Vetting

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Major's approval - is a matter of status rather than condition

First time the effect of the owners' failure to obtain in due time an oil major approval came in sight in *The Seaflower* case[1]. Although the main difficulty met in this case was the clause drafted with insufficient consideration given to the precise meaning and effect of the terms[2], this decision attracted general attention to the importance of oil majors' approval rather than to the importance of careful drafting.

First of all, majors' approvals or rather their absence negatively affect tradability of the vessel, i.e. vessels which do not have an approval simply cannot carry products of that oil major[3].

Secondly, an approval is a matter of status, as Rix LJ stated at para 64: 'An oil company's approval may reflect the vessel's condition, but it is a matter of status rather than condition. Similarly, a vessel's class is a matter of status - although that status may be affected in many different ways: at one extreme a vessel may be completely out of class, which is a most serious matter, because such a vessel cannot trade, but at another extreme there may be only a recommendation or even a mere notation of class that something relatively minor be attended to within a certain date. In the case of an oil majors' approval, however, the vessel either has it or it does not. In that respect it is like a term as to the vessel's class at the time of contract: if the vessel is out of class, the condition as to her class is broken.'

The Seaflower decision is, however, of limited application nowadays, since in the aftermath of *The Erika* incident all oil majors has changed its the vetting practice and clauses similar to one examined in *The Seaflower* case are no longer in use. As some industry experts feared *The Erika* judgment brought an ambivalent result. Although it led oil companies to strengthen safety standards of sea transportation of crude oil and petroleum products in order to improve the prevention of maritime accidents, but it also prompted oil majors to review their monitoring systems to remove from it any basis for liability under existing legislation.

No oil majors are using nowadays the term 'acceptable' or 'approved', as a vessel is always screened prior to use, instead, at the end of screening process, major may only respond that 'no further information required at this time', which usually can be considered as the completion of a vetting procedure. Dilution of liability, which might arise as a result of

[1] [2001] 1 Lloyd's Rep 341
[2] As per Parker LJ
[3] Per Mr Justice Aikens

major's vetting, led to situation when no reasons commonly given by a major neither in case when vessel has finally been employed nor when she was rejected.

In a recent case of *Dolphin Tanker Srl v Westport Petroleum Inc (The Savina Caylyn)* [2010] EWHC 2617 (Comm) the High Court considered the owners' appeal in respect of questions of law concerned to proper construction of cl.50 of amended Shelltime4 form, which arose out of an arbitration award made by a sole arbitrator.

Meaning of an 'Oil major' and recognised oil majors'

The Vessel was delivered into service in June 2008 and traded without any vetting problems until beginning of December 2009. The first Qualifying Rejection found by the Arbitrator was by ChevTex on 1 December 2009. On 9 December 2009, the Vessel undertook a SIRE inspection carried out by BP. The inspection did not follow a nomination to BP by the Charterers; it was carried out at the Owners' request. The result of that inspection was a pass, as communicated to Owners on 12 January 2010. Next three Qualifying Rejections were suffered by the owners on 12 February 2010 – two by Total and ConocoPhillips, and one on 24 February 2010 by ChevTex. On 26 February the Charterers gave to the Owners notice of cancellation under Clause 50.

50. VESSEL'S APPROVAL CLAUSE. (AMENDED)

1.1 UPON DELVERY FROM SHIPYARD: OWNERS SHALL USE BEST ENDEAVORS TO OBTAIN PRE-APPROVALS, WHICH SHALL INCLUDE, BUT NOT LIMITED TO, INSPECTION OF THE VESSEL IN THE SHIPYARD OR AT FIRST BUNKERING OPERATION IF/WHEN POSSIBLE. IF PRE-APPROVALS ARE NOT OBTAINED WHEN THE VESSEL IS IN THE BUILDING YARD OR AT THE FIRST BUNKERING, OWNERS WILL USE BEST ENDEAVORS TO OBTAIN THE MINIMUM 3 (THREE) MAJOR OIL COMPANY APPROVALS AS SOON AS POSSIBLE, HOWEVER, SAID APPROVALS MUST BE IN PLACE NOT LATER THAN 60 (SIXTY) DAYS FROM DATE OF DELIVERY (SUBJECT TO VESSEL'S TRADING AREAS AND AVAILABILITY OF INSPECTORS).

1.2 (1) IF OWNERS FAILS TO SECURE THE 3 (THREE) MINIMUM APPROVALS AFTER 60 (SIXTY) DAYS OF DELIVERY FROM THE SHIPYARD, CHARTERER'S HAVE THE OPTION, TO EXTEND THE 60 (SIXTY) DAY PERIOD OR TO PLACE THE VESSEL OFF-HIRE FROM THE DATE AND TIME THAT SHE FAILS TO HOLD THE MINIMUM 3 (THREE) APPROVALS.

1.3 IF OWNERS SUBSEQUENTLY FAIL TO SECURE THE 3 (THREE) MINIMUM APPROVALS AFTER AN ADDITIONAL PERIOD OF 60 DAYS, CHARTERER'S MAY, WITHOUT PREJUDICE TO ANY OTHER TERMS OF THIS CHARTER, TERMINATE THE CHARTER PARTY BY SERVING NOTICE OF EARLY REDELIVERY TO OWNERS.

2.1 DURING THE CURRENCY OF THIS CHARTER PARTY: OWNERS WILL (IF SO REQUESTED BY THE CHARTERER'S) CO-OPERATE IN HAVING THE VESSEL INSPECTED BY OIL COMPANIES IF ANY CURRENT SIRE REPORT HAS TO BE RENEWED.

2.2 OWNERS WILL USE BEST ENDEAVORS TO HAVE THE VESSEL INSPECTED AND APPROVED BY A MINIMUM OF 3 OF BP, SHELL,

EXXONMOBIL, CHEVTEX AND TOTAL FINAL ELF WITHIN 60 DAYS OF THE DELIVERY OF THE VESSEL INTO THIS CHARTER.

2.3 (i) IF THE VESSEL IS REJECTED OR REFUSED PERMISSION TO CARRY OUT CARGO OPERATIONS BY ANY SUB-CHARTERER OR TERMINAL OPERATOR CONSEQUENT UPON ANY VETTING INSPECTION CARRIED OUT UNDER THE SIRE SYSTEM, OWNERS WILL RECTIFY THE FAULTS IDENTIFIED IN THE VETTING INSPECTION AND HAVE THE VESSEL INSPECTED AGAIN AS SOON AS IS REASONABLY PRACTICABLE.

2.4 (ii) SHOULD THE CHARTERER'S OTHERWISE REQUIRE VETTING INSPECTIONS OF THE VESSEL AND IF THESE INSPECTIONS ARE CARRIED OUT DURING THE CURRENCY OF THIS CHARTER, THEN ANY LOSS OF TIME, DEVIATION COSTS AND INSPECTION FEES IN CONNECTION WITH THE INSPECTION SHALL BE FOR THE CHARTERER'S' ACCOUNT.

3.1 A FAILED VETTING INSPECTION UNDER THE SIRE SYSTEM BY THE CHARTERER'S OR ANY OTHER COMPANY SHALL NOT OF ITSELF CONSTITUTE A REASON FOR THE CHARTERER'S TO PUT THE VESSEL OFF·HIRE OR ENABLE THE CHARTERER'S TO ASSERT A CLAIM UNDER THIS CHARTER.

3.2 HOWEVER, SHOULD BE VESSEL BE FAILED ON THREE (3) CONSECUTIVE OIL MAJOR VETTING REVIEWS/INSPECTIONS DUE TO OWNERS'/VESSEL'S REASON, THE CHARTERER'S SHALL HAVE THE OPTION TO PUT THE VESSEL IMMEDIATELY OFF-HIRE UNTIL THE VESSEL NEXT PASSES A VETTING INSPECTION, SUCH FAILURE SHALL AMOUNT TO A BREACH OF THIS CHARTER AND CHARTERER'S SHALL HAVE THE OPTION TO CANCEL THECHARTER WITHOUT RECOURSE TO EITHER PARTY, GIVING 30 DAYS NOTICE OF SUCH CANCELLATION.

3.3 A VETTING REVIEW / INSPECTION IS DEFINED AS A NOMINATION BY THE CHARTERER'S TO AN OIL MAJOR AND THE OIL MAJOR REVIEWING THE VESSEL BY EITHER A PHYSICAL INSPECTION OR LATEST SIRE INSPECTION REPORT. A FAILURE WOULD CONSIST OF THE OIL MAJOR REJECTING THE VESSEL DURING THIS PROCESS.

4. THE VESSEL'S VPQ WILL BE MAINTAINED FULLY UP TO DATE BY OWNERS WHENEVER NECESSARY DURING THE CHARTER.

First of all, the owners contended that on true construction of cl.50, an 'oil major' in the relevant part of clause 50 meant one of the five major oil companies named in an earlier part of clause 50, namely: BP, Shell, ExxonMobil, Chevtex and Total Fina Elf. The Charterers argued that it meant one of the six established oil majors as generally understood: ConocoPhillips, in addition to the five major oil companies identified in the earlier part of clause 50. The significance of this finding is that one of the rejections identified by the Arbitrator, and found by him to be a Qualifying Rejection, was by ConocoPhillips. The Arbitrator and the High Court accepted the Charterers' submissions on this point….