



SAMS® Newsletter

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...and More!



Summer 2024



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Cover by Penny Lowe
Layout/Design by Mark Shea





John Lowe, AMS®
Immediate Past President
SAMS® Newsletter Editor

Hello Everyone,

Typical summer business here on Long Island with pre-purchase and insurance work humming along. Hope everyone is well and as busy as they want to be.

I've had the opportunity to review many of our members surveys and thought I would touch on something that I feel could use some upgrading in our reports and that's photography. When reviewing reports, we look for certain things like pictures of the subject vessel from all 4 quarters, clear pictures of running gear, machinery space, deck machinery and living accommodations along with any outstanding equipment seen on board and we all seem to be doing a pretty good job with that. Where we fall short in my opinion is photo documentation of significant deficiencies. We see a lot of very clear photos of the actual deficiency but for someone reading the report this may not be clear enough. I will usually take an establishing shot of the general area where the deficiency is then below that a close up shot of the actual deficiency. This helps someone who may not be well versed understand what they are dealing with. The question of manipulating photos has come up a few times so I asked a maritime attorney about the legality of changing brightness and or contrast to make a picture more clear. His answer was that as long as you do not materially change the photos composition it's acceptable to manipulate these pictures, he also stated that we should state in our report that a certain photo may have been "manipulated for clarity."



Original Photo



Manipulated for clarity

Quick Tip: Keep your camera handy, you may want to record a time and date stamped photo of your reset tripmeter in your vehicle when leaving your office and when you return if are charging mileage and/or travel time. I also take a pic of my work order for the file in case the hard copy gets lost. And finally, I will clandestinely take a picture of everyone who attends survey in case there is ever a dispute. The only time I had a question on my travel time was due to heavy flooding and traffic on the Belt Parkway returning from handling a claim, I presented time stamped photos of my tripmeter when leaving the inspection, highway signs warning of the traffic ahead, actual photos of the flooding and my tripmeter when returning home from the inspection and my client was satisfied and cut my check. We are truly blessed to have digital photography available and we should take full advantage of it. Look forward to seeing everyone in New Orleans.

Be Well

I will look for you in the yards.



**Kristoffer Diel, AMS[®]
SAMS[®] President**

“Come on down to da bayou!”

Ahoy! Fellow SAMS[®] Surveyors & Associates!

Summer is now in full swing, and I hope everyone is as busy as they want to be!

Recently the SAMS[®] Office underwent a major rearrangement. This was brought about by the departure of Ms. Susan West, and the arrival of Ms. Jessica Mancheno.

Ms. Mancheno is now holding down the "front desk", so many of you have spoken with her by now. She also takes care of insurance requests and accounting.

Ms. Cheryl Roach will continue where Susan left off in reviewing and compiling new applications, upgrades and annual reviews prior to sending them to the Membership Committee.

I also want to single out Mr. Mark Shea for his ongoing efforts in maintaining the website, newsletter, continuing education and general help in the office. THANK YOU! MARK!

I am pleased to report the SAMS[®] Organization is steaming along in excellent condition. Membership numbers are stable, but finances are looking for attention and updating.

Thanks to the excellent managerial job by Ms. Rhea Shea by finding ways to keep office costs down, she has assisted us in not needing a dues increase since 2010! However, at the recent June BOD meeting review of financial accounts, it stood out that due to price increases for everything from Insurance to salaries, over the last decade, we can foresee the rapidly upcoming need for a dues increase to maintain our corporate banking balances. Towards that end, the BOD recently made a motion and passed a poll vote to increase next year's dues by \$100. This will be presented to the upcoming September IMEC attendees for ratification. Please refer to Randy Sharpe SAMS[®] Secretary/Treasurer's article for more information on this.

And last, but not least, a shout out to everyone on the Safety Committee. Under the leadership of Mr. Stephen Heinrich, AMS[®] it has become more organized and will be having an information table at the IMEC as well as speakers.

Please, everyone, review your workplace procedures. Not only are we all working in the heat of summer, but much of the time in confined spaces.

I hope to see you on 11 September, at the IMEC in New Orleans. Come on down to Da Bayou! If you are able, come a little earlier or stay a little later as there is much to see and do. You might want to visit the National WWII museum, take an airboat swamp tour, walk down Bourbon Street or even check out the historical cemeteries. It's a place like no other!

Kristoffer A. Diel

If anyone has any questions or suggestions regarding the operations of SAMS[®], please do not hesitate to contact me at your convenience.



**Gary Frankovich, AMS[®]
SAMS[®] Executive Vice President
Ethics Chair**

ETHICS, From the Greek “Ethos” -Moral Character-Doing What is Right !

Ethics are the principles that guide us to make a positive impact through our decisions and actions. Ethics play an important role not only in our personal lives, but also in our businesses. We are all encouraged to make ethical choices and apply ethics in all areas of our lives. **Ethics and the role of the marine surveyor:** As guardians of safety, quality, and compliance in the marine industry we carry a significant responsibility. Our decisions not only affect the integrity of the vessel, but also the lives of those who venture out on the water in them and the ecosystems they are used on. Ethics encompass a set of principles that govern our conduct, guiding us to distinguish right from wrong in the decisions we make. We encounter numerous situations where ethical dilemmas arise. From ensuring the condition and capability of a vessel for what the client intends to use it for to estimating the value of the vessel, our actions must ALWAYS reflect a commitment to honesty, integrity, and professionalism. One of the fundamental ethical principles for marine surveyors must be impartiality. We must remain independent and unbiased in our assessments; free from any conflicts of interest that could compromise our judgement. Whether we are inspecting a vessel for compliance with safety regulations, assessing damage for an insurance claim, or valuing a vessel for a loan, divorce, or donation, our loyalty lies solely with the truth and the integrity of our profession. Integrity is perhaps the most vital ethical virtue for a marine surveyor. It encompasses honesty, reliability, and a steadfast commitment to upholding ethical standards, even in the face of adversity. Upholding integrity means standing firm against pressure that may tempt us to compromise our principles, whether it's from our clients, the broker, employers, or other external influences. I will be giving the ethics presentation at the IMEC in New Orleans. I would like to ask anyone reading this article to please email me an ethical dilemma that you personally have faced, or a situation in which you were not sure if what was requested of you was ethical or not. I would like to talk about some examples at the IMEC and open up a dialogue with the attendees about what you all think might be ethical or unethical.

Call me: 904-377-0475





Randell Sharpe, AMS®
Secretary/Treasurer

We reviewed and passed our budget for the 2024 calendar year and SAMS® is financially healthy based on our projected income and reserves, but we are deficit spending this year with higher costs than projected income. Currently approximately 62% of our income comes from annual membership dues. The lion's share of the other income comes from meetings and conventions. You will see on your ballot for the annual business meeting after IMEC where you need to vote for the next board of directors that the board is proposing a 20% increase in our annual dues for 2025. That is a \$100 increase. We have not raised dues since 2010 and as you all know 2010 prices are history that will not be repeated. We need to approve this increase to continue to provide our members with our group liability insurance policy, to promote SAMS® and its members, and to continue to run our organization. The cost of the liability insurance policy which allows us to work in boat yards around the country and world has increased. The cost per member for that policy has risen from \$83 to \$117 per member since our last dues increase in 2010. That's \$34 of the proposed \$100 increase. We spend a substantial amount of our dues advertising SAMS® through multiple print and electronic media avenues. The cost of advertising continues to rise. We spent \$42,183 on advertising in 2019 and \$60,317 in 2023. We have budgeted \$80,000 in our 2024 advertising and public relations budget. That's almost a 90% increase in the money we **spend to promote you**. This year's budget equates to an increase of approximately \$50 per member in the last 5 years. We have great employees managing the day-to-day business of running our organization and we have increased their pay to keep up with industry pay schedules in order to retain our excellent staff. We spent \$153,625 for salaries and payroll taxes in 2019, and have budgeted \$195,000 for 2024. That's a 26% increase over the last 5 years. That equates to an increase of approximately \$56 dollars per member. As you can see from these numbers the long overdue increase in our annual membership dues is sorely needed. Add it up, costs have increased \$140 per year just counting cost increases in the last 5 years. This year's budget has a budget shortfall of \$59,200. Which equates to approximately \$80 per member. This is the first time we have projected a budget short fall in my memory as a 25 year member of SAMS®. We are managing our reserves by investing in safe government bonds and T-bills to earn a reasonable interest income from the reserves which has helped balance the budget. We are financially sound and can cover the shortfall with our reserves this year, but this can't go on forever. The board has had vigorous discussions on the amount to propose to the membership for this dues increase. We agreed on this \$100 increase for 2025. **I encourage you to vote YEA on the proposed dues increase that will be on your ballot for the annual membership meeting.** I will be preparing a presentation on the costs for membership review and ask you to support the increase.

OK, enough of the mundane business stuff. Many of you have seen the orange Smart Plug which is touted by the manufacturer to be superior to the standard Marincos shore power inlet plug for yachts. In my view it does have some good attributes with larger contact blades and a nice secure latch instead of those tiny plastic threads on the retainer nut that get stripped. However, the plug is only as good as the installation. Here are a couple photos of what can go wrong if the wiring connections are not properly made.

But, take a look at the back where the wiring was not tightly connected to the terminals, or undersized. Make sure you look at the back of the plug!

I look forward to meeting you at the next IMEC in New Orleans. Be safe out there.





Kenneth Weinbrecht, AMS®
Education Vice President

IMEC is only three months away.....have you made your plans? NOLA is always a great place to visit and have a great time. I've attached the tentative schedule for IMEC below, but always remember that things do have a chance of changing.

SAMS NOLA IMEC

Wednesday 9/11

1300 - 1310 - 9/11 moment of silence / remembrance - Kris Diel AMS® - President.
1310 - 1415 - ABYC - Using new standards on all boats - lithium batteries
1415 - 1445 - Break
1445 - 1545 - Safety committee
1545 - 1630 - Boat History Reports - Caroline Mantel
1630 - 1730 - Ethics - Gary Frankovich, SAMS® Exec. VP - They Asked Me To Remove Just A Small Thing On My Report.
1830 President's Reception

Thursday 9/12

0830 - 0900 - Welcome, Intro Of The Board Of Directors
0900 - 1000 - Crescent River Pilots Association - Captain Michael Bopp
1000 - 1030 - Break
1030 - 1200 - Steve Knox AMS®/CMS - Dan Rutherford Daniel Rutherford, CMI, LPI
Marine Surveyors and Adjusters - How to Peacefully & Successfully Exist.
1200 - 1330 - Lunch on your own
1330 - 1430 - "How to Investigate Marine Salvage Claims" - Roland Santos Jr., AMS®
1500 - 1530 - Break
1500 - 1630 - NTSB - Conception Fire - What Was Learned - PENDING
1630 - 1730 - Marine Fire Investigations & The Importance Of A Marine Surveyor - Southern Forensic Services - Glen Lawson
1830 Dinner

Friday 9/13

0800 - 0815 - Housekeeping
0815 - 0900 - Fireboy - Fire Extinguishing Systems - Keith Larson
0900 - 1000 - Fish Boat Inspections, Mike Andrews, AMS® - Fishing Boat Chair
1000 - 1030 - Break
1030 - 1200 - Triton Liners - In-Situ Fuel Tank Repairs - Darren Meyers
1200 - 1330 - Lunch on your own.
1330 - 1430 - Fireboy - Fire Extinguishing Systems - Keith Larson
1330 - 1500 - Revay Coating Consultants - David Revay
1500 - 1530 - Break
1600 - 1730 - Thermal Imaging - Charlie Hazouri CMS

Cont.

On the subject of CE credits I would like to let you know that if you have any questions as to what might receive CE credits, just send an email.

Here's some examples of what has been approved.

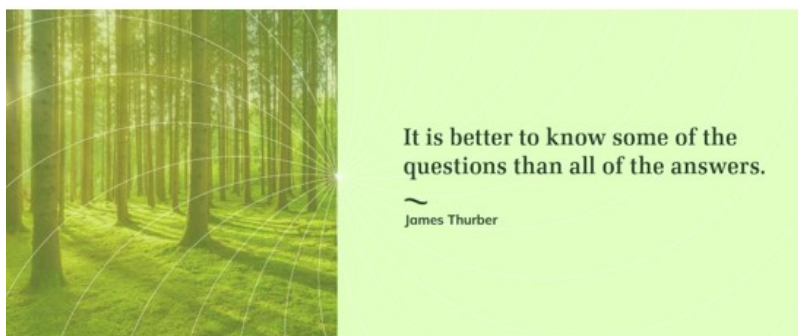
Firefighting class, welding classes, boat building.

First aid or trauma seminars, i.e. CPR class.

USCG License and license renewal.

Any ABYC or NFPA courses or certifications.

Any type of boat building seminar, IBEX etc.



I could write a book on what excuses people have had not being able to obtain CE's. CE's are not hard to get, and the excuses that we sometimes get for not having the time, no money or don't have enough work is not a really good reason. If you consider yourself a professional and treat your practice as such, there will always be opportunities to grow. While we do allow certain exceptions by giving extensions, the CE's always have to be obtained even with the extension.

Here's a good example:

ABYC dues is \$290/yr., \$5.67 each week. You can't even go to McDonalds for that kind of price!!!! I find it very disturbing that we have members that will join to get the standards and then not renew for a few years. Do you know that ABYC changes a lot of things / standards every year? Can you imagine being in a deposition or on the stand and opposing counsel asks if you're a member of ABYC and you are not but say you are. Well for your information, the membership directory is available to the general public and that is one of the first things councils staff will do; see what your credentials are.

IF YOU THINK EDUCATION IS EXPENSIVE, TRY IGNORANCE !

Safer Seas Digest

The National Transportation Safety Board (NTSB) has published its *Safer Seas Digest*. This publication encapsulates 31 investigations completed by the NTSB Office of Marine Safety in 2023. While each marine casualty is unique, there are some commonalities among the cases outlined in this digest. Among the fire safety risks and challenges identified by the NTSB are:

- Proper maintenance and repair of equipment and machinery,
 - Lack of fire detection,
 - Anticipation of fire hazards, including those presented by lithium-ion batteries, and
- Firefighting training.

The NTSB's fire investigation summaries are included in the attachment to this email. The full report that summarizes all maritime accidents that were investigated by the NTSB can be found here: [Safer Seas Digest 2023 \(nts.gov\)](https://www.nts.gov/publications/safer-seas-digest-2023)



Joseph Lobley, AMS®
Meeting / Conventions
Vice President

It's been five years since signing the contract with the Sheraton on New Orleans for IMEC 2024 thanks to the Pandemic. Fortunately we were able to secure the same room rate and other contract pricing. The dates are September 11th thru the 14th. We have a room rate of \$179.00 with the usual amenities. Parking deals with hotels in the city are non-existent but there are parking garages and lots nearby. The hotel is well situated just outside the French Quarter with a short walk to Bourbon St., Harrah's Casino, and the Riverwalk. The Warehouse District is in the hotel's "back yard". This area is also known as the Art's district and is full of galleries, some of the best restaurants in the city, and of course, many watering holes. We will likely have a big turn out so I have increased our typical room block. Please book your room early.

I would like everyone to know that contracting reasonable room rates, in decent hotels that can provide us the complimentary meeting rooms and provide the food and beverage for the social events, is becoming difficult. We already set the events up just off season and between other events. Room rates are beginning to slide up to the 185-195 per room night. While seeking a property for future IMECs it normal to get room rate offers for \$240.00 and higher. The BOD has discussed this many times trying to balance this cost out and give the same educational experience. Do we use a rent a meeting room and let everyone stay where ever they want and perhaps trade the evening social events for a caterer to do lunches? The issue is that the room rate and food and beverage agreements allow us to use the meeting spaces for free. Lowering these agreed prices will likely result in the upcharges for the meeting space and not being able to receive discounts on AV and complimentary rooms which use for the speakers. The fact is that we are too big for the small venues and too small for the big venues. Fortunately SAMS® requires only one IMEC every five years. So, we stay the course.

IMEC 2025 at the Hyatt Hotel Inner Harbor Baltimore, September 9-12, 2025. We were here in 2013 and had an excellent event. The room rate is \$180.00 per night. This will be our first departure from the typical week day format of starting Wednesday and ending on Saturday. We are moving the format to start on Tuesday and finish with the business meeting on Friday. This has been suggested by several hotel sales people in the past as a way lower the room rates since we are not occupying rooms on Friday night. The hotel has been remodeled and has all the usual amenities and is in a very good location with lots to do close by.

IMEC 2026 was voted on at the last General Membership Meeting to be held in the Florida Region. The cities chosen in order were Tampa, Orlando, and San Juan PR. It looks hopeful to get a location in the Tampa area signed up in a few weeks. I will keep everyone posted.



**Angel Zeno, AMS®
Testing Vice President**

I've been speaking with a few of our members after they have taken the AMS® exam and one of the things that stands out is that it seems like in many cases, they knew the material and the correct answer, but unfortunately, anxiety and nerves may have gotten the best of them when they were actually sitting to take the test. Which caused me to do a google search on how to overcome anxiety before a test. Not surprisingly it's a big enough topic to bring back quite a bit of information and tips. I was able to single out one article from Shamukha P. with the Schoolhouse blog which provides some helpful tips on dealing with the anxiety brought on by having to take a test. Feel free to drop me an email and I can send you a link to the full article. But I felt the following tip stood out as one of the most helpful.

While taking a test, stay calm and don't over think. First, look through the entire test and look at the questions before starting. If there is a question you don't know the answer to, skip it and come back to it later on. Answer all the questions you know and come back to the challenging ones at the end. To avoid any errors, always read every question multiple times, in order to understand it better and check your answer so you are 100% positive that you have selected the answer you would like. You shouldn't think about the results during the test because it could disturb your concentration. You also shouldn't have negative thoughts in your brain since it can affect how you do your test. Being overconfident and expecting a 100% is also not a good thing.

I hope you agree that it seems like solid advice.

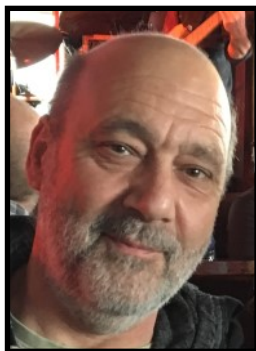
Speaking of taking the AMS® upgrade exam, if you are thinking of taking the exam at an IMEC be sure that you get the ball rolling early. There are a few procedural steps that need to be followed so it's always best to contact the SAMS® International office as soon as possible to start working out the details.

From a surveying business side I wanted to share the following bit of information. Anyone that will allow me to drone on about my surveying business already knows that I focus on damage claims. I have to admit that one of the things that I have taken for granted is sending in my invoice for a damage claim assignment and receiving a check within a few weeks.

Well my world took a slight zig when I received a virtual credit card in place of a regular paper check. At first I thought it was some type of junk mail and almost tossed it into the trash. But as it turns out the insurance carrier who I have done assignments for in the past has decided to trim down their expenses and sending a virtual credit card instead of a paper check was one of their cost cutting initiatives. I was able to process the virtual credit card using an app.

How many of you have had a chance to board an electric boat. As part of our monthly North Michigan Surveyors coffee meeting we were given a tour of an X-Shore electric boat built in Sweden. In addition to the electric propulsion system which was interesting on its own, the boat had quite a few interesting features. For example, the hull and deck layup consisted of a fiberglass and carbon fiber composite. If you get a chance to tour an electric boat I highly recommend that you do.

Remember to always work safe, let someone know when you head out on an assignment along with some information on where you are going and when to expect you back. And always tie up that ladder.



Eddy Assaf, AMS[®]
Public Relations
Vice President

Well, it's summertime and for those in the northern section the busiest time of the year. Talking with most surveyors in my area and around they have found it to be a little quieter this year post Covid and the economy have taken away a bit from boating. In one of our larger boating areas, just before Lake Champlain N.Y. most boaters are putting the vessels in the water for the vacation season only and then hauling them out once the vacations are over. One of the reasons is the economy, the other is no docks. As funny as it seems the marinas in the areas are full and can't take more boats, and even with this demand for slips, a lot of marinas closed their doors which make less room. I've seen several people buy boats just to put them for sale after and the only reason they bought it was to have the rights to have a place at a marina. In my general area 4 marinas have closed taking away over 4,700 docks to harbor boats, and there is no where available to put them. Hopefully things will get better within the next few years and if the government with their laws and raising taxes, and insurance companies making coverage policies almost unaffordable, could start giving them a break there might be a comeback, but remember waterfront property is very much in demand and this makes it more profitable for the marina owner than running the business.

On a different note, the SAMS[®] advertising is moving right along, up to now nothing new except the final stages of the new website. Trying to get all the pictures for the backgrounds on the different pages, and hopefully will have it done around Mid-July, and then the final stages, if all goes well, the new site will up by the end of July.

I am planning on throwing some more advertisements together for recruiting members and I'm working on a new ad for that, and hoping it will attract more people into thinking of being a marine surveyor.

There will be a section for MEMBERS NEWS, any article you see fit to put in there would be appreciated, either yours or something you ran across that you think might be interesting for the members.

Just want to give you all an insight of how the advertising budget has played since I have been in the VP position. My predecessor John Lowe had his budget cut about 40% due to financial reasons for the organization, this brought the advertising budget down to 35K which is where I was at when I took the position. Since then, and every year the board has been trying to put that money back into the advertising budget and by the end of 2023 our budget was back up to the original amount of 65K. well this year at the winter board meeting the board raised it a bit and we now have a new budget of 80K. this means about 20% of our dues goes to advertising, as for now, we see this as one of the better ways to give back to the members.

After so many years of asking the members if they felt that advertising in their area would be good, well after 5 years one person actually reached out, we talked about it and I verified the area and we started advertising in that local area of the state of Washington, for if you feel that some advertising in your area would be good, please let me know because it's the only way I'm going to know about it, they didn't give me a crystal ball with the job.

One of the things I find surveyors have trouble doing is saying NO when it comes to workload because that is the way we run our business and don't like to refuse work which sometimes give us a little too much work, especially as we climb a bit on in years. I have made changes in the last 2 years; I have learned to say NO on many good opportunities, but notice most times something else always comes up that is better. I'm now reaching 68 and have brought my business to where I can make a good living but even more important take some time to live.

Remember foremost to enjoy what you're doing out there, it always makes you a better surveyor and as always be safe so you can do it for the number of years you want. Cheers

Attention IMEC Attendees

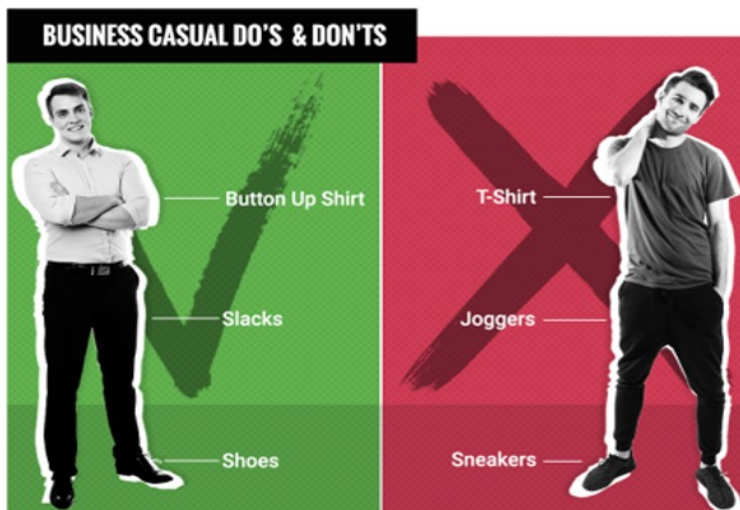
How about Business Casual – What to Wear or Not Wear

When an IMEC is held at a 4 or 5 star hotel as is the norm, I would expect our members to realize that they are not in the boatyard or in Billy-Bob's brew shack. Stretched out faded T-shirts paired with ragged jeans might be acceptable at Billy-Bob's, but unfortunately, some of our members don't seem to know how to dress for different environments.

When you attend an IMEC, you are not only representing yourself, but the SAMS[®] organization as a whole. SAMS[®] has never asked you to wear a suit and tie, and probably never will, but it seems to me that a little more thought when packing for the IMEC might get us a lot more respect at the venue. I've taken the time to look up "Business Casual" and this is what it says along with examples of what IS and what is NOT Business Casual.

"Appropriate business casual dress typically includes slacks or khakis, dress shirt or blouse, open-collar or polo shirt, optional tie or seasonal sport coat, a dress or skirt at knee-length or below, a tailored blazer, knit shirt or sweater, and loafers or dress shoes that cover all or most of the foot."

Please study the pictures carefully and honestly decide which one best represents you and the organization!!



From a former SAMS[®] President.

Need CE Credits ???

Newsletter Material Deadline: Have an interesting topic? Send it in! If your article is published in the SAMS® NEWSLETTER, you not only contribute news and information, you may be eligible to receive (3) CE Credits* for your article. The cutoff date for material to be submitted for publication in the next SAMS® Newsletter is November 15, 2024. The editor must receive all articles by this deadline or they MAY NOT be published in the next issue.

If you are planning to write an article you should know the following:

1. Your article should be technical in content, and of interest to the profession of marine surveying.
2. The article should be in MS Word.
3. Please use **Times New Roman, font size 12**
4. Length of the article should be 500 to 1000 words.
5. Articles that have been published before, MUST have a letter of permission letting SAMS® re-publish this article.





Charles W. Solarek, AMS®
Membership Vice President

Summer is finally here and most of us are out and about on the waterfront working our trade. Stay hydrated in the warm weather. Be mindful of rotating machinery, especially when the vessel is underway. Bottom line, please be safe out there!

The physical inspection of a boat is only the beginning of the survey process. Most of the time you meet your customers for the first time and impressions are made. And that first impression is most important. What are you wearing? How do you greet them? Do you shake hands? Do you conduct a pre-inspection briefing to explain your process? Are questions and/or concerns solicited? At the end of the day how do you conclude the inspection? Is there a discussion about the findings & recommendations so far? Do you explain what is next in the process and when your customer can expect the formal report? Again, do you shake hands as everyone goes on their way? Now comes the hard part, putting all that information you gleaned during the inspection onto paper, the formal report. For your "other clients," the financial institution and insurance underwriter, this is how they will see you. The information you do or do not provide and how it is presented is a direct reflection on you as a professional marine surveyor, on SAMS® and the marine surveyor profession as a whole.

I have been reviewing survey reports for new applicants, annual Surveyor Associate reviews and Surveyor Associate's applying to upgrade for about five years now. The most common issue I see repeatedly is a surveyor using a software product's boiler plate entries without giving it a second thought. Here is a great example. A surveyor listed a finding that the inspected vessel did not have an audible high bilge alarm as recommended in ABYC Standards. AWESOME! But here is his recommendation, "Investigate further/trace, and service, repair or replace as necessary."

SERIOUSLY?!? Did this individual even read that statement? Just because it is an option in the software does not mean that it must be used. If you were a loan officer or insurance underwriter who reads that comment what goes through your mind about this surveyor and the report? Just one more point about report writing. DO NOT BURY IMPORTANT INFORMATION. When discussing Surveyor Associate's annual reviews with an Surveyor Associate sometimes I would be told that what I thought was missing information is in the report, in the middle of a lengthy paragraph. So, the question I ask is, "Well, if I could not find it do you think the loan officer or underwriter is going to find it?"

My reports are in a constant state of evolution and yours should be too. ABYC Standards change, CFR requirements change, and installed equipment on the boats change. What was a good comment just a year ago may not be applicable today.

Sincerely wish everyone the best of summers. Again, be safe. We really wish to see more of you in New Orleans come September.



**Michael A. Terminel, AMS®
Pacific Regional Director**

One of the highest complaints lodged in the past against surveyors is not being timely in getting reports out or answering a clients call on a question in a timely manner. There are very few and I mean very few acceptable excuses for being late, no showing or not returning calls. To turn the tables, I had a client no show on me a few years back. To put it into perspective it was a 230-mile round trip car ride to the clients boat. I was a little upset. I called the client several times, all calls going to voice mail. I chalked it up to a learning experience. About 5 days later he finally returned my call apologizing up and down. As it turns out he was a surgeon in Las Vegas during a horrific concert shooting and was operating for almost a week straight. Needless to say, I went out of my way to make it to his boat the next time he was available and he has been a great client ever since. That's an excusable reason. Regional Directors are not immune from being timely. I've been busy, working every day and absolutely no excuse for forgetting to send my SAMS® Summer newsletter report to the International Office in a timely manner. When you don't have a good excuse, acknowledge your wrong and right the wrong. Same as with a client and don't wait a minute longer than you have too.

As we push through for many of us the busy season, I recount years of Regional Directors Randy's and Chuck's newsletters about report writing. Now that I sit in those shoes, I get it, why it was a repeated topic systematically. It takes years to massage your survey to a well written document. I look back at what I sent Randy as a Surveyor Associate and I literally cringe. It's a process as a Surveyor Associate and it does not stop when you become an AMS®. I encourage everyone to review and update your surveys format and content. With this I want to point out a couple items that I'm seeing time and again in reports. Excessive **Bold** or **BOLD CAPITAL** print and what we all probably take for simplicity and should be the easiest part of the survey, pictures, surprisingly some of them make me shutter, no pun intended.

The surveys I'm reviewing have some great pictures, and not so great pictures. Some are clear and depict the true appearance of the vessel and sorry, others are frankly just useless. When you think of how a picture should be presented, look at any National Geographic magazine. Please look carefully how they frame the object being presented. Is half the subject matter in the frame, is it supposed to be intentionally blurry, is the photo so dark with shadows the subject matter is not apparent to what you're looking at? No, the pictures are vivid, they pull you in, they tell a story, you are captivated by the subject matter. The pictures they choose for their magazine are not by chance, they are carefully chosen to tell a story.

A marine survey is no different, it tells a story. A picture is worth a thousand words, or not.



Actual Cover Shot of a submitted survey

or



Would this be a better picture



Actual Galley Picture in a submitted Survey

or



Would this be a better picture of a galley

As you can see by the photos on the left, help is needed and what we think is good is definitely in the eyes of the beholder. Here are a few much needed pointers for photos.

1. After you take the picture, look at it, unless your using film from the dark ages, digital photography has come a long ways and it's instant. Look at the picture, make sure it's clear, accurate to what you're taking the picture of and the object is framed.
2. When you take a picture, think of the picture as if you're were an absentee buyer dropping a sizeable amount of cash on the surveyors word and photos, or the underwriter ensuring the asset mitigating risk based on what your photos represent and what you need to see. A picture of half a galley table or a light shade does not do it.
3. Yes, we do take pictures of damaged equipment on the boat, or specific damage you want to highlight. You don't need to put a picture of the fuel tank label that's unreadable. You can simply say it in your notes, "fuel label unreadable". Please photograph a broken through hull valve, broken bilge pump switch, torn Bimini top delaminated rudder, bent propeller blade, any high dollar item or a safety item. By all means take a picture of the damaged item. But remember an underwriter does not need to see a picture of half of a perfectly good cleat.

Thirdly, think about back when you were in school. I know for some of us including myself that was a long-long time ago. Were we taught to use capitals and bold print for adjectives and verbs? The answer is no. Again, look at that National Geographic magazine and look at the grammar and formats of their paragraphs. You might have bold print in the heading or in the title page, using grammatic errors like **WAS** inspected at the sea trial, or **HAULED OUT** in Tacoma Washington are not capitalized and you don't use bold print. Highlighting words and phrases in the survey in my opinion will bring unnecessary focus on a simple word that could later be used in court against you.

Please review your surveys, update the format, clean them up and I guarantee when we do this we will have a better product for our clients. Hopefully we'll see you all in New Orleans and for the PNW region we are still a go for our Regional Meeting in Everett, Washington. Were continually looking for a good location and hopefully around the Seattle Boat Show timeframe so we can attend both.



Tom Benton, AMS[®]
Gulf Regional Director

Well, this is my second go around as a Regional Director. The way things are done has changed, and mostly for the better. Summer has definitely made itself known to the Heartland. Boat sales have been starting to get back to normal after a couple of years of an unexpected surge in boat sales. The Covid thing surprised me because at first, I thought boat sales would virtually stop. They didn't, in fact in my area brokers and dealers were running out of used inventory to sell. Another thing that surprised me was that prices actually went up across the board. I suppose that a shortage of used inventory may have caused the higher prices. It appears that people who were told to work from home figured out that they could just take their laptop to the boat and work from there. Well that has changed, and prices have settled back down to what they probably should have been all along.

Part of the job of Regional Director is reviewing survey reports of new applicants and those requesting an upgrade. These reports are judged against the SAMS[®] Recommended Survey Report Content document. This document has been developed and revised over the years and is basically the content that SAMS[®] expects member surveyors to include in their reports. We are not trying to make everyone's reports all look the same, but rather trying to make sure that everyone's reports include the necessary and factual information for the end users to make decisions about insuring or lending money on our client's boats. We are professionals and we need to look like professionals. The reports need to be laid out in a logical manner, and include the information needed by the end user. They need to be easy to read and easy for the underwriters and lenders to find what they are looking for. I suggest that every SAMS[®] member get a copy of the document and review your own reports against the document. Remember that when you show SAMS[®] membership on your report that you are representing all of us.

I hope everyone is doing well and staying busy. See You Around The Pond.





**Richard Reichelsdorfer, AMS®
Great Lakes Regional Director**

As I write this, I am heading to Chicago on a 50-foot sailboat in advance of a race. The remnants of hurricane Beryl are also heading to Chicago, and we are on a collision course.

I spoke with our Past President and Newsletter Editor a few days ago and he suggested that I write something about working in high heat and how to protect yourselves. My reply was I am from Wisconsin and is a cool 70 degrees out. So, with John's suggestion and a extremely rare visit of a tropical system to this area, the stars must be aligned for me to address extreme temperatures. High temps and sun are brutal when trying to work in them. Being in a engine room on a hot day with the sun baking is not something I like to do. If I do have a job on a hot day my first task is to try to schedule it as early as possible before it gets to hot. I also pack lots of water and a hat to keep the sun off. If the boat is in the water and equipped with air conditioning, the first thing I check is the air conditioning and I will perform a very long test of the system to make sure it is functional. I will split up my survey to cool down in the AC for a bit and then back outside in the heat to keep the workflow up.

It is very important to keep hydrated. Drinking lots of water and water with some electrolyte booster is a must. Bringing a small towel to keep wet with cool water is also very helpful to trying to keep your body temperature down.

Taking lots of breaks to cool down is also recommended. If the boat does not have AC, I will take a break in my car if it is convenient or find a shady spot to take a break.

Heat exhaustion is a serious matter. There are many resources online that will take you through the stages of heat exhaustion and stroke. I recommend everyone that some time to research this topic and know the signs. We all want you to be safe in your working environment.

**William Robinson, AMS®
New Mid - Atlantic Regional Director
Article will be in the next Newsletter**



**Christopher Day, AMS®
North Florida Regional Director**

Hello and welcome to the land of sunshine, greenery and afternoon storms. It seems like we are starting to get into a “Summer Pattern” a bit earlier than usual. With the first MAJOR HURRICANE (Cat 5 Beryl) hitting the Caribbean islands a lot earlier than expected, its time to start prepping for early morning surveys and getting our storm gear ready.

I wanted to say thank you for another successful N. Florida Regional meeting held in March at the Pelican Yacht club. I am looking for volunteers to help with IBEX in Tampa this year (the week of September 30th). I will need help with set up, manning the booth and tear down. Please contact me so that I can start planning and setting up a schedule.

In this issue, my topic, issue, or concern is about keeping in one’s wheelhouse when doing your surveys. I know that SAMS® is a professional organization and as an organization WE cannot control how you do your business, but I think that it is pertinent and prudent to survey what you know and what you have experiences/certifications to do. Marine Surveying is one of the oldest professions out there, but its also one of the most unsettled and un-established professions out there as well as we do not fall within a job description within the Federal Tax Code and we do not abide by any federal safety regulations or certifications. Basically, it’s the “Wild Wild West” out there when it comes to marine surveying. With that said, AS SAMS® MEMBERS, we should know our limits and seek advice and intellect on things that we have not surveyed before. This is the power of the SAMS® organization. It offers great abundance of knowledge of those who have “Been There, Done That” and as SAMS® members we should not be afraid to network and leverage that. There are many areas that can really get a surveyor in trouble IF we are not careful. I believe that stepping outside of our wheelhouse and doing things that we don’t have the experience is one of them: Being an expert witness, Surveying commercial jack barges, Insurance claims, Thermal Imaging, Ultrasound thickness testing (just to name a few). If you get the call for this and you are not comfortable in doing it, don’t do it. Work with the client to find someone and ask that person you find IF you can ride with them to gain the knowledge. See how difficult that it really is and IF you have the capability to get into that portion of survey. One ride along may not be enough. Form a relationship with that person that you referred out and see if you can go on multiple calls IF those type of jobs truly interest you. Take a few classes or go to a few industry conferences and sit in on a few presentations/classes to gain more knowledge (AKA building your tool bag/knowledge base for that type of survey). The worst thing that can happen to us surveyors is NOT have our reports accepted, have the client ask for their money back and having a complaint called into the SAMS® office. In this crazy litigious world, people are quick to discredit and sue IF not happy with the product or services that are provided. So, let’s stay in our wheelhouse and make sure that we build our knowledge base prior to stepping out of it.

For now. . . Stay safe in the heat. Dodge the afternoon rain drops and Answer those phone calls.



Rolando Santos, AMS®
South Florida Regional Director

This year continues to be a busy year with a variety of assignments consisting:

- Ship Board Fires
- Barge Fires
- Motor Yacht Fires
- Sinkings
- Fatalities / Injuries
- Collisions & Allisions
- Liability Claims
- Cargo losses
- Machinery Failures
- Salvage Claims
- And the C&V jobs

So in my review of SAMS® Member generated C&V / Pre-purchase reports, which is not exclusive to the job I do as a Regional Director, I continue to see “words” being used that all Marine Surveyors should limit and find an alternative term.

i.e.: You inspect a pump. Witness the pump working. Observe that it develops proper pressure and there is flow. You find some indications of corrosion on the pump casing and the prime mover. What is your finding?

Do you use the term “Serviceable”?

Or alternately do you simply state what you observed and that you found no exceptions?

i.e.: You check the stanchions on the life lines and find them well bedded and secure. What do you report?

Would you use the term “Serviceable”?

Or simply state your findings and observations?

The reality is that a Marine Survey / C&V is a snap shot in time and limited. In the case of the pump you really have no idea if that pump casing will develop an internal pin hole in the casing due to erosion/corrosion and start to leak the next day so the proper reporting of the facts is to state your concise observations.

Same applies to any other appurtenance on a motor yacht, ship, barge, tug, etc. All components are subject to a large variety of variables that from one minute to the next can change. If you stick to reporting the facts and observations you are not making a reaching statement and still serving your client with your learned & sage observations.

Last subject is fuel tank pressure testing. I frequently see this recommendation in the reports and find it a curious recommendation. Pressure testing of a fuel tank in a vessel / motor yacht is not a simple process and does present certain hazards with potentially serious consequences if it’s not done properly or safely.

I personally do these with great frequency so I take it for granted and I normally work with other Forensic Engineers and C&O experts so the procedure and safety protocols employed are SOP.

UL / Boat US did a study many years ago and I am of the opinion that the study is dated. I am aware that newer fuel tanks are being made of thicker gage metal and are being protected with coatings to stem some of the corrosion issues of past increasing the life span.

Fuel tank leaks are a real concern especially in older motor yachts and small boats and the recommendation does have merit.

If your observation of the boat / motor yacht drives you to make the recommendation I would suggest that you clearly state that **the pressure test needs to be done by a qualified technician that is insured.**

I checked the internet and no big surprise I found many websites with DIY pressure tests. I really do not recommend that anyone attempt to do this on their own. Can you imagine if they have a leak and the bilge pump kicks on?

Here in South Florida there are many vendors that are qualified to do the testing and many are equipped with the proper tools to include some of the following:

- Gas free testing
- Safe isolation of all electrical sources on the motor yacht / boat
- Inert Gas with proper pressure regulators
- Forced Ventilation of the hull
- Fire watch
- Explosion meters / monitoring

As a guide and for reference only the following are (Minimum) published standards:
33 CFR 183.580 and ABYC H-24





**John Hines, AMS®
Canadian Regional Director**

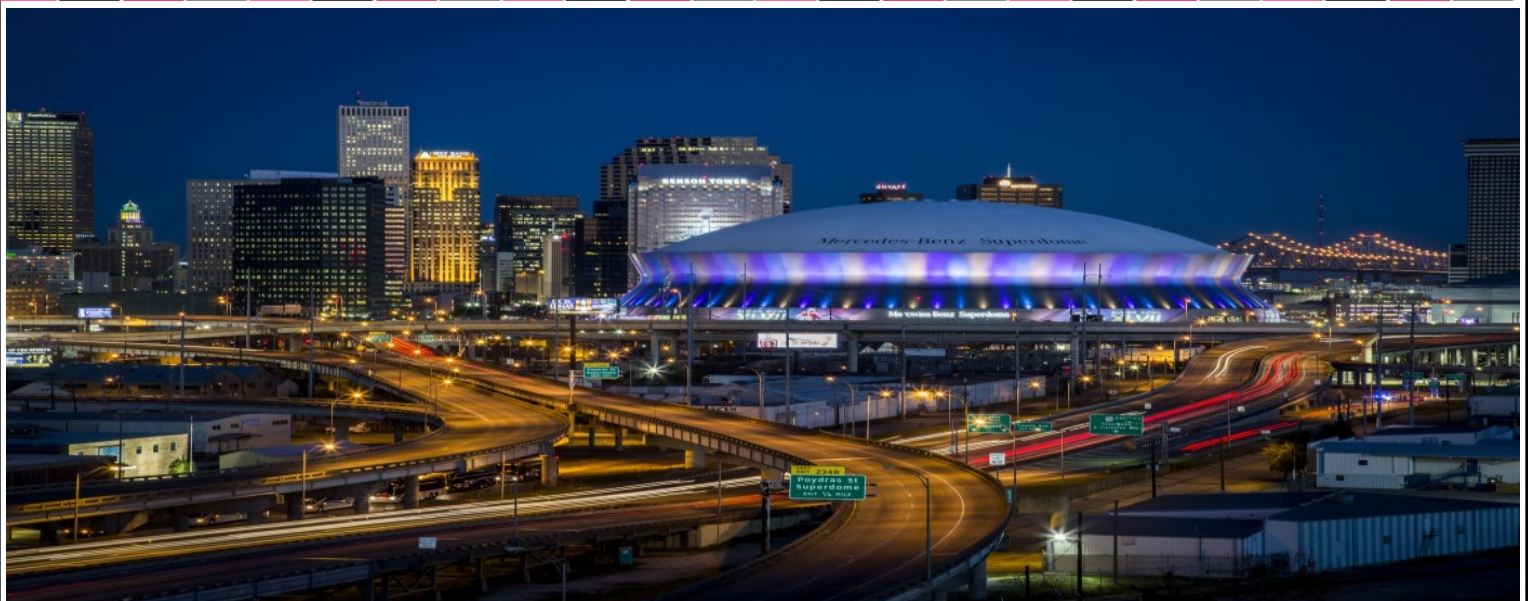
It is June now. I don't know where Spring has gone. Most of the boats are now in the water here and a lot are changing hands. It has been a busy season. This submission is going to be short due to family commitments. Our Regional Meeting went well with a number of good speakers including Transport Canada, local electrical technicians, riggers, and Skipper Plan Insurance. The Boulevard Club was a very nice venue. I am still talking with Transport Canada regarding the SVCP program. Thanks to those who attended and Geoff Wright for all his help with the organizing.

Since the last newsletter, we have had two new Surveyor Associates and one Affiliate member.

As you know, the IMEC is coming up September 11 to 14 in New Orleans. This would be a good chance for those who are nearing the time for their AMS® exam to arrange to write. We need to give the SAMS® Executive Director a minimum of 30 days' notice for the arrangements to be made. It is also the time for those AMS®s who require education credits and their mandatory attendance at one IMEC in five years to make their reservations to attend. This can give several credits and cover the meeting attendance requirement. With insurance companies becoming stricter on who they will accept surveys from, it is important to keep your SAMS® membership up.

I hope to see you at the IMEC.

Enjoy the rest of your summer.



A tale of the seller and the surveyor. Remember the surveyor usually doesn't know what they are talking about according to the seller whom we will call Mr. Knowitall. All names and locations have been changed to protect the innocent. On a recent survey of the vessel "Shaft Rub" for a client who we will refer to as Mr. Duediligance who was looking for a vessel to complete the great loop and looking for a good reliable boat. There was an issue discovered by the surveyor who we will call Mr. Pointitout, during the haul out portion of the inspection and it was more than the port prop and shaft was very difficult to turn.



Brian Williams, AMS®
Northeast Regional Director



Not sure what type of grease to apply here to help the shaft spin in the log!



This must be one of those custom curved struts!

After Mr. Pointitout showed this to Mr. Duediligance, he became very concerned as to how this happened. Mr. Knowitall stated it must have been that way when he bought the boat. Mr. Duediligance asked who performed the survey for him when he bought the boat. Mr. Knowitall did not have an answer. The surveyor Mr. Pointitout casually asked how long ago did you buy the boat? Mr. Knowitall stated he bought the boat in 2020. In continuing with the inspection Mr. Pointitout saw some markings on the prop from a local propeller repair "Billy Beats Props Straight" shop (with an ID number and a date of overhaul 2021. So, Mr. Pointitout asked why the prop was sent out for repair a year after Mr. Knowitall bought the boat. Mr. Knowitall started to get a little quiet now. Mr. Knowitall thought a minute and stated the Marina must have damaged it and sent it for repair without telling him. Mr. Pointitout, knowing Billy from Billy Beats Props Straight made a quick call to Billy and asked if he had any records on the repair. Now Mr. Knowitall started getting really quiet. Billy stated that the prop was dropped off by Mr. Knowitall himself with a couple of bent blades, was straightened and pickup a week later and paid for by Mr. Knowitall. Suddenly, Mr. Knowitall thinks he remembers hitting a submerged object on the ride home. "I don't believe it" If you are the first to call me and tell me the name of the vessel, I will convince the Immediate Past President to buy you a drink at IMEC in New Orleans. "Limit to Three" You are going, aren't you! At the end of the day Mr. Duediligance chose not to proceed with the purchase of the vessel "Shaft Rub" and was happy that he had hired a surveyor off the SAMS® website as he was not local to the area. The seller was not happy with the perseverance of the surveyor. And Mr. Pointitout felt good about the fact that he had saved Mr. Duediligance a huge headache and an expensive repair.

I know it's busy out there Try to enjoy some "Down Time".

Joseph A. Derie, AMS®
SAMS® Commercial Workboat Chair
SAMS® Tug & Barge Chair

CAPT Joseph A. Derie, NAMS-CMS; AMS®, SAMS®; CMI
Chair, SAMS® Commercial Workboat Committee
Chair, SAMS® Tug & Barge Committee
Southwest Passage Marine Surveys, LLC



OSHA AND CONFINED SPACES – PART 2
SURVEYING COMMERCIAL FISHING VESSELS AND BARGES

This is the second of a three-part series of articles about OSHA and confined spaces. Part 1 of this series of articles, *OSHA And Confined Spaces – Part 1 Surveying Commercial Fishing Vessels and Barges* was published in the SAMS Spring 2024 Newsletter.

OSHA has regulatory authority on commercial vessels under two CFRs. 29 CFR 1910 *Occupational Safety and Health Standards* and 29 CFR 1915 *Occupational Safety and Health Standards for Shipyard Employment*. OSHA also has authority on all commercial vessels, whether un-inspected or inspected, and recreational vessels while they are in a shipyard.

As I have written before, the US Coast Guard has regulatory responsibility regarding safety aboard uninspected commercial vessels at all times. The Occupational Safety and Health Administration (OSHA) also has regulatory responsibility regarding safety aboard these vessels while they are in US waters (OSHA Instruction, Directive Number: CPL 02-01-04, effective date: 02/22/2010, Subject: *OSHA Authority Over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS)*). Due to this memorandum, surveying uninspected commercial vessels should be done using the required standards of the USCG, general OSHA, 29 CFR 1910 *Occupational Safety and Health Standards*, and if the vessel has a crane or derrick, OSHA 29 CFR 1919 *Gear Certification*.

OSHA's *Permit Required Confined Spaces* pamphlet OSHA 3138-01R 2004 (available online) is another source of information for the surveyor of uninspected commercial vessels. It has the following definitions:

"A confined space:

- Is large enough for an employee to enter fully and perform assigned work; and
- Has a limited or restricted means of entry or exit.

These spaces may include underground vaults, tanks, storage bins, pits and diked areas, vessels, silos and other similar areas.

A **permit-required confined space** has one or more of these characteristics:

- Contains or has the potential to contain a hazardous atmosphere;
- Contains a material with the potential to engulf someone who enters the space;
- Has an internal configuration that might cause an entrant to be trapped or asphyxiated by inwardly converging walls or by a floor that slopes downward and tapers to a smaller cross section; and/or
- Contains any other recognized serious safety or health hazard."

As can be seen what surveyors generally identify as a **confined space** is by OSHA's definition a **permit-required confined space**, requiring testing and approval by a marine chemist before safe entry can be made without an SCBA or must be provided with continuous forced air ventilation for safe entry. Sometimes both are required. With continuous forced air ventilation, what is enough should be determined scientifically as simply installing ducting, and a fan or fans to the compartment may not be enough. I am currently working a court case where continuous forced air ventilation was provided and a seaman was still badly injured.

Cont.

The problem was the continuous forced air ventilation was installed with no testing or proof that it was the appropriate amount and positioning for the space, in this case a diesel fuel tank where the crew was removing sludge with shovels and buckets.

As mentioned previously 29 CFR 1910.146 *Permit-required confined spaces*, the OSHA standard for confined spaces, “contains the requirements for practices and procedures to protect employees in general industry from the hazards of entering permit spaces.” This section does not apply to agriculture, to construction, or to shipyard employment (parts 1928, 1926, and 1915 of this chapter, respectively).” When surveying uninspected commercial vessels surveyors should look for a sign reading “DANGER - PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER” or using other similar language, when finding those type spaces on vessels. If the sign is not there the surveyor should survey the compartment from the deck only and an appropriate comment should be made on the report. As mentioned in Part 1 of this series of articles, examples of Potential Hazards are “Ballast Tanks or Voids, Lazarette, Chain Locker,” “Sewage Tanks, Refrigeration Spaces,” “Fuel, Lube or Hydraulic Oil Tanks,” and “Slop Tanks, Holds or Voids where organic matter, like fish or fish slime, may collect and decomposes.”

It should be made perfectly clear at the beginning of a survey that the surveyor will not enter such a space without proper permit or forced ventilation, and there should be proof that the amount of forced ventilation is appropriate.

The OSHA *Permit Required Confined Spaces* pamphlet includes a *Permit-Required Confined Space Decision Flow Chart* as well as information on Written Programs required by the owner or operator. Other areas covered are equipment for safe entry, detection of hazardous conditions, informing contract employees, worker training, entry permits, emergencies and OSHA Assistance.

Part 3 of this series will be in a future newsletter and will discuss 29 CFR 1915 *Occupational Safety and Health Standards for Shipyard Employment*.

As always, I hope anyone who wants to discuss this column or has questions about surveying commercial workboats, tugs, barges or 46 CFR Subchapter M should contact me at 503-236-6818.





**Steve Heinrich, AMS[®]
Safety Committee Chair**

We are looking forward to seeing our colleagues in New Orleans for the International Meeting and Educational Conference, September 11-14, 2024. The Safety Committee is hosting a panel discussion which will feature a participant from Conrad Industries, Matt Mayon, the Health, Safety and Environmental manager. The panel discussion is part of the educational agenda September 11, Wednesday, 15:45 to 17:00. The topic will be “Surveyor Safety at the Worksite: Recommendations and Requirements.” In addition to Mr. Mayon the panel will include Joseph Derie, SAMS[®] Commercial Workboat, Tug and Barge Committee Chair.

We would like to add a panel member from a shipyard who is an operations supervisor and responsible for direct employees and/or contractors, to provide the perspective of the practical implications of safety requirements and practices. **If you know a yard operations manager from the New Orleans area who might be willing to participate in the panel discussion at IMEC, please contact me, my information is below.**

SAMS[®] Safety Committee is an opportunity to share your knowledge of safe working practices in the surveyor work environment, knowledge which could protect your fellow surveyors from a preventable and avoidable injury. The Safety Committee meets the third Tuesday evening of every month for one-hour, using Google Meet, and our members have presented at the International Meeting in Montreal and written articles for the SAMS[®] newsletter. If you are interested in joining the Safety Committee, we would welcome your membership and input. Please call or email me with your contact information.

Steve Heinrich, SAMS[®] AMS[®], SAMS[®] Safety Committee Chairman
Phone: 715-255-0515, email: steve@flagshipmarinesurvey.com

Insurer Wins Unanimous Decision in New York Choice of Law Battle

By James E. Mercante

July 11, 2024

In sports, there's nothing like a clean sweep, a shutout, a perfect game or a unanimous decision. Anything close to a unanimous decision in the U.S. Supreme Court these days is rare.

Count a gritty marine insurer as part of the exclusive Supreme Court's 9-0 club; winners by knockout in a hotly contested marine insurance dispute that braved its way from the District of Pennsylvania to the U.S. Court of Appeals for the Third Circuit and ultimately landed in the Supreme Court. And all the fuss was over the insurance contract's selection of New York law to govern future disputes.

The financial stakes were not as high in the case as they were for the overall marine insurance market. Indeed, while the legal expense far exceeded the value of the claim, the tenacity of the marine insurer involved in digging in on a major principal of maritime



James E. Mercante

law and not throwing in the towel, will turn out to be worth every penny for the future of marine insurance.

All the insurance company wanted was a fair fight, like any insurer involved in a disputed insurance coverage litigation. But the insured's retaliation to a declaratory judgment action included extra-contractual counter claims for breach of fiduciary duty, insurance bad faith and breach of Pennsylvania's Unfair Trade Practices Law. Such claims signal

JAMES E. MERCANTE (jmercante@gvlaw.com) is a partner at Gallo Vitucci Klar (in merger with his former firm Rubin, Fiorella, Friedman & Mercante), a retired Navy captain and president of the Board of Commissioners of Pilots of the State of New York.

dangerous waters for an insurance company and often have the effect of trumping a fair assessment and adjudication of the claim itself. Faced with claims that could result in a shifting of attorney's fees, treble damages and more, insurers typically settle rather than risk the pursuit of justice when such pursuit is not solely on the merits of the claim.

That all has changed for marine insurers since the Supreme Court's unanimous decision on Feb. 21, 2024, to overturn the Third Circuit and enforce the insurance contract's New York choice of law clause. *Great Lakes Insurance SE v. Raiders Retreat Realty Company*, 601 U.S. 65 (2024). The effect of enforcing the choice of law clause was to wipe out the state of Pennsylvania's extra-contractual bad faith claims. This permits a resolution on the merits not clouded by the specter of bad faith and attorney's fees.

Hitting Rock Bottom

Raiders Retreat (a Pennsylvania company) owned a yacht insured with Great Lakes Insurance for \$550,000. The yacht ran hard aground in Florida waters, resulting in extensive hull and machinery damage. The United Kingdom-based marine insurer denied the claim citing alleged misrepresentations in statements by the insured prior to binding coverage and breach of express warranties contained within the policy.

The district court enforced the policy's New York choice of law clause thereby sinking the extra-contractual claims sounding in Pennsylvania state law. Despite the insurance contract's clear and unambiguous New York

choice of law clause, the Third Circuit vacated and remanded permitting the district court to consider whether Pennsylvania state law has a 'strong public policy' to protect citizens insured in its state by applying its own state laws. 47 F.4th 225 (3d Cir. 2022).

With full appreciation of the significance of this ruling not only for the *Great Lakes Insurance SE v. Raiders Retreat Realty Company* case, but for the marine insurance market and maritime law as a whole, the insurer and its tenacious maritime coverage counsel, The Goldman Maritime Law Group, took an expensive gamble with a pitch to the Supreme Court. The thrust was to resolve once and for all a split in the Courts of Appeal regarding the enforceability of choice of law provisions in maritime contracts.

The decision authored by Justice Brett Kavanaugh concluded that choice of law provisions in maritime contracts are presumptively enforceable. The ruling is of utmost importance to the pursuit of uniformity in maritime laws throughout the United States as it will 'reduce legal uncertainty' and avoid a patchwork of marine insurance decisions throughout the 50 states. 601 U.S. *72, 77.

Bright Line Rule Adopted

As stated in the conclusion of my Admiralty Law column prior to oral argument, this would be the "*Supreme Court's opportunity to salvage a bright line federal rule permitting parties to a maritime contract to rely upon choice of law clauses that will be enforced by the courts. This is the only way to avoid parties running aground in mostly uncharted waters*

and laws of the 50 states...a federal maritime rule adopted by the Supreme Court will have the desired impact of promoting uniformity of law in this maritime nation". (See, James E. Mercante, "Off to Sea the Wizard: High Court Takes on Marine Insurance Dispute", New York Law Journal, April 19, 2023).

This is precisely what the court's decision has accomplished. Having attended oral argument on behalf of the New York Law Journal, it was quite encouraging to hear nine Justices (none with maritime backgrounds to speak of) questioning and opining on intricate issues of maritime law and marine insurance history dating back six decades to the court's last marine insurance dispute in *Wilburn Boat v. Fireman's Fund Insurance*, 348 U.S. 310 (1955).

Justice Clarence Thomas was highly critical of *Wilburn Boat* in his concurring opinion and seemed eager to have the opportunity to reverse course on a decades old Supreme Court decision. Here, Thomas was adamant that *Wilburn Boat* was wrongly decided and reiterated that 'uniformity' and federal admiralty law requires strict compliance with express

warranties in a marine policy. Similarly, under New York insurance law, a breach of warranty does not require a causal connection between the breach and the loss.

Judging Risk

A New York choice of law clause will be upheld according to the Supreme Court, unless the parties can "furnish no reasonable basis for the chosen jurisdiction." 601 U.S. at *76. The court acknowledged that New York was a reasonable choice because its insurance law is well developed, well known and well regarded.

A choice of law clause enables the parties to a maritime contract to determine in advance (before a conflict arises) what law will govern a dispute, and in the case of a marine insurer, to better assess risk of exposure and the insurance premium to be charged. Thus, the Supreme Court's decision is a giant step toward streamlining maritime contract disputes. It will avoid a tug-of-war over what law to apply when numerous jurisdictions are potentially implicated while providing a fair and unclouded judicial resolution on the merits of marine insurance litigation.

BAD BOAT PICS



If you have any bad boat pics send them into the editor.

John Lowe - captursa@aol.com



IMPORTANT MEMBER INFORMATION



**2024 SAMS[®]
International Meeting & Educational Conference (IMEC)
September 11 - 14
Sheraton Inn, New Orleans**

CE Credits:

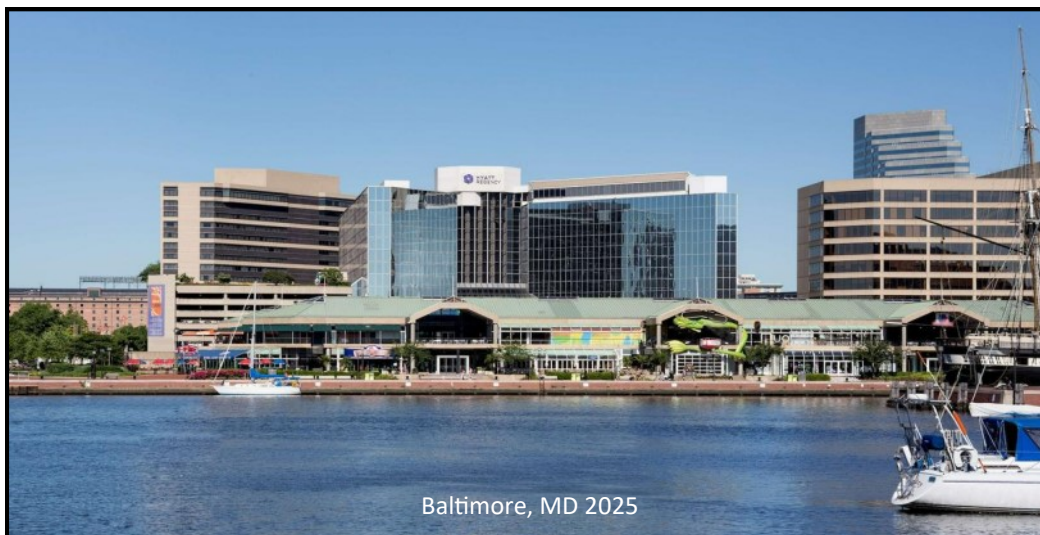
Don't forget to check the website under "Education" for ideas to obtain CE's.

Attention Members

Do you know that we have a Useful Links page on our Website ???



Upcoming IMEC'S



Baltimore, MD 2025



MEMBER'S CORNER

APRIL 2024 -
JULY 2024

The following members are now
Accredited Marine Surveyors with the
earned designator:

“YACHTS & SMALL CRAFT”

Roy G. Cramer, Marco Island, FL

Garrett Joseph Polehonka, Centralia, WA

Jason Ustaszewski, Cape Coral, FL

Eric D. Hibler, Lago Vista, TX

“HULL & MACHINERY”

Rolando E. Santos, Miami, FL

The following people have been
accepted into SAMS® as:

“AFFILIATES”

Konrad Fliszczyk, Oakville, ON, Canada

“SURVEYOR ASSOCIATES”

Samantha Jane Bartlett, Marigot, Saint Martin, France

Patrick L. Bryne, Plantation, FL

Stephen Dinkluge, Brick, NJ

Patrick H. Gordinier, Stevensville, MD

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