d at 1118. Our Supreme Court "has explained many times, 'virtually every contract contains an implied covenant of good faith and fair dealing between the parties[.]'" *Houle v. Liberty Insurance Corp.*, 271 A.3d 591, 594 (R.I. 2022) (quoting *McNulty v. Chip*, 116 A.3d 173, 185 (R.I. 2015)); *see also Centerville Builders, Inc. v. Wynne*, 683 A.2d 1340, 1342 (R.I. 1996). "The

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recently 'altered' interpretation of the legal standard employed with respect to a Rule 12(b)(6) motion to dismiss.").

implied covenant of good faith and fair dealing ensures that contractual objectives may be achieved, and that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *McNulty*, 116 A.3d at 185 (internal quotations and citations omitted). Our Supreme Court has "ma[de] clear that a claim for breach of the implied covenant of good faith and fair dealing is not an independent cause of action that must be pled separate and apart from a claim for breach of contract[.]" *Houle*, 271 A.3d at 595. In *Houle*, the Supreme Court reversed a granted motion to dismiss where "[t]he linchpin of the motion justice's decision was plaintiffs' purported failure to point out specific language in the policy that detailed defendant's contractual duties[,]" but "this conclusion plainly overlooks the implied covenant of good faith and fair dealing that is inherent in every insurance contract." *Id.*

The situation in the present case is similar, Defendants ask this Court to dismiss the case with the linchpin being the State's failure to point to a specific contractual provision that was breached. However, the State has alleged that the various Defendants performed inspections and other work on the Washington Bridge. The State further alleges that none of the Defendants found the issues that led to the ultimate emergency closure of the Washington Bridge. At the motion to dismiss stage, the Court must assume all allegations are true and '"*resolve any doubts in a plaintiff's favor*."' *Pontarelli*, 176 A.3d at 476 (quoting *Multi–State Restoration, Inc.*, 61 A.3d at 416) (emphasis added).

The State has alleged a conceivable case that Defendants breached their contract by inadequately performing their duties and by failing to notice damage to the Washington Bridge. The Court acknowledges that this is a close call, but this near tie goes to the Plaintiff. This Court

issues a narrow holding that on the facts of this case, though the Plaintiff has not pled a specific contractual provision breached by the Defendants, the Defendants have received adequate notice of the Plaintiff's breach of contract claims to survive a motion to dismiss. It is conceivable that these professional engineering firms breached an express or implied promise in their contracts with the State by failing to adequately address the myriad of issues with the Washington Bridge. Even without a specific contractual provision, the State's allegations clearly show that the Defendants, allegedly, failed to properly notify the State that there were issues with the bridge that would soon result in the emergency closure, which may have caused damage to the State by depriving it of the opportunity to repair the bridge or through the State expending resources in an attempt to rehabilitate the bridge while it was already beyond repair. Despite not citing a specific contractual provision, there is a strong indication that, at a minimum, the duty of good faith and fair dealing may have been breached.[5] Therefore, this Court cannot conclude beyond a reasonable doubt that the State would be unable to prove facts at trial that constitute a claim for breach of contract and the Defendants have adequate notice as required by the Rhode Island Superior Court Rules of Civil Procedure. The Court now addresses each contract individually.

1. AECOM, Counts I, IV, and X

[5] Other courts have found that a complaint survives a motion to dismiss without citing a specific contractual provision. *See In re Oakwood Homes Corp.*, 340 B.R. 510, 527 (Bankr. D. Del. 2006) ("The liberal standards of notice pleading do not require a plaintiff to identify the specific contract provision at issue. Rule 8 simply does not require such specificity; it merely requires that a complaint provide the defendant with fair notice."); *Mellencamp v. Riva Music Ltd.*, 698 F. Supp. 1154, 1160 (S.D.N.Y. 1988) ("Defendants contend that the third claim for breach of contract should be dismissed because it fails to specify the contracts and specific contract provisions at issue in the lawsuit. The Court disagrees."); *Wells v. Pennrose Management Co.*, No. CV ADC-24-01746, 2024 WL 4476512, at *5 (D. Md. Oct. 11, 2024) ("[I]n order to state a claim for breach of contract, a plaintiff need only allege the existence of a contractual obligation owed by the defendant to the plaintiff, and a material breach of that obligation by the defendant . . . . Maryland law does not require a plaintiff to cite a specific contractual provision to survive a motion to dismiss.") (Internal quotations and citations omitted.)

First, AECOM states that the State has not sufficiently alleged damages related to its breach of contract claims against it because the damages claims are vague and non-specific. (AECOM's Mem. at 7-9.)[6] AECOM then asserts that the State has only brought forth vague and conclusory allegations of breach, and the Complaint should not survive a motion to dismiss. *Id.* at 8. AECOM further argues that the State has not sufficiently alleged that conduct by AECOM caused the non-specific damages.[7] *Id.* at 9. AECOM asserts that its conduct did not cause the damage to the bridge and that the State should not recover damages of a new bridge on its behalf. *Id.* AECOM notes that the bridge would have needed repairs even if the deterioration was discovered sooner. *Id.*

However, the Court cannot conclude beyond a reasonable doubt that the State is not entitled to relief under any set of conceivable facts. The State has sufficiently pled that AECOM breached the contract by failing to properly inspect the bridge and that this breach caused damages related to the closure of the Washington Bridge. First, related to Count I, breach of the 2014 AECOM Contract, the State alleges that AECOM entered into a contract for complete design services for the rehabilitation of the Washington Bridge. (Compl. ¶ 58.) The State adds that AECOM provided RIDOT with inspection reports that failed to adequately recognize or address critical elements of the bridge's structural safety and integrity. *Id.* ¶ 61. The State alleges that as a result of this the State suffered damages related to the emergency closure of the

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[6] AECOM points to cases in federal court applying the federal pleading standard. (AECOM's Mem. at 7.) The only in jurisdiction case AECOM points to was on summary judgment, which required competent proof of damages, again inapplicable to a motion to dismiss. *See Petrarca v. Fidelity & Casualty Insurance Co*., 884 A.2d 406, 410 (R.I. 2005) (requiring competent evidence of damages at the *summary judgment* stage).

[7] AECOM directs the Court to *Petrarca*, where the Court stated that the "claim must fail if [plaintiff] has not offered competent proof of damages." *Petrarca*, 884 A.2d at 410. However, this case is inapposite because it related to a motion for summary judgment, not a motion to dismiss. *See id.*

Washington Bridge. *Id.* ¶¶ 95, 99.

Next reviewing the allegations related to Count IV and the 2019 AECOM Contract, the State alleges that the contract required AECOM to create a Design-Build RFP package, including development of the Base Technical Concept ("BTC"), geotechnical investigations, and other duties. *Id.* ¶ 77. The State goes on to allege that AECOM failed to effectively develop these plans and failed to otherwise comply with the contract, resulting in harm related to the emergency closure of the Washington Bridge. *Id.* ¶¶ 113-114.

Moving to Count X related to inspection contracts in 2017, 2019, 2020, and 2023, the State alleges that the State and AECOM entered into inspection contracts where AECOM performed four inspections. *Id.* ¶¶ 141-142. The State again alleges that AECOM failed to adequately perform these inspections, which resulted in damages related to the emergency closure of the Washington Bridge. *Id.* ¶¶ 143-144.

To grant a motion to dismiss, it must be '"established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim."' *Chase,* 160 A.3d at 973 (quoting *Tri-Town Construction Co.*, 139 A.3d at 478). The Court is unable to reach this high bar. Reviewing the allegations in the Complaint and making all inferences in favor of the State, as the Court is required to do at this stage, the State may be able to prove a factual circumstance where AECOM's breach stems from an insufficient inspection or poor performance of its duties in developing the BTC. Adequate performance under the contracts may have caught the deterioration in the bridge before the bridge was beyond repair, potentially enabling the State to recover damages based on the lost ability to extend the life of the bridge. Alternatively, the State may have suffered damage by attempting to repair the bridge while it was already beyond repair.

At this stage of litigation, the Court is not convinced beyond a reasonable doubt that the State is unable to recover from AECOM under any set of facts.

2. Jacobs Engineering, Count XIII

Jacobs Engineering opines that its Motion to Dismiss should be granted because the State fails to allege a breach of any specific contractual provision and that there is no allegation that the alleged breach caused the State's harm. (Jacobs's Mem. at 8.) Jacobs Engineering proceeds to cite a string of cases applying the federal pleading standard for the proposition that the State must allege a specific contractual provision that has been breached as a baseline requirement for bringing a breach of contract claim. *Id.* at 9. Next Jacobs Engineering asserts that the State has failed to plead how its alleged breach *caused* harm to the State. *Id.* at 9-10. Jacobs Engineering merely inspected the Washington Bridge in 2021 and reported that the condition of the bridge was "poor." *Id.* at 10. Jacobs Engineering asks this Court to look to the inspection reports which show that Jacobs Engineering did in fact report that the condition of the Washington Bridge was "poor." *Id.* Jacobs Engineering asserts that these documents are either sufficiently referred to in the Complaint or are sufficiently a public record by their availability on a state website. (Jacobs's Reply at 9.) Jacobs Engineering adds that these documents give an immense amount of detail along with their assessment that the condition was poor. *Id.* at 11. Therefore, Jacobs Engineering states that the breach of contract claim is insufficiently pled. (Jacobs's Mem. at 10.)

First, the Court determines that these inspection reports do not fit into one of the narrow exceptions for documents outside the Complaint that the Court may review. Similar to the discussion of Commonwealth Engineers' inspection reports, the Court cannot conclude that these reports are sufficiently referred to in the Complaint, where the State merely mentions the reports briefly. This is insufficient to establish that they are central to the Complaint or that the

Complaint is admittedly dependent on them. Additionally, our Supreme Court has explained that "the term 'public records' is overly broad, [the First Circuit] has equated that term with documents susceptible to judicial notice." *Goodrow*, 184 A.3d at 1126. A document is not sufficiently a public record merely because it is publicly available on a state website. Therefore, the inspection reports are not public records under this narrow exception, and the Court declines to review the inspection reports at the motion to dismiss stage. The Court also notes that without the benefit of discovery, the Court has little context to understand these reports and attempting to do so at this time may lead to an incorrect result. "Poor" may have been the correct terminology for the bridge or perhaps, in light of the emergency closure, the correct term was "critical" or "life threatening."

Moving to Jacobs Engineering's argument that the allegations in the Complaint are inadequate, the Court cannot conclude beyond a reasonable doubt that the State is not entitled to relief under any set of conceivable facts. The State has sufficiently pled that Jacobs Engineering breached the contract by failing to properly inspect the bridge and that this breach caused damages related to the closure of the Washington Bridge. Again, it is not clear beyond a reasonable doubt that the State cannot prove, *under any set of facts*, that Jacobs Engineering breached the contract by failing to properly inspect the Washington Bridge and that, because of that insufficient inspection, the State was unable to fix the Washington Bridge before it was beyond the point of no return.

3. Joint Venture, Including Barletta and Aetna, Count XV

The Joint Venture argues that its contract with the State required it to execute a design, provided by the State, to rehabilitate the Washington Bridge. (JV's Mem. at 10.) The Joint

Venture asserts that the Court is able to review the contract at the motion to dismiss stage because the documents are central to all of the State's claims against the Joint Venture and fit under the narrow exception where the motion would not need to be converted to one for summary judgment. *Id.* at 4. It then points to a number of exhibits to bolster its claim. (JV's Exs. 1-5.) The Joint Venture states that it was not required to research the bridge, evaluate it, or recommend repairs. (JV's Mem. at 10.) Further, the Joint Venture asserts that the State fails to point to any specific provision[8] of the contract that was breached and that alone should be fatal to the claim. *Id.* at 11. The Joint Venture also argues that it cannot be liable because the State admits it was not until a post-closure investigation of the Washington Bridge that the State discovered that the bridge could not be rehabilitated and needed to be demolished. (JV's Reply at 3.)

The State first asserts that the Joint Venture applied a heightened federal pleading standard, inapplicable under Rhode Island law. (Pl.'s Mem. at 29.) The State expounds that the Complaint gives fair and adequate notice of the claims being asserted sufficient to survive a motion to dismiss. *Id.* Further, the State points to language in the contract which states that the plans the State provided in the RFP process were "schematic only and are not guaranteed." *Id.* at 30. The contract further states that "[the Joint Venture] is responsible for the complete design, detailing, and construction of each new and rehabilitated bridge." *Id.* "[The Joint Venture] acknowledges by receipt of such documents that it explicitly understands that while these plans have been advanced to a certain level, the [Joint Venture] shall be required to provide a final,

[8] The Joint Venture points to a District of Rhode Island case for the assertion "describe[], with substantial certainty, the specific contractual promise the defendant failed to keep." *Burt v. Board of Trustees of University of Rhode Island*, 523 F. Supp. 3d 214, 220-21 (D.R.I. 2021), *aff'd*, 84 F.4th 42 (1st Cir. 2023) (quoting *Brooks v. AIG SunAmerica Life Assurance Co.*, 480 F.3d 579, 586 (1st Cir. 2007)). However, this case applies the federal courts' plausibility pleading standard, inapplicable under Rhode Island law.

complete Project design[.]" *Id.* Finally, "[the Joint Venture] shall perform concrete repairs and crack sealing for the existing structure that is to remain and be reused, including . . . drop-in beams, precast beams, cantilevers, substructures, spandrel walls, and all other concrete items." *Id.* at 31.

The Court finds that the contract is sufficiently referred to in the Complaint for the Court to review the contract without converting the motion to one for summary judgment. The allegations in the Complaint are certainly expressly linked to and admittedly dependent upon the contract outlining the relationship of the parties and creating the contractual duties central to the breach of contract claim. Therefore, the Court may review the contract at this stage.[9]

The Court now reviews the contractual language and "give[s] words their plain, ordinary, and usual meaning." *Chariho Regional School District by & through Chariho Regional School Committee v. State*, 207 A.3d 1007, 1015 (R.I. 2019) (internal quotation omitted). Reading the terms in the light most favorable to the State, as the Court is required to do at this phase, it is again not clear beyond a reasonable doubt that the State is not entitled to recovery under any set of facts. Importantly, the contract does not take all agency from the Joint Venture and instead allows it to make proposals and perform repairs. The Joint Venture admits that it proposed an Alternate Technical Concept to address issues flagged in the BTC in a different way. (JV's Reply at 7-8.) Perhaps the Joint Venture had more agency under the contract than it now purports to the Court and did in fact have the ability to recommend changes to the BTC based on its own expertise. The Court cannot say beyond a reasonable doubt that there is no set of facts where the

[9] However, reviewing the contract extensively gives this Court pause. The Joint Venture admits that multiple contract documents make up the contract between the Joint Venture and the State. (JV's Reply at 1.) Without the benefit of discovery and with a long sprawling contract encompassing multiple documents, it is difficult for the Court to dissect the relevant contract documents under a motion to dismiss.

Joint Venture breached the contract by failing to identify the problems with the Washington Bridge earlier which then caused harm to the State.

C. Contractual Indemnity and Declaratory Judgments on Contractual Indemnity, Non-Contractual Indemnity, and Contribution, Counts XVII, XVIII, XIX, XX

Defendants assert that the Contractual Indemnity Count and the Declaratory Judgment Counts for Contractual Indemnity, Non-Contractual Indemnity, and Contribution are not ripe and should be dismissed. (AECOM's Mem. at 19.) Defendants argue that the indemnity claims and the requests for declaratory relief are entirely contingent on uncertain future events that may not ever occur at all. *Id.* Defendants further explain that the State makes no allegation of who these third-party claimants are or what claims they would pursue against the State. *Id.* The State responds that its claims for contractual indemnity are sufficiently alleged, and that AECOM and the Joint Venture agreed to indemnify AECOM in the contract. (Pl.'s Mem. at 54.) The State then asserts that an actual controversy exists because it presently seeks clarification of indemnity obligations. *Id.* at 56. The State further opines that for the non-contractual indemnity Counts, it has alleged sufficient facts giving rise to a conceivable legal hypothesis entitling it to relief. *Id.* The Court first reviews the justiciability of the Counts generally before analyzing each Count individually in more detail.

1. Justiciability of Counts XVII-XX

"It is well settled in this jurisdiction that, as a general rule, a necessary predicate to a court's exercise of its jurisdiction is an actual justiciable controversy. This Court will not ordinarily entertain an abstract question or render an advisory opinion." *State v. Gaylor*, 971 A.2d 611, 613 (R.I. 2009). "Naturally, there remains the prerequisite that the party seeking declaratory relief present the court with an actual controversy." *Millett v. Hoisting Engineers'*

Licensing Division of Department of Labor, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977). "For a claim to be justiciable, two elemental components must be present: (1) a plaintiff with the requisite standing and (2) 'some legal hypothesis which will entitle the plaintiff to real and articulable relief.'" *N & M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964 A.2d 1141, 1145 (R.I. 2009) (quoting *Bowen v. Mollis*, 945 A.2d 314, 317 (R.I. 2008)). "The standing inquiry is satisfied when a plaintiff has suffered 'some injury in fact, economic or otherwise.'" *Id.* (quoting *Bowen*, 945 A.2d at 317). Our Supreme Court has "defined injury in fact as 'an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" *Id.* (quoting *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997)). "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.'" *Gaylor*, 971 A.2d at 614 (quoting *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580–81 (1985)).

The Court first reviews the allegations in the Complaint. In each of the relevant Counts, the State references future unidentified third parties but makes no allegations as to who these potential claimants are and what type of claims they may bring against the State. (Compl. ¶¶ 179-190.) The Court holds that the Indemnity Count and the three Declaratory Judgment Counts are not yet ripe for adjudication because there is no evidence of a concrete and imminent harm to the State. The State has failed to point to any potential plaintiffs who may sue the State and fails to define what types of claims they expect to emerge. The Court and the Defendants are left to guess as to who these claimants are and what the claims may eventually be. Each of the four Counts are entirely contingent on future events and, based on the current allegations, there is a possibility that these hypothetical claimants may never emerge. With so much contingent on

hypothetical future events, the Counts are not yet ripe for adjudication. "After all, that which is not ripe for decision cannot and should not be decided in a declaratory-judgment action." *Sasso v. State*, 686 A.2d 88, 91 (R.I. 1996). Therefore, the Court stays these claims pending any actions by third parties or amendment by the State.

Defendants also assert that the indemnity provisions are derivative of the negligence claim and should be dismissed alongside the negligence claims. (AECOM's Mem. at 16.) However, the Court need not address that argument because it granted the State leave to amend its negligence claims.

2. Contractual Indemnity, Count XVII, AECOM and the Joint Venture including Barletta and Aetna

The State asserts that AECOM agreed to indemnify the State for all damages, losses, or expenses arising out of its conduct. (Compl. ¶ 174.) The State further alleges that the Joint Venture agreed to the same. *Id.* ¶ 175. In support of these assertions, the State points to the Rhode Island Code of Regulations detailing general conditions of purchases which states:

> "Vendor shall defend, indemnify, release and hold harmless the State and its agencies, together with their respective officers, agents and employees, from and against **any and all third-party claims, demands, liabilities, causes of action, losses, damages, judgments and other costs and expenses** (including attorneys' fees) arising out of, or related to, directly or indirectly, in whole or in part, Vendor's breach of the Contract or the act(s), error(s) or omission(s) of the Vendor or its employees, agents, subcontractors or volunteers at any tier." 220 RICR 30-00-13.21(a) (emphasis added).[10]

The parties dispute the scope of this indemnity clause, particularly whether it applies

[10] In its Complaint, the State also alleges that contractual indemnity "arise[s] out of the *express contract* between such Defendants and the State" along with 220 RICR 30-00-13.21(a). (Compl. ¶ 176) (emphasis added). However, the State has not attached the contract or provided the language of the contractual provision, and the Court has no means of determining the scope of the purported indemnity clause or if it even exists at all. Therefore, the Court and the Defendants lack adequate notice related to the alleged indemnity clause in the express contract. If an indemnity clause exists, the State is permitted to provide the indemnity language in its amendment.

exclusively to third party liability or to all liabilities arising from the Defendants' respective conduct. The State asserts that the term "third-party" only modifies the "claims" and not the remaining items in the list. (Pl.'s Mem. at 53.) Whereas Defendants argue that the term "third-party" modifies claims and all other items in the list. (AECOM's Mem. at 16.)

"The concept of indemnity is based upon the theory that one who has been exposed to liability solely as the result of a wrongful act of another should be able to recover from that party." *Muldowney v. Weatherking Products., Inc.*, 509 A.2d 441, 443 (R.I. 1986). "Our law is well settled that indemnity provisions are valid if sufficiently specific, but are to be 'strictly construed against the party alleging a contractual right of indemnification.'" *Sansone v. Morton Machine Works, Inc.*, 957 A.2d 386, 393 (R.I. 2008) (quoting *Muldowney*, 509 A.2d at 443). "In Rhode Island, the general rule regarding indemnity is that no claim arises as such until the indemnitee's liability is fixed either by entry of judgment holding the indemnitee liable or by the settlement of the underlying claim by the indemnitee on the belief that he is liable." *Pardee v. Consumer Portfolio Services, Inc.*, 344 F. Supp. 2d 823, 836 (D.R.I. 2004).

"When determining whether a contract is ambiguous, the agreement is viewed in its entirety and the words used in the contract are given their ordinary meaning." *Sturbridge Home Builders, Inc. v. Downing Seaport, Inc.*, 890 A.2d 58, 62-63 (R.I. 2005). "When ascertaining the usual and ordinary meaning of contractual language, every word of the contract should be given meaning and effect; an interpretation that reduces certain words to the status of surplusage should be rejected." *Andrukiewicz v. Andrukiewicz*, 860 A.2d 235, 239 (R.I. 2004). '"[A]n agreement is ambiguous only when it is reasonably and clearly susceptible to more than one interpretation."' *McBurney v. Teixeira*, 875 A.2d 439, 443 (R.I. 2005) (quoting *W.P. Associates v. Forcier, Inc.*, 637 A.2d 353, 356 (R.I. 1994)). If a contract is clear and unambiguous, "the

intention of the parties must govern *if* that intention can be clearly inferred from the writing and if it can be fairly carried out in a manner consistent with settled rules of law." *W.P. Associates*, 637 A.2d at 356.

First, reviewing the plain language of the indemnity provision and giving words their ordinary meaning, the Court determines that the provision is clear and unambiguous. The term "third-party" modifies "claims" and all other items in the enumerated list. As explained by the First Circuit, per the series-qualifier canon, '"[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series."' *United States v. Trahan*, 111 F.4th 185, 193-94 (1st Cir. 2024) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* at 147 (2012)). Applying this canon of construction, the most natural reading of the provision is that "third-party" modifies each item in the enumerated list. Further, our Supreme Court has made clear that indemnity provisions are strictly construed against the party seeking indemnity. *Sansone*, 957 A.2d at 393. In *Sansone,* the Supreme Court construed an indemnity provision narrowly where it applied to "machinery and equipment ordered," but the provision did not extend to "any machinery and equipment to which that merchandise becomes a component." *Id.* at 394. With this in mind, the only reading of the indemnity clause is that the term "third party" modifies each item in the list.

The State seeks indemnity as to "all damages, losses, or expenses arising out of its acts or omissions[.]" (Compl. ¶¶ 174-175.) However, as stated above, the indemnity provision only pertains to third-party claims, third-party losses, and other third-party liabilities as expressed in the indemnity provision. The State has failed to make any allegation of third-party liability and

instead merely mentions that third party claims may possibly arise against the State. (Compl. ¶¶ 180-181.) Further, there is no indication or allegation that any third-party claims are imminent or looming. *See FleetBoston Financial Corp. v. Advanta Corp.*, No. PB 03-0220, 2003 WL 22048742, at *4-5 (R.I. Super. Aug. 13, 2003) (finding that an indemnity claim was ripe where a claim from the Internal Revenue Service loomed). "In Rhode Island, the general rule regarding indemnity is that no claim arises as such until the indemnitee's liability is fixed either by entry of judgment holding the indemnitee liable or by the settlement of the underlying claim by the indemnitee on the belief that he is liable." *Pardee,* 344 F. Supp. 2d at 836. Therefore, where the State has not alleged any third-party liability, its indemnity claim is not sufficiently ripe for judicial review.

3. Declaratory Judgment on Contractual Indemnity, Count XVIII, AECOM and the Joint Venture including Barletta and Aetna

The State also seeks a declaratory judgment that it is entitled to contractual indemnity from AECOM and the Joint Venture. (Compl. ¶ 180.) The Court reiterates that "[o]ur law is well settled that indemnity provisions are valid if sufficiently specific, but are to be 'strictly construed against the party alleging a contractual right of indemnification.'" *Sansone*, 957 A.2d at 393 (quoting *Muldowney*, 509 A.2d at 443). Again, "[i]n Rhode Island, the general rule regarding indemnity is that no claim arises as such until the indemnitee's liability is fixed either by entry of judgment holding the indemnitee liable or by the settlement of the underlying claim by the indemnitee on the belief that he is liable." *Pardee*, 344 F. Supp. 2d at 836. The State has not alleged any present or imminent third-party liability. (Compl. ¶¶ 180-182.) Therefore, as stated in the prior section, the Declaratory Judgment on Contractual Indemnity Count is also not ripe for judicial review.

4. Declaratory Judgment on Non-Contractual Indemnity, Count XIX, All Defendants

Moving to non-contractual indemnity, the State seeks a declaratory judgment stating that to the extent that in the future the State may be held liable to one or more third parties, the State is entitled to indemnity from all Defendants. (Compl. ¶ 184.) "The theory underlying the concept of equitable indemnity is that 'one who has been exposed to liability solely as the result of a wrongful act of another should be able to recover from that party.'" *DiMase v. Fleet National Bank*, 723 A.2d 765, 768 (R.I. 1999) (quoting *Muldowney*, 509 A.2d at 443). "The elements of [an equitable indemnity] claim are (1) the party seeking indemnity must be liable to a third party; (2) the prospective indemnitor must also be liable to the third party; and (3) as between the prospective indemnitee and indemnitor, the obligation ought to be discharged by the indemnitor." *Wampanoag Group, LLC v. Iacoi*, 68 A.3d 519, 523-24 (R.I. 2013) (internal quotations omitted).

Here, Count XIX seeking a Declaratory Judgment regarding Non-Contractual Indemnity is not yet ripe because any liability is purely based on the future hypothetical claims. Reviewing the elements of equitable indemnity, the State has not alleged that it is presently or imminently liable to any third party. Additionally, the State has not alleged that the Defendants are presently or imminently liable to a third party. Finally, without some indication as to who these future claimants are, the Court has no basis to determine whether the obligation ought to be discharged by the indemnitor. The Court cannot divine what these future claims will be, and speculation would be ultracrepidarian.[11] Any action taken by the Court would leave open multiple questions and would not resolve the controversy. Therefore, without an actual or looming third party claimant, the State's claim for Non-Contractual Indemnity is not yet ripe for judicial review.

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[11] *See A & H Manufacturing Co., Inc. v. Contempo Card Co., Inc.*, 576 F. Supp. 894, 901 (D.R.I. 1983) (Selya, J.).

5. Declaratory Judgment on Contribution, Count XX, All Defendants

Finally, the Court turns to Count XX for a Declaratory Judgment regarding Contribution, where the State seeks a declaration that if the State is held liable to a third party as a tortfeasor, then the State is entitled to contribution from the Defendants as joint tortfeasors. "[O]ne of the basic reasons underlying contribution is to prevent the imposition of total liability upon one party simply through the arbitrary, collusive, or fortuitous choice of defendants." *Cacchillo v. H. Leach Machinery Co.*, 111 R.I. 593, 597, 305 A.2d 541, 543 (1973) (citing Prosser, *Torts* § 50 at 307 (4th ed. 1971)). "[T]he right of contribution exists among joint tortfeasors[.]" G.L. 1956 § 10-6-3. However, '"there can be no contribution unless the injured person has a right of action in tort against both the party seeking contribution and the party from whom contribution is sought. The right of contribution is a derivative right and not a new cause of action."' *Cacchillo*, 111 R.I. at 595, 305 A.2d at 542 (quoting *Rowe v. John C. Motter Printing Press Co.*, 273 F. Supp. 363, 365 (D.R.I. 1967)).

The State asks this Court to declare that the various Defendants are liable to the State for Contribution pertaining to future third-party claims where the State is found liable as a tortfeasor. The State has not alleged any third-party claim where it may be found liable as a tortfeasor. Unfortunately, this Court lacks clairvoyance and cannot determine whether these hypothetical future claimants have a right of action in tort against both the State and the Defendants. Therefore, this claim is not yet ripe for judicial review.

D. Breach of Fiduciary Duty Against AECOM, Count V

The State alleges that AECOM breached a fiduciary duty owed to the State when AECOM served as the State's consultant in connection to the 2014 contract. (Compl. ¶¶ 115-121.) "To prevail on a claim for breach of fiduciary duty, a party must establish (1) the existence

of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach." *Rhode Island Resource Recovery Corp. v. Van Liew Trust Co.*, No. PC-10-4503, 2011 WL 1936011, at *7 (R.I. Super. May 13, 2011) (internal quotation omitted). "A fiduciary duty 'is one of trust and confidence and imposes the duty on the fiduciary to act with the utmost good faith.'" *EDC Investment, LLC*, 275 A.3d at 544 (quoting *Poletti v. Glynn*, 234 A.3d 941, 945 (R.I. 2020)). The determination of whether a fiduciary duty exists involves a variety of factors including, "the reliance of one party upon the other, the relationship of the parties prior to the incidents complained of, the relative business capacities or lack thereof between the parties, and the readiness of one party to follow the other's guidance in complicated transactions." *Id.* (quoting *Simpson v. Dailey*, 496 A.2d 126, 129 (R.I. 1985). In *EDC Investment, LLC*, our Supreme Court determined that the plaintiff "ha[d] not established factors—other than a typical commercial landlord-tenant association—that would impose a fiduciary duty" and that the trial justice did not err in dismissing the claim. *EDC Investment, LLC*, 275 A.3d at 544.

AECOM states that the count must be dismissed because the State fails to allege the existence of a fiduciary duty. (AECOM's Mem. at 11.) AECOM asserts that there are no specific allegations or factors that this Court could look to in order to determine that a fiduciary duty exists. *Id.* The State responds, opining that AECOM held itself out as the number one design firm and assured the State that it had extensive experience with the deterioration of important structures and with the Washington Bridge's history and unique design. (Pl.'s Mem. at 51.) The State alleges that in agreeing to serve as the State's consultant, AECOM assumed fiduciary duties because the State reposed trust and confidence in AECOM. *Id.* at 52.

The State has alleged factors sufficient to survive a motion to dismiss. The State alleges that, in its proposal, AECOM held itself out as the "number 1 ranked pure design firm by

Engineering News-Record" and that AECOM had "seen firsthand the effect of deterioration on important structures." (Compl. ¶ 55.) AECOM also explained its knowledge of the history of the Washington Bridge and should have known about its unusual design. *Id.* ¶¶ 56-57. Further, the State alleges that AECOM held itself out as a trusted expert in professional engineering, and the State relied upon that purported expertise. *Id.* ¶¶ 116-117. The State has alleged a relationship of trust and confidence which could conceivably create a fiduciary duty and survive a motion to dismiss.[12] Therefore, the State has sufficiently pled Count V claiming a Breach of Fiduciary Duty.

AECOM next argues that the fiduciary duty claim is duplicative of the State's breach of contract claim and does not constitute an independent cause of action. (AECOM's Mem. at 10-11.) AECOM points to our Supreme Court's holding that '"a plaintiff may not get additional bites of the apple by demanding multiple forms of relief for the same injury or by cloaking a single claim in a variety of legal theories."' *Graff*, 695 A.2d at 492 (quoting *DeCosta,* 758 F. Supp. at 812). However, Rule 8(e)(2) of the Superior Court Rules of Civil Procedure permits a party to plead in the alternative, "[a] party may set forth two (2) or more statements of a claim or defense alternately or hypothetically[.]" The Court again notes that *Graff* involves an appeal from a final judgment. *See Graff*, 695 A.2d at 487. At the motion to dismiss stage, the State may plead these two counts in the alternative.

IV

Conclusion

Based on the foregoing, Defendants' Motions are **DENIED** in part and the State is

[12] At hearing, AECOM argued that its statements referenced by the State were mere puffery. However, on a motion to dismiss, the Court must make all inferences in favor of the State. Applying this standard, these statements were more than mere puffery and the State has alleged a conceivable fiduciary relationship.

granted leave to amend in part. Counsel shall prepare the appropriate order as follows:

1. The Court grants the State thirty days leave to amend its Complaint as to Counts II, III, XIV, and XVI for Negligence. If the State fails to amend, Defendants may move for dismissal.

2. Defendants' Motions to Dismiss are **DENIED** as to Counts I, IV, X, XIII, and XV for Breach of Contract and Count V for Breach of Fiduciary Duty.

3. Counts XVII-XX are stayed pending amendment or action by a third-party.

4. AECOM's Motion for a More Definite Statement is **DENIED**.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Aecom Technical Services, Inc., et al.**
CASE NO:	**PC-2024-04526**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**February 27, 2025**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Jonathan N. Savage, Esq.; Alyssa L. Lemire, Esq.; Edward D. Pare, Esq.; Stephen N. Provazza, Esq.; Sara W. Rice, Esq.; Michael P. Robinson, Esq.**
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