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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

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.

Petition for Rehearing and Suggestion for Rehearing *En Banc*

Appellant United States Pipe and Foundry Company, LLC ("U.S. Pipe") requests, under Rules 221(a) and 240, SCACR, rehearing of this Court's March 12, 2026 Opinion affirming the circuit court's denial of Appellant's motion to compel arbitration. *See Comm'rs of the City of Greenville v. US Pipe and Foundry Co.*, Op. No. 2026-UP-123 (S.C. Ct. App. filed March 12, 2026). Respectfully, the Court overlooked or misapprehended several important points. The Court has misapprehended the application of S.C. Code Ann. § 36-2-318 to arbitration agreements. It has also applied an overly restrictive view of direct benefits estoppel in light of the contract-based claims asserted by Greenville Water, and overlooked key facts in the record confirming the claims

here arise under U.S. Pipe's Terms and Conditions of Sale. (R. at 147.) The court also misapprehended the record in concluding that other arguments raised were not preserved.

Consequently, the Court should grant rehearing and reverse the circuit court ruling based on the arguments below. U.S. Pipe further incorporates into this Petition and expressly reasserts into this Petition all arguments raised in its prior briefings and at oral argument and does not abandon or waive such arguments.

Argument

I. The Court misapprehended applicable law confirming that an arbitration agreement exists here by operation of law under UCC § 2-318.

By treating the provisions of U.S. Pipe's Terms and Conditions of Sale governing warranties, disclaimers, and remedies differently from the arbitration provision as applied to Greenville Water, the Court misapprehended applicable law. The Court correctly concludes that U.S. Pipe's "exclusions, disclaimers, and limitations to remedies associated with warranties in the Terms and Conditions of Sale—which governed the transactions between it and distributors—are operative against Greenville Water." (Op. at 3.)[1] But while the Court recognized U.S. Pipe's Terms entered the stream of commerce as a package, containing limitations, disclaimers, and remedy restrictions that remain "operative" against Greenville Water, the opinion then improperly severs the arbitration clause from that same package on the ground that arbitration is not itself a "remedy" under S.C. Code Ann. § 46-2-318.

U.S. Pipe does not contend that arbitration is a remedy. It is, however, an adjudicative process through which the warranties and their limitations are addressed. The Court overlooked the cases cited by U.S. Pipe holding that downstream consumers could not sidestep the forum-

[1] U.S. Pipe does not seek rehearing of this part of the opinion.

selection and related provisions of a manufacturer's terms and conditions while other rights and provisions in the document remain enforceable against the manufacturer by operation of section 2-318. (*See* U.S. Pipe's Br. at 13–16; Reply Br. at 4–5.)

Because the warranty provision of the Terms necessarily contemplates a process and a forum for invoking, administering, and adjudicating warranty disputes, Section 2-318 should be construed to carry forward that choice of process and forum. Such an interpretation would also be consistent with the UCC's goal of increasing the efficiency of commercial transactions. *See Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 447 n.10 (3d Cir. 2003) ("But the goal of commercial contract law is to efficiently facilitate business transactions between seasoned merchants.").

Further, interpreting Section 2-318 to treat some contract provisions differently from other provisions places arbitration provisions on lesser footing than the other types of provisions that travel downstream, which violates directives of the United States Supreme Court. *Morgan v. Sundance*, 596 U.S. 411, 418 (2022); *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219 (1985). These cases confirm that courts must treat arbitration agreements like other contracts and may not create arbitration-specific rules which disfavor enforcement. *Morgan*, 596 U.S. at 418. Yet the Court has done just that by (properly) allowing the warranty exclusions, disclaimers, and limitations from the Terms to flow downstream to Greenville Water but improperly imposing a caveat for the arbitration provision. (Op. at 5.)

The opinion is also inconsistent with this Court's prior precedent. In *One Belle Hall Prop. Owners Ass'n, Inc. v. Trammell Crow Residential Co.*, which the opinion does not mention, this Court enforced a manufacturer's arbitration provision against downstream property owners who asserted claims tied to the goods' limited warranty. 418 S.C. 51, 791 S.E.2d 286 (Ct. App. 2016).

One Belle Hall refutes the Court's current conclusion that a manufacturer's arbitration clause cannot extend to a downstream consumer under the law. There, this Court recognized there are appropriate circumstances where arbitration clauses travel with the warranty obligations that define the parties' dispute. The Court overlooked this case despite there being a similar contractual relationship between the purchaser and manufacturer in *One Belle Hall* and the parties here. By overlooking the case, the Court has undermined the UCC's goals of uniformity of interpretation and providing parties with predictability in their transactions. *See* S.C. Code Ann. § 36-1-103(a)(3); *In re Automated Bookbinding Servs., Inc.*, 471 F.2d 546, 552 (4th Cir. 1972) ("The Code's general purpose is to create a precise guide for commercial transactions under which businessmen may predict with confidence the results of their dealings.").

The opinion also overlooks the importance of the commercial context and the sophistication of the parties. Under South Carolina law and the UCC, the enforceability of an arbitration agreement between sophisticated commercial merchants and ordinary consumers is considered differently than when between two sophisticated parties. (U.S. Pipe's Br. at 19–20.) In the UCC context, distinctions between sophisticated commercial buyers and ordinary consumers matter for contract formation. The opinion does not address Greenville Water's status as a sophisticated merchant and the law's expectations that they will act more diligently in ascertaining and understanding contract terms. Relatedly, the opinion misapprehends the record by stating that the "only reference to U.S. Pipe specifically in the documents between distributors and Greenville Water" was the cancellation fee language in TEC's quote. (Op. at 2.) U.S. Pipe raised at least three examples showing that Greenville Water had notice of the Terms through documents involving the distributors. (*See* Reply Br. 6–7; R. at 60, 226, 228, 231.) In fact, Distributors' terms specifically refer Greenville Water to U.S. Pipe's contractual terms as it relates

to the warranties applying to the goods. (*Id.*) Greenville Water should have acted diligently in seeking out all the contractual provisions applicable to those warranty terms, but chose not to do so.

For these reasons and those set forth in U.S. Pipe's original briefing, the Court should grant rehearing.

II. Direct Benefits Estoppel applies because Greenville Water expressly argues the existence of a contractual relationship, and the Court misapprehended applicable law and overlooked key portions of the record to hold otherwise.

Rehearing should also be granted because the Court's opinion misapprehended the direct benefits estoppel argument and overlooked principles governing estoppel. The Court's conclusion that direct benefits estoppel is inapplicable to bind Greenville Water to arbitration relies on the assumption that Greenville Water does not seek any benefits under the Terms and did not rely on the Terms to impose liability. (Op. at 7.) U.S. Pipe did not argue direct benefits estoppel should apply to Greenville Water simply because U.S. Pipe sold and delivered pipes to them. (Op. at 5.) Instead, U.S. Pipe argued direct benefits estoppel should apply under *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012) because Greenville Water asserts contract-based claims that cannot be addressed without reference to the Terms. (U.S. Pipe's Br. at 31). *Pearson* supports an application of direct benefits estoppel to bind a nonsignatory in this case, but was overlooked by the Court. In *Pearson*, this Court bound a nonsignatory to an arbitration clause in a contract, finding he "received a benefit due to the contract, in that he was able to work at the Hospital and receive payment for his work," and without the contract "he would have had to make separate arrangements with the Hospital in order to work there." *Id.*, 400 S.C. at 296–97, 733 S.E.2d 597, 605.

The Court also overlooked that the record demonstrates Greenville Water seeks to exploit the benefits of a contractual relationship it affirmatively alleges it has with U.S. Pipe while trying to avoid the arbitration provision that governs disputes arising from that same relationship. (Reply Br. at 11–13.) Greenville Water expressly alleges it has a contract with U.S. Pipe directly, not just a contract with Distributors. (Compl. ¶¶ 13, 70–71; R. at 23, 39–40; PowerPoint at 18; R. at 305.) Greenville Water pled an express contractual relationship with U.S. Pipe. As such, the transaction and sale of pipes is a foundational prerequisite for any of the asserted contract and warranty claims, and by seeking classic "benefit of the bargain" contract damages Greenville Water further exploited the Terms. (*See* U.S. Pipe's Br. at 28–29.) This is all in addition to the implied contract claim Greenville Water asserts. (Compl. ¶¶ 115–23; R. at 47–48.)

The opinion also misapprehends South Carolina estoppel law by effectively holding that Greenville Water could be bound by the arbitration provision only if it expressly sued under U.S. Pipe's Terms. (Op. at 7.) Respectfully, the Court's interpretation of the doctrine is overly restrictive. "Whether a claim seeks a direct benefit from a contract containing an arbitration clause turns on the substance of the claim, not artful pleading." *Hays v. HCA Holdings, Inc.*, 838 F.3d 605, 609 (5th Cir. 2016). The Court's opinion rewards artful pleading, ignoring that Greenville Water explicitly pled a contractual relationship with U.S. Pipe and seeks contractual damages. (*See* Compl. ¶¶ 11, 12, 67, 70; R. at 26, 39.) Rather than determining whether Greenville Water sought to derive a benefit from U.S. Pipe's Terms as a nonsignatory, the Court constricts the standard by insisting that Greenville Water must sue under the Terms themselves. (Op. at 7.) The Court thus treats the absence of an express pleading reference to the Terms as dispositive. (Op. at 6–7.) Greenville Water did not expressly invoke the Terms not because they do not apply, but

because it wanted the benefits of a contract-based warranty suit without the burdens of the arbitration provision. Greenville water should be estopped from doing so.

The Texas Supreme Court's decision in *Lennar Homes of Texas Land & Construction, Ltd. v. Whiteley* illustrates the error in this finding. 672 S.W.3d 367, 377 (Tex. 2023).[2] There, the Texas Supreme Court rejected a subsequent purchaser's attempt to use the same pleading strategy employed by Greenville Water in this case. *Id.* at 377. The subsequent purchaser argued direct benefits estoppel did not apply to her claims, arguing that her implied warranty claims derive from the common law, and that she did not purchase the home at issue through the agreement that contained the arbitration provision. *Id.* The Texas Supreme Court explained that whether "a claim seeks a direct benefit from a contract containing an arbitration clause turns on the substance of the claim, not artful pleading." *Id.* at 377 (alterations and quotations omitted). It then held the downstream purchaser was required to arbitrate under direct benefits estoppel because her claims were based on rights that emanated from, and could not be determined without reference to, the original purchase contract. *Id.* at 378–79. In doing so, it rejected the argument that the warranty claims were independent of the contract: "To the contrary, as we have previously noted, a warranty which the law implies from the existence of a written contract is as much a part of the writing as the express terms of the contract. Although such warranties are "imposed by operation of law, the obligation still arises from the contract and becomes part of the contract. Absent a contract, the warranty would not arise." *Id.* at 377 (quotations and citations omitted).

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[2] Our Supreme Court often looks to Texas precedent for guidance on arbitration cases. *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 387, 892 S.E.2d 112, 117 (2023) (citing *In re Morgan Stanley & Co.*, 293 S.W.3d 182 (Tex. 2009)). This includes Texas's interpretation of the direct benefits estoppel doctrine. *Wilson v. Willis*, 426 S.C. 326, 343, 827 S.E.2d 167, 176 (2019) (citing *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018)); *Blackwell v. Mary Black Health Sys., LLC*, 445 S.C. 62, 73, 911 S.E.2d 147, 152 (Ct. App. 2024), *cert. granted* (June 25, 2025).

The doctrine of direct benefits estoppel exists precisely to prevent plaintiffs from obtaining this sort of advantage through selective reliance on beneficial contract terms while repudiating other terms they disfavor embedded in the same agreement. Equity does not permit a plaintiff to avoid arbitration simply by omitting references or relabeling contract dependent claims. Nor does it permit Greenville Water to sidestep its arbitration obligations by distracting the courts with the Certificate of Compliance. The Court erred by accepting Greenville Water's claim that the Certificate—and not the Terms—formed the basis of its claims. (Op. at 7.) U.S. Pipe pointed to several issues in the record contradicting Greenville Water's assertion that its contract and warranty claims arise from the Certificate of Compliance. (U.S. Pipe's Br. at 18–22.)

Greenville Water could not base its contract theories solely on the Certificate because it was not a contract and lacked all necessary terms. Greenville Water did not allege when, how, or why it received the Certificate. Greenville Water did not allege it relied on the Certificate to purchase the pipes. (*Id.*) The face of the Certificate itself confirms it was not intended for Greenville Water as it addresses pipes sold "either for your stock or for direct shipment to your customer." (Certificate; R. at 35.) The Court's opinion itself recognizes that Greenville Water received the Certificate "at some point after it purchased the pipes," which is irreconcilable with the notion that the Certificate formed the basis of contract formation or pre-purchase reliance. (Op. at 1.)

South Carolina law supports the premise outlined in *Lennar Homes* that suing on a warranty is in effect a suit on the contract. *See, e.g.*, *Brooks v. GAF Materials Corp.*, 284 F.R.D. 352, 359 (D.S.C. 2012) ("Under South Carolina law, warranty limitations or disclaimers must be a part of the basis of the bargain between the parties to a transaction to be effective."); *Lennar Homes*, 672 S.W.3d at 379. The Court's approach improperly grafts onto the equitable estoppel

doctrine a formal privity requirement. That is incompatible with the equitable function of estoppel and with section 2-318's recognition that downstream warranty litigation often proceeds in the absence of formal contractual privity.

For those reasons, rehearing is warranted. The proper question is not whether Greenville Water expressly referenced the "Terms and Conditions of Sale" in its pleadings, the question is whether Greenville Water's claims, in substance, seek to exploit the contractual relationship with U.S. Pipe or must be addressed with reference to the Terms to recover contract-based benefits. The answer to that question is that direct benefits estoppel applies and arbitration should be compelled.

III. The Court misapprehended the record in holding other issues bearing on arbitrability were unpreserved, including the standard of review applicable to the trial court's resolution of disputed factual issues.

The Court misapprehended the record in holding U.S. Pipe's remaining arguments were unpreserved. (Op. at 6 n.2.) Even despite the hearing transcription issues that Greenville Water concedes exists—issues that U.S. Pipe was not aware of until it received the transcript on appeal—the record as a whole reflects that U.S. Pipe's contract-formation, delegation, and factual-dispute issues were all presented to court below. (Reply Br. at 14–15, 22.) U.S. Pipe properly detailed several documents in the record that dispute Greenville Water's reliance on the Certificate of Compliance to bring the claims in the Amended Complaint. (Reply to Arbitration Motion, Ex. A, TEC Quote at 1; R. at 226; *id.*, Ex. B, TEC Pick Ticket at 1; R. at 228; *id.*, Ex. C, TEC's Application for Credit at 1–2; R. at 231–32.) Accordingly, these remaining arguments in support of arbitration were properly before the Court and should have been addressed.

The Court also misapprehended the significance of the applicable hearing standard. As demonstrated in *Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, 130 F.4th 396, 400 (4th Cir. 2025), the

FAA's framework—and South Carolina's comparable state-law procedure—require a summary determination of disputed arbitrability facts when a party denies enforcement. (Reply Br. at 22–23.) The Court's opinion overlooks this standard for its preservation ruling.

The Court overlooked evidence in the record reflecting that arguments about U.S. Pipe's expectation for continued fact discovery were presented to the circuit court, but discussed as part of the arbitral forum. In its reply in support of arbitration, U.S. Pipe argued that it "expects the facts to show that it has not issued a certificate of compliance to Greenville Water in over a decade." (Reply in Support of Mot. to Compel at 3; R. at 218.) At the motion hearing, U.S. Pipe's counsel outlined the factual basis for its opposition to Greenville Water claiming the Certificate formed the basis of its contract, explaining to the circuit court he didn't think they would "have to get into the facts here, because that's discovery." (Hr'g Tr. at 28:10-25; R. at 262.) The parties anticipated that there would be more to do on this key point that was the subject of conflicting evidence.

U.S. Pipe argued that the factual disputes bearing on arbitrability were not amenable for a final resolution due to factual deficiencies in the existing limited record before the trial court, requiring a summary trial or comparable evidentiary process on the issue of arbitrability.

Relatedly, the Court's opinion effectively placed the burden on U.S. Pipe to disprove Greenville Water's asserted lack of notice and reliance on the Terms, rather than clarifying the proper burden-shifting framework once an existing arbitration agreement is shown. Under the FAA, after the moving party shows the existence of a valid agreement, the opposing party must show why the agreement is not enforceable. The Court did not do this. Rehearing on this issue is necessary to apply (or at minimum clarify) the burden shifting framework and determine whether

Greenville Water met its burden to substantiate its challenge to enforcement, rather than simply requiring U.S. Pipe to negate Greenville Water's factual theory on an incomplete record.

Greenville Water did not meet this burden regarding the arbitration provision by raising unconscionability. As U.S. Pipe argued, that doctrine does not apply here, and the Court overlooked the Circuit Court's error in applying unconscionability to avoid enforcement of the arbitration provision. (U.S. Pipe's Br. 38–40; U.S. Pipe's Reply Br. at 18–20.) Neither the Circuit Court nor Greenville Water have identified any provision of the arbitration agreement that is substantively unconscionable, which is fatal to its argument. *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 614, 879 S.E.2d 746, 756 (2022). Not only should the arbitrator have decided this issue in the first instance, but Greenville Water failed to establish it applied, an issue this Court overlooked altogether.

Rehearing is warranted for these reasons, and at minimum, if the Court declines outright reversal, it should grant rehearing to correct its preservation ruling and remand for the factual proceedings required to determine arbitrability under the proper burden-shifting framework.

Conclusion

For the reasons stated above and in U.S. Pipe's prior briefing, the Court should grant rehearing, reverse the circuit court, and remand the matter to compel Greenville Water to submit its claims against U.S. Pipe to arbitration.

[Signature on following page.]

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March 27, 2026

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2025-000520
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Commissioners of Public Works of the City of Greenville, South Carolina .....Respondent,

v.

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

of which

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

Proof of Service

I, the undersigned of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant United States Pipe and Foundry Company, LLC, do certify that I have served all counsel of record in this action with a copy of the document(s) set forth below by mailing via U.S. Mail on March 27, 2026:

Document(s): **Petition for Rehearing and Suggestion for Rehearing *En Banc***

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March 27, 2026

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
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RE: *Commissioners of Public Works of the City of Greenville v. US Pipe and Foundry Company, LLC*
Appellate Case No. 2025-000520
NMRS File No. 088126.01500

Dear Ms. Kitchings:

Enclosed please find an original and one copy of the Appellant U.S. Pipe and Foundry Company, LLC's Petition for Rehearing and Suggestion for Rehearing *En Banc*, along with our check for the required fee. Please return a clocked copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of same.

Respectfully,

s/ Matthew A. Abee

Matthew A. Abee

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