

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
)	
TK ACCESS SOLUTIONS CORP. f/k/a)	CPSC DOCKET NO.: 21-1
THYSSENKRUPP ACCESS CORP.)	
)	
Respondent.)	
)	

ORDER ON COMPLAINT COUNSEL’S MOTION TO COMPEL DISCOVERY

Upon consideration of Complaint Counsel’s Motion to Compel Discovery and the Respondent’s Opposition to the Motion, it is hereby ordered that the Motion to Compel discovery is granted.

On April 5, 2022, Complaint Counsel filed its Motion to Compel Discovery and supporting Memorandum seeking to obtain discovery from TK Access Solutions Corp. (“Respondent”) of underlying financial documentation regarding the funding Respondent claims to possess to satisfy any expenses to remediate its residential elevators in the event a recall is ordered in addition to corporate governance, shareholder, other inter-corporate documents relating to organizational charts produced by Respondent. Complaint Counsel also seeks further response and production related to existing discovery requests.

Complaint Counsel’s Motion identifies various organizational charts produced and funding assurances made by Respondent’s counsel that it claims require further discovery production so that it can “test Respondent’s conclusory statements throughout the discovery process.” Complaint Counsel’s Motion, at 27. Complaint Counsel further identifies certain

deposition testimony by witnesses during discovery that it says disputes Respondent's representations. Complaint Counsel alleges that discovery to date shows that [REDACTED]

[REDACTED] Complaint Counsel's Motion, at 27. Complaint Counsel argues that the information already provided in discovery by Respondent, coupled with the additional facts set forth in its prior Motion to Amend, supports its right to additional discovery on whether the corporate veil should be pierced. Complaint Counsel's Motion, at 27.

Respondent filed an Opposition to the Motion to Compel and argues that the financial status or corporate structure of a company is not relevant in an action under 15 U.S.C. § 2064. Respondent further argues that Complaint Counsel's misunderstandings and mischaracterizations of Respondent's voluntary responses does not entitle it to additional discovery or "authoriz[e] a fishing expedition into the records [REDACTED]."

Respondent's Opposition, at 5. Respondent concludes that Complaint Counsel's demands for further production on matters not relevant to its burden of proof do not comply with the applicable rules of procedure, constitute an abuse of discretion, and should be denied.

Respondent's Opposition, at 5. Notwithstanding these arguments, Respondent provided additional documents and disclosure with respect to funding and corporate organization to resolve lingering confusion and further support its Opposition.

Both parties requested and were granted opportunity to file a reply and surreply brief. In reply, Complaint Counsel provides legal authority and argument supporting the relevancy of Respondent's financial status and organizational structure to this action and any potential remedy. Complaint Counsel further argues that the supplemental productions and disclosures made by Respondent in its Opposition further support its Motion to Compel. In its surreply,

Respondent states that Complaint Counsel is wrong on the facts because it ignores facts and descriptive information provided to date on the common business practice of cash-pooling that it says shows funds remain available to the Respondent to fund any potential remedy. Respondent also argues that Complaint Counsel errs in its interpretation of [REDACTED] [REDACTED]. Respondent further argues that Complaint Counsel alleges an incorrect statement about Respondent's response to Complaint Counsel's Interrogatory No. 28. Finally, Respondent argues that Complaint Counsel is wrong on the law with respect to veil piercing and argues distinguishing facts of the cited cases. Respondent's Surreply, at 1-4. I reviewed and considered all the parties' filings and arguments when making this decision.

The requested documents are relevant to this action and within the scope of discovery set forth in 16 C.F.R § 1025.31(c) as they may lead to admissible evidence. Discovery under the Federal Rules is "accorded broad and liberal treatment." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). Relevance is also an extremely broad concept. *Copantitla v. Fiskardo Estiatorio, Inc.* No. 09 CIV. 1608 RJH JCF, 210 WL 1327921, at *9 (S.D.N.Y. Apr. 5, 2010). In this case, Complaint Counsel has proffered facts and arguments to support relevance, specifically addressing the need to ensure that Respondent possesses sufficient funding, and access to funding through its corporate structure, to undertake any remedy that could be ordered in this enforcement action to protect the public. Complaint Counsel's Reply Br., at 2. The financial status, corporate structure and piercing the corporate veil relate to this litigation because it is the "procedural means of allowing liability on [the] substantive claim." *Int'l Fin. Servs. Corp. v. Chromas Techs. Canada, Inc.*, 356 F2d 731, 736-37 (7th Cir. 2004).

With respect to further discovery on the financial status and corporate organization raised by Complaint Counsel, the proffered facts indicate that the Respondent has [REDACTED]

[REDACTED]

[REDACTED]

“enmeshed in a network of financial relationships with persons and entities controlled by, or otherwise related to [a] parent.” *In the Matter of Chemtron Corp. f/k/a Chemtron Invest. Inc. et al.*, CPSC Docket 02-1. Complaint Counsel wants more discovery about Respondent’s corporate relationships to establish whether underlying facts warrant piercing the corporate veil. In this case, [REDACTED], and whether they may control either the Respondent’s actions or any funding sources available to satisfy a potential recall remedy. *Benchmark Design, Inc. v. BDC, Inc.*, No. 88-1007-FR, 1989 WL 81618, *2 (D. Or. Jul 5, 1989); *Jackam v. Hospital Corp. of America Mideast, Ltd.*, 800 F.2d 1577, 1579-80 (11th Cir. 1986), and other cases. Complaint Counsel’s Motion, at 22-23,

Commission precedent also supports this inquiry to ensure that any relief ordered is properly funded to protect the public. *Chemtron Corp., supra*; *In the Matter of Maxfield and Oberton Holdings, LLC*, CPSC Docket No. 12-1. Complaint Counsel’s Reply, at 3-4. In its surreply, Respondent argues that those cases are factually distinguishable and do not control here. Setting aside for the moment whether or not those cases control here, it is notable that Respondent is able to argue the distinguishable facts in those cases precisely because those facts were derived through the same discovery process the Complaint Counsel urges here and Respondent now opposes.

Further, Complaint Counsel identifies multiple examples in discovery to date where Respondent’s responses were inconsistent or unclear about the financial status and corporate

organization of the Respondent bringing into question whether Respondent is a shell. For example, in response to interrogatories and document requests made on July 30, 2021

Respondent provided on November 12, 2021, one organizational chart and a declaration from

[REDACTED]

[REDACTED]. Complaint

Counsel's Motion, at 8. Neither is this a fishing expedition. The discovery posed by Complaint Counsel contains pointed requests focused on whether Respondent is a shell corporation without sufficient financial assets to satisfy a potential recall remedy. Among other discovery to date,

[REDACTED] brought this issue

to the forefront.

Complaint Counsel also notes its concerns with the repeated, conclusory assurances provided by Respondent and its counsel regarding the amount and adequacy of its financial resources and the corporate structure given the lack of underlying financial or shareholder documentation produced. Complaint Counsel's Motion, at 9-21. Conclusory assurances by Respondent and its counsel about available financial resources warrant further discovery

notwithstanding Respondent's arguments that its financial status and organizational structure are not relevant in an action under Section 15 of the Consumer Product Safety Act. 15 U.S.C. § 2064. Respondent argues that its actions related to its funding sources and access to that funding are consistent with commercial practices and "how large entities – including corporations and governments – manage their finances." Respondent's Opposition, at 6. But it seems unlikely that another commercial entity with which Respondent, [REDACTED] may transact business, would rely solely on Respondent's "assurances of funding" standing alone. Such commercial entities would expect more, such as a letter of credit, a surety bond, or an escrow arrangement, for example. While the same commercial payment arrangements are not applicable here, Complaint Counsel is entitled to comparable financial certainty in this enforcement action that any potential recall to protect the public be funded by the Respondent and that Respondent is not a mere shell entity.

As noted above, relevance in discovery is broad and includes discovery of facts that may lead to admissible evidence. [REDACTED]
[REDACTED], is in the realm of relevance. This is especially true given that Respondent no longer operates in the residential elevator business, [REDACTED]
[REDACTED]
[REDACTED]

Complaint Counsel also set forth its numerous unsuccessful attempts, beginning on July 30, 2021, through routine discovery tools such as interrogatories, document production requests, and request for admissions, to gather the requested information. Complaint Counsel's Motion, at 1-8. Complaint Counsel further described its efforts to resolve the discovery impasse through

correspondence and consultations with Respondent before pursuing its Motion to Compel. Complaint Counsel's Motion, at Exh 3-10. Complaint Counsel appears to have made good faith efforts to resolve this discovery dispute before resorting to its Motion.

After Considering the Motions and Oppositions filed, I hereby GRANT the Complaint Counsel's Motion to Compel Discovery and direct the Respondent to make a full and complete production of all documents and information, including:

1. All of the underlying financial documentation regarding the funding Respondent claims it possesses to satisfy any expenses to remediate its residential elevators;
2. All corporate governance, shareholder and other inter-corporate documents relating to the organizational charts produced by Respondent;
3. Complete and accurate responses to Dkt. No. 14, Complaint Counsel's First Set of Interrogatories to Respondent, Nos. 25-26 and 28;
4. All relevant documents and things concerning Dkt. No. 15, Complaint Counsel's First Set of Requests for Production to Respondent, Nos. 7-9;
5. Complete and accurate responses to Dkt. No. 69, Complaint Counsel's First Set of Requests for Admission to Respondent, Nos. 56-60; and
6. Complete and accurate responses to Dkt. No. 70, Complaint Counsel's Second Set of Interrogatories to Respondent, Nos. 47-51, 56-57.

It is further ordered that Respondent has ten (10) days to respond to the discovery requests noted.

So ordered.

Done and dated April 27, 2022
Arlington, VA

Mary F. Withum
Administrative Law Judge