

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
	)	
	)	
THYSSENKRUPP ACCESS CORP.	)	CPSC DOCKET NO.: 21-1
	)	
	)	
Respondent.	)	
	)	

**COMPLAINT COUNSEL’S FIRST SET OF  
REQUESTS FOR ADMISSION TO RESPONDENT**

Pursuant to 16 C.F.R. § 1025.34, Complaint Counsel hereby requests that Respondent thyssenkrupp Access Corp., now known as TK Access Solutions Corp. (“Respondent”), admit the truth of each of the following matters under oath and in writing within 30 days of service hereof.

**DEFINITIONS**

1. “You,” “your,” “Respondent,” and “TKA” means the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on Respondent’s behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to Respondent), and all past and present parents, subsidiaries, divisions, or branches of Respondent, including but not limited to: Access Industries, Inc.; ThyssenKrupp Access Manufacturing, LLC; National Wheel-O-Vator Company, Inc, and TK Access Solutions Corp.

2. “Person” means any natural person, entity, group, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental and whether foreign or domestic.

3. “Documents” shall be interpreted as the term is used in Federal Rule of Civil Procedure 34, and includes electronically stored information.

4. “Relating to” or “related to” means consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. “Identify” or “identity,” when used with respect to an individual, means to provide the individual’s present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the individual works, business affiliation, and business or employment address, and the individual’s relationships or associations, if any, to the Respondent.

6. “Identify” or “identity,” when used with respect to a business, entity, building, or place, means the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondent.

7. “Identify” or “identity” when used with respect to a Document means the name or title of the Document, a description of the Document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the

identity of the Person who currently has custody of, possession of, or control over the Document. You may also identify a Document by providing a complete and legible copy thereof, and by stating that you have done so.

8. “Identify” when used with respect to a communication means to describe in detail the nature and content of the communication, state the date of the communication, identify all Persons to and from whom the communication was made, and identify all Persons hearing, witnessing, and/or present during the communication.

9. “Communications” means any disclosure, transfer, or exchange of information or opinion, however made, including but not limited to, emails, voice mails, fax, memoranda, inquiries, reports, claims, and complaints.

10. “Elevators” means any model of residential elevators manufactured and/or distributed by Respondent in U.S. commerce, including but not limited to the Elevators listed in the Complaint in CPSC Docket 21-1 filed on July 7, 2021: Chaparral, Destiny, LEV, LEV II, LEV II Builder, Rise, Volant, Windsor, Independence, and Flexi-Lift.

11. “Manufacture,” and all variations of the word manufacture, means to “manufacture, produce, or assemble,” as defined in 15 U.S.C. § 2052(a)(10).

12. “Distribute,” and all variations of the word distribute, means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce as defined in 15 U.S.C. § 2052(a)(7)–(8).

13. “Complaint” shall mean the Complaint, and any amendments to the Complaint, filed in this action, CPSC Docket 21-1.

14. “Answer” shall mean the Answer and Defenses, and any amendments to the Answer and Defenses, of Respondent, filed in this action.

15. “Hearing” shall mean any hearing conducted in this matter pursuant to 16 C.F.R. § 1025.41 *et seq.*

16. “Test” shall mean any examination, inspection, analysis, results, or other assessment of the Elevators, or any components of the Elevators.

17. “Affiliate” shall mean, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person.

18. “Installation Materials” shall mean materials disseminated by Respondent to assist in the installation of the Elevators, including, but not limited to: engineering drawings and instructional materials, including installation, design, and planning guides.

19. “Hazardous Space” shall mean the space between the hoistway door and the elevator car door or gate, in which children can become entrapped.

20. “ASME” shall mean The American Society of Mechanical Engineers, of New York, NY, including all past and present officers, directors, representatives, agents, and employees, all other past and present persons acting or purporting to act on ASME’s behalf.

21. [REDACTED]

23. “homeSAFE” shall mean the homeSAFE (Safety Awareness For Elevators) Campaign launched in June 2014, supported by Respondent, as well as the Association of Members of the Accessibility Equipment Industry (AEMA), National Association of Elevator

Contractors (NAEC), and National Association of Elevator Safety Authorities International (NAESA International).

24. “Home Elevator Safety Program” shall mean the “thyssenkrupp Access Corp. Home Elevator Safety Program” launched in February 2021 by Respondent.

25. “TK Elevator” shall mean TK Elevator Corporation, also known as “TKE,” a Delaware corporation with its principal place of business in Georgia.

26. “2012 TKA 15(b) Report” shall mean the Section 15(b) report submitted by TKA to the U.S. Consumer Product Safety Commission regarding the LEV II, Volant, and Rise Elevators on August 9, 2012.

27. “2012 TKA Fast-Track Recall” shall mean the Fast-Track Recall No. 12-750 conducted by TKA in cooperation with the U.S. Consumer Product Safety Commission for the LEV II, Volant and Rise Elevators on September 20, 2012. *See* <https://www.cpsc.gov/Recalls/2012/Residential-Elevators-Recalled-for-Repair-by-ThyssenKrupp-Access-Manufacturing-Due-to-Fall-Hazard>.

### **INSTRUCTIONS**

A. Each request shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of a request, that part shall be specified. An answer should not be supplied solely by reference to the answer to another request unless the answer is completely identical to the answer to which reference is made.

B. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word “including” shall be

construed to mean without limitation. The words “any” and “all” shall be construed so as to make the request inclusive rather than exclusive.

C. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

D. The singular shall include the plural, and vice versa.

E. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, Respondent’s attorneys are requested to contact Complaint Counsel to resolve any ambiguity. If any request cannot be answered in full after exercising the required diligence, it shall be answered to the extent possible with a full statement of all efforts to fully answer and of all reasons a full answer cannot be made.

F. If Respondent claims that the attorney-client privilege or any other privilege is applicable to any Document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the Document as follows:

- i) State the date, nature, and subject matter of the Document;
- ii) Identify each author of the Document;
- iii) Identify each preparer of the Document;
- iv) Identify each Person who is an addressee or an intended recipient of the Document;
- v) Identify each Person from whom the Document was received;
- vi) State the present location of the Document and all copies thereof;

- vii) Identify each Person who has or ever had possession, custody, or control of the Document or any copy thereof;
- viii) State the number of pages, attachments, appendices, and exhibits; and
- ix) Provide all further information concerning the Document and the circumstances upon which the claim of privilege is asserted.

G. For any Communication with respect to which a privilege is asserted, identify the Persons or entities among whom the Communication took place, the date of the Communication, and the subject.

H. In the event that any Document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that Document is to be identified as completely as possible, by including, without limitation, the following information:

- i) Each author of the Document;
- ii) Each preparer of the Document;
- iii) Each addressee or intended recipient of the Document;
- iv) Each Person who received the Document;
- v) The date of the Document;
- vi) The subject matter of the Document;
- vii) The reason for disposal of the Document;
- viii) Each Person who authorized disposal of the Document;
- ix) Each Person who disposed of the Document.

I. If any Document was, but is no longer, in your possession, custody, or control, provide the following information:

- i) State the disposition of the Document;

- ii) State the date such disposition was made;
- iii) Identify the present custodian of the Document, or, if the Document no longer exists, so state;
- iv) Identify the Person(s) who made the decision regarding the disposition of the Document; and
- v) State the reasons for the disposition and describe the Document and the contents of the Document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all Persons to whom the Document was distributed, shown, or explained.

J. Pursuant to 16 C.F.R. § 1025.31, the Respondent is under a continuing duty to supplement its responses to these discovery requests without further request from Complaint Counsel. Where the Respondent has responded to a discovery request with a response that was complete when made, Respondent is under a duty to supplement that response to include information later obtained.

### **REQUESTS FOR ADMISSION**

1. Admit to the authenticity of the Home Elevator Safety Campaign Activity Report, dated November 5, 2021, produced as bates number TKAS\_CPSC21-1\_63981.
2. Admit to the authenticity of the Home Elevator Safety Campaign Activity Report, dated February 1, 2022, produced as bates number TKAS\_CPSC-1\_64762.
3. Admit that TKA launched the Home Elevator Safety Program on February 16, 2021.



■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

█ [REDACTED]

[REDACTED]

█ [REDACTED]

[REDACTED]

█ [REDACTED]

[REDACTED]

[REDACTED]

18. Admit that TKA issued a press release on July 8, 2021 entitled: “CPSC Lawsuit Ignores thyssenkrupp Access Corp. Home Elevator Safety Program Already Underway.”

19. Admit that TKA refers to its Home Elevator Safety Program in its July 8, 2021 press release as a “robust, voluntary program.”

20. Admit that TKA refers to CPSC’s recall demand in its July 8, 2021 press release as mirroring the “voluntary steps thyssenkrupp Access Corp. is already taking” pursuant to the Home Elevator Safety Program.

21. Admit that the Home Elevator Safety Program is not a recall.

22. Admit that TKA refers to its Home Elevator Safety Program in its July 8, 2021 press release multiple times as being “voluntary.”

█ [REDACTED]

[REDACTED]

█ [REDACTED]

[REDACTED]

■ [REDACTED]

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[REDACTED]

41. Admit that during the homeSAFE campaign, TKA subsidized 25% of the cost of space guards to consumers.

42. Admit that consumers who participated in the homeSAFE campaign paid for 75% of the costs of any space guard.

43. Admit that during the homeSAFE campaign, TKA did not subsidize the cost of space guard installation for consumers.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

56. Admit that TK Elevator is providing funding to TKA to support the Home Elevator Safety Program.

[REDACTED]

[REDACTED]

[REDACTED]

58. Admit that TK Elevator is providing funding to cover litigation expenses, including attorneys' fees and costs, in CPSC Docket No. 21-1.

59. Admit that Mauro Carneiro is employed by TK Elevator.

60. Admit that Mauro Carneiro is a chief executive officer at TK Elevator.

61. Admit that TKA manufactured and distributed at least 16,000 Elevators within the United States.

62. Admit that on August 9, 2012, TKA filed the 2012 TKA 15(b) Report.

63. Admit that, in 2012, TKA conducted the 2012 TKA Fast-Track Recall.

64. Admit that Sheila A. Millar, current counsel for Respondent, filed the 2012 TKA 15(b) Report on behalf of TKA.

65. Admit that the subject line for the cover page for the 2012 TKA 15(b) Report is "Re: ThyssenKrupp Access Manufacturing, LLC LEV II Elevators."

66. Admit that the cover page for the 2012 TKA 15(b) Report states: "Attached please find a full 15(b) report on the above product."

67. Admit that the cover page for the 2012 TKA 15(b) Report states: "Based on the Company's analysis, it can account for all of the products, which were sold and installed exclusively through the Company's field offices and dealer network."

68. Admit that request number 3 of the 2012 TKA 15(b) Report requests "[a]n identification and description of the product(s)."

69. Admit that in response to request number 3 of the 2012 TKA 15(b) Report, TKA listed the “LEV II Residential Elevator, namely, LEV II, Volant, and Rise Residential Elevators.”

70. Admit that request number 7 of the 2012 TKA 15(b) Report requests “[t]he total number of products and units of each model involved.”

71. Admit that in response to request number 7 of the 2012 TKA 15(b) Report, TKA responded, in part, that “[t]he products are not sold at retail stores.”

72. Admit that request number 8 of the 2012 TKA 15(b) Report requests “[t]he dates when products and units were manufactured, imported, distributed, and sold at retail.”

73. Admit that in response to request number 8 of the 2012 TKA 15(b) Report, TKA responded that “[a]ffected products were manufactured between December 15, 2010 and August 3, 2012.”

74. Admit that TKA did not identify the Elevators in the 2012 15(b) Report as “Components,” as defined in TKA’s discovery requests.

75. Admit that the 2012 Fast-Track Recall did not identify the Elevators as “Components,” as defined in TKA’s discovery requests.

76. Admit that TKA did not contest the U.S. Consumer Product Safety Commission’s jurisdiction over the Elevators in the 2012 TKA 15(b) Report.

77. Admit that TKA did not contest the U.S. Consumer Product Safety Commission’s jurisdiction over the Elevators as part of the 2012 TKA Fast-Track Recall.

78. Admit that TKA did not state that the Elevators were not consumer products in the 2012 TKA 15(b) Report.

79. Admit that TKA did not state that the Elevators were not consumer products as part of the 2012 TKA Fast-Track Recall.

80. Admit that TKA has previously referred to the Elevators as products.

81. Admit that the Elevators are consumer products. *See* 15 U.S.C. § 2052(a)(5).

Dated this 9th day of February, 2022



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Gregory M. Reyes, Supervisory Attorney  
Michael J. Rogal, Trial Attorney  
Frederick C. Millett, Trial Attorney  
Joseph E. Kessler, Trial Attorney  
Nicholas J. Linn, Trial Attorney

Division of Enforcement and Litigation  
Office of Compliance and Field Operations  
U.S. Consumer Product Safety Commission  
Bethesda, MD 20814  
Tel: (301) 504-7809

Complaint Counsel for  
U.S. Consumer Product Safety Commission



**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2022, I served Complaint Counsel's First Set of Requests for Admission to Respondent pursuant to the Court's October 12, 2021 Order on Joint Motion to Amend Discovery Schedule and for Protective Order as follows:

*By email to the Secretary:*

Alberta E. Mills  
Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Email: AMills@cpsc.gov

*By email to the Presiding Officer:*

Hon. Mary F. Withum, Administrative Law Judge  
c/o Alberta E. Mills  
Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Email: AMills@cpsc.gov

*By email to Counsel for Respondent:*

Sheila A. Millar  
Steven Michael Gentine  
Eric P. Gotting  
Taylor D. Johnson  
Anushka N. Rahman  
Keller and Heckman LLP  
1001 G Street, NW, Suite 500 West  
Washington, DC 20001

Email: millar@khlaw.com  
gentine@khlaw.com  
gotting@khlaw.com  
johnsont@khlaw.com  
rahman@khlaw.com

Michael J. Garnier  
Garnier & Garnier, P.C.  
2579 John Milton Drive  
Suite 200

Herndon, VA 20171

Email: [mjgarnier@garnierlaw.com](mailto:mjgarnier@garnierlaw.com)

Meredith M. Causey  
Quattlebaum, Grooms & Tull PLLC  
111 Center Street  
Suite 1900  
Little Rock, AR 72201

Email: [mcausey@qgtlaw.com](mailto:mcausey@qgtlaw.com)



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Frederick C. Millett  
Complaint Counsel for  
U.S. Consumer Product Safety Commission