**International Recent Developments: China**

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This Article provides an overview of the significant decisions of the Chinese courts in 2019, in particular those of the Supreme People’s Court of China (SPC). It provides readers with an insight into the judicial practice of maritime law during this period in mainland China. The judgments involve liability for marine pollution, carriage of goods by sea, bailment, sale of ships, and limitation of liability actions. The source of these Chinese judgments is the database China Judgments Online. In 2019, Chinese courts delivered and published 10,547 maritime judgments on China Judgments Online, 85 of which are from the SPC.[[1]](#endnote-1)

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# I. Introduction

This is the third Article in the annual series of international recent developments of maritime law and judicial practice in China. In the first Article, the legal system of Mainland China and the maritime adjudication system were introduced.[[2]](#endnote-2) In the second Article, the legal system and admiralty practice of the Hong Kong Special Administrative Region of the People Republic of China (PRC) were introduced.[[3]](#endnote-3). This Article will introduce nine mainland maritime cases, including judgments delivered from Chinese maritime courts, the appellate courts of the maritime courts, and the Supreme People’s Court (SPC).[[4]](#endnote-4) The subject of these cases includes admiralty law, carriage of goods by sea, bailment, sale of ships, and the wrongful arrest of vessels.

# II. Admiralty Law

## A. Liability for Marine Pollution: Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd. (The “CMA CGM Florida” 1)

Marine pollution is mainly caused by oil discharge from ships at sea. Oil pollution is not regulated by the Maritime Codeof the People's Republic of China (CMC).[[5]](#endnote-5) The authorities for bunker oil pollution include Tort Liability Law of the People's Republic of China (Tort Liability Law),[[6]](#endnote-6) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Oil Convention), which China has ratified, the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Compensation for Vessel-induced Oil Pollution Damage (Oil Pollution Provisions),[[7]](#endnote-7) and the Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law in the Hearing of Cases of Disputes over Environmental Tort Liabilities (Environmental Tort Liabilities Interpretations).[[8]](#endnote-8) Generally speaking, the owner of the vessel that discharges bunker oil shall be liable for the pollution damage to the sea. However, it is unclear by law whether the at-fault vessel in a collision that causes another vessel’s discharge of bunker oil should be liable for such damage. The SPC gave a clear answer to this question in a recent judgment.

In Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd. (The “CMA CGM Florida” 1),[[9]](#endnote-9) oil pollution was caused by a ship collision between the vessel CMA CGM Florida and the vessel Chou Shan in the East China Sea on March 19, 2013. In the collision, the vessel CMA CGM Florida was damaged and bunker oil was discharged into the sea. The Shanghai maritime administrations organized several vessels for clean-up operations. The vessels in the operation included Xin’An 018 and Xin’An 019, both owned by Shanghai Xin’An Shipping Co., Ltd. (Xin’An Shipping). The apportionment of liability for the collision between the vessel CMA CGM Florida and the vessel Chou Shan was fixed at 50:50 by the Chinese courts. Xin’An Shipping applied to the Ningbo Maritime Court for payment of clean-up operation costs against Provence Shipowner 2008-1 Limited (Provence Limited), the shipowner of the vessel CMA CGM Florida, CMA CGM SA (CMA CGM), the bareboat charterer of the vessel CMA CGM Florida, and Rockwell Shipping Limited (Rockwell Shipping), the shipowner of the vessel Chou Shan.[[10]](#endnote-10)

All parties agreed to apply Chinese law to the dispute. The Ningbo Maritime Court, therefore, applied Chinese law to this case.[[11]](#endnote-11) One of the issues was who should be liable for the payment of the clean-up operation. The court applied the Bunker Oil Convention and Oil Pollution Provisions. According to paragraph 3 of article 1, article 2, and paragraph 1 of article 3 of the Bunker Oil Convention,[[12]](#endnote-12) the shipowner and bareboat charterer shall be liable for pollution damage caused by any bunker oil on board. Article 4 of the Oil Pollution Provisions provides that, in the case of oil pollution damage resulting from a collision of vessels that are both at fault, the victim may request that the shipowners of discharging vessels bear full compensation liability. Therefore, it was held that Provence Limited, as the shipowner, and CMA CGM, as the bareboat charterer of the vessel CMA CGM Florida, should be liable for bunker oil pollution caused by the vessel and bear the reasonable cost for the clean-up operations in this case. The vessel Chou Shan was not the discharging vessel, and thus, the shipowner should not bear joint and several liability for the clean-up operations.[[13]](#endnote-13)

Xin’An Shipping, Provence Limited, and CMA CGM appealed. The Zhejiang High People’s Court, as the appellate court, dismissed the appeal.[[14]](#endnote-14) The appellate court pointed out that article 4 of the Oil Pollution Provisions adopts the principle of “who spills oil is who is liable” for oil pollution liability, and the trial court had correctly applied this principle for determining the liability of Provence Limited and CMA CGM for the clean-up operation costs by Xin’An Shipping. There was no legal basis for Xin’An Shipping’s claim that Rockwell Shipping should bear the joint and several liability for the costs of the clean-up operations.[[15]](#endnote-15)

Xin’An Shipping applied to the SPC for retrial of the case, bringing up two core issues. The first core issue was whether, if the colliding vessels were all at fault and one vessel discharged oil, the shipowner of the non-discharging vessel could be held liable for oil pollution caused by the collision. The second core issue was if the non-discharging vessel were to be found liable, what liability the non-discharging vessel should bear.[[16]](#endnote-16) The SPC upheld the decisions of the trial court and the appellate court that Provence Limited, as the shipowner, and CMA CGM, as the bareboat charterer of the discharging vessel, should be liable for the clean-up operation costs. The SPC, however, held that the trial court and the appellate court were in error by holding that Rockwell Shipping should not be liable for the costs.[[17]](#endnote-17)

On the one hand, the SPC interpreted that the Bunker Oil Convention does not restrict the claim for bunker oil pollution damage against the non-discharging vessel. First, paragraph 1 of article 3 of the Bunker Oil Convention provides that “the shipowner at the time of an incident shall be liable for pollution damage.” This is the affirmative expression with respect to the liability of the shipowner of the discharging vessel. However, it cannot be conversely inferred that the other, non-discharging shipowner shall not be liable for oil pollution. These provisions do not impliedly exclude other liable parties. Second, paragraph 6 of article 3 of the Bunker Oil Convention provides that “[n]othing in this Convention shall prejudice any right of recourse of the shipowner which exists independently of this Convention.” The provisions regarding the shipowner’s right of recourse do not mean that the claimant of the oil pollution damage cannot directly claim against other liable parties. Third, paragraph 3(b) of article 3 of the Bunker Oil Convention provides that no liability for pollution damage shall attach to the shipowner if the shipowner proves that the damage was wholly caused by an act or omission done with the intent to cause damage by a third party. The Bunker Oil Convention, however, does not regulate whether the third party should bear the liability. In a word, the Bunker Oil Convention only regulates the liability of the spilling vessel. In a circumstance like this case, where collision resulted in bunker discharge from one of the involved vessels, the SPC held that the liability of the non-discharging vessel should be determined by domestic law.[[18]](#endnote-18)

Thus, because the applicable law in this case was determined to be Chinese law, the SPC applied the Tort Liability Law. Article 68 of the Tort Liability Law provides that, for damages caused by environmental pollution through the fault of a third party, the party suffering damages may seek compensation from either the polluter or the said third party. The polluter is then entitled to claim reimbursement from the third party. Furthermore, article 5 of the Environmental Tort Liabilities Interpretations provides that, where an infringed party files separate lawsuits against a polluter and a third party or files a single lawsuit against both the polluter and the third party pursuant to article 68 of the Tort Liability Law, the competent court shall accept the separate lawsuits or the single lawsuit. Where the infringed party requests that the third party be held liable for compensation, the competent court shall determine the corresponding compensation liability of the third party according to the extent of its fault. The competent court shall not uphold the claim by the polluter that it shall not be liable or shall only bear mitigated liabilities because damages from environmental pollution occurred as a result of the fault of the third party. In this case, although the vessel Chou Shan did not spill bunker oil, her collision with the vessel CMA CGM Florida caused a discharge of bunker oil from the CMA CGM Florida and the subsequent oil pollution. The shipowner of the vessel Chou Shan was the third party under the Tort Liability Law and the Environmental Tort Liabilities Interpretations and thus was liable for the oil pollution according to the judgment of the apportionment of liability in the collision, namely 50% of the liability for oil pollution damage.[[19]](#endnote-19)

Article 4 of the Oil Pollution Provisions provides that, in the case of oil pollution damage caused by the escape of bunker oil resulting from a collision of vessels that are both at fault, the victim may request that the owner of an oil-discharging vessel bear full compensation liability. It cannot be inferred that the victim can claim for oil pollution damage only against the shipowner of the discharging vessel or the victim cannot claim against another liable person. The SPC concluded that both the Bunker Oil Convention and the domestic law adopt the principle of no-fault liability for the polluter and the principle of liability for the wrongs of the third party. It means that, in principle, the polluter accepts the whole liability and the third liable person then accepts the corresponding liability. In the view of the SPC, Rockwell Shipping’s contention that “who spills oil is who is liable” does not correspond with the spirit of the convention and the domestic law.[[20]](#endnote-20) Therefore, although there is no legal basis for joint liability among Provence Limited, CMA CGM, and Rockwell Shipping, those liable parties should accept their liability respectively. The SPC held that Rockwell should take be held liable for50% of the clean-up operation costs.[[21]](#endnote-21)

Traditionally, the rule that “who spills oil is who is liable” is a general practice of liability for oil pollution damage, including pollution from bunker oil. However, this rule does not exclude the liability of third parties. It is not surprising to see the decision of the SPC in The “CMA CGM Florida” 1. This is one solution to deal with the liability for oil pollution damage. However, it does not mean the victim must claim against the liable third party. If the victim only claims against the shipowner of the discharging vessel for the whole liability of the pollution damage, the shipowner will be entitled to raise recourse action against the liable third party in China. Then, the final apportionment of liability for the oil pollution damage in the two claims will be the same as the apportionment in one claim, like the situation in The “CMA CGM Florida” 1. The result may be different only when the shipowner does not raise the recourse action against the liable third party. So, the SPC’s decision in The “CMA CGM Florida” 1 seems helpful for dispute resolution. At least, the trial court and the appellate should not have deprived the claimant of the right to claim against Rockwell Shipping as the liable third party, together with the shipowner and charterer of the discharging vessel.

## B. Maritime Salvage: Shanghai Salvage Bureau of Ministry of Transport v. Provence Shipowner 2008-1 Limited, CMA CGM SA and Rockwell Shipping Limited. (The “CMA CGM Florida” 2)

It is not uncommon that maritime salvage is organized by Chinese public authorities in Chinese waters. China has ratified the International Convention on Salvage 1989 (Salvage Convention). The Salvage Convention provides that it does “not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.” Still, the Convention allows salvors “to avail themselves of the rights and remedies provided for in the convention” with respect to salvage operations, namely the salvage payment.[[22]](#endnote-22) The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in the convention shall be determined by the law of the State where such authority is situated.[[23]](#endnote-23) The CMC provides that “[w]ith respect to the salvage operations performed or controlled by the relevant competent authorities of the State, the salvors shall be entitled to avail themselves of the rights and remedies provided for in [Chapter IX] in respect of salvage operations.”[[24]](#endnote-24) So, there is no difficulty for Chinese maritime authorities to claim salvage payments if they organized or conducted salvage operations. A difficult question in practice is whether the conduct of maritime authorities is maritime salvage operation or some other kind of operation. It is an important question because it controls whether Chinese maritime authorities are entitled to claim maritime salvage payment which may be higher than the normal cost of other operations. In Chinese judicial practice, whether an operation is a maritime salvage operation is not a question of law, but a question of fact that will be decided case by case.

In The “CMA CGM Florida” 1, the Shanghai maritime administrations arranged vessels from Shanghai Salvage Bureau of Ministry of Transport (Shanghai Salvage) for necessary operations after the collision and escape of bunker oil. Shanghai Salvage sent three vessels Shen Qian Hao, Lianhe Zhengli and De Yong for operation. In Shanghai Salvage Bureau of Ministry of Transport v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd. (The “CMA CGM Florida” 2),[[25]](#endnote-25) one of the disputes between Shanghai Salvage and the other parties was whether the operation of the three vessels was a salvage operation. Shanghai Salvage filed a claim against Provence Limited, CMA CGM, and Rockwell Shipping for salvage payment. In the first trial, the Ningbo Maritime Court held that Shanghai Salvage’s operation was not a salvage operation, but was a clean-up operation. Therefore, Shanghai Salvage was not entitled to claim salvage payment.[[26]](#endnote-26) The trial court found that the said salvage operation had no contractual or factual basis. There was no evidence to prove whether the Shanghai maritime administrations had given instructions for salvage operation, or if it was necessary to provide salvage operation to the CMA CGM Florida, or if Shanghai Salvage’s operation had salvage effect on the vessel CMA CGM Florida. Based on the purpose and nature of the whole operation, Shanghai Salvage’s operation was actually a clean-up operation. Therefore, the court ruled that Shanghai Salvage was entitled to the cost of the clean-up operation.[[27]](#endnote-27)

Shanghai Salvage, Provence Limited, and CMA CGM appealed. The Zhejiang High People’s Court dismissed the appeal.[[28]](#endnote-28) The appellate court found that, although Shanghai Salvage was requested to send vessels for salvage as emergency activities, the nature of the risk was not the danger to the CMA CGM Florida, but the danger to the marine environment. Furthermore, the CMA CGM Florida continued navigation after the collision and had never requested salvage. In other words, the CMA CGM Florida was not in direct or urgent danger after the collision, and the purpose of the vessels from Shanghai Salvage was instead for the clean-up operation. The trial court correctly determined that the operation by Shanghai Salvage in the emergency was not a salvage operation.[[29]](#endnote-29)

Shanghai Salvage applied to the SPC for retrial of the case. One of the questions in the retrial was whether Shanghai Salvage’s operation was a salvage operation. The SPC started with an analysis of the Salvage Convention. Per the Salvage Convention, “[s]alvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.”[[30]](#endnote-30) The SPC pointed out that, in some special circumstances, a salvage operation may include an operation preventing or minimizing marine pollution caused by ships. Some operations may be for both salvage and anti-pollution purposes, and the two purposes may be combined and difficult to distinguish. In the view of the SPC, the distinction is important in emergency activities on the sea because it determines the nature of the operation.[[31]](#endnote-31)

For the purpose of distinction, the SPC has detailed rules in article 11 of the Oil Pollution Provisions. First, in the case of pollution prevention measures undertaken for vessels involved in an accident, if the sole objective at the beginning of the operation is to prevent or reduce oil pollution damage, expenses so incurred shall be identified as the cost of preventive measures. Second, where an operation is intended both for rescuing the vessel and other property in distress and for reducing oil pollution damage, the cost of preventive measures and the cost of rescue measures shall be determined according to the priority given to the two objectives respectively; where there are no reasonable grounds on which primary and secondary objectives can be identified, relevant costs shall be divided equally. However, costs incurred after the elimination of relevant pollution hazards shall not be included in the cost of preventive measures. So, when determining whether an emergency activity on the sea is maritime salvage or anti-pollution, it is necessary to consider the initial purpose of operation, the risks that vessels faced, the actual operation performed, etc.

The SPC analyzed the facts of the emergency activity performed by Shanghai Salvage and concluded that the vessel Shen Qian Hao conducted salvage operation, the vessel Lianhe Zhengli conducted clean-up operation, and the vessel De Yong conducted both salvage and clean-up operations. First, in the rescue notice, the Shanghai maritime administrations requested Shanghai Salvage “send vessels for salvage.” In a subsequent rescue notice, Xin’An Shipping was requested to send the vessel Xin’An 019 for “clean-up pollution.” So, the initial purpose of the operation was not for clean-up but instead for salvage. Furthermore, although the CMA CGM Florida continued to navigate after the collision when the damage to the vessel became worse in the bad weather condition at the sea, the vessel faced increased risks which required salvage. In fact, the Shen Qian Hao was not a professional pollution-cleaning vessel, but a vessel for lifting and floating operations. The vessel mainly provided operations for lifting facilities and equipment, inspection underwater, freshwater supply, accompanying navigation, cutting steel plate, etc. From those facts, it can be seen that the main operation of the vessel Shen Qian Hao was salvage rather than clean-up. Such operation complied with the definition of a salvage operation under the Salvage Convention. Second, the vessel Lianhe Zhengli’s operations were mainly lifting cleaning equipment, plugging plates, pumping oil and water, cleaning oil-polluted holds, etc. Accordingly, the operation of the vessel Lianhe Zhengli was a clean-up operation, although she was originally sent for salvage. Third, the vessel De Yong was a tug sent to assist the other two vessels, the Shen Qian Hao and Lianhe Zhengli, in their operations. Because the vessel Shen Qian Hao provided salvage services and the vessel Lianhe Zhengli provided clean-up of the oil pollution, the operation of the vessel De Yong could be considered as both a salvage operation and a cleaning operation and the whole operation could be divided equally.[[32]](#endnote-32)

## C. Public Authorities: Yangshangang Maritime Safety Administration of the PRC v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd. (The “CMA CGM Florida” 3)

There is no doubt that Chinese maritime authorities, as the salvors, shall be entitled to avail themselves of the rights and remedies provided for in Chapter IX the CMC and in the Maritime Salvage Convention with respect to salvage operations, including salvage payment. However, neither the Salvage Convention nor the CMC clarifies whether public authorities are entitled to the cost of clean-up operations.

In Yangshangang Maritime Safety Administration of the PRC v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd. (The “CMA CGM Florida” 3),[[33]](#endnote-33) the Chinese courts confirmed the entitlement of the Chinese public authorities to clean-up operation costs. In the emergency activities for the vessel CMA CGM Florida, the Yangshangang Maritime Safety Administration of the PRC (Yangshangang Administration) was involved in relevant operations. The Yangshangang Administration was mainly responsible for the safety and risk assessment of the CMA CGM Florida, search for oil pollution, simulation and prediction, monitoring and surveying, oil sample comparison, information transmission, emergency support, etc. The Yangshangang Administration organized third parties to conduct those operations and then claimed against the parties in ship collision for the cost of those operations of the third parties in the Ningbo Maritime Court. The trial court held that the Yangshangang Administration conducted operations to minimize the oil pollution and therefore was entitled to claim the cost against the polluter by contract or by law.[[34]](#endnote-34) The trial court found that there was no contract between the Yangshangang Administration and other relevant parties. However, there was no reason to deny the Yangshangang Administration’s entitlement because of its public authority status, but the court did not clarify what law the Yangshangang Administration could rely on to claim the cost. The trial court only clarified that the Yangshangang Administration engaged in the emergency activities for public interest and therefore was entitled only to the cost of activities, rather than the management fee for the organization of the third parties.[[35]](#endnote-35)

The Yangshangang Administration, Provence Limited, and CMA CGM appealed. The Zhejiang High People’s Court, as the appellate court, dismissed the appeal.[[36]](#endnote-36) The appellate court applied the Marine Environment Protection Law of the People's Republic of China (Marine Environment Protection Law).[[37]](#endnote-37) Paragraph 1 of article 71 of the Marine Environment Protection Law provides that, in case of the sea accident of a vessel that has caused or may cause major pollution damage to the marine environment, the state administrative department in charge of maritime affairs has the right to adopt enforcement measures to avoid or reduce the pollution damage. The appellate court pointed out that Provence Limited and CMA CGM had a duty to avoid or reduce the oil pollution, but they did not take immediate measures to do so. The Yangshangang Administration, as a state maritime authority, implemented enforcement measures and organized third parties for the clean-up operation as an emergency activity. Therefore, the Yangshangang Administration had the right to claim the reasonable cost of the clean-up operation against Provence Limited and CMA CGM.[[38]](#endnote-38)

The Yangshangang Administration applied to the SPC for retrial of the case.[[39]](#endnote-39) The SPC upheld the decisions of the trial court and the appellate court that the Yangshangang Administration had the right to claim the cost of the clean-up operation but applied the Bunker Oil Convention and different provisions of the Marine Environment Protection Law to reach the same conclusion.[[40]](#endnote-40) First, "preventive measures" in the Bunker Oil Convention “means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.”[[41]](#endnote-41) Under the convention, pollution damage is defined as:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(b) the costs of preventive measures and further loss or damage caused by preventive measures.[[42]](#endnote-42)

In the view of the SPC, pollution damage refers to the scope of liability for pollution damage, and the cost of preventive measures is within the scope of liability for pollution damage. Therefore, the decisions of the trial court and the appellate court that the Yangshangang Administration had the right to recover its costs of suit complied with the spirit of the Bunker Oil Convention.

Second, paragraph 3 of article 5 of the Marine Environment Protection Law provides that the state administrative department in charge of maritime affairs shall be responsible for the supervision and control over marine environment pollution caused by non-military vessels inside the port waters under its jurisdiction. Further, it is responsible for non-fishery vessels and non-military vessels outside the said port waters and is responsible for the investigation and remediation of pollution accidents. The SPC pointed out that the Yangshangang Administration was the state maritime administrative department under the Marine Environment Protection Law. Paragraph 2 of article 90 of the Marine Environment Protection Law provides that, for any damages caused to marine ecosystems, marine aquatic resources, or marine protected areas that result in serious loss to the State, the interested department is empowered by the provisions of this Law to conduct marine environment supervision shall, on behalf of the State, claim compensation against those held responsible for the damages. The SPC held that the Yangshangang Administration was therefore entitled to claim damages against the liable person.[[43]](#endnote-43)

It seems reasonable for State public authorities to claim the cost of clean-up operations, including the operations organized by the public authorities and conducted by third parties. There is no reason for public authorities to bear the cost of third parties although the operations, such as clean-up operations, are part of the administrative work of the public authorities. However, the laws and interpretations of the laws relied on by the appellate court and the SPC in The “CMA CGM Florida” 3 are not satisfactory. Paragraph 1 of article 71 of the Marine Environment Protection Law provides that the state maritime administration has the right to adopt enforcement measures to avoid or reduce the pollution damage. However, it does not further provide that the state maritime administration has the right to claim the cost of these measures. Paragraph 3 of article 5 of the Marine Environment Protection Law provides that the state maritime administration shall be responsible for the supervision and control over marine environment pollution. However, it also lacks provisions for the recovery of the cost of the supervision and control operations. Although paragraph 2 of article 90 of the Marine Environment Protection Law provides the right to claim compensation, it is a right to claim on behalf of the State when the pollution caused serious loss to the State. However, in The “CMA CGM Florida” 3, the cost that the Yangshangang Administration claimed was paid to the third parties who conducted the clean-up operations. Even if the cost can be considered a loss to the State, the claim cannot be considered as a claim on behalf of the State. It seems to be on behalf of the third parties. Although the legal authorities may not be appropriate, the judicial decisions in The “CMA CGM Florida” 3 filled the gap between the law and practice. Now, it has been confirmed by the Chinese courts that Chinese public authorities are entitled to the cost of clean-up operations for oil pollution, even if the operations are conducted by third parties who are organized by the public authorities.

# III. Carriage of Goods by Sea

## A. Straight Bill of Lading: Xiamen Shengmao Co. v. Yatari Express Co.

In the CMC, “[a] bill of lading is a document which serves as an evidence of the contract of carriage of goods by sea and the taking over or loading of the goods by the carrier, and based on which the carrier undertakes to deliver the goods against surrendering the same.”[[44]](#endnote-44) There are three types of bills of lading according to their negotiability. First is the “straight bill of lading [which] is not negotiable.”[[45]](#endnote-45) Second is the “order bill of lading [which] may be negotiated with endorsement to order or endorsement in blank.”[[46]](#endnote-46) Third is the “bearer bill of lading[, which] is negotiable without endorsement.”[[47]](#endnote-47) Accordingly, the carrier shall deliver the goods to the consignee when a straight bill of lading is issued. The carrier shall deliver the goods to the holder of the bill of lading when an order or a bearer bill of lading is issued. In shipping practice, the consignee may authorize a person to take the delivery. In this circumstance, the authorization is important because it will decide whether there is a wrongful delivery, even if the straight bill of lading is surrendered for the delivery of the goods.

In Xiamen Shengmao Co. v. Yatari Express Co.,[[48]](#endnote-48) Xiamen Shengmao Co., Ltd. (Xiamen Shengmao) sold frozen goods, through a person named BINGXIAO, to SLF Food Inc. (SLF Food) from Fuzhou, China to New York. Xiamen Shengmao contracted with Yatari Express Co., Ltd. (Yatari Express) for the carriage of the goods by sea. Xiamen Shengmao provided the contact person’s name as BINGXIAO. Yatari Express carried the goods and issued a straight bill of lading on which SLF Food was the consignee. Xiamen Shengmao transferred the straight bill of lading to BINGXIAO of SLF Food. Yatari Express delivered the goods to RJ Trading Inc. d/b/a SLF Food (RJ Trading) after collection of the straight bill of lading on which there was a stamp of RJ Trading Inc. New Jersey Corporate without the signature of BINGXIAO. SLF Food did not pay the price of the goods. Xiamen Shengmao filed a claim in the Shanghai Maritime Court against Yatari Express for the loss of price of the goods due to the wrongful delivery of the goods. It was found that SLF Food and RJ Trading shared the same address. BINGXIAO was an employee of SLF Food and the then-manager of RJ Trading.[[49]](#endnote-49)

Xiamen Shengmao argued that Yatari Express did not deliver the goods to the consignee, SLF Food. Yatari Express denied that there was wrongful delivery for three reasons. First, BINGXIAO was the contact person for the sale of goods between Xiamen Shengmao and SLF Food, and therefore, BINGXIAO’s behavior should be considered the behavior of the consignee. Second, BINGXIAO confirmed the receipt of the goods, meaning that the consignee received the goods. Third, Yatari Express verified the consignee and collected the original straight bill of lading from BINGXIAO in exchange for the delivery of the goods. These all proved that Yatari Express had made no mistake in the delivery of the goods.[[50]](#endnote-50) The trial court accepted the argument of Yatari Express, holding that Yatari Express subjectively believed that the goods were delivered to SLF Food as the consignee, and objectively exercised due diligence to verify the consignee. Thus, the trial court held that Yatari Express delivered the goods to the consignee according to the request of Xiamen Shengmao. As to the status of BINGXIAO within SLF Food and RJ Trading, this case was a matter of sale of goods, and so the trial court did not deal with this point.[[51]](#endnote-51)

Xiamen Shengmao filed an appeal. Shanghai High People’s Court, the appellate court, dismissed the appeal.[[52]](#endnote-52) The appellate court upheld the decision of the trial court that Yatari Express followed the instructions from Xiamen Shengmao and delivered the goods to the consignee upon surrender of the original straight bill of lading. The appellate court concluded that Yatari Express did not breach the contract nor did they deliver the goods to a person other than the consignee. Furthermore, Xiamen Shengmao transferred the straight bill of lading to BINGXIAO. That action indicated that Xiamen Shengmao considered BINGXIAO to be the authorized person to accept delivery of the goods on behalf of the consignee SLF Food. Therefore, Yatari Express performed the contract according to the information provided by Xiamen Shengmao and had good reason to believe that BINGXIAO had authority to take delivery of the goods on behalf of the consignee. The appellate court rejected Xiamen Shengmao’s argument that Yatari Express had a mistake in the delivery of the goods to the consignee and caused the loss of the price of the goods to Xiamen Shengmao.[[53]](#endnote-53)

Xiamen Shengmao applied to the SPC for retrial of the case. In the application, Xiamen Shengmao argued that RJ Trading was not the consignee on the straight bill of lading and that BINGXIAO was only a contact person but had no authority to take delivery of the goods. Therefore, the delivery of the goods to the contact person should not have been considered a proper delivery of the goods to the consignee.[[54]](#endnote-54) The SPC dismissed the application. The SPC pointed out that, as a general principle, a carrier should deliver the goods only to the consignee expressly stated in the straight bill of lading. In this case, Yatari Express issued a straight bill of lading with the name and address of the consignee provided by Xiamen Shengmao. After the arrival of the goods, Yatari Express contacted the consignee according to the name and the address in the bill and Xiamen Shengmao’s instructions. Yatari Express delivered the goods upon surrender of the bill and took the original bill back. Therefore, it was correct for the trial court to hold that Yatari Express had good reason to believe that BINGXIAO had the authority to take delivery of the goods on behalf of the consignee. Even if Xiamen Shengmao did suffer a loss, it should claim the loss against other parties based on an unjust enrichment theory, rather than make a claim against Yatari Express based on breach of contract.[[55]](#endnote-55)

The decisions of the Chinese courts, including the SPC, in Xiamen Shengmao Co. v. Yatari Express Co. reflect the judicial practice in China that, where a straight bill of lading is issued, delivery of goods is effective upon the surrender of the bill of lading by the consignee or a person authorized by the consignee. It seems that the stamp in the straight bill of lading is not important for surrender requirements. The Chinese courts, in this case, did not examine why the stamp was different from the name of the consignee in the straight bill of lading. The carrier has a duty to verify the authority of the person who takes delivery of goods on behalf of the consignee, but it has no duty to check the stamp in the straight bill of lading. This should serve as a warning to Chinese export traders. They must make sure not only that the consignee surrendered the straight bill of lading, but also that the contact person has the authority to take delivery of goods on behalf of the consignee.

## B. Deck Cargo: Taiping General Insurance Co., Shanghai Branch v. Sinotrans Eastern Co.

Article 53 of the CMC states:

[If] the carrier intends to ship the goods on deck, he shall come into an agreement with the shipper or comply with the custom of the trade or the relevant laws or administrative rules and regulations.

When the goods have been so shipped on deck . . . the carrier shall not be liable for the loss of or damage to the goods caused by the special risks involved in such carriage.

If the carrier, in breach [of contract, custom, or law] has shipped the goods on deck and the goods have consequently suffered loss or damage, the carrier shall be liable therefore.[[56]](#endnote-56)

In shipping practice, parties to a carriage of goods by sea contract may execute a contract first, then ship the goods, after which a bill of lading is issued for the carriage of goods. It is common either that a bill of lading may have a liberty clause by which the carrier is free to load goods on deck or that the carrier states “on deck” in the bill of lading after loading the goods on deck. A question arises whether such carriage of goods on deck breaches contract, custom, or law. In particular, this question will be asked if a contract contains an “under deck” requirement for the carriage of goods by sea, but a bill of lading for the goods contains an “on deck” statement. The question is whether the carrier could be exempted from liability for the damage to the goods caused by carrying the goods on deck.

In Taiping General Insurance Co., Shanghai Branch v. Sinotrans Eastern Co.,[[57]](#endnote-57) China SFECO Group (SFECO) and Sinotrans Eastern Co., Ltd. (Sinotrans Eastern) concluded a bulk cargo international carriage contract for the shipment of a set of machines. Clause 4.14 of the contract provided that the carrier must load the cargo under deck and that special cargo could only be loaded on deck with the consent of SFECO. Clause 7.2 of the contract provided that, during the responsibility period, the carrier shall be liable for loss of or damage to the cargo if such loss or damage is caused by the negligence of the carrier. Sinotrans Eastern loaded SFECO’s cargo on deck and issued a bill of lading stating “ON DECK” on the face of the bill of lading. The cargo was damaged, and SFECO was indemnified by Taiping General Insurance Co., Ltd., Shanghai Branch (Taiping Insurance). Taiping Insurance exercised its subrogation right to claim against Sinotrans Eastern for the damage to the cargo in the Shanghai Maritime Court.[[58]](#endnote-58)

Sinotrans argued that it should be exempted from liability for the damage to the deck cargo because presumably, SFECO had agreed to load the cargo on deck when SFECO accepted, without objection, the bill of lading that stated that the cargo was loaded “ON DECK.” This argument was rejected by the Shanghai Maritime Court. The trial court pointed out that both the law and the contract required the consent of the shipper for loading the cargo on deck. Clause 4.14 of the contract provided such a request. Article 53 of the CMC also requires the consent of the shipper;[[59]](#endnote-59) otherwise, the carrier shall be liable for the loss of or damage to the deck cargo. In the view of the Shanghai Maritime Court, SFECO’s failure to reject the “ON DECK” statement on the bill of lading did not evidence its consent. Sinotrans Eastern could not prove SFECO’s consent to ship the cargo on deck, and thus Sinotrans Eastern was liable for the damage to the cargo on deck.[[60]](#endnote-60)

Sinotrans Eastern appealed. The Shanghai High People’s Court, the appellate court of the case, dismissed the appeal.[[61]](#endnote-61) The appellate court upheld the decision of the trial court based on the same authorities of law and contract. It reaffirmed that, without express consent by SFECO, it could not be inferred that by accepting the bill of lading, SFECO had agreed to ship the cargo on deck.[[62]](#endnote-62) Sinotrans Eastern applied to the SPC for retrial of the case. The SPC dismissed the application and interpreted further that loading cargo under deck was the intent of the parties and complied with the provisions in the CMC regarding deck cargo. Both the contract and the law clarified that the cargo should be loaded under deck and that loading on deck would require the consent of SFECO. The statement “ON DECK” in the bill of lading was insufficient to prove either the consent of SFECO for loading the cargo on deck or an agreement between the parties to load the cargo on deck. The trial court and the appellate court were correct in holding that Sinotrans Eastern should be liable for damage to the cargo shipped on deck without consent of SFECO.[[63]](#endnote-63)

The Chinese courts correctly held that the carrier should be liable for damage to cargo shipped on deck without consent of the shipper in Taiping General Insurance Co. However, the reasoning behind the decisions seems unclear. All the courts emphasized that the statement “ON DECK” in the bill of lading was not evidence of the shipper’s consent. However, no court explained why it was insufficient to prove consent. As argued by the carrier, the shipper accepting the bill of lading stating “ON DECK” was evidence of consent.[[64]](#endnote-64) The core question is not the evidentiary effect of the bill of lading, but the relationship between the bill of lading and the carriage of goods by sea contract. Per the CMC, a bill of lading “is a document which serves as an evidence of the contract of carriage of goods by sea.”[[65]](#endnote-65) Therefore, if there is no contract to the contrary, the bill of lading is evidence of the contract of carriage of goods by sea. In Taiping General Insurance Co., if the contract had omitted clause 4.14, which required loading cargo under deck and consent for loading on deck, the “ON DECK” statement on the bill of lading could evidence an intention or an agreement of parties in respect to shipping cargo on deck. It is inappropriate to say that the bill of lading cannot prove the intention or agreement of parties to the carriage contract. The “ON DECK” statement should not be accepted not because it has no evidentiary effect, but because it is inconsistent with the contract itself. When there is an inconsistency of agreement between the contract and the bill of lading, the contract takes priority because the bill of lading is only evidence of that contract.

## C. Limitation of Recourse Action: Sinotrans Hubei Co. v. Wuhan COSCO Shipping Lines Co.

The limitation of action period for maritime claims regarding the carriage of goods is regulated by the CMC. For the carriage of goods by sea, the CMC provides both limitation of the principal action and limitation of the recourse action. First, for claims against the carrier, the limitation period is one year, starting on the date “the goods were delivered or should have been delivered by the carrier.”[[66]](#endnote-66) Second,

Within the limitation period or after the expiration thereof, if the person allegedly liable has brought up a claim of recourse against a third person, that claim is time-barred at the expiration of 90 days, counting from the day on which the person claiming for the recourse settled the claim, or was served with a copy of the process by the court handling the claim against him.[[67]](#endnote-67)

In inland water and coastal carriage in China, the limitation of action period is regulated through judicial interpretation of the SPC. In the Reply of the Supreme People’s Court in Respect of Limitation of Action for Cargo Claim in Coastal and Inland Water Carriage (Reply),[[68]](#endnote-68) the SPC interpreted that the limitation of action between the shipper, consignee, and carrier in coastal and inland water carriage is one year, counting from the date on which the carrier delivers or should have delivered the goods. However, the SPC did not interpret whether the ninety-day limitation of recourse action should apply to recourse actions against third parties in disputes over inland water and coastal carriage of goods in China. A recent SPC judgment in the retrial of a case gave a clear answer to this question.

In Sinotrans Hubei Co. v. Wuhan COSCO Shipping Lines Co.,[[69]](#endnote-69) Sinotrans Hubei Co., Ltd. (Sinotrans Hubei) executed a contract of carriage with a cargo owner for the multimodal transport of containers, including an inland water portion, from Wuhan, Hubei to Haikou, Hainan. Sinotrans Hubei then subcontracted with Wuhan COSCO Shipping Lines Co., Ltd. (Wuhan COSCO Shipping). The container cargo was damaged during the voyage. In the trial between the cargo owner and Sinotrans Hubei, the Wuhan Maritime Court held that Sinotrans was liable for the damage to the cargo. The judgment was delivered on December 3, 2016. Sinotrans Hubei appealed and the parties settled the dispute under the mediation of the Hubei High People’s Court, the appellate court of the case. The appellate court issued the civil mediation order on June 5, 2017. Sinotrans Hubei then claimed against Wuhan COSCO Shipping for its liability to the cargo owner under the civil mediation order.[[70]](#endnote-70) One of the issues in the dispute was the limitation of the recourse action against third parties.

The trial court analyzed the limitation of action issue from four aspects. First, the trial court pointed out that the inland water and coastal carriage has a different limitation of action rule than that of the ocean carriage. The CMC provides the limitation of action in sea carriage. The SPC’s Reply provides the limitation of action for inland water and coastal carriage. Therefore, the limitation of recourse action in the CMC should not govern the dispute of coastal carriage in this case. Otherwise, there is no need for the SPC to reply to the issue of limitation of action in dispute of inland water and coastal carriage. There is no law or judicial interpretation on the limitation of recourse actions against third parties in disputes of inland water and coastal carriage. The ninety-day limitation of recourse action in the CMC should not apply to the dispute in this case.[[71]](#endnote-71)

Second, the limitation of action applies to relevant parties, normally the counterparty in contract or tort. The basic facts between different parties can be the same, but the legal relationships between them may be different. Thus, the limitation of actions between them should be different. Wuhan COSCO Shipping argued that the one-year limitation of action from the SPC’s Reply should apply to this case. However, that limitation of action applies to the dispute between a cargo owner and carrier. It does not apply to this case where the dispute was not an action between the cargo owner and the carrier, but a third-party recourse action between the carrier and the subcarrier. Wuhan COSCO Shipping was not the ultimate deliverer of the cargo. So, the day on which the cargo was ultimately delivered had no relation to the limitation of action against Wuhan COSCO Shipping, and the one-year limitation of action in the Reply did not apply to this case.[[72]](#endnote-72)

Third, the starting date of a limitation of action has a close relationship with the right of suit. Sinotrans Hubei confirmed its liability by the judgment of the Wuhan Maritime Court on December 3, 2016, and settled the claim under the mediation order of the Hubei High People’s Court on June 5, 2017. Sinotrans Hubei had no right of suit against Wuhan COSCO Shipping or another liable person before the judgment or settlement date because, at that point, it had suffered no loss. Only when Sinotrans Hubei settled the principal claim did it suffer actual loss and thereafter obtained the right of suit.[[73]](#endnote-73)

Fourth, it is common in Chinese coastal carriage of goods that the carriage is sub-contracted many times and sometimes the mode of carriage is changed. If the starting date of the limitation of action is always the date of delivery in cargo claims, the carriers in the chain of carriage must deal with the principal claims first, and then raise the recourse actions against the sub-carriers. However, the recourse actions become difficult because the carriers may have no rights of suit before they settle the principal claims. This makes the cargo claims more complicated and wastes legal resources. On the other hand, in the chain of cargo claims, the liable party may not be held liable because of the expiry of the limitation of action. It becomes unfair if the liable party is therefore discharged from liability.[[74]](#endnote-74)

Based on the preceding considerations, the Wuhan Maritime Court held that neither the ninety-day limitation of action in the CMC nor the one-year limitation of action in the SPC’s Reply should apply to this case. The court held that the General Principles of the Civil Law of the People's Republic of China should apply. Those Principles provide that the limitation of civil action is two years, counting from the date when the entitled person knows or should have known that their rights have been infringed.[[75]](#endnote-75) No matter whether the starting date is the judgment date, i.e. December 3, 2016, or the settlement date, i.e. June 5, 2017, Sinotrans Wuhan’s recourse action on September 26, 2017, was within the two-year limitation of action. Thus, the Wuhan Maritime Court held that Sinotrans Hubei was not time-barred to claim against Wuhan COSCO Shipping.[[76]](#endnote-76)

Wuhan COSCO Shipping appealed to the appellate court, the Hubei High People’s Court. The appellate court considered this case a dispute of carriage of goods by sea and held that the CMC, rather than general civil laws, should apply. Thus, the appellate court applied the ninety-day limitation of action to the claim of Sinotrans Hubei against Wuhan COSCO Shipping. Sinotrans Hubei’s recourse action was then clearly time-barred. The appellate court overruled the decision of the trial court and dismissed the claim of Sinotrans Hubei.[[77]](#endnote-77) Sinotrans Hubei applied to the SPC for retrial of the case. The SPC overruled the decision of the appellate court and upheld the decision of the trial court. The SPC further analyzed that the limitation of action for sea carriage in the CMC should not apply to this case because it was unknown in which stage of the multimodal carriage the damage occurred.[[78]](#endnote-78)

In Chinese judicial practice, the limitation of action in the CMC always applies to cargo claims, no matter whether the claims arise from sea carriage or inland water and coastal carriage, because the Reply applied the same one-year limitation of action to the inland water and coastal carriage disputes. Although the Reply does not provide the same limitation of recourse action in the CMC to inland water and coastal carriage, it is not uncommon for Chinese courts to apply this limitation to the disputes of inland water and coastal carriage. The decision of the appellate court in Sinotrans Hubei Co. is a typical example of such judicial practice in China. The two-year limitation for inland water and coastal carriage may not be reasonable when compared to the ninety-day limitation in sea carriage, but it is better than nothing. Because the limitation for cargo claims in the CMC only applies to sea carriage, the decision of the SPC in Sinotrans Hubei Co. filled the gap for limitation of recourse action in inland water and coastal carriage. The decision has the same function as the Reply, which filled the gap of limitation of action in the CMC for inland water and coastal carriage.

# IV. Other Maritime Cases

## A. Bailment: China Railway Materials Import & Export Co. v. Fuzhou Sunrich Port Co.

In the Contract Law of the People's Republic of China (Contract Law),[[79]](#endnote-79) there are two relevant named contracts relating to the storage of goods in port yards. The first contract type is a contract for safekeeping, which means a contract whereby the depositary keeps the item delivered by the depositor and then returns the said item.[[80]](#endnote-80) The second contract type is a warehousing contract, which means a contract whereby the depositary stores the items handed over by the depositor for warehousing and the depositor pays warehousing fees.[[81]](#endnote-81) In practice, they can also be called bailments. When the goods are shipped on board a vessel, the shipper is the bailor and the carrier is the bailee. When the goods are discharged and stored in a port, the port is the bailee. However, it is uncertain who the bailor is in the second bailment. The shipper as the owner of the goods may continue to be the bailor, or the carrier may act as the sub-bailor in the second bailment. The consignee may also be the bailor if it has a bailment contract with the port. In this circumstance, the shipper and the consignee will have a conflict of interest in the bailment of the goods. The port, as the bailee, may have a dilemma. If the port releases the goods to the consignee, the shipper may claim against the port for infringement of its property rights to the goods. If the port follows the shipper’s instruction and refuses to release the goods to the consignee, it may breach the bailment contract executed with the consignee. This is a common problem in practice in China.

In China Railway Materials Import & Export Co. v. Fuzhou Sunrich Port Co.,[[82]](#endnote-82) China Railway Materials Import & Export Co., Ltd. (China Railway) agreed to sell bulk cargo to the buyer. In the sale contract, it was agreed that the buyer would take delivery of the cargo and pay the cost of transport in port. The buyer would also pay the port charge, port construction fee, storage fee, and other relevant expenses in port. The buyer would pay the port costs and expenses to the port directly. For delivery of the cargo, the sale contract provided that the seller was responsible for the registration of export and customs clearance, and the buyer is responsible for taking delivery of the cargo after customs clearance. The port agent would be nominated by the seller, and the agent must follow the seller’s instructions for delivery of the cargo. The seller would transfer the title of the cargo to the buyer after the buyer pays the price of the cargo. In this case, the buyer concluded a port operation contract with Fuzhou Sunrich Port Co., Ltd. (Sunrich Port). Clause 3(5) of the port operation contract provided that Sunrich was charged by the buyer with dealing with the formalities of the vessel that carried the cargo and for the discharge of the cargo. Sunrich was responsible for the storage of the cargo. In a supplementary agreement to the port operation contract, it was emphasized that, for the cargo stored by the buyer, Sunrich was only responsible for the discharge as loaded. The cargo was discharged and stored in the port yard of Sunrich Port. China Railway found that part of the cargo was released to the buyer without its permission. China Railway filed a claim against Sunrich Port for the loss of the cargo in the Xiamen Maritime Court.[[83]](#endnote-83)

In the trial court, Sunrich Port argued that it had provided port operations for the carrying vessel because it had the port operator contract with the buyer and had followed the buyer’s instruction according to the contract. Sunrich handled the cargo with the seller because it was required by the buyer. This did not mean that Sunrich had a bailment contract relation with the seller or the agent of the seller. Thus, Sunrich argued that it had no liability to China Railway for the release of the cargo to the buyer.[[84]](#endnote-84) This argument was accepted by the Xiamen Maritime Court. It was pointed out that there was no evidence to prove a bailment relationship between China Railway and Sunrich Port. The facts of the discharge and storage of the cargo could not prove the existence of a bailment contractual relationship or a duty of care owed by Sunrich Port under the law of bailment. In fact, there was no bailment contract between China Railway and Sunrich Port. Sunrich Port accepted the cargo and transported the cargo from the vessel to the port yard according to the port operation contract. In the view of the Xiamen Maritime Court, the buyer entrusted Sunrich Port to store the cargo based on its possession of the cargo, and Sunrich Port released the cargo according to the instructions of the buyer. Therefore, China Railway’s reservation of the title of the cargo under the sale contract was not prejudiced. The Xiamen Maritime Court dismissed China Railway’s claim.[[85]](#endnote-85)

China Railway appealed to the Fujian High People’s Court. The appellate court upheld the decision of the trial court and dismissed the appeal.[[86]](#endnote-86) The appellate court repeated that Sunrich Port had a bailment relationship with the buyer rather than with China Railway. Sunrich Port stored the cargo by possession because of the possessory right of the buyer. The appellate court further clarified that Sunrich Port had a duty of care for the storage of the cargo under the bailment contract with the buyer but had no duty and no ability to verify the owner or controller of the cargo in each transaction. In other words, the matters of the sale contract were not the matters of Sunrich Port. Therefore, Sunrich Port had the right to release the cargo to the buyer based on the presumption of and reliance on the property rights and the buyer’s right of disposal. The appellate court held that Sunrich Port did not infringe on the rights of China Railway and thus did not bear any tort liability to China Railway.[[87]](#endnote-87)

China Railway applied to the SPC for retrial of the case. The SPC upheld the decisions of the trial court and the appellate court and dismissed China Railway’s application.[[88]](#endnote-88) First, the SPC interpreted that both the contract of safekeeping and the warehousing contract were service contracts, not contracts for the transfer of goods. In a service contract, the keeper of the goods possesses the goods on behalf of the depositor. Such contracts do not transfer the property rights attached to the goods. In international trade and shipping practice, either the buyer, carrier, seller or agent can conclude safekeeping or warehousing contracts with the keeper or depositary. The goods in transit may be sold many times. It would be too harsh to require the keeper to identify the owner of the goods when the safekeeping or warehousing contract is concluded.[[89]](#endnote-89) Second, the Contract Law does not require that the depositor in safekeeping and warehousing contracts be the owner of the goods. It also does not require that the depositor be the owner of the goods before it deposits the goods to the keeper or depositary. Furthermore, the Contract Law provides that, where a third party claims the rights of an item that is in safekeeping, the depositary shall perform the obligation of returning the said item to the depositor, unless preservation or enforcement measures are taken against the said item pursuant to the law.[[90]](#endnote-90) In this case, according to the doctrine of privity of contract, Sunrich Port should return the cargo to the buyer rather than a third party, i.e. China Railway, unless the cargo had been preserved or disposed of by enforcement measures.[[91]](#endnote-91)

The SPC repeated that China Railway had no bailment contract relationship with Sunrich Port. Therefore, it lacked the contractual basis for China Railway to directly request that Sunrich Port return the cargo. Additionally, Sunrich Port legally possessed the cargo based on the bailment contract with the buyer. Therefore, Sunrich Port had no tort liability to China Railway. Although China Railway possessed the delivery order for the cargo, it could request the return of the cargo without any limitation. The SPC took the view that China Railway’s right to take the cargo based on the delivery order could not take priority over the buyer’s right to take the cargo based on the bailment contract, nor could it discharge Sunrich Port’s duties under the bailment contract. Furthermore, Sunrich Port’s delivery of the cargo to the buyer complied with the bailment contract.[[92]](#endnote-92) China Railway or the carrier delivered the cargo to the buyer when the cargo was discharged and stored in the port yard of Sunrich Port. The SPC also took the view that, if China Railway could not take the cargo by the delivery order from Sunrich Port, it should claim against the buyer based on the privity of contract. Sunrich Port only had the duty to return the cargo to the buyer based on the bailment contract. In a word, Sunrich Port had no fault in releasing the cargo to the buyer under the bailment contract.[[93]](#endnote-93)

All the Chinese courts in China Railway Materials emphasized the doctrine of privity of contract and found no bailment contract between China Railway and Sunrich Port. Therefore, Sunrich Port had no fault in releasing the cargo under the bailment contract with the buyer. However, a serious question is whether China Railway claimed against Sunrich Port for tort liability, which has no relation to contracts including the bailment contract between Sunrich Port and the buyer. For there to be tort liability, the General Principles of the Civil Law provides that anyone who encroaches on the property of another person shall return the property; failing that, he shall reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as well.[[94]](#endnote-94) The triggering condition for liability in tort is an encroachment on the property, which has no relation to contracts. Of course, the victim would still need to prove that they hold rights in the property. If a person encroaches on the property of another person, a contract cannot excuse liability in tort under Chinese law, including the Contract Law.

Furthermore, in this case, it was held that the buyer had the possessory right when the cargo was discharged and stored by Sunrich Port. In fact, the buyer had never obtained the possessory right because it had never actually possessed the cargo. Although Sunrich Port actually possessed the cargo, it did not obtain the possession from the buyer under the bailment contract, but rather obtained the possession from the carrier according to the instructions from the seller. So, the buyer did not have a possessory right to request Sunrich Port to return the cargo. It is true, as suggested by the SPC, that although China Railway may claim against the buyer,[[95]](#endnote-95) this does not mean that China Railway cannot also claim against Sunrich Port for liability in tort. This situation is similar to a cargo claim in carriage of goods by sea action. When the carrier delivers damaged goods to the buyer, the buyer can claim against the seller. The buyer can also claim against the carrier if it proves that the damage occurred during the carriage of goods.

In the trial of the case, it was held that China Railway’s reservation of the title of the cargo under the sale contract was not prejudiced.[[96]](#endnote-96) However, China Railway’s reservation of the title was prejudiced when the cargo was released to the buyer. The appellate court held that Sunrich Port had the right to release the cargo to the buyer based on the presumption and reliance of the property right and buyer’s right of disposal.[[97]](#endnote-97) In fact, the buyer had never obtained the property right or the right of disposal of the cargo. A bailment contract is not evidence of such rights. As the SPC pointed out, the keeper or depositary does not have a duty to verify the property interests of the depositor.[[98]](#endnote-98) So, there is no such presumption of reliance that the buyer as depositor has the property right or right of disposal. The SPC took the view that China Railway’s right to take the cargo based on the delivery order could not take priority over the right to take the cargo based on the bailment contract.[[99]](#endnote-99) There is no legal basis for this view. Conversely, China Railway’s right to take the cargo was based on the property right vested upon the reservation clause in the sale contract. Such a right could take priority over the right of the buyer to take the cargo based on the bailment contract because the property right takes priority over the contractual right.

Of course, it may be difficult for Sunrich Port to identify whether another party, e.g. China Railway, has a superior property right that trumps the contractual right of the buyer when the buyer requests Sunrich Port to release the cargo. However, it was not unknown to Sunrich Port that China Railway had the right to take delivery of the cargo. In fact, when the cargo was discharged and transported to the port yard of Sunrich Port, the delivery order, in which China Railway was named as the consignee, was transferred to Sunrich Port.[[100]](#endnote-100) Although it was marked on the delivery order that the order was used for customs clearance, it could not be denied that China Railway was the person who was entitled to take the delivery of the cargo. Otherwise, the delivery order would be meaningless. At least, it was stated clearly in the delivery order that “if a person claiming delivery of the cargo by holding the delivery order is not the consignee, that person shall surrender a proof from the consignee to the port to prove that he is entitled to take delivery of the cargo”.[[101]](#endnote-101) Even if Sunrich Port did not know the property right of China Railway, it did know that China Railway was entitled to take delivery of the cargo. However, the Chinese courts, including the SPC, chose to protect Sunrich Port based on the bailment contract. The decisions in China Railway Materials gives a warning to the seller who agrees with the buyer to dispose of the cargo by keeping it in a port based on a bailment contract between the buyer and the port. In this circumstance, such ports may be considered an unsafe port for the carriage of goods by sea because the goods may ultimately be delivered without a bill of lading or delivery order. This result is inconsistent with shipping and trade practice of bulk cargo.

## B. Sale of a Ship: Li Aijun v. Xu Xiaodong and Li Hubing

The sale of ships is not regulated by the CMC. General principles, including rules of damage for breach of contract under the Contract Law, apply to the sale of ship contracts in China. If either party to a contract causes losses to the other party by failing to perform its obligations or failing to perform its obligations according to the contractual agreements, the compensation for the loss will be equivalent to the loss caused by the breach of contract. This compensation includes the profit that is obtainable after the contract’s performance. This amount shall not exceed the total amount of the loss that may be caused by a breach of contract and that has been or ought to have been foreseen by the party in concluding the contract.[[102]](#endnote-102) A difficult question in practice is whether a claimed damage is a loss that is or should have been foreseeable by the party in concluding the contract.

In Li Aijun v. Xu Xiaodong and Li Hubing (The “Ning Gao Xiang 999”),[[103]](#endnote-103) Li Aijun (buyer) agreed to purchase the vessel Ning Gao Xiang 999 from Xu Xiaodong and Li Huibing (seller). It was agreed that the price of the vessel was 6,800,000 RMB.[[104]](#endnote-104) The buyer would pay a deposit of 200,000 RMB first, and then 1,400,000 RMB before the cancellation of the vessel’s registration. The remaining balance would be paid when the registration of the vessel was cancelled and the title was transferred or otherwise negotiated. On the date of the conclusion of the sale of the ship contract, the buyer paid the deposit and paid 1,400,000 RMB later. For this transaction, the buyer paid the transaction fee to Nanjing Shipping Exchange Management Service Co., Ltd. and the risk guarantee to a shipbroker. Because the buyer had financial difficulty in payment of the balance, it applied to the Wuhan Maritime Court to cancel the sale of ship contract and requested that the seller return the 1,600,000 RMB. The seller, in turn, argued that the buyer requested to cancel the contract because of the falling market price of the vessel. The seller agreed to cancel the contract but claimed damages of 1,590,000 RMB for the loss in value of the vessel in the market due to the cancellation of the contract.[[105]](#endnote-105)

The Wuhan Maritime Court held that the buyer failed to pay the balance of the purchase price and was in breach of the sale of ship contract. Therefore, the seller had the right to forfeit the deposit, namely 200,000 RMB, and claim the actual damage. The actual damage included necessary expenses for the conclusion and performance of the contract, such as the transaction fee and risk guarantee, and the cost of restoring the vessel to its original status.[[106]](#endnote-106) As for the falling market price, the Wuhan Maritime Court rejected the seller’s claim for the loss of market price. The Wuhan Maritime Court pointed out that the contract price of 6,800,000 RMB was a result of negotiation upon the market condition at that time. But the variation in the market value of the vessel due to the change in the shipping market was not a result that could be predicted by the buyer. The parties did not reach an agreement on liability for the loss of the falling market value of the vessel. Therefore, the seller was not entitled to claim a loss for the falling market price of the vessel.[[107]](#endnote-107)

The buyer appealed to the Hubei High People’s Court as the appellate court of the case. The appellate court overruled the decision of the trial court on the issue of damage due to the falling market price of the ship.[[108]](#endnote-108) The appellate court held that the buyer was entitled to further compensation if the deposit was not enough to cover the damage. The authority the court relied upon is article 28 of the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases of Disputes Over Sales and Purchase Contract.[[109]](#endnote-109) Article 28 provides that, if the deposit stipulated in a sales and purchase contract is insufficient to compensate for the loss arising from the breach of the contract by one party to the contract and the other party requests for compensation for the portion of loss exceeding the deposit, the court may request the concurrent payment of the deposit and the compensation for loss, provided that the aggregate amount of the deposit and the compensation shall not exceed the total loss arising from the breach of the contract. The appellate court found that the buyer suffered a loss due to the falling market price of the vessel and such a loss could not be covered by the deposit. Therefore, the buyer was entitled to the loss of the market price of the vessel.[[110]](#endnote-110) However, the appellate court did not explain whether the market loss was foreseeable by the buyer when he executed the contract.

The buyer applied to the SPC for retrial of the case. The SPC discussed the foreseeability of the market loss in the retrial. The SPC pointed out that the buyer was a professional in the shipping industry and should be able to foresee the market variation in ship value. When the buyer cancelled the contract in a falling market, the seller suffered a loss due to the falling market price of the vessel. The SPC upheld the decision of the appellate court and dismissed the application for retrial.[[111]](#endnote-111)

There is no doubt that the buyer shall be liable for the loss suffered by the seller because of the buyer’s breach of contract. However, it is questionable whether the market loss is foreseeable when the buyer executes the contract. The reason the buyer could have foreseen the market drop, in the view of the SPC, was because of the market expertise of the buyer. However, it is common sense that markets fluctuate. A reasonable layman knows that markets change from time to time. The change in market price is not a unique feature of the shipping market, but a common character of all general markets. Under this reasoning, common sense may not be evidence of foreseeability. The appropriate test of foreseeability should be whether the buyer has or ought to have foreseen the falling market price of the vessel when he executed the contract. However, from the decisions of the Chinese courts in The “Ning Gao Xiang 999”, it can be seen that the innocent party can easily claim the market loss due to a breach of contract by the wrongful party in China. This seems to not be a buyer-friendly decision in the ship market.

## C. Wrongful Arrest of a Vessel: Zhoushan PENAVICO Freight & Forwarding Co. v. Dalian Fenghai Ocean Fishery Co.

In the Special Maritime Procedure Law, the preservation of maritime claims means the compulsory measures taken by a maritime court, on the application of a maritime claimant, against the property of the person against whom a claim is made, for the purpose of ensuring fulfillment of the claim.[[112]](#endnote-112) However, a maritime claimant who has wrongly applied for the preservation of a maritime claim must indemnify the person against whom the claim is made or the interested person for the losses thus incurred.[[113]](#endnote-113) A ship’s arrest is the main method of preserving maritime claims. An application may be made to a maritime court for the arrest of a ship for maritime claims relating to the contract of carriage of goods by sea.[[114]](#endnote-114) For such an application, the maritime court may arrest the ship concerned if the shipowner is liable for the maritime claim and is the owner of the ship at the time of the arrest.[[115]](#endnote-115) However, the Special Maritime Procedure Law does not provide a rule for determining whether an application for the arrest of ships is a wrongful application. This is an important issue because it decides whether the applicant must indemnify the person against whom the claim is made.

In Zhoushan PENAVICO Freight & Forwarding Co. v. Dalian Fenghai Ocean Fishery Co.,[[116]](#endnote-116) Dalian Fenghai Ocean Fishery Co., Ltd. (Dalian Fenghai) had a carriage of goods dispute with Zhoushan PENAVICO Freight & Forwarding Co., Ltd. (Zhoushan PENAVICO). It then applied to the Dalian Maritime Court to arrest the vessel Sheng Fu belonging to Zhoushan PENAVICO. The Dalian Maritime Court accepted the application and arrested the vessel. Because Zhoushan PENAVICO failed to provide security for the release of the vessel, the vessel was sold by a judicial auction in 2004. The carriage of goods dispute was tried by the Dalian Maritime Court and the Liaoning High People’s Court as the appellate court. The appellate court held that Zhoushan PENAVICO was liable to Dalian Fenghai for the loss of the goods to Dalian Fenghai. However, Dalian Fenghai’s claim was time-barred, and therefore, the appellate court dismissed the claim against Zhoushan PENAVICO in 2010. Zhoushan PENAVICO, after receiving the judgment of the carriage of goods dispute from the appellate court, claimed against Dalian Fenghai for damages due to the wrongful arrest and auction sale of the vessel in the Dalian Maritime Court.[[117]](#endnote-117)

The Dalian Maritime Court denied the wrongful arrest of the vessel and dismissed Zhoushan PENAVICO’s claim. The Dalian Maritime Court pointed out that the principle of fault liability should apply to the damage caused by the preservation of a claim. Whether the preservation of a maritime claim is wrong should not depend on whether the maritime claim of the claimant was supported by the court, but instead depend on whether the claimant had intention or gross negligence to cause damage in the application for the arrest of the ship. Although the appellate court dismissed the applicant’s claim in the carriage of goods dispute, the reason for the dismissal was the expiry of limitation of action. Furthermore, the judgment of the appellate court concluded that Zhoushan PENAVICO was liable to Dalian Fenghai for loss of the goods. It can be seen that Dalian Fenghai had no subjective fault in its application for the preservation of the maritime claim. In this case, Zhoushan PENAVICO was the shipowner of the arrested ship and the liable person to the maritime claim raised by Dalian Fenghai. Dalian Fenghai applied for the arrest of the ship according to the Special Maritime Procedure Law. Therefore, Dalian Fenghai did not wrongfully apply for the arrest of the ship and was not liable for the loss suffered by Zhoushan PENAVICO due to the arrest and auction.[[118]](#endnote-118)

Zhoushan PENAVICO appealed to the Liaoning High People’s Court as the appellate court of the case. In the view of the appellate court, the reason that Dalian Fenghai applied for the preservation of the maritime claim was to protect its legitimate interests. The appellate court repeated that Zhoushan PENAVICO was the liable person in the carriage of goods dispute and that Dalian Fenghai had complied with the maritime procedures in the application for the arrest of the ship without subjective fault. Therefore, the appellate court upheld the decision of the trial court and dismissed the appeal.[[119]](#endnote-119)

Zhoushan PENAVICO applied to the SPC for retail of the case. The SPC dismissed the application for retrial.[[120]](#endnote-120) On the one hand, the SPC analyzed the principle of fault liability according to the Tort Liability Law. Article 6 of the Tort Liability Law provides that the actor infringing upon civil rights and interests of others by fault shall assume tort liability. If the actor presumed to be at fault according to the law is unable to prove otherwise, he or she shall assume the tort liability. Article 7 provides that, if an actor infringes upon the civil rights and interests of others and shall bear tort liability according to legal provisions regardless of whether he or she is at fault, such provisions shall prevail. The SPC pointed out that Chinese law does not provide whether the principle of fault liability or the principle of no-fault liability should apply to the damage caused by property preservation. Because causing damage by property preservation was a general infringement act, the court held that the principle of fault liability should apply to such an act. For the liability in tort under the principle of fault liability, the applicant for the property preservation should have a subjective fault, the objective act should be illegal, the applicant must suffer damage, and there must be a causal relationship between the applicant’s act and the damage.[[121]](#endnote-121)

On the other hand, the core issue in the carriage of goods dispute between Dalian Fenghai and Zhoushan PENAVICO was whether Dalian Fenghai’s claim was time-barred. This is a controversial issue for judges. It would impose too strict a duty on the applicant if the applicant was required to predict the result of the issue before the judgment was delivered. When the applicant applies for property preservation, he will not know the final judgment of the case. The applicant’s prediction on the rights and obligations may not be the same as the ultimate judgment of the courts. It would be too harsh to the applicant if the determination of whether property preservation was valid could only be assessed by the fact that the application was supported by the court. It would prevent the applicant from protecting their legitimate interests through the preservation procedures. The judgment of the appellate court, that Zhoushan PENAVICO was liable, has proven the reasonable prediction of Dalian Fenghai with respect to the liability of Zhoushan PENAVICO. Based on this reasonable judgment, Dalian Fenghai applied for arrest and auction sale of the ship to protect its legitimate interests. It tried its best to exercise due diligence as a reasonable person without malintent or gross negligence. Therefore, Dalian Fenghai complied with the law in its application for the arrest of the ship.[[122]](#endnote-122)

Chinese courts rarely recognize a wrongful arrest of ships in judicial practice. The decisions of the Chinese courts in Zhoushan PENAVICO summarized the test of a wrongful arrest. As a subjective test of the wrongful arrest of ships, it is required that the applicant has no malintent or gross negligence in the application for the arrest of ships. The objective test of the wrongful arrest of ships requires that the application and the grant of an application for the arrest comply with the procedural laws. The special circumstance, in this case, is that the person against whom the claim was made was held liable for the maritime claim which the application for arrest was based on. This is one of the reasons that the courts denied the claim of the wrongful arrest of the ship. It is, however, unknown whether it could be considered a wrongful arrest if the person was not held liable for the maritime claim. Hopefully, this uncertainty can be solved by future development in Chinese judicial practice.

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   . The database “China Judgments Online” can be accessed at <http://wenshu.court.gov.cn> (last visited Mar. 10, 2020). (Editor’s Note: Because the cases cited throughout the Article are only in Chinese and official translations are unavailable, our editorial staff was unable to verify the substances of the cases. However, we have no reason to doubt the expertise of the Author. All other content has been verified for accuracy.) [↑](#endnote-ref-1)
2. . Liang Zhao, International Recent Developments: China, 42 Tul. Mar. L.J. 569, 570 (2018). [↑](#endnote-ref-2)
3. . Liang Zhao, International Recent Developments: China, 43 Tul. Mar. L.J. 503, 504 (2019). [↑](#endnote-ref-3)
4. . Unless otherwise stated, Chinese law and practice means the law and practice of Mainland China. [↑](#endnote-ref-4)
5. . Zhonghua Renmin Gongheguo Haishang Fa (中华人民共和国海商法) [Maritime Code of the People’s Republic of China] (promulgated by Standing Comm. of the Nat’l People’s Cong., Nov. 7, 1992, effective July 1, 1993) Westlaw China [hereinafter CMC]. CMC is an abbreviation of Chinese Maritime Code. [↑](#endnote-ref-5)
6. . Zhonghua Renmin Gongheguo Qinquan Zeren Fa (中华人民共和国侵权责任法) [The Tort Liability Law of the People's Republic of China] (promulgated by the Standing Comm. of the Nat’l People's Cong., Dec. 26, 2009, effective July 1, 2010) Westlaw China. [↑](#endnote-ref-6)
7. . Zuigao Renmin Fayuan Guanyu Shenli Chuanbo Youwu Sunhai Peichang Anjian Ruogan Wenti De Guiding (最高人民法院关于审理船舶油污损害赔偿纠纷案件若干问题的规定) [Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Compensation for Vessel-induced Oil Pollution Damage] (promulgated by Sup. People’s Ct., May 4, 2011, effective July 1, 2012), Westlaw China. [↑](#endnote-ref-7)
8. . Zuigao Renmin Fayuan Guanyu Shenli Huanjing Qinquan Zeren Jiufen Anjian Shiyong Falv Ruogan Wenti De Jieshi (最高人民法院关于审理环境侵权责任纠纷案件适用法律若干问题的解释) [Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law in the Hearing of Cases of Disputes over Environmental Tort Liabilities] (promulgated by Sup. People’s Ct., June 1, 2015, effective June 3, 2015) Westlaw China. [↑](#endnote-ref-8)
9. . Shanghai Xinan Chuanwu Youxian Gongsi Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (上海鑫安船务有限公司诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2018）最高法民再367号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Shanghai Xin’An III), China Judgments Online (Sup. People’s Ct. Nov. 8, 2019). [↑](#endnote-ref-9)
10. . Id. at 1-2. [↑](#endnote-ref-10)
11. . Id. at 3. The application of Chinese law was upheld by the Zhejiang High People’s Court (at 5) and the SPC (at 10). [↑](#endnote-ref-11)
12. . Article 1, paragraph 3 of the Bunker Oil Convention provides that “shipowner” means the owner, including the registered owner, bareboat charterer, manager and operator of the ship. Article 2 provides the scope of application of the Bunker Oil Convention. Paragraph 1 of article 3 provides that, except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences. [↑](#endnote-ref-12)
13. . Shanghai Xinan Chuanwu Youxian Gongsi Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (上海鑫安船务有限公司诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2015）甬海法商初字第451号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Shanghai Xin’An I), China Judgments Online (Ningbo Mar. Ct. June 30, 2017).. [↑](#endnote-ref-13)
14. . Shanghai Xinan Chuanwu Youxian Gongsi Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (上海鑫安船务有限公司诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2017）浙民终579号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Shanghai Xin’An II), China Judgments Online (Zhejiang High People’s Ct. April 10, 2018). [↑](#endnote-ref-14)
15. . Id. at 14. [↑](#endnote-ref-15)
16. . Shanghai Xin’An III, China Judgments Online, at 11. [↑](#endnote-ref-16)
17. . Id. at 11-12. [↑](#endnote-ref-17)
18. . Id. at 12. [↑](#endnote-ref-18)
19. . Id. [↑](#endnote-ref-19)
20. . Id. [↑](#endnote-ref-20)
21. . Id. at 13. [↑](#endnote-ref-21)
22. . International Convention on Salvage, art. 5, Apr. 28, 1989, 1953 U.N.T.S. 194 (entered into force July 14, 1996) [hereinafter Salvage Convention]. [↑](#endnote-ref-22)
23. . Id. [↑](#endnote-ref-23)
24. . CMC, supra note 5, art. 192. Chapter IX of the CMC concerns salvage at sea. [↑](#endnote-ref-24)
25. . Jiaotong Yunshu Bu Shanghai Dalao Ju Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (交通运输部上海打捞局诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2018）最高法民再368号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Shanghai Salvage III), China Judgments Online (Sup. People’s Ct. Sept. 20, 2019). [↑](#endnote-ref-25)
26. . Jiaotong Yunshu Bu Shanghai Dalao Ju Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (交通运输部上海打捞局诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2015）甬海法商初字第442号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Shanghai Salvage I), China Judgments Online (Ningbo Mar. Ct. July 14, 2017). [↑](#endnote-ref-26)
27. . Id. at 2. [↑](#endnote-ref-27)
28. . Jiaotong Yunshu Bu Shanghai Dalao Ju Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (交通运输部上海打捞局诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2017）浙民终581号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Shanghai Salvage II), China Judgments Online (Zhejiang High People’s Ct. Mar. 29, 2018). [↑](#endnote-ref-28)
29. . Id. at 3 [↑](#endnote-ref-29)
30. . Salvage Convention, supra note 22, art. 1(a). [↑](#endnote-ref-30)
31. . Shanghai Salvage III, China Judgments Online, at 4. [↑](#endnote-ref-31)
32. . Id. at 4-5. [↑](#endnote-ref-32)
33. . Zhonghua Renmin Gongheguo Yangshangang Haishi Ju Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (中华人民共和国洋山港海事局诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2018）最高法民再369号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Yangshangang Administration III), China Judgments Online (Sup. People’s Ct. Sept. 20, 2019). [↑](#endnote-ref-33)
34. . Zhonghua Renmin Gongheguo Yangshangang Haishi Ju Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (中华人民共和国洋山港海事局诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2015）甬海法商初字第445号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Yangshangang Administration I), China Judgments Online (Ningbo Mar. Ct. July 14, 2017). [↑](#endnote-ref-34)
35. . Id. at 4. [↑](#endnote-ref-35)
36. . Zhonghua Renmin Gongheguo Yangshangang Haishi Ju Su Puluo Wangsi Chuandong 2008-1 Youxian Gongsi, Faguo Dafei Lunchuan Youxian Gongsi He Luoke Weier Hangyun Youxian Gongsi (中华人民共和国洋山港海事局诉普罗旺斯船东2008-1有限公司, 法国达飞轮船有限公司和罗克韦尔航运有限公司（2017）浙民终582号) [Shanghai Xin’An Shipping Co. v. Provence Shipowner 2008-1 Ltd., CMA CGM SA and Rockwell Shipping Ltd.] (Yangshangang Administration II), China Judgments Online (Zhejiang High People’s Ct. Mar. 29, 2018). [↑](#endnote-ref-36)
37. . Zhonghua Renmin Gongheguo Haiyang Huanjing Baohu Fa (中华人民共和国海洋环境保护法) [Marine Environment Protection Law of the People's Republic of China] (promulgated by Standing Comm. of the Nat’l People’s Cong., Aug. 23, 1982, effective Mar. 1, 1983, revised by Standing Comm. of the Nat’l People’s Cong., Dec. 25, 1999, Dec. 28, 2013, Nov. 7, 2016 and Nov. 4, 2017) Westlaw China. [↑](#endnote-ref-37)
38. . Yangshangang Administration II, China Judgments Online, at 6. [↑](#endnote-ref-38)
39. . The retrial request was not for the entitlement of the cost, but for other issues. [↑](#endnote-ref-39)
40. . It was the Marine Environment Protection Law 2013, which was effective law at the time of the clean-up operation in this case. [↑](#endnote-ref-40)
41. . International Convention on Civil Liability for Bunker Oil Pollution Damage, art. 1(7), Mar. 23, 2001, Gr. Br. T.S. No. 47 (2012) (Cd. 8489) [hereinafter Bunker Oil Convention]. [↑](#endnote-ref-41)
42. . Id. art. 1(9). [↑](#endnote-ref-42)
43. . Yangshangang Administration III, China Judgments Online, at 9. [↑](#endnote-ref-43)
44. . CMC, supra note 5, art. 71. [↑](#endnote-ref-44)
45. . Id. art. 79(1). [↑](#endnote-ref-45)
46. . Id. art. 79(2). [↑](#endnote-ref-46)
47. . Id. art. 79(3). [↑](#endnote-ref-47)
48. . Xiamen Shengmao Youxian Zeren Gongsi Su Yetai Guoji Huoyun Daili Youxian Gongsi (厦门晟茂有限责任公司诉烨泰国际货运代理有限公司（2019）最高法民申481号) [Xiamen Shengmao Co. v. Yatari Express Co.] (Xiamen Shengmao III), China Judgments Online (Sup. People’s Ct. Apr. 17, 2019). [↑](#endnote-ref-48)
49. . Xiamen Shengmao Youxian Zeren Gongsi Su Yetai Guoji Huoyun Daili Youxian Gongsi (厦门晟茂有限责任公司诉烨泰国际货运代理有限公司（2016）沪72民初1481号) [Xiamen Shengmao Co. v. Yatari Express Co.] (Xiamen Shengmao I), China Judgments Online, at 10-13 (Shanghai Mar. Ct. April 28, 2017. [↑](#endnote-ref-49)
50. . Id. at 14-15. [↑](#endnote-ref-50)
51. . Id. at 15-16. [↑](#endnote-ref-51)
52. . Xiamen Shengmao Youxian Zeren Gongsi Su Yetai Guoji Huoyun Daili Youxian Gongsi (厦门晟茂有限责任公司诉烨泰国际货运代理有限公司（2017）沪民终268号) [Xiamen Shengmao Co. v. Yatari Express Co.] (Xiamen Shengmao II), China Judgments Online (Shanghai High People’s Ct. Nov. 3, 2017). [↑](#endnote-ref-52)
53. . Id. at 10. [↑](#endnote-ref-53)
54. . Xiamen Shengmao III, China Judgments Online, at 1. [↑](#endnote-ref-54)
55. . Id. at 2. [↑](#endnote-ref-55)
56. . CMC, supra note 5, art. 53. [↑](#endnote-ref-56)
57. . Taiping Caichan Baoxian Youxian Gongsi Shanghai Fengongsi Su Zhongguo Waiyun Huadong Youxian Gongsi (太平财产保险有限公司上海分公司诉中国外运华东有限公司（2019）最高法民申2021号) [Taiping Gen. Ins. Co., Shanghai Branch v. Sinotrans E. Co.] (Taiping III), China Judgments Online (Sup. People’s Ct. Sept. 6, 2019). [↑](#endnote-ref-57)
58. . Under the Special Maritime Procedure Law of the People's Republic of China, in exercising the right of subrogation, an insurer shall bring an action in its own name against the third party that caused the accident covered, if no action has been brought by the insured against that third party. That is the reason why Taiping Insurance claimed directly against Sinotrans Eastern. See Zhonghua Renmin Gongheguo Haishi Susong Tebie Chengxu Fa (中华人民共和国海事诉讼特别程序法) [Special Maritime Procedure Law of the People’s Republic of China] (promulgated by Standing Comm. of the Nat’l People’s Cong., Dec. 25, 1999, effective July 1, 2000) Westlaw China, art. 94 [hereinafter Special Maritime Procedure Law]. [↑](#endnote-ref-58)
59. . CMC, supra note 5, art. 53. [↑](#endnote-ref-59)
60. . Taiping Caichan Baoxian Youxian Gongsi Shanghai Fengongsi Su Zhongguo Waiyun Huadong Youxian Gongsi (太平财产保险有限公司上海分公司诉中国外运华东有限公司（2017）沪72民初2330号) [Taiping Gen. Ins. Co., Shanghai Branch v. Sinotrans E. Co.] (Taiping I), China Judgments Online, at 13 (Shanghai Mar. Ct. May 25, 2018). [↑](#endnote-ref-60)
61. . Taiping Caichan Baoxian Youxian Gongsi Shanghai Fengongsi Su Zhongguo Waiyun Huadong Youxian Gongsi (太平财产保险有限公司上海分公司诉中国外运华东有限公司（2018）沪民终404号) [Taiping General Insurance Co., Shanghai Branch v. Sinotrans E. Co.] (Taiping II), China Judgments Online (Shanghai High People’s. Ct. Sept. 21, 2018). [↑](#endnote-ref-61)
62. . Id. at 14. [↑](#endnote-ref-62)
63. . Taiping III, China Judgments Online, at 3. [↑](#endnote-ref-63)
64. . Id. at 1. [↑](#endnote-ref-64)
65. . CMC, supra note 5, art. 71. [↑](#endnote-ref-65)
66. . Id. art. 257. [↑](#endnote-ref-66)
67. . Id. [↑](#endnote-ref-67)
68. . Zuigao Renmin Fayuan Guanyu Ruhe Queding Yanhai, Neihe Huowu Yunshu Peichang Qingqiuquan Shixiao Qijian Wenti De Pifu (最高人民法院关于如何确定沿海、内河货物运输赔偿请求权时效期间问题的批复) [Reply of the Supreme People’s Court in Respect of Limitation of Action for Cargo Claims in Coastal and Inland Water Carriage] (promulgated by Sup. People’s Ct., May 24, 2011, effective May 31, 2011) Westlaw China. [↑](#endnote-ref-68)
69. . Zhongwaiyun Hubei Youxian Zeren Gongsi Su Wuhan Zhongyuan Haiyun Jizhuangxiang Yunshu Youxian Gongsi (中外运湖北有限责任公司诉武汉中远海运集装箱运输有限公司（2018）最高法民再457号) [Sinotrans Hubei Co. v. Wuhan COSCO Shipping Lines Co.] (Sinotrans III), China Judgments Online (Sup. People’s Ct. May 29, 2019). [↑](#endnote-ref-69)
70. . Zhongwaiyun Hubei Youxian Zeren Gongsi Su Wuhan Zhongyuan Haiyun Jizhuangxiang Yunshu Youxian Gongsi (中外运湖北有限责任公司诉武汉中远海运集装箱运输有限公司（2017）鄂72民初1856号) [Sinotrans Hubei Co. v. Wuhan COSCO Shipping Lines Co.] (Sinotrans I), China Judgments Online (Wuhan Mar. Ct. Nov. 30, 2017). [↑](#endnote-ref-70)
71. . Id. at 7-8. [↑](#endnote-ref-71)
72. . Id. at 8. [↑](#endnote-ref-72)
73. . Id. [↑](#endnote-ref-73)
74. . Id. at 9. [↑](#endnote-ref-74)
75. . Zhonghua Renmin Gongheguo Minfa Tongze (中华人民共和国民法通则) [General Principles of the Civil Law of the People's Republic of China] (promulgated by the Nat’l People’s Cong., April 12, 1986, effective Jan. 1, 1987, revised by Standing Comm. of the Nat’l People’s Cong., Aug. 29, 2009) Westlaw China, arts. 135, 137. In Zhonghua Renmin Gongheguo Minfa Zongze (中华人民共和国民法总则) [General Rules of the Civil Law of the People's Republic of China] (promulgated by the Nat’l People’s Cong., Mar. 15, 2017, effective Oct. 1, 2017) Westlaw China, art. 188, the limitation of civil action is three years, counting from the date when the entitled person knows or should have known the liable person and that his rights have been infringed. However, the General Rules on the Civil Law did not apply to this case because they had not taken effect when Sinotrans Hubei raised an action against Wuhan COSCO Shipping. [↑](#endnote-ref-75)
76. . Sinotrans I, China Judgments Online, at 9. [↑](#endnote-ref-76)
77. . Zhongwaiyun Hubei Youxian Zeren Gongsi Su Wuhan Zhongyuan Haiyun Jizhuangxiang Yunshu Youxian Gongsi (中外运湖北有限责任公司诉武汉中远海运集装箱运输有限公司（2018）鄂民终263号) [Sinotrans Hubei Co. v. Wuhan COSCO Shipping Lines Co.] (Sinotrans II), China Judgments Online, at 8 (Hubei High People’s Ct. May 7, 2018). [↑](#endnote-ref-77)
78. . Sinotrans III, China Judgments Online, at 9-10. [↑](#endnote-ref-78)
79. . Zhonghua Renmin Gongheguo Hetong Fa (中华人民共和国合同法) Contract Law of the People’s Republic of China] (promulgated by Nat’l People’s Cong., Mar. 15, 1999, effective Oct. 1, 1999), Westlaw China [hereinafter Contract Law]. [↑](#endnote-ref-79)
80. . Id. art. 365. [↑](#endnote-ref-80)
81. . Id. art. 381. [↑](#endnote-ref-81)
82. . Zhongtie Wuzong Jinchukou Youxian Gongsi Su Fuzhou Songxia Matou Youxian Gongsi (中铁物总进出口有限公司诉福州松下码头有限公司（2019）最高法民申3119号) [China Ry. Materials Import & Exp. Co. v. Fuzhou Sunrich Port Co.] (Fuzhou III), China Judgments Online (Sup. People’s Ct. Aug. 27, 2019). [↑](#endnote-ref-82)
83. . Zhongtie Wuzong Jinchukou Youxian Gongsi Su Fuzhou Songxia Matou Youxian Gongsi (中铁物总进出口有限公司诉福州松下码头有限公司（2017）闽72民初94号) [China Ry. Materials Import & Exp. Co. v. Fuzhou Sunrich Port Co.] (Fuzhou I), China Judgments Online, at 17-22 (Xiamen Mar. Ct. Feb. 5, 2018). [↑](#endnote-ref-83)
84. . Id. at 8. [↑](#endnote-ref-84)
85. . Id. at 23-24. [↑](#endnote-ref-85)
86. . Zhongtie Wuzong Jinchukou Youxian Gongsi Su Fuzhou Songxia Matou Youxian Gongsi (中铁物总进出口有限公司诉福州松下码头有限公司（2018）闽民终457号) [China Ry. Materials Import & Exp. Co. v. Fuzhou Sunrich Port Co.] (Fuzhou II), China Judgments Online (Fujian High People’s Ct. Sept. 30, 2018). [↑](#endnote-ref-86)
87. . Id. at 11-12. [↑](#endnote-ref-87)
88. . Zhongtie Wuzong Jinchukou Youxian Gongsi Su Fuzhou Songxia Matou Youxian Gongsi (中铁物总进出口有限公司诉福州松下码头有限公司（2019）最高法民申3119号) [China Ry. Materials Import & Exp. Co. v. Fuzhou Sunrich Port Co.] (Fuzhou III), China Judgments Online (Sup. People’s Ct. Aug. 27, 2019). [↑](#endnote-ref-88)
89. . Id. at 4. [↑](#endnote-ref-89)
90. . Contract Law, supra note 79, art. 373. [↑](#endnote-ref-90)
91. . Fuzhou III, China Judgments Online, at 4. [↑](#endnote-ref-91)
92. . Id. at 5. [↑](#endnote-ref-92)
93. . Id. [↑](#endnote-ref-93)
94. . General Principles of the Civil Law of the People's Republic of China, supra note 75, art. 117. See also General Rules of the Civil Law of the People's Republic of China, supra note 75, art. 120. [↑](#endnote-ref-94)
95. . Fuzhou III, China Judgments Online, at 5. [↑](#endnote-ref-95)
96. . Fuzhou I, China Judgments Online, at 24. [↑](#endnote-ref-96)
97. . Fuzhou II, China Judgments Online, at 12. [↑](#endnote-ref-97)
98. . Fuzhou III, China Judgments Online, at 4. [↑](#endnote-ref-98)
99. . Id. at 5. [↑](#endnote-ref-99)
100. . Fuzhou I, China Judgments Online, at 20. [↑](#endnote-ref-100)
101. . Id. at 5. [↑](#endnote-ref-101)
102. . Contract Law, supra note 79, art. 113. [↑](#endnote-ref-102)
103. . Li Aijun Su Xu Xiaodong He Li Hubing (李爱军诉徐晓东和李湖兵（2019）最高法民申1732号) [Li Aijun v. Xu Xiaodong and Li Hubing] (Li Aijun III), China Judgments Online (Sup. People’s Ct. June 17, 2019). [↑](#endnote-ref-103)
104. . RMB means Ren Min Bi. It is Chinese Yuan, the official Chinese money unit. [↑](#endnote-ref-104)
105. . Li Aijun Su Xu Xiaodong He Li Hubing (李爱军诉徐晓东和李湖兵（2016）鄂72民初642号) [Li Aijun v. Xu Xiaodong and Li Hubing] (Li Aijun I), China Judgments Online, at 2-3 (Wuhan Mar. Ct. Dec. 18, 2017). [↑](#endnote-ref-105)
106. . Id. at 7-8. [↑](#endnote-ref-106)
107. . Id. at 8. [↑](#endnote-ref-107)
108. . Li Aijun Su Xu Xiaodong He Li Hubing (李爱军诉徐晓东和李湖兵（2018）鄂民终854号) [Li Aijun v. Xu Xiaodong and Li Hubing] (Li Aijun II), China Judgments Online (Wuhan Mar. Ct. Sept. 3, 2018). [↑](#endnote-ref-108)
109. . Zuigao Renmin Fayuan Guanyu Shenli Maimai Hetong Jiufen Anjian Shiyong Falv Ruogan Wenti De Jieshi (最高人民法院关于审理买卖合同纠纷案件适用法律若干问题的解释) [Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law in the Hearing of Cases of Disputes Over Sales and Purchase Contract] (promulgated by Sup. People’s Ct., May 10, 2012, effective July 1, 2012) Westlaw China. [↑](#endnote-ref-109)
110. . Li Aijun II, China Judgments Online, at 7. [↑](#endnote-ref-110)
111. . Li Aijun III, China Judgments Online, at 3. [↑](#endnote-ref-111)
112. . Special Maritime Procedure Law, supra note 58, art. 12. [↑](#endnote-ref-112)
113. . Id. art. 20. [↑](#endnote-ref-113)
114. . Id. art. 21(7). [↑](#endnote-ref-114)
115. . Id. art. 23(1). [↑](#endnote-ref-115)
116. . Zhoushan Waidai Huoyun Youxian Gongsi Su Dalian Fenghai Yuanyang Yuye Youxian Gongsi (舟山外代货运有限公司诉大连丰海远洋渔业有限公司（2018）最高法民申6289号) [Zhoushan PENAVICO Freight & Forwarding Co. v. Dalian Fenghai Ocean Fishery Co.] (Zhoushan III), China Judgments Online (Sup. People’s Ct. Oct. 29, 2019). [↑](#endnote-ref-116)
117. . Zhoushan Waidai Huoyun Youxian Gongsi Su Dalian Fenghai Yuanyang Yuye Youxian Gongsi (舟山外代货运有限公司诉大连丰海远洋渔业有限公司（2011）大海长事外初字第1号) [Zhoushan PENAVICO Freight & Forwarding Co. v. Dalian Fenghai Ocean Fishery Co.] (Zhoushan I), China Judgments Online, at 3-4 (Dalian Mar. Ct. Dec. 20, 2017). [↑](#endnote-ref-117)
118. . Id. at 5. [↑](#endnote-ref-118)
119. . Zhoushan Waidai Huoyun Youxian Gongsi Su Dalian Fenghai Yuanyang Yuye Youxian Gongsi (舟山外代货运有限公司诉大连丰海远洋渔业有限公司（2018）辽民终332号) [Zhoushan PENAVICO Freight & Forwarding Co. v. Dalian Fenghai Ocean Fishery Co.] (Zhoushan II), China Judgments Online, at 5-6 (Liaoning High People’s. Ct. June 7, 2018). [↑](#endnote-ref-119)
120. . Zhoushan III, China Judgments Online. [↑](#endnote-ref-120)
121. . Id. at 3. [↑](#endnote-ref-121)
122. . Id. [↑](#endnote-ref-122)