

# 南京海事法院 服务保障船舶与海洋工程装备产业发展 审判情况通报

Nanjing Maritime Court Report on Judicial Services to Support  
the Development of the Shipbuilding and Ocean Engineering Equipment Industry



中华人民共和国南京海事法院

Nanjing Maritime Court of PRC

2023年12月

December 2023



南京海事法院服务保障船舶与海洋工程装备产业发展审判情况通报  
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# 前言

江苏拥江临海，优越的地理位置和先进制造业基础为船舶与海洋工程装备产业（以下简称船舶海工产业）发展提供了有利条件。近年来，江苏船舶海工产业规模不断扩大，造船完工量等造船指标稳居全国前列。南通、泰州、扬州等地形成了高技术船舶海工产业集群，江苏已逐步成为全国领先、全球有影响力的船舶海工产业高地。

履职以来，南京海事法院依法公正高效审理了大量涉及船舶海工产业的海事海商案件，通过建立常态调研机制，优化审判资源配置，实施审判精品战略，打造智能化审执平台，推进区域海事司法合作等方式，持续优化法治化一流营商环境，为助力江苏船舶海工产业高质量发展，提升产业国际竞争力提供了有力司法保障。

本次发布的审判情况通报系统梳理了2020年至2023年上半年期间南京海事法院审理的船舶海工产业案件情况，梳理了服务保障船舶海工产业发展的司法举措，总结了船舶海工产业纠纷的特点并提出相应的司法建议，同时发布了典型案例，供社会业界了解这方面的审判工作情况，以期提供更好的海事司法指引与服务保障。

# 南京海事法院 服务保障船舶与海洋工程装备产业发展 审判情况通报

## 目 录

<b>一、涉船舶海工产业案件的审判基本情况</b> .....	001
（一）收结案概况 .....	002
（二）案件总体特点与态势 .....	004
<b>二、服务保障船舶海工产业发展的做法</b> .....	007
（一）精准研判产业发展需求，持续加大海事司法供给 .....	008
（二）精心审理疑难复杂案件，依法维护企业合法权益 .....	009
（三）推动涉企纠纷多元化解，助力优化法治营商环境 .....	009
（四）能动延伸海事司法职能，护航企业规范健康发展 .....	010
<b>三、涉船舶海工产业纠纷的问题与建议</b> .....	013
（一）强化权利保护意识，审慎拟定涉船舶设计类合同条款 .....	014
（二）强化风险防范意识，充分考虑市场风险和自身防控能力 .....	015
（三）强化安全生产意识，严格落实安全生产主体责任 .....	014
（四）强化现代金融意识，谨慎合理选择融资渠道 .....	016
（五）强化生态保护意识，积极推动产业绿色转型发展 .....	020
<b>四、典型案例</b> .....	024



Nanjing Maritime Court Report on Judicial  
Services to Support the Development of  
the Shipbuilding and Ocean Engineering Equipment Industry

TABLE OF CONTENTS

I. General Introduction of Trials Involving Shipbuilding Industry.....043

    A. Overview of Case Initiation and Resolution .....044

    B. General Characteristics and Trends of Cases .....047

II. Strategies for Supporting and Safeguarding the Shipbuilding Industry .....051

    A. Targeted Assessment of Industry Growth Demands, Continual Enhancement of  
Maritime Legal Services .....052

    B. Meticulous Adjudication of Complex Cases, Legal Safeguarding of Corporate  
Rights and Interests .....053

    C. Advancement of Diverse Dispute Resolutions, Contributing to an Optimal Legal  
Business Environment .....055

    D. Proactive Expansion of Judicial Functions, Ensuring Standardized and Healthy  
Corporate Growth .....056

III. Legal Issues and Recommendations Pertaining to Shipbuilding Industry Disputes .....059

    A. Strengthening Rights Protection Awareness and Cautious Drafting of Shipbuilding  
Design Contracts .....060

    B. Reinforcing Awareness of Risk Prevention by Thoughtful Consideration of  
Market Risks and Self-Regulation Capabilities .....062

    C. Enhancing Safety Production Awareness and Strict Enforcement of Safety  
Production Responsibilities .....064

    D. Reinforcing Awareness of Modern Finance and Exercising Prudent and Rational  
Choices in Financing Channels.....066

    E. Strengthening Environmental Awareness and Actively Promoting Green  
Transformation and Industry Development .....069

IV. Typical Cases.....073

一、涉船舶海工产业案件的  
审判基本情况



船舶海工产业是技术先导性强、产业关联度大的现代综合性产业，作为我国战略性新兴产业的重要组成部分和高端装备制造业的重点方向，产业以金属或非金属为主要材料，制造船舶、水上固定及浮动装置并进行修理拆卸活动，主要包括船舶建造修理业、船舶配套业和海工装备制造

制造业。2020年至2023年上半年<sup>1</sup>，我院新收船舶海工装备相关案件共计1673件，涵盖船舶海工装备设计、建造、拆解、修理，船舶配套供应等生产制造性环节和成品船买卖、租赁、抵押、经营等后续流动衍生环节。为明确统计范围，契合船舶海工产业的制造业属性，根据我院审理案件情况，本审判情况通报后文所称的涉船舶海工产业案件，是指因船舶海工装备的设计、建造、拆修等生产性、加工性环节所引发的案件纠纷。<sup>2</sup>

### (一) 收结案概况

2020年至2023年上半年，我院新收涉船舶海工产业案件755件，审结703件<sup>3</sup>，结案比为93.1%。其中，2020年、2021年、2022年以及2023年上半年新收涉船舶海工产业案件分别为202件、290件、196件、67件，分别占全院新收案件数的11.48%、13.45%、7.63%、5.29%；审结案件数分别为162件、238件、233件、70件，分别占全院审结案件数的12.84%、10.57%、9.26%、6.40%。

1. 本通报所称2020年，是指2020年1月1日至2020年12月31日，以下所称各年均相同；所称2023年上半年，是指2023年1月1日至2023年6月30日，下同。  
2. 主要包括船舶设计纠纷、船舶建造纠纷、船舶建造分包纠纷、船舶建造检验纠纷、船舶改建纠纷、船舶修理纠纷、船舶拆解纠纷、海工装备和船舶配套品供应纠纷、船舶建造融资纠纷和因船舶修造所致的人身损害纠纷。  
脱离船舶生产制造链条后，对成品船舶进行买卖交易、租赁、抵押融资、经营产生的船舶买卖合同纠纷、船舶租赁合同纠纷、船舶借款抵押合同纠纷、船舶经营合同纠纷、船舶权属纠纷，以及利用成品船舶进行客货运输产生的海上、通海可航水域运输合同纠纷不列入本报告所称的涉船舶海工产业案件的统计范畴。  
3. 除特别说明外，以下所称案件的统计数据均包含诉前调解案件数量、诉前财产保全案件数量、民事一审案件数量、行政一审案件数量、行政赔偿案件数量、民事特别程序案件数量、申请承认和执行外国仲裁裁决案件数量。  
本审判情况通报所统计案件数，在没有特别指明的情况下，均不包括执行案件数。



新收案件中，船舶物料和备品供应合同纠纷383件，船舶建造合同纠纷263件，船舶修理合同纠纷71件，建造融资类合同纠纷14件，因船舶修造所致的人身损害责任纠纷11件，船舶改建合同纠纷6件，其他纠纷7件。

审结案件中，以判决方式结案304件，以调解方式结案（包含诉前调解成功案件）148件，以撤诉方式结案（包含准予撤诉和按撤诉处理）156件，以其他方式结案95件<sup>4</sup>，案件调撤率为43%，低于同期其他海事海商案件，反映出涉船舶海工产业案件化解难度较大。

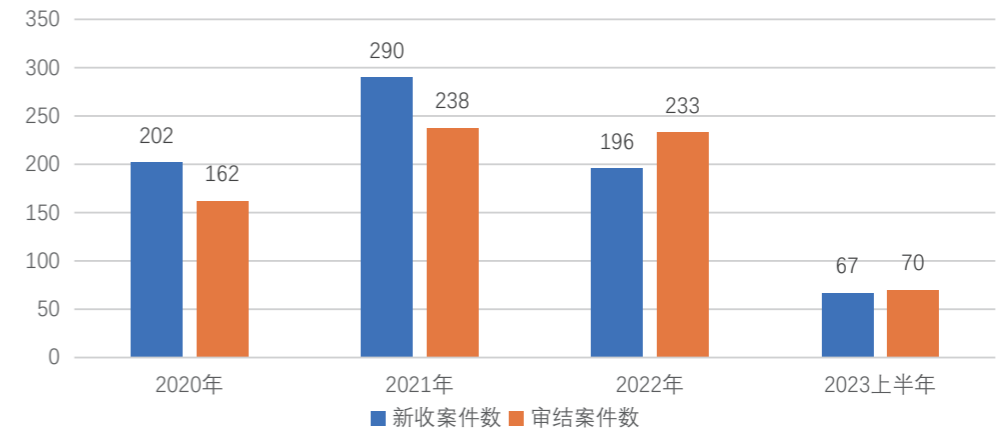


图 1-1-1 南京海事法院 2020 年至 2023 年上半年涉船舶海工产业案件的收结案统计图

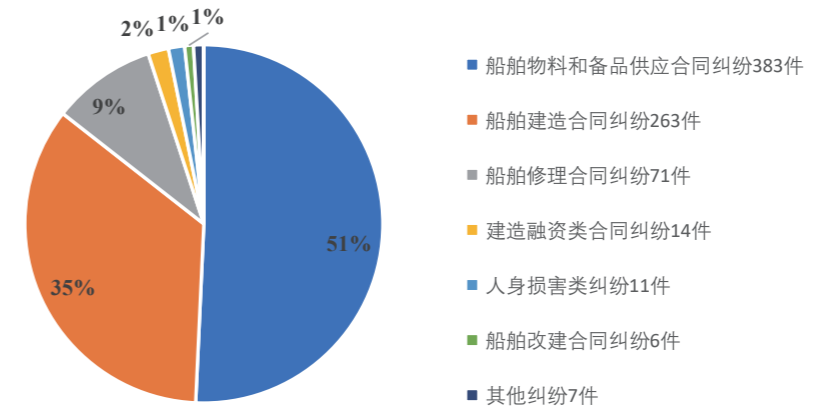


图 1-2-1 南京海事法院 2020 年至 2023 年上半年新收涉船舶海工产业案件分类型情况

4. 主要指诉前财产保全案件的结案方式。



在执行方面，2020年至2023年上半年，我院共扣押各类船舶476艘，其中实际扣押79艘，限制船舶转让、抵押、光船租赁397艘。实际扣押的79艘船舶按照船籍港划分，中国内地籍船舶62艘，港澳台籍船舶3艘，外国籍船舶14艘。按照案件来源划分，我院直接受理案件扣押船舶38艘，地方法院委托扣押船舶41艘。拍卖各类船舶32艘，成交金额24634.5万元，平均溢价率22%，其中拍卖外国籍船舶及我国港澳台籍船舶2艘，成交金额3460万元；地方法院委托拍卖船舶23艘、成交金额5722.5万元。

## （二）案件总体特点与态势

通过对审理的案件数量、案件类型、诉讼主体等情况进行分析，涉船舶海工产业案件整体呈现出以下特点和规律：

### 1. 案件体量较为平稳，地域分布相对集中

从案件数量看，三年半间我院新收涉船舶海工产业案件755件，除2021年，受苏州某企业因船用物料备品供应纠纷引发80余件关联案件外，三年年均收案在200件左右。新收案件总量在全国11家海事法院中位于前列。<sup>5</sup>

从地域分布看，新收755件案件中，案件主体涉及泰州地区<sup>6</sup>的有215件，涉及南通地区的有155件，占比分别为28.5%、20.5%。在船舶修造类合同中，案件主体涉及泰州地区的为99件，涉及南通地区的为100件，合计占全院三年半间新收涉船舶修造类纠纷案件数量的58.5%。案件地域分布情况与江苏通泰扬地区船舶海工产业聚集的特点相吻合。新收

5. 该数据来源于中国海事审判网，根据船舶物料和备品供应合同纠纷、船舶检验合同纠纷、船舶建造合同纠纷、船舶修理合同纠纷、船舶改建合同纠纷、船舶拆解合同纠纷等案由，分别统计各家海事法院受理的案件数。

6. 所称涉及泰州地区，是指案件的原被告住所地之一位于泰州市内。以下表述同理。



755件案件中，船舶物料和备品供应合同纠纷383件，占比达50.7%；船舶修造类纠纷合计为340件，占比达45.0%。

### 2. 新类型案件不断涌现，裁判规则指引导向作用不断凸显

新收755件案件中，涉及船舶关键部件和专用物品买卖合同纠纷207件，标的物涵盖船用钢板、船用主机、舱盖板等专供船舶或者船舶工程使用的设备和材料，反映出我省具有较为完备的船舶配套产业基础。

与此同时，案件标的物类型不断拓展，呈现出更加多样化和现代化的特点。例如，在青岛缔圆石油平台工程有限公司与惠生（南通）重工有限公司船舶建造合同纠纷一案，案件标的物为液化天然气浮式生产储卸装置（FLNG）的船体电仪工程，FLNG是开发海洋天然气资源的一种重要海工装备，是海洋天然气装备中最复杂、造价最高、附加值最大的产品。在宏华海洋油气装备（江苏）有限公司与晟治风电科技（上海）有限公司船舶改建合同及股权转让纠纷一案，案件标的物为自升式风电运维平台，用于海上风机检测维修等，是一种资金和技术密集型海工装备，该类标的物争议往往伴随着复杂的融资结构，司法裁判结果往往引发社会各方高度关注。

### 3. 案件主体多元但以中小企业为主，风险防控能力有待提升

从案件主体看，新收755件案件中，被告涉及中小企业的案件数量539件，占比71.4%，被告涉及自然人的案件数量238件，占比31.5%，被告涉及大型企业的案件数量89件，占比11.8%。<sup>7</sup>这一方面反映出，受疫情影响，中小船舶海工企业在经营过程中更易发生纠纷；另一方面，

7. 由于部分案件当事人同时涉及中小企业、自然人、大型企业中两类或三类主体，因此该部分统计数据会有重复统计的情况。中小（微）企业的划分标准依据国家统计局《统计上大中小微型企业划分办法（2017）》（国统字〔2017〕213号）中中小企业的标准，即从业人员数小于1000人或营业收入小于4亿元人民币的企业为中小（微）企业。



由于船舶海工企业具有离散型、模块化生产的特点，船舶制造企业承接船舶或海工装备成品订单后，再将部分配套设备交由中小企业生产，或将机电安装、船舶涂装等工程分包给中小型企业施工，一艘船舶或海工装备的建造可能形成一系列因配套设备供应或工程分包产生的纠纷。

从案件标的额看，新收 755 件案件总标的额约 13.7 亿元，其中最大案件标的额约 5200 万元，最小案件标的额约为 1 万元。案件标的额为 10 万元以下的案件 163 件，占比 21.6%；10 万（不含）至 100 万的案件 365 件，占比 48.3%；100 万（不含）至 500 万的案件 173 件，占比 22.9%；500 万（不含）至 1000 万的案件 30 件，占比 4.0%；1000 万（不含）以上的案件 24 件，占比 3.2%。



## 二、服务保障船舶海工产业发展的做法



### （一）精准研判产业发展需求，持续加大海事司法供给

近年来，江苏船舶与海工装备产业布局不断优化，构建了南通经济开发区海洋工程船舶及重装备制造产业基地、崇川区船舶海工产业基地、无锡国家高新区中船海洋探测技术产业园、盐城东台海洋工程特种装备产业园、射阳风电产业园、大丰风电产业园、镇江特种船舶及海洋工程装备特色产业基地等重点园区。2022年10月，通泰扬海工装备和高技术船舶集群入选全国先进制造业集群，江苏正全力打造世界级船舶海工先进制造业集群。

为全面了解江苏船舶海工产业对海事司法的需求，南京海事法院坚持每年开展“大走访、大调研”，先后走访三十余家船舶建造企业、海工装备企业和相关行业协会，深入了解产业发展方向及发展进程中面临的问题和困难，有的放矢完善海事司法服务。针对船舶海工产业面临转型升级的实际情况，制定出台《关于发挥海事审判职能作用为推动“强富美高”新江苏建设再出发提供司法服务和保障的意见》，明确将“促进现代船舶产业链转型升级，保障造船业健康发展”作为海事司法服务保障的重点；针对高水平对外开放和海洋经济发展新形势，出台《服务保障〈区域全面经济伙伴关系协定〉（RCEP）高质量实施司法措施》《服务海洋经济高质量发展若干措施》，对打造船舶建造司法保护高地进行专条阐释，为增强船舶海工产业综合竞争力，推动绿色智能船舶和高端船用装备产业链发展提供有力司法支撑；为服务保障船舶海工产业更好融入长三角一体化发展战略，签署《长三角海事司法合作协议》，形成《关于服务长三角地区船舶产业高质量发展的合作意见》，不断凝聚区域海事司法合力。



### （二）精心审理疑难复杂案件，依法维护企业合法权益

针对通泰扬地区船舶海工产业发达、案涉纠纷错综复杂的特点，南京海事法院在南通、泰州派出法庭专门组建合议庭，负责集中审理通泰扬地区涉船舶海工案件，确保案件裁判专业高效、尺度统一。在一起船舶建造保险合同追偿案件中，保险公司认为船舶火灾事故应由为涉案船舶生产、安装“脱硫塔出舷管和排气管”的施工单位负责，法院为查清船舶火灾事故的原因及责任主体，多次勘查现场、询问了解情况，在依法审查施工人员资质、作业流程规范程度、消防措施采取情况等基础上，明确施工单位已尽注意义务，无需承担责任，得到双方当事人一致认可。

为强化专业审判智力支撑，南京海事法院还抽调精干力量组建船舶建造买卖审判团队，围绕案件审理中的常见疑难问题开展课题研究，其中《船舶建造合同纠纷疑难法律问题研究》一文被《法律适用》刊载并被多篇学术文章引用；选聘三十余名船舶建造行业专家，纳入咨询专家库，助力破解船舶设计、船舶修造涉及的专业性技术性事实认定难题。

### （三）推动涉企纠纷多元化解，助力优化法治营商环境

基于涉船舶海工产业纠纷当事人多为商事主体，更加倾向适用调解、仲裁等方式快速解决纠纷的特点，南京海事法院秉持包容开放的司法理念，与中国海仲上海总部、南京仲裁委分别签署合作框架协议，在沿海、沿江、大运河沿线设立44个多元解纷站点，推动诉讼、仲裁、调解有效衔接。在已审结的涉船舶海工纠纷案件中，有41%的案件以调解或撤诉方式结案。在一起国际船舶建造合同纠纷案件中，挪威船东主动将争议解决方式由伦敦仲裁变更为到南京海事法院诉讼并适用中国法律，南京海事法院仅用时27天即化解这起持续时间长达5





年多的国际纠纷，以专业的司法能力赢得当事人对中国海事司法的信任，该案入选 2020 年全国海事审判十大典型案例。

因船舶建造周期长、资金需求量大、市场波动风险高，船舶建造合同常因价款支付、船舶交付等问题陷入履行僵局，南京海事法院充分发挥海事强制令“短、平、快”的程序优势，有效缩短造船合同履行周期。在一起来料加工船舶建造合同纠纷中，法院在船东提供足额担保的情况下，一方面发出海事强制令责令船厂及时交船，另一方面积极组织双方调解，耗时仅 3 个月即促成双方就办理船舶登记、造船款支付等事项达成一揽子解决方案，实现船厂船东双方利益最大化，使延续近 2 年的争议得以妥善化解，得到涉案企业高度赞誉。

#### （四）能动延伸海事司法职能，护航企业规范健康发展

将能动司法理念贯穿海事审判执行工作全过程。聚焦企业风险防范意识不够强的现象，组织编写《航运、港口、物流、造船等行业法律风险提示手册》和《船舶管理与运输业务法律风险提示手册》，发布 5 起涉船舶海工产业的典型案例，向 2 家船舶海工企业发送司法建议，指导帮助企业防范风险、规范经营。

疫情期间，为帮助企业纾困解难，及时出台《护航港航船舶企业发展十二项措施》，从畅通海事案件受理渠道、降低涉海企业维权成本、精心审理涉疫案件、创造复工达产有利条件等四个方面优化稳企发展司法对策。泰州某船舶公司原系国内民营造船十强企业，因资金链断裂陷入破产困境，法院创造性地采取先行交船、获取船款的执行方式，帮助企业盘活资金、成功重整。南通某船舶修造公司成立 20 多年无一涉诉案件，受疫情和国际航运市场波动影响经营困难，引发系列债务纠纷，



法院坚持贯彻善意文明执行理念，引导企业运用以物抵债、执行担保等方式，一揽子化解 17 起纠纷，以司法手段保产业链供应链，帮助企业缓解债务压力，支持民营造船企业改革发展，该案入选 2021 年全国海事审判十大典型案例。



### 三、涉船舶海工产业纠纷 的问题与建议



南京海事法院对2020年至2023年上半年立案审理的涉船舶海工产业案件进行归纳梳理，在总结案件集中反映问题的基础上，<sup>8</sup>提出以下意见建议：

### （一）强化权利保护意识，审慎拟定涉船舶设计类合同条款

在我院审理的涉船舶设计纠纷、船舶建造合同质量纠纷等案件中，经常存在以下争议：一是技术许可使用范围和转让条件的约定存在模糊空间。技术授权使用方为保护技术和提升收益，往往会通过框架协议对技术应用采取限制，但技术转让受限和技术许可使用边界常导致双方争议。二是船舶设计问题常与船舶质量纠纷交织。船舶是否存在设计瑕疵常需要专业机构鉴定，当事人维权成本较高，同时，设计瑕疵、设计错误所引发的赔偿金额常数倍于设计合同标的额，高额赔偿款会导致部分民营设计企业陷入经营困难。需要注意的是，船舶设计建造过程中相应技术法规可能发生变动，若船舶建造的龙骨安装日期延后导致船舶设计不符合新生效的法规，常引发纠纷。

围绕船舶设计和船舶技术标准方面，我院建议如下：

1. 建议船舶海工企业对授权技术的使用范围作清晰约定。船舶海工企业应充分认识授权不足带来的风险问题，重视技术合同文本的订立，对技术使用范围、技术转让条件、技术标准作出清晰约定，依约履行，避免发生技术侵权。同时，企业需要不断提升自身研发创新能力，填补技术短板和授权空白，增强自身在市场中的竞争力。

2. 建议船舶设计单位和建造企业严格遵照审图规范流程，同

8. 问题梳理自我院审判实践，同时参照《关于进一步提升全省船舶与海工装备产业竞争力的若干政策措施》《江苏省“十四五”船舶与海洋工程装备产业发展规划》对船舶海工产业在“提升创新能力和水平”、“提高全产业链竞争力”、“促进行业安全发展”、“保持资金链平稳”、“推动绿色转型升级”等与我院案件审理密切相关的几方面要求，提出相应建议。



时需注意船舶建造合同中的约定技术标准。船舶设计和建造流程应严格按照船级社、船检局的审图流程进行，并确保按图、按工艺施工。<sup>9</sup>船舶建造过程中船东一方若提出新的要求，需要变更图纸的，应在得到船检机构批准的情况下，由船东、船舶建造企业和设计单位对图纸变更内容进行共同确认，对因此产生的增减项目予以固定，同时需充分考虑因图纸变更所可能导致的交船期延误风险。需要特别注意的是，船舶建造规范标准既有法定技术标准，也有当事人约定的技术要求和标准，船舶设计单位和建造企业应尤其注意定作方提出的约定技术标准（常高于法定技术标准），在合同中予以明确约定并依约履行。

### （二）强化风险防范意识，充分考虑市场风险和自身防控能力

我院审理的船舶建造类履约纠纷，因受产业链和市场波动影响成讼较为普遍，集中反映出以下问题：一是市场波动和较长的履约周期常导致合同违约。履约周期长、市场波动影响大是船舶建造纠纷发生的主要原因，原材料供应、人员配备、资金筹集、自然气候、政府监管均会导致建造周期具有不确定性，中小船企承接的船舶建造项目无法按期交付的状况时有发生。二是船舶建造合同的违约会同时影响配套产品合同的履行。由于船舶产业的长链条、紧密关联的特性，船舶建造合同的违约或解除会对船舶配套品供应商产生重大利益影响。<sup>10</sup>

围绕船舶建造合同履行方面，我院建议如下：

1. 建议船舶海工企业充分考虑行业波动风险，合理订立合同条款。船舶海工企业应当充分考虑诸如原材料价格浮动、船东弃船、设

9. 实践中发现，船舶设计存在瑕疵、审图流程未全部完成即先行动工、船舶建造过程中提出新要求导致图纸变动、船舶建造未完全按图施工等都是常见的导致船舶建造质量纠纷的原因。

10. 在我院审理的一起船舶定制天然气附加系统纠纷案件中，由于船舶建造时发生爆炸事故，船舶定作人与造船厂之间的合同无法履行，船舶专属设备供应商又与船舶定作人发生诉讼。相关纠纷持续多年，产生了一系列诉讼案件，对企业经营产生重大影响。



备供应商违约等市场波动风险，着力做好风险防范。需要注意的是，司法实践中常将价格涨跌作为正常商业风险对待。船舶建造合同主体以市场行情变化、继续履行合同对其显失公平为由要求变更或解除合同的，通常难以得到法院的支持。以下几种做法值得参考：一是在合同中设置风险缓冲或价格调整条款，通过对冲的方式减少建造成本波动的风险。例如在合同中约定“若原材料价格上涨超过一定幅度时，定作人对超过部分费用予以一定的补偿；反之若原材料价格下跌超过一定幅度时，建造方对下跌超过部分费用予以一定减免。”将未来预期的收益和可能发生的亏损互相对冲，减少船舶建造履约风险。二是预先评估设备供应商的履约能力和资信状况，充分认识重要设备的供应问题可能影响图纸审查、后续船舶建造施工、船舶检验等重要环节，对于重要的船用设备，建议预设备选供应商。

2. 建议船舶海工企业准确记录船舶建造重要时间节点，及时沟通确认影响工期的因素。船舶海工企业应当准确、完备地保存船舶建造合同中所约定的重要时间节点，例如审图日期、船舶开工日期、图纸变更日期（如有）、试航日期、检验验收日期等（内河船舶尤为重要<sup>11</sup>）。发生纠纷时，上述时间节点将影响是否违约及违约责任负担的判定。同时，对于合同中约定的可能影响工期的因素（例如自然气候因素<sup>12</sup>），应予以准确记录并和定作方沟通确认，避免后续工期争议。

### （三）强化安全生产意识，严格落实安全生产主体责任

我院审理的涉船舶修造生产事故的相关案件集中反映出以下问题：

11. 目前，海船建造重要日期会有四方确认书，即海事机构、船检机构、船厂、船舶所有人共同对海船重要日期进行共同确认。内河船舶建造目前暂无相关强制性要求。

12. 例如，当船舶建造合同约定“雨天等无法施工日期不计入船舶建造工期”时，建造企业应对建造工期中的下雨日期予以记录并和定作方沟通确认。



一是项目分包施工管理不规范易导致事故发生。船舶建造企业常将船舶建造中的管路制造安装、结构建造、焊接、舾装、涂装等脏险难业务进行工程分包。厂区安全管理规范欠缺或者外包施工方落实规范不严格时，容易发生生产事故。二是损害赔偿和工资发放等问题易引发矛盾。由于商业保险赔付问题<sup>13</sup>、人身损害鉴定和伤残等级鉴定周期较长等原因，受伤劳动者在获得相应赔偿方面通常面临一定困难。由于船舶建造分包涉及的实施内容多为劳动密集型作业，劳务用工成本在总成本中占比较高，分包方很大程度上依赖结算的工程价款与雇员结算工资。当分包施工产生工程价款结算和工程量确认纠纷时，易牵涉出劳务用工权益保障等群体性问题。

围绕船舶建造的分包管理和安全生产方面，我院建议如下：

1. 建议船舶海工企业压实主体责任，做好分包施工的监督管理，购买保险以分散风险。司法实践中，法院会依据施工合同和安全生产管理协议书中的约定情况、船厂是否已经配备专职或兼职的安全员、是否已对承揽方实行安全教育和监督管理等情况，综合判断船舶建造企业是否尽到了对整个厂区的安全生产所应承担的监督、协调和管理责任。<sup>14</sup>为确保安全生产，做好分包施工管理，船舶海工企业可采取以下措施压降风险：一是强化对分包施工方的安全管理，加强安全管理机构和人员配备，健全完善安全隐患排查治理机制，常态化加强安全隐患排查，提升企业安全生产水平；二是落实好实际施工人员的保险保障，实际施工人员发生变动时，及时联系保险公司调整被保险人员名单，发生意外事故时，应尽快固定现场证据并通告保险公司。

13. 实践中，外包施工方式下易发生人身损害。施工队大多没有购买工伤保险，往往以团体意外险、雇主责任险等商业保险方式代替。

14. 司法实践中，主张不承担赔偿责任的船厂多以“自身为建造发包方，承揽人对自身造成损害，其作为定作人在没有过失情况下不承担赔偿责任”“自身已经尽到相关安全管理义务”等理由进行抗辩。



2. 建议施工方强化证据意识，对重要资料进行留存。司法实践中，分包施工方往往由于未能收集和固定相关凭证，难以有效证明工程量增加和“总包合同价”之外的工程款等事实，其要求增加工程价款的诉请获支持的比例不高。因此，在船舶建造施工过程中，双方应当注重收集和固定反映工程量、施工进度计划、施工指令等内容的证据材料，特别是对于履约过程中变更工程任务的往来函件、会议纪要、签证单、通话记录等，以便在产生争议时有效维护自身权益。

#### （四）强化现代金融意识，谨慎合理选择融资渠道

我院审理的船舶建造融资类纠纷以及追索设备供应款纠纷集中反映出以下问题：一是中小民营企业在融资方面仍存在一定困难。商业银行出于防范风险考虑，更青睐于资信良好、规模较大的国有船企，中小型民营船企不得不转寻其他渠道获取资金，存在名为联合承揽或设备采购，实为资金借贷的融资做法。目前，船舶建造领域分化出船舶贷款融资、融资租赁、股权融资、民间借贷融资等融资模式。值得注意的是，实践中许多中小造船厂为争取订单，常为定作方垫资造船，款项一般系以较高的利息从民间融资而来。一旦定作人未及时付款或船舶建造合同纠纷，高杠杆、高利率的融资方式会引发更大风险。二是融资关系涉及主体众多，法律关系复杂<sup>15</sup>，且船舶建造融资款存在挪用风险。同时，船舶建造企业资金链状况会直接影响设备供应商，部分设备供应商在不信任船舶建造企业资金状况时，会以拒绝供应设备为由要求提前支付价款，给船舶建造企业资金链造成进一步压力。

15. 船舶融资关系的主体不仅包括船东或船企，还包括资金提供方甚至担保方。即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。



围绕船舶建造融资和应收账款管理方面，我院建议如下：

1. 建议企业跟进关注江苏省政府相关融资新政策。2022年，江苏省政府出台《关于进一步提升全省船舶与海工装备产业竞争力若干政策措施》，采取一系列措施加大财政金融支持力度，全面提升船舶海工产业竞争力，包括增加融资支持种类与额度、落实组合式减税降费政策、强化财政专项资金支持等一揽子政策。例如，省政府要求落实建造中船舶海工抵押融资制度，开辟抵押登记办理“绿色通道”；鼓励支持符合条件的船舶海工企业通过IPO、增发股票、发行债券等方式拓展低成本融资渠道；对符合条件的船舶海工企业研发费用加计扣除比例由75%提高至100%等一系列措施。建议船舶海工企业及时关注跟进相关政策，选取恰当合适的融资途径。

2. 建议金融机构、船东、担保方共同监督船舶建造专项融资款。资金提供方为降低风险，常约定融资资金专门用于建造特定船舶，<sup>16</sup>这种为建造特定船舶进行融资的款项在设定之初就具有鲜明目的性，由于牵涉法律关系众多，一旦发生挪用纠纷，会导致连锁反应。建议各相关方共同监督，确保专款专用。

3. 建议供应商审慎衡量交易方资产情况，管控设备应收账款。建议船舶配套设备供应企业在订立合同时，审慎衡量交易方经营状况和资产情况，不能仅因双方具有长期业务往来关系就忽视资金风险。但同时，由于船舶建造施工常具有严格的施工顺序，部分关键设备停止供应会中断船舶建造流程，导致重大损失。因此，设备供应商在行使不安抗辩权时应符合法定构成要件。<sup>17</sup>

16. 然而实践中，由于监管缺失或不到位，船企违约将融资款挪用于建造特定船舶以外的船舶甚至用于船舶建造以外项目的情形时有发生。

17. 依据《民法典》第五百二十七条：应当先履行债务的当事人，有确切证据证明对方有下列情形之一的，可以中止履行：（一）经营状况严重恶化；（二）转移财产、抽逃资金，以逃避债务；（三）丧失商业信誉；（四）有丧失或者可能丧失履行债务能力的其他情形。当事人没有确切证据中止履行的，应当承担违约责任。



没有确切证据即中止履行，要求提前支付全部价款或者拒绝供应设备的行为，存在违约风险。

### （五）强化生态保护意识，积极推动产业绿色转型发展

我院审理的涉船舶拆解、船舶修理类案件，集中反映出以下问题：一是船舶拆修业务中存在违规经营现象。尤其在船舶拆解业中，非法拆船时有发生。例如，拆解企业在船舶所有权不清晰的情况下就直接拆解船舶；部分企业未取得排污许可证就从事拆船业务；一些废旧船舶的流向监管缺位，非法拆解频繁发生。二是船舶拆修业务与环境污染防治密切相关，但部分中小型民营企业在环境保护措施方面存在不足，缺乏必要的环境污染防治设备。

围绕在船舶修理和船舶拆解方面，我院建议如下：

1. 建议修理企业和船方签订合同时细化合同内容，规范承接业务。在船舶修理业中，船东拖欠修船款、中小船舶修理企业经营欠规范<sup>18</sup>是常见的导致船舶修理纠纷的原因。因此，签订船舶修理合同应当对修理费用标准、修理项目、修理工期、修理标准、价款结算、违约责任等方面进行明确细化，特别是应当对船舶修理所更换下来的旧配件和废钢的归属和处理问题作出明确约定，避免后续纠纷。<sup>19</sup>

2. 建议生态环境部门进一步强化船舶拆解的环境污染防治，引导企业实现环保工艺的转型升级。船舶拆解业作为高污染行业，船舶拆解企业应遵守法律、行政法规、地方性法规和行政规章，业务经营

18. 例如，合同对修理费用标准和修理项目约定不明确，进而引发船东与船企之间关于修船款的支付纠纷；部分中小船企不能及时按照合同约定日期或者标准完成船舶修理，造成损害赔偿纠纷；修船企业将承接的船舶修理项目随意分包导致质量瑕疵进而引发损害赔偿纠纷；由于修理业务分包管理不规范导致的分包结算纠纷等。

19. 根据生态环境部、工业和信息化部、海关总署 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》，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，这为船舶修理企业资源化利用船舶修理中的配件废钢提供了制度保障。



应符合废船安全环保拆解的法规规定和国家环境标准规范<sup>20</sup>。拆解船舶前应当查验船舶报废证明和产权情况，拆解完毕后应当及时出具相应拆解证明。建议生态环境部门进一步强化对船舶拆解的监督监管，引导企业顺应绿色修船拆船的发展趋势，加快绿色环保技术工艺的升级改造，采取更先进的工艺处理船舶拆修所产生的垃圾、残油、污水和易燃易爆物品等废弃物，逐步实现绿色转型。

20. 包括但不限于：申领由生态环境部门审批的拆船项目竣工环境保护验收合格证明和核发的拆船排污许可证；实际拆解场地应与排污许可证的生产经营场所地址一致；配备或者设置防止拆船污染所必需的拦油装置、废油接收设备、含油污水接收处理设施、废弃物回收处置场等。



## 四、典型案例



## 案例 1

### 发挥海事强制令制度优势 破解造船合同履行僵局

——江苏远仪船务有限公司申请海事强制令案

#### 【基本案情】

2020年5月，江苏远仪船务有限公司（以下简称远仪船务公司）与连云港美尔美图船业有限公司（以下简称美尔美图船业公司）签订《船舶建造加工合同》，约定美尔美图船业公司在8个月内以来料加工方式建造完工一艘大型船舶，船舶建造款按吨位计算，每吨2980元。船舶建造过程中因多种原因导致工期严重延误，双方协商后，美尔美图船业公司向远仪船务公司出具《船舶建造联系复函》，承诺收到远仪船务公司再行支付的170万元后，于2022年7月10日前完成船舶下水，8月10日之前完成交船手续，船舶建造款按照合同办理结算。远仪船务公司于2022年7月4日向美尔美图船业公司支付了170万元，美尔美图船业公司于2022年10月27日完成船舶检验，并取得船舶检验证书，但其以船舶建造款未结清为由扣押船舶检验证书，拒绝协助办理船舶登记手续。远仪船务公司向南京海事法院申请海事强制令，并提供了担保，请求法院责令美尔美图船业公司交付船舶及船舶检验证书、协助办理船舶所有权登记，后远仪船务公司鉴于其已实际控制了该船舶，撤回交付船舶的请求。

#### 【裁判结果】

法院经审查，裁定准许请求人远仪船务公司的海事强制令申请。美尔美图船业公司提出复议申请，法院认为，美尔美图船业公司未依约交付船舶检验证书、办理船舶所有权登记，导致远仪船务公司投入巨资建



造的船舶无法正常航行和营运，已对远仪船务公司产生现实且紧迫的损害。美尔美图船业公司以船舶建造款尚未结清为由主张其享有船舶留置权，不符合法律规定和当事人之间的约定，双方关于船舶建造款的争议可另行解决，依法驳回美尔美图船业公司的复议申请，维持原裁定。

#### 【典型意义】

船舶建造周期长、资金需求量大、市场风险高，在合同履行过程中，当事各方容易因船舶价款、船舶交付、船舶质量等问题产生纠纷，导致耗费巨额资金建造的船舶不能及时投入使用。本案中，船东虽然已经实际占有船舶，但因船厂拒绝交付船舶检验证书、办理船舶登记手续，使得船舶无法正常航行和运营，不仅极大影响了船东的合法权益，而且法律风险直接传导至船舶交易链下游，连环追偿纠纷一触即发。面对“多输困局”，法院充分发挥海事强制令“短、平、快”的程序性优势，责令船厂协助船东办理相关船舶登记手续。同时，为了保障船厂的船舶建造款债权，要求船东提供充分的担保，并告知船厂另行主张的权利，妥善平衡双方当事人利益。法院在面对造船合同履行僵局过程中，坚持守正创新，搁置双方争议，加快船舶交付的周转速度，是司法助力船舶建造行业高质量发展的创新举措。同时，法院将调解贯穿纠纷化解始终，最终促成双方就办理船舶登记证书、剩余船舶建造款给付等事项达成一揽子解决方案，彻底解决了双方争议。

【案号】（2023）苏72行保1号





## 案例 2

### 高效化解涉外船舶建造纠纷 打造国际海事司法优选地

——BOA BARGES AS 与南京奕淳船舶制造有限公司  
船舶建造合同纠纷案

#### 【基本案情】

2007年4月18日，案外人挪威籍船东 BOA OFFSHORE AS 向南京奕淳船舶制造有限公司（以下简称南京奕淳公司）订购船舶并签订三份总价款近 5000 万美元的《半潜重型甲板货驳造船合同》，合同约定发生争议后应在伦敦进行仲裁并受英国法律管辖。2010年5月17日，挪威籍船东 BOA BARGES AS 作为新买方，承继原三份合同权利义务。后因合同履行发生争议，双方决定于 2015 年 12 月 8 日终止合同，但对合同终止后的一系列相关问题并未达成一致。2020 年初，双方争议不断增大，无法自行协商解决，解决纠纷只能根据合同约定向伦敦国际仲裁院申请仲裁。2020 年新冠肺炎疫情对国际仲裁活动产生较大影响，特别是随着海外疫情形势日益严峻，不少欧洲国家采取入境限制等防控措施。基于多种因素考虑，双方当事人于 5 月 16 日签订《补充协议》，约定将合同争议解决方式变更为提交南京海事法院裁决并适用中国法律。6 月 11 日，原告 BOA BARGES AS 委托律师到南京海事法院提起诉讼，请求判令被告南京奕淳公司返还预付款及相应利息。

#### 【处理结果】

南京海事法院在案件受理阶段审查发现，原告代理律师的授权委托书应当经挪威公证机关证明及中华人民共和国驻挪威大使馆认证，但因疫情影响未能向法院提交公证认证文书。鉴于疫情对公证认证的实际影响及该案其他相关立案材料规范齐全，且原告代理律师承诺将于案件开



庭审理前补齐公证认证文书，南京海事法院决定对该案先行立案，允许代理律师迟延提交授权手续，后原告代理律师也按时补齐了公证材料。案件审理过程中，为减少疫情期间人员流动、聚集带来的风险，南京海事法院在认真审查涉案证据材料的基础上，通过互联网办案方式促成当事人达成调解协议，用时 27 天审结此案。

#### 【典型意义】

在我国疫情防控效果明显，海外疫情防控形势严峻的情况下，我国司法的国际吸引力、影响力日益增强。本案是一起国际船舶建造合同纠纷案件，外国当事人主动将争议解决方式由伦敦仲裁变更为向南京海事法院起诉并适用中国法律，既是基于对中国建设国际海事司法中心、优化司法环境的信任，也是对江苏服务保障“一带一路”建设，积极打造海事诉讼优选地的充分认可。面对原告申请立案时因疫情影响未能及时提交公证认证文书的情况，南京海事法院根据《最高人民法院关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见（三）》相关精神要求，允许外国当事人延期提交相关公证认证文书，有效促进了涉案纠纷快速化解，是人民法院依法平等保护当事人合法权益，积极优化法治化、国际化、便利化营商环境的生动实践。本案中，人民法院在疫情背景下积极运用互联网办案方式，通过组织多轮在线协商，最终在立案受理后 27 天调解结案，圆满化解了此起持续时间长达 5 年的国际船舶建造合同纠纷，有效帮助企业渡过难关，充分发挥了司法促发展、稳预期、保民生的作用，向国际社会展示了中国特色社会主义司法制度的优越性。

【案号】（2020）苏 72 民初 611 号



### 案例 3

## 认定船舶建造期间不可抗力 积极化解船厂经营风险

——中国平安财产保险股份有限公司江苏分公司与扬州龙和造船有限公司船舶建造合同纠纷案

#### 【基本案情】

2019年8月，恒发公司作为定作方与作为承揽方的龙和造船公司签订《船舶加工定作合同》，约定委托龙和造船公司建造涉案船舶“恒发18”轮。恒发公司为该轮在中国平安江苏分公司处投保了船舶建造险。2021年4月，龙和造船公司所在地区出现大风天气，导致涉案龙门吊倾覆并砸在正在建造中的“恒发18”轮上，致使缆绳断裂、船舶受损。中国平安江苏分公司向被保险人恒发公司理赔后取得代位求偿权，诉至南京海事法院请求判令龙和造船公司赔偿损失65万余元及相应利息，龙和造船公司抗辩涉案事故因突发的猛烈阵风所致，属不可抗力，故应当全部免除赔偿责任。

#### 【裁判结果】

法院经审理认为，对突发大风等自然灾害造成的事故是否能够准确预见，进而判断是否构成不可抗力，应当按照一般人的预见能力，并结合天气预报、实际风力以及当事人可采取的措施等予以综合认定。当事人虽能根据天气预报预知当日的大风天气，但此后突发超出天气预报最大风力值的大风仍系难以预见的情况，已经采取了能够预防一般大风的措施但仍发生事故并造成损失的，应当认定属于不能避免、不能克服的客观情况，在没有其他违约或过错的情况下，应当全部免除其赔偿责任。据此，法院依法驳回中国平安江苏分公司的全部诉讼请求。判决后，双



方当事人均未提出上诉。

#### 【典型意义】

江苏造船企业因处长江中下游地区，受环境及气候影响，夏季突发大风天气导致船厂内在建船舶受损较为多见。司法实践中，因天气预报越来越精准，造船企业在援引不可抗力进行抗辩时证明大风导致事故的不可预见性难度较大，且实务中对于可预见的程度、举证责任分配等也存在一定的争议。本案系一起典型的援引不可抗力主张免责的案件，法院审理中认定应以一般人的认知水平确定其可预见大风导致事故产生的能力，合理分配举证责任，确定造船企业在举证证明其已尽合理谨慎防风措施而仍然无法避免事故发生的，可以认定构成不可抗力，有效化解此类自然灾害可能给船舶建造企业造成的系统性经营风险，依法保护船舶建造企业的合法权益，对处理此类案件具有规则示范作用。

【案号】（2023）苏72民初77号

### 案例 4

## 依法认定优先受偿权 破解垫资建船纠纷矛盾

——泰州市海陵区恒兴造船厂与霍某、郭某、河南省长泰集装箱航运有限公司船舶建造合同纠纷案

#### 【基本案情】

2014年，霍某与泰州市海陵区恒兴造船厂（以下简称恒兴造船厂）签订船舶建造合同，约定以来料加工方式建造一艘散货船。船舶建造完毕后，霍某、郭某以该船为抵押向中国邮政储蓄银行漯河分行（以下简称邮储银行漯河分行）贷款130万元。2016年结算船款时，霍某、郭某



向恒兴造船厂出具借据，约定付清 15 万元建船尾款后船厂交付船舶，同时约定关于恒兴造船厂的垫资造船款 90 万元，以三年为期进行归还，月息 1.2%。借据出具后，霍某仅支付 3.8 万元，并多次以船舶存在质量问题为由向政府部门投诉，恒兴造船厂留置该船舶。由于霍某、郭某未能按约归还邮储银行漯河分行贷款，邮储银行漯河分行申请扣押拍卖该船舶。恒兴造船厂同时起诉要求霍某、郭某返还船款 102 万元并确认其对船舶拍卖款的优先受偿权。

### 【裁判结果】

法院经审理认为，恒兴造船厂已于 2015 年将案涉船舶建造完毕，分别通过安徽省船检局和河南省船检局的入籍检验，均检验合格。霍某作为船舶定作人全程参与了船舶加工建造过程，在向多个海事部门反映船舶质量问题后，相关部门调查均认为所反映问题不涉及航行安全和船舶质检。恒兴造船厂行使留置权于法有据，霍某以船舶存在质量缺陷为由不承担船舶建造尾款的主张不能成立，一审判决霍某、郭某支付船舶加工费、垫资款共计 101 万元，并确认恒兴造船厂对船舶拍卖所得价款享有优先受偿权。二审维持原判。

### 【典型意义】

中小造船企业为争取订单，常为船舶定作方垫资造船，其款项多从民间融资而来，并向定作方约定较高的垫资款利息。在船舶建造合同发生纠纷后，垫资建船的方式常引发巨大风险。本案中，法院根据合同履行情况、约定利率情况、船厂垫资情况、海事部门对船舶的质检情况等因素进行了综合判定，在确认船厂按约建造船舶、船舶质量符合标准、利率符合法律规定的前提下，支持了船厂要求定作人支付船舶加工费和垫资款的请求，并依法确认了其优先受偿权利。在行业习惯和融资安全



中寻找恰当的平衡点，规范了船舶建造市场秩序。

【案号】(2021)苏 72 民初 250 号

## 案例 5

### 厘定安全生产主体责任 保障安全有序船舶建造秩序

——中国平安财产保险股份有限公司诉泰兴市交通机械设备厂船舶建造保险合同追偿案

### 【基本案情】

扬州中远海运重工有限公司（以下简称中远海运重工公司）与泰兴市交通机械设备厂（以下简称泰兴交通机械厂）签订《供货合同》，约定由泰兴交通机械厂负责为其承建的 N944 号船舶生产、安装“脱硫塔出舷管和排气管”，同时中远海运重工公司就该船舶向中国平安财产保险股份有限公司（以下简称中国平安财保公司）投保船舶建造险。2020 年 6 月，交通机械厂安排工作人员至该船厂进行现场法兰焊接施工，工作人员在焊接工作开始之前登轮对现场勘查，确保焊接点下部放置了铁皮、三防布、灭火器等防火措施，在确认无误并收到中远公司指挥调度后开始进行焊接工作，但未对脱硫塔内部进行检查确认，施工过程中火花从排气管间隙处落入脱硫塔内部引燃塑料填料导致发生火情并造成财产损失。中国平安财保公司在向中远海运重工公司赔付后，起诉要求施工人泰兴交通机械厂对船舶火灾事故造成的损失支付赔偿款人民币 500 万元。

### 【裁判结果】

法院经审理认为，船舶建造企业对于厂区的安全监管责任不因分包施工而完全转移至施工作业方。在施工人泰兴交通机械厂已对船舶建造



施工现场履行一般的检查、检视、确认义务并按中远海运重工公司的指示进行施工的情况下，由于分包施工中发生火灾造成的财产损失，保险人中国平安财保公司代位作为被保险人的中远海运重工公司要求施工人泰兴交通机械厂承担损害赔偿责任的，法院不予支持。判决后，双方当事人均未提出上诉。

### 【典型意义】

船舶建造工序环节多、施工环境复杂、涉及财产重大，高空作业、密闭空间作业、动火作业等工序的生产作业中安全隐患频发。并且由于船舶建造企业常将船舶建造中的管路制造安装、焊接、舾装、涂装等脏险难业务进行分包施工，厘定船舶建造施工的安全生产主体责任显得尤为重要。本案中，法院通过审查施工人员资质、消防措施采取情况、作业流程规范程度，明确作为发包方的大型船舶建造企业，因其制定有完备的安全生产管理制度，熟悉生产环节和环境，应是安全生产的主要责任人，其风险防范责任不因分包施工即转移由承揽人负担，对于压实船厂安全生产主体责任，督促做好厂区安全监管，确保船舶制造业安全、绿色、智能化发展有着重要意义。

【案号】（2022）苏 72 民初 944 号



## 案例 6

### 确认合同未约定费用 保障船舶修造市场良性运转

——上海长航闵南船厂与香港海坤船务有限公司  
(Haikun Shipping Co., Ltd.) 等船舶改建合同纠纷案

### 【基本案情】

2015 年，香港海坤船务有限公司（HAIKUN SHIPPING CO., LTD. 以下简称海坤船务公司）等作为委托修理方与上海长航闵南船厂（以下简称闵南船厂）签订协议，约定由闵南船厂为“海科 108”轮提供修理和改装服务，俞某作为委托修理方的履约担保人。2019 年，上海海赢船务有限公司（以下简称海赢公司）与海坤船务公司协议约定由其负责船舶后续修理及改装工作，并承担船舶工程完工结算付款。后船舶修理工程完工，闵南船厂未收到任何费用，经催要无果后，闵南船厂诉至本院要求海坤船务公司、俞某、海赢公司等连带承担船舶修理改装费用、码头费、船舶供岸电费等费用共计 866 万余元。

### 【裁判结果】

法院经审理认为，虽然闵南船厂与委托修理方之间未约定码头费和岸电费用，但考虑到涉案船舶修理改造时间已远超预计时间，船舶实际占用码头对闵南船厂造成了损失，且船员实际在船期间必须对船舶进行供电，岸电费用必然发生，根据实际情况酌情对具体金额予以了认定，对闵南船厂主张码头费、船舶供岸电费的请求予以支持。

### 【典型意义】

船舶修理改装是为了改善船舶性能或改变船舶用途而进行的船舶维修工作，必然占用船坞码头。这一过程往往较为复杂且耗费时间较长，



对于作为承修方的船厂而言，委托修理方不及时支付修理改装费用是一大法律风险，且追索欠款期间还可能不断产生新的高额费用。本案中，因委托修理方拖欠费用导致船舶无法及时交付，船舶在港期间又产生了码头费和岸电费用，对船厂造成了进一步损失。该费用虽属于当事人未约定内容，但法院审查相关费用的合理性后酌情予以了支持认定，有效保护了船厂的合法权益，对促进船舶维修市场健康良性运转提供了有力司法保障。

【案号】（2020）苏72民初957号

## 案例 7

### 准确界定合同解除责任 化解供应链企业间长期纠纷

——泰州市港航联运输有限公司与泰州中燃清洁能源有限公司  
船舶物料和备品供应合同纠纷案

#### 【基本案情】

2015年10月，泰州市港航联运输有限公司（以下简称港航联公司）与泰州中燃清洁能源有限公司（以下简称中燃公司）签订合同，约定中燃公司为港航联公司拟建造船舶定制天然气附加系统。同月，港航联公司与案外人靖江市华鑫船舶修理有限公司（以下简称华鑫公司）签订船舶造船合同，合同履行过程中，华鑫公司发生爆炸事故并被勒令停产，船舶无法继续建造。中燃公司遂向武汉海事法院起诉要求解除与港航联公司的船舶物料和备品供应合同并要求赔偿损失。经武汉海事法院判决，船舶物料和备品供应合同被解除，港航联公司应向中燃公司赔偿相应损失。判决生效后，港航联公司履行了赔偿义务，但其认为中燃公司应向其交付合同项下全部剩余未交付设备，故向南京海事法院起诉，请求中



燃公司交付设备。

#### 【裁判结果】

法院经审理认为，中燃公司在天然气附加系统建造过程中，部分设备虽已交付港航联公司，但仍有部分设备由中燃公司留存，由于港航联公司在供应合同解除后已向中燃公司赔偿了相应损失，中燃公司继续占有定制的部分设备丧失法律根据，据此，判令中燃公司向港航联公司支付未交付设备对应的折价款金额。

#### 【典型意义】

船舶建造是典型的离散型生产，在发生意外事件致使船舶建造合同无法继续履行时，恰当平衡好定作方、建造方、物料供应方等各方利益，对于打造稳定安全、迅速高效、成本优势突出的船舶建造产业链，推进船舶产业高质量发展尤为关键。本案中，由于船舶建造时发生爆炸事故，船舶定作人与造船厂之间的合同无法履行，船舶专用设备供应商又与船舶定作人发生关联诉讼。法院在全面查清案件事实的基础上，准确认定船舶物料和备品供应合同解除后，船舶定作人和备品供应企业间全部清理结算责任，实质性化解企业间持续多年的矛盾纠纷，对于规范船舶物料和备品供应市场秩序，营造稳定公平透明、可预期的法治化营商环境具有重要意义。

【案号】（2021）苏72民初912号



## 案例 8

### 依法认定合同无效 规范海上风电工程建设秩序

——江苏龙源振华海洋工程有限公司与晟治风电科技（上海）有限公司、中诚非融资性担保（深圳）有限公司海洋工程建设纠纷案

#### 【基本案情】

2021年6月，江苏龙源振华海洋工程有限公司（以下简称龙源公司）因海上风电项目风机安装施工需要，与晟治风电科技（上海）有限公司（以下简称晟治公司）签订《工程施工合同》一份，约定晟治公司提供船舶设备配合龙源公司施工。中诚非融资性担保（深圳）有限公司（以下简称中诚公司）接受晟治公司委托向龙源公司提供担保，龙源公司向晟治公司预付了施工费500万元。同年8月，晟治公司用于施工的“晟治1”轮到达风场外围，但该轮实际施工配置不符合技术要求，晟治公司虽作出多次承诺，“晟治1”轮始终不能满足海上风机吊装需求。同年9月，晟治公司向龙源公司申请解除案涉合同。双方确认直到项目工程风机全部安装结束，“晟治1”轮都未能满足现场施工条件，未进行现场施工。因晟治公司一直未退款，龙源公司诉至南京海事法院，请求确认双方签订的合同已解除，晟治公司退回预付工程款并支付违约金，中诚公司对晟治公司退款承担担保责任。

#### 【裁判结果】

法院经审理认为，根据相关法律规定，从事海上风机安装应当具有相应资质，现因晟治公司不具有海上风电工程的专业承包资质及劳务分包资质，故龙源公司与晟治公司签订的案涉施工合同应为无效，中诚公司提供的担保也随之无效。据此，依法判令晟治公司返还龙源公司工程



预付款500万元，驳回龙源公司的其他诉讼请求。判决后，双方当事人均未提出上诉。

#### 【典型意义】

在“双碳”目标的指引下，海上风电已经成为我国推动可再生能源发展的重要领域。依法规范海上风电建设市场秩序，对于服务保障海洋经济高质量发展具有重要意义。工程质量是工程建设的生命线，相较于陆上风电，海上风电设施架设成本更高，建设施工难度更大，企业必须具备相应资质和施工能力方可进行海上风电、海岸与近海等工程建设施工。本案中，晟治公司并不具备海上风电工程施工资质，亦不具备相应能力，在实际施工过程中，晟治公司的施工平台始终不能满足施工需求，致使原定施工安排受阻、合同不能履行。在诉讼过程中，虽然当事人要求解除合同，但法院在全面查清案件事实的基础上，依法认定案涉合同无效，合理确定各方当事人的权利义务和法律责任。本案的处理对于规范海上风电等海洋工程建设秩序、帮助市场主体防范化解风险、营造公平有序的市场竞争环境具有积极的引导意义。

【案号】（2022）苏72民初1534号



## 案例 9

### 合理判定中介费支付条件 规范海工船舶租赁市场秩序

——江苏煜丰航务工程有限公司与南京杨川机电设备检修  
安装有限责任公司、魏某居间合同纠纷案

#### 【基本案情】

为承接海上风电工程风机安装项目，2021年，魏某与江苏煜丰航务工程有限公司（以下简称煜丰公司）协商租赁海上风电起重工程船，约定煜丰公司促成工程船舶租赁合同后，魏某支付居间费300万元/月。合同同时约定，魏某利用煜丰公司提供的交易平台绕开公司与船方直接签订合同的，仍应当全额支付报酬。经煜丰公司协商，工程船“海欣起重1”轮的船方与魏某合作公司江苏贞源电力科技有限公司（以下简称贞源公司）签订船舶租赁协议，但船方未按约定时间将船舶开抵嵊泗2号风场施工现场，遭项目部发函解除施工合同。随后，贞源公司临时将工程船舶变更到去象山1号风场施工，但经海况适应后，工程项目部发函称船舶性能不匹配施工现场海域情况，无法完成风机安装任务。煜丰公司起诉要求魏某支付按约定相应居间费用。

#### 【裁判结果】

法院经审理认为，本案双方对案涉中介合同中居间费用的支付条件产生了分歧。合同约定，煜丰公司促成工程船租赁合同后，魏某应支付煜丰公司300万元/月的报酬，结合合同上下文中介报酬应按月支付、随租赁时间长短支付的约定来看，该条款并非指向成约即付中介报酬之意，而是应根据租赁合同签订后的实际履行情况来确定中介报酬给付情况。本案中工程船舶未按约定时间到达施工现场，遭工程项目部解除施



工合同。在变更施工项目后，又因船舶自身性能原因无法完成风机机舱的安装任务而被迫离场。魏某租船进行海上风电安装施工的目的均未能实现。综上，船舶租赁合同的从未正常履行，中介报酬的支付条件未成就。法院一审判决驳回煜丰公司诉讼请求。判决后，双方当事人均未上诉。

#### 【典型意义】

海洋工程作为科技含量高、技术创新性强的战略性新兴产业发展方向，其施工需要海洋工程装备提供设备支持。在海工装备（船舶）紧俏的市场行情之下，获得与项目匹配的工程船舶是海上风电项目如期完成的关键一环，同时也对应着高额租船费用，且相关租船中介合同也常约定高昂的中介费用，并与租船期限挂钩。本案中，法院通过体系解释合同条款，查明在特种海工船不符约定条件导致其无法实际参与海洋工程项目施工时，驳回了中介请求支付高额报酬的请求，公平合理地保护了当事人合法权益，为海洋工程施工和海工装备租赁市场的规范有序发展提供了司法保障。

【案号】（2022）苏72民初555号



## 案例 10

### 善意文明执行 助力民营企业脱困

——泰州口岸船舶有限公司执行协同破产重整系列案件

#### 【基本案情】

泰州口岸船舶有限公司（以下简称口岸公司）曾系国内十强民营造船企业，也是江苏省首家获得有关部委“四证”的规模民营船企。近年来，受国际航运市场波动影响，企业经营管理出现严重困难，引发大量债务纠纷。2020年初，各债权人陆续向上海市静安区人民法院、泰州市中级人民法院、泰州市高港区人民法院以及南京海事法院提起多起诉讼并申请财产保全，其中，仅南京海事法院就受理诉讼案件82件，执行案件58件，立案标的额高达5.9亿元。同时，南京海事法院根据当事人保全申请及其他法院委托依法查扣了口岸公司名下四艘在建船舶。之后，口岸公司向南京海事法院提交申请，表示其建造的TK0630船舶已达到向船东交船标准，但因司法扣押难以交付，若不能按期交付船舶，需赔付船东预付款及利息合计800余万美元，且每日负担约2万元人民币的船舶维护保养费用，特请求在法院监督下进行交船，将执行标的由“船舶”转为“船款”。

#### 【执行过程】

南京海事法院收到口岸公司申请后高度重视，立即成立专项工作小组对保全措施调整方案的必要性和可行性开展调研，经过多方调查查明，船舶的及时交付既可以减少船舶价值贬损，也可以得到外籍船东支付的款项及所得出口退税，从而更大范围保障船东、口岸公司以及各债权人的合法权益。为降低企业损失、实现资产保值、维护债权人权益，南京



海事法院依法决定同意口岸公司申请，并积极与各方主体对接协商，制定全面详细的船舶交付方案，最终配合受理口岸公司破产申请的泰州市高港区人民法院顺利完成TK0630等船舶实际交付和后续事宜，口岸公司收到外籍船东全额购船款。在口岸公司及其关联企业进入破产程序后，南京海事法院依据破产管理人申请及时完成相关船舶解除扣押工作，并高效办结44起关联在执系列案件，积极支持涉案企业合并重整，尽快恢复产能。

#### 【典型意义】

江苏是造船大省，每年造船完工量占全国近半，目前已形成千亿级造船产业链，其中，民营造船企业是推动造船业快速发展的重要主体。本案是南京海事法院通过善意文明执行，实现执行程序与破产程序有机衔接，助力民营船企破产重整、快速恢复产能的成功实践。南京海事法院在案件审理过程中，认真贯彻落实中央《关于加强综合治理从源头切实解决执行难问题的意见》和省委实施意见以及最高人民法院相关文件精神，积极探索“先行处置保存价款”的执行措施，全力保障被扣押船舶顺利交接以及船款顺利交付，同时高效执结关联案件帮助破产企业恢复商誉，在充分保护申请执行人权益的同时，最大限度降低执行行为对被执行人生产生活的负面影响，以“蓄水养鱼”而非“竭泽而渔”的方式帮助民营企业稳步有序破产重整，通过一系列善意文明执行举措，让民营企业在执行程序中感受到司法温情。

【案号】（2020）苏72民初145号、（2020）苏72执16号等系列审执案件





## *Foreword*

Jiangsu's strategic position, adjacent to the Yangtze River and the East China Sea, coupled with its advanced manufacturing capabilities, has established a propitious foundation for the development of the shipbuilding and ocean engineering equipment industry (hereinafter referred to as the 'shipbuilding industry'). In recent years, Jiangsu has witnessed a continuous expansion of its shipbuilding industry, with impressive statistics in shipbuilding completion and other key indicators that consistently position it as a national leader. High-tech shipbuilding industry clusters have emerged in regions such as Nantong, Taizhou, and Yangzhou, solidifying Jiangsu's position as a prominent and globally influential hub for the shipbuilding industry.

Since its inception, the Nanjing Maritime Court has diligently and effectively adjudicated numerous maritime and maritime commercial cases related to the shipbuilding industry. Through the establishment of a systematic research mechanism, optimal allocation of judicial resources, implementation of a strategy aimed at achieving judicial excellence, development of an intelligent litigation and enforcement platform, and the promotion of regional maritime judicial cooperation, the court has continuously enhanced the legal framework and business environment. This judicial support has significantly contributed to promoting high-quality development within Jiangsu's shipbuilding industry and elevating its global competitive standing.

This report methodically reviews cases from 2020 to the first half of 2023, detailing the judicial initiatives supporting the shipbuilding industry's advancement. It encapsulates the unique aspects of industry disputes and offers judicial recommendations, alongside showcasing typical cases. The report aims to offer insight into the court's work in maritime justice, serving as a valuable reference and support for maritime legal services.



## I. General Introduction of Trials Involving Shipbuilding Industry



The shipbuilding industry is a highly technology-driven and multifaceted modern industry with significant industrial interconnections. As a crucial component of China's strategic emerging industries and a focus area within high-end equipment manufacturing, this industry primarily employs metal and non-metal materials for the construction, repair, and dismantling of vessels and the production of equipment for maritime use. It encompasses shipbuilding and repair, maritime equipment design, ship-related components manufacturing, and more.

During the period from 2020 to the first half of 2023<sup>1</sup>, our court registered a total of 1,673 cases related to shipbuilding and ocean engineering equipment. These cases encompass the entire spectrum of production and manufacturing processes, including the design, construction, repair, and disassembly of maritime equipment, as well as various downstream activities such as the buying, selling, leasing, pledging, and operating of finished vessels. To provide clarity and align with the industrial manufacturing nature of the shipbuilding and ocean engineering equipment sector, this report uses the term "cases related to the shipbuilding industry" to refer to disputes arising from the production and processing stages of maritime equipment, such as design, construction, and repair.<sup>2</sup>

## A. Overview of Case Initiation and Resolution

From 2020 to the first half of 2023, our court received 755 new

1. The term "2020" as used in this report refers to the period from January 1, 2020, to December 31, 2020, and the same applies to the respective years mentioned below. The term "the first half of 2023" refers to the period from January 1, 2023, to June 30, 2023, and similar references are applicable.

2. This footnote refers to the types of disputes included and excluded from the statistics in the report: Included in the scope of cases considered as "cases related to the shipbuilding industry" in this report are mainly disputes related to ship design, shipbuilding, shipbuilding subcontracting, shipbuilding inspection, ship modification, ship repair, ship dismantling, offshore equipment and ship-related supply, shipbuilding financing, and personal injury disputes arising from shipbuilding.

Excluded from the scope of this report are disputes related to the trading, leasing, mortgage financing, operation of completed ships, ship sales contracts, ship leasing contracts, ship loan mortgage contracts, ship operation contracts, ship ownership disputes, as well as transportation contracts for maritime and navigable waters involving the use of completed ships for cargo and passenger transport, once they have been removed from the ship production and manufacturing chain.



cases related to the shipbuilding industry, concluding 703 cases,<sup>3</sup> with a case conclusion rate of 93.1%. Specifically, the number of newly received cases in each year is as follows: 202 cases in 2020, 290 cases in 2021, 196 cases in 2022, and 67 cases in the first half of 2023, accounting for 11.48%, 13.45%, 7.63%, and 5.29% of the total newly received cases in their respective years. The number of cases concluded in the same years were 162, 238, 233, and 70, respectively, constituting 12.84%, 10.57%, 9.26%, and 6.40% of the total cases concluded during those years.

Among the newly received cases, there were 383 disputes related to ship material and spare parts supply contracts, 263 disputes related to ship construction contracts, 71 disputes related to ship repair contracts, 14 disputes related to construction financing contracts, 11 disputes related to personal injury liability resulting from ship construction, 6 disputes related to ship modification contracts, and 7 other disputes.

Of the cases concluded, 304 were resolved through judgments, 148 through mediation (including successful pre-trial mediations), 156 through withdrawal of the lawsuit (including cases where withdrawal was granted or handled as a withdrawal), and 95 through other means.<sup>4</sup>

The case withdrawal rate stood at 43%, which is lower than that of other maritime and maritime commercial cases during the same period, reflecting the heightened complexity of resolving cases related to the shipbuilding industry.

3. Unless otherwise specified, the statistical data for the cases referred to below include the number of cases for pre-litigation mediation, cases involving pre-litigation property preservation, first-instance civil cases, first-instance administrative cases, cases related to administrative compensation, special civil procedure cases, and cases for the recognition and enforcement of foreign arbitration awards.

The statistics in this judicial report regarding the number of cases do not include enforcement cases unless explicitly indicated otherwise.

4. This primarily refers to the methods of concluding pre-litigation property preservation cases.

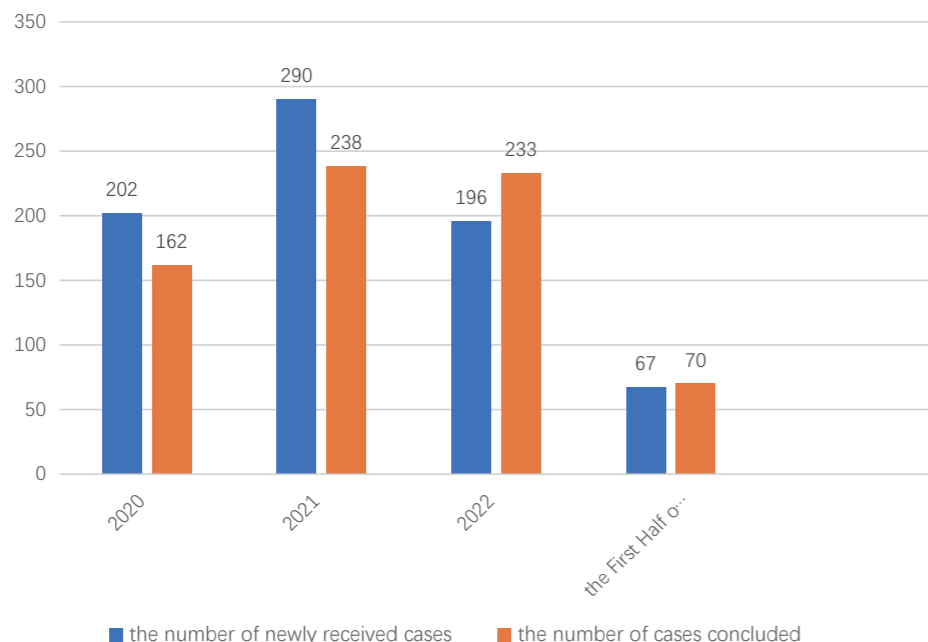


Figure 1-1-1: Statistical Overview of the Initiation and Conclusion of Cases Related to the Shipbuilding Industry at the Nanjing Maritime Court from 2020 to the First Half of 2023

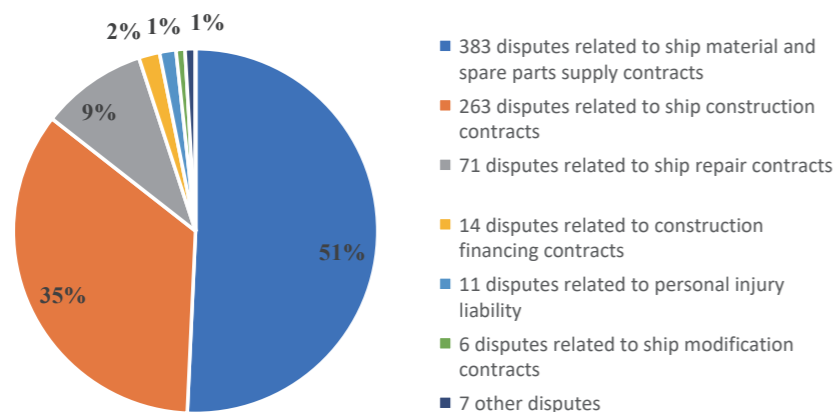


Figure 1-2-1: Breakdown of Newly Received Cases Related to the Shipbuilding Industry at the Nanjing Maritime Court from 2020 to the First Half of 2023



In terms of enforcement, from 2020 to the first half of 2023, our court detained a total of 476 vessels of various types. Among these, 79 vessels were physically detained, and restrictions were imposed on the transfer, mortgage, and bareboat charter of 397 vessels. Of the 79 vessels physically detained, they can be categorized based on their flag state as follows: 62 vessels were of Chinese mainland registry, 3 were of Hong Kong, Macau, or Taiwan registry, and 14 were of foreign registry. According to the source of the cases, our court directly accepted 38 vessels for detention, while 41 vessels were detained upon the request of local courts. Furthermore, a total of 32 vessels of various types were subject to auction, resulting in a total transaction amount of CNY 246,345,000, with an average premium rate of 22%. This total includes the auction of 2 foreign-registered vessels and vessels registered in Hong Kong, Macau, or Taiwan, which collectively amounted to CNY 34,600,000. In addition, 23 vessels were auctioned by local courts, with a total transaction amount of CNY 57,225,000.

### B. General Characteristics and Trends of Cases

An analysis of the number of cases, case types, and litigation parties reveals several overarching characteristics and trends in cases related to the shipbuilding industry:

**1. The number of cases is relatively stable, and the geographical distribution is relatively concentrated**

In terms of case volume, our court received 755 new cases related to the shipbuilding industry over three and a half years. Excluding over 80 related cases triggered by a dispute involving ship material and spare parts supply in 2021, the annual average number of new cases was around 200. This places our court at the forefront of maritime



courts nationwide.<sup>5</sup>

Regarding geographic distribution, 215 cases involved the Taizhou region<sup>6</sup>, while 155 cases involved the Nantong region, constituting 28.5% and 20.5% of the total, respectively. In the category of ship construction contracts, 99 cases involved the Taizhou region, and 100 cases involved the Nantong region, collectively representing 58.5% of all newly received cases related to ship construction disputes in our court over three and a half years. This distribution aligns with the concentration of shipbuilding industry clusters in the Jiangsu Nantong-Taizhou-Yangzhou region. Out of the 755 newly received cases, 383 disputes pertained to ship material and spare parts supply contracts, accounting for 50.7% of the total, while 340 disputes were related to ship construction, constituting 45.0% of the total.

## 2. Emergence of New Types of Cases and Growing Importance of Judgement Rules

Among the 755 newly received cases, 207 cases involved disputes related to the sale of ship critical components and specialized items. These cases covered items such as ship steel plates, ship engines, and hatch covers designed exclusively for maritime vessels or shipbuilding projects. This illustrates the well-established foundation of the ship-related equipment and component industry in our province.

Concurrently, there has been an expansion in the types of case subjects, showcasing more diversity and modernization. For example, in a case involving a dispute between Qingdao Diyuan Petroleum Platform Engineering Co., Ltd., and Huisheng (Nantong) Heavy

5. This data is sourced from the China Maritime Trial Network and is based on cases categorized under various dispute types, such as disputes related to ship materials and spare parts supply contracts, ship inspection contracts, ship construction contracts, ship repair contracts, ship renovation contracts, ship dismantling contracts, etc. The number of cases filed at various maritime courts is separately counted based on these case categories.

6. When referring to cases involving the Taizhou region, it means that either the plaintiff's or defendant's place of residence is located within the city of Taizhou. The same principle applies to the following statements.



Industry Co., Ltd. over a ship construction contract, the subject matter of the case was the electrical and instrument engineering of a floating liquefied natural gas (FLNG) production, storage, and offloading unit (FLNG). FLNG is a critical maritime engineering equipment for offshore natural gas resource development, characterized by its complexity, high cost, and substantial added value among maritime gas equipment. In another case involving Honghua Marine Oil and Gas Equipment (Jiangsu) Co., Ltd., and Shengzhi Wind Power Technology (Shanghai) Co., Ltd., which concerned a ship modification contract and equity transfer dispute, the subject matter was a self-elevating wind power maintenance platform used for offshore wind turbine testing and maintenance. This type of equipment is capital and technology-intensive in nature. Disputes involving such subject matters often come with complex financing structures, and judicial rulings in such cases typically garner considerable attention from various stakeholders.

## 3. Diverse Range of Litigants, Primarily Comprising Small and Medium Enterprises, Highlighting the Need for Enhanced Risk Management

In terms of the parties involved, among the 755 newly filed cases, 539 cases, or 71.4%, involve defendants who are small and medium-sized enterprises. Cases involving individual defendants account for 238 cases, or 31.5%, while those involving large enterprises represent 89 cases, or 11.8%.<sup>7</sup> This pattern reflects, on the one hand, that the impact of the pandemic has made small and medium-sized shipbuilding and ocean engineering companies more susceptible to disputes during

7. Due to the fact that some cases involve parties who simultaneously fall into two or three categories, there may be duplicate statistics in this section. The classification of small and micro (micro) enterprises is based on the standards for industrial enterprises outlined in the "Method for Classification of Large, Medium, Small, and Micro Enterprises for Statistical Purposes (2017)" issued by the National Bureau of Statistics of China (No. [2017] 213), which considers enterprises with fewer than 1,000 employees or annual revenue less than 400 million RMB as small and micro (micro) enterprises.



their business operations. On the other hand, it is attributable to the nature of shipbuilding and ocean engineering companies, characterized by a decentralized and modular production system. When shipbuilding companies undertake orders for complete vessels or ocean engineering equipment, they often subcontract the production of certain auxiliary components to small and medium-sized enterprises, or delegate tasks such as electrical and mechanical installations and ship coatings to smaller firms. This interconnected production process can lead to a series of disputes stemming from issues related to the supply of auxiliary components or subcontracted engineering work.

Regarding the monetary values involved in these cases, the total claim amount of the 755 newly filed cases is approximately CNY 1.37 billion. The largest individual case has a claim amount of around CNY 52 million, while the smallest case involves a claim of just CNY 10,000. Cases with claim amounts below CNY 100,000 account for 163 cases, or 21.6% of the total. Those with claim amounts ranging from CNY 100,000 (exclusive) to CNY 1 million comprise 365 cases, or 48.3%. Cases with claim amounts from CNY 1 million (exclusive) to CNY 5 million total 173 cases, or 22.9%. Cases with claim amounts from CNY 5 million (exclusive) to CNY 10 million amount to 30 cases, or 4.0%. There are 24 cases, or 3.2%, with claim amounts exceeding CNY 10 million.



## II. Strategies for Supporting and Safeguarding the Shipbuilding Industry



### ***A. Targeted Assessment of Industry Growth Demands, Continual Enhancement of Maritime Legal Services***

In recent years, the layout of Jiangsu's shipbuilding and ocean engineering industry has seen continuous optimization. Key industrial zones have been established, including the Nantong Economic Development Zone's Marine Engineering, Shipbuilding, and Heavy Equipment Manufacturing Base, Chongchuan District's Shipbuilding and Ocean Engineering Industry Base, Wuxi National High-Tech District's China Shipbuilding Marine Detection Technology Industry Park, Yancheng Dafeng's Marine Engineering Special Equipment Industry Park, Sheyang Wind Power Industry Park, Dafeng Wind Power Industry Park, and Zhenjiang's Special Shipbuilding and Ocean Engineering Equipment Specialized Industry Base. In October 2022, the Tongtaiyang Marine Equipment and High-Tech Ship Cluster was selected as a national advanced manufacturing cluster, as Jiangsu strives to create a world-class shipbuilding and ocean engineering advanced manufacturing cluster.

To comprehensively understand the maritime judicial requirements of Jiangsu's shipbuilding and ocean engineering industry, the Nanjing Maritime Court annually conducts extensive visits and research activities, visiting over 30 shipbuilding companies, marine equipment companies, and relevant industry associations. These efforts provide an in-depth understanding of the industry's development direction, the challenges it faces, and difficulties encountered during its development. The court has used this information to fine-tune its maritime judicial services.

In response to the need for transformation and upgrading in the ship and ocean engineering industry, the NANJING MARITIME



COURT has developed and implemented the "Opinions on Fully Leveraging the Role of Maritime Trial to Provide Judicial Services and Guarantees for the Re-start of the Construction of New Jiangsu Province Featuring Strong Economy, Wealthy People, Beautiful Environment and a High Degree of Social Civilization." Making clear that "promoting the transformation and upgrading of the industrial chain of modern shipbuilding and ensuring the healthy development of shipbuilding" as a focal point of maritime judicial services. In response to the new situation of high-level opening-up and the development of the ocean economy, the Nanjing Maritime Court introduced "Judicial Measures to Serve and Guarantee the High-Quality Implementation of the Regional Comprehensive Economic Partnership (RCEP)" and "Several Measures to Serve the High-Quality Development of the Marine Economy," providing specialized provisions to promote the development of the shipbuilding industry and offer robust judicial support for the comprehensive competitiveness of the ship and ocean engineering industry. To better integrate the ship and ocean engineering industry

into the development strategy of the Yangtze River Delta, the Nanjing Maritime Court jointly signed the "Yangtze River Delta Maritime Judicial Cooperation Agreement" and formulated the "Cooperation Opinions on Serving the High-Quality Development of the Shipbuilding Industry in the Yangtze River Delta Region." These initiatives aim to consolidate regional maritime judicial cooperation efforts continually.

### ***B. Meticulous Adjudication of Complex Cases, Legal Safeguarding of Corporate Rights and Interests***



In light of the complexity of maritime cases in the Tongtaiyang region, an area known for its flourishing shipbuilding and ocean engineering industry, the Nanjing Maritime Court established specialized collegiate benches within its Nantong and Taizhou Branches. These benches are responsible for the centralized adjudication of shipbuilding and ocean engineering cases from the Tongtaiyang region, ensuring that case judgments are professionally efficient and uniformly applied.

In a particular case involving a claim for compensation under a shipbuilding insurance contract, the insurance company argued that the shipboard fire accident should be the responsibility of the construction company that installed the "desulfurization tower, outboard pipes, and exhaust pipes" on the vessel in question. To ascertain the cause of the shipboard fire accident and the responsible party, the court conducted multiple site inspections and inquiries to gather information. Based on a thorough legal examination of the qualifications of construction personnel, the standardization of the construction process, and the implementation of fire prevention measures, the court concluded that the construction company had fulfilled its duty of care and should not bear any liability. This judgment was unanimously accepted by both parties involved.

To strengthen the intellectual support for specialized adjudication, the Nanjing Maritime Court has formed a team of judges specializing in shipbuilding purchase and sale contracts. They conduct research on common and complex issues encountered in case adjudication. One of the articles resulting from this research, titled "Research on Complex Legal Issues in Shipbuilding Contracts Disputes," was published in the "Law Application" journal and cited in several academic articles.



The court has also recruited over thirty experts from the shipbuilding industry, who have been included in a consultative expert database, contributing their expertise to resolve the technical challenges associated with ship design, ship construction, and other specialized aspects of fact-finding.

### ***C. Advancement of Diverse Dispute Resolutions, Contributing to an Optimal Legal Business Environment***

Given that parties involved in shipbuilding and ocean engineering industry disputes are often commercial entities, they tend to favor quick dispute resolution methods such as mediation and arbitration. In line with an inclusive and open judicial

philosophy, the Nanjing Maritime Court has signed cooperation framework agreements with the China Maritime Arbitration Commission's Shanghai headquarters and the Nanjing Arbitration Commission. It has established 44 diversified dispute resolution points along the coast, the Yangtze River, and the Grand Canal, facilitating effective connections between litigation, arbitration, and mediation. In completed shipbuilding and ocean engineering dispute cases, 41% were resolved through mediation or withdrawal of claims. In an international shipbuilding contract dispute, a Norwegian shipowner willingly changed the dispute resolution method from London arbitration to litigation at the Nanjing Maritime Court, applying Chinese law. The Nanjing Maritime Court resolved this international dispute, which had lasted over five years, in just 27 days, thereby earning the trust of the parties involved in China's maritime judiciary. This case was selected as one of the top ten typical maritime trial cases in China in 2020.

Due to the lengthy shipbuilding cycle, significant capital



requirements, and high market volatility, shipbuilding contracts often face impasses related to price payments and vessel deliveries. The Nanjing Maritime Court fully utilizes the procedural advantages of maritime compulsory orders, known for being "quick, simple, and efficient," to expedite the performance of shipbuilding contracts. In one dispute regarding a shipbuilding contract for processing external materials, and with the shipowner providing sufficient guarantees, the court, on the one hand, issued a maritime compulsory order requiring the shipyard to deliver the vessel promptly. On the other hand, it actively facilitated mediation between the parties, resulting in a comprehensive solution within just three months. This solution covered ship registration and shipbuilding payment matters, maximizing the interests of both the shipyard and the shipowner. It successfully resolved a dispute that had persisted for nearly two years, earning high praise from the involved enterprises.

#### ***D. Proactive Expansion of Judicial Functions, Ensuring Standardized and Healthy Corporate Growth***

The proactive judicial philosophy runs through the entire maritime trial and execution process. Focusing on the issue of insufficient risk prevention awareness among enterprises, the court has organized the compilation of "Legal Risk Advisory Manuals for Industries Such as Shipping, Ports, Logistics, and Shipbuilding" and "Legal Risk Advisory Manuals for Ship Management and Transport Operations." The court has published five typical cases related to the shipbuilding and ocean engineering industry, offering judicial suggestions to two shipbuilding and ocean engineering companies. These suggestions guide and assist enterprises in risk prevention and business standardization.

During the pandemic, to help companies overcome difficulties,



the court promptly introduced the "Twelve Measures to Support the Development of Maritime Enterprises in Ports and Navigation." These measures optimized judicial strategies for stable enterprise development in four areas: facilitating the acceptance of maritime cases, reducing the cost of safeguarding the rights of maritime-related companies, carefully adjudicating cases related to the pandemic, and creating favorable conditions for resuming work and production. In the case of a shipbuilding company in Taizhou that was once among the top ten domestic private shipbuilding companies but faced bankruptcy due to a broken capital chain, the court creatively adopted the execution method of delivering the vessel and obtaining ship payment to help the company revive its capital and successfully restructure. In the case of a ship repair company in Nantong, which had been operating for more than 20 years without any litigation cases, but encountered operational difficulties due to the pandemic and fluctuations in the international shipping market, triggering a series of debt disputes, the court adhered to the principle of goodwill and civilized execution. It guided the enterprise to use debt-for-equity swaps and execution guarantees to comprehensively resolve 17 disputes. Through judicial means, it protected the industrial supply chain and helped the enterprise alleviate its debt pressure, supporting the reform and development of private shipbuilding companies. This case was selected as one of the top ten typical maritime trial cases in China in 2021.





### III. Legal Issues and Recommendations Pertaining to Shipbuilding Industry Disputes



The Nanjing Maritime Court conducted a comprehensive review of shipbuilding and ocean engineering industry cases filed and tried from 2020 to the first half of 2023. Based on the summarization of issues reflected in these cases,<sup>8</sup> the following opinions and suggestions are presented:

### ***A. Strengthening Rights Protection Awareness and Cautious Drafting of Shipbuilding Design Contracts***

In the cases the court has handled, such as disputes related to ship design, and quality issues in shipbuilding contracts, the following disputes frequently arise: Firstly, the terms of technology licensing, scope of use, and transfer conditions are often ambiguous. To protect technology and increase income, technology licensees often impose restrictions on technology applications through framework agreements. However, disputes frequently arise due to limitations on technology transfer and the boundaries of technology licensing. Secondly, ship design problems are often intertwined with disputes over ship quality. Determining whether there are design defects in a vessel often requires assessment by professional organizations. The cost of protecting the rights of the parties involved is high. Additionally, compensation for design defects or errors can be several times the contract value, leading to operational difficulties for some private design companies. It is important to note that technical regulations related to ship design and construction may change during the ship's construction process. If the keel installation date of the ship is delayed, resulting in the ship

<sup>8</sup>We have reviewed our judicial practice and formulated recommendations, taking into account various policy measures such as "Several Policy Measures for Further Enhancing the Competitiveness of the Shipbuilding and Offshore Equipment Industry in the Province" and "Development Plan for the Shipbuilding and Marine Engineering Equipment Industry in Jiangsu Province during the 14th Five-Year Plan." These recommendations align with several key aspects closely related to our court's case handling, including "enhancing innovation capabilities and levels," "raising the overall industry chain competitiveness," "promoting the safe development of the industry," "maintaining stable financial support," and "facilitating green transformation and upgrading."



design no longer conforming to the newly enacted regulations, it often leads to disputes.

Regarding ship design and technical standards for ships, the following suggestions are provided by the court:

1. It is recommended that shipbuilding and ocean engineering companies clearly define the scope of authorized technology use. These companies should fully understand the risks associated with insufficient authorization and attach importance to the preparation of technology contract texts. Clear agreements should be made regarding technology usage, transfer conditions, and technical standards, which should then be strictly adhered to. This helps prevent technology infringement. Furthermore, companies should continually enhance their research and development capabilities to fill technical gaps and authorization voids, thereby increasing their competitiveness in the market.

2. It is recommended that ship design firms and construction companies strictly adhere to the standard drawing approval process. They should also pay attention to the technical standards stipulated in shipbuilding contracts. The ship design and construction

processes should follow the strict approval processes of classification societies and ship inspection bureaus, ensuring that construction is carried out according to the drawings and processes.<sup>9</sup> If shipowners make new demands during the shipbuilding process and require changes to the drawings, it should only be done with the approval of the ship inspection organization. In such cases,

<sup>9</sup>In practice, it has been observed that common reasons for disputes related to shipbuilding quality include design flaws in ship design, initiating construction work before completing the entire design approval process, changes in blueprints due to new requirements during the shipbuilding process, and instances where the ship construction deviates from the approved blueprints.



shipowners, shipbuilding companies, and design firms should jointly confirm the changes in the drawings, account for the additional or reduced items resulting from the changes, and take into account the potential risk of delays in the delivery time due to changes in the drawings. It is essential to note that shipbuilding regulations include both statutory technical standards and the technical requirements and standards agreed upon by the parties involved in the contract. Ship design firms and construction companies should pay special attention to the agreed-upon technical standards proposed by the contracting parties, which are often higher than statutory technical standards. These standards should be clearly specified in the contract and adhered to accordingly.

### ***B. Reinforcing Awareness of Risk Prevention by Thoughtful Consideration of Market Risks and Self-Regulation Capabilities***

In the cases of shipbuilding performance disputes handled by our court, lawsuits often occur due to the influence of the industry chain and market fluctuations. They have collectively highlighted the following issues: Firstly, market fluctuations and extended performance periods frequently lead to contract breaches. The lengthy performance period and significant market fluctuations are the main causes of disputes in shipbuilding. Uncertainties related to raw material supply, personnel allocation, fund raising, natural climate conditions, and government regulations can all contribute to project delays for small and medium-sized shipbuilding enterprises. Secondly, the breach of shipbuilding contracts can also affect the performance of auxiliary product contracts. Given the long and closely interconnected nature of the shipbuilding industry, contract breaches or terminations



in shipbuilding can significantly impact suppliers of ship auxiliary products.<sup>10</sup>

Regarding the performance of shipbuilding contracts, our court provides the following suggestions:

1. It is recommended that shipbuilding and ocean engineering companies carefully consider industry risks and establish contract terms reasonably. These companies should take into account risks such as fluctuating raw material prices, shipowners abandoning ships, or equipment supplier breaches, and focus on risk prevention. It is important to note that in judicial practice, price fluctuations are often considered normal business risks. Contract parties requesting changes or terminations of contracts due to changes in market conditions that cause them unfairness in continuing to fulfill the contract are generally difficult to be supported by the courts. There are a few practices worth considering: Firstly, setting up risk buffer or price adjustment clauses in contracts to reduce the risk of fluctuating construction costs. For instance, the contract could specify that "if raw material prices increase beyond a certain extent, the contracting party compensates the excess amount; conversely, if raw material prices decrease beyond a certain extent, the building party reduces the costs by a certain amount." This helps offset anticipated profits against potential losses, reducing the risk of shipbuilding performance. Secondly, it's advisable to conduct a preliminary assessment of equipment suppliers' performance capabilities and credit status. Recognizing that supply problems for significant equipment may affect critical phases such as drawing reviews, subsequent ship construction, and inspections, it's

10. In practice, it has been observed that common reasons for disputes related to shipbuilding quality include design flaws in ship design, initiating construction work before completing the entire design approval process, changes in blueprints due to new requirements during the shipbuilding process, and instances where the ship construction deviates from the approved blueprints.



recommended to pre-select suppliers for critical marine equipment.

2. It is recommended that shipbuilding and ocean engineering companies accurately record significant shipbuilding milestones and promptly communicate and confirm factors affecting project timelines. These companies should accurately and comprehensively preserve critical milestones stipulated in shipbuilding contracts, such as drawing approval dates, ship construction commencement dates, drawing modification dates (if any), sea trial dates, inspection and acceptance dates, especially for inland vessels.<sup>11</sup>In the event of disputes, these milestones will affect the determination of whether there is a breach of contract and the allocation of responsibilities. Moreover, for factors specified in the contract that may affect project timelines (e.g., natural climatic factors<sup>12</sup>), accurate recording and confirmation with the contracting party are essential to avoid disputes over project timelines.

### ***C. Enhancing Safety Production Awareness and Strict Enforcement of Safety Production Responsibilities***

In the cases related to shipbuilding and production accidents handled by our court, several issues have been consistently highlighted: Firstly, non-standard subcontracting management often leads to accidents. Shipbuilding companies frequently subcontract tasks involving high-risk and challenging operations like pipeline manufacturing and installation, structural construction, welding, outfitting, and painting. When safety management regulations in the factory are lacking or subcontractors do not strictly adhere to the

11. Currently, for the construction of ocean-going ships, there is a "Four-Party Confirmation Letter" in which maritime authorities, ship inspection organizations, shipyards, and shipowners jointly confirm the critical dates of the ship. As for inland waterway vessel construction, there are currently no relevant mandatory requirements in place.

12. For example, when a shipbuilding contract stipulates that "rainy days or other days when construction is impossible are not included in the shipbuilding period," the construction company should keep records of rainy days during the construction period and communicate with the ordering party for confirmation.



standards, production accidents are more likely to occur. Secondly, compensation claims and wage payments often lead to conflicts. Due to factors such as the lengthy duration of commercial insurance payouts,<sup>13</sup> personal injury assessments, and disability classifications, injured workers typically face difficulties in receiving compensation. Subcontracted work in shipbuilding generally involves labor-intensive tasks where labor costs are a significant portion of the total cost. Subcontractors often heavily rely on engineering payment and employee salary settlements. Disputes can easily arise when there are disagreements over engineering payment settlements and project quantity confirmation, which can involve issues related to labor rights and protection.

Regarding subcontract management and safety in shipbuilding, our court provides the following recommendations:

1. It is recommended that shipbuilding and ocean engineering companies emphasize their primary responsibilities, improve supervision and management of subcontracted work, and purchase insurance to mitigate risks. In legal practice, the court evaluates whether shipbuilding companies have fulfilled their supervision, coordination, and management responsibilities for the overall safety of the entire factory area based on the provisions of construction contracts and safety management agreements.<sup>14</sup>To ensure safety in production and manage subcontracted work effectively, shipbuilding and ocean engineering companies can take the following measures to reduce risks: Firstly, enhance safety management for subcontractors,

13. In practice, there is a high risk of personal injury in subcontracted construction. Construction teams often do not purchase work injury insurance and instead rely on commercial insurance methods such as group accident insurance and employer's liability insurance.

14. In judicial practice, shipyards that argue against assuming liability for compensation often use reasons such as "being the contracting party for self-construction and claiming that the contractor, which is themselves, should not be held liable for damages they have suffered, and, as the ordering party, they are not liable for compensation without fault" or "having fulfilled relevant safety management obligations."



strengthen the allocation of safety management personnel, establish and improve mechanisms for identifying and addressing safety hazards, routinely conduct safety hazard inspections, and enhance the overall safety performance of the company. Secondly, ensure proper insurance coverage for actual construction personnel. In cases where there are changes in actual construction personnel, companies should promptly contact insurance companies to adjust the list of insured persons. In the event of accidents, on-site evidence should be secured and the insurance company should be notified promptly.

2. It is recommended that subcontractors develop an awareness of evidence and maintain crucial documentation. In legal practice, subcontractors often find it difficult to prove the facts, such as increased engineering quantities and additional engineering costs beyond the "general contract price," because they fail to collect and maintain relevant evidence. The proportion of their claims for increased engineering costs being supported by the court is often low. Therefore, in the shipbuilding construction process, both parties should focus on collecting and maintaining evidence materials that reflect the quantity of engineering, construction progress schedules, construction orders, especially correspondence, meeting minutes, certificates, phone records, etc., related to the change of engineering tasks during the performance process, to effectively safeguard their own rights in case of disputes.

#### ***D. Reinforcing Awareness of Modern Finance and Exercising Prudent and Rational Choices in Financing Channels***

In the shipbuilding financing disputes and equipment supply payment recovery cases handled by our court, the following issues



have been consistently brought to attention: Firstly, small and medium-sized private enterprises continue to face difficulties in financing. Commercial banks, in their risk mitigation efforts, often prefer state-owned shipbuilding enterprises with strong creditworthiness and a larger scale. Small and medium-sized private shipbuilding companies have to seek alternative ways to secure funds, often by using financing methods with names such as "joint contracting" or "equipment procurement," which, in reality, involve borrowing funds. In the shipbuilding industry, various financing models have emerged, including shipbuilding loans, financing leases, equity financing, and private borrowing. It's worth noting that many small shipyards, in their pursuit of orders, often provide advance funding for ship construction on behalf of ordering parties, and this funding typically comes from private financing with relatively high interest rates. If ordering parties fail to make payments in a timely manner or disputes arise in shipbuilding contracts, the high-leverage and high-interest-rate financing method can pose increased risks. Secondly, financing relationships involve numerous parties, complex legal relationships,<sup>15</sup>

and there is a risk of misappropriation of shipbuilding financing funds. At the same time, the financial condition of shipbuilding companies directly affects equipment suppliers. Some equipment suppliers, when they lack confidence in the financial condition of the shipbuilding companies, demand advance payment on the grounds of refusing to supply equipment, thereby exerting additional pressure on the shipbuilding company's financial chain.

15. The subjects involved in ship financing relationships not only include shipowners or shipping companies but also fund providers and even guarantors. Due to the high-risk nature of ship financing, fund providers typically require ship enterprises or shipowners to provide guarantees to ensure that the financing party has sufficient debt repayment capability. The involvement of guarantors complicates the interest relationships. Within a primary contract, usually a loan contract, there are typically multiple related contracts, including guarantee contracts and mortgage contracts.



Regarding shipbuilding financing and accounts receivable management, our court provides the following recommendations:

1. We suggest that companies closely follow the relevant financing policies issued by the Jiangsu Provincial Government. In 2022, the Jiangsu Provincial Government introduced a series of policy measures to enhance the competitiveness of the shipbuilding and offshore equipment industry. These measures include increased financial and fiscal support, the implementation of a combination of tax reduction and fee reduction policies, and strengthened financial special fund support. For example, the provincial government requires the establishment of a shipbuilding financing pledge system and the opening of a "green channel" for pledge registration. They encourage eligible shipbuilding and offshore equipment companies to expand low-cost financing channels through methods such as IPOs, stock offerings, and bond issuances. For companies that meet the criteria, the proportion of deductible research and development expenses was increased from 75% to 100%. We recommend that shipbuilding and ocean engineering companies stay informed about and follow relevant policies and choose suitable financing channels accordingly.

2. We recommend that financial institutions, shipowners, and guarantors jointly oversee shipbuilding-specific financing funds. To reduce risks, providers of funds often stipulate that the financing funds are to be used exclusively for the construction of specific vessels.<sup>16</sup> These funds are characterized by a specific purpose from the outset, and any disputes or misappropriation can have a cascading effect due to the multitude of legal relationships involved. We suggest that all relevant parties exercise joint oversight to ensure that the

<sup>16</sup> However, in practice, due to inadequate or ineffective regulation, cases of shipping companies defaulting and misappropriating financing funds for the construction of specific vessels other than those intended, or even diverting the funds for projects unrelated to ship construction, have occurred.



earmarked funds are used as intended.

3. We recommend that suppliers carefully assess the assets of their trading partners and manage equipment accounts receivable prudently. Ship equipment suppliers should exercise caution when assessing the business and asset conditions of their trading partners. They should not disregard financial risks solely based on long-term business relationships. However, given the strict construction sequence in shipbuilding, the suspension of the supply of critical equipment can disrupt the shipbuilding process, leading to significant losses. Therefore, equipment suppliers, when exercising the right to suspend performance due to insecurity, should meet the statutory requirements for its establishment.<sup>17</sup> Suspending performance without clear evidence, demanding advance payment of the full price, or refusing to supply the equipment may entail a risk of breach of contract.

### ***E. Strengthening Environmental Awareness and Actively Promoting Green Transformation and Industry Development***

In cases related to ship repair and ship dismantling that have been heard in our court, the following issues have been highlighted: Firstly, unauthorized and irregular operations are prevalent in the ship repair and dismantling businesses. This is especially evident in ship dismantling, where illegal ship breaking occurs. For instance, dismantling companies engage in ship breaking without clear ownership of the vessels. Some enterprises perform ship breaking without obtaining the required pollution discharge permits.

<sup>17</sup> According to Article 527 of the Civil Code of the People's Republic of China: A party who is required to perform the obligation first and has clear evidence to prove that the other party falls into one of the following situations may suspend performance: (1) severe deterioration of its business operations; (2) transfer of property or withdrawal of funds to evade debts; (3) loss of business credibility; (4) other situations in which the ability to perform the obligation is or may be lost. If the party does not have clear evidence to suspend performance, it shall bear the liability for breach of contract.



Additionally, the regulation of the disposal and dismantling of some old vessels is inadequate, leading to frequent occurrences of illegal ship breaking. Secondly, ship repair and dismantling activities are closely related to environmental pollution prevention and control. However, some small and medium-sized private enterprises lack adequate environmental protection measures and essential pollution control equipment.

Regarding ship repair and ship dismantling, our court offers the following recommendations:

1. We recommend that repair companies and shipowners sign detailed contracts to standardize business undertakings. Delays in repair payments by shipowners and non-standard operations by small and medium-sized ship repair companies<sup>18</sup> are common causes of ship repair disputes. Therefore, when entering into ship repair contracts, it is essential to clarify and specify aspects such as repair cost standards, repair projects, repair timelines, repair standards, payment settlements, and liability for breach. Particularly, it is advisable to establish clear agreements regarding the ownership and disposal of old components and scrap steel removed during ship repair to avoid subsequent disputes.<sup>19</sup>

2. We suggest that environmental protection authorities further strengthen environmental pollution prevention and control in ship dismantling, guiding companies to transition and upgrade their eco-

18. For example, unclear provisions in the contract regarding repair cost standards and repair project details can lead to disputes between shipowners and shipyards over repair payments. Some small and medium-sized shipyards may fail to complete ship repairs in a timely manner according to the contract's specified deadlines or standards, resulting in disputes over damages and compensation. Repair companies subcontracting ship repair projects arbitrarily may lead to quality defects and subsequent disputes over compensation. Disputes over subcontracting settlements can also arise due to the lack of proper subcontracting management in the repair business.

19. According to the joint notice issued by the Ministry of Ecology and Environment, the Ministry of Industry and Information Technology, and the General Administration of Customs at the end of 2020 regarding the supervision of waste steel generated from the repair of foreign ships within the country, qualified repair waste steel can be stored, transferred, utilized, and disposed of within the country without being managed as solid waste. This provides a regulatory framework for ship repair companies to utilize the waste steel generated from ship repairs as resources.



friendly processes. Ship dismantling is considered a high-pollution industry, and companies engaged in ship dismantling should adhere to relevant laws, administrative regulations, local regulations, and administrative rules. Business operations must comply with regulations governing the safe and environmentally friendly dismantling of scrap ships, as well as national environmental standards and specifications.<sup>20</sup> Before the dismantling of ships, inspections should be conducted to verify vessel scrappage certificates and property rights. After dismantling is complete, appropriate dismantling certificates should be issued promptly. We recommend that environmental protection authorities enhance their supervision and management of ship dismantling, encouraging companies to align with the trend of green ship repair and ship dismantling. This includes accelerating the upgrade and transformation of eco-friendly environmental protection technology processes. The use of more advanced processes for handling waste generated during ship repair and dismantling, such as garbage, residual oil, wastewater, flammable and explosive materials, should be gradually implemented to achieve a green transformation.

20. Including but not limited to: applying for the environmental protection completion acceptance certificate for shipbreaking projects approved by the ecological and environmental authorities and obtaining the shipbreaking discharge permit; the actual shipbreaking site should be consistent with the production and operation location address on the discharge permit; equipping or setting up necessary facilities to prevent pollution from shipbreaking, such as oil containment devices, waste oil collection equipment, oily wastewater collection and treatment facilities, and waste recycling and disposal sites.



## IV. Typical Cases





## Case 1:

### Utilizing the Advantages of Maritime Injunction System to Crack the Deadlock of Shipbuilding Contract Performance

— Application for the Maritime Injunction by Jangsu Yuanyi Ship  
Service Co., Ltd.

#### Case Summary:

In May 2020, Yuanyi Ship Service Co., Ltd and Meiermeitu Shipbuilding Co., Ltd. entered into a Shipbuilding Contract, stipulating that Meiermeitu Shipbuilding Co., Ltd. would construct a large vessel in 8 months by processing materials. The shipbuilding cost was calculated per ton, with a rate of CNY 2,980 per ton. Various factors during the shipbuilding process resulted in serious delays in the construction period. After negotiation, Meiermeitu Shipbuilding Co., Ltd. provided a "Shipbuilding Contact Reply" letter, committing to complete the ship's launch before July 10, 2022, and complete the handover procedures before August 10, upon receiving the additional payment of CNY 1.7 million from Yuanyi Ship Service Co., Ltd.. The ship construction payment shall be settled in accordance with the contract. On July 4, 2022, Yuanyi Ship Service Co., Ltd. paid CNY 1.7 million to Meiermeitu Shipbuilding Co., Ltd. Meiermeitu Shipbuilding Co., Ltd. completed the ship inspection on October 27, 2022, and obtained the certificate of ship's inspection. However, they withheld the ship inspection certificate on the ground that Yuanyi Ship Service Co., Ltd. failed to pay shipbuilding fee and refused to assist in handling ship registration procedures. Yuanyi Ship Service Co., Ltd. applied to Nanjing Maritime Court for a maritime injunction



and provided a guarantee, requesting the court to order Meiermeitu Shipbuilding Co., Ltd. to deliver the ship, ship inspection certificate, and assist in processing ship ownership registration. Later, Yuanyi Ship Service Co., Ltd. withdrew its request for delivery of the vessel in view of its actual control of the vessel.

#### Judgment:

After examination, the court ruled to grant the petitioner, Yuanyi Ship Service Co., Ltd.'s application for a maritime injunction. Meiermeitu Shipbuilding Co., Ltd. submitted a reconsideration application, but the court held that the failure of Meiermeitu Shipbuilding Co., Ltd. to deliver the ship inspection certificate and register the ownership of the ship in accordance with the agreement had resulted in the inability of the ship built by Yuanyi Shipping Co., Ltd. with huge investment to operate normally, which had caused real and imminent damage to Yuanyi Ship Service Co., Ltd.. Meiermeitu Shipbuilding Co., Ltd. asserted its right to retain the ship based on unpaid shipbuilding costs, which did not conform to legal regulations or the agreement between the parties. The dispute regarding shipbuilding costs could be resolved separately. Therefore, the court rejected the reconsideration application of Meiermeitu Shipbuilding Co., Ltd. and upheld the original ruling.

#### Significance:

The long construction period, large capital demand, and high market risk of shipbuilding make it easy for parties involved to dispute issues such as ship price, ship delivery, and ship quality during the performance of the contract, resulting in the construction of ships that cost huge amounts of money but cannot be put into use in a timely



manner. In this case, even though the shipowner had effectively taken control of the vessel, the shipyard refused to deliver the ship inspection certificate and handle the ship registration procedures, the ship could not operate normally, which not only greatly affected the legitimate rights and interests of the shipowner, but also directly transmitted the legal risks to the downstream of the ship transaction chain, resulting in a series of compensation disputes. Faced with the complex scenario, the court gave full play to the procedural advantages of maritime injunctions, which are "short, flat and fast", and ordered the shipyard to assist the shipowner in handling the relevant ship registration procedures. In order to protect the shipyard's claim for ship construction funds, the court required the shipowner to provide sufficient guarantees and informed the shipyard of its right to make separate claims, in order to properly balance the interests of both parties. In the face of the deadlock in the performance of the shipbuilding contract, the court adhered to innovation and put aside the disputes between the two parties, speeding up the turnover of the ship delivery. This is an innovative measure of judicial assistance to the high-quality development of the shipbuilding industry. At the same time, the court facilitated the mediation throughout the dispute resolution process, and finally reached a package solution on the handling of the ship registration certificate, the payment of the remaining ship construction funds and other matters, which completely resolved the disputes between the two parties.



## Case 2:

### Efficiently Resolving Disputes Related to Foreign Ship construction to create the International Maritime Judicial Priority

— BOA BARGES AS vs. Nanjing Yichun Shipbuilding Co., Ltd.  
Dispute over International Shipbuilding Contract

#### Case Summary:

On April 18, 2007, Norwegian shipowner BOA OFFSHORE AS, ordered ships from Nanjing Yichun Shipbuilding Co., Ltd. and signed three Semi-Submersible Heavy-duty Deck Barge Contracts with a total price of nearly US\$50 million. The contracts agreed that disputes shall be arbitrated in London and governed by English law. On May 17, 2010, Norwegian shipowner BOA BARGES AS, as the new purchaser, assumed the rights and obligations of the original three contracts. With the occurrence of the dispute over the contract performance, both parties decided to terminate the Contract on December 8, 2015, but failed to reach an agreement on a series of issues after the termination of the contract. By the beginning of 2020, the dispute cannot be solved by negotiation due to its escalation. Thus, both parties shall apply to the London Court of International Arbitration for arbitration in accordance with the relevant contract to solve the dispute. The outbreak of COVID-19 in February 2020 had a great impact on international arbitration. Especially with the increasingly severe situation of global epidemic, many European countries adopt entry restrictions and other prevention and control measures. Based on various factors, both parties signed the Supplementary Agreement on May 16, which agreed to submit the dispute to Nanjing Maritime Court



for adjudication and apply Chinese laws. On June 11, the plaintiff BOA BARGES AS entrusted lawyers with a lawsuit to Nanjing Maritime Court, requesting the defendant Nanjing Yichun Co., Ltd. to return the advance payment and the accrued interest.

### ***Judgment:***

At the acceptance of this case, it was found through examination that the power of attorney of the plaintiff's attorney shall be notarized by the Norwegian notary office and authenticated by the embassy of the People's Republic of China in Norway. However, due to the influence of the pandemic situation, the plaintiff failed to submit the authenticated notarial documents to the court. In view of the actual impact of the pandemic on notarization and authentication and the complete specifications of other relevant filing materials of the case, and the plaintiff's attorney promised to complete the authenticated notarial documents before the trial, Nanjing Maritime Court decided to file the case first, allowing the attorney to delay submitting and authorization procedures. In the process of trial, in order to reduce the risks brought about by the flow and gathering of people during the pandemic, the court, on the basis of carefully examining the evidence materials involved in the case, facilitated the parties to reach a mediation agreement by handling the case through the Internet, and concluded the case in 27 days.

### ***Significance:***

This case is an international ship construction contract dispute, the foreign party took the initiative to alter the dispute resolution method from arbitration in London to filing a lawsuit to Nanjing Maritime



Court and applying Chinese law, which is based on not only the trust in China's efforts to build the International Maritime judicial center and optimize the judicial environment, but also the recognition of the Nanjing Maritime Court's service to ensure the construction of "the Belt and Road Initiative" and actively build a preferred place for maritime litigation. Facing the situation where the plaintiff was unable to submit the notarization documents due to the pandemic's impact, the Nanjing Maritime Court, in line with the " Guiding Opinions of the Supreme People's Court on Several Issues Concerning the Proper Trial of Civil Cases Involving COVID-19," allowed foreign parties to extend the submission of notarization documents, effectively expediting the resolution of the dispute. In this case, the people's court effectively employed online dispute resolution methods against the background of the pandemic. Through organizing multiple rounds of online negotiations, the case was finally resolved through mediation within 27 days after being filed, successfully settling a five-year-long international shipbuilding contract dispute, effectively helping enterprise overcome difficulties, fully demonstrating the role of the judicial system in promoting development, maintaining stability, and safeguarding people's livelihoods, demonstrating the superiority of the Chinese socialist judicial system to the international community.



### Case 3:

## Determining Force Majeure During Ship Construction and Proactively Mitigating Operational Risks of Shipyards

—Dispute Over Shipbuilding Contract Between China Ping An Property Insurance Co., Ltd. Jiangsu Branch and Yangzhou Longhe Shipbuilding Co., Ltd.

### Case Summary:

In August 2019, Yangzhou Longhe Shipbuilding Co., Ltd. (hereinafter referred to as "Longhe"), as the builder, and Hengfa Company, as the owner, entered into a "Shipbuilding Processing Order Contract" to commission the construction of the vessel "Hengfa 18." Hengfa Company had insured the ship construction insurance at China Ping An Property Insurance Co., Ltd. Jiangsu Branch. In April 2021, the region where Longhe is located experienced severe winds, causing the overturning of the gantry crane onto the under-construction "Hengfa 18." This incident resulted in rope breakage and damage to the ship. China Ping An Property Insurance Co., Ltd. Jiangsu Branch filed a lawsuit with the Nanjing Maritime Court, seeking a judgment that Longhe should compensate for the loss of over CNY 650,000 and corresponding interest. Longhe argued that the incident in question, caused by a sudden and violent gust of wind, constituted force majeure and should be entirely exempt from compensation liability.

### Judgment:

Upon examination, the court determined that whether accidents resulting from sudden natural disasters, such as severe winds, could be accurately foreseen and thus be deemed as force majeure should



be assessed based on the general foreseeability capacity of ordinary people. This assessment should also consider weather forecasts, actual wind force, and the measures that the parties could take. In this case, although the parties could foresee the severe wind on the day based on the weather forecast, but the subsequent occurrence of a wind force exceeding the maximum value predicted in the forecast was still unforeseeable. Longhe had taken measures that could prevent ordinary strong winds, yet the accident occurred, causing damage. In such a situation, where no other breach or fault existed, it should be determined that the objective circumstances were unavoidable and insurmountable. Therefore, Longhe's compensation liability should be entirely exempted. Based on this, the court lawfully rejected all of China Ping An Property Insurance Co., Ltd. Jiangsu Branch's claims. After the judgment, neither party appealed.

### Significance:

Jiangsu's shipbuilding enterprises, located in the middle and lower reaches of the Yangtze River, are often affected by the environment and climate, sudden strong winds in summer have caused damage to ships built in shipyards. In judicial practice, as weather forecasts become increasingly precise, it becomes more difficult for shipbuilding companies to prove the unforeseeability of accidents caused by invoking force majeure. Additionally, disputes often arise regarding the extent of foreseeability, the allocation of the burden of proof, and other practical issues. This case is a typical case of invoking force majeure to claim exemption from liability. During the trial, the court affirmed that the foreseeability of accidents caused by strong winds should be determined based on the cognitive capacity of an ordinary person. This reasonable allocation of the burden of



proof helps to establish that shipbuilding companies can be deemed to have encountered force majeure when they can prove that they have taken reasonable and prudent wind prevention measures and yet the accident could not be avoided. This resolution effectively mitigates the systemic operational risks that natural disasters might pose to shipbuilding enterprises, protects the legitimate rights and interests of shipbuilding companies in accordance with the law, and serves as a regulatory example for handling such cases.

#### Case 4:

### Legally Recognizing Priority Payment Rights - Resolving Disputes over Shipbuilding Advances

— Taizhou Hailing District Hengxing Shipyard vs. Mr. Huo, Mr. Guo, and Henan Changtai Container Shipping Co., Ltd. Shipbuilding Contract Dispute

#### Case Summary:

In 2014, Mr. Huo entered into a shipbuilding contract with Hengxing Shipyard, stipulating the construction of a bulk cargo ship through the supplied material processing method. After completion of the ship's construction, Mr. Huo and Mr. Guo mortgaged the ship to the Luohe Branch of China Post Savings Bank and obtained a loan of CNY 1.3 million. When settling the ship's payment in 2016, Mr. Huo and Mr. Guo issued promissory notes to Hengxing Shipyard. These notes outlined the agreement to pay the remaining CNY 150,000 for the ship's construction before the shipyard delivered the vessel. Additionally, the notes included an arrangement regarding the shipyard's advance payment of CNY 900,000, which was to be repaid



over a three-year period with a monthly interest rate of 1.2%. After the promissory notes were issued, Mr. Huo only paid CNY 38,000. He subsequently lodged complaints with government authorities, citing quality issues with the ship as the basis. In response, Hengxing Shipyard retained possession of the ship. As Mr. Huo and Mr. Guo failed to repay the loan from the Luohe Branch of China Post Savings Bank, the bank applied for the detention and auction of the ship. Simultaneously, Hengxing Shipyard filed a lawsuit demanding Mr. Huo and Mr. Guo to return the shipbuilding payment of CNY 1.02 million and sought confirmation of their priority payment rights for the ship auction proceeds.

#### Judgment:

After deliberation, the court held that Hengxing Shipyard had completed the construction of the vessel in 2015 and had passed both the entry inspections conducted by the Anhui Maritime Safety Administration and the Henan Maritime Safety Administration, which declared the vessel met the standards. Mr. Huo, as the shipowner, had been actively involved throughout the ship's construction process. Despite raising quality concerns with multiple maritime authorities, investigations by these relevant departments concluded that the issues reported did not affect navigation safety or ship quality. Hengxing Shipyard's exercise of the right of retention was legitimate. Mr. Huo's claim that he did not need to pay the final ship construction installment due to alleged quality defects in the vessel was not justified. In the first-instance judgment, the court ruled that Mr. Huo and Mr. Guo must pay a total of CNY 1.01 million for ship construction and advances. It also confirmed Hengxing Shipyard's priority payment rights over the proceeds from the auction of the ship. The second-instance judgment



upheld the original verdict.

### ***Significance:***

To secure orders, small and medium-sized shipbuilding companies often provide advance funding for ship construction on behalf of shipowners. These funds often come from private financing, and the shipyards agree to relatively high interest rates on these advances. Disputes arising from shipbuilding contracts can carry substantial risks when advance funding is involved. In this case, the court conducted a comprehensive assessment based on contract performance, agreed-upon interest rates, shipyard's advance funding, maritime department quality inspections, and other factors. The court confirmed that the shipyard had constructed the vessel as stipulated in the contract, and the vessel met the quality standards while the interest rate was in accordance with legal requirements. Consequently, the court supported the shipyard's request for the shipowners to pay for the ship construction and advances. Furthermore, it legally confirmed the shipyard's priority payment rights. This judgment sets a precedent for maintaining a proper balance between industry practices and financing security, thereby regulating the shipbuilding market.



### **Case 5:**

#### **Determining the subject of Safety Production Liability and Ensuring Orderly Construction of Ships**

— Ping An Property&Casualty Insurance Company of China., Ltd. v.  
Taixing Transport Machinery Factory  
Shipbuilding Insurance Contract Subrogation Case

#### ***Case Summary:***

Yangzhou COSCO Heavy Industry Co., Ltd. (hereinafter referred to as "COSCO") signed a "Supply Contract" with Taixing Transport Machinery Factory (hereinafter referred to as "TaixingFactory "). According to the contract, Taixing Factory was responsible for the production and installation of the "desulfurization tower discharge pipe and exhaust pipe" for the vessel N944, and COSCO insured the shipbuilding with Ping An Property&Casualty Insurance Company of China., Ltd. (hereinafter referred to as "Ping An"). In June 2020, Taixing Factory arranged its personnel to conduct flange welding at the shipyard. Before starting the welding, the workers conducted an on-board survey to check fire prevention measures that iron sheets, fireproof cloth, and fire extinguishers, were properly placed below the welding points. Once everything was confirmed and after receiving directives from COSCO, the welding work commenced. However, they did not inspect and confirm the interior situation of the desulfurization tower. During the construction process, sparks fell into the interior of the desulfurization tower through a gap of the exhaust pipe, igniting the plastic packing material and causing a fire, resulting in property losses. After compensating COSCO, Ping An claimed Taixing Factory



to pay compensation of CNY 5 million for the loss resulting from the ship's fire accident.

### ***Judgment:***

The court held that safety production liability in the shipbuilding factory does not entirely shift to the subcontractor during subcontracted construction work. In this case, Taixing factory, as the subcontractor, had performed its obligations of inspection, examination, and confirmation at the shipbuilding factory. They had also carried out construction under the direction of COSCO. Given these circumstances, when a fire caused by subcontracted construction results in property damage, and Ping An, as the insurer, was subrogated to claim compensation on behalf of the insured party (COSCO) from Taixing. The court did not support this claim. After the judgment, neither party filed an appeal.

### ***Significance:***

Shipbuilding processes involve multiple steps, complex construction environments, and significant property value. Hazards are prevalent in production operations such as high-altitude work, work in confined spaces, and hot work. Furthermore, shipbuilding companies often subcontract various high-risk and difficult tasks, such as the manufacturing and installation of pipelines, welding, ship outfitting, and painting. Clearly defining the primary safety production liability within ship construction becomes crucial. In this case, the court, by examining factors such as the qualifications of the construction workers, the implementation of fire safety measures, and the level of standardization in the work processes, determined



that large shipbuilding companies, acting as the contracting party, should bear the primary liability for safety production. This is due to their comprehensive safety production management systems and their familiarity with the production processes and environment. The court emphasized that this responsibility for risk prevention should not shift to the subcontractor just because subcontracted construction is involved. This judgment serves to reinforce the primary safety production liability of shipyards, encourage effective safety supervision within shipyards, and ensure the safe, green, and intelligent development of the shipbuilding industry, which is of significant importance.

### ***Case 6:***

#### **Confirming Undesignated Contractual Costs, Ensuring the Sound Operation of the Shipbuilding Market**

— Shanghai Changhang Minnan Shipyard vs. Haikun Shipping Co., Ltd., and Others Ship Refurbishment Contract Case

#### ***Case Summary:***

In 2015, Haikun Shipping Co., Ltd. (hereinafter referred to as "Haikun Shipping") and others, acting as the contracting party for ship repairs, signed an agreement with Shanghai ChanghangMinnan Shipyard (hereinafter referred to as "Minnan Shipyard"), stipulating that Minnan Shipyard would provide repair and refurbishment services for the vessel "Haike 108." Mr. Yu acted as the performance guarantor for the contracting party. In 2019, Shanghai Haiying Shipping Co., Ltd. (hereinafter referred to as "Haiying Company") and Haikun Shipping



signed an agreement, appointing Haiying Company to carry out the subsequent repair and refurbishment work for the ship and to handle payment for the completion of the ship's engineering. After the ship's repair and refurbishment work was completed, Minnan Shipyard did not receive any payments. Following unsuccessful attempts to collect the outstanding fees, Minnan Shipyard filed a lawsuit, seeking a total of over CNY 8.66 million from Haikun Shipping, Mr. Yu, Haiying Company, and others, to jointly bear the expenses for ship repair and refurbishment, dock fees, and vessel shore power supply fees.

### ***Judgment:***

The Court held that while dock fees and shore power supply fees were not stipulated between Minnan Shipyard and the contracting party for ship repairs, considering that the time taken for the ship repair and refurbishment significantly exceeded the estimated duration and the vessel's occupation of the dock had caused losses to Minnan Shipyard. Furthermore, the ship's crew needed shore power supply during its stay in port, incurring shore power supply expenses as a natural consequence. Based on the actual circumstances, the court, in its discretion, recognized the specific amounts and supported Minnan Shipyard's claim for dock fees and vessel shore power supply fees.

### ***Significance:***

Ship repair and refurbishment refer to maintenance work performed to enhance vessel performance or alter the vessel's intended use. This process typically involves occupying shipyard docks, which can be complex and time-consuming. For shipyards acting as contractors, the contracting party not to make timely payments for repair and refurbishment work poses significant legal risks.



Additionally, during the process of recovering owed payments, new and substantial expenses may continue to accrue. In this case, the contracting party's default in paying for the repair work resulted in the ship not being delivered promptly. During its stay at the port, the vessel incurred dock fees and shore power supply expenses, which led to further losses for the shipyard. Although these expenses were not explicitly outlined in the contract, the court, after reviewing the reasonableness of the related costs, exercised its discretion to recognize them. This judgment effectively protected the shipyard's legitimate rights and interests, offering robust judicial support for promoting the healthy and sound operation of the ship repair market.

### **Case 7:**

## **Accurately Defining the Contract Termination Liabilities to Resolve the Long-Term Dispute between Supply Chain Companies**

— Case of Dispute over Ship Materials and Spare Parts Supply Contract between Taizhou Port and Shipping Transportation Co., Ltd. and Taizhou Zhongran Clean Energy Co., Ltd.

### ***Case Summary:***

In October 2015, Taizhou Port and Shipping Transportation Co., Ltd. (hereinafter referred to as "Port and Shipping Transportation Co., Ltd.") entered into a contract with Taizhou Zhongran Clean Energy Co., Ltd. (hereinafter referred to as "Zhongran Co., Ltd."), in which Zhongran Co., Ltd. agreed to provide Port and Shipping Transportation Co., Ltd. with a custom-built ship natural gas auxiliary system. In the same month, Port and Shipping Transportation Co., Ltd. entered into a





shipbuilding contract with a third party, Jingjiang Huaxin Ship Repair Co., Ltd. (hereinafter referred to as "Huaxin Co., Ltd. "). During the performance of the contract, Huaxin Co., Ltd. experienced an explosion incident and was ordered to cease production, rendering it unable to continue with the ship construction. Subsequently, Zhongran Co., Ltd. filed a lawsuit with Wuhan Maritime Court seeking the termination of the ship materials and spare parts supply contract with Port and Shipping Transportation Co., Ltd. and requesting compensation for losses. Following the judgment of Wuhan Maritime Court, the ship materials and spare parts supply contract was terminated, and Port and Shipping Transportation Co., Ltd. was ordered to compensate Zhongran Co., Ltd. for its corresponding losses. After the judgment became final and enforceable, Port and Shipping Transportation Co., Ltd. fulfilled its compensation obligation; however, it contended that Zhongran Co., Ltd. was obligated to deliver to it all remaining undelivered equipment under the contract. Consequently, it filed a lawsuit with Nanjing Maritime Court, requesting that Zhongran Co., Ltd. return the equipment.

### ***Judgment:***

Upon trial, Nanjing Maritime Court held that, during the construction of the natural gas auxiliary system, while Zhongran had delivered certain equipment to Port and Shipping Transportation Co., Ltd., it still retained some equipment. Given that Port and Shipping Transportation Co., Ltd. had compensated Zhongran Co., Ltd. for the corresponding losses after the supply contract was terminated, Zhongran Co., Ltd.'s continued possession of certain custom-made equipment was without legal justification. As a result, the court judged that Zhongran Co., Ltd. shall pay Port and Shipping Co., Ltd.



the discounted amount equivalent to the value of the undelivered equipment.

### ***Significance:***

Shipbuilding is a typical discrete production process. When an unexpected event occurs causing the shipbuilding contract unenforceable, it is of paramount importance to appropriately balance the interests of the shipowner, shipbuilder, and material suppliers. This is crucial for creating a stable, safe, rapid, efficient, and cost-effective shipbuilding industry chain, which plays a vital role in advancing high-quality shipbuilding industry development. In this case, an explosion incident during shipbuilding process rendered the contract between the shipowner and the shipyard unenforceable. Concurrently, the supplier of ship-specific equipment engaged in related litigation with the shipowner. Based on a comprehensive examination of the case facts, the court accurately determined that, following the termination of the ship materials and spare parts supply contract, all clearing and settlement responsibilities between the shipowner and the spare parts supplier were duly ascertained. This led to a substantive resolution of long-standing disputes between the companies. The case holds significant importance in regulating the order of ship materials and spare parts supply markets and creating a stable, fair, transparent, and predictable legal business environment.



## Case 8:

### Determining the Invalidity of Contracts to Regulate the order of Offshore Wind Power Engineering Construction

—Dispute between Jiangsu Longyuan Zhenhua Marine Engineering Co., Ltd., and Shengzhi Wind Power Technology (Shanghai) Co., Ltd., and Zhongcheng Non-Financial Guarantee (Shenzhen) Co., Ltd.

#### Case Summary:

In June 2021, Jiangsu Longyuan Zhenhua Marine Engineering Co., Ltd. (hereinafter referred to as "Longyuan Co., Ltd.") signed an Engineering Construction Contract with Shengzhi Wind Power Technology (Shanghai) Co., Ltd. (hereinafter referred to as "Shengzhi Co., Ltd.") for the installation of wind turbines for an offshore wind power project. The contract stipulated that Shengzhi Co., Ltd. would provide vessel equipment to support Longyuan Co., Ltd.'s construction work. Zhongcheng Non-financing Guarantee (Shenzhen) Co., Ltd. (hereinafter referred to as "Zhongcheng Co., Ltd."), commissioned by Shengzhi Co., Ltd., provided a guarantee to Longyuan Co., Ltd., which made a prepayment of 5 million RMB for the construction. In August of the same year, the vessel "Shengzhi 1" arrived at the offshore wind farm for construction purposes. However, it has been discovered that the actual configuration of the vessel did not meet the technical requirements. Despite the multiple assurances from Shengzhi Co., Ltd., "Shengzhi 1" remained to be unsuitable for the lifting requirements of offshore wind turbines. In September of the same year, Shengzhi Co., Ltd. applied for the contract termination to Longyuan Co., Ltd.. Both parties confirmed that, "Shengzhi 1" failed to meet the



on-site construction conditions and no on-site construction was carried out until the wind turbine installation was completed. Due to Shengzhi Co., Ltd.'s failure to refund the payment, Longyuan Co., Ltd. filed a lawsuit to Nanjing Maritime Court, seeking to confirm the termination of the contract, requested that Shengzhi Co., Ltd. should refund the prepayment for the project, and pay the liquidated damages, and hold Zhongcheng Co., Ltd.'s responsibility for guaranteeing the refund by Shengzhi Co., Ltd..

#### Judgment:

Upon trial, the court determined that, in accordance with relevant legal provisions, those engaged in offshore wind turbine installation must possess the appropriate qualifications. As Shengzhi Co., Ltd. lacked the professional contracting qualifications and subcontracting qualifications required for offshore wind power engineering, the contract they entered into with Longyuan Co., Ltd. for the construction should be invalid. Consequently, the guarantee provided by Zhongcheng Co., Ltd. was also invalidated. Based on these findings, the court ordered Shengzhi Co., Ltd. to return the 5 million RMB advance prepayment made by Longyuan Co., Ltd. and rejected Longyuan Co., Ltd.'s other litigation requests. Neither party filed an appeal.

#### Significance:

Based on the goal of "dual carbon", the offshore wind power has become a crucial sector for promoting renewable energy development in China. The lawful regulation of the offshore wind power construction market is of paramount importance in ensuring the high-



quality development of the marine economy. The engineering quality is the lifeblood of construction projects. Compared to onshore wind power, offshore wind power facilities have higher construction costs and greater construction complexity. Companies must possess the requisite qualifications and construction capabilities to undertake the offshore wind power, coastal, and nearshore construction projects. In this case, Shengzhi Co., Ltd. lacked the qualifications for offshore wind power engineering construction and the corresponding capability. During the construction process, Shengzhi Co., Ltd.'s construction platform was unable to meet the construction requirements, leading to the disruptions in the originally planned construction schedule and to render the contract unenforceable. Although the parties sought the termination of the contract, the court, on the basis of a comprehensive investigation of the facts, determined the invalidity of the contract according to the relevant law, and reasonably determined the rights, obligations and legal responsibilities of the parties. The handling of this case is of positive guiding significance in regulating the order of offshore wind power and other marine engineering constructions, helping market players to prevent and defuse risks, and creating a fair and orderly market competition environment.



### Case 9:

## Fairly Determining of Intermediary Fee Payment Conditions to Regulate the Order of the Offshore Vessel Leasing Market

—Case of Dispute over Intermediary Contract between Jiangsu Yufeng Maritime Engineering Co., Ltd. and Mr. Wei

### Case Summary:

In 2021, in order to undertake the installation of wind turbines for offshore wind power projects, Mr. Wei negotiated the lease of offshore wind turbine lifting vessels with Jiangsu Yufeng Maritime Engineering Co., Ltd. (hereinafter referred to as "Yufeng Co., Ltd."). The parties agreed that once Yufeng Co., Ltd. facilitated the leasing contract for the engineering vessels, Mr. Wei would pay an intermediary fee of CNY 3 million per month. The contract also stipulated that if Mr. Wei, using the trading platform provided by Yufeng Co., Ltd., circumvented the direct signing of contracts with the shipowners, he would still be required to pay the full amount of the compensation. Following negotiations by Yufeng Co., Ltd., the shipowners of the engineering vessel "Haixin Lifting 1" entered into a ship leasing agreement with Mr. Wei's cooperating company, Jiangsu Zhenyuan Electric Power Technology Co., Ltd. (hereinafter referred to as "Zhenyuan Co., Ltd."). However, the shipowners did not arrive at the Shengsi No. 2 wind farm construction site as agreed and received a letter of contract termination from the project department. Subsequently, Zhenyuan Co., Ltd. temporarily relocated the engineering vessel to the Xiangshan No. 1 wind farm for construction. However, after adapting to sea conditions, the project department sent a letter stating that the vessel's



performance did not match the conditions in the construction area, rendering it incapable of completing the wind turbine installation task. Yufeng Co., Ltd. filed a lawsuit, seeking payment of the intermediary fee as per the agreement.

### ***Judgment:***

After careful examination, the court determined that the parties had a dispute regarding the payment conditions for the intermediary fee in the intermediary contract at issue. The contract stipulated that, once Yufeng Co., Ltd. facilitated the engineering vessel leasing contract, Mr. Wei was obligated to pay Yufeng Co., Ltd. a monthly fee of CNY 3 million. Considering the contractual provisions for monthly payments and the length of the leasing period, it was evident that the clause did not imply a "pay upon conclusion" interpretation of the intermediary fee. Instead, the payment of the intermediary fee should be determined based on the actual performance of the leasing contract. In this case, the engineering vessel did not arrive at the construction site as scheduled, leading to the termination of the construction contract by the project department. After changing the construction site, the vessel was forced to leave due to its own performance limitations, rendering it incapable of completing the wind turbine nacelle installation task. Mr. Wei's purpose for leasing the vessel for offshore wind turbine installation was not realized. Therefore, the ship leasing contract was never properly executed, and the conditions for paying the intermediary fee were not met. The court, in the first-instance judgment, rejected Yufeng Co., Ltd.'s litigation request. Following the judgment, neither party appealed.



### ***Significance:***

Offshore engineering, as a strategic emerging industry with high technological content and strong technological innovation, relies on the support and guarantee of maritime engineering equipment. In the competitive market for maritime equipment (vessels), securing engineering vessels that match the project is a crucial aspect for the timely completion of offshore wind power projects, and yet the lessee need to pay high rent ,even high intermediary fees linked to the leasing period. These vessel leases are associated with high costs, and intermediary contracts often stipulate high intermediary fees, which are linked to the leasing period. In this case, the court, through the systematic interpretation of contract terms, clarified the fact that specialized offshore engineering vessels fail to meet the agreed conditions and cannot actively participate in maritime engineering project construction, then reject the intermediary's request for payment of high fees. The judgment result protects fairly and reasonably the parties' legitimate rights and interests and provides judicial support for the orderly development of maritime engineering construction and the maritime equipment leasing market.



## Case 10:

### Facilitating the Rehabilitation of Private Enterprises through Good-Faith and Civilized Enforcement

—Series of Cases on Coordinated Execution and Bankruptcy  
Reorganization of Taizhou Port Ship Co., Ltd.

#### Case Summary:

Taizhou Port Ship Co., Ltd. (hereinafter referred to as Port Co., Ltd.) was previously among the top ten private shipbuilding enterprises in China and the first large-scale private shipbuilding company in Jiangsu Province to obtain the "Four Permits" from relevant authorities. In recent years, the company faced severe operational and management difficulties due to fluctuations of the international shipping market, leading to a significant amount of debt disputes. In early 2020, various creditors filed multiple lawsuits and applied for property preservation in Shanghai Jing'an District People's Court, Taizhou Intermediate People's Court, Taizhou Gaogang District People's Court, and Nanjing Maritime Court. Nanjing Maritime Court handled 82 lawsuits and 58 enforcement cases, with the total amount in dispute reaching as high as CNY 590 million. Simultaneously, based on applications for preservation and in compliance with other courts' instructions, Nanjing Maritime Court lawfully seized four vessels under construction owned by the Port Co., Ltd.. Subsequently, the Port Co., Ltd. applied to Nanjing Maritime Court, stating that its TK0630 vessel had met the delivery standard to the shipowner. However, due to judicial detention, it could not be delivered. If the vessel were not delivered on time, the Port Co., Ltd. would need to compensate the shipowner with over 8 million dollars, including the prepayment



and interest. Additionally, it incurred daily maintenance costs of approximately CNY 20,000. The Port Co., Ltd. specifically requested, under the court's supervision, to proceed with the delivery and change the execution target from "vessel" to "purchase price."

#### Judgment:

Nanjing Maritime Court attached great importance to the Port Co., Ltd.'s application. It immediately formed a special task force to research the necessity and feasibility of adjusting the preservation measures. Through various investigations, the court discovered that timely delivery could not only reduce the depreciation of the vessel's value but also secure payments from foreign shipowners and benefit from export tax rebates. This approach would more broadly safeguard the legitimate interests of the shipowners, the Port Co., Ltd., and all creditors. In order to reduce the company's losses, preserve asset value, and protect the rights and interests of creditors, Nanjing Maritime Court legally approved the Port Co., Ltd.'s application and actively coordinated with relevant parties to formulate a comprehensive and detailed vessel delivery plan. In the end, in collaboration with the Taizhou Gaogang District People's Court, which received the Port Co., Ltd.'s bankruptcy application, Nanjing Maritime Court successfully completed the actual delivery and subsequent matters of vessels such as TK0630, helping the Port Co., Ltd. get the full purchase price from the foreign shipowners. After the Port Co., Ltd. and its related entities entered the bankruptcy proceedings, Nanjing Maritime Court, based on the bankruptcy administrator's application, promptly released the vessels under detention and efficiently concluded 44 related enforcement cases, actively supporting the consolidation and reorganization of the companies involved in the cases to quickly



restore their production capacity.

### ***Significance:***

Jiangsu is a major shipbuilding province, with ship completions accounting for nearly half of the national total each year. Currently, it has developed a billion-dollar shipbuilding industry chain, with private shipbuilding enterprises playing a crucial role in driving rapid industry growth. This case represents a successful practice by Nanjing Maritime Court, demonstrating good-faith and civilized enforcement to establish connection between the enforcement procedure and the bankruptcy procedure, facilitating the bankruptcy reorganization and swift recovery of production capacity of private shipbuilding companies. During the case's adjudication, Nanjing Maritime Court diligently implemented the Central Committee's "Opinions on Strengthening Comprehensive Management and Effectively Resolving Enforcement Difficulties at the Source" and the Provincial Committee's implementation guidelines, along with relevant documents from the Supreme People's Court. The court actively explored enforcement measures involving "prior disposition for preserving purchase prices." ensuring that detained vessels were smoothly transferred and purchase prices were efficiently delivered, while simultaneously aiding the recovery of the companies' reputation. In full protection of the applicant's rights, the court minimized the impact of the enforcement on the production and lives of the executed parties. Through a series of good-faith and civilized enforcement measures, the court allowed private enterprises to go through the bankruptcy reorganization process in a stable and orderly manner, fostering a sense of judicial compassion within the enforcement process for private enterprises.