

1 The State of Ohio,)
2 County of Cuyahoga.) SS:

3 IN THE COURT OF COMMON PLEAS

4 Thomas Kohut,)
5 Plaintiff,) Case No.

6 -vs-) 246,823

7 The Hobart Manufacturing)
8 Company, etc.,)
9 Defendants.)

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11 Deposition of BOBBY CLARY, Ph.D., an
12 expert witness herein, called by the
13 Plaintiff as if upon cross-examination under
14 the statute, and taken before Luanne Protz,
15 a Notary Public within and for the State of
16 Ohio, pursuant to the agreement of counsel,
17 and pursuant to the further stipulations of
18 counsel herein contained, on Thursday, the
19 7th day of September, 1995 at 9:00 A.M., at
20 the offices of Schulman, Schulman & Meros,
21 the Standard Building, the City of
22 Cleveland, the County of Cuyahoga and the
23 State of Ohio.

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1 APPEARANCES:

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3 On behalf of the Plaintiff:

4 Schulman, Schulman & Meros, by:

5 John Meros, Esq.

6 Lisa Friedman, Esq.

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9 On behalf of the Defendant:

10 Thompson, Hine & Flory, by:

11 S. Stuart Eilers, Esq.

12
13 Theodore Laszlo, Esq.

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P R O C E E D I N G S

BOBBY CLARY, Ph.D., being of lawful age, having been first duly sworn according to law, deposes and says as follows:

CROSS-EXAMINATION OF BOBBY CLARY, Ph.D.

BY MR. MEROS:

Q May I have your full name, sir?

A Bobby L. Clary.

Q Your street address is what?

A 1502 North Skyline Drive.

Q That is where, sir?

A Stillwater, Oklahoma.

Q Your name has been given to me as an expert witness for the defendant, Hobart, in this case. I've been sent your resume' which was marked in a case, I believe, as Plaintiff's Deposition Exhibit 1-Clary, maybe from a prior case or two. I'll just kind of leave it as Exhibit 1 in this case.

A That's fine.

Q Could you simply tell me if this is a current personal resume', or is it somewhat outdated?

A It's somewhat outdated, but it is the most recent one, and I will tell you the

1 major change is that I am now professor
2 emeritus at Oklahoma State University, and
3 I'm president of Wayne Engineering Services.

4 Q Tell me a little bit about Wayne
5 Engineering Services. What is that? Is it
6 a partnership, a corporation?

7 A It's a corporation, and it offers
8 engineering services to clients as they
9 request them and need them, engineering
10 services primarily in the area of agricul-
11 tural engineering.

12 Q You are the principal in that company?

13 A Yes.

14 Q The number of employees in that company?

15 A One full-time.

16 Q And that is you, sir?

17 A Yes.

18 Q Any other part-time employees?

19 A Yes, from time to time.

20 Q Are there any associates that you have
21 in that work?

22 A Not permanent associates, but, yes,
23 there are associates from time to time as
24 needed.

25 Q And do you employ independent contrac-

1 tors in that business?

2 A I have.

3 Q All right.

4 A On occasion, yes.

5 Q When did Wayne Engineering Services
6 get underway?

7 A In the year 1993, the early part; it's
8 a little over two years old.

9 Q Your present full-time employment is as
10 what, sir?

11 A As president of Wayne Engineering
12 Services.

13 Q Okay. When did you cease having
14 full-time employment as a professor at the
15 university?

16 A January of 1993, if I can remember the
17 dates correctly.

18 Q You are a registered engineer; is that
19 correct?

20 A Yes, that's correct.

21 Q I won't ask you to go back and recite
22 what's in your resume' in terms of your
23 background. I think that that's adequately
24 covered. What was the number of times you
25 took the qualifying exam to become a regis-

1 tered engineer?

2 A Well, it's a two-part exam, and I took
3 each part once.

4 Q Are you registered in several states?

5 A No.

6 Q Are you registered, then, in one state
7 only?

8 A Correct.

9 Q Have you attempted to be registered in
10 any other state?

11 A No.

12 Q Has your engineering license ever been
13 suspended or subjected to a reprimand in any
14 way?

15 A Not to my knowledge.

16 Q Have you ever participated in the
17 formulation of any product standards?

18 A Yes.

19 Q Could you tell me something about that,
20 please?

21 A What do you want --

22 Q It's too broad a question?

23 A Maybe not. Maybe I can clarify it. I
24 have been active professionally in the
25 American Society of Agricultural Engineers

1 for a long period of time. During that time
2 period, I have been very active in issues
3 relating to the society, including the
4 development and promulgation of standards
5 within the organization, and have served for
6 a number of years, during the last 20, in
7 various kinds of activities that involve
8 writing approval or promulgation of stan-
9 dards by the society, and, so, in terms of
10 actual hands-on activity and promulgation of
11 standards, that would be the major activi-
12 ties under which -- that I've been involved
13 in, in hands-on kinds of standards activi-
14 ties.

15 Q And --

16 A Obviously, I've used engineering design
17 and safety standards from there and other
18 organizations professionally throughout my
19 whole professional life.

20 Q Are there any other areas of standards
21 involvement that you've had outside of, I
22 think you limited that to agricultural
23 standards; is that correct, or agricultural
24 --

25 A No, ASAE which includes the food

1 system.

2 Q The food system also?

3 A Yes. The food system, which by some is
4 referred to as food engineering activities,
5 is also a part of ASAE.

6 Q Have you ever been in charge of safety
7 for any product manufacturers?

8 A Yes, but not by that name, not by that
9 designation. I was a principal in a small
10 manufacturing company in the early part of
11 the 1970's that designed, manufactured and
12 marketed a limited line of equipment.

13 Q That was cattle-handling equipment?

14 A Yes.

15 Q That was your own small manufacturing
16 company?

17 A That's correct, and I had engineering
18 design responsibilities for that which
19 included the safety issues related thereto.

20 Q Would you consider that self-
21 employment, however? It was your company,
22 and you were employed by your company
23 concerning safety practices?

24 A Well, I had a part ownership in that
25 company. I did not have major ownership in

1 that company, but I had part ownership in
2 that company.

3 (At this time Theodore Laszlo left
4 the deposition.)

5 MR. MEROS: Off the record a
6 second.

7 (At this time a discussion was
8 held off the record.)

9 BY MR. MEROS:

10 Q Have you ever been an employee of any
11 other manufacturing entity for which you
12 would have had safety engineering respon-
13 sibilities or safety considerations in the
14 design of a product?

15 A You've used a couple of terms that I
16 feel that early on I must make sure that
17 we're on the same terms.

18 Q Sure.

19 A When you say "safety engineering," I'm
20 not sure that I or anyone else knows what
21 you mean.

22 Q Okay.

23 A Engineering design is a specialty
24 that's recognized by the various states.
25 Safety engineering is not within that

1 classification. However, engineers do, in
2 fact, as a part of the normal engineering
3 design process and the manufacturing process
4 address -- they are the discipline that
5 addresses safety issues and the design.
6 They are the group that is assigned that
7 responsibility by the state registration
8 laws, including the registration laws of the
9 state of Ohio.

10 So, engineers do those things, but
11 they're not typically called safety
12 engineers. However, I have had responsi-
13 bility and have taught, as a matter of fact,
14 safety issues related to the design of
15 various types of products, and, so, I have
16 had that responsibility, although it's not
17 normally called such a thing. Safety
18 engineering generally is a term that people
19 who don't have any expertise to bring to the
20 table try to use to give themselves credi-
21 bility.

22 Q I see. You have taught safety
23 engineering; is that what you just said?

24 A You didn't hear a word I just said, I
25 don't believe.

1 Q Or did you say that you talked about
2 safety engineering?

3 A Sir, I said that I have taught engi-
4 neering design.

5 Q Taught engineering design.

6 A That includes all of the issues with
7 regard to producing a reasonably safe
8 product, and it would include all of the
9 issues with regard to what would be referred
10 to as safety issues with regard to equip-
11 ment, including guarding, including safety
12 signs, or what attorneys like to refer to as
13 warnings, including the human factors issues
14 that are important and how you use those in
15 the design process, all of those things, but
16 that's a part of the engineering design
17 process. It's not a separate discipline.

18 Q What textbooks would you use for your
19 students in teaching those subjects?

20 A Typically, the -- there would not be a
21 textbook that would be used, but, however,
22 on those subjects would be current litera-
23 ture and current state of the art, and it
24 would come out of technical literature
25 that's written throughout the engineering

1 profession. Additionally, a major source of
2 information would be -- would be the various
3 standards of the American National Standards
4 Institute, the Underwriters' Laboratory
5 standards, the ASAE standards, the SAE
6 standards, depending on what particular
7 product you happen to be looking at, and
8 even today, of course, you'd be interested
9 in ISO standards and international standards
10 as well as U.S. standards. Additionally,
11 the Marks handbook would be used on many
12 design issues.

13 MR. EILERS: M-A-R-K-S?

14 THE WITNESS: Yes.

15 BY MR. MEROS:

16 Q Would you use Marks textbook in
17 teaching your students engineering design?

18 A It's a handbook.

19 Q Would you use that in your teaching
20 duties concerning engineering design?

21 A From time to time, yes.

22 Q Is that a good source of information as
23 you consider it?

24 A On some issues it certainly is a good
25 source of information.

1 Q What issues is it not a good source of
2 information on?

3 A I don't know. I haven't even evaluated
4 it in that regard, but certainly it has good
5 information on many issues that's easy for
6 students to access and easy for them to use
7 and understand.

8 Q Do you own a copy of the Marks hand-
9 book?

10 A Yes, I do.

11 Q Is it in your library?

12 A Yes.

13 Q When was the last time that you used
14 that in one of your courses --

15 A Well, the last time I --

16 Q -- as any subject matter?

17 A Well, it's been two-and-a-half years
18 since I've had responsibility for a course.
19 So, it would have been shortly -- some time
20 probably in the year before that.

21 Q Have you ever required that any of your
22 students purchase a copy of the Marks hand-
23 book?

24 A No. It's one of the books that they
25 may elect to purchase, but --

1 Q Outside of the technical literature and
2 industry standards that you have talked
3 about and the Marks handbook, are there any
4 other written sources of information that
5 you would use in your engineering design
6 courses at the university?

7 A Well, I just mentioned a whole lot of
8 them, and there's quite a volume of
9 information within that, that I mentioned
10 prior to mentioning the Marks handbook.

11 Q I understand. In terms of categories
12 of what you said, you talked about technical
13 literature.

14 A Current technical literature, yes.

15 Q Articles, and you did not name any
16 specifically, but, then, you said, I think,
17 a handful of standards, and you enumerated
18 those, and I don't think that I heard
19 anything else specifically in terms of
20 either articles or technical literature,
21 other than some of the standards that you
22 cited that you would use.

23 Can you think of any other papers,
24 literature, writings, specific documents
25 that you would use in teaching engineering

1 design?

2 A Well, there are -- there are many
3 depending upon what the particular issue
4 happens to be. The library is full of
5 reference sources, textbooks of all types.

6 Q How about in your library? Are there
7 any other sources of information that you
8 would turn to?

9 A You mean my personal library?

10 Q Yes, in teaching engineering design.

11 A Sure, there may well be depending upon
12 -- depending upon what the subject may be.
13 I may well have some of the same literature
14 that would be in the university library
15 available to me in my personal library as
16 well.

17 Q Okay. Let me see if I can go back to a
18 question that I asked you a few moments ago.
19 Have you ever been in charge of designing a
20 safeguard or a safety guard or a safety
21 device for a product manufacturer?

22 A Not as an employee, but on a consulting
23 basis I have done that, yes.

24 Q Okay. Has that mainly been in the
25 agricultural equipment field?

1 A Well, it would have been in -- yeah, or
2 closely related.

3 Q Okay.

4 A I would say generally.

5 Q Have you ever designed any guard or
6 safety guard or safety device for a meat
7 chopper or meat grinder?

8 A Not for commercial production, no.

9 Q Have you ever designed a guard, a
10 safety guard or a safety device for any
11 food-processing equipment?

12 A Yes, there have been times when that
13 has been addressed in the academic
14 environment but not for -- and -- and in the
15 research equipment environment but not that
16 was intended to go into commercial produc-
17 tion.

18 Q In the research end, then, can you give
19 me an example of what type of a guard, a
20 safety guard or safety device you may have
21 designed for food-processing equipment?

22 A Well, there has been -- there have been
23 various pieces of one-of-a-kind research
24 equipment that would have been designed
25 where it was necessary to provide guarding

1 for various parts of the power-driven
2 components that would be in an area where,
3 if they were not guarded, there would be an
4 increased likelihood of workers or people
5 coming into contact with those power-driven
6 components, and there have been any number
7 of those over the years.

8 Q That you were involved in the design
9 of?

10 A Yes.

11 Q Could you just give me one example?

12 A Well, there have been -- there have
13 been guards that have been designed for
14 cooling apparatus that was used to process
15 meat products. There have been guards that
16 were designed for apparatus that was used to
17 process peanuts and other types of agricul-
18 tural products. There have been guards that
19 have been designed for cryogenic systems for
20 processing various types of agricultural
21 products including meat products.

22 Q I was trying to -- okay.

23 A There have been guards that have been
24 designed for various types of materials-
25 handling conveyance systems and the power-

1 driven components that would be associated
2 therewith. There are several that come to
3 my mind immediately. That's not all.

4 Q Those would fall into the farm equip-
5 ment category?

6 A The agricultural engineering category,
7 and it would be -- it would be farm
8 equipment. If you include the food system
9 --

10 Q Okay.

11 A -- it would -- it would all fall within
12 that if you include the food system in that
13 definition.

14 Q The food system would include, I think
15 in your understanding, peanuts, peanut
16 farming, corn husking, hay baling, as food?

17 A I would define the food system as the
18 American Society of Agricultural Engineers
19 does.

20 Q And how is that?

21 A It would include the processing of
22 agriculture. It would not only include the
23 machinery that's used on a farm to produce
24 various types of agricultural crops and do
25 other things, but it would also include the

1 processes and the equipment that would be
2 used beyond the farm gate to take that
3 agricultural product and turn it into the
4 consumer food items that we are all familiar
5 with.

6 Q Would that include meat-processing
7 equipment?

8 A Yes.

9 Q And meat cutters?

10 A Yes.

11 Q And meat choppers?

12 A Well, yes, it certainly could.

13 Q Okay.

14 A Depending upon -- it certainly could.

15 Q To a probability, though, does it
16 include the meat-processing equipment that
17 we find in meat markets?

18 A It sure does.

19 MR. EILERS: What do you mean,
20 "to a probability"?

21 MR. MEROS: The agricultural
22 standard that he was talking about, and he
23 said that it "could" include.

24 THE WITNESS: What do you mean,
25 "probability"?

1 BY MR. MEROS:

2 Q Well, you said that it "could" include.
3 I'm just trying to understand what you meant
4 by "could" include.

5 A There are some people that may work in
6 that area, and there may be some other
7 people that choose not to work in that area,
8 and that was the only significance of the
9 word "could" that would be within the
10 profession.

11 Q The meat chopper that's the subject of
12 our case, I think that you had information
13 given to you that it was shipped in July of
14 1950; is that correct?

15 A That's correct. That's my under-
16 standing.

17 Q What is your understanding of what
18 industry standards, public or private, were
19 in existence in July of 1950?

20 A The industry standards or the -- I
21 shouldn't say "industry standards." The
22 applicable engineering standards that would
23 have been in effect at that time period
24 would have been the UL standard, and I
25 believe it's, if I remember the number

1 correctly, it's 73; either 63 or 73. I be-
2 lieve that it's 73, if I remember correctly.
3 I'd have to look it up.

4 Q That's fine. Any other standard?

5 A I believe that would be the applicable
6 standard at that time in 1950 to this parti-
7 cular product.

8 Q Okay. As a consultant, I believe that
9 you inspected the feed pan, auger, cylinder
10 neck/throat in this case in 1994; is that
11 correct?

12 A That's correct.

13 Q Can you recall the specific date of
14 your inspection or not?

15 A No. It was in the spring, as I recall,
16 but I don't remember the month.

17 Q Okay. At the time of your inspection,
18 how was your professional time being spent?
19 You were not teaching anymore at that point?

20 A That's correct.

21 Q Okay.

22 A I was retired from that position.

23 Q From your teaching position?

24 A Yes.

25 Q Okay. Were you still spending any time

1 in your real estate management business or
2 not?

3 A Oh, yes.

4 Q How much of your time was spent in
5 managing real estate that you own or invest
6 in or what have you?

7 A I don't know. I have never -- too
8 much.

9 Q Too much time?

10 A Too much.

11 Q All right. You were out of the
12 manufacturing business yourself as of the
13 1970's; is that correct?

14 A Yes.

15 Q Had you ever done any other manufac-
16 turing after your small manufacturing com-
17 pany closed or you stopped --

18 A It didn't close. I just sold my
19 ownership and no longer was involved.

20 Q Have you ever done any manufacturing
21 since that time?

22 A No.

23 Q Are there any other activities that you
24 had or were engaged in at the time of your
25 inspection in this case professionally?

1 A I don't understand the question.

2 Q Well, at the time of your inspection of
3 the machine in this case, you were retired
4 from full-time teaching.

5 A That's correct.

6 Q You still were spending too much time
7 in your real estate management business.

8 A Yes.

9 Q Okay. You were working as a consultant
10 for Wayne Engineering Services; is that
11 correct?

12 A Well, as an employee of Wayne
13 Engineering.

14 Q As an employee of Wayne Engineering
15 Services at the time. Were you engaged in
16 any other professional engineering activi-
17 ties other than those?

18 A I believe that that's essentially it.
19 At that time I was employed 100 percent of
20 the time by Wayne Engineering Services.
21 Although I don't recall it at the moment, I
22 wouldn't sit here and tell you that I may
23 not have done some engineering consulting
24 outside of the corporation, but I don't
25 recall it at the moment.

1 Q Have you ever been retained by a
2 manufacturer to analyze hazard or risk in
3 any of the manufacturer's products?

4 A Yes.

5 Q Can you give me an example of some of
6 those?

7 A The products or --

8 Q The company name, the product that you
9 were retained to analyze in terms of hazard
10 or risk.

11 A I can't give you the company's name
12 without the approval of the clients to do
13 that, because part of the retention is the
14 confidentiality of that, but I would
15 certainly be happy to tell you some of the
16 types of products or the products, if that
17 would be helpful to you.

18 Q Yes, please.

19 A I have been retained to consult with
20 various companies on the design of various
21 types of materials-handling equipment,
22 specifically equipment for handling various
23 types of agricultural products, granular
24 materials specifically such as wheat and
25 other kinds of materials that were being

1 used in various processing applications.

2 I have consulted on the design of
3 equipment for performing tools, power tools
4 and equipment for doing maintenance work on
5 agricultural tractors and other types of
6 similar equipment.

7 I've been -- I have consulted with
8 companies on the design or evaluation of
9 their product lines that include their com-
10 plete line of agricultural equipment which
11 is predominantly tractors and combines.

12 Q Those --

13 A Those are things that come to my mind
14 at the moment.

15 Q Those examples involve circumstances in
16 which you were retained to render expert
17 opinions?

18 A No.

19 Q Okay. Those were circumstances in
20 which the manufacturer --

21 A I interpreted your question to not
22 include the reason that we're here today,
23 expert testimony.

24 Q That's what I intended.

25 A I excluded anything dealing with what I

1 would consider litigation-related stuff of
2 any type. None of that stuff is included.

3 Q In what you had just answered?

4 A Correct.

5 Q For the products that you were dis-
6 cussing a moment ago, you cannot divulge the
7 manufacturers' names because of a confiden-
8 tiality agreement that you have with those
9 companies?

10 A And what I consider ethical considera-
11 tions without their approval to do so.

12 Q I see. Have you never asked them for
13 approval to discuss their --

14 A I never have asked.

15 Q Okay. Within the past year, you have
16 been consulting as an expert witness for the
17 purposes of litigation; is that correct?

18 A On this case?

19 Q No, within the past year, you've been
20 consulting as an expert witness on this and
21 other cases, I would assume.

22 A (At this time the witness nodded his
23 head.)

24 Q With --

25 A With who? I missed the word.

1 Q I haven't gotten there yet. You've
2 been consulting with others?

3 A Others, okay.

4 Q Over the past year?

5 A That's the word.

6 Q I'll try to speak a little bit slower.
7 I'm trying to rush it because I'm afraid
8 that we're talking over one another, and I'm
9 trying to get my questions in before you
10 start answering.

11 A I'll try to hold up.

12 Q If I may, may I ask you to wait until I
13 stop speaking? And, then, we'll have a
14 better understanding of what I'm saying and
15 trying to ask.

16 A That's a very reasonable request.

17 Q Within the past year, I take it that
18 you've been consulting in this and other
19 cases for the purposes of rendering opinions
20 and testifying.

21 A Yes.

22 Q Okay. May I ask you, within the past
23 year, how many cases you've been active in
24 terms of consulting on for litigation
25 purposes?

1 A I don't know. I haven't counted them.

2 Q All right.

3 A But I have been essentially busy.

4 Q Within the past calendar year, how many
5 depositions have you given?

6 A I don't know that number either, but
7 I'm going to estimate 12 to 15.

8 Q Over the past year, how many cases have
9 you consulted in on behalf of the plaintiff?

10 A There have been a couple.

11 Q Can you --

12 A At least a couple.

13 Q Can you recall any specifics about
14 those couple of cases as you sit here now?

15 A Yes.

16 Q Can you recall what the products were
17 in each of those cases?

18 A Yes.

19 Q All right. I'd like to ask you for
20 some specifics. Tell me about the cases
21 during the past year in which you've con-
22 sulted on behalf of the plaintiff.

23 A Well, I can recall one case that
24 involved hay-handling equipment attached to
25 an agricultural tractor, and the other case,

1 as I recall, involved an agricultural
2 tractor.

3 Q The nature of the injury in the first
4 case involved what?

5 A A serious injury that resulted, I
6 believe, in paraplegia, paralysis at least
7 in the lower part of the body.

8 Q And in the second case, the injury was
9 what?

10 A You know, I don't recall.

11 Q In either of those cases, were the
12 issues essentially of engineering design?

13 A Yes.

14 Q Were they cases involving lack of
15 guarding?

16 A No, but I believe that there may have
17 been one case that involved removal of
18 guarding.

19 Q And that's within the past calendar
20 year in terms of your involvement?

21 A You know, we're approximating this. I
22 don't have a memory that would cut us off
23 precisely one year ago.

24 Q Okay.

25 A But in the approximate last year.

1 Q Were you consulting on behalf of the
2 plaintiff in that case?

3 A Yes.

4 Q And it was a case that involved
5 essentially, as far as you can recall today,
6 the removal of a guard?

7 A Yes. If I recall correctly, I believe
8 that that's one of the elements that's
9 involved.

10 Q What type of a product was involved in
11 that case?

12 A It was a tractor.

13 Q A tractor manufactured by whom?

14 A Deere & Company, I believe.

15 Q You've also rendered expert testimony
16 on behalf of Deere & Company in other cases
17 in the past?

18 A Yes.

19 Q And in this case that you're speaking
20 about now, you're rendering testimony on
21 behalf of the plaintiff.

22 A Yes.

23 Q Is that correct?

24 A Yes.

25 Q Was there --

1 A However, so that you're not misled,
2 Deere & Company is, to my knowledge, not a
3 defendant in the case. There's other
4 parties that would be defendants.

5 Q I understand. The removal of the guard
6 in that case concerns the removal by whom,
7 if you know?

8 A I don't right now recall exactly who
9 did the removal or if I knew who did the
10 removal.

11 Q Have you written a report in that case?

12 A No.

13 Q You have not. Have you been asked to
14 write a report in that case?

15 A I have not.

16 Q Have you offered any deposition testi-
17 mony in that case?

18 A No.

19 Q Who is the plaintiff's --

20 A To my knowledge, I don't know that it
21 has been disclosed as a consulting matter.

22 Q What industry standards are you relying
23 on for your opinions in that case?

24 A Well, if I use industry standards, and
25 I don't know whether I will or will not, but

1 if I do, it would be the applicable engi-
2 neering sign and safety standards which
3 would be the appropriate ASAE, ANSI and SAE
4 standards.

5 Q Have you assigned fault as an expert in
6 that case to any individual yet in terms of
7 your opinions?

8 A No, no, I have not issued any opinion,
9 any official opinions yet in that case.

10 Q Have you made any findings in that case
11 at all?

12 A No official findings, no.

13 Q Have you agreed to be an expert,
14 though, for the plaintiff in that case?

15 A I guess that question as such has not
16 been asked or answered. I'm consulting with
17 -- my role has been one of consulting with
18 the attorneys representing the plaintiff in
19 that case.

20 Q It's a case of the removal of a guard
21 on a tractor manufactured by Deere &
22 Company?

23 A Well, that's at least one of the --

24 Q Have I got that right?

25 A That's at least one of the issues.

1 Q What guard was removed, if you can
2 recall that?

3 A If I recall, it was a guard that was
4 placed over the -- in the area of the
5 starter in the starter solenoid of the
6 tractor.

7 Q And as a result of the guard removal,
8 was there inadvertent activation?

9 A No, there was intentional activation.

10 Q I see. Are there any other cases that
11 you can recall for me during the past
12 approximate year in which you are testifying
13 on behalf of the plaintiff?

14 A Those -- well, you said "testifying."

15 Q Well, that you have agreed to consult
16 on behalf of.

17 A You previously asked me about con-
18 sulting.

19 Q Cases in which you've agreed to consult
20 on behalf of the plaintiff.

21 A Those are the ones that I recall at the
22 moment.

23 Q Can you estimate for me the number of
24 cases during the past approximate year in
25 which you have agreed to consult on behalf

1 of any defendant?

2 A The number?

3 Q Uh-huh.

4 A No, but I would expect that it's on the
5 order of ten.

6 Q Including this particular case here?

7 A Yes, maybe -- maybe -- yeah, somewhere
8 in that range, I would say ten to 15, pro-
9 bably.

10 Q Okay.

11 A Again, I'm estimating. I have not -- I
12 haven't looked at those numbers.

13 Q Based upon your estimate, is it fairly
14 accurate to say that, within the past calen-
15 dar year, you have agreed to consult with
16 the plaintiff approximately 25 to 30 percent
17 of the time and with the defendant the
18 remainder of your consulting time?

19 A Those are your numbers, and I would
20 accept them and say that they're probably
21 not too far off. I don't know what the
22 percentage is. I haven't done that, but
23 that's probably a reasonable estimation.

24 Q There's ten to 15 that you're working
25 on, on behalf of the defendant during the

1 past calendar year, and I think you said
2 about three for the plaintiff. Is that
3 fair, or is that not fair?

4 A No. I think that that's fair.

5 Q Okay. In years previously, was the
6 spread or the percentage or the comparison
7 any different?

8 A Oh, from time -- sure, it's changed
9 from time to time over the last 20 some odd
10 years, but I think that I have in the past
11 said that, in terms of litigation-related
12 activities, oh, probably 80 percent of my
13 activities is nonplaintiff related.

14 Q That kind of simplifies it for me. I
15 can move ahead. Thank you.

16 A And -- and, you know, that's an
17 estimation, and it varies from time to time,
18 but it's probably as good an estimation as
19 I've got.

20 Q Which is that 80 percent of your time,
21 80 percent of your consulting time was spent
22 probably on nonplaintiff matters.

23 A Yes.

24 Q Okay. Outside of this case, Kohut
25 versus Hobart, are there any other cases

1 that you've ever consulted on for the firm
2 of Thompson, Hine & Flory?

3 A Yes.

4 Q May I ask you, during the past calendar
5 year, what other cases have you consulted on
6 with Thompson, Hine & Flory or at the
7 request of Thompson, Hine & Flory or at the
8 request of someone else for Thompson, Hine &
9 Flory?

10 A You said in the past calendar year?

11 Q Let's take the past calendar year
12 first. Let's just start there.

13 A In the past calendar year, and I am
14 assuming that we're talking about essen-
15 tially September 1 being the end of that
16 calendar year --

17 Q Approximately, sure.

18 A -- and going back to last September.
19 It's hard for me, without looking at some
20 kind of records, to have any way of cutting
21 them off precisely with that fine of a line,
22 but I'm going to tell you that I think,
23 probably within the past calendar year, in
24 addition to this case I have consulted with
25 this firm on two other cases.

1 Q Are they active in your file now, or
2 are they closed cases?

3 A They're active.

4 Q What is the product, if it involves
5 product liability; what is the product
6 involved in each of those instances?

7 A One is a meat chopper or meat grinder,
8 whichever word you want to use.

9 Q Exclusive of this case?

10 A Yes.

11 Q Okay.

12 A Yes, exclusive of this case.

13 Q And the other one is?

14 A And the other is a saw.

15 Q A saw case?

16 A Yes.

17 Q The manufacturer of the saw in that
18 case is whom?

19 A Hobart.

20 Q Hobart, okay. Is that a band saw?

21 A Yes.

22 Q Can you recall for me the name or the
23 plaintiff's name or the case or county that
24 identifies the other meat grinder case?

25 A Identifies, you said, the name of the

1 party?

2 Q If you can.

3 A Lunsford.

4 Q Lunsford, could you spell that for us,
5 please?

6 A Well, I can, but it may be incorrect.
7 I believe that it is L-U-N-S-F-O-R-D.

8 Q In what jurisdiction is that case
9 pending as far as you know?

10 A East Texas.

11 Q State court or federal court?

12 A I can't answer that. I don't know.

13 Q Have you given a deposition in that
14 case yet?

15 A No.

16 Q Have you offered an expert report in
17 that case, a written report?

18 A I'm not sure.

19 Q Okay.

20 A I may have, but I just don't recall.

21 Q May I ask you if you can recall the
22 plaintiff's attorney's name in the Lunsford
23 case?

24 A I cannot.

25 Q What was the --

1 A I don't know if I ever knew it.

2 Q Okay. What was the nature of the
3 injury in the Lunsford case?

4 A There is an injury to a hand, as I
5 recall, maybe fingers, but a portion of the
6 hand.

7 Q And in what part of the meat grinder
8 did the injury occur as far as you've
9 understood from that case?

10 A It would have been on entry into the
11 feed intake area through the hopper into the
12 cylinder.

13 Q Can you recall the model of the meat
14 grinder?

15 A I believe that it's a 4332, if I
16 remember correctly.

17 Q Can you recall the manufacturing year
18 of that particular meat grinder?

19 A The manufacturer was Hobart. The year,
20 I'm not sure of the year of manufacture.

21 MR. EILERS: Just so there's no
22 --

23 MR. MEROS: You want to confer
24 with him?

25 MR. EILERS: No, but I think that

1 it's helpful for you to have as accurate a
2 record as you can possibly make.

3 MR. MEROS: I agree.

4 MR. EILERS: And I can refresh
5 the witness' recollection that the product
6 was a 4532.

7 THE WITNESS: Pardon me, 4532.

8 MR. MEROS: I appreciate that.

9 THE WITNESS: I'm sorry. Thank
10 you.

11 BY MR. MEROS:

12 Q Can you recall the approximate date of
13 injury or the year of injury?

14 A No, I don't. It's within the last four
15 or five years, but which year, I don't
16 recall.

17 Q And you cannot recall the vintage of
18 the machine, when it was made?

19 A No. I didn't look at that file before
20 I came here, so I just don't recall.

21 Q In that case, as far as you understand,
22 was there a guard present either in the feed
23 pan or on top of the cylinder entry --

24 A Yes.

25 Q -- at the time of injury?

1 A A portion of it was there at the time
2 of the injury.

3 Q Is it a case in which a portion of the
4 guard had been cut away or removed in some
5 manner?

6 A Yes.

7 Q Allowing entry into the neck/throat of
8 the cylinder down into the auger?

9 A Yes.

10 Q Okay. Beyond the past calendar year,
11 in years past, and let's go back approxi-
12 mately five years to approximately 1990;
13 were you retained during that time for any
14 other cases by the firm of Thompson, Hine &
15 Flory?

16 A Yes.

17 Q Can you recall for me the types of
18 products during those five years that were
19 involved in cases that you consulted with
20 Thompson, Hine & Flory on?

21 A There would have been, as I recall, a
22 packaging machine --

23 Q Packaging --

24 A -- for packaging fresh meat products
25 specifically.

1 Q Manufactured by whom?

2 A Hobart.

3 Q Hobart.

4 A There would have been a post hole
5 digger.

6 Q Manufactured by?

7 A Ford New Holland.

8 Q Any other products?

9 A Probably, but those are the ones --

10 Q That come to mind?

11 A Those are the ones that come to my mind
12 at the moment. It seems like there ought to
13 be another one or two, but I don't know what
14 it is.

15 Q Can you recall how long ago you first
16 consulted with the firm of Thompson, Hine &
17 Flory as an expert witness on any case?

18 A Well, you took us back to about five
19 years ago.

20 Q 1990, approximately.

21 A And I suspect that that's about the
22 beginning of the activity, somewhere at
23 least in that general time frame.

24 Q In either the 4532 meat grinder case or
25 the packaging machine case or the post hole

1 digger case, have you ever offered a depo-
2 sition in any of those cases? I think that
3 you've already explained in the Lunsford
4 case, which is the 4532 meat grinder case,
5 that you have not testified yet.

6 A I don't think that I have. I could be
7 wrong on that, but I don't think that I
8 have. I don't think that I've given a depo-
9 sition on that.

10 Q In the other cases for which you
11 consulted with Thompson, Hine & Flory since
12 1990, have you ever given a deposition?

13 A Yes.

14 Q Were you deposed in the packaging
15 machine case?

16 A Yes.

17 Q Were you deposed in the post hole
18 digger case?

19 A Yes.

20 Q Did you testify at trial in either of
21 those cases?

22 A No.

23 Q Can you recall for me the plaintiff's
24 counsel's name in the packaging case?

25 A I can tell you that it was a lady, but

1 beyond that, I don't remember her name.

2 Q Where were you deposed in the packaging
3 case?

4 A Where?

5 Q Yes, Cleveland, Ohio or in some other
6 jurisdiction?

7 A Oklahoma City.

8 Q Oklahoma City. Is that the city of
9 residence for the plaintiff's counsel in
10 that case?

11 A I believe that that's true.

12 Q The post hole digger case, can you
13 recall the plaintiff's counsel's name in
14 that case?

15 A No.

16 Q So, as far as you can recall for me
17 today, you first began to consult with
18 Thompson, Hine & Flory as an expert witness
19 in product cases in approximately 1990?

20 A Well, somewhere back in that time
21 frame, yes.

22 Q And since that time, as far as you can
23 recall for me today, you've worked on
24 approximately five cases including the Kohut
25 versus Hobart case.

1 A If that's what the numbers add up to,
2 and I think that's correct; I didn't count
3 them, but I think that's correct.

4 Q Let's see if this jogs your recollec-
5 tion any further. You explained that you
6 were involved as an expert in the 4532 meat
7 grinder case which you call the Lunsford
8 case. You talked about a band saw case
9 that's currently going on. That's also a
10 Hobart product?

11 A Yes.

12 Q Okay. You talked about the packaging
13 machine case, and you talked about the post
14 hole digger case, and that's four, plus the
15 Kohut case is five. Are there any others
16 that come to your mind at this time?

17 A Not at this time.

18 Q The band saw case, in what jurisdiction
19 is that case pending?

20 A I don't even know.

21 Q Can you recall for me the name of the
22 plaintiff's counsel in the band saw case?

23 A I have no idea who plaintiff's counsel
24 is.

25 Q Can you recall the name of the plain-

1 tiff in the band saw case?

2 A I am assuming that there's a litiga-
3 tion, that there is a case involved in that,
4 and there may not be. I have only consulted
5 briefly with Mr. Eilers on that case to
6 date. Whether I will be further involved or
7 not, I don't know.

8 Q All right. May I have a summary, as
9 best as you can recall it now, of some of
10 the defendant manufacturing companies that
11 you've been asked to consult with for
12 forensic purposes, expert witness purposes?
13 Take as long as you need to answer the
14 question.

15 A You want me to name --

16 Q Yes. I have a list. I just want to
17 see if there are any others.

18 MR. EILERS: Why don't you --

19 MR. MEROS: Do you want me to see
20 if I can do it --

21 MR. EILERS: By telling him
22 what's on your list.

23 BY MR. MEROS:

24 Q Other than the following companies that
25 I'm going to name, tell me if there are any

1 other manufacturers. New Idea AVCO.
2 A I think it's AVCO-New Idea.
3 Q The court reporter in that transcript
4 put it backwards. I copied it correctly.
5 AVCO-New Idea. Charles Machine Works?
6 A Yes.
7 Q Koehring?
8 A Yes.
9 Q Western Land Roller?
10 A Yes.
11 Q Great Western Manufacturing Company?
12 A Yeah, I've forgotten those, yes.
13 Q Speicher Equipment?
14 A Yes.
15 Q Ford, which is Ford Motor Company?
16 A Well, no, it's -- it's not the Automo-
17 tive Division.
18 Q It would have been Ford New Holland?
19 A Yes, I guess they've just changed their
20 name, and now I think that it's just New
21 Holland, but that organization.
22 Q AMPI?
23 A Yes.
24 Q J.I. Case?
25 A Yes.

1 Q International Harvester?

2 A Yes.

3 Q And, of course, Navastar.

4 A Yes.

5 Q Deere & Company?

6 A Yes.

7 Q Was there some conflict that existed or
8 that you had recognized when you were a
9 full-time professor at the university
10 concerning you being retained by Deere &
11 Company?

12 A No.

13 Q In terms of Deere & Company was funding
14 some construction at the university or
15 funding a program at the university --

16 MR. EILERS: John, what does this
17 possibly have to do with the Kohut case?

18 MR. MEROS: Well, I was going to
19 go further and --

20 THE WITNESS: I want to answer
21 that question. The answer to that is no.

22 BY MR. MEROS:

23 Q Okay, there wasn't any code that
24 specifically prohibited you from testifying
25 on behalf of Deere, but you saw that there

1 was some conflict that you either recognized
2 or did not recognize that would have
3 affected your judgment?

4 A No. I think what you're probably
5 referring to is that I looked at an issue
6 that involved a piece of Deere equipment,
7 and I elected not to get involved in that
8 case for personal reasons, and I don't
9 recall now exactly what those reasons were,
10 but it was not for any of the reasons that
11 you have mentioned. That I'm certain of.

12 Q There are no conflicts of interest that
13 you have had that have made you distance
14 yourself from offering expert testimony on
15 behalf of a defendant manufacturer then?

16 A I'm not quite sure that I understand
17 that question.

18 Q I'll see if I can rephrase it for you.
19 There was no conflict of interest in your
20 past which prevented you from testifying as
21 a consultant for Deere & Company, then?

22 A Not that I know about.

23 Q Nor for any other manufacturer?

24 A Well, I have not -- I'm not aware of
25 any such conflict of interest arising. I

1 don't know if there might be some somewhere
2 or not with some company of some type
3 someplace, but I don't know what it would be.

4 Q In some instances, you've testified on
5 behalf of Deere & Company; is that correct?

6 A Yes.

7 Q And in one other instance, or possibly
8 more, you are offering testimony that might
9 criticize Deere & Company; is that correct?

10 A I'm not aware of that.

11 Q Okay. Have you ever rendered expert
12 testimony against any of the manufacturers
13 for whom you have on occasion rendered
14 expert testimony in favor of?

15 A No, that would be unethical; wouldn't
16 it?

17 Q I don't know. I do not know.

18 A I would think that it would have a
19 serious ethical consideration for me as an
20 engineer to get involved, just like it would
21 for attorneys to do that.

22 Q Well, I don't know that that's accur-
23 ate, but I guess that your answer stands.

24 MR. EILERS: In any event, it
25 doesn't seem to be a point worth debating.

1 MR. MEROS: You're right.

2 BY MR. MEROS:

3 Q Are there any other corporations for
4 whom or manufacturing entities for whom
5 you've offered expert testimony other than
6 those that I mentioned? I can run through
7 it quickly if you want me to.

8 A I think that I can recall them.

9 Q Okay.

10 A I'm sure that there are.

11 Q We can add the Hobart Company to that
12 list.

13 A And when you say -- when you say that
14 I've offered testimony for, I interpret that
15 to mean that I have consulted with and
16 worked with attorneys --

17 Q Yes.

18 A -- that have represented those enti-
19 ties.

20 Q That's correct.

21 A I think that's what you meant.

22 Q That's correct.

23 A Yes, Belarus Machinery Company, Hobart,
24 of course, the reason that we're here today.

25 Q Right.

1 A Or the company that we're here today
2 for. I'm sure that there are others. Those
3 are the ones that I think -- I think you've
4 covered most of them, however.

5 Q I see in my notes the Hyster --

6 A Refresh my company.

7 Q -- the Hyster Company, H-Y-S-T-E-R, and
8 have you rendered expert testimony in con-
9 sultation with them?

10 A I don't believe so.

11 Q Have you ever worked on a forklift case?

12 A Yes.

13 Q Concerning Hyster?

14 A Yes.

15 Q You testified on behalf of the plain-
16 tiff or defendant in that case?

17 A I believe that that was for the plain-
18 tiff, as I recall.

19 Q Have you ever rendered expert testimony
20 on behalf of Honda in any cases?

21 A No.

22 Q Have you rendered expert testimony in
23 any motor vehicle cases?

24 A No. When you say "motor vehicle," I
25 presume that you mean automotive.

1 Q Automotive cases.

2 A No.

3 Q Caterpillar, have you offered expert
4 testimony on behalf of Caterpillar?

5 A I don't recall any.

6 Q Massey-Ferguson?

7 A Yes, I have. Massey, that was not in
8 that previous list; was it?

9 Q I don't think so. Any others?

10 A I'm sure, but those are what come to my
11 mind. I'm sure that there are others,
12 however, but I just don't recall them right
13 now.

14 Q Can you give me an approximation of the
15 percentage of your cases that you've con-
16 sulted on, either for plaintiff or defen-
17 dant, that involved agricultural equipment
18 or machinery?

19 A Essentially, all of it has involved
20 agricultural equipment or closely related
21 products, and I would include the product
22 that we're here about today.

23 Q As agricultural?

24 A In that category, or closely related.

25 Q Okay.

1 A It would be within the bounds of pro-
2 ducts that would be covered by agricultural
3 engineers.

4 Q Okay. You would categorize a Hobart
5 meat grinder case as involving or being
6 related to the agricultural equipment
7 industry?

8 A Certainly to the agricultural
9 engineering industry, yes.

10 Q Are there any other cases in which
11 you've been involved as an expert witness
12 that concern the same issue as in this case,
13 the Kohut versus Hobart Company?

14 A Tell me what those issues are, so that
15 I know what you're talking about.

16 Q Adequacy of guard attachment, auxiliary
17 type of guard versus permanent guard, the
18 issue of the feasibility of permanently
19 attaching a guard four years prior to the
20 manufacturer implementing that design, guard
21 removal, the feasibility of guard removal.

22 A I'm sure that there have been.

23 Q Can you name any for me that might have
24 involved this kind of a machine?

25 A Not right offhand. I can't give you

1 the products or the names, but the issues of
2 guarding and attachment, those issues that
3 you mentioned are common engineering design
4 issues that are addressed and have been in
5 product litigation in many areas.

6 Q Have you ever been qualified or
7 accepted as an expert in your field in any
8 courts in Ohio, either state or federal?

9 A I don't believe that I have, but I'm
10 not sure about that. I'm not sure whether
11 I've testified in Ohio or not. I don't
12 recall for sure.

13 Q The Lunsford case, can you recall for
14 me in that case the method of attachment for
15 the guard on the model 4532 meat grinder?

16 A No, not without going back and review-
17 ing it, I would not -- I would hesitate to
18 say something that's incorrect without
19 refreshing my memory.

20 Q Would you consider that to be a guard
21 removal case, the Lunsford case?

22 A At least it was a removal of a portion
23 of the guard, yes.

24 Q Was a portion of that guard destroyed
25 or damaged in some way?

1 A Yes.

2 Q Obviously, it seems like it was.

3 A It was broken away, yes.

4 Q To the point where the other portion of
5 that guard could not be reattached; it had
6 been damaged or destroyed in some fashion?

7 A The part that was removed?

8 Q Yes.

9 A Well, it could have been reattached by
10 rewelding, but I would not have recommended
11 doing that.

12 Q You had said that it could have been
13 reattached by rewelding. Was any part of
14 that guard originally welded?

15 A I don't believe so.

16 Q Okay, because you've used the word
17 "rewelding."

18 A Well, it was broken away, and "re" was
19 probably not a good word.

20 Q Okay.

21 A I should have said welded back into its
22 position. However, I would have recommended
23 that the guard would have been replaced.

24 Q What specialized experience or know-
25 ledge do you have concerning guarding

1 mechanisms for meat grinders or meat
2 choppers?

3 A Well, as a practitioner of the
4 agricultural engineering profession all of
5 my life, I have worked with and been around
6 meat grinders of various types and various
7 sizes. Additionally, I have taught
8 engineering design to engineering students
9 in that one of their places of employment
10 could well be in the design of this type of
11 equipment or similar equipment, and as a
12 part of that engineering design, the design
13 of guards for this product as well as other
14 products would be an integral part of that
15 engineering design. That's where the deci-
16 sions are made. That's who has responsibi-
17 lity for the guarding of the equipment, is
18 the design engineer, the people that design
19 the product. So, I would have taught those
20 concepts from -- throughout my teaching
21 career, and, of course, in addition to that,
22 I have been professionally involved with
23 this industry through ASAE and through other
24 activities over the years for my entire
25 professional life. In addition to that, I

1 have investigated, obviously, some accidents
2 that have involved this kind of equipment.

3 Q I'll get to that in just a moment. As
4 part of your design engineering curriculum
5 that you would teach, I take it, then, that
6 you advocated at times to your students that
7 the machine manufacturers should build a
8 guard as an integral part of a machine or
9 that the design engineer make safety an
10 integral part of his design engineering
11 work.

12 A Well, it absolutely is an integral
13 part, both the design of appropriate guards
14 to do the things that guards are intended to
15 do and other issues that affect producing a
16 reasonably safe product is all an integral
17 part of the engineering design process, and
18 it goes hand-in-hand, day in and day out
19 throughout the engineering design process,
20 and, of course, a product is not -- the
21 design is not complete until those issues
22 are satisfactorily addressed, whatever they
23 may be.

24 Q In teaching design engineering, did you
25 advocate a concept that safety guards or

1 safety devices be built into machinery so
2 that they're an integral part of the
3 machinery?

4 MR. EILERS: What do you mean by
5 "integral"?

6 MR. MEROS: "Integral"? I
7 thought that we all understood that.

8 BY MR. MEROS:

9 Q You've use the word "integral" today.

10 A I don't think that I have.

11 MR. EILERS: In answering your
12 question.

13 THE WITNESS: Only in --

14 BY MR. MEROS:

15 Q Well, it was your choice of word. I'm
16 just inferring or using the word in the
17 manner in which I've heard you use it:
18 integral, an integral part of a machine.

19 A Well, I don't have a definition. Tell
20 me what you mean by "integral." An integral
21 part of the machine, to me, means that it is
22 a part of the machine, period.

23 Q What do you mean by "integral" when you
24 say that?

25 A I just defined it.

1 MR. EILERS: Yes.

2 THE WITNESS: It's a part of the
3 machine.

4 BY MR. MEROS:

5 Q But you said that it's an integral part
6 of the machine.

7 A No. I think that I may have parroted
8 your words because I don't believe those
9 were my words.

10 Q We get to use our real time now,
11 because we're going to go back and search to
12 find where you used the word.

13 MR. EILERS: We want to know how
14 you used the word. Does this make any
15 difference?

16 BY MR. MEROS:

17 Q In my use of the word, I've used it in
18 the terminology that you have used it, and
19 my question --

20 a It's my definition -- my definition as
21 I have used it here in the last few minutes
22 would have just been that it's a part of the
23 machine.

24 Q Okay.

25 A It's a part of the design of the

1 machine.

2 Q This won't take but a couple of
3 minutes. Let me have a short break, and
4 we'll look back for the response, and I
5 think that I got it in the last ten or 15
6 minutes. I may have used the word
7 "integral."

8 (At this time the testimony was
9 read back.)

10 THE WITNESS: I'll respond.

11 BY MR. MEROS:

12 Q In all fairness, would you like to see
13 the screen?

14 MR. EILERS: That's a different
15 use of the word.

16 MR. MEROS: That's what I need
17 him to explain.

18 MR. EILERS: A different context.

19 BY MR. MEROS:

20 Q That's what I need you to explain.

21 A Can I explain what I mean in that
22 context?

23 Q Let me put a question to you which will
24 lead you to that. We have the part of the
25 record where you said, and I'm taking this

1 phrase, "the design of guards for this
2 product as well as other products would be
3 an integral part of engineering design."

4 A Yes.

5 Q What did you mean by your use of the
6 word "integral"?

7 MR. EILERS: " -- part of
8 engineering design."

9 BY MR. MEROS:

10 Q "An integral part of engineering
11 design."

12 A What I was referring to in that part is
13 that for the design engineering team that
14 puts the design together, the issue of
15 guarding for that particular product is a
16 part of that design team's responsibility as
17 opposed to them putting together the func-
18 tional considerations and all of the other
19 considerations, and then some totally
20 outside nonengineering person coming in and
21 making the decisions on guarding issues.

22 Q All right.

23 A So, I only intended to say that it's a
24 part of the decisions that engineer design
25 teams make when they put the design of the

1 product together.

2 Q Tell me if I'm wrong, though. It
3 sounds like you meant that that's an
4 important part of engineering design when
5 you said that it is an integral part. You
6 didn't just say that it's a part of
7 engineering design or that it's something
8 that's done in engineering design. You used
9 the words, "integral part of engineering
10 design."

11 A "Integral" meant what I just told you
12 that it meant, but I would tell you that
13 guarding issues related to product design
14 are an important part --

15 Q Okay.

16 A -- of engineering design decisions.

17 Q All right.

18 A I don't have a bit of problem with
19 that. That is important.

20 Q Okay. As part of your engineering
21 design curriculum, in teaching your
22 students, did you advocate the concept that
23 safety guards or safety devices should be
24 built into or permanently made a part of a
25 machine?

1 A Tell me what you mean by "permanently
2 made."

3 Q Well, you did not advocate that safety
4 devices should be optional devices that
5 could be put on or taken off easily; did you?

6 A In many applications, yes.

7 Q Okay.

8 A Certainly, in many applications, that
9 will be a very desirable decision to make.

10 Q Did you ever -- go ahead.

11 A What you teach and what the real issue
12 is, and the issue of guarding is that you
13 use guards in the engineering design process
14 to minimize the possibility of inadvertent
15 contact with power-driven components, and I
16 would include in that feed intake areas,
17 although some people would separate those
18 into two different categories, and I don't
19 care which way you do it. So, the purpose
20 of engineering design is -- in designing
21 guards is just to do that, to minimize the
22 possibility of inadvertent contact during
23 normal operation and service of that
24 equipment.

25 Now, engineers have to make

1 decisions on every product and on every
2 guard in every application that they use it
3 to determine what's the most effective guard
4 to accomplish that attaching and also to be
5 compatible with the functional objectives of
6 the machine and the economics and reliabi-
7 lity and serviceability and all of those
8 other things that engineers have to address.

9 So, whether or not a guard is made
10 easily removable or more difficult to remove
11 depends upon what the particular design
12 application is and what the particular func-
13 tion is on that particular design issue.

14 Q I understand.

15 A And it may vary from one place to
16 another even on the same product.

17 Q There would be some instances for some
18 products where you would want a guard to be
19 easily removable?

20 A There may well be, yes.

21 Q And there are some instances where you
22 would want the guard not to be bypassed but
23 to be a permanent part of the machine?

24 A Well, again --

25 MR. EILERS: I object to the form

1 of the question.

2 THE WITNESS: Again, I'm having
3 difficulty with what you mean by "permanent
4 part."

5 BY MR. MEROS:

6 Q One that you --

7 A When you say "more difficult to re-
8 move," if that's what you mean by permanent
9 --

10 Q Yes.

11 A -- that's probably true.

12 Q Okay, yet it depends on the machine,
13 its function, its application in the work-
14 place?

15 A And the --

16 Q And other factors?

17 A And man/machine interaction.

18 Q Right.

19 A And probably other things, but those
20 are at least some of the things that it
21 depends upon.

22 Q Can you think of an example in which
23 you would advocate that a safety guard or a
24 safety device for a piece of machinery would
25 be made more difficult to remove?

1 MR. EILERS: Objection to form.

2 THE WITNESS: More difficult than
3 what?

4 BY MR. MEROS:

5 Q I don't understand. Did you not under-
6 stand my question?

7 MR. EILERS: Well, "more dif-
8 ficult" is a relative term.

9 MR. MEROS: But he used it. I'm
10 only using the terms that he has used.

11 BY MR. MEROS:

12 Q More difficult to remove than one that
13 might be more easy to remove. This is kind
14 of an exchange of words that we both under-
15 stand.

16 A Sure. I would -- I would say to you
17 that where a guard is located on a piece of
18 machinery and where people have to get
19 behind that guard to do something on a
20 regular and a very frequent basis, maybe as
21 to service, maybe as to lubricate, maybe as
22 to repair, whatever the reason happens to
23 be, but if they have to get behind that
24 guard for -- on a frequent basis, then,
25 there's a large body of engineering know-

1 ledge that would argue that that needs to be
2 an easily accessed area so that the guard
3 needs to be easily removed from that area
4 for the person to get in to do that, and it
5 needs to be easily replaced --

6 Q I understand.

7 A -- onto that area after that person has
8 accomplished whatever he or she is intending
9 to accomplish in that area. So, those would
10 be areas where, typically, you would want to
11 go to guards that are -- that have ease of
12 removal and use.

13 There's another, an additional
14 thought in the engineering profession that
15 is discussed from time to time and con-
16 tinuously, and that is that the ease of
17 removal and replacement actually facilitates
18 --

19 Q I understand.

20 A -- the keeping of a guard in place so
21 that it can be there down the road for -- to
22 do what its engineering design is to do, and
23 that's to minimize the possibility of inad-
24 vertent contact during normal operation and
25 service. So, it's those kinds of issues

1 that are addressed in making those deci-
2 sions.

3 Q That's an example of instances where
4 you want easy removal of a guard --

5 A Uh-huh.

6 Q -- to get in back of it to service a
7 piece of machinery, to switch a guard to
8 make it interchangeable with a better guard,
9 guard maintenance; things of that sort, of
10 course, would dictate that the guard be
11 easily removable.

12 A In some cases it might, yes.

13 Q Can you think of any examples, though,
14 where on a piece of machinery you would want
15 a guard that would be more difficult to
16 remove, that you would try to discourage the
17 owner/operator/user from bypassing a guard?

18 A Well, this meat grinder that we're here
19 today on might be a case in point and
20 specifically the guard in the pan of the
21 meat grinders. It's a product that has some
22 pretty important sanitation requirements,
23 and making the guard more difficult to
24 remove might facilitate the sanitation of
25 that unit.

1 Additionally, it may be an issue
2 where it's not necessary to very frequently
3 get underneath the guard from the topside,
4 and if you do, that there are other easily
5 available means of doing that, and that's
6 just to pull the panel off and go in from
7 the underside through the opening that's
8 provided. So, in those kinds of cases where
9 people -- where you're not expecting people
10 to need to take it off and remove it on a
11 frequent basis, you would go to a more
12 permanent type attachment, and when I say
13 "more permanent type attachment," that means
14 that it's something that requires generally
15 some kind of simple tools to remove it.

16 Q So, this case may be an example in your
17 mind of a guard or a safety device that may
18 not have a need for removal but that the
19 manufacturer would want to make more dif-
20 ficult to remove.

21 A Well, not a frequent removal by
22 operators. There are times when removal of
23 this guard is essential.

24 Q Removal in terms of removal from the
25 feed pan or removal of the pan and guard

1 from on top of the cylinder? Which one are
2 you talking about?

3 A Both actually, and I was talking about
4 the guard from the feed pan, but I would
5 agree with either one of those.

6 Q Okay.

7 A It would need to be done from time to
8 time.

9 Q Can you think of any other examples in
10 machinery?

11 A I am sure that I could if I sat here
12 and thought about it, but, typically, you
13 make -- the engineering design concept is
14 that -- is that where guards are more
15 difficult -- pardon me; where guards don't
16 need to have people going behind them on a
17 frequent basis, where there are some types
18 of structural or other requirements for the
19 attachment, in order to ensure the reliabi-
20 lity of holding the guard in place so that
21 it doesn't fall off unintentionally, those
22 kinds of things, those kinds of applications
23 would be the kinds of applications. I know
24 that there are special cases, such as
25 sanitation, where you might look at stronger

1 attachment procedures for the guard.

2 Q How many meat chopper accidents have
3 you investigated outside of this one and the
4 Lunsford case?

5 A I believe that there have been a couple
6 of others. Outside of this one and the
7 Lunsford case?

8 Q Outside of this one and Lunsford, what
9 other meat chopper or meat grinder accident
10 cases have you investigated?

11 A I have looked at some others. I don't
12 believe that I've given any testimony in
13 those, however.

14 Q In those instances where you inves-
15 tigated other meat grinder accidents, who
16 was asking you to investigate them; the
17 manufacturer or the injured plaintiff?

18 A I believe that I was in every case
19 working for attorneys that represented --

20 Q The manufacturers?

21 A The manufacturers, yes.

22 Q Any other manufacturers outside of
23 Hobart?

24 A Either manufacturers or distributors,
25 one of the two.

1 Q Any other manufacturers outside of
2 Hobart that have asked you to --

3 A Yeah, there were others, and I can't
4 even recall now who it was.

5 Q Butcher Boy?

6 A It may have been Butcher Boy.

7 Q Biro?

8 A I don't believe that it was Biro, but
9 it is a possibility, but I don't believe
10 that it was.

11 Q Have you been involved in any other
12 Hobart cases for any other Hobart machinery
13 besides the band saw case, the Lunsford
14 case, this case and the packaging case? I
15 am assuming that the band saw case is a
16 Hobart case.

17 A Yes.

18 Q I think that you've already explained
19 that.

20 A There's at least one other Hobart case
21 that I did some consulting on.

22 Q At least one other?

23 A Yes.

24 Q Can you think of the one when you say
25 "at least one other?" Can you tell me --

1 A It was a mixer machine.

2 Q It was a mixer machine?

3 A A mixer, yes.

4 Q When were you involved in that case?

5 A Within the last two years.

6 Q In what jurisdiction was that case

7 pending or in what state?

8 A I am assuming that there was litiga-

9 tion, and I believe that there was, and I

10 believe it was pending -- it would have been

11 pending in Florida.

12 Q Were you consulting with Thompson, Hine

13 & Flory on that case or for another firm?

14 A No.

15 Q It was another firm?

16 A Yes.

17 Q That was a Hobart case, though, and it

18 was pending in Florida?

19 A Yes.

20 Q Can you recall whether you were deposed

21 in that case or whether you testified at

22 trial?

23 A I did neither.

24 Q Neither?

25 A Correct.

1 Q Can you recall for me the issue in that
2 case?

3 A No, I don't even recall it. I don't
4 recall it.

5 Q Can you recall for me the plaintiff's
6 counsel's name in that case?

7 A No.

8 Q Was it Al Gordon or Donna Michaelson?

9 A (At this time the witness shrugged his
10 shoulders.)

11 Q Okay.

12 A I just don't know.

13 Q Can you recall what part of Florida you
14 traveled to, to inspect the mixer?

15 A It was in central Florida.

16 Q Central Florida?

17 A And I believe that I flew into Orlando,
18 as I recall.

19 Q Okay.

20 A But I don't believe that the product
21 was in Orlando. It was outside somewhere.

22 Q Okay.

23 A It was in that central Florida area.

24 Q And this instance was in the last two
25 years?

1 A I believe that's correct.

2 Q And outside of the four or five cases
3 that you've mentioned, you can't think of
4 any other Hobart cases that you've been
5 involved in? There's only four or five that
6 you mentioned today.

7 A That's correct.

8 MR. MEROS: Would you like a
9 short break? I'm still on schedule to
10 finish in the anticipated time. Would you
11 like a short break? It's been an hour and a
12 half.

13 MR. EILERS: I'd never know it
14 from the questions that you asked.

15 MR. MEROS: I start to move
16 quickly.

17 MR. EILERS: Do you? You get to
18 the point?

19 MR. MEROS: Eventually. I
20 stumble around for four or five hours before
21 --

22 MR. EILERS: You're just not
23 asking anything having to do with the Kohut
24 case.

25 MR. MEROS: I stumble around for

1 hours before I find something interesting.

2 Shall we take a five or ten-minute break?

3 MR. EILERS: Super.

4 (At this time a short recess was
5 had.)

6 BY MR. MEROS:

7 Q Your assignment in the present case,
8 the Kohut case, I have a few questions about
9 that. Let me start by asking you if you
10 have any notes or if you have any indepen-
11 dent recollection as to when you were first
12 contacted in this case. First of all, do
13 you have any notes that would show when the
14 first contact was?

15 A No.

16 Q Do you have a recollection as to when
17 the first contact was?

18 A I don't have a recollection of an
19 absolute first date, but it would have been
20 some time prior to February of 1994, and I
21 believe that it likely was in the late fall
22 of 1993.

23 Q At that time, the approximate time when
24 you were first contacted in this case, you
25 were at that time already consulting with

1 the Hobart Company on some other matters; is
2 that correct?

3 A Well, not with the Hobart --

4 MR. EILERS: Thompson, Hine &
5 Flory.

6 THE WITNESS: And I would have
7 been --

8 BY MR. MEROS:

9 Q If you'd like to phrase it that way,
10 that's fine. You were consulting with
11 Thompson, Hine & Flory for or on behalf of
12 the retention of the Hobart Company?

13 A I don't recall if I was actively
14 consulting at that time, but I had consulted
15 at least prior to that time, and I may have
16 been actively consulting at that time on
17 other matters.

18 Q How were you contacted; over the phone
19 or with a letter?

20 A I don't remember it specifically,
21 whether it was in person when I was with Mr.
22 Eilers or if it was by telephone, but I
23 believe that it was by telephone.

24 Q And who contacted you?

25 A Mr. Eilers, as I recall.

1 Q What were you told about this case in
2 terms of what you were asked to consult on?

3 A Well, I don't recall the details, don't
4 even recall the conversation, but what would
5 have normally been relayed to me at that
6 time period would have been the equipment
7 that was involved, a lawyer's description of
8 the accident, and at least some allegations
9 that likely would have come out of the
10 Complaint or that kind of allegation, or at
11 least an allegation as the lawyers under-
12 stood it at that time period.

13 I would have been asked if I'd be
14 willing to consult with him on the engineer-
15 ing design issues related to the case, and
16 after some appropriate discussions on timing
17 and other things, we would have -- I would
18 have said yes or no. In this case I would
19 have said: yes, I would be willing to
20 consult with you, and we made agreements
21 that he would have sent me some information
22 as it became -- as it was available, and
23 after I had a chance to look at it, then
24 we'd begin to talk about looking at it and
25 inspecting the equipment.

1 Q Did you make sure that you had a full
2 understanding of the facts before you agreed
3 to consult with them on this case?

4 A No.

5 Q At what point in the conversation --

6 A I only made sure that it appeared to be
7 a case that would fall within my expertise
8 and that I would have some willingness to
9 agree to work on it with him, and the facts
10 would come subsequent to that.

11 Q All right.

12 A And that's what the investigation was
13 all about.

14 Q What were you asked to do in this case
15 specifically, if anything at all?

16 A I guess that I was asked to evaluate
17 the engineering design of the product and to
18 consult with Mr. Eilers initially as to the
19 reasonableness of that design, particularly
20 in terms of whether or not it was a reason-
21 ably safe product, and at some subsequent
22 time, I, of course, was asked to prepare the
23 report that you have seen and to -- to serve
24 as an expert witness in this case.

25 MR. EILERS: I note that the

1 original discussions and retention might
2 have been with my predecessor on the case,
3 Ted Laszlo, and you may recall it the same
4 way, John.

5 THE WITNESS: That may be true,
6 yes. Now that he mentions it, it may have
7 been with Mr. Laszlo.

8 BY MR. MEROS:

9 Q With Mr. Laszlo?

10 A As a matter of fact, it probably was
11 with Mr. Laszlo, now that he has refreshed
12 my memory.

13 Q Your recollection appears to be
14 refreshed, and in that regard, can you
15 recall for me if you were consulting with
16 Mr. Laszlo on another Hobart case at the
17 time that he talked to you about this one?

18 A I don't recall. I don't -- I had met
19 Mr. Laszlo previously. I cannot recall
20 whether or not we had had consultations
21 together on previous cases or not.

22 Q But you had had prior consultations
23 with Mr. Eilers on other cases prior to this
24 one?

25 A Yes, yes.

1 Q But you don't recall --

2 A Mr. Eilers or his firm.

3 Q But you don't recall whether you had

4 prior consultations on prior cases with Mr.

5 Laszlo of that firm.

6 A No. I had met Mr. Laszlo at various

7 times in the past.

8 Q Okay.

9 A We at least had an acquaintance, but I

10 can't recall whether there were actual

11 consultations involved.

12 Q Do you have an estimate of the total

13 hours that you have spent on this case so

14 far?

15 A I hadn't even thought about it. Let's

16 see; I could probably give you an estimate.

17 I'm going to estimate that up until the time

18 I've come in here, the total time is

19 probably in the approximately 40-hour range.

20 Q You reviewed certain things prior to

21 preparing a report in this case, I take it.

22 A Yes.

23 Q And I believe that you've made a list

24 of those things in the report that you

25 submitted.

1 A Yes.

2 Q Is there anything else that you can
3 recall for me now that you would add to the
4 list of items that you reviewed in connec-
5 tion with the preparation of your report?
6 I'll show it to you.

7 A I have reviewed other things, and they
8 were not in my file at that time, and they
9 are now, some of them are.

10 Q Okay. May I have an example of what
11 you may have taken a look at?

12 A I have reviewed the drawings, selected
13 drawings of the 4332 meat chopper, parti-
14 cularly with regard to the pan and the guard
15 assembly.

16 Q I see.

17 A There are other drawings as well, but
18 those, I think, are the ones that you'd be
19 interested in. I have also reviewed the UL
20 standard.

21 Q Okay.

22 A I have also looked again at some
23 patents. I have reviewed Mr. Robinson's
24 deposition.

25 Q Okay.

1 A And Mr. Schlieper's deposition since
2 that time period.

3 Q Have you looked at the exhibits that
4 were appended to or made a part of Mr.
5 Schlieper's deposition?

6 A Yes. I think it would be safe to say
7 that I have reviewed everything that has
8 been produced through discovery from Hobart
9 to the plaintiff, including the attachments
10 to Mr. Schlieper's depo.

11 Q When you say that you've taken a look
12 at some patents, are those the patents that
13 were exhibits to Mr. Schlieper's deposition?

14 A I have seen those, yes.

15 Q Are there any other patents, though,
16 that are in your file?

17 A No. Those are not in my file. I have
18 seen those, but I --

19 Q I'm sorry. Are there any patents that
20 are in your file?

21 A Of this case?

22 Q Yes.

23 A No.

24 Q I thought you said that there were some
25 patents in your file.

1 A As I say, I have looked at those, but I
2 have not put them in my file. I could, I
3 guess, but I have not.

4 Q What is your understanding of how this
5 injury occurred based upon your review of
6 depositions, evidence, exhibits and other
7 things in this case?

8 A Young Mr. Kohut was utilizing the meat
9 chopper to grind meat, and, in fact, had
10 ground the meat once and was in the process
11 of going through a second grind of the
12 product and was, as I recall, nearing the
13 end of about a 40 -- what was estimated to
14 be about a 40-pound batch of meat; had the
15 chopper located on -- at a fairly low
16 elevation such that he was having to get out
17 of a standing position in order to be able
18 to operate the unit, according to his
19 testimony.

20 He was operating it with the guard
21 to the cylinder removed from the feed pan,
22 and in the process of using his right hand
23 to move materials into the hopper leading to
24 the cylinder and the screw of the chopper,
25 he placed his hand far enough down inside

1 the hopper that it came into contact with
2 the screw while it was under power and doing
3 the thing that it's designed to do, and
4 that's to chop up meat, and he subsequently
5 was injured.

6 There's some indication in his
7 testimony that he may have been, although
8 it's not clear, but he may have been
9 observing what he was doing with his left
10 hand at about the time of the accident
11 occurring and the injury occurring to his
12 right hand.

13 Q I'd like to mark your report in this
14 case as Exhibit 2. It's dated November 23,
15 1994. Let me just take a moment and put a
16 sticker on it.

17 (At this time Plaintiff's Exhibit
18 2 was marked for identification purposes.)

19 BY MR. MEROS:

20 Q Your report states five opinions that
21 are found on page two. I think that they
22 are clearly stated. I don't have a lot of
23 questions about those. I would like to ask
24 you, though, if there are any other opinions
25 that you have in this case other than the

1 five included in your report, the five
2 paragraphs included in your report.

3 A I would -- and maybe I'll just read
4 these before I respond.

5 Q That's fine, sure.

6 A Yes.

7 Q Okay.

8 A I would, obviously, have opinions with
9 regard to warnings on this particular
10 machine, and that's only because plaintiff's
11 expert or the plaintiff had not alleged any
12 warnings issues at the time that my report
13 was written, and I understand that that
14 issue has now been raised by Mr. Robinson
15 and maybe others.

16 Q Uh-huh.

17 A So, I would expect to certainly have
18 opinions on that issue. Additionally, it's
19 my understanding that Mr. Robinson may be
20 supplementing his report and issuing opi-
21 nions on other areas, and I would certainly
22 plan to look at those and, if appropriate,
23 would render additional opinions on those
24 areas.

25 Q Do you have any additional opinions

1 today as a result of reading the Schlieper
2 deposition and the Robinson deposition?

3 A Well, I have one opinion, and I think
4 it's quite clear. I don't know that it's an
5 opinion. It's more of a factual observa-
6 tion, and that is that Mr. Robinson, obvi-
7 ously, misinterpreted what Mr. Schlieper's
8 testimony was, particularly with regard to
9 the availability of drive screws. Addi-
10 tionally to that, I guess I would have an
11 opinion that it's not clear that the guard
12 from the feed pan was removed by using a
13 screwdriver to place a screwdriver blade in
14 the slot to back out the screws.

15 Q I'm sorry. I didn't get the earlier
16 part of what you said. Just pause for a
17 moment, and she'll read it back.

18 MR. MEROS: Could you read it
19 back?

20 (At this time the question was
21 read back.)

22 BY MR. MEROS:

23 Q I see, all right. Are there any other
24 areas that you have opinions on right now?
25 I haven't asked you for those opinions yet,

1 but I just am asking for other areas that
2 you might have an opinion for me today on.

3 A No. I think, other than the response
4 to the additional discovery that has come
5 about since my report, those would be the
6 only areas in which I would have opinions
7 that are not enumerated in my report.

8 Q If Mr. Robinson does not issue a
9 supplemental report and offers no written
10 opinions further than what's in the record,
11 would you have any further opinions in this
12 case?

13 A I don't know. As I sit here today, I
14 don't intend to, but should Mr. Eilers ask
15 me to consider additional issues, I would
16 certainly do that, or if it became approp-
17 riate, as a result of something that goes on
18 here the rest of today or at some other time
19 subsequent to today, for me to address
20 additional issues and other opinions, I will
21 certainly do that, and should any of that
22 happen, I would presume that it would be
23 made available in whatever a timely manner
24 is as the case progresses, but right now I
25 don't have any plans to do -- to have -- to

1 form additional opinions. I would expect to
2 put some exhibits together before trial time
3 and that kind of thing.

4 Q Let's see if we can clear up the
5 misunderstanding that Robinson had regarding
6 what Schlieper said about drive screws. Is
7 it true that, or is it factual that the
8 misunderstanding was that Mr. Robinson
9 thought that Schlieper said that there were
10 no drive screws available in July of 1950,
11 that they hadn't been invented yet or that
12 they hadn't been on the market yet? Is that
13 what you think that Mr. Robinson took Mr.
14 Schlieper to be saying?

15 A Yes.

16 Q Okay.

17 A Except I think that your date is maybe
18 not exactly correct.

19 Q Okay.

20 A I think that the date may have been
21 different than July of 1950, but, yeah,
22 that's it.

23 Q Because it is a fact, is it not, that
24 drive screws were invented and available
25 prior to the shipping date of this product?

1 A I haven't looked it up. I can tell you
2 that drive screws were not in widespread use
3 at that time period and didn't really come
4 into widespread use until some time subse-
5 quent to that, but the exact first date of
6 development and invention of that particular
7 concept, I haven't looked up. I haven't
8 made an attempt to look at it. If it be-
9 comes an issue, I may do that.

10 Q Where would you go to research it?

11 A I don't know. I don't know. I haven't
12 even attempted to do that. I haven't even
13 addressed it at this stage, but if it be-
14 comes an important issue, and if it's impor-
15 tant, and I don't think that it has anything
16 to do with this case, but should it do that
17 or should it be an issue, I'll certainly
18 plan to address it.

19 Q Am I understanding you to say that you
20 don't think that drive screws and their
21 availability prior to the production of this
22 product have anything to do with this case?

23 A That's correct.

24 Q Okay.

25 A I don't believe that it's an important

1 issue in this case.

2 Q All right.

3 A I don't think it has anything to do
4 with whether or not the product is a
5 reasonably safe product or not.

6 Q All right. Do you know of any federal
7 government standards that would describe
8 drive screws or U-type screws prior to July
9 of 1950?

10 A Federal government standards?

11 Q Uh-huh.

12 A No. The federal government does not
13 promulgate standards.

14 Q Does the federal --

15 A They promulgate regulations but not
16 standards.

17 Q Let me use the word "specifications."
18 Are you aware of any federal specification
19 for screws and types of screws that was
20 written, promulgated prior to the selling
21 date of this product?

22 A No. I'm not familiar one way or the
23 other. I have not made an attempt to deter-
24 mine that.

25 Q Okay. Do you know of any products in

1 existence before July of 1950 that imple-
2 mented drive screws?

3 A Again, I haven't --

4 Q You haven't researched it?

5 A I haven't researched that.

6 Q Okay. Have you ever read or taken a
7 look at the Herbert Johnston patent that was
8 granted in 1931 that was assigned to the
9 Hobart Company?

10 A Yes. I believe I have -- I have seen
11 the Johnston patent, and I believe that it's
12 the one that you referred to.

13 Q Do you find that that has any signi-
14 ficance to this case in any way?

15 A Yes, I guess it does. I don't think
16 that it's a critical issue, but I think that
17 it defines some of the technological
18 advancement through the Hobart Corporation
19 in the design and some of the evolutions
20 that went on in the design. I think it
21 describes the technology of moving -- of
22 beginning to define the configuration, shape
23 and size of the feed intake area into the
24 cylinder of the grinder.

25 Q Did Mr. Johnston appear to recognize

1 when he applied for the patent that it was
2 not an uncommon occurrence for an operator
3 to accidentally get his fingers into the
4 auger while feeding meat into the grinder?

5 MR. EILERS: I object to the
6 question. I think, one, the patent speaks
7 for itself.

8 MR. MEROS: True.

9 MR. EILERS: I don't think that
10 it is appropriate to ask this witness what
11 was in the mind of Herbert Johnston when the
12 patent application was authored in approxi-
13 mately 1922 which was probably some few
14 years before Bobby Clary was born.

15 THE WITNESS: That's correct. It
16 was before I was born.

17 BY MR. MEROS:

18 Q I see. I'm asking you to at least
19 recall for me what was not in the mind of
20 Mr. Johnston but what was in the patent
21 itself as the terminology, the written words
22 that were used in applying for the patent
23 that drove his invention or that motivated
24 him to try to find a safety device for a
25 meat grinder.

1 MR. EILERS: I'm going to object
2 to that question as well, but if you can
3 from memory deal with it, proceed.

4 THE WITNESS: I don't recall that
5 from memory. I'd be happy to look at the
6 patent and read what it says, but -- and I
7 would not -- I would choose not to try to
8 paraphrase it.

9 BY MR. MEROS:

10 Q Okay.

11 A But I would say, however, that in that
12 time period, Mr. Johnston was talking about
13 a chopper technology that was different than
14 the chopper technology that existed at the
15 time that this product that we're here about
16 today was designed and manufactured, in any
17 event.

18 Q Whatever the patent says, it says, I
19 suppose.

20 A That's right.

21 Q We cannot change it, and we cannot
22 alter it. To the extent, though, that you
23 have considered that, it is an item, a
24 document, a patent that you have looked at
25 at some time in connection with this case.

1 A I have looked at it in connection with
2 this case, and I looked at it primarily in
3 connection with this case because it had
4 been -- it had arisen in several of the
5 depositions or at least a couple of the
6 depositions that I had -- that I had
7 reviewed. So, I refreshed my memory on it.

8 Q Have you also taken a look at the David
9 Meeker patent that was applied for in 1945
10 and granted in 1945 which was assigned over
11 to the Hobart Company?

12 A Yes.

13 MR. EILERS: Applied for in 1945
14 and granted in '45?

15 MR. MEROS: '49 I said.

16 MR. EILERS: You said '45.

17 MR. MEROS: Did I say '45? I
18 meant to say '49, because I know it was
19 granted in '49.

20 BY MR. MEROS:

21 Q So that the record is clear, we're
22 talking about the Meeker patent that was
23 applied for in '45, granted in '49, and it
24 was assigned over to the Hobart Company.

25 A I have seen a couple of Meeker patents

1 and I believe, without putting those dates
2 to memory, I believe that I have seen the
3 one that you're talking about.

4 Q Do you find that the Meeker patent,
5 which was an exhibit to the Schlieper
6 deposition, has any significance in this
7 case?

8 A Well, it has -- it has significance to
9 the extent that it indicates some of the
10 design evolution and some of the concepts
11 that Hobart was going through as they were
12 attempting to improve their product over the
13 years.

14 Q I get to use this.

15 A Hey, how about that. Look at this.
16 Look at this gadget.

17 Q There is the Meeker patent which, to
18 identify it, is Exhibit 15 from the
19 Schlieper deposition, and there you can see
20 that it was -- I'll give you a nice, tight
21 shot of this. It was applied for in 1945
22 and granted in 1949.

23 A Yes, that's correct.

24 Q Okay.

25 A I agree with that.

1 Q In the context of the Schlieper patent
2 -- I'm sorry; I meant to say "Meeker
3 patent," and I don't know how well you can
4 read it. It may be easier to hand this to
5 you. I thought possibly we could all take a
6 look at this at the same time. I can
7 actually get it fairly large there.

8 The paragraph that starts here, in
9 the column that is marked as column one, the
10 Meeker patent, Mr. Meeker in his invention
11 explains what led up to this patent, what it
12 does, what he hopes to accomplish with this
13 patent, and at the very bottom of column
14 one, he explains that "It is still further
15 object to provide such a chopper in which
16 --"

17 A Wait a minute. I can't read that.
18 Push it up.

19 Q There we go. I'm going to enlarge it
20 for you more.

21 A I can read it from here.

22 Q Okay. "It is still further object to
23 provide such a chopper in which the protec-
24 tive feature is built into the machine and
25 is not afforded by auxiliary devices, the

1 removal of which defeats the purpose which
2 can be manufactured readily and at low cost,
3 and which may be easily kept in a clean and
4 sanitary condition by the user."

5 Now, you have read that before
6 today --

7 A Yes.

8 Q -- before I read that into the record.

9 A And you read it correctly, yes.

10 Q And you don't know what was in the mind
11 of Mr. Meeker, right?

12 A Well, only --

13 Q Or do you?

14 A Only to the extent that it's enumerated
15 by him or by others in the patent and in the
16 device that he patented.

17 Q Do you find the passage that I just
18 read into the record to have any signifi-
19 cance to this case in any way?

20 A No. I find that it has some signifi-
21 cance to Mr. Meeker's patent.

22 Q And what is that?

23 A Well, it basically defines the con-
24 figuration. He was basically changing the
25 configuration of the inlet area or the

1 hopper and the feed inlet into the cylinder,
2 and he was trying to get rid of guards
3 completely in that area as other parts of
4 the patent well enumerate, and, so, he was
5 visualizing a concept that's totally
6 different than the machine that was here,
7 and, of course, it's a concept that, because
8 of difficulties, never panned out.

9 Q Do you have any information that, by
10 July of 1950, the Hobart Company and its
11 agents and representatives had knowledge
12 that its guards were being removed with
13 frequency from the meat grinders and meat
14 choppers?

15 MR. EILERS: Objection to form.

16 THE WITNESS: No, I have no
17 evidence to that effect.

18 BY MR. MEROS:

19 Q Your inspection of this product
20 occurred in the law offices of Ron Balbier,
21 I understand. I was there when you came in
22 to do the inspection. Do you have any notes
23 that would reflect the date of that inspec-
24 tion? I may have asked you this already.

25 A You did ask me that, and, you know, I

1 looked last night in my file for my notes,
2 and I'm sure that I took an abbreviated set
3 of notes, but they are not in my file, and I
4 obviously left them somewhere, and I'm not
5 sure where they are, but I would expect that
6 they're back in my office.

7 Q Did you take any photographs at that
8 time?

9 A Yes, I did.

10 Q Do you have those?

11 A And that would be a major part of my --
12 yes, I do.

13 Q You don't have to get them out. Did
14 you make any findings based upon your
15 physical inspection of the feed pan, auger,
16 cylinder neck and throat at that time?

17 A Did I make any findings?

18 Q Yes.

19 A Yes.

20 Q Are they included in your notes?

21 A They would be -- they would be included
22 in the photographs.

23 Q Your findings?

24 A Yes.

25 Q Well, did you make any --

1 A I did not write any findings out, as I
2 recall, other than to -- my notes would only
3 document the condition and the things that
4 are shown in the photographs.

5 Q Do you have any notes of that inspec-
6 tion?

7 A I did have a brief, one page of notes,
8 and right now I can't tell you where they
9 are because I thought that they were in the
10 file that I brought with me, and they are
11 not.

12 Q Did you at any time after your inspec-
13 tion write anything down not contemporaneous
14 with your inspection but at any time after
15 concerning findings of your physical inspec-
16 tion?

17 A No, other than what's in my report that
18 we have already looked at.

19 Q Okay. From your inspection, could you
20 tell --

21 A And there would have been -- you know,
22 there would have been a preparation of this
23 report, and there would at various times
24 have been this report in bits and pieces
25 that eventually came together to make this

1 report.

2 Q Could you tell from your inspection the
3 length of time that the guard had been off
4 of this product?

5 A No.

6 Q Could you even estimate the number of
7 months or years that the guard had been off
8 of this product as a result of your inspec-
9 tion of the feed pan?

10 A Not as a result of the inspection. I
11 know of no way of doing that as a result of
12 the inspection.

13 Q What has the --

14 A Particularly with the guard and its
15 attachments not being available.

16 Q All right. What has your review of
17 depositions in this case shown you in terms
18 of the allegation of how long the guard had
19 been off?

20 A A long time.

21 Q Could you be more specific or not?

22 A Well, the older Mr. Vistein, and did I
23 say that name correctly?

24 Q That's correct.

25 A The older Mr. Vistein suggests that he

1 thinks that he purchased the chopper
2 somewhere around 1953, but he's not sure of
3 that, that that's the time, so whether or
4 not that's the correct time or not, I can't
5 say.

6 Q All right.

7 A Based upon his testimony, he said that
8 he's never seen such a guard, but it's not
9 clear that -- as you read his deposition as
10 to whether or not his memory is very good on
11 that issue or not.

12 Q All right.

13 A But -- so he suggested it may have been
14 off for many, many, many years, but cer-
15 tainly the best physical evidence that I
16 have available suggests that it had been off
17 for quite some time.

18 Q Could you tell from your inspection
19 whether or not this feed pan ever had a
20 guard mounted on it or in it originally?

21 A I believe that there is an extremely
22 high likelihood, and I believe that it's
23 likely certain that there was a guard
24 mounted on it at some time.

25 Q And what is the basis of that opinion