

# 大连海事法院 2022 年海事审判 白皮书

Dalian Maritime Court  
White Paper on Maritime Trials (2022)



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

# 2022 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 (2022)

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

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## 前言

2022年，是党和国家历史上极为重要的一年，也是大连海事法院发展中刻骨铭心的一年。“抗疫”“发展”“党的二十大”“一起向未来”“中国式现代化”等定格2022年的年度记忆。

面对发展之要、防疫之需、创优之艰，大连海事法院坚持以习近平新时代中国特色社会主义思想为指导，全面贯彻落实党的二十大精神，深入贯彻习近平法治思想，坚决扛牢服务保障海洋强国和“一带一路”建设使命职责，在统筹推进国内法治和涉外法治、护航党的二十大胜利召开、深入实施海事审判精品战略、防范化解重大风险、加强法治化营商环境建设等方面，改革创新、迎难而上，各项工作取得新进展，多项工作成果成为全国亮点，有效地履行维护国家政治安全、确保社会大局稳定、促进社会公平正义、保障人民安居乐业的职责使命，更好地服务东北全面振兴取得新突破。时任辽宁省委副书记、大连市委书记胡玉亭，辽宁省委常委、政法委书记于天敏先后来我院调研，给予充分肯定。

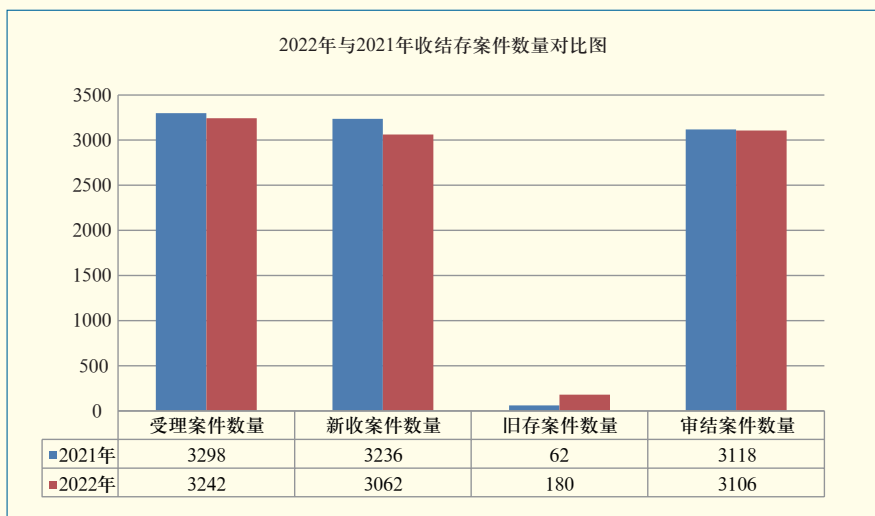
## 一、基本情况

### （一）总体概况

**1. 收结案情况。**2022年，大连海事法院受理各类案件3242件，同比下降1.7%。其中新收3062件，同比下降5.38%；旧存180件，同比上升190.32%；审结3106件，同比下降0.38%；结案率95.81%（含12月收案），同比上升1.26个百分点，依照辽宁法院“审判执行质效”统计排名标准，结案率为100%（不含12月收案），居全省中级法院第1位（与另外6家中级法院并列）。依照“人民法院大数据管理和服务平台”统计数据，我



院结案率为 95.81%（含“执恢”、“执保”案件），居全国十一家海事法院第 1 位。（以上数据均包含执保、执恢案件）



**2. 质效指标情况。**一审判决案件改判发回重审率为 2.98%，同比上升 1.56 个百分点；调解率 22.84%，同比上升 2.71 个百分点；撤诉率 28.56%，同比下降 1.51 个百分点；一审服判息诉率为 86.84%，同比上升 4.05 个百分点；速裁快审方式结案 710 件，速裁案件平均审理时间 27.99 天。

### （二）案件分类

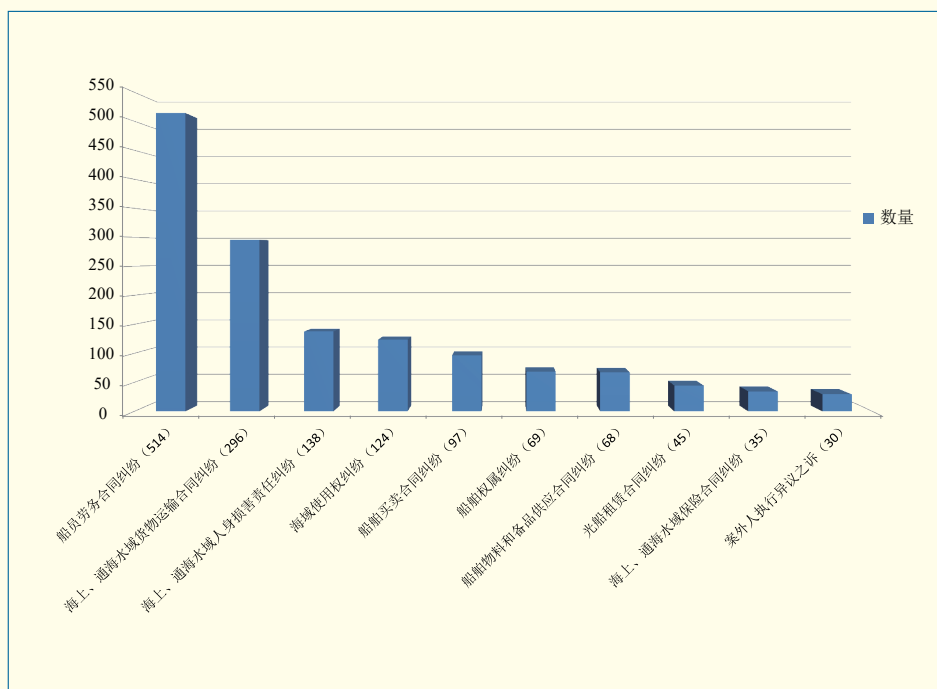
**1. 民事案件<sup>〔1〕</sup>：**受理 2008 件，同比下降 3.37%。其中新收 1890 件，同比下降 7.44%；审结 1921 件，同比下降 1.99%；结案率 95.67%，同比上升 1.43 个百分点；涉案标的额 28.2873 亿元，同比减少 11.6127 亿元。

民事案件中，受理海事海商案件 1843 件，同比上升 9.31%。其中新收 1729 件，同比上升 4.60%；审结 1759 件，同比上升 11.90%。数量居前十位的新收海事海商案件共 1729 件，其中船员劳务合同纠纷 514 件，

〔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。



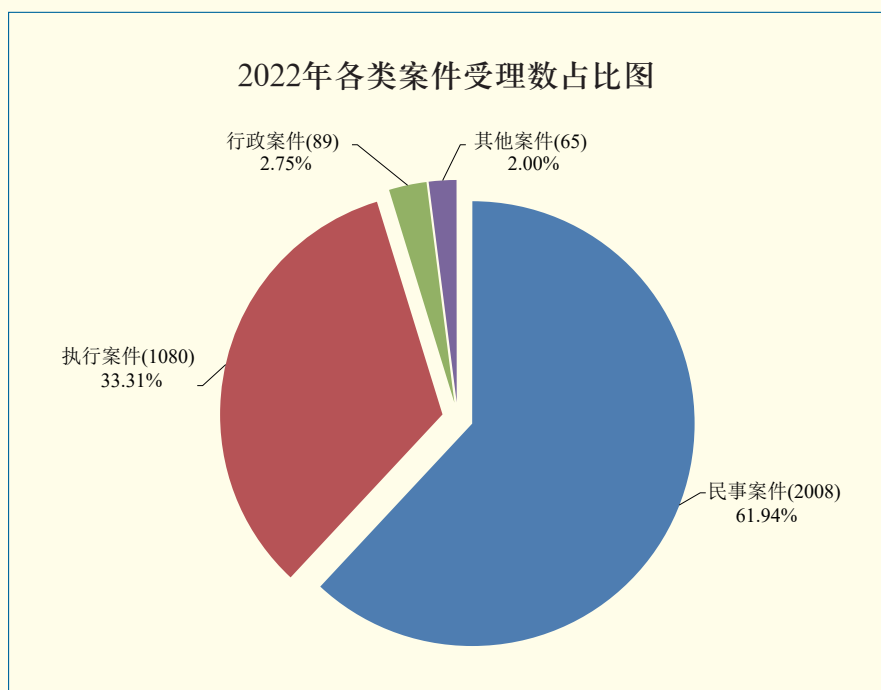
占新收海事海商案件的 29.73%，同比下降 2.10%；海上、通海水域货物运输合同纠纷 296 件，占比 17.12%，同比上升 161.95%；海上、通海水域人身损害责任纠纷 138 件，占比 7.98%，同比上升 11.29%；海域使用权纠纷 124 件，占比 7.17%，同比上升 0.81%；船舶买卖合同纠纷 97 件，占比 5.61%，同比下降 34.01%；船舶权属纠纷 69 件，占比 3.99%，同比下降 45.67%；船舶物料和备品供应合同纠纷 68 件，占 3.93%，同比上升 23.64%；光船租赁合同纠纷 45 件，占比 2.6%，与去年同比持平；海上、通海水域保险合同纠纷 35 件，占比 2.02%，同比下降 7.89%；案外人执行异议之诉 30 件，占比 1.74%，同比上升 36.36%。具体类型如下：



**2. 行政案件：**受理 89 件，同比下降 2.2%。其中新收 79 件，同比下降 10.23%；审结 83 件，同比上升 2.47%；涉案标的额 1.8623 亿元，同比减少 0.3077 亿元。

**3. 执行案件：**受理 1080 件，同比上升 1.50%，其中新收 1028 件，同

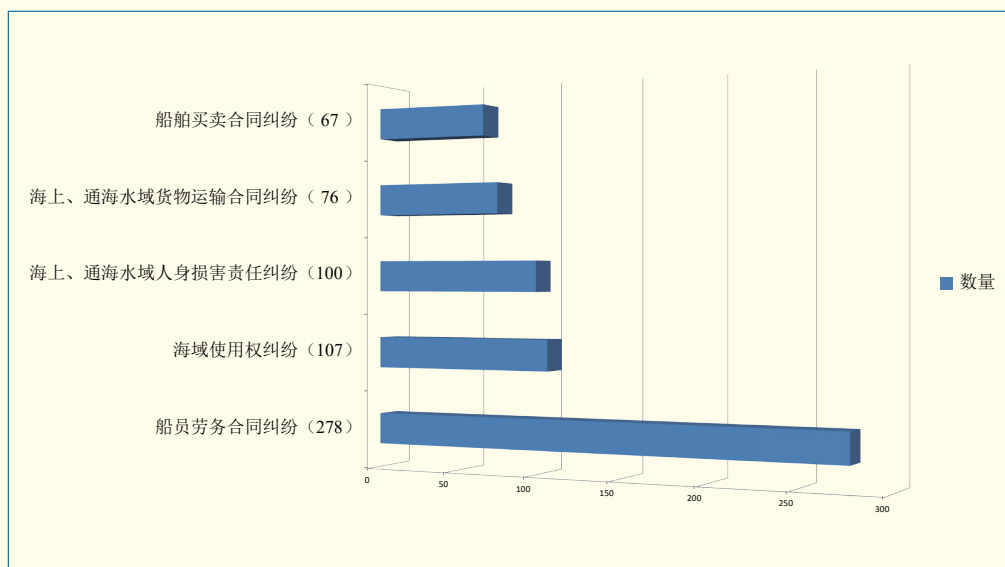
比下降 1.34%。执结 1037 件，同比上升 2.47%；首次执行案件法定期限内结案率 98.27%，首次执行案件执行完毕率 32.64%；受理涉民生执行案件 449 件，执结 438 件，执行到位 1661.3275 万元。非因法定事由和合理原因超期未发放执行案款和不明执行案款，实现“双清零”。执行工作四项核心指标中，有财产可供执行的案件法定期限内结案率 100%，终结本次执行程序案件合格率 100%，涉执行信访办结率 100%，执行案件整体结案率 96.02%。执行质效位列辽宁省三家专门法院第 1 位。



**4. 派出法庭案件：**五个派出法庭受理各类案件 1168 件，同比下降 2.5%。其中新收 1114 件，同比下降 5.59%；旧存 54 件，同比上升 200%。审结 1133 件，同比下降 0.96%；结案率 97%，同比上升 1.51 个百分点。一审判决案件改判发回重审率 3.76%，高于全院 0.78 个百分点；调解率 23.50%，高于全院 0.96 个百分点；撤诉率 27.46%，低于全院 1.1 个百分点。

五个派出法庭受理海事海商案件 987 件，占全院海事海商案件总数的 53.55%。其中新收 933 件，占全院海事海商案件的 53.96%；审结 954 件，占全院海事海商案件的 54.24%；涉案标的额 10.0730 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 628 件，具体类型如下：



**5. 扣押、拍卖船舶情况：**扣押船舶 30 艘，其中外国籍船舶、港澳台籍船舶 2 艘。拍卖外国籍船舶 1 艘，拍卖中国籍船舶 51 艘。

**6. 涉外涉港澳台案件情况：**新收涉外案件 222 件、涉港澳台案件 36 件，占民事案件的 12.85%，同比上升 85.61%；审结涉外案件 220 件、涉港澳台案件 38 件。案件涉及英国、法国、塞内加尔、挪威、马来西亚、新加坡、韩国、墨西哥、利比里亚、埃及、丹麦、德国、几内亚、美国、印度尼西亚、南非、马绍尔群岛、瑞士、俄罗斯联邦、阿曼、澳大利亚、塞舌尔、阿根廷、日本、塞拉利昂、新西兰、荷兰、苏里南共 28 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 1033 场，总观看数 184359 次，庭审直播率 53.02%，居辽宁省中级人民法院第 4 位。依托中国裁判文书网公布裁判文书 1247 篇，裁判文书上网率居辽宁省中级人民法院第 14 位。依托中国审判流程信息公开网公开审判流程，有效公开率 100%，居辽宁省中级法院第 1 位。

## 二、工作亮点

### （一）坚持严格公正司法，审判质效实现新提升

牢记“努力让人民群众在每一个司法案件中感受到公平正义”目标，坚持问题导向、目标导向、效果导向，强化精细化、闭环式审判管理，全年进行预警提示、数据通报、督办调度 292 次，组织优秀裁判文书和优秀庭审评选、裁判文书撰写交流座谈会、专业法官会议团队经验交流会，审判质量、效率、效果等主要指标保持高位运行。强化海事审判精品战略实施，妥善处理涉金枪鱼钓公司等一批重大疑难复杂案件，提炼形成承运人识别、承运人管货义务范围、无单放货责任认定、环境公益诉讼等类案审理意见，3 篇案例入选最高人民法院第三批涉“一带一路”建设典型案例和海事审判典型案例，2 篇案例入选辽宁省高级人民法院典型案例、优秀业务成果。以异地执行锦州港 15000 吨燃油案件为原型拍摄的微电影《亮剑沧海》，入选辽宁省第三届短视频（微电影）推优活动最佳作品。

### （二）坚持服务对外开放，司法公信实现新提升

发挥专业优势，出台《关于加强海事司法保障服务辽宁进一步扩大对外开放的实施意见》，以 18 条举措提升涉外司法效能、促进优化国际

化营商环境，司法理念、裁判观点以及诸多调研成果得到广泛认可，8 篇案例入选辽宁省高级人民法院涉外商事海事审判优秀裁判文书。连续 4 年发布中英双语海事审判报告，发布《涉疫海事审判情况报告》专项审判白皮书，中英文双语门户网站定期录制发布英文信息和视频，在省级以上媒体发布稿件 38 篇，微信公众号实现每日更新，阅读量、点赞量位列全国海事法院前列，方便外国受众深入了解我国司法动态、政策文件和法治建设等情况。

### （三）坚持服务中心大局，服务效能实现新提升

紧扣东北全面振兴全方位振兴、大连“两先区”“三个中心”建设、打造高水平对外开放新高地等高质量发展要求，找准用好海事审判服务保障“三个支点”。聚焦区位优势，深化海事审判理论研究，组织“渤海法治论坛”，开展中日韩比较法律制度、海陆大通道建设、航运法治等 6 项专题调研，形成 16 篇调研文章，相关成果被纳入《大连海洋强市建设三年行动方案》《辽宁省港口管理规定》。聚焦自贸区发展前沿课题，创新设立中国（辽宁）自由贸易试验区大连片区海事法庭，在法律框架内支持制度创新、产业创新、技术创新，为高端航运业发展提供更有针对性的嵌入式司法服务。聚焦打好蓝天、碧水、净土保卫战，举办 2022 年渤海生态环境保护司法协作联席会，与庄河市政府协同联动推进养殖用海清理整治工作，妥善审理多起因在斑海豹保护区海域从事传统渔业养殖经营而发生的纠纷，推动实现海洋生态“海清岸净”。

### （四）坚持司法为民宗旨，群众满意实现新提升

依托智慧法院建设成果强化便民利民，为跨域诉讼服务、线上庭审、电子送达、执行协作、社会信用体系建设提供强大数据支撑。香港某海运公司向我院申请诉前财产保全，因疫情无法提供全部公证认证手续，我院利用互联网线上审核该公司法定代表人身份并现场见证授权委托事



宜，仅用一小时便完成诉前保全。依托诉讼制度改革提升办案效能，积极推进小额诉讼、繁简分流、适用普通程序独任制等改革举措，完善“少数法官解决多数简单案件、多数法官解决少数复杂案件”的分调裁审新模式，全年速裁案件 921 件，简易案件审理周期稳定在 28 天以内。依托“我为群众办实事”活动为民排忧解难，组织“涉企法律服务”专项活动，广泛走访大连港、锦州港、营口港、大连船舶重工等港航企业，创建民营企业微信咨询通道，选派优秀法官开展法律宣讲。我院被最高人民法院命名“为群众办实事示范法院”，是全国 11 家海事法院唯一获此荣誉的海事法院。

### （五）坚持全面从严治院，队伍素能实现新提升

旗帜鲜明把党的政治建设放在首位，以党建带队建促审判，开辟“学思践悟”“二十大精神”专栏，组织开展云诵读，推进党建与业务深度融合，“亮剑沧海，‘执’爱无悔”支部建设案例，荣获省直机关党支部建设“优秀案例”。创新人才培养规划、平台搭建和机制建设，用好专题调研团队、英语翻译团队、专业法官会议团队、审判白皮书起草团队，完善院史馆、党建中心和阅览室，建立青年干警读书班学习机制，累计举办“海法讲坛”17 期，与大连海事大学合作举办海商法强化培训班，推动形成崇法尚德、亲海强海、追求卓越的海事司法文化，涌现出一批领军型法官、专业型精兵、复合型人才。先后有 2 个集体和 17 名个人受到省级以上表彰，政治部荣获全国法院政治工作先进集体，1 名干警被评为“全国优秀法官”，在辽宁省高级人民法院组织的“评推树”活动中，3 名干警获评审判业务专家，5 名干警获评审判理论研究人才，2 名干警获评办案能手，1 名干警获评岗位标兵。

### 三、问题建议

为加强海事、涉外司法保障，全面护航辽宁沿海经济带开发开放，服务保障国家大局，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、维权、止损等方面提出以下建议。

#### （一）对海洋自然资源与生态环境损害公益诉讼主体的建议

休渔期是保护海洋水产资源、保障海洋经济可持续发展的重要制度。经略海洋，深耕蓝色国土，必须坚持绿色协调发展。我院积极履行司法职能，保护海洋自然资源与生态环境。实践中，仍存在部分船主为私利组织渔船在休渔期非法捕捞的情形。船主对此不仅要承担刑事、行政责任还要承担赔偿海洋自然资源损失、修复费、评估费等损失的民事责任。

<sup>〔2〕</sup> 对于提起公益诉讼的主体，依照《中华人民共和国民事诉讼法》第五十八条第二款<sup>〔3〕</sup>、《最高人民法院 最高人民检察院关于办理海洋自然资源与生态环境公益诉讼案件若干问题的规定》第三条<sup>〔4〕</sup>规定，人民检察院在直接函告和发布公告催告有权提起民事公益诉讼（和启动生态环境损害赔偿程序）的机关履行职责未果后，可以提起民事公益诉讼，并要求被告承担生态修复责任或承担行政机关代履行产生的相关费用，以及

〔2〕 例如（2022）辽72民初704号大连海警局与刘宏伟海洋自然资源与生态环境损害民事公益诉讼案。

〔3〕 《中华人民共和国民事诉讼法》第五十八条第二款：“人民检察院在履行职责中发现破坏生态环境和资源保护、食品药品安全领域侵害众多消费者合法权益等损害社会公共利益的行为，在没有前款规定的机关和组织或者前款规定的机关和组织不提起诉讼的情况下，可以向人民法院提起诉讼。前款规定的机关或者组织提起诉讼的，人民检察院可以支持起诉。”

〔4〕 《最高人民法院 最高人民检察院关于办理海洋自然资源与生态环境公益诉讼案件若干问题的规定》第三条：“人民检察院在履行职责中发现破坏海洋生态、海洋水产资源、海洋保护区的行为，可以告知行使海洋环境监督管理权的部门依据本规定第二条提起诉讼。在有关部门仍不提起诉讼的情况下，人民检察院就海洋自然资源与生态环境损害，向有管辖权的海事法院提起民事公益诉讼的，海事法院应予受理。”



检察院委托评估生态环境损害产生的调查、鉴定评估费用。<sup>〔5〕</sup>

**建议：**休渔期内，渔业从业人员应当严格按照法律规定和政策要求，不得非法捕捞，否则将承担刑事责任、行政责任以及民事赔偿责任。渔业行政主管部门应当做好宣传教育和管理工作。对于破坏生态环境和资源保护等损害社会公共利益的行为，法律规定的机关可以向人民法院提起公益诉讼。在没有法律规定的机关，或者前款规定的机关不提起诉讼的情况下，人民检察院可以向人民法院提起公益诉讼。人民检察院在履行职责中发现破坏海洋生态、海洋水产资源、海洋保护区的行为，可以告知行使海洋环境监督管理权的部门提起诉讼。在有关部门仍不提起诉讼的情况下，人民检察院可向有管辖权的海事法院提起民事公益诉讼。

## （二）对船舶所有人、经营人或者光租人的建议

维护海上运输和航行安全，依法保护遭受损害的人身和财产损失，是海事法院重要审判职能之一。在海上交通事故中，船舶碰撞最为常见，船舶实际所有人与登记所有人不一致的，船舶实际所有人有权就因碰撞造成的损害向对方船舶的侵权人主张赔偿损失。根据《最高人民法院关于审理发生在我国管辖海域相关案件若干问题的规定（二）》第一条<sup>〔6〕</sup>规定，船舶实际所有人未取得捕捞许可证，其无权就经营收入、经营费用的损失向侵权人主张赔偿。<sup>〔7〕</sup>此外，船舶所有人应当使船舶处于适航状态，配备有效船舶证书和适格船员。对于无证船舶在航行或作业过程中与他船发生碰撞，无证船舶的所有人应对碰撞造成的损害承担相应的过错责

〔5〕 例如（2022）辽72民初1344号辽宁省丹东市人民检察院与郑洪贵等海洋自然资源与生态环境损害民事公益诉讼案。

〔6〕 《最高人民法院关于审理发生在我国管辖海域相关案件若干问题的规定（二）》第一条：“当事人因船舶碰撞、海洋污染等事故受到损害，请求侵权人赔偿渔船、渔具、渔货损失以及收入损失的，人民法院应予支持。  
当事人违反渔业法第二十三条，未取得捕捞许可证从事海上捕捞作业，依照前款规定主张收入损失的，人民法院不予支持。”

〔7〕 例如（2021）辽72民初119号刘淑梅与韩铁仁等海上财产损害责任纠纷案。



任，无证船舶本身所遭受的财产损失也不应得到赔偿。<sup>〔8〕</sup>

**建议：**渔船船舶所有人或者经营人从事渔业捕捞活动，应当依法申领渔业捕捞许可证，不得涂改、伪造、买卖、出租、出借和以其他形式转让捕捞许可证。因购置渔船发生所有人变更的，应当重新申请渔业捕捞许可证，还应当办理原渔业捕捞许可证注销手续。船舶所有人在海上航行中应使船舶处于适航状态，并采取合理避碰措施，避免造成船舶碰撞发生毁损或者沉没。船舶所有人或者经营人应当做好船舶管理工作，运用良好船艺，否则将按行为过错程度承担相应的赔偿责任。

### （三）对船坞、码头建造合同主体的建议

船坞、码头是船舶运营、仓储物流的重要支点，在营造辽宁成为东北地区全面振兴的“蓝色引擎”的营商环境建设中的作用十分突出。因船坞、码头建设工期长、投入巨大，隐蔽工程多，资质要求高等原因，相关主体间的工程款纠纷、工程质量纠纷经常出现。保障建设单位和施工单位、实际施工人的合法权益，是海事法院优化营商环境的具体职能体现。对存在质量问题的建设工程是否应支付工程款，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》（法释〔2004〕14号，以下简称建设工程合同2004年解释）第三条<sup>〔9〕</sup>、第十六条第三款<sup>〔10〕</sup>规定，对整改以后质量仍不合格或者质量缺陷属于不可修复的，不支付工程价款。码头建设工程经修复并使用后，未经验收或按原

〔8〕 例如（2021）辽72民初1034号熊火军、郭全晋诉金福祥船舶碰撞损害责任纠纷案。

〔9〕 《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》（法释〔2004〕14号）第三条：“建设工程施工合同无效，且建设工程竣工验收不合格的，按照以下情形分别处理：（一）修复后的建设工程竣工验收合格，发包人请求承包人承担修复费用的，应予支持；（二）修复后的建设工程竣工验收不合格，承包人请求支付工程价款的，不予支持。因建设工程不合格造成的损失，发包人有过错的，也应承担相应的民事责任。”

〔10〕 《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》（法释〔2004〕14号）第十六条第三款：“建设工程施工合同有效，但建设工程竣工验收不合格的，工程价款结算参照本解释第三条规定处理。”

设计标准鉴定是否合格的前提下，发包人不得以码头不具有使用功能拒付工程款。<sup>〔11〕</sup>对工程分包中存在的“在业主支付后支付”条款，属于《中华人民共和国民法典》第五百一十一条第四项规定的履行期限不明确<sup>〔12〕</sup>，而非付款条件的约定。在工程已经交付并结算，达到法律规定及合同约定的付款条件时，承包人不能以业主已破产或者尚未支付为由，拒绝向分包人支付全部或部分工程款。<sup>〔13〕</sup>

**建议：**施工人要严格按照设计要求及合同约定进行施工，保证质量符合合同约定标准，并承担保修责任。分包人在签订工程分包合同时应当特别注意付款条件和付款期限的约定，避免出现显失公平或者约定不明的情况。坚持施工人资质与工程相符的硬性要求，规范建工市场准入制度，杜绝无资质或超越施工资质施工，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。发包人应当对工程及时验收，若不符合质量标准，应要求施工人立即整改修复。对于修

〔11〕 例如（2021）辽72民初366号中交一航局第三工程有限公司与大连福佳·大化石油化工有限公司、大连福佳·大化石油化工有限公司码头建造合同纠纷案。

〔12〕 《中华人民共和国民法典》第五百一十一条：“当事人就有关内容约定不明确，依据前条规定仍不能确定的，适用下列规定：  
（一）质量要求不明确的，按照强制性国家标准履行；没有强制性国家标准的，按照推荐性国家标准履行；没有推荐性国家标准的，按照行业标准履行；没有国家标准、行业标准的，按照通常标准或者符合合同目的的特定标准履行。（二）价款或者报酬不明确的，按照订立合同时履行地的市场价格履行；依法应当执行政府定价或者政府指导价的，依照规定履行。（三）履行地点不明确，给付货币的，在接受货币一方所在地履行；交付不动产的，在不动产所在地履行；其他标的，在履行义务一方所在地履行。（四）履行期限不明确的，债务人可以随时履行，债权人也可以随时请求履行，但是应当给对方必要的准备时间。（五）履行方式不明确的，按照有利于实现合同目的的方式履行。（六）履行费用的负担不明确的，由履行义务一方负担；因债权人原因增加的履行费用，由债权人负担。”

〔13〕 例如（2022）辽72民初265号大连嘉林建筑安装工程有限公司与中交一航局第三工程有限公司码头建造合同纠纷案。

复仍不符合质量标准的，可以拒绝支付工程款；对于达到付款条件的，发包人无正当理由不得拒绝付款。

#### （四）对海域使用权合同主体的建议

提高海洋资源综合开发利用能力，推动海洋经济向质量效益型转变，是推进海洋强国战略的重要方面。海域使用权行使方式包括转让、出租、抵押和作价入股及承包。在法律关系的识别上，不能仅以合同名称或者海域使用权人登记发生变更作为认定海域使用权转让的绝对依据，而应结合合同的具体内容判断是转让、租赁或者承包等其他法律关系。海域承包应指农村集体经济组织将海域使用权发包给其经济组织成员的情形<sup>〔14〕</sup>。而海域使用权的转让，通常是指转让人将海域使用权完全让与受让人，受让人因此对海域享有占用、使用、收益和处分的权利。在承租人、次承租人未履行返还海域义务情形下，出租人既可以基于租赁合同，也可以基于物权请求权，要求承租人和次承租人对返还海域及支付超期使用费承担不真正连带责任。承租人在向出租人履行了支付义务后，可依法向次承租人追偿。<sup>〔15〕</sup>

**建议：**海洋行政主管部门要加强对海域使用权流转的监管审批及档案的留存。海域使用权人转让或者出租、发包海域使用权，应当在合同中明确约定合同性质、双方权利义务及违约责任。若为承包，则应为农村集体经济组织与其经济组织成员之间使用海域的情形。若为转让，其后果是出让人因此完全脱离与海域使用权的支配关系。若为出租，则无须变更登记海域使用权人；即使双方约定变更登记，也不影响双方之间

〔14〕 《中华人民共和国海域使用管理法》第二十二条：“本法施行前，已经由农村集体经济组织或者村民委员会经营、管理的养殖用海，符合海洋功能区划的，经当地县级以上人民政府核准，可以将海域使用权确定给该农村集体经济组织或者村民委员会，由本集体经济组织的成员承包，用于养殖生产。”

〔15〕 例如（2021）辽72民初71号大连弘达百业集团有限公司与周灵、张丽云、大连有义水产有限公司、第三人段宝卫海域使用权纠纷案。

的租赁合同关系。在超期占用海域时，出租人既可基于租赁合同关系向承租人主张，也可基于侵权向次承租人主张。

## 四、典型案例

### （一）债权人行使撤销权，应证明债务人对自己债权或财产的处分行为与损害债权人实现债权之间具有因果关系

郝某诉茂润公司、第三人姚某债权人撤销权纠纷及债权人代位权纠纷案<sup>〔16〕</sup>中，郝某曾于2019年4月17日提起债权人代位权诉讼，法院判决茂润公司给付郝某加油款4837845.5元及该款项自2014年12月1日至2019年4月17日止的利息，双方上诉后二审维持原判。茂润公司于2020年11月6日向郝某支付了判决款项5919354.54元（包括本金4837845.5元及截止2019年4月17日的利息1081509.04元）。2020年11月，茂润公司向胜春公司（自然人独资有限责任公司）的股东姚某支付了200万元工程款后，茂润公司与胜春公司签订《工程款支付完成确认书》（以下简称确认书），载明茂润公司已经按照与胜春公司商定确认的工程款数额全额支付给胜春公司工程款2026.44万元（其中包括茂润公司代胜春公司支付郝某的油款5919354.54元），至此双方再无债权债务。2020年12月24日，胜春公司办理了注销登记。2021年11月郝某再次提起诉讼，请求撤销确认书并判令茂润公司支付拖欠加油款自2019年4月18日至2020年11月5日的利息363584.96元。法院认为，茂润公司与胜春公司作为施工合同双方有权对工程价款结算与支付进行协商，郝某行使撤销权应当证明胜春公司的处分行为与损害其债权或影响债权实现之间存在因果关系。郝某未证明胜春公司有放弃债权的行为，亦未证明胜春公司与茂

〔16〕（2022）辽72民初477号。

润公司的结算行为对胜春公司及股东财产或履行能力不足的实际影响程度。郝某未证明其已向姚某主张权利，相反，确认书和茂润公司的付款凭证至少证实姚某在2020年11月已经收到了茂润公司支付的200万元，足以涵盖郝某的剩余债权，在没有其他证据补强因果关系的情况下，不能证明成立因果关系。郝某主张的债权人撤销权不成立，亦无权提起代位权诉讼。

## （二）受托人以自己名义与第三人订立的合同直接约束委托人与第三人的适用情形是第三人“明知”代理关系

北良公司诉忠进公司、第三人泉林公司港口货物保管合同纠纷案<sup>〔17〕</sup>中，泉林公司委托忠进公司作为进口代理人办理大连口岸进口集装箱与散杂货的换单、报检、报关、提货、内陆运输至佳木斯等事宜，泉林公司按照约定支付代理费。随后，忠进公司作为委托人就65件货物大连港中转事宜与港口经营人北良公司签订《港口作业委托合同》，约定货物到港运至北良公司堆存。后因一直未缴关税，大连海关将货物拍卖。北良公司起诉要求判令忠进公司支付堆存费。法院认为，《中华人民共和国民法典》第九百二十五条关于受托人以自己名义与第三人订立的合同直接约束委托人与第三人的规定，核心在于第三人在订立合同时知道受托人背后的代理关系，这里的“知道”应仅限于在订立合同时向第三人披露代理关系的“明知”，而不应包括“应当知道”。应当知道，属于推定法律事实，相比“明知”会加重第三人的注意义务。忠进公司主张其企业主营范围为国际货运代理，北良公司在货物集港前必然知道另有进口货物的货主，其应当知道忠进公司与泉林公司之间的委托关系，案涉港口作业委托合同直接约束泉林公司的主张不成立。依照《中华人民共和国民法典》第九百二十六条第一、二款规定，忠进公司接受泉林公司的委

〔17〕 一审（2021）辽72民初853号，二审（2022）辽民终1658号。



托代为办理货运代理事项，其以自己的名义与北良公司签订了港口作业委托合同，北良公司在订立合同时并不知道忠进公司与泉林公司之间的委托关系，虽然忠进公司事后披露了泉林公司，但北良公司仍有权选择向忠进公司主张权利，判决忠进公司向北良公司按合同约定支付堆存费。

### （三）双方未订立亦未实际履行货运代理合同，一方仅支付货运代理费用的，不足以认定存在货运代理法律关系

港林公司诉海骏大连公司、富捷公司、海骏公司、第三人强铭公司海上货运代理合同纠纷案<sup>〔18〕</sup>中，强铭公司与港林公司约定，由港林公司为其申请木材出口许可证，并以港林公司名义进行木材出口贸易，货款由国外买方付至港林公司外汇账户，由港林公司代强铭公司向货运代理企业支付货运代理费用后，余款付给强铭公司。2021年8月，强铭公司与越南客户达成木材交易合同，港林公司代为申请出口许可证。海骏大连公司、富捷公司、海骏公司与强铭公司联系货运代理业务，与港林公司联系支付货运代理费用和开具发票。案涉货物于2021年9月23日自大连港装船，于2021年10月3日抵达越南胡志明市。2021年9月30日，海骏大连公司按强铭公司指示办理提单电放手续。2021年10月19日，港林公司向海骏大连公司支付了货运代理费用。2022年，港林公司以海骏大连公司、富捷公司、海骏公司未经其同意擅自电放货物致使无法收回货款为由，要求三被告承担赔偿责任。法院认为，港林公司应对其与海骏大连公司、富捷公司、海骏公司存在海上货运代理合同关系的主张承担举证责任。港林公司并非提单上记载的托运人，未证明其委托强铭公司与海骏大连公司建立海上货运代理关系，应承担举证不能的法律后果，依法判决驳回了港林公司的诉讼请求。

〔18〕一审（2022）辽72民初563号，二审（2022）辽民终1693号。

#### （四）航次租船合同下提单签发人不能证明提单系接受承运人委托签发，应当承担提单项下交付货物的责任

文津公司诉蓉阳公司、捷联公司海上货物运输合同纠纷案<sup>〔19〕</sup>中，洧致达公司与捷联公司签订航次租船合同后，文津公司向“高顺”（KOUSHUN）轮交付硫酸钾货物并获得盖有船章和蓉阳公司业务专用章的大副收据。“高顺”轮自中国鲅鱼圈港运输至墨西哥曼萨尼约港后，提单记载的托运人洧致达公司收到盖有蓉阳公司方章及“AS AGENT”字样的电放提单，但提单记载的收货人墨西哥肥料公司未收到货物。文津公司于洧致达公司和墨西哥肥料公司签发权益转让书后，在大连海事法院提起诉讼，请求判令捷联公司、蓉阳公司交付货物或连带赔偿货款损失93000美元及利息。法院认为，洧致达公司作为航次租船合同的承租人以及提单记载的托运人、墨西哥肥料公司作为提单记载的收货人均签发权益转让书，将航次租船合同和提单下要求交付货物的权利转让给文津公司，并向蓉阳公司、捷联公司进行了告知，该债权转让合法有效，文津公司具有诉讼主体资格。文津公司明确表示不以航次租船合同为依据主张权利，捷联公司既非签发提单的承运人，也非实际承运人，在提单证明的海上货物运输合同法律关系下，不负有向提单载明的托运人、收货人交付货物的义务。尽管“高顺”轮船长授权蓉阳公司签发提单，但蓉阳公司未在装货港签发正本提单，而是在船舶到达目的港后按艾斯航运有限公司指示签发电放提单，蓉阳公司未证明船舶所有人、签发提单指示人的身份，以及二者之间的关系，未对被代理人进行完整和有效的披露，承运人仍然处于隐藏、未知和难以识别的状态，文津公司有权选择蓉阳公司作为相对人主张权利。蓉阳公司未提供证据证明货物已于目的港交付给收货人，依照《中华人民共和国海商法》第五十条第四款规定，视为货物已经灭失。法院判决蓉阳公司赔偿损失78400美元及利息。

〔19〕（2022）辽72民初146号。



### （五）区段承运人未尽管货义务，多式联运经营人和区段承运人不能以货物本身自然性质导致货物损失免责

宇生园公司诉广盛公司、中谷公司多式联运合同纠纷案<sup>〔20〕</sup>中，宇生园公司购入海蜇后委托广盛公司自广西防城港万尾运输至辽宁营口盖州宇生园公司。广盛公司分别于2021年4月4日、2021年4月7日向中谷公司订舱，双方签订的《沿海内贸货物运输委托书》（以下简称委托书）记载《国内水路货物运输规则》（以下简称水规）并入运单。广盛公司收到货物当天将货物运至防城港码头交与中谷公司备运，设备交接单清洁无批注，中谷公司于2021年4月6日、4月10日实际接收两个20G的集装箱货物并签发运单。案涉货物分别于5月12日、5月15日离开钦州，5月21日、5月26日到达目的港营口，5月23日、5月30日提箱。提箱次日宇生园公司开箱验货发现货损，保险公司检验后认为货物长时间在密闭的空间内腐败变质导致货损，不属于保险责任。法院认为货损发生于中谷公司管货期间，装载货物的集装箱在钦州港码头露天堆放30余日，期间气温最高33℃，最低22℃，中谷公司在知晓货物为海蜇的情况下，未尽妥善管货义务，长时间将货物搁置码头，是导致货物损坏的原因，不能适用货物自然属性事由来免责。判令多式联运经营人广盛公司、海运区段承运人中谷公司连带赔偿宇生园公司货物损失184254.5元。

### （六）售后回租形式的船舶融资租赁，如未能实现融物担保功能，应认定为借款关系

陕西融租公司诉远洋渔业公司、中国融租公司等船舶营运借款合同纠纷案<sup>〔21〕</sup>中，远洋渔业公司先后分别与中国融租公司、陕西融租公司签订船舶融资租赁合同，但仅为中国融租公司办理了船舶抵押权登记，未

〔20〕一审（2022）辽72民初722号，二审（2022）辽民终1603号。

〔21〕一审（2021）辽72民初106号，二审（2021）辽民终2381号。



能为陕西融租公司办理船舶所有权变更登记或他项权登记，陕西融租公司亦未提出异议。因还款纠纷，陕西融租公司向法院提起诉讼，要求远洋渔业公司等按照船舶融资租赁合同承担 4500 万元租金及利息等违约责任。法院认为，售后回租作为特殊形式的融资租赁，既包括出租人（买方）向承租人（卖方）支付转让价款的融资借款功能，又包括承租人向出租人转移租赁物所有权的融物担保功能。船舶作为特殊动产，无法仅以交付作为所有权转移的公示要件，需以出租人登记为船舶所有人或进行他项权登记作为实现船舶售后回租担保功能的必要条件。陕西融租公司与远洋渔业公司签订的船舶融资租赁合同仅完成了资金融资交易，未实现对船舶的融物担保功能，故应认定为借款关系。

#### （七）以整体解释原则界定国际租船合同范本条款含义，适用国际惯例准确计算滞期时间

香港马西马斯公司诉大连薪益公司、海城镁肥公司航次租船合同纠纷案<sup>〔22〕</sup>中，香港马西马斯公司作为船舶出租人向大连薪益公司、海城镁肥公司提供“东洋丸（TOYO MARU）”轮进行中印远洋运输，并先后签订两份航次租船合同，明确约定合同约定不明部分适用《金康航次租船合同范本》1994 年版。合同履行过程中，因目的港天气原因及发生罢工致船舶卸港滞期，香港马西马斯公司向法院提起诉讼，要求大连薪益公司、海城镁肥公司承担滞期费和移泊燃油消耗费用 433188.55 元及利息损失。法院认为，在航次租船合同未就罢工时间扣除明确约定的情况下，大连薪益公司、海城镁肥公司虽援引《金康航次租船合同范本》1994 年版第 16 条（c）款有关承租人对罢工无法或影响货物装卸所引起的后果不负责任的规定，而主张罢工时间应从卸货时间中扣除，但该条中（a）和（b）款对因罢工影响货物的装卸时间的计算、卸货港滞期费支付均作

〔22〕一审（2019）辽72民初160号，二审（2021）辽民终955号。

出了规定，(c)款中的“后果”并不包括装卸时间的延长，故应适用整体解释原则对该条规定进行理解适用；同时，根据“一旦滞期，永远滞期”国际惯例，进入滞期时间后因天气原因造成的滞期损失亦应由船舶承租人承担。故大连薪益公司、海城镁肥公司就天气和罢工原因提起的免责抗辩主张不予支持。

#### （八）有效回应特殊群体司法需求，启动“一站式”多元解纷联动机制实质化解矛盾纠纷

高某锁诉刁某林船舶买卖合同纠纷案<sup>〔23〕</sup>中，刁某林作为卖方与高某锁签订船舶买卖合同，将其渔船出售于高某锁。合同履行后，因无力偿还购船贷款及对约定内容存在不同认知，高某锁起诉要求解除购船合同并由刁某林向其返还购船款。合同双方均为聋哑人，法院受案后立即启动残疾人诉讼服务绿色通道机制，为当事人联系公益律师和手语翻译，充分保障案件双方充分、平等参与诉讼活动。因缺乏事实与法律依据，高某锁的诉讼请求未能获得法院支持，其与刁某林的矛盾纠纷日趋激烈。为了有效化解社会矛盾，切实保障残疾人合法权益，法院启动“一站式”多元解纷联动机制，与大连市司法局人民调解中心、当地政府街道综治办、派出所、村委会和司法所协同配合，最终促成案涉纠纷得到实质化解。

#### （九）农村集体经济组织或村民委员会对海域使用登记制度实施前既已经营管理的海域，享有相应的海域使用权

大某井村委会诉杜某喜海域使用权纠纷案<sup>〔24〕</sup>中，大某井村委会在海域使用权登记制度实施以前，依法将其经营管理的养殖用海承包本村村民杜某喜。海域使用权登记制度实施后，杜某喜申请就承包用海取得《海

〔23〕一审（2021）辽72民初1453号，二审（2022）辽民终75号。

〔24〕一审（2022）辽72民初598号，二审（2022）辽民终1049号。

域使用权证书》。虽然大某井村委会与杜某喜又另行签订合同约定杜某喜使用海域的权利义务，但杜某喜在按约支付部分海域使用费用后，以大某井村委会无权享有海域使用权为由拒绝履行合同。大某井村委会向法院提起诉讼，要求杜某喜按约履行合同义务并腾退海域。法院认为，大某井村委会通过合同授权杜某喜承包使用村委会经营管理用海是杜某喜申请获取《海域使用权证书》的前提，但杜某喜获取《海域使用权证书》不代表大某井村委会的海域使用权归于消灭。根据《中华人民共和国海域使用管理法》第二十二条规定，在该法实施前已由村民委员会经营、管理的养殖海域，海域使用权仍可归村民委员会享有，并承包给集体成员用于养殖生产。法院判令杜某喜应按约支付海域使用费用，并将海域腾退后返还大某井村委会使用。

#### （十）新冠疫情应急防控下发生的集装箱超期使用纠纷既不适用不可抗力免责，亦不能机械适用阶段累进式的惩罚性赔偿

马士基公司诉毅都冷链公司海上货物运输合同纠纷案<sup>〔25〕</sup>中，马士基公司承运一批冷藏集装箱货物自俄罗斯渔港码头至中国大连港，毅都冷链公司为提单项下收货人。货到目的港后不久突发新冠疫情，因冷链货物消杀作业导致集装箱超期使用。马士基公司要求毅都冷链公司先行缴纳集装箱超期使用费，否则不予提货。毅都冷链公司申请法院依法出具海事强制令要求马士基公司先行放货，马士基公司依令执行后，向法院起诉要求毅都冷链公司支付集装箱超期使用费 1819818 元。法院认为，集装箱超期使用费的争议系因新冠疫情常态化防控和应急防控引起，毅都冷链公司应当能够预见新冠疫情常态化防控和应急防控会对货物交付产生影响，故对毅都冷链公司以不可抗力为由主张免责，法院不予支持，超期使用集装箱应承担相应的违约责任；同时，马士基公司采用阶段累

〔25〕一审（2021）辽72民初1591号，二审（2021）辽民终605号。



进式计收集装箱超期使用费的方式，除具有损失补偿性外，累进式更多地体现惩罚性，鉴于疫情应急防控具有公共卫生属性，因疫情防控致高额惩罚性赔偿，显失公平，故法院将集装箱超期使用费中的惩罚性赔偿计算标准调整为补偿性费率计算标准。

### 结束语

党的二十大提出以中国式现代化全面推进中华民族伟大复兴，提出了在法治轨道上全面建设社会主义现代化国家的重大时代命题。2023年是全面贯彻落实党的二十大精神的开局之年，也是辽宁省委确定的实施全面振兴新突破三年行动的首战之年。我们将坚持以习近平新时代中国特色社会主义思想为指导，深刻领会中国式现代化的中国特色和本质要求，正确把握海事法院在中国式现代化建设中的职责定位，紧紧围绕中国式现代化谋划推进法院工作现代化，进一步鼓励对海事司法理论实践的前瞻性研究探索，进一步释放高端涉外法治人才在高质量发展中的核心驱动效应，进一步提高对海洋强国、“一带一路”建设等重大战略的支撑能力，奋力推进新时代新征程大连海事法院工作理念、工作体系、工作能力现代化，不断提升大连海事法院国际影响力和司法公信力，以更大的担当和作为，为新时代东北全面振兴作出新的更大贡献！

## Preface

2022 was an extremely important year in the history of the Party and the country, a memorable year in the development of Dalian Maritime Court. The keywords that define the year 2022 include “epidemic fight”, “development”, “the 20th National Congress of the Communist Party of China”, “Together for a Shared Future” and “the Chinese path to modernization”.

Facing the needs of development, epidemic prevention, and improving excellence, Dalian Maritime Court has adhered to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, has fully implemented the spirit of the 20th National Congress of the Communist Party of China, has deeply implemented Xi Jinping Thought on the Rule of Law, and has resolutely fulfilled its mission and responsibilities to serve and guarantee the strategy of building China into a maritime power and the Belt and Road Initiative. In terms of taking a coordinated approach to the rule of law in domestic matters and in matters involving foreign parties, ensuring the successful convening of the 20th National Congress of the Communist Party of China, implementing the strategy of excellence in maritime trials, preventing and mitigating significant risks, and strengthening the construction of a legal and business-friendly environment, the Court has undertaken reforms and innovations, overcame difficulties, and made new progress in various areas of work. Several achievements became nationwide highlights, effectively fulfilling its duty and mission to safeguard national political security, to ensure overall social stability, to promote social fairness and justice, and to ensure that the people live and work in contentment, thereby better serving the new breakthroughs in the comprehensive revitalization of Northeast China. Hu Yuting, then Deputy Secretary of the Liaoning Provincial Committee and Secretary of the Dalian Municipal Committee, and Yu Tianmin, member of the Liaoning

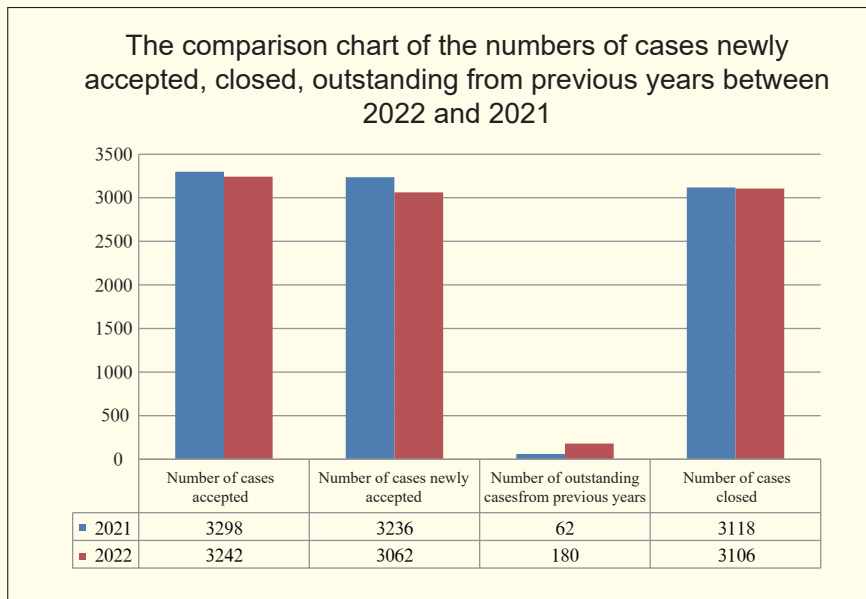


Provincial Committee and Secretary of the Political and Legal Affairs Committee, visited our court in succession, fully acknowledging the achievements made by the Court.

## I. Basic information

### 1. Overview

**1.1 The numbers of accepted and closed cases.** In 2022, the Court accepted 3242 cases of various types (excluding cases of enforcement of preservation and enforcement of recovery), a decrease of 1.7% over last year. Among these cases, 3062 cases were newly accepted, a decrease of 5.38% over last year; 180 cases were pending from previous years, an increase of 190.32% over last year; 3106 cases were closed, a decrease of 0.38% over last year; the clearance rate reached 95.81%, an increase of 1.26% on last year; (including cases received in December), the clearance rate reached 100% (excluding cases received in December), ranking first among all the intermediate courts in the province (with equal standing with another 6 intermediate courts), according to the ranking criteria of Judicial Efficiency in Trial and Execution in Liaoning Courts. According to the statistics of People's Court Big Data Management and Service Platform, the clearance rate reached 95.81% (including cases of enforcement of preservation and enforcement of recovery), ranking first among 11 maritime courts in China.



**1.2 Quality and effectiveness targets.** The ratio of cases reversed or set aside for retrial from the second trial was 2.98%, an increase of 1.56% over last year; the reconciliation ratio was 22.84%, an increase of 2.71 % over last year; the litigation withdrawal ratio was 28.56%, a decrease of 1.51% over last year; the ratio of satisfactory settlement without appeal was 86.84%, an increase of 4.05% over last year; 710 cases were closed through means of expedited trial, and the average trial time of expedited cases was 27.99 days.

## 2. Classifications of cases

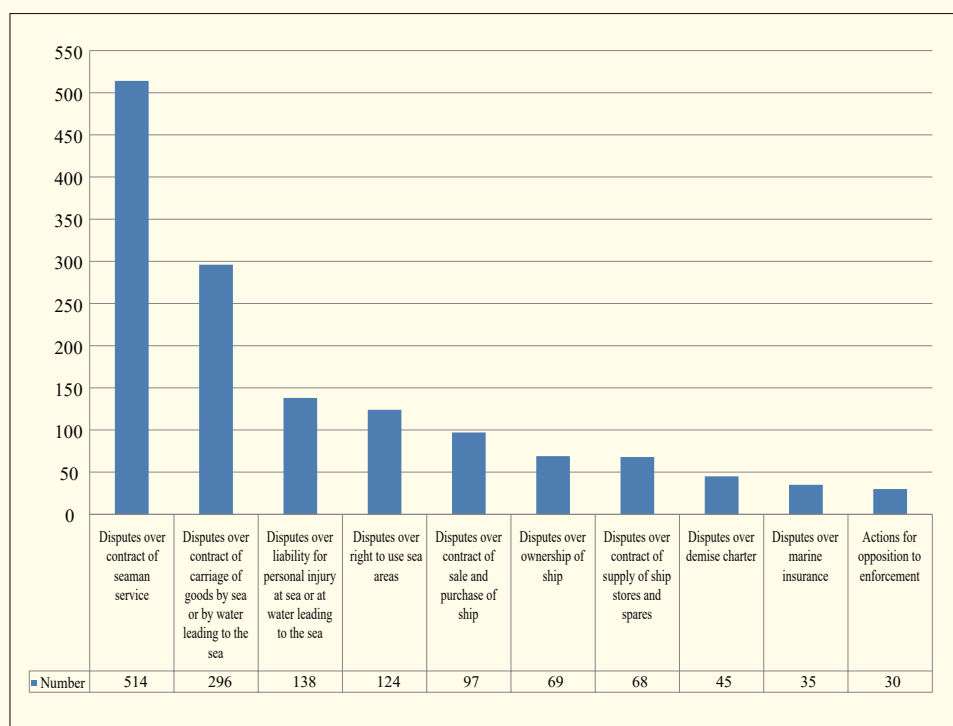
**2.1 Civil cases data <sup>(1)</sup>** : 2,008 cases were accepted, a decrease of 3.37% over last year. Among these cases, 1,890 cases were newly accepted, a decrease of 7.44% over last year; 1,921 cases were closed, a decrease of 1.99% over last year; the

(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.

clearance rate reached 95.67%, an increase of 1.43% over last year; the subject-matter value amount of these cases was RMB 2.82873 billion, a decrease of RMB 1.16127 billion over last year.

Among these civil cases, the Court accepted 1,843 admiralty and maritime cases, an increase of 9.31% over last year. Among the cases, 1,729 cases were newly accepted, an increase of 4.60% over last year; 1,759 cases were closed, an increase of 11.90% over last year. Of the new cases accepted, the number of admiralty and maritime cases falling with the top 10 types as listed below reached 1,729. Among the cases, disputes over seaman employment contracts were 514, accounting for 29.73% of newly accepted admiralty and maritime cases and a decrease of 2.10% over last year; disputes over contracts of carriage of goods by sea or by water heading to the sea were 296, accounting for 17.12% and an increase of 161.95% over last year; disputes over liability for personal injuries at sea or at water leading to the sea were 138, accounting for 7.98% and an increase of 11.29% over last year; disputes over right to use sea areas were 124, accounting for 7.17% and an increase of 0.81% over last year; disputes over contracts of sale and purchase of ships were 97, accounting for 5.61% and a decrease of 34.01% over last year; disputes over ship ownership were 69, accounting for 3.99% and a decrease of 45.67% over last year; disputes over contracts of supply of ship stores and spares were 68, accounting for 3.93% and an increase of 23.64% over last year; disputes over demise charter were 45, accounting for 2.6% and same as last year; disputes over marine insurance were 35, accounting for 2.02% and a decrease of 7.89% over last year; actions for opposition to enforcement were 30, accounting for 1.74% and an increase of 36.36% over last year. The types of the above cases were as follows:

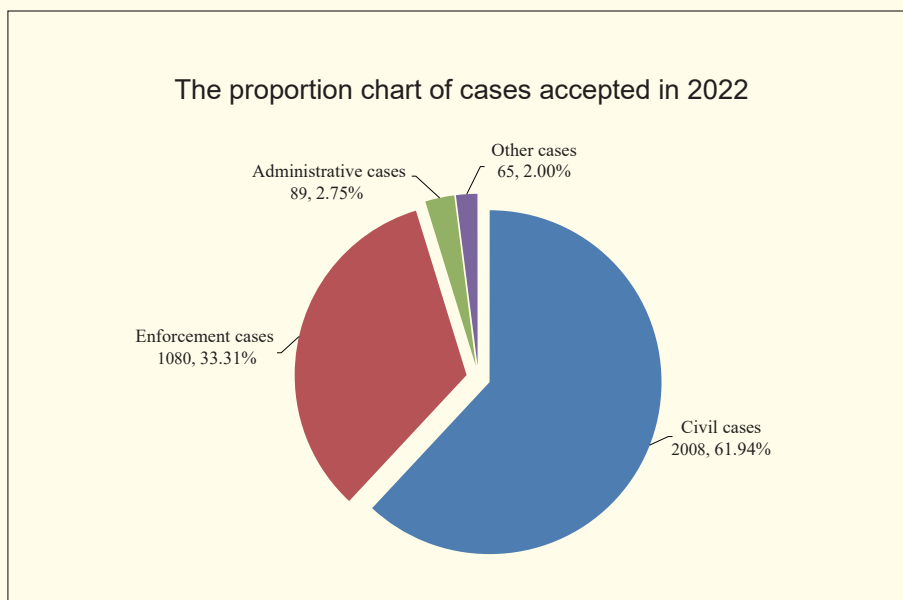




**2.2 Administrative cases data:** The Court accepted 89 maritime administrative cases, a decrease of 2.20% over last year. Among the cases, 79 cases were newly accepted, a decrease of 10.23% over last year; 83 cases were closed, an increase of 2.47% over last year; the subject-matter value amount of the cases was RMB 186.23 million, a decrease of RMB 30.77 million over last year.

**2.3 Enforcement cases data:** 1080 cases were accepted, an increase of 1.5% over last year. Among the cases, 1028 cases were newly accepted, a decrease of 1.34% over last year; 1037 cases were closed, an increase of 2.47% over last year; the clearance rate within statutory time limit of first-time enforcement cases was 98.27%, and the completion rate of first-time enforcement cases was 32.64%; 449 cases were accepted about the enforcement cases involving people's livelihood, and 438 cases were closed, reaching RMB 16.613275 million. There were no overdue enforcement case funds nor unclear enforcement case funds without statutory

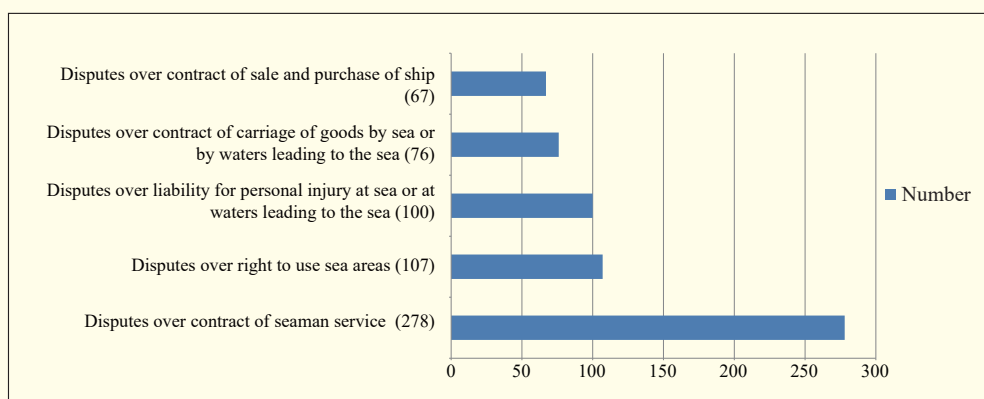
reasons or reasonable reasons. Among the four core targets of enforcement work, the clearance rate of cases in which property was available for enforcement within statutory time limit was 100%, the pass rate of the termination of the enforcement procedure was 100%, the completion rate of public complaints and proposals for enforcement was 100%, the overall clearance rate of enforcement case was 96.02%, and the quality of enforcement ranked first among the three specialized courts in Liaoning Province.



**2.4 Dispatched tribunal cases data:** Five dispatched tribunals accepted 1,168 cases of various types, a decrease of 2.5% over last year. Among the cases, 1114 cases were newly accepted, a decrease of 5.59% over last year; 54 cases were pending from previous years, an increase of 200% over last year; 1133 cases were closed, a decrease of 0.96% over last year; the clearance rate reached 97%, an increase of 1.51% over last year. The ratio of cases reversed or set aside for retrial from the second trial was 3.76%, 0.78% higher than that data across the Court; the reconciliation ratio was 23.50%, 0.96% higher than that across the Court; the

litigation withdrawal ratio was 27.46%, 1.1% higher than that across the Court.

Five dispatched tribunals accepted 987 admiralty and maritime cases, accounting for 53.55% of the total number of admiralty and maritime cases of the Court. Among the cases, 933 cases were newly accepted, accounting for 53.96% of the total admiralty and maritime cases of the Court; 954 cases were closed, accounting for 54.24% of the total admiralty and maritime cases of the Court; the subject-matter value amount of these cases was RMB 10.073 billion. The number of the admiralty and maritime cases falling within the top 5 types listed below reached 628. The types of the above cases were as follows:



**2.5 Ship arrest and auction data:** 30 ships were arrested, 2 of which were foreign, Hong Kong, Macao and Taiwan-related. 1 foreign ship was auctioned, 51 ships flying Chinese flag were auctioned.

**2.6 Foreign, Hong Kong, Macao and Taiwan-related cases:** The Court accepted 222 cases relating foreign affairs and 36 cases involving Hong Kong, Macao and Taiwan affairs, accounting for 12.85% of the civil cases, an increase of 85.61% over last year; 220 cases were foreign, Hong Kong, Macao and Taiwan-related cases and 38 cases were closed. The cases involved nearly 28 countries and regions, including the United Kingdom, France, Senegal, Norway, Malaysia, Singapore, South Korea, Mexico, Liberia, Egypt, Denmark, Germany, Guinea, the

United States, Indonesia, South Africa, the Marshall Islands, Switzerland, Russia, Oman, Australia, Seychelles, Argentina, Japan, Sierra Leone, New Zealand, the Netherlands, Surinam.

### **3. Judicial transparency**

1,033 trials were streamed live on China Open Trials Online, with a total of 184,359 views. the live trial rate was 53.02%, ranking fourth among the intermediate courts in Liaoning Province. 1,247 judgment documents were released on China Judgments Online, ranking fourteenth 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 first among the intermediate courts in Liaoning Province.

## **II. Work highlights**

### **1. Adhering to strict and fair administration of justice, and achieving new improvements in the quality and efficiency of trials**

Keeping in mind the goal of “striving to let the people feel fairness and justice in every judicial case”, the Court adheres to approaches of problem orientation, goal orientation, and effect orientation, strengthen-refining, closed-loop trial management, and carries out preemptive reminders, data notifications, and supervision and dispatch for 292 times throughout the year. We organized the selection of excellent judgment documents and excellent court trials, the symposium on the writing of judgment documents, and the seminars for judges’ exchanging their experience. The main performance indicators such as trial quality, efficiency, and effect were kept at a high level. The Court strengthened the implementation of the high-quality maritime trial strategy, properly handled a number of major, difficult and complicated cases involving tuna fishing companies,

and refined and formed the trial opinions of similar cases regarding carrier identification, the scope of the carrier's duty of cargo management, determination of liability for delivery without a bill of lading, and environmental public interest litigations. 3 cases were selected into the third batch of typical cases relating to the construction of the "One Belt and One Road" Initiative and typical cases of maritime trials by the Supreme People's Court, and 2 cases were selected into the typical cases and outstanding practice achievements of the Higher People's Court of Liaoning Province. The micro-movie "Bright Sword and the Sea", which was made based on the 15,000-ton fuel oil case of Jinzhou Port, was selected as the best work of the Third Short Video (micro-movie) Event in Liaoning Province.

## **2. Adhering to the opening up of services, and achieving new improvements in judicial credibility**

Giving full play to its professional advantages, the Court issued the "Implementation Opinions on Strengthening Maritime Judicial Services for Ensuring Liaoning to Further Opening Up", using 18 measures to improve foreign-related judicial efficiency and to optimize the international business environment. Our judicial conception and views, and many research results were widely received, and 8 cases were selected as excellent judgment documents for foreign-related commercial and maritime trials by the Higher People's Court of Liaoning Province. The Court published bilingual maritime trial reports in Chinese and English for 4 consecutive years, released a special trial white paper on the "Report on Maritime Trials Relating to Epidemic", regularly recorded and released information and videos on the bilingual portal website in Chinese and English, and published 38 manuscripts in media at or above the provincial levels. The WeChat official account was updated daily, and the number of readings and likes ranked top among the maritime courts in China. Our Wechat updates were easier for foreign audiences to have an in-depth understanding of the judicial trends, policy documents, and the construction of the rule of law.

### **3. Adhering to serve the central tasks and overall interests, achieving new improvements in service efficiency**

Closely following the high-quality development goals, including the overall revitalization of the Northeast, the construction of “two pioneering areas” and “three centers” in Dalian, and the creation of a new highland for high-level opening up to the outside world, the Court identified and made good use of the “three pivots” of maritime trial services. Focusing on location advantages, the Court deepened theoretical research on maritime trials, organized the “Bohai Forum on the Rule of Law”, carried out 6 special surveys on comparative studies on the legal systems in China, Japan and South Korea, on construction of land and sea passages, and on rule of law in shipping, and completed 16 research articles. The outcomes of research were included in “The Three-Year Action Plan for Building a Strong Ocean City” and “Liaoning Port Management Regulations”. Focusing on the cutting-edge issues of the development of the free trade zone, the Court innovatively set up the Dalian District Maritime Court in the China (Liaoning) Pilot Free Trade Zone, supporting institutional innovation, industrial innovation, and technological innovation within the legal framework, and providing more tailored and embedded judicial services for the development of the high-end shipping industry. Focusing on protecting the blue sky, clear water, and pure land, the Court held the 2022 Bohai Sea Ecological and Environmental Protection Judicial Cooperation Joint Meeting, and cooperated with the Zhuanghe Municipal Government to promote the rectification of the sea cultivation activities. The Court properly heard several disputes arising from engaging in traditional fish farming operations in National Spotted Seal Nature Reserve, promoting the realization of “clean seas and clean shores” in marine ecology.

#### **4. Adhering to the tenet of justice for the people, and achieving a new level of degree of public satisfaction**

Based on the achievements of building a “Smart Court”, for the purpose of enhancing the convenience to and benefitting the people, the Court provided strong data support for cross-regional litigation services, remote court hearings, electronic service, collaboration in enforcement, and for construction of the social credit system. A Hong Kong shipping company applied to our Court for pre-litigation property preservation, but were not able to complete the notary certification procedures due to the epidemic. In this case, the Court verified the identity of the company’s legal representative through the Internet and witnessed authorizing power of attorney on site. The pre-litigation preservation was completed within an hour. Due to the deepening reform on the litigation system, the efficiency was greatly enhanced. We had been working actively to promote reform initiatives such as small claims process, diverging complex and simple cases, the application of ordinary procedures sitting by a sole judge, and etc. We have improved the new model of allocating trials, i.e., “a few judges to solve many straightforward cases, many judges to solve a smaller number of complex cases”. 926 cases went through a speedy trial throughout the year, while the trial timescale of simple cases is steadily within 28 days. Relying on the series activities of “I serve the people for practical issues”, the Court organized special legal service activities for enterprises with visits to Port of Dalian, Jinzhou, Yingkou, Dalian Shipbuilding Industry Co., Ltd and etc. At the same time, the Court opened a WeChat consultation channel for private enterprises and selected outstanding judges to popularize legal knowledge. The Court was acknowledged by The Supreme People’s Court as “the model court of doing practical work for the people”, being the only honor holder among 11 maritime courts in China.



### **5. Adhering to full and strict governance over the Court, and achieving new enhancements in professionalism of the team**

Firmly putting the Party's political construction in the first place, to promote the quality of trial with the Party construction and team building, the Court achieved an in-depth integration of the Party construction and its own work by writing series of columns such as "learning and practicing" and "the spirit of the 20th CPC National Congress", as well as organizing online recitation events. The Party branch construction case of "Regretless Love on Law Enforcement" was awarded the Excellent Case of the Party branch construction by the provincial departments. Implementing the mechanism of talent training, platform building, and mechanism improvement, the Court made good use of the research team, the English translation team, the professional judges' convening team, the drafting team of the white paper on the trials. The Court upgraded the court history museum, the Party building center and the reading room, established a mechanism of learning for young officers, as well as held a total of 17 sessions of "maritime law forum" and cooperated with Dalian Maritime University to run programs of maritime law intensive trainings. The Court strived to promote a good maritime judicial practice culture that is respecting the law and virtue, strengthening the maritime power, and pursuing excellence. A number of leading judges, professional elites, and multi-skilled talents came to the fore. In this result, 2 groups and 17 individuals were commended successively by the provincial level and above. The Political Department won the title of "the advanced group of nationwide courts". One officer was awarded the title of "national excellent judge". In the appraisal activity organized by the Higher People's Court of Liaoning Province, 3 officers were evaluated as trial experts, 5 as theoretical research talents, 2 as case-handling experts, and 1 officer was evaluated as excellent pacesetter.



### III. Issues and suggestions

In order to strengthen the judicial protection of maritime affairs and foreign affairs, to comprehensively support the development and opening up of the Liaoning Coastal Economic Belt, and to serve to ensure the overall situation of the country, the Court carefully summarized the judicial practice and put forward the following suggestions in terms of operation and management, rights protection, loss mitigation and other aspects for maritime stakeholders.

#### **1. Suggestions regarding the parties of public interest litigation on marine natural resources and ecological environmental damages**

The fishing moratorium is an important system to protect marine aquatic resources and to ensure the sustainable development of marine economy. In order to achieve the goal of ocean governance and deeply cultivating the blue land, it is necessary to adhere to green sustainable development. The Court actively performs judicial functions to protect marine natural resources and ecological environment. In practice, there are still situations where some shipowners undertake illegal fishing during the fishing moratorium for private interests. The shipowner not only bears liabilities in criminal and administrative law, but also bears civil liabilities such as compensation for the loss of marine natural resources, repair fees, evaluation fees, and etc.<sup>(2)</sup> For the parties of public interest litigation, in accordance with Paragraph 2 of Article 58 of the Civil Procedure Law of the People's Republic

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(2) For example, the Civil Public Interest Lawsuit Case of Damage to Marine Natural Resources and Ecological Environment between Dalian Maritime Police Bureau and Liu Hongwei, (2022) L72MC NO.704.

of China <sup>(3)</sup> and Article 3 of The Provisions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Handling of Public Interest Lawsuits Involving Marine Natural Resources, Ecology and Environment, <sup>(4)</sup> where the People's Procuratorate urges the interested institution who have the right to file civil public interest lawsuit, but such party fails to perform their duties (and to initiate the ecological and environmental damage compensation procedure) through direct letters and announcements, the People's Procuratorate can file a civil public interest lawsuit and require the defendant to bear the responsibility for ecological restoration or bear the relevant expenses incurred by the administrative agency on their behalf for implementation, the investigation, appraisal and evaluation expenses to evaluate the ecological environment damage. <sup>(5)</sup>

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- (3) Paragraph 2 of Article 58 of the Civil Procedure Law of the People's Republic of China: "Where the people's procuratorate finds in the performance of functions any conduct that undermines the protection of the ecological environment and resources, infringes upon consumers' lawful rights and interests in the field of food and drug safety or any other conduct that damages social interest, it may file a lawsuit with the people's court if there is no authority or organization prescribed in the preceding paragraph or the authority or organization prescribed in the preceding paragraph does not file a lawsuit. If the authority or organization prescribed in the preceding paragraph files a lawsuit, the people's procuratorate may support the filing of a lawsuit."
- (4) Article 3 of the Provisions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Handling of Public Interest Lawsuits Involving Marine Natural Resources, Ecology and Environment: "the people's procuratorate that finds in the performance of duties any act which damages marine ecology, marine aquatic resources, or a marine protected area may notify the department exercising marine environment supervision and administration that it shall file a lawsuit in accordance with Article 2 of these Provisions. If the relevant department fails to file a lawsuit and the people's procuratorate files a civil public interest lawsuit with the maritime court having jurisdiction for the damage caused to marine natural resources, ecology and environment, the maritime court shall accept the lawsuit."
- (5) For example, the Civil Public Interest Lawsuit Case of Damage to Marine Natural Resources and Ecological Environment between the People's Procuratorate of Dandong, Liaoning Province and Zheng Hongze, (2022) L72MC NO.1344.

Suggestion: During the fishing moratorium, fishery practitioners shall strictly comply with legal provisions and policy requirements, and shall not engage in illegal fishing. Otherwise they will bear criminal liability, administrative liability and civil liability for compensation. The fishery administrative authorities should engage in publicity, education, and management. For acts that damage the public interest, such as damage ecological environment, resource protection, the relevant institution prescribed by law may file public interest lawsuit with the People's Courts. Where there is no such institution specified by law, or the parties specified in the preceding paragraph does not file a lawsuit, the People's Procuratorate may file a public interest lawsuit with the People's Court. When the People's Procuratorate discovers acts of damaging marine ecology, marine aquatic resources, and marine protected areas during the performance of its duties, it may notify the department exercising the right to supervise and manage the marine environment to file a lawsuit. If the relevant departments still do not file a lawsuit, the People's Procuratorate may file a civil public interest lawsuit with a competent maritime court.

## **2. Suggestions regarding shipowners, operators or bareboat charterers**

It is one of the important judicial functions of maritime courts to maintain the safety of maritime transportation and navigation, and to protect the injured personal and property losses in accordance with the law. In marine traffic accidents, ship collision is the most common form of accidents, and if the actual shipowner is not the registered owner, the actual shipowner has the right to claim compensation for the damage caused by the collision from the counter ship. In accordance with Article 1 of the Provisions of the Supreme People's Court on Several Issues concerning the Trial of the Relevant Cases Occurring in Sea Areas under the

Jurisdiction of China (II),<sup>(6)</sup> where the actual shipowner has not obtained a fishing license, they have no right to claim compensation from the tortfeasor for the loss of operating income and operating expenses.<sup>(7)</sup> In addition, shipowners shall make their ships seaworthy, equipping with valid ship certificates and manning with qualified crew. If an unlicensed ship collides with another ship during navigation or operation, the owner of the unlicensed ship shall bear the corresponding fault liability for the damage caused by the collision, and the property loss suffered by the unlicensed ship itself shall not be compensated.<sup>(8)</sup>

Suggestion: Owners or operators of fishing vessels engaged in fishing activities shall apply for fishing licenses in accordance with the law, and fishing licenses may not be altered, forged, sold, leased, lend or transferred by other illegal means. If the owner changes due to the purchase of a fishing vessel, a new application for a fishing license shall be made, and procedures for canceling the original fishing license shall also be completed. The shipowner shall make the ship seaworthy during the sea voyage, and take reasonable measures to avoid collision and to mitigate damage or sinking of the ship in collision. The shipowner or operator should exercise diligence in ship management and use good seamanship, they will bear the corresponding liability for compensation according to the apportionment

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(6) Article 1 of Provisions of the Supreme People's Court on Several Issues concerning the Trial of the Relevant Cases Occurring in Sea Areas under the Jurisdiction of China (II) state: Where a party who suffers damage due to such accidents as vessel collision and marine pollution files a claim for compensation for losses to the fishery vessel, fishing tackle, and aquatic products as well as income loss against the infringing party, the people's court shall support such claim. Where a party who, in violation of Article 23 of the Fisheries Law, engages in offshore fishing operations without obtaining a fishing license files a claim for income loss in accordance with the provision of the preceding paragraph, the people's court shall not support such claim.

(7) For example, the dispute over liability for maritime property damage between Liu Shumei and Han Tieren, and the cases number was (2021) L72MC No.119.

(8) For example, the dispute over liability for ship collision damage between the plaintiffs, Xiong Huojun, Guo Quanjin and defendant, Jin Fuxiang, (2021) L72MC No.1034.

of fault.

### 3. Suggestions regarding the parties under a contract of dock construction

Docks are important pivots for ship operation, warehousing and logistics, and important contents of business environment construction in Liaoning. They play a prominent role in helping Liaoning to become a “blue engine” for promoting the revitalization of Northeast Area Revitalization Plan. Due to the long construction period, huge investment, numerous concealed projects, and high qualification requirements, disputes over docks construction project payment and project quality have arisen. Protecting the legitimate rights and interests of construction parties and actual contractors is a specific function of the maritime court for optimizing the business environment. According to the provisions of Article 3,<sup>(9)</sup> and Article 16,<sup>(10)</sup> Paragraph 3 of the “Interpretation of the Supreme People’s Court on the Application of Law in the Trial of Construction Contract Disputes (Fa Shi [2004] No. 14, hereinafter referred to as the Construction Engineering Contract Interpretation of 2004)”, where the construction quality still fails to pass qualification or the quality defects are irreparable after rectification, the project

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(9) Article 3 of the “Interpretation of the Supreme People’s Court on the Application of Legal Issues in the Trial of Construction Contract Disputes”: “Where the construction contract of is invalid and the construction project fails to pass the completion inspection and acceptance, it shall be dealt with according to the following circumstances: (1) where the repaired construction project passes the completion inspection and acceptance, and the employer requests the contractor to bear the repair costs, it shall be supported; (2) where the repaired construction project fails the completion inspection acceptance and the contractor requests payment of the project price, it will not be supported. Where the employer is at fault for losses caused by unqualified construction projects, they shall also bear corresponding civil liability.”

(10) Article 16, Paragraph 3 of the “Interpretation of the Supreme People’s Court on the Application of Law in the Trial of Construction Contract Disputes”: “Where the construction contract is valid, but the construction project fails to pass the completion inspection and acceptance, the settlement of the project price shall be handled in accordance with the provisions of Article 3 of this Interpretation.”

payment shall not be made. After the dock construction project has been repaired and put into use, the employer shall not refuse to make the project payment on the grounds that the dock does not fit for use, provided that it has not been checked for acceptance or whether it is qualified according to the original design standard.<sup>(11)</sup>

The “payment after the owner’s payment” clause in the subcontracting of the project falls in the circumstance of the performance period being unclear as specified in Item 4 of Article 511 of the Civil Code of the P.R.C.,<sup>(12)</sup> rather than a payment term. When the project has been delivered and settled, and the payment

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(11) For example (2021) Liao 72 Min Chu 366 the dispute over the dock construction contract between No.3 Engineering Company Ltd. Of CCCC and Dalian Fujia Dahua Petrochemical Co., Ltd. and Dalian Fujia Dahua Petrochemical Terminal Co.

(12) Article 511 of the Civil Code of the P.R.C: "Where an agreement between the parties concerning the contents of their contract is unclear and such contents cannot be determined according to the provisions of the preceding Article, the following provisions shall be applied: (1) where the quality requirements are not clearly stipulated, the contract shall be performed in accordance with a mandatory national standard, or a recommendatory national standard in the absence of a mandatory national standard, or the standard of the industry in the absence of a recommendatory national standard. In the absence of any national or industrial standard, the contract shall be performed in accordance with the general standard or a specific standard conforming to the purpose of the contract. (2) where the price or remuneration is not clearly stipulated, the contract shall be performed in accordance with the market price in the place of performance at the time the contract is concluded. Where a government-set or government-guided price shall be applied as required by law, the contract shall be performed at such a price. (3) where the place of performance is not clearly stipulated, the contract shall be performed at the place of the party receiving money where payment of money is involved, or, where real estate is to be delivered, at the place where the real estate is located. For other subject matters, the contract shall be performed at the place where the party performing the obligation is located. (4) where the period of performance is not clearly stipulated, the debtor may perform the obligation at any time, and the creditor may request the debtor to perform at any time, provided that he shall give the debtor a period of time necessary for preparation. (5) where the manner of performance is not clearly stipulated, the contract shall be performed in a manner conducive to realizing the purpose of the contract. (6) where the allocation of expenses for performance is not clearly stipulated, the expenses shall be borne by the party performing the obligation; where the expenses for performance are increased due to the creditor's reason, the creditor shall bear the increased part of the expenses.

conditions stipulated in the law and the contract have been met, the contractor cannot refuse to pay all or part of the project payment to the subcontractor on the grounds that the owner has gone bankrupt or has not yet paid.<sup>(13)</sup>

Suggestion: The contractors should carry out the construction strictly in accordance with the design requirements and the contract, ensuring that the quality meets the standards stipulated in the contract, and assuming the warranty responsibility. When signing a subcontracting agreement, the subcontractors should pay special attention to the provisions of preconditions for payment and payment terms, so as to avoid situations that are obviously unfair or unclear. Adhere to the rigid requirement that the qualifications of the constructors match the project, standardize the construction market access system, and prevent unqualified or unqualified construction. When contracting a project, the contractor should also fully and objectively understand the real situation of the project target, and fully consider whether the project matches its qualification conditions and grades. During the construction process, all parties should strictly comply with legal provisions, contractual agreements, and industry rules, and exercise diligence in signing and retaining daily documents and other relevant evidence to prove the actual quantity and quality, so as to avoid disputes or to ensure a better resolution of disputes. The employer shall check and accept the project in a timely manner, and if the quality standard is not met, the contractor shall be required to rectify and repair immediately. If the repair still does not meet the quality standards, the claim of project payment will be rejected. For those who meet the payment conditions, the employer shall not refuse payment without justifiable reasons.

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(13) For example the dispute over the construction contract between Dalian Jialin Construction and No.3 Engineering Company Ltd. Of CCC, (2022) Liao 72 Minchu No. 265



#### 4. Suggestions regarding the parties under a contract of the sea area use right

Improving the comprehensive development and utilization capacity of marine resources and promoting the transformation of the marine economy into a quality-effectiveness type are important aspects of advancing the strategic construction of marine power. The methods of exercising the right to use the sea area include transfer, lease, mortgage, value as capital, and contracting. In the identification of legal relationships, a contract or the change in the registration of the right to use the sea area cannot be used as the absolute basis for determining the transfer of the right to use the sea area. Such fact should be combined with the specific content of the contract to determine whether it is a transfer, lease, contract or other legal relationship. Sea area contracting shall refer to the situation where rural collective economic organizations contract the right to use sea areas to their economic organization members.<sup>(14)</sup> The transfer of the right to use sea areas usually means that the transferor completely transfers the right to use sea areas to the transferee, thereby giving the transferee the right to occupy, use, make proceeds from, and dispose of the sea area. When the lessee or sub-lessee fails to fulfill the obligation to return the sea area, the lessor may require the lessee or sub-lessee to assume unreal joint responsibility for returning the sea area and paying the overdue use fee based on both the lease contract and the right of real claim. After fulfilling the payment obligation to the lessor, the lessee may recover from the sub-lessee in

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(14) Article 22 of the "Sea Areas Administration Law of the People's Republic of China": "If any sea area has already used for aquatic breeding under the management and administration of rural collective economic organizations or villagers' committee prior to the implementation of this Law, and if it is in conformity with the functional divisions of the sea and approval of the local people's government on the county level has been obtained, the right to use sea areas may remain with the rural collective economic organization or villagers' committee so that the sea areas may be contracted by the members of the collective economic organizations for aquatic breeding."

accordance with the law.<sup>(15)</sup>

Suggestion: Marine administrative authorities should strengthen the regulatory supervision and approval of the transfer of sea area use rights and the retention of archives. When the holder of the right to use sea area transfers or leases or contracts the right to use sea area, the nature of the contract, the rights and obligations of both parties, and the liability for breach of contract shall be clearly stipulated in the contract. In the case of contracting, it should be between rural collective economic organizations and their members. If it is for transfer, the legal consequence is that the transferor is completely divested of the control of the sea area use rights. If it is for leasing, there is no need to change the registered owner of the sea area use right. Even if both parties agree to change the registration, it does not affect the lease contract relationship between the two parties. When occupying the sea area beyond the time limit, the lessor may either claim against the lessee based on the lease contract relationship or claim against the sub-lessee based on tort.

## IV. Typical cases

### **1. A creditor claiming the right of revocation should prove a causal link between the debtor's disposition of the creditor's interest or property and the impairment of the creditor's ability to realize its claim**

In the case of dispute over creditor's claim of revocation and subrogation between Xi as the plaintiff and Maorun Company as the defendant, Yao as the third party,

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(15) For example, the dispute over the right to use the sea area between Dalian Hongda Baiye Group Co., Ltd., Zhou Ling, Zhang Liyun, Dalian Youyi Aquatic Products Co., Ltd., and the third party Duan Baowei, (2021) Liao 72 Minchu No. 71.

<sup>(16)</sup> Hao filed a creditor subrogation lawsuit on 17 April 2019, the Court held that Maorun Company should pay Hao payment for fuelling of 4837845.5 yuan and interest accruing from 1 December 2014 to 17 April 2019, and the appellate decision upheld the original judgment. Maorun paid Hao the judgment sum of 5919354.54 yuan (including the principal amount of 4837845.5 yuan and the interest of 1081509.04 yuan as of 17 April 2019) on 6 November 2020. In November 2020, after Maorun paid 2 million RMB to Yao, a shareholder of Shengchun (a natural person sole investment limited liability company), Maorun signed the Confirmation Letter of Completion of Payment of Project Payment (hereinafter referred to as the Confirmation Letter) with Shengchun, stating that Maorun had already paid Shengchun 20,264,400 yuan in full in accordance with the amount of the project payment that had been agreed upon and confirmed by Shengchun (including 5,919,354.54 yuan for fuel payment on behalf of Hao), so that the two parties had no further debts and liabilities. In November 2021, Hao filed another lawsuit, requesting to revoke the Confirmation Letter and claiming Maorun to pay 363584.96 yuan of interest on the outstanding fuel payment from 18 April 2019 to 5 November 2020 (hereinafter referred to as the Confirmation Letter). The Court held that Maorun and Shengchun, as both parties to the construction contract, had the right to negotiate the issues regarding the settlement and payment of the project price, and to exercise the right of revocation, Hao should prove that there was a causal relationship between Shengchun's disposal and the detrimental effect on its claim. Hao did not prove that Shengchun Company had waived its claims, nor did he prove that the settlement between Shengchun Company and Maorun Company had actually affected Shengchun Company and its shareholders' property or their ability to fulfil their claims. Hao failed to prove that he had asserted his rights against Yao; on the contrary, the Confirmation Letter and the proof of

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<sup>(16)</sup> The case number was (2022) L72MC No.477.

payment from Maorun at least confirmed that Yao had received the payment of 2 million yuan from Maorun in November 2020, which was sufficient to cover Hao's claim balance, and in the absence of any other evidence to presumption of causation, it could not be proved that causation had been established. Hao's claim for the creditor's right of rescission was not established, and he was not entitled to bring a subrogation action.

## **2. Where the application of a contract signed by the agent in its own name with a third party, the contract directly binds the principal and the third party if the third party explicitly “knows” the agency relationship**

In the case of dispute over port cargo storage contract between Beiliang Co. as the plaintiff, and Zhongjin Co., Ltd. as the defendant and Quanlin Co., Ltd. as the third party, <sup>(17)</sup> Quanlin Company authorized Zhongjin Company as the import agent to handle the exchange of receipt, inspection, customs declaration, delivery, inland transportation to Jiamusi of import containers and bulk groceries at Dalian port, and Quanlin Company shall pay commission fee in accordance with the agreement. Subsequently, Zhongjin Company, as the client, signed the Port Operation Commission Contract with the port operator Beiliang Company on the transfer of 65 goods in Dalian Port, providing that the goods would be transported to the port to Beiliang Company for storage. Due to the unpaid tariff, Dalian Customs auctioned the goods. Beiliang company sued to order the Zhongjin company to pay the storage fee. The Court held that Article 925 of the Civil Code of the P.R.C concerns a contract signed by the agent in its own name with the third party with an effect of directly binding the principal and the third party, in which the key is that the third party knows the agent relationship when signing the contract, and the term “knows” here should only be limited to explicit knowledge of the agency relationship that

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(17) The case number of the first instance was (2021) L72MC No.853, and the case number of the second instance was (2022) LMZ No.1658.

has been disclosed to a third party at the time of signing the contract, and should not include implied knowledge. Comparing with explicit knowledge, implied knowledge as a presumption of fact in the law would increase the duty of care of the third party. Zhongjin Company claimed that the main scope of its enterprise was international freight forwarding. Beiliang Company must know the owner of other imported goods before the cargo arriving at port, and it should know the agency relationship between Zhongjin Company and Quanlin Company, and the port operation commission contract involved in the case directly restricts Quanlin Company's claim which was not established. In accordance with the first and second paragraph of Article 926 of the Civil Code of the P.R.C, Zhongjin Company accepted Quanlin Company to handle freight forwarding matters, and signed a port operation contract in its own name with Beiliang Company. When signing the contract, Beiliang Company didn't know the agency relationship between Zhongjin Company and Quanlin Company. Although Zhongjin Company later disclosed Quanlin Company, Beiliang Company still had the right to choose to make a claim against Zhongjin Company, hence, it was held Zhongjin Company to pay storage fees to Beiliang Company as agreed in the contract.

### **3. If the parties have not concluded or actually performed the freight forwarding contract, and a party only pays freight forwarding costs, it is not sufficient to determine the formation of the freight forwarding legal relationship**

In the case of dispute over contract of freight forwarding by sea between Ganglin Co. as the plaintiff and Haijun Dalian Co., Fujie Co., Haijun Co. as the defendant, and the third party Qiangming Co.,<sup>(18)</sup> Qiangming Co. and Ganglin Co. agreed

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(18) The case number of the first instance was (2022) L72MC No.563, and the case number of the second instance was (2022) LMZ No.1693.

that Ganglin Co. would apply for a timber export license for the Qiangming Company and carry out the timber export trade in the name of Ganglin Co., and the cargo payment would be paid by the foreign buyer to Ganglin Co.'s foreign exchange account, the Ganglin Company on behalf of Qiangming Company was to pay freight forwarding fees to freight forwarding enterprises, forwarding the balance to Qiangming Company. In August 2021, Qiangming Company entered a timber trading contract with a Vietnamese customer, and Ganglin applied for an export license on behalf of Qiangming Company. Haijun Dalian Company, Fu Jie Company and Haijun Company contacted Qiangming Company for freight forwarding business and contacted Ganglin Company for payment of freight forwarding fees and issue of invoice. The goods in question were loaded from Dalian port on September 23, 2021 and arrived at Ho Chi Minh City, Vietnam on October 3, 2021. On September 30, 2021, Haijun Dalian Company went through the procedures of electro-release of bill of lading according to the instruction of Qiangming Company. On October 19, 2021, Ganglin Company paid the freight forwarding fee to Haijun Dalian Company. In 2022, Ganglin Company claimed that Haijun Dalian Company, Fujie Company, and Haijun Company were unable to recover the payment for the goods due to unauthorized electronic release of the goods without their consent, and demanded that the three defendants bear compensation liability. The Court held that, Ganglin Company should bear the burden of proof for its claim of having a maritime freight forwarding contract relationship with Haijun Dalian Company, Fujie Company, and Haijun Company. Ganglin Company was not the shipper recorded on the bill of lading, and had not established that it had authorized Qiangming Company to form a maritime freight agency relationship with Haijun Dalian Company. It should bear the legal consequences of failing to fulfill burden of proof. According to the law, Ganglin Company's claim was rejected.

#### **4. The issuer of the bill of lading under the voyage charterparty shall bear the responsibility of delivering the goods under the bill of lading, if it cannot be proved that the bill of lading has been issued on behalf of the carrier**

In the case of dispute over contract of carriage of goods by sea between Wenjin Company as the plaintiff and Rongyang Company, Jielian Company as the defendant,<sup>(19)</sup> after Weizhida company signed a voyage charterparty with Jielian Company, Wenjin company delivered cargo of potassium sulfate to The KOUSHUN and obtained the mate's receipt stamped with the ship's seal and the business seal of Rongyang. After The KOUSHUN sailed from the port of Bayuquan to the port of Manzanillo, Mexico, the shipper as recorded in the bill of lading, Weizhida Company, received a telex release bill of lading with the seal of Rongyang Company and the words "AS AGENT", but the consignee as recorded in the bill of lading, Mexican Fertilizers Company, did not receive the goods. Wenjin Company filed a lawsuit at Dalian Maritime Court after obtaining the assignment of rights and interests by Weizhida Company and Mexican Fertilizer Company, requesting to order Jielian Company and Rongyang Company to deliver the goods or compensate the loss of payment for the goods of 93,000 U.S. dollars and interest jointly or severally. The Court held that, Weizhida Company as the charterer of the voyage charterparty and the shipper of the bill of lading, Mexican Fertilizer Company as the consignee of the bill of lading, all issued a letter of assignment of rights and interests, transferring the right to demand delivery of the goods under the voyage charterparty and the bill of lading to Wenjin Company, and informed Rongyang Company and Jielian Company, which was legal and valid, so Wenjin Company was entitled to make the claim. Wenjin Company clearly

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(19) (2022) L72MC No.146.

submitted that it would not claim its rights on the basis of the voyage charterparty, as Jielian Company was neither the carrier that issued the bill of lading nor the actual carrier, and did not have the obligation to deliver the goods to the shipper and consignee stated in the bill of lading under the legal relationship of the contract of carriage of goods by sea. Although the master of The KOUSHUN authorized Rongyang Company to issue the bill of lading, Rongyang Company did not issue the original bill of lading at the port of loading, but issued the telex release bill of lading discharge on the instruction of Ace Shipping Company Limited after the arrival of the vessel at the port of destination, and Rongyang Company did not certify the identities of the owner of the vessel and the person who instructed the issuance of the bill of lading, as well as the relationship between them, and failed to make complete and effective disclosure of the agent. Without complete and effective disclosure of the principal, the carrier was still in a hidden, unknown and unidentifiable state, and Wenjin Company had the right to choose Rongyang Company to claim its rights as the counterparty. Rongyang Company failed to provide evidence to prove that the goods had been delivered to the consignee at the port of destination. In accordance with Article 50(4) of the Maritime Code of PRC, the goods were deemed to have been lost. The Court ruled that Rongyang Company should compensate for the loss of \$78400 and interest.

## **5. Multimodal transport operators and section carriers are not excluded from liability for loss of goods on the ground of the inherent nature of the goods, where the section carrier fails to comply with its obligations with respect to the goods**

In the case of dispute over multimodal transport contract between Yushengyuan as the plaintiff and Guangsheng Company and Zhonggu Company as the



defendants,<sup>(20)</sup> Yushengyuan Company purchased jellyfish and commissioned Guangsheng Company to transport them from Fangchenggang, Guangxi to Yushengyuan in Yingkou, Liaoning. Guangsheng Company booked the sea carriage to Zhonggu Company on April 4, 2021 and April 7, 2021 respectively, and the “Power of Attorney for Transportation of Coastal Domestic Trade Cargo” (hereinafter referred to as the power of attorney) signed by both parties recorded the “Rules for Transportation of Goods by Domestic Waterways” (hereinafter referred to as the Water Rules) and issued the waybill. On the day Guangsheng Company received the goods, they were transported to Fangchenggang Port and handed over to Zhonggu Company for transportation. The Material Handover Letter was clean and without any annotations. Zhonggu Company actually received two 20G container goods on April 6 and April 10, 2021 and issued waybills. The goods in question left Qinzhou on May 12 and May 15, arrived at the destination port of Yingkou on May 21 and May 26, and were picked up on May 23 and May 30 respectively. On the next day of collecting the container, Yushengyuan Company opened the container and found the goods damaged. The insurance company inspected the goods and concluded that the goods were damaged due to corruption and deterioration of the goods for a long period of time in a confined space, which was not excluded from the insurance coverage. The Court held that the damage occurred during the period when Zhonggu Company was in charge of the goods, and the container was stacked in the open air at the Qinzhou Port Terminal for more than 30 days, during which the temperature was 33°C at the highest and 22°C at the lowest. Zhonggu Company did not fulfill the obligation of proper management of the goods and left the goods at the terminal for a long period of time, which caused the damage to the goods, and could not exempt

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(20) The case number of the first instance was (2022) L72MC No.722, and the case number of the second instance was (2022) LMZ No.1603.

from the liability by relying on the exclusion of natural characteristic and inherent vice of the goods. It was held that Guangsheng Company as the multimodal transportation operator, and Zhonggu Company as the ocean carrier, should jointly and severally indemnify Yushengyuan Company for the loss of the goods, amounting to 184,254.5 yuan.

## **6. Ship financial leasing in the form of sale and leaseback shall be recognized as a lending relationship if it lacks the collateral function**

In the case of dispute over Ship Operation Loan Contract between Shaanxi Ronglei Company as the plaintiff and Ocean Fishing Company, China Ronglei Company and others as the defendants,<sup>(21)</sup> Ocean Fishing Company successively entered into a ship finance lease contract with China Ronglei Company and Shaanxi Ronglei Company, but only registered the ship mortgage with China Ronglei Company and failed to register the change of ownership of the ship or the registration of other rights with Shaanxi Ronglei Company, which was not disputed by Shaanxi Ronglei Company. As a result of the repayment dispute, Shaanxi Ronglei filed a lawsuit with the Court, requesting Ocean Fishing Company and others to bear the default liability of RMB 45 million rent and interest in accordance with the ship finance lease contract. The Court held that, as a special form of financial leasing, the sale and leaseback included both the financial loan function of the lessor (buyer) paying the transfer price to the lessee (seller) and the collateral function of the lessee transferring the ownership of the leased property to the lessor. As a special movable property, delivery of the ship does not satisfy the publicity element for the transfer of ownership. The registration of the lessor as the owner of the ship or the registration of other rights was required as a necessary condition for the realization of the security function of the sale and leaseback of

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(21) The case number of the first instance was (2021) L72MC No.06, and the case number of the second instance was (2021) LMZ No.2381.

the ship. The ship finance lease contract signed between Shaanxi Ronglei Company and Ocean Fishing Company only completed the capital financing transaction, without realizing the collateral function of the ship, so it should be regarded as a lending relationship.

### **7. Interpret the clauses of international standard forms of charterparties as a whole, and accurately calculate demurrage time by following international customary practice**

In the case of dispute over voyage charter party between Hong Kong Maximas Company as the plaintiff and Dalian Payee Company and Haicheng Magnesium Fertilizer Company as the defendant,<sup>(22)</sup> Hong Kong Maximus Company, as the shipowner, provided The TOYO MARU to Dalian Payee Company and Haicheng Magnesium Fertilizer Company for Sino-Indian ocean transportation, and had signed two voyage charterparties, specifying that the unclear parts of the contract should be subject to Gencon 1994. During the performance of the contract, due to weather conditions at the destination port and strikes leading to demurrage, Hong Kong Maximus Company filed a lawsuit with the Court, and argued that Dalian Xuyi Company and Haicheng Magnesium Fertilizer Company should bear demurrage, relocation fuel consumption costs of 433188.55 yuan and interest. The Court held that in the absence of a clear agreement as to the deduction of strike time in the voyage charterparty, although Dalian Xuyi Company and Haicheng Magnesium Fertilizer Company relied upon the provision in Article 16 (c) of Gencon 1994, contending that the charterers were not responsible for the consequences caused by the inability or impact of the strike on cargo loading and unloading, and claimed that the strike time should be deducted from the unloading time, paragraphs (a) and (b) of this article provided provisions for the calculation

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(22) The case number of the first instance was (2019) L72MC No.160, and the case number of the second instance was (2021) LMZ No.955.

of the loading and unloading time of goods affected by strikes, as well as the payment of demurrage at the unloading port, and the “consequences” in paragraph (c) did not include the extension of loading and unloading time, so the principle of overall interpretation should be applied to understand and apply this provision; meanwhile, according to the international practice of “once on demurrage, always on demurrage”, any demurrage caused by weather reasons after entering the demurrage period should also be borne by the ship charterers. Therefore, the Court rejected the argument raised by Dalian Xuyi Company and Haicheng Magnesium Fertilizer Company regarding weather and strike reasons.

## **8. Effectively respond to the judicial needs of special groups, and launch a one-stop Diversified Dispute Resolution Mechanism to effectively resolve conflicts and disputes**

In the dispute over the ship purchase contract between the plaintiff Gao and the defendant Diao,<sup>(23)</sup> Diao sold his fishing boat to Gao. They signed a ship purchase contract. After the performance of the contract, due to the inability to repay the loan for the purchase of the ship and disputes in terms of the agreement contents, Gao filed a lawsuit requiring the termination of the ship purchase contract and the refund of the purchase price by Diao. Both parties to the contract are deaf-mutes, so the Court immediately initiated the green channel mechanism for litigation services for persons with disabilities. The Court contacted social services lawyers and invited sign language translators for the parties, in order to ensure that both parties could fully and equally participate in litigation activities. Due to lack of facts and legal basis, the Court rejected Gao’s claims. The disputes between Gao and Diao became increasingly competitive. In order to effectively resolve the conflict and protect the legitimate rights and interests of persons with disabilities,

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(23) The case number of the first instance was (2021) L72MC No.1453, and the case number of the second instance was (2022) LMZ No.75.

the Court launched a one-stop diversified dispute resolution mechanism. The Court cooperated with the People's Mediation Centre of the Dalian Justice Bureau, the subdistrict office of the local government, the police station, the village committee and the judicial office, ultimately contributing to the resolution of the substantive disputes in the case.

### **9. Rural collective economic organizations or Villagers' Committee have the corresponding right to use the sea areas that had been operated and managed before the implementation of the sea area use registration system**

In the case of dispute over the right to use the sea area between Da Moujing Village Committee as the plaintiff and Du Mouxi as the defendant,<sup>(24)</sup> before the implementation of the registration system for the right to use sea areas, the Da Moujing Village Committee legally contracted with Du Mouxi, a villager of this village, to operate and manage the aquaculture sea area. After the implementation of the registration system for sea area use rights, Du Mouxi applied for the "Sea Area Use Right Certificate" for contracted sea use. Although the Da Moujing Village Committee and Du Mouxi signed a separate contract regarding Du Mouxi's rights and obligations to use the sea area, Du Mouxi refused to fulfill the contract on the grounds that the Da Moujing Village Committee did not have the right to use the sea area, after having paid part of the sea area use fees as agreed. The Da Moujing Village Committee filed a lawsuit with the Court, demanding that Du Mouxi should fulfill his contractual obligations and vacate the sea area according to the agreement. The Court held that, the authorization of Du Mouxi to contract and use the sea area for the operation and management of the village committee

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(24) The case number of the first instance was (2022) L72MC No.598, and the case number of the second instance was (2022) LMZ No.1049.

through the contract by the Damoujing Village Committee was a prerequisite for Du Mouxi to apply for the “Sea Area Use Certificate”, but Du Mouxi’s acquisition of the “Sea Area Use Certificate” did not mean that the sea area use right of the Damoujing Village Committee was extinguished. According to the provisions of Article 22 of the Law of the China on the Administration of the Use of Sea Areas, the right to use the sea areas that had been operated and managed by the Villagers’ Committee before the implementation of the Law can still be enjoyed by the Villagers’ Committee and contracted to collective members for aquaculture production. The Court ordered Du Mouxi to pay for the use of the sea area as agreed, and to return the sea area to the Damoujing Village Committee for use once it was vacated.

## **10. Disputes over the detention of containers under the emergency restrictions of the COVID-19 do not fall within force majeure nor mechanically apply progressive punitive damages**

In the case of dispute over carriage of goods by sea between Maersk Company as the plaintiff and Yidu Cold Chain Company as the defendant,<sup>(25)</sup> Maersk Co., Ltd. carried a batch of reefer container goods from a Russian fishing port terminal to Port of Dalian, China. Yidu Cold Chain Co., Ltd. was the consignee under the bill of lading. The COVID-19 broke out shortly after the cargo arrived at the destination port, and the container was detained due to the disinfection and sterilization operation of cold chain cargo. Maersk Company required Yidu Cold Chain Company to pay the container usage charges for overdue in advance, otherwise the goods would not be released. Yidu Cold Chain Company applied to the Court to issue a maritime injunction in accordance with the law, requiring Maersk Company to release the goods first. After Maersk Company enforced the

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(25) The case number of the first instance was (2021) L72MC No.1591, and the case number of the second instance was (2021) LMZ No.605.

order, they sued before the Court and claimed that Yidu Cold Chain Company should pay a container overdue charges of 1819818 yuan. The Court held that the dispute over the container overdue charges was caused by the emergency restriction measures taken during the COVID-19 epidemic. Yidu Cold Chain should be able to foresee the impact of such measures on the delivery of goods. Therefore, the Court did not support Yidu Cold Chain's argument for exemption on the grounds of force majeure, and held that Yidu should bear the corresponding liability for breach of contract; at the same time, Maersk adopted the method of progressive calculation and collection of container overdue charges. With regard to measure of damages, the progressive method was more punitive. In view of the public health nature of epidemic emergency prevention and control, the result of high punitive damages was obviously unfair, so the Court rejected the punitive damages test, and adopted the compensatory approach instead.

### Concluding remarks

The 20th National Congress of the Communist Party of China proposes the great historical mission of advancing the rejuvenation of the Chinese nation on all fronts through a Chinese path to modernization; and poses the theme of building China into a modern socialist country in all respects through the rule of law. The year 2023 is the starting year for the comprehensive implementation of the spirit of the 20th National Congress of the Communist Party of China and the first year for the implementation of the three-year action plan for comprehensive revitalization advanced by the Liaoning Provincial Committee. We will adhere to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era; deeply learn the Chinese characteristics and essential requirements of China's modernization, correctly position the role of the maritime court in China's modernization construction; focus on planning and advancing the modernization

of the Court's work in the context of China's modernization; further encourage forward-looking research and experiment in maritime judicial theory and practice, further promote the core driving effect of high-end foreign-related legal talents in high-quality development; further enhance the support for major strategies such as building a maritime power and the Belt and Road Initiative. The Court will strive to promote the modernization of Dalian Maritime Court's work concept, work system, and work capacity in the new era and new journey; continuously enhance its international influence and judicial credibility, and make new and greater contributions to the comprehensive revitalization of Northeast China in the new era with greater responsibilities and achievements!





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