No. 28202 -- Eastern Steel Constructors, Inc., a Maryland corporation doing business in the State of West Virginia v. The City of Salem, a municipal corporation; and Kanakanui Associates, a West Virginia corporation, and unidentified John Doe defendants
and
The City of Salem, a municipal corporation v. Old Republic Surety Company, a corporation domiciled in the State of Wisconsin

Starcher, J., concurring:

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In *Aikens v. Debow*, 208 W.Va. 486, ___, 541 S.E.2d 576, 592 (2000), this Court took what I referred to as a "bold step forward" and recognized that a particular tortfeasor may owe a certain, clearly foreseeable party a duty of due care to avoid causing that party a "purely economic loss." Our law exists to provide remedies to those persons or entities who are injured, even when that "injury" is purely an economic loss, as a direct and proximate cause of a tortfeasor's carelessness.

I concur to the majority's opinion because it again represents a careful, well-reasoned step forward. The opinion demonstrates the principle that a defendant's duty toward a plaintiff is highly fact-dependent, and relative to the "circumstances of time, place, manner or person." Syllabus Point 1, *Dicken v. Liverpool Salt & Coal Co.*, 41 W.Va. 511, 23 S.E. 582 (1895).

The majority's opinion demonstrates that this Court cannot endeavor to predict every situation where a tortfeasor's actions may have an adverse effect on a party's economic interests, and when under *Aikens v. Debow* those actions may form the basis for liability. As I suggested in my concurrence to *Aikens* -- and as the majority's opinion now makes crystal clear -- the evaluation of whether a defendant in a particular case owed a plaintiff a duty of care to not cause the plaintiff an economic loss is

a question for courts to consider on a case-by-case basis. *See Aikens*, 208 W.Va. at ___, 541 S.E.2d at 595.

I agree with the majority's analysis of the circumstances of time, place, manner and people surrounding the designing of the sewer system by defendant Kanakanui Associates, and the subsequent reliance by plaintiff Eastern Steel Constructors upon the plans made by Kanakanui. It is reasonably foreseeable to the average person, even the absence of privity of contract, that a contractor may be economically harmed when a design professional carelessly drafts plans for a project. It was definitely foreseeable to Kanakanui that plaintiff Eastern -- even though only theoretically known to Kanakanui when the plans were drafted -- could be financially harmed by mistakes in the plans. Therefore, a "special relationship" existed between the drafter of the plans, and the people who were expected to rely on the plans. The defendant designer therefore owed the plaintiff contractor a duty to carefully conduct its craft so as to avoid inflicting foreseeable economic losses that could result from carelessly drafted plans.

I applaud the majority's exacting analysis of the instant case. I therefore respectfully concur.