青岛海事法院

海事审判情况通报

Qingdao Maritime Court

Report on Maritime Trials

2018

青岛海事法院

Qingdao Maritime Court

2019 年 4 月

April 2019

前　言

2018 年是全面贯彻落实党的十九大精神的开局之年，是决胜全面建成小康社会，实施“十三五”规划承上启下的关键之年，也是山东新旧动能转换开局之年和关键之年，海洋强国战略和“一带一路”建设深入推进之年。一年来，我院深入学习贯彻习近平新时代中国特色社会主义思想和党的十九大精神，紧紧围绕海洋强国战略、“一带一路”建设、新旧动能转换和辖区海洋经济发展，牢牢把握司法为民、公正司法工作主线，强化责任担当，努力拼搏进取，有效发挥了海事审判职能作用，为维护国家海洋权益、促进海洋经济和经贸航运事业发展提供了有力的海事司法服务和保障，为国际海事司法中心建设作出了积极贡献，各项工作实现新的发展和进步。为更好地接受社会监督，不断改进海事司法工作，进一步提升海事司法的公信力和影响力，我们编写了

《青岛海事法院海事审判情况通报（2018 年）》，简要介绍我院 2018 年海事审判工作情况，同时发布十起典型案例。

编　　者

2019 年 4 月

Preface

2018 is the first year of the comprehensive implementation of the spirit of the 19th National Congress of the Communist Party of China. It is the key year to build a moderately prosperous society in all respects, and to implement the 13th Five-Year Plan. It is also the starting and crucial year for Shandong Province to transform the old motive forces into the new, with further advance of the Ocean Power Strategy and the construction of the Belt and Road initiative.

Over the past year, Qingdao Maritime Court has thoroughly studied and implemented Xi Jinping's Thought of Socialism with Chinese Characteristics in the New Age and the spirit of the 19th National Congress of the Communist Party of China, has firmly focused on the Ocean Power Strategy, the construction of the Belt and Road initiative, the transformation of old motive forces into the new and the development of marine economy within its jurisdiction. The Court has effectively dealt with maritime cases through firmly grasping the main line of work – judicial justice for the people, emphasizing responsibility assumption, and striving to make progress. It has provided strong maritime judicial services and has guaranteed the maintenance of national maritime rights and interests, and the development of marine economy and industry of economy, trade and shipping. It has made positive contributions to the

construction of international maritime judicial center. In brief, all work has achieved new developments and progress.

For better social supervision, continuous improvement in maritime judicial work, and further advance of the credibility and influence of maritime justice, we have complied the *Qingdao Maritime Court Report on Maritime Trials (2018)*, which briefly introduces the maritime trial work of Qingdao Maritime Court in 2018, and also includes ten typical cases.

Editor

April 2019

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Part II Typical Cases

第一部分　海事审判工作情况

2018 年，我院坚持以习近平新时代中国特色社会主义思想为指导，聚焦海洋强国战略、“一带一路”建设和新旧动能转换，牢牢把握司法为民、公正司法工作主线和“走在前列、争创一流”目标定位，忠实履行宪法法律赋予的职责，充分发挥海事司法职能作用，各项工作实现新的发展和进步。已连续八年被评为省级文明单位。全国人大常委会、最高人民法院和省市领导莅临视察指导给予鼓励或对相关工作作出批示予以肯定。

一、充分发挥职能作用，全力服务保障海洋经济发展

2018 年收案 4604 件。其中，海事侵权案件收案 252 件，海商合同案件收案 1549 件，涉外海事海商案件收案 128 件，涉港澳台案件 42 件，海事行政案件收案 26 件，海事特别程序案件收案 1431 件，执行收案 1008 件。全年结案 4409 件。其中，海事侵权案件结案 191 件，海商合同案件结案 1434 件，涉外海事海商案件结案 76 件，涉港澳台案件结案 47 件，海事行政案件结案 27 件，海事特别程序案件结案 1350

件，执行案件结案 1135 件。扣押船舶 155 艘次，其中外轮 12 艘，拍卖 53 艘，成交金额 2.17 亿元。审判执行工作总体运行平稳，呈现收案明显上升、结案略有下降、新类型案件增多等特点，案件涉及 30 多个国家和地区，对外影响日益深远。

图 1　2018 年海事海商案件收案情况

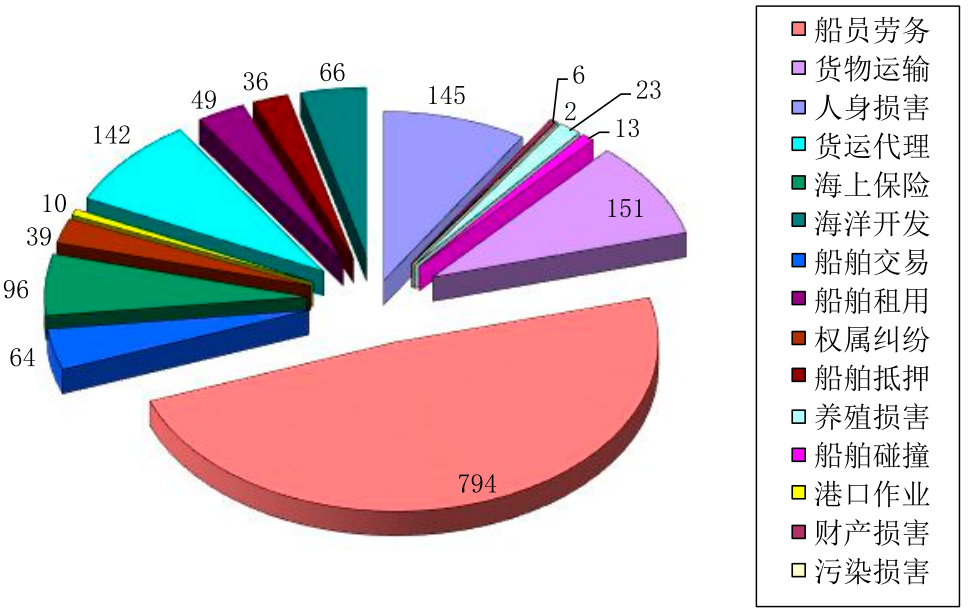
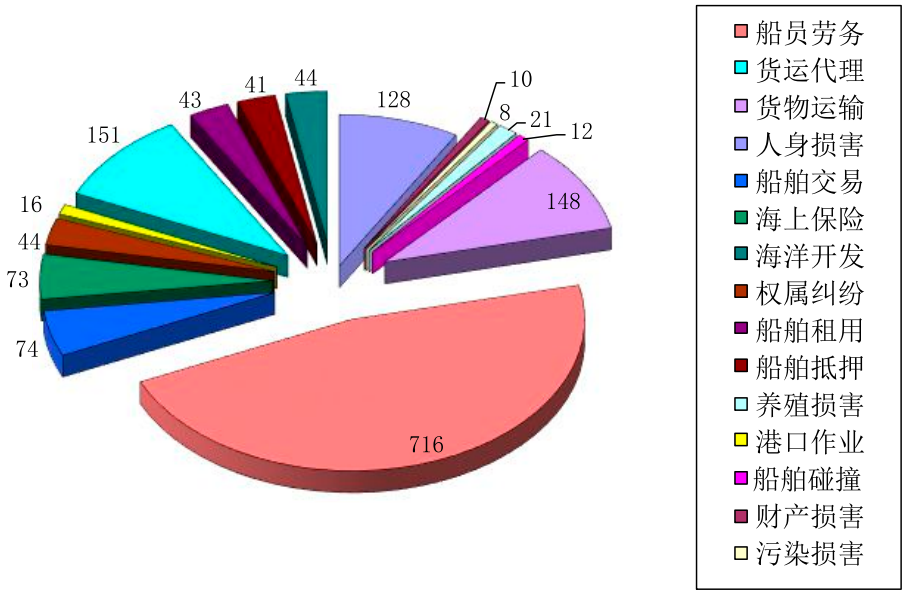


图 2　2018 年海事海商案件结案情况



（一）坚持服务大局，努力营造稳定公平透明的法治化营商环境。研究制定实施意见，明确了海事司法服务保障新旧动能转换、经略海洋战略的指导思想、职能定位和具体措施。研究制定为上海合作组织青岛峰会提供优质高效法律服务的具体措施，对峰会来访国家法律制度进行研究并编印《上海合作组织青岛峰会国别法律制度指引》一书。坚持公正与效率、效果并重，依法妥善审理涉及海洋开发利用与环境保护、海上货物运输、船舶修造、港口物流等海事海商案件，有效维护了海上正常的生产经营秩序和海洋生态环境，促进了青岛及全省海洋交通运输物流业和海洋装备制造业

等海洋优势产业发展。坚持平等保护原则，依据国际条约、外国法和国内法，公正高效审理涉外海事海商案件，有效维护了国家司法主权和中外当事人的合法权益。如审理的韩国大宇造船海洋株式会社诉马绍尔群岛西象公司、巴拿马西达克凌公司船舶抵押合同纠纷一案，案件涉及多国当事人，抵押合同签订于英国伦敦，主债权涉及伦敦仲裁裁决的承认与执行，我院依照船旗国法律认定船舶抵押权效力，确认了在国外设立的船舶抵押权的优先受偿效力，该案例被评为全国海事审判十大典型案例。本案及更多类似案件的成功处理，是海事司法能力和水平的体现，树立了我国海事司法公平公正的国际形象。坚持公权制约原则，依法妥善审理海事行政案件，监督支持海事行政机关依法行政，维护海事行政当事人合法权益，为海洋经济发展营造了良好的执法环境。

（二）坚持内外联动，全力推进基本解决执行难。牢固树立“全院一盘棋”思想，细化分解任务，强化责任落实，挂图作战，倒排工期，全院形成了基本解决执行难的整体合力。认真落实“三统一”执行办案管理模式，加强执行指挥中心实体化运作，加大执行网络查控和网拍工作力度，执行工作规范化水平明显提升。处理涉网拍执行案件80件，成交

62 起，成交金额高达 2.5 亿元。强化执行保障，配足配强执行力量，通过举办“执行大讲堂”、外出学习考察等途径，不断提升执行干警的业务能力和水平。加大信用惩戒力度，通过限制高消费、罚款、拘留等执行措施，倒逼被执行人主动履行法定义务。面对海事执行工作点多、线长、面广，执行力量不足等实际困难，争取有关方面的支持，积极推动建立完善海事执行联动机制，与中国人民财产保险股份有限公司青岛市分公司、荣成市海洋与渔业局、荣成市社会信用管理办公室等单位签署执行联动协议。通过强有力措施，推动基本解决执行难工作取得突破性进展，四项核心指标全部达标，执行工作机制体制进一步完善。有财产可供执行案件法定期限内实际执结率为 93.22%，终本案件合格率为 100%，信访案件办结率为 100%，执行案件执结率为 87.53%。

（三）坚持司法为民，努力让人民群众有更多获得感、幸福感。加强电子诉讼服务平台建设，自 2018 年 6 月 1 日开通网上立案、网上缴费功能以来，通过网上立案 1287 件、网上缴费 510 件。深化案件繁简分流，加大分调裁改革力度，按照最高法院确定的 80%案件进入速裁的要求进行落实，促进审判效率明显提升。全院人均结案 110.2 件，同比增加

20.3 件。不断加强烟台、威海、日照、石岛、东营等派出法庭的规范化建设，加大对追索劳务报酬等涉民生案件办理力度，开辟“绿色通道”，实行快立、快审、快执行。如威海法庭审理的 138 名船员追索劳务报酬系列案，被告田某拖欠船员劳务报酬近千万元，上百名船员及其家属到省市政府部门信访，公安机关将田某抓获并羁押在当地看守所。威海法庭受理案件后，加强与当地政府、法院、公安等有关部门的沟通协调，及时到看守所询问被告详细制作笔录，并连续三天加班加点开庭审理，第一时间作出判决，案件当事人全部服判息诉，船员劳务报酬全部清偿。荣成市成山镇人民政府和船员代表专程送来锦旗对我院公正高效化解涉案矛盾纠纷表示感谢。各派出法庭共收案 2389 件，占全院收案总数的 51.5%；结案 1972 件，占全院结案总数的 44.7%。

二、突出工作重点，促进海事审判体系和审判能力现代化

（一）深化司法改革，海事司法公信力明显提升。适应司法责任制改革“让审理者裁判、由裁判者负责”要求，完善了审判执行团队运行机制，建立了专业法官会议和季度研讨会制度。强化精品意识，健全精品案件生成机制。组织召开

座谈会邀请上级法院领导和法官来我院现场指导，进一步规范和统一了裁判标准。积极开展优秀裁判文书和典型案例评选活动，定期对优秀裁判文书和典型案例进行汇编。加强流程管理，严格节点管控，着力构建权责明晰、高效运转的管理机制。加大对未结案件的督办力度，每周进行分析通报和督促调度。服判息诉率为89.6%，连续多年保持在较高水平。

（二）强化科技支撑，智慧法院建设取得新进展。积极推进全业务网上办理，建立一体化工作平台，完善了自动分案、网上阅签、电子印章等办公办案系统。积极推进全流程依法公开，对科技法庭信息化设备进行升级改造，加强官方网站、微信公众号等网络平台的管理和应用，司法公开的途径进一步优化。积极推进电子卷宗随案同步生成和深度应用，建设庭审语音识别系统，全方位智能服务取得新成效。加强基础设施建设，新建2处科技法庭，对数据中心、信息安全、法庭监控等进行了升级改造，信息化服务办公办案和当事人诉讼的水平进一步提升。

（三）深化司法公开，海事司法透明度进一步提升。先后2次召开新闻发布会，公开发布服务保障新旧动能转换实施意见和基本解决执行难进展情况，《人民法院报》、《山东

法制报》、青岛电视台等 10 余家媒体进行宣传报道。发布2017 年度海事审判白皮书和 10 起典型案例，及时通报海事审判工作开展情况。举办宪法日暨法院公众开放日活动，邀请部分市人大代表、高校师生、媒体记者、居民代表等来我院视察参观。积极开展微电影展播，讲好海事司法故事，我院制作的微电影《起航》先后获评全省、全国十佳微电影。

三、坚持政治统领，努力打造过硬海事司法队伍

（一）加强政治建设，机关精神文明呈现新气象。深入学习贯彻习近平新时代中国特色社会主义思想和党的十九大精神，组织全院干警赴烟台胶东革命纪念馆、威海刘公岛红色教育基地参观学习，举办迎“五四”“新时代、新担当、新作为”主题演讲，召开庆祝建党 97 周年“七一”表彰大会暨规范化建设演讲会，教育引导全体干警树牢“四个意识”，坚定“四个自信”，坚决做到“两个维护”，严守纪律规矩，营造了干事创业、风清气正的良好氛围。

（二）加强党建工作，基层党组织组织力明显提升。坚持把工作重心向党支部倾斜，严格党内政治生活，定期召开党组理论学习中心组读书会，认真落实“三会一课”制度，做好支部书记述职、民主评议党员等工作，切实用好民主集

中制、批评与自我批评等有力武器。深入开展“不忘初心，牢记使命”主题教育，积极推进“基层党组织组织力提升工程”，注重目标引领、问题导向，坚持业务工作和党建工作同部署、同推进、同落实，实现党建工作和业务工作有机融合，基层党组织创造力、凝聚力、战斗力进一步增强。

（三）加强教育培训，海事司法能力进一步提升。举办新春集中培训，邀请专家教授来我院授课，组织干警到青岛蓝色硅谷、即墨法院考察学习。加强与高等院校和科研机构的合作，与山东大学签署战略合作协议并设立海洋海事海商法律研究中心、法学教育实践基地，积极派员参加国内外交流活动，为干警开阔视野、提升业务能力创造了优越的条件和环境。多篇调研论文在全国海事审判研讨活动中获奖。1名法官被评为第四届全国审判业务专家，后被推荐到中央党校中青年领导干部培训班学习并获评“优秀学员”。

（四）加强廉政建设，确保司法廉洁。认真落实党风廉政建设主体责任和监督责任，积极开展廉政警示教育活动，组织全体干警到青岛市反腐倡廉教育基地参观，邀请专家教授对新修订的《中国共产党纪律处分条例》作专题辅导，定期组织观看警示教育片，加强对干警遵纪守法情况的日常监

督，对违反廉政纪律的潜在性、倾向性、苗头性问题始终保持“零容忍”。

Part I Overview of Maritime Trial Work

In 2018, Qingdao Maritime Court adhered to the guidance of Xi Jinping's Thought of Socialism with Chinese Characteristics in the New Age , focused on the Ocean Power Strategy, the construction of the Belt and Road initiative and the transformation of the old motive forces into the new, firmly grasped the main line of work – judicial justice for the people, and stuck to the target of "going in the forefront, striving for the first-class", faithfully fulfilled the duties assigned by the Constitution and laws, gave full play to its function of handling maritime cases and all work had achieved new developments and progress. Qingdao Maritime Court has been rated as a provincial civilized unit for eight consecutive years. Leaders from the Standing Committee of the National People's Congress, the Supreme People's Court, and provincial, municipal leaders have come to inspect and give instructions, meanwhile giving encouragement or acknowledge on relevant work.

I. Exert its function to the full to serve and safeguard the development of marine economy with all efforts

4,604 cases were accepted in 2018. Among them, there were 252 cases concerning maritime tort disputes, 1,549 cases concerning disputes over maritime contracts, 128 foreign-related cases concerning disputes over maritime affairs, 42 cases involving Hong Kong, Macao and Taiwan, 26 maritime administration cases, 1,431 cases concerning special maritime procedures, and 1,008 enforcement cases. 4,409 cases were concluded throughout the year. Among them, there were 191 cases

concerning maritime tort disputes, 1,434 cases concerning disputes over maritime contracts, 76 foreign-related cases concerning disputes over maritime affairs, 47 cases involving Hong Kong, Macao and Taiwan, 27 maritime administration cases, 1,350 cases concerning special maritime procedures, and 1,135 enforcement cases. 155 ships were detained, including 12 foreign ships. 53 ships were auctioned, with a trade value of 217 million yuan. The overall operation of the trial and enforcement work was stable, with the characteristics of a remarkable increase in the number of cases which were accepted, a slight decrease in the number of cases concluded, and an increase in new types of cases. The cases involved more than 30 countries and regions, and the influence abroad was increasingly far-reaching.

Figure 1 Maritime Cases Accepted in 2018

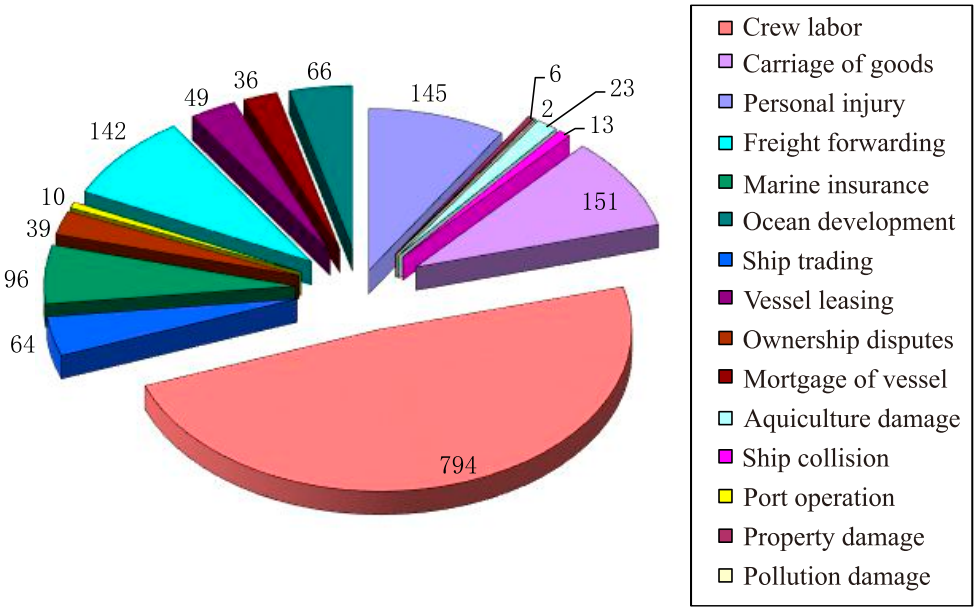
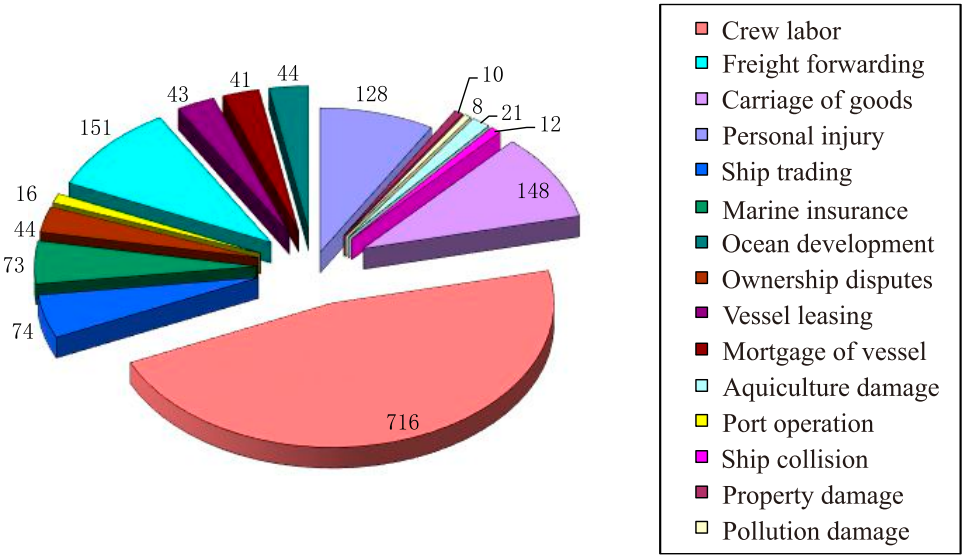


Figure 2 Maritime Cases Concluded in 2018



1. Qingdao Maritime Court insisted on serving the overall interests and strove to create a stable, fair, transparent and legal business environment. The Court formulated implementation opinion, and clarified the guiding ideology and functional orientation of maritime judicial practice as serving and safeguarding the transformation of old motive forces into the new and management of the sea strategy, and further worked out specific measures to achieve that goal. The Court also studied and formulated concrete plans for providing high-quality and efficient

legal services for the Shanghai Cooperation Organization Qingdao Summit, and compiled the book *Guidelines for the Legal Systems of Countries Attending Shanghai Cooperation Organization Qingdao Summit* after conducting research on the legal systems of the countries attending the Summit. The Court paid equal attention to fairness, efficiency and effectiveness, and properly handled maritime cases involving ocean development, utilization and environment protection, carriage of goods by sea, shipbuilding and port logistics, etc., effectively maintaining the normal production and operation order at sea and protecting marine ecological environment, and promoting the development of marine dominant industries in Qingdao City and Shandong Province, such as marine transportation and logistics industries and marine equipment manufacturing industries.

The Court adhered to the principle of equal protection and conducted fair and efficient trials of foreign-related maritime cases in accordance with international treaties, foreign laws and domestic laws, effectively safeguarding China's judicial sovereignty and the legitimate rights and interests of Chinese and foreign parties. For example, in one of the Ten Model Maritime Trial Cases – Daewoo Shipbuilding & Marine Engineering Co., Ltd. (South Korea) v. Celephant Inc. (Marshall Islands) and C Duckling Corporation (Panama) (Case about disputes over a ship mortgage contract), parties from multiple countries were involved. The mortgage contract was concluded in London, the UK and the principal creditor's rights involved the recognition and enforcement of the arbitral awards rendered by the London arbitration agency. The Court recognized

the effect of the ship mortgage according to the law of the flag country and confirmed the effect of priority of compensation from the ship mortgage established in foreign countries. The smooth handling of this case and more similar cases has shown the capability and level of maritime judicial practice and established the international image of justice and equity in China's maritime judicial practice. The Court also adhered to the principle of public power restriction, properly handled maritime administrative cases in accordance with the law, supervised, supported administration by law of the maritime administrative organs, and protected the legitimate rights and interests of maritime administrative parties, which created a good law enforcement environment for the development of marine economy.

2. Qingdao Maritime Court adhered to interaction between the internal and the external, spared no efforts to promote the basic resolution of enforcement difficulties. The Court highly emphasized cooperation within the Court and the whole Court formed an overall synergy to basically solve the enforcement difficulties by breaking tasks into smaller ones, strengthening responsibility implementation, setting clear goals and achieving them step by step, and scheduling the deadlines at the beginning. The Court conscientiously implemented the "three unifications" mode of enforcement case management (unification of management, command and coordination), strengthened substantive operation of the enforcement command center, intensified network inspection and control of enforcement and the work of online auction. As a result, the enforcement work has been remarkably standardized. The

Court handled 80 enforcement cases involving online auction, and 62 transactions were successfully completed, with a trade value of 250 million yuan.

In order to strengthen the guarantee of enforcement, and provide sufficient and strong enforcement power, the Court continuously improved the professional capacity of the enforcement all of the judges, court staff, and judicial personnel through “Enforcement Lecture Room”, and sending them to other places to study, and other means. The Court also strengthened punishment of people losing credit, and forced the executed to take the initiative to fulfill their legal obligations by adopting enforcement measures such as restricting high consumption, fines, and detention. Faced with practical difficulties of maritime enforcement such as too much work, long periods, wide scope, and insufficient enforcement power, the Court rallied support from relevant parties and actively promoted the establishment and perfection of maritime enforcement linkage mechanism. The Court has signed enforcement linkage agreements with Qingdao Branch of the PICC Property and Casualty Company Limited, Ocean and Fisheries Administration of Rongcheng City, Social Credit Management Office of Rongcheng City and other organizations.

Through strong measures, the Court has made breakthroughs in promoting general solution to enforcement difficulties: all four core indicators have been met and the enforcement mechanism has been further advanced. Within statutory period, the actual enforcement rate of cases where there were property for enforcement is 93.22%, the qualified

rate of termination of the enforcement process cases being 100%, the settlement rate of cases regarding complaints by letters and visits being 100%, and settlement rate of enforcement cases being 87.53%.

3. Qingdao Maritime Court adhered to the idea of justice for the people and endeavored to make the people have more sense of gain and happiness. The Court improved the construction of electronic litigation service platform and since the activation of the online filing and online payment function on June 1, 2018, 1,287 cases have been filed online and the fees of 510 cases have been paid online. The Court also deepened diversion of complicated and simple cases, increased the intensity of reforms of diversion, mediation, and adjudication, and carried out the requirement by the Supreme Court to enter 80% of the cases into fast-track sentencing procedure, thus raising the efficiency of hearing cases. The number of cases concluded per capita in the Court was 110.2, up 20.3 from a year ago.

The Court constantly strengthened the standard construction of dispatched tribunals in Yantai, Weihai, Rizhao, Shidao, Dongying, etc., and increased the intensity of handling cases involving people's livelihood such as claims for rewards for personal services by opening up a "green channel" to file, hear and enforce such cases fast. For example, in the series cases of 138 crew members claiming for rewards for personal services tried by Weihai tribunal, the defendant Tian was in arrears of the crew's remuneration of nearly 10 million yuan. Hundreds of crew members and their families visited the provincial and municipal government departments. Later on, the public security organ arrested Tian

and took him into custody. After the Weihai tribunal accepted the case, it strengthened communication and coordination with the local government, court, public security organization and other relevant departments, promptly went to the detention center to inquire about the defendant and made detailed transcript, and worked overtime for three consecutive days to try the cases. As a result, the verdict was made quickly, the parties to the cases all accepted the outcome and agreed to appeal no more, and the remuneration of the crew was all paid off. The people's government of Chengshan Town, Rongcheng City and crew representatives sent a silk banner to thank the Court for its fair and efficient resolution of the contradictions and disputes involved in the cases. A total of 2,389 cases were received by the dispatched tribunals, accounting for 51.5% of the total number of cases received by the Court; 1,972 cases were closed, accounting for 44.7% of the total number of cases concluded.

II Highlight work priorities and promote the modernization of maritime trial systems and trial capabilities

1. After deepening judicial reform, the credibility of maritime judicial practice has been enhanced significantly. Qingdao Maritime Court adapted to the requirement "let the judge reach the verdict and shoulder responsibility for the verdict" asked by the judicial responsibility system reform, perfected the operation mechanism of the trial and enforcement team, and established a professional judge meeting and quarterly seminar system. The Court strengthened the fine works awareness and improved the mechanism for generating high-quality cases. The Court held symposiums to invite the leaders and judges from higher

courts to come to the Court for on-site guidance in order to further standardize and unify the standards of adjudication. The Court also actively carried out excellent verdicts and typical cases selection activities, and regularly compiled excellent verdicts and typical cases. The Court strengthened process management, strictly controlled the nodes, and focused on building a management mechanism with clear rights and responsibilities and efficient operation. The Court also increased supervision of outstanding cases by conducting weekly analysis report and schedule supervision. The rate of cases concluded without appeal was 89.6%, which remained at a high level for many consecutive years.

2. Qingdao Maritime Court strengthened scientific and technological support, thus making new progress in the construction of smart courts. The Court actively promoted online processing of all services, established an integrated work platform, and improved the office and case handling systems such as automatic division, online reading and signing and electronic seal. The Court also actively promoted public disclosure of entire process of dealing with cases, upgraded the information devices of the science and technology court, strengthened the management and application of the official website, WeChat official account and other network platforms, therefore furthering judicial disclosure. Furthermore, the Court actively promoted the simultaneous generation of electronic files with the case and deep application of such operation, built a trial speech recognition system, and all-round intelligent services have achieved new results. In addition, the Court strengthened infrastructure construction, built 2 new science and technology courts, upgraded data

center, information security, and court monitoring, etc., thus the level of providing information service for the office, case handling and litigation has been enhanced.

3. Qingdao Maritime Court deepened judicial openness and further improved the transparency of maritime judicial practice. The Court held two press conferences to announce the implementation opinion of serving and guaranteeing the transformation of old motive forces into the new and the progress of basically resolving enforcement difficulties. More than 10 media outlets such as the *People's Court Daily*, *Shandong Legal News* and Qingdao TV Station conducted publicity reports. The Court also published white paper on 2017 maritime trial and 10 typical cases to timely report on the development of maritime trial. Moreover, the Court organized activities on the Constitution Day and the public open day of the Court, and invited representatives of Municipal People's Congress, teachers and students from universities, media reporters, and resident representatives, etc., to visit the Court. At last, the Court vigorously carried out micro film exhibitions to tell maritime judicial practice stories. The micro movie *Setting Sail* produced by the Court has been awarded the top ten micro movies in the province and the whole country.

III Adhere to the political leadership, and strive to build a strong maritime judicial team

1. The spiritual civilization of Qingdao Maritime Court presented a new atmosphere after strengthening political construction. The Court conducted in-depth study and implementation of Xi Jinping's Thought of

Socialism with Chinese Characteristics in the New Age and the spirit of the 19th National Congress of the Communist Party of China, and organized the Court's all of the judges, court staff, and judicial personnel to visit the Yantai Jiaodong Revolutionary Memorial Hall and the Weihai Liugong Island Red Education Base. The Court held a keynote speech on "New Era, New Responsibilities, and New Actions" to welcome May 4th Youth Day, and commenced a "July 1" commendation conference to celebrate the 97th anniversary of the founding of the Party, which was also a speech conference on standard construction. The Court educated and guided all all of the judges, court staff, and judicial personnel to foster "four consciousnesses" (consciousness of maintaining political integrity, thinking in big-picture terms, following the leadership core, and keeping in alignment), insist on "confidence in four aspects" (confidence in the path, theory, system, and culture of socialism with Chinese characteristics), resolutely safeguard the core status of general secretary Xi Jinping in the Party Central Committee and the Party, as well as the authority and unified, centralized leadership of the Party Central Committee, and strictly abide by the rules of discipline, therefore creating a upright and clean atmosphere for cultivating career.

2. The organizing ability of Qingdao Maritime Court's basic-level Party organizations has obviously improved through strengthening the work of Party construction. The Court shifted the focus of work to the Party branch, and was strict with the Party's political life. It regularly held reading meetings in the theory study center group of Party group, conscientiously implemented the "Three-meeting and One-class" (general

membership meeting of the Party branch, meeting of Party branch committee, meeting of Party group, and Party class) system, and did a great job in the branch secretary's reporting, democratic appraisal of party members, etc., and practically utilized strong weapons such as democratic centralism, criticism and self-criticism. The Court conducted in-depth education on the theme of "following your heart, and keeping the mission in mind", actively promoted the "project on enhancement of organizing ability of basic-level Party organizations", emphasized goal guidance, problem orientation, insisted on concurrent deployment, promotion, and implementation of the judicial work and Party construction work, achieved organic integration of Party construction work and judicial work, and further improved the creativity, cohesiveness and fighting capacity of basic-level Party organizations.

3. The maritime judicial practice capability of Qingdao Maritime Court has been further enhanced through strengthening education and training. The Court held centralized training in the early spring, inviting experts and professors to teach in the Court and organized all of the judges, court staff, and judicial personnel to study in Qingdao Blue Silicon Valley and Jimo court. Furthermore, the Court strengthened cooperation with colleges and universities and scientific research institutions, signed strategic cooperation agreements with Shandong University, established a maritime law research center and a law education practice base. The Court actively sent personnel to participate in domestic and international exchange activities, which created favorable conditions and environment for the all of the judges, court staff, and

judicial personnel to broaden their horizons and enhance their capabilities. In addition, a number of research papers received awards in the national maritime trial seminar. One judge was named the fourth national expert in judicial practice, and was recommended to attend the young and middle-aged leading cadres training class at the Party School of Central Committee of CPC and be awarded as “excellent students.”

4. Qingdao Maritime Court strengthened incorrupt construction to ensure the integrity of the judiciary. The Court earnestly implemented the main body responsibility and supervision responsibility of construction of honesty in the Party conduct, actively carried out the warning and education activities concerning being honest, and organized all all of the judges, court staff, and judicial personnel to visit the anti-corruption education base in Qingdao. The Court also invited experts and professors to give specialized training on the newly revised *Regulation of the Communist Party of China on Disciplinary Actions*, regularly organized the all of the judges, court staff, and judicial personnel to watch education films, strengthened daily supervision of all of the judges, court staff, and judicial personnel compliance with laws and disciplines, and maintained “zero tolerance” towards conducts which had the potentiality, inclination and likelihood to violate the discipline of integrity.

第二部分　典型案例

案例一：中国太平洋财产保险股份有限公司青岛分公司诉青岛怡之航物流有限公司等海上、通海水域货物运输合同纠纷案

【基本案情】

青岛坦福食品有限公司委托被告青岛怡之航公司自青岛出运3360箱冷冻鳕鱼柳和鳕鱼块至英国费力克斯托港。青岛怡之航公司向坦福公司交付了被告荷兰怡之航物流公司于2015年6月6日签发的提单,提单记载托运人为坦福公司。被告阳明海运股份有限公司系该票货物的实际承运人。就该批货物,太平洋公司作为保险人承保货物运输一切险。涉案货物运抵目的港菲利克斯托港后,目的港官员对货物进行检查发现货物存在明显化冻现象,并下达拒货通知书,拒绝入境并勒令退回。原告、坦福公司与三被告及货方在目的港对涉案货物损失情况进行了联合检验。由于原集装箱损坏已无法保证温度控制,为避免损失扩大,经各方确认,涉案货物更换集装箱后退运至青岛港，各方进行了联合检验。关于货损原因，太平洋公司提交了两份检验报告，证明货损系集装

箱断电及不能充分密封导致,阳明公司提供了英国卸货港和退运回青岛港的两份检验报告,证明货损系货主积载不当导致。怡之航公司提交的检验报告中未注明货损原因。关于货损金额,太平洋公司提交了一份检验报告,证明涉案提单项下货物严重风干占比16.45%,轻微风干占比27.55%;一份公估报告,证明整柜货物因回温导致品质不同程度受损,已经不能再出口,根据定损原则,整柜货物受损,核损金额为全部货值,减去残值。怡之航公司提供了一份检验报告,认为货损比例为10.5%。阳明公司提供了一份检验报告,认为货损比例为 50%。原告向坦福公司支付保险赔偿款人民币351771.94元,对该部分保险赔偿金依法取得代位求偿权,并请求三被告予以赔付。

【裁判结果】

青岛海事法院经审理认为,坦福公司系托运人,荷兰怡之航公司系承运人,青岛怡之航公司系货运代理人。阳明公司系涉案货物的实际承运人。太平洋公司系保险人,坦福公司系被保险人。本案焦点为货损原因,荷兰怡之航公司作为涉案货物的承运人、阳明公司作为实际承运人,对于货损系托运人原因造成负有举证责任。综合分析各方提交的检验报告,按照优势证据规则,阳明公司的两份检验报告并非直接检验得出的结论。相比较,太平洋公司的检验报告证明力更

高，为优势证据，而且该报告的原因分析与阳明公司提交的集装箱数据记录、卸货港检验报告中也显示出的集装箱曾断电导致温度大幅上升、集装箱除霜不合理、密封受损等因素相印证。因此对其关于货损原因的分析认定本院予以确认。阳明公司提交的红线到顶照片与其检验报告相矛盾，不能证明存在积载不当的事实。关于货损金额，检验报告结论不同的原因在于检验方法不同，综合分析按照优势证据规则，太平洋公司的检验报告证明力更强，为优势证据，确认涉案货物最终货损金额为人民币 351771.94 元。判决荷兰怡之航公司赔偿太平洋公司货物损失人民币 351771.94 元及相应的利息，阳明公司承担连带赔偿责任，驳回原告对被告青岛怡之航公司的诉讼请求。

【典型意义】

本案是一起具有涉外因素的海上货物运输合同下保险代位求偿纠纷，当事人对适用我国海商法处理本案纠纷没有异议。货损发生后，托运人第一时间通知所有利害关系方，与保险人、无船承运人、实际承运人共同联合进行了检验，但并未出具共同认可的检验报告，而是委托各自的检验机构出具了不同的检验报告，分析的货损原因也有很大程度的差距。此时如何认定这些检验报告的效力？法院按照优势证据制度原则，即根据对各检验报告内容的分析，如果货损原因

系集装箱断电及不能充分密封导致的可能性明显大于货物积载不当的可能性，使法官有理由相信它很可能存在，尽管还不能完全排除存在相反的可能性，也应当允许法官根据优势证据认定这一事实。优势证据规则是对双方所举证据的证明力进行判断时所确立的原则，属于采信原则。本案在检验报告效力采信及货物损失赔偿额的认定方面具有重要的指导意义。本案一审判决后，各方均未提起上诉，并以法院判决为基础达成了和解。

Part II Typical Cases

Case One: China Pacific Property Insurance Company Limited Qingdao Branch v. Eimskip Logistics (Qingdao) Co., Ltd., etc. (Case about disputes over contracts of carriage of goods at sea or in water areas leading to the sea)

【Basic Facts】

Qingdao Tanford Foods Co., Ltd. ("Tanford") entrusted the defendant Eimskip Logistics (Qingdao) Co., Ltd. ("Eimskip Qingdao") to transport 3,360 containers of frozen codfish strips and cod fillets from Qingdao to the port of Felixstowe, UK. Eimskip Qingdao delivered to Tanford a bill of lading issued by the defendant Eimskip Logistics (Netherlands) Co., Ltd. ("Eimskip Netherlands") on June 6, 2015. The shipper on the bill of lading was Tanford. The defendant Yangming Marine Transport Corporation ("Yangming") was the actual carrier to carry the goods involved. China Pacific Property Insurance Company Limited Qingdao Branch ("China Pacific Qingdao") underwrote all risks of the cargo carriage as an insurer. After arriving at the port of destination Felixstowe port, officials from the destination port inspected the goods and found that the goods were obviously thawed, therefore the officials issued a notice of rejection to refuse the entry of the cargo and ordered the cargo to be returned. The plaintiff, Tanford, the three defendants and the

owner of the goods jointly conducted an inspection of the damage of the goods at the destination port. Due to the damage of the original containers, the temperature control could not be guaranteed. In order to prevent any aggravation of damage, after confirmation by all parties, the goods involved were returned to Qingdao port after replacing the original containers. As for the cause of the damage, China Pacific Qingdao submitted two inspection reports to prove that the damage was caused by the failure of the container power and defective sealing while Yangming provided two inspection reports issued at the port of UK and the port of Qingdao, to prove that the damage was caused by improper stowage by the owner. The cause of damage was not indicated in the inspection report submitted by Eimskip Qingdao. Regarding the value of the loss of the goods, China Pacific Qingdao submitted an inspection report to prove that the goods under the bill of lading, which were seriously air-dried accounted for 16.45%, those slightly air-dried accounted for 27.55%. An assessment report provided by China Pacific Qingdao proved that all goods in the container had been damaged in varying degrees due to the rise of temperature and could not be exported again. According to the principle of the loss assessment, when all goods in the container suffered damage, the amount of damage was the total value of the goods minus the residual value. Eimskip Qingdao provided an inspection report, which showed that the proportion of the damaged goods was 10.5%. Yangming also provided an inspection report, illustrating that proportion was 50%. The plaintiff paid Tanford the insurance indemnity in the amount of 351,771.94 yuan. The plaintiff obtained the right of subrogation within

the amount of the indemnity it paid according to the law, and requested the three defendants to repay.

【Judgment】

Qingdao Maritime Court held that Tanford was the shipper, Eimskip Netherlands was the carrier, Eimskip Qingdao was the freight forwarder and Yangming was the actual carrier. China Pacific Qingdao was the insurer and Tanford was the insured. The focus of the case was the cause of the damage to cargo. Eimskip Netherlands as the carrier of the goods involved in the case and Yangming as the actual carrier had the burden of proof to prove that the damage to cargo was caused by the shipper. Based on the comprehensive analysis of the inspection reports submitted by all parties, and according to the principle of the preponderance of evidence, it was found that the conclusions of the two reports provided by Yangming were not directly drawn from inspection while the inspection report provided by China Pacific Qingdao was preponderant evidence with more persuasiveness. Besides, the analysis of the reasons stated in the report was consistent with the causes included in the container data records and the inspection report at the unloading port provided by Yangming, which were the significant rise of temperature of the container due to the power failure, unreasonable defrosting of the container and the damaged seal. The Court recognized China Pacific Qingdao's contention on the cause of the damage to the cargo. Photos of the goods reaching the red line at the top of the container submitted by Yangming to show that the shipper stowed the goods improperly were inconsistent with its inspection report, therefore it could not be used to prove that the goods were improperly

stowed. As for the value of the loss of the goods, the reason for the different conclusions in the inspection reports lied in the different inspection methods. According to the principle of the preponderance of evidence, the inspection report provided by China Pacific Qingdao was preponderant evidence with more persuasiveness, and the amount of the loss of the goods was therefore confirmed as 351,771.94 yuan. As a result, the Court ordered Eimskip Netherlands to compensate China Pacific Qingdao for the loss of goods in the amount of 351,771.94 yuan plus relevant interest and Yangming shall assume joint and several liability for such compensation. Plaintiff's claims against the defendant Eimskip Qingdao were dismissed.

【Significance】

The case involves foreign-related marine insurance subrogation disputes under the contract of carriage of goods by sea. The parties have no objection to the application of China's maritime law to solve the disputes in question. Upon the occurrence of the damage, the shipper immediately notified all concerned parties and inspected the goods together with the insurer, non-vessel operation carrier and actual carrier, but there was no such an inspection report that recognized by all parties. The parties respectively entrusted organizations to issue inspection reports and the causes of the damage analyzed in different reports also differed a lot. On this occasion, how to determine the probative force of these inspection reports? The Court relied on the principle of the preponderance of evidence, under which if the possibility of the damage caused by container power failure and insufficient sealing was obviously higher than

that of improper stowage of the goods, and made the judges believe that they were very likely to have existed, then the Court could acknowledge the former situation as a fact, even though the latter could not be completely excluded. This principle is established to determine the persuasiveness of the evidence provided by each party, which is a principle of the adoption of evidence. The case plays a guiding role in the adoption of inspection reports and the determination of the amount of compensation for the loss of goods. After the first instance, neither party appealed, and they reached a settlement agreement based on the Court's judgment.

案例二：日照中港粮油有限公司诉阳光财产保险股份有限公司海上保险合同纠纷案

【基本案情】

中港粮油公司从马来西亚进口的8000吨精炼棕榈油，总价款6728000美元，由阳光保险公司承保货运险，承保条款均为协会货物 A 条款。上述货物由“安曼达”轮分别在马来西亚两个港口装运。经装港检验，货物的食品安全测试项目均未超出中国公共卫生强制标准。2014年3月7日，“安曼达”轮完货后在第二装港锚地抛锚。因该轮主机故障，于4月12日15时开始由拖轮拖带航行，5月9日靠泊日照港卸货。经检验，涉案货物因酸值超标做退运处理。后中港粮油公司将涉案货物转卖给境外第三人，变卖回款4215801.26美元。涉案货物抵达日照港后，中港粮油公司即向阳光保险公司报案，但一直未获赔付。

【裁判结果】

青岛海事法院经审理认为，保险人对承保风险作为近因而导致的任何损失承担保险责任，但不对承保风险并非近因而导致的任何损失承担保险责任。所谓近因应当是效果上近接，并独立发挥决定性、支配性作用的原因。本案货损发生的近因是承运船舶的机损事故而非航程迟延。保险合同的除

外条款中并不包括承运船舶的机损事故，该近因属于承保风险，保险人应根据约定对该近因造成的损害承担保险责任。遂判决阳光保险公司承担保险责任。宣判后，原、被告均服判未上诉，判决已发生法律效力。

【典型意义】

本案是一起具有“一带一路”因素的海上保险合同纠纷案件，涉及到保险近因原则的理解和适用。近因原则是海上保险合同的一项基本原则，为绝大多数国家海上保险法所采用。所谓近因原则，是指只有对损失的发生起决定性的、占支配地位的、最具影响力的原因属于承保风险时，保险人才应当承担赔偿责任。由于船舶在海上航行可能遭遇一系列风险、事故，因此可能有以串连形式存在的一系列原因。如果某一原因的介入打断了原有的某一事件与损害结果之间的因果关系链条，并独立对损害结果起到决定性的作用，该新介入的原因即作为近因。如果没有新原因的介入，则须在因果关系链条中找到最后一个对损害结果发生决定性支配力并可作为其后一系列原因之充分条件的原因，作为近因确定保险责任的有无。在本案中，由于承运船舶发生机损事故导致航程远远超出正常时间，尽管从表面上看，损害是由航程迟延造成的，但迟延是船舶机损事故的必然结果，对涉案货物损害的发生不具有独立的决定力量，而是充当了船舶机损

事故与损害结果之间的桥梁，并非作为外来因素介入中断了原有的因果关系链条，而是在这一链条内部承担传导和中介的作用。因此，虽然航程迟延直接造成的灭失、损害或费用，属于协会货物 A 条款列明的一般除外条款，但由于本案货损发生的近因是承运船舶的机损事故而非航程迟延，故保险人不能免责。该判决通过对近因原则正确的理解、阐述和运用，定分止争，充分体现了司法服务保障“一带一路”建设的基本功能。

Case Two: Rizhao Middle Harbour Grain and Oil Co., Ltd. v. Sunshine Property and Casualty Insurance Company Limited (Case about disputes over a marine insurance contract)

【Basic Facts】

Rizhao Middle Harbour Grain and Oil Co., Ltd. ("Middle Harbour") imported 8,000 tons of refined palm oil from Malaysia in a total price of 6,728,000 US dollars. Sunshine Property and Casualty Insurance Company Limited ("Sunshine Insurance") underwrote a cargo insurance, and the terms of insurance contract were all terms of Institute Cargo Clause A. The above-mentioned cargo were shipped by the "Amanda" ship at two ports in Malaysia respectively. After the shipment inspection, the cargo did not exceed China's mandatory standards on public health in all the items of the food safety tests. On March 7, 2014, the ship "Amanda" anchored at the anchorage of the second port of shipment after taking all cargo. Due to the failure of the main engine, from 3 p.m. on April 12, the ship began to be towed by a tug and the cargo was unloaded at the port of Rizhao on May 9. After inspection, the cargo involved in the case were returned due to excessive acid number. Later on, Middle Harbour resold the cargo involved to a third party overseas in price of 4,215,801.26 US dollars. After the cargo involved arrived in Rizhao Port, Middle Harbour immediately notified Sunshine Insurance, but it had not received any indemnification.

【Judgment】

Qingdao Maritime Court held that the insurer shall assume the

insurance liability for any loss caused by the perils insured against as a proximate cause, and did not shoulder insurance liability for any loss caused by risks covered not as a proximate cause. The so-called proximate cause shall be a cause that was near in effect and independently played a decisive and dominant role. In the present case, the proximate cause of the cargo damage was the engine failure accident of the carrying ship, not the delay of the voyage. The exclusion clause of the insurance contract did not include engine failure accident of the carrying ship, and the proximate cause belonged to the risks covered. Therefore, the insurer shall bear the insurance liability for the damage caused by the proximate cause according to agreement. As a result, the Court reached a verdict that Sunshine Insurance shall assume insurance liability. After the judgment was made, both the plaintiff and the defendant accepted the result and did not appeal, and the judgment has been legally effective.

【Significance】

The case deals with marine insurance contract disputes with the Belt and Road initiative factor, which involves the understanding and application of the principle of proximate cause. The principle of proximate cause is a basic principle of marine insurance contracts and is adopted by marine insurance laws of most States. The so-called principle of proximate cause means that only when the cause that plays a decisive, dominant and most influential role in causing losses belongs to the risks covered, the insurer shall be liable for compensation. Since ships may encounter a range of risks and accidents while sailing at sea, there may be a series of causes. If the intervention of a certain cause interrupts the

causal relationship between the original event and the damage, and such intervening factor independently plays a decisive role in causing the damage, then the intervening cause is the proximate cause. If there is no intervening cause, it is necessary to find the last reason that plays a decisive and dominant role in causing damage in the causation chain, which shall also be a sufficient condition for the subsequent causes, as the proximate cause to determine whether the insurance liability exists or not.

In the present case, the duration of the voyage was far from being normal due to the engine failure of the carrying ship. Although on the surface, the damage was caused by the delay of the voyage, the delay was actually the inevitable result of the engine failure accident. Delay did not independently cause the damage of the cargo involved, but acted as a link between the ship's engine failure accident and the damage. It did not intervene as an external factor to interrupt the original causation chain, but instead assumed the role as a conductor and medium within the chain. Therefore, although the loss, damage or cost directly caused by the delay of voyage belonged to the general exclusion clause specified in Institute Cargo Clause A, the insurer could not exempt its liability because the proximate cause of the cargo damage in this case was the engine failure accident of the carrying ship, not the delay of voyage.

Through the correct understanding, elaboration and application of the principle of proximate cause, the judgment has ended disputes and fully embodies the basic functions of the judiciary – serving and guaranteeing the construction of the Belt and Road initiative.

案例三：中诚国际海洋工程勘察设计有限公司诉日照钢铁有限公司等船坞、码头建造合同纠纷案

【基本案情】

日钢公司与某航运公司签订了一份总承包合同，之后航运公司向工商局申请企业名称变更为诚基公司，虽经核准，但并未办理更名，而是另行登记设立诚基公司，控股股东为航运公司。2007 年涉案港口工程开工。2008 年航运公司成为诚基公司的全资子公司。2008 年 8 月日钢公司与诚基公司签订《日照钢铁有限公司港口项目设计、采购、施工总承包合同》，增加了工程内容，调整了合同工期。2008 年 9 月诚基公司按日钢公司的指令停工。2012 年 3 月诚基公司变更名称为中诚公司，航运公司仍合法存续，系中诚公司的全资子公司。2013 年 1 月日照钢铁控股集体有限公司与中诚公司就工程结算事宜签订《协议书》。2013 年 6 月山东省造价咨询公司出具《审核报告》，对工程款进行了审定。日钢公司在工程造价(结算)核定总表上加盖工程建设部的印章。审理中，根据监理公司盖章确认的《工程业务联系单》，经委托鉴定公司对涉案工程的停工、窝工造价损失进行了鉴定。日钢公司向中诚公司已支付工程款的金额为 244812318.11 元，对该事实各方均无异议。中诚公司因未收

到剩余工程款，请求法院判令日钢公司、日钢控股公司连带支付工程款、窝工损失、贷款利息。

【裁判结果】

青岛海事法院经审理认为，就涉案工程中诚公司与日钢公司之间签订了总承包合同，双方之间的合同依法成立。航运公司与中诚公司之间并非工程转包或者合同权利义务的概括转让，而是公司股份控制的关系。工程施工期间，《工程业务联系单》上记载的施工人为中诚公司。中诚公司实际参与了涉案合同的签订与履行，被告日钢公司与日钢控股公司均认可该事实，并且与中诚公司进行了工程量的确认，施工过程中的单据等所涉及的施工主体是中诚公司，中诚公司才是工程的真正履行义务主体，是适格的原告。对于工程价款，应当依据审计单位出具的《工程造价（结算）核定总表》来确定。对于停工损失费，应当依据鉴定公司出具的《工程造价鉴定意见书》来确定。根据合同的相对性原理，中诚公司应当向日钢公司主张合同项下的工程款及相关权利。因日钢控股公司并非涉案工程施工合同的当事人，对日钢公司的工程款及相关费用不负有连带清偿义务。判决被告日钢公司向原告中诚公司支付工程款 36123429.89 元及利息、停工损失费 11701788.64 元，驳回原告其他诉讼请求。一审判决后被告日钢公司不服，向山东省高级人民院提起上诉，山东省

高级人民法院判决驳回上诉，维持原判。

【典型意义】

本案是一起船坞码头建造合同纠纷，因该合同涉及标的额较大，履行过程中存在多份不同主体签订的合同，合同履行期较长，且合同履行过程中停工、窝工时间很久，导致双方产生很大争议。本案的处理具有以下典型意义：第一，船坞码头建造合同中，合同相对方应当结合合同签订情况、合同履行情况、当事人的有关证明材料综合认定。第二，各方已经按照《工程造价（结算）核定总表》确认并部分支付了工程款的情形下，除非异议方举证证明核定总表审核的工程项目超出合同的施工项目，否则应作为工程款认定的依据。第三，鉴定公司依据合同载明的监理公司盖章确认的《工程业务联系单》对停工、窝工的损失数额做出的鉴定结论应当作为认定停工损失费的依据。

Case Three: China Integrity International Oceaneering Co., Ltd. v. Rizhao Steel Co., Ltd., etc. (Case about disputes over dock and quay construction contracts)

【Basic Facts】

Rizhao Steel Co., Ltd. ("Rizhao Steel") signed a general construction contract with a shipping company. Later on, the shipping company applied to the Bureau of Industry and Commerce for the change of the company's name to Chengji Company. Although the application was approved, the shipping company did not change its name, instead it separately registered and established a Chengji Company with the shipping company itself being the controlling shareholder. The harbour project involved in the case started in 2007. In 2008, the shipping company became a wholly-owned subsidiary of Chengji Company. In August 2008, Rizhao Steel and Chengji Company signed the *General Contract for Design, Procurement and Construction of the Harbour Project of Rizhao Steel Co., Ltd.*, which added the content of the project and adjusted the work period. In September 2008, Chengji Company stopped the construction according to the instructions of Rizhao Steel. In March 2012, Chengji Company changed its name to China Integrity International Oceaneering Co., Ltd. ("China Integrity") and the shipping company still legally existed as a wholly-owned subsidiary of China Integrity. In January 2013, Rizhao Steel Holding Group Co., Ltd. ("Rizhao Steel Holding") and China Integrity signed an *Agreement* concerning the settlement of the project. In June 2013, a cost consultation

company of Shandong Province issued an *Audit Report* to verify the project payment. Rizhao Steel stamped on the general table of the verified project cost (settlement) using the seal of the department of engineering construction. During the trial, a verification company was commissioned to verify the damages caused by work stoppage or work slowdown according to the *Engineering Business Contact Sheet* confirmed by the supervision company with its stamp. The amount of the project payment that Rizhao Steel had paid to China Integrity was 244,812,318.11 yuan, and there was no objection to the fact raised by the parties. Since China Integrity did not receive the remaining project payment, it requested the Court to order Rizhao Steel and Rizhao Steel Holding to jointly and severally make the project payment, and to compensate the losses caused by work slowdown and the interest of loans.

【Judgment】

Qingdao Maritime Court held that the general construction contract for the project involved in the case was signed between China Integrity and Rizhao Steel, and the contract between the two parties was lawfully established. There was no assignment of construction or general transfer of contractual rights and obligations between the shipping company and China Integrity. Instead China Integrity company controlled the shares of the shipping company. In the process of construction, the construction undertaker on the *Engineering Business Contact Sheet* was China Integrity. China Integrity actually participated in the conclusion and performance of the contract involved, which was recognized by the defendant, Rizhao Steel and Rizhao Steel Holding. The two defendants

confirmed the workload of the project with China Integrity, and during the process of construction, China Integrity was the construction undertaker stated in the documents. Therefore, China Integrity was the actual party to perform the duty under the contract, and thus was the appropriate plaintiff. The project payment shall be determined according to *General Table of the Verified Project Cost (Settlement)* issued by the audit institution. The losses caused by work stoppage shall be determined according to the *Verification Opinion on Construction Cost* issued by the verification company. Pursuant to the privity of contract principle, China Integrity shall claim for the project payment and relevant rights under the contract against Rizhao Steel. Rizhao Steel Holding shall not jointly and severally pay the project payment and related expenses because it was not a party to the construction contract involved in the case. As a result, the Court ordered the defendant Rizhao Steel to pay the plaintiff China Integrity project payment of 36,123,429.89 yuan and interest and losses incurred by work stoppage in the amount of 11,701,788.64, yuan. The plaintiff's other claims were rejected. Rizhao Steel appealed to Shandong High People's Court. Then Shandong High People's Court dismissed the appeal and upheld the original judgment.

【Significance】

The case is about disputes over dock and quay construction contracts. There is great controversy between the two parties due to the following reasons: the amount of the contract is relatively large; there are many contracts concluded by different parties in the process of performance; the contract term for performance is long, and the work stoppage and

slowdown last for a long time.

The significance of the case is as follows: firstly, in dock and quay construction contracts, the counterparty of the contract should be identified in comprehensive consideration of the conclusion and performance of the contract and relevant certification materials of the parties. Secondly, under the circumstance where the parties have confirmed and partially paid the project payment in accordance with *General Table of the Verified Project Cost (Settlement)*, unless the objector proves that the projects verified by the *General Table* exceed the contracted construction projects, the *Table* shall be used as the basis for determination of the project payment. Thirdly, the verification conclusion on the losses caused by work stoppage and slowdown determined by the verification company based on the *Engineering Business Contact Sheet* stamped by the supervision company specified in the contract shall be used as the basis for determining the damages caused by work stoppage.

案例四：山东国大黄金股份有限公司诉天津市津南区兆丰化工有限公司等船舶经营管理合同纠纷案

【基本案情】

国大公司与兆丰公司协议共同出资建造一条2000吨级硫酸专用运输船，国大公司出资20%。2004年2月，该两公司与天意公司协议合作经营该化学品船,要求天意公司在办理船舶产权证时,产权必须填写兆丰公司与国大公司两方的名称。之后,国大公司向船舶建造方支付造船款120万元。船舶建造完毕后由天意公司管理。2009年7月，天意公司将该船出卖。天意公司设立时股东为崔文华、宫旭升、刘艳，2009年6月5日，增加注册资本为1930万元，其中新增注册资本1350万元由兆丰公司以上述化学品船出资，该船的所有权于2009年6月12日以前变更为天意公司。2012年10月15日，天津市滨海新区工商行政管理局对天意公司做出吊销营业执照的行政处罚，要求其停止经营活动，债权债务由股东、主管部门、投资人或清算组负责清算。后该公司一直处于吊销状态，股东未组织清算，无办公经营地，账册及财产均下落不明。国大公司因其投资的化学品船被转卖，请求法院判令被告兆丰公司、天意公司连带返还化学品船投资款本金120万元及利息，股东刘艳、崔文华、宫旭升对被

告天意公司的债务承担连带清偿责任。

【裁判结果】

青岛海事法院经审理认为，国大公司在投资120万元之后，未能按照其投资的股份享有船舶所有权，也没有获得收益和处分权，兆丰公司和天意公司通过增资、出卖等方式处分船舶所有权，并从中获得收益，该两公司的行为违反船舶合作经营管理合同的约定，应当承担违约责任。因天意公司已将涉案船舶卖给天津津投租赁有限公司，致使船舶经营管理协议无法继续履行，则兆丰公司与天意公司应当返还投资款，并赔偿损失。天意公司被吊销营业执照，其股东应当负有及时进行清算的义务。但其股东怠于履行清算义务，而且在本案审理过程中发现天意公司无办公经营地，只能采取公告的方式送达法律文书，公司注册登记时的账户已经销户，且账册与财产均下落不明。因此，股东崔文华、宫旭升、刘艳应当对天意公司的债务承担连带清偿责任。据此，判决兆丰公司、天意公司共同返还120万元及利息，三股东承担连带清偿责任。被告崔文华、刘艳不服一审判决，上诉至山东省高级人民法院，二审判决驳回上诉，维持原判。

【典型意义】

本案是一例典型的船舶经营管理合同纠纷。在合同履行过程中，出资人对船舶完全失控，合作方通过增资、出卖的

方式处分船舶非法获益。之后合作方人去楼空，股东怠于履行清算义务，导致出资人利益受损。本案的处理具有以下典型意义：第一，本案系船舶经营管理合同关系，该合同的本质是各方风险共担、利益共享，是一种合作关系。该合同属于无名合同，应当受合同法总则的调整。第二，股东作为公司解散时的清算义务人，对公司组织清算属于一种作为行为，是一种法定义务。当清算义务人不作为时，法律通过将清算责任向财产责任转化的方式，督促义务人依法清算，达到保护债权人利益及规范法人退出机制的目的,这正是规定“股东怠于履行清算义务时需对公司债务承担连带清偿责任”的立意主旨所在。天意公司被工商局吊销营业执照，其股东应当在法定期限内成立清算组进行清算,股东怠于履行清算义务应当承担连带清偿责任。

Case Four: Shandong Guoda Gold Co., Ltd. v. Tianjin Municipality Jinnan District Zhaofeng Co., Ltd., etc. (Case about disputes over ship operation and management contracts)

【Basic Facts】

Shandong Guoda Gold Co., Ltd. ("Guoda") and Tianjin Municipality Jinnan District Zhaofeng Co., Ltd. ("Zhaofeng") agreed to jointly make capital contributions to build a 2,000-ton vessel specifically used for transporting sulfuric acid, and Guoda contributed 20% of the capital. In February 2004, the two companies cooperated with Tianjin Development Area Tianyi Co., Ltd. ("Tianyi") to operate the chemical tanker, requiring Tianyi to list Zhaofeng and Guoda as the owners on the certificate of vessel ownership when applying for it. Afterwards, Guoda paid a shipbuilding payment in the amount of 1.2 million yuan to the ship builder. The ship was managed by Tianyi after being built. In July 2009, Tianyi sold the ship. When Tianyi was established, its shareholders were Cui Wenhua, Gong Xusheng and Liu Yan. On June 5, 2009, the registered capital of Tianyi increased to 19.3 million yuan, of which 13.5 million yuan was newly contributed by Zhaofeng to the ship. The owner of the ship was changed to Tianyi before June 12, 2009. On October 15, 2012, Administration for Industry and Commerce of Tianjin Binhai New Area imposed an administrative punishment on Tianyi to rescind its business license, requiring it to cease its business activities. And the shareholders, competent departments, investors or liquidation groups shall be responsible for the liquidation of rights and debts of the company.

Afterwards, Tianyi had been in the state of rescission. The shareholders did not carry out the liquidation, and there were no operating offices of Tianyi, the whereabouts of accounts and properties were also unknown. Because the chemical tanker it invested had been resold, Guoda requested the Court to order the defendants Zhaofeng and Tianyi to jointly and severally return 1.2 million yuan which was the principal of the investment payment of the chemical tanker and pay back the interest of such principal and to order the shareholders Liu Yan, Cui Wenhua and Gong Xusheng be jointly and severally liable for the debts of Tianyi.

【Judgment】

Qingdao Maritime Court held that after investing 1.2 million yuan, Guoda did not obtain the ownership of the vessel according to the shares it held, and did not enjoy the rights to seek profits from or dispose of the ship. Zhaofeng and Tianyi disposed of the ship by means of capital increase and sale and obtained profits from it. Such behavior of the two companies violated the contract for the cooperative operation and management of the ship, thus the two companies shall bear the liability for breach of contract. Since Tianyi had sold the vessel involved in the case to Tianjin Investment Group Leasing Co., Ltd., the contract for the cooperative operation and management of the ship could not continue. Therefore, Zhaofeng and Tianyi shall return the investment payment and compensate Guoda's losses. After the rescission of Tianyi's business license, its shareholders were obliged to carry out liquidation in a timely manner. However, they deliberately delayed the performance of their obligations. In addition, during trial of the case, the Court found that

Tianyi had no operation offices, and the legal documents could only be served by the means of announcement. Moreover, the account of the company at the time of registration had been closed, with the whereabouts of accounts and properties remaining unknown. Therefore, the shareholders Liu Yan, Cui Wenhua and Gong Xusheng shall be jointly and severally liable for the debts of Tianyi. Accordingly, the Court decided that Zhaofeng and Tianyi shall jointly return 1.2 million yuan and its interest, and the three shareholders shall assume joint and several liability for paying off the debts. The defendants Cui Wenhua and Liu Yan appealed to Shandong High People's Court. The appellate court dismissed the appeal and upheld the original judgment.

【Significance】

The case is a typical case about disputes over ship operation and management contracts. In the performance of the contract, the investor completely lost control of the ship, and its partners illegally obtained benefits from disposal of the ship by means of capital increase or sale. Then, the partners disappeared, and the shareholders deliberately delayed the performance of their obligation to liquidate, causing damage to the investor' interests.

The significance of the case is as follows: firstly, the relationship involved in the case is a contractual relationship on ship operation and management. The essence of the contract is the sharing of risks and interests by all parties, which is a cooperative relationship. The contract involved is an unnamed contract which is not stipulated by explicit and specific provisions and thus should be subject to the general rules of the

contract law. Secondly, it is a legal obligation for the shareholders to organize liquidation as liquidation obligors after the dissolution of the company. When the liquidation obligors fail to act, the law transforms this obligation into property liabilities to urge the obligors to act according to the law, thus fulfilling the purpose of protecting the interests of the creditors and regulating the withdrawal mechanism of legal persons. This is precisely the legislative intent of the regulation “when the shareholders are idle to fulfill their obligation to liquidate, they shall assume the joint and several liability for the debts of the company.” After the rescission of Tianyi’s business license by the administration for industry and commerce, its shareholders shall form a liquidation group within the statutory time limit to carry out liquidation. Shareholders shall assume the joint and several liability for the debts of the company if they are idle to fulfill their obligation to liquidate.

案例五：山东荣成农村商业银行股份有限公司龙须岛支行诉李耀钊等船舶抵押合同纠纷案

【基本案情】

农商行龙须岛支行与李耀钊签订《个人借款合同》，约定由李耀钊向农商行龙须岛支行借款 900 万元用于购买渔船，并约定分期还本付息；与李耀钊签订《抵押合同》，约定李耀钊以其所有的渔船提供抵押担保,并约定在有多种担保的情况下,农商行龙须岛支行有权自主决定实现担保的顺序；与李尧钊、李汉国、蒲永深、徐逢华、袁正秀、戚国涛、王新利签订《保证合同》，约定李尧钊等人提供连带责任保证，保证期间为债务人履行债务期限届满之日起二年，并在合同条款中以黑体加粗的字体约定债权人有权要求保证人先于物的担保承担保证责任。由于李耀钊借款后未能如期还款，农商行龙须岛支行起诉李耀钊及李尧钊等人，请求判令李耀钊偿还借款及利息、复利以及判令李尧钊等人承担连带保证责任。

【裁判结果】

青岛海事法院经审理认为,李耀钊作为借款人应当按照借款合同的约定全面履行自己的债务,故判决其偿还拖欠的借款及相应的利息、复利等。根据《保证合同》的约定以及

《中华人民共和国物权法》第一百七十六条的规定，农商行龙须岛支行有权在未行使船舶抵押权的情况下，要求作为保证人的李尧钊等人先于抵押担保承担保证责任。但是，根据《中华人民共和国担保法》第二十六条的规定，农商行龙须岛支行未在合同约定的保证期间要求保证人承担保证责任，李尧钊等人可以免除相应的保证责任。分期履行的保证期间应自每期履行期限届满之日起算。故判决李耀钊等保证人仅对分期偿还本息的期限届满之日起两年的保证期间内的债务承担保证责任，对分期偿还本息的期限届满之日起超过二年以上的债务免除保证责任。

【典型意义】

本案涉及船舶抵押权与保证担保并存情况下，债权人能否先于船舶抵押权要求保证人承担保证责任以及分期履行债务的保证期间的起算等问题，相关裁判有利于引导相关债权人、保证人、抵押权人正确认知自己的权利、义务与风险，进行风险预判，作出合理决策。本案的处理具有以下典型意义：一是明确了在物的担保与人的担保并存的情况下，债权人有权自主决定实现担保权顺位。根据《中华人民共和国物权法》第一百七十六条规定，被担保的债权既有物的担保又有人的担保的，债权人应当按照约定实现债权，即赋予了债权人在合同中选择实现担保权顺位的权利。物权法这一规定

改变了《中华人民共和国担保法》第二十八条关于保证人对物的担保以外的债权承担保证责任,并在债权人放弃担保物权的范围内免除保证责任的规定。由于物权法后于担保法生效，按照新法优于旧法的原则，应适用物权法的规定。本案在确认当事人意思自治的基础上,认定当事人约定的人的担保可以先于物的担保的合同效力,支持债权人先于物的担保实现人的担保,为借款合同项下提供物的担保与人的担保提供了指引,有利于相关担保人明确自己的权利、义务与风险，谨慎处分自己的权利。二是明确了分期履行债务的保证期间的起算。依照《中华人民共和国担保法》第二十六条的规定，保证人提供连带责任保证的在合同约定的保证期间和前款规定的保证期间，债权人未要求保证人承担保证责任的，保证人免除保证责任。保证合同约定保证人的保证期间为主合同约定的债务人履行债务期限届满之日起二年,但并未明确债务分期履行情况下，保证期间的起算。以每期履行届满之日起算分期履行债务的保证期间,对于促使债权人及时行使权利具有指引作用。

Case Five: Shandong Rongcheng Rural Commercial Bank Co., Ltd. Longxu Island Branch v. Li Yaozhao, etc. (Case about disputes over mortgage of ships contracts)

【Basic Facts】

Shandong Rongcheng Rural Commercial Bank Co., Ltd. Longxu Island Branch ("Longxu Island Branch") signed a *Contract for Individual Loans* with Li Yaozhao, stipulating that Li Yaozhao would borrow 9 million yuan from the Longxu Island Branch to purchase fishing boats, and Li Yaozhao could pay the principal and interest in installments. Longxu Island Branch also signed a *Mortgage Contract* with Li Yaozhao, stipulating that Li Yaozhao provided mortgage guarantee with fishing vessels owned by him, and the two parties agreed that in the case of multiple means of guarantees, Longxu Island Branch enjoyed the right to decide the order of realization of guarantees independently. Furthermore, Longxu Island Branch signed a *Guarantee Contract* with Li Yaozhao, Li Hanguo, Pu Yongshen, Xu Fenghua, Yuan Zhengxiu, Qi Guotao and Wang Xinli, stipulating that Li Yaozhao and other persons mentioned above offered joint responsibility guarantee and the duration of the guarantee was two years since the end of the execution period of the principal debt. It was also specified in bold font that the creditor had the right to require the guarantors to assume the guarantee responsibilities prior to real security. As Li Yaozhao failed to repay the loan on time, Longxu Island Branch sued Li Yaozhao, Li Yaozhao, and other persons, requesting the Court to order Li Yaozhao to repay the loan, interest,

compound interest and order Li Yaozhao and others to assume joint guarantee responsibilities.

【Judgment】

Qingdao Maritime Court held that Li Yaozhao, as a detor, shall fully repay the debts in accordance with the terms of the loan contract. Therefore, the court ordered him to repay the defaulted loan, corresponding interest and compound interest, etc. According to the *Guarantee Contract* and Article 176 of the *Property Law of the People's Republic of China* ("*Property Law*"), Longxu Island Branch enjoyed the right to request Li Yaozhao and other guarantors to assume guarantee responsibilities prior to the mortgage guarantee without enforcing the mortgage of ships. However, according to Article 26 of *The Guarantee Law of the People's Republic of China* ("*Guarantee Law*"), Longxu Island Branch did not request the guarantors to assume guarantee responsibilities during the period of the guarantee stipulated in the contract, thus Li Yaozhao and other guarantors could be exempt from corresponding guarantee responsibilities. Since the period of guarantee for payment in installments shall commence from the date of expiration of each period of payment, the Court decided that Li Yaozhao and other guarantors shall only shoulder the guarantee responsibilities for the debts within two years from the end of the execution period of each installment, and were exempt from the guarantee responsibilities for the debts more than two years from the end of the execution period of each installment.

【Significance】

The case deals with two questions: firstly whether the creditor can

require the guarantor to assume the guarantee responsibilities prior to real security when the mortgage of ships and guarantee coexist, and secondly how to determine the commencement of the duration of the guarantee in terms of payment by installment. Relevant judgments are conducive to guiding the relevant creditors, guarantors, and mortgagees to correctly understand their rights, obligations and risks, predict the potential risks, and make reasonable decisions.

The significance of the case is as follows: firstly, the case clarifies that where guarantee and real security coexist, the creditor enjoys the right to decide the order of realization of guarantees. Pursuant to Article 176 of the *Property Law*, where a secured credit involves both physical and personal security, the creditor shall realize the creditor's rights according to the contract, which means the creditor is given the right to decide the order of realization of guarantees in the contract. The provision of the *Property Law* has changed the provision of Article 28 of the *Guarantee Law.* Article 28 of the *Guarantee Law* stipulates that the guarantor assumes guarantee responsibilities over the creditor's right other than guaranteed by real security and if a creditor gives up the real security, the guarantor will be exempt from the guarantor responsibilities over the rights that the creditor gives up. Since the *Property Law* takes effect after the *Guarantee Law*, under the principle of new laws superior to old ones, the provisions of the *Property Law* shall be applicable. On the basis of confirming the autonomy of will of both parties, the case acknowledges the validity of the agreement that guarantee could be prior to real security, and supports the creditor in realizing personal security

prior to physical security, which provides guidance for offering real security and guarantee under loan contracts, and helps the relevant guarantor to define its rights, obligations and risks and to carefully dispose of its rights.

Secondly, the case makes clear the commencement of the duration of the guarantee in terms of payment by installment. According to Article 26 of the *Guarantee Law*, if the guarantor offers joint responsibility guarantee, during the period of the guarantee as stipulated in the contract and the period as stated in the previous paragraph, if the creditor fails to request the guarantor to assume guarantee responsibilities, the guarantor can be exempt from guarantee responsibilities. Guarantee contract stipulates that the duration of the guarantee is two years since the end of the execution period of the principal debt, but it does make regulations on the duration of guarantee under the circumstances of payment by installment. On this occasion, determining that the period of guarantee for payment in installments shall commence from the date of expiration of each period of payment will guide the creditor to exercise its rights in a timely manner.

案例六：中国银行运城市分行诉海洋力量二世特别海事公司无正本提单放货侵权损害赔偿纠纷案

【基本案情】

运城中行根据《授信额度协议》和海鑫公司的申请，开立不可撤销跟单信用证。信用证开立后，运城中行收到了受益人交来的包括提单在内的信用证项下单据。运城中行经审单认为符合信用证的规定，并向海鑫公司发出对外付款/承兑通知书。因备付款项不足，不能足额支付上述信用证项下款项，海鑫公司向运城中行申请进口押汇。2014 年 2 月 21 日，运城中行向海鑫公司提供 825 万美元押汇款用于支付信用证项下款项。由于海鑫公司未能偿还押汇本金及利息，三份正本提单仍由运城中行持有。运城中行所持提单项下货物由“ZAGORA”轮承运，在岚山港卸载后，被海鑫公司全部提取。后运城中行以无单放货为由，申请扣押了“ZAGORA”轮，并提起本案诉讼。

【裁判结果】

青岛海事法院经审理认为，运城中行先是基于履行了开证义务而取得信用证项下提单，后又基于进口押汇合同关系继续持有提单，而非基于买卖等基础合同关系交付或指示交付的方式取得提单，故不能认定其在取得涉案提单时即已取

得提单项下货物的所有权，不能行使基于所有权的物权请求权。但是，基于运城中行合法持有提单、法律规定提单可以设立权利质权、运城中行与海鑫公司在进口押汇合同中存在书面提单质押约定等事实，应当认定运城中行享有提单质权。海洋力量二世特别海事公司作为提单承运人，凭单交货系其法定义务，在未收回正本提单的情况下，将货物交付给海鑫公司，明显违反法定义务，侵犯了运城中行作为提单持有人所享有的提单质权，构成侵权。遂判决海洋力量二世特别海事公司赔偿运城中行损失 8351704.94 美元。

【典型意义】

进口押汇银行持有提单享有何种权利，在实践中一直存在争议。在本案中，运城支行并非基于买卖等基础合同关系交付或指示交付的方式取得提单，而是先基于履行了开证义务取得提单、后又基于进口押汇合同继续持有提单，并没有介入贸易本身，其持有提单的目的是作为对外垫款的担保。因，根据法律规定提单可以设立权利质权、运城中行与海鑫公司在进口押汇合同中存在书面提单质押约定等事实，应当认定运城中行享有提单质权。这符合当事人的意思表示，也符合进口押汇双方当事人以提单等单据担保银行债权实现的交易目的。提单承运人无单放货，侵害了进口押汇银行的担保物权，应承担侵权责任。本判决依照法律规定正确阐释

了进口押汇银行持有提单所享有的权利为提单质权,从而厘清了此类法律关系各方的权利义务,有效避免了因规则不明确给国际贸易带来的困扰。

Case Six: Bank of China Yuncheng City Branch v. Sea Powerful II Special Maritime Enterprises (Case about disputes over compensation for infringement damages for delivery of cargo without an original bill of lading)

【Basic Facts】

Bank of China Yuncheng City Branch ("BoC Yuncheng Branch") issued an irrevocable documentary credit in accordance with the *Credit Line Agreement* and the application of Haixin Co., Ltd. ("Haixin"). After the issuance of the letter of credit ("L/C"), BoC Yuncheng Branch received the documents under the L/C submitted by the beneficiary, including the bill of lading. After verification, BoC Yuncheng Branch confirmed that the documents complied with the L/C and issued the notice of payment/acceptance to Haixin. Due to the lack of the reserved funds, Haixin was unable to make the full payment under the L/C, and therefore applied for import bill advance to BoC Yuncheng Branch. On February 21, 2014, BoC Yuncheng Branch provided Haixin with 8.25 million US dollars for payment under the L/C. As Haixin failed to repay import bill advance and the interest, BoC Yuncheng Branch continued to hold three original bills of lading. The goods under the L/C held by BoC Yuncheng Branch were carried by the vessel ZAGORA and were taken by Haixin after discharge at Lanshan Port. Afterwards, BoC Yuncheng Branch applied for arrest of the ZAGORA and filed the suit over delivery of cargo without a bill of lading.

【Judgment】

Qingdao Maritime Court held that BoC Yuncheng Branch at first obtained the B/L upon its fulfillment of the obligation to issue the L/C, and later it continued to hold it on the basis of the agreement on import bill advance. The B/L was rather obtained by delivery or delivery to order based on the basic contractual relationship such as a sales contract. Therefore, BoC Yuncheng Branch did not obtain the title of cargo thereunder upon the delivery of the B/L and could not claim the property right based on ownership. Nonetheless, BoC Yuncheng Branch enjoyed the pledge right of the B/C based on the facts that it legally held the B/L, that the laws permit setting pledge of the B/L, and that the agreement on import bill advance between BoC Yuncheng Branch and Haixin provided the pledge of the B/L in written. Sea Powerful II Special Maritime Enterprises, as the carrier stated in the B/L, bore the statutory obligation to deliver the cargo with the production of the B/L, which it violated by its delivery to Haixin without collecting the original B/L and thus infringed the pledge right of BoC Yuncheng Branch as the holder of the B/L. This constituted an infringement and Sea Powerful II Special Maritime Enterprises was liable to compensate BoC Yuncheng Branch for its loss in the amount of 8,351,704.94 US dollars.

【Significance】

It has long been disputed in practice what kind of right a negotiating bank possesses as the holder of the B/L. In this case, BoC Yuncheng Branch did not obtain the B/L by delivery or delivery to order based on the basic contractual relationship such as a sales contract, but upon its

fulfillment of the obligation to issue the L/C at first, and later continued to hold it based upon the agreement on import bill advance. BoC Yuncheng Branch did not get involved in the transaction itself, and its purpose of holding the B/L was to guarantee the repayment of its advance payment. Therefore, BoC Yuncheng Branch enjoyed the pledge right of the B/C based on the facts that the laws permit setting pledge of the B/L, and that the agreement on import bill advance between BoC Yuncheng Branch and Haixin provided the pledge of the B/L in written. This is in line with the intent of the parties and the transaction purpose of both parties of the import bill advance to set pledge of the B/L and other documents to guarantee the bank's right as a creditor. The carrier stated in the B/L delivered the cargo without the production of the B/L, which infringed the security interest of the negotiating bank and thus shall bear the tort liability. This judgment correctly interprets the right enjoyed by the negotiating bank holding the B/L as the pledge right of the B/L in accordance with the laws, clarifies the rights and obligations of the respective parties, and effectively avoids the trouble caused by ambiguity in rules to international transactions.

案例七：李宗山诉李振洲海上、通海水域财产损害责任纠纷案

【基本案情】

原告李宗山、被告李振洲和案外人李宗平分别与海阳市行村镇中麻姑岛村委签订滩涂承包合同，约定村委会将其所属的滩涂划界分别承包给上述三人，三人承包区域相邻，承包期限二十年至三十年不等。此后，李宗山因与李宗平滩涂边界产生争议，以财产权属纠纷为由，于2008年在海阳市人民法院提起诉讼。该纠纷经海阳市人民法院一审、烟台市中级人民法院二审、山东省高级人民法院提审、海阳市人民法院重审、烟台市中级人民法院再审，最终于2013年以李宗山未能举证证明李宗平侵占其承包经营的滩涂为由驳回李宗山的诉讼请求。2017年10月10日，李宗山又以李振洲侵占其承包经营的滩涂为由向青岛海事法院提起诉讼。在庭审过程中，双方均出示滩涂承包合同，以证明其承包经营的滩涂边界。在要求李宗山提供滩涂使用权证书时，李宗山未能提交相应权属证书来证明其权利合法性，但其主张涉案滩涂所有权属村集体所有。李宗山对滩涂所有权属村集体所有一事亦未提交证据予以证明。

【裁判结果】

青岛海事法院经审理认为，本案系侵权责任纠纷，评判被告李振洲是否承担侵权责任及责任大小，应从原告李宗山对其主张的物权是否享有合法权益、被告李振洲是否实施了侵权行为及相应损害结果等方面予以认定。本案中，原告以其与村委会签订的滩涂承包合同主张对涉案滩涂享有合法的用益物权。根据《中华人民共和国物权法》第九条、第十条、第十七条、第四十八条的规定，滩涂属于不动产，除法律规定属于集体所有的情况外，均属于国家所有；且，关于滩涂物权的设立、变更、转让和消灭，须经依法登记，始发生效力，未经登记，不发生效力；而，不动产权属证书是权利人享有该不动产物权的证明。本案中，原告虽主张涉案滩涂非国家所有而属村集体所有，但未提交滩涂权属证书或养殖证来证明村委会对涉案滩涂享有合法的所有权或其本人对该滩涂享有合法的用益物权；亦未提交证据证明涉案滩涂属于《中华人民共和国物权法》第九条第一款所规定的无须登记即发生效力的特殊情形；故，不能认定原告对涉案滩涂享有合法物权，应由负有举证证明责任的原告承担相应不利后果。据此，青岛海事法院判决驳回原告李宗山的诉讼请求。原、被告均未提起上诉。

【典型意义】

本案是一起涉及滩涂权属认定问题的财产损害责任纠纷，反映出农村作为当前我国法治建设相对薄弱的领域，村民自治组织的村民委员会和村民个人在法律思维和依法办事方面还存在明显不足。本案中，当事人对物权法、海域使用管理法等法律关于滩涂作为不动产物权的归属存在认识盲区，认为“祖祖辈辈传下来的就是自己的”，而没有站在法律的视角下对全民所有、集体所有、个人所有的物权关系进行清晰的划分。这也是近些年来，农村产权纠纷层出不穷的根源所在。在通过裁判文书发挥法律规范行为导向作用的同时，也要顾及村民的文化水平和接受能力，通过不断的法律释明和思想疏导，让其思想认识向法律思维靠拢，在法律允许的范围内尽可能的满足其合理诉求，包括进行现场勘验、赴海事主管机关落实滩涂权属、到边防派出所核实相应情况，避免当事人将其败诉的原因归咎于其臆想的司法不公，也避免案件因说理不明而导致上诉、重审情况的发生，做到案结事了。

Case Seven: Li Zongshan v. Li Zhenzhou (Case about disputes over damage to property at sea or in water areas leading to the sea)

【Basic Facts】

The plaintiff Li Zongshan, the defendant Li Zhenzhou, and Li Zongping – the person not involved in the present case – respectively concluded a contract for the contracting of tidal flats with the Committee of Zhongmagu Island, Xingcun Town, Haiyang City (the "Committee"). The contracts provided that the Committee would delimit the tidal flats it owned and respectively contracted them to the three people mentioned above, and the three contracted areas were adjacent, with contracting periods ranging from 20 to 30 years. Later, Li Zongshan and Li Zongping disputed about the boundary of their tidal flats and the former filed a lawsuit in Haiyang Municipal People's Court in 2008, on the grounds of property ownership disputes. That case was originally heard by Haiyang Municipal People's Court and Yantai Intermediate People's Court conducted the trail of second instance. Then, it was reviewed by Shandong Higher People's Court and retried by Haiyang Municipal People's Court and Yantai Intermediate People's Court respectively. Eventually in 2013, Li Zongshan's claims were rejected for his failure to satisfy the burden of proof that Li Zongping trespassed upon the tidal flats under his contracted management. On October 10, 2017, Li Zongshan again filed a lawsuit against Li Zhenzhou to Qingdao Maritime Court claiming the latter had trespassed upon his contracted tidal flats. Both parties produced a contract for the contracting of tidal flats in the trial to

ascertain the boundary of their contracted tidal flats. When requested to provide the certificate of the right to use the tidal flats, Li Zongshan failed to produce the relevant documents to prove the legality of his right but claimed that the tidal flats involved were collectively owned by the village, which Li Zongshan also failed to submit evidence to prove.

【Judgment】

Qingdao Maritime Court held that the case dealt with disputes over tort liability, and to determine whether and to what extent the defendant Li Zhenzhou bore the tort liability were based on the following factors: whether the plaintiff Li Zongshan was entitled to the legal right of the claimed property, whether the defendant Li Zhenzhou had committed infringement and the resulting damage, etc. In this case, the plaintiff claimed the right to use the tidal flats based on the contract for the contracting of tidal flats. Pursuant to Articles 9, 10, 17 and 48 of the *Property Law of the People's Republic of China*, tidal flats which belong to real estates shall be owned by the State, except those that shall be collectively owned as prescribed by law; besides, the creation, change, transfer or elimination of the real right of tidal flats shall become effective after it is registered according to law, and without registration it shall have no effect; however, the real property ownership certificate shall be the proof of the holder's ownership of a real property. Here, although the plaintiff claimed that the tidal flat was not owned by the State but owned by the village collectively, he did not submit the certificate of ownership of the tidal flats or aquaculture certificate to prove the Committee's legal ownership or his legal right to use the tidal flats. Neither did he submit

any evidence to support that the tidal flats involved are those whose alterations of ownership are not required to be registered under the first clause of Article 9 of the *Property Law of the People's Republic of China*. Therefore, the plaintiff could not be deemed to have legal property rights over the tidal flats involved. With the burden of proof, the plaintiff shall bear the adverse consequences. Accordingly, Qingdao Maritime Court ruled that the plaintiff Li Zongshan's claims were rejected. Both the plaintiff and the defendant did not file an appeal.

【Significance】

The case deals with property damage liability disputes involving the identification of the ownership of the tidal flats. It reflects that the rural areas are relatively weak areas in our country's rule of law construction. And the self-governing organizations – the Villagers' Committees, and the villagers are still obviously incapable of legal thinking and acting in accordance with laws. In this case, the parties have a blind spot on the ownership of the tidal flats as a real estate under the property law and the law on the administration of sea areas, etc. They believe that "what the ancestors passed down are their own" but do not divide clearly the property rights among those owned by all citizens, those collectively owned and those owned by individuals. This is the root cause of the endless stream of property right disputes in rural areas in recent years. While activating the guiding function of the legal norms, through the judgments, to regulate the behaviors, we must also take into account the educational level and acceptability of the villagers. Other than making their thoughts and understandings become more similar to legal thinking

through continuous legal interpretation and ideological guidance, we shall also satisfy their reasonable needs within the scope of laws by taking measures including on-site inspections, visiting maritime authorities to clarify the ownership of the tidal flats, and verifying the situations at the border police station, to prevent the parties to the case from attributing the loss of the suit to the judicial injustice in their illusion, to avoid the occurrence of appeals and retrials due to the ambiguity in reasoning, and to settle the disputes after the judgment of the case.

案例八：烟台嘉利海参苗种培育有限公司诉山东核电有限公司等海上养殖损害责任纠纷案

【基本案情】

2005 年 4 月 19 日，被告山东核电有限公司与海阳核电建设工作委员会办公室签订《山东海阳核电厂使用海域补偿费用包干协议》，约定将使用海域移交，并负责完成回收、吊销用海海域范围内的集体、单位和个人的海域、滩涂使用证。2008 年 8 月 8 日，山东省人民政府发布《关于烟台市海洋功能区划的批复》，其中大辛家镇冷家庄村周围 5 公里海域为核电利用区。2013 年 4 月 16 日，原告嘉利公司与海阳核电装备制造工业园区冷家庄村委签订《虾池租赁合同》，双方约定村委将小码头南的虾池租赁给原告，租赁期自 2013 年 4 月 16 日起到 2062 年 4 月 16 日止，租金每年 20 万元。同年，山东电力集团公司与被告山东送变电工程公司签订《烟台海阳核电 500kv 送出至莱阳线路工程施工合同》，由该被告承包该线路工程。2014 年 9 月 28 日，山东省海洋与渔业厅向被告山东送变电工程公司颁发海域使用权证书。后该被告在上述涉案塔基海域施工并完成了塔基建设。2015 年 5 月 29 日，原告及农业部黄渤海区渔业生态环境监测中心的工作人员同公证员对养殖生物进行现场采样，并对采样

过程进行公证，烟台市鲁东公证处对上述保全证据事项予以公证。烟台市海洋环境监测预报中心作出测量报告，农业部黄渤海区渔业生态环境监测中心作出损失评估报告。原告要求判令二被告赔偿原告因核电项目输电线路塔基工程建设造成原告经济损失 149.0175 万元，并赔偿原告所花费评估费、公证费计 7.3 万元。

【裁判结果】

青岛海事法院经审理认为，本案系养殖污染损害赔偿纠纷。原告提交的损失评估报告未提及存在养殖物死亡的具体事实和数据，但根据现场照片、录像，同时显示有活体养殖物和死亡养殖物的画面，可以证明在原告养殖区有部分养殖物受损事实的存在。被告山东送变电工程公司施工中的抛石产生悬浮泥沙等客观事实会对原告的养殖物的栖息生长造成一定环境影响，其未能举证存在法定免责事由，也未能提供证据证明其行为与损害结果之间不存在因果关系，认定原告养殖物受损与该被告施工之间具有因果关系。关于损害责任的划分及计算标准，原告的养殖行为未经国家批准，系非法养殖。被告山东送变电工程公司的施工是在其已经取得海域使用权的范围内进行，因此原告根据养殖物的预期年产值请求损失，属于主张非法利益，法院不予支持。原告未能举证证明其养殖物实际死亡的具体数量或比例，但考虑到塔基

占用部分海区养殖物已无存活可能，施工污染导致部分养殖物死亡的事实客观存在，并且当时尚存活的养殖物仍有继续因污染死亡的可能性，因此可以参考原告投放养殖物的在勘验当时（施工结尾时）的实际价值考虑原告可得到法院支持的合法利益。综合考虑各方行为的合法性基础、施工方的污染影响程度和范围、养殖物的实际受损程度和养殖户的减损义务，确定双方的责任分担比例为，原告自负 55%，被告山东送变电工程公司承担 45%。即该被告应向原告支付 220531.88 元人民币。被告山东核电有限公司既非项目施工单位，也不是项目发包单位。原告请求该被告承担赔偿责任，无法证明该被告存在侵权事实，没有事实和法律依据，法院不予支持。

【典型意义】

本案最具有参考意义的部分在于损害责任的划分及计算标准问题，判决对双方当事人提交的证据材料进行了悉心比对，并从细节中发现问题，做出了准确的判断，并且把握住了合法性原则，最终双方当事人心服口服，均未提出上诉，并且被告主动履行了判决事项。本案最重要的一点在于对于养殖合法性的认定。养殖合法性问题在海洋环境污染案件中是认定损失的重要前提条件。本案原告在国家重点核电项目附近进行海参养殖，该片海域的养殖合法性问题必须在法律

认定上予以明确。对于非法养殖，仍有必要尊重养殖户的合法所有权，应给予适当补偿。本案确定根据鉴定报告认定养殖物经济价值进行适当补偿，但同时综合考虑各方行为的合法性基础、施工方的污染影响程度和范围、养殖物的实际受损程度和养殖户的减损义务，确定双方的责任分担比例，也是一种有益尝试。实践证明，各方对法院的处理结果都认为公平公正，均欣然接受。

Case Eight: Yantai Jiali Sea Cucumber Cultivation Co., Ltd. v. Shandong Nuclear Power Co., Ltd., etc. (Case about disputes over liability for marine aquiculture damages)

【Basic Facts】

On April 19, 2005, the defendant Shandong Nuclear Power Co., Ltd. ("Shandong Nuclear Power") and Haiyang Nuclear Power Construction Working Committee Office concluded the *Lump-work Agreement for Shandong Haiyang Nuclear Power Plant's Use of Sea Area with Compensation Fees*, which stipulated the transfer of the use of the sea areas and the withdrawal and revocation of the certificates of rights which were owned collectively or owned by entities or individuals, permitting them to use the area and tidal flats within the scope. On August 8, 2008, the People's Government of Shandong Province published the *Official Reply on Functional Divisions of the Sea of Yantai City*, under which the sea areas 5 kilometers around Lengjiazhuang Village, Daxinjia Town were nuclear power utilization areas. On April 16, 2013, the plaintiff Yantai Jiali Sea Cucumber Cultivation Co., Ltd. ("Jiali") and the Committee of Haiyang Nuclear Power Equipment Manufacture Industrial Park, Lengjiazhuang Village (the "Committee"), concluded the *Shrimp Pond Leasing Contract*, which stipulated that the Committee would lease the shrimp pond in the south of the small dock to the plaintiff and that the lease term was from April 16, 2013 to April 16, 2062, with the rent of 200,000 yuan per year. In the same year, Shandong Electric Power Group Corp. and the defendant Shandong Transmission and Transformation

Engineering Co., Ltd. ("Shandong Transmission and Transformation Engineering") concluded the *Construction Contract for the Project of the Transmission of 500kv Nuclear Power from Haiyang, Yantai to Laiyang Line,* and the defendant contracted the project of this line. On September 28, 2014, the Department of Ocean and Fishery of Shandong Province issued the certificate of right to use the sea areas to the defendant Shandong Transmission and Transformation Engineering. Later, the latter conducted and completed the construction of the tower base which was involved in the case. On May 29, 2015, the plaintiff and the staff of the Monitoring Center of Fishery Ecological Environment for the Yellow Sea and Bohai Sea Area of Ministry of Agriculture, together with the notaries, conducted the on-site sampling of the cultured organisms and notarized the sampling process. The Ludong Notary Office of Yantai City notarized the preservation of evidence mentioned above. The Marine Environment Monitoring and Forecasting Center of Yantai City made the measurement report, and the Monitoring Center of Fishery Ecological Environment for the Yellow Sea and Bohai Sea Area of Ministry of Agriculture made the loss assessment report. The plaintiff requested the Court to rule that both defendants were liable for the economic losses incurred by the plaintiff in the amount of 1,490,175 yuan due to the construction of tower base of the transmission line for the nuclear power project, and liable to compensate the assessment fee and notary fee of 73,000 yuan.

【Judgment】

Qingdao Maritime Court held that the case concerned the disputes about the compensation for the aquiculture pollution. The loss assessment

report submitted by the plaintiff did not mention the specific facts and data of the death of the bred products. However, the photos and videos of the scene in which both the living and dead bred products were displayed could prove the damage to some bred products within the area of aquiculture. The suspended sediment generated by the riprap in the construction of the Shandong Transmission and Transformation Engineering would have certain environmental impact on the habitat and growth of the bred products. And the defendant failed to prove with evidence that there existed a statutory exemption of liability or that there was not a causal link between its acts and the damage. Therefore, the Court ruled that there was a causal link between the defendant's construction and the damage to the bred products. Regarding the division and calculation criteria of the liability, the plaintiff's aquiculture was illegal as it had not been approved by the State. The construction of the defendant Shandong Transmission and Transformation Engineering was conducted within the scope of its certificate of right to use the sea areas. Therefore, the plaintiff's claim based on the loss of the expected annual output value of the bred products, which was illegal, was rejected by the Court. The plaintiff failed to prove the specific quantity or proportion of the actual death of the bred products. However, the bred products within the sea areas occupied by the tower base were not likely to survive. The fact that the construction pollution caused the death of some bred products did exist objectively. The bred products alive then would still be likely to die from the pollution. In consideration of the above, the Court supported the plaintiff's claim within the scope of the actual value of the

bred products it cultivated at the time of the inspection (at the end of construction). In comprehensive consideration of all parties' legal grounds of actions, the extent and scope of the pollution caused by the construction party, the degree of actual loss of the bred products and the obligation of the culturist to reduce the loss, the Court determined the proportion of responsibility between the two parties. The plaintiff itself bore the liability of 55%, and the defendant Shandong Transmission and Transformation Engineering bore 45%. That is, the defendant shall pay the plaintiff 220,531.88 yuan. The defendant Shandong Nuclear Power is neither a project construction entity nor a project contractor. The Court rejected the plaintiff's claim that the Shandong Nuclear Power was liable to make compensation, as it failed to prove the latter had conducted infringement, which rendered the claim lack factual and legal basis.

【Significance】

The most informative part of the case lies in the division of damage liability and the calculation criteria. In its judgment, the Court made a careful comparison between the evidence submitted by both parties, found problems from the details, made a correct judgment, and had good command of the principle of legality. Both parties were satisfied at the judgment and neither of them filed an appeal. And the defendant actively performed its duty under the judgment. The most important point of this case is to determine whether the aquiculture was legal. The issue of legality of aquiculture is an important prerequisite for determining losses in marine environment pollution cases. The plaintiff in this case cultivated sea cucumber in the vicinity of the national key nuclear power project.

The legality of the cultivation within this area must be clearly determined under the law. For illegal aquiculture, it is still necessary to respect the legal ownership of the culturists and make appropriate compensation. In this case, the Court determined the appropriate compensation based on the appraisal report of the economic value of the bred products, and meanwhile the Court comprehensively considered all parties' legal grounds of actions, the extent and scope of the pollution caused by the construction party, the degree of actual loss of the bred products and the obligation of the culturist to reduce the loss. It is a beneficial practice to determine both parties' sharing of the liability in consideration of all the above factors. Practice has proved that the parties considered the judgment made by the Court fair and just, and they readily accepted the results.

案例九：荣成大龙海运株式会社韩国分公司诉山东西霞口修船有限责任公司等追偿人身损害责任纠纷案

【基本案情】

大龙韩国公司通过其总公司即案外人荣成大龙海运有限公司与被告西霞口公司签订船舶修理合同及修船安全协议，由被告西霞口公司对涉案船舶“永霞（YONG XIA）”轮进行修理;被告昊洋公司与被告西霞口公司签订了长期承揽合同和安全协议，负责该轮修理工作。2016 年 2 月 6 日船舶在修理期间发生爆炸事故,造成受雇于大龙荣成公司的“永霞”轮韩国籍副船长张智雄(JANG JI UNG)死亡。大龙荣成公司和大龙韩国公司作为一方与张智雄母亲签订《和解协议》并支付赔偿。在诉讼过程中，案外人大龙荣成公司申请撤诉，并与被告西霞口公司签订协议放弃索赔。原告大龙韩国公司诉到法院，要求判令西霞口公司赔偿因“永霞”轮爆炸事故造成副船长张智雄死亡的人身损害赔偿共计 400 000 000 韩元及相应利息，昊洋公司承担连带责任。

【裁判结果】

青岛海事法院经审理认为,本案涉及的基本法律关系是人身损害发生后雇主承担赔偿责任，向第三人追偿。本案的主要焦点是原告大龙韩国公司与本案所涉争议是否具有法

律上的直接利害关系，即大龙韩国公司是否享有以自己的名义提起诉讼并追偿的权利。大龙韩国公司自认是大龙荣成公司在韩国设立的分支机构，被告西霞口公司予以认可，根据《最高人民法院关于适用<中华人民共和国民事诉讼法>的解释》第五十二条第一款第四项规定，大龙韩国公司可以作为民事诉讼的当事人提起诉讼。张智雄与大龙荣成公司签订有船员雇佣合同，大龙韩国公司没有提供证据证明其与张智雄存在雇佣合同关系。涉案的光船租赁合同、船舶修理合同、船员雇佣合同的当事人均是大龙荣成公司，而非大龙韩国公司。大龙韩国公司虽然与大龙荣成公司一起作为和解协议的一方，但协议上没有其盖章，未写明大龙韩国公司的追偿权利，并且大龙韩国公司提交的付款水单上仅记载有大龙荣成公司字样，在没有其他证据佐证的情况下，大龙韩国公司仅凭该证据不能获得追偿费用的权利。本案诉讼期间，大龙荣成公司提出了“撤诉申请”，明确表达了其对本案诉讼活动的反对态度。综上，大龙韩国公司没有提供有效证据证明其与本案具有法律上的直接利害关系，依照《中华人民共和国民事诉讼法》第一百一十九条第一款的规定，裁定驳回大龙韩国公司的起诉。

【典型意义】

本案涉及的基本法律关系是人身损害发生后雇主承担赔偿责任，向第三人追偿。本案的典型意义主要体现在：法

人的分支机构主张在人身损害事实发生后已承担雇主赔偿责任，是否应享有以自己的名义进行诉讼并向外追偿的权利，即该分支机构是否是适格原告。处理该类型纠纷，要着重查明并区分总公司与分支机构承担的法律责任和享有的法律权利，其实质是审查该分支机构是否与本案有法律上的直接利害关系。对证据的审查标准是“因自己权利受到侵害或争议而为了自己权益实施诉讼”，结合合同缔约方、赔偿协议实际履行方等因素综合考虑。作为总公司的案外人在诉讼期间明确表示对该案的反对态度并“申请撤诉”，也应结合上述因素予以考虑。

Case Nine: Rong Cheng Great Dragon Shipping Co., Ltd. Korea Branch v. Shandong Xixiakou Repair Yard Co., Ltd. and others (Case about disputes over the recovery from the third party of the compensation for personal injury)

【Basic Facts】

Rong Cheng Great Dragon Shipping Co., Ltd. Korea Branch ("Great Dragon Korea Branch"), through its head company, the Rong Cheng Great Dragon Shipping Co., Ltd. ("Rong Cheng Great Dragon SHPG", not involved in the present case), concluded the ship repair contract and the repair safety agreement with the defendant Shandong Xixiakou Repair Yard Co., Ltd. ("Xixiakou"), under which the Xixiakou was responsible for the repair of the vessel "YONG XIA". The defendants Haoyang Company and Xixiakou concluded a long-term work contract and safety agreement to take charge of the repair work. On February 6, 2016, the vessel exploded during the repair period, which caused the death of the deputy captain JANG JI UNG, with the nationality of South Korea, employed by the Rong Cheng Great Dragon SHPG. The Rong Cheng Great Dragon SHPG and the Great Dragon Korea Branch, as one party, signed a *Settlement Agreement* with JANG JI UNG's mother and paid the compensation. In the course of the lawsuit, the Rong Cheng Great Dragon SHPG applied for withdrawal of the action and signed an agreement with the defendant Xixiakou to waive its claims. The plaintiff Great Dragon Korea Branch filed the case to the Court and requested the Court to rule that Xixiakou was liable for the compensation of the deputy captain

JANG JI UNG's death caused by the explosion of the "YONG XIA" in total amount of 400,000,000 won plus the interest, with Haoyang Company bearing joint and several liability.

【Judgment】

Qingdao Maritime Court held that the basic legal relationship involved in the case concerned the recovery from the third party of the compensation the employer made for personal injury. The key issue was whether the plaintiff Great Dragon Korea Branch had the direct legal interest with the dispute involved in this case, that is, whether it was entitled to file a suit and claim for the recovery of the compensation on its own behalf. The Great Dragon Korea Branch considered itself as a Korea branch established by the Rong Cheng Great Dragon SHPG, which was agreed by the defendant Xixiakou. Pursuant to Article 52 (4) of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, Great Dragon Korea Branch was qualified as a party to file a civil lawsuit. JANG JI UNG and the Rong Cheng Great Dragon SHPG concluded a crew employment contract, but Great Dragon Korea Branch did not prove with evidence that itself had an employment contract relationship with JANG JI UNG. The party to the demise charter, the ship repair contract and the crew employment contract involved in this case was the Rong Cheng Great Dragon SHPG rather than Great Dragon Korea Branch. Although Great Dragon Korea Branch was a party to the Settlement Agreement together with the Rong Cheng Great Dragon SHPG, it did not stamp on the agreement and the agreement did not provide Great Dragon Korea

Branch with the right to recover the compensation. Besides, the payment record submitted by Great Dragon Korea Branch only contained the Rong Cheng Great Dragon SHPG. In the absence of other evidence, Great Dragon Korea Branch could not have the right to claim the recovery merely based on the record. Rong Cheng Great Dragon SHPG filed an application for withdrawal of the action during trial, which explicitly expressed its intent against the case. In conclusion, Great Dragon Korea Branch did not provide valid evidence to prove that it had a direct legal interest in the case. The case was dismissed in accordance with the first clause of Article 119 of the Civil Procedure Law of the People's Republic of China.

【Significance】

The basic legal relationship involved in the case concerns the recovery from the third party of the compensation the employer made after the occurrence of the personal injury. The typical significance of the case is the consideration of the question that whether a branch of a legal person is entitled to file a suit and recover its loss from a third party, that is, whether the branch is a qualified plaintiff when it asserted that it had paid the compensation for personal injury as an employer. To deal with such kind of disputes, it is necessary to identify and distinguish the legal liabilities and rights enjoyed by the head office and branches. The essence is to examine whether the branch has a direct legal interest in the case. The standard of evidence review is that "the litigation is filed for its own rights due to the violation of or disputes about its rights", which should be considered together with the contracting parties and the actual performing

party of the compensation agreement. As a party not involved in the case, the express intent of the head office against the litigation and the application for withdrawal of the action should also be considered together with the aforementioned factors.

案例十：柴福连申请海事债权登记与受偿案

【基本案情】

柴福连经劳务外派公司外派，受雇于信荣海陆运输股份有限公司，在西达克凌公司所属的巴拿马籍“金鹅”轮上担任轮机长。“金鹅”轮因西达克凌公司拖欠船舶修理费而被青岛海事法院依船舶修理厂的申请而扣押并拍卖。柴福连(与其他 45 名船员)为主张工资及船舶优先权等在青岛海事法院扣押过程中向厦门海事法院申请扣押了该轮，提起了诉讼，并在公告的债权登记期间提供了有关证据办理了债权登记。厦门海事法院依法移送至青岛海事法院审理。青岛海事法院经审理，作出生效判决。柴福连申请依照已生效的判决确认其船舶优先权等。柴福连登记的债权包含距扣押船舶超过一年以上的工资，未登记其申请债权登记时至船舶拍卖移交完毕离船时期间内的工资等。

【裁判结果】

青岛海事法院经债权确认程序终审认为，海事诉讼特别程序法并未明确限制债权人需要在申请债权登记时提供生效的裁判文书，只要在办理债权登记期间提供生效的裁判文书，经审查认定上述文书真实合法的，都可以裁定予以确认。柴福连于船舶拍卖公告的债权登记期间内依法办理了债权

登记，并提供了生效的裁判文书，上述文书真实合法，可以裁定予以确认。船舶扣押期间由船舶所有人或光船承租人负责管理，法院并未委托船员管理船舶，船舶被法院扣押期间的船员工资仍应由其雇主或船舶所有人负担，不属于《海事诉讼特别程序法》第一百一十九条第二款规定的为债权人的共同利益支付的其他费用，不应从船舶价款中先行拨付。对于船员工资、遣返费、社会保险或其他报酬类的海事请求而言，船舶优先权从船员自船舶离职之日起满一年不行使而消灭。故，对于申请人从船上离职之日起至扣押船舶之日止不满一年部分的海事请求，确认其对该轮享有船舶优先权，有权自该轮的拍卖价款中依法受偿。法院作出终审裁定，确认柴福连登记的自其从船上离职之日起至扣押船舶之日止不满一年部分的工资及其利息额度以内的债权对“金鹅”轮享有船舶优先权，并自该轮拍卖价款中优先拨付相应的案件受理费及债权登记费，不予支持柴福连的其他请求。

【典型意义】

本案是一起典型的申请海事债权登记与受偿案，其典型意义在于：一是明确海事债权人因船舶拍卖申请债权登记时未提供生效裁判文书的，只要在办理债权登记期间提供生效的裁判文书，经审查认定真实合法的，可以裁定予以确认，而无需再进行确权诉讼。二是明确船舶扣押期间，法院未委

托船员管理船舶的,该期间内的船员工资不属于为债权人共同利益支付的其他费用,不应从船舶价款中先行拨付。三是明确船员工资等海事请求的船舶优先权从船员自船上离职之日起满一年不行使而消灭,船员从船上离职之日起至扣押船舶之日止超过一年以上的海事请求,丧失船舶优先权。

Case Ten: Case concerning Chai Fulian's application for the registration of maritime creditor's right and the repayment of debt

【Basic Facts】

Chai Fulian was dispatched by the labor dispatch company and was employed by Xinrong Hailu Transportation Co., Ltd., and served as the chief engineer of the Panamanian vessel "Golden Goose", which was owned by the C Duckling Corporation. The "Golden Goose" was arrested and auctioned by Qingdao Maritime Court on the application of the ship repair yard due to the arrears of the ship repair fee by C Duckling Corporation. After Qingdao Maritime Court has arrested the vessel, Chai Fulian (and the other 45 crew members) applied to Xiamen Maritime Court for the arrest of the vessel for the claim of wages and maritime liens, etc., filed a lawsuit, and registered the creditors' rights with relevant evidence during the publicly announced registration term. Xiamen Maritime Court moved the case to Qingdao Maritime Court and the latter made the judgment after trial. Chai Fulian applied for the confirmation of his maritime lien, etc., in accordance with the effective judgment. The creditor's right Chai Fulian registered included that over the wages for more than one year from the arrest of the vessel, but it did not include the wages during the period from his application for the registration to the completion of the vessel's auction and transfer when he was not on board.

【Judgment】

Qingdao Maritime Court concluded after the confirmation of the creditor's right that the *Special Maritime Procedure Law* does not

explicitly require creditors to provide effective legal documents when applying for registration of the creditors' rights, as long as such documents are provided during the registration. If the documents are legal and valid, they can be confirmed after verification. Chai Fulian registered his rights in accordance with the law during the creditors' registration term prescribed in the public announcement of the vessel auction, and he provided the effective judgment which was legal and valid and thus could be confirmed. During the arrest of the vessel, the shipowner or bareboat charterer should be responsible for its management. The Court did not authorize the crew to manage the vessel and their wages should be paid by their employer or the shipowner. The wages do not belong to the expenses incurred for the common interests of the creditors, which shall be paid first from the proceeds of the ship under the second clause of Article 119 of the *Special Maritime Procedure Law*. For maritime claims for crew's wages, crew repatriation, social insurance and other remuneration, the maritime lien shall be extinguished if not exercised within one year from the date of the crew's departure from the vessel. Therefore, the Court confirms that the applicant's claim of wages within one year from his departure from the vessel to the arrest of it is entitled to maritime liens with the right of preferred compensation from the proceeds of the vessel's auction in accordance with the law. The Court finally confirmed Chai Fulian's registered creditor right and the maritime liens on the "Golden Goose", within the scope of his wages plus interests within one year from his departure from the vessel to the arrest of the vessel. And the relevant fees for case acceptance and creditor's right

registration would be allocated preferentially from the proceeds of the auction. Other claims raised by Chai Fulian were rejected.

【Significance】

This is a typical case concerning the application for the registration of maritime creditor's right and the repayment of debt. Its significance lies in the following aspects: First, it clarifies that maritime creditors who fail to provide effective legal documents when applying for creditor registration do not need to file another lawsuit for the confirmation of the right, as long as they provide those documents during the registration. If the documents are legal and valid, they can be confirmed after verification. Second, it clarifies that during the arrest of the vessel, the Court does not authorize the crew to manage the vessel and their wages do not belong to the expenses incurred for the common interests of the creditors, and thus they should not be paid first from the proceeds of the vessel. Third, it clarifies that the maritime liens of maritime claims for crew's wages, etc. shall be extinguished if not exercised within one year from the date of the crew's departure from the vessel. And the maritime liens of maritime claims extinguish, exceeding one year from the date of the crew's departure from the vessel to the arrest of the vessel.