

UNITED STATES OF AMERICA  
CONSUMER PRODUCTS SAFETY COMMISSION

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

**Order Denying Motion to Quash Subpoena for Patrick M. Bass**

Upon consideration of the Motion to Quash Non-Party Subpoena, and Complaint Counsel’s Opposition, it is hereby ordered that the Motion to Quash Non-Party Subpoena filed by Patrick M. Bass is denied.

On January 21, 2022, U.S. Consumer Product Safety Commission (“CPSC”) Complaint Counsel served a *subpoena duces tecum* on non-party, Patrick M. Bass. On January 31, 2022, Mr. Bass, through counsel, filed a Motion to Quash Non-Party Subpoena. On February 7, 2022, Complaint Counsel filed its Opposition.

In his Motion to Quash, Mr. Bass represents that he served in management positions and was the signing authority for thyssenkrupp Access Corp., (Respondent) now known as TK Access Solutions Corp. (TKA) after it ceased operations. He also served as Chief Executive Officer of thyssenkrupp North America Inc., from January 2015 until February 29, 2020. He is retired and claims that at his departure, he did not retain any documents and has no materials responsive to the *subpoena duces tecum*. He further claims that he was deposed in two prior civil litigation matters, on September 11, 2012, and June 14, 2018, pertaining to the hazards that are the subject matter of this Complaint. He claims that those depositions are more

contemporaneous and the best available evidence for his knowledge of topics relating to this proceeding. He states that any further testimony would only be duplicative of the earlier testimony, transcripts of which Complaint Counsel already possesses. Mr. Bass concludes that the burden of complying with the subpoena would be disproportionate to its evidentiary value and, as a non-party to the proceeding, would be unduly burdensome.

In its Opposition, Complaint Counsel argues that the information sought is relevant and necessary for this proceeding given the roles of Mr. Bass as President and CEO of Respondent, TKA, thyssenkrupp North America Inc., and as Executive Vice President Research and Development for thyssenkrupp Elevator (TKE). Complaint Counsel urges that Mr. Bass's knowledge of the residential elevators in this case, the gap space, and applicable safety standards is relevant to whether the elevators present a substantial product hazard. Complaint Counsel also argues that Mr. Bass served in the noted executive capacities when Respondent carried out its homeSAFE program. Complaint Counsel avers that the information sought is not unreasonably duplicative because this case involves different causes of action, more residential elevator products, and different parties. Finally, Complaint Counsel argues that the deposition is not unduly burdensome because it is tailored to Mr. Bass's involvement with Respondent and related entities during his dates of employment with those companies, and includes relevant topics not addressed in the prior two depositions, including the relationship between the Respondent and other thyssenkrupp entities. Finally, Complaint Counsel proposes a virtual deposition to limit the burden on Mr. Bass.

The proffered facts and argument support Complaint Counsel's *subpoena duces tecum* because the deposition seeks relevant, non-duplicative information from Mr. Bass. It is also not unduly burdensome to him. As noted above, Mr. Bass served in a variety of key executive roles

including Executive Vice President Research and Development for TKE where Compliant Counsel states that he designed residential elevators, trained installer mechanics and served as an installation mechanic. Additionally, as Vice Chair of the American Society for Mechanical Engineers (ASME) A17 Residence Elevator Committee, he was “responsible for proposing safety standards for residential elevators, when that committee was debating changing the width of the gap space between car doors and hoistway doors and how that space is measured.” Opp. To Motion to Quash, at 3. In his role as President and CEO of TKA between December 2015 and June 2018, and the thyssenkrupp North America Inc. from January 2015 to February 2020, Mr. Bass was present during the Respondent’s homeSAFE program and may have knowledge regarding the Respondent’s operations after it exited the residential elevator market and the end of the homeSAFE program, as well as Respondent’s actions regarding any related remedies. These topics relate directly to the current case and the issue of whether the Respondent’s products present a substantial product hazard pursuant to 15 U.S.C. § 2604(a).

The information sought appears not to be unreasonably duplicative because the prior actions were brought by private litigants in State court, involving negligence and product liability claims under Georgia and Arkansas law for only two of Respondent’s elevator models. In those cases, the information sought by deposition involved the duty of care and potential breach thereof. Here, by contrast, Complaint Counsel seeks an Initial Decision and Order that multiple residential elevator models manufactured and distributed by Respondent present a “substantial product hazard” under 15 U.S.C. § 2064(a), a finding which requires a “defect” that poses a “substantial risk of injury to the public” under federal law. This case also involves a wider range of products, including instructions and warnings, than the narrow subset of two residential elevator models in the State negligence and product liability cases. The remedies sought in the

State cases and this case also differ significantly. The State tort cases involved specific incidents for two individual families. This case involves a potential recall under federal law, that seeks to protect all consumers nationwide.

The subpoena is thus not unreasonably duplicative because the subject matter is broader than in the earlier State cases and the information sought is inherently divergent. *Flanagan v. Wyndham Int'l Inc.*, 231 F.R.D. 98, 105 (D.D.C. 2005). The fact of overlap alone is insufficient to make a subpoena unreasonably duplicative or unduly burdensome.

Complaint Counsel also argues that this litigation involves a matter of public interest and seeks to protect consumers from substantial risk of injury. It further argues that Mr. Bass's Motion essentially seeks to collaterally estop the deposition. But access to potential evidence through discovery cannot be constrained in the same manner as private litigants. *United States v. Mendoza*, 464 U.S. 154, 162-63 (1984); *Securities and Exchange Comm'n v. Seahawk Deep Ocean Tech.*, 166 F.R.D. 268, 271 (D. Conn. 1996).

In other key respects, the information sought appears relevant and tailored to this witness. As noted above, Complaint Counsel asserts that Mr. Bass designed certain elevator models that are the subject of this case and took part in the ASME A17 Residence Elevator Committee that debated changes to the standards for the gap space of the relevant elevator models. He also served in an executive capacity of Respondent and related entities when Respondent operated and then ceased operations of its homeSAFE program. All of this information is potentially relevant to whether the subject elevators and their related instructions present a substantial product hazard. Finally, Complaint Counsel notes that its deposition does not overlap and seeks topic areas not addressed in the prior depositions, including different elevator models not at issue in the State court actions, the relationship between Respondent and other related entities,

Respondent's actions after the incidents addressed in the State court actions, and the relationship of the homeSAFE program and consumer safety.

In sum, the subpoena is not unreasonably duplicative because it involves different parties, additional products, and different causes of action with different potential remedies involving a matter of public interest. The subpoena is not unduly burdensome because it is tailored to Mr. Bass's involvement with the Respondent and its residential elevators, some of which he designed as well as trained mechanics to install. Furthermore, Mr. Bass participated in the ASME committee debating gap space changes and was present when the Respondent stopped supporting its homeSAFE program. These non-duplicative topic areas are relevant to this case and involve information unique to Mr. Bass given his employment roles and timeframes with Respondent and related entities. *Am. Elec. Power Co. v. United States*, 191 F.R.D. 132, 136 (S.D. Ohio 1999). Complaint Counsel acknowledges that the current *subpoena duces tecum* is essentially for a deposition as Mr. Bass states he has no documents in his custody, possession, or control. Complaint Counsel has also proposed a virtual deposition to reduce the burden. A virtual deposition reduces the burden on Mr. Bass as does the limited, if any, document production because he denies custody, possession, or control of any of Respondent's records.

After considering the Motions and Oppositions filed, and the arguments made, I hereby DENY the Motion to Quash Non-Party Subpoena of Mr. Patrick M. Bass.

So ordered.

Done and dated February 14, 2022  
Arlington, VA

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Mary F. Withum  
Administrative Law Judge