



# 青岛海事法院 海事审判情况通报

**Qingdao Maritime Court  
Report on Maritime Trials  
2023**

青岛海事法院  
Qingdao Maritime Court

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# 前 言

2023年，青岛海事法院坚持以习近平新时代中国特色社会主义思想为指导，深入学习贯彻习近平法治思想，锚定“走在前、开新局”，全面落实省委“打响海事法院品牌”工作要求，主动服务和融入新发展格局，在省委、青岛市委、省法院党组的领导指导下，抓实“公正与效率”工作主题，稳步推进海事审判理念现代化、审判机制现代化、审判体系现代化、审判管理现代化，全面投身海洋强省建设，全力服务保障海洋经济高质量发展。

为更好的接受社会监督，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(2023年)》，简要介绍我院2023年海事审判工作情况，同时发布十起典型事例和十一起典型案例。

编 者

2024 年

## Preface

In 2023, the Qingdao Maritime Court adhered to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, deeply studied and implemented Xi Jinping Thought on the Rule of Law, anchored on the principle of “Taking the Lead and Opening Up New Horizons” comprehensively implemented the Shandong Provincial Party Committee’s proposal of “Branding the Maritime Court”, took the initiative to serve and integrate into the new development pattern. Under the leadership and guidance of the Shandong Provincial Party Committee, Qingdao Municipal Party Committee, and Party Leadership Group of Shandong High People’s Court, Qingdao Maritime Court focused on the theme of “Fairness and Efficiency”, steadily advanced the modernization of maritime adjudicative concept, mechanisms, systems and management. The court has been fully committed to the construction of a strong maritime province and has made every effort to serve and safeguard the high-quality development of the marine economy.

In order to better accept social supervision, continuously improve maritime adjudication, and further enhance the judicial integrity and influence, we compiled Report on Maritime Trials of Qingdao Maritime Court (2023), which briefly introduces the maritime trial work of Qingdao Maritime Court in 2023, and at the same time, released ten typical examples and eleven typical cases.

Editor

2024

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## 第一部分 主要工作情况

### 一、以政治建设为统领，不断加强新时代法院党的建设

牢牢把握党对政法工作的绝对领导，扎实开展学习贯彻习近平新时代中国特色社会主义思想主题教育，坚持理论学习、调查研究、推动发展、检视整改有机融合、一体推进，举办专题读书班4期，开展各类理论学习活动36次，围绕7类问题制定30条整改措施，修订或出台相关规章制度21项，不断强化政治机关意识，深刻领悟“两个确立”的决定性意义，增强“四个意识”、坚定“四个自信”、坚决做到“两个维护”。深入学习贯彻《中国共产党政法工作条例》，严格落实重大事项请示报告制度，及时向青岛市委、市委政法委汇报海事司法工作情况。严格落实意识形态工作责任制，增强忧患意识、坚持底线思维，牢牢把握意识形态话语权和主动权。抓紧抓牢“三会一课”组织生活制度，树立党的一切工作到支部的鲜明导向，严格落实党组理论学习中心组“第一议题”制度，及时传达学习习近平总书记重要指示、批示精神，自觉把党的领导贯穿于法院工作全过程、各方面，切实提高以海事司法推动海洋经济高质量发展的使命感和责任感。

## 二、深入贯彻总体国家安全观，坚定不移推动平安海洋建设

统筹发展和安全，夯实海洋经济与社会安全基础，主动参与全球海洋安全治理，构建全域联动、立体高效的海洋安全治理格局，以高水平安全保障高质量发展。

**（一）依法惩治海上违法犯罪。**2021年4月27日，马某某驾驶的巴拿马籍杂货船“义海”轮途经青岛东南水域时，因操作不当，与锚泊中的利比里亚籍油船“交响乐”轮发生碰撞，致使“交响乐”轮约9419吨船载货油泄漏入海，污染青岛、威海、烟台4360平方公里海域、786.5公里海岸线，是我国近年来海上最大的溢油污染事故。经最高人民法院批复、省法院指定，青岛市人民检察院于2023年10月7日向青岛海事法院提起公诉。青岛海事法院经公开开庭审理，于2024年1月8日宣判马某某犯重大责任事故罪，处有期徒刑二年，缓刑二年。全国、省、市三级人大代表，政协委员，媒体记者及各界群众百余人旁听庭审，被告人马某某当庭表示服从判决，彰显了海事司法权威。本案作为我国首例因船舶碰撞导致重大责任事故进而追究船长刑事责任的案件，为海上重大事故的责任认定、海上航行秩序的有效管理以及海事刑事案件管辖认定提供了重要依据，为参与和引领国际油污损害赔偿规则制定、推动国际海洋环境污染治理体系向

更加公正合理方向发展提供了有益探索。

**（二）防范化解海上重大风险。**立足“平安山东”“平安青岛”建设目标，系统总结近年来山东海域的海上风险事故，向省委呈报《关于进一步重视并加强平安海洋建设的报告》，得到省委、省政府高度重视。坚持府院联动，完善风险防控机制。与省农业农村厅建立海洋渔业司法执法协作机制，规范海洋渔业行政许可、行政处罚尺度，维护海洋渔业生产秩序，近年来我省伏季休渔期间异地违法作业渔船数量同比下降 90%。围绕养植物碍航风险，向烟台市政府发出关于规范海上养殖管理的司法建议，向国际航运公司发出首份中英文司法建议，指导其避让养殖水域，提升通航安全。坚持能动司法，完善风险处置机制，审结海上安全案件 62 件。在“鲁蓬远渔 028”印度洋倾覆事件中，主动提出司法建议，助力事件妥善处置。在“中华富强”轮火灾案中，面对全国 13 个省市上千名受损群众，探索建立“以司法为主轴”的府院联动新模式，实现事故稳妥、有序、高效化解，未发生一起信访事件，得到省委、省法院充分肯定，2023 年 6 月 18 日，“中华富强”轮已更名为“渤海恒生”轮正式复航。

**（三）着力推进海洋法治建设。**落实省法院《关于预防和解决行政诉讼案件推诿管辖问题的通知》，规范全省海

事行政案件管辖机制，收案同比上升 55.6%，行政机关负责人出庭应诉率达到 100%。坚持环保与民生并重，推动某水务集团有限公司与某海警局 8000 万元行政处罚纠纷案和解结案。坚持“双赢多赢共赢”理念，与青岛市委海洋委共同签署《服务保障青岛海洋经济高质量发展战略协作框架协议》，在威海、烟台、东营、日照召开海洋环境司法保护座谈会，探索建立海洋综合治理平台。在西港公司海洋牧场纠纷案中，发挥府院联动机制作用，主动向省农业农村厅发出关于规范海洋牧场管理秩序的司法建议，得到省农业农村厅高度重视并全面采纳，目前，《山东省海洋牧场建设管理条例》已列入《山东省人大常委会 2023-2027 年立法规划》。

### **三、深入贯彻新发展理念，为海洋经济高质量发展提供有力司法保障**

立足国家战略，主动对接构建新发展格局的司法需求，注重发挥海事司法的法治引领、法治保障作用，着力营造市场化、法治化、国际化一流营商环境。

**（一）持续提升涉外法治服务水平。**审结涉外案件 232 件，覆盖 50 多个国家和地区。深入推进海事司法标准供给，从已生效的海事司法案例中提炼裁判规则，为国内企业“走出去”，国外企业“走进来”提供法律指引和司法保障，省政府将其作为自贸区制度创新成果在全省推广应用。发挥海

事审判规则作用，对接国际高标准经贸规则。在“天鹰座”轮案中，运用司法裁判确立了对大豆货损具有指导意义的国际航运规则。提升涉外司法协作能力，依法保护企业海外利益。在缅甸新亚公司南瓜货损纠纷案中，针对“境外生产、境内销售”这一新兴农业经营模式，合理判定农产品海外运输损毁赔偿标准，为我国涉农企业“走出去”畅通海上通道。

**（二）打造对外开放新高地。**深度参与自由贸易试验区建设，与青岛自贸片区管委签署合作备忘录，设立青岛自贸片区审判区，审结涉自贸区案件 559 件，涉案标的额 10.6 亿元。举办自贸青岛·首届海事（司法）创新大会，启动全国首个海事域外法查明研究中心，与青岛自贸片区管委、山东海事局等 8 家单位联合签署“创新提升 法智护航”合作协议，与青岛自贸片区管委联合设立“海员司法救助资金池”，加速自贸区法治资源富集。坚持共商、共建、共享理念，审结涉“一带一路”案件 189 件，涉案标的额 23.7 亿元。在印度尼西亚籍“努萨摩德卡”轮扣押案中，推动利比亚籍原告与印度尼西亚籍被告主动中止国外仲裁程序，握手言和，为打造“海洋命运共同体”提供鲜活样本。积极参与青岛上合“法智谷”建设，落实上合组织国家地方法院大法官论坛会务筹备及保障工作任任务，审结涉上合组织成员国案件 9 件，涉案标的额 2014 万元。在涉印度多式联运纠纷

案中，依法判明货损区段不明情况下的多式联运主体责任，为国际多式联运规则判定提供中国方案。

**（三）持续优化海洋法治营商环境。**着力服务保障“海上粮仓”建设，推动海洋渔业创新发展。审结渔业案件 527 件，涉案标的额 32 亿元。在“深蓝一号”渔业设备建造合同纠纷案中，依法判定网箱倾斜和网衣破损导致鱼苗逸出责任，为大型海洋装备制造提供规则支持。发挥海事司法职能，规范海洋工程装备及船舶制造产业秩序，审结相关案件 204 件，涉案标的额 16.8 亿元。在“智腾”轮案中，对国内首艘无人驾驶自主航行系统实验船发电机的技术指标及环保标准依法予以确认，为保障智能航运安全有序发展提供司法支持。审结海上运输案件 506 件，涉案标的额 80.5 亿元。依法审理总标的额达 70 亿元的日照岚桥港收购案，为大型港口重组提供重要案例参考。审结海洋化工案件 47 件，涉案标的额 43.6 亿元。在“石油焦滞留案”中，向马绍尔群岛籍船东发出海事强制令，推动价值 6000 余万元的石油焦货物顺利交付。审结海洋能源案件 45 件，涉案标的额 39.7 亿元。在中国电建集团中南院运输合同纠纷案中，依法规范风电设备海上运输标准，促进海上风电能源产业健康发展。审结滨海旅游案件 45 件，涉案标的额 19.3 亿元，着力服务保障滨海旅游新业态发展。在世帆赛基地清淤案中，依法判

定海岸带整治修复项目工程成本，促进清淤工程顺利推进。

**（四）服务保障“美丽海洋”建设。**加强海洋环境司法保护能力建设，开展《海上生态环境损害评估鉴定法律制度研究》，召开海洋生态环境损害司法鉴定研讨会。与天津海事法院、大连海事法院签署《渤海生态环境保护司法协作机制框架协议》，组织召开 2023 年渤海生态环境保护司法协作联席会暨环渤海海洋法治研讨交流会，凝聚海洋环保法治共识。设立长岛海洋生态文明综合试验区、灵山岛省级自然保护区巡回审判庭，积极探索“蓝色碳汇”生态补偿方式，完善海洋环境司法保护机制。成功审结首起跨省域、跨海域非法捕捞海洋环境公益诉讼案，取得良好社会效果。

#### **四、践行以人民为中心的发展思想，努力维护社会公平正义**

牢固树立“小案事不小、小案不小办”工作理念，积极回应人民群众司法需求，及时高效便捷化解矛盾纠纷，努力让人民群众在每一个司法案件中感受到公平正义。

**（一）建立矛盾纠纷多元化解机制。**在“世界海员日”，发布船员权益保护十大典型案例，打造“海上枫桥”品牌。在派出法庭建立“法官+法官助理+调解员+书记员”一站式矛盾调处中心，实现诉前调解、司法确认、速裁一站式解决，民事裁判申请执行率仅 15.69%。积极融入驻地社会治理大



格局，加强与航运经贸行业调解组织诉调联动，在日照法庭推出“安岚无漾”诉源治理新模式，在石岛法庭建立“老船长调解室”，将大量矛盾纠纷化解在诉前，诉前化解率达37%。

**（二）切实保障民生福祉。**审结海洋弱势群体案件1064件，涉及群众2103人。与威海市高新区检察院、社会工作部联合签署《关于加强船员讨薪工作协作配合的实施意见》，建立海洋弱势群体维权通道，切实提升人民群众获得感，执行完毕率达64%，居全省各辖区法院第一，多篇案例入选诉前调解优秀案例、“平等保护中外当事人合法权益”典型案例。在陈某人身损害赔偿案中，自觉践行司法为民宗旨，跳出就案办案窠臼，层层追索赔偿款，为陈某拿到140万真金白银，真正实现案结事了，入选“小案事不小、小案不小办”精品案例。

**（三）完善审判监督管理体系。**落实《山东法院审判质量管理指标体系与评价办法（试行）》，完善考评机制，研究制定《疑难复杂案件监督管理办法（试行）》《审判委员会决议督办暂行办法》等多项管理制度。实施海事审判精品战略，积极推进海事司法文库编纂工作，征集各类优秀裁判文书、精品案例21批次，其中11篇入选全国优秀文书一等奖、涉外民商事案件适用国际条约和国际惯例典型案例等国家

级、省级优秀案例，9 篇案例入选全国法院案例库。加强智慧法院建设，自主研发“互联网+”船舶扣押监管平台，实现船舶扣押监管全链条信息化管理，自上线以来，共处理 197 名当事人扣押船舶申请，线上出具扣押命令 184 份，省政府、青岛市将其作为自贸区制度创新成果在省、市两级推广。

## 五、坚持全面从严治党，打造忠诚干净担当的法院铁军

深入贯彻落实习近平文化思想，将中华优秀传统文化融入司法实践，高标准建成“海洋法治教育基地”，打造“书香法院”文化品牌，先后被授予“全国法院文化建设特色项目”，青岛市“市级爱国主义教育基地”“法治宣传教育示范基地”。与山东大学签署合作协议，依托最高人民法院国际海事司法研究基地，发挥海事法院涉外案件窗口平台作用，完善干警知识结构，拓展干警国际视野，积极培养“懂外语、懂国际贸易和航运规则、懂国内法和国际法”的涉外海洋法治人才。多名干警被授予“全国法院先进个人”等荣誉称号，多篇论文在全国法院第三十五届学术讨论会等国家级学术论坛中获奖。压紧压实从严管党治警主体责任，坚决贯彻落实防止干预司法“三个规定”，做到“有问必录、应报尽报”，用好监督执纪“四种形态”，始终保持正风肃纪越来越严的高压态势，不断擦亮“清风徐来、廉自盛开”廉政品牌，努

力打造忠诚干净担当的法院铁军。

回顾过去一年，虽然工作取得一定成绩，但还存在一些问题和不足。例如海事司法国际影响力有待进一步提升，服务海洋经济高质量发展的手段有待进一步丰富，司法理念、司法能力与新时代要求还有差距，青岛海事法院管理体制机制障碍仍未能有效打通等等。对此，我们将积极采取有效措施，切实加以改进和解决。

## **Part I Overview of Main Works**

### **I. Take enhancing the Party's political building as the overarching principle, continuously strengthen the party building of courts in the new era**

Qingdao Maritime Court firmly adhered to the Party's absolute leadership over political and legal work, carried out the thematic education on studying and implementing Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era. This involved integrating theoretical study, investigation and research, driving development, and inspection and rectification in a unified manner. Qingdao Maritime Court organized 4 specialized reading classes and conducted 36 various theoretical study activities, formulated 30 rectification measures and revised or introduced 21 related rules and regulations to address 7 types of issues, so as to be more aware of our identity as political institutions; gain a deep understanding of the decisive significance of establishing Comrade Xi Jinping's core position on the Party Central Committee and in the Party as a whole and establishing the guiding role of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era; enhance the consciousness of the need to maintain political integrity, think in big-picture terms, follow the leadership core, and keep in alignment with the central Party leadership; stay confident in the path, theory, system, and culture of socialism with Chinese characteristics; and uphold Comrade Xi Jinping's core position on the Party Central Committee and in the Party as a whole and uphold the Central Committee's authority and its centralized, unified leadership.

Qingdao Maritime Court thoroughly studied and implemented The

Regulation of the Communist Party of China on Political and Legal Work, strictly adhered to the system of request and report on major events, and promptly reported the maritime judicial work situation to the Qingdao Municipal Party Committee and Political and Legal Affairs Commission of Qingdao Municipal Party Committee. Qingdao Maritime Court strictly implemented the system of responsibility for ideological work, be mindful of potential dangers, and be prepared to deal with worst-case scenarios, firmly grasping the ideological power of discourse and initiative.

Besides, Qingdao Maritime Court firmly adhered to the “the Three Meetings and One Lecture system”, established a clear orientation of the extension of the Party’s work to the branches, strictly implemented the “First Topic” system among the theoretical study central group of the Party leadership team, promptly transmit and study the important instructions and directives from General Secretary Xi Jinping, consciously integrated the Party’s leadership throughout all aspects and processes of the court’s work, significantly enhanced the sense of mission and responsibility of promoting the high-quality development of the marine economy through maritime justice.

## **II. Deeply implement the holistic approach to national security, and firmly promote the construction of peaceful ocean**

Qingdao Maritime Court coordinated development and security, strengthened the foundation of marine economy and social safety, actively participated in global marine security governance, so as to create a coordinated, multi-dimensional, and highly effective system for protecting marine security across all domains, ensuring high-quality development with a high level of security.

Punish maritime crime. On April 27, 2021, Mr. Ma was piloting the Panamanian-flagged general cargo ship “YI HAI” through the southeastern waters of Qingdao. Due to improper operation, the ship collided with the anchored Liberian-flagged oil tanker “SYMPHONY”. This collision caused approximately 9,419 tons of cargo oil to spill into the sea, polluting 4,360 square kilometers of sea area and 786.5 kilometers of coastline in Qingdao, Weihai and Yantai, which was the largest oil spill pollution accident in China in recent years. Approved by the Supreme People’s Court and designated by the Provincial Court, the Qingdao People’s Procuratorate filed a public prosecution before the Qingdao Maritime Court on October 7, 2023. After a public trial, the Qingdao Maritime Court sentenced Mr. Ma to two years imprisonment with a two-year probation on January 8, 2024, for the crime of a major liability accident. Over a hundred people, including national, provincial and municipal deputies to the National People’s Congress, members of CPPCC, journalists and the general public attended the trial. The defendant, Mr. Ma, accepted the verdict in court, which highlighted the authority of maritime justice. This case, which was the first one in China to hold a ship captain criminally responsible for a major accident due to a collision, provided a crucial precedent for determining responsibility in major maritime accidents, effectively managing maritime navigation order, and determining jurisdiction in maritime criminal cases. It also offered valuable insights for participating in and leading the development of international oil pollution damage compensation rules and promoting the international marine environmental pollution governance system toward greater fairness and justice.

Prevent and solve maritime major risk. Aiming at achieve the goals of “Peaceful Shandong” and “Peaceful Qingdao”, Qingdao Maritime

Court systematically summarized maritime risk accidents in the sea areas of the Shandong Province in recent years and submitted to the Shandong Provincial Party Committee the Report on Further Emphasizing and Strengthening Peaceful Marine Construction, which received high attention from the Provincial Party Committee and Provincial Government. Qingdao Maritime Court insisted on the coordination with the government to improve risk prevention mechanisms. In collaboration with the Shandong Provincial Department of Agriculture and Rural Affairs, Qingdao Maritime Court established a judicial enforcement cooperation mechanism for marine fisheries, standardizing administrative permits and penalties to maintain the order of marine fishery production. As a result, the number of illegal fishing vessels during the closed fishing season has decreased by 90% compared to previous years. To address the risk of aquaculture obstructing navigation, Qingdao Maritime Court issued judicial recommendations to the Yantai Municipal Government on regulating marine aquaculture management and sent the first bilingual judicial recommendations to international shipping companies, guiding them to avoid aquaculture areas and enhance navigation safety. By adopting proactive judicial measures, Qingdao Maritime Court improved the risk management mechanism and concluded 62 maritime safety cases. In the “LU PENG YUAN YU 028” Indian Ocean capsized incident, Qingdao Maritime Court proactively provided judicial recommendations to assist in the proper handling of the incident. In the “ZHONG HUA FU QIANG” fire case, facing thousands of victims from 13 provinces and cities, Qingdao Maritime Court explored a new “judicial-oriented” coordination model with the government to effectively resolve the incident without a single petition event. This approach received full recognition from the Shandong Provincial Party Committee and High

People's Courts. On June 18, 2023, the "ZHONG HUA FU QIANG" was officially renamed "BO HAI HENG SHENG" and resumed operations.

Promote the construction of maritime law-based governance. To implement the Notice on Preventing and Resolving Jurisdiction Issues in Administrative Litigation Cases issued by Shandong High People's Court, Qingdao Maritime Court standardized the jurisdiction mechanism for maritime administrative cases across the province, with case filings increasing by 55.6% on year-on-year basis, and the attendance rate of administrative agency heads in court reached 100%. Qingdao Maritime Court insisted in balancing environmental protection and people's livelihood, and facilitated the resolution of an 80 million yuan administrative penalty dispute between a water utility company and a maritime police bureau through mediation. Qingdao Maritime Court adhered to the principle of "win-win and all-win", signed the Strategic Cooperation Framework Agreement on Service Guarantee for the High-quality Development of Qingdao's Marine Economy with Marine Development Committee of Qingdao Municipal Party Committee. Additionally, Qingdao Maritime Court held seminars on judicial protection of the marine environment in Weihai, Yantai, Dongying, and Rizhao to explore the establishment of a comprehensive marine governance platform. In the marine ranching dispute case of Xiwan Company, Qingdao Maritime Court utilized the coordination mechanism with the government, proactively issued judicial recommendations to the Department of Agriculture and Rural Affairs of Shandong Province on regulating marine ranching management. This recommendation was highly valued and fully adopted by the department. Currently, the Regulations on the Construction and Management of Marine Ranching in Shandong Province have been included in the Legislative Plan of the



Standing Committee of the Shandong Provincial People's Congress (2023-2027).

### **III. Apply the new development philosophy in full and provide strong judicial protection for high-quality development of Qingdao marine economy**

Based on national strategy, Qingdao Maritime Court took the initiative to dock with the judicial needs of building a new development pattern, focused on giving full play to the role of the law in guiding and guaranteeing maritime trials, and strived to build a world-class business environment being market-oriented, law-based, and internationalized.

Continuously enhance the level of foreign-related legal service. 232 foreign-related cases were concluded, covering more than 50 countries and regions. To further advance the provision of maritime judicial standards, Qingdao Maritime Court refines the adjudication rules from effective maritime judicature cases, providing legal guidance and judicial protection for domestic enterprises to “go out” and foreign enterprises to “come in”. Shandong Provincial Government promoted it as an innovative achievement of FTZ across the province. The role of maritime adjudication rules has been brought into play, and high-standard international economic and trade rules have been matched. In the “Aquila” case, Qingdao Maritime Court utilized judicial adjudication to establish an international shipping rule regarding soybean cargo damage. The foreign-related judicial cooperation capability has been improved, and the overseas interests of enterprises have been protected by law. In the case of pumpkin cargo damage dispute of Myanmar New Asia Company, Qingdao Maritime Court reasonably determined the compensation standards for agricultural product damage during overseas

transportation under the emerging business model of “overseas production and domestic sales”, thereby facilitating smooth maritime routes for Chinese agricultural-related enterprises “going out”.

Establish an economy with a new height of openness. Qingdao Maritime Court is deeply involved in the construction of the FTZ, signing a memorandum of cooperation with the Administration of Qingdao Area of China (Shandong) Pilot Free Trade Zone, and establishing Qingdao FTZ trial area. 559 cases related to the Free Trade Zone were concluded, involving a total amount of 1.06 billion yuan. Qingdao Maritime Court hosted “Qingdao: The first Maritime (judicial) Innovation Conference”, launched the first Center for Foreign Law Ascertainment in China. What’s more, we signed the “Artificial intelligence (AI) and Justice Escort Innovation and Enhancement” cooperation agreement with the Administration of Qingdao Area of China (Shandong) Pilot Free Trade Zone, Shandong Maritime Safety Administration, and six other departments, and established a “Cash Pooling for Seafarers’ Judicial Assistance” with the Administration of Qingdao Pilot Free Trade Zone to accelerate the enrichment and aggregation of legal resources within FTZ. Adhering to the principle of extensive consultation, joint contribution, and shared benefits, Qingdao Maritime Court concluded 189 cases related to the “the Belt and Road Initiative”, involving an amount of 2.37 billion yuan. In the Indonesia-flagged vessel “ NUSAMODKA” arrested case, Qingdao Maritime Court facilitated Liberian plaintiffs and Indonesian defendants to voluntarily discontinue overseas arbitration proceeding and make peace, providing a vivid example of the “Maritime Community with a Shared Future”. We actively participated in the construction of the Qingdao SCO “Legal Intelligence Valley” and implemented the preparation and supported for SCO Justices Forum. 9 cases related to

SCO member states were concluded, involving an amount of 20.14 million yuan. In the multimodal transport dispute involving India, Qingdao Maritime Court determined the responsibility of the multimodal transport operator in cases where the segment of cargo damage was unclear, offering a Chinese solution for the determination of international multimodal transport rules.

Continuously optimizing the law-based governance of the marine business environment. Qingdao Maritime Court has been endeavoring to serve and safeguard the construction of the “Marine Granary” and to promote the innovative development in marine fisheries. 527 fishery cases were concluded, involving an amount of 32 billion yuan. In the dispute over the “Deep Blue No.1” fishing equipment construction contract, Qingdao Maritime Court was legally determined that the liability for the escape of fish fry is due to the tilting of the net cages and the damage to the nets, thereby providing regulatory support for large-scale marine equipment manufacturing. Giving play to maritime judicial functions to regulate the order of the marine engineering equipment and shipbuilding industry, Qingdao Maritime Court concluded 204 related cases with an amount of 16.8 billion yuan involved. In the “ ZHI TENG” case, the technical specifications and environmental protection standards for the electric generator of the first unmanned autonomous navigation system experimental vessel in China were confirmed in accordance with the law, providing judicial support for the safe and orderly development of intelligent maritime transportation. 506 maritime transport cases were concluded, involving an amount of 80.5 billion yuan. Moreover, Qingdao Maritime Court tried the Rizhao Lanqiao Port acquisition case with a total amount of 70 billion yuan, providing an important reference for the restructuring of large ports. 47

marine chemical cases were concluded, involving an amount of 43.6 billion yuan. In the “stranded petroleum coke” case, Qingdao Maritime Court issued a maritime injunction to the Marshall Islands shipowner, facilitating the smooth delivery of petroleum coke valued at over 60 million yuan. 45 marine energy cases were concluded, involving 39.7 billion yuan. In the case of the dispute over the contract of carriage of the Zhongnan Engineering Corporation Limited of Power Construction Group of China, Qingdao Maritime Court standardized the maritime transportation standards of wind power equipment according to law, promoting the healthy development of the offshore wind power energy industry. 45 coastal tourism cases were concluded, involving an amount of 19.3 billion yuan, strive to serving and safeguarding the development of new forms of coastal tourism. In the case of World Sailing Competition Base dredging, Qingdao Maritime Court determined the cost of the coastal zone remediation and restoration project, thus promoting the smooth progress of the dredging project.

Serve and safeguard the construction of a “Beautiful Ocean”. In order to strengthen the judicial protection capacity for marine environment, *Research on Legal System for Assessment and Appraisal of Marine Ecological Environment Damage* was carried out, and a symposium on judicial identification of marine ecological environment damage was organized. Qingdao Maritime Court signed the *Framework Agreement on the Judicial Cooperation Mechanism for Ecological and Environmental Protection of the Bohai Sea* with Dalian Maritime Court and Tianjin Maritime Court, and organized the 2023 Bohai Sea Ecological Environmental Protection Judicial Cooperation Joint Meeting and the Law-based governance on Bohai Rim Symposium to build law-based consensus on marine environmental protection. Establishing the

Changdao Marine Ecological Civilization Comprehensive Experimental Zone and the Lingshan Island Provincial Nature Reserve Circuit Court, Qingdao Maritime Court actively explored the ecological compensation method for “Blue Carbon Initiative” to improve the judicial protection mechanism for marine environment. The first cross-provincial and cross-sea illegal fishing marine environmental public interest litigation case was successfully concluded, achieving significant social effects.

#### **IV. Practice the people-centered philosophy of development, strive to safeguard social fairness and justice**

Firmly establishing the working concept that “small cases are not trivial, and small cases shouldn’t be handled simply”, Qingdao Maritime Court actively responds to the judicial needs of the people, resolved conflicts and disputes in a timely, efficient, and convenient manner, striving to ensure that the people feel fairness and justice in every case.

Establish a multi-dimensional mechanism for resolving conflicts and disputes. On “World Seafarer’s Day”, 10 typical cases on the protection of seafarers’ rights and interests were released, creating the brand of “Maritime Fengqiao Experience”. Establish a “judge + judge assistant + mediator + clerk” one-stop conflict mediation center in the dispatched court, thus achieving the one-stop settlement of pre-litigation mediation, judicial confirmation, and fast-track sentencing. The rate of application for enforcement of civil judgments is only 15.69%. In order to actively integrating into the resident social governance model, we enhanced collaboration on litigation and mediation with maritime economic and trade industry mediation organizations, launching a new model for litigation source management in Rizhao Court, called “Peaceful Lanshan Port”, as well as setting up the “Old Captain Mediation Room” at Shidao

court. By doing so, a large number of contradictions and disputes were resolved before litigation, and the pre-litigation resolution rate reached 37%.

Effectively safeguard the well-being of people. 1064 cases involving marine vulnerable groups were concluded, affecting 2103 individuals. Qingdao Maritime Court jointly signed the *Implementation Opinions on Strengthening Cooperation in Seafarers' Wage Reclaim* with the High-tech Zone Procuratorate and Social Work Department of Weihai, establishing a channel for marine vulnerable groups to protect their rights, effectively enhancing the people's sense of accomplishment. The rate of completion execution reached 64%, ranking first among all courts in the province. Multiple cases were selected as excellent pre-litigation mediation cases and typical cases of "equal protection of the legitimate rights and interests of Chinese and foreign parties". In the case of compensation for personal injury to Mr. Chen, consciously practicing the principle of justice for the people, Qingdao Maritime Court got out of the cases by cases rut, and diligently sought the compensation layer by layer, obtaining 1.4 million yuan compensation for Mr. Chen. The conclusion of case was truly achieved, and it was selected as a selected example of "small cases are not trivial, and small cases shouldn't be handled simply".

Improve the trial supervision and management system. The *Trial Quality Management Index System and Evaluation Measures on Courts in Shandong Province (For Trial Implementation)* was implemented to enhance the evaluation mechanism. We are developing multiple management systems, including *the Supervision and Management Measures for Complex Cases (For Trial Implementation)* and *the Interim Measures for Supervising the Implementation of the Judicial Committee Resolutions*. Qingdao Maritime Court have implemented the strategy of

high-quality maritime trials, actively promoted the compilation of maritime judicial libraries, and collected 21 batches of outstanding judgment documents and high-quality cases of all kinds. Among them, 11 won first prizes for national excellent judgments and were selected as typical cases of the application of international treaties and international practices in foreign-related civil and commercial cases and other national and provincial excellent cases, and 9 of them were included into the National Court Case Database. Besides, Qingdao Maritime Court also strengthened the building of smart courts, independently developed the “Internet+” ship arrest supervision platform, and realized the information management of the whole chain of ship arrest and supervision. Since the system was launched, a total of 197 applications for ship arrest have been processed, and 184 arrest orders have been issued online. Shandong Provincial Government and Qingdao Municipal Government promoted it as an innovation achievement of the FTZ system at both provincial and municipal levels.

**V. Exercise full and strict governance over the Party and build a loyal, clean and responsible maritime court iron troops.**

Deeply studying and implementing Xi Jinping Thought on Culture, Qingdao Maritime Court integrated excellent traditional Chinese culture into judicial practice. We have built the high-standardized “Law-based Governance of Ocean Education Base” and created the “Learning-oriented Court” cultural brand, which won the title of “National Court Cultural Construction Characteristic Project”, “Qingdao Municipal Patriotism Education Base” and “Qingdao Legal Propaganda Education Demonstration Base”. Moreover, Qingdao Maritime Court signed a cooperation agreement with Shandong University, relying on the

International Maritime Judicial Research Base of the Supreme People's Court to give play to the role of maritime court as a platform for foreign-related cases. In addition, we improved the knowledge structure of judges, bailiffs and other staffs, broaden their international perspective, and actively developed foreign-related maritime legal talents who understand foreign languages, international trade and shipping rules, as well as domestic and international law. Several of them were awarded Advanced Individual by the Supreme People's Court, and many of their papers won awards at the 35th National Court Academic Symposium and other national academic forums. Qingdao Maritime Court has always shouldered the main responsibility for full and rigorous governance over the party, earnestly followed the three rules of preventing interference in judicial practices, and ensured that "record all inquiries and report all due reports". With the four forms of oversight over discipline compliance, we have worked ceaselessly to improve Party conduct and enforce Party discipline, constantly polished the brand of integrity, thereby building a loyal, clean and responsible maritime court iron troops.

Reflecting on the past year, although some achievements have been made, there are still some problems and shortcomings. For instance, the international influence of maritime justice need to be further enhanced; the means to serve the high-quality development of marine economy needs to be further enriched; the judicial concept and judicial capacity still fall short of the requirements of the new era; the obstacles in the management system and mechanism of Qingdao Maritime Court have yet to be effectively resolved. To address these issues, we will actively take effective measures to make substantial improvements and solutions.



## 第二部分 海事审判情况

### 一、案件概况

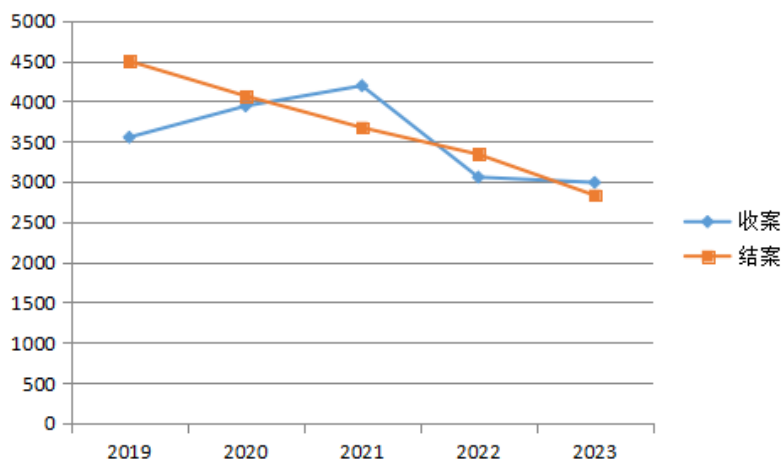
#### (一) 收结存案情况<sup>1</sup>

全院收案 2988 件，同比下降 2.16%；结案 2830 件，同比下降 15.24%；未结 584 件，同比上升 37.41%。与去年相比，收结案件数量相对于去年存在一定幅度下降，未结案件存在大幅度上升。

表1. 2023年案件同比情况表

	旧存	收案	结案	未结
2023年1-12月	425	2988	2830	584
2022年1-12月	709	3055	3339	425
同比	-40.06% ↓	-2.16% ↓	-15.24% ↓	37.41% ↑

图 1. 2019 年--2023 年收结案数量变化趋势图



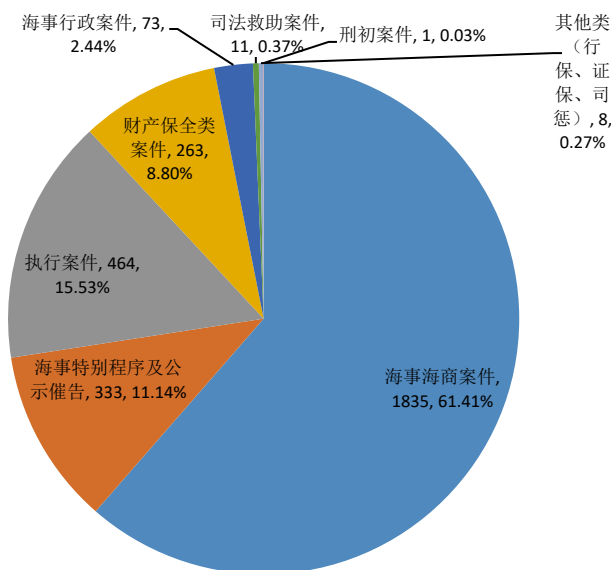
<sup>1</sup> 根据《最高人民法院关于调整执行案件司法统计标准的通知》，统计口径均为去除执恢、执保案件的数据。全口径统计（包括执恢、执保），收案 3741 件（-15.57%），结案 4036 件（+3.54%），未结 430 件（-40.11%）。

从收结案件数量变化来看,近五年案件数量呈现稳中下降的趋势。另外,2023年诉前调解直接化解海事海商纠纷820件,该部分案件未进入诉讼程序。

## (二) 收案情况

海事海商收案1835件(民初案件1825件,民再案件7件,民撤案件1件,请外送案件1件,协外认案件1件),海事特别程序及公示催告收案333件(民特案件331件,民催案件2件),执行收案464件(首执案件410件、执行异议案件54件),财产保全类收案263件,海事行政收案73件(行初案件20件,行审案件53件),司法救助收案11件,其他类(行保、证保、司惩)案件收案8件,刑初案件收案1件。

图2. 2023年各类案件收案分布情况



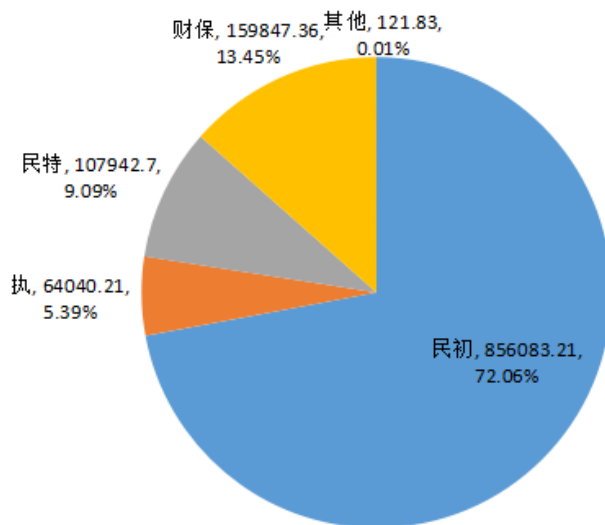
相较于 2022 年，海事行政案件、海事特别程序案件大幅度增加；海事海商一审案件呈下降态势，其余类型案件数量变化不大。

表 2. 2023 年三类变化较大案件同比情况表

	海事海商一审	海事特别程序	海事行政
2023	1825	331	73
2022	1986	222	54
同比	-8.11%	49.1%	35.19%

各类案件收案标的总额 1187839.846 万元，同比下降 58.78%；一审海事海商案件、财产保全案件、海事特别程序案件、执行案件标的占比分别为 72.06%、13.45%、9.09%、5.39%。

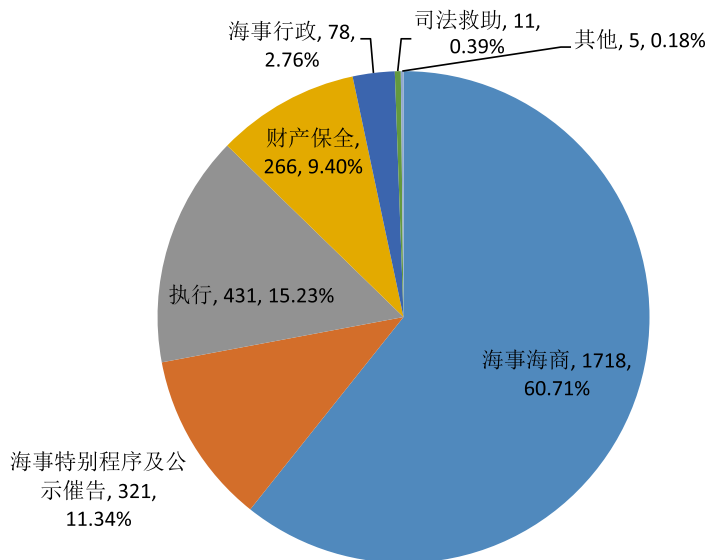
图 3. 2023 年度收案标的额占比分布情况（万元）



### （三）结案情况

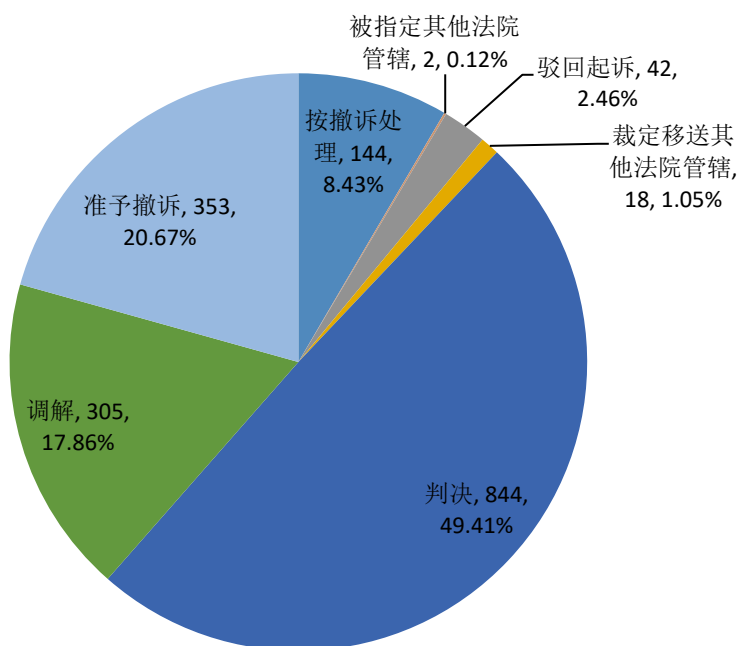
海事海商结案 1718 件（民初案件 1708 件，民再案件 7 件，协外认案件 2 件，请外送案件 1 件）；海事特别程序案件及公示催告案件结案 321 件（民特案件 319 件，民催案件 2 件），执行案件结案 431 件；财产保全类案件结案 266 件；海事行政类案件结案 78 件；司法救助类案件结案 11 件；其他类（行保、证保、司惩）案件结案 5 件。

图 4.2023 年各类案件结案分布情况



其中，海事海商一审案件结案 1708 件，同比下降 8.31%，共减少 142 件。从结案方式来看，判决结案 844 件，占 49.41%；调解结案 305 件，占 17.86%；裁定准予撤诉或按撤诉处理结案 497 件，占 29.10%；其他结案方式 62 件，占 3.63%。

图5.2023年海事海商一审案件结案方式统计



#### （四）诉前调解案件情况

诉前调解成功案件 820 件，调解成功并申请司法确认案件 341 件，无申请出具调解书案件，总数同比下降 24%，直接化解率为 36.44%，同比下降 1.66 个百分点。

## 二、各类案件情况

### （一）海事海商一审案件情况

海事海商一审案件收案 1825 件，同比下降 8.11%，共减少 161 件。

表3.2023年海事海商一审案件收案--案由前十类型统计

	案件数量	占比
总计	1825	——
船员劳务合同纠纷	344	25.50%
海上、通海水域货物运输合同纠纷	321	23.80%
海上、通海水域人身损害责任纠纷	171	12.68%
海上、通海水域货运代理合同纠纷	160	11.86%
海上、通海水域养殖损害责任纠纷	85	6.30%
海洋开发利用纠纷	80	5.93%
船舶物料和备品供应合同纠纷	61	4.52%
海上、通海水域保险合同纠纷	50	3.71%
船舶买卖合同纠纷	45	3.34%
海上、通海水域财产损害责任纠纷	32	2.37%

## （二）海事特别程序案件情况

海事特别程序案件收案 331 件，同比上升 49.1%；结案 319 件，同比上升 27.6%。

海事特别程序收案 331 件，其中申请海事债权登记与受偿案件 225 件，占比约 67.98%，同比上升 47.37%；宣告失踪、宣告死亡案件 95 件，占比约 28.70%，同比上升 39.71%。申请司法确认调解协议案件 4 件，申请设立海事赔偿责任限制基金案件 3 件，申请实现担保物权案件、申请撤销仲裁裁决案件、申请海事强制令、申请确认仲裁协议效力案件各 1 件。相较去年，海事特别程序案件类型和案由增多。

表 4. 2022 年—2023 年海事特别程序及督促、  
公示催告程序案件收案情况

案由 年份	债权 登记	司法 确认	财产 保全	宣告 死亡	扣押 船舶	涉仲 裁类	设立 基金	海事 强制 令	证据 保全	公示 催告
2023	225	4	263	95	62	5	3	5	2	2
2022	152	0	297	68	38	2	0	4	0	0

### （三）海事行政案件情况

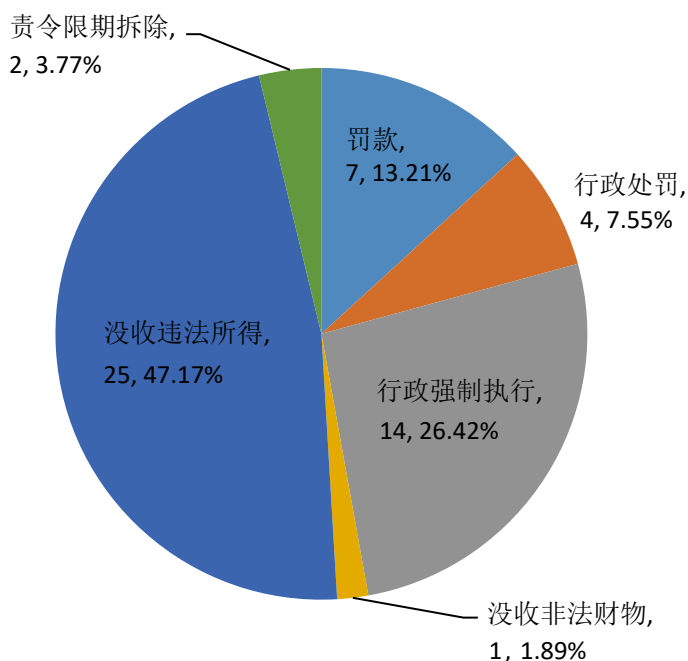
海事行政案件收案 78 件，同比上升 44.44%，其中，行初案件 20 件，行审案件 53 件。

案由构成方面，行初案件案由较分散，其中不履行职责类收案最多，占比为 30%。行审案件中，没收违法所得和行政强制执行类案件收案最多，占比为 73%。

表 5 2023 年海事行初案件案由构成情况

案由	数量
××（行政协议）行政补偿	1
不履行××职责	6
不依法履行××（行政协议）	1
不予受理行政复议申请决定	1
撤销××（行政协议）	1
罚款	2
行政确认	1
继续履行××（行政协议）	1
没收非法财物	2
没收违法所得	1
特许经营许可	1
责令交还土地	1
责令限期拆除	1

图 6.2023 年行审案件案由构成情况



#### (四) 执行案件情况<sup>2</sup>

执行收案（包括执恢、执保）1409 件，结案 1358 件。

表6. 2023年执行办案情况统计表

	执	执恢	执异	执保	合计
收案	410	55	54	912	1431
结案	375	41	56	912	1384
结收比	91.46%	74.55%	103.70%	100.00%	96.72%

<sup>2</sup> 执行局提供，数据调取自“人民法院执行案件流程信息管理系统”，查询时间 2023 年 1 月 1 日。



## （五）涉外、涉港澳台案件情况

涉外、涉港澳台案件共收案 437 件，占全部收案的 14.46%，同比上升 36.71%。其中，涉外案件 301 件，涉港案件 127 件，涉台案件 9 件。

案由构成方面，海上、通海水域货物运输合同纠纷，海上、通海水域养殖损害责任纠纷，申请扣押船舶，海上、通海水域财产损害责任纠纷和海事债权确权纠纷位列收案前五位，占全部涉外案件收案的 77.81%。

表 7. 2023 年涉外案件案由分布情况

案由	数量
海上、通海水域货物运输合同纠纷	161
海上、通海水域养殖损害责任纠纷	23
申请扣押船舶	21
海上、通海水域财产损害责任纠纷	15
海事债权确权纠纷	15
保险人代位求偿权纠纷	10
船舶碰撞损害责任纠纷	8
申请海事债权登记与受偿	5
船舶污染损害责任纠纷	4
海上、通海水域货运代理合同纠纷	4
海上、通海水域人身损害责任纠纷	3
申请诉前财产保全	3
船舶抵押合同纠纷	2
船舶修理合同纠纷	2
船舶租用合同纠纷	2
海上、通海水域保险合同纠纷	2
行政处罚	2
航次租船合同纠纷	2

案由	数量
水上运输财产损害责任纠纷	2
船舶触碰损害责任纠纷	1
船舶代理合同纠纷	1
多式联运合同纠纷	1
非法留置船舶、船载货物、船用燃油、船用物料损害责任纠纷	1
海难救助合同纠纷	1
海上、通海水域运输船舶承包合同纠纷	1
海运集装箱租赁合同纠纷	1
海运欺诈纠纷	1
没收非法财物	1
申请承认和执行外国仲裁裁决	1
申请公示催告	1
申请海事强制令	1
申请实现担保物权	1
申请诉前证据保全	1
申请宣告自然人死亡	1
因申请行为保全损害责任纠纷	1

表8. 2023年涉港澳台案件分布情况

案由	数量
海上、通海水域货物运输合同纠纷	69
海上、通海水域养殖损害责任纠纷	27
海上、通海水域人身损害责任纠纷	5
海上、通海水域货运代理合同纠纷	4
船员劳务合同纠纷	3
留置权纠纷	3
船舶碰撞损害责任纠纷	2
船舶修理合同纠纷	2
海上、通海水域保险合同纠纷	2
海运集装箱租赁合同纠纷	2
申请海事强制令	2
船舶权属纠纷	1
船舶营运借款合同纠纷	1

案由	数量
船舶租用合同纠纷	1
海运欺诈纠纷	1
航次租船合同纠纷	1
申请撤销仲裁裁决	1
申请扣押船舶	1
申请司法确认调解协议	1
水路货物运输合同纠纷	1

涉外案件共涉及 30 个国家或地区，其中前五名分别为利比里亚、爱尔兰、丹麦、新加坡、阿联酋。

表9.2023年涉诉当事人前十国家统计

涉诉国家	案件数量
利比里亚	45
爱尔兰	38
丹麦	28
新加坡	24
阿联酋	19
法国	19
马绍尔群岛	18
巴拿马	10
韩国	10
德国	9

## （六）船舶扣押和拍卖情况

扣押船舶共 77 条，其中，中国籍 68 条，外国籍 9 条。扣押平台 1 个。解扣船舶 32 条。

表 10. 2023 年扣押船舶情况统计

船舶类型	渔船	货船/轮	科考船	干、散货船	输油船	海上施工轮
船舶数量	57	13	1	4	1	1

网拍船舶总成交价 31131.73 万，其中拍卖成交渔船 34 条，总成交价 6444.45 万；拍卖成交干/散货船 7 条，总成交价 4891.44 万；拍卖成交油船 3 条，总成交价 18937 万；拍卖成交其他类型船 3 条，总成交价 462.15 万。

## Part II Overview of Maritime Trials

### I. Cases Overview 1

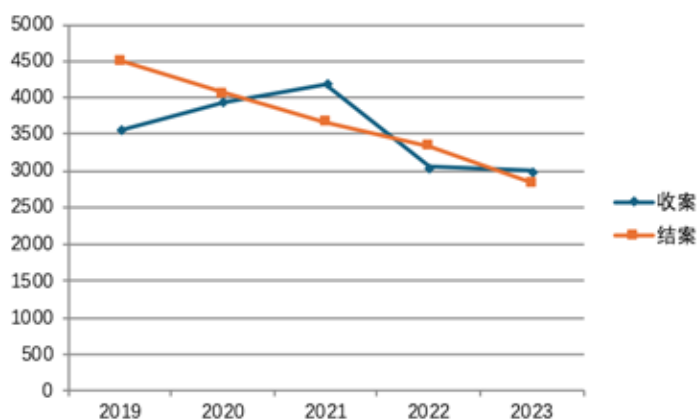
#### 1. Overview of Cases Accepted and Concluded

The Court has accepted 2988 cases, down 2.16% year-on-year; concluded 2830 cases, down 15.24% year-on-year; non-concluded 584 cases, up 37.41% year-on-year. The number of accepted and concluded cases has decreased to a certain extent, while the number of non-concluded cases has increased significantly compared with last year.

**Table 1. Year-on-year table of cases in 2023**

	Number of cases stored	Number of cases accepted	Number of cases concluded	Number of cases uncompleted
2023	425	2988	2830	584
2022	709	3055	3339	425
Year-on-year	-40.06% ↓	-2.16% ↓	-15.24% ↓	37.41% ↑

Figure 1. Trend chart of the number of accepted and concluded cases from 2019 to 2023



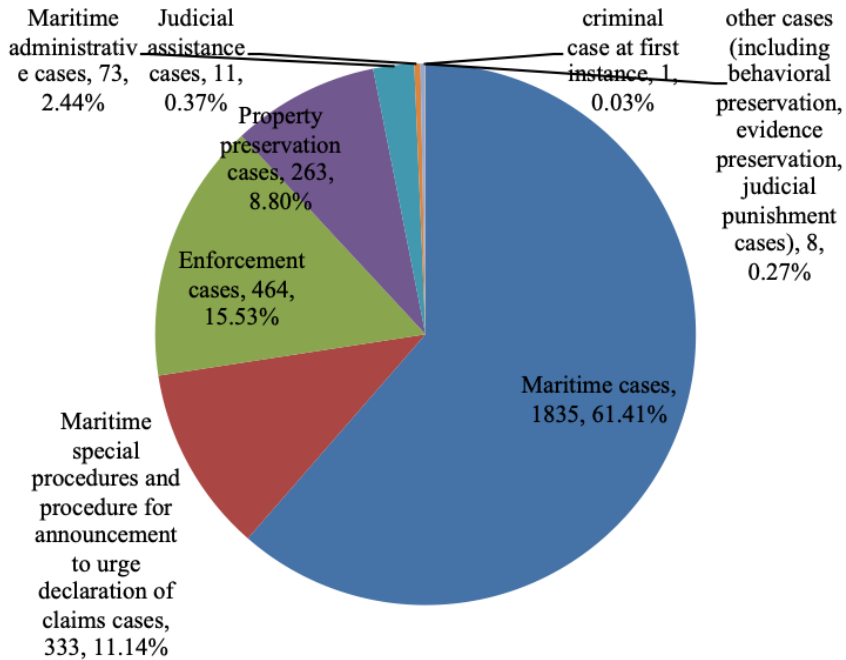
<sup>1</sup> According to Notice of the Supreme People's Court on Adjusting Judicial Statistics Standards for Enforcement Cases, The statistic is the data of the removal of execution recovery and execution preservation. All statistics (including execution recovery and execution preservation), the Court has accepted 3741 cases (-15.57%), concluded 4036 cases (+3.54%) and non-concluded 430 cases (-40.11%).

Judging from the changes in the number of cases accepted and concluded, the number of cases in the past five years has shown a steady downward trend. Additionally, 820 maritime disputes were directly resolved through pre-litigation mediation in 2023, which did not enter the litigation process.

## **2. The Cases Accepted**

1835 maritime cases (including 1825 civil cases at first instance, 7 retrial civil cases, 1 withdrawal case, 1 external transfer case, and 1 recognition and enforcement of foreign arbitral awards review case), 333 maritime special procedures and procedure for announcement to urge declaration of claims (including 331 cases of special procedures and 2 cases of public summons for exhortation), 464 enforcement cases (including 410 cases of first enforcement, 54 cases of enforcement objection), 263 property preservation cases, 73 maritime administrative cases (including 20 maritime administrative cases at first instance and 53 cases of application for enforcement judicial review), 11 judicial assistance cases, 8 other cases (including behavioral preservation, evidence preservation, judicial punishment cases) , and 1 criminal case at first instance.

**Figure 2. The distribution of cases accepted by category in 2023**



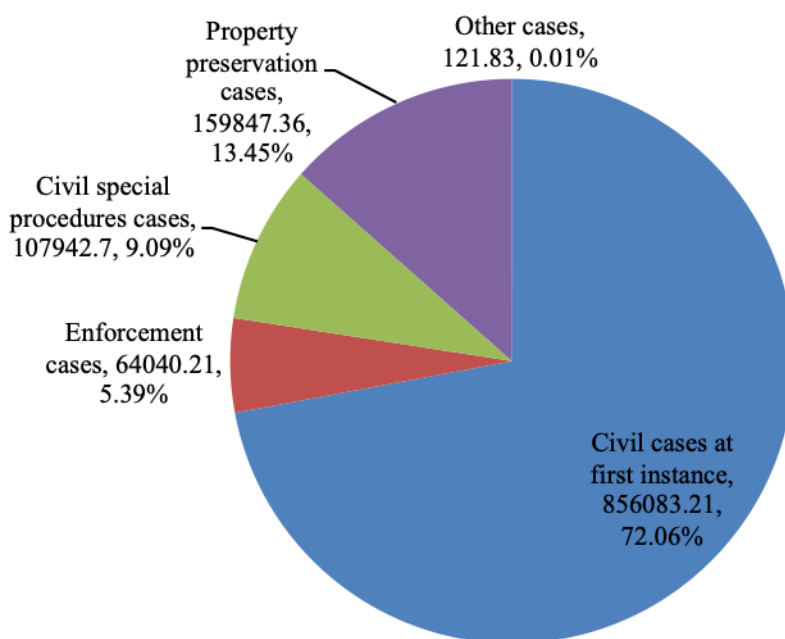
Compared with 2022, there was a significant increase in maritime administrative cases and maritime special procedures cases; a downward trend in first-instance maritime cases; The number of remaining types of cases has not changed much.

**Table 2. Year-on-year table of three types of cases with large changes in 2023**

	First-instance maritime cases	Maritime special procedures cases	Maritime administrative cases
2023	1825	331	73
2022	1986	222	54
Year-on-year	-8.11%	49.1%	35.19%

The total amount of subjects accepted in various cases will be 11,878.39846 million yuan, down 58.78% year-on-year; the proportions of first-instance maritime cases, property preservation cases, maritime special procedure cases and enforcement cases were 72.06%, 13.45%, 9.09% and 5.39% respectively.

**Figure 3. Distribution of the proportion of received targets in 2023 (in 10,000 yuan)**



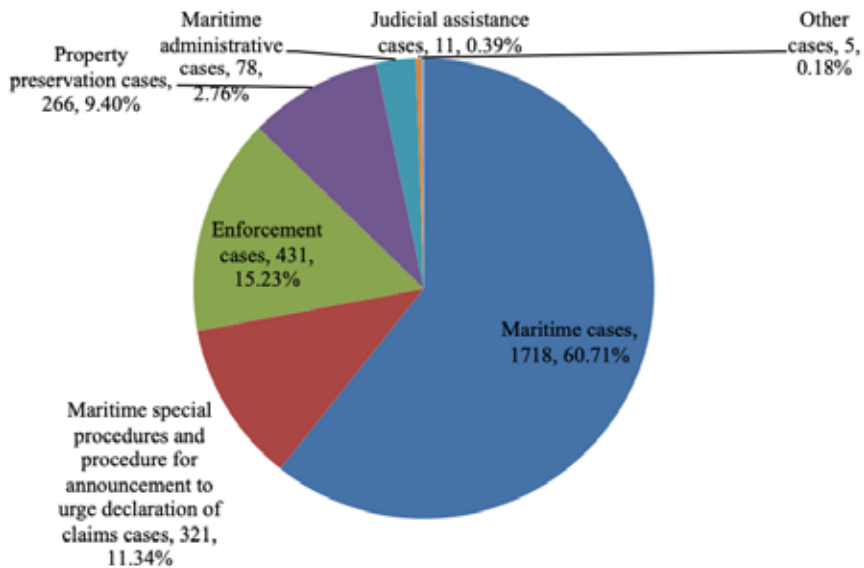
### 3. The Cases Concluded

1718 maritime cases (including 1708 civil cases at first instance, 7 retrial civil cases, 2 recognition and enforcement of foreign arbitral awards review case, and 1 external transfer case); 321 maritime special procedures and procedure for announcement to urge declaration of claims (including 319 cases of special



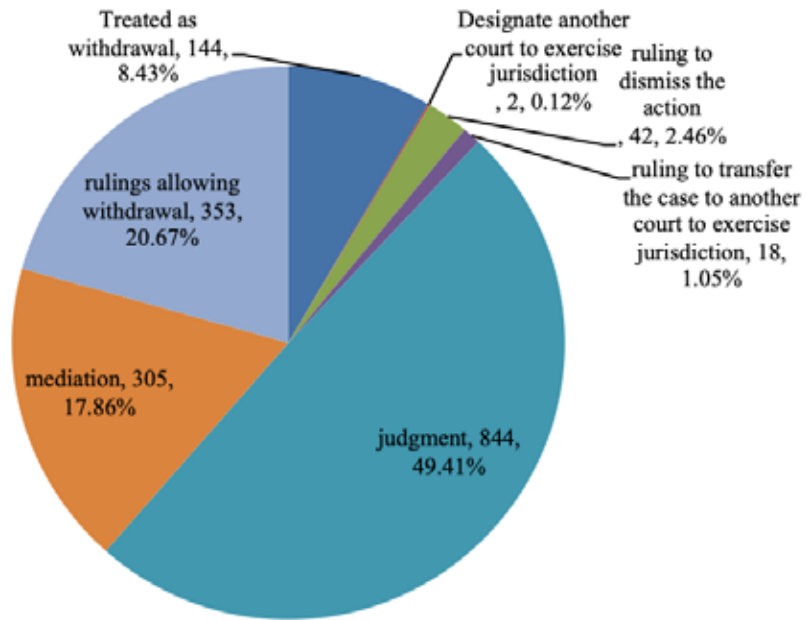
procedures and 2 cases of public summons for exhortation); 431 enforcement cases; 266 property preservation cases; 78 maritime administrative cases; 11 judicial assistance cases; 5 other cases (including behavioral preservation, evidence preservation, judicial punishment cases).

**Figure 4. The distribution of cases concluded by category in 2023**



Among them, 1,708 first-instance maritime cases were concluded, down 8.31% a year-on-year, representing a reduction of 142 cases. Regarding the methods in which cases were concluded, 844 cases were concluded by judgment, accounting for 49.41%; 305 cases were concluded by mediation, accounting for 17.86%; 497 cases were concluded by rulings allowing withdrawal or treated as withdrawal, accounting for 29.10%; and 62 cases were concluded by other methods, accounting for 3.63%.

**Figure 5. Maritime cases of first instance concluded in 2023**



#### **4. Overview of Pre-litigation Mediation Cases**

There were 820 successful cases of pre-litigation mediation, 341 cases of successful mediation and application for judicial confirmation, and no case of application for the issuance of judicial mediation letters, with a total down 24% year-on-year, and the direct resolution rate was 36.44%, down 1.66% year-on-year.

## **II. Overview of Various Cases**

### **1. Overview of Maritime Cases in the First Instance**

The Court accepted 1825 maritime cases in the first instance, down 8.11% year-on year, which amounts to 161 cases.

**Table 3. Maritime first-instance cases received in 2023-statistics of the top ten types of cases**

	Number of cases	Proportion
<b>Total</b>	1825	--
Disputes over seaman service contract	344	25.50%
Dispute over contract of carriage of goods by sea or waters leading to the sea	321	23.80%
Dispute over liability for personal injury at sea or at waters leading to the sea	171	12.68%
Dispute over contract of freight forwarding by sea or by waters leading to the sea	160	11.86%
Dispute over liability for damage of breeding over sea or waters leading to the sea	85	6.30%
Dispute over marine development and utilization	80	5.93%
Dispute over contract of supply of ship stores and spares	61	4.52%
Dispute over insurance contract arising at sea or at waters leading to the sea	50	3.71%
Dispute over contract for sale of ship	45	3.34%
Dispute over liability for property damage at sea or at waters leading to the sea	32	2.37%

## **2. Overview of Maritime Special Procedure Cases**

331 maritime special procedures cases were accepted, up 49.1% year-on-year; and 319 cases were settled, up 27.6% year-on-year.

331 maritime special procedures cases were accepted, of which 225 application for registration and satisfaction of maritime claims,

accounting for about 67.98%, up 47.37% year-on-year; 95 cases of declaration of disappearance and declaration of death, accounting for 28.7%, up 39.71% year-on-year. There were 4 cases of application for judicial confirmation of mediation agreement, 3 cases of application for the establishment of a limitation fund for maritime claims liability, 1 case of application for the realization of security rights, 1 case of application for the revocation of arbitration award, 1 case of application for maritime injunction and 1 case of application for confirmation of the validity of arbitration agreement. More types and causes of case for maritime special procedures compared to last year.

**Table 4. Reception of cases of maritime special procedures and supervision and procedure for announcement to urge declaration of claims from 2022 to 2023**

<b>cause of action year</b>	<b>2022</b>	<b>2023</b>
Registration of creditor’s rights	152	225
Judicial confirmation	0	4
Preservation of properties	297	263
Declared death	68	95
Arrest of ship	38	62
Arbitration category	2	5
Establishment of a limited liability fund	0	3
Maritime injunctions	4	5
Preservation of maritime evidence	0	2
Public summons for exhortation	0	2

### **3. Overview of Maritime Administrative Cases**

The Court accepted 78 maritime administrative cases, up 44.44% year-on-year. Among them, there were 20 administrative first-instance

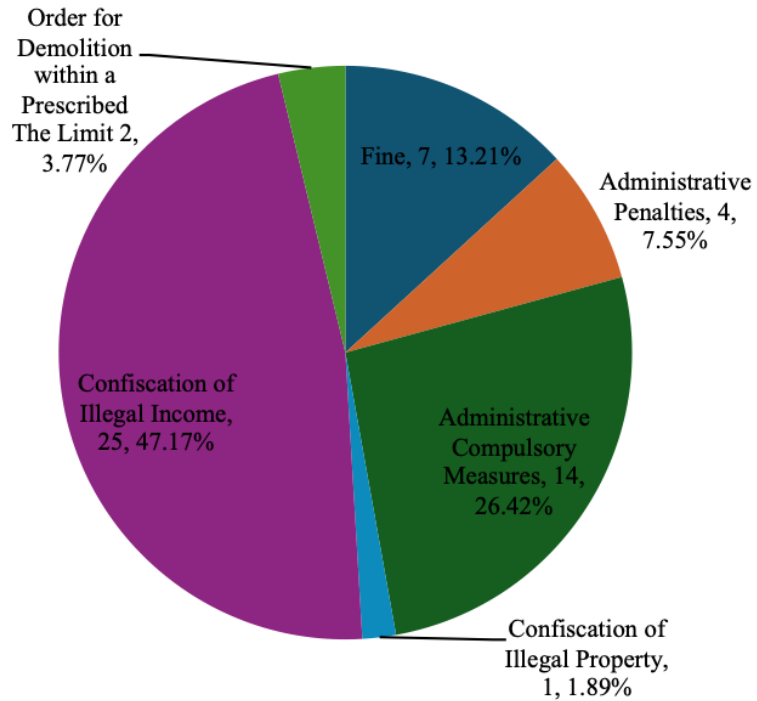
cases and 53 administrative review cases.

In respect of the composition of cause of action, the causes of action of administrative first-instance cases were dispersed, among which Failure to Perform Duty ranked the top, accounting for 30%. Among the administrative review cases, Confiscation of Illegal Income and Administrative Enforcement ranked the top, accounting for 73%.

**Table 5. Composition of causes of maritime administrative first-instance cases in 2023**

Cause of action	Number
XX (administrative agreement) administrative reconsideration	1
Failure to perform XX duty	6
Failure to perform XX (Administrative Agreement) in accordance with the law	1
Decision on refusal of administrative reconsideration	1
Revocation of XX (administrative agreement)	1
Fine	2
Administrative confirmation	1
Continuous performance of XX (administrative agreement)	1
Confiscation of illegal property	2
Confiscation of illegal income	1
Licensing for franchising	1
Order to return of land	1
Order for demolition within a prescribed time limit	1

**Figure 6. Composition of causes of maritime administrative retrial cases in 2023**



#### 4. Overview of Enforcement Cases<sup>2</sup>

The number of cases received for enforcement (including enforcement resumption and enforcement preservation) was 1409, and 1358 cases were settled.

<sup>2</sup> Provided by the Enforcement Bureau, the data was collected from the 'People's Court Enforcement Case Process Information Management System', and the query time was January 1, 2024.

**Table 6. Statistics on enforcement cases in 2023**

	<b>Enforcement</b>	<b>Enforcement resumption</b>	<b>Enforcement objection</b>	<b>Property preservation</b>	<b>Sum</b>
Number of cases accepted	410	5	54	912	1431
Number of cases concluded	375	1	56	912	1384
Conclusion-acceptance ratio	91.46%	4.55%	103.70%	100.00%	96.72%

### **5. Overview of Foreign-related, Hong Kong, Macao and Taiwan-related Cases**

The Court accepted 437 foreign-related, Hong Kong, Macao and Taiwan-related cases, accounting for 14.46% of all cases accepted, up 36.71% year-on-year. Among them, there were 301 foreign-related cases, 127 Hong Kong-related cases and 9 Taiwan-related cases.

In respect of the composition of the causes of action, dispute over contract of carriage of goods by sea or by waters leading to the sea, dispute over liability for damage of breeding over sea or waters leading to the sea, application for arrest of ships, dispute over liability for property damage at sea or at waters leading to the sea, and dispute over confirmation of maritime claims ranked among the top five cases accepted, accounting for 77.81% of all the foreign-related cases accepted.

**Table 7. Distribution of foreign-related cases in 2023**

<b>Cause of action</b>	<b>Number</b>
Dispute over contract of carriage of goods by sea or by waters leading to the sea	161
Dispute over liability for damage of breeding over sea or waters leading to the sea	23
Application for arrest of ships	21
Dispute over liability for property damage at sea or at waters leading to the sea	15
Dispute over subrogation rights of insurers	10
Dispute over liability for damage resulting from collision of ships	8
Application for registration and satisfaction of maritime claims	5
Dispute over liability for pollution damage resulting from ships	4
Dispute over contract of freight forwarding at sea or at water leading to the sea	4
Dispute over liability for personal injury at sea or at waters leading to the sea	3
Application for pre-litigation property preservation	3
Dispute over ship mortgage contracts	2
Dispute over contract for ship repairment	2
Dispute over charter parties	2
Dispute over insurance contract arising at sea or at waters leading to the sea	2
Administrative punishment	2
Dispute over voyage charter party	2
Dispute over liability for property damage of transportation at water	2
Dispute over liability for damage resulting from collision of ships	1
Dispute over ship agency contract	1
Dispute over multimodal transport contract	1
Dispute over liability for damage caused by illegal detention of ships, ship cargo, ship fuel and ship materials	1



<b>Cause of action</b>	<b>Number</b>
Dispute over contract of salvage at sea	1
Dispute over contracting contracts for the transportation of ships by sea or by waters leading to the sea	1
Dispute over sea container leasing contracts	1
Dispute over maritime frauds	1
Confiscation of illegal property	1
Application for recognition and enforcement of foreign arbitral awards	1
Application for urge declaration of claims	1
Application for maritime injunction	1
Application for the realization of security rights	1
Application for pre-litigation preservation of evidence	1
Application for the declaration of a natural person as dead	1
Dispute over liability for damage caused due to application for behavior preservation	1

**Table 8. Distribution of cases involving Hong Kong, Macao and Taiwan in 2023**

<b>Cause of action</b>	<b>Number</b>
Dispute over contract of carriage of goods by sea or by waters leading to the sea	69
Dispute over liability for damage of breeding over sea or waters leading to the sea	27
Dispute over liability for personal injury at sea or at waters leading to the sea	5
Dispute over contract of freight forwarding at sea or at water leading to the sea	4
Dispute over seaman service contract	3
Dispute of lien	3
Dispute over liability for damage resulting from collision of ships	2
Dispute over contract for ship repairment	2
Dispute over insurance contract arising at sea or at waters leading to the sea	2

<b>Cause of action</b>	<b>Number</b>
Dispute over sea container leasing contracts	2
Application for maritime injunction	2
Dispute over ownership of ships	1
Dispute over contract for loan of money for ship operation	1
Dispute over charter parties	1
Dispute over maritime frauds	1
Dispute over voyage charter party	1
Application for vessel arrest	1
Application for judicial confirmation of mediation agreement	1
Dispute over contracts for waterway transportation of goods	1

Foreign-related cases involved a total of 30 countries or regions, of which the top five were Liberia, Ireland, Denmark, Singapore, and U.A.E.

**Table 9. Country statistics of parties involved in litigation in 2023**

<b>Country</b>	<b>Total</b>
Liberia	45
Ireland	38
Denmark	28
Singapore	24
U.A.E	19
France	19
Marshall Islands	18
Panama	10
Korea	10
Germany	9

## 6. Overview of Seizure and Auction of Vessel

The Court seized 77 ships, including 68 Chinese ships and 9 foreign ships. The Court seized 1 platform and released 32 ships.

**Table 10. Statistics on the seizure of ship in 2023**

Type of vessel	Fishing vessel	Cargo ship	Scientific research ship	Dry cargo ship/bulk carrier
Number	57	13	1	4

The total transaction price of 2023 online auction sale of ships was 311,317,300 yuan, among which 34 fishing boats were sold at auction with a total transaction price of 64,444,500 yuan; 7 dry cargo ships/bulk carriers were sold at auction with a total transaction price of 48,914,400 yuan; 3 oil tankers were sold at auction with a total transaction price of 189,370,000 yuan, and 3 other types of ships were sold at auction, with a total transaction price of 4,621,500 yuan

## 第三部分 典型事例

### 一、设立青岛自贸片区审判区 助力自由贸易试验区高水平建设

#### 【基本情况】

为深入贯彻落实习近平总书记关于推进自由贸易试验区高质量发展的重要指示精神，全面落实海洋强国、贸易强国战略，青岛海事法院充分发挥在全球资源配置、要素循环、法治交流方面的突出作用，与中国（山东）自由贸易试验区青岛片区管委统筹协作，于2023年3月1日正式揭牌设立青岛海事法院青岛自贸片区审判区，选派优秀业务庭室依法审理涉外海事海商案件，一年来共审理案件823件，提炼总结海事司法裁判规则，不断探索可复制可推广的自由贸易“青岛经验”，以高质量海事司法服务保障青岛自贸片区高质量发展。

召开首届海事（司法）创新大会，围绕提升涉海领域法治服务保障，与青岛自贸片区等八家单位签署“创新提升 法智护航”共建协议，加快重点领域系统集成，深化海事司法改革服务创新。主导设立全国首个海事域外法查明研究中心，研究破解制约涉外审判实践中域外法查明难的“瓶颈”问题，增强涉外法律查明、法律援助等服务供给。与青岛自

贸片区等部门形成合力，设立“海员司法救助资金池”，通过资金先行垫付、债权转让方式及时解决海员遣返问题，实现船舶价值、债权人利益、船东偿债率最大化，维护航运业健康稳定发展。与中国船东互保协会签署合作备忘录，在海事诉讼保全与执行协作、海事纠纷多元化解和海事业务交流方面开展合作，明确涉外法治、海事司法、法律服务创新思路。与中国海事仲裁委员会签署《关于建立多元化纠纷解决工作机制协作纪要》，建立诉前调解机制，在仲裁保全、仲裁裁决的承认与执行、全国海事案件大联调、多元送达及海事标准供给等方面展开深入合作，促进海事司法与海事仲裁良性互动，服务保障海洋经济高质量发展。

### **【典型意义】**

建设自由贸易试验区，是党中央在新时代推进改革开放的一项战略举措。青岛海事法院主动将海事司法事业置于对外开放最前沿，将服务保障自由贸易试验区建设作为重中之重，青岛自贸片区审判区设立以来，充分发挥自贸试验区深化改革和扩大开放“试验田”的作用，以制度创新为核心，以产业发展为支柱，服务和融入国家发展战略，实践形成了一大批制度创新成果，构建航运、贸易、金融全产业链规则体系，营造市场化、法治化、国际化的一流海洋营商环境，推动打造国际海事司法纠纷解决优选地，在法治轨道上不断

推动青岛自贸片区更广领域探索、更深层次改革、更高水平开放、更高质量发展。

## **Part III Typical Examples**

### **I. Establish Qingdao Free Trade Zone Trial Area, Facilitate High-level Construction of the Pilot Free Trade Zone**

#### **【Basic Facts】**

For the purposes of thoroughly implementing the spirit of General Secretary Xi Jinping's important instructions on promoting the high-quality development of the Pilot Free Trade Zone, and fully implementing the Marine Power Strategy and Trade Power Strategy, Qingdao Maritime Court, giving full play to its prominent role in global resource allocation, elemental circulation, and legal exchange, coordinated and collaborated with Qingdao Area Administrative Committee of China (Shandong) Pilot Free Trade Zone, and officially opened Qingdao Free Trade Zone Trial Area on March 1 2023. Qingdao Maritime Court selected excellent business courts to hear foreign-related maritime cases in accordance with the law, hearing a total of 823 cases over the year, refining and summarizing the rules of maritime judicial adjudication, and exploring the "Qingdao Experience" that can be replicated and promoted, so as to guarantee the high-quality development of Qingdao Free Trade Zone with high-quality maritime judicial services.

The First Maritime (Judicial) Innovation Convention was held by Qingdao Maritime Court, focusing on the enhancement of the rule of law services in sea-related areas. Qingdao Maritime Court and Qingdao Free Trade Zone and other six units signed the "Innovation and Enhancement of Law and Intelligence Escort" Co-construction Agreement, accelerating the integration of key areas of the system, and deepening the reform of the maritime justice service innovation. Qingdao Maritime Court led the

establishment of the country's first maritime extraterritorial law ascertainment center, studying and solving the problem of the difficulty of ascertaining extraterritorial law in foreign-related trial practice, and enhancing the supply of foreign-related law ascertainment, legal aid and other services. Qingdao Maritime Court also cooperated with Qingdao Free Trade Zone and other departments to set up a "Sailors' Judicial Assistance Fund Pool" to solve sailors' repatriation problems in a timely manner through payment in advance and credit assignment, so as to maximize the value of the vessel, the interests of the creditors, debt servicing ratio of the shipowner, and to safeguard the healthy and stable development of the shipping industry. Also, Qingdao Maritime Court signed a memorandum of cooperation with the China Shipowners' Association in maritime litigation preservation and enforcement collaboration, diversified settlement of maritime disputes and maritime business exchanges, thereby clarifying innovative ideas on foreign-related rule of law, maritime justice and legal services. Besides, Qingdao Maritime Court signed *the Minutes of Collaboration on the Establishment of Diversified Dispute Resolution Mechanisms* with the China Maritime Arbitration Association, established a pre-litigation mediation mechanism, and launched in-depth cooperation in such areas as arbitration preservation, recognition and enforcement of arbitral awards, nationwide joint mediation of maritime cases, diversified service of process, and the supply of maritime standards, thus promoting the positive interaction between maritime justice and maritime arbitration and providing services to guarantee the high-quality development of the maritime economy.

### **【Significance】**

Building pilot free trade zones is a strategic measure of the CPC Central Committee to comprehensively deepen reform and further open



up under new conditions. Qingdao Maritime Court takes the initiative to put the maritime judicial career at the forefront of opening up, serves to protect the construction of the pilot free trade zone as a top priority. Since its establishment, Qingdao FTZ Trial Area has given full play to the role of a "testing ground" for deepening reform and expanding opening up, taking system innovation as the core and industrial development as the pillar, serving and integrating into the national development strategy, and practicing a large number of system innovations, building a system of rules for the whole industry chain of shipping, trade and finance, creating a market-oriented, law-based and internationalized maritime business environment, and promoting the creation of a preferred place for international maritime judicial dispute settlement, and continuously pushed Qingdao FTZ on the track of the rule of law to explore a wider range of fields, carry out deeper reforms, open up at a higher level, and develop at a higher quality.

## 二、创建“海法护企 合规共治”品牌护航海洋经济高质量发展

### 【基本情况】

近年来,伴随着我国海洋经济产业的快速发展和世界贸易环境的剧烈变化,涉外涉海企业在合法经营、安全管理、市场准入和海外利益保护等方面暴露出的不足、短板也日益增多,推进企业合规体系建设已经成为涉外涉海企业持续健康发展的必然要求。青岛海事法院作为面向海洋、联通内外的窗口,一直处于对外开放最前沿,有着丰富的涉外涉海资源积累。围绕完善企业合规建设,青岛海事法院在总结提炼案例规则指引、规范引导海洋产业秩序、服务保障国家对外开放战略等方面进行了积极探索。

**一是强化沟通协作配合。**坚持民事、刑事、行政一体合规理念,强化府院联动,紧紧依靠党委政府,凝聚“青法先生”服务团、行政监管部门及行业协会多方合力,建立健全日常联系、联合调研、信息共享等工作联络机制,将个案办理与系统治理相结合,从个案合规推向行业合规,持续扩大企业合规建设“朋友圈”。

**二是精准把脉企业需求。**充分发挥联络员信息触角作用,紧密贴合行业发展脉搏,深挖企业经营法律风险,制发司法建议,确保企业经营自由、充满活力的同时,又促使

依法依规、健康发展，让“严管”与“厚爱”相得益彰。

**三是主动延伸服务链条。**将法官说法、情景短剧等普法视频形式与诉源治理、案后答疑、反馈追踪等案件“后半篇”文章相结合，通过组织走访调研、庭审旁听、合规体检、讲座培训等方式，引导更多企业健全合规管理内控体系，切实推动企业矛盾纠纷排查预防、就地化解。

### **【典型意义】**

“海法护企 合规共治”海事司法助企品牌系列创建活动，是青岛海事法院深入践行习近平法治思想，创新探索企业合规建设路径，营造市场化、法治化、国际化营商环境的重要举措。活动旨在深度对接企业法治需求，充分凝聚涉海法治力量，以能动履职不断完善、丰富、发展企业合规共建路径，充分发挥企业合规的治理效能，将海事司法制度优势转化为海洋经济高质量发展的动能优势。依托“青法先生”服务团工作机制，围绕青岛中央法务区建设、涉外企业全链条服务、涉外纠纷多元化解等方面，改革创新服务手段，促进涉外涉海企业在法治化轨道上依法经营、依法管理，推动“法治红利”与“政策红利”深度联通融合，护航涉外涉海企业行稳致远，共同推动海洋经济高质量发展。

## **II. Create the brand of "Maritime Law Protecting Enterprises, Promoting Compliance and Co-Governance", Escort the High-Quality Development of Marine Economy**

### **【Basic Facts】**

In recent years, along with the rapid development of China's marine economic industry and the drastic changes in the world trade environment, inadequacies and shortcomings exposed by foreign-related maritime enterprises in lawful operation, safety management, market access and overseas interests security have been increasing. Thus, the promotion of the construction of the corporate compliance system has become an inevitable requirement for the sustained and healthy development of foreign-related maritime enterprises. Qingdao Maritime Court, as a window facing the sea and connecting inside and outside, has been at the forefront of opening up to the outside world, having a rich accumulation of foreign-related maritime resources. Focusing on the improvement of corporate compliance, Qingdao Maritime Court has actively been exploring in summarizing and refining the rules and guidelines of cases, regulating and guiding the order of the maritime industry, and servicing and safeguarding the national strategy of opening up to the outside world.

**First, strengthen communication and collaboration.** Qingdao Maritime Court adheres to the concept of "three in one" of civil, criminal and administrative compliance, strengthens the linkage between the government and the court, relies closely on the Party and government, gathers the joint efforts of the "Qingdao Law Teacher" service group. Together with administrative departments and industry associations, Qingdao Maritime Court has established and improved the liaison mechanism for daily contact, joint research, information sharing and other

work, combined case handling and system governance, pushed from case compliance to industry compliance, and continued to expand the "Circle of Friends" of enterprise compliance construction.

**Second, accurately grasp the needs of enterprises.** Qingdao Maritime Court gives a full play to the role of liaison information tentacles, closely matches the pulse of industry development, digs into the legal risks of business operations, and makes judicial advice, thereby ensuring the freedom of business operation and vitality, promoting the healthy development according to law and regulations, so that "strict management" and "love" complement each other.

**Third, initiatively extend the service chain.** Qingdao Maritime Court combines the judge's statement, scenario skit and other forms of law-promoting videos with articles about the "second half" of the case, such as the source of governance, post-case Q&A, feedback tracking, and guides more enterprises to improve the internal control system of compliance management by organizing visits and investigations, court attendance, compliance medical examination, lectures and training, and effectively promotes the investigation and prevention of enterprise conflicts and disputes, and on-site resolution.

### **【Significance】**

Creating the maritime judicial assistance enterprise brand series of "Maritime Law Protecting Enterprises, Compliance and Co-Governance" is an important initiative of Qingdao Maritime Court to practice Xi Jinping's thought on the rule of law, explore the path of enterprise compliance construction, and create a market-oriented, rule-of-law, international business environment. These activities are aimed at deeply meeting the legal needs of enterprises, fully cohereing sea-related legal forces. Besides, Qingdao Maritime Court actively performs its duties to

continuously improve, enrich and develop the corporate compliance co-construction path, giving a full play to the governance effectiveness of corporate compliance, and transforms the advantages of the maritime justice system into the kinetic advantages of the high-quality development of the marine economy. By relying on the working mechanism of "Qingdao Law Teacher" service group and focusing on the construction of Qingdao Central Legal District, the whole chain service for foreign-related enterprises, and the multiple resolution of foreign-related disputes, Qingdao Maritime Court has reformed and innovated service methods to promote foreign-related, sea-related enterprises to operate and manage on the track of rule of law, promote the deep integration of "rule of law dividend" and "policy dividend", as well as escorting foreign-related, sea-related enterprises to achieve stability and long-term development. Jointly promote high-quality development of the marine economy.

### 三、深化府院联动机制 以司法建议推动全省海洋牧场产业良性发展

#### 【基本情况】

2022年6月，烟台兴运海尚生态渔业有限公司以威海西港游艇有限公司所建海洋牧场平台无法检验、无法运营为由向青岛海事法院提起诉讼，要求解除《建造合同》并退还建造款项。青岛海事法院经审理发现，纠纷产生的核心原因在于山东省海洋牧场管理制度中存在检验规则缺失、管理机制僵化等突出问题，致使部分已建成的海洋牧场平台因无法检验而被有关部门责令停止运营。遂启动府院联动机制，与山东省农业农村厅开展联合调研，摸排全省海洋牧场建造、运营底数，总结针对性解决措施。2023年11月，经前期充分谋划，青岛海事法院向山东省农业农村厅发出《关于推动海洋牧场高水平建设 助力海洋强省战略的司法建议》，提出“运用已生效海洋牧场司法规则”“实施开放式海洋牧场管理机制”“试行地方性海洋牧场检验标准”“推广首创性海洋牧场实践经验”等4条针对性建议。该司法建议得到山东省农业农村厅全面采纳并立即推动落实。

#### 【典型意义】

通过青岛海事法院与山东省农业农村厅共同推进，目前山东全省海洋牧场管理秩序逐步进入良性运转状态。一是海

洋牧场管理紧迫性问题得到解决。山东省农业农村厅接到司法建议后高度重视，第一时间组织省海洋与渔业执法监察局、中国船级社青岛分社等单位召开专题会议。会议确定，海洋牧场属于新生事物，由省农业农村厅按照“特事特办”、鼓励创新原则，允许目前全省该类型平台可暂不发放相关检验、登记证书，正常运营。二是海洋牧场管理地方性职权得到“松绑”。依据专题会议纪要，山东省农业农村厅向沿海地市渔业主管部门发出《关于规范玻璃钢海洋牧场平台运营管理工作的通知》，明确提出坚持鼓励创新试点，落实容错纠错机制，支持各市渔业主管局先试先行，积极探索检验、确权发证模式，保障涉渔海上设施规范、安全、健康运行。三是海洋牧场管理法治化进程扎实推进。经省委同意，《山东省海洋牧场建设管理条例》已列入《山东省人大常委会2023-2027年地方立法规划》，下一步，山东省农业农村厅将会同青岛海事法院及有关部门在梳理总结胶东5市《海洋牧场管理条例》实施以来的成功经验和存在的问题的基础上，抓紧推进立法相关工作。



### **III. Deepen the Government-Court Coordination Mechanism, Promote the Healthy Development of the Provincial Marine Ranching Industry through Judicial Suggestions**

#### **【Basic Facts】**

In June 2022, Yantai Xingyun Haishang Ecological Fisheries Co., Ltd. filed a lawsuit with Qingdao Maritime Court, claiming that the marine ranching platform built by Weihai Xigang Yacht Co., Ltd. could not be inspected or operated, and requested for the termination of the *Construction Contract* and the refund of the construction payments. Qingdao Maritime Court found that the core reason for the dispute was the lack of inspection rules in the management system of the sea ranch in Shandong Province, the rigidity of the management mechanism and other prominent issues, causing some completed marine ranching platforms being ordered to cease operations due to the inability to undergo inspection. Consequently, Qingdao Maritime Court initiated a government-court coordination mechanism and conducted joint research with the General Office of the Ministry of Agriculture and Rural Affairs of Shandong Province, investigated the construction and operation status of marine ranching platforms across the province and summarized targeted solutions. In November 2023, after a thorough preliminary planning, Qingdao Maritime Court issued *The Judicial Suggestions on Promoting the High-level Construction of Marine Ranching Platform to Support the Strategy of Building a Strong Maritime Province* to the General Office of the Ministry of Agriculture and Rural Affairs of Shandong Province, in which four targeted suggestions are put forward, including "applying the effective judicial rules on sea ranching", "implementing an open sea ranch management mechanism", "piloting

local sea ranch testing standards", and "popularizing the first practical experience of sea ranching". The General Office of the Ministry of Agriculture and Rural Affairs of Shandong Province fully accepted and promptly implemented these suggestions.

### **【Significance】**

Through the joint efforts of Qingdao Maritime Court and the General Office of the Ministry of Agriculture and Rural Affairs of Shandong Province, the management of marine ranching in Shandong Province is gradually getting into good working order. First, the urgent issues of marine ranch management have been resolved. Upon receiving the judicial suggestions, the General Office of the Ministry of Agriculture and Rural Affairs promptly organized a thematic meeting with Shandong Ocean and Fisheries Enforcement Supervision Bureau and the CCS Qingdao Branch. The meeting determined that marine ranching, as a new-emerging industry, should be managed under the principle of "special-case-special-method" and innovation encouragement. It was agreed that the current platforms of this type in the province could temporarily operate without the issuance of relevant inspection and registration certificates. Second, the local authority over marine ranching management has been "loosened". According to the meeting minutes, the General Office of the Ministry of Agriculture and Rural Affairs issued a notice to coastal city fishery competent authorities, titled *Notice on Standardizing the Operation and Management of FRP Marine Ranching Platforms*. The notice emphasized the insistent encouragement of innovation pilots, the implementation of the mechanism to allow for and address errors, and support for local fishery competent authorities to explore pilot inspection and certification issuing models, ensuring the standardized, safe, and healthy operation of fisheries-related marine

facilities. Third, the law-based development of marine ranch management has made steady progress. With the approval of Shandong Provincial Committee, *the Regulations on the Construction and Management of Marine Ranching in Shandong Province* have been included in *the Legislative Plan of the Standing Committee of the Shandong Provincial People's Congress (2023-2027)*. As the next step, the Department of Agriculture and Rural Development of Shandong Province will work with the Qingdao Maritime Court and other relevant departments to promote the legislative work, based on summarizing and analyzing the successful experiences and issues identified since the implementation of the *Regulations on Management of Marine Ranching* in the five cities of the Jiaodong Peninsula.

## 四、制发《涉外送达指引》 促进涉外海事审判效能提升

### 【基本情况】

目前,我国涉外送达的配套机制供给与实践需求之间仍存在落差,涉外案件送达难是制约涉外民商事审判公正与效率的难题。2023年修订的《中华人民共和国民事诉讼法》第二百八十三条对涉外案件送达作出新的规定,包括诉讼代理人代为接受送达、允许向受送达人在中国境内设立的独资企业送达、向境外企业在中国境内的代表人、主要负责人(董监高)送达等多种方式的送达规定,为送达方式提供了更大灵活性,有利于提高送达成功率,便于涉外案件的审理。

但是,对于涉外海事审判而言,因涉外案件占比较高,专业性、特殊性、时效性强,即使按照2023年《中华人民共和国民事诉讼法》的修改规定,仍有以下四方面的困难:一是送达程序复杂耗时长;二是向方便旗船舶所有人送达难;三是船长离船情形下送达难;四是涉外送达翻译费用承担难。经过调研分析,近两年青岛海事法院受理的583件涉外案件中,送达失败率达5.9%。为提高涉外海事案件送达效率,对涉外海事诉讼文书的送达,除根据《中华人民共和国民事诉讼法》《中华人民共和国民事诉讼法》《中华人民共和国民事诉讼法》规定的法定送达方式外,青岛海事法院结合《中华人民共和国

海事诉讼特别程序法》正在修订之机，研究制定《涉外送达指引》（以下简称《指引》），尝试采用多种方式送达以提高涉外案件送达效率。《指引》全文共七条，包括在海事诉讼送达制度中有条件地引入当事人主义、增加向船长送达法律文书的情形、扩大对送达地址的认可，明确可以向船代、货代、互保协会等机构送达、对公告送达的启动不做过分限定等。

### 【典型意义】

1958年《承认及执行外国仲裁裁决公约》及2019年《承认与执行外国民商事判决公约》均规定，未予适当通知而作出的仲裁裁决、司法裁判将无法得到承认与执行，即未经有效送达的裁判结果在国际上亦不生效。因此，能否顺利送达与否直接关系影响涉案纠纷解决的最终结果。新修订的《中华人民共和国民事诉讼法》从立法层面进一步扩张了我国涉外送达方式，但因海事案件的专业性、特殊性、时效性等特点，涉外海事审判送达仍存在一定困难。青岛海事法院《涉外送达指引》按照先行先试原则，相继明确有条件地引入当事人主义；准许海事请求保全、海事强制令、海事证据保全等特别程序可以向船长送达；扩大送达地址的认可等创新规则，着重解决涉外案件送达的难点堵点，为进一步提高涉外海商事案件送达效率，规范完善送达程序提供了依据基础，

为《中华人民共和国民事诉讼法》的修订提供了审判实践支撑，对于涉外纠纷解决的质效提升具有重要意义。

#### **IV. Formulate and Issue the Foreign-related Service of Process Guidelines, Improve the Effectiveness of Foreign-Related Maritime Trials**

##### **【Basic Facts】**

Currently, there is still a gap between the supply of supporting mechanisms for the service of documents of foreign-related trials and practical needs. The difficulty in serving documents in foreign-related cases is a challenge to the fairness and efficiency of foreign-related civil and commercial trials. Article 283 of the revised *Civil Procedure Law of the People's Republic of China* in 2023 specifies the service of documents of foreign-related cases, including provisions on multiple ways of service of process, such as allowing service to be made on the litigator, on a sole proprietorship established by the person to be served in China, and on the legal representative or principal person in charge (directors, supervisors, and senior executives) of foreign enterprises within China. These provisions provide greater flexibility in the manner of service of process, which is conducive to improving the success rate and facilitating the trial of foreign-related cases.

However, as for foreign-related maritime trials, due to the high proportion of foreign-related cases, which are specialized, special and time-sensitive, despite the amendments to the *Civil Procedure Law of the People's Republic of China* in 2023, several challenges remain in 4 perspectives: First, complex and time-consuming service procedures; second, difficulty in serving documents to the owners of flag of convenience vessels; third, difficulty in serving documents when the ship's master is off the vessel; and fourth, difficulty in the costs bearing of translation for the foreign-related service. A survey and analysis of 583

foreign-related cases accepted by Qingdao Maritime Court in the past two years revealed a service failure rate of 5.9%. To improve the efficiency of the service of process in foreign-related maritime trials, Qingdao Maritime Court, alongside the revisions to the *Special Maritime Procedure Law of the People's Republic of China*, has researched and formulated *the Guide on Service of Process of Foreign-related Trials* (hereinafter referred to as the "Guide"). The Guide explores various methods to improve the efficiency of the service of process in foreign-related maritime trials, supplementing the statutory service methods stipulated by the *Civil Procedure Law of the People's Republic of China* and the *Special Maritime Procedure Law of the People's Republic of China*. The full text of the *Guide* consists of seven articles, including a conditional introduction to adversary system in the system of service of documents of maritime litigation, increasing the circumstances of serving to masters, an expansion of recognized service addresses, clarification that service can be made to ship agents, freight forwarders, and mutual insurance associations and other institutions, and no overly restrictive conditions for initiating service by public announcement.

### **【Significance】**

The 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and 2019 *Hague Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters* both stipulate that arbitral awards and judicial adjudication made without proper notice will not be recognized or enforced. In other words, judgments that are not effectively served are not valid internationally. Thus, whether documents can be successfully served or not directly impacts the final resolution of disputes. The newly revised



*Civil Procedure Law of the People's Republic of China* further expands the ways of the service of process in foreign-related trials at the legislative level. However, due to the professionalism, specificity, and urgency of maritime cases, there are still challenges in the service of process in foreign-related maritime trials. *The Guide on Service of Process of Foreign-related Trials* issued by Qingdao Maritime Court, following a principle of try first, has introduced several innovative rules: successively, explicitly and conditionally incorporating adversary system, allowing the documents of special procedures such as maritime claim preservation, maritime injunctions, and maritime evidence preservation to be served on the ship's master, and expanding the recognition of service addresses. These innovations aim to address the difficulties and provide a foundation for further improving the efficiency, specifying and improving the service of process. The Guide also supports the revision of the *Special Maritime Procedure Law of the People's Republic of China*, holding significant importance for enhancing the quality and efficiency of resolving foreign-related disputes.

## 五、强化海洋环境公益诉讼制度 推动构建跨区域海洋环境保护机制

### 【基本情况】

为深入践行海洋强国战略，推进海洋保护治理现代化，青岛海事法院在推动构建跨地域海洋环境司法保护机制方面创新实施了一系列创新合作举措：

一是联合建立海洋自然资源与生态环境保护跨省域协作机制。山东、浙江法检机关联动，旨在跨区域公益诉讼线索移送反馈、工作会商、联合办案及生态环境修复等方面加强合作配合，形成跨省域、跨部门、多领域的保护合力。二是与青岛市人民检察院会商形成《关于办理海洋自然资源与生态环境民事公益诉讼案件若干问题的会商纪要》，就进一步明确法律适用、创新修复方式、建立健全法检及相关单位工作机制形成意见。三是推动构建省内海洋生态保护协作机制。与日照市检察机关、涉海行政部门协作，打造优质高效司法服务、完善协同治理联动机制、推动蓝碳司法保护与生态治理研究为协作目标，围绕生态修复、司法保护、跨区域协作等方面，加强陆海统筹，保护海洋生态。四是建设公益诉讼替代性生态修复-暨蓝碳实践基地。与青岛市、日照市检察机关和涉海行政机关建立实践基地，基地兼具海洋碳汇实践、海洋生态修复以及海洋法治教育功能。

### 【典型意义】

一是有效发挥保护海洋自然资源与生态环境的司法职能。上述创新举措对法检之间、海事法院之间办理海洋自然资源与生态环境保护公益诉讼案件原则规则、案件类型、案件被告的确定、举证责任的分配、司法鉴定及专家意见的委托出具等形成一致意见，提升办案规范化和专业化水平。二是完善海洋自然资源与生态环境保护体系。明确了直接修复和替代性修复方式路径，建立“蓝色碳汇”实践基地，将诉讼成果有效转化。三是建立健全海洋自然资源与生态环境保护的长效机制。加强与检察院、公安机关、行政主管部门等协作配合，推动共性问题的综合治理，实现了资源共享、经验公用，凝聚起依法保护海洋生态环境的工作合力，共同推进海洋保护治理现代化。青岛海事法院将以各项创新举措为抓手，进一步凝聚海洋司法保护合力，通过科学方案和务实行动不断强化海洋利用、海洋保护、海洋治理，共同打造纵向贯通、横向联动的海洋环境保护网络。

## **V. Strengthen the Marine Environment Public Interest Litigation System, Promote the Establishment of a Cross-Regional Marine Environmental Protection Mechanism**

### **【Basic Facts】**

In order to thoroughly implement Marine Power Strategy and promote the modernization of marine protection and governance, Qingdao Maritime Court has initiated a series of innovative cooperative measures to promote the construction of a cross-regional marine environmental judicial protection mechanism:

**First, jointly establish a cross-provincial collaboration mechanism for marine natural resources and ecological environment protection.** This initiative involves cooperation between judicial and procuratorial authorities in Shandong Province and Zhejiang Province, aiming at strengthening collaboration in clue referral and feedback of cross-regional public interest litigation, consultations, joint cases handling, and ecological environment restoration, thus forming an inter-provincial, cross-departmental, and multi-field protection synergy. *Second, consult with the Qingdao People's Procuratorate and form the Minutes of Consultation on Several Issues Concerning the Handling of Civil Public Interest Litigation Cases Involving Marine Natural Resources and Ecological Environment.* Opinions are formed on further clarifying the application of laws, innovating restoration methods, and establishing and improving the working mechanisms of judicial and procuratorial authorities and relevant departments. **Third, promote a marine ecological protection cooperation mechanism within the province.** In collaboration with the procuratorial authorities and maritime administrative departments of Rizhao City, the goal is to create

high-quality and efficient judicial services, improve coordinated governance mechanisms, and promote Blue Carbon judicial protection and ecological governance. Besides, this effort also focuses on ecological restoration, judicial protection, and cross-regional collaboration to enhance land-and-sea integration and protect marine ecology. **Fourth, construct a public interest litigation alternative ecological restoration, which is also the Blue Carbon Base.** Qingdao Maritime Court, together with the procuratorial authorities and maritime administrative departments of Qingdao and Rizhao, has established a practice base, which has the functions for marine carbon sinks practice, marine ecological restoration, and law-based governance of ocean education.

#### **【Significance】**

**First, effectively exercise judicial functions in protecting marine natural resources and ecological environment.** The above innovations make it possible to reach a consensus between the lawyers and prosecutors and the maritime courts on handling public interest litigation cases on marine natural resources and ecological environmental protection, such as the principles and rules applied, the types of cases, the determination of the defendants in the cases, the allocation of the burden of proof, the commissioning of judicial appraisals and expert opinions, etc., so as to enhance the standardization of the handling of the cases and the level of professionalism. **Second, improve the marine natural resources and ecological environment protection system.** The path of direct restoration and alternative restoration is clearly defined, and along with the construction of a “Blue Carbon” base, effectively transforming the litigation outcomes into tangible results. **Third, establish a long-term mechanism for the protection of marine natural resources and ecological environment.** We strengthened coordination and cooperation

with procuratorates, public security organs, and administrative authorities to promote comprehensive treatment of common problems, shared resources and experience, pooled joint efforts to protect the marine ecological environment in accordance with the law, and jointly promoted the modernization of marine protection and governance. Qingdao Maritime Court will leverage these innovative measures to further consolidate judicial protection for the marine environment. Through scientific plans and pragmatic actions, we will continuously strengthen marine utilization, protection, and governance, creating a vertically integrated and horizontally coordinated network for marine environmental protection.

## 六、积极融入基层治理格局 不断擦亮“海上枫桥”品牌

### 【基本情况】

青岛海事法院通过扎实办理每一件案件、妥善化解每一起纠纷，不断弘扬和发展新时代“枫桥经验”，为基层社会治理提供坚强海事司法保障。2023年派出法庭诉前调解收案总计1952件，结案1911件，调解成功1107件，取得显著成效。

日照法庭进一步深化“安岚无漾”诉源治理平台机制功能，充分发挥各类涉海主体职能，强化多元解纷，在受理海上事故宣告死亡特别程序案件时，同步导入诉源治理平台进行调解，做到“特别程序特别作为”，先后有九起宣告死亡案件在公告期间即促成当事人达成和解，避免了宣告死亡后再行诉讼，减轻了当事人的诉累，维护了当地渔业生产秩序和沿海村居社会稳定。

石岛法庭依托政府、码头设立“老船长调解室”，助力海洋渔业行业治理，做到“小事不出港，矛盾不上交”，运行以来受理案件数及政府渔业部门受理涉渔纠纷数量大幅下降，并积极融入当地党委政府“荣合万家”社会治理品牌建设，推动基层社会治理。

威海法庭积极促进多元化解纠纷，主动融入威海社会化

治理和调解工作大格局，构建调解工作体系，加强与辖区涉海部门的沟通协作，凝聚强大合力，促进矛盾纠纷实质性化解，维护辖区社会稳定。

烟台法庭推进诉调对接机制建设，搭建线上线下调解与诉讼对接渠道，为基层建设营造良好的法治环境。依托长岛海洋文明综合试验区巡回法庭，主动赴岛化解纠纷，打通便民诉讼的“最后一公里”。

东营法庭通过加强释法说理、优化处结速度、对接协作机构、定期跟踪回访四项机制建设，主动对接驻地涉海机构，加强协作机制，探索减少同类纠纷的有效对策，不断提升案件办理的社会效果。

### **【典型意义】**

青岛海事法院充分贯彻为大局服务、为人民司法理念，发挥法庭立足基层、贴近群众的优势特点探索发展“海上枫桥”诉源治理新路径，构建符合海事司法规律和特点的多元解纷机制，积极融入基层治理体系。一是坚持扎根基层前沿，紧扣基层社会治理的现实需求，发挥基层优势、本土优势和专业优势，加强矛盾纠纷源头预防，及时化解涉海涉渔纠纷，并做好善后工作，提供全方位一体式司法服务，助推实现社会治理。二是主动延伸司法触角，构建法院横向与行政机关、行业协会、港口企业联动，纵向司法服务向村镇、码头、渔



船辐射的发展大格局。深入人民群众，坚持司法服务下沉，提供便捷诉讼服务。三是凝聚多元解纷合力，发挥与各类行政、社会主体良性互动关系，从源头减少诉讼增量。着力推进诉调对接、繁简分流，创新纠纷化解新模式，提高矛盾纠纷化解效率，减轻人民群众诉累，不断增强人民群众的司法获得感、幸福感、安全感，实现政治效果、社会效果和法律效果的统一。

## **VI. Actively Integrate into Grassroots Governance, Continuously Polish the Brand of "Maritime Fengqiao Experience"**

### **【Basic Facts】**

Qingdao Maritime Court, through the solid handling of each case and proper resolution of each dispute, continues to carry forward and develop the "FengQiao Experience" in the new era, and provides a strong maritime judicial protection for the primary-level governance. In 2023, 1952 cases of pre-litigation mediation were accepted by the dispatched court, 1911 of which were successful, which achieved remarkable results.

Rizhao Dispatched Court further deepened the mechanism function of "An LAN Wu Yang" litigation source management, gave full play to the functions of all sea-related entities, and strengthened the alternative dispute resolution. In acceptance of the declaration of death due to a maritime accident, Rizhao Dispatched Court synchronized the introduction of the source management platform for mediation, so as to achieve "special procedures for special action. Nine cases of declaration of death had been brought to a settlement during the announcement period, avoiding further litigation, reducing the burden of litigation on the parties concerned, and maintaining the order of local fisheries production and the social stability of coastal villages.

Relying on the government, Shidao Dispatched Court set up the "Old Captain Mediation Room" to help the governance of the marine fishery industry, and realized that "small things do not go out of the harbor, conflicts are not handed over". Since its operation, the number of cases accepted by the Dispatched Court and the number of fishing disputes accepted by government fisheries departments has dropped significantly. Besides, it has actively integrated into the construction of the brand,

"Prosperous and Harmonious Community", initiated by the local Party Committee and government, promoting primary-level governance.

Weihai Dispatched Court actively promoted diversified dispute resolution, took the initiative to integrate into the general pattern of socialized governance and mediation work in Weihai, built a mediation work system, strengthened communication and collaboration with sea-related departments under the jurisdiction, gathered strong synergy, promoted substantive resolution of conflicts and disputes, and maintained social stability under the jurisdiction.

Yantai Dispatched Court promoted the construction of the litigation and mediation connection mechanism, built online and offline channels, and created a favorable We will create a sound, law-based environment for the construction of primary-level governance. Relying on the Changdao Marine Ecological Civilization Pilot Area Circuit Court, Yantai Dispatched Court took the initiative to resolve disputes and opened up the "last kilometer" of litigation for the convenience of the people.

Through the construction of four mechanism as strengthening the interpretation of the law, optimizing the speed of settlement, contacting collaborative institutions, and regular follow-up visits, Dongying Dispatched Court took the initiative to contact with the sea-related institutions, strengthen the collaborative mechanism, explore effective countermeasures to reduce similar disputes, and constantly improve the social effect of the handling of the case.

### **【Significance】**

Qingdao Maritime Court fully implements the concept of serving the major objectives and administering justice for the people, gives full play to the advantages of the court as being based on the primary level and close to the people to explore the new routes to developing "Marine

FengQiao Experience", builds the alternative dispute resolution mechanism in conformity with the regularity and characteristics of the maritime justice, and actively integrates into the primary-level governance system.

First, Qingdao Maritime Court adheres to the frontiers, focuses on the reality needs for primary-level governance, gives full play to the primary-level, local, and professional advantages, strengthens the prevention of conflicts and disputes at the source, timely resolves the sea-related and fisheries-related disputes, and properly handle the aftermath of the incident, providing comprehensive and integrated judicial services and promoting the realization of social governance.

Second, Qingdao Maritime Court takes the initiative to extend its judicial tentacles, builds a horizontal linkage between courts and administrative organs, industry associations, and port enterprises, and a vertical development pattern of judicial services radiating to villages, harbours, and fishing boats. Qingdao Maritime Court will keep engaging with people, making the judicial services channel to the primary level, and providing convenient litigation services.

Third, Qingdao Maritime Court builds a strong synergy of alternation dispute resolution, gives full play to the good interactive relationship between various types of administrative and social entities, reduces the incremental litigation from the source. Qingdao Maritime Court has made efforts to promote the connection between litigation and mediation, separate complex cases and simple cases, innovate new modes of dispute resolution, thereby improving the efficiency of resolution of conflicts and disputes, reducing the burden of litigation on the people, and continuously enhancing the people's sense of access to justice, happiness and security, so as to achieve unity of political, social and legal effects.

## 七、规范海事行政审判机制 依法保障法治政府建设

### 【基本情况】

青岛海事法院坚持依法能动履职，充分发挥行政审判职能作用，以双赢多赢共赢新理念引领行政审判新发展，构建“管辖明确+府院联动+诉源治理”海事行政审判工作格局，助推全省海事行政审判依法规范化运行。

坚持多措并举，明确案件受理范围。以行政机关、地方法院、相对人三条路径为切入点，通过向省法院报送《关于明确海事行政案件受理范围的请示》、向行政机关发送司法建议、到地方法院走访调研、定制研发线上诉讼服务系统等多种方式，加大海事行政案件受案范围的宣传和解释工作，监督海事行政机关准确告知当事人管辖法院，为相对人正确选择管辖法院提供便利指引。

深化府院联动，加强司法执法协作。与山东海警局探索建立海事司法与海上行政执法协作联动机制，预防化解行政争议，共同保护国家海洋自然资源与生态环境。与山东省农业农村厅建立海洋渔业司法执法协作联动机制，联合出台22条措施，全面加强协作配合。与省、市、区三级20余家海事行政机关建立联系渠道，接待工作来访、答疑50余次，为山东海事局、中国海警局直属局、自然资源部北海局等单位开展行政执法业务培训，惠及800余人。

支持依法行政，维护海洋生态环境。审结我国首例对互有过失船舶碰撞导致海洋环境污染申请强制执行案，该案行政处罚数额创此类案件之最，明确对“多因一果”海洋环境污染行为的海事行政处罚标准，引导船舶所有人、经营管理人积极防止船舶油污污染。针对我省首例行政机关申请执行渔业资源损失赔偿费案，依法裁定准予强制执行缴纳渔业资源损失赔偿费用，为渔业资源的司法保护增添新路径。

### **【典型意义】**

青岛海事法院始终坚持“支持就是监督，监督就是支持”，将化解行政争议贯穿于行政审判全过程，2023年受理的行政诉讼案件调撤率达30%，节省行政和司法资源的同时努力达成“案结事了、政通人和”。依法受理并审查行政非诉执行申请53件，对于准予强制执行的案件采用“裁执分离”机制，将恢复海域原状等执行内容裁交地方政府及相关部门组织实施，确保行政裁决全面执行到位。通过调研座谈、判后释法、司法建议等多种方式，全省海事行政案件管辖缺失等长期问题得到基本解决，涉海行政机关及其负责人法治意识显著提升，更多海事行政争议得到实质性化解，持续以海事行政审判工作高质量发展促进法治政府、法治社会、法治国家高水平建设。

## **VII. Regulate Administrative Maritime Trial Mechanisms, Guarantee the Construction of Legal Government in Accordance with the Law**

### **【Basic Facts】**

Qingdao Maritime Court adheres to proactively perform their duties in accordance with the law, gives a full play to the role of administrative adjudication, guides the new development of administrative adjudication with the principle of "win-win and all-win", builds the maritime administrative judicial work framework of "clarified jurisdiction + joint efforts of governments and courts + litigation source governance", and promotes the standardized operation of maritime administrative trials in the province.

Qingdao Maritime Court insists on multiple measures to clarify the scope of case acceptance. Qingdao Maritime Court takes three paths of administrative authorities, local courts and counterparties as the entry point, increases the publicity and explanation of the scope of the acceptance of maritime administrative cases by submitting the *Request for Clarification on the Scope of Acceptance of Maritime Administrative Cases* to High people's court of Shandong Province, sending judicial suggestions to relevant administrative organs, visiting and investigating the local courts, customizing and developing the online litigation service system, etc. Qingdao Maritime Court also supervises the maritime administrative authorities to accurately notify the parties of their jurisdiction and provides convenient guidance for the counterparties to correctly choose the competent courts.

Qingdao Maritime Court deepens the linkage between the Government and the Courts, and strengthens the cooperation between

maritime justice and administrative law enforcement. Qingdao Maritime Court, together with the Shandong Coast Guard, established a collaborative linkage mechanism between maritime justice and maritime administrative law enforcement to prevent and resolve administrative disputes, jointly protect national natural resources and ecological environment. Qingdao Maritime Court also established a collaborative law enforcement mechanism with the General Office of the Ministry of Agriculture and Rural Affairs of Shandong Province, and jointly issued 22 measures to comprehensively strengthen collaboration and cooperation. Qingdao Maritime Court established contact channels with more than 20 maritime administrative organs at the provincial, municipal and district levels, received more than 50 visits and answers, and carried out administrative law enforcement training for Shandong Coast Guard, bureaus directly under the China Coast Guard, the North Sea Bureau of the Ministry of Natural Resources, and other institutions, which benefited more than 800 people.

Qingdao Maritime Court supports administration in accordance with the law and safeguarded the marine ecological environment. Qingdao Maritime Court concluded the first case in China to apply for enforcement against marine environmental pollution caused by collision of mutually negligent ships, which resulted in the largest administrative penalty ever imposed, and clarified the standards for maritime administrative penalties in respect of "multi-cause and one effect" marine environmental pollution, and guided the shipowners and manager to actively prevent oil pollution. In response to the first case in our province where an administrative organ applied for the enforcement of compensation for loss of fishery resources, Qingdao Maritime Court ruled by the law that it is permitted to enforce the payment of compensation for the loss of fishery resources, adding a



new path to the judicial protection of fishery resources.

**【Significance】**

Qingdao Maritime Court accepted and reviewed 53 applications for administrative non-litigation enforcement in accordance with the law, and adopted the mechanism of "separation of judgment and enforcement" for cases approved for compulsory enforcement, and adjudicated the restoration of the original state of the sea and other enforcement contents to local governments and relevant departments to ensure that the administrative rulings be fully implemented. Through research and discussion, interpretation of the law after the verdict, judicial suggestions and other ways, long-term problems such as the absence of jurisdiction of maritime administrative cases in the whole province have been basically resolved, the legal awareness of the sea-related administrative organs and people in charge has been significantly enhanced, and the number of maritime administrative disputes has been substantively resolved. Qingdao Maritime Court continues to promote the high-level construction of legal government, legal society and legal country through the high-quality development of maritime administrative trial work.

## 八、“交响乐”轮海上溢油事故所涉民事、行政、刑事案件依法妥善审结

### 【基本情况】

2021年4月27日，义海有限公司（SEA JUSTICE LTD）所属的巴拿马籍“义海”轮与交响乐船运有限公司（SYMPHONY SHIPHOLDING S. A.）所属的“交响乐”轮在黄海海域青岛朝连岛东南水域发生碰撞，引发我国建国以来最严重的船舶海上溢油污染事故，导致约9400吨船载货油泄漏入海，溢油总覆盖面积4360平方公里，受影响海岸线长度786.5公里。该事故对青岛及周边海域（烟台海阳市，威海乳山市、南海新区、文登区）造成严重污染，主要渔场、岸滩、海岛、自然保护地、滨海湿地、海水浴场、滨海旅游区等都受到不同程度损害。事故发生后，青岛海事法院牢牢把握事故处置窗口期，积极将事故所涉纠纷全部导入海事诉讼程序，着手相关民事、行政、刑事案件的审理和其他工作，统筹推进养殖损害、清污损失、货物损失、海难救助、船舶碰撞责任、旅游经营损失、生态环境损失、环境监测和应急处置等系列案件审理，实现了政治效果、法律效果、社会效果的有机统一。

### 【典型意义】

交响乐轮碰撞事故引发的系列案件及其处理涉及中国、希腊、英国、巴拿马、利比里亚、印度、菲律宾等多个国家，

牵涉超过 160 个诉讼主体，涵括民事、刑事、行政全部类型。

青岛容某海洋环保服务有限公司诉交响乐公司、北英保赔公司船舶污染损害责任纠纷一案，是全国首例对域外油轮所有人根据法律规定采用海事主管机关样本与清污公司订立的清污协议性质、相应清污行为性质及合同项下清污费用的限制性与否作出认定的生效判决，且是首例就油污责任保险人向受损害人承担赔偿责任予以明确的判决。入选新时代推动法治进程十大案件候选，获评最高人民法院涉外民商事适用国际条约和国际惯例典型案例。

案涉海事刑事案件系青岛海事法院试点管辖的首例海事刑事案件，也是首例因船舶碰撞导致财产损失追究船长刑事责任案件，为筑牢海上安全防线，推动平安海洋建设提供了鲜活样例，为积极参与国际油污损害赔偿规则制定、推动构建公正合理的国际海洋环境污染治理体系提供了有益探索，新华社、法治日报等中央媒体广泛宣传报道，释法普法成效显著。

案涉海事行政案件系《海洋环境保护法》修订以后首例因船舶油污污染而对外国船东予以行政处罚的案件，涉案标的高达 6.9 亿元，系海事行政机关对船舶油污污染予以的最大金额处罚，也是海事行政机关应船舶油污污染申请强制执行的最大的标的额的海事行政审查案件。案件有力推动国家清

污应急处理机制健全完善，有效填补油污损害赔偿规则空白，为维护国家海洋权益、维持海上航运秩序、保护海洋生态环境提供有力海事司法保障。

## **VIII. The Civil, Administrative and Criminal Cases Involved in the Oil-Spilling Accident of Vessel "A SYMPHONY" were Properly Concluded in Accordance with the Law**

### **【Basic Facts】**

On April 27, 2021, the Panamanian ship "SEA JUSTICE" belonging to SEA JUSTICE LTD and the ship "A SYMPHONY" belonging to SYMPHONY SHIPHOLDING S.A. collided in the southeast waters of Qingdao Chaolian Island in the Yellow Sea, triggering the most serious ship oil spill pollution accident since the founding of the country, resulting in the spillage of approximately 9,400 tons of oil into the sea, the total area covered by which was 4,360 square kilometers, and the length of the coastline affected by which is 786.5 kilometers. The accident caused serious pollution to Qingdao and the surrounding waters (Yantai Haiyang City, Weihai Lushan City, Nantai New District, Wendeng District), and the main fishing grounds, beaches, islands, nature reserves, coastal wetlands, sea water bathing beaches, coastal tourist areas, etc. were damaged to varying degrees. After the accident, Qingdao Maritime Court grasped the window period for accident disposal, actively introduced all disputes involved in the accident into the maritime litigation procedure, and proceeded with the trial of related civil, administrative and criminal cases and other work, and coordinated the promotion of aquaculture damages, clean-up losses, cargo loss, rescue, ship collision liabilities, tourism losses, ecological losses, environmental monitoring and emergency response and other series of cases, etc, thereby realizing the combination of political, legal and social effects.

### **【Significance】**

The series of cases arising from the collision of "A SYMPHONY"

and their handling involves a number of countries, including China, Greece, the United Kingdom, Panama, Liberia, India and the Philippines, and involves more than 160 litigants, including all types of civil, criminal and administrative cases.

Qingdao Rong Marine Environmental Protection Service Co. Ltd. v. SYMPHONY SHIPHOLDING S.A., The North of England Protecting & Indemnity Association Ltd. (dispute over damages for ship pollution) was the first case in China to make a determination on the nature of the pollution response agreement entered into between the owner of the extra-territorial oil tanker and the clean-up company, using the samples of the competent maritime authority in accordance with the provisions of the law, the nature of the pollution response and the limitation of its costs under the contract. In this case, for the first time, the liability of an oil pollution liability insurer to the infringing entity or individual for the compensation was clarified in the judgment. This case was selected as a candidate for the Top Ten Cases for Promoting the Rule of Law in the New Era and was honored by the Supreme People's Court as a typical case on the application of international treaties and international practices in foreign-related civil and commercial matters.

The maritime criminal case involved is the first maritime criminal case under the pilot jurisdiction of the Qingdao Maritime Court, and is also the first case of criminal liability of the captain of the ship due to property damage caused by ship collision. This case provides a vivid example for strengthening the maritime security line and building a peaceful ocean, and a useful exploration for actively participating in the formulation of international rules on compensation for oil pollution, as well as for promoting the construction of a fair and reasonable international system of governance of marine environmental pollution.

The case has been widely publicized and reported by Xinhua News Agency, Legal Daily and other state-owned media, which played an effective role in interpreting and popularizing the law.

The involved maritime administrative case is the first case after the revision of the *Marine Environmental Protection Law of the People's Republic of China* in which a foreign shipowner is administratively penalized due to oil pollution from the vessel, and the subject matter of the case is as high as RMB 690 million, which is the largest amount of penalty imposed by a maritime administrative organ on oil pollution from a vessel, and also the largest amount of maritime administrative review case in which the maritime administrative organ applied for compulsory enforcement of the application for oil pollution from a ship. The case provides a strong impetus to the improvement of the national emergency pollution response mechanism, effectively fills the blank of the rules of compensation for damages caused by oil pollution, and provides a strong maritime judicial guarantee for the maintenance of national maritime rights and interests, the maintenance of the order of shipping, and the protection of the marine ecological environment.

## 九、凝聚院校合力 共育涉外法治人才

### 【基本情况】

为加快推进涉外海事审判现代化建设,培养更多涉外法治人才,2023年以来,青岛海事法院先后与上海海事大学、山东大学、山东科技大学、青岛大学等高校签订合作协议,探索共建涉外法治人才培养机制,努力实现法学理论和实践创新的良性互动,提升法学院校教学实践水平的同时,不断提升法院干警能力素质。

**坚持党对涉外法治人才建设的领导。**深入学习贯彻习近平法治思想,认真贯彻落实习近平总书记关于加强涉外法治工作的重要讲话精神,邀请高校师生参观海洋法治教育基地,旁听庭审,向法学院校发放海事审判情况通报白皮书,方便法学院校师生及时了解海事审判实践情况。

**加强法学教学与法律实务深度融合。**积极参与法学院校法治人才培养改革创新,优选海事审判业务骨干赴法学院校进行海商法等审判实务专题授课,支持“双导师”教学模式落地落实。为法学院校师生提供司法实践平台,推出法官助理联合培养计划,签订产教融合研究生联合培养基地合作协议,目前已有8名法学院校优秀师生担任法官助理。

**搭建法院高校沟通交流合作平台。**加强院校战略合作,与上海海事大学就共建外国法查明研究中心、打造高端智库



平台、完善海事法律人才培养机制等内容开展合作探索；与山东科技大学建立常态化沟通机制，在涉外涉海法治人才培养、服务海洋经济发展、特色班级建设等领域进行精准对接，实现资源共享、优势互补，共同培育新时代复合型涉外法治人才。

**促进法院干警专业素质能力提升**，在西南政法大学举办青岛海事法院学习贯彻习近平新时代中国特色社会主义思想锻造法院铁军专题培训班；为进一步提升干警综合素质和专业能力，邀请中国政法大学、青岛大学、山东建筑大学等专家教授来院授课，并邀请高校师生旁听，起到了对内提升审判质效水平、对外打响海事法院品牌的良好效果。

### **【典型意义】**

涉外法治人才的培养目标和要求随着我国对外合作与竞争的深化而不断提高，加快培育涉外法治人才，是新时代贯彻落实党和国家关于涉外法治工作战略布局的一项重要举措，青岛海事法院携手相关高校，共建涉外法治人才培养机制，共同破解涉外法治人才培养难题，对推进高水平对外开放、应对外部风险挑战具有重要意义。通过促进提升法院干警的理论研究和司法实践能力，积极培养政治立场坚定、专业素质过硬、通晓国际规则、精通涉外法律事务的涉外法治人才，持续为海洋强国、贸易强国战略提供海事司法保障，为全球海洋治理提供更多的中国范式、中国方案。

## **IX. Cooperate with Colleges and Universities, Cultivate Foreign-related Legal Talents**

### **【Basic Facts】**

For the purpose of advancing the modernization of foreign-related maritime trials and cultivating more foreign-related legal talents, since 2023, Qingdao Maritime Court signed cooperation agreements with Shanghai Maritime University, Shandong University, Shandong University of Science and Technology, Qingdao University and other universities, to explore the co-construction mechanism for the cultivating foreign-related legal talents, striving to achieve a good interaction between legal theory and practice innovation, enhancing the level of teaching practice in law schools, and at the same time, continuously improving the ability of judges, bailiffs and other staffs.

**Adhere to Party's leadership in the cultivation of foreign-related legal talents.** In order to further study and implement Xi Jinping's thought on the rule of law, conscientiously implement the spirit of General Secretary Xi Jinping's important speech on strengthening the rule of law in foreign-related affairs, Qingdao Maritime Court invited teachers and students from universities to visit law-based ocean governance education base and attend the court hearings, distributed the white paper report on maritime trials to law schools and universities, so as to facilitate teachers and students to learn about maritime trial practice in a timely manner.

**Strengthen the further integration of law teaching and legal practice.** Qingdao Maritime Court actively participates in the innovative reform of legal talents training in law schools, selects core members in maritime trials to give lectures on maritime law and other trial practice topics, supporting the implementation of the "dual-mentor" teaching

model. In addition, with the aim of providing a judicial practice platform for teachers and students of law schools, Qingdao Maritime Court launched a joint training program for judges' assistants and signed cooperation agreements on joint training bases for postgraduate students in the integration of industry and education. At present, eight outstanding teachers and students of law schools have served as judge assistants in Qingdao Maritime Court.

**Build a platform for communication and cooperation between courts and universities.** In order to strengthen the strategic cooperation with colleges and universities, Qingdao Maritime Court, together with Shanghai Maritime University, built a center for proof of foreign law, created a high-end think tank, and improved the mechanism for cultivating maritime legal talents; established a regular communication mechanism with Shandong University of Science and Technology, so as to make precise connections in the fields of cultivating foreign-related maritime legal talents, serving the development of the marine economy, and constructing featured classes, thereby sharing resources, complementing each other's advantages, as well as jointly cultivating the foreign-related legal talents for a new era.

**Promote the professional quality and ability of judges, bailiffs and other staffs.** Qingdao Maritime Court held the thematic training course: Learning and Implementing Xi Jinping's Thought on Socialism with Chinese Characteristics in the New Era, Forging Iron Troops in Courts in Southwest University of Political Science and Law. For the purpose of further enhancing the comprehensive quality and professional ability of judges, bailiffs and other staffs, we invited the experts and professors in China University of Political Science and Law, Qingdao University, Shandong Jianzhu University and other universities to give

lectures, and invited teachers and students from universities and colleges to listen, which had the good effect of internally improving the trial quality and efficiency level, and externally starting the maritime court brand.

### **【Significance】**

With the deepening of China's foreign cooperation and competition, the training objectives and requirements of foreign-related legal talents are constantly improving. Accelerating the cultivation of foreign-related legal talents is an important measure to create a strategic framework for the rule of law in foreign-related matters. Qingdao Maritime Court, together with the relevant universities, builds foreign-related legal talent training mechanisms, and jointly cracks problems in legal talent cultivation, which is of great significance for promoting a high level of opening up and coping with the challenges of external risks. By promoting and enhancing the theoretical research and judicial practice ability of the judges, bailiffs and other staffs, Qingdao Maritime Court actively cultivates foreign-related legal talents with a firm political stance, excellent professional qualities, good knowledge of international rules, and proficiency in foreign-related legal affairs, continuously providing maritime judicial protection for the Maritime Power and Trade Power Strategy, as well as providing more Chinese models and Chinese solutions for global maritime governance.

## 十、普法进校园 法治护成长

### 【基本情况】

为进一步加强学校法治教育工作，弘扬法治理念和法治思维，全面推进中小学依法治校，培养青少年海洋法治意识，全力护航青少年健康成长，根据教育部《中小学法治副校长聘任与管理办法》等有关文件要求，青岛海事法院按照政治素质好、专业素养高、热心教育工作等标准，2022 年向青岛市崂山区推荐 10 名法治副校长人选，经初任培训后聘任到崂山区实验学校（初中部）等中小学开展工作。2023 年向青岛市教育局推荐 6 名干警作为市属学校法治副校长人选，青岛海事法院党组书记、院长吴锦标任青岛第三十九中学法治副校长。

各位法治副校长自受聘以来已进入校园开展法治副校长专题讲座十余次，讲座内容包含法律知识普及、预防校园欺凌等与校园安全息息相关的课题，引导同学们在日常生活和学习中不断增强法治观念，提高法律意识，坚决对校园欺凌说“不”。一是开展法治教育。面向教职工开展以法治实践教学为主的法治宣传；二是保护学生权益。参与学校学生权益保护制度的制定、执行，指导、监督学校落实未成年人保护职责，依法保护学生权益；三是预防未成年人犯罪。指导学校对未成年学生进行有针对性的预防犯罪教育，对有不

良行为的学生加强管理和教育；四是参与安全管理。协助学校完善安全管理制度，健全安全事故预防与处置机制，制止侵害学校和师生合法权益的行为；五是指导实施教育惩戒。参与建立学生教育保护辅导工作机制，协助开展特定群体矫治教育；六是指导依法管理。协助学校建立健全校规校纪，完善各类规章制度，协助加强与社区、家庭及社会有关方面的沟通联系。

### **【典型意义】**

青岛海事法院法治副校长队伍由院领导，审判一线的庭（局）长、法官骨干和法官助理组成，是一支政治素质高，业务能力强，工作作风严的高素质普法队伍。法治副校长们在工作中认真履行职责，精心开展法治教育，积极参与学校安全管理，紧密结合海事司法特点和热点焦点，开展有温度、接地气的青少年法治宣传教育。依托青少年海洋法治教育基地，与青岛市教育局共同探索具有青岛特色的海洋法治教育模式，为讲好海事司法故事，传播海事司法声音发挥了显著作用，为进一步增强青少年学生的法治意识和自我保护能力，筑牢校园安全防线，护航未成年人健康成长，建设法治校园、平安校园贡献了海事司法力量。

## **X. Popularize Law into the Campus, Protect Growth by Rule of Law**

### **【Basic Facts】**

In order to further strengthen the rule of law education in schools, carry forward the rule of law concept and thinking, comprehensively promote the rule of law in primary and secondary schools, cultivate young people's awareness of Marine rule of law, and make every effort to escort the healthy growth of young people, in accordance with the relevant documents of the Ministry of Education "Measures for the Appointment and Management of Vice Principals of Law in Primary and Secondary Schools" and other requirements, According to the standards of good political quality, high professional quality and enthusiasm for education, the Qingdao Maritime Court will recommend 10 candidates for vice principals of law to Laoshan District of Qingdao in 2022, and they will be appointed to Laoshan District Experimental School (Middle School) and other primary and middle schools after initial training. In order to further strengthen the law-related education in schools, carry forward the thinking of rule of law, comprehensively promote the rule of law in primary and secondary schools, foster young people's awareness of rule of law in marine governance, and make every effort to escort the healthy growth of teenagers, Qingdao Maritime Court follows the criteria of good political quality, high professional quality and enthusiasm for education, according to the requirements of Ministry of Education *Measures for the Appointment and Management of Vice Principals of Schools in Charge of Education on the Rule of Law in Primary and Secondary Schools* and other relevant documents. In 2022, 10 candidates for Vice Principals of Schools in Charge of Education on the Rule of Law

were recommended to the Laoshan District and appointed to work in primary and secondary schools such as the Laoshan District Experimental School (Junior High School) after initial training. In 2023, six candidates were recommended to the Qingdao Municipal Education Bureau for the Vice Principals in municipal schools. Among them, Wu Jinbiao, Secretary of the Party Leadership Group and President of Qingdao Maritime Court, was appointed as the Vice Principals of Schools in Charge of Education on the Rule of Law in Qingdao No. 39 High School.

Since the appointment, the Vice Presidents of the Rule of Law have delivered more than 10 lectures on campus, including the popularization of legal knowledge, the prevention of campus bullying and other topics closely related to campus safety, with the aim of guiding students to continuously improve legal awareness, and resolutely say "no" to campus bullying. First, carry out law-related education. To carry out the rule of law publicity for the faculty and staff, focusing on practical education on rule of law. Second, protect the rights and interests of students. To participate in the formulation and implementation of the system for protecting the rights and interests of students, as well as guiding and supervising the implementation of the duty of protecting minors, and protecting the rights and interests of students according to law. Third, prevent juvenile delinquency. To guide schools to carry out targeted crime prevention education for minor students, and strengthen management and education for students with bad behaviors. Fourth, participate in safety management. To assist the school to improve the safety management system, the safety accident prevention and disposal mechanism, and stop the behavior that infringes on the legitimate rights and interests of the school and teachers and students. Fifth, guide the implementation of educational punishments. To participate in the establishment of the



working mechanism of student education protection and counseling, and assist in the implementation of corrective education for specific groups. Sixth, guide law-based management. To help schools to establish and improve school rules and regulations, improve all kinds of rules and regulations, and help strengthen communication with the community, family and social parties.

### **【Significance】**

Qingdao Maritime Court's team of Vice President of the Rule of Law of is composed of the leaders of the court, the chief judge and director general of the division (department) in the trial line, the core members of judges and assistant judges, which is a high-quality legal publicity team with high political quality, strong professional ability and strict work style. They earnestly perform their duties, carefully carry out rule of law education, actively participate in school safety management, and closely combine the characteristics and hot spots of maritime justice to carry out warm and grounded publicity and education on the rule of law for teenagers. By relying on the Marine Legal Education Base for Teenagers, Qingdao Maritime Court, couple with Qingdao Municipal Education Bureau, have jointly explored the Qingdao characteristics marine law-related education base which plays a significant role in telling good maritime judicial stories and spreading the voice of maritime justice. Additionally, Qingdao Maritime Court has contributed maritime judicial power to further enhancing the legal awareness and self-protection ability of teenagers, building a strong campus security line, protecting the healthy growth of minors, constructing a peaceful campus governed by law.

## 第四部分 典型案例

### 一、利比里亚籍某公司与印度尼西亚籍某公司船舶买卖合同纠纷案

#### 【基本案情】

2022年2月，利比里亚籍某公司（以下简称A公司）作为买方，与印度尼西亚籍某公司（以下简称B公司）签定了船舶买卖合同，约定B公司向A公司出售其所属的“努萨摩德卡”（NUSA MERDEKA）轮，船舶价款为11,500,98650.90美元。A公司依约已向B公司支付了定金合计3,450,195.27美元。B公司未按上述合同约定向A公司交付船舶。

2023年1月17日，A公司连同其他三家境外公司作为共同买方，与B公司连同另外三家境外公司作为共同卖方，签订了和解协议，约定由共同卖方向共同买方支付17,500,000美元以及法律费用25,000美元作为“NUSA MERDEKA”轮、“BULL DAMAI 1”轮、“GAS KOMODO”轮、“BROTOJOYO”轮四条船舶的保证金退还以及损失赔偿的最终和解款。根据和解协议第3.2条，和解款中的200万美元是在卖方出售“NUSA MERDEKA”轮、“BULL DAMAI 1”轮、“GAS KOMODO”轮时向买方支付，且买方具有优先购买权。和解协议同时约

定,有关争议或索赔均适用英国法律并在新加坡海事仲裁院依据仲裁规则予以仲裁。

和解协议签订后,共同卖方将“BULL DAMAI 1”轮出售给天津某航运租赁有限公司,船名已变更为“SWORD FISH”轮,船旗由印度尼西亚变更为马绍尔群岛。但共同卖方并未征询共同买方是否优先购买船舶,亦未按照和解协议的约定向共同买方支付200万美元的和解款。就共同卖方违反和解协议约定的违约行为,共同买方已将在中华人民共和国水域申请扣押共同卖方所属船舶的权利转移给了A公司行使,由A公司代为采取相应措施。

A公司于2023年8月11日向青岛海事法院提出诉前海事请求保全申请,请求对B公司所属的、停泊于中华人民共和国山东省威海市招商局金陵船舶(威海)有限公司的印度尼西亚籍“努萨摩德卡”(NUSA MERDEKA)轮予以扣押,并为上述保全申请向青岛海事法院提供了担保和船舶买卖合同等证据材料。

### **【裁判理由】**

青岛海事法院在对A公司提交的船舶买卖合同等证据材料和担保进行审查后,认定A公司与B公司之间的纠纷属于船舶买卖合同纠纷,根据《中华人民共和国民事诉讼法》第二十一条、第二十三条规定,A公司基于该合同

享有的海事请求,可以申请扣押船舶所有权登记在 B 公司名下的印度尼西亚籍“努萨摩德卡”(NUSA MERDEKA)轮。虽然,双方在合同中约定发生争议在新加坡海事仲裁院仲裁解决,但根据《中华人民共和国民事诉讼法》第十四条规定,A公司提出的诉前扣押船舶申请不受当事人之间仲裁协议的约束。

青岛海事法院于2023年8月11日作出民事裁定书及扣押船舶命令,准许A公司提出的诉前扣押船舶申请,对船舶所有权登记在B公司名下、停泊于中华人民共和国山东省威海市招商局金陵船舶(威海)有限公司的印度尼西亚籍“努萨摩德卡”(NUSA MERDEKA)轮予以扣押,并责令B公司提供230万美元的担保,以解除船舶扣押。

A公司在扣押船舶期限内,向新加坡海事仲裁院申请仲裁,涉案船舶处于继续扣押状态,等待裁决结果。

船舶扣押期间不仅每日产生巨额维持费用,还存在安全隐患。青岛海事法院在与双方当事人沟通过程中了解到,仲裁程序预计不少于6个月。为尽快解决纠纷并解除船舶扣押,青岛海事法院就中华人民共和国法律对同类型纠纷案件的裁判规则向外国当事人进行法律释明,引导其对纠纷解决结果形成合理预期,同时向外国当事人宣传中华人民共和国海事法院特有的诉前调解程序的便捷和效率。最终,双方当

事人撤回在新加坡的仲裁申请,选择中华人民共和国青岛海事法院对涉案纠纷予以审理,并在诉前调解阶段达成和解协议,青岛海事法院出具民事裁定书,对双方达成的和解协议进行司法确认,该民事裁定书已经发生法律效力,和解协议业已履行完毕。

### **【典型意义】**

本案系合同履行过程中产生争议的涉外船舶买卖合同纠纷,在外国当事人协议约定合同争议由新加坡海事仲裁院进行仲裁的情况下,海事法院发挥司法能动性、打造涉外商事海事纠纷“解决优选地”典型案例。法治是最好的营商环境,加强涉外法治建设既是以中国式现代化全面推进强国建设、民族复兴伟业的长远所需,也是推进高水平对外开放、应对外部风险挑战的当务之急。海事法院作为审理涉外商事海事纠纷的前沿阵地,要在逐步提升涉外司法效能的基础上,不断提升涉外司法公信力。

涉案船舶买卖合同纠纷在诉前调解阶段得以顺利解决,双方当事人均对中国海事法院和中国法制予以高度赞扬,彰显了新时代中国特色社会主义法治在司法理念和制度设计上的优越性,是全面打造海事纠纷解决优选地的生动实践,本案引导外国当事人对在中国法院解决涉外合同纠纷形成合理预期,注重实质性纠纷化解,提升了中国法院在处理涉

外合同纠纷方面的司法公信力。在充分保障外国当事人合法权益的基础上，运用诉前调解制度成果，突出司法效率，充分发挥“东方经验”在国际海事纠纷解决中的独特优势，避免外籍船舶因长期扣押增加的安全隐患和当事人诉累。本案获评 2023 年全国海事审判典型案例。

## **Part IV Typical Cases**

### **I. A Liberian Company v. An Indonesian Company (Case about Disputes over Ship Sale and Purchase Contract)**

#### **【Basic Facts】**

On February 2022, a Liberian company (hereinafter referred to as Company A), as the buyer, signed a contract for the sale and purchase of a vessel with an Indonesian company (hereinafter referred to as Company B), agreeing that Company B would sell the vessel "NUSA MERDEKA", which belonged to Company B, for a sum of USD11,500,98650.90. Company A contractually paid a deposit totaling USD3,450,195.27 to Company B. Company B failed to deliver the vessel to Company A as agreed in the said contract.

On 17 January 2023, Company A, together with three other offshore companies, as co-buyers, and Company B, together with three other offshore companies, as co-owners, entered into a settlement agreement, pursuant to which the co-owners would pay the co-buyers USD 17,500,000 and legal fees of USD 25,000 as compensation for the loss of four vessels, "NUSA MERDEKA", "BULL DAMAI 1", "GAS KOMODO", "BROTOJOYO". Pursuant to Article 3.2 of the settlement agreement, USD 2 million of the settlement payment was to be paid to the buyers at the time of the sale of the "NUSA MERDEKA", "BULL DAMAI 1", "GAS KOMODO", and the buyers had pre-emption right. The settlement agreement also provided that disputes or claims would be governed by English law and arbitrated at the Singapore Chamber of Maritime Arbitration (SCMA) under the arbitration rules.

After the signing of the settlement agreement, the co-owners sold the

"BULL DAMAI 1" to a Tianjin shipping chartering company, and the name of the vessel was changed to "SWORD FISH", with the flag of the vessel changed from Indonesia to the Marshall Islands. However, the co-owners did not solicit the co-buyers to purchase the vessel in preference and did not pay the co-buyers the settlement amount of USD 2 million as agreed in the settlement agreement. With regard to the breach of contract by the co-owners in violation of the settlement agreement, the co-buyers had transferred the right to apply for the arrest of the vessel belonging to the co-owners in the waters of the People's Republic of China to be exercised by Company A, which would take corresponding measures on behalf of the co-buyers.

On 11 August 2023, Company A filed an application for pre-litigation maritime preservation with Qingdao Maritime Court, requesting the arrest of the Indonesian vessel "NUSA MERDEKA" belonging to Company B and berthed at China Merchants Jinling Shipbuilding (Weihai) Company Limited and provided Qingdao Maritime Court with evidence such as guarantees and the contract for the sale and purchase of the vessel for the above-mentioned application for preservation.

### **【Reasons for Judgment】**

Qingdao Maritime Court, after examining the contract for the sale of the vessel and other evidential materials and guarantees submitted by Company A, concluded that the dispute between Company A and Company B was a dispute over the contract for the sale of the vessel, and that according to the provisions of Articles 21 and 23 of the *Special Maritime Procedure Law of the People's Republic of China*, Company A, on the basis of the contract, could apply for the seizure of the Indonesian vessel "NUSA MERDEKA", the shipowner of which was registered in



Company B. Although the parties had agreed in the contract that disputes would be resolved by arbitration at the Singapore Chamber of Maritime Arbitration (SCMA), according to Article 14 of the *Special Maritime Procedure Law of the People's Republic of China*, the application for pre-litigation arrest of the vessel made by Company A was not subject to the arbitration agreement between the parties.

Qingdao Maritime Court issued a Civil Ruling and Order of Arrest on 11 August 2023, granting Company A's application for pre-litigation arrest of the vessel, and arresting the Indonesian vessel "NUSA MERDEKA", whose shipowner was registered in the name of Company B which was berthed at China Merchants Jinling Shipbuilding (Weihai) Company Limited. "NUSA MERDEKA" was arrested and Company B was ordered to provide a guarantee of USD 2.3 million to release the vessel from arrest.

Company A applied for arbitration at the Singapore Chamber of Maritime Arbitration (SCMA) within the period of arresting the vessel, and the vessel in question was under continued arrest pending the outcome of the award.

Not only did the vessel incur huge daily maintenance costs during the period of arrest, but it also posed a safety hazard. Qingdao Maritime Court learned in the course of its communication with the parties that the arbitration proceedings were expected to take no less than six months. In order to resolve the dispute as soon as possible and lift the arrest of the vessel, Qingdao Maritime Court provided the foreign parties with legal explanations on the rules of the People's Republic of China law on the adjudication of the same type cases of disputes, guided them to form reasonable expectations of the outcome of the dispute resolution, and at the same time, publicized to the foreign parties the convenience and

efficiency of the pre-litigation conciliation procedure unique to the Maritime Court of the People's Republic of China. In the end, the parties withdrew their application for arbitration in Singapore and chose Qingdao Maritime Court of the People's Republic of China to hear the dispute, and reached a settlement agreement in the pre-litigation conciliation stage. Qingdao Maritime Court issued a civil ruling to judicially confirm the settlement agreement reached by the two parties, which has already taken effect in the law, and the settlement agreement has been fulfilled.

### **【Significance】**

This case is a dispute arising in the performance of a contract for the sale of a foreign vessel. In the case of the foreign parties agreeing to arbitrate the contractual dispute by the Singapore Chamber of Maritime Arbitration, Qingdao Maritime Court plays the role of judicial activism, building a typical case of "preferred settlement" for foreign-related commercial maritime disputes. Rule of law is the best business environment. Strengthening the construction of the rule of law in relation to foreign affairs is not only a long-term need to comprehensively promote the construction of a strong nation and national rejuvenation with Chinese-style modernization, but also an urgent need to promote the opening up of the country to the outside world at a high level and to cope with the challenges posed by external risks. The maritime courts, as the front line for adjudicating foreign-related commercial maritime disputes, should continue to enhance the credibility of foreign-related justice on the basis of gradually improving the effectiveness of foreign-related justice.

The dispute over the sale and purchase contract of the vessel in question is successfully resolved at the pre-litigation mediation stage, and both parties highly praise the Chinese maritime courts and the Chinese legal system, demonstrating the superiority of the system of socialist rule

of law with Chinese characteristics for the new era in terms of judicial philosophy and institutional design, which is a vivid practice of building a preferred place for the settlement of maritime disputes in an all-round manner. This case also guides the foreign parties to form a reasonable expectation of settling the dispute over the foreign-related contract in the Chinese court. On the basis of fully safeguarding the legitimate rights and interests of foreign parties, the case utilizes the results of the pre-litigation mediation system, highlights judicial efficiency, gives full play to the unique advantages of the "Eastern Experience" in international maritime dispute resolution, and avoids the increased security risks and litigation fatigue of foreign vessels due to prolonged detention. The case is awarded the 2023 National Maritime Trial Typical Case.

## 二、青岛某公司诉交响乐公司、北英公司船舶污染损害赔偿纠纷案

### 【基本案情】

2021年4月14日，利比里亚籍“交响乐”油轮的船舶所有人交响乐公司与原告青岛某公司使用中国海事主管机关的样本签订了《船舶污染清除协议》，协议第三条就清污费用支付方式、支付时间及逾期利息等进行了约定。4月27日，“交响乐”轮与巴拿马籍杂货船“义海”轮碰撞，“交响乐”轮约9400吨船载货油泄漏入海，构成特别重大船舶污染事故。事故发生后，经交响乐公司通知，青岛某公司组织船舶、人员等参与了清污工作，经青岛海事法院认定，青岛某公司因案涉溢油事故造成的损失金额共计42987210元。

2021年8月18日，青岛海事法院裁定准许油污损害民事责任保险人北英公司设立“交响乐”轮油污损害赔偿责任限制基金。青岛某公司就本案主张的清污损失在上述基金中进行债权登记，并被裁定准予。

2021年9月30日，原告青岛某公司提起本案诉讼，请求法院判令被告交响乐公司、北英公司按上述合同约定支付全部的清污损失，不受油污损害赔偿责任限制基金的限制。被告则对《船舶污染清除协议》的性质及原告的起诉资格、

合同项下清污费用的限制性与否等提出抗辩。

### 【裁判理由】

青岛海事法院认为，本案具有涉外因素，事故泄漏油类属于《1992年国际油污损害民事责任公约》（以下简称《民事责任公约》）第一条第五款规定的持久性烃类矿物油，本案应优先适用《民事责任公约》，《民事责任公约》没有规定的事项适用国内法及司法解释的规定。

按照我国《海洋环境保护法》等相关法律规定，交响乐公司应当依法采取措施控制和消除污染，但海上溢油应急处置工作专业性极强，委托有能力的专业清污公司是其履行法定义务的必要手段。青岛某公司与交响乐公司签订的《船舶污染清除协议》虽系根据我国《海洋环境保护法》等有关法律法规的要求、采用海事主管机关样本订立，但除涉及双方如何联络开展污染控制和清除行动的部分强制性条款外，包括费用条款在内的其他内容均为青岛某公司与交响乐公司协商一致订立，该合同的性质仍属于民事合同。交响乐公司有关“船舶污染清除协议系行政合同，青岛某公司的清污行为系行政代履行行为，其依据合同提出索赔没有法律依据”的主张不能成立。青岛某公司依照合同约定采取的清污防污措施系民事法律行为，费用有权向交响乐公司主张。另一方面，两轮互有过失的碰撞引起“交响乐”轮油类泄漏，产生

“污染损害”，根据《民事责任公约》第三条第1款、第2款（b）项等规定，交响乐公司应当对因该溢油事故造成的污染损害承担赔偿责任。而青岛某公司主张的清污费用是基于其采取的清污措施而发生的费用，属于《民事责任公约》规定的“污染损害”，根据《民事责任公约》的立法宗旨、立法体例及《民事责任公约》第五条第1款的规定，交响乐公司有权限制赔偿责任。此外，根据《民事责任公约》和《船舶油污司法解释》的规定，北英公司作为油污责任保险人应当承担赔偿责任，并有权在其设立的油污损害赔偿限制基金的范围内限制其责任数额。

### 【典型意义】

本案是全国首例对域外油轮所有人根据法律规定采用海事主管机关样本与清污公司订立的清污协议性质、相应清污行为性质及合同项下清污费用的限制性与否作出认定的生效判决，且是首例就油污责任保险人向受损害人承担赔偿责任予以明确的判决。

本案在明确油轮所有人在溢油事故发生时负有排除危害义务的前提下，结合《船舶污染清除协议》中强制性条款及约定条款的具体内容，厘清了其民事合同的性质，明确了合同项下清污活动属于民事法律行为；同时通过正确理解《1992年国际油污损害民事责任公约》《最高人民法院关于

审理船舶油污损害赔偿纠纷案件若干问题的规定》的立法宗旨和体例及相关条款,判决确认油轮所有人有权在设立基金的前提下就该合同项下的清污费用限制赔偿责任;判决还首次在实体上明确了油污责任保险人应当向受损害人承担赔偿责任。

本案中所涉船舶污染系近年来最大的船舶溢油污染事故,所涉纠纷争议巨大,受到国内外相关人士的广泛关注,最终判决结果得到了各方当事人的充分认可。本案的审结,将在全国海事司法领域范围内对涉外清污协议和其合同项下清污行为的定性以及合同项下费用索赔的限制性认定有非常重要的借鉴意义。对我国专业清污行业的良性健康发展提供重要的司法保障,为我国海商法等相关法律的进一步发展完善提供重要的案例支撑,推动海事领域的法治进程发展,为中国特色社会主义海洋生态文明建设保驾护航。

## **II. a Qingdao Company v. Symphony Company, Beiying Company (Case about Disputes over Compensation for Damage Caused by Pollution from Vessel)**

### **【Basic Facts】**

On 14 April 2021, the shipowner of the Liberian tanker "A SYMPHONY", Symphony Company, and the plaintiff, a Company in Qingdao, signed the *Agreement for Ship Pollution Response* using a sample from a Chinese maritime authority, with Article 3 stipulating the manner of payment of decontamination costs, the time of payment and the interest rate for late payment. On 27 April, "A SYMPHONY" collided with the Panamanian general cargo ship "SEA JUSTICE", and about 9,400 tonnes of cargo oil from "A SYMPHONY" leaked into the sea, which caused a particularly serious ship pollution accident. After the accident, upon notification by Symphony Company., the plaintiff organized vessels and personnel for pollution response, and Qingdao Maritime Court determined that the losses incurred by Qingdao Company as a result of the oil spill amounted to RMB 4,298,721,210.

On 18 August 2021, Qingdao Maritime Court ruled that the insurer for the oil pollution damage, the Beiying Company, should be allowed to set up a limitation fund for maritime claims liability of oil pollution damage by "A SYMPHONY". The losses for pollution response claimed by a Qingdao company, in this case, were registered in the above fund and were ruled to be approved.

On 30 September 2021, the plaintiff requested the Court to order the defendants, the Symphony Company, and the Beiying Company, to pay the full amount of the losses for pollution response in accordance with the above contractual agreement, without being subject to the liability



limitation fund for compensation for oil pollution damage The defendants raised defenses as to the nature of *the Agreement for Ship Pollution Response*, the plaintiff's standing to sue, and the limitation of the cost of pollution response under the contract.

### **【Reasons for Judgment】**

Qingdao Maritime Court held that the case had foreign elements, and that the oil spill belonged to the persistent hydrocarbon mineral oils stipulated in Article 1, paragraph 5, of *the International Convention on Civil Liability for Oil Pollution Damage, 1992* (hereinafter referred to as the "*Civil Liability Convention*"), so the *Civil Liability Convention* should be applied in this case as a priority, and that the provisions of the domestic laws and judicial interpretations would be applied to those matters that were not stipulated in the *Civil Liability Convention*.

According to *Marine Environmental Protection Law of the People's Republic of China* and other relevant laws and regulations, the Symphony Company should take measures to control and eliminate pollution, but the maritime oil emergency disposal work is highly specialized, entrusted with the ability of the professional clean-up company is the necessary means to fulfill its legal obligations. *The Agreement for Ship Pollution Response* signed between the plaintiff and the defendant is based on *Marine Environmental Protection Law of the People's Republic of China* and other relevant laws and regulations, using the samples of the competent maritime authorities, but except for some mandatory provisions concerning how to contact the two parties to carry out pollution control and response, other contents, including the fee clause, are agreed upon by the plaintiff and the defendant. The nature of the contract remains civil. The Symphony's claim that *The Agreement for Ship Pollution Response* is an administrative contract, what the plaintiff

did is an administrative substitute performance, so there is no legal basis for its claim based on the contract could not be established. Also, the pollution response taken by plaintiff in accordance with the contract is deemed as a civil legal act, and the cost is entitled to claim against Symphony Company. On the other hand, according to the provisions of Article 3, paragraph 1, paragraph 2 (b), etc., of the *Civil Liability Convention*, Symphony Company shall be liable for the pollution damage caused by the oil spill accident caused by the collision between the two vessels at fault. The cost for pollution response claimed by the Qingdao Company is incurred based on measures taken by the company, which belongs to the "pollution damage" stipulated in the *Civil Liability Convention*. According to the legislative purpose and system of *the Civil Liability Convention* and the provisions of Article 5, paragraph 1 of it, the Symphony Company has the right to limit its liability. Besides, according to the provisions of the *Civil Liability Convention* and *Provisions on Several Issues Concerning Adjudicating Disputes of Compensation for Ship Oil Pollution Damage*, Beiyong Company, as an insurer of oil pollution liability, shall bear the liability for compensation. At the same time, it is entitled to limit the amount of its liability within the limits of the liability limitation fund for oil pollution damage established by it.

### **【Significance】**

This case is the first one in China in which an effective judgment was rendered on the nature of the pollution response agreement using a sample issued by competent maritime authority between the extraterritorial tanker owner and the cleaning company, the nature of the corresponding behavior, and the limitation of the costs under the contract according to the legal provisions. Besides, it is also the first judgment to clarify the liability of an oil pollution liability insurer to the damaged

units and individuals.

This case, on the premise of clarifying that the owner of the tanker has the obligation to eliminate hazards in oil spill accidents, combined with the mandatory provisions and the specific content of the agreed terms in the *The Agreement for Ship Pollution Response*, clarified the nature of the civil contract, and made it clear that the ship pollution response under the contract belonged to the civil legal behavior; At the same time, through a correct understanding of the legislative purpose and style of the *International Convention on Civil Liability for Oil Pollution Damage 1992*, the provisions of the *Civil Liability Convention* and the *Provisions on Several Issues Concerning Adjudicating Disputes of Compensation for Ship Oil Pollution Damage*, the judgement affirmed that the owner of the tanker is entitled to limit its liability for pollution response costs under the contract on the premise of establishing a limitation liability fund. The judgment also clarified for the first time in substantive terms that an oil pollution liability insurer should be liable to the injured person.

The ship pollution involved in this case is the largest ship oil spill pollution accident in recent years. The dispute involved was so controversial, which has been widely concerned by relevant people at home and abroad, and the final verdict was fully recognized by all parties. The conclusion of this case will be of great importance in the field of maritime justice throughout the country in terms of the characterization of foreign pollution response agreement and the acts, as well as the restrictive determination of claims for expenses under the contracts. The case provides important judicial protection for the healthy development of China's professional pollution cleaning industry, and important case support for the further development and improvement of Chinese

maritime law and other related laws, thus promoting the development of the rule of law process in the field of maritime affairs, and escorting the construction of socialist marine ecological civilization with Chinese characteristics.

### 三、“义海轮”船长马某某海上船舶碰撞重大责任事故罪案

#### 【基本案情】

2021年4月27日，马某某驾驶巴拿马籍杂货船“义海”轮（M/V SEA JUSTICE）途经青岛东南水域时，在海面大雾、能见度不良的情况下，未保持正规瞭望、未及时采取避让行动、未使用安全航速、未按规定施放声号、驾驶台资源管理失效，与锚泊中的利比里亚籍油船“交响乐”轮（M/V A SYMPHONY）发生碰撞，导致两轮船体破损。碰撞发生后，马某某采取应急措施不当，导致“交响乐”轮溢油扩大污染海域。“义海”轮负碰撞事故的主要责任，“交响乐”轮负次要责任。

#### 【裁判理由】

青岛海事法院经审理认为：被告人马某某作为船长及值班驾驶员，在船舶航行过程中违反有关安全管理的规定，指挥、操纵不当，导致船舶碰撞，发生特大船舶溢油污染事故，造成重大财产损失，公诉机关指控的罪名成立，应以重大责任事故罪追究其刑事责任。鉴于被告人马某某自首、自愿认罪认罚并赔偿部分损失，判决被告人马某某犯重大责任事故罪，判处有期徒刑二年，缓刑二年。

### **【典型意义】**

本案系我院试点管辖的首例海事刑事案件，也是全国首例以船舶碰撞造成财产损失追究船长刑事责任的案件。本案中，“义海”轮船长马某某在驾驶船舶从事货物运输过程中，既违反交通运输管理规定，又违反安全作业的有关规定，因而造成船舶碰撞，在碰撞发生后应急措施不当，溢油污染扩大，应以重大责任事故罪追究刑事责任。本案的审结回应了长期以来被忽视的船舶因过失造成溢油污染后果的刑事追责问题，打造了对船舶碰撞造成海洋生态环境损害等重大财产损失追究刑事责任的典型，为海事刑事犯罪的定罪量刑提供了新标准，标志着青岛海事法院海事审判“三合一”试点工作取得成效，探索维护海上航运秩序、保护海洋生态环境的新路径，为海洋经济高质量发展提供了有力的海事司法服务与保障。

### **III. Case about the major liability accident caused by ship collision committed by Mr. Ma, master of "SEA JUSTICE"**

#### **【Basic Facts】**

On 27 April 2021, the Panamanian general cargo vessel "SEA JUSTICE", captained by Mr. Ma, was passing through the southeast waters of Qingdao. Under foggy conditions and poor visibility on the sea surface, he failed to maintain a regular lookout, take timely avoiding action, use a safe speed, apply sound signals in accordance with the regulations and manage the resources of the bridge, which led to a collision with the Liberian oil tanker "A SYMPHONY", which was at anchor, resulting in damage to the hulls of the two vessels. After the collision, Ma took improper emergency measures, causing the oil leak from "A SYMPHONY" to expand and pollute the sea. "SEA JUSTICE" bore the main responsibility for the collision, while "A SYMPHONY" bore secondary responsibility.

#### **【Reasons for Judgment】**

Qingdao Maritime Court held that the defendant Mr. Ma, as the captain and the duty pilot, violated the regulations on safety management, commanded and maneuvered improperly during the voyage, leading to the collision and the occurrence of a severe oil spill accident, which resulted in a significant property damage. The charges made by the public prosecutor's office were substantiated, so Mr. Ma should be investigated for his criminal responsibility for the crime of a major liability accident. Given the fact that the defendant Mr. Ma surrendered, voluntarily pleaded and admitted his guilt, and compensated for some of the losses, he was found guilty of committing a major liability accident and sentenced to two years' imprisonment and two years' probation.

### **【Significance】**

This case is the first maritime criminal case under the pilot jurisdiction of the Court, and also the first case in the country in which the criminal liability of the captain of the vessel was investigated for property damage caused by ship collision. In this case, the captain of "SEA JUSTICE", Mr. Ma, in the course of driving the vessel to engage in the transport of goods, violated both the regulations on transport management and the relevant regulations on safe operation, thus causing the vessel to collide, and the emergency response after the collision was not appropriate so that criminal liability should be investigated for the crime of major liability accidents. The conclusion of this case responded to the long-neglected criminal liability for the consequences of oil spill pollution caused by the negligence of the vessel, setting up a typical example of investigating criminal liability for major property losses such as marine ecological environment damage caused by ship collision, and provided a new standard for the conviction and sentencing of maritime criminal crimes. This case marks the success of the "three-in-one" pilot work of maritime trial in Qingdao Maritime Court. We will continue to explore new ways to maintain maritime shipping order and protect the marine ecological environment, so as to provide powerful maritime judicial services and guarantees for the high-quality development of the marine economy.



## 四、烟台兴某有限公司诉威海西某有限公司海洋牧场平台建造合同纠纷案

### 【基本案情】

2016年8月30日，山东省海洋牧场项目实施试点工作启动。烟台兴某有限公司申请的海洋牧场项目获批，其于2017年5月12日与威海西某有限公司签订《39m玻璃钢海洋牧场平台建造合同》。针对平台检验问题，合同中未进行明确约定。2017年11月16日，涉案平台建造完工。2018年2月5日，平台交付兴某公司投入使用。兴某公司向西某公司支付全部合同价款550万元。

海洋牧场项目试点工作的相关规定和文件中未明确玻璃钢海洋牧场平台的检验规范和标准。在涉案合同签订、平台开工建造之后，《海洋牧场平台试点管理暂行办法》（以下简称《暂行办法》）印发。西某公司设计建造的玻璃钢海洋牧场平台纳入《暂行办法》管理时，涉案平台已建造完成。

2018年7月25日，烟台市牟平区海洋与渔业监督监察大队因涉案平台在未经船检部门检验、未取得任何证书的情况下投入使用，向兴某公司发出停业整改通知书，责令涉案平台立即停业整改。

2019年11月20日，山东省农业农村厅参照《暂行办法》等规定同意涉案项目通过验收。但烟台市牟平区海洋发

展和渔业局表示，涉案项目通过验收不代表平台符合船检标准可以经营，检验程序仍应由职能部门进行。

就山东省玻璃钢海洋牧场平台被渔业执法机关以未取得检验证书要求停止营运、且平台无法办理检验证书的问题，山东省农业农村厅于2022年7月20日称：2021年5月19日已确定由中国船级社青岛分社对钢质平台开展检验工作，但玻璃钢、PE材质平台的检验方案待进一步调研、论证后抓紧制定。

兴某公司因涉案平台未经检验无法使用，与西某公司产生纠纷，向法院请求解除《建造合同》、返还合同价款并赔偿各项损失共计950万元。

### **【裁判理由】**

青岛海事法院认为，涉案建造合同系双方真实意思表示，依法成立并合法有效，双方应依合同约定行使合同权利并履行合同义务。关于西某公司是否负有办理海洋牧场平台检验证书义务的问题，根据《民法典》第一百七十六条的规定，应从合同义务及法定义务两方面进行认定。合同义务方面，涉案合同没有关于平台检验事项的约定，平台交接前及交接时兴某公司也未提出西某公司应办理检验证书的问题，且双方也未就该问题进行任何磋商或补充约定，因此可以认定，西某公司没有办理检验证书的合同义务。法定义务方面，

平台从开始建造、建造完成直至交接之时，玻璃钢平台均没有相应的检验规范和检验标准；行政主管部门也未明确可参照何种检验规范或标准对玻璃钢海洋牧场平台进行检验；且涉案项目通过验收，可视为行政主管部门认可涉案平台符合《暂行办法》相关规范和要求，因此，西某公司没有办理检验证书的法定义务。关于涉案建造合同应否解除。依照《民法典》第五百六十二条及第五百六十三条之规定，合同解除权的行使应当在合同尚未履行完毕、合同目的尚未达到之前。本案中西某公司因不负有办理检验证书的义务，且已依约将平台建造完成后交付兴某公司，依照合同约定，交接后的风险均由兴某公司承担。在平台交接之后直至合同约定的保修期结束，可以认定合同目的已经达到，合同已经履行完毕。而在合同履行完毕之后，合同当事人均不具有合同的解除权。因此兴某公司已不具有合同解除权。涉案合同已无解除条件。青岛海事法院判决：驳回兴某公司的全部诉讼请求。兴某公司不服判决提起上诉，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】**

案涉玻璃钢海洋牧场平台项目系山东省政府相关部门开展的先行先试新兴项目，属于新生事物。对其试点阶段出现的因检验规范和检验标准缺失导致已建成平台无法使用

所引发的新类型纠纷，青岛海事法院着眼于维护政府项目稳定推行和经济交易安全的角度，在合同未明确约定检验事项的情况下，从合同义务及法定义务两方面着手，判定建造方不负有办理相关证书的义务。本案判决也进一步明确了在此类建造合同目的已经达到、合同已经履行完毕的情形下，合同当事人均不具有合同解除权的裁判规则，为该类新兴事物的后续发展起到了及时引导和规范作用，为全省海洋牧场建造企业吃下“定心丸”。

#### **IV. Yantai Xing Co., Ltd. v. Weihai Xi Co., Ltd. (Case about Disputes over the Construction Contract of Marine Ranching Platform)**

##### **【Basic Facts】**

On August 30, 2016, the pilot implementation of the Shandong Province Marine Ranching Project commenced. Yantai Xing Co., Ltd. received approval for its marine ranching project and subsequently signed a *39m Glass Fiber Reinforced Plastics Marine Ranching Platform Construction Contract* with Weihai Xi Co., Ltd. on May 12, 2017. As for the inspection of the platform, there was no specific agreement in the contract. On November 16, 2017, the construction of the platform in question was completed. On February 5, 2018, the platform was delivered to Xing Co., Ltd. to be put into use. Xing Co., Ltd. paid the contract price of 5.5 million yuan in full to Xi Co., Ltd.

The relevant regulations and documents of the pilot implementation of the marine ranching project did not specify the inspection specifications and standards for glass fiber reinforced plastics marine ranching platforms. After the contract involved was signed and construction began, the *Interim Measures for the Administration of the Pilot Program of Marine Ranching Platforms* (hereinafter referred to as the "*Interim Measures*") was issued. By the time the Glass Fiber Reinforced Plastics Marine Ranching Platform designed and constructed by Xi Co., Ltd. was included under the management of the *Interim Measures*, the platform involved had already been completed.

On July 25, 2018, Muping District Marine and Fisheries Supervision and Inspection Brigade of Yantai issued a notice of suspension of business and rectification to Xing Co., Ltd for putting the platform involved into

use without inspection by the ship inspection department without obtaining any certification. The platform involved was ordered to suspend business for rectification immediately.

On November 20, 2019, the Shandong Provincial Department of Agriculture and Rural Affairs agreed that the project involved passed the acceptance inspection based on the *Interim Measures* and other regulations. However, the Muping Municipal Bureau of Marine Development and Fisheries stated that passing the acceptance inspection did not mean that the platform met the ship inspection standards for operation, and the inspection procedure should still be carried out by the competent departments.

Regarding the issue of the glass fiber reinforced plastics marine ranching platforms in Shandong Province being requested by fishery law enforcement authorities to cease operations due to the lack of inspection certification and the platform's inability to obtain inspection certification, on July 20 2022, Shandong Provincial Department of Agriculture and Rural Affairs stated that, on May 19 2021, it had been determined that the CCS Qingdao Branch would conduct the inspections work on steel platforms, but the inspection program for the glass fiber reinforced plastic and PE material platform would be promptly formulated after further investigation and demonstration.

Due to the platform's inability to be used without inspection, Xing Co., Ltd. had a dispute with Xi Co., Ltd. Xing Co., Ltd, claimed to the court for termination of the *Construction Contract*, refund of the contract payment, and compensation for various losses totaling 9.5 million yuan.

#### **【Reasons for Judgment】**

Qingdao Maritime Court held that the *Construction Contract* involved was a true expression of the parties' intentions, legally

established, and valid. Both parties should exercise their contractual rights and perform their contractual obligations as agreed. Regarding whether Xi Co., Ltd. had the obligation to apply for the inspection certificate for the marine ranching platform, it should be determined based on both contractual and statutory obligations in accordance with Article 176 of the *Civil Code*. From a contractual obligation perspective, there was no specific agreement in the contract involved regarding the platform inspection issue. Xing Co., Ltd. did not raise the issue that Xi Co., Ltd should be liable for applying for any inspection certificates before or at the time of platform handover, and both parties did not conduct any negotiation or supplementary agreement with respect to such issue. Therefore, it can be concluded that Xi Co., Ltd has no contractual obligation to apply for the inspection certificate. From a statutory obligation perspective, there are no inspection specifications or standards for FRP platforms from the start of construction, upon completion, or at the time of handover. The administrative authorities did not specify which inspection specifications or standards could be referenced for the inspection of FRP marine ranching platforms. Moreover, the project involved passing the acceptance inspection can be deemed as the administrative authorities acknowledging that the platform met the relevant specifications and requirements of the *Interim Measures*. Therefore, Xi Co., Ltd has no a statutory obligation to apply for the inspection certificate. Regarding whether the *Construction Contract* should be terminated, according to Articles 562 and 563 of the *Civil Code*, the right to terminate the contract should be exercised before the contract is fully performed and the contract purpose is achieved. In this case, Xi Co., Ltd. has no obligation to handle the inspection certificate, and it has already delivered the platform to Xing Co., Ltd. after completion as

agreed. According to the contract, all the risks after the handover shall be borne by Xing Co., Ltd. From the handover until the end of the warranty period specified in the contract, it can be concluded that the contract purpose was achieved and the contract have already been fully performed. Once the contract is fully performed, the parties no longer have the right to terminate the contract. Therefore, Xing Co., Ltd no longer has the right to terminate the contract. The conditions for the termination of the contract involved are no longer met. The Qingdao Maritime Court rendered judgment that all claims of Xing Co., Ltd shall be dismissed. Xing Co., Ltd refused to accept the judgment and appealed, but The Higher People's Court of Shandong Province rejected the appeal and upheld the original judgement.

### **【Significance】**

The FRP marine ranching platform project in this case is a pioneering initiative project launched by relevant departments of the Shandong Provincial Government, which is also a newly emerging thing. During its pilot phase, a new type of dispute arouse due to the lack of inspection specifications and standards, which rendered the completed platform unusable. Qingdao Maritime Court, focusing on the perspective of maintaining stability in the implementation of government projects and the security of economic transactions, ruled that the builder is not obligated to apply for the relevant certificates. This decision was also based on the absence of a specific agreement in the contract concerning inspection issues and both contractual and statutory obligations. This judgment also clarified the adjudication rule that, in cases where the construction contract's purpose has been fulfilled and the contract has been fully performed, neither party has the right to terminate the contract. It also provided timely guidance and regulation for the subsequent



development of such new things, so that marine ranching construction enterprises in the province's industry could rest assured.

## 五、青岛市人民检察院诉李某某、吴某海洋自然资源与生态环境公益诉讼案

### 【基本案情】

2022年2月至4月，李某某驾驶“浙普渔68\*\*\*”船从浙江舟山沈家门码头出发，出海捕捞作业，使用电鱼方法和小于规定网目尺寸的网具分别捕捞渔获物5万余斤，销售金额共计100万余元。违反其所持有的捕捞许可证关于作业类型、场所、时限等方面的批准内容，未在核准的东海C2区域进行捕捞作业，而是在黄海江苏、山东区域违法进行跨海域捕捞。期间，吴某和其雇佣的船员驾驶“浙普渔运68\*\*\*”船，随同李某某捕捞船一同出海，实施了即时上船违法收购非法捕捞的水产品、贩卖于青岛沙子口码头和为捕捞船提供必要补给品的行为，并约定支付李某某渔获物收购款50万余元。

2022年7月25日，青岛市市南区人民检察院在办理刑事案件时发现本案线索，立案并发布诉前公告。公告期内无法律规定的机关和有关组织提起民事公益诉讼。2023年3月，青岛市人民检察院作为公益诉讼起诉人提起本案诉讼，请求判令：李某某承担海洋自然资源与生态环境修复费用约150万元、评估费1万元；吴某对李某某的赔偿责任承担连带责任；李某某与吴某在国家级媒体上刊登赔礼道歉声明。

### 【裁判理由】

青岛海事法院认为，本案系因使用禁用渔具、跨渔区非法捕捞、违法收购水产品引发的民事公益诉讼纠纷。李某某所属的“浙普渔 68\*\*\*”船的核准作业区域为浙江省 C2 类渔区，但其驾驶该船跨海区至江苏、山东海域从事捕捞作业，并且使用了不符合捕捞标准的网具，在渔船上加装电捕功能设施，违法采用电鱼方法和使用小于最小网目的网具实施捕捞作业，违反了《中华人民共和国渔业法》《渔业捕捞许可管理规定》的相关规定，严重破坏了海洋渔业资源和生态环境，损害了社会公共利益，其应当承担海洋自然资源与生态环境损害赔偿的民事侵权责任。

吴某作为具有十余年从事渔获物收购买卖的从业者，长期在浙江舟山区域负责收购并贩卖渔获物，其应明知“浙普渔 68\*\*\*”船的捕捞许可证核准的作业范围仅为东海浙江区域 C1 区，亦应对捕捞船的作业资质、范围、方式和收购的渔获物的合法来源等有能力辨识，在登上捕捞船收购时，具备观察捕捞船是否具有禁用渔具的条件，但其没有尽到注意义务，跟随多艘捕捞船跨海域从事收购活动并从中获取收益，且为捕捞船提供必要的补给品供其连续不间断的非法捕捞，存在放任侵害渔业资源和破坏海洋生态环境的行为与过错。

李某某的非法捕捞行为与吴某的违法收购行为相结合，共同侵害海洋自然资源与生态环境，依照《中华人民共和国民法典》第一千一百六十八条的规定，双方应对其侵权行为造成的损害后果承担连带赔偿责任。青岛海事法院判决：李某某承担海洋自然资源与生态环境修复费用 150 万元、评估费 1 万元；吴某对李某某的赔偿责任承担连带责任；李某某与吴某在国家级媒体上刊登赔礼道歉声明。

判决送达后，李某某与吴某均服判息诉，并在判决确定的期限内履行了赔偿义务。

### **【典型意义】**

本案是青岛海事法院审理的首起跨海域、跨省域非法捕捞、违法收购水产品生态环境民事公益诉讼案件。《中华人民共和国渔业法》《渔业捕捞许可管理规定》均规定，从事捕捞作业的单位和个人，必须按照捕捞许可证关于作业类型、场所、时限、渔具数量和捕捞限额的规定进行作业。《中华人民共和国渔业法》还规定，禁止使用炸鱼、毒鱼、电鱼等破坏渔业资源的方法进行捕捞；禁止使用小于最小网目尺寸的网具进行捕捞。李某某使用禁用渔具、跨渔区非法捕捞的行为违反了上述规定，严重破坏了海洋渔业资源和生态环境，损害了社会公共利益，应当承担海洋自然资源与生态环境损害赔偿的民事侵权责任。吴某明知渔获物系非法捕捞所

得而收购并销售从中获利的违法收购水产品的行为系放任侵害渔业资源和破坏海洋生态环境的行为，亦存在过错。非法捕捞行为与违法收购行为相结合，共同侵害海洋自然资源与生态环境，双方应对其侵权行为造成的损害后果承担连带赔偿责任。

非法捕捞行为成本低、利润高，在巨大利诱下，捕捞人员与收购、运输、销售人员长期勾结，形成固定买卖关系和完整利益链条，这一链条中，各环节均从非法捕捞行为中获得利益，具有高度协同性，行为与结果之间具有法律上的因果关系，共同导致海洋自然资源与生态环境受损。预防、打击非法捕捞行为，应从源头上彻底切断利益链条，让非法收购的共同侵权者付出经济代价，与非法捕捞者共同对海洋自然资源与生态环境损害后果承担连带赔偿责任。

两高司法解释出台后，青岛海事法院依法履行海洋环境资源审判职能，在与辖区检察机关共同办理海洋环境公益诉讼案件中，深入推进海洋生态文明建设，切实保护海洋渔业资源，依法针对“捕捞-收购-销售”的系列违法行为实施全链条打击、全方位惩治，斩断非法捕捞利益链，以最严格的制度、最严密的法治保护海洋自然资源与生态环境，充分发挥司法引领作用，彰显了海事司法维护海洋自然资源与生态环境的理念与决心。

## **V. Qingdao People's Procuratorate vs. Mr. Li and Mr. Wu (Case about Public Interest Litigation on Marine Natural Resources and Ecological Environment)**

### **【Basic Facts】**

From February to April 2022, Mr. Li operated the vessel “*ZHEPU FISHING 68\*\*\**” departing from Shenjiamen Port in Zhoushan, Zhejiang Province, for fishing. Mr. Li used electric fishing methods and nets with mesh sizes smaller than the stipulated regulations, catching over 50,000 pounds of fish, and the sales amount totaled more than 1 million yuan. This activity violated the approval of his fishing license concerning the type of operation, location, and time limits, etc. Instead of conducting operations in the approved East China Sea C2 area, Mr. Li engaged in illegal cross-water fishing in the Yellow Sea regions of Jiangsu Province and Shandong Province. During this period, Mr. Wu and his hired crew operated the vessel “*ZHEPU FISHING 68\*\*\**” alongside Li's vessel. Mr. Wu illegally purchased aquatic products on board, sold them at the Shazikou port of Qingdao, and provided necessary supplies to Li's fishing vessel. Mr. Wu agreed to pay Mr. Li over 500,000 yuan for the acquired fish.

On July 25, 2022, while handling a criminal case, the People's Procuratorate of Shinan District, Qingdao, discovered clues related to this case, subsequently filed it and issued a pre-litigation announcement. During the announcement period, no organ or organization specified by law initiated civil public interest litigation. In March 2023, the Qingdao People's Procuratorate, acting as the plaintiff of the public interest litigation, filed this lawsuit, requesting a judgement that Mr. Li should bear approximately 1.5 million yuan in marine natural resource and

ecological environment restoration costs and 10,000 yuan in assessment fees; Mr. Wu should bear joint liability for Mr. Li 's compensation; and both Mr. Li and Mr. Wu should publish an apology statement in national-level media.

### **【Reasons for Judgment】**

Qingdao Maritime Court held that this case is a civil public interest litigation dispute arising from the use of prohibited fishing gear, illegal fishing across designated fishing zones, and unlawful purchase of aquatic products. The vessel “*ZHEPU FISHING 68\*\*\**”, owned by Mr. Li, was approved to operate in the C2 fishing zone of Zhejiang Province. However, Mr. Li drove the vessel across the sea area to the sea area of Jiangsu Province and Shandong Province to engage in fishing operations. Furthermore, he used fishing gear that did not meet the fishing standards, installed electrical fishing facilities on the vessel, and engaged in fishing activities using electric fishing methods and nets with mesh sizes smaller than the minimum legal limit. These actions violated the relevant provisions of the *Fisheries Law of the People's Republic of China* and the *Provisions on the Administration of Fishing Licenses*, severely damaging marine fishery resources and the ecological environment, thereby harming the public interest. Therefore, Mr. Li shall bear the civil tort liability for compensating for the damage caused to marine natural resources and ecological environment.

Mr. Wu, as a practitioner having over ten years of experience in the purchase and sale of fishery products, has been responsible for acquiring and selling fishery products in the Zhoushan region of Zhejiang. He should have been aware that the fishing license for the “*ZHEPU FISHING 68\*\*\**”, only authorized operations in the C1 zone of the East China Sea within Zhejiang Province. Furthermore, Mr. Wu should have

been capable of discerning the fishing vessel's operating qualifications, scope, methods, and the legal source of the purchased fishery products. While boarding the fishing vessel for purchase, he had the opportunity to observe whether the vessel was using prohibited fishing gear. However, he failed to fulfill his duty of care and followed multiple fishing vessels to conduct cross-region purchasing activities, obtaining profits from them. Additionally, he provided the necessary supplies to the fishing vessels to continue illegal fishing, thereby existing behaviors and faults in indulging the infringement on fishery resources and the destruction of the marine ecological environment.

Mr. Li's illegal fishing operation, combined with Mr. Wu's illegal purchasing activities, jointly harmed marine natural resources and the ecological environment. According to Article 1168 of the *Civil Code of the People's Republic of China*, both parties are jointly liable for the damages caused by their infringing actions. Qingdao Maritime Court ruled that Mr. Li should bear the cost of marine natural resource and ecological environment restoration amounting to 1.5 million yuan in marine natural resource and ecological environment restoration costs and 10,000 yuan in assessment fees; Mr. Wu should bear joint liability for Mr. Li's compensation; and both Mr. Li and Mr. Wu should publish an apology statement in national-level media.

After the judgment was delivered, both Mr. Li and Mr. Wu accepted it without appeal and fulfilled their compensation obligations within the time limit specified in the judgment.

### **【Significance】**

This case is the first ecological environment civil public interest litigation concerning cross-waters, inter-provincial illegal fishing and purchase of aquatic products adjudicated by Qingdao Maritime Court.



According to the *Fisheries Law of the People's Republic of China* and the *Provisions on the Administration of Fishing Licenses*, the operation must be carried out in accordance with the provisions of the fishing license regarding the type of operation, location, and time limits, quantity of fishing gear, and fishing quota as specified. The *Fisheries Law of the People's Republic of China* also prohibits the use of methods that destroy fishery resources, such as explosive, toxic, or electric fishing, and the use of nets with mesh sizes smaller than the minimum specified. Mr. Li's actions of using prohibited fishing gear and conducting illegal fishing across designated fishing zones violated these regulations above-mentioned, severely damaging marine fishery resources and the ecological environment, thereby harming the public interest. As a result, he is liable for the civil tort of compensating for the damage caused to marine natural resources and the ecological environment. Mr. Wu knowingly purchasing and selling aquatic products obtained through illegal fishing for profit is a behavior that indulges the infringement on fishery resources and the destruction of the marine ecological environment, so there is also a fault. The combination of illegal fishing and purchasing actions jointly infringed on marine natural resources and the ecological environment, making both parties jointly liable for the damages caused by their infringing activities.

Illegal fishing is low-cost and highly profitable. Under the temptation of high profits, fishermen, along with buyers, transporters, and sellers have colluded for a long time, forming a fixed buyer-seller relationship and a complete chain of interests. Each link in this chain benefits from illegal fishing have a high degree of coordination. There is a legal causation between their actions and the results, collectively leading to the damage to marine natural resources and the ecological environment.

To prevent and combat illegal fishing, it is necessary to completely sever this chain of interests from its source. Parties jointly committing the tort should pay the economic costs and be jointly and severally liable to illegal fishers for the damage to marine natural resources and the ecological environment.

Following the issuance of provisions by the Supreme People's Court and the Supreme People's Procuratorate, Qingdao Maritime Court has lawfully fulfilled its function of adjudicating marine environmental resource cases. In collaboration with the procuratorate of competent jurisdiction on marine environmental public interest litigation, Qingdao Maritime Court has advanced the construction of marine ecological civilization, effectively protected marine fishery resources, and legally implemented a full chain and all-round crackdown on the series of illegal activities of "fishing-purchasing-selling". By severing the illegal fishing interest chain and protecting marine natural resources and the ecological environment with the strictest systems and the tightest rule of law, the law is given full play to the role of guiding, highlighting the concept and determination of safeguarding marine natural resources and ecological environments of maritime justice.

## 六、青州市某食品公司诉新加坡某航运公司海上货物运输合同货损案

### 【基本案情】

青州市某食品公司与他人共同投资成立缅甸某公司，在缅甸曼德勒北部租赁土地建设南瓜基地用于种植贝贝南瓜。南瓜基地实际股东包括某食品公司和刘某邓，基地使用的种子及吊绳、农药等物资由刘某邓安排自国内（昌乐、青州）运输到缅甸，产出的贝贝南瓜以缅甸某公司与某食品公司签订合同的方式运回国内销售。

2022年初，刘某邓通过其货运代理公司委托新加坡某公司将3票货物自缅甸运输至国内，货物均由缅甸某公司自行装箱、积载、计数和封箱，其中涉案2票货物出现货损：

第一票货物的报关单显示：货物单价0.11美元/千克，336000千克货物总价36960美元。某食品公司发现6个集装箱货物受损并申请鉴定，据鉴定报告显示，造成货损事故的主要原因有四个，一是货物装货前未预冷；二是集装箱通风孔未按要求开启；三是集装箱在2022年1月13日至19日期间发生多次长时间断电；四是货物采摘时间提前且装箱前未进行充分的表面风干。

第二票货物的报关单显示：货物单价0.11美元/千克，568000千克货物总价62480美元。某食品公司发现1个集

装箱货物受损并申请鉴定，据鉴定报告显示，造成本次货损事故的主要原因有三个，一是货物装货前未预冷；二是集装箱通风孔未按要求开启；三是货物装箱前未进行充分的表面风干。

某食品公司提起诉讼，请求判令新加坡某公司赔偿货物损失 1789029 元。

### 【裁判理由】

青岛海事法院认为，COAU7236494000 号提单项下 6 个集装箱发生货损，既有托运人未风干、未预冷、未开启通风孔的原因，也有承运人未查验通风孔、集装箱多次长时间断电的原因，综合考虑案件事实以及货物致损原因力的大小，某航运公司承担 70%的赔偿责任，某食品公司承担 30%的责任。COAU7236522570 号提单项下 1 个集装箱发生货损，主要原因为托运人未风干、未预冷、未开启通风孔，次要原因为承运人未查验通风孔，某航运公司承担 20%的赔偿责任，某食品公司承担 80%的责任。

新某公司与某食品公司不存在真实的贸易合同关系；报关价格仅系国内售价人民币 7 元/千克的十分之一，明显不合常理。因此，报关单价格不能作为计算货物装船价值的依据。现有证据也难以证明缅甸当地贝贝南瓜是否存在贸易市场以及市场价格，本院以贝贝南瓜养殖基地的生产成本作为

认定货物装船时价值的依据。某食品公司已确认涉案货物运输均未投保，故未产生保险费。

某食品公司要求某航运公司赔偿因清理受损坏货物的费用不属于《中华人民共和国海商法》规定的赔偿范围；某食品公司主张的箱使费，与本案货损纠纷无关，不予支持。

青岛海事法院一审判决某航运公司向某食品公司赔偿货物损失及利息；驳回某食品公司的其他诉讼请求。判决作出后，某食品公司提起上诉，山东省高级人民法院二审驳回上诉，维持原判。

### **【典型意义】**

某食品公司在缅甸租赁土地建设南瓜生产基地，成立新某公司经营，种子自国内运输到基地，产品运回国内销售，进出口手续以两公司签订贸易合同的方式办理。后产品在海运过程中发生货损，某食品公司作为收货人向承运人主张权利。

首先，判决厘清了托运人和承运人在南瓜风干和预冷、冷柜通风和断电的履约过错，精确判定了双方对于货损的责任比例。

其次，判决重点探究了自产南瓜的装货港价值认定，摒弃了以报关单价格为标准的传统裁判思路，创造性地采用国外基地生产成本作为认定货物装船时价值的依据，更为合理

的确定了货物损失金额，有力保护了我国企业海外利益，为国内企业探索境内选种-境外生产-境内销售这一农业创新生产模式提供有力司法保障。

再次，收货人主张因清理受损货物而产生的其他费用，不属于法律规定的赔偿范围，依法未予支持，有利于平等保护中外当事人合法权益，彰显海事司法公信力和影响力。

最后，收货人作为国内公司，向一带一路欠发达国家输送先进农产品技术，与当地农业生产行业进行技术交流，本案依法保障其合法权益，为我国农产品生产技术跨境交流提供司法支持。

## **VI. Qingzhou Foodstuffs Company v. Singaporean Shipping Company (Case about Dispute over Damage of Cargo under a Contract for the Carriage of Goods by Sea)**

### **【Basic Facts】**

A food company in Qingzhou co-invested with others to set up a Myanmar company that leased land in northern Mandalay, Myanmar, to build a pumpkin base for growing kabochasquash. The actual shareholders of the pumpkin base included the food company and Mr. Liu, and the seeds, slings, pesticides, and other materials used at the base were arranged by Mr. Liu to be transported from the country (Changle and Qingzhou) to Myanmar, and the output of the shellfish pumpkins was transported back to the country for sale by means of a contract between a Myanmar company and the food company.

At the beginning of 2022, Mr. Liu, through his freight forwarding company, commissioned a Singaporean company to transport three shipments of goods from Myanmar to China, and the goods were loaded, stowed, counted, and sealed by a Myanmar company itself, two of the shipments in question were damaged.

The customs declaration of the first shipment showed that the unit price of the goods was USD 0.11/kg and the total price of the 336,000 kg of goods was USD 36,960. The food company found that six containers of goods were damaged and applied for appraisal. According to the appraisal report, there were four main reasons for the cargo damage accident, one was that the goods were not pre-cooled before loading; the second was that the container ventilation holes were not opened according to the requirements; the third was that the containers were subjected to a number of prolonged power cuts from January 13 to January 19 2022; and the

fourth was that the cargoes were harvested in advance and were not adequately air-dried on the surface before being loaded into containers.

The customs declaration of the second shipment showed that the unit price of the goods was USD 0.11/kg and the total price of the 568,000 kg of goods was USD 62,480. The food company found that one container of goods was damaged and applied for appraisal. According to the appraisal report, there are three main reasons for this cargo damage accident, one is that the goods were not pre-cooled before loading; the second is that the container ventilation holes were not opened according to the requirements; and the third is that the surface of the goods was not sufficiently air-dried before loading.

The food company filed a lawsuit, requesting that a Singaporean company be ordered to compensate for the loss of goods in the amount of USD 1,789,029.

### **【Reasons for Judgment】**

Qingdao Maritime Court held that the cargo damage to the six containers under the bill of lading (No. COAU7236494000) was caused both by the shipper's failure to air-dry, pre-cool, and open the vents, as well as the carrier's failure to check the vents and the repeated and prolonged power outages. After taking into account the facts of the case as well as the extent of the cause, the shipping company is 70% liable and the food company is 30% liable. As for the damage to the container under the bill of lading with No. COAU7236522570, the primary cause is the shipper's failure to air-dry, pre-cool, and open the vents, and the secondary cause is the carrier's failure to check the vents, with a shipping company bearing 20% of the liability and a food company bearing 80%.

There is no real trade contractual relationship between the Singaporean company and the food company, and the customs declaration



price was only one-tenth of the domestic selling price of RMB 7/kg, which is obviously unreasonable. Therefore, the customs declaration price cannot be used as the basis for calculating the value of the goods on board. Existing evidence is also difficult to prove the existence of local trade market and the market price of Myanmar kabochasquash. Instead, the Court took the production cost of the breeding base of kabochasquash as the basis for determining the value of the goods on board the ship. The food company had confirmed that the transportation of the goods in question was not insured, so no insurance premiums were incurred.

The food company requested the shipping company to compensate for the cost of cleaning up the damaged goods, which did not belong to the scope of compensation provided for in the Maritime Code of the People's Republic of China, and the food company's claim for the cost of making the box was unrelated to the dispute over the loss of the goods and could not be supported.

The Qingdao Maritime Court ruled in the first instance judgment that the shipping company shall compensate the food company for the loss of goods and interests; and rejected the food company's other litigation requests. After the judgment was rendered, the food company filed an appeal, and the Higher People's Court of Shandong Province rejected the appeal and upheld the original judgment in the second instance.

### **【Significance】**

The food company leased land in Myanmar to build a pumpkin production base and set up a new company to operate it, the seeds were transported from China to the base and the products were shipped back to China for sale. The import and export formalities were handled by means of a trade contract signed by the two companies. When the products were damaged during transportation by sea, the food company, as the consignee,

claimed its rights to the carrier.

First, the judgment clarified the shipper's and carrier's performance faults in the air-drying and pre-cooling of the pumpkins, freezer venting, and power outages, accurately determined the parties' proportionate liability for goods damage.

Second, the judgment focused on exploring the value of self-produced pumpkins at the loading port, abandoning the traditional adjudication idea of taking the price of customs declaration as standard, creatively adopting the production cost of foreign bases as the basis for determining the value of the goods at the time of loading, and making the loss of the goods more reasonably, which strongly protected the interests of China's enterprises abroad and provided strong judicial safeguards for the domestic enterprises to explore the innovative production mode of agriculture, such as the selection of seeds in the country, production outside the country and sales within the country. It provided a strong judicial guarantee for domestic enterprises to explore the innovative agricultural production mode of domestic seed selection, overseas production and domestic sales.

Besides, the consignee claimed that other costs incurred as a result of cleaning up the damaged goods did not fall within the scope of compensation prescribed by law, thereby was not supported by the law, which was conducive to the equal protection of the legitimate rights and interests of Chinese and foreign parties, and demonstrated the credibility and influence of maritime justice.

Finally, the consignee, as a domestic company, delivered advanced agricultural technology to the less developed countries of the Belt and Road and carried out technological exchanges with the local agricultural production industry, and this case safeguarded its legitimate rights and

interests according to the law and provided judicial support for cross-border exchanges of China's agricultural production technology.

## 七、威海市升某公司诉威海市海某公司等海难救助合同案

### 【基本案情】

“中华富强”轮船舶所有人为威海市海某公司。某保险公司航运保险运营中心于2020年9月17日为该轮签发《船舶保险保险单（2009版）》，保险金额及保险价值均为3.3亿元，投保险别为远洋船舶一切保险。

“威港航拖10”轮，主机额定功率2352千瓦，约3198马力。“威港航拖20”轮，主机额定功率3088千瓦，约4199马力。两轮的原船舶所有人为威海市升某公司，威海市升某公司将两轮出售给其全资子公司，但仍由威海市升某公司实际经营。

2021年4月20日，“中华富强”轮在险情处置过程中连续发生两次爆燃，经评估，车货获救价值合计262.7万元。爆燃发生后，威海市委市政府立即成立市级应急救援指挥部，指挥“威港航拖10”轮、“威港航拖20”轮等7艘船舶对“中华富强”轮进行灭火消防工作。

根据航海日志的记载，“威港航拖10”轮到达“中华富强”轮现场至离开用时共计213小时；“威港航拖20”轮到达“中华富强”轮现场至离开用时共计546小时。

中华人民共和国海事局出具《威海“4.19”“中华富强”

轮调查报告》，载明初步估算直接经济损失约 9233.25 万元。

另查明，渤某公司持有某投资公司 100% 股权，某投资公司持有威海市海某公司 66.6667% 股权。

威海市升某公司提交其与案外人签订的《用船协议》、《拖轮使用协议》，两协议均载明：拖轮计费为 0.48 元/马力小时，节假日及夜班拖轮使用费增加 0.22 元/马力小时，节假日夜班使用费增加 0.44 元/马力小时，即 0.92 元/马力小时；如果需要拖轮抢险救助，费率按 3.8 元/马力小时收取。

威海市升某公司向本院提起诉讼，请求判令三被告支付救助款项 815.4 万元。

### **【裁判理由】**

青岛海事法院认为，升某公司系在威海市级应急救援指挥部的组织、协调和指挥下采取救助措施，其作为救助方有权向被救助方海某公司主张相应的救助报酬。因升某公司与海某公司未签订书面的雇佣救助合同，也未约定救助报酬以固定费率作为依据，因此本案不构成雇佣救助合同，应确定为“无效果无报酬”救助合同。

综合考虑船舶和其他财产的获救价值，救助方所用的时间、支出的费用，以及救助当时危险的性质和程度，救助报酬不得超过船舶和其他财产的获救价值并体现对救助作业

的鼓励等各项因素，本院确定升某公司应当获得的救助报酬。船舶获救价值占全部获救价值的 98.9%，则海某公司应向升某公司支付的救助报酬为上述救助报酬的 98.9%及利息。

人保公司某分公司对“中华富强”轮承保船舶一切险，但该险种并非责任保险，升某公司直接向人保公司某分公司主张权利，于法无据；升某公司要求渤海公司对海某公司应支付的救助报酬承担连带责任，以及海某公司的其他抗辩理由，均无事实与法律依据，不予支持。

青岛海事法院判决海某公司支付升某公司救助报酬 2867587.99 元及利息，并驳回升某公司的其他诉讼请求。

### **【典型意义】**

海难救助作为海上运输中古老的、特殊的法律制度，源自于航海实践，其制度价值在于抵御海上特殊风险，而在“建设海洋强国”的发展战略下，海上安全风险防范已成为发展海洋事业的重要内容，航运安全也是确保我国航运事业稳固发展的重要基石。该案争议标的数额较大，相关的事实争议和所涉法律问题较为复杂，涉及专业救助力量是否有权主张救助报酬、海难救助合同的性质、获救价值的认定、救助报酬的分摊、是否可直接向保险公司主张权利、船舶优先权的确认等问题，几乎涵盖了海难救助纠纷可能会涉及的所有争

议，具有相当的典型性。

青岛海事法院在本案中，从“鼓励救助、保障海上安全、保护环境”的基本原则和司法政策出发，积极发挥海事司法职能，综合考虑专业救助船的救助能力和努力，遇险船舶和其他财产的获救价值，救助方所用的时间、支出的费用，救助所面临的危险性质和程度，救助报酬不得超过船舶和其他财产的获救价值等因素，依法妥善审理，并合理确定海难救助报酬，最终作出了让各方当事人都认可的判决。

## **VII. Weihai Sheng Company v. Weihai Hai Company and other (Case about Disputes over Salvage Contract)**

### **【Basic Facts】**

The owner of the vessel "ZHONGHUA FUQIANG" is Weihai Hai Company. The shipping insurance operation center belonging to an insurance company issued the *Ship Insurance Policy (2009 Edition)* for the vessel on September 17 2020, with both the insurance amount and value of RMB 330 million, and the type of insurance is ocean vessel all risk insurance.

The main engine rated power of the vessel "WEIGANG HANGTUO 10" was 2,352 kilowatts, about 3,198 horsepower. The main engine rated power of the vessel "WEIGANG HANGTUO 20" was 3088 kilowatts, about 4,199 horsepower. The original owner of the two vessels was Weihai Sheng Company, which sold the vessels to its wholly-owned subsidiary, but the vessels were still operated by Weihai Sheng Company.

On April 20, 2021, two consecutive deflagrations occurred on the vessel "ZHONGHUA FUQIANG" in the process of risk disposal, and the total value of the rescued cargo and vehicles was assessed to be RMB 2,627,000. Immediately after the deflagration, Weihai Municipal Government set up a municipal emergency rescue headquarters and commanded "WEI GANG HANGTUO 10", "WEI GANG HANGTUO 20" and other 5 ships to extinguish the fire.

According to the logbook, the period from the arrival of the vessel "WEI GANG TOWING 10" at the vessel "ZHONGHUA FUQIANG" to the departure was 213 hours, and the corresponding period of the vessel "WEI GANG TOWING 20" was 546 hours.

The Maritime Safety Administration of the People's Republic of



China issued the *Investigation Report on the Weihai "4.19" "ZHONGHUA FUQIANG"*, which stated that the preliminary estimation of the direct economic loss was about RMB 92,332,500.

It was also ascertained that Bo Company held 100% equity interest in an investment company and that investment company held 66.6667% equity interest in Weihai Hai Company.

Weihai Sheng Company submitted the *Vessel Sharing Agreement* and *TOWHIRE & TOWCON* signed between Weihai Sheng Company and the non-parties, which both stated that: the tugboat billing fee was RMB 0.48/horsepower hour, the tugboat use fee for holidays and night shifts was increased by RMB 0.22/horsepower hour, and the tugboat use fee for holidays and night shifts was increased by RMB 0.44/horsepower hour, that is, RMB 0.92/horsepower hour; and that if tugboats were needed to rescue and provide aid, the fee would be charged at the rate of RMB 3.8/horsepower hour. If tugboat rescue was required, the rate would be charged at RMB 3.8/horsepower hour.

Weihai Sheng Company filed a lawsuit with this court, requesting that the three defendants be ordered to pay RMB 8,154,000 as salvage costs.

### **【Reasons for Judgment】**

Qingdao Maritime Court held that Sheng Company took salvage measures under the organization, coordination and command of the Weihai Municipal Emergency Rescue Command, and as the salvor party, it had the right to claim the corresponding salvage remuneration from the rescued party, Hai Company. Because the company and the sea company did not sign a written employment rescue contract, and also did not agree to salvage remuneration based on a fixed rate, this case does not constitute a contract of employment salvage and therefore should be

determined as "no cure no pay" salvage contract.

Taking into account the value of the ship and other property rescued, the time spent by the salvor, the expenses incurred, the nature and extent of the danger at the time of the salvage, and the fact that the remuneration for the salvage shall not exceed the value of the ship and other property rescued and the salvage operation should be encouraged, the Court determined that Sheng Company should be paid the remuneration for the salvage. The salvaged value of the ship accounted for 98.9% of the total salvaged value, and the salvage remuneration to be paid by Hai Company to Sheng Company was 98.9% of the above-mentioned salvage remuneration and its interests.

A branch company of The People's Insurance Company (Group) Of China Limited underwrote the all risks for vessels of the vessel "*ZHONGHUA FUQIANG*", but the insurance was not liability insurance, so Sheng Company had no legal basis to claim for its right towards the branch company of The People's Insurance Company (Group) Of China Limited. Sheng Company's claim that Bohai Company should bear joint and several liability for the salvage remuneration that shall be paid by Hai Company, and Hai company's other defense, had no factual and legal basis, which were not supported.

Qingdao Maritime Court ruled that Hai Company shall pay Sheng Company RMB 2867587.99 of salvage remuneration and interest, and rejected Sheng Company's other litigation requests.

### **【Significance】**

As an ancient and special legal system in maritime transportation, maritime salvage originates from the practice of navigation, and its institutional value lies in resisting special risks at sea. Under the development strategy of "build China into a maritime power", the

prevention of maritime security risks has become an important content of the development of maritime industry, and shipping safety is also an important cornerstone to ensure the solid development of China's shipping industry. The value of the object in this case is relatively large, and the facts and legal issues involved are relatively complex, involving whether the professional salvage force has the right to claim the salvage remuneration, the nature of the salvage contract, the determination of the salvage value, the apportionment of the salvage remuneration, whether the right can be claimed directly from the insurance company, and the confirmation of the ship's right of priority, which almost cover all the disputes that can be involved in the maritime disaster rescue dispute, which is rather typical.

Qingdao Maritime Court in this case followed the basic principles and judicial policy of "encourage salvage, safeguard maritime safety and protect the environment", actively played the function of maritime justice, took into account the salvage capacity and efforts of salvage vessels, the value of the ship in distress and other property rescued, the time the salvor party spent, the salvage cost, the nature and extent of the danger faced by the salvage ,and the fact that the remuneration for the rescue should not exceed the value of the ship and other property rescued. The court properly tried the case according to law, and reasonably determined the service fee, and finally made a judgment recognized by all parties.

## 八、中华人民共和国某海事局申请行政强制执行行政处罚款案

### 【基本案情】

2021年4月27日，马绍尔群岛共和国的S有限公司所属的巴拿马籍杂货船S轮由苏丹港开往青岛途中，与锚泊于青岛朝连岛东南水域的利比里亚共和国A公司所属利比里亚籍油船A轮发生碰撞，事故导致S轮首部受损、A轮左舷第2货舱破损、约9400吨船载货油泄漏入海，造成海域污染，构成特别重大船舶污染事故。经调查组认定，对船舶碰撞，S轮承担主要责任，A轮承担次要责任。

中华人民共和国某海事局委托某海事大学鉴定评估认定，本次船舶污染事故海洋环境污染直接损失为人民币2305048981.24元。据此，海事局依照《海洋环境保护法》（2017年修订）第六十五条、第九十条第二款之规定，先后作出两份海事行政处罚决定书，按照直接损失的30%分别对S公司、A公司处以罚款人民币691514694.37元。两公司未提出申诉抗辩，已由提供担保的担保人N船东互保协会分别缴纳罚款2600万美元（折合人民币164147550.00元），但经催告未在法定期限内履行其余处罚决定。海事局向青岛海事法院申请强制执行前述海事行政处罚决定书。

### 【裁判理由】

青岛海事法院认为：依照《海洋环境保护法》第六十五条的规定，船舶应当遵守海上交通安全法律、法规的规定，防止因碰撞、触礁、搁浅、火灾或者爆炸等引起的海难事故造成海洋环境的污染。本案中，根据船舶污染事故调查报告的认定结果，在碰撞事故中，S轮、A轮分别违反了《1972年国际海上避碰规则》的相关规定，两船均负有责任；在污染事故中，碰撞事故是造成溢油污染的原因，但碰撞后两船未建立有效联系以协调溢油应急行动，S轮贸然采取倒车措施使两船脱离，是导致溢油或溢油量扩大的原因。因此，两船均具有违反海上交通安全法律、法规的情形，且在防止后续海洋环境污染的发生过程中亦负有责任，海事局适用《海洋环境保护法》第九十条第二款的规定对两船分别实施处罚，不违反法律规定。两公司在收到行政处罚决定后，既未进行陈述和申辩，也未提起行政复议或者向法院起诉。两公司关于处罚金额违反过罚相当原则等申辩异议不具有明确法律依据，不予审查。《担保函》系由案外人出具，不影响本案强制执行。裁定准许执行海事局海事行政处罚决定，分别执行剩余罚款人民币 527367144.37 元的处罚内容。

### 【典型意义】

这系我国海事主管机关对船舶碰撞导致海洋生态环境

污染损害作出最高额海事行政罚款的海事行政处罚决定后申请强制执行的海事行政案件。本案中，碰撞的两船均具有违反海上交通安全法律、法规的情形，且在防止后续海洋环境污染的发生过程中均负有责任，在《海洋环境保护法》尚未明确对于多个主体多个行为导致一个结果的违法行为予以分别处罚还是共同处罚的情况下，海事法院依法确认海事主管机关对于多个主体多个行为导致一个结果的违法行为可以适用同一标准分别处罚，准予强制执行，明确了船舶碰撞导致海洋生态环境污染损害的海事行政处罚新标准，为海事行政罚款的执行提供了有力的司法保障，为保护海洋生态环境探索了新路径，对类似案件具有指导意义。

## **VIII. Case about Application for Administrative Enforcement of Administrative Fines by a Maritime Safety Administration of the People's Republic of China**

### **【Basic Facts】**

On 27 April 2021, the Panamanian general cargo ship "S" belonging to S Co., Ltd. of the Republic of the Marshall Islands was on its way from Port Sudan to Qingdao when it collided with the Liberian oil tanker "A" belonging to A Company of the Republic of Liberia, which was anchored in the southeastern waters of Qingdao Chaolian Island. The accident resulted in damage to the bow of "S", damage to the 2nd cargo hold on the port side of "A", and the leakage of about 9,400 tonnes of oil, which is the cargo, into the sea, causing pollution of sea area and constituting a particularly serious ship pollution accident. The investigation team determined that, for the ship collision, "S" bore primary responsibility and "A" bore secondary responsibility.

Maritime Safety Administration of the People's Republic of China commissioned a maritime university to appraise and assess that the direct loss of marine environmental pollution caused by the ship pollution accident was RMB 230,504,881.24. Accordingly, Maritime Safety Administration, in accordance with the provisions of Article 65 and Article 90(2) of *Marine Environmental Protection Law* (Revised in 2017), successively issued two maritime administrative penalty decisions, imposing fines of RMB 691,514,694.37 on S Co., Ltd. and A Co., Ltd. respectively, according to 30 percent of the direct loss. The two companies did not file any complaint or defense, and had paid the fine of USD 26 million (equivalent to RMB 164,147,550.00) by N Shipowners' Association, the guarantor, but did not fulfill the rest of the penalty

decisions within the statutory period after being promoted. Maritime Safety Administration applied to Qingdao Maritime Court to enforce the aforementioned maritime administrative penalty decisions.

**【Reasons for Judgment】**

Qingdao Maritime Court held that, in accordance with Article 65 of the *Marine Environmental Protection Law*, Vessels should comply with the provisions of maritime traffic safety laws and regulations, prevent marine environment pollution caused by maritime accidents such as collision, running on rocks, stranding, fire or explosion, etc. In this case, according to the findings of the investigation report of the ship pollution accident, in the collision accident, vessel "S" and "A" respectively violated the relevant provisions of the *International Convention for Preventing Collisions at Sea, 1972*, and both of them were liable. In the pollution accident, the collision accident was the cause of the oil spill and pollution. After the collision, the two ships did not establish an effective connection to coordinate the emergency action for the oil spill, and "S" hastily took the measure of reversing to make the two ships disengage, which was the cause of the oil spill or the expansion of the oil spill. Therefore, both ships violated maritime traffic safety laws and regulations and were also responsible in the process of preventing the subsequent occurrence of marine environmental pollution. Maritime Safety Administration imposed penalties on the two ships separately in accordance with the provisions of Article 90(2) of the *Marine Environmental Protection Law*. After receiving the administrative penalty decision, the two companies did not make any statement or defense, nor did they initiate administrative reconsideration or file a lawsuit in court. The defense of the two companies that the amount of penalty violated the principle of equivalence of penalties did not have a clear legal basis and



would not be examined. *Letter of Guarantee* was issued by non-parties, which would not affect the enforcement of this case. The judgment allowed the implementation of the maritime administrative penalty decision issued by Maritime Safety Administration, and the remaining fine of RMB 527,367,144.37 was to be enforced respectively.

### **【Significance】**

These two cases are maritime administrative cases in which the competent maritime authorities of our country applied for enforcement after issuing the maximum maritime administrative penalty decision for damage to the marine ecological environment caused by the collision of ships. In this case, the two ships in collision were both in violation of maritime traffic safety laws and regulations and were both reliable in the process of preventing the subsequent occurrence of pollution of the marine environment. Under the circumstance that *Marine Environmental Protection Law* has not yet been clarified whether the illegal acts caused by multiple subjects and multiple acts that lead to a result should be punished separately or jointly, the maritime court confirmed in accordance law that the competent maritime authorities can apply the same standard to make separate penalties for the illegal act caused by more than one subject and more than one act, permitted the enforcement, clarified the new standards of maritime administrative penalties for collision of ships resulting in pollution damage to the marine ecological environment, provided a powerful judicial guarantee for the enforcement of maritime administrative fines, explored a new path for the protection of marine ecological environment, and had guiding significance for similar cases.

## 九、某保险公司诉青岛某航运公司、香港某运输公司、日本某保险公司保险人代位求偿权纠纷案

### 【基本案情】

某贸易公司作为承租人与作为出租人的青岛某航运公司签订租船合同，自塞拉利昂至青岛运输铁矿石。某钢铁公司作为买方，与卖方某贸易公司签订铁矿石销售合同。某钢铁公司向某保险公司投保货物运输保险，运输工具为“盛明”轮。澳大利亚某公司作为“盛明”轮船长代理人签发了提单，后该轮被南非海事安全局进行凿沉处理。某保险公司依保险合同向某钢铁公司支付 145 万美元赔偿款。香港某运输公司为“盛明”轮船东及实际控制人，日本某保险公司为“盛明”轮的责任保险人。某保险公司诉请青岛某航运公司、香港某运输公司、日本某保险公司共同赔偿 145 万美元及利息。

### 【裁判理由】

青岛海事法院认为：某保险公司的代位求偿权成立，青岛某航运公司系航次租船合同下的出租人，香港某运输公司并非航次租船合同法律关系的当事方，不能突破合同相对性原则。本案货损原因并不构成“政府或者主管部门的行为”的免责事由。青岛某航运公司作为承运人，应当承担赔偿责任。香港某运输公司不承担责任，某保险公司无权直接起诉日本某保险公司。判决青岛某航运公司赔偿某保险公司

7742543.48 元及利息，驳回某保险公司对香港某运输公司、日本某保险公司的诉讼请求。某保险公司提起上诉，山东省高级人民法院二审维持原判。

### 【典型意义】

本案系一起涉及“一带一路”沿线国家南非、塞拉利昂及日本保险公司、中国香港船东的海上货物运输合同下保险人代位求偿纠纷，运输标的物为中国在非洲国家开采的铁矿石。案件焦点涉及海上货物运输保险合同、航次租船合同、提单关系和船舶保赔保险合同、日本某保险公司的民事行为能力等多种法律关系的认定。法院在同一个案件中正确识别多重法律关系，同时适用了中国和日本两个国家的法律进行裁判，及时、平等、全面地维护了各方当事人的权利，体现了国际化、法治化的营商环境。

另一方面，本案货损原因系南非海事安全局对“盛明”轮进行凿沉处理所致，被告据此主张构成“政府或者主管部门的行为”的免责事由。法院查明被告的该抗辩事由并不符合本案事实情况。南非港口当局作出的指令系基于“盛明”轮违反巴拿马海事部门单航次许可限制装载货物所致，要求其提供担保，“盛明”轮未能提供担保而被拒绝进港，在香港某运输公司发出弃船声明后被拖往公海，故南非政府的行为并非货损的原因，而是船公司违反船舶适航义务的后果，

法院的该审查认定充分还原了事实，因案涉标的物为中国在非  
洲投资的全资公司所托运，该案对免责事由的充分审查认定也免  
除了不利的涉外影响，为维护我国“一带一路”发展战略提供了  
有力的司法服务与保障。

## **IX. Insurance Company v. Qingdao Shipping Company, Hong Kong Shipping Company, Japanese Insurance Company (Case about Disputes over Subrogation Rights of Insurers)**

### **【Basic Facts】**

A Trading Company, as charterer, entered into a charter party with Qingdao Shipping Company, as shipowner, to deliver iron ore from Sierra Leone to Qingdao. A Steel Company, as buyer, entered into the Iron Ore Sales Contract with the Trading Company. The Steel Company took out a cargo insurance policy with an Insurance Company in respect of the vessel "SHENGMING". As agent for the Master of "SHENGMING", an Australian Company issued the bill of lading, and the vessel was subsequently scuttled by the South African Maritime Safety Administration. Insurance Company. The Insurance Company paid USD 1.45 million in compensation to the Steel Company under the insurance contract. The Hong Kong Transport Company is the owner and actual controller of the Japanese Insurance Company is the insurer of "SHENGMING". As a result, the Insurance Company sued the Qingdao Shipping Company, the Hong Kong Shipping Company, and the Japanese Insurance Company for a joint compensation of USD 1.45 million plus interest.

### **【Reasons for Judgment】**

Qingdao Maritime Court held that the Insurance Company's subrogation claim was established, the Qingdao Shipping Company was the owner under the Voyage Charterparty, and the Hong Kong Shipping Company was not a party to the legal relationship under the Voyage Charterparty, which could not break the privity of contract. The cause of the goods damage does not constitute an exemption of liability for "acts

of the government or competent authorities". As the carrier, the Qingdao Shipping Company shall bear the liability for compensation. the Hong Kong Shipping Company is not liable, and the Insurance Company has no right to sue the Japanese Insurance Company directly. Eventually, Qingdao Maritime Court judged that the Qingdao Shipping Company should compensate the Insurance Company for RMB 7,742,543.48 and interest, and rejected the Insurance Company's claims against the Hongkong Shipping Company and the Japanese Insurance Company. The Insurance Company appealed, and the High People's Court of Shandong Province upheld the original judgment.

### **【Significance】**

This case is a dispute over subrogation rights of insurers under the contracts for the international carriage of goods by sea, involving insurance companies in South Africa, Sierra Leone and Japan along the "the Belt and Road Initiative" and shipowner in Hong Kong, China, and the subject matter of the transport is the iron ore mined by China in African countries. The focus of the case involves the identification of a variety of legal relationships, such as marine cargo transport insurance contract, voyage charter party contract, bill of lading relationship, the ship protection and indemnity insurance contract, and the civil capacity of Japanese Insurance Company. The Court correctly identified multiple legal relationships in the same case and applied the laws of both China and Japan, safeguarded the rights of all parties in a timely, equal and comprehensive manner, and reflected the international and law-based business environment.

On the other hand, the cause of the cargo damage was the scuttling treatment of the vessel "SHENGMING" by the South African Maritime Safety Administration, and the defendant claimed that it constituted an

exemption of liability for "acts of the government or competent authorities". The Court found that the defendant's defense did not correspond to the facts of the case. The order issued by the South African Port Authority was based on the fact that "SHENGMING" had breached the restrictions of the single voyage permit of the Panamanian Maritime Authority to load the cargo, refused to provide security after it was required, and was not allowed to entry to the port, and was towed to the high sea after Hong Kong Shipping Company issued a declaration of abandonment. Therefore, the actions of the South African Government were not the cause of the damage to the cargo, but it was the consequence of the Shipping Company's breach of the seaworthiness obligation, and the court's examination and determination fully restored the facts. As the subject matter of the case was consigned by a wholly-owned company invested by China in Africa, the full examination and determination of exemption from liability in the case also exempted the case from unfavourable foreign implications and provided strong judicial services and safeguards for the maintenance of "the Belt and Road Initiative" development strategy.

## 十、泛某海运有限公司诉孔某利等放货保函纠纷案

### 【基本案情】

2018年8月18日，自韩国仁川港运往中国青岛港的三票化妆品货物（以下简称案涉货物）装载于“REVERENCE”轮，泛某公司作为承运人出具了两份电放提单以及一份海运单，单证显示收货人均为永某公司，托运人为R公司和G公司。后货物到达青岛港，永某公司向该轮的船舶代理人中某公司出具三份《外运进口货物电放保函》，要求承运人凭保函释放案涉三票货物，并保证承担由此给承运人造成的任何损失和一切费用，包括货物损失、利息、诉讼费、律师费等。

泛某公司凭保函向永某公司交付了货物。

2018年9月14日，永某公司、孔某利向泛某公司、中某公司出具《连带责任担保函》，孔某利保证与永某公司共同对泛某公司因提货事宜及贸易纠纷所产生的一切损失承担连带赔偿责任。

后二托运人作为共同原告在韩国首尔中央地方法院向泛某公司提起诉讼，要求泛某公司赔偿因错误放货导致的损失。2020年11月27日，韩国首尔中央地方法院作出一审判决，判决泛某公司向二托运人赔偿两份电放提单货物损失及利息等款项，泛某公司提起上诉，首尔高等法院二审判决



驳回泛某公司所有上诉诉求，上诉费用由泛某公司承担。后泛某公司共向二托运人支付赔偿金共 292155779 韩元，折合人民币 1579647 元。

### **【裁判理由】**

青岛海事法院认为，永某公司向承运人及其代理人出具《外运进口货物电放保函》，孔某利与永某公司向泛某公司出具了《连带责任担保函》，上述保函系二被告自愿承担凭保函放货责任的保证，且经泛某公司同意，因此具有连带责任保证合同的性质。泛某公司与永某公司、孔某利相互串通，明知凭保函交付货物将造成托运人的损害而故意为之，故三方之间的保证合同应认定为无效。泛某公司与二被告对于保证合同无效均存在主观过错，赔偿数额应根据损失的性质和各方的过错认定。

青岛海事法院一审判决二被告向泛某公司连带赔偿人民币 1978524 元及利息，驳回其他诉讼请求。山东省高级人民法院二审维持原判。

### **【典型意义】**

本案系海上货物运输过程发生的放货保函纠纷。托运人因承运人无单放货在韩国法院提起诉讼，承运人败诉承担赔偿责任后在中国法院向放货保函出具人追偿。中国法院对于韩国法院的生效判决予以确认并作为确定损失的重要依据，

体现了两国间的司法互惠原则和司法合作的发展趋势。

我国法律明确规定恶意串通损害他人的民事法律行为无效,其原理在于,双方相互勾结损害他人合法权益的行为,具有明显的不法性,应当对其给予否定性评价,从而保护受到侵害的第三人的合法权益,维持正常的市场经济秩序,营造良好营商环境。如果不对此宣告无效,也与社会主义核心价值观不符。特别是本案具有涉外因素,从平等保护中外当事人合法权益的角度出发,在司法实践中也应更为谨慎。本案是通过当事人实施的行为本身来认定该行为是恶意串通所为,其判断标准就是社会一般观念,即在案涉运输未签发正本提单的情况下,承运人应按照托运人的指示交付货物,而本案承运人在取得保函以为规避掉放货风险的情况下,无视托运人通知,直接放货,造成托运人损失,显然违背了诚实信用原则。该案的正确处理既为恶意串通类案件的举证提供了范本,也为规范在海上运输合同中承运人行为提供了法律参考,同时为平等保护中外当事人合法权益提交了公正答卷。

## **X. Pan Maritime Co. Ltd. v. Mr. Kong et al. (Case about Dispute over Letter of Guarantee for Cargo Release)**

### **【Basic Facts】**

On August 18 2018, three shipments of cosmetic goods (hereinafter referred to as the goods involved in the case) from Incheon Port in South Korea to Qingdao Port in China were loaded in the vessel "REVERENCE". Pan Company, as the carrier, issued two bills of lading for telex release and one waybill, which showed that the consignee was Yong Company, and the shippers were R Company and G Company. When the goods arrived at Qingdao Port, Yong Company issued three copies of the *Letter of Guarantee for Telex Release of Imported Goods* to the vessel's shipping agent, Zhong Company, requested the carrier to release the three shipments of goods involved in the case on the basis of the Letter of Guarantee, and guaranteed that it would bear any losses and all costs caused to the carrier, including loss of the goods, interest, litigation costs and attorney's fees, and so on.

On the basis of the Letter of Guarantee, Pan Company delivered the goods to Yong Company.

On September 14 2018, Yong Company and Mr. Kong issued a *Letter of Guarantee for Joint and Several Liability* to Pan Company and Zhong Company, in which Mr. Kong guaranteed that he and Yong Company would be jointly and severally liable for all the losses incurred by Pan Company in connection with the picking up of the goods and the trade disputes.

Later, the two shippers as co-plaintiffs filed a lawsuit in the Seoul Central District Court of South Korea against Pan Company, requesting Pan Company to compensate for the loss caused by the wrongful delivery

of the goods. November 27 2020, the Seoul Central District Court issued the first instance judgment in favor of Pan Company against the two shippers for the loss of the goods on the two telex release bills of lading, together with interest and other sums. Pan Company filed an appeal, and the Seoul High Court in the second instance dismissed all claims of Pan Company and ruled that the costs of the appeal should be borne by Pan Company. The Pan Company then paid the two shippers a total of KRW 292,155,779, equivalent to RMB 157,964,747.

### **【Reasons for Judgment】**

Qingdao Maritime Court held that Yong Company issued a *Letter of Guarantee for Telex Release of Imported Goods* to the carrier and its agent, and Mr. Kong and Yong Company issued *Letter of Guarantee for Joint and Several Liability* to Pan Company, the above Letters of Guarantee were the guarantee of two defendants to voluntarily undertake responsibility to release the goods, and Pan Company agreed to, so it has the nature of the joint and several liability guarantee contract. Pan Company, Yong Company and Mr. Kong colluded with each other, knowing that the delivery of goods by guarantee would cause damage to the shippers and intentionally doing so, thus the guarantee contract between the three parties shall be deemed null and void. Pan Company and the two defendants were both subjectively at fault for the invalidity of the guarantee contract, and the amount of compensation should be determined according to the nature of the loss and the fault of each party.

Qingdao Maritime Court ruled at first instance that the two defendants should pay RMB 1,978,524 with interest to the Pan Company jointly and dismissed other claims. Higher People's Court of Shandong Province upheld the original judgement at the second instance.

### **【Significance】**

This case is a dispute over the letter of guarantee for cargo release during the carriage of goods by sea. The shipper filed a lawsuit in South Korean court because the carrier released the goods without a bill of lading, and the carrier recovered the loss from the issuer of the letter of guarantee for cargo release in the Chinese court after having lost the lawsuit and assumed the liability for compensation. The Chinese court confirmed the effective judgment of the Korean court and took it as an important basis for determining the loss, which reflects the principle of judicial reciprocity and the development trend of judicial cooperation between the two countries.

Chinese law clearly stipulates that a juridical act by which an actor maliciously colludes with the opposite party to damage any other person's lawful rights and interests shall be void. The rationale lies in the fact that the collusion between the two parties to harm the legitimate rights and interests of others has obvious unlawfulness, and shall be given a negative evaluation, so as to protect the legitimate rights and interests of the infringed third party, to maintain the normal market economic order, and to create a good business environment. It is also inconsistent with the core socialist values if it is not declared invalid. In particular, the case has a foreign element, from the perspective of equal protection of the legitimate rights and interests of Chinese and foreign parties, judicial practice should also be more cautious. This case determines that the act is a malicious collusion through the parties' act itself, the standard is the general concept of society, that is, in the case of the original bill of lading not being issued during the carriage in question, the carrier should deliver the goods in accordance with the shipper's instructions. However, in this case, the carrier thought it could avoid the risk of releasing goods with the letter of

guarantee, ignored the shippers' instruction, directly released the goods, resulting in the loss of the shippers, obviously against the principle of good faith. The correct handling of the case not only provided a model for the proof of malicious collusion, but also provided a legal reference for the regulation of the carrier's behavior in the contract of carriage of goods by sea, and at the same time submitted a fair answer for the equal protection of the legitimate rights and interests of the Chinese and foreign parties.