Case Number: PC-2024-04526
Filed in Providence/Bristol County Superior Court
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HEARING DATE TBD BEFORE JUDGE STERN

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

STATE OF RHODE ISLAND

Plaintiff,

v.

AECOM TECHNICAL SERVICES, INC., *et al.*

Defendant.

C.A. No. PC-2024-04526

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT AECOM TECHNICAL SERVICES, INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT

Pursuant to Rhode Island Superior Court Rule 12(b)(6), Defendant AECOM Technical Services, Inc. ("AECOM") respectfully requests this Court dismiss Counts I, II, IV, V, X and XVII – XX of the Complaint ("Complaint") filed by Plaintiff State of Rhode Island ("Plaintiff" or the "State") to the extent such Counts are directed against AECOM.

Alternatively, should this Court fail to grant AECOM's Motion to Dismiss in whole or in part, AECOM respectfully requests this Court order the State to submit a more definite statement with respect to any remaining counts in the Complaint directed against AECOM pursuant to Rhode Island Superior Court Rule 12(e).

INTRODUCTION

This action arises from the closure of the Interstate 195 West-bound portion of the Washington Bridge in December 2023 when the bridge rehabilitation contractor then performing repair works on the bridge (Defendant, Vanasse Hangen Brustlin, Inc. ("VHB")) discovered deteriorated tie-rods in the structural support member for the West-Bound section of the Bridge.

Defendant, AECOM, like the 12 other defendants the State named in its Complaint, was one of several companies that performed services relating to the Washington Bridge over the prior several decades. AECOM's services in relation to the Washington Bridge primarily consisted of (1) providing design services and serving as an "Owner's Representative" in connection with Rhode Island Department of Transportation's ("RIDOT") proposed design-build rehabilitation projects intended to partially repair deterioration of the 50-year-old bridge; and (2) periodically performing routine or special inspections of the bridge per specifications and upon request by the RIDOT, in rotation with RIDOT's other bridge inspection contractors who are also named as Defendants in the Complaint. Importantly, AECOM did not perform any physical work on the bridge at any point in time and AECOM did not have any responsibility to maintain or physically repair the bridge. All of AECOM's services were either design or contract administration of the wholly separate contractors the State engaged to perform rehabilitation and maintenance of the bridge at various points in time.

The State commenced this action in August 2024 after an almost nine-month investigation following discovery of the damaged tie-rods, reportedly seeking to "hold those liable for the physical damage to its property and for the economic losses [the State] has and will continue to suffer." Compl., *Introduction*, page 4. In its Complaint, the State asserts claims against AECOM for alleged breaches of contract and fiduciary duty, negligence, and contractual indemnity. The Complaint also includes three (3) requests for declaratory relief directed at AECOM, amongst other Defendants, seeking indemnity for potential future third-party claims against the State. Although the State advances causes of actions against AECOM based on multiple legal theories, they all arise from or relate to services AECOM performed under its contracts with

the State. As discussed further below, the Economic Loss Doctrine precludes the State from asserting tort theories where the alleged loss arises out of a contract.

In addition, the damages that the State alleges in all of its counts against AECOM are conclusory, duplicative and non-specific. Namely, the State claims that due to AECOM's alleged non-performance or negligent performance of its services, the State incurred unspecified "damage to its property and economic damage." *See e.g.*, Compl. ¶ 99. However, the Complaint does not identify what, if any, physical damage to property and economic damage the State has allegedly incurred. Rather, the only allegation of damages incurred (or to be incurred) by the State is the vague statement on page 4 of the Complaint alleging that the Washington Bridge "must now be demolished, redesigned, and rebuilt in its entirety *at the cost of hundreds of millions.*"[1] It goes without saying that deterioration and the State's deferred or improper maintenance of an aging bridge does not constitute property damage or economic damage for which AECOM can or should be held liable. See *infra,* Argument Section III (providing authority that "property damage" entails physical destruction to tangible property; and replacement costs caused by deterioration and normal wear and tear are purely economic losses). Nor did AECOM ever promise or contract with the State to construct a new bridge, and there are no allegations to the contrary.

Not only is the Complaint devoid of any allegation of physical damage to property, it also fails to allege how AECOM's performance of its design and inspection services <u>*caused*</u> economic damage or physical damage to the Washington Bridge (a 50-year-old bridge that was under active rehabilitation when the aged and deteriorated tie-rods were discovered). Nor does the Complaint allege that AECOM caused personal injury. Again, it appears that the State is seeking to recover unspecified costs to demolish the existing bridge, and then to design and build an entirely new

[1] Notably, the State has reported in the press that it has received federal funding to cover much of this cost.

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replacement bridge, without any attempt at pleading causation to any breach of contract, act or omission by the Defendants. Whatever the claimed measure of damages, however, such damages are not recoverable and AECOM is not liable therefore as a matter of law.

Each count asserted against AECOM in the Complaint—for breaches of contract, negligence, fiduciary duty, contractual indemnity, and requests for declaratory relief—fails for multiple independent reasons.

Breaches of Contract (Counts I, IV and X): The State's breach of contract claims against AECOM should be dismissed because the State fails to state a valid claim for breach of contract. Setting aside whether AECOM breached any of its contractual obligations to the State, which AECOM disputes, the State fails to allege how AECOM's purported breaches of its contracts with the State caused the State to suffer actual damages. Moreover, the State fails to allege any type of damages whatsoever beyond its vague and conclusory statement that it incurred some unspecified "damage to its property and economic damage." Both reasons warrant the dismissal of the State's breach of contract claims against AECOM.

Negligence (Count II): The State's negligence claim against AECOM fails to allege any separate and distinct conduct from its breach of contract claims. Rather, it is wholly duplicative of its breach of contract claims against AECOM and should, therefore, be dismissed. The State's negligence claim should also be dismissed pursuant to the Economic Loss Doctrine because the State fails to allege that the bridge itself was physically damaged by AECOM's negligence, or personal injury as would be required for it to avoid the Economic Loss Doctrine.

Breach of Fiduciary Duty (Count V): The State's breach of fiduciary duty claim against AECOM fails to identify or even allege what, if any, legal duty—let alone one rising to the level of a fiduciary duty—exists between AECOM and RIDOT. The State also fails to allege any

conduct separate and distinct from its breach of contract claim. As such, the State's breach of fiduciary duty count is both insufficiently plead and duplicative of its contract claims against AECOM and should be dismissed.

Contractual Indemnity (Count XVII): The State's contractual indemnity claim also fails for several reasons. First, there is no allegation that the State is liable to any third party for either property damage or personal injury. Rather, the State is seeking "indemnity" for alleged first party economic losses, which do not fall within the scope of the contractual indemnity provision. Second, the State's indemnity claim is derivative of its negligence claim as the underlying clause addresses tort-types of damage such as negligence. Since the Economic Loss Doctrine bars the State's primary negligence claim, its contractual indemnity claim must also fail. Finally, even if the State could overcome these obvious impediments, the State's contractual indemnity claim is not ripe for adjudication because the State has not been determined to be liable to any third party through a judgment or settlement. All three reasons require this Court to dismiss the State's contractual indemnity claim against AECOM.

Declaratory Relief (Counts XVIII, XIX and XX): In each of the State's requests for declaratory relief, the State asks this Court to hold AECOM liable for a hypothetical future indemnity events that may or may not happen. Therefore, the States's requests for declaratory relief must be dismissed because there is no justiciable controversy.

STANDARD OF REVIEW

The function of a motion to dismiss is to test the sufficiency of the complaint. *See Rhode Island Employment Security Alliance, Local 401, S.E.I.U., AFL-CIO v. State Department of Employment and Training*, 788 A.2d 465, 467 (R.I. 2002) (quoting *Rhode Island Affiliate, ACLU v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989)). When ruling on a Rule 12(b)(6) motion, "the trial justice must look no further than the complaint, assume that all allegations in the complaint

are true, and resolve any doubts in a [non-movant's] favor." *Pellegrino v. Rhode Island Ethics Commission*, 788 A.2d 1119, 1123 (R.I. 2002) (quoting *Bernasconi*, 557 A.2d at 1232). The motion should be granted where it appears beyond a reasonable doubt that the non-movant would not be entitled to relief. *Id.* (quoting *Estate of Sherman v. Almeida*, 747 A.2d 470, 473 (R.I. 2000)); *see also Toste Farm Corp. v. Hadbury, Inc.*, 798 A.2d 901, 905 (R.I., 2002). Such is the case at bar.

To survive a motion to dismiss under Rule 12(b)(6), a complaint's "factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Bell Atlantic Co. v. Twombly*, 550 U.S. 544, 545 (2007); *Devaney v. Kilmartin*, 88 F. Supp. 3d 34, 44 (D.R.I. 2015). Courts evaluating a motion to dismiss should not accept as true "legal conclusions" or "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements. . . ." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "While detailed factual allegations are not required, 'a formulaic recitation of the elements of a cause of action' is not sufficient." *DeLucca v. Nat'l Educ. Ass'n of Rhode Island*, 102 F. Supp. 3d 408, 411 (D.R.I. 2015) (quoting *Iqbal*, 556 U.S. at 678).

ARGUMENT

I. Breach of Contract (Counts I, IV and X): Plaintiff Fails to State a Claim for Breach of Contract.

To state a claim for breach of contract, Plaintiff must allege that (1) a contract existed, (2) the defendant breached that contract, (3) the plaintiff sustained damages, and (4) the defendant's breach caused the plaintiff's damages. *See Fogarty v. Palumbo*, 163 A.3d 526, 541 (R.I. 2017). "[M]ere recitation of an essential element, sans factual allegations, misses the boat." *Rhode Island Recycled Metals, LLC v. Conway Marine Constr., Inc.*, 2017 WL 1831089, at *1 (D.R.I. May 4, 2017) (McConnell, J.) (internal citations omitted).

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Damages are an essential element of a claim for breach of contract, and the complaint in such an action must set forth "sufficient specific facts" to show that plaintiff suffered "damages… attributable to [the defendant's] actions [or inactions]." *DeRaffele v. 210-220-230 Owners Corp.*, 33 A.D.3d 752, 753 (2d Dep't 2006). *Accord, Petrarca v. Fid. & Cas. Ins. Co.*, 884 A.2d 406, 410 (R.I. 2005) (finding plaintiff's contract claim must fail because plaintiff failed to offer competent proof of damages); *Dweck v. Oppenheimer & Co., Inc.*, 30 A.D.3d 163 (1st Dep't 2006) (granting motion to dismiss breach of contract claim because no damages were sustained by plaintiff); *Arcidiacono v. Maizes & Maizes, LLP*, 8 A.D.3d 119, 120 (1st Dep't 2004) (granting motion to dismiss contract claim for failure to allege "any basis for an award of damages"); *Reade v. Sullivan*, 259 A.D.2d 229, 230 (1st Dep't 1940) (granting motion to dismiss contract claim because "in absence of allegations of fact showing damage, allegations of breach of contract are not sufficient to sustain a complaint"); *Smith v. Chase Manhattan Bank*, 293 A.D.2d 598. 600 (2d Dep't 2002) (granting motion to dismiss because plaintiffs made only "vague and conclusory" allegations of damage).

In this case, the State asserts three breach of contract counts against AECOM in its Complaint (Counts I, IV, & X) (collectively the "Contract Claims"). None of the Contract Claims cite a contractual provision that AECOM allegedly failed to perform or breached. Instead, in Counts I & IV, Plaintiff baldly alleges that AECOM breached the "2014 AECOM Contract[2]" and "2019 AECOM Contract[3]" by failing to: (a) conduct a detailed research and review of previous inspection reports, drawings, and plans—including, but not limited to, the Original Design Plans

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[2] Plaintiff refers to the 2014 AECOM Contract as the contract that AECOM and the State entered into on January 29, 2014 for "complete design services for the rehabilitation of the Washington Bridge (Contract Number 2014-EB-003)". Compl. ¶ 59.

[3] Plaintiff refers to a "Notice of Change/Contract Addendum" that AECOM and the State entered into in 2019 as the "2019 AECOM Contract." Compl. ¶ 76.

and the plans for the 1996-1998 rehabilitation project; (b) conduct an inspection of the Washington Bridge in conformance with the contract; (c) perform evaluations and report to the State as required by the contract; (d) recommend needed repairs in accordance with the requirements of the contract; and (e) otherwise comply with its contractual obligations. Complaint ¶¶ 98 & 113.[4] The State does not identify any contractual provision that was allegedly breached or violated by the alleged conduct. Not only do these allegations lack specificity as to the contract provisions breached, but also at no time prior to the Complaint were any such claims or allegations levied against AECOM by RIDOT, on contracts that were completed in some cases years prior.

Similarly, in Count X, the State asserts vague and non-specific allegations that AECOM breached its "inspection contract." Specifically, the State alleges that AECOM breached its "inspection contract"[5] by failing to "(a) conduct a detailed research and review of the bridge structure file for the Washington Bridge, including but not limited to, previous inspection reports, drawings, and plans; (b) conduct inspections of the Washington Bridge in conformance with the inspection contracts; (c) perform evaluations and report to the State as required by the inspection contracts; (d) recommend needed repairs in accordance with the requirements of the inspection contracts; and (e) otherwise comply with its contractual obligations." Compl. ¶ 143. Again, such allegations are untethered to any contract provision that is alleged to have been breached by such conduct.

The State's damages allegations are equally vague and non-specific. The State alleges that as a result of AECOM's alleged breaches of contract, Plaintiff "has and will continue to suffer both physical damages to its property and economic damages…." Compl. ¶¶ 99, 114 and 144. The

[4] Plaintiff alleges identical failures by AECOM in Counts I & IV in support of its claim that AECOM breached the 2014 AECOM Contract and 2019 AECOM Contract, effectively rendering the counts duplicative.

[5] In Count X, Plaintiff alleges that "[t]he State and AECOM are parties to a 2014 and a 2019 inspection contract." Compl. ¶ 141.

State fails to describe its alleged damages beyond those vague and conclusory statements. Moreover, the State does not articulate how AECOM's alleged contract breaches caused Plaintiff to incur "damages." Both failures independently warrant the dismissal of Plaintiff's Contract Claims for RIDOT's failure to meet and adequately allege a basic element of a breach of contract case—damages—with even sufficient notice, to say nothing of any specificity. There is no allegation that meets the pleading standard that RIDOT has been actually damaged and that such damage, whatever it may be, was caused by AECOM's failure to perform some unspecified contractual obligation.

Even if the Court deems such conclusory allegations to be sufficient, the Court must still dismiss the State's Breach of Contract claims against AECOM because such allegations (even if true) would not give rise to the damages the State seeks from AECOM. Stated differently, even if AECOM failed to carry out its inspection or oversight obligations under its contracts with the State as is alleged, the costs of demolishing this 50-year-old bridge and designing and installing a brand new replacement bridge are not types of damages that would flow from the breaches alleged in the Complaint because AECOM is not alleged to have caused the conditions requiring the demolition and replacement. Rather, the State appears to believe that because AECOM did not identify such conditions sooner than December 2023 (when they were in fact discovered by the rehabilitation contractor performing repairs on the bridge), the State should receive a new bridge. However, an Owner is not entitled to a brand new bridge simply because an inspection failed to identify a deteriorated structural element that the State would have needed to repair anyway even if discovered sooner. Nor is there any allegation by the State that the bridge conditions worsened as a result of AECOM's failure to discover them sooner. In sum, the State's legal theory would

impose liabilities that are wholly disproportionate and untethered to the services to be performed (and allegedly improperly performed) by AECOM.

II. The State's Negligence (Count II) and Breach of Fiduciary Duty (Count IV) Claims Should be Dismissed Because They Are Not Separate and Distinct From The State's Contract Claims.

Rhode Island Courts routinely dismiss claims when they do not constitute independent causes of action. *See, e.g., F. Saia Rests., LLC v. Pat's Italian Food to Go, Inc.*, No. 12-1294, 2012 WL 2133511, slip op. at 10-11 (R.I. Super. June 6, 2012) (Silverstein, J.) (dismissing count for injunctive relief where duplicative of relief requested in other counts and not recognized as independent cause of action); *State v. Lead Indus. Ass'n, Inc.*, No. 99-5226, 2001 WL 345830, at *17 (R.I. Super. Apr. 2, 2001) (Silverstein, J.) (describing absence of controlling case law that injunctive relief constitutes an independent cause of action and dismissing count for injunctive relief). Indeed, the Rhode Island Supreme Court has held 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, 491 (R.I. 1997) (quoting DeCosta v. Viacom Int'l, Inc., 758 F.Supp. 807, 812 (D. R.I. 1991)). "[F]ailure to perform a contractual obligation is not a tort in the absence of a duty to act apart from the promise made." *Anderson v. Fox Hill Village Homeowners Corp.*, 424 Mass. 365, 368 (1997). Put more simply, a party cannot be liable in tort where "liability exists solely because the [the party] did not perform a contractual duty." *Id.*

In this case, the State's negligence and breach of fiduciary duty claims are both premised solely on AECOM's alleged failure to perform its contractual obligations. Indeed, the State fails to allege conduct in support of its negligence and breach of fiduciary duty claims that is in any way separate and distinct from its Contract Claims. Additionally, the damages the State seeks in connection with its negligence and breach of fiduciary duty claims are identical to the conclusory

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relief the State seeks in its Contract Claims. Thus, the State is demanding multiple forms of relief for the same alleged injury by "cloaking a single claim in a variety of legal theories." *Graff v. Motta*, 695 A.2d 486, 491 (R.I. 1997). Accordingly, the State's negligence and breach of fiduciary claims are duplicative of its Contract claims and should be dismissed.

Furthermore, the State's breach of fiduciary duty claim should be dismissed because the State fails to allege the existence of a fiduciary duty. *See Chain Store Maint., Inc. v. Nat'l Glass & Gate Serv., Inc.*, No. CIV.A. PB 01-3522, 2004 WL 877599, at *13 (R.I. Super. Apr. 21, 2004). In order to establish a breach of fiduciary duty, the State first must demonstrate that a fiduciary relationship existed between the parties. *Id.* To determine whether a fiduciary relationship exists, courts look at a variety of factors. *See e.g., EDC Inv., LLC v. UTGR, Inc.*, 275 A.3d 537, 544 (R.I. 2022) (finding no fiduciary relationship where plaintiff failed to allege factors beyond that of a typical commercial landlord-tenant association). Those factors include "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.* (internal citation omitted). In this case, the Complaint lacks any specific allegations or factors that this Court could look to in order to determine such a relationship exists between the State and AECOM. Indeed, the State claims that a fiduciary relationship existed between the State and AECOM merely because AECOM entered into contractual agreements with the State. Compl. ¶¶ 118-19. Without clear and concrete allegations of a fiduciary duty beyond that, the claim cannot stand. Therefore, the Court should also dismiss the State's breach of fiduciary duty claim for failure to allege the existence of a fiduciary duty.

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III. The Economic Loss Doctrine bars the State's Negligence Count (Count II) and its Contractual Indemnity Count (Count XVII) which is derivative of that Count against AECOM.

The State's tort counts (Counts II and XVII), including its negligence cause of action, should also be dismissed for the independent reason that they are barred by the Economic Loss Doctrine. Pursuant to the Economic Loss Doctrine as recognized and applied by Rhode Island state and federal courts a plaintiff cannot recover purely economic damages when they arise in a contract context and the plaintiff suffers no personal injury or property damage. *Hexagon Holdings, Inc. v. Carlisle Syntec Inc.*, 199 A.3d 1034, 1042 (R.I. 2019); *Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1275 (R.I. 2007). Put differently, a plaintiff may not recover damages under a negligence theory when there is a contract in place and the plaintiff has suffered no personal injury or property damage. *Id.*

Courts define "property damage" as physical damage or destruction to or loss of tangible property. *Williams Ford, Inc. v. Hartford Courant Co.,* 232 Conn. 559, 584 (1995) (concluding that the phrase "damage to property" does not mean purely commercial losses "unaccompanied by physical damage to or loss of use of tangible property."); *City of Alton v. Sharyland Water Supply Corp.*, 277 S.W.3d 132, 154 (Tex. App. 2009), aff'd in part, rev'd in part, 354 S.W.3d 407 (Tex. 2011) ("[I]t is clear that property damage cannot consist merely of damage to an intangible asset or increased operational costs. Instead, some physical destruction of tangible property must occur."); *Murray v. Ford Motor Co.*, 97 S.W.3d 888, 892 (Tex.App.-Dallas 2003) (opining that property damage ordinarily entails physical destruction of property); *Great Pines Water Co., Inc. v. Liqui-Box Corp.*, 962 F. Supp. 990, 992 (S.D. Tex. 1997) (interpreting property damage to mean damage to tangible property, not economic loss).

Economic loss includes "damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits without any claim of personal injury or damage

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to other property...." *Alfred N. Koplin & Co. v. Chrysler Corp.*, 49 Ill.App.3d 194, 199 (1977), quoting from Note, Economic Loss in Products Liability Jurisprudence, 66 Colum.L.Rev. 917, 918 (1966); *Hart Eng'g Co. v. FMC Corp.,* 593 F.Supp. 1471 (D. R.I. 1984) (defining economic loss as "costs associated with repair and-or replacement of a defective product, or loss of profits consequent thereto."). The Economic Loss Doctrine was developed in connection with property damage claims to delineate the boundaries between contract and tort law, ensuring that purely economic losses without accompanying physical harm are addressed through contract remedies rather than tort theories.

Rhode Island Courts abide by the Economic Loss Doctrine because "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; *see also East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 866 (1986) ("The rule was developed in part to prevent the progression of tort concepts from undermining contract expectations."). Thus, "when parties have contracted to protect against potential economic liability, as is the case in the construction industry, contract principles override tort principles and, thus, purely economic damages are not recoverable." *Bos. Inv. Prop. No. 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I. 1995) (quoting *Berschauer/Phillips Construction Co. v. Seattle School District*, 124 Wash.2d 816, 828 (1994). "[I]f tort and contract remedies were allowed to overlap, particularly in the construction industry, certainty and predictability in allocating risk would decrease and impede future business activity." *Id*.

Rhode Island courts recognize that "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." *Bos. Inv. Prop. No. 1 State,* 658 A.2d at 518; *Triton Realty Ltd. P'ship v. Almeida*, No. PC 04-2335, 2006 WL 828733, at *3 (R.I. Super. Mar. 29, 2006). The Economic Loss Doctrine draws a distinction between "tort and contract rather between physical harm and economic loss." *Yakel v. Wheeler*, 10 N.W.3d 622 (Iowa Ct. App. 2024). When the "loss relates to a consumer or user's disappointed expectations due to deterioration, internal breakdown or non-accidental cause, the remedy lies in contract." *Id. See also Danforth v. Acorn Structures, Inc.*, 608 A.2d 1194 (Del.1992) (barring the plaintiff's tort action against the defendant builder for negligent design because repair costs stemming from deterioration of windows, door frames, and exterior siding was a strictly economic loss); *Redarowicz v. Ohlendorf*, 92 Ill.2d 171(1982) (holding that repair and replacement costs for defectively constructed chimney, wall, and patio were economic losses not recoverable in tort; noting that inferior workmanship that leads to eventual deterioration is not properly addressed by tort law); *American Towers Owners v. CCI Mechanical*, 930 P.2d 1182 (Utah 1996) (holding condominium association claiming negligent construction of condominium complex could not recover economic damages from contractor consisting of repair costs and diminution of property values).

Tort law, in contrast, is appropriate when the harm is caused by "a sudden or dangerous occurrence, frequently involving some violence or collision with external objects…." *Yakel v. Wheeler*, 10 N.W.3d 622 (Iowa Ct. App. 2024); *Nelson v. Todd's Ltd.*, 426 N.W.2d 120, 125 (Iowa 1988); *Moorman Mfg. Co. v. Nat'l Tank Co.*, 91 Ill. 2d 69, 86 (1982); *Hecktman v. Pac. Indem., Co.*, 59 N.E.3d 868, 872 (Ill. App. Ct. 2016).

"[W]here the negligent design or construction of a product leads to damage only to the product itself, the recovery for economic loss is in contract, and the Economic Loss Doctrine bars

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recovery in tort." *Wyman v. Ayer Properties*, LLC, 469 Mass. 64, 69 (2014). In this case, as stated above, Plaintiff's negligence claim is premised on the identical purported allegations as its Contract Claims and vaguely references identical damages. There is no allegation that AECOM's purported negligence caused personal injury or caused physical damage to other property. Indeed, there is no allegation whatsoever of an "accident, event or happening" resulting in the "loss of or direct damage to or destruction of tangible property*." CPC Int'l, Inc.*, 668 A.2d 647 at 649 (providing an example of the definition for "property damage"). Instead, it appears that the State is seeking to recover costs to repair or replace the Washington Bridge, which would be purely financial (*nee* economic) losses that fall squarely within the purview of the Economic Loss Doctrine. *See* Compl., *Introduction*, page 4 (alleging that the Washington Bridge "must now be demolished, redesigned, and rebuilt in its entirety at the cost of hundreds of millions"). Therefore, Plaintiff's negligence claim against AECOM is barred by the Economic Loss Doctrine and should be dismissed as such.

IV. Plaintiff's Claim for Contractual Indemnity (Count XVII) must be Dismissed because (i) it is also Derivative of its Negligence Claim and (ii) premature, making it not ripe for adjudication.

In Count XVIII, the State asserts a claim for contractual indemnity against AECOM. Plaintiff alleges that pursuant to an unspecified contract and by Virtue of 220 R.I. Code R. 30-00-13.21, AECOM "agreed to defend, indemnify, and hold harmless the State for all damages, losses, or expenses arising out of any of its acts or omissions, without regard for whether such damages, losses, or expenses were foreseeable." Compl. ¶¶ 174-175. Plaintiff then alleges that as "a direct and proximate result of the ***negligence of AECOM*** and the Joint Venture, the State has suffered and will continue to suffer both physical damages to its property and economic damages…." (emphasis added). Compl. ¶ 177. In short, through Count XVII, Plaintiff seeks to recover some unspecified damages it allegedly incurred due to AECOM's alleged negligence.

This claim must be dismissed for three equally important reasons. ***First***, the State does not allege any third-party liability for which it is seeking indemnification. Rather, the State appears to be utilizing the indemnity provisions to recover its own first-party losses that would otherwise not be recoverable by Contract.

Specifically, the State relies upon R.I. Code R. 30-00-13.21 which states:

> **A.** General
>
> 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. (Emphasis added).

This indemnity provision is clear that it relates to only "*third-party claims*, demands, liabilities, causes of action, losses, damages, judgment and other costs and expenses." *Id.* (emphasis added). But, there are no allegations in the Complaint that there are any "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." *Id.* As such, this provision is not applicable and dismissal is appropriate as to this Count.

Second, the State's contractual indemnity claim against AECOM is derivative of its negligence claim. Because the Economic Loss Doctrine bars a primary negligence claim against AECOM (and because plaintiff's negligence claim is duplicative of its Contract Claims), the State's contractual indemnity claim must fail as well. *See Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1278 (R.I. 2007) (concluding that the plaintiff could not bring a contribution or

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indemnity claim against the defendant when the primary negligence cause of action failed under the economic loss doctrine).

Third, Plaintiff's contractual indemnity claim against AECOM must also fail because it is, at best, premature and not ripe for adjudication. Under Rhode Island law, "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. *See A & B Constr. v. Atlas Roofing & Skylight Co.*, 867 F.Supp. 100, 113 (D.R.I.1994) (holding that indemnity arises where one party has been compelled by reason of some legal obligation to pay damages); *Muldowney v. Weatherking Prods.*, 509 A.2d 441, 443 (R.I.1986) (holding that a necessary element of an indemnity claim is that the party seeking indemnity must be liable to a third party); *See also Runyan v. United Brotherhood of Carpenters*, 566 F.Supp. 600, 609 (D.Colo.1983) (finding that no cause of action for indemnity accrues until there has been a judgment or settlement of claim, and that indemnity does not accrue until the indemnitee's liability is fixed).

Here, there has been no finding of liability against the State by judgment or settlement and no third-party claims alleged or levied. Therefore, Plaintiff's claim for contractual indemnity against AECOM is not ripe for adjudication and must be dismissed for this reason as well.

V. Plaintiff's Requests for Declaratory Judgment (Counts XVIII, XIX and XX) should be denied because there is no justiciable controversy.

In the Complaint, the State includes three similar/interrelated requests for declaratory relief seeking to hold AECOM (and the other defendants) responsible for <u>potential</u> claims that <u>potential</u> third parties could potentially bring against the State at some future time. Specifically:

- In **Count XVIII**, the State seeks a declaratory judgment declaring that it is entitled to indemnity from AECOM for "damages, losses, and/or expenses [the State incurs]

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in connection with one or more claims hereinafter asserted by one or more third parties against the State arising out of the acts or omissions of AECOM…." (Compl. ¶ 180);

- In **Count XIX**, the State seeks a declaratory judgment declaring it is entitled to non-contractual indemnity from AECOM to "the extent that in the future, the State may be held liable to one or more third parties as a result of the active fault and wrongful conduct of AECOM [and the other named defendants in the Complaint]…" (Compl. ¶ 184); and
- In **Count XX**, the State seeks a declaratory judgment declaring that, "[t]o the extent that in the future, the State may be held liable to one or more third parties as a tortfeasor, the State is entitled to contribution from [all of the named defendants], and each of them, as joint tortfeasors." (Compl. ¶ 188).

As discussed above, there are no third-party claims alleged to have been filed against the State.

"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." *State v. Gaylor*, 971 A.2d 611, 613 (R.I. 2009). As such, the Rhode Island Supreme Court has recognized the need to confine judicial review only to those cases that present a ripe case or controversy and Rhode Island courts "will not issue advisory opinions or rule on abstract questions." *See State v. Lead Indus. Ass'n*, 898 A.2d 1234, 1238 (R.I. 2006) (quoting *Vose v. Rhode Island Bhd. of Corr. Officers*, 587 A.2d 913, 915 n.2 (R.I. 1991)). "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)). *See also Nat'l Park Hospitality Ass'n v. DOI*, 538 U.S. 803, 807 (2003) (Ripeness is a justiciability doctrine which seeks to avoid "premature adjudication.").

The Rhode Island Supreme Court has cautioned, "there remains the prerequisite that the party seeking declaratory relief present the court with an actual controversy. Trial justices may not dispense with the traditional rules prohibiting them from rendering advisory opinions or adjudicating hypothetical issues." *See Millett v. Hoisting Eng'rs' Licensing Div. of Dep't of Labor*, 377 A.2d 229, 233 (1977) (citing *Malinou v. Powers*, 114 R.I. 399, 404, 333 A.2d 420, 423 (1975); *Goodyear Loan Co. v. Little*, 107 R.I. 629, 269 A.2d 542 (1970); *Lamb v. Perry*, 101 R.I. 538, 225 A.2d 521 (1967).

In this case, the State's requests for declaratory relief are entirely contingent on unspecified, non-existent and uncertain future events that may or may never occur at all. Indeed, the State is asking this Court to adjudicate purely hypothetical issues/causes of action -- that is, to hold AECOM and the other defendants responsible if some unknown, unidentified third-party pursues claims against the State, and then only if those causes of action/claims relate to or arise out of AECOM's services. There is not only uncertainty as to whether a third-party will file suit against the State but also the factual and legal basis for liability against AECOM. Thus, the State's requests for declaratory relief are not ripe for adjudication and must be dismissed.

VI. In the Alternative, This Court Should Order the State To Present a More Definite Statement with Respect to any Remaining Counts in the Complaint Directed Against AECOM.

To the extent the Court denies AECOM's Motion to Dismiss, *supra,* the Court should still require the State to provide a more definite statement as to those counts that survive said motion given their vagueness, lack of specificity and lack of particularity. A pleading must be sufficiently intelligible for the court to be able to make out one or more potentially viable legal theories on which the claimant might proceed and must not be so vague or ambiguous that the opposing party

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cannot respond, even with a simple denial, in good faith or without prejudice to himself. *See* 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure §1376 (1998); *Oresman v. G. D. Searle & Co.*, 321 F. Supp. 449, 458 (D.R.I. 1971); *Wheelock v. Rhode Island*, No. C A 06-366 S, 2006 WL 3391507, at *1 (D.R.I. Nov. 22, 2006).[6] Rhode Island's Rules of Civil Procedure require specifically that "[a] pleading...set forth a claim for relief [that]...contain[s] (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." R.I. Super. Ct. R. Civ. P. 8(a). Similarly, Rhode Island common law requires a plaintiff's allegations to be "as precise and definite as the nature of the case will reasonably permit." *Kenny v. Gibsons, Inc.*, 89 A.2d 181, 183 (R.I. 1952). An essential requirement of the complaint is that it "give the opposing party fair and adequate notice of the type of claim being asserted." *Berard v. Ryder Student Transp.*, 767 A.2d 81, 84 (R.I. 2001) (citing Friedenthal, Kane, and Miller, Civil Procedure §§ 5.7, 5.8 at 252-56 (1985); 1 Kent, R.I. Civ. Prac. § 8.2 at 83-84 (1969)).

Rhode Island Superior Court Civil Procedure Rule 12(e) provides a remedy for a defendant who is faced with a complaint containing insufficient or ambiguous facts:

> [i]f a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired.

R.I. Super. Ct. R. Civ. P. 12(e). If a pleading lacks or asserts vague or ambiguous facts that are necessary elements of the causes of action asserted therein, it is within the court's discretion to order the plaintiff to clarify the factual foundation for its claims. *Old Time Enters. v. Int'l Coffee*

[6] In construing the Superior Court Rules of Civil Procedure, the Rhode Island Supreme Court has frequently looked for guidance in the precedents of the federal courts, upon whose rules those of the Superior Court are closely patterned. *See Nocera v. Lembo*, 298 A.2d 800, 803 (R.I. 1973); *see also Hall v. Ins. Co. of North America*, 727 A.2d 667, 669 (R.I. 1999); *Smith v. Johns-Manville Corporation*, 489 A.2d 336, 339 (R.I. 1985); *Giarrusso v. Corrigan*, 276 A.2d 750, 750 (R.I. 1971).

Corp., 862 F.2d 1213, 1217 (5th Cir. 1989); *Fikes v. City of Daphne*, 79 F.3d 1079, 1082-83 (11th Cir. 1996). The same applies to allegations and demands for damages. *Slinski v. CSX Transp.*, No. 07-CV-10270-DT, 2007 WL 1377931, at *1 (E.D. Mich. May 8, 2007); *Hilbill Properties, LLC v. Jacobson Companies*, No. 4:13CV01663 ERW, 2013 WL 5819674, at *6 (E.D. Mo. Oct. 29, 2013). Courts routinely grant a motion for a more definite statement when the complaint, as framed, denies the defendant the ability to respond. *See Oresman v. G.D. Searle & Co.*, 321 F.Supp. 449, 458 (D.R.I. 1971); *Wheelock v. Rhode Island*, No. C A 06-366 S, 2006 WL 3391507, at *1 (D.R.I. Nov. 22, 2006).

As discussed above, each and every one of the State's counts against AECOM are based on vague, ambiguous and conclusory allegations. As the foundation for its Contract Claims, the State alleges in the most conclusory manner that AECOM breached its contracts with the State without identifying a contractual provision that AECOM allegedly failed to perform or breached or providing the contracts referenced therein. The State also fails to allege: (1) the acts or omissions that constituted the purported breaches; (2) any type of damages whatsoever beyond its vague and conclusory statement that it incurred some unspecified "damage to its property and economic damage"; and (3) any causal nexus between the allegations and such damage. What's more, the Complaint did not attach the contracts that AECOM allegedly breached, and Counsel for the State refused to provide AECOM's counsel with copies of them.[7]

The State's tort-based claims (negligence and breach of fiduciary duty) are equally based on vague, ambiguous and conclusory allegations. The State failed to allege factual support for its claim that AECOM was somehow negligent or explain how AECOM's purported acts or omissions

[7] On August 26, 2024, counsel for AECOM specifically asked counsel for the State to provide copies of the documents referenced in the Complaint so that AECOM could review them and prepare appropriate responses to the Complaint. Counsel for the State refused that request, instead stating that they "would prefer to deal with documents through discovery in the ordinary course." A copy of this email exchange is attached hereto as **Exhibit 1**.

caused the State to incur damages. Likewise, in support of its breach of fiduciary duty claim against AECOM, the State alleges in a conclusory manner that by virtue of its contractual relationship, AECOM owed the State a fiduciary duty. Compl. ¶¶ 118-119. The Complaint does not contain support beyond that as to how such a fiduciary duty exists or even arose. Nor does the Complaint identify what AECOM's purported breaches were. These generic, simplistic allegations fall short of the minimum pleading requirements under Rhode Island law as they do not provide AECOM with sufficient information or clarification to understand the full extent of the allegations against them or properly respond.

Furthermore, the Complaint is a "proverbial shotgun pleading," as it "incorporate[s] every antecedent allegation by reference into each subsequent claim for relief...." *See Wagner v. First Horizon Pharm. Corp.*, 464 F.3d 1273, 1279 (11th Cir.2006).[8] When presented with a "shotgun pleading," courts often order a plaintiff to file a more definite statement because, as here, they leave the defendants and the court to guess which allegations are relevant to which claim and defendant. *Griffin v. HSBC Mortg. Servs., Inc.*, 2015 WL 4041657, at *5 (N.D. Miss. July 1, 2015; *Bennett v. Nationstar Mortg.*, LLC, No. CV 15–00165–KD–C, 2015 WL 5294321, at *14 (S.D. Ala. Sept. 8, 2015). Each of the State's counts in the Complaint against AECOM "repeats, realleges, and incorporates all the preceding allegations…as if set forth fully herein." Since none of the counts against AECOM contain specific facts supporting its conclusory, overly simplistic, allegations, it is difficult, if not impossible, for AECOM to investigate and identify particular

[8] *See also Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir.2002) ("The typical shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (*i.e.*, all but the first) contain irrelevant factual allegations and legal conclusions. Consequently, in ruling on the sufficiency of a claim, the trial court must sift out the irrelevancies, a task that can be quite onerous.").

allegations in the Complaint relevant to the counts against it or formulate an appropriate defense or answer thereto.

The State's Complaint fails to provide fair notice and specificity to AECOM of the nature and extent of the State's myriad claims against it. AECOM can only guess as to particular acts or omissions that form the basis of the State's claims and how such acts or omissions are causally related to the State's alleged damages. Moreover, AECOM can only speculate what the State's purported damages are.

AECOM should not be materially prejudiced by having to engage in lengthy and expensive discovery to find this information out, especially when such information should be readily available to the State. Accordingly, to the extent the Court denies AECOM's Motion to Dismiss, the Court should order the State to provide a more definite statement of its claims against AECOM.

CONCLUSION

For all the foregoing reasons, Defendant AECOM Technical Services, Inc. respectfully requests that this Court dismiss all Counts asserted against AECOM in the State's Complaint with prejudice. Alternatively, if this Court is disinclined to dismiss all of the State's counts against AECOM, AECOM respectfully requests that this Court (a) grant partial dismissal as to those Counts for which the Court finds the relevant arguments above to be persuasive; or in the alternative, (b) Order the State to file a more definite statement of the facts and allegations asserted against AECOM, pursuant to Superior Court Rule 12 (e).

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CERTIFICATE OF SERVICE

hereby certify that on October 31, 2024, 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/ Amanda R. Prosek
Amanda Prosek