Dispute on Oil Major Approval Clause

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In the tanker market the large oil companies, the so called oil majors such as Shell, ExxonMobil, BP and Chevron, only consider chartering tankers which meet their minimum safety standards. They inspect the vessels by using a Standardized Inspection Report, called SIRE report. This completed SIRE report is then evaluated to see whether a particular vessel meets their requirements. If so, an approval will be granted.

Before the pollution incidents of the vessels ERICA and PRESTIGE in 2002, the majority of oil majors were willing to issue "approval" letters to the vessels which passed the SIRE inspections. As such it was not uncommon to see the following clause incorporated in charterparties as the standard Oil Major Approvals Clauses.

> *"Owner warrants that the Vessel is approved by the following companies and will remain so throughout the duration of this charterparty."*
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> *"Owners will exercise their best endeavors so that the Vessel shall maintain acceptable to oil companies."*

However, the situation began to change in 2002 after the occurrence of the above mentioned oil pollution incidents. The oil majors hesitated to issue "approval" letters as they believed that their image had been damaged by these pollution incidents involving pre-approved tankers. Instead they now issue "approval" letters in more guarded terms, often stating that blanket approval has not been granted and should not be assumed. Some examples are quoted below.

> *"We have now received sufficient information with regard to this vessel and will not normally require re-inspecting the vessel for a 12 month period from the date of 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 (sic) for Lukoil/Litasco business or intendeds to visit one of our terminals or facilities."*
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> *"Please be advised that once your comments have been uploaded to please consider the inspection process complete from our side. We do not have any further follow up needed. We review vessels acceptability on a case by case basis at time of nomination through our Commercial Department. This completion of the SIRE inspection process is not to be misinterpreted as a Chevron pre-approval of the vessel for future business."*

In the past few years, numerous disputes arose as a result of this change in that some charterers tried to deduct charter hire because these charterers believed absence of oil major blanket approvals constituted a breach of the Oil Major Approval Clause. The earliest case was *B.S.& N.Ltd v Micado Shipping Ltd*. A clear direction was not given until the recent Court of Appeals case *Transpetrol Maritime Services Limited v SJB*. In the first trial the court said *"Although it seems that some in the market prefer not to use the expression 'approval letter' there is no doubt that the word 'approved' in the clause is referring to such letters. "Approved" is an ordinary English word and the owner therefore warrants that the vessel*

has indeed been approved and will continue in such status throughout the charterparty…Not withstanding the potential risk for confusion particularly amongst outsiders the letters in this case would all be taken to constitute approval letters." This view was upheld by the Court of Appeals.

Now, more and more charterers have started to change the wording in their charterparties from "approval" to "no rejection" to avoid unnecessary disputes. For instance, some charterers now write *"There must not be in place any rejection of the Vessel from the following oil majors."* This would certainly be a way to resolve the continuous disputes on the issue of oil major approvals.

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