



# FEMAS NEWSLETTER

Winter 2008-9

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## Message from the President

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Time flies and the older one becomes the quicker it seems to go. Christmas and New Year vanished without trace and now we are in February 2009, where did January go? However, I must wish everyone a very happy and prosperous new year. I trust that it will be so, however looking around the docks here in Southampton with ships laid up and no prospect of work, it makes for a depressing sight. Being an ancient mariner I have been through several down turns in the economy but never have I witnessed such an effect on general shipping. According to the newspapers the shipping and charter rates have fallen so much that it is hardly worth being a shipowner.

How does all this affect Surveyors? For some it will be a time of plenty, getting involved in various aspects of litigation and contracts, giving advice and being supportive of unfortunate friends and clients. For some it will mean less work, fewer ships at sea brings with it fewer contracts, smaller numbers of damage claims, a reduction in bunker surveys and all of the other work which keeps the average surveyor in business.

The recession also brings to the fore other problems. One is safety. At other times like this I have witnessed some Owners trying to minimise costs by cutting down on safety either in terms of equipment or manpower. In both cases it is a false economy since in the case of an accident the damage and associated costs far outweigh any likely savings. Another saving which some Owners try to make is in the use of inexperienced and less expensive Surveyors. It is my opinion that some Owners do not appreciate the knowledge base which experienced surveyors bring to the job. Often I am surprised at the knowledge which many surveyors display and readily give voice to during technical discussions. It has been my experience many surveyors are not aware of the vast knowledge they possess. Some are like

sponges absorbing knowledge as they go about their daily business. Some of it not related to the matter in hand but available when necessary. It is for this reason that I continually cry that a labourer is worthy of his hire and none more so than the experienced surveyor. People will gladly pay a Lawyer and a Shipbroker etc but argue the cost of the surveyor who makes it all possible.

In these straightened times we all have a living to make but let us do it without lowering our standards or our fees. I know that we face competition from a variety of sources many of which fall far short of our professional standards and integrity. We have to keep going forward in the knowledge that our training and experience will see us through this tiresome period. If we falter then our profession will go backwards.

Despite the dismal remarks above, can I remind people that our profession has withstood the ravages of previous recessions and come out a much stronger group. As your President I wish you all every success during this tiresome period.

Norman Finlay

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### FEMAS Office Holders:

**President:** Norman Finlay (UK) SCMS

### Executive Council:

Dimitri Capaitzis - Greece (HMTCA)  
Frederic Beaugrand - France (UPEM)  
Erik Lefevre - Belgium (BAMTES)  
Andrea Panarello - Italy (AIPAM)  
Henk Arntz - Netherlands (NIVRE)

Secretary: Paul Owen (UK)

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## The World Economical Crisis and the Maritime Survey Business

The European economics are facing a substantial recession in 2009 and the effect on the maritime commercial activities, including the maritime survey interventions with regard to cargo handling, ship exploitation risks, value assessments, etc. will be inevitable.

It is to be feared that a decline in port activity will be inescapable, despite the intentions to launch 'commercial support programmes' in various ways, as these programmes will need a certain 'running-in' period before becoming fully effective.

For those marine survey companies, who are exclusively relying on the maritime business activities and do not have some kind of a 'back-up' survey activity in the industrial area, professional survival chances will largely depend on their ability to cope with the rapidly changing situation on the international economical scene.

There will be an opportunity to 'cut the cost' and raise the efficiency of the survey interventions, by optimizing the time spent on a survey mission and avoid or at least minimize the effect of non-productive elements that may show up, such as :

- a) travelling delays, due to traffic congestion;
- b) waiting time on board the vessel, because of interference of the survey by other, simultaneously occurring (Class) surveys involving a direct contribution from the ship's staff;
- c) delays related to the ISPS procedure requirements for properly announcing the surveyor's visit at the port operator's or stevedore's security services;

Obviously, the result of measures to optimize the survey intervention does not merely depend on the ability of the survey company to cope with the described non-productive factors, but is also subject to the efficiency of the interaction between the survey company and its professional contacts such as the

shipowner's agent, P&I Correspondent, stevedore, port authority, Class society, etc..

This requires also a good cooperation from the ship's staff of the vessel and the master who applies for a survey intervention should understand that it is not evident to launch such a request and expect the surveyor to show up within the next hour...

Whereas some improvement can be made on the side of the survey companies, to minimize the financial impact of non-productive elements in the organization and monitoring of the survey mission, there seems to be a growing concern under the marine survey companies on the Continent about the period for survey fee settlement, applied by their principals.

In the case of survey interventions upon the direct request of a P&I Club or its Correspondent, it seems to have become a common practice amongst some P&I Clubs to let the survey fee settlement depend on the approval of the shipowner with the outcome of the survey, the acceptance of a third party claim as being in accordance with the shipowner's findings, etc.

It goes beyond saying that the remuneration of a correctly performed P&I survey should not be submitted to any other appraisal than the criteria that are to be respected with regard to the received and accepted instructions, the integrity and professional approach of the surveyor, his ability to handle the case and determine the nature and extent of a third party claim, under the usual terms of a "without prejudice" survey attendance.

In times of an economical recession, shipowners may become tempted to object to any kind of amicable claim settlement, merely on the basis of a P&I survey report, and they may want to "shelve" the third party claim.

Such practice carries its own risks and is therefore left to the final appraisal of the shipowner and his P&I insurer, but it should have no impact whatsoever on the correct and timely remuneration of the survey intervention that has allowed parties concerned to gain proper insight on the nature and the financial aspect of a claim.

It is not because the surveyor brings "bad news" to his principals, that he should be 'rewarded' with a substantial delay in the settlement of his fees, after they have been approved by his local principals as being 'fair & reasonable' for the

services rendered.

In times of an economical recession, a correct and timely survey fee settlement will be one of the key elements to assure that the survey interventions remain on the same quality level and the maritime players (shipowners, insurers, brokers) may even benefit from an improved survey cost management on the side of the survey companies, when they will be challenged by the changing economical conditions.

Ing; Erik Lefèvre  
(Chairman of BAMTES vzw, Belgium)

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## News from HMTCA

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### AGM (FEMAS)

See Press Release.

### Member's Activities

At the HELINT (Hellenic Institute of Maritime Technology) Annual Conference of 27-28/10/08 in Piraeus, among the Speakers were our Members Costa Philippou: "Lessons from Marine Accidents" and Dimitri Capaitzis: "Shipbuilding Contracts and BIMCO Newbuildcon".

At the SNAME (USA Society of Naval Architects and Marine Engineers - Greek section) Annual Conference of 17-18/09/08 in Piraeus among the Speakers was HMTCA Member Dimitri Capaitzis: "Builders and Operators and their Management of tanker and dry bulker design".

HMTCA Member Chris Sariyannidis of CS & Associates is to send to FEMAS copies of their Monthly Newsletter.

### RINA / IMarEST Greek Joint Branch

Dimitri Capaitzis is on the Board while many of HMTCA Members are members of those Institutes and therefore Members of the Joint Branch. Total Members of the Joint Branch about 600.

### Other

Norman Finlay is investigating the idea of having an Expert Witness Seminar in Greece and HMTCA have formed a Committee to follow this matter (Matthaiou, Sariyannidis, Lyrintzi).

Norman Finlay has offered to lecture in Piraeus early in 2009 on Small Boat Rules.

The Greek Shipping Chamber of Commerce organised a Seminar in Athens in December on Arbitration. Their Chairman, the Chairman of London Arbitrators, Mr. Tsavlis and others were among the speakers. HMTCA Members, who are also Members of the Greek Arbitration Society, were also participants.

Norton Rose, Stephenson Harwood, Ince & Co and the Institute of Chartered Shipbrokers all had respective Seminars, in Piraeus in November / December on Shipbuilding Contracts and Sale & Purchase Contracts, in which some HMTCA Members participated.

### Press Release for AGM

FEMAS held their Executive Council Meeting and AGM in Piraeus, Greece on Friday 3 October 2008.

HMTCA organised the Executive Council meeting and AGM at K.C. Lyrintzis Company's offices located at 26 Akti Posidonod, Piraeus, this was followed by a reception and lectures on "Salvage and Towage" in the afternoon as follows:

- Introduction / Coordination (Capaitzis/CAP- TAITZIS)
- Int. Salvage & Towage Industry - An Historical Review (Tsavlis/TSAVLIRIS)
- Large Boxships and Salvage (Ficks/SVITZER)
- Salvage and Towage of Small Ships (Finlay/ SCMS)
- Salvage & Towage Industry - Problems & Challenges (Adamopoulou/TSAVLIRIS)
- Case study of PAX ship & Salvors, Surveyors, Owners & Underwriters (Ficks/SVITZER)
- Assessing Marine Accidents (Sariyannidis/ HMTCA)
- A Salvage Operation in the Arabian / Persian Gulf (Beaugrand/UPEM)
- Emergency Response Services (Lyrintzi / HMTCA, Saraidaries (KCL))

The Reception and Lectures were well attended by other members of FEMAS, HMTCA and

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Speakers the Shipping Community in Piraeus (about 60) and included representatives of Associations, Adjusters, Banks, Brokers, Class, Clubs, Insurance, Lawyers, Operators, Press and the University.

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### **A few words about the ERIKA sentence : Judgement n° 9934895010 passed on 16th January 2008 by Tribunal de Grande Instance of Paris, 11th Chamber, 4th Division**

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*(Please note this article was submitted for publication some months ago, before the appeal – which we hope to report on soon)*

A copy of the Judgement (in the French language) may be emailed on request.

The following comments do not engage any liability but that of this author:

- Tribunal de grande instance : lowest Judges in the French Justice Organisation (Court of Appeal above, then Supreme Court)
- Giuseppe SAVARESE, Owner through Malta Company TEVERE SHIPPING
- Antonio POLLARA of PANSHIP, Ship Manager
- Mauro CLEMENTE and Alessandro DUCCI of SELMONT Time Charterers
- RINa Classification Society
- TOTALFINA (Total SA), TOTAL TRANSPORT CORP (TTC), TOTAL PETROLEUM SERVICES LTD, Voyage Charterers
- Master and various Individuals acting as Intermediaries or Heads of Safety or Pollution Fighting

The printed decision consists of 278 pages. The facts are described from page 81 to page 266. The Judgement dealing with the public action (State) is given in page 268. The Judgement dealing with the private actions (all Parties but the State) is given in page 271.

The facts through which the Judge determined the various liabilities involved in this famous sea casualty are well known and were not objected

to by any of the Parties concerned. What is disturbing us however is the manner in which the Judge distributed the indemnities between the Parties condemned.

The State was awarded penalties to be paid separately by Owner and Manager, Time Charterer, Voyage Charterer and RINa, for having infringed the law for the prevention of the pollution of the sea. Penalties and not indemnities, for this infringement is an offence. We observe that the State Servants were not condemned for having contributed to the pollution by their lack of action.

The Parties were awarded substantial indemnities to be paid *in solidum* by Owner and Manager, Time Charterer, Voyage Charterer and RINa in refunding of their expenses AND on grounds of the item 475-1 of the French Criminal Proceeding Code which stipulates :

*... The tribunal determines the amount to be paid to the Party by the author of the offence... The tribunal fixes this amount ex aequo et bono or takes the economical situation of the Condemned into consideration ...*

The Judge pronounced here a double decision: separate penalties to the State, *in solidum* indemnities to the Parties. The second decision obviously followed the last words of the item 475-1 above. It means that, should a Condemned not being (or not willing or not subject to exequatur in his country) able to pay the award, then other Condemned must substitute. It is clear here that RINa and TOTAL alone are targeted, since the other Condemned may hardly pay the high amounts demanded. In this respect the decision seems to be in search of the *deep pocket*.

Further one should consider the actual and respective liability of the Owner and Manager, Time Charterers, Voyage Charterer and RINa. These four actors are not a bunch of criminals who share an even liability. That of an Owner who offers a ship in somewhat deficient condition cannot be equal to that of, for instance, a Charterer who loads that ship with cargo. Let's take the example of a Surveyor renting a truck with driver, in order to carry some goods from his flat to his farm. If, for whatever reason, the truck falls and makes injury to the road surroundings, would the Surveyor be equally condemned together with the driver and the truck Owner ?

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The Judge obviously realised this and he expressed it with his own words :

Pages 226 to 228 of the decision concerning the “*punishable persons*”: the Judge cited the French law of 5th July 1983 regarding the “*power of control or directorate in the management or the operation of the vessel*”. He then attributed explicitly this power to the Master, the Owner, the Ship Manager and RINa. However the Judge said that *TOTAL could not give any evidence that it was not controlling the management of the vessel*. This is called “negative evidence” which is usually banned from the proceedings, since it belongs to the one who accuses to supply every necessary evidence against the accused.

In this respect the decision seems to break the French major rule (also internationally known) according to which a penalty must be proportional to the offence. Observe that *TOTAL* appealed of the decision regarding the indemnities to the Parties that it was charged.

Another amazing facet of the decision was that declaring RINa alone liable for having let the ship sail in a defective condition. One would expect the Safety Officers who inspected the ship on several occasions on behalf of their States, to share the liability on grounds of MoU failure. One would also expect that RINa was recognised as acting on delegation from the Maltese State, since the State Safety Surveys cover the Class surveys and conversely. An artificial distinction seems to have been made here by the Judge. Observe that the failing State Officers have not been suited here.

Ultimately the decision ruins the basis of the Charter-Party, which is a lawful agreement which fixes the role of each Party. So far as we know, the Charterer who signs such an agreement is neither responsible for the condition and the maintenance of the vessel, nor for its navigation and its operation. The “power of management” retained by the Judge to condemn *TOTAL* discarded the agreement and substituted the interpretation of a tribunal, whereas (says the French law) “*a lawful contract makes the law of the Parties*”. If this decision were to be confirmed in appeal, then any chartered vessel entering the French waters would also enter into doubt regarding the validity of their Charter

agreement.

The next Judgement to come in appeal shall enlighten whether a vetting survey supersedes a Charter-Party in terms of contractual liability.

In conclusion, the Surveyor employed by any of the Parties engaged in chartering, should take the utmost precautions in giving his advice and survey report, since he may be well condemned - or fall into proceeding troubles - as were the employees cited in the sentence. Highly dissuasive isn't it ?

Henry Monasterolo  
General Secretary, UPEM

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## Latest News from the French Professional Marine Surveyors Union

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*(Please note: This article was submitted some months ago)*

As everybody knows, our very charismatic President Pierre Lefebvre disappeared in the first days of the summer, 2006. President less, UPEM Committee asked to well known Marine Surveyor Alfred SMITH to take the helm of the Union during an interim period in 2007.

At the UPEM Extraordinary Meeting held in December 2007. Members of the Bureau and UPEM Members entrusted me with the honour to become the torch-bearer of the Union for three years, may be a maximum of six years, if affinity! Fortunately I am helped by omnipresent and fully devoted General Secretary Henry MONASTEROLO, two Vice Presidents Le MOEL and LE SAUX hard at work and a ruthless Treasurer, Jean Guinard. However, I don't want forget all the delegates, advisors working inside the Bureau and all my colleagues from UPEM.

Our first decision had been in renewing and creating contacts with FEMAS. We are convinced the story of Independent Marine Surveyors in the future will be a European thing. Today UPEM, the only one Marine Surveyors Association in France, count 78 experienced and qualified members coming from Merchant Marine for the most, but also from the Navy or the Elite technical and engineering Schools or Universities. Eight Associated Members having high competences in connected technical skill areas are integrated inside the Union who stay fully opened. We are

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now in order to get onto different projects as, for example, the training of new marine surveyors.

With the impulse of UPEM, there is existing now in France a University Diploma of Marine Surveyor which commenced 18 months ago with the willpower of Le Havre University and Hydrographic Marine School. Teaching is provided by Experts coming from the maritime world : Marine Teachers, University Doctors, Insurance Specialists, Maritime Lawyers and indeed Marine Surveyors from UPEM. But perhaps this training could be the subject of another article in the FEMAS Newsletter.

At the present time, UPEM constituted a special committee of 5 Marine Surveyors to initiate serious thinking about the opportunity to create an Internet portal to distribute services and surveys offers from his Members.

Because we are sure we have to strengthen our voices, UPEM is ready to cultivate and reinforce relationship with Associations members of FEMAS.

Frédéric BEAUGRAND  
President

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## Suggestions for Improvement Areas for Surveyors

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These lists were produced in response to a request from the Executive Council for subjects for discussion at their next meeting.

Items suggested by UPEM regarding eventual improvements :

- (1) Surveyors have no return from the survey ( was the report suitable or could improve the chance of recovery, etc...)
- (2) Lack of interests from the members of the associations.
- (3) Surveyors are individualistic and are unwilling to transmit their knowledge and/or experience.
- (4) Difficulty to ask the members to be active in the associations.
- (5) It is forbidden by law to have an agreement

on the fees, who is considered as an act against the competition.

- (6) Independence of the surveyors
- (7) Lack of global view in the associations
- (8) Absence of economical group.
- (9) Absence of portal concerning our activities as surveyor

Items suggested by BAMTES:

- a) correct behaviour by the ship's staff in connection with the surveyor's mission
- b) correct survey fee settlement by P&I Clubs or their Correspondents
- c) time management by survey companies, to cope with the non-productive elements of a survey intervention

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## Web Site

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The new and updated FEMAS website is now operational and may be viewed at:

<http://www.femas.info>

or

<http://www.femas.org>

It has several areas including: About US; News; Members Associations; Registered Surveyors; Rules; Areas of Operations; a password protected Members Area (suggestions please as to what you would like to see here); and lastly a Contact Us area.

The Rules area does not yet include the full text of the FEMAS Memorandum and Articles of Association.

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## Next Newsletter

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Do you have any ideas for a news article for the next FEMAS Newsletter?

If the answer is yes, then please contact the Secretary, contact details on page 1.

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