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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2025-000520

Case No. 2024-CP-23-05956

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Commissioners of Public Works of the City of Greenville, South Carolina, .....Respondent

v.

United States Pipe and Foundry Company LLC, TEC Utilities Supply Inc.,  
and Hayes Pipe Supply Inc., .....Defendants,

of which

United States Pipe and Foundry Company LLC, is the .....Appellant.

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**REPLY MEMORANDUM TO MOTION FOR EXPEDITED APPELLATE REVIEW**

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Respondent, Commissioners of Public Works of the City of Greenville, South Carolina (“Greenville Water”), respectfully submits this Reply Memorandum in support of Greenville Water’s Motion for Expedited Appellate Review.

The parties agree that an expedited review of this matter is appropriate and, accordingly, this Court should grant Respondent Greenville Water’s request for expedited appellate review, given the important public interests involved. For the reasons set forth in its Motion for Expedited Appellate Review, Greenville Water respectfully requests that the Court enter the following schedule:

- **U.S. Pipe’s Initial Brief:** 15 days from receipt of the transcript;
- **Greenville Water’s Initial Response Brief:** 15 days from receipt of U.S. Pipe’s Initial Brief;
- **U.S. Pipe’s Initial Reply Brief:** 7 days from receipt of Greenville Water’s Initial Response Brief;
- **Submission of the Record:** 15 days from service of U.S. Pipe’s Initial Reply Brief; and
- **Final Briefs:** 15 days from after service of the record.

The above expedited briefing schedule, along with expedited review, is necessary to ensure that this important matter of public concern is decided as quickly as reasonably possible, so that Greenville Water may proceed with its claims on the merits to protect both itself and the public. U.S. Pipe’s assertions to the contrary (notwithstanding its consent to expedited review) are both disingenuous and incorrect.

*First*, despite its burden to establish a valid agreement to arbitrate and the presumption *against* arbitration when the resisting party, like Greenville Water, is a non-signatory to the alleged agreement, U.S. Pipe submitted *no* evidence of valid contract formation with respect to arbitration. Rather, U.S. Pipe’s purported right to arbitration rests solely on its legally baseless assertion that it can bind all downstream purchasers, like Greenville Water, to arbitration by unilaterally posting terms and conditions containing an arbitration provision on its website—even though the express terms of the alleged agreement do not apply to Greenville Water and U.S. Pipe offers *no* evidence that Greenville Water was informed of those terms and conditions, much less assented to them. Moreover, it is well established that direct benefits estoppel does not apply solely because of the existence of a contractual relationship between the parties. It only applies when a party knowingly exploits the agreement containing the arbitration provision and thereby receives a direct benefit from that agreement. U.S. Pipe submitted *no* evidence that

Greenville Water was even aware of the existence of the terms and conditions contained on its website—much less knowingly exploited them—and, therefore, the trial court correctly determined that a valid arbitration agreement does not exist.

*Second*, while U.S. Pipe asserts that it has provided documentation that the defective pipes it supplied are safe for the transportation of water, it also provided documentation certifying that its pipes complied with mandatory industry standards, which is demonstrably false. Harmful corrosion caused by improperly lined pipes is not a sudden occurrence; it progresses over time. As such, the deterioration of water quality can manifest at any time, depending upon how long the defective pipe has been in place. Immediately replacing all potentially affected pipe manufactured at U.S. Pipe’s Lynchburg facility without financial assistance from the responsible party (U.S. Pipe) would be an enormous undertaking and would severely impact the financial well-being of Greenville Water and taxpayers.

*Third*, without discovery into the full extent and scope of the manufacturing defect (including the timeframe during which it was present), Greenville Water has no way of knowing how much defective pipe is contained in its distribution system or where it is located (unless it assumes that all pipe manufactured at U.S. Pipe’s Lynchburg facility is defective). Because the inside of cement-mortar-lined ductile iron pipe is obscured by a black asphaltic seal paint coating, there is no way to directly observe the cement-mortar lining without cutting into the pipe and rendering it useless. It is only by happenstance that Greenville Water discovered the defect and confirmed that it applied across multiple batches of product over an extended period of time, which is highly suggestive of a widespread manufacturing defect caused by improper manufacturing processes and/or inadequate quality control. Greenville Water has no way of knowing how long those processes have been in place, but it is highly unlikely that they began

with the first defective batch of product that Greenville Water discovered. It is, therefore, imperative that Greenville Water be permitted to promptly engage in discovery concerning U.S. Pipe's manufacturing and quality control processes to determine the full extent and scope of the defect. Only then can Greenville Water identify the likely timeframe during which the defect was present and subsequently identify and remove (at U.S. Pipe's expense) pipe manufactured at U.S. Pipe's Lynchburg facility during the relevant time period.

For these reasons, as well as for those set forth in Respondent Greenville Water's Motion for Expedited Appellate Review, the Court should grant Greenville Water's request, adopt the proposed schedule identified herein, and decide this appeal on an expedited basis.

Dated: April 7, 2025

Respectfully submitted,

/s/ Adam C. Bach

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**PROOF OF SERVICE**

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The undersigned certifies that a copy of Reply Memorandum in support of Greenville Water’s Motion for Expedited Appellate Review was served upon counsel of record in the above-entitled action by electronic mail on March 26, 2025, as follows:

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Dated: April 7, 2025

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