

# OIL MAJOR VETTING AND 'APPROVALS'



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Since the *Erika* casualty in 1999, there has been a change in the way the oil majors vet and approve ships which are nominated to lift oil cargoes. However, this change has not necessarily been reflected in the terms of the charterparties negotiated between owners, oil majors and other charterers. The recently reported case of *Transpetrol Maritime Services Limited v SJB (Marine Energy) (the Rowan)*, highlights some of the difficulties owners may face when they warrant that their ship is 'approved' by the oil majors.

## VETTING IN PRACTICE

Each time a ship is nominated to a charterer and considered to lift cargo at a terminal which requires the consent of an oil major, the charterer will refer the nomination to the oil major vetting department.

The oil major will then 'vet' the ship. This may involve the oil major inspecting the ship. If so, the inspector will usually complete a Vessel Inspection Questionnaire which is uploaded into the Ship Inspection Report programme (SIRE) System. If no inspection is required, the oil major may review previous SIRE reports. Owners must also provide and maintain a Vessel Particulars Questionnaire.



The vetting criteria varies amongst the oil majors, but typically, in order to be considered acceptable to an oil major, a ship must satisfy the following criteria:

1. there must be an up-to-date (no more than six months old) SIRE report evidencing minimal defects with the ship and its on-board systems and maintenance;
2. the ship must have a good safety record;
3. the 'crew matrix' and shore-based management systems must be adequate; and
4. any other ships within the same managed fleet should have a good safety record.

The system is largely automated, in much the same way as 'credit scoring', although the actual decision to accept or reject a ship is usually made by an individual. Owners will be aware that oil majors do not automatically give reasons when they reject a ship, and on occasions where two different oil majors vet a ship simultaneously, owners may receive two different decisions.

## THE DIFFERENCE BETWEEN VETTING AND 'APPROVAL'

Before the *Erika* casualty in 1999, oil majors would often state that they had approved a ship for a fixed period. Now, 'approval' is usually only given for a particular voyage. Following a positive vetting, an oil major may simply write to the owner stating that no further information is required and the oil major will not re-inspect the ship for a certain period. However, no blanket approval lasting for a fixed period of time is given.

Confusion often arises, therefore, when ships are marketed as having 'oil major approvals' which are stated to be valid for a certain period. In such cases, owners and brokers are often referring to the period of validity of a SIRE inspection carried out by the oil major in question. In reality, an owner cannot be certain that the ship is acceptable because, as well as looking at the ship itself, an oil major will consider the cargo, and the load and discharge ports on a case by case basis. Each oil major will give different weight to the various criteria. The same ship may even be accepted by one oil major and rejected by another on the basis of the same SIRE report. The problems that can arise for owners, who may have warranted that the ship will be or has certain approvals, are illustrated by the recent decision in the *Rowan*.

## THE CHARTERPARTY TERMS

In 2007, SJB chartered the *Rowan* from owners for a voyage from the Black Sea to the US Gulf. The ship loaded cargo in Odessa and Batumi, and charterers exercised their option to discharge and reload at Antwerp.

The charterparty was evidenced by a recap which read:

- "Vessel Info...TBOOK WOG VSL is approved by: BP/ LITASCO/ STATOIL – EXXON VIA SIRE
- Terms: VITOL VOYAGE CHARTERING TERMS
- CLAUSE 18....TBOOK VSL APPROVED BY: BP/EXXON/ LUKOIL/MOH"

Clause 18 of the VITOL terms reads:

'Owner warrants that the vessel is approved by the following companies and will remain so throughout the duration of this charterparty (owner(s) to advise, including inspection dates and expiry dates).'

The ship was inspected in Antwerp by Shell and the classification society. Various defects were revealed and conditions of class were imposed, although it was agreed by class that the ship could sail to her discharge port. The ship was rejected by Shell.

The charterer claimed that they could have sold the cargo to Shell for \$3.25m, subject to successful vetting, but, as a result of the owner's breach of the charterparty warranty, the charterer actually realised just under \$2m for the cargo.

The issues in dispute were: what was the scope of the owner's obligations; did the owner ever have the necessary oil major 'approval' as warranted by the charterparty; and, if so, was that approval lost following the events at Antwerp?



#### THE OWNER'S WARRANTY

The owner said that the recap replaced the standard Vitol wording so that clause 18 provided solely what was written in the recap itself, and therefore the effect was an indication, without contractual commitment, that the listed approvals were in place at the outset of the charter.

The charterer argued that clause 18 stood but was merely qualified by 'TBOOK' (to best of owners' knowledge) in the recap. The additions were just that and not a replacement for clause 18.

Mr Justice Mackie agreed with the charterer. If clause 18 was meant to be deleted, this should have been made clear. Similarly, if 'WOG' (without guarantee) was to qualify clause 18, this should have been made clear. Therefore, charterer's construction of clause 18 was correct. The owners also argued that it was commercially unworkable to apply the phrase 'TBOOK' to a continuing warranty and therefore the correct construction must be that 'TBOOK' replaced the VITOL wording. The judge did not accept this argument either and remarked "one is also cautious about accepting arguments that a particular argument fails because it is commercially unrealistic. People daily make what are in retrospect bad bargains...".

The effect was that the owner had warranted, to the best of their knowledge and belief, the ship was approved by the oil majors specified, and would remain so throughout the charterparty.

#### MEANING OF 'APPROVAL'

The court then had to decide whether the ship was 'approved' at all, and if that approval was lost during the duration of the charterparty.

The owner relied on letters from the named majors, in terms similar to that provided by Lukoil at the outset of the charterparty:

'We have now received sufficient information ... and will not normally require re-inspecting the vessel for a 12 month period from the date of the inspection.

Please note, however, that this letter does not constitute a blanket approval of the vessel for LUKOIL-LITASCO business or for visits to Lukoil terminals or facilities. The vessel will be screened by us on each occasion it is tended for Lukoil/Litasco business or intends to visit one of our terminals or facilities.'

The charterer said that these letters showed that the owner had obtained no approvals at all. However, the judge accepted the evidence of the owner's expert witness that, in 2007, owners and operators collected such letters to help with marketing their ships and that these letters were usually known as 'approval letters' despite the conditional language in which they were expressed. The judge concluded that, in 2007, 'approved' was used by the market to mean 'acceptable to' the oil majors who might or might not then decide to accept the ship for use for particular business.

Therefore, the word 'approved' refers to such letters, notwithstanding the potential risk for confusion. Indeed, it would have been impossible for the owner to obtain anything stronger from the oil majors, as blanket or period approvals were no longer given. The ship therefore was approved at the outset of the charterparty.

However, the judge preferred the evidence of the charterer's expert as to when oil major approval could be lost. The owner's and charterer's experts agreed that approval could be lost when an oil major rejected a ship, but the charterer's expert said that approval could also be lost automatically as and when a ship fell into a condition that would lead to a fresh application for approval to fail. The judge found that the approval letters must be in place throughout the charter and, at any time when cargo is offered, the ship must not be in a state which to the knowledge of the owner, would remove the comfort of the warranted words to the potential purchaser of the cargo. It would be a breach of owner's warranty if an event occurred which, to the knowledge of owner, would cause the issuer of the letter to withdraw it if the event was known to the issuer. It was evident from the SIRE inspections in Antwerp that no oil major would have issued a letter in terms recognisable as an approval letter once the outcome of the SIRE inspections was known, and therefore the assurance provided by the approval letters was of no further value.

Therefore, even though Shell was not one of the oil majors named in the charterparty, the judge found that the rejection by Shell meant that approval was lost in Antwerp. Thus owners were in breach of their warranty that, to the best of their knowledge and belief, the ship would remain approved throughout the duration of the charterparty.

## LESSONS FOR OWNERS

The decision in the *Rowan* has raised concern amongst owners, not least because owners would not necessarily know whether a particular deficiency would result in lost approval until an inspection of the ship took place. Owners cannot always gauge how important to an oil major any particular deficiency is.

Problems for owners are particularly acute when they have given an onerous warranty, such as that contained in clause 18 of the VITOL terms. Owners may run into problems when they rely on previously negotiated charterparty clauses which may not reflect the current practice of the oil majors. For example, problems may arise when 'oil major approval' is required without taking into account that period approval is now not generally given; the clause may not take into account that inspection by an oil major depends on the willingness of the oil major, the schedule of the ship and the location and availability of inspectors; or the clause may be unclear as to whether the charterer is entitled to terminate if the ship is rejected by an oil major and/or how that right is to be exercised. These clauses will be strictly construed by the English courts and judges are unlikely to find that a warranty was not given by owners because in retrospect it turned out to be a bad bargain.

In conclusion, it is extremely difficult for owners to say that a ship is or will be approved or acceptable to the oil majors, and recent case law indicates that such approval may be lost more easily that owners realise.

## EVENTS

### MEMBER TRAINING WEEK

**7 to 9 June 2011, London**

The club's fifth member training week was held in London in June 2011. The mix between presentations and workshops allowed participants to share their individual experiences and learn from others in the industry. The speakers were drawn from the club managers, together with shipping industry experts and lawyers based in the UK. Topics covered included the shipping market, sanctions, wreck removal, cargo claims, piracy, pollution claims, personal injury claims, collision claims and managing a major casualty.

### STANDARD OFFSHORE FORUM

**20 October 2011, London**

The club's annual Offshore Forum offered a unique opportunity for shipowners involved in the offshore oil and gas industry to meet and discuss current industry issues with oil companies and contractors in an informal environment. This was the club's 11th offshore forum. Expert speakers held a review of the offshore market and the offshore insurance market and also looked at the implications of consequential loss.

### STANDARD CLUB HUMAN ELEMENT SEMINARS

**Hamburg 5 July 2011,**

**Athens 22 September 2011,**

**Singapore 3 November 2011 and**

**Seoul 8 November 2011**

The aim of the Human Element Seminars was to act as a 'catalyst of awareness' for senior managers to identify and manage the serious risks inherent in the human element in their organisations. The seminars offered an insight into how to reduce attritional incidents and claims that can mount up in the course of running a complex business, and equally offer an approach to reducing the risk of the 'big one' – the kind of catastrophe that has far-reaching implications.

By attending the seminars, participants became aware of how their organisation could:

- produce a 'just culture'
- enhance training programmes
- reduce the number of attritional incidents, which erode efficiency and reputation
- prevent the disaster that could become the 'big one'
- improve the bottom line.

Four seminars were held during 2011. Approximately 40 to 50 ship owner members attended each event. Although the seminars were held in different geographical locations, many members found they were facing the same issues whilst running their organisations, such as the threat of piracy, and recruiting and retaining qualified crew.

