

In the Beginning

Mercury and OMC, intense competitors, worked together in the late 1980s and early 1990s to develop a defense against propeller guard lawsuits.

Their efforts culminated in the 1989 U.S. Coast Guard National Boating Safety Advisory Council (NBSAC) propeller guard subcommittee report. The NBSAC report went on to become the keystone of their legal defense.

In late 1990, Mercury and OMC conducted underwater head and leg impact studies in an attempt to shore up the 1989 NBSAC report statements about blunt trauma.

Efforts were made to make all 3 reports appear to be independent studies with minimal or no involvement by Mercury and OMC.

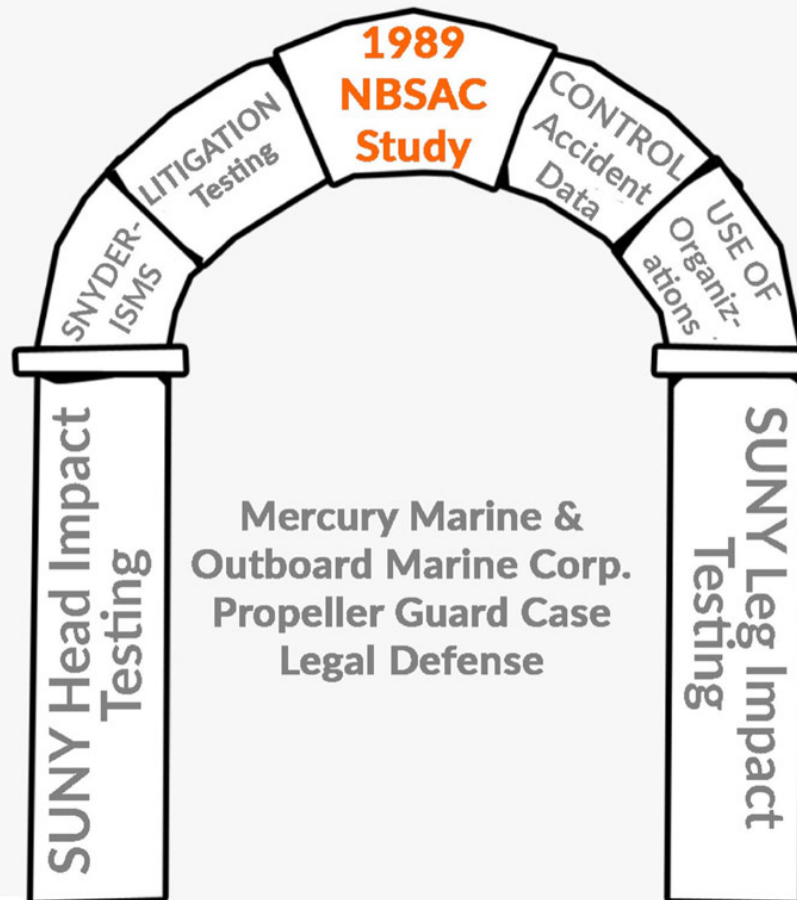
"Snyderisms"

Dick Snyder was Mercury Marine's in house, long time, expert witness in boat propeller strike cases. He was well known for repeating certain unsubstantiated statements over and over to the industry, media, and to the press. We call his statements, "Snyderisms"

While Snyder repeatedly voiced Snyderisms, little or no evidence was put forth of their truth.

Snyder was not a member of the 1989 NBSAC propeller guard subcommittee, but he had extensive interactions with them. As a result, some Snyderisms worked their way into the final NBSAC report, basically canonizing them as being true. Snyderisms include:

1. Propellers make nice clean cuts easy for surgeons to repair vs blunt trauma from propeller guards.
2. There are <100 propeller accidents a year.
3. Propeller guards have a 35 percent larger diameter than the propeller.
4. Propeller guards are only safe under 10 mph.
5. 80 percent of all propeller accidents occur when a boat is at operating speeds.
6. 1/3 of "struck by boat or propeller" fatalities were really stuck by the boat.
7. Although the prop left classic, unpleasant, repeated cuts some other engine or boat component was the instrument of greatest injury.



Litigation Testing

Like other equipment manufacturing industries, when proposed "safer alternatives" are presented in court cases in behalf of injured or deceased Plaintiffs, the Defendant (the industry) tests the proposed devices and they always fail.

There are tremendous incentives for the industry to insure proposed "safer alternatives" fail. If the industry were to find the proposed safer alternative actually worked, they could end up owing millions of dollars:

1. in this court case.
2. in similar cases which would quickly follow.
3. retrofitting the "safer alternative" to their units in the field.

Mercury is known for testing dozens of different propeller guards, every one of which failed, even one they designed and patented themselves. In the early days, propeller guard inventors furnished samples of their guards to Mercury thinking Mercury was actually searching for a propeller guard to use on their products. They were quickly disappointed when their guards were found to have miserably failed.

Don Kueny was the past Chief Engineer and past President of OMC. Kueny agreed in court (Decker vs OMC) "that if somebody conducts litigation testing with the preexisting goal of what they want to prove that you can fix the test apparatus in whatever way necessary to prove exactly what you want to prove so you can share it with the jury."

Use of Organizations

The boating industry has mastered using various boat trade, and marketing organizations to further their cause.

For example, NBSAC provided Mercury and OMC a window through which to see propeller safety regulations USCG was considering. NBSAC also provided Mercury and OMC a position from which they could derail those regulations.

Other organizations include the National Marine Manufacturers Association (NMMA) to which Brunswick annually pays millions of dollars in dues. NMMA themselves formed special interest organizations such as the Houseboat Industry Association (HIA), life jackets (PFDMA), and the Boating Industry Risk Management Council (BIRMC).

With Brunswick being a major player in NMMA, NMMA and HIA teamed up to write a public comment letter to the USCG against the use of propeller guards on house boats and strongly encouraged their members to do the same.

BIRMC has become a place for the industry to pool legal defense knowledge and tips behind closed doors.

American Boat and Yacht Council (ABYC) is used by the industry in conjunction with NMMA to develop voluntary standards none of which include propeller guards.

Control Accident Data

The boating industry has long controlled and manipulated accident data in legal cases to limit their liability. They:

1. Use the complexities of USCG's Boating Accident Report Database (BARD) to their advantage.
2. Mislead by misrepresenting propeller accident data.
3. Segment data to minimize the number of accidents being discussed, making the issue appear less important and less urgent. For example, only considering rental pontoon boat propeller strike fatality data for a single year.
4. Ignore under reporting of propeller accidents and feign any knowledge of how to account for unreported accidents.
5. Refuse to recognize media reported propeller strikes not reported in BARD.
6. Ignore propeller strikes outside the United States involving their boats and/or motors.
7. Make minimal or no efforts to monitor their accidents (Post Sale Product Safety Monitoring).
8. Prevent propeller accident data from being considered.