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大连海事法院 2019 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

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Dalian Maritime Court Report on Trials (2019)

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

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前言

新时代开启新征程，新征程呼唤新作为。2019年4月，国家主席习近平明确提出“构建海洋命运共同体”重要理念，引起国际社会共鸣。构建海洋命运共同体，是“构建人类命运共同体”理念在海洋领域的延展，是新时代海洋形势发展的实际需求，为海洋法治的全面建设指引了方向。为充分发挥海事审判在服务保障国家战略、保护海洋生态文明、维护国家领土主权和海洋权益等方面的积极作用，最高人民法院提出“加强海事审判工作，建设国际海事司法中心”的发展目标。海洋强国的大幕已经拉开，全面加强海事审判、提升中国司法“软实力”正当其时。

2019年，大连海事法院坚持把政治建设放在首位，不断增强“四个意识”，坚定“四个自信”，做到“两个维护”。牢牢抓住发展机遇，理清建设全国一流海事法院的工作思路，开拓创新，狠抓落实，作风形象呈现新面貌、新气象，各项工作实现新突破、新发展。

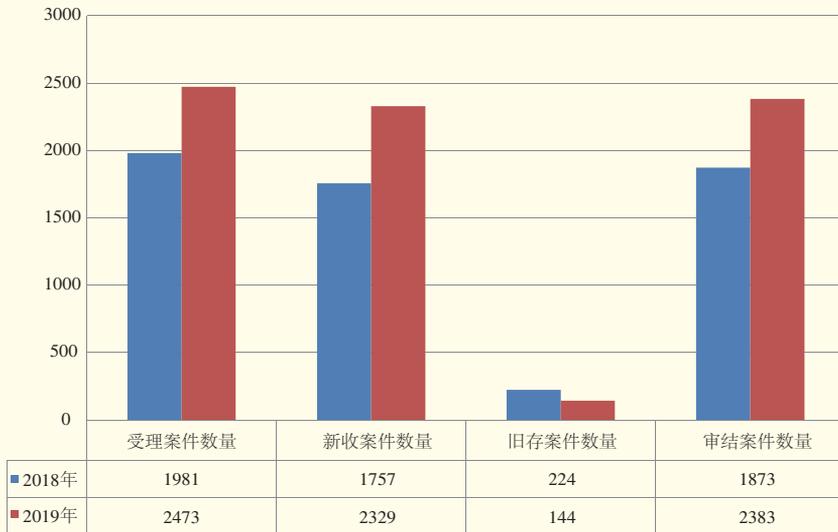
一、基本情况

（一）总体概况

1. 收结案数量大幅度增长。2019年，大连海事法院受理各类案件2473件，同比上升24.84%。其中新收2329件，同比上升32.56%；旧存144件，同比下降35.71%；审结2383件，同比上升27.23%；结案率96.36%，同比上升3.63个百分点，位居全国十一家海事法院第三名。



2019年与2018年收结存案件数量对比图



2. 主要质效指标运行良好。 一审案件改发率 3.47%，同比上升 0.47 个百分点；调解率 17.82%，同比下降 15.18 个百分点；撤诉率 17.76%，同比上升 1.55 个百分点；服判息诉率 77.86%，同比下降 13.44 个百分点；简易程序适用率 47.37%，同比上升 9.37 个百分点；清理 18 个月以上 3 年以下未结案件 18 件，清理 3 年以上未结案件 5 件，18 个月以上长期未结案件数量同比下降 41.76%。

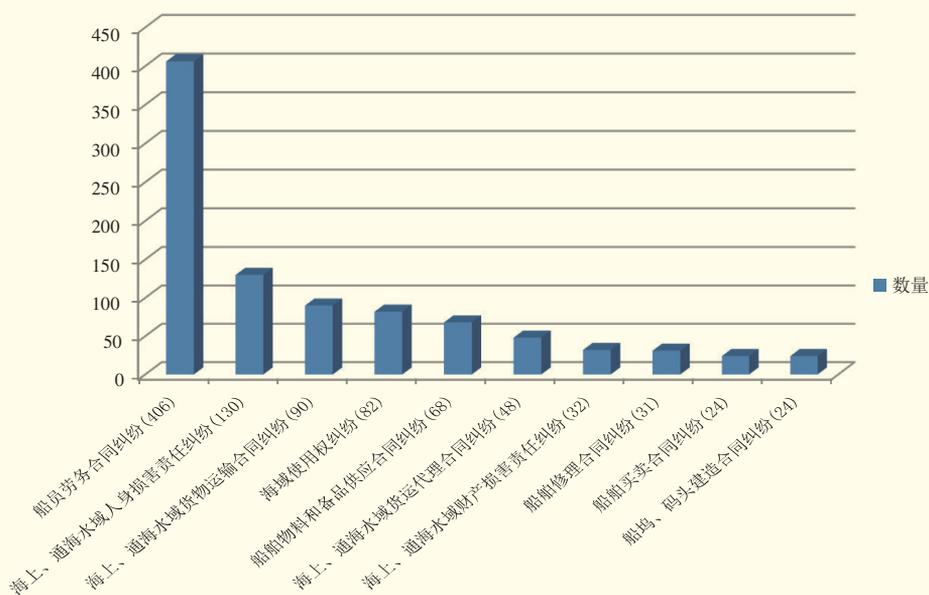
2019年与2018年主要质效指标对比图



（二）案件分类

1. 民事案件¹：受理 1418 件，同比上升 24.93%。其中新收 1341 件，同比上升 33.97%；审结 1362 件，同比上升 28.73%；结案率 96.05%，同比上升 2.83 个百分点；涉案标的额 67.71 亿元，同比增加 39.41 亿元。

民事案件中，海事海商案件受理 1307 件，同比上升 28.39%。其中新收 1233 件，同比上升 38.38%；审结 1252 件，同比上升 32.49%；结案率 95.79%，同比上升 2.96 个百分点。数量居前十名的新收海事海商案件共 935 件，具体类型如下：

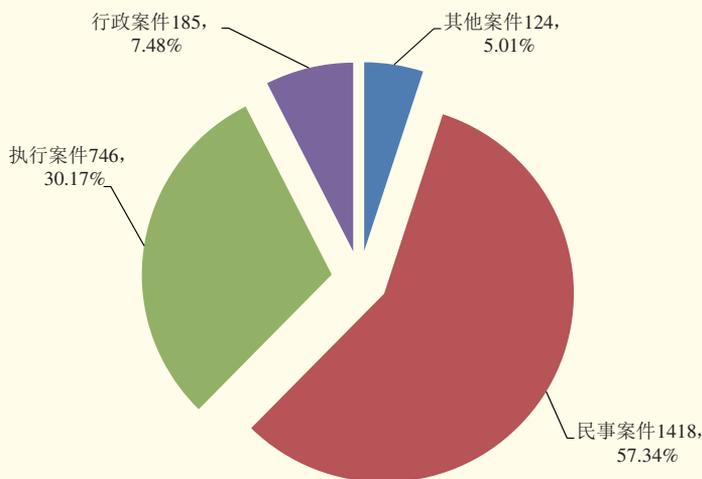


2. 行政案件：受理 185 件，同比上升 8.82%。其中新收 181 件，同比上升 31.16%；审结 174 件，同比上升 6.09%；结案率 94.05%，同比下降 2.42 个百分点；涉案标的额 4.23 亿元，同比减少 226.27 亿元。

1. 包含海事海商案件和海事特别程序案件，不包含非诉保全审查案件、国家赔偿案件、司法救助案件、司法协助案件和执行案件。

3. 执行案件：受理 746 件，同比上升 26.01%。其中新收 690 件，同比上升 28.73%；执结 725 件，同比上升 35.26%；基本解决执行难 4 项核心指标中前 3 项指标达到 100%，第 4 项结案率指标达到 97.18%，远远超出三个 90% 和一个 80% 的标准。

2019年各类案件受理数占比图

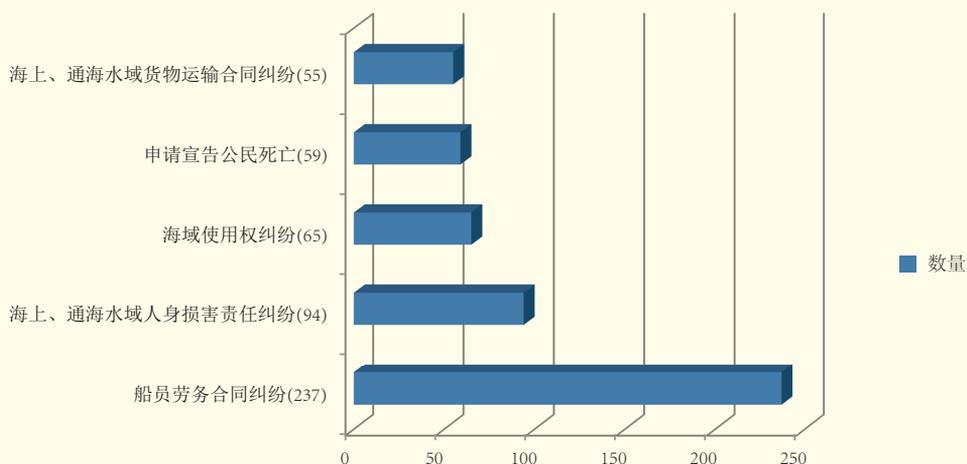


4. 派出法庭案件：五个派出法庭受理各类案件² 866 件，同比上升 19.61%。其中新收 821 件，同比上升 26.31%；旧存 45 件，同比下降 39.19%；结案 831 件，同比上升 22.57%。改发率 2.8%，低于全院 0.67 个百分点；调解率 11.98%，低于全院 5.84 个百分点；撤诉率 18.46%，高于全院 0.7 个百分点。

五个派出法庭受理海事海商案件 747 件，占全院海事海商案件总数 57.15%。其中新收 705 件，占全院海事海商案件 57.18%；审结 714 件，占全院海事海商案件 57.03%；涉案标的额 59.7 亿元。数量居前五名的新

2. 包含民事案件、非诉保全审查案件、行政案件和司法救助案件。

收海事海商案件共 491 件，具体类型如下：



5. 扣押、拍卖船舶情况：扣押船舶 17 艘，其中外国籍船舶、港澳台船舶 5 艘。拍卖船舶 11 艘，其中外国籍船舶、港澳台船舶 2 艘。

6. 涉外涉港澳台案件情况：受理涉外案件 50 件、涉港澳台案件 37 件，占全院总数的 3.52%；审结涉外案件 33 件、涉港澳台案件 30 件。案件涉及埃塞俄比亚、巴西、巴拿马、百慕大、伯里兹、丹麦、法国、韩国、加拿大、利比里亚、美国、马绍尔群岛、日本、瑞士、希腊、新加坡、英国、中国香港、中国台湾等近 20 个国家和地区。

（三）司法公开情况

依托中国庭审公开网直播庭审 1174 场，同比上升 4 倍，总观看数 1041696 次。2019 年 1-12 月作出的裁判文书在中国裁判文书网公布 2086 篇，裁判文书上网率 87.54%，位居辽宁法院中院组第四名。依托中国审判流程信息公开网实施审判流程信息公开，有效公开率 98.35%，位居辽宁法院中院组第二名。



二、工作亮点

（一）职能作用更加凸显

与驻地党委政府、港航企业、行业协会等相关部门建立工作联系、协作机制，了解司法需要，回应司法关切。依法妥善处理敏感案件，依法审理涉民生与东北亚航运中心建设案件。出台《关于服务保障东北全面深化改革创新推动高质量发展的实施意见》，提出20项具体措施。与大连自贸区管委会联合举办“大连自贸片区法治论坛”，深度参与“大连市推进东北亚航运中心建设条例”和“大连市海洋环境保护条例”等地方性法律规范的起草。提出《海事审判视角下的市场主体法律风险防范与依法行政》等五份高质量司法建议和情况报告，为大连法治软环境建设提供司法引导。

（二）执法办案更加优质高效

审判精品战略实现新突破，中燃航运（大连）有限责任公司申请设立海事赔偿责任限制基金案入选全国十大海事审判典型案例，潘玉忠诉中海石油（中国）有限公司天津分公司等海上污染损害责任纠纷案一审民事判决书荣获第三届全国法院环境资源优秀裁判文书评选一等奖。执行工作成效突出，基本解决执行难4项核心指标中3项指标达到100%，24项考核指标中22项超过全国平均水平。我院在基本解决执行难工作中成绩突出，荣获最高人民法院嘉奖。

（三）司法公开更加落实

坚持庭审、裁判文书和审判流程“应公开尽公开”原则，荣获辽宁省“庭审直播百日竞赛”中级法院组第四名、行政审判组个人第一名和第三名。首次发布中英双语海事审判报告。新研发的中英双语电脑版以及中文手机版官方网站，成为海事司法宣传的靓丽窗口。微信公众号每日更新，活跃度在全国十一家海事法院中排名第一。《人民法院报》《法制日报》《辽



宁日报》《辽宁法制报》和辽宁卫视等主流媒体发布我院宣传稿件 20 余篇。

（四）诉讼服务更加智能集约

两个“一站式”建设高标准起步。制定“简易案件立案标准”“速裁案件审限”等制度，实现繁简分流、快慢分道。与大连市工商业联合会、大连市仲裁委员会、大连市调解中心等 7 家机构建立多元化纠纷解决协作机制。构建诉讼服务大厅、新办案系统、移动微法院、诉讼服务网、12368 诉讼服务热线等“厅网线巡”一体的诉讼服务中心。全面实行跨区域立案、网上立案、电话预约立案、微信立案和自助缴费。诉讼服务 71 项指标持续高位运行，年底达到 81.5 分，受到辽宁省高级人民法院通报表扬。

（五）智慧法院建设更加富有成效

坚持高标准规划、高水平建设，智慧法院实现十个首次。一是首次建成现代化诉讼服务大厅，面积由 100 多平方米扩大到近 900 平方米；二是首次建成高标准的数字审委会；三是首次建成多功能会堂，具备集控中心、大型视频会议、科技大法庭功能；四是首次建成中英双语网站；五是首次建成具有视频会议功能的廉政教育室；六是首次在 2019 年 8 月 19 日完成全省第一例跨省立案；七是首次使用便携式科技法庭，在黑龙江省牡丹江市开庭审理一件当事人为孕妇的案件；八是首次配备高性能无人机“查船”“找人”；九是首次同步开通电脑端和手机端办公平台，全面实现办公无纸化、桌面和掌上同质化；十是首次一年内上线运行 37 个新系统。

（六）队伍建设更加突出素质能力

高度重视国际化、专家型、复合型人才培养，组织“海法讲坛”7 期。与大连海事大学合作开展人才培养。组织法治文化基层行和宪法进校园活动。积极参与海商法、海诉法修改工作，承办最高人民法院海诉法修改北部片区会议。组建调研课题团队、英语翻译团队，获省级课题立项



10件,省级以上奖励、调研成果37项,在《人民司法》《中国海商法研究》《中国港口》等期刊发表专业论文和案例11篇。编印《海事审判研究》《海事案例参考》各4期。先后参加“全国海事司法仲裁高端论坛”“东北亚国际航运中心仲裁论坛”“《海商法》修改与《民法典》编纂协调互动研讨会”等高端论坛,并做主题发言10余次。

三、问题建议

为进一步发挥海事司法的规则指引、评价等职能作用,结合海事审判实践,我们对各类海事主体应对经营和管理风险提出如下建议。

(一) 国际贸易企业在海上货运代理业务中应充分了解相关国家的进出口政策和法律法规,防范贸易和法律风险

委托国内的货运代理企业代理货物出口报关报检和目的港进口清关业务的国际贸易企业,应提前向货运代理企业提供进出口报关所需的必要证书。审判实践中,货运代理合同双方就货运代理企业的目的港清关义务是否包括代为办理贸易单证发生争议。³法院认为,依照《最高人民法院关于审理海上货运代理纠纷案件若干问题的规定》第一条⁴的规定,货运代理企业的目的港清关业务,通常指为货物办理海关申报、查验、征税、放行等手续,目的是使收货人顺利提取货物。除委托人与货运代理企业有特别约定外,目的港进口货物流程和政策的了解不在货运代理

3. 例如(2016)辽72民初672号江苏共筑石化工程有限公司诉锦程国际物流在线服务有限公司海上货运代理合同纠纷案。

4. 《最高人民法院关于审理海上货运代理纠纷案件若干问题的规定》第一条:“本规定适用于货运代理企业接受委托人委托处理与海上货物运输有关的货运代理事务时发生的下列纠纷:(一)因提供订舱、报关、报检、报验、保险服务所发生的纠纷;(二)因提供货物的包装、监装、监卸、集装箱装拆箱、分拨、中转服务所发生的纠纷;(三)因缮制、交付有关单证、费用结算所发生的纠纷;(四)因提供仓储、陆路运输服务所发生的纠纷;(五)因处理其他海上货运代理事务所发生的纠纷。”



企业的代理范围内，货运代理企业不负责为委托人办理贸易单证。依照上述规定第十条⁵，货运代理企业对委托人承担赔偿责任需以委托事务的存在为前提，双方未约定的贸易单证办理事务不属于货运代理企业的业务范畴，货运代理企业不承担未办理该事务的责任。

建议：国际贸易企业应充分了解进出口国家的进出口政策和法律法规，自行或委托进出口贸易代理企业代为办理进出口贸易单证，以防止货物因缺少贸易单证而被海关扣押；也应理性选择具有货运代理资质的企业，在其法定代理业务范围内明确约定代理事项，避免法律纠纷。

（二）海上货物运输合同托运人在贸易受阻时，应积极与承运人沟通货物回运、转港等事宜，减少经济损失

出口货物的国际贸易企业通常与承运人订立海上货物运输合同并成为托运人。当外国贸易买方与承运人订立海上货物运输合同时，我国国际贸易企业有时会按照贸易合同的约定成为提单记载的托运人。出口货物运输至目的港，承运人一般向收货人收取目的港发生的集装箱超期使用费、堆存费、港杂费等费用。但当贸易受阻等原因导致目的港无人提货时，基于诉讼便利性的需求，承运人往往凭提单向托运人主张目的港费用，并可能全部或部分获得法院的支持。⁶ 国际贸易企业在托运后如果不再关心其作为托运人对目的港费用可能承担的义务，将因此遭受经济损失。

建议：海上货物运输合同托运人应全面了解合同义务，在目的港无人提货时，积极主动与承运人沟通，考虑货物回运、转港的可行性和必

5. 《最高人民法院关于审理海上货运代理纠纷案件若干问题的规定》第十条：“委托人以货运代理企业处理海上货运代理事务给委托人造成损失为由，主张由货运代理企业承担相应赔偿责任的，人民法院应予支持，但货运代理企业证明其没有过错的除外。”

6. 例如（2018）辽72民初758号新鑫海航运有限公司（New Golden Sea Shipping Pte. Ltd.）诉深圳市鑫联升国际物流有限公司等海上货物运输合同纠纷案。



要性，减少可能产生的经济损失。

（三）海洋倾废管理部门应加强监测管理，防止非法倾倒废弃物造成的海洋污染

海洋倾废是影响海洋生态环境安全的重要污染行为之一，倾废主体、倾废程序、倾废物种类等一直受到我国法律和行政法规的严格规范⁷。法院在审判实践中发现，个别倾废主体规避监管⁸，非法倾废，例如不按指定地点倾倒废弃物、使用“套牌”船舶从事倾废等，对海洋生态环境和渔业养殖生产造成损害，极易引发纠纷。⁹

建议：海洋倾废管理部门¹⁰在按照法定程序履行监管职责过程中，可充分利用船舶定位、视频监控等方式，加大对不在指定地点倾倒废弃物、使用“套牌”船舶从事倾废等违法行为的查处力度。

（四）渔业管理部门应积极引导渔船所有人或经营人投保安全生产责任险和船员工伤险，减少遇险后的损失

我国多数渔船所有人或经营人以个人名义与船员形成雇佣或劳务关系，这一用工关系不受劳动法和劳动合同法的调整和规范，船员因没有法律意义上的用人单位而不能参加工伤保险。当船员在工作中遭受人身损害，因渔船所有人或经营人的赔偿能力有限，部分船员或其亲属无法获得及时充分的赔偿；渔船所有人或经营人也往往因一次意外事故而蒙

7. 例如海洋环境保护法（2017修正）、海洋倾废管理条例（2017修订）等法律法规。

8. 海洋倾废管理条例第十三条：“主管部门应对海洋倾倒活动进行监视和监督，必要时可派员随航。倾倒单位应为随航公务人员提供方便。”

9. 例如（2016）辽72民初882号王波诉大连中远川崎船舶工程有限公司等海上污染损害责任纠纷案。

10. 依照海洋倾废管理条例第四条的规定，海洋倾废废弃物的主管部门是中华人民共和国国家海洋局及其派出机构。因机构改革，国家海洋局的相关职能由自然资源部承继，海洋倾废的具体主管部门需要在法律法规层面予以明确。



受重大损失，生产难以恢复。¹¹

建议：渔业管理部门应加强法律宣传，引导渔船所有人或经营人登记为个体工商户，投保安全生产责任险¹²，并与船员订立书面劳动合同，为其投保《工伤保险条例》¹³规定的工伤保险。

（五）自然资源管理部门和渔业管理部门应规范海域使用及滩涂养殖的登记管理工作，促进水产养殖业健康发展

审判实践中，从事滩涂养殖的养殖户多数仅有海域使用权证，少数既没有海域使用权证也没有水域滩涂养殖证，还存在海域或滩涂长期由集体经济组织使用但未取得使用权证和养殖证的情况。¹⁴而依照海域使用管理法和渔业法的规定，从事海域滩涂养殖应持有海域使用权证和水域滩涂养殖证。上述情况下发生纠纷，当事人对于养殖合法性争议较大，不利于养殖户维护合法权益。

建议：自然资源管理部门和渔业管理部门应规范海域使用和滩涂养殖的发证登记管理工作，促进水产养殖业和海洋生态环境的协调发展。

11. 例如（2017）辽72民初849号齐景财诉左东良海上人身损害责任纠纷案；（2019）辽72民初924号赵兴明等诉杜根夫海上人身损害责任纠纷案。
12. 《中共中央 国务院关于推进安全生产领域改革发展的意见》（中发〔2016〕32号）第二十九条：“建立健全安全生产责任保险制度，在矿山、危险化学品、烟花爆竹、交通运输、建筑施工、民用爆炸物品、金属冶炼、渔业生产等高危行业领域强制实施，切实发挥保险机构参与风险评估管控和事故预防功能。完善工伤保险制度，加快制定工伤预防费用的提取比例、使用和管理具体办法。”《安全生产责任保险实施办法》（安监总办〔2017〕140号）第二条：“本办法所称安全生产责任保险，是指保险机构对投保的生产经营单位发生的生产安全事故造成的人员伤亡和有关经济损失等予以赔偿，并且为投保的生产经营单位提供生产安全事故预防服务的商业保险。”第三条：“按照本办法请求的经济赔偿，不影响参保的生产经营单位从业人员（含劳务派遣人员）依法请求工伤保险赔偿的权利。”
13. 《工伤保险条例》第二条：“中华人民共和国境内的企业、事业单位、社会团体、民办非企业单位、基金会、律师事务所、会计师事务所等组织和有雇工的个体工商户应当依照本条例规定参加工伤保险，为本单位全部职工或者雇工缴纳工伤保险费。”
14. 例如（2017）辽72民初310号李艳玲等诉大连市旅顺口区铁山街道柏岚子村民委员会海上污染损害责任纠纷案；（2017）辽72民初375号林发等诉孙琢琨等海域使用权纠纷案。



四、典型案例

（一）船舶碰撞后一船申请设立海事赔偿责任限制基金，其海事赔偿限额因对方可适用海商法第二百一十条而同样适用该规定

在申请人中燃航运（大连）有限责任公司（以下简称中燃公司）申请设立海事赔偿责任限制基金案¹⁵中，中燃公司所有的“中燃39”轮与朝鲜籍船舶“昆山”（KUM SAN）轮碰撞，中燃公司就所有因船舶碰撞引起的可以限制赔偿责任的非人身伤亡的海事赔偿请求，向法院申请设立海事赔偿责任限制基金。“中燃39”轮总吨2548吨，从事中国港口之间的运输，依照海商法第二百一十条第二款规定，其赔偿限额应适用《关于不满300总吨船舶及沿海运输、沿海作业船舶海事赔偿限额的规定》。该规定第五条规定：“同一事故中的当事船舶的海事赔偿限额，有适用海商法第二百一十条或者本规定第三条规定的，其他当事船舶的海事赔偿限额应当同样适用。”“昆山”轮总吨5852吨，从事国际运输，其海事赔偿限额应适用海商法第二百一十条的规定。“中燃39”轮与“昆山”轮碰撞，虽然“昆山”轮所有人没有向法院申请设立海事赔偿责任限制基金，“中燃39”轮的海事赔偿限额仍应当就高适用海商法第二百一十条的规定。

（二）海上污染损害的被侵权人应举证证明污染者的污染行为同其受到的损害之间具有关联性，否则承担举证不能的法律后果

在原告潘玉忠与被告中海石油（中国）有限公司天津分公司、被告绥中发电有限责任公司（以下简称二被告）海上污染损害责任纠纷案¹⁶中，潘玉忠要求二被告承担其排污行为使己方养殖的扇贝遭受损害的赔偿责任。依照《最高人民法院关于审理环境侵权责任纠纷案件适用法律若干

15. 一审（2017）辽72民特104号。

16. 一审（2016）辽72民初76号，二审（2017）辽民终452号，再审（2018）最高法民申1137号。



问题的解释》第六条、第七条的规定，潘玉忠应首先举证证明二被告有污染行为，潘玉忠的民事权益被损害，污染行为同损害之间具有关联性。潘玉忠完成前述举证后，才由二被告举证证明法律规定其不承担责任或者应当减轻责任的情形及其行为与损害之间不存在因果关系。潘玉忠未能举证证明其养殖扇贝所遭受的损害与二被告的排污行为存在关联性，法院判决驳回其诉讼请求。

（三）20总吨以下的船舶碰撞，仍应依照《1972年国际海上避碰规则》判定碰撞事故的过错和责任

在原告王秋红与被告大连海跃海钓有限公司、被告蔡明船舶碰撞损害责任纠纷案¹⁷中，发生碰撞的“蓝天海钓”轮与“辽长渔 31239”渔船均为 20 总吨以下的船舶，不能适用海商法关于船舶碰撞的规定，但因中国加入的《1972 年国际海上避碰规则》适用于在公海和连接于公海而可供海船航行的一切水域中的一切船舶，涉案两船就碰撞事故的过错和责任仍应依据该避碰规则的相关规定予以判定。“蓝天海钓”轮在能见度不良的雾区航行，未以安全航速行驶，未保持适当瞭望，未按避碰规则鸣放雾号，是碰撞事故发生的主要原因。“辽长渔 31239”渔船驾驶人员未发现本船在禁止抛锚及捕捞区域停航，未按避碰规则鸣放雾号，是碰撞事故发生的次要原因。法院认定碰撞事故的责任为“蓝天海钓”轮承担 80%，“辽长渔 31239”渔船承担 20%。

（四）海上货物运输承运人因船舶不适航、不合理绕航导致货物迟延交付的，不能援用海商法关于限制赔偿责任的规定

在原告环球维萨有限公司（Globe Visa Co., Ltd.）与被告俄罗斯海事检验检测有限公司（Russian Inspector's & Marine Surveyor's

17. 一审（2018）辽72民初287号。



Corporation, 以下简称检验公司)海上货物运输合同纠纷案¹⁸中, 承运人检验公司在船舶入级证书注明“船舶在未有1号发电机的情况下仅能在2015年6月4日前航行”的情况下, 未修复1号发电机, 于2015年7月28日起运货物, 使船舶在开航时不适航。船舶在运输途中又脱离货物产地证书及地理上的“白令海-俄罗斯海参崴-中国大连”航线, 绕航至韩国釜山港修理船舶, 直至2015年11月28日抵达目的港, 故未能在约定期限内交付货物, 构成迟延交付。法院认定检验公司明知货物属于食材性质的原材料, 具有时效性要求, 却以不适航的船舶承运货物, 因修理船舶不合理绕航, 又长期滞留于与货物运输无关的港口, 构成明知可能造成损失而轻率地作为或者不作为, 不得援用海商法第五十七条规定的限制赔偿责任的规定。

(五) 进口货物的提货单持有人与仓单持有人分离且均向港口经营人要求交付货物时, 港口经营人不能仅凭仓单交付货物

在原告中化国际(控股)股份有限公司(以下简称中化公司)与被告大连港股份有限公司(以下简称大连港公司)、第三人中国铁路物资哈尔滨有限公司(以下简称中铁公司)港口货物保管合同纠纷案¹⁹中, 港口经营人大连港公司依据案外的存货人出具的货物过户证明向中铁公司出具了仓单, 但存货人未向贸易卖方支付货款, 未取得提单, 因而无法取得提货单。中化公司向该贸易卖方购买货物取得提单, 向承运人换取提货单并向海关缴纳进口关税, 取得了加盖海关放行章的提货单。提货单持有人中化公司与仓单持有人中铁公司均向大连港公司要求交付进口货物。因仓储合同的效力不以存货人是仓储物的所有权人为前提, 法院认定存货人与港口经营人订立的港口货物保管合同有效, 但进口货物的提

18. 一审(2016)辽72民初121号, 二审(2019)辽民终663号。

19. 一审(2015)大海商初字第487号, 二审(2018)辽民终462号, 再审(2019)最高法民申3187号。



货人应当向港口经营人提供仓单和加盖海关放行章的提货单才能提取货物。向港口经营人出示提货单的人与出示仓单的人不一致，使港口经营人无法履行合同约定的货物交付义务。依照物权法第三十九条规定，另案生效判决书已确认中化公司对货物具有所有权，法院判决大连港公司将货物交付给中化公司。

（六）对采用保险人提供的格式条款订立的保险合同，应当作出有利于被保险人的解释

在原告大连旅顺滨海船舶修造有限公司（以下简称滨海公司）与被告中国人民财产保险股份有限公司大连市分公司营业部（以下简称大连人保营业部）、被告中国人民财产保险股份有限公司大连市分公司海上保险合同纠纷案²⁰中，滨海公司修理的“捷盛6”轮在坞修中发生事故，造成船舶主机损坏。被保险人滨海公司与保险人大连人保营业部订立的《修船责任保险协议书》对保险责任范围约定为“由于修船工人或技术人员的过失而引起的火灾事故或船舶机损对承修船舶所造成的直接损失，但机器本身的损坏不予负责。”该协议书系保险人为重复使用而预先拟定的格式合同，上述约定属于格式条款。对条款中“机器本身的损坏”的含义，保险人解释为因修理行为对被修机器造成的损坏，被保险人解释为被修机器在修理前已经存在的损坏和因机器固有的材质缺陷单独与其他因素叠加引起的损坏，两种解释均具有合理性。依照保险法第三十条，法院对该格式条款作出有利于被保险人的解释，认定机损事故属于约定的保险责任范围。

（七）海上非法养殖人无权向侵权人索赔养殖收益，但有权索赔养殖工具的损失

在原告刘诗国与被告林安琪、被告浙江海升海运有限公司（以下简

20. 一审（2016）辽72民初629号，二审（2018）辽民终400号。

称海升公司)、被告张世其海上养殖损害责任纠纷案²¹中,海升公司经营的“航鸿3”轮驶入刘诗国的浮筏养殖区,造成部分养殖浮筏损坏。刘诗国未取得海域使用权证,在该海域从事浮筏养殖不合法,其养殖收益不受法律保护,但刘诗国并未主张养殖收益损失,而是作为养殖浮筏的所有权人要求侵权人赔偿养殖浮筏作为养殖工具本身的损失,该赔偿请求与其养殖行为的合法性无关。“航鸿3”轮在海升公司经营和控制下进入刘诗国的养殖区,海升公司作为侵权人存在过错。刘诗国从事非法养殖,也未在养殖区周边设有灯浮等标示养殖区位置,对其损失也有一定过错。法院认定损害事故的责任为海升公司承担80%,刘诗国承担20%。

（八）发挥司法审查和诉讼引导作用，依法指导鉴定程序，审慎使用鉴定结论，公正调解重大疑难复杂案件

在原告大连南成修船有限公司（以下简称南成公司）、原告中国太平洋财产保险股份有限公司大连分公司与被告才华航运有限公司（Caihua Shipping S.A.，以下简称才华公司）船舶触碰损害责任纠纷案²²中,南成公司因才华公司所有的船舶触碰其经营的浮船坞导致浮船坞、系坞墩等设施损坏,向本院提起标的额过亿元的赔偿请求。因浮船坞结构特殊（前苏联建造,国内仅此一艘),损失构成复杂,法院发挥诉讼引导作用,对标的物损失程度、修复或重置费用及周期、生产经营损失等分项分步制定了鉴定程序实施意见;鉴定过程中坚持程序审查和法律释明,使鉴定事项与法律规定的赔偿范围相统一,确保鉴定依据的客观真实和鉴定结论的证明效力。法院坚持调解优先,依托陆续形成的多项鉴定评估结论,多次主持各方调解。最终,一起诉求超亿元的案件以才华公司赔偿4678万元达成和解。

21. 一审（2015）大海事初字第167号，二审（2017）辽民终1270号。

22. 一审（2013）大海事初字第52号及（2019）辽72民初1号。



（九）派出法庭运用人民法院调解平台,快捷高效调解船员劳务合同纠纷案

在原告于长春与被告姜洪刚船员劳务合同纠纷案²³中,船员于长春要求雇主姜洪刚给付所欠劳务费37000元。案件事实清楚,具备庭前调解的条件,但姜洪刚在距离法庭百里之外的渔港作业。为尽早化解矛盾,减轻当事人时间和交通等诉讼成本,我院长海派出法庭指导双方当事人通过微信小程序登录人民法院调解平台,实现了三方视频通话。法官C通过视频耐心释法明理,顺利促成当事人达成调解协议。该案从立案到作出民事调解书,全程不到两小时,兑现了“让信息多跑腿,让群众少跑路”的便民服务承诺。

（十）行政机关就其具有代履行的间接强制执行权的事项,不应申请法院强制执行

在申请执行人大连长兴岛经济区海洋与渔业局申请对被执行人王明远强制执行行政处罚决定案²⁴中,大连长兴岛经济区海洋与渔业局因王明远擅自围填海修建堤坝及养殖圈,对其作出恢复海域原状和缴纳罚款的行政处罚,并向法院申请强制执行该行政处罚决定书。法院认为,行政强制法第五十条赋予主管保障交通安全、防止环境污染或者保护自然资源的行政机关职权,在当事人拒不履行行政决定要求的排除妨碍、恢复原状等义务时,依法享有代履行的间接强制执行权。另依照该法第五十三条规定,行政机关应当就其没有行政强制执行权的事项申请法院强制执行。王明远擅自围填海修建养殖圈造成环境污染并破坏自然资源,在其逾期不履行行政处罚决定要求的恢复海域原状义务时,行政机关可以自己或者委托无利害关系的第三人依法实施代履行,不应申请法院强制执行。

23. 一审(2019)辽72民初1199号。

24. 一审(2018)辽72行审9号,二审(2018)辽行审复3号。



（十一）申请执行人与案外人均对执行标的物主张抵押权，按照抵押权的法定顺序享受优先受偿权

在执行申请执行人吉林银行股份有限公司大连分行（以下简称吉林银行）与被执行人大连中裕嘉合房地产开发有限公司金融借款合同纠纷案²⁵中，因生效法律文书确认吉林银行对某不动产具有优先受偿权，吉林银行申请对该不动产进行评估和拍卖。不动产登记的第一顺序抵押权人为中国民生银行股份有限公司大连分行，第二顺序抵押权人为吉林银行。第一顺序抵押权人将主债权和抵押权转让给中国东方资产管理股份有限公司辽宁省分公司（以下简称东方公司），因不动产已被查封，未在登记部门进行抵押权变更登记。东方公司在法院发布拍卖公告期间向法院申报债权并主张对不动产优先受偿。在主债权和担保该债权的抵押权均已转让给东方公司的情况下，包括吉林银行在内的相关权利人对东方公司系不动产的第一顺序抵押权人不存在异议，法院确认东方公司的优先受偿权，将拍卖流拍的不动产按抵押权顺序，部分以物抵债给东方公司，部分以物抵债给吉林银行，使优先受偿权在执行程序中按法定顺序得以实现。

结束语

海事法院作为中国司法的国际窗口，应着眼于中国特色社会主义事业发展全局，统筹国内国际两个大局，发挥海事审判在保护海洋生态文明、维护国家主权和海洋权益方面的积极作用。大连海事法院将不断涵养一流的认识水平，坚定一流的目标定位，完善一流的推进机制，培育一流的人才队伍，盯实一流的审判质效，追求一流的管理能力，建设一流的发展环境，强化一流的现代保障，下定决心、实干精进，以顽强的意志和不懈的拼搏，坚定不移向着一流目标迈进。

25. (2016)辽72执308号。



Foreword

A new era opens a new journey, and a new journey calls for a new action. In April, 2019, President Xi Jinping explicitly proposed the great concept of “building a maritime community of a shared future”, which struck a positive chord with the international community. Building a maritime community of a shared future is the extension of the concept of “building a community of a shared future for mankind” in marine fields and the pragmatic need of marine situation development in the new era, and points out the direction for the all-around construction of maritime rule of law.

In order to give full play to the maritime trial’s positive role in serving and safeguarding national strategy, protecting marine ecological civilization and safeguarding national territorial sovereignty and maritime rights and interests, the Supreme People’s Court puts forward the development goal of “Strengthening the maritime trial work and building an international maritime judicial center”. While the dream of maritime power is being pursued, it is the right time to fully strengthen the maritime trial and promote the soft power of China’s judicial system.

In 2019, Dalian Maritime Court insisted placing the political construction in the first place, continuously enhanced “Four Consciousnesses”, strengthened “Four Confidences” and implemented “Two Maintenances”. The Court firmly grasped the development opportunity, clarified the working ideology of building a first-class maritime court in the country, forged ahead in a pioneering spirit and paid close attention to implementation. The Court’s work style and image took on a new look while realizing a new breakthrough and new development in various work.

I. Basic information

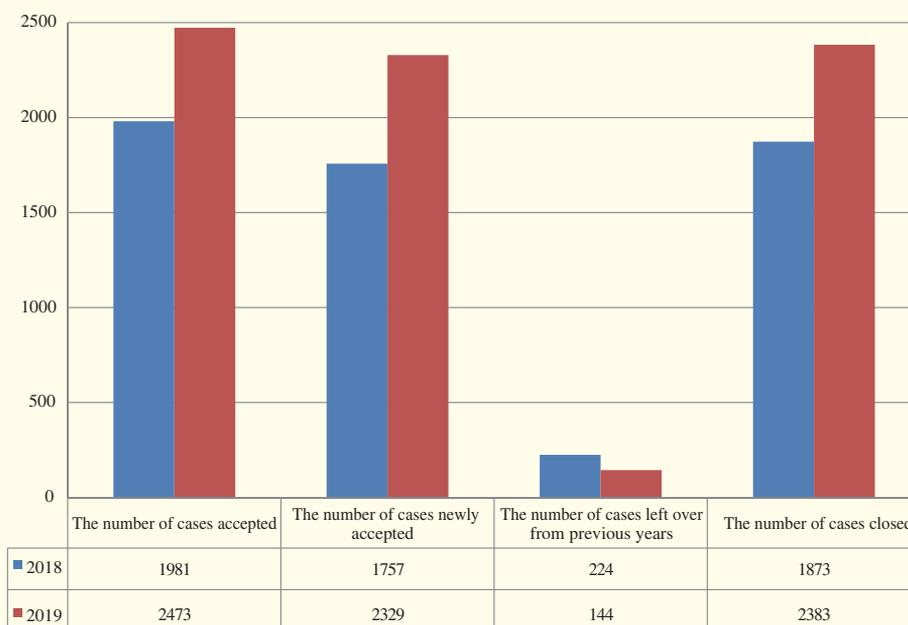
1. General situation

1.1 The numbers of accepted and closed cases have increased substantially.

In 2019, the Court accepted 2,473 cases of various types, an increase of 24.84%

over last year. Among these cases, 2,329 cases were newly accepted, an increase of 32.56% over last year, and 144 cases were left over from previous years, a decrease of 35.71% over last year; 2,383 cases were closed, an increase of 27.23% over last year. The clearance rate reached 96.36%, an increase of 3.63 percent points over last year, ranking the third among the eleven maritime courts in China.

The comparison chart of the numbers of cases newly accepted, closed, left over from previous years between 2019 and 2018

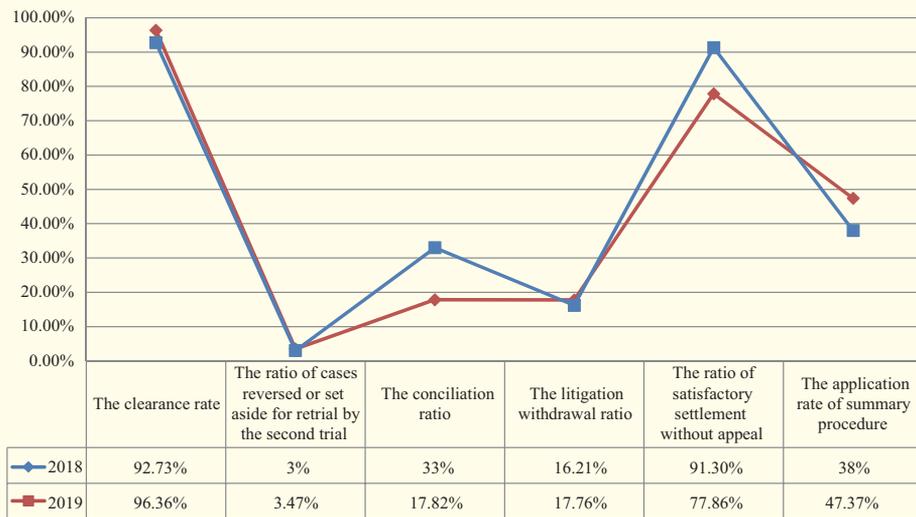


1.2 Major quality and effectiveness targets were well accomplished. The ratio of cases reversed or set aside for retrial by the second trial was 3.47%, an increase of 0.47 percent points over last year. The conciliation ratio was 17.82%, a decrease of 15.18 percent points over last year. The litigation withdrawal ratio was 17.76%, an increase of 1.55 percent points over last year. The ratio of satisfactory settlement without appeal was 77.86%, a decrease of 13.44 percent points over last year. The application rate of summary procedure was 47.37%, an increase of 9.37 percent points over last year; 18 open cases over 18 months and less than 3 years were



cleared up, and 5 open cases over 3 years were cleared up, and the number of long-term open cases over 18 months decreased by 41.76% over last year.

The comparison chart of the major quality & effectiveness targets between 2019 and 2018



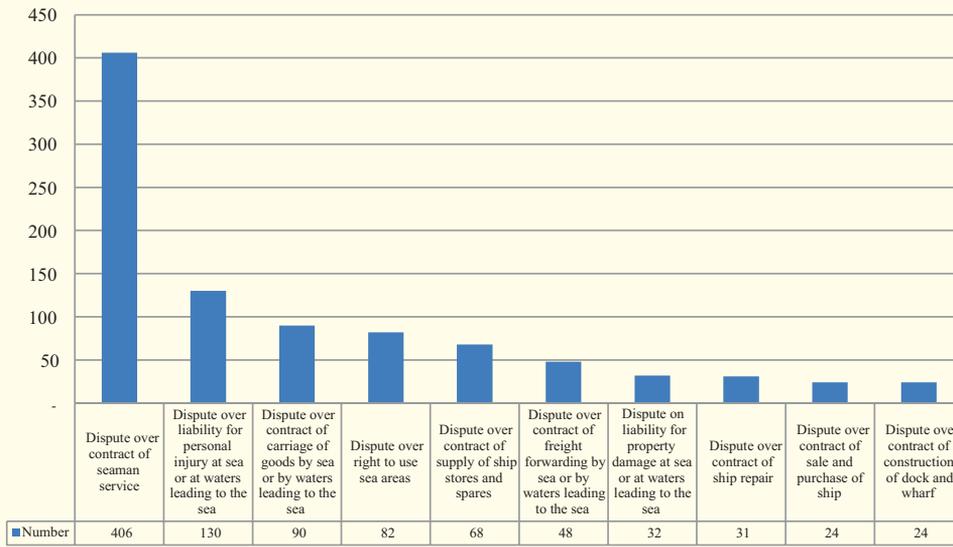
2. Case classification

2.1 Civil cases data¹: 1,418 cases were accepted, an increase of 24.93% over last year. Among these cases, 1,341 cases were newly accepted, an increase of 33.97% over last year; 1,362 cases were closed, an increase of 28.73% over last year. The clearance rate reached 96.05%, an increase of 2.83 percent points over last year. The subject amount of the cases was RMB 6.771 billion, an increase of RMB 3.941 billion over last year.

Among these civil cases, the Court has accepted 1,307 admiralty and maritime cases, an increase of 28.39% over last year. Among the cases, 1,233 cases were newly accepted, an increase of 38.38% over last year; 1,252 cases were closed, an increase of 32.49% over last year. The clearance rate was 95.79%, an increase

1. Including maritime cases and maritime special procedure cases, excluding non-litigation preservation review cases, state compensation cases, judicial aid cases, judicial assistance cases and enforcement cases.

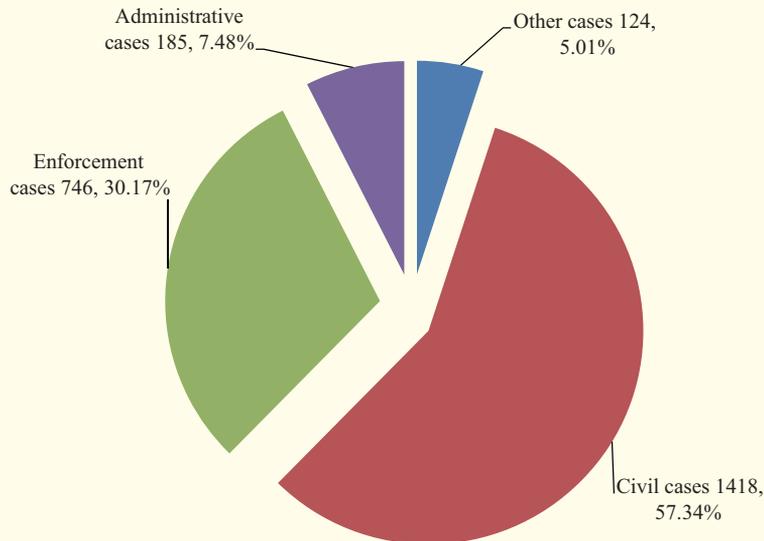
of 2.96 percent points over last year. Of the new contentious cases accepted, the number of the top 10 admiralty and maritime cases reached 935. The types of the above cases were as follows:



2.2 Administrative cases data: The Court accepted 185 maritime administrative cases, an increase of 8.82% over last year. Among the cases, 181 cases were newly accepted, an increase of 31.16% over last year; 174 cases were closed, an increase of 6.09% over last year. The clearance rate was 94.05%, a decrease of 2.42 percent points over last year. The subject amount of the cases was RMB 423 million, a decrease of RMB 22.627 billion over last year.

2.3 Enforcement cases data: 746 cases were accepted, an increase of 26.01% over last year. Among the cases, 690 cases were newly accepted, an increase of 28.73% over last year; 725 cases were closed, an increase of 35.26% over last year. The first three among the “four core targets” achieved 100% and the fourth achieved 97.18% in clearance rate, far exceeding the criteria of three 90% and one 80%.

The proportion chart of cases accepted in 2019

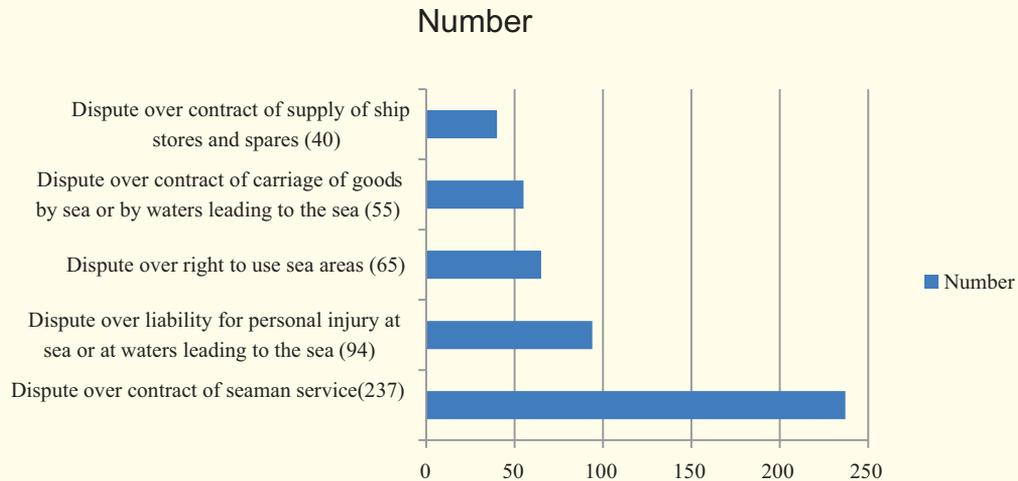


2.4 Dispatched tribunal cases data: Five dispatched tribunals accepted 866 cases of various types², an increase of 19.61% over last year. Among the cases, 821 cases were newly accepted, an increase of 26.31% over last year; 45 cases were left over from previous years, a decrease of 39.19% over last year; 831 cases were closed, an increase of 22.57% over last year. The ratio of cases reversed or set aside for retrial by the second trial was 2.8%, 0.67 percent point lower than the Court's data. The conciliation ratio was 11.98%, 5.84 percent points lower than the Court's data. The litigation withdrawal ratio was 18.46%, 0.7 percent point higher than the Court's data.

Five dispatched tribunals accepted 747 admiralty and maritime cases, accounting for 57.15% of the total number of admiralty and maritime cases of the Court. Among the cases, 705 cases were newly accepted, accounting for 57.18% of the total admiralty and maritime cases of the Court; 714 cases were closed, accounting for 57.03% of the total admiralty and maritime cases of the Court. The subject amount of the cases was RMB 5.97 billion. The number of the top 5 admiralty and

2. Including civil cases, non-litigation preservation review cases, administrative cases and judicial aid cases.

maritime cases reached 491. The types of the above cases were as follows:



2.5 Arrest and auction of ships data: 17 ships were arrested, of which 5 involved foreign, Hong Kong, Macao and Taiwan affairs. 11 ships were auctioned, of which 2 involved foreign, Hong Kong, Macao and Taiwan affairs.

2.6 Cases involving foreign, Hong Kong, Macao and Taiwan affairs: The Court accepted 50 cases involving foreign affairs and 37 cases involving Hong Kong, Macao and Taiwan affairs, accounting for 3.52% of the Court’s total number. 33 cases involving foreign affairs and 30 cases involving Hong Kong, Macao and Taiwan affairs were closed. The cases involved nearly 20 countries and regions, including Ethiopia, Brazil, Panama, Bermuda, Belize, Denmark, France, South Korea, Canada, Liberia, the United States, Marshall Islands, Japan, Switzerland, Greece, Singapore, the United Kingdom, Hong Kong, Taiwan, and so on.

3. Judicial openness

1,174 trials were broadcast live on China Open Trials Online, a four-fold increase over last year, with a total of 1,041,696 views. 2,086 judgment documents made from January to December 2019 were issued on China Judgments Online, with an online issuance rate of 87.54%, ranking the fourth in the “intermediate courts



group” of Liaoning courts. The Court disclosed the related judicial process information on China Judicial Process Information Online with an effective disclosure rate of 98.35%, ranking the second in the “intermediate courts group” of Liaoning courts.

II. Work highlights

1. More prominence given to judicial function

The Court established working relationships and cooperation mechanisms with local Party committees and governments, port and shipping enterprises and guilds, to understand judicial needs and respond to judicial concerns. According to law, the Court properly handled sensitive cases and heard cases involving people’s livelihood and Northeast Asia Shipping Center Construction. The Court issued the *Implementation Opinions on Serving and Safeguarding the Comprehensive and In-depth Reform and Innovation of Northeast China and Promoting High-quality Development*, and proposed 20 specific measures thereof. The Court jointly held the “Legal Forum of Dalian Section of the Free Trade Zone” with the Management Committee of Dalian Section of the Free Trade Zone and deeply participated in the drafting of local statutes and regulations, such as the *Regulations of Dalian City on Promoting Northeast Asia Shipping Center Construction and the Regulations of Dalian City on Protecting the Marine Environment*. The Court put forward 5 pieces of high-quality legal advice and investigation reports including the *Legal Risk Prevention of the Market Subject and Administration according to Law in the Perspective of Maritime Trial*, so as to provide the judicial guide in Dalian rule of law soft environment construction.

2. Higher quality and efficiency in law enforcement and case handling

The Court realized new breakthroughs in the trial quality strategy. The case of Application for Establishment of Funds for Limitation of Liability for Maritime Claims by CHIMBUSCO Shipping Co., Ltd (Dalian) was adopted as one of National Top Ten Typical Maritime Trial Cases. The Civil Judgment of the First



Instance Case of Dispute over Liability for Pollution Damage at Sea Filed by Pan Yuzhong against China National Offshore Oil Corporation (China) Tianjin Branch, etc. won the first prize in the contest of the Third National Excellent Court Judgment Documents on Environmental Resources. The Court achieved outstanding results in enforcement work where 3 out of the 4 core targets achieved 100% and 22 out of the 24 assessment targets exceeded the national average. The Court was commended by the Supreme People's Court for the outstanding results in basically resolving the difficulties in enforcement work.

3. Better implementation in judicial openness

The Court adheres to the principle of “Make What Should Be Open as Open as Possible” in court trials, judgment documents and judicial procedures. The Court was ranked the fourth in the intermediate courts group, and the first and the third in the administrative trials group in the “100-Day Contest of Live Trials” of Liaoning courts. The Court released the maritime trial report in Chinese and English for the first time. The newly developed Chinese/English bilingual computer version and Chinese official mobile version have become impressive showcases for maritime judicial publicity. The WeChat official account updated daily, its activity level ranking the first among the eleven maritime courts in China. Over 20 articles on the Court were released by the mainstream media, such as People's Court Daily, Legal Daily, Liaoning Daily, Liaoning Legal Daily and Liaoning TV.

4. More intelligent and intensive in litigation services

The Court started with high standards of the two “One-stop” constructions. The Court set out the rules of “Filing Standards for Simple Cases” and “Time Limits for Speedy Trial Cases” to realize the efficient distribution of complex and simple cases and separate the fast-track procedures from the slow-track ones. The Court established the diversified dispute resolution and coordination mechanism with 7 organizations including Dalian Federation of Industry and Commerce, Dalian Arbitration Commission and Dalian Resolution Center. The Court built the litigation service center integrating the functions of litigation service hall, new case-handling system, mobile micro court, litigation service network and 12368



litigation service hotline. The Court fully accomplished cross-jurisdiction case filing, online case filing, case filing reserved by phone, WeChat case filing and self-service payment. The 71 targets of the litigation service continuously operated at a high level, of which the total score reached 81.5 by the end of the year, and the Court was commended by Liaoning High People's Court.

5. More effective in smart court construction

Adhering to high-standard planning and high-level construction, the Court achieved 10 firsts in smart court construction. First, for the first time, the Court built a modern litigation service hall covering an area of nearly 900 square meters, which had been about 100 square meters. Second, for the first time, the Court set up a high-standard digital trial committee. Third, for the first time, the Court built a multifunctional hall integrating the functions of a centralized control center, a large video conference and a grand technology court. Fourth, for the first time, the Court built a bilingual website in Chinese and English. Fifth, for the first time, the Court built an office of clean politics education with the function of video conference. Sixth, for the first time, the Court realized the first cross-provincial case filing in Liaoning province on August 19, 2019. Seventh, for the first time, the Court relied on a portable technology court to hear a case involving a pregnant woman in Mudanjiang, Heilongjiang province. Eighth, for the first time, the Court was armed with high-performance UVAs in search of "ship and person". Ninth, for the first time, the Court synchronously opened an office platform on computer and mobile terminal, fully realizing paperless office and desktop and palm homogenization. Tenth, for the first time, the Court ran 37 new systems on line within a year.

6. More prominence given to caliber and competence in team building

The Court attaches great importance to the training of international, expert and compound talents, and organizes "Maritime Justice Forum" for 7 sessions. The Court cooperates with Dalian Maritime University to carry out talent training. The Court organized "grassroots journey for the culture of rule of law" and "constitution into campus" activities. The Court takes an active part in the revision of the *Maritime Code and the Special Maritime Procedure Law*, and hosted the



“Northern District Research Conference on Revision of the *Special Maritime Procedure Law* by the Supreme People’s Court”. The Court set up a research team and an English translation team. The Court won the approval of 10 provincial projects and 37 awards and research achievements at or above the provincial level, and published 11 professional papers and cases in journals, such as *The People's Judicature*, *Chinese Journal of Maritime Law* and *China Ports*. The Court compiled and printed 4 issues of *Maritime Trial Study* and *Maritime Case Reference* respectively. The Court participated in such high-end forums as “China Maritime Justice and Arbitration Summit Forum”, “Northeast Asia International Shipping Center Arbitration Forum” and “Seminar on the Coordination and Interaction between the Revision of the *Maritime Code* and the *Compilation of the Civil Code*”, and delivered more than 10 keynote speeches.

III. Problems and suggestions

In order to further play the role of guidance and evaluation of maritime judicial rules, and in light of the practice of maritime adjudication, we put forward the following suggestions for maritime subjects to deal with operational and management risks.

1. International trade enterprises should fully understand the import and export policies and laws and regulations of relevant countries in the sea freight forwarding business to prevent trade and legal risks

International trade enterprises that entrust the domestic freight forwarding enterprises to act as agents for export declaration and inspection of goods and import clearance at the port of destination should provide the freight forwarding enterprises with the necessary certificates required for import and export declaration in advance. In actual trials, the two parties to the freight forwarding contract have disputes over whether the customs clearance obligations of the freight forwarding enterprise at the destination port include handling trade



documents on behalf of the consignors.³ The Court holds the view that, in accordance with Article 1 of *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases about Disputes over Marine Freight Forwarding*⁴, the customs clearance businesses of the destination port of the freight forwarding enterprises usually refer to the formalities of customs declaration, inspection, taxation and release of goods, so as to enable the consignees to take delivery of goods smoothly. Unless otherwise agreed by the consignors and the freight forwarding enterprises, the understanding of the process and policy of import goods at the destination port is not within the agency scope of the freight forwarding enterprises, and the freight forwarding enterprises are not responsible for handling the trade documents for the consignors. In accordance with Article 10⁵ of the above provisions, the freight forwarding enterprises shall assume the liability for compensation to the consignors in the premise of the existence of the entrusted affairs, the handling of trade documents in the absence of an agreement between the parties is not within the business scope of the freight forwarding enterprises, and the freight forwarding enterprises shall not assume the responsibility for the failure of handling the affairs.

Suggestion: International trade enterprises should fully understand the import and export policies, laws and regulations of the importing and exporting countries,

3. For example, the dispute over contract of maritime freight forwarding between the plaintiff, Jiangsu Gongzhu Petrochemical Engineering Co., Ltd. and the defendant, Jincheng International Logistics Online Service Co., Ltd., and the case number was (2016) L72MC No.672.

4. Article 1 of Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases about Disputes over Marine Freight Forwarding: "These Provisions apply to the following disputes arising when freight forwarding enterprises handle marine freight forwarding affairs upon the entrustment of consignors: 1. disputes arising from the rendering of services such as booking space, customs declaration, quarantine declaration, inspection declaration and insurance services; 2. disputes arising from the rendering of services such as packaging, loading inspection, unloading inspection, container packing and unpacking, allocation and transshipping; 3. disputes arising from the making or delivery of documents or the settlement of expenses; 4. disputes arising from the rendering of storage and overland transport services; and 5. other disputes arising from the handling of other marine freight forwarding affairs."

5. Article 10 of Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases about Disputes over Marine Freight Forwarding: "Where consignors make claims for freight forwarding enterprises to make for compensation due to their dealing with the marine freight forwarding business that has caused losses to the consignors, the people's court should uphold it except where freight forwarding enterprises prove no fault."

handle by themselves or entrust import and export trade agencies to handle import and export trade documents, so as to prevent the goods from being detained by the customs due to the lack of trade documents; It is also necessary to rationally choose the enterprises with freight forwarding qualifications and clearly agree on the agency affairs within the scope of their legal agency business to avoid legal disputes.

2. The shippers of the contract of carriage of goods by sea should actively communicate with the carrier on matters relating to the return or transfer of the goods to reduce economic losses when their trades are blocked

International trade enterprises that export goods usually enter into contracts of carriage of goods by sea with the carriers and become shippers. When foreign trade buyers enter into contracts of carriage of goods by sea with the carriers, Chinese international trade enterprises sometimes become the shippers recorded in the bill of lading in accordance with the provisions of the trade contracts. When the export goods are transported to the port of destination, the carriers generally collect overdue fees for the use of containers, storage fees and port miscellaneous fees incurred at the port of destination from the consignees. However, when there is no delivery at the port of destination due to trade obstruction or other reasons, based on the need for convenience of litigation, the carriers often make a claim for the port of destination fees against the shippers with the bill of lading, and may obtain the support of the court in whole or in part⁶. The international trade enterprises will suffer economic losses if, after shipment, they are no longer concerned about their possible obligations for the port of destination charges as the shippers.

Suggestion: Shippers of contracts of carriage of goods by sea should have a full understanding of the contractual obligations and actively communicate with the carriers when there are no deliveries at the port of destination, and consider the

6. For example, the dispute over contract of carriage of goods by sea between the plaintiff, New Golden Sea Shipping Pte. Ltd., and the defendants, Shenzhen Xinliansheng International Logistics Co., Ltd., etc., and the case number was (2018) L72MC No.758.



feasibility and necessity of goods return and transfer in order to reduce possible economic losses.

3. Ocean dumping administrations should strengthen surveillance and management to prevent marine pollution caused by illegal waste dumping

Ocean dumping is one of the important pollution acts that affect the safety of the marine ecological environment. The dumping subjects, dumping procedures, and types of wastes dumped have been strictly regulated by Chinese laws and administrative regulations⁷.

The Court found in actual trials that individual dumping subjects avoided supervision and dumped illegally⁸, such as dumping wastes beyond the designated locations, using “fake plate” ships for dumping, etc., which caused damages to the marine ecological environment and fishery and aquaculture, and easily triggered disputes⁹.

Suggestion: In the process of performing supervision duties in accordance with legal procedures, ocean dumping administrations¹⁰ may make full use of ship positioning, video monitoring and other means to increase the investigation and punishment on the illegal activities of dumping wastes beyond the designated locations and using “fake plate” ships to dump.

4. Fishery administrations should actively guide ship owners or

7. For example, the Marine Environmental Protection Law (2017 Amendment), the Regulations on the Dumping of Wastes at Sea (2017 Amendment), etc.

8. Article 13 of the Regulations on the Dumping of Wastes at Sea: “The governing authorities should monitor and supervise the dumping activities. Some supervisors may also be sent to supervise on board in necessity. The dumping units should provide facilitation for the officials.”

9. For example, the dispute over liability for marine pollution damage between the plaintiff, Wang Bo and the defendants, Dalian COSCO Kawasaki Ship Engineering Co., Ltd., etc., and the case number was (2016) L72MC No. 882.

10. According to Article 4 of the Regulations on the Dumping of Wastes at Sea, the governing authorities in charge of the dumping of wastes at sea were the State Oceanic Administration and its dispatched departments. Due to the institutional reform, the relevant functions of the State Oceanic Administration are inherited by the Ministry of Natural Resources. The specific governing authorities of marine dumping need to be clarified at the legal and regulatory level.

operators of fishing ships to insure against work safety liabilities and work injuries for the crew to reduce losses after accident

Most of the ship owners or operators of the fishing ships in China establish employment or labor relationships with the crew in their own names. The relationships are not modulated or regulated by the *Labor Law and the Labor Contract Law*. The crew cannot enjoy the work injury insurance because they have no employer in the legal sense. When crew members suffer personal injuries at work, some of them or their relatives fail to obtain timely and sufficient compensation due to the limited compensation capacity of the ship owners or operators; the ship owners or operators often suffer heavy losses due to an accident and find it hard to resume production.¹¹

Suggestion: Fishery administrations should strengthen legal publicity, guide the ship owners or operators of the fishing ships to register as individual businesses, insure against work safety liabilities¹², sign labor contracts with the crew in a written form and insure against work injuries stipulated in the *Regulation on Work-related Injury Insurance*¹³ for the crew.

11. For example, the dispute over liability for personal injury at sea between the plaintiff, Qi Jingcai and the defendant, Zuo Dongliang, and the case number was (2017) L72MC No. 849; the dispute over liability for personal injury at sea between the plaintiffs, Zhao Xingming, etc. and the defendant, Du Genfu, and the case number was (2019) L72MC No. 924.

12. Article 29 of the Opinions of the Central Committee of the Communist Party of China and the State Council on Promoting the Reform and Development in the Field of Work Safety (Zhong Fa [2016] No. 32): "The work safety liability insurance system should be established and perfected, and be enforced in high-risk industries such as mines, hazardous chemicals, fireworks and firecrackers, transportation, building construction, civilian explosives, metal smelting and fishery production, and the functions of insurance institutions participating in risk assessment and control and accident prevention should indeed be reflected. The work injury insurance system should be perfected, and the formulation of specific methods for the extraction, use and management of work injury prevention costs should be expedited."

Article 2 of the Measures for the Implementation of Work Safety Liability Insurance (An Jian Zong Ban [2017] No. 140): "The term 'work safety liability insurance' as mentioned in the Measures refers to a commercial insurance that compensates for human casualties and related economic losses caused by work safety accidents incurred in the insured production and operation unit, and provides the services of preventing work safety accidents for the insured production and operation unit."

Article 3 of the Measures: "The economic compensation requested in accordance with the Measures should not affect the right of employees in the production and business units (including labor dispatch personnel) to participate in making insurance claims for compensation for work injuries."

13. Article 2 of the Regulation on Work-related Injury Insurance: "Enterprises, public institutions, social organizations, private non-enterprise entities, foundations, law firms, accounting firms, and other



5. Natural resources administrations and fishery administrations should regulate the registration administration of sea area use and tidal flat breeding, and promote the healthy development of the aquaculture industry

In actual trials, most of the farmers engaging in tidal flat breeding only hold certificates of sea area right, and a few have neither the certificate of sea area right nor the certificate of sea area or tidal flat breeding. There are some cases where the sea areas or the tidal flats are used by the collective economic organizations without the above mentioned two certificates.¹⁴ However, farmers engaging in sea area or tidal flat breeding should hold a certificate of sea area right and a certificate of sea area or tidal flat breeding in accordance with the provisions of the *Law on Administration of Sea Areas* and the *Fisheries Law*. There is much controversy over the legality of breeding between the parties in the event of disputes, which is not conducive to the farmers in safeguarding their legitimate rights and interests.

Suggestion: Natural resources administrations and fishery administrations should standardize the registration administration of certificates of sea area use and tidal flat breeding, and promote the coordinated development of the aquaculture industry and the marine ecological environment.

IV. Typical cases

1. Regarding the limitation of liability for maritime claims, the provisions of Article 210 of the Maritime Code which apply to one of the ships in a collision accident, can also apply to the other ship in the same accident who applied for the constitution of a limitation

organizations as well as individual businesses hiring laborers within the territories of the People's Republic of China should, in accordance with the Regulation, purchase work injury insurance and pay work injury insurance premiums for all their employees or hired laborers."

14. For example, the dispute over liability for marine pollution damage between the plaintiffs, Li Yanling, etc. and the defendant, Bailanzi Village Committee, Tieshan Sub-district Office, Lvshunkou District of Dalian, and the case number was (2017) L72MC No. 310; the dispute over sea area right between the plaintiffs, Lin Fa, etc. and the defendants, Sun Zhuokun, etc., and the case number was (2017) L72MC No. 375.

fund for maritime claims liability

In the case where the applicant Zhongran Shipping (Dalian) Co., Ltd. (hereinafter referred to as Zhongran Company) applied for the constitution of a limitation fund for maritime liability,¹⁵ the ship “Zhongran 39” owned by Zhongran Company collided with the North Korean ship “KUM SAN”. Zhongran Company applied to the Court for the constitution of a limitation fund for maritime liability for all maritime claims for non-personal injuries and loss of life that could limit liability due to the collision. The ship “Zhongran 39” is 2,548 tons in gross tonnage and engages in the transportation among Chinese ports. According to Paragraph 2 of Article 210 of the *Maritime Code*, the limitation of liability should accord with the *Provisions Concerning the Limitation of Liability for Maritime Claims for Ships with Gross Tonnages Not Exceeding 300 Tons and Those Engaging in Coastal Transport Services as Well as Those for Other Coastal Operations*. Article 5 of the *Provisions* stipulates: “Regarding the limitation of liability for maritime claims, the provisions of Article 210 of the *Maritime Code* or Article 3 of the *Provisions* which apply to one of the ships in an accident should also apply to the other ships in the same accident.” The ship “KUM SAN” is 5,552 tons in gross tonnage and engages in international transportation, and its limitation of liability shall accord with the provisions of Article 210 of the *Maritime Code*. Although the ship owner of “KUM SAN” did not apply to the Court for the constitution of a limitation fund for maritime liability, the limitation of liability of the ship “Zhongran39” in its collision with the ship “KUM SAN” should still accord with Article 210 of the *Maritime Code* in accordance with the higher limitation.

2. In the case of marine pollution damage, the victim of a tort should prove that there is a correlation between his damage and the polluter's pollution behavior, otherwise he should bear the consequences of being unable to provide evidence

In the case of dispute over liability for marine pollution damage between

15. The case number of the first instance was (2017) L72MT No. 104.



Pan Yuzhong as the plaintiff and CNOOC (China) Co., Ltd. Tianjin Branch as the defendant and Suizhong Power Generation Co., Ltd. as the defendant (hereinafter referred to as the two defendants),¹⁶ Pan Yuzhong demands that the two defendants undertake their liabilities for discharge of pollutants causing damage to his scallops. In accordance with Articles 6 and 7 of the *Interpretation by the Supreme People's Court of Several Issues on the Application of Law in the Trial of Disputes over Liability for Environmental Torts*, Pan Yuzhong should firstly shoulder the burden of proof to prove that the two defendants committed pollution, and Pan Yuzhong's civil rights and interests were damaged, and there is a correlation between pollution behavior and Pan Yuzhong's damage. It is not until the completion of the aforementioned proof by Pan Yuzhong, that the two defendants should prove that there is no causal relationship between their pollution behavior and Pan Yuzhong's damage, or that there are circumstances in which the law stipulates that their liability is exempted or their liability should be mitigated. Pan Yuzhong failed to prove that the damage he suffered from the raising of his scallops was related to the two defendants' pollution behavior. Therefore the Court rejected his claim.

3. In the event of a collision of ships of less than 20 tons in gross tonnage, the fault and liability of the collision should still be determined in accordance with the Convention on the International Regulations for Preventing Collision at Sea, 1972

In the case of dispute over liability for collision damage of ships between Wang Qihong as the plaintiff and Dalian Haiyue Sea Fishing Co., Ltd. as the defendant and Cai Ming as the defendant,¹⁷ both the ship "Blue Sky Sea Fishing" and the ship "Liaochangyu 31239" are ships of less than 20 tons in gross tonnage. Therefore the provisions of the *Maritime Code* on ship collision do not apply. However, as the *Convention on the International Regulations for Preventing Collision at Sea, 1972*,

16. The case number of the first instance was (2016) L72MC No. 76, the case number of the second instance was (2017) LMZ No. 452, and the case number of the retrial was (2018) ZGFMS No. 1137.

17. The case number of the first instance was (2018) L72MC No. 287.

which China has already joined, applies to all seagoing ships on the high seas and the waters connected to the high seas, the fault and liability of the two ships involved in the collision should be determined in accordance with the relevant provisions of the above Convention. The facts that ship “Blue Sky Sea Fishing” sailed in a foggy area with poor visibility, failed to proceed at a safe speed, failed to maintain a proper lookout and failed to sound the fog signal in accordance with the regulations of the above Convention were the primary causes for the collision. The facts that the crew of “Liaochangyu 31239” ship did not realize that the ship was moored in the location of prohibited anchorage or fishing and failed to sound the fog signal in accordance with the regulations of the above Convention were the secondary causes of the collision. The Court ruled that the responsibility for the collision was 80% for the ship “Blue Sky Sea Fishing” and 20% for the ship “Liaochangyu 31239”.

4. The carrier of goods by sea should not adopt the rules about the limitation of liability provided for in the Maritime Code if he delays the delivery of goods due to the ship’s unseaworthiness or unreasonable deviation

In the case of dispute over contract of carriage of goods by sea between Global Visa Co., Ltd as the plaintiff and Russian Inspector’s & Marine Surveyor’s Corporation as the defendant (hereinafter referred to as Inspection Company),¹⁸ the carrier Inspection Company began to transport the goods on July 28, 2015 and the ship was unseaworthy at the beginning of the voyage without repairing the No. 1 generator while it was marked in the ship’s classification certificate that “the ship can only sail before June 4, 2015 without the No. 1 generator”. During the voyage, the ship departed from the geographical route of “Bering Sea-Vladivostok, Russian-Dalian, China”, which is also specified in the certificate of origin of the goods, and deviated to Busan Port, South Korea to repair the ship. The ship did not arrive at the port of destination until November 28, 2015, so the carrier failed

18. The case number of the first instance was (2016) L72MC No. 121, and the case number of the second instance was (2019) LMZ No. 663.



to deliver the goods within the agreed period, constituting a delay in delivery. The Court decided that Inspection Company had known that the goods were raw materials of food property with timeliness requirements, but carried the goods on the unseaworthy ship, unreasonably deviated for repairing, and became stranded in a port unrelated to the goods for a long time, constituting an act or omission recklessly with knowledge that such loss would probably result. The rules about the limitation of liability provided for in Article 57 of the *Maritime Code* should not be adopted.

5. When the holder of the bill of lading of the imported goods is separated from the holder of the warehouse receipt and both require the port operator to deliver the goods, the port operator cannot deliver the goods only by the warehouse receipt

In the case of dispute over port goods warehousing contract between Sinochem International (Holdings) Co., Ltd. as the plaintiff (hereinafter referred to as Sinochem Company) and Dalian Port Co., Ltd. as the defendant (hereinafter referred to as Dalian Port Company) and China Railway Materials Harbin Co., Ltd. as the third party (hereinafter referred to as China Railway Company),¹⁹ the port operator Dalian Port Company issued a warehouse receipt to China Railway Company based on the goods transfer certificate issued by the depositor who was not involved in the case. However, the depositor had not paid the seller of the goods and had not obtained the bill of lading, so he could not obtain the delivery order. Sinochem Company purchased the goods from the seller to obtain the bill of lading, and then paid the import duties to the customs and obtained the delivery order with the customs clearance stamp. The holder of the bill of lading Sinochem Company and the holder of the warehouse receipt, China Railway Company, both demanded the delivery of imported goods from Dalian Port Company. The Court decided that the port goods warehousing contract between the depositor and the port operator was valid because the validity of this contract was not based on the

19. The case number of the first instance was (2015) DHSCZ No. 487, and the case number of the second instance was (2018) LMZ No. 462, and the case number of the retrial was (2019) ZGFMS No. 3187.

condition that the depositor was the owner of the stored goods, but the consignee of the imported goods should provide the warehouse operator with the warehouse receipt and the delivery order with the customs clearance stamp to take delivery of the goods. The person who presented the delivery order to the port operator was inconsistent with the person who presented the warehouse receipt, which made the port operator unable to fulfill the contractual delivery obligations of goods. According to the provisions of Article 39 of the *Property Law*, a separate effective judgment had confirmed that Sinochem Company held the ownership of the goods and the Court ruled that Dalian Port Company deliver the goods to Sinochem Company.

6. An insurance contract concluded with pre-formed terms provided by the insurer should be interpreted in a way favorable to the insured

In the case of dispute over contract of marine insurance between Dalian Lushun Binhai Ship Building and Repairing Co., Ltd. as the plaintiff (hereinafter referred to as Binhai Company) and the Business Department of People's Insurance Company of China Dalian Branch as the defendant (hereinafter referred to as Dalian People's Insurance Business Department) and People's Insurance Company of China Dalian Branch as the defendant,²⁰ the "Jiesheng 6" ship repaired by Binhai Company at the dock suffered main engine damage in the accident. The *Agreement of Repair Liability Insurance* concluded between the insured Binhai Company and the insurer Dalian People's Insurance Business Department stipulates that the scope of insurance liabilities shall be the direct damage of ship caused by fire accidents or damage to machinery of ship due to the fault of ship-repair workers or technical personnel, not including the damage of the machine itself. The agreement is a pre-formed contract drawn up in advance by the insurer for repeated use and the above term is a pre-formed term. For the meaning of "the damage of the machine itself" in the term, the insurer interpreted it as the damage of the repaired machine due to the repair and the insured interpreted it as the damage to the machine before

20. The case number of the first instance was (2016) L72MC No. 629, and the case number of the second instance was (2018) LMZ No. 400.



repair and damage caused by inherent material defects of the machine alone or in combination with other factors. Both interpretations have legitimacy.

According to Article 30 of the *Insurance Law*, the Court interpreted the pre-formed term in a way favorable to the insured and determined that the machine damage accident was within the scope of the agreed insurance liabilities.

7. The person engaging in illegal mariculture has no right to claim against the infringer for the loss of maricultural earnings, but has the right to claim for the damages of maricultural tools

In the case of dispute over liability for mariculture damage between Liu Shiguo as the plaintiff and Lin Anqi, Zhejiang Haisheng Shipping Co., Ltd (hereinafter referred to as Haisheng Company) and Zhang Shiqi as the defendants²¹, the ship “Hanghong 3” operated by Haisheng Company sailed through the mariculture zone managed by Liu Shiguo, resulting in the damage of breeding rafts. The maricultural earnings of Liu Shiguo were not protected by law because he had no certificate of sea area right, and the mariculture was illegal. However, Liu Shiguo did not actually make a claim for the losses in maricultural earnings, but, as the owner of the breeding rafts, demanded that the infringer compensate for the losses of maricultural tools, which was not related to the legality of mariculture. As for the ship “Hanghong 3” who under the operation and control of Haisheng Company illegally entered the mariculture zone, Haisheng Company was at fault. Liu Shiguo was also at fault to some degree for the damages, because his mariculture was illegal and he did not set up light buoys around the mariculture zone to highlight the location. The Court ruled that the responsibility for the damage accident was 80% for Haisheng Company and 20% for Liu Shiguo.

8. Exert the function of judicial review and litigation guide, guide judicial authentication in accordance with the law, adopt expert conclusion prudentially and mediate impartially in major, difficult

21. The case number of the first instance was (2015) DHSCZ No. 167, and the case number of the second instance was (2017) LMZ No. 1270.

and complex cases

In the case of dispute over liability for ship contact damage between Dalian Nancheng Ship Repairing Co., Ltd. (hereinafter referred to as Nancheng Company) and China Pacific Property Insurance Co., Ltd. Dalian Branch as the plaintiffs and Caihua Shipping S.A. (hereinafter referred to as Caihua Company) as the defendant,²² Nancheng Company claimed over RMB 100 million against Caihua Company for the facilities damages including floating dock and mooring block, for the reason that the ship owned by Caihua Company contacted with the floating dock managed by Nancheng Company. The floating dock was built by the former Soviet Union and was the only one in China with a special structure, and the composition of its loss was complicated. The Court exerted the function of litigation guide. First, the Court, with an item-specific and step-by-step approach, formulated the opinions about the implementation of the judicial authentication procedure on the degree of loss of the subject, the cost and period of repair or replacement and the loss of production and operation. Second, the Court stuck to procedural review and legal interpretation during the judicial authentication process, kept the matters of judicial authentication consistent with the scope of compensation prescribed by law, and ensured the objectivity of the evidences and the validity of the expert conclusion. The Court upheld the principle of mediation first, managed to mediate among the three parties many times according to the successively formed conclusions of judicial authentication. Finally, the case with the subject amount of over RMB 100 million was settled by mediation, and Caihua Company paid the compensation of RMB 46.78 million.

9. The dispatched tribunal mediates in a dispute over contract of seaman service quickly and efficiently, by using the People's Court Mediation Platform

In the case of dispute over contract of crew service between Yu Changchun as the plaintiff and Jiang Honggang as the defendant,²³ Yu Changchun claimed against

22. The case number of the first instance was (2013) DHSCZ No. 52 and (2019) L72MC NO. 1.

23. The case number of the first instance was (2019) L72MC NO. 1199.



Jiang Honggang for the wage of 37,000 yuan. The clear facts of the case made it possible for pretrial mediation, but Jiang Honggang was working in a fishing port a hundred miles away from the tribunal. In order to resolve the dispute as soon as possible and reduce litigation costs such as time and travelling expenses for the parties, the Changhai dispatched adjudication tribunal of the Court instructed the two parties to log in the People's Court Mediation Platform through the small program of WeChat and implemented the three-party video call. Judge C patiently interpreted the laws on line and successfully brought about a mediation agreement between the two parties. The Court settled the dispute from filing to making a civil mediation statement in less than two hours, and fulfilled the commitment of “information technology serves the people conveniently and efficiently”.

10. The administrative organ should not apply to the court for enforcement where it has the indirect enforcement power such as performance on behalf of the party concerned

In the case of application for enforcement in administrative penalty decision between the Ocean and Fisheries Bureau of Changxing Island Economic Zone, Dalian as the applicant and Wang Mingyuan as the person subject to execution,²⁴ the Ocean and Fisheries Bureau of Changxing Island Economic Zone, Dalian made an administrative penalty decision of restoring the original condition of the sea area and paying a fine to Wang Mingyuan due to his constructing dykes and breeding circles by means of unauthorized reclamation, and then applied to the Court for enforcement of the administrative penalty decision. The Court held that Article 50 of the *Administrative Compulsion Law* endows the power to the administrative organ in charge of safeguarding traffic safety, preventing environmental pollution or protecting natural resources, so that the administrative organ has the indirect enforcement power such as performance on behalf of the party concerned if the parties concerned refuse to perform obligations such as removal of obstruction or restitution required by the administrative penalty decision. In addition, according

24. The case number of the first instance was (2018) L72XS NO. 9, and the case number of the second instance was (2018) LXSF NO. 3.

to the provisions of Article 53 of the above law, the administrative organ should apply to the court for enforcement on matters for which it has no right of administrative enforcement. When Wang Mingyuan constructed breeding circles by means of unauthorized reclamation resulting in environmental pollution and destruction of natural resources, and refused to perform the obligations such as restitution within the time limit required by the administrative penalty decision, the administrative organ may perform the obligation on behalf of the party concerned or authorize a third party which is not a party of interest to perform the obligation on behalf of the party concerned according to the law, and should not apply to the court for enforcement.

11. When both the applicant for enforcement and the person not involved in the case claim the mortgage of the subject matter of enforcement, they should enjoy the first priority right to gain compensation according to the statutory sequence of mortgage

In the enforcement case of dispute over contract of financial loan between Jilin Bank Co., Ltd. Dalian Branch (hereinafter referred to as Jilin Bank) as the applicant and Dalian Zhongyu Jiahe Real Estate Development Co., Ltd. as the person subject to execution²⁵, Jilin Bank applied for evaluation and auction of a real estate since the effective legal document had confirmed its first priority right to gain compensation for the real estate. The registered first mortgagee of the real estate in the sequence is Dalian Branch of Minsheng Bank of China Co., Ltd. and the second mortgagee is Jilin Bank. The registered first mortgagee transferred the principal claim and the mortgage to China Oriental Asset Management Co., Ltd. Liaoning Branch (hereinafter referred to as Oriental Company), but the mortgagee did not register the change of mortgage in the registration department, as the real estate had been sealed up. Oriental Company declared the creditor's right to the Court and claimed the first priority to gain compensation for the real estate during the period of auction announced by the Court. The relevant creditors including Jilin

25. The case number was (2016) L7ZZ NO. 308.



Bank had no objection to the registered first mortgagee of the real estate of Oriental Company under the circumstance that the principal claim and the mortgage guaranteeing the principal claim had been transferred to Oriental Company. The Court confirmed Oriental Company's priority to gain compensation, and realized the priority to gain compensation in the enforcement procedure in accordance with the statutory sequence of mortgage by awarding one part of the real estate with abortive auction to Oriental Company by means of paying-a-debt-in-kind-assets and the other part to Jilin Bank.

Concluding remarks

As an international showcase of China's judiciary, the maritime court should focus on the overall layout of the development of socialist cause with Chinese characteristics, take both domestic and international situations into consideration, and give full play to the positive roles of maritime adjudication in protecting marine ecological civilization and defending national sovereignty, maritime rights and interests. The Court will constantly cultivate the first-class level of understanding, stick to the first-class goal positioning, perfect the first-class promotion mechanism, cultivate the first-class talent team, focus on the first-class trial quality and efficiency, pursue the first-class management capacity, build the first-class development environment, strengthen the first-class modern guarantee, resolve to work solidly and effectively, and move unswervingly towards the first-class goal with a tenacious will and an unremitting struggle spirit.

