

Leg part 2

13. SUNY Leg Impact Testing

by Gary Polson, PropellerSafety.com
Polson Enterprises
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Lack of Soft Tissue Damage

Researchers attributed the lack of soft tissue damage of the legs impacted by the propeller guard to the legs being embalmed for several years.

They ran an "in air" test at University of Tennessee using two cadavers averaging 70 years of age that had been embalmed for years. They struck the lower legs with a piece of pipe under conditions that had previously caused severe soft tissue damage to "fresher" cadavers. Like those at SUNY, the "in air" test showed no extensive soft tissue damage. Thus the researchers said the lack of soft tissue damage was due to the legs being embalmed too long.

However, they never verified their findings with "fresher" legs at SUNY. Most notably they never verified their findings with "fresher" legs from younger cadavers.

Researchers also failed to investigate if the "leathery" tissue on the older legs may have changed the impact forces felt by the tibia (bone) and distribution of those forces, potentially changing its failure point, failure mode, and other variables.

The researchers wrote, "The long-term storage and fixation *apparently* did not affect the bone strength adversely as it did the soft tissue."

Weak Findings

After all this testing, the best they can come up with in the Discussion (Conclusion) section of the IRCOBI leg impact paper is:

"It is the judgement of the researchers that, for the loading condition (perpendicularly striking lower legs) and population studied in this project (75 year old cadavers embalmed for several years), the prop-guarded cage was not effective in preventing extensive injury to the leg at boat velocities greater than or equal to 13.6 mph."

They fail to mention what would happen to your lower leg if it was struck by the leading edge of the outboard motor at or above 13.6 mph then passed through the open propeller.

The Boating Industry Still Tries to Stand on The Head & Leg Impact Reports

Early on, researchers involved in the SUNY underwater impact project, were used by the boating industry as expert witnesses. They explained the methods used in the head and leg impact tests and their findings. Kress and Scott sent in public comment letters on U.S. Coast Guard proposed propeller guard regulations along with copies of their reports, teamed with letters from Mercury Marine and OMC.

The head and leg impact reports are still frequently cited by the boating industry in propeller cases. For example in the recent Reed vs. Tracker Marine case, Lisa Gwin of BRC, the group involved in the original work at SUNY, cited both Mike Scott and Tyler Kress. Dr. Alexander Slocum cited Tyler Kress. William Daley, III of CED Technologies cited Tyler Kress, Mike Scott, and the 1989 NBSAC study. Defense attorney's questioned plaintiff expert, Keith Jackson, about Tyler Kress's leg impact paper.

Who Paid for the Study?

Early versions of the Leg Impact paper state the work was contracted for by Mercury Marine and OMC. The IRCOBI version of the leg impact paper the industry uses in court makes no mention of Mercury or OMC, and appears to be an independent study.

As the leg impact paper was edited by the industry and their lawyers, it became more favorable to their positions.

Don Kueny of OMC was asked about the involvement of lawyers in SUNY testing during his deposition in the Elliott case. Kueny said, "I don't recall there were lawyers present, no. It was a technical exercise."

The letter below shows Bowman and Brooke, the law firm overseeing the SUNY project for Mercury and OMC passing the bill for Tyler Kress and John Snider's services on to Alex Marconi (OMC's corporate lawyer) and Joseph Pomeroy (Mercury's Corporate lawyer).

Bowman and Brooke
ATTORNEYS AT LAW

November 25, 1991

Alex B. Marconi, Esq.
Outboard Marine Corporation
100 Sea-Horse Drive
Waukegan, Illinois 60085

Mr. Joseph Pomeroy
Mercury Marine
West 6250 Pioneer Road
Fond du lac, Wisconsin 54936

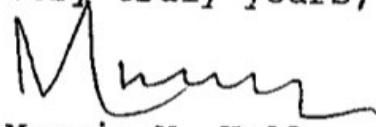
Re: University of Tennessee Underwater Impact Testing
Research

Gentlemen:

Enclosed please find an invoice from the University of Tennessee for services provided in conjunction with John Snider and Tyler Kress' underwater impact testing research program. The fee, \$72,459.00, is consistent with the most recent estimate.

Please make fifty percent of the payment, or \$36,229.50 from each Outboard Marine and Mercury Marine, directly to the University of Tennessee, Bursar's Office.

Please contact me with any questions or comments.

Very truly yours,

Marcia M. Kull