

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

IN THE MATTER OF

CPSC DOCKET NO.: 21-1

THYSSENKRUPP ACCESS CORP.,

Respondent.

**RESPONDENT'S SECOND SET OF INTERROGATORIES 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”) answer each of the following interrogatories under oath and in writing within 30 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; and

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 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.”

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.

- 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 interrogatories 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 interrogatory 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 interrogatories 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. Identify each Person who assisted or participated in preparing and/or supplying any of the information given in response to or relied upon in preparing the answers to these interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1. Identify each Person with knowledge of your efforts to respond to any set of (i) Respondent’s Second Set of Interrogatories, (ii) Respondent’s Second Set of Requests for Production of Documents or Things, or (iii) Second Set of Requests for Admission. For each Person identified, indicate the time period of their involvement, and describe the Person’s responsibility, role, and contribution.

INTERROGATORY NO. 2. For each of the incidents described in Paragraphs 66 through 80 of the Complaint, identify, by CPSC file-number, each In-Depth Investigation (“IDI”) conducted by CPSC personnel – including, but not limited to, staff, officers, contractors, or agents – of each of

the incidents alleged in the Complaint, the date of the incident, the date CPSC first became aware of such incident, and the date(s) of any and all IDIs pertaining to such incident.

INTERROGATORY NO. 3. Identify all CPSC personnel with knowledge of the corrective action plans (CAP) approved in connection with any of the following CPSC recalls: 21-056, 22-045, 22-046, 22-047.

INTERROGATORY NO. 4. Identify all CPSC personnel with knowledge of CPSC's decision(s) to publicly disseminate information regarding the availability of free space guards from the Company or not to publicly disseminate such information in any of the CPSC's statements on elevator safety.

INTERROGATORY No. 5. Identify all CPSC personnel with knowledge of CPSC's request to use all or portions of the freely available instructional video posted at <https://www.homelevator-safety.com>.

Dated: January 20, 2022



Sheila A. Millar (DC Bar 339341)
202-434-4143 (direct dial)
millar@khlaw.com

Eric P. Gotting (MD Bar 9612170350/DC Bar 456406)
202-434-4269 (direct dial)
gotting@khlaw.com

S. Michael Gentine
202-434-4164 (direct dial)
gentine@khlaw.com

Taylor D. Johnson (DC Bar 1616613)
202-434-4255 (direct dial)
johnsont@khlaw.com

Anushka N. Rahman (DC Bar 1048328/NY Bar)
202-434-4116 (direct dial)
rahman@khlaw.com

KELLER AND HECKMAN LLP
1001 G Street N.W.

Suite 500 West
Washington, D.C. 20001
(202) 434-4100

Michael J. Garnier (DC Bar 432819/VA Bar 23994)
703-237-2010
mjgarnier@garnierlaw.com
GARNIER & GARNIER, P.C.
2579 John Milton Drive
Suite 200
Herndon, VA 20171
(703) 237-2010

Meredith M. Causey (AR Bar 2012265)
501-379-1743 (direct dial)
mcausey@qgtlaw.com
QUATTLEBAUM, GROOMS & TULL PLLC
111 Center Street
Suite 1900
Little Rock, AR 72201
(501) 379-1700
ATTORNEYS FOR RESPONDENT,
TK Access Solutions Corp.

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 20, 2022, true and correct copies of the foregoing Respondent's Second Set of Interrogatories to Consumer Product Safety Commission 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:

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

By electronic mail to the Presiding Officer:

The Honorable Mary Withum, Administrative Law Judge
c/o Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
amills@cpsc.gov

By electronic mail to Complaint Counsel:

Mary B. Murphy
Complaint Counsel
Director
Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
mmurphy@cpsc.gov

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

Nicholas J. Linn, Trial Attorney
Complaint Counsel
Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
greyes@cpsc.gov
mrogal@cpsc.gov
fmillett@cpsc.gov
jkessler@cpsc.gov
nlinn@cpsc.gov



Sheila A. Millar