

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 PRODUCTION
OF DOCUMENTS AND THINGS TO RESPONDENT**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent, thyssenkrupp Access Corp., now known as TK Access Solutions Corp., (“Respondent” or “thyssenkrupp”) serve upon Complaint Counsel, within thirty (30) days, written responses to each of the requests set forth below, and, within thirty (30) days, produce at Complaint Counsel’s office each of the documents and things requested below.

DEFINITIONS

1. “You,” “your,” “Respondent,” and “thyssenkrupp” 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. “Document” 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. “Communication” 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. “Elevator” 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. “Interrogatories” shall mean Complaint Counsel’s First Set of Interrogatories to Respondent, served upon the Respondent.

16. “Requests for Production” shall mean Complaint Counsel’s First Set of Requests for Production of Documents and Things to Respondent, served upon the Respondent.

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

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

19. “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.

20. “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.

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

22. “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.

INSTRUCTIONS

A. Each request shall be answered separately and fully in writing. Each response shall state, with respect to each Document, item, or category requested, that it has been produced, unless the request is objected to, in which event, the reasons for objection shall be stated. If objection is made only to part of a request, item, or category, that part shall be specified. A response should not be supplied solely by reference to the response to another request or subpart, unless the response is completely identical to the response to which reference is made.

B. The responses shall be signed by the Person giving them, and the objections, if any, shall be signed by the Person or attorney making them. When a complete response to a particular request is not possible after exercising the required diligence, the request shall be answered to the extent possible, and a statement shall be made indicating the reasons only a partial response is given, stating the information or knowledge you have concerning the unanswered portion or unproduced Documents, and describing your efforts to secure the unknown information or unproduced Documents.

C. Each request seeks production of all Documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, insurers, or representatives, and all Documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

D. Each request for a Document contemplates production of the Document in its entirety, without abbreviation or expurgation, including any amendments thereto, whether referred to in the Document, or otherwise.

E. Identify each Person who assisted or participated in preparing and/or supplying any of the information, Documents, and things given in response to, or relied upon, in preparing a response to a request.

F. 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.

G. 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.

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

I. 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 complied with in full after exercising the required diligence, it shall be complied with to the extent possible, with a full statement of all efforts to make full compliance, and all reasons full compliance cannot be made.

J. 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.

K. 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.

L. 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; and
- ix) Each Person who disposed of the Document.

M. 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.

N. 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 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.

O. In producing the Documents and things requested here, indicate, and segregate the Documents by the specific request (by paragraph and subparagraph numbers/letters) in response to which each Document, group of Documents, or thing is produced.

P. Please provide all responsive Documents, including hardcopy, electronic and e-mail Documents in electronic format on CD or DVD. Document level searchable text, all fielded data, and metadata should be delivered in a Relativity-compatible load file (DAT and OPT) accompanied by Bates-numbered single page Group IV TIFF images representing each page of production.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All Documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses.

REQUEST NO. 2:

All Documents identified in answers to the Interrogatories and all Documents relating to your answers to the Interrogatories, in support of your answers, and used or relied upon in preparing your answers.

REQUEST NO. 3:

All Documents refuting or tending to refute the allegations of the Complaint.

REQUEST NO. 4:

All Documents supporting or tending to support the allegations of the Complaint.

REQUEST NO. 5:

All of your written document or sample retention policies in effect at any time(s).

REQUEST NO. 6:

All Documents and Communications related to the archiving or storage of any Documents that may be potentially relevant to any of the Requests for Production. Your response to this Request should include, but not be limited to, locations where Documents may be archived or stored; indices, appendices, or other similar Documents that identify the Documents archived or stored; and any descriptions of the Documents archived or stored.

REQUEST NO. 7:

All organizational charts and similar Documents created at any time that discuss lines of authority, ownership or control, or personnel reporting requirements within Respondent. This request includes, but is not limited to, Documents from related entities, such as former and current parents and subsidiaries, as well as any entities acquired by or merged with Respondent.

REQUEST NO. 8:

All founding and organizing Documents, past and present, for Respondent, and any amendments thereto, including, but not limited to, the certificate of formation, articles of incorporation, corporate bylaws, articles of merger, or similar Documents. This request includes, but is not limited to, Documents from related entities, such as former and current parents and subsidiaries, as well as any entities acquired by or merged with Respondent.

REQUEST NO. 9:

All Documents that Respondent has filed with any secretary of state or other state agency or division responsible for registering business entities and maintaining public records related to the formation or existence of business entities. This request includes, but is not limited to, Documents from related entities, such as former and current parents and subsidiaries, as well as any entities acquired by or merged with Respondent.

REQUEST NO. 10:

All Documents relating to each Communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the Documents requested here, and/or the Elevators, between, among, by, or with any Persons, including, but not limited to: the Respondent; the Respondent's employees, former employees, agents, and/or representatives; dealers, distributors, or other similar third parties; and customers or users.

REQUEST NO. 11:

All Documents and Communications created by any Person identified as a witness in response to Requests nos. 3 and 4 of the Interrogatories relating to the subject matter of this litigation, the Complaint, and the Answer.

REQUEST NO. 12:

For each year and each model of the Elevators, all Documents created at any time related to the Hazardous Space or the child entrapment hazard posed by the Elevators.

REQUEST NO. 13:

All Documents and Communications related to any interpretation regarding how to measure the Hazardous Space or measure from the hoistway door to the elevator car door or gate.

REQUEST NO. 14:

All Documents and Communications between Respondent and any dealer, distributor, installer, consumer, or other Person relating to the potential for children to become entrapped in the space between the hoistway door and elevator car door or gate or the Hazardous Space, including but not limited to, Documents and Communications relating to:

- a) the potential for the deflection of the elevator car door or gate; and
- b) the measurement of the Hazardous Space or space between the hoistway door and elevator car door or gate when the elevator car door or gate is an accordion door.

REQUEST NO. 15:

Provide one example of each iteration or version of every label, warning, instruction, manual, or video that included information on the possible risks associated with the Hazardous Space or the child entrapment hazard posed by the Elevators. Your response should include, but not be limited to, dates when each version was developed, disseminated, and discontinued.

REQUEST NO. 16:

All Documents and Communications, whether formal or informal, including opinions, assessments, studies, reports, publications, written evaluations, or materials of any kind, which discuss or refer to the effectiveness of any labels, warnings, instructions, or videos, including warnings related to the Hazardous Space or the child entrapment hazard posed by the Elevators.

REQUEST NO. 17:

All Documents and Communications, whether formal or informal, including opinions, assessments, studies, reports, publications, written evaluations, or materials of any kind, that discuss or refer to the Hazardous Space or the child entrapment hazard posed by the Elevators.

REQUEST NO. 18:

All Documents and Communications, whether formal or informal, including any opinions, assessments, studies, reports, publications, written evaluations, or materials of any kind, that evaluate the risks, hazards, or safety of the design of the Elevators.

REQUEST NO. 19:

All Documents and Communications, whether formal or informal, including any opinions, assessments, studies, reports, publications, written evaluations, or materials of any kind, that evaluate in any way the adequacy, clarity, risks, hazards, or safety of the Installation Materials or the installation of the Elevators generally.

REQUEST NO. 20:

All Installation Materials for all models of Elevators and for every year that each of the Elevators were manufactured and/or distributed.

REQUEST NO. 21:

All Documents relating to the manufacture, packaging, and engineering of the Elevators, including, but not limited to, the following:

- a) The identification and procurement of component parts;
- b) The identification and retention of a facility or facilities to manufacture the Elevators, including the component parts of the Elevators;
- c) The creation and procurement of necessary tools and equipment;
- d) Any differences in the manufacturing processes regarding different models or versions of the Elevators; and
- e) All Documents relating to changes at any time in the design, specifications, manufacture, and procedures for the manufacture of the Elevators, including changes to its materials, component parts, composition, Installation Materials, and construction.

REQUEST NO. 22:

Documents establishing the total number of Elevators manufactured and/or distributed in U.S. commerce by Respondent, including the number of Elevators distributed by model and year.

REQUEST NO. 23:

All Documents related to the marketing, advertising, distribution, and sale of the Elevators to dealers, distributors, or other third parties, including, but not limited to, the following:

- a) Documents related to providing dealers, distributors, or other third parties with materials related to the Hazardous Space;
- b) Documents related to providing dealers, distributors, or other third parties with materials related to the child entrapment hazard posed by the Elevators; or
- c) Documents related to providing dealers, distributors, or other third parties with information about safety devices, including but not limited to, space guards or light curtains.

REQUEST NO. 24:

All Documents relating to any Tests conducted on the Elevators, including all Test results, reports, or any other Document containing analysis and/or conclusions. This request includes, but is not limited to, Documents related to:

- a) Testing or certification to determine if the Elevators meet or fail to meet any mandatory or voluntary standard;
- b) Testing to evaluate the safety of the Elevators;

- c) Testing to assess how a consumer, including children, will interact with and operate the Elevators, including any human behavior analysis, whether by a Human Factors expert, or by any other expert or Person;
- d) Testing to assess the effectiveness of the Elevators' warnings, labels, and instructions, and Installation Materials;
- e) All Documents related to any changes made to the design, Installation Materials, manufacture, distribution, sale, marketing, promotion, or advertising of the Elevators, following any Tests of the Elevators; and
- f) All Documents related to any Tests conducted regarding the Hazardous Space or the child entrapment hazard posed by the Elevators.

REQUEST NO. 25:

All Documents related to any claim, warranty claim, complaint, inquiry, or reports of incidents, injuries, or fatalities related to the Hazardous Space or the child entrapment hazard posed by the Elevators, received from any source, including, but not limited to, from consumers; through dealers, distributors, or other third parties; through hospitals and physicians; through insurers; through any foreign, domestic, state or local government official or entity. This request includes, but is not limited to:

- a) All Documents associated with the claim, warranty claim, complaint, inquiry, or reports of incidents, injuries, or fatalities, including Documents given to you, as well as Documents you requested from the Person making the report. The request also includes, but is not limited to, Documents you received from a third party, such as medical reports or insurance claims;

- b) All Documents generated by you, or generated by a third party at your request, such as witness statements or evaluations and assessments of the claim, warranty claim, complaint, inquiry or report; and
- c) All Documents and Communications related to any safety, remedial or other similar measures taken by Respondent in response to any claim, warranty claim, complaint, inquiry, or reports of incidents, injuries, or fatalities, including, but not limited to, the homeSAFE campaign and Home Elevator Safety Program.

REQUEST NO. 26:

All nonprivileged Documents and Communications relating to negotiations, lawsuits, and alternative dispute resolution proceedings related to the Hazardous Space or the child entrapment hazard posed by the Elevators. This request includes, but is not limited to:

- a) Demand letters, complaints, settlement agreements, judicial opinions, and other similar Documents commencing or terminating an action or proceeding; and
- b) Deposition transcripts, trial or hearing transcripts, expert reports, and any other Documents relevant to any action or proceeding.

REQUEST NO. 27:

All Documents and Communications involving ASME regarding the Elevators and the Hazardous Space or the child entrapment hazard posed by the Elevators.

REQUEST NO. 28:

All Documents related to any safety device, including but not limited to space guards and light curtains, used to reduce or eliminate the Hazardous Space or the child entrapment hazard posed by the Elevators.

REQUEST NO. 29:

All Communications and Documents between Respondent and any employee, director, officer, agent, dealer, distribution center, distributor, customer, Affiliate, third party, or representative of Respondent regarding the Hazardous Space or the child entrapment hazard posed by the Elevators.

REQUEST NO. 30:

All Communications and Documents between Respondent and any other Person regarding the Hazardous Space or the child entrapment hazard involving the Elevators.

REQUEST NO. 31:

All Documents related to proposed or actual changes or revisions to the Installation Materials, design, specifications, manufacture, and procedures for the manufacture of the Elevators, related to the Hazardous Space or the child entrapment hazard posed by the Elevators.

REQUEST NO. 32:

All Communications and Documents related to the homeSAFE campaign. This request includes, but is not limited to, Documents evidencing the total number of space guards distributed during the campaign, the total number of consumers who participated in the campaign, and the total cost to consumers to purchase each space guard.

REQUEST NO. 33:

All Communications and Documents related to the Home Elevator Safety Program. This request includes, but is not limited to, Documents evidencing the total number of space guards distributed during the Program and the total number of consumers who have participated in the Program.

Dated this 30th day of July, 2021



Mary B. Murphy, Director
Gregory M. Reyes, Trial Attorney
Michael J. Rogal, 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 July 30, 2021, I served Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent upon all parties and participants of record in these proceedings, as follows:

An original and three copies by U.S. mail, postage prepaid, and one copy 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

One copy by U.S. mail, postage prepaid, to the Presiding Officer:

Presiding Officer
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
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Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001

Email: millar@khlaw.com
gentine@khlaw.com
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Gregory M. Reyes
Complaint Counsel for
U.S. Consumer Product Safety Commission