CONTENTS

大连海事法院
2018 年海事审判报告

特别说明：本白皮书以中英两种文字发布，以中文文本为准

目　录

CONTENTS

Dalian Maritime Court Report on Trials (2018)

Special Statement: This paper is announced in Chinese and English, and the Chinese Version shall prevail.

Contents

前 言

2018 年，大连海事法院坚持以习近平新时代中国特色社会主义思想为指导，深入贯彻党的十九大和十九届二中、三中全会精神，认真学习贯彻习近平总书记在辽宁考察时和在深入推进东北振兴座谈会上的重要讲话精神，狠抓执法办案第一要务，全力攻坚“基本解决执行难”，深入推进全面从严治党，持之以恒加强作风建设，审判工作取得新成绩，实现新发展。

一、2018 年海事审判基本数据与态势

整体案件指标：受理各类案件 1981 件，同比下降 11.9%；其中新收 1757 件，同比下降 13%；旧存 224 件，与上年基本持平；结案 1873 件，同比下降 7.5%；结案率 92.73%，同比上升 2.69 个百分点。

诉讼案件指标[1]：受理诉讼案件 1114 件，同比下降 14.9%；其中新收 955 件，同比下降 13.34%；涉案金额约 28.3 亿元，同比上升 128%；旧存 159 件，同比下降 23.19%；审结 1035 件，同比下降 10%；结案率 92.91%，同比上升 5.06 个百分点。

执行案件指标：受理执行案件 592 件，同比下降 14.9%；其中新收 536 件，同比下降 21.3%；旧存 56 件，同比上升 273%；执结 536 件，同比下降 16.25%；结案率 90.54%，同比下降 1.41 个百分点。

财产保全案件指标[2]：受理诉前财产保全案件 77 件，涉案金额约 4 亿元；受理诉讼财产保全案件 65 件，涉案金额约 11 亿元。

海事海商案件情况：受理海事海商案件 1018 件，同比下降 7.7%；其中新收 891 件，同比下降 3.77%；审结 945 件，同比下降 3.18%；结案率 92.83%，同比上升 4.34 个百分点；涉案金额 28.3013 亿元，同比上升 128.08%。新收海事案件 232 件，同比下降 11.45%；新收海商案件 659 件，同比下降 0.75%。

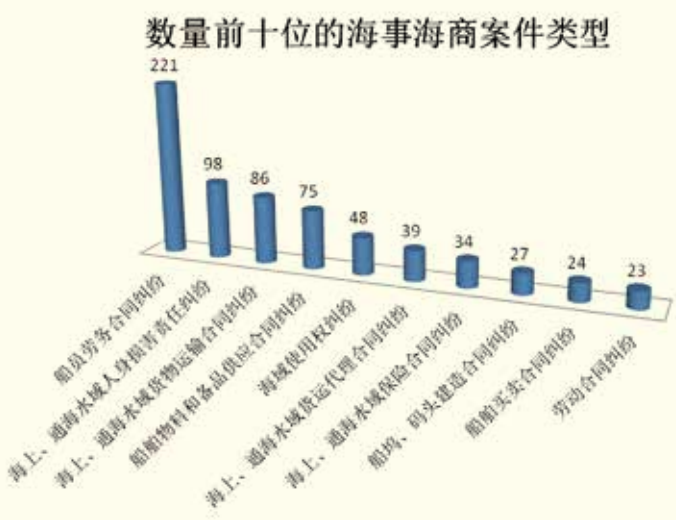
1. 仅包含海事海商诉讼案件与海事行政诉讼案件，不包含执行案件、非诉保全审查案件、特别程序案件、审查行政非诉执行案件、司法救助案件、司法协助案件及国家赔偿案件等。

2. 诉前财产保全案件单独计算案件数，诉讼财产保全案件不计入案件总数。

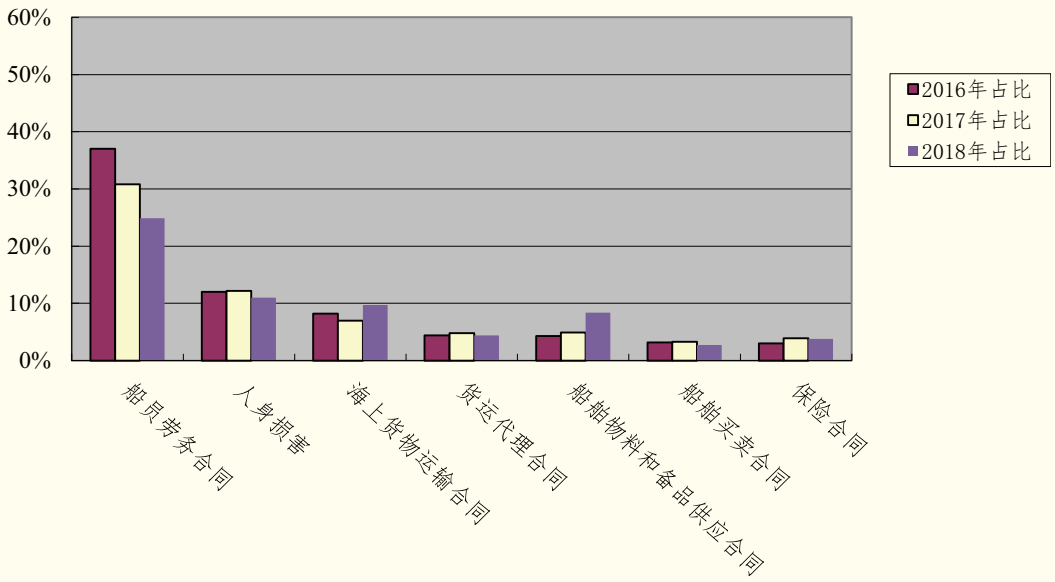
海事行政案件情况：受理海事行政案件 170 件，同比下降 19.4%，仍居全国海事法院之首；其中新收 138 件，同比下降 23.8%；审结 164 件，同比下降 8.4%；涉案金额约 230.5 亿余元，同比上升 2264%。

诉讼案件类型情况：

新收诉讼案件中，数量前十位的海事海商案件共 675 件，具体类型如下：

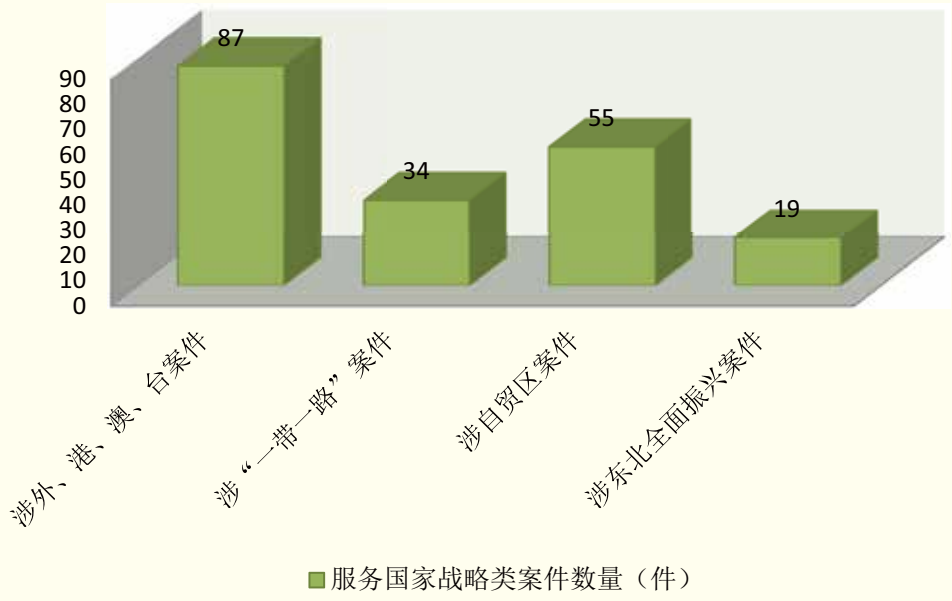


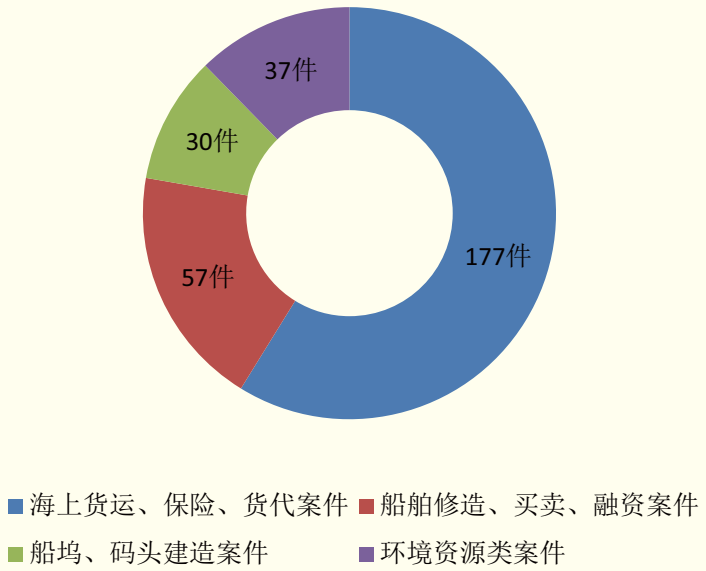
新收七类海事海商案件数量占当年全部新收海事海商案件比例情况如下：



审理千万元以上诉讼标的案件 71 件、亿元以上诉讼标的案件 8 件。妥善审理大案

要案，其中涉国家战略类案件数量及类型如下：





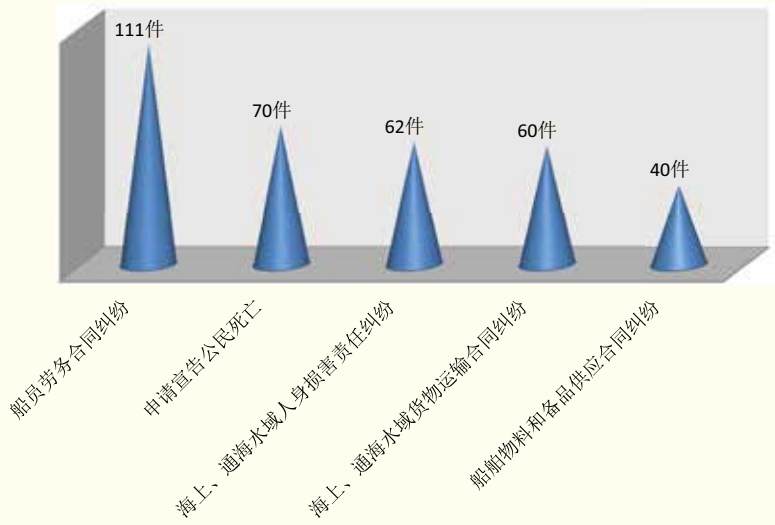
扣押船舶情况：审判庭[3]扣押船舶 23 艘，其中外轮 6 艘；执行局扣押船舶 11 艘，均为中国籍船舶；拍卖船舶 12 艘，均为中国籍船舶。

3. 包括海事庭、海商庭、立案庭及五个派出法庭。

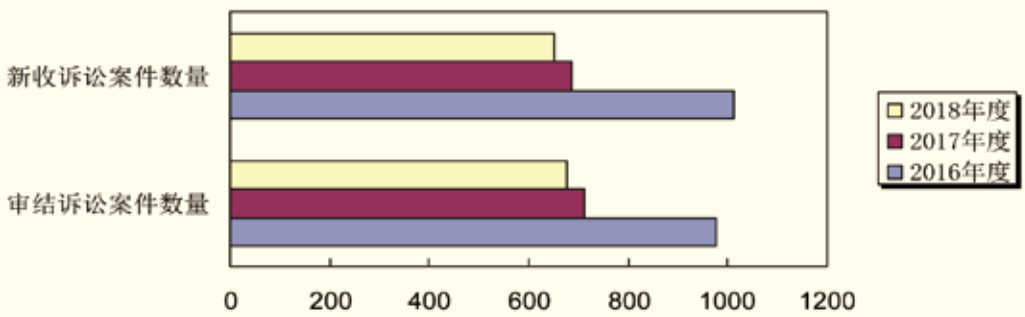
其他主要质效指标：诉讼案件调解率33%，同比下降3.43个百分点；撤诉率16.21%，同比下降1.27个百分点；服判息诉率91.3%，同比上升7.88个百分点；发改率3%，同比上升1.13百分点；案件平均审理天数81.9天，同比减少16.3天；简易程序适用率38%，同比下降3个百分点；信访投诉率1.37%，与上年基本持平；司法救助231件案件当事人，缓、减、免诉讼费311万余元。

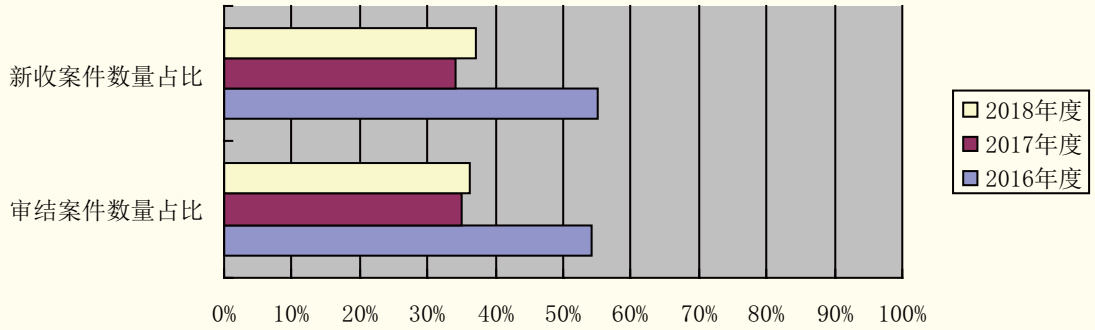
派出法庭案件情况：五个派出法庭受理各类案件724件，其中新收650件，占全院总数的37%；结案678件，占全院总数的36.2%；新收案件中，诉讼案件594件，占全院总数的66.9%；海事、海商案件立案标的额16.6亿元，占全院海事、海商案件立案标的总金额的58.7%；案件平均审理天数66.98天，同比下降1.8%；调解率24.72%，撤诉率15.11%，发改率3.07%。主要案件类型如下：

派出法庭数量前五位案件类型



派出法庭历年新收诉讼案件数、审结诉讼案件数及其占比情况：





二、2018 年海事审判工作情况

（一）发挥审判职能，保障国家战略

2018 年，我院院领导多次带头走访调研大连市委、市委政法委、市人大、自贸区管委会、大连港、营口港等港航企业，了解司法需求；出台《大连海事法院服务保障全面振兴工作实施意见》，提出 25 项具体举措服务东北全面振兴，为国家战略实施提供有力司法保障；召开优化营商环境专题座谈会，了解影响全面振兴的突出问题，与 25 家港航企业共同构筑风险防范机制；撰写《法治视角下的大连片区建设》、《自贸区沿海捎带业务相关法律问题研究》等 4 份调研报告，参与编制起草《法治大连建设规划纲要》，为搭建符合辽宁自由贸易试验区发展需求的司法保障平台提供海事方案；在为“一带一路”建设提供司法服务和保障主题征文及典型案例征集活动中获奖 13 篇，占辽宁法院获奖总数的 26%, 获得优秀组织单位奖。

（二）裁判行政争议，推进法治建设

严格审查被诉具体行政行为的合法性，维护行政相对人的合法权益，推进法治政府建设。裁判支持行政机关行政行为案件 38 件，审查行政非诉执行案件 74 件 , 原告撤诉 34 件。裁判撤销、变更、履行法定职责和确认违法、无效案件 15 件。督促行政机关负责人出庭应诉案件 76 件。在依法裁判行政争议同时，不断拓宽海事司法服务的路径与渠道。积极为行政部门提供法律咨询，第一时间加入大连市“11•18 船舶失联案件联合调查组”，为政府处理中韩毗邻海域突发事件提供专业海事法律意见。召开海事行政审判新闻发布会，发布海事行政审判司法审查报告及海事司法建议书，着力优化法治环境。

（三）组织执行战役，攻坚执行瓶颈

如期完成最高人民法院确定的“基本解决执行难”四项核心指标，首次执行案件实际结案率（2016-2018 年度）68.48%，高于全国平均值 25.73 个百分点。首次执行案件执行完毕率（2016-2018 年度）43.97%，高于全国平均值近 14 个百分点。加强执行查控系统建设，充分利用信息化技术精准查控被执行人财产，共查询被执行人银行存款 32600 条、股权信息 487 条、房屋及土地不动产信息 5520 条，查封房产 354 处、船舶 102 艘，拍卖船舶 12 艘。先后组织开展“雷霆行动”、“风暴战役”、“80 日攻坚”、“假日行动”等专项执行战役，在辽宁省内外开展集中行动 11 次。其中，在南京明洲码头、瓦房店长兴岛码头分别扣押长期躲避的“盛嘉禾 1 号”轮和“盛嘉禾 2 号”轮，有力打击了被执行人逃避执行的气焰；配合大连市政府惩治无理占用码头行为，驱离 8 艘占港油船，保护大连的不可移动文物之一“满化码头”，取得很好的社会效果。

（四）激发派驻优势，畅通诉讼渠道

五个派出法庭以营口港、锦州港、丹东港、三江流域及周边海域为支点，保障“辽蒙欧”、“辽满欧”物流大通道及“中蒙俄经济走廊”建设。强化巡回审判功能，派出法庭辖区 36.5% 的案件得到就近就便妥善解决。锦州法庭妥善处理一起涉案金额为 1.3 亿元的海洋工程建设纠纷案件，保障港航企业的长足发展；鲅鱼圈法庭圆满完成涉军案件赔偿损失工作，被评为辽宁省“法院系统涉军维权先进集体”；东港法庭主动融入地方政府法治建设，荣获“优质服务单位”称号；哈尔滨法庭依法化解哈尔滨空调股份有限公司诉太平洋财产保险股份有限公司海上保险合同纠纷，协调大连港解决历史遗留问题；长海法庭依法审结长海县环保局请求确认海域承包合同无效系列案件，践行“两山”理论，还青山绿水于民。

（五）构建智慧法院，深化司法公开

成立信息化建设工作领导小组，加快推进信息化建设和诉讼服务中心、执行指挥中心的优化升级。健全司法公开机制，从立案、庭审、执行、听证、文书、审务等六个方面加强司法公开。升级 8 个科技法庭，全部对接中国庭审公开网，实现庭审公开全覆盖。深入推进“三大公开平台”建设，裁判文书上网 1262 份，网上直播庭审 232 次。优化诉讼服务中心功能，整合立案信访、诉讼引导、咨询解答、诉前调解、司法

救助等多部门工作，全年提供诉讼引导1180次，提供法律咨询1200余人次，速裁海事海商案件107件。建设完成电子卷宗随案同步生成系统，实现OA办公系统深度应用。推送工作动态、典型案例、司法数据等230篇，点击量26万余次。自觉接受各界监督，强化与“两代表一委员”的沟通，组织开展代表委员走进法院、监督司法的“六个一”活动，邀请社会各界参观、旁听庭审和见证执行活动30余人次。

（六）增强司法能力，提升队伍素质

完善案件督办机制，清理18个月以上积案32件，3年以上积案8件，5年以上未结案件全部结清。完善海事审判陪审员队伍的选任机制，增任人民陪审员40人，普通程序案件陪审率69.7%。进一步加强与高校、海事行政部门、大型港航企业的交流合作，完善法官专业化水平，开展专题专项培训，提升干警司法综合素质和能力。创办《海事审判研究》、《海事案例参考》，组织法官往返印度尼西亚上船实践、开展速录员岗位比武及货物报关、港口作业、国际公约等项目培训，同大连海事大学签订《合作框架协议》及《共建硕士研究生联合培养基地协议》。深入开展调查研究工作，获省级课题立项10件，省级以上奖励、调研成果32项，一批年轻业务骨干多次站在中外论坛发出海事声音，行政审判经验在第五次全国涉外商事海事审判工作会议上交流。加强法院文化宣传工作，认真组织“忠诚干净担当”主题教育实践活动、“海法讲坛”及各类专项督查、检查、考核工作。根据我院真实事例创作的微电影《执爱无悔》获“中央政法委优秀微电影奖”，“全国法院十佳微电影奖”，我院被最高人民法院评为“2018年度在司法宣传工作中做出突出成绩的人民法院”。

三、审理案件发现的问题与建议

为了更好地总结审判经验，扩大海事审判对涉船、涉港、涉海、涉国际贸易等相关海事案件的规则引导和价值引领作用，为“一带一路”建设奉献海事力量，我院对司法实践中一些典型问题进行了总结和提炼，期望从审判的视角为各类海事相关主体在开展日常经营活动时提高风险防范意识、增强风险把控能力、提升经营管理水平提供有益参考。

（一）与港口经营人相关的问题与建议

1. 把握修法契机，对港口经营人行使货物留置权的适用范围予以明确

港口货物是港口经营人与作业委托人直接联系的载体，港口经营人在出现港口费用纠纷时对港口货物主张留置权，成为港口经营人实现港口费用债权、保障自身利益不受损害的常规手段。当货物所有权人直接与港口经营人签订港口作业合同时，货物所有权人与作业委托人是一致的，如果货物所有权人拖欠港口作业费用，其委托作业的港口货物属于“债务人的动产”，港口经营人留置港口货物在法律上不存在争议；但在港口经营实务中，货物在流转过程中发生所有权人变更，导致港口经营人行使留置权受阻，进而引发作业委托人、货物所有权人和港口经营人间的诉讼纷争。我院在审理（2015）大海商初字第586号案件[4]时认为，如果港口经营人对作业委托人享有到期债权，即使该债权是因已离港货物的作业产生，与港口经营人主张留置的港存货物不属于同一法律关系，根据《中华人民共和国物权法》第二百三十一条“企业之间留置的除外”规则，港口经营人有权留置已经合法占有的作业委托人的动产，但该动产须为作业委托人所有或合法占有。

建议：在港口作业实务中，港口经营人很难判断也没有必要判断向其交付货物的作业委托人是否是货物所有权人，故港口经营人应当有权依据《中华人民共和国合同法》（以下简称合同法）第三百八十条的规定，留置作业委托人向其交付的货物，而不限于作业委托人所有的货物。把握《中华人民共和国海商法》（以下简称海商法）修改的契机，建议在海商法中明确港口经营人的法律地位及其行使留置权的适用范围。

2. 港口货物仓储，逾期提货期间发生货损，仓储合同当事人应当以合同约定为基础就货损原因履行举证责任

根据合同法中关于仓储合同的规定[5]，保管人的归责原则为过错推定原则，即货物在保管人保管过程中，一旦发生货损则首先推定保管人有过错，保管人有义务举证证明其无过错或存在免责事由，否则应当承担货损责任。但就港口货物保管合同而言，在对作业委托人提货期限有约定的情况下，超过此提货期限发生的货损适用何种归责原

4. 原告大连港股份有限公司与被告沈阳东方钢铁有限公司港口货物保管合同纠纷案，辽宁省高级人民法院二审判决维持原判，案号为（2018）辽民终463号。基于该案判决撰写的论文《论港口经营人行使留置权的法律困境与出路》在《中国海商法研究》2018年第4期发表。

5. 详见合同法第三百九十四条规定。

则予以判断，法律并无明确规定。我院在审理（2015）大海商初字第376号案件[6]时认为，港口货物仓储注重货物的中转性、流动性，逾期提货期间发生的货损，货损原因的举证责任应归于作业委托人。本案中，货物入仓时存在不适于保管的特殊状态，双方对货物的在港时间做了“30天提离港口”的约定。该约定的存在阻却了法定归责原则的适用，作业委托人应就港口经营人在其逾期提货后是否尽到妥善保管义务承担举证责任。30天后货物热损加剧，应推定系由于货物入仓时的特殊状态导致，对于由此产生的货损根据约定应由作业委托人负担。除非作业委托人举证证明货损系港口经营人未尽到妥善保管义务致使热损加剧等货物品质因素之外的其他原因导致的，否则作业委托人应自行承担损失。

建议：港口经营人在遇到仓储货物品质存在瑕疵并有可能因仓储时间的不同引发潜在货损风险时（尤其是面对大宗粮食货物仓储），应在科学评价仓储风险的基础上，与作业委托人就仓储时间、条件以及责任承担等条款进行严谨而细致的探讨，在仓储协议中明确约定并严格履行，以避免因非自身过失行为而承担法律责任；作业委托人在仓储合同明确约定了仓储时间和提货时间时，应严格按照合同约定履行提货义务，以避免因逾期提货而承担货损责任的不利后果。

3. 仓单持有人凭仓单提取货物，需证明其是仓单的合法权利继受人

合同法第三百八十七条规定：“仓单是提取仓储物的凭证。存货人或者仓单持有人在仓单上背书并经保管人签字或者盖章的，可以转让提取仓储物的权利。”我院在审理（2015）大海商初字第203号案件[7]时认为，仓单持有人凭仓单提取货物，必须向港口经营人出示经过作业委托人合法背书转让并经港口经营人签字或者盖章的正本仓单，以证明其经仓单权利人合法处分取得了仓单权利，是仓单的合法权利继受人。仓单持

6. 原告布瑞特保险有限公司（Brit UW Limited）、塔尔伯特2002保险资本有限公司（Talbot 2002 Underwriting Capital Ltd.）、比兹利保险有限公司（Beazley Underwriting Ltd.）、比兹利斯塔夫保险有限公司（Beazley Staff Underwriting Ltd.）、斯塔尔辛迪加有限公司（Starr Syndicates Limited）、埃伦什奥CC（二）有限公司[Ironshore CC (Two) Limited]、埃伦什奥公司资本有限公司（Ironshore Corporate Capital Limited）、安维公司名称有限公司（ANV Corporate Name Ltd.）与被告营口港务股份有限公司粮食分公司、营口港务股份有限公司港口货物保管合同纠纷案，一审判决后，当事人均未上诉。

7. 原告永泓仓储物流（上海）有限公司与被告营口港务集团保税货物储运有限公司、第三人英国渣打银行（Standard Chartered Bank）港口货物保管合同纠纷案，辽宁省高级人民法院二审裁定维持原裁定，案号为（2016）辽民终376号。

有人提出，仓储合同订立时的作业委托人实际为仓单持有人的代理人，但其未举证证明该代理关系的存在，故仓单持有人未取得仓单权利。

建议：港口经营人在向作业委托人出具仓单时，在仓单上除了准确记载作业委托人信息外，还应就仓单转让需要注意的法律问题进行明确提示，以避免因仓单的不规范流转引发诉讼纠纷。仓单持有人在接受仓单时，应注意合同法第三百八十七条关于仓单权利转让要求的规定，避免受让仓单却无法主张仓单权利，蒙受巨额损失。

（二）海上保险合同中，保险合同双方在订立保险合同时，均应遵循最大诚信原则，如实履行告知义务

根据合同法和《中华人民共和国保险法》（以下简称保险法）的相关规定[8]，对保险合同中免除保险人责任的条款，保险人在订立合同时应当在投保单、保险单或者其他保险凭证上作出足以引起投保人注意的提示，并对该条款的内容以书面或者口头形式向投保人作出明确说明；未作提示或者明确说明的，该条款不产生效力。我院在审理（2016）辽 72 民初 137 号案件[9]时认为，最大诚信原则系海上保险的基石，由于海上风险巨大，最大诚信原则对于海上保险更有其特殊意义，保险合同双方应严格遵循最大诚信原则。本案中，保险人曾对被保险人所有的船舶承保过沿海内河船舶保险一切险，对之后其他保险人对该船舶的承保内容亦完全知悉，因此保险人对投保人以前所投保险的内容、需求、目的等是明知的。在此情况下，为了承揽业务而采用口头方式向投保人承诺不低于其他保险人的承保条件，保险人有义务在保险合同签订时就免除和减轻保险人的责任条款向投保人做出足以使投保人明确知悉该条款意思表示的特别说明，否则保险人应承担不利的法律后果。

建议：订立保险合同的双方均应遵循最大诚信原则，如实履行告知义务。保险人作为专业保险机构，应当诚信经营，不应当以“打擦边球”等方式不正当竞争，在投保人投保时依法履行明确说明义务，特别应当就减轻和免除保险人保险责任的条款向投保人进行完全的释明。同时，对投保人的保险需求提出专业建议，以避免重大风险遗漏。

8. 详见合同法第三十九条第一款、保险法第十七条第二款规定。

9. 原告东莞市海龙疏浚工程有限公司与中国平安财产保险股份有限公司深圳分公司海上保险合同纠纷案，辽宁省高级人民法院二审调解结案，案号为（2018）辽民终154号。

（三）财产保全案件当事人应当以合理原则为基础提起和应对保全申请，避免因保全过度或应对失当产生新的诉讼纠纷

《中华人民共和国民事诉讼法》（以下简称民诉法）第一百零五条规定：“申请有错误的，申请人应当赔偿被申请人因保全所遭受的损失。”该法对“申请有错误”的认定标准没有规定，故在判断申请人保全是否错误时，判断标准为《中华人民共和国侵权责任法》（以下简称侵权责任法）下的过错责任归责原则[10]，由主张申请有错误的一方承担举证责任，并考虑财产保全制度的特殊性。我院在审理（2017）辽72民初405号案件[11]时认为，财产保全制度的目的是为了保护当事人合法权益和将来生效裁判文书得以执行，法律没有规定以实体裁判结果作为审查保全错误与否的唯一和绝对依据，仅以生效裁决数额少于保全数额即所谓的“超额保全”来判断保全是否错误，会动摇保全制度的根本目的。本案中，虽然中国海事仲裁委员会未支持保全申请人的绝大部分请求，但保全申请人系因被申请人存在违约行为而依法享有并行使申请财产保全的诉讼权利。在保全申请人享有债权，不存在恶意仲裁的情况下，不应仅以保全数额与生效裁判结果的不同而对违约方给予过度保护，这与民事活动应遵循的诚实信用原则和公平原则相违背。

建议：财产保全被申请人如果判断被保全货物在保全期间可能会遭受减值损失，应在科学分析、理性判断的基础上尽可能地以及时协商、提供担保或申请法院拍卖等方式减少损失，以避免损失的进一步扩大；对于财产保全申请人，即使存在合法且合理的诉权，申请人亦应本着尽量减少潜在损失、合理控制保全风险的原则确定保全方式和保全金额，以避免因保全错误或保全过度产生纠纷。

（四）防范和识别当事人串通对船舶进行虚假登记的行为

我院在审理一起船舶抵押合同纠纷案件中，发现船舶系近20年船龄的钢质散货船，2016年海事局为该轮办理船舶抵押登记时，已提示出借人该轮有两笔共9000余万元的船舶抵押权未予注销，但出借人仍然同意以该轮作为抵押担保向借款人出借3000万

10. 详见侵权责任法第六条第一款。

11. 原告本钢集团国际贸易有限公司与被告香港市龙航运有限公司（HongKong City-Dragon Shipping Co., Ltd.）因申请财产保全损害责任纠纷案，辽宁省高级人民法院二审判决维持原判，案号为（2018）辽民终214号。

元，并且全权委托借款人办理船舶抵押登记手续，出借人与借款人共同确认船舶价值为12700万元。经查，借款人与出借人串通，通过签订虚假借款合同和抵押合同，骗取船舶登记管理机关办理了真实的船舶抵押权登记证书，诉讼时提供虚假银行流水虚构债权，以达到参与船舶拍卖款项分配并影响借款人的合法债权人受偿船舶拍卖款项的目的。出借人与借款人的行为构成虚假诉讼，我院依法驳回诉讼请求，并将案件移送公安机关。

建议：海事诉讼有其特殊的诉讼制度，证据亦复杂多样，法院在审理案件中发现存在虚假诉讼可能时，应当依职权调取相关证据，全面严格审查诉讼请求与相关证据之间是否存在矛盾，排除可疑事项，防止重大错案的发生，保障利益相关方的合法权益不受非法侵害。

四、2019年审判形势预判

（一）司法职能作用将愈发凸显

为助力东北深度融入“一带一路”建设、辽宁自由贸易试验区建设、大连东北亚航运中心建设，我院于2018年出台《大连海事法院服务保障全面振兴工作实施意见》，提出25项服务保障措施。随着经济活动不断活跃，辖区内重点港航企业的航道疏浚、港口建设、多式联运、海上保险纠纷等案件将进一步增多，亟需统一的裁判尺度。此外，大连市2018年底完成了《中国（辽宁）自由贸易试验区总体方案》中确定的108项任务，其中同航运有关的诸如“允许中资非五星旗船舶先行先试沿海捎带业务”等政策均为制度创新，相关领域将可能出现新型案件，给海事审判提出崭新课题。

（二）信息化建设步伐将持续加快

随着智慧法院建设的加快推进，智慧审判、智慧执行、智慧诉服、智慧管理的实现将给海事审判带来理念和方式的重大变革。电子卷宗随案同步生成的不断推广、庭审语音识别等技术的深度应用都将大大提升审判效率与质量。网上立案、缴费、阅卷、证据交换、送达、调解、开庭等在线功能，将让当事人体验到方便快捷的司法服务。政务网站、微博、微信公众号等新媒体的运用推广将加快推进司法公开，提升海事司法影响力和公信力。

（三）海洋环境保护司法需求将逐步扩大

党的十九大报告提出：“坚持陆海统筹，加快建设海洋强国”。当前，海洋开发利用秩序亟待规范，生态文明建设敦促海事司法服务不断进步以应对海洋环境保护的新需求，海事审判工作在围绕管海、用海以及护海的目标上将大有作为。船舶溢油、港口建设、填海造地、海洋开发利用、陆源污染物入海等引发的海洋生态环境领域纠纷应当予以高度重视，海事诉讼程序对环境污染的预防、减损功能有待实践进一步检验。海洋环境公益诉讼案件的审理经验迫切需要系统化积累与规范，对环境公益诉讼专项基金的设立探索，将有利于维护海洋再生产能力，保障海洋“蓝色粮仓”的建设。此外，海域征收补偿纠纷及因渔业资源枯竭带来的养殖业与航运业、旅游业之间的纠纷等亦亟需关注与妥善解决。

五、2019 年工作计划要点

（一）进一步提高政治站位，在服务大局上担当作为

深刻认识习近平总书记重要讲话的重大理论和实践意义，紧紧围绕辽宁省委“1+8”系列文件主动作为，服务拉长“四个短板”、推动“六项重点工作”，保障海洋强国、“一带一路”建设、自由贸易试验区建设等国家战略实施。

（二）狠抓执法办案第一要务，在审判质效上深耕细作

依法公正高效审理海事海商类民事和行政案件，深入推进审判精品战略，深化质效分析、流程节点管理、质量评查监督和司法公开机制。继续保持执行工作高水平运行，建立完善长效机制，巩固和深化“基本解决执行难”成果。

（三）积极推动司法改革落实到位，在严格管理上拓展深化

全面落实司法责任制，持续完善权责一致的司法权运行机制。探索自由贸易试验区审判机构建设，研究涉自由贸易试验区案件的集中管辖机制，积极融入辽宁自由贸易试验区大连片区建设、大连“两先区”建设等重点工作。

（四）强力推进信息化，在智慧法院建设上奋勇争先

积极推进信息技术与审判执行的深度融合，创新探索“互联网＋审判服务”新模式，打造集智慧诉讼、智慧审判、智慧执行、智慧政务为一体的智慧海事法院模式，全面提升司法保障能力。

（五）进一步强化队伍建设，在队伍战斗力上明显提升

全面贯彻落实新时代党的建设总要求，不断推动全面从严治党、从严治院向纵深发展。认真落实党风廉政建设和反腐败工作部署，强化对司法权运行的监督制约。加强审判能力和审判体系现代化建设，着力培养既熟悉中国法律和相关国际条约、国际惯例，掌握国际经贸航运知识，又具有丰富审判经验和较高外语水平的法官，为推动新时代海事审判工作发展提供人才保障。

六、海事审判典型案例六则

（一）承运人在救助触礁搁浅船舶过程中不存在管货过失的，不承担货物损失赔偿责任

基本案情：2012 年 8 月，承运人光明（利比里亚）公司〔Kuang Ming (Liberia) Corporation，以下简称光明公司〕所属“德明”轮在巴西巴拉那瓜港装载 60500 吨大豆起航驶往中国大连港，九三集团大连大豆科技有限公司（以下简称九三公司）系货物的提单持有人。该轮航行至印度尼西亚巽他海峡附近海域时触礁搁浅，船长进行自助脱浅，未成功。光明公司指定 T&T 公司进行现场检查，结论为事故船舶在没有外力帮助的情况下无法脱浅。2012 年 9 月 19 日，光明公司与 T&T 公司签订救助合同，对搁浅船舶及货物等进行救助。T&T 公司结合事故船舶受损情况及救助力量分布情况等，先后制作了两版救助计划，从先由 1 号货舱卸货更改为先由 2 号货舱卸货。救助过程中，救助人陆续发现 1 号货舱破损及污水井污水深度增加。救助人随即制作第三版救助计划，将 1 号货舱 3575.356 公吨大豆卸至救助轮，后确认 1 号舱货物全损。货物保险人中国平安财产保险股份有限公司（以下简称平安财险）向被保险人九三公司支付了保险赔款，平安财险黑龙江公司代平安财险与九三公司签署《赔付协议及权益转让书》，取得代位请求赔偿权。平安财险黑龙江公司起诉主张“德明”轮不适航，光明公司存在严重管货过失，要求光明公司向其赔偿货物损失 16635286.76 元及相应利息、货物救

助报酬损失468万美元（未标明币种的，币种均为人民币）及相应利息、评估费。

裁判要旨：法院经审理认为，“德明”轮不存在不适航的情形。事故发生后，光明公司通过救助公司积极调集救助船舶、潜水员、潜水设备以及其他特殊救助设备，在当地气候允许的情况下，及时检查和监测事故船舶受损情况。救助方案从考虑先由1号货舱卸货到变更为先由2号货舱卸货，综合考虑“德明”轮货物和人员的安全性及接收货物船舶的具体情况、现场空间的限制（水深、搁浅船舶的位置、救助船舶的位置等）和事故船的强度，进行谨慎合理的救助。货舱受损进水是逐步显现的过程，1号货舱破损及货物水渍是在救助过程中被发现并采取救助措施的。平安财险黑龙江公司未提供证据证明救助方案不合理，并因此造成1号货舱货物损失的扩大。即使因救助措施进一步扩大了货损程度和范围，只要救助措施合理，货物因货舱破损进水而损坏的原因力没有中断，就不应认为光明公司存在管货过失。“德明”轮在运输过程中，船长、船员因驾驶船舶过失导致船舶触礁搁浅，造成1号货舱货物损失，属于海商法第五十一条第一款第一项规定的免责情形，判决驳回平安财险黑龙江公司的诉讼请求。一审宣判后，双方当事人均未提起上诉。

典型意义：本案系典型的承运人驾驶船舶过失造成船舶触礁搁浅而引起的涉外海上货物运输合同纠纷案件。通过分析救助措施合理性及货舱破损原因力等海事技术问题，对于货损在救助过程中被发现而且货损可能因救助行为而扩大的审判难点，本案得出以下结论：只要承运人救助措施合理，货物因货舱破损进水而损坏的原因力未中断，即使因救助措施进一步扩大了货损程度和范围，承运人仍不存在管货过失，可以依法免责。本案涉及利比里亚、印度尼西亚等“一带一路”沿线国家，围绕“一带一路”建设大局，法院秉持公正、高效、专业等基本价值取向，依法分配举证责任，认定案件事实，准确阐释法律，免除了外方承运人的赔偿责任，赢得了国内外当事人的尊重和信赖，树立了中国海事司法的国际公信力。

（二）船舶触碰属于一般侵权行为，适用过错责任归责原则，委托他人管理船舶不能必然免除船舶触碰时船舶所有人的赔偿责任

基本案情：“中海才华”轮是才华航运公司（Caihua Shipping S.A.）委托大连船舶重工集团有限公司（以下简称大船重工公司）建造的1艘30万载重吨矿砂船。2013年1月30日，大船重工公司与才华航运公司签订《交付和接受协议》，将“中海才华”轮

在其船厂内交付才华航运公司。同日双方另签协议约定：交船同时，才华航运公司为“中海才华”轮购买船舶保险；大船重工公司同意该轮交船后在其公司码头停泊至2013年6月30日，停泊期间发生的相关停泊及维护费用由才华航运公司承担，大船重工公司将按照船厂有关安全和保养的规定及才华航运公司的要求对船舶进行必要维护；大船重工公司按后附的《“中海才华”轮安全管理委托协议》对船舶在码头停泊期间履行相应安全管理责任，具体包括“船舶在码头停泊期间，船厂应做好防盗，防火，防台及防冻的工作安排”等内容。2013年3月9日，“中海才华”轮在停泊中受强风等诸多因素影响，全部缆绳断裂后随风漂移，与大连中远船务工程有限公司（以下简称中远船务公司）码头相撞。海事局调查结论为“中海才华”轮应对本次事故承担全部责任。2013年4月8日、9日，才华航运公司委托上海中九工程检测公司、中船第九设计研究院对事故现场检测并出具《综合检测评估及修复咨询报告》，该报告估算修复费用为73万元。中远船务公司修复受损码头实际支付工程款743466元。事故发生时，“中海才华”轮没有配备船员。中远船务公司起诉，请求判令才华航运公司赔偿中远船务公司各项经济损失130万元及相应利息。

裁判要旨：法院经审理认为，才华航运公司是“中海才华”轮船舶所有人，负有对船舶的安全管理义务，应当采取充分有效的安全管理措施，防止或者避免船舶触碰他人财产造成损害。《中华人民共和国对外国籍船舶管理规则》第十四条规定：“船舶在港内停泊，必须留有足以保证船舶安全操纵的船员值班，遇有台风警报等紧急情况，全体船员必须立即回船采取防范、应急等措施。”才华航运公司在船舶交付后，仍将船舶在码头继续停靠时，应当安排足以保证船舶安全操纵的船员值班，尤其是在恶劣天气条件下，船舶受强风影响断缆随风漂移时，能够及时控制船舶的航行，避免事故发生。才华航运公司作为船舶所有人，应该能够预见到强风天气会给船舶在码头停靠带来的潜在危险性，但其未留有足以保证船舶安全操纵的船员在船上值班，也没有为应对恶劣天气条件采取有效的防范应急措施，其本身具有过错。虽才华航运公司与大船重工公司签订安全管理委托协议，但该协议内容不足以完全免除才华航运公司作为船舶所有人的安全管理责任。判决才华航运公司向中远船务公司赔偿码头修复费743466元及相应利息。一审宣判后，才华航运公司提起上诉。辽宁省高级人民法院二审判决驳回上诉，维持原判。

典型意义：船舶触碰是指船舶与固定的设施或障碍物发生接触并造成损害的海上

侵权行为，依照侵权责任法确定触碰船舶的侵权责任，采用过错责任归责原则。本案中，“中海才华”轮缆绳断裂之后随风漂移撞到码头就是典型的船舶触碰案件。在航运市场不景气的情况下，船舶的运价不高、运力过剩，有的新建船舶造好后没有立即投入使用，而是停靠在码头自行看管或者委托他人看管，待市场行情好转再投入营运。船舶所有人对船舶虽没有使用，仍具有管理义务，在船舶停靠期间如果发生碰撞或者触碰事故，船舶所有人仍有可能承担侵权责任。船舶所有人不能简单认为委托他人看船就可以免除自身对船舶的管理义务，在签订委托看船协议时一定要对船舶的船员配备情况做出约定，即使船舶处于停运状态不需要配备全部适航船员，也应当保留部分值班船员应对恶劣天气等突发状况。

（三）适用 1992 年油污公约审理案件时，受损害人可直接要求承担船舶所有人油污损害责任的保险人赔偿损失，但不能要求船舶所有人与油污责任保险人承担连带责任

基本案情：“阿提哥（Arteaga）”轮为葡萄牙籍油轮，船舶所有人为西班牙昂迪玛海运有限公司（Ondimar Transportes Maritimos Ltda，以下简称昂迪玛公司），油污损害责任保险人为英国博利塔尼亚船舶保险协会（Britannia Steam Ship Insurance Association，以下简称船舶保险协会）。2005 年 4 月 3 日，“阿提哥”轮从也门 RAS ISA 港装运麻里布原油 949986 桶运抵中国大连新港油轮锚地。“阿提哥”轮在从大连新港油轮锚地驶往大连新港原油泊位途中，在大连险礁岩搁浅，致使该轮 3S 舱出现破损，舱中原油溢出造成海面大面积污染。曾某租用的海参育苗室因该次事故影响受到污染，海参苗大量死亡。事故发生后，曾某委托大连水产学院对育苗室水质及刺参苗进行跟踪检测，最终确认所有育苗池因养殖海参苗无法成活而被清池。2005 年 4 月 26 日，辽宁省海洋渔业环境监督监测站受法院委托进行现场证据保全的调查与取证，确认曾某的育苗室水体体积、养殖品种、平均栖息密度，并认定损失率为 19.6%。2006 年 9 月山东海事司法鉴定中心受法院委托作出鉴定报告，认定曾某的育苗室属于本次事故溢油污染影响海域范围内，污染对刺参育苗产生一定影响，刺参苗的损失率按 3.33% 计算，评估刺参苗损失量 87599 头。曾某起诉，请求判令昂迪玛公司和船舶保险协会连带赔偿污染损失 550 万元及相应利息。

裁判要旨：法院经审理认为，我国是《1992 年国际油污损害民事责任公约》（以下

简称 1992 年油污公约）缔约国，本次事故泄漏油类，也是该公约规定的持久性原油，本案应适用 1992 年油污公约。曾某主张的养殖物损害赔偿请求，属于 1992 年油污公约第一条规定的“污染损害”，该公约第三条第 1 款明确规定，事故发生时的船舶所有人应对船舶因该事故造成的任何污染损害承担责任，昂迪玛公司作为船舶所有人应对曾某的养殖物的损害承担赔偿责任。虽然 1992 年油污公约规定，对油污损害的索赔可直接向承担船舶所有人油污损害责任的保险人提出，但公约并未明确规定受损害人可以要求船舶所有人与油污责任保险人承担连带责任。曾某已选择了向船舶所有人进行索赔，对其要求油污责任保险人承担连带赔偿责任的请求既不符合公约的规定，也不符合连带责任法定原则，对曾某该项请求，法院不予支持。虽然当事人自行委托鉴定结论的证明力通常会弱于法院委托鉴定的鉴定结论，但本案中法院委托两家鉴定部门对曾某损失的认定均存在明显瑕疵，曾某自行委托的行业专家所作报告也是多次对实地进行检测、跟踪做出，可以反映曾某的实际损失情况，法院依据该报告认定的损失率结合证据保全的养殖数量确定赔偿金额，判决昂迪玛公司向曾某给付 1319476 元及相应利息。一审宣判后，当事人均未提起上诉。

典型意义：本案审判涉及外籍油轮在中国海域溢油污染造成的损害赔偿等相关问题，确定了该类型案件的法律适用、赔偿责任主体、举证责任分配、损失认定的一些规则，包括：首先，涉外案件条约优先适用原则。在涉外民事法律关系中存在可以适用我国缔结或参加的国际条约情形的，应首先适用国际条约，符合 1992 年油污公约的船舶及所泄漏油类引起的污染损害赔偿，应适用 1992 年油污公约确定各方当事人的权利义务关系。其次，公约虽规定污染损害受害人可直诉油污责任保险人，但并未规定责任保险人对污染损害承担连带责任，按照连带责任法定原则，受害人无权要求责任保险人承担连带责任。最后，当事人单方委托的鉴定结论的证明力不必然弱于法院依职权委托鉴定的鉴定结论的证明力。

（四）海上拖航承拖方驾驶拖轮或管理拖轮的过失免责事由，不适用于指挥操作被拖轮

基本案情：2015 年 11 月 29 日，根据东莞市海龙疏浚工程有限公司（以下简称海龙公司）与天津众合泰富船务有限公司（以下简称众合公司）签订的《拖航合同》约定，由天津开行海运有限公司（以下简称开行公司）所有、众合公司承租的“大跃”轮对

海龙公司所有的“海龙浚1号”轮进行拖带作业，从山东省潍坊港拖带至辽宁省盘锦港。12月1日，因避风需要，“大跃”轮拖带“海龙浚1号”轮在辽宁省普兰店湾水域解拖、抛锚。12月3日，“海龙浚1号”轮在大风天气中走锚，尾部甲板上的机舱风机被大浪拍打脱落后轻油柜大量进水，船舶侧倾严重，最终沉没。12月4日，海龙公司委托大连盛洋海洋环境科技有限公司（以下简称盛洋公司）就“海龙浚1号”轮的清污、防污事宜进行处理。2016年3月16日清污、防污服务结束后，盛洋公司向海龙公司和中国太平洋财产保险股份有限公司东莞分公司（以下简称太保东莞分公司，本案中系“海龙浚1号”轮船舶污染责任保险的保险人）主张清污费用8770346.20元。经过协商，三方同意由海龙公司和太保东莞分公司向盛洋公司支付195万元作为最终解决方案，太保东莞分公司扣除10%的免赔额后，实际向盛洋公司支付175.5万元。太保东莞分公司以海上财产损害责任纠纷为由起诉，请求判令众合公司与开行公司连带赔偿经济损失及相关费用共计175.5万元及相应利息。海龙公司作为第三人参加了本案诉讼。

裁判要旨：法院经审理认为，本案系海上财产损害责任纠纷。海事局的事故结论书记载，“海龙浚1号”轮沉没事故原因有三：恶劣天气海况；拖航应急预案不全面；“海龙浚1号”轮船上人员缺少相关海上经验。拖航开始后的次日，“大跃”轮从海洋公报预测中了解到拖航将遇到恶劣天气，并采取了选择锚地避风的措施，故恶劣天气海况在事故发生前可以预见，不构成不可抗力。承拖方就驾驶拖轮或者管理拖轮的过失免责事由认定，应当严格限制在驾驶拖轮或管理拖轮的具体操作事项中。众合公司、开行公司作为承拖方，应当在恶劣天气来临前针对被拖轮制定拖航应急预案，其对此未举证，应对“海龙浚1号”轮的沉没及因沉没事故引起的清污、防污损失承担过错责任。太保东莞分公司未充分举证证明“海龙浚1号”轮船员完全是受承拖方指示进行的相关操作，且海龙公司在船员聘用方面亦存在一定过失。综上认定众合公司、开行公司对事故及损失承担主要责任，太保东莞分公司作为海龙公司的代位请求赔偿权利人承担次要责任，判决众合公司、开行公司向太保东莞分公司连带赔偿经济损失及相关费用共计1228500元及相应利息。一审宣判后，众合公司提起上诉，辽宁省高级人民法院二审判决驳回上诉，维持原判。

典型意义：本案系专业性强、技术性强的海上拖航纠纷案件。海上航行风险大，被拖轮一般为无动力船舶，在遇到恶劣天气和复杂海况时，承拖方如果准备不足、应对失当，很容易造成拖航事故，进而引发诉讼纠纷。当事人没有以海上拖航合同纠纷

的案由起诉，而是主张承拖方承担侵权责任。承拖方主张了驾驶拖轮或者管理拖轮的过失免责事由，首先该事由是否适用侵权纠纷，海商法没有规定，其次承拖方为了被拖轮的安全对被拖轮采取的指挥操作措施不属于该免责事由。本案通过对不可抗力和承拖方免责事由认定等分析，为海上拖航当事人在签订和履行拖航合同时如何避免拖航事故的发生，以及事故发生后的责任认定等海上拖航实务问题提供了有益的案例指引，也为海商法修改提供了参考。

（五）保险人签发保险单后，被保险人虽未按约缴纳保险费，仍应有权向保险人主张保险赔偿

基本案情：2012 年 9 月 25 日、2013 年 9 月 22 日华威船务有限公司（Hua Wei Shipping Co., Limited，以下简称华威公司）受大连锦洋航运有限公司（以下简称锦洋公司）委托，就华威公司光租锦洋公司的“Sae Byol”轮向中国平安财产保险股份有限公司天津分公司 (以下简称平安保险公司) 投保 2012 年 -2013 年度、2013-2014 年度船舶一切险。投保单均注明保险费为“分三期支付”，平安保险公司签发了分期付费的保险单。2012 年 12 月 27 日、2013 年 5 月 28 日，华威公司支付了该轮 2012-2013 年度前两期船舶保险费。2013 年 12 月平安保险公司向华威公司催缴 2012-2013 年度第三期保险费、2013-2014 年度第一期保险费。2013 年 12 月 29 日，“Sae Byol”轮在大连附近海域触礁沉没。事故发生后，锦洋公司及华威公司向平安保险公司提出保险理赔，平安保险公司以被保险人未按期缴纳保险费，海事局报告认定被保险人未能为船舶配备足够的合格持证船员、未能根据船舶经营航线配备足够的纸质海图资料等构成船舶不适航为由，不予赔偿。锦洋公司起诉，请求判令平安保险公司给付保险赔偿款 96 万美元（折合人民币 5858304 元）及相应利息。

裁判要旨：法院经审理认为，按法律规定，被保险人应当在合同订立后立即支付保险费，被保险人支付保险费前，保险人可以拒绝签发保险单。保险责任开始后，被保险人和保险人均不得解除合同。虽然被保险人未支付保险费，但平安保险公司签发了保险单，保险责任即已开始，对承保期限内发生的保险事故，仍应承担及时赔偿的义务。保险单“付费约定”中按保险费收取比例承担保险责任的规定与船舶保险单背面保险条款中的“如保险人同意，保险费也可分期交付，但保险船舶在承保期限内发生全损时，未交付的保险费要立即付清”的约定相矛盾。而且保险合同成立后，保险

人享有了向被保险人主张到期保险费的权利，被保险人无论何时支付保险费，其支付保险费的义务是固定不变的，与付费义务相对应的获得保险赔偿的权利亦应是固定的。而“付费约定”实际是保险人只享受收取保险费的权利而不承担保险赔偿或少承担保险赔偿义务的约定，有违公平原则，且该条款系格式条款，其未能遵循公平原则确定保险人与被保险人间的权利义务，该条款应属无效。船舶是否适航应是船舶开航前及开航当时的状态，在此时配备了足够的船员及与航次计划有关的航海资料，即应认定为船舶是适航的，至于船长对船员工作的安排及是否使用海图，均不应作为认定船舶是否适航的根据。海事部门对事故原因的分析更多的是从船舶营运安全生产的角度出发，并不能完全等同于民事诉讼中对民事责任承担的认定。综上，锦洋公司作为投保人及被保险人华威公司的委托人有权就“Sae Byol”轮保险事故向平安保险公司主张保险赔偿，“Sae Byol”轮发生保险事故后受到严重损坏，完全失去原有形体、效用，已发生实际全损，判决平安保险公司给付锦洋公司保险赔偿款 96 万美元（按 2013 年 12 月 30 日汇率折算）及相应利息。一审宣判后，平安保险公司提起上诉。在辽宁省高级人民法院的主持下，双方达成调解协议，由平安保险公司向锦洋公司给付保险赔偿款 96 万美元折算后的人民币 5858304 元。

典型意义：本案对保险公司在签发保险单后是否能以被保险人未足额支付保险费而拒绝保险赔偿提出了明确的法律观点，对保险实务具有较强的指导意义。首先法律赋予了保险人在未收到保险费时有拒绝签发保险单的权利，签发了保险单，保险责任即已开始。被保险人与保险人的权利义务应是对等的，在分期支付保险费的约定中，保险人既享有对被保险人主张保险费的权利，又不承担支付保险赔偿的义务，有违公平原则。另外，海事部门作出的调查报告并不当然具有证明效力，仍应根据调查确定的事实对当事人的权利义务进行分析确定。

（六）承托双方可约定承运人的免责事项，因约定的特殊气候原因导致合同无法履行的，承运人不应承担违约责任

基本案情：2016 年 9 月，同江港务局与黑河市丰泰机电产品交易有限公司（以下简称丰泰公司）签订《水路货物运输合同》，为丰泰公司运输面粉、食品等货物，起运港为俄罗斯哈巴罗夫斯克港，目的港为中国抚远港，运输总量为 4-6 个航次。截

至2016年10月30日同江港务局为丰泰公司完成了5个航次的货物运输，第5个航次卸载作业结束后，因气温骤降导致黑龙江可航水域形成大面积流冰，严重威胁航运安全，俄方责令所有中方船只限期离港并通知中国海事部门其将关闭港口，中国海事部门也因此通知中方船只停航，同江港务局因船舶无法继续靠港装货遂终止履行合同。丰泰公司与第三方协商抢运了部分滞港货物，但仍有36个集装箱货物滞港。双方就争议协商无果后，同江港务局起诉向丰泰公司主张欠付的运费13万元及相应滞纳金，丰泰公司反诉要求同江港务局赔偿货物滞港发生的仓储费、运费和货物价值贬损损失694441.26元。

裁判要旨：法院经审理认为，双方当事人签订的《水路货物运输合同》明确约定“由于自然灾害、航道水位、冰凌等不可抗力因素影响，造成承运人违约的，承运人不承担责任”，证明双方当事人在签订合同时已充分考虑到黑龙江水域可能因恶劣天气对合同履行产生的不利影响。可航水域发生流冰后，俄方已关闭港口且中国海事部门也要求中方船只停航，合同继续履行的客观条件已不存在。本案在把握合同特别约定条款的基础上，着重审查承运人是否构成违约，鉴于承运人已事实完成5个航次的货物运输，基本达到合同约定的运输总量要求，且不存在怠于履行、迟延履行等不当情形，判令丰泰公司向同江港务局给付运费13万元及相应滞纳金，驳回丰泰公司的反诉请求。丰泰公司提起上诉，辽宁省高级人民法院二审判决驳回上诉，维持原判。

典型意义：“一带一路”战略构想的提出和实施，为中俄双边关系的发展提供了新架构、新空间。随着两国经贸合作的不断深入，必将激活东北亚区域内的发展动力与合作潜力。大连海事法院地处“亚欧大陆桥”的起点，承载着区域经济可持续发展的司法守护职能。本案对界江区域特殊恶劣气候导致合同无法履行的情形给予了充分考虑，承托双方在合同中对承运人免责事项的约定，属于双方约定的不可抗力免责条款，该条款符合法律规定的生效条件即应认定为有效。当约定的免责事项发生时，承运人可以依据合同的约定免责。本案为处理中俄界江运输合同纠纷提供了参照案例，对区域营商环境建设具有积极意义。

Foreword

In the year of 2018, under the guidance of Xi Jinping Thoughts on Socialism with Chinese Characteristics in a New Era, Dalian Maritime Court (hereinafter referred to as the "the Court"), deeply implemented the spirit of the 19th National Congress of the Communist Party of China and the Second and the Third Plenary Sessions of the 19th CPC Central Committee, conscientiously studied and implemented the important speeches of General Secretary Xi Jinping in the study of Liaoning and in the symposium on further advancing the revitalization of Northeast China, vigorously dealt with the top priority in law enforcement and case handling, made full efforts to achieve "Basically Resolving Difficulties in Enforcement", further promoted the comprehensive and strictest possible implementation of the Party's work and continuously strengthened Style Construction. The Court has made new achievements and achieved new development in trials.

1. Basic data and situation of maritime trials in 2018

Overall cases data: The Court accepted 1,981 cases of various types, a decrease of 11.9% over last year. Among these cases, 1,757 new cases were accepted, a decrease of 13% over last year, and 224 cases were left over from previous years, basically on a par with the number of last year. 1,873 cases were closed, a decrease of 7.5% over last year. The clearance rate reached 92.73%, an increase of 2.69 percent points over last year.

Contentious cases data[1] : The Court accepted 1,114 contentious cases, a decrease of 14.9% over last year. Among these cases, 955 new cases were accepted, a decrease of 13.34% over last year. The subject amount of the cases was about RMB 2.83 billion, an increase of 128% over last year. 159 cases were left over from the previous years, a decrease of 23.19% over last year. 1,035 cases were closed, a decrease of 10% over last year. The clearance rate reached 92.91%, an increase of 5.06 percent points over last year.

Enforcement cases data: The Court accepted 592 enforcement cases, a decrease of 14.9% over last year. Among these cases, 536 new cases were accepted, a decrease of 21.3% over last year. 56 cases were left over from the previous years, an increase of 273% over last year. 536 cases were closed, a decrease of 16.25% over last year. The clearance rate reached 90.54%, a decrease of 1.41 percent points over last year.

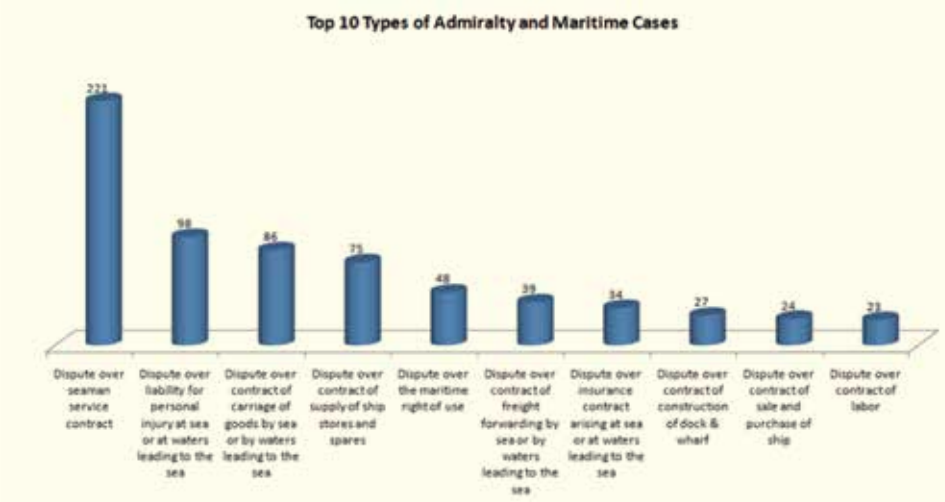
1. Only comprising of admiralty and maritime cases and maritime administrative cases other than enforcement cases, review cases of non-litigation preservation, special procedure cases, review cases of non-litigation administrative enforcement, cases of judicial aid, cases of judicial assistance and cases of state compensation, etc.

Property preservation cases data[2]: The Court accepted 77 pre-litigation preservation cases. The subject amount involved was approximately RMB 0.4 billion. The Court accepted 65 litigation property preservation cases. The subject amount involved was approximately RMB 1.1 billion.

Admiralty and maritime cases data: The Court accepted 1,018 admiralty and maritime cases, a decrease of 7.7% over last year. Among these cases, 891 new cases were accepted, a decrease of 3.77% over last year. 945 cases were closed, a decrease of 3.18% over last year. The clearance rate reached 92.83%, an increase of 4.34 percent points over last year. The subject amount of the cases was about RMB 2.83013 billion, an increase of 128.08% over last year. Among these cases, 232 new admiralty cases were accepted, a decrease of 11.45% over last year, 659 new maritime cases were accepted, a decrease of 0.75% over last year.

Maritime administrative cases data: The Court accepted 170 maritime administrative cases, a decrease of 19.4% over last year, still ranking first among the national maritime courts. Among these cases, 138 new cases were accepted, a decrease of 23.8% over last year. 164 cases were closed, a decrease of 8.4% over last year. The subject amount of the cases was about RMB 23.05 billion, an increase of 2264% over last year.

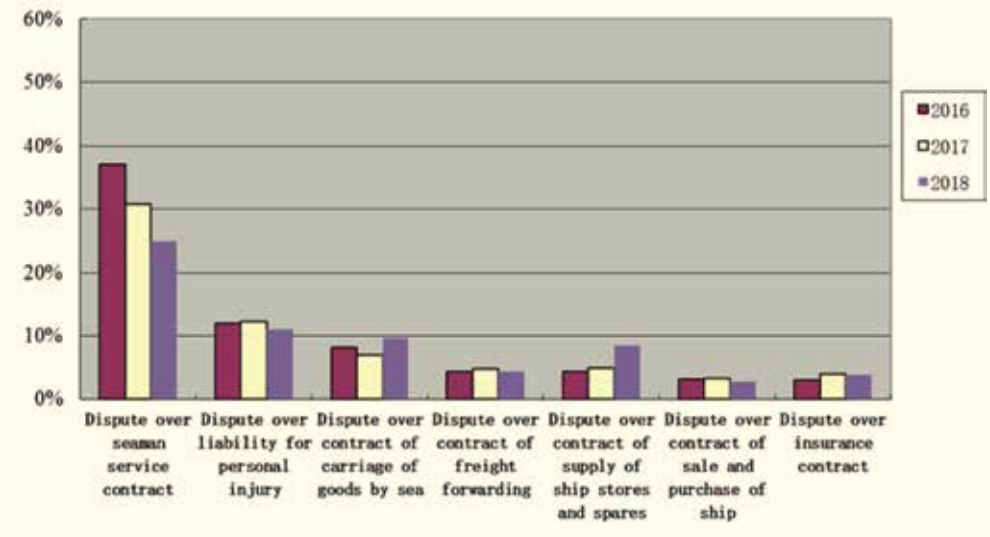
Types of Contentious Cases: Of the new contentious cases accepted, the number of the top 10 admiralty and maritime cases reached 675. The types of the above cases were as follows:



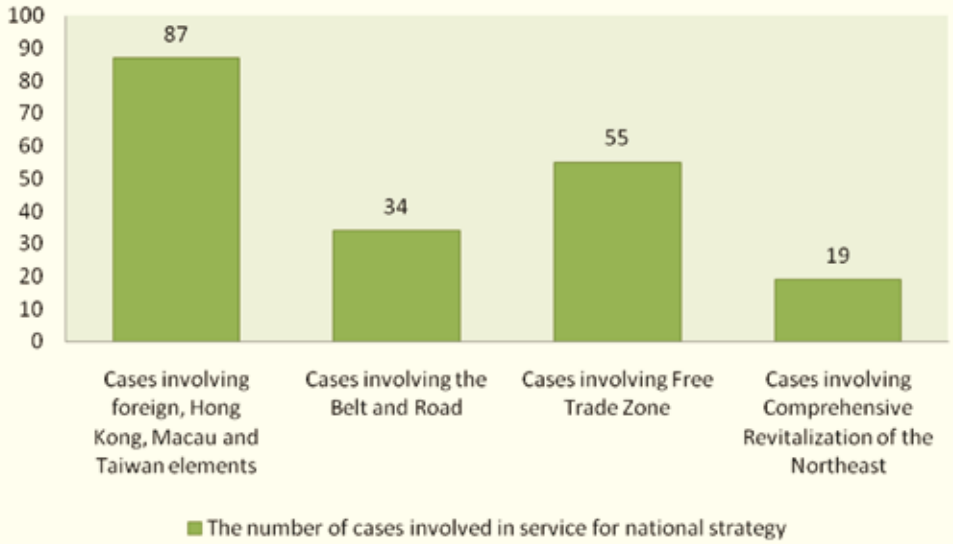
The proportions of the seven types of cases in all newly accepted maritime cases of the year were

2. Only comprising of admiralty and maritime cases and maritime administrative cases other than enforcement cases, review cases of non-litigation preservation, special procedure cases, review cases of non-litigation administrative enforcement, cases of judicial aid, cases of judicial assistance and cases of state compensation, etc.
The number of pre-litigation property preservation cases is calculated alone, and the number of litigation property preservation cases is not included in the total number of the cases.

as follows:



The Court tried 71 cases with the subject amount of more than RMB 10 million and 8 cases with the subject amount of more than RMB 100 million. The Court tried the big and vital cases properly, with the numbers and types of cases involving national strategies as follows:



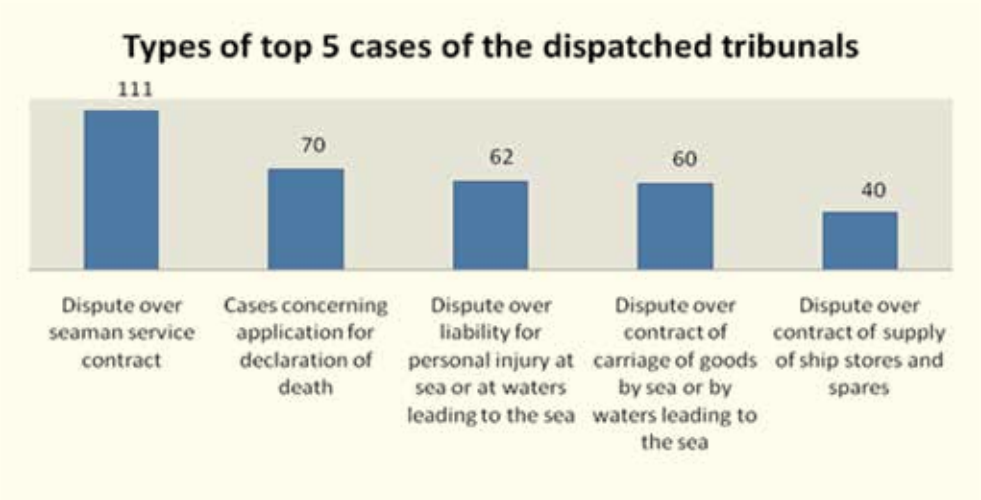
Arrest of ships: 23 ships were arrested by the tribunals[3], of which 6 were foreign. 11 ships were arrested by the Enforcement Tribunal, all of which were Chinese. 12 ships were auctioned by the Enforcement Tribunal, all of which were Chinese.

Other major data about quality & effectiveness: The conciliation ratio among contentious cases was 33%, a decrease of 3.43 percent points over last year. The litigation withdrawal ratio was 16.21%, a decrease of 1.27 percent points over last year. The ratio of satisfactory settlement without appeal was 91.3%, an increase of 7.88 percent points over last year. The ratio of cases reversed or set aside for retrial by the second trial was 3%, an increase of 1.13 percent points over last year. The average number of days for trial was 81.9 days, a decrease of 16.3 days over last year. The application rate of summary procedures was 38%, a decrease of 3 percent points over last year. The complaint rate of letters and visits was 1.37%, which was approximately the same as last year. Judicial aid was granted to parties of 231 cases, and over RMB 3.11 million in litigation fees was postponed, reduced and waived.

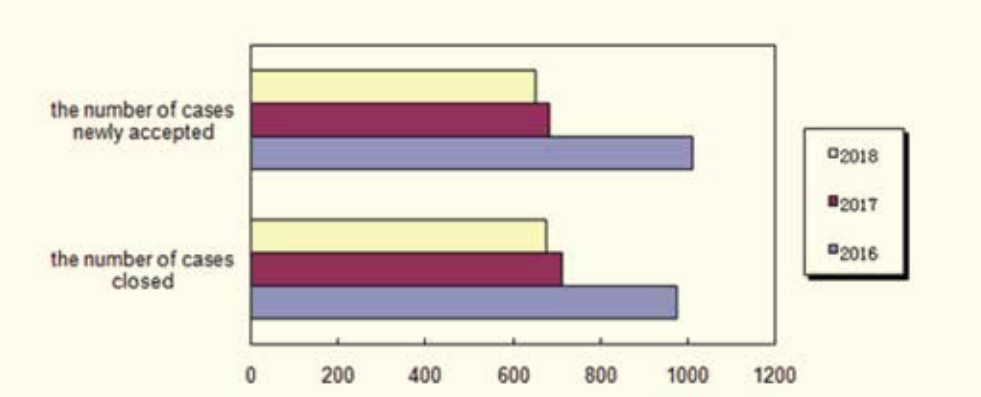
Cases of the dispatched tribunals: Five dispatched tribunals accepted 724 cases of various types, of which 650 cases were newly accepted, accounting for 37% of the total number of cases accepted by the Court. 678 cases were closed, accounting for 36.2% of the total number of cases closed by the Court. Among the cases newly accepted, there were 594 contentious cases, accounting for 66.9% of the total number of cases newly accepted by the Court. The total subject amount of the admiralty and maritime cases accepted reached about RMB 1.66 billion, accounting for 58.7% of the total subject amount of the admiralty and maritime cases accepted by the Court. The average number of days for trial was 66.98 days, a decrease of 1.8% over last year. The conciliation ratio was 24.72%. The litigation withdrawal ratio was 15.11%.The ratio of cases reversed or set aside for retrial by the second

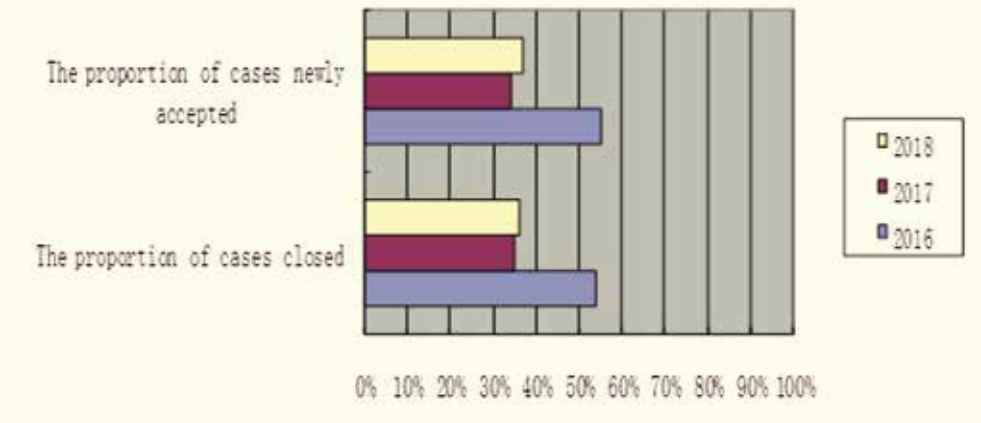
3. The tribunals comprise of the Admiralty Tribunal, the Maritime Tribunal, the Case Filing Tribunal and five dispatched tribunals.

trial was 3.07%. The main types of cases were as follows:



The numbers of contentious cases newly accepted, contentious cases closed and the corresponding proportions of five dispatched tribunals in 2016, 2017and 2018 were as follows:





II. Maritime trial briefs in 2018

1. Exert the trial function and safeguard national strategies

In the year of 2018, in order to understand the judicial requirements, the leading cadres of the Court took the initiative in many investigations, visiting Dalian Municipal Party Committee, Political and Legal Affairs Commission of the Dalian Municipal Committee, Dalian Municipal People's Congress, the Administrative Committee of Free Trade Zone, Dalian Port, Yingkou Port and other port and shipping enterprises. The Court issued the *Implementation Suggestions on Further Strengthening Service and Support of Overall Revitalization Work by Dalian Maritime Court* which put forward 25 specific proposals to serve the overall revitalization of the Northeast provinces and offered national strategies with strong judicial protection. The Court convened a symposium on optimizing the business environment to investigate the key problems related to the overall revitalization and jointly constructed the risk prevention mechanism with 25 port and shipping enterprises. The Court composed 4 investigation reports including the *Construction of Dalian Section of the Free Trade Zone in the Perspective of Rule of Law* and the *Study on the Related Law Problems of the Coastal Piggyback Service of the Free Trade Zone,* and participated in drafting the *Outline of Dalian Construction Plan under Rule of Law*, so as to offer the maritime measures to build a judicial protection platform in accordance with the development of Liaoning Pilot Free Trade Zone. 13 essays were awarded in the collection activity of essays and typical cases on the subject of offering the "Belt and Road" Construction with judicial service and protection, accounting for 26% of the total awards of Liaoning courts and receiving the Excellent Organization Unit Award.

2. Judge administrative disputes and promote the rule of law construction

The Court strictly examined the legality of the sued specific administrative acts and protected the legitimate rights and interests of administrative counterparts and promoted the construction of a government with the rule of law. The Court supported 38 cases of administrative acts of administrative departments by judgment, examined 74 cases of administrative non-litigation enforcement, permitted 34 cases of withdrawal by the plaintiffs, and decided 15 cases by revocation, modification, performance of the statutory duty and determining administrative acts illegal or invalid. The Court urged the principals of the administrative departments to appear in court in 76 cases. While judging the administrative disputes in accordance with the law, the Court continuously broadened the paths and channels of maritime judicial service. The Court offered legal advice to the administrative departments and, in the first instance, participated in the Joint Investigation Group concerning the Case of "11.18" Shipwreck of Dalian Municipal and offered the government with the professional maritime legal opinions to handle the emergency cases in the waters adjacent to China and South Korea. The Court held the press conference of maritime administrative trial and released the *Judicial Review Report of Maritime Administrative Trial* and the *Maritime Judicial Advice* to optimize environment for the rule

of law.

3. Organize enforcement battles and solve enforcement bottlenecks

The Court fulfilled the four core targets of "Basically Resolving the Difficulties in Enforcement" established by the Supreme People's Court as scheduled. The actual closed rate of first-time enforcement cases was 68.48% (the year of 2016-2018), 25.73 percent points above the national average; the completion rate of first-time enforcement cases was 43.97% (the year of 2016-2018), almost 14 percent points above the national average. The Court strengthened the construction of enforcement inquiry and control system and fully utilized the information technology to achieve accurate inquiry and control of the property owned by the person subjected to execution, which in total inquired into 32,600 messages of the deposit accounts of the person subjected to execution, 487 messages of stock rights and 5,520 messages of real estate, sealed up 354 house properties and 102 ships, and sold 12 ships by public auction. The Court successively organized and conducted special enforcement battles such as "Lightening Thunder", "Storm Campaign'', "80-day Assault" and "Holiday Action", of which 11 centralized actions were conducted inside and outside Liaoning Province. The Court arrested the ship "Shengjiahe 1" and the ship "Shengjiahe 2" at Mingzhou dock, Nanjing and Changxindao dock, Wafangdian respectively, which had been in hiding for a long time, dealing a heavy blow on the arrogance of escaping justice by the person subjected to execution. The Court cooperated with the Dalian Municipal Government to punish those acts of occupying the dock unjustifiably, expel 8 dock-occupying oil ships, and protect "Manhua Dock", one of Dalian's immovable cultural heritages, achieving very good social results.

4. Activate the advantages of the dispatched tribunals and open up the litigation channel

The five dispatched tribunals which pivot Yingkou Port, Jinzhou Port, Dandong Port, Three River Areas and their surrounding sea areas are to safeguard the construction of the logistics passages of "Liaoning-Mongolia-Europe" and "Liaoning-Manchuria-Europe" and "the Economic Corridor of China-Mongolia-Russia". The Court strengthened the function of circuit trials, and 36.5% of the cases under the jurisdiction of the dispatched tribunals were closed right in their jurisdiction area. The Jinzhou dispatched tribunal properly handled a series of cases of disputes over marine engineering construction with an amount of RMB 130 million and safeguarded the significant development of the port and shipping enterprises. The Bayuquan dispatched tribunal satisfactorily completed the compensation work of loss related to the military and was awarded "The Advanced Group Safeguarding Military-related Rights in the Court System" of Liaoning Province. The Donggang dispatched tribunal proactively became integrated in the construction of the rule of law of the local government and was awarded "Quality Service Unit". The Harbin dispatched tribunal succeeded in solving the disputes over a marine insurance contract between Harbin Air-conditioning Co., Ltd. and Pacific Property Insurance Co., Ltd. in accordance with the law, and coordinated with Dalian Port to settle the disputes left over by history. The Changhai dispatched tribunal closed a series of cases on

determining the Sea Area Sub-contracting Agreement to be invalid as claimed by the Environment Protection Bureau of Changhai County, which implemented Two Mountains Theory and returned lush mountains and green waters to the people.

5. Establish the smart court and deepen the openness in judicial system

The Court established a leadership team for informatization construction to promote the optimization and upgrade of the informatization construction, litigation service center and enforcement command center. The Court perfected the judicial openness mechanism and strengthened judicial openness in the six areas of case initiation, trials, enforcement, hearings, documents and trial-related affairs. The Court upgraded 8 tech-courts, all of which were connected to China Public Trial Website, and realized the full coverage on the public trial. The Court deeply promoted the construction of "Three Open Platforms", where 1,262 judgments were open online and 232 cases were tried live on website. The Court optimized the function of litigation service center, integrated multi-sectoral work of filing and letters and visits, litigation guide, consultation and explanation, pre-litigation mediation and judicial assistance. In 2018, the Court offered 1,180 times of litigation guide and over 1,200 person-times of legal consultation, and speedily judged 107 admiralty and maritime cases. The Court completed a system whereby electronic files were generated at the same time when a case was accepted, and realized the deep application of OA system, under which 230 copies of work trends, typical cases and judicial data were posted with more than 260 thousand hits. The Court conscientiously accepted supervision by all walks of life, enhanced communication with "Two Representatives and One Committee Member", organized and carried out the "Six Ones" activity, during which the representatives and committee members went to the Court to supervise the judicial process, and invited all walks of life to visit or observe the trial and witness the enforcement activities for more than 30 person times.

6. Enhance judicial capability and improve team quality

The Court perfected the case supervision system, closed 32 cases which had accumulated over periods of 18-months and above, 8 cases which had accumulated over periods of 3 years and above and closed all cases which had accumulated over periods of 5 years and above. The Court perfected the selection mechanism of people's jury team in maritime trials, added 40 people's jurors, and the jury rate in the ordinary procedure reached 69.7%. The Court further strengthened communication and cooperation with the universities, maritime administrative departments and large port and shipping enterprises, raised the level of judges' specialization and conducted seminars and special training to improve the judicial officers' comprehensive qualities and abilities. The Court initiated the *Maritime Trial Studies* and the *Maritime Cases as Reference*, organized judges to practice onboard to and fro between China and Indonesia, carried out competitions among the court stenographers and trainings on customs clearance, port operation, international convention and so on, and signed the *Cooperation Framework Agreement* and the *Agreement on Co-Construction of Joint Training Base*

for Postgraduates with Dalian Maritime University. With in-depth investigations and research, the Court acquired 10 provincial projects, received 32 awards and research achievements at or above the provincial level. A group of young judicial officers as the backbone of the Court frequently gave maritime presentations in Chinese and foreign forums, and exchanged administrative trial experiences at the Fifth National Foreign-Related Commercial and Maritime Trial Work Conference. The Court enhanced cultural publicity through conscientiously organizing practical activities of education with the theme of "Loyalty, Cleanness and Responsibility", "Maritime Law Forum" and various kinds of work on special supervision, inspection and assessment. The micro film *Enforcement Love without Regret* based on a real instance in the Court was awarded "The Excellent Micro Film of the Central Political and Legislative Affairs Commission of the Communist Party of China" and "Top Ten Micro Films in the National Courts", and the Court was awarded "The people's Court with the Outstanding Achievements in Judicial Publicity in 2018" by the Supreme People's Court of the People's Republic of China.

III. Problems originating from judicial cases and corresponding suggestions

In order to better summarize the trial experience, expand the role of maritime trial in guiding the rules and values of related maritime cases involving ships, harbors, seas and international trade and commerce, and dedicate maritime force for the construction of the "Belt and Road", the Court carried out summarization and abstraction of some typical problems found in daily trials and seminars. The Court expects to provide positive references to raise awareness of risk prevention, enhance risk control ability, and promote the level of management in the daily business activities for all kinds of marine-related subjects from the perspective of trial.

1. Problems and suggestions related to the port operator

1) Grasp the opportunity of law amendment to clarify the application scope of goods possessory lien exercised by the port operator

Port goods are the mediums of the direct contact between the port operator and the operation client. In the disputes over port cost, the port operator claims a possessory lien on port goods, which becomes a conventional means for the port operator to achieve the port cost claim and protect his own interest from being damaged. When the goods owner directly signs the port operation contract with the port operator, the goods owner is consistent with the operation client. If the goods owner defaults on the port operation cost, the port goods entrusted by the goods owner belong to "the movable property of the debtor". There is no legal dispute about the goods retained by the port operator. However, in the practice of port operation, the change of ownership results in obstruction of the exercise of the possessory lien by the port operator, which leads to litigation disputes among the operation client, the

goods owner and the port operator.

In the trial of case (2015) DHSC No. 586[4], the Court held that if the port operator was entitled to the due claim against the operation client, even if it was generated by the operation of outbound goods, it did not belong to the same legal relationship with the goods in the port that the port operator claimed to retain. According to Article 231 of "the exclusion of lien between enterprises" in the *Property Law of the People's Republic of China*, the port operator has the right to retain the movable property that the operation client legally occupied, but the movable property must be owned or legally occupied by the operation client.

Suggestion: In port operation practice, it is very difficult and unnecessary for the port operator to judge whether the operation client which delivered goods is the goods owner. Therefore, in accordance with the provisions of Article 380 of the *Contract Law of the People's Republic of China* (hereinafter referred to as *the Contract Law*), the port operator should have the right to retain the goods delivered by the operation client rather than only the goods owned by the operation client. To grasp the opportunity of amending the *Maritime Code of the People's Republic of China* (hereinafter referred to as *the Maritime Code*), the Court suggests it should clarify the legal status of the port operator and the application scope of his possessory lien in *the Maritime Code.*

2）When damage occurs during overdue taking delivery of goods in port warehousing, the parties of the warehousing contract should perform the burden of proof on the cause of damage based on the agreement

According to the provisions of the Warehousing Contract in *the Contract Law*[5], the warehouser's doctrine of liability fixation is the doctrine of presumption of fault. For example, once the damage occurs during the warehousing period, the warehouser's fault is presumed first, and the warehouser is obliged to prove that he is faultless or subject to exemption. However, as far as the port goods safekeeping contract is concerned, the law does not clearly stipulate what principle of liability should be applied to judge the goods damage occurring beyond the time limit for taking delivery of goods where there is an agreement on the time limit for the taking delivery of the goods by the client. In the trial of case (2015) DHSC No. 376[6], the Court held that importance was placed on the transitivity and

4. Dispute over the contract for the custody of port goods between the plaintiff Dalian Port Co., Ltd. and the defendant Shenyang Oriental Iron and Steel Co., Ltd., Liaoning High People's Court upheld the original judgment at the second instance, and the case number was (2018) LMZ No. 463. The paper On the Legal Dilemma and Way Out for Port Operators to Exercise Lien based on the judgment of the case was published in the fourth issue of China Maritime Law Research in 2018.

5. Article 394 of *the Contract Law.*

6. Dispute over the contract for the custody of port goods between the plaintiff, Brit UW Limited, Talbot 2002 Underwriting Capital Ltd, Beazley Underwriting Ltd, Beazley Staff Underwriting Ltd, Starr Syndicates Limited, Ironshore CC (Two) Limited, Ironshore Corporate Capital Limited, ANV Corporate Name Ltd, and the defendant, the Grain Branch of Yingkou Port Co., Ltd. and Yingkou Port Co., Ltd., after the judgment of the first instance by the Court was pronounced, none of the parties appealed.

liquidity of goods in the warehousing of port goods, and the burden of proof of the cause of goods damage during the overdue taking delivery period should be attributed to the operation client. In this case, there was a special situation which was that the goods were not suitable for storage when they entered the warehouses. The two parties made a "30-day departure" agreement on the dwelling time of the goods at port. The agreement impeded the application of the principle of legal liability, and the operation client should bear the burden of proof as to whether the port operator had fulfilled the duty of proper management of the goods after his overdue taking delivery. Thirty days later, the thermal damage of the goods aggravated. The existence of the agreement impeded the application of the principle of legal liability, and the operation client should bear the burden of proof as to whether the custodian had fulfilled the duty of proper management of the goods after the overdue taking delivery. Thirty days later, the goods could not be processed normally because of the thermal damage. It should be presumed that it was caused by the special state of the goods at the time of entering the warehouse, and the resulting damage should be borne by the operation client according to the agreement. Unless the operation client proved that the damage was caused by factors other than the quality of the goods, such as the port operator's failure to properly keep the goods, resulting in aggravation of thermal damage, otherwise the operation client shall bear the loss on his own.

Suggestion: When the port operator encounters warehousing goods that are defective in quality and may incur potential damage risks due to different warehousing times (especially in the case of large quantities of foodstuff goods), on the basis of scientific evaluation of warehousing risks, he should make a rigorous and meticulous discussion with the operation client on terms such as warehousing time, conditions and liability undertaking, and makes clear agreements in the warehousing contract and implements strictly, in order to avoid legal liability for faults other than his own. When the warehousing contract clearly stipulates warehousing time and delivery time, the operation client should strictly perform the delivery obligation in accordance with the contract, so as to avoid the negative consequences of the liability for goods damage caused by the overdue taking delivery.

3) The holder of the warehouse receipt should prove that he is the legal successor of title when taking delivery of the stored goods

Article 387 of *the Contract Law* stipulates, "The warehouse receipt is the voucher for taking delivery of the goods. Where the depositor or holder of the warehouse receipt has endorsed the warehouse receipt and the warehouser has signed or sealed thereon, the right to take delivery of the goods may be assigned." In the trial of case (2015) DHSC No. 203[7], the Court held that when taking delivery of the goods, the warehouse receipt holder should prove that he had obtained the warehouse

7. Dispute over the deposit contract of port cargo between the plaintiff, Yonghong (Shanghai) Warehouse and Freight Co., Ltd. and the defendant, Yingkou Port Group Bonded Goods Deposit and Ttransport Co., Ltd., and the third party, Standard Chartered Bank, Liaoning High People's Court upheld the original ruling at the second instance, and the case number was (2016) LMZ No. 376.

receipt through legal handling by the warehouse receipt owner and was the legal successor of title by showing the original warehouse receipt which was legally endorsed and transferred by the operation client and signed or sealed by the port operator. The warehouse receipt holder argued that the operation client was actually the agent of the warehouse receipt holder at the time of concluding the contract. However, as the holder failed to prove the existence of agency relationship, the warehouse receipt holder did not obtain the right to take delivery of the stored goods.

Suggestion: When producing the warehouse receipt to the operation client, the port operator should clearly remind the operation client of legal issues that need to be paid attention to in the transfer of the warehouse receipt, as well as record the information of the operation client accurately to avoid disputes over non-standard transfer of the warehouse receipt. When accepting a warehouse receipt, the warehouse receipt holder should pay attention to the provisions of Article 387 of *the Contract Law* regarding the requirements on the transfer of the warehouse receipt, to avoid failing to claim the rights of the warehouse receipt despite having had the warehouse receipt transferred to them, and suffering great loss.

2. Both parties of a marine insurance contract should truthfully fulfill the obligation of disclosure under the principle of utmost good faith in concluding the contract

According to the relevant provisions of *the Contract Law* and the *Insurance Law of the People's Republic of China* (hereinafter referred to as *the Insurance Law*)[8], the insurer should provide a reminder in the insurance application form, the insurance policy or any other insurance certificate that sufficiently raises the insurance applicant's attention to a clause in the insurance contract exempting the insurer from liability, and expressly explain those clauses to the insurance applicant in a written or verbal form. If the insurer fails to provide a reminder or express explanation thereof, the clause is not effective. In the trial of case (2016) L72MC No. 137[9], the Court held that the principle of utmost good faith, as the cornerstone of marine insurance, should be fulfilled truthfully by both parties of the marine insurance contract because great risks at sea made the principle extraordinarily significant. In this case, the insurer had insured hull and machinery all risk inner river and offshore of the ship owned by the insured before and was fully aware of the clauses of the marine insurance contract concluded by other insurers and the insured afterwards. The contents, needs and purposes of the insurance that the applicant insured previously were therefore known to the insurer. Under this circumstance, promising verbally that the underwriting conditions were no lower than the other insurers' in order to obtain the business, the insurer was, in concluding the contract, obliged to specially explain the clauses about exempting or reducing the insurer's liability to the applicant so that he could clearly understand the

8. Article 39 paragraph 1 of *the Contract Law* and Article 17 paragraph 2 of *the Insurance Law.*

9. Dispute over the marine insurance contract between the plaintiff, Dongguan Hailong Dredging Project Co., Ltd. and the defendant, China Ping An Property Insurance Co., Ltd., Liaoning High People's Court closed the case by mediation at the second instance, and the case number was (2018) LM.Z No. 154.

meaning of the aforesaid clause. Otherwise the insurer should bear unfavorable legal consequences.

Suggestion: Parties of an insurance contract should follow the principle of utmost good faith in concluding the contract and truthfully fulfill the disclosure obligation. As a professional insurance institution, the insurer should operate in good faith, avoid unfair competitions such as "hitting the edge ball", perform the duty of clearly explaining in accordance with the law when the applicant insures, and especially make a complete explanation on clauses about exempting or reducing the insurer's liability to the insured. At the same time, the insurer should provide professional advice on the insurance needs of the applicant to avoid great risk omissions.

3. Litigants of a property preservation case should file and respond to the application on the basis of the reasonable principle, so as to avoid new disputes due to excessive preservation or mishandling

Article 105 of the *Civil Procedure Law of the People's Republic of China* (hereinafter referred to as *the Civil Procedure Law*) stipulates that "if an application for property preservation is erroneous, the applicant should compensate the respondent for any loss incurred from preservation". When judging whether the applicant's preservation is erroneous, the principle of fault liability[10] under the *Tort Law of the People's Republic of China* (hereinafter referred to as *the Tort Law*) should be applicable because the criteria for determination are not specified by *the Civil Procedure Law.* Therefore, the litigant who claims the petition is wrong should bear the burden of proof, and consideration should be given to the special nature of the property preservation system. In the trial of case (2017) L72MC No. 405[11], the Court held that the purpose of the property preservation system was to protect the legitimate rights and interests of the litigants and ensure the enforcement of the effective judgment in the future. When judging whether the applicant's preservation is erroneous, just comparing the number between the ruled and the applied (the so-called "excessive preservation") would shake the fundamental purpose of the preservation system since the law did not stipulate the result of legally effective judgment as the sole and absolute criterion. In the case, the preservation applicant was legally entitled to the property preservation due to the breach of contract by the respondent, although the Maritime Arbitration Commission did not support most of requests of the preservation applicant. When the preservation applicant has the right to claim and there is no malicious arbitration, the defaulting party should not be overprotected just on the basis of the difference between the preservation amount and the result of the effective judgment, which is contrary to the principle of good faith and fairness that civil activities should follow.

Suggestion: The property preservation respondent should reduce the loss as much as possible

10. Article 6 Paragraph 1 of *the Tort Law.*

11. Dispute over the property preservation damage between the plaintiff, Bengang Group International Trade Co., Ltd. and the defendant, HongKong City-Dragon Shipping Co., Ltd., Liaoning High People's Court upheld the original judgment at the second instance, and the case number was (2018) LMZ No. 214.

and avoid the further escalation of the loss by negotiating in a timely manner, providing guarantees or applying for court auctions on the basis of scientific analysis and rational judgment that the preserved goods may suffer impairment loss during the preservation period. Even if there is a legitimate and reasonable right of action, the property preservation applicants should determine the preservation method and amount based on the principle of minimizing potential losses and reasonable control of risk of preservation to avoid disputes arising from wrongful or excessive preservation.

4. Prevent and identify the behavior of the parties colluding to engage in false register of ship

In the case of a ship mortgage contract dispute, the Court found that the ship was a steel bulk carrier of nearly 20 years old and the Maritime Safety Administration reminded the lender that two mortgages amounting to over RMB 90 million on the ship had not been cancelled when dealing with the mortgage register application in 2016. However, the lender still agreed to lend RMB 30 million to the borrower with the ship as mortgage and entrusted the borrower to handle the mortgage registration procedure. The lender and the borrower jointly confirmed that the value of the ship was RMB 127 million. After investigation, it turned out that the borrower and the lender colluded to participate in the ship auction and to affect the borrower's legal creditors' compensation for the auction of the ship by signing a false loan contract and a mortgage contract, defrauding the ship registration authority to obtain the real ship mortgage registration certificate, and providing false bank flow fidelity credits during the lawsuit. The behavior of the lender and the borrower constituted a false lawsuit, so the claim was dismissed by the Court in accordance with the law and the case documents were transferred to the police.

Suggestion: Maritime lawsuits have special litigation system. Evidence in maritime lawsuits is complex and diverse. When there is any possibility of false litigation in a trial, the court should investigate and collect relevant evidence according to its authority, comprehensively and strictly examine whether there is any contradiction between the litigation request and the evidence, and exclude suspicious matters, so as to prevent the occurrence of major misjudged cases and protect the legitimate rights and interests of parties from illegal infringement.

IV. Trial prediction in 2019

1. The judicial function will be increasingly prominent

In order to facilitate Northeast China's deep integration into the construction of the "Belt and Road", the construction of Liaoning Pilot Free Trade Zone, and the construction of Dalian Northeast Asia Shipping Center, the Court issued the *Implementation Suggestions on Further Strengthening Service and Support of Overall Revitalization Work by Dalian Maritime Court* in 2018, which put forward 25 specific proposals of service and protection. With increasing economic activities, the cases

of disputes over channel dredging, port construction, multimodal transportation and marine insurance of key port and shipping enterprises under the jurisdiction will further increase, which calls for a unified standard of judgment. Besides, Dalian completed 108 tasks identified in the *Overall Plan for Liaoning (China) Pilot Free Trade Zone 2018*, among which the policies related to shipping, such as "allowing Chinese-funded non-five-star flag ships to practice coastal piggyback service first", are all institutional innovations, and new cases may appear in related fields, which will bring new issues for maritime trial.

2. The pace of informatization construction will continue to accelerate

With the acceleration of the construction of smart court, the realization of smart trial, smart enforcement, smart appeal and service, and smart management will bring great changes to the concept and mode of maritime trial. The continuous promotion of synchronous generation of electronic files and the deep application of court speech recognition technology will greatly improve the trial efficiency and quality. Online filing, payment, marking, evidence exchange, service, mediation, trial and other online functions will enable the litigants to experience convenient and fast judicial services. The application and promotion of new media such as government websites, Weibo and WeChat Subscription account will promote judicial transparency and enhance the influence and credibility of maritime justice.

3. The judicial demand for marine environmental protection will gradually increase

The Report of the 19th National Congress of the Communist Party of China pointed out that we should persist in the overall planning of land and sea, and speed up the construction of a powerful marine country. At present, the order of marine development and utilization needs to be standardized urgently. The construction of ecological civilization prompts maritime judicial services to make continuous progress to meet the new needs of marine environmental protection. Maritime trial work will play a significant role in achieving the goal of administering, using and protecting the sea. More attention should be paid to marine environmental disputes caused by oil spill from ships, port construction, land reclamation, marine development and utilization, and land-based pollutants discharged into the sea. The function of maritime litigation procedures in preventing and mitigating environmental pollution needs to be further tested in practice. The trial experience of marine environmental public interest litigation cases needs systematic accumulation and regulation urgently. The exploration of setting up a special fund for environmental public interest litigation will help maintain marine reproductive capacity and ensure the construction of marine "Blue Granary". In addition, disputes over compensation for expropriation of sea and disputes between aquaculture, shipping and tourism caused by depletion of fishery resources also need urgent attention and to be settled properly.

V. Key points of the work plan for 2019

1. Further improve the political position, and take responsibility for the service of the overall situation

The Court will have a deep understanding of the important theoretical and practical significance of General Secretary Xi Jinping's important speech, carry out proactive work focusing on the "1+8" series of documents of Liaoning Provincial Committee, serve for lengthening the "Four Short Boards" and promoting the "Six Key Tasks", and ensure the implementation of national strategies such as the powerful marine country, the "Belt and Road" construction, and the Pilot Free Trade Zone construction.

2. Strictly grasp the top priority of law enforcement and case handling, and make intensive efforts to improve the quality and effectiveness of trials

The Court will hear civil and administrative cases of admiralty and maritime fairly and efficiently in accordance with the law, promote the strategy of boutique trial, and deepen quality and effectiveness analysis, process node management, quality evaluation and supervision and judicial transparency mechanism. The Court will continue to maintain a high level of enforcement work, establish and improve a long-term mechanism, and consolidate and deepen the results of "Basically Resolving the Difficulties in Enforcement".

3. Actively promote the implementation of judicial reform and put it in place, and expand and deepen the strict management

The Court will fully implement the judicial responsibility system and continuously improve the judicial power operation mechanism with consistent power and responsibility. The Court will explore the construction of judicial organs in the Pilot Free Trade Zone, study the centralized jurisdiction mechanism for cases involving the Pilot Free Trade Zone, and actively integrate into the key work including the construction of Dalian Area of China (Liaoning Province) Pilot Free Trade Zone, and Dalian's "Two Precursor Districts" construction.

4. Strongly promote informatization and take the lead in the construction of the smart court

The Court will actively promote the deep integration of information technology with trial and enforcement, innovate and explore the new mode of "Internet + Trial Service", and create a smart maritime court mode that integrates smart litigation, smart trial, smart enforcement and smart administrative affairs, so as to comprehensively enhance judicial protection capability.

5. Further strengthen team building and significantly improve team combat capability

The Court will fully implement the general requirements of Party building for the new era,

constantly push forward the strict administration of the Party and the strict administration of the Court to a deeper level of development. The Court will seriously implement the work plan of building good conduct and political integrity and fighting corruption, and strengthen supervision and restriction on the operation of judicial power. The Court will strengthen the modernization of judicial capacity and judicial system. The Court will focus on training judges who are not only familiar with Chinese law and relevant international treaties and practices, and master international trade and shipping knowledge, but also have rich judicial experiences and skills in foreign languages, so as to provide talent guarantee for promoting the development of maritime judicial work in the new era.

VI. Six typical maritime cases

1. When there is no fault in the management of the goods by the carrier in rescuing the ship which has run aground on a reef, the carrier shall not be liable for the loss of the goods

Background Facts: In August 2012, the ship "Deming" was loaded with 60,500 tons of soya beans at the port of Paranagua, Brazil, and bound for the port of Dalian, China. The owner of "Deming" was the carrier Kuang Ming (Liberia) Corporation (hereinafter referred to as K.M. Corporation). Dalian Soybean Science and Technology Co., Ltd. of Jiusan Group (hereinafter referred to as Jiusan Company) was the holder of bill of lading of the goods. The ship ran aground while sailing near the Sunda Strait in Indonesia. The captain failed in his attempt to save the ship. K.M. Corporation appointed T&T Company to conduct on-site inspection. The conclusion was that the ship could not get out of trouble without the help of external forces. On September 19, 2012, K.M. Corporation signed a rescue contract with T&T Company to salvage the stranded ship and goods, and so on. According to the ship damage condition and rescue force distribution, T&T Company successively worked out two versions of the rescue plan. First unloading the goods in No.1 hold was changed to first unloading the goods in No.2 hold. In the course of the rescue, the rescuers found that No.1 hold had been damaged and the sewage depth of sewage well had increased. The rescuers immediately worked out the third version of the rescue plan, which unloaded 3,575.356 metric tons of soybeans from No.1 hold to the salvage ship. The total loss of goods in No.1 hold was confirmed afterwards. The goods insurer Ping An Property Insurance Company of China paid the insurance indemnity to the insured Jiusan Company. Ping An Property Insurance Company Heilongjiang Branch (hereinafter referred to as HLJ Company), on behalf of his head office, signed the Agreement on Compensation and Transfer of Rights and Interests with Jiusan Company, obtaining the right of subrogation. HLJ Company claimed the unseaworthiness of "Deming" and severe fault in goods management of K.M. Corporation, demanded K.M. Corporation for compensating for the loss of the goods amounting to RMB 16,635,286.76 and the corresponding interest, and loss from the reward for the rescue amounting to USD 4.68 million and the corresponding interest and evaluation fee.

Summary of Judgment: After the trial, the Court held that there was no unseaworthiness of

"Deming". After the accident took place, K.M. Corporation actively mobilized rescue ships, divers, diving equipment and other special rescue equipment with the help of the rescue company, and examined and monitored the damage condition of the ship when the local weather permitted. KM Corporation changed the rescue plan from unloading the goods from the No.1 hold first to unloading the goods from the No.2 hold, and took the following factors into consideration for prudent and reasonable rescue: the safety of goods and personnel on board "Deming", the specific circumstances of the ship receiving the goods, on-spot space limitations (such as depth of water, the position of the ship stranded and the location of the salvage ship, etc.), strength of the ship. Water ingress into the hold was a gradual process. The No.1 hold damage and goods water-dampness was found during the salvage operation, and then salvage measures were taken. HLJ Company did not provide evidence to prove the rescue plan was unreasonable and therefore caused the expansion of goods loss of No.1 hold. Even if the salvage measures further expanded the extent and scope of the damage, as long as the salvage measures were reasonable, and the causative potency of the goods being damaged by water ingress into the hold was not interrupted, it should not be considered that the K.M. Corporation was at fault in the management of goods. In the process of transportation, "Deming" ran aground on the reef due to the fault of the captain and crew members in the navigation of the ship, resulting in the loss of goods in No.1 hold, which was one of the exemptions provided in Subparagraph 1, Paragraph 1 of Article 51 of *the Maritime Code.* The Court dismissed HLJ Company's claims. After the judgment of the first instance by the Court was pronounced, neither party appealed.

Typical Significance: This case is a typical case in which the fault of the carrier driving the ship causes the ship to run aground on the reef, which resulted in disputes over foreign-related contracts for the carriage of goods by sea. Through analyzing maritime technical issues such as the reasonableness of the rescue measures and the causative potency of the damage of the hold, regarding the difficulty in the trial, which was that in the process of rescue, the damage of goods was found and the damage of goods might have escalated due to the behavior of the rescue, the following conclusions were drawn in the case: as long as the carrier's rescue measures were reasonable and the causative potency of the goods being damaged by water ingress into the hold was not interrupted, then even if the rescue measures had further expanded the extent and scope of the damage, the carrier was still not at fault in the management of the goods and should be exempted from liability according to the law. This case involves countries along the "Belt and Road" route, such as Liberia and Indonesia. Focusing on the overall situation of the "Belt and Road" construction, the Court upheld the basic values of justice, efficiency and professionalism and, in accordance with the law, apportioned the burden of proof and ascertained the facts of the case, interpreted the law accurately, and exempted the foreign carrier from liability for compensation. The trial wins the respect and trust of the parties at home and abroad and establishes the international credibility of China's maritime judicial system.

2. The ship contact falls under the category of general tort, to which the fault liability doctrine is applicable. When entrusting others to manage the ship, the shipowner will not

necessarily be either wholly or partly exempt from his liability of contact

Background Facts: The ship "Zhong Hai Cai Hua" is a 300,000 DWT ore vessel built by Dalian Shipbuilding Industry Co., Ltd. (hereinafter referred to as DSI Company) under the commission of Caihua Shipping S.A. (hereinafter referred to as Caihua Shipping). On January 30, 2013, DSI Company and Caihua Shipping entered into the *Delivery and Acceptance Agreement,* delivering "Zhong Hai Cai Hua" to DSI Company in his shipyard. On the same day, both parties signed another agreement which specified the terms as follows: at the same time as the delivery of the ship, Caihua Shipping would purchase insurance for "Zhong Hai Cai Hua"; DSI Company agreed that the ship would be berthed at the pier of his company till June 30, 2013 after the delivery of the ship, all relevant berthing and maintenance expenses incurred during this period would be borne by Caihua Shipping, and DSI Company would carry out necessary maintenance in accordance with the relevant regulations on safety and maintenance of the shipyard and requirements of Caihua Shipping; DSI Company would perform the safety management responsibilities according to the attached *Consignment Agreement on the Safety Management of "Zhong Hai Cai Hua*", including specific contents such as "when the ship is berthed at the pier, the shipyard should make arrangements to prevent theft, fire, typhoon and freezing". On March 9, 2013, affected by strong wind and other factors during berthing, all the cables of "Zhong Hai Cai Hua" broke and the ship drifted with the wind, resulting in contact with the pier of Dalian COSCO Heavy Industry Co., Ltd. (hereinafter referred to as Dalian COSCO). Maritime Safety Administration concluded that "Zhong Hai Cai Hua" should bear full responsibility for the accident. On April 8 and 9, 2013, Caihua Shipping entrusted Shanghai Zhongjiu Engineering Testing Company and China Shipbuilding NDRI Engineering Co., LTD to conduct on-site inspection and issue the *Comprehensive Testing, Assessment and Repair Consultancy Report*. The report estimated the repair cost to be RMB 730 thousand. Dalian COSCO actually spent RMB 743,466 in the project of repairing the damaged pier. "Zhong Hai Cai Hua" had no crew members aboard when the accident happened. Dalian COSCO filed a lawsuit, demanding Caihua Shipping for compensating for economic losses of RMB 1.3 million and the corresponding interest.

Summary of Judgment: The Court held that Caihua Shipping, as the owner of "Zhong Hai Cai Hua", had the duty of the safety management of the ship and should take sufficient and effective safety management measures to prevent or avoid the ship's contact with other people's property resulting in damages. Article 14 of the *Regulations Governing Supervision and Control of Foreign Vessels by the People's Republic of China* stipulates that "While berthing in port, ships shall have on board a sufficient members of men to ensure safe maneuvering, and in case of emergency such as typhoon warning and so on, all hands shall return immediately aboard to take necessary precautions and urgent measures." When still keeping the ship docked at the pier after delivery, Caihua Shipping should arrange crew members who could sufficiently ensure the safe operation of the ship to keep watch so that, especially under severe weather conditions, when the cables were broken due to strong wind and the ship drifted with the wind, the crew could control the sailing of ship in a timely manner

to avoid accidents. As the shipowner, Caihua Shipping should be able to foresee the potential risk of strong wind when the ship was berthed at the pier, but neither arranged competent crew who could ensure the safety of the ship to keep watch nor took effective emergency measures to deal with bad weather and therefore had his own faults. Although Caihua Shipping and DSI Company had signed a safety management agreement, it was not enough to completely exempt Caihua Shipping from safety management responsibilities as the shipowner. The Court ordered Caihua Shipping to compensate Dalian COSCO for the repair fee of RMB 743,466 and the corresponding interest. After the judgment of the first instance by the Court was pronounced, Caihua Shipping appealed. Liaoning High People's Court dismissed the appeal and upheld the original judgment at the second instance.

Typical Significance: A ship contact refers to a maritime tort whereby a ship comes into contact with fixed facilities or obstacles and results in damages. The tort-related liabilities of the ship of contact should be determined in accordance with the Tort Law and the fault liability principle should be adopted. In this case, "Zhong Hai Cai Hua" having its cable broken and drifting with the wind and colliding into the pier is a typical maritime tort. Given the depressed situation of the shipping market, the freight rate is not high and the transport capacity is in surplus, and some new-built ships are not put into use immediately after being built, but are berthed at the pier to be looked after by themselves or looked after by other authorized people, waiting till the market conditions have improved before being put into operation again. Although not in use of the ship, the shipowner still has the responsibility of management. If there is a collision or contact accident during berthing, the shipowner may still bear the tort liability. The shipowner cannot simply think that entrusting others to attend the ship can exempt himself from the liability for the management of the ship. When signing the agreement to entrust others to maintain the ship, it is necessary to make an arrangement on the manning of the ship. Even if the ship is not in service and not necessary to be equipped with all competent crew, some of the crew should be reserved on watch for dealing with emergencies such as bad weather.

3. When the CLC 1992 is applied in the trial of a case, the person suffering the damage may directly require the insurer for oil damage liabilities of the shipowner to compensate for the loss, but the shipowner and the insurer for oil damage liabilities cannot be required to assume joint and several liabilities

Background Facts: The ship "Arteaga" is a Portuguese oil tanker. The shipowner is Ondinar Transportes Matrimos Ltda of Spain. The insurer for oil pollution damage is the Britannia Steamship Insurance Association (hereinafter referred to as P&I Club). On April 3, 2005, "Arteaga" sailed from Ras Isa Marine Terminal, Yemen with 949,986 bbls crude oil to Dalian Xingang Anchorage, China. While sailing enroute from Dalian Xingang Anchorage to Dalian Xingang petroleum berth, "Arteaga" ran aground at Dalian Xianjiao Reef with the 3S hold damaged, which resulted in the leakage of crude oil and serious pollution to the sea area. Such pollution caused the serious death of baby sea cucumbers at the breeding house rented by Zeng. After the accident, Zeng engaged Dalian Fisheries University to carry out investigation in order to test the water quality in the breeding house as well as the baby

sea cucumbers. The result showed that the entire cultivation pools were emptied due to the baby sea cucumbers' inability to survive. On April 26, 2005, the Court commissioned Liaoning Oceanic Fishery Environment Supervising and Monitoring Station (hereinafter referred to as Liaoning Station) to carry out investigation and evidence collection for on-site evidence preservation. The water volume in the breeding room, the species of the baby sea cucumbers and the average habitat density were established and the rate of loss was confirmed to be 19.6%. In September 2006, Shandong Maritime Centre of Judicial Authentication, commissioned by the Court, delivered an Examination and Evaluation Report on the damages caused by the pollution. It confirmed that Zeng's breeding house was located within the sea area affected by the pollution of oil leakage, which had caused certain damages to the baby sea cucumbers. Calculated a loss rate of 3.33% for the baby sea cucumbers, it was estimated that 87,599 baby sea cucumbers were lost. Zeng brought a claim against Ondimar Transportes Maritimos Ltda and P&I Club demanding that both companies be jointly and severally liable for the damages caused by pollution at RMB 5.5 million plus the corresponding interest.

Summary of Judgment: After the trial, the Court held that China is one of the signatories of the *International Convention on Civil Liability for Oil Pollution Damage 1992 (hereinafter referred to as the CLC 1992)*. The oil which leaked in the accident was the persistent crude oil subject to *the CLC 1992* and therefore such treaty ought to be applied in this case. The request for compensation for the damages to the breeding farm claimed by Zeng falls under "Pollution Damage" under Article 1 of *the CLC 1992*. Article 3 Paragraph 1 of the Convention clearly stipulates that the shipowner at the time of an accident should be liable for any pollution damage caused by the ship as a result of the accident. As the shipowner, Ondimar Transportes Maritimos Ltda should be liable for the damages of Zeng's farmed animals. Although *the CLC 1992* stipulates that a claim for the damages caused by oil leakage may be brought against the insurer who assumes responsibilities for losses from pollution, the Convention does not clearly stipulate that Zeng may require the shipowner to take joint and several liabilities with the insurer for oil liabilities. Zeng had chosen to make a claim against the shipowner. Zeng's claim that the insurer for oil damage liabilities take joint and several responsibilities for compensation was neither consistent with the provisions of *the CLC 1992* nor consistent with the legal principle of joint liability. The Court refused to provide support for this request by Zeng. Though the probative force of the investigation report commissioned by Zeng himself was generally weaker than the report commissioned by the Court, the investigation reports delivered by both judicial expertise institutions had obvious defaults in the determination of Zeng's damages. The investigation team engaged by Zeng had carried out repeated field tests and tracking, which could reflect Zeng's actual damages. In the case, after taking into consideration of the loss and damages stated in Zeng's investigation report together with the evidence about the quantity of baby sea cucumbers obtained in the evidence preservation process, the Court held that Ondimar Transportes Maritimos Ltda pay Zeng RMB 1,319,476 and the corresponding interest. Neither of the parties appealed after the judgment of the first instance by the Court.

Typical Significance: The trial is about the loss and damages and other related issues arising

from the oil pollution caused by a foreign oil tanker within the sea area in China, which establishes some rules in law application, identification of party liable, distribution of the burden of proof and determination of loss and damages. They include: First, international treaty in the case involving foreign interests. In foreign-related civil cases where there exists a situation in which an international treaty which our country has signed or participated in is applicable, the international treaty should be applied first. *The CLC 1992* should be applicable in cases involving the loss and damages resulting from the pollution of oil leakage in order to determine the parties' rights and obligations. Second, although *the CLC 1992* stipulates that the party who suffers loss and damages due to the pollution damage can directly make a claim against the insurer of the oil pollution liability, such a treaty does not stipulate that the insurer for the liability has joint and several liability for the pollution damage. Under the legal principle of joint and several liabilities, the victim has no right to require the insurer of the liability to take joint and several liabilities. Finally, the probative force of the investigation report commissioned by litigants is not necessarily weaker than that of the report commissioned by the court according to its authority.

4. Exemption of fault of the tug carrier in the navigation and management of the tug is not applicable in commanding and operating the towed ship

Background Facts: On November 29, 2015, in accordance with the Towage Contract between Dongguan Hai Long Dredging Engineering Co., Ltd. (hereinafter referred to as Hailong Company) and Tianjin Zhonghe Taifu Shipping Co., Ltd. (hereinafter referred to as Zhonghe Company), the tug "Dayue", owned by Tianjin Kaihang Shipping Co., Ltd. (hereinafter referred to as Kaihang Company) and rented by Zhonghe Company, carried out a sea towage from Weifang Port, Shandong to Panjin Port, Liaoning with the ship "No.1 Hailongjun" owned by Hailong Company. On December 1, due to the need of sheltering from the wind, "Dayue" towed "No.1 Hailongjun" onto the waters of Pulandian Harbour, Liaoning, and slipped the tow line and anchored. On December 3, the anchor of "No.1 Hailongjun" was dragged by strong wind, the cabin fan on the tail deck was smashed by the big waves, and the light oil tank was flooded. The ship seriously tilted and eventually sank. On December 4, Hailong Company authorized Dalian Shengyang Marine Environment Technology Co., Ltd. (hereinafter referred to as Shengyang Company) to deal with the clearing and anti-pollution matters of "No.1 Hailongjun". On March 16, 2016, after the clearing and anti-pollution service was completed, Shengyang Company claimed a sum of RMB 8,770,346.2 in clearing expenses against Hailong Company, and China Pacific Property Insurance Co., Ltd. Dongguan Branch (hereinafter referred to as DG Comany, the insurer who accepted the ship pollution liability insurance of "No.1 Hailongjun"). Through negotiation, the three parties agreed that Hailong Company and DG Comany would pay RMB 1.95 million to Shengyang Company as the final solution. After deducting a 10% excess amount, DG Comany actually paid Shengyang Company RMB 1.755 million. DG Comany lodged a lawsuit as a dispute over marine property damage liability, demanding Zhonghe Company and Kaihang Company for jointly and severally compensates for economic loss and relevant expenses of a total of RMB 1.755

million and the corresponding interest. Hailong Company participated in the case as the third party.

Summary of Judgment: After the trial, the Court held that the case was a dispute over maritime property damage liability. The accident conclusion report of Maritime Safety Administration showed that there were three reasons for the sinking of "No.1 Hailongjun": severe weather and sea condition, insufficient emergency plan, and lack of experience for members on "No.1 Hailongjun". The second day after the beginning of towage, "Dayue" learnt that the voyage would meet severe weather situation from marine bulletin forecast and took measures to berth in the anchorage and shelter. Therefore, severe weather and sea situation could be foreseen before the accident took place and did not constitute force majeure. The determination of exemption of fault of the tug carrier in the navigation and management of the tug should be strictly restricted to the specific operations in the navigation and management of the tug. As the tug carrier, Zhonghe Company and Kaihang Company should make emergency plans for the towed ship before the severe weather came. As the companies did not provide the proof in this area, the two companies should take responsibilities for their faults in the sinking of "No.1 Hailongjun" and its clearing and anti-pollution expenses. DG Comany did not provide sufficient proof that the crew members on "No.1 Hailongjun" had operated the towed ship completely under the instruction of the tug carrier. Furthermore, Hailong Company also had fault on hiring the crew members. In conclusion, Zhonghe Company and Kaihang Company should take main responsibility for the accident and loss, and DG Comany as the subrogation right holder of Hailong Company should take secondary responsibility. The Court made the judgment that Zhonghe Company and Kaihang Company should jointly and severally compensate DG Comany for financial losses and related expenses amounting to a total of RMB 1,228,500 as well as the corresponding interest. After the judgment of the first instance by the Court was pronounced, Zhonghe Company appealed. Liaoning High People's Court dismissed the appeal and upheld the original judgment at the second instance.

Typical Significance: The case is a highly professional and highly technical sea towage's dispute. There are high risks in sea voyage, and the towed ships are usually unpowered. When meeting severe weather and complicated marine situations, if the tug carrier fails to make adequate preparations and makes inappropriate responses, it will easily cause towage accidents thus triggering lawsuits. DG Comany did not lodge a lawsuit as a maritime towage contract dispute but claimed that the tug carrier should take responsibilities for infringement. The tug carrier claimed exemption of fault in the navigation and management of the tug. First, whether the exemption can be used for infringement dispute is not stipulated in *the Maritime Code*. Second, the tug carrier's command and operation measures toward the towed ship for safety did not belong to the exemption. Through analysis of factors such as the force majeure and exemption of fault of the tug carrier, the case has provided beneficial guidance as precedence for the parties to avoid marine towage accidents when signing and performing towage contracts and for determining liabilities after accidents take place. It also provides references for the amendment of *the Maritime Code*.

5. After the insurer concluded and signed the policy of insurance, the insured had the right

to claim insurance compensation to the insurer, although the insurance premium was not paid as scheduled

Background Facts: On September 15, 2012 and September 22, 2013, Huawei Shipping Company Limited (hereinafter referred to as Huawei Company) was entrusted by Dalian Jinyang Shipping Company Limited (hereinafter referred to as Jinyang Company), for the ship "Sae Byol" which Huawei Company rented from Jinyang Company, to insure all risks of the ship from 2012 to 2013 and from 2013 to 2014 with Ping An Property Insurance Co. Ltd. Tianjin Branch (hereinafter referred to as TJ Company). Both applications indicated that the premium was paid in three installments, and TJ Company issued an insurance policy with installment payment. On December 27, 2012, and May 28, 2013, HUAWEI Company paid the ship's insurance premium for the first two periods of 2012-2013. In December 2013, TJ Company urged Huawei Company to pay the third installment insurance premium of 2012-2013 and the first installment insurance premium of 2013-2014. On December 29, 2013, "Sae Byol" ran aground and sank in the sea area near Dalian. After the accident took place, Huawei Company and Jinyang Company claimed compensation from TJ Company. TJ Company refused to pay compensation for the following reasons: the insured failed to pay the premium on time; the marine department's report determined that the insured failed to equip the ship with sufficient qualified crew members; the insured failed to provide enough paper chart data according to the ship operating route, which constituted the unseaworthiness of the ship. Jinyang Company then filed a lawsuit and requested TJ Company to pay USD 960,000 (RMB 5,858,304) and the corresponding interest.

Summary of Judgment: The Court held that the insured ought to pay insurance premium immediately after the conclusion of the contract according to the law. Before the insured paid the insurance premium, the insurer could refuse to sign and issue the insurance policy. After the insurance liability began, neither the insured nor the insurer could terminate the contract. Although the insured did not pay the insurance premium, TJ Company had signed and issued the insurance policy, and therefore the insurance liability had begun. The insurer should still perform the obligation of paying indemnity or insurance benefits in a timely manner for accidents that took place within the insurance period. The stipulation in the "Payment Arrangement" of the insurance policy that the insurance liability should be borne according to the premium collection proportion was inconsistent with the stipulation in the insurance clauses on the reverse side of the insurance policy of the ship, which was "if the insurer agrees, the premium may also be paid in installments. However, in the event of total loss of the insured ship within the period covered by the insurance, the outstanding premium shall be paid promptly." Furthermore, after the conclusion of the insurance contract, the insurer had the right to claim from the insured the due premium. Whenever the insured paid the premium, his obligation to pay the premium was fixed and unchanged. Corresponding to the obligation of payment, the right to claim insurance coverage was also fixed. The "Payment Arrangement" was an agreement under which the insurer enjoyed the right to charge insurance premiums but undertook no or less obligation of insurance compensation. The clause violated the principle of fairness and was also a standard term which failed to follow the principle of fairness to determine the rights and obligations of the insurer

and the insured, which should be null and void. The seaworthiness of a ship should be the state before and at the time of sailing. A ship should be deemed seaworthy when it was manned with sufficient crew members and navigational data related to the voyage plan. Neither the captain's arrangement of the crew members' work nor the use of charts should be considered as the basis of determining whether the ship was seaworthy. The maritime department's analysis of the cause of the accident was made from the perspective of the safe production in ship operation, which cannot be totally equated to the liability determination in civil litigation. To sum up, Jinyang Company, as the applicant and the principal of the insured, should have the right to claim indemnity against TJ Company for the insured event. After the insured accident, the ship was seriously damaged and completely lost its original shape and effectiveness. The actual total loss occurred. The Court sentenced TJ Company to pay USD 960 thousand (at the exchange rate as of December 30, 2013) and the corresponding interest to Jinyang Company. After the judgment by the Court of the first instance was pronounced, TJ Company appealed. Under the auspices of Liaoning High People's Court, the two parties reached a mediation agreement. TJ Company paid RMB 5,858,304 of insurance compensation to Jinyang Company, which was converted from USD 960 thousand.

Typical Significance: The case puts forward a clear legal view on the issue of whether an insurance company can refuse to pay insurance compensation because the insured fails to pay the insurance premium in full after the issuing of the insurance policy, which has strong guiding significance to insurance practice. First, the law entitles the insurer to refuse to issue an insurance policy before receiving the premium. Once the policy is issued, the liability begins. The rights and obligations of the insured and the insurer should be equal. In the installment plan, the underwriter has the right to collect the insurance premium but does not bear any obligation to pay the insurance compensation, which is contrary to the principle of fairness. In addition, the investigation report made by the maritime department does not necessarily have the certifying effect. The court should still analyze and determine the rights and obligations of the parties based on the facts determined by investigation.

6. Exemption of the carrier can be agreed upon by the carrier and the shipper. When special weather reasons agreed cannot be implemented, the carrier should assume no responsibility for breach of contract

Background Facts: In September 2016, Tongjiang Port Administration and HeiheFengtai Mechanical and Electrical Products Trading Co., Ltd. (hereinafter referred to as Fengtai Company) signed the *Water Cargo Transportation Contract*, transporting flour, food and other products for Fengtai Company. The loading port was Khabarovsk Port, Russia (hereinafter referred to as Khabarovsk Port). The destination port was Fuyuan Port, China. The total transportation was 4-6 voyages. Till October 30, 2016, Tongjiang Port Administration completed 5 voyages for Fengtai Company. After the 5th unloading operation finished, there was a sharp decrease in temperature, which created a large area of floating ice on Heilongjiang navigable waters and seriously threatened voyage safety. The Russian authorities ordered all Chinese ships to leave the port within a specified

period of time and notified Chinese maritime department of their closing of the port. Therefore Chinese maritime department also notified Chinese ships to suspend shipping services. Tongjiang Port Administration subsequently terminated the contract because the ship could not continue to reach the port to load the cargo. Fengtai Company negotiated with a third party and transported part of the demurrage products in a rush but there were still 36 containers of the demurrage products at port. After bilateral negotiations over the dispute yielded no results, Tongjiang Port Administration sued Fengtai Company for unpaid transportation charge amounting to RMB 130 thousand and the corresponding demurrage. Fengtai Company made a counterclaim, requiring Tongjiang Port Administration to compensate for the storage fee, transportation fee and loss of devalued cargo due to the cargo delay amounting to RMB 694,441.26.

Summary of Judgment: Through the trial, the Court held that the *Water Cargo Transportation Contract* clearly stipulated that "where natural disasters, stage of waterway, ice and other forces majeure caused the carrier to breach the contract, the carrier is not liable for breach of contract". It proved that both parties had sufficiently considered the adverse effects on the performance of the contract caused by possible severe weather in Heilongjiang waters when signing the contract. When the navigable waters had floating ice, the Russian authorities shut the port and the Chinese maritime department also required suspend of shipping services, and the physical condition for the continuing performance of the contract no longer existed. In this case, on the basis of grasping the special agreement, the Court specially examined whether the carrier's acts constituted breach of contract. In the light of the fact that the carrier had completed cargo transportation 5 times and basically reached the total volume of contracted transportation, and did not have any improper act like being remiss in performance or delaying in performance, the Court judged that Fengtai Company should pay Tongjiang Port Administration the transportation fee amounting to RMB 130 thousand and the corresponding demurrage, and dismissed the counterclaim request of Fengtai Company. Fengtai Company appealed. Liaoning High People's Court dismissed Fengtai Company's appeal and upheld the original judgment at the second instance.

Typical Significance: The proposal and implementation of the "Belt and Road" strategic concept has provided a new structure and new space for the development of Sino-Russian bilateral relations. With the constant deepening of economic and trade cooperation between the two countries, the impetus for development and potential for cooperation in the Northeast Asia region will definitely be activated. Dalian Maritime Court is located at the starting point of Eurasian Land Bridge and plays the role of judicial guardian for the sustainable economic development of the region. In the case, the Court gave full consideration to the failure in performance of the contract due to the special severe weather in the boundary river area. The agreement by both parties in the contract about exemption falls under the category of force majeure exemption clause. So long as this clause complies with the conditions stipulated in the law for it to be valid, it should be confirmed as valid. When the exemption event in the agreement takes place, the carrier may be exempted from responsibility according to the contract. The case provides references for dealing with disputes over transport contracts on the Sino-Russian boundary river and has positive influence on the construction of the regional commercial environment.