

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

IN THE MATTER OF

CPSC DOCKET NO.: 21-1

THYSSENKRUPP ACCESS CORP.,

Respondent.

**RESPONDENT'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO
CONSUMER PRODUCT SAFETY COMMISSION**

Pursuant to 16 C.F.R. § 1025.33, Respondent TK Access Solutions Corp., formerly known as thyssenkrupp Access Corp. (“the Company”), hereby requests that the Consumer Product Safety Commission (“CPSC,” “the agency,” or “the Commission”) produce the following documents and things. These Requests are to be responded to in writing and you are directed to produce and permit inspection of the following documents and things in your possession, custody, or control at the offices of Keller and Heckman, LLP, 1001 G St. NW, Washington, DC 20037 c/o Sheila A. Millar or through some other mutually convenient means within thirty days of service hereof.

Pursuant to 16 C.F.R. § 1025.31(b), the Company reserves the right to submit additional requests for production of documents or things, requests for admission, or interrogatories.

DEFINITIONS

1. In the following requests:
 - A. “You,” or “your,” shall mean the CPSC and includes the current or former staff, contractors, agents, representatives, and officers, including the Commissioners and their personal staff.

B. “Document” shall be interpreted as the term is used in the Federal Rule of Civil Procedure 34, and shall include the original and all non-identical copies of all written, printed, typed, graphic, and photographic matter of any kind or nature, and all mechanical or electronic audio and/or visual recordings or transcripts thereof, however produced or reproduced, and all entries in a computer or electronic database (including Twitter and any other form of social media) of any kind, including but not limited to: correspondence, telexes, telegrams, telephone messages, statements, voice mail, electronic mail, facsimiles, and all other computer files or data, claim forms, incident reports, intake forms or histories, summaries of records of telephone conversations, memoranda, records, summaries or records of personal conversations or interviews, invoices, contracts, agreements, orders, books, calendars, diaries, reports, notebooks, photographs, videos (digital or otherwise), slides, charts, notes, plans, drawings, sketches, maps, summaries or records of meetings or conferences, drafts, logs of meetings or telephone calls, or letters, now or formerly in the possession, custody, or control of CPSC, CPSC’s attorneys, representatives, employees, or agents, including the Commissioners and their personal staff.

C. “Person” shall mean any natural person, corporation, partnership, unincorporated association, joint venture, not-for-profit corporation, trust, estate, public or quasi-public entity, or any other legal entity.

D. “Complaint” shall mean your Complaint filed against the Company in the above-captioned matter and any amendments thereto.

E. “Components” shall mean the alleged “consumer products” referred to in Paragraph 1 of your Complaint.

- F. “Dealers” shall mean third-party distributors or retailers of the Components.
- G. “Hoistway” shall mean a vertical shaft or channel through which a residential elevator car moves when in operation.
- H. “Identify,” “state the identity of,” “identification,” or “describe:
- i When used in reference to an individual, shall mean to state their full name, maiden or former names, present or last known home and business address and telephone numbers, and present or last known occupation, employer, and job title or description; or if none of the information is known, then the name and present home and business address and telephone numbers of all individuals who likely or may be able to provide all or part of the information.
 - ii When used in reference to an organization of any kind, shall mean to state its full name, its state of incorporation (if applicable), and the address of its principal place of business and its telephone numbers.
 - iii When used in reference to a Document, shall mean to state the type of Document, its date, the identity of its author(s) and its recipient(s), any title and/or serial number or file number appearing on the Document, the identity of its present custodian, its present location and a brief description of its subject matter. If any such Document was, but no longer is, in your possession or control or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred to others, or (iv) has been otherwise disposed of. In lieu of identifying a Document, a copy of the Document can be produced.

- I. “Installer” shall mean and shall include, as specified:
 - i “Hoistway Installer,” which shall mean any Person responsible for designing or building Hoistways;
 - ii “Hoistway Door Installer,” which shall mean any Person responsible for selecting or installing Hoistway Doors; and
 - iii “Equipment Installer,” which shall mean any Person responsible for installing residential elevators.

- J. “Hoistway Door” shall mean both
 - i a door, supplied and installed by persons who are not party to the above-captioned action, used to separate the Hoistway from the living space of a residence in which a residential elevator is installed and
 - ii the frame, jamb, flange, and similar fixed components, supplied and installed by persons who are not party to the above-captioned action, that are associated with a door.

- K. “Landing Sill” shall mean the edge of the floor of the residence within the Hoistway that leads to an installed residential elevator.

- L. “Gap Space” shall mean:
 - i. The distance between the Hoistway Door and the edge of the Landing Sill and
 - ii. The distance between the Hoistway Door and the gate that is interior to a residential elevator car.

- M. “2013 Investigation” shall mean the entire CPSC file, under file number CA140069, or any other file number, under which CPSC investigated the Components in

connection with the incident described in Paragraphs 67-73 of the Complaint, and all Documents associated therewith.

N. “Closing Letter” shall mean the letter, dated June 19, 2014, from Jonathan Thron of CPSC to Jay Doyle, then-counsel to the Company, by which CPSC informed the Company that the agency had closed the 2013 Investigation at least in part in view of “the corrective action measures the [Company] has undertaken [including] establishing two (2) websites to educate consumers about the hazard and partially subsidizing the cost of space guards for consumers whose elevators were installed out of specification.”

O. “Elevator Petition” shall mean the petition, filed by The Safety Institute and others on or about November 13, 2014, entitled “Petition for Recall to Repair/Retrofit and Rulemaking,” regarding which CPSC published notice and an opportunity for comment at pages 3226-27 of Volume 80 of the Federal Register on January 22, 2015.¹

P. “Briefing Package” shall mean the CPSC staff briefing package, prepared by Vincent J. Amodeo, Project Manager, et al., and dated March 15, 2017, which:

- i recommended that the Commission deny the Elevator Petition;
- ii described the “homeSAFE” campaign that the Company had undertaken in conjunction with elevator trade associations to address the hazards associated with Hoistway Doors and elevators that were improperly installed so as to create excessive Gap Spaces; and
- iii stated that “CPSC has not recalled any elevators related to the entrapment hazard identified by the petitioners [as] CPSC staff could not identify any specific

¹ The Federal Register notice states the Elevator Petition was filed November 1, 2013. However, as the copy of the Elevator Petition contained in the Briefing Package is stamped “Received CPSC 2014 NOV 13 . . . Office of the Secretary,” p. 1, and as the Elevator Petition refers to the Company’s homeSAFE campaign, p. 24-25, which was launched on June 25, 2014, the Company believes the Federal Register notice’s statement is in error.

elevator models or manufacturers whose installations revealed design defects or installation defects that caused a substantial product hazard.”

Q. “RCA” shall mean a CPSC Record of Commission Action or similar Document reflecting any vote by the Commission, whether conducted in an open or closed meeting, by ballot, or by electronic poll.

R. “Buerkle Alert” shall mean a statement from then-Acting Chairman Ann Marie Buerkle, dated August 1, 2019, entitled “Safety Alert to Protect Children from a Deadly Gap between Doors of Home Elevators.”

S. “Buerkle Letter” shall mean a letter from then-Acting Chairman Ann Marie Buerkle, dated August 6, 2019, that was addressed to the governors of all U.S. states and that alerted the governors to the hazards associated with improper installations of hoistway doors and elevators and the “critical role of installers” in preventing these hazards.

T. “Press Release” shall mean any release or statement, issued by or through CPSC or any person associated with CPSC, or any Commissioner or any Commissioner’s staff, including the Buerkle Alert and the Buerkle Letter, to any news person or organization, including any newspaper or any broadcast or Internet person or organization, regarding the Components, residential elevators, or the hazards associated with improper installations of Hoistway Doors or elevators.

U. “Withdrawn Unilateral Statement” shall mean the proposed unilateral statement that the Company was notified, via a letter from CPSC staff member Harriet Kerwin dated February 2, 2021, that CPSC intended to issue regarding the Components.

- V. “2017 Investigation” shall mean the entire CPSC file, under file numbers PI170085 or CA210007, or any other file number, under which CPSC investigated the Components, and any Documents associated therewith.
- W. “PSA” shall mean any CPSC Product Safety Assessments, or any similar staff technical evaluations, associated with the Components or any other residential elevator.
- X. “PD” shall mean any CPSC Preliminary Determination, or any similar staff technical evaluations, associated with the Components or any other residential elevator.
- Y. “ASME” shall mean the American Society of Mechanical Engineers.
- Z. “ASME A17.1” shall mean the American Society of Mechanical Engineers’ *A17.1 Safety Code for Elevators and Escalators*, including A17.1-2016 and any predecessor and successor standards.
- AA. “ASME A17.3” shall mean the American Society of Mechanical Engineers’ *A17.3 Safety Code for Existing Elevators and Escalators*, including A17.3-2020 and any predecessor standards.
- BB. “Administrative Record” shall mean the documents relating to the 2013 Investigation, the Elevator Petition, and the 2017 Investigation, including all allegations in the Complaint, including, but not limited to, all reports, memoranda, correspondence, expert reports, analyses, safety studies and reports, engineering studies and reports, human factors studies and reports, ASME committee minutes, correspondence with ASME or committee members, and other documents or information created or reviewed by the Commission that contributed to the Commission’s decision to close the 2013 Investigation, produce the preliminary determination associated with the 2017 Investigation, and/or issue the Complaint, considered by the Commission prior to the

filing of the Complaint, and/or factored in any way into the Commission's decision to file or serve the Complaint, to deny the Elevator Petition or propose to issue the Withdrawn Unilateral Statement.

2. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
3. The word "including" shall be construed to mean without limitation.
4. 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 requests inclusive rather than exclusive.
5. The singular shall include the plural, and vice versa.

INSTRUCTIONS

1. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein, as well as 16 C.F.R. § 1025.33. If the meaning of any word or phrase used herein is unclear, Complaint Counsel are requested to contact Respondent's counsel for the purpose of resolving 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.
2. These requests shall be deemed continuing to the extent permitted by 16 C.F.R. § 1025.31(f) so as to require prompt further responses if additional information or Documents are obtained between the time the responses were served and the time of the hearing.
3. If CPSC or Complaint Counsel 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:

- A. State the date, nature, and subject matter of the Document;
 - B. Identify each author of the Document;
 - C. Identify each preparer of the Document;
 - D. Identify each Person who is an addressee or an intended recipient of the Document;
 - E. Identify each Person from whom the Document was received;
 - F. State the present location of the Document and all copies thereof;
 - G. Identify each Person who has or ever had possession, custody, or control of the Document or any copy thereof;
 - H. State the number of pages, attachments, appendices, and exhibits;
 - I. Provide all further information concerning the Document and the circumstances upon which the claim of privilege is asserted; and
 - J. Produce all non-privileged portions of the Document.
4. Produce each document requested herein in its entirety, without deletion, redaction, or excision regardless of whether you consider the entire document to be relevant or responsive to the interrogatories.
 5. In producing the Documents, indicate in meta-data or otherwise the specific request in response to which each Document is produced.
 6. 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 OF DOCUMENTS

1. All Documents you relied upon in answering Respondent's Interrogatories or Requests for Admission.
2. All Documents within the Administrative Record, including, but not limited to, any and all PSAs, related to:
 - A. the 2013 Investigation;
 - B. the Closing Letter;
 - C. the 2017 Investigation;
 - D. the Withdrawn Unilateral Statement;
 - E. any proposed resolution of the 2017 Investigation prior to the issuance of the Complaint;
 - or
 - F. the Complaint.
3. All RCAs related to the Components, including, but not limited to, RCAs associated with:
 - A. the 2013 Investigation;
 - B. the Closing Letter;
 - C. the 2017 Investigation;
 - D. the Withdrawn Unilateral Statement;
 - E. any proposed resolution of the 2017 Investigation prior to the issuance of the Complaint;
 - F. the Complaint; or
 - G. Any of the Press Releases.

4. All Documents related to CPSC's review of the Elevator Petition, including, but not limited to, any and all PSAs associated with the Components or any other residential elevators, any and all materials related to ASME activities (such as committee minutes or correspondence), and engineering drawings and installation materials related to any brand of residential elevator, as reviewed by staff in support of the Briefing Package's statement that "CPSC staff could not identify any specific elevator models or manufacturers whose installations revealed design defects or installation defects that caused a substantial product hazard." Briefing Package at 14.
5. All Documents associated with any communication regarding the Elevator Petition, the Components, and/or the purported defect or hazard alleged in the Complaint to or from any Person outside the agency, including, but not limited to:
 - A. the law firm of Cash, Krugler & Fredericks LLC;
 - B. The Safety Institute;
 - C. Engineering Systems, Inc.;
 - D. The American Society of Mechanical Engineers;
 - E. The National Association of Elevator Safety Authorities;
 - F. AEMA – An Association of Members of the Accessibility Equipment Industry;
 - G. The National Association of Elevator Contractors;
 - H. The Consumer Federation of America;
 - I. Consumers Union;
 - J. Consumer Reports;
 - K. Public Citizen;
 - L. Kids in Danger;

- M. any Member or Committee of Congress, including any personal or committee staff of such Member or Committee;
 - N. Alexander Hoehn-Saric, nominee for Chairman and Commissioner of CPSC (PN768, PN769);
 - O. Mary Boyle, CPSC Executive Director and nominee for Commissioner of CPSC (PN770);
 - P. Richard Trumka, Jr., nominee for Commissioner of CPSC (PN871); or
 - Q. any Person in the news media, including, but not limited to, the *Washington Post*.
6. All Documents related to all communications between CPSC staff and any Commissioner or any commissioner's staff regarding the Components, residential elevators, or the hazards associated with installation of Hoistways, Hoistway Doors, or residential elevators, including, but not limited to, communications regarding the Administrative Record and the Press Releases, prior to the issuance of the Complaint.
 7. All Documents related to any determination by CPSC, including by staff or by the Commission, any Commissioner, or any Commissioner's staff, regarding whether or not to engage with the Company or any other Person in the residential elevator industry in a public information campaign related to the Gap Space.
 8. All Documents related to all communications between CPSC staff and any Commissioner or any commissioner's staff to any Person regarding the Components, residential elevators, or the hazards associated with installation of Hoistways, Hoistway Doors, or residential elevators, including, but not limited to, communications regarding the Administrative Record and the Press Releases, subsequent to the Commission's vote to issue the Complaint.

9. All Documents identifying, by name and title, all CPSC staff, including all Commissioners and all commissioners' staff, who:
 - A. were or are considered "decision-makers" within the meaning of 16 C.F.R. § 1025.68(b)(1) and
 - B. were or are *not* considered "decision-makers" within the meaning of 16 C.F.R. § 1025.68(b)(1).
10. All Documents related to participation by CPSC, including any Commissioner or any commissioner's staff, in meetings, teleconferences, video conferences, ballots, or other activities of the committees responsible for the development of ASME A17.1 or ASME A17.3 from May 3, 2013, to the present.
11. All Documents related to the Briefing Package, including all Documents that formed the basis of or were associated with CPSC's statement in the Briefing Package that "CPSC has not recalled any elevators related to the entrapment hazard identified by the petitioners [as] CPSC staff could not identify any specific elevator models or manufacturers whose installations revealed design defects or installation defects that caused a substantial product hazard." Briefing Package at 14.
12. All Documents related to any CPSC inquiry into the identity of the person(s) associated with CPSC who was identified in a July 8, 2021, *Washington Post* article as a "senior agency official" who asserted that "The decision to sue was spurred by regulators learning the company had been inspecting and fixing some home elevators on its own, without alerting the regulators" or made any similar statement, representation, or disclosure.
13. All Documents related to any meetings between any Person associated with CPSC, including, but not limited to, any staff, any Commissioner, or any commissioner's staff, including, but

not limited to, each of the following meetings, including, but not limited to, full lists of attendees, full meeting logs, and all notes, summaries, communications, or similar Documents produced by or in the possession of any Person outside CPSC and any Person associated with CPSC:

- A. Meeting on February 26, 2019, with DeWane Ray and other CPSC staff;
- B. Meeting on April 8, 2019, with Acting Chairman Buerkle;
- C. Meeting on April 8, 2019, with Commissioner Kaye;
- D. Meeting on April 8, 2019, with Commissioner Adler;
- E. Meeting on April 8, 2019, with Commissioner Feldman; and
- F. Meeting on April 8, 2019, with Commissioner Baiocco.

- 14. All Documents related to the closed Commission meeting held on July 7, 2021, including any Briefing Package or similar staff-produced material, any meeting notes held by any Person associated with CPSC, and the full meeting minutes of said meeting.
- 15. All Documents associated with the 2013 Investigation in which any CPSC staff advised the Commission, any Commissioner, any Commissioner's staff, any Member of Congress, or any staff of any Member of Congress as to the status of that investigation, including but not limited to staff's decision to close the investigation, at any point before or after the closure of that investigation, including but not limited to the period during which Commissioner Robert S. Adler was Acting Chairman.
- 16. All Documents from any Person associated with CPSC that address, analyze, evaluate, or otherwise describe the role of Installers in the installation of residential elevators.
- 17. All Documents from any Person associated with CPSC that address, analyze, evaluate, or otherwise describe the role of Installers in the construction of Hoistways.

18. All Documents from any Person associated with CPSC that address, analyze, evaluate, or otherwise describe the role of any Person in selecting Hoistway Doors.

19. All Documents from any Person associated with CPSC that address, analyze, evaluate, or otherwise describe the role of any Person in installing Hoistway Doors.

August 6, 2021

Respectfully submitted,



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Attorneys for Respondent,
TK Access Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, true and correct copies of the foregoing RESPONDENT’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO CONSUMER PRODUCT SAFETY COMMISSION were served via U.S. Mail and/or electronic mail on the Secretary of the U.S. Consumer Product Safety Commission and all parties and participants of record in these proceedings in the following manner:

Original and three copies by U.S. Mail, first-class and postage prepaid, and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills:

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

As no Presiding Officer has been appointed as of the date of service, one copy by U.S. Mail, first-class and postage-prepaid, to the Presiding Officer in the care of the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills, at the above address.

One copy by electronic mail to:

Robert Kaye
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
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One copy by electronic mail to Complaint Counsel:

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