

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

IN THE MATTER OF

THYSSENKRUPP ACCESS CORP.,

Respondent.

CPSC DOCKET NO.: 21-1

MOTION TO QUASH NON-PARTY SUBPOENA

Non-party Jurrien Van Den Akker, through the undersigned counsel and pursuant to 16 C.F.R. § 1025.38(g), hereby moves to quash the subpoena served on him by U.S. Consumer Product Safety Commission (“CPSC”) Complaint Counsel on January 21, 2022. The grounds for this motion are set forth below.

Mr. Van Den Akker served as President of ThyssenKrupp Access Corp., now known as TK Access Solutions Corp. (“the Company”), from November 1, 2011, through December 25, 2015. Mr. Van Den Akker is now retired and is a foreign national who is removed from the residential elevator industry.

At his departure, Mr. Van Den Akker did not retain documents pertaining to the Company and thus has no materials responsive to Complaint Counsel’s *subpoena duces tecum*.

Further, Mr. Van Den Akker was deposed in two prior civil litigation matters pertaining to the potential hazards that are the subject of the Complaint in this matter. These depositions were given on November 20, 2012 (pertaining to the incident described at Paragraphs 67-73 of the Complaint) and June 13, 2018 (pertaining to the incident described at Paragraphs 74-75 of the Complaint).

These depositions, which were necessarily more contemporaneous to all of the issues in the above-captioned matter than current testimony would be, involved the same issues as the

instant action. These depositions are thus the best available evidence regarding Mr. Van Den Akker's knowledge of topics including, but not limited to:

- the design, manufacture, and distribution, through dealers, of the Company's residential elevators;
- the Company's knowledge of locations in which its dealers or their agents installed the elevators;
- the Company's instructions for professional installers' installation of its residential elevators;
- the "Gap Space" adjoining a residential elevator installation;
- the potential hazards associated with excessively large "Gap Spaces;" and
- the Safety Codes applicable to residential elevator installations at the time the Company offered products.

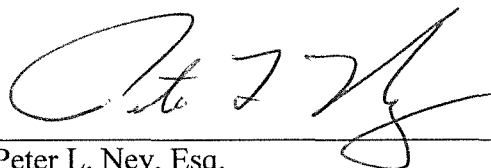
Any current testimony could only be duplicative of Mr. Van Den Akker's prior deposition testimony. Upon information and belief, Complaint Counsel has received copies of the complete transcripts of these depositions, with exhibits, and thus has access to this best-available evidence.

As Mr. Van Den Akker can provide no documents or additional information responsive to Complaint Counsel's subpoena, the burden of complying with that subpoena would necessarily be disproportionate to its evidentiary value. Moreover, that burden would fall on a person who is not a party to this matter. Non-parties to any litigation "have no dog in that fight. Although discovery is by definition invasive, parties to a law suit must accept its travails as a natural concomitant of modern civil litigation. Non-parties have a different set of expectations. Accordingly, concern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs." *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998),

citing *Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir.1993); *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir.1980); *Addamax Corp. v. Open Software Found., Inc.*, 148 F.R.D. 462, 468 (D.Mass.1993). See also *Nitcsch v. DreamWorks Animation SKG Inc.*, No. 5:14-cv-04062, 2017 WL 930809, at *2 (N.D. Cal. Mar. 9, 2017) (citing *United States v. Columbia Broadcasting Sys., Inc.*, 666 F.2d 364, 371 (9th Cir. 1982) where the court stated, “Nonparty witnesses are powerless to control the scope of litigation and discovery, and should not be forced to subsidize an unreasonable share of the costs of a litigation to which they are not a party.”).

For the foregoing reasons, Mr. Van Den Akker respectfully requests the Presiding Officer to quash the subpoena.

Dated: January 27, 2022



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Counsel for Non-Party Witness,
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CERTIFICATE OF SERVICE

Pursuant to 16 C.F.R. § 1025.16, as adopted by the Presiding Officer in CPSC Docket No. 21-1, I hereby certify that on January 27, 2022, true and correct copies of the foregoing Motion to Quash Subpoena were filed 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:

By electronic mail to the Secretary of the U.S. Consumer Product Safety Commission:

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By electronic mail to the Presiding Officer:

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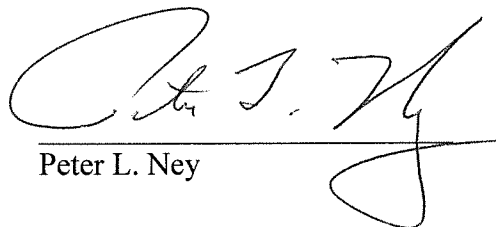
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