

## 2023 SPRING INSTITUTE MEETING

Kiawah Island Golf Resort  
Kiawah Island, South Carolina  
May 13 - 15



Registration will be opening soon. Please check your email.

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### FUTURE MEETING DATES

Be sure to mark your calendar for the upcoming Institute meetings, which are scheduled as follows:

**2023 Fall Meeting**  
October 14-16, 2023  
Hotel 1000 Seattle  
Seattle, WA

**2024 World Cutting Tool Conference**  
May 21-24, 2024  
Tokyo, Japan

### MEMBERSHIP:

The best way to recruit new members is through referrals from current members. Do you know of a cutting tool manufacturer who is not a member? Please provide the information to the USCTI Office and they can be invited to the spring meeting as our guest.



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# USCTI President's Message



Jeff Major

To all USCTI members and sponsors:

We are midway into the first quarter of 2023 and it appears that our economy is holding its own. As recently shared through the monthly AMT/USCTI press release, the cutting tool industry saw an overall growth of 10.4% in 2022. In January, the U.S. labor market had its best month in job hirings since 1969 and cutting tool sales remain steady. Economic pressures still exist, and the Fed continues to raise interest rates to stave off inflation.

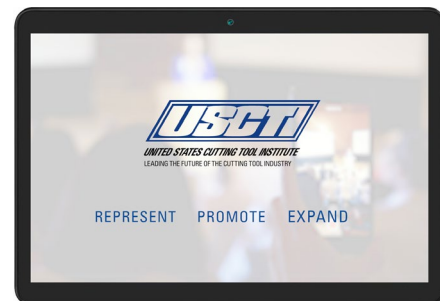
Over the past few months, we have lost some USCTI member companies, which has a direct effect on our operating expenses and reserves. The USCTI membership committee met recently to discuss how we can retain existing members and grow the Institute.

Our goal is to continue to enhance the Institute's value proposition to motivate future companies to join. The Board has been tasked with reaching out to potential new members in an effort to grow. I encourage you to also reach out to other cutting tool manufacturers who may benefit from USCTI membership or to provide the Institute office with contact information for the Board to contact.

We are excited to launch our new USCTI video which we will use to help in our outreach efforts. A link to the video can be found within this newsletter and on the USCTI website. Please share the link via your company websites and social media platforms.

Our spring 2023 meeting will be held May 13-15 at the Kiawah Island Golf Resort in South Carolina. We are looking forward to seeing everyone ... and to some warm weather!

Jeff Major, USCTI President  
Greenfield Industries



**We are excited to launch our latest recruitment tool, a video highlighting the benefits of USCTI. We ask all members to post the [link](#) on your websites and share via your social media channels.**

## USCTI STAFF CONTACTS

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# USCTI Scholarship Program

USCTI reached out to former scholarship winners to hear how the scholarship has benefited them. Here's what Autumn Ohl, 2021 winner, had to say:

*The money that I received from the scholarship went into paying for part of my first semester of college at Kent State University, where I am majoring in aerospace engineering. This was a pretty big award, so having received it will make funding my education much more accessible in the future.*

*Being awarded this scholarship was great in helping me out financially, but perhaps the greatest benefit was being able to attend USCTI's 2021 Fall Meeting in San Antonio, Texas. This was really the first time that I was able to directly connect with people from the industry and interact with "the professional world." Attending this conference, I sat in on meetings about economic outlooks into the following year, ways to bring people into the industry, and other discussions that gave me a broad perspective on how things operate within the cutting tool industry. When returning from the conference, I received an email from a journalist that works for [Cutting Tool Engineering Magazine](#), wanting to interview me about my experiences with this scholarship.*



Autumn Ohl

*Being interviewed for a magazine was an entirely new experience, but one that was very rewarding. When that article was released, I posted about it on my LinkedIn page, where I had recently connected with everyone I met in San Antonio, and my first boss, Kevin Johnson, commented. Kevin congratulated me on winning the scholarship and asked me if I had any interest in interning with his company, Fischer Special Tooling. I accepted his offer and worked in his shop during the summer of 2022. This internship opportunity was huge for me and gave me real, hands-on engineering and manufacturing experiences. These skills have now led me to be offered many other internship opportunities for the upcoming semesters, for which I am very grateful. The opportunities that I am currently being offered, in my opinion, would not be possible without having won the 2021 USCTI scholarship. All of the things that I have learned from earning this award have allowed me to make huge strides in progressing within the profession.*

**Know someone who could also benefit from the USCTI Scholarship? The deadline for this year's scholarship is March 1. Submit a nomination today for a local student or employee. More information, including the application can be found [here](#).**

# USCTI Statistics Committee Update

The USCTI Statistics Committee has been meeting to discuss USCTI's statistics program and as a part of the discussions, they are reviewing all annual reports to ensure they are of benefit to members.

A survey was sent to all members about the annual regrind report to determine if it is valuable, as there has been limited participation over the past few years. Changes are being made to the Mid-Year Employee survey to be more in line with current trends, and the new HR Committee will be reviewing the Middle Manager survey to ensure all surveyed information is relevant and beneficial.

In addition, all base-year data is being updated from 2017 to 2022. Each participating member company is receiving their 2022 data for review. Please ensure you are providing the necessary feedback so all data is correct.

Remember, if you are not participating in statistics, you are missing out on key data to assist your business including the quarterly forecast and webinar from IHS Markit. If you have feedback on the statistics program, the quarterly forecast, or suggestions for other reporting, please contact the USCTI office.

# USCTI Technical Committee Update

Please visit USCTI's [Technical Resource Center](#) on our website for a variety of downloadable technical information submitted by member companies. As a reminder, if you have technical papers we can brand for USCTI (attributing the member company), please send them to the USCTI office at [uscti@uscti.com](mailto:uscti@uscti.com).

Drew Strauchen, Technical Committee Chair  
GWS Tool Group

## USCTI HR Committee

USCTI is in the process of putting together an HR Committee to assist member companies with recruitment, onboarding, training, and retention of employees. If you are facing specific challenges in any of these areas, please let us know. If you have any tools that have been successful, also let us know!

# 2022 Fall Business Outlook Survey

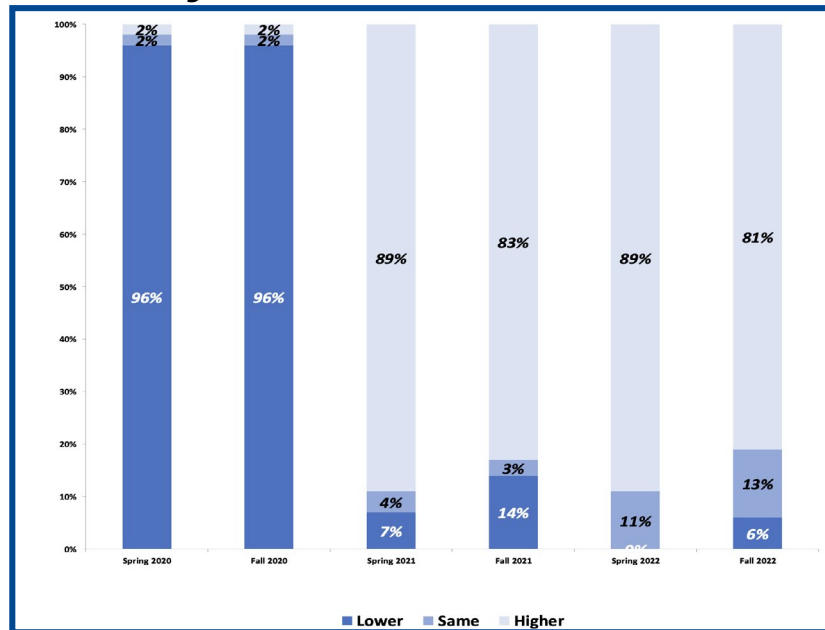
Thirty-two member companies responded to the Fall Business Outlook Survey (lower response than spring). Highlights from the survey include:

- Respondents noted a 12-month forecast of higher sales revenue for the cutting tool industry dropped to 81% from 89% in the spring.
- The same percent of respondents noted higher sales revenue for the most recent quarter as the same quarter in 2021.

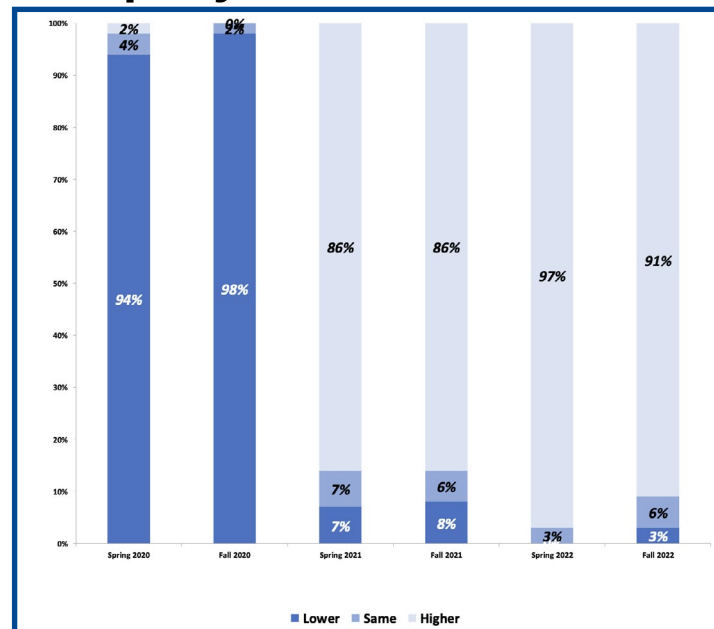
- Higher sales revenue forecast dropped slightly from spring to 91% (from 97%).
- Companies noting higher employment rates for the quarter dropped from the spring to 47% (from 58%).

Please take the time to fill out the Spring 2023 Business Outlook survey, which will be distributed soon. We'll share the results at the Spring Institute Meeting on Kiawah Island, South Carolina.

## Industry Forecast



## Company Forecast





# Message from the Programs Committee



Although there are many unknowns as we begin 2023, it is too early to be anything other than optimistic. Last year ended up being a good year for most everyone in the cutting tool industry and we are hopeful the trend will continue.

USCTI visited The Greenbrier and The Broadmoor in 2022. Both venues were special in their own unique ways, and both offered a great deal of history to go along with our speakers and networking. Our roundtable discussions continue to be a valuable opportunity for members to learn from others who have experienced issues that are affecting their companies. When we share these experiences, it can help prepare all of us for times when we may encounter similar situations in our own companies. This in turn can help strengthen our industry.

Our spring meeting this year is at the beautiful Kiawah Island Golf Resort in South Carolina from May 13-15. Here is some of what we have planned:

- Two of our speakers are economists, including Thomas Walstrom, Senior Business Economist for the Federal Reserve Bank of Chicago
- One speaker will focus on automation and robotics
- One speaker will address growing our businesses while managing risks

Later this year, the fall meeting will be held at the Hotel 1000 Seattle in Seattle from October 14-16. We don't have the final speaker list yet, but the plan is to focus heavily on the aerospace industry and will include USCTI favorite Richard Aboulafia. On behalf of the Programs Committee, I hope to see you at Kiawah Island in May.

Sincerely,  
Mike Stokey





## Legal Update

# The FTC's Historic Attempt to Drive a Mack Truck Through the Sherman Act

**On Nov. 10, the FTC issued a statement regarding the scope of unfair methods of competition under Section 5 of the Federal Trade Commission Act, purporting to clarify its new enforcement criteria for Section 5 cases.**

*By Carl W. Hittinger and Justin M. Kadoura, BakerHostetler*

The Federal Trade Commission announced in 2021 that it was repudiating its former enforcement regime under which it used the rule of reason, guided by the goal of promoting consumer welfare, to evaluate actions brought under Section 5 of the Federal Trade Commission Act. On Nov. 10, the FTC issued a statement regarding the scope of unfair methods of competition under Section 5 of the Federal Trade Commission Act, purporting to clarify its new enforcement criteria for Section 5 cases. The historic statement, however, creates significant uncertainty for businesses seeking to predict what conduct will be deemed by the FTC to run afoul of Section 5 and what analytical structure the FTC will use to make those determinations.

### Background

Congress passed the FTCA in 1914 to supplement the Sherman and Clayton Acts. Section 5 allows the FTC to investigate and prosecute, among other things, "unfair methods of competition," which includes a broader range of conduct than the conduct prohibited by the Sherman and Clayton Acts, such as "incipient violations of those statutes" and "conduct which ... is a close violation or is contrary to their spirit." Unlike criminal prosecutions and private civil actions for treble damages under the Sherman, Clayton, and Robinson-Patman Acts, however, claims under Section 5 of the FTCA can be brought only by the FTC in an administrative proceeding and can seek only injunctive relief (if awarded by a federal court in a subsequent action).

In August 2015, the FTC explained that, in Section 5 actions alleging conduct "that fall outside the scope of the Sherman and Clayton Acts," the FTC is "guided by the public policy underlying the other antitrust laws, namely, the promotion of consumer welfare," and applies "a framework similar to the rule of reason." The rule of reason was developed over time by courts in Sherman and Clayton Act cases and allows consideration of all the circumstances—including actual or likely harm to competition, market power, market definition, and efficiency justifications—when deciding whether a defendant's particular conduct is actually anticompetitive and thus illegal.

Application of the rule of reason to determine whether conduct is an "unfair method of competition" is in line with the FTC's decades-long practice of prosecuting and adjudicating Section 5 actions on "a flexible case-by-case basis." The FTC also confirmed that it would continue to rely "on the Sherman and Clayton Acts as its primary enforcement tools."

In July 2021, however, the FTC stated that it would no longer apply that framework. Instead, it proclaimed that it would more aggressively "identify and combat unfair methods of competition [under Section 5] even if they do not violate a separate antitrust statute" and would "consider whether to issue new guidance or to propose rules that

*continued on page 7*

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will further clarify the types of practices that warrant scrutiny under this provision." In its recent statement, the FTC described "the most significant general principles" that will guide its interpretation of Section 5 going forward.

### Analysis

To violate Section 5 under these new "principles," according to the FTC, conduct must be "a method of competition" that is "unfair, meaning that the conduct goes beyond competition on the merits." The FTC vaguely explained that whether conduct "goes beyond competition on the merits" depends on whether it is "coercive, exploitative, collusive, abusive, deceptive, predatory, or involve[s] the use of economic power of a similar nature" and "tends to negatively affect competitive conditions." Significantly, however, these amorphous factors will be assessed on a "sliding scale," such that "when the indicia of unfairness are clear, less may be necessary to show a tendency to negatively affect competitive conditions."

The lone dissenting commissioner, Christine S. Wilson, warned that the FTC's new approach replaces case-by-case adjudications that employ the well-understood structure of the rule of reason fleshed out by 125 years of case law under the Sherman Act and consider the anticompetitive impact of the conduct, in favor of a "quick look analysis that approximates per se condemnation." Specifically, Wilson noted that as to the first factor, the "statement provides no content for the list of adjectives that may signal the presence of 'unfair' methods of competition" and thus provides no guidance to businesses. Moreover, Wilson argued that the FTC's sliding-scale approach could allow conduct to be condemned merely because it is "facially unfair" under the first factor or merely has a "tendency" to affect competition under the second, with no analysis of market conditions, market power, or actual or likely anticompetitive effects. Significantly, Wilson also noted that the FTC "hedged" on whether and when

businesses would be permitted to present evidence of legitimate efficiency and procompetitive effects that could justify conduct that is found "facially unfair." And, even where the FTC does consider anticompetitive effects and procompetitive justifications under the second factor, its statement indicates that it will consider not only the interests of consumers—the central tenant of antitrust law for the last 50 years—but also "labor, competitive rivals, and unnamed others." In short, Wilson fears that the FTC's new shotgun approach is based on poorly defined criteria that have little or nothing to do with whether the conduct actually or likely inhibits competition to the detriment of consumers, and will give the FTC "the authority to summarily condemn essentially any business conduct it finds distasteful," whether illegal or not under the Sherman, Clayton, or Robinson-Patman Acts.

## THE FTC ALSO CONFIRMED THAT IT WOULD CONTINUE TO RELY "ON THE SHERMAN AND CLAYTON ACTS AS ITS PRIMARY ENFORCEMENT TOOLS.



The "general principles" set out in the FTC's historic statement unfortunately raise more questions than they answer. It is clear that the FTC intends (and in some cases has already begun) to investigate large swaths of purportedly undesirable conduct that previously did not fall under Section 5 or any other existing federal or state antitrust law. But the FTC provided only a "non-exhaustive" list of conduct that it believes constitutes "incipient violations" or "violation[s] of the spirit of the antitrust laws" under Section 5. It remains to be seen what other conduct the FTC will decide falls under these umbrella phrases, how exactly the FTC will apply its new framework, and what violations the courts (used to a more honed analysis under other antitrust laws) will uphold on review. Stay tuned.

*Carl W. Hittinger is a senior partner at BakerHostetler and serves as the firm's antitrust and competition practice national team leader and also litigation group coordinator for the Philadelphia office. Justin M. Kadoura is an associate in the firm's Philadelphia office in its litigation group. BakerHostetler serves as antitrust counsel to the United States Cutting Tool Institute.*

### Legal Counsel Updates

Members are encouraged to visit [BakerHostetler](#) for access to timely and informative updates from USCTI legal counsel on issues such as health care, employment law, patent law, etc.

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