

**BUSINESS CALENDAR (STERN, J.)
HEARING DATE: TBD @ TBD**

STATE OF RHODE ISLAND
PROVIDENCE COUNTY

SUPERIOR COURT

STATE OF RHODE ISLAND, :
 :
 :
 Plaintiff, :
 :
 v. :
 :
 AECOM TECHNICAL SERVICES, INC., :
 AETNA BRIDGE COMPANY, :
 ARIES SUPPORT SERVICES INC., :
 BARLETTA HEAVY DIVISION, INC. :
 BARLETTA/AETNA I-195 WASHINGTON :
 BRIDGE NORTH PHASE 2 JV, :
 COLLINS ENGINEERS, INC. :
 COMMONWEALTH ENGINEERS & :
 CONSULTANTS, INC., :
 JACOBS ENGINEERING GROUP, INC. :
 MICHAEL BAKER INTERNATIONAL, INC., :
 PRIME AE GROUP, INC. :
 STEERE ENGINEERING, INC., :
 TRANSYSYSTEMS CORPORATION, and :
 VANASSE HANGEN BRUSTLION, INC. :
 :
 Defendants. :

C.A. No. PC-2024-04526

**BARLETTA/AETNA I-195 WASHINGTON BRIDGE NORTH PHASE 2 JV'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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Defendant Barletta/Aetna I-195 Washington Bridge North Phase 2 JV, comprised of a joint venture between Defendant Barletta Heavy Division, Inc. (“Barletta”) and Defendant Aetna Bridge Company (“Aetna”), collectively referred to as the “JV”, by and through their undersigned counsel, hereby moves to dismiss the Complaint filed by Plaintiff, the State of Rhode Island (“State”), and states as follows:

BACKGROUND

While the State attempts to create a legal basis to cast blame upon the JV for the failure of Washington Bridge North No. 700 (“Washington Bridge”), the State’s blame game is political and without a supportable legal basis.

The State’s decision to rehabilitate the Washington Bridge rather than build a new bridge rested solely with the State. In early-2021, the State solicited bids, via a Request for Proposals (“RFP”), for a design and construction project known as the I-195 Washington North Phase 2 Project (“Project”), which included rehabilitation of the Washington Bridge.

The State’s decision to procure the Project was rooted in the State’s multi-year analysis of the Washington Bridge, beginning, at a minimum, in 2019 and in connection with a separate contract (“2019 AECOM Contract”) between the State and AECOM Technical Services Inc. (“AECOM”). The 2019 AECOM Contract required AECOM to prepare a complex and robust Design-Build RFP Package for the Project (“2019 Design-Build Solicitation”), which analyzed the feasibility of the Project and required the preparation of mandatory, guiding design documents for the Project. The State’s guiding design documents were known as the Base Technical Concept (“BTC”). The BTC set the design threshold for the Project, which prospective bidders were *required* to advance.

The State’s decision to procure the Project turned out to be flawed after the discovery, in early-2024, of compromised post tension tendons in the beams after expensive (and previously unfunded) testing was authorized. Had the State performed that expensive testing prior to issuing the RFP for the Project, the rehabilitation portion of the Project would not have even hit the drawing board. Moreover, the State’s BTC, which the JV advanced as required by the State, failed to even address the structural deficiencies that led to the Project’s termination in early-2024. In other words, the State procured a Project and provided guiding design documents that failed to remedy the issues that led to the Project’s termination. Nevertheless, the State now seeks to shift the burden of its inadequate BTC and ultimate conclusion to procure a rehabilitation Project, when the condition of the Washington Bridge warranted demolition instead of rehabilitation.

ALLEGATIONS OF THE COMPLAINT

The State opened the Washington Bridge to traffic in 1968. Complaint (“Compl.”) at ¶ 19. The State admits that the “Washington Bridge has an extremely unusual design and may be the only bridge of its kind in the United States, if not the world.” *Id.* at ¶ 20. For over fifty years since the State’s construction of the Washington Bridge, the State has engaged in numerous measures to repair or rehabilitate it. *Id.* at ¶¶ 40-41, 46-67.

On or about March 17, 2021, after analyzing the feasibility of yet another rehabilitation project, the State solicited an RFP for the Project. *Id.* at ¶ 78; *see also id.* at J. “***A Second Attempt at Rehabilitation of the Washington Bridge: A Design-Build Rehabilitation Project***”. The State began preparing the solicitation documents for the Project in connection with the 2019 Design-Build Solicitation and the 2019 AECOM Contract. *Id.* at ¶¶ 76–77. The State highlights AECOM’s work related to the 2019 Design-Build Solicitation as:

Development of Base Technical Concept (“BTC”) documents, survey, comprehensive traffic analysis, geotechnical investigations, plan submission, shop

drawings, Request for Information (“RFI”) reviews, and the performance of construction phase services for this project as RIDOT’s representative throughout the construction work.

Id. at ¶ 77.

On July 2, 2021, the JV responded to the State’s RFP. *Id.* at ¶ 82. On September 1, 2021, the State awarded the Project to the Joint Venture and the State and the JV simultaneously executed the contract for the Project (“Contract”). *Id.* at ¶ 90. On October 19, 2023, the JV issued rehabilitation plans for the Project, which advanced the State’s BTC and which the State approved as contractually compliant. *Id.* at ¶ 91. However, nearly two months later, after previously inaccessible areas were exposed, the JV’s engineer of record, Vanasse Hangen Brustlin, Inc. (“VHB”), identified previously unknown structural issues with the Washington Bridge at Piers 6 and 7. *Id.* at ¶ 92-93. After the State’s further investigation into the structural issues, the State alone determined that “the only reasonable option is to demolish and replace the [Washington Bridge]” and terminated the Contract. *Id.* at ¶ 95. **Of significance, the State’s own contractual BTC failed to identify or address any of the structural issues that led to termination of the Contract.** Ex. 1, RFP, Part 2 – Technical Provisions, Appendix B.03 (Base Technical Concept).

LEGAL STANDARD

For purposes of a Rule 12(b)(6) motion, all allegations in the complaint are taken to be true. *Fuller Mill Realty, LLC v. R.I. Dep’t of Revenue Div. of Tax’n*, 313 A.3d 377, 381 (R.I. 2024). Additionally, because the State relies on contract documents which are central to the State’s claim, the Court may consider such documents for the purpose of ruling on the JV’s Motion. *Id.*

Here, all of the State’s factual allegations are expressly linked to the Contract, which is comprised of a confluence of contract documents relating to the State’s procurement of the Project (“Contract Documents”):

CONTRACT (CONTRACT DOCUMENTS): The agreement covering the performance of the work and the furnishing of materials required for the design and construction of the Project. The Contract shall include: the signature sheet, addenda, special provisions, required federal and state provisions, supplemental specifications, labor and wage schedules and other related material, BTC plans, RFP Part 2 (Technical Provisions) as amended, all exhibits, appendices, reference documents, amendments to the foregoing, all Change Orders issued, RFP Part 3 (Terms and Conditions), and the final Proposal accepted by the State. Capitalized terms appearing in the Contract and not otherwise defined shall have the meanings ascribed to them in Part 3 – Terms and Conditions, the final Technical Proposal, and any other documents by which the Contractor makes commitments to the State in the course of the procurement phase of the Design-Build process.

Ex. 2, RFP, Part 3 – Terms and Conditions, Appendix C (Abbreviations, Definitions And Terms).

While not attached to the State’s Complaint, the Contract Documents govern the relationship between the State and the JV and are integral to all of the State’s causes of action asserted against the JV. The Contract Documents are in direct contradiction to the State’s manufactured allegations, which are wholly inconsistent with the terms of the Contract. The Contract Documents must be considered for the purposes of this Motion. *See also Mokwenyei v. R.I. Hosp.*, 198 A.3d 17, 22 (R.I. 2018) (“[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).”)

In analyzing the Contract Documents, the Court shall “give words their plain, ordinary, and usual meaning.” *Chariho Reg’l Sch. Dist., by and through the Chariho Reg’l Sch. Comm. v. State*, 207 A.3d 1007, 1015 (R.I. 2019) (quoting *Botelho v. City of Pawtucket Sch. Dep’t*, 130 A.3d 172, 176 (R.I. 2016)). “If we do not discern any contractual ambiguity, ‘our judicial role becomes quite straightforward: the plain language . . . is to be applied.’” *Fuller Mill Realty*, 313 A.3d at 381 (R.I. 2024) (quoting *Papudesu v. Med. Malpractice Joint Underwriting Ass’n of R.I.*, 18 A.3d 495, 498 (R.I. 2011)).

ARGUMENT

I. The BTC and the State's role.

All of the State's causes of action against the JV should be dismissed. While the State identifies the Project as Design-Build, the reality is the State maintained complete control over the process and decision-making for the JV's design.

1.1.4. State's Role

The State's role in the Project will be similar in structure to its role in Design-Bid-Build projects. **The State intends to perform Project oversight, design acceptance or approval and construction acceptance and independent assurance actions for the limited purpose of ensuring that the DB Entity's work meets the requirements of the RFP and the Contract.** State oversight activities will include design reviews, design acceptance/approval at key design milestones (*i.e.*, Semi-Final Design Submittal, Final Design Submittal) and construction independent assurance and acceptance. The State will also serve as a liaison with regulatory agencies in connection with the DB Entity's application for Environmental Approvals and Clearances and amendments thereof. The State's performance of its role is with a full reservation of all its rights and the State does not waive the same. None of the State's role in the Project, however, shall relieve the DB Entity from its obligations as defined in the RFP and Contract.

Ex. 1, RFP, Part 2 – Technical Provisions (1.1.4 State's Role).

The State studied and tested the Washington Bridge from the moment it was constructed until the recent Project termination.

In 2019, the State determined that the bridge could be rehabilitated and undertook creation of a **required** preliminary design to guide the RFP process and **define the scope of the Project**, known as the BTC. Ex. 1, RFP, Part 2 – Technical Provisions (1.2.3 Preliminary Design Documents) (“A preliminary BTC design for the Project has been **completed by the State.**”) and (1.2.1 BTC-Related Reference Documents) (“The BTC, including preliminary design drawings and Special Provisions, has been developed in **order to define the State's minimum baseline design requirements**, which shall be met or exceeded by the DB Entity's final design.”)

The BTC is defined by the Contract Documents as:

BASE TECHNICAL CONCEPT (BTC). Base Technical Concept which is the set of requirements included in the RFP for the design and construction of any roadway, bridge, traffic management, drainage, utilities, and other work that defines the scope of the Project.

Ex. 2, RFP, Part 3 – Terms and Conditions, Appendix C (Abbreviations, Definitions And Terms);

Ex. 3, RFP, Part 1 – Instructions to Proposers (3.1. General Description of Base Technical Concept) (“The major features of the BTC design are as follows . . . Rehabilitation of the Washington Bridge No. 700 structure”).

RFP, Part 2 – Technical Provisions (3.13.1 General) provides as follows:

3.13. Bridge Design and Other Structures

3.13.1. General

The general scope of the Project is based on the BTC Drawings and Special Provisions, except as modified herein. The Project includes the construction of a new Waterfront Drive Off-Ramp Bridge, Gano Street On-Ramp Bridge, rehabilitation and strengthening of the Washington Bridge North No. 700 and widening of the Washington Bridge North in Spans 1 through 4 between the existing Gano Street Off-Ramp and the proposed Gano Street On ramp. Accelerated Bridge Construction techniques may be used on some or all the work to minimize the impact on existing traffic and to reduce the overall project schedule.

The general scope of work shall include the following anticipated work included in the BTC:

Current Bridge #	New Bridge #	Bridge Name	Treatment
070001	070001	Washington Bridge North	Rehabilitation & Widening
	126601	Gano Street On-Ramp Bridge	New
	126701	Waterfront Drive Off-ramp Bridge	New

Ex. 1.

RFP, Part 1 – Instructions to Proposers (2.1 General Description of the Design-Build Contracting Process and Project) additionally provides as follows:

The BTC identifies the bridges, and proposed treatment (Rehabilitation or New) shown in Table No. 1 as being required to support the proposed roadway layout. The Contractor shall determine the final location, layout, type, and dimensions of all elements of the bridges required to accommodate the roadways required to provide a final design that meets all of the requirements of the RFP and all design codes, guide and specifications applicable. All bridges, and other structures required to support the final design shall be included in this project as part of the Proposal and be included in the Price Proposal.

Table No. 1: Bridge Structures Anticipated to be Included in BTC (ID and Proposed Treatment)

Current Bridge #	New Bridge #	Bridge Name	Treatment
-	126601	Gano St. On-Ramp Bridge	New
-	126701	Waterfront Drive Off-Ramp Bridge	New
070001	070001	Washington Bridge North	Rehabilitation

Ex. 3.

The JV was contractually required to advance the BTC to final design. Ex. 3, RFP, Part 1 – Instructions to Proposers (3.1 General Description of Base Technical Concept) (“All Proposals shall meet the requirements of the RFP and incorporate the BTC without any exceptions to or deviations from the BTC”) and (“Following award of the Contract, the BTC . . . will become [the] Contractual obligation[] of the Proposer if it should obtain the Contract.”). **Importantly, the JV was not contractually required to evaluate whether or not the Project could proceed because that decision had already been made.** *Id.* (“The documents submitted by a Proposer shall be based on the BTC.”)

The JV was only asked to develop the final design, advancing the State’s BTC. *Id.* (2.1 General Description of the Design-Build Contracting Process and Project). The final design focused on the location, layout, type, and dimensions only, following the State’s required BTC. *Id.* (“The Contractor shall determine the final location, layout, type, and dimensions of all elements of the bridges required to accommodate the roadways required to provide a final design that meets all of the requirements of the RFP”); Ex. 1, RFP, Part 2 – Technical Provisions (1.2.1 BTC-Related Reference Documents) (“The DB Entity acknowledges by receipt of such documents [including the BTC] that it explicitly understands that while these documents have been advanced

to the level indicated by the State, the DB Entity shall be required to provide a final, complete Project design that is stamped, sealed and certified by its own Professional Engineers of Record.”)

In applying the plain language to the Contract Documents, these documents specify that:

- The JV was not allowed to vary from the State’s BTC;
- The JV was required to advance the BTC; and
- The BTC defines the scope of the Project.

The State ultimately ignores its own Contract Documents, and, more specifically, the BTC. Instead, the State’s Complaint summarily asserts a series of vague allegations not tailored to the Contract.

II. The State’s Complaint.

The State criticizes the JV’s final design as a basis for its causes of action against the JV. The State overlooks that, to sustain a cause of action against the JV, the State must allege the JV breached the Contract because the final design failed to meet the minimum baseline requirements set forth in the BTC. Ex. 1, RFP, Part 2 – Technical Provisions (1.2.1 BTC-Related Reference Documents) (“The BTC, including preliminary design drawings and Special Provisions, has been developed in order to define the State’s *minimum baseline design requirements, which shall be met or exceeded by the DB Entity's final design.*”). The State cannot do so and, as a result, cannot state a cause of action against the JV.

The State relies on the following allegation as a source of its complaint against the JV:

“On or about October 19, 2023, the Joint Venture issued rehabilitation plans . . . [that] still did not address the existence of any possible problems relating to the tie-down rods at Piers 6 and 7 and did not call for repairs to the post-tensioning systems.” Compl. ¶ 91. Noticeably absent from the State’s Complaint is any allegation that the BTC called for: (1) repairs to the tie-down rods at Piers

6 and 7; or (2) repairs to the post-tensioning systems. **In fact, the BTC failed to identify any repairs to the tie-down rods at Piers 6 and 7 or repairs to the post-tensioning systems.** Because the JV was contractually required to follow the BTC, the State cannot allege the JV breached the contract. To the contrary, the JV's final design is contractually compliant and advanced the State's contractually required BTC.

The State also criticizes the JV's proposal for the Project in that the proposal "repeatedly emphasized that if it were accepted, the result would be a rehabilitated [Washington Bridge] with a 25-year life expectancy." Compl. ¶ 82. The State's criticism in this regard makes a point of no significance. In its response to the RFP, and as required by the RFP, the JV notes: "we developed a technical approach that *advances the BTC* as provided in the RFP." Ex. 4, Technical Proposal, Binder 1¹. Once again, the State fails to allege that the JV's design fails to meet the BTC threshold regarding the 25-year life expectancy goal. Nor can it. As to the 25-year design life goal, the State represented that, if the BTC is met, the 25-year design life goal would be satisfied. The RFP provides, in pertinent part:

The overall goal of this project is to provide a 25-year design life for the rehabilitated structure; therefore, the DB Entity shall design and construct the bridge strengthening and rehabilitation with a minimum design life of 25 years. **The BTC plans** show one way to achieve this using link slabs to eliminate as many deck joints as possible, preventing future deterioration of beam ends.

Ex. 1, RFP, Part 2 – Technical Provisions (3.13.7.1. Washington Bridge Rehabilitation). The State's assertion that the JV's design failed to meet the 25-year life expectancy goal is simply an admission that the State's BTC was deficient. Yet, the State attempts to shift the burden of its inadequate BTC to the JV.

¹ Exhibit 4 is attached hereto in subparts (A, B, and C) due to upload limitations on the Court's docketing system.

A. The State’s contract-based claims (Counts XV, XVII, and XVIII) fail to state a claim upon which relief can be granted.

The State’s breach of contract cause of action (Count XV) fails to state a claim for which relief can be granted. “[U]nder Rhode Island law plaintiff must prove that (1) an agreement existed between the parties, (2) the defendant breached the agreement, and (3) the breach caused (4) damages to the plaintiff.” *Pickett v. Ditech Fin., LLC*, 322 F. Supp. 3d 287, 291 (D.R.I. 2018).

As described throughout, the State has failed to plead facts establishing a breach of contract. Rather, the State asserts a series of conclusory and vague allegations not tailored to the Contract. The State mischaracterizes the relationship between the State and the JV in an attempt to impute liability to the JV, where none exists. For example, the State alleges the JV breached the Contract by failing to:

- (a) conduct a detailed research and review of the bridge file for the Washington Bridge in conformance with the 2021 Design-Build Contract;
- (b) conduct an inspection of the Washington Bridge in conformance with the 2021 Design-Build Contract;
- (c) perform evaluations and report to the State as required by the 2021 Design-Build Contract;
- (d) recommend needed repairs in accordance with the 2021 Design-Build Contract;
and
- (e) otherwise comply with its contractual obligations.

Compl. ¶ 165.

As it relates to the Washington Bridge, the Contract at issue is a rehabilitation Project, not a research and review, inspection, performance evaluation, or repair recommendation project. The State ultimately fails to allege any breaches which correspond to the Contract that governs the State and the JV’s relationship. Accordingly, the State’s breach of contract claim must be dismissed.

The State critically fails to specify the JV's breach of any particular provision of the Contract. This alone is fatal to the State's Breach of Contract Count. When alleging a breach, plaintiffs must "describ[e], with substantial certainty, the specific contractual promise the defendant failed to keep." *Burt v. Bd. of Trs. of Univ. of R.I.*, 523 F. Supp. 3d 214, 220 (D.R.I. 2021), *aff'd*, 84 F.4th 42 (1st Cir. 2023); *Berard v. Ryder Student Transp. Servs., Inc.*, 767 A.2d 81, 83–84 (R.I. 2001) (underscoring that a viable complaint must "give the opposing party fair and adequate notice of the type of claim being asserted."). The State has failed to identify, with any certainty, the specific contractual promise the JV purported to breach.

Crucially, the State's indemnity protections under the Contract are derivative of the JV's breaches under the Contract. The State concedes to the same. Compl. at ¶¶ 173-182; *see also* 220-RICR-30-00-13.21 ("[JV] shall defend, indemnify, release and hold harmless the State . . . arising out of, or related to, directly or indirectly, in whole or in part, [JV's] breach of the Contract or the act(s), error(s) or omission(s) of the [JV] . . ."). Thus, because the State's contractual indemnity causes of action (Count XVII and Count XVIII) are derivative of the State's breach of contract claim, which the State has failed to sufficiently plead, the State likewise fails to state a claim upon which relief can be granted as it relates to the State's contractual indemnity claims.

B. The State's negligence claim (Count XVI) is barred by the economic loss doctrine and therefore it fails as a matter of law.

The State's tort-based claims fail to state a claim upon which relief can be granted. To the extent the JV owes the State any duty that governs the JV's standard of care, that duty must exist in contract. *See* 220-RICR-30-00-13.22 ("In addition to the specific requirements imposed by the State in the Contract, a Vendor engaged by the State shall generally have the following standard responsibilities: 1. Perform services in accordance with applicable standards of professional skill and care or as otherwise provided in the solicitation or Contract. . . .") There is no independent

duty arising under common law, statute, or other law from which the State may derive such a duty. Nor does the State identify one in its Complaint.

The State's negligence claim is barred by the economic loss doctrine, which in its simplest terms, bars the use of negligence or strict liability theories for recovery of economic losses arising out of commercial transactions where the loss is not a consequence of an event causing personal injury or damage to other property. *See 6 Bruner & O'Connor Construction Law* § 19:10.

Pursuant to the economic loss doctrine, “a plaintiff is precluded from recovering purely economic losses in a negligence cause of action.” *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)). In other words, 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. *See Bos. Inv. Prop. # 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I. 1995). Moreover, where there are damages in the construction context between commercial entities, the economic loss doctrine will bar any tort claims for ‘purely economic damages.’” *Hexagon Holdings, Inc.*, 199 A.3d at 1042 (quoting *Franklin Grove Corp.*, 936 A.2d at 1275). The Rhode Island Supreme Court has explained 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.

The Rhode Island Supreme Court's adoption of the economic loss doctrine confirms that contract principles override tort principles when parties have entered into a contract to “protect against potential economic liability” and that “if tort and contract remedies were allowed to overlap,” then it would chill business activity because of interference with risk allocation.” *E.W. Burman*, 658 A.2d at 517. It “is the very essence of the economic loss doctrine” that parties should

“utilize contract law to protect themselves from economic damages.” *Franklin Grove Corp.*, 936 A.2d at 1277 (quoting *E.W. Burman*, 658 A.2d at 517).

The State’s damages need not to be purely economic in a literal sense to be considered economic for purposes of applying the economic loss doctrine. For example, in *Franklin Grove Corp. v. Drexel*, the plaintiff, Franklin Grove Corporation (“Buyer”), purchased property for a residential development. 936 A.2d 1272, 1273 (R.I. 2007). Under the purchase and sale agreement for the property, the sellers were required to obtain a wetland permit and hired an engineer, William Drexel (“Engineer”), to complete the work necessary to secure the permit. *Id.* The Buyer hired a surveyor, National Land Surveyors (“Surveyor”), to survey the Property in preparation for construction and hired a second company, TNT Development Corporation (“Excavator”), to excavate the foundation. *Id.* at 1273–74. After the house was constructed, the Rhode Island Department of Environmental Management (“RIDEM”) issued a notice of violation to the Buyer directing it to restore the wetlands that the Excavator had improperly removed for the construction of the house. *Id.* at 1274. Although there was physical damage to the wetlands, the actions or inactions that led to the damage were subject to commercial contracts—in other words, the Buyer’s damages emanated from the Excavator’s performance of its contractual obligations. *Id.* at 1277. Thus, the Buyer’s damages were economic in nature and within the purview of the economic loss doctrine. *Id.* at 1278.

Similarly, in *Hexagon Holdings, Inc. v. Carlisle Syntec, Inc.*, the plaintiff, Hexagon Holdings, Inc.—a commercial entity—entered into a construction contract with a general contractor, A/Z Corporation, for the construction of a new office building. 199 A.3d 1034, 1036 (R.I. 2019). In turn, AZ Corporation hired a roofing subcontractor, McKenna Roofing and Construction, Inc. (“McKenna”) to install a roof, which began to leak after installation. *Id.*

Although the roof was commercial property, the repair of the roof—albeit a failed repair—was subject to a contract. The parties entered an arms-length deal for the construction of the roof and had the opportunity to allocate the risk accordingly. *Id.* at 1043. Notwithstanding the physical damage to the roof, the plaintiff’s damages in *Hexagon Holdings* were economic for the purpose of applying the economic loss doctrine. *Id.*

Here, the RFP and the JV’s proposal comprise the Contract between the State and the JV (*i.e.*, Aetna and Barletta) for the rehabilitation of the Washington Bridge. There is direct contractual privity between the State and the JV and the State’s damages (if any) emanate from the JV’s alleged failure to comply with its performance obligations under the Contract.² As the Rhode Island Supreme Court’s decisions in *Franklin Grove* and *Hexagon Holdings* make clear, although the State’s purported damages may involve damage to property, namely, the Washington Bridge, the actions or inactions that led to the damage are subject to a commercial contract—therefore, the State’s damages can only be economic in nature. The State and the JV contractually allocated the risk of failed remediation efforts by way of the Contract and it follows that contract principles (as opposed to tort principles) are more appropriate for addressing the State’s alleged harms.

In short, there is no independent duty arising under common law, statute, or other law sufficient to support a claim of negligence against the JV. Further, because the State’s damages can only be economic in nature, the State’s negligence claim against the JV is barred by the economic loss doctrine and fails to state a claim upon which relief can be granted.

² The State claims to have suffered both “physical damages to its property and economic damages . . .” (Compl. at ¶¶ 166, 171, 177.) However, as explained above, the State’s damages with respect to the Washington Bridge can only be economic in nature.

C. The State’s claims for non-contractual declaratory relief do not present a justiciable controversy and must be dismissed (or, at a minimum, stayed).

The State’s claims for declaratory relief (*i.e.*, Count XIX (Declaratory Relief Regarding Non-Contractual Indemnity) and Count XX (Declaratory Relief regarding Contribution)) rely on the occurrence of a contingent future event that is uncertain to ever occur, namely, a third party suing and obtaining an adverse judgment against the State for damages in connection with the closure of the Washington Bridge. Accordingly, Count XIX and Count XX do not present justiciable controversies and must be dismissed (or at a minimum, stayed).

Rhode Island’s Uniform Declaratory Judgments Act, R.I. Gen. Laws § 9–30–1 *et seq.* (the “UDJA”) vests the Superior Court with the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” R.I. Gen. Laws § 9–30–1. At the outset, in assessing whether Count XIX (Declaratory Judgment Regarding Non-Contractual Indemnity) and Count XX (Declaratory Judgment Regarding Contribution) state a claim for declaratory relief, this Court must determine whether the State has alleged an actual justiciable controversy. *See, e.g., N&M Props., LLC v. Town of W. Warwick*, 964 A.2d 1141, 1145 (R.I. 2009) “Without making this initial determination, the court does not have jurisdiction to entertain the claim.” *Id.* at 1144–45.

“For a claim to be justiciable, two elements 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.” *Id.* (citations omitted). “The standing inquiry is satisfied when a plaintiff has suffered ‘some injury in fact, economic or otherwise.’” *Id.* (citations omitted). Injury in fact has been defined as “an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Id.* (citations omitted). Although *N & M Properties* framed the first prong as a question of “standing,” because the overall test is

one of justiciability, and ripeness is a justiciability doctrine, ripeness principles are also applicable and ought to be applied. *See Watson v. Fox*, 44 A.3d 130, 135 n.12 (R.I. 2012) (including standing and ripeness in list of “specific categories of justiciability”). “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.’” *State v. Gaylor*, 971 A.2d 611, 614–15 (R.I. 2009) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–81 (1985)). Thus, to meet the standing prong, the State’s Complaint must allege an injury that is concrete and particularized, actual or imminent, but not conjectural, hypothetical, or resting upon future events. *See Gaylor*, 971 A.2d at 614-15; *N & M Props.*, 964 A.2d at 1145.

In *N&M Properties*, the Rhode Island Supreme Court laid out the following concerning the second “legal hypothesis” prong of the justiciability analysis:

The second requirement for justiciability is that the facts postulated yield to some conceivable legal hypothesis which will entitle the plaintiff to some relief against the defendant. *Goodyear Loan Co. v. Little*, 107 R.I. 629, 631, 269 A.2d 542, 543 (1970) (citing 1 Anderson, *Actions for Declaratory Judgments* § 14 at 59 (2d ed. 1951)). A well-respected treatise has explained that “[w]here a concrete issue is present and there is a definite assertion of legal rights coupled with a claim of a positive legal duty with respect thereto which shall be denied by adverse party, then there is a justiciable controversy calling for the invocation of the declaratory judgment action.” 1 Anderson, § 14 at 62. If the court determines there is no justiciable controversy, the court can go no further, and its immediate duty is to dismiss the action *Id.* § 9 at 49–50.

N&M Props., LLC, 964 A.2d 1141 at 1145–46.

i. The State’s claim for non-contractual indemnity (Count XIX) fails as a matter of law.

The State cannot meet one of the necessary elements to establish that it is entitled to declaratory relief for a future claim for non-contractual indemnification. This is because the Complaint does not allege that the State is liable to a third party in relation to an existing lawsuit concerning the closure of the Washington Bridge.

Notably, although the right to indemnity traditionally arose from contract, express or implied, Rhode Island follows the modern trend which also recognizes claims for indemnity on the basis of equity. *See, e.g., Helgerson v. Mammoth Mart, Inc.*, 335 A.2d 339, 341 (R.I. 1975) (“We agree that [the] concept [of equitable indemnity] is sound and should be followed in this state.”). The elements of a claim for equitable indemnity are as follows:

- (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, 524 (R.I. 2013).

Here, the State claims that “[t]o 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 [the Defendants], the State, as the entity passively at fault, is entitled to indemnity” from, *inter alia*, the Joint Venture. Compl. at ¶ 184 (emphasis added). Upon review of the Complaint, however, the State does not allege that anyone has filed a lawsuit concerning the Washington Bridge closure that would subject the State to potential liability, let alone that anyone has obtained an adverse judgment against the State. Count XIX of the Complaint does not pass muster under the first prong of the justiciable controversy test because the State cannot establish that it is liable to a third party as a result of the JV’s actions or inactions under the Contract. Further, a third-party claim against the State would presumably seek damages for economic losses arising from the closure of the Washington Bridge. Assuming that is the case, the economic loss doctrine would bar the State’s non-contractual indemnity claim against the JV.³

³ The JV refers to this Court’s decision in *Aisle Five Realty, LLC v. Ransom Consulting f/k/a Ransom Env’t Consultants, Inc.*, C.A. No. PC-2018-7865 (R.I. Super. July 7, 2021) (Stern, J.), a copy of which is attached hereto as Exhibit 5.

Based on the foregoing, the State cannot meet the first prong of the justiciability analysis, namely, that it has suffered an actual injury such that it has standing to seek declaratory relief. Accordingly, Count XIX (Declaratory Relief Regarding Non-Contractual Indemnity) is not justiciable and should be dismissed (or, at a minimum, stayed) as it relates to the JV.

ii. The State’s claim for contribution (Count XX) also fails as a matter of law.

The State also cannot meet one of the necessary elements to establish that it is entitled to a declaration that it is entitled to contribution from the JV for a contingent third-party claim, and even if it could, the State’s contribution claim would also be barred by the economic loss doctrine.

Rhode Island’s Uniform Contribution Among Tortfeasors Act (“UCATA”) confers a statutory right to contribution among joint tortfeasors. *See* R.I. Gen. Laws § 10-6-3 (“[T]he right of contribution exists among joint tortfeasors; provided however, that when there is a disproportion of fault among joint tortfeasors, the relative degree of fault of the joint tortfeasors shall be considered in determining their pro rata shares.”) 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 v. H. Leach Mach. Co.*, 305 A.2d 541, 542 (R.I. 1973).

Here, much like Count XIX, Count XX relies on a contingency that has not yet occurred and is uncertain to ever occur. Specifically, the State claims 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 the JV, among others. Compl. at ¶ 188 (emphasis added). The State does not claim that a third party has sued the State for damages resulting from the closure of the Washington Bridge such that the JV or its constituents may be held liable under a derivative contribution theory. Count XX of the Complaint (like Count XIX) does not pass muster under the first prong of the

justiciability test because the State cannot establish that it is liable in tort to a third party as a result of the JV's actions or inactions. Even if the State were somehow found liable to a third party in tort, the hypothetical third party's damages would presumably be economic in nature and therefore barred by the economic loss doctrine.⁴

The State cannot establish that there is any existing lawsuit, let alone an adverse judgment, that subjects the State to liability under a tort theory of recovery. It follows that Count XX (Declaratory Relief Regarding Non-Contractual Indemnity) is not justiciable and should be dismissed (or, at a minimum, stayed).

CONCLUSION

While the State has advanced its Complaint against the JV in an effort to cast blame for political purposes, the facts alleged simply do not support its claim. It is legally absurd to suggest that the JV is responsible for the cost of demolition and other damages when the State developed and approved the BTC which mandated rehabilitation of the bridge.

The State's Go/No Go decision on whether to proceed with rehabilitation in lieu of demolition has always rested with the State. That Go/No Go decision is the only decision that changed which resulted in the termination of the Project.

For the reasons set forth throughout, the JV respectfully requests that the Court dismiss the JV and its members from the State's action in its entirety.

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ATTORNEY SIGNATURES ON FOLLOWING PAGE]**

⁴ See note 3, *supra*.

Dated: October 31, 2024

Respectfully submitted,

FOLEY & LARDNER LLP

/s/ Jeffrey R. Blease

Jeffrey R. Blease (MB #675247)
111 Huntington Avenue, Suite 2500
Boston, MA 02199
jblease@foley.com
Admitted Pro Hac Vice

Christopher D. Mellado (FB #1018915)
301 E. Pine Street, Suite 1200
Orlando, FL 32801
chris.mellado@foley.com
Admitted Pro Hac Vice

*Lead Counsel for Barletta/Aetna I-195
Washington Bridge North Phase 2 JV and
Barletta*

LYNCH & PINE

/s/ Jeffrey B. Pine

Jeffrey B. Pine #2278
1 Park Row, 5th Floor
Providence, Rhode Island 02903
jpine@lynchpine.com

*Attorney for Barletta/Aetna I-195 Washington
Bridge North Phase 2 JV and Barletta*

**KELLY, SOUZA, PARMENTER &
RESNICK, P.C.**

/s/ Jackson C. Parmenter

Jackson C. Parmenter #8396
128 Dorrance Street, Suite 300
Providence, Rhode Island 02903
jparmenter@ksprlaw.com

*Attorney for Barletta/Aetna I-195 Washington
Bridge North Phase 2 JV and Lead Counsel
for Aetna*

CERTIFICATE OF SERVICE

I hereby certify that on Thursday, October 31, 2024, I filed and served *Defendant Barletta/Aetna I-195 Washington Bridge North Phase 2 JV's Motion to Dismiss Plaintiff's Complaint* through the electronic filing system on all counsel of record.

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Jeffery B. Pine

Jeffrey B. Pine