上海海事法院　服务保障船舶产业发展审判情况通报

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（中英文对照本）

Shanghai Maritime Court Report on Trials Involving Shipbuilding Industry

2021年5月

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前　言

我国的船舶产业具有悠久的历史,经过多年的快速发展,高端产品研制取得重大突破,国际市场份额位居世界首位,世界造船大国的地位进一步巩固。当前,“海洋强国”战略逐步走向深入,海洋资源开发从近岸走向深海,船舶产业面临更为广阔的市场空间;同时,船舶建造加快向智能化转型,船型结构升级不断取得新突破,促使全球船舶建造市场形成新的竞争格局。机遇与压力并存,我国的船舶产业正迎来转型升级的重要战略机遇期。

上海及周边地区是我国船舶产业发展的重镇,大批在国际上具有竞争力的骨干船舶建造企业、海工装备制造企业都汇聚于此,形成了覆盖上下游产业及配套服务业的产业集群,是上海国际航运中心的重要组成部分。一直以来,上海海事法院重点关注船舶产业发展中出现的矛盾问题,依法审理了大量涉及船舶设计、建造、修理、配套产品买卖、融资、保险等环节的纠纷,致力于规范企业经营行为、优化市场营商环境,积极探索服务保障产业发展的司法机制,为推动船舶产业持续健康发展、提升国际市场竞争力提供了有力的司法保障。

这本海事审判情况通报系统梳理了近年来上海海事法院服务保障船舶产业发展的工作举措、问题建议和典型案例,以供社会业界充分了解这方面的审判工作情况。

Foreword

China's shipbuilding industry has a time-honored history. Through years of rapid development, China has made great breakthroughs in the research and development of high-end products and ranks first in terms of global market share, which further consolidates its position as the leading shipbuilding power in the world. Currently, the strategy of making China a maritime power is gradually deepened and the focus of the exploration and exploitation of marine resources has been shifted from offshore waters to the deep sea. The shipbuilding industry is embracing a broader market space. Meanwhile, the intelligent transformation of the shipbuilding industry is accelerated and new breakthroughs have been made in the upgrade of ship structures, forming a new competition pattern for the global shipbuilding market. Opportunities and pressures coexist. China's shipbuilding industry is entering into an important period of strategic opportunities for transformation and upgrading.

Shanghai and the surrounding areas are of strategic importance in the development of China's shipbuilding industry. A large number of internationally leading shipbuilding companies and marine engineering equipment manufacturers have gathered here, forming an industrial cluster covering upstream and downstream industries and supporting services and constituting an important part of the Shanghai International Shipping Center. The Shanghai Maritime Court has always been focusing on conflicts and disputes arising in the development of the shipbuilding industry and has tried a large number of disputes over the design, building and repair of ships, purchase and sales of supporting products, financing, insurance, etc. The Shanghai Maritime Court is dedicated to regulating the operations of enterprises, optimizing the business environment and actively exploring judicial mechanisms that serve and guarantee the development of the shipbuilding industry, thus providing strong judicial services and

guaranteeing for promoting the sustainable and sound development of China's shipbuilding industry and improving its international market competitiveness.

This maritime trial systematically briefing reviews the work initiatives, problem suggestions and typical cases of the Shanghai Maritime Court in serving and guaranteeing the development of the shipbuilding industry in recent years and is prepared for all sectors of society to fully understand the maritime trials.

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第一部分

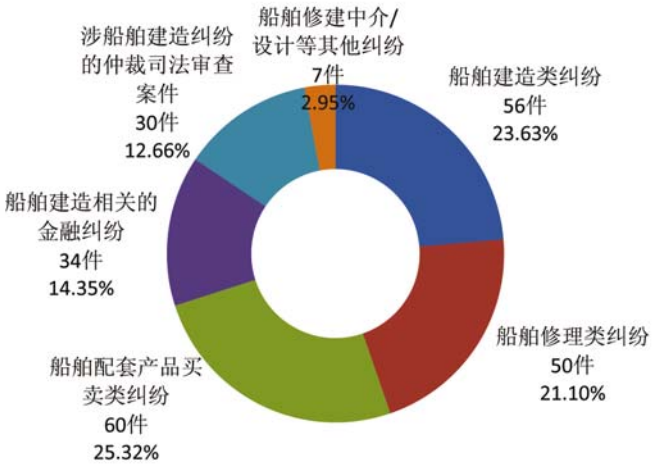
服务保障船舶产业发展的审判工作情况

一、服务保障船舶产业发展的审判工作概况

海事法院管辖的船舶产业发展相关纠纷包含多种类型，其中一审海事海商纠纷主要包括直接发生在船舶建造活动中的船舶建造合同纠纷、船舶设计合同纠纷、船舶修理合同纠纷等，还包括与建造活动相关的船舶配套产品买卖合同纠纷、船舶建造相关的金融借款合同纠纷、银行保函纠纷、保险合同纠纷等；因船舶建造相关纠纷通常还通过仲裁途径解决，涉及船舶建造的仲裁司法审查案件等特别程序案件也占一定比例。

2016 年至 2020 年，上海海事法院共审结上述各类海事海商纠纷案件共计 237 件。其中，船舶建造类纠纷 56 件，船舶修理类纠纷 50 件，船舶配套产品买卖类纠纷 60 件，船舶建造相关的金融纠纷（船舶建造融资纠纷、与船舶建造有关的银行保函纠纷、船舶建造保险纠纷）34 件，涉船舶建造纠纷的仲裁司法审查案件 30 件，船舶修建中介、船舶设计等其他类型纠纷 7 件。

近五年审结的涉船舶产业相关案件类型分布情况



相关案件主要特点如下：

1. 相关案件以合同纠纷为主，侵权纠纷也占一定比例。因涉及船舶建造活动的纠纷多产生于市场主体的经营活动之中，相关案件中以

合同纠纷为主,占比超95%。与船舶建造相关的侵权纠纷则出现在在建船舶发生试航事故、船舶设计存在瑕疵、船舶配套设备产品质量瑕疵等特殊情形下,占比相对较少。

2. 案件纠纷具有较强的技术性、专业性和规则性。船舶产业是技术密集型行业,船舶设计、建造、验收等环节需符合国际公约以及船级社等机构发布的诸多规范要求。特别是国际海事组织(IMO)等机构为应对气候变化和保护海洋环境制定和颁布的一系列新标准,给船东、船企、船舶设计单位产生了新的影响。审判实践中发现,有相当一部分纠纷源自船舶建造过程中出现的技术问题,例如船舶设计是否符合约定标准/是否存在瑕疵、已建成船舶是否达到设计预期能力、船舶试航是否合格并满足交船条件、船舶关键部件是否存在质量问题、设计修改是否影响工程量计算等。在这些案件审理中,通常需要专业机构或专家证人参与诉讼活动,以便准确认定相关技术问题。

3. 因建造活动出现障碍引发的关联案件较为常见。船舶产业链条各环节的紧密联系在相关纠纷中也常以关联案件的形式得到体现。一类是船舶产业上下游环节上的关联,某一环节出现障碍往往会引发多个环节的纠纷。如因船舶建造合同履行障碍会导致一系列配套的船舶关键部件和专用物品买卖合同纠纷、因船舶设计的变动造成工作量变动而引发分包工程结算纠纷等。另一类是船舶产业与金融服务的关联,建造活动中出现的障碍会传导到配套的金融服务领域。例如船企和船东为规避和控制船舶建造过程中存在的风险,在船舶建造合同中约定各自出具由银行开立的保函来担保船舶建造合同项下的付款或还款义务,以增强各自信用;船企通常还会按照船舶建造合同约定投保船舶建造保险。一旦船舶建造合同出现履行障碍,常会引发有关金融担保、建造保险等金融类纠纷。

4. 涉外案件的数量开始呈现上升迹象。受到长期以来形成的惯例

等诸多因素影响,涉外的船舶建造合同及与之相关的金融担保、融资合同等纠纷常选择适用英国法在英国伦敦仲裁解决。上海海事法院受理的全部涉船舶产业类案件中,涉外案件通常仅占一成左右,远低于各类案件中涉外案件所占的比例。随着中国海事审判的国际影响力、公信力逐步提升,已有国内船企开始尝试在出口船舶建造合同及相关合同中约定选择在国内通过诉讼途径解决纠纷,涉外案件数量开始呈现上升迹象。审判实践中出现了新加坡买方在争议发生后变更仲裁约定改为向上海海事法院提起诉讼并适用中国法律审理的船舶建造合同纠纷案件,还出现了适用英国判例法判决的船舶建造佣金合同纠纷案件,以及依照公约对英国、新加坡等国家和地区的仲裁裁决进行司法审查类案件等典型案例。

二、服务保障船舶产业发展的重点工作举措

1. 优化海事审判资源配置模式,提升涉船舶产业类案件审判专业化水平

近年来,上海船舶产业空间布局不断优化,构建了长兴岛船舶制造基地、临港海洋工程装备制造基地、外高桥船舶与海洋工程装备制造基地等聚焦先进海洋产业的集群,形成了以海洋战略新兴产业、高端船舶和海洋工程装备制造为特色的产业发展功能区。为更好服务相关功能区建设和船舶产业发展,上海海事法院于2020年4月新设长兴岛派出法庭,专门受理当事人注册地或纠纷发生地位于崇明相应功能区内的有关海事海商纠纷案件,同时拓宽了自贸区法庭服务临港新片区工作职能,形成了南北呼应的工作格局,积累海事审判服务保障船舶产业的有效经验,

长兴岛派出法庭揭牌成立

进一步提升船舶产业类案件审判的专业化程度。

针对船舶产业链条各环节关联紧密、涉及面广的特点，当有关案件涉及船舶建造融资、金融担保、建造保险、在建船舶试航期间的海损事故时，上海海事法院采用跨部门组成合议庭方式进行审理，以确保执法标准统一，拓展海事审判服务船舶产业的广度和深度。

2. 发挥专业组织优势完善多元解纷机制，打造涉船舶产业类纠纷解决优选地

上海海事法院与中国船级社上海分社、上海市船舶与海洋工程学会、上海船舶工业行业协会等建立良好协作关系，注重发挥行业性、专业性组织在调处涉船舶产业相关案件中的作用，根据各类纠纷的特点确定最适宜委托调解的组织，引导当事人优先选择多元调解方式。对于船舶建造分包纠纷等数量集中、群体效应显著的纠纷，充分发挥司法示范效应，用生效裁判明确规则，引导其他相关当事人接受调解，扩大成效。

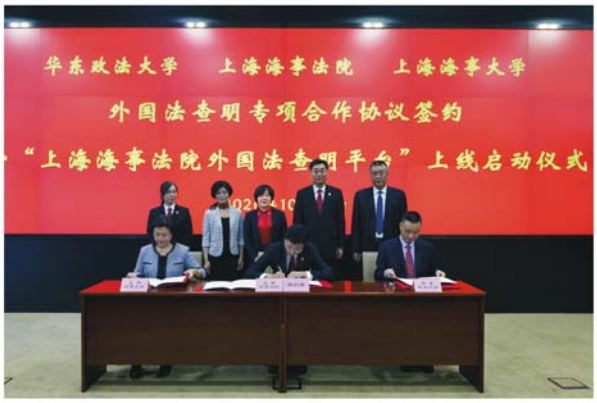
携手上海经贸商事调解中心，外籍调解员解决跨境纠纷

上海海事法院还制定了《涉外海事纠纷诉讼、调解、仲裁多元化解决一站式工作规则》，对接或引入调解组织、仲裁机构及法律服务机构等社会资源。特邀船舶产业内资深专业人士担任调解员，为中外当事人提供多元、便捷、高效的一站式纠纷解决服务，形成涉外海事纠纷多元解纷体系，吸引中外当事人在中国境内解决纠纷，努力使上海成为涉船舶产业类纠纷解决的优选地。

3. 秉持包容开放的司法理念，做好涉外仲裁司法审查和外国法查明工作

基于当前涉船舶产业类涉外纠纷仍主要适用外国法选择境外仲裁解决的现状，上海海事法院秉持包容开放的司法理念，有效开展涉外仲裁司法审查和外国法查明工作。

在涉外仲裁司法审查方面，上海海事法院充分尊重当事人的仲裁意愿，准确把握案件涉外因素，认定涉外仲裁协议效力，正确适用《承认及执行外国仲裁裁决公约》和《最高人民法院关于内地与香港特别行政区相互执行仲裁裁决的安排》，承认和执行外国仲裁裁决和香港仲裁裁决，营造“仲裁友好型”的司法环境，优化法治化营商环境。



与华东政法大学、上海海事大学签约并上线外国法查明平台

在外国法查明方面，上海海事法院制定了涉外海事审判中外国法律查明工作的指导意见和外国法查明统一委托工作规则，与华东政法大学、上海海事大学分别签署了《外国法查明专项合作协议》，并正式上线全国海事审判领域首个外国法查明平台——“上海海事法院外国法查明平台”，破解外国法查明难题。

4. 聘请专家陪审员建立技术咨询专家人才库，提高涉船技术事实认定质量

船舶设计、建造涉及诸多专业性技术性规范，据不完全统计，近四成的船舶建造纠纷争议焦点涉及技术性专业性问题。上海海事法院积极探索健全专


召开最高人民法院国际海事司法上海基地特邀咨询员座谈会

业技术事实调查机制，确定涉船专业技术事实查明的有效方式。2016年开始，上海海事法院聘请一批船舶建造业等行业内专业技能精湛、理论知识扎实、实务经验丰富的专家担任陪审员，在证据审查核验、技术事实查明等方面助推提高案件审理专业化水平。上海海事法院还与科研院所、行业协会等协作，建立船舶工程技术咨询特邀专家人才库，为解决专业技术问题提供智力支持，为解决船舶产业矛盾纠纷提供有力专业技术保障。

5. 搭建沟通交流平台提供精准司法服务，助力船企应对风险挑战

当前国际形势错综复杂，加上新冠肺炎疫情影响，船舶产业不断面临新的挑战。上海海事法院主动搭建沟通交流平台，直面船企在司法需求方面的“痛点”“堵点”和“难点”，摸准司法服务的脉络，提供精准司法服务，助力船企应对来自国际国内的挑战。2020年9月，上海海事法院召开了“船舶、海洋装备高端制造企业常态化疫情防控风险应对与司法保障”专题研讨会，江南造船、沪东中华造船、外高桥造船、振华重工、中远海重工等与会船企和行业协会代表就中国船企在疫情防控常态化背景下风

召开专题研讨会，服务保障船舶、海洋装备高端制造企业健康发展

长兴岛派出法庭走访驻地船舶建造企业

险应对、中国船企参与境外仲裁的注意事项、船舶建造纠纷中专家证人的选择等问题进行了广泛深入的交流讨论。上海海事法院还建立定点联络、定期沟通、定向施策的司法服务保障机制，主动联系、及时回应船企司法需求，总结推广先进经验做法，服务船企高质量发展。

6. 深化长三角区域海事司法协作，形成服务船舶产业合力

长三角地区是中国最重要的船舶制造基地，船舶配套产业集群发达，已经形成了层次鲜明、结构合理、联系紧密的产业布局。长三角地区所形成的船舶产业发展新格局，对区域内海事司法协作提出了新的要求。

上海海事法院

沪海法〔2019〕49号

上海海事法院服务保障
长江三角洲区域一体化发展的实施意见

实施长江三角洲区域（以下简称长三角）一体化发展战略是以习近平同志为核心的党中央作出的重大决策部署。为深入学习贯彻习近平总书记关于推进长三角一体化发展的重要讲话和指示精神，积极贯彻落实《长江三角洲区域一体化发展规划纲要》、《上海市贯彻<长江三角洲区域一体化发展规划纲要>实施方案》和《上海市高级人民法院关于贯彻落实<上海市贯彻<长江三角洲区域一体化发展规划纲要>实施方案>的行动计划》，更好发挥海事司法服务保障长三角更高质量一体化发展的职能作用，结合我院工作实际，制定如下实施意见。

一、切实提高思想认识，增强为长三角一体化发展提供海事司法服务和保障的责任感和使命感

1、深刻认识长三角一体化发展国家战略的重大意义。实施

- 1 -

制定《实施意见》，服务保障长三角一体化发展

2019 年 11 月，上海海事法院制定并发布了《服务保障长三角区域一体化发展的工作意见》，明确了主动对接长三角港航一体化发展协同推进的任务要求，从履行审判职责、升级诉讼服务、加强区域合作、促进研讨交流、推动数据共享等方面为推进法院工作提供了明确的指引。

上海海事法院还联合长三角地区其他海事法院，共同构建海事司法协助机制、审判资源和信息共享机制、案件标准统一机制、典型案例发布机制等综合体系，不断提升海事审判服务保障包括船舶产业在内的海洋经济发展水平。

第二部分

涉船舶产业类纠纷相关问题和建议

按照船舶产业链条各环节的时空布局和逻辑关系,此次总结归纳了2016年至2020年上海海事法院审结的涉船舶产业十种类型纠纷的主要特点和发现的问题,并提出相关建议,具体如下:

一、船舶设计类纠纷

船舶设计是一个多参数、多目标、多约束、多学科高度非线性问题的求解和优化的过程,技术精度要求高、学科知识范围广。上海是中国船舶设计重点地区,汇集了一批重量级的国有船舶设计科研院所和具有自主设计能力的国有大型船企设计团队,以及近年来发展迅猛的一批民营船舶设计公司。目前,上海海事法院审结的船舶设计类案件呈现如下特点:

1. 船舶设计引发的纠纷涉及船舶工业全产业链多个环节。船舶设计是船舶建造工程的灵魂,对整个船舶建造工程最终目标的实现起着举足轻重的作用。船舶设计出现问题,轻则由于变更设计导致建造工程内容增减、工期延误,重则导致建成船舶无法使用或达不到设计要求。因此,船舶设计与后续船舶建造、船舶建造保险等船舶产业链上其他环节息息相关,由此引发的纠纷既有船舶设计合同履行本身产生的纠纷,也有因船舶设计变动引发的船舶建造分包结算纠纷、因船舶设计瑕疵引发的船舶建造保险合同纠纷及相应的代位求偿纠纷等。

2. 设计标的类型多样,船舶设计委托方所在地和建造地通常均位于长三角区域。设计船舶类型有散货船、油轮等常规船型,也有大湖型运输船、公务船、引航船、油田工作船、潜水支持船等非常规船型。设计委托方大多为江苏、浙江地区的船东、船企,船舶建造地点除上海外,多在江苏的泰州、南通及浙江的舟山、宁波、台州等长三角船舶产业重要基地。这表明上海在船舶设计行业的中心地位凸显,区域内其他地区在市场化资源配置下积极承接上海制造业转移和支持上海服务业发展,长三角地区船舶产业呈现良好的分工协作关系。

3. 涉诉船舶设计单位中民企占比高，因船舶设计瑕疵引发的赔偿金额远高于设计合同标的额。船舶设计瑕疵引发的纠纷涉及民营船舶设计企业的居多，因此民营船舶设计企业需要进一步提升自身技术储备、经营管理水平、风险防范能力。相关案件中，船舶设计瑕疵引发的赔偿金额是设计费用的几倍甚至十几倍，一些船舶设计企业因此陷入经营困境甚至进入破产重组程序。

二、船舶修建中介类纠纷

船舶修建中介类纠纷在海事海商案件中属于“小众”类别。修造船经纪人通过撮合船企与船东达成修船或新造船协议提供经纪服务而获取佣金。优秀的修造船经纪人能够促进船企和船东相互了解、协助船企或船东进行合同谈判、缓冲船企和船东之间冲突，增进船企和船东的顺畅合作。

上海海事法院审结的此类案件，所涉业务均为外国经纪公司撮合外国船东与中国大型船企的经纪业务，经纪公司通常注册于萨摩亚、塞舌尔等避税国，船东则为注册于巴拿马等方便旗国的单船公司。这类涉外修建中介合同，往往遵照国际惯例，将经纪人获得佣金的时间和条件与船舶建造合同履行进展程度，特别是进度款支付情况关联起来，而航运市场的变化又会给船舶建造合同的履行带来各种不确定因素，船东或船企在履行过程中发生解除船舶建造合同或转让船舶建造合同的情形下，经纪人是否依然可以获得佣金要根据修建中介合同准据法、合同条款约定进行综合判断。

此外，受 IMO 限硫令影响，中国船企承接了全球大多数船舶安装脱硫塔的业务。2020 年初，安装脱硫塔业务受到了新冠肺炎疫情及石油价格战的冲击，许多船东搁置了脱硫塔安装计划，也因此引发了不少船舶修建中介的佣金纠纷。

三、船舶修理类纠纷

船舶修理产业是中国船舶产业的重要组成部分，是海运贸易产业链中的一个关键环节。近年来，世界修船中心东移，中国年修船工程量（完工艘数）占全球份额的40%，其中约80%为外籍船舶修理，已经成为全球最大的修船国。2016年至2020年，上海海事法院共审结船舶修理合同纠纷50件，其中涉外籍船舶修理案件16件，其余34件为国内民用船舶修理，涵盖沿海运输船、内河运输船、工程船、渔船、游艇等。相关案件反映出如下特点：

1. 中小型船企在经营方面欠规范易引发纠纷，行业规范亟待加强。相关案件表明，国内运输船、工程船、渔船等民用船舶修理纠纷多与中小型船企在经营方面的欠规范有直接关系。相关纠纷包括船东与船企因修理费用标准、修理项目争议引发的修船款支付纠纷、船企在不具备相应修理能力的情况下承接修理业务造成船期延误引发的损害赔偿纠纷、船企随意分包引发的分包结算纠纷、船舶修理存在质量瑕疵引发的损害赔偿纠纷等。船舶修理事关船舶质量和航行安全，亟待加强行业规范。随着政府职能转变和“放管服”改革的推进，工业和信息化部于2019年4月废止了《船舶行业规范条件》和《船舶行业规范企业监督管理办法》，行业组织应在引导企业规范发展、加强行业自律方面发挥更大作用，促进包括修船业在内的船舶行业规范经营健康发展。

2. 外籍船舶修理纠纷多因船东未及时支付修船款引发，中国船企应加强应收账款风险管理。国际修船市场上，中国修船业具有工期较短、质量优良、价格低廉三大优势，一些国际船舶管理公司与中国修船企业签订了船舶维保修理的长期合作协议。中国（上海）自由贸易试验区设立以来，在区内设立的船舶管理公司和业务量都有增长，因船舶管理公司未按期支付外籍船舶修船费用引发的船舶修理纠纷近年来有所增加。此类案件虽标的额较大，但事实清楚，法律关系简单，大多以调

解方式审结,但中国船企为及时收款,不可避免在调解中作出让步,进一步减少了原本微薄的修船利润。

3. 船舶行业绿色发展给修船业带来新机遇、新挑战,船舶修理更换的旧配件和废钢的处理问题值得高度关注。随着 IMO 限硫令和 BWM 公约(《船舶压载水及沉积物管理与控制公约》)的生效,中国船企承接了大量船舶加装脱硫塔和压载水处理系统业务,这成为船企生产经营的新增长点。同时,中国船企顺应绿色修船发展趋势,不断加快绿色环保技术工艺的升级改造,绿色转型初现成效。有关部委在 2020 年底联合印发的《关于外籍船舶在境内维修产生的废钢铁监管有关事项的通知》中明确,符合条件的修船废钢可在境内贮存、转移、利用和处置,不按固体废物进行管理,为中国船企资源化利用船舶修理中的配件废钢提供了制度保障。值得注意的是,按照行业惯例,修船更换的旧配件和废钢归修理企业所有,合同未作特别约定时船企有权随时处置。船东明知保险索赔需要提供旧配件但未在修理合同中提出特别要求,而事后主张保险公司因缺少旧配件无法查明事故原因拒赔致其遭受损失的,不能获得支持。

四、船舶建造类纠纷

当前,在绝大多数船舶建造合同中,当事人约定的争议解决方式为适用英国法在英国伦敦仲裁。上海海事法院受理的船舶建造类案件多数为国内船舶建造合同纠纷,所涉船舶类型包括沿海运输船、内河运输船、工程船、渔船、远洋渔船,亦有部分案件为外国买方在纠纷发生后变更约定的仲裁方式改为向上海海事法院提起诉讼。以船舶是否建成作为划分标准,上海海事法院审结的船舶建造合同纠纷(不含 24 件建造分包类纠纷)可分为建成前的纠纷和建成后的纠纷,数量相当,均为 16 件:建成前的纠纷主要为船舶建造合同因一方原因造成不能继续履行,另一方主张解除合同及解除后的款项结算、违约责任的承担;建成后的

纠纷主要为船舶建造款的结算支付问题,也有个别案件系因建成船舶未达设计标准产生的损害赔偿纠纷。相关案件反映出如下问题:

1. 船舶建造合同履约周期长、受市场波动影响大,但一般商业风险不构成情势变更。多起案件中,双方最初订立建造多艘船舶的合同,因航运市场变化船舶建造合同几经变更仍不能履行,最终成讼。由于船舶建造合同履行周期较长,合同履行过程中会遇到诸多外来风险,包括原材料设备价格的上涨、航运市场行情的急剧变化等,这些风险都可能造成一方当事人继续履行合同的困难或不利。当事人在订立合同过程中应充分考虑有关风险,并在合同中作出明确约定。需要注意的是,正常的商业风险不构成情势变更。船舶建造合同当事人以市场行情变化、继续履行合同对其显失公平为由要求变更或解除合同的,通常难以得到支持。

2. 船舶建造合同纠纷往往涉及技术事实争议,纠纷处理难度大。主要体现在双方当事人就船舶建造合同中的技术事实矛盾争议大、证据搜集难、对抗性强,往往互为本反诉,一方主张损害赔偿,另一方主张违约责任;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交织,常涉及第三人。就争议技术事实,当事人搜集证据困难,一些案件当事人不得不在审理过程中撤回起诉,以进一步搜集证据。法院对有关技术事实的认定,很大程度上需要专业机构或专家证人的辅助。

3. 为船舶建造提供资金的资金提供方究竟是作为船舶建造合同当事人,还是借款人需结合合同约定和具体安排作出认定。船舶建造是资金密集型的生产活动,资金来源主要包括船东提供的进度款、船企垫付的资金及引入的第三方出资。如资金提供方与原船舶建造合同双方订立三方合同,船东将船舶建造合同项下部分权利转让给资金提供方,纠纷产生后,资金提供方可直接作为合同当事人向船企主张船舶建造

合同项下有关权利。但在一些由船企进行融资的安排中,船东与船企签订建造合同后,船企与资金提供方签订联合承揽协议(船东事先并不知情),由资金提供方向船企提供建造资金。后船东因船企未交付船舶而主张资金提供方连带返还船舶建造款时,二审法院认为因资金提供方仅提供建造资金,而未与船东达成作为船舶建造合同共同承揽人的意思表示和联系,故不支持船东的诉讼请求。

五、船舶建造分包类纠纷

随着船舶建造模块化生产方式的广泛应用,船企普遍采用工程分包的方式,将分段建造、管系制造装配、机电安装、船舶涂装等工程进行分包,以降低用工成本,优化产业链,提升企业的竞争力。分包方已成为船舶建造主力军中不可或缺的力量。总体上,船企通过不断改善和加强对船舶建造过程中分包方队伍的管理和控制,确保了船舶建造在质量、安全、环保等方面的先进水准,同时形成了较为和谐稳定的船舶建造劳务市场秩序。但每年仍有少量船舶建造分包引发的纠纷诉至法院。2016 年至 2020 年,上海海事法院共审结船舶建造分包纠纷 24 件。相关案件主要有以下特点:

1. 分包内容涉及建造工程实施的各专业,多为劳务密集型工作。有关分包合同多数是由船企与分包方以劳务合作、加工承揽、船舶建造分包等名义签订,也有少部分是由分包方与次分包方、设备供货方签订。分包内容为船舶建造中的管路制造安装、结构建造、焊接、舾装、涂装等需要大量劳动力的工作。据了解,当前船舶建造中一半乃至四分之三的工作是由劳务分包等外包工完成的。船舶建造工程分包方在各专业岗位上占据了重要地位。

2. 工程结算纠纷占比高、诉请标的额大,多牵涉劳务用工权益保障。相关纠纷中,除 1 件系因分包方施工过程中引发火灾引起的由保险公司向分包方保险代位求偿纠纷外,其余 23 件纠纷均因工程价款结算

争议引发。有关工程价款结算的纠纷中,有17件原告诉请金额超过100万元,2件诉请金额超过1000万元,诉请标的金额较大。由于分包方用工成本在收入中占比较高,分包方很大程度上依赖结算的工程价款与雇员结算工资,因而大额工程结算纠纷往往牵涉劳务用工权益保障等群体性问题,这在一定程度上增加了纠纷处理的维稳因素和统筹难度。

3. 分包方证据意识不强,较难举证证明工程量增加,诉请获支持的比例不高。船企与分包方往往订立“闭口合同价”,并以物量吨位作为计价基础,在分包工程修改或增加时,分包方因证据意识不强或其他因素,未能收集和固定相关证据,无法提供有效证据证明工程量增加和“闭口合同价”之外的工程款等事实。分包方作为原告起诉船企的23件案件中,有8件以判决方式结案,分包方均未获得全额支持,其中有4件最终获支持金额不足诉请金额的30%。

六、船舶配套产品买卖类纠纷

船舶配套包括机电配套产品和系统、船舶动力系统、电气自动化系统等。船舶配套具有量大、面广和高技术、高附加值的产业特点,是中国船舶产业综合竞争力的重要体现之一。2016年至2020年,上海海事法院共审结船舶配套产品买卖类纠纷60件。案件类型大多为因船舶建造合同解除引起的有关船舶配套厂商解除船舶设备和专用物品买卖合同纠纷、因设备款未及时支付引发的纠纷,亦有部分案件涉及船舶配套产品质量问题引发的纠纷。

近年来,国家出台了一系列政策,支持我国船舶配套产业的发展。工业和信息化部发布的《船舶配套产业提升行动计划(2016－2020)》提出,加强关键技术与产品的试验验证能力建设,提高产品寿命周期、质量追溯能力;支持行业组织发布经技术机构认证符合装船要求的船舶配套产品目录,引导船东、船企、船舶设计单位选用。从相关案件审理

情况来看,我国船舶配套产业发展较快,产业体系不断完善,重点船用设备研制取得重大突破,产业规模不断拓展,本土船用设备装船能力大幅提高。但总体而言,我国船舶配套产业的核心技术和产业能力距世界先进水平还有很大的差距,高端配套几乎被外国知名品牌垄断,尚不能有效支撑船舶行业的发展需求。

七、船舶建造融资类纠纷

船舶建造属于资金密集型产业。船舶建造过程中,通常由船东按约支付造船进度款,也存在船企负责部分垫资的情况。对于资金周转困难的企业,无论是船东还是船企,融资都不失为一种行之有效的做法。目前,船舶建造领域分化出船舶贷款融资、融资租赁、造船供应链融资、股权融资、民间借贷融资等融资模式。2021 年 2 月 22 日,国务院发布《关于加快建立健全绿色低碳循环发展经济体系的指导意见》,特别提出要大力发展绿色金融,可以预见绿色船舶融资项目会持续增长。2016 年至 2020 年,上海海事法院审结的船舶建造融资类纠纷有以下主要特点:

1. 涉及主体众多,法律关系复杂。船舶融资关系的主体不仅包括船东或船企,还包括资金提供方。同时,因船舶融资具有高风险性,资金提供方通常会要求船企或船东提供担保,以确保融资方有足够的偿债能力。担保方的介入,使得利益关系更为复杂。在一个作为主合同的贷款合同关系下,通常会存在包括保证合同、抵押合同在内的多份从合同。担保关系是否存在、担保责任范围是审理重点。船舶属于特殊动产,其作为担保物的认定方式有别于一般动产或不动产,也导致了实现船舶抵押权需要经过特定的程序。船舶经营权、经营收益是否能用作抵押,也是审理中遇到的新类型问题。

2. 民营企业融资难,多以融资租赁方式融资。由于航运市场波动大、资金占用周期长,商业银行出于防范风险考虑,对在建船舶贷款采

取审慎的态度,更青睐于资信良好、规模较大的国有船企,而国有大型船企对外来资金的需求并不强烈,中小型民营船企则不得不转寻其他渠道获取资金。上海海事法院审结的涉船舶建造融资类案件中船企均为民营企业,融资安排以融资租赁为主,还存在少数名为联合承揽或设备采购,实为资金借贷的情形,此类案件中合同性质的认定往往直接影响当事人的责任承担。

3.“专款”未“专用”,资金用途监管缺失,导致纠纷时有发生。船舶建造资金需求量大,回收周期长,涉及的利益主体众多,高利润与高风险并存。资金提供方为降低风险,通常会约定融资资金专门用于建造特定船舶。但从相关案件审理情况反映,存在监管缺失或不到位,船企违约将融资款挪用于建造特定船舶以外的船舶甚至船舶建造以外项目的情形。船舶建造融资款被挪用导致船舶延期交付甚至最终无法交付,由此引发的纠纷并不鲜见。

八、与船舶建造有关的保函纠纷

船舶建造过程中,船企和船东都承担着一定的风险。为了加强船企和船东彼此信任度,遵照国际惯例,双方在船舶建造合同中约定,各自提供由银行开立的保函来担保船舶建造合同项下各自的付款/还款义务。由船东委托的银行开立的“预付款保函”作为对船东在交船前预付船舶建造进度款义务的担保,由船企委托的银行开立的“还款保函”作为对船企在约定情况下退还船东已支付预付款义务的担保。2016 年至 2020 年,上海海事法院审结的此类案件数量不多,但反映出的问题颇具代表性:

1. 独立保函的法律效果及处理。独立保函是由银行或非银行金融机构出具,载明见索即付或明确开立人的付款义务独立于基础交易关系及保函申请法律关系,只要保函载明的付款条件达成,开立人就应立即无条件地付款。独立保函下,受益人要求支付款项的主张更易实现。

需要引起注意的是,有些案件中船企或船东的母公司等非金融机构出具了记载“见索即付”内容的保函,其措辞与金融机构出具的独立保函一致,但由于无论是现行外国法还是中国法下,独立保函的出具人必须是金融机构,因此由非金融机构出具的类似保函,不会被法院或仲裁机构认定为独立保函,从而丧失了独立保函项下的权益保护基础,这点对于接受独立保函的相对方而言应当引起足够的重视。同时,独立保函相关争议应当受保函争议解决条款约束。有案件中,保函约定了仲裁条款,当事人在仲裁未获支持后再以其他诉由向法院起诉,法院认为因涉案纠纷仍属于与保函相关的争议,不应由法院管辖。

2. 非独立保函的法律效果及处理。独立保函以外的保函形式在我国担保法律制度下一般构成保证合同。因保证合同具有从属性,开立人付款义务确定之前需对作为主合同的船舶建造合同基础法律关系进行审理,只有确认保函担保对象有付款义务,受益人才能要求开立人根据保函约定的形式承担保证责任。但对于非独立保函担保属性的认定,不同准据法的结论可能存在差异,有关各方应当予以关注。除此以外,《外汇管理条例》规定申请人签订对外担保合同后,应当到外汇管理机关办理对外担保登记。2014 年出台的《跨境担保外汇管理规定》进一步明确外汇局对内保外贷[①]和外保内贷[②]实行登记管理。相关主体在对外出具保函时应按规定办理登记。

九、船舶建造保险类纠纷

船舶建造履约周期较长,建造中船舶处于动态的变化过程之中,风险较一般工程更为复杂。船企或船东通常会通过投保船舶建造险将风险分散给保险公司,实践中,也出现了船企与船东同为被保险人,并在发生保险事故后,保险公司向两被保险人作出保险赔偿的情形。上海

① 担保人注册地在境内、债务人和债权人注册地均在境外的跨境担保。
② 担保人注册地在境外、债务人和债权人注册地均在境内的跨境担保。

海事法院审结的涉船舶建造保险合同纠纷的案件有以下特点：

1. 船舶建造险承保时间跨度长，保险事故发生于多个环节。从一开始原材料制造成零件、零件组装成部件、部件组装成船舶各分段后上船台合拢，在此期间因特定自然灾害或意外事故导致的物质损害、费用及相关责任，到新建船舶试航时发生的保险事故，都属于船舶建造险的保险责任期间。上海海事法院审结的涉船舶建造保险合同纠纷案件既有船舶在船坞内建造时，因设备缺陷或设计错误受损的情形导致船舶价值受损的情形，也有船舶基本建成后在试航期间发生事故以致损害发生。

2. 船舶建造保险条款内容较为简单，容易引发重大争议。目前我国保险公司推出的船舶建造保险产品配套的保险条款，多参照或直接照搬中国人民财产保险股份有限公司推出的《船舶建造保险条款》，而这一条款最初系借鉴英国协会 ICC 造船企业风险保险条款。由于中英法律对于海上保险的规定存在差异，加之船舶建造保险条款的翻译因素影响，实践中容易在承保范围和除外责任的界定上出现重大分歧。

3. 极个别保险理赔存在通融赔付的情形，船舶建造保险人行使代位求偿权难获支持，仍需提高保险理赔审核专业化程度。依照现行法律规定，就保险人行使代位求偿权纠纷案件中，法院仅就造成保险事故的第三人与被保险人之间的法律关系进行审理，换言之，保险人替代了被保险人的身份，负有证明系第三人原因造成了保险事故的举证责任。但实践中，存在被保险人为大客户时，保险人在保险理赔环节对事故原因所涉技术事实的证据搜集、固定不够周延，理赔审核不够严谨，甚至出现通融赔付的情况，值得有关各方注意。

十、涉船舶建造仲裁的司法审查类纠纷

在船舶建造业，采用标准格式订立船舶建造合同的做法比较普遍，常见的船舶建造合同标准格式均选择仲裁作为争议解决的方式。造成

这一现象的原因复杂。仲裁的健康发展,离不开司法的支持和监督。2016年至2020年,上海海事法院审结的30件仲裁司法审查案件中,有20件系涉船舶建造仲裁案件,其中仲裁协议效力确认案件6件、申请撤销仲裁裁决案件12件、申请承认和执行境外仲裁裁决案件1件、申请协助仲裁保全案件1件。尊重仲裁的特点和规律,依法办理相关仲裁司法审查案件,提升仲裁司法审查的透明度和可预期性,保障仲裁法律制度的正确实施和准确适用,是海事审判服务保障船舶产业的应有之义。相关案件的具体情况如下:

1. 充分尊重当事人的仲裁意愿,秉持有利于认定仲裁协议有效的原则,支持当事人选择仲裁方式解决纠纷。上述涉船舶建造仲裁协议效力确认案件中,除1件因当事人约定两个以上仲裁机构且不能就仲裁机构选择达成一致依法被认定无效外,其余案件中仲裁协议均被认定为有效。另外,在案件已立案受理后,若被告在首次开庭前提交仲裁协议并提出争议应提交仲裁解决,法院经审查属实,将依法裁定驳回原告起诉。

2. 秉持积极、包容、开放的司法理念认定涉外仲裁协议效力,保障法治化营商环境。依照中国法律,是否具有涉外因素是判断涉外仲裁协议效力的前提。在主体所在地、标的物所在地、法律事实发生地不具有涉外因素时,国际船舶建造合同因船舶的建造、交接、入级和加入船旗国等多个环节均与境外有连接点,通常属于“可以认定为涉外民事案件的其他情形”,合同境内当事人有权选择向中国仲裁机构以外的仲裁机构申请仲裁解决纠纷。当事人在合同中明确将争议交境外机构仲裁的,应诚信对待自行达成的仲裁协议,仲裁协议有效。

3. 以支持仲裁的立场办理申请撤销仲裁裁决案件和仲裁程序中的保全案件,严格依照法定事由,审查当事人提出的撤销仲裁裁决的申请。近年审结的涉船舶建造的申请撤销仲裁裁决案中,除因原仲裁机

构决定重新仲裁而终结审理外，其余案件均驳回了申请人撤销仲裁裁决的申请。仲裁中的保全措施作为确保仲裁案件公正审理、裁决得以有效执行的“前置性”程序尤为重要。有关仲裁机构依照《中华人民共和国仲裁法》第二十八条提交的涉船舶建造的仲裁程序中的保全案件，均得到了上海海事法院的支持。2020 年，上海海事法院还根据《最高人民法院关于内地与香港特别行政区法院就仲裁程序相互协助保全的安排》审查了首例准许香港仲裁程序中财产保全申请的案件，以上充分体现了海事司法支持仲裁的立场。

4. 支持国际商事仲裁，加强区际司法协助，为仲裁跨境执行营造“仲裁友好型”的司法环境。长期以来，上海海事法院正确适用《承认及执行外国仲裁裁决公约》（1958 年《纽约公约》），审结了一批承认和执行外国仲裁裁决案件，依照《最高人民法院关于内地与香港特别行政区相互执行仲裁裁决的安排》审结了一批承认和执行香港仲裁裁决案件。案件当事人涉及挪威、德国、阿联酋、荷兰、韩国、英属维尔京群岛、马绍尔群岛、中国香港等国家和地区，仲裁机构包括新加坡国际仲裁中心、香港国际仲裁中心等。上述案件的办理，充分体现了上海海事法院根据条约和安排规定，支持国际商事仲裁、加强区际司法协助、营造“仲裁友好型”的司法环境，优化国际化市场化法治化营商环境的司法态度。

第三部分

服务保障船舶产业发展典型案例

案例一

充分尊重市场主体间风险约定　合理界定船舶设计方法律责任

——永诚财产保险股份有限公司北京分公司等诉罗尔斯－罗伊斯海运有限公司(Rolls－Royce Marine AS)侵权损害责任纠纷案

【基本案情】

2012年1月14日,由武船重工为中海油服建造的一艘船舶在南通进行试航前的检查调试时,武船重工施工人员在未接到工作指令亦未技术交底的情形下,开启了通海的舱口盖,船舶因短时间内大量江水快速涌入而坐底。

依照罗尔斯公司与中海油服设计合同的约定,该船舶由罗尔斯公司负责技术设计、提供技术设计图纸,中海油服负有对技术图纸审查的义务,罗尔斯公司仅就交付前因其重大过失或故意失职所造成的损失负责。依照中海油服与武船重工造船合同的约定,武船重工负责包括舱口盖在内的后续详细设计、生产设计,且对罗尔斯公司提供的技术图纸负有校核义务,如因武船重工过失未能发现缺陷等造成损失,武船重工自行承担责任。船舶设计经过双送审,劳氏船级社和中国船级社均未提异议。2010年1月20日,罗尔斯公司曾通过邮件回复武船重工,强调舱口盖在图纸中的位置并指出通海的检修口应标注“直通大海”。

中海油服、武船重工作为共同被保险人向保险公司投保了船舶建造险。2014年10月,保险公司与中海油服、武船重工签订保险赔偿协议,保险公司支付保险赔偿金3.16亿元。

保险公司起诉称,罗尔斯公司技术设计中未设立必要通海警示标识,亦未安排人员现场监督指导,导致施工人员误开启舱口盖,船舶坐底,罗尔斯公司存在过错且系导致事故发生的根本原因,应承担侵权责任法上的产品责任,向保险公司赔偿损失6320万元及利息。

【裁判结果】

上海海事法院一审认为,技术设计或设计图纸并非侵权责任法或产品质量法下的产品,罗尔斯公司在设计图纸上对非专用于通海的舱口盖未标注通海标识不属于设计缺陷。设计合同和造船合同对设计方承担设计缺陷责任已作出了特别约定,现有证据不能证明罗尔斯公司对涉案事故发生存在过错且是导致事故的根本原因,故一审判决驳回保险公司全部诉请。一审判决后,保险公司提起上诉。上海市高级人民法院二审判决,驳回上诉,维持原判。

【典型意义】

本案中船东与船企系船舶建造保险的共同被保险人,保险人因受基础合同制约,不得已选择设计方作为保险代位求偿的责任对象。本案虽是侵权之诉,但在设计合同和造船合同对船东、船企和设计方权责义务作出特别安排的情形下,法院审理不应完全抛开合同或相应关系来考量设计方在本案中的法律地位及义务和责任,最终法院按照侵权法律关系的构成要件和具体规定,综合考虑相关合同条款的约定,合理界定了船舶设计方的法律责任。

本案对船舶保险人、船企及船东均具有一定指导意义。保险公司在设计保险产品、接受投保时,应充分考虑两个以上的共同被保险人(特别是明显处于造船合同相对地位的双方)可能带来的特定法律风险。而对于船企及船东,在设计方只负责技术初步设计的情况下,更应切实担负起图纸审查、校核的义务,增强有效识别技术图纸内容的能力,更细致地编制施工图、施工工艺,并加强对分包商在内的施工人员的技术交底和专业培训,避免小纰漏酿成大灾祸。

案例二

准确查明和适用英国判例法　营造良好国际商事交往环境

——胜船海事公司(Winship Maritime Inc.)诉中海工业有限公司等船舶建造佣金合同纠纷案

【基本案情】

中海工业、扬州重工作为卖方与买方TTI公司(巴拿马籍)于2015年6月签订三份《造船合同》,与胜船海事(塞舌尔籍)于2015年7月签订三份对应的《佣金协议》。《佣金协议》约定,考虑到胜船海事在协助订立和履行造船合同方面所作的努力和给予的配合,卖方应当向胜船海事支付经纪佣金;佣金分六期,分别对应收到买方支付的各期造船款后30天内支付;协议受英国法律约束并须依英国法律予以解释。

2016年8月起,TTI公司由于资金原因,在美国法院进入破产重整,未再按时支付涉案三船的造船款。2018年3月30日,TTI公司与三家新买方分别签订《转售协议》,TTI公司将其在《造船合同》下的所有权利转让给新买方。后卖方从新买方处获得全额船款,船舶也顺利交付。

胜船海事起诉称,卖方仅支付前二期佣金,请求判令中海工业、扬州重工支付剩余各期佣金共计2456500美元及利息。

【裁判结果】

上海海事法院一审认为,本案争议的法律关系为涉外民事法律关系,各方当事人在《佣金协议》中约定适用英国法,应予尊重。在英国法下,经纪人获得佣金应当首先以佣金合同(条款)等协议所约定的条件达成为前提。本案约定的胜船海事获得佣金的条件为促成《造船合同》订立且卖方收到买方支付的船款,每收到一期船款对应一期佣金。此处的买方应当限定于TTI公司或其代表。《造船合同》转让后,胜船海事获得佣金的条件无法达成,中海工业、扬州重工并无过错,不必对胜船海事的损失承担责任。遂判决驳回胜船海事的全部诉讼请求。一审

判决后,各方当事人均未上诉,该判决已生效。

【典型意义】

外国法的查明是准确审理涉外民商事案件的基础,也是正确适用外国法的前提。加强外国法查明并加以准确适用,是依法平等保护中外当事人合法权益的重要保障,也是运用法律手段维护我国主权、安全、发展利益的客观要求。

本案是一起涉外船舶建造佣金合同纠纷。当事人在合同中约定适用英国法。本案裁判充分尊重当事人有关准据法选择的意思自治,并准确查明和适用英国判例法有关佣金支付的规则,判决结果在业内获得良好反响,彰显了我国海事审判公信力和国际影响力,营造了法治化的国际商事交往环境。

案例三

妥处远洋渔船建造纠纷　支持远洋渔业规范发展

——启东市顺丰远洋渔业有限公司诉上海振华重工启东海洋工程股份有限公司船舶建造合同纠纷案

【基本案情】

顺丰公司与振华启东公司签订《造船合同》,顺丰公司委托振华启东公司建造八艘鱿鱼钓船。之后,双方又数次签订谅解备忘录、补充协议,对付款时间、单船价格、交船时间进行调整,约定2012年12月28日开工建造,顺丰公司应支付首期造船进度款5780万元。顺丰公司实际仅支付了造船进度款5000万元,振华启东公司则未按期开工建造船舶。2014年2月18日,双方签订新合同推迟交船时间并约定此前协议应即中止,双方自行协调处理原合同的债权债务并承担责任。2014年9月28日,双方签订补充协议约定,振华启东公司继续执行前两艘船舶建造工作,顺丰公司针对八艘船舶已支付的4200万元(5000万元扣除借款

800 万元)全部作为第一、二艘船舶的预付款,终止或解除其他六艘船舶的建造。2015 年 8 月,前两艘船舶顺利交接。

顺丰公司起诉称,因振华启东公司未在约定期限内交船,应当依照原合同承担违约责任,赔偿顺丰公司损失 22172000 元。

【裁判结果】

上海海事法院一审认为,从新合同的排他性条款分析,原合同的权利义务中止,但双方对于原合同项下未尽的债权债务约定了协调处理并承担责任的解决方式,故顺丰公司依据原合同主张违约损失具有合同依据。振华启东公司在收到 5000 万元进度款后,未按期开工建造,属于违约,对船舶延期交付有一定影响。顺丰公司未能按约定足额支付造船进度款 5780 万元,亦存在违约。法院综合双方当事人履约情形,考虑当事人实际损失等因素,判决振华启东公司应赔偿违约损失 260.4 万元。顺丰公司与振华启东公司均不服一审判决,提起上诉。上海市高级人民法院二审判决,驳回上诉,维持原判。

【典型意义】

近年来,我国大力推进远洋渔业的发展,出台了新建渔船扶持政策,实现远洋渔业装备的现代化,提升远洋渔业发展水平。远洋渔业公司纷纷利用产业政策建造新船,提升远洋捕捞能力,扩大经营规模。海事审判应准确把握相关政策,妥善处理相关纠纷,支持远洋渔业规范发展。

本案中,远洋渔业公司计划建造多艘远洋渔船,但因船企收到建造资金未按期开工的原因,以及船东后续资金准备不足,船舶建造合同履行中数次变更,建造计划一再推迟,船舶最终未能如期全部建成和交付,引发本案纠纷。法院依据船舶建造合同更新过程中的结算和清理条款的具体约定,在合同双方互有违约的情况下,综合船舶建造合同双方的履约情形,明确了违约责任的承担,合理确定了违约损失。案件的

妥善处理对审理类似履行周期长、变更次数多、互有违约行为的复杂船舶建造合同纠纷具有一定的参考意义。

案例四

强化契约精神促进规范发展　构建和谐稳定分包市场秩序

——上海春熙船舶工程有限公司睢宁分公司诉上海外高桥造船海洋工程有限公司船舶建造分包合同纠纷案

【基本案情】

春熙睢宁分公司与其他四家劳务分包方先后共同承揽了外高桥公司四艘船舶建造工程，自2015年3月1日起根据“实物量派工量”按月结算劳务费用。春熙睢宁分公司根据外高桥公司的要求完成了相应工程。2014年10月至2016年9月，外高桥公司按月向春熙睢宁分公司制作船舶工程承揽报酬月度结算单，春熙睢宁分公司确认后开具发票。期间，外高桥公司共向春熙睢宁分公司支付工程款10727693.77元，暂扣质保金336806.65元。春熙睢宁分公司与其他劳务分包方多次向外高桥公司提出书面申请，要求在月度结算基础上增补工程款以弥补分包方损失，并退还质保金。外高桥公司回复不同意增补要求。

春熙睢宁分公司诉称，其共完成了四艘船舶作业量的30%以上，外高桥公司应按合同约定工程总价和付款节点支付工程款，扣除已付款项，外高桥公司还应支付工程款3255200元。

【裁判结果】

上海海事法院一审认为，本案船舶建造劳务分包的结算方式为根据“实物量派工量”按月结算，而非按固定劳务费用及船舶建造进度节点付款。春熙睢宁分公司应自行承担履行分包合同的商业风险。春熙睢宁分公司亦未就其完成船舶作业量30%的估算比例提供有效证据，应承担举证不能的不利后果。但外高桥公司应支付已经月度结算确认

的质保金和扣减的集装箱场地占用费。遂判决,外高桥公司应向春熙睢宁分公司支付工程款项351206.65元。春熙睢宁分公司不服一审判决提起上诉。上海市高级人民法院二审判决,驳回上诉,维持原判。

【典型意义】

当前随着船舶建造模块化生产方式的广泛采用,船企普遍采用工程分包的方式。分包方相对弹性的用工模式,有助于优化劳动力配置,提升我国船企的市场竞争力。

在工程价款约定或结算时,分包方会考虑与船企保持良好合作关系,以便日后承揽到更多的建造分包项目。这种具有商业目的的退让往往被认定为是商事主体综合考虑自身成本收益作出的决策。一旦分包方就有关分包合同结算事项作出书面承诺或确认,相关结算安排的约定即对其具有法律约束力。分包方因自身测算失误遭遇亏损,事后又未能与船企就增补价款协商一致的,只能自行承担经营风险。当然,为了切实保护船舶建造领域共同利益,维护行业秩序和稳定,船企也应本着最大谅解,遵循公平及诚实信用原则,合理分配各方权益。本案的审理有助于强化船舶建造工程分包合同当事方的契约精神和规则意识,构建和谐稳定的船舶建造分包劳务市场秩序。

案例五

明确产品质量举证责任　支持船舶配套业健康发展

——沪东中华造船(集团)有限公司诉上海汉福空气处理设备有限公司等船舶工程专用物品产品质量责任纠纷案

【基本案情】

上海汉福与沪东中华签订购销合同,上海汉福为沪东中华建造的LNG船液货舱提供除湿装置。4台风量除湿装置在出厂前和进船厂后均由沪东中华验收合格。

2016年6月17日1736时,位于长兴岛0号基地码头舾装的H1718A船4号液货舱穹顶外上方的涉案除湿机组发生燃烧,沪东中华厂内消防队赴现场处置。沪东中华内部调查后认为,涉案除湿装置火烧的直接原因是设备后电加热器故障所致。上海汉福委托上海冷冻空调行业协会组织专家对着火起因进行了分析,认为火灾系由外来因素导致。上海市消防局火灾调查处两位专家在本案审理期间受上海海事法院委托,对沪东中华和上海汉福所提交的事故调查报告进行了审阅,并赴现场勘查,认为根据现有证据无法认定涉案事故的起火部位和起火原因。

沪东中华起诉称,上海汉福和启东汉福所生产销售的除湿装置存在质量缺陷并引发火灾,应连带赔偿火灾损失11510293.03元。

【裁判结果】

上海海事法院一审认为,原告以侵权之诉作为其请求权基础提起本案诉讼,应举证证明涉案产品存在缺陷、使用缺陷产品导致损害以及该缺陷与损害后果之间存在因果关系等。事故发生后,双方均对本次事故原因作出分析报告但结论相悖,法院委托的火灾事故调查专家在审阅了双方的事故原因分析报告后赴现场勘查,但仍无法作出事故原因的可信结论。在事故原因无法查明的情况下,沪东中华作为负有举证责任一方应对此承担举证不能的法律后果。法院遂判决驳回沪东中华的全部诉讼请求。沪东中华不服一审判决提起上诉。上海市高级人民法院二审判决,驳回上诉,维持原判。

【典型意义】

船舶配套业是船舶产业的重要组成部分,是实现造船强国的重要支撑。近年来,国家出台了一系列政策,支持我国船舶配套业的发展,支持行业组织发布经技术机构认证符合装船要求的船舶配套产品目录,引导船东、船企、船舶设计单位选用国产船舶配套产品,我国船舶配

套业得以较快发展,本土船用设备装船能力不断提高。

本案是一起高附加值LNG船型装配国产设备引发的产品质量责任纠纷。法院准确适用证据规则,明确在产品质量责任纠纷中的举证责任。因船企的现有证据不足以完成对产品缺陷和因果关系的证明,法院驳回其诉讼请求。本案的处理有助于维护船用配套业市场秩序,支持船舶配套业健康发展,也有助于船企改进事故原因调查流程,进一步提升船舶建造管理水平。

案例六

妥处涉船金融借款纠纷　营造良好船舶融资环境

——中国信达资产管理股份有限公司江苏省分公司诉南通富慧物流有限公司等为建造特定船舶而发生的借款合同及担保合同纠纷案

【基本案情】

2010年6月,富慧物流因委托龙力重工建造一艘54000吨散货船向南通建行申请贷款2亿元,五矿上海向南通建行承诺若船舶不能完工或无法交付使用,则购入船舶并足额代偿富慧物流在南通建行的贷款本息。2010年7月9日,南通建行与富慧物流签订了2亿元固定资产贷款合同;与富慧投资、东升海运以及李平签订了保证合同,各保证人对主合同项下全部债务承担连带保证责任;与龙力重工、龙和造船签订了最高额保证合同,龙力重工、龙和造船为主合同项下的一系列债务提供最高额保证。南通建行依贷款合同的约定按期发放贷款。涉案船舶未能完工投入运营,富慧物流和南通建行于2013年又签订船舶抵押合同,富慧物流将“富慧370”轮向南通建行设定抵押,并办理了抵押登记。

南通建行起诉要求判令借款人按约还款并支付利息,担保人承担担保责任,五矿上海承担代偿责任。审理期间,信达资产因受让南通建行转让的系争债权,经法院准许作为本案原告参加诉讼。

【裁判结果】

上海海事法院一审认为,南通建行按约发放贷款,借款方富慧物流未按合同约定支付利息,构成违约,按照合同约定,南通建行有权解除合同并要求贷款加速到期,南通建行的各项诉讼请求应予支持。因信达资产受让了南通建行的全部债权,故判决富慧物流应向信达资产偿还欠付的贷款本息,信达资产有权对“富慧370”轮行使抵押权,各保证人应在其保证范围内承担连带保证责任,五矿上海应按协议书约定履行代偿责任。五矿上海、东升海运不服一审判决提起上诉。二审中各方当事人达成调解结案。

【典型意义】

船舶融资是船舶产业发展的重要环节,是船舶产业竞争力的重要因素,融资环境也是船舶产业发展软环境的重要组成部分。银行贷款是新造船融资中最普遍的形式。本案系典型的因船舶建造融资而引发的借款合同及担保合同纠纷,涉及主体众多,标的额大,法律关系复杂,涵盖了金融贷款融资下的全部常见担保形式和船舶建造贷款融资下的特有代偿形式。贷款银行为保障资金安全,在贷款合同下设定了连带保证、最高额保证、船舶抵押担保、代偿人在特定条件下的代偿安排等。本案对船舶建造融资相关各方的权利义务逐一认定,妥善解决了纠纷,维护了资金提供方及其权利继受人的合法权益,有利于营造良好的船舶建造融资环境。

案例七

明晰保险责任范围　维护造船保险行业秩序

——泰州三福船舶工程有限公司诉中国大地财产保险股份有限公司泰州中心支公司等海上保险合同纠纷案

【基本案情】

2008年4月28日,三福船舶与赫密恩海运签订造船合同,双方又与设计方签订技术规格书,约定建造船舶达到干舷吃水8.25米时,载重吨约为16900吨。三福船舶向大地财险投保船舶建造险,大地财险签发保险单中的保险条款列明保险责任范围包括“保险船舶任何部分因设计错误而引起的损失”,除外责任包括“建造合同规定的罚款以及由于拒收和其他原因造成的间接损失”。涉案船舶基本建成前的测试显示吃水8.25米时的载重吨比约定少903.20吨。为此,三福船舶与赫密恩海运协商同意减免后两期的建造款858万美元。三福船舶之后就上述降价损失向大地财险提出保险索赔被拒,遂提起诉讼,请求判令大地财险赔偿因设计错误造成的损失858万美元。

【裁判结果】

上海海事法院一审认为,涉案保险承保的损失应限于因造船合同项下事由产生的损失。被保险人与船舶买方在造船合同约定之外另行协商赔偿超出保险合同当事人订立合同时的合理预期,属于间接损失,保险人有权拒绝赔付。三福船舶与船舶买方协商降价损失不属于涉案保险的承保范围。法院一审判决大地财险赔偿三福船舶因设计错误而产生的船舶损失及迟延交付赔偿金人民币303万元及利息。大地财险不服一审判决提起上诉。上海市高级人民法院二审判决,驳回上诉,维持原判。

【典型意义】

保险是经济“减震器”和社会“稳定器”,《中国银保监会关于推动银行业和保险业高质量发展的指导意见》中强调了积极开发支持先进制造业的金融保险产品。在我国这样的造船大国,促进保险业同船舶产业深度融合,对推动船舶产业向高质量发展有重要意义。近年来虽涉及船舶险的纠纷略有上升,但目前国内海上保险业务仍以货运险为主,船舶险的发展相对较缓。因此保险合同条款和保险理赔的规则都

不够成熟完备,容易引起保险合同双方的分歧,导致纠纷的产生。本案判决对船舶建造险的法律适用、保险条款的解释,以及船舶设计错误、损失赔偿数额认定等一系列比较复杂的法律适用和专业技术问题进行了充分的阐释和论证,回应了船舶建造业与保险业关注的法律热点问题,对规范相关市场主体的履约行为、促进航运保险业稳定健康发展,均具有积极作用。

案例八

依法认定在建船舶权属　厘清船企破产财产范围

——特拉斯私人有限公司(TERAS PNEUMA PTE. LTD)诉中航国际租赁有限公司、南通蛟龙重工发展有限公司案外人执行异议之诉纠纷

【基本案情】

中航租赁因船舶融资租赁纠纷一案将蛟龙重工等诉至上海海事法院。判决生效后,中航租赁申请执行,执行过程中扣押了停泊于蛟龙重工船厂内的在建船舶“海科66”轮。特拉斯公司认为,“海科66”轮又名“Teras Ocean”轮,系特拉斯公司所有的财产。特拉斯公司于2012年2月委托蛟龙重工建造该船舶,并于2014年9月协议终止船舶建造合同,另行签订了船舶买卖合同,由特拉斯公司出资4000万美元购买该船舶,并依约支付了全部购船款,船舶已经完成交付和所有权转移。特拉斯公司依据船舶买卖合同等文件在新加坡海事部门对涉案船舶办理了临时登记。特拉斯公司据此向上海海事法院提出执行异议,在异议被驳回后以中航租赁和蛟龙重工为被告提起案外人执行异议之诉。案件审理过程中,蛟龙重工被宣告破产并进入清算程序。

【裁判结果】

上海海事法院一审认为,在建船舶作为动产,物权的设立和转让自

交付时生效。特拉斯公司与蛟龙重工签订买卖合同以及船舶交接协议书,确认由特拉斯公司接受船舶的实际交付,属于动产交付行为,船舶所有权已转移至特拉斯公司。船舶交接后,因特拉斯公司将该船交由蛟龙重工继续后续建造,蛟龙重工对涉案船舶的占有系基于双方后成立的加工承揽合同关系,不影响特拉斯公司已经取得涉案船舶的所有权的事实。特拉斯公司在涉案船舶被扣押之前已实际取得了船舶所有权,涉案船舶并非蛟龙重工所有的财产。同时,中航租赁对于涉案船舶不享有留置权、抵押权或其他优先权利。故特拉斯公司有权基于其船舶所有权排除对涉案船舶的强制执行。

上海海事法院一审判决确认“海科66”轮(“Teras Ocean”轮)属特拉斯公司所有,不得在前述船舶融资租赁纠纷执行案中强制执行。一审判决后,各方均未上诉,该判决已生效。

【典型意义】

船舶建造合同既有买卖合同的特点,又有承揽合同的特征,各国的立法和司法实践对于船舶建造合同法律属性的认定不同。建造中船舶所有权的归属会因对合同性质的不同认定而产生不同的结果。《中华人民共和国海商法》未就在建船舶所有权作出规定。当事人可以通过约定材料、机器和设备的提供或者船舶所有权的归属等方式,确定在建船舶的所有权。明确在建船舶所有权归属确定规则对相关各方维护自身利益,做好风险防范至关重要。

本案是一起在建船舶买方提出的执行异议之诉,以阻止对在建船舶的强制执行措施。法院认为案外人执行异议之诉不因被执行人破产和执行程序中止而失去独立存在的价值,依照船舶建造合同约定和我国民事法律关于动产物权变动的规则认定涉案在建船舶归船东所有、不属于船企的破产财产。本案的处理,合理分配了相关各方利益和风险,明确了在建船舶权属确定规则,有利于促进我国造船业发展。

案例九

妥处在建军舰碰撞纠纷　助力新时代海洋强国建设

——沪东中华造船(集团)有限公司诉宋殿光等船舶碰撞损害责任纠纷案

【基本案情】

2019年2月15日,“皖利辛货0688”轮沿黄浦江航行至沪东中华附近时,船舵失控,失控后处置不当,与系泊在浦西侧沪东中华码头的在建军舰发生碰撞,造成该舰受损。杨浦海事局经调查后认定“皖利辛货0688”轮应对事故承担全部责任。经公估,该舰的合理维修费用为916270.25元。事发前,宋殿光、宋殿亮已订立船舶买卖合同,宋殿亮支付了大部分船款后,宋殿光已将该船舶交付宋殿亮实际占有、使用,但尚未办理转让船舶所有权的登记手续。沪东中华诉称,涉案事故发生系因“皖利辛货0688”轮舵机保养不善、配员不足导致,长盛公司是船舶经营人,宋殿光是登记船舶所有人,宋殿亮是船舶实际经营人且事发时驾驶船舶,应就事故损失承担连带赔偿责任。

【裁判结果】

上海海事法院审理认为,本案应适用民法有关侵权责任的一般规定,由侵权人向被侵权人承担侵权责任。肇事船舶事发时由宋殿亮占有、使用并驾驶,故宋殿亮系本案侵权人,应向负责舰艇建造的沪东中华承担侵权责任。长盛公司作为登记的船舶经营人和光船承租人,负有对该轮进行安全营运和管理的义务,对此次事故亦具有过错,应与宋殿亮承担连带责任。遂判决宋殿亮、长盛公司连带赔偿沪东中华经济损失916270.25元。一审判决后,各方均未上诉,该判决已生效。

【典型意义】

随着我国海洋强国战略的深入实施,海洋主权和安全愈发受到重视。军事舰艇与其他船舶、相关当事方之间的法律关系,军事舰艇因碰

撞等法律事实所引发民事纠纷的法律适用等问题亟需海事司法审判实践的探索与解决。军事舰艇相关海事纠纷裁判规则的确立以及该类纠纷的依法妥善解决也有助于树立我国海洋大国、海洋强国的良好形象，并增强我国航运发展的软实力。

《中华人民共和国海商法》第三条第一款将用于军事的、政府公务的船舶排除在其调整的船舶范围之外，并在该法第八章船舶碰撞再次将此类船舶排除在该法船舶碰撞规则的调整范围之外。本案准确适用法律，明确此种情形下应适用侵权责任法，并参照适用海商法及相关司法解释有关碰撞损害赔偿范围的技术规定，妥善处理了该起涉在建军舰的碰撞纠纷，取得良好的法律和社会效果。

案例十

尊重当事人仲裁意愿　准确认定保函仲裁范围

——恒顺船务有限公司（Heng Shun Shipping Inc）诉上海浦东发展银行股份有限公司保证合同纠纷案

【基本案情】

恒顺公司根据造船合同向惠港公司支付了两期船舶建造款共1422.7万美元。浦发银行向恒顺公司出具还款保函，载明与保函有关的争议应根据伦敦海事仲裁员协会的规则在伦敦仲裁。因惠港公司未按约定交船，恒顺公司发出解除通知，并要求惠港公司退还所有款项及利息，之后再向浦发银行发出退款要求，但均无果。2012年3月16日，恒顺公司向伦敦海事仲裁员协会提起仲裁，要求浦发银行支付1422.7万美元及相应利息。仲裁庭认为，恒顺公司倒签造船合同日期规避适用PSPC规则，以获取船级社的认证，造船合同存在误导第三方的欺诈性表述，违背了公共政策，不可执行；还款保函不是见索即付的保函。仲裁庭认定造船合同及保函不可执行，裁定驳回恒顺公司的请求。恒

顺公司起诉称,浦发银行在出具还款保函时存在过错,请求判令浦发银行赔偿还款保函确定的还款金额1422.7万美元。浦发银行提出主管异议称,涉案纠纷已在伦敦仲裁解决,故法院不应受理。

【裁判结果】

上海海事法院经审理认为,恒顺公司依据保函中的仲裁条款申请仲裁,其在仲裁请求被驳回后又主张浦发银行出具保函时存在过错致其损失,恒顺公司的诉请内容属于与保函相关的争议,涉案争议已由伦敦仲裁解决,法院对此没有管辖权,遂裁定驳回起诉。恒顺公司不服一审裁定,提起上诉。上海市高级人民法院二审裁定,驳回上诉,维持原裁定。

【典型意义】

在整个船舶建造过程中,船企和船东都承担着一定的风险。为了增强船企和船东对彼此的信任度,双方在造船合同中约定各自提供由银行开立的保函来担保造船合同下各自的付款/还款义务。由船东委托的银行开立的“预付款保函”作为对船东在交船前预付船舶建造进度款义务的担保,由船企委托的银行开立“还款保函”作为对船企在违约的情况下退还船东已经支付预付款义务的担保。该类保函也多约定争议解决应适用英国法在伦敦仲裁。

本案原告在仲裁未获支持后,以被告开立还款保函时存在缔约过失为由向法院提起诉讼。法院明确有关保函争议均应受到保函仲裁条款的约束,法院对此没有管辖权。该案的处理,体现法院充分尊重当事人仲裁意愿的态度,展现了中国法院尊重和支持国际商事仲裁的一贯立场。

Part One :

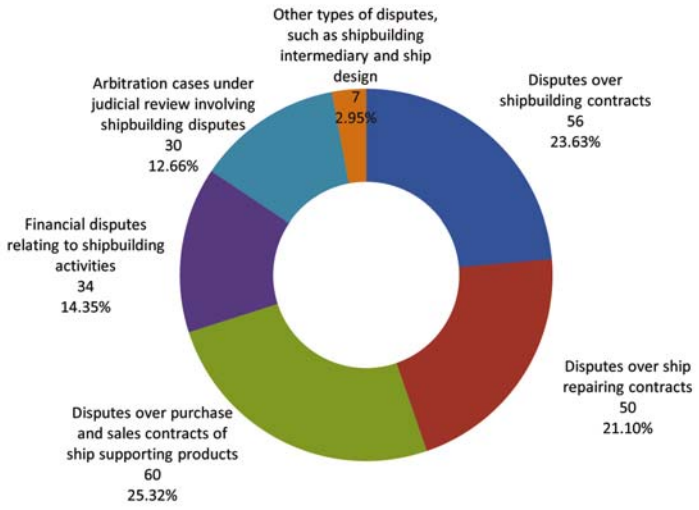
Trials of Serving and Guaranteeing Development of Shipbuilding Industry

Ⅰ. Overview of Trials of Serving and Guaranteeing Development of Shipbuilding Industry

The Shanghai Maritime Court (hereinafter referred to as the "Court") has jurisdiction over a wide range of disputes relating to the development of the shipbuilding industry. Among them, maritime disputes involved in first-instance cases mainly include disputes over shipbuilding contracts, ship design contracts and ship repair contracts directly arising in shipbuilding activities, as well as disputes over purchase and sales contracts of ship supporting products, financial loan contracts, bank guarantees and insurance contracts relating to shipbuilding activities. As disputes relating to shipbuilding activities are also usually resolved through arbitration, cases tried pursuant to special procedures, such as arbitration cases under judicial review involving shipbuilding disputes, also account for a certain proportion.

From 2016 to 2020, the Court concluded a total of 237 cases involving the above maritime disputes, including 56 cases of disputes over shipbuilding contracts, 50 cases of disputes over ship repair contracts, 60 cases of disputes over the purchase and sales contracts of ship supporting products, 34 cases of financial disputes relating to shipbuilding activities (disputes over financing contracts, bank guarantees and insurance contracts relating to shipbuilding activities), 30 arbitration cases under judicial review involving shipbuilding disputes and 7 cases involving other types of disputes, such as shipbuilding intermediary and ship design.

Distribution of Types of Cases Involving the Shipbuilding Industry Concluded in the Recent Five Years



The main characteristics of relevant cases are as follows:

1. Cases of contract disputes take up a dominant proportion and cases of infringement disputes also account for a certain proportion. As disputes relating to shipbuilding activities mainly arise from business activities of market entities, cases of contract disputes take a dominant proportion, up to more than 95% of the total cases. Infringement disputes relating to shipbuilding activities arise under special circumstances, such as accidents in trial voyages of ships, ship design defects and quality defects in ship supporting products, thus accounting for a small proportion.

2. The disputes are highly technological, professional and regular. The shipbuilding industry is a technology-intensive industry. The ship design, building and acceptance are required to be carried out in strict accordance with international treaties and the specifications issued by the classification society and other competent authorities. In particular, to cope with climate changes and protect the marine environment, the International Maritime Organization (IMO) and other competent organizations have established and issued a series of new standards, imposing new requirements on shipowners, shipbuilding enterprises and ship design entities. It is found in trial practices that a significant number of disputes arise from technical issues occurring during the shipbuilding process, for example, whether or not the ship design meets the agreed standards or has defects, whether or not the built ships reach the designed capacity, whether or not the ships are qualified in trial voyages and meet the delivery conditions, whether or not there are quality problems in key ship parts and whether or not design changes will affect the calculation of quantities. In the trial of these cases, professional institutions or experts are usually required to participate in litigation activities to accurately identify relevant technical issues.

3. Associated cases of disputes arising from failures in shipbuilding activities are common. The close connections of various procedures in the shipbuilding industry chain are reflected in associated cases of the corresponding disputes. The connections may be divided into two types: the connections between upstream and downstream procedures and that between shipbuilding companies and financial institutions. In the former case, the failure of one procedure usually causes disputes in several other procedures. For example, the failure in the fulfillment of a shipbuilding contract may

cause a series of disputes over the purchase contracts of key parts and special items of the ships and the adjustment of ship designs may cause workload changes, which may eventually result in contracting project settlement disputes. In the latter case, failures in the shipbuilding process usually cause problems in the related financial service sectors. For example, to avoid and control shipbuilding risks, shipbuilding companies and shipowners usually specify in the shipbuilding contracts that both parties shall, respectively, request a bank to issue a performance guarantee to ensure that the payment or repayment obligations under the contracts will be fulfilled and enhance their credit standings. Usually, shipbuilding companies would purchase shipbuilding insurance as agreed upon in the shipbuilding contracts. Therefore, a failure in the fulfillment of a shipbuilding contract is very likely to trigger financial disputes over financial guarantees and insurance.

4. Foreign-related cases are increasing. As a result of diversified factors such as historical practices, disputes over foreign-related shipbuilding contracts and the related financial guarantees and financing contracts are usually subject to English laws and are arbitrated in London, Britain. Foreign-related cases only account for about 10% of all shipbuilding industry cases accepted by the Court, which is far lower than the proportion of foreign-related cases in other industries. In recent years, the international influence and credibility of China's maritime trials are gradually increasing. Many Chinese shipbuilding companies have tried to specify in their ship export contracts and related agreements that disputes arising from the fulfillment of their contracts shall be settled through legal proceedings in China. The number of foreign-related cases is now increasing. The Court has accepted many typical foreign-related cases. For example, the Court accepted a case about disputes over a shipbuilding contract between a Singaporean buyer and a Chinese shipbuilding company, where the buyer overthrew the arbitration agreement and filed a lawsuit with the Shanghai Maritime Court to settle the dispute based on Chinese laws; adjudicated a case about disputes over shipbuilding commissions based on the British case law; and conducted judicial review on arbitral awards issued by tribunals in other countries such as Britain and Singapore.

Ⅱ. Key Initiatives Taken to Serve and Guarantee Development of Shipbuilding Industry

1. Optimize the allocation of maritime trial resources and improved the professionalism of trials of cases in shipbuilding industry.

In recent years, Shanghai has constantly restructured the layout of the shipbuilding industry. It built many industrial clusters of leading marine companies, such as the Changxing Shipbuilding Base, Lingang Marine Engineering Equipment Manufacturing Base, and Waigaoqiao Shipbuilding and Marine Engineering Equipment Manufacturing Base and set up industrial development zones featuring strategic emerging marine industries, high-end shipbuilding and marine engineering equipment manufacturing. To better serve the construction of related functional areas and the development of the shipbuilding industry, the Court set up the Changxing Island Division in April 2020, which specialized in handling maritime disputes in the functional areas of Chongming District. At the same time, it broadened the functions of courts in the free trade zone in serving the new Lingang area, facilitated the work of courts in both the north and south of Shanghai, accumulated effective experience in protecting the shipbuilding industry through maritime trial services and further enhanced the professionalism of trials of cases in this industry.

The Changxing Island Division is set up

In view of the close connection and wide coverage of the procedures of the shipbuilding industry chain, when any cases involve shipbuilding financing, financial guarantee, shipbuilding insurance and marine damages during the trial voyages of ships under construction, the Court has set up an inter-departmental collegiate panel to conduct the trial to unify the law enforcement standards and expand the breadth and depth of maritime trial services for the shipbuilding industry.

2. Give full play to the advantages of professional organizations and improved the diversified dispute resolution mechanism, to make Shanghai a preferred place for resolution of disputes involving shipbuilding industry.

The Court has established good cooperation relationships with the China Classification Society Shanghai Branch, Shanghai Society of Naval Architects and Ocean Engineers and Shanghai Association of Shipbuilding Industry. Focusing on the roles of industrial and professional organizations in mediating and resolving cases involving the shipbuilding industry, the Court has determined that the most suitable organizations entrusted with mediation based on the characteristics of various disputes and guided the parties involved to prioritize multiple mediation methods. For disputes that are concentrated in numbers and have significant group effects such as the disputes over shipbuilding sub-contracts, the Court gave full play to the judicial demonstration effect and specified the rules through effective judgments to guide other parties involved to accept mediation and expand the results.

The Court cooperates with the Shanghai Commercial Mediation Center to resolve cross-border disputes through foreign mediators

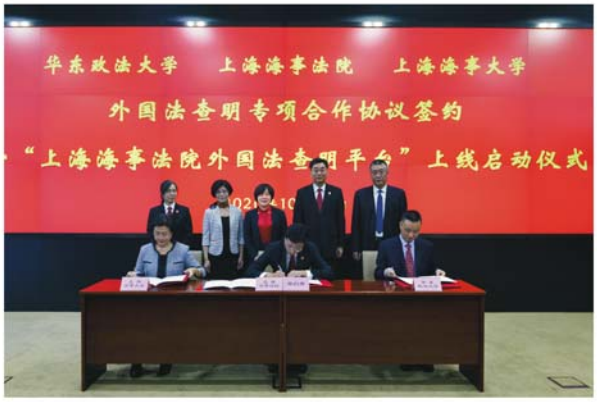
In addition, the Court formulated the *One-Stop Work Rules for Diversified Resolution of Foreign-related Maritime Disputes by Litigation, Mediation and Arbitration.* The Court provided the Chinese and foreign parties involved with diversified, convenient and efficient one-stop dispute resolution services by cooperating with or introducing social resources such as mediation organizations, arbitration organizations and legal service organizations and inviting senior professionals in the shipbuilding industry to serve as mediators and formed a diversified resolution system for foreign-related maritime disputes, to attract the Chinese and foreign parties involved to resolve disputes within the territory of China and strive to make Shanghai a preferred place for the resolution of disputes involving the shipbuilding industry.

3. Effectively carry out judicial review of foreign-related arbitration cases and ascertainment of foreign laws by adhering to the judicial concept of inclusion and openness.

Based on the current situation that foreign-related disputes involving the shipbuilding industry are mainly resolved by foreign arbitration organizations under foreign laws, the Court effectively carried out a judicial review of foreign-related arbitration cases and ascertainment of foreign laws by adhering to the judicial concept of inclusion and openness.

In terms of judicial review of foreign-related arbitration cases, the Court fully respected the willingness of the parties involved to resort to arbitration proceedings, accurately mastered foreign elements involved in the cases, identified the effectiveness of foreign-related arbitration agreements, correctly applied the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the *Arrangements of the Supreme People's Court on the Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region* and recognized and enforced foreign arbitral awards and the arbitral awards made in Hong Kong, to build an "arbitration-friendly" judicial environment and optimize the law-based business environment.

In terms of ascertainment of foreign laws, the Court formulated the *Guiding Opinions on the Ascertainment of Foreign Laws in Maritime Trials Involving Foreign Elements* and the *Work Rules for the Unified Entrustment of Ascertainment of Foreign Laws*. The Court signed the Special Cooperation Agreement on Ascertainment of Foreign Laws with the East China University of Political Science and Law (ECUPL) and the Shanghai Maritime University (SMU), respectively, and formally launched the Shanghai Maritime Court Foreign Law Ascertainment Platform, the first foreign law ascertainment platform in the field of



The Court signs contracts with the ECUPL and SMU and launches the foreign law ascertainment platform

maritime trials in China, to resolve difficulties in the ascertainment of foreign laws.

4. Hire expert jurors and built a talent pool of invited experts proficient in shipbuilding engineering technology consultation to improve the quality of identifying technical facts involving shipbuilding industry.

Shipbuilding and ship design involve multiple professional and technical specifications. According to incomplete statistics, nearly 40% of disputes relating to shipbuilding activities focus on technical and professional issues. The Court has been actively exploring and improving the investigation mechanism for professional and technical facts and determined effective ways to identify professional and technical facts involving the shipbuilding industry. Since 2016, the Court has hired a group of experts with excellent expertise, solid theoretical knowledge and rich practical experience in related industries such as the shipbuilding industry to serve as jurors, to help improve the professionalism of trials in terms of review and verification of evidence, identification of technical facts, etc. In addition, the Court has built a talent pool of invited experts proficient in shipbuilding engineering technology consultation in conjunction with scientific research institutions and industry associations, which provided intellectual support for solving professional and technical issues and provided powerful professional and technical support for resolving conflicts and disputes in the shipbuilding industry.

The forum for invited consultants at Shanghai International Maritime Judicial Base of the Supreme People's Court

5. Build a communication and exchange platform to provide targeted judicial services and facilitate shipbuilding enterprises to cope with risks and challenges.

Under the complicated international situation and the influence of the COVID-19 pandemic, the shipbuilding industry is facing new challenges. The Court pro-actively built a communication and exchange platform, directly faced the "pain points," "obstacles" and "difficulties" of shipbuilding enterprises in terms of judicial requirements, mastered the essence of judicial services and provided targeted judicial

services, to facilitate shipbuilding enterprises to cope with international and domestic challenges. In September 2020, the Court held a seminar on "Risk Response by Shipbuilding and High-End Marine Equipment Manufacturing Enterprises under Regular Epidemic Prevention and Control and Judicial Support" during which, representatives of shipbuilding enterprises and industry associations presented at the seminar, such as Jiangnan Shipyard (Group) Co. Ltd., Hudong-Zhonghua Shipbuilding (Group) Co., Ltd., Shanghai Waigaoqiao Shipbuilding Co., Ltd., Shanghai Zhenhua Heavy Industries Co., Ltd. and COSCO Shipping Heavy Industry Co., Ltd. made extensive and in-depth exchanges and discussions about the risk response by Chinese shipbuilding enterprises in the context of regular epidemic prevention and control, precautions for Chinese shipbuilding enterprises' participation in overseas arbitration, selection of expert witnesses in shipbuilding disputes and other related issues. In addition, the Court established a judicial service and support mechanism for fixed-point contact, regular communication and targeted measures, to actively contact shipbuilding enterprises and promptly respond to their judicial requirements, conclude and promote advanced experience and practices and serve the high-quality development of shipbuilding enterprises.

The Court holds a seminar, serving and supporting the sound development of shipbuilding and high-end marine equipment manufacturing enterprises

Changxing Island Division visits shipbuilding enterprises

6. Deepen the maritime judicial cooperation in the Yangtze River Delta region, to form the joint effort for serving the shipbuilding industry.

The Yangtze River Delta region is the most important shipbuilding base in China, where ship supporting industry clusters are well developed and an industrial layout featuring distinct levels, reasonable structure and close connection has been formed. The new development pattern of the shipbuilding industry formed in the Yangtze River Delta region has posed new requirements on the maritime judicial cooperation in the region.

In November 2019, the Court formulated and issued the *Opinions on Serving and Guaranteeing the Integrated Development of the Yangtze River Delta Region*, specifying the tasks and requirements for pro-actively cooperating in the integrated development of the port and shipping industries, and providing explicit guidance for work of courts from such aspects as fulfilling trial duties, upgrading litigation services, strengthening regional cooperation, promoting discussions and exchanges and promoting data sharing.

上海海事法院

沪海法〔2019〕49号

上海海事法院服务保障
长江三角洲区域一体化发展的实施意见

实施长江三角洲区域（以下简称长三角）一体化发展战略是以习近平同志为核心的党中央作出的重大决策部署，为深入学习贯彻习近平总书记关于推进长三角一体化发展的重要讲话和指示精神，积极贯彻落实《长江三角洲区域一体化发展规划纲要》、《上海市贯彻<长江三角洲区域一体化发展规划纲要>实施方案》和《上海市高级人民法院关于贯彻落实<上海市贯彻<长江三角洲区域一体化发展规划纲要>实施方案>的行动计划》，更好发挥海事司法服务保障长三角更高质量一体化发展的职能作用，结合我院工作实际，制定如下实施意见。

一、切实提高思想认识，增强为长三角一体化发展提供海事司法服务和保障的责任感和使命感

1、深刻认识长三角一体化发展国家战略的重大意义。实施

- 1 -

The Court formulates the opinions, serving the integrated development of the Yangtze River Delta region

In addition, the Court, in conjunction with other maritime courts in the Yangtze River Delta region, established comprehensive mechanisms such as the maritime judicial assistance mechanism, trial resources and information sharing mechanism, unified case standard mechanism and typical case publishing mechanism, to continuously improve the role of maritime trials in providing judicial services and guarantees for the development of marine economy including the shipbuilding industry.

Part Two :

Characteristics of Disputes over Various Types Involving Shipbuilding Industry, Problems Identified and Suggestions

According to the spatio-temporal layout and logical relationship of the links in the industry chain of shipbuilding industry, the Court hereby summarizes the main characteristics of ten types of disputes involving shipbuilding industry concluded by the Shanghai Maritime Court from 2016 to 2020 and the problems identified, and brings forward the relevant suggestions as follows:

Ⅰ. Dispute over Ship Design

Ship design is a multi-parameter, multi-objective, multi-constraint and multi-discipline process of solving and optimizing highly non-linear problems. It requires high technical precision and extensive disciplinary knowledge. Shanghai is a key area for ship design in China, bringing together a number of heavyweight state-owned ship design scientific research institutions and design teams of large-scale state-owned with independent design capabilities, as well as a number of private ship design companies that have been developing rapidly in recent years. Currently, the ship design cases tried by the Shanghai Maritime Court have the following characteristics:

1. Disputes caused by ship design involve multiple links in the whole industry chain of the shipbuilding industry. Ship design is the soul of shipbuilding projects. The ship design work plays a decisive role in realizing the ultimate objective of the whole shipbuilding project. In the event of problems occurred in ship design, a small problem will cause repeated changes to the design, causing the increase or decrease of the content of the construction project and project delay, and a big problem will result in the failure to use the ship or meet the design requirements. Thus, ship design is closely connected to the subsequent shipbuilding, shipbuilding insurance and other links in the industry chain of the shipbuilding industry; disputes arising therefrom include disputes arising from the performance of the ship design contracts, and also disputes concerning the settlement of subcontracting payment for shipbuilding arising from ship design changes, disputes concerning shipbuilding insurance contracts arising from ship design flaws and the corresponding subrogation disputes, etc.

2. There are various types of design objects. Both the entrusting parties for ship design and the construction sites located in the Yangtze River Delta. The designed ships include bulk carriers, oil tankers and other conventional ships, as well as large-lake transport ships, business ships, pilot ships, oilfield work ships, diving support ships

and other unconventional ships. The entrusting parties for design are mostly shipowners and shipbuilding companies from Jiangsu and Zhejiang. Apart from Shanghai, the shipbuilding sites are also located in key bases of the shipbuilding industry in the Yangtze River Delta in Taizhou and Nantong of Jiangsu, as well as Zhoushan, Ningbo, Taizhou of Zhejiang, etc. It demonstrates that Shanghai has a prominent position in the ship design industry, other regions in the area actively accept the transfer of Shanghai's manufacturing industry and support the development of Shanghai's service industry under the allocation of market-oriented resources. A sound division of labor cooperation is shown in the shipbuilding industry of the Yangtze River Delta.

3. Private enterprises account for a high proportion of the ship designers involved in litigation. The amount of compensation caused by ship design flaws is much higher than the amount under the design contract. Most of the disputes arising from ship design flaws involve private ship design enterprises, which indicates that private ship design enterprises need to further enhance their technical reserves, operating and management capacities, and risk prevention capabilities. In the relevant cases, the amount of compensation arising from ship design flaws is several or even a dozen times the design fee. Some ship design enterprises have thus got into business difficulties or even entered into bankruptcy or reorganization procedures.

Ⅱ. Dispute over Intermediary of Shipbuidling and Repair

The intermediary disputes in shipbuilding and repair are "niche" type in maritime cases. The shipbuilding and repair brokers obtain commissions through providing brokerage services for shipbuilding companies and shipowners to enter into shipbuilding or repair agreements. An excellent shipbuilding and repairbroker can promote the mutual understanding between the shipbuilding companies and the shipowners, assist the shipbuilding companies or the shipowners in contractual negotiation, buffer conflicts between shipbuilding companies and shipowners, and provide value-for-money services to shipbuilding companies and shipowners.

All the businesses involved in such cases concluded by the Shanghai Maritime Court are intermediary businesses where foreign agencies act as the go-between for foreign shipowners and large-scale Chinese shipbuilding companies. The brokers are

usually registered in Samoa, Seychelles and other tax avoidance countries. Meanwhile, the shipowners are single-ship companies registered in Panama and other countries of flags of convenience. These foreign-related repair and shipbuilding intermediary contracts often comply with international practices, where the time and conditions for the agent to obtain the commission are related to the progress of the performance of the shipbuilding contract, especially to the progress payment. On the other hand, any change to the shipping market will also bring about various uncertainties to the performance of the shipbuilding contract, and in the event of the rescission of the shipbuilding contract or the transfer of the shipbuilding contract in the course of performance by the shipowners or shipbuilding companies, whether the broker can still obtain the commission needs to be determined according to the governing law of the intermediary contract of shipowners and shipbuilding companies and the clauses of the contract.

Besides, under the impact of the IMO sulfur restriction order, Chinese shipbuilding companies have undertaken the business of desulfurization tower installation for most ships around the world. At the beginning of 2020, the business of desulfurization tower installation was hit by the COVID-19 epidemic and the oil price war. Many shipowners put aside their desulfurization tower installation plans, resulting in many commission disputes.

Ⅲ. Dispute over Ship Repair

Ship repair industry is an important part of China's shipbuilding industry, anda key link in the industry chain of maritime trade. In recent years, the world's ship repair center has moved eastward, and the number of China's annual ship repair projects (number of completed ships) takes up 40% of that of the world, 80% of which are for the repair of foreign ships. China has thus become the world's largest ship repair country. From 2016 to 2020, the Shanghai Maritime Court concluded 48 ship repair contractual disputes in total, including 16 foreign ship repair cases, and the other 32 cases involved the repair of coastal transport ships, inland water transport ships, engineering ships, fishing vessels, yachts and other domestic civil vessels. The relevant cases have the following characteristics:

1. The non-standard management of small and medium-sized shipbuilding

companies is likely to cause disputes, and the industrial standards need to be strengthened urgently. The relevant cases show that the disputes arising from the repair of domestic transport ships, engineering ships, fishing vessels and other civil vessels are mostly related to the non-standard management of small and medium-sized shipbuilding companies directly. The relevant disputes include disputes concerning the payment for ship repair arising from the repair expense standard and repair item, disputes concerning liquidated damages arising from ship delay when shipbuilding companies undertake repair business without the corresponding repair capabilities, subcontracting settlement disputes arising from improper subcontracting, disputes arising from liquidated damages caused by quality defects in ship repair, etc. Ship repair is related to ship quality and navigation safety, and it is urgent to strengthen industry standards. With the transformation of functions of the government and the promotion of the "streamline administration and delegate power, improve regulation, and upgrade services" reform, the Ministry of Industry and Information Technology annulled the *Standard Conditions for the Shipbuilding Industry and the Regulatory and Administrative Measures for the Standardization of the Shipbuilding Industry* in April 2019. Associations in the industry should play a greater role in leading the standardized development of the enterprises and strengthening the self-discipline of the industry, and promote the healthy development of the standardized management of the shipbuilding industry, including the ship repair industry.

2. Disputes arising from the repair of foreign ships are mostly caused by the shipowner's failure to pay for the ship repair in time, and Chinese shipbuilding companies should strengthen the risk management of accounts receivable. In the international ship repair market, the Chinese ship repair industry has three advantages: short work periods, good quality, and low price. Some international ship management companies have reached long-term cooperation agreements with Chinese shipbuilding companies to maintain and repair ships. Since the establishment of the China (Shanghai) Pilot Free Trade Zone, a number of wholly foreign-owned ship management companies have established wholly foreign-owned ship management companies within the free trade zone. Thus, ship repair disputes arising from the ship management companies' failure to pay for the repair of foreign ships have been

increasing in recent years. Although the amount of subject in such cases is large, the fact is clear and the legal relationship is simple, most of the cases have been concluded through mediation. However, for timely payment collection, the Chinese shipbuilding companies have to make concessions in the mediation, which further reduces the already low ship repair profits.

3. The green development of shipbuilding industry has brought new opportunities and new challenges to the shipbuilding industry, and the question of how to dispose the old components and scrap steel replaced in the ship repair deserve great attention. With the validation of the IMO2020 sulfur restriction order and the BWM convention (*International Convention for the Control and Management of Ships Ballast Water and Sediments*), Chinese shipbuilding companies have undertaken a large number of businesses for adding desulfurization towers and ballast water treatment systems, which has become a new growth point of the production and operation of the shipbuilding companies. Meanwhile, Chinese shipbuilding companies have continually accelerated the upgrade and transformation of green environment-friendly techniques, and the green transformation has achieved initial results, which conforms to the trend of green ship repair development. The relevant ministries and commissions jointly issued the *Notice on Issues concerning the Supervision of Scrap Steel Generated by the Repair of Foreign Ships in China*, clarifying that scrap steel generated by ship repair that meets certain conditions can be stored, transferred, utilized and disposed in China without being managed as solid waste. This has created conditions and provided policy guarantee for the resource utilization of the components and scrap steel in ship repair by Chinese shipbuilding companies. It is worth noting that according to industry practice, the old components and scrap steel replaced in ship repair belong to the repair companies, and the shipbuilding companies have the right to dispose of them at any time in the absence of special provisions under the contracts. In the event that the shipowner knows that the old components are needed for insurance claims yet does not put forward any special requirements in the repair contract, so that it suffers losses due to the insurance company refuses to make compensation as the cause of the accident cannot be found out due to the lack of old components, the shipowner cannot get support.

Ⅳ. Dispute over Shipbuilding

Currently, in most shipbuilding contracts, the disputes are solved by arbitration in London in accordance with English law. The shipbuilding cases tried by the Shanghai Maritime Court are mainly domestic shipbuilding contractual disputes; wherein the ships involved include coastal transport ships, inland river transport ships, engineering ships, fishing vessels and ocean fishing vessels, and in some of the cases, after the dispute occurred, the foreign buyer changed the agreed-upon arbitration method and turned to the Shanghai Maritime Court for litigation. Regarding whether the ship has been built or not, the shipbuilding contractual disputes concluded by the Shanghai Maritime Court (not including the 24 shipbuilding subcontracting disputes) can be divided into disputes concerning built ships and disputes concerning in-construction ships, and the number of each type is all 16. The disputes concerning in-construction ships are mainly caused by either party's failure to continue performing the shipbuilding contract, where the other party proposes rescission of the contract as well as the settlement of payment and the assumption of liabilities for breach of contract after the rescission. The disputes concerning built ships are mainly caused by the settlement of payment for shipbuilding. In contrast, a small number of cases are caused by liquidated damages arising from the built ship's failure to meet the design standard. The relevant cases reflect the following issues:

1. A shipbuilding contract has a long performance period and is greatly affected by market fluctuation, but general commercial risks do not constitute situation changes. In many cases, the two parties firstly entered into a contract for the construction of multiple ships. However, the shipbuilding contract was changed repeatedly and was still unable to be performed due to the change of the shipping market, finally leading to litigation. As a shipbuilding contract has a long performance period, a number of eternal risks may be encountered during the performance of the contract, including the increase of the prices of raw materials and equipment, the dramatic change to the shipping market condition, etc. All the risks may cause difficulty or disadvantage for either party to continue performing the contract. When entering into the contract, each party should fully consider the relevant risks and make a clear agreement in the contract. It should be noted that normal commercial risks do not constitute situation

changes. In the event that either party to a shipbuilding contract requests the change or rescission of the contract on the pretext that the market condition is changed and the continued performance of the contract is obviously unfair to such party, it is usually hard to get support for such party.

2. Shipbuilding contractual disputes often involve technical fact disputes, which are difficult to resolve. It is mainly reflected in the fact that the technical facts in the shipbuilding contract between both parties involve great conflicts, it is hard to collect evidence, and the rivalry is strong. In such a case, both parties file claims or counterclaims against each other, where one party claims liquidated damages while the other party claims liabilities for breach of contract; and the ship quality problem usually involves ship design and the quality of key equipment and special articles of the ship, and involves a third person. For the technical facts in such disputes, it is difficult for the parties to collect evidence, and some parties have to withdraw the lawsuit during the trial to collect further evidence. The identification of the relevant technical facts by the court largely relies on the assistance of professional institutions or experts.

3. Whether the fund provider that provides the fund for shipbuilding is a party to the shipbuilding contract or the lender should be determined according to the agreement and the specific arrangement. Shipbuilding is a capital-intensive production activity. The fund source mainly includes the progress payment provided by the shipowner, the fund advanced by the shipbuilding company and the third-party fund introduced. If the fund provider enters into a third-party contract with the two parties to the original shipbuilding contract and part of the rights of the shipowner under the shipbuilding contract is transferred to the fund provider, after the dispute occurs, the fund provider may claim the relevant rights under the shipbuilding contract as a party to the contract against the shipbuilding company directly. However, in some arrangement where the shipbuilding company handles the financing, after the shipowner enters into the construction contract with the shipbuilding company, the shipbuilding company and the fund provider enter into a joint contracting agreement (without the knowledge of the shipowner), where the fund provider provides the shipbuilding company with the construction fund. Then when the shipowner claims that the fund provider should assume the joint liability to refund the payment for

shipbuilding as the shipbuilding company fails to deliver the ship, the court of second instance will hold that the fund provider only provides the construction fund and does not reach the expression and connection with the shipowner as a joint contractor of the shipbuilding contract, and thus refuse to support the claims of the shipowner.

Ⅴ. Dispute over Shipbuilding Subcontracting

With the extensive application of the shipbuilding modular production method, a shipbuilding company usually adopts subcontracting for a project, where segmented construction, piping manufacturing and assembly, electromechanical installation, ship coating and other parts of the project are subcontracted, to reduce the labor cost, optimize the industry chain and enhance the competitiveness of the enterprise. The subcontractors have become an indispensable force in the main force of shipbuilding. Generally, a shipbuilding company keeps improving and strengthening the management and control of the subcontractors in the course of shipbuilding, which has ensured the advanced level of shipbuilding in quality, safety, environmental protection and other aspects, and meanwhile formed a harmonious and stable order of the labor market for shipbuilding. However, there are still a small number of lawsuits concerning disputes arising from shipbuilding subcontracting. From 2016 to 2020, the Shanghai Maritime Court tried 24 shipbuilding subcontracting disputes in total. The relevant cases have the following main characteristics:

1. Subcontracting contents involve various majors in the implementation of the construction project, most of which are labor-intensive tasks. Most of the relevant subcontracts are signed between the shipbuilding companies and the subcontractors in the name of labor cooperation, processing contracting, shipbuilding subcontracting, etc. In contrast, a small number of the contracts are signed between the subcontractors and the secondary subcontractors or equipment suppliers. The subcontracting contents are piping manufacturing and installation, structural construction, welding, fitting-out, coating and other tasks in shipbuilding that need a lot of labor. It is known that half or even three-quarters of the current shipbuilding work is completed by labor subcontractors or other subcontractors. The shipbuilding subcontractors hold an important position in various professional posts.

2. Project settlement disputes account for a high proportion, with large claimed

subject amounts, most of which involve the protection of labor rights and interests. In the relevant disputes, except one dispute of insurance subrogation claimed by the insurance company against the subcontractor due to fire in the course of construction conducted by the subcontractor, the remaining 23 disputes are all caused by project payment settlement. In the relevant project payment settlement disputes, the amount claimed by the plaintiffs of 17 cases exceeds RMB 1 million, and that of 2 cases exceeds RMB 10 million, which are large subject amounts claimed. As a subcontractor's labor cost takes up a high proportion in its income, the subcontractor largely relies on the settled payment for the project to pay its employees. As a result, large-amount project disputes often involve the protection of labor rights and interests and other group issues, which, to a certain extent, has increased the stability maintenance factor and overall planning difficulty for dispute resolution.

3. The subcontractors do not have a strong awareness of evidence, and thus it is difficult for them to prove the increase of the workload. Therefore, they are not supported in most cases. Shipbuilding company and subcontractor often agree upon a "closed contractual price" with the quantity and tonnage as the pricing basis. In the event of any change or increase to the subcontracting work, the contractor will be unable to provide valid evidence to prove the increased workload and the project payment beyond the "closed contractual price" as it fails to collect and fix the relevant evidence due to its weak awareness of evidence or any other factor. In the 23 cases where the subcontractors sued the shipbuilding companies as the plaintiffs, 8 cases were concluded through judgment. The subcontractors were not supported with their full claimed amounts, including 4 cases where the subcontractors only got less than 30% of the claimed amounts.

Ⅵ. Dispute over Ship Accessory Trade

Ship accessories include accessory electromechanical products and systems, ship power systems, electrical automation systems, etc. Ship accessories have the industrial characteristics of large volume, wide range, high technology and high added value, and are one of the most important manifestations of the comprehensive competitiveness of China's shipbuilding industry. From 2016 to 2020, the Shanghai Maritime Court tried 60 ship accessory trade disputes in total. Most of the cases are disputes arising

from the rescission of sales contracts for ship equipment and special articles by ship accessory manufacturers due to the rescission of the shipbuilding contracts and disputes arising from the failure to pay for the equipment in time; some cases also involve disputes arising from the quality of the products provided by the accessory manufacturers.

In recent years, China has enacted a series of policies to support the development of its ship accessory industry. It is proposed in the *Action Plan for the Promotion of the Ship Accessory Industry* (2016-2020) issued by the Ministry of Industry and Information Technology that the construction of the trial and validation capability of key techniques and products should be strengthened, and the useful life and quality tracing capability of products should be enhanced; industrial organizations should be supported for the publication of catalogs of ship accessories that meet the shipment requirements certified by technical institutions, and shipowners, shipbuilding companies and ship designers should be guided to select them. According to the trial of the relevant cases, China's ship accessory industry has been developing rapidly, the industrial system has been continuously improved, a great breakthrough has been made in the research of key ship equipment, the industrial scale has been continuously expanded, and the shipment capacity of domestic ship equipment has been significantly enhanced. However, in general, the core technology and industrial capacity of China's ship accessory industry are still far from the world's advanced level, almost all the high-end accessory products are monopolized by renowned foreign brands, and China's ship accessory industry is still unable to effectively support the development demand of the ship industry.

Ⅶ. Dispute over Shipbuilding Financing

Shipbuilding is also a capital-intensive industry. In the course of shipbuilding, the shipbuilding progress payment is usually made by the shipowner as agreed, while sometimes the shipbuilding company may advance the fund. For an enterprise with capital turnover difficulty, whether it is the shipowner or the shipbuilding company, financing is an effective practice. At present, ship loan financing, financial leasing, shipbuilding supply chain financing, equity financing, private loan financing and other financing methods have occurred in the shipbuilding field. The State Council issued the

Guiding Opinions on Accelerating the Establishment and Improvement of a Green and Low-Carbon Circular Development Economic System on February 22, 2021, where it is specifically proposed that great efforts should be made for green finance. Thus it is foreseeable that green ship financing projects will continue to grow. From 2016 to 2020, the shipbuilding financing disputes concluded by the Shanghai Maritime Court have the following main characteristics:

1. There are many subjects involved and the legal relationship is complex. The subjects of a ship financing relationship include the shipowner or the shipbuilding company and the fund provider. Meanwhile, due to the high risk of ship financing, the fund provider often requires the shipbuilding company or the shipowner to guarantee that the financing party has sufficient solvency. The involvement of the guarantor makes the interest relationship more complex. Under the loan contract relationship with one master contract, there are often a number of subordinate contracts, including the guarantee contract and the mortgage contract. Whether the guarantee relationship exists and the scope of liability to guarantee are the focus of the trial. A ship is a special movable property, and the way to identify it as a guaranty is different from that for a general movable property or real estate property; as a result, the realization of the mortgage of the ship needs special procedures. Whether the operating right and operating revenues of the ship can be used for mortgage is also a new type of issue in trial.

2. It is difficult for a private enterprise to obtain financing, and most private enterprises obtain financing through financial leasing. Due to the significant fluctuation of the shipping market and the long period of capital occupation, out of the consideration of risk prevention, commercial banks adopt a cautious attitude for loans provided to in-construction ships. They prefer large-scale state-owned shipbuilding companies with good credit standing. However, large-scale state-owned shipbuilding companies do not have strong demand for funds provided by other institutions, while small and medium-sized private shipbuilding companies have to turn to other channels to obtain funds. In the shipbuilding financing cases tried by the Shanghai Maritime Court, all the shipbuilding companies are private enterprises, most of the financing arrangements are financial leasing. In a small number of cases, the funds are from joint

contracts for hired work or equipment purchase contracts, which, however, are actual from capital loans; the identification of the nature of the contract in such a case often directly affects the assumption of liabilities by the parties.

3. "Special funds" are not used for "fixed purposes". The lack of supervision of the usage of funds has led to disputes from time to time. The demand of shipbuilding fund is large, and it will take a long time to recover such fund and involves a large number of stakeholders, where both high profits and high risks coexist. To reduce the risk, the fund provider usually makes the arrangement that the financing fund shall be used to construct a specific ship only. However, according to the trial of the relevant cases, due to the lack or inadequacy of supervision, the shipbuilding company may misappropriate the financing fund for the construction of any ship other than the specific ship or even for any project other than shipbuilding. The misappropriation of the financing fund for shipbuilding will cause the late delivery of the ship or even the failure to deliver the ship, and disputes arising therefrom are often to be seen.

Ⅷ. Dispute over Letters of Guarantee Related to Shipbuilding

In the course of shipbuilding, both the shipbuilding company and the shipowner assume certain risks. To strengthen the mutual trust between the shipbuilding company and the shipowner and in accordance with international practices, both parties agree in the shipbuilding contract that each party shall guarantee its payment/repayment obligation under the shipbuilding contract with a letter of guarantee issued by a bank. The "letter of guarantee for advance payment" issued by the bank entrusted by the shipowner is the guarantee for the shipowner's obligation to advance the progress payment for shipbuilding before delivery, and the "letter of guarantee for repayment" issued by the bank entrusted by the shipbuilding company is the guarantee for the shipbuilding company's obligation to refund the advance payment that has been made by the shipowner as agreed. From 2016 to 2020, there were not many cases of this type tried by the Shanghai Maritime Court, but the issues reflected therein are quite representative:

1. Legal effect and handling of independent letter of guarantee. Independent letter of guarantee is issued by a bank or a non-bank financial institution, setting forth a demand guarantee or specifying that the payment obligation of the issuer is independent

of the basic transaction relationship and the legal relationship of the application for the letter of guarantee. Once the payment conditions set forth in the letter of guarantee are met, the issuer shall unconditionally pay right away. Under an independent letter of guarantee, the beneficiary's request for payment is easier to realize. It should be noted that in some cases, the parent company of the shipbuilding company or the shipowner or any other non-financial institution has issued a letter setting forth "demand guarantee", and the wording is consistent with the independent letter of guarantee issued by a financial institution. However, as to whether under the current foreign laws or the current Chinese law, the issuer of an independent letter of guarantee must be a financial institution, a similar letter of guarantee issued by a non-financial institution will not be identified as an independent letter of guarantee by the court or arbitration institution. Thus, the basis for the protection of rights and interests under the independent letter of guarantee is lost, which should be paid sufficient attention by the counterparty that accepts the independent letter of guarantee. Meanwhile, disputes concerning an independent letter of guarantee should be bound by the dispute resolution clause under the letter of guarantee. In some cases, the letter of guarantee includes an arbitration clause, and either party files an action with the court with some other cause of action after the claim is rejected in arbitration; the court holds that the content of the action is still the dispute concerning the letter of guarantee, and the dispute concerned shall be governed by the arbitration clause rather than the court.

2. Legal effect and handling of non-independent letters of guarantee. A letter of guarantee other than an independent letter of guarantee generally constitutes a contract of guaranty under China's legal system of guarantee. Due to the subordination of a contract of guaranty, before determining the issuer's payment obligation, the basic legal relationship of the master contract, that is, the shipbuilding contract, should be reviewed. Only when the guaranteed object of the letter of guarantee is confirmed to have the payment obligation , the beneficiary can require the issuer to assume the liability of guaranty in the form agreed upon under the letter of guarantee. However, to identify the attribute of the guarantee under a non-independent letter of guarantee, the conclusion under different governing laws may differ, and the relevant parties should pay attention to it. In addition, it is prescribed under the Regulations on Foreign

Exchange Administration that after the applicant signs the contract of guaranty, it should handle the guarantee registration with the foreign exchange administration. The *Regulations on Cross-Border Guarantee Foreign Exchange Administration* enacted in 2014 further clarifies that the Administration of Foreign Exchange should implement registration management for offshore financing against domestic guarantee and domestic financing against the offshore guarantee. Therefore, when issuing a letter of guarantee to another party, the relevant subject should handle the administrative registration as prescribed by laws and administrative regulations.

Ⅸ. Dispute over Shipbuilding Insurance

The performance period of shipbuilding is long, ships in construction are in a dynamic process of change, and the risks are more complex than general projects. The shipbuilding company or the shipowner usually reduces its risks by buying shipbuilding insurance and distributing the insurance company's risks. In practice, after an insurance accident happens, the insurance company may also make insurance compensation to the shipbuilding company and the shipowner, who are both insured persons. The cases involving shipbuilding insurance contract disputes tried by the Shanghai Maritime Court have the following characteristics:

1. It takes a long time for the underwriting of shipbuilding insurance, and insurance accidents happen in multiple links. From the manufacture of parts with raw materials, the assembly of components with parts, the assembly of each section of the ship with the components and the assembly of the entire ship, to any material damages, expenses and relevant liabilities caused by any specific natural disaster or accident during this period of time and any insurance accident that happens in the pilot voyage of the newly built ship, the whole period should be the insurance liability period for shipbuilding insurance. The cases concerning shipbuilding insurance contract disputes tried by the Shanghai Maritime Court include those concerning disputes that the value of the ship is damaged due to equipment defects or design errors when the ship is still in construction in the dock, and the disputes that an insurance accident happens during the pilot trial and causing damages when the ship is basically built.

2. The content of the shipbuilding insurance clause is simple, and is likely to lead to major disputes. Currently, the insurance clauses supporting shipbuilding insurance

products launched by Chinese insurance companies usually refer to or directly copy the *Shipbuilding Insurance Clauses* launched by the PICC Property and Casualty Company Limited, and this clause was originally based on the shipbuilding enterprise risk insurance clause of ICC, the English association. Due to the difference of marine insurance provisions under Chinese law and English law and the impact of the translation factor of the shipbuilding insurance clause, in practice, major divergences may occur in the definition of the scope of insurance and exclusions.

3. For a small number of insurance claims, exgratia payment still exists. It is difficult for the shipbuilding insurer to be supported for the right of subrogation. The professionalization degree of the insurance claims review still needs enhancement. According to the current legal provisions, in cases concerning disputes arising from the right of subrogation to be exercised by the insurer, the court only reviews the legal relationship between the third person causing the insurance accident and the insured person. In other words, the insurer takes the insured person's identity and assumes the burden of proof to prove that the insurance accident is caused by a third person. However, in practice, when the insured person is a major client, the collection and fixing of the evidence for the technical facts involved in the cause of the accident in the insurance claim link is not circumspect enough, the claims review is not rigorous enough, and even exgratia payment exists, which needs to be paid attention to.

X. Dispute over Judicial Review of Shipbuilding Arbitration

In the shipbuilding industry, it is common to conclude shipbuilding contracts in a standard format. In arbitration, it is chosen for dispute resolution for the general standard format for shipbuilding contracts. The reason for this phenomenon is historical and complex. The healthy development of arbitration is inseparable from the support and supervision of justice. From 2016 to 2020, in the 45 arbitration judicial review cases tried by the Shanghai Maritime Court, 20 cases involved shipbuilding arbitration, including 6 cases of the confirmation of the effect of the arbitration agreement, 12 cases of the application for the cancellation of the arbitration ruling, 1 case of the application for the acceptance and enforcement of overseas arbitration ruling, and 1 case of application for the assistance of arbitration preservation. It is an

integral component of the maritime judicial services for the support of the shipbuilding industry to respect the characteristics and laws of arbitration, handle relevant arbitration judicial review cases according to law, enhance the transparency and predictability of judicial arbitration review and guarantee the proper implementation and accurate application of the legal system of arbitration. Details of the relevant cases are as follows:

1. Fully respect the parties' willingness to engage in arbitration, adhere to the principle of holding the validity of the arbitration agreement, and support the parties to choose arbitration to solve disputes. In the foregoing cases of confirming the validity of the shipbuilding arbitration agreement, except 1 case where the parties agreed upon over two arbitration institutions and were unable to reach an agreement to choose the arbitration institution so that the arbitration agreement was identified as invalid according to law, other arbitration agreements in the remaining cases were all identified as valid. Besides, when the case had been filed, the defendant submitted the arbitration agreement before the first trial and brought forward the dispute, the dispute should be solved through arbitration. The court thus rejected the plaintiff's claims according to law after verification.

2. Adhere to the proactive, inclusive and open judicial philosophy to identify foreign-related arbitration agreements' validity and protect the legalized business environment. According to Chinese law, whether there are any foreign-related factors is the prerequisite to determine the effect of a foreign-related arbitration agreement. When the location of the subject, the location of the subject matter and the location when the legal fact happened does not have any foreign-related factors, while the international ship repair contract is connected to overseas factors in the construction, handover, classification and joining in the flag country of the ship and many other links, it should be identified as "other circumstances where the cases can be identified as foreign-related civil cases". In such a case, the domestic party shall have the right to apply for arbitration to solve the dispute with a foreign arbitration institution. Where the parties clarify in the contract that the dispute will be submitted to an overseas institution for arbitration, the parties should treat the arbitration agreement reached by themselves in good faith, and the arbitration agreement should be valid.

3. Handle cases of application for the cancellation of arbitration rulings and preservation cases in arbitration procedures from the standpoint of supporting arbitration. The application filed by a party for the cancellation of the arbitration ruling should be reviewed strictly according to statutory reasons. In the cases of application for the cancellation of arbitration rulings involving shipbuilding, except the cases that the original arbitration institution decided to conduct the arbitration again and conclude the trial, in all the remaining cases, the application filed by the applicant for the cancellation of the arbitration ruling was rejected. The preservation measures in arbitration are quite important for the "prepositive procedure" that ensures the fair trial of the arbitration cases and the effective enforcement of the rulings. The Shanghai Maritime Court supported all the preservation cases handled by the relevant arbitration institutions in the arbitration procedures involving shipbuilding submitted in accordance with Article 28 of the *Arbitration Law of the People's Republic of China.* In 2020, the Shanghai Maritime Court also reviewed the first case of approving property preservation application in Hong Kong arbitration procedures in accordance with the *Arrangement of the Supreme People's Court on the Mutual Assistance for Preservation in Arbitration Procedures between Courts of Mainland China and the Hong Kong Special Administrative Region.* The foregoing fact has fully demonstrated the standpoint of maritime justice's support for arbitration.

4. Support international commercial arbitration, strengthen inter-regional judicial assistance, and create an "arbitration-friendly" judicial environment for the cross-border enforcement of arbitration. For a long time, the Shanghai Maritime Court has properly applied the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (1958 *New York Convention*) and concluded cases of the acceptance and enforcement of foreign arbitration rulings, and also concluded cases of the acceptance and enforcement of Hong Kong arbitration rulings in accordance with the *Arrangement of the Supreme People's Court on the Mutual Enforcement of Arbitration Rulings by Mainland China and the Hong Kong Special Administrative Region.* The parties to the cases involve Norway, Germany, the United Arab Emirates, the Netherlands, South Korea, the British Virgin Islands, the Marshall Islands, Hong Kong and other countries and regions. The arbitration institutions include the Singapore

International Arbitration Centre, the Hong Kong International Arbitration Centre, etc. The trial of the foregoing cases has fully demonstrated that the judicial attitude of the Shanghai Maritime Court to support international commercial arbitration, strengthen inter-regional judicial assistance and create an "arbitration-friendly" judicial environment in accordance with conventions and arrangements, and optimize the internationalized, market-oriented and legalized business environment.

Part Three :

Typical Cases about Support of Development of Shipbuilding Industry

Case 1: Fully respect risk agreements between market players and reasonably define the designer's legal liabilities

—Alltrust Property Insurance Co., Ltd. Beijing Branch, *et al.* v. Rolls-Royce Marine AS: Case of Dispute over Tort Liability

[Case Description]

On January 14, 2012, when a vessel built by Wuchang Shipbuilding Industry Group Co., Ltd. (hereinafter referred to as "WS") for China Oilfield Services Limited (hereinafter referred to as "COSL") was inspected and commissioned at the Nantong Wharf of the shipyard before the sea trial voyage, the construction personnel of WS opened the hatch cover connected to the sea without receiving work instructions or technical disclosures. As a result, a large amount of river water leaked into the vessel in a short time and the vessel was grounded. Rolls-Royce Marine AS (hereinafter referred to as "Rolls-Royce") was responsible for the technical design and provision of technical design drawings for the vessel. In accordance with the design contract between Rolls-Royce and COSL, COSL was obliged to review the technical drawings, and Rolls-Royce was only responsible for losses arising from its gross negligence or willful misconduct prior to the delivery of the technical drawings. In accordance with the shipbuilding contract between COSL and WS, WS was responsible for the subsequent detailed design and production design, including hatch covers, and was obliged to check the technical drawings provided by Rolls-Royce; and WS shall assume any loss arising from its failure to discover any defects in the technical drawings due to negligence. The design drawings were submitted to the Lloyd's Register of Shipping and the China Classification Society for approval, and neither of them raised objections thereto. On January 20, 2010, Rolls-Royce replied to WS by email, emphasizing the position of hatch cover in the drawings and saying that the manhole connected to the sea shall be marked with "Connected to Sea". COSL and WS, as the co-insured, purchased a builder's risk insurance policy from the insurance company. In October 2014, the insurance company entered into an insurance indemnity agreement with COSL and WS, specifying that the insurance company shall pay an insurance indemnity of RMB 316 million. The insurance company brought a lawsuit to the court, claiming that Rolls-Royce did not provide necessary warning signs for the

connection to the sea in the technical design, nor arrange personnel to provide on-site supervision and guidance. As a result, the construction personnel mistakenly opened the hatch cover and the vessel was grounded. Rolls-Royce had fault which was the root cause of the accident, so Rolls-Royce should assume the product liability under the tort liability law and compensate the insurance company for its loss of RMB 63. 2 million and the interest accrued thereon.

[Judgment]

Shanghai Maritime Court held in first instance that technical design or design drawings were not products under the tort liability law or product quality law. Rolls-Royce's failure to mark on the design drawings a "Connected to Sea" sign for the hatch cover that is not specially used for connection to the sea was not a design defect. The design contract and shipbuilding contract included special provisions on the designer's liability for design defects. The existing evidences could not prove that Rolls-Royce had fault in the accident involved and that its failure to mark the warning sign was the root cause for the accident. Therefore, Shanghai Maritime Court judged in first instance that all claims of the insurance company shall be rejected. The insurance company appealed against the judgment of first instance. Shanghai High People's Court judged in second instance that the appeal shall be dismissed and the original judgment shall be affirmed.

[Typical Significance]

In this case, both the shipowner and shipbuilding enterprise were co-insured of the builder's risk insurance. Subject to the basic contract, the insurance company had no choice but to take the designer as the object of insurance subrogation. This case involves a tort action. However, given that the design contract and shipbuilding contract included special arrangements on the rights and obligations of the shipowner, the shipbuilding enterprise and the designer, the court should not ignore the contracts or the corresponding relationships when considering the designer's legal status, obligations, and responsibilities in the case. Finally, the court reasonably defined the legal liabilities of the ship designer in accordance with the constitutional elements and specific provisions of the tort legal relationship, and the relevant provisions of the contracts.

This case is of certain guiding significance to ship insurers, shipbuilding enterprises, and shipowners. When designing insurance products and accepting insurance applications, insurance companies should fully consider the specific legal risks that may arise from two or more co-insured (especially from the parties that are obviously counterparties in a shipbuilding contract). When the designer is only responsible for the preliminary technical design, the shipbuilding enterprise and shipowner should effectively assume the obligation to review and check the drawings, improve their ability to effectively identify the technical drawings, prepare construction drawings and construction processes more meticulously and strengthen the technical disclosure and professional training to construction personnel, including subcontractors, to avoid big disasters caused by small mistakes.

Case 2: Accurately ascertain and apply the British case law, create a good international business environment

—Winship Maritime Inc. v. China Shipping Industry Co., Ltd. et al.: Case of Dispute over Shipbuilding Commission Contract

[Case Description]

China Shipping Industry Co., Ltd. (hereinafter referred to as "CIC") and COSCO Shipping Heavy Industry (Yangzhou) Co., Ltd. (hereinafter referred to as "CHI Yangzhou"), as the seller, concluded three *Shipbuilding Contracts* with TTI (registered in Panama), as the buyer, in June 2015, and they concluded three *Commission Agreements* with Winship Maritime Inc. (hereinafter referred to as "WM") (registered in Seychelles) in July 2015 accordingly. In accordance with the *Commission Agreements*, in consideration of WM's efforts and cooperation in the conclusion and performance of the *Shipbuilding Contracts*, the seller shall pay brokerage commissions to WM; the commissions shall be paid in six installments, respectively, within thirty days after the seller's receipt of the corresponding installment payment from the buyer; and the agreements shall be governed by and interpreted in accordance with the British laws. Since August 2016, TTI entered bankruptcy reorganization in a U. S. court for fund reasons, and had no longer paid installment payments for the three vessels involved as scheduled. On March 30, 2018, TTI concluded the *Resale Agreement* with three new buyers respectively, according to

which, TTI sold all rights and interests under the *Shipbuilding Contracts* to the new buyers. Later, the seller received the full payments from the new buyers and delivered the ships to the buyers smoothly. WM brought a lawsuit to the court, claiming that the seller only paid the first two installments of commissions, and requested the court to order CIC and CHI Yangzhou to pay the remaining installments of commissions, in aggregate amount of USD 2,456,500, and the interest accrued thereon.

[Judgment]

Shanghai Maritime Court held in first instance that the legal relationship involved was a foreign-related civil legal relationship and the parties' choice of the British laws as the applicable law in the *Commission Agreements* should be respected. Under the British laws, a broker's collection of commissions shall be conditioned upon the satisfaction with the terms as specified in the commission contract (clause) and other related agreements. In this case, the parties agreed that WM's collection of commissions shall be conditioned upon the conclusion of the *Shipbuilding Contracts* and the seller's receipt of installment payments from the buyer, namely, the seller shall pay WM an installment of commission after receiving the corresponding installment payment from the buyer. The buyer mentioned here should be limited to TTI or its representative. After the assignment of the *Shipbuilding Contracts*, the conditions based upon which WM collected commissions cannot be achieved, so CIC and CHI Yangzhou had no fault and were not labile for the losses sustained by WM. Therefore, all the claims of WM shall be rejected. After the judgment of first instance was rendered, no party appealed, and the judgment came into effect.

[Typical Significance]

The ascertainment of foreign laws is the basis for the accurate trial of foreign-related civil and commercial cases, and the precondition for the correct application of foreign laws. Strengthening the ascertainment and accurate application of foreign laws provides an important guarantee for equally protecting the legitimate rights and interests of the foreign and Chinese parties in accordance with the law and also meets the objective requirement of protecting China's sovereignty, safety, and development interests by legal means.

This case involves a dispute over foreign-related shipbuilding commission

contracts. The parties chose the British laws as the applicable law in the contracts. The judgment of this case fully respects the parties' free choice of the governing law, accurately ascertains and applies the rules of the British case law on payment of commissions, and thus has received good response in the industry. It demonstrates the credibility and international influence of China's maritime trials, and creates a law-based international business environment.

Case 3: Properly resolve the dispute over the building of deep-sea fishing vessels, support the regulated development of the deep-sea fishery

—Qidong Shunfeng Ocean Fishery Co., Ltd. v. Shanghai Zhenhua Heavy Industries Qidong Marine Engineering Co., Ltd.: Case of Dispute over Shipbuilding Contract

[Case Description]

Qidong Shunfeng Ocean Fishery Co., Ltd. (hereinafter referred to as "Shunfeng") and Shanghai Zhenhua Heavy Industries Qidong Marine Engineering Co., Ltd. (hereinafter referred to as "Zhenhua Qidong") concludedthe *Shipbuilding Contract*, according to which, Shunfeng entrusted Zhenhua Qidong to build eight squid jigging vessels. Later, the parties concluded memorandums of understanding and supplementary agreements several times, adjusting the payment time, unit price, and delivery time of vessels, and specifying that the building of vessels shall commence on December 28, 2012, and Shunfeng shall pay Zhenhua Qidong the first progress payment of RMB 57.8 million. Shunfeng actually paid a progress payment of RMB 50 million, and Zhenhua Qidong did not commence the building of vessels as scheduled. On February 18, 2014, the parties concluded a new contract, specifying that the delivery time of vessels shall be postponed, the previous agreements between the parties shall be suspended, and the parties shall settle the outstanding claims and debts under the original contract through negotiation and assume relevant liabilities. On September 28, 2014, the parties signed a supplementary agreement, specifying that Zhenhua Qidong shall continue the building of the first two vessels, and the remaining progress payment of RMB 42 million (after deduction of the borrowing of RMB 8 million) made by Shunfeng for the eight vessels shall be taken as the advance payment of the first two vessels, and the building of the remaining six vessels shall be

terminated. The first two vessels were delivered smoothly in August 2015. Shunfeng brought a lawsuit to the court, claiming that Zhenhua Qidong should assume the liability for breach of contract due to its failure to deliver the vessels within the specified time limit, and compensate Shunfeng for its losses of RMB 22,172,000.

[Judgment]

Shanghai Maritime Court held in first instance that, according to the exclusive clauses of the new contract, the parties' rights and obligations under the original contract were suspended, but the parties agreed that they shall settle the outstanding claims and debts under the original contract through negotiation and assume the relevant liabilities. Therefore, Shunfeng's claims for losses under the original contract had a contractual basis. After receiving the progress payment of RMB 50 million, Zhenhua Qidong did not commence the building of vessels as scheduled, which constituted a breach of contract and had a certain impact on the postponed delivery of vessels. Shunfeng's failure to pay the agreed progress payment of RMB 57.8 million in full also constituted a breach of contract. Shanghai Maritime Court judged that Zhenhua Qidong shall pay Shunfeng RMB 2.604 million as the compensation for the losses sustained by Shunfeng due to the breach of contract by Zhenhua Qidong, by taking into account factors such as the parties' performance of contract and their actual losses. Both Shunfeng and Zhenhua Qidong were dissatisfied with the judgment of first instance and appealed. Shanghai High People's Court judged in second instance that the appeal shall be dismissed and the original judgment shall be affirmed.

[Typical Significance]

In recent years, China has vigorously promoted the development of deep-sea fishery and issued support policies for new fishing vessels, to realize the modernization of deep-sea fishery equipment and improve the development level of deep-sea fishery. Deep-sea fishing companies have built new vessels under the industry policy, to improve their deep-sea fishing capacity and expand their business scale. The maritime trials should accurately master relevant policy, and properly resolve related disputes, to support the regulated development of the deep-sea fishery.

In this case, the deep-sea fishing company planned to build several deep-sea fishing vessels. However, due to the shipbuilding enterprise's failure to commence the

building of vessels as scheduled after receiving the progress payment, and the shipowner's shortage of funds to make the subsequent payments, the parties made changes to the shipbuilding contract several times during the performance of the contract and postponed the building plan repeatedly, and finally, not all the vessels were built and delivered as scheduled, thus giving rise to the dispute in this case. The court, in accordance with the specific provisions of the settlement and clearing clauses of the updated contract and based on both parties' breach of contract and their performance of the shipbuilding contract, defined the parties' liability for breach of contract, and reasonably determined the amount of loss arising from the breach of contract. The proper trial of this case is of certain reference significance to disputes over shipbuilding contracts where the performance period is long, changes are made several times, and both parties are in breach of contract.

Case 4: Strengthen the spirit of contract and promote the regulated development, contribute to the building of a harmonious and stable subcontracting market

—Shanghai Chunxi Ship Engineering Co., Ltd. Suining Branch v. Shanghai Waigaoqiao Shipbuilding and Offshore Co., Ltd.: Case of Dispute over Shipbuilding Subcontract

[Case Description]

Shanghai Chunxi Ship Engineering Co., Ltd. Suining Branch (hereinafter referred to as "Chunxi Suining Branch") and other four labor subcontractors jointly undertook the building project of four vessels of Shanghai Waigaoqiao Shipbuilding and Offshore Co., Ltd. (hereinafter referred to as "SWS Offshore") successively. From March 1, 2015, SWS Offshore settled the labor costs on a monthly basis according to the "completed quantities". Chunxi Suining Branch completed the corresponding quantities according to the requirements of SWS Offshore. From October 2014 to September 2016, SWS Offshore issued a monthly statement of labor costs to Chunxi Suining Branch each month, and Chunxi Sunning Branch issued an invoice to SWS Offshore after confirming the amount. During that period, SWS Offshore paid a total of RMB 10,727,693.77 to Chunxi Suining Branch as the project price, and temporarily withheld a quality guarantee deposit of RMB 336,806.65. Chunxi Suining

Branch and other labor subcontractors filed written applications with SWS Offshore several times, requesting an increase of the project price based on the monthly settlement to make up their losses, and the refund of the quality guarantee deposit. SWS Offshore replied that it did not agree to the increase of the project price. Chunxi Suining Branch brought a lawsuit to the court, claiming that it had completed more than 30% of the shipbuilding quantities of the four vessels and SWS Offshore should pay the project price according to the agreed total project price and payment schedule and pay Chunxi Suining Branch the remaining project price of RMB 3,255,200.

[Judgment]

Shanghai Maritime Court held in first instance that, in this case, labor costs under the shipbuilding contract were settled on a monthly basis according to the "completed quantities", rather than the fixed labor costs and the shipbuilding schedule. Chunxi Suining Branch shall assume the commercial risk arising from the performance of the sub-contract. Chunxi Suining Branch failed to provide valid evidence about its completion of 30% of the project quantities, so it shall assume the adverse consequences resulting from the inability to produce evidence. However, SWS Offshore should pay the quality guarantee deposit confirmed in the monthly statement and the container site occupancy charges deducted. Therefore, Shanghai Maritime Court judged that SWS Offshore shall pay the project price of RMB 351,206.65 to Chunxi Suining Branch. Chunxi Suining Branch appealed against the judgment of first instance. Shanghai High People's Court judged in second instance that the appeal shall be dismissed and the original judgment shall be affirmed.

[Typical Significance]

With the extensive adoption of modularized production in shipbuilding activities, shipbuilding enterprises generally build vessels through sub-contracting. The relatively flexible employment mode of subcontractors is conductive to optimizing the allocation of labor force and improving the market competitiveness of China's shipbuilding enterprises.

When reaching an agreement with a shipbuilding enterprise on the project price or settlement method, a sub-contractor often makes concessions to the shipbuilding

enterprise for the purpose of taking more subcontracting projects in the future. These concessions are made with a commercial purpose and are often regarded as a decision made by a business entity, taking into account its own costs and benefits. Once a subcontractor makes a written commitment or confirmation on the settlement of a subcontract, the relevant settlement arrangement will be legally binding upon both parties. In this case, the sub-contractor suffered losses due to errors in calculation and failed to reach an agreement with the shipbuilding enterprise on the increase of the project price, so it shall assume the operating risks. Off course, to effectively protect the common interests in the shipbuilding industry, and maintain the industrial order and stability, the shipbuilding enterprise should reasonably allocate the interests of all parties involved based on the principles of maximum understanding, fairness and good faith. The trial of this case is conductive to strengthening the spirit of contract and sense of rules of the parties to shipbuilding sub-contracts, and building a harmonious and stable shipbuilding sub-contract market.

Case 5: Define the burden of proof for product quality, support the sound development of the ship supporting industry

—Hudong-Zhonghua Shipbuilding (Group) Co., Ltd. v. Shanghai Hanfu Air Treatment Equipment Co., Ltd., et al.: Case of Dispute over Quality Liability of Special Marine Equipment

[Case Description]

Shanghai Hanfu Air Treatment Equipment Co., Ltd. (hereinafter referred to as "Shanghai Hanfu") and Hudong-Zhonghua Shipbuilding (Group) Co., Ltd. (hereinafter referred to as "Hudong-Zhonghua") concluded a purchase and sales contract, accordingly, Shanghai Hanfu provided dehumidification apparatuses for liquid cargo tanks of LNG carriers built by Hudong-Zhonghua. Four dehumidification apparatuses were inspected and found qualified by Hudong-Zhonghua before the delivery and after the entry into the shipyard. At 17:36 of June 17, 2016, the dehumidification apparatuses involved that were arranged above the dome of No. 4 liquid cargo tank of the H1718A carrier outfitted at the No. 0 base wharf of Changxing Island were burned, and the fire brigade of Hudong-Zhonghua went to the scene and dealt with the accident. Hudong-Zhonghua believed after an internal investigation that

the burning of the dehumidification apparatuses involved was directly resulted from the failure of the electric heater behind the equipment. Shanghai Hanfu entrusted Shanghai Freezing Air Conditioning Industry Association to organize experts to analyze the cause of the fire and believed that the fire was caused by external factors. Two experts of the Fire Investigation Division of Shanghai Fire Department, after reviewing the accident investigation reports submitted by Hudong-Zhonghua and Shanghai Hanfu and going to the scene for investigation during the trial of this case under the entrustment by the Shanghai Maritime Court, held that the existing evidence was not enough to determine the area of origin and cause of the fire. Hudong-Zhonghua brought a lawsuit to the court, claiming that the dehumidification apparatuses manufactured and sold by Shanghai Hanfu and Qidong Hanfu Air Treatment Equipment Co., Ltd. had quality defects and thus resulted in the fire, so they should jointly and severally liable for the losses arising from the fire, in aggregate amount of RMB 11,510,293.03.

[Judgment]

Shanghai Maritime Court held in first instance that the Plaintiff brought the lawsuit based on tort claims, so the Plaintiff should produce evidence to prove that the products involved had defects, the use of the defective products would result in damages, and there was a causal relationship between the defects and the consequences of damages. After the occurrence of the accident, the parties made an analysis report on the cause of the accident respectively but their conclusions were inconsistent. The fire accident experts entrusted by the court reviewed the reports submitted by the parties and went to the scene for investigation. However, they were still unable to make a credible conclusion on the cause of the accident. When the cause of the accident could not be identified, Hudong-Zhonghua, as the party responsible for producing evidence, shall assume the legal consequences resulting from the inability to produce evidence. Therefore, all the claims of Hudong-Zhonghua shall be rejected. Hudong-Zhonghua appealed against the judgment of first instance. Shanghai High People's Court judged in second instance that the appeal shall be dismissed and the original judgment shall be affirmed.

[Typical Significance]

The marine equipment industry, as an important part of the shipbuilding industry,

provides significant support for making China a shipbuilding power. In recent years, China has issued a series of policies to support the development of the domestic marine equipment industry, support the industry associations in issuing catalogs of marine equipment certified by the technical organizations to comply with the assembly requirements, and guide shipowners, shipbuilding enterprises, and ship designers to use homemade marine equipment, which contributes to the rapid development of China's marine equipment industry and continuous improvement of the assembly capacity of domestic marine equipment.

This case involves a dispute over the product quality liability arising from the assembly of domestic equipment on a high-value-added LNG carrier. The court accurately applied the rules of evidence and specified the rules of producing evidence in disputes over product quality liability. The court rejected the claims of the shipbuilding enterprise on the ground that its existing evidence was insufficient to prove the product defects and the causal relationship. The judgment of this case is conductive to maintaining the market order of the marine equipment industry, supporting the sound development of the marine equipment industry, facilitating shipbuilding enterprises to improve the accident investigation process, and further improving the shipbuilding management.

Case 6: Properly resolve the dispute over financial loan relating to shipbuilding activities, contribute to the building of a good shipbuilding financing environment

—China Cinda Asset Management Co., Ltd. Jiangsu Branch v. Nantong Fuhui Logistics Co., Ltd., et al.: Case of Dispute over Loan Contract and Guarantee Contracts involving Specific Shipbuilding

[Case Description]

In June 2010, Nantong Fuhui Logistics Co., Ltd. (hereinafter referred to as "Fuhui Logistics") applied to China Construction Bank Nantong Branch (hereinafter referred to as "CCB Nantong Branch") for a loan of RMB 200 million for entrusting Jiangsu Longli Heavy Industry Co. Ltd. (hereinafter referred to as "JLHI") to build a 54,000-ton bulk cargo ship. Minmetals Shipping & Forwarding Shanghai Co., Ltd. (hereinafter referred to as "MSFS") committed to CCB Nantong Branch that if the

ship could not be completed or delivered for use, it would purchase the ship and paid off, on behalf of Fuhui Logistics, the principal and interest of the loan granted by CCB Nantong Branch to Fuhui Logistics. On July 9, 2010, CCB Nantong Branch concluded a fixed asset loan contract of RMB 200 million with Fuhui Logistics; concluded a guarantee contract with Shanghai Fuhui Investment Co., Ltd. (hereinafter referred to as "Fuhui Investment"), Nantong Dongsheng Ocean Shipping Co., Ltd. (hereinafter referred to as "NDOS"), and Li Ping, specifying that all guarantors shall be jointly and severally liable for all debts under the master contract; and concluded a maximum guarantee contract with JLHI and Yangzhou Ryuwa Shipbuilding Co., Ltd. (hereinafter referred to as "YRS"), specifying that JLHI and YRS shall provide the maximum guarantee for a series of debts under the master contract. CCB Nantong Branch disbursed the loan as scheduled in accordance with the loan contract. As the ship involved failed to be completed and put into operation, Fuhui Logistics and CCB Nantong Branch concluded a ship mortgage contract in 2013, according to which, Fuhui Logistics mortgaged M. V. "Fuhui 370" with CCB Nantong Branch, and handled the procedures for mortgage registration. CCB Nantong Branch sued to request the court to order the borrower to pay off the principal and interest of the loan as agreed, the guarantors to assume the guarantee liability or MSFS to assume the liability to pay off the principal and interest of the loan on behalf of the borrower. During the trial, China Cinda Asset Management Co., Ltd. (hereinafter referred to as "Cinda Asset") participated in the lawsuit of this case as the Plaintiff of this case upon approval by the court due to acquisition of the disputed claims from CCB Nantong.

[Judgment]

Shanghai Maritime Court held in first instance that failure by the borrower Fuhui Logistics to pay the interest as agreed after the disbursement of the loan by CCB Nantong Branch as agreed constituted a breach of contract. In accordance with the contract, CCB Nantong Branch had the right to dissolve the contract and require the accelerated maturity of the loan, so the claims of CCB Nantong Branch shall be admitted. As Cinda Asset acquired all disputed claims of CCB Nantong Branch, Shanghai Maritime Court ruled that Fuhui Logistics shall pay off the principal and interest of the loan to Cinda Asset, Cinda Asset shall have the right to exercise the

mortgage right against M. V. "Fuhui 370", all guarantors shall assume the joint and several guarantee liability within the guaranteed scope, or MSFS shall assume the liability to pay off the principal and interest of the loan on behalf of the borrower. MSFS and NDOS appealed against the judgment of first instance. The parties involved reached a settlement in the trial of second instance.

[Typical Significance]

Shipbuilding financing is an important link in the development of the shipbuilding industry and an important factor in the competitiveness of the shipbuilding industry. The financing environment is also an important part of the soft environment for the development of the shipbuilding industry. Bank loans are the most common form of new shipbuilding financing. This case is a typical case of dispute over loan contract and guarantee contracts arising from shipbuilding financing, which involves multiple entities, a large amount of subject matter and complex legal relationships and covers all common guarantee forms under loan financing and the specific form of debt payments on behalf of others under the shipbuilding financing. To ensure fund security, the lender set the joint and several guarantee, maximum guarantee, vessel mortgage guarantee, and debt payments on behalf of others under specific conditions under the loan contract. In this case, the court ascertained the rights and obligations of all parties involved in the shipbuilding financing, properly resolved the dispute and maintained the legitimate rights and interests of the lender and its successor, which is conductive to building a good shipbuilding financing environment.

Case 7: Define the scope of the insurance liability, contribute to maintaining the order of the shipbuilding insurance industry

—Taizhou Sanfu Ship Engineering Co., Ltd. v. China Continent Property & Casualty Insurance Co., Ltd. Taizhou Central Branch, et al.: Case of Dispute over Marine Insurance Contract

[Case Description]

On April 28, 2008, Taizhou Sanfu Ship Engineering Co., Ltd. (hereinafter referred to as "Sanfu") and Hermione Three Maritime Limited (hereinafter referred to as "Hermione") concluded a shipbuilding contract, and the parties concluded technical specifications with the designer, specifying that when the ship reached the

freeboard draft of 8.25 m, the carrying capacity was about 16,900 tons. Sanfu purchased a builder's risk insurance from the China Continent Property & Casualty Insurance Co., Ltd. Taizhou Central Branch (hereinafter referred to as "CCIC Taizhou Central Branch"). The insurance clauses of the insurance policy issued by CCIC Taizhou Central Branch specified that the insurance liability included "losses arising from any part of the insured ship due to design errors" and the exclusions included "fines as prescribed in the shipbuilding contract as well as indirect losses arising from rejection and other reasons". The result of the ship test performed before the basic completion of the ship involved showed that when the draft was 8.25 m, the carrying capacity was 903.20 tons less than that as stipulated in the design contract. For this reason, Sanfu and Hermione reached an agreement on the reduction of the price of the last two installments by USD 8.58 million. Later, Sanfu made an insurance claim to the CCIC Taizhou Central Branch for the aforesaid losses arising from price reduction but it was refused. Therefore, Sanfu Company broughta lawsuit requesting the court to order CCIC Taizhou Central Branch to indemnify it for the losses of USD 8.58 million arising from design errors.

[Judgment]

Shanghai Maritime Court held in first instance that the losses covered by the insurance involved shall be limited to the losses arising under the shipbuilding contract. The insured and the ship buyer made a separate agreement on compensation beyond the provisions of the shipbuilding contract, which exceeded the reasonable expectations of the parties to the insurance contract when they concluded the contract and belonged to indirect losses, so the insurer had the right to refuse compensation. The losses arising from the reduction of price agreed upon by Sanfu and the ship buyer were beyond the coverage of the insurance involved. Shanghai Maritime Courtjudged that CCIC Taizhou Central Branch shall compensate Sanfu for its losses arising from design errors and the liquidated damages for delayed delivery, which are RMB 3.03 million in total and the interest accrued thereon. CCIC Taizhou Central Branch appealed against the judgment of first instance. Shanghai High People's Court judged in second instance that the appeal shall be dismissed and the original judgment shall be affirmed.

[Typical Significance]

Insurance is a "shock absorber" of economic operation and a "stabilizer for social development". The *Guiding Opinions of the China Banking and Insurance Regulatory Commission on Promoting the High-Quality Development of Banking and Insurance Industries* emphasizes the active development of financial insurance products that support the advanced manufacturing industry. Promoting the deep integration of the insurance industry with the shipbuilding industry is of great significance to boosting the high-quality development of the shipbuilding industry in a shipbuilding power like China. Despite the slight increase in the number of disputes involving ship insurance, currently, the domestic marine insurance business is still dominated by cargo insurance, and the development of the ship insurance is relatively slow. Therefore, the insurance contract clauses and the rules for settlement of insurance claims have not yet been well established, which easily results in disagreements between the parties to the insurance contract and thus gives rise to disputes. The judgment of this case has fully interpreted and demonstrated a series of complex issues about the application of laws and professional and technical issues, such as the application of laws for the builder's risk insurance, the interpretation of insurance clauses, ship design errors, and the determination of the amount of compensation for losses and responded to legal hot issues in the shipbuilding industry and the insurance industry. It has played a positive role in regulating the performance of the relevant market players and promoting stable and healthy development of the shipping insurance industry.

Case 8: Determine the ownership of a vessel under construction according to law and define the scope of bankruptcy property of the shipbuilding enterprise

—TERAS PNEUMA PTE. LTD v. CATIC International Leasing Co., Ltd., Nantong Jiaolong Heavy Industry Development Co., Ltd.: Case of Dispute over Objection to Enforcement Raised by an Outsider

[Case Description]

CATIC International Leasing Co., Ltd. (hereinafter referred to as "CATIC Leasing") brought a lawsuit to the Shanghai Maritime Court against Nantong Jiaolong Heavy Industry Development Co., Ltd. (hereinafter referred to as "NJHID") with respect to the case arising from dispute over ship financing lease. After the judgment

took effect, CATIC Leasing applied for enforcement. A vessel M. V. "Haike 66" under construction that was berthed at the shipyard of NJHID was detained during the enforcement. TERAS PNEUMA PTE. LTD (hereinafter referred to as "TERAS") held that M. V. "Haike 66", also known as vessel M. V. "Teras Ocean", was the property of TERAS. TERAS entrusted NJHID to build the vessel in February 2012. In September 2014, the parties terminated the shipbuilding contract by agreement and separately entered into a purchase and sales contract, according to which, TERAS would purchase the vessel at a price of USD 40 million, and it had paid the full purchase price as agreed in the contract. The delivery and ownership transfer procedures of the vessel had been completed. TERAS completed the temporary registration of the vessel involved with Singapore's competent maritime department by presenting the purchase and sales contract and other related documents. Therefore, TERAS brought an enforcement objection lawsuit to the Shanghai Maritime Court. After the objection was rejected, TERAS filed an enforcement objection lawsuit as an outsider against CATIC Leasing and NJHID. In the trial of the case, NJHID was declared bankrupt and entered the liquidation proceeding.

[Judgment]

Shanghai Maritime Court held in first instance that, the creation and transfer of real rights in the vessel under construction, as movable property, shall take effect at the time of delivery. TERAS and NJHID entered into a purchase and sale contract and a vessel delivery agreement, confirming that TERAS accepted the actual delivery of the vessel, which belonged to the delivery of movable property, and the ownership of the vessel had been transferred to TERAS. After the delivery of the vessel, TERAS entrusted NJHID to continue the subsequent building of the vessel. NJHID's possession of the vessel involved was actually based on the processing contract relationship subsequently established between the parties, which did not affect the fact that TERAS had obtained the ownership of the vessel involved. TERAS had actually obtained the ownership of the vessel before the vessel was detained, so the vessel was not the property of NJHID. In addition, CATIC Leasing has no lien, mortgage, or other priority rights over the vessel involved. Therefore, TERAS had the right to challenge the enforcement measures against the vessel involved based on its ownership of the

vessel.

The first-instance judgment of Shanghai Maritime Court determined that M. V. "Haike 66" (M. V. "Teras Ocean") shall be owned by TERAS, and it shall not be subject to enforcement in the foregoing case of dispute over the financing lease of the vessel. After the judgment of first instance was rendered, no party appealed, and the judgment came into effect.

[Typical Significance]

A shipbuilding contract has both the characteristics of a sales contract and a processing contract. The legislation and judicial practice of different countries have different identifications of the legal nature of the shipbuilding contract. The ownership of a vessel under construction is determined by the nature of the contract. The *Maritime Code of the People's Republic of China* does not specify the ownership of vessels under construction. The parties may determine the ownership of a vessel under construction through specifying the provision of materials, machines, and equipment or the ownership of the vessel. Clarifying the rules for determining the ownership of vessels under construction is of great importance for the parties to protect their own interests and prevent risks.

This case involves an enforcement objection lawsuit filed by the buyer of the vessel under construction to prevent enforcement measures against the vessel under construction. The court held that the enforcement objection lawsuit filed by an outsider shall not lose the value of independent existence due to the bankruptcy of the person subject to enforcement and the suspension of the enforcement procedure and determined, in accordance with the shipbuilding contract and the rules for changes of the real rights in movable property as specified in China's civil laws, that the vessel under construction involved shall be owned by the shipowner, and shall not belong to the bankruptcy property of the shipbuilding enterprise. The judgment of this case reasonably allocates the interests and risks of the parties, and defines the rules for determining the ownership of the vessel under construction, which is conductive to promoting the development of China's shipbuilding industry.

Case 9. Properly settle dispute over collision of cargo ship and naval ship, facilitate the process of developing China into a strong maritime power in the new era

—Hudong-Zhonghua Shipbuilding (Group) Co., Ltd. v. Song Dianguang, et al.: Case of Dispute over Ship Collision Damage Liability

[Case Description]

On February 15, 2019, when M. V. "WANLIXINHUO 0688" cargo ship was sailing along the Huangpu River to the vicinity of the shipyard of Hudong-Zhonghua Shipbuilding (Group) Co., Ltd. (hereinafter referred to as "Hudong-Zhonghua"), the rudder was out of control. Due to being incorrectly operated after losing control, the ship collided with a naval ship (hull number: H1746A), which was under construction and moored at Hudong-Zhonghua Wharf on the west side of Huangpu River, causing damage to the latter. After investigation, Yangpu MSA determined that M. V. "WANLIXINHUO 0688" should assume full responsibility for the accident. After an assessment, the reasonable maintenance cost of H1746A was RMB 916,270.25. Before the accident, Song Dianguang and Song Dianliang had entered into a ship sales contract. After Song Dianliang paid most of the contract price, Song Dianguang delivered the ship to Song Dianliang for actual possession and use, but had not yet gone through the registration procedures for the transfer of the ship's ownership. Hudong-Zhonghua brought a lawsuit to the court, claiming that the root causes of the accident were the poor maintenance of the wheel steering gear and insufficient manning of M. V. "WANLIXINHUO 0688". Lixin Changsheng Shipping Co., Ltd. (hereinafter referred to as "Changsheng") was the ship operator, Song Dianguang was the registered shipowner, and Song Dianliang was the actual ship operator when the accident took place. They should be jointly and severally liable for damages caused by the accident.

[Judgment]

Upon trial, Shanghai Maritime Court held that the general provisions of the civil lawon tort liability shall be applied to this case, and the tortfeasor shall assume the tort liability. In view that Song Dianliang was possessing, using, and operating M. V. "WANLIXINHUO 0688" when the accident took place, he was identified as the

tortfeasor in this case and was liable for compensating Hudong-Zhonghua for the losses. Changsheng, the registered operator and bareboat charterer of M. V. "WANLIXINHUO 0688", was responsible for safe operation and management of the ship and was jointly and severally liable for this accident. Therefore, Shanghai Maritime Court judged that Song Dianliang and Changsheng shall jointly pay Hudong-Zhonghua RMB 916,270. 25 for economic losses incurred from the accident. After the judgment of first instance was rendered, no party appealed and the judgment came into effect.

[Typical Significance]

With the in-depth implementation of the strategy of developing China into a strong maritime power, maritime sovereignty and security have attracted more and more attention. The legal relationships between naval and civil ships, the relationships between the parties involved, and the application of law in civil disputes caused by legal facts such as collisions of naval and civil ships urgently require exploration and resolution in maritime judicial practices. The establishment of adjudication rules for maritime disputes involving naval ships and the proper settlement thereof in accordance with the law are conductive to maintaining a good image of China as a strong maritime power and enhance the soft power of China in shipping development.

Article 3, Paragraph 1 of the *Maritime Code of the People's Republic of China* excludes ships used for military and government services from the scope. It once again excludes these ships from the scope of ship collision rules in Chapter 8 of the Code. By accurately applying the *Tort Liability Law of the People's Republic of China* in this case and referencing the applicable maritime code and the related judicial interpretations of the technical provisions on the scope of compensation for collision damages, the judgment of this case properly settled this dispute and has achieved good legal and social effect.

Case 10: Respect the willingness of the parties involved to resort to arbitration proceedings and accurately determine the arbitration scope of guarantees

—Heng Shun Shipping Inc v. Shanghai Pudong Development Bank Co., Ltd.: Case of Dispute over Guarantee Contract

[Case Description]

Heng Shun Shipping Inc (hereinafter referred to as "Heng Shun") paid Nantong Huigang Shipbuilding Co., Ltd, (hereinafter referred to as "Huigang") two installments of payments, totaling USD 14.227 million. Shanghai Pudong Development Bank Co., Ltd. (hereinafter referred to as "SPDB") issued a refund guarantee, according to which, any dispute relating to the guarantee shall be subject to arbitration in London in accordance with the rules of the London Maritime Arbitrators Association (hereinafter referred to as "LMAA"). Heng Shun sent a notice of termination to Huigang due to Huigang's failure to deliver the vessel as agreed in the contract, and required Huigang to refund all payments and the interest accrued thereon. Later, it sent a refund request to SPDP, but both requests were refused. On March 16, 2012, Heng Shun filed an application with LMAA for arbitration, requesting LMAA to order SPDB to pay USD 14.227 million and the interest accrued thereon. The arbitral tribunal held that Heng Shun backdated the shipbuilding contract to circumvent the application of PSPC rules and obtain the certification by the classification society, and the shipbuilding contract contained fraudulent statements that misled third parties, which violated the public policy and was unenforceable; and that the refund guarantee was not a demand guarantee. The arbitral tribunal determined that the shipbuilding contract and the guarantee were unenforceable and ruled that the claims of Heng Shun shall be rejected. Heng Shun filed a lawsuit with the court, claiming that SPDB had fault in issuing the refund guarantee, and requesting the court to order SPDB to pay the amount of USD 14.227 million determined in the refund guarantee. SPDB filed an objection to the court's jurisdiction over the dispute, claiming that the dispute involved had been settled in London through arbitration, so the court should not accept it.

[Judgment]

Upon trial, Shanghai Maritime Court held that Heng Shun applied for arbitration in accordance with the arbitration clause in the guarantee, and filed a lawsuit with the court, claiming that SPDB had fault in issuing the refund guarantee and thus caused loss to it after its arbitration claims were rejected. The claims filed by Heng Shun involved the dispute over the guarantee which had been resolved in London through

arbitration, and the court had no jurisdiction over the case, so Shanghai Maritime Court ruled to reject the lawsuit. Heng Shun appealed against theruling of first instance. Shanghai High People's Court ruled in second instance that the appeal shall be dismissed and the original ruling shall be affirmed.

[Typical Significance]

In the whole shipbuilding process, both the shipowner and shipbuilding enterprise are exposed to certain risks. To enhance the trust between the shipbuilding enterprise and the shipowner, the parties often specify in a shipbuilding contract that they shall respectively provide a guarantee issued by a bank to guarantee their respective payment/repayment obligation under the shipbuilding contract. A performance guarantee issued by a bank entrusted by the shipowner serves as a guarantee for the shipowner's payment of progress payments prior to the delivery of the ship and a refund guarantee issued by a bank entrusted by the shipbuilding enterprise serves as a guarantee for the shipbuilding enterprise's refund of the payments already made by the shipowner when the shipbuilding enterprise is in breach of contract. Such guarantees often specify that any disputes shall be resolved through arbitration under the British laws in London.

In this case, after the Plaintiff's claims were not admitted by the arbitral tribunal, the Plaintiff brought a lawsuit to the court on the ground that the Defendant had fault in issuing a refund guarantee. The court clarified that the dispute about the guarantee shall be subject to the arbitration clause as specified in the guarantee and the court had no jurisdiction over the dispute. The ruling of this case embodies that the court fully respects the willingness of the parties involved to resort to arbitration proceedings and is in line with the Chinese courts' stand that they respect and support the international commercial arbitration.