

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

Adam C. Bach (S.C. Bar #74885)  
John H. Scully (S.C. Bar # 100744)  
**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\*  
**DiCELLO LEVITT LLP**  
Ten North Dearborn Street, Sixth Floor  
Chicago, Illinois 60602  
Tel.: 312-314-7900  
alevitt@dicellolevitt.com  
dflynn@dicellolevitt.com  
askinner@dicellolevitt.com  
jholmes@dicellolevitt.com

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 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.<sup>1</sup>

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.

---

<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

---

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 149-50.

<sup>5</sup> *Id.* at 150.

<sup>6</sup> *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.<sup>7</sup>

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

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 tapped<sup>9</sup> without concern for damage to the lining.<sup>10</sup>

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.<sup>11</sup>

**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.<sup>12</sup>

---

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.* at 151.

<sup>11</sup> *Id.*

<sup>12</sup> <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.”<sup>13</sup>

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.<sup>14</sup> The lining surface shall be free from ridges, corrugations, or defects that reduce the thickness of the lining to less than the specified thickness.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

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

---

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

<sup>14</sup> *Id.* at Sec. 4.8.1.

<sup>15</sup> *Id.* at Sec. 4.11.

<sup>16</sup> *Id.* at Sec. 6.1.

<sup>17</sup> 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.”<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup>

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).

---

<sup>18</sup> S.C. Code. Ann. Regs. 61-58.4().

<sup>19</sup> 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>

<sup>20</sup> 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.<sup>21</sup> 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.

---

<sup>21</sup> 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 cut<sup>22</sup>). The cement-mortar lining is concentrated entirely on one end of the pipe, rather than maintaining a uniform thickness all the way around:



<sup>22</sup> 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*

---

Adam C. Bach (S.C. Bar #74885)  
John H. Scully (S.C. Bar #100744)  
**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\*  
**DiCELLO LEVITT LLP**  
Ten North Dearborn Street, Sixth Floor  
Chicago, Illinois 60602  
Tel.: 312-314-7900  
alevitt@dicellolevitt.com  
dflynn@dicellolevitt.com  
askinner@dicellolevitt.com  
jholmes@dicellolevitt.com

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 to be filed