

**UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT**

No. 25-2006

LISA DEBAR, Individually and as personal representative of
the Estate of Cody Hatt,
Appellant

v.

FIRSTENERGY CORP.; FIRSTENERGY GENERATION LLC;
FIRSTENERGY SOLUTIONS CORP.; FIRSTENERGY
PENNSYLVANIA ELECTRIC CO.; FIRSTENERGY SERVICE CO.; ET
AL.

AMENDED PURSUANT TO CLERKS ORDER DATED 7/14/25

On Appeal from the U.S. District Court, E.D. Pa.
Chief Judge Wendy Beetlestone, No. 2:24-cv-05164

Before: RESTREPO, BIBAS, and FISHER, *Circuit Judges*
Argued: Apr. 20, 2026; Filed: Oct. 14, 2026

OPINION OF THE COURT

FISHER, *Circuit Judge*.

Cody Hatt suffered fatal injuries while working for a demolition contractor that was tearing down a power plant in Pennsylvania known as Hatfield's Ferry. His mother, as his survivor and on behalf of his estate, sued the owner and operators of the plant for negligence. The District Court dismissed the complaint.

Two Pennsylvania tort law doctrines govern this appeal. First, when a property owner hires an independent contractor to work on the property, the owner does not owe a duty to employees of the contractor. There is an exception when the owner hires a contractor but retains detailed control over the job—over not only what is to be done, but how and by whom. The retained-control exception is difficult to show; an owner does not retain control by imposing safety requirements or contract specifications for the work. Here, the plaintiff has not alleged facts that, if true, would demonstrate that the defendants retained sufficient control. The second applicable tort law doctrine is that a landowner has no duty to protect those invited onto its land from dangers that are open and obvious. The risks of demolishing the long-disused Hatfield's Ferry Power Station were indeed obvious, and the complaint fails to allege otherwise. We will therefore affirm.

I.

A. Which documents we consider

At the outset, we confront the question of what parts of the record to consider on appeal. When ruling on a motion to dismiss, “courts may consider documents integral to or explicitly relied upon in the complaint, or any undisputedly

authentic document that a defendant attaches . . . to a motion to dismiss if the plaintiff’s claims are based on the document.” *In re Asbestos Prod. Liab. Litig. (No. VI)*, 822 F.3d 125, 133 n.7 (3d Cir. 2016) (citation modified). The parties attached five documents to the complaint and the motion to dismiss. All of them are within bounds for us to consider, but we rely primarily on the two about which DeBar has expressed no objection: the demolition contract and the Specification.

The demolition contract. DeBar attached to her complaint a document titled “Purchase Order,” which was the demolition contract between North American Dismantling and FirstEnergy Service. The District Court took this document into account, and correctly so: the demolition contract is “integral to or explicitly relied upon in the complaint.” *In re Asbestos Prod.*, 822 F.3d at 133 n.7.

The Specification. DeBar alleged that FirstEnergy Service created the “Generation Specification of the Hatfield Power Plant . . . , which set forth detailed specifications for how the demolition work was to be performed.” App. 965. FirstEnergy Service attached to its motion to dismiss a document titled “FIRSTENERGY GENERATION, LLC SPECIFICATION FLT-SPEC-XX-XXXX FOR DEMOLITION OF HATFIELD POWER PLANT,” App. 1052. The District Court did not consider this document because its title does not exactly match the references in the complaint. But if the mismatch created doubt, DeBar has cleared it up on appeal: in her brief, she cites FirstEnergy’s Specification document, treating it as a source of information about the parties’ contract. In other words, she does not dispute

the Specification's authenticity. Additionally, DeBar's claims are based on this document, which outlines FirstEnergy's requirements for the demolition project. So we will consider the Specification.

The remaining documents. DeBar referenced two other documents in the complaint but did not attach them: the "FE Generation Personal Safety Manual" and the FirstEnergy Service "Code of Conduct." App. 966. It is unclear whether either of these documents is among the three FirstEnergy attachments to its motion to dismiss: the "Preliminary Work Plan for FirstEnergy – Demolition, Hatfield Power Plant," App. 1137; North American Dismantling's "Environmental, Health, Safety and Security Plan and Manual for FirstEnergy Hatfield Power Plant," *id.* at 1169; and the "North American Dismantling Corp. Safety Program," *id.* at 1194. Even if these attachments are not the documents DeBar referenced in the complaint, we still may consider them if they are "undisputedly authentic" and DeBar's "claims are based on [them]." *In re Asbestos Prod.*, 822 F.3d at 133 n.7.

DeBar has not questioned the authenticity of the documents. And her claims are based on the documents, because—like the demolition contract and Specification—they lay out the duties of FirstEnergy Service and North American Dismantling with regard to the Hatfield's Ferry demolition project. So we may take these attachments into account as well.

In the District Court, DeBar complained that FirstEnergy Service "carefully controlled the documents . . . that it wishe[d] for the Court to consider," providing some "while holding back others." App. 1668 n.2. Even without

considering the “Preliminary Work Plan,” the “Environmental, Health, Safety and Security Plan,” and the “North American Dismantling Corp. Safety Program”—the documents FirstEnergy Service “wishe[d] for the Court to consider,” *id.*—the complaint fails to state a claim.¹

B. Factual and procedural history

1. The plant and the contract

Allegheny Energy Supply owned a coal-fired power plant, the Hatfield’s Ferry Power Station, in Carmichaels, Pennsylvania. The plant was operated by FirstEnergy Corp. and FirstEnergy Service. In 2013, FirstEnergy Corp. and FirstEnergy Service, under pressure from the Environmental Protection Agency, decided to shut down coal generation at Hatfield’s Ferry. In 2022, demolition of the plant began—including its two cooling towers, which were around 500 feet high, and its three emissions stacks, which ranged from 540 to 700-plus feet.

FirstEnergy Service contracted with North American Dismantling to complete more than \$4 million worth of demolition work at the plant. FirstEnergy Service entered into the contract, titled a “Purchase Order,” “on its own behalf and on behalf of its affiliates,” who were not named. App. 1009. FirstEnergy assigned a buyer and a project manager to the project who used e-mail addresses with the domain “@firstenergycorp.com.” *Id.* at 1010. The Specification called

¹ Defendants argue persuasively that these documents further show that the District Court correctly dismissed the complaint. *See* Appellee’s Br. 9–13, 40–41.

for a “Purchaser’s Engineer” to serve as “the designated Engineering Representative from the Project Engineering Department, FirstEnergy Corp.” *Id.* at 1056. North American Dismantling was to submit invoices “electronically at the FirstEnergy Supplier Portal,” which had a “firstenergycorp.com” web address, and to direct payment questions to an e-mail address with the “@firstenergycorp.com” domain. *Id.* at 1010.

The contract provided that the demolition work was to be performed “in accordance with [FirstEnergy’s] Generation Specification of Hatfield Power Plant.” *Id.* at 1010. FirstEnergy Service had “unobstructed access to Contractor’s or any of its Subcontractors’ Work, facilities, procedures and records for the purpose of observing and reviewing Work completion and quality.” *Id.* at 1014. The work was “subject to [FirstEnergy Service’s] inspection, tests, and count at any time or place at [FirstEnergy Service’s] discretion.” *Id.* North American Dismantling’s employees working at Hatfield were “subject to [FirstEnergy Service’s] continuing approval,” and FirstEnergy Service retained the right to “object to any [North American Dismantling] employee who, in [FirstEnergy Service’s] opinion, did not meet” the contract criteria “or whose performance [was] unsatisfactory.” *Id.* at 1015. If FirstEnergy Service objected to a North American Dismantling employee, North American Dismantling was required to “immediately replace or remove such individual.” *Id.*

For its part, North American Dismantling agreed that it would be “considered an independent contractor . . . responsible for all acts and omissions (negligent or otherwise)

of its agents, employees and subcontractors.” *Id.* at 1013. North American Dismantling was “alone . . . liable and responsible for the manner and methods by which the Work [was] performed and for materials, work force and equipment.” *Id.* North American Dismantling “assume[d] full responsibility for [its] employees’ acts and omissions (negligent or otherwise)” and was required to “enforce all . . . worker health and safety and similar requirements.” *Id.* at 1015.

With regard to safety, North American Dismantling agreed it was “solely responsible for the safety and health of its employees” and would “conduct the Work in a manner to avoid risk of bodily harm to persons or damage to property.” *Id.* at 1016. North American Dismantling further committed to “take all necessary safety and health precautions, and . . . do everything necessary to prevent accidents or injury to persons on . . . the premises.” *Id.* In addition, it would “not require any employee . . . to work in surroundings or under working conditions that [were] . . . hazardous, or dangerous to safety or health.” *Id.*

North American Dismantling also agreed that it had “examined the site in all ways pertinent to performance required by the Specification, and that it [had] informed itself concerning the physical and geological conditions to be encountered . . . [and] the character of the Work to be performed.” *Id.* at 1027. The Specification further provided that FirstEnergy Service “assume[d] no responsibility for buildings and structures to be Demolished. Conditions existing at time of inspection for bidding purpose [would] be maintained by [FirstEnergy Service] as far as practical.” *Id.* at

1082.

Drawing on the contract documents, DeBar alleged that FirstEnergy Service “exerted actual control over the [demolition] work by instructing and/or directing [North American Dismantling]” where, when, by what means, and with what equipment to do the work and by “giving instructions and/or directions to [North American Dismantling] personnel as to the manner of doing the actual demolition work.” *Id.* at 965. DeBar also alleged that FirstEnergy Service required North American Dismantling to comply with a “Code of Conduct” and with the Specification document, which “set forth detailed specifications for how the demolition work was to be performed.” *Id.*

To further support her allegations that FirstEnergy Service actually controlled the work, DeBar invoked the “FE Generation Personal Safety Manual.” *Id.* at 966. And she noted the assignment to the project of the FirstEnergy Service project manager and purchaser representative, who oversaw “contracted personnel to assure compliance with the contract documents . . . , field construction work and continuous monitoring of project safety.” *Id.* at 966, 967. She alleged that when North American Dismantling “elected to or intended to do the work in a manner inconsistent with how [FirstEnergy Service] dictated” in the Specification, Personal Safety Manual, and Code of Conduct, FirstEnergy Service “forced strict compliance with [those] documents, thereby exerting actual control.” *Id.* at 967. DeBar also alleged that FirstEnergy Service’s purchaser representative was responsible to, and actually did, “monitor[] and evaluat[e]” the work and “conduct

safety audits,” on the basis of which FirstEnergy Service “issued instructions and/or directions to [North American Dismantling] personnel concerning how the work was to be performed.” *Id.* at 966–68.

2. The accident

On September 28, 2022, Cody Hatt, an employee of North American Dismantling, was demolishing one of the smokestacks at Hatfield’s Ferry. He had been assigned to “dismantl[e] a metal and/or steel catwalk affixed to the smokestack. The catwalk catastrophically failed and collapsed,” and Hatt fell and landed on a different catwalk forty feet below. *Id.* at 970. His injuries were “catastrophic” and “horribly painful.” *Id.* at 971. He was taken to the hospital at West Virginia University where, tragically, he died. Hatt was twenty-nine years old and is survived by his two minor children; his father; and his mother, plaintiff Lisa DeBar.

3. Procedural history

In June 2024, DeBar filed a wrongful death and survival action against numerous defendants in Pennsylvania state court. FirstEnergy Service removed to the United States District Court for the Eastern District of Pennsylvania based on diversity jurisdiction.² In February 2025, DeBar voluntarily

² DeBar was, and Hatt had been, a resident of Michigan. The defendants are all citizens of Ohio. Damages for Hatt’s injuries, pain and suffering, and loss of future earnings are more than \$75,000. Thus, the District Court had jurisdiction under 28 U.S.C. § 1332.

dismissed her claims against one group of defendants, the EnergyHarbor defendants.

After DeBar amended her complaint, FirstEnergy, FirstEnergy Service, and Allegheny Energy Supply moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. *Debar v. FirstEnergy Corp.*, No. CV 24-5164, 2025 WL 1241903, at *1 (E.D. Pa. Apr. 29, 2025). The District Court dismissed the claims against First Energy and FirstEnergy Service with prejudice, and those against Allegheny Energy Supply without prejudice. *Id.* at *5, *7, *8. Rather than amending again, DeBar elected to stand on her complaint. Consequently, the District Court converted the dismissal of the claims against Allegheny Energy Supply to a with-prejudice dismissal. DeBar appeals.

II.

The District Court had jurisdiction under 28 U.S.C. § 1332 (diversity). We have jurisdiction under 28 U.S.C. § 1291 (final decisions of district courts).

To be final under § 1291, a district court's decision must dispose of all claims against all defendants. *Carter v. City of Phila.*, 181 F.3d 339, 343 (3d Cir. 1999). In addition, an order dismissing claims without prejudice is not final. *Morton Int'l, Inc. v. A.E. Staley Mfg. Co.*, 460 F.3d 470, 477 (3d Cir. 2006). When DeBar filed this appeal, finality was lacking because the claims against some defendants, the EnergyHarbor defendants, had been dismissed without prejudice. After appealing, however, DeBar “unequivocally renounc[ed] any intention to take further action against the Energy Harbor Defendants.”

Dkt. 17 at 6. Accordingly, all claims are finally adjudicated, and we have jurisdiction. *Tiernan v. Devoe*, 923 F.2d 1024, 1031 (3d Cir. 1991).

We review *de novo* a grant of a motion to dismiss for failure to state a claim. *Abramowski v. Nuvei Corp.*, 166 F.4th 391, 393 n.2 (3d Cir. 2026).

III.

DeBar argues that the District Court erroneously dismissed the claims against FirstEnergy Service, FirstEnergy Corp., and Allegheny Energy Supply. She offers one theory of liability for each of these defendants. None reveal an error.

A. FirstEnergy Service did not owe a duty to Hatt because he worked for an independent contractor and FirstEnergy Service did not retain control of the site

For over a century, it has been settled law in Pennsylvania “that a landowner who engages an independent contractor is not responsible for the acts or omissions of such independent contractor or his employees.” *Beil v. Telesis Const., Inc.*, 11 A.3d 456, 466 (Pa. 2011) (citing *Pender v.*

Raggs, 35 A. 1135 (Pa. 1896)).³ The very title of an independent contractor “implies that the contractor is independent in the manner of doing the work contracted for.” *Id.* (quoting *Silveus v. Grossman*, 161 A. 362, 364 (Pa. 1932)).

An exception to the general rule applies “when the owner retains control over the manner in which the work is done.” *Id.* “The primary question in many premises cases,” including this one, “is whether the property owner [who hired] . . . the independent contractor retained sufficient control of the work to be legally responsible for the harm to the plaintiff.” *Id.* Either contractual language or actual conduct can show that the hiring party retained control. *Id.* at 467. For the exception to apply, the hiring party “must have retained at least some degree of control over the manner in which the work is done.” *Id.* at

³ The parties have not advanced any arguments about two issues, which we note here, and as to which we accept their mutual conclusions. First, choice of law: the parties and the District Court have treated Pennsylvania law as controlling. We follow suit. *See Williams v. BASF Catalysts LLC*, 765 F.3d 306, 316–17 (3d Cir. 2014). Second, although many Pennsylvania retained-control cases involve landowner defendants, FirstEnergy Service operated Hatfield’s Ferry Power Station rather than owning it. Regardless, the retained-control rule applies. As the District Court explained, Pennsylvania “case law amply illustrates that the rule is not limited to [landowners],” but applies generally to parties who hire independent contractors. *Debar v. FirstEnergy Corp.*, No. CV 24-5164, 2024 WL 5008504, at *3 n.3 (E.D. Pa. Dec. 6, 2024) (collecting cases). We use the terms “owner” and “hiring party” interchangeably.

466 (quoting Restatement (Second) of Torts § 414, cmt. c). The control must extend to the contractor’s “methods of work, or as to operative detail,” in such a manner “that the contractor is not entirely free to do the work in his own way.” *Id.* at 467 (quoting Restatement § 414, cmt. c). The hiring party does not retain control merely by reserving “a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations.” *Id.* at 466 (quoting Restatement § 414, cmt. c). Those who hire contractors often have such rights, which do not trigger the exception. *Id.* at 466–67.

The retained-control exception is “narrow[.]” *Id.* at 467. In particular, “consistent pronouncements by [Pennsylvania] courts” over the past fifty years establish that “certain safety-related conduct, including the employment of on-site safety representatives with the authority to stop work, does not constitute control of the work site as a matter of law.” *Id.* at 468. Nor is control established by “a property owner retaining a certain degree of authority over safety issues, such as supervising and enforcing safety requirements, and even imposing its own safety requirements at a work site.” *Id.* at 469. Declining to impose liability on owners who pay attention to work site safety supports Pennsylvania’s “salutary public policy of encouraging attention to safety matters.” *Id.* at 468.

In addition, an owner does not retain control by imposing specifications for the work. An owner has “the right to direct [the contractor] to perform to contract expectations. . . . Directing a contractor what to do is not the

same as directing a contractor how to do it.” *LaChance v. Michael Baker Corp.*, 869 A.2d 1054, 1061 n.14 (Pa. Commw. Ct. 2005). Even exercising ongoing, consultative oversight does not retain control. *See Nertavich v. PPL Elec. Utils.*, 100 A.3d 221, 224, 232 (Pa. Super. Ct. 2014) (concluding that control was not retained, even though the owner’s Authorized Representative functioned as “the daily source of contact . . . in areas of any question, materials, quality assurance, general safety, work procedures and schedule”).

The District Court held that DeBar’s allegations are conclusory or that they do not show retention of control. *Debar*, 2025 WL 1241903, at *4–5. DeBar insists her allegations are not conclusory and adds that the District Court misapplied federal pleading standards. Neither argument has merit.

1. The allegations are conclusory and insufficient

According to DeBar, her complaint plausibly alleges retained control. She highlights her allegations that FirstEnergy Service “instruct[ed] and/or direct[ed] [North American Dismantling] where and when to perform its work,” “the means and methods and/or manner in which the demolition work was to be done,” and “the equipment to be used.” Appellant’s Br. 29. We have reviewed, one by one, the allegations relating to retained control—twenty-four paragraphs in all. App. 965–68 (Complaint ¶¶ 65–88). The District Court correctly concluded that DeBar failed to allege that FirstEnergy retained enough control, and the kind of control, to be liable. Each of the allegations fails for at least

one of the following reasons.

Several of the allegations simply recite elements of the retained control exception. But “labels and conclusions” do not allow a complaint to survive a motion to dismiss, nor does “a formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “[T]he clearest indication that an allegation is conclusory and unworthy of weight in analyzing the sufficiency of a complaint is that it embodies a legal point.” *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 790 (3d Cir. 2016) (disregarding allegations in an employment discrimination case that the plaintiff’s supervisors “subjected her to disparate treatment based on her gender and retaliation for making complaints”). So DeBar failed to state a claim when she alleged that FirstEnergy Service “exerted actual control over the Project work by instructing and/or directing [North American Dismantling] as to the means, methods, and or manner in which the demolition work was to be done,” App. 965 (¶ 67), and that FirstEnergy Service’s “personnel issued instructions and directions to [North American Dismantling] personnel concerning how the work was to be performed.” *Id.* at 967 (¶ 82); *see also id.* at 965–67 (¶¶ 65–66, 68–69, 71, 81, 88).

Several of the allegations state that FirstEnergy Service imposed safety requirements or inspections. But an owner that “retain[s] a certain degree of authority over safety issues, such as supervising and enforcing safety requirements, and even imposing its own safety requirements at a work site,” does not retain control. *Beil*, 11 A.3d at 469. So DeBar failed to state a claim when she alleged that FirstEnergy Service “enforced the

FE Generation Personal Safety Manual, which set forth detailed safety requirements for the Project work,” App. 966 (¶ 74), and when she alleged that FirstEnergy’s purchaser representative “was responsible to conduct safety audits, and actually did so and on the basis of those safety audits issued instructions and/or directions to [North American Dismantling] personnel concerning how the work was to be performed,” *id.* at 968 (¶ 87); *see also id.* at 966–67 (¶¶ 77, 78–79, 82–83, 85).

Several of the allegations state that FirstEnergy Service provided North American Dismantling with detailed specifications for the work. But an owner has “the right to direct [the contractor] to perform to contract expectations. . . . Directing a contractor what to do is not the same as directing a contractor how to do it.” *LaChance*, 869 A.2d at 1061 n.14. So DeBar failed to state a claim when she alleged that FirstEnergy Service’s “Purchaser Representative was ‘responsible for the oversight of contracted personnel to assure compliance with the contract documents.’” *Id.* at 967 (¶ 85); *see also id.* at 966–68 (¶¶ 72–73, 77, 81–83, 88).

Several of the allegations state that FirstEnergy Service employed a project manager and purchaser representative who were assigned to the job, and that FirstEnergy Service monitored and approved the demolition work. But an owner does not retain control merely by reserving “a general right to . . . inspect . . . progress or to receive reports.” *Beil*, 11 A.3d at 466 (quoting Restatement § 414, cmt. c). An owner also does not retain control by assigning its employee to a job—even an employee who remains in daily contact with the contractor

regarding materials, quality, safety, procedures, and schedule. *Nertavich*, 100 A.3d at 224, 232; *see also Beil*, 11 A.3d at 469; *LaChance*, 869 A.2d at 1062. So DeBar failed to state a claim when she alleged that “the Project work was subject to [FirstEnergy Service’s] approval,” App. 967 (¶ 84), and that FirstEnergy Service assigned a project manager and purchaser representative to the job, *id.* at 966 (¶ 75–77), who “monitor[ed] and evaluat[ed] the Project work,” *id.* at 967 (¶ 86), and “over[saw] the [North American Dismantling] personnel and control[led] their work in order to assure compliance” with FirstEnergy’s requirements, *id.* at 966 (¶ 78).

Several of the allegations invoke the Code of Conduct. We do not have this document in the record, and the complaint does not allege how the Code of Conduct demonstrated that FirstEnergy Service retained control. Conclusory allegations do not permit a complaint to survive a motion to dismiss. *See Twombly*, 550 U.S. at 557. So DeBar failed to state a claim when she alleged that the Code of Conduct shows that FirstEnergy retained control of the site. App. 965–67 (¶¶ 70, 77–78, 82–83).

Finally, a few of the allegations quote the following provision of the demolition contract:

The Purchaser Representative(s) serves as the primary interface between the Contractor, station personnel, and other corporate support functions. This individual is responsible for the oversight of contracted personnel to assure compliance with the contract documents (purchase order,

specification and contract), field construction work and continuous monitoring of project safety.

App. 1029 (emphasis added). Truncating the language of this provision to focus on the emphasized phrase, DeBar alleged that the “Purchaser Representative was ‘responsible for . . . field construction work.’” *Id.* at 966 (¶ 79); *see also id.* at 967 (¶ 80).

A plaintiff is entitled to reasonable inferences that may be drawn from her complaint. *Iqbal*, 556 U.S. at 678. But the inference DeBar asks us to draw—that, through the emphasized phrase, FirstEnergy Service retained control of the entire job—is not reasonable. The provision states that the Purchaser Representative “is responsible for the oversight of” three matters: “[1] contracted personnel to assure compliance with the contract documents . . . , [2] field construction work[,] and [3] continuous monitoring of project safety.” App. 1029. Being responsible for work is different from being responsible for oversight of work, and general oversight does not demonstrate control. *See Beil*, 11 A.3d at 466; *Nertavich*, 100 A.3d at 232. The phrase “field construction work” must be read in light of its modifying phrase, “oversight of”—particularly given the context provided by the rest of the contract documents. North American Dismantling agreed that it was “considered an independent contractor,” *id.* at 1013; that it was “alone . . . liable and responsible for the manner and methods by which the Work [was] performed,” *id.*; and that it “assume[d] full responsibility for [its] employees’ acts and omissions (negligent or otherwise),” *id.* at 1015.

In sum, none of the allegations show that FirstEnergy Service retained control of the job site. *See* App. 965–68 (¶¶ 65–88). The dissent would hold that DeBar stated a claim and cites in particular *Beil*, 11 A.3d at 456. There, it is true, the Pennsylvania Supreme Court held only that “*certain* safety-related conduct . . . does not constitute control of the work site as a matter of law,” and did “not rule out the possibility that, in certain circumstances not present in [*Beil*], a property owner’s actions concerning safety matters could constitute sufficient control.” 11 A.3d at 468, 469 n.4 (emphasis added).

But DeBar has not alleged “circumstances not present in” *Beil*. *Id.* at 469 n.4. Similar to this case, the owner in *Beil* “designated one of its employees . . . as its project manager.” *Id.* at 458–59. The project manager was deeply enough involved with ongoing work that he “was consulted about placement of the scaffolding” from which the plaintiff fell “to make sure that it was in a safe position.” *Id.* at 467. And the *Beil* owner “controlled safety matters at the site” to such a degree that the independent contractor was required “to comply with any safety directions or rules reasonably issued by the [owner] . . . , whether or not [the independent contractor] agree[d] that those directions or rules [were] actually required in order to comply with applicable law.” *Id.* at 467 (citation omitted). Even under those circumstances, the owner did not retain control under Pennsylvania law. *Id.* at 468. DeBar has not alleged any safety-related conduct or oversight by North American Demolition that went beyond the facts of *Beil*. *Beil* therefore does not allow us to conclude that DeBar alleged that FirstEnergy Service retained control of the

demolition site.

2. The District Court did not misapply pleading standards

DeBar argues that the District Court “summarily cast aside [her] well-pled factual allegations” and “inappropriately held [her] to a heightened pleading standard.” Appellant’s Br. 30–31. According to DeBar, she could not meet this “improper burden” without discovery, especially because Hatt died and cannot provide information. *Id.* at 31. In support, she cites *Fowler v. UPMC Shadyside*, 578 F.3d 203 (3d Cir. 2009).

Fowler explained the pleading standard under the Supreme Court’s then-new *Iqbal* decision. *Id.* at 209–11. We reversed the dismissal of the complaint because the plaintiff plausibly stated a claim: “The complaint [pled] how, when, and where UPMC allegedly discriminated against Fowler.” *Id.* at 212. Fowler alleged that she was injured on the job; that she was restricted to sedentary work; that she got a clerical position; that the position was eliminated; and that despite multiple job applications and calls to Human Resources, she was never contacted about any open sedentary positions. *Id.* The District Court held Fowler could not “prove” she was disabled, and we corrected that error by noting that a plaintiff need not prove anything to survive a motion to dismiss—she “need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary elements” of her claim. *Id.* at 213 (citation modified).

DeBar argues that the District Court committed the same error here as in *Fowler*. But the above examination of

each retained-control allegation shows that DeBar has not offered the kinds of specific factual allegations Fowler did—she did not allege “how, when, and where” FirstEnergy Service retained control of the work. *See Fowler*, 578 F.3d at 212. She alleged only that FirstEnergy Service had contract specifications for the work and imposed safety requirements—but, under Pennsylvania law, such allegations do not show retained control. *See Part III.A.1., above.*

Tragically, the individual at the center of this case is dead and unable to aid the factual investigation. But DeBar does not provide any authority to support the notion that insufficiently pled claims are given extra leeway if the case involves a fatality.

Finally, DeBar argues that the District Court erred because it “relied exclusively on cases decided at the summary judgment or judgment as a matter of law stage to hold that” the complaint was insufficient. Appellant’s Br. 34. Generally, Pennsylvania case law contemplates the retained-control determination being made at a later stage of the case. *See, e.g., Beil*, 11 A.3d at 467 (affirming judgment as a matter of law entered after trial). We conclude, however, that dismissal was not erroneous here.

Twombly offers helpful insight. The question there was whether the plaintiff sufficiently pled an antitrust claim: conspiracy in restraint of trade. *Twombly*, 550 U.S. at 553–54. The Supreme Court explained that, because legal parallel conduct can look like illegal conspiracy, “we have previously hedged against false inferences from identical behavior at a number of points in the trial sequence.” *Id.* at 554. After trial,

a plaintiff “is not entitled to a directed verdict” where the “evidence show[s] nothing beyond parallel conduct.” *Id.* “[A]t the summary judgment stage a . . . plaintiff’s offer of conspiracy evidence must tend to rule out the possibility that the defendants were acting independently.” *Id.* Then the Court moved to the key issue, “the antecedent question of what a plaintiff must plead in order to state a claim.” *Id.* The Court modified the directed-verdict and summary-judgment standards and held that “stating . . . a claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made,” that is, “enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.” *Id.* at 556. The answer to the question at hand was provided by looking to the established summary-judgment and directed-verdict standards and translating them to arrive at the correct standard for a motion to dismiss.

Twombly’s logic demonstrates that retained-control cases resolved at summary judgment, or after trial, are neither controlling on their precise terms nor irrelevant. Undertaking the same analytical exercise as in *Twombly*, we can discern what DeBar needed to allege to survive a motion to dismiss. We begin with the rule that judgment notwithstanding the verdict is appropriate where “there is a dearth of evidence [at trial] that would establish that the [owner] controlled the manner or operative detail of the . . . work.” *Beil*, 11 A.3d at 471. Moving back a step in the litigation sequence, at summary judgment the question is whether “there is a genuine issue of material fact concerning [the owner’s] retention of control of the worksite.” *Farabaugh v. Pa. Tpk. Comm’n*, 911 A.2d 1264,

1275 (Pa. 2006). Backing up once more to the pleading stage, the question on a motion to dismiss is whether the “complaint [contains] enough factual matter (taken as true) to suggest that” the owner retained control, that is, “enough fact to raise a reasonable expectation that discovery will reveal evidence of” the owner’s control. *See Twombly*, 550 U.S. at 556. As in *Twombly*, translating established standards for judgment notwithstanding the verdict and for summary judgment leads us to the correct standard on a motion to dismiss.

As explained above, DeBar’s allegations—including that FirstEnergy Service had safety standards, employed a project manager, and imposed contract specifications—would not, even if eventually proven to be true, demonstrate that FirstEnergy Service retained control of the demolition work. Therefore, it was not error to dismiss the claims against FirstEnergy Service.

The dissent agrees with DeBar that because resolution of the retained-control question at a later stage of the case is more common, it was error to grant the motion to dismiss. Emphasizing the well-established difference in standards between a motion to dismiss and a motion for summary judgment, the dissent notes that a claim “might appear plausible in light of the well-pled facts in the complaint, only to appear deficient at the summary judgment stage.” *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 323 n.21 (3d Cir. 2010). Here, we do not question the plausibility of DeBar’s allegations; we give her the benefit of every doubt, as we must. *Connelly*, 809 F.3d at 790. The reason her complaint fails is because even if it is all true, which it very well may be,

FirstEnergy Service would not be liable.

The dissent takes issue with the fact that we look to summary-judgment and judgment-as-a-matter-of-law cases to discern the correct motion-to-dismiss standard. *See Twombly*, 550 U.S. at 564–66. Granting that our case law advises against uncritically doing so, we have not arrived at our conclusion uncritically. Rather, we have carefully followed the lead of the Supreme Court when faced with a similar question.

B. FirstEnergy Corp. is not vicariously liable for tortious conduct

DeBar argues that FirstEnergy Corp. is vicariously liable for the negligence of FirstEnergy Service Corp. However, as explained, FirstEnergy Service committed no negligence for which FirstEnergy Corp. could be vicariously responsible. Therefore, DeBar has not stated a claim against FirstEnergy Corp.

FirstEnergy Corp. moved to dismiss only once, and the District Court granted the motion with prejudice. If DeBar had requested leave to amend her claims against FirstEnergy Corp., it may have been reasonable for the District Court to grant the request. *See Arthur v. Maersk, Inc.*, 434 F.3d 196, 204 (3d Cir. 2006) (leave to amend is generally granted absent “undue delay, bad faith, [or] futility”). But far from seeking to amend, DeBar filed notice that “after carefully weighing the merits of repleading against immediate appellate review,” she elected to “stand on the . . . [c]omplaint.” App. 1734. Therefore, the District Court did not err in dismissing with prejudice the claims against FirstEnergy Corp.

C. Allegheny Energy Supply did not owe a duty to Hatt because the danger was open and obvious

DeBar argues that Allegheny Energy Supply was liable because it owned the Hatfield's Ferry Power Station. Under Pennsylvania law, landowners "owe a duty to protect invitees from foreseeable harm," but not when the "danger is known or obvious" to the invitees. *Carrender v. Fitterer*, 469 A.2d 120, 123 (Pa. 1983) (citation omitted). This rule continues to apply when the invitee is a contractor: "An owner of land who delivers temporary possession of a portion of the land to an independent contractor owes no duty to the employees of the independent contractor with respect to an obviously dangerous condition." *Brletich v. U.S. Steel Corp.*, 285 A.2d 133, 136 (Pa. 1971) (quoting *Hader v. Coplay Cement Mfg. Co.*, 189 A.2d 271, 277 (Pa. 1963)). The Pennsylvania Supreme Court has reiterated this rule in the specific context of a demolition contractor. *See id.*

An "obvious" danger is one where, objectively, "both the condition and the risk are apparent . . . and . . . recogniz[able]" through the "exercis[e] [of] normal perception, intelligence, and judgment." *Carrender*, 469 A.2d at 123 (quoting Restatement § 343A, cmt. b). Like the question of retained control, discussed above, obviousness "is usually a question of fact for the jury, [but] . . . may be decided by the court where reasonable minds could not differ as to the conclusion." *Id.* at 124.

The District Court held that "reasonable minds could not differ as to the conclusion that performing demolition work on a catwalk one hundred feet in the air—tragic as the

consequences may be—presents a potential condition that is both open and obvious.” *Debar*, 2025 WL 1241903, at *8 (internal quotation marks and citations omitted). DeBar argues that the District Court erred because there has been no discovery into “the precise nature of the danger that caused the accident, and whether this danger was fully appreciated by [North American Dismantling] and/or Cody Hatt.” Appellant’s Br. 41. DeBar contends that the factfinder should determine whether the danger was open and obvious.

The District Court did not err. Under Pennsylvania law, a danger is open and obvious where the overall risk is apparent—not necessarily the specific hazard that ultimately causes the plaintiff’s injury. In *Palenscar v. Michael J. Bobb, Inc.*, 266 A.2d 478, 479 (Pa. 1970), a contractor was hired to repair the electrical system at a warehouse. The contractor observed that the system was “obsolete and dangerous,” including its circuit breakers, but the owner responded that he was not going to replace the system because the building was about to be condemned to build a highway. *Id.* The contractor set about repairing the obsolete system and was severely injured by a short circuit in a breaker box. *Id.* at 480. The court awarded judgment as a matter of law to the warehouse owner because the danger was open and obvious. *Id.* There is no indication the contractor knew about the risk posed by that particular circuit box. *See id.* But he knew he was hired to fix a defective electrical system, so the risks were obvious. *See id.*

Pennsylvania law acknowledges that the dangers associated with a soon-to-be-demolished property may be open and obvious. In *Atkins v. Urban Redevelopment Authority of*

Pittsburgh, 414 A.2d 100, 102 (Pa. 1980), a contractor’s employee was injured on a stairway inside the defendant’s property. The Superior Court held that the owner had no duty to warn or protect the plaintiff. *Id.* at 103–05. The house was uninhabitable and about to be demolished, and the employee knew that the contractor—who managed and maintained the owner’s properties—did not generally repair houses slated for demolition. *Id.* at 104. Because the danger was open and obvious, the Superior Court affirmed entry of judgment notwithstanding the verdict in favor of the owner. *Id.* at 105.

There is a potential distinction between *Palenscar* and *Atkins*, on one hand, and this case on the other. Those cases involved a warehouse that was about to be condemned and a house that was being demolished because it was dangerous. Here, the Hatfield’s Ferry Power Station was shut down not because it was derelict, but because of “growing concern[] and pressure from the Environmental Protection Agency.” App. 963.

Upon closer inspection, however, this distinction evaporates. Electric generation ceased at Hatfield’s Ferry in 2013 and demolition did not begin until 2022. *Id.* at 964. Obviously, an industrial facility that has been shuttered for nine years, and is being torn down, could be in disrepair. In addition, North American Dismantling had, according to the contract, examined the site, “informed itself concerning the physical . . . conditions to be encountered,” *id.* at 1027, and trained its employees, *id.* at 1015. Thus, North American Dismantling and Hatt were like the contractors and employees in *Atkins* and *Palenscar*, who knew the conditions of the

properties they were working on. *See Atkins*, 414 A.2d at 102; *Palenscar*, 266 A.2d at 479. Reasonable minds could not disagree that the danger to Hatt was open and obvious. Accordingly, DeBar fails to state a claim against Allegheny Energy Supply.

The dissent believes that, to arrive at this conclusion, we flip the motion-to-dismiss standard and construe the facts against DeBar rather than in her favor. *See Connelly*, 908 F.3d at 790. The dissent says that although the employees in *Atkins* and *Palenscar* knew the conditions of the properties, we cannot infer such knowledge here: Hatfield's Ferry was demolished not in response to safety concerns, but in response to environmental concerns about coal-generated electricity. However, in the demolition contract (which we may consider, *see* Part I.A., above), North American Dismantling agreed that it had "examined the site in all ways pertinent to performance . . . , and that it [had] informed itself concerning the physical and geological conditions to be encountered." App. 1027. Granting DeBar all the favorable inferences to which she is entitled, she fails to state a claim against Allegheny Energy Supply.

* * * * *

For all these reasons, we will AFFIRM.

RESTREPO, *Circuit Judge*, dissenting.

The Majority prohibitively raises the bar for wrongful death claims brought by employees of independent contractors. Under Pennsylvania law, plaintiffs can succeed on such claims if they show that the defendant retained sufficient control of the contractor, a factual inquiry for the jury save for the exception where the record evidence demonstrates the defendant is not liable as a matter of law. Pennsylvania courts appropriately apply this evidentiary standard at the later stages of the case once the evidence has been developed. Yet, without any record evidence or supporting case law from the pleadings stage, the Majority precedentially affirms the dismissal of DeBar's well-pleaded complaint. This is not a case where the complaint consists of only threadbare assertions or formulaic recitations of the elements of the claim. DeBar has pleaded more than enough to satisfy the minimal showing required at the motion to dismiss stage and her complaint should proceed.

First, DeBar sufficiently pleads that FirstEnergy Service Company ("FESC" or "FirstEnergy Service") retained control over North American Dismantling Corporation ("NADC" or "North American Dismantling"), the employer of decedent Cody Hatt. DeBar advances a theory of actual retained control, which requires the court to evaluate whether FirstEnergy Service "exercised actual control over the work," regardless of any contractual limitations of liability. *Beil v. Telesis Const., Inc.*, 11 A.3d 456, 467 (Pa. 2011).

This inquiry is not appropriate for a motion to dismiss. The Pennsylvania Supreme Court has established that "the

question of the quantum of retained control necessary to make the owner of the premises liable is a question for the jury.” *Id.* A court may determine the issue in certain instances, but only when “*the evidence fails to establish* the requisite retained control.” *Id.* (emphasis added). Thus, the standard of review requires a court to examine the evidence to determine whether the defendant exercised actual control, and that requires that there be evidence for the court to examine. But the Majority affirms dismissal of the claim before discovery commenced and supports its holding only with summary judgment or post-trial caselaw that does not justify dismissal at this early stage.

The Majority attempts to resolve this deficiency by drawing from the articulation of the pleading standard from *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and “translating established standards for judgment notwithstanding the verdict and for summary judgment” to “lead[] us to the correct standard on a motion to dismiss” in the retained control context. Maj. 23. Our Circuit has advised against uncritically doing so. We noted that *Twombly*’s articulation also supports the view that even if allegations “will not suffice to take a[] . . . plaintiff’s case to the jury, it will sometimes suffice to overcome a motion to dismiss and permit some discovery” because “the standards applicable to Rule 12(b)(6) and Rule 56 motions remain distinct.” *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 323 n.21 (3d Cir. 2010) (quoting *Starr v. Sony BMG Music Entm’t*, 592 F.3d 314, 329 (2d Cir. 2010) (Newman, J., concurring)). Thus, we said, a claim can “appear plausible in light of the well-pled facts in the complaint, only to appear deficient at the summary judgment

stage.” *Id.*; see also *Fowler v. UPMC Shadyside*, 578 F.3d 203, 213 (3d Cir. 2009) (rejecting court’s reliance on post-pleadings cases when dismissing a claim on a motion to dismiss because “[i]t is axiomatic that the standards for dismissing claims under Fed. R. Civ. P. 12(b)(6) and granting judgment under either Fed. R. Civ. P. 50 or Fed. R. Civ. P. 56 are vastly different”).

The Majority identifies certain legal bars to an actual control claim and asserts the complaint runs afoul of those limitations. Specifically, it contends that DeBar “alleged only that FirstEnergy Service had contract specifications for the work and imposed safety requirements—but, under Pennsylvania law, such allegations do not show retained control.” Maj. 21. The Majority’s treatment of DeBar’s complaint both misrepresents Pennsylvania law and DeBar’s allegations, which plead what is minimally required— “control over the manner, methods, means, or operative detail in which the work is performed.” *Beil*, 11 A.3d at 471.

DeBar’s safety-related allegations do not warrant dismissal at this early stage. DeBar alleged that: FirstEnergy Service “implemented[] and enforced the FE Generation Personal Safety Manual, which set forth detailed safety requirements for the Project work,” JA966 ¶ 74; through the Project Manager and Purchaser Representative assigned to the project, FirstEnergy Service “enforce[ed] the terms of FESC’s Specifications, [the] FE Generation Personal Safety Manual, and FESC’s Code of Conduct,” JA966 ¶ 77; FirstEnergy Service “through at least its Purchaser Representative, was responsible for monitoring and evaluating the Project work, and actually did so,” JA967 ¶ 86; FirstEnergy Service, again

“through at least its Purchaser Representative, was responsible to conduct safety audits, and actually did so and on the basis of those safety audits issued instructions and/or directions to the NADC personnel concerning how the work was to be performed,” JA968 ¶ 87. These allegations are specific examples of how FirstEnergy Service retained control over North American Dismantling’s work at the plant. Demanding more risks precluding litigants because they lack granular information only obtainable through the discovery process.

Nor are these allegations facially insufficient as a matter of law to state a claim under a retained control theory. Relying on *Beil v. Telesis Construction, Inc.*, the Majority holds that the allegations about control over safety-related conduct fail to state a retained control claim under Pennsylvania law. *Beil* provided the important qualifier that only “*certain* safety-related conduct . . . does not constitute control of the work site as a matter of law.” 11 A.3d at 468 (emphasis added). *Beil* explicitly recognized that plaintiffs *can* state a retained control theory by alleging safety-related conduct: “We do not rule out the possibility that, in certain circumstances not present in this matter, a property owner’s actions concerning safety matters could constitute sufficient control over the manner in which work is done such that the owner is subject to liability.” *Id.* at 469 n.4. Moreover, *Beil* was deciding a motion for judgment notwithstanding the verdict and reached its conclusion only after evaluating “[t]he evidence in the matter.” *Id.* at 469. Thus, the *Beil* court properly departed from the “general proposition” that the retained control inquiry is a question for the jury because it could conclude that “the evidence fail[ed] to

establish the requisite retained control.” *Id.* at 467. The *Beil* court had an evidentiary basis upon which to make a retained control determination. The Majority has no such basis.

The Majority similarly recasts the remainder of DeBar’s allegations of actual control. Those allegations include that FirstEnergy Service, often through its Purchaser Representative: “was responsible for and exerted actual control over the ‘field construction work’ including but not limited to the work that was being performed by decedent at the time of the accident,” JA967 ¶ 80; “actually did oversee the NADC personnel and control their work in order to assure compliance with FESC’s Specifications, [the] FE Generation Personal Safety Manual, and FESC’s Code of Conduct,” JA966 ¶ 78; “was responsible for monitoring and evaluating the Project work, and actually did so,” JA967 ¶ 86; “issued instructions and/or directions to the NADC personnel concerning how the work was to be performed,” JA968 ¶ 87; and “provid[ed] the instructions and/or directions to NADC and its personnel . . . and . . . [took] affirmative actions on the Project site to enforce strict compliance with FESC’s Specifications (i.e., how FESC wanted the work to be accomplished),” JA968 ¶ 88.

The Majority rejects these allegations by relying upon *Beil* and two intermediate appellate court decisions, *LaChance v. Michael Baker Corp.*, 869 A.2d 1054 (Pa. Commw. Ct. 2005), and *Nertavich v. PPL Elec. Utils.*, 100 A.3d 221 (Pa. Super. Ct. 2014). None controls here. The Majority cites *LaChance*, a summary judgment opinion, to reject what the Majority broadly categorizes as allegations that “FirstEnergy Service provided North American Dismantling with detailed

specifications for the work,” Maj. 16. In *LaChance*, “the evidence . . . demonstrate[d]” the plaintiff failed to establish retained control. 869 A.2d at 1062. And *LaChance* explained that a defendant *can* establish retained control when there is “such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way,” *id.* at 1058–59 (quoting RESTATEMENT (SECOND) OF TORTS § 414 cmt. c (A.L.I. 1965)), or where evidence showed that the defendant directed the contractor “how to do [the job],” *id.* at 1061 n.14. Drawing all inferences in favor of the plaintiff, as we must at this stage, DeBar’s allegations sufficiently state such a claim.

The Majority relies on *Nertavich* to reject all allegations relating to the Purchaser Representative and Project Manager. *Nertavich*—decided on a motion for judgment notwithstanding the verdict—rejected the trial court’s finding that the mere establishment of a representative demonstrated retained control over general safety issues at the site, 100 A.3d at 234–35, but noted that its “conclusion might be different if there was any evidence that [the representative] provided instructions or directions to Nertavich or the other QSC employees,” *id.* at 241 n.28. Here, DeBar did not merely allege that FirstEnergy employed a Purchaser Representative and Project Manager, but rather that those individuals took specific actions that constituted control. These allegations are specific enough to survive dismissal.

Therefore, the complaint plausibly alleges a retained control claim and precedent does not preclude it. I would reverse and permit the claim to proceed.

Similar issues plague the Majority’s holding as to the liability of the owner of the Power Station, Allegheny Energy Supply Company, LLC (“Allegheny Energy Supply”). The complaint alleges the catwalk failed—in some unknown way at this pre-discovery stage—causing Hatt to fall. Allegheny Energy Supply argues that it did not owe a duty because the harm to Hatt was open and obvious. Pennsylvania courts have long held that “the question of whether a danger was known or obvious is usually a question of fact for the jury.” *Carrender v. Fitterer*, 469 A.2d 120, 124 (Pa. 1983). Yet, the Majority holds that we may take the exceptional step of deciding this question because “reasonable minds could not disagree that the danger to Hatt was open and obvious.” Maj. 28.

To reach its conclusion, the Majority disregards our obligation to assume all “factual allegations to be true, construe those truths in the light most favorable to the plaintiff, and then draw all reasonable inferences from them.” *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 790 (3d Cir. 2016). Instead, the Majority makes a significant inference *against* DeBar, concluding that any danger was open and obvious because “[o]bviously, an industrial facility that has been shuttered for nine years, and is being torn down, could be in disrepair.” Maj. 27. The complaint does not state that the Power Station, let alone the relevant catwalk, was in disrepair. It simply states that coal generation ceased at the Power Station in 2013 and the demolition began in 2022. It is thus inappropriate for the Majority to affirm dismissal of the claim against Allegheny Energy Supply because the Power Station “could be in disrepair.”

In support of its holding, the Majority relies upon *Palenscar v. Michael J. Bobb, Inc.*, 266 A.2d 478 (Pa. 1970), and *Atkins v. Urban Redevelopment Authority of Pittsburgh*, 414 A.2d 100 (Pa. 1980), both decided on motions for judgment notwithstanding the verdict. The Majority declares that “North American Dismantling and Hatt were like the contractors and employees in *Atkins* and *Palenscar*, who knew the conditions of the properties they were working on.” Maj. 27-28. This is not supported by the complaint, which explicitly states that the Power Station’s demolition was in response to environmental concerns and makes no mention of known malfunctions or dangers. In contrast, in *Palenscar*, evidence established that the contractor knew of the dangerous condition of the relevant electrical system: the contractor was hired for the express purpose of locating a malfunction and repairing a faulty electrical system, the defendant had hired the contractor “more than one hundred times over the previous eighteen months to do all of [the defendant]’s electrical work,” and the contractor itself had previously informed the defendant that the electrical system was dangerous. 266 A.2d at 479. Similarly, in *Atkins*, the plaintiff knew that the relevant property was to be demolished because it was inhabitable, the plaintiff had worked for the contractor for three years and often inspected buildings that were to be demolished, the contractor previously visited the property on multiple occasions, and the contractor was specifically hired to discover and protect others from dangerous conditions on the property. 414 A.2d 100 at 102, 105.

Unlike the demolitions in *Palenscar* and *Atkins*, and contrary to the Majority's improper inference, the complaint gives us no reason to think the catwalk was being demolished because it was dangerous, let alone that Hatt knew of any danger. Just as importantly, both *Palenscar* and *Atkins* were decided after the case went to the jury and a full evidentiary record was presented. It may well be that discovery would compel us to deviate from the standard rule that the open and obvious question is for the jury because the evidence would disprove DeBar's allegations. But at this stage, we have only DeBar's allegations and "we must accept these allegations as true, drawing all reasonable inferences in favor of Plaintiff[]." *Stringer v. Cnty. of Bucks*, 141 F.4th 76, 90 (3d Cir. 2025). Faithful application of the pleading standard to these allegations, which are not conclusory, results in the conclusion that reasonable minds could differ as to whether the risk leading to Hatt's death was open and obvious. The claim against Allegheny Energy Supply should prevail at this preliminary stage.¹

¹ Even assuming a contract solely "between North American Dismantling and FirstEnergy Service," Maj. 3, bears on Allegheny Energy Supply's duties to North American Dismantling, contrary to the Majority's assertion, the demolition contract's representation that North American Dismantling examined the site supports an inference that the harm was not open and obvious. Granting all favorable inferences to DeBar, the allegation that DeBar was fatally injured on the site despite North American Dismantling's

The Majority has introduced a heightened pleading standard for independent contractor cases that I fear will stifle worthy claims. For these reasons, I respectfully dissent.

examination suggests that the risk would neither be apparent to a business invitee nor recognized as dangerous.

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