

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

**COMPLAINT COUNSEL’S PROPOSED PREHEARING SCHEDULE AND
STATEMENT ON PREHEARING CONFERENCE MATTERS
PURSUANT TO 16 C.F.R § 1025.21**

Pursuant to this Court’s September 29, 2021 Order and 16 C.F.R. § 1025.21, Complaint Counsel respectfully submits its proposed prehearing schedule and a statement addressing the matters set forth in 16 C.F.R. § 1025.21(a)(1) through (14). Complaint Counsel met and conferred with counsel for Respondent but was unable to agree on the proposed schedule herein.

I. PROPOSED PREHEARING SCHEDULE

Complaint Counsel proposes the following prehearing schedule:

Last day to serve any written discovery requests	3/4/2022
Discovery closes (pending motions to compel)	4/1/2022
Motions for Summary Decision Due	4/29/2022
Responses to Motion for Summary Decision Due	5/27/2022
Prehearing Briefs and written expert testimony due	7/15/2022

Witness and Exhibit Lists, Stipulations and Motions in Limine due	8/19/2022
Hearing (est. two weeks)	9/12/2022
Post-hearing briefs Due (16 CFR § 1025.46)	50 days after hearing
Replies to post-hearing briefs Due (16 CFR § 1025.46)	15 days after briefs

II. STATEMENT OF PREHEARING CONFERENCE MATTERS LISTED IN 16 C.F.R. § 1025.21

Complaint Counsel submits the following in response to the matters listed in 16 C.F.R. § 1025.21(a)(1) through (14):

16 C.F.R. § 1025.21(a)(1)—Petitions for leave to intervene

Complaint Counsel does not anticipate non-parties moving to intervene in this matter.

16 C.F.R. § 1025.21(a)(2)—Motions, including motions for consolidation of proceedings and for certification of class actions

Respondent has filed a motion to dismiss and motion to strike and Complaint Counsel has filed oppositions to both motions.

16 C.F.R. § 1025.21(a)(3)—Identification, simplification and clarification of the issues

Complaint Counsel anticipates submitting joint stipulations to simplify and clarify issues in this matter.

16 C.F.R. § 1025.21(a)(4)—Necessity or desirability of amending the pleadings

Complaint Counsel may seek to amend its Complaint pursuant to 16 C.F.R. § 1025.13 to update the name of Respondent and potentially to add other corporate or individual respondents as appropriate based on discovery.

16 C.F.R. § 1025.21(a)(5)—Stipulations and admissions of fact and of the content and authenticity of documents

Complaint Counsel anticipates submitting joint stipulations on facts and the authenticity of documents in timeframes as ordered by the Presiding Officer.

16 C.F.R. § 1025.21(a)(6)—Oppositions to notices of deposition

No deposition notices have been submitted to date. Complaint Counsel is amenable to proceeding without obtaining leave of this Court for noticing depositions unless there is an objection. Complaint Counsel is also amenable to producing, for depositions, certain staff involved in the determination that the Subject Products pose a substantial product hazard. This excludes Commissioners, Commissioners' staff, and others not involved in the substantial product hazard allegations set forth in the Complaint.

16 C.F.R. § 1025.21(a)(7)—Motions for protective orders to limit or modify discovery

Complaint Counsel and Respondent's counsel have jointly submitted a motion for protective order. This Court granted the motion on October 12, 2021.

We expect to have a dialogue about limitations going forward on depositions, interrogatories, requests for production and requests for admission consistent with the expeditious resolution of matters as described 16 C.F.R. § 1025.1.

16 C.F.R. § 1025.21(a)(8)—Issuance of subpoenas to compel the appearance of witnesses and the production of documents

Complaint Counsel expects to file an application for the issuance of non-party subpoenas for former corporate officers/employees of Respondent pursuant to 16 C.F.R. § 1025.38. Complaint Counsel expects to also seek leave to obtain additional non-party subpoenas as discovery progresses.

16 C.F.R. § 1025.21(a)(9)—Limitation on the number of witnesses, particularly to avoid duplicate expert witnesses

Currently, Complaint Counsel does not anticipate the necessity to limit the number of witnesses at this time and will avoid duplicative expert testimony. Complaint Counsel expects objections and/or motions for protective order as appropriate will address any potential duplication or excessive witness discovery.

16 C.F.R. § 1025.21(a)(10)—Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission’s substantive standards, regulations, and consumer product safety rules

Complaint Counsel requests official notice be taken of the Consumer Product Safety Act, 15 U.S.C. § 2051 *et. seq.* and the regulations relating to the rules of practice for adjudicative proceedings, 16 C.F.R. Part 1025 and substantial product hazards under 16 C.F.R. Part 1115.

16 C.F.R. § 1025.21(a)(11)—Disclosure of the names of witnesses and of documents or other physical exhibits which are intended to be introduced into evidence

Complaint Counsel expects to submit the names of anticipated witnesses and exhibits in the timeframes ordered by the Presiding Officer. Complaint Counsel further anticipates meeting and conferring with Respondent’s counsel to determine whether there are witnesses that will be called by both parties and whether exhibits can be designated as joint exhibits.

16 C.F.R. § 1025.21(a)(12) Consideration of offers of settlement

Complaint Counsel and Respondent’s counsel have engaged in settlement discussions prior to and after the filing of the Complaint. The parties have been unable to reach a settlement to date.

16 C.F.R. § 1025.21(a)(13)—Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time and place of the hearing, with due regard to the convenience of the parties

Complaint Counsel has submitted its proposed prehearing schedule herein. Complaint Counsel estimates two weeks for the hearing, and requests that the hearing take place in the Washington, DC metropolitan area.

16 C.F.R. § 1025.21(a)(14) Such other matters as may aid in the efficient presentation or disposition of the proceedings

Complaint Counsel requests electronic service and filing for documents and pleadings in this proceeding. As discussed above, Complaint Counsel also requests that no leave for depositions be required and that parties may proceed on notice unless an objection is lodged.

Dated this 19th day of October, 2021



Mary B. Murphy, Director
Gregory M. Reyes, Supervisory Attorney
Michael J. Rogal, Trial Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2021, I served Complaint Counsel's Proposed Prehearing Schedule and Statement on Prehearing Matters Pursuant to 16 C.F.R. § 1025.21 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:

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:

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