

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

TO: Kevin L. Brinkman, PE
Vice President, Code & Safety
National Elevator Industry, Inc. (NEII)
5537 SW Urish Road
Topeka, KS 66610
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SUBPOENA

Complaint Counsel in the above-captioned matter (“Complaint Counsel”) is seeking an Initial Decision and Order determining that various models of residential elevators manufactured and distributed by thyssenkrupp Access Corp., now known as TK Access Solutions Corp. (“TKA” or “Respondent”), present a substantial product hazard. Complaint Counsel believes that you, as former Vice President for Engineering for TKA and National Wheel-O-Vator (which was

acquired by Respondent), possess information or have knowledge that will assist in that determination.

The U.S. Consumer Product Safety Commission has authorized the issuance of this Subpoena in this matter pursuant to Sections 15 and 27(b)(3) & (4) of the Consumer Product Safety Act, 15 U.S.C. §§ 2064 and 2076(b) (3) & (4), and 16 C.F.R. part 1025. **The Subpoena requires that you produce documents and appear for a deposition.**

I. GENERAL INSTRUCTIONS

A. The Commission's rules for adjudications govern this Subpoena. 16 C.F.R. § 1025.38. Title 16 of the Code of Federal Regulations, Section 1025.38 sets forth procedures for motions to quash or modify the terms of this Subpoena.

B. This Subpoena shall be answered by you.

C. The public disclosure of any information provided to the Commission under this Subpoena shall be governed by the Freedom of Information Act, 5 U.S.C. § 552, the Commission's regulations under that Act, 16 C.F.R. part 1015, and the October 12, 2021 Protective Order entered in this matter, available at <https://www.cpsc.gov/Recalls/Recall-Lawsuits-Adjudicative-Proceedings>. If you wish to request confidential treatment for any information provided, you should submit a request for such treatment with responsive documents. Questions about this Subpoena should be directed to Michael J. Rogal, Trial Attorney, U.S. Consumer Product Safety Commission, Office of Compliance and Field Operations, Division of Enforcement and Litigation, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7528; e-mail: mrogal@cpSC.gov.

D. Each document production 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, 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 your or their control.

E. 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 to make the request inclusive rather than exclusive.

F. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, to make all definitions and discovery requests inclusive rather than exclusive. The singular shall include the plural and vice versa.

G. To the extent that you withheld, based upon a claim of privilege, any information or documents (including electronic records) that would have been responsive to any information or document production requests contained in the Subpoena, provide the following information:

1. For any document withheld, 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; and (i) provide all further information

concerning the document and the circumstances upon which the claim of privilege is asserted.

2. Regarding any communication withheld, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

H. In an affidavit accompanying the response to the Subpoena, you must include a statement, signed under oath or affirmation, indicating that a diligent search of all files, records, and databases for responsive information and documents has been made, that the information contained in the responses to the questions is complete and accurate, and that you have produced true copies of all the documents requested in the Subpoena.

I. Submit your response to the Subpoena to Michael J. Rogal, Trial Attorney, U.S. Consumer Product Safety Commission, Office of Compliance and Field Operations, Division of Enforcement and Litigation, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7528; e-mail: mrogal@cpsc.gov. Documents should be provided electronically in native file format.

J. Your obligation to respond to the Subpoena is a continuing one. As additional information becomes available to you that is responsive to the Subpoena, you must submit that information immediately.

II. DEFINITIONS

For the purposes of the Subpoena, the following definitions apply:

1. “TKA” means thyssenkrupp Access Corp., now known as TK Access Solutions Corp., a Missouri corporation with its principal place of business located at P.O. Box 545, Clinton, Missouri 64735, including any agent, parent, subsidiary, affiliate, successor, or

predecessor entity, as well as all past and present officers, directors, representatives, agents, and employees of TKA.

2. “Person” means any natural person, entity, group, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, officer, or other business or legal entity, whether private or governmental, and whether foreign or domestic.

3. “Subject Products” means various models of residential elevators that were manufactured and/or distributed in U.S. commerce from 1996 through 2012, including without limitation, the following models: Chaparral, Destiny, LEV, LEV II, LEV II Builder, Volant, Windsor, Independence, and Flexi-Lift. Subject Products include those products which are defined in the Complaint filed in *In the Matter of thyssenkrupp Access Corp.*, CPSC Docket No. 21-1, which is available at <https://www.cpsc.gov/Recalls/Recall-Lawsuits-Adjudicative-Proceedings>.

4. “Document(s)” shall be interpreted as the terms is used in Federal Rule of Civil Procedure 34, and includes electronically stored information.

5. “Communication(s)” shall mean any transfer of information, ideas, opinions, or thoughts by any means, at any time or place, under any circumstances, including, but not limited to, any transfer of information or data in a document, or from one location to another, by electrical, electronic, digital, or other means.

6. “Relating to” or “related to” shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection to the matter discussed.

III. SUBPOENA AD TESTIFICANDUM AND DUCES TECUM

You are ordered to appear at the Commission's headquarters at 4330 East West Highway, Bethesda, MD 20814 to testify regarding the matters referred to above twenty (20) days after service of the subpoena, or on a date and at a location mutually agreeable to the parties, and continuing thereafter until your testimony is concluded.

You are also directed to produce at the Commission's headquarters at 4330 East West Highway, Bethesda, MD 20814 within ten (10) days of service of the subpoena and prior to testifying at the deposition above, copies of all records in your possession, custody, or control relating to:

- 1) Any and all Documents and Communications concerning thyssenkrupp Access Corp. and funding and/or control by former and current parents and subsidiaries, as well as any entities acquired by or merged with Respondent.
- 2) Any and all Documents and Communications relating to reports of incidents, including incidents involving injuries, related to elevator entrapments involving the Subject Products.
- 3) Any and all Documents and Communications relating to the engineering drawings and instructional materials, including installation, design, and planning guides ("Installation Materials") for the Subject Products.
- 4) All Documents and Communications related to any interpretation regarding how to measure the hoistway door to the elevator car door or gate.
- 5) 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 child entrapment hazard posed by the Elevators.

- 6) 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 child entrapment hazard posed by the Elevators.
- 7) 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 Subject Products generally.
- 8) Any and all Documents and Communications relating to any design changes or proposed design changes for Installation Materials on the Subject Products.
- 9) Any and all Documents and Communications relating to your involvement on the American Society for Mechanical Engineers A17 Residence Elevator Committee or ASME A17.1 *Safety Code for Elevators and Escalators*, concerning:
 - the potential entrapment hazard posed by a 5 inch or greater gap between an elevator car door and hoistway door;
 - the potential for measuring discrepancies between peaks and valleys of accordion doors; and
 - the ability for accordion doors to be significantly more flexible due to deflection.

BY ORDER OF THE COMMISSION

The undersigned, an authorized official of
the U.S. Consumer Product Safety Commission,
has hereto set her hand and caused the seal
of the Commission to be affixed at
Bethesda, MD, this _____ day of
_____, 2022.

Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission