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STATE OF RHODE ISLAND **SUPERIOR COURT**
PROVIDENCE, SC.

STATE OF RHODE ISLAND	)	
	)	
VS.	)	
	)	**C.A. No. PC-2024-4526**
AECOM TECHNICAL SERVIES, INC.,	)	
AETNI BRIDGE COMPANY,	)	
ARIES SUPPORT SERVICES, INC	)	
BARLETTA HEAVY DIVISION, INC.,	)	
BARLETTA/AETNI I-195 WASHINGTON	)	
BRIDGE NORTH PHASE 2 JV,	)	
COLLINS ENGINEERS &	)	
CONSULTANTS, INC.	)	
JACOBS ENGINEERING GROUP, INC.	)	
MICHAEL BAKER INTERNITIONIL INC.	)	
PRIME AE GROUP, INC.	)	
STEERE ENGINEERING, INC.	)	
TRANSYSTEMS CORPORATION, and	)	
VANISSE HANGEN BRUSTLIN, INC.	)	

DEFENDANT, ARIES SUPPORT SERVICES, INC.'S
LIMITED REPLY TO PLAINTIFF'S CONSOLIDATED RESPONSE
TO DEFENDANTS' RULE 12 MOTIONS

INTRODUCTION

Defendant, Aries Support Services, Inc. ("Aries"), having previously filed an answer, has moved for Judgment on the Pleadings pursuant to R.I.Civ.P. 12(c). Aries was a subcontractor to co-defendant, AECOM in connection with AECOM's January 29, 2014 contract with the State, referenced in Paragraph 59 of the State's complaint. Aries argues that the economic loss doctrine requires the dismissal of Count II of the State's complaint, which alleges a tort-based theory of recovery. The general applicability of the economic loss doctrine has been extensively briefed by

other defendants in this matter and, except for the brief additional comments below, Aries relies on the analysis set forth by those defendants in support of its motion as it relates to Count II.

Similarly, Aries relies on the analysis set forth by the other moving defendants as it relates to Counts XIX and XX.

ARGUMENT

I. The Economic Loss Doctrine Applies to Bar the State's Claim.

The State claims that the policies supporting the application of the economic loss doctrine are not present in the instant matter. In fact, the opposite is true. As noted in *Hexagon Holdings, Inc. v. Carlisle Syntec Inc.*, 199 A.3d 1034, 1043, 1044 (R.I. 2019) the following language from the New Jersey Supreme Court has been repeatedly cited by the Rhode Island Supreme Court in support of the application of the doctrine:

> "[t]he purpose of a tort duty of care is to protect society's interest in freedom from harm, i.e., the duty arises from policy considerations formed without reference to any agreement between the parties. A contractual duty, by comparison, arises from society's interest in the performance of promises. Generally speaking, tort principles, such as negligence, are better suited for resolving claims involving unanticipated physical injury, particularly those arising out of an accident. Contract principles, on the other hand, are generally more appropriate for determining claims for consequential damage that the parties have, or could have, addressed in their agreement." *E.W. Burman, Inc.*, 658 A.2d at 517-18 (emphasis in original) (*quoting, Spring Motors Distributors, Inc.*, 98 N.J. 55, 489 A.2d 660, at 672); see also *Drexel* , 936 A.2d at 1275-76.

In a case where the parties have equal bargaining power, an extension of tort liability for tort damages is unwarranted and "contract law is the proper device to allocate economic risk." *Boston Inv. Property No. 1 State v. E.W. Burman*, 658 A.2d 515, 518 (R.I. 1995). Here, the State is a sophisticated and experienced purchaser of engineering services and was acting in a commercial, rather than sovereign, capacity in contracting for those services. There is no justification for allowing the State to seek remedies not bargained for in its contracts.

The State cites two intermediate appellate court decisions from other jurisdictions to support its claim that it is not bound by the economic loss doctrine. Its reliance is misplaced. In *Commonwealth v. Monsanto Co., et al.,* 269 A.3d 623 (Pa. Comm. Ct. 2021), the Commonwealth of Pennsylvania and several state agencies brought an action against Monsanto Co. and others, seeking remedies under theories of public nuisance, trespass, design defect, failure to warn, negligence and unjust enrichment. 269 A.2d at 635. The State misinterprets the analysis of the *Commonwealth* Court. The Court relied on the State's status as a trustee or *parens patriae* authority to determine that the Commonwealth had *standing* to bring the action, 269 A.3d at 647, not whether the economic loss doctrine applied. Standing is not at issue in connection with the pending motion. Instead, it is the ability of the State, a sophisticated consumer of engineering and construction services, to avoid the limitations imposed by the contract it entered into.

Indeed, a review of that portion of the *Commonwealth* Court's decision dealing with the economic loss doctrine supports application of the doctrine. The Court first noted the doctrine's historical origin:

> Traditionally, Pennsylvania's economic loss doctrine [was] "developed in the product liability context to prevent tort recovery where the only injury was to the product itself." *Sarsfield v. CitiMortgage, Inc.*, 707 F. Supp. 2d 546, 556 (M.D. Pa. 2010). Eventually, the doctrine came to stand for the proposition that, "no cause of action can be maintained in tort for negligence or strict liability where the only injury was 'economic loss' - that is, loss that is neither physical injury nor damage to tangible property." *2-J Corp. v. Tice* , 126 F.3d 539, 541 (3d Cir. 1997) (citing *Aikens v. Baltimore & Ohio R.R. Co.* , 501 A.2d 277, 279 (1985))
> 269 A.3d at 676, 677.

However, the Court went on to note,

> **Recently** , **however**, in *Dittman v. UPMC* , [649 Pa. 496,] 196 A.3d 1036 (2018), the Pennsylvania Supreme Court limited the doctrine's application and moved away from an analysis of whether plaintiff alleges solely economic harms. Instead, the Pennsylvania Supreme Court shifted to an examination of what *kinds of remedies* are available to the plaintiff. Under the new *Dittman* test, the economic loss doctrine bars a plaintiff's solely economic claim via a *tort* action if the breached duty arises under a *contract* . *Id* . at 1054.

269 A.3d 678. (emphasis in original)

The State's reliance on *Morris v. Osmose Wood Preserving*, 340 Md. 519, 667 A.2d 624, 642 (Md. 1995), is similarly unavailing. In *Morris*, a class action, the issue was whether allegedly defective roofing material fit into an exception to Maryland's general economic loss rule in the absence of property damage for conditions "presenting a clear danger of death or personal injury." 340 Md. at 526. Like the State here, plaintiffs claimed that the product might cause hypothetical damage, i.e., first, by "threatening the safety of plaintiffs or other occupants who have cause to be on the roof, and, second, that occupants of the dwellings on which the material was used "may be injured 'as the degradation process renders the roof incapable of supporting any weight'…, posing 'the threat of the roofs collapasing and injuring the occupants therein.'" 340 Md. at 535, 536.

In response the Court held,

> Neither of these assertions, by themselves, meet the required legal threshold of pleading the existence of a clear and extreme danger of death or serious personal injury, as required by *Whiting-Turner* and its progeny. There is no allegation that any injury has ever occurred since the roofs were installed on the plaintiffs' townhouses, or on the roofs of the members of the class, or that any of the roofs have collapsed because of weather conditions or because of the alleged degradation associated with their construction. As noted by the Court of Special Appeals, mere possibilities are legally insufficient to allege the existence of a clear danger of death or serious personal injury.
> *Id. at 536.*

The *Morris* Court therefore sustained the lower court's dismissal of plaintiffs' tort claims. *Id*. The Maryland court's analysis applies with equal force to the matter at bar. The State's reference to potential damage claims is too speculative to constitute property damage for the purposes of the pending motion.

II. Aries' Reference to its Contract Does Not Change the Character of its Motion.

In its complaint, the State fails to acknowledge that Aries performed its work under a contract with AECOM. Through a footnote, it appears the State complains that this simple, undeniable fact should not be considered. The State's position is in error. As noted by the Court in *Goodwin v. Bank of America,* 184 A.3d 1121 (R.I. 2018),

> Ordinarily, when ruling on a motion to dismiss brought under Rule 12(b)(6) or Rule 12(c), 'a court may not consider any documents that are outside of the complaint, or not expressly incorporated therein, unless the motion is converted into one for summary judgment.' " *Chase v. Nationwide Mutual Fire Insurance Co*., 160 A.3d 970, 973 (R.I. 2017) (quoting *Alternative Energy, Inc. v. St. Paul Fire & Marine Insurance Co.*, 267 F.3d 30, 33 (1st Cir. 2001)). "There is, however, a 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." Id. (quoting *Alternative Energy, Inc.*, 267 F.3d at 33).
> 184 A.3d at 1126.

The executed contract pursuant to which Aries performed its work is the source of any duty owed to the State, and therefore, is central to the State's claim. This is particularly true where, as here, the dispositive point is not the detail of the contract, but the fact that it exists.

CONCLUSION

For the reasons stated above, and those previously set forth by Aries Support Services, Inc. and the other moving defendants, Aries respectfully requests that the Court grant its motion for judgment on the pleadings.

Defendant, Aries Support Services, Inc.,

By its attorneys,

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CERTIFICATION

I hereby certify that on the 14th day of January 2025, a copy of the within document was served upon all counsel of record through the Court's electronic filing system.

/s/ John F. Kelleher