Lloyd's List Intelligence

Chinese maritime law in review 2024

By Dr Liang Zhao

Chinese maritime law in review 2024 is published by Lloyd's List Intelligence, 5th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom. Lloyd's List Intelligence is a premium legal research supplier to practitioners across the globe. Our maritime and commercial content is available online via single-user subscriptions or multi-user licences at https://i-law.com/ilaw/martimelist.htm

Please contact us: +44 (0)20 7509 6499 (EMEA); +65 6028 3988 (APAC) or email customersuccess@lloydslistintelligence.com

Lloyd's List Intelligence

Contents

Author profile

Dr Liang Zhao

Institute of Maritime Law, Southampton Law School, University of Southampton

Dr Liang Zhao is an Associate Professor in Law at Southampton Law School, University of Southampton, UK. He is also the Co-Director of Private and Commercial Law Centre at University of Southampton Law School.

Dr Zhao is Fellow of the Chartered Institute of Arbitrators (CIArb), Supporting Member of London Maritime Arbitrators Association (LMAA), arbitrator of China Maritime Arbitration Commission and other Chinese arbitration commissions.

His areas include maritime law, insurance law, conflict of laws and comparative law. He has published academic articles and practical comments in reputable periodicals. He co-authored a book entitled "Maritime Law and Practice in China" published by Informa Law in 2017, and a book chapter of Ship Finance in "Maritime Law and Practice in Hong Kong" published by Sweet and Maxwell Hong Kong in 2019 (2nd Edition).

Chinese maritime law in review 2024

By Dr Liang Zhao
Institute of Maritime Law, Southampton Law School, University of Southampton

Introduction

This review provides an analysis of the significant decisions of the Chinese courts in 2024. It provides readers with insight into the judicial practice of maritime law over this period in mainland China. The judgments relate to carriage of goods by sea, marine insurance, admiralty law and dispute resolution.

The source of these Chinese judgments is the database of China Judgements Online and the judgments recommended by Chinese maritime law professionals. This review also includes the Supreme People's Court Guiding Cases (Nos 230 to 236) released in 2024 and the Typical Cases of National Maritime Trial in 2024.

All laws referred to in this review are Chinese law: eg "Maritime Law" means the Maritime Law of the People's Republic of China.

Carriage of goods by sea

Cases analysed in this review involving the carriage of goods by sea mainly include disputes concerning bills of lading and container demurrage. In bill of lading disputes, the main topics are the issuance of the bill of lading, the description of goods in the bill of lading, the evidence function of bill of lading and the incorporation of the charterparty into the bill of lading. The main issue in a container demurrage dispute is determining who is liable for the demurrage, either the shipper or the consignee. In addition, cases of carriage of goods by sea include disputes of scope of damage and freight forwarder's liability.

Bills of lading

Issuing a bill of lading

Article 72 of the Maritime Law provides that "when the goods have been taken over by the carrier or have been loaded on board, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading". Article 77 provides that, except for the note made by the carrier in the bill of lading:

> "... the bill of lading issued by the carrier or the other person acting on his behalf is prima facie evidence of the taking over or loading by the carrier of the goods as described therein. Proof to the contrary by the carrier shall not be admissible if the bill of lading has been transferred to a third party, including a consignee, who has acted in good faith in reliance on the description of the goods contained therein."

According to the above provisions, how the carrier makes a note on the apparent condition of the goods relates to the carrier's liability to the bill of lading holder. In the case of bad apparent condition of the goods, the carrier may issue a claused bill of lading, so as to negate its liability for surface damage to the goods. However, the carrier may issue a clean bill of lading under a letter of undertaking, posing a potential liability risk to third parties. In *Langfang Juli Exploration Technology Co Ltd and PICC Property and Casualty Co Ltd Xiamen Branch v Border Shipping Ltd*,[1] the carrier issued both a claused bill of lading to the charterer and a clean bill of lading to the shipper, resulting in a dilemma in determining liability for damage to the goods.

In this case, Langfang Juli Exploration Technology Co Ltd (hereinafter referred to as "Juli Co") exported a shipment of casing pipes to Trona, Turkey, and instructed COSCO Shipping to book space and provide other marine shipping agency services. COSCO Shipping accepted the instruction and delegated the pre-port operations to Tianjin New Legend who was responsible for booking space with Tianjin Sun Transport. Due to a remark on the Mate's Receipt which read "CARGO CONDITION AS PER P&I SURVEYOR REPORT", and cargo flaws which were noted in the report, Tianjin Sun Transport issued the original clean bill of lading after it received a letter of guarantee (hereinafter referred to as "LOG") from Juli Co for issuing a clean bill of lading. The bill of lading contained details as follows: "Carrier: BORDER Company; Shipper: Juli Co; Consignee: ETI; Port of Loading: Tianjin, China; Port of Discharge: Iskenderun, Türkiye". Tianjin Sun Transport signed and sealed at the bottom right of the bill of lading as agent for the carrier, Border Co.

Tianjin Sun Transport delivered the full set of original bills of lading to Tianjin New Legend, which was then passed to COSCO Shipping and finally received by Juli Co. Juli Co sent the original clean bill of lading to ETI by post. After the ship arrived at the port of discharge, Horizon inspected the condition of the cargo shipped on deck and in cargo holds as instructed by ETI. Horizon issued a Statement of Facts to the master to report the damage on the surface of the goods. Juli and its insurer, PICC Xiamen Branch, sued the carrier, Border Co, for the said cargo damage.

Juli Co claimed that it was a clean bill of lading issued and transferred in this case, whereas Border Co argued that it was a claused bill of lading issued and transferred. Juli Co and Border Co submitted photocopies of the clean bill of lading and the claused bill of lading to claim their rights respectively, but did not provide the original copies of those bills of lading.

Tianjin Maritime Court ascertained the evidentiary effect of the two bills of lading. First, it was found that, according to the authorisation issued by the master of the ship, Tianjin Sun Transport was authorised to issue the bill of lading for the carriage of goods by sea in this case, and it acknowledged that it had issued a clean bill of lading rather than a claused bill of lading. Tianjin New Legend collected the clean bill of lading from Tianjin Sun Transport and delivered the same to Juli Co, against which the consignee ETI picked up the cargoes based on the clean bill of lading at the destination port. Therefore, Tianjin Maritime Court confirmed the issue and transfer of the clean bill of lading and recognised the legal effect of the clean bill of lading.

> In order to rely on the remarks in the claused bill of lading to deny its liability for the cargo damage, the carrier also needs to prove that the claused bill of lading has been circulated, and that the company is holding the claused bill of lading to claim compensation for cargo damage

Secondly, it was also found that the claused bill of lading presented by Border Co was only attached to an email sent by the charterers for "requesting release of cargoes against LOG without presentation of original B/L". It was stated in the email that the reason for not providing the original bill of lading was that the original bill had not arrived at the destination port, and the LOG undertook to deliver a full set of original bills of lading to Border Co once they came into its possession. Therefore, Tianjin Maritime Court pointed out that Border Co must be in possession of the claused original bill of lading, but it did not present the original copy, nor did it provide other evidence to prove that it was the claused bill of lading that was actually

[1] (2024) JMZ 416 (Tianjin High People's Court).

circulated.[2] Tianjin High People's Court, as the appellate court, held that it was not improper for the court of first instance to find on the facts that the clean bill of lading was actually circulated and dismissed the appeal.[3]

In this case, although the clean bill of lading submitted was a copy, the chain of evidence effectively supported the legal effect of the clean bill of lading. Even if the carrier was able to submit the original claused bill of lading, its legal effect might not be recognised. In order to rely on the remarks in the claused bill of lading to deny its liability for the cargo damage, the carrier also needs to prove that the claused bill of lading has been circulated, and that the company is holding the claused bill of lading to claim compensation for cargo damage.

This case shows that the carrier may have different liabilities in different legal relationships under different bills of lading when issuing multiple different bills . In this case, the carrier had issued a clean bill of lading upon the LOG. After assuming liability to the holder of the bill of lading, the carrier may be entitled to recourse action on the basis of the LOG.

Remarks on a bill of lading

If the apparent condition of the goods is not satisfactory, the carrier can make note of the condition in the bill of lading. Article 76 of the Maritime Law provides:

> "... if the carrier or the other person issuing the bill of lading on his behalf made no note in the bill of lading regarding the apparent order and condition of the goods, the goods shall be deemed to be in apparent good order and condition."

In *China Animal Husbandry Industry Co Ltd v Palmer Maritime Inc*,[4] the carrier did not make notes on the apparent condition of the goods, and the carrier and the consignee had different opinions on the goods' apparent condition. The consignee claimed that the goods were damaged, and that the carrier should compensate for the damage.

In this case, China Animal Husbandry Industry Co (hereinafter referred to as "CAHIC") entered into a sales contract with the seller for the purchase of Distillers Dried Grains with Solubles (hereinafter referred to as "DDGS"). The sales contract provided that the Hunter L colour value (a colour model to measure the level of light to dark colours) of the cargo should be 50 or higher.

Palmer Maritime Inc (hereinafter referred to as "Palmer") carried the goods. After loading the goods on board the ship, the master issued a bill of lading. The bill of lading recorded that the goods were shipped in apparent good order and condition. The bill of lading was issued to order, and the notify party was CAHIC. The Russell Maritime Group issued a certificate of quality, stating that the results of the analysis of the official samples showed that the subject cargo contained a Hunter L value of 50.8.

CAHIC found the cargo damaged during the discharge operation. CAHIC requested China Certification & Inspection Group Guangdong Co Ltd (hereinafter referred to as "CCIC") to inspect the cargo in the warehouse. The test result of samples of the cargo showed that the sample contained a Hunter L value of 42.5. Instructed by the West of England P&I Club, Dalian Sanjie Marine Insurance Appraisal Co Ltd attended onboard the carrying vessel for inspection and investigation on behalf of the shipowner. They engaged surveyors Societe Generale de Surveillance SA (hereinafter referred to as "SGS") to monitor the discharge, inspect the condition of the cargo, and take samples. Palmer submitted the SGS test report which recorded a Hunter L value of 48.66 for mixed samples of the cargo.

CAHIC claimed against the shipowner, asserting that the carrier had the right to make a note on what it considered to be a bad apparent condition of the loaded cargo and that failure to do so would result in adverse consequences. CAHIC contended that Palmer did not exercise due diligence to verify the apparent condition of the goods at the port of loading and failed to make a truthful note in the bill of lading that the goods in question were already in a bad condition with mixed colours when they were loaded on board the vessel. CAHIC claimed that Palmer should bear the loss caused by the failure to make a truthful note on the goods in the bill of lading.

Guangzhou Maritime Court made a civil judgment in the first instance trial, holding that Palmer Marine was liable

[2] (2024) J 72 MC 90 (Tianjin Maritime Court).
[3] (2024) JMZ 416 (Tianjin High People's Court).
[4] [2022] ZGFMZ 14 (Supreme People's Court); [2024] 2 CMCLR 1; Guiding Case No 232 (discussed and adopted by the Trial Committee of the Supreme People's Court; issued on 25 November 2024).

to CAHIC for the loss of the goods.[5] Palmer appealed against the judgment. Guangdong High People's Court dismissed the appeal and upheld the judgment.[6] Palmer applied for retrial to the Supreme People's Court. The Supreme People's Court brought the case to trial and ruled that the relevant judgments of Guangdong High People's Court and Guangzhou Maritime Court should be set aside, and the claim of CAHIC should be rejected. The Supreme People's Court pointed out that, in this case, the determination of whether Palmer was liable for failure to truthfully make a note in the bill of lading should be based on the objective situations of observing the apparent condition of the goods and whether the judgment made was in line with the usual standards.[7]

> The determination of whether Palmer was liable for failure to truthfully make a note in the bill of lading should be based on the objective situations of observing the apparent condition of the goods and whether the judgment made was in line with the usual standards

The Supreme People's Court analysed this issue from the perspectives of the loading operation, the master's judgment and the nature of the goods. First, the goods in question were bulk cargo. According to the records of the port of loading, they were loaded by conveyor belts and grabs. During the loading process, the cargo hold was full of dust, and the hatch was covered with canvas to avoid dust contamination in the terminal. Under these circumstances, it was difficult for the crew to observe the apparent condition of all the cargoes clearly and comprehensively, and there were no objective conditions to suspect that the apparent condition of the cargoes was abnormal.

Secondly, the master and the crew were not experts regarding the goods and had no ability to professionally judge their brightness and colour. The Hunter L value needs to be tested by laboratory instruments, and it is difficult to distinguish the difference with the naked eye when values are similar. It is in line with common sense for the carrier to make a judgment that the apparent condition of the cargo is good according to normal knowledge and usual judgment standards. According to the loading situation, it was not improper that the carrier issued the bill of lading recording that the goods were loaded "in apparent good condition".

Thirdly, there may be a variety of colours of DDGS due to raw materials, processing methods and other factors. Different colours indicate different inner qualities, but they are not indicators of damage to, or the apparent bad condition of, the goods. The law does not require the carrier to make a note on the internal quality of the carried goods, so the colour of DDGS was not within the scope of the note made by the carrier in the bill of lading. Therefore, the Supreme People's Court held that there was no factual and legal basis for CAHIC's claim for Palmer to bear the liability for not making a note in the bill of lading, and Palmer should not be liable for the damage to the goods.

It is the carrier's right and obligation to describe the apparent condition of bulk cargo in the bill of lading. A correct description of the apparent condition helps the consignee to control the risk and handle the goods properly. It should be noted, however, that the carrier's obligation to describe the goods is not for the consignee, although the consignee can claim damages against the carrier on the basis of a clean bill of lading. The carrier issues a bill of lading and describes the goods at the shipper's request. It is not directly for the benefit of a third party. In this case, the Supreme People's Court emphasised the master's right to describe the apparent condition of the goods based on a master's reasonable judgment and analysed the carrier's duty regarding the description of goods in the specific circumstances of the case. As a guiding case, this judgment could serve as a reference for similar cases.

5 (2016) Y72 MC705 (Guangzhou Maritime Court).
6 (2019) YMZ 807 (Guangdong High People's Court).
7 [2022] ZGFMZ No 14 (Supreme People's Court).

Scanned copy of a bill of lading

Article 71 of the Maritime Law provides that:

> "... a bill of lading is a document as proof of the contract of carriage of goods by sea and the fact that goods have been received by the carrier or loaded on board vessel, and based on which the carrier undertakes to deliver the goods against surrendering the same."

When goods are lost or damaged the cargo interests, such as the shipper or the bill of lading holder, may request the carrier to compensate for the loss in accordance with the contract of carriage evidenced by the bill of lading. In *B Materials (Shanghai) Co Ltd v Qingdao A International Logistics Co Ltd*,[8] the carrier did not issue the original bill of lading but issued a scanned copy of the bill of lading. The shipper claimed against the carrier for the loss of the goods due to delivery of the goods without a bill of lading. The carrier argued that there was no original bill of lading, and therefore, there was no contractual relationship between it and the shipper.

In this case, B Materials (Shanghai) Co Ltd (hereinafter referred to as "Shanghai B Co"), as the seller, signed a sales contract with the buyer. B Materials Co contacted Qingdao A International Logistics Co Ltd (hereinafter referred to as "Qingdao A Co") for shipping matters. Qingdao A Co issued a scanned copy of a bill of lading to Shanghai B Co, in which the shipper was Shanghai B Co, the consignee was the buyer, the port of origin was Qingdao, China, and the port of destination was Durban, South Africa. Shanghai B Co instructed Qingdao A Co to make sure that the goods were to be delivered upon notification. However, the official website of the actual carrier showed that some of the containers in question had already been picked up without notification. Shanghai B Co claimed against Qingdao A Co, requesting the payment of loss caused by the release of goods without the original bill of lading.

Qingdao Maritime Court, as the first instance court, held that the contract of carriage of goods by sea between the two parties was established and came into effect when Shanghai B Co instructed Qingdao A Co to arrange the shipment of the goods and Qingdao A Co issued a scanned copy of the bill of lading to Shanghai B Co. The court pointed out that, according to the carriage contract, Qingdao A Co should not release the goods to the buyer before receiving notification from Shanghai B Co. The goods were delivered, and Qingdao A Co admitted that they could not provide the status of the goods. Therefore, it was held that the goods could be considered lost, and Qingdao A Co should be liable for the loss.[9]

Qingdao A Co appealed and argued that the first instance court erred in determining the relationship between it and Shanghai B Co based only on a copy of the bill of lading. It contended that a copy of the bill of lading did not have the nature, functions and legal effect of the original bill of lading. It argued that a copy of the bill of lading was not the actual bill of lading and could not be used as a basis to determine the contractual relationship between the two parties for the carriage of goods by sea.

> As long as the authenticity of the copy bill of lading can be proved, the copy bill can prove the contract of carriage and the fact that the goods have been received or loaded

Shandong High People's Court, as the appellate court, pointed out that where there was no original bill of lading issued, the contractual relationship between the two parties and their obligations and liabilities should be determined according to the actual operation and performance of the carriage of goods by sea. In this case the scanned copy of the bill of lading issued by Qingdao A Co was not a contract of carriage itself, but the contents of the scanned bill of lading could be used to recognise the legal status of the parties. Shanghai B Co was recorded as the shipper, and was also the seller and the exporter of the goods in question. Therefore, Shanghai B Co should be recognised as the shipper which delivered the goods for carriage. On the other hand, the copy of the bill of lading contained a letterhead showing Qingdao A Co as the carrier. Qingdao A Co communicated with the actual carrier regarding transport affairs. Qingdao A Co should be recognised as the NVOCC (non-vessel

[8] (2023) LMZ 1450 (Shandong High People's Court).

[9] (2023) L 72 MC 735 (Qingdao Maritime Court).

operating common carrier) for the carriage of the goods in question. Therefore, it was held that Qingdao A Co should compensate Company B for the loss of the goods without notification.[10]

The bill of lading in article 71 of the Maritime Law should be the original bill of lading in the general sense. The question to be considered is whether the original bill of lading is necessarily required for the functions of the bill of lading in the Maritime Law. For the delivery of goods function, a bill of lading should be the original bill of lading, otherwise, the carrier will be in a dilemma of delivering goods to both the original bill of lading holder and the copy bill of lading holder. For this function, the bill of lading is not only a proof of fact, but also a document of title. So, only the original bill of lading can achieve this function. This is the reason why it is always agreed in the bill of lading that the goods are to be delivered upon the surrender of the original bill of lading.

But for the functions of "proof of the contract of carriage of goods by sea and the fact that goods have been received by the carrier or loaded on board vessel", the original bill of lading may not necessarily be needed. As long as the authenticity of the copy bill of lading can be proved, the copy bill can prove the contract of carriage and the fact that the goods have been received or loaded. The fact evidenced by the copy will not be repeated, and the copy does not represent any right. Therefore, the copy of the bill of lading is able to fulfil both functions. The courts in this case properly applied the legal rules and adopted a pragmatic approach to solve judicial problems.

Without holding original bill of lading

In the "Provisions of the Supreme People's Court on Certain Issues Concerning the Application of Law to the Trial of Cases Involving Delivery of Goods without Original Bills of Lading", article 2 provides:

> "Where a carrier, in violation of laws, delivers goods without the original bill of lading, thus injuring the original B/L holder's rights under the bill of lading, the original bill of lading holder may request the carrier to bear the civil liability for the resultant loss."

This provision gives the holder of the original bill of lading a right of action. In *Company B v Company A (Company C, third party)*,[11] the carrier delivered the goods without a bill of lading, causing the seller's loss of the goods, but the seller did not hold the original bill of lading. Facing the seller's claim, the carrier argued that the seller was not the holder of the bill and should not have the right of action.

In this case, Company B and Company D entered into a contract of sale for selling masks to Company D. For the performance of the contract, Company B entrusted Company C with the freight forwarding of goods. Company A (formerly Company Z) carried the goods and issued the original bill of lading for the carriage. The company named in the letterhead of the bill of lading was Company Z. The bill of lading stated that the shipper was Company W and the consignee and the notifying party were Company R.

> In a judicial interpretation of the Maritime Law, a bill of lading includes a copy of the bill of lading for the evidence function of the bill of lading, and the bill of lading holder includes the person who should have held the bill of lading but actually does not hold the bill of lading. This kind of judicial interpretation is in line with commercial value and deserves to be recognised

After the shipment of the goods, Company B issued a letter of guarantee to Company A, requesting the change of the consignee and notifying party from Company R to Company D in the bill of lading. In addition, due to a freight forwarding contract dispute between Company B and Company C, the full set of original bills of lading issued by Company A was detained by Company C. So, the bill of lading was not actually delivered to Company B or circulated to other parties. The goods were delivered

[10] (2023) LMZ 1450 (Shandong High People's Court).

[11] (2023) HMZ 620 (Shanghai High People's Court).

without the bill of lading. Company B claimed against Company A for the loss of the goods.[12]

Shanghai Maritime Court, as the first instance court, held that Company B had the rights of suit as the bill of lading holder or the actual shipper. First, the bill of lading should be delivered to Company B, and Company B should be the bill of lading holder. Company B did not actually hold the bill of lading because Company C temporarily detained the bill of lading due to the dispute under the freight forwarding contract. However it could not be denied that Company B possessed the legal status of the holder of the bill of lading. Furthermore, the full set of the original bill of lading had not been circulated or returned to Company A at the port of destination. So, it did not affect Company B's right to request Company A to bear the carrier's liability on the basis of the original bill of lading. Secondly, Company B issued a letter of guarantee to Company A requesting to change the consignee recorded in the bill of lading. Company A accepted the request and ultimately issued the bill of lading. This proved that Company B was the actual shipper of the goods, and therefore, Company B had the right to request Company A as the carrier to bear the liability for the loss caused by the delivery of goods without a bill of lading.[13] Company A appealed, and Shanghai High People's Court dismissed the appeal and upheld the judgment of the first instance court.

Like the judicial interpretation of the copy of the bill of lading in *B Materials (Shanghai) Co Ltd v Qingdao A International Logistics Co Ltd*, the judicial interpretation of the bill of lading holder in this case was not limited to the literal meaning of the concept. In a judicial interpretation of the Maritime Law, a bill of lading includes a copy of the bill of lading for the evidence function of the bill of lading, and the bill of lading holder includes the person who should have held the bill of lading but actually does not hold the bill of lading. This kind of judicial interpretation is in line with commercial value and deserves to be recognised.

Incorporation of charterparty into bill of lading

When a bill of lading is issued under a charterparty, the charterparty is often incorporated into the bill of lading, which gives rise to issues such as identification of the parties and incorporation of the terms. In terms of parties, the identification of the carrier remains a common legal issue in disputes over the carriage of goods by sea.[14] Whether the terms of the charterparty can be incorporated into a bill of lading is another prominent issue, which involves matters such as payment of freight and lien on the goods. In *A Shipping Co Ltd v China B International Trading Co Ltd*,[15] the court addressed these two issues.

In this case, A Shipping Co Ltd (hereinafter referred to as "A Shipping Co") was the owner of the vessel in dispute. On 30 June 2022 A Shipping Co, as the owner, and C Company, as the charterer, entered into a voyage charterparty, under which A Shipping Co provided the vessel to transport about 48,000 tonnes of petroleum coke from Venezuela to a major port in China. After the goods were loaded onto the vessel, the ship agency issued a straight bill of lading for the goods on behalf of the master of the vessel. The bill of lading stated that the shipper was Fine Materials Co, the consignee was China B International Trading Co Ltd (hereinafter referred to as "B Trade Co"), and the freight was to be paid under a charterparty dated 30 June 2022.

On 13 September the vessel discharged all its cargo at Rizhao port. On the same day, A Shipping Co sent a notice of lien to C Company, Fine Materials Co and B Trade Co, claiming that A Shipping Co would exercise its right of lien on the goods discharged by the vessel in Rizhao port because the charterer, C Company, had failed to pay the freight and demurrage in accordance with the charterparty. A Shipping Co requested Qingdao Maritime Court: (1) to order B Trade Co to pay the freight and demurrage to A Shipping Co; and (2) to confirm A Shipping Co's right of lien on the goods recorded in the bill of lading. The legal issues in this case included: (a) whether A Shipping Co was the carrier under the bill of lading; (b) whether B Trade Co had the obligation to pay the freight under the bill of lading; and (c) whether A Shipping Co's claim of lien on the goods was established.

The first issue is the identification of the carrier. Because A Shipping Co claimed the payment of freight and demurrage from B Trade Co based on the bill of lading rather than the charterparty, A Shipping Co could only claim its rights as a carrier. Therefore, whether A Shipping Co became a carrier under the bill of lading was the key point of determining rights. Qingdao Maritime Court, as the first instance court, pointed out that because the bill

[12] For the delivery of goods without a bill of lading, see the relevant cases and comments in "Chinese maritime law in 2023: a review".
[13] (2022) H 72 MC 1571 (Shanghai Maritime Court).
[14] For the identity of the carrier, see the relevant cases and comments in "Chinese maritime law in 2023: a review".
[15] (2023) LMZ 1530 (Shandong High People's Court).

of lading was issued by the ship agent on behalf of the master and it did not contain any information about the carrier, it is important to investigate on whose instructions or authorisation the master issued the bill of lading. In the view of the court, since the master of the ship was an employee of the owner or demise charterer of the vessel, in the absence of evidence to the contrary, the bill of lading issued by the master of the ship shall be deemed to be issued on behalf of the owner or demise charterer of the vessel. Therefore, the carrier of the bill of lading shall be the owner or demise charterer of the vessel.[16] Shandong High People's Court, as the court of second instance, supported the above conclusion.[17]

The above conclusion is a generally accepted view in the judicial practice of Chinese courts. With regard to the case of evidence to the contrary, it generally refers to the case where the bill of lading has a clear identification of the carrier or where there is a time charter under which a bill of lading is issued. A Shipping Co in this case did not submit any time charter contract or other evidence to prove that the master issued the bill of lading according to its authorisation. A Shipping Co was not the owner or demise charterer of the vessel. Qingdao Maritime Court pointed out that, although there are different views on the identification of the carrier of the bill of lading under time charter in practice, A Shipping Co could not be identified as the carrier of the bill of lading in this case.

Regarding the payment obligation under the second issue, article 69(2) of the Maritime Law stipulates that "the shipper and the carrier may reach an agreement that the freight shall be paid by the consignee. However, such an agreement shall be noted in the transport documents". Qingdao Maritime Court pointed out that the bill of lading in question did not state that the freight was to be paid by the consignee. It was found that the bill of lading contained a statement on the upper right-hand side of the bill of lading: "TO BE USED WITH CHARTER-PARTIES" and a statement on the lower left-hand side: "Freight payable as per CHARTER-PARTY dated 30 June 2022". Therefore, the rights and obligations related to freight under the bill of lading should be dealt with in accordance with the freight clause of the incorporated charterparty. Qingdao Maritime Court pointed out that the charterer under the charterparty dated 30 June 2022 was C Co, and the party who was obliged to pay the freight according to the charterparty was C Co. After incorporation into the bill of lading, the freight clause did not change due to the incorporation, and the obligor who was obliged to pay the freight according to the clause did not change to B Trade Co. Therefore, it was held that B Trade Co was not obliged to pay freight under the bill of lading.[18] Shandong High People's Court upheld the decision.[19]

> Whether a charterparty is validly incorporated into a bill of lading has always been a controversial issue in Chinese judicial practice. Unlike the English courts, which actively support the validity of incorporation, the Chinese courts take a very strict and cautious attitude towards the validity of incorporation

The dispute of lien is the most controversial issue. Article 87 of the Maritime Law provides:

> "If the freight, contribution in general average, demurrage to be paid to the carrier and other necessary charges paid by the carrier on behalf of the owner of the goods as well as other charges to be paid to the carrier have not been paid in full, nor has appropriate security been given, the carrier may have a lien, to a reasonable extent, on the goods."

Qingdao Maritime Court interpreted the article to mean that the goods subject to a lien by the carrier in the international carriage of goods by sea should be limited to goods owned by the debtor, which is different from the relevant provisions of the Civil Code.[20] In the view of the court, the contract part of the Civil Code is the general law, and the Maritime Law is the special law for the international

[16] (2023) L 72 MC 450 (Qingdao Maritime Court).
[17] (2023) LMZ 1450 (Shandong High People's Court).
[18] (2023) L 72 MC 450 (Qingdao Maritime Court).
[19] (2023) LMZ 1450 (Shandong High People's Court).
[20] After the implementation of the Civil Code, the Supreme People's Court promulgated and implemented the Interpretation of the Supreme People's Court on the Application of the Relevant Guarantee System, which stipulates in article 62 para 1 that "if the debtor fails to honour the debt due and the creditor, due to the same legal relationship, places a lien on the movable property of a third party in legal possession and claims to be compensated for the priority of the property so placed, the people's court shall support the claim. Where the third party requests the return of the retained property on the ground that it is not the property of the debtor, the people's court shall not support it".

contract of carriage of goods by sea. According to the principle that the special law takes precedence over the general law, the carrier's right of retention under a lien should be exercised in accordance with article 87 of the Maritime Law, and only goods owned by the debtor can be retained. In this case, A Shipping Co was not the carrier, and B Trade Co was not the debtor of the freight and demurrage. Therefore, Qingdao Maritime Court held that B Trade Co was not liable to pay the freight and demurrage, and A Shipping Co had no right to exercise the lien on the goods owned by B Trade Co.[21]

A Shipping Co appealed, claiming that clause 25 of the Charter Confirmation signed between A Shipping Co and C Co stipulated that "other terms are based on GENCON 94", and clause 8 of the lien clause of GENCON 94 stipulated that: "The Owners shall have a lien on the cargo and all sub freight payable in respect of the cargo, for freight, dead freight, demurrage, claims for damages and all other amounts due under this Charter Party including the cost of recovering same". Therefore, A Shipping Co's lien was from the contract. In this regard, Shandong High People's Court pointed out that, although the bill of lading was to be used with the charterparty, it did not specify which charterparty was to be used with the bill of lading, nor did it express that the lien clause in the charterparty was incorporated into the bill of lading. Therefore, it was held that the lien clause in the charterparty between A Shipping Co and C Co was not validly incorporated into the bill of lading, and B Trade Co was not subject to the lien clause in the charterparty.[22]

Whether a charterparty is validly incorporated into a bill of lading has always been a controversial issue in Chinese judicial practice. Unlike the English courts, which actively support the validity of incorporation, the Chinese courts take a very strict and cautious attitude towards the validity of incorporation. For example, Shandong High People's Court held that a valid incorporation requires a clear statement of the charterparty to be incorporated, generally including the date of the charterparty and information of the parties. Of course, if there is clear information about the charterparty to be incorporated, the charterparty can be validly incorporated into the bill of lading. After the valid incorporation of the charterparty, there is no need to express incorporation of a specific clause in the charterparty, such as a lien clause. The terms that need to be specifically stated to be incorporated generally refer to dispute resolution clauses such as arbitration clauses.[23]

In addition, during the appeal hearing, A Shipping Co submitted an arbitration award and a translation of the arbitration award related to the dispute. On 24 September 2023 Company A, as the shipowner, initiated arbitration against C Co, the charterer. On 22 January 2024 the arbitrator issued an arbitral award which ruled that C Co should pay the freight and confirmed that A Shipping Co had the lien on the goods in the case. The place of arbitration was Hong Kong. A Shipping Co submitted the award to prove the reasonableness and legality of its lien.

In response, Shandong High People's Court pointed out that the arbitral award was made in Hong Kong and was not recognised by the People's Court in mainland China and thus was not valid. This view is questionable. Arbitral awards made outside mainland China (including Hong Kong) need to be submitted to the Chinese courts for recognition and enforcement if they wish to be recognised in mainland China. However, the arbitral award submitted by A Shipping Co in relation to the dispute in question was not for recognition or enforcement but to prove the reasonableness and legality of its claim of lien on the goods for the unpaid freight and demurrage. The recognition should not be necessary in this case. Nevertheless, even if the court recognised the probative effect of the arbitral award, the result would not be different because the court had already found that B Trade Co was not subject to the lien clause, which had not been validly incorporated into the bill of lading.

[21] (2023) L 72 MC 450 (Qingdao Maritime Court).
[22] (2023) LMZ 1450 (Shandong High People's Court).
[23] For analysis of the incorporation of arbitration clauses in leases into bills of lading under PRC law, see Liang Zhao and Lianjun Li, "Incorporation of arbitration clauses into bills of lading under the PRC law and its practical implications" 2017, *Arbitration International*, 33(4), 647 to 661.

Container demurrage

When no one picks up the goods at the port of destination, the carrier may suffer a loss as a result. Article 86 provides:

> "If the goods were not taken delivery of at the port of discharge or if the consignee has delayed or refused the taking delivery of the goods, the master may discharge the goods into warehouses or other appropriate places, and any expenses or risks arising therefrom shall be borne by the consignee."

Meanwhile, the container demurrage may be borne by the shipper. In the "Minutes of the National Symposium on the Foreign-related Commercial and Maritime Trial Work of Courts" (hereinafter referred to as "Minutes"), article 61 provides:

> "Where the holder of a bill of lading does not claim delivery or exercise other rights against the carrier at the port of destination, the costs and risks arising from unclaimed goods should be borne by the shipper. Where the carrier claims freight, storage fee, demurrage, or any other expenses incurred in connection with unclaimed goods against the shipper in accordance with the contract of carriage, the people's court should support the claim."

Therefore, after the goods arrive at the port of destination, the consignee shall promptly take delivery of the goods. In the case that the consignee does not claim to pick up the goods, the carrier may claim against the shipper or the consignee for the relevant loss, including the container demurrage.

Unclaimed goods

Although the law entitles the carrier to claim against the consignee or the shipper for the container demurrage arising from the unclaimed cargo at the port of destination, the law does not define or explain the meaning of the "unclaimed goods". In *Dalian Bright International Logistics Co Ltd v Dalian Ruiqi Biotechnology Co Ltd*,[24] the courts analysed the concept of "unclaimed goods" in article 61 of the Minutes and limited "unclaimed goods" to cargoes that are not claimed by the bill of lading holder at the port of destination.

In this case, Dalian Bright International Logistics Co Ltd (hereinafter referred to as "Bright Logistics") carried the goods of Dalian Ruiqi Biotechnology Co Ltd (hereinafter referred to as "Dalian Ruiqi"). On 21 August 2022 Bright Logistics, as the carrier, issued a telex release bill of lading, which recorded that the consignor was Dalian Ruiqi, the consignee and the notifying party were HT Co, the port of loading was Dalian, China, and the port of discharge was Inchon, South Korea. On 22 August 2022 the consignee of the goods exchanged the bill of lading and obtained a delivery order. On 23 August 2022 the goods arrived at the port of Incheon, Korea. At the time of the judgment, the consignee had not yet taken delivery of the goods. Bright Logistics claimed against Dalian Ruiqi for the container demurrage.

Dalian Maritime Court, as the first instance court, held that Dalian Ruiqi was not liable for the container demurrage. It pointed out that the consignee had exercised the right to take the delivery of the goods and had the obligation to take

[24] (2024) LMZ 397 (Liaoning High People's Court).

the delivery of the goods on time after it exchanged the bill of lading for a delivery order in the port of destination. Therefore, the consignee should be liable for the relevant costs arising from the delay and refusal to take delivery of the goods. Accordingly, Dalian Ruiqi should not be liable for the relevant costs. The court dismissed the claim from Bright Logistics for the container demurrage.[25]

Bright Logistics appealed, arguing that the goods in question were unclaimed goods. First, according to article 61 of the Minutes, the consignee in this case did not actually claim the delivery of the goods from the carrier although it exchanged the bill of lading for the delivery order. It was still the situation where "the holder of a bill of lading does not claim delivery" under article 61. Even if it was not the situation, it should be the situation where "the holder of a bill of lading does not ... exercise other rights against the carrier" under article 61 because the consignee did not exercise the right to possession, use and benefit of the goods. Therefore, the container demurrage should be borne by the shipper in the bill of lading.

Secondly, article 523 of the Civil Code provides:

> "Where the parties concerned agree that a third party shall discharge the debts to the creditor, but the third party fails to do so at all or the third party's discharge of its liabilities is not in compliance with contractual agreements, the debtor shall bear the liability for breach of contract to the creditor."

In this case, Bright Logistics issued a bill of lading to Dalian Ruiqi, which constituted a contractual relationship for the carriage of goods by sea between them. Bright Logistics contended that, according to article 523 of the Civil Code, Dalian Ruiqi had the obligation to take the delivery of the goods and return the container in a timely manner when the consignee did not take the delivery of the goods.

Liaoning High People's Court rejected the contention of Bright Logistics in the appeal. First, HT Co, as the consignee, namely the bill of lading holder, exchanged the bill of lading and did claim the delivery of goods from the carrier. Therefore, the issue was not "unclaimed goods" under article 61 of the Minutes but the delay or refusal in the delivery of the goods. In this case, HT Co still had an obligation to take delivery of the goods and should be liable for relevant costs when it failed to do so. Secondly, article 11 of the Civil Code provides that "where other laws have special provisions on civil relations, they shall be applied in accordance with their provisions". Accordingly, Liaoning High People's Court held that the special provisions of the Maritime Law should apply in this case. Liaoning High People's Court dismissed the appeal.[26]

The courts of the case properly interpreted and applied the provisions of article 61 of the Minutes. However, article 61 of the Minutes has room for improvement. First, it does not provide a specific or detailed explanation of "other rights", which may cause uncertainty in the application of the law. Secondly, the person who "does not claim delivery or exercise other rights against the carrier at the port of destination" is limited to the bill of lading holder only in this article. But such a person may include a consignee other than the holder of the bill of lading, for example, the consignee of the sea waybill. Article 61 should expand the scope of the subject party of unclaimed goods and better protect the carrier's right to claim the container demurrage.

Actual shipper

Article 42(3) of the Maritime Law provides for two types of shippers, one being "the person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier", ie the contractual shipper, and the other being "the person by whom or in whose name or on whose behalf the goods have been delivered to the carrier involved in the contract of carriage of goods by sea", ie the actual shipper.[27] The Maritime Law does not distinguish between the two types of shippers for their rights and obligations in the carriage of goods by sea.

In *New Golden Sea Shipping Pte Ltd v China National Machinery Industry International Co Ltd*,[28] the courts analysed the obligation and liability of the two types of shippers for the container demurrage. In the case, the buyer entered into a sale contract with China National Machinery Industry International Co Ltd (hereinafter referred to as "Machinery Co"), agreeing that the buyer would purchase a batch of goods from Machinery Co. The sale contract was concluded on FOB terms, with the

[25] (2023) L 72 MC 1439 (Dalian Maritime Court).

[26] (2024) LMZ 397 (Liaoning High People's Court).

[27] For the actual shipper, see the relevant cases and comments in "Chinese maritime law in 2023: a review".

[28] (2021) ZGFMS 5588 (Supreme People's Court); [2022] 3 CMCLR 8; Guiding Case No 230 (discussed and adopted by the Trial Committee of the Supreme People's Court, issued on 25 November 2024).

buyer of the goods being responsible for entering into a contract for the transport of the goods, and the seller, Machinery Co, being responsible for loading the goods onto the ship nominated by the buyer. In order to fulfil the trade contract, the buyer entrusted a logistics company to provide freight forwarding services for the goods. The logistics company made a booking with New Golden Sea Shipping Pte Ltd (hereinafter referred to as "New Golden Shipping"). After accepting the booking, New Golden Shipping loaded the goods in the container and arranged the shipment of the container. The bill of lading recorded that the shipper was Machinery Co, the consignee as per instructions, the carrier was New Golden Shipping, and the notification party was the buyer company.

The goods arrived at the port of destination and were discharged at the port. They were still stored at the port of destination without being picked up at the time of the trial, which resulted in losses including the container demurrage. New Golden Shipping claimed against Machinery Co for the container demurrage and other losses. Tianjin Maritime Court rejected all the claims of New Golden Shipping.[29] New Golden Shipping appealed. Tianjin High People's Court dismissed the appeal and upheld the original judgment.[30] New Golden Shipping applied to the Supreme People's Court for retrial. The Supreme People's Court dismissed New Golden Shipping's application for retrial.[31]

The courts analysed the issue of the actual shipper's liability for container demurrage from two aspects. First, the court held that Machinery Co should not be liable for the container demurrage because it was the actual shipper and did not claim delivery of the goods. The court pointed out that the contract of carriage of goods by sea in question was entered into by the buyer and New Golden Shipping, and the freight was paid by the buyer to New Golden Shipping. Machinery Co met the legal characteristics of the actual shipper rather than the contractual shipper as stipulated in article 42(3) of the Maritime Law. Furthermore, the bill of lading in this case had been transferred with the letter of credit, and Machinery Co did not hold the bill of lading or claim any rights under the bill of lading. It was held that the relevant costs and risks should be borne by the contractual shipper and Machinery Co should not be liable for the relevant costs.

Secondly, the court pointed out that, although Machinery Co was recorded as the shipper in the bill of lading, it was not the contractual shipper. In the view of the court, the bill of lading is only evidence of the contract of carriage under article 71 of the Maritime Law, but not the contract of carriage of goods by sea itself. Machinery Co did not participate in the negotiation of the contract of carriage of goods by sea, did not give specific instructions to New Golden Shipping in the course of the carriage, and did not pay the freight to New Golden Shipping. It was the buyer, not Machinery Co, that concluded the contract of carriage of goods by sea with New Golden Shipping. Therefore, the carrier had the right to claim against the contractual shipper for the costs arising from the unclaimed goods at the port of destination, and there was no legal basis for New Golden Shipping to request Machinery Co to bear the losses arising from the unclaimed goods.

> To deny the legal relationship between the named shipper and the carrier of the bill of lading on the basis that the bill of lading is only evidence of the contract of carriage may affect the role that the bill of lading should play in international shipping and trade

This case is a Guiding Case of the Supreme People's Court, and its importance cannot be overstated. The court confirmed the actual shipper's status of the FOB Chinese seller on the one hand and clarified the liability of the contractual shipper for container demurrage on the other. However, there are two questions worth discussing. First, although the Maritime Law provides for two types of shippers, article 61 of the Minutes does not limit the shipper to the contractual shipper for the liability of container demurrage. There is no clear legal basis for holding that the carrier can claim only against the contractual shipper for the container demurrage.

Secondly, the court ignored the existence of a third type of shipper, that is, the shipper named in the bill of lading. This shipper is usually agreed upon by the buyer and seller and is recorded in the box of the shipper in the bill

[29] (2019) J 72 MC 1012 (Tianjin Maritime Court).
[30] (2020) JMZ 446 (Tianjin High People's Court).
[31] (2021) ZGFMS 5588 (Supreme People's Court).

of lading. This agreed bill of lading shipper can be either the buyer or the seller or even a third party, depending entirely on the commercial needs and mutual agreement between the seller and the buyer. Under the FOB trade term, the seller may request to be named as the shipper in the bill of lading in order to protect its own interests so as to obtain the status of shipper and exercise the shipper's rights, such as requiring the buyer to pay the price of goods for the exchange of bill of lading. The bill of lading is indeed evidence of the contract of carriage, but it is the contract of carriage that the bill of lading proves. Since the seller agreed to become the shipper in the bill of lading, it means that the seller agreed to form a contract of carriage with the carrier as evidenced by the bill of lading. To deny the legal relationship between the named shipper and the carrier of the bill of lading on the basis that the bill of lading is only evidence of the contract of carriage may affect the role that the bill of lading should play in international shipping and trade.

Freight forwarder

Article 61 of the Minutes provides that, if no one picks up the goods at the port of destination, the carrier may rely on the relationship of the contract of carriage to claim against the shipper for container demurrage or other costs incurred. But this provision does not apply to freight forwarders who may suffer the relevant costs caused by unclaimed goods. If the freight forwarder is liable for the container demurrage because of the freight-forwarding business, whether he can claim compensation from the principal should depend on the agreed matters in the freight forwarding agreement. In *Ningbo Logistics Co and Shenzhen Logistics Co v Zhejiang Auto Parts Co*,[32] the court held that the release of goods at the port of destination was not an agreed freight forwarding matter, and the freight forwarder had no right to claim against the principal for the container demurrage.

In this case, Ningbo Logistics Co was instructed by the foreign buyer to ship a batch of car wheels from the designated warehouse of Zhejiang Auto Parts Co to the port of Oakland, US. Ningbo Logistics Co and Zhejiang Auto Parts Co communicated their business through an instant messaging platform. Ningbo Logistics Co issued a house bill of lading, recording that the shipper was the Zhejiang Auto Parts Co and the consignee was the US buyer. After the goods reached the port of destination, Zhejiang Auto Parts Co issued an application to Ningbo Logistics Co for telex release, which stated:

> "Our company entrusts your company to arrange for the transport of the above goods and applies to your company for telex release of the goods due to business needs. ... Our company guarantees to bear all the responsibilities and consequences caused by the telex release and to compensate for all the losses thus caused to your company."

The consignee failed to pick up the container cargo, incurring container demurrage and other costs.

Ningbo Logistics Co and others filed a lawsuit to Ningbo Maritime Court, requesting Zhejiang Auto Parts Co to bear the relevant costs arising from the unclaimed goods at the port of destination. Ningbo Maritime Court found that the delivery of goods at the port of destination was not within the scope of the freight forwarding affairs and Zhejiang Auto Parts Co had no ownership of the goods at the port of destination. The court pointed out that Ningbo Logistics Co had no legal basis to claim against Zhejiang Auto Parts Co for the loss of container demurrage.[33]

Ningbo Logistics Co and others appealed, and Zhejiang High People's Court dismissed the appeal. Zhejiang High People's Court pointed out that, although article 61 of the Minutes entitles the carrier to claim against the shipper for container demurrage or other expenses incurred due to the unclaimed goods, the provision is not applicable to the freight forwarder. Zhejiang High People's Court further pointed out that Ningbo Logistics Co could only rely on the relationship of entrustment to claim against the foreign buyer for container demurrage or other relevant expenses.

Because the court ascertained that the release of goods at the port of destination was not within the scope of freight forwarding affairs, Zhejiang Auto Parts Co was not responsible for the relevant costs arising from the unclaimed goods at the port of destination. If the release of goods at the port of destination is within the scope of the freight forwarding affairs, whether Zhejiang Auto Parts Co is liable for the relevant costs is still a question. Obviously, article 61 of the Minutes cannot answer the question because the article applies to the claim by the carrier rather than the freight forwarder. The answer to this question depends on the scope of the freight-forwarding business. If the release of goods at the port of destination is

[32] (2024) ZMZ 94 (Zhejiang High People's Court).

[33] (2023) Z 72 MC 1200 (Ningbo Maritime Court).

an agreed freight-forwarding business, the freight forwarder may be able to request its principal to bear the relevant costs arising from the unclaimed goods at the port of destination according to the freight forwarding agreement.

In this case, there is another noteworthy fact; that is, Zhejiang Auto Parts Co applied for the telex release of the goods. The request was for the delivery of the goods at the port of destination, which seemed to be proof of acting as an agent for the affairs at the port of destination. Ningbo Logistics Co argued that the application for the telex release of the goods included the guarantee of the cost of release of goods. However, the court rejected this argument and held that the guarantee of the cost was contrary to the purpose of the application for the telex release. From the content of the telex release application, the application includes the guarantee for the cost of discharge at the port of destination and the guarantee for the liability due to the discharge of the goods without a bill of lading. If the container demurrage and other costs are associated with the application, it seems that they could be included in the scope of the guarantee, and thus the freight forwarder can claim the container demurrage and other relevant costs based on the guarantee in the telex release application.

Consignee's liability

Article 86 of the Maritime Law provides for both the carrier's right to claim container demurrage from the consignee and the consignee's liability for the relevant costs and risks. This liability is a statutory liability and does not depend on other conditions precedent. However, in *Hapag-Lloyd Shipping (China) Co Ltd v Shandong Awan Import & Export Co Ltd and Another*,[34] the court set a condition precedent to the consignee's liability under article 86 of the Maritime Law, changing the application of this article.

In this case, Hapag-Lloyd Shipping (China) Co Ltd (hereinafter referred to as "Hapag-Lloyd") accepted its principal's instructions to carry containerised goods and issued a bill of lading. The bill of lading stated, inter alia, that the shipper was the principal, the consignee was Shandong Awan Import & Export Co Ltd (hereinafter referred to as "Awan"), the carrier was Hapag-Lloyd, the port of loading was Port Sudan, the port of discharge was Qingdao, and the goods consisted of Sudanese cotton loaded in 18 containers. Clause 20 para 2 of the bill of lading provided:

> "The cargo interests shall take delivery of the goods within the time specified in the carrier's rate sheet, and if the cargo interests fail to do so, they shall be liable for the cost of storage, as well as the detention and demurrage."

After the arrival of the goods, Hapag-Lloyd China sent emails to Awan urging it to take delivery of the goods and repeatedly notified Awan that it had incurred container demurrage due to the storage of the goods at the terminal. Awan did not respond. Later, the goods were delivered to the buyer by a district court order. Hapag-Lloyd claimed against Awan and the buyer for the container demurrage.

Qingdao Maritime Court rejected Hapag-Lloyd's claim. The court applied the principle of consistency of rights and obligations to deny the consignee's liability for the container demurrage. The court pointed out that when Awan, as the consignee stated in the bill of lading, did not exercise its right to take delivery of the goods, it waived its right to the bill of lading conferred by the law, and according to the principle of consistency of rights and obligations, Awan should not be responsible for the payment of the container demurrage. In the view of the court, although the consignee should be liable for the container demurrage under article 86 of the Maritime Law, it should not bear the corresponding risks and costs if the consignee did not claim the right to the goods. First, the consignee or bill of lading holder has the legal right to take delivery of the goods and accordingly should bear the relevant costs in the port of discharge. However, when the consignee or bill of lading holder does not exercise the right to take delivery of the goods, it gives up the legal rights from the bill of lading. According to the principle of consistency of rights and obligations, the consignee should not bear the corresponding liability arising from the unclaimed goods. Secondly, since the holder of the bill of lading or the consignee did not take delivery of the goods at the port of destination, the shipper, as the contracting party, should be liable to the carrier for the consequences of the failure to take delivery of the goods by the holder of the bill of lading or the consignee.

The consignee in this case was not liable for the container demurrage for two reasons. The first reason is the principle of consistency of rights and obligations. The principle itself has no problem, but the waiver of the right does not mean that the obligation is automatically

[34] (2024) L 72 MC 712 (Qingdao Maritime Court).

waived. The obligations and liabilities of the consignee under article 86 of the Maritime Law are statutory obligations and liabilities, the existence and extinction of which do not presuppose the exercise or waiver of other rights. At least, the provision of article 86 itself does not establish such a precondition. The second reason is the shipper's liability. Of course, the carrier can claim against the shipper in accordance with article 61 of the Minutes. But the right to claim against the shipper does not mean that the consignee would not assume the liability for the container demurrage under article 86 of the Maritime Law. There is no legal connection between the shipper's liability and the consignee's liability.

Limitation of action

For the time bar against the carrier, article 257 para 1 of the Maritime Law stipulates:

> "The limitation period for claims against the carrier with regard to the carriage of goods by sea is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier. Within the limitation period or after the expiration thereof, if the person allegedly liable has brought up a claim of recourse against a third person, that claim is time-barred at the expiration of 90 days, counting from the day on which the person claiming recourse settled the claim or was served with a copy of the process by the court handling the claim against him."

This is the statutory limitation of action against the carrier. The time bar of 90 days in the above provision applies only to the carrier's recourse action against a third party, not to the carrier's direct action against the cargo interests. The Maritime Law does not provide a statutory limitation of action for the carrier's claim against the cargo interests. The Supreme People's Court's Reply on the Limitation of Action for the Carrier's Right to Claim Compensation from the Shipper, the Consignee or the Holder of the Bill of Lading in respect of the Carriage of Goods by Sea (hereinafter referred to as "Reply"), stipulates that, with regard to the carrier's right to claim compensation from the shipper, the consignee or the holder of the bill of lading in respect of the carriage of goods by sea, the provision of article 257 para 1 of the Maritime Law applies mutatis mutandis, and that the one-year limitation of action starts from the date on which the right holder knew or should have known of the infringement of the right.

> The one-year time bar for the carrier's right to claim compensation for the container demurrage is calculated from the expiration of the free use period of the container

In the aforementioned case of *Hapag-Lloyd Shipping (China) Co Ltd v Shandong Awan Import & Export Co Ltd and Another*,[35] another legal issue was whether Hapag-Lloyd's action exceeded the limitation of action. Qingdao Maritime Court pointed out that the limitation of action for the carrier's request for the container demurrage based on the contract of carriage shall be one year, calculated from the date when the carrier knew or should have known that its rights had been infringed. The container demurrage starts to be calculated from the expiry of the free use period. In the view of the court, although the use of containers after the free use expiry date is a continuing behaviour, the carrier is aware of the free use period of the containers, and the container demurrage has already arisen after the free use expiry date regardless of whether the consignee has taken delivery of the goods. Therefore, the one-year time bar for the carrier's right to claim compensation for the container demurrage is calculated from the expiration of the free use period of the container. In summary, the limitation action for the carrier's claim for container demurrage is one year, starting from the date after the expiry of the container's free use period. Regarding the limitation of action and the starting date of the limitation for the container demurrage claim, the judgment of Qingdao Maritime Court in this case is reasonable and represents the normal practice in Chinese courts.

[35] (2024) L 72 MC 712 (Qingdao Maritime Court).

Scope of damages

Article 46 of the Maritime Law provides that, during the period the carrier is in charge of the goods, the carrier shall be liable for the loss of or damage to the goods. Article 55 provides: "The amount of indemnity for the loss of the goods shall be calculated on the basis of the actual value of the goods so lost, while that for the damage to the goods shall be calculated on the basis of the difference between the values of the goods before and after the damage or on the basis of the expenses for the repair".

In addition to the Maritime Law, the Civil Code has general rules on damages. Article 591 of the Civil Code provides:

> "After either party to a contract breaches the contract, the other party shall take appropriate measures to prevent the loss from being aggravated, and the party that fails to take appropriate preventive measures and thus causes the loss to be aggravated may not claim compensation for the aggravated portion of the loss. The reasonable expenses incurred by a party in preventing the aggravation of the loss shall be borne by the party in breach."

In *Bertschi International Freight Forwarding (Shanghai) Co Ltd v Shanghai Haihua Shipping Co Ltd*,[36] the parties raised disputes on the application of the law to the liability resulting from damage to the goods. Bertschi International Freight Forwarding (Shanghai) Co Ltd (hereinafter referred to as "Bertschi") claimed compensation for damage to the cargo and the cost of handling the salvage cargo from the carrier based on the Maritime Law and the Civil Code. Shanghai Haihua Shipping Co Ltd (hereinafter referred to as "HASCO") argued that it should only be liable for the compensation for cargo damage according to the Maritime Law.

Bertschi contended that the scope of the carrier's liability could not be limited to the loss of value of the goods under the Maritime Law. Article 55 of the Maritime Law specifies the amount of compensation in case of loss of or damage to the goods. However, the amount of compensation in this article refers to the loss of the value of the goods, not the limit of the carrier's liability for the loss of or damage to the goods. The Maritime Law does not provide that the scope of the carrier's liability under the contract for carriage of goods by sea is limited to the loss of the value of the goods or that the carrier is not liable for other direct losses caused by its breach of contract. Bertschi further contended that the scope of the carrier's liability should be governed by the provisions of the Civil Code on the scope of general damages. Damage for breach of contract is for compensation purposes. In this case, the disposal of the residual cargo was necessary and reasonable, and the relevant disposal costs were the direct loss caused by HASCO's failure to fulfil its obligation to take charge of the cargo, for which HASCO should be liable. The disposal costs were for preventing further loss of the goods in question due to their toxicity, which was a derogation cost and should be compensated.

The Supreme People's Court rejected Bertschi's contentions. It was pointed out that, according to the legislative purpose of the Maritime Law, article 55 of the Maritime Law is not only a provision on the method of calculating the compensation for loss of or damage to the goods but also a provision on the scope of the carrier's liability. The court of the second instance held that the Maritime Law stipulates the scope of compensation for the carrier's liability.[37] The Supreme People's Court held that it should not apply the general civil law to increase the carrier's liability in addition to the liability under the Maritime Law and that the application of the Maritime Law was not inappropriate.[38]

It is true that the legislative purpose of the Maritime Law is to limit the scope of liability for cargo damage to the loss of value of the goods, and even the carrier has the legal right to limit its liability for cargo damage.[39] However, this does not mean that the carrier only compensates for the value of the loss of goods in the case of a breach of statutory or agreed obligations. Damages for breach of contract other than cargo loss are not subject to the Maritime Code. The general provisions of the Civil Code shall not be applied to the extent that they are inconsistent with the special provisions of the Maritime Code for the same legal issue, eg liability for the loss of or damage to goods. However, regarding other losses and reasonable costs incurred by the parties to prevent the extension of losses, the Maritime Law does not have special provisions, and the relevant provisions in the Civil Code should be applied. The handling cost is another kind of damage different

[36] (2023) ZGFMS 2157 (Supreme People's Court).

[37] (2022) HMZ 1040 (Shanghai High People's Court).

[38] (2023) ZGFMS 2157 (Supreme People's Court).

[39] Article 56 of the Maritime Law provides that "the carrier's limit of liability for loss of or damage to the goods shall be calculated in accordance with the number of pieces of the goods".

from cargo damage and is not an aggravation of the carrier's liability for cargo damage under the Maritime Law. Therefore, the handling costs of the residual cargo should be compensated under the Civil Code.

Freight forwarding

Under the general rules of civil law, the general principle of liability for breach of contract is the principle of no-fault liability, ie if one of the parties fails to perform the contractual obligations or the performance of the contractual obligations is not in accordance with the agreement, the party shall be liable for breach of contract. In the Provisions of the Supreme People's Court on Certain Issues Concerning the Trial of Cases of Disputes Over Marine Freight Forwarding, article 10 provides:

> "Where the principal claims that the freight forwarder shall bear the corresponding liability for compensation on the grounds that the freight forwarder causes losses to the principal during handling marine freight forwarding transactions, the people's court shall uphold such claim, except that the freight forwarder can prove it is not at fault."

This article adopts the principle of presumption of liability for fault in the freight forwarding contract legal relations. This is because the freight forwarder as a fiduciary is in control of the entrusted matters and the business process. The application of the principle of presumption of liability for fault is fair to the parties in the freight-forwarding business and can reduce the cost of proof in judicial proceedings.

The principle of presumption of liability for fault applies only when the freight forwarder is at fault in dealing with the freight forwarding affairs within the scope of entrustment. If the loss does not occur in the scope of the entrusted affairs, the freight forwarding agent is not liable for the loss, and there is no need to prove that it is not at fault. In *Shaoxing A Co Ltd v Qingdao B Co Ltd*,[40] Shaoxing A entrusted Qingdao B to act as an agent for the freight-forwarding business, including booking, customs clearance, terminal operation, document production and other matters. The two parties did not sign a written agreement. According to the chat records between them, the two parties did not make a clear agreement on how to release the goods. The goods in question were delivered without the bill of lading. Shaoxing A did not receive the full amount of payment and claimed against Qingdao B for the loss of the payment.

Qingdao Maritime Court, as the court of first instance, pointed out that the parties did not agree on the matter of the delivery of goods. and Shaoxing A could not prove that Qingdao B was at fault in the performance of the freight forwarding contract. Therefore, Qingdao Maritime Court dismissed Shaoxing A's claim.[41] Shaoxing A applied for retrial. Shandong High People's Court dismissed the application. First, Qingdao B was not the carrier and did not have the right to control the goods. It was not Qingdao B's contractual obligation to deliver the goods in the port of destination. Qingdao B had a communication obligation, but there was no causal relationship between the communication and the release of goods. Secondly, Shaoxing A did not prove that Qingdao B failed to obtain information of the goods and truthfully inform the control of the goods in time. Thirdly, there was no causal relationship between Qingdao B's information about the control of the goods and the carrier's release of goods without a bill of lading. Therefore, Shandong High People's Court upheld the decision of the court of first instance.[42]

[40] (2024) LMS 6750 (Shandong High People's Court).
[41] (2023) L 72 MC 748 (Qingdao Maritime Court).
[42] (2024) LMS 6750 (Shandong High People's Court).

Marine insurance

In the marine insurance cases analysed here, the main legal issues in disputes are the duty of disclosure and the insurance period. In respect of the duty of disclosure, the Insurance Law and the Maritime Law have different provisions on the remedies for breach of the duty. In respect of the insurance period, the main question concerns the boundary between the periods of a cargo all risks insurance and an erection all risks insurance, which will decide the different liability of the insurers under the two insurances. Other disputes in the marine insurance cases covered include the relationship between the insurable interest and the rights of suit, the insurer's liability to third parties, and the evidential effect of an investigation report issued by the maritime administration.

Duty of disclosure

The insured has a duty of disclosure to the insurer, which can derive from both contractual agreements and legal provisions. Article 222 of the Maritime Law stipulates:

> "Before the contract is concluded, the insured shall truthfully inform the insurer of the material circumstances which the insured has knowledge of or ought to have knowledge of in his ordinary business practice and which may have a bearing on the insurer in deciding the premium or whether he agrees to insure or not.
>
> The insured need not inform the insurer of the facts which the insurer has known of or the insurer ought to have knowledge of in his ordinary business about which the insurer made no inquiry."

As for the consequences of violating this statutory obligation, article 223 of the Maritime Law provides :

> "Upon failure of the insured to truthfully inform the insurer of the material circumstances set forth in paragraph 1 of Article 222 of this Law due to his intentional act, the insurer has the right to terminate the contract without refunding the premium. The insurer shall not be liable for any loss arising from the perils insured against before the contract is terminated.
>
> If, not due to the insured's intentional act, the insured did not truthfully inform the insurer of the material circumstances set out in paragraph 1 of Article 222 of this Law, the insurer has the right to terminate the contract or to demand a corresponding increase in the premium. In case the contract is terminated by the insurer, the insurer shall be liable for the loss arising from the perils insured against which occurred prior to the termination of the contract, except where the material circumstances were uninformed or wrongly informed of and have an impact on the occurrence of such perils."

In hull and machinery insurance, the operation and chartering information of the insured ship may become material information that needs to be disclosed. If it is not disclosed, whether the insurer can terminate the insurance and deny liability depends on the specific circumstances of the case. In *Fujian Huajing Marine Technology Co Ltd v Ping An Property & Casualty Insurance Company of China Ltd and Another* ,[43] the trial court analysed the information that had not been disclosed and held that the insured had not breached its duty of disclosure. In this case, Ping An Property & Casualty Insurance Company of China, Ltd (hereinafter referred to as "Ping An") underwrote the marine insurance of the vessel *Fu Jing 001* of Fujian Huajing Marine Technology Co Ltd (hereinafter referred to as "Fu Jing Co"). Ping An issued the policy in which the Institute Time Clauses (Hulls) 1.10.83 were incorporated. Clause 4.2 of the Clauses stipulates that, unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of "any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis, or requisition for title or use of the Vessel ... A pro rata daily net return of premium shall be made".

On 2 July 2022 *Fu Jing 001* was affected by a typhoon in the Yangjiang sea area. The vessel anchored and came into contact with several wind turbines and submarine cables in a wind farm, and consequently the vessel sank. On 21 July 2022 Fu Jing Co gave a notice of abandonment to Ping An. On 29 July 2022 Ping An Guangdong Branch confirmed that the vessel was a total loss but explicitly refused to accept the abandonment. On 1 August 2022 Fu

[43] (2023) Y 72 MC 1069 (Guangzhou Maritime Court).

Jing Co filed an application for insurance indemnity with Ping An. On 23 August 2022 Ping An Guangdong Branch refused the request for compensation. Ping An argued that the insuring documents received by the insurer on 27 April 2022 did not show the existence of a bareboat charter registration of the vessel. As a matter of fact, Fu Jing Co entered into the bareboat charter with other companies and registered the bareboat charter for the vessel. *Fu Jing 001* not only had a bareboat charter registration but also had a time charter contract and an operating agreement.

One of the issues in dispute in this case was whether the insured had breached the duty of disclosure. Guangzhou Maritime Court started the analysis of the issue from the concept of the bareboat charter. Article 144 of the Maritime Law stipulates:

> "A bareboat charter is a contract whereby the shipowner provides the charterer with an unmanned ship, which is to be possessed, employed and operated by the charterer for an agreed period of time and for which the charterer shall pay the shipowner the hire."

Guangzhou Maritime Court pointed out that bareboat charter under the Maritime Law needs to satisfy three elements. First, the shipowner provides the vessel without crew; secondly, it is to be possessed, used and operated by the charterer within the agreed period; and thirdly, the charterer pays hire to the shipowner.

In this case, the court found that, although Fu Jing Co signed the bareboat charter and registered the charter for the vessel, by reading it with other supplemental agreements signed by Fu Jing Co and other companies, it could be found that the registration of the bareboat charter was only an external manifestation, which is actually a financial guarantee. In fact, there was no change in the management of the vessel, and the charterer of the bareboat charter did not actually possess, use or operate the vessel. Therefore, Guangzhou Maritime Court held that the bareboat charter contract in this case did not satisfy elements required in the Maritime Law, and there was therefore no bareboat charter of the vessel in substance.

The court found that the registration of the bareboat charter as a financial guarantee of the vessel was a proactive announcement to the Shenzhen Stock Exchange and that the relevant support arrangements, financial reporting arrangements and the plan for bareboat charter registration were information that could be publicly enquired into. The court held that it was the fact "which the insurer has known of, or the insurer ought to have knowledge of in his ordinary business" in article 222 of the Maritime Law, which the insurer did not enquire about and which the insured was not required to reveal. Furthermore, the court pointed out that the insurer did not submit any evidence to prove that the insured had intentionally failed to disclose the bareboat charter registration, and there was no evidence to prove how the insured's failure to disclose information had any effect on the occurrence of the insurance event.

The court also found that the insurer did not ask the insured, when accepting the insurance proposal and underwriting, whether the vessel had been registered as bareboat chartered, whether it planned to be registered as bareboat chartered, whether it would be bareboat chartered, also that and did not inform the insured that it was not allowed to register the vessel as bareboat chartered. Therefore, Guangzhou Maritime Court rejected the insurer's argument that the insured had breached its duty of disclosure.

> The Maritime Law imposes an active duty of disclosure in respect of marine insurance, requiring the insured to truthfully inform the insurer of important information that the insured knows, or should know in the ordinary course of business, that affects the insurer's determination of the insurance premium rate or the determination of whether to agree to underwrite the insurance policy

Guangzhou Maritime Court analysed the nature of the relevant agreement and held that the insured's failure to disclose the relevant information was not a violation of the duty of disclosure. This decision is based on the content of the particular agreement. However, the court further held that the insurer failed to enquire of the insured about the relevant information. This seems to aggravate the insurer's statutory obligation. Article 16 of the Insurance Law sets up a passive duty to inform; ie the insured is only

required to truthfully inform the insurer of the questions asked by the insurer regarding the subject matter of the insurance or the relevant circumstances of the insured. Unlike the Insurance Law, articles 222 and 223 of the Maritime Law impose an active duty of disclosure in respect of marine insurance, requiring the insured to truthfully inform the insurer of important information that the insured knows, or should know in the ordinary course of business, that affects the insurer's determination of the insurance premium rate or the determination of whether to agree to underwrite the insurance policy. This reflects the difference between commercial insurance contracts and consumer insurance contracts. Under the Maritime Law, the marine insurer no longer has the obligation to make enquiries on its own initiative.

In judicial practice, there are not many cases in which the insureds' claims were dismissed on the basis of the insured's failure to fulfil the duty of disclosure.[44] Although there was no wilful failure to disclose information in the above case, it is worth noting that article 223 of the Maritime Law still allows the insurer to have the right to terminate the contract or to demand a corresponding increase in the premium in the event that the insured's duty of disclosure was not wilful. Had the facts of this case been a bareboat charter in the substantive sense, the outcome of the case may have been different.

In addition, the court focused on the insured's statutory duty of disclosure, ignoring the insured's contractual duty of disclosure under contract. The insured may have violated the corresponding contractual duty even though he did not violate the statutory duty. In this case, clause 4.2 of the insurance contract stipulates that, unless the insurers agree to the contrary in writing, "this insurance shall terminate automatically at the time of any change, voluntary or otherwise, ...transfer to new management, or charter on a bareboat basis ...". This clause does not stipulate whether bareboat charter and other situations need to be substantive, and the court has not interpreted or analysed the application of the clause. From the clause itself, in the case of bareboat charter, the insurance should be automatically terminated, and the insurer should therefore not bear insurance compensation liability. The case is currently in the second instance, and further trial results will be analysed in the 2025 edition of this review.

The insured's duty of disclosure may exist not only prior to the conclusion of the contract as a statutory duty by law but also during the period of the insurance contract as a contractual duty agreed upon in the insurance contract. In *Wang Fengmin and Others v China Life Property and Casualty Insurance Co Ltd, Nantong City Centre Branch*,[45] clause 16 of the insurance contract stipulated that if a change of the vessel, including the change of the owner of the insured vessel, occurs during the period of the insurance, the owner of the vessel is obliged to notify the insurer and to obtain the insurer's consent for the insurance contract to continue to be in force; otherwise, the insurance contract is cancelled automatically. In this case, part of the owners of the insured vessel changed, but the insured did not inform the insurer of the change or obtain the insurer's consent. The insured vessel was damaged in an accident, and the insurer refused to pay compensation.

The insured's duty of disclosure may exist not only prior to the conclusion of the contract as a statutory duty by law but also during the period of the insurance contract as a contractual duty agreed upon in the insurance contract

The trial court held that there was no evidence to prove that the change of partial ownership of the vessel would lead to a significant increase in the degree of danger and therefore did not support the insurer's defence.[46] The Supreme People's Court upheld the trial court's judgment in a retrial. The reasoning of the judgment is that the change did not lead to a significant increase in the degree of danger. However, the duty of disclosure in the insurance clause does not require the condition that the change will lead to a significant increase in the degree of danger. This interpretation of the insured's duty of disclosure clause may not be consistent with the true intention of the parties to the contract.

[44] In *Shanghai Chunkou Industrial Co Ltd v PICC Property and Casualty Co Ltd Tianjin Branch* (2024) ZGFMS 2283 (Supreme People's Court), the Supreme People's Court held that the insured had intentionally failed to fulfil the duty of disclosure and therefore rejected the insured's claim.

[45] (2024) ZGFMS 4790 (Supreme People's Court); [2025] 1 CMCLR 1.

[46] (2021) SMZ 2055 (Jiangsu High People's Court).

Insurable interest

In the aforementioned case of *Wang Fengmin and Others v China Life Property and Casualty Insurance Co Ltd, Nantong City Centre Branch*,[47] the insurance policy of the vessel in question stated that the insured was Haimen Jiangshan Cargo Handling Co Ltd (hereinafter referred to as "Jiangshan"). The plaintiffs in this case were Wang Fengmin, Mao Yongsong and Zhenjiang Hongyi Shipping Service Co Ltd (hereinafter referred to as "Hongyi"). They were the actual owners of the vessel. After the accident, the plaintiffs claimed against the insurer for compensation. The insurer argued that the plaintiffs were not the insured or the transferee of the insurance of the vessel and did not have the right to claim for insurance compensation. After the occurrence of the insurance accident, Jiangshan issued an "Information Note", recognising that the actual insured of the insurance contract was the shipowners, namely Wang Fengmin, Mao Yongsong and Hongyi, and that the insurance benefit should be attributed to the shipowners. The insurer argued that the "Information Note" was issued unilaterally by Jiangshan after the accident and could not bind the insurer and other third parties.

The trial court held that the plaintiffs had an insurable interest at the time of the accident and therefore had the right to claim insurance compensation. The trial court relied on article 48 of the Insurance Law. This article states that "if the insured does not have an insurable interest in the subject matter of insurance at the time of the insurance accident, he shall not claim insurance compensation from the insurer". Accordingly, the trial court held that the plaintiffs, as the actual owners and operators of the vessel, had an insurable interest in the vessel and, in conjunction with the "Information Note" issued by Jiangshan, concluded that the plaintiffs had an insurable interest in the vessel and had the right to claim insurance compensation in this case.[48] The Supreme People's Court upheld the judgment of the trial court in a retrial.

The judgment in this case links the insured's right of action to the insured's insurable interest. Thus, the courts held that, as long as the plaintiff had an insurable interest at the time of the accident, the plaintiffs were competent plaintiffs and had the right to claim insurance compensation. This understanding may not be consistent with the purpose of the law. Article 48 of the Insurance Law provides that an insured who has no insurable interest has no right to claim compensation. However, it cannot be deduced from this that as long as a person has an insurable interest, he must have the right to claim compensation. Insurable interest is one of the conditions for the right to claim, but not the only condition. It is not the case that once the condition is fulfilled, the right to claim is inevitable; at least article 48 does not express it as such.

Even if the existence of insurable interest can constitute a right of claim, the subject specified in the article is the insured, but the plaintiffs in this case were not the insured. The article cannot be applied. The "Information Note" issued by Jiangshan does not resolve the problem. The concept of "actual insured" in the "Information Note" does not exist in the Insurance Law. The fact that Jiangshan attributed the benefit of the insurance to the plaintiffs did not transform the plaintiffs' status into the insured or give the plaintiffs the right to claim compensation. It is Jiangshan that is the proper plaintiff in the case. If Jiangshan did not wish to participate in the litigation, it could assign the insurance to the plaintiffs, and the plaintiffs thus have the right of suit against the insurer.

Period of insurance

For ordinary marine cargoes, the cargo interests will normally arrange cargo insurance for transport risks, and the period of the cargo insurance usually ends when the goods reach the final warehouse or storage premises at the destination agreed in the policy. For special cargoes, such as machinery and equipment to be installed during or after discharge, the cargo interests will normally arrange insurance for installation work, and the period of the erection all risks insurance will normally begin at the commencement of the installation work. If a loss of or damage to the goods occurs in the course of both discharge and installation, it is possible that the question of the boundary between the periods of the two insurances arises. The solution to this issue is of great significance in determining the liability of different insurers. In *DINSON Industries Corporation v China Life Property and Casualty Insurance Co Shanghai Branch*,[49] the courts analysed the issue in detail, which is worthy of reference.

In this case, DINSON Industries Corporation (hereinafter referred to as "DINSON) was the insured, and China Life

[47] (2024) ZGFMS 4790 (Supreme People's Court); [2025] 1 CMCLR 1.
[48] (2021) SMZ 2055 (Jiangsu High People's Court).
[49] (2023) HMZ 818 (Shanghai High People's Court).

Property and Casualty Insurance Co Shanghai Branch (hereinafter referred to as "China Life") was the insurer of the erection all risks insurance. China Life issued the erection all risks insurance policy. The policy recorded that the subject matter insured was a gantry crane installation project, and the place of the insurance project was French Guiana Maritime Terminal. It was agreed that the insurance liability of the insurer starts from the commencement of the insured works at the construction site or the arrival of the materials and equipment used for the insured works at the construction site, and terminates at the time when the owner of the works issues the certificate of completion and acceptance or passes the acceptance of the works or the owner of the works actually possesses or uses or receives the works or all of the works, whichever occurs first.

DINSON also had cargo insurance for the carriage of the goods. The "warehouse-to-warehouse" liability period agreed in the cargo insurance was effective from the time when the insured goods left the warehouse or storage place at the place of shipment as stated in the insurance policy, including sea, land, inland waterway and barge transport in the normal course of transport, until the goods arrived at the final warehouse or storage place or at the place of destination of the consignee as stated in the insurance policy, or any other place of storage used by the insured for allocation, distribution or abnormal transport.

The goods were loaded on board the vessel *Da An* from the port of Taicang, China, to the port of Tigre de Tiscana, French Guiana. Upon the arrival of the vessel at the port of destination, the substructure of the gantry crane was partially discharged from the vessel and landed on the quayside, including some of its fittings. Subsequently, the ship's crane was lifted to install the superstructure of the gantry crane. During this process, the superstructure was suspended in a position close to the top of the substructure for a few hours and then slowly lowered to connect the turntable and install the bolts. Thereafter, the superstructure suddenly tipped over and fell onto the substructure it had been installed with and other cargo that had been discharged to shore. The gantry crane was damaged.

DINSON requested insurance indemnity from China Life but was rejected. DINSON claimed against China Life. One of the issues in dispute in this case is whether there was double insurance, ie whether China Life could pay a loss in proportion to the amount for which it was liable under its insurance and a right of contribution against the insurer of cargo insurance. The accident occurred during the period of insurance of the erection all risks insurance. If the period of the cargo insurance had not yet ended when the accident occurred, there might be a situation of double insurance in this case. Therefore, whether the accident occurred during the period of the cargo insurance is a prerequisite for determining the double insurance in this case.

DINSON contended that the transport delivery had been completed when the vessel arrived at the port of destination, ie the port of installation. After that, the ship acted as an installation tool. The installation work at this time was not a delivery but belonged to the consignee's possession of the goods, and the ship used its own equipment to carry out the installation work according to the consignee's entrustment arrangement. Therefore, the accident occurred when the carriage had already ended and the installation had already begun, so there was no double insurance in this case. China Life argued that, when the cargo damage occurred, the equipment was still in a suspended state and had not landed safely. So, the period of the cargo insurance had not ended. In addition, the accident occurred during the discharge of the superstructure of the crane, and part of the cargo under the cargo insurance was still on board the vessel, which sufficiently demonstrated that the period of the cargo insurance had not been terminated.

Shanghai Maritime Court, as the court of first instance, pointed out that the dispute between the parties related to the special nature of the operation process of discharge and installation of the gantry crane as the subject matter insured. The court analysed this dispute from three aspects and concluded that the period of the cargo insurance had ended when the accident occurred in this case and there was no double insurance. First, the purposes of the two insurances are different. The purpose of the cargo insurance is mainly to prevent or protect the goods in the transport process from all kinds of risk, including loading and discharge process risks, to complete the function or purpose of the movement of the goods. The purpose of erection all risks insurance is to prevent or protect the relevant goods or equipment from various risks during the installation process.

Secondly, the operation was for installation, not carriage of the goods. From the fact that the superstructure was suspended above the substructure for a few hours and then slowly lowered to connect the turntable and install the bolts, the purpose was to complete the installation of

the upper and lower structure of the crane and had nothing to do with the transport. Thirdly, when the ship's crane was lifted to install the superstructure of the gantry crane, which was suspended in a position close to the top of the substructure for a few hours, the goods in question were in the place of storage used by the insured for allocation, distribution or abnormal transport. Accordingly, the period of the cargo insurance had been terminated. Therefore, the accident occurred during the period of the erection all risks insurance for the installation work.[50]

> Parties to cargo insurance for carriage of goods by sea can agree on the start and end time of the insurance period, and the law does not mandate that the period of the insurer's liability must coincide with the period of the carrier's liability for carriage of goods by sea

China Life appealed, arguing that the accident occurred when the crane had not been discharged in place and the transport of the goods had not ended, so the corresponding cargo insurance period had not yet ended. In other words, the period of cargo insurance should be consistent with the period of the carriage. In this regard, Shanghai High People's Court as the appellate court pointed out that the parties to cargo insurance for carriage of goods by sea can agree on the start and end time of the insurance period, and the law does not mandate that the period of the insurer's liability must coincide with the period of the carrier's liability for carriage of goods by sea. In practice, it is not uncommon that the carrier has received the goods and the carrier's responsibility period starts from the receipt of the goods, but the cargo insurance period has not yet started if the goods were still stored in a warehouse at the place of origin, or the goods arrive at the port of temporary storage in the terminal warehouse, and the carrier's responsibility period has been completed but the period of insurance of the cargo insurance has not yet ended. Therefore, whether the period of cargo insurance has ended should be decided based on the agreement of the insurance contract and the relevant facts of the case.

Shanghai High People's Court divided the "warehouse-to-warehouse" insurance period into two situations, namely "normal transport" and "abnormal transport". The former one is that the goods arrive at the final warehouse or storage place of the consignee at the destination stated in the insurance policy, and the latter one is that the goods arrive at other storage places used by the insured for allocation, distribution or abnormal transport. The former situation is for the normal termination of the insurance policy for the carriage of goods and emphasises the spatial element, ie the goods must have entered a particular spatial location with certainty for the insurance period to be terminated, irrespective of by whom and in what manner the goods were brought to that location. The latter situation is for the special end of the cargo insurance. In this situation, since the goods have not yet arrived at the destination of the consignee's final warehouse or storage premises stated in the insurance policy, whether the cargo insurance period has ended does not depend on the location of the goods. The key point is to see whether the place of storage used by the insured is for "distribution, allocation, or abnormal transport".

Regarding the judgment of whether there was an "abnormal transportation" at the time of the accident, Shanghai High People's Court interpreted "abnormal transportation" according to article 142 para 1 of the Civil Code. This article stipulates:

> "With regard to the explanation of an expression of intention wherein the counterparty is involved, the meaning of the intention expressed shall be determined based on the words and phrases used and according to the relevant provisions and terms, the purpose and nature of the act, common practices, and the principle of good faith."

Shanghai High People's Court pointed out that the special fact in this case was that the ship's crane was both the discharge equipment and the installation equipment of the goods, and the discharge and installation was a continuous process. Therefore, before the crane transport and discharge were completed, the crane installation work had already begun. The nature and purpose of the transport after the installation work started were different

[50] (2023) H 72 MC 389 (Shanghai Maritime Court).

from the normal situation where the goods are only carried. This should fall under "abnormal transport" as referred to in the insurance terms.

Finally, Shanghai High People's Court analysed the definition of double insurance. Article 56 of the Insurance Law stipulates that double insurance refers to insurance where the policyholder has entered into insurance contracts with more than one insurer for the same subject matter insured, the same insurance benefit and the same insurance risks, and the sum insured exceeds the insurance value. Shanghai High People's Court pointed out that, at the time of the accident, the insurance period of the erection all risks insurance had already begun, and the insurance period of the cargo insurance had already ended. So, there did not exist two valid insurance policies for the same insurance accident at the same time. Therefore, there was no double insurance in this case. Shanghai High People's Court upheld the judgment of Shanghai Maritime Court.

The risk covered by cargo insurance is a total or partial loss of goods in transit due to external causes. It only emphasises the source of the risk, not the nature of the risk. In Supreme People's Court Guiding Case No 52,[51] the Supreme People's Court held that if the insured proves that the loss is not due to its own reasons but due to an accident within the period of insurance, the insurer shall bear the insurance liability. Therefore, although the insurer of cargo insurance did not intend to underwrite the installation risk, according to Guiding Case No 52, the insurer of cargo insurance could not defend from the perspective of underwriting the risk. Mr Bing Yan of AnJie Broad Law Firm, the agent ad litem of the insurer of cargo insurance in this case, believed that Shanghai High People's Court and Shanghai Maritime Court had made creative determinations on the termination node of the liability period of the cargo insurance in this case, which played the role of judicial guidance. He also pointed out that the judicial interpretation of the risks of cargo insurance within the scope of the risks in carriage might be more in line with the original intention of the cargo insurance, but it is questionable whether it is consistent with the interpretation of "all risks" in Guiding Case No 52.

In addition, if there was no erection all risks insurance in this case, and it has been disclosed to the insurer of cargo insurance that the goods would be discharged and installed at the same time, or the insurer of cargo insurance should be aware of such operations, the insurer of cargo insurance may take the risks in the discharge and installation of the goods. Lastly, the cargo insurance dispute was heard by Nanjing Maritime Court, and the case was ultimately withdrawn. If the case was not withdrawn and Nanjing Maritime Court held that the insurance accident fell within the period of the cargo insurance, it may result in different judgments for the same dispute. The above issues need to be solved in further judicial practice.

[51] *Hainan Fenghai Cereals and Oil Industry Co Ltd v PICC Property and Casualty Co Ltd, Hainan Branch* (2003) MSTZ No 5; Guiding Case No 52 (discussed and adopted by the Trial Committee of the Supreme People's Court on 15 April 2015).

Compensation to third party

The insurer may compensate a third party who has suffered damage caused by the insured in a certain circumstance. Article 65(2) of the Insurance Law provides :

> "Where an insured in liability insurance causes any damage to a third party and the liability of the insured for indemnity to the third party has been determined, the insurer shall directly pay insurance benefits to the third party according to the request of the insured. Where an insured is negligent in making a request, the third party shall have the right to directly request the insurer to pay the insurance benefits for the damage with respect to which the third party shall be indemnified."

The determination of the liability of the insured and the insured's negligence in making a request are the legal requirements for the insurer to compensate the third party directly. Article 14(1) of the Supreme People's Court Interpretation on Several Issues Concerning the Application of the Insurance Law of the People's Republic of China (IV) (hereinafter referred to as "Judicial Interpretation of the Insurance Law IV") stipulates that the insured's liability to the third party shall be deemed to be determined in one of the following circumstances:

> "(1) the liability of the insured for the compensation of the third party is confirmed by the judgment of the people's court and by arbitration awards; (2) the liability of the insured to the third party is agreed upon by the insured and the third party; (3) other circumstances under which the liability of the insured to the third party can be determined."

In *Hainan Dongzhan Building Materials Trading Co Ltd v PICC Property and Casualty Co Ltd Fuzhou Branch; Pingtan Comprehensive Pilot Zone Huachen Shipping Co Ltd and PICC Property and Casualty Co Ltd*,[52] the courts analysed whether the statutory requirements were satisfied for the third party's direct claim against the insurer. In this case, Hainan Dongzhan Building Materials Trading Co Ltd (hereinafter referred to as "Dongzhan Co") and Haizhong entered into a cement sale and purchase contract, agreeing that Dongzhan Co would purchase bulk cement from Haizhong. Pingtan Comprehensive Pilot Zone Huachen Shipping Co Ltd (hereinafter referred to as "Huachen Co") carried the goods and issued a waterway transport document, stating that the consignee was Dongzhan Co. On 27 February 2023 the vessel *Huachen 8* loaded the cement. When the ship sailed to the sea area near Moon Bay of Wenchang, it touched with an underwater reef and ran aground. As a result of this accident, all the cement carried was destroyed. Huachen Co had a coastal and inland waterway shipowner's P&I insurance for the carrying vessel with PICC Property and Casualty Co Ltd (hereinafter referred to as "PICC") for the period from 24 March 2022 to 23 March 2023. Huachen Co did not fulfil its obligation to compensate Dongzhan Co and did not request PICC to pay the insurance indemnity directly to Dongzhan Co. Dongzhan Co sued and requested PICC to pay the insurance indemnity directly to it.

After the accident, the local Maritime Safety Administration issued its "Report of Water Traffic Accident Liability Determination" stating that the vessel involved in the accident was fully responsible for the accident. Haikou Maritime Court as the court of first instance pointed out that Huachen Co's liability for the loss of Dongzhan Co's goods could be ascertained, and that the above circumstances belonged to the "other circumstances under which the liability of the insured to the third party can be determined" as stipulated in article 14(1)(3) of the Judicial Interpretation of the Insurance Law IV. Therefore, it was held that Dongzhan Co was entitled to sue PICC for direct payment of the insurance indemnity directly to it.[53]

PICC appealed, arguing that Huachen Co's liability to Dongzhan Co was not determined by any effective judgment or arbitral award, and they did not settle their dispute of liability. Therefore, the statutory requirements of the insured's liability to a third party and the insured's negligence to request were not satisfied. Hainan High People's Court, as the appellate court, dismissed the appeal. It was found that the parties did not submit evidence to prove that the insured Huachen Co has requested PICC pay an insurance indemnity directly to Dongzhan Co. In the view of the court, this could be regarded as evidence of the circumstance that "an insured is negligent in making a request". Although Huachen Co's liability to Dongzhan Co was not determined before the trial of the case, Hainan High People's Court pointed out that, in order to avoid the litigation exhaustion of parties

[52] (2024) QMZ 272 (Hainan High People's Court).

[53] (2023) Q 72 MC 282 (Haikou Maritime Court).

involved in the case, it was appropriate for the court to rule that the PICC pay the insurance indemnity directly to Dongzhan Co.[54]

Although the phrase "negligent in making a request" in article 65(2) of the Insurance Law includes not only the objective lack of request but also the subjective inactivity and negligence in requesting, the courts in this case did not demand the subjective determination but rather the lack of evidence to prove the request of the objective situation as "negligent in making a request". This is in line with the legislative intention of the Insurance Law to protect the interests of the innocent third parties. Furthermore, the courts did not require the determination of the insured's liability before the trial but determined it in the trial. It was considered as "other circumstances under which the liability of the insured to the third party can be determined" in article 14(1)(3) of the Judicial Interpretation of the Insurance Law IV. This is a good judicial practice to avoid litigation exhaustion of parties.

Marine investigation report

After a maritime accident occurs in Chinese waters, the maritime safety administration will investigate and issue an investigation report to determine the cause of the accident and liability. Article 1 para 5 of the Fourth Civil Trial Division of the Supreme People's Court and the China Maritime Safety Administration's Guiding Opinions on Regulating the Investigation of Maritime Traffic Accidents and the Trial of Maritime Cases (hereinafter referred to as "Guiding Opinions") stipulates:

> "The marine investigation report and its conclusions can be used as evidence for litigation by the maritime court in the trial of the case, unless there is sufficient factual evidence and reasons sufficient to overrule the investigation report and its conclusions."

In *Shipping Company A, Taizhou City v Taizhou Branch of B Insurance Co*,[55] the court comprehensively analysed the investigation report issued by the maritime safety administration and other evidentiary information from the parties and accepted the marine investigation report as evidence in the trial of the case.

In this case, the insured vessel of Shipping Company A sailed to the sea area of Guangdong Huilai at 21.00 on 18 July 2021. The vessel encountered wind and waves and finally sank after water entered into the cargo hold. The insurer rejected the insurance claim of Shipping Company A. The insurer relied on the Accident Investigation Report and the Water Traffic Accident Investigation Conclusion issued by the Jieyang Maritime Safety Administration. The report stated that the insured vessel, improperly loaded and fastened with cargo, encountered crosswinds and waves and subsequently sank. The report concluded that the improper loading and fastening of cargo was the direct cause of the accident, and the encounter with wind and waves was only a causal factor for the accident. It also concluded that the master's countermeasures were improper, and the insured vessel should be held fully responsible for the accident. Shipping Company A disagreed with the above reports and conclusions, arguing that the accident was caused by high winds. They replied on a meteorological certificate from the Meteorological Bureau of Huilai County, which reported that "according to the meteorological radar monitoring data, there were convective cloud activities in the sea surface off Huilai County from 19.00 on 18 July 2021 to 07.00 on 19 July 2021, and there was a short period of strong thunderstorms with wind gusts of magnitude 8 or above".

The trial court held that the proof of the Meteorological Bureau involved the geographical ambiguity and long time span involved and was not sufficient to overturn the accident investigation report and conclusion of the Jieyang Maritime Safety Administration. The court accepted the report and conclusion of the Maritime Safety Administration.[56] Shipping Company A applied for retrial. The Supreme People's Court held that the certificate of the Meteorological Bureau involved a wide area of the offshore sea surface of Huilai County and a time span of 12 hours and that the meteorological data alone could not prove that the wind on the sea surface at the time of the incident was above grade 8. The evidence provided by Shipping Company A was not sufficient to overturn the Jieyang Maritime Bureau's accident investigation report and investigation conclusions.

Although an investigation report issued by the Maritime Safety Administration will generally be recognised, the court may still deny the report and reject it in case of contrary and clear evidence. In *Lin Bin v PICC Property and*

[54] (2024) QMZ 272 (Hainan High People's Court).
[55] (2024) ZGFMS 1490 (Supreme People's Court); [2024] 4 CMCLR 52.
[56] (2022) SMZ 1677 (Jiangsu High People's Court).

Casualty Co Ltd, Guangzhou Branch,[57] the court rejected the accident conclusion report issued by the maritime safety administration after an on-site investigation and review of the report of professional organisations. In this case, a third party registered the insured vessel for the actual owner of the vessel. The insurance policy stated that the third party was the insured, and the subject matter of the insurance was the vessel *Hai Shi Tong 898*. The insurance coverage was all risks for coastal inland waterway vessels, as well as the additional 1/4 collision, touching liability, propeller and other separate loss; and the insurance was responsible for compensation, including collision and touching. Clause 3 "exclusions" stipulated:

> "The insurance shall not be responsible for the losses, liabilities and expenses of the insured vessel caused by the following conditions: ... normal maintenance, painting, natural wear and tear, rust and corrosion of the hull of the vessel, decay and breakdown of the machinery itself and separate loss of rudders, propellers, masts, anchors, anchor chains, sculls and sub vessels."

> "The marine investigation report and its conclusions can be used as evidence for litigation by the maritime court in the trial of the case, unless there is sufficient factual evidence and reasons sufficient to overrule the investigation report and its conclusions"

On 22 October 2021 the vessel sailed to the waters south of Beihai Tieshan Harbour. Water entered into the cargo hold, causing the ship to pitch left. The vessel took the initiative to purposely ground on the beach and ran aground in the Beihai Baihutou shoal. On 29 October the local Maritime Safety Administration issued an "Accident Conclusion Report", which recorded:

> "The vessel touched an unknown object, causing the cargo hold to take on water and the ship to tilt left and lose stability. In order to reduce the loss, the vessel took actions of beaching and running aground. The accident caused damage to the bottom plate of the port side of the front cargo hold, which was off the bow of the ship with a size of about 30x20 cm. The accident was a unilateral liability accident, and the vessel was fully responsible for the accident."

On 8 April 2022 the vessel was salvaged and sent to a shipyard. On 10 April Hai Jiang Loss Adjusting Co arrived at the shipyard to conduct a survey of the vessel. On 7 to 8 May, the surveyor inspected the leakage holes at the bottom of the vessel. On 3 July 2022 Hai Jiang Loss Adjusting Co issued an inspection report, which concluded that "the cause of the accident was the water ingress through the corrosion and cracking of the weld seams of the bottom plate. The accident was not within the scope of insurance liability but within clause 3 'exclusion' of the policy". On 30 October Hai Jiang Loss Adjusting Co issued the Supplemental Inspection Report, which was consistent with the findings of the Inspection Report. Accordingly, the insurer issued a Notice of Refusal of Claim to the third party. The plaintiff, as the actual owner of the vessel, sued the insurer and claimed insurance compensation.[58]

In response to the above different conclusions of various investigations, Beihai Maritime Court conducted a detailed investigation and made a comprehensive analysis. First, the court pointed out that the maritime authority investigated the cause of the accident when the vessel was still in the beach-stranding state. At that time, the lower part of the hull submerged in the water, and the bottom plate sat buried in the water. In the absence of the underwater investigation to explore or survey sampling, the court took the view that the maritime authority's conclusion was doubtful.

Secondly, the court conducted an on-site inspection of the vessel but did not find the said 30x20 cm damage from the bottom plate of the vessel. The court found that a combination of cracks and damage in the No 1 cargo hold left and right sides of the bottom plate and the central keel,

[57] (2024) GMZ 134 (Guangxi High People's Court).

[58] Beihai Maritime Court held that, as the beneficial owner of the vessel, the plaintiff had an insurable interest. After the third party, the registered owner of the ship, disclosed the plaintiff's identity to the insurer and issued a certificate, it was held that the plaintiff was entitled to claim insurance compensation. For the similar situation, see the aforementioned case of Wang Fengmin and Others v China Life Property and Casualty Insurance Co Ltd, Nantong City Centre Branch (2024) ZGFMS 4790 (Supreme People's Court); [2025] 1 CMCLR 1.

which were relatively flat without traces of concave, were caused by the long period of sitting on the beach after the ship was salvaged from the shore and the cracks existed at the time of salvage from the shore.

Furthermore, the interrogation records of the maritime authority of the five crew members onboard the vessel did not record that there was a situation where the ship had been in contact with other objects. Therefore, the accident conclusion made by the local Maritime Safety Administration was inconsistent with the actual situation concluded by the vessel's on-site investigation and the interrogation records. Beihai Maritime Court refused to accept the conclusion in the Accident Conclusion Report issued by the local Maritime Safety Administration.

In addition, the court analysed the evidential effect of the report from professional organisations. The court pointed out that, although the inspection report issued by Hai Jiang Loss Adjusting Co was a commercial report which did not have the legal force of an administrative report, it was still valid evidence and could reflect the real situation of the accident to a certain extent. From the scene photos of Hai Jiang Loss Adjusting Co as well as the investigation by the court, the damage pattern corroborated with the Inspection Report. The Inspection Report and the Supplementary Inspection Report were made by Hai Jiang Loss Adjusting Co after several on-site surveys, which made the conclusion of the cause of the accident more convincing. In summary, the court held that the plaintiff failed to prove that the accident fell within the insurance risks and the defendant should not be liable for compensation.[59]

Guangxi High People's Court, as the appellate court, upheld the judgment of first instance. The appellate court analysed other relevant evidence in this case. First, the local maritime safety administration's conclusions were made based on the "investigation enquiry notes" and the "ship profile". However, neither the "investigation enquiry notes" nor the "ship profile" mentioned the ship collision with an unknown object, and there was no evidence to support the statement that the bottom plate of the front cargo hold was damaged about 30x20 cm from the bow. Secondly, the vessel was floated and towed to the shipyard on 8 April 2022. The local maritime safety administration issued an Accident Conclusion Report on 29 October 2021, but it did not conduct an underwater investigation for the purpose of the report. Furthermore, after the floating of the vessel, the local maritime safety administration did not conduct any further on-site investigation of the vessel. The trial court conducted an on-site survey of the vessel, and the video and photographs of the survey did not reflect the said damage about 30x20 cm from the bow position as stated in the report of the local maritime safety administration. To sum up, the cause of the accident identified in the Inspection Report and the Supplementary Inspection Report submitted by the insurer was better corroborated by the circumstances of the on-site investigation.[60]

It is a special Chinese judicial practice that Chinese courts conduct their own investigations of accident sites, which is a power derived from Chinese civil procedure law.[61] Although this practice may be time-consuming and laborious, investigations by courts are helpful in clarifying complex or questionable facts. Mr Leiming Chen of Beijing Kangda (Guangzhou) Law Firm, the agent ad litem of the insurer in this case, pointed out that, according to judicial interpretations, the facts stated in the accident conclusion report made by the maritime administration can usually be presumed to be true, except where there is sufficient evidence to the contrary to overturn it.[62] In addition, according to the aforementioned "Guiding Opinions", the accident conclusion report made by the maritime safety administration can be used as evidence to prove the fact, and the effectiveness of this evidence is more authoritative than other evidence. According to these provisions, the conclusions in the accident conclusion report made by the maritime safety administration are almost impossible to be overturned in Chinese maritime judicial practice. During the trial of this case, the trial court discovered that the Accident Conclusion Report was unreasonable from a professional perspective. It took the initiative to investigate and collect evidence in accordance with the law to ascertain the facts of the case and make a factual determination. This not only demonstrates the professional level of the Chinese Maritime Court but also reflects the Chinese maritime judges' pragmatic, dedicated and responsible attitude in trials.

[59] (2023) G 72 MC 252 (Beihai Maritime Court).

[60] (2024) ZGFMS 1490 (Supreme People's Court); [2024] 4 CMCLR 52.

[61] The power of investigation is from article 67 of the Civil Procedure Law.

[62] Article 114 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China provides that "matters recorded in documents prepared by state organs or other organisations with social management functions in accordance with the law within the scope of their authority are presumed to be true, except where there is sufficient evidence to the contrary to overturn them ...".

Admiralty law

In the admiralty cases examined here, a variety of legal issues are covered. One case concerns a shipowner's right to payment where salvage operations are carried out by different vessels held by the same owner. Another case concerns limitation of liability for maritime claims over priority in distribution of limitation funds, as well as the distribution in proportion and limitation of liability for coastal transport vessels. Also discussed is a case involving the court's application of the Civil Code to determine co-ownership shares of a vessel.

Maritime salvage

Article 179 of the Maritime Law stipulates that, where salvage operations rendered to the distressed ship and other property have had a useful result, the salvor shall be entitled to a reward, except when the salvage of the ship or the goods on board carries the danger of environmental pollution, then the salvor is given special compensation equal to the salvage cost, or an otherwise agreed sum. Article 191 of the Maritime Law stipulates that "the provisions of this Chapter shall apply to the salvor's right to the payment for the salvage operations carried out between the ships of the same shipowner". Article 187 of the chapter on salvage in maritime distress of the Maritime Law provides that "where the salvage operations have become necessary or more difficult due to the fault of the salvor or where the salvor has committed fraud or other dishonest behaviour, the salvor shall be deprived of the whole or part of the payment payable to him". The Supreme People's Court interpreted and applied the above provisions in *Dongying Xinyu Logistics Co Ltd v Dongguan Fenghai Ocean Shipping Co Ltd*.[63]

In this case, Dongguan Fenghai Ocean Shipping Co Ltd (hereinafter referred to as "Fenghai Shipping") was the shipowner of the vessels *Feng Sheng You 9* and *Feng Sheng You 16*. In the process of loading petrol on board the vessel *Feng Sheng You 16* at Dongying port, petrol leaked into the pump compartment and engine room due to gaps in the transverse wall between the engine room and pump compartment as well as negligence of personnel in management and operation, resulting in a situation that endangered the safety of personnel, the vessel and the port. According to the arrangement and requirements of the local authorities, a number of units, including Fenghai Shipping, participated in rescue work. Fenghai Shipping deployed *Feng Sheng You 9* into the port to participate in the rescue. All the petrol loaded on *Feng Sheng You 16* was transferred to *Feng Sheng You 9*, and the danger to *Feng Sheng You 16* was averted.

Fenghai Shipping filed a lawsuit with Qingdao Maritime Court, requesting Dongying Xinyu Logistics Co Ltd (hereinafter referred to as "Xinyu Logistics"), the owner of the loaded petrol, to pay the salvage reward for the rescue work. Xinyu Logistics argued that the vessel was negligent in the accident. Fenghai Shipping was the owner of *Feng Sheng You 9* and *Feng Sheng You 16*. According to article 187 of the Maritime Law, Fenghai Shipping should be deprived of the whole or part of the salvage reward due to its own negligence. The legal issue of the case is whether the problems of the vessel and the negligence in the management and operation of the personnel could be attributed to the negligence of Fenghai Shipping, ie the circumstance "where the salvage operations have become necessary or more difficult due to the fault of the salvor" in article 187 of the Maritime Law.

Qingdao Maritime Court rejected the claim of Fenghai Shipping.[64] Fenghai Shipping appealed. Shandong High People's Court revoked the judgment of Qingdao Maritime Court and ordered Xinyu Logistics to pay Fenghai Shipping the salvage reward.[65] Xinyu Logistics applied for retrial. The Supreme People's Court dismissed the retrial application of Xinyu Logistics.[66]

This case is the Supreme People's Court Guiding Case No 231. The Supreme People's Court gave reasons for its decision. First, the Supreme People's Court explained the legislative purpose of article 191 of the Maritime Law. It was pointed out that in order to encourage ships owned by the same shipowner to participate in the rescue of marine casualties, to avoid unfairly depriving the participating crew members of their entitlement to salvage reward, and to fairly protect the interests of the

[63] (2020) ZGFMS 4813 (Supreme People's Court); Guiding Case No 231 (discussed and adopted by the Trial Committee of the Supreme People's Court; issued on 25 November 2024).

[64] (2019) L 72 MC 137 (Qingdao Maritime Court).
[65] (2020) LMZ 14 (Shandong High People's Court).
[66] (2020) ZGFMS 4813 (Supreme People's Court).

insurers of the respective ships, article 191 of the Maritime Law stipulates that salvage between ships owned by the same shipowner may also give rise to the right to claim salvage reward.

Secondly, the Supreme People's Court held that, in determining the salvage reward, the salvage ship can be treated as an independent unit. When the accident that triggered the salvage operation was caused by the improper steering and cargo management of the ship in distress, the right of the salvaging ship of the same shipowner to claim the salvage reward should not be affected. It was explained that the faults and liabilities of the two vessels in the salvage relationship should not be mixed up merely because they belong to the same shipowner. If the ship in distress is negligent in the course of steering or managing cargo and causes a maritime accident, this should not be regarded as negligence on the part of the salvage ship.

The Supreme People's Court further explained that the "salvor" in article 187 of the Maritime Law should be understood as the salvaging vessel, not the owner of the salvaging vessel. So, as long as the salvaging vessel did not fulfil any of the criteria stipulated in article 187 of the Maritime Law, the salvage reward received by the salvaging vessel should not be deprived or reduced. In this case, although the vessels *Feng Sheng You 9* and *Feng Sheng You 16* belonged to the same owner, *Feng Sheng You 9* , as a salvaging vessel, was not at fault for the maritime disaster. Xinyu Logistics did not prove that *Feng Sheng You 9* had committed fraud or other dishonest behaviour during the salvage operation. Therefore, the Supreme People's Court supported the salvage reward request of Fenghai Shipping.

It should be noted that the "fault ... fraud or other dishonest behaviour" in article 187 of the Maritime Law refers to the negligence and behaviour of the salvor. The ship as an object shows no negligence or behaviour in operation. However, in order to encourage ships of the same owner to participate in maritime salvage operations, the Supreme People's Court regarded the ship as the subject of the claim for the salvage reward. The Supreme People's Court pointed out that, under the civil procedure law, litigation could not be brought by a ship. However, in determining the salvage reward, the Supreme People's Court took the view that the salvaging vessel can be treated as an independent unit. The problem, however, is that the subject of the claim for salvage reward is the owner of the vessel, not the vessel herself. Even if it were a separate unit, *Feng Sheng You 9* is not a salvor under the Maritime Law or a subject of litigation in the proceedings. In any event, this guiding case will have an impact on the legal rules governing salvage between vessels of the same owner.

Limitation fund for maritime claims

Priority in payment

The limitation of liability for maritime claims is the maximum amount of compensation that the liable person can legally pay for all restricted claims, such as personal injury or death, and non-personal injury or death. Article 207 para 1(1) of the Maritime Law stipulates that, with respect to the maritime claims for loss of life or personal injury or loss of or damage to property, including damage to harbour works, basins and waterways and aids to navigation occurring on board or in direct connection with the operation of the ship or with salvage operations, as well as consequential losses resulting therefrom, the liable person may limit his liability, whatever the basis of liability may be. Article 210 para 1(4) provides that, without prejudice to the right of claims for loss of life or personal injury, claims in respect of loss and damage to harbour works, basins and waterways and aids to navigation shall have priority over other claims other than that for loss of life or personal injury in the distribution of the limitation fund.

In *Changzhou Hongchuan Petrochemical Warehousing Co Ltd and Another v Ningbo Tiansheng Shipping Co Ltd*,[67] the damage to the terminal property caused by the collision and the loss of terminal operation were within the scope of the limitation of liability. The legal dispute arose as to whether the claim for compensation that could be paid in priority included the claim for compensation for the loss of terminal operation caused by the damage to the terminal property.

In this case, the vessel operated by Ningbo Tiansheng Shipping Co Ltd (hereinafter referred to as "Tiansheng Shipping") collided with another vessel, resulting in damage to the terminal property owned by Changzhou Hongchuan Petrochemical Storage Co Ltd (hereinafter referred to as "Hongchuan Warehousing"). Changzhou Maritime Safety Administration issued a "Water Traffic Accident Investigation Conclusion Report", finding that the vessel was fully responsible for the accident. As a result of the accident, Hongchuan Warehousing paid for the repair of the terminal property and suffered the loss of the terminal operation. Hongchuan Warehouse and its insurer claimed against Tiansheng Shipping for the cost of rescue and repair and the loss of the terminal operation.

Tiansheng Shipping applied to Wuhan Maritime Court for the establishment of a limitation fund. Subsequently, Hongchuan Warehouse and others filed a lawsuit with Wuhan Maritime Court, requesting Tiansheng Shipping to compensate for the damages caused by the accident, and that the repair cost and the operation loss be given priority over other non-personal injury claims within the amount of the limitation fund set up by Tiansheng Shipping. Wuhan Maritime Court issued a civil ruling granting Hongchuan Warehouse's application for registration of claims. Then, Wuhan Maritime Court made a judgment that Tiansheng Shipping should compensate Hongchuan Warehouse and its insurer for the cost of rescue and repair. The said compensation was to be distributed in the limitation fund, and the cost of repair was to be given priority in the distribution of the limitation fund.[68] Wuhan Maritime Court did not support Hongchuan Warehouse's request for compensation for the loss of terminal operation.

> *Changzhou Hongchuan Petrochemical Warehousing v Ningbo Tiansheng Shipping* has provided clear conclusions on the application of the relevant provisions of the law and are of clear guiding significance

Hongchuan Warehouse appealed, requesting Tiansheng Shipping to compensate it for the loss of terminal operations and that the claim for the loss of terminal operations be given priority in the distribution of the limitation fund. Hubei High People's Court held that Hongchuan Warehouse's request for the operation loss and interest had a factual and legal basis and should be supported. However, the request that that claim should be given priority in the distribution of the limitation fund had no basis in law and was not supported. In summary, the loss of repair cost and the loss of operation was to be distributed in the limitation fund, and the loss of repair cost would be given priority in the distribution of the limitation fund.[69]

[67] (2021) EMZ 15 (Hubei High People's Court); Guiding Case No 233 (discussed and adopted by the Trial Committee of the Supreme People's Court; issued on 25 November 2024).

[68] (2017) E72 MC 1563 (Wuhan Maritime Court).

[69] (2021) EMZ 15 (Hubei High People's Court).

In article 207 para (1) of the Maritime Law, the term "damage" is used for the port works, harbour basin, fairway and navigational aids, and the term "loss" is used for the result arising therefrom. In article 210, para 1(d) for the priority of payment, the term "loss and damage" is used in relation to port works, harbour pools, fairways and aids to navigation. The use of these terms may not make a material difference in the Maritime Law. But if "loss and damage" is understood to include both physical "damage" and economic "loss", it is possible to infer from this understanding that the operation loss of the terminal should be given priority in the distribution of the limitation fund. Nevertheless, this guiding case has provided clear conclusions on the application of the relevant provisions of the law and are of clear guiding significance.

Distribution in proportion

When the subject matter insured is damaged, both the insured and the insurer of its underinsurance can claim compensation from the liable person within the limitation fund. However, the Maritime Law does not stipulate whether there is a priority relationship between the insured and the insurer. In *China National Offshore Oil Corporation Ltd Tianjin Branch and Another v Hainan Ansheng Shipping Co Ltd and Another*,[70] the court determined the rule of distribution in proportion, which provides a reference for such disputes.

In this case, the vessel chartered by Hainan Ansheng Shipping Co Ltd (hereinafter referred to as "Ansheng Shipping") had an accident during anchoring in the submarine pipe and cable protection zone near Liaoning Jinzhou Harbour. The vessel's anchor contacted the submarine natural gas pipeline belonging to China National Offshore Oil Corporation Ltd (hereinafter referred to as "CNOOC"), resulting in damage to the pipeline. Ping An Property & Casualty Insurance Company of China, Ltd Tianjin Branch (hereinafter referred to as "Ping An"), as the insurer of CNOOC, paid for partial damage according to the underinsurance. Ansheng Shipping established a limitation fund in Dalian Maritime Court. CNOOC Tianjin Branch claimed against Ansheng Shipping for the direct loss other than the insurance claim payment and the production loss. CNOOC Tianjin Branch also requested confirmation that it had priority over Ping An in the distribution of the limitation fund and that Ansheng Shipping's insurer assumed joint and several liability.

Dalian Maritime Court, as the first instance court, held that Ansheng Shipping, as the bareboat charterer of the vessel that caused the pipeline damage, should bear the corresponding liability. CNOOC Tianjin Branch had the right to claim the repair cost and production loss for the damage to the submarine pipeline. Ping An paid insurance claims to CNOOC and was entitled to exercise subrogation rights against Ansheng Shipping. For the remaining uninsured losses, CNOOC still had the right to claim against Ansheng Shipping, but there was no factual and legal basis for claiming that it had priority over Ping An in the distribution of the limitation fund. Dalian Maritime Court ruled in the first instance that Ansheng Shipping should pay compensation for direct loss and production loss to CNOOC and pay compensation for direct loss to Ping An, and the above three payments should be limited by the limitation fund.[71] Ansheng Shipping appealed. Liaoning High People's Court dismissed the appeal and upheld the trial court judgment.

This case determined the liabilities of the parties in collision and clarified the rule that the insured and the insurer of the underinsurance have equal rights in the distribution of the limitation fund. Both the insurer and the insured of the underinsurance shall be compensated proportionally according to their respective losses in the limitation fund. This case provides guidelines for the handling of this type of dispute and balances the legitimate rights and interests of the oil and gas enterprises, the shipping enterprises and the insurance industry in accordance with the law.

Coastal transport vessels

Article 210 para 1 of the Maritime Law stipulates the rules for calculating the limitation of liability for maritime claims for ocean-going vessels of 300 gt or above. It sets up different standards for different tonnages of vessels. Article 210 para 2 stipulates that the limitation of liability for ships with a gross tonnage not exceeding 300 gt and those engaging in transport services between the Chinese ports as well as those for other coastal works shall be regulated by the competent authorities. Article 3 of the Provisions Concerning Limitation of Liability for Maritime Claims for Ships with a Gross Tonnage not Exceeding

[70] (2024) LMZ 846 (Liaoning High People's Court); Typical Case of National Maritime Trial in 2024.

[71] (2023) Liao 72 MC 725 (Dalian Maritime Court).

300 Tons and Those for Coastal Transport Services or for Other Coastal Operations (hereinafter referred to as "Limitation of Liability Provisions") stipulates the criteria for calculating the limitation of liability for ships engaged in ocean carriage of less than 300 gt.

Article 4 of the Limitation of Liability Provisions stipulates that "the limitation of liability for maritime claims for a ship with a gross tonnage not exceeding 300 tons engaging in the carriage of goods between the ports of the People's Republic of China or in other coastal operations shall be calculated on the basis of 50 per cent of the limitation amount specified in Article 3 of these Provisions, and that for a ship with a gross tonnage exceeding 300 tons shall be calculated on the basis of 50 per cent of the limitation specified in the first paragraph of Article 210 of the Maritime Law".

Where there are both ocean-going and coastal transport or operating vessels involved in the same accident, article 5 of the Limitation of Liability Provisions stipulates that "where the provisions of article 210 of the Maritime Law or article 3 of the Provisions are applicable to the limitation of liability of the vessels involved in the same accident, the limitation of liability shall be equally applied to the other vessels involved". This provision aims at realising equal protection for the parties involved in the same accident. In *Establishment of a limitation fund by Nanjing A Shipping Co*,[72] the court applied the relevant provisions and determined the limitation of liability of the parties in a collision dispute.

In this case, vessel A, owned by Nanjing A Shipping Co, is a seagoing vessel (2,986 gt) engaged in the carriage of general cargo along the coastline of China and in the middle and lower reaches of the Yangtze River. The collision between vessel A and vessel B (27,800gt), owned by Singapore B Shipping Co took place in the waters of the Pearl River, resulting in partial damage to the two vessels and damage to the containers and cargo carried by vessel B. Nanjing A Shipping Co applied to Guangzhou Maritime Court for the establishment of a 291,081 SDR (calculated at 50 per cent of the limitation of liability) limitation fund in accordance with the provisions of article 4 of the Limitation of Liability Provisions in respect of the liability for all non-personal injuries and deaths claims that might arise from the collision. Singapore B Shipping Co did not apply for the establishment of a limitation fund.

The Guangzhou Maritime Safety Administration and Singapore B Shipping Co objected to the amount of the limitation fund. They argued that, according to article 5 of the Limitation of Liability Provisions, and article 210 para 1 of the Maritime Law should be applied to calculate the amount of the limitation fund for vessel A, and article 4 of the Limitation of Liability Provisions concerning the calculation of the limitation of liability in accordance with 50 per cent of the limitation of liability should not be applied. Therefore, the limitation fund established by Nanjing A Shipping Co should be set at 582,162 SDR and corresponding interest. So, the dispute of the case was whether the amount of the limitation fund set up for vessel A should be calculated in accordance with 50 per cent of the limit of maritime liability under article 210 of the Maritime Law. The core question of the dispute was how to accurately understand and apply the application of relevant provisions under article 5 of the Limitation of Liability Provisions.

> Legal provisions have a high degree of abstraction to adapt to a variety of different situations, so their understanding should be as objective and reasonable as possible to apply the abstract legal provisions into varying circumstances with objectivity and predictability

Guangzhou Maritime Court held that, as long as the limitation of liability as stipulated in article 210 para 1 of the Maritime Law is applicable to vessel A, no matter whether Nanjing A Shipping Co had set up a limitation fund, whether it had applied for the establishment of a fund, and whether it had the right to apply for the establishment of a fund, it should not affect the calculation of the limitation of liability for vessel A in accordance with the provisions of article 210 of the Maritime Law. The reasons are as follows. First, the limitation of liability of the vessel concerned referred to in article 5 of the Limitation of Liability Provisions is calculated based on the tonnage of the ship. The limitation of liability shall always exist objectively, regardless of whether it is claimed. If the limitation of liability varies according to the subjective will of the vessel concerned, it will leave the limitation of

[72] (2021) Y 72 MT 5 (Guangzhou Maritime Court); Guiding Case No 234 (discussed and adopted by the Trial Committee of the Supreme People's Court; released on 25 November 2024).

liability of the other vessel concerned in a constant state of uncertainty. In this case, vessel B was an ocean-going vessel with over 300 gt, and vessel A was a coastal vessel. Regardless of whether vessel A applied for the limitation fund, the limitation of liability for vessel B must be applied to vessel A, which is in line with the application rules in article 5 of the Limitation of Liability Provisions.

Secondly, the court pointed out that this case is a procedural case and does not examine the substantive disputes that may arise from the accident. If the understanding of applicable limitation of liability is not objective but rather controversial, then the rights of coastal vessels will always be in a state of uncertainty, and non-coastal vessels will not be able to know how to exercise their rights. Therefore, Guangzhou Maritime Court held that the limitation of liability rule in article 210 para 1 of the Maritime Law should apply to both vessel A and vessel B and granted the application for the limitation fund amounting to 582,162 SDR and interest.

Legal provisions have a high degree of abstraction to adapt to a variety of different situations, so their understanding should be as objective and reasonable as possible, to apply abstract legal provisions into varying circumstances with objectivity and predictability. In judicial practice, due to different interpretations of the applicable rules for limitation of liability under article 210 of the Maritime Law and article 5 of the Limitation of Liability Provisions, the application of rules may be different according to the merits of each case. As a guiding case, this case plays a guiding role in the interpretation and the application of relevant provisions.

Ship share

The Maritime Law does not provide rules for the share of joint ownership of a ship. Article 309 of the Civil Code provides:

> "Where the shares of immovables or movables are not agreed upon among the persons who share the ownership, or the agreement reached is indefinite in this respect, their shares shall be determined on the basis of the amounts of their respective capital contributions; if it is difficult to determine the amounts of capital contributions, the immovables or movables shall be deemed to be shared equally among them."

The co-owners of a vessel may not only agree on the share of the joint ownership but also record the proportion of the co-owners' capital contribution on the ship registration document. When the agreed share is different from the share stated in that document, disputes over the proportion of share will arise.

In *Wei v Liu and Another*,[73] Wei, Xiong and Liu agreed to purchase a vessel. Liu, on behalf of Wei and Xiong, entered into a contract for the sale and purchase of a ship with the seller. The total price of the ship was 7 million Chinese yuan. Wei's actual capital contribution was 3.71 million yuan; Xiong's actual capital contribution was 700,000 yuan, and Liu's actual capital contribution was 2.59 million yuan. For ship registration in the maritime administrative department, the three parties, through

[73] (2024) HMZ 32 (Shanghai High People's Court).

instant messaging, signed a ship shares cooperation agreement, agreeing that the total price of the ship was 5.2 million Chinese yuan, under which Liu's investment amount was 1.924 million yuan with a share ratio of 37 per cent, and Xiong and Wei's same investment amount was 1.638 million yuan and the share was 31.5 per cent. The agreement was submitted to the maritime administrative department for ship registration. The three parties agreed to write another share agreement for the actual capital contribution. In the certificate of registration of ownership of the ship, the owners of the ship were Liu, Xiong and Wei, of which Liu accounted for a 37 per cent share of the ship, Xiong accounted for a 31.5 per cent share of the ship and Wei accounted for a 31.5 per cent share of the ship.

Wei sued Liu and Xiong, claiming that their respective shares should be confirmed according to the actual capital contribution for re-registration of the ship. The parties did not object to the relationship between each other and the actual capital contribution, but there was a difference of opinion as to whether the share should be confirmed according to the actual capital contribution. In this regard, Liu argued that the ship shares cooperation agreement should prevail, while Wei and Xiong argued that the share should be determined according to the actual capital contribution. The issue of the dispute is whether the ship's shares should be determined according to the ship shares cooperation agreement or the actual capital contribution.

Shanghai Maritime Court, as the first instance court, held the share of the parties to the ship should be determined according to the amount of capital contribution. The court pointed out that the ship shares cooperation agreement was agreed upon for the registration of the ship and the implementation of the expedient action. It was not an agreement on the share of the ship. The signed ship shares cooperation agreement was the only necessary document for the ship registration authority. In the view of Shanghai Maritime Court, Wei's claim for confirming their respective shares according to the actual capital contribution was, in essence, to re-register the 21.5 per cent share in Xiong's name under his name in the ship registration. The claim did not affect Liu's due share, rights or interests and restored the actual share of the three parties. Shanghai Maritime Court supported Wei's claim. It was held that Wei, Xiong and Liu enjoyed the share according to their respective capital contributions, at 53 per cent, 10 per cent and 37 per cent.[74]

> Co-owners of a vessel may not only agree on the share of the joint ownership but also record the proportion of the co-owners' capital contribution on the ship registration document. When the agreed share is different from the share stated in that document, disputes over the proportion of share will arise

Liu appealed, requesting to reject Wei's claim. Liu argued that the three parties had made a clear agreement on the share of the ship. The agreement was binding on the three parties. Liu also argued that he had truthfully informed Wei and Xiong about the relevant requirements of the ship registration and there was no inducement to Wei to give up the actual capital contribution of the share. Liu believed that Wei voluntarily gave up his share of the actual capital contribution, which should be regarded as the disposal of his own rights.

Shanghai High People's Court pointed out in the second instance that, from the facts of the case, the communication records between the parties before the registration of the ownership of the ship were sufficient to prove that the agreement on the cooperation of the ship's shares was only for the purpose of the registration of the ownership of the ship. The record of the shareholding of the ship in the cooperation agreement was based on the trust for the registration of the ownership of the ship. It could not be regarded as an agreement on the shareholding of the parties on the ship or evidence of an agreement of transfer or gift of the share. In this case, because the parties did not have an explicit agreement on the ship's shares, Wei's claim that the ship's shares should be determined according to the amount of capital contribution under article 309 of the Civil Code had a legal basis and was confirmed by Xiong. Accordingly, Shanghai High People's Court upheld the decision of the court of first instance.

[74] (2023) H 72 MC 514 (Shanghai Maritime Court).

Dispute resolution

In the cases examined here on the subject of maritime dispute resolution, the legal issues that arise include the applicable law in a collision case and carriage case, the interpretation of a bilingual arbitration clause, the legal effect of ad hoc arbitration and the application of the doctrine of forum non conveniens.

Applicable law

Ship collision

Article 273(1) of the Maritime Law stipulates that "the law of the place where the infringing act is committed shall apply to claims for damages arising from the collision of ships". Article 44 of the Law on Application of Laws to Foreign-Related Civil Relations provides:

> "Tort liabilities shall be governed by lex loci delicti, provided that where the parties concerned have a common habitual residence, laws of the common habitual residence shall apply. Agreements on the application of laws reached by the parties concerned after the occurrence of tort shall prevail."

In a collision dispute between foreign ships, if the parties choose an applicable law for their dispute, whether it violates the provisions of the Maritime Law on the applicable law to ship collision disputes has become a legal issue. Through the guiding case of *A Ship Leasing Co Ltd v B Wealth Co Ltd*,[75] the Supreme People's Court made it clear that if the parties to a dispute of liability for damage caused by a collision between foreign ships choose the applicable law by agreement after the occurrence of the ship collision accident, the applicable law to be applied to the dispute shall be determined in accordance with their agreement.

In this case, vessel A (a Panamanian tanker) belonging to A Ship Leasing Co Ltd (hereinafter referred to as "A Ship Leasing"), collided with the vessel B (a Liberian container ship) belonged to B Wealth Co Ltd (hereinafter referred to as "B Wealth"). A Ship Leasing applied to Ningbo Maritime Court for the seizure of vessel B, which was being repaired in Zhoushan Port of Ningbo, and then filed a lawsuit requesting B Wealth to compensate for the damage to vessel A and the loss of the ship's operation. B Wealth filed a counterclaim, requesting that A Ship Leasing compensate for its losses. Ningbo Maritime Court consolidated the trial of the claim with the counterclaim.

During the trial, the plaintiff and the defendant unanimously chose to apply Chinese law. Ningbo Maritime Court pointed out that, although the Maritime Law as a special law does not provide for ship collision dispute parties a free choice of the applicable law, the Law on Application of Laws to Foreign-Related Civil Relations allows the parties to choose the law applicable to tort liability. Therefore, the choice of the applicable law by the Law on Application of Laws to Foreign-Related Civil Relations was not invalid. In this case, both parties were registered companies in the Republic of the Marshall Islands, and the two ships involved in the case had the nationalities of Panama and Liberia respectively. During the hearing, the plaintiff and the defendant unanimously proposed that Chinese law be applied to the dispute over tort liability. According to the Law on Application of Laws to Foreign-Related Civil Relations, Ningbo Maritime Court held that the choice of the application of Chinese law was valid.

The Maritime Law in the civil law system is a special law for maritime disputes. The Law on Application of Laws to Foreign-Related Civil Relations is also a special law for the application of law. It is a good juridical practice that Ningbo Maritime Court respected the parties' choice of law in this case. However, it is noted that the case deals with a special factual situation; that is, the ships in collision were foreign-registered ships. If the colliding ships are China-registered ships or a Chinese ship and a foreign ship, it is unknown whether the parties to a collision dispute can choose the applicable law for dispute resolution.

[75] (2023) Z 72 MC 314 (Ningbo Maritime Court); Guiding Case No 236 (discussed and adopted by the Trial Committee of the Supreme People's Court; issued on 25 November 2024).

Contract for the carriage of goods by sea

The law applicable to the contract for carriage of goods by sea depends on the applicable law clause in the contract. If there is no agreed law, the applicable law is determined according to the closest principle. In the aforementioned bill of lading case of *Company B v Company A (Company C, third party)*,[76] Company B clearly chose to apply Chinese law to deal with the dispute, while Company A claimed that US law should be applied according to the terms on the back of the bill of lading. The parties did not reach a consensus on the application of law in this case. Clause 4(2) on the back of the bill of lading stated:

> "If the transport covered by the bill of lading includes transport to, from or through a port or place in the United States, the transport of such goods shall be subject to the provisions of the United States Carriage of Goods by Sea Act of 1936 and its revisions, the terms of which shall be incorporated into this bill of lading."

Clause 5 stated:

> "Whenever the United States Carriage of Goods by Sea Act is applicable, this contract shall be subject to the jurisdiction of the United States. In all other cases, actions against the carrier may be brought only in the country of the carrier's principal place of business and shall be determined in accordance with the laws of that country."

For the applicable law, Shanghai Maritime Court held that Chinese law should apply to this case. First, the court pointed out that the terms on the back of the bill of lading were unilaterally printed in advance by the carrier, and the parties had not fully negotiated to reach those standard terms. Therefore, it could not be proved that the terms on the back of the bill of lading were the real intention of the parties. So, Company B could not be bound by the US law clause in the bill of lading. Furthermore, Company A was a legal entity in China. So, the court did not accept the opinion of Company A that US law should be applied in this case.

Secondly, the court pointed out that, according to the principle of closest connection, if the parties have not chosen the applicable law, the law of the party's regular residence where the fulfilment of the obligation best reflects the characteristics of the contract, or other law with the closest connection to the contract, shall be applied. It was found that the goods were shipped from the Chinese port of Shanghai, and both Company B and Company A were legal entities in China. Considering the place of signing the contract of carriage, the place of origin and the place of residence of the parties, etc, the court decided that Chinese law should apply to the dispute. On the other hand, the court pointed out that, although the delivery of the goods took place in the United States, this fact could not prove that the law of the United States was the law with which the contract for carriage of goods by sea as a whole has the closest connection.[77] Shanghai High People's Court as the appellate court did not address the issue of the applicable law in the second instance.

The judgment on the applicable law issue needs to be analysed. First, the bill of lading is not the contract itself or a result of negotiation but just a shipping document issued in the course of the performance of the contract. All the terms on the back of the bill of lading are unilaterally printed by the carrier in advance. So, they are not the terms negotiated by the parties. This is why there are

[76] (2023) HMZ 620 (Shanghai High People's Court).

[77] (2022) H 72 MC 1571 (Shanghai Maritime Court).

mandatory laws governing the terms of bills of lading, such as article 44 of the Maritime Law, which provides that "any stipulation in a contract of carriage of goods by sea or a bill of lading or other similar documents evidencing such contract that derogates from the provisions of this Chapter shall be null and void". Therefore, the legal effect of a law clause in the bill of lading, regardless of whether the law clause is applicable or not, should not be denied by the reason of the standard clause. If the standard clause can be a reason to deny the law clause in the bill of lading, all the terms of the bill of lading can be denied because they are all standard clauses. In this way, the entire legal system for bills of lading would cease to exist.

Furthermore, the court rejected Company A's argument for the application of US law on the ground that Company A was a Chinese legal entity. This is a common view in Chinese judicial practice. However, there is no legal basis for this view. There is no law that provides that a Chinese legal entity cannot choose to apply foreign law in a contract, especially in a foreign-related contract.

Secondly, the transport in question was from China to the US, and the dispute in the case was delivery of goods without a bill of lading. There are important factors closely relating to the US. For example, the place of delivery of goods was in the US, and the US was the jurisdiction agreed upon in the bill of lading. It was difficult to say that US law did not have the closest connection with the case. The court held that the fact that the delivery of the goods took place in the US did not prove that US law was the law with the closest connection to the contract for carriage of goods by sea as a whole. It was not explained why the fact of delivery could not prove the closest connection. This case reflects the cautious attitude of Chinese courts towards the choice of foreign law.

Arbitration clause

Article 288 para 1 of the Civil Procedure Law provides:

> "In the case of a dispute arising from the foreign economic, trade, transport or maritime activities, if the parties have had an arbitration clause in the contract concerned or have subsequently reached a written arbitration agreement and have submitted the dispute to an arbitral organ in the People's Republic of China handling cases involving foreign element or to any other arbitral body for arbitration, they shall not bring an action in a people's court."

This provision makes clear that the parties are not allowed to bring a lawsuit to court if there is a valid arbitration agreement. It also makes clear that a valid arbitration agreement excludes the jurisdiction of the court, and the court shall respect and enforce the valid arbitration agreement.

In *Company 1 and Another v Company 2*,[78] the parties had a dispute over a voyage charter in Shanghai Maritime Court. The voyage charterparty in question was bilingual in English and Chinese, of which clause 21 was expressed in English as "ARBITRATION IF ANY TO BE SETTLED AT HK AND ENGLISH LAW TO BE APPLIED (the English version of the contract shall take precedence over the Chinese version, and the Chinese version shall be for reference only)". The Chinese version read that "if arbitration is needed, it will be conducted in Hong Kong, and English law to be applied". Before the first hearing of the first instance, Company 2 raised a jurisdiction objection, arguing that there was a legally valid arbitration clause in the charterparty between Company 2 and Company 3, and the dispute did not fall within the jurisdiction of the court. Shanghai Maritime Court examined the validity of the arbitration clause in the charterparty.

Article 18 of the Law on Application of Laws to Foreign-Related Civil Relations stipulates:

> "Parties concerned may agree upon the laws applicable to an arbitration agreement. Where the parties have made no such choice, laws of the domicile of the arbitration institution or laws of the place of arbitration shall apply."

Shanghai Maritime Court applied this article and held that, since the parties had not agreed to choose the

[78] (2023) HMZ 867 (Shanghai High People's Court).

applicable law of the arbitration agreement, the law of the agreed place of arbitration, ie the law of Hong Kong, shall apply to review the validity of the arbitration agreement in question. First, the court interpreted that the phrase "ARBITRATION IF ANY" means that "if there is any dispute, it should be submitted to arbitration". The corresponding phrase in the Chinese version is "if arbitration is needed", which is different from the English version. Because the clause provides that "the English version shall take precedence over the Chinese version", priority should be given to the English version. In the view of the court, the English version is obviously more in line with English understanding and more suitable for the context. Secondly, according to the Arbitration Ordinance of Hong Kong, clause 21 of the charterparty expresses the clear intention of arbitration between the parties, and the content and form are also in line with the relevant provisions of the Arbitration Ordinance. Therefore, the arbitration clause is legal and valid, and the dispute should be solved by arbitration in Hong Kong. The claim by Company 1 and Company 3 was dismissed.[79]

> The clause "ARBITRATION IF ANY" does not contain the word "exclusive" to exclude the jurisdiction of court. Therefore, whether the agreement excludes the jurisdiction of the court is often a matter of dispute in Chinese courts. The interpretation of the clause in this case demonstrated the courts' proper understanding and application of the arbitration clause in the contract

Company 1 appealed, requesting the use of the Chinese version of clause 21 in the voyage charterparty and arguing, based on the Chinese version, that the agreement did not completely exclude the jurisdiction of the court. First, China is a Chinese-speaking country. The local Chinese language should be respected, and the court should interpret the Chinese version when there is a Chinese version of the contract. Secondly, Company 2 and Company 3 are two Chinese enterprises, and the communication for entering into the charterparty was also carried out in Chinese. In the case that the contracting parties are all Chinese companies and the parties communicated in Chinese, the focus should be on the Chinese local language. There might be different understandings of English in China. It is more appropriate to refer to the Chinese version in order to explore the contractual intention of the parties. Thirdly, the Chinese version of clause 21 means that "if arbitration is required …". The agreement did not completely exclude the jurisdiction of the court and was not definitive or exclusive.

Shanghai High People's Court rejected Company 1's argument. It was pointed out that there had been a clear agreement in clause 21 that, in the event of inconsistent understanding of the English and Chinese versions of the arbitration clause, the understanding of the English version should prevail. So, Company 1's claim that the arbitration clause should be understood in the Chinese version was contrary to the agreement and not in line with good faith. As to whether clause 21 did not completely exclude the jurisdiction of the court, Shanghai High People's Court pointed out that this should be examined by the Arbitration Ordinance of Hong Kong. It was confirmed that the clause was capable of embodying a clear expression of the parties' intention to submit the dispute to arbitration and it was in written form. According to article 19 of the Arbitration Ordinance of Hong Kong, the arbitration clause complied with the relevant provisions on arbitration agreements both in terms of content and form under the Arbitration Ordinance of Hong Kong. Therefore, the appeal was dismissed, and it was held that the parties should apply for arbitration in Hong Kong.

The arbitration clause in this case is very common in charterparties. The clause itself does not contain the word "exclusive" to exclude the jurisdiction of court. Therefore, whether the agreement excludes the jurisdiction of the court is often a matter of dispute in Chinese courts. The interpretation of the clause in this case demonstrated the courts' proper understanding and application of the arbitration clause in the contract, especially the interpretation of the English clause, which honoured the parties' intention and was in line with industry practice. The special feature of the case is that the contract in question has both Chinese and English versions. It also provides that the English version shall take precedence, and the Chinese version shall be used only as a reference. Thus, the court gave priority to the English version. However, if the contract does not contain such a prioritisation agreement, the court may need to consider the Chinese version of the contract terms and may have different interpretations of the arbitration clause.

[79] (2023) H 72 MC 1273 (Shanghai Maritime Court).

Ad hoc arbitration

Ad hoc arbitration does not exist in the Chinese civil procedure law or arbitration law, even though it is not uncommon in maritime arbitration in international practice. There is a pilot trial for ad hoc arbitration in Shanghai, China. The Regulations of Shanghai Municipality on Promoting the Initiative of the International Commercial Arbitration Centre (hereinafter referred to as "Ad Hoc Arbitration Regulations") came into effect on 1 December 2023. Article 20 of the Ad Hoc Arbitration Regulations provides that Shanghai, in accordance with the state's deployment, will explore the possibility of agreeing on ad hoc arbitration to be conducted in Shanghai, in accordance with specific arbitration rules and with specific personnel, in the field of commerce and maritime affairs that have a foreign-related element. In *A Trading Co v B Freight Forwarding Co*,[80] the parties in dispute applied for confirmation of the validity of an arbitration agreement. It is the first case of an application for confirmation of the validity of an ad hoc arbitration agreement since the implementation of the Ad Hoc Arbitration Regulations.

In this case, A Trading Co is a registered company in China (Shanghai) Pilot Free Trade Zone (hereinafter referred to as "Shanghai FTZ") and B Freight Forwarding Co is a registered company in Shanghai FTZ Lingang New Area. In January 2024 the two companies entered into an International Import Goods Transportation Agreement, which stipulated that B Freight Forwarding Co would handle the customs clearance and other formalities for the imported goods for A Trading Co. During the performance of the agreement, the two parties disputed the costs of transporting and customs clearance for a batch of goods imported from the Philippines. In November 2024 the two parties reached a written agreement on the settlement of the dispute over the aforesaid costs, agreeing to settle the dispute by arbitration, applying the Shanghai Arbitration Association Ad Hoc Arbitration Rules, with the seat of the arbitration in Shanghai. The arbitration agreement was governed by Chinese law, and the arbitral tribunal consisted of one arbitrator. Later, B Freight Forwarding Co considered that the arbitration agreement was not legally effective. A Trading Co applied to Shanghai Maritime Court, requesting confirmation of the validity of the ad hoc arbitration agreement.

Shanghai Maritime Court applied Chinese law to examine the validity of the arbitration agreement. It was pointed out that the content of the International Import Goods Transportation Agreement covered the affairs before and after the customs clearance of the goods, which was a contract with foreign-related factors. Furthermore, the applicant of the case, the agreement on the place of arbitration and the arbitration rules were in line with the relevant provisions in the Ad Hoc Arbitration Regulations. The arbitrator was appointed according to the Shanghai Arbitration Association Ad Hoc Arbitration Rules. Therefore, Shanghai Maritime Court held that the ad hoc arbitration agreement in question was valid.

In this case, the court fully respected the parties' willingness to have ad hoc arbitration and effectively safeguarded the parties' expectation of reliance on the validity of an ad hoc arbitration agreement under the existing legal and policy conditions. It was a meaningful exploration of the establishment of standards and rules for reviewing the validity of ad hoc arbitration agreements. The case provides a useful judicial sample for China's maritime ad hoc arbitration.

Doctrine of forum non conveniens

The doctrine of forum non conveniens was introduced in the Civil Procedure Law (2023 Amendment). Article 282 of the Civil Procedure Law provides:

> "When a People's Court accepts a foreign-related civil case, upon jurisdiction objection raised by the defendant, it can dismiss the action and inform the plaintiffs to bring the case before a more convenient foreign forum if it meets all the following requirements:
>
> (1) The basic facts of the dispute did not take place within the territory of the People's Republic of China; it is obviously inconvenient for the People's Court to try the case and the parties to participate in the litigation;
>
> (2) There is no agreement between the parties that the case should be subject to the jurisdiction of the People's Court;
>
> (3) The case is not subject to the exclusive jurisdiction of the People's Court;

[80] (2024) H 72 MT 43 (Shanghai Maritime Court); Typical Case of National Maritime Trial in 2024.

(4) The case does not relate to the sovereignty, safety or public interests of the People's Republic of China; and

(5) It is more convenient for a foreign court to try the case.

Once the action is dismissed, if a foreign court refuses to exercise its jurisdiction over the case or fails to take necessary measures to try the case or is unable to conclude the case within a reasonable period, and the party files the case again before a People's Court, the Chinese court shall accept the case."

In *Zhongshan A Service Department v B Waterway Bureau and Another*,[81] the Chinese court demonstrated the good practice of the doctrine of forum non conveniens. In this case, a waterway bureau and a Hong Kong engineering company entered into a subcontractor agreement agreeing to subcontract part of a reclamation project in Macao's waters to the Hong Kong engineering company. It was agreed that any disputes arising from the execution of the project would be referred to the Macao courts. In the course of construction, the Hong Kong engineering company rented a ship from a Zhongshan service department to transport engineering materials and purchased sand for the project from Guang X Co. A dispute arose between the Zhongshan service department and the Hong Kong engineering company over the cost of chartering the vessel. The Zhongshan service department brought the dispute to Guangzhou Maritime Court, which held that the Hong Kong engineering company should pay the cost of chartering the vessel to the Zhongshan service department.

On the ground that the waterway bureau owed a debt to the Hong Kong engineering company, the Zhongshan service department filed a creditor subrogation lawsuit with Wuhan Maritime Court, requesting that the waterway bureau pay the aforementioned ship chartering cost to it. During its defence, the waterway bureau raised jurisdictional objections, arguing that the case should be subject to the jurisdiction of the Macao court as a more convenient court. In addition, as a result of the Hong Kong engineering company defaulting on the payment for the procurement of sand, Guang X Co filed a lawsuit in the Court of First Instance of Macao against the Hong Kong engineering company, requesting confirmation of the claim of the Hong Kong engineering company against the waterway bureau and ordering the waterway bureau to make the payment for the project to Guang X Co as well as the interest on the delay, etc. The case is under trial in the Court of First Instance of Macao.

Wuhan Maritime Court held that it had jurisdiction over the case. First, the subrogation action brought by the Zhongshan service department against the waterway bureau, the counterpart of its debtor, the Hong Kong engineering company, was subject to the special jurisdiction of the maritime court. Secondly, the domicile of the waterway bureau was within the jurisdiction of Wuhan Maritime Court. However, Wuhan Maritime Court considered other factors. In the core of the dispute lies the creditor-debt relationship between the Hong Kong engineering company and the waterway bureau; Macao was the place where the basic facts of the dispute occurred. Three parties had not reached a consensus on the mainland jurisdiction of the court. The dispute was not subject to the exclusive jurisdiction of the mainland courts and did not involve the mainland social and public interests.

> *Zhongshan A Service Department v B Waterway Bureau* is a typical example of how the Chinese maritime courts deal with the conflict of jurisdiction in maritime cases between the mainland courts and the Macao courts, with reference to the provisions of article 282 of the Civil Procedure Law concerning the doctrine of forum non conveniens

In the view of the court, it was more convenient for the Macau courts to hear the dispute. The Macao court had also accepted the subrogation action filed by Guang X Co and would make a judgment on the claims and debts between the Hong Kong engineering company and the waterway bureau. In addition, according to the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and the Macau Special

[81] (2023) E72 MC 997 (Wuhan Maritime Court); Typical Case of National Maritime Trial in 2024.

Administrative Region, the recognition and enforcement of the relevant judgments of the Macao courts in the mainland courts is institutionally guaranteed. Therefore, Wuhan Maritime Court ruled to dismiss the lawsuit of the Zhongshan service department and informed it to file a lawsuit in the Macao court.

This case is a typical example of how Chinese maritime courts deal with the conflict of jurisdiction in maritime cases between the mainland courts and the Macao courts, with reference to the provisions of article 282 of the Civil Procedure Law concerning the doctrine of forum non conveniens.[82] Wuhan Maritime Court examined the party's objection to the jurisdiction in light of the relevant provisions of the law and the purpose of the legislation and also took into account the fact that the Macao court had already accepted the relevant disputes and Macao's civil and commercial judgments could be recognised and enforced in the mainland, etc. It concluded that it would be more convenient for the Macao court to take jurisdiction over this case, and more conducive to the realisation of the creditor's subrogation right.

The case is also a typical instance of the application of the doctrine of forum non conveniens in coordinating inter-district conflicts of jurisdiction in parallel litigation. It has increased judicial mutual trust between the mainland and Macao and has fully demonstrated the important role of the doctrine of forum non conveniens in coordinating conflicts of jurisdiction in parallel litigation, conserving judicial resources, and lowering litigation costs for the parties concerned. It also has manifested the court's stance of focusing on courtesy and cooperation to enhance the efficiency of dispute resolution.

Conclusion

In the maritime judgments delivered by Chinese courts in 2024, carriage of goods by sea and marine insurance continued to be the main areas giving rise to maritime disputes in Chinese judicial practice, with development in new areas, such as ad hoc arbitration.

The draft revision of the Maritime Law was submitted to the Standing Committee of the National People's Congress for a second review on 24 June 2025. It is expected that the revision of the Maritime Law will be successfully completed. The revised Maritime Law will be explored in detail in a future edition of this work.

[82] For more judicial practice of the doctrine of forum non conveniens in Chinese courts, see Liang Zhao, "Forum Non Conveniens in China: an empirical analysis", *The Chinese Journal of Comparative Law 2024*, 11(3) https://doi.org/10.1093/cjcl/cxae002.

Appendix: judgments analysed in this review

A Ship Leasing Co Ltd v B Wealth Co Ltd (2023) Z 72 MC 314 (Ningbo Maritime Court)

A Shipping Co Ltd v China B International Trading Co Ltd (2023) L 72 MC 450 (Qingdao Maritime Court); (2023) LMZ 1530 (Shandong High People's Court)

A Trading Co v B Freight Forwarding Co (2024) H 72 MT 43 (Shanghai Maritime Court)

B Materials (Shanghai) Co Ltd v Qingdao A International Logistics Co Ltd (2023) L 72 MC 735 (Qingdao Maritime Court); (2023) LMZ 1450 (Shandong High People's Court)

Bertschi International Freight Forwarding (Shanghai) Co Ltd v Shanghai Haihua Shipping Co Ltd (2022) HMZ 1040 (Shanghai High People's Court); (2023) ZGFMS 2157 (Supreme People's Court)

Changzhou Hongchuan Petrochemical Warehousing Co Ltd and Another v Ningbo Tiansheng Shipping Co Ltd (2017) E72 MC 1563 (Wuhan Maritime Court); (2021) EMZ 15 (Hubei High People's Court)

China Animal Husbandry Industry Co Ltd v Palmer Maritime Inc (2016) Y72 MC705 (Guangzhou Maritime Court); (2019) YMZ 807 (Guangdong High People's Court); [2022] ZGFMZ 14 (Supreme People's Court); [2024] 2 CMCLR 1

China National Offshore Oil Corporation Ltd Tianjin Branch and Another v Hainan Ansheng Shipping Co Ltd and Another (2023) Liao 72 MC 725 (Dalian Maritime Court); (2024) LMZ 846 (Liaoning High People's Court)

Company 1 and Another v Company 2 (2023) H 72 MC 1273 (Shanghai Maritime Court); (2023) HMZ 867 (Shanghai High People's Court)

Company B v Company A (Company C, third party) (2022) H 72 MC 1571 (Shanghai Maritime Court); (2023) HMZ 620 (Shanghai High People's Court)

Dalian Bright International Logistics Co Ltd v Dalian Ruiqi Biotechnology Co Ltd (2023) L 72 MC 1439 (Dalian Maritime Court); (2024) LMZ 397 (Liaoning High People's Court)

DINSON Industries Corporation v China Life Property and Casualty Insurance Co Shanghai Branch (2023) H 72 MC 389 (Shanghai Maritime Court);(2023) HMZ 818 (Shanghai High People's Court)

Dongying Xinyu Logistics Co Ltd v Dongguan Fenghai Ocean Shipping Co Ltd (2019) L 72 MC 137 (Qingdao Maritime Court); (2020) LMZ 14 (Shandong High People's Court); (2020) ZGFMS 4813 (Supreme People's Court)

Establishment of a limitation fund by Nanjing A Shipping Co (2021) Y 72 MT 5 (Guangzhou Maritime Court)

Fujian Huajing Marine Technology Co Ltd v Ping An Property & Casualty Insurance Company of China Ltd and Another (2023) Y 72 MC 1069 (Guangzhou Maritime Court)

Hainan Dongzhan Building Materials Trading Co Ltd v PICC Property and Casualty Co Ltd Fuzhou Branch; Pingtan Comprehensive Pilot Zone Huachen Shipping Co Ltd and PICC Property and Casualty Co Ltd (2023) Q 72 MC 282 (Haikou Maritime Court); (2024) QMZ 272 (Hainan High People's Court)

Hainan Fenghai Cereals and Oil Industry Co Ltd v PICC Property and Casualty Co Ltd, Hainan Branch (2003) MSTZ No 5

Hapag- Lloyd Shipping (China) Co Ltd v Shandong Awan Import & Export Co Ltd and Another (2024) L 72 MC 712 (Qingdao Maritime Court)

Langfang Juli Exploration Technology Co Ltd and PICC Property and Casualty Co Ltd Xiamen Branch v Border Shipping Ltd (2024) JMZ 416 (Tianjin High People's Court)

Lin Bin v PICC Property and Casualty Co Ltd, Guangzhou Branch (2023) G 72 MC 252 (Beihai Maritime Court); (2024) GMZ 134 (Guangxi High People's Court)

New Golden Sea Shipping Pte Ltd v China National Machinery Industry International Co Ltd (2019) J 72 MC 1012 (Tianjin Maritime Court); (2020) JMZ 446 (Tianjin High People's Court); (2021) ZGFMS 5588 (Supreme People's Court); [2022] 3 CMCLR 8

Ningbo Logistics Co and Shenzhen Logistics Co v Zhejiang Auto Parts Co (2023) Z 72 MC 1200 (Ningbo Maritime Court); (2024) ZMZ 94 (Zhejiang High People's Court)

Shanghai Chunkou Industrial Co Ltd v PICC Property and Casualty Co Ltd Tianjin Branch (2024) ZGFMS 2283

Shaoxing A Co Ltd v Qingdao B Co Ltd (2023) L 72 MC 748 (Qingdao Maritime Court); (2024) LMS 6750 (Shandong High People's Court)

Shipping Company A, Taizhou City v Taizhou Branch of B Insurance Co (2022) SMZ 1677 (Jiangsu High People's Court); (2024) ZGFMS 1490 (Supreme People's Court); [2024] 4 CMCLR 52

Wang Fengmin and Others v China Life Property and Casualty Insurance Co Ltd, Nantong City Centre Branch (2021) SMZ 2055 (Jiangsu High People's Court); (2024) ZGFMS 4790 (Supreme People's Court); [2025] 1 CMCLR 1

Wei v Liu and Another (2023) H 72 MC 514 (Shanghai Maritime Court); (2024) HMZ 32 (Shanghai High People's Court)

Zhongshan A Service Department v B Waterway Bureau and Another (2023) E72 MC 997 (Wuhan Maritime Court)

Lloyd's List Intelligence

Achieve more with Maritime and Commercial on i-law.com

i-law.com is your essential online legal companion, combining user-friendly functionality with our quality maritime law content. Our extensive shipping law library, including *Lloyd's Law Reports* dating back to 1919, provides the information you need at the right time, anywhere in the world

Discover the power of i-law.com today at lloydslistintelligence.com/products/ilaw