Part I:

Trial Work About the Guarantee of the Integrated Development of the Yangtze River Delta With Service

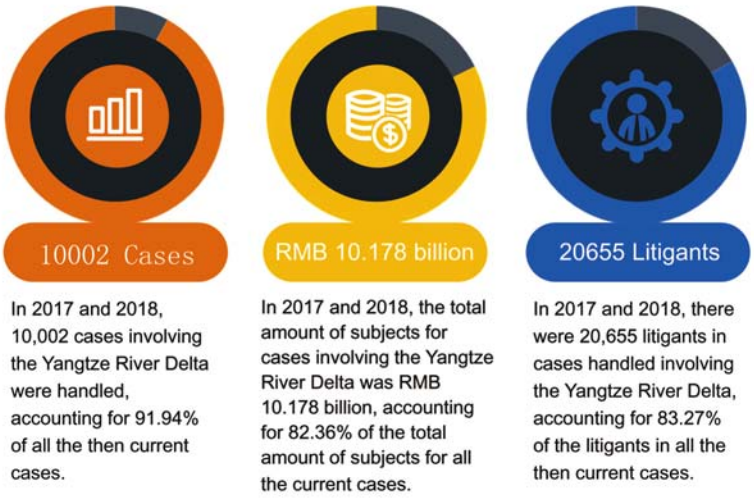
In July 2019, the *Outline of the Integrated Development Plan for the Yangtze River Delta* was enacted, marking a new phase of the comprehensive enhancement of the integrated development of the Yangtze River Delta. Implementing the national strategy of the integrated development of the Yangtze River Delta and leverage the functions and leading role of Shanghai as a core city is a major event in the economic and social development of Shanghai, as well as the key work of the Shanghai Maritime Court by surrounding the center and serving the overall situation.

Ⅰ. Overview of the Trial Work About the Guarantee of the Integrated Development of the Yangtze River Delta With Service

Located in the center of the Yangtze River Delta and as a key hub for sea, land, and air transportation, the Shanghai Maritime Court has handled a large number of maritime disputes involving the Yangtze River Delta. The main demonstrations are as follows:

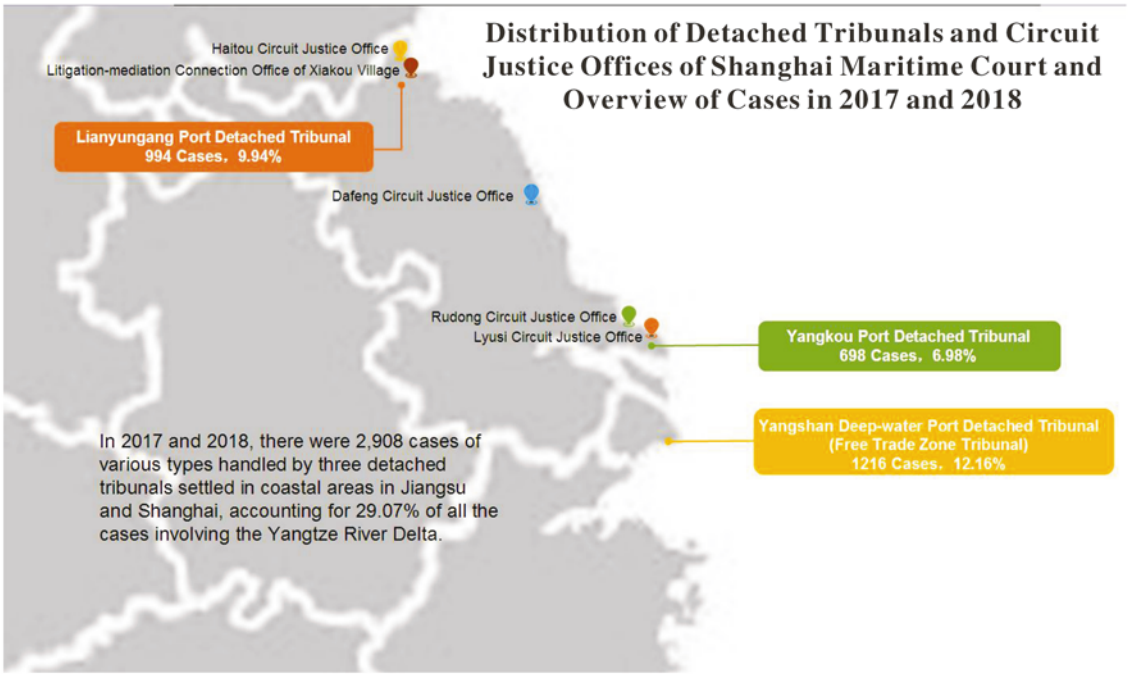
–Among the cases handled, cases involving the three provinces and one city of the Yangtze River Delta accounted for 91.94% of the all cases, and the amount of subjects in such cases accounted for 82.36% of the total amount of subjects in all the cases.

Among the cases handled between 2017 and 2018, there were 10,002 cases of various types involving parties in Shanghai, Jiangsu, Zhejiang, and Anhui, accounting for 91.94% of all the then current cases handled; the total amount of subjects in cases of various types reached RMB 10.178 billion, accounting for 82.36% of the total amount of subjects in all the then current cases.



– Cases involving the three provinces and one city of the Yangtze River Delta handled locally by detached tribunals accounted for 29.07% of all the cases of the Yangtze River Delta.

The Shanghai Maritime Court has established the Dispatched Tribunal of Lianyungang Port and the Dispatched Tribunal of Yangkou Port. in Jiangsu Province, and Yangshan Deep-water Port Detached Tribunal in the Shanghai Free Trade Zone (Free Trade Zone Tribunal), and has established circuit justice offices, justice bases, justice work stations, and litigation-mediation connection studios in a number of key coastal ports, all of which are jointly working as front ends that serve the development of key coastal ports and efficiently solve disputes locally. Between 2017 and 2018, there were 2,908 cases solved locally by detached tribunals and circuit justice offices, accounting for 29.07% of the total cases in the Yangtze River Delta.



– The proportion of maritime freight forwarding contract disputes and maritime freight contract disputes directly related to the sea, land, and air collecting and distributing system to all the cases is the highest.

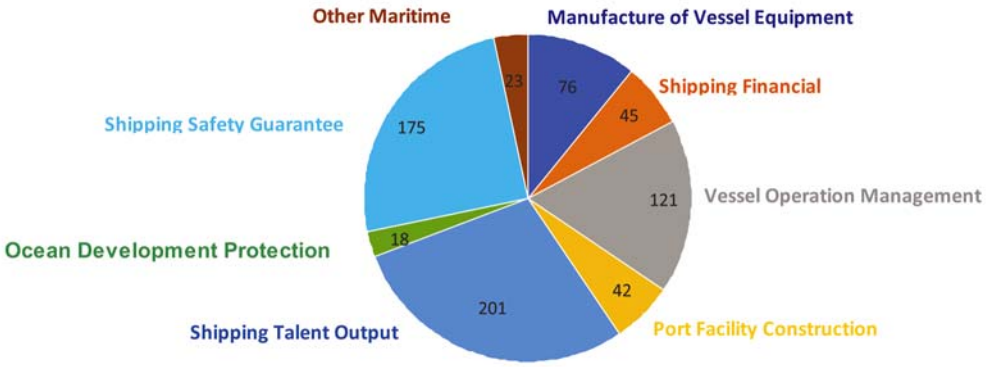
The collecting and distributing system connecting the surrounding railways, highways, and air transportation with the Shanghai Port and the surrounding ports as the center has achieved the smooth operation of import and export trade and domestic trade transportation in Southeast areas. Between 2017 and 2018, there were 6,436 maritime freight forwarding contract dispute cases and 875 maritime freight contract dispute cases respectively related thereto, accounting for 73.10% of all the cases involving the Yangtze River Delta, being the major type of cases.

– There are also cases of types other than cases directly related to the collecting and distributing system, covering all key fields of oceanic economic development.

In first trial maritime cases, cases related to shipping financial services, vessel equipment manufacture, vessel operation management, port infrastructure construction, shipping professional talent output, voyage safety guarantee, oceanic resource development, and protection and other maritime disputes, etc. that are closely related to port shipping operation development in the Yangtze River Delta have appeared in the judicial practice in the recent two years. The number and proportion of cases of each major type are shown in the figure below.

Distribution of Cases Involving the Yangtze River Delta Handled in 2017 and 2018

(Except maritime transport and freight forwarding cases;unit:case)



Ⅱ. Key Initiatives to Guarantee the Integrated Development of the Yangtze River Delta With Service

（Ⅰ）Connect the strategy for the integrated development of the Yangtze River Delta, and lead court development with planning

In response to the *Outline on the Integrated Development Plan for the Yangtze River Delta*, and the corresponding implementation plan, the Shanghai Maritime Court has formulated and enacted the *Opinions on the Work for the Guarantee of the Integrated Development of the Yangtze River Delta with Service*, to guide court development with policies first, to actively meet task requirements for the integrated port-shipping coordinated development in the Yangtze River Delta, and to provide specific and clear guidance for court work from fulfilling trial duties, upgrading litigation services, strengthening regional judicial cooperation, promoting judicial discussions and exchanges, promoting regional data sharing, etc.

（Ⅱ）Guide the healthy development of the industry within the region, and create a transparent, stable, and fair business environment

Adhere to the demands for the building of key industry development clusters such as shipping finance, cruise operation, shipbuilding, etc. in the maritime field in the Yangtze River Delta, actively plan new initiatives for judicial services, and help import and export enterprises to properly solve conflicts and disputes and cope with operating risks. Normalize the release of typical cases, send judicial suggestions, and provide emerging business conducts and trading patterns with reasonable judicial

expectations. Promote generalized authorization, contractual delivery address terms, on-line mediation, remote court hearings, and other initiatives, to facilitate market players to conduct litigation activities. Formulate review work guidelines for foreign-related evidence and jurisdictional objection, make efforts to improve the efficiency of trial power operation, reduce the time cost of dispute resolution, and try to create a transparent, stable, and fair business environment.

(Ⅲ) Lead Informatization with rules, and join hands to ensure a safe and unobstructed hub port area

Through efficiently solving maritime cases related to navigation safety, summarize the problems highlighted in the feedback trial, ensure the efficient operation of the distributing and collecting system of the Yangtze River Delta, and join hands to create a safe and unobstructed hub port area. For ship collision and other cases that are quite professional which happen in port and shipping operations, summarize the characteristics of such cases, release white papers on the trial of ship collision cases and navigation safety, and apply ship collision trajectories, accident site sea charts, case data chart presentations, and other forms to highlight problems found in trial activities and reduce the occurrence of accidents of the same types. Conduct the research and development of the ship big data analysis system, and realize data exchange with the Maritime Safety Administration and other relevant departments, as a hardware support that ensures the efficient operation of trial work.

(Ⅳ) Strengthen judicial coordination in the Yangtze River Delta and jointly provide efficient judicial services

Adhere to the practical demand of building a Yangtze River Delta urban cluster and strengthen the regional integrated cooperation, and actively promote the coordination of maritime dispute resolution resources in the Yangtze River Delta. Judicial cooperation agreements have been signed with the Lianyungang Intermediate People's Court, the Yancheng Intermediate People's Court, the Nantong Intermediate People's Court, etc., to carry out deeper judicial cooperation in the Yangtze River Delta. Work with courts, Party committee governments, and law enforcement agencies of the Yangtze River Delta to carry out seminars on legal issues in the Yangtze River Delta, law publicity and education, and other activities, so as to promote the unification of law enforcement standards and harmony and stability of the society in the Yangtze River Delta. Accelerate the reform of cross-regional litigation services, and cooperate with other maritime courts to carry out cross-regional maritime litigation practice, and promote cross-regional handling of litigation services and cross-level joint handling. Establish a "one-stop" dispute resolution work station for litigation, mediation, and arbitration in the headquarters of the Court, carry out the "people mediation + judicial confirmation" litigation-mediation connection work in key coastal ports, integrate various litigation service resources, and improve a diversified dispute resolution mechanism in line with the characteristics and needs of maritime trials.

(Ⅴ) Build a high-end think tank for shipping law research, and integrate regional marine law research forces

Give full play to the advantages of rich practice and research resources in the

Yangtze River Delta, work with local colleges and institutions in Shanghai, actively build a convergent seminar platform, listen to various opinions and suggestions inside and outside the industry, and provide support for resolving maritime law issues in the Yangtze River Delta. Engage experts with profound academic attainments and rich experience in the maritime field as special consultants and expert jurors, and give full play to the positive role of the experts as "external brains" in assisting judicial decision-making, making judgments on difficult problems, and other aspects. Deepen the sharing of industry, academic, and research resources with colleges and institutes, and organize research and investigation activities in various forms from time to time. Invite renowned experts and scholars and senior judges to conduct business training, assist in judicial work with shipping law research, and promote shipping law research with trial activities, so as to jointly resolve forefront issues arising from the development of the port and shipping industry and open-up exchange in the Yangtze River Delta.

(Ⅵ) **Unblock the international and domestic communication bridge, and build a business card for justice exchange of the Yangtze River Delta**

Follow the pace of the opening-up of the Yangtze River Delta, actively participate in foreign exchange activities, enhance the understanding and trust of overseas entities in China's maritime justice, and create a more attractive investment and business environment for the Yangtze River Delta. Judges have been sent to participate in JPRI and the International Maritime Arbitration Seminar and other international academic conferences, and delegations from Panama, the United States, Japan, South Korea, etc. have been received to visit the Court, so as to show the development achievements of China's maritime trial work and create a business card

for foreign exchanges of the Yangtze River Delta. Work with the Tulane University Maritime Law Research Center, to establish a column on the website of the Center to publish maritime trial cases of this Court and inform maritime trials of this Court, so as to open a window of maritime trials to the outside world.

(Ⅶ) **Integrate information technology and trial work in an in-depth manner, and build a prototype room for the construction of a smart court**

Adhere to the "Internet + maritime trial" informatization development model, make efforts to build a "prototype room" of a smart maritime court, and promote the overall enhancement of the performance of maritime judicial services in the Yangtze River Delta. Conduct the research and development of a maritime case intelligent case handling assistance system and on-line intelligent maritime litigation system, ship data analysis system and its on-line operation, and carry out on-line case registration, on-line mediation, on-line auction, remote trial, mobile case handling, on-line litigation, etc., to meet remote litigation, mobile case handling, and open full-process of maritime disputes in the Yangtze River Delta, provide comprehensive and convenient intelligent assistance for judges that handle the cases, provide parties to the cases with on-line full-process litigation services, start up a new path for maritime trial specialization and intelligent development, and upgrade the Court's capabilities in intelligent case handling and litigation services in all aspects.

Ⅲ. Notable Problems and Suggestions in the Guarantee of the Integrated Development of the Yangtze River Delta With Service

(Ⅰ) The number of multi-modal cargo damage dispute cases has increased significantly

The Shanghai Port is a key hub port in the central and eastern regions. With the promotion of "the Belt and Road" initiative, the role of the Shanghai Port in the collection and distribution system of the Yangtze River Delta has been leveraged, freight business by land, rail, and air via sea passages to Central Europe, the Middle East, and Central Asia and other landlocked countries has grown quickly, and the number of multi-modal freight damage cases has increased. Such cases have the following characteristics: first, the whole-process operator of multi-modal transport is likely to be sued. Generally, in multi-modal transport cases, a large-scale Chinese maritime transport group issues full-process ocean bill of ladings or other sea transportation documents as a multi-modal transport operator. After the goods are transported by sea to the coastal port near the inland destination, they are then transported by a local railway or road transportation to complete the transportation

business of the inland section. When cargo damage occurs in the inland section, the cargo party often chooses to claim against the full-process operator of the multi-modal transport operator from the litigation cost, and the domestic shipping company thus faces a higher risk of being sued. Second, there are outstanding law application issues. In the inland section, transportation often crosses borders of multiple countries, and laws and regulations on the adjustment of road and rail transportation of various countries vary; besides, international conventions on admittance also vary. As a result, disputes often arise from the choice of the governing law. Especially when it is difficult to accurately identify the country where the damage occurs, the issue of law application becomes more prominent. Third, whether the cause of the cargo damage constitutes a force majeure is controversial. The cause of cargo damage in such cases is usually related to the state of transportation infrastructure in relevant countries. For instance, mountain roads may be extremely bumpy, railroad bed settlement may collapse, etc., which will cause vehicle overturn, and most of such accidents are mixed with climatic factors such as rain, snow, ice, etc. Thus, whether the cause of cargo damage is force majeure becomes the focus of controversy that the parties are concerned about. Fourth, it is quite difficult to find facts of such cases. Since cargo damage accidents occur abroad and occur during the transportation conducted by road and railway carriers, whether the Plaintiff's cargo party and insurer or the Defendant's whole-process transport operator does not directly master relevant evidence. Thus, the cause of the accident, the degree of loss, the reasonableness of derogation measures, and other key facts are difficult to review, and the trial period is generally long.

In respective of the features aforesaid, we recommend that foreign multimodal transport contracts, especially the parties thereof related to the whole process of logistic service, shall make better efforts to research and understand the legal systems of related countries and the sectional responsibilities of each transportation mold. Careful discussion and agreement shall be made on precise provisions covering governing law, dispute resolution, jurisdiction and delivery addresses before the contract is entered, in order to avoid unnecessary procedure disputes that may arise from any potential controversy. It's important to acquire full understanding of the characteristics of the

infrastructure, geological environment and natural conditions of each transportation section, and to negotiate on disclaimer subject or loss allocation in a fair and reasonable manner. The liability insurance, cargo transportation insurance and other insurance tools shall be properly obtained to spread risks. The operators of multimodal transport shall select partners of different sections with prudence, and minimize the actual carrier's control and the damage rate of goods during transportation. In the event that cargo damage occurs, the obligee of goods shall take necessary steps to acquire and retain materials related to the accident causes, the status and extent of cargo damage in order to avoid unsuccessful claims due to insufficient evidence.

(Ⅱ) A number of weak links exposed in disputes related to "Sending Grain From North to South" need improving

Due to the advantages of bulk grain container transportation such as stable transportation capacity, relatively low transportation price, easy sea-rail transportation, etc., in the domestic transportation of "Sending Grain From North to South", it has been gradually replacing the traditional bulk transportation. In the trial of relevant cases, this Court finds that there are many weak links in domestic bulk food container transportation, which should be paid great attention to. First, overweight packing and improper packing often cause "container explosion". In order to load more goods and reduce costs, shippers use inverted containers and then pack the containers by filling them with conveyor belts. This method ignores food breathing, swelling after water absorption, loading volume ratio, and other issues, and does not use bullet seals, wire seals, and other special container sealing techniques, significantly increasing the risk of "container explosion" in the process of transportation. Second, carriers fail to take effective measures in weight limitation supervision, inland transshipment, and subsequent remediation. When the carrier transports overweight containers without knowing the weight of the container, transportation safety risk occurs; when bulk grain is transported by sea to inland barges, some carriers fail to effectively supervise the inland barges, as a result of which goods are likely to be lost or in shortage; after "container explosion" or any other accident happens, the carrier entrusts a third party with cargo re-scanning and inventory check, no effective supervision can be conducted, as a result of which

container scanning becomes a mere formality in the form with evident shortage. Third, the insurance popularizing rate is low, and carriers are assuming great compensation pressure. As insurance premiums for bulk grain transportation are low, and cargo damage and cargo shortage occur frequently and the causes are difficult to discover, the popularizing rate of this type of insurance is low. Once there is any cargo damage or cargo shortage dispute, the carrier often becomes the first object of claim, assuming great compensation pressure.

As for the problems found in the trial of cases of domestic trade for bulk grain container transportation, it is suggested that the carrier should strengthen reasonable and standardized packing supervision, inform the shipper of the reasonable packing weight, and the relevant legal risks that may arise from overweight containers once "container explosion" occurs, and reduce the occurrence of "container explosion" and other accidents; strengthen the supervision of cargo receipt, transshipment, and subsequent regulation, and prohibit overweight containers from being loaded; strengthen the supervision of inland river barges to prevent the occurrence of cargo loss and theft, and strengthen the supervision of third-party re-scanning and inventory check and prevent container scanning from becoming a mere formality and avoid any relevant legal risks of carriers under stop-loss obligations; enhance the popularizing rate of food transportation insurance and liability insurance, reduce litigation risks, and reduce compensation pressure.

(Ⅲ) False declaration of dangerous goods transported by sea needs to be paid attention to urgently.

In sea cargo transportation, it is commonly seen that shippers falsely declare dangerous goods, bringing about great hidden dangers to ships, crew members, and shipborne cargo. Especially when any major accident happens in a large-scale hub port represented by the Shanghai Port, the operating efficiency of the entire hub may be affected. In previous investigations and interviews, shipping and port operating enterprises have responded strongly to this issue. Recently, the Court has handled a number of cases arising from the concealment of dangerous goods, mainly involving exported fireworks, chemical products, etc. Shippers or freight forwarding companies may have fluke mind, and thus declare common goods that actually should be declared

as dangerous goods to save freight. The shipping parties are not aware of the actual situation of the goods, and thus fail to take isolation, ventilation, cooling, and other necessary measures during transportation and also fail to patrol and monitor in time, which is likely to cause accidents. Explosion, spontaneous combustion, and other accidents in some cases have also posed serious threats to the safety of ships, crew members, and shipborne cargo, resulting in salvage costs, shipping schedule losses, and huge losses in other cargo damage as well as a series of chain reactions due to shipping schedule delays. In the handling of some cases, it is often difficult to provide evidence to prove the facts; in some other cases, dangerous goods are found to be inconsistent in inspection, resulting in disputes related to the assumption of liquidated damages claimed by carriers and other losses among shippers, freight forwarders, etc. It should be pointed out that as dangerous goods to which accidents happen or dangerous goods that are found in inspection are only a part of the concealed dangerous goods, it is possible that a large quantity of goods continue to be released by this fraudulent means, posing potential hidden dangers that affect navigation safety, and similar disputes will continue to occur.

According to the statistics, hazardous articles currently account for 5% –10% in container transportation. This means a container vessel with 8000 standard containers may carry 400–800 containers of hazardous articles. Every department of the marine transportation, therefore, shall attach more importance to and enhance management over this issue, especially the management and supervision over the consignors and the ship owners as the the main responsible parties. More attention shall be paid to false statement of hazardous articles appeared in marine transportation and any stowage violating regulations by the carriers. Marine courts will establish clear judicial guidance by making the law breakers take all civil liabilities for compensation. Meanwhile, hazardous articles in sea transportation often cause serious pollution cases. Based on the reality of marine pollution, we recommend related departments to strengthen protection of the marine ecological environment by further improving criminal legislation and law-enforcement.

(Ⅳ) **There are several difficulties in cargo damage disputes involved in the transportation of imported auto parts.**

With the development of the automobile industry, more and more automobile manufacturers have set up production bases in the Yangtze River Delta, and there are more and more imported auto parts transported via the Shanghai Port. Correspondingly, sea cargo transport contract dispute cases related to imported auto part cargo damage are reflected in trial practice. In some cases where the insurer makes compensation and then sues the carrier by subrogation, some common difficulties have arisen. First, in dispute handling, there is no sufficient authority that issues a cargo damage identification conclusion, which makes it quite difficult to identify the losses. The professional requirements for the identification and evaluation of cargo damage of auto parts are relatively high. In some cases, the identification and evaluation agency states that it is unable to carry out the cargo damage detection for imported auto parts, and the detection agency recommended by the organization is often the manufacturer of the insured, and the conflicts of interest and roles arising therefrom have posed difficulties for the court to determine the degree of cargo damage and the scope of compensation. Second, "ex gratia payment" has occurred from time to time. To maintain the cooperative relationship with big clients, insurance companies are very lenient in the review of claims, and the basis for external claims is usually not adequate, as a result of which it is quite difficult for insurance companies to collect compensation by subrogation. In individual cases, the insurance company even makes compensation for the total loss based on the claims of the insured without any detection and evaluation. Third, the reasonableness of maintenance methods and costs often becomes the focus of controversy. For some auto parts, no domestic manufacturer has the capacity for production and maintenance. Such parts can only be returned to the original manufacturer for maintenance and then re-imported. The maintenance cost plus the second freight cost may exceed the original value of the goods; some parts are found to be unable to be fixed after being returned to the original manufacturer, and whether the import cost should be deemed as expanded losses will be in dispute; for some parts, an alternative maintenance manufacturer can be found in China, and whether export rework should be deemed as a necessary mitigation measure is in question. Fourth, there are many other legal issues involved in the trial of such cases. In addition to resolving the problem of cargo damage in accordance with maritime laws

and regulations, it also involves intellectual property rights, environmental protection, consumer rights and interests, public safety, and other cross-field legal issues to be considered at the same time.

The practical recognition and the accuracy of judicial adjudication need to be further unified concerning the problems aforesaid. Our observation reveals that the majority of consignors or consignees of many lawsuits are famous automobile makers or their affiliates or partners, while most of the carriers thereof are shipping companies well-known at home and abroad. Both parties in such cases have substantially equal bargaining positions and negotiating ability. For this reason, we recommend that the appraisal agency, standard and methods of cargo damage shall be discussed and agreed upon clearly in advance when making contracts, especially long-term or volume contracts. If such conditions do not exist, the cargo party shall be careful in its inspection and assessment, determination of repair scheme and disposal of remaining goods, thus to be able to inform the carriers to participate or require them to provide better resolutions with necessary evidence. It must be avoided by all means that unilateral actions are taken before informing the opposite parties, because this will result in the non-confirmation of the responsible party when final claims are made and lead to the re-inspetion and re-assessment impossible to be implemented. When the carrier waives or is negligent to exercise its rights aforesaid in any reasonable period, the disposal made by the cargo party may have the preponderance of evidence and thus reduce the disputes and risks that its claims may be confronted with.

Part Ⅱ:

Typical Cases of Maritime Disputes Involving the Yangtze River Delta

In recent years, the Shanghai Maritime Court has given full play to maritime trial functions, handled a large number of maritime disputes arising from the economic development of the Yangtze River Delta, timely and effectively protected the legitimate rights and interests of all parties, and formed a batch of cases with reference values. The following are ten representative typical cases that reflect new problems and new situations in port and shipping development, shipbuilding, cruise operation, ship insurance financing, oceanic resource development, and utilization and other aspects in the Yangtze River Delta in recent years.

Case 1: The captain should make a decision that is the most beneficial to the avoidance of ship collision or loss reduction as the case may be. Persuasions, warnings, instructions, or commands issued by the Maritime VTS Center shall not exempt the captain from the duties and obligations to abide by the corresponding sailing rules and manage and sail the vessel in accordance with the actual situation of the voyage.

[Basic Facts]

The dispute in the case arose from a collision accident between the ship "Haideyou 9" owned by the Plaintiff and the ship "Zhehai 156" owned by the Defendant on waters of the Changjiang Estuary. When the accident happened, the visibility of the waters dropped to 100-150 meters, and the Command Center of the Shanghai Maritime Bureau issued provisional waterway regulation information. The ship "Zhehai 156" followed the ship "Haideyou 9", sailing on the waters on the northeast side of the D45 buoy light of the Yangtze Estuary. When the ship "Haideyou 9" found the visibility continuously dropped, she continued to sail at a speed of 10 knots. The ship chose to leave the main course for anchorage only after the VTS Center reminded her of the large amounts of fog time and time again. The ship "Zhehai 156" still failed to take safety sailing measures in time even after receiving the reminders from the VTS Center about the speed reduction and anchorage; instead, she continued to sail at a speed of 9.7 knots, following the ship "Haideyou 9". Subsequently, the ship "Zhehai 156" deviated from the main course, constituting a danger and emergency situation of collision between the two ships. The two ships finally collided with each other and were damaged to different degrees.

According to the investigation and analysis conducted by the Chongming Maritime Safety Administration, the two ships failed to observe the action rules for ships under

poor visibility, failed to sail at a safe speed according to the then environment and circumstance, and failed to make adequate estimation of the collision danger, and took improper emergency measures. The inappropriate emergency measures for the two ships were the main cause of the disputed accident. At the time when the accident happened, the visibility on the waters was low, which was the objective cause of the disputed accident. It was thus ruled that the ship "Zhehai 156" should assume the major liabilities for the accident, and the ship "Haideyou 9" should assume the minor liabilities for it.

The Plaintiff filed a suit to the Court, requesting the ship "Zhehai 156" should be ordered to assume 90% of the liabilities for the disputed accident. The two parties held different opinions on the VTS commands in their claim and defense opinions. The Plaintiff stated that the ship "Zhehai 156" failed to follow the command of the Maritime VTS Center in time, and violated the command and sailing rules many times, which directly caused the formation of the collision emergency and the occurrence of the danger and finally caused the unavoidable collision, and the ship "Zhehai 156" should at least assume 90% of the liabilities for the disputed accident. The Defendant argued that the ship "Zhehai 156" had fully performed its obligation of observation and had foreseen the possibility of collision; however, the disputed accident happened only after the corresponding measures were taken as ordered by the maritime VTS center; thus, the disputed accident happened accidentally, and neither party should assume any liability for it.

Through trial, the Court found that the relevant sailing rules and common practice should not exempt the captain from any of his/her responsibilities for the sailing and safety of the ship under any circumstance, and even if the ship was led by a pilot, the captain should still be responsible for management and sailing. In this case, the visibility at the time when the accident happened, the captain of the disputed ship, as the responsible person for the management and sailing of the ship, should be even more compliant with the corresponding sailing rules, and should ensure safety by commanding the ship with good sailing skills based on the actual situation of the sailing as ordered by the Maritime VTS Center. Commands issued by the Maritime VTS Center are different from the management and specific sailing measures taken by the captain, and shall thus

not exempt the captain from the duties and obligations to abide by the corresponding sailing rules and manage and sail the vessel in accordance with the actual situation of the voyage. In combination with other claim and defense opinions, the Court made a ruling that the ship "Zhehai 156" should assume 75% of the liabilities for the collision accident with the ship "Haideyou 9". Neither the Plaintiff nor the Defendant appealed.

[Typical Significance]

VTS is also known as "Vessel Traffic System". It is a service provided by the administration to improve traffic safety, enhance traffic efficiency, and protect the environment. At Shanghai Port and the surrounding waters with a high density of vessels, the VTS center has vessel dynamic supervision, information navigation aid service, joint action coordination, emergency handling command, and other functions, and plays an important part in piloting for the safe sailing of vessels and enhancing the efficiency of vessels that enter and depart from the ports. Though the sailing instructions sent by the center to vessels seem to be administrative instructions, the decision-making right in sailing will not be transferred due to it. The judgment in this case specifies that when the VTS center conducts supervision and command of a vessel, the captain should make the decision that is the most beneficial to collision avoidance or damage reduction for the vessel as the case may be based on his/her most direct understanding and knowledge of the dynamics of the vessel and the current sea conditions, and should still be responsible for ensuring safe sailing and management.

Case 2: For a passenger personal injury liability dispute case that happens in a public place of a foreign cruise, if no agreement is reached upon the applicable law and there is no common habitual residence, the applicable law shall be determined in accordance with the home port of the cruise and the domicile of the victim based on the principle of the most significant relationship. With the popularization of cruise consumption, it is also reasonable to measure the security obligations of a cruiser with a Chinese port as the home port with the standard for the security obligations of a general public place administrator.

[Basic Facts]

The Plaintiff (7 years old, minor) and his/her mother purchased a tourism product

and took a British cruise to Japan and Korea for sightseeing. When the cruise sailed to high seas, the Plaintiff drowned in a swimming pool of the cruise ship, suffering level-1 disability. The Plaintiff's mother instituted an action to the Court as the legal agent against the cruise company as the Defendant, with the travel agency selling the tour product as the Third Party, claiming that the Defendant should be liable for tort as the Defendant failed to fulfill the security obligations. In the trial of the case, the parties held different opinions on the applicable law and liability assumption for this case.

Through trial, the Court found that as for the law application in this case, the "place of an infringe act" is usually understood as a geographical location directly related to a certain country or a specific scope of law. A cruise is a special transport means for marine traveling and sightseeing, which is often in a dynamic process of marine sailing and does not fall within the scope of geological location. Thus, for a marine personal injury liability dispute that happens on a cruise, generally, the vessel itself shall not be recognized as the place of the infringe act , while the law of the flag state of the vessel shall not equal the law of the place of the infringe act. According to the principle of the most significant relationship, the following connecting points shall be considered in a comprehensive manner: the place where the infringe act happens, the place of the consequence of the infringement, the domicile and habitual residence of the victim, the flag state of the disputed vessel, the nationality of the shipowner, the nationality of the ship operator, the place where the contract is signed, the departure port and destination port of cruise passenger transportation, the place of operation of the Defendant's company, and other connecting points. More connecting points in this case were concentrated in China, which had the most direct and real connection with this case, and all the factors that had the most influence on the legitimate rights and interests of the victim pointed to China. Thus, the applicable law of this case should be determined as the law of the People's Republic of China.

As for the assumption of liabilities in this case, the Defendant failed to refer to the Chinese law in the service and security for tourists and also failed to provide lifeguards or supervisors to patrol around the swimming pool to avoid any drowning accident as prescribed or suggested by relevant British organizations, and thus had obvious fault. Secondly, the Defendant only set up a safety notice beside the swimming pool without

inquiring or preventing any child that entered the swimming pool alone or taking any other effective measures; instead, the staffers took an indulgent and inactive attitude and committed obvious malfeasance in management. Thirdly, the Defendant claimed that it was an international practice that swimming pools on a cruise did not have any lifeguards. However, such practice was not recognized by relevant parties and relevant departments of Britain where the Defendant was located, where the Defendant was located, and was not in line with the practice recommended by relevant British organizations and even violated relevant Chinese laws. Thus, the Court did not accept it. The mother of the Plaintiff, as the Plaintiff's legal guardian, failed to take custody of the minor Plaintiff effectively, and should also be liable for the damage. To sum up, the Court made a ruling that the Defendant should be liable for 80% of the various losses suffered by the Plaintiff. After the judgment was made, neither the Plaintiff nor the Defendant appealed. The judgment for this case has become effective.

[Typical Significance]

As the largest home port for cruises in the Yangtze River Delta, Shanghai Port has attracted a large number of tourists from Shanghai and nearby provinces and cities that travel on board via the Shanghai Port, and is an important landmark of the development of China's cruise tourism industry. With popularization of cruise consumption, cases related to personal injuries that occur on cruise tours have also started to appear in judicial practice. In this case, basic issues related to a personal injury liability dispute that occurs on a cruise are specified with precedents, providing references for cruise operators to improve their operation and management and strengthen risk control in the future. In particular, in accordance with the cognitive level of cruise tour consumers about cruise tourism and security facilities on cruises, it specifies that the security obligations of a cruise with a Chinese port as the home port should be measured based on the security obligations of a general public place administrator, which will play a positive role in reasonably and fully protecting the safety and health of tourists and promoting the long-term development of the cruise industry.

Case 3: In the trial of a shipbuilding contract dispute case, whether the change of market quotation is a change of circumstances should be determined according to the characteristics of the industry, the risk type and degree, etc. Any fluctuation of the ship price caused by any financial crisis should be a commercial risk and should not be deemed a cause of change of circumstances, and no party should claim change of circumstances for it to request the reduction or exemption of contractual liability.

[Basic Facts]

In early 2011, the Third Party Changjiang Shipping Company and the Defendant Eneng Lvhai Company signed a bulk cargo shipbuilding contract, where it was agreed that the Defendant should build eight bulk cargo ships of 6,700 tons for the Third Party, with the method of installment, date of commencement and delivery of shipbuilding for each batch, etc. Subsequently, the Plaintiff Bank of Communications Financial Leasing Co., Ltd., as the finance lease company, signed a shipbuilding contract transfer agreement with the Defendant and the Third Party, where it was specified that the three parties agreed to transfer part of the rights and obligations of the Third Party under the shipbuilding contract to the Plaintiff, to satisfy the need of financing arrangement. Then the parties performed the obligations under the contract as agreed, and the Plaintiff and the Third Party made partial payments to the Defendant successively in accordance with the time of payment agreed upon under the contract.

However, in the subsequent shipbuilding process, the Defendant encountered fund shortage and operation difficulty, and informed the Third Party that the ship price was too low, it was suffering loss in shipbuilding, and other situations many times. Wherein, the building of two bulk cargo ships was shut down, and the building of the ships was not completed as of the time of action; and the Defendant had been in shut-down for a long time, and was unable to build the remaining ships. The Plaintiff and the Third Party believed that the Defendant breached the contract, and claimed that the contract should be terminated according to law and the payment for shipbuilding should be refunded. The Defendant argued that the reason why the disputed ships were not delivered was that the price under the shipbuilding contract was too low, which deviated from the market quotation, and the down payment made by the Third Party was not enough to cover the materials purchase and shipbuilding production and processing costs. Thus, the

Defendant requested that the claims of the Plaintiff should be rejected.

Through trial, the Court found that the contract that was concluded according to law was legally binding on the parties, and the parties should perform their obligations as agreed without changing or terminating the contract at will. In this case, the Defendant should have reasonable judgment and expectation of the risks and earnings in the production and operation activities it was engaged in as an enterprise that had been engaged in shipbuilding for a long time. The Defendant argued that the shutdown of shipbuilding was because the price under the shipbuilding contract was much lower than the market quotation and the down payment was not enough to cover the materials purchase and production and processing costs. However, the Defendant failed to provide any evidence to prove that the foregoing circumstances fell within the scope where the contract could be modified or revoked in accordance with the Contract Law, and the Defendant also failed to obtain the confirmation by the Plaintiff or the Third Party in the course of shipbuilding and the trial of this case. To sum up, the Court made the ruling that the contract should be terminated and the Defendant should refund the payment for shipbuilding. After the first instance judgment was made, no party appealed. The judgment for this case has become effective.

[Typical Significance]

A shipbuilding contract is a typical contract with a long term of performance and a large scope of fluctuation, the fluctuation of the raw materials or equipment price, the shipping market quotation, etc. will dramatically affect the performance of the contract, and the commercial risks are relatively concentrated. The shipbuilding industry of the Yangtze River Delta has formed a certain industry scale and market share. In recent years, the overall environment depression of the industry has been gradually reflected in judicial practice, and market subjects are often involved in disputes resulting from the dramatic decline of the market quotation in contract performance. The judgment of this case specifies a standard for distinguishing commercial risks and change of circumstances in the course of shipbuilding. The limited application of the change of circumstances shall meet essential elements that the objective circumstance is changed, the situation is unforeseeable to the parties, is neither attributable to the party nor attributable to force majeure, the incident happens after the contract is concluded and before it is performed

completely, the continued performance of the contract is obviously unfair, etc. The mere regular fluctuation of the market quotation should be normal fluctuation and risk in commercial operation. Enterprises should control it by strengthening the analysis and anticipation of the market quotation, strictly managing and controlling contract performance, etc.

Case 4: In the identification of foreign-related factors under a foreign-related arbitration agreement, to determine atypical foreign-related factors other than the location of the subject, the location of the subject matter and the place where the legal fact occurs, the judicial sovereignty and autonomy of will should be comprehensively measured, and foreign-related factors not directly related to the disputed fact shall be excluded; meanwhile, a more positive, inclusive, and open judicial concept should be adopted to support international maritime arbitration activities.

[Basic Facts]

The Applicant Almex and the two Respondents Jiachuan Company and Dajin Company signed a shipbuilding contract in China, where the buyer was the Applicant or any party designated by the Applicant, and the seller was the two Respondents. It was agreed under the contract that the disputed ship should be registered with American Bureau of Shipping and built in accordance with special inspection rules and standards of American Bureau of Shipping, the ship should comply with laws and regulations of regulatory institutions of the Marshall Islands, and the shipbuilding cost should be paid in USD. The shipbuilding contract was governed by and interpreted in accordance with British law, and any dispute arising therefrom should be subject to the final arbitration in accordance with arbitration rules of the London Maritime Arbitrators Association in London. The parties otherwise signed a memorandum on that day, agreeing that the buyer should transfer the building contract to an overseas wholly-owned subsidiary established subsequently, and the seller should transfer its rights and obligations under the building contract to an otherwise established overseas wholly-owned single-ship company.

The Applicant claimed that both parties to the disputed contract were domestic Chinese legal persons, the shipbuilding was carried out in China, all legal facts related

to the contract happened in China, and the contract did not involve any foreign factors; thus, it applied for the confirmation of the invalidity of the arbitration clause in the disputed contract. The two Respondents jointly argued that it was agreed under the contract that its effect and interpretation should be governed by and interpreted in accordance with British law, the effect of the arbitration agreement should be recognized in accordance with British arbitration law, the contract involved some foreign factors, and thus they requested that the disputed arbitration agreement should be valid.

Through trial, the Court found that the determination of the nature of a foreign-related civil legal relationship should be subject to lex fori, that is, the law of the People's Republic of China, and when the disputed legal relationship could be recognized as a foreign-related civil relationship in nature, the validity of the disputed arbitration agreement should be governed by British law as explicitly chosen by the parties. Thus, the determination of whether there is any foreign-related factor will decide whether or not the parties have the right to choose the applicable law for the disputed contract, and whether or not they have the right to choose any arbitration agency other than an arbitration agency of China to apply for a dispute settlement through arbitration. The disputed contract was an international shipbuilding contract, there were a number of connection points for the building, handover, classification, and joining the flag state and other contents between the ship and another place outside China. Especially, the flag state of the ship would be the Marshall Islands, which would be based on a company established in the Marshall Islands as a precondition. It was also specified in the contract that the buyer should establish a single ship company before the seller delivered the ship, to receive the disputed ship. All the foregoing factors were sufficient for the recognition that the dispute in this case fell within the scope of "other circumstances where a case can be identified as a foreign-related civil case" stipulated by Chinese law. Thus, the disputed relationship was a foreign-related civil relation. In accordance with the provisions on the identification of the validity of an arbitration agreement under British law, the parties in this case had reached a written arbitration agreement with express meaning related to the disputed arbitration, and each party should treat the agreement it executed in good faith. In the event that the Applicant did not submit any evidence to prove the disputed arbitration agreement had infringed upon

any public interest or had any other circumstances that could result in the invalidity of the agreement, the disputed arbitration agreement should be deemed as valid. To sum up, the Court ruled that the clause of arbitration agreement in the disputed shipbuilding contract was valid. The judgment for this case has become effective.

[Typical Significance]

With the development of the opening-up of the Yangtze River Delta, new cooperation patterns of foreign-related maritime activities have been emerging. The judgment in this case is a typical case for the identification of "atypical foreign-related factors", with certain reference values for the identification of the validity of arbitration agreements in foreign-related cases in the future. As the opening-up of China has been strengthened, there will be more and more foreign-related disputes. Correspondingly, there should be flexible and independent dispute resolution channels available to commercial subjects. The judicial organs should provide sufficient support and guarantee for arbitration activities, aiming at supporting international maritime arbitration and creating a sound legal and business environment, and gradually adopt a more positive, inclusive, and open judicial concept in the identification of the validity of foreign-related arbitration agreements.

Case 5: An action of outsider enforcement objection has the effect of forming enforcement exclusion and confirming entity rights. Such interest of suit will not disappear due to the suspension of the enforcement procedures, and will not lose its value due to the bankruptcy of the person subject to enforcement and the suspension of the enforcement procedures. In the course of trial of an action of outsider enforcement objection, when the person subject to enforcement enters into bankruptcy liquidation procedures, the Court should engage in an entity trial and make a judgment for the case of enforcement objection.

[Basic Facts]

In this case, the Defendant AVIC Leasing sued the other Defendant of this case Jiaolong Heavy Industry etc. to the Court due to a ship finance lease dispute in another case. In the course of judgment and enforcement of the previous case, the ship "Haike 66" that was still in shipbuilding and was berthed in the shipyard of the Defendant

Jiaolong Heavy Industry was seized.

In this case, after the enforcement objection brought forward by the Plaintiff in the course of enforcement was rejected, the Plaintiff otherwise instituted the enforcement objection, claiming that the ship "Haike 66" was a property owned by the Plaintiff. The ship was built by the Defendant Jiaolong Heavy Industry as entrusted by the Plaintiff in February 2012. The shipbuilding contract was terminated as agreed in September 2014, and another ship purchase and sales contract was signed for the purchase. The Plaintiff paid for the ship in full, signed the ship handover statement, and completed the delivery and ownership transfer. The ship has been provisionally registered and obtained the corresponding certificate from the Maritime Department of Singapore, and the name was registered as "Teras Ocean". Thus, the Plaintiff requested the Court to confirm the Plaintiff as the ship owner of the disputed ship, and confirm that no seizure or other enforcement measures should be taken on the disputed ship in relevant enforcement cases. In the trial of this case, the Defendant Jiaolong Heavy Industry was announced bankrupt and entered into liquidation procedures according to law.

The Defendant AVIC Leasing argued that the Plaintiff neither handled the ship ownership registration or obtained the ownership certificate, nor actually occupied the ship, and it thus did not have ownership of the ship. Jiaolong Heavy Industry had entered into the bankruptcy liquidation procedures, and the ship should be taken over by the liquidation team. The enforcement measures could not be carried out anymore, and the action instituted by the Plaintiff had lost the interest of suit and should be rejected. The Defendant AVIC Leasing should not be a party in the case of the confirmation of ship ownership either.

The liquidation team of the Defendant Jiaolong Heavy Industry appointed an agent to participate in the litigation, arguing that the company had entered into the bankruptcy procedures, the Plaintiff should claim the recall right against the bankruptcy administrator first, and its claiming the confirmation of the ship ownership in this case does not comply with the law.

Through trial, the Court found that this case was an action of outsider enforcement objection, and should fall within the scope of civil litigation procedures arising from enforcement procedures yet independent from enforcement procedures. The Plaintiff's

claiming the confirmation of the ownership of the disputed ship and the exclusion of the enforcement measures on the disputed ship based on the exclusive ownership to the enforcement subject matter was for the purpose of defending against the enforcement applicant with its ownership, which complied with the law and still had the interest of suit. The purchase and sales contract of the disputed ship was legal and valid. After delivery, the ownership had been transferred to the Plaintiff. The ship was occupied by the Defendant Jiaolong Heavy Industry to continue with the building work, which did not affect the fact of ownership transfer. Thus, the Plaintiff had already obtained the ownership to the disputed ship, and also had the right to exclude the enforcement on the disputed ship based on the ship ownership. To sum up, it was confirmed in the judgment that the disputed ship was owned by the Plaintiff, and the ship should not be subject to enforcement in enforcement procedures in another case. After the judgment of first instance was made, no party instituted any appeal. The judgment for this case has become effective.

[Typical Significance]

The high-quality development of the Yangtze River Delta needs the active promotion of industry transformation and upgrading. Backward production capacity should be led to withdraw in a legal and orderly manner by bankruptcy liquidation, reorganization and other means, to realize the effective reorganization and redistribution of assets. The dispute in this case is just a litigation connection issue in the course of enterprise withdrawal. As for the connection between outsider enforcement objection and bankruptcy liquidation procedures, it is specified that the outsider enforcement objection litigation is not affected by the suspension of enforcement procedures caused by the bankruptcy of the person subject to enforcement, and judgment rules such as that the outsider enforcement objection litigation has an independent value beyond the enforcement procedures and the "interest of suit" of the outsider enforcement objection litigation will not be diminished due to the suspension of the enforcement procedures are confirmed, and it is actually identified that written delivery is a legal and effective way of transferring the ownership of ships in building. Thus, this case has a certain reference value for the trial of cases of such type.

Case 6: The claim of double insurance contribution is not based on the prerequisite of subrogation right against the liable person, and the conditions to be met shall include: the compensation made by the first indemnifying insurer to the insured person is reasonable and prudent; the contributory insurer is liable for the insured person under the insurance contract; the compensation paid by the first indemnifying insurer exceeds the liability it shall assume under the legal relationship of double insurance.

[Basic Facts]

Acai Company intended to ship a batch of welded pipes from the Xingang Port of China to the Luanda Port of Angola. There was an open policy contract between the Plaintiff Fidelidade and the Defendant Acai Company, where the Plaintiff underwrote the shipping risks of the disputed cargo, Acai Company was the insured person and the insurance condition was "Cargo Insurance-Clause A (C. E. 01)". During the same period, the Defendant C. V. Starr & Co., Inc. also underwrote the transportation risks for the same batch of cargo, and the insured person, insurance subject matter, and insured amount were the same as those recorded in the insurance voucher issued by the Plaintiff, and the type of insurance was the marine cargo transportation all-risk and war insurance clause of The People's Insurance Company (1/1/1981). In addition, there was no "prohibition of other insurance clause," "non-contribution clause", or "ratable proportion clause" in the insurance contract respectively of the plaintiff and the defendant, and there was no arrangement about the consequence of the violation of the double insurance notification obligation.

When the disputed cargo was unloaded at the destination port, the insured person found the cargo was damaged, filed claims against the ship owner on the same day, and informed the Plaintiff and the Defendant of the loss occurrence for the cargo in time. After testing, the loss adjustment company entrusted by the Plaintiff found that the cause of the cargo damage was improper stowing, the Plaintiff then paid the testing cost and insurance compensation in accordance with the amount confirmed under the testing report. In the next year, the Defendant urged the insured person to submit the chartering contract and the power of attorney that allowed the attorney of the Defendant to handle the claim against the carrier issued by the insured person. After it failed, the Defendant notified the insured person that the claim had been rejected.

Subsequently, the Plaintiff notified the Defendant that the disputed cargo was subject to double insurance, requiring the Defendant to contribute to 50% of the insurance compensation, and the Defendant did not pay it. Then the Plaintiff requested the court to order the Defendant to contribute to 50% of the insurance compensation as well as the interest thereof. The Defendant argued that the insurance applicant and the insured person did not provide the Defendant with certificates and materials related to the insurance accident so that the Defendant refused to pay the compensation, the Plaintiff did not prove that it had exercised the subrogation right, the Plaintiff's litigation claim about the contribution to the inspection (loss adjustment) fee and the insurance proceeds interest did not have legal basis, requesting that the litigation claim of the Plaintiff should be rejected.

Through the trial, the Court believed that there was a statutory legal relationship of double insurance between the Plaintiff and the Defendant. The compensation that had been made by the plaintiff to the insured person was reasonable and prudent, the defendant was also liable for the insured person under its insurance contract, and the compensation made by the plaintiff to the insured person had rescinded the liability of the defendant. Thus, the right of contribution of the plaintiff was tenable. The contributory insurer can exercise the contractual defense against the insured person, unless the defense conflicts with the right of insured person to file claims against any other insurer freely. The exercise of the right to claim double insurance contribution is not based on the exercise of the subrogation right. To sum up, the Court ruled that the Defendant should pay the insurance compensation and the interest thereof to the Plaintiff. After the judgment of first instance was made, the Defendant conscientiously performed the payment obligation under the judgment. The judgment for this case has become effective.

[Typical Significance]

In maritime judgment practice, double insurance contribution disputes are a new type of disputes that have occurred frequently in recent years. With the emergence of various operating elements in the Yangtze River Delta, major shipping insurance institutions have set up shipping insurance business centers in Shanghai successively, and such cases may occur repeatedly. The judgment result of this case has specified the

judgment idea of such cases, sorted out the standard and essential review elements for double insurance contribution, clarified the method of judgment for the generalized provision under Article 225 "Double Insurance Contribution" under the Maritime Law, and provided a reference for the handling of cases of the same type and the resolution of internal disputes in the insurance industry in the future.

Case 7: In the event that the freight forwarding business indirectly occupies the cargo of the consignor based on a certain legal relationship, the freight forwarding business shall still have the leading force and controlling force on the cargo of the consignor, which shall be deemed to constitute the "occupation of movable properties of the debtor legally", and meets the legal elements of the lien right the creditor has.

[Basic Facts]

The Plaintiff and the Defendant entered into an agreement, agreeing that the Defendant entrusted the Plaintiff with space booking, towing, custody, inspection declaration, and other freight forwarding affairs and the payment of relevant expenses; if the Defendant did not confirm the expenses or failed to pay the expenses as agreed after confirmation, the Plaintiff shall have the right to detain relevant documents and goods for which the Defendant entrusted the Plaintiff with the business; if the Defendant still failed to perform the payment obligation, the Plaintiff shall have the right to realize and dispose of the detained documents or goods. After the agreement was signed, the Defendant confirmed the amount of pending payment in the business and issued a *Payment Guarantee Letter* to the Plaintiff, confirming the amount of arrears and payment deadline.

After a few months, the Plaintiff handled the import freight forwarding for a batch of goods as entrusted by the Defendant again. Both the consignee set forth in the bill of lading and the operator and consignee set forth in the customs declaration note were the Defendant. After picking up the goods from the carrier, the Plaintiff stored the goods in an outsider's warehouse. As the Defendant owed expenses to the Plaintiff, the Plaintiff required the Defendant to pay the arrears before pickup and delivery; however, the Defendant overlooked it. The Plaintiff then issued a Lawyer's Letter to the Defendant for exigent collection of the arrears, and informed the Defendant of the

detention of the foregoing import goods.

The Plaintiff instituted an action with the Court, requesting a ruling that the Defendant should pay the relevant freight forwarding fee and the storage charge and a confirmation that the Plaintiff shall have the right to detain the foregoing import goods and have the right to realize the goods under such bill of lading according to law for the repayment of the arrears owed by the Defendant to the Plaintiff first. The Defendant argued that the goods were stored in another person's warehouse, and the Plaintiff had no lien right.

Through the trial, the Court found that there was a marine freight forwarding relationship between the two parties. As entrusted by the Defendant, the Plaintiff provided freight forwarding services, and the Defendant also confirmed the expenses, and thus shall pay the expenses to the Plaintiff as agreed. The arrears owed by the Defendant has already constituted breach of contract, and the Defendant shall continue with the performance, make compensation, and assume other liabilities for breach of contract to the Plaintiff. As for whether the Plaintiff had the right to detain the goods, the entrusted affair of the Plaintiff included customs clearance and inland transport, and had the obligation of inland transport and custody for the batch of goods, which should be legal occupation. Goods of the batch were owned by the Defendant, and the customs declaration price was equivalent to the amount of the due debt owed by the Plaintiff. In addition, the Plaintiff still indirectly occupied the batch of goods as of then, and the effect of the lien right would not be affected. To sum up, it is confirmed in the judgment that the Plaintiff shall have the lien to the cargo under such bill of lading. After the announcement of the judgment of first instance, the Defendant instituted an appeal, and the appeal was withdrawn automatically as the case handling fee was not paid. The judgment for this case has become effective.

[Typical Significance]

Marine freight forwarding contract disputes are the most handled marine disputes involving the Yangtze River Delta by this Court, especially disputes arising from goods detention by freight forwarders due to arrears owed by entrusting persons. This case is a typical example of the legal exercise of lien right by a freight forwarder. When the entrusting person owes arrears to the freight forwarder, if the detention of

the entrusting person's goods is used as a remedy, stricter conditions shall be met. The price of the detained goods shall be equivalent to the amount of the due debt, a reasonable debt fulfillment period shall be given after detention, and the goods shall be kept in good custody; additionally, the form of the legal occupation of the entrusting person's mobile properties is also important, and the lien right can also be established through indirect occupation.

Case 8: If the contractual carrier claimes the exemption from liabilities for delivery of goods without the bill of lading as the law of the destination port mandates that the goods shall be delivered to the port authority,, he shall prove that such mandatory provision exists, providing that the goods can only be delivered to the local customs or port authority.

[Basic Facts]

To export a batch of furniture, the Plaintiff Fujia Company entrusted the Defendant Shipping Asia Freight Forwarding Co. , Ltd with the carriage of goods from the Shanghai Port of China to the Santos Port of Brazil. After accepting the entrustment, the Defendant issued a freight forwarding bill of lading to the Plaintiff with the Defendant as the addressee of the bill of lading. The goods were actually carried by ZIM Integrated Shipping Services Ltd, and the company issued an ocean bill of lading. The disputed goods arrived at the destination port in time but the consignee failed to pay as agreed. Information in relevant website shown that the disputed containers of goods had been put into another voyage, which is confirmed by the Defendent. The Defendent also confirmed that the goods might be delivered to the consignee under the bill of lading after two months after the goods arriving at the port.

The Plaintiff claimed that the Defendant shall be liable for the loss of goods and interest, because due to the delivery of goods by the Defendent, the consignee refused to pay for the bill of lading. The Defendant argued that, according to Act No. 1356 of the Ministry of Finance of Brazil, implemented from May 6th, 2013, after the goods arrived at the destination port and were delivered to the local wharf, the carrier would be devested the right to control the goods. The carrier's exemption statements also existed in the face clauses of the confirmation letter for the bill of lading. According to

the relevant provisions of China, the carrier was not liable under such circumstance.

Through trial, the Court found that in the event that the goods were delivered in full containers load, if the containers of goods had already been transferred, that fact could be the prima facie evidence proving that Shipping Asia Freight Forwarding Co., Ltd had delivered the goods without taking back the bill of lading. According to the interpretation by the relevant departments of Act No. 1356 of the Ministry of Finance of Brazil, the importer or freight forwarder shall get the delivery order by submit the original marine bill of lading (MB/L) to the actual carrier, and then handle the import formalities in the Brazilian Port. This provision did not influence the transfer of real right in international trade, and it could not be understood as the goods could be delivered without taking back the bill of lading at Brazil port. After Shipping Asia Freight Forwarding Co., Ltd, the carrier under the freight forwarding bill of lading, obtained or should obtain the goods from the actual carrier, it did not have to deliver the goods to port authority or customs. Thus, delivering the goods with taking back the original bill of lading was still the main obligation and responsibility of Shipping Asia Freight Forwarding Co., Ltd as the carrier. The standard clause of exempting main obligations and responsibilities in the bill of lading was invalid. Furthermore, the Defendant had neither provided the specific content of the "new rules of Brazilian Customs" to the Plaintiff or explained them, nor reached an agreement on the avoidance of such risk, the assuming of liabilities, and other issues. So the Defendant Shipping Asia Freight Forwarding Co., Ltd was adjudged to be liable for the Plaintiff's loss of goods payment and interest. After the judgment of first instance was made, the Defendant Shipping Asia Freight Forwarding Co., Ltd instituted an appeal. The appeal was rejected in the judgment of the second trial and the original judgment was upheld.

[Typical Significance]

In recent years, customs of various countries have been enacting new policies to meet the needs of trade and improve customs clearance effciency, which raises disputes caused by delivering goods without tacking back the bill of lading. In the Yangtze River Delta area, there are a large quantity of enterprises' goods loaded and exported from the Shanghai Port each year. Many disputes of delivering goods without the bill

of lading arise from these goods and usually appear in judicial practice. If the carrier wants to quote any policy to claim exemption, he shall strictly assume a burden of proof. Two conditions shall be met for the claim of the existence of the mandatory provision at the destination port: first, the destination port has relevant provisions that the goods shall be delivered to the local customs or port authority; second, according to such provisions, the carrier can only deliver the goods to the local customs or port administration. Only when the two conditions are met at the same time can the carrier be exempted from the liabilities for delivering goods without tacking back the bill of lading.

Case 9: After the ascertainment of the liability for damage, if the insured of liability insurance has not made such request or delayes in making the request whilst the insured is able to make such request,, and when a third person suffering damage sues the insurer, the insured person has not asked the insurer to pay the insurance compensation to the third person, the insured will be deemed to "be slack to request" the insurer to pay.

[Basic Facts]

A batch of goods owned by the outsider Baosteel was loaded on the ship "Xinnanfang 818". During the voyage, a collision accident happened to the ship, causing the submergence of ship and the loss of goods. The Plaintiff China Pacific Insurance underwrote the transport comprehensive insurance for the batch of goods. The Plaintiff Tian'an Insurance underwrote the marine risks of the ship, including "liability insurance of the ship owner to the goods".

After the accident happened, the Plaintiff had obtained the subrogation right after making the insurance compensation to the insured, Baosteel, and instituted an action with the Court, requesting the owner of the ship to assume the liability for the loss of goods, which was supported by the court's judgment. However, South Ship Company failed to perform its obligation under the judgment. The Defendant and the ship owner had also reached a settlement on the loss caused by the ship collision accident. The ship owner had contacted the Defendant to urge it to make the compensation as soon as possible.

The Plaintiff then instituted an action with the Court, claiming that the ship owner failed to perform its obligation under the judgment, and there was alos no response to the Plaintiff's request that the Defendant should directly pay the insurance compensation. The action of the ship owner had constituted "being slack to make request". The Plaintiff was entitled to ask the Defendant to directly pay the insurance compensation to it. The Defendant argued that its action had not constituted "being slack to make request" and the situation where the Defendant can make the compensation directly.

Through trial, the shipowner indeed claimed insurance compensation from Tian'an Insurance on the loss of goods, yet it failed to specify whether the object of insurance compensation was itself or the Plaintiff, and as the ship owner failed to perform the compensation liability and the exigent notice for compensation was not clear enough, it should be identified that the ship owner failed to clearly ask the Defendant to directly pay the insurance compensation to the Plaintiff for the liability for the loss of goods. Under such circumstance, it could be deemed to constitute the circumstance of "being slack to make request", and the Plaintiff was entitled to directly ask Tian'an Insurance to pay the insurance compensation as prescribed by Paragraph 2, Article 65 of the *Chinese Insurance Law*. So the Court adjudicated that the Defendant Tian'an Insurance should pay the insurance compensation and the interest to the Plaintiff China Pacific Insurance. After the judgment of first instance was announced, neither the Plaintiffs nor the Defendants filed any appeal. The judgment of this case has came into force now.

[Typical Significance]

Liability insurance is one of the key business types in the maritime insurance field. As more and more maritime insurance businesses have been settling in Shanghai and the surrounding areas, new issues and disputes that occur in such businesses need judicial guidance and regulation. This case is one example of identificating the standard of the "being slack to make request". The prerequisite for the review and the identification of "being slack to make request" is the confirmation by the insured person of the compensation liability to be assumed by the third person. The basic content is that the insured person's failing to perform the compensation liability and

when a third person instituted an action with the insurer as the Defendant, the insured has not asked the insurer to directly pay the insurance compensation to the third person.

Case 10: Where a sea areas occupant and a owner of the right to the use of sea areas reach an agreement on the occupation of the waters before the expiration of the right to the use of sea areas, even if the two parties fail to reach an agreement on the amount of compensation within the validity term of the certificate of the right to the use of sea areas, owner of the right to the use of sea areas shall still be entitled to the compensation.

[Basic Facts]

For the construction of a cofferdam project of Rudong Coastal Tourism Economic Development Zone, the breeding sea areas used by the Plaintiff Nantong Daliu Fishery Company needed to be occupied. The Defendant Rudong Coastal Tourism Development Company and the Plaintiff first reached an agreement on the compensation for attachments above the ground of the sea areas to be paid in two times. The two parties also agreed that the compensation for the occupation of the right to the use of sea areas should be otherwise determined through negotiation. Subsequently, the Plaintiff did not apply for a certificate for the change and renewal of the right to the use of sea areas with the Marine and Fishery Administration, and the certificate of the right to the use of sea areas it holds expired at the end of the year. Then a dispute on the compensation arose between both parties. The Plaintiff instituted an action with the Court, requesting that the Defendant should be adjudged to pay the compensation for the right to the use of sea areas and the interest. The Defendant argued that when it occupied the sea areas at the time it started the work at the end of the next year, the the Plaintiff's certificate of the right to the use of sea areas had expired, so the Defendant was not obliged to make compensation for Plaintiff's right to the use of sea areas. Even if it still had the right to the use of sea areas, the compensation standard shall be subject to the remaining time of the certificate and the specific applicable compensation standard shall be determined as "standard cardinal number × 15% × remaining validity term" in accordance with the *Interim Measures*

on the Compensation for the Occupation of State-Owned Fishery Waters of Jiangsu Province.

Through trial, the Court found that sea areas occupant should make certain economic compensation to the owner of the right to the use of sea areas. The Plaintiff and the Defendant reached an agreement of the preliminary compensation for the occupation of the sea areas for the cofferdam before the expiration of the certificate of the right to the use of sea areas, and the Defendant had an clear intent to make such compensation. The Plaintiff had not renewed the certificate after then. The two parties agreed that the compensation for the occupation of the sea areas should be otherwise determined through negotiation, which did not mean that no compensation would be made for the occupation of the sea areas. Thus, the Defendant should make compensation for the Plaintiff's right to the use of sea areas. As the sea areas were about to be taken back, even if the Plaintiff applied for renewal, it would not be approved. Thus, the term of calculation of the compensation for the occupation of the sea areas should be subject to the time set forth in the certificate. In addition, as the remaining time of the right to the use of sea areas was less than one year, as prescribed by the *Interim Measures*, the calculation method mentionde-above would not be applicable; instead, the minimum standard for occupation compensation should govern. To sum up, the Defendant was adjudged to pay the compensation for the Plaintiff's right to the use of sea areas at the minimum standard for occupation compensation. After the judgment of first instance was made, the Defendant instituted an appeal. The appeal was rejected in the judgment of the second trial and the original judgment was upheld.

[Typical Significance]

The Yangtze River Delta is rich in marine resources, with extensive aquaculture, tourism, and other development projects in coastal waters. During the development and utilization of marine resources, the occupation of sea areas and the compensation by governmental subordinate enterprises often occurs as planned by the government. A compensation contract is generally signed by the enterprise under the requisition authority and the holder of the right to the use of sea areas, and is compensation for the occupation of sea areas in nature. The judgment in this case is a typical dispute

arising from the compensation for the right to the use of sea areas. In the event that an intent on the occupation of the sea areas for the construction of a cofferdam project has been reached before the expiration of the right to the use of sea areas, it shall be deemed that the right to the use of sea areas is taken back in advance, and even if the time when the sea areas are occupied for project commencement later than the time the right to the use of sea areas expires, occupation compensation shall still be paid to the owner of the right to the use of sea areas in accordance with the prescribed standard.