

# 南京海事法院海事审判报告（2021）

Report on Trails of Nanjing Maritime Court of PRC (2021)



中华人民共和国南京海事法院  
Nanjing Maritime Court of PRC

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# 南京海事法院海事审判报告

(2021年1月—2021年12月)

特别说明：本报告以中英两种文字发布，以中文文本为准

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**Report on Trails of Nanjing Maritime Court of PRC**  
**(January—December 2021)**

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

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## 前言

2021 年，南京海事法院坚持以习近平新时代中国特色社会主义思想为指导，深入学习贯彻习近平法治思想，认真贯彻中央、省委决策部署和上级法院工作要求，紧紧围绕“努力打造全国一流乃至在国际上有影响力的海事法院”奋斗目标，坚持强基固本、稳中求进，大力实施“精品审判、服务品牌、基础建设、素质提升”四大工程，认真落实“服务大局前瞻化、执法办案精品化、制度构建体系化、诉讼服务信息化、队伍建设专业化”要求，全面深化高质量海事司法实践，服务保障江苏更高水平对外开放和经济社会高质量发展。

## 一、基本情况<sup>1</sup>

### （一）总体概况

2021 年，南京海事法院受理各类案件 3409 件，同比增长 47.77%，位列全国海事法院第 5 位。其中，新收案件 2722 件，同比增长 23.39%，位列全国海事法院第 6 位；审执结案件 2822 件，同比增长 74.20%，位列全国海事法院第 6 位。

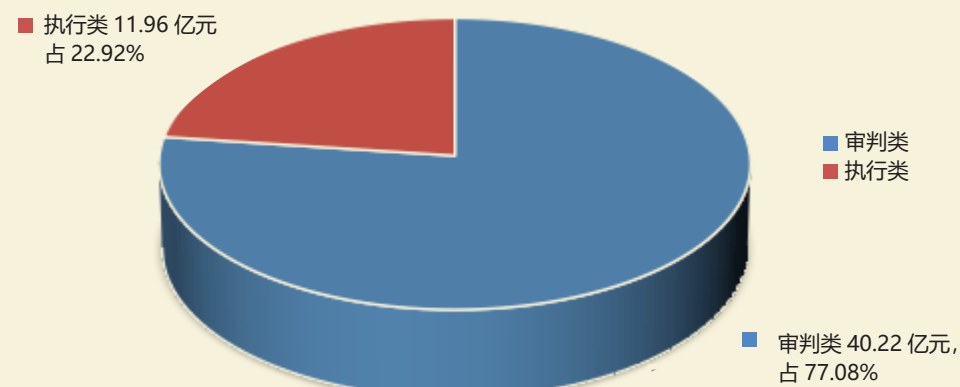
2021 年，全院审判质效指标持续向好，其中，结收案比 103.64%，同比增长 30.24 个百分点，高出全国海事法院平均结收案比 7.76 个百分点。其他各项审判执行指标平稳运行，结案率 82.78%，法定正常审限内结案率 72.97%，一审服判息诉率 76.36%，一审判决案件被改判发回重审率 0.17%。

2021 年，全院立案标的额总计 52.18 亿元，其中审判类案件 40.22 亿元，占比 77.08%；执行类案件 11.96 亿元，占比 22.92%。（见

<sup>1</sup> 本部分数据主要来自中国海事审判网。



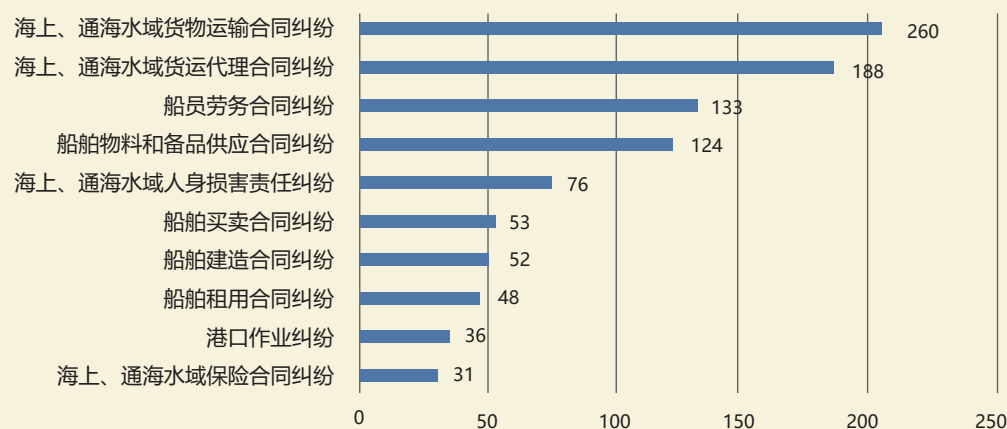
图表 1)



图表 1: 全院立案标的额情况

## (二) 案件构成

1. **民事案件**: 受理 2262 件, 同比增长 39.72%。其中, 新收 1753 件, 同比增长 14.80%; 审结 1785 件, 同比增长 60.81%。其中收案数量排名前三的案由分别是: 海上、通海水域货物运输合同纠纷 (206 件), 海上、通海水域货运代理合同纠纷 (188 件), 船员劳务合同纠纷 (133 件)。(见图表 2)



图表 2: 新收案件数排名前十的案由



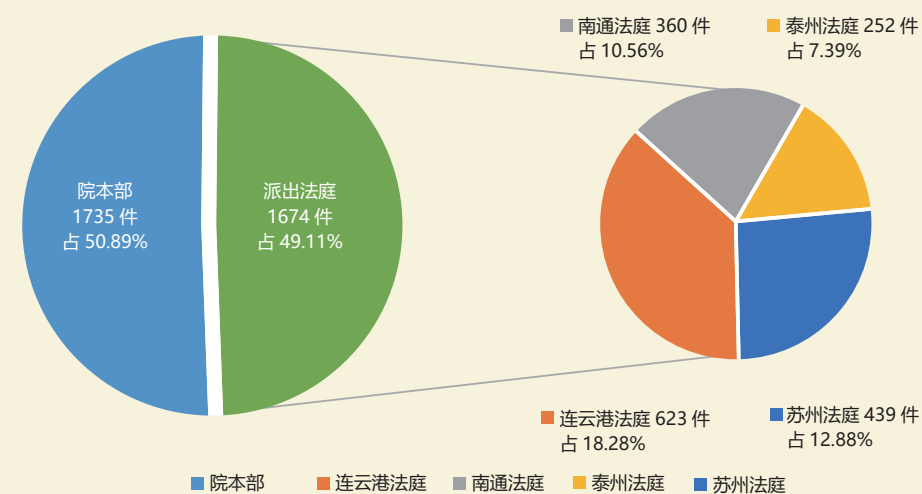
2. **行政案件**: 受理 126 件, 同比减少 17.65%。其中, 新收 68 件, 同比减少 55.26%; 审结 118 件, 同比增长 24.21%。

3. **执行案件**: 受理 1021 件, 同比增长 90.84%。其中, 新收 901 件, 同比增长 70.97%; 执结 919 件, 同比增长 121.45%。

4. **扣押船舶情况**: 依法扣押船舶 118 艘, 其中外国籍、港澳台船舶 4 艘; 依法拍卖成交船舶 11 艘, 拍卖成交总额 5938.82 万元。

5. **涉外涉港澳台案件情况**: 受理 197 件, 占全院受理民事案件的 8.71%。其中, 新收 107 件, 占全院新收民事案件的 6.10%; 审结 110 件, 占全院审结民事案件的 6.16%。案件涉及中国香港、新加坡、马绍尔群岛等 41 个国家或地区。涉“一带一路”签约国案件 80 件, 占比 40.61%, 其中, 新收 44 件, 审执结 41 件, 案件涉及新加坡、韩国、巴拿马等 19 个“一带一路”签约国。

6. **派出法庭收结案情况**: 派出法庭共受理案件 1674 件, 占全院受理案件的 49.11%。其中, 新收案件 1337 件, 占全院新收案件 49.12%; 审结 1348 件, 占全院审结案件 47.77%。(见图表 3)



图表 3: 派出法庭受理案件情况





### (三) 司法公开情况

2021 年度,通过中国裁判文书网上传裁判文书 1335 篇,裁判文书上网率 80.15%;依托中国庭审公开网直播案件庭审 803 场,庭审直播率 43.67%,累计观看 254348 人次;依托中国审判流程信息公开网有效公开案件 1417 件,有效公开率 100%。

## 二、工作亮点

### (一) 贯彻新发展理念,精准护航国家战略大局

紧扣海洋强国、“一带一路”建设等国家战略开展前瞻性调研,针对自由贸易试验区“负面清单”等特殊监管政策提出海事司法对策,出台海事司法服务保障更高水平对外开放 14 项措施,聚焦国际航运、物流、船舶建造、航运金融、国际港口建设、船员劳务六大重点领域细化海事司法服务举措。贯彻落实长江保护法,与省交通运输厅、江苏海事局联合发布九项工作举措和十大典型案例,共同推进长江经济带高质量发展,相关工作受到最高人民法院主要领导批示肯定。积极服务长三角一体化发展,与上海、宁波、武汉海事法院签署长三角海事司法合作协议,开通长三角海事司法合作交流平台,协助长三角地区法院执行 58 件次,主动对接江苏沿海地区发展战略,研究海事司法服务保障意见,促进江苏海洋经济发展。

### (二) 实施审判精品战略,打造海事纠纷解决“优选地”

完善涉外案件审理机制,开通劳氏报告外文数据库,开展涉外电子送达、境外远程质证,制定外国法查明工作操作规程,提升涉外案件审判效能。树立精品意识,弘扬工匠精神,先后审结并推出



23 件涉及服务保障高水平对外开放、贯彻落实长江保护法、“我为群众办实事”的典型案件,一起挪威当事人主动将协议管辖由英国仲裁变更为在南京海事法院诉讼的国际船舶建造合同纠纷案,入选全国十大海事审判典型案例。坚持公开透明司法理念,选择中国航海日、世界海员日、履职两周年等节点召开 5 场新闻发布会,深度宣介海事法院工作,51 篇报道被《人民法院报》《新华日报》等主流媒体刊发。实时更新中英文网站,录制 6 期英文版《海法之声》,发布多语种海事典型案例,“两微一端”点击量达 73 万次。根据真实案例改编拍摄的微电影《北极星号》荣获全国法院第八届“金法槌奖”二等奖、第六届平安江苏“三微”比赛暨优秀政法文化作品征集评选一等奖。

### (三) 践行司法为民宗旨,增强人民群众海事司法获得感

优化诉讼服务,建成海事审判大数据分析平台、法官远程会议系统、互联网法庭,全面开展网上立案、跨域立案、在线诉讼,实现疫情期间“审判执行不停摆、公平正义不止步”。与中国海事仲裁委员会上海总部、南京仲裁委员会搭建诉讼、仲裁、调解有效衔接的海事解纷平台,增设 12 个一站式解纷中心,在无锡江阴新设巡回审判基地,深入推进海事纠纷多元化解。开辟船员诉讼绿色通道,在长江水上服务区设立 5 家船员权益保护工作站,疫情期间先后协助 42 名被扣押船舶船员换班和外籍船员遣返,涉渔矛盾一站式解纷中心诉前化解案件 132 件,帮助渔民及时获得赔偿款、挽回经济损失 2000 余万元。充分发挥派出法庭服务职能,泰州法庭协同当地法院助力破产船企快速恢复产能,苏州法庭服务自由贸易试验区苏州片区创新发展,连云港法庭、南通法庭干警进渔村、上渔船、下滩涂,



把矛盾纠纷化解在基层，涉渔矛盾一站式解纷中心调解员祁洪桂的先进事迹被最高人民法院在全国推广。

#### （四）坚持系统谋划推进，健全海事审判权运行机制

完善建章立制，制定《南京海事法院发展规划纲要（2021-2025）》，全面落实司法责任制，海事特色院庭长审判监督管理新模式入选江苏法院 2021 年司法改革案例。配合省法院进一步明确涉大运河海事海商案件、海事行政案件管辖分工，合理确定海事法院审理内河案件的范围，探索海事审判“三合一”机制改革。积极对接省自然资源厅、省生态环境厅等单位，将海事司法与行政执法“四方协作”拓展到“1+10”模式，合作建成全国首个“点对点”船舶在线执行查控系统，开通港口货物执行查控平台，入选首届江苏智慧法治十大优秀案例。完善海事司法外部监督机制，探索专门法院向人大及其常委会负责并报告工作的具体实现形式，邀请“两代表一委员”38 人次参加“开门纳谏”座谈会 5 场次，参观法庭、旁听庭审 3 场次，代表委员对南京海事法院工作给予充分肯定。

#### （五）落实全面从严治党，锻造过硬海事审判队伍

扎实开展党史学习教育，深入开展队伍教育整顿，不断提升队伍凝聚力和战斗力。聚焦“懂法律、懂外语、懂海洋、懂贸易、懂航运”复合型海事审判人才培养目标，制定《队伍建设五年规划（2021-2025）》，启动“海法菁英”培养计划，举办 9 期“海事大讲堂”，选派 10 名干警到最高人民法院、省法院跟案学习、到高校研修学习、到港航企业驻企实习，为青年翻译小组定制培训课程，常态化开展学术沙龙和周末法律英语培训，加强与高校双向交流合作，不断拓



宽干警国际视野和专业能力。干警撰写的 49 篇论文在《法律适用》《人民司法》《中国海商法研究》《世界海运》等期刊发表或在全国、省级会议上获奖。1 名法官获评全国审判业务专家，2 名法官获评全省审判业务专家，1 名法官荣获人民法院涉外商事海事审判工作先进个人。

### 三、问题建议

为更好服务保障海洋强国、“一带一路”建设等国家重大战略实施，助力营造市场化、法治化、国际化营商环境，我院梳理总结履职以来海事审判实践经验，对下列海事主体应对经营、管理或职业风险提出如下建议。

#### （一）对船舶建造企业的建议

船舶建造属于资金、技术密集型产业，不仅工程量大，耗时长、流程复杂，且涉及材料供应、人员配备、资金筹集、自然气候、政府监管等多方面因素，容易引发纠纷。履职以来，我院共受理船舶建造纠纷案件 108 件，案件反映出的问题主要有：（1）融资风险较高，部分中小造船企业为承揽工程，选择主动垫资造船，而其资金一般系以高利率从民间融资而来，若在造船过程中出现资金链断裂或定作方弃船，将难以抵御市场风险。<sup>2</sup>（2）履约周期长，船舶建造合同履行过程中遇到原材料、设备价格大幅上涨，航运市场行情急剧变化等，会对一方当事人继续履行合同造成困难或不利。（3）技术事实争议大，船舶质量问题通常与船舶设计、船舶关键设备和专用物品质量问题相互交织影响。同时，船东、船企和船级社在签订建造

<sup>2</sup>（2022）苏 72 民初 695 号。



船舶入级检验和审图服务协议时，常出现与之前建造合同约定的开工日期和建造周期不一致情形，影响工期与违约金的计算。<sup>3</sup>

**建议：(1) 防范化解融资风险。**船舶建造资金需求量大，持续周期长，需要充足稳定的资金供给，船企在融资时应当谨慎选择合适的融资渠道，并确保融资款项“专款专用”，切实防范融资带来的资金链断裂风险。**(2) 充分拟定合同条款。**船企与船东在订立合同过程中应对合同价款、支付方式、船图批准、建造中检查、试航与交船、迟延交付与展期、船舶登记、买卖双方违约解除权、保险与管辖权条款等作出明确约定，避免产生后续争议。**(3) 注重相关证据收集。**船舶建造合同当事人应当注重收集和固定反映双方法律关系形成、发展的证据材料，特别是对于履约过程中变更合同内容的往来函件、会议纪要、签证单、通话记录等，以便在后续双方发生争议时准确查明认定相关事实。

## (二) 对航运企业的建议

航运市场不确定因素较多，天气、水文、航道环境检查、港口作业能力、疫情等均会影响船舶行程，给航运企业依约完成运输作业、获取经营效益带来诸多挑战。履职以来，我院共受理货物运输纠纷案件 435 件，案件反映出的问题主要有：(1) 航运企业作为承运人，在面对托运人或收货人不能依约及时、足额支付运费、滞期费等费用时，留置价值远超其主张费用的货物或在未协商的情况下违法处置所留置货物，给托运人造成损失。<sup>4</sup>(2) 航运企业根据货物运输合同约定的受载期抵达装货港锚地等待装货，在得知需长时间等待才能靠泊装货时，为避免船舶滞期过长而承担损失，在合同的约定解

<sup>3</sup> (2020) 苏 72 民初 936 号。

<sup>4</sup> (2020) 苏 72 民初 248 号。



除条件仍未成就的情形下单方解除合同，将船舶驶离装货港并退还托运人预付定金，给托运人造成损失。<sup>5</sup>(3) 航运企业在船舶航行时，存在未按规定采取让路行动、未保持安全航速、未按规定值班等情况，导致航行事故风险加大，还有的被挂靠航运企业疏于安全管理，导致实际经营人违规运营。

**建议：(1) 合法行使留置权。**航运企业应遵守《民法典》<sup>6</sup>和《海商法》<sup>7</sup>中关于留置权的相关规定，根据风险预估情况及货物运输类型，在合同中明确约定留置财产前后的债务履行期限、保管财产费用和实现留置权费用负担等内容。在决定行使留置权时，应控制留置财产限度、妥善保管留置财产、注意法定或约定的债务履行期间、依法实现留置权，避免不当行使留置权而侵害他人权益。**(2) 细化滞期费约定条款。**航运企业在约定船舶滞期费时，应当充分考虑船舶行程风险及可能的滞期损失，完善细化合同中滞期费的计算方式及标准等内容，保护自身的预期利益。**(3) 提高风险防范意识。**航运企业应确保足额配员、船员适任，提高船员的船舶操纵技术和避碰水平。涉船舶挂靠经营时，被挂靠航运企业要充分履行自身的安全管理义务。

## (三) 对货运代理企业的建议

海上货运代理是海上货物运输的重要环节，也是海洋经济服务业的重要组成部分，随着近年来对外贸易行业受到疫情等客观因素影响，相关经营风险也随之传递到货运代理行业，同时由于市场的准入门槛较低，加之代理操作环节的繁杂特点，使得货运代理企业在日常经营过程中相关法律纠纷增多。履职以来，我院共受理货运

<sup>5</sup> (2021) 苏 72 民初 392 号。

<sup>6</sup> 《中华人民共和国民法典》第四百四十七条至第四百五十七条、第八百三十六條。

<sup>7</sup> 《中华人民共和国海商法》第八十七条、第八十八条。





代理纠纷案件 414 件，案件反映出的问题主要有：（1）货运代理企业业务员在揽收业务时，经常通过微信、邮件等方式与对方经办人员沟通，既未签订书面合同，又无法掌握委托人的名称、经营地址、联系方式等具体信息，导致发生纠纷后难以确定当事人并进行有效送达，阻碍了纠纷的及时解决。<sup>8</sup>（2）货运代理合同经常出现合同抬头与签章落款人不一致的情况，在合同履行过程中若有多个主体参与并分别负责交单、交货、付款，准确界定合同相对方较为困难。<sup>9</sup>（3）货运代理行业中转委托现象较为常见，但由于不同主体之间签订的委托合同约定的权利义务并不完全一致，导致处于中间环节的货代企业在垫付相关费用并发生法律纠纷时，难以向托运人主张权利。<sup>10</sup>

**建议：（1）规范合同签订。**货运代理企业在经营中应尽可能签订书面委托合同，明确合同相对人，确定双方的权利义务关系，在合同中增加送达地址确认条款，明确双方确认的地址不仅可以作为合同履行中相关文件的送达地址，也可以作为发生争议后仲裁机构、司法机关送达法律文书的地址。**（2）增强证据意识。**货运代理企业在合同履行过程中，应注意保留对认定权利义务有影响的证据材料，及时固定双方共同确认的事实，在涉及第三方收取费用时，应保留原始付款凭证及第三方出具的票据，避免用货代企业自行制作的发票替代实际付款凭证。**（3）防范转委托风险。**货运代理企业在相关事项需要转委托时，应征得委托人的明确同意，同时应保障上下游代理合同权利义务的一致性，避免最终承担应当由委托人承担的风险。

#### （四）对渔民船员群体的建议

海洋渔业是公认的高风险行业，渔船海上生产点多、面广、线长，

<sup>8</sup>（2019）苏 72 民初 21 号。

<sup>9</sup>（2020）苏 72 民初 980 号。

<sup>10</sup>（2020）苏 72 民初 980 号。



受天气、海况影响较大，海洋捕捞作业风险高，出锚、放网、起网、收捡鱼货等作业对船员专业技能要求较高，审判实践中，与渔民船员密切相关的船员劳务合同纠纷、海上人身损害责任纠纷发生频繁。履职以来，我院共受理涉渔民船员群体纠纷案件 347 件，案件反映出的问题主要有：（1）八九月份开海时节，船员用工需求旺盛，船员用工市场逐渐形成预支 1-2 个月工资等惯例。<sup>11</sup>有的船员收到预付工资后以各种理由不上船，甚至从多个船东处预支工资，损害船东利益。<sup>12</sup>（2）船员劳务合同签订不规范，对劳务时间、工资标准约定不明确，船东在效益不好或亏损时恶意拖欠船员工资，损害船员合法权益。<sup>13</sup>（3）有的船员海上作业技术不熟练，因操作不慎被起网机绞伤、渔网拖拽，导致残疾甚至死亡。<sup>14</sup>

**建议：（1）提升从业技能。**自觉接受渔业安全生产职业培训，重点提升渔船航行技能、避碰规则、科学装载、捕捞器具操作、养殖排筏安全措施、自救互救等方面技能，提高安全生产意识，运输船舶等船员应持证上岗，定期接受技能培训。**（2）签订书面劳务合同。**尽量以书面形式签订合同并及时固定有关证据，重点对工资标准、工作时间、请休假待遇等方面进行明确约定。**（3）投保分散风险。**与船东协商为船员购买足额的商业保险，积极参加渔业互助保险，适当分散海洋捕捞作业的高风险。

<sup>11</sup>（2021）苏 72 民初 180 号。

<sup>12</sup>（2021）苏 72 民初 11 号。

<sup>13</sup>（2021）苏 72 民初 693 号。

<sup>14</sup>（2021）苏 72 民初 589 号。



## 四、典型案例

### 一、承运人不得以整船货物短量在合理范围内为由主张对单一提单项下货物短量免责

——厦门建发物产有限公司诉华兴海船务有限公司  
海上货物运输合同纠纷案

#### 【基本案情】

建发公司向新加坡华杰公司购买乌克兰玉米，货物由华兴海公司所有的“华兴海”轮承运。该轮分别签发编号 1、2、3、4 的清洁提单（提单 1、2 的持有人为建发公司，提单 3、4 的持有人为案外人恒盛公司），自乌克兰运往中国，但四套提单项下货物并未区分舱位。案涉船舶在中国黄埔港卸下提单 1 项下货物，短量 18.05 吨，在中国张家港卸下提单 2、3、4 项下货物，短量 320.95 吨，四套提单共计短量 339 吨，商检机构就四套提单分别出具依据水尺计重的重量证书。后建发公司向南京海事法院提起诉讼，主张华兴海公司就四套提单项下全部短量 339 吨的损失进行赔偿，华兴海公司抗辩称整船货物短量在 5% 以内己方应当免责。

#### 【裁判结果】

南京海事法院经审理认为，建发公司非提单 3、4 的合法持有人，无权就提单 3、4 项下货物短量向华兴海公司索赔。华兴海公司签发四套清洁提单，应当在目的港向每个提单收货人分别交付各自提单记载重量的货物，其可以根据各个提单分别向各持有人或收货人主张 5% 合理短量免责抗辩，但以整船货物短量在 5% 以内提出免责抗辩，缺乏法律依据。因提单 1 项下货物短量在 5% 以内，故华兴海公



司对该短量损失可以免责。提单 2 项下货物短量超过了 5%，华兴海公司没有举证区分合理因素与不合理因素各自造成的损失，亦没有举证证明具有免责事由，故应对提单 2 项下全部短量损失予以赔偿。

#### 【典型意义】

本案是一起典型的“一带一路”大宗散货海上货物运输合同纠纷案。根据我国进出口商品检验行业标准《进出口商品重量鉴定规程——水尺计重》，大宗散货卸货后货物短少在 5% 以内的，可以认定为由于自然损耗、计量允差等因素造成的合理范围内的短量，除非有相反证据证明承运人有过失，则承运人原则上对该短少损失不负赔偿责任。本案涉及承运人签发的多份提单分属不同提单持有人和收货人，在多个港口卸货、未对各提单项下货物进行分舱装卸的情况下，作出了承运人不得以整船货物短量在 5% 范围内主张对全部提单项下货物短量免责的司法认定。法院在案件处理中正确解读了“提单对货物情况的记载在承运人和提单持有人之间是绝对证据”原则，准确把握承运人“合理短量”免责标准，合理界定混装散货各提单持有人权利，对大宗散货海上货物运输短量纠纷解决具有参考和借鉴价值。

【案号】(2020) 苏 72 民初 35 号



## 二、超过船检证书记载的参考载货量不必然构成超载

——江苏金马运业集团股份有限公司诉中国人民财产保险股份有限公司  
靖江支公司海上保险合同纠纷案

### 【基本案情】

2018年11月19日,金马公司所属“金马988”轮装载1200吨不锈钢从福建福州启航,途经浙江象山大目岛东南约2海里海域时触碰不明物体,导致船底破损进水,所载卷钢部分被海水浸泡受损,货损金额约为47万余元。金马公司在赔偿货主后,向靖江人保公司主张保险责任,靖江人保公司认为“金马988”轮本次航行实际载货量超过船舶检验证书上登记的参考载货量,处于超载状态是导致事故发生的原因,因超载属于保险预约协议及保险条款约定的免责情形,故拒绝理赔。后金马公司诉至南京海事法院,请求判令靖江人保公司支付保险赔偿金。

### 【裁判结果】

南京海事法院经审理认为,“金马988”轮船舶检验证书记载船舶满载排水量1310.5吨、参考载货量950吨。事故发生时,船舶装载了1200吨钢材,超出了参考载货量,但仅凭载货量超过证书记载的参考载货量数值不足以判定船舶超载。双方当事人事后曾现场试验涉案船舶装载与事故发生时装载相同重量货物时,船舶并未超过载重线。事故发生后,海事部门仅对海事声明准予备查,并未认定船舶超载,靖江人保公司在金马公司报险后亦未进行调查了解,无证据证实船舶超载,遂判决靖江人保公司应对“金马988”轮本次事故承担保险责任。



### 【典型意义】

船舶超载会降低船舶抗沉性和航行稳定性,增大船舶倾覆风险,易诱发重大交通事故,是水上交通安全治理的一大“顽疾”。本案区分了船舶超载和陆运货车超载的认定方式,指出船舶超载是船舶的实际排水量超过了核定的满载排水量,载重线被水浸没,船舶应根据不同的航行区域和季节选择适用相应的载重线。同时船舶检验证书中记载的参考载货量仅是船舶设计时针对某类积载因数的货物计算出的近似值,只对船舶装载某些货物的重量具有一定的参考作用,并不能直接作为认定船舶超载的依据。本案所采用的船舶核定载重线标准,既是当前船舶安检执法的通行规则,也将进一步提升行政执法部门对超载船舶执法检查的指向性和精准性,提高船舶运输经营主体的安全和守法意识。

【案号】(2020)苏72民初771号



### 三、申请海事赔偿责任限制基金应根据事故发生时 船舶执行航线确定事故船舶属性

——上海鼎衡船务有限责任公司申请设立海事赔偿责任限制基金案

#### 【基本案情】

鼎衡公司是天津籍散装化学品船“鼎衡18”轮的光船租赁人。2020年7月25日，“鼎衡18”轮由惠州港装载货物到达漕泾港卸货，7月27日，在漕泾港卸货完毕后驶往泰州港途中与“泰东货5588”轮在红浮附近发生碰撞，事故造成“泰东货5588”轮翻扣，船载货物沉没。鼎衡公司遂向南京海事法院提出申请，就本次事故引起的非人身伤亡的损失，设立海事赔偿责任限制基金，金额按照《海商法》第二百一十条第一款规定的赔偿限额50%确定。新东吴公司对此提出异议，认为“鼎衡18”轮具备国际航行能力，并非《海商法》所规定的从事中华人民共和国港口之间货物运输或者沿海作业的船舶，不应按照《海商法》第二百一十条第一款规定的赔偿限额50%计算海事赔偿限额。

#### 【裁判结果】

南京海事法院经审查认为，虽然鼎衡公司取得了从事国际船舶危险品运输的许可，“鼎衡18”轮取得了中国船级社签发的入级证明，但仍应根据发生海事事故航次的具体情况来判断“鼎衡18”轮是否属于从事我国港口之间运输的船舶。本案中，案涉船舶碰撞事故发生在“鼎衡18”轮由漕泾港前往泰州港接货过程中，因此，应当认定“鼎衡18”轮为从事我国港口之间运输的船舶，可以适用海事赔偿限额决定的有关规定按照50%计算海事赔偿限额。据此，裁定准



许鼎衡公司提出的设立海事赔偿责任限制基金的申请。

#### 【典型意义】

海事赔偿责任限制是一项十分古老的海上风险分摊制度，是指在发生重大海损事故时，责任人根据法律的规定，将自己的赔偿责任限制在一定范围内的法律制度。本案是南京海事法院成立以来审理的第一起申请设立海事赔偿责任限制基金案件。本案中，虽然“鼎衡18”轮具备国际航行能力和资质，但法院查明“鼎衡18”轮事故前一航次、计划的下一航次以及事故后恢复运营的第一个航次均系国内沿海运输，最终认定“鼎衡18”轮发生事故时属于从事我国港口之间货物运输的船舶，申请人可以按照相关法律规定赔偿限额50%设立海事赔偿责任限制基金，充分保障了航运企业合法权益，对航运企业尤其是国内沿海运输企业正确运用海事赔偿责任限制制度规避航运风险具有规则指引意义。

【案号】（2020）苏72民特70号





## 四、交叉相遇局面中让路船应当积极采取

### “早、大、宽、清”的避让行动

——香港中建船务有限公司诉郑某等船舶碰撞损害责任纠纷案

#### 【基本案情】

2018年5月22日,中建公司所有的巴拿马籍散货船“ZHONG JIAN”轮与郑某所有“安捷利18”轮在黄海南部海域发生碰撞,事故造成两船船体不同程度受损。经查明,“ZHONG JIAN”轮产生修理费、检验费、租金及燃油损失等1,676,834.14元,“安捷利18”轮产生修理费、船期损失、维持费用等715,573元。因双方对于事故责任的认定争议较大,中建公司向南京海事法院提起诉讼,诉请郑某按照90%责任比例赔偿损失,郑某反诉要求中建公司按照60%责任比例赔偿损失。

#### 【裁判结果】

南京海事法院经审理认为,海上航行船舶应当遵守《1972年国际海上避碰规则》(以下简称《避碰规则》)。本案中,虽然“安捷利18”轮未接入船艏向数据,但可以综合其他数据并考虑一定风压差确定“安捷利18”轮船艏向,再结合“ZHONG JIAN”轮AIS、SVDR数据和“安捷利18”轮AIS数据,可以判定两船互见时,“ZHONG JIAN”轮位于“安捷利18”轮右舷,两船系大角度或垂直交叉相遇局面。依据《避碰规则》关于交叉相遇局面应采取的避碰行动规定,可以认定“ZHONG JIAN”轮是直航船,“安捷利18”轮是让路船。“安捷利18”轮错判对方为追越船,未履行尽早宽裕让清直航船的义务,导致两船形成紧迫局面,应当承担事故主要责任。与此同时,“ZHONG JIAN”轮违反《避碰规则》第十七条关于



直航船可以独自采取操纵行动的规定,应当承担事故次要责任。综上,法院认定“ZHONG JIAN”轮承担30%事故责任,“安捷利18”轮承担70%事故责任,并据此确定中建公司、郑某应当承担的具体赔偿数额。

#### 【典型意义】

《避碰规则》作为防止船舶碰撞事故、保障海上交通安全的重要海事法规,是船舶航行在公海和连接于公海的一切通航水域应当共同遵守的海上交通规则。依据《避碰规则》要求,船舶在航道中航行会遇他船时,须给他船让路的船舶,应当积极采取“早、大、宽、清”的避让行动。本案在准确查明案件事实的基础上,正确理解《避碰规则》的技术规范性质和法律规范性质,并根据《避碰规则》条款准确认定两船互见时的会遇局面,进而确定直航船与让路船,对船舶避碰中各阶段应采取的避碰行动进行分析,合理认定事故责任和责任比例,对引导船舶高度重视航行安全和严格遵守《避碰规则》要求具有重要启示意义。

【案号】(2019)苏72民初74号



## 五、扣押危化品船舶后应及时采取安全管理及应急处置措施

——“高诚5”轮诉前扣押案

### 【基本案情】

“高诚5”（GAO CHENG5）轮系中国香港籍危化品船舶，因船东拖欠某金融控股公司4558万元借款，该公司向南京海事法院提出诉前扣押船舶申请。“高诚5”轮在江苏靖江港某公司码头被依法扣押时，船上共有船员19人，含外籍船员（缅甸籍）5人，同时该船装载有1600余吨危化品乙酸仲丁酯（SBAC），该类化学品具有易燃特性。后因双方就款项支付迟迟未达成一致意见，该轮一直被扣押于靖江港。因靖江港区域并无案涉化学品船舶停泊锚地，且靖江港扣押地不具备就地卸货的客观条件，在船舱内长期储存该类危化品货物对该船及船上人员、靠泊港口航道甚至长江水域环境均带来了重大风险。

### 【处理结果】

为化解船舶长时间装载危化品产生的重大安全隐患，南京海事法院积极与扣船申请人、船东、船载危化品的货主、码头公司、洗舱公司、边检、海关等部门协调，迅速制定移泊计划，顺利完成了“高诚5”轮先至常熟港某码头公司卸货、洗舱，后移泊至太仓港危险品锚地码头公司的工作。在实施移泊、卸货及洗舱的过程中，法院密切关注船上船员的生活情况，及时与船舶代理、海事部门协调保障船上生活物资供应。在太仓港危险品锚地锚泊后，该轮又面临冬季大风多发情况下的走锚失控风险。为保障船舶安全，法院积极协同



江苏海事局、太仓海事局等部门，在船东及船员的配合下，及时安排拖轮驻守，防止船舶走锚。临近春节，船东的欠薪让船员们焦躁不安，法院积极安抚船员情绪并与船东、船舶代理、船员派遣公司及扣船申请人协商给薪方案，经多次沟通，最终扣船申请人表示愿意向船员支付部分工资以继续实现船舶看管。至此，扣押“高诚5”轮带来的各类风险均得以有效化解。

### 【典型意义】

长江是中华民族的母亲河，是我国重要战略水源地、生态宝库和黄金水道。本案中，船舶长期扣押，装载的危化品对长江水域生态安全和环境保护造成了直接威胁。南京海事法院充分发挥江苏海事司法与行政执法“1+10”协作机制，积极争取海事、卫健、外办等部门支持，在当事人、协助义务单位等多方协作下，及时采取安全管理和应急处置措施，最终消除了船载危化品险情带来的重大隐患。该案为人民法院防范化解类似风险提供了有益示范，在积极践行善意文明司法理念，依法保障人民群众生命财产安全、预防安全生产事故发生的同时，也有效保护了长江水域安全，是人民法院为长江大保护提供司法服务、保障长江流域绿色发展的具体实践。

【案号】(2020)苏72执保343号



## 六、因疫情无法及时办理公证认证手续的外国当事人 申请延期提交身份证明文件的应予准许

——江苏鑫瑞源食品有限公司等与法国达飞海运集团、达飞轮船（中国）有限公司、正利航业有限公司、正利航业股份有限公司  
海上货物运输合同纠纷案

### 【基本案情】

2019年5月，“ALS JUVENTUS”轮装载多个集装箱新鲜大蒜由中国连云港运往印度尼西亚泗水，达飞轮船（中国）有限公司代表承运人法国达飞海运集团签发了提单，正利航业有限公司、正利航业股份有限公司亦在提单签发及托运过程中代表法国达飞海运集团处理相关事宜。后因船方管货不当，涉案货物发生热损，导致包括鑫瑞源公司在内的多个托运人无法收回货款而造成损失。后鑫瑞源等六公司诉至南京海事法院，就货损主张赔偿。

### 【裁判结果】

该六起涉外、涉台系列案件立案受理时正值新冠疫情爆发，因当事人涉及法国、新加坡及我国台湾地区，送达诉讼法律文书困难重重，法院通过司法大数据搜索并联系到外国当事人在中国诉讼的常用诉讼代理人，但此后国外疫情严重影响代理手续办理公证认证，为推进案件审理进度，法院在征得鑫瑞源等六公司同意的前提下，准许律师迟延提交授权书的公证认证手续。法国达飞海运集团基于自身利益考虑，以涉案提单中存在“与本提单证明的货物运输合同相关的所有纠纷均由法国马赛商事法院管辖”的约定为由，提出管辖权异议。在等待公证认证手续过程中，法院及时开展调解工作，积极引导各方当事人对赔偿责任归属形成清晰认识，经调解各方达成由法国达飞海运集团与鑫瑞源等六公司协商解决纠纷的共识。



2020年7月，法国达飞海运集团提交诉讼代理授权的公证认证手续，同意接受南京海事法院管辖。后经多次在线交换证据、在线调解，最终达成调解协议，“一揽子”解决六起纠纷。

### 【典型意义】

本案为典型的涉外、涉港澳台、涉“一带一路”、涉自由贸易试验区案件，牵涉主体众多，法律关系复杂。该案采取积极、主动、灵活的送达方式，允许外国当事人延期提交相关公证认证手续，着力解决疫情期间涉外案件送达难、公证认证难问题，这一司法创新实践得到此后出台的《最高人民法院关于依法妥善审理涉新冠疫情民事案件若干问题的指导意见（三）》的认可。案件处理过程中，法院秉持平等保护理念，以公正、专业、敬业的形象和便捷高效的司法服务赢得外国当事人的信赖，法国当事人接受南京海事法院对该系列案件的管辖，并最终与鑫瑞源等六公司达成承担赔偿责任的调解协议，展示了中国海事司法公正高效专业的良好形象，是南京海事法院打造海事诉讼优选地，优化法治化、国际化、便利化营商环境的生动实践。

【案号】(2020)苏72民初177号



## 七、对《民法典》规定的证明自然人不可能生存的 “有关机关”应根据特定条件作合理认定

——徐某某申请宣告王某某死亡案

### 【基本案情】

徐某某与王某某系夫妻关系，均为连云港市赣榆区海头镇马庄村村民。2021年4月15日，王某某受赣榆区海头镇海前村村民闫某某雇佣在苏赣渔03789号渔船上进行捕捞作业时遇恶劣天气，渔船发生倾覆，包括船主闫某某在内五人落水失踪，经搜救，仅打捞出—具船员的尸体，船上其他人员包括王某某均未有讯息。2021年7月，王某某所在马庄村村民委员会、闫某某所在海前村村民委员会、海头镇渔政监督中队、海头镇人民政府出具证明，认为根据王某某落水的特殊环境、时间、地点、环境及搜救情况，王某某已无生存可能。王某某的丧葬后事已按民俗办理。2021年7月21日，徐某某向南京海事法院申请宣告王某某死亡。

### 【裁判结果】

南京海事法院受理该案后，分别前往王某某、闫某某所在村庄走访调查，向涉渔矛盾一站式解纷中心了解情况，核查了村民委员会、镇政府等出具的有关证明的真实性，并于2021年8月3日在《人民法院报》发出寻找王某某的公告，法定公告期间三个月届满后，于2021年11月组织听证，仍无王某某讯息。据此，依照《中华人民共和国民法典》第四十六条，《中华人民共和国民事诉讼法》第一百八十五条关于自然人宣告死亡的有关规定，依法判决宣告王某某死亡。



### 【典型意义】

海洋渔业是公认的高风险行业，渔船海上生产点多、面广、线长，受海洋灾害性天气影响较大，一旦发生船只倾覆等重大海难事故，船员落海后生还率极低，因此，宣告自然人死亡特别程序案件在海事法院较为常见。本案是典型的因意外事件下落不明，申请宣告自然人死亡特别程序案件，南京海事法院在案件审理过程中，通过多方走访深入了解当地渔业生产客观实际，对《中华人民共和国民法典》第四十六条第二款规定的“有关机关”范围进行合理解释，不局限于通常认知的海警部门、公安机关，而是扩大至了解事故情况的村民委员会、基层人民政府、渔政监督部门和渔业生产机构，进而认定上述单位作出的被申请人不可能生存证明具有法律效力，依法确认申请宣告死亡不受二年时间的限制，在公告期间届满后依法宣告被申请人死亡，最大限度保障被申请人近亲属及时进行权利救济和处理债权债务、身份等法律关系，有效维护社会经济生活稳定。

【案号】（2021）苏72民初59号





## 八、港口作业方应设置明显安全警示标志并安排专人在作业区域进行安全管理

——丁某某诉陆某某、启东市华祥建筑装潢材料有限公司  
港口作业人身损害赔偿纠纷案

### 【基本案情】

2021年3月31日，丁某某驾驶的苏通源货8588号货船停靠在启东市吕四港镇华强码头，华祥公司安排持有吊机操作资格证的陆某某操作吊机将该货船运载的黄沙进行卸货。在卸货作业即将结束时，丁某某被吊机配重撞倒受伤。事故发生后，启东市吕四港镇人民政府对华祥公司作出行政处罚决定书，认定华祥公司未在有较大危险因素的生产经营场所和有关设施、设备上设置明显的安全警示标志的行为，违反了安全生产法及相关作业规范，决定给予人民币壹万伍仟元罚款的行政处罚。丁某某受伤住院后累计发生医疗费用637775.46元，华祥公司已垫付250000元，后丁某某诉至南京海事法院，请求判令华祥公司支付已发生的部分医药费387775.46元。

### 【裁判结果】

南京海事法院经审理后认为，华祥公司作为港口作业方，未在操作区域以及操作设备上设置明显的安全警示标志，未安排专人在作业区域进行安全管理，未能尽到足够的安全管理义务，对丁某某的损失存在过错，应当承担赔偿责任；丁某某明知装卸作业尚未完成，擅自进入操作区域，在吊机驾驶员视觉盲区时未注意避让正在移动的吊机，未能对自身安全尽到足够的注意义务，放任危险的发生，其对自身的受伤亦存在过错，可以减轻华祥公司的赔偿责任。结合双方在本起事故中过错程度及责任大小，确认丁某某因本起事故造



成的损失，由华祥公司承担60%的赔偿责任，丁某某自担40%的责任。一审判决后，当事人均未提起上诉。

### 【典型意义】

江苏是港口大省，港口货物通过能力、万吨级以上泊位数、货物吞吐量、亿吨大港数等多项指标均位列全国第一。由于港口作业的复杂性和连续性，港口作业事故具有多发性、严重性特点。特别是由于操作人员违规操作等原因，导致机械伤害类事故占比较多，因此，港口作业安全问题亟需关注。本案是典型的港口货物装卸作业中发生的人身损害赔偿纠纷案件。法院通过合理界定作业人员工作内容和工作职责，根据各方履行义务情况依法确定事故责任划分，对促进港口作业主体正视合规操作、安全生产的重要性，严格遵守安全生产管理规定，确保港口企业安全健康发展具有引导示范作用。

【案号】(2021)苏72民初683号



## 九、强化善意文明执行理念尽量降低执行措施对被执行人生产经营活动的影响

——南通市通德船舶修造有限公司系列执行案件

### 【基本案情】

2020 年底，受国际航运市场波动影响，通德船舶公司经营管理出现严重困难，资金链断裂引发船舶物料与备品供应合同、船舶建造合同、劳务合同等系列纠纷，审理阶段各方当事人达成和解协议。后因通德船舶公司未能及时按生效民事调解书履行法定义务，各申请执行人向南京海事法院申请强制执行，申请执行总标的额达 2000 余万元。

### 【执行结果】

南京海事法院在执行该系列案件时，充分了解船舶建造行业发展近况，经全省法院关联案件检索和网络查控，被执行人通德船舶公司成立 20 余年来无一涉诉案件，且名下无银行存款、不动产等财产可供执行。为帮助民营造船企业渡过难关，同时维护申请执行人合法权益，法院决定在南通地区开展集中执行行动，通过主动走访当地相关企业、召开债权人会议，积极运用以物抵债、执行担保等方式，最终促成“涉民生案件申请执行人优先获得救济、小标的案件一次执行到位、大标的案件达成和解协议”的“一揽子”解决方案。

### 【典型意义】

江苏是造船大省，每年造船完工量占全国近半，目前已形成千亿级造船产业链。民营造船企业是推动船舶制造业快速发展的重要主体，本



案的妥善处理不仅关系到债权人合法权益能否及时实现，更关系到涉案民营造船企业能否降低损失渡过难关。南京海事法院充分发挥跨区域管辖职能，通过精研细查，科学甄别，精准施策，开展地区集中执行活动，有效避免系列执行案件中的司法资源浪费。同时，积极贯彻落实善意文明执行理念，强化申请执行人提供财产线索责任，促成涉案当事人达成和解协议，依法为“诚实而不幸”的被执行企业缓解债务压力，彰显了海事司法在服务保障法治化营商环境、精准护航民营企业健康发展等方面的重要作用。

【案号】(2020)苏 72 执 106、108、116 号，(2021)苏 72 执 31、32、157、233、234、235、236 号



## 十、依照我国缔结的国际条约不存在拒绝承认和执行情形的应当承认和执行国外仲裁机构的裁决

——NHE 航运有限公司与江苏四海荣进出口有限公司  
申请承认和执行外国仲裁裁决案

### 【基本案情】

2019年9月29日，巴拿马籍NHE航运公司与四海荣公司签订《租船确认书》，约定四海荣公司租用NHE航运公司的“海澜之轮”运输一批货物。后NHE航运公司与四海荣公司因上述《租船确认书》发生纠纷，NHE航运公司在英国伦敦提起仲裁。2020年6月23日，裁决仲裁员IAN GAUNT就“海澜之衡”轮租船确认书纠纷作出仲裁裁决。2020年7月1日，IAN GAUNT作出《仲裁裁决更正备忘录》，对仲裁裁决中有关《租船确认书》签订的时间进行了补正。后因四海荣公司未履行仲裁裁决确定的义务，NHE航运公司向南京海事法院申请承认和执行该仲裁裁决。

### 【裁判结果】

南京海事法院经审查后认为，英国和我国均为《承认及执行外国仲裁裁决公约》（以下简称《纽约公约》）的缔约国，根据《纽约公约》第五条的规定，拒绝承认和执行外国仲裁裁决的情形可以分为两类：一是需要被申请人请求并提供证据证明的，包括仲裁协议无效等程序性事项；二是法院依职权主动审查的，包括争议事项不可仲裁以及违反法院地公共政策两项。本案中，被申请人四海荣公司未到庭进行答辩、质证，未对涉案仲裁协议的效力、仲裁员的任命、裁决事项超裁、仲裁庭的组成及仲裁程序等事项提出异议，未提交证据证明上述事项存在瑕疵，也未提出拒绝承认和执行的抗



辩。鉴于仲裁裁决事项系因履行租船合同引起的纠纷，属平等主体之间的契约性商事法律关系，当事人有权选择以仲裁方式解决争议，并不违反我国社会公共政策，故裁定承认和执行案涉外国仲裁裁决。

### 【典型意义】

仲裁是国际通行的争议解决方式，因其具有当事人意思自治、专家裁判、一裁终局、高效灵活、国际执行力强等特点备受企业青睐，成为市场主体解决跨境商事争议的主要方式之一。承认和执行外国仲裁裁决，是我国司法机关适用有关法律对外国仲裁裁决予以认可并使之付诸实施的行为，是国家行使司法主权的重要表现，对于促进国际经贸发展，营造稳定、公平、透明、可预期的法治化营商环境具有重要意义。本案是南京海事法院审理的第一起承认和执行外国仲裁裁决案件。案件审理中，法院在查明案件事实上，准确适用《纽约公约》的规定，对案涉仲裁裁决予以承认和执行，平等保护中外当事人合法权益。该案的审理有利于增强国外企业对我国法治化营商环境的认可和信赖。

【案号】(2020)苏72协外认1号



## Report on Trails of Nanjing Maritime Court of PRC (2021) (January—December 2021)

### Foreword

In 2021, guided by Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, Nanjing Maritime Court (hereinafter “NMC”) thoroughly implemented Xi Jinping Thought on the rule of law, the decisions of the central and provincial committees as well as the work requirements of the higher courts. Committed to the goal of “striving to build a national first-class and even internationally influential maritime court”, NMC strengthened the foundation, pursued progress steadily, and vigorously implemented four projects of “high-quality trial, service brand, infrastructure construction, quality improvement”. It saw the big picture of services in a forward-looking way, refined the trial and enforcement process, formulated rules and regulations systematically, provided informationalized litigation services, and built a professional team to comprehensively deepen high-quality maritime judicial practice, guarantee higher level of opening up and high-quality economic and social development in Jiangsu Province.

### I. BASIC FACTS<sup>1</sup>

#### (i) General Overview

In 2021, NMC accepted 3,409 cases of various types with an increase of 47.77% over last year, ranking the fifth among the maritime courts in China. Among these, 2,722 cases were newly accepted, with an increase of 23.39% over last year, ranking the sixth among the maritime courts; 2,822 cases were concluded, with an increase of 74.20% compared with the figure of 2020, ranking the sixth among the maritime courts.



In 2021, the quality and effectiveness of trials of NMC continue improving, the clearance-acceptance ratio was 103.64%, with an increase of 30.24 percentage points over last year, 7.76 percentage points higher than the average figure of other maritime courts. Other indicators on trial and execution are stable. with a clearance rate of 82.78%, the clearance rate within the statutory period was 72.97%, 76.36% cases were settled without appeals, 0.17% cases were reversed or set aside for retrial rate by the second trial.

In 2021, the total subject amount of cases accepted by NMC was 5.218 billion yuan, of which 4.022 billion yuan (77.08%) were trial cases and 1.196 billion yuan (22.92%) were enforcement cases. (Chart 1)

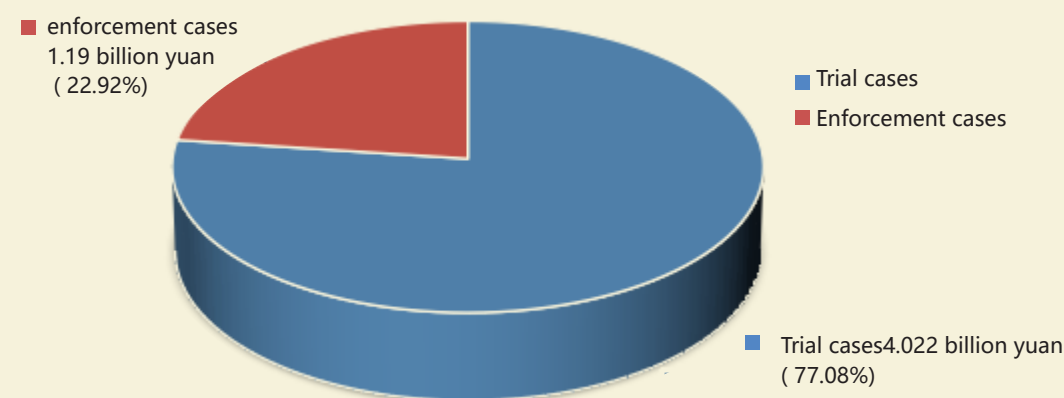


Chart 1: The Subject Amount of Cases Accepted by NMC

#### (ii) Composition of Cases

1. **Civil cases:** 2,262 cases accepted, with an increase of 39.72% over last year. Among these, 1,753 cases were newly accepted, with an increase of 14.80% over last year; 1,785 cases were concluded, an increase of 60.81% over last year. The top three disputes were over: contracts of carriage of goods by sea or by waters leading to the sea (206 cases), contracts of freight forwarding by sea or by waters





leading to the sea (188 cases), and contracts of seaman service(133 cases). (Chart 2)

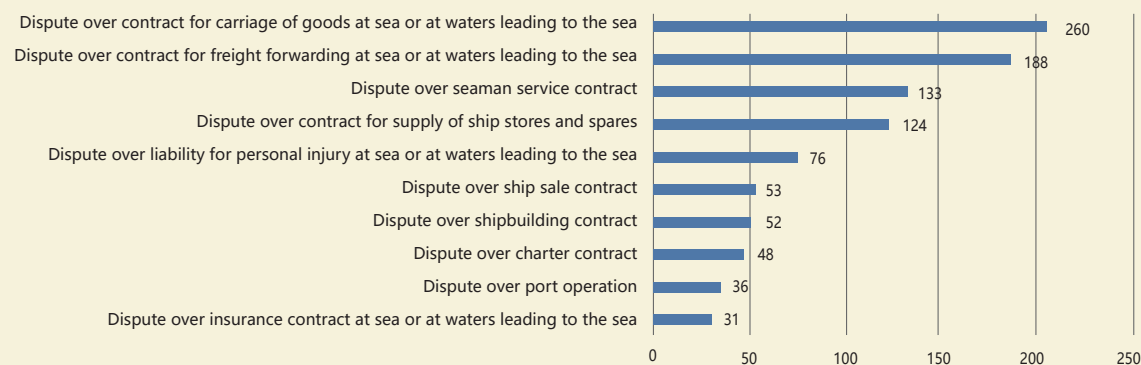


Chart 2: Top Ten Disputes of the Newly-accepted Cases

**2. Administrative cases:** 126 cases were accepted, a decrease of 17.65% over last year. Among these, 68 cases were newly accepted, with a decrease of 55.26% over last year; 118 cases were concluded, with an increase of 24.21% over last year.

**3. Enforcement cases:** 1,021 cases were accepted, with an increase of 90.84% over last year. Among these, 901 cases were newly accepted, with an increase of 70.97% over last year; 919 cases were concluded, with an increase of 121.45% over last year.

**4. Arrest of ships:** 118 ships were arrested in accordance with the law, and 4 flying the flags of foreign countries and Hong Kong(china); 11 ships were judicially sold in accordance with the law, with a total turnover of 59,388,200 yuan.

**5. Cases involving foreign countries and affairs concerning, Hong Kong, Macao and Taiwan:** 197 cases were accepted, accounting for 8.71% of all civil cases accepted by NMC. Among these, 107 cases were newly accepted, accounting for 6.10% of all new civil cases accepted by NMC; 110 cases were concluded, accounting for 6.16% of all civil cases concluded by the Court. The cases involved 41 countries or regions,



including Hong Kong (China), Singapore and the Marshall Islands. There were 80 cases involving signatories who also take part in the “Belt and Road Initiative”, accounting for 40.61% of the total cases. Among these, 44 cases were newly accepted and 41 cases were concluded, involving 19 signatories, such as Singapore, South Korea and Panama.

**6. Cases of Dispatched Tribunals:** 1,674 cases were accepted by dispatched tribunals, accounting for 49.11% of the accepted cases of NMC. Among these, 1,337 cases were newly accepted, accounting for 49.12% of the newly accepted cases of NMC; 1,348 cases were concluded, accounting for 47.77% of the concluded cases of NMC. (Chart 3)

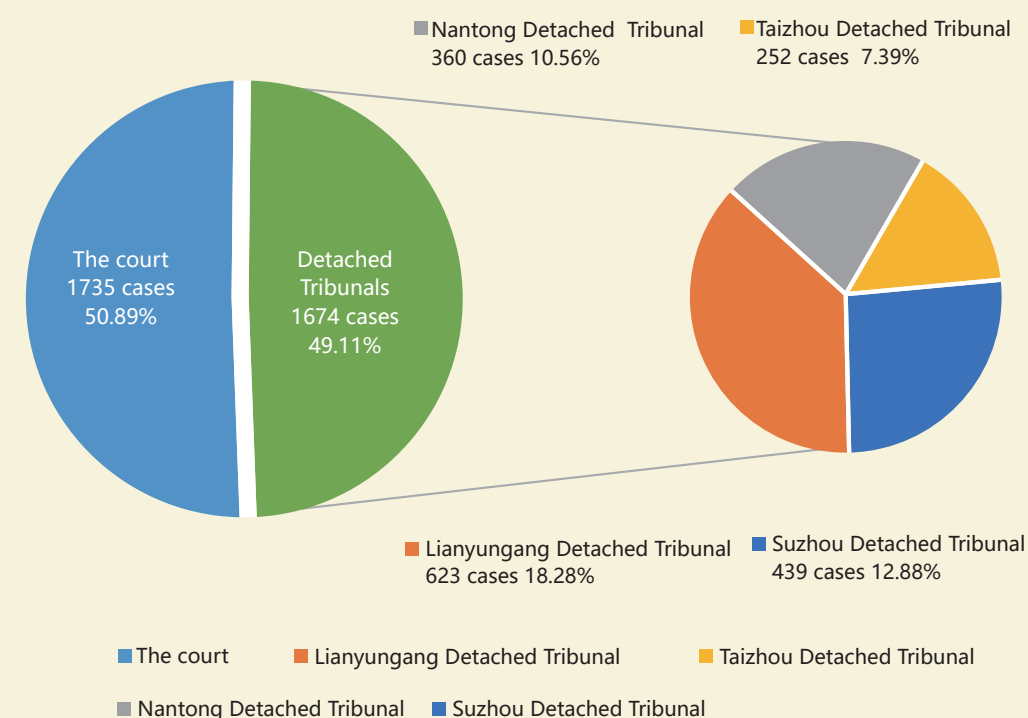


Chart 3: Cases Accepted by the Dispatched Tribunals

### (iii) The Openness of the Justice System

In 2021, 1,335 (80.15%) judgments were uploaded on the China



Judgments Online; 803 (43.67%) trials were broadcast live on the China Open Trial, with 254,348 times of views in total; 1,417 (100%) cases were effectively disclosed through China Judicial Process Information Online, with an effective disclosure rate of 100%.

## **II .Work Highlights**

### ***(i) Implementing the new development concept, accurately escorting the national strategies***

NMC carried out forward-looking research centred on national strategies such as the construction of a strong maritime country and the Belt and Road Initiative, put forward maritime judicial measures related to the special regulatory policies, including the "negative list" of free trade pilot zones. In addition, NMC introduced 14 measures which focus on international shipping, logistics, ship building, shipping finance, international port construction and crew labour to ensure a higher level of opening up. To promote high-quality development of the Yangtze River Economic Belt and fully implement the Yangtze River Protection Law, NMC jointly issued nine initiatives and ten typical cases with the provincial Department of Transport and Jiangsu Maritime Bureau, which got approval by the leaders of Supreme People's Court. To actively serve the integrated development of the Yangtze River Delta, NMC signed the Yangtze River Delta maritime judicial cooperation agreement with maritime courts in Shanghai, Ningbo and Wuhan, established a platform for exchanges on maritime judicial cooperation in the Yangtze River Delta and assisted the courts in the Yangtze River delta region with maritime enforcement for 58 times. To promote the development of Jiangsu maritime economy, NMC was well aligned with the development strategy



of Jiangsu coastal areas and studied the measures on maritime judicial services.

### ***(ii) Making NMC a "preferred" place for dissolving maritime disputes through elite trials***

To enhance the effectiveness of trials of foreign-related cases, NMC improved the mechanism for hearing cases involving foreign affairs, equipped with the database of Lloyd's reports, delivered the legal instruments of the foreign-related cases through electronic ways, carried out remote examination of evidences abroad and formulated procedures for the identification of foreign laws. Committed to the elite performances and craftsmanship spirit, NMC concluded and launched 23 typical cases involving services to ensure a high level of opening-up, the implementation of the Yangtze River Protection Law and the commitment of "addressing practical issues for the people". In a dispute over an international shipbuilding contract, the litigants from Norway and China changed the agreed jurisdiction from arbitration in the UK to litigation in NMC on their own initiative. This case was selected as one of the annual top ten typical maritime cases of China. Upholding open and transparent judicial principles, NMC held five press conferences on different dates, such as the China Maritime Day, the Day of the Seafarer, the second anniversary of working, to propagandize the work of NMC. 51 reports about NMC were published in the People's Court Daily, Xinhua Daily and other mainstream media. NMC's Chinese and English websites were updated in real time, six issues of Voice of Maritime Law in English were released, typical maritime cases were published in several languages, with 730,000 hits on the Microblog, WeChat and news apps. The microfilm Polaris, an adaptation based on a real case, won the second prize of the 8th National Court "Golden Gavel Award" and the first prize of the 6th



Safe Jiangsu "Three Micros" Competition and the collection of excellent cultural works of politics and law.

***(iii) Enforcing the law for the people, enhancing the people's sense of contentment from maritime justice***

NMC optimized litigation services and fully carried out online filing, cross-domain filing and online litigation through a big data analysis platform for maritime trials, a teleconferencing system for judges as well as an Internet court, realizing "trial, execution and justice as usual" during the COVID-19 epidemic. To further diversify the resolution of maritime disputes, firstly NMC set up a platform to resolve maritime disputes in cooperation with the Shanghai headquarter of the China Maritime Arbitration Commission and the Nanjing Arbitration Commission. Secondly NMC set up 12 additional one-stop dispute resolution centres. Thirdly, a new circuit trial base was established in Jiangyin, Wuxi. NMC opened a fast pass for crew lawsuits and five workstations for crew rights in the Yangtze River water service area. During the COVID-19 epidemic, NMC has successively helped the detained crew to change shifts and repatriate foreign crew members, in total 42 people. In the meantime, the one-stop centre for resolving fishing-related conflicts resolved 132 cases before litigation, helping fishermen to obtain timely compensation and recover economic losses of more than RMB 20 million. To give full play to service functions of detached tribunal, firstly the Taizhou detached tribunal with the local court helped bankrupt shipbuilding enterprises to quickly restore its production capacity. Secondly, the Suzhou detached tribunal served the innovative development of the Pilot Free Trade Zone in Suzhou. Thirdly, the police officers of the Lianyungang detached tribunal and Nantong detached tribunal resolved conflicts and disputes at



the primary level such as in fishing villages, aboard fishing boats and in mudflats. Fourthly, the advanced deeds of Qi Honggui, a mediator of the one-stop centre for resolving fishing-related conflicts, were popularized nationwide by the Supreme People's Court.

***(iv) Adhering to systematic planning and improving the operation mechanism of maritime trial power***

NMC improved the establishment of rules and systems, made the Development Plan for Nanjing Maritime Court (2021-2025) and implemented the judicial accountability system. The new management mode of court president trial supervision with maritime characteristics was selected as a 2021 judicial reform case in Jiangsu courts. With the help of the provincial court, NMC made efforts to further clarify the maritime judicial division of commerce and administration, involving the cases of Grand Canal. In this way, NMC reasonably has determined the hearing scope of the maritime court on inland river cases and explored the "three-in-one" mechanism reform of the maritime trial, In active liaison with the provincial Department of Natural Resources and the provincial Department of Ecology and Environment, NMC expanded the "four-party collaboration" between maritime justice and administrative law enforcement to a "1+10" model. NMC built China's first "peer-to-peer" online ship enforcement and control system and opened the port cargo enforcement and control platform, which was listed in the top ten outstanding cases of the "1st Jiangsu Smart Rule of Law". Additionally, NMC improved the external supervision mechanism of maritime judicature and explored the specific realization form of special courts being responsible and reporting work to the people's congress and its standing committee, such as inviting 38 "two representatives and a



commission member" to participate in the "taking advice" forum 5 times and visit the court and attend the court hearing 3 times. After the Activity, the representatives and commission members highly recognized the work of NMC.

#### ***(v) Implementing full and strict governance over the Party, forging a professional maritime trial team***

To improve cohesion and competitiveness of the team, NMC organized Party history learning and education activities as well as in-depth team education and rectification. Aiming at training compound talents equipped with the "knowledge of law, foreign languages, sea, trade and shipping", broadening international perspectives of court officers and improving their professional ability, NMC formulated the Five-year Plan for Team Building (2021-2025), launched the "elites of maritime court" training program, held nine sessions of "Maritime Lecture", appointed 10 court officers to the Supreme People's Court and Jiangsu High People's Court for case study, to study in universities and to port and shipping enterprises as interns, customized training courses for the youth translation group, organized academic salons on a regular basis, set up legal English training at weekends, and strengthened exchanges and cooperation with universities. Forty-nine papers written by court officers were published in journals such as Journal of Law Application, People's Judicature, Chinese Journal of Maritime Law and World Shipping, or won awards at national and provincial conferences. One judge was awarded as a national expert in trial practice, two judges were awarded as provincial experts in trial practice, and one judge was awarded as an advanced individual in the People's Court's trial work on foreign commercial and maritime cases.



### ***III. Issues and Suggestions***

In order to better serve major national strategies such as the building of a powerful maritime country and the Belt and Road Initiative, and to help create a market-oriented and international business environment in accordance with the law, NMC has sorted out and summarized practical experiences of maritime trials since undertaking its duties, and put forward the following suggestions on business, management or professional risks facing the following maritime bodies:

#### ***(i) Suggestions for shipbuilding enterprises***

Shipbuilding is a capital-intensive and technology-intensive industry, which not only involves a large amount of work, long and complicated processes, but also involves various factors such as material supply, staffing, fund raising, climate conditions and government supervision, and is prone to disputes. Since undertaking its duties, NMC has accepted 108 cases of shipbuilding disputes, which have reflected the following problems: (1) Financing risks are high. Some small-sized and medium-sized shipbuilding enterprises take initiatives to advance funds for shipbuilding in order to undertake projects, while their funds are generally financed from private sources at high interest rates. If the capital chain breaks down during the shipbuilding process, or if the ordering party abandons the ship, they will be difficult to resist the market risks.<sup>2</sup> (2) The performance period is long. Price surges of raw materials and equipment, or dramatic market changes during the performance of shipbuilding contracts, may exert adverse impact to a party in continuing to perform the contract. (3) The technical facts are highly disputed. Ship quality is usually intertwined with ship design, ship key equipment and quality

<sup>2</sup> (2022) Jiangsu 72, Civil Case First Instance No.695.





of special articles. Additionally, when shipowners, ship enterprises and classification societies sign agreements for the classification survey and drawing review for the shipbuilding, there are often inconsistencies in terms of the starting date and construction period agreed in the previous construction contract, which will affect the calculation of the construction period and liquidated damages.<sup>3</sup>

Suggestions: (1) Prevent and resolve financing risks. Shipbuilding requires a sufficient and stable supply of funds due to its large demand for capital and long duration, so shipbuilding enterprises should carefully choose suitable financing sources, and ensure that the fund is "earmarked" to effectively prevent capital chain rupture by financing. (2) Fully formulate contract terms. To avoid subsequent disputes, ship enterprises and shipowners should make clear agreement on the contract price, payment method, approval of ship design, inspection during construction, trial trip and delivery, delay in delivery and extension, ship registration, the right of release for breach of contract between the buyer and the seller, insurance and jurisdiction clause, etc. (3) Pay attention to collecting relevant evidence. The parties to a shipbuilding contract should pay attention to collecting and fixing the evidence reflecting the formation and development of the legal relationship between the two parties, especially those which change the content of the contract in the course of performance, including mails, minutes of meetings, project verification form and telephone records, so as to accurately determine the relevant facts in the event of subsequent disputes between the parties.

## ***(ii) Suggestions to shipping enterprises***

There are many uncertainties in the shipping market, such as weather, hydrology, channel environment inspection, port operation capacity,

<sup>3</sup> (2020) Jiangsu 72, Civil Case First Instance No.936.



pandemic, etc., which may affect the ship's journey and bring many challenges for shipping enterprises to complete the transportation according to the contract and obtain business benefits. Since taking up its duties, the Court has accepted 435 cases of disputes over contract of carriage of goods, which have reflected the following problems: (1) When shippers or receivers fail to pay freight and demurrage in full and on time, shipping enterprises, as carriers, retain goods of a value far in excess of the costs they claim or dispose of the retained goods illegally without consultation, causing losses to the shippers.<sup>4</sup> (2) When a shipping enterprise arrives at the anchorage of the loading port to wait for loading according to the contract of carriage of goods, and learns that it needs to wait for a long time to load the goods, it unilaterally terminates the contract without the formation of dissolution condition agreed in the contract to avoid losses due to the long delay of the ship, and sails the ship away from the loading port and returns the deposit paid by the shipper, causing losses to the shipper.<sup>5</sup> (3) When their vessels are underway, shipping enterprises fail to take give-way action, maintain a safe speed and keep watch as required, leading to an increased risk of navigational accidents, and some dependent shipping enterprises neglect their safety management, leading to illegal operation by the actual operator.

Suggestions: (1) Lawful exercise of lien rights. Shipping enterprises should, in compliance with the relevant provisions on liens in the Civil Code [Article 447 to 457, Article 836 of the Civil Code of the People's Republic of China] and the Maritime Law [Articles 87 and 88 of the Maritime Law of the People's Republic of China], stipulate clearly in the contract the period of time for the performance of the debt before and after retaining the property, the cost of keeping the property and the expense of realising the lien, based on the risk prediction and the

<sup>4</sup> (2020) Jiangsu 72, Civil Case First Instance No.248.

<sup>5</sup> (2021) Jiangsu 72, Civil Case First Instance No.392.



freightage type. When deciding to exercise the lien right, shipping enterprises should control the limit of the retained property, keep the retained property properly, pay attention to the statutory or agreed period of debt performance and realise the lien right in accordance with the law, so as to avoid infringing the rights and interests of others by improperly exercising the lien right. (2) Refine the provisions on demurrage. When agreeing on demurrage, shipping enterprises should take full account of the risk of the ship's journey and the possible loss of demurrage, and improve the calculation method and standard of demurrage in the contract to protect their own expected interests. (3) Raise awareness of risk prevention. Shipping enterprises should ensure that vessels are manned with adequate qualified crew, and improve the ship maneuvering and collision prevention skills of the crew. When ships are involved in dependent operations, the dependent shipping enterprises should fully perform their own safety management obligations.

### ***(iii) Suggestions for freight forwarding enterprises***

Marine freight forwarding is an important link in the transportation of goods by sea, and is also an important part of the marine economic service industry. With the foreign trade industry being affected by objective factors such as pandemic in recent years, the relevant business risks have also been transferred to the freight forwarding industry. Moreover, due to the low entry threshold and the complicated operations, the legal disputes related to freight forwarding enterprises increase in the daily operation process. Since performing its duties, NMC has accepted 414 cases of freight forwarding disputes which reflect the following problems: (1) freight forwarding business operators often communicate with the other party through WeChat and emails without signing a written contract or grasping the name of the principal, business address, contact information,



etc., which makes it difficult to identify the party, serve documents on the party effectively and resolve disputes in time after they occur.<sup>6</sup> (2) In the freight forwarding contract, the title of the contract is often inconsistent with the signatory. It is difficult to accurately define the party in the contract if more than one party participates in the contract performance and is responsible for the submission of orders, delivery and payment respectively.<sup>7</sup> (3) Re-entrustment is common in the freight forwarding industry. But because the rights and obligations of entrustment contracts signed between different parties are not completely consistent, it is difficult for freight forwarding enterprises in the middle to claim rights from the shipper when they pay relevant fees in advance and have legal disputes.<sup>8</sup>

Suggestions: (1) Standardize the signing of contracts. Freight forwarding enterprises should, as far as possible, sign a written commission contract in their operation to clarify the relative parties to the contract, determine the rights and obligations of both parties, and add a confirmation clause for service address in the contract to make it clear that the address confirmed by both parties can be used not only as the address for service of relevant documents in the performance of the contract, but also as the address for service of legal documents by arbitration institutions and judicial authorities after a dispute has occurred. (2) Enhance the awareness of evidence. Freight forwarding enterprises, in the performance of the contract, should pay attention to keep evidence which will affect the rights and obligations confirmed and timely consolidate the fact confirmed by both parties. When the third party charges fees, freight forwarding companies should retain the original proof of payment and negotiable instrument issued by the third party to avoid using the invoice made by the freight forwarding enterprise instead of the

<sup>6</sup> (2019) Jiangsu 72, Civil Case First Instance No.21.

<sup>7</sup> (2020) Jiangsu 72, Civil Case First Instance No.980.

<sup>8</sup> (2020) Jiangsu 72, Civil Case First Instance No.980.



actual proof of payment. (3) Prevent the risk of sub-delegation. Freight forwarding enterprises should obtain the explicit consent of the principal when the relevant matters need to be sub-entrusted, and also ensure that the rights and obligations of the upstream agency contract are consistent with the downstream one to avoid bearing the risks that should be borne by the principal.

#### ***(iv) Suggestions for fishermen and crew***

Marine fishing is a recognized high-risk industry. It usually covers multiple production spots in a wide area, requires a long period and is subject to weather and sea conditions. Marine fishing operations such as anchoring, setting nets, net hauling and collecting fish also have high risks and require a high level of professional skills. In trials, disputes over labour contracts and personal injury on the sea which are closely connected to fishermen and crew members happen frequently. Since NMC took up its duties, it has accepted 347 cases of disputes involving fishermen and crew. The main problems reflected in the cases are: (1) There is a large demand for crew employment in August and September when it is suitable for fishing. Thus, it has gradually developed the practice of paying crew members 1-2 months' wages in advance.<sup>9</sup> After receiving advance wages, some crew members do not come on board for various reasons, or even take advance wages from multiple shipowners, harming the interests of shipowners.<sup>10</sup> (2) The labor contracts are not signed in a standard way. The agreement on working hours and wage standard is unclear. The shipowner maliciously delays the crew's wages when the profit is not good or there are losses, which damages the legitimate rights and interests of crew members.<sup>11</sup> (3) Due to a lack of proficiency in operations at sea, some crew become disabled or even die

<sup>9</sup> (2021) Jiangsu 72, Civil Case First Instance No.180.

<sup>10</sup> (2021) Jiangsu 72, Civil Case First Instance No.11.

<sup>11</sup> (2021) Jiangsu 72, Civil Case First Instance No.693.



after being strangled by netting machines or dragged by fishing nets.<sup>12</sup>

Suggestions: (1) Improve professional skills. Fishermen should accept vocational training in fishery safety, to improve skills such as navigation, collision prevention, scientific loading, using fishing apparatuses, safety measures for breeding rafts, self-rescue and rescuing others as well as the awareness of safe production. Crew should be licensed and receive regular skills training. (2) Sign written labour contracts. Sign contracts in writing as far as possible and fix the relevant evidence in time, focusing on clear agreements on wage rates, working hours, vacation and leave benefits, etc. (3) Take out insurance against risks. Crew should negotiate with the shipowner to purchase adequate commercial insurance for the crew and actively participate in mutual fishery insurance to diffuse the high risks of marine fishing operations properly .

<sup>12</sup> (2021) Jiangsu 72, Civil Case First Instance No.589.



## IV . Typical Cases

### Case 1: The carrier shall not be exempt from the liability for shortage of cargo under a single bill of lading on the ground that the shortage of whole cargo is within reasonable limits

——Xiamen C&D Commodities Limited vs. Huaxinghai Shipping Co., Ltd.

Dispute over Contract of Carriage of Goods by Sea

#### [ Basic Facts ]

Xiamen C&D Commodities Limited ("C&D" for short) purchased Ukrainian corn from Singapore Huajie Company and the goods were carried by the vessel "Huaxinghai" owned by Huaxinghai Company. The ship issued clean bills of lading numbered 1, 2, 3 and 4 respectively (B/L 1 and 2 were owned by C&D and B/L 3 and 4 by Heng Sheng, an outer party) for transportation from Ukraine to China, but the cargo under the four bills of lading didn't distinguish shipping space. The ship involved unloaded the goods under B/L 1 in Huangpu Port, China, with a shortage of 18.05 tons, and unloaded the goods under B/Ls 2, 3 and 4 in Zhangjiagang, China, with a shortage of 320.95 tons, making a total shortage of 339 tons under the four B/Ls. The commodity inspection agency provided weight certificates based on the water measurement for each of the four B/Ls. Then, C&D Company filed a lawsuit to NMC, claiming compensation for the shortage of 339 tons under the four B/Ls. Huaxinghai company argued that the carrier should be exempted from liability for the shortage of goods within 5%.

#### [ Judgement Results ]

After hearing the case, NMC held that C&D was not the legal holder of



B/Ls 3 and 4, and was not entitled to claim from Huaxinghai Company for the shortage of goods under B/Ls 3 and 4. Since it issued four sets of clean B/Ls, Huaxinghai Company should deliver the goods of the weight recorded in the respective B/Ls in the port of destination to the corresponding consignee, and it can claim the exemption from liability for the reasonable shortage of 5% of cargo to each holder or consignee according to each B/L, but it lacked legal basis to put forward the exemption from liability for the shortage within 5% of all cargo. Because the shortage of goods under B/L 1 was within 5 %, Huaxinghai Company can be exempted from the liability for the loss of this shortage. The shortage of goods under B/L 2 exceeded 5%. Additionally, no evidence was adduced to distinguish the loss caused respectively by reasonable and unreasonable factors, or to prove that Huaxinghai Company wasn't liable for the losses, so the company should compensate for the losses under B/L 2.

#### [ Profound Significance ]

This case is a typical contract dispute over marine transportation of "Belt and Road" bulk cargoes. According to Rules for the Weight Survey of Import and Export Commodities—Weight by Draft, China's inspection standard of import and export commodities, if the unloaded cargo is short within 5%, it can be regarded as a reasonable shortage due to natural losses, measurement tolerances, etc., unless contrary evidence is adduced that the carrier is negligent, then the carrier, in principle, is not liable for the losses. The case involved multiple B/Ls issued by the carrier belonging to different B/L holders and consignees, multiple unloading ports and the fact that the goods under different B/Ls weren't stored in separate compartments. Hence, the freighter was not allowed to claim exemption from liability for the shortage within 5% of all cargo.





As for this case, NMC correctly interpreted the principle of "the B/L is the absolute evidence between the carrier and the holder of the B/L" and reasonably defined the rights of the holders of the B/L for mixed bulk cargoes by accurately grasping the carrier's "reasonable shortage" exemption, which can act as a future reference for the settlement of disputes over the shortage of bulk cargoes during marine transportation.

【Case No.】 (2020) Jiangsu 72, Civil Case First Instance No.35



**Case 2: Exceeding the reference cargo volume stated in the inspection certificate does not necessarily constitute overloading**

—Jiangsu Jinma Transportation Group Co., Ltd vs. PICC

Property and Casualty Company Limited (Jingjiang Branch)

Dispute over marine insurance contract

**[ Basic Facts ]**

On 19th November 2018, the vessel "Jinma 988", loading 1,200 tons of stainless steel, belonging to Jinma Company (hereinafter referred to as Jinma) sailed from Fuzhou, Fujian Province and touched an unknown object when passing through the waters about 2 nautical miles southeast of Damu Island in Xiangshan, Zhejiang Province, resulting in the part of the loaded stainless steel being soaked by the sea water flooding in the broken vessel bottom, which represented a loss of over 470 thousand yuan. After compensating the cargo owner, Jinma claimed the insurance liability from PICC Property and Casualty Company Limited (Jingjiang Branch) (hereinafter referred to as Jingjiang PICC). Jingjiang PICC considered that the actual cargo volume of the vessel exceeded the reference cargo volume stated in the ship's inspection certificate, so it was the overloading that led to the accident. They refused to settle the claim as the overloading was an exemption from liability as agreed in the insurance reservation agreement and the insurance clause. Jinma later appealed to NMC, requesting that Jingjiang PICC be ordered to pay the insurance compensation.

**[ Judgement Results ]**

After hearing the case, NMC held that the ship inspection certificate



of the vessel "Jinma 988" recorded that the ship had a fully-loaded displacement capacity of 1310.5 tons and a reference cargo capacity of 950 tons. At the time of the accident, the ship was loaded with 1200 tons of steel, which exceeded the reference cargo capacity, which was not sufficient to decide the ship was overloaded. Both parties had afterwards tested the ship on site when it was loaded with the same weight of cargo as at the time of the accident, and the ship did not exceed the load line. After the accident, the maritime department only inspected the maritime statement and did not determine that the ship was overloaded. Jingjiang PICC did not investigate after Jinma reported the accident, either. No evidence confirmed the overloading, so it was decided that Jingjiang PICC should bear the insurance liability for the accident of "Jinma 988".

### ***[ Profound Significance ]***

Overloading of ships will reduce the resistance to sinking and navigation stability, increase the risk of capsizing, and induce major traffic accidents, which is a greatly "persistent problem" in water traffic safety management. This case distinguishes the way of determining overloading of ships and that of land trucks. Overloading of ships means that the actual full load displacement of ships exceeds the approved one and the load line is submerged by water. Vessels should choose the load line according to the sailing area and the season. Additionally, the reference cargo capacity stated in the ship inspection certificate is only an approximate value for certain type of cargoes with stowage factors when the ship is designed, which only has, to some extent, a reference value for the weight of certain cargoes loaded on the ship and cannot be directly used as the basis for



determining the overloading of the ship. The standard of approved load lines for ships adopted in this case is the general rule for ship safety inspection and enforcement, and will further enhance the directness and precision of enforcement and inspection of overloaded ships by administrative and law-enforcing departments, and improve the safety and law-abiding awareness of shipping entities.

**【Case No.】** (2020) Jiangsu 72, Civil Case First Instance No.771



**Case 3: The limitation fund for maritime liability shall be applied on the basis of the attributes of the vessel involved in the accident determined according to the route the vessel took at the time of the accident**

—Shanghai Dengheng Shipping Co., Ltd. applying for the establishment of the limitation fund for marine claim

**[ Basic Facts ]**

Dingheng Company is the bareboat charterer of "Dingheng 18". On 25 July 2020, the vessel sailed from Huizhou port to Caojing port to discharge its cargo. On 27 July, during its journey to Taizhou port after the unloading, the vessel crashed into the "East Tai Cargo 5588" near the red buoys, capsizing the "East Tai Cargo 5588" with its all cargoes sinking. Hence, Dingheng Company applied to NMC for the establishment of a maritime liability limitation fund for non-personal injury or death caused by the accident, the amount of which was determined in accordance with 50% of the compensation limit stipulated in Article 210(1) of the Maritime Code of the People's Republic of China ("Maritime Code" for short). Opposed to that, New Dongwu Company argued that the "Dingheng 18" was capable of international navigation and was not a ship engaged in the transportation of goods between ports in the People's Republic of China or in coastal operations as stipulated in the Maritime Code. Therefore, the maritime compensation limit in this case should not be calculated in accordance with 50% of the compensation limit stipulated in Article 210(1) of the Maritime Code.

**[ Judgement Results ]**

After investigation, NMC held that although Dingheng Company had



obtained a permit to engage in international shipping of dangerous cargoes and "Dingheng 18" had obtained a certificate of classification issued by the China Classification Society, it was still necessary to judge whether "Dingheng 18" was a ship engaged in transportation between ports in China based on the specific circumstances of the voyage in which the maritime accident occurred. In this case, the accident occurred when "Dingheng 18" was travelling from Caojing Port to Taizhou Port to receive the cargo, therefore, "Dingheng 18" should be regarded as a vessel engaged in transportation between ports in China and the relevant provisions concerning the maritime compensation limit could apply to this case. The maritime compensation limit could be calculated in accordance with 50% of the provisions. Accordingly, it was decided that Dingheng Company's application for the establishment of a maritime liability limitation fund was granted.

**[ Profound Significance ]**

Limitation of maritime liability, a very old system of maritime risk apportionment, refers to a legal system whereby, in the event of a major maritime accident, the responsible person limits his or her liability to a certain extent in accordance with the provisions of the law. This case is the first application for the establishment of a maritime liability limitation fund heard by NMC since its establishment. In this case, although the vessel was capable and qualified for international voyages, NMC considered that the vessel's previous voyage, the planned next voyage and the first voyage after the accident were all in domestic waters, and finally held that "Dingheng 18" was a vessel engaged in the transportation of goods



between ports in China at the time of the accident. It can be of guiding values for shipping enterprises, especially domestic coastal transport enterprises to correctly use the maritime liability limitation system to avoid shipping risks.

【Case No.】 (2020) Jiangsu 72, Civil Case Special Hearing No.70



**Case 4: Give-way vessels should actively take "early, big, wide and clear" evasive action when two vessels meet**

—Sino Construction Shipping (HK) Limited vs. ZHENG Xx, et al

Dispute over liability for losses arising from vessel collision

***[ Basic Facts ]***

On 22 May 2018, the Panamanian bulk carrier, "ZHONG JIAN", owned by Sino Construction Shipping (HK) Limited (hereinafter referred to as Sino Construction), collided with the vessel "An Jieli 18", owned by Mr. Zheng, in the southern waters of the Yellow Sea, causing different degrees of damage to the two vessels. It was found that "ZHONG JIAN" needed RMB 1,676,834.14 for repair costs, inspection fees, rent and fuel losses, and "An Jieli 18" needed RMB 715,573 for repair costs, loss of shipping time and maintenance costs. Due to the dispute between the two parties over the liability of the accident, Sino Construction filed a lawsuit to NMC, claiming Mr. Zheng to compensate for the loss in accordance with the 90% liability ratio, while Mr. Zheng countersued, claiming Sino Construction to compensate for the loss in accordance with the 60% liability ratio.

***[ Judgement Results ]***

After the hearing, NMC held that sailing vessels should comply with the International Regulations for Preventing Collisions at Sea 1972 (hereinafter referred to as Regulations for Preventing Collisions). In this case, although "An Jieli 18" did not have access to the bow direction data, the bow direction of "An Jieli 18" could be determined by factoring in wind pressure difference and other data. Given AIS and SVDR of "ZHONG JIAN", and AIS of "An Jieli 18", it was safe to conclude that when the two ships saw each other, "ZHONG JIAN"





was on the starboard side of "An Jieli 18". The two vessels met at a large angle or perpendicular to each other. According to the provisions of Regulations for Preventing Collisions on the evasive action to be taken when two vessels meet, it can be concluded that "ZHONG JIAN" was a stand-on vessel and "An Jieli 18" was a give-way vessel. "An Jieli 18" misjudged that the other party was an overtaking vessel and failed to fulfill the obligation of giving way to the stand-on vessel as early as possible, resulting in the urgent situation between the two vessels. Therefore, "An Jieli 18" should bear the main responsibility for the accident. Meanwhile, "ZHONG JIAN" violated Article 17 of Regulations for Preventing Collisions, which stipulates that a stand-on vessel can take actions alone, and should bear secondary responsibility for the accident. In summary, NMC decided that "ZHONG JIAN" bore 30% of the responsibility for the accident and "An Jieli 18" bore 70% of the responsibility for the accident, and accordingly determined the specific amount of compensation to be borne by Sino Construction and Mr. Zheng.

### ***[ Profound Significance ]***

As an important maritime regulation to prevent ship collisions and ensure maritime traffic safety, Regulations for Preventing Collisions is a common maritime traffic rule to be observed by ships sailing on the high seas and all navigable waters connected thereto. According to Regulations for Preventing Collisions, when vessels are approaching one another while sailing in the fairway, a vessel which is directed to keep out of the way of another vessel (Give-way vessel) shall, so far as possible, take early and substantial action to keep well clear. In this case, on the basis of ascertained facts, NMC accurately comprehended



the technical and legal nature of Regulations for Preventing Collisions, recognized the two vessels were under head-on situation when they met, and then identified the Stand-on vessel and the Give-way vessel, and analysed the actions to avoid collision taken at each stage. Accordingly, the liability and the liability ratio for the accident were reasonably determined, which plays an important guiding role in raising the awareness of navigation safety and strict compliance with Regulations for Preventing Collisions.

**【Case No.】** (2019) Jiangsu 72, Civil Case First Instance No.74



### **Case 5: Safety management and actions on emergencies should be taken promptly after seizing a ship loaded with dangerous chemicals**

—Pre-litigation seizure of "Gao Cheng 5"

#### ***[ Basic Facts ]***

"GAO CHENG 5", a dangerous chemical vessel registered in Hong Kong, China, was seized by NMC according to an application from a financial holding company to whom the shipowner owed a loan of RMB 45.58 million. When the vessel was seized at the wharf of a company in Jingjiang Port, Jiangsu Province, there were 19 crew members on board(including 5 of Myanmar nationality), and the vessel was loaded with more than 1,600 tons of the hazardous inflammable chemical, sec-butyl acetate (SBAC). The vessel has been detained in Jingjiang port due to the failure of reaching an agreement on payment between the two parties. As there was no permitted anchorage for dangerous chemical vessels in the Jingjiang port, and objective conditions to the vessel was unsatisfied as well, the prolonged storage of such hazardous chemical posed significant threats to the vessel and its crew, the water environment near the port and even the Yangtze River.

#### ***[ Results ]***

In order to clear the potential safety hazards arising from the long-time loading of dangerous chemical on board, NMC actively coordinated with the seizure applicant, the shipowner, the owner of the cargo, the terminal company, the compartment-cleaning company, the border inspection department and the customs to quickly accomplish a series of activities such as firstly moving the vessel to a terminal company in Changshu Port to unload and clean the compartments, and then



berthing the vessel at an anchorage for dangerous chemicals in Taicang Port. During the process, NMC paid close attention to the living conditions of the ship's crew and coordinated with the shipping agent and the maritime department to ensure the supply of living necessities on board in a timely manner. After anchoring, the ship faced the risk of losing control of the anchor in winter when strong winds were common. In order to ensure the safety of the ship, the Court actively coordinated with Jiangsu Maritime Bureau and Taicang Maritime Bureau. With the joint efforts of the shipowner and the crew, a tugboat was arranged to be stationed in time to control the anchor. With the Spring Festival approaching, shipowner's delay in paying wages made the crew very anxious. NMC actively calmed the crew and negotiated the plan to pay wages with the shipowner, the shipping agent, the crew-dispatched company and the seizure applicant. So far, Various risks arising from seizing "Gao Cheng 5" were effectively resolved.

#### ***[ Profound Significance ]***

The Yangtze River is the mother river of the Chinese nation, an important strategic water source, ecological treasure and golden waterway in China. In this case, prolonged seizure of the ship carrying dangerous chemicals posed a direct threat to the ecological safety and environmental protection of the Yangtze River waters. NMC gave full play to the "1+10" collaboration mechanism between Jiangsu maritime judicature and administrative law enforcement, and actively sought the support from departments such as the maritime, health and foreign affairs. With the collaboration of the parties involved and assisting departments, the Court eventually eliminated the major hidden peril posed by the dangerous chemicals on board through timely safety management and emergency disposal measures. The case provided a



useful demonstration for the people's courts to prevent and resolve similar risks. In addition to actively practicing good and civilized judicature, safeguarding people's lives and properties as well as preventing safety accidents in accordance with the law, this case also showed effective water protection of the Yangtze River. This case was a concrete practice for the people's courts to provide judicial services for the great protection of the Yangtze River and safeguard the green development of the Yangtze River basin.

【Case No.】 (2020) Jiangsu 72, Enforcement and preservation No.343



**Case 6: Foreign parties who are unable to go through the notarization and identification in time due to the pandemic shall be allowed to apply for an extension to submit their identity documents**

—Jiangsu Xinruiyuan Food Co., Ltd., et al vs. CMA CGM Group, CMA CGM (China) Limited, CNC Line Limited, Cheng Lie Navigation Co., Ltd.

Dispute over contract for carriage of goods at sea

***[ Basic Facts ]***

In May 2019, "ALS JUVENTUS" was carrying several containers of fresh garlic from Lianyungang, China to Surabaya, Indonesia. The bill of lading was issued by CMA CGM (China) Limited, on behalf of the carrier, CMA CGM Group. CNC Line Limited and Cheng Lie Navigation Co., Ltd., on behalf of CMA CGM Group, dealt with relevant affairs during the issuance of the bill of lading and the consignment process. Later, due to improper management by the shipping company, the cargoes involved in the case suffered heat wastes, resulting in losses due to the failure of receiving the payment for the goods of a number of shippers, including Jiangsu Xinruiyuan Food Co., Ltd. (hereinafter referred to as Xinruiyuan). Later, Xinruiyuan and six other companies filed a lawsuit to NMC to claim compensation for the loss of goods.

***[ Judgement Results ]***

The six cases were accepted during the COVID-19 Pandemic. As the cases involved parties whose places of business are in France, Singapore and China Taiwan, the service of judicial documents was difficult. Therefore, NMC searched through judicial big data and contacted the agents ad litem in China who were frequently appointed



by the foreign parties . But since then, the pandemic in foreign countries has greatly affected the notarization of the letter of attorney. In order to guarantee the progress of the case, with the consent of Xinruiyuan and the other five companies, NMC allowed the lawyers to delay the submission of the authentication certificate. CMA CGM Group objected to the jurisdiction of NMC on the grounds that the bill of lading in the case included an agreement that "all disputes over the contract of carriage of goods evidenced by this bill of lading shall be subject to the jurisdiction of the Commercial Court of Marseille, France". In the process of waiting for the notarial certification, NMC promptly mediated between the parties and guided the parties to clearly understand the attribution of liabilities. After mediation, the parties reached a consensus that the disputes would be settled by negotiation between CMA CGM Group and the adverse parties. In July 2020, CMA CGM Group submitted the notarial certificate of the letter of attorney and agreed to accept the jurisdiction of NMC. After several online exchanges of evidence and online mediations, a mediation agreement was finally reached to settle the six disputes "in a single package".

### ***[ Profound Significance ]***

This series of case involving many parties and complicated legal relationships are typical cases involving foreign elements, "Belt and Road" countries and pilot free trade zones. In handling of these cases, NMC adopted a proactive and flexible approach to service, allowing foreign parties to postpone the submission of relevant notarization and authentication documents, to address the difficulties in service of judicial documents, notarization and authentication in the cases involving foreign elements during the pandemic. This innovative judicial practice has been recognized by the later issued Guiding



Opinions of the Supreme People's Court on Several Issues Concerning Properly Handling Civil Cases Related to COVID-19 Epidemic in Accordance with the Law (III). During the process of the case, NMC upheld the equal protection and won the trust of foreign parties with fair, professional and dedicated performance as well as convenient and efficient judicial services. The French parties accepted the jurisdiction of NMC over the series of cases and finally reached a mediation agreement to assume liabilities with Xinruiyuan and the other five companies. These cases demonstrated a good image of Chinese maritime courts as fair, efficient and professional, which were vivid practices of NMC to build a preferred place for maritime litigation and develop an international and convenient business environment with rule of law.

**【Case No.】** (2020) Jiangsu 72, Civil Case First Instance No.177





**Case 7: The "relevant authority" under the Civil Code to prove the impossibility of survival of a natural person shall be reasonably determined under certain conditions**

—Xu Xx's application for declaring Wang Xx dead

**[ Basic Facts ]**

Xu Xx and Wang Xx are husband and wife, both villagers of Mazhuang Village, Haitou Town, Ganyu District, Lianyungang. On 15 April 2021, Wang Xx was hired by Yan Xx, villager of Haiqian Village, Haitou Town, Ganyu District, to carry out fishing operations on the fishing boat "SuGanYu 03789" in bad weather. The fishing boat capsized, five people, including the owner of the boat Yan Xx, fell into the water and disappeared. After search and rescue, only one crew member's body was retrieved. The other people on the boat, including Wang Xx, were not found. In July 2021, the villagers' committee of Mazhuang village where Wang Xx belonged, the villagers' committee of Haiqian village where Yan Xx was located, Haitou Town Fishery Supervision Detachment and Haitou Town People's Government issued a certificate that given the special environment, time, location, environment and search and rescue, Wang Xx was unlikely to survive. On 21 July 2021, Xu Xx applied to NMC to declare Wang Xx dead.

**[ Judgement Results ]**

NMC accepted the case, visited and investigated the villages where respectively Wang Xx, Yan Xx belonged, asked for relevant information from one-stop centre for resolving fishing-related conflicts, checked the authenticity of the relevant certificates issued by the villagers' committees and town government. On August 3, 2021, NMC found an announcement in the People's Court Daily for searching Wang



Xx. After the expiry of the statutory notice period of three months, NMC organized a hearing in November 2021, still no news of Wang Xx. Accordingly, in accordance with Article 46 of the Civil Code of the People's Republic of China and Article 185 of the Civil Procedure Law of the People's Republic of China on the declaration of death of natural persons, Wang Xx was declared dead in accordance with the law.

**[ Profound Significance ]**

Marine fishing is a publicly recognized high-risk industry. It usually covers multiple production spots in a wide area, requires a long period and is subject to the catastrophic marine weather. Once a major marine accident such as a ship capsizing occurs, there is little chance of crew members' survival after falling overboard. The case was a typical application for a special procedure to declare the death of a natural person due to an accident in which the whereabouts were unknown. During the trial of the case, NMC, through many visits and in-depth investigation of the objective reality of local fishery production, reasonably interpreted the scope of "relevant authorities" as stipulated in Article 46(2) of the Civil Code of the People's Republic of China, which was not limited to the commonly perceived departments such as marine police and public security, but expanded to the village committee, primary-level people's government, fishery supervision department and fishery production institutions that were aware of the accident. NMC has thus determined that the certificate of impossibility of survival issued by the aforementioned authorities is legally valid, has confirmed that the application for declaration of death is not limited to two years in accordance with the law, and has declared the death in accordance with the law after the expiry of the notice period,



so as to protect the rights of the respondent's next of kin such as right relief and handling legal relations including claims, debts and identity. This also demonstrated the support for social and economic stability.

【Case No.】 (2021) Jiangsu 72, Civil Case First Instance No.59



**Case 8: The port operator should put up clear safety warning signs and appoint specially-assigned person manage safety in the operating area**

—Ding Xx vs. Lu Xx, Qidong Huaxiang Construction Upholstery  
Materials Co.,Ltd.

Dispute over compensation for personal injury in port operations

***[ Basic Facts ]***

On 31 March 2021, Ding Xx drove the cargo ship "Su Tongyuan Cargo 8588" to dock at the Huajiang Wharf in LvSIGANG Town, Qidong. Huaxiang Company arranged for Lu Xx, who held a crane operating certificate, to operate the crane to unload the yellow sand carried by the cargo ship. At the end of the unloading operation, Ding Xx was injured heavily when he was knocked down by the crane balance weight. After the accident, the People's Government of LvSIGANG Town, Qidong City, issued an administrative penalty decision to Huaxiang Company on the grounds that Huaxiang Company's failure to set up obvious safety warning signs on the production and operation sites with greater risk factors as well as related facilities and equipment, which violated the safety production law and relevant codes of practice. Thus, the government decided to impose an administrative penalty of RMB 15,000. The injury of Ding Xx in hospital incurred accumulated medical expenses of RMB 637,775.46, of which Huaxiang company advanced RMB 250,000. Later, Ding Xx sued to NMC, requesting that Huaxiang Company be ordered to pay RMB 387,775.46, the remaining medical expenses incurred.

***[ Judgement Results ]***

NMC, after hearing the case, held that Huaxiang Company, as a port operator, did not set up obvious safety warning signs in the operating



area and on the operating equipment, or arrange for anyone to manage safety in the operating area, which meant its failure to fulfill safety management obligations, and that the company was at fault for the loss of Ding Xx. Thus, the company should bear the responsibility for compensation. Ding Xx, knowing that the loading and unloading operation was underway, entered the operating area without permission. When he was out of the crane driver's sight, he didn't pay attention to the moving crane, or fulfill duty of care on his own safety, leading to the occurrence of danger. He was also at fault for his own injuries. Thus, the Huaxiang Company's compensation responsibility can be mitigated. Considering the fault and responsibility of the two parties in the accident, it was determined that the Huaxiang Company was liable for the 60% of the loss caused by the accident, Ding Xx was liable for the 40%. After the first trial, the parties did not appeal.

### ***[ Profound Significance ]***

Jiangsu is a major port province, with a number of indicators, such as port cargo handling capacity, the number of over-10,000-ton berths, cargo throughput and the number of 100-million-ton large ports, ranking first in China. Due to the complexity and continuity of port operations, serious accidents can easily occur during the port operations. In particular, a large number of accidents involving machinery injuries are caused by irregular operations, so the safety of port operations needs urgent attention. This case is a typical case of disputes over personal injury occurred during loading and unloading of port cargo. By reasonably defining the work contents and work duties of the operators and determining in accordance with the law the division of responsibility for the accident based on the fulfillment of



obligations by all parties, NMC has played a guiding and exemplary role in promoting port operation subjects to strictly comply with the safety production management regulations over the operation and safe production, ensuring the safe and healthy development of port enterprises.

**【Case No.】** (2021) Jiangsu 72, Civil Case First Instance No.683



## Case 9: Reinforcing civilized execution of cases and minimizing the interference in business activities

—Execution of Tongde Ship Building & Repairing Co., Ltd. serial cases

### **[ Basic Facts ]**

At the end of 2020, affected by the fluctuation of the international shipping market, Tongde Ship Building & Repairing Co., Ltd. ("Tongde Company" for short) faced serious difficulties. Then its capital chain rupture led to a series of contract disputes over ship materials, ship construction and labour. The related parties reached a settlement agreement during the trial. Later, as Tongde Company failed to fulfill its legal obligations in accordance with the civil mediation in force, the applicants applied to NMC for forcible execution, with the total amount applied for reaching over RMB 20 million.

### **[ Execution Results ]**

During the execution of cases, NMC was fully aware of the recent dilemma of the shipbuilding industry. Provincial research showed, Tongde Company had not been involved in any lawsuit for more than 20 years since its establishment. Now it had no deposits, real estate and other properties for execution. In order to both help the private shipbuilding enterprises to overcome the difficulties and protect applicants' legitimate rights and interests, NMC decided to carry out the centralized execution method in Nantong by visiting relevant local enterprises, holding creditors' meetings, and offsetting debts in objects, using execution guarantees. Eventually, NMC achieved the "package" solution that "prioritizes the assistance to the applicant in cases involving people's livelihood, guarantees the execution of small-



target cases in place at one time, reaches the settlement agreement for large-target cases".

### **[ Profound Significance ]**

Jiangsu is a major shipbuilding province with a 100-billion shipbuilding industry, accounting for nearly half of the country's yearly shipbuilding capacity. Private shipbuilding enterprises are important roles in promoting the rapid development of the shipbuilding industry. A proper execution of Tongde case is not only related to whether the legitimate rights and interests of creditors can be fulfilled in time, but also to whether the private shipbuilding enterprises can reduce their losses and tide over the difficulties. NMC gave full play to its provincial jurisdiction and carried out region-focused execution through careful research, scientific screening and precise implementation, effectively avoiding the waste of judicial resources in these execution. Meanwhile, NMC actively implemented civilized execution, strengthened the responsibility of the applicant to provide property clues, facilitated the parties involved in the case to reach a settlement agreement, and relieved the pressure of debt for the "honest and unfortunate" executed enterprises in accordance with the law. NMC demonstrates the important role of maritime judicature in safeguarding the business environment and accurately facilitate a healthy development of private enterprises.

**[Case No.]** (2020) Jiangsu 72 Execution Case No.106, 108, 116, (2021) Jiangsu 72 Execution Case No.31, 32, 157, 233, 234, 235, 236





**Case 10: Foreign arbitral awards shall be recognized and enforced where there is no refusal of recognition and enforcement in accordance with international treaties concluded by China**

——Application for recognition and enforcement of foreign arbitral awards by NHE Shipping Co., Ltd. and Jiangsu Sihairong Import & Export Co., Ltd.

**[ Basic Facts ]**

On 29 September 2019, Panamanian NHE Shipping Company (hereinafter referred to as "NHE") and Jiangsu Sihairong Import & Export Co., Ltd. (hereinafter referred to as "Sihairong Company") signed the Charter Confirmation, agreeing that Sihairong Company would charter NHE's vessel Hailan to transport a batch of goods. Later, NHE initiated arbitration in London, UK for disputes over the aforementioned Charter Confirmation. On 23 June 2020, arbitrator Ian Gaunt rendered an arbitral award in relation to the disputes over the Charter Confirmation for the vessel "Hailan ZhiHeng". On 1 July 2020, Ian Gaunt issued a Correction Memorandum of the Arbitral Award, which corrected the arbitral award in relation to the time of the signing of the Charter Confirmation. Afterwards, NHE appealed to NMC for the recognition and enforcement of the arbitral award as Sihairong Company failed to perform its obligations as determined by the arbitral award.

**[ Judgement Results ]**

After examination, NMC held that both the UK and China are parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the "New York



Convention"). According to Article 5 of the New York Convention, conditions under which refusal to recognize and enforce a foreign arbitral award can be divided into two categories: first, the respondent is required to request and provide evidence, including the invalidity of the arbitration agreement; second, the court takes the initiative to review according to its functions and powers, including non-arbitrable disputes and violation of the public policy of the place where the court is located. In this case, the respondent, Sihairong Company, did not appear before the court for defence and cross-examination, did not raise objections to the validity of the arbitration agreement in question, the appointment of the arbitrators, the super-adjudication of the award, the composition of the arbitral tribunal and the arbitration procedure, did not submit evidence to prove that the aforementioned matters were defective, and did not raise the defence to refuse recognition and enforcement. In view of the fact that the arbitral award involved a dispute arising from the performance of the charter contract, which was a contractual commercial legal relationship between equal subjects, and the parties had the right to choose to settle the dispute by arbitration, which did not violate the public policy of China's society, it was ruled that the foreign arbitral award in question was recognized and enforced.

**[ Profound Significance ]**

Arbitration is an internationally accepted way to resolve disputes. For its features such as party autonomy, expert adjudication, finality, efficiency and flexibility, and strong international enforcement, it is favoured by enterprises and has become one of the main ways for market players to resolve cross-border commercial disputes. Recognition and enforcement of foreign arbitral awards is a practice



of China's judicial organs to recognize and implement foreign arbitral awards by applying relevant laws, an important manifestation of the State's exercise of judicial sovereignty, and is of great significance in both promoting international economic and trade development and creating a stable, fair, transparent and predictable business environment based on the rule of law. This case is the first case of recognition and enforcement of foreign arbitral awards heard by NMC. During the trial of the case, NMC accurately applied the provisions of the New York Convention on the basis of ascertaining the facts of the case, and recognized and enforced the arbitral award in question, protecting the legitimate rights and interests of Chinese and foreign parties equally. The trial of this case is conducive to enhancing the recognition and trust of foreign enterprises in China's business environment based on the rule of law.

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