敬海律師事務所
WANG JING & CO.

March 2023

Maritime and Commercial Law Newsletter

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News

WJNCO Contributes to "Chambers Global Practice Guides-Shipping (China)" for the Sixth Consecutive Time

Chambers and Partners, the legal ranking organization, recently published the Chambers Global Practice Guides 2023.

Mr. John Wang (Executive Managing Partner), Mr. Xu Jun (Equity Partner), Mr. Song Jia (Young Talent Lawyer), and Mr. Zhao Yuxuan (Associate) of Wang Jing & Co. have once again been invited to contribute to this year's "Shipping Law and Practice in China", which marks the sixth time that Wang Jing & Co. has contributed to the Chambers Global Practice Guides.

In this Guide, our lawyers mainly introduce and discuss the following nine heated topics: Maritime and Shipping Legislation and Regulation, Marine Casualties and Owners' Liability, Cargo Claims, Maritime Liens and Ship Arrests, Passenger Claims, Enforcement of Law and Jurisdiction and Arbitration Clauses, Ship-Owner's Income Tax Relief, Implications of the Coronavirus Pandemic, Environmental Legislation and Trade Sanctions, and Additional Maritime or Shipping Issues. The full text can be accessed via this link: https://practiceguides.chambers.com/practice-guides/shipping-2023/china.

Wang Jing & Co. will continue to refine and enhance our expertise in the fields of admiralty & maritime to make our contribution to the building of rule of law in the area of Chinese Maritime Code.

Mr. Wang Yongli Promoted to be Equity Partner, Mr. Zhu Yu and Mr. Wang Kai Promoted to be Partner

For nearly 30 years, Wang Jing & Co. has upheld the values of "Professionalism, Efficiency, Sharing and Inheritance" in support for more young partners and backbone lawyers to stand out. We are delighted to announce that from March 2023, Mr. Wang Yongli have been made an equity partner while Mr. Zhu Yu and Mr. Wang Kai partners of our firm. Wang Jing & Co. would also like to take this opportunity to show our gratitude to those in the industry for their support and assistance over the years. We will continue to provide quality and professional legal service dedicatedly to our clients both at home and abroad. Below please find the profiles of the three partners.

Mr. Wang Yongli joined Wang Jing & Co. in July 2009 and became a partner of Wang Jing & Co. Qingdao Office in 2017. With a strong professional background, he specializes in maritime and admiralty law, ocean engineering, international trading, property insurance and liability insurance disputes and he can provide timely, targeted, and comprehensive litigation strategies to protect clients' interest to the largest extent, which has gained wide acclaim from his clients. One of Yongli's clients once praised him that "your consistently proactive attitude and prompt response have convinced us that you are the best lawyer for the case."

Yongli's clients mainly include well-known P&I Clubs, insurance companies, shipping companies, trading companies and banks both at home and abroad. In his practice of law for over ten years, he has handled numerous complex cases, including at the time the biggest collision accident between two

large vessels in Shandong province, cargo damage claim due to grounding of M/V "Kota Kado", the series of disputes over warehousing, storage and port operation arising from repeated mortgage financing of warehouse receipts in Qingdao Port, arrest of M/V "Nerissa" (which was included in the Supreme Court's Annual Work Report in 2020), soybean cargo damage case of M/V "Adelante", the collision and oil spill case of M/V "AS" and etc.

Mr. Zhu Yu graduated from Qingdao Ocean Shipping Mariner College (Major: Navigation) and Renmin University of China (LLB) and was once working for COSCO Shipping Bulk Co., Ltd. With more than ten years of maritime navigation experience, Yu is a holder of 2/O Competency Certificate for Class A Unlimited Navigation Area. He joined Wang Jing & Co., Tianjin Office in 2005 as a senior consultant and associate with practices spanning maritime and admiralty, international trading, shipping logistics, insurance and etc, providing legal services for logistics companies, shipping companies, forwarding companies, trading companies and insurance companies. In addition, Yu once served as the legal counsel of China Pingtan Shipowners' Association.

Mr. Wang Kai graduated from Shanghai Maritime University with a master's degree in Maritime Code in 2010 and has been working for Wang Jing & Co. Qingdao Office since then. Kai is proficient at legal procedures including litigation, arbitration, and execution and adept in handling litigation and non-litigation cases involving maritime and admiralty, marine insurance, and commercial affairs while knowledgeable in company law and insolvency & restructuring. Kai also serves as the perennial legal adviser of large-scale state-owned enterprises, shipping companies, and forwarding companies, providing his clients with comprehensive legal services including legal advice, corporate compliance, legal risk prevention, and dispute resolution. Kai is an adroit communicator and negotiator who are capable to produce diverse dispute resolution strategies to protect clients' interest to the largest extent by reducing risk and cost to the lowest. With his solid erudition in law and the rigorous and practical working attitude, Kai is highly recognized and trusted by his clients. In his years of practice, Kai has handled many significant and typical cases, mainly including:

The case of dispute over ship mortgage of M/V "E Elephant", M/V "A Max", and M/V "Blue Marlin I" - This case involved complicated legal issues including ship mortgage, auction, ascertainment of foreign law, service abroad of documents etc. Kai managed to acquire quick compensation for the client by strategic settlement after winning the litigation and case was selected into the Typical Cases by the Qingdao Maritime Court.

The case of external guaranty dispute, recognition and enforcement of foreign arbitration, and insolvency & reconstructing of M/V "Trans Spring"/M/V "Trans Summer" - Kai provided legal advice for the owners in support of the London arbitration and assisted in the recognition and enforcement of the London arbitration award at a Chinese court. By seizing several properties of the opposite party, Kai managed to force the other party into the procedure of bankruptcy & reorganization and acquired tens of millions of compensations for the client.

The case of explosion due to repair of M/V "Yong Xia" - Kai managed solve the issue of claim rights for the client by crafting the strategy to claim through insurance subrogation rights and managed to win the case by breaking the barrier that the shipyard was not held liable by the competent authority as in the investigation report. In the execution stage, Kai managed to break the deadlock in execution by forcing the shipyard into the procedure of bankruptcy & reorganization by seizing and auctioning mortgaged properties of the shipyard.

One Case Handled by WJNCO Listed in "Deals of the Year 2022" by China Business Law Journal

On 9 February 2023, China Business Law Journal, the famous legal media, released "Deals of the Year 2022". Deals and cases of the year with major significance were selected from massive submission by both Chinese and international law firms with consideration on factors including significance, complexity, innovative nature etc. The case of dispute over international oil product trade (AVA vs Wittco, cargo delivery dispute) handled by **Mr. John Wang** (executive managing director), **Ms. Zhang Jing** (partner), **Mr. Zhao Yuxuan** (associate), and **Ms. Yang Junru** (associate) was made to the list.

Case Brief

Company A sold a shipment of oil product to Company B with the cargo delivered to a warehouse at one of the Chinese ports. While Company A was prepared to deliver the cargo, Company B delayed in taking the cargo because Company B had resold the cargo to a third party and after several transfers the ownership of the cargo was assigned to the end buyer, Company C. However, due to pandemic prevention and lack of import qualifications, Company C was not in condition to take delivery of the cargo.

As Company A signed a port storage contract for the cargo with the port company, delay in picking up the cargo resulted in a huge storage fee claim by the port company against Company A. Besides, as the cargo kept occupying Company A's leased tanks, goods under other transactions at the same port by Company A were unable to be discharged to the leased tanks as scheduled, incurring high ship demurrage fees therefrom. With the increasing storage fees and demurrage fees, Company A was under enormous pressure. Therefore, WJNCO was entrusted to provide legal services on how to empty the shore tanks in time, respond to the claim for storage fees and demurrage fees, and file claims against the downstream company.

WJNCO then dived deep into exploring the possibility to entrust notary public to take delivery of the cargo to promptly clear the shore tanks and formulated a comprehensive strategy with a combination of tactics in both offense and defence including filing litigation before a Chinese court and applying for property preservation on the cargo, negotiating with the port company consistently, offsetting debts with demurrage-related parties, submitting arbitration abroad with both upper and lower transaction parties under precise timing control of each critical procedure, which eventually helped our client win both domestic litigation and foreign arbitration as well as settle the disputes over transaction and chartering.

Cross-border oil trades are always interlocked. Any uncontrollable factor that breaks in any of the links will trigger a "domino effect" in a series of defaults and claims. Therefore, lawyers are required to respond quickly and take effective legal measures promptly to prevent further loss. As the trading chain is rather long, one dispute would normally involve pending issues under other contracts between the buyer and the seller, which makes the dispute even more complicated. In addition, jurisdiction and appliable law stipulated in the contracts in the trading chain are not always consistent, resulting in combinations of foreign & domestic litigation or arbitration and property preservation. Therefore, lawyers who handle such cases are required to have a comprehensive view and the ability to coordinate various procedures.

Cases and Insights

A New Judical Guidance of Classification Societies' Liabilities - Analysis of Case Tiger Pioneer

Author:

Qiao Jing joined Wang Jing & Co. in 2007 and is now a partner, mainly engaged in dispute resolution. Ms. Qiao has handled a large number of maritime and commercial disputes, international trade disputes, corporate and commercial disputes, property insurance, liability insurance, and reinsurance disputes for associations, shipping companies, insurance companies, and trade companies. She is familiar with relevant laws and regulations, meticulous in handling cases and flexible in thinking. Ms. Qiao is familiar with Chinese law and regulation and handles cases meticulously and carefully with flexible thinking. Ms. Qiao also provides year-round legal services to clients .

Song Jia graduated from Bristol University and got LLM degree. He then furthered his study at University of Law (London) in British Law and received GDL and LPC. Prior to joining Wang Jing & Co., Mr. Song worked at a shipping company in Singapore and a top Chinese law firm for a couple of years. His practice focuses on dry shipping cases, ship finance leasing, insurance and corporate. Mr. Song also has extensive research experience in sanctions and compliance.

Abstract

Along with the booming shipping industry, classification societies have gradually become an important and indispensable player in the industry. They provide technical support to protect the safety of ships and offshore installations through the provision of classification rules that are generally accepted and recognised by the industry, as well as professional inspection services.

However, while the classification societies are getting stronger connections with more legal relationships, they are also much easier to get drawn into litigation or be asked for bearing legal liabilities. Under such circumstances, there is an urgent need for guidance at legislative and judicial level on how to recognise the classification societies’ legal status, duties, and liabilities.

WJNCO were instructed by a classification society to make full defense against a recourse claim made by the subrogated hull underwriters in a dispute arising from the alleged defect of tail shaft on board a vessel. This case provides useful reference to the statutory role of a classification society and their possible responsibilities under Chinese law.

I. Case Brief

In October 2016, the tail shaft of a Panama size bulker “Tiger Pioneer” was broken at sea, which caused water flooding the engine room and the Vessel was out of control. The shipowner immediately arranged emergency rescue and docking repair for the Vessel resulting in huge amounts of repair fee and loss of use/fuel, totaling in excess of RMB50,000,000. After making the insurance indemnity to the shipowner under the insurance policy, the Vessel’s hull underwriter PICC filed a recourse claim against the Defendants for the alleged defects of quality in ship product before Wuhan Maritime Court, requesting Company A (the manufacturer of the broken stern shaft), Company B and C (the deep processing manufacturers), and Society D (the classification society of the vessel, and the inspection agency of the processor to bear joint and several liability for damages.

II. Judgments

The Court of first instance held as follows:

(1) The stern shaft involved in this case, as a ship power equipment device, is a product that has been produced and processed for sale. Therefore,

disputes over the quality of the stern shaft equipment shall be subject to the *Product Quality Law of the People's Republic of China*.

(2) Society D was only required to carry out the tests and inspections in accordance with their published classification rules, and to exercise due diligence in the course of the classification survey. Considering that Society D cannot follow up the whole manufacturing and processing stage, if the defects on the equipment could not be detected by the scope of inspection methods available and the inspection methods specified in the rules, Society D shall be considered to have exercised due diligence and not to be at fault.

(3) Society D shall not be liable for the losses caused by the defective product involved in this case.

The Court of second instance supported the opinions of the Court of first instance. The reasoning part in the second instance judgment related to the issue we discuss in this article is as follows:

"Given that it was in fact impossible for Society D to follow up all the manufacturing stages by itself during the whole manufacturing process, it could only conduct inspections according to the requirements of its published classification rules and regulations relying on the quality of the manufacturer. However, the scope of inspection methods available and the inspection methods specified in the rules (including non-destructive methods such as magnetic particle and ultrasonic testing) cannot detect such kind of welding. The manufacturer and the processor did not and could not inform the classification society of the welding to carry out additional inspection and testing before certification. That said, Society D's inspection of the stages of production and processing of the stern shaft involved in this case conforms to the requirements of the inspection specifications and Society D had no dereliction of duty or missed inspection, namely it was not at fault. Therefore, it shall not be liable for the losses caused by the defective product involved in this case."

III. Case Analysis

The classification societies are involved in a wide range of activities including classification services, statutory services, and other industrial services. In such services, the classification societies play different roles and enter different legal relationships, with the basis of their services and the duties they exercise changed, which, correspondently, leads to different liabilities.

As far as the classification services are concerned, which involved in this case, it is notable that the courts had made guidance to the following issues:

1. Legal status of the societies

Since the dispute arose from the accident caused by the quality defects of the stern shaft, one of the focuses of this case was whether the *Product Quality Law of P.R.C* shall apply.

In the Judgments, the Courts held that the stern shaft fell within the definition of a product under the *Product Quality Law*, which is therefore applicable in the case. The H&M insurer, who obtained the right of subrogation, is entitled to file a tort claim against the manufacturer and the processer of the stern shaft, who shall bear strict liabilities accordingly.

Nevertheless, shall the classification society be deemed as the product quality inspection agencies under the *Product Quality Law*? Referring to the judgments, we believe that the Courts have given a negative answer to this question.

First, under the *Product Quality Law*, there are clear provisions in respect of the establishment of product quality inspection agencies. To be specific, before the agencies are able to undertake product quality inspection work, they must be qualified for an examination set by the market supervision and management authorities. However,

it seems that foreign classification societies are not established under this rule and would not be examined by the relevant authorities. This means that, in terms of qualifications, classification societies are generally not in a position to be considered as product quality inspection agencies.

Second, product quality inspection agencies are not allowed to carry out inspections unless and until they are entrusted by the administrative department. In other words, the source of their inspection authority comes from administrative entrustment. However, it is notable that Owners in most countries are free to choose a society to class with (save that there are still some countries setting compulsory provisions on the choice of classification societies in respect of ship registration), and the relationship between the Owner and the classification society is contractual. It means that the classification society exists as a civil subject in the classification service. For the shipowner, the society is only a party to the contract; and for others not part of the contract, the society is an independent third party commissioned by the shipowner.

Finally, the inspection standards of product quality inspection agencies are usually national standards, and the inspection has an administrative character which represents a certification of product quality by the administrative authorities. In the case of classification services, the inspection by classification societies does not have any administrative character and is not an official certification of the quality of marine products. In other words, the function of the classification societies' inspection is only to confirm whether the products have complied with the classification rules of the classification societies.

In summary, from the perspective of inspection qualifications, legal relationships and inspection standards, classification societies should not be considered as the product quality inspection agencies under the *Product Quality Law*.

2. Societies' duties in the contract of classification services

Currently, under Chinese law, contracts for classification services and other industrial services are nameless contracts with no special provisions on contractual obligations, which can only refer to the general principles for the performance of contracts. According to Article 509 of the *Civil Code*, the parties shall perform their obligations in full in accordance with the agreement and the performance shall follow the principle of good faith.

In general, the main duties of the classification societies in a service contract could be summarized as the following two points:

(1) To carry out design appraisal and surveys in accordance with their own established and published classification rules and standards; and
(2) To exercise due care in the survey.

In this case, the breakage of the stern shaft was primarily caused by the illegal welding defect, combined with overload running. According to the Rules and Regulations for the Classification of Ships and the Rules for the Manufacture, Testing and Certification of Materials published by Society D, welding repair of crankshaft or similar rotating parts is prohibited. The stern shaft in question was apparently a rotating part and is not allowed to be welded. But after grinding and polishing, the colour difference on the surface of the shaft was very subtle. In addition, there was also no significant difference between the permeability of base metal and weld metal. Without destructive treatments, such as acid etching, Society D cannot discover such welding by carrying out the visual inspection and other inspections (including MPI, ultrasonic testing, etc.) within the scope of inspection methods in the Rules.

The Courts' Judgments indicated that, there shall be no dereliction of duty or omission of inspection of Society D in this case, given that Society D could not discover the defects after having conducted reasonable inspections complied with the specifications in the Rules they established.

We may assume that, in classification services, the classification societies shall be deemed to have fully per-

formed their contractual obligations with no breach of contract, as long as they have carried out the inspections strictly on the basis of their own classification rules and have exercised due care sufficiently.

3. Liabilities for the societies of losses caused by defective equipment inspected

Following the foregoing discussion, the classification society provides the service on a contractual basis and may face general risk of breaching of contract. However, if damage is caused to a third party without contractual relationship with the classification society in the course of the service, the liability of classification society in tort may also arise.

In this case, the court found that the case was a tort liability dispute arising from damage caused by the quality of the marine product. In response to the question of whether Society D should be held liable, the court clearly held that in the inspection process of this case, Society D was not at fault and should not be liable for the damage caused by the defective product.

From the judgment, we can see that the basis of the court's finding of liability in tort for classification societies was "fault". However, the services provided by classification societies are usually highly specialised with high technical barriers to the testing methods. It is difficult to determine whether a classification society is at fault in terms of professionalism through general criteria.

In this case, Society D's inspection of the stern shaft in question could only be carried out in accordance with the published rules, and the non-destructive methods available under the rules were unable to detect the defects. Thus, the courts held that the society's inspection complied with the requirements of the classification rules, and there was no negligence or omission of the classification societies in the inspection, with the result that the society was not at fault.

From the above holdings, we can assume that, when considering whether the classification society was at fault in the dispute over defective product quality, the court would generally focus on whether the classification societies have complied with their contractual obligation to provide classification services (say, whether the services were provided in accordance with the published classification specifications) and whether their duty of care was exercised during the process.

Since classification societies cannot attend the entire production process of a marine product, they can only determine the quality of the product by means of the testing methods specified in their rules. After the products have been finished, the destructive inspection methods are no longer available while the non-destructive inspection methods may have various technical limitations that prevent the detection of potential defects. In such case, if the classification society has exercised due care and diligence in using the testing methods available in the rules, but still fails to detect the defects, it should be considered that the classification society is not at fault and shall not be liable for tort.

IV. Summary and Prospect

It has been over 260 years since the first classification society was established in the world. This is likely the first case decided by the courts in mainland China at both hierarchies for ascertaining the legal role and rules and duty of a classification society under Chinese law.

The Courts made their decisions in the judgments for the underlying consideration of the low levels of fees charged by classification societies and unfavorable effect to the developments of the shipping industry if strict liability is imposed upon the societies. Therefore, this case provides useful reference to the legal role and possible responsibilities/duties of a classification society under Chinese law.

| Cases and Insights

The Validity of "Knock for Knock Clause" in Ocean Towage Agreement

Preface

The Chinese Supreme People's Court released the 2022 Analysis of Outstanding Cases of National Court System recently. The Dispute over Ocean Towage Agreement between P Insurance Company and N Salvage Bureau handled by WJNCO lawyers won the second prize in the civil case category. This dispute centered on the validity of the "Knock for Knock Clause" in the Ocean Towage Agreement and Chinese courts of first and appeal instance finally ascertained that this clause was legal and valid.

I. Case Summary and Abbreviate of Adjudication

In October 2016, B Company ("the Towed Party") as the owners of Vessel T entered into an Ocean Towage Agreement with N Salvage Bureau ("the Tug Operator"), entrusting the Tug Operator to provide towing services for the Vessel T to escape from typhoon. The agreement provides for liability and exclusion of liability, i.e. the Tug Operator shall be solely responsible for the loss of and damage to the tug and its related properties and related expenses, whether or not due to the negligence or any fault of the Towed Party, and shall have no recourse against the Towed Party; and vice versa, the Towed Party shall be solely responsible for the damage to the tug and its related properties, whether or not due to the negligence or any fault of the Tug Operator, and shall have no recourse against the Tug Operator.

During towing, due to bad weather and sea conditions, the main towing cable broke twice, and then after several unsuccessful attempts to pick up the tow, Vessel T drifted to a nearby reef and was stranded. Two months later, Vessel T was successfully refloated but damaged during the refloating. The insurance company paid insurance indemnity to the Towed Party. In the process of recovery, the insurance company claimed that the liability exclusion clause ("Knock for Knock Clause") specially agreed in the Ocean Towage Agreement was a form term, which violated the mandatory provisions of the *Maritime Code*, and the Tug Operator was grossly negligent in the occurrence of the accident, so the "Knock for Knock Clause" was invalid, and the Tug Operator should be liable for the damages according to its degree of fault. WJNCO lawyers represented the Tug Operator and argued that the liability exclusion clause agreed in the Ocean Towage Agreement was legal and valid, which was a common and widely recognized industry practice in the international towing market, and the Tug Operator was entitled to claim exclusion of liability.

The courts of first and second instance ascertained that the parties to the Towage Agreement could agree on their own liability for damages that might occur in the course of towing at sea, and the negligence liability would only

Author:

Qiao Jing joined Wang Jing & Co. in 2007 and is now a partner, mainly engaged in dispute resolution. Ms. Qiao has handled a large number of maritime and commercial disputes, international trade disputes, corporate and commercial disputes, property insurance, liability insurance, and reinsurance disputes for associations, shipping companies, insurance companies, and trade companies. She is familiar with relevant laws and regulations, meticulous in handling cases and flexible in thinking. Ms. Qiao is familiar with Chinese law and regulation and handles cases meticulously and carefully with flexible thinking. Ms. Qiao also provides year-round legal services to clients .

Song Jia graduated from Bristol University and got LLM degree. He then furthered his study at University of Law (London) in British Law and received GDL and LPC. Prior to joining Wang Jing & Co., Mr. Song worked at a shipping company in Singapore and a top Chinese law firm for a couple of years. His practice focuses on dry shipping cases, ship finance leasing, insurance and corporate. Mr. Song also has extensive research experience in sanctions and compliance.

apply if there was no agreement or no different agreement in the Towage Agreement; when there is no intent or gross negligence on the part of the Tug Operator , the "Knock for Knock Clause" agreed between the Tug Operator and the Towed Party was legal and valid, and the Tug Operator could be exempted from liability for negligence based on this clause.

II. The Validity of "Knock for Knock" Clause

1. Whether it is a format clause

"Knock for Knock Clause" is considered by BIMCO to be a core principle in structuring a *Supplytime*. The meaning of this clause is usually that the contracting parties are responsible for the loss of their own property, personal injury or death, even if such property loss, personal injury or death is caused by the act, omission or breach of contract of the other party, and vice versa. Therefore, the essence of the "Knock for Knock Clause" is that the parties share the risk and responsibility by mutually agreeing on a number of exempted matters (and non-excludable matters) to replace the original fault-based liability.

Terms of international standard towage agreement, such as the International Ocean Towage Agreement Daily Hire format ("TOWHIRE") recommended by the International Salvage Union ("ISU"), the European Association ("ETA") and the Baltic and International Maritime Council ("BIMCO") in 2008 (…*Loss or damage of whatsoever nature, however caused to or sustained by the Tow, shall be for the sole account of the Hirer without any recourse to the Tugowner, his servants or agents*…) and the Lump Sum format ("TOWCON") both include the "Knock for Knock Clause". Are these standard contractual clauses "format clauses" as defined in Article 496(1) of the *Civil Code*, which are pre-drafted for repeated use and are not negotiated with the other party at the time of concluding the contract?

In this case, the judge held that BIMCO is one of the most influential non-governmental organizations in the shipping industry in the international arena, and the standard contractual clauses formulated by BIMCO are only for the reference of its members, which are not mandatory and are the basic clauses of the parties' autonomy of will, which can be added or subtracted after negotiation by the parties, and are different from the format clauses designated by the monopoly party as mandatory for the other party to apply.

Therefore, in terms of the "Knock for Knock Clause" itself, it is not a form clause, and the parties to the contract can refer to use it, but whether to use it in the contract still depends on the autonomy of the parties.

2. Whether there is violation of the mandatory provisions of the *Maritime Code*

Article 162(1) of the *Maritime Code* provides for the principle of "negligent liability" for the apportionment of liability between the Tug Operator and the Towed Party in ocean towage, that is, if the losses are suffered by the Tug Operator or by the Towed Party as a result of a mistake by one party, the party which made that mistake shall bear liability for compensation; if the losses are suffered as a result of mistakes by both parties, each party shall bear liability for compensation pursuant to the proportional degree of its mistake. Article 162(2) further provides that, in spite of the provisions of the above paragraph and subject to proof by the tug operator, the tug operator shall not bear liability for compensation of losses suffered by the Towed Party which are incurred due to any of the following reasons: (1) mistakes made during the operating or administering of the tug by the Master, crew members or pilot of the tug or employees or agents of the Tug Operator; (2) mistakes made when the tug is engaged in salvage or seeking to rescue human life or property.

Then, should the "Knock for Knock Clause" be null and void for violating the provisions of the *Maritime Code* on the allocation of liability for towage? The judges of first and second instance held that Article 162(3) of the *Maritime Code* clearly stipulates that the fault liability clause in Article 162(1) and Article 162(2) shall apply only when there is no agreement or no different agreement in the contract. Therefore, this article stipulates the principle of contractual agreement taking precedence under the fault liability of the towage agreement. According to the meaning of the text, if the contract between the Tug Operator and the Towed Party has reached a clear agreement on how to bear the liability for damages, the contractual agreement shall apply first, and the provisions of

this article shall only apply when there is no agreement or no different agreement in the Ocean Towage Agreement.

In addition, according to the provisions of Article 162(2) of the *Maritime Code* and its legislative spirit, the parties have the right to agree and apply the liability exclusion clause in the Ocean Towage Agreement. In other words, the "Knock for Knock Clause" agreed by the Tug Operator and the Towed Party is the autonomy of the parties regarding the determination of liability and risk sharing, which does not violate the provisions of the *Maritime Code* and is also in line with the legislative spirit of promoting the smooth implementation of towing operation and protecting the rights and interests of all parties to the greatest extent possible.

3. Whether to apply the provisions of the *Civil Code* on validity of contracts

Article 506 of the *Civil Code* stipulates the circumstances where the exclusion clause in a contract is null and void: "(1) those that cause personal injury to the other party; or (2) those involving property damage to the other party as a result of deliberate intent or gross negligence." Based on the legal application principle of "*lex specialis derogat legi generali* (special law prevails over general law)", the provisions of general law shall apply when there is no provision of special law. To examine the validity of the "Knock for Knock Clause", is it necessary to consider the provisions of the *Civil Code* on the invalidity of the liability exclusion clause? In this case, the judge of first instance held that since the *Maritime Code* had clearly stipulated the liability for negligence, according to the principle of "special law prevails over general law", the liability exclusion clause of the Ocean Towage Agreement should not apply to the provisions of the *Contract Law* (note: the contract was still valid when the accident in question occurred and the case was heard), so there was no need to consider the provisions of the *Contract Law* (the current *Civil Code*).

III. Conclusion

In marine towage, the towed object is directly exposed to the risk of the sea, and the towage operation itself also increases the difficulty of the ship's maneuvering, therefore, the risk that the Tug Operator has to bear for the towed object is much higher than the risk that the Marine Carrier has to bear for the transported goods. In addition, there is a special feature in the marine towage industry that the value of the towed goods is usually tens of millions or even over hundreds of millions, while the towage fee is less than one-tenth or even one-hundredth of its value. If the industry's risk sharing system, which was formed after a long time of development, is broken arbitrarily, it will not only disturb the normal development of the domestic towage market, but also does not conform to the usual practice of the international towage market. The judgment of the courts of first and second instance in this case recognized the validity of the "Knock for Knock Clause", which respects the practice of the international towage market and has positive significance for the development of the domestic towage market.