UNITED STATES OF AMERICA
CONSUMER PRODUCTS SAFETY COMMISSION

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

Order Denying Motion to Quash Subpoena for Jurrien Van Den Akker

Upon consideration of the Motion to Quash Non-Party Subpoena, and Complaint Counsel's Opposition, it is hereby ordered that the Motion to Quash Non-Party Subpoena filed by Jurrien Van Den Akker is denied.

On January 21, 2022, U.S. Consumer Product Safety Commission ("CPSC") Complaint Counsel served a *subpoena duces tecum* on non-party, Jurrien Van Den Akker. On January 27, 2022, Mr. Van Den Akker, through counsel, filed a Motion to Quash Non-Party Subpoena. On February 3, 2022, Complaint Counsel filed its opposition.

In his Motion to Quash, Mr. Van Den Akker represents that he served as President of ThyssenKrupp Access Corp., now known as TK Access Solutions Corp. (TKA, or Respondent), from November 11, 2011, through December 25, 2015, is retired, and is a foreign national who is removed from the residential elevator industry. He also claims that at his departure, he did not retain any documents and has no materials responsive to the *subpoena duces tecum.* He further claims that he was deposed in two prior civil litigation matters, on November 20, 2012, and June 13, 2018, pertaining to the hazards that are the subject matter of this Complaint. He claims that those depositions are more contemporaneous and the best available evidence for his knowledge

of topics relating to this proceeding. He states that any further testimony would only be duplicative of the earlier testimony, transcripts of which Complaint Counsel already possesses. Mr. Van Den Akker concludes that the burden of complying with the subpoena would be disproportionate to its evidentiary value and, as a non-party to the proceeding, would be unduly burdensome.

In its Opposition, Complaint Counsel argues that the information sought is relevant and necessary for this proceeding given Mr. Van Den Akker's role as President of TKA for more than four years. Complaint Counsel argues that the testimony would not be duplicative because this case involves different parties, different products, and different causes of action. It also argues that the discovery sought would not be duplicative particularly because the remedy sought in this action is much broader than the remedy sought by the two litigants in the prior civil actions in State court. Finally, Complaint Counsel argues that the subpoena does not impose an undue burden on Mr. Van Den Akker because it is tailored to his involvement with Respondent at key periods of employment and no other officers exist to provide relevant testimony as Respondent is no longer in the residential elevator business. Complaint Counsel also notes several non-overlapping topic areas, including a greater number of elevator models as well as the homeSAFE campaign, among others. Finally, Complaint Counsel proposes a virtual deposition to limit the burden on Mr. Van Den Akker.

I am persuaded by Complaint Counsel's arguments that the subpoena seeks relevant testimony that is neither unreasonably duplicative nor overly burdensome for Mr. Van Den Akker to provide. Specifically, according to Complaint Counsel's Opposition, Mr. Van Den Akker oversaw the Respondent's business operations designing, manufacturing, and selling residential elevators so that his knowledge of TKA operations is relevant to the action for Initial

Decision and Order to determine whether various models of residential elevators manufactured and distributed by Respondent present a substantial product hazard. According to Complaint Counsel, Mr. Van Den Akker oversaw TKA after it wound down its residential elevator business and may have knowledge of Respondent's operations after it exited the residential elevator market, including the homeSafe program, and thereby, may have key information on TKA's actions concerning remedies to its residential elevators. These topics relate directly to the current case and the issue of whether the Respondent's products present a substantial product hazard pursuant to 15 U.S.C. § 2604(a)(2).

Mr. Van Den Akker argues that the prior two depositions of him in other cases are the best available evidence and further deposition would be duplicative. As noted above, the present case involves different parties, different products, and different causes action, which leads to the conclusion that there would be less duplication than averred. Specifically, the prior two cases where Mr. Van Den Akker was deposed involved State law negligence and product liability claims for only two of Respondent's elevator models whereas here, Complaint Counsel seeks an Initial Decision and Order that multiple residential elevator models manufactured and distributed by Respondent present a "substantial product hazard" under 15 U.S.C. § 2064(a), a finding which requires a "defect" that poses a "substantial risk of injury to the public" under federal law. This case also involves a wider range of products, including instructions and warnings, than the narrow subset of two residential elevator models in the State negligence and product liability cases. The remedies sought in the State cases and this case also differ significantly. The State tort cases involved specific incidents for two individual families. This case involves a potential recall under federal law, that seeks to protect all consumers nationwide.

The subpoena is thus not unreasonably duplicative because the subject matter is broader than in the earlier State negligence cases and the information sought is inherently divergent. *Flanagan v. Wyndham Int'l Inc.*, 231 F.R.D. 98, 105 (D.D.C. 2005). The fact of overlap alone is insufficient to make a subpoena unreasonably duplicative or unduly burdensome.

I am also persuaded by Complaint Counsel's argument that this litigation involves a matter of public interest and seeks to protect consumers from substantial risk of injury, and thus access to potential evidence through discovery cannot be constrained in the same manner as private litigants. *United States v. Mendoza*, 464 U.S. 154, 162-63 (1984); *Securities and Exchange Comm'n v. Seahawk Deep Ocean Tech.*, 166 F.R.D. 268, 271 (D. Conn. 1996).

In sum, the subpoena is not unreasonably duplicative because it involves different parties, different and more products, and different causes of action with different potential remedies involving a matter of public interest. Neither is the subpoena unduly burdensome because it is tailored to Mr. Van Den Akker's involvement with the Respondent and its residential elevators designed, manufactured, and sold during his time of employment; the Respondent is no longer in the residential elevator business; and there are no other officers with information Mr. Van Den Akker possesses. *Am. Elec. Power Co. v. United States*, 191 F.R.D. 132, 136 (S.D. Ohio 1999). Complaint Counsel acknowledges that the current *subpoena duces tecum* is essentially for a deposition as Mr. Van Den Akker states he has no documents in his custody, possession, or control. Complaint Counsel has also proposed a virtual deposition to reduce the burden. A virtual deposition reduces the burden on Mr. Van Den Akker as does the limited, if any, document production because he denies custody, possession, or control of any of Respondent's records.

After considering the Motions and Oppositions filed, and the arguments made, I hereby DENY the Motion to Quash Non-Party Subpoena of Mr. Jurrien Van Den Akker.

So ordered.

Done and dated February 8, 2022
Arlington, VA

Mary F. Withum -S

Digitally signed by Mary F. Withum -S
Date: 2022.02.08 14:49:25 -05'00'

Mary F. Withum
Administrative Law Judge