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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-000520
Case No. 2024-CP-23-05956

Commissioners of Public Works of the City of Greenville,
South CarolinaRespondent,

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.

Record on Appeal

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Certificate of Counsel

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Case No.: 2024CP2305956

Plaintiff,

ORDER

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

This matter comes before the Court upon Defendant United States Pipe and Foundry Company LLC's ("U.S. Pipe") Motion to Dismiss or Stay Pending Arbitration.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from U.S. Pipe's alleged manufacture of ductile iron pipe with defective cement-mortar lining at its Lynchburg, Virginia facility and its sale of the defective cement-mortar-lined pipes through its distributors, Defendants TEC Utilities Supply Inc. ("TEC") and Hayes Pipe Supply Inc. ("Hayes"), to Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina ("Greenville Water"). Compl., ¶ 1. Greenville Water asserts claims against U.S. Pipe for declaratory relief and damages, including the following: (1) Declaratory Judgment against U.S. Pipe pursuant to South Carolina Code §§ 15-53-10, *et seq.*; (2) Breach of Express Warranty; (3) Breach of Implied Warranty of Merchantability; (4) Breach of Implied Warranty of Fitness for a Particular Purpose; (5) Breach of Implied Contract; (6) Violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.*; and (7) in the alternative, Unjust Enrichment.

A. Greenville Water's Complaint

Greenville Water alleges that Cement-mortar-lined ductile iron pipe is industry standard in the waterworks industry because the cement-mortar-lining prevents water from reacting with the iron contained in the pipes. Compl., ¶ 2. Ductile iron pipe that does not have cement-mortar lining results in numerous problems, including deterioration of water quality, decreased functionality of and damage to water distribution systems, and decreased life expectancy of the pipe, resulting in lost revenue and reputational harm. *Id.* at ¶¶ 10, 37-44. As a result, industry standards and South Carolina law require all ductile iron pipes used for water service to have cement-mortar-lining that is of a minimum uniform thickness. *Id.* at ¶¶ 4, 27-36.

The American Water Works Association (“AWWA”) is a non-profit, scientific, and educational association, founded to improve water quality, that issues industry standards approved by the American National Standards Institute (“ANSI”). *Id.* at ¶ 4. The AWWA standard for cement-mortar-lined ductile iron pipe requires cement mortar lining to have a uniform thickness of 1/16-inch throughout the length of all 3-inch to 12-inch ductile iron pipe (“ANSI/AWWA Standard C104/A21.4”). *Id.* The purpose of this standard is to ensure water quality and safety. *Id.* Both the South Carolina Plumbing Code and Safe Drinking Water Act as well as Greenville Water’s design and construction specifications require all water service ductile iron pipes to be cement-mortar-lined in compliance with ANSI/AWWA Standard C104/A21.4. *Id.* at ¶ 5.

U.S. Pipe’s marketing and promotional materials tout that its ductile iron pipe fabrication “meets or exceeds” the latest revision of ANSI/AWWA Standard C104/A21.4. *Id.* at ¶ 6. U.S. Pipe also issued a Certificate of Product Compliance to Greenville Water that certified that the Defective Pipes complied with ANSI/AWWA C104/A21.4. *Id.* Despite U.S. Pipe’s marketing and promotional representations and Certificate of Product Compliance to Greenville Water,

Greenville Water alleges that the pipe U.S. Pipe manufactured does not meet ANSI/AWWA Standard C104/A21.4. *Id.*

During a construction project, Greenville Water discovered that a substantial quantity of ductile iron pipe manufactured at U.S. Pipe's Lynchburg, Virginia facility (and purchased indirectly through TEC and Hayes) did not comply with industry standards because the cement-mortar-lining was concentrated almost entirely on one side of the pipe. *Id.* at ¶¶ 8, 53-60. Upon discovery of the defect, Greenville retained an outside engineering firm to test pipe from U.S. Pipe's Lynchburg, Virginia facility across numerous deliveries and batches, which Greenville Water alleges showed that more than 70% of the pipe tested failed to comply with industry standards. *Id.* at ¶¶ 56-57.

Greenville Water alleges that the defective cement-mortar-lined ductile iron pipe will cause numerous problems—all leading to a loss of consumer confidence, reputational harm, and, ultimately, lost revenue—including, among others: increased corrosion causing deterioration of water quality; build-up of corrosive material causing water pressure problems; damage to infrastructure caused by cement-mortar breaking-off from the pipes and causing pipe clogs; and proliferation of numerous types of bacteria due to loose cement, which can be harmful to human health if allowed to reach unsafe levels. *Id.* at ¶ 10.

Greenville Water alleges that, from October 2022 through May 2023, Greenville Water regularly purchased ductile iron pipe with cement-mortar lining from U.S. Pipe, through distributors TEC and Hayes, much of which was manufactured at U.S. Pipe's Lynchburg, Virginia facility. *Id.* at ¶ 61. Since October 2022, Greenville Water has purchased approximately \$330,000.00 worth of uninstalled pipe presently being stored at its storage facility and more than 100,000 feet of cement-mortar-lined ductile iron pipe manufactured at U.S. Pipe's Lynchburg,

Virginia facility was installed in Greenville Water's water distribution system. *Id.* at ¶ 62. Additionally, prior to October 2022, a substantial amount of cement-mortar-lined ductile iron pipe manufactured at U.S. Pipe's Lynchburg, Virginia facility was purchased and installed in Greenville Water's distribution system by Greenville Water and contractors of Greenville Water. *Id.* at ¶ 64.

In addition to declaratory relief, Greenville Water seeks benefit of the bargain damages for the difference between what it paid in consideration for the defective pipes and what it actually received, consequential damages for the cost of removing and replacing the defective pipes presently installed in its water distribution system, and punitive damages for U.S. Pipe's deceptive and unfair trade practices. *Id.* at ¶ 67.

B. U.S. Pipe's Motion to Compel Arbitration.

U.S. Pipe asserts that its sale of ductile iron pipe is "expressly conditioned" on Greenville Water's acceptance of U.S. Pipe's Terms and Conditions of Sale, which it asserts are readily available on its website to anyone with access to the Internet. U.S. Pipe Motion at 3; *see also* Exhibit A to U.S. Pipe's Motion. U.S. Pipe's Terms and Conditions of Sale contain the following arbitration provision:

ARBITRATION; CONSENT TO VENUE. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, including the arbitrability thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with the then-current Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. No dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person, and any arbitrator attempting such a proceeding shall be deemed to have exceeded the powers available under the Federal Arbitration Act. Claims shall be heard by a single arbitrator in Dallas County, Texas. In the event that this arbitration provision is deemed invalid or inapplicable for any reason, in whole or in part, the parties agree that the venue and jurisdiction for any proceedings arising out of or related to the Agreement shall lay exclusively in the state and federal courts of Dallas County, Texas to which jurisdiction each party irrevocably consents and waives any

objection or defense that it is not subject to personal jurisdiction in such venue or that the forum is inconvenient.

Mot. at 3.

U.S. Pipe asserts that, even though Greenville Water purchased ductile iron pipe through its distributors, TEC and Hayes, invoices and pick tickets used by TEC and Hayes “reference the terms & conditions applicable to the sale.” *Id.* at 3-4. U.S. Pipe also asserts that, as a sophisticated purchaser, Greenville Water had knowledge of the Terms and Conditions of Sale. *Id.* at 4. In support of its assertion that Greenville Water was placed on notice of U.S. Pipe’s Terms and Conditions of Sale through TEC and Hayes, U.S. Pipe points to: (1) unspecified terms contained in warranty provisions in TEC’s and Hayes’ respective terms and conditions that U.S. Pipe alleges are applicable to Greenville Water’s relationships with TEC and Hayes; (2) a reference to a manufacturer “cancellation fee” contained in an invoice TEC allegedly provided to Greenville Water; (3) a reference to TEC’s full terms and conditions contained in a pick ticket TEC allegedly provided to Greenville Water; and (4) and a provision contained in TEC’s terms and conditions that states “Sole and exclusive warranty, if any, on goods sold by TEC, is that provided by the goods manufacturer.” U.S. Pipe Reply Memorandum at 2-3; *see also* Exhibits A-C to U.S. Pipe’s Reply Memorandum.

U.S. Pipe asserts there is a policy in South Carolina to favor arbitration of disputes where an agreement to arbitrate exists and that Greenville Water is subject to U.S. Pipe’s Terms and Conditions of Sale. U.S. Pipe’s Motion at 7-8. U.S. Pipe further asserts that the arbitration provision contained in its Terms and Conditions of Sale is not unconscionable and is enforceable against Greenville Water. *Id.* at 10. Finally, U.S. Pipe asserts that, even if Greenville Water is not a party to U.S. Pipe’s Terms and Conditions of Sale, Greenville Water should be estopped from

repudiating the arbitration provision because Greenville Water derives a direct benefit from the warranty contained in U.S. Pipe's Terms and Conditions of Sale. *Id.* at 9-10.

Greenville Water asserts that it is a non-party to U.S. Pipe's Terms and Conditions of Sale because it never purchased ductile iron pipe directly from U.S. Pipe and did not otherwise agree to be bound by U.S. Terms and Conditions of Sale because it had no knowledge of the terms, including the arbitration provision, prior to this litigation. Greenville Water's Memorandum in Opposition at 7-9. Specifically, Greenville Water asserts that it does not meet the definition of the term "Buyer," as that term is expressly defined by the Terms and Conditions of Sale, and, therefore, Greenville Water is not a party to the "Agreement," as that term is expressly defined by the Terms and Conditions of Sale. *Id.* Greenville Water further asserts that it cannot be a third-party beneficiary to U.S. Pipe's Terms and Conditions of Sale because the terms expressly provide that "Buyer and Seller are the only intended beneficiaries of this document, and there are no third party beneficiaries." *Id.* at 8. Greenville Water asserts that it cannot be subjected to arbitration under a direct benefits estoppel theory because it has not and does not seek to derive any benefit from the Terms and Conditions of Sale, of which it was not aware prior to this litigation. *Id.* at 9-12. Lastly, Greenville Water asserts that, even if it were a party to U.S. Pipe's Terms and Conditions of Sale, the arbitration provision cannot be enforced against Greenville Water because the provision is an unconscionable adhesion contract. *Id.* at 12-14.

C. The Evidence Submitted

In support of its motion to compel arbitration, U.S. Pipe submits a copy of its Terms and Conditions of Sale containing the arbitration provision at issue. *See* Exhibit A to U.S. Pipe's Motion. In its Reply Memorandum, U.S. Pipe also submits invoices and pick tickets allegedly

provided to Greenville Water by TEC that contain alleged references to U.S. Pipe's Terms and Conditions of Sale, as identified above. *See* Exhibits A-C to U.S. Pipe's Reply Memorandum.

In opposition to U.S. Pipe's motion to compel arbitration, Greenville Water submits the affidavit of its Chief Administrative Officer, Robert Schmidt. *See* Exhibit 1 to Greenville Water's Memorandum in Opposition. Among other averments, Mr. Schmidt avers that Greenville Water has never purchased ductile iron pipe directly from U.S. Pipe, Greenville Water has never looked at or otherwise been notified of U.S. Pipe's Terms and Conditions of Sale, and Greenville Water did not agree to arbitrate any disputes with U.S. Pipe. *Id.* Greenville Water also submits its purchase orders with TEC and Hayes that it alleges contain the terms and conditions (which include no warranty limitations or arbitration provision) applicable to its relationships with TEC and Hayes. *See* Exhibits 2-3 to Greenville Water's Memorandum in Opposition.

II. LEGAL STANDARD

The threshold issue in determining arbitrability is "whether a valid, binding arbitration agreement exists in the first place." *BVW Holding AG v. Hoowaki, LLC*, No. 2021-001168, 2024 WL 112281, at *2 (S.C. Ct. App. Jan. 10, 2024). "[W]here one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place." *Id.* (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22 (2007)). If no agreement exists, "the court must deny any application to arbitrate." *Id.*

"Although arbitration is viewed favorably by the courts, it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts." *Wilson v. Willis*, 426 S.C. 326, 337 (2019); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596 (2001). "[T]he presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement *or the identity of the parties who may be bound to*

such an agreement.” *Wilson*, 426 S.C. at 337 (quoting *Carr v. Main Carr Development, LLC*, 337 S.W.3d 489, 496 (Tex. Ct. App. 2011) (emphasis in *Wilson*)). “Even the exceptionally strong policy favoring arbitration cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so.” *Id.*

III. FINDINGS OF FACT AND LEGAL ANALYSIS

A. Greenville Water is a Nonsignatory to U.S. Pipe’s Terms and Conditions of Sale

U.S. Pipe asserts that Greenville Water is a party to its Terms and Conditions of Sale and is, therefore, subject to the arbitration provision contained therein. The party seeking arbitration has “the burden of proving the existence of a valid agreement to arbitrate.” *BVW Holding AG*, 2024 WL 112281, at *2. Arbitration, while favored, exists solely by agreement of the parties, and a party “cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000). Therefore, “a presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.” *Wilson*, 426 S.C. at 337-38 (emphasis in original).

After fully reviewing the evidence submitted and arguments made by the parties, the Court finds that Greenville Water is a nonsignatory to U.S. Pipe’s Terms and Conditions of Sale and, therefore, a “presumption *against* arbitration” applies. *Wilson*, 426 S.C. at 337-38 (emphasis in original). U.S. Pipe’s Terms and Conditions of Sale expressly provide that the “Agreement” applies only to a “Buyer” that purchases products from “Seller,” which is defined as “U.S. Pipe and Foundry Company, LLC, Griffin Pipe Products Co., and U.S. Pipe Fabrication, LLC.” *See* Exhibit A to U.S. Pipe’s Motion at 1. Greenville Water has submitted evidence, namely the affidavit of Mr. Schmidt, that establishes that Greenville Water has never purchased ductile pipe

from any of these entities. *See* Exhibit 1 to Greenville Water’s Memorandum in Opposition at ¶¶ 5-6. U.S. Pipe has failed to submit any contrary evidence, showing that Greenville Water has purchased ductile iron pipe directly from U.S. Pipe, Griffin Pipe Products Co., or U.S. Pipe Fabrication, LLC. Based on the record before the Court, Greenville Water is, therefore, not a “Buyer” under the express terms of U.S. Pipe’s Terms and Conditions of Sale.

Further, under U.S. Pipe’s Terms and Conditions of Sale, the term “Agreement” means the agreement between “Buyer” and “Seller.” *See* Exhibit A to U.S. Pipe’s Motion at 1. The arbitration provision expressly provides that it applies only to claims arising out of or relating to the “Agreement.” *Id.* at 6-7. But, because Greenville Water is not a “Buyer,” its claims do not arise out of or relate to any “Agreement” with “Seller.” And under the express terms of U.S. Pipe’s Terms and Conditions of Sale, Greenville Water cannot be a third-party beneficiary and cannot be subject to arbitration on that basis. *See Id.* at 7. Accordingly, the Court finds that, under the express terms of U.S. Pipe’s Terms and Conditions of Sale, Greenville Water is a nonsignatory to the contract and a “presumption *against* arbitration” applies. *Wilson*, 426 S.C. at 337-38 (emphasis in original).

B. U.S. Pipe has Failed to Otherwise Establish a Valid Agreement to Arbitrate.

U.S. Pipe asserts that Greenville Water has agreed to arbitrate its claims with U.S. Pipe by virtue of certain terms contained in documents provided to Greenville Water by TEC and Hayes. Whether the parties have formed an agreement to arbitrate is determined by applying South Carolina contract law. *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 241-43 (Ct. App. 2022). Under South Carolina law, there must be competent record evidence of reasonable notice, acceptance, and mutual assent to establish a valid arbitration agreement. *Id.*

The Court finds that Greenville Water was not placed on reasonable notice of U.S. Pipe’s arbitration provision and U.S. Pipe has failed to present evidence that Greenville Water otherwise

knew of and assented to the arbitration provision. Even assuming that the terms and conditions of TEC and Hayes are applicable to their contractual relationship with Greenville Water (which Greenville Water disputes),¹ it is undisputed that those terms and conditions do not contain or reference an arbitration provision. Further, the documents submitted by U.S. Pipe in support of its argument do not contain a link to U.S. Pipe’s Terms and Conditions of Sale, do not otherwise provide the Terms and Conditions of Sale, do not incorporate the Terms and Conditions of Sale, and do not reference arbitration in any way. The Court finds that vague references in documents from TEC and Hayes to manufacturer warranties and cancellation fees are not sufficient to place Greenville Water on reasonable notice of the arbitration provision contained in U.S. Pipe’s Terms and Conditions of Sale. U.S. Pipe provides no authority to the contrary.

Greenville Water further presented evidence, through the affidavit of Mr. Schmidt, that establishes that Greenville Water has never purchased ductile iron pipe directly from U.S. Pipe, using its website or otherwise. *See* Exhibit 1 to Greenville Water’s Memorandum in Opposition at ¶¶ 5-6. Mr. Schmidt further avers that Greenville Water has never looked at or otherwise been notified—by U.S. Pipe, TEC, or Hayes—of U.S. Pipe’s Terms and Conditions of Sale, including, but not limited to, the warranty, arbitration, or venue provisions contained therein. *Id.* at ¶ 8; *see also Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 241-43 (Ct. App. 2022) (“A party cannot assent to something he does not know about, so the law in general requires that for an offer to be effective, the responding party must have reasonable notice of the offer’s terms.”). U.S. Pipe provides no evidence to the contrary that demonstrates the elements required for valid contract

¹ Because the Court finds that U.S. Pipe failed to place Greenville Water on reasonable notice of the arbitration provision and has not presented sufficient evidence of an agreement to arbitrate, the Court does not decide at this juncture the terms and conditions that are applicable to the contractual relationship between Greenville Water and TEC and Hayes.

formation under South Carolina law for purposes of establishing a valid arbitration provision. The Court thus finds that U.S. Pipe has failed to rebut the presumption against arbitration that is applied when a party is a nonsignatory to a contract containing an arbitration provision. *See Wilson*, 426 S.C. at 337-38.

C. Greenville Water Cannot be Forced to Arbitrate Under an Estoppel Theory.

U.S. Pipe asserts that, even if Greenville Water is a nonsignatory to its Terms and Conditions of Sale, Greenville Water can be compelled to arbitrate its claims under a direct benefits estoppel theory. Whether an arbitration agreement may be enforced against non-signatories, and under what circumstances, is an issue controlled by state law. *Wilson*, 426 S.C. at 338. South Carolina recognizes that non-signatories to arbitration agreements can potentially be bound in limited circumstances under an estoppel theory. *Id.* (citing *Malloy v. Thompson*, 409 S.C. 557, 561-62 (2014)). Equitable estoppel, however, “should be used sparingly” and only when necessary to prevent injustice. *Id.* at 345.

Under direct benefits estoppel, “[a] nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Id.* at 340 (quoting *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290 (2012)). “A benefit is direct if it flows directly from the agreement.” *Blackwell v. Mary Black Health System, LLC*, No. 2020-001613, 2024 WL 4234719, at *4 (S.C. Ct. App. Sept. 18, 2024). “In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.” *Id.* Generally, cases in which estoppel is applied involve “non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *Id.* In other words, “[u]nder the direct

benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory ‘knowingly exploits’ the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement. . . .” *Wilson*, 426 S.C. at 340-41 (quoting *Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626, 977 N.Y.S.2d 685, 999 N.E.2d 1130, 1134 (2013)).

In support of its estoppel argument, U.S. Pipe relies primarily upon *One Belle Hall Prop. Owners Ass’n v. Trammell Crow Residential Co.*, 418 S.C. 51, 791 S.E.2d 286 (Ct. App. 2016). The Court finds that *One Belle Hall* is distinguishable from the present case. In *One Belle Hall*, unlike the present case, a warranty claim was initiated under the agreement containing the arbitration provision by a developer hired by the plaintiff for the plaintiff’s benefit. Further, the plaintiff in *One Belle Hall* did not dispute that the arbitration provision applied to its claims. It only asserted that the contract containing the provision was unconscionable. As a result, the *One Belle Hall* court did not address the issue of direct benefits estoppel at all. The court held only that the trial court erred in finding that the contract was unconscionable.

This case is more akin to the South Carolina Supreme Court’s decision in *Wilson v. Willis*, 426 S.C. 326, 337 (2019), which is binding upon this Court. In *Wilson*, the defendant sought to enforce an arbitration provision against the plaintiffs, who were non-signatories to the contract containing the arbitration provision. *See Wilson*, 426 S.C. at 338. In holding that the non-signatories were not bound to the arbitration agreement under an estoppel theory, the South Carolina Supreme Court emphasized that the plaintiffs were “never aware of the existence of the contract” until they initiated litigation and that general principles of South Carolina law formed the basis of most of the plaintiffs’ claims. *Id.* at 342. The Supreme Court further emphasized that “direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen ‘but for’ a contract’s existence[.]” *Id.* at 343. The court went on to distinguish between direct

benefits and indirect benefits and explained that a benefit is indirect “where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.” *Id.* at 343-44. Ultimately, the court held that the plaintiffs could not be bound by the arbitration provision because they did not “knowingly exploit[] and receive[] a direct benefit” from the contract containing the arbitration agreement. *Id.* at 344.

In the present case, like in *Wilson*, Greenville Water submits un rebutted evidence that it was unaware of U.S. Pipe’s Terms and Conditions of Sale prior to this litigation and, therefore, could not have sought to derive a benefit from the Terms and Conditions of Sale at the time its claims arose. Further, Greenville Water’s Complaint does not reference U.S. Pipe’s Terms and Conditions of Sale and none of Greenville Water’s claims arise from the Terms and Conditions of Sale.² Rather, the Complaint alleges Greenville Water’s warranty and implied contract claims arise out of affirmative representations made by U.S. Pipe in the Certificate of Product Compliance U.S. Pipe provided to Greenville Water. In other words, like in *Wilson*, general principles of South Carolina law form the basis of Greenville Water’s claims. And, contrary to U.S. Pipe’s assertions, Greenville Water’s implied contract claim against U.S. Pipe does not automatically subject Greenville Water to arbitration because Greenville Water “does not exploit (and thereby assume)” the Terms and Conditions of Sale. *Wilson*, 426 S.C. at 343-44. This is not a situation where Greenville Water seeks to derive a benefit from U.S. Pipe’s Terms and Conditions of Sale while, at the same time, attempting to repudiate the arbitration provision, which is the circumstance in

² For that reason, the other two cases upon which U.S. Pipe relies are distinguishable. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 297 (Ct. App. 2012) (holding the plaintiff accepted a benefit under the contract and sought to use the contract containing the arbitration provision to hold the defendant liable); *see also International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) (holding the contract containing the arbitration provision formed the factual foundation for every claim asserted by the plaintiff and that the plaintiff’s “entire case . . . hinge[d] on its asserted rights under the . . . contract”).

which direct benefits estoppel applies. *See Blackwell*, 2024 WL 4234719, at *4 (“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.”). Accordingly, the Court finds that considerations of equity and justice do not warrant estopping Greenville Water from asserting its nonsignatory status to U.S. Pipe’s Terms and Conditions of Sale. Greenville Water is, therefore, not subject to arbitration under an estoppel theory.

D. The Arbitration Agreement is an Unconscionable Adhesion Contract as to Greenville Water.

Greenville Water asserts that, even if it is subject to U.S. Pipe’s Terms and Conditions of Sale, the arbitration provision cannot be enforced because it is an unconscionable adhesion contract. Courts may invalidate arbitration agreements on general state law “contract defenses, such as fraud, duress, and unconscionability.” *Zabinski*, 346 S.C. at 593. In South Carolina, unconscionability is defined as “the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson*, 373 S.C. at 24-25. “In analyzing claims of unconscionability of arbitration agreements, the [U.S. Court of Appeals for the] Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decisionmaker.” *Id.* at 25. While adhesion contracts are not per se unconscionable, courts look upon them with “considerable skepticism” because they raise “considerable doubt that any true agreement ever existed to submit disputes to arbitration.” *Id.* at 26-27.

The Court finds that, even assuming the arbitration provision applied to Greenville Water, it is not enforceable against Greenville Water because it is an unconscionable contract of adhesion.

By simply placing terms and conditions, including an arbitration provision, on its website and not providing any reasonable notice to indirect purchasers of its products (and non-users of the website), like Greenville Water, U.S. Pipe has failed to afford Greenville Water any meaningful choice in its ability to negotiate the arbitration provision in U.S. Pipe's Terms and Conditions of Sale. *See Simpson*, 373 S.C. at 24-25; *see also Lampo*, 437 S.C. at 241-43 ("A party cannot assent to something he does not know about, so the law in general requires that for an offer to be effective, the responding party must have reasonable notice of the offer's terms."). Courts across the United States have found that terms placed on a website without reasonable notice to those intended to be bound do not bind a party to those terms, even when the party used the website to conduct the transactions at issue. *See, e.g., Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1178-79 (9th Cir. 2014) (holding browsewrap terms of use were not enforceable because users of website were not provided reasonable notice of the terms); *Walker v. Nautilus, Inc.*, 541 F. Supp. 3d 836, 841 (S.D. Ohio 2021) ("Courts have refused to enforce browsewrap terms of use where the website's users were required to scroll down the webpage to discover the terms."); *Marshall v. Georgetown Memorial Hosp.*, No. 2:21-cv-02733, 2022 WL 5434226, at *6-7 (D.S.C. July 7 2022) (holding no agreement to arbitrate arose where website did not make clear user was agreeing to arbitrate).

U.S. Pipe's attempt to enforce the Terms and Conditions of Sale contained on its website against Greenville Water here is even more one-sided because Greenville Water never transacted directly with U.S. Pipe, much less used U.S. Pipe's website to conduct the transactions at issue. *See Schmidt Aff.* at ¶¶ 5-6. U.S. Pipe identifies no authority that allows a manufacturer to bind all downstream purchasers of a product to arbitration by simply posting one-sided terms and conditions on a website. *See Zajac, LLC v. Walker Industrial and Truck, Inc.*, No. 2:15-cv-00507-GZS, 2016 WL 9021492, at *1 (D. Me. Mar. 21, 2016) ("It cannot be the case that a manufacturer

can simply post warranty terms on its website and bind any and all downstream purchasers of its products.”). The fact that Greenville Water may be a sophisticated purchaser does not alter the Court’s analysis because there is no evidence of an arms-length, commercial negotiation between the parties since Greenville Water did not purchase the pipe at issue from U.S. Pipe. *See South Carolina Elec. & Gas Co. v. Westinghouse Elec. Corp.*, 826 F. Supp. 1549, 1554 (D.S.C. 1993). The Court, therefore, finds that the arbitration provision in U.S. Pipe’s Terms and Conditions of Sale cannot be enforced against Greenville Water because it is unconscionable under South Carolina law.

E. The Federal Arbitration Act Does Not Apply and this Court is the Proper Forum.

“The purpose of the FAA is ‘to make arbitration agreements as enforceable as other contracts, but not more so.’ *Wilson*, 426 S.C. at 336 (quoting *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12 (1967)) (emphasis added). “A party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement.”

Because the Court finds that there is no valid agreement to arbitrate between U.S. Pipe and Greenville Water, the FAA does not apply. For the same reason, the venue and jurisdiction provision contained within the arbitration provision of U.S. Pipe’s Terms and Conditions of Sale also does not apply. The Court thus finds that it has jurisdiction over Greenville Water’s claims against U.S. Pipe and that this Court is the proper venue to hear those claims.

IV. CONCLUSION

The Court finds that there is no basis to enforce the arbitration provision contained in U.S. Pipe’s Terms and Conditions of Sale against Greenville Water. U.S. Pipe’s Motion to Dismiss or Stay Pending Arbitration is denied.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that U.S. Pipe's Motion to Dismiss or Stay Pending Arbitration is DENIED in its entirety.

IT IS SO ORDERED.

E-signature of Judge Gravely to follow



Greenville Common Pleas

Case Caption: Commissioners Of Public Works Of The City Of Greenville Sou vs. United States Pipe And Foundry Company LLC , defendant, et al
Case Number: 2024CP2305956
Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2025-02-24 17:28:49 page 18 of 18

The South Carolina Court of Appeals

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.


Appellate Case No. 2025-000520

ORDER

On March 26, 2025, Respondent filed a motion to expedite, seeking expedited judicial review and to expedite the briefing schedule. Appellant filed a return, agreeing that an expedited review of the matter was appropriate and proposing a briefing schedule. Respondent filed a reply, which also included a proposed briefing schedule. After careful consideration, we grant in part and deny in part Respondent's motion to expedite. A motion to expedite is generally premature if made before the record on appeal and final briefs are filed. *See Maner v. Maner*, 278 S.C. 377, 380, 296 S.E.2d 533, 535 (1982) (explaining that motions to expedite were premature in cases where the briefs remained outstanding). Because the parties have not served and filed the record on appeal and final briefs, Appellant's motion to expedite is denied without prejudice. However, we grant Respondent's request to set an expedited briefing schedule.

Appellant shall serve and file its initial brief and designation of matter within twenty-one days of receiving the transcript. Respondent shall serve and file its initial brief and designation of matter within twenty-one days of service of Appellant's initial brief and designation of matter. Appellant shall serve and file any initial reply brief within seven days of service of Respondent's initial brief and

designation of matter. Thereafter, Appellant shall serve and file the record on appeal within fifteen days, and the parties shall serve and file their final briefs within fifteen days of service of the record on appeal. If no reply brief is filed, Appellant shall serve and file the record on appeal within fifteen days of service of Respondent's initial brief and designation of matter, and the parties shall serve and file their final briefs within fifteen days of service of the record on appeal. Furthermore, there shall be a presumption against granting extensions in this case.



FOR THE COURT

Columbia, South Carolina

cc:

Beattie B. Ashmore, Esquire
John Hampton Scully, Esquire
Paul G. Joyce, Esquire
Daniel Rock Flynn, Esquire
Justin J. Hawal, Esquire
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FILED
Apr 09 2025

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Plaintiff,

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2024-CP-23-_____

SUMMONS

TO: THE DEFENDANTS ABOVE NAMED

You are hereby summoned and required to answer the complaint served upon you, and to serve a copy of your answer to same upon the subscriber at 1306 South Church Street, Greenville, South Carolina, 29605, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be in default and Plaintiff will move the court for the relief demanded in the complaint.

[signature on following page]

Respectfully submitted,

/s/ Adam C. Bach

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*Counsel for Plaintiff Commissioners of
Public Works of the City of Greenville,
South Carolina*

* *Pro Hac Vice* applications to be filed

October 8, 2024

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Plaintiff,

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2024-CP-23-_____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina (“Greenville Water” or “Plaintiff”) brings this action against Defendants United States Pipe and Foundry Company LLC (“U.S. Pipe”), TEC Utilities Supply Inc. (“TEC”), and Hayes Pipe Supply Inc. (“Hayes”) (collectively, “Defendants”). Plaintiff makes the following allegations upon personal knowledge as to its own acts, upon information and belief and its attorneys’ investigation as to all other matters, and alleges as follows:

I. NATURE OF THE ACTION

1. This action arises out of U.S. Pipe’s manufacture of ductile iron pipe with defective cement-mortar lining at its Lynchburg, Virginia facility (the “Lynchburg Facility”) and its sale of the defective cement-mortar-lined pipes through its distributors, TEC and Hayes, to Greenville Water (the “Defective Pipes”).

2. Cement-mortar-lined ductile iron pipe is standard in the waterworks industry because the cement-mortar lining prevents water from reacting with the iron contained in the pipes. Ductile iron pipe that does not have cement-mortar lining results in water quality problems like brown and rusty water and functional problems to water distribution systems like flow rate reduction. Cement-mortar lining provides an area of high pH near the pipe wall and a barrier between the water and the pipe, reducing the pipe's susceptibility to a specific form of corrosion called tuberculation.¹

3. It is an industry standard and custom to line all ductile-iron pipe installed in water systems today with a cement-mortar lining, unless otherwise specified by the purchaser.

4. The American Water Works Association ("AWWA") is a non-profit, scientific, and educational association, founded to improve water quality, that issues industry standards approved by the American National Standards Institute ("ANSI"). The AWWA standard for cement-mortar-lined ductile iron pipe requires cement mortar lining to have a uniform thickness of 1/16-inch throughout the length of all 3-inch to 12-inch ductile iron pipe. The purpose of this standard is to ensure water quality and safety ("ANSI/AWWA Standard C104/A21.4").

5. Both the South Carolina Plumbing Code and Safe Drinking Water Act as well as Greenville Water's design and construction specifications require all water service ductile iron pipes to be cement-mortar-lined in compliance with ANSI/AWWA Standard C104/A21.4.

6. U.S. Pipe's marketing and promotional materials tout that its ductile iron pipe fabrication "meets or exceeds" the latest revision of ANSI/AWWA Standard C104/A21.4. U.S. Pipe also issued a Certificate of Product Compliance to Greenville Water that certified that the Defective Pipes complied with ANSI/AWWA C104/A21.4.

¹ Tuberculation is a bacterial-based oxygen-driven form of corrosion that results in iron oxide precipitation.

7. Despite U.S. Pipe's marketing and promotional representations and Certificate of Product Compliance to Greenville Water, the Defective Pipes do not meet ANSI/AWWA Standard C104/A21.4.

8. After unknowingly installing significant quantities of the Defective Pipes in its water distribution system, Greenville Water learned that the Defective Pipes fail to have cement-mortar lining with a uniform thickness of 1/16-inch throughout the length of the pipe. The photo below depicts one of the Defective Pipes with a non-uniform cement-mortar lining on one side that is less than 1/16-inch thick.



9. The Defective Pipes thus do not comply with industry standards, South Carolina law, Greenville Water's own design and construction specifications, or U.S. Pipe's affirmative certifications and representations concerning its product.

10. Greenville Water prides itself in providing its customers with the highest quality and safest water available. The Defective Pipes will cause numerous problems—all leading to a loss of consumer confidence, reputational harm, and, ultimately, lost revenue—including, among others: increased corrosion causing deterioration of water quality; build-up of corrosive material causing water pressure problems; damage to infrastructure caused by cement-mortar breaking-off from the pipes and causing pipe clogs; and proliferation of numerous types of bacteria due to loose cement, which can be harmful to human health if allowed to reach unsafe levels.

11. Greenville Water seeks: (1) a declaration that the alleged defect causes the Defective Pipes to violate South Carolina law governing their intended use; (2) benefit-of-the-bargain damages as a result of Defendants' manufacture and sale of the Defective Pipes; (3) consequential damages for the cost of removing and replacing the Defective Pipes presently installed in Greenville Water's water distribution system; and (4) punitive damages for U.S. Pipe's deceptive and unfair trade practices, including its reckless failure to implement reasonable processes to ensure product quality control at its Lynchburg Facility in light of its misrepresentations and material omissions concerning the Defective Pipes.

12. Greenville Water's claims against Defendants for declaratory relief and damages include the following: (1) Declaratory Judgment against U.S. Pipe pursuant to South Carolina Code §§ 15-53-10, *et seq.*; (2) Breach of Express Warranty against U.S. Pipe; (3) Breach of Express Warranty against TEC and Hayes; (4) Breach of Implied Warranty of Merchantability against U.S. Pipe; (5) Breach of Implied Warranty of Merchantability against TEC and Hayes; (6) Breach of Implied Warranty of Fitness for a Particular Purpose against U.S. Pipe; (7) Breach of Implied Warranty of Fitness for a Particular Purpose against TEC and Hayes; (8) Breach of Implied Contract against U.S. Pipe; (9) Violations of the South Carolina Unfair Trade Practices Act, S.C.

Code. Ann. §§ 39-5-20, *et seq.*, against U.S. Pipe; and (10) in the alternative, Unjust Enrichment against all Defendants.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction over Defendants, pursuant to South Carolina Code §§ 36-2-802, 36-2-803, and 15-5-150, because Defendant TEC is organized under the laws of and has its principal place of business in South Carolina; all Defendants transact business, contracted to supply goods, and manufactured and/or distributed goods with the expectation they would be used in South Carolina; and Greenville Water is a resident of South Carolina.

14. Venue is proper in Greenville County, pursuant to South Carolina Code §§ 15-7-30, because Defendant TEC's principal place of business was located in Greenville County at the time this action arose, the most substantial part of the alleged acts and omissions giving rise to this action occurred in Greenville County, and Greenville Water's principal place of business at the time this action arose was located in Greenville County.

III. PARTIES

A. **Plaintiff**

15. Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina is a body corporate and politic formed pursuant to South Carolina Code §§ 5-31-10, *et seq.* and headquartered in Greenville, South Carolina. Greenville Water operates and controls a water utility that provides "quality water and a sustainable future for more than 500,000 residents in Greenville County" and portions of surrounding counties. Greenville Water's operations include water treatment, engineering and operation, construction and maintenance, conservation, and storage.

B. Defendants

16. Defendant U.S. Pipe and Foundry Company LLC is an Alabama limited liability company headquartered in Birmingham, Alabama. U.S. Pipe's only member is USP Holdings Inc., a Delaware corporation with its principal place of business in Rosemont, Illinois. U.S. Pipe designs and manufactures water and wastewater products, including ductile iron pipe, for sale throughout the United States. U.S. Pipe manufactured and sold the Defective Pipes to Greenville Water through its distributors, TEC and Hayes.

17. Defendant TEC Utilities Supply Inc. is a South Carolina corporation, headquartered in Greenville, South Carolina. TEC is in the business of selling, warehousing, and distributing products for the waterworks industry, including ductile iron pipe manufactured by U.S. Pipe. TEC operated as a distributor for U.S. Pipe, selling and distributing a portion of the Defective Pipes to Greenville Water.

18. Defendant Hayes Pipe Supply Inc. is a Tennessee corporation, headquartered in Nashville, Tennessee. Hayes is in the business of selling, warehousing, and distributing products for the waterworks industry and for sewage systems, including ductile iron pipe manufactured by U.S. Pipe. Hayes operated as a distributor for U.S. Pipe, selling and distributing a portion of the Defective Pipes to Greenville Water.

IV. FACTUAL ALLEGATIONS**A. Cement-Mortar-Lined Ductile Iron Pipe is Designed to Maximize Water Quality and Safety.**

19. The first cast iron water mains were not coated or lined on the inside. Water that flowed through them freely interacted with the iron from which they were made. Certain types of water chemically react with the interior of unlined iron pipe, which resulted in frequently

encountered problems, such as the water turning red or rusty and a reduction of flow rate through the pipe.²

20. After significant research and experimentation, the use of cement-mortar lining in ductile iron pipes was found to prevent corrosion and improve flow characteristics.³

21. The first cement-mortar-lined cast-iron pipe was installed in the water distribution system of Charleston, South Carolina in 1922. Since 1922, substantial improvements have been made in the production and design of cement-mortar-lined ductile iron pipe, including the development of a centrifugal lining process.⁴

22. Today, there are two primary manufacturing methods for lining pipes and pipe fittings to ensure the best possible quality control is maintained and that a uniform thickness of cement-mortar is distributed throughout the entire length of the pipe: the centrifugal method and the projection method.⁵

23. The centrifugal cement-mortar lining process consists of distributing the mortar evenly throughout the length of the pipe by means of a lance that moves while the pipe is spinning. After introduction of the mortar at a relatively low speed, the pipe is spun at a higher rate and vibrated to produce a dense lining that adheres to the pipe wall.⁶

² AWWA Manual, Chapter 9: Interior Lining and Hydraulics, at 149 (2009).

³ *Id.*

⁴ *Id.* at 149-50.

⁵ *Id.* at 150.

⁶ *Id.* at 151.

24. The projection method of cement-mortar lining consists of spraying or slinging mortar on the pipe wall with a rapidly revolving head that has been inserted through the stationary pipe at its centerline. The pipe is then spun and vibrated to smooth and compact the lining.⁷

25. When done properly, these methods result in lining that is dense, smooth, and offers very little frictional resistance to the flow of water.⁸

26. To prevent a rapid loss of moisture from the mortar and properly cure cement linings in pipe, the lining can be: (1) seal-coated immediately; (2) stored in a moist atmosphere for a period of time; or (3) processed through an elevated temperature “curing tunnel” to accelerate the cure. When cured properly, the cement lining has sufficient adherence to the wall of the pipe that the pipe may be cut and tapped⁹ without concern for damage to the lining.¹⁰

27. It is the industry standard and custom for all ductile-iron pipe installed in water systems today to be provided with a cement-mortar lining with uniform thickness using the centrifugal process or projection method, unless otherwise specified by the purchaser.¹¹

B. Industry Standards and South Carolina Law Require Uniform Thickness of Cement Mortar Lining.

28. The American Water Works Association is an international, nonprofit, scientific, and educational society dedicated to providing total water solutions by assuring the effective management of water. Its membership includes over 4,300 water utilities that supply roughly 80 percent of drinking water in the United States.¹²

⁷ *Id.*

⁸ *Id.*

⁹ Tapping allows a utility to tie into a pressurized water system by drilling or cutting safely into an existing pipe.

¹⁰ *Id.* at 151.

¹¹ *Id.*

¹² <https://www.awwa.org/About-Us> (last accessed October 6, 2024).

29. AWWA promulgates industry standards approved by ANSI concerning cement-mortar lining for ductile iron pipe and fittings, including ANSI/AWWA Standard C104/A21.4.

30. To ensure quality control is maintained and that a uniform thickness of mortar is distributed throughout the entire length of the pipe, ANSI/AWWA Standard C104/A21.4 provides that all ductile iron pipe with cement-mortar lining “shall be lined by a centrifugal process or a projection method.”¹³

31. The standard also stipulates that the thickness of the linings for pipe and fittings shall not be less than 1/16-inch (1.6 mm) for 3-inch to 12-inch pipe.¹⁴ The lining surface shall be free from ridges, corrugations, or defects that reduce the thickness of the lining to less than the specified thickness.¹⁵

32. Any cement-mortar lining not conforming to ANSI/AWWA Standard C104/A21.4 shall, at the purchaser’s option, be made satisfactory or the pipe replaced by the manufacturer or supplier upon notice of nonconformance that explains the basis of a determination of nonconformance.¹⁶

33. The South Carolina Plumbing Code provides that ductile iron water service piping shall be lined with cement mortar in accordance with ANSI/AWWA Standard C104/A21.4.¹⁷

34. South Carolina has also adopted regulations that mirror the federal Safe Drinking Water Act of 1974. South Carolina’s Safe Drinking Water Act (“SDWA”), among other

¹³ ANSI/AWWA C104/A21/4-22, Cement-Mortar Lining for Ductile-Iron Pipe and Fittings, Sec. 4.7.1.

¹⁴ *Id.* at Sec. 4.8.1.

¹⁵ *Id.* at Sec. 4.11.

¹⁶ *Id.* at Sec. 6.1.

¹⁷ South Carolina Plumbing Code Sec. 605.3

requirements, requires all Public Water Systems (which includes Greenville Water), to “conform to Section C of the American Water Works Association (AWWA) Standards.”¹⁸

35. Greenville Water, as a public water supplier, must therefore use ductile iron pipe with cement-mortar lining with a uniform, minimum thickness of 1/16-inch.

36. To ensure compliance with South Carolina law, Greenville Water’s construction specifications for water mains require that all ductile iron water service piping shall be cement mortar lined in accordance with ANSI/AWWA Standard C104/A21.4.¹⁹ Greenville Water does not knowingly allow any ductile iron pipe to be used in its water distribution system that does not comply with ANSI/AWWA Standard C104/A21.4.

C. Cement-Mortar-Lined Ductile Iron Pipe with Non-Uniform Thickness Causes Significant Problems.

37. When cement-mortar-lined ductile iron pipe is a uniform thickness of at least 1/16-inch in compliance with ANSI/AWWA Standard C104/A21.4, it has a life expectancy of approximately 100 years.²⁰

38. Cement-mortar lining that fails to meet ANSI/AWWA Standard C104/A21.4, however, can cause a myriad of problems, including, without limitation, significantly diminished life expectancy of the pipe, damage to the infrastructure of water distribution systems, decreased functionality of water distribution systems, decreased water quality, and build-up of potentially harmful bacteria (if allowed to reach unsafe levels).

¹⁸ S.C. Code. Ann. Regs. 61-58.4().

¹⁹ See Greenville Water Construction Specifications for Water Mains, Sec. 5-3.01 (Nov. 1, 2019), available at <https://www.greenvillewater.com/wp-content/uploads/2021/02/Greenville-Water-Construction-Specs-2019.pdf>

²⁰ Muster TH, Gotama J, Gould S, De Silva D, Beale N, Burn S, Davis P (2011) Cement mortar linings in cast and ductile iron pipes: life expectancy and dependence upon water chemistry. In: 18th International corrosion conference

39. Cement-mortar lining that is less than 1/16-inch thick will fail to protect the pipe from corrosion, which will lead to water quality problems, such as iron deposits in the water, that result in brown and rusty water.

40. The only way to combat the decrease in water quality for consumers is to regularly flush the water mains, which wastes time and resources, ultimately leading to decreased revenue. Regularly flushing the water mains also increases the risk of causing a negative environmental impact.

41. As tuberculation inevitably increases, corrosive material accumulates in the water distribution system, which causes water pressure problems.

42. Additionally, when cement-mortar is unevenly concentrated at the top of the pipe, gravity will naturally cause the mortar to break-off and fall into the water distribution system, which clogs the pipes. Tapping or drilling into the water mains to connect new lateral distribution lines also causes cement-mortar lining of non-uniform thickness to break-off and fall into the water distribution system.

43. Over time, loose cement and clogs in the water mains, customer service lines, and valves caused by cement that has broken-off of the pipes can cause a build-up of numerous types of bacteria, which can be harmful to human health if allowed to reach unsafe levels.

44. Decreased water quality and reliability—even if the water is technically “safe” to drink—causes a loss of consumer confidence in public water systems and results in reputational harm and increased customer complaints, ultimately leading to lost revenue.

D. U.S. Pipe Certified Its Cement-Mortar-Lined Ductile Iron Pipe Meets or Exceeds Industry Standards.

45. Cement-mortar-lined ductile iron pipe is typically manufactured with an asphaltic seal paint coating on the freshly placed cement-mortar lining, which helps cure the lining by

minimizing loss of moisture during hydration, resulting in controlled cure of the mortar.²¹ The inside of a cement-mortar-lined ductile iron pipe with an asphaltic seal paint coating is pictured below:

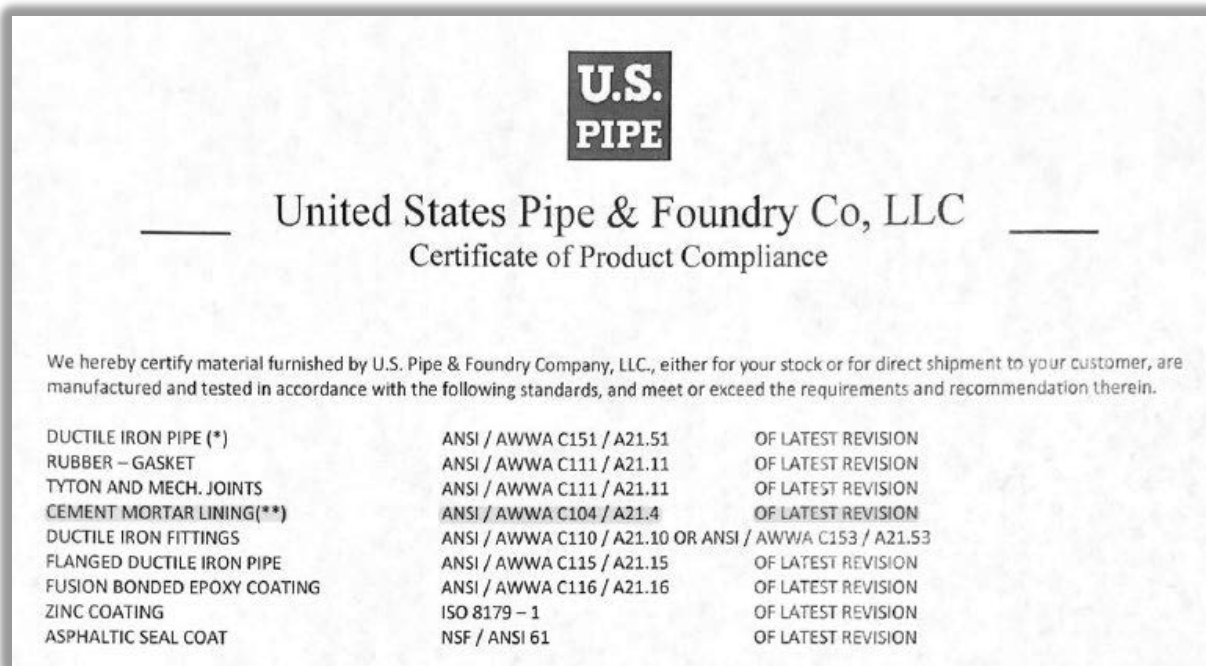


46. As pictured above, this black coating makes it impossible to directly observe the cement-mortar lining underneath without cutting the pipe and thereby rendering it useless.

47. Consequently, purchasers of cement-mortar-lined ductile iron pipe rely heavily upon the manufacturer's Certificate of Product Compliance to ensure their water distribution systems are in compliance with industry standards and state law.

²¹ AWWA Manual, Chapter 9: Interior Lining and Hydraulics, at 150 (2009).

48. U.S. Pipe issued a Certificate of Product Compliance to Greenville Water that its cement-mortar-lined ductile iron pipe meets or exceeds the requirements of ANSI/AWWA Standard C104/A21.4.



49. U.S. Pipe also touts in its marketing and promotional materials that its cement-mortar-lined ductile iron pipe meets or exceeds the requirements of ANSI/AWWA Standard C104/A21.4.

50. Because the cement-mortar-lined ductile iron pipe that it purchased from U.S. Pipe was manufactured with a black asphaltic seal paint coating covering the defective cement mortar lining, Greenville Water was unable to observe the defect in the cement-mortar lining of the pipes it purchased.

51. Consequently, Greenville Water relied upon U.S. Pipe’s Certificate of Product Compliance and affirmative representations of compliance with ANSI/AWWA Standard C104/A21.4 to ensure compliance with its internal construction specifications, industry standards, and South Carolina law.

52. Had Greenville Water known the cement-mortar lining was defective for any of the pipes it purchased from U.S. Pipe, it would not have purchased the Defective Pipes nor would it have permitted them to have been installed in its water distribution system.

E. Despite Its Certification of Product Compliance, U.S. Pipe Manufactured and Sold Ductile Iron Pipe with Defective Cement-Mortar Lining.

53. In May 2023, during a construction project on Holmsby Lane in Greenville, South Carolina (the “Holmsby Project”), after cutting into a pipe to attach a portion of it to a fire hydrant, Greenville Water discovered that the cement-mortar lining in the interior of the pipe was defective and did not comply with ANSI/AWWA Standard C104/A21.4.

54. Below is a photo of the actual defective pipe that was discovered during construction at the Holmsby Project (a piece of yellow tape has since been placed to hold the cement-mortar lining in place because, as a result of the defect, it became detached from the interior of the pipe when the pipe was cut²²). The cement-mortar lining is concentrated entirely on one end of the pipe, rather than maintaining a uniform thickness all the way around:



²² As discussed above, had the pipe been in compliance with ANSI/AWWA Standard C104/A21.4, the cement-mortar lining would not have detached from the pipe itself when cut or tapped. See ¶ 42, *supra*.

55. The construction team subsequently notified Greenville Water of the defective pipe, and Greenville Water immediately stopped work on the Holmsby Project to investigate further.

56. Greenville Water's investigation revealed the defective pipe at issue was manufactured at U.S. Pipe's Lynchburg Facility and the defective cement-mortar lining was widespread among pipe that was manufactured by U.S. Pipe at its Lynchburg Facility.

57. Greenville Water subsequently retained an outside engineering firm to test pipe from U.S. Pipe's Lynchburg Facility across numerous deliveries and batches, which showed that more than 70% of the pipe tested failed to comply with ANSI/AWWA Standard C104/A21.4.

58. U.S. Pipe's Lynchburg Facility is older than its other manufacturing facilities—including its Bessemer, Alabama facility ("Bessemer Facility") from which Greenville Water has also purchased cement-mortar-lined ductile iron pipe that is materially compliant with ANSI/AWWA Standard C104/A21.4.

59. Upon information and belief, unlike the Bessemer Facility, the Lynchburg Facility lacks automated processes for manufacturing and curing cement-mortar-lined ductile iron pipe that ensure appropriate quality control, including compliance with ANSI/AWWA Standard C104/A21.4.

60. Despite having actual knowledge that its processes at the Lynchburg Facility did not meet industry standards and caused its cement-mortar-lined ductile iron pipe to be susceptible to non-compliance with ANSI/AWWA Standard C104/A21.4, U.S. Pipe nonetheless certified that the Defective Pipes complied with ANSI/AWWA Standard C104/A21.4 without having appropriate quality control processes in place to provide a good faith basis to do so.

F. Greenville Water Has Been Damaged Due to U.S. Pipe's Manufacture and Sale of the Defective Pipes.

61. From October 2022 through May 2023, Greenville Water regularly purchased ductile iron pipe with cement-mortar lining from U.S. Pipe, through distributors TEC and Hayes, much of which was manufactured at U.S. Pipe's Lynchburg Facility.

62. Since October 2022, Greenville Water has purchased approximately \$330,000.00 worth of uninstalled pipe presently being stored at its storage facility and more than 100,000 feet of cement-mortar-lined ductile iron pipe manufactured at U.S. Pipe's Lynchburg Facility was installed in Greenville Water's water distribution system.

63. Based upon Greenville Water's testing of pipe from U.S. Pipe's Lynchburg Facility across numerous deliveries and batches from October 2022 through May 2023, demonstrating a greater than 70% failure rate, it is nearly certain that most, if not all, of the cement-mortar-lined ductile iron pipe manufactured at U.S. Pipe's Lynchburg Facility and installed in Greenville Water's distribution system during that time period is defective because it does not comply with ANSI/AWWA Standard C104/A21.4.

64. Additionally, prior to October 2022, a substantial amount of cement-mortar-lined ductile iron pipe manufactured at U.S. Pipe's Lynchburg Facility was purchased and installed in Greenville Water's distribution system by Greenville Water and contractors of Greenville Water.

65. Upon information and belief, U.S. Pipe used the same manufacturing processes and quality control procedures at its Lynchburg Facility prior to October 2022. Consequently, it is highly likely that all cement-mortar-lined ductile iron pipe from the Lynchburg Facility that was purchased by Greenville Water and installed in Greenville Water's distribution system prior to October 2022 has the same defect at approximately the same 70% failure rate.

66. Greenville Water has notified U.S. Pipe of the Defective Pipes. U.S. Pipe, however, has refused to refund the purchase price of the Defective Pipes or pay to replace any of the presently installed Defective Pipes in Greenville Water's water distribution system.

67. In addition to declaratory relief, Greenville Water seeks benefit of the bargain damages for the difference between what it paid in consideration for the Defective Pipes and what it actually received, consequential damages for the cost of removing and replacing the Defective Pipes presently installed in its water distribution system, and punitive damages for U.S. Pipe's deceptive and unfair trade practices.

V. CLAIMS ALLEGED

COUNT I

Declaratory Judgment, South Carolina Code §§ 15-53-10, *et seq.* Against all Defendants

68. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

69. Pursuant to the Uniform Declaratory Judgments Act under South Carolina Code § 15-53-30, any person interested under a written contract or other writings constituting a contract or whose rights, status, or other 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.

70. Greenville Water entered into a contractual relationship with U.S. Pipe and, among other written documents and communications, U.S. Pipe provided Greenville Water with a written certificate of compliance with ANSI/AWWA Standard C104/A21.4.

71. Greenville Water also entered into contractual relationships with TEC and Hayes, and among other written documents and communications, entered into purchase orders that provided that TEC and Hayes warranted that the cement-mortar-lined ductile iron pipes they sold to Greenville Water would comply with Greenville Water's specifications, including ANSI/AWWA Standard C104/A21.4., and would be fit for the purpose intended for their use.

72. As a public water supplier and system, Greenville Water is subject to the requirements of § 605.3 of the South Carolina Plumbing Code and § 61-58.4 of the South Carolina Safe Drinking Water Act.

73. Both the South Carolina Plumbing Code and the South Carolina Safe Drinking Water Act require Greenville Water to use only cement-mortar-lined ductile iron pipe that complies with ANSI/AWWA Standard C104/A21.4 in its water distribution system.

74. Greenville Water seeks a declaration that the installation of cement-mortar-lined ductile iron pipe, manufactured and sold by Defendants, that fails to comply with ANSI/AWWA Standard C104/A21.4, in violation of Defendants' contracts with Greenville Water, has or will cause Greenville Water to be in noncompliance with the requirements of § 605.3 of the South Carolina Plumbing Code and § 61-58.4 of the South Carolina Safe Drinking Water Act.

COUNT II
Breach of Express Warranty
Against U.S. Pipe

75. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

76. Pursuant to § 36-2-313 of the South Carolina Uniform Commercial Code, a seller of a product creates an express warranty by making any affirmation of fact or promise to the buyer,

whether directly or indirectly, which relates to the goods and becomes part of the basis of the bargain.

77. U.S. Pipe issued a Certificate of Product Compliance and represented in its promotional and marketing materials that its cement-mortar-lined ductile iron pipe meets or exceeds the requirements of ANSI/AWWA Standard C104/A21.4.

78. U.S. Pipe's affirmation of fact and promise that that its cement-mortar-lined ductile iron pipe meets or exceeds the requirements of ANSI/AWWA Standard C104/A21.4 was part of the basis of the bargain with Greenville Water because had Greenville Water known that the Defective Pipes did not meet the requirements of ANSI/AWWA Standard C104/A21.4 it would not have purchased the Defective Pipes.

79. U.S. Pipe breached its express warranty because the Defective Pipes do not meet or exceed the requirements of ANSI/AWWA Standard C104/A21.4.

80. As a direct and proximate cause of U.S. Pipe's breach of express warranty, Greenville Water has been damaged, including, without limitation, by not receiving the benefit of its bargain with U.S. Pipe and by unknowingly installing cement-mortar-lined ductile iron pipe that does not meet industry standards nor comply with South Carolina law in its water distribution system.

81. Greenville Water is entitled to recover all damages proximately caused by U.S. Pipe's breach of express warranty, including general damages, and special or consequential damages that are the natural and direct result of the breach.

COUNT III
Breach of Express Warranty
Against TEC and Hayes

82. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

83. Pursuant to § 36-2-313 of the South Carolina Uniform Commercial Code, a seller of a product creates an express warranty by making any affirmation of fact or promise to the buyer, whether directly or indirectly, which relates to the goods and becomes part of the basis of the bargain.

84. The Purchase Order Standard Terms and Conditions between Greenville Water, on one hand, and TEC and Hayes, on the other, provide that TEC and Hayes expressly warrant that all goods and services furnished pursuant to the Purchase Order will conform with Greenville Water's construction specifications.

85. Both Greenville Water's construction specifications and South Carolina law require that all cement-mortar-lined ductile iron pipe installed in Greenville Water's water distribution system must comply with ANSI/AWWA Standard C104/A21.4.

86. TEC and Hayes breached their express warranty because the Defective Pipes do not comply with ANSI/AWWA Standard C104/A21.4.

87. As a direct and proximate cause of TEC's and Hayes' breach of express warranty, Greenville Water has been damaged, including, without limitation, by not receiving the benefit of its bargain with TEC and Hayes and by unknowingly installing cement-mortar-lined ductile iron pipe that does not meet industry standards nor comply with South Carolina law in its water distribution system.

88. Greenville Water is entitled to recover all damages proximately caused by TEC's and Hayes' breach of express warranty, including general damages, and special or consequential damages that are the natural and direct result of the breach.

COUNT IV
Breach of Implied Warranty of Merchantability
Against U.S. Pipe

89. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

90. Pursuant to § 36-2-314 of the South Carolina Uniform Commercial Code, a warranty that goods are merchantable is implied in a sale of goods if the seller is a merchant with respect to goods of that kind.

91. U.S. Pipe is in the business of manufacturing and selling cement-mortar-lined ductile iron pipe and, therefore, is a merchant with respect to goods of that kind.

92. U.S. Pipe breached its implied warranty of merchantability because the Defective Pipes fail to comply with ANSI/AWWA Standard C104/A21.4 and, therefore, their use in Greenville Water's water distribution system fails to meet industry standards and fails to comply with South Carolina law.

93. As a direct and proximate cause of U.S. Pipe's breach of implied warranty of merchantability, Greenville Water has been damaged, including, without limitation, by not receiving the benefit of its bargain with U.S. Pipe and by unknowingly installing cement-mortar-lined ductile iron pipe that does not meet industry standards nor comply with South Carolina law in its water distribution system.

94. Greenville Water is entitled to recover all damages proximately caused by U.S. Pipe's breach of implied warranty merchantability, including general damages, and special or consequential damages that are the natural and direct result of the breach.

COUNT V
Breach of Implied Warranty of Merchantability
Against TEC and Hayes

95. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

96. Pursuant to § 36-2-314 of the South Carolina Uniform Commercial Code, a warranty that goods are merchantable is implied in a sale of goods if the seller is a merchant with respect to goods of that kind.

97. The Purchase Order Standard Terms and Conditions between Greenville Water, on one hand, and TEC and Hayes, on the other, also provide that TEC and Hayes warrant that the goods and services sold will be merchantable, safe, and free from defects in material or workmanship.

98. TEC and Hayes are in the business of selling and distributing cement-mortar-lined ductile iron pipe and, therefore, are merchants with respect to goods of that kind.

99. TEC and Hayes breached their implied warranty of merchantability because the Defective Pipes fail to comply with ANSI/AWWA Standard C104/A21.4 and, therefore, their use in Greenville Water's water distribution system fails to meet industry standards and fails to comply with South Carolina law.

100. As a direct and proximate cause of TEC's and Hayes' breach of implied warranty of merchantability, Greenville Water has been damaged, including, without limitation, by not receiving the benefit of its bargain with TEC and Hayes and by unknowingly installing cement-

mortar-lined ductile iron pipe that does not meet industry standards nor comply with South Carolina law in its water distribution system.

101. Greenville Water is entitled to recover all damages proximately caused by TEC's and Hayes' breach of implied warranty merchantability, including general damages, and special or consequential damages that are the natural and direct result of the breach.

COUNT VI
Breach of Implied Warranty of Fitness for a Particular Purpose
Against U.S. Pipe

102. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

103. Pursuant to § 36-2-315 of the South Carolina Uniform Commercial Code, where the seller of goods has reason to know the particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods shall be fit for such purpose.

104. U.S. Pipe knew or should have known that Greenville Water was purchasing cement-mortar-lined ductile iron pipe for use in its water distribution system and Greenville Water relied upon U.S. Pipe's skill to furnish suitable cement-mortar-lined ductile iron pipe for that purpose.

105. The Defective Pipes are not fit for the purpose for which they were sold because they fail to comply with ANSI/AWWA Standard C104/A21.4 and, therefore, their use in Greenville Water's water distribution system fails to meet industry standards and fails to comply with South Carolina law.

106. As a direct and proximate cause of U.S. Pipe's breach of implied warranty of fitness for a particular purpose, Greenville Water has been damaged, including, without limitation, by not

receiving the benefit of its bargain with U.S. Pipe and by unknowingly installing cement-mortar-lined ductile iron pipe that does not meet industry standards nor comply with South Carolina law in its water distribution system.

107. Greenville Water is entitled to recover all damages proximately caused by U.S. Pipe's breach of implied warranty of fitness for a particular purpose, including general damages, and special or consequential damages that are the natural and direct result of the breach.

COUNT VII
Breach of Implied Warranty of Fitness for a Particular Purpose
Against TEC and Hayes

108. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

109. Pursuant to § 36-2-315 of the South Carolina Uniform Commercial Code, where the seller of goods has reason to know the particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods shall be fit for such purpose.

110. The Purchase Order Standard Terms and Conditions between Greenville Water, on one hand, and TEC and Hayes, on the other, also provide that TEC and Hayes warrant that the goods and services sold will be fit and sufficient for the purpose intended.

111. TEC and Hayes knew or should have known that Greenville Water was purchasing cement-mortar-lined ductile iron pipe for use in its water distribution system and Greenville Water relied upon TEC's and Hayes' skill to furnish suitable cement-mortar-lined ductile iron pipe for that purpose.

112. The Defective Pipes are not fit for the purpose for which they were sold because they fail to comply with ANSI/AWWA Standard C104/A21.4 and, therefore, their use in

Greenville Water's water distribution system fails to meet industry standards and fails to comply with South Carolina law.

113. As a direct and proximate cause of TEC's and Hayes' breach of implied warranty of fitness for a particular purpose, Greenville Water has been damaged, including, without limitation, by not receiving the benefit of its bargain with TEC and Hayes and by unknowingly installing cement-mortar-lined ductile iron pipe that does not meet industry standards nor comply with South Carolina law in its water distribution system.

114. Greenville Water is entitled to recover all damages proximately caused by TEC's and Hayes' breach of implied warranty of fitness for a particular purpose, including general damages, and special or consequential damages that are the natural and direct result of the breach.

COUNT VIII
Breach of Implied Contract
Against U.S. Pipe

115. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

116. Greenville Water entered into an implied contract with U.S. Pipe when it arranged to purchase cement-mortar-lined ductile iron pipe manufactured by U.S. Pipe.

117. As part of the transaction, U.S. Pipe agreed to provide Greenville Water with cement-mortar-lined ductile iron pipe that met or exceeded the requirements of ANSI/AWWA Standard C104/A21.4.

118. Greenville Water entered into the implied contract with the reasonable expectation that U.S. Pipe would provide it with cement-mortar-lined ductile iron pipe that complied with the requirements of ANSI/AWWA Standard C104/A21.4 and South Carolina law.

119. Greenville Water would not have purchased cement-mortar-lined ductile iron pipe manufactured by U.S. Pipe, in the absence of the implied contract or implied terms between it and U.S. Pipe. Cement-mortar-lined ductile iron pipe that complied with the requirements of ANSI/AWWA Standard C104/A21.4 and South Carolina law was critical to realize the intent of the parties.

120. Greenville Water fully performed its obligations under the implied contract with U.S. Pipe.

121. U.S. Pipe breached its implied contract with Greenville Water by failing to provide Greenville Water with cement-mortar-lined ductile iron pipe that complied with the requirements of ANSI/AWWA Standard C104/A21.4 and South Carolina law.

122. As a direct and proximate cause of U.S. Pipe's breach of implied contract, Greenville Water has been damaged, including, without limitation, by not receiving the benefit of its bargain with U.S. Pipe and by unknowingly installing cement-mortar-lined ductile iron pipe that does not meet industry standards nor comply with South Carolina law in its water distribution system.

123. Greenville Water is entitled to recover all damages proximately caused by U.S. Pipe's breach of implied contract, including general damages, and special or consequential damages that are the natural and direct result of the breach.

COUNT IX
Violation of the South Carolina Unfair Trade Practices Act,
S.C. Code. Ann. §§ 39-5-10, *et seq.*
Against U.S. Pipe

124. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

125. U.S. Pipe is a "person," as defined by S.C. Code Ann. § 39-5-10(a).

126. South Carolina's Unfair Trade Practices Act ("UTPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20.

127. U.S. Pipe advertised, offered, and sold goods or services in South Carolina and engaged in trade or commerce directly or indirectly affecting the people of South Carolina, as defined by S.C. Code Ann. § 39-5-10(b).

128. U.S. Pipe engaged in unfair and deceptive acts and practices, including:

- a. omitting, suppressing, and concealing the material fact that its Lynchburg Facility lacked reasonable processes for ensuring appropriate quality control, including compliance with ANSI/AWWA Standard C104/A21.4;
- b. omitting, suppressing, and concealing the material fact that use of its cement-mortar-lined ductile iron pipe manufactured at its Lynchburg Facility in a public water system was likely to violate industry standards and South Carolina law;
- c. failing to identify foreseeable risks that would cause its products not to comply with ANSI/AWWA Standard C104/A21.4, remediate those risks, and adequately improve its manufacturing processes to ensure appropriate quality control;
- d. failing to implement and maintain reasonable processes for ensuring appropriate quality control, including compliance with ANSI/AWWA Standard C104/A21.4; and
- e. misrepresenting that its cement-mortar-lined ductile iron pipe manufactured at its Lynchburg Facility meets or exceeds the requirements of ANSI/AWWA Standard C104/A21.4.

129. U.S. Pipe's acts and practices had, and continue to have, the tendency and capacity to deceive.

130. U.S. Pipe's representations and omissions were material because they were likely to deceive reasonable consumers about the quality of its cement-mortar-lined ductile iron pipe.

131. U.S. Pipe intended to mislead Greenville Water and other South Carolina consumers and induce them to rely on its misrepresentations and omissions.

132. Had U.S. Pipe disclosed to Greenville Water that the Defective Pipes did not meet or exceed the requirements of ANSI/AWWA Standard C104/A21.4, U.S. Pipe's Lynchburg Facility would have been unable to continue in business and it would have been forced to adopt reasonable processes to ensure appropriate quality control and compliance with the requirements of ANSI/AWWA Standard C104/A21.4.

133. Instead, U.S. Pipe falsely held itself out as manufacturing and selling products of the highest quality and U.S. Pipe was trusted to provide cement-mortar-lined ductile iron pipe that met industry standards and could be used in public water systems in compliance with South Carolina law.

134. Because U.S. Pipe held itself out as manufacturing and selling products of the highest quality, Greenville Water acted reasonably in relying on U.S. Pipe's misrepresentations and omissions, the truth of which it could not have discovered prior to purchasing and installing the Defective Pipes.

135. U.S. Pipe had a duty to disclose the above-described facts due to, among other reasons, its knowledge that Greenville Water and other South Carolina consumers rely upon its misrepresentations and omissions to comply with industry standards and South Carolina law designed to provide safe and effective public water systems.

136. U.S. Pipe's business acts and practices offend an established public policy, and are immoral, unethical, and oppressive. U.S. Pipe's acts and practices also offend established public policies that seek to protect consumers who rely upon safe and effective public water systems. These public policies are reflected in laws such as the South Carolina Plumbing Code and South Carolina Safe Drinking Water Act.

137. U.S. Pipe's unfair and deceptive acts or practices adversely affected the public interest because such acts or practices have the potential for repetition and such acts or practices impact the public at large, including those that rely upon the safety and effectiveness of public water systems.

138. U.S. Pipe's violations present a continuing risk to purchasers of cement-mortar-lined ductile iron pipe as well as the general public.

139. U.S. Pipe acted intentionally, knowingly, and maliciously to violate South Carolina's Unfair Trade Practices Act, and recklessly disregarded Greenville Water's rights. In light of this conduct, punitive damages would serve the interest of society in punishing and warning others not to engage in such conduct and would deter U.S. Pipe and others from committing similar conduct in the future.

140. As a direct and proximate result of U.S. Pipe's unfair and deceptive acts or practices, Greenville Water has suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including loss of consumer confidence in its public water system and other reputational harm.

141. Greenville Water seeks all monetary and non-monetary relief allowed by law, including damages for its economic losses, treble damages, punitive damages, declaratory relief, and reasonable attorneys' fees and costs.

COUNT X
Unjust Enrichment
Against All Defendants

142. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-67, as if fully set forth herein.

143. Alternatively, to the extent a valid contract was not formed between Greenville Water and Defendants, Defendants have been unjustly enriched at Greenville Water's expense.

144. Greenville Water paid for cement-mortar-lined ductile iron pipe that complies with ANSI/AWWA Standard C104/A21.4 and, therefore, may lawfully be used in Greenville Water's water distribution system.

145. Defendants failed to provide Greenville Water with cement-mortar-lined ductile iron pipe that complies with ANSI/AWWA Standard C104/A21.4 and, therefore, may lawfully be used in Greenville Water's water distribution system.

146. Had Greenville Water known Defendants would provide cement-mortar-lined ductile iron pipe that fails to comply with ANSI/AWWA Standard C104/A21.4 and, therefore, cannot lawfully be used in Greenville Water's water distribution system under South Carolina law, it would not have purchased the Defective Pipes.

147. Defendants nonetheless retained the money that Greenville Water provided and has, therefore, been unjustly enriched.

148. Greenville Water is entitled to restitution and non-restitutionary disgorgement in the amount by which Defendants were unjustly enriched.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendants as follows:

- a. Declare that Defendants' manufacture and sale of cement-mortar-lined ductile iron pipe that fails to comply with ANSI/AWWA Standard C104/A21.4 for use in Greenville Water's water distribution system violates South Carolina law;
- b. Award all monetary relief to which Plaintiff is entitled, including as set forth in Counts I-X above;
- c. Award pre- and post-judgment interest;
- d. Award reasonable attorneys' fees and costs to Plaintiff's counsel; and
- e. Grant such further and other relief as this Court deems appropriate.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: October 8, 2024

Respectfully submitted,

/s/ Adam C. Bach

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*Counsel for Plaintiff Commissioners of
Public Works of the City of Greenville,
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* *Pro Hac Vice* applications to be filed

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Case No.: 2024CP2305956

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Plaintiff,

vs.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.

Defendants.

**ANSWER AND DEFENSES OF
DEFENDANT HAYES PIPE
SUPPLY, INC.**

NOW COMES defendant Hayes Pipe Supply, Inc. (“HPS”), by and through undersigned counsel, and responds to the complaint as follows:

FOR A FIRST DEFENSE

HPS answers the complaint, denying all averments not specifically admitted, as follows:

1. HPS admits that plaintiff has filed this action but denies the validity of the claims asserted against HPS.
2. HPS admits that cement-mortar lining is a product used in the waterworks industry and refers to the manufacturer’s specifications regarding the attributes of the product. HPS denies the characterizations and legal conclusions asserted in paragraphs 2 through 12 of the complaint.
3. HPS admits that venue and jurisdiction are proper as averred in paragraphs 13 and 14 of the complaint.
4. HPS admits the averments in paragraphs 15 through 18 of the complaint upon information and belief.

5. HPS is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 19 through 67 of the complaint.

AS TO COUNT I

6. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

7. HPS admits that South Carolina has adopted the Uniform Declaratory Judgments Act.

8. HPS is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 70 of the complaint.

9. HPS denies the averment in paragraph 71 of the complaint.

10. HPS is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 72 through 74 of the complaint.

AS TO COUNT II

11. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

12. HPS is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 75 through 81 of the complaint.

AS TO COUNT III

13. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

14. HPS denies the averments in paragraphs 83 through 88 of the complaint.

AS TO COUNT IV

15. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

16. HPS denies the averments in paragraphs 90 through 94 of the complaint.

AS TO COUNT V

17. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

18. HPS admits that South Carolina has adopted a version of the Uniform Commercial Code as averred in paragraph 96 of the complaint but denies application of implied warranties to the products sold by HPS, as such warranties were disclaimed.

19. HPS denies the averments in paragraphs 97 through 101 of the complaint.

AS TO COUNT VI

20. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

21. HPS is without knowledge or information sufficient to form a response to the averments in paragraphs 103 through 107 of the complaint.

AS TO COUNT VII

22. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

23. HPS admits that South Carolina has adopted a version of the Uniform Commercial Code as averred in paragraph 109 of the complaint.

24. HPS denies the averments in paragraphs 110 through 114 of the complaint and states that HPS disclaimed all warranties.

AS TO COUNT VIII

25. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

26. HPS is without knowledge or information sufficient to form a response to the averments in paragraphs 116 through 123 of the complaint.

AS TO COUNT IX

27. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

28. HPS is without knowledge or information sufficient to form a response to the averments in paragraphs 125 through 141 of the complaint.

AS TO COUNT X

29. HPS incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

30. HPS denies the averments in paragraphs 143 through 148 of the complaint.

FOR A SECOND DEFENSE

31. HPS disclaimed all warranties, express or implied, in HPS' terms and conditions that accompanied pick lists and invoices.

FOR A THIRD DEFENSE

32. Plaintiff's claims are barred by the Spearin Doctrine, as HPS is not responsible for the design of Plaintiff's project.

FOR A FOURTH DEFENSE

33. Plaintiff's claims are barred by waiver or estoppel or both.

DATED this 12th day of December 2024.

SHELTON LAW CAROLINAS

/s/Gregory L. Shelton

Gregory L. Shelton

S.C. Bar No.: 76532

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ATTORNEY FOR DEFENDANT

HAYES PIPE SUPPLY, INC.

HAYES PIPE SUPPLY, INC.
TERMS AND CONDITIONS OF SALE

1. Definitions
 - A. "Seller" herein is Hayes Pipe Supply, Inc.
 - B. "Buyer" herein is the corporation, partnership or individual to which products or materials are sold to by Hayes Pipe Supply, Inc.
 - C. "Sales Tax" is the prevailing aggregate of City, County and State sales and use taxes to which the sale is subject.
 - D. "Authorized representatives" are only Hayes Pipe Supply, Inc. officers.
 - E. "Orders" are Buyer's written or verbal purchase orders to Seller.
2. All orders are subject to approval and acceptance by one of Seller's authorized representatives.
3. Payment terms are net thirty (30) days. All "days" are calendar days counted from invoice date.
4. In the event Buyer fails to make payment in accordance with the terms of this agreement, the account shall be deemed to be delinquent and a service charge of one and one-half percent (1 1/2%) per month shall be paid to Seller on the unpaid balance. Service charges shall be monthly. Buyer also agrees to pay all collection costs and expenses, including reasonable attorneys fees incurred by Seller in collecting or attempting to collect any invoice that has not been paid when due.
5. Should it become apparent that Buyer will be unable to meet his financial obligations to Seller or in any other way create reasonable grounds for insecurity on the part of the Seller, the Seller shall have the right to demand payment for any shipment in advance or demand satisfactory security. Should Buyer fail to meet the financial obligations incurred by the agreement or fail to comply with the terms and conditions imposed by this agreement, Seller may cancel any unshipped portion of the order without prejudicing any other right Seller may have.
6. SELLER DOES NOT EXPRESSLY OR IMPLIEDLY WARRANT ANY PRODUCTS SOLD TO BUYER TO BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE, NOR SHALL SELLER BE LIABLE FOR ANY DAMAGES, CONSEQUENTIAL OR INCIDENTAL, THAT MAY OCCUR FROM THE SALE, INSTALLATION, OR USE OF ANY PRODUCTS SOLD TO BUYER. ALL WARRANTIES ARE LIMITED TO THE WARRANTIES PROVIDED BY THE MANUFACTURER OF THE PRODUCTS. PRODUCTS ARE INTENDED FOR USE AND INSTALLATION AS DESCRIBED IN THE MANUFACTURER'S WRITTEN RECOMMENDATIONS. ANY DEFECTS CAUSED BY IMPROPER USE OR INSTALLATION VOIDS ANY AND ALL WARRANTIES EXPRESSED OR IMPLIED BY SELLER OR SELLER'S VENDORS EXCEPT THE WARRANTY OF TITLE. ANY PRIOR EXPRESSED OR IMPLIED WARRANTIES OR SERVICE / INSTALLATION INSTRUCTIONS ARE SUPERSEDED BY THIS PROVISION.
7. SELLER ACCEPTS NO RESPONSIBILITY FOR DESIGN OF THE PROJECT OR INSTALLATION OF MATERIALS DELIVERED. ANY DEFECTS IN PROJECT DESIGN OR INSTALLATION OF MATERIALS VOIDS ANY AND ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, BY SELLER OR SELLER'S VENDORS EXCEPT WARRANTY OF TITLE.
8. Materials shipped are per Seller's interpretation of the purchase order or the plans and specifications provided by Buyer. SIZES, QUANTITIES AND SPECIFICATION CONFORMITY OF THE MATERIALS ARE NOT GUARANTEED BY THE SELLER. Quotations are offered to Buyer as a service and it is Buyer's responsibility to carefully check all items and provide Seller with a correct and comprehensive purchase order. Should, after Buyer fully discharges his responsibilities under the agreement, Seller ships materials which clearly do not conform to the Buyer's detailed order, the limit of Seller's liability shall be to credit Buyer at invoice prices, for the incorrect material shipped at the time the material is returned to Seller in good condition.
9. Seller's estimated shipping promises are based on shipping promises from Seller's vendors or from analysis of Seller's current inventories which are subject to prior sale. SELLER SHALL NOT BE LIABLE for any failure or delay in shipment or delivery of products resulting from any cause beyond Seller's control including but not limited to, prior sale, provisions of law or government regulations, accident, explosion, fire, wind storm, flood or other casualties, strike, lock-out or other labor difficulty, riot, war, insurrection or failures by Seller's vendors to meet their estimated shipping promises. Shipping dates are approximate and are based on Seller's best estimate for all conditions at the time of quotation.
10. Products may not be returned to Seller without Seller's prior consent. If Seller agrees to accept returned materials, those materials must be returned in good condition suitable for resale by Seller as new and unused products. All returned products will be credited to Buyer at invoice price less a re-stocking and re-handling charge. The amount of this charge is dependent upon the total cost to Seller created by the transaction and Seller's inventory levels of those returned products at the time of return, whether or not the products are Seller's normal "stock" items, and the resaleability of the products.
11. All payments for materials furnished by Seller shall be made upon the basis of material delivered (or picked up) as shown by Seller's delivery ticket, whether signed by Buyer or not and by Seller's delivery records. Buyer will receive monthly statements from Seller showing amounts delivered and payments due. Failure on the part of Buyer to notify Seller of discrepancies prior to the due date of each shipment constitutes acceptance for the materials, workmanship, and delivery schedule for the materials covered by the statement.
12. Shipments of material via commercial carrier are F.O.B. point of shipping origin with freight allowed to shipping destination unless specifically agreed otherwise. Shipping via Seller's trucks are F.O.B. destination. In both cases, delivery may be made only on passable roads with smooth and firm surfaces. Unloading will be accomplished by Buyer's equipment and personnel and must be done in a timely fashion or Buyer will be subject to detention charges.
13. Shipments must be inspected by Buyer before unloading to ascertain any damage caused by transport. Claims for shortages or defective materials or non-conformity to specifications which would be revealed by Buyer's prompt inspection, must be communicated to Seller in writing within five (5) days after Buyer receives the materials in order to facilitate prompt investigation of claims.
14. Buyer may not assign or delegate this agreement or the duties arising out of this agreement without Seller's prior written consent. Waiver of a breach of this agreement shall not be construed as a waiver of any other breach.
15. Buyer hereby waives any and all rights which Buyer may have under Tennessee Code Annotated §20-4-101 et seq, relating to venue as it now exists or may hereafter be amended, and further agrees that any action brought by Seller may be brought in the appropriate court in Davidson County Tennessee.
16. Should any part or provision of this agreement be declared invalid, unenforceable, illegal or in conflict with any law, the validity and enforceability of the remaining portions or provisions shall not be affected. This agreement, along with its terms and conditions shall be interpreted under the laws of the State of Tennessee.
17. Acceptance of this offer is expressly limited to the above terms and conditions.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Commissioners of Public Works of The City)
of Greenville, South Carolina,)
))
Plaintiff,)
))
v.)
))
United States Pipe and Foundry)
Company LLC, TEC Utilities Supply)
Inc., and Hayes Pipe Supply Inc.,)
))
Defendants.)

Case No. 2024CP2305956

UNITED STATES PIPE AND
FOUNDRY COMPANY LLC'S
ANSWER

Defendant United States Pipe and Foundry Company LLC (“U.S. Pipe”) by and through its attorneys, Beattie B. Ashmore, P.A. and Colucci & Gallaher, P.C., for its answer to Plaintiffs the Commissioners of Public Works of The City of Greenville, South Carolina’s complaint, subject to all applicable motions, affirmative defenses, and other pleadings, states as follows:

FOR A FIRST DEFENSE

1. U.S. Pipe denies each and every allegation of the Complaint that is not hereinafter specifically admitted and strict proof is demanded thereof.

2. As to the introductory paragraph of the Complaint, which is not numbered, U.S. Pipe admits only that Plaintiff has identified itself as Commissioners of Public Words of the City of Greenville, South Carolina and has filed a Complaint naming Defendants United States Pipe and Foundry Company LLC, TEC Utilities Supply Inc., and Hayes Pipe Supply Inc. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegation that “Plaintiff makes the following allegations upon personal

knowledge as to its own acts, upon information and belief and its attorneys' investigation as to all other matters" therefore denies the same and strict proof is demanded thereof. U.S. Pipe denies the allegations of Plaintiff's claims asserted against U.S. Pipe as set forth herein and denies all other allegations within this paragraph and strict proof is demanded thereof.

3. U.S. Pipe admits only that TEC and Hayes are distributors of U.S. Pipe; U.S. Pipe denies all other allegations contained in Paragraph 1 and strict proof is demanded thereof.

4. Paragraph 2 of the Complaint, inclusive of the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

5. Paragraph 3 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

6. Paragraph 4 of the Complaint contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that the allegation claims that the pipe was defective, the allegation is denied.

7. Paragraph 5 of the Complaint contains legal conclusions to which no response is required. To the extent that the allegation claims that the pipe was defective, the allegation is denied.

8. Upon information and belief, U.S. Pipe admits that its ductile iron pipe meets applicable standards, and lacks information with which to admit or deny the remaining allegations contained in paragraph 6 of the Complaint because the allegation does not identify

what marketing and promotional materials are referenced or provide the project for which the Certificate of Product Compliance was issued.

9. U.S. Pipe denies the allegation contained in paragraph 7 of the Complaint and demands strict proof thereof.

10. U.S. Pipe is without sufficient information with which to admit or deny the allegations contained in paragraph 8 of the Complaint, and therefore same are denied and strict proof is demanded thereof.

11. U.S. Pipe is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, denies that the ductile iron pipe manufactured by U.S. Pipe was defective, and demands strict proof of the alleged claim.

12. U.S. Pipe denies the allegations contained in paragraph 10 of the Complaint and demands strict proof thereof.

13. Paragraph 11 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations are denied and strict proof demanded thereof.

14. Paragraph 12 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations are denied and strict proof demanded thereof.

15. Paragraph 13 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations are denied and strict proof demanded thereof.

16. Paragraph 14 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations are denied and strict proof demanded thereof.

17. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the Complaint, and therefore denies same and demands strict proof thereof.

18. In response to paragraph 16 of the complaint, U.S. Pipe admits that it is an Alabama limited liability company, denies that it is headquartered in Birmingham, Alabama, denies that it manufactured and sold “Defective Pipes” to Greenville Water and demands strict proof thereof.

19. In response to paragraph 17 of the complaint, U.S. Pipe admits that defendant TEC Utilities Supply, Inc. (“TEC”) is a South Carolina corporation, admits that TEC sells ductile iron pipe manufactured by U.S. Pipe, denies that TEC sold or distributed “Defective Pipes” to Greenville Water and demands strict proof thereof.

20. In response to paragraph 18 of the complaint, U.S. Pipe admits that defendant Hayes Pipe Supply, Inc. (“Hayes”) is a Tennessee corporation, admits that Hayes sells ductile iron pipe manufactured by U.S. Pipe, denies that Hayes sold or distributed “Defective Pipes” to Greenville Water and demands strict proof thereof.

21. Paragraph A of the Complaint contains no allegations of wrongdoing and therefore no response is required thereto.

22. Paragraph 19 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile Paragraph 19 of the Complaint, including the footnote, contains no

allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

23. Paragraph 20 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

24. Paragraph 21 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

25. Paragraph 22 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

26. Paragraph 23 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

27. Paragraph 24 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

28. Paragraph 25 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

29. Paragraph 26 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

30. Paragraph 27 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

31. Paragraph B of the Complaint contains no allegations of wrongdoing and therefore no response is required thereto.

32. Paragraph 28 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

33. Paragraph 29 of the Complaint contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

34. Paragraph 30 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph

claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

35. Paragraph 31 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

36. Paragraph 32 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

37. Paragraph 33 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

38. Paragraph 34 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

39. U.S. Pipe denies the allegations contained in paragraph 35 of the Complaint and demands strict proof thereof.

40. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36 of the Complaint and the footnote referenced therein, and therefore denies same and demands strict proof thereof.

41. Paragraph C of the Complaint contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

42. Paragraph 37 of the Complaint, including the footnote, contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

43. U.S. Pipe denies the allegations contained in paragraph 38 of the Complaint and demands strict proof thereof.

44. U.S. Pipe denies the allegations contained in paragraph 39 of the Complaint and demands strict proof thereof.

45. U.S. Pipe denies the allegations contained in paragraph 40 of the Complaint and demands strict proof thereof.

46. U.S. Pipe denies the allegations contained in paragraph 41 of the Complaint and demands strict proof thereof.

47. U.S. Pipe denies the allegations contained in paragraph 42 of the Complaint and demands strict proof thereof.

48. U.S. Pipe denies the allegations contained in paragraph 43 of the Complaint and demands strict proof thereof.

49. U.S. Pipe denies the allegations contained in paragraph 44 of the Complaint and demands strict proof thereof.

50. Paragraph D of the Complaint contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

51. Upon information and belief, U.S. Pipe admits the allegations contained in paragraph 45 of the Complaint.

52. U.S. Pipe denies the allegations contained in paragraph 46 of the Complaint and demands strict proof thereof.

53. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 47 of the Complaint, and therefore denies same and demands strict proof thereof.

54. U.S. Pipe denies the allegations contained in paragraph 48 of the Complaint and demands strict proof thereof.

55. Paragraph 49 of the Complaint contains no allegations of wrongdoing and therefore no response is required thereto. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

56. U.S. Pipe denies the allegations contained in paragraph 50 of the Complaint and demands strict proof thereof.

57. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 51 of the Complaint, and therefore denies same and demands strict proof thereof.

58. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52 of the Complaint, and therefore denies same and demands strict proof thereof.

59. U.S. Pipe denies the allegations contained in paragraph E of the Complaint and demands strict proof thereof.

60. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 53 of the Complaint, and therefore denies same and demands strict proof thereof.

61. U.S. Pipe denies the allegations contained within footnote 22 of the Complaint and demands strict proof that the pipe included in the photograph was manufactured by U.S. Pipe. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 54 of the Complaint, and therefore denies same and demands strict proof thereof.

62. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 55 of the Complaint, and therefore denies same and demands strict proof thereof.

63. U.S. Pipe denies the allegations contained in paragraph 56 of the Complaint and demands strict proof thereof.

64. U.S. Pipe denies the allegations contained in paragraph 57 of the Complaint and demands strict proof thereof.

65. U.S. Pipe denies the allegations contained in paragraph 58 of the Complaint and demands strict proof thereof.

66. U.S. Pipe denies the allegations contained in paragraph 59 of the Complaint and demands strict proof thereof.

67. U.S. Pipe denies the allegations contained in paragraph 60 of the Complaint and demands strict proof thereof.

68. U.S. Pipe denies the allegations contained in paragraph F of the Complaint and demands strict proof thereof.

69. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 61 of the Complaint, and therefore denies same and demands strict proof thereof.

70. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 62 of the Complaint, and therefore denies same and demands strict proof thereof.

71. U.S. Pipe denies the allegations contained in paragraph 63 of the Complaint and demands strict proof thereof.

72. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 64 of the Complaint, and therefore denies same and demands strict proof thereof.

73. U.S. Pipe denies the allegations contained in paragraph 65 of the Complaint and demands strict proof thereof.

74. U.S. Pipe denies the allegations contained in paragraph 66 of the Complaint and demands strict proof thereof.

75. U.S. Pipe denies the allegations contained in paragraph 67 of the Complaint and demands strict proof thereof.

76. In response to paragraph 68 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

77. Paragraph 69 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

78. U.S. Pipe denies the allegations contained in paragraph 70 of the Complaint and demands strict proof thereof.

79. To the extent the allegations contained in Paragraph 71 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe.

80. Paragraph 72 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

81. Paragraph 73 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

82. U.S. Pipe denies the allegations contained in paragraph 74 of the Complaint and demands strict proof thereof.

83. In response to paragraph 75 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

84. Paragraph 76 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

85. U.S. Pipe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 77 of the Complaint, and therefore denies same and demands strict proof thereof.

86. U.S. Pipe denies the allegations contained in paragraph 78 of the Complaint and demands strict proof thereof.

87. U.S. Pipe denies the allegations contained in paragraph 79 of the Complaint and demands strict proof thereof.

88. U.S. Pipe denies the allegations contained in paragraph 80 of the Complaint and demands strict proof thereof.

89. U.S. Pipe denies the allegations contained in paragraph 81 of the Complaint and demands strict proof thereof.

90. In response to paragraph 82 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

91. Paragraph 83 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

92. To the extent the allegations contained in Paragraph 84 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe.

93. To the extent the allegations contained in Paragraph 85 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe.

94. To the extent the allegations contained in Paragraph 86 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

95. To the extent the allegations contained in Paragraph 87 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

96. To the extent the allegations contained in Paragraph 88 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

97. In response to paragraph 89 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

98. Paragraph 90 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

99. Paragraph 91 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

100. U.S. Pipe denies the allegations contained in paragraph 92 of the Complaint and demands strict proof thereof.

101. U.S. Pipe denies the allegations contained in paragraph 93 of the Complaint and demands strict proof thereof.

102. U.S. Pipe denies the allegations contained in paragraph 94 of the Complaint and demands strict proof thereof.

103. In response to paragraph 95 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

104. Paragraph 96 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

105. To the extent the allegations contained in Paragraph 97 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

106. To the extent the allegations contained in Paragraph 98 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

107. To the extent the allegations contained in Paragraph 99 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent

they are directed to other parties to this action, no response is required from U.S. Pipe, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

108. To the extent the allegations contained in Paragraph 100 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

109. To the extent the allegations contained in Paragraph 101 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

110. In response to paragraph 102 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

111. Paragraph 103 of the Complaint contains legal conclusions to which no response is required, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

112. U.S. Pipe denies the allegations contained in paragraph 104 of the Complaint and demands strict proof thereof.

113. U.S. Pipe denies the allegations contained in paragraph 105 of the Complaint and demands strict proof thereof.

114. U.S. Pipe denies the allegations contained in paragraph 106 of the Complaint and demands strict proof thereof.

115. U.S. Pipe denies the allegations contained in paragraph 107 of the Complaint and demands strict proof thereof.

116. In response to paragraph 108 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

117. Paragraph 109 of the Complaint contains legal conclusions to which no response is required, and to the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

118. To the extent the allegations contained in Paragraph 110 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied

119. To the extent the allegations contained in Paragraph 111 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied

120. To the extent the allegations contained in Paragraph 112 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe. To

the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

121. To the extent the allegations contained in Paragraph 113 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

122. To the extent the allegations contained in Paragraph 114 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

123. In response to paragraph 115 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

124. U.S. Pipe denies the allegations contained in paragraph 116 of the Complaint and demands strict proof thereof.

125. U.S. Pipe denies the allegations contained in paragraph 117 of the Complaint and demands strict proof thereof.

126. U.S. Pipe denies the allegations contained in paragraph 118 of the Complaint and demands strict proof thereof.

127. U.S. Pipe denies the allegations contained in paragraph 119 of the Complaint and demands strict proof thereof.

128. U.S. Pipe denies the allegations contained in paragraph 120 of the Complaint and demands strict proof thereof.

129. U.S. Pipe denies the allegations contained in paragraph 121 of the Complaint and demands strict proof thereof.

130. U.S. Pipe denies the allegations contained in paragraph 122 of the Complaint and demands strict proof thereof.

131. U.S. Pipe denies the allegations contained in paragraph 123 of the Complaint and demands strict proof thereof.

132. In response to paragraph 124 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

133. Paragraph 125 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

134. Paragraph 126 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

135. Paragraph 127 of the Complaint contains legal conclusions to which no response is required. To the extent that this paragraph claims that the ductile iron pipe manufactured by U.S. Pipe was defective, those allegations are denied.

136. U.S. Pipe denies the allegations contained in paragraph 128 of the Complaint and demands strict proof thereof.

137. U.S. Pipe denies the allegations contained in paragraph 129 of the Complaint and demands strict proof thereof.

138. U.S. Pipe denies the allegations contained in paragraph 130 of the Complaint and demands strict proof thereof.

139. U.S. Pipe denies the allegations contained in paragraph 131 of the Complaint and demands strict proof thereof.

140. U.S. Pipe denies the allegations contained in paragraph 132 of the Complaint and demands strict proof thereof.

141. U.S. Pipe denies the allegations contained in paragraph 133 of the Complaint and demands strict proof thereof.

142. U.S. Pipe denies the allegations contained in paragraph 134 of the Complaint and demands strict proof thereof.

143. U.S. Pipe denies the allegations contained in paragraph 135 of the Complaint and demands strict proof thereof.

144. U.S. Pipe denies the allegations contained in paragraph 136 of the Complaint and demands strict proof thereof.

145. U.S. Pipe denies the allegations contained in paragraph 137 of the Complaint and demands strict proof thereof.

146. U.S. Pipe denies the allegations contained in paragraph 138 of the Complaint and demands strict proof thereof.

147. U.S. Pipe denies the allegations contained in paragraph 139 of the Complaint and demands strict proof thereof.

148. U.S. Pipe denies the allegations contained in paragraph 140 of the Complaint and demands strict proof thereof.

149. U.S. Pipe denies the allegations contained in paragraph 141 of the Complaint and demands strict proof thereof.

150. In response to paragraph 142 of the Complaint, U.S. Pipe repeats and realleges each and every preceding paragraph as if fully set forth herein verbatim.

151. To the extent the allegations contained in Paragraph 143 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe.

152. To the extent the allegations contained in Paragraph 144 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe.

153. To the extent the allegations contained in Paragraph 145 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe.

154. To the extent the allegations contained in Paragraph 146 of the Complaint are directed at U.S. Pipe, the same are denied and strict proof is demanded thereof. To the extent they are directed to other parties to this action, no response is required from U.S. Pipe.

155. U.S. Pipe denies the allegations contained in paragraph 147 of the Complaint and demands strict proof thereof.

156. U.S. Pipe denies the allegations contained in paragraph 148 of the Complaint and demands strict proof thereof.

157. In response to the “WHEREFORE” paragraph, including its sub-parts, to the extent the therein are directed at U.S. Pipe, the same are denied and strict proof is demanded

thereof. To the extent they are directed at other parties to this action, no response is required from U.S. Pipe.

158. U.S. Pipe denies that the Plaintiff is entitled to recover any of the relief requested in the Complaint and strict proof is demanded thereof.

For a Second Defense
(Failure to State a Claim)

159. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

160. That the Plaintiffs Complaint in its entirety fails to state a claim upon which relief may be granted against U.S. Pipe and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

For a Third Defense
(No Deviation from Standard of Care)

161. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

162. At all times relevant hereto, U.S. Pipe acted reasonably, in good faith, and with due diligence.

163. Upon information and belief, the materials supplied by U.S. Pipe were provided within acceptable standards and methods, and, at no time pertinent hereto, did U.S. Pipe deviate from any known and then prevailing standard while providing those materials. Consequently, Plaintiff is barred from recovery against U.S. Pipe.

For a Fourth Defense
(No Proximate Cause)

164. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

165. That, even if U.S. Pipe were negligent, as alleged in the Complaint, which is specifically denied, the negligence of U.S. Pipe is not the direct or proximate cause of any injury alleged by the Plaintiff and therefore U.S. Pipe is not liable for any damages allegedly sustained by the Plaintiff.

For a Fifth Defense
(Laches / Waiver / Estoppel / Statute of Limitations)

166. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

167. Some or all of the claims against U.S. Pipe are barred by the doctrine of laches, waiver and/or estoppel.

168. Upon information and belief, some, or all of the causes of action alleged in the Complaint were not commenced within the applicable time limit, and therefore, are barred by the applicable statute of limitations or statute of frauds.

For a Sixth Defense
(Culpable Conduct)

169. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

170. U.S. Pipe alleges that any injuries and damages alleged by the Plaintiffs, if

any, which U.S. Pipe expressly denies, were due to and caused by the intervening and superseding negligence of a third-party, including but not limited to the Plaintiffs, over whom U.S. Pipe had no control, so as to bar the claims of the Plaintiffs as to U.S. Pipe, or, in the alternative, in proportionate reduction of same.

171. U.S. Pipe alleges that the injuries and damages alleged by the Plaintiffs, if any, which this answering Defendant expressly denies, were due to and caused by the negligence of the Plaintiffs, which alone or concurring, supervening and/or intervening with the negligence, if any, of other persons, unknown third parties, so as to be the sole proximate cause of Plaintiffs' alleged injuries and damages, if any, so as to bar Plaintiffs' claims as to Defendant, or, in the alternative, in proportionate reduction of same.

For a Seventh Defense
(Use of Product)

172. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

173. Whatever damages that were sustained by Plaintiffs at the time and place alleged in the Complaint are due in whole or in part as a result of the misuse, abuse or misapplication of the product.

For an Eighth Defense
(Lack of Privity)

174. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

175. Plaintiffs' claims are barred because they were never in privity with U.S. Pipe.

For a Ninth Defense
(Failure to Join)

176. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

177. Plaintiffs' claims are barred, in whole or in part, to the extent they may have failed to join parties whose participation is indispensable for proper adjudication and, therefore, this matter should be dismissed.

For a Tenth Defense
(Superseding Negligence)

178. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

179. That this Defendant would show that the damages alleged by the Complaint, which damages are hereby specifically denied, were the sole and proximate result of the intervening and/or superseding negligence and/or intervening and/or superseding willful acts and/or recklessness of third persons or parties, which intervening and/or superseding negligence and/or willful acts and/or other actions are a bar to the causes of action asserted against this Defendant.

For an Eleventh Defense
(Economic Loss Rule)

180. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

181. Plaintiffs' claims may be barred, in whole or in part, by the economic loss rule.

For a Twelfth Defense
(Failure to Mitigate)

182. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

183. Upon information and belief, Plaintiffs' damages are barred in whole or in part by their failure to mitigate damages, if any.

For a Thirteenth Defense
(Reservation and Non-Waiver)

184. U.S. Pipe gives notice of its intent to assert any additional affirmative defenses that may become available as information is received and considered and reserves the right to amend this Answer to assert any such defenses as they become known. U.S. Pipe pleads any and all other defenses which may be applicable and provided for by Rules 8, 9, and 12 of the South Carolina Rules of Civil Procedure, by statute, regulation, or by common law, as if fully set forth herein.

185. U.S. Pipe incorporates by reference the affirmative defenses raised by the co-defendants in this action.

For a Fourteenth Defense
(Punitive Damages Not Allowed)

186. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

187. Any claim by Plaintiff for punitive damages against U.S. Pipe cannot be sustained because such damages are not recoverable under the facts of the case and South Carolina law, and furthermore, their imposition in this case would violate both the United

States and South Carolina Constitutions, including, but not limited to, procedural and substantive Due Process rights, and Equal Protection rights, guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 3 of the South Carolina Constitution. This also includes, but is not limited to, S.C. Code Ann. §§ 15-32-520 and 15-35-530, the requirement for a bifurcated trial and the clear and convincing evidence standard of proof.

For a Fifteenth Defense
(Contribution Among Joint Tortfeasors Act and Indemnity)

188. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

189. U.S. Pipe would show that, in the event of a verdict rendered jointly against U.S. Pipe and the remaining Defendants, U.S. Pipe is entitled to be set off or reduced or abated or apportioned to the extent that any other party's actions caused or contributed to any damages from said remaining Defendants, pursuant to the provisions of the South Carolina Uniform Contribution Among Joint Tortfeasors Act Section 15-38-10, *et seq.* SC Code Amended, and/or other provisions of law. U.S. Pipe reserves and asserts all rights under S.C. Code Ann. § 15-38-15 to the extent it bars, limits, or apportions any fault or recovery herein. U.S. Pipe would also show that, if it is liable to Plaintiff (which it denies), then other potentially responsible parties would be liable to it in contribution or indemnity. U.S. Pipe pleads the doctrines of contribution and indemnity as a defense in this action.

For a Sixteenth Defense
(Learned Intermediaries and Sophisticated User Doctrine)

190. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

191. Without admitting its products were defective, U.S. Pipe submits that the products that are the subject of the complaint were sold to sophisticated users, who in turn, through the exercise of their own knowledge and expertise, should have known and appreciated the proper uses and requirements of the products and therefore, this Defendant pleads the Sophisticated User Doctrine as a complete defense to this action.

For a Seventeenth Defense
(Damages)

192. All allegations contained within U.S. Pipe's answer and other affirmative defenses are incorporated herein and made part of hereto by reference which are not inconsistent with this defense.

193. Plaintiff is not entitled to special damages, treble damages, attorney's fees, or any other damages or interest, costs, or expenses. These damages, including but not limited to attorney's fees and pre-judgment interest, are not recoverable. Damages are also limited by other provisions of South Carolina law, for example Chapter 2 of Title 36 of the South Carolina Code of Laws.

WHEREFORE, having fully answered the Complaint of the Plaintiff, United States Pipe and Foundry Company, LLC prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

Date: March 10, 2025
Greenville, South Carolina

BEATTIE B. ASHMORE, P.A.

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STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Case No.: 2024CP2305956

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Plaintiff,

vs.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.

Defendants.

**ANSWER AND DEFENSES OF
DEFENDANT HAYES PIPE
SUPPLY, INC.**

NOW COMES defendant Hayes Pipe Supply, Inc. (“Hayes Pipe”), by and through undersigned counsel, and responds to the complaint as follows:

FOR A FIRST DEFENSE BY WAY OF ANSWER

Hayes Pipe answers the complaint, denying all averments not specifically admitted, and with paragraphs numbered to correspond to the paragraphs of the complaint, as follows:

1. Hayes Pipe admits that plaintiff has filed this action but denies the validity of the claims asserted against Hayes Pipe and further denies the remaining averments in paragraph 1 of the complaint.

2. Hayes Pipe admits that cement-mortar lining is a product used in the waterworks industry and refers to the manufacturer’s specifications regarding the attributes of the product. Hayes Pipe denies the characterizations and legal conclusions asserted in paragraph 2 of the complaint.

3. Paragraph 3 of the complaint contains a legal conclusion to which no response is required. To the extent a response is required, Hayes Pipe denies the legal conclusion upon information and belief.

4. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 4 of the complaint.

5. Paragraph 5 of the complaint contains a legal conclusion to which no response is required. To the extent a response is required, Hayes Pipe denies the legal conclusion upon information and belief.

6. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 6 of the complaint.

7. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 7 of the complaint.

8. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 8 of the complaint.

9. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 9 of the complaint.

10. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 10 of the complaint.

11. Hayes Pipe admits that plaintiff has filed this action but denies the validity of plaintiff's claims and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 11 of the complaint.

12. Hayes Pipe admits that plaintiff has filed this action but denies the validity of plaintiff's claims and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 12 of the complaint.

13. Hayes Pipe denies plaintiff's characterizations and assumptions in paragraph 13 of the complaint concerning South Carolina's Code of Laws and admits that Hayes Pipe transacted business in Greenville County, South Carolina.

14. Hayes Pipe denies plaintiff's characterizations and assumptions in paragraph 14 of the complaint concerning South Carolina's Code of Laws and admits that Hayes Pipe transacted business in Greenville County, South Carolina.

15. Hayes Pipe admits that plaintiff is a political body formed to control water quality in Greenville County, South Carolina and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 15 of the complaint.

16. Hayes Pipe denies the averments in paragraph 16 of the complaint, except Hayes Pipe admits that Defendant U.S. Pipe and Foundry Company LLC ("U.S. Pipe") is a manufacturer of water and wastewater products for sale.

17. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 17 of the complaint.

18. Hayes Pipe denies the averments in paragraph 18 of the complaint, except Hayes Pipe admits that Hayes Pipe is a Tennessee corporation with its principal office in Nashville, Tennessee and that Hayes Pipe sells products for use by the waterworks industry.

AS TO FACTUAL ALLEGATIONS

19. Hayes Pipe admits that cast iron reacts with water, and is without knowledge or information sufficient to form a belief as to the truth of the remaining historical averments in paragraphs 19 of the complaint.

20. Hayes Pipe admits that cement-mortar lining is used in ductile iron pipes, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraphs 20 of the complaint

21. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the historical averments in paragraph 21 of the complaint.

22. Hayes Pipe admits that manufacturers of pipe employ varying methods for manufacturing pipe but is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 22 of the complaint.

23. Hayes Pipe admits that manufacturers of pipe employ varying methods for manufacturing pipe but is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 23 of the complaint.

24. Hayes Pipe admits that manufacturers of pipe employ varying methods for manufacturing pipe but is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 24 of the complaint.

25. Hayes Pipe admits that manufacturers of pipe employ varying methods for manufacturing pipe but is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 25 of the complaint.

26. Hayes Pipe admits that manufacturers of pipe employ varying methods for manufacturing pipe but is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 26 of the complaint.

27. Hayes Pipe admits that manufacturers of pipe employ varying methods for manufacturing pipe but is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 27 of the complaint.

28. Hayes Pipe admits that the American Water Works Association is a trade association serving participants in the water works industry but is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 28 of the complaint.

29. Hayes Pipe admits that the AWWA promulgates industry standards concerning materials but is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 29 of the complaint.

30. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 30 of the complaint.

31. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 31 of the complaint.

32. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 32 of the complaint.

33. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 33 of the complaint.

34. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 34 of the complaint.

35. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 35 of the complaint.

36. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 36 of the complaint.

37. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 37 of the complaint.

38. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 38 of the complaint.

39. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 39 of the complaint.

40. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 40 of the complaint.

41. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 41 of the complaint.

42. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 42 of the complaint.

43. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 43 of the complaint.

44. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations and speculation in paragraph 44 of the complaint.

45. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 45 of the complaint.

46. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 46 of the complaint

47. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 47 of the complaint

48. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 48 of the complaint

49. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 49 of the complaint

50. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 50 of the complaint

51. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 51 of the complaint.

52. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 52 of the complaint.

53. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 53 of the complaint.

54. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 54 of the complaint.

55. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 55 of the complaint.

56. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 56 of the complaint.

57. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 57 of the complaint.

58. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 58 of the complaint.

59. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 59 of the complaint.

60. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 60 of the complaint.

61. Hayes Pipe admits that Hayes Pipe sold U.S. Pipe materials to plaintiff and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 61 of the complaint.

62. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 62 of the complaint.

63. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 63 of the complaint.

64. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 64 of the complaint.

65. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 65 of the complaint.

66. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 66 of the complaint.

67. Hayes Pipe is without knowledge or information sufficient to form a belief as to the characterizations in paragraph 67 of the complaint.

AS TO COUNT I

68. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

69. Hayes Pipe denies plaintiff's characterizations and assumptions in paragraph 60 of the complaint concerning South Carolina's Code of Laws and further denies that plaintiff is entitled to relief under section 15-53-30 of the South Carolina Code of Laws.

70. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 70 of the complaint.

71. Hayes Pipe admits that Hayes Pipe sold certain materials to plaintiff pursuant to a sales contract. Hayes Pipe denies that Hayes Pipe promised to warrant the materials for merchantability or fitness for a particular purpose, or for compliance with specifications or standards. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 71 of the complaint.

72. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 72 of the complaint.

73. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 73 of the complaint.

74. Hayes Pipe admits that plaintiff asserts a claim for declaratory judgment but denies the validity of plaintiff's claim and the averments in paragraph 74 of the complaint.

AS TO COUNT II

75. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

76. No response from Hayes Pipe to paragraph 76 is required, as Count II of the complaint is directed to another defendant. To the extent a response is required, denied.

77. No response from Hayes Pipe to paragraph 77 is required, as Count II of the complaint is directed to another defendant. To the extent a response is required, denied.

78. No response from Hayes Pipe to paragraph 78 is required, as Count II of the complaint is directed to another defendant. To the extent a response is required, denied.

79. No response from Hayes Pipe to paragraph 79 is required, as Count II of the complaint is directed to another defendant. To the extent a response is required, denied.

80. No response from Hayes Pipe to paragraph 80 is required, as Count II of the complaint is directed to another defendant. To the extent a response is required, denied.

81. No response from Hayes Pipe to paragraph 81 is required, as Count II of the complaint is directed to another defendant. To the extent a response is required, denied.

AS TO COUNT III

82. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

83. Hayes Pipe denies plaintiff's characterizations and assumptions in paragraph 83 of the complaint concerning South Carolina's Code of Laws and further denies that section 36-2-313 of the South Carolina Code of Laws applies in this case.

84. Hayes Pipe denies the averment in paragraph 84 of the complaint.

85. Hayes Pipe denies the legal conclusions in paragraph 85 of the complaint and further denies that plaintiff's purported terms and conditions apply.

86. Hayes Pipe denies the averment in paragraph 86 of the complaint.

87. Hayes Pipe denies the averment in paragraph 87 of the complaint.

88. Hayes Pipe denies the averment in paragraph 88 of the complaint.

AS TO COUNT IV

89. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

90. Hayes Pipe denies plaintiff's characterizations and assumptions in paragraph 90 of the complaint concerning South Carolina's Code of Laws and further denies that section 36-2-314 of the South Carolina Code of Laws applies in this case.

91. Hayes Pipe admits that Hayes Pipe is a supplier of pipe and denies the legal conclusion in paragraph 91 of the complaint.

92. Hayes Pipe denies the averment in paragraph 92 of the complaint.

93. Hayes Pipe denies the averments in paragraph 93 of the complaint.

94. Hayes Pipe denies the averment in paragraph 94 of the complaint.

AS TO COUNT V

95. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

96. Hayes Pipe denies plaintiff's characterizations and assumptions in paragraph 96 of the complaint concerning South Carolina's Code of Laws and further denies that section 36-2-314 of the South Carolina Code of Laws applies in this case.

97. Hayes Pipe denies the averments in paragraph 97 of the complaint.

98. Hayes Pipe admits that Hayes Pipe is a supplier of pipe and denies the legal conclusion in paragraph 98 of the complaint.

99. Hayes Pipe denies the averment in paragraph 99 of the complaint.

100. Hayes Pipe denies the averment in paragraph 100 of the complaint.

101. Hayes Pipe denies the averment in paragraph 101 of the complaint.

AS TO COUNT VI

102. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

103. No response from Hayes Pipe to paragraph 103 is required, as Count VI of the complaint is directed to another defendant. To the extent a response is required, denied.

104. No response from Hayes Pipe to paragraph 104 is required, as Count VI of the complaint is directed to another defendant. To the extent a response is required, denied.

105. No response from Hayes Pipe to paragraph 105 is required, as Count VI of the complaint is directed to another defendant. To the extent a response is required, denied.

106. No response from Hayes Pipe to paragraph 106 is required, as Count VI of the complaint is directed to another defendant. To the extent a response is required, denied.

107. No response from Hayes Pipe to paragraph 107 is required, as Count VI of the complaint is directed to another defendant. To the extent a response is required, denied.

AS TO COUNT VII

108. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

109. Hayes Pipe denies plaintiff's characterizations and assumptions in paragraph 109 of the complaint concerning South Carolina's Code of Laws and further denies that section 36-2-315 of the South Carolina Code of Laws applies in this case.

110. Hayes Pipe denies the averments in paragraph 110 of the complaint.

111. Hayes Pipe denies the averments in paragraph 111 of the complaint.

112. Hayes Pipe is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 112 of the complaint.

113. Hayes Pipe denies the averments in paragraph 113 of the complaint.

114. Hayes Pipe denies the averments in paragraph 114 of the complaint.

COUNT VIII

115. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

116. No response from Hayes Pipe to paragraph 116 is required, as Count VIII of the complaint is directed to another defendant. To the extent a response is required, denied.

117. No response from Hayes Pipe to paragraph 117 is required, as Count VIII of the complaint is directed to another defendant. To the extent a response is required, denied.

118. No response from Hayes Pipe to paragraph 118 is required, as Count VIII of the complaint is directed to another defendant. To the extent a response is required, denied.

119. No response from Hayes Pipe to paragraph 119 is required, as Count VIII of the complaint is directed to another defendant. To the extent a response is required, denied.

120. No response from Hayes Pipe to paragraph 120 is required, as Count VIII of the complaint is directed to another defendant. To the extent a response is required, denied.

121. No response from Hayes Pipe to paragraph 121 is required, as Count VIII of the complaint is directed to another defendant. To the extent a response is required, denied.

122. No response from Hayes Pipe to paragraph 122 is required, as Count VIII of the complaint is directed to another defendant. To the extent a response is required, denied.

123. No response from Hayes Pipe to paragraph 123 is required, as Count VIII of the complaint is directed to another defendant. To the extent a response is required, denied.

AS TO COUNT IX

124. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

125. No response from Hayes Pipe to paragraph 125 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

126. No response from Hayes Pipe to paragraph 126 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

127. No response from Hayes Pipe to paragraph 127 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

128. No response from Hayes Pipe to paragraph 128 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

129. No response from Hayes Pipe to paragraph 129 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

130. No response from Hayes Pipe to paragraph 130 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

131. No response from Hayes Pipe to paragraph 131 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

132. No response from Hayes Pipe to paragraph 132 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

133. No response from Hayes Pipe to paragraph 133 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

134. No response from Hayes Pipe to paragraph 134 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

135. No response from Hayes Pipe to paragraph 135 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

136. No response from Hayes Pipe to paragraph 136 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

137. No response from Hayes Pipe to paragraph 137 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

138. No response from Hayes Pipe to paragraph 138 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

139. No response from Hayes Pipe to paragraph 139 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

140. No response from Hayes Pipe to paragraph 140 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

141. No response from Hayes Pipe to paragraph 141 is required, as Count IX of the complaint is directed to another defendant. To the extent a response is required, denied.

AS TO COUNT X

142. Hayes Pipe incorporates its responses to paragraphs 1 through 67 of the complaint as though fully set forth herein.

143. Hayes Pipe denies the averments in paragraph 143 of the complaint.

144. Hayes Pipe denies the averments in paragraph 144 of the complaint.

145. Hayes Pipe denies the averments in paragraph 145 of the complaint.

146. Hayes Pipe denies the averments in paragraph 146 of the complaint.

147. Hayes Pipe denies the averments in paragraph 147 of the complaint.

148. Hayes Pipe denies the averments in paragraph 148 of the complaint.

FOR A SECOND DEFENSE
(Exclusion of Warranty)

149. Plaintiff fails to state a claim for which relief can be granted against Hayes Pipe
150. The warranties alleged against Hayes Pipe in the complaint were excluded by the parties.

FOR A THIRD DEFENSE
(Waiver or Estoppel)

151. Plaintiff's claims against Hayes Pipe are barred by waiver or estoppel or both.

FOR A FOURTH DEFENSE
(Modification)

152. The parties modified the agreement to exclude the express and implied warranties alleged in the complaint.

FOR A FIFTH DEFENSE
(Acceptance of Goods)

153. Plaintiff is barred from recovery by its acceptance of the goods.

FOR A SIXTH DEFENSE
(Notice)

154. Plaintiff is barred from any remedy as a consequence of plaintiff's failure to notify Hayes Pipe of the alleged breach within a reasonable time.

FOR A SEVENTH DEFENSE
(Limitation of Damages)

155. Plaintiff's claim is barred to the extent plaintiff seeks damages beyond the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted.

FOR AN EIGHTH DEFENSE
(Failure to Mitigate)

156. Plaintiff's claims are barred to the extent plaintiff failed to mitigate its damages.

FOR A NINTH DEFENSE
(Spoliation)

157. Plaintiff's claims are barred by the doctrine of spoliation.

FOR A TENTH DEFENSE
(Limitation of Remedy)

158. Plaintiff is bound by the contractual limitation of remedy in Hayes Pipe's terms and conditions.

FOR AN ELEVENTH DEFENSE
(Sophisticated User Doctrine)

159. Plaintiff's claims are barred by the Sophisticated User Doctrine, as plaintiff's personnel, through the exercise of their own knowledge and expertise, should have known and appreciated the proper uses and requirements of the goods.

FOR A TWELFTH DEFENSE
(Spearin Doctrine)

160. Plaintiff's claims are further barred by the Spearin Doctrine, as Hayes Pipe is not responsible for the design of plaintiff's project and owner warrants the constructability and suitability of the plans and specifications.

FOR A THIRTEENTH DEFENSE
(Unclean Hands)

161. Plaintiff's equitable claim against Hayes Pipe is barred by the doctrine of unclean hands.

FOR A FOURTEENTH DEFENSE
(Failure to State a Claim)

162. Plaintiff fails to state a claim for which relief can be granted.

FOR A FIFTEENTH DEFENSE
(Reservation and Non-Waiver)

163. Hayes Pipe reserves the right to assert additional affirmative defenses that may arise during the course of this action.

WHEREFORE, Hayes Pipe prays the following:

- A. That this action be dismissed, or, alternatively, that judgment be entered in favor of Hayes Pipe and against plaintiff on all claims;
- B. That Hayes Pipe recover court costs incurred in this action; *and*
- C. For such other and further relief for Hayes Pipe that the Court deems just and proper.

DATED this 11th day of March 2025.

SHELTON LAW CAROLINAS

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ATTORNEY FOR DEFENDANT
HAYES PIPE SUPPLY, INC.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COMMISSIONERS OF PUBLIC WORKS)
OF THE CITY OF GREENVILLE, SOUTH)
CAROLINA,)

C.A. No. 2024-CP-23-05956

Plaintiff,)

v.)

UNITED STATES PIPE AND FOUNDRY)
COMPANY LLC, TEC UTILITIES SUPPLY)
INC., and HAYES PIPE SUPPLY, INC.,)

**TEC UTILITIES SUPPLY, INC.’S
ANSWER TO PLAINTIFF’S
COMPLAINT**

Defendants.)

Defendant TEC Utilities Supply Inc. (“TEC”), by and through its undersigned counsel, hereby replies to the Complaint filed by Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina (“Plaintiff”) as follows. Unless otherwise stated herein, TEC denies each and every allegation in the Complaint.

FOR A FIRST DEFENSE BY WAY OF ANSWER

1. TEC denies the allegations in Paragraph 1 as stated.
2. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and therefore denies the same.
3. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and therefore denies the same.
4. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and therefore denies the same. Further responding, the allegations

in Paragraph 4 refer to ANSI/AWWA Standard C104/A21.4, to which TEC specifically craves reference as that document speaks for itself.

5. The allegations in Paragraph 5 refer to South Carolina's Plumbing Code and Safe Drinking Water Act. TEC specifically craves reference to those laws and denies any allegations in Paragraph 5 that are inconsistent with the contents thereof. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 regarding Plaintiff's design and construction specifications, and therefore denies the same.

6. The allegations in Paragraph 6 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies the same.

7. TEC denies the allegations in Paragraph 7.

8. TEC denies the allegations in Paragraph 8.

9. TEC denies the allegations in Paragraph 9.

10. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 regarding on what Plaintiff prides itself. TEC denies the remaining allegations in Paragraph 10.

11. TEC denies the allegations in Paragraph 11. Plaintiff is not entitled to recover under the Complaint in any fashion.

12. Paragraph 12 contains legal conclusions to which no response is required. To the extent a response is required, TEC denies the allegations in Paragraph 12.

13. Paragraph 13 contains legal conclusions to which no response is required. To the extent a response is required, TEC specifically craves reference to South Carolina Code §§ 36-2-802, 36-2-803, and 15-5-150 and denies any allegations in Paragraph 13 that are inconsistent with

the contents of these statutory provisions. Further responding, TEC admits that it is organized under the laws of and has its principal place of business in South Carolina. TEC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13, and therefore denies the same.

14. Paragraph 14 contains legal conclusions to which no response is required. To the extent a response is required, TEC specifically craves reference to South Carolina Code § 15-7-30, and denies any allegations in Paragraph 14 that are inconsistent with the contents of that statutory provision. Further responding, TEC admits that its principal place of business is located in Greenville County. TEC denies the remaining allegation in Paragraph 14.

15. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore denies the same.

16. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and therefore denies the same.

17. TEC admits that it is a South Carolina corporation, headquartered in Greenville, South Carolina. The remaining allegations in Paragraph 17 are denied as stated.

18. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18, and therefore denies the same.

19. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19, and therefore denies the same.

20. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20, and therefore denies the same.

21. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, and therefore denies the same.

22. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, and therefore denies the same.

23. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, and therefore denies the same.

24. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, and therefore denies the same.

25. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25, and therefore denies the same.

26. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26, and therefore denies the same.

27. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27, and therefore denies the same.

28. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28, and therefore denies the same.

29. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29, and therefore denies the same.

30. The allegations in Paragraph 30 refer to ANSI/AWWA Standard C104/A21.4. TEC specifically craves reference to that document and denies any allegations in Paragraph 30 that are in addition to or inconsistent with the contents thereof.

31. The allegations in Paragraph 31 refer to ANSI/AWWA Standard C104/A21.4. TEC specifically craves reference to that document and denies any allegations in Paragraph 31 that are in addition to or inconsistent with the contents thereof.

32. The allegations in Paragraph 32 refer to ANSI/AWWA Standard C104/A21.4. TEC specifically craves reference to that document and denies any allegations in Paragraph 32 that are in addition to or inconsistent with the contents thereof.

33. The allegations in Paragraph 33 refer to the South Carolina Plumbing Code. TEC specifically craves reference to that code and denies any allegations in Paragraph 33 that are in addition to or inconsistent with the contents thereof.

34. The allegations in Paragraph 34 refer to South Carolina's Safe Drinking Water Act. TEC specifically craves reference to that law and denies any allegations in Paragraph 34 that are in addition to or inconsistent with the contents thereof.

35. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35, and therefore denies the same.

36. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36, and therefore denies the same.

37. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37, and therefore denies the same.

38. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38, and therefore denies the same.

39. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39, and therefore denies the same.

40. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40, and therefore denies the same.

41. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41, and therefore denies the same.

42. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42, and therefore denies the same.

43. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43, and therefore denies the same.

44. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44, and therefore denies the same.

45. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45, and therefore denies the same.

46. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46, and therefore denies the same.

47. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47, and therefore denies the same.

48. The allegations in Paragraph 48 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48, and therefore denies the same.

49. The allegations in Paragraph 49 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49, and therefore denies the same.

50. TEC denies the allegations in Paragraph 50 as stated.

51. The allegations in Paragraph 51 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51, and therefore denies the same.

52. TEC denies the allegations in Paragraph 52.

53. TEC denies the allegations in Paragraph 53.

54. TEC denies the allegations in Paragraph 54.

55. TEC denies the allegations in Paragraph 55.

56. TEC denies the allegations in Paragraph 56.

57. TEC denies the allegations in Paragraph 57.

58. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58, and therefore denies the same.

59. TEC denies the allegations in Paragraph 59.

60. The allegations in Paragraph 60 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC denies the allegations in Paragraph 60.

61. TEC denies the allegations in Paragraph 61 as stated.

62. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62, and therefore denies the same.

63. TEC denies the allegations in Paragraph 63.

64. TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64, and therefore denies the same.

65. TEC denies the allegations in Paragraph 65.

66. The allegations in Paragraph 66 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66, and therefore denies the same.

67. TEC denies the allegations in Paragraph 67. Plaintiff is not entitled to recover under the Complaint in any fashion.

RESPONSE TO PLAINTIFF'S FIRST CAUSE OF ACTION
(Declaratory Judgment, South Carolina Code §§ 15-53-10, *et seq.* Against all Defendants)

68. TEC repeats and reasserts its answers and denials to Paragraphs 1-67 as if fully set forth herein to the extent not inconsistent herewith.

69. Paragraph 69 contains legal conclusions to which no response is required. To the extent a response is required, TEC denies the allegations of Paragraph 69 as stated.

70. The allegations in Paragraph 70 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70, and therefore denies the same.

71. TEC denies the allegations directed at it in Paragraph 71 as stated. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes Pipe Supply, Inc. (“Hayes”) in Paragraph 71, and therefore denies the same.

72. Paragraph 72 contains legal conclusions to which no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72, and therefore denies the same.

73. Paragraph 73 contains legal conclusions to which no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73, and therefore denies the same.

74. TEC denies the allegations directed at it in Paragraph 74 as stated. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes and United States Pipe and Foundry Company LLC (“US Pipe”) in Paragraph 74, and therefore denies the same.

RESPONSE TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Breach of Express Warranty Against U.S. Pipe)

75. TEC repeats and reasserts its answers and denials to Paragraphs 1-74 as if fully set forth herein to the extent not inconsistent herewith.

76. The allegations in Paragraph 76 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76, and therefore denies the same.

77. The allegations in Paragraph 77 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77, and therefore denies the same.

78. The allegations in Paragraph 78 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 78, and therefore denies the same.

79. The allegations in Paragraph 79 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79, and therefore denies the same.

80. The allegations in Paragraph 80 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80, and therefore denies the same.

81. The allegations in Paragraph 81 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 81, and therefore denies the same.

RESPONSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Breach of Express Warranty Against TEC and Hayes)

82. TEC repeats and reasserts its answers and denials to Paragraphs 1-81 as if fully set forth herein to the extent not inconsistent herewith.

83. Paragraph 83 contains legal conclusions to which no response is required. To the extent a response is required, TEC denies the allegations in Paragraph 83 as stated.

84. TEC denies the allegations directed at it in Paragraph 84 as stated. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes Pipe Supply, Inc. ("Hayes") in Paragraph 84, and therefore denies the same.

85. Paragraph 85 contains legal conclusions to which no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 85, and therefore denies the same. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's construction specifications in Paragraph 85, and therefore denies the same.

86. TEC denies the allegations directed at it in Paragraph 86. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 86, and therefore denies the same.

87. TEC denies the allegations directed at it in Paragraph 87. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 87, and therefore denies the same.

88. TEC denies the allegations directed at it in Paragraph 88. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 88, and therefore denies the same.

RESPONSE TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability Against U.S. Pipe)

89. TEC repeats and reasserts its answers and denials to Paragraphs 1-88 as if fully set forth herein to the extent not inconsistent herewith.

90. The allegations in Paragraph 90 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 90, and therefore denies the same.

91. The allegations in Paragraph 91 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 91, and therefore denies the same.

92. The allegations in Paragraph 92 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 92, and therefore denies the same.

93. The allegations in Paragraph 93 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 93, and therefore denies the same.

94. The allegations in Paragraph 94 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94, and therefore denies the same.

RESPONSE TO PLAINTIFF'S FIFTH CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability Against TEC and Hayes)

95. TEC repeats and reasserts its answers and denials to Paragraphs 1-94 as if fully set forth herein to the extent not inconsistent herewith.

96. Paragraph 96 contains legal conclusions to which no response is required. To the extent a response is required, TEC denies the allegations in Paragraph 96 as stated.

97. TEC denies the allegations directed at it in Paragraph 97 as stated. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 97, and therefore denies the same.

98. TEC denies the allegations directed at it in Paragraph 98 as stated. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 98, and therefore denies the same.

99. TEC denies the allegations directed at it in Paragraph 99. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 99, and therefore denies the same.

100. TEC denies the allegations directed at it in Paragraph 100. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 100, and therefore denies the same.

101. TEC denies the allegations directed at it in Paragraph 101. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 101, and therefore denies the same.

RESPONSE TO PLAINTIFF'S SIXTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose Against U.S. Pipe)

102. TEC repeats and reasserts its answers and denials to Paragraphs 1-101 as if fully set forth herein to the extent not inconsistent herewith.

103. The allegations in Paragraph 103 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 103, and therefore denies the same.

104. The allegations in Paragraph 104 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 104, and therefore denies the same.

105. The allegations in Paragraph 105 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 105, and therefore denies the same.

106. The allegations in Paragraph 106 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 106, and therefore denies the same.

107. The allegations in Paragraph 107 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 107, and therefore denies the same.

RESPONSE TO PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose Against TEC and Hayes)

108. TEC repeats and reasserts its answers and denials to Paragraphs 1-107 as if fully set forth herein to the extent not inconsistent herewith.

109. Paragraph 109 contains legal conclusions to which no response is required. To the extent a response is required, TEC denies the allegations in Paragraph 109 as stated.

110. TEC denies the allegations directed at it in Paragraph 110 as stated. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 110, and therefore denies the same.

111. TEC denies the allegations directed at it in Paragraph 111. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 111, and therefore denies the same.

112. TEC denies the allegations in Paragraph 112.

113. TEC denies the allegations directed at it in Paragraph 113. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 113, and therefore denies the same.

114. TEC denies the allegations directed at it in Paragraph 114. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes in Paragraph 114, and therefore denies the same.

RESPONSE TO PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Breach of Implied Contract Against U.S. Pipe)

115. TEC repeats and reasserts its answers and denials to Paragraphs 1-114 as if fully set forth herein to the extent not inconsistent herewith.

116. The allegations in Paragraph 116 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 116, and therefore denies the same.

117. The allegations in Paragraph 117 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 117, and therefore denies the same.

118. The allegations in Paragraph 118 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118, and therefore denies the same.

119. The allegations in Paragraph 119 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 119, and therefore denies the same.

120. The allegations in Paragraph 120 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 120, and therefore denies the same.

121. The allegations in Paragraph 121 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 121, and therefore denies the same.

122. The allegations in Paragraph 122 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 122, and therefore denies the same.

123. The allegations in Paragraph 123 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 123, and therefore denies the same.

RESPONSE TO PLAINTIFF'S NINTH CAUSE OF ACTION
**(Violation of the South Carolina Unfair Trade Practices Act,
S.C. Code. Ann. §§ 39-5-10, *et seq.* Against U.S. Pipe)**

124. TEC repeats and reasserts its answers and denials to Paragraphs 1-123 as if fully set forth herein to the extent not inconsistent herewith.

125. The allegations in Paragraph 125 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 125, and therefore denies the same.

126. The allegations in Paragraph 126 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 126, and therefore denies the same.

127. The allegations in Paragraph 127 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127, and therefore denies the same.

128. The allegations in Paragraph 128, including all subparagraphs, are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 128, including all subparagraphs, and therefore denies the same.

129. The allegations in Paragraph 129 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 129, and therefore denies the same.

130. The allegations in Paragraph 130 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 130, and therefore denies the same.

131. The allegations in Paragraph 131 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 131, and therefore denies the same.

132. The allegations in Paragraph 132 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 132, and therefore denies the same.

133. The allegations in Paragraph 133 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 133, and therefore denies the same.

134. The allegations in Paragraph 134 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 134, and therefore denies the same.

135. The allegations in Paragraph 135 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 135, and therefore denies the same.

136. The allegations in Paragraph 136 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 136, and therefore denies the same.

137. The allegations in Paragraph 137 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 137, and therefore denies the same.

138. The allegations in Paragraph 138 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 138, and therefore denies the same.

139. The allegations in Paragraph 139 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 139, and therefore denies the same.

140. The allegations in Paragraph 140 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 140, and therefore denies the same.

141. The allegations in Paragraph 141 are not directed at TEC, and therefore no response is required. To the extent a response is required, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 141, and therefore denies the same.

RESPONSE TO PLAINTIFF'S TENTH CAUSE OF ACTION
(Unjust Enrichment Against All Defendants)

142. TEC repeats and reasserts its answers and denials to Paragraphs 1-141 as if fully set forth herein to the extent not inconsistent herewith.

143. TEC denies the allegations directed at it in Paragraph 143. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes and US Pipe in Paragraph 143, and therefore denies the same.

144. Paragraph 144 contains legal conclusions to which no response is required. To the extent a response is required, TEC denies the allegations in Paragraph 144 as stated.

145. TEC denies the allegations directed at it in Paragraph 145. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes and US Pipe in Paragraph 145, and therefore denies the same.

146. TEC denies the allegations directed at it in Paragraph 146. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes and US Pipe in Paragraph 146, and therefore denies the same.

147. TEC denies the allegations directed at it in Paragraph 147. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes and US Pipe in Paragraph 147, and therefore denies the same.

148. TEC denies the allegations directed at it in Paragraph 148. Further responding, TEC lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at Hayes and US Pipe in Paragraph 148, and therefore denies the same.

RESPONSE TO PLAINTIFF’S REQUEST FOR RELIEF

149. TEC denies the unnumbered paragraphs identified as (a) – (e) of Plaintiff’s *ad damnum* or wherefore clause to its complaint.

FOR A SECOND DEFENSE

150. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

151. Plaintiff’s Complaint fails, in whole or in part, to state a claim for relief and should be dismissed in its entirety. Alternatively, TEC would show some or all of Plaintiff’s Complaint can no longer be maintained.

FOR A THIRD DEFENSE

152. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

153. This Court lacks subject matter jurisdiction over this action.

FOR A FOURTH DEFENSE

154. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

155. The warranties alleged against TEC in Plaintiff’s Complaint were excluded by the parties.

FOR A FIFTH DEFENSE

156. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

157. The parties modified their agreement to exclude the express and implied warranties alleged in Plaintiff’s Complaint.

FOR A SIXTH DEFENSE

158. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

159. Plaintiff is barred from recovery by its acceptance of the goods.

FOR A SEVENTH DEFENSE

160. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

161. Plaintiff is barred from any remedy as a consequence of its failure to notify TEC of the alleged breach within a reasonable time.

FOR AN EIGHTH DEFENSE

162. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

163. Plaintiff's Complaint is barred, in whole or in part, by the doctrines of equity including, inter alia, estoppel, waiver, and unclean hands.

FOR A NINTH DEFENSE

164. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

165. Plaintiff's claims against TEC are barred by the doctrine of spoliation.

FOR A TENTH DEFENSE

166. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

167. Plaintiff's claims against TEC are barred by the sophisticated user doctrine. Plaintiff's personnel, through the exercise of their own knowledge and expertise, should have known and appreciated the proper uses and requirements of the goods.

FOR AN ELEVENTH DEFENSE

168. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

169. Plaintiff's claims against TEC are barred by the Spearin doctrine. TEC is not responsible for the design of Plaintiff's projects, and Plaintiff as owner warrants the constructability and suitability of its plans and specifications.

FOR A TWELFTH DEFENSE

170. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

171. Plaintiff's Complaint is barred, in whole or in part, because TEC acted lawfully and in good faith at all relevant times, and has not violated any statutory or legal right of Plaintiff.

FOR A THIRTEENTH DEFENSE

172. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

173. Plaintiff's claims are barred, in whole or in part, by its failure to mitigate damages. Plaintiff may have failed or refused to exercise reasonable care and diligence to avoid loss and minimize damages, and therefore, may not recover for losses that could have been prevented by reasonable efforts on its part, or by expenditures which might reasonably have been made.

FOR A FOURTEENTH DEFENSE

174. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

175. No act or omission on the part of TEC proximately caused Plaintiff to sustain any alleged damages. Any assertion of damages on the part of Plaintiff is entirely speculative, uncertain, and hypothetical.

FOR A FIFTEENTH DEFENSE

176. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

177. Plaintiff is bound by the contractual limitation of remedy in TEC's terms and conditions.

FOR A SIXTEENTH DEFENSE

178. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

179. Plaintiff's claims are barred to the extent Plaintiff seeks damages beyond the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted.

FOR A SEVENTEENTH DEFENSE

180. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

181. To the extent Plaintiff seeks to recover special damages, it fails to allege such damages with specificity.

FOR AN EIGHTEENTH DEFENSE

182. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

183. Plaintiff's claims are barred, reduced, or limited pursuant to the applicable South Carolina statutory and common law regarding limitations of awards, caps on recovery, and setoffs.

FOR A NINETEENTH DEFENSE

184. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

185. TEC specifically pleads the application of S.C. Code. Ann. § 15-32-530 to this action.

FOR A TWENTIETH DEFENSE

186. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

187. TEC hereby reserves all present or future rights it may have to arbitrate Plaintiff's claims against it. Plaintiff's Complaint is subject to a binding arbitration agreement that is governed by the Federal Arbitration Act.

FOR A TWENTY-FIRST DEFENSE

188. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

189. TEC hereby gives notice that it may rely upon other applicable defenses of which it becomes aware and hereby reserves the right to assert such defenses.

PRAYER FOR RELIEF

WHEREFORE, having answered Plaintiff's Complaint, TEC prays the Court for the following relief:

1. Dismiss Plaintiff's Complaint in its entirety with prejudice;
2. Order Plaintiff to pay TEC's costs, expenses, and attorneys' fees reasonably incurred in the defense of this action; and
3. For such other and further relief as this Court may deem just and proper.

/s/ Rivers S. Stilwell
Rivers S. Stilwell (SC Bar No. 2108)
David C. Dill (SC Bar No. 101519)
Claire K. Atwood (SC Bar No. 105496)
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*Attorneys for Defendant TEC Utilities
Supply Inc.*

March 13, 2025
Greenville, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

 Commissioners of Public Works of The City
 of Greenville, South Carolina,

Case No. 2024CP2305956

Plaintiff,

v.

MOTION TO DISMISS OR STAY
 PENDING ARBITRATION

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

Defendants.

Pursuant to Rules 12(b)(1), (3), and (6) of the South Carolina Rules of Civil Procedure and any other applicable Rule, and pursuant to 9 U.S.C. §§3 and 4 of the Federal Arbitration Act (“FAA”), Defendant United States Pipe and Foundry Company LLC (“US Pipe”) moves to compel arbitration of the above-captioned action and dismiss this matter with prejudice, or in the alternative stay this matter while arbitration is pending. Because of Plaintiff’s claims against US Pipe arise out of a transaction involving interstate commerce and are subject to a binding arbitration that is governed by the FAA, the entire action should be dismissed and compelled to arbitration.

FACTUAL BACKGROUND

This action arises out of the Plaintiffs purchase of ductile iron pipe for use in its water distribution system. Plaintiff claims that the ductile iron pipe manufactured by US Pipe and distributed by co-defendants TSC Utilities Supply, Inc. and Hayes Pipe Supply Inc. fails to comply with standards set forth by the American Water Works Association, specifically a requirement to have cement lining a minimum of 1/16” in the ductile iron pipe. Plaintiff does not claim that this alleged defect in the ductile iron pipe that it has installed impacts the

quality of the water in any way. Instead, it claims that it did not get the benefit of its bargain with US Pipe and that the ductile iron pipe may one day lead to decreased revenue for the system.

In its complaint, Plaintiff alleges that from “October 2022 through May 2023, Greenville Water regularly purchased ductile iron pipe with cement-mortar lining from U.S. Pipe, through distributors TEC and Hayes, much of which was manufactured at U.S. Pipe’s Lynchburg [Virginia] Facility.” See Complaint ¶61. Plaintiff claims that since “October 2022, more than 100,000 feet of cement-mortar-lined ductile iron pipe manufactured at U.S. Pipe’s Lynchburg Facility was installed in Greenville Water’s water distribution system.” Complaint ¶62. Plaintiff further alleges that it “entered into a contractual relationship with U.S. Pipe” (Complaint ¶70), entered “into contractual relationships with TEC and Hayes” (Complaint ¶71), and that US Pipe breached the express warranty on the ductile iron pipe it manufactured, such warranty being “part of the basis of the bargain with Greenville Water.” (Complaint ¶¶76, 78, 79). Finally, Plaintiff alleges that it entered into a contract with US Pipe. See (Complaint ¶¶116-117).

Plaintiff filed its complaint on October 8, 2024 and served the complaint on October 10, 2024. The complaint includes the following claims: Count I - Declaratory Judgment (all Defendants), Count II - Breach of Express Warranty (Defendant US Pipe), Count III - Breach of Express Warranty (Defendants TEC and Hayes), Count IV - Breach of Implied Warranty of Merchantability (Defendant US Pipe), Count V - Breach of Implied Warranty of Merchantability (Defendants TEC and Hayes), Count VI - Breach of Implied Warranty of Fitness for a Particular Purpose (Defendant US Pipe), Count VII - Breach of Implied Warranty of Fitness for a Particular Purpose (Defendants TEC and Hayes), Count VIII -

Breach of Implied Contract (Defendant US Pipe), Count IX - violation of the South Carolina Unfair Trade Practices Act (US Pipe), and Count X - Unjust Enrichment (all Defendants).

The sale of ductile iron pipe by US Pipe is “expressly conditioned” on Greenville Water’s acceptance of US Pipe’s Terms and Conditions of Sale, which can be found at <https://www.uspipe.com/about-us/#tab-f980d7d7e6543f9a7f0> and annexed hereto as **Exhibit**

A. The Terms and Conditions¹ in effect at the time that Greenville Water alleges it “purchased ductile iron pipe with cement-mortar lining from U.S. Pipe” include the following provision:

ARBITRATION; CONSENT TO VENUE. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, including the arbitrability thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with the then-current Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. No dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person, and any arbitrator attempting such a proceeding shall be deemed to have exceeded the powers available under the Federal Arbitration Act. Claims shall be heard by a single arbitrator in Dallas County, Texas. In the event that this arbitration provision is deemed invalid or inapplicable for any reason, in whole or in part, the parties agree that the venue and jurisdiction for any proceedings arising out of or related to the Agreement shall lay exclusively in the state and federal courts of Dallas County, Texas to which jurisdiction each party irrevocably consents and waives any objection or defense that it is not subject to personal jurisdiction in such venue or that the forum is inconvenient.

US Pipe’s terms and conditions are readily available to anyone with access to the internet. See <https://www.uspipe.com/about-us/#tab-f980d7d7e6543f9a7f0>. Even when Plaintiff purchased ductile iron pipe directly from TEC or Hayes, the credit application,

¹ US Pipe denies that Plaintiff’s claims have any merit whatsoever, does not waive any defenses, and reserves all available defenses, including but not limited to notice, warranty, limitation of liability and the time required to bring a claim as appropriate defenses.

invoices and pick tickets used by TEC and Hayes specifically reference the terms & conditions applicable to the sale. As a sophisticated purchaser of ductile iron pipe, Greenville Water had knowledge of these terms. For example, the TEC terms and conditions of sale that Greenville Water agreed to state in part:

WARRANTY: TEC is a reseller of goods only, and as such does not provide any warranty for the goods it supplies hereunder. **SOLE AND EXCLUSIVE WARRANTY, IF ANY, ON GOODS SOLD BY TEC, IS THAT PROVIDED BY THE GOODS MANUFACTURER. TEC MAKES NO EXPRESSED OR IMPLIED WARRANTIES. TEC HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT WILL TEC BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIR OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE GOODS SOLD BY TEC. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL TEC'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE GOOD(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE GOODS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS SPECIFICALLY SET FORTH IN THIS PARAGRAPH, ALL GOODS AND/OR SERVICES PROVIDED BY TEC, ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS", "WHERE IS" AND "WITH ALL FAULTS".**

(emphasis in original). Hayes' terms and conditions of sale provide similar language, stating in pertinent part:

SELLER DOES NOT EXPRESSLY OR IMPLIEDLY WARRANT ANY PRODUCTS SOLD TO BUYER TO BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE, NOR SHALL SELLER BE LIABLE FOR ANY DAMAGES, CONSEQUENTIAL OR INCONSEQUENTIAL, THAT MAY OCCUR FROM THE SALE,

INSTALLATION, OR USE OF ANY PRODUCTS SOLD TO BUYER, ALL WARRANTIES ARE LIMITED TO THE WARRANTIES PROVIDED BY THE MANUFACTURER OF THE PRODUCTS. PRODUCTS ARE INTENDED FOR USE AND INSTALLATION AS DESCRIBED IN THE MANUFACTURER'S WRITTEN RECOMMENDATIONS. ANY DEFECTS CAUSED BY IMPROPER USE OR INSTALLATION VOIDS ANY AND ALL WARRANTIES EXPRESSED OR IMPLIED BY SELLER OR SELLER'S VENDORS EXCEPT THE WARRANTY OF TITLE. ANY PRIOR EXPRESSED OR IMPLIED WARRANTIES OR SERVICE / INSTALLATION INSTRUCTIONS ARE SUPERSEDED BY THIS PROVISION.

(emphasis in original).

As set forth below, as a sophisticated purchaser of US Pipe's ductile iron pipe, Plaintiff is bound by the agreement to arbitrate found in US Pipe's Terms and Conditions of sale, requiring dismissal of this action.

ARGUMENT

Plaintiff's has alleged that it purchased ductile iron pipe from US Pipe and has a contract with US Pipe that includes warranties and other terms. As set forth above, both TEC and Hayes include specific language in their Terms & Conditions that refer their customers to the manufacturer of the goods being sold for all applicable warranties. Because Plaintiff received the benefit of a written warranty when it purchased US Pipe products, it is subject to the arbitration agreement found in US Pipe's Terms and Conditions of Sale. *See One Belle Hall Prop. Owners Ass'n v. Trammell Crow Residential Co.*, 418 S.C. 51, 791 S.E.2d 286 (Ct. App. 2016).

All of the claims made against US Pipe (as well as TEC and Hayes) involve the ductile iron pipe purchased by Greenville Water, and are therefore all of the asserted claims are

subject to the arbitration agreement. The Terms and Conditions² provide that any “controversy or claim arising out of or relating to” the purchase of US Pipe’s products are required to be arbitrated in Dallas County, Texas. As such, the claims fall within the arbitration provision’s broad scope. US Pipe respectfully asks this Court to compel the matter to arbitration and to dismiss this action with prejudice, or, in the alternative, stay this litigation until the arbitration is completed.

I. Agreements to Arbitrate Disputes Are Favored

The policy of the “United States and of South Carolina is to favor arbitration of disputes” where an agreement to arbitrate exists. *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 131 (2016), quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001). Unless “the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538-39, 542 S.E.2d 360, 363 (2001), citing *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 130 L. Ed. 2d 753, 115 S. Ct. 834 (1995); *Soil Remediation Co. v. Nu-Way Env'tl., Inc.*, 323 S.C. 454, 476 S.E.2d 149 (1996); *Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 208, 731 S.E.2d 324, 325 (Ct. App. 2012) (“Generally, if the contract providing for arbitration involves interstate commerce, the Federal Arbitration Act (FAA) displaces the state arbitration statute.”). Because the complaint alleges that the ductile iron pipe was manufactured by US Pipe in Lynchburg,

² Even if the arbitration agreement is deemed invalid, the exclusive venue for any dispute relating to the purchase of the ductile iron pipe is in the state and federal courts located in Dallas County, Texas.

Virginia and installed in Greenville, South Carolina, there is no question that the transaction involves interstate commerce.

The FAA provides that an arbitration provision in a transaction involving interstate commerce “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. §2 (2012). When determining if the arbitration agreement is valid, the analysis requires a review of the arbitration agreement separate from the warranty. The South Carolina Supreme Court has recognized that under “the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole.” *Munoz*, 343 S.C. at 540, 542 S.E.2d at 364, citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 87 S. Ct. 1801, 18 L. Ed. 2d 1270 (1967). Because arbitration is a matter of contract law (all of Plaintiff’s claims are contract claims related to the purchase of the ductile iron pipe; there are no tort claims), general contract principles of law apply to the evaluation of the enforceability of an arbitration clause, including potential contract defenses such as fraud, duress and unconscionability. See *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 116.

Any “doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 287, 733 S.E.2d 597, 600 (Ct. App. 2012), quoting *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118. Recognizing that a “party cannot be compelled to arbitrate a particular dispute unless his agreement expressly encompasses the subject matter of the dispute,” *Simmons v. Lucas & Stubbs Assocs.*, 283 S.C. 326, 332-33, 322 S.E.2d 467, 470 (Ct. App. 1984), unless the “court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute,

arbitration should be ordered.” *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118. Here, the arbitration clause applies to any controversy or claim arising out of or relating to the sales of goods and products manufactured by US Pipe, including the ductile iron pipe that is the subject of the complaint. “A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.” *Id.* at 597, 553 S.E.2d at 118-19.

A. Plaintiff Greenville Water is Subject to the US Pipe Terms and Conditions.

The Court of Appeals in *One Belle Hall Prop. Owners Ass'n* addressed a similar claim by an end user against a product supplier. *See* 418 S.C. 51, 791 S.E.2d 286. That case involved a claim by the plaintiff Association against various entities relating to the construction of the buildings in the community. One of the claims was against Tamko Building Products, Inc., the manufacturer of roofing shingles used on the plaintiff Association’s community buildings. These shingles had a twenty-five-year “repair or replace” limited warranty, which included a binding arbitration provision found on page five of the warranty. *One Belle Hall*, 418 S.C. at 56, 791 S.E.2d at 289.

After the plaintiff filed litigation against the developer, Tamko was brought in on the claim that the roof shingles it manufactured were defective. Tamko moved to compel arbitration, which was opposed on the grounds that neither the Association nor the individual owners agreed to arbitrate, as well as the defense that the arbitration clause was unconscionable and unenforceable. *Id.* at 418 S.C. at 58-59, 791 S.E.2d at 290. After the Circuit Court denied the motion to compel arbitration, the Court of Appeals reversed on appeal.

The Court of Appeals found that the circuit court erred in determining that the “purportedly unenforceable disclaimers and limitations within the ‘Legal Remedies’ paragraph contributed to the unconscionability of the arbitration agreement,” in part due to the existence of a severability clause; that the “circuit court erred in finding the arbitration agreement was not separable from other allegedly unconscionable provisions that precede the arbitration agreement on page five,” and the “arbitration provision facilitates an unbiased decision by a neutral decisionmaker in the event of a dispute.” *One Belle Hall*, 418 S.C. at 64-65, 791 S.E.2d 293-294. Based on these findings, the Court of Appeals reversed the circuit court and compelled the Association to arbitrate.

The situation found in this dispute is the same as in *One Belle Hall*. US Pipe is a material manufacturer that provides a warranty for the products it sells along with other terms including an arbitration agreement. Plaintiff purchased the products subject to US Pipe’s terms and conditions, including the arbitration and venue agreement. Because the arbitration agreement is not unconscionable and includes all of the alleged claims made by Greenville Water, this dispute should be arbitrated before the American Arbitration Associate in Dallas County, Texas.

Even if Greenville Water claims that it is not subject to US Pipe’s terms and conditions because it does not have a direct contractual relationship with US Pipe (which would contradict its claim for an implied contract), it is well established that a “non-signatory is estopped from refusing to comply with an arbitration clause when it receives a direct benefit from a contract containing an arbitration clause,” *Wilson v. Willis*, 426 S.C. 326, 340–41, 827 S.E.2d 167, 175 (2019) (quoting *Pearson*, 400 S.C. at 290, 733 S.E.2d at 601). Because Plaintiff’s claims is that it reaped the benefits of the warranty provided by US Pipe, it is

subject to US Pipe’s terms and conditions of sale, which mandate arbitration of all claims relating to US Pipe products.

B. The Arbitration Provision Is Not Unconscionable

In South Carolina, “unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *One Belle Hall*, 418 S.C. at 60, 791 S.E.2d at 291, quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007).

The Court of Appeals in *One Belle Hall* recognized that the warranty provided by Tamko was an adhesion contract, but also recognized that the South Carolina Supreme Court “has made clear that adhesion contracts are not *per se* unconscionable.” See *One Belle Hall*, 418 S.C. at 63, 791 S.E.2d at 293, citing *Simpson*, 373 S.C. at 27, 644 S.E.2d at 669 and *id.* at 36, 644 S.E.2d at 674 (recognizing “the importance of a case-by-case analysis . . . to address the unique circumstances inherent in the various types of consumer transactions.”) As such, the Court needs to look to the “second prong of the unconscionability analysis to determine whether no reasonable person would make or accept any oppressive or one-sided terms within the arbitration agreement.” *Id.*, 418 S.C. at 63, 791 S.E.2d at 293.

After distinguishing the arbitration clauses found in *Simpson* (a vehicle trade-in contract) and *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013) (a home purchase agreement), the Court of Appeals found that the arbitration provision in *One Belle Hall* was neither oppressive nor unconscionable, compelling the Association to arbitrate its claims against Tamko. Like the arbitration agreement in *One Belle Hall*, the arbitration provision here “facilitates an unbiased decision by a neutral decisionmaker in the event of a dispute” by requiring the arbitration to use the Commercial Arbitration Rules of the American

Arbitration Association. See *One Belle Hall*, 418 S.C. at 64-65, 791 S.E.2d at 294. As such, the arbitration agreement does not “unduly limit a purchaser’s right to a meaningful legal proceeding” and allows for all of the claims relating to the purchase of US Pipe’s products to be determined by a neutral decision maker.

Furthermore, the Court of Appeals recognized that “South Carolina’s Commercial Code generally permits sellers of goods to include most of the limitations and exclusions found in the Warranty. See S.C. Code Ann. § 36-2-316(2)-(3) (2003) (allowing a seller to exclude or modify implied warranties); S.C. Code Ann. § 36-2-719(1)(a) (2003) (permitting a seller to repair or replace nonconforming goods in lieu of statutory remedies); § 36-2-719(3) (allowing a seller to exclude consequential damages).” *One Belle Hall*, 418 S.C. at 64 n.7, 791 S.E.2d 293. Any claim that US Pipe’s warranty is unconscionable because it excludes potential claims and damages is without merit.

II. The FAA Requires Enforcement of the Arbitration Agreement.

The FAA governs the enforceability of the arbitration agreement in the Contract. As provided in the FAA, a two-part test is used to determine whether a dispute is arbitrable. First, the court must decide if a valid agreement to arbitrate exists; and second, the court must find that the specific dispute falls within the substantive scope of the agreement. Any question relating to the scope of arbitrable issues is resolved in favor of enforcing the agreement to arbitrate. *Pearson*, 400 S.C. at 287, 733 S.E.2d at 600.

Here, the two-part test is met, and the Court should grant the Motion compelling the parties to arbitration, and dismiss this action, or, in the alternative, stay it until the arbitration is completed.

A. The Transaction Involved Interstate Commerce.

The FAA applies to any arbitration agreement in connection with a transaction involving interstate commerce. See 9 U.S.C. § 2; see also *Allied-Bruce Terminix Companies v. Dobson*, 513 U.S. 265, 281 (1995) (explaining that FAA applies to arbitration agreement involving transaction in interstate commerce, even if parties do not contemplate an interstate commerce connection). The FAA provides that a written arbitration agreement contained in a “contract evidencing a transaction involving commerce . . . shall be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The FAA defines “commerce” as “commerce among the several states.” 9 U.S.C. § 1. In section 2 of the FAA, “[t]he word ‘involving’ . . . signals an intent to exercise Congress’s commerce power to the full,” and the phrase “‘evidencing a transaction’ mean[s] only that the transaction . . . turn[s] out, in fact, to have involved interstate commerce.” *Allied-Bruce Terminix Cos.*, 513 U.S. at 276, 277.

Here, the allegations in the complaint are that the Plaintiff, located in South Carolina, received defective cement lined ductile iron pipe that was manufactured in Virginia. These allegations alone demonstrate that the transaction involved interstate commerce, and therefore the FAA applies to this action.

B. The Claims are Subject to the Arbitration Agreement.

The FAA provides that arbitration agreements are enforceable according to their terms:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or any agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. In this case, the arbitration agreement provides that “[a]ny controversy or claim arising out of or relating to” the sale of the US Pipe product is subject to binding arbitration. As set forth in *One Belle Hall*, 418 S.C. at 65, 791 S.E.2d at 294, the end user of manufactured products is subject to the arbitration agreement found in the warranty for those products. Under this standard, Plaintiff cannot overcome the validity of the arbitration agreement in the terms and conditions of sale. Therefore, Plaintiff is bound to arbitrate its claims against US Pipe.

Here, each of Plaintiff’s claims fall within the Arbitration Agreement’s broad scope. The arbitration agreement requires that Plaintiff arbitrate “any claim” arising out of the purchase of US Pipe products. When deciding “whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.” *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118, citing *Hinson v. Jusco Co.*, 868 F. Supp. 145 (D.S.C. 1994); *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993). Because “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration,” unless “the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.” *Zabinski, id.*, citing *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999), *Great W. Coal*, 312 S.C. at 564, 437 S.E.2d at 25. All of Plaintiff’s claims arise out of the purchase of the ductile iron pipe, and thus arise out of the terms and conditions of sale. Therefore, all claims are subject to arbitration.

C. This Action Should be Dismissed Because Arbitration is the Proper Forum.

Because all of Plaintiff's claims are subject to arbitration, the Court lacks subject matter jurisdiction and is not a proper venue for the adjudication of the claims. Therefore, the Court should dismiss all claims asserted against US Pipe in this matter with prejudice, or in the alternative, without prejudice. Should the Court decide not to dismiss this action, in the alternative US Pipe requests that the Court stay the action until the completion of the arbitration. See 9 U.S.C. § 3 (providing that "the court . . . upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration . . . shall on application of one of the parties stay the trial of the action . . .") (emphasis added).

CONCLUSION

US Pipe respectfully requests that the Court grant its motion and compel Plaintiff to arbitrate the claims set forth in the complaint. As detailed above, Plaintiff's claims are subject to a binding arbitration agreement and, therefore, US Pipe is properly asserting its right to demand arbitration.

Date: November 12, 2024
Greenville, South Carolina

Beattie B. Ashmore, P.A.

By: /s/ Beattie B. Ashmore
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EXHIBIT A

Terms and Conditions of Sale

All quotations and sales of goods and products ("Products") manufactured by United States Pipe and Foundry Company, LLC, Griffin Pipe Products Co., LLC, and U.S. Pipe Fabrication, LLC (collectively, "Seller") to buyer and its parents, subsidiaries, affiliates, or business units (collectively, "Buyer") are expressly conditioned upon Buyer's acceptance of these Terms and Conditions of Sale (this "Agreement").

TERMS OF SALE. All sales to Buyer are subject to these Terms, which shall prevail over any inconsistent terms of Buyer's purchase order or other documents. Buyer agrees that any terms and conditions appearing on any document submitted by Buyer which conflict with (i) the terms and conditions contained herein, (ii) any quotation submitted by Seller, or (iii) any sales contract between Seller and Buyer are hereby expressly rejected and shall not constitute terms of any sale of goods or services by Seller. This Agreement supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, whether written or oral. The foregoing shall apply to all documents heretofore or hereafter submitted by Buyer, whether executed by Seller or not. Modification or alteration of this Agreement must be in writing and signed by an authorized representative of Seller and Buyer. Seller objects to additional or different terms and conditions in any of Buyer's purchase orders, documentation or correspondence, and those additional or different terms are of no force or effect. By making an order with Seller, Buyer certifies that it is solvent and that it will advise Seller immediately if it becomes insolvent.

PRICES. Seller's quoted prices are subject to change without notice, and all quotations for pipe or pipe fittings expire and become invalid if Buyer does not accept them and ship them complete within 180 days from the date of issue. All Grooved product pricing is firm for 30 (thirty) days. All prices are subject to adjustment upon receipt by Seller of final project plans and/or specifications; any material change in project plans or specifications may result in a change in price or additional fees. Any claims by Buyer related to billing errors or adjustments shall be made in writing to Seller within ten (10) days from the invoice date or they are waived. Any changes by Buyer in quantities, destination, schedule or installation may result in a price adjustment by Seller.

All prices may be subject to a minimum 5% increase 180 days from Bid date. Orders, releases, and or shipments placed after one year may be repriced at current market conditions.

Quotes are represented as a unit price quote and should not be considered a lump sum quote. If additional material is needed beyond the quantities represented, Seller reserves the right to re-price the products at time of order.

If a product is of a different diameter, lining or coating, or configuration is required that is not included in the quote, that product will be priced at time of order based on current pricing at the time of release.

Buyer shall review and ensure that linings and coatings are correctly quoted per their request. Seller will not be held responsible for any charges incurred if incorrect linings and coatings are quoted. Seller has quoted Seller's standard primer. If a different primer is required, additional charges may apply.

PRICE ESCALATION. Pricing for the first year following the date of the quote may change following 180 (one hundred eighty) days from the Bid Date for pipe, flanged pipe and fabrication, and fittings and 30 (thirty) days for grooved products.

All orders, releases, and or shipments placed or made after 180 (one hundred-eighty) days of the Bid Date are subject to a minimum 5% price increase each 180 (one hundred-eighty) days following the Bid Date if a price increase occurred during the preceding 180 (one hundred-eighty) days.

TAXES. Buyer agrees to pay, and Seller's prices exclude, all current or future city, county, state, federal, and other taxes (including, without limitation, taxes based on or measured by sale, use, manufacture or shipment) imposed on Products sold to Buyer. If any exemption from any such taxes is available, Buyer shall present an applicable tax exemption certificate to Seller before Seller's first shipment.

PAYMENT. Any orders not paid in full in advance are orders on credit and are subject to the Seller's Credit Application. Payment terms for open credit sales are NET 30 DAYS from invoice date. Open credit sales are any sales to Buyer for which Buyer has not paid Seller in immediately available funds prior to shipment of the Product. Notwithstanding the foregoing, all orders are subject to Seller's continuing approval of Buyer's credit. If Seller deems Buyer's credit unsatisfactory for any reason, Seller may require payment in advance or require that Buyer provide guarantees or other security satisfactory to Seller in its sole discretion. In addition, Seller may in its discretion require an advance deposit of up to 100% of Seller's selling price for any specially manufactured goods ordered by Buyer hereunder. If Buyer fails to comply with these terms or the conditions of any Order, Seller may cancel any unshipped portion of the Order and exercise any other remedies available under these terms or applicable law, and Buyer shall remain liable for all unpaid amounts due to Seller. Seller does not accept the withholding of any amount of retainage for any balance outstanding, even if retainage is part of a contract between Buyer and a third party. Buyer's payment to Seller is not contingent on Buyer's ability to collect or obtain funds from any other party. If Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable and Seller may suspend further performance under any order with Buyer. Seller may apply Buyer's payments against any open charges on Buyer's account within Seller's sole discretion and Seller may exercise setoff or recoupment to apply to or satisfy Buyer's outstanding debt. Seller expressly reserves its right to file liens if payment is not received for its materials and expressly disclaims any waiver of lien rights language which may be contained in any future agreements between the Parties hereto. All past-due amounts shall be subject to an interest charge equal to the lesser of 1.5% per month or the maximum amount permitted by applicable law, and interest continues to accrue after Seller obtains a judgment against Buyer. Notwithstanding anything stated therein to the contrary, any lien waiver or release executed by Seller related to the goods sold under these Terms shall only be effective to the extent payment is received, paid by the drawee bank, and not avoidable as a preference in any action under the United States Bankruptcy Code. Buyer agrees that all funds owed to or received by Buyer from any source, resulting from the labor or material supplied by Seller shall be held in trust for the benefit of Seller. Buyer agrees to promptly pay to Seller all such funds. Upon request, Buyer shall irrevocably assign to Seller its account receivable from anyone to the extent that such is resulting from the labor or materials supplied by Seller.

COSTS OF ENFORCEMENT. Buyer agrees to pay all costs, expenses, and reasonable attorneys' fees incurred by Seller in exercising its rights and remedies, or in enforcing a term, condition, or provision of these Terms or any other contract between the Parties.

TITLE AND RISK OF LOSS. Risk of loss with respect to the Products passes to Buyer at the F.O.B. point. Seller will not make adjustments unless Buyer gives Seller a written delivery form listing Product damage or loss, signed by carrier's agent or driver, within 48 hours after delivery. In any event, Seller will not be responsible for any lost or damaged Products for which Buyer has signed a receipt acknowledging Buyer received such Products in good order. Title to the Product passes to Buyer upon Seller's receipt of full payment from Buyer for all amounts owed for the Product. As collateral security for the payment of the purchase price of open orders, the Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of the Buyer in, to and under the Products to which title has passed to Buyer, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under applicable law. If Seller holds Products per Buyer's instructions or because Buyer has failed to supply shipping information, Buyer agrees that Seller may invoice Buyer for the Product, and Buyer agrees to make payment in accordance with the invoice terms.

DELIVERY; DELAYS. Seller's shipping dates are estimates based on factory conditions at the time Seller receives Buyer's Order and are subject to change due to circumstances which occur between the date of Seller's quotation and Seller's receipt of Buyer's Order, or between Seller's receipt of Buyer's Order and the date of delivery. Truck deliveries are limited to suitable and accessible locations. All listed delivery dates are estimates only. Seller accepts no liability for late deliveries, including any liquidated damages. Buyer's acceptance of any Products will constitute Buyer's waiver of any claim for damages because of any delay in delivery of such Products.

FORCE MAJEURE. Seller shall not be liable for any failure, damage, or delay in manufacture, shipment, or delivery of Products resulting from a cause beyond Seller's reasonable control, including, but not limited to: acts of God, provisions of law, governmental action or regulations, accident, explosion, fire, weather, flood or other casualty, strike, lockout, or other labor difficulty, civil unrest or riot, war, acts of terrorism, insurrection, or scarcity of labor, raw material, production facilities or transportation. Upon occurrence of any such event, the time for Seller's performance shall be extended reasonably, the purchase price shall be adjusted for any increased costs to Seller resulting therefrom, and Buyer shall not be entitled to any other remedy.

In the event Force Majeure is declared, Seller will not be liable for any causes of actions for breach or damages that arise from Seller's inability to meet Seller's delivery or pricing obligations.

INSPECTION. Buyer shall inspect the Products immediately on the arrival thereof and within fourteen (14) days after arrival shall give written notice to Seller of any matter by reason whereof it may allege that the Products are not in accordance with the Agreement. If Buyer shall fail to give such notice, the Products shall be deemed to be in all respects in accordance with the agreement terms. All Products made to special specifications are deemed to be inspected and accepted before shipment is made and may not be canceled.

CANCELLATION AND CHANGES. Buyer may not cancel or change any Order Buyer has placed unless agreed to in writing by an authorized representative of Seller, and Buyer will remain responsible for any costs incurred by Seller prior to or because of such cancellation or change. If Buyer attempts to cancel or change any Order without Seller's consent, without limiting any other remedies available to Seller, Buyer shall pay to Seller within fifteen (15) days of such cancellation or change the contract price, including applicable taxes, for all Products which have been completed prior to Seller's actual receipt of Buyer's notice of cancellation or change. In addition, Buyer shall pay

to Seller within fifteen (15) days of such cancellation or change all costs and other expenses incurred by Seller for uncompleted items plus a cancellation charge in an amount equal to one hundred percent (100%) of the amount of the Order. In the event of any change, Seller shall be entitled to revise its prices and delivery schedules to reflect such change.

RETURNS. Buyer shall not return Product to Seller without Seller's prior written consent, which may be granted or withheld in Seller's sole discretion. If Seller consents to Buyer's return of Product, Seller will accept returned Product for credit if, in its sole discretion, it finds such Product to be in good and resaleable condition. Such credit shall be the invoice price of the returned Product less 45% on acceptable Product, and less all shipping and handling charges. If such Product is not in good and resaleable condition, as determined in Seller's sole discretion, the credit given to Buyer shall be the scrap value of the Product less all shipping and handling charges.

SPECIFICATIONS. Seller is not responsible or liable for the adequacy or performance of engineering, design, or specifications furnished by Buyer.

SCHEDULE. Lead times will be established upon receipt of a valid purchase order. For a purchase order to be considered valid, it must contain accurate mutually agreed-upon ship dates and ship no later than the stated quotation terms. Material will be released for use on other Seller orders and new lead times will be negotiated if material has not shipped within 14 days of original release date.

WARRANTY. Seller warrants that its Products will conform to the description and specifications in Buyer's Order(s) for them for a period of one (1) year from the date such Product is installed; provided, however, that Seller reserves the right to furnish thicker (wall) Product than Buyer's order without prior notice to Buyer if it meets all other specifications in Buyer's Order(s). THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW, STATUTE OR OTHERWISE, OR IMPLIED BY INDUSTRY OR TRADE CUSTOM, COURSE OF DEALING BETWEEN THE PARTIES OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WORKMANSHIP, DESIGN OR NON-INFRINGEMENT OF ANY THIRD PARTY'S PROPRIETARY RIGHTS. No representation or warranty, express or implied, made by any sales representative or other agent of Seller which is not specifically set forth in these terms shall be binding upon Seller. Buyer assumes all risk and liability resulting from Product use, whether singly or in combination with other Products. Per the claims procedure in these terms, Seller may be liable to Buyer for breach of the above warranty and any actionable negligence of Seller, but SELLER'S SOLE LIABILITY (AND BUYER'S EXCLUSIVE REMEDY) WHETHER FOR BREACH OF WARRANTY OR FOR NEGLIGENCE IS EXPRESSLY LIMITED, AT THE OPTION OF SELLER, TO ONE OF THE FOLLOWING: (i) THE REPLACEMENT AT THE AGREED POINT OF DELIVERY OF ANY PRODUCTS THAT DO NOT CONFORM TO THE DESCRIPTION AND SPECIFICATIONS IN BUYER'S ORDER(S) FOR THEM, (ii) THE REPAIR OF ANY PRODUCTS THAT DO NOT CONFORM TO THE DESCRIPTION AND SPECIFICATIONS IN BUYER'S ORDER(S) FOR THEM, OR (iii) THE REFUND OR CREDITING TO BUYER'S ACCOUNT OF THE AMOUNT PAID FOR SUCH PRODUCTS. SELLER IS NOT RESPONSIBLE FOR ANY LABOR, REMOVAL, OR INSTALLATION CHARGES THAT MAY RESULT FROM ANY REPAIR OR REPLACEMENT OF PRODUCTS. This warranty does not cover failure of any part or parts manufactured by parties other than Seller, failure of any part or parts from external forces, including but not limited to corrosive soils, earthquake, installation, vandalism, impact damage to Products, frost damage, delays or difficulties related to limited visibility or underwater installations, or application of excessive torque. This warranty shall be void if there has been misuse, accident, modifications, unsuitable physical or operating environment, improper maintenance, storage or installation of the Products. The Parties agree that the above is intended as a complete allocation of

risk between them and because the price paid for Product reflects such risk allocation, this limitation will not have failed of its essential purpose even if it operates to bar certain remedies. Seller makes no warranty whatsoever with respect to goods, products, accessories or parts furnished by Seller but not manufactured by Seller, which carry only the warranty, if any, of the manufacturer thereof and Seller hereby assigns to Buyer all of its rights and interest in the manufacturer's warranties (if any) to the extent that this assignment is not prohibited by the terms of such warranty or agreement between Seller and manufacturer.

LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OR OTHERWISE, SELLER SHALL HAVE NO LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, LIQUIDATED, PUNITIVE, OR CONSEQUENTIAL DAMAGES, NON-COMPLIANCE WITH REGULATIONS OF FOREIGN GOVERNMENTS, LOST PROFITS, LOSS OF USE OF PRODUCTS OR OTHER PROPERTY OR EQUIPMENT, OR DAMAGES SPECIFICALLY EXCLUDED IN THIS OR ANY OTHER SPECIAL WARRANTY LIMITATION, LOSSES OR EXPENSES, DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING OR USE OF THE GOODS OR SERVICES OR FROM ANY OTHER CAUSE OR BREACH. IN NO EVENT SHALL SELLER'S LIABILITY, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE PURCHASE PRICE ACTUALLY PAID BY BUYER; BUYER WAIVES ANY CLAIM IN EXCESS OF SUCH AMOUNT.

NOTICE OF CLAIMS. Seller will promptly consider settlement of claims per its policies and procedures. Seller SHALL NOT BE LIABLE UNLESS IT RECEIVES WRITTEN NOTICE (for which TIME IS OF THE ESSENCE) OF BUYER'S CLAIM: (A) at the time Buyer receives Products with a deficiency (such as a shortage) or defect that can be seen by visual examination, or (B) within ninety (90) days after Buyer receives Products deficient for any other reason. As to Products Seller sells, Seller shall not be liable for a claim made by any claimant other than Buyer. Buyer must institute legal action for all claims against Seller within one (1) year after the latter of delivery or installation of the Product, or the claims shall be barred and deemed waived notwithstanding any statutory period of limitations. Seller must be given reasonable opportunity to investigate all claims. Seller is not liable for any charge or expense incident to a claim absent the written consent of an authorized representative of Seller.

INDEMNIFICATION. Buyer acknowledges that Seller does not participate in the installation of the Products. Buyer agrees to indemnify, defend, and hold harmless Seller and its officers, directors, managers, members, employees or other representatives from and against any claim, demand, loss, costs (including reasonable attorneys' fees) or damages incurred or sustained by Seller arising from or related to use or resale of the Products and any of Buyer's negligent, intentional or tortious acts or omissions, including the installation of any Product or Buyer's failure to comply with this Agreement.

GOVERNING LAW. These terms, and each sale and purchase of Products to Buyer by Seller, shall be governed in all respects by the laws of the State of Texas without giving effect to conflict of laws principles that would require the application of any other jurisdiction's substantive laws, provided, however, that the law applicable to any mechanic's or materialman's lien asserted by Seller shall be construed and governed by the law of the jurisdiction where the goods or services were delivered, consumed, or used. The United National Convention on Contracts for the International Sale of Goods, and any successor thereto, will not apply to this Agreement.

ARBITRATION; CONSENT TO VENUE. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, including the arbitrability thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with the then-current Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be

entered in any court having jurisdiction thereof. No dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person, and any arbitrator attempting such a proceeding shall be deemed to have exceeded the powers available under the Federal Arbitration Act. Claims shall be heard by a single arbitrator in Dallas County, Texas. In the event that this arbitration provision is deemed invalid or inapplicable for any reason, in whole or in part, the parties agree that the venue and jurisdiction for any proceedings arising out of or related to the Agreement shall lay exclusively in the state and federal courts of Dallas County, Texas to which jurisdiction each party irrevocably consents and waives any objection or defense that it is not subject to personal jurisdiction in such venue or that the forum is inconvenient.

COMPLIANCE WITH LAWS. Each Party represents and warrants, in connection with transactions contemplated by these Terms, that it will comply with all applicable federal, state and local laws, regulations, and orders, including without limitation: (A) all applicable laws and regulations regarding export controls, economic sanctions, trade embargoes and anti-boycott restrictions, and all applicable anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended) and the United Kingdom Bribery Act (collectively, "Applicable International Trade and Anti-Corruption Laws"); and (B) all applicable equal opportunity requirements including those set forth in U.S. Executive Order 11246, the U.S. Rehabilitation Act of 1973, as amended, and the U.S. Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and regulations promulgated thereunder, and laws prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age or sex in any term or condition of employment, all of which are incorporated by reference into this Agreement; and (C) all applicable laws and regulations addressing human trafficking and slavery. Each Party acknowledges and confirms that it and its officers, directors, employees, agents, contractors, and/or any representative acting on its behalf are familiar with the provisions of Applicable International Trade and Anti-Corruption Laws. Each Party agrees to indemnify, defend and hold harmless the other Party and its employees from and against any and all claims, demands, costs, penalties and fines arising in connection with any alleged breach by the indemnifying party or any of its representatives of this Section.

NO ASSIGNMENT OR MODIFICATION. Buyer shall not assign or transfer any contract with Seller without its prior written consent. No modification of these terms shall be effective unless specifically agreed to in writing by Seller, and no modification shall be rendered effective by Seller's receipt, acknowledgment, or acceptance of any purchase order or other form Buyer provides that stipulates different terms or conditions, and Seller hereby gives notification of objection to any such terms and conditions.

NO WAIVER. No waiver of these terms shall be effective against Seller unless made in writing by an authorized representative of Seller. Buyer shall not assert that Seller's waiver of Buyer's breach of these terms, or of those of a later contract of the Parties, is a waiver of any other breach, nor assert that Seller's failure to exercise a right arising from Buyer's default is a continuing waiver of the right, and Buyer agrees that Seller may exercise the right at a later time.

NO THIRD PARTY BENEFICIARIES. Buyer and Seller are the only intended beneficiaries of this document, and there are no third party beneficiaries.

CORRECTIONS. Seller reserves the right to correct typographical or clerical errors in a quotation, order, or agreement without prejudice or legal effect.

SEVERABILITY. Any of these terms that a governing jurisdiction prohibits or declares unenforceable shall be ineffective only to the extent of such prohibition or unenforceability only in that jurisdiction, without invalidating the remaining terms or affecting the validity or enforceability of such terms in any other jurisdiction.

HEADINGS. Paragraph headings are for convenience of reference only, are without substantive meaning, and shall not be used to construe or interpret these terms.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Plaintiff,

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2024CP2305956

JURY TRIAL DEMANDED

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
MOTION TO DISMISS OR STAY PENDING ARBITRATION**

Dated: January 16, 2025

ROA_0154

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I. INTRODUCTION

Defendant United States Pipe and Foundry Company LLC (“U.S. Pipe”) seeks to compel Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina (“Greenville Water”) to arbitrate its claims based solely upon Terms and Conditions of Sale it posted to its website that Greenville Water never even saw—much less agreed to be bound by—prior to this litigation. What’s more, because Greenville Water has *never* purchased ductile iron pipe directly from U.S. Pipe, it cannot be reasonably disputed that, by the Terms and Conditions of Sale’s own express language, Greenville Water is a non-party to the alleged agreement containing the arbitration provision. Since Greenville Water is a non-party to U.S. Pipe’s Terms and Conditions of Sale, a presumption *against* arbitration arises under South Carolina law that U.S. Pipe has entirely failed to rebut. As the party seeking to compel arbitration, U.S. Pipe has the burden to demonstrate reasonable notice, acceptance, and mutual assent to establish a valid arbitration agreement. U.S. Pipe, however, has failed to introduce *any* competent evidence of valid contract formation with respect to arbitration between Greenville Water and U.S. Pipe.

U.S. Pipe is thus left with one potential option to enforce the arbitration provision against Greenville Water: a direct benefits estoppel theory. But U.S. Pipe cannot establish direct benefits estoppel because Greenville Water did not knowingly exploit and receive a direct benefit from U.S. Pipe’s Terms and Conditions of Sale—terms of which Greenville Water was not even aware during the time its claims arose. Contrary to U.S. Pipe’s *ipse dixit* assertions, *none* of Greenville Water’s claims arise out of the general warranties contained in U.S. Pipe’s Terms and Conditions of Sale. Rather, they arise solely out of express and implied promises that U.S. Pipe made specifically to Greenville Water in its Certificate of Product Compliance that the ductile iron pipe it manufactured complied with a specific industry standard, ANSI/AWWA Standard C104/A21.4.

In other words, Greenville Water's claims exist under general principles of South Carolina law irrespective of U.S. Pipe's Terms and Conditions of Sale. Direct benefits estoppel therefore does not apply.

Finally, even if the arbitration provision could be enforced against Greenville Water (which it cannot), the arbitration provision is an unconscionable adhesion contract. No authority exists that allows a manufacturer to unilaterally bind all downstream purchasers of a product by simply posting terms and conditions on its website without any notice to indirect purchasers. In doing so, U.S. Pipe has failed to afford Greenville Water any meaningful choice in its ability to negotiate the arbitration provision in U.S. Pipe's Terms and Conditions of Sale and, therefore, under South Carolina law, the provision is unconscionable.

For these reasons and the reasons that follow, U.S. Pipe's motion to compel arbitration should be denied.

II. FACTUAL BACKGROUND

This action arises out of U.S. Pipe's manufacture of ductile iron pipe with defective cement-mortar lining at its Lynchburg, Virginia facility (the "Lynchburg Facility") and its sale of the defective cement-mortar-lined pipes through its distributors, Defendants TEC Utilities Supply Inc. ("TEC") and Hayes Pipe Supply Inc. ("Hayes"), to Greenville Water (the "Defective Pipes"). Compl., ¶ 1. Greenville Water alleges that the Defective Pipes cause significant "water quality problems"¹ as well as damage to its water distribution system, resulting in Greenville Water not receiving the benefit of its bargain and sustaining other consequential damages, including the cost of repair, lost revenue, and reputational harm. *See, e.g.*, Compl., ¶¶ 2, 10, 38-40, 44. As set forth

¹ Like many of its assertions regarding Greenville Water's claims, U.S. Pipe's assertion that Greenville Water "do[es] not claim that this alleged defect in the ductile iron pipe that it has installed impacts the quality of the water in any way" is incorrect. *See* Mot. at 1-2.

fully below, the evidence establishes that Greenville Water is not a party to U.S. Pipe's Terms and Conditions of Sale, did not otherwise agree to be bound by U.S. Pipe's Terms and Conditions of Sale, and does not seek to exploit any benefit from U.S. Pipe's Terms and Conditions of Sale.

A. U.S. Pipe manufactured and sold defective ductile iron pipe through its distributors, TEC and Hayes, to Greenville Water.

Cement-mortar-lined ductile iron pipe is industry standard in the waterworks industry because the cement-mortar-lining prevents water from reacting with the iron contained in the pipes. Compl., ¶ 2. Ductile iron pipe that does not have cement-mortar lining results in myriad problems, including deterioration of water quality, decreased functionality of and damage to water distribution systems, and decreased life expectancy of the pipe, resulting in lost revenue and reputational harm. *Id.* at ¶¶ 10, 37-44. As a result, industry standards and South Carolina law require all ductile iron pipes used for water service to have cement-mortar-lining that is of a minimum uniform thickness. *Id.* at ¶¶ 4, 27-36.

During a construction project, Greenville Water discovered that a substantial quantity of ductile iron pipe manufactured at U.S. Pipe's Lynchburg Facility (and purchased indirectly through TEC and Hayes) did not comply with industry standards because the cement-mortar-lining was concentrated almost entirely on one side of the pipe, as pictured below:



Id. at ¶¶ 8, 53-60. Upon discovery of the defect, Greenville retained an outside engineering firm to test pipe from U.S. Pipe's Lynchburg Facility across numerous deliveries and batches, which showed that more than 70% of the pipe tested failed to comply with industry standards. *Id.* at ¶¶ 56-57.

B. U.S. Pipe promised Greenville Water that its ductile iron pipe met industry standards irrespective of the warranties contained in the Terms and Conditions of Sale.

Contrary to U.S. Pipe's assertion that Greenville Water seeks to reap a benefit from warranties contained in U.S. Pipe's Terms and Conditions of Sale (Mot. at 9-10), neither Greenville Water's implied contract nor its warranty claims arise out of U.S. Pipe's Terms and Conditions of Sale. Rather, U.S. Pipe certified to Greenville Water via a Certificate of Product Compliance that all ductile iron pipe it manufactured complied with applicable industry standards, including the specific industry standard governing minimum thickness of cement-mortar-lining (ANSI/AWWA Standard C104/A21.4). Compl., ¶¶ 6, 45-52. Further, Greenville Water relied upon U.S. Pipe's Certificate of Product Compliance and affirmative representations concerning its compliance with industry standards when deciding to purchase pipe manufactured by U.S. Pipe because the pipe it purchased was manufactured with a black asphaltic seal paint coating that prevented Greenville Water from directly observing the quality of the cement-mortar-lining. *Id.* at ¶¶ 50-51. Had Greenville Water known that the express warranty made to it in the Certificate of Product Compliance was false, Greenville Water would not have purchased the Defective Pipes and would not have permitted them to have been installed in its water distribution system. *Id.* at ¶ 52. The affirmative misrepresentations that U.S. Pipe made to Greenville Water in the Certificate of Product Compliance form the basis of Greenville Water's implied contract, warranty, and South Carolina Unfair Trade Practice Act claims; not U.S. Pipe's Terms and Conditions of Sale. *Id.* at ¶¶ 77-79, 91-92, 104-05, 117-21.

C. U.S. Pipe’s Terms and Conditions of Sale do not purport to bind indirect purchasers, like Greenville Water.

U.S. Pipe’s Terms and Conditions of Sale do not purport to bind indirect purchasers that purchase goods through U.S. Pipe’s distributors, like TEC and Hayes. The term “Seller” is defined as referring to U.S. Pipe, Griffin Pipe Products Co., LLC, and U.S. Pipe Fabrication, LLC only—not distributors of U.S. Pipe. *See* Def.’s Ex. A at 1. Additionally, the term “Buyer” is defined as an entity and its parents, subsidiaries, affiliates, or business units that purchased goods from “Seller.” *Id.* It does not include entities that purchase goods manufactured by U.S. Pipe indirectly from distributors of U.S. Pipe, like TEC and Hayes. *Id.* The arbitration provision expressly applies only to “[a]ny controversy or claim arising out of or relating to the Agreement, or the breach thereof. . . .” *Id.* at 5. The term “Agreement” means the Agreement between “Seller” and “Buyer.” *Id.* at 1. The Terms and Conditions further provide that there are no third-party beneficiaries to the “Agreement.” *Id.* at 6.

D. Greenville Water is not a direct purchaser and, therefore, is not a “Buyer” under U.S. Pipe’s Terms and Conditions of Sale.

While U.S. Pipe falsely implies that Greenville Water purchased the Defective Pipes directly from U.S. Pipe (*see* Mot. at 3-4), Greenville Water has *never* purchased ductile iron pipe directly from U.S. Pipe. *See* Compl., ¶¶ 1, 16, 61; *see also* Affidavit of Robert Schmidt (“Schmidt Aff.”) at ¶¶ 5-6 (attached as Exhibit 1). Rather, Greenville Water has *always* purchased ductile iron pipe manufactured by U.S. Pipe through distributors TEC and Hayes. *Id.* Greenville Water’s contractual relationship with TEC and Hayes is governed by the terms and conditions set forth in Greenville Water’s purchase orders with TEC and Hayes. *See, e.g.*, Purchase Orders (attached as Exhibits 2-3). The purchase orders with TEC and Hayes do not subject Greenville Water to arbitration nor do they reference or incorporate U.S. Pipe’s Terms and Conditions of Sale in any way. *See id.* Greenville Water is, therefore, not a “Buyer,” as that term is defined and used in U.S.

Pipe's Terms and Conditions of Sale because it did not purchase any goods from "Seller" (U.S. Pipe, Griffin Pipe Products Co., LLC, or U.S. Pipe Fabrication, LLC). *See* Def.'s Ex. A at 1.

E. Greenville Water has never been put on notice of nor agreed to U.S. Pipe's Terms and Conditions of Sale.

Since Greenville Water has never purchased ductile iron pipe directly from U.S. Pipe, Greenville Water has never been notified of nor agreed to U.S. Pipe's Terms and Conditions of Sale. *Schmidt Aff.* at ¶¶ 8-9. Nor has Greenville Water ever used U.S. Pipe's website in connection with the purchase of ductile iron pipe. *Id.* at ¶ 6. Additionally, and as set forth above, Greenville Water's contractual relationships with TEC and Hayes are governed by the terms and conditions contained in Greenville Water's purchase orders with TEC and Hayes. *See* Exs. 2-3; *Schmidt Aff.* at ¶ 9. Even assuming that TEC and Hayes had separate terms and conditions, as alleged by U.S. Pipe, those terms and conditions neither reference nor incorporate U.S. Pipe's Terms and Conditions of Sale (or the arbitration provision) in any way. *See* *Mot.* at 3-5.

III. ARGUMENT

A. No valid arbitration agreement exists between Greenville Water and U.S. Pipe.

The threshold issue in determining arbitrability is "whether a valid, binding arbitration agreement exists in the first place." *BVW Holding AG v. Hoowaki, LLC*, No. 2021-001168, 2024 WL 112281, at *2 (S.C. Ct. App. Jan. 10, 2024). "[W]here one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place." *Id.* (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22 (2007)). If no agreement exists, "the court must deny any application to arbitrate." *Id.*

"Although arbitration is viewed favorably by the courts, it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts." *Wilson v. Willis*, 426 S.C. 326, 337 (2019); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596 (2001).

“[T]he presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement *or the identity of the parties who may be bound to such an agreement.*” *Wilson*, 426 S.C. at 337 (quoting *Carr v. Main Carr Development, LLC*, 337 S.W.3d 489, 496 (Tex. Ct. App. 2011) (emphasis in *Wilson*)). “Even the exceptionally strong policy favoring arbitration cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so.” *Id.* Here, Greenville Water cannot be forced to arbitrate, because it has not agreed to forego its right to a judicial remedy.

1. Greenville Water is a non-party to U.S. Pipe’s Terms and Conditions of Sale.

The arbitration provision cannot be enforced against Greenville Water, because Greenville Water is a non-signatory to U.S. Pipe’s Terms and Conditions of Sale. Arbitration, while favored, exists solely by agreement of the parties, and a party “cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000). Therefore, “a presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.” *Wilson*, 426 S.C. at 337-38 (emphasis in original).

U.S. Pipe’s Terms and Conditions of Sale, by their own express terms, apply only to purchasers of goods and products from the “Seller” of those goods and products. Def.’s Ex. A at 1. The term “Seller” is defined as “United States Pipe and Foundry Company, LLC, Griffin Pipe Products Co., LLC, and U.S. Pipe Fabrication, LLC.” *Id.* It does not include resale distributors of goods and products manufactured by U.S. Pipe, like TEC and Hayes. *Id.* And the term “Buyer” is defined as a person or entity, including “its parents, subsidiaries, affiliates, or business units,” that purchases goods and products from “Seller.” *Id.*

Greenville Water never purchased goods or products directly from U.S. Pipe, Griffin Pipe Products Co., LLC, or U.S. Pipe Fabrication, LLC. Schmidt Aff. at ¶ 6. Rather, it purchased all ductile iron pipe that was manufactured by U.S. Pipe from U.S. Pipe’s distributors, TEC and Hayes. *Id.* Greenville Water, therefore, does not meet the definition of the term “Buyer” in U.S. Pipe’s Terms and Conditions of Sale. Def.’s Ex. A at 1. And, Greenville Water cannot be considered a third-party beneficiary to the contract because the Terms and Conditions of Sale expressly state that “Buyer and Seller are the only intended beneficiaries of this document, and there are no third party beneficiaries.” Def.’s Ex. A at 6. Greenville Water is, therefore, a non-signatory to U.S. Pipe’s Terms and Conditions of Sale and a presumption against arbitration applies. *Wilson*, 426 S.C. at 337-38.

2. U.S. Pipe has not submitted any evidence to rebut the presumption against arbitration.

U.S. Pipe provides *no evidence* to support its assertion that the parties agreed to arbitration—because no such evidence exists. The party seeking arbitration has “the burden of proving the existence of a valid agreement to arbitrate.” *BVW Holding AG*, 2024 WL 112281, at *2. Whether the parties have formed an agreement to arbitrate is determined by applying South Carolina contract law. *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 241-43 (Ct. App. 2022). Under South Carolina law, there must be competent record evidence of reasonable notice, acceptance, and mutual assent to establish a valid arbitration agreement. *Id.*

U.S. Pipe’s motion is predicated entirely upon false factual assertions without any evidentiary support. U.S. Pipe does not provide evidence (because none exists) that Greenville Water had ever seen U.S. Pipe’s Terms and Conditions of Sale on its website at any point prior to the filing of the present motion. *See id.* at 242 (“A party cannot assent to something he does not know about, so the law in general requires that for an offer to be effective, the responding party

must have reasonable notice of the offer’s terms.”). There is no evidence that Greenville Water ever purchased ductile iron pipe directly from U.S. Pipe (it did not), much less used U.S. Pipe’s website to do so. Schmidt Aff. at ¶¶ 5-6. Nor does U.S. Pipe provide evidence that Greenville Water was otherwise put on notice of the Terms and Conditions of Sale. *Id.* at ¶ 8. There is no evidence that TEC or Hayes informed Greenville Water of U.S. Pipe’s Terms and Conditions of Sale or incorporated U.S. Pipe’s Terms and Conditions of Sale into any agreement with Greenville Water. *Id.*

Rather, U.S. Pipe baselessly asserts, without any evidentiary support, that “the credit application, invoices and pick tickets used by TEC and Hayes specifically reference the terms & conditions applicable to the sale.” Mot. at 3-4. Notably, however, U.S. Pipe does *not* assert that any documents used by TEC or Hayes specifically reference U.S. Pipe’s Terms and Conditions of Sale, let alone the arbitration provision. And, even assuming the terms and conditions of Hayes and TEC quoted in U.S. Pipe’s motion are applicable to Greenville Water (they are not), the quoted terms and conditions contain no reference to arbitration nor U.S. Pipe’s Terms and Conditions of Sale. *See* Mot. at 4-5. Instead, they simply purport to place limitations on warranties *provided by TEC and Hayes*. *Id.* U.S. Pipe has thus failed to carry its burden to rebut the presumption against arbitration and prove an agreement to arbitrate by competent evidence.

3. Greenville Water cannot be forced to arbitrate under an estoppel theory.

Recognizing that Greenville Water is a non-signatory to U.S. Pipe’s Terms and Conditions of Sale and there is no evidence to support a valid arbitration agreement, U.S. Pipe asserts that Greenville Water is nonetheless subject to arbitration under an estoppel theory because it claims (incorrectly) that Greenville Water has “reaped the benefits of the warranty provided by US Pipe” contained in its Terms and Conditions of Sale. Mot. at 9-10. Whether an arbitration agreement may be enforced against non-signatories, and under what circumstances, is an issue controlled by

state law. *Wilson*, 426 S.C. at 338. South Carolina recognizes that non-signatories to arbitration agreements can potentially be bound in limited circumstances under an estoppel theory. *Id.* (citing *Malloy v. Thompson*, 409 S.C. 557, 561-62 (2014)). Equitable estoppel, however, “should be used sparingly” and only when necessary to prevent injustice. *Id.* at 345.

Under direct benefits estoppel, “[a] nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Id.* at 340 (quoting *Perason v. Hilton Head Hosp.*, 400 S.C. 281, 290 (2012)). “A benefit is direct if it flows directly from the agreement.” *Blackwell v. Mary Black Health System, LLC*, No. 2020-001613, 2024 WL 4234719, at *4 (S.C. Ct. App. Sept. 18, 2024). “In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.” *Id.* Generally, cases in which estoppel is applied involve “non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *Id.* In other words, “[u]nder the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory ‘knowingly exploits’ the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement. . . .” *Wilson*, 426 S.C. at 340-41 (quoting *Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626, 977 N.Y.S.2d 685, 999 N.E.2d 1130, 1134 (2013)).

In support of its estoppel argument, U.S. Pipe relies almost entirely upon *One Belle Hall Prop. Owners Ass’n v. Trammell Crow Residential Co.*, 418 S.C. 51, 791 S.E.2d 286 (Ct. App. 2016). But *One Belle Hall* is readily distinguishable for two primary reasons. First, in *One Belle Hall*, unlike here, prior to litigation the plaintiff initiated a warranty claim arising out of the same terms and conditions that contained the arbitration provision. *See id.* at 58. Greenville Water,

however, has *never* made a warranty claim arising out of U.S. Pipe’s Terms and Conditions of Sale. Second, in *One Belle Hall*, it was assumed that the plaintiff was a party or signatory to the contract containing the arbitration provision because the plaintiff made a warranty claim under the contract. Indeed, unlike here, the party seeking to enforce the arbitration provision did not assert that the plaintiff was bound to the arbitration provision under an estoppel theory at all. Consequently, the only issue the court decided in *One Belle Hall* was whether the arbitration provision was unconscionable. The court of appeals decision in *One Belle Hall*, therefore, does not control.

Rather, this case falls directly within the South Carolina Supreme Court’s holding in *Wilson v. Willis*. In *Wilson*, the defendant sought to enforce an arbitration provision against the plaintiffs, who were non-signatories to the contract containing the arbitration provision. *See Wilson*, 426 S.C. at 338. In holding that the non-signatories were not bound to the arbitration agreement under an estoppel theory, the South Carolina Supreme Court emphasized that the plaintiffs, like here, were “never aware of the existence of the contract” until they initiated litigation and that general principles of South Carolina law formed the basis of most of the plaintiffs’ claims. *Id.* at 342. The Supreme Court further emphasized that “direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen ‘but for’ a contract’s existence[.]” *Id.* at 343. The court went on to distinguish between direct benefits and indirect benefits and explained that a benefit is indirect “where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.” *Id.* at 343-44. Ultimately, the court held that the plaintiffs could not be bound by the arbitration provision because they did not “knowingly exploit[] and receive[] a direct benefit” from the contract containing the arbitration agreement. *Id.* at 344.

Here, contrary to the South Carolina Supreme Court’s holding in *Wilson*, U.S. Pipe incorrectly asserts that Greenville Water is automatically subject to U.S. Pipe’s Terms and Conditions of Sale because Greenville Water alleges a contractual relationship with U.S. Pipe in its implied contract claim. Mot. at 9. But, like in *Wilson*, while some of Greenville Water’s claims arise out of a contractual relationship with U.S. Pipe, none of Greenville Water’s claims arise out of the general warranties contained in U.S. Pipe’s Terms and Conditions of Sale. Rather, they arise under general principles of South Carolina law through express and implied promises that U.S. Pipe made specifically to Greenville Water in its Certificate of Product Compliance that the ductile iron pipe it manufactured complied with a specific industry standard, ANSI/AWWA Standard C104/A21.4. *See* Compl., at ¶¶ 6-7, 47-52, 70, 77-79, 92, 105. Indeed, like the plaintiffs in *Wilson*, Greenville Water was not even aware of the existence of U.S. Pipe’s Terms and Conditions of Sale prior to this litigation and therefore could not (and did not) exploit those terms and conditions to its benefit at any point prior to this litigation. *See* Schmidt Aff. at ¶ 8. And, because Greenville Water exploits only the contractual relationship of the parties and “does not exploit (and thereby assume) the agreement itself,” it cannot be bound by the arbitration provision contained therein. *See Wilson*, 426 S.C. at 343-44; *Blackwell*, 2024 WL 4234719, at *4.

B. Assuming *arguendo* Greenville Water is subject to U.S. Pipe’s Terms and Conditions of Sale (it is not), the arbitration clause is an unconscionable adhesion contract.

Even if a valid arbitration agreement existed (it does not), the arbitration clause in U.S. Pipe’s Terms and Conditions of Sale is an unconscionable adhesion contract. Courts may invalidate arbitration agreements on general state law “contract defenses, such as fraud, duress, and unconscionability.” *Zabinski*, 346 S.C. at 593. In South Carolina, unconscionability is defined as “the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair

and honest person would accept them.” *Simpson*, 373 S.C. at 24-25. “In analyzing claims of unconscionability of arbitration agreements, the [U.S. Court of Appeals for the] Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decisionmaker.” *Id.* at 25. While adhesion contracts are not per se unconscionable, courts look upon them with “considerable skepticism” because they raise “considerable doubt that any true agreement ever existed to submit disputes to arbitration.” *Id.* at 26-27.

U.S. Pipe’s arbitration provision is an adhesion contract that cannot be enforced both because the terms were not agreed to by Greenville Water and it is unconscionable. By simply placing terms and conditions, including an arbitration provision, on its website and not providing any reasonable notice to indirect purchasers of its products (and non-users of the website), like Greenville Water, U.S. Pipe has failed to afford Greenville Water any meaningful choice in its ability to negotiate the arbitration provision in U.S. Pipe’s Terms and Conditions of Sale. *See Simpson*, 373 S.C. at 24-25. Courts across the United States have found that terms placed on a website without reasonable notice to those intended to be bound do not bind a party to those terms, *even when the party used the website to conduct the transactions at issue. See, e.g., Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1178-79 (9th Cir. 2014) (holding browsewrap terms of use were not enforceable because users of website were not provided reasonable notice of the terms); *Walker v. Nautilus, Inc.*, 541 F. Supp. 3d 836, 841 (S.D. Ohio 2021) (“Courts have refused to enforce browsewrap terms of use where the website’s users were required to scroll down the webpage to discover the terms.”); *Marshall v. Georgetown Memorial Hosp.*, No. 2:21-cv-02733, 2022 WL 5434226, at *6-7 (D.S.C. July 7 2022) (holding no agreement to arbitrate arose where website did not make clear user was agreeing to arbitrate).

U.S. Pipe's attempt to enforce the Terms and Conditions of Sale contained on its website against Greenville Water here is even more one-sided because Greenville Water never transacted directly with U.S. Pipe, much less used U.S. Pipe's website to conduct the transactions at issue. *See* Schmidt Aff. at ¶¶ 5-6. And no authority exists that would allow a manufacturer to bind all downstream purchasers of a product to arbitration by simply posting one-sided terms and conditions on its website. *See Zajac, LLC v. Walker Industrial and Truck, Inc.*, No. 2:15-cv-00507-GZS, 2016 WL 9021492, at *1 (D. Me. Mar. 21, 2016) ("It cannot be the case that a manufacturer can simply post warranty terms on its website and bind any and all downstream purchasers of its products."). The fact that Greenville Water may be a sophisticated purchaser does not alter the analysis because there was no arms-length, commercial negotiation between the parties since Greenville Water did not purchase the Defective Pipes from U.S. Pipe. *See South Carolina Elec. & Gas Co. v. Westinghouse Elec. Corp.*, 826 F. Supp. 1549, 1554 (D.S.C. 1993). The arbitration provision in U.S. Pipe's Terms and Conditions of Sale therefore cannot be enforced against Greenville Water because it is unconscionable under South Carolina law.

C. The Federal Arbitration Act does not apply and this Court is the proper forum.

"The purpose of the FAA is 'to make arbitration agreements as enforceable as other contracts, but not more so.'" *Wilson*, 426 S.C. at 336 (quoting *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12 (1967)) (emphasis added). "A party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement." *Id.* Here, for the reasons set forth above, there is no valid agreement to arbitrate between U.S. Pipe and Greenville Water and, therefore, the FAA does not apply. Moreover, since Greenville Water cannot be bound to U.S. Pipe's Terms and Conditions of Sale for the reasons set forth above, the venue and jurisdiction clause contained within the

arbitration provision of those terms and conditions does not apply (*see* Def.'s Ex. A at 6) and this Court is the proper forum.

IV. CONCLUSION

For the foregoing reasons, U.S. Pipe's Motion to Dismiss or Stay Pending Arbitration should be denied in its entirety.

Dated: January 16, 2025

Respectfully submitted,

/s/ Adam C. Bach

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*Counsel for Plaintiff Commissioners of
Public Works of the City of Greenville,
South Carolina*

* *Pro Hac Vice* applications pending

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Plaintiff,

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2024CP2305956

AFFIDAVIT OF ROBERT SCHMIDT

I, Robert Schmidt, after being duly sworn according to law, depose and state as follows:

1. I am employed as the Chief Administrative Officer for the Commissioners of Public Works of the City of Greenville, South Carolina (“Greenville Water”).

2. As Chief Administrative Officer for Greenville Water, I am familiar with Greenville Water’s purchase of ductile iron pipe manufactured by Defendant United States Pipe and Foundry Company LLC (“U.S. Pipe”) from its distributors, Defendants TEC Utilities Supply Inc. (“TEC”) and Hayes Pipe Supply Inc. (“Hayes”).

3. From October 2022 through May 2023, Greenville Water regularly purchased ductile iron pipe with cement-mortar lining manufactured by U.S. Pipe, through distributors TEC and Hayes, much of which was manufactured by U.S. Pipe at its Lynchburg, Virginia facility.

4. Additionally, prior to October 2022, a substantial amount of cement-mortar-lined ductile iron pipe manufactured by U.S. Pipe was purchased and installed in Greenville Water’s distribution system by Greenville Water and private developers of construction projects requiring water service through Greenville Water’s distribution system.

5. Greenville Water has always purchased ductile iron pipe manufactured by U.S. Pipe from U.S. Pipe's distributors, TEC and Hayes.

6. Greenville Water has never purchased ductile iron pipe manufactured by U.S. Pipe directly from U.S. Pipe (or its affiliates Griffin Pipe Products Co., LLC and U.S. Pipe Fabrication, LLC), using its website or otherwise.

7. To the extent that private developers using Greenville Water's distribution system have purchased and installed ductile iron pipe manufactured by U.S. Pipe in Greenville Water's water distribution system, Greenville Water has no knowledge or records of the entities from which such private developers have purchased such ductile iron pipe.

8. Prior to this litigation, Greenville Water has never looked at or otherwise been notified—by U.S. Pipe, TEC and Hayes, or any private developer—of U.S. Pipe's Terms and Conditions of Sale, including, but not limited to, the warranty, arbitration, or venue provisions contained therein.

9. Consequently, Greenville Water did not agree to arbitrate any disputes with U.S. Pipe, nor did it agree to any warranty or venue limitations. Rather, Greenville Water's purchase of ductile iron pipe manufactured by U.S. Pipe from TEC and Hayes are governed by the terms and conditions contained in Greenville Water's purchase orders with TEC and Hayes.

FURTHER AFFIANT SAYETH NAUGHT



Robert Schmidt

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

SWORN TO and subscribed before me
on the 7th day of January, 2025 by
Robert Schmidt

Kimberly J. Haalter
Notary Public

My Commission Expires: 2/16/2034



EXHIBIT 2



Greenville Water

PURCHASE ORDER

Purchase Order #: PO0027037

Date: 08/17/2022

VENDOR: V03412
HAYES PIPE SUPPLY INC
950 FIBER GLASS RD
NASHVILLE, TN,37210

BILL TO:
GREENVILLE WATER
407 West Broad Street
PO Box 687
Greenville, SC 29601
(864) 241-6155 (Phone)

DELIVER TO:
HAYES PIPE SUPPLY INC
950 FIBER GLASS RD
NASHVILLE, TN 37210

REQUISITIONER	SHIPPED VIA	TERMS	DUE DATE
ExtUser accttwo brod			08/17/2022

ITEM	DESCRIPTION	UOM	QTY	UNIT PRICE	TOTAL
PIPE-202	PIPE, DUCT IRON 6"	FEET	1100	25.31	\$27,841.00
				Subtotal	\$27,841.00
				Sales Tax	\$1,679.46
				Freight	\$0.00
				Other	\$0.00
				Trade Discount	\$0.00
				Total	\$29,511.46

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PURCHASE ORDER STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are agreed to by the Supplier ("Seller") whose name appears on the face of this Purchase Order and Commissioners of Public Works City of Greenville, aka Greenville Water. Seller hereby acknowledges and agrees that these Terms and Conditions shall apply and are hereby incorporated into this Purchase Order, between Seller and Greenville Water ("Buyer") under which Seller agrees to provide goods or services. This agreement shall be referred to herein as "Purchase Order."

- 1. ACCEPTANCE** – Commencement of performance pursuant to this Purchase Order constitutes acceptance hereof by Seller.
- 2. TERMINATION/CANCELLATION** – Buyer may at any time terminate this Purchase Order in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to the termination, plus actual direct costs resulting from termination.
- 3. CONFIDENTIALITY** – The parties will keep confidential any information (whether written or oral) in nature (including software and manuals) obtained under this Purchase Order and will not, without the written consent of the other party, disclose said information to any person (other than their employees or professional advisers).
- 4. CHANGES** – Buyer shall have the right at any time to make changes in the specifications, designs, drawings, the quantity of items ordered, delivery, and mode of transportation. If any such required changes cause an increase or decrease in the cost, or the time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Seller of Notice of Change.
- 5. WARRANTY** – Seller expressly warrants that all goods and services furnished by this Purchase Order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and that goods and services will be fit and sufficient for the purpose intended, merchantable, safe, and free from defects in material or workmanship. Seller agrees to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, without expense to Buyer, when notified of such nonconformity, provided Buyer elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by the Buyer in doing so.
- 6. PRICES, TERMS AND INVOICES** – The prices for goods and/or services ordered are specified on the face of this Purchase Order. No charges shall be made for shipping, handling, delivery, taxes or other extras unless specified on this Purchase Order. Payment is contingent upon approval of the goods and/or services by Buyer. Invoices will be paid by Buyer within 30 days from receipt of goods and/or the receipt of invoice for services performed or as specified on this Purchase Order.
- 7. FORCE MAJEURE** – Each party shall be excused from performance directly caused by circumstances beyond its reasonable control, including, without limitation, acts of God, governmental actions, war, national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether related to either party's workforce), and restraints or delays affecting transportation carriers.
- 8. PATENTS** – Seller agrees, at its own expense, to defend against Buyer or against those selling or using the goods or services covered by this Purchase Order for alleged infringement of patent or invention rights arising from the sale or use of such goods or services and to indemnify and save Buyer harmless from any damages, liabilities, claims, losses, and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or arising the goods or services covered by this Purchase Order: provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by Seller with specifications furnished by Buyer.
- 9. INDEMNITY AND INSURANCE** – Seller shall defend and indemnify Buyer against all damages, liability, claims, losses and expenses (including attorneys' fees) arising out of, or resulting in any way from any defect in the goods or services purchased hereunder or from any act or omission of seller, its agents, employees or subcontractors. Seller shall maintain such public liability insurance, including products liability insurance (including non-owned automobile liability) and Workmen's Compensation, and employer's liability insurance as will adequately protect Buyer against such damage, liabilities, claims, losses and expenses (including attorneys' fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.
- 10. INSPECTION/TESTING/REJECTION** – Payment for delivered goods and services do not constitute acceptance. Buyer has the right to inspect and approve, or reject any materials, supplies, services and/or installations which are in the Buyer's judgment defective. Rejections and goods supplied in excess of quantities specified on this Purchase Order may be returned to the Seller at its expense. In addition to Buyer's other rights, Buyer may charge the Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination that results in deterioration of the finished product or service, Buyer reserves the right to the replacement, as well as payment of damages.
- 11. REMEDIES** – Remedies shall be cumulative, and in addition to any other remedies available in law or equity.
- 12. DELIVERY/SHIPPING RELEASES** – Delivery is to be made to the "Ship To" location shown on the face of this Purchase Order. Supplier will ship goods F.O.B. Destination unless otherwise indicated on this Purchase Order. Delivery requirements, manner of delivery, and specified due dates of this Purchase Order shall be strictly adhered to and shall not be modified without the written acceptance of the Buyer. Seller shall report delays immediately to the Buyer. Buyer reserves the right to cancel this Purchase Order if Seller's order acknowledgement is unsatisfactory or if shipments are not made as requested.
- 13. ENTIRE AGREEMENT** – This Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. No changes shall be made unless in writing and duly signed by an authorized representative of both Buyer and Seller.
- 14. NON-ASSIGNMENT AND SUBCONTRACTING** – Except as provided in this Purchase Order, Seller may not assign or subcontract in any manner any portion of this Purchase Order and any monies which may become due hereunder without the advance written consent of Buyer, which may not be unreasonably withheld.
- 15. LAW OF THE CONTRACT** – This PO shall be governed by and interpreted in accordance with the laws of the State of South Carolina.

EXHIBIT 3



Greenville Water

PURCHASE ORDER

Purchase Order #: PO0027078

Date: 09/16/2022

VENDOR: V00448

TEC UTILITIES SUPPLY INC
ACCOUNTS RECEIVABLE
PO BOX 25189
GREENVILLE, SC,29616-0189

BILL TO:

GREENVILLE WATER
407 West Broad Street
PO Box 687
Greenville, SC 29601
(864) 241-6155 (Phone)

DELIVER TO:

TEC UTILITIES SUPPLY INC
ACCOUNTS RECEIVABLE
GREENVILLE, SC 29616-0189

REQUISITIONER	SHIPPED VIA	TERMS	DUE DATE
ExtUser accttwo brod			09/16/2022

ITEM	DESCRIPTION	UOM	QTY	UNIT PRICE	TOTAL
PIPE-202	PIPE, DUCT IRON 6"	FEET	22012	24.81	\$546,117.72
PIPE-203	PIPE, DUCT IRON 8"	FEET	1467	32.68	\$47,941.56
Subtotal					\$594,059.28
Sales Tax					\$35,643.56
Freight					\$0.00
Other					\$0.00
Trade Discount					\$0.00
Total					\$629,702.84

ELECTRONICALLY FILED - 2025 Jan 16 12:03 PM - GREENVILLE - COMMON PLEAS CASE#2024CP2205956

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are agreed to by the Supplier ("Seller") whose name appears on the face of this Purchase Order and Commissioners of Public Works City of Greenville, aka Greenville Water. Seller hereby acknowledges and agrees that these Terms and Conditions shall apply and are hereby incorporated into this Purchase Order, between Seller and Greenville Water ("Buyer") under which Seller agrees to provide goods or services. This agreement shall be referred to herein as "Purchase Order."

- 1. ACCEPTANCE** – Commencement of performance pursuant to this Purchase Order constitutes acceptance hereof by Seller.
- 2. TERMINATION/CANCELLATION** – Buyer may at any time terminate this Purchase Order in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to the termination, plus actual direct costs resulting from termination.
- 3. CONFIDENTIALITY** – The parties will keep confidential any information (whether written or oral) in nature (including software and manuals) obtained under this Purchase Order and will not, without the written consent of the other party, disclose said information to any person (other than their employees or professional advisers).
- 4. CHANGES** – Buyer shall have the right at any time to make changes in the specifications, designs, drawings, the quantity of items ordered, delivery, and mode of transportation. If any such required changes cause an increase or decrease in the cost, or the time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Seller of Notice of Change.
- 5. WARRANTY** – Seller expressly warrants that all goods and services furnished by this Purchase Order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and that goods and services will be fit and sufficient for the purpose intended, merchantable, safe, and free from defects in material or workmanship. Seller agrees to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, without expense to Buyer, when notified of such nonconformity, provided Buyer elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by the Buyer in doing so.
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- 7. FORCE MAJEURE** – Each party shall be excused from performance directly caused by circumstances beyond its reasonable control, including, without limitation, acts of God, governmental actions, war, national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether related to either party's workforce), and restraints or delays affecting transportation carriers.
- 8. PATENTS** – Seller agrees, at its own expense, to defend against Buyer or against those selling or using the goods or services covered by this Purchase Order for alleged infringement of patent or invention rights arising from the sale or use of such goods or services and to indemnify and save Buyer harmless from any damages, liabilities, claims, losses, and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or arising the goods or services covered by this Purchase Order: provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by Seller with specifications furnished by Buyer.
- 9. INDEMNITY AND INSURANCE** – Seller shall defend and indemnify Buyer against all damages, liability, claims, losses and expenses (including attorneys' fees) arising out of, or resulting in any way from any defect in the goods or services purchased hereunder or from any act or omission of seller, its agents, employees or subcontractors. Seller shall maintain such public liability insurance, including products liability insurance (including non-owned automobile liability) and Workmen's Compensation, and employer's liability insurance as will adequately protect Buyer against such damage, liabilities, claims, losses and expenses (including attorneys' fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.
- 10. INSPECTION/TESTING/REJECTION** – Payment for delivered goods and services do not constitute acceptance. Buyer has the right to inspect and approve, or reject any materials, supplies, services and/or installations which are in the Buyer's judgment defective. Rejections and goods supplied in excess of quantities specified on this Purchase Order may be returned to the Seller at its expense. In addition to Buyer's other rights, Buyer may charge the Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination that results in deterioration of the finished product or service, Buyer reserves the right to the replacement, as well as payment of damages.
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- 14. NON-ASSIGNMENT AND SUBCONTRACTING** – Except as provided in this Purchase Order, Seller may not assign or subcontract in any manner any portion of this Purchase Order and any monies which may become due hereunder without the advance written consent of Buyer, which may not be unreasonably withheld.
- 15. LAW OF THE CONTRACT** – This PO shall be governed by and interpreted in accordance with the laws of the State of South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Case No.: 2024CP2305956

Plaintiff,

PLAINTIFF'S MOTION TO COMPEL

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina (“Greenville Water”), respectfully moves this Court, pursuant to Rule 37(a) of the South Carolina Rules of Civil Procedure, for an Order compelling Defendant United States Pipe and Foundry Company LLC (“Defendant”) to provide responses to Greenville Water’s First Set of Interrogatories and First Request for Production of Documents (the “Requests”) served upon Defendant with the Summons and Complaint on October 11, 2024 at 11:40 a.m. by personal service. *See* Affidavit of Service (attached as Ex. 1).

Rules 33(a) and 34(b) of the South Carolina Rules of Civil Procedure provide that Defendant was required to serve responses and objections to the Requests no later than 45 days after service of the summons and complaint. Defendant’s responses and objections to the Requests were, therefore, due no later than November 25, 2024. After not receiving responses to the Requests, Greenville Water wrote Defendant on December 2, 2024, advising that its responses to the Requests were overdue and that if complete responses were not provided, Greenville Water would be forced to move to compel Defendant to respond to the Requests

pursuant to Rule 37(a). *See* Dec. 2, 2024 Correspondence (attached as Ex. 2). To date, however, Greenville Water has not received a response to its letter nor Defendant's responses to the Requests.

Under Rule 37(a), “[a] party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery. . . .” Specifically, if a party “fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.” Rule 37(a)(2) SCRCF. Further, “[i]f the motion is granted, the court *shall*, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.” Rule 37(a)(4) SCRCF (emphasis added).

Here, on December 2, 2024, Greenville Water provided reasonable notice to Defendant that its responses to the Requests were overdue. *See* Ex. 2. Defendant did not respond to the December 2, 2024, letter and has otherwise ignored the pending Requests that were served more than three months ago. *See* the Requests (attached as Ex. 3). Pursuant to Rule 37(a)(2), Greenville Water is thus entitled to an Order compelling Defendant to answer interrogatories and produce documents for inspection. Greenville Water further requests that the Order award Greenville Water's reasonable expenses incurred for the prosecution of this motion pursuant to Rule 37(a)(4) and also deem that any objections to the Requests have been waived. *See*

Richardson on Behalf of 15th Circuit Drug Enforcement Unit v. Twenty-one Thousand and No/100 Dollars (\$21,000.00) U.S. Currency and Various Jewelry, 430 S.C. 594, 598 (Ct. App. 2020) (“A party served written discovery has a duty to answer it, unless the party objects based on a stated reason or moves for a protective order.”).

Greenville Water anticipates that Defendant may attempt to assert that it was not required to provide responses or objections to the Requests because its baseless motion to compel arbitration is presently pending. But, even if Defendant’s motion had merit (which it does not), a motion to compel arbitration does not automatically stay discovery. Rather, the party seeking arbitration, has the burden to move to stay discovery or otherwise seek protection from the court. *See Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551 (Ct. App. 2003) (“As the party seeking arbitration, [the defendant] bore the onus to halt discovery by seeking the court’s protection.”). Therefore, Greenville Water’s motion should be granted and Defendant should be compelled to respond to the Requests, any objections thereto should be deemed waived, and Greenville Water should be awarded reasonable attorney’s fees and costs for being required to bring this motion.

Dated: January 20, 2025

Respectfully submitted,

/s/ Adam C. Bach

Adam C. Bach (S.C. Bar #74885)

TONNSEN BACH, LLC

1306 South Church Street

Greenville, South Carolina 29605

Tel.: 864-236-5013

abach@tonnsenbach.com

Adam J. Levitt*

Daniel Rock Flynn*

Anna Claire Skinner*

Jessica Holmes*

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Justin J. Hawal*
DICELLO LEVITT LLP
8160 Norton Parkway, Third Floor
Mentor, Ohio 44060
Tel.: 440-953-8888
jhawal@dicellolevitt.com

*Counsel for Plaintiff Commissioners of
Public Works of the City of Greenville,
South Carolina*

* *Pro Hac Vice* applications pending

Exhibit 1

AFFIDAVIT OF SERVICE

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2024-CP-23-05956

Plaintiff:

Commissioners of Public Works of The City of Greenville, South Carolina

vs.

Defendant:

United States Pipe and Foundry Company LLC, et al

For:

Adam Bach
Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605

Received by Tonnsen Bach Law Firm to be served on **United States Pipe and Foundry Company LLC, 6650 Rivers Ave., North Charleston, SC 29406.**

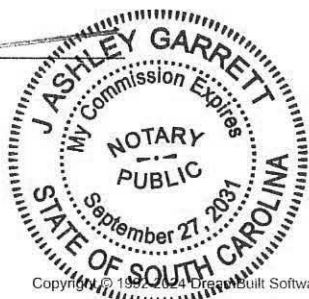
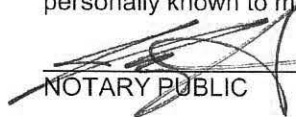
I, Vincent Buckey, being duly sworn, depose and say that on the **11th day of October, 2024 at 11:40 am, I:**

served a **CORPORATION** by delivering a true copy of the **Letter, Summons, Complaint, Plaintiff's First Set of Interrogatories to Defendant United States Pipe and Foundry Company LLC. and Plaintiff's First Request for Production of Documents to Defendant United States Pipe and Foundry Company LLC to: Amy Overcash as Authorized Representative of Corporate Creations for CORPORATE CREATIONS NETWORK INC.** on behalf of **United States Pipe and Foundry Company LLC**, at the address of: **6650 Rivers Ave., North Charleston, SC 29406.**

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server in good standing in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 16th day of October, 2024 by the affiant who is personally known to me.

NOTARY PUBLIC



Vincent Buckey
Process Server

Tonnsen Bach Law Firm
1306 S. Church St.
Greenville, SC 29605
(864) 236-5013

Our Job Serial Number: UPL-2024003176

Exhibit 2

U.S. Pipe -- AJL Letter to Beattie Ashmore, re Discovery Responses -- 120224.pdf



Adam J. Levitt
To beattie@beattieashmore.com
Cc Adam Bach; Dan Flynn; Justin Hawal; Anna Claire Skinner; Jessica Holmes; Adam J. Levitt

☺ Reply Reply All Forward

Mon 12/2/2024 1:30 PM

 U.S. Pipe -- AJL Letter to Beattie Ashmore, re Discovery Responses -- 120224.pdf
206 KB

Dear Mr. Ashmore,

Please see the attached letter.

Thanks.

Adam

 Adam J. Levitt
DICELLO LEVITT
Ten North Dearborn Street
Sixth Floor
Chicago, Illinois 60602
312.214.7900

This transmission may contain privileged and confidential information meant for the intended recipient only. If you have received this email in error, please notify the sender and permanently delete this email and any attachments.



DICELLO LEVITT

TEN NORTH DEARBORN STREET SIXTH FLOOR CHICAGO, ILLINOIS 60602

ADAM J. LEVITT
ALEVITT@DICELLOLEVITT.COM
312.214.7900

December 2, 2024

BY .PDF EMAIL (beattie@beattieashmore.com)

Mr. Beattie B. Ashmore
650 East Washington Street
Greenville, South Carolina 29601

Re: *Commissioners for Public Works of the City of Greenville, South Carolina v. United States Pipe and Foundry Company, LLC, et al., Case No. 2024 CP 2305956*

Dear Mr. Ashmore,

We write concerning Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina's ("Greenville Water") First Set of Interrogatories and First Request for Production of Documents (the "Requests") directed to Defendant United States Pipe and Foundry Company LLC ("U.S. Pipe").

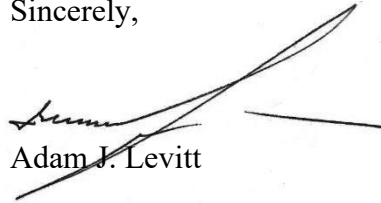
Greenville Water served the Requests on U.S. Pipe with the summons and complaint by personal service, on October 11, 2024. Rules 33(a) and 34(b) of the South Carolina Rules of Civil Procedure provide that U.S. Pipe was required to serve its written responses and objections to the Requests no later than 45 days after service of the summons and complaint. U.S. Pipe's written responses and objections to the Requests were, therefore, due no later than November 25, 2024. To date, however, we have not received U.S. Pipe's written responses to the Requests.

As a result of U.S. Pipe's failure to timely serve its written responses and objections, any objections that U.S. Pipe may have had to the Requests are now waived. *See Richardson on Behalf of 15th Circuit Drug Enforcement Unit v. Twenty-one Thousand*

and No/100 Dollars (\$21,000.00) U.S. Currency and Various Jewelry, 430 S.C. 594, 598 (Ct. App. 2020) (“A party served written discovery has a duty to answer it, unless the party objects based on a stated reason or moves for a protective order.”); *see also Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551 (Ct. App. 2003) (“As the party seeking arbitration, [the defendant] bore the onus to halt discovery by seeking the court’s protection.”). Please immediately provide U.S. Pipe’s complete responses to the Requests—without objection—or Greenville Water will be forced to move to compel U.S. Pipe’s complete discovery responses pursuant to Rule 37(a) SCRPC.

Thank you.

Sincerely,



Adam J. Levitt

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Case No.: _____

Plaintiff,

JURY TRIAL DEMANDED

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

**PLAINTIFF’S FIRST SET OF INTERROGATORIES
TO DEFENDANT UNITED STATES PIPE AND FOUNDRY COMPANY LLC**

Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina (“Plaintiff”) propounds the following First Set of Interrogatories (“Interrogatories”) to Defendant United States Pipe and Foundry Company LLC (“Defendant” or “U.S. Pipe”), to be answered separately and fully, under oath, within thirty (30) days after the date of service, pursuant to the provisions of Rule 33 of the South Carolina Rules of Civil Procedure.

DEFINITIONS

1. “Bessemer Facility” means U.S. Pipe’s manufacturing facility located in Bessemer, Alabama.
2. “Communication” means every manner or means of disclosure, transfer, or exchange of information (in the form of facts, ideas, inquiries, or otherwise), and every disclosure, transfer, or exchange of information, whether oral or written, including all letters, memoranda, notes, and messages, whether printed, typed, or handwritten, all electronic modes of

correspondence such as electronic mail and facsimiles, and all Documents reflecting the substance or occurrence of conversations or meetings.

3. “Defendant,” “You,” or “Your,” as used in these Document Requests, means United States Pipe and Foundry Company LLC, and any of its directors, officers, employees, partners, members, representatives, agents (including attorneys, accountants, consultants, investment advisors, or bankers), and any other Person purporting to act on its behalf or under its direct or indirect control. In the case of business entities, these defined terms include parents, subsidiaries, affiliates, predecessor entities, successor entities, divisions, departments, groups, acquired entities, related entities, and any other Person acting or purporting to act on the entity’s behalf or under its direct or indirect control.

4. The terms “Document” and “Documents” are used in the broadest sense permissible under the South Carolina Rules of Civil Procedure, and include but are not limited to:

- a. all correspondence, memoranda, records, letters, reports, notes, drafts, books, records, papers, minutes, schedules, tabulations, computations, lists, ledgers, journals, purchase orders, contracts, bills of lading, invoices, agreements, vouchers, accounts, checks, recordings, affidavits, diaries, calendars, desk pads, drawings, photocopies, motion pictures, slides, photographs, sketches, charts, graphs, or any written or printed matter or tangible thing on which any words or phrases are affixed;
- b. information contained in any computer, electronic, digital, or tape-recorded format or media, including any computer or electronic database, electronic mail or “e-mail,” translated, if necessary, into reasonably useable form;

- c. originals and copies, any and all drafts, and all copies that contain any notation not on the original; and
- d. communications.

Every draft or non-identical copy of a Document is a separate Document as defined herein.

5. “Employee” means any former or current employee, officer, agent, representative, consultant, expert, office, committee, department, division, or group, including those at corporate or division headquarters, or at any regional, departmental, or local offices anywhere in the world.

6. The term “Identify,” when used with reference to:

- a. a natural person, means to state his/her full name, present or last known employer, job title, present or last known residence, address and telephone number, and present or last known business address and telephone number, and any other information which would establish his/her relationship to Plaintiff or Defendant;
- b. a business entity, means to state: (i) the full name and address of the entity; (ii) the identity of all individual(s) in connection with the entity who have knowledge of the information requested; and (iii) the positions held by such individual(s) in relation to the entity;
- c. a document, means to state: (i) the type of document (*e.g.*, letter, memorandum, etc.); (ii) the date the document was prepared or created; (iii) the identity of the preparer/author of the document; (iv) the identity of all recipients of the document; (v) the title or heading and the number of pages of the document; (vi) the identity of the custodian or other person last known to have possession of the document; and (vii) the present or last known location of the document; and

- d. a communication, means to state: (i) the date of the communication; (ii) the form of the communication (*e.g.*, in person meeting or presentation, telephonic communication, etc.); (iii) the place where the communication was made; (iv) the identity of each person who was a party to or was present at the time of the communication; and (v) a summary of the communication.
- 7. “Lynchburg Facility” means U.S. Pipe’s manufacturing facility in Lynchburg, Virginia.
- 8. “Person” means the plural as well as the singular and shall include any natural persona and any corporation, partnership, firm, joint venture, sole proprietorship, or any other legal business entity of any kind.
- 9. “Plaintiff” means Commissioners of Public Works of the City of Greenville, South Carolina.
- 10. “Relating to” or “Relate to” means concerning, pertaining to, involving, discussing, describing, referring to, mentioning, demonstrating, illustrating, or providing evidence thereof.

INSTRUCTIONS

- 1. You must answer these Interrogatories or subparts thereof separately and fully in writing under oath. Your answers should include all responsive information known or reasonably available to You, Your Employees, and any other Persons consulted relating to any factual matters or matters of opinion relating to any of the facts or issues involved in the case.
- 2. You should not interpret any identification, description, or explanation of information or materials herein that is specific in nature to diminish the breadth of any more general request that may otherwise encompass such information or materials.

3. As necessary to make the Interrogatories inclusive rather than exclusive, the singular form of a word shall be construed as the plural, and the plural form of a word shall be construed as the singular.

4. As necessary to make the Interrogatories inclusive rather than exclusive, “and” and “or” shall be construed conjunctively or disjunctively.

5. No part of any Interrogatory should be left unanswered because an objection is interposed to another part of the Interrogatory. If an objection is made to an interrogatory, or a part of an interrogatory, the specific ground for the objection shall be set forth clearly in the response to that interrogatory.

6. Whenever an interrogatory may be answered by referring to a Document, that Document shall be identified in the response by bates number or, if the Document has not previously been produced, that Document shall be attached as an exhibit to the response and referred to in the response. If the Document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

7. If the responding party elects to produce business records in response to an interrogatory, the responding party shall produce the records as they are kept in the usual course of business or shall organize and label them to correspond with the interrogatory. If the Document is being produced in its native electronic format (allowing the Document to retain its metadata), identify the Document using its hash or other appropriate electronic identification and identify the interrogatories to which the Document is responsive. If the Document is not being produced in electronic form, identify the Document using the applicable bates numbers or specifically identify the type of Document being produced (e.g., letter, memorandum, telegram, contract, invoice, etc.), its date and author(s), its custodian, and every person to whom such document or any copy thereof

was given or sent. For all Documents produced, identify the name of the employee, officer, or agent certifying the Documents as business records.

8. If a claim of privilege is asserted in objecting to an Interrogatory or subpart thereof, the objection should state the type of privilege asserted and, with reasonable particularity, all grounds for such objection, such that the assertion can be reasonably tested. To the extent that a claim of privilege applies to only part of an Interrogatory or a part of your Answer thereto, You should answer all portions of the Interrogatory to which the claim of privilege does not apply.

9. If any information requested is withheld based on a claim that such information constitutes attorney work-product, please provide all the information described in Instruction No. 8 and identify the litigation in connection with which the information and the information it contains was obtained and/or prepared.

10. You are required to supplement or amend Your responses to these Interrogatories in accordance with Rule 26 of the South Carolina Rules of Civil Procedure.

11. Each paragraph and subparagraph of these Interrogatories should be construed independently and no other paragraph or subparagraph shall be referred to or relied on for the purpose of limiting the scope of these Interrogatories.

12. If, in answering these Interrogatories, You claim any ambiguity in interpreting either an individual request or a definition or instruction applicable thereto, such claims do not constitute a basis for refusing to respond. Rather, You shall set forth in Your response the language You deem to be ambiguous and the interpretation You are applying in Your response.

13. To the extent not covered in the Instructions above, the South Carolina Rules of Civil Procedure apply.

INTERROGATORIES

1. Identify the person(s) answering these Interrogatories and whether they do so from personal knowledge. Otherwise, identify the sources from which the information was obtained.
2. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.
4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.
6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
7. If You have been improperly identified, provide the proper defendant's identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.
8. Identify all people at the Lynchburg Facility, including, but not limited to, operators and maintenance personnel, who work on the mortar application process or equipment at the Lynchburg Facility, and for each person identified, further identify their technical certifications

and any training regarding the operation or maintenance of the mortar application process, technology, or equipment.

9. Identify the manufacturing methods and processes for lining ductile iron pipe and pipe fittings with cement mortar that have been used at the Lynchburg Facility as well as the timeframe in which each method or process was used.

10. Identify the manufacturing methods and processes for lining ductile iron pipe and pipe fittings with cement mortar that have been used at the Bessimer Facility as well as the timeframe in which each method or process was used.

11. Identify the method(s) and process(es) that were used to apply cement mortar lining to ductile iron pipe manufactured at the Lynchburg Facility from October 2022 to May 2023.

12. Identify the entire timeframe in which the method(s) and process(es) identified in response to Interrogatory No. 11 were used to manufacture pipe at the Lynchburg Facility.

13. Identify each distributor, developer, contractor, water utility, government entity, or other entity (whether currently in existence or not) to which U.S. Pipe has supplied ductile iron pipe, either directly or indirectly, manufactured at the Lynchburg Facility during the timeframe identified in response to Interrogatory No. 12.

14. For each entity listed in response to Interrogatory No. 13, provide the type and amount of ductile iron pipe sold to each distributor, developer, water utility, government entity, or other entity, and the date when the ductile iron pipe was supplied.

15. Identify when the present mortar application technology and equipment was installed at the Lynchburg Facility.

16. Identify when the present mortar application technology and equipment was installed at the Bessimer Facility.

17. Identify any changes, including the date and a description of the change, to the mortar application process, technology, and equipment at the Lynchburg Facility since its installation.

18. Identify any changes, including the date and a description of the change, to the mortar application process, technology, and equipment at the Bessimer Facility since its installation.

DATED: October 8, 2024

/s/ Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
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*Counsel for Plaintiff Commissioners of
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South Carolina*

* *Pro Hac Vice* applications to be filed

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the foregoing via electronic mail and/or U.S. mail this 8th day of October, 2024:

United States Pipe and Foundry Company, LLC
Corporate Creations Networks Inc.
400 Eagle Point Corporate Drive
Birmingham, Alabama 35242

/s/ Adam C. Bach
Adam C. Bach (S.C. Bar #74885)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Case No.: _____

Plaintiff,

JURY TRIAL DEMANDED

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

**PLAINTIFF’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT UNITED STATES PIPE AND FOUNDRY COMPANY LLC**

Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina (“Plaintiff”) propounds the following Requests for Production of Documents (“Document Requests”) to Defendant United States Pipe and Foundry Company LLC (“Defendant” or “U.S. Pipe”), to be answered separately and fully, under oath, within thirty (30) days after the date of service, pursuant to the provisions of Rule 34 of the South Carolina Rules of Civil Procedure.

DEFINITIONS

1. “Bessemer Facility” means U.S. Pipe’s manufacturing facility located in Bessemer, Alabama.
2. “Communication” means every manner or means of disclosure, transfer, or exchange of information (in the form of facts, ideas, inquiries, or otherwise), and every disclosure, transfer, or exchange of information, whether oral or written, including all letters, memoranda, notes, and messages, whether printed, typed, or handwritten, all electronic modes of

correspondence such as electronic mail and facsimiles, and all Documents reflecting the substance or occurrence of conversations or meetings.

3. “Defendant,” “You,” or “Your,” as used in these Document Requests, means United States Pipe and Foundry Company LLC, and any of its directors, officers, employees, partners, members, representatives, agents (including attorneys, accountants, consultants, investment advisors, or bankers), and any other Person purporting to act on its behalf or under its direct or indirect control. In the case of business entities, these defined terms include parents, subsidiaries, affiliates, predecessor entities, successor entities, divisions, departments, groups, acquired entities, related entities, and any other Person acting or purporting to act on the entity’s behalf or under its direct or indirect control.

4. The terms “Document” and “Documents” are used in the broadest sense permissible under the South Carolina Rules of Civil Procedure, and include, but are not limited to:

- a. all correspondence, memoranda, records, letters, reports, notes, drafts, books, records, papers, minutes, schedules, tabulations, computations, lists, ledgers, journals, purchase orders, contracts, bills of lading, invoices, agreements, vouchers, accounts, checks, recordings, affidavits, diaries, calendars, desk pads, drawings, photocopies, motion pictures, slides, photographs, sketches, charts, graphs, or any written or printed matter or tangible thing on which any words or phrases are affixed;
- b. information contained in any computer, electronic, digital, or tape-recorded format or media, including any computer or electronic database, electronic mail or “e-mail,” translated, if necessary, into reasonably useable form;

- c. originals and copies, any and all drafts, and all copies that contain any notation not on the original; and
- d. communications.

Every draft or non-identical copy of a Document is a separate Document as defined herein.

5. “Employee” means any former or current employee, officer, agent, representative, consultant, expert, office, committee, department, division, or group, including those at corporate or division headquarters, or at any regional, departmental, or local offices anywhere in the world.

6. “ESI” means information stored in or on Electronic Media, regardless of the media type or whether it is in the original format in which it was created, and that is retrievable in perceivable forms and includes, without limitation, metadata, system data, and fragmented data.

7. “Lynchburg Facility” means U.S. Pipe’s manufacturing facility in Lynchburg, Virginia.

8. “Person” means the plural as well as the singular and shall include any natural persona and any corporation, partnership, firm, joint venture, sole proprietorship, or any other legal business entity of any kind.

9. “Plaintiff” means Commissioners of Public Works of the City of Greenville, South Carolina.

10. “Relating to” or “Relate to” means concerning, pertaining to, involving, discussing, describing, referring to, mentioning, demonstrating, illustrating, or providing evidence thereof.

INSTRUCTIONS

1. You must respond to these Document Requests or subparts thereof separately and fully in writing. Your responses should include all responsive documents and information known

or reasonably available to You, Your Employees, and any other Persons consulted relating to any of the facts or issues involved in this case.

2. Each Document requested herein is requested to be produced in its entirety and without deletion or excisions, regardless of whether You consider the entire Document to be relevant or responsive to the Request. If You have redacted any portion of a Document, stamp the word “redacted” on each page of the Document that You have redacted and provide the basis for each redaction.

3. All materials that are responsive to these Document Requests are to be produced along with all attachments and enclosures. If Documents responsive to a Document Request are normally kept in a file or other folder, also produce that file or folder.

4. You should not interpret any identification, description, or explanation of information or materials herein that is specific in nature to diminish the breadth of any more general request that may otherwise encompass such information or materials.

5. You are to produce the materials and information requested in these Document Requests either as they are kept in the usual course of business or organize and label them to correspond with the categories to which they relate.

6. As necessary to make a Document Request inclusive rather than exclusive, the singular form of a word shall be construed as the plural, and the plural form of a word shall be construed as the singular.

7. As necessary to make a Document Request inclusive rather than exclusive, “and” and “or” shall be construed conjunctively or disjunctively.

8. You shall respond to each part of a Document Request regardless of whether an objection is interposed to another part of the Document Request.

9. If You assert an objection to any Request, You must state the grounds for Your objection with specificity and nonetheless respond and produce any responsive Documents or ESI that are not subject to the stated objection. If You object to part of a Request or category, You must specify the portion of the Request to which You object, identify whether you are withholding any Documents (in whole or in part) based on that objection, and You must produce Documents responsive to the remaining parts of the Request.

10. If a claim of privilege is asserted in objecting to a Document Request or subpart thereof, the objection should state the type of privilege asserted and, with reasonable particularity, all grounds for such objection, such that the assertion can be reasonably tested, including by identifying the Document by date, author, addressee and all recipients, description, and general subject matter of the Document.

11. Whenever You are asked to produce a Document that is deemed by You to be properly withheld from production for any reason, You shall provide a listing thereof by title or subject heading, date, author, Person who signed the Document, addressee and all recipients, and a statement of the grounds(s) asserted for withholding the Document.

12. If You maintain that any Document or Thing requested has been destroyed, set forth the contents of the Document or Thing, the date of its destruction, and the name of the Person who authorized its destruction.

13. If no Document or ESI responsive to a Request exists, please state that no responsive Document or ESI exists.

14. You are required to supplement or amend Your responses to these Document Requests in accordance with Rule 26 of the South Carolina Rules of Civil Procedure.

15. Documents which cannot be legibly copied should be produced in their original form.

16. These Requests are intended to cover all Documents in Your possession, custody, and control, whether directly or indirectly.

17. Each paragraph and subparagraph of these Document Requests should be construed independently.

18. If, in responding to these Document Requests, You claim any ambiguity in interpreting either an individual request or a definition or instruction applicable thereto, such claims do not constitute a basis for refusing to respond. Rather, You shall set forth in Your response the language You deem to be ambiguous and the interpretation You are applying in Your response.

19. To the extent not covered in the Instructions above, the South Carolina Rules of Civil Procedure apply.

REQUESTS FOR PRODUCTION

In accordance with the foregoing, the following documents and things are requested for production:

1. All Documents, Communications, and ESI reviewed, consulted, or referred to in responding to the contemporaneously-served Interrogatories.

2. All Documents, Communications, or ESI related to the processes and procedures for the mortar application technology used for ductile iron pipe manufactured at the Lynchburg Facility, including, but not limited to, any that relate to quality assurance.

3. All Documents, Communications, or ESI related to the processes and procedures for the mortar application technology used for ductile iron pipe manufactured at the Bessemer Facility, including, but not limited to, any that relate to quality assurance.

4. All plant personnel training Documents related to the mortar application process and quality control process used for ductile iron pipe manufactured at the Lynchburg Facility.

5. All plant personnel training Documents related to the mortar application process and quality control process used for ductile iron pipe manufactured at the Bessemer Facility.

6. All Documents related to employee training concerning the mortar application process and quality control process used for ductile iron pipe manufactured at the Lynchburg Facility, including, but not limited to, training presentations, manuals, or handouts.

7. All Documents related to employee training concerning the mortar application process and quality control process used for ductile iron pipe manufactured at the Bessemer Facility, including, but not limited to, training presentations, manuals, or handouts.

8. All maintenance Documents related to the mortar application technology (both preventative & necessary) used for ductile iron pipe manufactured at the Lynchburg Facility.

9. All maintenance Documents related to the mortar application technology (both preventative & necessary) used for ductile iron pipe manufactured at the Bessemer Facility.

10. All mortar supplier quality inspection Documents related to ductile iron pipe manufactured at the Lynchburg Facility.

11. All mortar supplier quality inspection Documents related to ductile iron pipe manufactured at the Bessemer Facility.

12. All technical certifications for any Employees, including, but not limited to, operators and maintenance personnel, who work on the mortar application process or equipment used for ductile iron pipe manufactured at the Lynchburg Facility.

13. All technical certifications for any Employees, including, but not limited to, operators and maintenance personnel, who work on the mortar application process or equipment used for ductile iron pipe manufactured at the Bessimer Facility.

14. All Documents relating in any way to the design or installation of the mortar application technology and equipment used for ductile iron pipe manufactured at the Lynchburg Facility.

15. All Documents relating in any way to the design or installation of the mortar application technology and equipment used for ductile iron pipe manufactured at the Bessimer Facility.

16. All Documents relating in any way to any changes made to the mortar application process, technology, or equipment used for ductile iron pipe manufactured at the Lynchburg Facility since the initial installation.

17. All Documents relating in any way to any changes made to the mortar application process, technology, or equipment used for ductile iron pipe manufactured at the Bessimer Facility since the initial installation.

18. All Documents relating in any way to any maintenance or repair work undertaken to the mortar application process, technology, or equipment used for ductile iron pipe manufactured at the Lynchburg Facility since the initial installation.

19. All Documents relating in any way to any American National Standards Institute (“ANSI”) and American Water Works Association (“AWWA”) certification processes for ductile

iron pipe manufactured at the Lynchburg Facility, including, but not limited to, ANSI/AWWA Standard C104/A21.4.

20. All Documents relating in any way to any American National Standards Institute (“ANSI”) and American Water Works Association (“AWWA”) certification processes for ductile iron pipe manufactured at the Bessimer Facility, including, but not limited to, ANSI/AWWA Standard C104/A21.4.

21. All Communications and representations U.S. Pipe made to Plaintiff, directly or through a distributor or other third party, concerning ductile iron pipe U.S. Pipe supplied, directly or through a distributor, to Plaintiff or its contractors.

22. All batch process information from the Lynchburg Facility.

23. Documents and ESI sufficient to show all ductile iron pipe from U.S. Pipe’s Lynchburg Facility that You supplied to Plaintiff or any of its contractors, including, but not limited to, any label, batch, lot, and individual pipe information.

24. Documents and ESI sufficient to show all ductile iron pipe from U.S. Pipe’s Bessimer Facility that You supplied to Plaintiff or any of its contractors, including, but not limited to, any label, batch, lot, and individual pipe information.

25. All Documents listing distributors who U.S. Pipe supplied with pipe from the Lynchburg Facility in the last ten years.

26. All Documents listing distributors, developers, water utilities, government, entities, or other entities to which U.S. Pipe sold or otherwise delivered ductile iron pipe manufactured at the Lynchburg Facility in the last ten years.

27. All Documents, Communications, and ESI concerning qualitative complaints relating to ductile iron pipe manufactured at either the Lynchburg Facility or Bessemer Facility at any time in the last ten years.

28. All Communications between U.S. Pipe and/or its representative or agents, including, but not limited to, Matt Rogers, on the one hand, and any distributors, developers, water utilities, government entities, or other entities, on the other hand, relating to qualitative complaints about U.S. Pipe in the last ten years.

29. All Documents related in any way to defects or water quality issues that could result if cement-mortar-lined ductile iron pipe does not have a uniform cement-mortar lining thickness as set forth in ANSI/AWWA Standard C104/A21.4.

30. All Documents sufficient to show Your organizational structure and the identity of Your personnel in the offices, departments, or divisions that have had involvement or knowledge of any of the matters referenced in the Complaint.

DATED: October 8, 2024

/s/ Adam C. Bach

Adam C. Bach (S.C. Bar #74885)

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*Counsel for Plaintiff Commissioners of
Public Works of the City of Greenville,
South Carolina*

* *Pro Hac Vice* applications to be filed

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the foregoing via electronic mail and/or U.S. mail this 8th day of October, 2024:

United States Pipe and Foundry Company, LLC
Corporate Creations Networks Inc.
400 Eagle Point Corporate Drive
Birmingham, Alabama 35242

/s/ Adam C. Bach
Adam C. Bach (S.C. Bar #74885)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Commissioners of Public Works of The City)
of Greenville, South Carolina,)
))
Plaintiff,)
))
v.)
))
United States Pipe and Foundry)
Company LLC, TEC Utilities Supply)
Inc., and Hayes Pipe Supply Inc.,)
))
Defendants.)

Case No. 2024CP2305956

REPLY MEMORANDUM IN
FURTHER SUPPORT OF
MOTION TO DIMISS OR STAY
PENDING ARBITRATION

Defendant United States Pipe and Foundry Company LLC (“U.S. Pipe”) submits the following in further support of its motion to dismiss and compel arbitration of the above matter. Because Greenville Water is subject to the arbitration provision and the claims out of a transaction involving interstate commerce, the case should be dismissed and compelled to arbitration.

FACTUAL BACKGROUND

Greenville Water claims that it never “looked at or otherwise been notified - by U.S. Pipe, TEC and Hayes, or any private developer - of U.S. Pipe’s Terms and Conditions of Sale, including, but not limited to, the warranty, arbitration, or venue provisions contained therein,” despite simultaneously alleging that it “entered into a contractual relationship with U.S. Pipe” (Complaint ¶70), that U.S. Pipe bargained with Greenville Water and provided an express warranty on the ductile iron pipe it manufactured (Complaint ¶78), and that U.S. Pipe entered into a contract with Greenville Water (Complaint ¶116). Despite these affirmative allegations, Greenville Water now asserts that it never read any of the agreements it had with defendants TEC and Hayes.

Greenville Water's self-imposed failure to read the agreements does not excuse it from the plain language of the terms & conditions applicable to the purchase of ductile iron pipe from TEC and Hayes. While Greenville Water claims that it was never aware of the U.S. Pipe's terms and conditions, the transactions related to the purchase orders attached to Mr. Schmidt's affidavit shows that Greenville Water had *actual* notice that U.S. Pipe's terms & conditions applied to the purchase of the ductile iron pipe.

For example, the Credit Application, Quote, Invoice and Pick Ticket used by TEC specifically refer Greenville Water to the manufacturer's terms & conditions; the quote specifically mentions U.S. Pipe. Greenville Water's September 16, 2022 purchase order to TEC, attached to Mr. Schmidt's affidavit as Exhibit 3, is identified as Purchase Order # PO0027078. This PO is in response to an August 5, 2022 quote provided by TEC, a true and accurate copy of which is annexed hereto as Exhibit A. The TEC quote states in part: "If the pipe is not used the manufacture has in it's terms for a 5% cancellation fee. TEC Utilities Supply will only charge a cancellation fee for unused pipe, if the manufacture choses to exercise said term. The U.S. Pipe represenatative [sic] has verbally committed that they will not do this as there are other consumers inline to take said pipe." Greenville Water had actual knowledge that the purchase of ductile iron pipe was subject to U.S. Pipe's terms.

After Greenville Water provided its PO in response to the quote, TEC sold the ductile iron pipe and provided Greenville Water with an Invoice and Pick Ticket, referencing Greenville Water P.O. #0027028, and stating in part: "Please see full Terms and Conditions of Sale included with [sic] the Application for Credit." A true and accurate copy of the Invoice and Pick Ticket are annexed hereto as Exhibit B.

The TEC Application for Credit states, in pertinent part, that “TEC is a reseller of goods only, and as such does not provide any warranty for the goods it supplies hereunder. **SOLE AND EXCLUSIVE WARRANTY, IF ANY, ON GOODS SOLD BY TEC, IS THAT PROVIDED BY THE GOODS MANUFACTURER...**” (emphasis in original). A true and accurate copy of the Application for Credit is annexed hereto as Exhibit C. Hayes uses similar language in their terms & conditions. Because Greenville Water both agreed and had actual notice that the terms & conditions of the manufacturer applied when it purchased the pipe, it is bound by those terms.

ARGUMENT

Greenville Water attempts to distance itself from the terms of its agreements with TEC and Hayes by claiming that the only agreement it had with U.S. Pipe is a screen shot of a “certificate of compliance.” There is no allegation regarding the date the certificate was issued, who requested the certificate, or a complete copy of the certificate. While U.S. Pipe expects the facts to show that it had not issued a certificate of compliance to Greenville Water in over a decade, the certificate does not impede Greenville Water’s actual notice of U.S. Pipe’s terms and conditions.

Greenville Water’s principal legal argument is that *One Belle Hall Prop. Owners Ass’n v. Trammell Crow Residential Co.*, 418 S.C. 51, 791 S.E.2d 286 (Ct. App. 2016) does not apply because the plaintiff in *One Belle Hall* previously made a claim under the manufacturer warranty, which leads to the assumption that plaintiff was a signatory to the agreement incorporating the arbitration requirement. These arguments are incorrect.

- I. *One Belle Hall* Confirms That An End User is Subject to a Product Manufacturer’s Terms & Conditions.

In its argument, Greenville Water attempts to avoid its obligation to arbitrate by: (1) attempting to distinguish the current case and *One Belle Hall Prop.*; and (2) analogizing the current case to *Wilson v. Willis*, 426 S.C. 326 (2019). Greenville Water’s arguments are misplaced.

Greenville Water mischaracterizes *One Belle Hall*’s facts. The plaintiffs in *One Belle Hall* did not sign the arbitration agreement and did not initiate a warranty claim based on the manufacturer’s terms and conditions before bringing suit. *One Belle Hall Property* 418 S.C. at 58. The Court of Appeals’ procedural history notes that “during the construction of [One Belle Hall], and *prior to the transfer of ownership from its developers to the Association*,” a roofing subcontractor installed the manufacturer’s allegedly defective shingles (emphasis added). Instead of the eventual end user plaintiff (One Belle Hall Property Owners Association, Inc.), an unnamed *developer* - another defendant in the lawsuit brought by the Association – submitted the warranty claim and failed to return the warranty kit. *See One Belle Hall*, 418 S.C. at 58. The plaintiff Association initially filed the lawsuit against the developers, and approximately a year later amended its complaint to bring claims for negligence, breach of warranty and strict liability against the manufacturer. *Id.* Greenville Water’s attempt to distinguish *One Belle Hall* because of a prior warranty claim fails.

Greenville Water’s second argument against *One Belle Hall*—that “it was assumed the plaintiff was a party or signatory to the contract . . . because [it] made a warranty claim under the contract[,]” also fails. Like this case, *One Belle Hall*’s plaintiff was not a signatory to the contract containing the arbitration provision. *See One Belle Hall*, 418 S.C. at 56 (explaining that a *subcontractor* installed the defendant’s product); *see also* One Belle Hall Property Owners Association’s Mem. in Opp. to Tamko’s Motion to Dismiss & Compel

Arbitration at p. 19 (“Plaintiffs did not purchase the shingles directly from [the manufacturer] TAMKO, but were provided the shingles along with the construction/repair of One Belle Hall”). Because the *One Belle Hall* plaintiffs were invoking an agreement containing the warranty provision, that agreement’s arbitration provision applied to end user of the product. The same applies here.

II. *Wilson v. Willis* Confirms that Greenville Water Must Arbitrate its Claims.

Despite Greenville Water’s assertion, *Wilson v. Willis* confirms that that Greenville Water must arbitrate its claims against U.S. Pipe. In *Wilson*, fourteen insureds sued an insurance agent, the agent’s broker, the insurance agency employing the agent, and six insurance companies that did business with the insurance agency for claims of unfair trade practices, fraud and conversion. *See Wilson*, 426 S.C. at 331. Based on agreements with the insurance agency, three of the insurance companies moved to compel the *Wilson* plaintiffs to arbitration. *See id.* at 332. The *Wilson* court explained that the insurance companies’ motion to compel arbitration was inappropriate because their agreements with the insurance agency were “purely for the benefit of the parties to the contract in outlining their business relationships” *Id.* at 345. As such, there was no “direct benefit” that the plaintiffs (the insureds) could claim from those agreements, and therefore they were not subject to the arbitration provision. *Id.* at 344.

Unlike *Wilson*, U.S. Pipe’s Terms & Conditions were not “purely for the [contracting parties’] benefit.” *See id.* Rather, in its sale of pipe to Greenville Water, TEC told Greenville expressly that “[i]f the pipe is not used the manufacture[r] has in it[s] terms a 5% cancellation fee.” *See* Exhibit A. Likewise, in the Credit Applications, TEC (and Hayes in its terms and conditions) cautioned the purchaser that the products’ only warranties came from manufacturers, i.e., U.S. Pipe. *See* TEC Application for Credit, Exhibit C. U.S. Pipe’s Terms

& Conditions did not simply “outline[] its business relationship[]” with TEC and Hayes, *Wilson*, 426 S.C. at 345, as did the agreements at issue in *Wilson*. They instead took the further step of providing Greenville Water with a direct benefit – including a one year warranty and providing when and how Greenville Water could make a warranty claim.

The *Wilson* plaintiffs, unlike Greenville Water, did not allege “a claim for breach of contract.” *Id.* at 342. They sued on tort alone, and the Court explained that the plaintiffs’ “allegation that [the insurance companies] possibly conspired . . . to commit fraud is misconduct that does not arise from the contract.” *Id.* Conversely, Greenville Water explicitly alleges there was “an implied contract” between Greenville Water and U.S. Pipe by virtue of U.S. Pipe’s relationship with TEC and Hayes. *See* Compl. ¶ 61, 116-123. As Greenville Water claims that an implied contract exists with TEC/Hayes as middlemen, any claimed “misconduct” had to arise from U.S. Pipe’s Terms & Conditions. *See Wilson*, 426 S.C. at 342. In other words, Greenville Water cannot sustain an ‘implied contract’ claim against U.S. Pipe without invoking U.S. Pipe’s contractual relationship to TEC/Hayes, since Greenville Water is simultaneously claiming that it only purchased the product at issue through the distributor defendants. The ductile iron pipe manufactured by U.S. Pipe did not just simply appear at Greenville Water’s facility.

The Supreme Court in *Wilson* offered examples of ‘direct benefits’ in the estoppel-arbitration context which are clearly analogous to the current case. One such case, *Pearson v. Hilton Head Hosp.*, 400 S.C. 281 (Ct. App. 2012), is instructive. In *Pearson*, the plaintiff-doctor contracted with a hospital staffing agency, who in turn contracted with the defendant-hospital to employ the plaintiff. *See Pearson*, 400 S.C. at 285. The contract between the hospital and the staffing agency contained an arbitration provision. *See id.* at 286. The Circuit

Court denied the hospital's motion to compel arbitration, but the Court of Appeals reversed. *See id.* at 297. The Court reasoned that the plaintiff received a direct benefit from the hospital's and the staffing agency's contract because that contract made the plaintiff "able to work at the hospital and receive payment for his work." *Id.* at 296. If not for the hospital-staffing agency contract, the plaintiff "would have had to make separate arrangements with the hospital in order to work there." *Id.* at 297.

According to the Court in *Wilson*, the *Pearson* plaintiff "clearly received a direct benefit from the hospital's contract with [the staffing agency]" *Wilson*, 426 S.C. at 344 (emphasis added). Unlike the *Pearson* plaintiff, the *Wilson* plaintiffs "did not embrace [the agreement-at-issue] during the life of the contract and then, during litigation, attempt to repudiate the arbitration clause in the contract." *Id.*

This case's situation is just like the one in *Pearson*. The relationship between U.S. Pipe and TEC/Hayes (which specifically include U.S. Pipe's Terms & Conditions) makes it possible that Greenville Water can purchase ductile pipe from TEC/Hayes. Like the *Pearson* plaintiff, Greenville Water "would have to make separate arrangements" with U.S. Pipe to obtain U.S. Pipe's products if not for the U.S. Pipe-TEC/Hayes contractual relationship. *Pearson*, 400 S.C. at 297. Indeed, under those contractual relationships, Greenville Water benefited from the express warranty that U.S. Pipe provided. *See* U.S. Pipe Terms & Conditions (stating that U.S. Pipe warrants "its Products will conform to the description and specifications in Buyer's Orders for them for a period of (1) year").

Another case analogous to the present action that *Wilson v. Willis* cites approvingly is *International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411 (4th Cir. 2000). In *International Paper Co.*, the plaintiff bought an industrial saw from a

distributor, who in turn bought the industrial saw from the defendant. *See Int'l Paper Co.*, 206 F.3d at 414. The contract between the distributor and the defendant contained an arbitration provision. *See id.* In the litigation, the defendant moved to compel the plaintiff to arbitration. *See id.* at 414.

In opposition to the motion, *International Paper Co.*'s plaintiff argued that because it had "no knowledge" of the defendant's agreement containing the arbitration condition, it "could not be bound by [it.]" *See id.* at 415. The district court rejected this argument and ordered arbitration. *See id.* Later, the Fourth Circuit affirmed. *See id.* at 418. The Fourth Circuit explained that "[t]he [distributor-defendant] contract provides part of the factual foundation for every claim asserted [by the plaintiff] against [the defendant]." *Id.* Since the plaintiff's "entire case hinge[d] on its asserted rights under the [distributor-defendant] contract," it could not avoid that contract's arbitration provision. *Id.*

Here, despite Greenville Water's characterizations otherwise, its entire case "hinges" on the U.S. Pipe-TEC/Hayes relationship. Mr. Schmidt affirmatively states that through "October 2022 through May 2023, Greenville Water regularly purchased ductile iron pipe with cement-mortar lining manufactured by U.S. Pipe, through distributors TEC and Hayes" and "Greenville Water has always purchased ductile iron pipe manufactured by U.S. Pipe from U.S. Pipe's distributors, TEC and Hayes." Greenville Water does not merely claim breach of express warranty but also makes claims of breach of implied warranty and implied contract against U.S. Pipe. *See* Compl. ¶¶ 89-94, 102-107, 115-23. South Carolina law provides that warranty disclaimers are as equally operative to foreseeable third-party beneficiaries as they are to contracting parties. *See* S.C. Code. Ann. § 36-2-318, comment 1; *Brooks v. GAF Materials Corp.*, 284 F.R.D. 352, 358 (D.S.C. 2012) ("As noted in the

Comments to [S.C. Code Ann. § 36-2-318], third-party beneficiaries not only receive warranty protection, but are subject to valid warranty disclaimers”). Therefore, the scope of U.S. Pipe’s warranty disclaimers to TEC/Hayes are directly applicable to Greenville Water and critical to Greenville Water’s recovery. In addition, given that Greenville Water acquired all the ductile pipe through TEC/Hayes, “[the U.S. Pipe-TEC/Hayes] contract[s] provide[] part of the factual foundation for every claim asserted [by Greenville Water] against [U.S. Pipe].” *See Int’l Paper Co.*, 206 F.3d at 418. Like the *International Paper Co.* plaintiff, Greenville Water must arbitrate its claims. *See id.*

CONCLUSION

U.S. Pipe respectfully requests that the Court grant its motion, dismiss the complaint and require the parties to arbitrate the claims.

Date: January 6, 2025
Greenville, South Carolina

Beattie B. Ashmore, P.A.

By: /s/Beattie B. Ashmore
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EXHIBIT A



PO Box 25189
 Greenville, SC 29616
 864-288-6755

Quote Number	
1098272	
Quote Date	Page
8/25/2022 15:28:42	1 of 2

Quote Expires On 9/24/2022

Bill To: 1851
 Greenville Water System
 P O Box 687
 EMAIL INVOICES
 Greenville, SC 29602

 864-241-6005

Ship To:
 PROJ: STOCK / SHOP
 Greenville Water System
 100 Oscar St.
 Greenville, SC 29601

Purchase Order No.	
Terms	Net 30 Days
Carrier	TEC DELIVERY TRUCK
Freight	
Taker	FTUCKER
Salesrep	Fred Tucker

Requested By: Mr. David Freeman

Ordered	Quantities		UOM	Disp.	Item ID	Item Description	Unit Price	Ext. Price
	Allocated	Remaining						

Customer Note: CUSTOMER MUST HAVE A JOB NAME WITH THE PO #

Order Note: The lower price of \$23.40 for 6" Ductile Iron Pipe (DIP) and the lower price of \$30.82 for 8" DIP will be held for all pipe that GWS takes possession of by 12/30 end of business day at 5pm. the price will increase to \$24.57 for 6" DIP and \$32.35 for 8" DIP after the first of the year and the price and terms will terminate June 30th 2023. TEC Utilities Supply will hold three truckloads of 6" DIP (approx. 6300LF) and one truckload of 8" DIP (approx 1620LF) for GWS to use as they need. GWS will be billed for pipe when it is drawn from our yard or it is delivered to a job site. TEC Utilities Supply will bill out at the end of every day that pipe is drawn on. TEC Utilities Supply expects payment within 30 days as standard terms with 1.5% monthly finance charge on all balances of unpaid invoices. TEC Utilities Supply will replensih our yard once a whole load of same size pipe has been taken off our yard., When mutually beneficial and GWS has the capacity we may redirect trucks to go straight to the jobsite from the plant. If the pipe is not used the manufacture has in it's terms for a 5% cancellation fee. TEC Utilities Supply will only charge a cancellation fee for unused pipe, if the manufacture choses to exercise said term. The U.S. Pipe represenatative has verbally committed that they will not do this as there are other consumers inline to take said pipe.

41,040.00	0.00	41,040.00	FT		PDT35006C 6 CL350/50 TJ DI PIPE	23.4000 FT	960,336.00
4,860.00	0.00	4,860.00	FT		PDT35008C 8 CL350 TJ DI PIPE	30.8200 FT	149,785.20
1.00	0.00	1.00	EA	--	-	0.0000 EA	0.00

ROA_0226

ELECTRONICALLY FILED - 2025 FEB 06 06:11:51 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2305956

EXHIBIT B



PLEASE REMIT TO

TEC Utilities Supply, Inc.
PO Box 25189
Greenville, SC 29616
 A/R Dept. Phone# 864-288-9460

**ORIGINAL
ORDER DETAILS**

CUSTOMER P.O. #	0027078
ORDER NUMBER	1098272
ORDER DATE	9/16/2022 12:00:13
TICKET NUMBER	3093346
SALESREP	Fred Tucker

INVOICE

INVOICE	5107665
DATE	3/15/2023 07:11:00
PAGE	1 of 1
TERMS	Net 30 Days
NET DUE DATE	4/14/2023

ELECTRONICALLY FILED - 2025 Feb 06 11:51 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2305956

Bill To: 1851
 Greenville Water System
 P O Box 687
 EMAIL INVOICES
 Greenville, SC 29602

Ship To:
 PROJ: STOCK / SHOP
 Greenville Water System
 100 Oscar St.
 Greenville, SC 29601

Ordered	Shipped	Remaining	UOM	Disp.	Part Number / Description	Unit Price	Extended
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Customer Note: CUSTOMER MUST HAVE A JOB NAME WITH THE PO #

Order Note: FOUR TRUCKLOADS TOTAL DELIVERY- 1 TRUCKLOAD SPLIT BETWEEN 220 KAY DRIVE (85 STICKS) AND REMAINDER (19 STICKS) TO TANK #6
 B/L #'s- 4117104, 4117127, 4117143, 4117144

Carrier: TEC DELIVERY TRUCK **Tracking #:**

20,246.58	8,328.32	11,918.26	FT	S	PDT35006C 6 CL350/50 TJ DI PIPE	24.5700	204,626.82
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Total Lines: 1

SUB-TOTAL: 204,626.82
South Carolina: 12,277.61
AMOUNT DUE: 216,904.43



TEC Utilities Supply, Inc.
 PO Box 25189
 Greenville, SC 29616
 864-288-6755

*** REPRINT ***

PICK TICKET

Pick Ticket	3093346
Pick Date	3/14/2023 09:57:39
Page	1 of 1
Order Number	1098272
Order Date	9/16/2022

PO #:	0027078
VIA:	TEC DELIVERY TRUCK
FOB:	
TERMS:	Net 30 Days
TAKER:	FTUCKER
SALESREP:	Fred Tucker
PICKED BY:	MES DATE: 3/13/23

SHIP TO

PROJ: STOCK / SHOP
 Greenville Water System
 100 Oscar St.
 Greenville, SC 29601

BILL TO

1851
 Greenville Water System
 P O Box 687
 EMAIL INVOICES
 Greenville, SC 29602
 864-241-6005
 Ordered By: Mr. David Freeman

Quantities				Item ID	Unit	Extended
Ordered Allocated	To Pick	UOM Unit Size	Disp	Item Description	Price	Price

Customer Note: CUSTOMER MUST HAVE A JOB NAME WITH THE PO #

Order Note: FOUR TRUCKLOADS TOTAL DELIVERY-
 1 TRUCKLOAD SPLIT BETWEEN 220 KAY DRIVE (85 STICKS) AND REMINDER (19 STICKS) TO
 TANK #6
 B/L #'s- 4117104, 4117127, 4117143, 4117144

20,246.58	8,328.32 FT	S		PDT35006C	24.5700	204,626.82
8,328.32		1.0		6 CL350/50 TJ DIP	FT	
				6 CL350/50 TJ DI PIPE		
				BIN: YRD-P2	Qty: 8328.32 FT	<u>8328.32</u>

Total Pieces:	8328.32	Total Lines:		Total Weight:	141581.44	SUB-TOTAL:	204,626.82
						TAX:	12,277.61
						GRAND TOTAL:	216,904.43

ELECTRONICALLY FILED - 2023-Feb-06 11:51 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2305956

WARNING: Effective 1/4/2014, it is unlawful to use any product in the installation or repair of any public water system or any plumbing in a facility or system that provides water for human consumption if the wetted surface of the product has a weighted average lead content greater than 0.25%. This prohibition does not extend to service saddles used under USA Public Law 111-380.

TERMS & CONDITIONS: Payment terms are NET 30 DAYS unless otherwise agreed to in writing. Service charges of 1-1/2% per month (18% per annum) will be billed to the buyer's account for all past due invoices. Special Order goods are non-cancellable, non-returnable. Returned goods may be subject to restocking fees and return freight. Buyer is hereby requested to provide TEC Utilities Supply, Inc. with the name and contact information of the designated lien agent for the project upon which these goods will be used. Please see full Terms and Conditions of Sale included with the Application for Credit.

*** REPRINT *** ROA_0229

EXHIBIT C



APPLICATION FOR CREDIT

PAGE 1 OF 2

PLEASE RETURN TO: P. O. BOX 25189 GREENVILLE, SC 29616-0189

Fax: 864-234-7698

ELECTRONICALLY FILED - 2025 Feb 06 11:51 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP23059556

APPLICANT - GENERAL INFORMATION **SALESMAN:**

LEGAL NAME:			FEIN OR SS#:		
STREET ADDRESS:			PHONE:		
CITY:	STATE:	ZIP:	FAX:		
COUNTY:	WEBSITE:		EMAIL:		
BILLING ADDRESS (if different):					
CITY:	STATE:	ZIP:	A/P CONTACT:		
A/P PHONE:		A/P FAX:		A/P EMAIL:	
ARE PURCHASE ORDERS ISSUED?: YES <input type="checkbox"/> NO <input type="checkbox"/>		ARE PURCHASES SALES TAX EXEMPT: YES <input type="checkbox"/> NO <input type="checkbox"/>			
DO YOU REQUIRE JOB NAMES?: YES <input type="checkbox"/> NO <input type="checkbox"/>		<i>If answering "YES" above, please provide exemption certificates</i>			
AUTHORIZED PURCHASERS:					
BUSINESS ENTITY TYPE (select one): <input type="checkbox"/> CORP <input type="checkbox"/> PARTNER <input type="checkbox"/> LLC <input type="checkbox"/> SOLE PROP <input type="checkbox"/> OTHER:					
BUSINESS START DATE:		DATE OF INCORPORATION:		STATE OF INCORPORATION:	
TYPE OF BUSINESS ENGAGED IN:					
ESTIMATED MONTHLY VOLUME:			NUMBER OF EMPLOYEES:		
BONDING/SURETY CO.:				CAPACITY:	
AGENT NAME:				PHONE:	

PRINCIPAL/OFFICER INFORMATION

TITLE	NAME	ADDRESS	D.OB.	SS#

REFERENCES

	NAME	CITY, STATE	PHONE	FAX	ACCOUNT #
BANK					
TRADE					
TRADE					
TRADE					

The undersigned certifies the following: (1)The applicant is solvent and capable to meet its obligations hereunder (2)The information provided herein is true and correct and is to be used to obtain a commercial credit account for the Applicant (3)The undersigned is authorized to sign this application on behalf of the Applicant (4)TEC is hereby authorized to verify and/or investigate any information provided herein and to inquire of references for the sole purpose of determining both current and ongoing credit worthiness (5)TEC is authorized to answer questions of others concerning TEC's credit experience with Applicant (6)The undersigned has read, understood, and agrees to all of TEC's Terms & Conditions of Sale and agrees to notify TEC in writing, within 5 days, of any material change to the information provided in this Application including, but not limited to, changes affecting ownership, location, name and corporate status.

Signature: _____ Name: _____ Date: _____

PERSONAL GUARANTY

In consideration of TEC extending credit to Applicant, I, the undersigned individual, personally guarantees to TEC, TEC's successors and assigns, the prompt payment of all sums as and when due from Applicant, without first requiring TEC to proceed against Applicant and the undersigned personally guarantees payment of all subsequent purchases by Applicant, as well as any and all obligations previously incurred by Applicant. I hereby agree to the extent allowed by law to waive all notices including, but not limited to, notice of acceptance hereof and of defaults in payment and agree that my personal liability shall not be impaired by any extension of the time or other indulgence to any obligator or by any exchange or substitution of goods. I agree to pay the Applicant's reasonable attorney's fees and all other costs of collection incurred by TEC in the event TEC retains an attorney to enforce this agreement. This is a continuing guaranty. Any changes or modifications will not be made without written consent by TEC. This guaranty will not exceed \$1,000,000.00 (one million dollars) and shall remain enforceable for 10 (ten) years from date of last sale.

Signature: _____ Name: _____ Soc Sec #: _____ Date: _____

Signature: _____ Name: _____ Soc Sec #: _____ Date: _____



TERMS AND CONDITIONS OF SALE

1. **GENERAL:** These Terms and Conditions (herein after referred to as "Terms") constitute an agreement between TEC Utilities Supply, Inc. (herein after referred to as "TEC") and the entity placing the order (herein after referred to as "Buyer"). The Terms contained herein along with the Terms and Conditions of Sale listed on TEC's Application for Credit constitute the entire agreement between the two parties. Any additional or different Terms and Conditions in any way altering or modifying these are expressly objected to and shall not be binding on TEC unless specifically agreed to in writing by TEC's authorized representative. No alteration or modification of these terms shall result by TEC's shipment of goods following receipt of buyer's purchase order, or other documents containing additional conflicting or inconsistent terms. There are no terms, conditions, understandings or agreements other than those contained herein.
2. **PRICING:** Prices on TEC's website, catalogs, or quotes are subject to change without notice, and all such prices expire or become invalid if not accepted within 10 calendar days from the date of issue, unless otherwise noted by TEC in writing. Price extensions, if made, are for Buyer's convenience only, and they, as well as any mathematical, stenographical, or clerical errors are not binding on TEC. Prices shown do not include any sales, excise, or other governmental tax or charge payable by buyer to any federal, state, or local authority unless specifically noted by TEC in writing. Any taxes now or hereafter imposed upon sales or shipments will be added to the purchase price, and buyer shall reimburse TEC for any such tax or provide TEC with a tax exemption certificate acceptable to taxing authorities. All pricing and other terms provided to the Buyer shall be kept confidential except to the extent that Buyer or TEC is required by law to disclose the same.
3. **DELIVERY:** TEC shall not be liable for delay or default in delivery resulting from any cause beyond TEC's reasonable control, including, but not limited to, governmental action, strikes, other labor troubles, fire, damage or destruction of goods, wars (declared and undeclared), acts of terrorism, manufacturer's shortages, availability or timeliness of transportation, materials, fuels, or supplies, and acts of God (each a "Force Majeure Event"). Under no circumstances shall TEC be liable for any special, consequential, incidental, indirect, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.
4. **SHIPMENT:** When goods are delivered to Buyer in TEC's own vehicles, the F.O.B. point shall be Buyer's designated delivery site. In all other cases the F.O.B. point shall be point of shipment and all responsibility and costs associated with delivery and shipment shall be borne by Buyer. Title and risk of loss shall pass to Buyer at the applicable F.O.B. point, which for goods not delivered in TEC's own vehicles shall be when TEC delivers the goods to the common carrier. All claims for shortages of goods or loss or damage to goods as to which TEC has the risk of loss shall be waived unless the Buyer, within 10 calendar days after receipt of the short or damaged shipment, gives TEC written notice fully describing the shortage or damage. Partial shipments are permitted at TEC's discretion.
5. **WARRANTY:** TEC is a reseller of goods only, and as such does not provide any warranty for the goods it supplies hereunder. **SOLE AND EXCLUSIVE WARRANTY, IF ANY, ON GOODS SOLD BY TEC, IS THAT PROVIDED BY THE GOODS MANUFACTURER. TEC MAKES NO EXPRESSED OR IMPLIED WARRANTIES. TEC HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT WILL TEC BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIR OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE GOODS SOLD BY TEC. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL TEC'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE GOOD(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE GOODS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS SPECIFICALLY SET FORTH IN THIS PARAGRAPH, ALL GOODS AND/OR SERVICES PROVIDED BY TEC, ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS", "WHERE IS" AND "WITH ALL FAULTS".**
6. **INDEMNIFICATION:** Buyer shall indemnify, defend and hold TEC, its officers, directors, employees, and agents harmless from any and all costs (including attorneys' and accountants' fees and expenses), liabilities, and damages resulting from or relating to any third party (including Buyer's employees) claim, complaint, and/or judgment arising from Buyer's use of any goods furnished hereunder, as well as any negligent, intentional, or tortious act or omission of Buyer or any material breach by Buyer of these terms.
7. **RETURNS:** Returns may be accepted at the sole discretion of TEC. No goods may be returned for credit without written consent by an authorized representative of TEC. All goods returned must be in original packaging, free from any damage, and must contain any and all appropriate parts and pieces where applicable. Returned goods may, at the sole discretion of TEC, be subject to restocking fees, return shipping and handling charges or any other charges TEC deems necessary. Maximum amount of credit TEC will extend is net purchase price minus any deemed necessary charges unless otherwise agreed to in writing by both TEC and Buyer.
8. **PAYMENT TERMS:** Payment terms for all purchases charged to Buyer's account are NET 30 (thirty) days from date of invoice unless otherwise agreed to in writing by both TEC and Buyer. TEC reserves the right to demand payment in full including any and all service charges accrued on Buyer's account at any time after the first service charge has accrued. The Buyer also agrees that should legal proceedings be instituted by TEC to collect any sums due for credit extended to Buyer, the Buyer will pay all costs of collection including TEC's reasonable attorney fees and court costs incurred pre-suit, through trial, on appeal, and in any administrative or bankruptcy proceedings not to exceed 20% of the total amount due. If Buyer fails to comply with these Terms, TEC may terminate or restrict any order immediately upon notice to the Buyer. Buyer certifies that it is solvent and that it will advise TEC immediately if it becomes insolvent. Buyer agrees to send TEC written notice of any changes in the form of ownership of Buyer's business within 5 days of such change. Buyer and TEC are the only beneficiaries of this document, and there are no third party beneficiaries.
9. **SECURITY INTEREST:** Buyer does hereby grant TEC a purchase money security interest in the goods until such time as TEC is paid in full. Buyer will assist TEC in taking any necessary action to perfect and protect TEC's security interest. No goods furnished by TEC shall become a fixture by reason of being attached to real estate.
10. **SERVICE CHARGES:** Service charges will be billed to Buyer's account at the rate of 1-1/2% per month (18% per annum), or the maximum rate permitted by applicable law, on all invoices 30 days or more past due.
11. **RETURNED CHECKS:** Returned checks will result in a \$25.00 returned check fee assessed to the Buyer's account or as an additional charge to Buyer's invoice.
12. **GOVERNING LAW:** These Terms, Buyer's account, and the business relationship between TEC and Buyer shall be governed in all respects by the laws of the state of South Carolina without regard to conflicts of laws rules. The parties agree that any legal action arising under or related to these Terms shall be brought in Greenville County, South Carolina, and any right to object to such venue or to assert the inconvenience of such forum is waived.
13. **VALIDITY:** The invalidity or unenforceability of all or part of these Terms will not affect the validity or enforceability of the other terms. Both TEC and Buyer agree to replace any void or unenforceable term with a new term that achieves substantially the same practical economic effect and is valid and enforceable.

The following provisions shall survive termination, cancellation, and completed performance of the Terms and Conditions as long as necessary to allow the aggrieved party to fully enforce such clauses: 5, 6, 8, 9, 10, 11, and 12.

ALL WRITTEN CORRESPONDENCE AND PAYMENTS SHOULD BE SENT TO:

TEC Utilities Supply, Inc.
P. O. Box 25189
Greenville, SC 29616-0189

ROA_0232

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Commissioners of Public Works of The City of
Greenville, South Carolina,
Plaintiff,
v.
United States Pipe and Foundry
Company LLC, TEC Utilities Supply
Inc., and Hayes Pipe Supply Inc.,
Defendants.

)
)
) Case No. 2024CP2305956
)
)
) **DEFENDANT UNITED STATES PIPE**
) **AND FOUNDRY COMPANY LLC'S**
) **RESPONSE TO PLAINTIFF'S**
) **MOTION TO COMPEL**
)
)
)
)

Plaintiff served discovery requests with its Summons and Complaint, seeking confidential and proprietary information from Defendant United States Pipe and Foundry Company LLC ("U.S. Pipe"). U.S. Pipe timely filed a Motion to Dismiss or Stay Pending Arbitration, as Plaintiff's claims against U.S. Pipe arise out of a transaction involving interstate commerce and are subject to binding arbitration governed by the FAA. If the Court grants U.S. Pipe's Motion, Plaintiff's Motion to Compel is moot. If the Court denies U.S. Pipe's Motion, U.S. Pipe suggests that the parties confer and submit a proposed Confidentiality Order to the Court to protect the confidential and proprietary information sought in discovery.

Date: January 6, 2025

Greenville, South Carolina

Beattie B. Ashmore, P.A.

By: /s/ Beattie B. Ashmore
Beattie B. Ashmore, Esq.
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pjoyce@cgbuffalo.com

1 STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 13
2 COUNTY OF GREENVILLE) COURT C.A NO. 2024-CP-23-05956
3
4 Commissioners of Public Works)
5 of the City of Greenville)
6 Plaintiff,)
7 Versus)
8 United States Pipe and Foundry)
9 Company LLC, TEC Utilities Supply)
10 Inc, and Hayes Pipe Supply Inc)
11 Defendant.)
12

13 H E A R I N G
14

15 DATE: February 10, 2025
16

17 LOCATION: South Carolina Court 13
18

19 JUDGE: Perry H. Gravely
20

21 TRANSCRIBED BY: ERIN REILLY
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APPEARANCES:

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EXHIBITS

[None Marked]

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDINGS

1
2 THE COURT: So, what I've got is this is
3 Commissioners of Public Works in Greenville versus US Pipe et
4 al, 24CP235956. I have the following motions of Defendant US
5 Pipe's motion to dismiss, I have Plaintiff's motion to refer to
6 master in equity, Plaintiff's motion to strike, Defendant
7 Hayes's Motion to set aside default and Defendant's TEC
8 Utilities motion to set aside default and Plaintiff's motion to
9 compel, correct? Does that cover everything?

10 MR. LEVITT: Yeah.

11 THE COURT: All right. I don't know -- what do y'all
12 think would be the best course of action here?

13 MR. JOYCE: Paul Joyce for Defendant US Pipe. It
14 seems to me the first one would probably be the motion to
15 dismiss.

16 THE COURT: All right. I guess this is - that's the
17 first one filed. I'll let you go first.

18 MR. JOYCE: [Indiscernible].

19 THE COURT: Wherever you want -- whatever you're
20 comfortable doing.

21 MR. JOYCE: So, Your Honor --

22 THE COURT: What was your name again?

23 MR. JOYCE: Paul.

24 THE COURT: Paul.

25 MR. JOYCE: Joyce.

1 THE COURT: Joyce. Okay.

2 MR. JOYCE: Working with Mr. Ashmore. So, US Pipe is
3 a manufacturer of pipe products, ductile and pipe other things.
4 The issue here is pipe that is manufactured in their plant in
5 Lynchburg and two East Coast plants. One at Bessemer, Alabama
6 and [indiscernible]. They make ductile iron pipe for various
7 sizes, widths, coatings; you got cement line, epoxyline,
8 lastly, asphalt.

9 THE COURT: And I've read the memo so all good.

10 MR. JOYCE: So, what we're really hear for is just our
11 terms and conditions make it clear that Dallas County, Texas,
12 those terms and conditions are passed on to the end user from
13 the two distributors; Hayes and TEC Industries. The one belt
14 piece is I think directly on point with the situation we have
15 here. We have an end user that was non-signatory too -- from
16 the contracts that purchased the product [indiscernible] which
17 was [indiscernible]. And when they sued for breach of warranty
18 the manufacturer sued back. We have to go in ours because
19 that's in our terms and conditions. So, here Greenville Water
20 uses Hayes, TEC as a distributor again [indiscernible]

21 THE COURT: How do they say that? Isn't that kind of
22 the big issue? How do they say you got to look to the
23 manufacturer?

24 MR. JOYCE: It's right in their pick tickets, their
25 credits, everything [indiscernible] either Hayes or TEC

1 manufacturing. So, it makes absolute sense they sell a lot
2 different products manufacturer you can't name specific
3 manufacturer because they sell products. With TEC from
4 actually specifically mentioned TEC gave Greenville Water
5 manufacturer goods, [indiscernible] contract adherence but it's
6 not here. Arbitration says [indiscernible].

7 THE COURT: Kind of like when you buy the chainsaw at
8 Walmart. Walmart's not -- you don't have a direct connection
9 with Steel or whoever but you --

10 MR. JOYCE: You might sue Walmart but you are going
11 to sue. You're going to go to Steel and you're going to say,
12 "Hey, my [indiscernible] broke, it's broken, they fixe it but
13 there's a process in place that needs to be followed.

14 THE COURT: All right. Yes?

15 MR. LEVITT: I'll step up there, Your Honor.

16 THE COURT: Live and in person this time.

17 MR. LEVITT: Yeah. Nice to meet you in person, Your
18 Honor. Let me have this in. Can we see if this PowerPoint
19 works?

20 THE COURT: Yes.

21 MR. LEVITT: Thank you. I'll be a little bit longer
22 than this but there's a lot.

23 THE COURT: Let's see. All right. I think that --
24 is that what you're looking?

25 MR. LEVITT: Yes, that's good.

1 THE COURT: Okay.

2 MR. LEVITT: So, once again - let me put that up a
3 little bit. Thank you. So, good afternoon, Your Honor, I'm
4 Adam Levitt. As I said to you in the first call that we had
5 together in the scheduling hearing, I occasionally stutter when
6 I speak. Not a problem for me, shouldn't be for you. Anything
7 I say is unclear, let me know, I'll go right back over it.

8 THE COURT: Okay.

9 MR. LEVITT: Let me level set one thing, Your Honor,
10 I think and as we'll see in the PowerPoint, we'll talk about
11 what the case is about and everything else. The reason that US
12 Pipe wants this case in arbitration because based on the
13 documents we have in our complaint and based on their own
14 representations, they're going to lose either way. They've
15 represented one thing; the Pipe shows something else. The
16 reason they want this case in arbitration is because they want
17 to keep it secret. They don't want their other customers to
18 know the problems with this pipe that they manufacture. That's
19 what this is all about, Your Honor, because after everything --
20 so, you really have to look.

21 They talk about sophisticated party, they talked about
22 this, they talked about that. The documents speak for
23 themselves, the facts and the law speak for themselves. The
24 South Carolina Supreme Court in Wilson speaks for itself.
25 There's -- the call on whether or not to send this to

1 arbitration isn't even a close call. Let's talk about what
2 this case is about. If I -- so what this case is about is that
3 US Pipe manufactured ductile iron pipe with a defective cement
4 mortar lining and indirectly sold that pipe to Greenville
5 Water, a downstream purchaser. There's never been a
6 transaction between Greenville Water and US Pipe, it never
7 happened, its distributors did. And then what this case is
8 about is and you'll see in a minute or two US Pipe through its
9 certificate of product compliance, affirmatively misrepresented
10 that it's DIP met or exceeded industry standards that govern
11 that kind of pipe.

12 And in this case, Greenville Water seeks to hold US
13 Pipe responsible for its affirmative misrepresentations in it's
14 own document, a certificate of product compliance concerning
15 the quality of its products. And why is this important? Why is
16 the cement mortar lining on a water pipe important? And the
17 reason for that is that it's a standard in the waterworks
18 industry because the cement lining keeps the water from coming
19 in contact with the iron on the pipe which would lead to rust
20 and other problems. And the problem is ductile iron pipe with
21 a defective lining like we have here causes both water quality
22 and functionality problems, which leads to a loss of consumer
23 confidence, reputational harm, and ultimately lost revenue.
24 So, -- and what harms can it cause? Increased corrosion,
25 decrease in water quality --

1 THE COURT: Let me ask you this though, and this is
2 great background information but what does this have to do with
3 whether this should go to arbitration or not?

4 MR. LEVITT: We'll get there.

5 THE COURT: Okay.

6 MR. LEVITT: I'll go through this fast and we'll get
7 to the key points. So, these are -- it is just a series of
8 problems. And let me actually -- Justin, do you mind handing
9 proposing PowerPoint as well. Judge, I apologize.

10 MR. LEVITT: Can I hand this up, I'm sorry.

11 THE COURT: Yes.

12 MR. LEVITT: Sorry about that. You always forget one
13 thing.

14 THE COURT: Okay.

15 MR. LEVITT: That was the one thing today. So, it's
16 a buildup of corrosive material causing water pressure
17 problems, infrastructure damage. It clogs the water meters; it
18 clogs sprinkler systems and all that and then a bacteria build
19 up in the pipes as well. Short story, it's not good and
20 there's a reason why these standards exist. So, what happens
21 is the standards require and it's an AWWA and ANSI standard, it
22 requires that each of these pipes has uniform thickness of
23 mortar of 1/16th of an inch all the way through. And that's
24 the ANSI AWWA standard C104/A21.4 for these reasons to make
25 sure it's lined properly and these problems that have occurred

1 in US Pipe's product will not occur.

2 And moreover, both the South Carolina Plumbing Code
3 and the Safe Water -- Safe Drinking Water Act require the same
4 thing. So, this is the key document here, Your Honor. In this
5 document, which we attach to our pleadings, US Pipe
6 affirmatively represents that its pipe meets or exceeds the
7 ANSI-AWWA C104/8210.4 standard. I'll pop it out for you. The
8 key point there and I'll walk over to this, is that, that these
9 pipes meet or exceed the requirements and recommendation
10 therein. We submit borderline ANSI-AWWA C104/8210.4 are of
11 latest provision. So, what US Pipe is saying to the world is
12 that their Pipe meet this standard, they do not.

13 The fact is Greenville Waters investigation revealed
14 that the defective cement mortar lining is widespread across
15 the pipes that US Pipe manufactured at its Lynchburg, Virginia
16 facility. And rather than having a uniform thickness, the
17 cement mortar is unevenly concentrated. It's a mess
18 essentially, which you'll see in one second and Greenville
19 Water hired an outside engineering firm that showed more than
20 70% of its pipe that it tested on its yard failed to comply
21 with the ANSI standard, which we could all agree is a problem
22 and here's what it looks like. As opposed to, I think you can
23 see, that rather than the 1/16th all the way around, these are
24 just sample pipes on Greenville Water's yard. There is clear
25 differentiation between, for example [indiscernible] for

1 example, all the water is flagged off and there's water on
2 higher so you have [indiscernible]. So, that's what the case
3 is about.

4 Now, we claim that -- we seek as a result of this and
5 Greenville Water has miles of this pipe in the ground. So,
6 we're seeking, number one: We're seeking our benefit of the
7 bargain damages because we didn't get what we paid for. Number
8 two: Consequential damages including the cost of repair, lost
9 revenue, and reputational harm. And number three: We are
10 seeking punitive damages for US Pipes, deceptive and unfair
11 trade practices. And the affirmative misrepresentations that
12 US Pipe made to Greenville Water in its certificate of product
13 compliance that I just showed, Your Honor, form the basis of
14 Greenville Water's implied contract warranty in South Carolina
15 Unfair Trade Practice Act claims.

16 Again, so to answer your question, why are we here.
17 Greenville Water cannot be forced to arbitrate its claims
18 against US Pipe. None of Greenville Water's claims arise out
19 of US Pipe's terms and conditions of sale because Greenville
20 Water has never purchased pipe from US Pipe, was never provided
21 US Pipe's terms and conditions of sale prior to this lawsuit,
22 never otherwise agreed to be bound by US Pipe's terms and
23 conditions of sale, and has not and does not seek to derive any
24 benefit from any terms contained in US Pipes terms and
25 conditions of sale. It's two ships passing in the night. I know

1 US Pipe wants this to be this way but the facts are absolutely
2 not on all fours. There is no relationship between the two. And
3 US Pipe has to prove the existence of an agreement to
4 arbitrate. And the South Carolina case law says in the BVM
5 Hogan case or BVW Hogan case. Where one party denies the
6 existence of an arbitration agreement raised by an opposing
7 party, the Court must immediately determine whether the
8 agreement exists in the first place. If no agreement exists,
9 the Court must, as the BVW Court says, must deny any agreement,
10 any application to arbitrate. And under the expressed terms of
11 US Pipes, terms and conditions of sale, there is no agreement
12 to arbitrate between US Pipe and Greenville Water. So,
13 Greenville's -- so US Pipes current motion has to fail as a
14 matter of law.

15 Again, going to the actual documents here, Greenville
16 Water is not a buyer under US Pipe's terms and conditions of
17 sale. If you look at its own expressed terms and we'll put
18 them up on the screen, US Pipe's terms and conditions only
19 apply to the buyer that purchases from US Pipe or its related
20 entities. Greenville Water, again, as we said a minute ago,
21 has never purchased any of this pipe directly from any of these
22 entities. Greenville Water is therefore not a buyer as that
23 term is defined by the terms and conditions of sale. And
24 here's the document on the following slide, talking about what
25 the scope of this contract is. Defining what a buyer and a

1 seller are and showing that Greenville Water, in fact cannot
2 fall into those terms.

3 And again, as we said, the arbitration provision only
4 applies to the agreement between a buyer and a seller. And
5 again -- so under US Pipe's terms and conditions, the term
6 agreement means disagreement between the buyer and seller and
7 the arbitration provision applies only to claims arising out of
8 the agreement. Because there is no agreement between US Pipe
9 and Greenville Water, the arbitration clause cannot apply. So,
10 in the same way talking about the scope of the arbitration
11 agreement, the document itself confirms the point that I just
12 made, Your Honor.

13 The same way Mr. Joyce was talking about the third-
14 party beneficiary language. The fact is the words of US Pipe's
15 own agreement, don't lie. Greenville Water cannot be a third-
16 party beneficiary to US Pipe's terms and conditions of sale and
17 we'll see why. In the language of US Pipe's own terms and
18 conditions of sale, it says, and we'll pop it out
19 [indiscernible]. Likewise, US Pipe cannot rely on TEC and
20 Hayes's terms and conditions. Because there's no contractual
21 basis in US Pipes terms and conditions of sale to enforce the
22 ARB clause against Greenville Water, US Pipe then argues,
23 because again because it really wants this case in arbitration.

24 US Pipe argues that the terms and conditions of Hayes
25 and TEC somehow subject Greenville Water to arbitration with US

1 Pipe. US Pipe is wrong for at least three reasons here. Number
2 one: The terms and conditions contained in Greenville Water's
3 own purchase order control Greenville Water's contractual
4 relationship with Hayes and TEC, and they don't contain or
5 reference an ARB clause of any sort, that's number one. Number
6 two: Even if those terms apply which they don't, neither Hayes
7 or TEC terms or conditions reference an ARB clause. And number
8 three: US Pipe is not a party to any agreement between
9 Greenville Water and TEC and/or Hayes. The terms applicable to
10 Greenville Water and TEC or Hayes have no effect on Greenville
11 Water's claims against US Pipe. So, again, there's no
12 connection here.

13 Greenville Water's purchase orders, as we argue in
14 our brief govern its contractual relationship with Hayes and
15 TEC. And under Greenville Water's purchase orders with Hayes
16 and TEC, Hayes and TEC are sellers and Greenville Water is a
17 buyer. And this is -- as we set forth in our PowerPoint
18 [indiscernible] in Greenville Water's purchase order we have
19 agreed to sell DIP to Greenville Water. And again, that says
20 here in the document itself the acceptance line [indiscernible].
21 So, the terms in fact are clear from the language of the
22 document.

23 Likewise, Greenville Water's purchase orders do not
24 contain an ARB clause and expressly provide warranties
25 applicable to Hayes and TEC. And under the express terms of

1 Greenville Water's purchase orders, with Hayes and TEC, the
2 terms contained in the purchase orders represent the entire
3 agreement between Greenville Water and/or Hayes and/or TEC. So,
4 the same way the language in here, here's the warranty
5 language. If we look Paragraph 13, it states that this is the
6 entire agreement. And again, even if they apply, which they
7 don't, TEC terms and I'll show you Hayes's terms as well, they
8 don't contain an ARB clause of any sort. For example, here
9 this text, you can read that if you'd like or you can take my
10 word for it. There isn't a single word about arbitration
11 anywhere in there. Likewise, with Hayes, the same thing. So,
12 you can read it if you'd like, Your Honor, but, you can take my
13 word there's not an ARB clause anywhere in there.

14 So, again, there's no arbitration linked here
15 whatsoever. So again, Greenville Water, as far I just argued
16 in my brief [indiscernible] is clear that this court case is
17 clear that a presumption against arbitration arises when the
18 party resisting arbitration is a non-signatory to the written
19 agreement to arbitrate. And the other case is the BVW case and
20 Lampo made it clear also that the party seeking arbitration, in
21 this case US Pipe, has the burden of proving the existence of a
22 valid agreement to arbitrate. And under South Carolina law,
23 there has to be competent record evidence of reasonable notice,
24 acceptance and mutual ascend to establish valid arbitration
25 agreement. That doesn't exist here. Under the expressed terms

1 of US Pipe's terms and conditions as we talked about, in
2 Greenville Water is not a party to the contract. So, the
3 presumption against arbitration applies.

4 Number two: US Pipe hasn't presented any evidence of
5 a valid agreement to arbitration or to rebut the presumption
6 against arbitration. And US Pipe also fails to present any
7 evidence that Greenville Water ever saw US Pipe's terms and
8 conditions of sale, much less ever assented to those terms. In
9 Mr. Schmidt's affidavit that we attached to our opposition;
10 Greenville Water actually sets forth those facts as well. And
11 so, with -- the bottom line is as the Wilson case states, even
12 the exceptionally strong policy favoring arbitration cannot
13 justify requiring litigants to forego a judicial remedy where
14 they have not agreed to do so.

15 Here, Greenville Water has not agreed to do so. So,
16 US Pipe does not get a presumption in favor of arbitration,
17 because Greenville Water is not bound to that agreement.
18 Greenville Water also never agreed to forgo a judicial remedy,
19 and US Pipe presents no evidence to the contrary. So, where we
20 are now is vague references to warranties in terms of the
21 manufacturer as Mr. Joyce was saying in his opening argument,
22 are not sufficient to place Greenville Water on reasonable
23 notice. The documents they relied on, they don't contain a
24 link to US Pipes terms and conditions of sale, they don't
25 otherwise provide the terms and conditions of sale. They don't

1 incorporate them, and they don't reference arbitration in any
2 way. And so, for example, Mr. Joyce was referring to this
3 cancellation fee language, which I could hand up if it's easier
4 for Your Honor to read or I can put it up on the screen. The
5 language here says nothing about arbitration, it simply says,
6 "The US Pipe representative has verbally committed
7 [indiscernible] cancellation." There's nothing in there, even
8 if you take all the letters [indiscernible] that goes
9 arbitration across that. There is no reason --

10 THE COURT: Did you try that?

11 MR. LEVITT: I have not.

12 THE COURT: Okay.

13 MR. LEVITT: I assume but we [indiscernible].

14 Likewise, here, in this document [indiscernible] there's
15 nothing in here giving any indication to an agreement they
16 never agreed to with US Pipe that there's some sort of ARB
17 clause there. So, the same way mere reference to a manufacturer
18 warranty in TEC terms and conditions of sales can't bind
19 Greenville Water to arbitration. Again, document after
20 document after document. Well, US Pipe aspirationally wants to
21 somehow create an arbitration link, nothing exists here,
22 because that connection does not have it. Greenville Water did
23 not otherwise agree to be bound by US Pipes terms and
24 conditions of sales. US Pipe has to show that Greenville Water
25 knew of the arbitration provision in its terms and conditions of

1 sale on US Pipe's website prior to litigation. They failed to
2 do that. Likewise, US Pipe must show that Greenville Water
3 purchased DIP directly from US Pipe using US Pipe's website.
4 They failed to do that. We're 0 for 2 so far.

5 Number three: US Pipe must show that Greenville Water
6 was otherwise put on reasonable notice of the ARB clause in US
7 Pipe's, terms and conditions of sale. 0 for 3. They failed to
8 do that as well. Let's keep going. Number four, US Pipe must
9 show that TEC or Hayes informed Greenville Water that the ARB
10 clause in US Pipes terms and conditions of sale was there. They
11 failed to do that. We're 0 for 5 so far, let's go for 0 for 6.
12 US Pipe must show that TEC or Hayes incorporated US Pipes ARB
13 clause into an agreement with Greenville Water. They failed to
14 do that. So, none of those things happened.

15 So, where we are now, since Greenville Water is not a
16 party to US Pipes terms and conditions and because Greenville
17 Water did not otherwise agree to be bound by US Pipe's terms
18 and conditions, US Pipe is left with one last argument that
19 they raised to enforce the arbitration clause. A direct
20 benefits estoppel theory. Let's talk about what that is. Under
21 a direct benefit estoppel theory, a non-signatory in this case,
22 Greenville Water, would be estopped from refusing to comply
23 with an ARB clause when it receives a direct benefit from a
24 contract containing an ARB clause. And that's the
25

1 Wilson case, again, the Supreme Court case. Here though,
2 Greenville Water does not seek to derive any benefit from US
3 Pipes terms and conditions of sale. And again, the Courts here
4 explain that a benefit is a direct benefit if it flows directly
5 from the agreement, and the Blackwell case goes on to say, in
6 cases in which estoppel was applied, they involved non-
7 signatories who in the life of the contract had embraced the
8 contract, despite their non-signatory status, but then in
9 litigation attempt to repudiate the ARB clause in the contract
10 it's not what happened here. Greenville Water does not
11 receive, and has not received, a direct benefit from US Pipe's
12 terms and conditions of sale. Greenville Water has not sought
13 to invoke any warranty provision in US Pipes terms and
14 conditions at any point, it never happened.

15 THE COURT: I mean, don't y'all sue for expressed
16 warranty -- against US Pipe?

17 MR. LEVITT: It doesn't arise out of TEC -- it arises
18 out -- as we -- let me get there. As we argue we do have a
19 warranty claim. Let me grab the complaint [indiscernible].

20 THE COURT: Count 1 or Count 2.

21 MR. LEVITT: Yeah, it goes to the Certificate of Product
22 Compliance, not the terms and conditions of sale. It goes back
23 to the document I showed you where they made a representation
24 that these products and they said it to the whole world, that
25 these products were in spec when they're not, that's what the

1 warranty claim arises out of.

2 THE COURT: Yeah.

3 MR. LEVITT: So, again, we don't seek -- so as we see
4 here, Greenville Waters claims against US Pipe arise out of
5 general principles of South Carolina law and flows straight
6 from promises that US Pipe's -- US Pipe made in its certificate
7 of, of product compliance as I just said, not its terms and
8 conditions of sale. And Greenville Water has not embraced US
9 Pipe's terms and conditions, and in fact, as we argue and as
10 we show Greenville Water had no idea they even existed until
11 they filed this lawsuit. Now, US Pipe puts a lot of stock in
12 the One Belle Hall case. That's what they led with here in
13 their argument, and in their brief. It's in apposite for a
14 number of reasons. Number one: One Belle Hall has no
15 discussion of a direct benefit estoppel at all. So, again, 0
16 for 1. The plaintiff in One Belle Hall had no dispute with
17 the agreement containing the ARB clause. It only asserted that
18 the contract was unconscionable. It's not what happened here,
19 and you can see in that case exactly what happened.

20 So, again, 0 for 2 there. Likewise, the One Belle
21 Hall court looking at this and considering the
22 unconscionability argument only held that the Circuit Court
23 erred in finding the ARB clause was unconscionable. Again,
24 that's not the situation here. And likewise, a warranty claim
25 in that case was initiated under the agreement by a developer

1 hired by the plaintiff for the plaintiff's benefit. Again,
2 that's not what happened here. It's not what we're seeking,
3 it's not what our claims arise out of. The second case, they
4 rely on the Pearson case it doesn't apply either. In that
5 case, the plaintiff in Pearson was a party to a contract with
6 the placement agency that contained an ARB clause. That's not
7 our situation here. Likewise, the plaintiff in Pearson, unlike
8 here, knowingly accepted a benefit under the contract between
9 the placement agency and the hospital for his employment at the
10 hospital. Again, not what happened here. And the plaintiff in
11 Pearson sought to hold -- sought to use the contract with the
12 ARB clause to hold the hospital liable, which again is not what
13 happened here. Our claims do not arise out of a contract
14 between Greenville and US Pipe, they arise out of the
15 Certificate of Product compliance.

16 Third case they rely on is International Paper, I
17 will not pronounce the defendant's name. You can if you'd
18 like, it is a long German name, it doesn't apply. International
19 Paper, the contract with the ARB clause provided part of the
20 factual foundation for every claim that the plaintiff asserted.
21 We don't do that here. Number two: The plaintiff in
22 International Paper alleged the defendant failed to honor the
23 warranties contained in the contract. And the claims were all
24 based on that. Again, not what happened here. Third: The
25 plaintiff's entire case in International Paper hinged on its

1 asserted rights under the contract as the court found. Again,
2 not the case here.

3 Now, switching to the positive side of this,
4 explaining why the direct benefits estoppel theory doesn't
5 apply, we look at the South Carolina Supreme Court case, Wilson
6 against Willis, which we cite and discussed at length in our
7 papers and we argue is really -- it's positive case here.

8 Number One: In that case general principles of South Carolina
9 law form the basis of the plaintiff's claims. So, too with us.
10 Likewise in that case, the plaintiffs as the courts found could
11 not have sourced to derive a benefit from the contract because
12 as the Court said, they were never aware of the existence of
13 the contract until they initiated litigation. Same thing here,
14 Your Honor. That's exactly what we argue, that's exactly what
15 happened here.

16 Number three: The court found that the direct benefit
17 estoppel theory did not apply simply because the plaintiff's
18 claims related or would not have arisen but for the contract
19 existence. So, too here. So, continuing with that, the court
20 found, the Supreme Court here found that a benefit is indirect
21 when a non-signatory mere alleges contractual relationship
22 between the parties and implied contract, but does not exploit
23 and assume the agreement itself. Again, exactly what happens
24 here. Moving along, the court found the plaintiff did not
25 attempt to procure any direct benefit from the contract itself

1 while at the same time attempting to avoid the ARB clause. Same
2 thing here. Finally, equitable estoppel, as the court held, is
3 ultimately a theory designed to prevent injustice and should be
4 used sparingly. And the court found that principles of equity
5 did not warrant stopping the plaintiff from asserting its non-
6 signatory status. So, we satisfy each of those things.

7 And again, stacking all of that up, for US Pipes
8 terms and conditions of sale cannot be enforced against
9 Greenville Water because it would be unconscionable, it would
10 be the equivalent of posting something on the Internet
11 somewhere and saying, "Because I posted something on the
12 Internet somewhere that you didn't know about, you're still
13 bound by it". That's not the law in North Carolina, it's not
14 the law across the United States. And it would be
15 unconscionable to hold Greenville Water to a term that it never
16 knew about, it never agreed to, was never unknownst for.

17 So, this whole unconscionability thing is a serious
18 issue as the court say here, for example, in Lampo, which we
19 talked about earlier, the court said a party cannot consent to
20 something it does not know about. So, the law in general,
21 requires that for the law is that for an order to be effective,
22 the responding party must have reasonable notice of the offer's
23 terms. That never happened here. So, it would be
24 unconscionable to hold them to that.

25 Greenville Water had no meaningful choice in

1 negotiating the terms of US Pipe's terms and conditions of
2 sale. Greenville Water could not have consented to those terms
3 because it was never placed on reasonable notice of them. And
4 US Pipe cannot bind all downstream purchasers of its product by
5 simply as I said at the beginning of this argument, simply by
6 posting those terms on its website, and the fact --- and
7 there's additional support along these lines throughout the
8 South Carolina cases which are in our papers. I don't need to
9 reiterate here unless Your Honor would like me to.

10 So, moving along here, the fact that Greenville Water
11 also is a commercial entity is not in anyway dispositive of the
12 issue of unconscionability. Because there was no arm's length
13 negotiation between Greenville Water and US Pipe, because
14 Greenville Water never purchased this pipe directly from US
15 Pipe and the courts are clear on that, talking about the lack
16 of arm's length negotiation. Moving along to -- and as a
17 result of that, because there was no arm's length negotiation
18 between the entities at issue here US Pipe's terms and
19 conditions are unconscionable adhesion contract.

20 So, again, US Pipe asserts that Greenville Water is
21 subject to the ARB clause in its terms and conditions because
22 they posted it on its website. The law says no. Likewise, US
23 Pipe asserts that we are subject to the ARB clause in its terms
24 despite not having been placed on notice because Greenville is
25 a sophisticated purchaser. The answer to that is no as well.

1 The fact that Greenville is a sophisticated purchaser doesn't
2 mean that it automatically is aware of every posting on every
3 website that it lacks a contractual relationship with. That
4 would be silly. That would be saying essentially, you've never
5 bought an Apple product but because it's out there, you're
6 bound if you buy that from somebody else. It makes no sense,
7 Your Honor. There's no connection here at all. So, then US
8 Pipe fails to provide any evidence of an arm's length
9 negotiation between Greenville and US Pipe because no such
10 negotiation ever occurred. So, for those reasons, it would be
11 unconscionable to force US Pipe -- to force Greenville water to
12 arbitrate. And finally, because we're not bound by any of the
13 terms and conditions, the venue and jurisdiction provisions
14 fall away as well. This court is the right forum for this
15 case. US Pipe's motion should be denied in this entirety.
16 Thank you.

17 THE COURT: All right. I just -- I was going to say
18 brief response. I'll let you respond in full.

19 MR. JOYCE: A very brief response. And I guess is
20 the one -- the most concerning thing that I heard from Mr.
21 Levitt is, I guess on second page of his PowerPoint, there's a
22 lot of pages.

23 MR. LEVITT: I'll go there if you want.

24 MR. JOYCE: Where it says that, you know, there's a
25 chemical reaction between the iron and the water and the pipe.

1 I'm sitting there thinking, well wait a second. In paragraph
2 45 of the complaint, they have a picture of the pipe. What
3 does that picture show? It shows the inside of a pipe with an
4 asphalt lining. And what do they allege? They allege, "You
5 can't see the cement because it's covered by the asphalt
6 lining." But now we're saying, "But it's going to cause all
7 this damage, it's going to ruin the water that's going through
8 it because the water's going to come in contact with the bare
9 spots, the metal". But you can't even see the cement because
10 it's all covered. Now, I realize that's the end, that's what
11 they're looking for at the end of the day. But that's the crux
12 of their complaint. Is that we provided a product that doesn't
13 match what they asked for. Looking at what they asked for
14 attached to Mr. Schmidt's affidavit is two POs.

15 They say, "pipe duct iron six inch", that's what they
16 asked for. There are a lot of stuff about standards. That's
17 -- what is in the purchase order? "Pipe comma duct iron, six
18 inch." That is it. What's the bargain they got? They got
19 pipe. They say we didn't agree to -- we're not getting any
20 benefit from the terms and conditions that US Pipe has on their
21 website. No, they got the benefit, they got the pipe. And
22 when they purchased the pipe, just like someone going in and
23 buying a chainsaw from a store, they get the manufacturer's
24 warranty and that warranty comes with it. Even if they want to
25 ignore it, even if they say we're not going to read that, we're

1 not going to look, even though our vendor says, "Hey, you got
2 to look at the manufacturer's terms and conditions. They're
3 the warranty, they're the ones that apply." You can't just
4 ignore it because you want to ignore it. So, Your Honor, all
5 the claims arise out of the purchase of the pipe.

6 I disagree that this case is like Wilson. Wilson
7 involved a -- an insureds suing their insurance agent who was
8 employed by the broker who owned the insurance agency, who had
9 a contract with three of six insurance companies, three of them
10 had arbitration provisions. That's rather a long stretch.
11 Here you have a customer buying a product, specifically this
12 product, getting that product, getting the benefit of the
13 warranty that comes with that product and that provides that
14 they have to arbitrate any claim related to the pipe.
15 Certification? I don't know where it came from. There's a
16 screenshot of a part of it in the pleading that document that
17 Mr. Levitt had isn't in the pleading, isn't attached to the
18 pleading. We've got a screenshot. I don't think we have to get
19 into the facts here, because that's discovery, but that hasn't
20 been issued according to my client in over a decade, they
21 haven't issued anything to Greenville Water. So, they're
22 pulling a document that they found somewhere on the Internet
23 and saying, this is our contract. But our contract isn't for
24 the purchase of the pipe. It's just this term that you're
25 going to comply with the certification of it. It doesn't make

1 any sense. So, Your Honor, the last thing. One Bell Hall.
2 Upon reading that case, it's a condominium association. The
3 condominium association didn't build the building. They took
4 over the building once -- like in South Carolina, once you have
5 enough owners, you take it over from the developer then they
6 sued. There was no direct contractual relationship between the
7 manufacturer of the product, Tamco and the association, the
8 plaintiff. Yet the Court of Appeals said you have to
9 arbitrate. They reversed the circuit court. You have to go to
10 arbitration; you have to work this out there, not in court.
11 Thank you, Your Honor.

12 THE COURT: Brief response?

13 MR. LEVITT: Yes. Two points. That's it.

14 THE COURT: Okay.

15 MR. LEVITT: Two points. Number one is in paragraph
16 48 of our complaint; we actually have the certification. So,
17 it's not what -- and we had it in our client's possession
18 custody or control. If at trial, US Pipe wants to argue that
19 it's not its own document, I'd like the jury to hear that,
20 that's number one. Number two: The irony of saying something
21 they found on the Internet shouldn't be a dispositive thing
22 which is what Mr. Joyce just said. But, their whole argument
23 is that, we should be bound to an arbitration clause that they
24 put on the Internet that they say we should have found. It's
25 nonsense, Your Honor. There isn't any connection, there isn't

1 any reason that US Pipe's terms and conditions in any way have
2 an effect on Greenville Water. The South Carolina Supreme
3 Court and Wilson makes that clear. The documents here make it
4 clear. Their motion should be denied. Thank you.

5 THE COURT: All right. Looks like the next logical
6 discussion would be to hear Defendant Hayes and Defendant TEC
7 with his motion to set aside default because Plaintiff's other
8 two motions were referred to master in equity for the default
9 judgment by default of the [indiscernible] and the striking
10 that untimely answers. So, is that a fair plan with everybody?

11 MR. HAWAL: Yes, Your Honor. There was one other, I
12 don't know if it made it to the motion docket, but there was
13 the motion to compel the --

14 THE COURT: Right. But I just figured we just give
15 it. Yeah, that's the final one.

16 MR. HAWAL: Okay. Got it.

17 THE COURT: You got to see what parties you got to
18 compel first.

19 MR. SHELTON: May I please the Court, Greg Shelton.
20 Your Honor, I'm here for Hayes Pipe Supply, Inc and we filed a
21 motion to set aside an entry of default. And I've got a -- I'm
22 not sure if the Court will need to refer to my notebook but I'd
23 like to approach and hand it over.

24 THE COURT: Yes you can go ahead. What was your name
25 again?

1 MR. SHELTON: Greg Shelton, of Shelton Law Carolinas.

2 THE COURT: Okay. Should have had this before -- all
3 this before the Super Bowl because, you know, since it wasn't
4 very exciting this would be -- I'm not sure this is more
5 exciting than the Super Bowl but --

6 MR. SHELTON: Your Honor, again, Greg Shelton I'm
7 here for Hayes Pipe Supply Inc Company that was formed in 1973.
8 It's in Tennessee, in Nashville. And the company used an
9 attorney named David Zinn, Zinn Cooper [phonetic] in Nashville
10 pretty much in the beginning, but last September, Mr. Zinn
11 retired and so Hayes needed to find another attorney. And so,
12 they found the firm contacted Mr. Mobley in -- sometime in
13 2024. And in September, the registered agent for Hayes Supply
14 switch from Mr. Zinn to Mr. Mobley. And during that process,
15 the idea was -- I wasn't part of those discussions but imagine
16 maybe Mr. Mobley must route process through my office, which is
17 pretty common with law firms.

18 And so, we were served with the summons and complaint
19 in -- up in the following month, in October, I think about a
20 month -- four weeks later after that process was initiated.
21 Now Hayes Supply was referred in here as a distributor. Supply
22 House is the construction -- full construction term. But we
23 sell pipe and other joints to different companies, developers,
24 municipalities and whoever needs pipe for sewage
25 [indiscernible]. And we do have terms and conditions that

1 accompany our sales. And those terms and conditions make clear
2 that we don't produce the equipment or the material, we buy the
3 materials with the manufacturers warranties. So, -- and that's
4 all in the book there. We'll find that language in as an
5 exhibit to Mr. Sullivan's affidavit, tab two.

6 So, I first became involved in this case I think it
7 was around December 12th, [indiscernible] because they received
8 a motion to defer -- for entry of default in material to damages
9 hearing I suppose. I think that was part of the package they
10 received but immediately [indiscernible] Grenville was told to
11 make a decision about [indiscernible] they were going to pursued
12 the default [indiscernible] be made in Chicago. I subpoenaed all
13 the attorneys I could and having not received response by 4:00
14 o'clock. I've been working in Nashville and file the answer to
15 that claim. I think that was the -- that was [indiscernible]
16 So, the [indiscernible] contact to ensure Counsel Zinn was told
17 [indiscernible] we may move the default that decision will be
18 made shortly and then later that afternoon, the motion to strike
19 the answer was filed. So, a couple days later before
20 [indiscernible] and file the motion to set aside the default
21 that we're here today about. So, that's just [indiscernible]
22 very briefly, I'll show you the Court is fully aware of this
23 process, but just for the record the rules allow the setting
24 aside of default -- entries of default and default judgments are
25 a little bit different [indiscernible].

1 Lower standard will make sure the Plaintiff is in good faith.

2 Good faith -- excuse me. Good cause.

3 THE COURT: Good cause, yeah.

4 MR. SHELTON: Good cause, yeah. [Indiscernible].

5 THE COURT: Yes, Plaintiff.

6 MR. HAWAL: Good afternoon, Your Honor. My name is
7 Justin Hawal and I represent Greenville Water along with my
8 colleague Mr. Levitt and Mr. Bach.

9 THE COURT: Justin what?

10 MR. HAWAL: Hawal, H-A-W-A-L.

11 THE COURT: Okay. Yes. Okay.

12 MR. HAWAL: I'd like to briefly start with the motion
13 to strike Hayes's answer. I don't think it's very
14 controversial but I'd like to get that out of the way.

15 THE COURT: They might think it is.

16 MR. HAWAL: I'm sorry?

17 THE COURT: They might think it is.

18 MR. HAWAL: Well, they didn't respond to it so that
19 might say otherwise but --

20 THE COURT: I mean, isn't that just the reverse of
21 their setting aside default?

22 MR. HAWAL: Yes, sir. They go hand in hand, Your
23 Honor.

24 THE COURT: Okay.

25 MR. HAWAL: And I'll just make the brief point that

1 the case law is clear that if you file an untimely answer
2 without leave of court, after the opposing party moves for an
3 entry of default, but before the default is granted, it's not a
4 valid pleading under the Civil Rules. And so, we would ask the
5 Court that simply strike that answer and allow them to answer
6 only if they're relieved from default. With respect to their
7 motion to set aside the default, they're absolutely right, this
8 is an eight-figure case. And that's all the more reason why a
9 sophisticated entity like Hayes should have acted diligently to
10 make sure they were going to respond to the complaint. They
11 claim that there is no requirement to show good cause for the
12 failure to respond and that's not actually true.

13 In fact, the key dispositive issue here is whether or
14 not they have set forth an adequate explanation for their
15 failure to respond to the complaint. And there's South
16 Carolina Supreme Court case, Sundown Operating Company and
17 numerous other appellate court cases in South Carolina that
18 say, before this court even gets to the factors set forth in
19 Wham v. Shearon Lehman Brothers, the Court has to evaluate or
20 analyze the explanation for the default. They skip that step
21 here; they don't make any showing. They don't even recognize
22 this requirement because if you look at the plain language of
23 their affidavit that they submitted in support of their motion
24 to set aside, it illustrates nothing more than a failure to
25 diligently communicate. Hayes's inside Counsel says, I thought

1 outside counsel was going to respond to the complaint. Outside
2 counsel wasn't even licensed to practice law in South Carolina
3 and claims they thought Hayes was going to hire a South
4 Carolina attorney to respond to the complaint but what you have
5 here is a complete lack of diligence.

6 All they -- all it would've required was for somebody
7 to pick up the phone or send an email and confirm, "Hey, are
8 you going to be responding in the complaint? Do I need to hire
9 another attorney?" And they completely failed to do that. And
10 there's a litany of cases that we cite in our brief and I won't
11 go through them all now but that find and refuse to set aside
12 an entry of default when there's a lack of diligence and
13 failing to communicate with the appropriate persons for
14 responding to a complaint. And actually, the cases that Hayes
15 cites in its brief illustrate this point. The Ricks v.
16 Weinrauch case, which is an appellate court case that was
17 decided in 1987. They cite for the proposition that simply
18 leaving the summons and complaint in your car while it was
19 being serviced, was enough to establish good cause but that's
20 not actually what occurred in that case.

21 What occurred in that case is the defaulting party
22 immediately contacted their insurance agent to have the summons
23 and complaint forwarded onto the insurance carrier so that an
24 attorney could be assigned to defend the case. Unbeknownst to
25 the defaulting party, she went on vacation, her insurance agent

1 then went bankrupt and failed to forward those documents to the
2 insurance carrier. And then when she, again, contacted an
3 attorney again showing diligence and trying to respond to the
4 complaint she realized that she had locked the paperwork in her
5 car and was unable to retrieve it before the time to respond.

6 Similarly, in the Sears Roebuck & Company case, which
7 is an appellate court case out of Georgia, which is not binding
8 on this court, but it was a failure of the insurance carrier
9 after they were informed. And despite the defaulting party's
10 due diligence that caused the defaulting party not to respond
11 to the complaint.

12 And then lastly, the Dawson case, which is a South
13 Carolina Common Pleas Court case also illustrates that there
14 has to be diligence and at least in part some circumstances
15 that are outside of the party's control that lead to the
16 default. In that case, the Plaintiff, again, or excuse me, not
17 the Plaintiff, the defaulting party forwarded the summons and
18 complaints to the insurance carrier. And because of Hurricane
19 Matthew hitting there were extenuating circumstances that
20 caused a delay in that process. And then on top of that, the
21 insurance carrier mistakenly thought that Defense Counsel was
22 assigned to the case because it also had a different case with
23 a similar name.

24 So, without the fault of the defaulting party she
25 failed to respond to the complaint. That's not what we have

1 here Your Honor. All these cases have a common theme that you
2 have to show reasonable diligence because these are
3 consequential legal papers that you need to respond to. In
4 this case, as my colleague represented is a very substantial
5 case that you have to take diligent actions to protect your
6 rights. And there have to be some sort of circumstances
7 outside the party's control that contributed to the failure to
8 respond. And so, because they have not made that showing, even
9 taking the language in their affidavit at its face, this court
10 does not even need to consider the factors sets forth in Wham.
11 Thank you, Your Honor.

12 THE COURT: Have you read the case of Jordan vs.
13 Hartford Financial Group?

14 MR. HAWAL: I may have Your Honor but --

15 THE COURT: I don't think it's cited by anybody
16 that's every lawyer should have in their back pocket when you
17 get in default. Anyway, I mean, it says -- you know, it
18 basically says just because somebody missed a deadline doesn't
19 mean you should excuse a good cause, that Judge Hill wrote.
20 So, I figured somebody would have it out here. So, yes, any
21 response?

22 MR. SHELTON: A couple of points, Your Honor. The
23 idea of -- I'm just learning today; this is eight figures.
24 There's not -- there's no damage complaint in the complaint.
25 My client received a complaint or the summons and complaint

1 TEC's discovery and no damages listed. So, the idea that there
2 should have been like alarm bells going off, I don't think that
3 was apparent from the paperwork. And I also want to mention,
4 Your Honor, I can go through and do a postmodern deconstruction
5 of every default that's ever entered and find some mistake but
6 somebody messed something up. And to me that's the point of
7 having the rule in the first place, because if everybody
8 exercised diligence and did everything perfectly and made it to
9 the Court house and filed it on time, we wouldn't have the
10 rule. I also I want to mention, Your Honor, back to Judge --

11 THE COURT: I meant that it normally boil down to
12 what -- I mean, after hearing all this, what I think it could
13 come -- you can list all those cases and they all can be
14 distinguished by each party but it basically what the Court
15 decides is equitable and what I ultimately determine is what's
16 good cause. I feel like it's good cause if it's not then
17 you're out, if I do find it's good cause then you're in. I
18 mean that's --

19 MR. SHELTON: I agree, Your Honor.

20 THE COURT: And I have some, you know, argument to
21 base it on.

22 MR. SHELTON: Yes, Your Honor.

23 THE COURT: Yeah.

24 MR. SHELTON: Sound discretion, good cause, justice,
25 all those principles. I have a few more points.

1 THE COURT: Yeah. Go ahead.

2 MR. SHELTON: Well, I just wanted to mention a state
3 a line from the Seventh Circuit case and this is quoting a
4 Supreme Court case with the United States Supreme Court.
5 Likewise, it states, \$31 million sanction, I'm not sure if
6 that's the eight figures you're looking for but would be
7 accessible to EGAs misconduct is negligent, reckless at worse,
8 rather than deliberate. In the injury, if any to its adversary
9 it's negligible like damages and simple litigation the sanction
10 should fit the offense. There's a major reason why this report
11 should not enter default, he doesn't say precipitously. He
12 says precipitously and given that judge used to work I'm sure
13 that's correct definition. But that -- those are the points I
14 wanted to make towards, I also want to make one other point.
15 When we look at these cases and I can go through the cases. I
16 can go through all of their -- the cream of the crop cases that
17 they --

18 THE COURT: I'd prefer you not.

19 MR. SHELTON: I can do that but when you look at the
20 cases that the Court of Appeals, they're usually by the party
21 that was in default because otherwise the case has been tried
22 or settled. And those that make it to the Court of Appeals,
23 the Courts are looking at the [inaudible] or sound discretion
24 analysis. So, it's not so much a ones and zeros type of
25 analysis, but looking at whether the Court below accuracy

1 [indiscernible] discretion.

2 THE COURT: Got it. All right. Mr. Stilwell.

3 MR. STILWELL: Judge, I feel like, you know, a
4 blind squirrel finds a nut sometimes, but one of my associates
5 Constatine went to the [indiscernible] and I think Judge Pan
6 was talking about Hartford -- Jordan versus Hartford Financial
7 Group. My first question was like, why is that not on my brief?

8 THE COURT: I'm actually the one that told Judge Pan
9 about that.

10 MR. STILWELL: When I was young practicing law, Judge
11 [indiscernible] see what you can do with that. The only time I
12 didn't get out of the [indiscernible] was Judge Nicoles figured
13 out the [indiscernible] notice. But in this one I think had to
14 go through all the Wham factors and good cause. How do they
15 even served? When you look at the affidavits submitted file
16 they came in, they still the salesmen [indiscernible] and
17 described as Supreme Court to accept [indiscernible].

18 THE COURT: And let me just -- I also for the record,
19 Mr. Stillwell, you are fine with going forward today. I know
20 we kind in our meeting the other day said yours could be moved
21 down the road if needed, but you -- I guess you haven't had a
22 full 10 days since you're -- that you're fine with going
23 forward today it sounds like.

24 MR. STILWELL: I'm just thinking though I had 10
25 days, maybe I should have stood on that.

1 THE COURT: No. Okay. Just making sure for the
2 record. All right.

3 MR. HAWAL: Thank you, Your Honor. First with
4 respect to the damages point I don't know where the hallway
5 talk came up with the \$15 million dollar --

6 THE COURT: I think it mixed up with that other thing
7 going
8 on that.

8 MR. HAWAL: It could be more; it could be less than
9 that but the key point is an entry of default does not bind
10 damages against either TEC or Hayes. There would still have to
11 be a damages hearing later down the line, presumably after
12 Plaintiffs litigated their claims against US Pipe to determine
13 what damages is if any, were appropriate to reward against TEC
14 and Hayes. With respect to the point about in every one of
15 these cases, there's some mistake, of course, that's why the
16 party is in default. It's not about perfection but the Courts
17 do require reasonable diligence because if that were not a
18 requirement there'd be no consequence for failing to respond on
19 time under Rule 12. I mean, the rule would be rendered
20 meaningless if every person that made a mistake got out from
21 under the default.

22 Now, with respect to TEC's motion to set aside and
23 the service issue, TEC was properly served we believe under
24 this court's long existing case law that it has never required
25 exact in compliance with the rules to affect service of process

1 but instead to looks to whether the Plaintiff substantially
2 complied with the rules such that the Court has personal
3 jurisdiction over the Defendant and the Defendant has notice of
4 the proceeding. So, here we have a situation as established in
5 the affidavit of the process server where she goes to their
6 principal place of business, she sees somebody behind the desk,
7 she asks the person are you the registered agent Mark Schmidt?
8 And for whatever reason, we don't know why the guy nodded and
9 said that he was. And so, we have someone who misrepresented
10 their identity and accepted service on behalf of TEC. Then you
11 have -- if you look at --

12 THE COURT: Did he say he was or he just didn't
13 respond. I was thinking, I saw an affidavit.

14 MR. HAWAL: The affidavit says that he affirmatively
15 nodded which the process server took to understand that he was
16 confirming that he was in fact the registered agent. And then
17 if you look at their affidavit that they submitted in support
18 of their motion to set aside the default, the registered agent
19 actually admits that he actually received a copy of the
20 complaint, reviewed it before the time to respond and then
21 nonetheless failed to respond because he incorrectly believed
22 that US Pipe, because they were going to be responding to the
23 complaint, TEC didn't have to.

24 And so, if this were -- if there were ever a case for
25 substantial compliance under Rule 4D, Your Honor, I think this

1 one is it where you have an extenuating circumstance where they
2 actually received and had actual notice of the case and despite
3 that waited until January to set aside their motion to default.
4 Now with respect to whether there's good cause, Your Honor, to
5 set aside the default, again, the stated reason in the
6 affidavit taking that at face value is that the registered
7 agent mistakenly believed that they didn't have to respond to
8 the complaint.

9 But there are several cases in which South Carolina
10 courts routinely state, "Lack of familiarity with legal
11 proceedings is unacceptable. And the Courts do not hold a
12 layman to any lesser standing than it is applied to an
13 attorney." And so, the same concept of reasonable diligence is
14 applied here in any reasonable prudent commercial entity like
15 TEC that has in fact been subjected to lawsuits previous to
16 this, would know that when you receive a summons and complaint
17 the first thing you need to do is consult an attorney. And so,
18 respectfully Your Honor, I don't think they can meet the
19 threshold requirement to provide an adequate explanation for
20 their default such that this court does not even need to
21 consider the Wham factors. Thank you.

22 THE COURT: And I'll allow to me that you respond to
23 this. I like the particular sentence in the Jordan versus
24 Hartford case. It says, the good cause standard exists to
25 ensure the interests of justice are protected even when a party

1 missteps. So, a harmless procedural foot fault does not spring
2 a trap door that mindlessly jettisons innocent party out of
3 court regardless of the circumstances.

4 MR. HAWAL: I would say, Your Honor, there are
5 numerous South Carolina appellate court decisions that hold the
6 opposite.

7 THE COURT: Yeah, but that's the Supreme Court 2021.

8 MR. HAWAL: Correct, Your Honor. Look, I mean --

9 THE COURT: I mean, it basically says, you know what
10 -- you know, he promotes, you know, in his opinion, Justice
11 Hill's promotes, "hey, let the parties try the case and not,
12 you know, fall back on missteps that a party may make." I
13 mean, it's just the judge feels like it's good cause and that's
14 -- I just --

15 MR. HAWAL: Sure, Your Honor.

16 THE COURT: I like that language.

17 MR. HAWAL: And it's absolutely in your discretion
18 but I would just say there would be a damages hearing, so it's
19 not like they're automatically being awarded you know, huge
20 damages against them. We would still have to prove those
21 things.

22 THE COURT: Well, but you -- they admit everything in
23 the complaint of their default and all that.

24 MR. HAWAL: Excuse me.

25 THE COURT: If they admit everything in the complaint

1 that pretty much gets at least a second base.

2 MR. HAWAL: Of course, Your Honor but I think there -

3 -

4 THE COURT: I'm saying for anything else.

5 MR. HAWAL: We would still need to prove it by a
6 preponderance of the evidence but I'll --

7 THE COURT: All right. Any response? Yeah, that's
8 you.

9 MR. SHELTON: Judge, there is no actual notice of
10 substantial client test under rule that state what those cases
11 say. You got to serve [indiscernible] leave it with sales. His
12 affidavit says I didn't make any [indiscernible].

13 THE COURT: All right. So, I guess that leaves the
14 Plaintiff's motion to refer to master in equity. I guess just
15 here briefly on that because I'll have to decide the others
16 before. Shoot.

17 MR. SHELTON: Your Honor, that may be tied to the
18 motion for default then --

19 THE COURT: Right. But I guess [indiscernible] it
20 was a motion on here, I mean --

21 MR. HAWAL: Correct. Your Honor, if I may, I can
22 explain what happened here.

23 THE COURT: Yes.

24 MR. HAWAL: We meet for an entry of default along
25 with to refer to the master in equity in the same motion. The

1 default has been entered by the clerk.

2 THE COURT: Okay.

3 MR. HAWAL: So, our understanding is in the event you
4 decide not to, you know, relieve them from their default then
5 the damages portion of the default would be referred to the
6 master in equity. And essentially, we would believe that that
7 proceeding would be stayed while Plaintiff would litigate their
8 case with US Pipe.

9 THE COURT: Okay. Does anybody else want to respond
10 to that?

11 MR. SHELTON: Your Honor, just briefly I did want to
12 set procedurally in terms of a motion to strike. I'm not sure
13 how that bakes out. I think if the Court grant -- if the Court
14 would grant my motion, I prepared a proposed order in a folder
15 in all of the books asking for 10 days to final answer. So, I
16 think it's up to the Court -- if my motion is granted whether
17 my old answer which I prepared in two hours to get my foot in
18 the door would sort of be valid. I would get 10 days to go,
19 you know, file my answer.

20 THE COURT: I mean, well I -- and I usually how I've
21 addressed that in the past if I let somebody answer, I'll let
22 them say, you know, can either rely on the one that's already
23 filed or has 15 days to file an amended answer. I mean, that's
24 kind of.

25 MR. SHELTON: Yes, Your Honor.

1 THE COURT: Okay. So, that leaves -- I think that
2 only leaves us with the motion to compel. Is that correct?

3 MR. HAWAL: Yes, Your Honor.

4 THE COURT: Plaintiff's motion to compel.

5 MR. HAWAL: Thank you, Your Honor. So, US Pipe
6 doesn't dispute that Plaintiff served both interrogatories and
7 written requests for production on it with a copy of the
8 summons and complaint and under the rules --

9 THE COURT: Let me ask you this though this is our
10 rule in this court is, have y'all talked by telephone or in
11 person about the discovery outstanding?

12 MR. HAWAL: We have not, Your Honor.

13 THE COURT: All right. That's bad, this one's
14 continue then. I mean -- I know there's a duty to consult and
15 we have just discovered that, you know, people don't -- they
16 send off a little email and most of the time if they've picked
17 up the phone and actually talked to the other side, it's
18 amazing how many times these motions to compel are worked out.

19 MR. HAWAL: Well, we're just asking for them to
20 provide responses in the first instance.

21 THE COURT: Well, that's what I'm saying is if, you
22 know, have you called him and said, I want my damn answers.

23 MR. HAWAL: We wrote a letter, Your Honor.

24 THE COURT: That's what I'm saying is it means and
25 that's just something Judge Morgan imposed. I tell you what,

1 we're going to take a break. I'm going to give y'all five
2 minutes to talk about it and I'll let that be your
3 consultation. How about that and then I can hear it.

4 MR. LEVITT: Thank you, Your Honor.

5 [OFF THE RECORD].

6 THE COURT: So, what'd y'all come up with?

7 MR. HAWAL: Your Honor, we conferred US Pipe is
8 taking the position, it appears that they will not respond to
9 discovery until a ruling on the arbitration issue is decided.

10 THE COURT: Right.

11 MR. HAWAL: But I think there is case law that is
12 clear.

13 THE COURT: I think y'all consulted you maybe at
14 least know each other's side. All right. Okay. Let me hear
15 from you then I'll hear from them.

16 MR. HAWAL: I mean, very briefly there, there's case
17 law, Evans v. Manufactured Homes Inc that clearly states as the
18 party seeking arbitration, the Defendant bore the onus to halt
19 discovery by seeking the Court's protection. There has been no
20 stay of discovery here, they've never asked for a stay of
21 discovery. They haven't submitted any responses under Rule 33
22 or Rule 34. And the other basis that they've stated is
23 confidentiality. The way to handle that is to provide written
24 responses and objections, raise the confidentiality issue and
25 then we would've been happy to negotiate a confident -- a

1 protective order that would've addressed that. So, there is no
2 basis under the rules for simply unilaterally refusing to
3 answer discovery without seeking permission from the Court.
4 And so, we would ask that the court compel them to respond to
5 our discovery, deem all objections waived. And --

6 THE COURT: Is that what it means when I make them
7 discover that they have to give up all their objections?

8 MR. HAWAL: Well, Your Honor, I think that's it
9 within your discretion, but there is certainly authority out
10 there that says there has to be some sort of teeth to the rule.
11 If you don't respond to discovery, there has to be some sort of
12 consequence. And so, I think waiving the objections here would
13 be appropriate under the rules and case law within this state
14 and then certainly under Rule 34 --

15 THE COURT: Have you ever heard of them being imposed
16 in this state, Mr. Bach?

17 MR. BACH: In federal court, certainly, Your Honor
18 but I will say --

19 THE COURT: That's not state, that's across the street.

20 MR. BACH: The year end, CLE Justice Kittredge
21 reminded all the attorneys in the room that courts have got to
22 start enforcing discovery with sanctions. I think, you know,
23 that's been a big point of his since he's assumed the Chief
24 Justice and I think that's a pretty mild one given these facts.

25 THE COURT: Okay. All right. I'm sorry to cut you

1 off.

2 MR. HAWAL: And then I would just lastly add Your
3 Honor, Rule 38(4)(A)(4) says that the Court shall order
4 attorney's fees and costs for the costs of having to bring a
5 motion to compel. Unless the refusal to respond is
6 substantially justified. And again, under the rules here,
7 there is no justification for either not seeking a stay of
8 discovery or not responding under the rules. Thank you, Your
9 Honor.

10 THE COURT: Yes.

11 MR. SHELTON: Your Honor, nevertheless depending on
12 the Court if the Court rules, we're here we're going to respond
13 to discovery in a timely manner. The demands they've made are
14 -- I can deal with the record but we're talking about an eight-
15 month period where they say they got bad fight, they want 10
16 years of complaints nationwide.

17 They want all our manufacturing methods. They want
18 -- they ask for manufacturing methods, processes, technology
19 use, its proprietary in its terms. So, I think it's fair to
20 say, okay, the Court rules denies our motion to dismiss. We
21 respond properly. I don't think they should be awarded
22 attorney's fees as the Court pointed out, they never bothered
23 with a phone call before they even brought the motion. So,
24 typically you have to comply with the Court's rules before the
25 Court will.

1 THE COURT: That's maybe an unwritten rule, I don't
2 know --

3 MR. SHELTON: I think it's a practical rule, it makes
4 a lot of sense. So -- but like I said, Your Honor, depending
5 on how the Court rules, if we're in arbitration different set
6 of discovery rules could be much more limited. We're not going
7 to be talking about 10 years of complaints nationwide, a pipe
8 that is sold in California in 2016, which is what they're
9 asking for here. So, that --

10 THE COURT: All right. Anything else? That doesn't
11 mean you have to.

12 MR. HAWAL: No, Your Honor, I would just say that if
13 they had objections to the scope of discovery, they should have
14 raised them in their objections -- written objections and
15 responses.

16 THE COURT: All right. I'm going to look at all this
17 because y'all give me all this stuff to read and look at. So,
18 I'll look at it and let y'all know something hopefully by the
19 end of the week.

20 MR. SHELTON: All right. Thank you, Your Honor.

21 MR. HAWAL: Thank you, Your Honor.

22 MR. LEVITT: Thank you, Your Honor.

23 THE COURT: What I anticipate is that I will let you
24 know, I will email everybody, let them know what my ruling is,
25 and then request proposed orders along those lines.

1 MR. LEVITT: All right. Thank you.

2 THE COURT: All right. Thank you. You all have a safe
3 trip; I know you came out of town.

4 MR. LEVITT: We appreciate it.

5

6 [END OF HEARING]

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CERTIFICATE OF TRANSCRIBER

I, ERIN REILY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 13, South Carolina, on the 10th day of February 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 5th, 2025

ERIN REILLY

TRANSCRIBER





*Commissioners of Public Works of The City of
Greenville, South Carolina v. United States Pipe and
Foundry Company, LLC, et al.*

C.A. No. 2024-CP-2305956 (Ct. Comm. Pleas, February 10, 2025) (Gravely, J).

Plaintiff's Opposition to U.S. Pipe's Motion to Dismiss or Stay Pending Arbitration

Justice in all its **DIMENSIONS**

What This Case is About

- U.S. Pipe manufactured ductile iron pipe with defective cement mortar lining and indirectly sold the defective pipe to Greenville Water—a downstream purchaser—through its distributors, TEC and Hayes.
- U.S. Pipe, through its Certificate of Product Compliance, affirmatively misrepresented that its ductile iron pipe met or exceeded industry standards governing cement-mortar-lined ductile iron pipe.
- Greenville Water seeks to hold U.S. Pipe accountable for U.S. Pipe’s affirmative misrepresentations in its Certificate of Product Compliance concerning the quality of its products.

Why is cement mortar lining important?

- Cement-mortar-lined ductile iron pipe is standard in the waterworks industry because the cement lining prevents water from chemically reacting with the iron contained in the pipes, which leads to corrosion.
- Ductile iron pipe with defective cement-mortar-lining causes both water quality and functionality problems—leading to a loss of consumer confidence, reputational harm, and, ultimately, lost revenue.

Justice in all its **DIMENSIONS**





What Harms Do Defective DIP Cause?

- Increased corrosion causing deterioration of water quality;
- Build-up of corrosive material causing water pressure problems;
- Damage to infrastructure caused by cement mortar breaking off from the pipes and causing pipe clogs; and
- Proliferation of numerous types of bacteria due to build-up caused by loose cement and pipe clogs, which can be harmful to human health if allowed to reach unsafe levels.

What Do Industry Standards Require?

- The American Water Works Association (“AWWA”) is a non-profit, scientific, and educational association, founded to improve water quality, that issues industry standards approved by the American National Standards Institute (“ANSI”).
- The AWWA standard for cement-mortar-lined ductile iron pipe requires cement mortar lining to have a uniform minimum thickness of 1/16-inch throughout the length of all 3-inch to 12-inch ductile iron pipe. This standard is known as ANSI/AWWA Standard C104/A21.4 and is designed to ensure water quality and safety.
- Both the South Carolina Plumbing Code and Safe Drinking Water Act, as well as Greenville Water’s design and construction specifications, require all water service ductile iron pipes to be cement-mortar-lined in compliance with ANSI/AWWA Standard C104/A21.4.

U.S. Pipe Affirmatively Represents That Its Pipe Meets or Exceeds ANSI/AWWA C104/A21.4



We hereby certify material furnished by U.S. Pipe & Foundry Company, LLC, either for your stock or for direct shipment to your customer, are manufactured and tested in accordance with the following standards, and meet or exceed the requirements and recommendation therein.

DUCTILE IRON PIPE (*)	ANSI / AWWA C151 / A21.51	OF LATEST REVISION
RUBBER – GASKET	ANSI / AWWA C111 / A21.11	OF LATEST REVISION
TYTON AND MECH. JOINTS	ANSI / AWWA C111 / A21.11	OF LATEST REVISION
CEMENT MORTAR LINING(**)	ANSI / AWWA C104 / A21.4	OF LATEST REVISION
DUCTILE IRON FITTINGS	ANSI / AWWA C110 / A21.10 OR ANSI / AWWA C153 / A21.53	
FLANGED DUCTILE IRON PIPE	ANSI / AWWA C115 / A21.15	OF LATEST REVISION
FUSION BONDED EPOXY COATING	ANSI / AWWA C116 / A21.16	OF LATEST REVISION
ZINC COATING	ISO 8179 – 1	OF LATEST REVISION
ASPHALTIC SEAL COAT	NSF / ANSI 61	OF LATEST REVISION

Epoxy Lined Ductile Iron & Fittings for Force Mains and Gravity Sewer Lines) U.S. Pipe certifies that our applicator met the requirements of the specifications.

U.S. Pipe & Foundry Company, LLC certifies that all of our TYTON®, TR FLEX®, HP LOK®, MJ, USIFLEX® and FLANGED ductile iron pipe, LESS ACCESSORIES, is manufactured in the United States, and thereby meets the requirements of the "Buy America Act".

UNITED STATES PIPE AND FOUNDRY COMPANY, LLC

By: *Lavar Bo Curry*

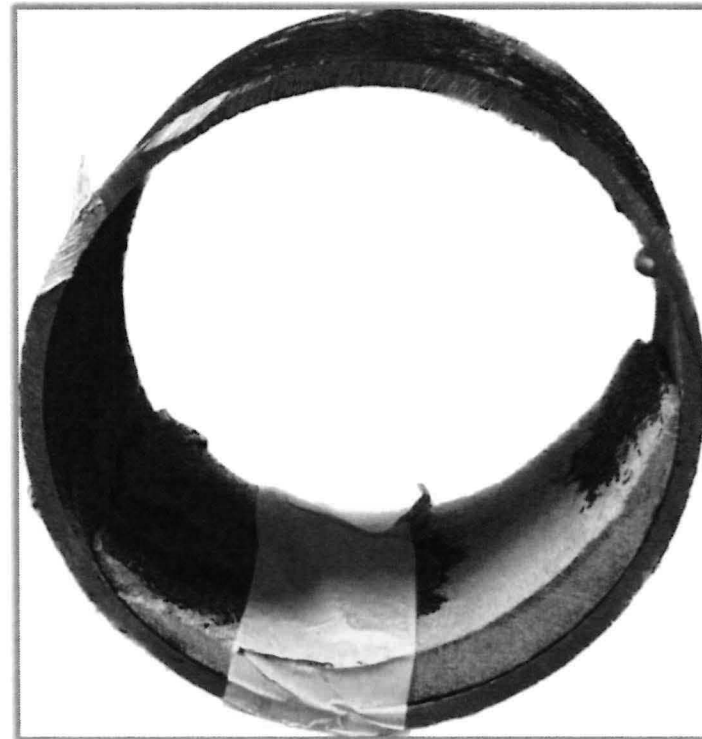
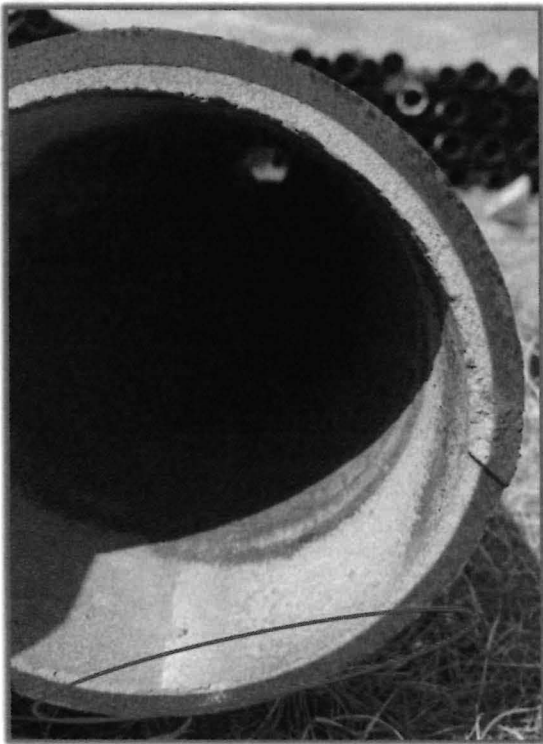
Justice in all its **DIMENSIONS**

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U.S. Pipe's Ductile Iron Pipe Does Not Meet or Exceed ANSI/AWWA C104/A21.4

- Greenville Water's investigation revealed that defective cement-mortar lining is widespread across the pipes that U.S. Pipe manufactured at its Lynchburg, Virginia facility.
- Rather than having cement mortar lining that is a uniform thickness of 1/16-inch, the cement mortar is unevenly concentrated on one side of the pipe.
- Greenville Water retained an outside engineering firm to test pipe from U.S. Pipe's Lynchburg facility across numerous deliveries and batches, which showed that more than 70% of the pipe tested failed to comply with ANSI/AWWA Standard C104/A21.4.

U.S. Pipe's Ductile Iron Pipe Neither Meets Nor Exceeds ANSI/AWWA C104/A21.4



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Greenville Water's Claims

- Greenville Water seeks: (1) benefit-of-the-bargain damages because it did not receive what it paid for; (2) consequential damages, including the cost of repair, lost revenue, and reputational harm; and (3) punitive damages for U.S. Pipe's deceptive and unfair trade practices.
- The affirmative misrepresentations that U.S. Pipe made to Greenville Water in the Certificate of Product Compliance form the basis of Greenville Water's implied contract, warranty, and South Carolina Unfair Trade Practice Act claims.

Greenville Water Cannot be Forced to Arbitrate

None of Greenville Water's claims arise out of U.S. Pipe's Terms and Conditions of Sale, because Greenville Water:

1. Has *never* purchased pipe from U.S. Pipe;
2. Was *never* provided U.S. Pipe's Terms and Conditions of Sale prior to this litigation;
3. Did not otherwise agree to be bound by U.S. Pipe's Terms and Conditions of Sale; and
4. Does not seek to derive *any* benefit from *any* terms contained in U.S. Pipe's Terms and Conditions of Sale.

U.S. Pipe Must Prove the Existence of an Agreement to Arbitrate

- “[W]here one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place.” *BVW Holding AG v. Hoowaki*, No. 2021-001168, 2024 WL 112281, at *2 (S.C. Ct. App. Jan. 10, 2024) (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22 (2007)).
- **If no agreement exists, “the court must deny any application to arbitrate.” *Id.***
- Under the express terms of U.S. Pipe’s Terms and Conditions of Sale, there is no agreement to arbitrate between U.S. Pipe and Greenville Water and the Court must deny U.S. Pipe’s motion.

Greenville Water is Not a “Buyer” Under U.S. Pipe’s Terms and Conditions of Sale

- By its own express terms, U.S. Pipe’s Terms and Conditions of Sale (the “Agreement”) applies only to a “Buyer” that purchases products from U.S. Pipe and Foundry Company, LLC, Griffin Pipe Products Co., LLC, and U.S. Pipe Fabrication, LLC.
- Greenville Water has *never* purchased ductile iron pipe directly from U.S. Pipe and Foundry Company, LLC, Griffin Pipe Products Co., LLC, and U.S. Pipe Fabrication, LLC.
- Greenville Water is, therefore, not a “Buyer,” as that term is defined by the Terms and Conditions of Sale.

U.S. Pipe's Terms and Conditions of Sale: Definition of "Buyer" and "Agreement"

Terms and Conditions of Sale

All quotations and sales of goods and products ("Products") manufactured by United States Pipe and Foundry Company, LLC, Griffin Pipe Products Co., LLC, and U.S. Pipe Fabrication, LLC (collectively, "Seller") to buyer and its parents, subsidiaries, affiliates, or business units (collectively, "Buyer") are expressly conditioned upon Buyer's acceptance of these Terms and Conditions of Sale (this "Agreement").

TERMS OF SALE. All sales to Buyer are subject to these Terms, which shall prevail over any inconsistent terms of Buyer's purchase order or other documents. Buyer agrees that any terms and conditions appearing on any document submitted by Buyer which conflict with (i) the terms and conditions contained herein, (ii) any quotation submitted by Seller, or (iii) any sales contract between Seller and Buyer are hereby expressly rejected and shall not constitute terms of any sale of goods or services by Seller. This Agreement supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, whether written or oral. The foregoing shall apply to all documents heretofore or hereafter submitted by Buyer, whether executed by Seller or not. Modification or alteration of this Agreement must be in writing and signed

All quotations and sales of goods and products ("Products") manufactured by United States Pipe and Foundry Company, LLC, Griffin Pipe Products Co., LLC, and U.S. Pipe Fabrication, LLC (collectively, "Seller") to buyer and its parents, subsidiaries, affiliates, or business units (collectively, "Buyer") are expressly conditioned upon Buyer's acceptance of these Terms and Conditions of Sale (this "Agreement").

claims by Buyer related to billing errors or adjustments shall be made in writing to Seller within ten (10) days from the invoice date or they are waived. Any changes by Buyer in quantities, destination, schedule or installation may result in a price adjustment by Seller.


All prices may be subject to a minimum 5% increase 180 days from Bid date. Orders, releases, and or shipments placed after one year may be repriced at current market conditions.

Quotes are represented as a unit price quote and should not be considered a lump sum quote. If additional material is needed beyond the quantities represented, Seller reserves the right to re-price the products at time of order.

If a product is of a different diameter, lining or coating, or configuration is required that is not included in the quote, that product will be priced at time of order based on current pricing at the time of release.

Buyer shall review and ensure that linings and coatings are correctly quoted per their request. Seller will not be held responsible for any charges incurred if incorrect linings and coatings are quoted. Seller has quoted Seller's standard primer. If a different primer is required, additional charges may apply.

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The Arbitration Provision Only Applies to the “Agreement” Between “Buyer” and “Seller”

- Under U.S. Pipe’s Terms and Conditions of Sale, the term “Agreement” means the agreement between “Buyer” and “Seller.”
- The arbitration provision applies only to claims arising out of or relating to the “Agreement.”
- But, because Greenville Water is not a “Buyer,” its claims do not arise out of or relate to any “Agreement” with “Seller.”

U.S. Pipe's Terms and Conditions of Sale: Scope of Arbitration Agreement

risk between them and because the price paid for Product reflects such risk allocation, this limitation will not have failed of its essential purpose even if it operates to bar certain remedies. Seller makes no warranty whatsoever with respect to goods, products, accessories or parts furnished by Seller but not manufactured by Seller, which carry only the warranty, if any, of the manufacturer thereof and Seller hereby assigns to Buyer all of its rights and interest in the manufacturer's warranties (if any) to the extent that this assignment is not prohibited by the terms of such warranty or agreement between Seller and manufacturer.

LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OR OTHERWISE, SELLER SHALL HAVE NO LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, LIQUIDATED, PUNITIVE, OR CONSEQUENTIAL DAMAGES, NON-COMPLIANCE WITH REGULATIONS OF FOREIGN GOVERNMENTS, LOST PROFITS, LOSS OF USE OF PRODUCTS OR OTHER PROPERTY OR EQUIPMENT, OR DAMAGES SPECIFICALLY EXCLUDED IN THIS OR ANY OTHER SPECIAL WARRANTY LIMITATION, LOSSES OR EXPENSES, DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING OR USE OF THE GOODS OR SERVICES OR FROM ANY OTHER CAUSE OR BREACH. IN NO EVENT SHALL SELLER'S LIABILITY, WHETHER IN CONTRACT, TORT, OR OTHERWISE,

ARBITRATION; CONSENT TO VENUE. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, including the arbitrability thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with the then-current Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be


the claims shall be barred and deemed waived notwithstanding any statutory period of limitations. Seller must be given reasonable opportunity to investigate all claims. Seller is not liable for any charge or expense incident to a claim absent the written consent of an authorized representative of Seller.

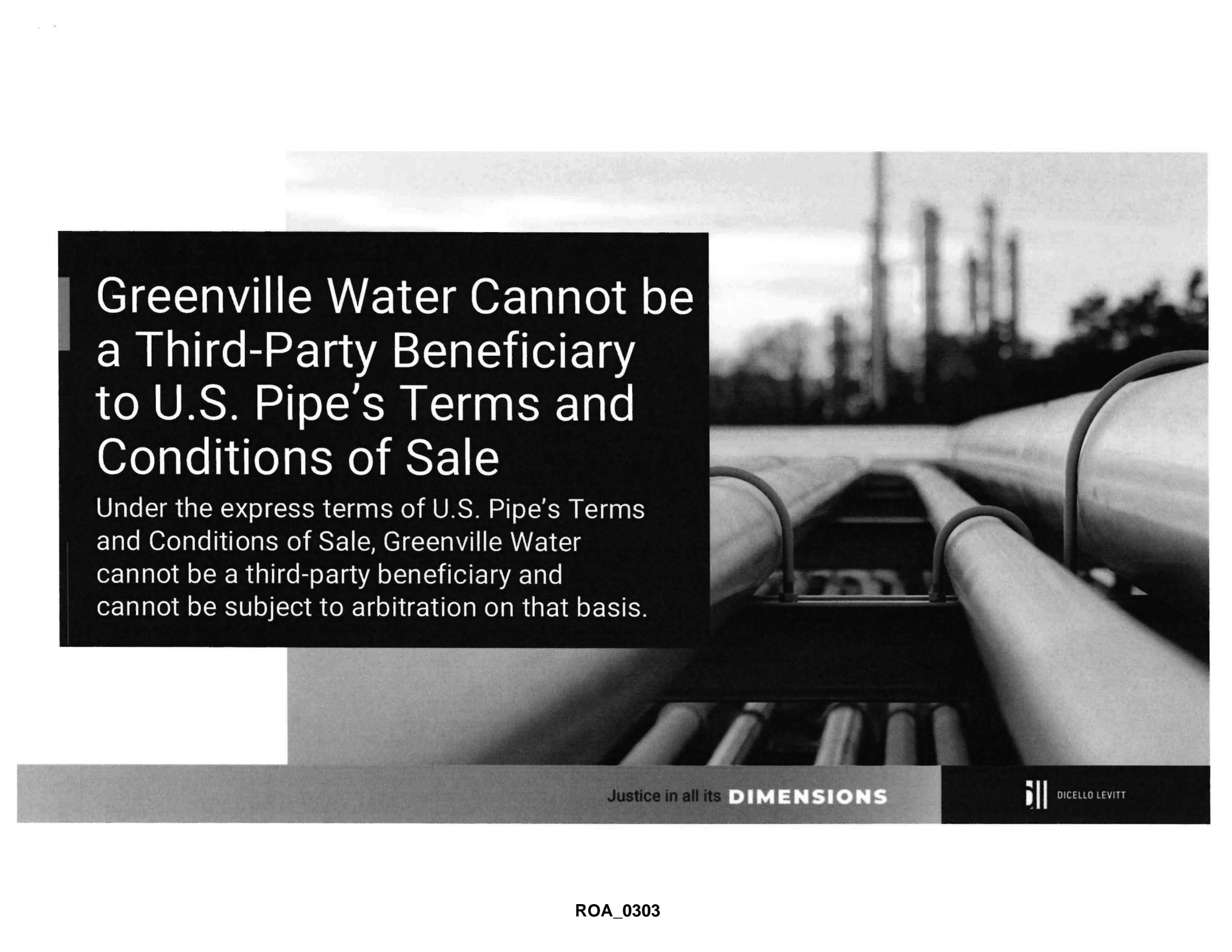
INDEMNIFICATION. Buyer acknowledges that Seller does not participate in the installation of the Products. Buyer agrees to indemnify, defend, and hold harmless Seller and its officers, directors, managers, members, employees or other representatives from and against any claim, demand, loss, costs (including reasonable attorneys' fees) or damages incurred or sustained by Seller arising from or related to use or resale of the Products and any of Buyer's negligent, intentional or tortious acts or omissions, including the installation of any Product or Buyer's failure to comply with this Agreement.

GOVERNING LAW. These terms, and each sale and purchase of Products to Buyer by Seller, shall be governed in all respects by the laws of the State of Texas without giving effect to conflict of laws principles that would require the application of any other jurisdiction's substantive laws, provided, however, that the law applicable to any mechanic's or materialman's lien asserted by Seller shall be construed and governed by the law of the jurisdiction where the goods or services were delivered, consumed, or used. The United National Convention on Contracts for the International Sale of Goods, and any successor thereto, will not apply to this Agreement.

ARBITRATION; CONSENT TO VENUE. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, including the arbitrability thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with the then-current Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be

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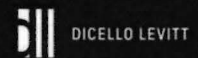
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Greenville Water Cannot be a Third-Party Beneficiary to U.S. Pipe's Terms and Conditions of Sale

Under the express terms of U.S. Pipe's Terms and Conditions of Sale, Greenville Water cannot be a third-party beneficiary and cannot be subject to arbitration on that basis.

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U.S. Pipe's Terms and Conditions of Sale: No Third Party Beneficiaries

entered in any court having jurisdiction thereof. No dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person, and any arbitrator attempting such a proceeding shall be deemed to have exceeded the powers available under the Federal Arbitration Act. Claims shall be heard by a single arbitrator in Dallas County, Texas. In the event that this arbitration provision is deemed invalid or inapplicable for any reason, in whole or in part, the parties agree that the venue and jurisdiction for any proceedings arising out of or related to the Agreement shall be exclusively in the state and federal courts of Dallas County, Texas to which jurisdiction each party irrevocably consents and waives any objection or defense that it is not subject to personal jurisdiction in such venue or that the forum is inconvenient.

COMPLIANCE WITH LAWS. Each Party represents and warrants, in connection with transactions contemplated by these Terms, that it will comply with all applicable federal, state and local laws, regulations, and orders, including without limitation: (A) all applicable laws and regulations regarding export controls, economic sanctions, trade embargoes and anti-boycott restrictions, and all applicable anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended) and the United Kingdom Bribery Act (collectively, "Applicable International Trade and Anti-Corruption Laws"); and (B) all applicable equal opportunity requirements including those set forth in U.S. Executive Order 11246, the U.S. Rehabilitation Act of 1973, as amended, and the U.S.

NO THIRD PARTY BENEFICIARIES. Buyer and Seller are the only intended beneficiaries of this document, and there are no third party beneficiaries.

confirms that it and its officers, directors, employees, agents, contractors, and/or any representative acting on its behalf are familiar with the provisions of Applicable International Trade and Anti-Corruption Laws. Each Party agrees to indemnify, defend and hold harmless the other Party and its employees from and against any and all claims, demands, costs, penalties and fines arising in connection with any alleged breach by the indemnifying party or any of its representatives of this Section.


NO ASSIGNMENT OR MODIFICATION. Buyer shall not assign or transfer any contract with Seller without its prior written consent. No modification of these terms shall be effective unless specifically agreed to in writing by Seller, and no modification shall be rendered effective by Seller's receipt, acknowledgment, or acceptance of any purchase order or other form Buyer provides that stipulates different terms or conditions, and Seller hereby gives notification of objection to any such terms and conditions.

NO WAIVER. No waiver of these terms shall be effective against Seller unless made in writing by an authorized representative of Seller. Buyer shall not assert that Seller's waiver of Buyer's breach of these terms, or of those of a later contract of the Parties, is a waiver of any other breach, nor assert that Seller's failure to exercise a right arising from Buyer's default is a continuing waiver of the right, and Buyer agrees that Seller may exercise the right at a later time.

NO THIRD PARTY BENEFICIARIES. Buyer and Seller are the only intended beneficiaries of this document, and there are no third party beneficiaries.

CORRECTIONS. Seller reserves the right to correct typographical or clerical errors in a quotation, order, or agreement without prejudice or legal effect.

Justice in all its **DIMENSIONS**

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U.S. Pipe Cannot Rely on TEC's and Hayes' Terms and Conditions

- Since there is no contractual basis in U.S. Pipe's Terms and Conditions of Sale to enforce the arbitration provision against Greenville Water, U.S. Pipe is forced to argue that the terms and conditions of its distributors, TEC and Hayes, somehow subject Greenville Water to arbitration *with U.S. Pipe*.
- U.S. Pipe is wrong for at least three reasons:
 1. The terms and conditions contained in Greenville Water's purchase order control Greenville Water's contractual relationships with TEC and Hayes and do not contain or reference an arbitration provision;
 2. Even if they applied (which they do not), neither TEC's nor Hayes' terms and conditions contain or reference an arbitration provision; and
 3. U.S. Pipe is not a party to any agreement between Greenville Water and TEC and/or Hayes; therefore, the terms applicable to Greenville Water and TEC and/or Hayes have no effect on Greenville Water's claims against U.S. Pipe.

Greenville Water's
Purchase Orders
govern its contractual
relationships with TEC
and Hayes

Under Greenville Water's
purchase orders with
TEC and Hayes, TEC
and Hayes are "Sellers"
and Greenville Water is
a "Buyer."

Greenville Water's Purchase Orders Govern its Contractual Relationships with TEC and Hayes

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are agreed to by the Supplier ("Seller") whose name appears on the face of this Purchase Order and Commissioners of Public Works City of Greenville, aka Greenville Water. Seller hereby acknowledges and agrees that these Terms and Conditions shall apply and are hereby incorporated into this Purchase Order, between Seller and Greenville Water ("Buyer") under which Seller agrees to provide goods or services. This agreement shall be referred to herein as "Purchase Order."

- 1. ACCEPTANCE** - Commencement of performance pursuant to this Purchase Order constitutes acceptance hereof by Seller.
- 2. TERMINATION/CANCELLATION** - Buyer may at any time terminate this Purchase Order in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to the termination, plus actual direct costs resulting from termination.
- 3. CONFIDENTIALITY** - The parties will keep confidential (whether written or oral) in nature (including software and manuals) obtained under this Purchase Order and will not, without the written consent of the other party, disclose said information to any person (other than their employees or professional advisers).
- 4. CHANGES** - Buyer shall have the right at any time to make changes in the specifications, designs, drawings, the quantity of items ordered, delivery, and mode of transportation. If any such required changes cause an increase or decrease in the cost, or the time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, as both. Any claim by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Seller of notice of Change.
- 5. WARRANTY** - Seller expressly warrants that all goods and services furnished by this Purchase Order will conform to the specifications, drawings,

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are agreed to by the Supplier ("Seller") whose name appears on the face of this Purchase Order and Commissioners of Public Works City of Greenville, aka Greenville Water. Seller hereby acknowledges and agrees that these Terms and Conditions shall apply and are hereby incorporated into this Purchase Order, between Seller and Greenville Water ("Buyer") under which Seller agrees to provide goods or services. This agreement shall be referred to herein as "Purchase Order."

9. INDEMNITY AND INSURANCE - Seller shall defend and indemnify Buyer against all damages, liability, claims, losses and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder or from any act or omission of seller, its agents, employees or subcontractors. Seller shall maintain such public liability insurance, including products liability insurance (including non-owned automobile liability) and Worker's Compensation, and employer's liability insurance as well as adequately protect Buyer against such damage, liabilities, claims, losses and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.

10. INSPECTION/TESTING/REJECTION - Payment for delivered goods and services do not constitute acceptance. Buyer has the right to inspect and approve, or reject any materials, supplies, services and/or installations which are in the Buyer's judgment defective, repetitive and goods supplied in excess of quantities specified on this Purchase Order may be returned to the Seller at its expense. In addition to Buyer's other rights, Buyer may charge the Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination that results in deterioration of the finished product or service, Buyer reserves the right to the replacement, as well as payment of damages.

11. REMEDIES - Remedies shall be cumulative, and in addition to any other remedies available in law or equity.

12. DELIVERY/SHIPPING RELEASES - Delivery is to be made to the "Ship To" location shown on the face of this Purchase Order. Supplier will ship goods F.O.B. Destination unless otherwise indicated on this Purchase Order. Delivery requirements, manner of delivery, and specified due dates of this Purchase Order shall be strictly adhered to and shall not be modified without the written acceptance of the Buyer. Seller shall report delays immediately to the Buyer. Buyer reserves the right to cancel this Purchase Order if Seller's order acknowledgment is unsatisfactory or if shipments are not made as required.

13. ENTIRE AGREEMENT - This Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. No changes shall be made unless in writing and only signed by an authorized representative of both Buyer and Seller.

14. NON-ASSIGNMENT AND SUBCONTRACTING - Except as provided in this Purchase Order, Seller may not assign or subcontract in any manner any portion of this Purchase Order and any monies which may become due hereunder without the advance written consent of Buyer, which may not be unreasonably withheld.

15. LAW OF THE CONTRACT - This PO shall be governed by and interpreted in accordance with the laws of the State of South Carolina.

Justice in all its **DIMENSIONS**

 DICELLO LEVITT

ROA_0307

Greenville Water's Purchase Orders govern its contractual relationships with TEC and Hayes

TEC and Hayes accepted the terms and conditions in Greenville Water's purchase orders when they agreed to sell ductile iron pipe to Greenville Water.

Greenville Water's Purchase Orders Govern its Contractual Relationships with TEC and Hayes

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are agreed to by the Supplier ("Seller") whose name appears on the face of this Purchase Order and Commissioners of Public Works City of Greenville, aka Greenville Water. Seller hereby acknowledges and agrees that these Terms and Conditions shall apply and are hereby incorporated into this Purchase Order, between Seller and Greenville Water ("Buyer") under which Seller agrees to provide goods or services. This agreement shall be referred to herein as "Purchase Order."

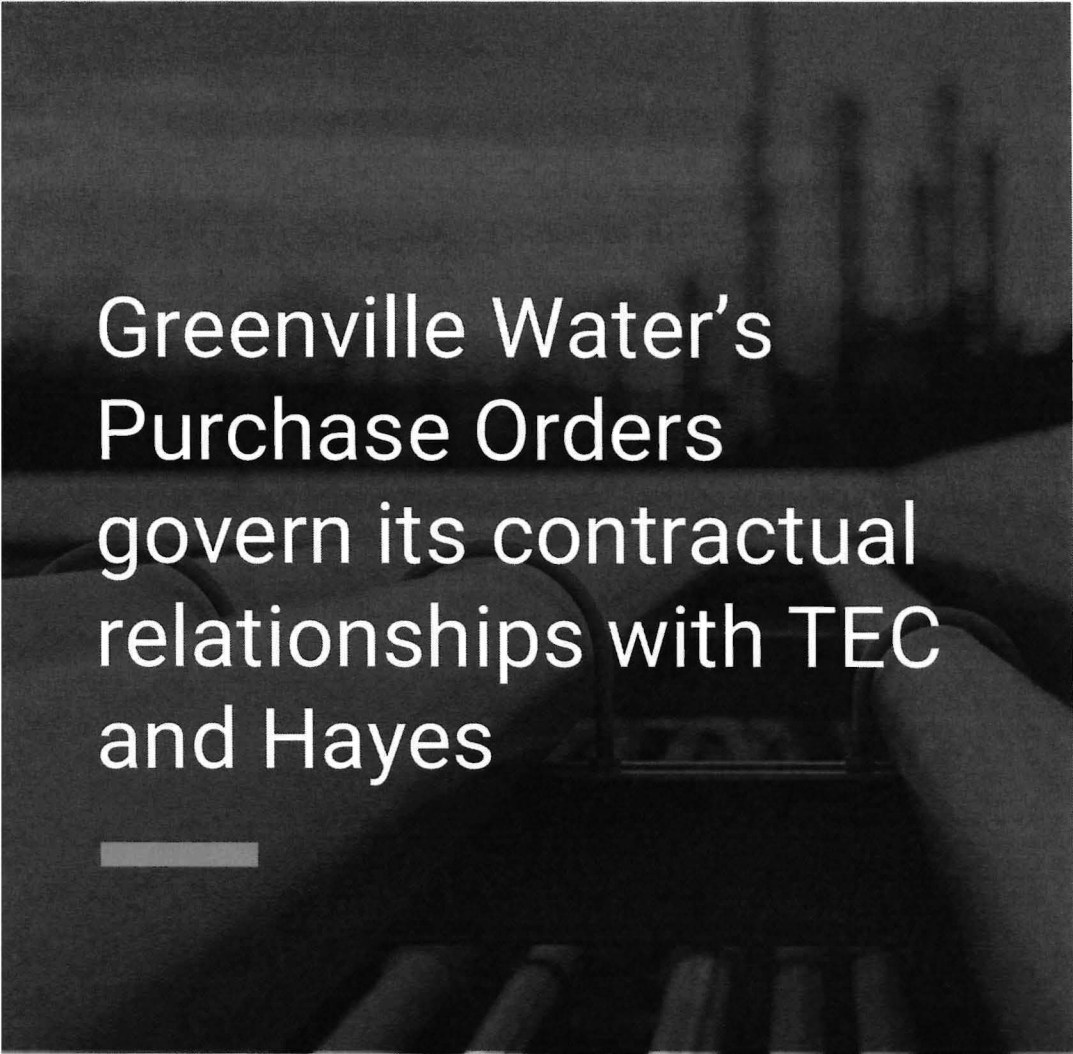
- 1. ACCEPTANCE** - Commencement of performance pursuant to this Purchase Order constitutes acceptance hereof by Seller.
- 2. TERMINATION/CANCELLATION** - Buyer may at any time terminate this Purchase Order in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to the termination, plus actual direct costs resulting from termination.
- 3. CONFIDENTIALITY** - The parties will keep confidential any information (whether written or oral) in nature (including software and manuals) obtained under this Purchase Order and will not, without the written consent of the other party, disclose said information to any person (other than their employees or professional advisors).
- 4. CHANGES** - Buyer shall have the right at any time to make changes in the specifications, designs, drawings, the quantity of items ordered, delivery, and mode of transportation. If any such required changes cause an increase or decrease in the cost, or the time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Seller of notice of Change.
- 5. WARRANTY** - Seller expressly warrants that all goods and services furnished by this Purchase Order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and that goods and services will be fit and sufficient for the purpose intended, merchantable, safe, and free from defects in material or workmanship. Seller agrees to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, without expense to Buyer, when notified of such nonconformity, provided Buyer elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable

1. ACCEPTANCE – Commencement of performance pursuant to this Purchase Order constitutes acceptance hereof by Seller.

- 7. FORCE MAJEURE** - Each party shall be relieved from performance directly caused by circumstances beyond its reasonable control, including, without limitation, acts of God, governmental actions, war, national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether required to settle party's workforce), and restraints or delays affecting transportation carriers.
- 8. PATENTS** - Seller agrees, at its own expense, to defend against Buyer or against those selling or using the goods or services covered by this Purchase Order for alleged infringement of patent or invention rights arising from the sale or use of such goods or services and to indemnify and save Buyer harmless from any damages, liabilities, claims, losses, and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the goods or services covered by this Purchase Order; provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by Seller with specifications furnished by Buyer.
- 9. INDEMNITY AND INSURANCE** - Seller shall defend and indemnify Buyer against all damages, liability, claims, losses and expenses (including attorney's fees) arising out of, or resulting in any way from any defect in the goods or services purchased hereunder or from any act or omission of Seller, its agents, employees or subcontractors. Seller shall maintain such public liability insurance, including products liability insurance (including non-owned automobile liability) and Workmen's Compensation, and employer's liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.
- 10. INSPECTION/TESTING/REJECTION** - Payment for delivered goods and services do not constitute acceptance. Buyer has the right to inspect and approve, or reject any materials, supplies, services and/or installations which are in the Buyer's judgment defective, rejections and goods supplied in excess of quantities specified on this Purchase Order may be returned to the Seller at its expense. In addition to Buyer's other rights, Buyer may charge the Seller all expenses of unpacking, examining, reworking and repacking such goods. In the event Buyer returns goods whose defects or nonconformity is not apparent on examination that results in deterioration of the finished product or service, Buyer reserves the right to the replacement, as well as payment of damages.
- 11. REMEDIES** - Remedies shall be cumulative, and in addition to any other remedies available in law or equity.
- 12. DELIVERY/SHIPPING RELEASES** - Delivery is to be made to the "Ship To" location shown on the face of this Purchase Order. Supplier will ship goods F.O.B. Destination unless otherwise indicated on this Purchase Order. Delivery requirement, manner of delivery, and specified due dates of this Purchase Order shall be strictly adhered to and shall not be modified without the written acceptance of the Buyer. Seller shall report delays immediately to the Buyer. Buyer reserves the right to cancel this Purchase Order if Seller's order acknowledgment is unsatisfactory or if shipments are not made as requested.
- 13. ENTIRE AGREEMENT** - This Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. No changes shall be made unless in writing and signed by an authorized representative of both Buyer and Seller.
- 14. NON-ASSIGNMENT AND SUBCONTRACTING** - Except as provided in this Purchase Order, Seller may not assign or subcontract in any manner any portion of this Purchase Order and any monies which may become due hereunder without the advance written consent of Buyer, which may not be unreasonably withheld.
- 15. LAW OF THE CONTRACT** - This PO shall be governed by and interpreted in accordance with the laws of the State of South Carolina.

Justice in all its **DIMENSIONS**





Greenville Water's Purchase Orders govern its contractual relationships with TEC and Hayes

- Greenville Water's purchase orders do not contain an arbitration provision and expressly provide warranties applicable to TEC and Hayes.
- Under the express terms of Greenville Water's purchase orders with TEC and Hayes, the terms contained in the purchase orders represent the entire agreement between Greenville Water and TEC and/or Hayes.

Greenville Water's Purchase Orders Govern its Contractual Relationships With TEC and Hayes

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are agreed to by the Supplier ("Seller") whose name appears on the face of this Purchase Order and Commissioners of Public Works City of Greenville, and Greenville Water. Seller hereby acknowledges and agrees that these Terms and Conditions shall apply and are hereby incorporated into the Purchase Order, between Seller and Greenville Water ("Buyer") under which Seller agrees to provide goods or services. This agreement shall be referred to herein as "Purchase Order."

- 1. ACCEPTANCE** - Commencement of performance pursuant to this Purchase Order constitutes acceptance hereof by Seller.
- 2. TERMINATION/CANCELLATION** - Buyer may at any time terminate this Purchase Order in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to the termination, plus actual direct costs resulting from termination.
- 3. CONFIDENTIALITY** - The parties will keep confidential any information (whether written or oral) in nature (including software and manuals) obtained under this Purchase Order and will not, without the written consent of the other party, disclose said information to any person (other than their employees or professional advisors).
- 4. CHANGES** - Buyer shall have the right at any time to make changes in the specifications, designs, drawings, the quantity of items ordered, delivery, and mode of transportation, if any such required changes cause an increase or decrease in the cost, or the time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claims by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Seller of notice of Change.

5. WARRANTY - Seller expressly warrants that all goods and services furnished by this Purchase Order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and that goods and services will be fit and sufficient for the purpose intended, merchantable, safe, and free from defects in material or workmanship. Seller agrees to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, without expense to Buyer, when notified of such nonconformity, provided Buyer elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by the Buyer in doing so.

their claims (whether stated to either party's workbooks), and otherwise or direct affecting transportation terms.

8. PATENTS - Seller agrees, at its own expense, to defend against Buyer or against those selling or using the goods or services covered by this Purchase Order for alleged infringement of patent or invention rights arising from the sale or use of such goods or services and to indemnify and save Buyer harmless from any damages, liabilities, claims, losses, and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the goods or services covered by this Purchase Order; provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by Seller with specifications furnished by Buyer.

9. INDEMNITY AND INSURANCE - Seller shall defend and indemnify Buyer against all damages, liability, claims, losses and expenses (including attorney's fees) arising out of, or resulting in any way from any defect in the goods or services purchased hereunder or from any act or omission of Seller, its agents, employees or subcontractors. Seller shall maintain such public liability insurance, including products liability insurance (including non-owned automobile liability) and Workmen's Compensation, and employer's liability insurance as well as adequate product Buyer against such damage, liabilities, claims, losses and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.

10. INSPECTION/TESTING/REJECTION - Payment for delivered goods and services do not constitute acceptance. Buyer has the right to inspect and approve, or reject any materials, supplies, services and/or installations which are in the Buyer's judgment defective. Rejection and goods supplied in excess of quantities specified on this Purchase Order may be returned to the Seller at its expense. In addition to Buyer's other rights, Buyer may charge the Seller all expenses of unpacking, examining, reworking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination that results in deterioration of the finished product or service, Buyer reserves the right to the replacement, as well as payment of damages.

11. REMEDIES - Remedies shall be cumulative, and in addition to any other remedies available in law or equity.

12. DELIVERY/DIFFERS RELEASES - Delivery is to be made to the "drop to" location shown on the face of this Purchase Order. Supplier will ship goods F.O.B. Destination unless otherwise indicated on this Purchase Order. Delivery requirements, manner of delivery, and specified due date of this Purchase Order shall be strictly adhered to and shall not be modified without the written acceptance of the Buyer. Seller shall report delays immediately to the Buyer. Buyer reserves the right to cancel this Purchase Order if Seller's order acknowledgment is unsatisfactory or if shipments are not made as requested.

13. ENTIRE AGREEMENT - This Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. No changes shall be made unless in writing and duly signed by an authorized representative of both Buyer and Seller.

14. NON-ASSIGNMENT AND SUBCONTRACTING - Except as provided in this Purchase Order, Seller may not assign or subcontract in any manner any portion of this Purchase Order and any monies which may become due hereunder without the advance written consent of Buyer, which may not be unreasonably withheld.

15. LAW OF THE CONTRACT - This PO shall be governed by and interpreted in accordance with the laws of the State of South Carolina.

Justice in all its **DIMENSIONS**



Greenville Water's Purchase Orders Govern its Contractual Relationships With TEC and Hayes


PURCHASE ORDER STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are agreed to by the Supplier ("Seller") whose name appears on the face of this Purchase Order and Commissioners of Public Works City of Greenville, aka Greenville Water. Seller hereby acknowledges and agrees that these Terms and Conditions shall apply and are hereby incorporated into this Purchase Order, between Seller and Greenville Water ("Buyer") under which Seller agrees to provide goods or services. This agreement shall be referred to herein as "Purchase Order."

- 1. ACCEPTANCE** - Commencement of performance pursuant to this Purchase Order constitutes acceptance hereof by Seller.
- 2. TERMINATION/CANCELLATION** - Buyer may at any time terminate this Purchase Order in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to the termination, plus actual direct costs resulting from termination.
- 3. CONFIDENTIALITY** - The parties will keep confidential any information (whether written or oral) in nature (including software and manuals) obtained under this Purchase Order and will not, without the written consent of the other party, disclose said information to any person (other than their employees or professional advisers).
- 4. CHANGES** - Buyer shall have the right at any time to make changes in the specifications, designs, drawings, the quantity of items ordered, delivery, and mode of transportation. If any such required changes cause an increase or decrease in the unit, or the time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Seller of notice of Change.
- 5. WARRANTY** - Seller expressly warrants that all goods and services furnished by this Purchase Order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and that goods and services will be fit and sufficient for the purpose intended, merchantable, safe, and free from defects in material or workmanship. Seller agrees to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, without expense to Buyer, when notified of such nonconformity, provided Buyer elects to provide Seller with the opportunity to do so in the event of failure of Seller to remedy defects in its performance under this purchase order. Seller shall not be liable for consequential or special damages.
- 7. FORCE MAJEURE** - Each party shall be excused from performance directly caused by circumstances beyond its reasonable control, including, without limitation, acts of God, governmental actions, war, national emergency, riot, civil disturbance, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether related to either party's workforce), and restraints or delays affecting transportation carriers.
- 8. PATENTS** - Seller agrees, at its own expense, to defend against Buyer or against those selling or using the goods or services covered by this Purchase Order for alleged infringement of patent or invention rights arising from the sale or use of such goods or services and to indemnify and save Buyer harmless from any damages, liabilities, claims, losses, and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the goods or services covered by this Purchase Order; provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by Seller with specifications furnished by Buyer.
- 9. INDEMNITY AND INSURANCE** - Seller shall defend and indemnify Buyer against all damages, liability, claims, losses and expenses (including attorneys' fees) arising out of, or resulting in any way from any defect in the goods or services purchased hereunder or from any act or omission of seller, its agents, employees or subcontractors. Seller shall maintain such public liability insurance, including products liability insurance (including non-owned automobile liability) and Worker's Compensation, and employer's liability insurance as well as adequately protect Buyer against such damage, liabilities, claims, losses and expenses (including attorneys' fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.
- 10. INSPECTION/TESTING/REJECTION** - Payment for delivered goods and services do not constitute acceptance. Buyer has the right to inspect and approve, or reject any materials, supplies, services and/or installations which are in the Buyer's judgment defective. Rejections and goods supplied in excess of quantities specified on this Purchase Order may be returned to the Seller at its expense. In addition to Buyer's other rights, Buyer may charge the Seller all expenses of unloading, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination that results in deterioration of the finished product or service, Buyer reserves the right to the replacement, as well as payment of damages.
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- 12. DELIVERY/SHIPPING RELEASES** - Delivery is to be made to the "Ship To" location shown on the face of this Purchase Order. Supplier will ship goods F.O.B. Destination unless otherwise indicated on this Purchase Order. Delivery requirements, manner of delivery, and specified due dates of this Purchase Order shall be strictly adhered to and shall not be modified without the written acceptance of the Buyer. Seller shall report delays immediately to the Buyer. Buyer reserves the right to cancel this Purchase Order if Seller's order acknowledgement is unsatisfactory or if shipments are not made as requested.
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- 15. LAW OF THE CONTRACT** - This PO shall be governed by and interpreted in accordance with the laws of the State of South Carolina.

13. ENTIRE AGREEMENT – This Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. No changes shall be made unless in writing and duly signed by an authorized representative of both Buyer and Seller.

Justice in all its **DIMENSIONS**

 DICELLO LEVITT

Even if they applied
(which they do not),
TEC's terms and
conditions do not
contain an arbitration
provision

TEC's terms and conditions
that U.S. Pipe relies upon in
its motion do not contain
or reference any arbitration
provision.

TEC's Terms and Conditions do not Contain an Arbitration Provision

WARRANTY: TEC is a reseller of goods only, and as such does not provide any warranty for the goods it supplies hereunder. SOLE AND EXCLUSIVE WARRANTY, IF ANY, ON GOODS SOLD BY TEC, IS THAT PROVIDED BY THE GOODS MANUFACTURER. TEC MAKES NO EXPRESSED OR IMPLIED WARRANTIES. TEC HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT WILL TEC BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIR OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE GOODS SOLD BY TEC. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL TEC'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE GOOD(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE GOODS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS SPECIFICALLY SET FORTH IN THIS PARAGRAPH, ALL GOODS AND/OR SERVICES PROVIDED BY TEC, ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS", "WHERE IS" AND "WITH ALL FAULTS".

Justice in all its **DIMENSIONS**

Even if they applied
(which they do not),
Hayes' terms and
conditions do not contain
an arbitration provision

The terms and conditions
of Hayes that U.S. Pipe
relies upon in its motion do
not contain or reference
any arbitration provision.

Hayes' Terms and Conditions do not Contain an Arbitration Provision

SELLER DOES NOT EXPRESSLY OR IMPLIEDLY WARRANT ANY PRODUCTS SOLD TO BUYER TO BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE, NOR SHALL SELLER BE LIABLE FOR ANY DAMAGES, CONSEQUENTIAL OR INCIDENTAL, THAT MAY OCCUR FROM THE SALE,

INSTALLATION, OR USE OF ANY PRODUCTS SOLD TO BUYER, ALL WARRANTIES ARE LIMITED TO THE WARRANTIES PROVIDED BY THE MANUFACTURER OF THE PRODUCTS. PRODUCTS ARE INTENDED FOR USE AND INSTALLATION AS DESCRIBED IN THE MANUFACTURER'S WRITTEN RECOMMENDATIONS. ANY DEFECTS CAUSED BY IMPROPER USE OR INSTALLATION VOIDS ANY AND ALL WARRANTIES EXPRESSED OR IMPLIED BY SELLER OR SELLER'S VENDORS EXCEPT THE WARRANTY OF TITLE. ANY PRIOR EXPRESSED OR IMPLIED WARRANTIES OR SERVICE / INSTALLATION INSTRUCTIONS ARE SUPERSEDED BY THIS PROVISION.

Greenville Water did not otherwise agree to be bound by U.S. Pipe's Terms and Conditions of Sale

- “[A] presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.” *Wilson*, 426 S.C. at 337-38 (emphasis in original).
- The party seeking arbitration has “the burden of proving the existence of a valid agreement to arbitrate.” *BVW Holding AG*, 2024 WL 112281, at *2.
- Under South Carolina law, there must be competent record evidence of reasonable notice, acceptance, and mutual assent to establish a valid arbitration agreement. *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 241-43 (Ct. App. 2022).

Greenville Water did not otherwise agree to be bound by U.S. Pipe's Terms and Conditions of Sale

- Under the express terms of U.S. Pipe's Terms and Conditions of Sale, Greenville Water is not a party to the contract. The presumption *against* arbitration applies.
- U.S. Pipe presents *no* evidence of a valid agreement to arbitrate, let alone to rebut the presumption against arbitration.
- U.S. Pipe presents *no* evidence that Greenville Water ever saw U.S. Pipe's Terms and Conditions of Sale, much less assented to its terms.

Greenville Water did not otherwise agree to be bound by U.S. Pipe's Terms and Conditions of Sale

- “[T]he presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement or *the identity of the parties who may be bound to such an agreement.*” *Wilson v. Willis*, 426 S.C. 326, 337 (2019) (quoting *Carr v. Main Carr Development, LLC*, 337 S.W.3d 489, 496 (Tex. Ct. App. 2011) (emphasis in *Wilson*)).
- “Even the exceptionally strong policy favoring arbitration cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so.” *Id.*

Greenville Water did not otherwise agree to be bound by U.S. Pipe's Terms and Conditions of Sale

- U.S. Pipe does not get a presumption in favor of arbitration because Greenville Water is not bound to the agreement.
- In sum, Greenville Water has not agreed to forego a judicial remedy, and U.S. Pipe presents *no* evidence to the contrary.

Greenville Water did not otherwise agree to be bound by U.S. Pipe's Terms and Conditions of Sale

- Vague references to "warranties" and "terms" of the manufacturer in TEC's price quotations and invoices are not sufficient to place Greenville Water on reasonable notice of the arbitration provision.
- The documents: (1) do not contain a link to U.S. Pipe's Terms and Conditions of Sale; (2) do not otherwise provide the Terms and Conditions of Sale; (3) do not incorporate the Terms and Conditions of Sale; and (4) do not reference arbitration in any way.

Mere References to a Cancellation Fee Cannot Bind Greenville Water to Arbitration

TEC UTILITIES SUPPLY, INC. PO Box 25189
Greenville, SC 29616
854-288-0755

Quote Number: **1098272**
Quote Date: 6/25/2022 15:28:42 Page: 1 of 2
Quote Expires On: 9/24/2022

Bill To: 1851 Ship To:
Gre: drawn from our yard or it is delivered to a job
P.O. site. TEC Utilities Supply
City: will bill out at the end of every day that pipe is
854 drawn on. TEC Utilities
Supply expects payment within 30 days as
standard terms with 1.5% monthly
finance charge on all balances of unpaid
invoices. TEC Utilities Supply
will replensih our yard once a whole load of same
size pipe has been taken
off our yard., When mutually beneficial and GWS
has the capacity we may
redirect trucks to go straight to the jobsite from
the plant. If the pipe is
not used the manufacture has in it's terms for a
5% cancellation fee. TEC
Utilities Supply will only charge a cancellation fee
for unused pipe, if the
manufacture choses to exercise said term. The
U.S. Pipe representative has
verbally committed that they will not do this as
there are other consumers
inline to take said pipe.

30 Days
DELIVERY TRUCK
JCKER
Tucker
Est. Price

inline to take said pipe					
41,048.00	0.00	41,048.00 FT	POT35084C	23,4000 FT	960,336.00
4,905.00	0.00	4,900.00 FT	8 CL 35080 TJ DI PIPE	30 8200 FT	149,788.20
1.00	0.00	1.00 EA	POT35080C	0.0000 EA	0.00

8 CL 35080 TJ DI PIPE
8 CL350 TJ DI PIPE

Justice in all its **DIMENSIONS**



Mere Reference to TEC's Terms and Conditions of Sale (which do not contain an arbitration provision) Cannot Bind Greenville Water to Arbitration

TEC Utilities Supply, Inc.
 PO Box 25189
 Greenville, SC 29616
 Alt. Dept. Phone 864-288-5400

ORDER NUMBER: 2388272
 ORDER DATE: 9/14/2022
 PICK TICKET NUMBER: 3993346

TEC Utilities Supply, Inc.
 PO Box 25189
 Greenville, SC 29616
 864-288-6793

TEC UTILITIES SUPPLY, INC.

PROJ: STOCK / SHIP
 Greenville Water System
 1300 Clover St.
 Greenville, SC 29602

8801
 Greenville Water System
 P O Box 187
 Greenville, SC 29602
 864-241-6005

Order Date: 9/14/2022
 Order Number: 2388272
 Order Date: 9/14/2022

PICK TICKET 3993346
 Pick Date: 9/14/2022 09:57:39
 Page: 1 of 4
 Order Number: 2388272
 Order Date: 9/14/2022

PO #: 0021018
 VIA: TEC DELIVERY TRUCK
 FOB: Net 30 Days
 TERMS: NET 30 DAYS
 TAXES: FTUCKER
 SALESREP: Fred Tucker
 PICKED BY: JMS DATE: 7/1/23

Customer Name: 1553
 Greenville Water System
 P O Box 187
 Greenville, SC 29602
 EMAIL INVOICES

Customer Name: 1553
 Greenville Water System
 P O Box 187
 Greenville, SC 29602
 EMAIL INVOICES

Order Number: 2388272
 Order Date: 9/14/2022
 Order Number: 2388272
 Order Date: 9/14/2022

TERMS & CONDITIONS: Payment terms are NET 30 DAYS unless otherwise agreed to in writing. Service charges of 1-1/2% per month (1.8% per annum) will be billed to the buyer's account for all past due invoices. Special Order goods are non-cancellable, non-returnable. Returned goods may be subject to restocking fees and return freight. Buyer is hereby requested to provide TEC Utilities Supply, Inc. with the name and contact information of the designated lien agent for the project upon which these goods will be used. Please see full Terms and Conditions of Sale included with the Application for Credit.

Total Lines: 1						
	8,328.32	3.0	6 CL350/750 1/2 DRP	FT	8/21/22	204,520.82
			6 CL350/750 1/2 DR PIPE	FT	8/21/22	12,277.61
			886 PIGS	Qty:	8326.52 FT	6,028.30
Final Price:	8328.32	Final Lines:	Final weight:	141581.44	SUB-TOTAL:	204,520.82
					TAX:	12,277.61
					GRAND TOTAL:	216,904.43

WARNING: Effective 1/8/2011, it is unlawful to use any product in the installation or repair of any public water system or any plumbing in a facility or structure that provides water for human consumption (the actual surface of the product has a rough storage flat surface greater than 200). This prohibition also extends to repair and maintenance work under old permits, see 141.160.


TERMS & CONDITIONS: Payment terms are NET 30 DAYS unless otherwise agreed to in writing. Service charges of 1-1/2% per month (1.8% per annum) will be billed to the buyer's account for all past due invoices. Special Order goods are non-cancellable, non-returnable. Returned goods may be subject to restocking fees and return freight. Buyer is hereby requested to provide TEC Utilities Supply, Inc. with the name and contact information of the designated lien agent for the project upon which these goods will be used. Please see full Terms and Conditions of Sale included with the Application for Credit.

*** REPRINT ***

Justice in all its DIMENSIONS




Mere Reference to a Manufacturer Warranty in TEC's Terms and Conditions of Sale (which do not contain an arbitration provision) Cannot Bind Greenville Water to Arbitration



TEC UTILITIES SUPPLY, INC.
APPLICANT - GENERAL INFORMATION

LEGAL NAME: _____
 STREET ADDRESS: _____
 CITY: _____
 COUNTY: _____
 BILLING ADDRESS (if different): _____
 CITY: _____
 A/P PHONE: _____



APPLICATION FOR CREDIT
 PAGE 2 OF 2
 PLEASE RETURN TO: P. O. BOX 21528 GREENVILLE, SC 29615-0528
 TEL: 864.234.2018

TERMS AND CONDITIONS OF SALE

1. **GENERAL:** These Terms and Conditions (herein after referred to as "Terms") constitute an agreement between TEC Utilities Supply, Inc. (herein after referred to as "TEC") and the entity placing the order (herein after referred to as "Buyer"). The Terms contained herein along with the Terms and Conditions of Sale listed on TEC's Application for Credit constitute the entire agreement between the two parties. Any additional or different Terms and Conditions in any way altering or modifying those set forth herein are void and shall not be binding on TEC unless specifically agreed to in writing by TEC's authorized representatives. No alterations or modifications of these Terms shall be made by TEC's shipment of goods following receipt of Buyer's purchase order, or other documents containing additional conflicting or inconsistent terms. There are no terms, conditions, understandings or agreements other than those contained herein.

2. **PRICING:** From TEC's website, catalogs, or quotes are subject to change without notice, and all such prices apply to become a valid final accepted written order unless otherwise stated by TEC or in writing. Price variations, if made, are for Buyer's convenience only, and shall in no way

5. WARRANTY: TEC is a reseller of goods only, and as such does not provide any warranty for the goods it supplies hereunder. **SOLE AND EXCLUSIVE WARRANTY, IF ANY, ON GOODS SOLD BY TEC, IS THAT PROVIDED BY THE GOODS MANUFACTURER. TEC MAKES NO EXPRESSED OR IMPLIED WARRANTIES. TEC HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT WILL TEC BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIR OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE GOODS SOLD BY TEC. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL TEC'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE GOOD(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE GOODS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS SPECIFICALLY SET FORTH IN THIS PARAGRAPH, ALL GOODS AND/OR SERVICES PROVIDED BY TEC, ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS", "WHERE IS" AND "WITH ALL FAULTS".**

TRADE:

The undersigned certifies the following: (a) The applicant is owner of a valid commercial credit account for the Applicant (b) The undersigned is authorized person to sign and accept of responsibility for the information concerning TEC's credit experience with Applicant (c) The undersigned is aware of any material change to the information provided and will notify TEC of any material change to the information provided at _____

Signature: _____

In consideration of TEC extending credit to Applicant, the undersigned hereby certifies that the undersigned is the authorized person to sign and accept of responsibility for the information concerning TEC's credit experience with Applicant. (d) The undersigned agrees to be an authorized representative of the undersigned and to be bound by any and all terms and conditions of sale and any other documents which may be required by TEC and to be bound by any and all terms and conditions of sale and any other documents which may be required by TEC and to be bound by any and all terms and conditions of sale and any other documents which may be required by TEC.

Signature: _____

By both TEC and Buyer, TEC reserves the right to demand payment in full including any and all interest charges accrued on Buyer's account at any time after the first invoice charge has expired. The Buyer also agrees that should legal proceedings be initiated by TEC to collect any sums due for credit extended to Buyer, the Buyer will pay all costs of collection including TEC's reasonable attorney fees and court costs incurred prior, through trial, on appeal, and in any administrative or bankruptcy proceedings not to exceed 25% of the total amount due. If Buyer fails to comply with these Terms, TEC may terminate or suspend any order immediately upon notice to the Buyer. Buyer certifies that it is solvent and that it will advise TEC immediately if it becomes insolvent. Buyer agrees to send TEC, within notice of any change in the form of ownership of Buyer's business within 30 days of such change. Buyer and TEC are the only parties to this document, and there are no third party beneficiaries.

9. **ASSIGNMENT RESTRICTIONS:** Buyer shall not assign, subcontract, or otherwise transfer its interest in this goods and services account to any other party without the prior written consent of TEC. Any such assignment, subcontract, or other transfer shall be null and void and shall not be binding on TEC.

10. **DEFERRED PAYMENT:** Service charges will be billed to Buyer's account at the rate of 1.125% per month (15% per annum), or the maximum rate permitted by applicable law, as of the date 30 days after the invoice date.

11. **BUYER'S OBLIGATIONS:** Returned checks will result in a 30-day delinquency charge to the Buyer's account as an additional charge to Buyer's invoice.

12. **GOVERNING LAW:** These Terms, Buyer's equipment, and its location shall be governed by the laws of the state of South Carolina without regard to conflicts of laws rules. The parties agree that any legal action arising under or related to these Terms shall be brought in Greenville County, South Carolina, and any legal action shall be subject to the jurisdiction of such County or court.

13. **ENTIRE AGREEMENT:** The validity of enforceability of all or part of these Terms shall not affect the validity or enforceability of the other terms. Both TEC and Buyer agree to defend, maintain or coordinate with each other with all actions and suits that arise out of these Terms and conditions of sale and any other documents which may be required by TEC.

The following provisions shall survive termination, cancellation, and completed performance of the Terms and Conditions of Sale insofar as they relate to the agreed party to fully perform such issues: 1, 6, 8, 9, 10, 11, and 12.

ALL WRITTEN CORRESPONDENCE AND PAYMENTS SHOULD BE SENT TO:
 TEC Utilities Supply, Inc.
 P. O. Box 21528
 Greenville, SC 29615-0528

Justice in all its DIMENSIONS



Greenville Water Did Not Otherwise Agree to be Bound by U.S. Pipe's Terms and Conditions of Sale

- ✘ U.S. Pipe must show that Greenville Water knew of the arbitration provision in the Terms and Conditions of Sale on U.S. Pipe's website prior to this litigation.
- ✘ U.S. Pipe must show that Greenville Water purchased ductile iron pipe directly from U.S. Pipe using U.S. Pipe's website. *Id.*

Greenville Water Did Not Otherwise Agree to be Bound by U.S. Pipe's Terms and Conditions of Sale

- ✘ U.S. Pipe must show that Greenville Water was otherwise put on reasonable notice of the arbitration provision in U.S. Pipe's Terms and Conditions of Sale.
- ✘ U.S. Pipe must show that TEC or Hayes informed Greenville Water of the arbitration provision in U.S. Pipe's Terms and Conditions of Sale.
- ✘ U.S. Pipe must show that TEC or Hayes incorporated U.S. Pipe's arbitration provision into an agreement with Greenville Water.

Greenville Water Did Not Otherwise Agree to be Bound by U.S. Pipe's Terms and Conditions of Sale

Since Greenville Water is not a party to U.S. Pipe's Terms and Conditions of Sale, and because Greenville Water did not otherwise agree to be bound by U.S. Pipe's Terms and Conditions of Sale, U.S. Pipe is left with one potential option to enforce the arbitration provision against Greenville Water: a direct benefits estoppel theory.

Greenville Water does not seek to derive *any* benefit from U.S. Pipe's Terms and Conditions of Sale

- Under direct benefits estoppel, “[a] nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Wilson*, 426 S.C. at 338 (quoting *Malloy v. Thompson*, 409 S.C. 557, 561-62 (2014)).
- “A Benefit is direct if it flows directly from the agreement.” *Blackwell v. Mary Black Health System, LLC*, No. 2020-001613, 2024 WL 4234719, at *4 (S.C. Ct. App. Sept. 18, 2024).
- Generally, cases in which estoppel is applied involve “non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *Blackwell*, 2024 WL 4234719, at *4.

Greenville Water does not seek to derive *any* benefit from U.S. Pipe's Terms and Conditions of Sale

- Greenville Water does not receive a direct benefit from U.S. Pipe's Terms and Conditions of Sale. Greenville Water has not sought to invoke any warranty provision in U.S. Pipe's Terms and Conditions of Sale at any point.
- Greenville Water's Complaint neither references nor asserts claims arising out of U.S. Pipe's Terms and Conditions of Sale.

Greenville Water does not seek to derive *any* benefit from U.S. Pipe's Terms and Conditions of Sale

- Greenville Water's claims against U.S. Pipe arise under general principles of South Carolina law and flow directly from promises made in U.S. Pipe's Certificate of Product Compliance—not U.S. Pipe's Terms and Conditions of Sale.
- Greenville Water has not embraced U.S. Pipe's Terms and Conditions of Sale; Greenville Water did not know that they even existed until this litigation commenced.

One Belle Hall Prop. Owners Ass'n v. Trammell Crow Residential Co., 418 S.C. 51 (Ct. App. 2016) Does Not Apply

- ✘ *One Belle Hall* did not address direct benefits estoppel at all.
- ✘ The plaintiff in *One Belle Hall* did not dispute the agreement containing the arbitration provision applied; it only asserted the contract was unconscionable. See Memorandum in Opposition to Motion to Compel Arbitration, 2014 WL 12569298; 2014 WL 12351897.

One Belle Hall Prop. Owners Ass'n v. Trammell Crow Residential Co., 418 S.C. 51 (Ct. App. 2016) does not apply

- ✘ The *One Belle Hall* court held only that the circuit court erred in finding the arbitration provision at issue was unconscionable. 418 S.C. at 65.
- ✘ A warranty claim was initiated under the agreement by a developer hired by the plaintiff for the plaintiff's benefit. 418 S.C. 58.

Pearson v. Hilton Head Hosp., 400 S.C. 281 (Ct. App. 2012) Does Not Apply

- ✘ The plaintiff in *Pearson* was a party to a contract with the placement agency that contained an arbitration provision. 400 S.C. at 286.
- ✘ The plaintiff in *Pearson* knowingly accepted a benefit under the contract between the placement agency and the hospital through his employment at the hospital. 400 S.C. at 297.
- ✘ The plaintiff in *Pearson* sought to use the contracts with the arbitration provisions to hold the Hospital liable. 400 S.C. at 297.

International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411 (4th Cir. 2000) Does Not Apply

- ✘ In *International Paper Co.* the contract with the arbitration provision provided "part of the factual foundation for every claim asserted" by the plaintiff. 206 F.3d at 418.
- ✘ The plaintiff in *International Paper Co.* alleged that the defendant failed to honor the warranties contained in the contract and sought damages, revocation, and rejection "in accordance with" the contract. 206 F.3d at 418.
- ✘ The plaintiff's "entire case" in *International Paper Co.* "hinge[d] on its asserted rights under the . . . contract." 206 F.3d at 418.

Wilson v. Willis, 426 S.C. 326 (2019) Dictates That Direct Benefits Estoppel Does Not Apply

- ✓ General principles of South Carolina law formed the basis of the plaintiffs' claims. *Wilson*, 426 S.C. at 342.
- ✓ The plaintiffs could not have sought to derive a benefit from the contract because they were "never aware of the existence of the contract" until they initiated litigation. *Wilson*, 426 S.C. at 342.
- ✓ Direct benefits estoppel did not apply simply because the plaintiffs' claims "relate[d] to or would not have arisen 'but for' [the] contract's existence[.]" *Wilson*, 426 S.C. at 343.

Wilson v. Willis, 426 S.C. 326 (2019) Dictates That Direct Benefits Estoppel Does Not Apply

- ✓ A benefit is indirect when a non-signatory merely alleges a contractual relationship between the parties, *i.e.*, an implied contract, but does not “not exploit (and thereby assume) the agreement itself[.]” 426 S.C. at 342-43.
- ✓ The plaintiffs did not attempt to procure any direct benefit from the contract itself, while, at the same time, attempting to avoid the arbitration provision. *Wilson*, 426 S.C. at 343-44.
- ✓ “Equitable estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly.” *Wilson*, 426 S.C. at 345. Principles of equity did not warrant estopping the plaintiff from asserting its non-signatory status.

U.S. Pipe's Terms and Conditions of Sale cannot be enforced against Greenville Water, because doing so would be unconscionable

- Unconscionability is “the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25 (2007).
- “A party cannot assent to something he does not know about, so the law in general requires that for an offer to be effective, the responding party must have reasonable notice of the offer’s terms.” *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 242 (Ct. App. 2022).
- “It cannot be the case that a manufacturer can simply post warranty terms on its website and bind any and all downstream purchasers of its products.” *Zajac, LLC v. Walker Industrial and Truck, Inc.*, No. 2:15-cv-00507-GZS, 2016 WL 9021492, at *1 (D. Me. Mar. 21, 2016).

U.S. Pipe's Terms and Conditions of Sale cannot be enforced against Greenville Water, because doing so would be unconscionable

- Greenville Water had no meaningful choice in negotiating the terms of U.S. Pipe's Terms and Conditions of Sale.
- Greenville Water could not have assented to the terms of U.S. Pipe's Terms and Conditions of Sale because it was never placed on reasonable notice of them prior to this litigation.
- U.S. Pipe cannot bind all downstream purchasers of its products to its Terms and Conditions of Sale simply by posting them on its website.

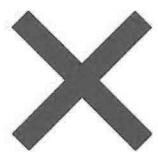
U.S. Pipe's Terms and Conditions of Sale cannot be enforced against Greenville Water, because doing so would be unconscionable

- “[T]he fact that a contract has been negotiated in a commercial setting is not dispositive on the issue of unconscionability.” *South Carolina Elec. & Gas Co. v. Westinghouse Elec. Corp.*, 826 F. Supp. 1549, 1554 (D.S.C. 1993)
- While contracts terms between two sophisticated parties are not generally found to be unconscionable, they must “have been negotiated at arms-length[.]” *South Carolina Elec. & Gas Co.*, 826 F. Supp. at 1554.
- While adhesion contracts are not *per se* unconscionable, courts look upon them with “considerable skepticism” because they raise “considerable doubt that any true agreement ever existed to submit disputes to arbitration.” *Simpson*, 373 S.C. at 36-27.

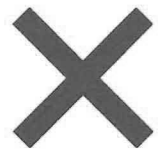
U.S. Pipe's Terms and Conditions of Sale cannot be enforced against Greenville Water, because doing so would be unconscionable

- The fact that Greenville Water is a commercial entity is not dispositive on the issue of unconscionability.
- There was no arm's-length negotiation between Greenville Water and U.S. Pipe because Greenville Water never purchased ductile iron pipe directly from U.S. Pipe.
- Because there was no arm's-length negotiation between Greenville Water and U.S. Pipe, U.S. Pipe's Terms and Conditions of Sale is an unconscionable adhesion contract.

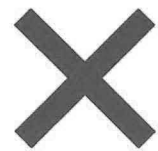
U.S. Pipe's Terms and Conditions of Sale Cannot be Enforced Against U.S. Pipe Because it Would be Unconscionable



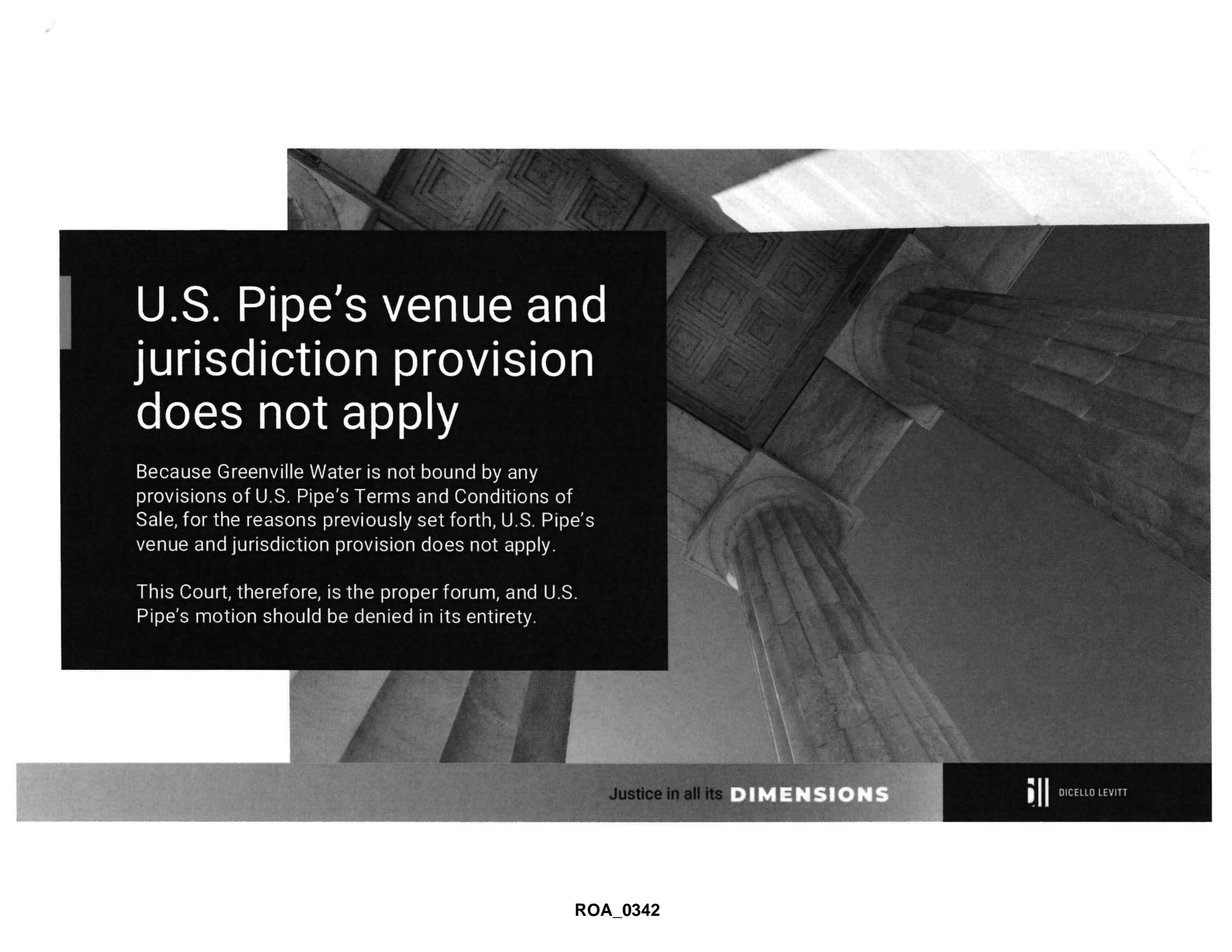
U.S. Pipe asserts that Greenville Water is subject to the arbitration provision in its Terms and Conditions of Sale simply by the fact that U.S. Pipe posted the Terms and Conditions of Sale on its website.



U.S. Pipe asserts that Greenville Water is subject to the arbitration provision in its Terms and Conditions of Sale, despite having not been placed on reasonable notice of its existence, because Greenville Water is a "sophisticated purchaser."



U.S. Pipe provides no evidence of an arm's-length negotiation between Greenville Water and U.S. Pipe, because none exists.



U.S. Pipe's venue and jurisdiction provision does not apply

Because Greenville Water is not bound by any provisions of U.S. Pipe's Terms and Conditions of Sale, for the reasons previously set forth, U.S. Pipe's venue and jurisdiction provision does not apply.

This Court, therefore, is the proper forum, and U.S. Pipe's motion should be denied in its entirety.

Justice in all its **DIMENSIONS**

 DICELLO LEVITT



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Mar 14 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

2024-CP-23-05956

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.

NOTICE OF APPEAL

United States Pipe and Foundry Company LLC (“U.S. Pipe”) appeals the Order filed February 25, 2025 denying U.S. Pipe’s Motion to Dismiss or Stay Pending Arbitration. A copy of the Order is attached to this Notice. U.S. Pipe received written notice of the Order on February 25, 2025.

South Carolina case law provides that “[a]n order denying arbitration is immediately appealable.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013); *see also Towles v. United HealthCare Corp.*, 338 S.C. 29, 34-35, 524 S.E.2d 839, 842 (Ct. App. 1999) (noting section 16 of the FAA explicitly provides for an appeal from an order denying a motion to compel arbitration and finding that the circuit court’s order refusing to compel

arbitration was immediately appealable); *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740, 143 S. Ct. 1915, 1919, 216 L.Ed. 2d 671 (2023) (“Congress provided for immediate interlocutory appeals of orders denying—but not of orders granting—motions to compel arbitration.”). Therefore, this appeal is ripe for the Court’s review and consideration.

Date: March 14, 2025
Greenville, South Carolina

Beattie B. Ashmore, P.A.

By: /s/ Beattie B. Ashmore
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Mar 14 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

2024-CP-23-05956

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.

PROOF OF SERVICE

I hereby certify that on the date indicated below, I have caused a copy of United States Pipe and Foundry Company LLC’s Notice of Appeal to be served on the below persons, via email.

The Honorable Jenny Abbott Kitchings
Clerk of Court
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*Attorney for United States Pipe and Foundry
Company LLC*

Dated this 14th day of March 2025

/s/ Beattie B. Ashmore
Beattie B. Ashmore

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF GREENVILLE, SOUTH
CAROLINA,

Case No.: 2024CP2305956

Plaintiff,

v.

UNITED STATES PIPE AND FOUNDRY
COMPANY LLC, TEC UTILITIES SUPPLY
INC., and HAYES PIPE SUPPLY INC.,

Defendants.

ORDER

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Mar 14 2025

SC Court of Appeals

This matter comes before the Court upon Defendant United States Pipe and Foundry Company LLC's ("U.S. Pipe") Motion to Dismiss or Stay Pending Arbitration.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from U.S. Pipe's alleged manufacture of ductile iron pipe with defective cement-mortar lining at its Lynchburg, Virginia facility and its sale of the defective cement-mortar-lined pipes through its distributors, Defendants TEC Utilities Supply Inc. ("TEC") and Hayes Pipe Supply Inc. ("Hayes"), to Plaintiff Commissioners of Public Works of the City of Greenville, South Carolina ("Greenville Water"). Compl., ¶ 1. Greenville Water asserts claims against U.S. Pipe for declaratory relief and damages, including the following: (1) Declaratory Judgment against U.S. Pipe pursuant to South Carolina Code §§ 15-53-10, *et seq.*; (2) Breach of Express Warranty; (3) Breach of Implied Warranty of Merchantability; (4) Breach of Implied Warranty of Fitness for a Particular Purpose; (5) Breach of Implied Contract; (6) Violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.*; and (7) in the alternative, Unjust Enrichment.

A. Greenville Water's Complaint

Greenville Water alleges that Cement-mortar-lined ductile iron pipe is industry standard in the waterworks industry because the cement-mortar-lining prevents water from reacting with the iron contained in the pipes. Compl., ¶ 2. Ductile iron pipe that does not have cement-mortar lining results in numerous problems, including deterioration of water quality, decreased functionality of and damage to water distribution systems, and decreased life expectancy of the pipe, resulting in lost revenue and reputational harm. *Id.* at ¶¶ 10, 37-44. As a result, industry standards and South Carolina law require all ductile iron pipes used for water service to have cement-mortar-lining that is of a minimum uniform thickness. *Id.* at ¶¶ 4, 27-36.

The American Water Works Association (“AWWA”) is a non-profit, scientific, and educational association, founded to improve water quality, that issues industry standards approved by the American National Standards Institute (“ANSI”). *Id.* at ¶ 4. The AWWA standard for cement-mortar-lined ductile iron pipe requires cement mortar lining to have a uniform thickness of 1/16-inch throughout the length of all 3-inch to 12-inch ductile iron pipe (“ANSI/AWWA Standard C104/A21.4”). *Id.* The purpose of this standard is to ensure water quality and safety. *Id.* Both the South Carolina Plumbing Code and Safe Drinking Water Act as well as Greenville Water’s design and construction specifications require all water service ductile iron pipes to be cement-mortar-lined in compliance with ANSI/AWWA Standard C104/A21.4. *Id.* at ¶ 5.

U.S. Pipe’s marketing and promotional materials tout that its ductile iron pipe fabrication “meets or exceeds” the latest revision of ANSI/AWWA Standard C104/A21.4. *Id.* at ¶ 6. U.S. Pipe also issued a Certificate of Product Compliance to Greenville Water that certified that the Defective Pipes complied with ANSI/AWWA C104/A21.4. *Id.* Despite U.S. Pipe’s marketing and promotional representations and Certificate of Product Compliance to Greenville Water,

Greenville Water alleges that the pipe U.S. Pipe manufactured does not meet ANSI/AWWA Standard C104/A21.4. *Id.*

During a construction project, Greenville Water discovered that a substantial quantity of ductile iron pipe manufactured at U.S. Pipe's Lynchburg, Virginia facility (and purchased indirectly through TEC and Hayes) did not comply with industry standards because the cement-mortar-lining was concentrated almost entirely on one side of the pipe. *Id.* at ¶¶ 8, 53-60. Upon discovery of the defect, Greenville retained an outside engineering firm to test pipe from U.S. Pipe's Lynchburg, Virginia facility across numerous deliveries and batches, which Greenville Water alleges showed that more than 70% of the pipe tested failed to comply with industry standards. *Id.* at ¶¶ 56-57.

Greenville Water alleges that the defective cement-mortar-lined ductile iron pipe will cause numerous problems—all leading to a loss of consumer confidence, reputational harm, and, ultimately, lost revenue—including, among others: increased corrosion causing deterioration of water quality; build-up of corrosive material causing water pressure problems; damage to infrastructure caused by cement-mortar breaking-off from the pipes and causing pipe clogs; and proliferation of numerous types of bacteria due to loose cement, which can be harmful to human health if allowed to reach unsafe levels. *Id.* at ¶ 10.

Greenville Water alleges that, from October 2022 through May 2023, Greenville Water regularly purchased ductile iron pipe with cement-mortar lining from U.S. Pipe, through distributors TEC and Hayes, much of which was manufactured at U.S. Pipe's Lynchburg, Virginia facility. *Id.* at ¶ 61. Since October 2022, Greenville Water has purchased approximately \$330,000.00 worth of uninstalled pipe presently being stored at its storage facility and more than 100,000 feet of cement-mortar-lined ductile iron pipe manufactured at U.S. Pipe's Lynchburg,

Virginia facility was installed in Greenville Water's water distribution system. *Id.* at ¶ 62. Additionally, prior to October 2022, a substantial amount of cement-mortar-lined ductile iron pipe manufactured at U.S. Pipe's Lynchburg, Virginia facility was purchased and installed in Greenville Water's distribution system by Greenville Water and contractors of Greenville Water. *Id.* at ¶ 64.

In addition to declaratory relief, Greenville Water seeks benefit of the bargain damages for the difference between what it paid in consideration for the defective pipes and what it actually received, consequential damages for the cost of removing and replacing the defective pipes presently installed in its water distribution system, and punitive damages for U.S. Pipe's deceptive and unfair trade practices. *Id.* at ¶ 67.

B. U.S. Pipe's Motion to Compel Arbitration.

U.S. Pipe asserts that its sale of ductile iron pipe is "expressly conditioned" on Greenville Water's acceptance of U.S. Pipe's Terms and Conditions of Sale, which it asserts are readily available on its website to anyone with access to the Internet. U.S. Pipe Motion at 3; *see also* Exhibit A to U.S. Pipe's Motion. U.S. Pipe's Terms and Conditions of Sale contain the following arbitration provision:

ARBITRATION; CONSENT TO VENUE. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, including the arbitrability thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with the then-current Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. No dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person, and any arbitrator attempting such a proceeding shall be deemed to have exceeded the powers available under the Federal Arbitration Act. Claims shall be heard by a single arbitrator in Dallas County, Texas. In the event that this arbitration provision is deemed invalid or inapplicable for any reason, in whole or in part, the parties agree that the venue and jurisdiction for any proceedings arising out of or related to the Agreement shall lay exclusively in the state and federal courts of Dallas County, Texas to which jurisdiction each party irrevocably consents and waives any

objection or defense that it is not subject to personal jurisdiction in such venue or that the forum is inconvenient.

Mot. at 3.

U.S. Pipe asserts that, even though Greenville Water purchased ductile iron pipe through its distributors, TEC and Hayes, invoices and pick tickets used by TEC and Hayes “reference the terms & conditions applicable to the sale.” *Id.* at 3-4. U.S. Pipe also asserts that, as a sophisticated purchaser, Greenville Water had knowledge of the Terms and Conditions of Sale. *Id.* at 4. In support of its assertion that Greenville Water was placed on notice of U.S. Pipe’s Terms and Conditions of Sale through TEC and Hayes, U.S. Pipe points to: (1) unspecified terms contained in warranty provisions in TEC’s and Hayes’ respective terms and conditions that U.S. Pipe alleges are applicable to Greenville Water’s relationships with TEC and Hayes; (2) a reference to a manufacturer “cancellation fee” contained in an invoice TEC allegedly provided to Greenville Water; (3) a reference to TEC’s full terms and conditions contained in a pick ticket TEC allegedly provided to Greenville Water; and (4) and a provision contained in TEC’s terms and conditions that states “Sole and exclusive warranty, if any, on goods sold by TEC, is that provided by the goods manufacturer.” U.S. Pipe Reply Memorandum at 2-3; *see also* Exhibits A-C to U.S. Pipe’s Reply Memorandum.

U.S. Pipe asserts there is a policy in South Carolina to favor arbitration of disputes where an agreement to arbitrate exists and that Greenville Water is subject to U.S. Pipe’s Terms and Conditions of Sale. U.S. Pipe’s Motion at 7-8. U.S. Pipe further asserts that the arbitration provision contained in its Terms and Conditions of Sale is not unconscionable and is enforceable against Greenville Water. *Id.* at 10. Finally, U.S. Pipe asserts that, even if Greenville Water is not a party to U.S. Pipe’s Terms and Conditions of Sale, Greenville Water should be estopped from

repudiating the arbitration provision because Greenville Water derives a direct benefit from the warranty contained in U.S. Pipe's Terms and Conditions of Sale. *Id.* at 9-10.

Greenville Water asserts that it is a non-party to U.S. Pipe's Terms and Conditions of Sale because it never purchased ductile iron pipe directly from U.S. Pipe and did not otherwise agree to be bound by U.S. Terms and Conditions of Sale because it had no knowledge of the terms, including the arbitration provision, prior to this litigation. Greenville Water's Memorandum in Opposition at 7-9. Specifically, Greenville Water asserts that it does not meet the definition of the term "Buyer," as that term is expressly defined by the Terms and Conditions of Sale, and, therefore, Greenville Water is not a party to the "Agreement," as that term is expressly defined by the Terms and Conditions of Sale. *Id.* Greenville Water further asserts that it cannot be a third-party beneficiary to U.S. Pipe's Terms and Conditions of Sale because the terms expressly provide that "Buyer and Seller are the only intended beneficiaries of this document, and there are no third party beneficiaries." *Id.* at 8. Greenville Water asserts that it cannot be subjected to arbitration under a direct benefits estoppel theory because it has not and does not seek to derive any benefit from the Terms and Conditions of Sale, of which it was not aware prior to this litigation. *Id.* at 9-12. Lastly, Greenville Water asserts that, even if it were a party to U.S. Pipe's Terms and Conditions of Sale, the arbitration provision cannot be enforced against Greenville Water because the provision is an unconscionable adhesion contract. *Id.* at 12-14.

C. The Evidence Submitted

In support of its motion to compel arbitration, U.S. Pipe submits a copy of its Terms and Conditions of Sale containing the arbitration provision at issue. *See* Exhibit A to U.S. Pipe's Motion. In its Reply Memorandum, U.S. Pipe also submits invoices and pick tickets allegedly

provided to Greenville Water by TEC that contain alleged references to U.S. Pipe's Terms and Conditions of Sale, as identified above. *See* Exhibits A-C to U.S. Pipe's Reply Memorandum.

In opposition to U.S. Pipe's motion to compel arbitration, Greenville Water submits the affidavit of its Chief Administrative Officer, Robert Schmidt. *See* Exhibit 1 to Greenville Water's Memorandum in Opposition. Among other averments, Mr. Schmidt avers that Greenville Water has never purchased ductile iron pipe directly from U.S. Pipe, Greenville Water has never looked at or otherwise been notified of U.S. Pipe's Terms and Conditions of Sale, and Greenville Water did not agree to arbitrate any disputes with U.S. Pipe. *Id.* Greenville Water also submits its purchase orders with TEC and Hayes that it alleges contain the terms and conditions (which include no warranty limitations or arbitration provision) applicable to its relationships with TEC and Hayes. *See* Exhibits 2-3 to Greenville Water's Memorandum in Opposition.

II. LEGAL STANDARD

The threshold issue in determining arbitrability is "whether a valid, binding arbitration agreement exists in the first place." *BVW Holding AG v. Hoowaki, LLC*, No. 2021-001168, 2024 WL 112281, at *2 (S.C. Ct. App. Jan. 10, 2024). "[W]here one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place." *Id.* (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22 (2007)). If no agreement exists, "the court must deny any application to arbitrate." *Id.*

"Although arbitration is viewed favorably by the courts, it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts." *Wilson v. Willis*, 426 S.C. 326, 337 (2019); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596 (2001). "[T]he presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement *or the identity of the parties who may be bound to*

such an agreement.” *Wilson*, 426 S.C. at 337 (quoting *Carr v. Main Carr Development, LLC*, 337 S.W.3d 489, 496 (Tex. Ct. App. 2011) (emphasis in *Wilson*)). “Even the exceptionally strong policy favoring arbitration cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so.” *Id.*

III. FINDINGS OF FACT AND LEGAL ANALYSIS

A. Greenville Water is a Nonsignatory to U.S. Pipe’s Terms and Conditions of Sale

U.S. Pipe asserts that Greenville Water is a party to its Terms and Conditions of Sale and is, therefore, subject to the arbitration provision contained therein. The party seeking arbitration has “the burden of proving the existence of a valid agreement to arbitrate.” *BVW Holding AG*, 2024 WL 112281, at *2. Arbitration, while favored, exists solely by agreement of the parties, and a party “cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000). Therefore, “a presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate.” *Wilson*, 426 S.C. at 337-38 (emphasis in original).

After fully reviewing the evidence submitted and arguments made by the parties, the Court finds that Greenville Water is a nonsignatory to U.S. Pipe’s Terms and Conditions of Sale and, therefore, a “presumption *against* arbitration” applies. *Wilson*, 426 S.C. at 337-38 (emphasis in original). U.S. Pipe’s Terms and Conditions of Sale expressly provide that the “Agreement” applies only to a “Buyer” that purchases products from “Seller,” which is defined as “U.S. Pipe and Foundry Company, LLC, Griffin Pipe Products Co., and U.S. Pipe Fabrication, LLC.” *See* Exhibit A to U.S. Pipe’s Motion at 1. Greenville Water has submitted evidence, namely the affidavit of Mr. Schmidt, that establishes that Greenville Water has never purchased ductile pipe

from any of these entities. *See* Exhibit 1 to Greenville Water’s Memorandum in Opposition at ¶¶ 5-6. U.S. Pipe has failed to submit any contrary evidence, showing that Greenville Water has purchased ductile iron pipe directly from U.S. Pipe, Griffin Pipe Products Co., or U.S. Pipe Fabrication, LLC. Based on the record before the Court, Greenville Water is, therefore, not a “Buyer” under the express terms of U.S. Pipe’s Terms and Conditions of Sale.

Further, under U.S. Pipe’s Terms and Conditions of Sale, the term “Agreement” means the agreement between “Buyer” and “Seller.” *See* Exhibit A to U.S. Pipe’s Motion at 1. The arbitration provision expressly provides that it applies only to claims arising out of or relating to the “Agreement.” *Id.* at 6-7. But, because Greenville Water is not a “Buyer,” its claims do not arise out of or relate to any “Agreement” with “Seller.” And under the express terms of U.S. Pipe’s Terms and Conditions of Sale, Greenville Water cannot be a third-party beneficiary and cannot be subject to arbitration on that basis. *See Id.* at 7. Accordingly, the Court finds that, under the express terms of U.S. Pipe’s Terms and Conditions of Sale, Greenville Water is a nonsignatory to the contract and a “presumption *against* arbitration” applies. *Wilson*, 426 S.C. at 337-38 (emphasis in original).

B. U.S. Pipe has Failed to Otherwise Establish a Valid Agreement to Arbitrate.

U.S. Pipe asserts that Greenville Water has agreed to arbitrate its claims with U.S. Pipe by virtue of certain terms contained in documents provided to Greenville Water by TEC and Hayes. Whether the parties have formed an agreement to arbitrate is determined by applying South Carolina contract law. *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 241-43 (Ct. App. 2022). Under South Carolina law, there must be competent record evidence of reasonable notice, acceptance, and mutual assent to establish a valid arbitration agreement. *Id.*

The Court finds that Greenville Water was not placed on reasonable notice of U.S. Pipe’s arbitration provision and U.S. Pipe has failed to present evidence that Greenville Water otherwise

knew of and assented to the arbitration provision. Even assuming that the terms and conditions of TEC and Hayes are applicable to their contractual relationship with Greenville Water (which Greenville Water disputes),¹ it is undisputed that those terms and conditions do not contain or reference an arbitration provision. Further, the documents submitted by U.S. Pipe in support of its argument do not contain a link to U.S. Pipe’s Terms and Conditions of Sale, do not otherwise provide the Terms and Conditions of Sale, do not incorporate the Terms and Conditions of Sale, and do not reference arbitration in any way. The Court finds that vague references in documents from TEC and Hayes to manufacturer warranties and cancellation fees are not sufficient to place Greenville Water on reasonable notice of the arbitration provision contained in U.S. Pipe’s Terms and Conditions of Sale. U.S. Pipe provides no authority to the contrary.

Greenville Water further presented evidence, through the affidavit of Mr. Schmidt, that establishes that Greenville Water has never purchased ductile iron pipe directly from U.S. Pipe, using its website or otherwise. *See* Exhibit 1 to Greenville Water’s Memorandum in Opposition at ¶¶ 5-6. Mr. Schmidt further avers that Greenville Water has never looked at or otherwise been notified—by U.S. Pipe, TEC, or Hayes—of U.S. Pipe’s Terms and Conditions of Sale, including, but not limited to, the warranty, arbitration, or venue provisions contained therein. *Id.* at ¶ 8; *see also Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 241-43 (Ct. App. 2022) (“A party cannot assent to something he does not know about, so the law in general requires that for an offer to be effective, the responding party must have reasonable notice of the offer’s terms.”). U.S. Pipe provides no evidence to the contrary that demonstrates the elements required for valid contract

¹ Because the Court finds that U.S. Pipe failed to place Greenville Water on reasonable notice of the arbitration provision and has not presented sufficient evidence of an agreement to arbitrate, the Court does not decide at this juncture the terms and conditions that are applicable to the contractual relationship between Greenville Water and TEC and Hayes.

formation under South Carolina law for purposes of establishing a valid arbitration provision. The Court thus finds that U.S. Pipe has failed to rebut the presumption against arbitration that is applied when a party is a nonsignatory to a contract containing an arbitration provision. *See Wilson*, 426 S.C. at 337-38.

C. Greenville Water Cannot be Forced to Arbitrate Under an Estoppel Theory.

U.S. Pipe asserts that, even if Greenville Water is a nonsignatory to its Terms and Conditions of Sale, Greenville Water can be compelled to arbitrate its claims under a direct benefits estoppel theory. Whether an arbitration agreement may be enforced against non-signatories, and under what circumstances, is an issue controlled by state law. *Wilson*, 426 S.C. at 338. South Carolina recognizes that non-signatories to arbitration agreements can potentially be bound in limited circumstances under an estoppel theory. *Id.* (citing *Malloy v. Thompson*, 409 S.C. 557, 561-62 (2014)). Equitable estoppel, however, “should be used sparingly” and only when necessary to prevent injustice. *Id.* at 345.

Under direct benefits estoppel, “[a] nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Id.* at 340 (quoting *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290 (2012)). “A benefit is direct if it flows directly from the agreement.” *Blackwell v. Mary Black Health System, LLC*, No. 2020-001613, 2024 WL 4234719, at *4 (S.C. Ct. App. Sept. 18, 2024). “In contrast, any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.” *Id.* Generally, cases in which estoppel is applied involve “non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *Id.* In other words, “[u]nder the direct

benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory ‘knowingly exploits’ the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement. . . .” *Wilson*, 426 S.C. at 340-41 (quoting *Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626, 977 N.Y.S.2d 685, 999 N.E.2d 1130, 1134 (2013)).

In support of its estoppel argument, U.S. Pipe relies primarily upon *One Belle Hall Prop. Owners Ass’n v. Trammell Crow Residential Co.*, 418 S.C. 51, 791 S.E.2d 286 (Ct. App. 2016). The Court finds that *One Belle Hall* is distinguishable from the present case. In *One Belle Hall*, unlike the present case, a warranty claim was initiated under the agreement containing the arbitration provision by a developer hired by the plaintiff for the plaintiff’s benefit. Further, the plaintiff in *One Belle Hall* did not dispute that the arbitration provision applied to its claims. It only asserted that the contract containing the provision was unconscionable. As a result, the *One Belle Hall* court did not address the issue of direct benefits estoppel at all. The court held only that the trial court erred in finding that the contract was unconscionable.

This case is more akin to the South Carolina Supreme Court’s decision in *Wilson v. Willis*, 426 S.C. 326, 337 (2019), which is binding upon this Court. In *Wilson*, the defendant sought to enforce an arbitration provision against the plaintiffs, who were non-signatories to the contract containing the arbitration provision. *See Wilson*, 426 S.C. at 338. In holding that the non-signatories were not bound to the arbitration agreement under an estoppel theory, the South Carolina Supreme Court emphasized that the plaintiffs were “never aware of the existence of the contract” until they initiated litigation and that general principles of South Carolina law formed the basis of most of the plaintiffs’ claims. *Id.* at 342. The Supreme Court further emphasized that “direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen ‘but for’ a contract’s existence[.]” *Id.* at 343. The court went on to distinguish between direct

benefits and indirect benefits and explained that a benefit is indirect “where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.” *Id.* at 343-44. Ultimately, the court held that the plaintiffs could not be bound by the arbitration provision because they did not “knowingly exploit[] and receive[] a direct benefit” from the contract containing the arbitration agreement. *Id.* at 344.

In the present case, like in *Wilson*, Greenville Water submits un rebutted evidence that it was unaware of U.S. Pipe’s Terms and Conditions of Sale prior to this litigation and, therefore, could not have sought to derive a benefit from the Terms and Conditions of Sale at the time its claims arose. Further, Greenville Water’s Complaint does not reference U.S. Pipe’s Terms and Conditions of Sale and none of Greenville Water’s claims arise from the Terms and Conditions of Sale.² Rather, the Complaint alleges Greenville Water’s warranty and implied contract claims arise out of affirmative representations made by U.S. Pipe in the Certificate of Product Compliance U.S. Pipe provided to Greenville Water. In other words, like in *Wilson*, general principles of South Carolina law form the basis of Greenville Water’s claims. And, contrary to U.S. Pipe’s assertions, Greenville Water’s implied contract claim against U.S. Pipe does not automatically subject Greenville Water to arbitration because Greenville Water “does not exploit (and thereby assume)” the Terms and Conditions of Sale. *Wilson*, 426 S.C. at 343-44. This is not a situation where Greenville Water seeks to derive a benefit from U.S. Pipe’s Terms and Conditions of Sale while, at the same time, attempting to repudiate the arbitration provision, which is the circumstance in

² For that reason, the other two cases upon which U.S. Pipe relies are distinguishable. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 297 (Ct. App. 2012) (holding the plaintiff accepted a benefit under the contract and sought to use the contract containing the arbitration provision to hold the defendant liable); *see also International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) (holding the contract containing the arbitration provision formed the factual foundation for every claim asserted by the plaintiff and that the plaintiff’s “entire case . . . hinge[d] on its asserted rights under the . . . contract”).

which direct benefits estoppel applies. *See Blackwell*, 2024 WL 4234719, at *4 (“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.”). Accordingly, the Court finds that considerations of equity and justice do not warrant estopping Greenville Water from asserting its nonsignatory status to U.S. Pipe’s Terms and Conditions of Sale. Greenville Water is, therefore, not subject to arbitration under an estoppel theory.

D. The Arbitration Agreement is an Unconscionable Adhesion Contract as to Greenville Water.

Greenville Water asserts that, even if it is subject to U.S. Pipe’s Terms and Conditions of Sale, the arbitration provision cannot be enforced because it is an unconscionable adhesion contract. Courts may invalidate arbitration agreements on general state law “contract defenses, such as fraud, duress, and unconscionability.” *Zabinski*, 346 S.C. at 593. In South Carolina, unconscionability is defined as “the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson*, 373 S.C. at 24-25. “In analyzing claims of unconscionability of arbitration agreements, the [U.S. Court of Appeals for the] Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decisionmaker.” *Id.* at 25. While adhesion contracts are not per se unconscionable, courts look upon them with “considerable skepticism” because they raise “considerable doubt that any true agreement ever existed to submit disputes to arbitration.” *Id.* at 26-27.

The Court finds that, even assuming the arbitration provision applied to Greenville Water, it is not enforceable against Greenville Water because it is an unconscionable contract of adhesion.

By simply placing terms and conditions, including an arbitration provision, on its website and not providing any reasonable notice to indirect purchasers of its products (and non-users of the website), like Greenville Water, U.S. Pipe has failed to afford Greenville Water any meaningful choice in its ability to negotiate the arbitration provision in U.S. Pipe's Terms and Conditions of Sale. *See Simpson*, 373 S.C. at 24-25; *see also Lampo*, 437 S.C. at 241-43 ("A party cannot assent to something he does not know about, so the law in general requires that for an offer to be effective, the responding party must have reasonable notice of the offer's terms."). Courts across the United States have found that terms placed on a website without reasonable notice to those intended to be bound do not bind a party to those terms, even when the party used the website to conduct the transactions at issue. *See, e.g., Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1178-79 (9th Cir. 2014) (holding browsewrap terms of use were not enforceable because users of website were not provided reasonable notice of the terms); *Walker v. Nautilus, Inc.*, 541 F. Supp. 3d 836, 841 (S.D. Ohio 2021) ("Courts have refused to enforce browsewrap terms of use where the website's users were required to scroll down the webpage to discover the terms."); *Marshall v. Georgetown Memorial Hosp.*, No. 2:21-cv-02733, 2022 WL 5434226, at *6-7 (D.S.C. July 7 2022) (holding no agreement to arbitrate arose where website did not make clear user was agreeing to arbitrate).

U.S. Pipe's attempt to enforce the Terms and Conditions of Sale contained on its website against Greenville Water here is even more one-sided because Greenville Water never transacted directly with U.S. Pipe, much less used U.S. Pipe's website to conduct the transactions at issue. *See Schmidt Aff.* at ¶¶ 5-6. U.S. Pipe identifies no authority that allows a manufacturer to bind all downstream purchasers of a product to arbitration by simply posting one-sided terms and conditions on a website. *See Zajac, LLC v. Walker Industrial and Truck, Inc.*, No. 2:15-cv-00507-GZS, 2016 WL 9021492, at *1 (D. Me. Mar. 21, 2016) ("It cannot be the case that a manufacturer

can simply post warranty terms on its website and bind any and all downstream purchasers of its products.”). The fact that Greenville Water may be a sophisticated purchaser does not alter the Court’s analysis because there is no evidence of an arms-length, commercial negotiation between the parties since Greenville Water did not purchase the pipe at issue from U.S. Pipe. *See South Carolina Elec. & Gas Co. v. Westinghouse Elec. Corp.*, 826 F. Supp. 1549, 1554 (D.S.C. 1993). The Court, therefore, finds that the arbitration provision in U.S. Pipe’s Terms and Conditions of Sale cannot be enforced against Greenville Water because it is unconscionable under South Carolina law.

E. The Federal Arbitration Act Does Not Apply and this Court is the Proper Forum.

“The purpose of the FAA is ‘to make arbitration agreements as enforceable as other contracts, but not more so.’ *Wilson*, 426 S.C. at 336 (quoting *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12 (1967)) (emphasis added). “A party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement.”

Because the Court finds that there is no valid agreement to arbitrate between U.S. Pipe and Greenville Water, the FAA does not apply. For the same reason, the venue and jurisdiction provision contained within the arbitration provision of U.S. Pipe’s Terms and Conditions of Sale also does not apply. The Court thus finds that it has jurisdiction over Greenville Water’s claims against U.S. Pipe and that this Court is the proper venue to hear those claims.

IV. CONCLUSION

The Court finds that there is no basis to enforce the arbitration provision contained in U.S. Pipe’s Terms and Conditions of Sale against Greenville Water. U.S. Pipe’s Motion to Dismiss or Stay Pending Arbitration is denied.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that U.S. Pipe's Motion to Dismiss or Stay Pending Arbitration is DENIED in its entirety.

IT IS SO ORDERED.

E-signature of Judge Gravely to follow



Greenville Common Pleas

Case Caption: Commissioners Of Public Works Of The City Of Greenville Sou vs.
United States Pipe And Foundry Company LLC , defendant, et al
Case Number: 2024CP2305956
Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2025-02-24 17:28:49 page 18 of 18

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Mar 14 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

2024-CP-23-05956

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.

PROOF OF SERVICE

I hereby certify that on the date indicated below, I have caused a copy of United States Pipe and Foundry Company LLC’s Notice of Appeal to be filed in the South Carolina Court of Common Pleas, Greenville County, and served on the below, via email.

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Dated this 14th day of March 2025

/s/ Beattie B. Ashmore
Beattie B. Ashmore

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To: [Court Of Appeals Filings](#)
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Subject: Notice of Appeal 2024-CP-23-05956
Date: Friday, March 14, 2025 12:47:01 PM
Attachments: [Proof of Service NOA filed in circuit court.pdf](#)

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******

Good afternoon,
Attached for filing, please find the Appellants *Notice of Appeal Proof of Service in Circuit Court* in the above referenced matter.
Should you have any questions, do not hesitate to contact the office.
Thanks so much,
Rhonda Bell
Legal Assistant to Beattie Ashmore

Rhonda M. Bell, Legal Assistant to Beattie B. Ashmore | Beattie B. Ashmore, P.A. | 650 E. Washington Street, Greenville, S.C. 29601 | Phone: (864) 467-1001 Fax: (864) 672-1406 | Email: Rhonda@beattieashmore.com | Website: www.beattieashmore.com

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From: Rhonda Bell
To: Court Of Appeals Filings
Cc: Stephanie Gray; Beattie B. Ashmore, P.A.; Paul G. Joyce; jscully@tonnsenbach.com; Adam Bach; dflynn@dicellolevitt.com; jhawal@dicellolevitt.com; jholmes@dicellolevitt.com; alevitt@dicellolevitt.com; ddill@maynardnexsen.com; rstilwell@maynardnexsen.com; greg@sheltonlawcarolinas.com
Subject: Notice of Appeal 2024-CP-23-05956
Date: Friday, March 14, 2025 11:43:40 AM
Attachments: [Notice of Appeal 3.14.25.pdf](#)
[Attachment 1 Order Denying Motion to Dismiss or Stay Pending Arbitration.pdf](#)
[Notice of Appeal Proof of Service 3.14.25.pdf](#)

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good morning,

Attached for filing, please find the Appellants *Notice of Appeal, Attachment 1: Order Denying Motion to Dismiss and Notice of Appeal Proof of Service* in the above referenced matter.

Should you have any questions, do not hesitate to contact the office.

Thanks so much,

Rhonda Bell

Legal Assistant to Beattie Ashmore

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Subject: Notice of Appeal 2024-CP-23-05956
Date: Friday, March 14, 2025 11:46:48 AM
Attachments: [Filing Fee Letter.pdf](#)

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Good morning,
Attached for filing, please find the Appellants *Filing Fee Letter* in the above referenced matter.
Should you have any questions, do not hesitate to contact the office.
Thanks so much,
Rhonda Bell
Legal Assistant to Beattie Ashmore

Rhonda M. Bell, Legal Assistant to Beattie B. Ashmore | Beattie B. Ashmore, P.A. | 650 E. Washington Street, Greenville, S.C. 29601 | Phone: (864) 467-1001 Fax: (864) 672-1406 | Email: Rhonda@beatticashmore.com | Website: www.beatticashmore.com

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BEATTIE B. ASHMORE, P.A.

ATTORNEY AT LAW

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TELEPHONE (864) 467-1001

Beattie Ashmore: Beattie@BeattieAshmore.com
Stephanie Gray, Associate: Stephanie@BeattieAshmore.com

March 14, 2025

RECEIVED

Mar 14 2025

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Commissioners of Public Works of the City of Greenville, South Carolina v.
United States Pipe and Foundry Company LLC, *et al.*
Circuit Court Case No. 2024-CP-23-05956

Dear Ms. Kitchings:

Enclosed please find a check in the amount of \$250.00 for the filing fee for Appellant United States Pipe and Foundry Company LLC's Notice of Appeal in the above matter, which was electronically filed with the Court on March 14, 2025.

Respectfully,

/s/ Beattie B. Ashmore

Beattie B. Ashmore

cc (*via email*):

John Hampton Scully, jscully@tonnsenbach.com
Adam Crittenden Bach, abach@tonnsenbach.com
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104208

March 14, 2025

RECEIVED
MAR 17 2025
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Commissioners of Public Works of the City of Greenville, South Carolina v.
United States Pipe and Foundry Company LLC, *et al.*
Circuit Court Case No. 2024-CP-23-05956

Dear Ms. Kitchings:

Enclosed please find a check in the amount of \$250.00 for the filing fee for Appellant United States Pipe and Foundry Company LLC's Notice of Appeal in the above matter, which was electronically filed with the Court on March 14, 2025.

Respectfully,

/s/ Beattie B. Ashmore

Beattie B. Ashmore

cc (*via email*):

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RECEIVED
Aug 14 2025
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-000520
Case No. 2024-CP-23-05956

Commissioners of Public Works of the City of Greenville,
South CarolinaRespondent,

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 theAppellant.

Certificate of Counsel

The undersigned certifies that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

[Signature on following page.]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

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Attorneys for United States Pipe and Foundry Company, LLC

Columbia, South Carolina
August 14, 2025