	Deposition of	Richard Ha	yes	, taken sune 25, 2001 index rage
State Of Ohio, County of Cuyaho) ga.) 55:			appearances:
IN T ANNA OLLER, et a Plainti vs. WILTON CORP., et Defenda THE D THE dep the Plaintiffs Ohio Rules of Co	THE COURT OF COMMON PLEAS	V 160 ES to the fore me, the		Appearances: On behalf of the Plaintiffs: John R. Liber, II, Esq. 17 1/2 North Franklin Street Chagrin Falls, Ohio 44022 On behalf of the Defendant Cincinnati Milacron: Robert H. Eddy, Esq. Gallagher, Sharp, Fulton & Norman Seventh Floor Bulkley Building 1501 Euclid Avenue Cleveland, Ohio 44115 On behalf of the Defendant Wilton Corp.: C. Richard McDonald, Esq. Davis and Young Co., LPA 1700 Midland Building 101 Prospect Avenue Cleveland, Ohio 44115 Doug S. Musick, Esq. Roetzel & Andress 1375 East Ninth Street One Cleveland Center Cleveland, Ohio 44114
Fulton & Norman, Cleveland, Ohio, and date above :	tt the offices of Gallagh Seventh Floor Bulkley B commencing at 1:10 p.m. Met forth.	uilding, , the day 3	1 2	4 (Plaintiff's Exhibit Nos. 30 and 31
EXAMINATION BY:		PAGE NO.	3	were marked.)
Mr. Liber			5	EXAMINATION OF RICHARD HAYES
			6	BY MR. LIBER:
			7	Q Say your name, please.
			8	A Richard H. Hayes, H-a-y-e-s.
EXHIBIT		PAGE NO.	9	Q Mr. Hayes, you are here on behalf of Wilton
30 .			10	Corporation as an expert in the area of safety?
31 .			11	A That's correct.
32 .			12	Q Could you give us your office address, please?
33 .			13 14	A It's 5727 Airport Highway, Suite A, Toledo, Ohio 43615.
			15 16	Q Mr. Hayes, for identification purposes, I've marked two documents which I'm placing in front
			17	of you.
			18	The one you're looking at right now is
			19	marked Plaintiff's Exhibit 31 and the other one
			20	is Plaintiff's Exhibit 30. Would you please
			21	identify those two documents for me.
<u>Cara</u>	NEDEX		22	A One is my current CV and the other is my report
			23	dated July 11, 2000.
			24	Q Your CV is identified as Number 31, correct?
			•	

25 A That's correct.

CADY & WANOUS REPORTING SERVICES, INC.

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Page 1 to Page 4

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<u>`</u> 1	Q	And your report is identified as Exhibit 30,	1		before?	
2		correct?	2	А	A few times, yes.	
3	А	That's correct.	3		As best as you can ballpark, how many times h	as
 4		Are there any additions, corrections,	4	-	that occurred?	
5		modifications you would like to make to either	5	А	More than 300, less than 800.	
6		exhibit?	6		And according to your vitae, you indicate that	
7	Δ	There is a correction on the CV, and that is for	7		you consult on behalf of both parties to legal	
8	Λ	the American Board of Forensic Examiners. It's	8		matters, plaintiffs and defendants; is that	
		now Diplorie.	9		correct?	
9 40		•	10	٨	Yes.	
10		Would you refer me to which page?	1			
11		The last page.	11	Q	Do you have any breakdown as to how many	
12		At the bottom?	12		percentage wise is between plaintiffs and	
13		That's the only change. No changes.	13		defendants who you end up consulting for on	
14		Are you a native of Ohio, sir?	14		litigation matters?	
15		Yes.	15	A	In the past, what, five years, I can give you a	
16		Where did you go to high school?	16		ballpark on that.	
17		Tiffin, Ohio; Tiffin Calvert.	17		Okay.	
18	Q	Let me begin by going through your background	18	А	I'm going to say about 20 percent plaintiff and	
19		and experience.	19		about 80 percent defense.	
20		I have had a chance to review your CV and	20	Q	So the majority of the	
21		the bulk of your experience is with the	21	А	It works out. I need to add to that to about	
22		Occupational Safety and Health Administration;	22		six plaintiffs' cases a year.	
23		is that fair to say?	23	Q	You do review plaintiff cases, but it's fair to	
24	А	That's correct.	24		say that the majority of the cases you review	
25	Q	I take it you've also had your deposition taken	25		and end up working on are on behalf of	
·		7				8
				~	And how money for this 10	0
1		defendants?			And how many for trial?	
2	А	As of late, we've been doing more plaintiffs'	2	А	None for trial. They've all been settled.	
3		work, and I think it's only because we started	3	~	For plaintiff.	
4		doing more we get calls and but we look at	4	Q	For a plaintiff.	
5		both.	5		Can you recall the name of the plaintiff	
6	Q	But the majority of your work is for defendants	6		or the name of the plaintiff's lawyer on the	
7		in litigation?	7		last case you served as with respect to a safety	
8		Currently, correct.	8		expert in an intentional tort case?	
9	Q	Other than the case we're here about today, how	9	А	Well, I've got several pending right now, and I	
10		many other matters have you reviewed or	10		didn't bring my list of cases. There's a	
11		consulted for with respect to an allegation	11		fellow by the name of Richard Louis down in	
12		involving a workplace intentional tort?	12		Jackson, Ohio against I can't give you the	
13	А	How many?	13		site. It's a medical lot company. I have	
14	Q	Yes.	14	Q	Mr. Louis is the plaintiff's attorney?	
15	А	Oh, many.	15	А	He's the plaintiff's attorney. Lynch versus	
16		And once again, your best estimate.	16		Kissel Brothers, which is a carnival type show,	
17		Oh, I'm going to say more than 800, less than	17		case of a trip and fall hazard. And there's	
18		1,200.	18		several others. I can't remember what they	
19	0	An easier question, how many of those have you	19		are.	
20	-34	appeared on behalf of a plaintiff or an injured	20		Okay. How many times have you testified in	
20		party involving an allegation of a workplace	21		court as an expert witness?	
 21		intentional tort?	22		For what – which kind of cases? In OSHA, a	
22 23	٨	For deposition or for actual trial?	23		number of times.	
		Let's start with deposition.	23		That's a good point. Thank you.	
24 25		For deposition, probably 60.	24 25	9	With respect to your litigation services	
25	н	For deposition, probably ov.	20		value respect to your augation services	

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2		9			10
1		as a consultant, how many times have you	1	Q	With respect to the litigation cases which you
2		testified in trial?	2	-	have acted as a consultant, how many of those
	•		3		÷
3	А	Well, since I consult on OSHA cases as well as			have involved an issue of machine guarding?
4		tort cases, more than 12, less than 20.	4	А	
5	Q	In any case that you've consulted in, have you	5		as general manufacturing, general industry, even
6		ever been disqualified or found not of	6		under construction cases, it generally involves
7		sufficient experience or training in order to	7		some type of machinery.
			8	Δ	Other than the case which we're here about
8		offer expert opinions?		G	
9		No.	9		today, have you ever consulted or worked on a
10	Q	I understand you get paid for your services.	10		lawsuit involving a milling machine?
11	А	l do.	11	Α	Not horizontal milling machines, not in the
12	Q	What is your fee schedule?	12		intentional tort arena, but in the OSHA arena,
13		It's 175 an hour for straight preparation,	13		before the Occupational Safety and Health Review
	~	review of materials. That's 250 an hour for	14		Commission. And it was not involving the
14			1		-
15		depositions in trial work with a minimum of four	15		cutters, it was involving a coolant issue.
16		hours for trial work.	16	Q	Okay. So let me turn that into the positive,
17	Q	Is that portal to portal for the deposition?	17		if I may.
18	А	That's correct.	18		Is it fair to say that as a litigation
19		Do you have any way to determine how much	19		consultant, you have not worked on a case before
20	Q.	money or strike that. How much time you	20		involving a horizontal milling machine?
		-	1	А	Not a Cincinnati Milacron horizontal milling
21		have spent on the case that we are here about	21	А	•
22		today, that is, Anna Oller versus Wilton	22		machine. I have worked on vertical
23		Corporation, et al?	23		multispindle milling machines.
24	А	I'm going to say less than 25 hours. That	24	Q	Was that the coolant issue you mentioned?
25		includes a site visit.	25	А	No, that would be the vertical head. It moved
					10
		11			12
1		11 unintended and it hit the guy in the head.	1		12 that. That's my experience from an OSHA
	Q	unintended and it hit the guy in the head.	1		
2	Q	unintended and it hit the guy in the head. Was there a guarding issue involved in that	1 2	Q	that. That's my experience from an OSHA perspective with milling machines.
2 3		unintended and it hit the guy in the head. Was there a guarding issue involved in that case?	1 2 3	Q	that. That's my experience from an OSHA perspective with milling machines. When I say core allegations of this case, can we
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2		13	,		. 14	
1	Δ	You have to clarify that for me.	1	0	Okay. Would that type of a focus, the dozen or	
2		As a litigation consultant, have you ever dealt	2	9	so, less than 25 that you've handled, how many	
	Q	with that issue before?	3		of those involved a situation where the injury	
3						
4		No.	4		had already occurred and OSHA was investigating	
5		Let's go back	5		the situation after the fact?	
6	А	Not on a horizontal.	6		None.	
7	Q	to OSHA.	7	Q	So is it fair to say then that your involvement	
8		With respect to our claim that there	8		in those situations was reviewing a particular	
9		should have been a spindle guard or a rotating	9		issue of the guarding prior to any injury	
10		cutter guard on a horizontal milling machine,	10		occurring?	
11		tell me about your experiences with that while	11	А	· · · · · · · · · · · · · · · · · · ·	
12		you were at OSHA.	12		captive machine shop or if it's a production	
13	Δ	I've probably had over a dozen cases of that	13		type milling operation, what generally would	
	~	when I was with OSHA in the years that I was	14		lead us to look at a milling machine would be	
14		•	15		any recordable injuries that showed up on what's	
15		with them, and that's with approximately 15,000			• •	
16		cases that I've reviewed, either directly	16	~	called the OSHA 200 injury notice form.	
17		involved with the case, or actually gone out to	17	Q	•	
18		the site and looked at them.	18	A	By examining those records, if we saw anything	
19	Q	And of that, about a dozen?	19		that dealt with machine guarding issues, we were	
20	А	About a dozen or so. That's just a ballpark.	20		obligated to go look at it. All of those	
21	Q	l understand.	21		cases and it could be more than a dozen	
22	А	In OSHA, you don't track your cases by the type	22		usually the clue was in the records, and	
23		of machine. It's by the company.	23		generally, it involved a minor injury, slight	
24	Q	Sure. But it's certainly less than 25?	24		laceration that required a little bit more than	
25		l would say so.	25		first aid. Nothing serious, of those that I	
		-				
		15			16	
1		ever recall.	1	Q	Okay.	
2	Q	Okay. And what would your role be involved in	2		MR. McDONALD: Go ahead and	
3		actually examining the, or inspecting the	3		answer.	
4		premises and conducting a review therefrom?	4	А	What was the question?	
5	А	We look at the machine, see how it's being used.	5	Q	Sure. While you were at OSHA, did you ever find	
6		If it's a production machine, a jobbing machine;	6		an employee in violation of ANSI B11.8, I think	
7		whether it's vertical, horizontal, whether or	7		it is, I want to make sure I'm saying it right.	
8		not; where the operator's position was, loading,	8		I thought I had it down straight.	
9		unloading; that would be about it.	9		MR. McDONALD: You're saying it	
10	\sim	Before the Anna Oller case, had you ever	10		right.	
	Ч.				MR. LIBER: Let's mark this	
11		consulted or reviewed the ANSI milling machine	11			
12		guarding standard which we know as B8.11?	12		as 32.	
13		Correct.	13			
14		Is that a yes?	14		(Plaintiff's Exhibit No. 32 was marked.)	
15	А	Yes.	15			
16	Q	Okay. You had heard of that before, seen it	16	Q	Placing in front of you what we've marked as	
17		before, consulted it before?	17		Plaintiff's Exhibit 32, is that a copy of the	
18	А	Yes.	18		American National Standard B11.8 with respect to	
19	Q	And had you done that in your capacity in the	19		the safeguarding standards for milling machines?	
20		different positions you held while at OSHA?	20	А	It's yes. The 1974 version.	
 21	А	Yes.	21		Okay.	
22		Had you ever found an employer in violation of	22		Yes, I did review that before, when I was with	
23	-	that standard for a horizontal milling machine?	23	- •	OSHA.	
∠3 24		MR. McDONALD: I'm going to	24	0	While you were with OSHA, did you ever find an	
24 25		object.	25	-34	employer in violation of that standard?	
/		001001.	<u> </u>			

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5		. 17	Ĩ		18
1	Δ	With a milling machine, no.	1		concerned, ANSI would not fall within what OSHA
2		And is it correct to say that through OSHA,	2		states is appropriate standards?
	Q		3		MR. McDONALD: Objection.
3		1910.212, employers are required, for milling		٨	-
4		machines, to follow the ANSI standard?	4	А	Well, there has to be an adoption of a specific
5		MR. McDONALD: Objection.	5		OSHA standard, and as we sit here today, I'm not
6	А	I don't agree with that. 212 is primarily a	6		sure I don't believe that OSHA adopted B11.8
7		general machine guarding standard, and it does	7		making 1974 as the guiding document for milling
8		reference milling machines, but that's about it.	8		machines.
9		It's a very broad, broadly interpreted,	9	Q	Okay. Are you familiar with any other standard
10		catch-all type standard. That's why I probably	10		that would apply to milling machines?
11		would have looked at the B11 standard, though,	11	А	No.
12		because there's not enough detail in the	12	Q	So is it your testimony in this case that B11.8
13		standard itself.	13		does not apply to this accident?
14	Q		14	Δ	Well, it may apply to it, but from a regulatory
	Q		15		position, my position is that it does not apply.
15		paragraph three with two little ii's I guess		0	
16		you'd say (a)(3)(iii), correct?	16		Okay.
17		That point of operation it's talking	17		Not in terms of a regulatory issue.
18		about point-of-operation guarding, but it states	18	Q	Aside from a regulatory issue, how would B11.8
19		that, "The guarding device shall be in	19		apply to this case?
20		conformity with any appropriate standards	20	А	Well, B11.8 is a national consensus standard
21		therefor, or in the absence of applicable	21		that's developed with the cooperation of the
22		specific standards, shall be so designed" - on	22		industry itself. In order to cite an ANSI
23		and on; is that correct?	23		standard under OSHA, you have to cite what's
24	А	That's what it says, yes.	24		called the general duty clause, which is Section
25		And you're saying that as far as ANSI is	25		5A-1 of the act. That's number one.
*****		19			20
1		19 Number two, you have to show that there's	1	A	20 Is there a question?
1			1 2		
2		Number two, you have to show that there's	1	Q	Is there a question?
		Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard.	2	Q	Is there a question? Yes. Could you tell me what that is, please?
2 3 4		Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that	2 3	Q	Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why.
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2 3 4 5 6		Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that there's likelihood of serious physical harm or death.	2 3 4 5 6	Q A	Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why. This is the 29 CFR 1910.212 general requirements for all machines, the Occupational Safety and Health standard.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q	Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that there's likelihood of serious physical harm or death. And number four, you have to show that the employer knew that it existed. So you have to show all those things. I'm sorry, that was very well said. Can you repeat them for me? Or I can ask her to read it back. THE WITNESS: Why don't you read it back. (Record was read.) There was a fifth one? And fifth, probably one of the most important	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19		Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why. This is the 29 CFR 1910.212 general requirements for all machines, the Occupational Safety and Health standard. Is that what you identified as item number 13 in your report of July 11, 2000? Yes. What is the purpose of the OSHA standard 1910.212? It's a what we all a horizontal standard, and the difference between a horizontal standard and a vertical standard is that a horizontal standard would apply to all machines, whereas a vertical standard would only apply to specified equipment. A vertical standard a good example of that would be the bakery industry has vertical standards. The logging industry has
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q	Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that there's likelihood of serious physical harm or death. And number four, you have to show that the employer knew that it existed. So you have to show all those things. I'm sorry, that was very well said. Can you repeat them for me? Or I can ask her to read it back. I'm EWITNESS: Why don't you read it back. (Record was read.) There was a fifth one? And fifth, probably one of the most important aspects of it, there has to be a feasible method of fixing the problem.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20		Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why. This is the 29 CFR 1910.212 general requirements for all machines, the Occupational Safety and Health standard. Is that what you identified as item number 13 in your report of July 11, 2000? Yes. What is the purpose of the OSHA standard 1910.212? It's a what we all a horizontal standard, and the difference between a horizontal standard and a vertical standard is that a horizontal standard would apply to all machines, whereas a vertical standard would only apply to specified equipment. A vertical standard a good example of that would be the bakery industry has vertical standards. The logging industry has vertical standards. This is a general standard
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q	Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that there's likelihood of serious physical harm or death. And number four, you have to show that the employer knew that it existed. So you have to show all those things. I'm sorry, that was very well said. Can you repeat them for me? Or I can ask her to read it back. THE WITNESS: Why don't you read it back. (Record was read.) There was a fifth one? And fifth, probably one of the most important aspects of it, there has to be a feasible method	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q A Q A Q A	Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why. This is the 29 CFR 1910.212 general requirements for all machines, the Occupational Safety and Health standard. Is that what you identified as item number 13 in your report of July 11, 2000? Yes. What is the purpose of the OSHA standard 1910.212? It's a what we all a horizontal standard, and the difference between a horizontal standard and a vertical standard is that a horizontal standard would apply to all machines, whereas a vertical standard would only apply to specified equipment. A vertical standard a good example of that would be the bakery industry has vertical standards. The logging industry has vertical standards. This is a general standard that applies to all machines in the workplace.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	QA	Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that there's likelihood of serious physical harm or death. And number four, you have to show that the employer knew that it existed. So you have to show all those things. I'm sorry, that was very well said. Can you repeat them for me? Or I can ask her to read it back. THE WITNESS: Why don't you read it back. (Record was read.) There was a fifth one? And fifth, probably one of the most important aspects of it, there has to be a feasible method of fixing the problem.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q A Q A Q A	Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why. This is the 29 CFR 1910.212 general requirements for all machines, the Occupational Safety and Health standard. Is that what you identified as item number 13 in your report of July 11, 2000? Yes. What is the purpose of the OSHA standard 1910.212? It's a what we all a horizontal standard, and the difference between a horizontal standard and a vertical standard is that a horizontal standard would apply to all machines, whereas a vertical standard would only apply to specified equipment. A vertical standard a good example of that would be the bakery industry has vertical standards. The logging industry has vertical standards. This is a general standard that applies to all machines in the workplace. Is there a vertical standard under OSHA which
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 20 21 22 23	QA	Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that there's likelihood of serious physical harm or death. And number four, you have to show that the employer knew that it existed. So you have to show all those things. I'm sorry, that was very well said. Can you repeat them for me? Or I can ask her to read it back. THE WITNESS: Why don't you read it back. (Record was read.) There was a fifth one? And fifth, probably one of the most important aspects of it, there has to be a feasible method of fixing the problem.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q A Q A Q A Q Q	Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why. This is the 29 CFR 1910.212 general requirements for all machines, the Occupational Safety and Health standard. Is that what you identified as item number 13 in your report of July 11, 2000? Yes. What is the purpose of the OSHA standard 1910.212? It's a what we all a horizontal standard, and the difference between a horizontal standard and a vertical standard is that a horizontal standard would apply to all machines, whereas a vertical standard would only apply to specified equipment. A vertical standard a good example of that would be the bakery industry has vertical standards. The logging industry has vertical standards. This is a general standard that applies to all machines in the workplace. Is there a vertical standard under OSHA which applies to milling machines?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	QA	Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that there's likelihood of serious physical harm or death. And number four, you have to show that the employer knew that it existed. So you have to show all those things. I'm sorry, that was very well said. Can you repeat them for me? Or I can ask her to read it back. THE WITNESS: Why don't you read it back. (Record was read.) There was a fifth one? And fifth, probably one of the most important aspects of it, there has to be a feasible method of fixing the problem. (Plaintiff's Exhibit No. 33 was marked.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q A Q A Q A Q A	Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why. This is the 29 CFR 1910.212 general requirements for all machines, the Occupational Safety and Health standard. Is that what you identified as item number 13 in your report of July 11, 2000? Yes. What is the purpose of the OSHA standard 1910.212? It's a – what we all a horizontal standard, and the difference between a horizontal standard and a vertical standard is that a horizontal standard would apply to all machines, whereas a vertical standard would only apply to specified equipment. A vertical standard a good example of that would be the bakery industry has vertical standards. The logging industry has vertical standards. This is a general standard that applies to all machines in the workplace. Is there a vertical standard under OSHA which applies to milling machines? No.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	QA	Number two, you have to show that there's an exposure to a condition that is addressed in a national consensus standard. Number three, you have to show that there's likelihood of serious physical harm or death. And number four, you have to show that the employer knew that it existed. So you have to show all those things. I'm sorry, that was very well said. Can you repeat them for me? Or I can ask her to read it back. THE WITNESS: Why don't you read it back. (Record was read.) There was a fifth one? And fifth, probably one of the most important aspects of it, there has to be a feasible method of fixing the problem.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q A Q A Q A Q A	Is there a question? Yes. Could you tell me what that is, please? I have a hearing deficiency, that's why. This is the 29 CFR 1910.212 general requirements for all machines, the Occupational Safety and Health standard. Is that what you identified as item number 13 in your report of July 11, 2000? Yes. What is the purpose of the OSHA standard 1910.212? It's a what we all a horizontal standard, and the difference between a horizontal standard and a vertical standard is that a horizontal standard would apply to all machines, whereas a vertical standard would only apply to specified equipment. A vertical standard a good example of that would be the bakery industry has vertical standards. The logging industry has vertical standards. This is a general standard that applies to all machines in the workplace. Is there a vertical standard under OSHA which applies to milling machines?

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1		21	1		22
1		mentions milling machines, does it not?	1		guidance document was signed by a fellow by the
2	А	That's correct.	2		name of Barry White who was the Assistant
3	Q	And there under, I think it's subparagraph	3		Secretary of Labor.
4		three, Roman numeral IV, it identifies some	4	Q	And the purpose of that was for what?
5		machines which usually require	5		Well, to clarify the fact that you can't guard
6		point-of-operation guarding; is that correct?	6		the point of operation on most milling machines.
	٨	That's correct.		\cap	Isn't it correct that ANSI B11.8 clarifies that
7			8	Q	by separating out point of operation in the
8	Q	With respect to milling machines, do any of the	1		
9		OSHA regulations provide any other guidance for	9		rotating cutter hazard?
10		employer to assess or evaluate whether or not a	10	А	It separates it out and excludes it from
11		horizontal milling machine requires	11	_	guarding, yes.
12		point-of-operation guarding?	12	Q	Right. Except when the operator is working
13		In terms of what, like guidance documents?	13		within a foot of the blades; is that correct?
14	Q	Yes.	14		Generally, that's true.
15	А	Yes. There are guidance documents.	15	Q	Well, specifically that's true according to that
16	Q	And what would those be?	16		standard; is that correct?
17	А	There's a 1979 guidance document that deals with	17		MR. McDONALD: Which standard
18		the 1974 B11.8 standard that talks about not	18		are you talking about? I'm sorry.
19		being able to guard the point of operation.	19		MR. LIBER: ANSI B11.8.
20		And the genesis for that guidance document,	20		MR. McDONALD: Objection.
21		which is still in effect today, is paragraph	21	Q	Correct?
22		212(a)(3)(ii) because some of our compliance	22		That's correct.
23		officers, including myself, attempted to cite	23		And, in fact, OSHA 1910.212 states that items
24		that back in the 70s. So to avoid the	24	~	such as rotating parts require machine guarding
25		litigation effort that was taking place, the	25		as well; is that correct?
25		illigation enort that was taking place, the	20		as well, is that correct:
<u></u>		23			24
	A	23 That's correct. That's what it states.	1		24 as a viable means for protection on milling
-		That's correct. That's what it states.	1		
2		That's correct. That's what it states. And would, in your opinion, a rotating cutter on	1		as a viable means for protection on milling
-		That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part	2	Q	as a viable means for protection on milling machines. In fact, it's in a number of other
2 3 4	Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A?	2 3	Q	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the
2 3 4 5	Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It	2 3 4 5	Q	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was
2 3 4 5 6	Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes.	2 3 4 5 6	Q	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture
2 3 4 5 6 7	Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under	2 3 4 5 6 7	Q	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches,
2 3 4 5 6 7 8	Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that	2 3 4 5 6 7 8	Q	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph
2 3 4 5 6 7 8 9	Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of	2 3 4 5 6 7 8 9	Q	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all?
2 3 4 5 6 7 8 9 10	Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or	2 3 4 5 6 7 8 9 10		as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection.
2 3 4 5 6 7 8 9 10 11	Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling	2 3 4 5 6 7 8 9 10 11		as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what
2 3 4 5 6 7 8 9 10 11 12	Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct?	2 3 4 5 6 7 8 9 10 11 12	A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were.
2 3 4 5 6 7 8 9 10 11 12 13	Q A Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on?	2 3 4 5 6 7 8 9 10 11 12 13	A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a
2 3 4 5 6 7 8 9 10 11 12 13 14	Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five.	2 3 4 5 6 7 8 9 10 11 12 13 14	A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference?
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q A Q A Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q A Q A Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q A Q A Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q A Q A Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8? Essentially, from reviewing the documents, I	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife estimating where the garage corner is. I need
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q A Q A Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife estimating where the garage corner is. I need exact measurements in order to at least in my
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q A Q A Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8? Essentially, from reviewing the documents, I	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A Q A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife estimating where the garage corner is. I need exact measurements in order to at least in my business, you have to be pretty precise.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q A Q A Q A Q A	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8? Essentially, from reviewing the documents, I felt that they were in compliance with the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A Q A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife estimating where the garage corner is. I need exact measurements in order to at least in my
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q A Q A Q A Q A Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8? Essentially, from reviewing the documents, I felt that they were in compliance with the distance factor.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A Q A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife estimating where the garage corner is. I need exact measurements in order to at least in my business, you have to be pretty precise.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q A Q A Q A Q A Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8? Essentially, from reviewing the documents, I felt that they were in compliance with the distance factor. Based upon what?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A Q A Q	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife estimating where the garage corner is. I need exact measurements in order to at least in my business, you have to be pretty precise. Right. And nobody can get those exact
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q A Q A Q A Q A Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8? Essentially, from reviewing the documents, I felt that they were in compliance with the distance factor. Based upon what? Based upon no one knows how far the loading	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22	A Q A Q A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife estimating where the garage corner is. I need exact measurements in order to at least in my business, you have to be pretty precise. Right. And nobody can get those exact measurements in this case; is that right?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q A Q A Q A Q A Q A Q A Q	That's correct. That's what it states. And would, in your opinion, a rotating cutter on a milling machine be considered a rotating part under 1910.212 paragraph A? Rotating parts encompass a lot of things. It could be that too, yes. In this case, you concluded that, under paragraph number five of your opinions, that Wilton did not violate any federal, State of Ohio safety rule, regulation, ANSI standards or industry practice by operating the milling machine in this case; is that correct? What paragraph are you on? Five. That's correct. Okay. What's your basis for concluding that Wilton did not violate ANSI B11.8? Essentially, from reviewing the documents, I felt that they were in compliance with the distance factor. Based upon what? Based upon no one knows how far the loading table was from the cutter heads, and that's one	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A Q A Q A	as a viable means for protection on milling machines. In fact, it's in a number of other standards too, but If the individual who trained Anna Oller on the operation of the machine testified that it was his estimate that the distance of the fixture from the blades was approximately eight inches, would that change your conclusion in paragraph five at all? MR. McDONALD: Objection. Not unless he measured it and recorded what those measurements were. Why does the exact measurement make a difference? Well, when you're dealing with four inches and people estimating things for example, I have a car that is full of dings from my wife estimating where the garage corner is. I need exact measurements in order to at least in my business, you have to be pretty precise. Right. And nobody can get those exact measurements in this case; is that right? That's what I found out, correct.

Page 21 to Page 24

		25				26
1	Q	It was disposed of by Wilton; is that correct?	1	А	Yeah. I want to communicate with you.	
2		That's my understanding.	2		If any time you don't understand something that	
3		But with respect to an operation such as this,	3		I ask you, just like that situation, you will	
4	~	if the employee's perception is that the	4		let me know so I can rephrase it so that we	
5		operation of the machine, the work area is	5		communicate?	
		within 12 inches of the blade, it is significant	6	۵	Sure.	
6		-	7		Is it fair to say that the point of the OSHA	
7		for any safety engineer, safety person, safety	-	Q		
8		personnel to be able to then fully evaluate that	8		regulations, and indeed the point, in general,	
9		by making specific and direct measurements and	9		of the ANSI standards, is to improve workplace	
10		analysis; is that fair to say?	10		safety?	
11		MR. McDONALD: Objection. Go	11	A		
12		ahead.	12	Q	5	
13	А	That's a big question. A lot of stuff in that	13		there is an operation which is perceived as	
14		question. Can you get right to the question	14		dangerous, and it may, in fact, apply to OSHA	
15		itself? If you're talking about the injured	15		standards, that it is incumbent upon the	
16		party let me see if I understand this.	16		employer to have that evaluated to see if any	
17		If the injured party has a perception that	17		changes need to be made?	
18		it's 12 inches or less and I don't know	18		MR. McDONALD: Objection.	
19		really where I'm going with this question.	19	А	I think it's prudent for an employer to do that,	
20	Q	Well, let me restate it if you don't understand	20		yes. That's another part of our business. We	
21		it.	21		do that.	
22	А	I don't.	22	Q	So in this case, if the operators of the general	
23		And you've taken enough depositions to know that	23		purpose milling machine were under the	
24		it's important for us to communicate here; is	24		impression that they were required to work	
25		that fair to say?	25		within a foot of the blades, it would be	
		······································			·	
		27				28
1		27 incumbent upon the employer to evaluate that	1		offering any opinions which are in addition to	28
1 2			1 2		or different than those which are listed on	28
		incumbent upon the employer to evaluate that			or different than those which are listed on Plaintiff's Exhibit 30?	28
2		incumbent upon the employer to evaluate that operation to determine if, number one, it	2		or different than those which are listed on Plaintiff's Exhibit 30? I suspect not.	28
2 3		incumbent upon the employer to evaluate that operation to determine if, number one, it complied with OSHA, and number two, if any type	2 3		or different than those which are listed on Plaintiff's Exhibit 30?	28
2 3 4	A	incumbent upon the employer to evaluate that operation to determine if, number one, it complied with OSHA, and number two, if any type of protective measures had to be taken?	2 3 4		or different than those which are listed on Plaintiff's Exhibit 30? I suspect not.	28
2 3 4 5	A	incumbent upon the employer to evaluate that operation to determine if, number one, it complied with OSHA, and number two, if any type of protective measures had to be taken? MR. McDONALD: Objection.	2 3 4 5		or different than those which are listed on Plaintiff's Exhibit 30? I suspect not. Okay. And I take it, that in fairness, that if	28
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		Deposition of Richard Ha		s, ti	aken June 29, 2001 Index Page 8 30
1		THE WITNESS: Yes, I'm sorry.	1		best you can recall.
2	А	Yeah, there was a subsequent affidavit by Jerry	2	А	I don't recall their names.
3	- •	Rennell that I was able to look at.	3		Did you tape any of those conversations?
4	Q	That was what was submitted in support of the	4		No, I did not.
5		plaintiff's brief in opposition to summary	5		Do you recall the substance of any of those
6		judgment?	6	~	conversations?
7	Δ	That's correct.	7	А	No.
8		Other than that, were there any other matters?	8		Other than the ANSI standard and the OSHA
9		No.	9	~	standard, have you done any research on either
10		Any other documents, anything else?	10		point-of-operation guarding or rotating cutter
11		Just the OSHA documents. When I refer to any	11		guarding for general purpose milling machines?
12		OSHA documents, I try to make it	12	А	Yes.
13		all-encompassing.	13		Tell me about the research you performed.
14	0	Have you spoken with any of the witnesses in	14		Internet search, going back through my own ANSI
15	~	this case?	15		documents, going back through machine guarding
16	А	When I made my site visit, I sat in on some	16		classes that I've taken over the past 30 years,
17		conversations with counsel and one or two of the	17		going through OSHA's documentation on court
18		witnesses, and I had a few questions of my own,	18		cases involving milling machines.
19		but nothing earth-shattering.	19	Q	Anything else?
20	Q	What were the names of the witnesses that you	20		No. That's it.
21		had conversations with?	21	Q	And from that research, did you produce anything
22	А	Oh, boy. Dempsey	22		of significance in this case?
23		MR. McDONALD: No, Dempsey	23	А	Just the 1979 Barry White document.
24		wasn't there. He was gone.	24		Do you have a copy of that with you today?
25	Q	I don't think you can ask Rick for help, but as	25	А	I believe I brought one, yeah. Or one that we
		· · · · · · · · · · · · · · · · · · ·	ļ		
		31			32
1		can make a copy of.		A	Well, it would have been with OSHA for sure, and
2		MR. McDONALD: Sure.	2		it probably would have been a few times since
3	А	This is the only copy I have, John, so.	3		OSHA. One of those things that you know you've
4		MR. McDONALD: Go ahead and	4	~	read it and you just don't know where it's at. And Plaintiff's Exhibit 34 came about as a
5		mark and then we'll get copies.	5	Q	
6		MR. LIBER: Let's mark this	6		result of what you explained earlier as OSHA compliance officers misconstruing the OSHA
7		as Exhibit 34.	7		regulation 1910.212?
8		(Disintiffe Exhibit No. 24 was marked)	8	۸	Not misconstruing, but applying 212 and then
9		(Plaintiff's Exhibit No. 34 was marked.)	9	A	finding out that litigation or through
10 11	~	I'm sorry. We need to change the date on that.	11		settlement negotiations of the problems folks
12	А	It's 1976.	12		have with milling machines.
12	\sim	What date does it say?	13	0	Okay.
14		2-18-76. Not '79.	14		That would be the genesis for this document.
14		And when's the date that you pulled that up on	15		And in general terms, that situation would arise
16	Q	the Internet?	16	ů.	as a result of checking a 200 form, as you said,
10	Δ	Oh, 6-28, 2001.	17		a minor injury, or going to inspect the scene,
18		Yesterday?	18		observing the operation and seeing an unguarded
10		Well, I had a tattered copy in my machine	19		machine, and the compliance officer would say,
20	А	guarding standard, but it had coffee stains on	20		"You've got to put a guard on that" and would
21		it, so I pulled this up. It's a fresh copy.	21		issue some type of order or even a citation?
22	0	So you had seen that document before yesterday?	22	А	They would try to, yes.
22		Yes, but I can't tell you when.	23		Sure. And then that would be litigated?
24		Was it back when you were with OSHA or since	24		In many cases, yes.
25	ч.	you've been a consultant in litigation matters?	25		As a result of the correction, or the

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		. 33	Ī		34	
1		clarification, I guess I should say, for	1		standard, of course, the point of operation is	
2		Plaintiff's Exhibit 34, what then was the	2		excluded. We were always trying to cite that	
3		process to go through to determine if guards	3		point of operation, couldn't do this.	
4		were feasible in a particular operation?	4	Q	What's the difference between the point of	
5	А	Well, we would explore with in-house engineers	5	•	operation, a point-of-operation guard, and a	
6		from OSHA what methods are available. We would	6		rotating cutter guard on a horizontal milling	
7		ensure that they would meet the minimal	7		machine?	
8		requirements, if there were any, if it was	8	Á	Well, point of operation is clearly defined in	
9		feasible and practical, because the way this is	9	/ `	all the ANSI standards, as well as OSHA	
9 10		written, that's where it talks about	10		standards. The point of operation is the	
11		practicality, and if nothing could be done, that	11		specific area where the work is performed on the	
12		would be the end of it. The citation would be	12		piece. A punch press, for example, is not the	
12		vacated, and we would probably have a side	13		guide rods as point of operation. They're	
13		agreement that the operator be trained, those	14		moving, they can take your head off, but it's	
14		kind of things. We'd explore different ways to	15		where the punch actually goes through and forms	
		•	16		the metal. It's very clearly defined.	
16 17	~	get around the document. You said minimum standards. Where would that	17		In the same is true, and my view, of	
	Q	come from?	18		milling machines. It has a point of operation.	
18	^		19		It's where the work is performed.	
19	Μ	Well, of course you would look at ANSI, of course. You would look at the instruction	20	\cap	And the difference between that and the rotating	
20 21		books that come with the milling machines and	20	G.	cutter itself?	
22		find out if there could be any relief granted.	22	Δ	Well, I see no difference between that. That	
22		You've got to understand that the compliance	23	~	is the point of operation to me, based upon the	
23 24		officer primarily was worried about the point of	24		definition of what it is.	
25		operation. And when you look at the ANSI	25	Ο	As a safety engineer, how do you reconcile ANSI	
20		•	20	Q.		
		35			36	
1		where it says that you can't or don't have to	1		consultant?	
2		guard point of operation; then it says, on the	2		Since 1989.	
3		other hand, in some circumstances you have to	3	Q	And all that time you've never seen a rotating	
4		provide a rotating cutter guard?	4		cutter guard on a horizontal milling machine in	
5	Α		~			
6		That's a good question.	5		operation?	
		Do you have an answer for it as a safety	6		Never.	
7	Q	Do you have an answer for it as a safety specialist?	6 7		Never. Have you ever seen any brochures or designs or	
7 8	Q	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great	6	Q	Never. Have you ever seen any brochures or designs or diagrams of such a device?	
8 9	Q	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great angst, and ANSI standards are full of those kind	6 7 8 9	Q A	Never. Have you ever seen any brochures or designs or diagrams of such a device? Yes.	
8 9 10	Q	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great angst, and ANSI standards are full of those kind of dichotomies. But part of the problem with	6 7 8 9 10	Q A Q	Never. Have you ever seen any brochures or designs or diagrams of such a device? Yes. And do you know why that is the case?	
8 9 10 11	Q	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great angst, and ANSI standards are full of those kind of dichotomies. But part of the problem with the milling machine is the feasibility to do it	6 7 8 9 10 11	Q A Q A	Never. Have you ever seen any brochures or designs or diagrams of such a device? Yes. And do you know why that is the case? Why what is the case?	
8 9 10 11 12	Q	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great angst, and ANSI standards are full of those kind of dichotomies. But part of the problem with the milling machine is the feasibility to do it and still create a part. And it isn't just	6 7 8 9 10 11 12	Q A Q A	Never. Have you ever seen any brochures or designs or diagrams of such a device? Yes. And do you know why that is the case? Why what is the case? I'm sorry. Do you know why, in your experience,	
8 9 10 11 12 13	Q	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great angst, and ANSI standards are full of those kind of dichotomies. But part of the problem with the milling machine is the feasibility to do it and still create a part. And it isn't just milling machines, there's many other machines	6 7 9 10 11 12 13	Q A Q A	Never. Have you ever seen any brochures or designs or diagrams of such a device? Yes. And do you know why that is the case? Why what is the case? I'm sorry. Do you know why, in your experience, you have never seen such a device, a rotating	
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 8 9 10 11 12 13 14 15 16 17 18 19 20 21	QAQQ	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great angst, and ANSI standards are full of those kind of dichotomies. But part of the problem with the milling machine is the feasibility to do it and still create a part. And it isn't just milling machines, there's many other machines that this crops up. So they leave an open-ended standard like that and manufacturers have to fend for themselves. And quite frankly, in the literally thousands of machines that I've looked at that are true horizontal milling machines, I've never seen one guarded. That was my next question.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q A Q A Q A	Never. Have you ever seen any brochures or designs or diagrams of such a device? Yes. And do you know why that is the case? Why what is the case? I'm sorry. Do you know why, in your experience, you have never seen such a device, a rotating cutter guard in operation? I have an opinion as to why they don't, and I've had clients tell me why they don't guard it. The guards don't work, A. B, it could exacerbate a condition that they don't want getting trapped in the guard between the guard and the cutter itself. And B C, sorry.	
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 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q A Q A Q A Q A	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great angst, and ANSI standards are full of those kind of dichotomies. But part of the problem with the milling machine is the feasibility to do it and still create a part. And it isn't just milling machines, there's many other machines that this crops up. So they leave an open-ended standard like that and manufacturers have to fend for themselves. And quite frankly, in the literally thousands of machines that I've looked at that are true horizontal milling machines, I've never seen one guarded. That was my next question. In 30 years, I haven't seen one guarded. How long were you with OSHA?	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q AQAQ A Q	Never. Have you ever seen any brochures or designs or diagrams of such a device? Yes. And do you know why that is the case? Why what is the case? I'm sorry. Do you know why, in your experience, you have never seen such a device, a rotating cutter guard in operation? I have an opinion as to why they don't, and I've had clients tell me why they don't guard it. The guards don't work, A. B, it could exacerbate a condition that they don't want getting trapped in the guard between the guard and the cutter itself. And B C, sorry. C. C, sorry. That the guard that I'm familiar with, once it moves and I guess Mr. Rennell	
 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q A Q A Q A Q A	Do you have an answer for it as a safety specialist? As a safety person, it probably causes me great angst, and ANSI standards are full of those kind of dichotomies. But part of the problem with the milling machine is the feasibility to do it and still create a part. And it isn't just milling machines, there's many other machines that this crops up. So they leave an open-ended standard like that and manufacturers have to fend for themselves. And quite frankly, in the literally thousands of machines that I've looked at that are true horizontal milling machines, I've never seen one guarded. That was my next question. In 30 years, I haven't seen one guarded. How long were you with OSHA?	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q AQAQ A Q	Never. Have you ever seen any brochures or designs or diagrams of such a device? Yes. And do you know why that is the case? Why what is the case? I'm sorry. Do you know why, in your experience, you have never seen such a device, a rotating cutter guard in operation? I have an opinion as to why they don't, and I've had clients tell me why they don't guard it. The guards don't work, A. B, it could exacerbate a condition that they don't want getting trapped in the guard between the guard and the cutter itself. And B C, sorry. C. C, sorry. That the guard that I'm familiar	

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	v		37			38
	1		point. You still have a rotating cutter that's	1		me to be belittling, that there's nothing to it.
	2		exposed. So that feasibility thing jumps up to	2		In fact, there isn't even any paper that says
	3		me.	3		sheet with a de minimis citation.
	4	Q	The clarification memo from Mr. White indicates	4		The purpose is to simply notify the employer?
	5		that there are other options in the event that	5	А	It's to notify the employer, and generally when
	6		guarding of the cutter is not feasible; is that	6		they issue a de minimis notice, it's verbal and
	7		correct?	7		they ask them to keep looking at the
	8	Â	Yes.	8		technologies to see if anything changes that
	9	Q	And what types of things has he mentioned?	9		affects their equipment. Most employers agree
	10	А	Barry talks about splash shields, chip shields,	10		with that.
	11		or barriers. And I'm quoting, "Splash	11	Q	What is the National Safety Council?
	12		shields, chip shields or barriers which provide	12	A	National Safety Council is a national
	13		protection to the operator or employees may be	13		organization started many, many years ago by
	14		acceptable; and if necessary, a de minimis	14		insurance companies in order to assist employers
	15		notice may be issued."	15		in reducing their premiums by enforcing safety
	16	0	What does a "de minimis notice" mean or refer	16		standards.
	17	~	to?	17	Q	As a safety engineer, do you receive their
	18	Δ	A "de minimis notice" means that if they have or	18	-	publications?
	19		do not have any of those things – a "de minimis	19	А	I used to. I don't any more.
	20		notice" in OSHA parlance means that there is no	20		Why don't you anymore?
	21		record of the it's not a citation. There is	21		Because they have no impact of law. A lot of
	22		no record of it except in OSHA's files against	22		what they look at are statistic driven as
	23		an employer, and there is no fine that	23		opposed to as opposed to factual statistics.
	23 24		accompanies the citation. It's just that.	24		There's a lot of estimation and it just didn't
	24 25		It's obviously Latin, and it appears to	25		do anything for me.
	20		it's obviously Latin, and it appeals to	20		ao anyamig ior nio.
				ŀ		
			39			40
-	1	Q	39 But at one point in time you did receive their	1		that's why you don't see the National Safety
-	1 2	Q		1		that's why you don't see the National Safety Council showing up as under OSHA's
-			But at one point in time you did receive their			that's why you don't see the National Safety Council showing up as under OSHA's promulgation procedures as anything other than
-	2		But at one point in time you did receive their publications?	2		that's why you don't see the National Safety Council showing up as under OSHA's
-	2 3	A	But at one point in time you did receive their publications? At one point in time I actually was a member of	2 3		that's why you don't see the National Safety Council showing up as under OSHA's promulgation procedures as anything other than
-	2 3	A Q	But at one point in time you did receive their publications? At one point in time I actually was a member of the NSC.	2 3 4	Q	that's why you don't see the National Safety Council showing up as under OSHA's promulgation procedures as anything other than commenters. They don't develop standards
-	2 3 4 5	A Q	But at one point in time you did receive their publications? At one point in time I actually was a member of the NSC. Did you leave voluntarily?	2 3 4 5	Q	that's why you don't see the National Safety Council showing up as under OSHA's promulgation procedures as anything other than commenters. They don't develop standards themselves. ANSI's more important to me.
-	2 3 4 5 6	A Q A	But at one point in time you did receive their publications? At one point in time I actually was a member of the NSC. Did you leave voluntarily? Oh, sure. You don't get kicked out of the	2 3 4 5 6	Q	that's why you don't see the National Safety Council showing up as under OSHA's promulgation procedures as anything other than commenters. They don't develop standards themselves. ANSI's more important to me. Forgive me for jumping around a little bit, but
	2 3 4 5 6 7	A Q A	But at one point in time you did receive their publications? At one point in time I actually was a member of the NSC. Did you leave voluntarily? Oh, sure. You don't get kicked out of the National Safety Council.	2 3 4 5 6 7	Q	that's why you don't see the National Safety Council showing up as under OSHA's promulgation procedures as anything other than commenters. They don't develop standards themselves. ANSI's more important to me. Forgive me for jumping around a little bit, but I got off track with a couple things.
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• •	2 3 4 5 6 7 8 9 10 11 2 3 4 5 6 7 8 9 10 11 2 13 14 15 16 17 8 9 20 21 20 21 22	A Q A Q A Q A Q A Q A Q A Q A Q A Q A Q	But at one point in time you did receive their publications? At one point in time I actually was a member of the NSC. Did you leave voluntarily? Oh, sure. You don't get kicked out of the National Safety Council. You never know. And I'd certainly be interested if you were the first. I've been thrown out of better places. They like your money. Are there publications That was a good one, John. I'm going to have to remember that one. (Off the record.) Are their publications in your opinion reliable and authoritative? No. The NSC? Yes. Some are, some aren't. Why would they not be reliable and authoritative in the area of safety, workplace safety?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22	AQ AQ AQ AQ AQ	that's why you don't see the National Safety Council showing up as under OSHA's promulgation procedures as anything other than commenters. They don't develop standards themselves. ANSI's more important to me. Forgive me for jumping around a little bit, but I got off track with a couple things. With respect to your contact with Wilton in this case, have you ever worked for them before in any other capacity? No. Had you ever heard of Wilton Corporation or Wilton Tool or any other subsidiaries prior to this case? No, I have not. Other than this case, have you been in contact with Mr. McDonald before? No. How about any of the other members of his office? Not that I recall. Do you know how you were first or how you

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		Deposition of Richard Ha	ayes	i, ta	aken June 29, 2001 Index Page 11 42
1	Δ	I believe it was Roetzel & Andress. I could be	1		gentleman.
	~		2	0	You're not aware of any other opinion or
2	\sim	wrong.	3	Q	
3	Q	I notice on your CV in the education that you're			reputation he holds in the area of safety
4	٨	not a licensed engineer; is that correct?	4	۸	analysis or safety review?
5		That's correct.	5	А	Other than being prolific in a number of states
6	Q	You don't have any training, undergraduate or	6	~	that I work in as a safety person, no.
7		graduate, in an engineering field?	7		You mean "prolific" by doing a lot of work?
8		No.	8	А	He does a lot of a lot of plaintiffs' work,
9	Q	Does that make a difference in the safety	9	~	yeah.
10		industry, whether you're an engineer or not?	10	Q	Have you ever heard of or worked with Professor
11		No.	11		Igor Paul from MIT?
12	Q	With respect to the other individuals who have	12	А	Yes, but I don't know the case. It was one
13		been offered as experts in this case, have you	13	_	other case.
14		ever been in contact with Ralph Barnett before?	14	Q	And you just recalled his name by reading it on
15		Barnett?	15	_	a report?
16		Yes.	16	А	He has a unique name and one of those ones that
17		No.	17		stick with you.
18		How about Gerald Rennell?	18	Q	You wouldn't know him if he walked in this room
19	А	Jerry and I are in a lot of cases together. And	19		today?
20		I look forward to meeting him someday and	20		I can picture him by his name.
21	Q	You have not met him before?	21	Q	So you've met the gentleman before?
22	А	Not that I know of.	22	А	No.
23	Q	Okay. You have a smile on your face. Do you	23	Q	That was a tongue-in-cheek comment
24		have an opinion as to Mr. Rennell?	24	A	Tongue in cheek.
25	А	No. I read many of his reports and he's a fine	25	Q	As part of the information you had to review in
		//2			ÂÂ
		43	1		44 Is there a reason why you omitted it from your
1		the preparation of your report was the report of	1	Q	Is there a reason why you omitted it from your
2		the preparation of your report was the report of Ralph Barnett; is that correct? Item number two	2		Is there a reason why you omitted it from your report?
2 3		the preparation of your report was the report of Ralph Barnett; is that correct? Item number two on your report?	2 3	A	Is there a reason why you omitted it from your report? Nothing in particular, no.
2 3 4		the preparation of your report was the report of Ralph Barnett; is that correct? Item number two on your report? Yes.	2 3 4	A	Is there a reason why you omitted it from your report? Nothing in particular, no. Because you also reach the same opinion with
2 3 4 5		the preparation of your report was the report of Ralph Barnett; is that correct? Item number two on your report? Yes. And with respect to opinion number eight, your	2 3 4 5	A	Is there a reason why you omitted it from your report? Nothing in particular, no. Because you also reach the same opinion with regards to the splash guards and arbor supports;
2 3 4 5 6		the preparation of your report was the report of Ralph Barnett; is that correct? Item number two on your report? Yes. And with respect to opinion number eight, your final opinion, you mentioned the items which	2 3 4 5 6	A Q	Is there a reason why you omitted it from your report? Nothing in particular, no. Because you also reach the same opinion with regards to the splash guards and arbor supports; is that correct?
2 3 4 5 6 7		the preparation of your report was the report of Ralph Barnett; is that correct? Item number two on your report? Yes. And with respect to opinion number eight, your final opinion, you mentioned the items which have arisen in this case as being attachments to	2 3 4 5 6 7	A Q A	Is there a reason why you omitted it from your report? Nothing in particular, no. Because you also reach the same opinion with regards to the splash guards and arbor supports; is that correct? That's correct.
2 3 4 5 6 7 8		the preparation of your report was the report of Ralph Barnett; is that correct? Item number two on your report? Yes. And with respect to opinion number eight, your final opinion, you mentioned the items which have arisen in this case as being attachments to the machine which left the Cincinnati	2 3 4 5 6 7 8	A Q A	Is there a reason why you omitted it from your report? Nothing in particular, no. Because you also reach the same opinion with regards to the splash guards and arbor supports; is that correct? That's correct. And it would be fair to say that the splash
2 3 4 5 6 7 8 9		the preparation of your report was the report of Ralph Barnett; is that correct? Item number two on your report? Yes. And with respect to opinion number eight, your final opinion, you mentioned the items which have arisen in this case as being attachments to the machine which left the Cincinnati manufacturing facility in 1943, you mentioned	2 3 4 5 6 7 8 9	A Q A	Is there a reason why you omitted it from your report? Nothing in particular, no. Because you also reach the same opinion with regards to the splash guards and arbor supports; is that correct? That's correct. And it would be fair to say that the splash guards and arbor supports could form some type
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	` 1		just wouldn't make any sense to rely on that	1		46 whether or not that met any particular standard.	
	2		for rotating parts or point-of-operation	2		and I always refer them to either this document.	
	3		guarding. And I think Mr. White and I can't	3		if that is germane at the time, or in reading	
	4		speak for him. I know him. I can imagine	4		ANSI standards. And it would appear that the	
	5		that's the dilemma he was in when he drafted	5		ANSI standard, if you put a splash shield up,	
				6		gives you a pass on the one foot issue, because	
	6 7	0	this opinion. Have you ever seen a horizontal milling machine	7		it says either/or, splash shield or one foot.	
	7	Q	• –	8			
	8	٨	with a splash guard in place?		0	I happen to prefer the distance thing.	
	9		Yes.	9	Q	The same would go for an automatic spindle stop;	
	10		During operation?	10		is that correct, that could be considered a	
	11		Yes.	11	٨	guarding device under ANSI?	
	12	Q	In that operation was the operator working	12	A	A fully I don't know. It could be. I	
	13		within a foot of the rotating blade?	13	~	didn't see it in there.	
	14		They could be.	14	Q	Well, it would stop the rotating of the cutter,	
	15	Q	As a safety consultant, have you ever been	15		which would avoid the application of ANSI?	
	16		assigned the task of evaluating the safety	16		Which I like.	
	17		utility of a splash guard or an overarm support	17	Q	And you would agree with me that it is from	
	18		brace on a horizontal milling machine?	18		the safety standpoint of the operator, it would	
	19	А	Only in consideration of the slipping and	19		be optimal to have them loading the fixture	
	20		tripping hazard from oil and chips splashing out	20		without the spindle turning?	
	21		from a machine.	21	А		
	22	Q	How about with respect to offering a chance to	22	-	the operator, yes, I 100 percent agree with you.	
	23		avoid or deflect contact between the operator's	23	Q	And would the disabling of an automatic spindle	
	24		extremities and the rotating cutter?	24		stop, which is controlled only by the employer,	
	25	A.	Well, I've been asked by various employers	25		result in a violation of ANSI and/or OSHA?	
	20		······································				
			47			48	
				1	Q		
			47		Q	48	
			47 MR. McDONALD: Objection. Go	1	Q	48 And as a matter of fact, there could be	
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			45	1		j.	U
	1		hand, whether it's hair, whether it's a knee, a	1		differently?	
	2		foot, a face; is that correct?	2		No.	
	3	А	That would be the hazard, correct. That's one	3	Q	Under paragraph seven of your opinion, you say	
	4		hazard.	4		that the primary cause of the plaintiff's injury	
	5	Q	And from a safety analysis standpoint and a	5		was the resultant response of her being startled	
	6		guarding standpoint, does it really make any	6		by another employee; is that correct?	
	7		difference how that body part actually gets to	7		That's my opinion, that's correct.	
	8		the point where it's in contact with the blade?	8	Q	Okay. But as we've stated before or as we	
	9	А	No. We're talking about the specific hazard	9		alluded to before, is it fair to say that if the	
	10		itself. It wouldn't matter how it occurred.	10		rotating cutters were not rotating but had been	
	11	Q	It wouldn't matter if the person is pushed; it	11		stopped when the startling event occurred, it's	
	12		wouldn't matter if they slipped; it wouldn't	12		more likely than not that Anna Oller would not	
	13		matter if they fainted; it wouldn't matter if	13		have had all four of her fingers amputated by	
	14		they're startled by an explosion in another part	14		this machine?	
	15		of the plant; or it wouldn't matter if it's by	15		If the cutter head had been stopped?	
	16		horseplay. Is that fair to say?	16		Yes.	
	17	А	It wouldn't matter. That's fair to say.	17		That's fair. Sure.	
	18	Q	And in this case, the operator, Anna Oller, was	18	Q	With respect to your evaluation of the utility	
	19		not involved in horseplay. Would it be fair to	19		of the coolant splash guards, the arbor support,	
	20		say that she was the innocent victim of	20		and the automatic spindle stop features, did you	
	21		another's horseplay? Would you agree with me	21		make any measurements of any of those devices?	I
	22		there?	22	А	I could not.	
	23	А	That is what she said.	23	Q	Okay. Did you perform any type of a human	
	24	Q	Do you have anything, with your knowledge of the	24		factors analysis on a similar machine to	
	25		case, that would lead you to conclude something	25		determine if those devices would pose as any	
			51			55	2
	4			1		anything in this case?	<u> </u>
	1		type of a utility to preventing, avoiding, or deflecting the actual injury operation in this	2	۸	They're totally worthless.	
	2 3		case?	3		Do the dimensions of those devices, had they	
		۸	I don't do human factor analysis.	4	Q	been there, in conjunction with Mrs. Oller's	
	4 5		Did you take any measurements of, or seek to	5		dimensions, play any role in your opinion?	
	5 6	Q	take any measurements of Mrs. Oller herself, the	6	Δ	No.	
			length of her arm, the length of her fingers,	7		What's the basis for your conclusion that	
	7		how high her armpit was off the ground, how tall	8	Q	Mrs. Oller was adequately trained on the	
	8		she was, how much she weighed?	9		operation and hazards associated with the	
	9 10	^	No.	10		machine?	
	11		As far as your opinion that the coolant splash	11	А	It's my understanding that she had had several	
	12	Q	guard and arbor supports could not have	12	Λ	months of training, had been operating in the	
	12		prevented an unfortunate accident, are those	13		production capacity for some time, and there	
	13 14		factors, that is: The size, the height of the	14		really isn't a lot of sophistication with the	
				15		operation of the machinery. She had been shown	
	15 16		guards; the size, the height, the measurements	16		how to operate the machine by other employees	
	16		of the operator, do those have any bearing on	17		and had no problems with it prior to her	
	17	٨	your opinion?	18		accident.	
	18 10	A	If I understand you're going to have to	19		MR. LIBER: Mark that as 35,	
	19 20		repeat that question. If I understand your				
	20	~	question right	20 21		please.	
•	21		Let me repeat it.	21		(Plaintiff's Exhibit No. 35 was marked.)	
	22		There is a word that you referenced, that's	22 23		(Plaintin's Exhibit No. 55 was marked.)	
	23		why	23 24	0	What is your understanding of how long the	
	24 25	ų	You, in simple terms, say that the splash guard and arbor supports wouldn't have helped out in	24 25	4	plaintiff had been an employee of Wilton?	
	25		and abor supports wouldn't have helped out in	20		plantin had been all employee of thiom	
					·	and a series of the data former with the first state.	-

		Deposition of Richard Ha	-	s, ta	aken June 29, 2001 Index Page 14 54
1	A	Oh, boy. I can't recall. I keep wanting to	1	Q	And are you satisfied that Wilton complied with
2		say six months, but that's just a stab in the	2		that standard?
3	~	dark.	3	А	Well, again, ANSI doesn't discuss a time frame
4	Q	Can you tell me how long she had been operating	4		or length of training, it just says they shall
5	۸	this particular machine prior to the injury?	5		be trained. Yeah, just says they should be trained.
6		Several months, three or four months.		0	
7	Q	Would it make any difference in your opinion if her testimony was that she was working the	8	Q	The question was: Are you satisfied that Wilton complied with that standard in this case?
8 9		machine only seven days before the date of the	9	Δ	Yes.
9 10		accident?	10		Would you agree with me that as far as the
11	Α	No.	11	~	machine tool industry is concerned, Anna Oller
12		Why not?	12		at the time of the accident was a relatively
13		Well, there is no for that kind of a	13		novice machine operator?
14	•••	machinery, there is no magic number that jumps	14	А	That I can't answer.
15		out by any literature or in my opinion of how	15	Q	Are you familiar with any information or studies
16		many days would be adequate to make her	16		with respect to the assignment of experienced or
17		comfortable with the machine. I thought she had	17		nonexperienced employees to general purpose
18		been on it longer, but she may have been on a	18		milling machines?
19		similar machine doing different things.	19	А	There's none that I'm aware of.
20	Q	What type of similar machine is that?	20	Q	Did you read Mr. Dempsey's deposition?
21		I can't recall. I'd have to refer to my notes.	21		Yes.
22	Q	Are you familiar with ANSI standard B11.8-6 on	22	Q	· · ·
23		the training of employees for drilling, milling,	23		about the fact that the general purpose milling
24	•	boring and related machines?	24		machines and I'm paraphrasing should be
25	A	Yes.	25		reserved for the most experienced of machinists,
		55	. 1		56
1		machine operators?	1		modifications of the machine; is that correct?
2	A	machine operators? I don't recall that he said that, but he may	2		modifications of the machine; is that correct? That's correct.
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		57			58
ົ 1	А	If you tell them that, sure.	1		said before, it would exacerbate the condition
2		And is it fair to say that in this case, that	2		and just create another trap point for the
3		was not the way the emergency stop operated?	3		operator, as some guards do.
4	Δ	That I don't know.	4	0	How would it exacerbate the situation?
		Opinion three, you say, "The cutter area or	5		Well, it creates another trapping point
5	Q				
6		point of operation where the plaintiff received	6		dependent upon cutter rotation. You can still
7		her injuries cannot be guarded due to the size	7		get your hand or finger caught in it. It really
8		and the configuration of the cutters"; is that	8		does nothing for what we're talking about, which
9		correct?	9		is rotating cutters. A badly engineered guard
10	А	That's correct.	10		is worse than no guard because you think the
11	Q	How do you know that?	11		badly engineered guard is going to somehow
12	А	Just based upon the description that was given	12		protect you, when, in fact, it won't.
13		in the depositions.	13	Q	But nevertheless, you don't think there even is
14	Q	Any specific reference that you can recall?	14		a guard that can be engineered to address the
15	А	Plus the photographs that I reviewed.	15		safety issue imposed by the rotating cutter on a
16	Q	You say that the installation of a guard would	16		horizontal milling machine?
17		create an in-running nip point which would be	17	А	Well, in my experience, I have not seen one that
18		equally as hazardous as no guard at all,	18		I would accept in 30 years.
19		correct?	19	Q	Do you know what a miter saw is?
20	А	That's correct.	20		Yes.
21		And could you explain the basis for that?	21		Are there any current guarding standards for
22		Well, you still have a hazard there, which is a	22	- 14	consumer miter saws?
23	1	rotating cutter. If the guard moves out of	23	Δ	There probably is, but it's probably a consumer
24		the way, you still have a hazard there, which is	24		CSPC standard.
24 25		your rotating cutter. I believe that, as I	25	\cap	Any that would apply to miter saws used in the
20			~~ V	M	They mak troud upply to millor out to about in the
		59	 .		60
1		59 workplace, to your knowledge?	1		in-running nip point?
1 2	A		1	A	
	A	workplace, to your knowledge?	1		in-running nip point?
2	A	workplace, to your knowledge? There would have to be possibly a	2	Q	in-running nip point? You're saying there is no distinction?
2 3		workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness	2 3	Q	in-running nip point? You're saying there is no distinction? Right.
2 3 4		workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier.	2 3 4	Q A	in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip
2 3 4 5		workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier. Are you familiar with the blade guards that are	2 3 4 5	Q A	in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip point" is defined in the standard, as I recall.
2 3 4 5 6 7	Q	workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier. Are you familiar with the blade guards that are now available on all commercially sold miter saws?	2 3 4 5 6	Q A	in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip point" is defined in the standard, as I recall. But as a matter of fact, the ANSI standard
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q A Q A	workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier. Are you familiar with the blade guards that are now available on all commercially sold miter saws? No. You have no idea what I'm talking about? I have a suspicion you're talking about? I have a suspicion you're talking about the self-retracting guard, but that's on a that design came from a radial arm saw, as opposed to a miter saw. Miter saws came later with that type of guard system. Right. As far as the hazards that the blade would pose to an operator, is there a distinction between that of a miter saw and that of a horizontal milling machine, in your mind?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q A Q A Q A Q A	 in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip point" is defined in the standard, as I recall. But as a matter of fact, the ANSI standard states that if it's a general purpose milling machine and in the automatic or semiautomatic mode, the rotating cutter has to be guarded if the operator is working within a foot of the cutter. I believe it says something like that, yes. Does ANSI provide any distinction or any type of option for a feasibility study? I it may. I don't recall. Do you see it anywhere on what we've marked as Exhibit 32
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q A Q A	workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier. Are you familiar with the blade guards that are now available on all commercially sold miter saws? No. You have no idea what I'm talking about? I have a suspicion you're talking about the self-retracting guard, but that's on a that design came from a radial arm saw, as opposed to a miter saw. Miter saws came later with that type of guard system. Right. As far as the hazards that the blade would pose to an operator, is there a distinction between that of a miter saw and that of a horizontal milling machine, in your mind? It's the same issue. You still can whack your	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q A Q A Q A Q A Q	 in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip point" is defined in the standard, as I recall. But as a matter of fact, the ANSI standard states that if it's a general purpose milling machine and in the automatic or semiautomatic mode, the rotating cutter has to be guarded if the operator is working within a foot of the cutter. I believe it says something like that, yes. Does ANSI provide any distinction or any type of option for a feasibility study? I it may. I don't recall. Do you see it anywhere on what we've marked as Exhibit 32 32?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q A Q A	workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier. Are you familiar with the blade guards that are now available on all commercially sold miter saws? No. You have no idea what I'm talking about? I have a suspicion you're talking about the self-retracting guard, but that's on a that design came from a radial arm saw, as opposed to a miter saw. Miter saws came later with that type of guard system. Right. As far as the hazards that the blade would pose to an operator, is there a distinction between that of a miter saw and that of a horizontal milling machine, in your mind? It's the same issue. You still can whack your hand off with the miter saw and the radial arm	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q A Q A Q A Q A Q	 in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip point" is defined in the standard, as I recall. But as a matter of fact, the ANSI standard states that if it's a general purpose milling machine and in the automatic or semiautomatic mode, the rotating cutter has to be guarded if the operator is working within a foot of the cutter. I believe it says something like that, yes. Does ANSI provide any distinction or any type of option for a feasibility study? I it may. I don't recall. Do you see it anywhere on what we've marked as Exhibit 32 32? and 35 both. And you're asking for a
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 - 21	Q A Q A	workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier. Are you familiar with the blade guards that are now available on all commercially sold miter saws? No. You have no idea what I'm talking about? I have a suspicion you're talking about? I have a suspicion you're talking about the self-retracting guard, but that's on a that design came from a radial arm saw, as opposed to a miter saw. Miter saws came later with that type of guard system. Right. As far as the hazards that the blade would pose to an operator, is there a distinction between that of a miter saw and that of a horizontal milling machine, in your mind? It's the same issue. You still can whack your hand off with the miter saw and the radial arm saw guard.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	QA Q AQ AQ AQA	 in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip point" is defined in the standard, as I recall. But as a matter of fact, the ANSI standard states that if it's a general purpose milling machine and in the automatic or semiautomatic mode, the rotating cutter has to be guarded if the operator is working within a foot of the cutter. I believe it says something like that, yes. Does ANSI provide any distinction or any type of option for a feasibility study? I it may. I don't recall. Do you see it anywhere on what we've marked as Exhibit 32 32? and 35 both. And you're asking for a feasibility study?
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$\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 19\\ 20\\ 21\\ 22\\ 23\\ 24\end{array}$	Q A Q A Q A	 workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier. Are you familiar with the blade guards that are now available on all commercially sold miter saws? No. You have no idea what I'm talking about? I have a suspicion you're talking about the self-retracting guard, but that's on a that design came from a radial arm saw, as opposed to a miter saw. Miter saws came later with that type of guard system. Right. As far as the hazards that the blade would pose to an operator, is there a distinction between that of a miter saw and that of a horizontal milling machine, in your mind? It's the same issue. You still can whack your hand off with the miter saw and the radial arm saw guard. But it's the best they could come up with? It's a fact, isn't it, that ANSI makes no such distinction between the installation of a 	2 3 4 5 6 7 8 9 10 11 2 3 14 5 6 7 8 9 10 11 2 13 14 15 16 17 8 9 20 21 22 23 24	QA Q AQ AQ AQA QA	 in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip point" is defined in the standard, as I recall. But as a matter of fact, the ANSI standard states that if it's a general purpose milling machine and in the automatic or semiautomatic mode, the rotating cutter has to be guarded if the operator is working within a foot of the cutter. I believe it says something like that, yes. Does ANSI provide any distinction or any type of option for a feasibility study? I it may. I don't recall. Do you see it anywhere on what we've marked as Exhibit 32 - 32? - and 35 both. And you're asking for a feasibility study? Yes. I don't see anything about feasibility studies. ANSI is straightforward. If the operation
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q A Q A Q A	 workplace, to your knowledge? There would have to be possibly a self-closing they're called an awareness barrier. Are you familiar with the blade guards that are now available on all commercially sold miter saws? No. You have no idea what I'm talking about? I have a suspicion you're talking about the self-retracting guard, but that's on a that design came from a radial arm saw, as opposed to a miter saw. Miter saws came later with that type of guard system. Right. As far as the hazards that the blade would pose to an operator, is there a distinction between that of a miter saw and that of a horizontal milling machine, in your mind? It's the same issue. You still can whack your hand off with the miter saw and the radial arm saw guard. But it's the best they could come up with? It's a fact, isn't it, that ANSI makes no 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	QA Q AQ AQ AQA QA	 in-running nip point? You're saying there is no distinction? Right. I think it's defined. I think "in-running nip point" is defined in the standard, as I recall. But as a matter of fact, the ANSI standard states that if it's a general purpose milling machine and in the automatic or semiautomatic mode, the rotating cutter has to be guarded if the operator is working within a foot of the cutter. I believe it says something like that, yes. Does ANSI provide any distinction or any type of option for a feasibility study? I it may. I don't recall. Do you see it anywhere on what we've marked as Exhibit 32 32? and 35 both. And you're asking for a feasibility study? Yes. I don't see anything about feasibility studies.

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1		states that a guard has to be installed; is that	1		protective equipment and have to make the right
2		fair to say?	2		selection and decision.
3	А	Yeah. It's pretty straightforward.	3		I personally have never seen a citation
4	Q	Paragraph four excuse me, opinion four. You	4		issued in my 30 years that dealt with employees
5		find nothing wrong with a person's use of gloves	5		wearing gloves on any kind of machinery. I'm
6		in close proximity to rotating bladed equipment?	6		not saying that it's proper, I just haven't seen
7	А	Define "close proximity" for me.	7		it from an enforcement perspective.
8		Within a foot.	8	Q	What's the difference between a heavy cloth work
9	A	Less than a foot?	9		glove and a light rubber protective glove?
10		Yes.	10	А	Well, for example, I carry around surgical
11		It depends. If you're talking about a heavy	11		gloves in the trunk of my car. That's a
12		mule skin work glove, I'd say that would be	12		lightweight glove that is not designed for
13		problematic working around any kind of rotating	13		anything other than tactile, very minute tactile
14		machinery. And it would be true with drill	14		work. Whereas a heavy work glove, I'd be
15		presses, milling machines. But if you're	15		moving railroad ties.
16		talking about a lightweight type of PPE,	16	Q	And what's the difference, from those two types
17		personal protective equipment, that's designed	17		of gloves, as far as operation within a foot of
18		to protect the employee from water hazards and	18		a horizontal milling machine?
19		coolant hazards and those kind of things that	19	A	Oh, the tearing factor. The rubber gloves, of
20		are dermatological, I think at that point then	20		course, are going to tear quite quickly. The
21		one has to determine what's the worst case	21		heavy gloves won't.
22		scenario for the operator.	22	Q	Have you ever heard of the term tear-away
23		If the gloves that's another dichotomy	23		gloves?
24		with the OSHA standards. Employers are	24	А	No.
25		expected to provide the appropriate personal	25		And what's the relevance of the ability of a
					•
					<u></u>
		63			64
1		glove to be able to tear, as between a rubber,	1		Anything made out of latex, thin latex, I don't
2		glove to be able to tear, as between a rubber, light rubber glove, and a heavy fabric glove?	2		Anything made out of latex, thin latex, I don't see how it's going to affect what can occur with
2 3	A	glove to be able to tear, as between a rubber, light rubber glove, and a heavy fabric glove? What's the ability of it to tear?	2 3		Anything made out of latex, thin latex, I don't see how it's going to affect what can occur with what we're talking about.
2 3 4	A	glove to be able to tear, as between a rubber, light rubber glove, and a heavy fabric glove? What's the ability of it to tear? MR. McDONALD: What's the	2 3 4	Q	Anything made out of latex, thin latex, I don't see how it's going to affect what can occur with what we're talking about. So are you suggesting that, in other words, if a
2 3		glove to be able to tear, as between a rubber, light rubber glove, and a heavy fabric glove? What's the ability of it to tear? MR. McDONALD: What's the relevance?	2 3 4 5	Q	Anything made out of latex, thin latex, I don't see how it's going to affect what can occur with what we're talking about. So are you suggesting that, in other words, if a machine operator who's working within a foot, a
2 3 4	Q	glove to be able to tear, as between a rubber, light rubber glove, and a heavy fabric glove? What's the ability of it to tear? MR. McDONALD: What's the relevance? What's the relevance?	2 3 4 5 6	Q	Anything made out of latex, thin latex, I don't see how it's going to affect what can occur with what we're talking about. So are you suggesting that, in other words, if a machine operator who's working within a foot, a foot or less of a horizontal milling machine, if
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			CO	ţ.			90
	1	Q	Okay. Would you do me a favor, and if we have	1		bulletin prior to perhaps this case?	
	2		to try this case, would you get that information	2	А	No.	
	3		so that we know it at trial?	3	Q	On the first page it lists the primary hazards	
	4		MR. McDONALD: When he was a	4		associated with milling machines, and in the	
	5		member?	5		second column on the top it identifies wearing	
	6		MR. LIBER: Yes.	6		loose-fitting clothing and gloves. Is that fair	
	7	А	If I can figure out a way to do that, yeah. We	7		to say?	
	8		keep all our checks that were written. The	8	А	That's usually part of any machine operation,	
	9		reason I think that '91 may have been that year,	9		yes. That's what it says.	
	10		because I started weapons work about that same	10	Q	Do you agree with that National Safety Council	
	11		time, and I remember going to an NSC meeting in	11		bulletin, that to reduce the hazard of milling	
	12		Washington as part of that. So let me check,	12		machines, when all practical, gloves should not	
	13		though. Sure.	13		be worn, as well as loose-fitting clothing, near	
	14	Q	Placing in front of you what has been marked	14		or around the operation of a milling machine?	
	15		previously as Plaintiff's Exhibit 18b5, a	15	А	Well, I agree and disagree both. If that's	
	16		National Safety Council bulletin on milling	16		the problem with the NSC data. It just says	
	17		machines.	17		"wearing gloves." It doesn't say that there's	
	18		MR. EDDY: Is there a date	18		alternatives to heavy work gloves. Whereas	
	19		on that, John?	19		loose sleeves, that's pretty well-defined.	
	20		MR. LIBER: It's copyrighted	20		But just wearing gloves, I disagree that	
	21		1991 on the back.	21		there is not a glove I think there is a glove	
	22		MR. EDDY: Thank you.	22		that is acceptable when working with coolants	
	23	Q	That was part of the material submitted in	23		that isn't going to make a hill of beans no	
	24		support of Mr. Rennell's affidavit.	24		matter where you get caught it's so lightweight.	
	25		Mr. Hayes, were you familiar with that	25		And the reason I say that is because today, as	
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-			67	 			68
-	1		well as when I was with OSHA, there is	1		MR. McDONALD: Objection.	68
-	2		well as when I was with OSHA, there is significant enforcement actions for the coolant	2	A	If that's what was said, I would strongly	68
-	2 3		well as when I was with OSHA, there is significant enforcement actions for the coolant oil responses that operators were getting from	23		If that's what was said, I would strongly discredit that statement.	68
-	2 3 4		well as when I was with OSHA, there is significant enforcement actions for the coolant oil responses that operators were getting from the conversion of what's called nitrosamines in	2 3 4	Q	If that's what was said, I would strongly discredit that statement. Why?	68
	2 3 4 5		well as when I was with OSHA, there is significant enforcement actions for the coolant oil responses that operators were getting from the conversion of what's called nitrosamines in the oil.	2 3 4 5	Q	If that's what was said, I would strongly discredit that statement. Why? I don't believe that anybody was there to	68
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Deposition of Richard	l Hayes,	taken	June	29,	2001
	69				

		69			70	
1		assumptions that it's eight inches. I read	1	А	Not clear, that's true.	
2		that. Why couldn't it equally be assumed that	2	Q	So, in fact, your opinion in number six should	
3		it was 12 inches? Nobody measured it.	3		accurately state that it is, in your opinion,	
4		There's estimations.	4		not possible to determine whether ANSI has been	
5		The photographs are deceiving. When you	5		complied with in this case, or words to that	
6		look at them, it makes it look like it's within	6		effect?	
7		two inches of the cutter head, which is	7	А	Well, why would I assume that it was not in	
8		something in fundamental evidence photography	8		compliance would be the question I would ask	
9		classes I remember saying I could make something	9		myself, and that's the question I did ask. Is	
10		look any way I want it to look. So the	10		there any evidence to tell me that it wasn't in	
11		photographs are useless. So without	11		compliance?	
12		measurements taking timely to the event, I	12	Q	And is there any evidence to tell you that it	
13		discount the inches. That's just a number that	13		was in compliance?	
14		somebody grabbed out of the sky, as far as I'm	14	А	Well, that's a catch-22. I'm chasing my tail	
15		concerned.	15		around.	
16	O	As far as a nonbias review of this case then,	16	Q	But you're assuming the one side and refusing to	
17		wouldn't it be more fair to say that they were	17		assume the other.	
18		not compliant with the ANSI standards, rather	18	А		
19		than relying	19		position, I tend to think most employers try to	
20	Δ	If the evidence clearly shows one thing or the	20		be good employers and be in compliance. I saw	
21		other, you can go either way with it. It's one	21		a lot of evidence that their engineering staff	
22		of those deals that you've got to show me.	22		had done things in the plant to make it a safer	
23	0	Right. Well, that's my point, is that it	23		place. That gives them a little more of a	
23 24	Ч.	doesn't clearly show that it was, in fact, in	24		leading edge of credibility for me.	
24 25		compliance, correct?	25	Q		
20		•		~	~	
		71			72	
1		Oh, no, before the fact.	1	Q	You already did.	
2		When was your inspection?	2		We'll have fun with that one.	
3	Α					
4		I can't tell you that.	3		(Off the record.)	
-		I can't tell you that. It wasn't before this accident, was it?	4	Q	Do you have anything else to say on the	
5	Q	•		Q		
5 6	Q A	It wasn't before this accident, was it?	4	Q	Do you have anything else to say on the	
5 6 7	Q A	It wasn't before this accident, was it? No. No.	4 5		Do you have anything else to say on the observation that it was operated for many years	
6	Q A	It wasn't before this accident, was it? No. No. As a matter of fact, your inspection couldn't	4 5 6		Do you have anything else to say on the observation that it was operated for many years without causing any accident?	
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				iyes	, la		
			73 you stick your hands in those cutters, you're	1	Δ	74 Not the ANSI standard, but the OSHA standard	
	1 2		going to get a pretty good cut, whether the	2	A	itself.	
	2 3		cutter is rotating or not. The cutters are	3	Ο	Okay.	
			sharp. You can get a pretty severe laceration	4		However, I have to add that, if there is a trade	
	4 5		by inadvertently contacting the cutter head.	5	~	association journal that deals with it, or if	
	5			6		they're part of a committee that's on an ANSI	
	6		And the fact that they haven't had any accidents	7		standard, conceivably that would be the	
	7		prior to that I mean, usually an accident	1		· · · · · · · · · · · · · · · · · · ·	
	8	_	puts an employer on notice.	8	~	knowledge prerequisite to issue a citation.	
	9	Q	There's no evidence of any prior accidents; is	9	Q	Can you believe that a company of Wilton's size	
	10		that correct?	10		which includes a machinery division that	
	11		None that I've seen, correct.	11		produces milling machines could legitimately	
	12	Q	Is it fair to say that regardless to OSHA or	12		claim that it did not know of the ANSI guarding	
	13		ANSI, you don't believe that either of those	13		standard?	
	14		standards would apply to the machine in this	14	٨	MR. McDONALD: Objection. I can't answer that. I don't know what how	
	15		case?	15	А		
	16	A		16		much effort they put towards that. We see it	
	17		enough to support a violation being issued is a	17		frequently in a lot of companies, including	
	18	-	better way to put it.	18	~	very, very large companies.	
	19	Q	From a safety standpoint, can an employer get	19	Q	Well, so then are you saying that it's okay for	
	20		away with stating that they did not know of a	20		a large company such as that to violate industry	
	21		standard in order to get out from under a	21		safety standards and get away with it?	
	22		violation?	22		MR. McDONALD: Objection.	
	23	A		23	A	No. I'm just saying that there's large, very	
	24	Q	Does that apply equally to the OSHA standard and	24		large companies and small companies that miss	
	25		the ANSI standard?	25		things and don't keep up with the standards	
	-		75			76	
	1		and	1		Only.	
	2	Q	Does that justify hazardous or unsafe practices?	2	Q	With respect to your belief that the automatic	
	3		MR. McDONALD: Objection.	3		spindle stop which I think you did indicate	
	4	А	Not necessarily, no. Of course not.	4		you refer to as kind of a nice thing to have on	
	5		MR. LIBER: Thank you.	5		the machine, but you said you didn't consider it	
	6		That's all the questions I have for you.	6		a safety device because it's optional with the	
	7		MR. EDDY: I've got a few.	7		employee, I think was your exact testimony.	
	8		MR. McDONALD: Okay.	8		Do you recall that?	
	9		****	9		Correct. Yes.	
	10		EXAMINATION OF RICHARD HAYES	10	Q	Actually, this generation of machine, way back	
	11		(MR. EDDY:	11		50 some-odd years ago, when it was designed and	
	12	Q	You indicated that you said in all your years	12		built, the device itself was optional with	
	13		you don't see many milling machine injuries?	13		purchaser. Is that what you meant to say, that	
	14		I haven't, no.	14		it was optional with the purchaser, or were you	
	15	Q	When you were working with OSHA, did you ever	15		meaning to say it was an optional device for the	
	16		investigate a milling machine injury such as	16		employee?	
	17	_	this?	17		For the employee.	
	18		Small such as this?	18	Q	Okay. And by that I take it you're referring	
	19		Yes.	19		to the fact that an automatic spindle safety	
	20	A	Well, I don't know. Involving a horizontal	20		stop can be flipped on and off by a switch,	
····.	21		milling machine.	21		essentially?	
	22		I have investigated accidents on	22		That's my problem with it.	
				- A A	~		
	23		horizontal milling machines as a result of a	23		If it was a device that would you consider it	
	23 24		record review of minor injuries.	24		a safety device if it was both nonoptional with	
	23	Q	-			-	

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1		77	1		78	8
1		turned off?	1		that require finely hand milling, that is	
2	А	Yes.	2		cranking the piece that's being milled into the	
3	Q	Okay. And so, in fact, if you're one of the	3		cutter and back, and back and forth into the	
4		purchasers that buys that feature way back when,	4		cutter, away from the cutter?	
5		when machines like this were being built and	5	А	That's my understanding, yes.	
6		sold and you purchased the option, and, in fact,	6		And so on a machine like that where you want to	
7		it's being used, you would consider it well,	7		have certain milling operations that you're	
8		it would operate as a safety device while it's	8		going to do by hand like that, an automatic	
9		being used. Is that a fair statement?	9		spindle safety stop would be an impediment	
10	۸	And if the employee actually used it.	10		during that sort of fine milling operation; is	
			11		that correct?	
11		Right.	12	Δ	That lends itself to the feasibility issues I	
12	А	And that was verified through direct	13	Л	was talking about before. You couldn't do the	
13	~	observation, yes.	13			
14	Q	Had it flipped on rather than flipped off, it	I	~	job.	
15		would operate it would function as a safety	15	Q	Right. Now, with respect to the splash guard	
16		device; you would agree with that?	16		and arbor support feature, you indicated that	
17		Yes.	17		you thought that the splash guard and overarm	
18		Okay. Have you ever operated a milling machine?	18		support arbor support brace were your	
19		I have, but not for very long.	19		words were "totally worthless" in terms of	
20	Q	You have an understanding of why on a machine	20		preventing any accident or preventing this	
21		such as this the automatic spindle safety stop	21		accident?	
22		feature the automatic spindle stop feature	22		Preventing this accident.	
23		can be toggled on or toggled off? Do you have	23		Okay. What do you base that on?	
24		an understanding that there are milling	24	А	The fact that it really doesn't serve to guard	
25		operations that may be done on these machines	25		the cutters.	
<u></u>		79	f		18	$\overline{\mathbf{n}}$
	~	- Okov 79	4		80 splash quard and arbor support brace on it?	2
1		Okay.	1	Δ	splash guard and arbor support brace on it?	<u> </u>
2		Okay. The whole issue of guarding cutters is why we're	2		splash guard and arbor support brace on it? Yes.	<u> </u>
2 3	A	Okay. The whole issue of guarding cutters is why we're here.	2 3		splash guard and arbor support brace on it? Yes. Have you? And I would show you just I have	2
2 3 4	A	Okay. The whole issue of guarding cutters is why we're here. Let's just take the splash guard.	2 3 4		splash guard and arbor support brace on it? Yes. Have you? And I would show you just I have an operator's instruction book that was part of	2
2 3 4 5	A	Okay. The whole issue of guarding cutters is why we're here. Let's just take the splash guard. As the splash guard was originally	2 3 4 5		splash guard and arbor support brace on it? Yes. Have you? And I would show you just I have an operator's instruction book that was part of the interrogatory responses in our discovery	<u> </u>
2 3 4 5 6	A	Okay. The whole issue of guarding cutters is why we're here. Let's just take the splash guard. As the splash guard was originally intended, it's intended from a functional point	2 3 4 5 6		splash guard and arbor support brace on it? Yes. Have you? And I would show you just I have an operator's instruction book that was part of the interrogatory responses in our discovery request to the plant, page two of the operator's	5
2 3 4 5 6 7	A	Okay. The whole issue of guarding cutters is why we're here. Let's just take the splash guard. As the splash guard was originally intended, it's intended from a functional point of view to protect the operator from having	2 3 4 5 6 7		splash guard and arbor support brace on it? Yes. Have you? And I would show you just I have an operator's instruction book that was part of the interrogatory responses in our discovery request to the plant, page two of the operator's instruction book, and it shows a horizontal	<u> </u>
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2 3 4 5 6 7 8 9	A	Okay. The whole issue of guarding cutters is why we're here. Let's just take the splash guard. As the splash guard was originally intended, it's intended from a functional point of view to protect the operator from having liquid sprayed on him or her that comes off the piece that's being milled.	2 3 4 5 6 7 8 9	Q	splash guard and arbor support brace on it? Yes. Have you? And I would show you just I have an operator's instruction book that was part of the interrogatory responses in our discovery request to the plant, page two of the operator's instruction book, and it shows a horizontal milling machine of the same vintage, correct? Uh-huh.	<u>)</u>
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1 the darbor comes into the overam support brace, you're standing right in front of that, and you moved your hand, your right hand from the right position to a left position along the bottom edge of the table, don't you think it would be it key that at some point your hand would actually come in contract or perhaps your wrist in contact with the leading edge of the splash guard before it would hit the outtor? A I id in othing like that. 2 A It could. C Now, I want to understand what Plaintiff's interpretation and complicate letter. 3 actually come in contract with the eading edge of the splash guard before it would hit the outtor? A No. 1 Q And you would agree then that there are some circumstances depending on the exact position the operator, the exact location and width of the splash guards - because they come in different sizes - that it might, under some ic circumstances, in fact, oparate in a fastion that would block inactivetient contact with the curcumstances, in fact, oparate in a fastion that would block inactivetient contact with the curcumstances, in the splash guards - because they could never do that? 2 A Vide is that, different sizes - that it might, under some circumstances, in the oparation is a fastion that budy block inactivetient contact with the curcumstances, in the splash guard before it would hit be cartigured to try figure out how tall the plaintiff is and where a standard splash guard might be cartigured to try figure out how tall the plaintiff is and where standard splash guard might be cartigured to try form within OSHA or from an inquivy outside of the field in the sponse to either an OSHA inquir from manufacturing, the peopole that make the machinery. I think a good example was, as 1 a				. 81			82
 you're standing right in front of that, and you moved your hand, your right hand from the right position to a left position along the bottom edge of the table, don't your think it would be likely that at some policy would agree then that there are some actually come in contact or perhaps your wist actually come in contact with the cutter? A It could. Contact, actually come in a fashion different sizes - that i might, under some conters? A With all that all those variables, yes. Q Okay. That's fine. You're not saying it could never do that? A No. Q And you made no effort in this case to try to figure out how tall the plaintiff is and where a Gothar ward borse to either an OSHA inquiry from maufudcuring, the people that was the to Gothar sandard splash guard might be configured to try fits the forbal document that guides G Does it qualify as, I guess, the agency's official interpretation, based upon a to of input from mauridacting, the people that make the said before, press brakes for some said before, press brakes and engling the digition the field staff. Q And this was, apparently, fiest issued by the Coccupational Safef you they to come up with a memorandum the gift eld staff (if a question come tipse). A Ar ta kare would hone of those and in question is staff oudding about? A Are have to main an inquiry outside of the orbis be official document tha	•	1		the arbor comes into the overarm support brace.	1		to figure out whether there could be, in this
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_		THE STATE OF OHIO,) SS:
1	jam up when you're pulling it down. It	COUNTY OF CUYAHOGA.)
2	hesitates. This is what I see. And usually	
3	the guard only has to cover the outer periphery	I, Tracy L. Barker, a Notary Public within
4	of the saw teeth, whether it be a miter saw or	
		and for the State of Ohio, duly commissioned and
5	whether it be a radial arm saw. And what it's	qualified, do hereby certify that RICHARD HAYES,
6	intended to do is to tell you, okay, something's	was first duly sworn to testify the truth, the
7	touching my fingers, the next thing that's going	whole truth and nothing but the truth in the cause
8	to touch is going to be the blade.	aforesaid; that the testimony then given by him was
	· · · · · · · · · · · · · · · · · · ·	by me reduced to stenotypy in the presence of said
9	Q You mean the wood	witness, afterwards transcribed on a
10	A Well, if your hand's in there, it's going to cut	computer/printer, and that the foregoing is a true
11	your hand.	and correct transcript of the testimony so given by
12	Q Right.	him as aforesaid.
13	A What happens is, this guard tends to stick up	I do further certify that this deposition was
	-	taken at the time and place in the foregoing
14	just a little bit and the blade always hits your	caption specified. I do further certify that I am
15	hand anyway. We've done accidents with those.	not a relative, counsel or attorney of either
16	Q Okay.	party, or otherwise interested in the event of this
17	A So they don't really work for any other reason	action.
	• •	IN WITNESS WHEREOF, I have hereunto set my
18	other than to prevent any inadvertent contact	hand and affixed my seal of office at Cleveland,
19	when the saw's at rest.	Ohio, on this 19th day of July 2001.
20	MR. EDDY: I don't have	
21	anything further. Thanks.	
22		Tracy L. Barker, Notary Public
		within and for the State of Ohio
23		My Commission expires June 6, 2005.
24		
25		
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	07	
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	THE STATE OF)) SS:	
	COUNTY OF)	
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	Before me, a Notary Public in and for said	
	state and county, personally appeared the RICHARD	
	HAYES, who acknowledged that he did sign the	
	foregoing transcript and that the same is a true	
	and correct transcript of the testimony so given.	
	IN TESTIMONY WHEREOF, I have hereunto	
	affixed my name and official seal at	
	this day of	
	, 2001.	
	RICHARD HAYES	
	Notary Public	
	My Commission expires:	

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