UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

IN THE MATTER OF THYSSENKRUPP ACCESS CORP., Respondent.	CPSC DOCKET NO.: 21-1

RESPONDENT'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, Respondent TK Access Solutions Corp., formerly known as thyssenkrupp Access Corp. ("the Company"), through the undersigned 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). Counsel for Respondent met and conferred with Complaint Counsel but was unable to agree on a proposed schedule.

I. Proposed Prehearing Schedule

Respondent respectfully proposes the following prehearing schedule to provide for the fair, timely resolution of the above-captioned matter:

1. All written discovery requests shall be submitted by April 1, 2022;
2. All written expert reports shall be submitted by May 2, 2022;
3. All depositions shall be completed by June 3, 2022;
4. All discovery (excluding pending motions) shall be closed by June 17, 2022;
5. Motions for summary decision shall be due by August 5, 2022;
6. Witness and exhibit lists shall be exchanged between the parties by August 5, 2022;
7. Responses to motions for summary decision are due by September 8, 2022;

8. All stipulations and pre-hearing motions are due by September 26, 2022;

9. Final witness and exhibit lists shall be submitted to the ALJ by September 26, 2022;

10. The last date for a pre-hearing conference shall be September 30, 2022;

11. All pre-hearing briefs shall be due by October 10, 2022;

12. The hearing (est. two full weeks) shall commence on October 24, 2022;

13. Post-hearing briefs shall be due 50 days after completion of the hearing; and

14. A reply to a post-hearing brief shall be due 15 days after service of the post-hearing brief.

CPSC's rules call for a timely, fair resolution of adjudicated matters. "A major concern of the [U.S. Consumer Product Safety] Commission is that all matters in adjudication move forward in a timely manner, consistent with the Constitutional due process rights of all parties." 16 C.F.R. § 1025.1. For the reasons described below, Respondent's proposed schedule comports with the Commission's stated concern for timely, due process-governed adjudications.

Prior to its filing of this action, CPSC made extensive requests for information and documents of the Company, including by letters dated October 28, 2019, and May 15, 2020. Pursuant to CPSC's requests, the Company submitted more than 25,000 pages of documents between January 30, 2020, and August 28, 2020, including product design and engineering documents, specifications, materials lists, site design guides, and installation guides and full documentation of the Company's prior HomeSAFE campaign. Throughout the course of the CPSC inquiries that culminated in this action and the earlier investigation that CPSC closed without action in 2014, the Company provided substantial volumes of additional information and documents, including details of the current Home Elevator Safety Program.

To date, by contrast, CPSC has provided the Company virtually no non-public documents underlying its decisions, such as the underlying documents related to the assessment resulting in

the 2014 Closing Letter nor underlying documents related to statements and conclusions referenced in the 2017 Briefing Package. The Briefing Package states that staff reviewed information on eight incidents, including three non-fatal incidents staff believed related to entrapments, and "could not identify any specific elevator models or manufacturers whose installations revealed design defects or installation defects that caused a substantial product hazard resulting from an excess space gap between the car door and hoistway." The Company believes that the incident resulting in the 2014 Closing Letter, which is also the incident referenced at Paragraphs 67 to 73 of the Complaint, is one of the incidents staff reviewed referenced in the 2017 Briefing Package as not revealing design or installation defects.

The Company shares all Parties' interest in the efficient resolution of this matter. However, unlike Complaint Counsel, the Company has not had the benefit of voluminous pre-litigation discovery or the opportunity to review any of the information or documents forming the basis of CPSC's Complaint (let alone review such materials for years, as CPSC has had). Therefore, the Company's ability to evaluate Complaint Counsel's claims and prepare its defense would be impaired by Complaint Counsel's compressed Discovery schedule, particularly to the extent Motions to Compel are necessary to enable the Company to address the present information imbalance. The Company's proposed schedule will result in a Hearing within approximately a year, while allowing the Company the opportunity to receive, analyze, and marshal the essential Discovery that Due Process guarantees and that is reflected in CPSC's adjudicative rules. 16 C.F.R. § 1025.1.

II. Statement of Prehearing Conference Matters Listed in 16 C.F.R. § 1025.21

Respondent respectfully submits the following regarding 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

Respondent does not anticipate non-parties seeking leave 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 on grounds that include lack of jurisdiction and mootness and a motion to strike, and Respondent respectfully requests that this Court rule on these motions. Complaint Counsel has filed oppositions to both motions.

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

Respondent anticipates submitting joint stipulations to simplify and clarify issues in this matter following the close of Discovery.

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

Respondent reserves the right to amend its pleading as necessary but does not anticipate any need to do so.

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

Respondent 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 depositions

No deposition notices have been submitted to date. Respondent is amenable to proceeding without obtaining leave of this Court for noticing depositions unless there is an objection.

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

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

Respondent expects to continue to discuss with Complaint Counsel regarding the scope of discovery going forward consistent with the resolution of this matter in a timely manner, consistent with the Constitutional due process rights of all parties, as reflected in 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

Respondent expects to file an application for the issuance of non-party subpoenas to for former employees, agents, contractors, or officers of the U.S. Consumer Product Safety Commission who may have knowledge of 1) the facts and circumstances surrounding CPSC's decision to close an investigation associated with the same alleged consumer products that are the subject of the Complaint in this matter or 2) the facts and circumstances surrounding CPSC's prior statement that agency staff had not identified any design or installation defects in any specific elevator models or manufacturers.

Respondent 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

At this time, Respondent does not anticipate the necessity to limit the number of witnesses but reserves the right to request such limits. Respondent will seek to avoid duplicate expert witnesses.

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

Respondent respectfully requests that official notice be taken of:

- CPSC Briefing Package – Petition CP 15-01 Petition for Residential Elevators, March 15, 2017;
- CPSC Record of Commission Action – Petition Requesting Rulemaking on Residential Elevators, March 24, 2017;
- Acting Chairman Ann Marie Buerkle, Safety Alert to Protect Children from a Deadly Gap between Doors of Home Elevators, August 1, 2019;
- Acting Chairman Ann Marie Buerkle's Letter to All 50 Governors to Change Building Codes for Residential Elevators, August 6, 2019;
- CPSC Alert: Protect Children from a Deadly Gap between Doors of Home Elevators, August 8, 2019; and
- CPSC News Release, Vacation Rental Homes Can Pose a Deadly Hazard – Kids Can Be Crushed to Death in Dangerous Home Elevator Gaps, June 24, 2021.

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

Respondent anticipates submitting the names of anticipated witnesses and exhibits in the timeframes ordered by the Presiding Officer. Respondent further anticipates meeting and conferring with Complaint 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

As early as 2013, Respondent has invited CPSC's collaboration in efforts to address the hazards associated with improper third-party installations of residential elevators in manners inconsistent with applicable code requirements. Respondent has continued to engage in discussions with Complaint Counsel and other CPSC staff up to and since the filing of the Complaint in this matter. 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

Respondent has described its proposed prehearing schedule herein, above. Respondent requests that the hearing take place in the Washington, D.C., 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

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

October 19, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2021, true and correct copies of the foregoing RESPONDENT'S PROPOSED PREHEARING SCHEDULE AND STATEMENT ON PREHEARING CONFERENCE MATTERS PURSUANT TO 16 C.F.R. § 1025.21 were filed via U.S. Mail and/or electronic mail with the Secretary of the U.S. Consumer Product Safety Commission and served on 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 E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
amills@cpsc.gov

One copy by certified mail and by electronic mail to:

The Honorable Mary Withum, Administrative Law Judge
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U.S. Consumer Product Safety Commission
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One copy by electronic mail to:

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One copy by electronic mail to Complaint Counsel:

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