UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

COMPLAINT COUNSEL'S MOTION TO EXTEND CERTAIN DISCOVERY DEADLINES

Pursuant to 16 C.F.R. §§ 1025.1, 1025.15(c), 1025.23, 1025.31(i), and 1025.42(a) Complaint Counsel respectfully moves this Court to extend certain upcoming discovery deadlines in this matter. According to this Court's October 26, 2021 Scheduling Order, the deadline for written discovery is March 4, 2022; the deadline for depositions is April 8, 2022; and discovery closes on April 29, 2022. For the reasons detailed herein, due mostly in part to Mauro Carneiro's purported unavailability, if the Complaint in this matter is amended to add TK Elevator Corp. ("TKE") as a respondent, such amendment will occur after the deadlines for written discovery and depositions. This would prejudice Complaint Counsel's ability to conduct additional discovery after the addition of a new respondent.

Thus, Complaint Counsel requests that this Court order that, if the Complaint in this matter is amended, certain discovery deadlines be extended so that Complaint Counsel and TKE can conduct appropriate discovery. Specifically, Complaint Counsel requests that the deadlines in this Court's October 26, 2021 Scheduling Order be updated as follows for discovery related only to TKE:

1. TKE-related written discovery requests shall be submitted 10 days after the entering of any order amending the Complaint.
2. TKE-related depositions shall be completed 30 days after the entering of any order amending the Complaint.
3. TKE-related discovery shall close 30 days after the entering of any order amending the Complaint.

Complaint Counsel is not requesting any extension of deadlines for any discovery related to current Respondent, thyssenkrupp Access Corp, now known as TK Access Solutions Corp.

I. BACKGROUND

On July 7, 2021, Complaint Counsel filed a Complaint commencing this action. Dkt. No. 1. The parties are currently in the midst of conducting discovery. On December 21, 2021, Complaint Counsel noticed the deposition of Mauro Carneiro for January 19, 2022. Dkt. No. 36. Mr. Carneiro's deposition was the first deposition noticed in this matter. Shortly thereafter, Respondent informed Complaint Counsel that Mr. Carneiro was on vacation until January 14, but was willing to discuss the details regarding Mr. Carneiro's deposition.[1] On January 11, 2022, and after a meet and confer, Complaint Counsel requested potential dates for Mr. Carneiro's deposition in "late January or early February."[2] On January 19, 2022, Respondent noted that Mr. Carneiro was "unavailable in January and ha[d] very limited availability in February," and proposed either February 22 or 23, 2022 for his deposition.[3] Respondent also noted that Mr. Carneiro was unavailable during the first two weeks of March.[4] On January 24, 2022, Complaint Counsel informed Respondent that Mr. Carneiro's deposition was necessary "to

[1] Email from Sheila Millar to Michael Rogal (Dec. 22, 2021) ("Exhibit 1").
[2] Letter from Frederick C. Millett to Sheila A. Millar at 1 (Jan 11, 2022) ("Exhibit 2").
[3] Letter from Sheila A. Millar to Frederick C. Millett at 1 (Jan. 19, 2022) ("Exhibit 3").
[4] *Id.*

determine, *inter alia*, whether [Respondent] has sufficient funding or whether [Complaint Counsel] will need to file a motion to amend the complaint to add additional parties to this case."[5] Complaint Counsel reiterated its request for earlier proposed dates.[6] On January 31, 2022, Respondent provided minimal information regarding Mr. Carneiro's unavailability and noted that the proposed dates accounted for Mr. Carneiro's schedule, Mr. Michael Garnier's travel schedule, and travel restrictions.[7] Taking Respondent at its word, and in an effort to avoid judicial intervention, Complaint Counsel agreed to a February 23, 2022 deposition date.[8]

Because of the delay in scheduling Mr. Carneiro's deposition, and due to upcoming discovery deadlines, Complaint Counsel filed Complaint Counsel's Motion to Transmit Proposed Amended Complaint and Memorandum in Support of Complaint Counsel's Amended Complaint to the Commission and accompanying filings (collectively, "Motion to Transmit") on February 14, 2022. Dkt. Nos. 73-75. [redacted] On February 15, 2022, Complaint Counsel immediately emailed Respondent and noted that because of this family emergency and the filing of the Motion to Transmit, the deposition would need to be postponed.[9] In that same email, Complaint Counsel requested Mr. Carneiro's availability in March. Complaint Counsel received no response from Respondent. One week later, Complaint Counsel again requested Mr. Carneiro's availability, this time for the last two weeks in March.[10] Again, Respondent did not

[5] Letter from Frederick C. Millett to Sheila A. Millar at 1 (Jan. 24, 2022) ("Exhibit 4").
[6] *Id.*
[7] Letter from Sheila A. Millar to Frederick C. Millett at 2 (Jan. 31, 2022) ("Exhibit 5").
[8] Email from Michael Rogal to Sheila Millar (Jan. 31, 2022) ("We disagree with your extending the date of the Carneiro deposition past our requested dates in early February. However, in an effort to resolve this scheduling issue, we are prepared to accept Wednesday, February 23, 2022 as the date for Mr. Carneiro's deposition per your proposal in your January 19, 2022 letter.") ("Exhibit 6").
[9] Email from Frederick Millett to Sheila Millar (Feb. 15, 2022) ("Exhibit 7").
[10] Email from Frederick Millett to Sheila Millar (Feb. 22, 2022) ("Exhibit 8").

respond. On February 24, 2022, Complaint Counsel called counsel for Respondent and left a voicemail. Complaint Counsel also emailed Respondent, again requesting availability for a deposition in March.[11] Respondent finally provided a response, and suggested April 12, 13, or 14[12]—all of which are dates outside of the April 8, 2022 deadline for depositions, as ordered in this Court's October 26, 2022 Scheduling Order.[13] Complaint Counsel informed Respondent that the dates were unacceptable, as they were outside of the deadline for depositions, and requested details on why Mr. Carneiro is unavailable for the entire month of March.[14] Subsequently, Respondent proposed April 5 or 6, 2022 for the deposition.[15] To date, Complaint Counsel has not been provided substantive details regarding Mr. Carneiro's unavailability, other than broad claims of business meetings and international travel. Notably, it appears that Mr. Carneiro's limited availability relates not to his duties to Respondent—the U.S. entity for which he is the President, Treasurer, Secretary, and sole director of[16]—but instead relates solely to his role as the CEO of TKE's Home unit.[17] Nevertheless, and again to avoid judicial intervention, Complaint Counsel recently filed an amended notice of deposition for April 5, 2022. Dkt. No. 80.

Thus, since the deposition of Mr. Carneiro was noticed in December, Respondent has—for the sole officer and director of Respondent—provided only four available dates from January through April that fall within the deadline for depositions.

[11] Email from Michael Rogal to Sheila Millar (Feb. 24, 2022) ("Exhibit 9")
[12] Email from Sheila Millar to Michael Rogal (Feb. 24, 2022) ("Exhibit 10").
[13] At the time of this filing, this Court's October 26, 2022 Scheduling Order was not listed on the public docket on the Commission's website. *See* https://www.cpsc.gov/Recalls/Recall-Lawsuits-Adjudicative-Proceedings.
[14] Email from Michael Rogal to Sheila Millar (Feb 24, 2022) ("Exhibit 11").
[15] Email from Sheila Millar to Michael Rogal (Feb. 25, 2022) ("Exhibit 12").
[16] Declaration of Mauro Carneiro ¶¶ 1-3, November 11, 2021, TKAS_CPSC21-1_64757-60 ("Exhibit 13").
[17] Email from Sheila Millar to Michael Rogal (Feb. 24, 2022) ("Exhibit 14").

II. EXTENDING CERTAIN DISCOVERY DEADLINES IS APPROPRIATE AND SUPPORTED BY THE COMMISSION'S RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS.

The Commission's Rules of Practice for Adjudicative Proceedings ("Rules"), at 16 C.F.R. Part 1025, vest this Court with broad discretion to alter time limits and other procedural aspects of this proceeding. *See* 16 C.F.R. § 1025.1 ("[B]road discretion has been vested in the Presiding Officer who will hear a matter being adjudicated to allow him/her to alter time limitations and other procedural aspects of a case, as required by the complexity of the particular matter involved."); *see also* 16 C.F.R. § 1025.42(a) (noting that the Presiding Officer shall have all powers necessary to "conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order"). Further, the Rules allow the Presiding Officer to "extend any time limit prescribed or allowed by these rules or by order of the Commission or the Presiding Officer," "for good cause shown," and to "issue any just and appropriate order," for controlling discovery and ensuring timely completion. 16 C.F.R. §§ 1025.15(c), 1025.31(i).

In the event that TKE is added as a respondent, Complaint Counsel is requesting a brief extension of time for certain discovery deadlines, and solely for discovery related to TKE. Good cause exists for Complaint Counsel's proposed extension. Although Complaint Counsel has been diligently attempting to take Mr. Carneiro's deposition, his extremely limited availability has frustrated Complaint Counsel's ability to do so. Currently, Respondent proposed, and Complaint Counsel noticed, the deposition of Mr. Carneiro for April 5, 2022. As a result, and pursuant to this Court's February 18 Order, additional briefing for amending the Complaint would be due no earlier than April 15, 2022. This is outside of the deadline for submitting written discovery requests and completing depositions, and is only 14 days before the close of discovery on April 29, 2022.

Complaint Counsel does not expect extensive additional discovery related to TKE; however, certain written discovery requests and depositions may be necessary to establish facts that may be relevant to the potential amended complaint. As currently structured, Complaint Counsel would be unable to conduct such additional discovery if TKE is added as a respondent. As such, Complaint Counsel is proposing brief extensions of time for the following discovery deadlines:

1. TKE-related written discovery requests shall be submitted 10 days after the entering of any order amending the Complaint.
2. TKE-related depositions shall be completed 30 days after the entering of any order amending the Complaint.
3. TKE-related discovery shall close 30 days after the entering of any order amending the Complaint.

Extending the discovery deadlines as suggested does not impact other deadlines in the Court's October 26, 2021 Scheduling Order, and is sufficiently in advance of the scheduled hearing date of September 12, 2022. Further, Complaint Counsel is not requesting an extension of time for any discovery related to current Respondent, thyssenkrupp Access Corp., now known as TK Access Solutions Corp. The parties have been in the midst of discovery and Complaint Counsel believes the previously ordered deadlines related to discovery from Respondent are adequate.

III. CONCLUSION

Accordingly, and having shown good cause, Complaint Counsel respectfully requests that the Presiding Officer issue a just and appropriate Order extending certain discovery deadlines for TKE-related discovery, as set forth above.

Dated this 3rd day of March, 2022

Respectfully submitted,

Gregory M. Reyes, Supervisory Attorney
Michael J. Rogal, Trial Attorney
Frederick C. Millett, Trial Attorney
Joseph E. Kessler, Trial Attorney
Nicholas J. Linn, Trial Attorney

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EXHIBITS 1-14
REDACTED

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[PROPOSED] ORDER ON COMPLAINT COUNSEL'S
MOTION TO EXTEND CERTAIN DISCOVERY DEADLINES

This matter, having come before the Presiding Officer on Complaint Counsel's Motion to Extend Certain Discovery Deadlines dated March 3, 2022, it is hereby ORDERED that the Motion is GRANTED.

It shall be further ORDERED:

Certain discovery deadlines in this Court's October 26, 2021 Scheduling Order are updated as follows:

1. TKE-related written discovery requests shall be submitted 10 days after the entering of any order amending the Complaint.
2. TKE-related depositions shall be completed 30 days after the entering of any order amending the Complaint.
3. TKE-related discovery shall close 30 days after the entering of any order amending the Complaint.

Done and dated March ___ 2022

Arlington, VA

_____
Mary F. Withum
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2022, I served Complaint Counsel's Motion to Extend Certain Discovery Deadlines as follows:

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

By email to the Presiding Officer:

Hon. Mary F. Withum, Administrative Law Judge
c/o Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
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By email to Counsel for Respondent:

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