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BUSINESS CALENDAR HEARING
January 21, 2025 at 9:30am

STATE OF RHODE ISLAND
PROVIDENCE, SC

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., TRANSYSTEMS CORPORATION, and VANASSE HANGEN BRUSTLIN, INC., *Defendants*.	)	C.A. No. PC-2024-04526

PLAINTIFF'S CONSOLIDATED RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 12 MOTIONS

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INTRODUCTION

Rhode Island is home to a unique bridge of unusual design, possibly the only kind of its type in all the nation – the I-195 westbound Washington Bridge, formally known as Washington Bridge North No. 700. Since the Bridge first opened to traffic in 1968, the State has employed numerous engineering firms to conduct routine and special inspections of the Bridge in an effort to ensure its structural integrity, which is crucial to public safety as the Bridge has been one of Rhode Island's vital transportation arteries for decades. Each of these engineering firms knew or should have known of the Bridge's unique engineering features and considered these characteristics when performing their inspections to meet their obligations in advising the State regarding the Bridge's structural integrity. Yet, each of these firms failed to inform the State of critical deficiencies with the Bridge's structure.

On two separate occasions, the State engaged firms to design and perform work to conduct a complete rehabilitation of the Bridge – each time without success. In the first attempt, Defendant AECOM Technical Services, which claimed familiarity with the Bridge's unique design, created a plan for the Bridge's rehabilitation that failed to adequately recognize or address critical elements of the Bridge's structural safety and integrity. It then created construction plans for the rehabilitation that failed to identify, analyze, or recommend improvements that were necessary to effectuate a complete rehabilitation of the Bridge.

In the second attempt, the State retained AECOM to act as the Rhode Island Department of Transportation (RIDOT)'s representative in creating a design-build package for a construction project to rehabilitate the Bridge in order to give it a 25-year life span. The proposal from Defendant Barletta/Aetna I-195 Washington Bridge North Phase 2 JV, a joint venture between Defendant Aetna Bridge Company and Defendant Barletta Heavy Division, for the construction work was accepted. Despite representing it would perform an independent review of the Bridge's

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structural steel, prestressed girder, and camber designs, the Joint Venture's construction plans for the rehabilitation failed to address the existence of critical failures that resulted in the RIDOT, just two months later, issuing an emergency declaration closing the Bridge in order to protect the safety of the public.

Later investigation revealed the existence of numerous significant problems with the structural integrity of the Bridge, the severity of which have made the Bridge unsalvageable. These problems did not occur overnight – they were ignored over the years by the numerous entities that purported to inspect the Bridge to ensure it was in adequate condition and safe for use, and by the firms who purported to design plans for the effective and complete rehabilitation of the Bridge. As a result, the State has expended resources trying to rehabilitate the Bridge when it may not have been possible and must now expend millions of dollars to demolish, redesign, and rebuild the Bridge.

Rather than saddle the taxpayers with this expense, the State now seeks to hold accountable the entities whose actions resulted in the unnecessary expenditure of those funds and the need to close, demolish, and rebuild the Bridge. To that end, the State has asserted the following causes of action:

1. AECOM Technical Services – Breach of contract, negligence, breach of fiduciary duty, and contractual indemnity (Counts I, II, IV, V, X, XVII);
2. Aetna Bridge Company – Breach of contract, negligence, and contractual indemnity (Counts XV, XVI, XVII);
3. Aries Support Services – Negligence (Count II);
4. Barletta Heavy Division – Breach of contract, negligence, and contractual indemnity (Counts XV, XVI, XVII);

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5. Barletta/Aetna I-195 Washington Bridge North Phase 2 JV – Breach of contract, negligence, and contractual indemnity (Counts XV, XVI, XVII);
6. Collins Engineers – Breach of contract and negligence (Counts VIII, IX);[1]
7. Commonwealth Engineers & Consultants – Negligence (Counts III & XVI);
8. Jacobs Engineering Group – Breach of contract and negligence (Counts XIII & XIV);
9. Michael Baker International – Breach of contract and negligence (Counts XI, XII);[2]
10. Prime AE Group – Negligence (Count II);
11. Steere Engineering – Negligence (Count II);
12. TranSystems Corporation – Breach of contract and negligence (Counts VI & VII);[3] and
13. Vanasse Hangen Brustlin – Negligence (Count XVI).[4]

The State is also seeking declaratory judgments on issues of contractual indemnity, non-contractual indemnity, and contribution. (Counts XVIII, XIX, XX).

Defendants seek to dismiss or otherwise dispose of each of the State's claims. The Defendants' motions rest on misapplications of legal standards, including flawed reliance on the economic loss doctrine and unjustifiable demands for heightened pleading specificity not required under Rhode Island law. As demonstrated herein, the State's claims for breach of contract, negligence, breach of fiduciary duty, contractual indemnity, and declaratory relief for indemnity and contribution are well-pleaded and supported by factual allegations detailing each Defendant's role in the Bridge's deterioration and failure. The State's claims seek to ensure accountability for public safety failures and prevent taxpayers from bearing the costs of Defendants' misconduct. The

[1] Defendant Collins has not moved to dismiss these claims.
[2] Defendant Michael Baker International has not moved to dismiss these claims.
[3] Defendant TranSystems has not moved to dismiss these claims.
[4] Defendant Vanasse Hangen Brustlin has not moved to dismiss these claims.

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Court should deny Defendants' motions and allow the State's claims to proceed to discovery and resolution on their merits.

STATEMENT OF FACTS

Design and Construction of the Washington Bridge

The I-195 westbound Washington Bridge, formally known as Washington Bridge North No. 700, is a critical infrastructure component of Rhode Island's transportation network that opened to traffic in 1968. (Comp. Intro., ¶ 32). Originally designed in the late 1960s by Charles A. Maguire & Associates and constructed by Defendant Aetna Bridge Company, the bridge features a unique design that uses post-tensioned cantilever beams and steel tie-down rods essential for its stability. (Comp. ¶¶ 18-32).

The post-tensioned cantilever beams are made of concrete and post-tensioned steel cables. (Comp. ¶¶ 26-27). Ducts in the concrete beams are filled with grout to protect the cables and maintain the stability of the beams, which are themselves used in two configurations: a balanced cantilever configuration in which the stability of the beam is established by the weight of adjacent drop-in prestressed girder spans and vertical rods that anchor the beam to the supporting pier; and an unbalanced cantilever configuration in which a drop-in prestressed girder span is located on only one end of the beam and the stability of the beam is maintained by steel tie-down rods located on the opposite end. (Comp. ¶¶ 22-24, 28). Each of the Bridge's unbalanced cantilever beams require these tie-down rods for their stability. (Comp. ¶ 25). Only the Bridge's exterior-facing tie-down rods on the exterior beams are accessible for visible inspection. (Comp. ¶ 25).

Early Problems

In the early 1990s, the State hired A.G. Lichtenstein & Associates to inspect the Bridge. (Comp. ¶ 33). The inspection identified:

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- Deterioration at the ends of the concrete drop-in beams;
- Signs of distress in the "grout in the stressing pocket and the precast shoulders of the cantilever beams;"
- Shadows seen on radiography that suggested the presence of voids in the grout encasing and protecting the post-tensioned cables;
- Corrosion from moisture and salt exposure in the post-tensioning cables in the post-tensioned cantilever beams; and
- Diagonal cracks in the post-tensioned beams.

(Comp. ¶¶ 36-39).

Rehabilitation work was performed on the Bridge from 1996 through 1998. (Comp. ¶¶40). During that time, "significant deterioration was discovered in the supports of the cantilever drop-in beam connections, as well as voids in the grout encasing and protecting the cables in the post-tensioned cantilever beams." (Comp. ¶ 40). Retrofit grouting was performed to address these issues. (Comp. ¶ 41).

Rhode Island's First Attempt to Completely Rehabilitate the Washington Bridge

Defendant Michael Baker International ("MBI") inspected the Bridge in the summer of 2011 and found the superstructure to be in "poor condition." (Comp. ¶¶ 42-44). Based on MBI's findings, the State concluded the Bridge was in need of major repair. (Comp. ¶ 45).

The Rhode Island Department of Transportation ("RIDOT") issued a Request for Proposals ("RFP") for the Bridge's rehabilitation in which it sought to obtain a consultant to provide "structural engineering consultant services to include preliminary engineering, final design and construction services for the rehabilitation. . . ." (Comp. ¶ 46). The concept for this RFP was to initiate a "Design-Bid-Build" project, meaning that the State of Rhode Island sought to hire a

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consultant to create design and construction documents, which would then be utilized to solicit bids from contractors for the project. (Comp. ¶ 48). The contractor selected to do the physical Bridge rehabilitation would build the project pursuant to the documents created by the consultant. (Comp. ¶ 48). (This differs from a "Design-Build" project, which involves only a single design-builder that both creates the design documents and builds the project.) (Comp. ¶ 48). The RFP specified that the Bridge's latest inspection had found "substantial concrete deterioration." (Comp. ¶ 47).

Work under the RFP was to be completed in three phases. (Comp. ¶ 49). In the first phase, a consultant would inspect the bridge and create a report outlining the necessary repairs to "completely rehabilitate the existing structure." (Comp. ¶¶ 50-51). The consultant was to evaluate the suitability of the existing elements in the Bridge and prepare a cost estimate for the rehabilitation work to aid RIDOT with the final design and construction of the rehabilitation. (Comp. ¶ 51). The consultant was also required to review available National Bridge Inspection Standards Inspection Reports for the Bridge "in preparation for their own inspection and utilize the information, as appropriate, in the development of repair details." (Comp. ¶ 52).

The second phase of the work called for the consultant to prepare documents for, and provide advice and guidance to, RIDOT, in order for it to advance the rehabilitation project out to bid. (Comp. ¶ 53). And phase three, the final phase, called for the consultant to provide construction support, attend meetings, monitor construction activities, review contractor shop drawings and Requests for Information, and advise and guide RIDOT in connection with advancing the Bridge rehabilitation work to completion. (Comp. ¶ 54).

Defendant AECOM submitted a letter of interest/technical proposal seeking to be RIDOT's consultant for the Bridge's rehabilitation. (Comp. ¶ 55). In the proposal, AECOM

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demonstrated its familiarity with the Bridge's design, and its previous repairs and inspections. (Comp. ¶¶ 56-57). It also touted itself as the number one design firm and claimed expertise regarding transportation engineering, including structural, traffic, and architecture engineering, as well as firsthand experience with the "effect of deterioration on important structures." (Comp. ¶ 55).

The State ultimately selected AECOM as the consultant. (Comp. ¶ 58). In January 2014, the State and AECOM entered into a contract for complete design services for the rehabilitation of the Washington Bridge (Contract Number 2014-EB-003) ("2014 AECOM Contract"). (Comp. ¶ 59).

A year later, in January 2015, AECOM provided RIDOT with a technical evaluation report and a final inspection report, (Comp. ¶61), completing phase one of the three-phase rehabilitation contract. But AECOM's reports were deficient in that they failed to adequately recognize or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶ 61).

Over the next year and a half, AECOM worked on phase two, developing and designing final construction plans for the Bridge's complete rehabilitation, with the aid of subconsultants – Defendant Steere Engineering, Defendant Prime AE Group, and Defendant Aries Support Services – each of which AECOM claimed possessed "the experience, knowledge, and character to qualify them for the particular duties" they were to perform. (Comp. ¶¶ 60, 62, 64). In September 2016, AECOM provided RIDOT its final construction plans and specifications for the complete rehabilitation ("AECOM's 2016 Construction Plans"). (Comp. ¶ 63). These Plans failed to identify, analyze, or recommend improvements that were "necessary to completely rehabilitate the existing structure" as required by the 2014 AECOM Contract. (Comp. ¶ 65).

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For phase three, RIDOT contracted with Cardi Corporation to perform the construction specified in AECOM's 2016 Construction Plans. (Comp. ¶ 66). As a result of Cardi Corporation's work adhering to the traffic management requirements, for which AECOM was responsible, unacceptable levels of traffic, congestion, and delays resulted. (Comp. ¶ 67). Consequently, the contract was terminated. (Comp. ¶ 67).

Multiple Defendants Inspect the Bridge but Fail to Inform RIDOT of Critical Deficiencies in the Bridge's Structural Safety and Integrity

RIDOT retained multiple engineering firms to conduct both routine and special inspections of the Bridge for the purposes of conducting comprehensive evaluations of the Bridge's superstructure and substructure and making recommendations to the State regarding the Bridge's structural safety and security. (Comp. ¶¶ 68-72). Each of the Defendants who conducted these inspections failed to inform RIDOT of critical deficiencies with the Bridge's structure. (Comp. ¶ 69).

a. Defendant TranSystems Corporation

RIDOT contracted with Defendant TranSystems Corporation to conduct a special inspection of the Bridge for the express purpose of inspecting the deteriorated condition of elements of the Bridge's superstructure and substructure. (Comp. ¶¶ 73a, 74, 123). TranSystems conducted this special inspection during June – July 2016. (Comp. ¶¶ 73a, 124). Thereafter, it provided RIDOT with an inspection report in which it failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).

RIDOT contracted with Defendant TranSystems for a second special inspection of the Bridge, which occurred over the course of multiple days in July 2022. (Comp. ¶¶ 73h, 123-124). The primary purpose of this inspection was to investigate the deteriorated condition of the Bridge. (Comp. ¶ 73h). TranSystems provided RIDOT with a report for this second inspection in which it

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again failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).[5]

b. Defendant Collins Engineers

RIDOT contracted with Defendant Collins Engineers for the performance of a routine inspection of the Bridge. (Comp. ¶¶ 73b, 132). Collins conducted this inspection over several days in June and July of 2017. (Comp ¶¶ 73b, 133). Thereafter, it provided RIDOT with an inspection report in which it failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).[6]

c. Defendant Michael Baker International

RIDOT contracted with Defendant MBI to conduct a special inspection of the Bridge for the purpose of "monitor[ing] the condition of the superstructure and substructure due to deteriorated condition." (Comp. ¶¶ 73d, 74, 146). MBI conducted this special inspection during June – July 2018. (Comp. ¶¶ 73d, 147). Thereafter, it provided RIDOT with an inspection report in which it failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).[7]

[5] The State has asserted causes of action against Defendant TranSystems for negligence (Count VII) and breach of contract (Count VI) based on its failures related to the 2016 and 2022 inspections. TranSystems has not filed a motion to dismiss or otherwise challenge these counts.
[6] The State has asserted causes of action against Defendant Collins for negligence (Count IX) and breach of contract (Count VIII) based on its failures related to the 2017 inspection. Collins has not filed a motion to dismiss or otherwise challenge these counts.
[7] The State has asserted causes of action against Defendant MBI for negligence (Count XII) and breach of contract (Count XI) based on its failures related to the 2018 inspection. MBI has not filed a motion to dismiss or otherwise challenge these counts.

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d. Defendant AECOM

Defendant AECOM inspected the Bridge more than any other Defendant. After AECOM failed to accomplish the complete rehabilitation of the Bridge under its 2014 three-phase contract with RIDOT, it again contracted with RIDOT – this time for the performance of a special inspection that specifically involved inspections of the beam ends of the drop-in girders located in Spans 1 through 6 and 8 through 14 of the Bridge. (Comp. ¶¶ 73c, 74, 141-142). AECOM completed this inspection over several days in October 2017. (Comp. ¶ 73c). Thereafter, it provided RIDOT with an inspection report in which AECOM failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).

AECOM contracted with RIDOT to perform both a routine inspection and special inspection of the Bridge, which it performed over several days in June and July of 2019. (Comp. ¶¶ 73e, 74, 141-142). Thereafter, it provided RIDOT with an inspection report in which AECOM again failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).

Under another contract with RIDOT, AECOM conducted a special inspection of the Bridge over multiple days in June and July of 2020. (Comp. ¶¶ 73f, 74, 141-142). It then provided RIDOT with an inspection report in which AECOM still failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).

In June – July of 2023, AECOM performed another routine inspection of the Bridge under contract with RIDOT. (Comp. ¶¶ 73i, 74, 141-142). Thereafter, it provided RIDOT with an inspection report in which it failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).

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e. Defendant Jacobs Engineering Group

On July 23, 2021, under contract with RIDOT, Defendant Jacobs Engineering Group conducted a routine, special, and underwater inspection of the Bridge. (Comp. ¶¶ 73g, 74, 155-156). Thereafter, it provided RIDOT with an inspection report in which it failed to identify, recognize, or address critical elements of the Bridge's structural safety and integrity. (Comp. ¶¶ 74-75).

Rhode Island's Second Attempt to Completely Rehabilitate the Washington Bridge

Despite engaging multiple engineering firms to inspect the Washington Bridge, the State had not been made aware of any critical issues with the Bridge's structural safety and integrity. It continued to pursue complete rehabilitation of the Bridge and, in 2019, entered into a Notice of Change/Contract Addendum ("2019 AECOM Contract") with AECOM for the creation of a Design-Build RFP package ("2019 Design-Build Solicitation") and for Construction Phase Services. (Comp. ¶ 76). AECOM's work on the 2019 Design-Build Solicitation included: 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 owner's representative throughout the construction work. (Comp. ¶ 77).

After AECOM prepared the 2019 Design-Build Solicitation, RIDOT issued RFP/Bid No. 7611889—a request for proposals to initiate a Design-Build project based on AECOM's Design-Build Solicitation. ("2021 RFP"). (Comp. ¶¶ 78-79). As stated in the 2021 RFP, the overall goal of the project was to provide a 25-year design life for the rehabilitated Bridge. (Comp. ¶ 80). The RFP required, therefore, that the Design-Build Entity "shall design and construct the bridge strengthening and rehabilitation with a minimum design life of 25 years." (Comp. ¶ 80).

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Additionally, the RFP required the Design-Build Entity to "perform concrete repairs and crack sealing for the existing structure that is to remain and be reused, including but not limited to drop-in beams, precast beams, cantilevers, substructures, spandrel walls, and all other concrete items." (Comp. ¶ 81).

A Design-Build proposal was submitted by Defendant Barletta/Aetna I-195 Washington Bridge North Phase 2 JV, a joint venture between Defendant Aetna Bridge Company and Defendant Barletta Heavy Division. (Comp. ¶¶ 6, 82). The Joint Venture's proposal, which represented and touted its deep understanding of the bridge and its history, repeatedly emphasized that if it were accepted, the result would be a rehabilitated bridge with a 25-year life expectancy. (Comp. ¶¶ 82-83). The Proposal identified two designers of the rehabilitation work: Defendant Vanasse Hangen Brustlin ("VHB"), who was represented to have valuable knowledge of the site based on its participation in earlier rehabilitation efforts, was identified as the main designer, with its work to be supplemented by the structural/bridge design work of Defendant Commonwealth Engineers & Consultants. (Comp. ¶¶ 84, 88). The Proposal stated that the rehabilitation would achieve a rating that would satisfy all design, legal, and permit loads. (Comp. ¶ 85). Furthermore, it demonstrated the Joint Venture's understanding of the Bridge's critical elements. For instance, the proposal stated that it would eliminate a proposed tie-down rod at one end of the bridge, at Pier 4:

> We have replaced the ***fracture-critical tie-down*** on the east side of Pier 4 with a new column support to balance the shiplap spans within existing Span 1 (see Figure 4-16). This modification eliminates all foundation work in the Seekonk River and removes this ***fracture-critical item*** requiring annual inspection, allowing this element to be inspected biannually with the rest of the bridge's inspection cycle, saving RIDOT in long-term maintenance costs.

(Comp. ¶ 86). Despite the Joint Venture's recognition of the fracture criticality of the tie-downs, it still failed to address their existence at Piers 6 and 7. (Comp. ¶ 87).

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As part of its undertaking to extend the life expectancy of the bridge by twenty-five years, the proposal further stated: "Commonwealth and VHB will perform independent steel and camber designs as added quality review during the design phase" and "Commonwealth Engineers will perform independent review of structural steel, prestressed girder, and camber designs as well as additional rehabilitation design tasks." (Comp. ¶ 89).

RIDOT accepted the Proposal and, in September 2021, awarded the Design-Build project to the Joint Venture in reliance on its promises that, if awarded the contract, it would extend the life expectancy of the bridge by twenty-five years. (Comp. ¶ 90).

In October 2023, the Joint Venture issued rehabilitation plans stamped by VHB, Barletta, and Aetna. (Comp. ¶ 91). These plans failed to 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. (Comp. ¶ 91).

Emergency Closure of the Washington Bridge

On December 8, 2023, VHB identified: (1) Tie-down rod failures at Pier 7; and (2) Tie-down rods compromised at Pier 6. VHB also observed evidence of a possible failure of other tie-down rods. (Comp. ¶¶ 92-93). As a result, RIDOT issued an emergency declaration on December 11, 2023, closing the Washington Bridge. (Comp. ¶ 94). Later investigation revealed the existence of unaddressed voids, poor grout, moisture, and corrosion, resulting in widespread deterioration of the post-tensioning system, critical to the safety and structural integrity of the bridge, such that the only reasonable option is to demolish and replace the existing bridge. (Comp. ¶ 95).

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PROCEDURAL POSTURE

Presently before the Court are Rule 12(b)(6) motions to dismiss filed by AECOM, Aetna, Barletta, Commonwealth Engineers, the Joint Venture, Jacobs Engineering, and Prime AE. AECOM has also moved, in the alternative, for a more definite statement under Rule 12(e). Jacobs Engineering has also moved for dismissal under Rule 12(b)(1).

Also pending are motions for judgment on the pleadings under Rule 12(c) filed by Aries and Steere Engineering.

STANDARD OF REVIEW

A. Rule 12(b)(6) Motions to Dismiss

"It is well settled that a Rule 12(b)(6) motion has a narrow and specific purpose: 'to test the sufficiency of the complaint.'" *Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 21 (R.I. 2018) (quoting *Multi-State Restoration, Inc. v. DWS Props., LLC*, 61 A.3d 414, 416 (R.I. 2013)). "When a hearing justice rules on such a motion, he or she is to 'look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff's favor.'" *Id*. (quoting *Multi-State Restoration* at 416). "If 'it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim', then the motion to dismiss may be granted." *Id*. (quoting *Rein v. ESS Grp.*, 184 A.3d 695, 699 (R.I. 2018)). And, with regard to a claim for declaratory judgment, dismissal "'before a hearing on the merits . . . is proper only when the pleadings demonstrate that, beyond a reasonable doubt, the declaration prayed for is an impossibility.'" *Family Dollar Stores of R.I. v. Araujo*, 204 A.3d 1089, 1098 (R.I. 2019) (quoting *Tucker Estates Charlestown, LLC v. Town of Charlestown*, 964 A.2d 1138, 1140 (R.I. 2009)).

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"[W]hen a motion to dismiss includes documents as exhibits that were either mentioned or referred to in a complaint but not expressly incorporated, and the hearing justice does not 'explicitly exclude them from . . . consideration,' the motion 'automatically' converts to one for summary judgment." *Mokwenyei*, 198 A.3d at 22 (quoting *Pontarelli v. Rhode Island Dep't of Elementary & Secondary Educ.*, 176 A.3d 472, 477 (R.I. 2018) (citing *Bowen Court Assocs. v. Ernst & Young*, 818 A.2d 721, 726 (R.I. 2003)); (citing *Leone v. Mortgage Electronic Registration Sys.*, 101 A.3d 869, 873 (R.I. 2014); *Multi-State Restoration, Inc.*, 61 A.3d at 418; *DeSantis v. Prelle*, 891 A.2d 873, 876 (R.I. 2006)). In such case, the motion must be "disposed of as provided in Rule 56 . . . [,]'" *id*. at 21 (quoting *Multi-State Restoration* at 417), and "'all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56." *St. James Condo. Ass'n v. Lokey*, 676 A.2d 1343, 1345 (R.I. 1996).

Furthermore, as this Court has held, the Rhode Island Supreme Court has not adopted the heightened standard of review that federal courts apply under Federal Rule of Civil Procedure 12(b)(6):

> Our Supreme Court has not adopted the federal plausibility standard of pleading, whereby "factual 'allegations must be enough to raise a right to relief above the speculative level,' and a plaintiff must nudge 'their claims across the line from conceivable to plausible."' *Chhun v. Mortgage Electronic Registration Systems, Inc.*, 84 A.3d 419, 422 (R.I. 2014) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Rather, Rhode Island follows a notice pleading standard; thus, "a 'pleading need not include 'the ultimate facts that must be proven in order to succeed on the complaint …' or 'to set out the precise legal theory upon which his or her claim is based."' *Gardner v. Baird*, 871 A.2d 949, 953 (R.I. 2005) (quoting *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992)). Therefore, the "pleading simply must provide the opposing party with 'fair and adequate notice of the type of claim being asserted."' *Id*. (quoting *Haley*, 611 A.2d at 848).

Chartercare Cmty. Bd. v. Lee, 2020 WL 6736280, at *2 (R.I. Super. Nov. 6, 2020) (Stern, J.).

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B. Rule 12(b)(1) Motions to Dismiss

"A motion under Rule 12(b)(1) questions a court's authority to adjudicate a particular controversy before it." *Boyer v. Bedrosian*, 57 A.3d 259, 270 (R.I. 2012). "In 'ruling on a Rule 12(b)(1) motion, a court is not limited to the face of the pleadings. A court may consider any evidence it deems necessary to settle the jurisdictional question.'" *Id*. (quoting *Morey v. State of R.I.*, 359 F. Supp. 2d 71, 74 (D.R.I. 2005) (quoting *Palazzolo v. Ruggiano*, 993 F. Supp. 45, 46 (D.R.I. 1998)). *See also CoxCom LLC v. R.I. Commerce Corp*., 2024 WL 4763681, at *3 (R.I. Super. Nov. 7, 2024) (Stern, J.). While some courts consider issues of justiciability like standing and ripeness under Rule 12(b)(1), the Rhode Island Supreme Court has examined such issues under Rule 12(b)(6). *See Rhode Island Econ. Dev. Corp. v. Wells Fargo Secs.*, 2013 WL 4711306, at *7 (R.I. Super. Aug. 28, 2013) (Silverstein, J.) (citing *Watson v. Fox*, 44 A.3d 130, 138-39 (R.I. 2012)).

C. Rule 12(e) Motions for More Definite Statement

A motion for more definite statement under Rule 12(e) may be granted only if "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. . . ." Super. R. Civ. P. 12(e). This rule must be applied in concert with Rule 8(a)'s pleading standard, which states that a pleading sets forth a claim for relief when it contains "a short and plain statement of the claim showing that the pleader is entitled to relief" and "a demand for judgment for the relief the pleader seeks." *See Berard v. Ryder Student Transp. Services, Inc.*, 767 A.2d 81, 83 (R.I. 2001). "[A] plaintiff is not required to plead the ultimate facts that must be proven to succeed on the complaint, nor must the plaintiff set out the legal theory upon which the claim is based." *Id*. (citing *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992)). "'All that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted.'" *Id*. at 83-84 (quoting *Haley* at 848; citing

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Freidenthal, Kane, and Miller, Civil Procedure §§ 5.7, 5.8 at 252–56 (West 1985); 1 Kent, R.I. Civ. Prac. § 8.2 at 83–84 (1969)). "Applying the liberal pleading rule, [the Supreme Court of Rhode Island] has recognized the sufficiency of complaints even when the claims asserted within those complaints lack specificity." *Konar v. PFL Life Ins. Co.*, 840 A.2d 1115, 1118 (R.I. 2004).

D. Rule 12(c) Motions for Judgment on the Pleadings

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

> The availability of a Rule 12(c) motion to terminate litigation is severely limited in light of the rules of pleading employed by the Superior Court of Rhode Island. Under Rule 8(a) of the Superior Court Rules of Civil Procedure, a claim for relief need be only "(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 to which he or she deems himself entitled." The plaintiff is not required to plead the ultimate facts that must be proven in order to succeed on the complaint. The plaintiff is also not obligated to set out the precise legal theory upon which his or her claim is based. All that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted. *See* Friedenthal, Kane, and Miller, Civil Procedure §§ 5.7 and 5.8 at 252–56 (West 1985); 1 Kent, R.I. Civ. Prac. § 8.2 at 83–84. Although a statement of circumstances and occurrences in support of the claim being presented is plainly contemplated in order to provide such notice, great generality in such a statement is allowed as long as defendant is in fact given fair notice of what is claimed. *See* 5 Wright & Miller, Federal Practice and Procedure: Civil 2d § 1215 at 145 (West 1990).

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Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992).

ARGUMENT

I. The Complaint Adequately States Breach of Contract Claims

The elements of a breach-of-contract claim are "the existence and breach of a contract, and that the defendant's breach thereof caused the plaintiff's damages." *Fogarty v. Palumbo*, 163 A.3d 526, 541 (R.I. 2017) (citing *Petrarca v. Fid. & Cas. Ins. Co.*, 884 A.2d 406, 410 (R.I. 2005)). Under Rule 8(a), a breach of contract claim need contain only "a short and plain statement of the claim showing that the pleader is entitled to relief" and "a demand for judgment for the relief the pleader seeks." *See Hexagon Holdings, Inc. v. Carlisle Syntec Inc*., 199 A.3d 1034, 1038-39 (R.I. 2019) (holding party stated a claim for breach of contract under third-party beneficiary theory even though the contract was not specifically referenced in the complaint). As set forth above, *see supra* at p. 15, the Rhode Island Supreme Court has not adopted the heightened pleading standard applied in the federal courts. *See Chartercare Cmty. Bd. v. Lee*, 2020 WL 6736280, at *2 (R.I. Super. Nov. 6, 2020) (Stern, J.).

a. Counts I, IV, and X against AECOM are Sufficiently Pled

The State has alleged AECOM breached four separate contracts: (1) the 2014 contract for complete design services for the Bridge's rehabilitation (Comp. ¶ 59, Count I - ¶¶ 96-99); (2) the 2019 contract addendum in which AECOM agreed to create a Design-Build RFP package and provide construction phase services for the Bridge's rehabilitation (Comp. ¶76, Count IV - ¶¶ 111-114); and (3) two inspection contracts – one created in 2014 under which AECOM purported to conduct several inspections of the Bridge during 2017, 2019, and 2020; and the other created in 2019 under which AECOM performed an inspection of the Bridge in 2023. (Comp. Count X - ¶¶

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140-144). These allegations satisfy the first element of a breach of contract claim, namely the existence of a contract.

The State also adequately alleges AECOM breached each of these contracts. It alleges AECOM breached the 2014 contract and its 2019 addendum 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 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." (Comp. ¶¶ 98, 113). The State makes identical allegations regarding AECOM's breach of the inspection contracts with only a slight difference in paragraph (a), in which the State alleges that AECOM failed to "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." (Comp. ¶ 143). These allegations satisfy the second element of the claim by alleging that AECOM engaged in conduct that breached its contracts with the State.

The State's allegations also satisfy the final element of a breach of contract claim – that AECOM's breach caused the State's damages. In the general allegations, incorporated into each of these breach of contract counts, (Comp. ¶¶ 96, 111, 140), the State alleges AECOM repeatedly failed over the years to identify any of the critical problems with the Bridge's structural safety and integrity. (Comp. ¶¶ 61, 65, 69, 73c., 73e., 73f., 731., 74-75). It further alleges in each Count that AECOM failed to report these critical problems to the State or recommend needed repairs. (Comp. ¶¶ 98, 113, 143). The State then alleges that "[a]s a direct and proximate result of AECOM's breaches of the [contracts], the State has suffered and will continue to suffer both physical damages

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to its property and economic damages. . . .” (Comp. ¶¶ 99, 114, 144). These allegations satisfy the final element of the claim by alleging that AECOM’s breach of the contracts led to the State’s damages.

Despite these detailed allegations, AECOM argues in its Rule 12(b)(6) motion to dismiss that the State’s breach of contract allegations are somehow too vague and non-specific. ***First***, without citing any Rhode Island case law that would require anything more than an allegation asserting a contract exists, it finds fault with the State’s failure to cite particular provisions of the contracts that were breached. This argument ignores that the Complaint has plainly put AECOM on notice of the State’s claims; indeed, a plaintiff can state a claim for breach of contract without even mentioning the particular contract in the complaint, much less a particular provision in a particular contract. *See Hexagon Holdings*, 199 A.3d at 1038-39 (holding party stated a claim for breach of contract under third-party beneficiary theory even though the contract was not specifically referenced in the complaint).

Second, AECOM argues that the State’s damage allegations are too vague and non-specific to satisfy the pleading requirements. In support of this argument, AECOM cites a string of New York cases that are completely irrelevant because New York applies a *different pleading standard* than Rhode Island. *See Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC*, 155 A.D.3d 1218, 1220 (2017), *aff’d*, 31 N.Y.3d 1090, 103 N.E.3d 774 (2018) (holding action should have been dismissed for failure to state a claim under New York law requiring “detailed facts” in pleading). The only case AECOM cites from this jurisdiction, *Petrarca v. Fidelity and Casualty Insurance Co.*, 884 A.2d 406 (R.I. 2005), was decided on a motion for summary judgment on the basis that the plaintiff failed to *prove* damages, not properly *allege* damages. *See* 884 A.2d at 410-12. In *Rhode Island Economic Development Corp. v. Wells Fargo Securities,* 2013 WL 4711306,

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at *14 (R.I. Super. Aug. 28, 2013), by contrast, the court actually analyzed whether a plaintiff sufficiently pled a breach of contract claim. There, the court held that a plaintiff's "bald statement" that "Defendants' conduct injured [its] reputation and credit" was sufficient to survive a motion to dismiss. Here, as the State's allegations regarding damages are more detailed than a "bald statement," they are certainly sufficient to withstand AECOM's motion to dismiss.

Finally, AECOM argues the State's alleged damages do not logically flow from AECOM's breach of contract in that AECOM is not alleged to have caused the conditions leading to the demolition and replacement of the Bridge. To the contrary, viewing the allegations in the Complaint as true and construing all reasonable inferences in favor of the State, the Complaint puts AECOM on notice that its failure to properly perform under the contracts amounted to a failure to detect and report critical structural issues with the Bridge at a time when those issues could have been repaired. If AECOM had performed as contractually required, it would have notified the State of the problems with the Bridge at a time when the Bridge could have been successfully rehabilitated, or the State's current damages could have otherwise been avoided. By failing to do so, AECOM has caused the State to suffer damages in the amount of the resources the State wasted in an attempt to rehabilitate the Bridge and by creating the need for the State to demolish and replace the Bridge, rather than repair the Bridge so that it could continue to be safely used by the motoring public. These allegations satisfy Rhode Island's pleading standard. *See Rhode Island Econ. Dev. Corp. v. Wells Fargo Sec.*, 2013 WL 4711306, at *14 (R.I. Super. Aug. 28, 2013) (Silverstein, J.) ("The Rhode Island standard only requires fair and adequate notice of the plaintiff's claim and that the claim *may entitle the plaintiff to relief under any conceivable set of facts*.") (emphasis added) (citing *Narragansett Elec. Co. v. Minardi*, 21 A.3d 274, 277 (R.I. 2011); *McKenna v. Williams*, 874 A.2d 217, 225 (R.I. 2005)).

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Accordingly, the State's breach of contract allegations against AECOM are sufficiently pled in that they give fair and adequate notice of the State's claims showing the State may be entitled to relief and make a demand for judgment for the relief sought. AECOM's motions to dismiss Counts I, IV, and X should, therefore, be denied.[8] For these same reasons, AECOM's motion in the alternative for a more definite statement should also be denied. The State's allegations are sufficient for AECOM to answer them, as other Defendants in this matter have done. *See* Answers of Defendants Aries Support Services, Steere Engineering, TranSystems Corporation, Michael Baker International, and Vanasse Hangen Brustlin.

b. Count XIII against Jacobs Engineering Group is Sufficiently Pled

In Count XIII, the State alleges Defendant Jacobs Engineering Group conducted a routine, special, and underwater inspection of the Bridge on July 23, 2021, pursuant to a 2019 inspection contract with the State. (Comp. ¶¶ 73g; 155-156). Jacobs breached that contract when it "fail[ed] 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 an inspection of the Washington Bridge in conformance with the inspection contract; (c) perform

[8] Near the end of its motion and again relying on authority from outside of this jurisdiction, Defendant AECOM claims the State's entire Complaint should be dismissed as a "shotgun pleading" because it claims the Complaint incorporates every antecedent allegation by reference into each subsequent claim for relief. This is simply not true. While the Complaint does incorporate each of the general factual allegations into each of the counts for relief, this is standard pleading practice and is not prohibited. *See* R. Civ. P. 10(c) ("Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion."). The Complaint does not, however, "incorporat[e] into successive counts all preceding allegations and counts," which is the "quintessential 'shotgun' pleading. . . ." *See Keith v. DeKalb Cnty., Georgia*, 749 F.3d 1034, 1045 (11th Cir. 2014) (citations omitted). Only the general allegations are incorporated into each count, and those allegations are relevant to each cause of action in that they lay out the history of the Bridge and the responsibilities and actions of each Defendant with regard to the Bridge, as well as the events leading up to the Bridge's emergency closure. There is simply no basis to dismiss the State's complaint as a shotgun pleading.

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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." (Comp. ¶ 157). The State further alleges, "As a direct and proximate result of Jacobs Engineering's breaches of the inspection contract, the State has suffered and will continue to suffer both physical damages to its property and economic damages well in excess of the amount necessary to satisfy the jurisdiction of this Court." (Comp. ¶ 158). Jacobs has moved to dismiss[9] this claim on essentially identical grounds as Defendant AECOM's motion to dismiss. Unsurprisingly, its motion must fail for the same reasons.

First, Jacobs argues the State's breach of contract claim is insufficient because the Complaint fails to attach the contract or allege the breach of any particular contractual provision. As demonstrated above, *see supra* at p. 20, Rhode Island law does not require a breach of contract claim to meet such requirements. A plaintiff can state a claim for breach of contract without even referencing the contract that was allegedly breached. *See Hexagon Holdings*, 199 A.3d at 1038-39 (holding party stated a claim for breach of contract under third-party beneficiary theory even though the contract was not specifically referenced in the complaint). It is not surprising, therefore, that Jacobs has not cited any legal precedent supporting its argument. Instead, it cites non-precedential cases from other states. Jacobs does cite a single case from the federal District Court of Rhode Island, *Burt v. Board of Trustees of University of Rhode Island*, 523 F. Supp. 3d 214 (D.R.I. 2021), *aff'd*, 84 F.4th 42 (1st Cir. 2023),[10] but that case is also inapposite because, as set

[9] Jacobs moved to dismiss under both Rules 12(b)(1) and 12(b)(6) without specifying which Rule it believes applies to which count of the Complaint. As Jacobs's argument with regard to the breach of contract count contends the State has failed to state a claim, it is properly reviewed under Rule 12(b)(6), the purpose of which is to test the sufficiency of the complaint. *See Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 21 (R.I. 2018).

[10] Jacobs cites *Burt* for the proposition that a plaintiff, when alleging a breach of contract, must describe, "'with substantial certainty, the specific contractual promise the defendant failed to

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forth above, *see supra* at 15, the federal courts apply a different, heightened pleading standard that is not applicable here. *See Chartercare Cmty. Bd. v. Lee*, 2020 WL 6736280, at *2 (R.I. Super. Nov. 6, 2020) (Stern, J.); *compare Burt* at 219 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007), for the proposition that a plaintiff must "plead a 'plausible entitlement to relief'" in order to withstand a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6)).

Jacobs next argues that the breach of contract count must be dismissed because the State has failed to make sufficient allegations demonstrating how its breach of contract caused the State to suffer harm. But just as with the allegations against AECOM, when viewing the allegations in the Complaint as true and construing all reasonable inferences in favor of the State, the Complaint puts Jacobs on notice that its failure to properly perform under the contract amounted to a failure to detect and report critical structural issues with the Bridge at a time when those issues could have been repaired. If Jacobs had performed as contractually required, it would have notified the State of the problems with the Bridge at a time when the Bridge could have been successfully rehabilitated. By failing to do so, Jacobs has caused the State to suffer damages in the amount of the resources the State wasted in an attempt to rehabilitate a Bridge that could no longer be rehabilitated and by creating the need for the State to demolish and replace the Bridge, rather than repair the Bridge so that it could continue to be safely used by the motoring public. These allegations satisfy Rhode Island's pleading standard. *See Rhode Island Econ. Dev. Corp. v. Wells Fargo Sec.*, 2013 WL 4711306, at *14 (R.I. Super. Aug. 28, 2013) (Silverstein, J.) ("The Rhode

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keep.'" 523 F. Supp. 3d at 220. This is a quote from *Brooks v. AIG SunAmerica Life Assur. Co.*, 480 F.3d 579, 586 (1st Cir. 2007), which was applying Massachusetts contract law, not Rhode Island law, when holding that plaintiffs must allege "the defendant breached the contract, by describing, with 'substantial certainty,' the specific contractual promise the defendant failed to keep." (Citing *Buck v. Am. Airlines, Inc.*, 476 F.3d 29, 38 (1st Cir. 2007); *Doyle v. Hasbro, Inc.*, 103 F.3d 186, 194–95 (1st Cir. 1996); *Williams v. Astra USA, Inc.*, 68 F.Supp.2d 29, 37 (D. Mass. 1999)).

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Island standard only requires fair and adequate notice of the plaintiff's claim and that the claim *may entitle the plaintiff to relief under any conceivable set of facts*.") (emphasis added) (citations omitted).

Jacobs attempts to improperly introduce facts outside the four corners of the Complaint to argue that its alleged breach of contract could not have damaged the Bridge because, at the time of its inspection, the Bridge was already in poor condition and near a permanent state of disrepair. It does this by referencing two documents—the report Jacobs prepared regarding its July 23, 2021 inspection of the Bridge and a document titled "The Washington Bridge Rehabilitation and Redevelopment Project: Repairing and Improving a Critical Connection to Southern New England, FFY2019 Build Grant Application." Even if these documents included facts that may cast doubt on the State's pleadings (which they do not), neither of these documents can be considered by the Court when ruling on Jacobs's motion to dismiss without converting the motion into one for summary judgment under Rule 56, with all attendant procedural safeguards.

"[W]hen a motion to dismiss includes documents as exhibits that were either mentioned or referred to in a complaint but not expressly incorporated, and the hearing justice does not 'explicitly exclude them from . . . consideration,' the motion 'automatically' converts to one for summary judgment." *Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 22 (R.I. 2018) (quoting *Pontarelli v. Rode Island Dep't of Elementary & Secondary Educ.*, 176 A.3d 472, 477 (R.I. 2018)) (citations omitted). In such case, the motion must be "disposed of as provided in Rule 56 . . . [,]'" *id*. at 21 (quoting *Multi-State Restoration, Inc. v. DWS Props., LLC*, 61 A.3d 414, 4177 (R.I. 2013)), and "'all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56." *St. James Condo. Ass'n v. Lokey*, 676 A.2d 1343, 1345 (R.I. 1996). However, "if 'a complaint's factual allegations are expressly linked to—and admittedly

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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).'" *Id*. at 22 (quoting *Jorge v. Rumsfeld*, 404 F.3d 556, 559 (1st Cir. 2005)).

This exception does not apply to the external documents referenced by Jacobs. While the inspection report was mentioned in the Complaint, the State's allegations are not "expressly linked to" or "admittedly dependent on the inspection report." The State alleges that Jacobs breached the inspection *contract*, a claim that is not dependent on the contents of the inspection *report*. The report may be relevant evidence to prove the State's breach of contract claim, but it is certainly not necessary evidence. And there is even less basis for the Court to consider the grant application as that document is not mentioned in the Complaint at all and has no bearing on the State's causes of action against Jacobs.

Jacobs further claims the Court can take judicial notice of these external documents because they are "public records" in that they are publicly available on the RIDOT website. Jacobs is incorrect. For the Court to consider the documents on this basis, they would have to be "official public record[s]." *See Goodrow v. Bank of Am., N.A.*, 184 A.3d 1121, 1126 (R.I. 2018) (citing *Freeman v. Town of Hudson*, 714 F.3d 29, 36–37 (1st Cir. 2013)). In *Freeman*, the court expressly rejected the "expansive view that any document held in a public repository falls within the category of extrinsic materials that may be considered" on a motion to dismiss. 714 F.3d at 36. Instead, the documents must bear an "indicia of reliability" like that attendant to "official records, such as birth or death certificates and other similar records of vital statistics." *Id*. at 36-37. Neither the inspection report nor the grant application bears the same indicia of reliability as an official public record.

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The Court must, therefore, reject Jacobs's invitation to impermissibly broaden the scope of its motion to dismiss by injecting these self-serving documents in a blatant effort to dispute liability and shift the Court's focus to external narratives. This is procedurally inappropriate on a Rule 12(b)(6) motion to dismiss, where the court's role is solely to assess whether the complaint sufficiently states a claim upon which relief can be granted. Allowing consideration of these external documents would undermine the State's ability to define its case through its pleadings and would prejudice its right to develop its claims through discovery. Accordingly, the Court should decline to consider these documents and, consistent with Rhode Island law, limit its review to the allegations within the Complaint.

Even if the Court were to consider these documents, they fail to undermine the State's allegations that Jacobs breached its contractual obligations, resulting in damages to the State. Jacobs's characterization of the Bridge's condition as "poor" in the inspection report does not establish that it performed a thorough inspection, conducted the necessary in-depth analysis of the Bridge's structure, or provided the State with adequate recommendations for the required repairs. In fact, this vague description supports the State's claim that Jacobs neglected to offer the detailed and specific guidance necessary to address the Bridge's deficiencies. Similarly, the grant application does not demonstrate that Jacobs's inadequate inspection and recommendations were unrelated to the State's damages or the eventual need to demolish and rebuild the Bridge. On the contrary, it shows that, at the time of the application, the Bridge was in a state that could still be fully rehabilitated. This underscores that Jacobs either knew or should have known of the structural issues during its inspection and failed to conduct the careful, detailed analysis the situation demanded.

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In light of the foregoing, the State has pled a breach of contract claim against Jacobs sufficient to withstand its motion to dismiss. The Court should, therefore, deny the motion to dismiss Count XIII of the Complaint.

c. Count XV against the Joint Venture, Barletta, and Aetna is Sufficiently Pled

In Count XV, the State alleges Defendants Joint Venture, Barletta, and Aetna entered into a 2021 Design-Build Contract with the State. (Comp. ¶ 164). This contract required, as set forth in the 2021 RFP for the project, that the Defendants:

- "[D]esign and construct the bridge strengthening and rehabilitation with a minimum design life of 25 years." (Comp. ¶ 80)

- "[P]erform concrete repairs and crack sealing for the existing structure that is to remain and be reused, including but not limited to drop-in beams, precast beams, cantilevers, substructures, spandrel walls, and all other concrete items." (Comp. ¶ 81).

When the Joint Venture issued its plans, they "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." (Comp. ¶ 91). The State alleges the Joint Venture, Barletta, and Aetna breached the Design-Build Contract 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 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 requirements of the 2021 Design-Build Contract; and (e) otherwise comply with its contractual obligations." (Comp. ¶ 165). And, as a direct and proximate result of these breaches, "the State has suffered and will continue to suffer both physical damages to its property and economic damages well in excess of the amount necessary to satisfy the jurisdiction of this Court." (Comp. ¶ 166).

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The Joint Venture moved to dismiss the State's breach of contract count under Rule 12(b)(6) for failing to state a claim. That motion was adopted by Defendants Barletta and Aetna.

The Joint Venture, Barletta, and Aetna argue that the Court must dismiss the breach of contract claim against them because the State has failed to describe with "substantial certainty" the specific contractual provisions that were breached. As set forth above, *see supra* at 15, this is another reference to the heightened federal pleading standard that Rhode Island courts do not follow. *See Chartercare Cmty. Bd. v. Lee*, 2020 WL 6736280, at *2 (R.I. Super. Nov. 6, 2020) (Stern, J.). The State's allegations are sufficiently pled in that they give fair and adequate notice to the Joint Venture, Barletta, and Aetna of the State's breach of contract claim showing the State may be entitled to relief and make a demand for judgment for the relief sought. *See Rhode Island Econ. Dev. Corp. v. Wells Fargo Secs.*, 2013 WL 4711306, at *14 (R.I. Super. Aug. 28, 2013) ("The Rhode Island standard only requires fair and adequate notice of the plaintiff's claim and that the claim *may entitle the plaintiff to relief under any conceivable set of facts*.") (emphasis added).

These Defendants also point to language from the 2021 Design-Build Contract that they claim demonstrates the State's allegations regarding the Defendants' breach of the Contract terms are inconsistent with their actual duties under the Contract. Defendants claim they had no duty under the Contract to research and review, inspect, evaluate, or recommend repairs. They say their only duty was to advance the Base Technical Concepts ("BTC") and by submitting a design that met those requirements, even if the design failed to result in rehabilitation of the Bridge with a 25-year life span, they satisfied that duty. But Defendants' interpretation, in addition to being contrary to the text of the allegations, which this Court must consider as true at this stage of adjudication, is refuted by the language of the Contract.

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Submitting a design plan for a rehabilitated Bridge with a minimum 25-year design plan was required by the Contract:

6.7. Technical Approach

Section 4 of the Technical Proposal (the "Technical Approach") shall use the BTC as the basis for setting forth the technical approach(es) that the Proposer intends to use in order to complete the Project design and construct the Project.

The Technical Approach Section shall identify the quality and expected useful life of each of the facilities to be designed and constructed as part of the Project, and it shall identify the performance criteria by which each Project facility or component should be evaluated. Proposers are advised that the minimum service life for any proposed new bridges is expected to be seventy-five (75) years and the minimum service life for any proposed rehabilitated bridges is expected to be twenty-five (25) years. Design shall be in accordance with the specifications and criteria given in Part 2 – Technical Provisions.

The Proposer shall include detailed information on the incorporation of any proposed modifications to the BTC's and its effect on items listed below.

(Ex. 3 to Joint Venture's motion to dismiss, RFP, Part 1 – Instructions to Proposers: 6.7 Technical Approach). While a plan that resulted in a rehabilitated Bridge with a 25-year life span was a requirement, Defendants are wrong to suggest they had no autonomy in presenting a plan that differed from the BTC. Proposed modifications to the BTC were clearly contemplated by the Contract. *Id*. Indeed, the Contract specified that the BTC design plans were not presented as a final concept, but would need to be completed, verified, and finalized by the DB Entity:

3.13.7. **Bridge Design and Construction**

Preliminary BTC design plans have been developed for the proposed rehabilitation of the Washington bridge and the proposed new bridges, including general layout of each new bridge. These plans and layouts are schematic only and are not guaranteed. Notes are included on the plans that indicate the design and detailing requirements for each bridge. Unless otherwise indicated, vertical clearance for the Washington Bridge shall not be less than the existing clearance. The vertical clearance for the proposed Gano Street On-Ramp shall not be less than 14'-3" over the newly constructed shared use path and 16'-0" over Gano Street. The vertical clearance for the proposed Waterfront Drive Off-Ramp Bridge shall not be less than 14'-3". The DB Entity is responsible for the complete design, detailing, and construction of each new and rehabilitated bridge.

The DB Entity acknowledges by receipt of such documents that it explicitly understands that while these plans have been advanced to a certain level, the DB Entity shall be required to provide a final, complete Project design stamped, sealed, and certified by a Professional Engineer, for review and approval by the State and possibly third parties. The Professional Engineer shall be registered as such in the State of Rhode Island and Providence Plantations.

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(Ex. 1 to Joint Venture's motion to dismiss, RFP, Part 2 – Technical Provisions: 3.13.7 Bridge Design and Construction). The Contract specified multiple times that the DB Entity was free to use its judgment when determining how to achieve a rehabilitated Bridge with a 25-year life span:

> 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. It is not the intent of the project to replace bearings not explicitly shown on the BTC drawings. The Design Build Team may propose alternative methods, through the ATC process, to meet the 25-year design life goal, however preference will be given to proposals that minimize the amount of future required maintenance. The Design Build Team is responsible for any required retrofit or strengthening required by their proposal to achieve the 25-year design life. The DB Entity shall develop models and prepare design calculations as necessary to show their proposed method of rehabilitation will achieve this requirement. If link slabs are included in the DB Entities proposal,

(Ex. 1 to Joint Venture's motion to dismiss, RFP, Part 2 – Technical Provisions: 3.13.7.1 Washington Bridge Rehabilitation).

Additionally, the Contract made clear that the DB Entity was responsible for the structural integrity of the Bridge's concrete:

> The DB Entity shall perform concrete repairs and crack sealing for the existing structure that is to remain and be reused, including but not limited to drop-in beams, precast beams, cantilevers, substructures, spandrel walls, and all other concrete items. All repairs shall be in accordance with the requirements provided on the BTC Plans and the RIDOT Standard Specifications. It is anticipated that 6,000LF of cracks will need to be repaired and sealed under this rehabilitation. All costs associated with repairing and sealing of cracks shall be included in Item 1.4.1 of Form N Cost Proposal Form.

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(Ex. 1 to Joint Venture's motion to dismiss, RFP, Part 2 – Technical Provisions: 3.13.7.1 Washington Bridge Rehabilitation). The Contract also specified the "rehabilitation shall include but not be limited to the following items," which included:

m) Sealing of structural cracks in concrete (It is anticipated that 6,000LF of cracks will need to be repaired and sealed under this rehabilitation.);

p) Adjustment, replacement, and/or removal of seismic longitudinal restrainers, end diaphragms, anchor rods, bearings, pedestals, etc., as deemed necessary by the DB Entities design;

(Ex. 1 to Joint Venture's motion to dismiss, RFP, Part 2 – Technical Provisions: 3.13.7.1 Washington Bridge Rehabilitation).

These excerpts from the exhibits reveal that the Joint Venture, Barletta, and Aetna had clear contractual obligations to provide a complete, professionally certified design that met or exceeded the BTC as necessary to deliver a rehabilitated structure with a 25-year design life. The State's allegations that the Defendants breached those contractual obligations, causing damage to the State as a result, are sufficient to put Defendants on notice of the claim against them. Accordingly, the Court should deny the motion to dismiss Count XV of the Complaint.

II. The Complaint Adequately States Negligence Claims

"To properly set forth 'a claim for negligence, 'a plaintiff must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage.'" *Holley v. Argonaut Holdings,* 968 A.2d 271, 274 (R.I. 2009) (quoting *Willis v. Omar*, 954 A.2d 126, 129 (R.I. 2008)). The Rule 8(a) pleading requirements that apply to breach of contract claims apply equally to negligence claims. The plaintiff is not required to plead ultimate facts or set forth a precise legal theory; the only requirement is that "the complaint give the opposing party fair and adequate notice

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of the type of claim being asserted." *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992) (citing Friedenthal, Kane, and Miller, Civil Procedure §§ 5.7 and 5.8 at 252–56 (West 1985); 1 Kent, R.I. Civ. Prac. § 8.2 at 83–84).

Defendants argue the State's negligence claims are insufficiently pled and barred by the economic loss doctrine. Both arguments fail. The State's factual allegations regarding the Defendants' failure to exercise the requisite standard of care in their respective roles in the inspection, design, construction, and maintenance of the Bridge, resulting in the Bridge's deterioration and emergency closure, are sufficient to put Defendants on notice of the State's negligence claims. The economic loss doctrine does not bar these claims because it does not apply in the circumstances here in which the State, a sovereign entity, is seeking damages for harm to public infrastructure that amounted to a public hazard. Additionally, with regard to Defendants AECOM and the Joint Venture, the economic loss doctrine does not apply because the State's negligence claims implicate duties independent of their contractual obligations.

a. The Economic Loss Doctrine Does Not Bar the State's Negligence Claims

Each of the Defendants seeks to dispose of the State's negligence claims under the judicially made economic loss doctrine, which "was created specifically to induce commercial entities to allocate their foreseeable financial risks through the utilization of contract law rather than tort law." *Triton Realty Ltd. P'ship v. Almeida*, No. C.A. PC04-2335, 2006 WL 2089255, at *4 (R.I. Super. July 25, 2006) (citing *Boston Inv. Prop. # 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 516-18 (R.I. 1995)). As demonstrated below, the economic loss doctrine does not bar the State's negligence claims because: (1) the doctrine's purpose does not support its application in this case; (2) the State has alleged property damage, making the doctrine inapplicable; (3) the Court lacks sufficient basis at this stage of litigation to apply the doctrine; and (4) the State's allegations

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support claims for negligent misrepresentation against certain defendants, a tort independent of any contractual duties to which the doctrine does not apply.

1. The Purpose Behind the Economic Loss Doctrine Does Not Support its Application in this Case

The economic loss doctrine is rooted in principles designed to govern commercial transactions between private commercial entities in order to prevent commercial parties from using tort claims to recover for failed contractual expectations. *See Boston Inv. Prop. No. 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I. 1995) (reasoning "it is appropriate for sophisticated commercial entities to utilize contract law to protect themselves from economic damages"). But here, the plaintiff is the State of Rhode Island, a sovereign entity, not a commercial entity. The State's claims in this lawsuit arose not from profit-driven activities but from its role as a steward of public resources in performing the essential public function of caring for the Bridge, a critical piece of public infrastructure. And in this lawsuit, the State is seeking damages ultimately caused to the public by alleging that, as a result of the Defendants' actions and omissions, Defendants created a public safety hazard requiring emergency closure of the Bridge. The policies underpinning the application of the economic loss doctrine in commercial transactions are simply not present in this case. *See Commonwealth v. Monsanto Co.*, 269 A.3d 623, 673 (Pa. Commw. Ct. 2021) ("[T]he economic loss rule has never been applied to preclude a sovereign proceeding as trustee or *parens patriae* from prosecuting common law claims."); *Morris v. Osmose Wood Preserving*, 340 Md. 519, 534-35, 667 A.2d 624, 632 (1995) ("[W]e do not ordinarily allow tort claims for purely economic losses. But when those losses are coupled with a *serious* risk of death or personal injury resulting from a dangerous condition, we allow recovery in tort to encourage correction of the dangerous condition."). The Court should reject Defendants' attempt to bar the State's negligence claim under the economic loss doctrine.

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2. The Economic Loss Doctrine Does Not Apply because the State has Alleged Property Damage as a Result of Defendants' Negligence

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." *Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1275 (R.I. 2007) (citing *Boston Inv. Prop. # 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I.1995)). This doctrine is inapplicable here as the State has repeatedly alleged that it suffered property damage as a result of Defendants' negligence:

- Introduction – "The State of Rhode Island brings this Complaint to hold those liable for the *physical damage to its property* and for the economic losses it has and will in the future suffer." (emphasis added);

- ¶ 104 – "As a direct and proximate result of the negligence of AECOM, Steere, Prime, and Aries Support Services, the State has suffered and will continue to suffer both *physical damages to its property* and economic damages well in excess of the amount necessary to satisfy the jurisdiction of this Court." (emphasis added);

- ¶ 110 – "As a direct and proximate result of Commonwealth Engineers' negligence, the State has suffered and will continue to suffer both *physical damages to its property* and economic damages well in excess of the amount necessary to satisfy the jurisdiction of this Court." (emphasis added);

- ¶ 162 – "As a direct and proximate result of Jacobs Engineering's negligence, the State has suffered and will continue to suffer both *physical damages to its property* and economic damages well in excess of the amount necessary to satisfy the jurisdiction of this Court." (emphasis added);

- ¶ 171 – "As a direct and proximate result of the negligence of the Joint Venture, Barletta, Aetna, VHB, and Commonwealth Engineers, the State has suffered and will continue to suffer both *physical damages to its property* and economic damages well in excess of the amount necessary to satisfy the jurisdiction of this Court." (emphasis added); and

- ¶ 177 – "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 well in excess of the amount necessary to satisfy the jurisdiction of this Court." (emphasis added).

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Defendants argue that physical damage to the Bridge amounts to economic and not property damage because the Bridge was the subject of the contracts between the State and the Defendants. *See Hexagon Holdings, Inc. v. Carlisle Syntec Inc*., 199 A.3d 1034, 1043 (R.I. 2019). But, the State's allegations of property damage are not limited to damage to only the Bridge. The State has repeatedly alleged that it suffered "physical damages to *its property*." (Emphasis added). It would be too narrow a construction to read those allegations as meaning only damage to the Bridge. *See Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 21 (R.I. 2018) (When ruling on a motion to dismiss, the Court "is to 'look no further than the complaint, assume that all allegations in the complaint are true, and *resolve any doubts in a plaintiff's favor*.'") (emphasis added) (quoting *Multi-State Restoration, Inc. v. DWS Props., LLC*, 61 A.3d 414, 416 (R.I. 2013)).

Viewing the State's damage allegations under the appropriate standard of review, it is not "'clear beyond a reasonable doubt that the [State] would not be entitled to relief . . . . under any set of facts," which is required before the Court may dismiss the State's negligence claims. *Id*. (quoting *Rein v. ESS Grp.*, 184 A.3d 695, 699 (R.I. 2018)). *See also Rhode Island Econ. Dev. Corp. v. Wells Fargo Sec.*, 2013 WL 4711306, at *14 (R.I. Super. Aug. 28, 2013) (Silverstein, J.) ("The Rhode Island standard only requires fair and adequate notice of the plaintiff's claim and that the claim *may entitle the plaintiff to relief under any conceivable set of facts*.") (emphasis added) (citing *Narragansett Elec. Co. v. Minardi*, 21 A.3d 274, 277 (R.I. 2011); *McKenna v. Williams*, 874 A.2d 217, 225 (R.I. 2005)). For instance, the State has alleged that the Bridge was a "vital transportation artery" for its "residents and interstate travelers." (Comp. Intro.). As those travelers had to find alternate avenues of travel, it is not inconceivable that those other avenues of travel will have suffered damage as a result of the increased traffic. The State has also alleged that the Bridge had to be demolished as a result of the Defendants' negligent conduct. (Comp. Intro., ¶ 95).

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It is not inconceivable that demolishing the Bridge resulted in property damage to surrounding land and structures, like the adjacent roadways and bridge. As there are conceivable facts under which the State would be entitled to relief for negligence despite the application of the economic loss doctrine, the Court cannot dismiss the State's negligence claims as barred by the doctrine.

3. The Court Lacks Sufficient Basis at the Outset of Litigation to Apply the Economic Loss Doctrine

In *Inland American Retail Management v. Cinemaworld of Florida*, 2011 WL 121647 (R.I. Super. Jan. 7, 2011) (Silverstein, J.), *vacated on other grounds by Inland Am. Retail Mgmt. LLC v. Cinemaworld of Florida, Inc.*, 68 A.3d 457 (R.I. 2013), this Court considered whether the economic loss doctrine barred a defendant, who was being sued for breaching a commercial lease contract, from counterclaiming for negligence. The Court recognized "[a]t first glance it would seem that the economic loss doctrine would bar Defendant's claim of negligence [because it] did not suffer personal injury or property damage and is claiming purely economic damages." *Id*. at * 8. But, upon viewing the contract at issue, it found the parties agreed to allow negligence actions for the recovery of economic damages:

> [I]n *E.W. Burman*, our Supreme Court, when discussing the purpose of the economic loss doctrine, stated that "it is appropriate for sophisticated commercial entities to utilize contract law to protect themselves from economic damages." *Id*. Here, the parties have done just that.
>
> The Lease specifically provided that "[e]xcept if caused by Landlord's negligence or willful misconduct, neither Landlord nor its agents shall be liable to Tenant for any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss ...." (Lease § 14.07.) Accordingly, the parties have specifically contracted for the right of [defendant] to bring a negligence cause of action for any losses sustained. Therefore, the Court finds as a matter of law that Defendant's negligence claim is not barred by the economic loss doctrine.

Id. (citing *Boston Inv. Prop. No. 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I. 1995)).

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Here, at this stage of the litigation where the Court is limited to reviewing the allegations in the State's Complaint, the Court does not have sufficient basis to determine whether the parties contracted for the right to bring a negligence cause of action. In order to make this determination, it will need to review all applicable contracts and subcontracts. Thus, it must reject Defendants' motions to dismiss or otherwise dispose of the State's negligence claims as barred by the economic loss doctrine.

4. The State's Allegations Support Claims for Negligent Misrepresentation Against AECOM and the Joint Venture, a Tort Independent of Any Contractual Duties, which are Not Barred by the Economic Loss Doctrine

"'[T]he economic loss rule does not bar recovery in tort when the defendant's alleged misconduct implicates a tort duty that arises independently of the terms of the contract.'" *Rhode Island Econ. Dev. Corp. v. Wells Fargo Securities, LLC*, 2013 WL 4711306, at *38 (R.I. Super. Aug. 28, 2013) (*Eastwood v. Horse Harbor Found.*, 241 P.3d 1256, 1264 (Wash. 2010)). One such tort that arises independently of the terms of the contract is negligent misrepresentation. *See Rhode Island Econ. Dev.*, 2013 WL 4711306, at *38.

The elements of the tort of negligent misrepresentation are: "'(1) a misrepresentation of a material fact; (2) the representor must either know of the misrepresentation, must make the misrepresentation without knowledge as to its truth or falsity or must make the representation under circumstances in which he [or she] ought to have known of its falsity; (3) the representor must intend the representation to induce another to act on it; and (4) injury must result to the party acting in justifiable reliance on the misrepresentation.'" *Id*. at *36 (quoting *Cruz v. DaimlerChrysler Motors*, 66 A.3d 446, 453 (R.I. 2013)). "Duty" is not an element of the tort. *Id*.

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The State's Complaint includes allegations sufficient to put Defendants AECOM and the Joint Venture on notice of a claim for negligent misrepresentation arising independently of any contract terms:

- AECOM's Letter of Interest/Technical Proposal represented that the firm had unparalleled expertise, ranking as a top transportation engineering design firm, with firsthand experience on the effect of deterioration on important structures. (Comp. ¶ 55). AECOM also represented that its subconsultants possessed "the experience, knowledge, and character to qualify them for" their particular duties. (Comp. ¶ 60).

- The Design-Build proposal submitted by the Joint Venture, which claimed to have a deep understanding of the Bridge and its history, repeatedly emphasized that if it were accepted, the result would be a rehabilitated Bridge with a 25-year life expectancy. (Comp. ¶¶ 82-83). It represented that Defendant VHB, which it claimed had valuable knowledge of the site based on its participation in earlier rehabilitation efforts, would be its lead designer. And it represented that as part of the undertaking to extend the life expectancy of the Bridge by 25 years, VHB and Defendant Commonwealth would perform independent steel and camber designs and Commonwealth would perform an independent review of structural steel, prestressed girder, and camber designs as well as perform additional rehabilitation design tasks. (Comp. ¶ 89). The Joint Venture's promises induced the State to award the contract to the Joint Venture. (Comp. ¶ 90).

Although the State has not pled a separate count for negligent misrepresentation, the allegations in the Complaint are sufficient to put Defendants AECOM and the Joint Venture on notice of this claim. *See Butera v. Boucher*, 798 A.2d 340, 353 (R.I. 2002) (holding plaintiff's complaint adequately asserted a claim for abuse of process that was not separately pled but was "embedded in the malicious-prosecution count of the complaint," because "'vagueness, lack of detail, conclusionary statements, or failure to state facts or ultimate facts, or facts sufficient to constitute a cause of action are no longer . . . fatal defects.'") (quoting *Bragg v. Warwick Shoppers World, Inc.*, 102 R.I. 8, 12, 227 A.2d 582, 584 (1967)). Here, a fair reading of the State's allegations is sufficient to put AECOM and the Joint Venture on notice that the State is alleging they were

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induced to choose these Defendants for the Bridge rehabilitation due to Defendants' misrepresentations regarding their experience, skill, and intentions for the project. Thus, even if the Court determines the economic loss doctrine applies to the State's negligence claims, the State may still proceed against AECOM and the Joint Venture for negligent misrepresentation.

b. Count II against AECOM, Steere, Prime, and Aries Support Services is Sufficiently Pled

In Count II, the State alleges Defendants AECOM, Steere, Prime, and Aries owed the State a "duty to conform to the standard of skill, care, and diligence exercised by the average professional engineering, consulting, construction, inspection, and design firm." (Comp. ¶ 101). It alleges they breached this duty by "negligently failing to (a) conduct a reasonably adequate detailed research and review of previous inspection reports, drawings, and plans—including, but not limited to, the Original Design Plans, and the plans for the 1996-1998 rehabilitation project; (b) recognize the importance and significance of the tie-down rods as critical to the stability of the Washington Bridge; (c) perform an investigation into or evaluation of the cracking discovered along the post-tensioned cables in the post-tensioned cantilever beams; and (d) recommend repairs to address the cracking discovered along the post-tensioned cables in the post-tensioned cantilever beams." (Comp. ¶ 102). Additionally, it alleges that AECOM "was negligent in its inspections of the Washington Bridge in April 2014, and on July 28, 2015, October 27, 2017, July 24, 2019, July 22, 2020, and July 21, 2023." (Comp. ¶ 103). "As a direct and proximate result of the negligence of AECOM, Steere, Prime, and Aries Support Services, the State has suffered and will continue to suffer both physical damages to its property and economic damages well in excess of the amount necessary to satisfy the jurisdiction of this Court." (Comp. ¶ 104).

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1. AECOM, Prime & Steere's Motion to Dismiss Should be Denied

AECOM has moved to dismiss Count II of the Complaint under Rule 12(b)(6). Defendants Prime and Steere have adopted AECOM's motion.

Defendants first argue the State's negligence action is merely duplicative of its breach of contract actions. They claim the negligence counts must be dismissed because a contractual responsibility does not form the duty necessary to state a negligence claim, and that a party may not plead duplicative claims arising from different legal theories. They are incorrect on both points.

First, Rule 8(e)(2) specifically permits a party to plead in the alternative:

> A party may set forth two (2) or more statements of a claim or defense alternately or hypothetically, either in one (1) count or defense or in separate counts or defenses. When two (2) or more statements are made in the alternative and one (1) of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one (1) or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

For this reason, "it would be premature at this time to consider one count's effect on another given that the [State] is permitted to plead in the alternative." *Rhode Island Econ. Dev. Corp. v. Wells Fargo Secs.*, 2013 WL 4711306, at *31 (R.I. Super. Aug. 28, 2013) (citing Super. R. Civ. P. 8(d)(2)) (stating that while a party "cannot get double recovery," that is not a consideration at the motion to dismiss stage during which the court is "merely testing the sufficiency of the Complaint").

Second, as professional engineers, Defendants AECOM, Prime, and Steere have an independent duty to act with due care that goes beyond their contractual obligations. Under 220 R.I. Code R. 30-00-13.22, a "Vendor engaged in providing goods or services to the State shall generally have the following standard responsibilities: 1. ***Perform services in accordance with applicable standards of professional skill and care***. . . ." (Emphasis added). The Rules and Regulations for Professional Engineering provide guidance with respect to the standards of

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professional skill and care in engineering. 430 R.I. Code R. 00-00-1.7, which is "binding on every person holding a certificate of registration as a Professional Engineer and on business entities and sole proprietorships authorized to offer or perform engineering services in this State," provides, in pertinent part:

> C. Obligations to Society
>
> 1. Registrants, in the performance of their services for clients, employers, and customers, shall be cognizant that their ***first and foremost responsibility is to the public welfare***.
>
> 2. Registrants shall approve and seal only those design documents that conform to accepted engineering standards and ***safeguard the life, health, property, and welfare of the public***.
>
> * * * *
>
> D. Obligations to Clients or Employer
>
> 1. Registrants shall undertake assignments ***only when qualified by education or experience*** in the specific technical fields of engineering involved. . . .

(Emphasis added).

Under these regulations, it is clear that professional engineers have an obligation to protect the public from dangers affecting life, health, and property that may arise from practices that fall below the standard of care. This establishes a duty owed by Defendants that is independent of their obligations under any contract with the State – and establishes a duty owed by those Defendants that did not have a contract with the State, including Defendants Prime and Steere. Accordingly, the motion to dismiss Count II of the Complaint should be denied.

AECOM's motion for a more definite statement should also be denied. The State has sufficiently pled a cause of action for negligence that gives AECOM fair notice of the claim being asserted.

2. Steere's Motion for Judgment on the Pleadings Should be Denied

In its motion for judgment on the pleadings, Defendant Steere argues that the work it performed on the Bridge under the subcontract with AECOM was limited to spans 15-18, which

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does not include Piers 6 and 7. Based on this, Steere claims that there can be no connection between its work and the critical Bridge failures. This factual argument fails for two reasons.

First, it relies on contracts between AECOM and Steere (not between the State and Steere) that cannot be considered by the Court when ruling on Steere's motion for judgment on the pleadings. The State's Complaint does not incorporate these contracts; the allegations in the State's Complaint are not "expressly linked to" or "admittedly dependent on" these contracts; and the contracts are not official public records that are subject to judicial notice. *See Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 22 (R.I. 2018). *See also* discussion at pp. 25-27. Therefore, they cannot be considered when testing the sufficiency of the State's pleading. *See Owen Bldg. LLC v. Victory Heating & Air Conditioning Co.,* No. CV 20-00266-WES, 2021 WL 412282, at *3-4 (D.R.I. Jan. 20, 2021), *report and recommendation adopted*, No. CV 20-266 WES, 2021 WL 409863 (D.R.I. Feb. 5, 2021) (declining, on motion to dismiss implied warranty claim under 12(b)(6), to consider "extraneous materials . . . outside the pleadings," including contract between movant and co-defendant).

Second, Steere's argument misconstrues the State's allegations, which are much broader than alleging just failures at Piers 6 and 7. While the State does allege the Bridge was initially closed after the identification of tie-down rod failures at Pier 7 and compromised tie-down rods at Pier 6, (Comp. ¶¶ 92-92), it further alleges that "[l]ater investigation revealed the existence of unaddressed voids, poor grout, moisture, and corrosion, resulting in widespread deterioration of the post-tensioning system, critical to the safety and structural integrity of the bridge. . . ." (Comp. ¶ 95). Thus, even if the Court reviewed the contracts submitted by Steere and determined they did limit Steere's work to a different area of the Bridge than Piers 6 and 7, it would not demonstrate that Steere's negligent conduct could not have caused or contributed to the other problems with

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the Bridge, which ultimately resulted in its emergency closure and the need to demolish and replace the Bridge.

Again failing to give the State's Complaint a reasonable construction, Steere's final argument is that the State is improperly seeking a "betterment" in the form of a new bridge that would put the State in a better position than it would have been if Steere properly performed its professional services. It claims a fair reading of the Complaint "leads to the conclusion that the State attained several years of service out of the bridge more than it would have had it known the true condition of piers 6 and 7 earlier."

On a motion for judgment on the pleadings, the Court must accept all factual allegations as true and view them in the light most favorable to the plaintiff. *See Swanson v. Speidel Corp*., 110 R.I. 335, 293 A.2d 307, 309 (1972). When doing so, it is clear that the State is not seeking a betterment – it is seeking to recover damages necessary to restore the Bridge to a safe and functional condition, as it would have been but for the Defendants' actions and omissions. The damages claimed by the State represent, among other things, the cost of remediation and replacement necessitated by the Bridge's catastrophic failure, which was directly caused by the Defendants' failure to fulfill their obligations, not an enhancement beyond the Bridge's original design or capacity. As it is not "clear beyond a reasonable doubt that the [State] will be unable to prove [its] right to relief," Steere's motion for judgment on the pleadings must be denied. *See id*.

As each of Steere's arguments fails, its motion for judgment on the pleadings as to Count II of the Complaint should be denied.

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3. Aries's Motion for Judgment on the Pleadings Should be Denied

Aries[11] moved for judgment on the pleadings[12] on Count II as barred by the economic loss doctrine. As set forth above, *see supra* at pp. 33-38, this doctrine does not apply to the State's negligence actions. Aries's motion for judgment on the pleadings as to Count II of the Complaint should, therefore, be denied.

c. Count III against Commonwealth Engineers is Sufficiently Pled

In Count III, the State alleges a negligence claim against Commonwealth based on its conduct in assisting AECOM in conducting inspections of the Bridge in 2019 and 2023. (Comp. ¶ 107). The State alleges Commonwealth "owed the State a duty to conform to the standard of skill, care, and diligence exercised by the average professional engineering, consulting, construction, inspection, and design firm in conducting" these inspections. (Comp. ¶ 108). It further alleges Commonwealth breached this duty by "negligently failing to (a) conduct a reasonably adequate 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 standard of care customary in the professional engineering, consulting, construction, and design industry; (c) recognize the importance and

[11] Defendant Aries attaches as an exhibit to its memorandum a copy of its contract with AECOM. This contract cannot be considered by the Court as the State's allegations are not "expressly linked to" or "admittedly dependent on" the contract, nor subject to judicial notice as an official public record. *See Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 22 (R.I. 2018). *See also* discussion at pp. 25-27; *Owen Bldg. LLC v. Victory Heating & Air Conditioning Co., Inc.*, No. CV 20-00266-WES, 2021 WL 412282, at *3-4 (D.R.I. Jan. 20, 2021), *report and recommendation adopted*, No. CV 20-266 WES, 2021 WL 409863 (D.R.I. Feb. 5, 2021) (declining, on motion to dismiss implied warranty claim under 12(b)(6), to consider "extraneous materials . . . outside the pleadings," including contract between movant and co-defendant).

[12] Aries states that it is moving for judgment on the pleadings under Rule 12(b)(6), but Rule 12(c) governs such motions. Regardless of whether Aries is moving to dismiss under 12(b)(6) or for judgment on the pleadings under 12(c), the same standard of review applies. *See Swanson v. Speidel Corp*., 110 R.I. 335, 293 A.2d 307, 309 (1972).

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significance of the tie-down rods as critical to the stability of the Washington Bridge; (d) perform an investigation into or evaluation of the cracking discovered along the post-tensioned cables in the post-tensioned cantilever beams; and (e) recommend repairs to address the cracking discovered along the post-tensioned cables in the post-tensioned cantilever beams." (Comp. ¶ 109). "As a direct and proximate result of Commonwealth Engineers' negligence, the State has suffered and will continue to suffer both physical damages to its property and economic damages well in excess of the amount necessary to satisfy the jurisdiction of this Court." (Comp. ¶ 110).

Commonwealth has moved to dismiss Count III for failing to allege any wrongful act or omission. Its entire argument is based on an assertion that Commonwealth makes with regard to two documents extraneous to the Complaint that cannot be reviewed by the Court when ruling upon the sufficiency of the State's claims. Furthermore, even if the Court could consider the documents, at most they create an issue of fact that must be decided by the ultimate factfinder in this action.

The extraneous documents relied on by Commonwealth are inspection reports purportedly submitted by AECOM in 2019 and 2023. Commonwealth claims these inspection reports are referred to in the Complaint, so they are deemed to be incorporated within. Commonwealth is incorrect.

"[W]hen a motion to dismiss includes documents as exhibits that were either mentioned or referred to in a complaint but not expressly incorporated, and the hearing justice does not 'explicitly exclude them from . . . consideration,' the motion 'automatically' converts to one for summary judgment." *Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 22 (R.I. 2018) (quoting *Pontarelli v. Rhode Island Dep't of Elementary & Secondary Educ.*, 176 A.3d 472, 477 (R.I. 2018)) (citations omitted). However, "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).'" *Id*. at 22 (quoting *Jorge v. Rumsfeld*, 404 F.3d 556, 559 (1st Cir. 2005)). The inspection reports at issue were not "expressly incorporated" in the Complaint. They were not even directly referred to. The allegations Commonwealth claims amount to an incorporation of these inspection reports into the Complaint demonstrates as much:

> 68. From 2015 until the fractured tie-down rods were discovered in December of 2023, five engineering firms oversaw inspections of the Washington Bridge and reported their findings to RIDOT pursuant to inspection contracts between the State of Rhode Island and such firms.
>
> 74. After completing its inspection of the Washington Bridge, each engineering firm reported its findings to RIDOT through an inspection report pursuant to an inspection contract between the State of Rhode Island and the firm.

Nor can it be said that the State's allegations are "expressly linked to" or "admittedly dependent on" the inspection reports submitted by AECOM. The State's negligence claim against Commonwealth is based on its negligent conduct in assisting AECOM in conducting the inspections. This claim can be proven without the use of AECOM's inspection reports. The reports cannot, therefore, be considered by the Court when ruling on the sufficiency of the State's claims.

Even if the Court were to consider the reports, however, they do not demonstrate what Commonwealth claims – that it did not assist AECOM with the 2019 and 2023 inspections. The highlighted language is what Commonwealth contends is the smoking gun evidence relieving it of any potential liability:

Bridge Inspection Report

Structure Inventory and Appraisal Sheet (English Units)

Name: Washington Bridge North Agency ID: 070001 Inspec Date: 07/24/2019 Inspected By: AECOM

It argues that if Commonwealth had assisted AECOM in the inspection, the highlighted language would instead read: "Inspected by: AECOM – Commonwealth." But that is a determination of fact that cannot be made by the Court when deciding whether to dismiss the State's count as insufficiently pled. This is demonstrated by Commonwealth's use of a third extraneous document – a "2023 inspection report of the adjacent Eastbound Bridge," which Commonwealth says the Court should review to "alleviate any doubt" that Commonwealth would have been listed on the report by AECOM if it had assisted in the inspections. Obviously, this third report, which is not even tangentially referenced in the Complaint, cannot be considered by the Court when ruling on Commonwealth's 12(b)(6) motion to dismiss. And Commonwealth's need to rely on this third report to help alleviate the Court's doubt proves that Commonwealth is making a factual argument that is not appropriate when the sole issue before the Court is the sufficiency of the State's pleadings. The Court must, therefore, deny Commonwealth's motion to dismiss Count III.

d. Count XIV against Jacobs Engineering is Sufficiently Pled

Jacobs moved to dismiss Count XIV as barred by the economic loss doctrine. As set forth above, *see supra* at pp. 33-38, this doctrine does not apply to the State's negligence actions. Jacobs's motion to dismiss Count XIV of the Complaint should, therefore, be denied.

e. Count XVI against the Joint Venture, Barletta, Aetna, VHB,[13] and Commonwealth Engineers is Sufficiently Pled

1. Joint Venture, Barletta, and Aetna's Motion to Dismiss Should be Denied

In moving to dismiss Count XVI, the Joint Venture, Barletta, and Aetna claim they have no duty to the State independent of its contractual obligations that could form the basis of a duty in

[13] VHB has not filed a motion to dismiss or otherwise challenge this, or any, count of the Complaint.

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tort, and that the State's negligence claims are barred by the economic loss doctrine. They are wrong on both counts, as demonstrated above. *See supra* at pp. 41-42 (discussion regarding the independent duty professional engineers have to act with due care); pp. 33-40 (discussion regarding the inapplicability of the economic loss doctrine). Accordingly, the motion of the Joint Venture, Barletta, and Aetna to dismiss Count XVI for failure to state a claim should be denied.

2. Commonwealth's Motion to Dismiss Should be Denied

Commonwealth also moves to dismiss Count XVI, arguing the State has failed to adequately allege that Commonwealth performed any work under the Joint Venture proposal. Commonwealth's motion must fail, however, as the only reasonable inference to draw from the State's allegations is that Commonwealth did perform work under the Joint Venture proposal, and that work was negligent.

The State alleges that the Joint Venture's Design-Build proposal identified Commonwealth as a supplemental designer on the Bridge rehabilitation project, (Comp. ¶ 84), specifying it would perform "structural/bridge design." (Comp. ¶ 88). The proposal further specified that Commonwealth would "perform independent steel and camber designs as added quality review during the design phase" and "independent review of structural steel, prestressed girder, and camber designs as well as additional rehabilitation design tasks." (Comp. ¶ 89). The State then alleges that Commonwealth breached its duty to act with due care by "failing to (a) conduct a reasonably adequate 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 an inspection of the Washington Bridge in conformance with the standard of care customary in the professional engineering, consulting, construction, and design industry; (c) recognize the importance and significance of the tie-down rods as critical to the stability of the Washington

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Bridge; (d) perform an investigation into or evaluation of the cracking discovered along the post-tensioned cables in the post-tensioned cantilever beams; and (e) recommend repairs to address the cracking discovered along the post-tensioned cables in the post-tensioned cantilever beams." (Comp. ¶¶ 169-170).

The State is not required to plead any particular facts to sufficiently state a claim for negligence. To withstand Commonwealth's motion to dismiss, the only requirement is that the State's allegations give Commonwealth adequate notice of the State's "claim and that the claim *may entitle the plaintiff to relief under any conceivable set of facts*." *Rhode Island Econ. Dev. Corp. v. Wells Fargo Secs.*, 2013 WL 4711306, at *14 (R.I. Super. Aug. 28, 2013) (emphasis added) (citing *Narragansett Elec. Co. v. Minardi*, 21 A.3d 274, 277 (R.I. 2011); *McKenna v. Williams*, 874 A.2d 217, 225 (R.I. 2005)). Only if "'it is clear beyond a reasonable doubt that the [State] would not be entitled to relief from [Commonwealth] under any set of facts that could be proven in support of the [State] claim'" may the Court grant the motion to dismiss. *Mokwenyei v. Rhode Island Hosp.*, 198 A.3d 17, 21 (R.I. 2018) (quoting *Rein v. ESS Grp.*, 184 A.3d 695, 699 (R.I. 2018)).

It is clear that the State is alleging Commonwealth did perform work as part of the Joint Venture and that such work was negligent, resulting in the State suffering damages. Commonwealth's motion to dismiss Count XIV must, therefore, be denied.

III. The Complaint Adequately States a Claim for Breach of Fiduciary Duty

The elements of a claim for breach of fiduciary duty are "'(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach.'" *Rhode Island Econ. Dev. Corp. v. Wells Fargo Secs.*, 2013 WL 4711306, at *31 (R.I. Super. Aug. 28, 2013) (quoting *Rhode Island Res. Recovery Corp. v. Van Liew Trust Co.*, No. PC-10-4503, May 13, 2011,

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Silverstein, J., at 14). "The 'term 'fiduciary' is a broad concept that might correctly be described as 'anyone in whom another rightfully reposes trust and confidence.'" *Id*. (quoting *A. Teixeira & Co. v. Texeira*, 699 A.2d 1383, 1387 (R.I. 1997)). "A 'fiduciary relationship 'arises whenever confidence is reposed on one side, and domination and influence result on the other' or 'when there is a reposing of faith, confidence and trust, and the placing of reliance by one upon the judgment and advice of the other.'" *Id*. (quoting *Rhode Island Res. Recovery Corp.*, No. PC-10-4503, May 13, 2011, at 15). "'Divining the existence of a fiduciary duty is a fact-intensive enterprise.'" *Id*. (quoting *Cafe La France, Inc. v. Schneider Secs.*, 281 F. Supp. 2d 361 (D.R.I 2003)). "'Among the relevant factors are the degree to which one party relies upon the other, the history of the parties' relationship preceding the incident spawning the alleged breach, the parties' relative levels of business sophistication, and the willingness of one party to accept guidance from the other.'" *Id*. (quoting *Café La France*).

AECOM has moved to dismiss Count V, arguing the State has failed to allege the existence of a fiduciary duty. On the contrary, the State's allegations are sufficient to state that AECOM owed a fiduciary duty to the State. The State alleges AECOM held itself out as the number one design firm and assured the State it had extensive experience with the deterioration of important structures and the Bridge's history in particular. (Comp. ¶¶ 55-57). AECOM held itself out "as a trusted expert in professional engineering, consulting, construction, and design" and in reliance on those representations, the State "reasonably and justifiably relied upon AECOM's purported expertise." (Comp. ¶¶ 116-117). In so doing, it retained AECOM to act as its "Consultant in connection with the 2014 Contract" and as "RIDOT's Owner Representative in connection with the 2019 Design-

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Build Proposal."[14] (Comp. ¶¶ 77, 118-119). In agreeing to serve as a Consultant and Owner's Representative, AECOM assumed fiduciary duties, (Comp. ¶¶ 118-119), which the State then alleges AECOM breached. (Comp. ¶ 120). As the State has "pled that it rightfully reposed trust and confidence in" AECOM, it has sufficiently pled that AECOM owed it a fiduciary duty. *See Rhode Island Econ. Dev. Corp. v. Wells Fargo Secs.*, 2013 WL 4711306, at *33 (R.I. Super. Aug. 28, 2013) (citing *A. Teixeira & Co., Inc. v. Texeira*, 699 A.2d 1383, 1387 (R.I. 1997)). The Court should, therefore, deny AECOM's motion to dismiss Count V of the Complaint. AECOM's motion in the alternative for a more definite statement should also be denied on the same basis.

IV. The Complaint Adequately States Claims for Contractual Indemnity

a. Count XVII against Defendant AECOM is Sufficiently Pled

In Count XVII, the State brings a count for contractual indemnity in which it alleges that 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." (Comp. ¶ 174). It further alleges the contractual obligations owed by AECOM "arise out of the express contract between [AECOM] and the State and by virtue of 220 R.I. Code R. 30-00-13.21." (Comp. ¶ 176).

AECOM argues this count must be dismissed because the State has not alleged it is subject to any third-party liability. However, the State's claim for contractual indemnity is governed by the terms of the contracts between the parties, which the State alleges are not limited to damages

[14] By acting as RIDOT's Owner's Representative, AECOM was acting as the State's agent, which supports a finding that it was acting as the State's fiduciary. *See Rhode Island Econ. Dev. Corp*, 2013 WL 4711306, at *33 ("'The existence of an agency supports the finding that a confidential relationship was established between brother and sister, as an agent always stands in the position of a fiduciary to his principal.'") (quoting *Cahill v. Antonelli*, 120 R.I. 879, 883, 390 A.2d 936, 939 (1978) (using "confidential" and "fiduciary" interchangeably)).

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arising from third-party liability. The State's allegation, which must be taken as true, is that AECOM has "agreed to defend, indemnify, and hold harmless the State for all damages, losses, or expenses arising out of any of its acts or omissions." (Comp. ¶ 174). Under this provision, third-party liability is irrelevant.

In addition to the express terms of the contract, the State has also alleged that AECOM's obligation to indemnify arises from 220 R.I. Code R. 30-00-13.21, which provides:

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

220 R.I. Code R. 30-00-13.21(A.). While this provision enumerates third-party claims, it also expressly includes broader categories of "losses" and "damages." These terms are not qualified or limited to third-party contexts, and, under their plain and ordinary meaning, encompass the first-party damages the State has suffered as a result of AECOM's conduct.

AECOM next argues the State's count for contractual indemnity must be dismissed because it is derivative of the State's negligence action and is, therefore, barred by the economic loss doctrine. This argument fails because, as demonstrated above, *see supra* at 33-40, the economic loss doctrine is not applicable to the State's negligence claims. Furthermore, AECOM's violations of its contractual obligations can also form the basis of its duty to indemnify under the contracts between AECOM and the State as well as 220 R.I. Code R. 30-00-13.21(A.), which requires indemnification for damages "arising out of, or related to, directly or indirectly, in whole or in part, Vendor's breach of the Contract." Thus, AECOM can be held liable for contractual indemnity whether its conduct giving rise to the State's damages amounts to negligence or breach of contract.

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Finally, AECOM argues this count must be dismissed as premature because there is no third-party judgment for which the State has been found liable. But, as demonstrated above, third-party liability is irrelevant to the State's contractual indemnity count.[15] Each of AECOM's arguments in favor of dismissing the State's contractual indemnity count must, therefore, be rejected by the Court.

b. Count XVII against the Joint Venture, Barletta, and Aetna is Sufficiently Pled

In Count XVII, the State also brings a count for contractual indemnity against Aetna, Barletta, and the Joint Venture in which it alleges that the Joint Venture "agreed to defend, indemnify, and hold harmless the State for all damages, losses, or expenses arising out of its acts or omissions, without regard for whether such damages, losses, or expenses were foreseeable." (Comp. ¶ 175). It further alleges the contractual obligations owed by "the Joint Venture arise out of the express contract between [the Joint Venture] and the State and by virtue of 220 R.I. Code R. 30-00-13.21." (Comp. ¶ 176).

Unlike AECOM, Defendants Aetna, Barletta, and the Joint Venture move to dismiss the State's claim for contractual indemnity because they contend it is derivative of the State's claim for breach of contract, which they argue the State has failed to sufficiently plead. As demonstrated above, however, the State has sufficiently pled a cause of action for breach of contract against Defendants Aetna, Barletta, and the Joint Venture. *See supra* at pp. 28-32. Accordingly, the Court must deny their motion to dismiss this count for contractual indemnification.

[15] Each of the cases cited by AECOM is inapposite. *See A & B Const. v. Atlas Roofing & Skylight Co.*, 867 F. Supp. 100, 113-14 (D.R.I. 1994) (reviewing claim for "implied equitable indemnity," not express contractual indemnity, which is at issue here); *Muldowney v. Weatherking Prods.*, 509 A.2d 441, 443 (R.I. 1986) (holding third-party liability is necessary element of claim for equitable indemnity); *Runyan v. United Broth. of Carpenters*, 566 F. Supp. 600, 609 (D. Colo. 1983) (denying motion for summary judgment on claim for indemnification raised in labor dispute).

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c. Count XVIII against AECOM is Sufficiently Pled

In Count XVIII, the State seeks declaratory judgment regarding its "entitlement to contractual defense and indemnity for claims hereinafter asserted by one or more third parties against the State that arise out of the acts or omissions of AECOM." (Comp. ¶ 180). It asserts that it is entitled to indemnity "[t]o the extent that in the future, the State incurs damages, losses, and/or expenses 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 . . . ." (Comp. ¶ 182). AECOM has moved to dismiss this claim on the ground that it does not present an actual controversy in that the State's request for declaratory relief is contingent on uncertain future events that may never come to pass. AECOM's motion should be denied because the State's claim presents a justiciable controversy suitable for resolution by the Court.

Under Rhode Island's Uniform Declaratory Judgments Act, the Court has 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. "Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." R.I. Gen. Laws § 9-30-2. A contract need not have been breached in order for the Court to construe the contract. *See* R.I. Gen. Laws § 9-30-3. The purpose of the Act "is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered." R.I. Gen. Laws § 9-30-12. "While the Court has, under the Uniform Declaratory Judgments Act, a great deal of discretion in deciding whether to grant declaratory relief, the Court does not have that discretion to dismiss such a claim." *Abad v. City of Providence*,

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No. CIV.A. 01-2223, 2004 WL 2821310, at *12 (R.I. Super. Oct. 5, 2004), *aff'd sub nom. Arena v. City of Providence*, 919 A.2d 379 (R.I. 2007), (citing *Redmond v. Rhode Island Hosp. Trust Nat'l Bank*, 120 R.I. 182, 186 (R.I. 1978)). As with other motions to dismiss under Rule 12(b)(6), a motion to dismiss a claim for declaratory judgment "should not be [granted] on the grounds of a failure to state a claim upon which relief can be granted unless it is clear beyond a reasonable doubt that the plaintiff is not entitled to relief no matter what set of facts might be proved in support of the claim." *Redmond* at 187.

An actual controversy exists for resolution under the Act. The State seeks judicial clarification of AECOM's contractual indemnity obligations for damages caused by AECOM's conduct. AECOM's argument that the claim is hypothetical or premature mischaracterizes the nature of the State's action. The State is not seeking an advisory opinion but rather a binding determination of AECOM's contractual indemnity obligations. A "controversy [is] justiciable under the Act so long as plaintiff(s) present sufficient facts giving rise to some conceivable legal hypothesis which will entitle plaintiff to some relief against defendant(s)." *FleetBoston Fin. Corp. v. Advanta Corp.*, No. CIV.A. PB 03-0220, 2003 WL 22048742, at *5 (R.I. Super. Aug. 13, 2003) (citing *Millette v. Hoisting Eng's' Licensing Div.*, 377 A.2d 229, 234 (R.I. 1977)). The State has done that here by alleging the facts regarding AECOM's acts or omissions, which directly caused substantial damages to the State. These allegations establish a concrete and ongoing dispute over AECOM's obligations under the indemnity provision of the contract, which can be decided even though third-party claims may yet be asserted against the State arising out of AECOM's acts and omissions. *See FleetBoston*, 2003 WL 22048742, at *5 (finding existence of justiciable controversy for declaratory judgment action regarding indemnification from federal tax liabilities despite issue of ultimate tax liability not yet being resolved). AECOM's duty to indemnify does

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not depend on the resolution of any future third-party claims; the Court has the power to proceed over the State's declaratory judgment action in order to ensure an efficient and effective resolution of the dispute over AECOM's indemnity obligations.

d. Count XVIII against the Joint Venture, Barletta, and Aetna is Sufficiently Pled

In Count XVIII, the State also seeks declaratory judgment regarding its "entitlement to contractual defense and indemnity for claims hereinafter asserted by one or more third parties against the State that arise out of the acts or omissions of . . . the Joint Venture." (Comp. ¶ 180). Defendants Aetna, Barletta, and the Joint Venture have moved to dismiss this count on the ground that they moved to dismiss Count XVII – that it is derivative of the State's breach of contract claim, which they contend has not been sufficiently pled. As the State has, however, sufficiently pled a cause of action for breach of contract against Defendants Aetna, Barletta, and the Joint Venture, *see supra* at 28-32, the Court must deny their motion to dismiss this count for declaratory judgment regarding contractual indemnity.

V. The Complaint Adequately States Claims for Declaratory Judgment

In the final two counts of its Complaint, the State seeks declaratory judgment as to all Defendants for non-contractual indemnity as to all Defendants (Count XIX) and contribution as to all Defendants (Count XX). Defendants argue these claims are not justiciable because they are contingent on the actions of unspecified third parties and that they are insufficiently pled because the State has not identified the third parties or that the State has been held liable to any third party. But, as with the State's claim in Count XVIII for declaratory relief regarding contractual indemnity, the State's allegations establish a concrete and ongoing dispute over Defendant's non-contractual indemnity and contribution obligations, which can be decided even though third-party claims have yet to be asserted against the State.

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In seeking declaratory judgment regarding non-contractual indemnity, the State alleges that "in the future, [it] may be held liable to one or more third parties as a result of the active fault and wrongful conduct of AECOM, Aetna, Aries Support Services, Barletta, the Joint Venture, Collins, Commonwealth Engineers, Jacobs Engineering, MBI, Prime, Steere, TranSystems, and VHB, and each of them, through the doctrine of respondeat superior or other forms of vicarious liability, the State, as the entity passively at fault, is entitled to indemnity from AECOM, Aetna, Aries Support Services, Barletta, the Joint Venture, Collins, Commonwealth Engineers, Jacobs Engineering, MBI, Prime, Steere, TranSystems, and VHB, and each of them." (Comp. ¶ 184). It makes essentially the same allegation in support of its claim for declaratory judgment regarding contribution – "To 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 AECOM, Aetna, Aries Support Services, Barletta, the Joint Venture, Collins, Commonwealth Engineers, Jacobs Engineering, MBI, Prime, Steere, TranSystems, and VHB, and each of them, as joint tortfeasors." (Comp. ¶ 188).

While the State's ultimate liability for any third-party claims is, of course, dependent on third-parties filing such claims, this does not render the State's declaratory judgment claims hypothetical or non-justiciable. The Court may award declaratory relief under the Uniform Declaratory Judgments Act to clarify the parties' rights and obligations even when future events may further define the scope of those rights and obligations. *See FleetBoston*, 2003 WL 22048742, at *5 (finding existence of justiciable controversy for declaratory judgment action regarding indemnification from federal tax liabilities despite issue of ultimate tax liability not yet being resolved). For a controversy to be justiciable under the Act, the plaintiff need only present "sufficient facts giving rise to some conceivable legal hypothesis which will entitle plaintiff to

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some relief against defendant(s).” *Id*. at *5. The State has adequately alleged that it faces ongoing uncertainty regarding its indemnity and contribution rights against Defendants who are alleged to have negligently contributed to the bridge’s failure. Resolving these claims now serves the interests of judicial economy and ensures that the parties’ respective responsibilities are clearly defined, minimizing future disputes.

Furthermore, the State is not required at this stage to prove its liability or that of the Defendants, but need only present sufficient facts to support a plausible claim for non-contractual indemnification and contribution. The Complaint sets forth detailed allegations of the Defendants’ negligence and their respective roles in the Bridge’s failure, demonstrating that Defendants share responsibility for the damages incurred. As these allegations put Defendants on notice that the State’s potential liability could arise from the Defendants’ actions, the non-contractual indemnification and contribution claims are sufficiently pled and should proceed. Accordingly, Defendants’ arguments that Counts XIX and XX are non-justiciable or insufficiently pled should be rejected.

Defendant Commonwealth also argues that Counts XIX and XX must be dismissed because the State has failed to join in this action the third parties who have an interest in the State’s claims for declaratory judgment. Commonwealth is incorrect. The Uniform Declaratory Judgments Act requires that “all persons shall be made parties who have or claim any interest which would be affected by the declaration.” R.I. Gen. Laws § 9-30-11. This provision only requires the joinder of parties who have an “actual, present, adverse, and antagonistic interest in the subject matter” of the suit. *Town of Warren v. Bristol Warren Reg’l Sch. Dist*., 159 A.3d 1029, 1037 (R.I. 2017). Here, the as-yet unidentified third parties do not (and could not) have a claim or interest that would be affected by the Court’s declaration. The State seeks only a determination

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regarding Defendants' obligations to indemnify or contribute to the State in the event of third-party liability – this matter pertains solely to the relationships and responsibilities between the State and the Defendants and can be decided without prejudicing any absent third parties. It is not necessary, therefore, to join these third parties in this action.

Defendants' arguments that the economic loss doctrine bars the State's claims for declaratory judgment also fail. The State's claims for declaratory judgment do not seek recovery of purely economic losses – they seek a determination of the Defendants' obligations to indemnify or contribute to any liability the State may face. Whether a third-party claim is subject to the economic loss doctrine would be determined when that claim is adjudicated – not prior to such claims being raised when the State is merely seeking declaratory relief regarding its indemnity and contribution rights.

As the State's claims for declaratory judgment are justiciable and sufficiently pled, the Court must deny Defendants' motions to dismiss or otherwise dispose of Counts XIX and XX.

CONCLUSION

The State's Complaint sufficiently states cognizable causes of action for breach of contract, negligence, breach of fiduciary duty, contractual indemnity, and declaratory judgment. Accordingly, the Court should deny Defendants' Rule 12 motions in their entirety. In the event, however, the Court is inclined to grant Defendants' motions in whole or in part, the Court should do so without prejudice for the State to amend its Complaint. *See Hendrick v. Hendrick*, 755 A.2d 784, 794 (R.I. 2000) (explaining it has been "'consistently held that Rule 15(a) liberally permits amendment absent a showing of extreme prejudice.'") (quoting *Wachsberger v. Pepper*, 583 A.2d 77, 78 (R.I. 1990)).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 7TH day of January 2025, 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/ *Michael P. Robinson*