

# 大连海事法院 2021 年海事审判 白皮书

Dalian Maritime Court  
White Paper on Maritime Trials (2021)



中华人民共和国大连海事法院  
Dalian Maritime Court of the P.R.C

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## 大连海事法院

# 2021 年海事审判白皮书

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 White Paper on Maritime Trials (2021)

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

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## 前言

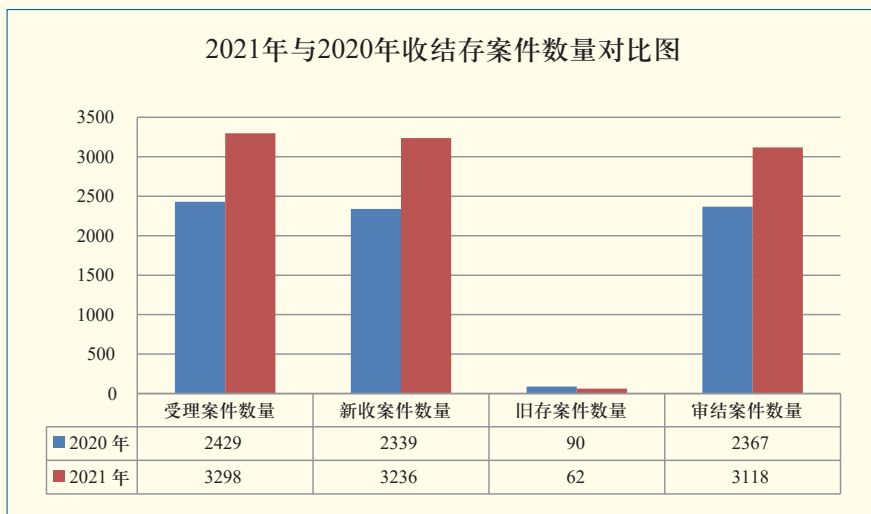
2021年，大连海事法院与时代同频共振，与人民同向同行，雷厉风行抓落实，撸起袖子加油干，把增强“四个意识”、坚定“四个自信”、做到“两个维护”融入司法为民与公正司法全过程，创造性抓好工作落实，工作全面上台阶、上水平，一流海事法院建设取得关键性进展和突破性成效，为推进新时代东北全面振兴全方位振兴提供了有力的司法服务保障。

新风一开，万木春来。自2019年作出建设全国一流海事法院决定以来，大连海事法院党组坚持破瓶颈、补短板、打基础、扬优势，各项工作精细、精益、精致、精彩，呈现出基础夯实、机制完善、硕果累累、活力迸发的良好态势。这些成绩的取得，凝聚起开拓前行的信心和力量，建立起干成事与强信心的良性循环，源源不断地催生干事创业、成事兴业的强大正能量，不断以阶段性成果为一流海事法院建设积累坚实基础，不断增强高质量发展的成效和优势。这是大连海事法院宝贵的精神财富，也是取得更大发展的不竭动力。

## 一、基本情况

### （一）总体概况

**1. 收结案情况。**2021年，大连海事法院受理各类案件3298件，同比上升35.78%。其中新收3236件，同比上升38.35%；旧存62件，同比下降31.11%；审结3118件，同比上升31.73%；结案率94.54%，同比下降2.91个百分点，居全国十一家海事法院第1位、辽宁省中级法院第5位。



**2. 质效指标情况。**一审案件改发率 1.42%，同比下降 0.73 个百分点；调解率 20.13%，同比下降 7.65 个百分点；撤诉率 30.07%，同比上升 6.78 个百分点；服判息诉率 82.79%，同比下降 2 个百分点；以速裁快审方式结案占比 73.68%，速裁案件平均审理时间 22.66 天；12 个月以上未结案件清结率达到 100%。

## （二）案件分类

**1. 民事案件<sup>〔1〕</sup>：**受理 2078 件，同比上升 37.89%。其中新收 2042 件，同比上升 40.73%；审结 1960 件，同比上升 33.24%；结案率 94.32%，同比下降 3.29 个百分点；涉案标的额 39.90 亿元<sup>〔2〕</sup>，同比增加 10.24 亿元。

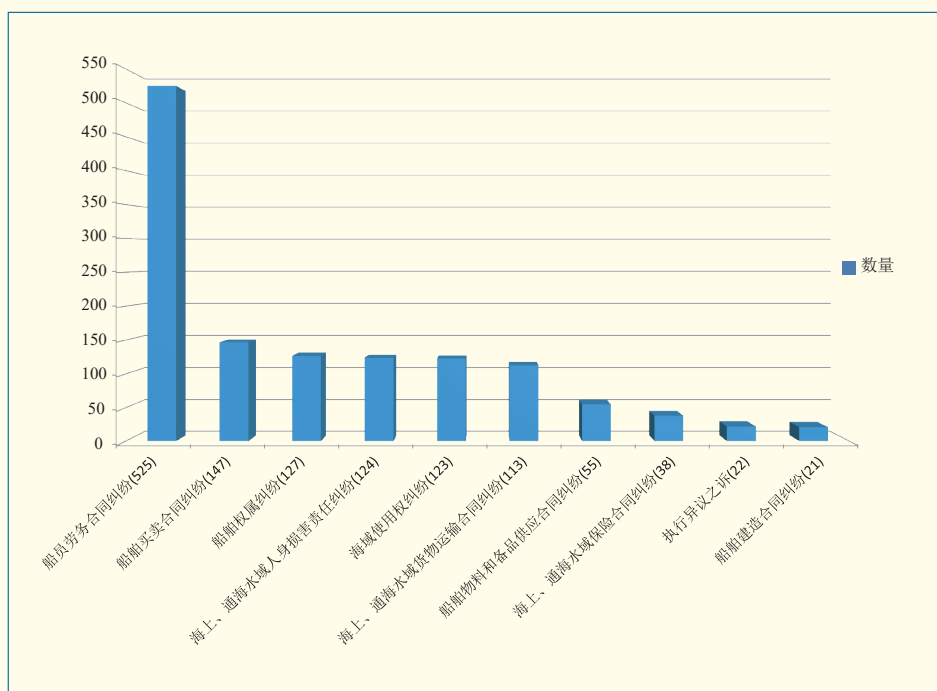
民事案件中，海事海商案件 1686 件，同比上升 25.91%。其中新收 1653 件，同比上升 25.99%；审结 1572 件，同比上升 20.46%。数量居前十位的新收海事海商案件共 1295 件，其中船员劳务合同纠纷 525 件，占新收海事海商案件的 31.76%，同比上升 10.53%；船舶买卖合同纠纷 147

〔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。

〔2〕 本白皮书中未标明币种的，币种均为人民币。



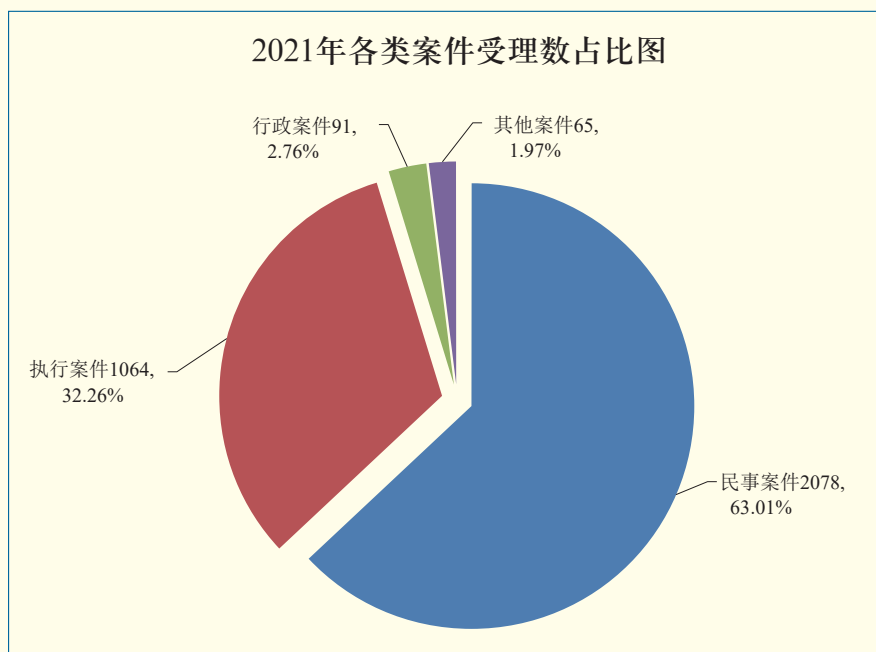
件，占比 8.89%，同比上升 44.12%；船舶权属纠纷 127 件，占比 7.68%，同比上升 23.30%；海上、通海水域人身损害责任纠纷 124 件，占比 7.50%，同比上升 26.53%；海域使用权纠纷 123 件，占比 7.44%，同比上升 16.04%；海上、通海水域货物运输合同纠纷 113 件，占比 6.84%，同比上升 9.71%；船舶物料和备品供应合同纠纷 55 件，占比 3.33%，同比下降 3.51%；海上、通海水域保险合同纠纷 38 件，占比 2.30%，同比上升 80.95%；执行异议之诉 22 件，占比 1.33%，同比上升 340%；船舶建造合同纠纷 21 件，占比 1.27%，同比上升 110%。具体类型如下：



**2. 行政案件：**受理 91 件，同比下降 5.21%。其中新收 88 件，同比上升 6.02%；审结 81 件，同比下降 12.90%；涉案标的额 2.17 亿元，同比增加 0.79 亿元。

**3. 执行案件：**受理 1064 件，同比上升 41.49%。其中新收 1042 件，同比上升 42.54%；执结 1012 件，同比上升 38.63%；首次执行案件法定

期限内结案率 99.32%，执行标的到位率 60.70%；受理涉民生执行案件 521 件，执结 508 件，执行到位 1845.29 万元。非因法定事由和合理原因超期未发放执行案款和不明执行案款，实现“双清零”。执行工作四项核心指标中，有财产可供执行的案件法定期限内结案率 99.74%，终结本次执行程序案件合格率 100%，涉执行信访办结率 100%，执行案件整体结案率 95.11%。执行质效位列辽宁省三家专门法院第 1 位。

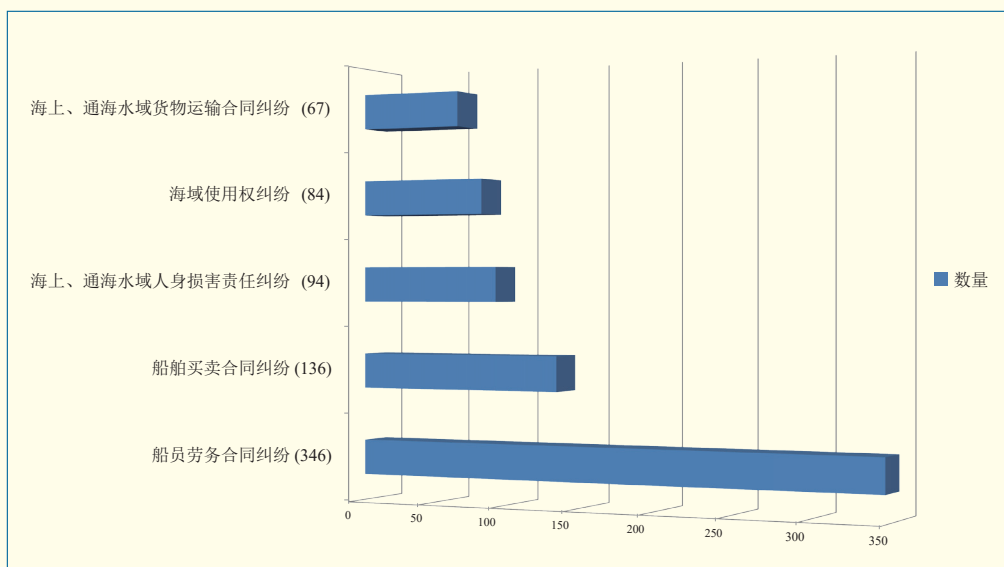


**4. 派出法庭案件：**五个派出法庭受理各类案件<sup>(3)</sup> 1198 件，同比上升 18.61%。其中新收 1180 件，同比上升 21.03%；旧存 18 件，同比下降 48.57%；审结 1144 件，同比上升 15.32%；结案率 95.49%，同比下降 2.73 个百分点。一审案件改发率 1.24%，低于全院 0.18 个百分点；调解率 20.83%，高于全院 0.7 个百分点；撤诉率 33.17%，高于全院 3.1 个百分点。

[3] 包含民事案件、非诉保全审查案件和执行案件。

五个派出法庭受理海事海商案件 1090 件，占全院海事海商案件总数的 64.65%。其中新收 1073 件，占全院海事海商案件的 64.91%；审结 1036 件，占全院海事海商案件的 65.90%；涉案标的额 23.69 亿元。

派出法庭新收海事海商案件中数量居前五位的案件共 727 件，具体类型如下：



**5. 扣押、拍卖船舶情况：**扣押船舶 52 艘，其中外国籍船舶、港澳台船舶 14 艘。拍卖船舶 38 艘，其中外国籍船舶 1 艘。

**6. 涉外涉港澳台案件情况：**受理涉外案件 109 件、涉港澳台案件 30 件，占民事案件的 6.69%，同比上升 110.61%；审结涉外案件 89 件、涉港澳台案件 24 件。案件涉及英国、美国、法国、加拿大、俄罗斯、日本、韩国、朝鲜、德国、波兰、丹麦、挪威、瑞士、乌克兰、新加坡、泰国、希腊、巴拿马、马绍尔群岛、孟加拉、缅甸、斯洛文尼亚、印度尼西亚、秘鲁、加纳、南非、肯尼亚、蒙古、几内亚和中国香港共 30 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 1623 场，总观看数 420808 次，庭审直



播率 76.20%，居辽宁省中级法院第 1 位。依托中国裁判文书网公布裁判文书 2779 篇，裁判文书上网率居辽宁省中级法院第 1 位。依托中国审判流程信息公开网公开审判流程信息，有效公开率 100%，居辽宁省中级法院第 1 位。

## 二、工作亮点

### （一）坚持抗疫前行，凸显硬核担当

充分发挥敢为人先的首创精神，率先受理海事强制令案件近 30 件，帮助国内数百家进口冷链企业解决疫情期间提箱难题，加速价值上亿元的滞留港口集装箱货物流转，形成可复制推广的“大连样本”，被写入最高法院 2021 年度工作报告。充分发挥智慧法院建设成果优势，采取“网上办，线下寄，电话询”等一系列便民举措，网上立案 388 件，网上送达 4996 次，网上开庭与调解 906 次，12368 诉讼服务中心接线 1702 次，网络司法拍卖 807 次，船舶网拍覆盖率 100%，成交金额 1.17 亿元，溢价率 47.29%，实现立案“不打烊”，审理“云端见”，执行“不掉线”。

### （二）坚持站位全局，强服务促振兴

精准对接优化营商环境大局，制定《贯彻落实习近平法治思想，推动海事审判工作高质量发展的工作意见》，发布中英双语《2020 年海事审判报告》和涉自贸区纠纷等 5 份专项审判报告，为群众办实事 50 件，收到感谢锦旗 29 面。辽宁省委副书记、大连市委书记胡玉亭，辽宁高院党组书记、院长郑青予以批示肯定。精准助力东北亚国际航运中心建设，组织“海洋强国战略专题研讨会”“助力东北亚国际航运中心建设研讨会”，形成一批自贸区海事司法保障和中日韩海事法律制度比较等专题调研成果。精准推进海洋环境资源保护，与天津、青岛海事法院会签《渤



海生态环境保护司法协作框架协议》，1篇环境资源案例荣获最高法院优秀案例分析评选三等奖，承办的辽宁高院重点课题“涉海环境资源审判典型问题分析与对策”顺利结项。

### （三）坚持司法为民，提质效保民生

司法公信力持续增强，审判质量、效率、效果综合指标连续三年保持辽宁省十七家中级法院第1位，“一站式”79项指标得分继续排名辽宁省法院第1位，在全国法院涉外商事海事审判工作座谈会上作经验介绍。海事司法国际影响力持续增强，确定提单首要条款、地区条款和法律适用条款冲突时的审查要点，准确适用外国法律认定责任，1起案件入选最高法院第三批涉“一带一路”建设典型案例；加拿大籍当事人在温哥华港发现货损后，主动选择到起运港鲑鱼圈法庭诉讼，并在法院调解下获得赔偿。民生权益保障水平持续提升，开设船员劳务、船舶买卖、海上保险等案件的快速处理通道和“赵法官船员热线”，成功执结中石油辽河石化分公司申请执行锦州港15000吨燃油案件，消除重大安全隐患。疫情期间通过法院调解平台以视频连线方式，为飘泊海上、不能离船的12名缅甸籍船员办理授权委托见证，并帮助解决大连市政府高度关注的蒙古籍“联太”轮弃管船员系列案件。

### （四）坚持文化聚力，做强文化品牌

建强中英双语门户网站，用活“两微一端”，全年推送原创稿件387篇，发布法官观点、典型案例35篇，拍摄《我和我的祖国》《青春有你》《与法同行》《万疆》等19部视频短片以及船舶扣押、行政审判等英文视频，多角度、多层次、全方位讲好海事法院精彩故事。海事司法透明度排名连年提升至第4位，进入全国海事法院第一方阵。建成集院史馆、党建室、阅览室为一体的文化中心，为打造特色法院文化增添靓丽色彩，提升思想引领力、文化凝聚力和精神推动力。加强基层基础建设，完成5个派



出法庭公共区域、诉讼服务中心、调解室、接待室、阅览室的升级改造，派出法庭诉讼服务能力、办公条件、文化氛围明显提升。

### （五）坚持夯基搭台，筑起人才高地

坚持政治引领，扎扎实实开展党史学习教育、政法队伍教育整顿，在一次次理论学习、一场场政治轮训中，全院干警政治领悟力、政治辨别力、政治执行力不断提升，事不避难、义不逃责，勇于担当、埋头苦干成为新风尚。坚持学习导向，深入实施“审研学”一体化建设机制，着力培养可堪大用、能担重任的栋梁之才，培育出一批有深度、可转化的调研成果。3个集体、12名个人受到最高法院、省级表彰，完成最高法院指定的《〈中国民法典适用大全涉外商事海事编〉海事海商分册》船舶优先权部分撰写任务，26篇调研成果发表、获奖，其中最高法院、中国法学会等组织的国家级调研成果14篇、核心期刊成果10篇。

## 三、问题建议

为发挥海事司法职能作用，更加精准高效地服务保障海洋强国、“一带一路”建设等国家大局，我们认真总结了审判工作实践，对相关海事主体在经营管理、风险防控、避免损失等方面提出以下建议。

### （一）对海上货物运输合同货方的建议

我国是进出口贸易大国，海上货物运输作为进出口运输的重要方式，其纠纷在海事审判中比较常见。海事法院通过公正审理此类案件，确立相关主体的义务和责任，有力地保障了运输和贸易的健康发展。依照《中华人民共和国海商法》（以下简称海商法）第七十八条规定，承运人同收货人、提单持有人之间的权利、义务关系，依据提单的规定确定。可见，海上货物运输合同既约束承运人与托运人，也约束收货人与提单持有人。

海上货物运输实践中，承运人的损失可能由托运人造成，也可能由收货人造成。例如，托运人未向承运人告知货物的危险性质，导致货物运至卸货港后，承运人因不知货物为危险品而未向海事部门申报，因此被海事部门处罚。依据提单背面条款对货方责任的约定，承运人有权就罚款向收货人追偿并主张集装箱超期使用费。<sup>〔4〕</sup>若货物因收货人原因被海关扣押，或者因收货人迟延报关导致逾期提取，属于收货人违反对承运人所负的运输合同项下及时提取货物和返还集装箱的义务，承运人亦有权向收货人主张因此产生的集装箱超期使用费。<sup>〔5〕</sup>

**建议：**托运人托运危险货物，应当依照海上危险货物运输的有关规定，妥善包装，作出危险品标志和标签，并将其正式名称和性质以及应当采取的预防危害措施以书面方式准确告知承运人，确保货物在卸货港可以及时被提取，避免自身遭受不必要的损失。托运人与收货人都应当全面了解装货港和卸货港影响货物交付和提取的政策，避免发生罚款、集装箱超期使用费等损失。若在我国发生类似纠纷，为尽快提货止损，收货人可以向海事纠纷发生地的海事法院申请海事强制令并提供担保，请求责令承运人交货，之后双方再就纠纷进行仲裁、诉讼或者和解。<sup>〔6〕</sup>

## （二）对船舶建造合同主体的建议

船舶建造行业的发展程度，是大连建设东北亚国际航运中心的重要指标之一。海事法院积极化解此类纠纷，妥善维护了船舶建造行业的良好秩序。实践中，船舶定造人经常委托熟悉造船相关业务的代理公司去联系和监督造船，并办理船舶登记等手续。船舶定造人与受托人订立委

〔4〕例如（2021）辽72民初780号、（2021）辽72民初781号建发公司诉马士基公司海上货物运输合同纠纷案。

〔5〕例如（2021）辽72民初1282号新鑫海公司诉宝恒公司海上货物运输合同纠纷案；（2021）辽72民初705号海陆公司诉毅都公司海上货物运输合同纠纷案。

〔6〕例如（2021）辽72行保18号毅都公司申请海事强制令案；（2021）辽72行保26号宏途公司申请海事强制令案。

托合同后，受托人可能以船舶定造人的名义，也可能以自己的名义，与船舶建造人订立船舶建造合同。在船舶建造完成后，受托人再将船舶登记于船舶定造人的名下。对于受托人以自己的名义订立船舶建造合同的，依照《中华人民共和国民法典》第九百二十五条<sup>〔7〕</sup>、第九百二十六条第二款<sup>〔8〕</sup>规定，根据船舶建造人在订立合同时是否知道前述代理关系，来确定船舶定造人是否承担造船款的给付责任。若船舶建造人不知道前述代理关系，船舶建造人在受托人披露船舶定造人后有权选择将船舶定造人作为相对人主张权利，之后不能再变更相对人，也不可以要求受托人对欠款承担补充给付责任。<sup>〔9〕</sup>另外，船舶建造人与定造人有时约定，由船舶建造人提供适航证书、所有权证书及船舶入籍手续。根据《中华人民共和国船舶登记办法》第二十五条第二项<sup>〔10〕</sup>规定，对于船舶未进行船名核定而无法申请证书，船舶定造人与建造人仍然负有共同义务和责任，船舶定造人不得以船舶未取得相关证书为由解除合同。<sup>〔11〕</sup>

**建议：**船舶建造人在订立船舶建造合同时不知道受托人与船舶定造人之间代理关系的，在受托人披露船舶定造人后，应当谨慎审查二者的经济状况和履行能力，准确选择受托人或者船舶定造人主张造船款。即使船舶建造合同约定由船舶建造人提供适航证书，在新造船舶申请登记

〔7〕《中华人民共和国民法典》第九百二十五条：“受托人以自己的名义，在委托人的授权范围内与第三人订立的合同，第三人在订立合同时知道受托人与委托人之间的代理关系的，该合同直接约束委托人和第三人；但是，有确切证据证明该合同只约束受托人和第三人的除外。”

〔8〕《中华人民共和国民法典》第九百二十六条第二款：“受托人因委托人的原因对第三人不履行义务，受托人应当向第三人披露委托人，第三人因此可以选择受托人或者委托人作为相对人主张其权利，但是第三人不得变更选定的相对人。”

〔9〕例如（2021）辽72民初393号裕丰公司诉航道公司等船舶建造合同纠纷案。

〔10〕《中华人民共和国船舶登记办法》第二十五条第二项：“船舶申请登记前，应当按照下列规定申请核定船名：新造船舶，由船舶建造人或者定造人向拟申请登记地船舶登记机关申请。未确定拟申请登记地或者为境外定造人建造的，由船舶建造人向建造地船舶登记机关申请。”

〔11〕例如（2020）辽72民初34号拓维公司诉三江公司船舶买卖合同纠纷案。



前，船舶定造人和建造人也应当积极向拟申请登记地船舶登记机关申请核定船名，以推动船舶证书的办理。

### （三）对港航工程合同主体的建议

在辽宁建设海洋强省的进程中，沿海各港口的改扩建工程持续推进，为海陆大通道建设发挥了基础性作用。港口、航道等工程项目往往技术复杂、工时较长、涉及资金巨大，相关各方主体有时会因建筑资质、工程款数额等发生纠纷。港航工程的发包人将工程发包给承包人，根据《最高人民法院关于审理建设工程施工合同纠纷案件适用法律问题的解释（一）》第一条第一项、第二项<sup>〔12〕</sup>规定，承包人应当具备相应资质条件，即承包人应当取得建筑施工企业资质，并且承包的工程符合其资质等级，否则施工合同将被认定无效。<sup>〔13〕</sup>若合同无效，合同当事人履行合同的民事法律行为自始没有法律约束力，遭受损失的当事人只能根据前述司法解释第六条<sup>〔14〕</sup>规定，请求对方赔偿损失。无论合同是否有效，施工人对其主张的工程量都应当举证证明已经实际完成，在其不能证明的情况下，法院根据案件事实认定工程量并计算工程款。<sup>〔15〕</sup>

**建议：**为避免港航工程施工合同被认定无效，工程发包人在发包工

〔12〕《最高人民法院关于审理建设工程施工合同纠纷案件适用法律问题的解释（一）》第一条第一项、第二项：“建设工程施工合同具有下列情形之一的，应当依据民法典第一百五十三条第一款的规定，认定无效：（一）承包人未取得建筑业企业资质或者超越资质等级的；（二）没有资质的实际施工人借用有资质的建筑施工企业名义的。”

〔13〕例如（2020）辽72民初625号港龙公司等诉涌溢公司等航道、港口疏浚合同纠纷案；（2020）辽72民初94号航顺公司诉航五公司航道、港口疏浚合同纠纷案；（2021）辽72民初539号崔某诉航一公司海洋工程建设纠纷案。

〔14〕《最高人民法院关于审理建设工程施工合同纠纷案件适用法律问题的解释（一）》第六条：“建设工程施工合同无效，一方当事人请求对方赔偿损失的，应当就对方过错、损失大小、过错与损失之间的因果关系承担举证责任。损失大小无法确定，一方当事人请求参照合同约定的质量标准、建设工期、工程价款支付时间等内容确定损失大小的，人民法院可以结合双方过错程度、过错与损失之间的因果关系等因素作出裁判。”

〔15〕例如（2020）辽72民初625号港龙公司等诉涌溢公司等航道、港口疏浚合同纠纷案。



程时应当谨慎审核承包人的建筑资质条件，施工人在承包工程时也应当全面客观了解工程标的真实情况，充分考虑工程是否与其资质条件、等级相匹配。施工过程中，各方均应当严格按照法律规定、合同约定和行业规则，做好日常往来文件及其他相关证据的签收和留存，以证明实际工程量和工程质量，避免发生纠纷或者更好地应对纠纷。

#### （四）对海域使用权相关主体的建议

海洋的开发、利用、保护和管控，属于海洋强国建设的重要内容，任何人不得在军事管理区和自然保护区从事养殖和捕捞等经营活动。实践中，海域使用权人将海域出租给承租人使用时，双方会约定当国家依法收回海域使用权时合同终止。在合同履行期间，海域行政主管部门以海域“位于军事管理区范围内”等客观原因为由将海域使用权收回，海域租赁合同依约定终止。之后，承租人继续占用该海域的，原海域使用权人不得就继续占用期间向承租人主张海域租金。<sup>〔16〕</sup>对于被规划为“非经营性公益事业用海”的海域，海域管护单位无权擅自改变海域规划用途，也无权出租给他人从事养殖、捕捞等经营活动，相关合同因违反法律法规的效力性强制规定<sup>〔17〕</sup>而被认定无效。<sup>〔18〕</sup>

**建议：**海域使用权人出租海域，应当遵守国家法律法规，在海域被依法收回的情况下，及时与承租人结算租金，妥善处置海域附属设施。海域承租人在订立海域租赁合同时应当充分考虑约定的合同终止情形，

〔16〕例如（2021）辽72民初940号盐厂村委会诉于某海域使用权纠纷案。

〔17〕例如《中华人民共和国海域使用管理法》第二十八条：“海域使用权人不得擅自改变经批准的海域用途；确需改变的，应当在符合海洋功能区划的前提下，报原批准用海的人民政府批准。”《中华人民共和国自然保护区条例》第二十六条：“禁止在自然保护区内进行砍伐、放牧、狩猎、捕捞、采药、开垦、烧荒、开矿、采石、挖沙等活动；但是，法律、行政法规另有规定的除外。”《水产种质资源保护区管理暂行办法》第十六条：“特别保护期内不得从事捕捞、爆破作业以及其他可能对保护区内生物资源和生态环境造成损害的活动。”

〔18〕例如（2020）辽72民初450号信海公司诉种苗管理站确认解除合同效力纠纷案。

并在该情形出现时及时退出海域，避免产生收入损失。海域行政主管部门应当加强辖区内的海域管理，对于海域使用权被依法收回的，应当及时收回海域，避免因海域被承租人继续占用而引发租金、收入损失等纠纷。同时，海域管护单位应当严格履行自然保护区海域的管护职责，保护国家珍稀水产种质资源，维护海洋生物多样性，促进渔业的可持续发展。

## 四、典型案例

### （一）货物灭失或者损坏发生的原因和区间存在多个，承运人仅对其责任期间内发生的不能免责的货损负赔偿责任

营口供销公司诉万海航运公司海上货物运输合同纠纷案<sup>〔19〕</sup>中，万海航运公司以“万海”轮将3180箱新鲜李子自中国大连港运往泰国林查班港。收货人从卸货港提取货物并运至其仓库开箱时发现货损，之后将其持有的提单项下损失索赔权转让给托运人营口供销公司。营口供销公司起诉，要求承运人万海航运公司按照全损赔偿货物损失108756美元及其利息。营口供销公司委托的鉴定人出具调查报告，认为货物在运输过程中出现温度控制的改变和/或不稳定，导致全部货物发生腐烂变质。万海航运公司提供集装箱温度记录仪及其委托的鉴定人调查报告，抗辩其在运输货物过程中已尽到谨慎处理和合理照管货物的义务，且货物残值应为货物价值的10%-20%之间。法院认为，货损是由于承运人责任期间集装箱内温度不稳定和收货人提货后将集装箱运往其仓库期间未通电制冷共同造成的，依照海商法第五十四条，酌定万海航运公司对货损承担30%的赔偿责任。结合李子变卖获得一定收益的事实，法院判决万海航运公司赔偿营口供销公司货物损失29354.12美元及其利息。

〔19〕（2021）辽72民初1184号。



## （二）发挥司法审查和诉讼引导作用，向域外法人充分释明诉讼风险并促成和解

加拿大管道供应公司诉香港灵便公司海上货物运输合同纠纷案<sup>〔20〕</sup>中，灵便公司以“蒙特西莫”（MOUNT SEYMOUR）轮将764.257吨钢管自中国鲅鱼圈港运往加拿大温哥华港。卸货过程中，钢管被发现存在不同程度变形，收货人管道供应公司为修复钢管支付修复费用228580.48美元。一年后，管道供应公司在大连海事法院起诉，要求灵便公司给付修复费用20万美元。审理过程中，法官与双方当事人充分讨论我国海商法关于诉讼时效中断制度的特别规定及其在该案件中的适用，使管道供应公司认识到其可能因诉讼请求超过诉讼时效而处于不利的处境。在法院主持下，双方达成灵便公司赔付15000美元的和解协议。管道供应公司住所地在加拿大，却未在卸货港所在地的法院提起诉讼，而是选择在装货港所在地的中国法院进行诉讼，表明其对中国法律和中国海事司法的信任。法院也没有以超过诉讼时效为由简单地驳回诉讼请求，而是考虑管道供应公司的损失客观存在，以调解方式实质性化解了双方的纠纷。

## （三）提单抬头名称不构成识别承运人的绝对依据，对承运人的识别应当结合案情综合认定

惠胜公司诉大连涅浦顿公司、上海涅浦顿公司海上货物运输合同纠纷案<sup>〔21〕</sup>中，惠胜公司的货运代理人 与大连涅浦顿公司联系，拟从美国萨凡纳发运一批药品至中国大连。海洋网联公司接受大连涅浦顿公司订舱并实际进行了货物运输。惠胜公司从大连涅浦顿公司取得的抬头为NEPTUNE SHIPPING LIMITED的记名提单，并无承运人或者其代理人的签章。货物运到大连后，惠胜公司出具进口货物电放保函，海洋网联公

〔20〕（2021）辽72民初1286号。

〔21〕（2021）辽72民初638号。

司依照美国相关法规，要求其提供该批药品的详细信息，并因其未能提供而拒绝交付货物。惠胜公司起诉，要求大连涅浦顿公司与上海涅浦顿公司向其赔偿运输费用等损失 146489.92 元及其利息。法院认为，惠胜公司与大连涅浦顿公司未订立书面海上货物运输合同，惠胜公司的货运代理人与大连涅浦顿公司联系货物运输事宜后，大连涅浦顿公司向惠胜公司交付的提单抬头虽然显示承运人为 NEPTUNE SHIPPING LIMITED，但大连涅浦顿公司未举证证明其系该公司的代理人；大连涅浦顿公司向海洋网联公司订舱后，取得海洋网联公司签发的收货人为大连涅浦顿公司的记名提单，并向惠胜公司出具该提单扫描件；惠胜公司已通过货运代理人向大连涅浦顿公司支付运费。综上，惠胜公司与大连涅浦顿公司之间的海上货物运输合同关系成立并有效，惠胜公司为托运人，大连涅浦顿公司为承运人，海洋网联公司为实际承运人。惠胜公司与大连涅浦顿公司都应当知道涉案药品存在管控要求但未提前采取措施，对于货物不能交付各承担 50% 责任，法院判决大连涅浦顿公司赔偿惠胜公司费用损失 73245 元及其利息。惠胜公司不能证明上海涅浦顿公司为货物承运人或者实际承运人，法院驳回其对上海涅浦顿公司的诉讼请求。

#### （四）保赔协会为船舶所有人出具的保函，不应视为船舶所有人对责任的认可或者对债务的加入

人保营口分公司诉祥龙公司、南方航线公司港口作业纠纷案<sup>〔22〕</sup>中，南方航线公司所有的巴拿马籍“保罗”（NAVIOS MARCO POLO）轮从俄罗斯摩尔曼斯克港运到中国鲅鱼圈港的铁矿粉在新港公司卸船过程中，造成新港公司的卸货设备损坏。为防止该船被扣押，案外人保赔协会作为担保人，以南方航线公司为被担保人，向新港公司出具了保函。人保营口分公司向港口作业受托人新港公司赔付损失后，代位请求港口作业

〔22〕（2021）辽72民初1285号。



委托人即货物所有人祥龙公司赔偿设备损失 847823.80 元及其利息，并认为保函的出具应当视为保函的被担保人对货方债务的加入，故要求南方航线公司对该损失承担连带赔偿责任。法院认为，祥龙公司因其委托作业的货物中夹带铁板造成卸货设备的皮带受损，对设备损坏承担主要责任；新港公司监控卸货作业，却没有第一时间发现货物掺有杂质，未进行有效过滤，皮带受损后没有及时发现并关停设备，对设备损坏的发生及扩大存在次要责任。法院判决祥龙公司向人保营口分公司赔偿损失 593477 元及其利息；保函的出具仅可以视为保函出具人对被担保人“可能责任”的一种担保，不应视为被担保人对损坏赔偿责任的认可或者对货方债务的加入，故驳回人保营口分公司要求南方航线公司承担连带赔偿责任的诉讼请求。

### （五）同一案件中不同涉外法律关系应当分别依据法院地的冲突规范确定准据法

卢某诉威尔公司海事债权确权纠纷案<sup>〔23〕</sup>中，卢某向威尔公司出借 6.2 亿韩元，威尔公司以其所有的“海洋之星”轮作为担保，在该轮上为卢某设立不超过债权数额 10 亿韩元的第一顺位船舶抵押权，并依法进行了船舶抵押权登记。之后大连海事法院另案扣押并拍卖“海洋之星”轮，卢某向法院申请债权登记，并提起海事债权确权诉讼，请求确认卢某对威尔公司享有截至 2020 年 4 月 30 日本息合计 819989041 韩元（折合人民币约 4921335.84 元）的债权，及 2020 年 4 月 30 日至实际受偿日相应利息的债权；确认卢某享有的该债权对“海洋之星”轮具有船舶抵押权，应当在船舶拍卖价款中优先受偿。法院认为，本案纠纷具有涉外因素，应当依照我国的法律适用法分别确定双方的借款合同关系和船舶抵押担保关系适用的法律。卢某为韩国公民，威尔公司住所地也在韩国，卢某

〔23〕（2020）辽72民初109号。

在韩国向威尔公司出借款项，双方没有协议选择合同适用的法律，依照《中华人民共和国涉外民事关系法律适用法》第四十一条，本案借款合同纠纷应当适用韩国法律。“海洋之星”轮系韩国籍船舶，依照海商法第二百七十一条第一款，本案船舶抵押权纠纷亦应当适用韩国法律。卢某向法院提供了韩国立法部官方网站公布的韩国法律，法院在查明后予以采信。依照韩国法律规定，法院判决确认卢某对威尔公司享有6.2亿韩元及相应利息的债权，该债权在10亿韩元范围内对“海洋之星”轮享有船舶抵押权，对该轮拍卖、变卖所得价款依照法律规定的受偿顺位优先受偿。

**（六）委托人既未委托货运代理人办理目的港报关又未要求将报关文件随货物一同运输，货运代理人仅将约定货物装箱出运不构成违约，对缺少报关文件造成的延误不承担责任**

奥格斯特公司诉锦程公司海上货运代理合同纠纷案<sup>〔24〕</sup>中，奥格斯特公司委托锦程公司办理310件鲜花自中国厦门出口至日本东京的订舱、清关、货物装箱、交付承运人等事宜。锦程公司接收货物并将贴附于货物包装箱外包含《植物检疫证书》在内的“随机文件”取下后，将货物装入集装箱出运。收货人于货物运到东京的4日后以奥格斯特公司邮寄的《植物检疫证书》办理了清关提货手续，之后以货物已枯萎腐烂为由拒付货款。奥格斯特公司主张，锦程公司未经其同意，擅自取下货物外包装上的《植物检疫证书》，收货人因此无法办理报关手续而延误提货，起诉要求锦程公司赔偿货物损失891900日元（约折合人民币57133.33元）及其利息。法院认为，锦程公司作为受托人，义务限于按照委托人的指示妥善完成委托事务。涉案委托事务不包含目的港清关，锦程公司不需要按照目的港清关政策的要求进行装箱。锦程公司询问随机文件以及装箱的具体要求时，奥格斯特公司确认了货物装箱情况，并未要求将报关

〔24〕一审（2021）辽72民初39号，二审（2021）辽民终1123号。



文件随货物一同出运。锦程公司已妥善完成海上货运代理事宜，法院判决驳回奥格斯特公司的诉讼请求。

### （七）船舶借用人驾驶船舶故意碰撞他船，船舶所有人应当对他船损害承担赔偿责任

宋某诉刘某、李某船舶碰撞损害责任纠纷案<sup>[25]</sup>中，宋某为25506号渔船所有人，船舶吨位为12总吨。李某为25105号渔船所有人，船舶吨位为66总吨。2016年5月6日，刘某借用李某的25105号渔船出海作业，与驾驶25506号渔船的宋某发生捕捞纠纷。刘某驾驶25105号渔船高速追赶25506号渔船，并造成两船碰撞，致25506号渔船当场翻扣，船上4名船员全部落水，其中2人死亡，2人获救。宋某起诉要求刘某、李某共同承担船舶损害赔偿款228240元、鉴定费损失44000元。法院认为，依照海商法第三条及第一百六十五条关于船舶及船舶碰撞含义的界定，本案适用海商法确定船舶碰撞责任。依照《最高人民法院关于审理船舶碰撞纠纷案件若干问题的规定》第四条，李某作为25105号渔船所有人，应当对碰撞造成的船舶损害承担赔偿责任。刘某虽然是船舶碰撞的直接行为人，但海商法作为调整船舶碰撞责任的特别法，已对船舶碰撞的责任主体作出明确规定，宋某要求刘某承担船舶损害赔偿责任的诉讼请求于法无据。法院判决李某给付宋某船舶碰撞合理损失51580元、鉴定费损失22495元，驳回宋某对刘某的诉讼请求。

[25] 一审（2020）辽72民初98号，二审（2021）辽民终758号。





### （八）被保险人未及时将显著增加保险船舶危险程度的超航区航行情况通知保险人，保险人对因此导致的船舶事故不承担保险责任

滨海公司诉财险公司海上保险合同纠纷案<sup>〔26〕</sup>中，滨海公司就其所有的“中旅1”轮向财险公司投保“沿海船舶全损险”及“沿海内河船舶保险附加船主对旅客责任保险”。该船海上客船适航证书记载的航行范围为特定航线航区，并注明“该船限航行于大连港至大连棒棰岛特定航线，限航行于港区附近距岸不超过10海里的水域”。保险单记载的航行范围与该证书一致。“中旅1”轮于保险期间未办理转港航行手续也未书面报告财险公司，自大连港开航前往防城港。2017年2月19日，该船在长江口灯船东北约60海里处水域遭遇风浪，导致船舶失控沉没。滨海公司因保险拒赔，起诉要求财险公司支付船舶全损保险赔偿款4084800元及其利息。法院认为，涉案事故是在滨海公司未经海事部门同意、未事先书面通知财险公司的情况下，擅自超出保险单约定和适航证书规定航行范围的航次中发生，财险公司对因危险程度增加而发生的保险事故不承担保险赔偿责任，故判决驳回滨海公司的诉讼请求。

### （九）当事人提起海洋环境公益诉讼，应当具备起诉主体资格，并且该诉讼属于受诉海事法院的管辖范围

绿家园中心诉船舶重工公司环境污染责任纠纷案<sup>〔27〕</sup>中，绿家园中心认为船舶重工公司在生产过程中存在损害环境公益的行为，起诉要求船舶重工公司停止侵权、赔礼道歉、消除危险并赔偿环境受到的损失以及环境受到损害至恢复原状期间服务功能的损失。船舶重工公司对绿家园中心

〔26〕 一审（2020）辽72民初26号，二审（2021）辽民终95号，再审（2021）最高法民申3179号。

〔27〕（2021）辽72民初91号。



的诉讼主体资格提出异议。法院认为，依照《中华人民共和国海洋环境保护法》第八十九条第二款和《最高人民法院关于审理海洋自然资源与生态环境损害赔偿纠纷案件若干问题的规定》第二条和第三条，在海上或者沿海陆域内从事活动，对中华人民共和国管辖海域内海洋自然资源与生态环境造成损害，由行使海洋环境监督管理权的部门代表国家对责任者提出损害赔偿要求，所提起的海洋自然资源与生态环境损害赔偿诉讼，由损害行为发生地、损害结果地或者采取预防措施地海事法院管辖。绿家园中心不是行使海洋环境监督管理权的部门，其在海事法院提起海洋环境公益诉讼，属于诉讼主体不适格。绿家园中心如果提起非海洋的环境公益诉讼，则不属于海事法院的管辖范围。法院裁定驳回绿家园中心的起诉。

### （十）拖轮拖带驳船的海上拖航中发生海损事故，拖轮所有人申请设立海事赔偿责任限制基金，应当以拖轮总吨计算赔偿限额

轮驳公司申请设立海事赔偿责任限制基金案<sup>〔28〕</sup>中，程远公司受华锐公司委托，自大连港至汕头港运输岸桥、滚装工具等。程远公司将该货物装载于某打捞局所有的“德浮 15002”驳船，并期租轮驳公司所有的“津港轮 35”轮拖带“德浮 15002”驳船。当拖航至厦门港东南约 25 海里处时，拖轮和驳船遭遇恶劣天气，拖揽断裂，发生海损事故。轮驳公司作为“津港轮 35”轮所有人，向法院申请设立海事赔偿责任限制基金，数额为 97611.50 特别提款权及其利息。华锐公司不同意轮驳公司以拖船总吨计算赔偿限额，认为涉案货物运输是以拖轮拖带驳船的方式进行的国内沿海运输，拖轮和驳船是一个整体，应当以拖轮与驳船的合计吨位计算赔偿限额。法院认为，申请设立海事赔偿责任限制基金是船舶所有人、承租人、经营人、救助人、保险人或者其他法律规定主体的权利而非义

〔28〕一审（2020）辽72民特114号，二审（2021）辽民他280号。

务。“津港轮 35”轮和“德浮 15002”驳船分别属于不同所有人，轮驳公司也不是“德浮 15002”驳船的承租人、经营人、救助人或者保险人，无权对驳船是否申请设立基金作出处分，亦无义务为他人的船舶设立基金。法院裁定轮驳公司按照“津港轮 35”轮的船舶吨位计算赔偿限额并设立基金。

## 结束语

2022 年，是推进辽宁全面振兴全方位振兴取得新突破的关键一年。辽宁省委书记张国清在省第十三次党代会报告中提出“加强海事、涉外司法保障”，这是对海事司法职能作用的高度重视，也是对海事司法工作的殷切期待。我们将紧密团结在以习近平总书记为核心的党中央周围，深刻领会“两个确立”的决定性意义，锚定一流目标，夯实一流基础、培树一流口碑、打造一流成果、做强一流品牌，加强海事、涉外司法保障，全面护航以大连为龙头的辽宁沿海经济带开发开放，全力交出一份争先进位的新答卷，以优异成绩向党的二十大献礼！



### Foreword

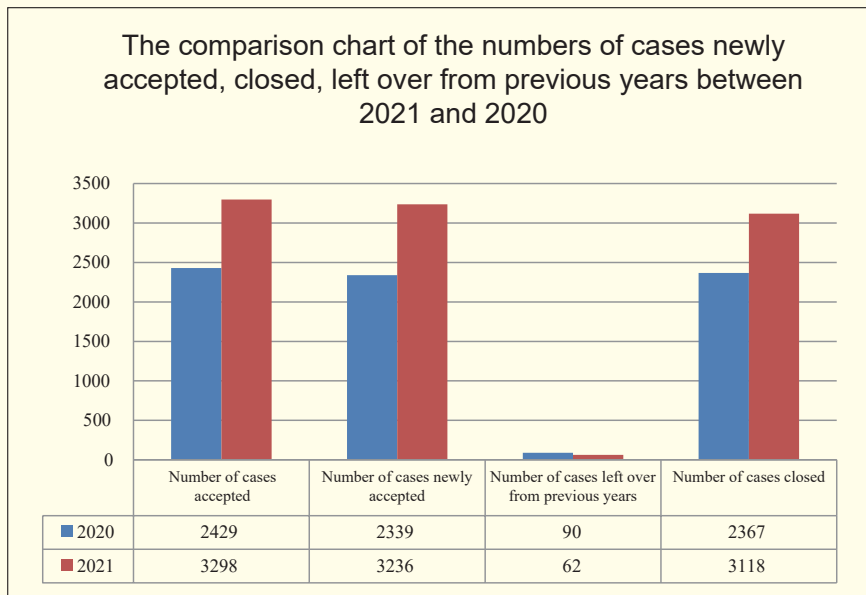
In 2021, Dalian Maritime Court simultaneously resonated with the times, marched together with the people, grasped implementation with vigor and rolled up sleeves to work harder. The Court integrated enhancing “Four Consciousness”, strengthening “Four Matters of Confidence” and realizing “Two Maintenance” into the whole process of people-oriented judicial justice, creatively and effectively implemented the work and upgraded the work to a higher stage and level in an all-round way. The Court made key progress and breakthrough achievements in building a first-class maritime court, provided a strong judicial service guarantee for all-round and comprehensive revitalization of Northeast China in the new era.

As the new wind blows, thousands of trees sprout. Since the decision to build a national first-class maritime court was made in 2019, the Court’s Party Group has insisted on breaking bottlenecks, improving weak links, laying foundations and enhancing advantages. The Court’s work turned meticulous, lean, delicate and brilliant with a good trend of solid foundation, perfect mechanism, fruitful results and burst of vitality. These achievements condensed the confidence and strength to forge ahead, established a virtuous circle of success and confidence, continuously generated strong positive energy for creation and accomplishment of a cause, continuously accumulated a solid foundation for the construction of first-class maritime court with phased results, and continuously enhanced the effectiveness and advantages of high-quality development. This is the valuable spiritual wealth of Dalian Maritime Court, as well as an inexhaustible driving force for greater development.

## I. Basic information

### 1. General situation

**1.1 The numbers of accepted and closed cases.** In 2021, the Court accepted 3298 cases of various types, an increase of 35.78% over last year. Among these cases, 3236 cases were newly accepted, an increase of 38.35% over last year; 62 cases were left over from previous years, a decrease of 31.11% over last year; 3118 cases were closed, an increase of 31.73% over last year; the clearance rate reached 94.54%, a decrease of 2.91 percent points over last year, ranking the first among the eleven maritime courts in China and the fifth among the intermediate courts in Liaoning Province.



**1.2 Quality and effectiveness targets.** The ratio of cases reversed or set aside for retrial by the second trial was 1.42%, a decrease of 0.73 percent point over last year; the conciliation ratio was 20.13%, a decrease of 7.65 percent points over last



year; the litigation withdrawal ratio was 30.07%, an increase of 6.78 percent points over last year; the ratio of satisfactory settlement without appeal was 82.79%, a decrease of 2 percent points over last year; the proportion of clearance by means of speedy trial was 73.68%, and the average speedy trial lasts 22.66 days; the clearance ratio of open cases over 12 months was 100%.

## 2. Case classification

**2.1 Civil cases data** <sup>(1)</sup> : 2078 cases were accepted, an increase of 37.89% over last year. Among these cases, 2042 cases were newly accepted, an increase of 40.73% over last year; 1960 cases were closed, an increase of 33.24% over last year; the clearance rate reached 94.32%, a decrease of 3.29 percent points over last year; the subject amount of the cases was RMB 3.99 billion, an increase of RMB 1.024 billion over last year.

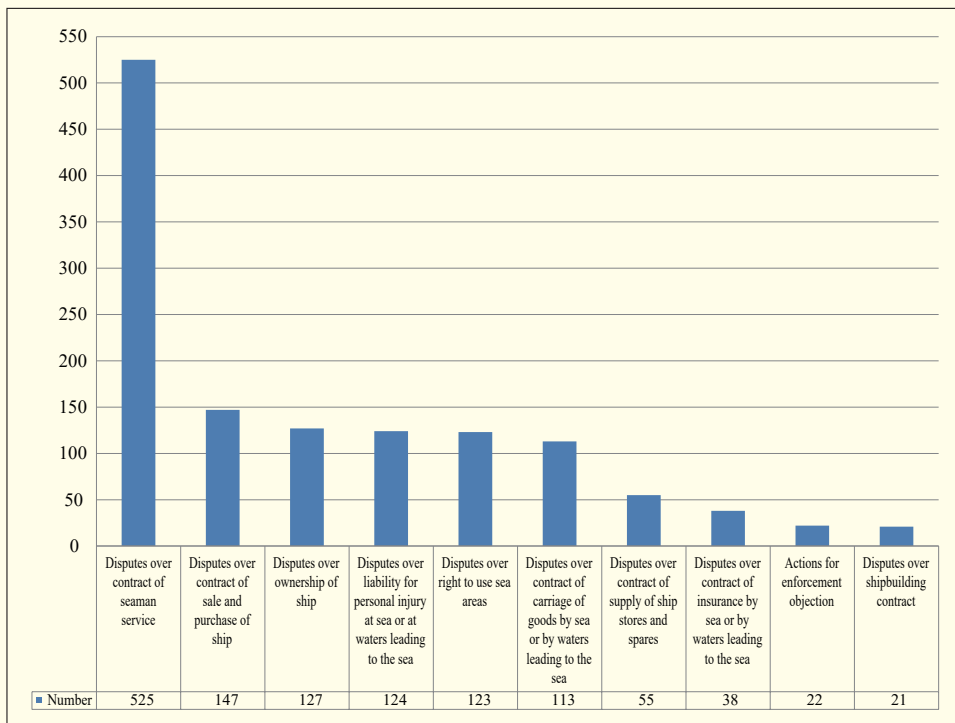
Among these civil cases, the Court accepted 1686 admiralty and maritime cases, an increase of 25.91% over last year. Among the cases, 1653 cases were newly accepted, an increase of 25.99% over last year; 1572 cases were closed, an increase of 20.46% over last year. Of the new contentious cases accepted, the number of the top 10 admiralty and maritime cases reached 1295, the types of which were: disputes over contract of seaman service were 525, accounting for 31.76% of newly accepted admiralty and maritime cases and an increase of 10.53% over last year; disputes over contract of sale and purchase of ship were 147, accounting for 8.89% and an increase of 44.12% over last year; disputes over ownership of ship were 127, accounting for 7.68% and an increase of 23.30% over last year; disputes over liability for personal injury at sea or at waters leading to the sea were 124, accounting for 7.50% and an increase of 26.53% over last year; disputes over right to use sea areas were 123, accounting for 7.44% and an increase of 16.04% over

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(1) Including admiralty and 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.



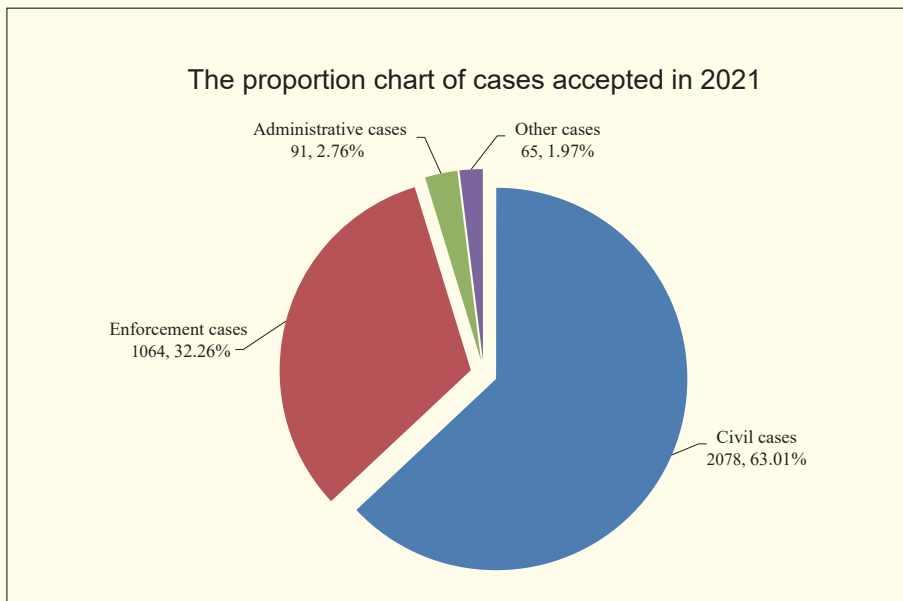
last year; disputes over contract of carriage of goods by sea or by waters leading to the sea were 113, accounting for 6.84% and an increase of 9.71% over last year; disputes over contract of supply of ship stores and spares were 55, accounting for 3.33% and a decrease of 3.51% over last year; disputes over contract of insurance by sea or by waters leading to the sea were 38, accounting for 2.30% and an increase of 80.95% over last year; actions for enforcement objection were 22, accounting for 1.33% and an increase of 340% over last year; disputes over shipbuilding contract were 21, accounting for 1.27% and an increase of 110% over last year. The types of the above cases were as follows:



**2.2 Administrative cases data:** The Court accepted 91 maritime administrative cases, a decrease of 5.21% over last year. Among the cases, 88 cases were newly accepted, an increase of 6.02% over last year; 81 cases were closed, a decrease of 12.90% over last year; the subject amount of the cases was RMB 217 million, an

increase of RMB 79 million over last year.

**2.3 Enforcement cases data:** 1064 cases were accepted, an increase of 41.49% over last year. Among the cases, 1042 cases were newly accepted, an increase of 42.54% over last year; 1012 cases were closed, an increase of 38.63% over last year; the clearance rate in statutory time limit of first enforcement case was 99.32%, and the arrival rate of enforcement was 60.70%; 521 cases were accepted about the enforcement cases involving people's livelihood, 508 cases were closed, with arrival of RMB 18.4529 million. There were neither overdue enforcement case funds nor unclear enforcement case funds without statutory reasons or reasonable reasons. Among the four core targets of enforcement work, the clearance rate of cases where property is available for enforcement within statutory time limit was 99.74%; the pass rate of the termination of the enforcement procedure was 100%; the completion rate involving public complaints and proposals for enforcement was 100%; the overall clearance rate of enforcement cases was 95.11%. the enforcement quality and effectiveness ranked the first among the three specialized courts in Liaoning Province.

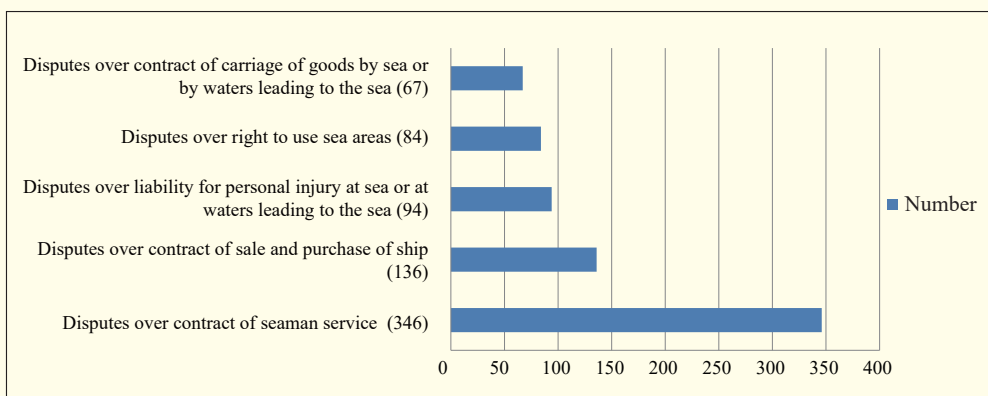




**2.4 Dispatched tribunal cases data:** Five dispatched tribunals accepted 1198 cases of various types <sup>(2)</sup>, an increase of 18.61% over last year. Among the cases, 1180 cases were newly accepted, an increase of 21.03% over last year; 18 cases were left over from previous years, a decrease of 48.57% over last year; 1144 cases were closed, an increase of 15.32% over last year; the clearance rate reached 95.49%, a decrease of 2.73 percent points over last year. The ratio of cases reversed or set aside for retrial by the second trial was 1.24%, 0.18 percent point lower than the Court's data; the conciliation ratio was 20.83%, 0.7 percent point higher than the Court's data; the litigation withdrawal ratio was 33.17%, 3.1 percent points higher than the Court's data.

Five dispatched tribunals accepted 1090 admiralty and maritime cases, accounting for 64.65% of the total number of admiralty and maritime cases of the Court. Among the cases, 1073 cases were newly accepted, accounting for 64.91% of the total admiralty and maritime cases of the Court; 1036 cases were closed, accounting for 65.90% of the total admiralty and maritime cases of the Court; the subject amount of the cases was RMB 2.369 billion.

The number of the top 5 admiralty and maritime cases reached 727. The types of the above cases were as follows:



(2) Including civil cases, non-litigation preservation review cases, and administrative cases.



**2.5 Arrest and auction of ships data:** 52 ships were arrested, of which 14 involved foreign, Hong Kong, Macao and Taiwan affairs. 38 ships were auctioned, one of which was foreign.

**2.6 Cases involving foreign, Hong Kong, Macao and Taiwan affairs:** The Court accepted 109 cases involving foreign affairs and 30 cases involving Hong Kong, Macao and Taiwan affairs, accounting for 6.69% of the civil cases, an increase of 110.61% over last year; 89 cases involving foreign affairs and 24 cases involving Hong Kong, Macao and Taiwan affairs were closed. The cases involved 30 countries and regions, including Britain, the United States, France, Canada, Russia, Japan, South Korea, North Korea, Germany, Poland, Denmark, Norway, Switzerland, Ukraine, Singapore, Thailand, Greece, Panama, Marshall Islands, Bangladesh, Myanmar, Slovenia, Indonesia, Peru, Ghana, South Africa, Kenya, Mongolia, Guinea, and Hong Kong.

### **3. Judicial openness**

1623 trials were broadcast live on China Open Trials Online, with a total of 420,808 views and 76.20% live rate of trial, ranking the first among the intermediate courts in Liaoning Province. 2779 judgment documents made in 2021 were issued on China Judgments Online, ranking the first in judgment document issuing rate among the intermediate courts in Liaoning Province. The Court disclosed the related judicial process information on China Judicial Process Information Online with an effective disclosure rate of 100%, ranking the first among the intermediate courts in Liaoning Province.

## **II. Work highlights**

### **1. Insist on making progress while fighting against the epidemic, and show the hard-core responsibility**

Giving full play to the pioneering spirit, the Court accepted nearly 30 cases of

maritime injunction and took the lead in helping hundreds of domestic cold chain enterprises engaging in import trade solve the problem of taking delivery of containers during the epidemic. By speeding up the circulation of stranded container goods worth more than RMB 100 million, the Court formed a replicable “Dalian Sample” which was written into the Supreme Court’s 2021 annual work report. Giving full play to the achievements of smart court construction, the Court took a series of such services convenient to the people as “online handling, offline post, telephone inquiry”, which helped to realize no close on case filing, trial and enforcement. In 2021, 388 cases were accepted online, 4996 services were fulfilled online, 906 trials and mediations were accomplished online, 1702 telephone calls were accessed to 12368 Litigation Service Center, ship auctions were completed 100% online among the 807 judicial auctions which reached a transaction value of RMB 117 million and a premium rate of 47.29%.

## **2. Insist on comprehensive outlook, strengthen service and promote revitalization**

The Court accurately connected the overall situation of optimizing the business environment, formulated the *Work Opinions on Implementing Xi Jinping Thought on the Rule of Law and Promoting the High-quality Development of Maritime Trial Work*, published the *2020 Maritime Trial Report* in both Chinese and English and 5 special trial reports including the report on disputes related to the Free Trade Zone. In 2021, the Court undertook 50 practical things for the masses and received 29 pennants of thanks. Hu Yuting, Deputy Secretary of Liaoning Provincial Party Committee and Secretary of Dalian Municipal Party Committee, and Zheng Qing, Secretary of the Party Group and President of Liaoning High Court, affirmatively gave their instruction. The Court accurately assisted the construction of international shipping center in Northeast Asia, organized the “Seminar on Maritime Power Strategy” and “Seminar on Assisting the Construction of International Shipping Center in Northeast Asia”, and accomplished numbers



of achievements on the maritime judicial guarantee for the Free Trade Zone and the comparison of maritime legal systems between China, Japan and South Korea. The Court accurately promoted the protection of marine environmental resources, countersigned the *Judicial Cooperation Framework Agreement on Bohai Sea Ecology and Environment Protection* with Tianjin Maritime Court and Qingdao Maritime Court. One environmental resource case won the third prize of the Supreme Court's Excellent Case Analysis Selection. The *Analysis and Countermeasures on Typical Problems in the Trial Related to Marine Environment and Resource*, a key project of Liaoning High Court, was successfully concluded.

### **3. Insist on judicial service for the people, improve quality and efficiency to protect people's livelihood**

The Court's judicial credibility has been strengthening continuously. The comprehensive indicator of trial quality, efficiency and effect has ranked the first among the seventeen intermediate courts in Liaoning Province for three consecutive years. 79 "one-stop" indicators continued to rank the first among the courts in Liaoning Province. The Court introduced the experience at the national conference on commercial and maritime trials. The Court's international influence of maritime justice has been strengthening continuously. One case, which defined the review points determining the applicable foreign laws when the primary clause, the regional clause and the applicable law clause of the bill of lading conflict, was selected as the third batch of typical cases involving the construction of the "Belt and Road" by the Supreme Court. One Canadian party voluntarily chose to file a lawsuit to Bayuquan dispatched tribunal at the port of shipment after discovering goods damage at the Port of Vancouver, and obtained compensation through the tribunal's mediation. The Court's level of protecting people's livelihood rights and interests has been promoted continuously. Expressway and "Judge Zhao's hotline for crew" were set up for cases of seaman service, ship sale and purchase and insurance by sea. Case of application for enforcement of 15,000 tons of fuel oil

in Jinzhou Port by Liaohe Petrochemical Branch of Petro China was successfully concluded, eliminating major safety issues. Using video connection of the court mediation platform, the Court witnessed authorized entrust for 12 Myanmar crew members who were floating at sea and could not leave the ship during the epidemic. The Court helped to solve the series of cases of abandoned crew members from Mongolian M.V. LIAN TAI which were highly concerned by the Dalian Municipal Government.

#### **4. Insist on harnessing power of culture, and strengthen cultural brand**

The Court built up the Chinese-English bilingual website. By effectively using the “WeChat, Microblog and App”, the Court pushed 387 original articles, 35 judge’s statements and typical cases throughout the year. The Court showed his wonderful stories from multiple angles and all directions by filming 19 short video clips including *My Motherland and Me*, *Vigorous Youth*, *Legal Talk*, *Homeland*, as well as English videos concerning ship arrest and administrative trial. The ranking of maritime judicial transparency continuously rose to the fourth, entering into the first phalanx of national maritime courts. The Court established a cultural center integrating the Court’s history museum, the Party building room and the reading room, which added beautiful colors to the creation of a characteristic court culture and enhanced ideological leadership, cultural cohesion and spiritual driving force. The Court strengthened infrastructures of five dispatched tribunals by upgrading their public areas, litigation service center, mediation room, reception room and reading room. The conditions of dispatched tribunals and their capacity of litigation service and cultural atmosphere have been improved significantly.

#### **5. Insist on building a solid foundation and broad platform, and bring up a group of high-end talents**

The Court insisted on political leadership, solidly carried out the Party history study and education, and political and legal team education and rectification. The political comprehension, political discernment, and political execution of the



Court's staff have been continuously improved by series of theoretical studies and political rotation trainings. Refusing to shirk difficulty or responsibility, bravely undertaking responsibility, and working hard turned a new fashion. The Court insisted on learning-orientation, deeply implemented the "Trial, Study and Research" integrated construction mechanism, focused on training talents who possessed huge potential and were capable of shouldering great responsibilities. The Court cultivated numbers of in-depth and transformable research results. 3 groups and 12 individuals were commended by the Supreme Court or Liaoning High Court. Designated by the Supreme Court, the Court completed the mission of writing the part of maritime lien of the *Maritime Volume of Foreign-related Commercial and Maritime Issues of Application of the Civil Code of the P.R.C.* 26 research results were published or awarded, among which 14 were national research results organized by the Supreme Court or the China Law Society, and 10 were published on core journals.

### III. Problems and suggestions

In order to give full play to maritime judicial functions and serve the national big picture of maritime power and construction of the "Belt and Road" in a more accurate and efficient manner, the Court carefully summarized judicial practice and put forward the following suggestions for relevant maritime subjects in terms of operation and management, risk prevention and control, loss avoidance and other aspects.

#### 1. Suggestion for the goods interests under contract of carriage of goods by sea

China is a big country of import and export trade. As an important way of import and export transportation, the disputes over carriage of goods by sea are quite common in maritime adjudication. By adjudicating these cases fairly, the maritime

courts establish the obligations and responsibilities of relevant subjects, which effectively guarantee the healthy development of transportation and trade. In accordance with article 78 of the *Maritime Code of the P.R.C*, the relationship between the carrier and the consignee and the holder of the bill of lading with respect to their rights and obligations shall be defined by the clauses of the bill of lading. It can be seen that the contract of carriage of goods by sea not only binds the carrier and the shipper, but also binds the consignee and the holder of the bill of lading. In the practice of the carriage of goods by sea, the loss of the carrier may be caused by the shipper or the consignee. For example, the shipper does not inform the carrier of the dangerous nature of the goods. As a result, when the goods arrived at the port of discharge, the carrier is punished by the maritime authorities because he does not know the goods are dangerous and fails to declare. The carrier shall have the right to recover the penalty from the consignee and claim for the demurrage according to the agreement of liability for the goods interests under the clauses on the back of the bill of lading.<sup>(3)</sup> If the goods are detained by the customs for the reason of the consignee, or due to the delayed declaration of the consignee, the consignee is in violation of the obligation of timely taking delivery of the goods from and returning the container to the carrier under the contract of carriage of goods by sea, the carrier is also entitled to claim the demurrage from the consignee.<sup>(4)</sup>

**Suggestion:** At the time of shipment of dangerous goods, the shipper shall, in compliance with the regulations governing the carriage of such goods, have them

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(3) For example, the dispute over contract of carriage of goods by sea between Jianfa Company as the plaintiff and Maersk Company as the defendant, and the case number was (2021) L72MC No. 780, (2021) L72MC No. 781.

(4) For example, the dispute over contract of carriage of goods by sea between Xinxinhai Company as the plaintiff and Baoheng Company as the defendant, and the case number was (2021) L72MC No. 1282; the dispute over contract of carriage of goods by sea between Hailu Company as the plaintiff and Yidu Company as the defendant, and the case number was (2021) L72MC No. 705.



properly packed, distinctly marked and labelled and notify the carrier in writing of their proper description, nature and the precautions to be taken, and make sure the goods can be taken delivery of in time at the discharging port and avoid unnecessary loss. The shipper and the consignee shall fully understand the policies affecting the delivery and taking delivery of the goods at the loading port and the discharging port, so as to avoid losses such as fines and demurrage. If a similar dispute occurs in China, in order to take delivery of the goods and stop the loss as soon as possible, the consignee may apply for a maritime injunction and provide security to the maritime court where the maritime dispute occurs, requesting the carrier to deliver the goods, and then the two parties may conduct arbitration, litigation or reconciliation over the dispute. <sup>(5)</sup>

### **2. Suggestion for the parties under shipbuilding contract**

The development degree of shipbuilding industry is one of the important indexes for Dalian to build itself into the international shipping center of Northeast Asia. The Court actively resolves such disputes and properly maintains the good order of shipbuilding industry. In practice, the client often entrusts the agent company familiar with related shipbuilding business to contact and supervise shipbuilding, and handle ship registration and other procedures. When the entrustment contract is concluded between the client and the agent, the agent may conclude a shipbuilding contract with the ship builder in the name of the client or in his own name. After the building is completed, the agent shall register the ship in the name of the client. Where the agent concludes the shipbuilding contract in

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(5) For example, the case of applying for a maritime injunction by Yidu Company, and the case number was (2021) L72XB No. 18; the case of applying for a maritime injunction by Hongtu Company, and the case number was (2021) L72XB No. 26.



his own name, the court shall, in accordance with Article 925 <sup>(6)</sup> and Paragraph 2 of Article 926 <sup>(7)</sup> of the *Civil Code of the P.R.C.*, determine whether the client be liable for shipbuilding price, based on the fact whether the ship builder knows the agency relationship when the contract is concluded. If he is not aware of the aforesaid agency relationship, the ship builder shall have the right to choose the client as the counterpart for claims after the agent discloses the client, and shall not change the counterpart or require the agent to assume supplementary liability for the arrears. <sup>(8)</sup> In addition, the ship builder and the client sometimes agree that the ship builder shall provide seaworthiness certificate, ownership certificate and nationality certificate of the ship. According to Item 2 of Article 25 <sup>(9)</sup> of the *Measures of the P.R.C. for the Registration of Ships*, the client and the ship builder still have joint obligations and responsibilities for being unable to file an application where the ship name is not assessed, and the client shall not

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- (6) Article 925 of the *Civil Code of the P.R.C.*: “Where an agent, acting within the scope of authority granted by the principal, concludes a contract with a third person in his own name, if the third person is aware of the agency relationship between the agent and the principal, the said contract shall directly bind the principal and the third person, unless there is definite evidence establishing that the said contract binds only the agent and the third person.”
- (7) Paragraph 2 of Article 926 of the *Civil Code of the P.R.C.*: “Where an agent fails to perform his obligations owed to a third person because of the principal, the agent shall disclose the principal to the third person, and the third person may then claim his rights against either the agent or the principal as a counterpart, except that he may not change the counterpart once he has made the selection.”
- (8) For example, the dispute over shipbuilding contract between Yufeng Company as the plaintiff and Channel Company, etc. as the defendants, and the case number was (2021) L72MC No. 393.
- (9) Item 2 of Article 25 of the *Measures of the P.R.C. for the Registration of Ships*: “Before an application for the registration of a ship is filed, the application shall be filed for assessing the ship name in accordance with the following provisions: For a newly-built ship, the ship builder or the client shall file an application with the ship registration authority at the place where the application is to be filed. If the place of registration where the application is to be filed is not determined yet or the ship is built for an overseas client, the ship builder shall file an application with the ship registration authority at the place where it is built.”



terminate the contract on the grounds that the ship has not obtained the relevant certificates. <sup>(10)</sup>

**Suggestion:** If the ship builder is not aware of the agency relationship between the agent and the client when concluding the shipbuilding contract, he shall, after the agent discloses the client, carefully examine the economic status and performance capacity of the two parties and accurately select the agent or the client to claim the shipbuilding price. Even if the shipbuilding contract agrees that the ship builder shall provide the seaworthiness certificate, both the client and the ship builder shall actively file an application for assessing the ship name with the ship registration authority at the place where the application is to be filed prior to the registration application of a newly-built ship, so as to promote the handling of the ship certificate.

### **3. Suggestion for the parties under contract of port and channel construction**

In the process of building Liaoning into a strong province of marine economy, the reconstruction and expansion projects of coastal ports have continued to advance, which has played a fundamental role in the construction of Land-Sea Trade Corridor. Most of the construction projects such as ports and channels have the problems of complex technology, long working hours and huge cost. Relevant parties sometimes have disputes over construction qualifications or amount of project funds. When the employer of the port and channel project offers the project

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(10) For example, the dispute over contract of sale and purchase of ship between Tuowei Company as the plaintiff and Sanjiang Company as the defendant, and the case number was (2020) L72MC No. 34.

to the contractor, according to the provisions of item 1 and 2 of Article 1<sup>(11)</sup> of the *Interpretation of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Cases Regarding Disputes over Construction Contracts for Construction Projects (I)*, the contractor shall have the corresponding qualification conditions, that is, the contractor shall obtain the qualification for construction enterprise and the contracted project shall meet its qualification level, otherwise the construction contract will be deemed invalid.<sup>(12)</sup> If the contract is invalid, the juridical act performed by the contracting party is not legally binding from the beginning, and the party suffering the loss may only request the other party to compensate in accordance with Article 6<sup>(13)</sup> of the above judicial interpretation. No matter whether the contract is valid or not, the constructor shall provide evidence to prove that the claimed quantities have been actually completed. If he cannot prove it, the court shall determine the project quantities and calculate the

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(11) Item 1 and 2 of Article 1 of the *Interpretation of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Cases Regarding Disputes over Construction Contracts for Construction Projects (I)*: " A construction contract for construction project falling under any of the following circumstances shall be deemed invalid in accordance with the provisions of paragraph 1 of Article 153 of the *Civil Code*: (1) The contractor has not obtained the qualification for construction enterprise or has exceeded the qualification level. (2) The actual constructor without qualification borrows the name of a qualified construction enterprise."

(12) For example, the dispute over channel and port dredging contract between Ganglong Company as the plaintiff and Yongyi Company, etc. as the defendants, and the case number was (2020) L72MC No. 625; the dispute over channel and port dredging contract between Hangshun Company as the plaintiff and Hangwu Company as the defendant, and the case number was (2020) L72MC No. 94; the dispute over marine engineering construction between Cui X as the plaintiff and Hangyi Company as the defendant, and the case number was (2021) L72MC No. 539.

(13) Article 6 of the *Interpretation of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Cases Regarding Disputes over Construction Contracts for Construction Projects (I)*: " Where a construction contract for construction project is invalidated, a party requesting the other party to compensate for the loss shall assume the burden of proof for the other party's default, amount of loss and causal relationship between the default and the loss....."



project payment according to the facts of the case. <sup>(14)</sup>

**Suggestion:** In order to avoid the contract of port and channel construction being deemed invalid, the employer should carefully review the construction qualification of the contractor when offering the project, and the constructor should also comprehensively and objectively understand the real situation of the project object and fully consider whether the project matches his qualification and level when contracting the project. In the construction process, all the parties shall strictly follow the legal provisions, contractual agreements and industry rules, and keep a good record of signing and retaining daily communication documents and other relevant evidences to prove the actual quantities and quality of the project, so as to avoid disputes or cope with them successfully.

#### **4. Suggestion for the parties related to right to use sea areas**

The marine exploitation, utilization, protection and management is an important part of the maritime power construction , and no one is allowed to engage in any business activity such as aquaculture or fishing in military management areas and nature reserves. In practice, when the holder of the right to use the sea areas leases the sea areas to the lessee, both the parties agree that the contract will be terminated when the state takes back the right to use the sea areas in accordance with the law. During the performance of the contract, the sea area administrative department takes back the right to use the sea areas for objective reasons such as the sea areas is “located in the scope of military management area”, and the sea areas lease contract is terminated as agreed. After that, if the lessee continues to occupy the sea areas, the original holder of the right to use the sea areas shall not claim the sea

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(14) For example, the dispute over channel and port dredging contract between Ganglong Company as the plaintiff and Yongyi Company, etc. as the defendants, and the case number was (2020) L72MC No. 625.



areas rent from the lessee during the period of continuous occupation.<sup>(15)</sup> For the sea areas planned as “non-business sea areas use for public interests”, the sea areas management and protection unit has no right to change the planned use of the sea areas without authorization, or lease it to others to engage in business activities such as aquaculture or fishing. The relevant contract will be deemed invalid for its violating the mandatory provisions on effectiveness stipulated by laws and regulations<sup>(16)</sup> .<sup>(17)</sup>

**Suggestion:** When leasing the sea areas, the holder of the right to use sea areas shall abide by the national laws and regulations. When the sea areas are taken back according to law, the holder shall settle the rent with the lessee in time and properly dispose of the ancillary facilities of the sea areas. The lessee of the sea areas shall fully consider the agreed termination conditions when concluding the sea areas lease contract, and shall withdraw from the sea areas in a timely manner when such a condition occurs to avoid the income loss. The administrative department of sea areas shall strengthen the management of the sea areas within its jurisdiction, and if the right to use the sea areas is taken back in accordance with the laws, it

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(15) For example, the dispute over right to use sea areas between Yanchang Village Committee as the plaintiff and Yu X as the defendant, and the case number was (2021) L72MC No. 940.

(16) For example, Article 28 of the *Law of the P.R.C on the Administration of Sea Areas*: “The holder of the right to use the sea areas shall not change the approved uses of the sea areas without authorization. Where it is necessary to change, the change shall be in conformity with the functional divisions of the sea and approval of the people’s government that made the approval shall be obtained.” Article 26 of the *Regulations of the P.R.C on Nature Reserves*: “Such activities as felling, grazing, hunting, fishing, gathering medicinal herbs, reclaiming, burning, mining stone, quarrying and sand dredging shall be prohibited in nature reserves unless it is otherwise provided by relevant laws and regulations.” Article 16 of the *Interim Measures for the Administration of Aquatic Germplasm Resources Conservation Zones*: “During the special protection period, fishing, blasting operations and other activities that may cause damage to the biological resources and ecological environment in the protected area are not allowed.”

(17) For example, the dispute over confirming the validity of contract termination between Xinhai Company as the plaintiff and Seedling Management Station as the defendant, and the case number was (2020) L72MC No. 450.



shall be taken back in time to avoid disputes such as rent and income loss caused by the continuous occupation of the sea areas by the lessee. At the same time, the sea areas management and protection unit shall strictly perform the management and protection duties of the sea areas of the nature reserve, protect the national rare aquatic germplasm resources, maintain the marine biodiversity and promote the sustainable development of fisheries.

### IV. Typical cases

#### **1. Where there are several reasons and intervals for the goods loss or damage, the carrier is only responsible for the loss or damage that cannot be exempted during his liability period**

In the case of dispute over contract of carriage of goods by sea between Yingkou Supply and Marketing Company as the plaintiff and Wanhai Shipping Company as the defendant,<sup>(18)</sup> Wanhai Shipping Company transported 3180 boxes of fresh plums from Dalian Port, China to Laem Chabang Port, Thailand by M.V. WAN HAI. The consignee took delivery of the goods from the port of discharge and found the goods was damaged when carrying them to the warehouse for unpacking, and then transferred the right to claim damage under the bill of lading to the shipper Yingkou Supply and Marketing Company. Yingkou Supply and Marketing Company sued and demanded that the carrier, Wanhai Shipping Company, compensate the loss of goods in the amount of USD 108,756 calculated according to the total loss and its interest. The appraiser entrusted by Yingkou Supply and Marketing Company issued an investigation report which believed that the temperature control of the goods had changed and/or was unstable during transportation, resulting in the deterioration of all goods. Wanhai Shipping

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(18) The case number was (2021) L72MC No. 1184.

Company provided the container temperature recorder and the investigation report of the appraiser entrusted by himself to argue that he had fulfilled the obligation to handle and care for the goods properly and carefully, and the residual value of the goods should be 10%-20% of the value of the goods. The Court held that the damage to the goods was caused by the unstable temperature in the container during the carrier's liability period and the failure of the consignee to energize and refrigerate the container during the period from the delivery-taking to the warehouse. In accordance with Article 54 of the *Maritime Code of the P.R.C.*, Wanhai Shipping Company was liable for 30% of the loss of the goods. The Court ruled that Wanhai Shipping Company compensated Yingkou Supply and Marketing Company for the loss of goods by USD 29,354.12 and its interest considering the fact that the latter had obtained some profit by selling the plums.

## **2. Play the role of judicial review and litigation guidance, fully explain litigation risks to extraterritorial legal persons and facilitate reconciliation**

In the case of dispute over contract of carriage of goods by sea between Pipe and Piling Supplies Company (Canada) as the plaintiff and Basin Company (HK) as the defendant, <sup>(19)</sup> Basin Company transported 764.257 tons of steel pipes from Bayuquan Port, China to Vancouver Port, Canada by M.V. MOUNT SEYMOUR. The steel pipes were found to be deformed in various degrees during discharge. Pipe and Piling Supplies Company, the consignee, paid USD 228,580.48 to repair the steel pipes. A year later, Pipe and Piling Supplies Company sued Basin Company for USD 200 thousand for repair cost. During the trial, the judge and both parties fully discussed the special provisions on interruption of limitation of action stipulated in the *Maritime Code of the P.R.C.* and its application in the case. Pipe and Piling Supplies Company realized that he might be in a disadvantageous position because the limitation of action had expired. Under the auspices of the

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(19) The case number was (2021) L72MC No. 1286.



Court, the two parties reached a settlement agreement in which Basin Company paid USD 15,000. Pipe and Piling Supplies Company is domiciled in Canada, but he chose to file a lawsuit in Chinese court where the loading port is located, other than in Canadian court where the discharging port is located, which showed his trust in Chinese law and Chinese maritime justice. The Court did not simply dismiss the claims on the grounds that the limitation of action had expired, but substantively resolved the dispute between the two parties through mediation considering the loss of Pipe and Piling Supplies Company existed objectively.

### **3. The name on the title of the bill of lading does not constitute an absolute basis for identifying the carrier, and the identification of the carrier shall be comprehensively determined based on the circumstances of the case**

In the case of dispute over contract of carriage of goods by sea between Huisheng Company as the plaintiff and Dalian Neptune Company and Shanghai Neptune Company as the defendants,<sup>(20)</sup> the freight forwarder of Huisheng Company contacted Dalian Neptune Company and planned to transport a batch of medicines from Savannah, USA to Dalian, China. Ocean Network Company accepted the booking of Dalian Neptune Company and actually transported the medicines. Huisheng Company obtained a straight bill of lading from Dalian Neptune Company with the title Neptune Shipping Limited, without the signature or seal of the carrier or his agent. When the goods arrived in Dalian, Huisheng Company issued a letter of guarantee for telex release of the goods. Ocean Network Company, in accordance with relevant U.S. regulations, required Huisheng Company to provide the detailed information of the medicines, and refused to deliver the goods because Huisheng Company failed to provide them. Huisheng Company sued and demanded that Dalian Neptune Company and Shanghai Neptune Company compensate for the loss of RMB 146,489.92 and its interest,

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(20) The case number was (2021) L72MC No. 638.



including freight. The Court held that Huisheng Company and Dalian Neptune Company did not enter into a written contract of the carriage of goods by sea. After the agent of Huisheng Company contacted with Dalian Neptune Company in the carriage of goods, the title of the bill of lading delivered by Dalian Neptune Company to Huisheng Company showed that the carrier was Neptune Shipping Limited, but Dalian Neptune Company had not provided evidence to prove that he was the agent of the company. After Dalian Neptune Company booked space with Ocean Network Company, he obtained a straight bill of lading showing the consignee was Dalian Neptune Company and delivered a scanned copy of the bill of lading to Huisheng Company. Huisheng Company had paid the freight to Dalian Neptune Company through the freight forwarder. To sum up, the contractual relationship for the carriage of goods by sea between Huisheng Company and Dalian Neptune Company was established and valid. Huisheng Company was the shipper, Dalian Neptune Company was the carrier, and Ocean Network Company was the actual carrier. Both Huisheng Company and Dalian Neptune Company should have known that the medicines involved in the case had control requirements but did not take measures in advance, so each of them took 50% of the responsibility for the failure to deliver the goods. The Court ruled that Dalian Neptune Company compensated Huisheng Company for the expense loss of RMB 73,245 and its interest. Since Huisheng Company could not prove that Shanghai Neptune Company was the carrier or the actual carrier, the Court rejected his claim against Shanghai Neptune Company.

#### **4. The letter of guarantee issued by the P&I club for the ship-owner shall not be considered that the ship-owner accepts the liability or joins in the debt**

In the case of dispute over port operations between Yingkou Branch of People's Insurance Company as the plaintiff and Xianglong Company and Southern Airlines



Company as the defendants,<sup>(21)</sup> the iron ore powder transported from Murmansk port, Russia to Bayuquan port, China by Panamanian M.V. NAVIOS MARCO POLO owned by Southern Airlines Company was discharged at Xingang Company, resulting in the damage of discharging equipment of Xingang Company. In order to prevent the ship from being arrested, the P&I club as the guarantor, issued a letter of guarantee to Xingang Company with Southern Airlines Company as the guaranteed person. After paying to Xingang Company, the port operator, Yingkou Branch of People's Insurance Company subrogated Xianglong Company, the client and the goods owner, to compensate for the equipment loss of RMB 847,823.80 and its interest, and claimed the Southern Airlines Company to bear joint and several responsibility for compensation, because the issue of the letter of guarantee should be considered that the guaranteed person joined in the goods owner's debt. The Court held that Xianglong Company bore primary responsibility for the damage of the discharging equipment's belt caused by the iron plates in the consigned goods; Xingang Company bore secondary responsibility for the occurrence and expansion of equipment damage, for he monitored the discharging operation, but did not find that the goods were mixed with impurities at the first time, filter the goods effectively, find the belt damaged and shut down the equipment in time. The Court ruled that Xianglong Company compensated Yingkou Branch of People's Insurance Company for the loss of RMB 593,477 and its interest; the issuance of the letter of guarantee may only be considered a kind of guarantee where the issuer of letter of guarantee bore "possible responsibility" for the guarantee and shall not be considered that the guarantee recognized the liability or joined in the debt, thus rejected the request of Yingkou Branch of People's Insurance Company for Southern Airlines Company bearing joint and several responsibility.

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(21) The case number was (2021) L72MC No. 1285.

**5. In the same case, the applicable law shall be respectively determined in different foreign-related laws according to the conflict rules of the place where the court is located**

In the case of dispute over confirmation of maritime claims between Lu X as the plaintiff and Will Company as the defendant,<sup>(22)</sup> Will Company borrowed KRW 620 million from Lu X, and took its own M.V. OCEAN STAR as a guarantee to set up a ship mortgage in first order of no more than KRW 1 billion for Lu X on the ship, and registered the ship mortgage according to law. After that, Dalian Maritime Court arrested and auctioned M.V. OCEAN STAR in another case, Lu X applied to the Court for creditor's rights registration, and brought an action for the confirmation of maritime claims against Will Company, requesting to confirm Lu X creditor's rights amounting to KRW 819,989,041 (equivalent to about RMB 4,921,335.84) including its interest until April 30, 2020, and the interest from April 30, 2020 to the actual repayment date, and confirm that the creditor's rights enjoyed by Lu X had a mortgage on M.V. OCEAN STAR, which should have priority to be paid out of the ship auction price. The Court held that it was a foreign-related case, and shall respectively determine the applicable law to relationship of the loan contract and relationship of the ship mortgage guarantee in accordance with the applicable laws of China. Lu X was a South Korean citizen and Will Company's domicile was in South Korea, Lu X lent money to Will Company in South Korea, and they had no agreement to choose the law applicable to the contract. In accordance with Article 41 of the *Law of the P.R.C on Application of Laws to Foreign-related Civil Relations*, the South Korean law applied to the dispute over loan contract in the case. M.V. OCEAN STAR was a South Korean ship, in accordance with Article 271 of the *Maritime Code of the P.R.C*, the South Korean law applied to the dispute over ship mortgage in the case too. Lu X submitted the

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(22) The case number was (2020) L72MC No. 109.



South Korean law published on the official website of South Korean Legislative Ministry to the Court, and the Court accepted it after ascertainment. In accordance with the law of South Korean, the Court confirmed that Lu X had KRW 620 million and its interest of creditor's rights to Will Company, and the creditor's right had a mortgage on M.V. OCEAN STAR within the range of KRW 1 billion, which should have priority to be paid out of the ship auction and sale price.

**6. The principal neither authorizes the freight forwarder to declare at the port of destination, nor requires him to carry customs declaration documents with the goods, the freight forwarder who only packs and ships the goods does not break the contract, and shall not be liable for the delay caused by lack of customs declaration documents**

In the case of dispute over contract of freight forwarding by sea between August Company as the plaintiff and Jincheng Company as the defendant,<sup>(23)</sup> August Company authorized Jincheng Company to handle the booking, clearing customs, packing and delivering to the carrier of 310 boxes of flowers from Xiamen, China to Tokyo, Japan. After accepting the goods and taking down the “random documents” including the plant quarantine certificate attached to the packaging box of goods, Jincheng Company loaded the goods into containers for shipment. 4 days after the goods arrived in Tokyo, the consignee cleared the customs and took delivery of the goods with the plant quarantine certificate mailed by August Company, but refused to pay for the goods on the ground that the flowers had withered and decomposed. August Company claimed that Jincheng Company took off the plant quarantine certificate on the outer packing of goods without his consent, as a result, the consignee could not clear the customs and took delivery of the goods in delay, and requested Jincheng Company to compensate for the

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(23) The case number of the first instance was (2021) L72MC No. 39, and the case number of the second instance was (2021) LMZ No. 1123.

loss of goods JPY 891,900 (equivalent to about RMB 57,133.33) and its interest. The Court held that as the agent, Jincheng Company's obligation was limited to properly completing the entrusted affairs from the principal. The entrusted affairs did not include the customs clearance of the destination port, and Jincheng Company was not obliged to pack according to the customs clearance policy at the destination port. When Jincheng Company inquired the specific requirements about the random documents and packing, August Company confirmed the packing of goods and did not require the customs declaration documents to be carried with the goods. Jincheng Company had properly completed the freight forwarding work by sea. The Court rejected the claim of August Company.

### **7. Where the ship borrower intentionally collides with another ship, the ship-owner shall be liable for the collided ship's damage**

In the case of dispute over damage liability for ship collision between Song X as the plaintiff and Liu X and Li X as the defendants,<sup>(24)</sup> Song X was the owner of the fishing boat No. 25506 (ship tonnage of 12 GT), and Li X was the owner of the fishing boat No. 25105 (ship tonnage of 66 GT). On May 6, 2016, Liu X borrowed the fishing boat No. 25105 from Li X to go fishing, and had a fishing dispute with Song X who was driving the fishing boat No. 25506. Liu X drove the fishing boat No. 25105 to chase after the fishing boat No. 25506 at high speed and caused a collision between the two boats, causing the fishing boat No. 25506 to overturn on the spot and all four crew members on board to fall into the water, resulting in two dead and the other two rescued. Song X sued Liu X and Li X to jointly bear RMB 228,240 for ship damage and RMB 44,000 for loss of appraisal fee. The Court held that, in accordance with the definition clause about ship and ship collision stipulated in Article 3 and Article 165 of the *Maritime Code of the P.R.C.*, the case

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(24) The case number of the first instance was (2020) L72MC No. 98, and the case number of the second instance was (2021) LMZ No. 758.



was applied in the *Maritime Code of the P.R.C* to determine the liability for ship collision. According to Article 4 of the *Provisions of the Supreme People's Court on Some Issues about the Trial of the Cases of Ship Collision Disputes*, Li X, as the owner of fishing boat No. 25105, shall be liable for the ship damage caused by the collision. Liu X was the direct perpetrator of the ship collision, but the *Maritime Code of the P.R.C* as a special law adjusting the responsibility of ship collision made clear provisions on the subject of responsibility for ship collision, Song X's requested that Liu X bear the damage compensation responsibility for ship collision was groundless in the law. The Court ruled that Li X paid Song X RMB 51,580 for the reasonable loss of ship collision and RMB 22,495 for the loss of appraisal fee, and rejected Song X's claim against Liu X.

### **8. The insurer shall not be liable for any accident to the ship resulting from the insured's failure to timely notify the insurer of any overboard navigation that significantly increases the degree of risk to the insured ship**

In the case of dispute over contract of insurance by sea between Binhai Company as the plaintiff and Property Insurance Company as the defendant,<sup>(25)</sup> Binhai Company insured "Total Loss Insurance of Coastal Ship" and "Coastal and Inland River Ship Insurance and Additional Insurance of Ship owner's Liability for Passengers" for self-owned M.V. ZHONGLV 1 to Property Insurance Company. The sea passenger ship's seaworthiness certificate recorded the navigation range as a specific route area, and stated that "the ship is limited to the specific route from Dalian port to Dalian Bangchui Island, and is limited to the waters not more than 10 nautical miles from shore near the port area". The scope of navigation recorded in the insurance policy was consistent with the certificate. M.V. ZHONGLV 1 sailed from Dalian port to Fangcheng port during the insurance

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(25) The case number of the first instance was (2020) L72MC No. 26, the case number of the second instance was (2021) LMZ No. 95, and the case number of the retrial was (2021) ZGFMS No. 3179.

period without going through the procedures of transferring to another port and reporting to Property Insurance Company in writing. On February 19, 2017, the ship encountered wind and waves at about 60 nautical miles northeast to the Yangtze River estuary lightboat, causing the ship to sink out of control. Due to be refused for insurance, Binhai Company sued Property Insurance Company to pay RMB 4,084,800 for the total loss of the ship insurance and its interest. The Court held that the accident involved in the case occurred during a voyage that exceeded the scope of the insurance policy and the seaworthiness certificate without the consent of the maritime authority and the prior written notice to Property Insurance Company, and Property Insurance Company shall not bear the insurance compensation liability for the insurance accident due to the increasing degree of risk, so rejected the claim of Binhai Company.

**9. When the party initiates a public interest lawsuit on the marine environment, he shall have the qualifications as the subject of litigation, and the lawsuit shall be within the jurisdiction of the maritime court at the place where the lawsuit is filed**

In the case of dispute over environmental pollution liability between Greenhome Center as the plaintiff and Shipbuilding Heavy Industry Company as the defendant,<sup>(26)</sup> Greenhome Center claimed that Shipbuilding Heavy Industry Company had committed acts that harmed the environment in the production, and requested that Shipbuilding Heavy Industry Company stop the infringement, apologize, eliminate the danger and compensate for the loss of environmental damage, and the loss of service functions from being damaged to being restored to the original state. Shipbuilding Heavy Industry Company raised objection to the eligibility of Greenhome Center as the subject of litigation. The Court held that, in accordance with paragraph 2 of article 89 of the *Marine Environmental Protection*

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(26) The case number was (2021) L72MC No. 91.



*Law of the P.R.C* and articles 2 and 3 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases Involving Disputes over Compensation for Damage to Marine Natural Resources, ecology and environment*, if an activity is carried out in the sea or in the coastal land areas, causing any damage to marine natural resources, ecology and environment in the sea areas under the jurisdiction of the People's Republic of China, the department exercising the power of marine environment supervision and control shall file a lawsuit for compensation for damage on behalf of the State against the responsible person, and where the lawsuit for compensation for damage to marine natural resources, ecology and environment was filed thereby, it shall be under the jurisdiction of the maritime court at the place where the damage act occurred, the place of the damage result, or the place where preventive measures were taken. Greenhome Center was not a department exercising the power of marine environment supervision and control, and he was not qualified as the subject of public interest lawsuit filing a lawsuit on the marine environment in the maritime court. If Greenhome Center filed a non-marine environmental public interest lawsuit, it was not within the jurisdiction of the maritime court. The Court dismissed the Greenhome Center's suit.

### **10. The limitation of liability, where the marine casualty occurs in sea towage of barge towed by tug and the tug owner applies for the constitution of a limitation fund for maritime liability, shall be calculated according to the gross tonnage of the tug**

In the case where the tug and barge company applied for the constitution of a limitation fund for maritime liability,<sup>(27)</sup> Chengyuan Company, entrusted by Huarui Company, carried the shore bridge and roll-roll tools from Dalian Port

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(27) The case number of the first instance was (2020) L72MT No. 114, and the case number of the second instance was (2021) LMT No. 280.





to Shantou Port. Chengyuan Company loaded the goods into the barge DEFU 15002 owned by X Salvage Bureau and time chartered the tug JINGANGLUN 35 owned by the tug and barge company to tow the barge DEFU 15002. The tug and the barge encountered the bad weather, the towing line broke and a marine casualty occurred when it sailed 25 sea miles southeast to Xiamen Port. As the owner of tug JINGANGLUN 35, the tug and barge company applied to the Court for the constitution of a limitation fund for maritime liability with the amount of SDR 97,611.50 and its interest. Huarui Company disagreed that the tug and barge company calculated the limitation of liability according to the gross tonnage of the tug, and held that the goods transport involved was a domestic coastal transport by means of tug towing barge, and the tug and the barge was an entirety and the limitation of liability should be calculated according to the total tonnage of the tug and the barge. The Court held that applying for the constitution of a limitation fund for maritime liability was the right but not the obligation for the ship-owner, the charterer, the operator, the salvor, the insurer and other parties stipulated by laws. The ownership of tug JINGANGLUN 35 and barge DEFU 15002 was separate. The tug and barge company was not the charterer, the operator, the salvor or the insurer of barge DEFU 15002, and had no right to decide whether the barge apply for the constitution of a limitation fund or obligation to constitute the fund for the ship owned by others. The Court ruled that the tug and barge company calculated the limitation of liability according to the tonnage of tug JINGANGLUN 35 and constituted the fund.

## Concluding remarks

The year 2022 is a crucial year for new breakthroughs in promoting the comprehensive and all-round revitalization of Liaoning Province. Zhang Guoqing, Secretary of Liaoning Provincial Party Committee, proposed in the report of the



13th Party Congress of Liaoning Province to “strengthen the judicial guarantee for maritime affairs and foreign affairs”, which attached great importance on the role of maritime judicial function, as well as ardent expectations for maritime judicial work. We will unite closely around the Party Central Committee with Comrade Xi Jinping as its core, deeply understand the decisive meaning of “Two Establishments”, anchor the first-class goal, consolidate the first-class foundation, build the first-class reputation, cultivate first-class results, strengthen first-class brands, enhance maritime and foreign-related judicial guarantee, comprehensively escort the development and opening up of Liaoning coastal economic belt with Dalian as the leading role, and make every effort to hand over a new answer sheet for the advanced position, and present a gift to the 20th National Congress of the Communist Party of China with excellent results!

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# 2021年海事审判白皮书

Dalian Maritime Court White Paper on Maritime Trials (2021)