RIGA GRADUATE SCHOOL OF LAW

The Oil Major Approval of Tanker Vessels and its' Effects on Charter-Parties in Relation to Claims Against Ship-Owners

BACHELOR THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) ……

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List of Abbrevations

BP	British Petroleum
CLC	1969 Convention on Civil Liability for Oil Pollution Damage Collisions at Sea
COLREGs	Convention on the International Regulations for Preventing
DOC	Document of Compliance
EU	The European Union
IMO	International Maritime Organization
INTERTANKO	International Association of Independent Tanker Owners
MARPOL	International Convention for the Prevention of Pollution from Ships
OCIMF	Oil Companies International Maritime Forum
OILPOL	1954 International Convention for the Prevention of Pollution of the Sea by Oil
SIRE	Ship Inspection Report Programe
SOLAS	The International Convention for the Safety of Life at Sea
STCW	1972 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
UNCLOS	The United Nations Convention on the Law of the Sea
VIQ	Vessel Inspection Questionnaire
VLCC	Very Large Crude Carrier

Abstract

The Oil Major approval of tanker vessels is a highly complex legal issue, which entails various legal uncertainties within the process, both for the shipowners and charterers. The legal relationship between the shipowner and charterer is regulated by a charter-party, which will determine the legal implications of the approval subject to an Oil Major or Vetting clause that the parties have incorporated in the charter-party. Author aims to provide guidance for the shipping industry with regard to the complex and uncertain issues entailed in the approval processes. Further, to clarify the legal relationships and consequences arising out of charter-parties, with regard to such Oil Major clauses, and to ascertain how the international communities' measures towards environmental pollution have significantly changed the practice of Oil Major approvals. The author begins the work with clarifying the term 'Oil Major' itself, subject to English Admiralty Court judgments, which is an essential part of the analysis and provides a practical insight into the consequences of dispute resolution. These analyses further provide practical advice that would be useful for both shipowners and charterers alike, where, the author has provided clarification to the various complexities involved in the Oil Major approval or so called vetting process. Furthermore, the author provides industry based recommendations towards the application and drafting of such Oil Major clauses. These analyses will serve as a guide for both shipowners and charterers that seek to draft the most suitable Oil Major or so called vetting clause for their charter-parties or similar contractual relations. The analyses have further provided a guiding light in the vast and complex planes of the process of Oil Major approval, and the various legal implications entailed in the procedure.

Introduction

The Oil Major approval of tanker vessels is an essential part of the daily commercial transactions that are conducted by oil tankers across the globe. Without the Oil Major approval, it is highly difficult for the vessels to profitably trade oil, and in cases the approval is lost, it may cause issues of liability from the ship-owners part, towards the charterers subject to charter-party. Furthermore, the loss of an oil major approval, may amount to detrimental reduction of the oil's

price, in the selling port, therefore, causing damages. The Oil Majors and other lesser oil companies have established a unified system that allows them to regulate the quality of the vessels and oil that is being traded in the international markets, in order to ensure uniform standards and quality among all merchants. The Thesis aims to analyze the approval of tanker vessels by the Oil Majors, and the related process and formalities, according to the available case law. Further, to establish what are the ship-owner's liabilities towards charterers in cases the oil major approval is denied, or lost in the middle of the voyage. The author proposes three research questions as the aim of this research: 'what is the process of tanker vessel approval by the oil majors, and what are the legal effects on the shipowner' further, 'what is the legal relationship between the charterers, Oil Majors and shipowners.' Finally, 'how has the international communities' regulations towards marine environmental preservation influenced the policies of the Oil Majors.' The research has utilized a variety of sources, primarily focusing on case analysis from the English Admiralty Courts, as England is usually the chosen forum for maritime disputes, further proceeding with arbitral tribunal judgments, as the parties often decide to proceed with arbitration when resolving their disputes. Furthermore, relevant charter-parties and various industry recommendations as well as academic writings are analyzed in order to establish solid support for the analysis. Nevertheless, relevant conventions and mechanisms with regard to oil pollution are mentioned to illustrate the international communities' actions on a global scale to battle oil pollution. It is essential to note that, the topic is highly practical in its' nature, therefore, case law, charter-parties and industry professional standards are used as the main sources.

The first part is aimed at establishing which oil companies are to be considered as Oil Majors, subject to relevant Admiralty Court and arbitral tribunal judgments, further, to ascertain their influence and effects on international shipping. The second part will address the humanities' response to various oil pollution accidents, which have directly affected the enactment of various legal mechanisms to combat oil pollution, and have further affected the policies of Oil Majors themselves. The part will further provide slight historical developments of Oil Majors, and how their policies towards the vessel approval have significantly changed, due to global accidents and political reasons. The following part will focus on the actual practice of the Oil Major approval, involving all the necessary elements and procedures within the approval process. It will further analyze the legal relationship between the Oil Majors and Ship-owners, as well as, the legal

consequences of the approval. Finally, the thesis will conclude with a chapter devoted to charter-parties. Where the two most common and relevant types of charter-parties with regard to Oil Major approval will be analyzed, in order to establish the commercial practice within this sphere. Furthermore, the legal relationships between the Oil Majors, Ship-Owners and Charterers will be ascertained, taking into account the legal consequences and implications subject to the charter-party if the Oil Major approval has been lost.

The doctrinal methodology has been chosen for this particular work, as it will be necessary to analyze the existing case law concerning the Oil Majors, in order to determine the practice and legal effects entailed in this process. The doctrinal methodology will be used specifically for the first, third and fourth part. Additionally, interdisciplinary methodology will be used for the second part in order to ascertain the political and economic impact of the Oil Majors and the vetting procedures, and its effects on the international shipping.

1. The Oil Majors

1.1. The Oil Majors as Defined by Case law

The 'Oil Majors' is a generally common term used to describe the six largest oil companies in the world that are dominating the oil market. Their policies and actions influence many different industries, especially the shipping industry, due to the fact that oil flow across the globe is mostly ensured through the oil tanker trade. This part will address the issue of actual defining of the Oil Majors subject to case law, in order to determine which companies legally are considered as being the Oil Majors subject to previous court judgments. Furthermore, the Oil Major importance on the shipping industry will be ascertained in order to determine their influence on different operational, political and economic aspects of the trade. Essentially, the established role played of the Oil Majors will assist the author in further chapters when determine the legal relationships and consequences resulting out of the Oil Major approvals with regard to charterparties.

In *The Rowan*[1] case the English High Court of Justice (Commercial Division), mentioned different Oil Majors namely; Exxon Mobil, Statoil, Lukoil, BP, and even a Greek Oil Major

[1] Transpetrol Maritime Services Ltd v SJB (Marine Energy) BV (The Rowan) [2012] EWCA Civ 198. Available on: Westlaw UK Database.

Motor Oil Hellas, which the court stated to be "less of a 'major' than others."[2] All these afore mentioned oil companies had conducted the vetting inspections within the SIRE system. In the *Falcon Carrier Shipping*[3] Shell, Conoco Phillips, and Chevron were considered to be part of the term 'Oil Majors' subject to 1984 Shelltime 4 Charter-party, which included a clause "The vessel shall hold at least 3 (three) out of the following: Conoco / Chevron / Exxonmobil / BP Amoco / Shell / Statoil."[4] What is vital in this context, is the establishment of what really determines which oil companies will be considered as the Oil Majors, there are two possibilities. Within the Charterparties there can be an incorporated 'Oil Major' Clause subject to the parties' discretion, which will determine the ship-owners obligation towards which Oil Majors the approval must be acquired, however, the Clause could not always be sufficient in determining the actual status of an Oil Major, as relevant case law has proven.

In the *Dolphin Tankers v Westport Petroleum*[5] the Charter-party included an Oil Major Clause which included 5 Oil Majors, namely; BP, Shell, Exxon, Chevron and Total, this clause excluded the 6th Oil Major ConocoPhilips. The Charter-party further contained a clause with an option to cancel the Charter if in consecutive reviews three Oil Majors would have rejected the vessel. The rejection was received by three Oil Majors where one of them was ConocoPhilips, the Oil Major which was excluded in the Clause contained in the Charter-party, therefore, Charterers canceled the Charter-party. The Ship-owners had argued that ConocoPhilips was not part of the Oil Major Clause that was incorporated in the Charter-party, therefore, the Charterer's cancelation was unlawful. Finally, the English High Court concluded, that the Charterer's had rightfully canceled the Charter-party subject to the Clause, and that the initial arbitral tribunal had rightfully found that in the world there are six Oil Majors. Further, the English High Court affirmed, that it was right from the arbitrator's perspective, to step outside the Charter-party when determining this issue:

> "There were six recognised oil majors. The ordinary and natural meaning of the unqualified words "oil major" included all six major oil companies. That meaning was supported by the reference in the definition of "vetting review" to nomination by the charterer to "an" oil major. There had been

[2] Ibid para 11.
[3] Society of Maritime Arbitrators, Inc. In The Matter Of The Arbitration Between Falcon Carrier Shipping, Ltd., As Owner Of The M/V Falcon Carrier, Claimant ST Shipping And Transport, PTE. LTD., Time Charterer, And Glencore, LTD., AS Guarantor, Respondents, Under A Time Charter Party, Date, 2013 WL 5409218. Available on: Westlaw International Database.
[4] Ibid
[5] Dolphin tankers v Westport Petrol [2010] EWHC 2617 (Comm). Available on: Westlaw UK Database.

> no intention to confine the natural meaning of that expression. The arbitrator had correctly found that it would make no commercial sense for the vessel's approval to be limited to a sub-set of oil majors and that the vessel's tradability could be assessed by any of them (see paras 36-38 of judgment)".[6]

The case has illustrated that, the Oil Major Clause in charter-party may not always fully determine the status of Oil Majors, if it will not contain the list of the six main recognized Oil Major companies, namely; Shell, Total, Exxon, BP, Chevron, and ConocoPhilips.[7] The courts have recognized, that for commercial purposes, the Oil Major Clause in charter-party may not exclude any of the 'Group of Six' Oil Majors. The importance in this, is the way how the Oil Major clauses are constructed in the charter-parties and the legal effects to that, however, this will be left to discuss in the final part with regard to charter-parties.[8] What is essential to note in this regard, is that the Oil Major clauses in charter-parties will not have a full legal effect towards the liabilities and they will not protect the shipowner in case they are excluding any of the six Oil Majors. In actual oil trade, there may be cases when the charterer would seek to receive an approval from an Oil Major that is outside the scope of the Oil Major Clause, therefore the shipowner would not be protected from liability in such cases, even if the Oil Major has not been mentioned in the charter-parties' Clause. If shipowners seek to avoid such cases, the Clause must be construed very carefully, the best solution would be not to name the clause as an 'Oil Major Clause' but rather as 'Vetting Clause' and possibly excluding the term 'Oil Major' at all, as it would imply positive approval from all six Majors.[9] However, it is possible that the list may contain additional to the Six Oil Majors, namely, 'less of a majors' as it was in *the Rowan* case, where the Greek company Motor Oil Hellas had been included in the list.[10] This illustrates the highly complex legal implications placed on the shipowners by the Oil Major Clauses.

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[6] Ibid page 2
[7] Society of Maritime Arbitrators, Inc. In The Matter Of The Arbitration Between Falcon Carrier Shipping, Ltd., As Owner Of The M/V Falcon Carrier, Claimant ST Shipping And Transport, PTE. LTD., Time Charterer, And Glencore, LTD., AS Guarantor, Respondents, Under A Time Charter Party, Date, 2013 WL 5409218. Available on: Westlaw International Database.
[8] See supra note 84 onwards
[9] See supra note 6
[10] Transpetrol Maritime Services Ltd v SJB (Marine Energy) BV (The Rowan) [2012] EWCA Civ 198. Available on: Westlaw UK Database.

2. The International Communities' Measures Towards the Environmental Preservation of the World's Oceans and The Effects on the Oil Majors and their Policies

The political rationale behind the Oil Major approval has been shaped by numerous maritime casualties, that resulted in devastating damage to the world's oceans and natural environment. Tanker vessel accidents will often result in tremendous ocean pollution, where large amounts of crude oil or chemicals are being unleashed in waters, being lethal to oceanic wildlife and its inhabitants. This Part will analyze the international communities' measures towards combating oil pollution, and whether the Oil Majors are contributing to the international cause by their 'vetting' or 'approval' policies. The part will have particular reference to various oil pollution conventions and regional organizations that have enacted legislation and are combating the effects of oil pollution, furthermore, the work of the International Maritime Organization (IMO) will be acknowledged to establish their practice on this cause. Essentially, all this part will evolve and will be built in the context of the Oil Majors and how their policies have been influenced by the international community's measures towards prevention of oil pollution.

2.1. The OCIMF

The Oil Company International Marine Forum (OCIMF) was formed in April 1970 as a response to public's growing concern about marine pollution, particularly by oil after the *Torrey Canyon* accident.[11] Following the accident a variety of Oil Pollution initiatives were emerging nationally, regionally and internationally, through the OCIMF the oil industry was able to play a greater coordinating role in response of these initiatives. The OCIMF was able to provide its professional expertise through cooperation with governments and intergovernmental bodies.[12] Essentially, OCIMF was granted a consultative status at International Maritime Organization (IMO) in 1971 and it still continues to present oil industries views at IMO meetings. The work of OCIMF covers tankers, barges, offshore support vessels and also terminals, which are all essential in order to ensure the functioning of oil industry. Notably, the OCIMF now is comprised of 112 oil companies worldwide, all six Oil Majors are part of the OCIMF, furthermore, the world's largest

[11] 'Introduction,' *OCIMF,* available on: *https*://www.ocimf.org/organisation/introduction/. Accessed on March 10th, 2018.
[12] Ibid

government owned oil companies are part of the Organization; such as the Abu Dhabi National Oil Company, Saudi Arabian Oil Company and others.[13]

The OCIMF today is widely recognized as the voice for safety of oil shipping industry, by providing its expertise on the safe and environmentally safe transport and handling of hydrocarbons. The OCIMF has further been a highly active member at IMO, whereas, they have contributed to a wide variety of regulations that have been enacted, with the aim to improve the safety of tankers and to ensure the protection of environment.[14] OCIMF sends a representative to every IMO meeting that is concerned with safety and environmental protection in relation to tanker operations. The relationship with IMO is kept strong, whereas, in 2016 the IMO Secretary General Kitack Lim had visited OCIMF's Maritime Safety and Marine Environment divisions.[15] The OCIMF provides reference to IMO's meetings[16] that have been concerned with the maritime environmental preservation. The OCIMF has further contributed to discussions with regard to tanker safety and the draft EU Directive on Environmental Liability, as well as significantly contributed to IMO's and EU's discussion on phasing out of single-hull tankers in the past years.[17]

2.2. SIRE

The Ship Inspection Report Programme (SIRE) is a system used as a tanker risk assessment tool in order to evaluate charterers, ship operators, terminal operators and government bodies that are concerned with ship safety.[18] The programme was launched in 1993 and since then has become the industry standard tool used by the Oil Majors and other oil companies when determining the most suitable vessel to be used in their oil trade transactions.

The SIRE system is a large database comprised of tanker vessels nominated by ship-owners. The inspections are carried out by the SIRE inspectors, which will inspect the vessel and fill in the

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[13] 'Members', *OCIMF,* available on: https://www.ocimf.org/organisation/members/. Accessed on March 10th, 2018
[14] 'Annual Report 2017', *OCIMF,* available on: https://www.ocimf.org/media/61327/annual-report-2017.pdf. Published in 2017. page 7 Accessed on: March 10th, 2018.
[15] Ibid, page 32
[16] 'IMO', *OCIMF,* available on: https://www.ocimf.org/imo,-iopc-funds-eu/imo.aspx. Accessed on March 15th, 2018.
[17] 'Annual Report 2017', *OCIMF,* available on: https://www.ocimf.org/media/61327/annual-report-2017.pdf. Published in 2017. page 7
[18] 'Ship Inspections Report Programme (SIRE)', *OCIMF,* available on: https://www.ocimf.org/sire/. Accessed on March 15th, 2018.

Vessel Inspection Questionnaire (VIQ), and then submit it to the uniform SIRE system.[19] The questionnaire contains overall twelve chapters of information to ascertain the vessel's seaworthiness and security requirements, the chapters are; 'General Information, Certification and Documents, Crew Management, Navigation, Safety Management, Pollution Prevention, Structural Condition, Cargo and Ballast Systems, Mooring, Communication, Engine and Steering Compartments, General Appearance and Condition.'[20] Each one of these questionnaire parts are comprised of legislation requirements derived out of international conventions, and other relevant standard regulations as enacted by IMO. The VIQ refers particularly[21] to; The International Convention for the Safety of Life at Sea (SOLAS)[22], the International Convention for the Prevention of Pollution from Ships (MARPOL)[23], Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGs)[24], International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).[25] Such reference to international conventions concerned with environmental safety and pollution prevention, affirms the author's assumption, that the SIRE system has been enacted as an another tool to ensure that the vessels have complied with the international safety standards, subject to the conventions. Furthermore, as the SIRE system has been designed by the OCIMF, it clearly demonstrates that the Oil Majors and other oil companies part of the OCIMF, are concerned with environmental preservation and they seek to ensure that every single commercial tanker vessel abides the international standards. The oil companies are achieving this by refusing to buy oil from any vessel that has not been approved under the SIRE system, neither allowing such vessels to enter their terminals for any cargo operations. In other words, a vessel that would fail the VIQ, would not be able to sell oil to the OCIMF members, until the positive 'approval' would have been

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[19] 'Sire Factsheet', *OCIMF,* available on: https://www.ocimf.org/media/60083/2015-SIRE-factsheet-final-on-web.pdf. Accessed on March 15th, 2018.

[20] 'Vessel Inspection Questionnaire (VIQ) 2014', *OCIMF,* available on: https://www.ocimf.org/sire/resources.aspx. Accessed on March 18th, 2018.

[21] Ibid

[22] International Convention for the Safety of Life at Sea (SOLAS), 1974. Available on: http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx. Accessed on: March 18th, 2018.

[23] International Convention for the Prevention of Pollution from Ships (MARPOL). Available on: http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO.../MARPOL.pdf. Accessed on: March 18th, 2018.

[24] Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs). Available on: http://www.jag.navy.mil/distrib/instructions/COLREG-1972.pdf. Accessed on: March 18th, 2018.

[25] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978. Available on: opac.vimaru.edu.vn/edata/EBook/STCW95.pdf. Accessed on: March 18th, 2018.

received. This is a rational decision by the oil companies, as the questionnaire would indicate the security and safety standards on-board the vessel. Whereas, it would place a significant risk on the oil company if they were to allow the vessel to enter their terminals, and to conduct cargo operations.

The SIRE system in the Oil Major context is vital due to the reason that it is the system used by the Oil Majors and other oil companies when they are determining the most suitable vessel for their transactions. The SIRE reports are often being completed by the inspectors on behalf of the Oil Majors, where they physically inspect the vessel and upload the SIRE questionnaire on the system, by further deciding whether to approve or not to approve the vessel. The other scenario is when a physical inspection is not required, then the Oil Major will review previous SIRE reports. The general criteria for a vessel to be acceptable for the Oil Majors it has to contain four criteria, namely; there has to be an up-to-date SIRE report, which evidences minimal or no deficiencies to the vessels, further, the vessel must have a good safety report, the crew matrix and shore-based management systems must be adequate, finally, other ships in the same fleet must have a good safety record.[26] However, this may depend on case-to-case basis, also each Oil Major has a slightly different approach towards the approval procedure.

2.3. International Communities Response To Oil Pollution with Legal Mechanisms

Contemporarily, the international community has been highly concerned with oil pollution accidents and maritime casualties that have resulted in devastating damage to the oceanic life. However, historically it was not the case. The impact of shipping on the marine environment was not recognized as early as in 1954, when government of the United Kingdom called a conference, in order to introduce measures against the deliberate discharge of oil and oily residues into the territorial sea of states.[27] At that period, washing of vessel's tanks and later discharging the mixture of oil and water into the sea was a common shipboard operation.[28] As a response, the international community enacted the 1954 International Convention for the Prevention of

[26] Helen McCormick, 'Oil Major Vetting and 'Approvals' ', *standardclub bulletin,* published in December 2011. Page 1. Accessed on: March 18th, 2018.
[27] Sarah Fiona Gahlen, *Civil Liability For Accidents at Sea,* (Germany: Springer-Verlag 2014) page 8
[28] Ibid

Pollution of the Sea by Oil (OILPOL),[29] which prevented the discharge of oil or other oily mixtures within 50 miles from the mainland, and also established some 'prohibited zones' that were to be particularly protected. Notably, these measures were being enacted at the same period when the First United Nations Conference on the Law of the Sea took place in 1954, which resulted in conclusion of Four Conventions in 1958[30]; Convention on the Territorial Sea and Contiguous Zones[31], the Convention on the High Seas[32], the Convention on Fishing and Conservation of the Living Resources of the High Seas[33], and additionally the Optional Protocol concerning the Compulsory Settlement of Disputes arising out of the Law of the Sea Conventions.[34]

2.3.1. Torrey Canyon

Even though, the OILPOL Convention was ratified by many states across the globe, pollution control was still of a minor concern at that time for the international community and IMO itself. Whereas the world only began to acknowledge the environmental hazards of an increasingly industrialized society.[35] The international communities perception towards the environmental issues drastically changed in 1967, when the *Torrey Canyon* ran aground off Land's End[36] and released 120,000 tons of crude oil in the sea. The accident had raised questions of measures in place at that period to prevent oil pollution from ships and also address the deficiencies in the system to provide compensation following accidents at sea. As a response to the accident, IMO called an Extraordinary session of its Council which drew up an action plan on the technical and

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[29] International Convention for the Prevention of Pollution of the Sea by Oil, 1954, available on: http://www.admiraltylawguide.com/conven/oilpol1954.html. Accessed on: March 18th, 2018.

[30] Donald R Rothwell, Tim Stephens, *The International Law of the Sea,* (The United Kingdom: Hart Publishing, 2nd edition 2016) page 6

[31] Convention on the Territorial Sea and the Contiguous Zone Geneva, 29 April 1958. Available on: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXI-1&chapter=21&clang=_en. Accessed on: March 18th, 2018.

[32] Convention on the High Seas 1958. Available on: https://www.gc.noaa.gov/documents/8_1_1958_high_seas.pdf. Accessed on: March 18th, 2018.

[33] Convention on Fishing and Conservation of the Living Resources of the High Seas 1958.. Available on: https://www.gc.noaa.gov/documents/8_1_1958_fishing.pdf. Accessed on: March 18th, 2018.

[34] Optional Protocol of Signature concerning the Compulsory Settlement of Disputes. Available on: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-5&chapter=21&lang=en

[35] 'Background', *IMO,* available on: http://www.imo.org/en/OurWork/environment/pollutionprevention/oilpollution/pages/background.aspx. Accessed on: March 21st, 2018.

[36] Elizabeth A Kirk, "Science and the International Regulation of Marine Pollution," in Routhwell Oude Elferink and Scott Stephens: *The Oxford Handbook of the Law of the Sea,* (Oxford University Press, 2015) Page 518

legal aspects with regard to Torrey Canyon accident. At that time it was still, however, perceived that even though accidental pollution was highly devastating, still the operational pollution was a bigger threat.[37] The developments of 1969 Convention on Civil Liability for Oil Pollution Damage[38] (CLC), the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution[39] (Intervention Convention), and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage[40] (Fund Convention), were directly influenced by the accident.[41]

Therefore, in 1969 the 1954 OILPOL Convention was amended, with a mechanism developed by the oil industry called 'load on top', which had double the advantage of recovering oil from the water, consequently, reducing pollution. During that period, there was a significant growth in the oil tanker trade and also in the size of the vessels that resulted in the international communities' perception that the 1954 OILPOL Convention with all of its amendments are still inadequate to counter the grave environmental threats that derive from oil trade.[42]An international conference was convened to adopt a new Convention; MARPOL, which would contain provisions from the OILPOL Convention, and provide further provisions to counter the emerging pollution threats. The new convention provided provisions for continues monitoring of oily water discharges, and further provided governments' with the obligation to provide shore based reception and treatment facilities at ports and terminals. MARPOL further provided provisions regarding Special Areas in which more significant discharge standards were applicable, those Special Areas are; Red Sea, Mediterranean Sea, as well as the Baltic Sea.[43] The Convention, however, did not get wide recognition in terms of ratifications at the beginning. The situation changed between 1976 and

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[37] 'Background', *IMO,* available on: http://www.imo.org/en/OurWork/environment/pollutionprevention/oilpollution/pages/background.aspx. Accessed on: March 21st, 2018.

[38] International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969. Available on: http://www.admiraltylawguide.com/conven/civilpol1969.html Accessed on: March 22nd, 2018.

[39] International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969. Available on: https://treaties.un.org/doc/Publication/UNTS/Volume 970/volume-970-I-14049-English.pdf. Accessed on: March 22nd, 2018.

[40] International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND). available on: https://treaties.un.org/doc/Publication/UNTS/Volume 1110/volume-1110-I-17146-English.pdf. Accessed on: March 23rd, 2018.

[41] Elizabeth A Kirk, "Science and the International Regulation of Marine Pollution," in Routhwell Oude Elferink and Scott Stephens: *The Oxford Handbook of the Law of the Sea,* (Oxford University Press, 2015) Page 518

[42] 'Background', *IMO,* available on: http://www.imo.org/en/OurWork/environment/pollutionprevention/oilpollution/pages/background.aspx. Accessed on: March 21st, 2018.

[43] Ibid

1977 when another series of oil pollution accidents took place mainly in or nearby the territories of the United States. The most significant one of them was the *Argo Merchant* accident, which caused great public concern and which led to further developments in the global battle against ocean pollution. The U.S. immediately resorted to international awareness raising, and took the initiative on their hands in order to acquire necessary signatories for MARPOL, and further to enact other stringent pollution prevention mechanisms. The U.S. had called the 1978 Conference on Tanker Safety and Pollution Prevention, where there was an additional Protocol adopted to the MARPOL, furthermore, in order to increase the ratification process, the Conference agreed to excludes parties from Annex II, for a period of up to three years from the date when the Convention enters into force.[44]

2.3.2. Amoco Cadiz

The international community received another blow to their pollution prevention efforts in 1978, when *Amoco Cadiz* grounded near the French coast, resulting in the worst oil spill for France ever. The oil spill was also one of the most significant ones the world had ever experienced, as more than 220,000 tones of crude oil were unleashed in the waters, causing contamination of over 120 beaches in France, further, resulting in millions of ocean species casualties, essentially, some of the species were completely distinct in particular areas.[45] Notably, Amoco operated the vessel, which is Oil Major BP's subsidiary company in the U.S., whereas it carried oil for Oil Major Shell.

2.3.3. Exxon Valdez

In 1989, another oil pollution accident was the driving force to enact further changes in the Annex I of the MARPOL, since the adoption of its protocol in 1978. *Exxon Valdez* was a Very Large Crude Carrier (VLCC) operated by Oil Major Exxon, which ran aground on north-eastern part of Prince William Sound.[46] The accident caused largest crude oil spill in the U.S. waters to date. Importantly, it gained a wide outcry in the public, which demanded an immediate

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[44] Ibid

[45] 'AMOCO CADIZ, France, 1978', *ITOPF,* available on: http://www.itopf.com/in-action/case-studies/case-study/amoco-cadiz-france-1978/. Accessed on: March 21st, 2018.

[46] 'Background', *IMO,* available on: http://www.imo.org/en/OurWork/environment/pollutionprevention/oilpollution/pages/background.aspx. Accessed on: March 21st, 2018.

government's reaction.[47] The key measure of the *Exxon Valdez* accident towards the development of international oil pollution mechanisms, was the proposal to enact compulsory 'double hull' regulation into MARPOL. The amendments entered into force in 1993 and currently, most single hull tankers were banned from trading oil internationally since 2005[48], with some exceptional types of tankers 'category 3' since 2010.[49] The European Union, with this regard had acted unilaterally and banned single hull tankers from its ports since October 21st, 2003[50], which a move widely criticized by IMO, due to its unilateral nature.[51]

2.3.4. Erika and Prestige

The *Erika* and *Prestige* accidents were a turning point in the Oil Major approval policies, where the Oil Majors no longer were willing to issue 'blanket pre-approval' letters in the form in which they previously approved tanker vessels. The perception of the Oil Majors was that their reputation had been damaged by those pollution accidents, in connection with pre-approved tanker vessels. Therefore, the new policy in practice was implemented by issuing approvals in more guarded forms[52], often stating that a blanket approval should not be implied from the approval letter, and that the vessels acceptability will be reviewed on case-to-case basis when accessing the ports or terminals of the particular oil company.[53] The Erika accident further led to various Regulation and Directive enactment in the EU, concerned with marine pollution and safety. The measures within the EU have been classified as Erika I, Erika II and Erika III, so

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[47] John Holusha, 'Exxon's Public-Relations Problem', *nytimes,* available on: https://www.nytimes.com/1989/04/21/business/exxon-s-public-relations-problem.html. Accessed on: March 22nd, 2018.

[48] 'Revised phase-out schedule for single-hull tankers enters into force', *IMO,* available on: http://www.imo.org/blast/mainframe.asp?topic_id=1018&doc_id=4801. Accessed on: March 22nd, 2018.

[49] Ibid

[50] 'Single-hull oil tankers banned from European ports from 21 October 2003', *Europa,* available on: http://europa.eu/rapid/press-release_IP-03-1421_en.htm?locale=en. Published on: October 21st, 2003.

[51] 'IMO Concern At Unilateral EU Action On Single-Hull Tankers', *steamship mutual,* available on: https://www.steamshipmutual.com/publications/Articles/Articles/SingleHull_IMO_1003.asp. Published in October 2003.

[52] Eric Chau, 'Dispute on Oil Major Approval Clause', *seatransport*, available on: http://seatransport.org/seaview_doc101/SV105%201404/1059%20Dispute%20on%20Oil%20Major%20Approval%20Clause.pdf. Accessed on March 26th, 2018. page 1

[53] Please see further note 49 "Most of the Oil Majors currently operate such a system, where they imply that blanket approval should not be perceived."

called 'Erika Law', where on each one of these phases, different legislation was adopted to ensure additional safety compliance within the EU MS ports.[54]

2.3.5. UNCLOS Regime

The United Nations Convention on the Law of the Sea (UNCLOS) is generally considered to be the current framework that creates the regulatory regime with regard to marine pollution. The provisions of Part XII consists of commonly accepted customary international law rules that contain general obligations towards marine pollution across all maritime areas, and from various sources. However, the LOSC does not provide great detail, what it does is rather provides framework for jurisdiction and obligations of flag, coastal and port states.[55]

Overall, the international communities' actions towards environmental causes, particularly, oil pollution, have been directly influenced by significant maritime accidents, that have lead to grave contamination of the world's oceans. The OCIMF which is a organization comprised of the world's largest oil companies and all Oil Majors, has provided significant assistance in terms of expertise towards the environmental preservation mechanism development, both regionally and internationally. The Oil Major policies have also been directly influenced by the maritime casualties, especially *Prestige* and *Erika,* which lead to the policy to no longer issue blanket pre-approvals.

3. The Legal Aspects of Tanker Vessel Approval (Vetting) by the Oil Majors

The tanker vessel approval or so called vetting, is being carried out by the Oil Majors and oil companies in order to determine whether the vessel complies with the quality and security standards subject to the international norms. The approval procedure is carried out by a 'vetting inspection'[56] appointed by the Oil Majors or oil company when they seek to determine whether the vessel is suitable to carry out oil trade on their behalf, or whether, to receive oil from such vessels.[57] The vetting inspections are carried out by all Oil Majors, and it is an essential part of

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[54] Aleka Manadaraka-Sheppard, *Modern Maritime Law,* (Routledge, 2nd edition 2007) pages 997; 1003; 1012.
[55] Elizabeth A Kirk, "Science and the International Regulation of Marine Pollution," in Routhwell Oude Elferink and Scott Stephens: *The Oxford Handbook of the Law of the Sea,* (Oxford University Press, 2015) Page 520
[56] See supra notes 18;19;20
[57] Captain Howard N. Snaith, 'Paris MoU PSC Familiarisation Course (Part 2) April 2011', available on: https://www.intertanko.com/upload/SnaithHaguePart2Vetting.pdf. Accessed on: March 26th, 2018.

the daily tanker commercial transactions. Due to the reason that, firstly, the vetting inspections serve as another tool to ensure that the ship-owners are complying with the compulsory safety requirements that are compulsory under the flag-states and port control authorities, subject to international legal norms and instruments. Further, without an Oil Major approval, the vessel will not be able to successfully carry out oil trade, as the vessel would not be allowed to enter Oil Major terminals for cargo operations, without possessing such approval. This part will focus on the legal effect analysis with regard to Oil Major approval of tanker vessels, and the consequences arising out of that.

To begin with, acquiring the Oil Major approval is a vital part for the ship-owning company in order to enable its vessels to trade oil in the international markets, and to ensure that the vessel could be further chartered. In the case of *Astipalaia v Hanjin Shenzen*[58] the vessel had lost its Oil Major approval due to a collision and had to undertake long repair works. Within the process of re-acquiring the Oil Major approval again, the vessel did not trade oil, but was converted into a 'floating storage tank' until the approval was once again acquired.[59] This demonstrates that, the shipping companies are reluctant to trade oil and conduct voyages, unless they have acquired the Oil Major approval. It is vital in the context that, the Oil Major approval is not 'compulsory' under any international convention or instrument, however, it is more like a common trade practice or custom (it could imply effects of *Lex Mercatoria),* to which the shipowners will abide in order to successfully conduct their transactions and to earn profit. Generally, a trade custom is; "a custom of trade, if alleged by either party, is a matter requiring detailed evidence of custom. It must be reasonable, certain, consistent with the contract, universally acquiesced in, and not contrary to law."[60]

3.1. The Approval Process

Oil majors operate a system of vetting and approvals to ensure that the vessels they use, trade or buy cargos from are of satisfactory quality. The companies' pool their inspection reports made for the purposes of approvals through a database known as SIRE as discussed previously. The pooled reports are visible also for other Oil Majors, and other oil companies, which are members

[58] Owners of the Astipalaia v Owners and/or Demise Charterers of the Hanjin Shenzhen [2014] EWHC 210. Available on: Westlaw UK Database.
[59] Ibid
[60] Society of Maritime Arbitrators, Inc. In The Matter Of The Arbitration Between IINO Kaiun Kaisha Ltd., Time-Chartered Owner Of M/T Stellar Hope Chembulk Trading INC., Charterer Under A Time Charter party Dated September 10, 1993, 1996 WL 34449887. Available on: Westlaw International Database.

of the OCIMF. The vetting inspections cover the same or similar matters for all oil companies, however, there may be additional policies for different Oil Majors. A report is sent to Owners who may respond with comments, in case there are deficiencies that may be disputed. When Owners provide comments these are incorporated in the SIRE report, which is then available for all SIRE members to read. Vetting involves more than simply looking at the SIRE report, but that report is a major factor in any decision that leads to an approval. It became clear from the evidence that the owners and operators of tankers seek and collect written approvals from oil majors and like to have as many as possible, preferably from the top names.[61] The owners will have to acquire the approval from the Six Oil Majors in case they want to make sure that their charter-parties are not compromised, as recent judgments such as the *Dolphin Tankers*[62] has demonstrated. Where the charter-parties may be cancelled due to the reason that an approval is missing from any of the Oil Majors. However, this would depend on case-to-case basis, and the particular trade routes the charterers are undertaking. As the charter-party would be breached only in cases when the approval cannot be received from an Oil Major with which the charterer seeks to trade with. Primarily, the breach of charter will be determined subject to the Oil Major Clause or Vetting clause as incorporated in the charter-party, and will be determined subject to the indicated oil companies as the parties would have agreed between themselves.

The approval process may differ from company to company, however, the current and most contemporary practice is to use the OCIMF SIRE system, which is used as an industry-standard ship inspection tool. The practice of British Petroleum (BP) is to require the SIRE inspectors to report on all vessel or operational deficiencies using the VIQ, and to detail both positive and negative comments on the vessel's operational functioning. Essentially, the vessel that seeks to trade for BP, will have to receive a confirmation from BP V&C Superintendent subject to the SIRE report. Each SIRE report issued by an inspector, is reviewed by a BP Superintendent before it is released to the ship-owner's managers via the SIRE system. The process provides BP with another mechanism to ensure the adherence of safety standards on the vessel. Following a successful review by the Superintendent[63], the Document of Compliance (DOC) holder will be

[61] Transpetrol Maritime Services Ltd v SJB (Marine Energy) BV (The Rowan) [2011] EWHC 3374 (Comm). Available on: Westlaw UK Database. Paragraph 7.
[62] Dolphin tankers v Westport Petrol [2010] EWHC 2617 (Comm). Available on: Westlaw UK Database.
[63] 'Vetting and clearance', *BP,* available on: https://www.bp.com/en/global/bp-shipping/vetting-clearance.html. Accessed on: March 30th, 2018.

advised, which in most of the cases is the ship-owner.[64] This advice, however, does not constitute a blanket approval of the vessel for BP businesses or other terminals and facilities. Notably, BP will require screening of vessels on each occasion as they are tendered to trade with BP, or in cases the vessels seeks to call in any BP port or facility.[65] This policy approach is the one, which has been enacted, by most of the Oil Majors after Erika and Prestige accidents, as a defense for the Oil Majors against claims or bad publicity.[66]

The view of Exxon is similar to BP, whereas, an approval would not be granted to a vessel, which does not have a positive SIRE report. Additionally to the SIRE report, Exxon has enacted Marine Safety Criteria, which will be used as an additional tool when approving a vessel in order to ensure safety standards. If Exxon has put a vessel on hold, it is highly difficult for the hold to be lifted, namely, it is done by company's senior manager, followed by a thorough scrutiny and justification with regard to that particular vessel.[67] The reason behind this is obviously with regard to the Oil Major policies post Erika and Prestige, where the Oil Majors seek to prevent any legal liabilities or bad publicity.

The approval process and the legal consequences may be more complex than it seems at first hand. Prior to the ERICA and PRESTIGE accidents in 1999 and 2002, the Oil Majors when inspecting the vessel issued a 'pre-fixture blanket approval letters' as well as made the records in the SIRE system, this pre-approval was effective for a period from six to twelve months. This practice had the effect that the ship-owners were certain that the Oil Major approval was granted at the time of inspection, ensuring them with legal certainty that they are complying with the relevant oil major clauses in their charter-parties. However, this had placed liability issues on the Oil Majors themselves, where in 1999 Total had to pay very significant fines ordered by the

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[64] Anish Wankhede, 'What ISM Certificates You Require to Start a Shipping Company?', *marineinsight,* available on: https://www.marineinsight.com/marine-safety/what-ism-certificates-you-require-to-start-a-shipping-company/. Published on: July 21st, 2016.

[65] 'Vetting and clearance', *BP,* available on: https://www.bp.com/en/global/bp-shipping/vetting-clearance.html. Accessed on: March 30th, 2018.

[66] See supra note 47

[67] 'Meeting with ExxonMobil On Vetting Issues', *intertanko,* available on: https://www.intertanko.com/News-Desk/Weekly-News/Year-2000/No-212000/MEETING-WITH-EXXONMOBIL-ON-VETTING-ISSUES/. Last edited: October 3rd, 2011.

French High Court, after the company had 'failed to ensure' that the vessel was in a good condition.[68]

The Oil Majors no longer issue 'pre-approvals' and in some cases it may be difficult to establish whether the approval has been actually received. In the *Falcon Carrier Shipping*[69] the court concluded that; "once a vessel has concluded a successful SIRE, owner may consider the vessel to be approved by the Oil Major conducting the inspection unless and until the charterer can demonstrate that the Oil Major subsequently determined that it would not accept the vessel for any purpose without an additional SIRE inspection. The fact that an Oil Major will not accept the vessel for a particular voyage to an environmentally sensitive location or that it requires some additional documentation should not be sufficient to establish a lack of under Oil Major Clause, although the failure of the owner to supply any requested information in a reasonable time may lead to a finding that the vessel is not."[70] However, what is peculiar in this regard, is that even when there has been an apparently successful SIRE inspection, if the Oil Major thereafter indicates that the vessel has been rejected on the basis of a SIRE review, charterer would be entitled to give notice to owner that the vessel has no longer been approved by that Oil Major,[71] which can have further legal consequences on the ship-owner and charterer legal relationship, that will be discussed in the final Part.

3.2. Denial of Approval

There may be different reasons for the Oil Major decision to deny the approval of a vessel, or to disapprove it following an approval. The ship-owner would always like to ensure that the approval obligation is fulfilled, in case there is an Oil Major Clause incorporated in the contract. Essentially, even if the Oil Majors no longer issue 'approvals' in the form as they used to be before Erika and Prestige accidents, the currently issued approvals still have the same implications on the Oil Major clauses, regardless, of the 'approval letters' form. Contemporarily, it is a common trade practice to issue the approvals through email correspondence. The Oil Majors generally are now careful when construing their approvals, where the approval letter may

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[68] Robert Myles, 'Erika Oil Disaster - France's top Court Upholds Total Conviction', *digital journal,* available on: http://www.digitaljournal.com/article/333666. Published on: September 27th, 2012.
[69] Society of Maritime Arbitrators, Inc. In The Matter Of The Arbitration Between Falcon Carrier Shipping, Ltd., As Owner Of The M/V Falcon Carrier, Claimant ST Shipping And Transport, PTE. LTD., Time Charterer, And Glencore, LTD., AS Guarantor, Respondents, Under A Time Charter Party, Date, 2013 WL 5409218. Available on: Westlaw International Database. Page 8th, paragraph 9.
[70] Ibid
[71] Ibid

include terms such as; "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. The vessel will be screened by us on each occasion it is tended (sic) for Lukoil/Litasco business or intends to visit one of our terminals or facilities."[72] Such approval practice by the Oil Majors, therefore, create legal difficulties for the shipowners, as the shipowner will not be able to receive an approval prior to visiting a particular terminal, or when applying to the Oil Major. In order to resolve such issue for the shipowner, the Oil Major Clause must be construed to include a timeframe in which the shipowner can resolve the deficiency, in order to prevent instant breach of charter on the shipowners' part. The Clause should include a reasonable period for resolving the deficiency as otherwise the charterer would simply terminate the charter and claim damages from the shipowner, such a situation would be highly unpractical and would create unfavourable trade practices. Such terms also indicate policy to screen the vessel on each occasion when visiting the terminals. Therefore, it may not be clear in some occasions as to when the approval has been received.

The English Court of Appeals has provided some clarification with regard to the complex legal implications of the term 'approved', where in *The Rowan*[73] judge Mackie QC noted that; "As I see it "approved" for the purpose of the clause means that the approval letters specified must be in place throughout the charter. At any time when offered to cargo buyers the vessel must not be in a state which to the knowledge of Owners would remove the comfort of the warranted approvals to the potential purchaser of cargo. For example there will be a breach of warranty if some event occurs which, to the knowledge of Owners, would if known to the issuers of the approval letter, cause it to the withdraw or cancel that approval. The fact that the commitment undertaken by the writers of the letters is so limited is, as I see it, beside the point."[74]

In the *Murphy Oil*[75] case ConocoPhilips, denied the approval due to the reason that the company had enacted a new policy, prohibiting vessels with single hulls into their facilities, consequently, the charterers terminated the charter-party. Such a decision by the Oil Majors led to a claim from the shipowners, against allegedly unlawful termination of the charter-party, where the shipowner

[72] Transpetrol Maritime Services Ltd v SJB (Marine Energy) BV (The Rowan) [2012] EWCA Civ 198. Available on: Westlaw UK Database.
[73] Ibid
[74] Ibid
[75] Society of Maritime Arbitrators, Inc. In The Matter Of The Arbitration Between Keystone D.T., INC., As Owner Murphy Oil USA, INC., As Charterer Under An Amended Nype Time Charter Party Dated August 20, 2010 Under a July 27, 2007 Shelltime4 Contract For The Charter Of The M/T Delaware TRA, 2015 WL 9450194. Available on: Westlaw International Database.

sought to recover $6.442.761 in damages from the charterer. The charterers had contested the vetting clause incorporated in the charter-party which read as following; "Owner is to maintain Shell, ConocoPhilips, Valero and ChevronTexaco vetting approvals throughout the terms of this Contract. Should the Vessel fail to maintain the above vetting approvals, Owners shall have a reasonable amount of time, not more than sixty (60) days from the date of the vetting, to correct the deficiency. If the Vessel is still unacceptable and the Shell, ConocoPhilips, Valero and ChevronTexaco vetting requirements are still not met by Owners, Charterers shall have the right to terminate the Charter."[76] The charterer's argument was that the vetting clause did not specifically refer to the SIRE inspections and that the shipowner must comply with other means of approval, in this case the double hull policy as enacted by the Oil Majors. The Tribunal concluded that the term 'vetting' did refer to SIRE as the customary approval mechanism in the oil trade, however, subject to the parties' intentions when concluding the contract, the shipowner had to additionally comply with the double hull policy.[77] Therefore, the shipowners claim against the charterer was dismissed and court held that the charter-party was lawfully cancelled. However, the charterer had to pay to the shipowner off-hire and other related costs in the amount of $1.325.445, as the charterer had unlawfully placed the vessel on off-hire, before cancelling the contract.[78]

4. The Legal Aspects of Charter-Parties in Relation to Oil Major Approval of Tanker Vessels

Charter-parties are type of contracts used particularly in international shipping for the use or hire of the vessel. The charter-parties are used for various purposes subject to the charterer's intentions. The charter-parties may be used in order for the charterer to carry cargo on their own behalf, or to sub-charter the vessel, as well as to employ the vessel as a general ship.[79] The charter-parties generally differ from traditional bill of lading contracts, in two regards. Firstly,

[76] Ibid
[77] Ibid "Keystone's position included the point that at the time of Addendum No. 2 Keystone requested Valero be deleted from Clause 27 because Valero would not vet the Vessel due to its single hull configuration, and if it did so, it would permit Murphy to terminate the Charter. This supports the view that the single hull rejection basis was appropriate and reasonable under Clause 77."
[78] Ibid
[79] 'Charter parties a Comparative Analysis', *UNCTAD,* available on: unctad.org/en/PublicationsLibrary/c4isl55_en.pdf. Published on: June 27th, 1990.

charter-parties are not subject to mandatory application of the Hague and Hague-Visby Rules,[80] secondly, they are not subject to the statutory assignment contained in the Convention on the Carriage of Goods by Sea 1992.[81]

Charter-party is a contract concluded for the use of the vessel, as opposed to the bill of lading, which is classified as contract for the carriage of goods.[82] There generally exist three forms of charter-parties, namely, voyage charter-parties, time charter-parties and bareboat charter-parties. Subject to the author's aim, the voyage and time charter-parties will be analyzed, as bareboat charter-parties are irrelevant[83] within the Oil Major approval context. This part will begin with an slight introduction to the two relevant types of charter-parties and their trade purposes. The part will further proceed with the analysis of particular Oil Major or so called vetting clauses in order ascertain the various legal obligations and relationships between the charterer and shipowner. Finally, the legal implications arising out of the Clauses subject to the charter-parties will be analyzed in order to illustrate various claims that can consequently arise out of the failure to retain or acquire an Oil Major approval.

4.1. Voyage Charter-parties

Under a voyage charter the vessel is lend out to the charterer for a specific voyage, namely, the charter-party will mention specific ports until which the charter-party will be in force. The parties to a voyage charter-party are the Carrier, which undertakes the transportation, most commonly referred as the Owner or Ship-owner, however, not necessary the registered owner of the vessel. They may be also referred to as the chartered owners or disponent owners, as in some cases they may have chartered or leased the vessel. The second party to a voyage charter-party is the Charterer, which will have the duty to provide cargo for the voyage. The cargo provided by the

[80] The Hague-Visby Rules - The Hague Rules as Amended by the Brussels Protocol 1968. Available on: http://www.jus.uio.no/lm/sea.carriage.hague.visby.rules.1968/doc.html. Accessed on: March 30th, 2018.
[81] United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"). Available on: http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html. Accessed on: March 30th, 2018.
[82] Simon Baughen, *Shipping Law,* (Routledge, 6th edition, 2015) Page 188
[83] Bareboat charterparties are long-term lease contracts of a vessel, where the charterer will both manage and operate the vessel. The charterer will be registered in the ship's registry as the 'disponent owner' of the vessel. Usually, Oil Major or vetting clauses are not included in such charterparties, as it is commercially irrational. However, if they would be, it would have similar legal implications as to time or voyage charterparties.

charterer is not necessarily his own, the charterer may even be neither the exporter, nor the importer of the cargo, however, in most cases charterer will be one of them.[84]

The ship-owner will be paid 'freight', which will cover the costs, including fuel and crew, as well as its profit. Essentially, 'laytime', will also be provided for the loading and discharging operations, if the operations exceed the permitted laytime, the shipowner will be compensated by 'demurrage' at the rate set down in the charter.[85] In this regard, it will be the charterer's obligation to load and unload the vessel within the said laytime period, otherwise claims for demurrage will arise, and the charterer may be under obligation to refund the demurrage costs as set out in the voyage charter-party. There may also be issues during the voyage with regard to the loading or unloading port, in cases the vessel has suddenly lost the Oil Major Approval, consequently, the operations may be compromised, possibly exceeding the laytime as set out in the charter-party.[86] The issue arises at this very moment, the question is, who will be liable for the demurrage payments, and whether the shipowner can claim any costs from the charterer, in case the approval has been lost in a voyage charter. On the other hand, the charterer is highly affected in this situation as well, as the cargo seller or buyer is awaiting for the cargo operations to begin, however, it is not possible due to the Oil Major refusal.

In *The Rowan*[87] case, the vessel was chartered on a voyage charter-party for the carriage of fuel and/or vacuum gas oil from, from one to two safe ports in the Black Sea (with charterer's option to discharge at Antwerp) to amongst other, one to two safe ports in the U.S. Gulf. During the voyage events occurred that raised claims for demurrage and port costs. Further, there was no formal/written 'charter-party' concluded between the parties, however, the parties agreed that the terms contained are found in emails that were exchanged. The agreement had an Oil Major Clause incorporated which read; 'TBOOK WOG VSL IS APPROVED BY: BP/LITASCO/STATOIL-EXXON VIA SIRE.' Which translates into "To best of Owner's

[84] Harvey Williams, *Practical Guides Chartering Documents,* (Lloyd's of London Press Ltd, 3rd edition 1996) Chapter I, page 1;2.
[85] Simon Baughen, *Shipping Law,* (Routledge, 6th edition, 2015) Page 188
[86] See supra notes 137;138
[87] Transpetrol Maritime Services Ltd v SJB (Marine Energy) BV (The Rowan) [2012] EWCA Civ 198. Available on: Westlaw UK Database.

knowledge, without Owner's guarantee, vessel is approved by the oil companies [there identified, via the SIRE database]".[88]

The issue in this case arose due to the owner's guarantee to have the vessel approved by named oil companies, and the standard Vitol terms, specifically, Clause 18. The court found that "the force of 'TBOOK' (in a voyage charter at any rate) must be first, that the owner has, to the best of his knowledge, at the date of the charter, procured approvals from the named oil companies and secondly that, at the date of the charter, he knows of no facts which would cause the vessel to lose the approval of those oil companies in the course of the duration of the charter."[89] Essentially, the judge found that this clause should be treated as a 'warranty' in relation to the documentation of the 'Oil Major Approval', and not as a warranty of the underlying condition of the vessel. In this particular case the ship-owner had acquired all the documentation that led them to believe that the approval was received after receiving initial 'approval' from Shell, and after an agreement to sell the cargo to Shell. However, later Shell refused to buy the cargo from Charterers, due to the reason that the vessel had issues with sea-chest valve, an issue found by classification survey conducted in Antwerp. What is vital in this regard, is that Shell when conducting their 'approval survey' did not comment anything regarding the sea-chest valve in the SIRE system, and the approval was seen as positive.[90]

This issue has illustrated, that even though the Oil Major approval was lost, and the Charterer's sought to claim damages from the ship-owner in the amount of $3.247.000. The ship-owners had complied with their obligations under the constructed Oil Major Clause, as they fulfilled the 'TBOOK' obligation with regard to the warranty of documentation, not the warranty of the underlying condition of the vessel, as the judge rightly pointed out and allowed the ship-owners appeal against the charterers.[91] Furthermore, the judge was persuaded by the ship-owner's arguments that "that warranties as to 'approval' letters should be treated in the same way as warranties about Class. It is well settled that a warranty that a vessel is in Class is not a warranty that she is rightly in Class,"[92] the judge continued; "it is probably not even a warranty that an owner does not know anything

[88] Ibid
[89] Ibid
[90] Ibid
[91] Ibid page 8
[92] Ibid. The Court has more elaborated on the classification warranty issues in the case of French v Newgass (1878) 3 CPD 163.

that would cause a vessel to lose her Class or have a recommendation imposed on her."[93] This has the same implications as the 'to the best of Owner's knowledge' as the owner's were certain to the best of their knowledge that the approval has been received, by having the relevant 'documentation' in place.

The afore analysis have demonstrated the complex situation of the Oil Major approval which may lead in certain cases to uncertainties as to whether the Oil Major approval was in place at the time when the issue occurred. What is particularly essential in *The Rowan* case is that, the judges found that the warranty of the approval lies in the documentation that the approval has been received, and not the actual underlying condition of the vessel, however, clearly they are inter-linked, as without the vessels underlying condition, the approval would not be received subject to an inspection. In this case the charterer's claims against ship-owner were denied, by confirming that the necessary documentation proving the approvals were in place, subject to the agreed charter-party terms.

4.2. Time Charter-parties

A time charter-party in contrast to a voyage charter-party is defined not by a geographical voyage, but rather by a certain period until which the vessel will be at the charterer's disposal.[94] The set period for time charter-party varies, and it can be generally from six months up to 5 years or even longer, subject to the parties' intentions. The essential difference within the Oil Major context is that in time charter-parties 'hire' is being paid, rather than 'freight'. Whereas, it will directly influence the shipowner in cases the charterer will have lost time owing to shipowners' fault. The running of a time charter-party can be interrupted by an 'off-hire' clause, which will temporarily cease the running of hire, therefore, the shipowner will be deprived of its' remuneration for lending out the vessel to a charterer. Failure to acquire an Oil Major approval, can directly influence the charterer in terms of the availability to use the tanker vessel for its' intended purposes, namely; to trade oil. Therefore, it may be so that the off-hire clause is triggered by the charterer due to the reason that the approval is not in place.[95]

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[93] Ibid
[94] Simon Baughen, *Shipping Law,* (Routledge, 6th edition, 2015) Page 189
[95] See supra notes 142;143;144

4.3. INTERTANKO on the Oil Major Clauses in Charter-parties

The International Association of Independent Tanker Owners (INTERTANKO) generally suggest to the ship-owners to refrain from the incorporation of Oil Major Clauses in their charter-parties. The primary reason for that is that the Oil Major Clauses are highly unfavourable for the ship-owners due to the practical issues entailed in the approval process. The issue is that today there is rarely a formal acceptance or rejection of the vessel by the Oil Majors, therefore, a requirement to maintain an Oil Major 'approvals' is highly problematic for the ship-owner, and has led to some high-profile litigation. The recommendation of INTERTANKO is that the ship-owner will only realistically warrant that the vessel is 'not unacceptable',[96] but will not warrant that the 'the vessel will have certain Oil Major approvals during the period of the charter-party.'

> *"a)* ***Owners warrant*** [emphasis added] *that at the time of delivery:*
>
> *(i) the Vessel will have a SIRE report available through the OCIMF system which has been issued within the last 6 months.*
>
> *(ii)* ***the Vessel is not unacceptable to*** [emphasis added] *[insert companies]*
>
> *(b) If, during the currency of the charter, the Vessel is found to be unacceptable following a vetting inspection performed under the SIRE system****, Owners will take corrective action and will promptly report such actions to the inspecting company concerned and the Charterers will be informed****.* [emphasis added] *If required Owners will have the Vessel inspected again as soon as reasonably practicable. Owners, however, shall not have any obligation to make any changes to the Vessel's design.*
>
> *(c) If the Vessel is found to be unacceptable following a vetting inspection performed under the SIRE system by any of the abovementioned companies, that shall not of itself entitle the Charterers to put the Vessel off-hire or to claim damages****. However, should the Vessel be found unacceptable on 3 consecutive vetting inspections by any of the abovementioned companies, the Charterers shall have the option to cancel the charter with immediate effect within 7 days of the result of the third inspection becoming known.*** [emphasis added] *If, at that time, the Vessel is committed for a voyage such cancellation will take effect from the completion of discharge."*[97]

Such clause provides the ship-owner to take a corrective action in cases the vessel is unacceptable to Oil Majors, it further sets out the ship-owners obligations towards the charterer if the identified defects cannot be corrected. Nevertheless, the clause provides an eventual express right for the

[96] Michele White (Legal Counsel of INTERTANKO) Email Correspondence, see full in Annex II
[97] Ibid

charterer to cancel the fixture. The approach provided by INTERTANKO is balanced and practical, which would be useful for both ship-owners and charterers. Essentially, the clause provides a realistic and practical approach towards the Oil Major 'approvals', which is objective for the most contemporary shipping industries practice. The clause ensures that the ship-owners will follow their reasonable obligations towards the 'approval', and ensure that the charterer's rights are not violated.

4.4. INTERTANKO's Advice to Ship-owners on Oil Major Clauses

INTERTANKO further provides advice to the ship-owners with regard to the incorporation of Oil Major clauses in the charter-parties. It is essential for the ship-owner to not mention anything in the Oil Major clause that is not certain, or anything that is legally impossible to comply with. Further, the ship-owners should avoid words that make compliance a 'condition' or amount to a guarantee. A provision containing a requirement for compliance with future approval acquirement should be termed as to 'owner will provide due diligence.' If the vessel is a new-building, a liberal allowance of time to provide any approvals should be granted. Further, in case of time charter-parties, the vessel should remain on-hire when it is being inspected, and the costs should be covered by the charterer. Additionally, a clause that would provide a vetting failure to place the vessel off-hire should be avoided. The ship-owner should avoid a provision specifying a hire reduction in case the vessel would fail the vetting inspection; charterer's remedies would still remain, and would be those available under the general maritime law of the jurisdiction specified in the charter-party. If the owner must include a description of the monetary consequences of a vetting failure, the monetary consequences should be limited, if possible, to the loss of time and additional expenses incurred by the charterer.[98]

4.5. BIMCO's Advice to Ship-owners on Oil Major Clauses

The Baltic and International Maritime Council (BIMCO)[99] is the largest maritime trade group in the world, representing over half of global tonnage internationally. BIMCO was the first organization in the world, which in 1913 produced the first draft standard charter-party agreement. BIMCO enjoys non-governmental organizations (NGO) status, and it works closely

[98] Ibid
[99] 'About Us and Our Members', *BIMCO,* available on: https://www.bimco.org/about-us-and-our-members. Accessed on April 1st, 2018.

with International Maritime Organization (IMO), also with government agencies with regard to different maritime matters.[100] Notably, before becoming a BIMCO member, the company is being screened by the Membership Department on various aspects such as; environmental record, operating and safety procedures, as well as their financial management. Therefore, all of its' members has certain credibility and prestige conferred on them on an international scale, with regard to compliance with such key aspects.[101]

BIMCO currently produces a wide variety of standard charter-party agreements, which are used by ship-owners and charterers worldwide. The standard charter-party agreements will include common standardized clauses that will be further up to the parties' discretion to negotiate on, and possibly exclude or include additional clauses. BIMCO perceives the Oil Major Clauses as a highly challenging issue, and generally, BIMCO do not recommend the use of such clauses. The issue as perceived by BIMCO is that such clauses place the ship-owners in very difficult position in terms of compliance. Additionally, the complexities of vetting 'approvals' as discussed previously, make it highly difficult to develop a workable vetting clause.[102] BIMCO generally do not recommend, nor offer vetting clauses, and the only 'workable' vetting clause is included in their BIMCHEMTIME[103] time-charter, designed for chemical tanker use. The vetting clause provided by BIMCO is split into eight parts, and additional three sub-clauses. Each part will be analyzed accordingly in order to ascertain the rationale and legal implications behind each one of those sub-clauses. Furthermore, the analysis will allow the author to establish the most practical Oil Major Vetting Clauses, nevertheless, to distinguish between the obligations of the ship-owner and charterer within the 'approval' process.

The part a) of the BIMCHEMTIME time charter states that; "Owners shall, with the co-operation of the Charterers, arrange to have the Vessel inspected under the CDI and SIRE Vessel Inspection Programs and by the major Oil and Chemical companies as required."[104] The rationale behind this part is to establish the commercial nature of the charterer's co-operation with the ship-owners and to assist

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[100] 'BIMCO', *maritime executive,* available on: https://www.maritime-executive.com/magazine/bimco - gs.ddWGAb0. Accessed on April 1st, 2018.
[101] Ibid
[102] Grant Hunter (BIMCO Head of Contracts and Clauses) Email Correspondence '*Originally published in BIMCO Special Circular No. 1, 22 February 2006 - New Vetting Clause for Chemical Trade* '
[103] 'BIMCHEMTIME 2005', *BIMCO,* available on: https://www.bimco.org/contracts-and-clauses/bimco-contracts/bimchemtime-2005. Accessed on April 1st, 2018.
[104] Ibid

in the process of obtaining positive inspections from the Oil Majors. The term 'cooperation' is meant to stipulate the active participation of the charterers in the process.[105] The sub-clause i) provides two options, if the charter-party will be concluded for a short period it could include; "Owners warrant that on the day of delivery the Vessel has been vetted and is acceptable to"[106], however, if the charter-party is concluded for a long time period, then such sub-clause will simply be impossible to comply with from the ship-owners part, as it is beyond the ship-owners control to predict the enactment of new regulations from the Oil Majors. Therefore, in long term charter-parties, BIMCO recommends the use of a sub-clause that turns the warranty into a obligation to exercise due diligence "Owners shall exercise due diligence to maintain such acceptances throughout the currency of this Charter Party."[107] Further, the term 'is acceptable to' has been used instead of more common term 'shall be accepted', in order to prevent the provision turning into a condition. Generally, it is advised for the shipowners to refrain from subscribing to vetting clauses that imply strict conditions or warranties as to their fulfilment. Such provision also distinguishes between the two processes of vetting and acceptance; vetting always precedes acceptance.[108] Whereas, vetting does not always result in acceptance, therefore, such clauses should include periods when the shipowner can fix any deficiencies, in order to prevent instant breach of the charter-party. In practice, such periods are included within the clause, as it is a rational choice of both parties.[109]

The second sub-clause ii) "Owners declare that the Vessel has been vetted and is, to the best of their knowledge, acceptable on a case-by-case basis by, Owners shall exercise due diligence to maintain such acceptances throughout the currency of this Charter Party." This Sub-clause is similar to i) whereas it distinguishes between the process of vetting and acceptance. Furthermore, it illustrates situations where specific acceptance of a vessel has not been issued by the oil company following an inspection or vetting, but where the owner believes that if they were to seek a formal acceptance for a voyage during the charter-party period, it would be given without any further need to

[105] Grant Hunter (BIMCO Head of Contracts and Clauses) Email Correspondence '*Originally published in BIMCO Special Circular No. 1, 22 February 2006 - New Vetting Clause for Chemical Trade* '
[106] Ibid
[107] Ibid
[108] Ibid
[109] See supra note 97

inspect or vet the vessel.[110] Such terms also reflect the policies of some Oil Majors that no longer issue 'blanket pre-approvals' but rather advise the ship-owners that 'the vessel will not need inspections for period of six or twelve months'. This, however, does not imply positive acceptance as discussed in the IV part[111], it rather provides an assumption that the vessel has met the required standards of the Oil Major, and should the vessel be presented to that Major by charterer, it should be accepted.[112] However, not necessarily, as currently the Oil Majors would still screen the vessel before it enters its' terminals on case-to-case basis. This should not compromise the approval itself, as if it is in place, the Oil Major usually will not require to have another inspection in the period between six to twelve months. The screening formality would rather check whether the vessel has the approval, and whether it fulfills the companies' security measures.[113]

The iii) sub-clause is developed specifically to cover the cases of newbuildings and vessels that are currently entering new trades; "Owners shall exercise due diligence to obtain and thereafter maintain, throughout the currency of this Charter Party, acceptance of the Vessel by".[114] The rationale behind this part is primarily the common practice of newbuildings. The fact is that it will not be possible to acquire an approval for a newbuilding before the vessel is delivered and its' cargo discharging operations successfully pass the inspection. If acceptance would be made a strict obligation or warranty in this case, then the shipowner would immediately breach the charter-party when the newbuilding would be delivered into the time charter-party. The obligation, therefore, is converted into one to exercise 'due diligence', such approach is similar to the one enacted by INTERTANKO, giving liberal time allowance for the newbuildings to acquire such approvals.[115]

Part b) deals with the responsibility for the allocation of costs with regard to the Oil Major approval, under this part, the obligation to arrange and cover the costs of the inspection will be on

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[110] 'BIMCHEMTIVE 2005', *BIMCO,* available on: https://www.bimco.org/contracts-and-clauses/bimco-contracts/bimchemtime-2005 - Clause 9 (BIMCO Vetting and Inspection Clause for Chemical Tankers). Accessed on April 1st. 2018.
[111] See supra note 69
[112] 'BIMCHEMTIVE 2005', *BIMCO,* available on: https://www.bimco.org/contracts-and-clauses/bimco-contracts/bimchemtime-2005 - Clause 9 (BIMCO Vetting and Inspection Clause for Chemical Tankers). Accessed on April 1st. 2018.
[113] See supra notes 54,56,58
[114] Ibid
[115] See supra note 98

the owner. Unless, the charterer seeks to acquire approvals from different oil companies, outside the charter-party; "Inspections by above named companies (including CDI and SIRE Inspections) to maintain or obtain acceptances shall be arranged by Owners and costs for such inspections shall be for Owners' account. If inspections by companies not named above are required by Charterers, all costs for such inspections shall be for Charterers' account."[116] See part c in Annex II.

Part d) expresses further provisions on newbuildings, which are directly related with the part a) sub-clause iii), where the owner will not be in breach of the charter-party by delivering a vessel without acceptances and CDI/SIRE inspection, as this provision rightly acknowledges that the inspection cannot be undertaken until the vessel has conducted its' first cargo operations. However, when the vessel has reached her first port of discharge, then the owners must act with hastily manner, to acquire the relevant acceptances and arrange CDI/SIRE inspection; "If the Vessel, on the day of delivery, is a newbuilding without any major approvals or Inspections, then the Charterers shall allow Owners reasonable time to arrange for the vetting and Inspection of the Vessel."[117]

Part e) reflects the provisions as set out in the preamble of the Sub-clause a) with regard to the co-operation between shipowner and charterer to have the vessel vetted; "Charterers shall assist Owners to get relevant oil and chemical companies to vet the Vessel. If any of the major Oil and/or Chemical companies, including those named above, refuse to inspect the Vessel because they have no commercial interest in the Vessel or an inspector is not available, then the Owners shall not be held liable and sub-clause (g) shall not apply."[118] The term 'shall assist owners' places an obligation on the charterers to actively participate in the approval acquiring process.[119] This does not seem, however, to be practical for the charterer's, as in some cases they may not be experienced in such practices, or simply would not have the means available to be involved in such process. The second part of this sub-clause, specifies and protects the ship-owners against situations if the approval has been declined on the lack 'commercial interests' or 'if inspector is not available', preventing the ability of charterer to reduce hire, by making the owner liable for situations beyond their control.

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[116] 'BIMCHEMTIVE 2005', *BIMCO,* available on: https://www.bimco.org/contracts-and-clauses/bimco-contracts/bimchemtime-2005 - Clause 9 (BIMCO Vetting and Inspection Clause for Chemical Tankers). Accessed on April 1st. 2018. See part c in Annex II.
[117] Ibid
[118] Ibid
[119] Ibid

Part f) stipulates that the vessel shall remain on-hire during the period of inspection, and that the charterer may place the vessel off-hire only in situations the vessel has been expressly failed the inspection; "(f) The Vessel shall remain on-hire for the purpose of carrying out Inspections described in sub-clauses (a) and (b) above. If the Vessel fails to be accepted following any such Inspections or achieves a CDI score below an agreed minimum score of: ____ % (calculated as the average of the Statutory, Recommended and Desirable Sections), then the cost for re-inspection will be for the Owners' account and the Vessel shall be off-hire for any time lost in having her re-inspected."[120] This Sub-clause provided by BIMCO is more focused on chemical tanker inspections, however, it would have the same effect on oil tanker inspections within the SIRE system. The common approach, however, in the Oil Major approval with this regard is that, the charterer would have the right to place the vessel off-hire after the owner has failed to acquire approval on 'three consecutive vetting inspections by named Oil Majors'[121] This seems to be a commercially reasonable approach, giving equal rights on both the owner and charterer, further, providing protection and ensuring compliance from both sides.

Part g)[122] deals with the sanctions that are placed on the vessel for the owners' failure to obtain or retain acceptances, and also deals with the consequences of such failure, even if the due diligence was exercised. The sanctions are limited, however, only to companies named in sub-clauses (a)(i) through (iii) and not to unnamed companies.[123] However, according to the relevant case law, namely, the *Dolphin Tankers*[124], the English High Court established, that it is allowed to step outside the charter-party, with regard to determining the Six Oil Majors. Furthermore, if approval has not been acquired by one of them, the ship-owner may be at breach of the charter-party if the approval was essential for the charterer, even if the company has not been named in the charter-party.[125] The clause further contains a provision for the parties to agree to a daily reduction of hire, for each non-acceptance, until acceptance is achieved. The owners are obliged to inform the charterers by a written notice when the vessel has been prepared and is eligible to the relevant

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[120] 'BIMCHEMTIVE 2005', *BIMCO,* available on: https://www.bimco.org/contracts-and-clauses/bimco-contracts/bimchemtime-2005 - Clause 9 (BIMCO Vetting and Inspection Clause for Chemical Tankers). Accessed on April 1st. 2018.
[121] See Supra note 97 INTERTANKO
[122] See ANNEX II
[123] 'BIMCHEMTIVE 2005', *BIMCO,* available on: https://www.bimco.org/contracts-and-clauses/bimco-contracts/bimchemtime-2005 - Clause 9 (BIMCO Vetting and Inspection Clause for Chemical Tankers). Accessed on April 1st. 2018.
[124] Dolphin Tankers v Westport Petroleum [2010] EWHC 2617 (Comm). Available on: Westlaw UK Database.
[125] See supra note 5

companies for re-vetting. If the vessel is not re-vetted by the relevant companies within 30 days of receiving owner's notice, the reduction of hire must cease to exist.[126] This provision provides a defense for the ship-owner, with regard to the Oil Major lack of commercial interest in the vessel, or if the inspectors are unavailable at that period, the Part e) will ensure that in such cases the Part g) will not be applicable.[127] Part g) further addresses the charterer's possibility to cancel the charter-party, in cases the vessel is not able to obtain the acceptances subject to sub-clause a), the charterer's may notify the owner that owners, that unless the situation has not been rectified within ninety days, the charterers shall have the right to cancel this charter-party. The charterer's right to cancel shall be exercised by giving prior notice to the ship-owner, within three working days after the expiry of the ninety-day rectification period.[128] Such sub-clause has been used to ensure that the owners are not caught in situations where it is not possible to retain the acceptance or where owners would prefer for economic reasons not to regain the acceptance. The charterers on the other hand, have a right to cancel the charter-party in such situations, if the acceptance cannot be acquired within the ninety-day period.[129]

The final part h) deals with the shipowner's obligations in cases when the vessel has been damaged in an accident, and when the shipowner seeks to regain the vessel's previous working condition as before the accident. The Sub-clause sets out that, the off-hire period after the vessel has been damaged, shall not be part of the g) Sub-clause's thirty and ninety day periods in order to restore the vessel's lost acceptances after the incident.[130] What is essential in this regard, is that the shipowners must immediately inform the charterers that the accident has occurred, and that there could be some possible implications on the Oil Major approvals. If the ship-owners will choose not to inform the charterers, it may amount to 'deliberate misrepresentation' and the protection from clauses as such, may cease to exist. Further, it may enable the charterer to bring

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[126] 'BIMCHEMTIVE 2005', *BIMCO,* available on: https://www.bimco.org/contracts-and-clauses/bimco-contracts/bimchemtime-2005 - Clause 9 (BIMCO Vetting and Inspection Clause for Chemical Tankers). Accessed on April 1st. 2018.
[127] See supra note 118
[128] 'BIMCHEMTIVE 2005', *BIMCO,* available on: https://www.bimco.org/contracts-and-clauses/bimco-contracts/bimchemtime-2005 - Clause 9 (BIMCO Vetting and Inspection Clause for Chemical Tankers). Accessed on April 1st. 2018.
[129] Ibid
[130] Ibid

claims for commercial and even consequential damages that have consequently occurred, as in the *Team Tankers* case.[131]

4.6. Consequential Claims arising out of Failure to Retain an Oil Major Approval

Generally, the breach of an Oil Major or Vetting Clause may lead to consequential breaches subject to other Clauses incorporated in the charter-parties. The most common of such breaches are the laytime and or demurrage Clauses in voyage charter-parties. Whereas, in time charter-parties in case the charterer would have lost time, it could invoke the off-hire Clause. This sub-part will address the issue of claims arising both in voyage charter-parties and time charter-parties.

4.6.1. Owner's Misrepresentation and Charterer's Claims for Subsequent Damages

As *The Rowan*[132] case has illustrated, the owner's obligations in receiving the Oil Major approval, lies in the obtaining of relevant documentation that confirms the fact that the approval has been received.[133] The Clause usually is incorporated in charter-parties with the term 'To the best of Owner's knowledge' this term has an essential effect on the owner's liabilities in case a dispute arises. In the *Team Tankers*[134] an issue arose after the vessel collided in Korea, consequently repairs had to be carried out. The owner had informed the Oil Majors of the problems, after the 'class survey' was carried out, pointing out two deficiencies to be dealt with. The owner, however did not inform the charterers that this issue occurred, and claimed that the vessel would arrive at the contracted date in the port of unloading. At the port of unloading, ConocoPhilips advised charterers, that the vessel has been refused by its vetting group, and that they reject to buy the contracted cargo.[135]

The charterer's immediately began arbitration proceedings against the ship-owner for 'deliberate misrepresentation' and claimed the amount of $1.541.410 for commercial losses. The tribunal

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[131] See supra note 134
[132] Transpetrol Maritime Services Ltd v SJB (Marine Energy) BV (The Rowan) [2012] EWCA Civ 198. Available on: Westlaw UK Database.
[133] See supra note 31 (the Rowan judgment para 8)
[134] Society of Maritime Arbitrators, Inc. In The Matter Of The Arbitration Between Team Tankers A/S As Claimant And Disponent Owner Noble Americas CORP. As Respondent And Charterer Of The Team Jupiter Under An ASBATANKVOY Form Charter Party Incorporating Noble Liquichem Terms 2002 Dated June, 2012 WL 4341824. Available on: Westlaw International Database.
[135] Ibid

found that the owner had indeed deliberately misrepresented the charterer, and had breached its obligations under the charter-party. Furthermore, the misrepresentation and concealing of facts on the owner's part, gave a legal right to the charterer which otherwise would not be there, due to the reason that the 'laydays' were not exceeded. Essentially, the deliberate misrepresentation allowed the charterer's to claim damages for 'future contracts' and prevented the ship-owners to invoke usual defense under English Law, namely, the *Hadley v Baxendale*[136] case which usually would not allow parties to claim any subsequent damages, subject to the two limbs, unless the facts of subsequent 'special circumstances' were previously communicated.

The above analysis is a great illustration for the complexities that may arise in the disputes between ship-owner and charterer. The deliberate misrepresentation on the owner's part, led the tribunal to establish that the ship-owner had breached its obligations under the charter-party. Had the ship-owner previously informed the charterer that the collision occurred, and that there could be possible implications on the vetting procedures, the tribunal would have come to a different conclusion, and possibly the ship-owner would have succeeded on its claim for demurrage. Rather than be left to pay significant amount of commercial damages to the charterer.

4.6.2. Claims of Demurrage in Voyage Charter-parties

The secondary payment obligation after freight in voyage charter-parties arises out of the cargo operations, namely, loading and discharging. The performance of a voyage charter-party can be divided into four parts; two of them are performed by the shipowner, whereas, the other two by the charterer. The first obligation of the shipowner is to proceed with 'reasonable dispatch' on the 'approach voyage' to the loading port or place as set in the voyage charter-party. The place may be either a port or berth located within a port. The second obligation is to proceed with 'reasonable dispatch' on the 'approach voyage' towards the port or place of discharge. The obligations of the charterer, on the other hand, are to nominate in a 'reasonable time' a port or

[136] Hadley v Baxendale (1854) 9 Ex 341. Available on: Westlaw UK Database. "Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a *356 breach of contract under these special circumstances so known and communicated."

place for cargo operations. Further, to conduct the cargo operations without due delay, if the charterer fails to perform either of its' above obligations, the shipowner may claim damages against the charterer.[137] Essentially, the nominated port has to be a safe port; "A port will not be safe unless, in the relevant period of time, a particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship."[138] The other set of charterer's obligations is more directly related with the set time-frame allowed to conduct cargo operations. The 'reasonable time' is replaced by a set period in the voyage charter-party; 'laytime.' Consequently, if loading or discharging operations exceed the set time in the laytime Clause[139], the charterer will be liable for 'demurrage'.[140]

The relevance of such clauses in the Oil Major context is vital, as the process to acquire a positive approval from an Oil Major to enter their terminals directly affects the time when the cargo operations can be initiated. Namely, as currently acceptance to enter an Oil Major terminal is granted on case-to-case basis, whereas, blanket pre-approvals are no longer provided. Therefore, the lay-time can be compromised in relation to such procedures. Generally, for the shipowner to fulfill his obligations with this regard, the SIRE inspections must be in place from the relevant Oil Majors and other oil companies depending on how the Oil Major/Vetting Clause has been construed. Further, the shipowner has to have all the relevant documentation in place that have led to acquiring the approval.[141]

4.6.3. Claims of Off-hire in Time Charter-parties

The off-hire clause contained in time charter-party will allow the charterer to place the vessel off-hire, at times when the charterer is not able to use the vessel for the intended purposes. When a vessel is placed off-hire, the ship-owner is not receiving 'hire' per day, which at the end can amount to high profit reduction. The triggering of an off-hire clause can be caused by various reasons, such as the seaworthiness of vessel or the loss of Oil Major approval, subject to the

[137] Simon Baughen, *Shipping Law,* (Routledge, 6th edition, 2015) page 223
[138] 'Safe Port and Safe Berth Warranties – Time and Voyage Charters', *steamship mutual,* available on: https://www.steamshipmutual.com/publications/Articles/Articles/Safe_Port.asp. Published in June 1999.
[139] Simon Baughen, *Shipping Law,* (Routledge, 6th edition, 2015) page 223
[140] 'A previously agreed daily rate of liquidated damages, which replaces the common law liability for detention, assessed at the market rate. The laytime and demurrage calculations will cease with the completion of the cargo operations.'
[141] See supra note 81

particular events as indicated in the off-hire clause. Generally, a charterer must establish three elements in order to invoke the Clause.

First of all, the charterer must demonstrate that the shipowner has failed to provide its' services as required subject to the charter-party as required by the charter.[142] This element could certainly be satisfied if the shipowner has failed to acquire relevant Oil Major approvals subject to the relevant Clause, however, it can backfire for the charterer if invoked incorrectly.[143] Most importantly, the charterer must show that the failure has been caused by one of the events mentioned either in the off-hire Clause or in the Oil Major/Vetting Clause, otherwise, the off-hire cannot be lawfully invoked.[144] Finally, the charterer must indicate how much time was lost as a consequence of the inefficiencies. Essentially, the invocation of the off-hire Clause depends entirely on its' construction within the charter-party, and on the particular terms and events, to which the parties have agreed to trigger the Clause.

In cases when the charterer seeks to invoke the off-hire clause subject to shipowner's failure to acquire or maintain an Oil Major approval. The charterer must ensure that those particular events are included within the Clause, as otherwise, the charterer would be due to cover all the costs for withheld hire, including interest. To deal with such issues, both the shipowners and charterers are invited to mutually agree on the terms when negotiating their charter-parties, in order to establish clear grounds as to when off-hire can be invoked. The Oil Major/Vetting Clause must also include reference to off-hire[145], in order to prevent legal uncertainties as to when the off-hire clause can be invoked.

In the case of *Wonsild Liquid Carriers v. M/T Dzintari*[146] the charterers had decided to place the vessel off-hire subject to disponent owner's failure to acquire relevant Oil Major approvals. The

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[142] Simon Baughen, *Shipping Law,* (Routledge, 6th edition, 2015) page 246

[143] See supra note 75

[144] Society of Maritime Arbitrators, Inc. In The Matter Of The Arbitration Between Keystone D.T., INC., As Owner Murphy Oil USA, INC., As Charterer Under An Amended Nype Time Charter Party Dated August 20, 2010 Under a July 27, 2007 Shelltime4 Contract For The Charter Of The M/T Delaware TRA, 2015 WL 9450194. Available on: Westlaw International Database. "It is well settled that a charterer is required to pay charter hire continuously unless there is an applicable express exemption in the charter party. Clause 77 (The Vetting Clause) is silent regarding off-hire, and specifically provides for a remedy of termination for a violation of the Clause. Accordingly, Murphy had no right to stop paying hire based upon Clause 77"

[145] See supra note 90 INTERTANKO Clause

[146] In the Matter of the Arbitration Between Wonsild Liquid Carriers Ltd., As Disponent Owners of the M/T Dzintari, Naviera Del Pacifico Sa De CV, As Charterers. [Society of Maritime Arbitrators, New York February 24th, 2003). Available on: Westlaw International Database.

vetting clause[147] included that the shipowner must exercise due-diligence to acquire the Oil Major approvals from BP, Mobil, Shell, Chevron, Texaco, Dow and from other companies subject to the charterer's request. The clause further included that in case of non-compliance, the charterer can place the vessel off-hire. The disponent owner had informed the charterer that the vessel would not be inspected in Houston, as to which the charterer responded by issuing a voyage order, to discharge the cargo at different location. The charterers later informed that the vessel has been placed off-hire, even when giving the vessel different instructions. The arbitral tribunal concluded, that the charterer's had two options on how to respond to the failure to acquire the approvals. The first option was to put the vessel off-hire, the second, to continue to trade the vessel without the approval to other companies. The charterers had exercised their second option initially, therefore, they unlawfully had placed the vessel off-hire, and were due to pay the hire costs to the disponent owner.[148]

Conclusion

All in all, the Oil Major approval of tanker vessels is a highly complex legal issue, whereas the author strongly believes that, these analyses have provided significant guidance throughout the complexities of this issue. Generally, the tanker vessel approval procedure, so called Oil Major approval or vetting, has been strongly influenced by various maritime casualties that have resulted in tremendous damage to the world's oceans. Those maritime casualties have led and united the international community against the battle of oceanic pollution. Each one of these significant maritime casualties as discussed in Part III have resulted in various regional and international initiatives, which have materialized in the adoption of international conventions and mechanisms against the humanities attempts to balance its' commercial energy needs, with the preservation of our environment. Those measures, and maritime casualties have, nevertheless

[147] Ibid M/T Dzintari "Owneers to exercise due diligence throughout the term of the Charter in maintaining compliance/approvals with major oil and chemical company vetting standards. All compliance/approvals to be arranged at Owners time and expense. Upon delivery, Owners warrant that the Vessel has approvals from BP, Mobil, Shell, Chevron, Texaco, Dow and CDI in accordance with those companies' vetting procedures and throughout the term of the Charter shall maintain these approvals in accordance with each company's vetting procedure. Furthermore, Owners will use best endeavors to obtain major oil/chemical company approvals as requested by Charterers. Owners will exercise due diligence to maintain such additional approvals throughout the term of the Charter. Should Owners fail in maintaining all the above approvals, then Charterers to have the option of placing the Vessel off-hire until such time as the approval(s) are obtained."
[148] Ibid M/T Dzintari

influenced the Oil Major policies, whereas their commercial practice has been changed towards the approval procedures. Namely, the blanket pre-approval policy as practiced prior to 2000, was abolished following the *Erika* and *Prestige* accidents. Currently, the Oil Majors no longer issue blanket pre-approval letters, where they seek to determine whether the vessel is 'acceptable' on case-to-case basis, before allowing it to conduct cargo operations in its' terminals.

The author's analyses have shed light on the complex differentiation issue with regard to terms Oil Major and oil company. Namely, subject to English Admiralty Court's current authority *Dolphin Tankers*, Oil Majors are considered to be the six largest oil companies in the world, those are; BP, Shell, Exxon, Total, ConocoPhilips and Chevron. This directly influences the construction of Oil Major and Vetting Clauses that are being incorporated within the Charter-parties.[149] If in a charter-party, the clause refers to Oil Majors, then it refers specifically to those six oil companies. It is possible, however, that the parties have agreed on terms to incorporate additional oil companies within the Clause. Such situation is common, and accepted, whereas, it is enshrined in the principle of party autonomy to decide, which oil companies to include within the approval clause. What must be essentially noted in this regard is however, that if the shipowner has agreed to comply with a Clause that incorporates the term 'Oil Majors', then in order to prevent legal implications, the shipowner should acquire approvals from all six Oil Majors, in order not to be in breach of the charter-party.[150] To prevent such scenarios, the parties could opt to refrain from the term 'Oil Majors' and rather, indicate the clause as 'vetting' or simply 'approval' Clause. However, if such Clause would still mention mostly the Oil Major companies and if the dispute is brought to admiralty court, then it could be interpreted subject to the customary commercial practice, as in the afore mentioned case.

Generally, the failure to acquire or retain an Oil Major approval subject to a charter-party may raise various legal implications and claims from both the charterer's and shipowners. The most common of such consequential claims are the demurrage in voyage charter-parties[151] and off-hire in time charter-parties[152]. There may also be cases of owner's misrepresentation, with regard to not informing the charterer that the approval has been lost, where the charterer may claim damages on such grounds.

[149] See supra note 6
[150] See supra note 6
[151] See supra note 137
[152] See supra notes 142-148

The tanker vessel approval or so-called vetting is being carried out using the SIRE system as enacted by OCIMF. Whereas, it has been accepted as industry wide custom and is being used by all Oil Majors, and all most significant oil companies in the world. The approval entails a physical vetting inspection at first hand, following which a VIQ is completed and uploaded on the SIRE database. Following that, the shipowner may add comments on particular criteria which it may concern. The oil companies will then screen the vessel through the SIRE system on case-to-case basis, when tendered for an approval from shipowner or operator. Subject to a positive screening, the concerned vessel will be granted with a positive 'approval' to enter the terminal and conduct cargo operations. There may be additional requirements beside the SIRE inspection enacted by each Oil Major, however, SIRE inspection is a common practice for all of them. The additional requirements may be in the form of additional inspection by companies' superintendent or other aspects that would provide and ensure even greater safety compliance.[153] There may also be situations when the vessel is denied of an approval, and there may be various reasons for that. The first reason may be a simple lack of commercial interest in the vessel, where the Oil Major do not see a commercial purpose to trade with it. If there is a commercial interest, then the vessel's safety compliance will be screened, and the acceptance or denial will solely depend on the vessel's compliance to the safety requirements as demanded under SIRE subject to various legal instruments. The relevant case law has demonstrated that the warranty of an 'Oil Major approval' lies in the warranty to have the relevant approval documentation, whereas, it is not directly related to the underlying condition of the vessel, however, both are inter-linked, therefore, relevant.[154] That, however, depends on the particular construction of the oil major or so called vetting clause, as the parties can generally agree to the most favourable conditions, subject to party autonomy. The legal effects of an positive Oil Major approval are that the shipowner will fufill its' obligations subject to the charter-party, therefore, would not be in breach of the contract, preventing charterer to bring successful claims. The legal relationship is between the charterer and shipowner subject to the charter-party, whereas, Oil Majors are not part of this chain directly, as they approve a vessel on case-to-case basis subject to shipowners or operators request.

[153] See supra notes 60; 62 BP requirements
[154] See supra notes 87;88;89 (warranty of documentation)

Most of the tanker trade organizations such as BIMCO and INTERTANKO generally do not advice the shipowners to incorporate such Oil Major or vetting clauses in their charter-parties, due to the complex legal implications that are entailed in their usage and their unfavourable conditions that are placed on the shipowner. However, still very often parties tend to incorporate them when concluding their charter-parties, where it is up to the party autonomy to decide on their terms of contract at first hand. If such clauses are included, the shipowner must ensure compliance with the relevant clause, in order to prevent being liable for damages towards the charterer.

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Annex I

Statement of Ethics

I have carefully considered the ethics of conducting (research of various issues that are involved in Oil Major vetting, by analysing a variety of legislation, cases and seeking industry recommendations through email correspondence) and include here my assessment of ethical issues raised and how to approach them. The online aspect of this research, as well as the fact that I will be dealing with the sensitive information means that I shall fulfil all necessary ethics requirements required by Riga Graduate School of Law as well as those required under Latvian Law. Throughout the project, I will be critically reflexive about unanticipated ethical issues arising from its sensitive, qualitative and digital nature.

Much of the data collected will involve interviews with (shipping industry and relevant Organizations) professionals, who will not be paid for their participation. Before beginning data collection, I will seek consent from the particular Organization by a request, which I will guide them through in order to gain their written informed consent. This request will supply my contact details; will outline the aims of my research, including my obligation to do no harm; and will specify my intended outputs, my intention to share data, and their rights to anonymity, confidentiality, and to withdraw from the project at any time. In terms of data retention, I will fully anonymise all data on an individual level as well as on an institutional level where requested. Only I will have access to the personal information corresponding to collected data, which will be securely stored and password protected, and will be held confidentiality. In all instances of potentially risky information, I will err on the side of caution.

Annex II

INTERTANO Email Correspondence – Ms. Michele White

Dear Robert Thank you for your enquiry.

Please find below the Vetting Inspection Clause developed by INTERTANKO. The issue with Vetting and oil majors is really that oil majors do not in fact 'approve' a vessel. So a c/p requirement to maintain approvals is not really appropriate. There is no guaranteed linkage between inspection and approval. This is the reasoning behind the wording we use in the model clause below. In addition below is some practical guidance we have given to our Members in the past to cross check on c/p clauses if they are not using the I-O Model Clause.

INTERTANKO's Documentary and Vetting Committees have worked closely together to produce a new model clause for vetting inspection in advance of the launch of the new 8th Edition of the INTERTANKO book "A Guide to the Vetting Process" to be published in Autumn 2009. The clause begins with an express warranty of the vetting inspection position at the time of delivery of the vessel. In appropriate cases this express warranty could be qualified by a 'best endeavours' provision. The clause reflects the practical workings of the SIRE system, as opposed to the previous 'oil major approval' requirements.

Today there is rarely a formal acceptance or rejection of the Vessel, so a requirement to maintain oil major "approvals" is problematical for an owner, and has led to some high profile litigation. The clause therefore provides that an owner will, realistically, only warrant the vessel is 'not unacceptable'. In addition, it is understood that vetting departments will generally only be willing to rely on a SIRE inspection report if the inspection took place within the last six months. The clause then sets out the owner's obligations in the event that a vessel is unacceptable to an oil company, giving the owner an opportunity to take corrective action and have the vessel re-inspected. It deals ultimately with what will happen if the defects identified cannot be corrected, with an eventual express right for the charterer to cancel the fixture. In devising the new clause INTERTANKO has tried to take a balanced and practical approach which it hopes will be useful for owners and charterers alike.

The clause reads as follows: a) Owners warrant that at the time of delivery: (i) the Vessel will have a SIRE report available through the OCIMF system which has been issued within the last 6 months. (ii) the Vessel is not unacceptable to [insert companies] (b) If, during the currency of the charter, the Vessel is found to be unacceptable following a vetting inspection performed under the SIRE system, Owners will take corrective action and will promptly report such actions to the inspecting company concerned and the Charterers will be informed. If required Owners will have the Vessel inspected again as soon as reasonably practicable. Owners, however, shall not have any obligation to make any changes to the Vessel's design. (c) If the Vessel is found to be unacceptable following a vetting inspection performed under the SIRE system by any of the abovementioned companies, that shall not of itself entitle the Charterers to put the Vessel off-hire or to claim damages. However, should the Vessel be found unacceptable on 3 consecutive vetting inspections by any of the abovementioned companies, the Charterers shall have the option to cancel the charter with immediate effect within 7 days of the result of the third inspection becoming known. If, at that time, the Vessel is committed for a voyage such cancellation will take effect from the completion of discharge.

Annex III

BIMCO Email Correspondence – Mr. Grant Hunter

Dear Robert

Thank you for your email.

Oil major vetting is a challenging issue. BIMCO does not host oil major vetting clauses on our website as they often place owners (some of whom may be our members) in a very difficult position in terms of compliance – therefore we do not want to be seen to endorse such clauses. We have attempted to draft a standard vetting clause for tankers, but the complexities of vetting approvals by oil companies make it difficult to develop a workable clause. The closest we have come is a clause designed for chemical tankers and found in BIMCO's BIMCHEMTIME time charter.

Please find below some information on that clause which I hope assists:

BIMCO BIMCHEMTIME Vetting and Inspection Clause

Vetting and Inspection Clause for Chemical Carrier Time Charter Parties

(a) Owners shall, with the co-operation of the Charterers, arrange to have the Vessel inspected under the CDI and SIRE Vessel Inspection Programs and by the major Oil and Chemical companies as required.

(i) Owners warrant that on the day of delivery the Vessel has been vetted and is acceptable to: _____.

Owners shall exercise due diligence to maintain such acceptances throughout the currency of this Charter Party.

(ii) Owners declare that the Vessel has been vetted and is, to the best of their knowledge, acceptable on a case-by-case basis by: _____.

Owners shall exercise due diligence to maintain such acceptances throughout the currency of this Charter Party.

(iii) Owners shall exercise due diligence to obtain and thereafter maintain, throughout the currency of this Charter Party, acceptance of the Vessel by: _____.

(b) Inspections by above named companies (including CDI and SIRE Inspections) to maintain or obtain acceptances shall be arranged by Owners and costs for such inspections shall be for Owners' account. If inspections by companies not named above are required by Charterers, all costs for such inspections shall be for Charterers' account.

(c) The Owners shall on receipt of an Inspection Report promptly make their comments on such Reports available to Charterers and arrange to have them entered into the respective databases.

(d) If the Vessel, on the day of delivery, is a newbuilding without any major approvals or Inspections, then the Charterers shall allow Owners reasonable time to arrange for the vetting and Inspection of the Vessel.

(e) Charterers shall assist Owners to get relevant oil and chemical companies to vet the Vessel. If any of the major Oil and/or Chemical companies, including those named above, refuse to inspect the Vessel because they have no commercial interest in the Vessel or an inspector is not available, then the Owners shall not be held liable and sub-clause (g) shall not apply.

(f) The Vessel shall remain on-hire for the purpose of carrying out Inspections described in sub-clauses (a) and (b) above. If the Vessel fails to be accepted following any such Inspections or achieves a CDI score below an agreed minimum score of: ____ % (calculated as the average of the Statutory, Recommended and Desirable Sections), then the cost for re-inspection will be for the Owners' account and the Vessel shall be off-hire for any time lost in having her re-inspected.

(g) (i) If the Vessel, despite the exercise of due diligence, fails to obtain or retain acceptances by

any of the companies listed in sub-clauses (a)(i), (ii) and (iii) above or the minimum CDI score stated in sub-clause (f), then the hire shall be reduced by the amount of ____ per day for each company's non-acceptance and/or while the CDI score remains below the agreed minimum. Each reduction in hire, as stated above, shall continue until the corresponding company re-accepts the Vessel. If a reduction in hire is caused by a CDI score below the agreed minimum, such reduction shall continue until the agreed minimum CDI score is achieved. The Owners shall give the Charterers written notice when the Vessel has been prepared for and is eligible to the relevant companies for re-vetting. If the Vessel is not re-vetted by the relevant companies within 30 days of receiving the Owners' notice, reduction of hire shall cease.

(ii) Should the Vessel when re-vetted or re-inspected still not obtain the acceptances required under sub-clause (a) or the minimum CDI score required under sub-clause (f), the hire shall be reduced or continue at the reduced rate as stated in sub-clause (g)(i) and the Charterers may notify the Owners that unless the situation has been rectified within 90 days, the Charterers shall have the right to cancel this Charter Party. Such right to cancel shall be exercised by giving notice thereof within three (3) working days after the expiry of the above rectification period. The cancellation shall take effect as soon as the Vessel is free of existing cargo commitments. If the Charterers do not exercise the right to cancel this Charter Party, the provisions of this Clause shall remain in full force and effect.

(h) In case the non-acceptances of the Vessel result from the fact that the Vessel, following an accident, must perform repairs to re-establish its condition as before the accident, the period of time in which the Vessel is off-hire due to such accident and in which the repairs are carried out shall not be included in the periods of 30 and 90 days allowed to Owners as per sub-clause (g) to restore the Vessel's acceptances lost for the reason of the accident.

Kind regards

Grant Hunter

Head of Contracts & Clauses