青岛海事法院

海事审判情况通报

Qingdao Maritime Court

Report on Maritime Trials

2020

青岛海事法院

Qingdao Maritime Court

2021 年 5 月

May 2021

前　言

2020年，我院始终坚持以习近平新时代中国特色社会主义思想为指导，深入学习贯彻党的十九大和十九届二中、三中、四中、五中全会精神，紧紧围绕海洋强省、山东自贸区，以及青岛上合示范区、国家沿海重要中心城市和国际航运贸易金融创新中心等一系列战略规划，牢牢把握“走在前列、全面开创”总要求和司法为民、公正司法工作主线，忠实履行宪法法律赋予的职责，充分发挥海事司法职能作用，各项工作实现新的发展和进步。为更好地接受社会监督，不断改进海事司法工作，进一步提升海事司法公信力和影响力，我们编写了《青岛海事法院海事审判情况通报（2020年）》，简要介绍我院2020年海事审判工作情况，同时发布十起典型案例。

编　者

2021年5月

Preface

In 2020, as the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, the Qingdao Maritime Court thoroughly study and implement the guiding principles of the Party's 19th National Congress of the Communist Party of China and the second, third, fourth and fifth plenary sessions of its 19th Central Committee in full. The Court firmly focus on a series of strategic plans including the Strong Marine Province, the Shandong Pilot Free Trade Zone, Qingdao Shanghai Cooperation Organization Local Economy and Trade Demonstration Cooperation Zone, National Coastal Important Central City and the International Maritime Trade and Finance Innovation Center. The Court firmly grasp general requirement of "leading edge, comprehensive pioneering" and the main work line of judicial justice for fairness and the people, faithfully perform the duties assigned by the Constitution and laws, give full play to the role of the maritime judicial function and accordingly made new developments in all judicial works.

For better social supervision, continuous improvement in maritime judicial work, and further advance of the credibility and influence of maritime justice, we have complied the Qingdao Maritime Court Report on Maritime Trials (2020), which briefly introduces the maritime trial work of Qingdao Maritime Court in 2020 and ten typical cases.

Editor

May 2021

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第一部分　海事审判工作情况

2020 年，我院始终坚持以习近平新时代中国特色社会主义思想为指导，认真学习贯彻习近平法治思想，紧紧围绕海洋强省、山东自贸试验区建设，聚焦青岛上合示范区、国家沿海重要中心城市和国际航运贸易金融创新中心等重大战略规划，牢牢把握“走在前列、全面开创”总要求和司法为民、公正司法工作主线，忠实履行宪法法律赋予的职责，充分发挥海事司法职能作用。

一、案件总体情况

全年共受理各类案件 4013 件，结案 4054 件，案件涉及 30 多个国家和地区，成功处理了多起外籍当事人主动申请在我院管辖港口扣押船舶，使我院获得管辖权的案件，体现出外籍当事人对我国海事司法的认可和信任，彰显了我国海事司法的国际公信力。

一审海事海商与海事行政案件收案 2213 件，其中：海事侵权案件收案 258 案件、海商合同案件收案 1756 件、海

事行政案件收案 19 件。另有涉外海事海商案件收案 213 件、涉港澳台案件收案 42 件、海事特别程序案件收案 740 件、执行案件收案 1016 件。

一审海事海商与海事行政案件结案 2321 件，其中：海事侵权案件结案 270 件、海商合同案件结案 1829 件、海事行政案件结案 18 件。另有涉外海事海商案件结案 224 件、涉港澳台案件结案 48 件、海事特别程序案件结案 743 件、执行案件结案 1035 件。通过淘宝网平台网上拍卖船舶 37 艘，其中网拍货轮 12 艘，渔船 17 艘，拖船、驳船 8 艘。

图 1　2020 年一审海事海商案件收案案由统计

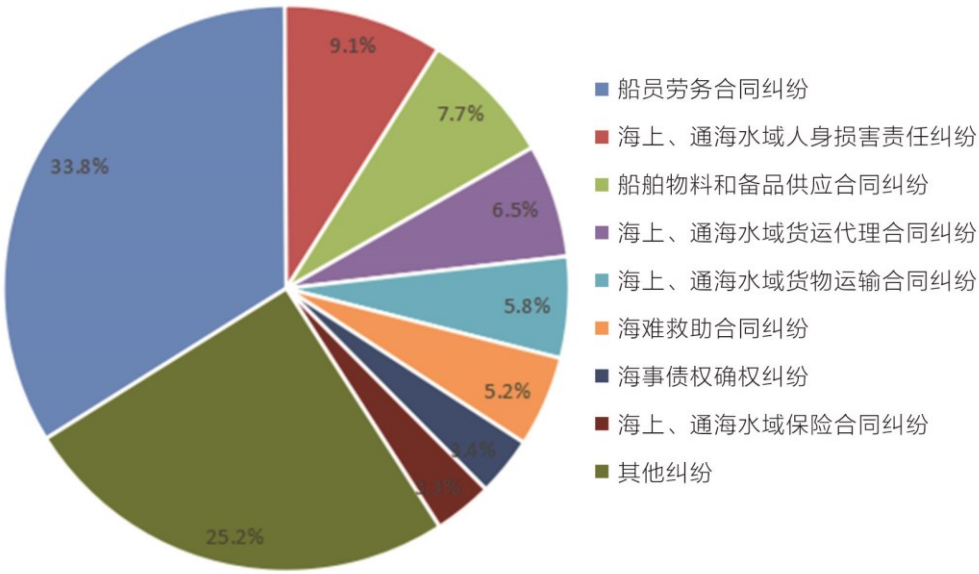

表 1　2020 年一审海事海商案件收案案由汇总

收案案由	汇总	占比
船员劳务合同纠纷	748	33.8%
海上、通海水域人身损害责任纠纷	201	9.1%
船舶物料和备品供应合同纠纷	171	7.7%
海上、通海水域货运代理合同纠纷	143	6.5%
海上、通海水域货物运输合同纠纷	128	5.8%
海难救助合同纠纷	115	5.2%
海事债权确权纠纷	75	3.4%
海上、通海水域保险合同纠纷	74	3.3%
其他纠纷	558	25.2%

图 2　2020 年一审海事海商案件结案方式统计

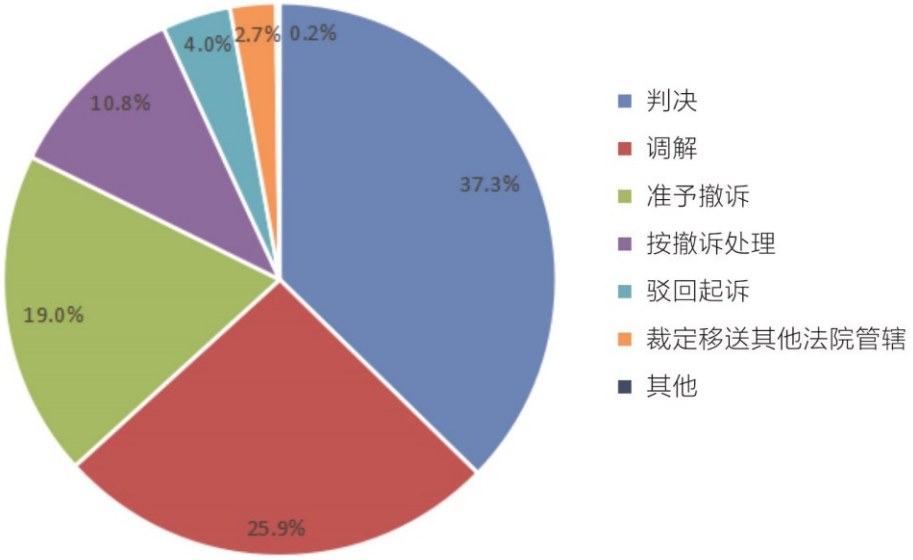

表 2　2020 年一审海事海商案件结案方式汇总

结案方式	汇总	占比
判决	866	37.3%
调解	602	25.9%
准予撤诉	442	19.0%
按撤诉处理	251	10.8%
驳回起诉	93	4.0%
裁定移送其他法院管辖	62	2.7%
其他	5	0.2%

二、主要工作情况

（一）坚持服务大局，持续深入优化营商环境

一是完善海事司法服务保障措施，着力优化法治化海洋营商环境。深入学习领会习近平总书记“法治是最好的营商环境”的重要论述，将持续深入优化海洋营商环境放在突出位置，在充分调研的基础上，结合海事司法实际，制定并公开发布12条具体措施，通过公正司法、依法履职，努力做到精准发力、精准服务。坚决贯彻落实党中央关于统筹推进疫情防控和经济社会发展的重大决策部署，面对新冠肺炎疫情给海事司法带来的问题和挑战，按照“坚定信心、同舟共济、科学防治、精准施策”总要求，坚持疫情防控与审判执行业务两手抓、两不误，组织召开服务疫情防控和复工复产调研座谈会，邀请港航、造船、外贸、涉海金融保险等10余家相关单位座谈，全面了解港航企业对海事司法的新期待新要求，主动听取意见建议，妥善做好海事司法应对，努力为坚决打赢疫情防控阻击战和推进复工复产、恢复正常经营秩序提供有力的海事司法服务和保障。召开海事司法服务保障青岛高质量发展座谈会、到青岛港实地调研、邀请全国人

大代表参加监督联络工作会议等途径，广泛征求全国及省市人大代表、专家教授以及港航、造船、外贸、涉海金融保险等涉海相关单位的意见建议，准确把握海事司法服务保障青岛建设国家沿海重要中心城市、全球海洋中心城市和国际航运贸易金融创新中心的切入点和着力点，研究制定为青岛汇聚全球资源要素提供优质高效海事司法服务的具体措施，努力为更好服务青岛高质量发展提供有力支持，得到青岛市委主要领导同志的批示肯定。

二是突出抓好涉外案件审理，着力优化国际化海洋营商环境。立足海事审判涉外性强的特点，主动对接青岛上合示范区和山东自贸区建设，通过积极行使涉外海事海商案件管辖权，发挥海事司法在统筹国内法治和涉外法治方面的职能优势，打造国际海事司法争议解决优选地，切实增强各类市场主体投资山东、投资青岛的信心，努力为“一带一路”建设和辖区更高水平对外开放提供有力的海事司法保障。成功审理的“狮子”轮案，7家境外当事人先后向我院申请扣押该轮，关联案件涉及德国、瑞典、巴拿马、利比里亚、乌克兰、菲律宾等国家和地区，总标的额超过2000万美元。在

船东弃船的情况下，我院积极协调，将21名外籍船员遣返回国，并依法成功拍卖“狮子”轮，拍卖价款人民币6783.6万元，溢价率高达19.7%。乌克兰和菲律宾两国使馆对我院工作给予高度评价，并对妥善处理船员遣返表示衷心感谢。该案入选省法院两会工作报告。此类案件体现出外方当事人对我国海事司法的认可和信任，彰显了我国海事司法的国际公信力，是我院服务保障扩大对外开放、持续深入优化国际化营商环境的具体体现。

三是加快建设智慧法院，着力优化便利化营商环境。在全省法院率先部署启用全流程网上办案系统，并在使用过程中不断推进系统的升级完善，逐步实现了立案、交费、调解、送达、鉴定、庭审、执行等诉讼事务一网通办。充分运用智慧法院建设成果，大力推进互联网审判，探索构建“海事云司法”新模式。全年通过互联网审理各类案件249件次，其中包括网上开庭、网上调解、网上办理司法救助案件、网上解除船舶扣押等，最大限度保障了当事人的诉讼权利和合法权益。如首次通过互联网召开债权人会议，会议跨越四省、联通八方、一刻钟完成，近三千万元船舶拍卖价款分配方案

当日裁定，当日分配到位，该案例入选全省法院服务保障疫情防控和促进经济社会发展十大典型案例,并被最高法院作为典型经验在人民法院报、中国法院网、最高法院微信公众号推广。创新网络拍卖方式，对网拍船舶实行在线看船、在线答疑、全程网络直播，其中“正和58”轮以成交价2888万元、溢价率高达78%成功拍出，使申请执行人超预期受偿，同时减轻了被执行人的债务负担，人民网、人民法院报等20余家媒体进行了宣传报道。

（二）坚持司法为民，全面促进海事诉讼服务转型升级

一是全力提升办案质效，努力为人民群众提供优质高效的海事司法服务。加大对审判执行工作的调度力度，强化审判执行质效通报，及时研究解决工作中遇到的实际困难和问题。每季度召开全体员额法官会议，对发改案件进行逐案分析评查，并就认识不一致的问题与二审法院加强沟通交流；对海上货物运输合同、海洋开发利用、海上保险合同、建设工程合同等四类上诉案件涉及的问题分别进行梳理，加强类案裁判指引。紧盯“3+1”核心指标，加大执行工作力度，

加强立审执协调配合，健全完善执行惩戒机制和海事执行联动机制，更加注重公正、善意、文明执行，有效维护了当事人的胜诉权益。

二是健全多元解纷机制，最大限度满足人民群众的海事司法需求。按照“推进案件繁简分流、轻重分离、快慢分道”的要求，研究制定对船员劳务合同和人身损害赔偿案件进行简案快审的意见，健全完善速裁机制和程序，充分发挥速裁机制优势。针对海事海商案件不同类型寻找对应的行业组织，实现诉前调解重点行业、重点领域全覆盖。协调设立7家专业调解机构，公开招录特邀调解员、和解员118名，开展诉前与诉中的委派、委托调解工作。全年委派、委托调解成功127件。针对近两年涉港航纠纷明显增多的新情况，与山东港口集团加强沟通交流，共同搭建诉调对接平台，做好辖区内涉港口、航运、货代等纠纷的诉前调解及执前调解工作，合力打造和谐无讼港口。针对荣成市涉船员权益保障纠纷较为集中的实际，多次与荣成市政府、市委政法委等有关单位座谈交流，加强协作配合，积极推进诉源治理，涉船员权益保障纠纷诉前化解率达80%以上。

三是创新审判方式方法，最大限度维护涉海民生权益。加大司法救助力度，创新救助方式，用足政策，加大司法救助的范围与力度，以司法救助形式结案24件，发放救助款项近92万元，申请省院联动救助88万元。加大对追索劳务报酬等涉民生案件当事人的保护力度，开辟“绿色通道”，实行快立、快审、快执行，妥善审结船员劳务合同及人身损害赔偿案件1003件，最大限度维护了弱势群体的合法权益。加强对烟台、威海、日照、石岛、东营等五个派出法庭审判工作的监督指导，各派出法庭深入港航企业、渔村码头就地办案，及时有效化解了大量矛盾纠纷，促进了社会和谐稳定。

（三）坚持司法公开，努力提升海事司法透明度和影响力

一是深化司法公开。连续第二年用中英文双语向社会发布2019年度海事审判白皮书和十个典型案例，学习强国、人民法院报等20余家媒体进行了宣传报道。对所有依法应当公开开庭的案件均进行互联网庭审直播，全年直播案件1400余件次。按照应上尽上的原则加强裁判文书上网工作，

在中国裁判文书网公开文书3340份；每季度对不公开的裁判文书进行反向公开，说明不公开的理由。突出门户网站作为司法公开第一平台的作用，加强对中英文网站的管理维护，及时更新各个板块栏目信息。微信公众号每天发布开庭与庭审直播公告及法院动态信息。定期开展法院公众开放日活动，邀请人大代表、政协委员、媒体记者、高校师生等社会各界代表参加，司法公开的广度、深度和力度明显加大。

二是加强新闻宣传。突出海事司法特色，努力讲好海事司法故事，全年编发信息简报160余篇，在国家级及省市媒体发表稿件130余篇次，其中人民日报新媒体发稿2篇、学习强国发稿12篇次、人民法院报发稿5篇，发稿层次和数量实现新突破。首次采用“云发布”的形式召开新闻发布会，邀请部分全国、省两级人大代表、中央及省市三级媒体参加，通报“海事云司法”推进情况和十大典型案例，取得较好效果。首次召开律师、法律工作者座谈会，邀请部分全国及省市人大代表和有代表性的律师、法律工作者参加，专门宣传推介全流程网上办案系统，并征求对法院工作的意见建议。通过院领导带队到辖区律师协会走访调研、加强与外地律师

事务所驻青岛分所的协作等方式和途径，广泛发放《山东法院诉讼服务指南》专题宣传片，全方位推介全流程网上办案系统。加强网络宣传，在内外网网站、微信公众号等自媒体开辟“今日我当班”“干警风采录”“典型案例”等专栏，全方位、多角度、多层次宣传服务保障疫情防控和复工复产、推进全流程网上办案等各方面工作情况，树立了良好的海事司法形象，扩大了海事司法的影响力。

三是加强对外交流。针对“一带一路”建设的司法需求，突出青岛连接南北、贯通东西的“双节点”独特地位，依托海事法院系统整合航运审判资源的优势，主动与青岛银保监会、司法、仲裁、港口、民商法研究会、律师协会等组织机构加强沟通交流和协作配合，探索构建符合青岛城市定位的海陆空铁联动优势特点的管辖机制和国际多式联运法律适用机制。先后召开服务疫情防控、复工复产和青岛高质量发展专题座谈会，邀请专家教授及港航、造船、外贸、涉海金融保险等 10 余家相关单位来我院，就海事司法面临的形势任务和应对措施进行研讨，为更好服务辖区海洋经济高质量发展提供了有力的智力支持。

（四）坚持政治统领，努力建设过硬海事司法队伍

一是加强思想政治建设。扎实开展“两个坚持”专题教育，组织干警认真学习贯彻习近平法治思想，深入学习贯彻党的十九大和十九届二中、三中、四中、五中全会精神，引导全院干警增强“四个意识”、坚定“四个自信”、做到“两个维护”。在强化学习教育的前提下，深入检视剖析问题，对于查摆出的问题实行台账式管理，明确整改措施和整改时限。建立“海课堂”学习制度，将政治理论学习、审判业务学习、优秀传统文化和红色文化学习制度化，定期邀请国内外知名专家教授来院讲学；召开青年干警座谈会，学习习近平法治思想主题党日等系列党建活动，有效提升了干警队伍的政治觉悟和精神境界。

二是加强素质能力建设。突出实战实用实效导向，围绕全面提升海事司法能力，有针对性地加强教育培训。制定实施书香法院读书行动方案和青年干警外语能力提升计划，营造了浓厚的学习研究氛围。全年选派干警参加各类培训班36 个班次。邀请全国人大代表印萍来院宣讲全国“两会”精神，多次组织参加民法典全员培训，积极组织各类调研论

文和典型案例征集活动。多措并举，促进了干警队伍业务能力和综合素质的提升，1 本专著获全省法学优秀成果评选二等奖，多篇调研论文、裁判文书在国家级和省级评选活动中获奖，有的论文在国家权威刊物上发表。

三是加强激励机制建设。开展“好法官、好干警、好员工”评选活动，通过发挥先进典型的示范带动作用，营造干事创业、风清气正的良好氛围。重新修订 2020 年度员额法官、司法辅助和司法行政人员绩效考核及奖金发放办法，根据案件类型和办案数量、质量、效率、效果、难易程度等合理设定员额法官考核内容的权重系数;对司法辅助和司法行政人员,建立工作日志制度并将日志作为绩效考核和职务职级晋升的重要依据；将职务职级晋升常态化，选拔任用干部更加突出工作实绩。通过一系列措施，树立了正确的选人用人导向，极大调动了干警的工作积极性，激发了干警干事创业、争先创优的内生活力。

四是加强党风廉政建设。自觉接受省纪委监委派驻省法院纪检监察组的监督，注重运用监督执纪“四种形态”促进纪律作风转变。组织签订党风廉政目标责任书，细化责任清

单，层层传导压力。扎实开展纪律作风教育整治，纪检组与各个党支部分别进行集体廉政谈话,有针对性地加强教育引导，增强了干警的纪律规矩意识。健全廉政风险防控机制，加强对干警日常行为的跟踪监督,定期组织观看警示教育专题片，引导全院干警知敬畏、存戒惧、守底线，确保法官清正、法院清廉、司法清明。

Part I Overview of Maritime Trail Work

In 2020, Qingdao Maritime Court adhere to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, earnestly study and implement Xi Jinping Thought on Rule of Law, closely around the construction of a Strong Marine Province, the Shandong Pilot Free Trade Zone, focusing on Qingdao SCO Demonstration Zone, the National Coastal Important Central City and International Shipping Trade Innovation Financial Center and other major strategic planning, firmly grasp the general requirements of "leading edge, comprehensive pioneering" and the main work line of justice for the people and judicial fairness, faithfully perform the duties entrusted by the Constitution and laws, give full play to the role of maritime judicial functions.

I. Overview of the cases

In 2020, the Court in total handled 4013 cases and concluded 4054 cases, involving more than 30 countries and regions, successfully handled a number of cases in which the court gained jurisdiction because foreign parties took the initiative to apply for the arrest of ships in ports under our jurisdiction, reflecting the recognition and trust of foreign parties in China's maritime justice, and demonstrating the international credibility of China's maritime justice.

2213 cases concerning maritime and maritime administrative cases were accepted in first instance, including 258 cases concerning maritime

tort disputes, 1756 cases concerning maritime contracts and 19 cases concerning maritime administrative. In addition, 213 foreign-related cases, 42 cases involving Hong Kong, Macao and Taiwan, 740 cases involving special maritime procedures, and 1016 enforcement cases were accepted.

2321 cases concerning disputes over maritime affairs and maritime administrative cases were settled in first instance, including 270 cases concerning maritime tort disputes, 1829 cases concerning maritime contracts and 18 cases concerning maritime administrative. In addition, 224 foreign-related cases, 48 cases involving Hong Kong, Macao and Taiwan, 743 cases involving special maritime procedures, and 1035 enforcement cases were settled. 37 ships were auctioned online through Taobao platform, including 12 freighters, 17 fishing boats and 8 tugs and barges.

Figure 1 Maritime Cases Accepted of First Instance in 2020

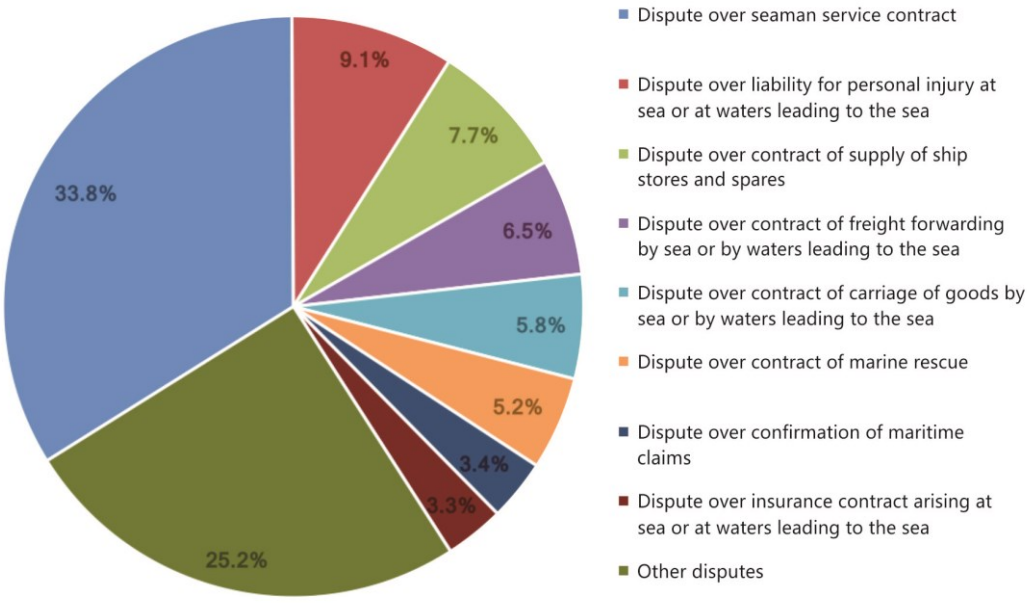

Table 1 Maritime Cases Accepted of First Instance in 2020

Cause of Action	Total	Proportion
Dispute over seaman service contract	748	33.8%
Dispute over liability for personal injury at sea or at waters leading to the sea	201	9.1%
Dispute over contract of supply of ship stores and spares	171	7.7%
Dispute over contract of freight forwarding by sea or by waters leading to the sea	143	6.5%
Dispute over contract of carriage of goods by sea or by waters leading to the sea	128	5.8%
Dispute over contract of salvage at sea	115	5.2%
Dispute over confirmation of maritime claims	75	3.4%
Dispute over insurance contract arising at sea or at waters leading to the sea	74	3.3%
Other disputes	558	25.2%

Figure 2 Maritime Cases of First Instance Concluded in 2020

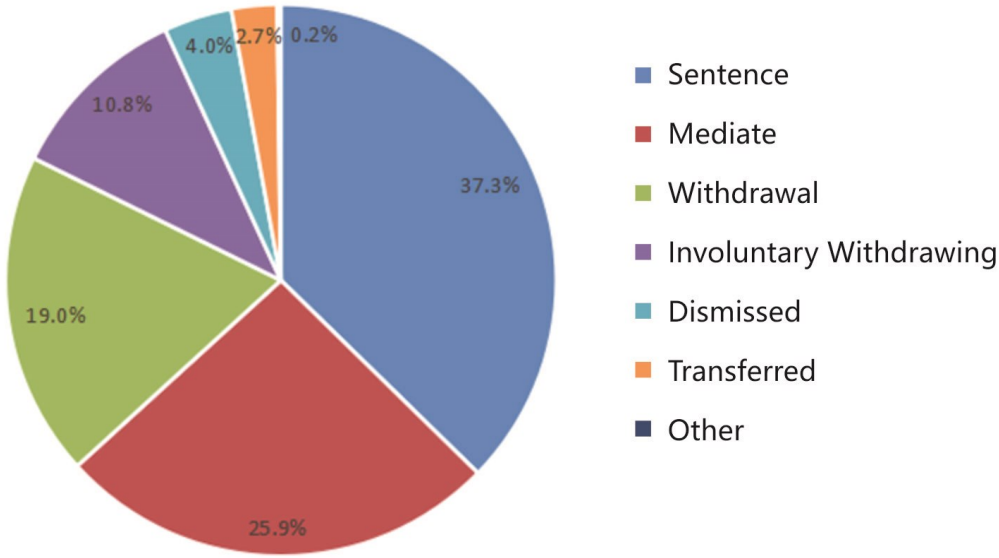

Table 2 Maritime Cases of First Instance Concluded in 2020

Ways of Case Settlement	Total	Proportion
Sentence	866	37.3%
Mediate	602	25.9%
Withdrawal	442	19.0%
Involuntary Withdrawing	251	10.8%
Dismissed	93	4.0%
Transferred	62	2.7%
Other	5	0.2%

II. Overview of main works

1. Persisting in serving the overall situation and continuously optimizing the business environment.

First, the court improves the safeguard measures for Maritime Judicial Services and strive to optimize the legalized marine business environment. Through In-depth study and understanding the important statement of General Secretary Xi's “the rule of law is the best business environment”, the court put continued and in-depth optimization of the marine business environment in a prominent position. On the basis of full investigation and combining with the maritime justice practice, the court formulated and published 12 specific measures. Through fair justice and performing duties in accordance with law, the Court strove to achieve precise and accurate service. The Court resolutely implement the major decisions and deployments of the CPC Central Committee on the integrated promotion of epidemic prevention and control and economic and social development. In the face of the problems and challenges posed to maritime justice by the Covid-19 pandemic, the court followed the general requirements of “strengthen confidence, help each other to cope with the trials and tribulations, adopt science-based approaches and implement precise policies”, adhering to the epidemic prevention and control and the trial execution in both hands. The Court organized a seminar on services for epidemic prevention and control and resuming work and production, inviting more than 10 relevant units involving port and shipping, shipbuilding, foreign trade, and sea-related finance and insurance ,etc., having a discussion on the full understanding of port and shipping enterprise on the new expectations and requirements of maritime

justice, taking the initiative to listen to opinions and suggestions, and to properly handle maritime judicial response. Qingdao Maritime Court strove to provide strong maritime judicial services and security of winning the battle against the epidemic, promoting the resumption of work and production, and restoring normal business order. By organizing seminar on use maritime judicial services to ensure the high-quality development of Qingdao, conducting on-site investigations in Qingdao Port and inviting representatives of the National People's Congress to participate in supervision and liaison work meetings, etc., the Court extensively solicit opinions and suggestions from deputies to the national and provincial people's congresses, experts and professors, as well as relevant units of ports and shipping, shipbuilding, foreign trade, maritime finance and insurance, etc. Focus precisely on using maritime judicial services to guarantee the building of Qingdao as an important national coastal central city, a global marine central city and an international shipping trade and financial innovation center, the Court study and develop specific measures to gather global resource to provide high-quality and efficient maritime judicial services for Qingdao, striving to provide strong support for better serving Qingdao's high-quality development, which was approved by the main leading comrades of Qingdao Municipal Party Committee.

Second, the Court focus on the trial of foreign-related cases and strives to optimize the international marine business environment. Based on the strong foreign-related characteristics of maritime trial, the Court takes the initiative to dock with the construction of Qingdao SCO Demonstration Zone and Shandong Pilot Free Trade Zone, actively

exercise the jurisdiction over foreign-related maritime cases, give full play to the functional advantages of maritime justice in coordinating the domestic and foreign-related rule of law, and create the preferred place for international maritime judicial dispute resolution. Effectively enhancing the confidence of all kinds of market entities to invest Shandong and Qingdao, the Court strive to provide powerful maritime judicial safeguard for the construction of the “Belt and Road” and high-quality opening up in the district. In the successful trial of the “Lion”, seven overseas parties successively applied to our court for arresting the ship, involving Germany, Sweden, Panama, Liberia, Ukraine, the Philippines and other countries and regions, with a total amount of more than $20 million. When the ship owner abandoned the ship, the court actively coordinated to repatriate 21 foreign crew members and successfully auctioned the “Lion” according to the law. The auction price was RMB 67.836 million, and the premium rate was as high as 19.7%. The embassies of Ukraine and the Philippines spoke highly of the work of the court and expressed their heartfelt thanks for the proper handling of crew repatriation. The case was selected into the work report of the Two Conferences of the Province. Such cases not only reflect the recognition and trust of foreign parties in our country's maritime justice, but also demonstrate the international credibility of our country's maritime justice, and a solid manifestation of our Court's service to guarantee the expansion of opening and continue to in-depth optimize the international business environment.

Third, the Court accelerated the construction of Intelligent Court and strive to optimize the convenient business environment. The Court take

the initiative in deploying and launching a full-process online case handling system, and continuously promoted the upgrading and improvement of the system during the process of using, and gradually realized the integration of litigation affairs such as case filing, payment, mediation, service, appraisal, court hearing, and enforcement. Making full use of the achievements of intelligent court construction, vigorously promoting online trial, we explore the construction of a new mode of "online maritime justice". Throughout the year, 249 cases of various types were tried through the Internet, including online court sessions, online mediation, online judicial assistance cases, online release of ship arrests, etc., to maximize the protection of litigant rights and legal rights and interests of the parties. For example, a creditor meeting was held via the Internet for the first time. The meeting spanned four provinces and was completed within 15 minutes. The distribution plan of a nearly 30 million RMB ship auction price was determined and distribution on the same day. This case was selected as one of the top ten typical cases of the courts serving to protect epidemic prevention and control and promote economic and social development in Shandong Province, and was reported by the Supreme Court as a typical experience in People's Court Daily. Promoted by China Court website and WeChat official account of the Supreme Court. The innovative online auction including online ship viewing, online Q&A and online webcast was implemented. Among them, *Zhenghe 58* was successfully sold at a transaction price of RMB 28.88 million and a premium rate of 78%, which exceed the executor's expectation and reduced the debt burden of the executee. More than 20 media such as People's Daily and People's Court Daily carried out

reports.

2. Adhering to justice for the people and comprehensively promoting the transformation and upgrading of Maritime Litigation Service.

First, the Court made every effort to improve the quality and efficiency of case handling, and strove to provide high-quality and efficient maritime judicial services. The Court intensify the dispatch of the trial execution, strengthen the notification of the quality and effectiveness of the trial execution, and timely study and solve the practical difficulties and problems encountered in the work. A meeting of all judges is held every quarter to analyze and evaluate cases of the remand and overrule case by case, and enhance communication with the court of second instance on the issues of inconsistent understanding. The Court sorts out the issues involved in four types of appeal cases, including maritime cargo transportation contracts, marine development and utilization, marine insurance contracts, and construction engineering contracts, and strengthened the guidelines for judgments in such cases. The Court focus on the core indicators of "3+1", strengthen the execution efforts, strengthen the coordination between filing, hearing and execution, improve the joint of execution punishment mechanism and maritime enforcement, pay more attention to fair, good faith and civilized implementation, effectively guarantee the parties' rights in winning the lawsuit.

Second, the Court improved the diversified dispute resolution mechanism to meet the maritime judicial needs to the maximum extent. In accordance with the requirements of "promoting the separation of

complicate and simple cases, the separation of light and heavy cases, and the separation of speed and slowness", we study and formulate opinions on the quick trial of crew service contracts and personal injury compensation cases, improve the mechanism and procedures of accelerated procedures, and give full play to the advantages of accelerated procedures. In view of different types of maritime cases, we found corresponding industry organizations, and achieve full coverage of key industries and key areas in pre-litigation mediation. We coordinate the establishment of seven professional mediation agencies, publicly recruit 118 specially invited mediators and conciliators, and carried out pre-litigation and in litigation mediation. Throughout the year, 127 mediation cases were successfully assigned or entrusted. In response to the significant increase in disputes involving port and shipping in the past two years, the Court and Shandong Port Group enhance communication and jointly establish a platform of litigation and mediation, carry out pre-litigation and pre-execution mediation for disputes involving ports, shipping, and freight forwarding to create a harmonious and non-litigation port. In view of the fact that the disputes concerning the protection of seafarers' rights and interests are relatively concentrated in Rongcheng City, we discussed with the Rongcheng Municipal Government, the Political and Legal Committee of the Municipal Party Committee and other relevant units for many times, strengthen the cooperation, and actively promote the governance of litigation sources. The pre-litigation resolution rate of disputes concerning the protection of seafarers' rights and interests has reached more than 80%.

Third, the Court innovated trial methods to maximize the protection

of people's rights and interests related to the sea. The Court increased the efforts of judicial assistance, innovated the way of assistance, made full use of policies, increased the scope and strength of judicial assistance, closed 24 cases in the form of judicial assistance, issued assistance funds nearly RMB 92 million, and applied RMB 88 million for provincial courts' assistance. We strengthen the protection of the parties involved in people's livelihood cases, such as the recovery of labor remuneration, open up a "green channel", implement quick registration, quick trial and quick execution, and properly concluded 1003 cases of crew service contracts and personal injury compensation, maximize the protection of the legitimate rights and interests of vulnerable groups. Qingdao Maritime Court strengthened the supervision and guidance of the trial work of five dispatched courts in Yantai, Weihai, Rizhao, Shidao, Dongying. Each dispatched Court handled the cases on site in port and shipping enterprises and fishing village docks, effectively solving a large number of contradictions and disputes in a timely manner and promoted social harmony and stability.

3. Adhere to judicial openness and strive to enhance the transparency and influence of maritime justice

First, the Court has been deepening judicial openness. For two consecutive years, the White Paper on Maritime Trials in 2019 and ten typical cases were published both in Chinese and English, and more than 20 media such as Learning from Powerful Countries and People's Court Daily carried out publicity and reports. The Court conducted online trial of all cases that should be held in public in accordance with the law. More than 1,400 cases were webcast throughout the year. In accordance with

the principle of judgement document online, and disclosed 3340 documents on China judicial documents website; every quarter, the judgment documents that are not made public shall be made public reversely to explain the reasons for not making public. The Court highlight the role of portal website as the first platform of judicial publicity, strengthen the management and maintenance of Chinese and English websites, and timely update the column information of each section. The official account of WeChat publishes daily announcements of court sessions and online court hearings and dynamic information. The public open day of the Court is regularly held, and representatives from all walks of life such as deputies to the National People's Congress, members of the Chinese People's Political Consultative Conference, media reporters, teachers and students of colleges and universities are invited to attend, and the breadth, depth and strength of judicial openness have increased significantly.

Second, the Court strengthen the news promotion, including highlighting the characteristics of maritime justice and trying to tell a good maritime judicial story. More than 160 information bulletins were compiled and distributed throughout the year, and more than 130 manuscripts were published in national and provincial media. Among them, 2 articles were published by new media of People's Daily, 12 articles were published by xuexi.cn, and 5 articles were published by People's Court Daily. The level and quantity of publishing reached a new breakthrough. The court held a press conference online for the first time, inviting some deputies to the national and provincial people's congresses and the media at the central and provincial levels to attend, and reported

the promotion of “online maritime justice” and ten typical cases, which achieved good results. The Court also held a forum for lawyers and legal workers for the first time, and invited some deputies to the national, provincial and municipal people’s congresses and representative lawyers and legal workers to participate in the forum. It was dedicated to promoting the whole process of online case handling system and soliciting opinions and suggestions on the work of the court. Through the ways and means of visiting and investigating the Law Association under the jurisdiction led by the leaders of the court, strengthening the cooperation with the Qingdao branch of other part of the country, etc., the special publicity film of “Shandong court litigation service guide” was widely distributed, and the whole process online case handling system was comprehensively promoted. The Court strengthen network propaganda, in the internal and external web sites, WeChat official account and other self-media create column such as *Today's Duty Shift*, *All of the judges, court staff and judical personnel Style Collection* and *Typical Cases*, promoting the advocacy of epidemic prevention and control and resuming production from multiple angles and levels, and to promote the whole process of online handling. Not only created a positive maritime image but also expanded the influence of maritime justice.

Third，the Court strengthen external communication. For the judicial needs of the Belt and Road initiative, highlighting the unique position of Qingdao as a *Double Node* connecting not only the north and the south but also the east and the west. Relying on the advantages of maritime court system to integrate shipping trial resources, the Court took the initiative to strengthen communication and cooperation with Qingdao

Banking and Insurance Regulatory Commission, Judiciary, Arbitration, Port, Civil and Commercial Law Research Association, Bar Association and other organizations, exploring the construction of the jurisdiction mechanism and international multimodal transport law application mechanism which is in line with the advantages of land, sea and air rail linkage of Qingdao city positioning. The court successively held symposiums on the prevention and control of epidemic situation, resuming work and production and the high-quality development of Qingdao, inviting experts and professors and more than 10 relevant units such as port and shipping, shipbuilding, foreign trade, maritime related finance and insurance to discuss the situation tasks and countermeasures faced by maritime justice, providing strong intellectual support for better serving the high-quality development of marine economy in the jurisdiction.

4. Adhere to Political Leadership and strive to build a strong maritime judicial team.

First, the Court enhance ideological and political construction. Carrying out the *Two Insistences* thematic education, the Court organize the all of the judges, court staff and judicial personnel to conscientiously study and implement Xi Jinping's thought of rule of law, and thoroughly study and implement the spirit of the nineteen and nineteen second, third, fourth and fifth plenary sessions of the party. The court guided all of the judges, court staff and judicial personnel to enhance *Four Consciousness*, strengthen *Four Self-confidences* and achieve *Two Maintenances*. On the premise of strengthening learning and education, the Court deeply examine and analyze the problems, implement rigorously management of

the problems, and clarify the rectification measures and time limit. The Court establish the Sea Classroom learning system, which institutionalized the study of political theory, trial business, excellent traditional culture and red culture. The Court regularly invited well-known domestic and international experts and professors to give lectures; the symposium of all of the youth judges, court staff and judicial personnel was held to study the series of Party building activities such as Xi Jinping's rule of law ideology, party-day activities and other activities, which effectively enhanced the political awareness and spiritual realm of the police force.

Second, the Court strengthen the construction of quality and ability. The Court highlight the practical and effective guidance of actual combat, focus on comprehensively improving maritime judicial ability, and strengthen education and training in a targeted way. The Court formulate and implement the action plan of reading in the scholarly court and the plan of improving the foreign language ability of all of the youth judges, court staff and judicial personnel, which created a strong learning and research atmosphere. all of the judges, court staff and judicial personnel were selected to attend 36 training classes throughout the year; Yin Ping, a deputy to the National People's Congress, was invited to preach the spirit of the *Two Sessions*. The Court organized training activities for all members of the Civil Code for several times, and actively organized various research papers and typical cases collection activities. By taking various measures, the Court promoted the improvement of the professional ability and comprehensive quality of the all of the judges, court staff and judicial personnel. 1 monograph won the second prize of

the provincial law excellent achievement selection. Several research papers and judicial documents won awards in the national and provincial selection activities, and some papers were published in the national authoritative journals.

Third, the Court strengthen the construction of incentive mechanism. The Court carried out the selection activities of "Outstanding judges, Outstanding policemen and Outstanding employees" to create a good atmosphere of entrepreneurship by giving full play to the exemplary role of advanced models. The Court revised the performance appraisal and bonus payment methods for post judges, judicial assistants and judicial administrative personnel in 2020, and reasonably set the weight coefficient of post judges' appraisal content according to the type of cases and the number, quality, efficiency, effect and difficulty of handling cases; the court established a work log system for judicial assistant and judicial administrative personnel, and took the log as an important basis for performance appraisal and promotion; the Court normalized the promotion of Posts and ranks, and selected and appointed cadres to highlight their work performance. Through a series of measures, the Court established a correct guidance for selecting and employing personnel, greatly mobilized the work enthusiasm of the all of the judges, court staff and judicial personnel, and stimulated the endogenous vitality of them to start a business and strive for excellence.

Forth, the Court strengthen construction of Party Work Style and Honest Government. The Court consciously accept the supervision of the discipline inspection and supervision group dispatched by the provincial Commission for Discipline Inspection and Supervision, and pay attention

to using the “Four Forms” of supervision and discipline enforcement to promote the transformation of discipline style. The court signed a letter of responsibility for the party's work style and clean government, detailed the list of responsibilities, and conducted pressure at all levels. The court carried out a solid education and rectification of discipline and style. The discipline inspection group held collective honest talks with branches of the party and strengthened education and guidance to enhance the sense of discipline and rules of all of the judges, court staff and judicial personnel. The court has improved the anti-corruption risk prevention and control mechanism, strengthened the tracking and supervision of the daily behavior of tall of the judges, court staff and judicial personnel, and regularly organized to watch warning education feature films. The court has improved the anti-corruption risk prevention and control mechanism, strengthened the tracking and supervision of the daily behavior of all of the youth judges, court staff and judicial personnel, and regularly organized members to watch warning education feature films, which guided the police in the whole hospital to be aware of awe, guard against fear, and to keep the bottom line, so as to ensure the integrity of judges, the integrity of the court, and the integrity of the judiciary.

第二部分　典型案例

案例一:“狮子轮”扣押拍卖及确权诉讼系列案

【基本案情】

2020 年 4 月 30 日以来，先后有 7 家境外当事人和 1 家香港公司向青岛海事法院申请扣押利比里亚籍“狮子（SAM LION）”轮，申请人涉及德国、巴拿马、爱沙尼亚、爱尔兰、瑞典、塞浦路斯和中国香港。扣押船舶后，船东巴拿马某公司未在法定时间内提供担保，并最终弃船，德国某贷款银行申请拍卖船舶。青岛海事法院发出公告，要求债权人在规定时间内登记债权。期间，上述 8 家涉外当事人和“狮子轮”21 名外籍船员，向青岛海事法院登记债权并提起诉讼，进行海事债权确认。纠纷涉及船舶抵押借款合同、船舶保险合同、船舶物料备品供应合同等，涉案标的额超过 2000 万美元。其中拖欠德国某贷款银行借款本金 16 393 129.25 美元，利息及罚息 741 326.44 美元，合计 17 134 455.69 美元。

【裁判结果】

青岛海事法院经审查依法裁定拍卖“狮子”轮，于2020年12月16日，通过阿里司法拍卖网，以6 783.6万元人民币网拍成功，溢价1118万元，溢价率20%。

德国某贷款银行与船东巴拿马某公司船舶抵押借款合同纠纷一案，青岛海事法院认为，双方在抵押合同中明确约定适用利比里亚法律，依照《中华人民共和国涉外民事关系法律适用法》第四十一条的规定，当事人可以协议选择合同适用的法律。据此，确认本案船舶抵押借款合同纠纷适用利比里亚法律。在签订借款合同及以“狮子”轮作为抵押物签订抵押合同时,巴拿马某公司是一家合法设立及存续的公司,并根据利比里亚法律具有完全的能力和资格,亦有完全的能力和资格履行贷款合同和抵押合同条款所规定的义务,涉案船舶抵押权已依法设立并经利比里亚海事部门依法登记,对巴拿马某公司有效且具有执行力。遂判决巴拿马某公司偿还原告德国某贷款银行欠款本金及利息、罚息，确认德国某贷款银行对“狮子”轮享有抵押权,并有权从该轮拍卖变卖价款中优先受偿。判决后，原、被告均未上诉。

另 7 起涉及保险合同和船舶备品物料欠款纠纷案件和 21 名船员船员工资确权案件，青岛海事法院均依照法律规定依法对债权进行了确认，21 名船员的船员工资具有优先权，有权从船舶拍卖价款中优先受偿。

【典型意义】

“狮子”轮系列案件的特点是，当事人双方全部是涉外主体，7 家申请人或原告系境外当事人，1 家是中国香港当事人，21 名船员全部是外籍船员，其中乌克兰籍 5 名，菲律宾籍 16 名，船舶是外籍轮船，案件争议本身与中国大陆没有连接点，申请人依据我国海事诉讼特别程序法和相关司法解释的规定，选择在青岛海事法院辖区港口提出扣押船舶申请，根据《中华人民共和国海事诉讼特别程序法》第十九条的规定，青岛海事法院通过扣押船舶，从而获得了诉讼案件管辖权，意味着当事人主动选择青岛海事法院处理其纠纷。处理诉讼案件的准据法有的依照约定适用了外国法，有的在案件审理过程中选择了中国法。

该院还克服疫情防控和船东弃船的影响，对 21 名外籍

船员积极展开人道主义援助，先行垫付部分船员工资，解决了船舶供给和船员的日常生活和医疗所需，经多方沟通协调，妥善安置并顺利遣返了全部外籍船员。从被抛弃到各环节工作有序推进，利比里亚籍船舶“狮子”轮历时7个月，在青岛海事法院经历了一段特殊的“航程”，得到了乌克兰和菲律宾两国使馆的高度评价和衷心感谢。

“狮子”轮系列案件的妥善处理，是该院打造国际海事纠纷解决优选地的有益探索，充分体现出外方当事人对我国海事司法的认可和信任，彰显了我国海事司法的国际公信力，是海事司法服务保障扩大对外开放、持续深入优化国际化营商环境的具体体现。

Part II Typical Cases

Case one: Case concerning the seizure auction and the action of affirming rights of the "SAM LION" and a series of litigation

【Basic Facts】

Since April 30, 2020, seven foreign parties and a Hong Kong company had applied to Qingdao Maritime Court for the seizure of the Liberian ship "SAM LION" under legal process. The applicants hereof involved Germany, Panama, Estonia, Ireland, Sweden, Cyprus and Hong Kong, China. After the ship was seized, the owner of the ship, a Panamanian company, did not provide appropriate security within the limitation period, and eventually abandoned the ship. Therefore, a German lending bank applied for the auction sale of the ship in accordance with law. The Court issued notices to the creditors of the ship, requiring them to register their claims relating to the ship within the period of the public announcement. During the period, the above-mentioned 8 foreign-related parties and 21 foreign crew members of the "SAM LION" applied for the Court to register their claims and brought an action to affirm their maritime claims. The dispute included a ship mortgage loan contract, ship insurance contracts, ship material and spare parts supply contracts, etc., and the sums of money under the case exceeded 20 million US dollars. Among them, the principal amount owed to the German loan bank was 16,393,129.25 US dollars, and the interest

and penalty interest was 741,326.44 dollars, totaling 17,134,455.69 US dollars.

【Judgement】

After review, Qingdao Maritime Court conducted an examination and made an order to approve the auction of the "SAM LION" ship. On December 16, 2020, the ship was successfully auctioned on the Ali Judicial Auction Website for RMB 67,836 million, with a premium of RMB 11.18 million and the premium rate was 20%.

The case concerned a dispute over a Ship Mortgage Loan Contract between a German lending bank and a Panama company (the ship owner). Qingdao Maritime Court held that the two parties clearly agreed in the Mortgage Contract to apply Liberian Law, in accordance with the Article 41 of the *Law of the People's Republic of China on Choice of Law for Foreign-related Civil Relationships*, the contracting parties are entitled to choose the law applicable to the contract. Accordingly, it was confirmed by the Court that the Liberian Law was applicable to the dispute over the *Loan Contract* in this case. When signing the Loan Contract and a Mortgage Contract establishing a mortgage on the "SAM LION", the Panama company was a legally established and existing company, thus enjoying the full capabilities and qualifications according to Liberian laws, and have the capability to fulfill the obligations stipulated in the terms of the Loan Contract and the Mortgage Contract. The mortgage of the ship involved in the case had been established in accordance with the law and has been registered in accordance with the law by the Liberian Maritime Department, therefore the mortgage was effective and enforceable for the

Panamanian company. The Court entered into judge that the Panamanian company shall repay the plaintiff's principal and interest and penalty interest owing to the German lending bank, affirmed that the German lending bank had a mortgage on the “SAM LION” and had priority over other claims from the proceeds of the sale of the ship. After the verdict, neither the plaintiff nor the defendant appealed.

In the other 7 cases concerning disputes over Insurance Contracts, Ship Material and Spare Parts Supply Contract and the affirmation of wages of the 21 crew members, the Court confirmed the creditor’s rights in accordance with laws and regulations, and the 21 crew members’ wages had priority over other claims from the proceeds of the sale of the ship.

【Significance】

The typical significance of the “SAM LION” series of cases are that both parties in dispute are foreign-related entities, including 7 foreign applicants or plaintiffs, and 1 Hong Kong company, 21 foreign crew members (5 Ukrainian and 15 Filipino) and a foreign ship. The dispute itself had no connection with the mainland of China. The applicants chose to apply for the arrest of the ship at the port under the jurisdiction of Qingdao Maritime Court in accordance with the provisions of China’s Maritime Procedure Law and relevant judicial interpretations. According to Article 19 of the *Special Maritime Procedure Law of the People's Republic of China*, the Court had the jurisdiction of the cases by arresting the ship, which means that the parties actively chose the Court to solve their disputes. During the trial, some applicable laws applied foreign laws

with the agreement between the parties, and some had applied Chinese laws.

The Court had also overcome the impact of epidemic prevention and control and the ship-owner’s abandonment of the ship, and actively carried out humanitarian assistance to the 21 foreign crew members, and advanced part of their wage, which solved the ship’s supply and the crew’s daily life and medical needs. Through multi-party’s communication and coordination, all foreign crew members were properly settled and repatriated. From being abandoned to the orderly promotion of all procedures, the Liberian ship “SAM LION” experienced a special "voyage" in Qingdao Maritime Court for seven months, which was highly praised and sincerely thanked by the embassies of the Ukraine and the Philippines.

The proper handling of the “SAM LION” series of cases is a useful exploration for the Court to create an optimal solution for international maritime disputes. It fully reflects the recognition and trust of foreign parties on China's maritime justice, demonstrating the international credibility of China's maritime justice, manifesting the maritime services to guarantee the expanding opening up and the further optimization of the international business environment.

案例二：中国太平洋财产保险股份有限公司青岛分公司与岱荣航运公司等海上货物运输合同货损纠纷案

【基本案情】

2019年1月31日，被告岱荣航运公司所有、被告MMSL私人有限公司光租的“天鹰座”轮船长签署了四套提单，将54178公吨含水量为13.23%的巴西大豆运至中国。3月21日抵达青岛港锚地，5月20日完成卸货。承运人在运输期间采用“三度规则”进行通风，有在适宜通风的时间未予通风的现象。

卸货前经联合检验，发现货舱表层大豆均有明显霉变。原告认为霉变系未及时有效的通风造成，被告认为系装货港时品质状况和青岛港的迟延卸货所导致。

涉案大豆检验出含有多种杂草，海关要求收货人进行除害处理。中国大豆国家标准载明大豆水分含量应小于等于13%。

原告依据保险合同约定赔付收货人后取得代位求偿权，请求依法判令两被告连带赔偿原告经济损失489万元及相应利息。

【裁判结果】

青岛海事法院认为，本案系涉外海上货物运输合同货损纠纷，适用中华人民共和国法律作为准据法。一、原告与两被告之间的法律关系。岱荣公司虽然为涉案船舶登记所有人，船长显然系光租人 MMSL 公司而非岱荣公司的代表，MMSL 公司系承运人，应承担承运人责任，岱荣公司并非承运人。原告作为涉案货物的保险人，取得代位求偿权。二、货损责任的承担。涉案大豆受损的原因应当从案涉大豆品质是否适合海上运输要求、责任期间内的通风措施是否得当、迟延卸货对货损发生的影响三个方面进行分析。本案中，大豆水分稍高，且有杂草，有一定的品质缺陷，但并非不适合海上运输；“天鹰座”轮通风不当，未尽妥善、谨慎的管货义务，与货损有必然因果关系；货物在船舱滞留，迟延卸货 38 天，也与货损有必然因果关系。综合考虑上述因素，根据承运人违反其所应负责任和义务的过错程度，本院确定 MMSL 公司对本案货物损失承担 50%的赔偿责任较为合理。三、货损金额的确定。489 万元系因货损产生的必要的修复费用，且金额较为合理，原告也已对外实际支付，本院

予以支持。MMSL 公司依照 50%的比例承担赔偿责任。故判决：MMSL 私人有限公司赔偿原告损失人民币 244.5 万元及利息。判决后双方均服判未上诉。

【典型意义】

本案系一起复杂的涉及中国、巴拿马、新加坡、英国、巴西等多个国家的涉外海上货物运输合同下大豆货损纠纷案。被告光租人 MMSL 公司为“一带一路”成员国中的新加坡公司，本案审理中公平公正地对待外方当事人，切实为“一带一路”建设提供了司法保障，取得了良好的示范效果，本案的审理具体有以下两方面的指导意义。

一方面为创新庭审方式，提升涉外司法效能。2020 年 11 月，因新加坡公司委托的专家鉴定人 Chris 教授所在的英国疫情严重，青岛海事法院首次采用远程视频方式允许其出庭作证，接受双方当事人的质询，并全程网上直播。整个庭审跨越了半个地球，跨国连线全程顺畅无障碍，为案件事实查明鉴定了基础，取得了良好的庭审效果，有效地提升了涉外案件的审判质效，也体现了中国海事司法的国际化、专业

化、智能化水平。

另一方面，本案确定的裁判规则对同类大豆货损案具有可资借鉴的指导意义。大豆热损案较多，双方抗辩一般集中在货物品质、通风措施、迟延卸货三个方面，本案中对此进行了深入详尽地分析认定。最终根据货方与船方违反各自义务的过错程度，确定了 5：5 的责任比例。新加坡公司服从判决并自动履行了付款义务。

大豆货损往往涉及外国船东、光船承租人、大期租租家、小期租租家、程租租家等一系列租船合同下的法律主体，因此本案做出的判决效力不仅及于本案的中外当事人，还是新加坡公司向其下家租家挪威公司索赔的依据。判决后被告选择不上诉也是与其下家租家共同确认接受法院判决的结果。因此本案的服判息诉意味着中国法院的裁判规则获得了除当事人之外更多外国公司的认可，对于不断增强中国海事审判在国际社会的话语权和影响力，提高中国海事司法的国际公信力，具有积极意义。

Case Two: China Pacific Property Insurance Co., Ltd. Qingdao Branch v. Dairong Shipping Co., Ltd., etc. (Case about disputes over the Cargo Damage)

【Basic Facts】

On January 31, 2019, the captain of the "Aquila" ship signed four sets of B/L to transport 54,178 metric tons of Brazilian soybeans with a moisture content of 13.23% to China. The defendant Dairong Shipping Co., Ltd. (hereinafter Dairong) was the ship owner and the defendant MMSL private Co., Ltd. (hereinafter MMSL) was the bareboat character of the "Aquila" ship. The ship arrived at the anchorage of Qingdao Port on March 21, and finished discharge on May 20. The carrier applied the "three-degree rule" for the ventilation during transportation, and there is the case that ventilation is not provided at the right time.

A joint inspection made before the discharge revealed that the soybeans on the surface of the cargo hold had obvious mildew. The plaintiff claimed that the mildew was caused by the failure of timely and effective ventilation, and the defendant claimed that the mildew was caused by the quality condition at the loading port and the delayed discharge at Qingdao Port.

The soybean involved in the case was found to contain a variety of weeds, therefore the Customs required the consignee to perform disinfection treatment. China's national soybean standards specify that the moisture content of soybeans shall be no more than 13%.

After indemnifying the consignee, the plaintiff was entitled to the right of subrogation under insurance contract. The plaintiff claimed that

the two defendants shall be jointly liable for the economic losses of RMB 4.89 million and the corresponding interest in accordance with the law.

【Judgement】

Qingdao Maritime Court held that this case is a dispute over cargo damage under a foreign-related contract of carriage of goods by sea, and the applicable law is the law of the People's Republic of China. Issue one is the legal relationship between the plaintiff and the two defendants. Although Dairong was the registered owner of the ship, the captain was the representative of MMSL (the bareboat charterer) instead of Dairong. MMSL was the carrier and shall bear the responsibility. As the insurer of the goods involved, the plaintiff was entitled to the right of subrogation. Issue two is the liability for cargo damage. The cause for the damage of the soybean involved in the case shall be analyzed from three perspectives: whether the quality of the soybean involved in the case met the requirements of voyage, whether the ventilation measures during the carrier's liability period were appropriate and the impact of delayed discharge on the cargo damage. In this case, the soybeans were not suitable for voyage due to the certain quality defects of slightly higher moisture content and contained weed. The improper ventilation of the "Aquila" was not in proper and prudent control of the cargo, which was necessarily causally related to the damage. The cargo was placed in the cabin and the discharge was delayed for 38 days, which also had a causal relationship with the cargo damage. Taking all the above factors into consideration and based on the degree of fault of the carrier's breaching of responsibilities and obligations, the Court concluded that it was

reasonable for MMSL to bear 50% of the compensation liability for the cargo loss in this case. Issue three was the determination of the amount of the damage of goods. The amount of RMB 4.89 million was reasonable for the necessary repair cost of the damage of goods, and the plaintiff had actually paid it, therefore, the court supported the plaintiff's claim. MMSL shall bear the liability for compensation at a rate of 50%. The Court entered the judgement that MMSL private Co., Ltd. shall compensate the plaintiff for losses of RMB 2.445 million and the corresponding interest. After the judgement, both parties accepted the verdict without appeal.

【Significance】

This case was a complicated dispute over soybean cargo damage under a foreign-related contract of carriage of goods by sea, involving several countries such as China, Panama, Singapore, the United Kingdom and Brazil. The defendant, MMSL, was a Singapore company along the "Belt and Road" member states. During the trial, the foreign parties were treated fairly and impartially, which effectively provided a judicial guarantee for the construction of the "Belt and Road" and achieved proper demonstration effects. The case has specific guiding significance in the following two aspects.

On the one hand, the case innovated the methods of court trials and enhanced the effectiveness of foreign-related justice. In November 2020, due to the severe epidemic in the UK, the expert appraiser Chris commissioned by the Singapore company could not testify in court offline. Qingdao Maritime Court applied a remote video for the first time to allow

him to testify in court, accepting the inquiries from both parties and webcast the whole process. The trial spanned half of the world, while the cross-border connection was smooth and barrier-free, providing a basis for the identification of case facts and achieving a good trial effect. It effectively improves the quality and effectiveness of the trial of foreign-related cases, and also demonstrated the internationalization, specialization and intelligence of China's maritime justice.

On the other hand, the adjudication rules established in this case have a guiding significance for similar soybean cargo damage cases. There are many cases involve soybean heat damage, and the defenses of both parties generally focus on the three aspects: cargo quality, ventilation measures, and delayed discharge. An in-depth and detailed analysis was made in this case. Eventually, the Court determined a 5 to 5 liability ratio according to the degree of the fault of the cargo party and the ship party. The Singapore company obeyed the judgment and fulfilled its payment obligations.

Soybean cargo damage often involves a series of carter parties including foreign ship owners, bareboat charterers, large time charterers, small time charterers, voyage charterers and other legal entities under Charter Contract Therefore, the validity of the judgment made in this case is not limited to the Chinese and foreign parties involved, but also the basis for the Singapore company's claim against its next renter, the Norwegian company. After the judgment, the fact that defendant did not appeal also showed the joint acceptance to the court's judgment of the defendant and his next tenant. Therefore, the judgment made in this case manifests that the judgment rules of the Chinese courts have been

recognized by more foreign companies in addition to the involved parties, which has a positive meaning to increase the voice and influence of China's maritime trials in the international community, and to improve the international credibility of China's maritime justice.

案例三：青岛某工贸有限公司与法国某海运公司等海上货物运输合同纠纷案

【基本案情】

2019 年 1 月，原告青岛某工贸有限公司通过被告法国某海运公司出运一票货物至西班牙瓦伦西亚。货物装船后，被告某轮船（中国）有限公司青岛分公司作为法国某海运公司的代理人向青岛某工贸有限公司签发一式三份正本提单，提单记载托运人为青岛某工贸有限公司，承运人为法国某海运公司。2019 年 3 月 20 日，法国某海运公司在瓦伦西亚港卸货并交付收货人。青岛某工贸有限公司至提起本案诉讼之日仍持有全套正本提单。

法国某海运公司提供西班牙瓦伦西亚公证处出具的《提单遗失或失窃证明书》，记载收货人申请对涉案提单的效力进行注销并提供了相应的担保，公证机关据此要求法国某海运公司不得将提单中所载商品交付给第三方，直到提单所有权被撤回且该被盗提货单的所有权得到确认为止。2019 年 3 月 13 日，《提单遗失或失窃证明书》送达法国某海运公司。

2019 年 12 月，西班牙执业律师就《提单遗失或失窃证明书》出具法律意见，称西班牙法下《提单遗失或失窃证明书》适用的法律为《航海条例》，具体条文不再赘述。

【裁判结果】

青岛海事法院经审理认为，《提单遗失或失窃证明书》系根据西班牙法律做出的生效文书，根据《提单遗失或失窃证明书》的要求，法国某海运公司作为承运人必须在货物到达目的港后交付给收货人，事实上，承运人也是先收到了《提单遗失或失窃证明书》，之后到达目的港货交收货人，符合《中华人民共和国海商法》第五十一条规定的免责事由，依法不应承担赔偿责任。故判决：驳回原告青岛某工贸有限公司的诉讼请求。

判决做出后，各方当事人均未提起上诉，判决已生效。

【典型意义】

本案是一起典型的承运人无正本提单交付货物的海上货物运输合同纠纷。承运人按照目的港所在地公证机关出具

的生效法律文书的要求将货物交付收货人，从严格字义解释的角度来看，既不属于政府或主管部门的行为，也不属于司法扣押，亦不属于依照卸货港所在地法律规定交付海关或港口的行为，并不符合《海商法》第五十一条第一款第五项或者《最高人民法院关于审理无正本提单交付货物案件适用法律若干问题的规定》第七条的规定；但是《海商法》第五十一条第一款第五项系参照《海牙规则》第 4 条第 2 款(g)项的规定所制定，其规定的“君主、当权者或人民的扣留或管制，或依法扣押”并未拘泥于政府或主管部门，而是涵盖了各类具有相应行政权力、司法权力等的国家机关。从立法原意的角度考虑，《海商法》第五十一条第一款第五项应当理解为只要不是由于承运人的原因所引起的，并且承运人对此亦不能合理地予以防止和避免，因此所造成的货物灭失或损坏，承运人均可以免责。本案的典型意义在于对《海商法》第五十一条第一款第五项规定的“政府或主管部门的行为”，应当根据立法意图予以合理解释。

Case Three: A Qingdao Industry and Trade Co., Ltd. v. A French Shipping Company (Case about disputes over carriage of goods by sea contracts)

【Basic facts】

In January 2019, the plaintiff Qingdao Industry and Trade Co., Ltd. ("Qingdao Industry") shipped a shipment to Valencia, Spain through a French shipping company ("French Shipping"). After the goods were loaded, the defendant, a Qingdao branch of a shipping company (China) Co., Ltd. ("Qingdao Shipping") as the agent of French Shipping, issued triplicate original B/L to Qingdao Industry, which stated that the shipper was Qingdao Industry and the carrier was French shipping. French Shipping unloaded the cargo at the Port of Valencia and delivered it to the consignee on March 20th, 2019. To the date of filing this lawsuit, Qingdao Industry still held the full set of original B/L.

The French Shipping provided a "Certificate of Lost or Stolen of Bill of Lading" ("the Certificate") issued by the Notary Office of Valencia, Spain, which recorded the consignee's application to cancel the validity of the B/L involved and provided guarantees. Accordingly, the notary authority requested French shipping not to deliver the goods contained in the B/L to a third party until the ownership of the B/L was withdrawn and the ownership of the stolen B/L was confirmed. The Certificate was delivered to French shipping on March 13th,2019.

In December 2019, a Spanish lawyer issued legal opinion stating that the applicable law of the Certificate under Spanish law was Navigation Regulations, and the specific provisions would not be repeated.

【Judgement】

Qingdao Maritime Court held that the Certificate was an effective document made in accordance with Spanish law. According to the Certificate, French Shipping as the carrier must deliver the goods to the consignee after goods arriving at the port of destination. And French Shipping actually received the Certificate before arriving at the port of destination to deliver the goods, which complied with the exemptions provided in Article 51 of *the Maritime Law of the People's Republic of China* and should not be liable for compensation. Therefore, the court dismissed Qingdao Industry 's claims.

【Significant】

This case is a typical case about dispute over contract for the carriage of goods by sea in which the carrier delivers the goods without the original B/L. From the perspective of strict literal interpretation, the carrier delivers goods to consignee in accordance with the requirements of the effective legal document issued by notary office at the port of destination. This is neither an act of government or competent authority, nor a judicial seizure, nor does it belong to the act of delivering to the customs or port in accordance with laws and regulations of the location of the unloading port. It does not comply with Article 51, Paragraph 1, Item 5 of *the Maritime Law* ("Item 5") or Article 7 of the Provisions of *the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Delivery of Goods* Without Original Bill of Lading. However, Item 5 is formulated with reference to the provisions of Article 4, Paragraph 2(g) of *the Hague Rules*, which stipulates "the

detention or detention of the monarch, authority or the people" "control or seizure according to law" is not limited to the government or competent authorities, but covers various State agencies with corresponding administrative and judicial powers. From the perspective of the original legislative intent, this clause should be understood that as long as it is not caused by the carrier, and the carrier cannot reasonably prevent and avoid it, then the carrier is exempted from liability for the loss or damage of the goods. The significance of the case lies in the "acts of the government or competent authorities" stipulated in Item 5 shall be reasonably explained in accordance with the legislative intent.

案例四：青岛某物流公司与天津某船务公司航次租船合同纠纷案

【基本案情】

2017 年 9 月 2 日，原被告签订《航次租船合同》，合同约定：原告租用被告所属“华顺 9”轮运输卷钢，保底 4980 吨。起运港为“连云港宏海港务、青岛大湾港”，到达港为“九江杏坛、定安（任选一港）”，受载期为 2017 年 9 月 3 日正负一天，运价 72 元/吨，装港、卸港留港期限皆为 72 小时，两港合并使用。签约后，一方未履行合同约定的需支付对方总运费 30%的违约金。

9 月 4 日，“华顺 9”轮在起运港做好装货准备，原告多次联系被告，告知被告其已备好货物，只是由于天气原因不便装船，愿意承担由于其自身原因导致的滞期费，并可以提前支付滞期费。9 月 5 日被告在未征得原告同意的情况下将该轮自起运港撤船。

原告向法院提出请求，要求判令被告按照合同约定支付违约金。

【裁判结果】

青岛海事法院认为，本案为中华人民共和国港口之间的航次租船合同纠纷，依据原、被告的诉辩主张，本案的争议焦点为：一、原告的诉讼请求是否已超过诉讼时效；二、被告是否应承担违约责任。

关于焦点一：原告的诉讼请求是否已超过诉讼时效。原告主张本案诉讼时效应当适用《海商法》第二百五十七条第二款规定，“有关航次租船合同的请求权，时效期间为二年，自知道或者应当知道权利被侵害之日起计算”；被告认为应当适用《最高人民法院关于如何确定沿海、内河货物运输赔偿请求权时效期间问题的批复》法释[2001]18号之规定，“托运人、收货人就沿海、内河货物运输合同向承运人要求赔偿的请求权，或者承运人就沿海、内河货物运输向托运人、收货人要求赔偿的请求权，时效期间为一年，自承运人交付或者应当交付货物之日起计算。”青岛海事法院认为，从《海商法》的设置体系看，《海商法》第二条第二款规定“本法第四章海上货物运输合同的规定，不适用于中华人民共和国港口之间的海上货物运输”，第二百五十七条规定“就海上

货物运输向承运人要求赔偿的请求权，时效期间为一年，自承运人交付或者应当交付货物之日起计算，……有关航次租船合同的请求权，时效期间为二年，自知道或者应当知道权利被侵害之日起计算”，第二百五十七条第一款规定了远洋班轮运输的请求权时效，第二款规定了远洋航次租船合同的请求权时效，即第二百五十七条的规定，不适用于中华人民共和国港口之间的海上货物运输，因此本案并不适用《海商法》的诉讼时效规定；《最高人民法院关于如何确定沿海、内河货物运输赔偿请求权时效期间问题的批复》适用范围仅为沿海、内河货物运输赔偿请求，并不包括沿海航次租船合同，因此该批复并不适用于本案，本案的诉讼时效应适用《民法总则》第一百八十八条规定，“向人民法院请求保护民事权利的诉讼时效期间为三年，……诉讼时效期间自权利人知道或者应当知道权利受到损害以及义务人之日起计算”。

2017 年 9 月 5 日被告从起运港撤船，原告要求被告继续履行航次租船合同未果，此时为原告知道或应当知道权利被侵害的时间，诉讼时效应从 2017 年 9 月 5 日开始计算，原告提起本案诉讼的时间为 2019 年 8 月 14 日，并未超出诉

讼时效期间。

关于焦点二：被告是否应承担违约责任的问题。被告在未征得原告同意的情况下撤船，违反了合同约定，构成违约，应当承担违约责任。合同约定，“一方未履行合同约定的需支付对方总运费 30%的违约金”，根据上述约定，被告应向原告支付总运费 30%的违约金。

该案上诉后，二审予以维持。

【典型意义】

海事审判实践中，对于中华人民共和国港口之间航次租船合同纠纷中有关请求权的诉讼时效适用法律存在着很大的争议。本案的典型意义在于：在法律规定不够明确的情况下对该问题作出了恰当诠释，对同类问题的审判能够起到示范、参考作用。

本案中原被告双方对于本案的诉讼时效的主张分别代表着实践中的争议方观点。实践中，持有原告观点的人认为，《海商法》第二条第二款的规定，意味着《海商法》其它章节的内容应适用于沿海货物运输，因而《海商法》关于航次

租船合同的时效制度，适用于沿海航次租船合同纠纷。

这是对《海商法》碎片化的理解，是把《海商法》的条款进行孤立和割裂的结果。本案从《海商法》的设置体系设置的角度，诠释了《海商法》不适用本案的原因。在特别法没有规定的情况下，应适用一般法的规定，本案法律事实发生在《民法典》施行前，因此，本案诉讼时效应适用《民法总则》的相关规定。

Case Four: Dispute on voyage charter between a logistics company in Qingdao and a shipping company in Tianjin

【Basic Facts】

On September 2, 2017, the plaintiff and the defendant signed the Voyage Charter Contact, which agreed that the plaintiff chartered the "Hua shun 9" ship owned by the defendant to transport coil steel, with a minimum of 4980 tons. The port of departure is "Lianyungang Honghai Port, Qingdao Dawan Port", and the port of arrival is Jiujiang Xingtan, Ding'an (optional port). The loading period is one day plus or minus September 3, 2017, the freight rate is 72 yuan/ton, the duration of loading port and unloading port is 72 hours, and the two ports are used together. After signing the contract, one shall pay the other party a penalty of 30% of the total freight if it fails to perform the contract.

On September 4, the "Hua shun 9" was ready for loading at the port of departure. The plaintiff contacted the defendant many times and told him that the goods had been prepared, but it was not convenient to load due to the weather. The plaintiff was willing to bear the demurrage due to its own reasons, and can pay the demurrage in advance. On September 5, the defendant withdrew the ship from the port of departure without the consent of the plaintiff.

The plaintiff filed a motion with the court, requesting the defendant to pay liquidated damages in accordance with the contract.

【Judgement】

Qingdao Maritime Court held that this case was a dispute over voyage charter contract between ports of the people's Republic of China. According to the claims of the plaintiff and the defendant, the focus of dispute in this case are as follows:

1. Whether the plaintiff's claim has exceeded the limitation of action; 2. Whether the defendant should be liable for breach of contract.

Issue 1: whether the plaintiff's claim has exceeded the limitation of action. The plaintiff claimed that the limitation of action in this case shall apply to the second paragraph of Article 257 of *the Maritime Code*, "the limitation period of claim for voyage charter party is two years, counting from the date when he knows or should know that the right has been infringed."; the defendant held that the provisions of the Reply of the Supreme People's Court on How to Determine the Limitation Period of Claims for Compensation in Coastal and Inland Waterway Transportation shall be applied. That provision provides that "the limitation period of the shipper's and the consignee's right to claim compensation from the carrier in respect of the contract of carriage of goods by coastal or inland waterways, or the carrier's right to claim compensation from the shipper or the consignee in respect of the carriage of goods by coastal or inland waterways, is one year, counting from the date on which the carrier delivered or should have delivered the goods." Qingdao Maritime Court held that from the perspective of the establishment system of the maritime law, Article 2(2) of *the Maritime Code* mandates that the provisions of Chapter IV of this Law concerning contracts for the carriage of goods by sea shall not apply to the carriage of goods by sea between the ports of the

people’s Republic of China. Article 257 provides that “the limitation period for claims against the carrier in respect of the carriage of goods by sea shall be one year, counting from the date on which the carrier delivers or ought to deliver the goods... The limitation period for claims in respect of voyage charter party shall be two years, counting from the date on which the carrier knows or ought to know that the rights have been infringed.” The first paragraph of Article 257 mandates the limitation of claim for ocean liner transportation, and the second paragraph mandates the limitation of claim for ocean voyage charter party, that is, the provisions of Article 257 shall not apply to the carriage of goods by sea between the ports of the People’s Republic of China. Therefore, the limitation of action in the maritime law is not applicable in this case; The application scope of the Reply of the Supreme People’s Court on How to Determine the Limitation Period of Claims for Compensation in Coastal and Inland Waterway Transportation only covers claims for compensation in coastal and inland waterway transportation, and does not include coastal voyage charter party. Therefore, the Reply does not apply to this case. Article 188 of the general provisions of the Civil Code of PRC is applicable to the time effect of action in this case. “The limitation period of action for applying to the people's court for protection of civil rights is three years... The limitation period of action shall be calculated from the date when the obligee knows or should know that the right has been damaged and the obligor”.

On September 5, 2017, the defendant withdrew the ship from the port of departure, and the plaintiff failed to ask the defendant to continue the performance of Voyage Charter Contract. This is the time when the

plaintiff knew or should have known that his rights were infringed. The time of action effect is calculated from September 5, 2017. The time for the plaintiff to file the lawsuit is August 14, 2019, which does not exceed the limitation period.

Issue 2: whether the defendant should bear the responsibility for breach of contract. The defendant withdrew the ship without the consent of the plaintiff, which violated the contract and constituted a breach of contract. According to the contract, “if one party fails to perform the contract, it shall pay the other party a penalty of 30% of the total freight”. According to the above agreement, the defendant shall pay the plaintiff a penalty of 30% of the total freight.

After appeal, the case was confirmed in the second trial.

【Significance】

In the practice of maritime trial, there is a great controversy on the application of the law of limitation of action in the disputes of Voyage Charter Contract between ports of the People’s Republic of China. The typical significance of this case lies in: in the case that the legal provisions are not clear enough, the issue has been properly interpreted, which can play a role of demonstration and reference for the trial of similar issues.

In this case, the claims of both the plaintiff and the defendant for the limitation of action in this case represent the views of the disputing party in practice. In practice, those who hold the plaintiff's view hold that the second paragraph of Article 2 of CMC means that the contents of other chapters of CMC should be applicable to the coastal transportation of

goods. Therefore, the limitation system of voyage charter party in maritime law is applicable to the disputes of coastal Voyage Charter Contract.

This is the fragmented understanding of the maritime law and the result of the isolation and separation of the provisions of the maritime law. This case interprets the reason why CMC is not applicable to this case from the perspective of the establishment system of CMC. In the absence of special law, the general law shall be applied. The legal facts of this case occurred before the implementation of the Civil Code. Therefore, the relevant provisions on limitation of action of the Civil Code of PRC shall be applied in this case.

案例五：乐邦控股集团有限公司与青岛港董家口矿石码头有限公司等港口货物保管合同纠纷案

【基本案情】

2017年8月30日，第三人天津港储物流有限公司（以下简称港储公司）作为承租方，被告青岛港董家口矿石码头有限公司（以下简称董矿公司）作为出租方签订《场地租赁协议》。董矿公司同意将其位于青岛港董家口港区20万平方米的场地租赁给港储公司进行散装货物储存作业使用。双方签订《场地交接确认书》、《场地交接确认书补充协议》。后案外人宝沃公司与董矿公司签订《场地租赁协议》、《场地交接确认书》、《场地交接确认书补充协议》。2019年5月31日，宝沃公司与原告乐邦控股集团有限公司（以下简称乐邦公司）签订《场地转让协议》。2018年4月24日，乐邦公司作为需方与供方宏锦公司签订《焦炭购销合同》。2018年6月29日，宏锦公司向董矿公司发出《货权转移证明》。2018年10月11日，乐邦公司与宏锦公司签订《焦炭购销合同》。宏锦公司向董矿公司发出《货权转移证明》，载明宏锦公司

将7102库中8000吨焦炭货权转给乐邦公司，以港口实际过磅计量为准。在该合同项下，乐邦公司主张要求董矿公司交付涉案焦炭。对于乐邦公司主张要求董矿公司交付的共计27359.02吨（8104库328.26吨、7102库13649.68吨、7204库4381.08吨、7208库9000吨）焦炭，乐邦公司并未提供合同约定的第三方检验机构报告、定金支付凭证、增值税专用发票。董矿公司、港储公司均拒绝向乐邦公司交付上述焦炭。

【裁判结果】

青岛海事法院一审认为，本案争议焦点为：一、乐邦公司与董矿公司之间是否存在港口货物保管合同关系；二、乐邦公司是否取得其所主张货物的所有权；三、董矿公司是否负有向乐邦公司交付货物的义务，如应交付而不能交付，应对乐邦公司承担何种赔偿责任。由于乐邦公司与董矿公司既未签订书面的保管合同，也未向董矿公司交付焦炭或支付保管费或仓储费，同时，涉案《货权转移证明》、《货物转让通知》、《货物提货权转移通知书》中的内容既不符合仓单的法

定记载事项，也无证据证明其可以作为货物的保管凭证，仅是宏锦公司和泰合公司向乐邦公司履行货物交付义务而发给董矿公司的通知，并不能认定乐邦公司与董矿公司之间形成港口货物保管合同关系。乐邦公司所主张货物均由港储公司负责保管，对此是明知的。乐邦公司又主张对涉案货物享有所有权， 但其提交了其与案外人宏锦公司、泰合公司之间的《购销合同》、银行转账回单、《货物转让通知》、《货权转移证明》、《提货权转移通知书》、《检验报告》等证据不足以证明涉案《货物转让通知》、《货权转移证明》、《提货权转移通知书》是在履行涉案焦炭购销合同过程中形成的，不足以证明其已经取得涉案货物的所有权。因此，无论基于港口货物保管合同关系或基于所有权，董矿公司不负有向乐邦公司交付案涉货物的义务，故判决驳回乐邦公司的全部诉讼请求。一审判决后乐邦公司不服，向山东省高级人民院提起上诉，山东省高级人民法院判决驳回上诉，维持原判。

【典型意义】

本案系港口进口货物保管合同纠纷。该案件涉及了进口

货物的提货人应当基于港口货物保管合同关系或基于所有权的法律关系主张权利、权利人向港口经营人或货物的保管人和仓储人主张放货以及港口经营人放货对象选择的困境等一系列复杂的法律问题。在海事司法实践中，本案为进口货物保管合同法律效力的司法审查和认定，以及对进口货物所有权人的司法审查和认定，提供了海事司法裁判实践案例的典型参照。同时，本案为港口交付进口货物类型纠纷争端提供了案例指引，有助于我国航运及国际贸易的规范有序发展，助推并优化外贸营商环境，助力国家海洋经济发展，为“一带一路”倡议不断持续深入发展，提供最有力的海事司法保障。

Case Five: Lebang Holding Group Co., Ltd. v. Qingdao Port Dongjiakou Ore Co., Ltd. (Case about disputes over Port cargo storage contract)

【Basic Facts】

On August 30, 2017, the third party, Tianjin Port Storage Logistics Co., Ltd ("Port Storage") as the lessee, signed a "Venue Lease Agreement" with the defendant, the Qingdao Port Dongjiakou Ore Terminal Co.as the lessor, Ltd ("Dong Ore"). Dong Ore agreed to lease 200,000 square meters of Dongjiakou Port area of in Qingdao to Port storage for bulk cargo storage. The two parties signed the "Venue Handover Confirmation Letter" and the "Venue Handover Confirmation Supplementary Agreement". Then, the outer party Baowo Company ("Baowo") and Dong Ore signed "Venue Lease Agreement", "Venue Handover Confirmation", and "Venue Handover Confirmation Supplementary Agreement". On May 31, 2019, Baowo and the Lebang Holding Group Co., Ltd. ("Lebang Holding") signed the "Venue Transfer Agreement". On April 24, 2018, Lebang Holding, as the demander, signed the "Coke Purchase and Sale Contract" with the supplier Hongjin Company ("Hongjin"). Later, on June 29, Hongjin issued a "Certificate of Transfer of Title" to Dong Ore. Then Lebang Holding and Hongjin signed the "Coke Purchase and Sale Contract" once again on October 11. Hongjin then issued the "Certificate of Transfer of Title" to Dong Ore, which stated that Hongjin transferred the cargo rights of 8,000 tons of coke in the 7102 warehouses to Lebang Holding, subject to the actual weighing measurement at the port. According to the contract, Lebang

Holding requested Dong Ore to deliver the coke involved in the case. For the total of 27,359.02 tons (328.26 tons in 8,104 warehouses, 13649.68 tons in 7202, 4381.08 tons in 7204, and 9000 tons in 7208) that Lebang Holding claimed to require Dong Ore to deliver, Lebang Holding did not provide a third-party inspection agency report as agreed in the contract, deposit payment vouchers, special VAT invoices. Both Dong Ore and Port Storage refused to deliver the above coke to Lebang Holding.

【Judgement】

Qingdao Maritime Court held that the issues in this case are: 1. whether there was a Port Cargo Storage Contract between Lebang Holding and Dong Ore; 2. whether Lebang Holding had obtained the ownership of the cargo it claims; 3. whether Dong Ore have the obligation to deliver the goods to Lebang Holding. If Dong Ore shall have delivered but cannot delivered, what kind of compensation liability should it bear to Lebang Company.

Since Lebang Holding and Dong Ore have neither signed a written storage contract, nor have they delivered coke or paid storage fees. The contents of “Certificate of Transfer of title”, “Notice of Transfer of Goods”, and “Notice of Transfer of Cargo Delivery Right” neither complied with the statutory items in the warehouse receipt, nor did they prove that it can be used as a custody certificate for the goods. It was only a notice issued by Hongjin and Taihe Company to Lebang Holding to fulfill the obligation of delivery of goods, which cannot determine that Lebang Holding and Dong Ore have formed a port cargo storage contract relationship. Lebang Holding knew that the cargo it claimed were kept by

Port Storage. Lebang Holding also claimed ownership of the goods, however, the “purchase and sales contracts” with the outer party Hongjin and Taihe, bank transfer receipts, “Notice of Transfer of Goods”, “Certificate of Transfer of Title”, “Notice of Transfer of Delivery Right”, “Inspection Report” etc. submitted by Lebang Holding were insufficient to prove that the “Notice of Transfer of Goods”, “Certificate of Transfer of Cargo Rights”, and “Notice of Transfer of Delivery Right” were formed in the process of entering into the Coke Purchase and Sale Contract. These were also not enough to prove that it had obtained the ownership of the goods. Therefore, whether based on the port cargo storage contract or on the basis of ownership, Dong Ore was not obligated to deliver the goods involved in the case to Lebang Holding, the judgment rejected all the claims of Lebang Holding.

After the first trial, Lebang Holding appealed to the Shandong Higher People’s Court. The Shandong Higher People’s Court upheld the original judgment.

【Significance】

The case is a typical case on the dispute over Port Cargo Storage Contract. The case includes a series of complex legal issues such as whether the consignor of imported goods shall claim rights based on the port cargo custody contractual or ownership relationship, the dilemma that the right holder claims to release the cargo to the port operator or the custodian and warehousing person of the cargo and the dilemma of port operator's choice of delivery object. The case provides a typical reference for the judicial review and determination of the legal validity of the

import cargo custody contract, as well as the judicial review and determination of the owner of the imported goods in maritime judicial practice. Furthermore, the case provides guidance for disputes over the type of imported goods delivered by the port, which contributes to the standardized and orderly development of shipping and international trade, boost and optimize the business environment for foreign trade, helps the development of national marine economy, and provides the most powerful maritime judicial guarantee for the continuous and in-depth development of the “Belt and Road” initiative.

案例六：梁某等与寿光市某航运有限公司等船舶建造合同纠纷案

【基本案情】

2008 年 8 月 1 日，原告梁某某、梁某、方某某签订《投资造船协议》，约定三方使用第三人江苏某船业有限公司的船台合股建造 27000 吨散货船。 2010 年 2 月 8 日，江苏某船业公司作为建造方、被告寿光市某航运公司作为订购方、被告付某某作为订购方担保人签订《船舶建造合同》，约定船价 9550 万元和分期付款方式，交船地点为江苏某船业公司码头或附近安全锚地。江苏某船业公司出具书面授权书，授权梁某某在《船舶建造合同》上代表江苏某船业公司签字。2011 年 1 月 21 日，涉案船舶建造完成。2011 年 1 月 22 日，江苏某船业公司与寿光市某航运公司签订《船舶交接书》，将涉案船舶在江苏某船业公司码头交付给寿光市某航运公司，寿光市某航运公司同时取得船舶所有权证书。2011 年 6 月 2 日，为寿光市某航运公司欠付涉案船舶建造款项事宜，第三人江苏某船业公司与寿光市某航运公司、付某某、寿光

市某海运公司、郭某某等四被告签订《船舶建造合同补充协议》，梁某某作为江苏某船业公司授权代表在协议上签字，各方确认船款欠付金额为3550万元并约定了支付和担保方式。2011年7月4日至2020年6月22日，寿光市某航运公司向梁某某陆续支付剩余船款3346万元。

【裁判结果】

青岛海事法院经审理认为，涉案船舶建造合同和补充协议均由梁某某代表梁某某、梁某、方某某签署，造船款由寿光市某航运公司向梁某某直接支付，江苏某船业公司签署的相关书面材料仅为船舶办证的需要，梁某某、梁某、方某某与寿光市某航运公司之间成立船舶建造合同关系。梁某某、梁某、方某某不具备造船资质，其借用江苏某船业公司名义而为，构成以合法形式掩盖非法目的，船舶建造合同和补充协议应认定为无效。鉴于无效合同项下的标的船舶早已建造完成并交付营运，没有必要返还，寿光市某航运公司应给予合理补偿。故判决：一、寿光市某航运公司于本判决生效之日起十日内向梁某、方某某、梁某某偿付204万元及自2020

年 8 月 14 日起至实际付款之日止以全国银行间同业拆借中心公布的贷款市场报价利率为基准计算的利息；二、驳回梁某、方某某、梁某某对寿光市某航运公司的其他诉讼请求；三、驳回梁某、方某某、梁某某对付某某、郭某某、寿光市某海运有限公司的诉讼请求；四、第三人江苏某船业公司在本案中不承担责任。

判决做出后，各方当事人均未提起上诉，判决已生效。

【典型意义】

本案是一起典型的个人挂靠公司造船的船舶建造合同纠纷。本案的典型性在于个人借用公司名义签订造船合同的行为，属于《中华人民共和国合同法》第五十二条第三项规定的“以合法形式掩盖非法目的”的情形，应认定为无效。

《中华人民共和国合同法释义及实用指南》将“以合法形式掩盖非法目的”解释为行为人为达到非法目的以迂回的方法避开了法律或者行政法规的强制性规定，但本案突破了“法律或者行政法规的强制性规定”的范围，扩大到行业规范的范畴。主要考虑在于：一、目前法律或者行政法规没有

对船舶建造的法定资质作出规定,但国内新船的建造应由船舶检验机构审核许可的造船企业承接,建造完成后的船舶由船舶检验机构出具相应的船舶技术证书,船舶订购方凭检验合格证书向海事局申请船舶所有权登记,是航运和造船业共知的事实。二、在挂靠关系中,个人借用公司名义申报造船,资金、技术方面都实力有限,管理也不够规范,安全监管无法落到实处,难以切实有效地保证船舶的建造质量。

船舶是大型的交通运输工具,船舶质量事关生命财产安全,本案将“以合法形式掩盖非法目的”进行合理解释,旨在发挥裁判文书的示范引领作用,警示船舶建造各方防范风险。

Case Six: Liang etc. v. Shouguang Shipping Co., Ltd. etc(Case about dispute over shipbuilding contract)

【Basic Facts】

On August 1, 2008, the plaintiff Liang xx, Liang x and Fang signed an Investment Shipbuilding Agreement, agreeing to utilize the third party, Jiangsu Shipping Co., Ltd.'s ("Jiangsu Shipping") slipway jointly to construct a 27,000-ton bulk carrier. On February 8,2010, Jiangsu Shipping, as the builder, a shipping company in Shouguang ("Shouguang Shipping"), the defendant, as the buyer, and, Fu, also the defendant, as the guarantor of Shouguang Shipping signed the Shipbuilding Contract, which agreed that the ship price was 95.5 million yuan with installment payment and the place of delivery was the dock or a nearby safe anchorage of the Jiangsu Shipping. Jiangsu Shipping issued a written authorization to empower Liang xx to sign the above contract. The ship construction was completed on January 21, 2011. Later, on January 22, 2011, Jiangsu Shipping signed a "Ship Handover Letter" with Shouguang Shipping, agreeing to deliver the ship at the dock of Jiangsu Shipping and the certificate of ownership was delivered at the same time. On June 2, 2011, because Shouguang Shipping owed money for construction, Jiangsu Shipping, the third party Shouguang Shipping, Fu, Shouguang ocean shipping company ("Shouguang Ocean") and Guo, the four defendants, signed a Supplementary Agreement, Liang xx as the authorized representative of Jiangsu Shipping to sign the agreement. The parties confirmed that the amount owed for the ship construction was 35.5 million yuan and agreed on the payment and the guarantee method.

From July 4, 2011 to June 22, 2020, Shouguang Shipping paid to Liang 33.46 million yuan totally.

【Judgement】

Qingdao Maritime Court held that the Shipbuilding Contract and Supplementary Agreement were both signed by Liang xx on behalf of Liang xx, Liang x and Fang. Construction funds were paid directly by Shouguang Shipping to Liang xx and relevant written materials signed by Jiangsu Shipping were only for getting the ship certification. Liang xx, Liang x, Fang and Shouguang Shipping established a ship construction contract relationship. Liang xx, Liang x and Fang didn't have ship construction qualifications. They borrowed the name of Jiangsu Shipping, constituting using legal form to cover up illegal purposes. The Shipbuilding Contract and Supplementary Agreement shall be deemed invalid. In view of the fact that the ship under the invalid contract has already been built and delivered to operation, there was no need to return it, but Shouguang Shipping shall give reasonable compensation.

The court ruled that: 1. Shouguang Shipping shall pay RMB 2.04 million to Liang x, Fang and Liang xx within 10 days from the effective date of this judgment and the interest calculated on the basis of the quoted interest rate on the loan market announced by the National Interbank Borrowing Center from August 14th, 2020 to the date of actual payment; 2. Dismissed other claims of Liang x, Fang, Liang xx against Shouguang Shipping; 3. Dismissed the claims of Liang x, Fang, Liang xx against Fu, Guo and Shouguang Ocean; 4. Jiangsu Shipping, the third party, was not liable in this case.

After the judgment was made, both the plaintiff and the defendants accepted the result and did not appeal, and the judgment has been legally effective.

【Significance】

This case is a typical case about shipbuilding contract of personally subordinating to a company. The typicality of this case lies in the behavior of individuals signing shipbuilding contracts in the name of companies, which belongs to the situation of "covering up illegal purposes in legal form" stipulated in Article 52, paragraph 3 of *the Contract Law of the people's Republic of China*, so the contract should be regarded as invalid.

The Interpretation and Practical Guide to the Contract Law of the People's Republic of China interprets "covering up illegal purposes in legal form" as evading the mandatory provisions of laws or administrative regulations in a roundabout way to achieve illegal purposes. But this case breaks through the scope of "mandatory provisions of laws or administrative regulations" and extends to the scope of industry norms. The main considerations are: 1. The current laws or administrative regulations do not provide for the statutory qualifications for shipbuilding, but the construction of new domestic ships should be undertaken by shipbuilding enterprises approved by the ship inspection agency. After the completion of construction, the ship inspection agency will issue a corresponding ship technology certificate. It is a fact known to the shipping and shipbuilding industries that the ordering party shall apply to the Maritime Safety Administration for registration of ship ownership by

presenting the inspection certificate. Second, in the subordinating relationship, individuals have limited strength to use the name of the company to declare shipbuilding, capital and technique, the management is not standardized and the safety supervision cannot be put into practice. It is difficult to ensure the quality of ship effectively.

Ship is a large means of transportation. The quality of the ship is related to the safety of life and property. This case interpreted "covering up the illegal purpose in a legal form" reasonably, in order to play a leading role in the demonstration of the judgment documents, warning ship construction parties to guard against risks.

案例七：希腊国家银行与利比里亚共和国蓝色劳拉海运有限公司船舶抵押合同纠纷案

【基本案情】

原告希腊国家银行与被告利比里亚共和国蓝色劳拉海运有限公司船舶抵押合同纠纷一案，原、被告于 2007 年 9 月 6 日订立借款合同，约定原告作为贷款方向被告出借 75,463,000 美元的担保贷款，由被告和利比里亚共和国蓝色港口海运有限公司承担连带偿还责任。2015 年 1 月 26 日，原、被告订立船舶抵押合同，约定以原告希腊国家银行为抵押权人在被告所有的利比里亚籍“蓝枪鱼（BLUE MARLIN I）”轮上设立第一优先抵押权，抵押金额为上述借款合同中逾期未付的 40,468,972.76 美元及相应的利息及履行抵押合同的费用、佣金和支出。同日，该抵押权按照利比里亚共和国法律和船旗登记在“蓝枪鱼”轮船舶登记机关利比里亚共和国海事局进行了登记。上述船舶抵押权设立后，被告未按照约定向原告偿还抵押的借款。2019 年 5 月 29 日，原告希腊国家银行向青岛海事法院申请诉前海事请求保全，请求扣

押被告蓝色劳拉海运有限公司所属的 “蓝枪鱼”轮以行使船舶抵押权。青岛海事法院依法作出（2019）鲁 72 财保 302 号民事裁定予以准许，在中华人民共和国威海港将该轮扣押，并依法对该案件行使管辖权。

【裁判结果】

青岛海事法院认为，原告希腊国家银行与被告利比里亚共和国蓝色劳拉海运有限公司及利比里亚共和国蓝色港口海运有限公司签订的《修订版借款合同》及此后多次签署的《补充协议》，均明确约定了原告出借的 75,463,000 美元（原始金额）的款项尚未偿还的本金为 40,468,972.76 美元，且又经原、被告签订的《抵押合同》予以确认，无证据表明被告在上述合同签订后存在还款的事实。据此，对于原告于借款合同项下未得偿付的本金债权 40,468,972.76 美元予以认定。原告在本案中仅主张 1530 万美元的债权，系其对自身实体权利的自主处分，应予以支持。

原、被告于 2015 年 1 月 26 日签订的《抵押合同》所设立的船舶抵押权同日在利比里亚共和国海事局进行了登记，

根据《中华人民共和国海商法》第二百七十一条的规定，船舶抵押权适用船旗国法律。《利比里亚共和国法典第 21 章利比里亚海商法》第 101（1）条、第 107 条的规定，原告对“蓝枪鱼”轮所设立的船舶抵押权于 2015 年 1 月 26 日起生效，对到期付款日 2019 年 6 月 19 日起的未偿债务金额，有权通过拍卖船舶行使该船舶抵押权。原告依照《中华人民共和国海事诉讼特别程序法》的相关规定，于 2019 年 5 月 29 日向本院申请扣押“蓝枪鱼”轮，又于 2019 年 6 月 19 日提起诉讼后申请拍卖该轮，系正当行使船舶抵押权的行为，其主张在船舶拍卖价款中优先受偿的诉讼请求应予以支持。

【典型意义】

本案是海事法院实施海事审判精品战略，为“一带一路”沿线国家海商纠纷解决提供中国方案的典型案例。希腊国家银行与“蓝枪鱼”轮船舶所有人的海事请求保全纠纷，在收到申请后青岛海事法院依法对相关材料进行审查并于当日依法对“蓝枪鱼”轮实施了扣押。该案件双方当事人均为中

华人民共和国境外注册的企业法人，涉案抵押船舶“蓝枪鱼”轮船籍国系利比里亚共和国，青岛海事法院通过对涉案船舶的扣押，依法行使管辖权。该案中，涉案当事人均系“一带一路”沿线国家，涉案标的额1530万美元，诉讼请求折合人民币近亿元。通过该案的公正审理，有效保障了涉外当事人的合法权益，树立了我国海事司法的公正形象，有利于推动更多“一带一路”国家民商事纠纷选择中国方案解决相关争议，对于服务和保障“一带一路”建设具有重要的参考价值。

Case Seven: National Bank of Greece v. the Republic of Liberia Blue Laura Shipping Co., Ltd. (Case about disputes over mortgage of ships contracts)

【Basic Facts】

Dispute over Ship Mortgage Contract between the Plaintiff National Bank of Greece and the Defendant Blue Laura Marine Limited of the Republic of Liberia. The plaintiff and the defendant concluded a loan contract on September 6, 2007, under which the plaintiff lended a secured loan of 75,463,000 dollars to the defendant, and the defendant and the Blue Harbor Shipping Co., Ltd. of the Republic of Liberia undertake joint liability for repayment. On January 26, 2015, the plaintiff and the defendant concluded a Ship Mortgage Contract, which provided for the establishment of a first priority mortgage in favor of the Plaintiff National Bank of Greece as mortgagee on the Liberian-owned vessel "Blue Marlin" owned by the Defendant in the amount of 40,468,972.76 U.S. dollars, together with the corresponding interest and the costs, commissions and expenses of performing the mortgage contract. On the same day, the mortgage was registered with the Maritime Authority of the Republic of Liberia, the registry of “Blue Marlin”, in accordance with the laws of the Republic of Liberia. After the ship mortgage was established, the defendant failed to repay the mortgaged loan to the plaintiff in accordance with the agreement. On May 29, 2019, the plaintiff, the National Bank of Greece, filed an application to Qingdao Maritime Court for maritime claims before bringing a lawsuit, applying for arresting the “Blue Marlin” ship belonging to the defendant Blue Laura Shipping Co.,

Ltd. to exercise the right of ship mortgage. Qingdao Maritime Court issued a civil property reservation verdict to granting the applicant's application, arresting the ship at the Weihai Port of the People's Republic of China, and exercising jurisdiction over the case in accordance with the law.

【Judgement】

Qingdao Maritime Court held that the *Revised Loan Contract* signed by the plaintiff, the National Bank of Greece and the defendants, Blue Laura Shipping Co., Ltd. of the Republic of Liberia and the Blue Port Shipping Co., Ltd. of the Republic of Liberia, and the *Supplementary Agreements* revised for several times were clear and valid. It was agreed that the outstanding principal of the 75,463,000 U.S. dollars (original amount) loaned by the plaintiff was 40,468,972.76 U.S. dollars and it was confirmed by the *Mortgage Contract* signed by the two parties. There was no evidence that the defendant had repaid the money after signing the contract. Accordingly, the Court confirmed the plaintiff's unpaid principal claim of 40,468,972.76 U.S. dollars under the Loan Contract. The plaintiff was entitled to dispose his own substantive right, so the claim shall be supported that the plaintiff only claimed the creditor's rights of 15.3 million U.S. dollars in this case

The ship mortgage right established by the *Mortgage Contract* signed by the both parties on January 26, 2015, and was registered at the Maritime Safety Administration of the Republic of Liberia on the same day. According to Article 271 of the *Maritime Law of the People's Republic of China*, the law of the flag State of the ship shall apply to the

mortgage of the ship. The *Code of the Republic of Liberia, Chapter 21, Maritime Law of Liberia*, Article 101(1) and Article 107 mandate the plaintiff's mortgage on the "Blue Marlin" came into effect on January 26, 2015. The plaintiff was entitled to exercise the mortgage on the ship by auction, thus gaining the outstanding debts since June 19, 2019 from the proceeds of the auction sale. In accordance with the relevant provisions of the *Special Maritime Procedure Law of the People's Republic of China,* the plaintiff applied to this court for the arrest of "Blue Marlin" on May 29, 2019, and then applied for auction of the vessel on June 19, 2019. These claims were proper exercise of the ship mortgage rights and the plaintiff enjoyed the right of preferred compensation of the ship from the proceeds of the auction shall be supported.

【Significance】

The case is a typical case in which Qingdao Maritime Court implements the boutique maritime trial strategy and provides a Chinese solution for the resolution of maritime disputes for the "Belt and Road" countries. The case is about the dispute over a maritime claim preservation between the National Bank of Greece and the ship owner of the "Blue Marlin". After receiving the application, Qingdao Maritime Court examined the relevant materials and arrested the "Blue Marlin" on the same day in accordance with the law. Both parties in the case are enterprise legal person registered in foreign countries. The mortgaged ship "Blue Marlin" was registered at the Republic of Liberia. Qingdao Maritime Court exercise the jurisdiction by arresting the ship involved in accordance with the law. In this case, the parties involved are the "Belt

and Road" countries, the amount of subject is 15.3 million U.S. dollars, and the litigation request is equivalent to nearly RMB 100 million. The fair trial of this case effectively protected the legitimate rights and interests of foreign-related parties and established a fair image of China's maritime justice. It is conducive to promoting more "Belt and Road" countries to apply Chinese solutions to resolve related civil and commercial disputes, and it has a great reference value for the services and guarantees to the construction of the "Belt and Road" initiative.

案例八：冯某某与中国某财产保险股份有限公司威海市荣成支公司海上保险合同纠纷案

【基本案情】

2018 年 4 月 9 日，原告冯某某为其所属的“鲁荣渔 52097”渔船在被告中国某财产保险股份有限公司威海市荣成支公司处投保沿海内河渔船保险一切险，投保单最后一栏载明“投保人声明：保险人已将《沿海内河渔船保险条款》（包括责任免除部分）向本人做了明确说明，本人已充分理解”。原告在投保单的投保人签章处签字，但主张被告未曾向其出具《沿海内河渔船保险条款》、也未就保险条款的内容向其进行说明。经查，涉案《沿海内河渔船保险条款》为被告单独印制，相关除外责任条款未在投保单中予以载明。同日，被告收取了保费并出具保险单。

2018 年 9 月 1 日，“鲁荣渔 52097”渔船从鸿运渔港出海，船上配备 6 名船员，仅船长闫某某（系原告之夫）持有三级轮机长证书，其余船员未持有船员证书。

2018 年 9 月 6 日，闫某某的哥哥报警称“鲁荣渔 52097”

渔船在海上被不明船舶碰撞发生险情，6人失联。荣成市海洋与渔业执法大队组织多方力量进行搜救后，认定涉案渔船于江苏射阳以东约160海里处沉没灭失，1人死亡、5人失联，沉没事故直接原因系不明船舶碰撞。

2019年10月14日，被告以原告违反《沿海内河渔船保险条款》载明的除外责任条款拒绝了原告的理赔申请。原告遂诉至本院，请求被告向原告赔付保险金112万元。

【裁判结果】

青岛海事法院经审理认为，被告是否有权依据约定或者法定的除外责任条款免除其赔偿责任以及如何认定保险赔偿责任比例是本案的争议焦点。判决被告向原告冯某某支付保险赔偿款63万元；驳回原告的其他诉讼请求。

审查约定的除外责任条款是否生效的过程中，被告以原告或其代表（包括船长）的行为存在《沿海内河渔船保险条款》第四条、第八条、第二十一条规定的除外责任情形而拒绝赔付，以“投保人声明”一栏的记载和原告在投保单上的签字来证明其已履行《中华人民共和国保险法》第十七条所规

定的义务明显不足。首先，与投保单其他内容相比，该声明部分仅“投保人声明”五个字加粗显示，且投保单仅有一处“投保人（签章）”栏，原告在此处的签章并不能证明其是对投保险种、保险期间、保险金额等保险合同主要内容的认可还是对“投保人声明”的认可，事实上造成原告只要在“投保人（签章）”栏签字就被迫作出“投保人声明”的局面；其次，本案所涉《沿海内河渔船保险条款》并不包含在投保单中，而是独立印制，投保过程中被告是否向投保人出具过完整条款并对免除保险人责任条款进行过提示和明确说明亦无法确定；不能仅以内容笼统、形式亦不够突出的“投保人声明”来证明其已就免除保险人责任条款履行了提示和明确说明义务。根据《中华人民共和国保险法》第十七条第二款的规定，《沿海内河渔船保险条款》中免除保险人责任的相应条款对原告不产生效力，被告不能援引上述条款免除其赔偿责任。

此外，还要审查本案是否存在适用法定除外责任的情形。本案中，“鲁荣渔 52097”渔船从鸿运渔港开航时，船上配备的 6 名船员中仅船长持有三级轮机长证书，其余船员均

未持有船员证书，船员明显不适任，并构成未妥善配备船员的不适航，应适用《中华人民共和国海商法》第二百四十四条的规定，应免除保险人的相应赔偿责任。是否能够据此免除被告的全部赔偿责任，还要看船员不适任所导致的船舶不适航是否是造成保险船舶损失的唯一原因。根据荣成市海洋与渔业执法大队关于不明船舶碰撞是涉案渔船沉没事故直接原因的认定，“不明船舶”对涉案渔船沉没负有过失。与此同时，涉案渔船就其自身存在的不适航情形，对碰撞事故亦负有过失。二者之间过失程度的比例，依据现有证据无法判定，根据《中华人民共和国海商法》第一百六十九条第一款的规定，在两船过失程度比例无法判定的情况下，原告应就涉案渔船存在不适航的情形自行承担 50%的赔偿责任。被告亦可据此免除对涉案渔船因碰撞沉没全损 50%的赔偿责任，但仍须承担船舶全损情况下剩余 50%的赔偿责任。

【典型意义】

本案是涉及海上保险合同约定除外责任条款和法定除外责任条款适用问题的典型案例。审理海上保险合同纠纷案

件的核心问题在于保险人是否应当对特定事故承担保险责任以及承担保险赔偿责任的比例。对此，需要从三个层面进行递进式审查：首先，分析事故原因和承包范围，认定全部或者部分事故是否属于承包范围；其次，审查保险合同约定的除外责任条款是否生效以及是否存在法定除外责任适用的情形，认定保险人是否有权依据约定或者法定除外责任拒绝赔付；最后，根据保险承保风险在涉案事故中的影响程度（因果关系构成情况）确定保险人应当承担的保险赔偿责任比例。而，本案的争议焦点在于保险合同约定的除外责任条款是否生效以及保险人能否援引该条款免除其赔偿责任。在保险人将除外责任条款以格式条款的形式独立印刷而未在投保单上以足以引起投保人注意的形式予以载明的情况下，不能仅以内容笼统、形式亦不够突出的“投保人声明”来证明保险人已就除外责任条款履行了提示和明确说明义务。此外，在审查是否存在除外责任情形时，不能局限于当事人关于约定除外责任条款是否生效的争议，还要审查涉案纠纷是否存在使用法定除外责任的情形，并结合该情形在保险事故中的原因力占比来确定保险人最终承担的赔偿责任比例。

Case Eight: Feng v. A Chinese Property Insurance Company Limited, Weihai Rongcheng Branch (Case about disputes over contract of maritime insurance)

【Basic Facts】

On April 9, 2018, the plaintiff, Feng, took out an all-risk of coastal and river fishing vessel insurance for her "Lu Rong Yu 52097" fishing vessel with the defendant, a Chinese Property Insurance Co., Ltd, Weihai Rongcheng Branch. The last column of the policy stated that "Policyholder Declaration: the insurer has clearly explained to me the terms and conditions of the coastal and river fishing vessel insurance (including the exclusions) and I have fully understood". The plaintiff signed the insurance policy, but claimed that the defendant had not issued the coastal and river fishing vessel insurance clause to her, nor did the defendant explain the content of the insurance clause to her. After the investigation, it was found that the coastal and river fishing vessel insurance clause was printed separately by the defendant, and the relevant exclusion clauses were not set out in the insurance policy. On the same day, the defendant collected the insurance premium and issued the insurance policy.

On September 1, 2018, "Lu Rong Yu 52097" fishing vessel went fishing from HongYun Fishing Port. The ship is equipped with 6 crews, within whom only the captain, Yan (the husband of the plaintiff) held a certificate of chief engineer Ⅲ, and the rest of the crews didn't hold the crew certificate.

On September 6, 2018, Yan's brother reported to the police that "Lu

Rong Yu 52097" was collided by an unidentified ship at sea and 6 crews got lost. Marine and Fisheries Enforcement Brigade of Rongcheng organized multiple forces to search and rescue and identified that fishing vessel sank and lost at about 160 nautical miles east of Sheyang, Jiangsu Province with 1 person died and 5 others were lost. The direct cause of the sinking accident is the collision of unidentified ships.

On October 14, 2019, the defendant rejected the plaintiff's claim application on the grounds that the plaintiff violated the exclusive liability clause stipulated in the coastal and river fishing vessel insurance clause. The plaintiff then filed a lawsuit to this court, asking the defendant to pay the plaintiff 1.12 million yuan in insurance compensation.

【Judgment】

After hearing the case, Qingdao Maritime Court held that whether the defendant had the right to be exempted from the liability according to the agreed or statutory exclusions and how to determine the proportion of insurance liability were the focal points of the dispute in this case. The defendant was sentenced to pay insurance compensation of 630,000 yuan to plaintiff, Feng and other claims of the plaintiff were dismissed.

In the process of reviewing whether the agreed exclusions were in effect, the defendant refused to pay compensation on the grounds that the act of the plaintiff or her representative (including the captain) had been excluded as stipulated in Article 4, Article 8 and Article 21 of the coastal and river fishing vessel insurance clause. Obviously，it is insufficient that the record in the policyholder's declaration column and the plaintiff's signature on the application form are insufficient to show that the insurer

has fulfilled the obligations stipulated in Article 17 of the Insurance Law of the People's Republic of China. First of all, compared with other contents of insurance application, in this section, only few words as "policyholder's declaration" were bold, and there was only 1 column for policyholder to sign in. Therefore, the signature of the plaintiff cannot prove his or her recognition of main content of insurance contract, such as the type of insurance, the period of insurance, insurance amount and others, or just the recognition of "policyholder's statement". In one word, it makes a situation that once the plaintiff signed in the column, then a policyholder's statement was made. Secondly, the coastal and river fishing vessel insurance clause involved in this case was not included in the insurance policy, but independently printed, and it cannot be determined whether the defendant has issued a complete article to the policyholder in the process of insurance and has given a warning and explicit explanation to the exclusion clause exempting the insurer's liability; An applicant's declaration, which is neither general nor prominent enough, cannot be used to prove that he or she has fulfilled the obligation of making a warning and explicit representation in respect of the exclusion clause. According to the second paragraph of Article 17 of *the Insurance Law of the People's Republic of China*, the corresponding clauses in the coastal and river fishing vessel insurance clause exonerating the insurer's liability was invalid for the plaintiff, and the defendant cannot invoke the above-mentioned clauses to exonerate his liability to compensate.

In addition, it was necessary to examine whether there were circumstances for the application of statutory exclusions in the case. In

this case, When “Lu Rong Yu 52097” set sail from Hongyun Fishing Port, only the captain held a certificate of chief engineer Ⅲ, while the other crews didn't hold the crew certificate. Obviously, the other crews were unworthy for duties, which constituted unseaworthiness without properly manning the crew. According to Article 244 of *the Maritime Law of the People's Republic of China*, the insurer could be exempted from the liability for compensation. Whether the defendant can be exempted from all liability for compensation depends on whether the unseaworthiness of the ship caused by the unfitness of the crew is the only cause of the loss of the Vessel. According to the investigation by Marine and Fishery Enforcement Brigade of Rongcheng, the collision of the unidentified vessel was the direct cause of the sinking, and therefore the unidentified vessel should take liability of negligence for the sinking of the fishing boat involved. At the same time, the fishing boat involved, with respect to its own unseaworthiness, also should be responsible for the collision accident. The proportion of the degree of negligence between the two cannot be determined on the evidence available. According to Paragraph 1 of Article 169 of *the Maritime Law of the People's Republic of China*, in the case that the proportion of the degree of negligence between the two vessels cannot be determined, the plaintiff shall bear 50% of the liability for the unseaworthiness of the fishing vessel involved. The defendant may also be exempted from liability for 50% of the total loss of the vessel due to the collision and sinking, but is still liable for the remaining 50% of the total loss of the vessel.

【Significance】

This case is typical involving the application of the agreed and statutory exclusion clauses in the contract of marine insurance. The core issue in the trial of the dispute cases concerning the contract of marine insurance is whether the insurer should bear the insurance liability for a specific accident and the proportion of the insurance liability. To this, review should be carried on from three progressive levels: first, analyzing the reason of accident and the coverage, determining whether all or part of the accident belongs to the coverage; Secondly, examining whether the exclusion clause agreed in the insurance contract are effective or not, whether there are statutory exclusions to apply, and then determining whether the insurer has the right to refuse to pay according to the agreed or statutory exclusions. Finally, the proportion of insurance indemnity liability that the insurer should undertake is determined according to the degree of influence of insurance underwriting risk in the involved accident (causality constitution). The issue of this case is whether the exclusion clause stipulated in the insurance contract is effective and whether the insurer can invoke it to be exempted from compensation liability. If the insurer only prints the exclusion clause in the form of a separate clause, and does not show it in an attractive form to get the attention of the policyholder, then the insurer cannot prove that he has fulfilled the obligation of making a warning and explicit explanation in respect of the exclusions by means of a “policyholder’s declaration”, which is general in content and not prominent in form. In addition, when examining the existence of exclusion, one should not be limited to the dispute between the parties as to whether the agreed exclusion is in force,

but also examine whether the dispute in question involves the use of statutory exclusion, and the ultimate proportion of indemnity liability of insurer should be determined by the proportion of the causal force in the insurance accident.

案例九：山东荣成某银行与马绍尔群岛某公司等代位权纠纷案

【基本案情】

原告山东荣成某银行诉被告马绍尔群岛某公司、第三人田某某、袁某某、荣成某渔业公司代位权纠纷一案，荣成某渔业公司为一人有限责任公司，田某某系该公司唯一股东和法定代表人，田某某与袁某某系夫妻关系。荣成某渔业公司为田某某向山东荣成某银行的借款提供抵押担保，抵押财产为“鲁荣渔 58912”船，并办理了抵押登记。抵押合同约定抵押权人的抵押权的效力及于抵押财产的从物，从权利、附属物、添附物、天然及法定孳息、抵押财产的代位物，以及因抵押财产损毁、灭失、拆迁、侵权或征收而获得的保险金、赔偿金、补偿金。2017 年，“鲁荣渔 58912”船与马绍尔群岛某公司所属的巴哈马籍散货船“DANNY BOY”轮发生碰撞事故。碰撞后“鲁荣渔 58912”船返回港口进行了修理。因田某某迟延还款，山东荣成某银行对田某某、袁某某、荣成某渔业公司提起船舶抵押合同之诉。2018 年，法院根据

山东荣成某银行的申请，依法拍卖了“鲁荣渔 58912”船，所得价款 6751616 元，山东荣成某银行实际受偿 4975751 元。2019 年 5 月 27 日，法院就上述船舶抵押合同之诉作出判决，判令田某某、袁某某连带偿还山东荣成某银行贷款本金 7595814.94 元及利息，山东荣成某银行对“鲁荣渔 58912”船享有抵押权，并对该船拍卖变卖价款依法优先受偿。因荣成某渔业公司怠于行使到期债权，山东荣成某银行对马绍尔群岛某公司提起代位权诉讼，要求马绍尔群岛某公司承担船舶碰撞损害赔偿责任，并将田某某、袁某某和荣成某渔业公司列为第三人。

【裁判结果】

青岛海事法院经审理认为，田某某和袁某某在船舶抵押合同之诉中经生效判决确定为山东荣成某银行的债务人。山东荣成某银行仅对荣成某渔业公司所属的“鲁荣渔 58912”船享有抵押权，荣成某渔业公司并非其债务人。故山东荣成某银行是否有权就船舶碰撞法律关系对马绍尔群岛某公司提起索赔，关键在于船舶抵押权的效力是否可以及于荣成某

渔业公司因船舶碰撞事故而可能获得的赔偿金。

《物权法》第一百七十四条系担保物权物上代位性的法律规定。本案中，抵押合同中关于抵押权效力范围的约定也应系为了保证如果抵押船舶发生了毁损、灭失、拆迁、侵权或者征收等情形，抵押权人可以对该船的代位物仍然享有优先受偿的权利，以使被担保的债权得以实现。反言之，如果抵押期间，抵押船舶虽然发生过受损事故，但抵押权人实现抵押权之时，抵押船舶的价值并未发生减少，抵押权人对该船的抵押权应限于船舶本身的价值。涉案碰撞事故导致“鲁荣渔 58912”船舶受损，其价值的确因碰撞而减少，但该轮并非发生了全损。荣成某渔业公司在法院扣押该轮之前，已经对船舶完成了修理，且本案无证据显示扣船及拍卖当时，该船的价值因碰撞事故而减少。因此，山东荣成某银行的抵押权也没有因碰撞事故而受损，“鲁荣渔 58912”船已经依法拍卖，山东荣成某银行也已就拍卖价款优先受偿，根据《物权法》第一百七十七条的规定，在担保物权已经实现的情况下，担保物权消灭，山东荣成某银行无权再就该船因碰撞事故可能获得的赔偿金享有抵押权。虽然船舶拍卖价款清偿不

足以清偿债务，但不足部分应根据《物权法》第一百九十八条的规定，由债务人田某某和袁某某承担，即山东荣成某银行的债务人仍然是田某某与袁某某，而不是抵押人荣成某渔业公司，则被告马绍尔群岛某公司不是山东荣成某银行的次债务人，山东荣成某银行无权主张荣成某渔业公司因“鲁荣渔 58912”船碰撞受损而可能获得的赔偿金。青岛海事法院作出民事裁定，驳回了山东荣成某银行的起诉。

【典型意义】

本案是一起涉及《物权法》第一百七十四条即《民法典》第三百九十条担保物权物上代位性的典型案例。抵押权是以支配财产的交换价值为目的，属于一种价值权。因此，抵押物的形态或性质上发生变化时，只要仍能维持其交换价值，抵押权的效力也就及于抵押物的代位物。《物权法》第一百七十四条即《民法典》第三百九十条均规定，担保期间，担保财产毁损灭失或者被征收等，担保物权人可以就获得的保险金、赔偿金或者补偿金等优先受偿。被担保债权的履行期限未届满的，也可以提存该保险金、赔偿金或者补偿金等。

该制度的设立目的在于保护抵押权人的利益，避免抵押财产在抵押期间因客观或第三方的原因发生了价值减损的情况下抵押权人的抵押权落空，因此赋予了抵押权人仍然可就抵押财产的代位物实现受偿权，但同时也应注意，如果抵押期间，抵押财产虽然发生过受损事故，但抵押人已通过修复等方式使抵押财产的价值恢复从前，抵押权人实现抵押权之时，抵押财产的价值并未发生减少，抵押权人的抵押权应限于抵押物本身的价值，适用《物权法》或《民法典》关于物上代位性的规定时，应注意审查这一点，不应一概认定抵押权人仍然有权获得抵押财产的代位物价值。

本案还明确了当抵押财产价值减少时，抵押权人的救济途径。抵押权人可以要求抵押人恢复抵押财产的价值、将赔偿金用于清偿主合同项下的债务、将赔偿金存入抵押权人的指定账户；此外，《物权法》第一百九十三条与《民法典》第四百零八条也均规定，抵押权人有权要求抵押人提供与减少价值相应的担保。但上述救济途径只可择一而行。本案的典型意义在于引导债权人、抵押权人等正确认知自己的权利与风险，进行风险预判，作出合理决策，提醒其注意并非在任何情况下其都有权就抵押财产的代位物主张受偿权利。

Case Nine: The Bank in Rongcheng, Shandong Province v. The Company in Marshall Island (Case about the dispute over subrogation)

【Basic Facts】

The plaintiff, the bank in Rongcheng, Shandong Provence claimed the defendant, the company in Marshall Islands, and the third-party Tian, Yuan and the fishery company in Rongcheng, for subrogation disputes. The fishery company is a one-person limited liability company, Tian is the sole shareholder and the legal representative of the company, Tian and Yuan are couple. The fishery company provided mortgage guarantee for Tian's loan to the bank in Rongcheng, Shandong Province, and the mortgaged property was the vessel "Lu Rong Yu 58912", which has been registered for mortgage. The mortgage contract agreed that the effect of the mortgage right shall be applied to the subordinates of the mortgaged property, the rights, appurtenances, additions, natural and legal fruits, the subrogates of the mortgaged property, and the insurance, compensation, and indemnity due to the damage, loss, demolition, infringement or expropriation of the mortgaged property. In 2017, the vessel “Lu Rong Yu 58912” and “DANNY BOY”, a Bahamian bulk owned by a company in Marshall Islands, was involved in a collision. After the collision, the vessel "Lu Rong Yu 58912" returned to the port for repair. Due to Tian’s delay in repayment, the bank in Rongcheng filed a lawsuit against Tian, Yuan and the fishery company of vissel mortgage. In 2018, according to the application of the bank in Rongcheng, the court auctioned off the vessel "Lu Rong fishery 58912", the proceeds of which amounted to

RMB 675,1616, and the bank was actually paid RMB 497,5751. On May 27, 2019, the court issued a judgment on the above-mentioned contract of vessel mortgage lawsuit, ordering Tian and Yuan to repay the loan principal of $759,5814.94 and the interest jointly and severally to the bank in Rongcheng. The court also ruled that the bank enjoy the mortgage right on “Lu Rong Yu 58912”, and was entitle to priority payment of the proceeds from the auction and sale of the vessel in priority according to law. Because of the fishery company’s negligence in exercising its due claim, the bank in Rongcheng filed a subrogation lawsuit against the company in the Marshall Islands, requiring that this company bear the liability for the liability of collision damages and listing Tian, Yuan and the fishery company as third parties.

【Judgment】

Qingdao Maritime Court held that, in accordance with the effective judgment of the contract of the vessel mortgage lawsuit, Tian and Yuan were identified as the debtors of the bank in Rongcheng. The bank in Rongcheng only enjoyed the mortgage right to “LuRongYu 58912” owned by the fishery company, and the fishery company was not the debtor of the bank. Therefore, whether the bank in Rongchen, Shandong was entitled to filed a claim against the company in the Marshall Islands dor the legal relationship of vessel collision depended on whether the effect of vessel mortgage can be applied to the compensation that the fishing company may receive because of the collision.

Article 174 of *the Property Law of the People’s Republic of China* is the provision of the Physical subrogation of the real right for security. In

this case, the agreement on the scope of effectiveness of mortgage in the mortgage contract also aimed at ensuring that in case of damage, loss, demolition, tort or expropriation of the mortgaged vessel. Accordingly, the mortgagee can still enjoy the priority to be reimbursed for the substitute of the vessel to realize the creditor's right secured. In other words, if during the mortgage period, the vessel has been damaged, but the value of the mortgaged vessel does not decrease when the mortgagee realizes the right of mortgage, the mortgage right to the vessel shall be limited to the value of the vessel itself. “Lu Rong Yu 58912” was damaged by the collision, and its value was indeed reduced due to the collision, but the vessel did not suffer a total loss. The fishing company had finished repairing the vessel before the court detained it, and there was no evidence in this case showing that the value of the vessel was reduced due to the collision at the time of the arrest and auction. Therefore, the mortgage right of the bank in Rongcheng was not damaged by the collision, and “Lu Rong Yu 58912” has been auctioned in accordance with the law, and the bank in Rongcheng has also received priority repayment for the auction price. Pursuant to Article 177 of *the Property Law*, when the real right for security has been realized, the real right for security may be eliminated, and the bank in Rongcheng has no right to enjoy mortgage for the compensation that the vessel may receive due to the collision. Although the auction price of the vessel was not enough to pay off debts, the insufficient part should be borne by the debtor, Tian and Yuan, pursuant to the article 198 of *the Property Law*. Therefore, the debtor of the bank in Rongcheng was still Tian and Yuan, rather the mortgagor, the fishery company. The company in Marshall

Islands was not the subordinate debator of the bank in Rongcheng, and the bank was not entitled to claim the compensation that the fishery company might have received for damage caused by the collision damage happened to “Lu Rong Yu 58912”. The Qingdao Maritime Court issued a civil ruling, dismissing the suit filed by the bank in Rongcheng, Shandong Province.

【Significance】

This case is a typical case involving the subrogation of the real right for security set forth in Article 174 of *the Property Law*, namely Article 390 of *the Civil Code*. Mortgage is a right to value for the purpose of domination the exchange value of property. Accordingly, when the form or nature of the guaranty produces a change, as long as it maintains its exchange value, the effect of mortgage also applies to the substitute. Article 174 of *the Property Law* (that is, Article 390 of *the Civil Code*) stipulates that in case the property for security is damaged, lost or expropriated during the term of security, the holder of the real rights for security may seek preferred compensations from the insurance money, damages or indemnities, etc. incurred there from, or may submit such insurance money, damages or indemnities, etc. to a competent authority if the term for performing the obligee's rights as secured has not expired. The system was established to protect the interests of the mortgagee against the loss of the mortgage if the value of the mortgaged property is impaired during the mortgage period, either objectively or by third parties, therefore, the mortgage is granted the right to be compensated for the substitute of mortgage property. However, it should also be noted that, if

during the period of the mortgage, the mortgaged property has been damaged, but its value has been restored by means of repair, and the value of the mortgaged property has not been reduced when the mortgagee realizes the mortgage, the mortgagee's right shall be limited to the value of the mortgage itself. When applying the provisions of *the Property Law* or *the Civil Code* on subrogation, care should be taken to examine this point and it should not be assumed that the mortgagee is still entitled to the subrogated value of the mortgaged property.

The case also clarifies the remedies for the mortgagee when the value of the mortgaged property decreases. The mortgagee may require the mortgagor to restore the value of the mortgaged property, use the compensation to pay off the debts under the principal contract, and deposit the compensation into the designated account of the mortgagee. In addition, Article 193 of *the Property Law* and Article 408 of *the Civil Code* also stipulate that the mortgagee has the right to require the mortgagor to provide security corresponding to the reduced value. However, only one of these remedies may be pursued. The typical significance of this case is to guide creditors and mortgagees to recognize their rights and risks correctly, to predict risks, to make reasonable decisions, and to remind them that they are not entitled to claim compensation for the substitute of the mortgaged property under all circumstances.

案例十：山东某海洋生物科技有限公司与长岛某油轮运输有限公司海上养殖损害责任纠纷案

【基本案情】

2016 年 11 月 14 日，原告山东某海洋生物科技有限公司取得198.67公顷开放式养殖海洋牧场《海域使用权证书》。2019 年 11 月 6 日，长岛自然资源局出具《证明》，确认由于受海洋规划等因素影响， 2019 年初养殖证发放工作暂停。

2019 年 8 月 20 日，原告报案称其海洋牧场海区因船舶驶入致使养殖架及附属物受损。接报后长岛海事处依法组织海事调查，认定被告长岛某油轮运输有限公司所属“某油12”轮驶入原告所属养殖区，致使该水域养殖筏架及附属物受损。

2019 年 10 月，山东某海事司法鉴定所受原告委托，对前述养殖损害事故进行司法鉴定，结论为此次事故共造成经济损失总计 4060386.30 元。

2020 年 4 月 10 日，被告向长岛县公证处申请对相关海

域的勘察行为进行保全证据公证，公证处委派公证员根据现场情况制作了公证书。5 月 28 日，山东某司法鉴定中心接受被告委托对本案事故造成养殖损失进行评估鉴定，结论为此次造成养殖总损失费用为 1515721 元。

原告向青岛海事法院提出诉讼请求：1.判令被告赔偿原告养殖损失人民币 4060386.30 元及利息；2.确认原告对被告的“某油 12”轮享有船舶优先权。

【裁判结果】

青岛海事法院一审认为，海事处具备法定的职责权限，其作出行政行为遵循了法定的步骤和程序，事故报告书的事故结论所依据的事实清楚、证据充分、内容合法适当。本案触碰事故是被告“某油 12”轮擅自驶入养殖区而引发，被告负有该事故的全部责任。

原告受损区的养殖属于合法养殖。原告已取得受损养殖区的海域使用权证书，有权根据该证书授予的权限合法使用海域。原告虽不持有养殖证，但不应认定其养殖行为非法。1.通过自然资源局《证明》可以认定原告未办理养殖证系因

为渔业主管机关存在特殊因素不予办证。2.海域使用权证和养殖证的颁发机关同为当地县政府，因此原告不属于擅自养殖。

原告根据“专家意见”主张养殖经济损失 4060386.30 元，依据不足，法院不予支持。原告“专家意见”存在的问题主要有以下方面：1.现场取样样品过少，违背技术规范。2.取样偏离受损养殖区，与案件没有关联性。3.多处引用并非定损专家的相关数据。4.进行经济价值评估依据不足。5.适用污染标准计算养殖损失方法错误。

被告委托公证人员及到场人员勘验的地点没有一个到达证书养殖范围，更没有进入海事处确定的受损范围内，与本案没有关联性。但被告委托专家的“海事意见书”构成被告对触损赔偿责任的自认。

综上，法院判决：被告赔偿原告养殖损失 1515721 元及利息。

原告不服一审判决，上诉至山东省高级人民法院。二审法院经过审理作出判决：驳回上诉，维持原判。

【典型意义】

本案系海上养殖损害纠纷，此类案件因现场不易保存取证难度大而构成疑难海事案件。此类案件主要涉及三方面的事实需要查清，一是养殖户养殖的合法性，二是船舶触碰侵权的事实，三是养殖损失的核定。三方面的证据主要有三个来源，一是由海洋渔业部门证明养殖情况，二是由海事交管部门证明事故情况，三是由鉴定机构评估损失情况。本案中，法院对第一和第三个方面的事实作出了特别的认定，对其他同类案件的审理也具有参考意义。

一、关于养殖合法性。根据《海域使用管理法》《渔业法实施细则》的规定，单位和个人使用海域，从事养殖生产，应当申请并领取海域使用权证书、养殖使用证，自取得证书时起取得相应使用权。因此是否持有两证是判定养殖户养殖合法性的直接证据。但本案是由于非养殖户原因造成未能持证，本案中构成障碍的客观因素是发证机关原因，因此法院根据有权发证机关的证明判定养殖户仍是合法养殖。

二、关于养殖损害的评估。养殖户遇到海上事故受损后，可以单方委托有相应资质的机构进行损失评估，单方委托具

有更快捷高效的优势。但单方委托专家作出《鉴定意见书》只是具有专门知识的人就专业问题提出的意见，不属于《民事诉讼法》法定的鉴定，而只是“专家意见”。对于“专家意见”，应视为当事人的陈述进行审查。“专家意见”应符合客观、公正、诚实原则，法院对其所依据的材料、原理、方法、过程以及做出的结论可进行全面审查。

法官进行全面审查，不仅要正确适用法律，还要准确引用养殖技术规范、产量验收方法、经济损失计算方法等国家标准、行业标准。本案承办法官明确一一点明了原告单方委托专家鉴定结论在关联性、客观性、合法性的缺陷，最终否定了该“专家意见”。由于该“专家意见”违背鉴定基本原则未被法院采纳，原告单方委托该机构进行鉴定没有必要性，相应的鉴定支出也应根据谁主张、谁负担的原则而由原告自行承担。

Case Ten: The Marine Biotechnology Co., Ltd. in Shandong Province v. Oil Tanker Transportation Co., Ltd. at Changdao (Case about disputes over the liability for damage to mariculture)

【Basic Facts】

On November 14, 2016, the plaintiff, a marine biotechnology Co., Ltd. in Shandong Province obtained a sea area use certificate for 198.67 hectares of open aquaculture marine ranch. On November 6, 2019, Changdao Natural Resources Bureau issued a certificate to certify that due to the impact of Marine Planning and other factors, the issuance of aquaculture certificates at the beginning of 2019 suspended.

On August 20, 2019, the plaintiff reported that its farming raft and appurtenances in aquaculture marine ranch was damaged by a ship sailing into the area. After receiving the report, the Maritime Department of Changdao organized a maritime investigation in accordance with law and found that the defendant- the tanker transport company in Changdao is the owner of "the No. 12 oil tanker" which shipped into the plaintiff's farming area and caused the damage.

In October 2019, a maritime judicial appraisal institute appointed by the plaintiff in Shandong conducted a judicial appraisal on the aforementioned farming damage accident and concluded that the accident caused an economic loss of 4,060,386.30 yuan in total.

On April 10, 2020, the defendant made an application to the Notary Office of Changdao County for the preservation of evidence on the act of surveying the relevant sea area. A notary from Notary Office issued a

notarized certificate based on the scene. On May 28, a judicial appraisal institute in Shandong was appointed by the defendant and appraised the loss of breeding caused by the accident in this case and concluded that the total loss was RMB 1,515,721.

The plaintiff filed a lawsuit to the Qingdao Maritime Court, requesting the court to rule that: 1. to order the defendant to compensate the plaintiff for the breeding losses of RMB 4,060,386.30 and its interest; 2. to confirm the plaintiff has the right of maritime priority over the defendant's vessel "No. 12 oil tanker".

【Judgment】

The Qingdao Maritime Court held in the first trial that the Marine Department has the legal authority to carry out administrative acts. In this case, the administrative actions taken by the Maritime Department followed statutory steps and procedures. And the accident report was based on clear facts, sufficient evidence, lawful and appropriate content. The accident was caused by the defendant's “No.12 oil tanker” which sailed into the aquaculture marine ranch without permission, and the defendant was fully liable for the accident.

The farming acts conducted by plaintiff on the damaged area was legal. The plaintiff had obtained the use certificate of the damaged farming area and had the right to use the sea area according to the authority granted by the certificate. The plaintiff’s farming conducts should not be considered as illegal based on not having the farming aquaculture certificate considering the following reasons: 1. From the certificate of Changdao Natural Resources Bureau, that the plaintiff did

not get the aquaculture certificate was due to the special concerns of Fishery Authority. 2. The issuing authority of sea area use certificate and aquaculture certificate is the same one Local County Government, therefore the farming acts by plaintiff were not unauthorized.

The plaintiff's claim for economic loss of RMB 4,060,386.30 was based on the "expert's opinion" which was not supported by the court because of lack of basis. The plaintiff's "expert's opinion" had following problems: 1. The number of samples taken on site was too small, which was contrary to the technical specifications. 2. The samples taken were far from the damaged farming area, and was not relevant to the case. 3. The data quoted in the report was not from the expert who accessed the loss. 4. The basis for assessing the economic value was insufficient. 5.The pollution standard applying to calculate the farming loss was wrong.

The location inspected by notaries and other attendants was not within the range of survey site and damaged farming area determined by the Marine Department, which was not relevant to this case. However, the "maritime opinion" commissioned by the experts of defendant constitutes the defendant's self-admission of liability for touch damage.

In summary, the Court ordered the defendant to compensate the plaintiff for losses of RMB 1,515,721 and interest.

The plaintiff appealed against the first-instance judgment to the Shandong High People's Court. The Court in second trial held that: the appeal was rejected and the original judgment was affirmed.

【Significance】

The case is a dispute over maritime farming damage, and such cases

constitute difficult maritime cases because the scene is not easily preserved and difficult to obtain evidence. In these cases, three aspects of facts need to be ascertained: Firstly, the legality of the farming conducts. Secondly, the fact of the ship collision infringement. And thirdly, the approval of the farming damage. There are three main sources of evidence: firstly, proof provided by the marine fisheries department. Secondly, proof of the accident by the marine department. And thirdly, assessment of the damage provided by the accreditation body. In this case, the court made special judgement of the fact on the first and third aspects, which is also a reference to other similar cases.

Firstly, the legality of farming. According to the provisions of the *Sea Area Use Management Law* and the *Rules for the Implementation of the Fisheries Law*, units and individuals using the sea area and engaging in farming production shall apply for and receive a sea area use right certificate and an aquaculture certificate, and obtain the corresponding using right from the time they obtain the certificate. Therefore, whether the two certificates are held is direct evidence to determine the legality of the farmer's farming. However, in this case, the failure to hold the certificate was not caused by the farmer, and the objective factor that constituted an obstacle in this case was the issuing authority. Therefore, the court decided that the farmer was still legal to farm based on the certificate of the authority that was entitled to issue.

Secondly, the assessment of farming damage. When encounter damages in a maritime accident, a farmer may unilaterally commission a correspondingly qualified institution to conduct a damage assessment. However, the unilateral commissioning of an expert to make an "expert's

opinion" is only the opinion of a person with specialized knowledge on professional issues, which does not belong to the statutory identification of the Civil Procedure Law, but is "expert opinion". The "expert's opinion" shall be examined as a statement by the parties. The "expert's opinion" shall comply with the principles of objectivity, impartiality and honesty, and the court may conduct a comprehensive review of the materials, principles, methods and processes on which it is based and the conclusions it draws.

The judge conducted a comprehensive review, not only to correctly apply the law, but also to accurately quote the technical specifications of farming, yield acceptance methods, economic loss calculation methods and other national and industry standards. In this case, the judge clearly pointed out that the plaintiff unilaterally commissioned expert identification conclusions in relevance, objectivity, legality of the defects, and ultimately rejected the "expert's opinion". As the "expert's opinion" contrary to the basic principles of identification was not adopted by the court, the plaintiff unilaterally commissioned the agency to identify the need, the corresponding identification expenses should also be based on the principle of "who claims, who bears" and bear by the plaintiff itself.