Guangzhou Maritime Court

Report on Trials 2019

Guangzhou Maritime Court

February 2020

Preface

The year of 2019 witnessed constant changes and growing uncertainties in the global political and economic landscapesfollowing the buildup ofrisksstemming from the China-US economic and trade frictions and the British endeavor to withdraw from the European Union. Yet the global shipping industry managed to press ahead under these turbulent situations. On September 4, 2019, the Baltic Dry Index hit 2518, a record high over the recent 9years. In the two quarters that followed, the prosperity index and confidence index of the shipping industry remained stable, showing a basic trend of coexistence of challenges and opportunitiesand increasing marketconfidence.

2019 marked the 70th anniversary of the founding of the Chinese People's Liberation Army Navy. On April 23when he reviewed the naval parade in the city ofQingdao, General Secretary Xi Jinping proposed building a maritime community with a shared future, and the important concept resonated strongly with the international community and elicited a positive international response. In the year, China waselectedCouncil member of "A" category of the International Maritime Organization for the 16th timesince 1989. The reelection was anacknowledgment of the international standing and commitments of China as a major shipping power. Amid these importance events, the market was brimming with the appeal of the "AI plus Shipping" scheme following the mushroominghi-techs such as the world's first AI-recognitionsmart port system with full-stack solution,the world's first hydrogen-powered 5Gsmart port, and the rollout of China's self-propelled cargo ship "Jin Dou Yun 0". Maritime judiciaries shouldered great duties and responsibilities instudying and implementing the concept of building a maritime community with a shared future and the Marine Power Strategy and inpromoting the rapid and healthy development of the shipping industryby raising the confidence of shipping market and providing good servicesand guaranteesto facilitate the application of innovative shipping technologies.

2019 was also a remarkable year for Guangzhou Maritime Court.Within the year, the court registered all-time high records in the number of both accepted casesand closed cases andinitiated the scheme to conduct maritime litigation through the internet. The court also passed the performance assessment on"basically resolving the problem of difficult enforcement". The court also held the 27th National Maritime Trial Seminar. In 2019, guided by Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and the court's overall workapproach of "serving the national strategies by giving full play to maritimeadjudicationfunctions, delivering quality cases,and keeping pace with international frontiers", Guangzhou Maritime Court performed its duties

faithfully following the Constitution and the law, gave top priority to case handling, and provided services and guaranteesfor the advancement of the Belt and Road Initiative and the development of the Greater Bay Area. With these, a mentality in pursuit of progressand strength was enhanced in the court.

In 2019, by analyzing the causes and risks in relation to such issues as jurisdiction in maritime lawsuits, disputes over ship-bridge collision, marine fishery disputes, the start of interestcalculation in maritime lawsuits, disputes over personal injury at sea, law enforcement activities of maritime administrative organs, and auction of shipsand allocation of proceeds, wewould like to present some suggestions in this report. It is expected that with the guidance of this report shipping market players will take steps to fend off risks and maritime administrative organs will strengthen administration according to law, andthat they will jointly seize the day to achieve healthy and orderly development of the shipping industry.

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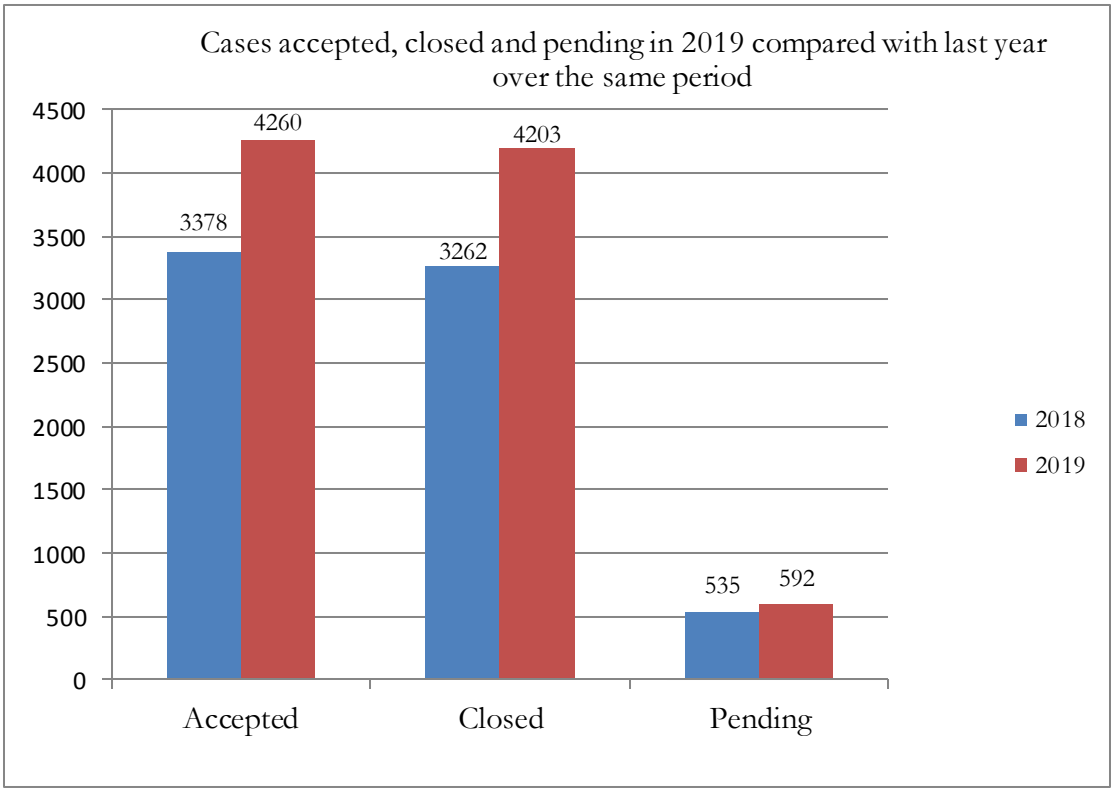
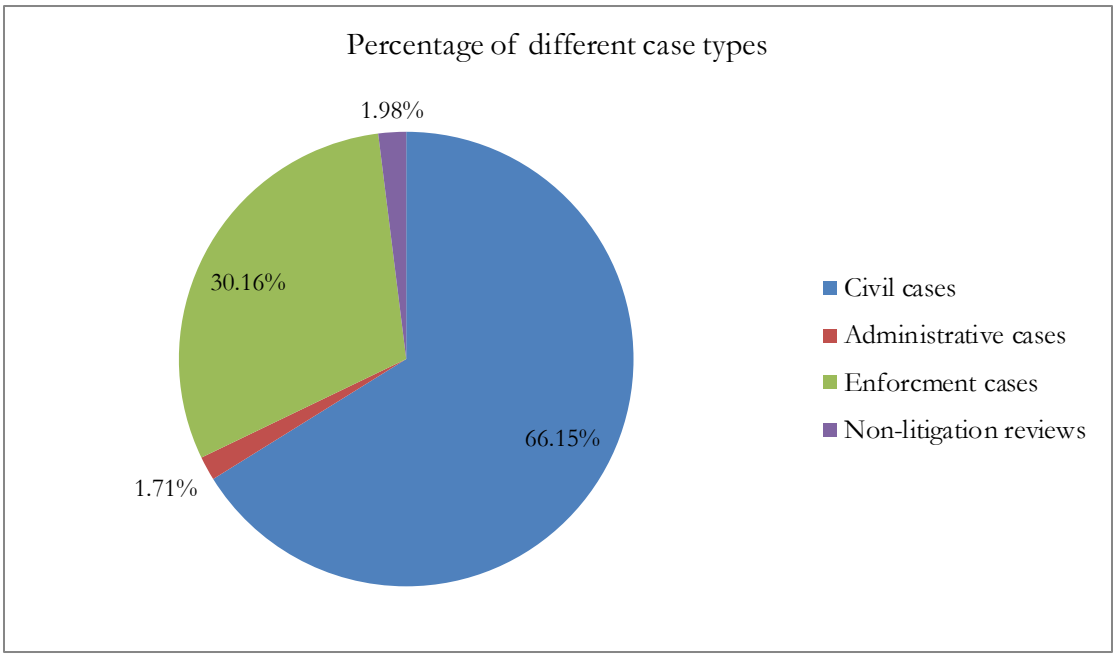
I. General Information about Maritime Trial

(I) Overall performance

In 2019, Guangzhou Maritime Court accepted4795 cases, a year-on-year increase of 26.18%, which included 4260 new cases, increasing by 26.11% from the previous year. 4203 cases were closed, up 28.81% over last year, and 592 cases pending,rising 10.65% compared with last year. The value involved in the new cases amounted to 9.726 billion yuan, falling 58.98% from the previous year, and the value involved in the closed cases totaled 11.123 billion yuan, falling 48.50% from the year earlier. Throughout the year, 87.65% cases were concluded, increasing by 1.75% compared with last year, and the ratio of closed cases to accepted cases was 98.66%.



Among the new cases accepted, there were 2818 civil cases (including non-litigation cases), accounting for 66.15% of all the new accepted cases, and 73 administrative cases, 1285 enforcement cases (including 560 preservation enforcement cases) and 84 non-litigation review cases, accounting for 1.71%, 30.16% and 1.98% respectively. The percentages of different categories of cases are shown as below:



Among the cases closed by the court, there were 2743 civil cases with a year-on-year increase of 29.94%, accounting for 65.27% of the total closed cases, including 2441 litigation cases and 302 non-litigation cases; 80 administrative cases with a year-on-year increase of 344.44%, accounting for 1.90% of the total closed cases, which included 47 litigation cases and 33 non-litigation cases; 1296 enforcement cases (including 561 preservation enforcement cases) with a year-on-year increase of 17.18%, accounting for 30.84% of the total closed cases; and 84 non-litigation review cases accounting for 1.99%, with a year-on-year increase of 211.11%.

Among the litigation cases closed in first instance (inclusive of civil and administrative litigation cases), there were 595 cases concluded by judgment, accounting for 23.91%; 349 concluded by mediation, accounting for 14.03%; 592 allowed to be withdrawn by a ruling, accounting for 23.79%; 891 ruled to be withdrawn, accounting for 35.81%; 26 ruled to be transferred to other units, accounting for 1.05%; and 35 more accounting for 1.41%.

In 2019, the court accepted 1285 newenforcement caseswhile there were157 pending cases of previous year. With 1296 cases effectively enforced and 146 pending, 89.88% of the enforcement cases were concluded by the court, up 2.24% compared with last year.100% of the cases successfully enforced or legally terminated were accepted, 100% of the enforcement complaint letters and visits were addressed, and online auction had extended to cover all aspects. The court ranked firstin the province interms of actual enforcement rate, enforcement completion rate and preservation rate,and it registered thelowest number of terminated enforcement procedures across the province.Witha

high-standard and stable core enforcement index, the court passed the performance assessment on "basically resolving the problem of difficult enforcement".

(II) Characteristics oftrial and enforcement in 2019

In the year of 2019, the number of cases accepted and closed by Guangzhou Maritime Court reached an all-time high, which increased significantly compared with that of 2018. Some characteristics could be seen in the trial and enforcement during the year.

1. Significant rise of new accepted cases. In 2019, the court accepted a total of 4260 new cases, a remarkable increase compared with 2641 cases in 2017 and 3378 in 2018. Litigation cases were in the majority. Among these new cases, there were 2576 first-instance cases with a year-on-year increase of 32.37%, accounting for 60.47% of the new cases. Among them, dispute over contract of carriage of goods by sea, dispute over marine forwarding contract and dispute over crew labor contract were the top three types of first-instance cases accepted.

2. Large portion of cases involving foreign countries or Hong Kong, Macao&Taiwan. In 2019, the court accepted 725 cases involving countries and regions such as Germany, UK, Australia, Singapore, Mexico, Hong Kong, Macao and Taiwan. These cases accounted for 29.15% of first-instance maritime cases, and 616 of them were concluded, accounting for 23.91% of all the first-instance cases.The court lawfully exercised maritime jurisdiction and applied the law correctly when dealing with cases involving foreign elements or Hong Kong, Macao and Taiwan,which helped to builda law-based and convenient international business environment for the advancement of the Belt and Road Initiative and the construction of the Greater Bay Area.

3. Frequent port-related disputes. In 2019, the court handled 54 maritime cases in relation tocargo handling operation, port construction and dredging, and storage of goods at port, with a total of 140 million yuan involved. Given the visits of strong typhoons such as Hato and Mangkhut in recent years, cases related to water damage to goods stored in port rapidly increased, and the port operators often became defendants or third parties in such cases. It was frequent that port operators were often held liable as defendant or third party in such cases.When dealing with these cases, the court would give detailed explanation on thecontext of typhoon as force majeure and set rules for the judgment of similar cases. By playing a guiding role, the court strived to provide strong judicial support for the construction of strategic sea passagessuch as key ports and shipping hubs andpromote orderly and healthy

development of the shipping market.

4. Large number of cases related to people's livelihood. In 2019, the court dealt with 259 cases in relation to people's livelihood, such as dispute over crew labor contract and personal injury compensation claims, involving a total value up to57.1585 million yuan. 163 cases in relation to crew's wages were enforced effectively, which secured a total sum of 6.3684 million yuan. A fast track was in place to facilitate fast handling of the filing, trial and enforcement of crew related cases, which helped to protect the legitimate rights and interests of disadvantaged groups such as seafarers, fishermen, and victims caught in maritime accidents and their close relatives. Throughout the year, the court handled 5 cases of liability disputesover damage caused by ship-induced pollution and damage arising from aquatic farming, involvinga total value of 41.5108 million yuan. By trying these cases, the court effectively protected people's ecological safety and benefits, as well as the ecological environment of the Pearl River Delta and the adjacent sea areas. In the year 2019, the court actively conducted maritime trial via the internet, and 124 cases were heard online and across regions, which enabled the litigants to have access to justice more conveniently.

5. Steady progress to achieve the goal of "basically resolving the problem of difficult enforcement". The court's enforcementendeavors have brought satisfactory results. Inthe year, the court launched aspecial enforcement campaign "2019 Nanyue Enforcement Operation", andit also passed the performance assessment on "basically resolving the problem of difficult enforcement". In 2019, 89.88% of the cases were enforced and concluded, involving a total sum of more than 1.45 billion yuan. Duringthe year, the courtrendered546 consumption restriction orders and announced 165 natural persons and 273 legal persons as discredit judgment debtors.A disobedient judgment debtor was detainedto procure fulfillment of his obligations, a party not involved in an enforcementcase butrefused to cooperate with the court's enforcement activity was fined. And another judgment debtorwho refused to perform his obligations was transferred to the police and was accused of disobedience against the judgment or ruling of people's court.

6. Satisfactory price premium achieved in online judicial auctions. In 2019, the court made 104 online auction announcements and conducted 94 auction sales online. Of the 68 properties on auction, 35 succeeded, bringing a turnover of 120 million yuan and an average premium rate of 71.97%. 52 ships were intended for sale and 22 were auctioned off, with a turnover of 88.835 million yuan and an average premium rate of 67.8%.

II. Exercising Litigation Rights According to Law —Issues and Suggestions on Jurisdiction of Maritime Litigation

1. Jurisdiction of a separation action for disregard of corporate personality

Company A and Company B had entered into a time charterparty, whereby Company B leased Vessel X from Company A for carriage of goods. However, upon completion of the carriage, Company B did not pay the fixed hire to Company A as agreed in the time charterparty. Company A therefore filed a lawsuit before this Court, requesting the court to order Company B to pay the hire of CNY360,000. Through mediation of the Court, Company B agreed to pay to Company A an amount of CNY350,000. As Company B did not actively made the payment, Company A applied with this Court for compulsory enforcement. During the enforcement, the Court did not find any of Company B's assets and had to end the procedure. Later, Company A brought a lawsuit before this Court against Company C and Company D on the basis that the two companies were affiliates of Company B. Company A requested the court to order the two companies to bear joint and several liability for the debt of B in the sum of CNY350,000. Upon examination, The Court found that the request of Company A belonged to corporation-related disputes and a maritime court did not have jurisdiction over such disputes. The Court hence made a ruling to reject the lawsuit.

According to the *Decision of the Standing Committee of the National People's Congress on the Establishment of Maritime Courts in Coastal Port Cities*, maritime courts have jurisdiction over first instance maritime cases. The scope of maritime cases is determined in accordance with the *Provisions of the Supreme People's Court on the Scope of Cases to Be Accepted by Maritime Courts* (hereinafter referred to as "*Provisions on the Scope of Cases*"). In practice, a request for disregard of corporate personality brought incidentally with a maritime case will be accepted by maritime courts. This helps to reduce litigation burdens and resolve disputes at a time. Under the aforementioned law and judicial interpretation, a corporation related dispute is not within the scope of cases accepted by maritime courts. Maritime courts have no jurisdiction over a separate action for corporate-related dispute according to law.

In fact, some shipping companies will establish a shell company to sign business contracts with clients, but the business profit will be remitted to the account of its affiliate or actual controller. This poses big challenges to creditors claiming their debts as well as to courts' enforcement work. There is a similar situation when it comes to a spouse's joint debt. In our opinion, in the event of the aforementioned or similar circumstance, if the basic legal relationship of a dispute involves a maritime nature, to ascertain the debt payment liability

of liable party in one attempt, the claimant may list all the potential debtors as defendants. In such circumstances, the ascertainment of the principal debtor is still in the core of the lawsuit, while the ascertainment of affiliates, the controlling shareholders or the actual controllers is taken as a process to identify other debtors related to or associated with the principal debtor. Hence, the dispute will be examined on the basic legal relationship, and maritime courts will have jurisdiction to handle the entire case. Creditor may also, during a maritime enforcement procedure, apply with the court to add a defendant according to law. If a creditor files a separate action and does not apply to add defendants during the court's maritime enforcement procedure, we suggest that the creditor should initiate the lawsuit before a local people's court according to law.

2. Jurisdiction of disputes over sales contract of goods carried by sea

Company A and Company B concluded an electrical appliance supply contract, whereby Company A purchased the goods from Company B and the parties agreed that the goods would be carried by sea. Due to cash flow difficulties, Company B did not supply the goods after receiving Company A's deposit. Company A filed a lawsuit before Court C at the place where Company B resided, requesting the court to order Company B to refund to it an amount twice as much as the deposit. Upon examination, Court C decided that Company A's claim involved a dispute over contract of carriage of goods by sea and by navigable waters connected to sea, and ruled to transfer the case to this Court according to Article 25 and Article 110 of the *Provisions on the Scope of Cases*. This Court examined and found that the case was within the jurisdiction of Court C, and referred the case to the superior court for further instruction. The superior court decided that Court C had jurisdiction over the case and ruled that the case shall be governed by Court C.

Article 110 of the *Provisions on the Scope of Cases* provides that "civil, commercial and administration lawsuits which involve maritime disputes as specified in this provision are subject to the jurisdiction of maritime courts". In regard to a sales contract dispute, as provided in Articles 11, 13 and 18 of the said judicial interpretation, maritime courts only have jurisdiction over disputes arising from contracts regarding the sales of vessels, key component parts and special items of ships and marine stores. Dispute over other sales contracts (or supply contracts) are taken as general sales contract disputes regardless that the subject matter therein is agreed to be or is actually transported by sea. The parties' agreement on transport method of the goods will not change the basic legal relationship of a sales contract. In this regard, the subject case was neither a sales contract dispute subject to the jurisdiction of maritime courts nor a dispute over contract of carriage of goods by sea or by navigable waters connected to sea. The dispute arising from the

conclusion and performance of the contract in question was not a maritime dispute, and therefore maritime courts did not have jurisdiction over it.

We suggest that with respect to disputes over sales contract of goods except those listed in the *Provisions on the Scope of Cases*, as well as advance payment dispute or guarantee dispute (except pledge of ship) related to the sales of goods, to avoid unnecessary delay of legal proceedings, local people's courts and the parties concerned should identify the right of jurisdiction based on the fundamental legal relationship and should not develop an extensive understanding of "maritime disputes" under Article 110 of the *Provisions on the Scope of Cases*.

3. Remedies available to employers after receipt of a final arbitration award

Seaman B, employed by Company A, died of a sudden illness during his work onboard a vessel. The labor administrative department examined and determined that Seaman B's death constituted a work-related injury. Seaman B's family members C and D could not reach an agreement with Company A on compensation and hence applied for labor arbitration before the labor dispute arbitration committee at the place where Company A was located. They requested to be awarded a payment of work-related injury insurance compensation from Company A. The labor dispute arbitration committee supported C and D's request and stated that it was the final award. Company A refused to accept the arbitration award and filed a lawsuit before Court E at the place where the arbitration committee was located, requesting the work-related injury compensation to be borne by the vessel's actual operator. Court E examined that the subject work-related injury compensation dispute was arising from Seaman B's death during his work onboard the vessel, which shall be heard by a maritime court according to the *Provisions on the Scope of Cases*. Court E then transferred the case to this Court. Upon examination on the facts and grounds provided by Company A, this Court determined that Company A's filing of lawsuit after receiving the labor arbitration award was a denial of the award, which was not a lawful remedy and was beyond the scope of civil cases to be accepted by the Court. Therefore, the lawsuit filed by Company A was inadequate and was not accepted by the court.

The people's courts shall guarantee the parties' rights to file lawsuit according to law. But the parties should properly identify their rights so that they can exercise the same lawfully within a reasonable time. According to Articles 48 and 49 of the *Law of the People's Republic of China on Labor-dispute Mediation and Arbitration*, if a worker is dissatisfied with the final arbitration award made by a labor dispute arbitration committee, he may initiate

a lawsuit before a people's court within 15 days from the date he receives the award. However, where an employer disagrees with a final arbitration award, it may, within 30 days from the date it receives the award, apply for revocation of the same before an intermediate people's court at the place where the labor dispute arbitration commission is located. The employer cannot file a lawsuit to deny the arbitration award.

Disputes between a seaman and his employer may arise from a crew labor contract, crew service contract, and compensation liability for personal injury or work-related injury occurring during the performance of contract. Today, problems such as personnel management disorder and difficulties faced by seamen who seek to protect their rights are still evident in the crew service market.

We suggest that seamen and their employers should establish legal relationship in a lawful and standardized manner. In case of dispute, this will help the people's courts to identify the legal relationship between them by relying on the evidence submitted by the parties and to grant lawful remedies according to different types of legal relationships.

III. Maintaining Navigation Safety According to Law —Issues and Suggestions on Vessel-Bridge Collision Dispute

1. Should a company having vessels nominally attached to itbear joint liability for compensation?

In a case arising from vessel-bridge collion, vessel X departed from a Foshan port for Hainan in ballast.When navigating in Hemaxi Waterway, she mistakenly entered Chifen Waterway of a lower waterway level. Herbow mast and the third floor of her bridge collidedwith the main beam of Bridge L between Pier 11 and Pier 12 across the waterway, causing damage to both Bridge L and the boat herself.After the collision, the maritime department issued an *Investigation Report on Inland Traffic Accident* after the accident, ascertaining that the vesselshall bear full liability for the accident. The registered owner of the vessel was Company A. B had entered into a vessel operation and management contract with Company A, which agreed that the ownership and the right to operate the vessel was registered under the name of Company A while the vessel was actually owned by B. A and B filed a lawsuit before Wuhan Maritime Court in respect of the ownership of Vessel X. Wuhan Maritime Court's effective judgment ascertained that B had the ownership of Vessel X. The municipal's highway bureau, who was the owner of Bridge L,filed a lawsuit before this court, requesting the court to order Company A and B to bear joint and several liability for compensation for the loss caused by the collion of the ship and the bridge. During the court hearing, B acknowledged that it had been operating the vessel at all times. Both the first- and second-instance courts supported the claimant's requests.

The court's effective judgment held that since the vessel was solely liable for the accident, B, asthe actual owner who had been operating the vessel at all times, shall be fully liable for compensation for the losses arising from the accident according to Article 6 of the *Tort Liability Law of the People's Republic of China* (hereinafter referred to as the "*Tort Liability Law*"). If an actual owner of a carriage vesselwho does not obtain a transport licenseregisters the vessel's ownership inthe name of a shipping company which waterway transport qualification so to bypass the national regulations on waterway transport license, the nominal registered shipowner should be responsible for the safety management of the vessel. Company A, as the registered owner of Vessel X, was responsible to ensure the safety of the ship and shall be held jointly liable for any ship accidents with the actual controller of the ship. According to Article 12 of the *Guiding Opinions of the Supreme People's Court on Legal Issues Concerning Cases of Disputes over Carriage of Goods by Inland Waterways* (hereinafter referred to as the "*Guiding Opinions*"), Company

A and B shall bear joint and several liability in the subject case.

Company A arguedbefore the court that Article 12 of the *Guiding Opinions* was merely a normative regulation rather than a judicial interpretation and therefore shall not be used as a basis for judgment. Such defense is often citedby nominal registered shipowners in vessel-bridge collision disputes.

In our opinion, companies having vessels nominally attached to them but failing to fulfill the safety management obligations shall bear joint and several liabilities for tort caused by collision and contact of ships. This is supported by laws and judicial practice. A defense made for the purpose of delaying legal proceedings (such as the one mentioned in the preceding paragraph) will not be upheld by the court. We suggest that these companies should enhance safety management on the attached vessels and take material measures to avoid collision or contact accidents. If an attached vessel gives rise to an accident due to her own fault, the registered owner, after making compensation according to the effective judgment, may seek recourse against the actual owner/operator according to the relevant vessel operation and management contract to minimize or recover from loss.

2. Is the vessel entitled to limitation of liability for maritime claims in collision with bridge?

Vessel Y, when navigating downstreamthrough Bridge H located in Xinhui,Guangdong, collided with the bridge, causing damage to the bridge and traffic congestion. The vessel held an inland vessel inspection certificate, inland vessel seaworthiness certificate and alicense for operating in Hong Kong-Macaoshipping lines. The maritime department issued an*AccidentInvestigation Report*, ascertaining that Vessel Y shall be fully liable for the accident caused by her navigation negligence. The owner's maintenance unitof Bridge H initiated a lawsuit against the owner of the vessel, demanding a compensation in a total amount over 8 million yuan. The shipowner proposed that since the vessel was licensed to navigate in Hong Kong-Macao shipping lines and the accident occurred in the tidal reach which belonged to sea waters, it was entitled to limitation of liability for maritime claims. This court held that Vessel Y was an inland vessel, and although she was licensed to navigate in Hong Kong-Macao shipping lines, she was sailingin inland watersat the time of the accident. Therefore, the vessel was not entitled to limitation of liability for maritime claims.

Limitation of liability for maritime claims is a special mechanism under the maritime law, which was designed to safeguard the orderly development of marine transport. It

lawfully entitles ship owners, operators and charterers to limit their compensation liabilities to certain extent in caseof seriousmarine accidents. It is a special protection against vessel operational risks at sea. Generally speaking, the mechanism only applies to "sea-going ships" asprovided for in Article 3 of the *Maritime Law of the People's Republic of China* (hereinafter referred to as "*Maritime Law*"). An inland vessel with a gross tonnage of more than 20 tons and not applied for military or public service, if allowed to sail in Class A navigation area, may operate in Hong Kong-Macao shipping lines upon approval. Such vessel may be deemed a "sea-going vessel" under Article 3 of the *Maritime Law* in the event of accidents during her navigation in the approved navigation areas at sea. In the subject case, Vessel Y was an inland vessel permitted to navigate in Class A navigation area and Hong Kong-Macao shipping lines, but the accident was taking place during her voyage from Nansha Port to Xinhui Port, which belonged to inland shipping line. The accident location was downstream near Bridge H, which was inland water. The owner of Vessel Y claimed that the accident water was within tidal reach. However, there was no such legal basis to classify a tidal reach as sea water. Vessel Y shall be deemed an inland vessel at the time of the accident rather than a "sea-going vessel"as defined in the *Maritime Law*. Thus, the vessel was not entitled to limitation of liability for maritime claims according to the *Maritime Law*.

We suggest that ship owners, operators and charterers should have full knowledge of the types, navigation abilities and navigational areas of their vessels. Whether a vessel is entitled to limitation of liability for maritime claims under the *Maritime Law* is closely dependent on whether the ship is deemed a "sea-going vessel". In general, a vesselwith a seagoing vessel inspection certificate is a "sea-going vessel" no matter she is navigating in inland waters or insea waters at the time of accident. As for a vessel with inland vessel inspection certificate which is also licensed for navigation at sea, she may be deemeda "sea-going vessel" if she is at sea during an accident. In litigation,ship owners, operatorsor charterers should judge whether their ships are "sea-going vessels" and whether they are entitled to limit the liability for maritime claimsrather than abuse theirlitigation rights to waste judicial resources.

3. Scope of losses arising from vessel-bridge collision

In the case discussed above, the owner's maintenance unit of Bridge H demanded the owner of Vessel Y to compensate the costs covering aspects ofbridge repair, installation of emergency traffic safety facilities, onsite traffic maintenance and safety management, waterway traffic control and safety measures, emergency lightning, repair design, repair supervision, testing, owner's management fee,extra traffic controlfor bus detours and

extra traffic facilities, and navigation resumption announcements. The shipowner argued that some of the costs were unreasonable and unlawful. The court held that the costs on bridge repair, design, supervision, testing and owner's management fee were necessary for the repair of the damaged bridge, and these costs shall be supported since evidence had proved that they were actually incurred. The costs forsafe passage of the bridge such as installation of emergency traffic safety facilities, onsite traffic maintenance and safety management, waterway traffic control and safety measures, navigation resumption announcement,as well as extra traffic control for bus detours and extra traffic facilities were not related to the repair project and therefore shall not be supported.

According to Article 5 of the *Provisions of the Supreme People's Court on the Trial of Cases of Compensation for Property Damages Arising from Collision and Contact of Ships* (hereinafter referred to as the "*Provisions on Collision and Contact of Ships*"), compensation for property loss due to vessel contact accident includes costs for the repair of a property in total or partial damage, as well as any reasonable loss of profit due to non-functioning of such property before it resumes function. Bridges concern public transport safety. Repair of a bridge is a complicated task, which requires evaluation and design before commencement, supervision during the progress,and quality testingupon thecompletion of the project. Therefore, the costs for the repair, design and supervision of the repair work, testing, and owner's management are necessary for the repair of the damaged bridge. However, during the repair of a bridge, the owner of the bridge or the authorities responsible for traffic safety administration may have to spend extra money to maintain the safe passage of the bridge, such as setting emergency traffic safety facilities. Such costs arepart of the normal expenditure for public administration and does not constitute a repair cost as defined in the *Provisions on Collision and Contact of Ships* or a reasonable loss of profit due to non-functioning of the bridge.

We suggest that in case of a bridge damage event, the bridge's maintenance unit should actively take reasonable and proper emergency measures to repair the bridge subject to therelevant laws and regulations. For any costs incurred during the bridge repair, the maintenance unit should catalogue these costs properly according to the relevant laws and regulations and by referring to similar cases. By doing so, instead of expanding the loss scope willfully, they will have a clear understanding of the scope of the repair costs or the reasonable loss of profit. This will improve the efficiency of future recourse for compensation, and will also save judicial costs. Bridge H had been involved in severalsimilar contact accidents prior to and following the subject case. Wetherefore suggest that shipowners, operators and charterers should raisetheir navigation safety awareness, avoid overloading vessels, and improve crew's navigation skills andsafety

accountability awareness by means of enhancing crew management and training. Bridge's maintenance units should enhance daily maintenance of bridges by testing their navigational capacities and ensuringthe normal function of navigation safety facilities and navigational signs. Waterway and maritime regulators should strengthen supervision and governance overwaterfront areas and vessels, add safety signs and warnings in accident-prone locations, and implement more stringent punishment on dangerous navigation acts to urge crew to comply with navigation safety guidelines.

IV. Regulating Marine Fishery Development According to Law —Issues and Suggestions on Marine Fishery Disputes

1. Transfer of rights under marine fishery contract

In a case of marine fishery contract dispute, Villages A and B concluded a marine fishery contract with natural persons C and D. C was a villager of Village A, while D was not a member of either Village A or B. Villages A and B were island habitats and mainly relied on tourism and the village's collective right to use the surrounding sea areas. During the conclusion of contract, Village A called for villagers' representative meeting, by which the village agreed to transfer its collective right to use sea areas and leased such sea areas to C and D. During the hearing, the court found that Village B did not call for a villagers' meeting to decide whether to transfer its collective right to use sea areas and lease such areas to C and D. Considering that the transfer of village's collective right to use sea areas should also follow specific procedures, the court reached out to seek Village B's consent. Village B then called for a meeting and decided to transfer the collective right to use the sea areas and lease such sea areas to C and D. Upon the completion of lawful contracting procedures, the court lawfully supported the claim of A and B against C and D for the overdue charges for transfer of the management right of sea areas.

According to Clause 1 (h), Article 24 of the *Organization Law of the Villagers' Committees of the People's Republic of China* (hereinafter referred to as the "*Organization Law of the Villagers' Committees*"), items concerning villagers' interests are subject to discussions at villagers' conference, including (h)disposal of village's collective property by loan, lease or in other manners. Clause 2 further provides that villagers' conference may authorize villagers' representative meeting to discuss and make decision regarding the items specified in the preceding clause. This court held that, since the validity of contracting procedure was a precondition for the effectiveness of contract, the fishery contract must be discussed and passed on the villagers' meetings of both villages. After Village B held a meeting and agreed to transfer its collective right for the use of sea areas, the court was able to admit the effectiveness of the marine fishery contract according to law. The court lawfully supported the claim of A and B for the overdue charges for transfer of the management right of sea areas.

According to the *Guiding Opinions on Coordinating and Advancing the Reform of Property Right System for Natural Resources* issued by the General Office of the CPC Central Committee and the General Office of the State Council, it is necessary to build a multi-level system for the right to use sea areas, optimize the functions of the right to use sea areas to be

assigned, transferred, mortgaged, leased or contributed as share capital, and to define the relation between the right to develop aquaculture in waters and beaches and the right to use sea areas and land management right. To this end, natural resources administrations should further reform the transfer system of the right to use sea areas and enrich the content of the functions of such right. This will help to maintain orderly property right relationships, promote the value-added use of sea areas, and increase farmers' income.

We suggest that the transfer of village's collective right to use sea areas under marine fishery contract shall strictly follow the *Organization Law of the Villagers' Committees* and other relevant laws. Collective property cases involving coastal villages shall be handled prudently following the relevant laws and regulations, and the special legal person status of rural collective economic organization shall be implemented according to law so as to protect the legitimate rights and interests of its members.

2. Ascertainment of time bar under marine fishery contract

In a dispute over marine fishery contract, Village A and Company B entered into a contract for rock whelk aquaculture on January 1, 2012, with a contract term valid from January 1, 2012 to December 31, 2014. On December 23, 2014, Village A sent a payment demand letter to Company B, requiring B to pay the overdue contracting charges under the contract. Li, the then legal representative of Village A, attended the hearing to testify that he had handed over the letter to Liu, the representative of Company B, on or about December 24th or 25th of 2014. On June 17, 2015, Village A offset part of the charges with Company B's advance payment. On June 18, 2015, Village A issued a lawyer's letter, and Li testified that he had handed over the lawyer's letter to Liu on or about June 20. Liang, the current legal representative of Village A, testified that on July 22, 2017, along with the township leader, he met the representative of Company B to discuss the debt repayment. The court ascertained that the former legal representative of Village A, from 2012 until the reelection of villager committee in 2017, had demanded repayment of the debt every year either face to face or via phone calls with the representative of Company B.

According to Article 135 of the *General Principles of the Civil Law of the People's Republic of China*, the limitation of action of this case was two years. Did the time bar discontinue in this case? Upon examination, the court found that Village A was on an island in the Lingding Yang sea area, with a population of less than one hundred. As most villagers had moved to nearby cities, the village's resident population was not more than 20. Given these facts and based on evidence such as the lawyer's letter and witness statements, the

court accepted the ground for discontinuance of time bar. As the calculation of time bar of the case discontinued sporadically during 2015 and 2017, it was not time barred as of October 1, 2017. According to Article 2 of the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Time Bar System under the General Provisions of the Civil Law of the People's Republic of China*, "Where a case subject to the two- or one-year time bar under the *General Principles of the Civil Law* is not time barred on the date the *General Provisions of the Civil Law* comes into force, and the party requests to apply the three-year time bar allowed under the *General Provisions of the Civil Law*, the people's courts shall support such request." Therefore, Village A's filing of the lawsuit on May 4, 2018 was not time barred.

In addition to some major, typical and foreign-related maritime cases, maritime courts also handle civil cases involving island residents, fishermen and seamen. These parties do not have a good sense of law and evidence and hence are usually unable to present solid evidence. Given the solitary social environment of islands, in order to balance the parties' interests, the court may take a lenient approach in the ascertainment of discontinuance of time bar. In this case, based on the evidence submitted by the claimant, the court ascertained that the time bar had discontinued. Nevertheless, "Law aids not those who sleep on their rights." We suggest that the parties should timely exercise their rights. They should also improve their awareness in evidence collection. When making a transaction or demanding the opponent party to fulfill obligations, they should keep written evidence that may affect the time bar.

3. The subject entitled to fishery administrative compensation

In a fishery administrative compensation dispute, A had been engaged in fishing activities near Water Area B since 1984 by setting up fishing equipment and had obtained a fishing license for that. In 2015, the government of Municipality C planned to build Bridge D, which would ride over the equipment set by A near the said water area. Later, the bridge's construction unit removed all the fishing equipment and nets from the waters. A could not continue fishing operation and hence demanded administrative compensation from the municipal government. Court E examined and concluded that A could demand compensation only if he had the right to use the sea area. The municipality reclaimed the right to use sea area indeed, but A was not involved. The court ruled that the municipal government's disregard of A's administrative compensation demand did not constitute administrative nonfeasance and hence rejected A's request.

According to Article 30 of the *Law of the People's Republic of China on the Administration of*

Sea Areas (hereinafter referred to as the "*Law on Administration of Sea Areas*"), "To meet the need of public interest or State security, the people's government that originally gives approval to the use of sea areas may revoke such right according to law. If the right to use sea areas is revoked prematurely, compensation shall be made to the subject who has the right to use the sea areas." If the government revoked the right to use sea areas, it shall make compensation accordingly. But such compensation shall be made only to those who have the right to use sea areas. According to Article 46 of the *Property Law of the People's Republic of China*, sea areas are owned by the State. According to the *Law on Administration of Sea Areas*, organizations or individuals may apply with the oceanic administrative department of the people's government at or above county level for approval to use the sea areas or acquire such right by bidding or auction, and shall obtain a license for the right to use the sea areas according to law. As per Article 19 of the *Law on Administration of Sea Areas*, the applicant obtains the right to use sea areas upon the date it receives the license for such right. According to the *Property Law*, the *Provisional Regulation on Real Estate Registration* and the relevant implementation measures, the right to use sea areas is an immovable property right subject to registration. That means, the subject of the right to use sea areas should be the one that has been registered, and the lawfully registered right to use sea areas is protected by law. Although A held a fishing license, he was not the subject of the right to use sea areas. Therefore, Municipality C's refusal of making compensation to A for reclamation of the right to use sea area did not constitute administrative nonfeasance.

We suggest that the parties should have clear understanding of the nature of their own rights and only file lawsuits on the basis of the legal relationship that they are engaged in. Otherwise, their requests may be overruled by courts. The people's courts should explain to the parties the natures of their claims, helping them avoid litigation burdens that may occur due to incorrect identification of legal relationship. In the subject case, after the court's explanation, A decided to file a civil lawsuit against the bridge's construction unit to demand compensation for loss of fishing apparatus and economic loss for cessation of fishing.

V. Determing the Begining day of interest payment According to Law —Issues and Suggestions on claim of Interest

1. Issues about the effect of evidences like invoice notice on the begining date of interest payment

From December 2014 to January 2016, Company A and Company B had been engaged in a long-term transport contractual relationship, whereby A agreed to load goods from a third party and carry to the locations designated by B. A claimed that B shall pay the freight on monthly basis, but it did not provide any evidence in this regard. C, who was the legal representative of B during the term of the transport contract, paid A part of the freight via his personal account on January 11 and 12, 2016. A submitted the Notice of Reconciliation which recorded the vessel's name/voyage, waybill number and freight amount and showed that the overdue freight was CNY129,157.06. C signed on the notice as confirmation on May 20, 2017. On April 5, 2017, C and D entered into a shareholders' decision, by which the parties agreed on a Revision of Articles of Association of B,sold all the shares held by C to D at a price of CNY500,000, and changed B's legal representative to D. On the same day, B registered the changes of its article of association and legal representative at the local industrial and commercial administration. A sued B in court for the overdue freight of CNY129,157.06 plus interest since January 30, 2016 to the actual payment day at the loan interest rate stipulated by the People's Bank of China over the corresponding period, and requested D to bear the joint liability for the debt above. The first-instance judgment decided that B shall pay A the freight of CNY129,157.06 plus interest dating from A filed the lawsuit to the payment day decided by the judgment, and overruled other claims of A. A was not satisfied with the judgment and filed an appeal. The second-instance judgment decided that B shall pay A the freight of CNY129,157.06 plus interest since May 20, 2017 to the payment day decided by the judgment, and ordered D to bear joint liability for the debt of B.

The first instance court held that, as the former legal representative of B, C had confirmed the fact of transportation involved during his tenure by signing on the Invoice Notice. The change of legal representative on April 5, 2017, had no effect on B's liability to pay the overdue freight with its independent property. A's claim that was not confirmed by B or D. Since B and D didn't confirm the fact that freight shall be paid on monthly basis，and A failed to provide any evidence in this regard either, the interest claimed by A shall be paid since the date of lawsuit filing . The subject debt occurred before the acquisition of B's shares by D, and no evidence indicated that D's personal property was mixed up with the property of B, so the first instance court overruled A's

claim that D shall bear joint liability for the debt of B. The second instance court found that the freight claimed by A covered a series of shipments arranged for B over a year rather than just that month by reviewing the content of the Invoice Notice. Given that A did not provide further evidence to prove that the parties had agreement on freight payment date and the confirmation of the Invoice Notice by B should be identifed as its acceptance of the freight payment obligation, so B shall pay the interest of the freight since the date B signed on the notice, i.e. May 20, 2017. According to Article 63 of the *Companies Law of the People's Republic of China*, the shareholder of a limited liability one-person company shall bear the burden of proof to prove that the property of company is independent of his own property. D, as the sole shareholder of B, had submitted evidence in relation to the incorporation and change of shareholding structure of B, which, however, was insufficient to prove that D's personal property was independent from the company's property. Therefore, D shall bear the legal consequence for failure to meet the burden of proof，which means it shall bear the joint and several liability for the debts of the company.

The Invoice Notice represented the parties' confirmation on freight payment and could be taken as a debt agreement, so the court could ascertain the parties' rights and obligations according to the content of such notice. We suggest that parties should provide evidence to support their request on the start of interest calculation，and that the parties may consider presenting a settlement statement or invoice notice or other similar documents as evidence if there is no expressly agreed time of payment. According to Article 61 of the *General Provisions of the Civil Law*, a legal person shall be liable for the legal consequences of the civil activities that its legal representative engages in its name. The legal consequences of the legal representative's signing the said settlement statement or reconciliationnotice shall be borne by the legal person. If a creditor sues the shareholder of a one-person company to bear joint liability on the ground that the shareholder's property was mixed up with his company's property, the burden of proof will be reversed. The shareholder of such company shall submit relevant evidence, such as financial audit reports to prove that the company has run an independent and well-regulated financial system with clear financial expenditure records, and it has independent business location. Otherwise, the shareholder shall bear joint liability for the company's debt.

2. Issues about the effect of insurance ascertainment period on the begining date of interest payment

Company A requested cargo transport insurance for a shipment of imported soybeans

with the insurer Company B. B issued an insurance policy, which recorded that the goods insured was bulk Argentine and Uruguayan soybeans to be carried by Vessel C from a Uruguayan port to a port in Guangdong, and the goods were insured against ocean marine cargo insurance "All Risks". The captain of the vessel signed a clean bill of lading at the loading port. After the goods arrived at destination port, officers of the entry-exit inspection and quarantine bureau boarded the ship for inspection and found that the Uruguayan soybeans laden in bulk had become moist, caked, moldy, and damaged by heat. A commercial survey institute entrusted by A to examine the extent of damage, issued the survey report on September 19, 2016 which confirmed that the subject cargo was damaged, then issued another survey report on July 20, 2017 which verified the losses and expenses arising from the shipment involving. After the accident, A reported the loss to B and demanded insurance compensation, but it was turned down by B. A then brought a suit in the first instance court against B, claiming for the loss of cargo and resale in a total amount of CNY10,693,595.62 plus interest dating from such losses occurred to the date of actual payment at the loan interest rate stipulated by the People's Bank of China over the corresponding period. The first-instance judgment decided that B shall pay A CNY9,147,639.03 plus interest since the next day of that such losses occurred or expenses was payable. B was not satisfied with the judgment and filed an appeal. During the second instance hearing, A agreed the expenses and interest payment to be dated from the the survey institute issued the second survey report. The second instance court retained the original judgment on such issues as whether the subject cargo loss was insured and whether the cost for disposal of moldy cargo was covered by insurance, and only corrected the begining date of interest payment. The second instance judgment decided that the interest of the losses and expenses in the amount of CNY9,147,639.03 shall be paid since July 21, 2017.

The effective judgment ascertained that according to Article 237 of the *Maritime Law* and Article 23 of the *Insurance Law of the People's Republic of China* (hereinafter referred to as the "*Insurance Law*"), insurer shall indemnify the insured promptly, failing which the insurer shall compensate the insured for any loss incurred thereby. A reported the damage to B, but was dismissed by the latter, so A had the right to demand interest payment from B. According to the aforementioned law, however, insurance money will be paid only if the insured or beneficiary has made a claim for indemnity or for payment of insurance benefits, and insurer is allowed to make ascertainment and determination within a reasonable period. B was not obligated to made indemnification immediately after the occurrence of loss. Therefore, it was inappropriate for the first instance court to decide the interest loss to be paid from the following date the inspection and quarantine bureau confirmed the cargo loss. The judgment shall be amended. The claim of A in the

second instance court for which the interest loss shall be paid since the next day of that the survey institute issued the second survey report, was regarded as reasonable and supported by evidence, and then upheld by the second instance court.

An insurance claim generally involves two steps, i.e. "ascertainment of loss amount" and "payment of insurance benefits (indemnity)". The ascertainment and determination of the loss amount is the premise for insurer's fulfillment of its indemnity obligation. Thus, a reasonable period for such ascertainment is allowed. Article 15 of the *Interpretation II of the Supreme People's Court on Several Issues Concerning the Appliation of the Insurance Law of the People's Republic of China* provides that the 30-day ascertainment period under Article 23 of the *Insurance Law* shall be calculated from the date when the insurer receives a claim for the first time and the policyholder, the insured or beneficiary provides evidence and other relevant materials to the insurer. That means, the ascertainment period starts on two conditions, i.e. the "receipt of claim" and the "submission of evidential materials". We suggest that policyholder, the insured or beneficiary should timely make a compensation demand from the insurer and submit preliminary evidential documents upon occurrence of the insured accident. A reasonable ascertainment period does not mean that the insurer can delay payment willfully. Rather, it shall timely verify the loss and pay indemnity according to the aforementioned laws and judicial interpretation; otherwise, it may be held liable to pay overdue interest.

3. Issues about the interest payment dating from claimant's filing of lawsuit

In a ship building contract dispute, Company A entrusted Company B to build two yachts by signing a Ship Building Contract and a supplementary agreement. Later, the parties disputed over the performance of contract, and A filed a lawsuit claiming for terminating the contract and demanding B to return the principal and interest of the shipbuilding fund. The court decided that the contract and the supplementary agreement to be terminated and B shall return A the fund collected as well as paying the interest thereof. A claimed the interest payment dating from the shipbuilding fund was paid. However, the first and second instance courts decided the interest payment dating from the copies of the statement of claim was delivered. In a port terminal construction contract dispute, as there was no written contract or agreed payment time for the project fund between the employer and contractor, the court ordered that the interest of the overdue project fund to be paid dating from the claimant filed the lawsuit. In another port terminal construction contract dispute, the employer and contractor agreed in the contract that the parties would sign a price settlement agreement within 30 days upon the contractor's submission of a fullset of completion acceptance documents, upon which

the final installment, i.e. 15% of the total project price,would be paid.After the project was completed and accepted and was opened to service, the contractor filed a lawsuit against the employer claiming for the overdue final installment and interest thereof. The court held that since there was no evidence to prove that the contractor had provided the said settlement documents as agreed under the contract and the parties had negotiated on payment through correspondence, the interest on the final installment of the project fund shall be paid dating from the claimant filed the lawsuit.

In contract disputes, we should decide whether the begining time of payment return or interest loss be effected by the lawsuit filing, by analysing the effectiveness of contract, the agreement between the parties, and the special provisions of the laws and judicial interpretations comprehensively. For example, Article 18 of the *Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases of Dispute over Construction Contracts for Construction Projects* (hereinafter referred to as "the *Interpretationon Construction Projects*") provides that "interest shall be paid since the date when the project fund becomes payable. Where the parties do not agree on a payment time or have no specific agreement in this regard, the following date shall be taken as the date the project fund becomes payable: (i) the date of delivery, if the project has already been delivered; (ii) the date the project completion settlement documents are submitted, if the project is not yet delivered; or (iii) the date a party files a lawsuit, if the project is not delivered and the project fund is not yet settled". In the first port terminal construction dispute mentioned above, since the parties did not agree on a payment date, and the project was not delivered and the project fund was not settled, the court decided the interest to be paid since the date of lawsuit filing . In the second case, although the parties had agreed on a condition for the payment of the final installment, they delayed to settle the payment. The court ascertained that the case did not meet the condition for an implicit acceptance of settlement set forth in Article 20 of the *Interpretation on Construction Projects*, and hence decided the interest to be paid since date of lawsuit filing .

It should be noticed that the *Minutes of the National Courts' Civil and Commercial Trial Work Conference* issued by the Supreme People's Court on November 8, 2019 made some new rules on the interest . For example, Article 34 of the minutes provides that where a mutual-obligation contract become invalid, ineffective or is revoked, the subject matter will be returned in consideration of the return of payment and vice versa. That means, before a party returns the subject matter, the other party only has to pay the principal free for interest. The minutes further provides that on August 20, 2019, the People's Bank of China authorized the National Interbank Funding Center to publish the loan market quoted loan prime rate (or LPR) at 9:30 on the 20th day of each month

(extended on holidays). From then on, people's courts began to make judgements on loan interest in line with the LPR benchmark. For instance, if the interest requested by a party covers a period with August 20, 2019 falling in between, the interest shall be calculated separately. Thus, a judgment will be described as follows: [a fund] in the amount of [CNY] shall be paid plus interest accrued from [MM-DD-YYYY] to August 19, 2019at the loan interest rate published by the People's Bank of China over the same period and at the loan prime rate published by the National Interbank Funding Center from August 20, 2019 to the payment date decided by the judgment."

VI. Protecting People's Wellbeing in Sea-related Disputes According to Law —Issues and Suggestions on Disputes over Personal Injury at Sea

1. Coverage of fisherman personal accident insurance

In a dispute over marine protection and indemnity contract, two policies for fisherman personal accident insurance were involved. The first one was personal accident insurance purchased by A (member of the fisherymutual insurance association B) from B, which recorded that the entered vessel was Vessel C and the insured was A. The second one was also a personal accident insurance arranged by the fishery company D (member of B) from B, which recoded that the entered vessel was Vessel E and the insured was A and a dozen of other crew members employed by D. At a later time, A was accidentally injured during service onboard Vessel E. The injury was ascertained as a occupational injury by the relevant authority. B confirmed that A's injury during his work onboard Vessel E was covered by the fisherman personal accident insurance, and hence paid D an amount of CNY78,000 and remarked that the sum was for "insurance indemnity". Later, A and D entered into a labor dispute settlement agreement to dissolve their employment relationship. D paid a lump-sum compensation to A, which covered the balances of the invalidity allowance and medical subsidy, as well as employment subsidy in an aggregate of CNY133,987.68. Hence, all disputes arising duringthe parties' employment relationship were settled, and no party shall make further claim against the other. But later, A made a claim against B by presenting the first insurance policy. The court held that the entered vessel under the first insurance policy was Vessel C rather than Vessel E.Hence, A had no right to sue against B based on the insurance policy.

In the subject case, the claimant, as a member of the defendant, purchased a fisherman personal accident insurance, and the defendant, as a lawfully registered social association legal person, underwrote the insurance and issued a policy. The mutual insurance was a marine protection and indemnity insurance contract, so a marine protection and indemnity contractual relationship established between the claimant and the defendant. Fisherymutual insurance is underwritten by a mutual protection association which collects membership fees from ship owners and fishery participants and uses to fend off the potential risks to the entered vessels against accidents jointly. A fisherymutual insurance only covers the risks faced by the entered vessel as specified in the insurance policy. Now that the first insurance policy in this case had written that "the entered vessel was Vessel C and the insured was A", the injury to A during service onboard Vessel E was not covered by the insurance. Therefore, the claimant's litigation requests shall be rejected.

We suggest that applicants or the insured, when filing a claim, should strictly follow the contractual agreement and the principle of utmost good faith in civil action. Double dipping will not get support from the court. Fisherymutual insurance associations should specify in mutual insurance policy that "this policy only covers an accident occurring onboard the entered vessel stated herein". If the policy contains any liability exemptions or special agreements, the associations should give noticeable reminders and explanations to their members (or the insured) so as to avoid any unnecessary dispute.

2. Safety obligations of the operator of sight-seeing yacht

In a dispute over liability for personal injury at sea, A boarded a yacht navigated by B for sight-seeing at sea. B was the owner and actual operator of the yacht. During the voyage, the yacht bumped heavily in the rough sea and A bounced in his seat and got hurt in his waist. A was sent to hospital for medical treatment and later was identified as level-10 disabled according to judicial appraisal. Company C had signed a yacht service agreement with B, whereby C was responsible to arrange insurance for B for the sight-seeing activity. Company C hence purchased public liability insurance for B with Company D. Following the accident, A demanded compensation from B, C and D. B asserted that A was at fault for the injury by taking the cruise trip regardless of his pre-existing conditions. The court held that B, as the owner, actual operator and navigator of the yacht, was obligated to ensure the safety of his passenger onboard the yacht. B did not fulfill such obligation and therefore B shall be liable to make compensation for his fault. Company C, on the other hand, was only responsible to provide insurance arrangement and legal consultancy service to B. C was not at fault for the injury and therefore shall not be held liable for the accident. And the insurance company D shall indemnify A to the extent as agreed in the public liability insurance policy.

B, as a yacht operator with relevant experience and qualifications, should have been well aware of the safety risks that might occur during the sight-seeing at sea, and he was obligated to provide his passengers with proper protection measures and gave safety warnings. In the subject case, however, there was no written safety warning on the yacht, nor did B warn or remind passengers of their physical conditions verbally or otherwise. B, who was the owner and actual operator of the yacht, did not fulfill his safety obligations during sight-seeing, due to which A got injured when the yacht gained speed. B was at fault for the accident. According to paragraph 1 of Article 6 of the *Tort Liability Law*, "If an actor, through his own fault, infringes upon the civil rights or interests of another he shall bear tort liability." And paragraph 1 of Article 7 of the *Provisions of the Supreme*

People's Court on Several Issues Concerning the Application of Law in the Trial of Tourism Disputes, "Where a tour operator and a tourism support service provider do not fulfill their safety obligation, due to which the tourists sustain personal injury or property loss, the tourist's claim against the tour operator and the tourism support service provider shall be supported by the people's courts". B shall bear theliabilityfortort.

We suggest that operators in offshore sight-seeing industry should properly fulfill their safety obligations. Above all, they should give necessary safety warnings to tourists and take necessary safety measures according to the conditions of their operation activity. In this case, given the rough seas and the bumpy ride of the yacht, the operator should have reminded passengers to check their physical conditions before the ride. Yacht operators should choose passengers prudently to avoid or minimize the operational risks.

3. Ascertainment of insuranceinterestunder group life insurance contract

In amarine insurance contract dispute, A employed 6 people (including B) for fishery operations at sea. Before departure, A asked his wife C to purchase from E (employee of insurance company D) a group accident insurance for the six crew members. Since the applicant and the insured were at sea, C handed over their ID card photocopies and premiums to E for insurance arrangement. E signedthe policy on behalf of the applicant and the insured. Later, B accidently fell overboard and drowned. A thus claimed indemnity from D. D rejected payment and asserted that A did not sign an employment contract with B and hence A did not have an insuranceinterestin B. Moreover, at the time the insurance contract was concluded, B was at sea and did not give consent to such contract. Thus, the subject insurance contract was invalid. The court held that C had the photocopy of B's ID card for arrangement of the life insurance, and B knew that A was purchasing the insurance for him and showed no objection. It could be ascertained that B had given his consent for the purchase of insurance. Therefore, the court ascertained that the applicant had an insuranceinterestin the insured, and the subject insurance contract was valid and effective.

In the subject case, the insurance company asserted that the applicant did not sign an employment contract with the insured and hence the applicant did not have insuranceinterestin the insured. However, as per paragraph 1(d) of Article 31 of the *Insurance Law*,"The insurance applicant shall have an insurance interest in the insured with whom it has established a labor relationship." The provision affirms employer's entitlement to the insurance interest in its employee, but it does not apply to the employment relationship in the subject case. Nevertheless, the insurance company's

defense was untenable because the applicant was entitled to the insurance interest in the insured as long as the latter gave his consent. Paragraph 2 of Article 31 of the *Insurance Law*reads, "If the insurant agrees that the insurance applicant enters into an insurance contract for him, the applicant shall be deemed to have an insurable interest in the insurant", and paragraph 3 of Article 1 of the *Interpretation III of the Supreme People's Court on Several Issues Concerning the Application of the Insurance Law of the People's Republic of China,* "The insured shall be deemed to have given his consent to the applicant for the conclusion of an insurance contract for him and agreed on the insured amount in the circumstance where there is sufficient evidence to prove that the insured has given his consent for the insurance arrangement by the applicant." In the subject case, B had provided the photocopy of his ID card to A, which shall be deemed a consent for the purchase of insurance by A. Thus, A had an insurance interest in Band the insurance contract in question was valid and effective.

We suggest that insurance companies should strengthen internal management and risk control, standardize and improve their underwriting procedures, and arrange professional training for staff—especially sales personnel—to minimize operational risks. In regard to a group insurance, it may not be feasible to require all the insured members to sign the insurance contract in person. Alternatively, insurance companies may apply videoform to complete identity authentication and contracting procedures. They may also develop online platform for insurance purchase to enable whole process monitoring by applying facial recognition technology and to improve the standardization and transparency of the marketing and underwriting procedures for group insurance so as to reduce the number of such disputes.

VII. Maintaining Rule of Law in Maritime Administrative Governance According to Law
—Issues and Suggestions on Law Enforcement of Maritime Administrations

1. Procedure for maritime administrations to apply for compulsory enforcement

Ocean and Fisheries Bureau A rendered an administrative penalty decision to Shipyard B for illegal construction of impervious structures and illegal land reclamation. According to the decision, B was ordered to return the sea area occupied by the illegal impervious structures, restore this sea area to its original state and pay a fine of CNY222,240 eight times as much. B was also ordered to return the sea area occupied by the illegal land reclamation, restore this sea area to its original state and pay a fine of CNY1,330,875 thirteen times as much. During the statutory period specified in the decision, B only paid CNY300,000 and did not return the illegally occupied sea areas or restore them to their original states. Moreover, B did not apply for administrative reconsideration or filed an administrative lawsuit against the said administrative penalty. A had sent a notice to urge B to pay the fine, return the illegally occupied sea areas and restore them to their original states. However, B did none of what it had been ordered to do. Thus, A applied to the court for compulsory enforcement against B for the unpaid fine of CNY1,253,115 plus an additional fine of CNY1,253,115, and the return and restoration of the illegally occupied sea areas. The court ruled in favor of a compulsory enforcement for the fine of CNY1,253,115 and the return and restoration of illegally occupied sea areas, but dismissed the application for the additional fine of CNY1,253,115.

Generally maritime administrative organs do not have the power to force a party to perform an administrative decision. To do so, they will have to apply to the people's courts for compulsory enforcement according to the *Administrative Compulsion Law of the People's Republic of China* (hereinafter referred to as the *Administrative Compulsion Law*). As provided in Article 54 of the *Administrative Compulsion Law*, "Before applying to the people's court for compulsory enforcement, the administrative organ shall send a notice to urge the party to perform its obligation. If the party does not fulfill its obligation 10 days after the receipt of such notice, the administrative organ may proceed to apply for compulsory enforcement to the people's court with jurisdiction at the place where the administrative organ is located." In the notice, the administrative organ shall specify the obligations to be fulfilled by the party concerned and urge it to fulfill such obligations according to law. In the notice of this case rendered by the administrative organ, where the additional fine was not mentioned, B was only requied to pay the outstanding fine, return the sea areas illegally occupied and restore them to their original states. It's not in

accordance with the law that the administrative organ applied for compulsory enforcement for something not mentioned in the notice. Hence, the court dismissed A's application for compulsory enforcement for the additional fine of CNY1,253,115 according to law.

We suggest that maritime administrative organs should have a deep understanding of the *Administrative Compulsion Law* and the *Administrative Procedure Law* and a good knowledge of the procedures of application for compulsory enforcement of the people's courts. This will help maritime administrative organs to standardize work process and improve law enforcement. Maritime administrative organs should pay special attention to the time limit for applying for compulsory enforcement, and, to protect the lawful rights of the party, they should follow the lawful procedures by urging the party to fulfill obligation before applying for compulsory enforcement.

2. Basis for administrative penalty on joint illegal acts

Fisheries Administrative Team C caught D, E and F illegally electrofishing within its district, for which they were mutually fined CNY10,000 and ordered to pay CNY50,000 in damages for the loss of fishery resources by C, with an additional fine of 3% a day for overdue payment. During the statutory period, however, they did not pay the fine or apply for administrative reconsideration or file an administrative lawsuit. C then applied to the court for compulsory enforcement for the fine of CNY10,000 and the damages of CNY50,000 for the loss of fishery resources, as well as an additional fine of CNY60,000 for non-payment. The court dismissed C's application for compulsory enforcement.

The court held that the administrative penalty decision was not based on facts clearly ascertained and was wrong in application of law. First, the ownership of the fishing boat and the role of each of the three individuals in the illegal act were unclear. This means the basic facts of the illegal act were not clearly ascertained. Thus, the administrative penalty decision was not based on facts clearly ascertained. Second, D, E and F, who were engaged in illegal fishing, were not eligible objects for administrative penalty because they were not legal persons or organizations under the law. It was unlawful that the administrative organ took the three as an organization and imposed a penalty on them as a whole. As Article 4.2 of the *Law of the People's Republic Of China on Administrative Penalty*(hereinafter referred to as the "*Administrative Penalty Law*"), "Creation and imposition of administrative penalty shall be based on facts and shall be in correspondence with the facts, nature and seriousness of the violations of law and

damage done to the society." The administrative organ should ascertain the facts, nature and seriousness of the violation and the social damage done by each of the three individuals and imposed separate administrative penalties according to each of the individuals' circumstances and the different roles they had played in the illegal act. It was in violation of the law that the administrative organ imposed administrative penalty on the three as a whole. Lastly, the administrative organ, when serving the penalty decision on the three individuals, invited the local villagers' committee to witness the service by leaving the penalty decision at the domiciles of the three individuals while none of them or their adult family members were at home. And the administrative organ did not take photo or video record of the service process. The service violated Article 86 of the *Civil Procedure Law* on the service by leaving the documents at the domicile of the person to be served if that person refuses to accept the documents(according to Article 40 of the *Administrative Penalty Law*, the service of administrative decisions shall be conducted in accordance with the *Civil Procedure Law*). To conclude, according to paragraph 1(14)of Article 101 and Article 161 of the *Interpretation of the Supreme People's Court on Application of the Administrative Procedure Law of the People's Republic of China*, the court overruled the application for compulsory enforcement.

We suggest that maritime administrative organs should make administrative penalty based on facts. Before making any administrative penalty decision, they should thoroughly investigate the facts of the illegal act. With respect to a joint illegal act, they should find out the role and things done by each individual in the illegal act and impose administrative penalties accordingly. Maritime administrative organs should make penalty decisions based on laws, have better understanding of the relevant administrative penalty laws, and improve the capacity in correct application of law to achieve better law-based governance.

3. Protection of the rights of party subject to administrative penalty procedure

Fisheries Administrative Team G ascertained that Village Economic Cooperative H built a wind shelter at sea without obtaining the right to use sea area, which illegally occupied a sea area in a total of 0.4646 hectares. This was in violation of Article 3 of the *Law on Administration of Sea Areas*. G made an administrative penalty decision on H according to law, whereby it ordered H to return the sea area illegally occupied, to restore such sea area to the original state and to pay a fine of CNY2,299,770 with an additional fine of 3% a day for overdue payment. However, H did not do what the decision had ordered it to do,did not apply for administrative reconsideration or file an administrative litigation. H still failed to do so when it received the notice from G which urged it to perform the

penalty decision. G hence applied to the court for compulsory enforcement for the fine of CNY2,299,770 plus a fine of CNY2,299,770, as well as the return and restoration of sea area illegally occupied. Upon examination on the materials submitted by G, the court ruled to deny G's application for compulsory enforcement.

According to Article 31 of the *Administrative Penalty Law,* "Before deciding to impose an administrative penalty, administrative organs shall notify the party of the facts, grounds and basis on which the penalty decision is made and shall notify the party of the rights that party is entitled to according to law." And paragraph 1 of Article 32 goes that, "The party shall have the right to make statements and defenses. Administrative organs shall listen to the party's opinions and reexamine the facts, grounds and evidence provided by the party. If the facts, grounds and evidence are established, the administrative organs shall accept them." In this case, before making the administrative penalty decision, G did not notify H of its right to make statements or defenses by any means, which deprived H of the right to know in administrative penalty procedures. This further damaged H's lawful right to make statements and defenses. Moreover, the content of the *Penalty Payment Notice* issued by G was unlawful. According to Article 35 of the *Administrative Compulsion Law*, "Before making a decision to apply for compulsory enforcement, administrative organs shall send a notice to urge the party to perform its obligations; The notice shall be made in writing with the following items expressly stated therein: (i) time limit for the fulfillment of obligation; (ii) approach for the fulfillment of obligation; (iii) if monetary payment is involved, the notice shall expressly state the amount and payment method; (iv) the party has the right to make statements and defenses according to law." However, the*Penalty Payment Notice* in this case did not include the said content as required by the law, which prejudiced the lawful rights of the party. Since G had obviously damaged the rights of the party when making the administrative penalty decision and the payment notice, the court overruled G's application for compulsory enforcement according to Article 160 and paragraph 1(4)of Article 161 of the *Interpretation of the Supreme People's Court on Application of the Administrative Procedure Law of the People's Republic of China*.

We suggest that administrative organs should systematize and standardize administrative penalty procedures. When imposing penalties, administrative organs should protect the party's right of information, statement and defense entitled by the law, and other lawful rights and interests. This will help maintain proper procedures of law-based governance, so that the party, stakeholders, as well as the people will have a sense of equity and benefit from administrative law enforcement activities.

VIII. Advancing Vessel Enforcement Procedure According to Law —Issues and Suggestions on Auctions of Ships and Distribution of Proceeds

1. Enforcement objection to vessel auction raised by a third party

During the enforcement of a judgment on a financial lease contract dispute, the court arrested and appraised the vessel owned by the respondent, and issued a notice to the public on the auction of the vessel. Before the official auction of the vessel, a third party applied for objection to the auction, claiming that he has partial ownership of the vessel to be auctioned and requesting the court to suspend the vessel auction procedure. The court confirmed with the maritime safety administration that the vessel was registered under the name of the respondent. With the provision of a security to court and request to advance the vessel auction procedure by the applicant, the court continued the vessel auction procedure according to law.

It is not uncommon that during a vessel auction procedure, a third party applies for objection to the enforcement procedure. Article 16 of the *Interpretation of the Supreme People's Court of Several Issues concerning the Enforcement Procedures in the Application of the Civil Procedure Law of the People's Republic of China* provides that during the examination of any objection raised by a third party to the enforcement procedure, the people's court shall not dispose of the subject matter of the enforcement. Where the objection of the third party is reasonable or where the third party provides sufficient and effective security to request for cessation of the enforcement, the court may rule to cease the disposal of the subject matter. Where the applicant provides sufficient and effective security to request for continuing the enforcement procedure, the court shall continue with the enforcement. In the subject case, the applicant provided sufficient and effective security to the court. Hence, upon examination the court decided to advance the enforcement procedure and continue the vessel auction according to law.

A vessel auction during the enforcement procedure is the court's compulsory enforcement as per the applicant's application and in accordance with the effective judgment, which is serious and compulsory in terms of law. We suggest that where a third party applies for enforcement objection to the vessel auction, it should have sufficient factual and legal grounds, instead of carelessly doing so or even by colluding with the respondent to hinder the court's enforcement procedure. Where a third party provides a security in applying for cessation of enforcement, it shall, in case such application was eventually proved to be incorrect, compensate to the applicant for any loss resulting therefrom.

2. Offsetting the debt with property when vessel auction or reselling fails

During the enforcement of a judgment on a financial lease contract dispute, the court put the vessel owned by the respondent for auction. However, the vessel was passed in at the first and second auction, as well as the selling-off procedure. The applicant applied to the court for offsetting the debt with the vessel at the starting price of selling-off procedure. The court called for the creditors' meeting according to law. It was confirmed during the meeting that the creditors with maritime lien did not want to apply for offsetting debt with the vessel, and the applicant agreed to pay off the debt owed to the creditors who had the maritime lien. The court then ruled to off-set the respondent's debt owed to the applicant with the vessel at the selling-off price in accordance with law.

According to Article 19 of the *Provisions of the Supreme People's Court about Auctioning or Selling off Property by the People's Courts in Civil Execution* (hereinafter referred to as the "*Provisions about Auctioning or Selling off Property*"), where a property is passed in at auction and selling-off procedure, and the applicant applies or agrees to accept the property at the reserve price, the property shall be handed over to the applicant for off-setting the debt. Where there are two or more applicants apply for offsetting the debt with the auctioned property, it shall be granted to the creditor with priority in statutory compensation sequence. Nevertheless, given the uniqueness of the maritime lien, offsetting a debt with a vessel will not extinguish the maritime lien. Therefore, if a vessel is taken to set off a debt, any maritime claim with priority in the compensation sequence shall be paid off within the reserve price for off-set so as to extinguish the maritime lien and make the certain vessel free of encumbrances for the purpose of offsetting the debt. Besides, if the debt amount owed to the creditor is smaller than the vessel price for off-set, the creditor should pay back the balance thereof.

In practice, setting off a debt with a property is an enforcement approach when there is no other option after the subject property is passed in at the auction. We suggest that if vessel auction and selling-off procedure fail, meanwhile the applicant or other creditors have other approaches to utilize the vessel which could maximize its value, the applicant or other creditors may apply for setting off the debt with the vessel according to Article 19 of the *Provisions about Auctioning or Selling off Property*. This will be an alternative way to liquidate the vessel's value, and serve to protect the parties' rights.

3. Multiple distributions of proceeds from vessel auction

During the enforcement of a judgment on a financial lease contract dispute, the court put the respondent's vessel on auction as per the application of a bank, i.e. the applicant. As the auction notice was publicized, the creditors applied with the court for registration of their claims for distribution of the proceeds from vessel auction. During the creditors' litigation procedures to ascertain their claims, the applicant, as the mortgagee of the vessel, applied with the court for distribution of the balance of the auction proceeds after preserving a sufficient amount of the same for payment to the registered holders of maritime lien. According to the compensation sequence provided in the *Maritime Law* and other relevant laws, the court issued a ruling on the distribution of the vessel auction proceeds and the preservation of part of such proceeds.

Article 22 of the *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Arrest and Auction of Ships* provides that "any proceeds and interests from the auction and selling-off of a vessel by the maritime courts, after setting off the costs as per Paragraph 2 in Article 119 of the *Special Maritime Procedure Law*, shall be distributed in the following sequence according to law: (i) maritime claims that are entitled to maritime lien; (ii) maritime claims that are secured by maritime lien; (iii) maritime claims that are secured by vessel mortgage; (iv) other maritime claims related to the auctioned or selling-off vessel." During the enforcement, if the vessel auction proceeds are sufficient to cover the maritime claims with priority in compensation sequence, and an applicant whose compensation sequence ranks behind appliesfor distribution of the proceeds, the court may first distribute the proceeds to such applicant after calling for the creditors' meeting and preserving sufficient auction proceeds for the claims with priority. After the cases for ascertaining other creditors' claims are closed, the court may further distribute the proceeds preserved. This will greatly save time and cost (e.g seamen's wage for guarding the vessel, third party guarding fee, berthing fee, fuel cost, etc.) incurred during the arrest and auction of ship andbenefitboth the applicant and the respondent.

Vessel auction involves procedures for credit rights registration and litigation for ascertainment of rights, which could be rather time consuming. With the accumulation of the cost for vessel guarding, the proceeds to be distributed may keep decreasing. This means the amount to be enforced gets increasingly smaller. We suggest that if the vessel auction proceeds could satisfy the maritime claims with priority in the compensation sequence, an applicant may apply with the court for preserving part of the proceeds and first distributing the rest. This could help speed up the realization of the repayment of the applicant's claims and cut down the distribution period.