海商事诉讼检察监督研究

——以宁波-舟山港区域内司法实践为视角

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摘要：海商事诉讼检察监督制度立法的缺失，导致检察监督权在海商事诉讼领域的缺位，亟待检察机关建立全域性、系统性的监督模式。笔者通过收集全国海事法院的司法裁判案例，总结了海商事诉讼审判活动中的高发问题，拟建立立体的检察监督点，并以宁波海事法院与检察机关的良性互动、实践探索为切入点，立足海商事民事案件监督的重点、难点，讨论在民商法体系下海商事案件融入检察监督的价值，探索检察机关在海商事民事诉讼领域如何开展理性监督、科学监督的新路径。

关键词：海商事诉讼 检察监督 虚假诉讼 船舶碰撞

随着海洋经济的迅猛发展，海商事呈现经营模式多样化和船舶经营主体多元化的特点，附着在船舶之上的不再是一两个单纯的主体，而是逐渐变成庞大的利益群体，而与此对应的是海商事诉讼持续居高不下。以宁波-舟山港为例，港区各类国际货船进出频繁，东海渔业作业繁忙，货船、渔船密集行驶，台风时常频发，因航行船速过快、疏于瞭望、船

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舶不适航、船员不适格、过于自信而冒险航行，船舶碰撞事件经常发生，由此引发人身、财产损害赔偿、海难救助、共同海损以及赔偿责任限制基金适用等纠纷；同时，海上货物运输引起的纠纷、船舶建造、买卖合同纠纷亦频发，呈现出诉讼标的巨大、法律关系错综复杂的特点。对于每年呈递增趋势的海商事案件，与之不对应的是，我国对海商事领域的民事法律监督却一直处于空白。在当前海商事法律监督机构尚未明确的状况下，我们既亟待相关法律作进一步明确和完善，也需要检察机关正确认识过渡阶段的角色定位，沿海检察机关既要大胆探索先行先试，也要秉承司法谦抑性理念规范监督。

一、当前司法语境下海商事诉讼监督制度的困境

（一）理论的空白带来司法实践探索的困境

修改后《民事诉讼法》和《人民检察院民事诉讼监督规则》虽然赋予了检察机关明确的检察监督权。但《民事诉讼法》并没有对海商事诉讼监督作出特别规定。从海商法审判的重点以及海诉法的特别程序看，立法对海商事检察监督的范围、方式、程序、举证责任等都缺乏明确规定，因此现行《民事诉讼法》勾勒的检察监督制度与海商事诉讼检察监督制度并不能完全融合，亟待法律制度设计层面的补正和完善。

（二）司法实践中指导案例体系尚未形成

从全国范围看，目前对海商事诉讼的检察监督仅仅停留在个案上，或只是对其中一个诉讼环节的监督，全域性、系统性的监督模式尚未形成。由于尚未形成监督气候，监督空间相对狭窄。加上海商事法律渊源不仅包括《海商法》，也包括我国已经加入的国际公约、国际惯例等，对检察监督能力提出了挑战。

（三）管辖上的不对应及与三审合一制度的冲突

海事法院属于专门法院，与中级人民法院同级，下面无基层海事法院，在案件审级上与民事诉讼法有关级别管辖的规定不对称，也与检察机关的机构设置不相协调。我国检察机关的设置是按照行政区域划分的，而海事法院跨地域设立，通常以设立派出法庭来及时行使管辖权，但是我国民诉法并没有规定基层检察院对派出法庭的监督权。管辖的不对应性客观上造成了法律监督权能发挥的不畅，同时也堵塞了当事人的申诉渠道。

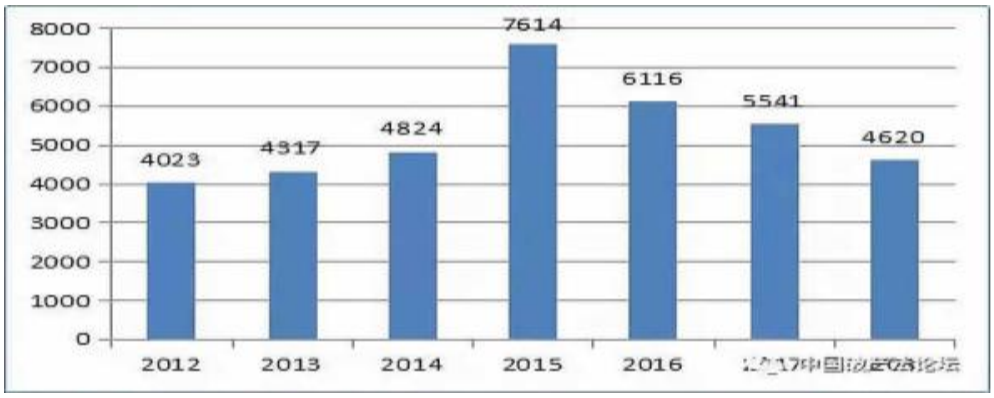
（四）海商事诉讼程序上的特别设置对检察监督提出挑战

海商事诉讼适用海事诉讼特别程序，检察监督是否需要建立对应的海商事诉讼法律监督特别程序，是一个值得关注和探索的问题。

二、海商事诉讼监督实践探索

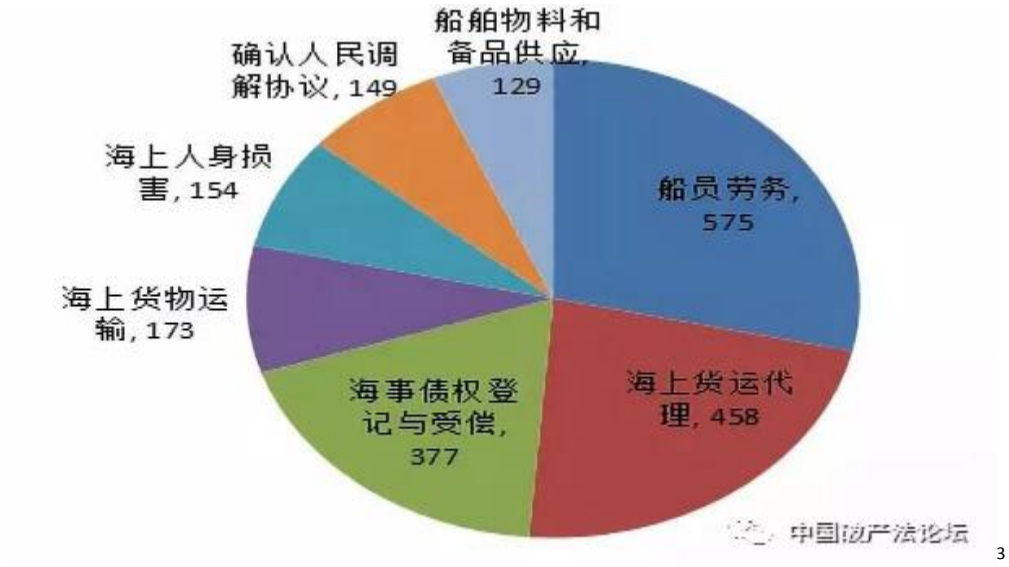
（一）宁波-舟山港区域内司法实践

以宁波海事法院审理的案件为主要分析参考对象，宁波海事法院近几年案件办理的基本情况[2]：从2012年1月至2018年12月，宁波海事法院海商事案件受理数由低到高，在2015年到达高峰，近几年逐渐趋于平稳。其中2018年收案4620件，收案标的金额45.89亿元，共结案4703件，结案标的金额40.96亿元。新收执行案件1693件，首次执行案件实际执结率68.95%，终本率14.05%，实际执行到位率31.12%，扣押船舶192艘，拍（变）卖成交船舶37艘。其中三个派出海事法庭共受理各类案件2308件，审（执）结案件2379件，分别占全院收、结案件总数的49.96%和50.58%。三个海事法庭中舟山法庭案件受理率最高，占比约为60%。因目前派驻海事法庭在三审合一制度探索阶段基本还是以办理海商事案件为主，说明派驻海事法庭承担了海商事办理的主要任务。



图一：2012-2018年年宁波海事法院收案数量柱状图

[2] 宁波海事法院，2018年浙江海事审判情况报告，中国破产法论坛2019-03-1。



[3]

图二：2018 年宁波海事法院受理的过百案件饼状图

综上二图看，海商事案件数量呈现逐年递增的趋势，但与之对应的，对海商事领域的民事法律监督却一直处于空白。根据我国宪法和民事诉讼法的立法原意，检察机关作为法律监督机关，其监督范围涵盖所有诉讼领域，包括与诉讼过程紧密联结的各个诉讼环节。修改后的民事诉讼法对民事检察制度进行重构，在最大限度地由法院救济来解决当事人之间民事纠纷的前提下，进一步明确了由检察机关对民事审判权的法律监督。

（二）海商事诉讼存在的问题

笔者通过司法裁判网查阅了全国 10 个海事法院涉及海商法方面的案件共 600 件和被改判的近 50 个案例，涉及的案由和案件性质基本涵盖了海商法领域大部分案件类型。这

[3] 宁波海事法院，2018 年浙江海事审判情况报告，中国破产法论坛，2019-03-1。

些案件中与普通民事案件相比，案件呈现出标的大、审判周期长、延伸案件多的特点，其中发回重审22件，一审案件被改判18件，二审案件被最高法改判3件，通过审判监督程序改判6件。从中反映出四个方面问题：

1.举证责任分配不一

《海牙规则》的参与国中许多是航运大国,其对适航的举证责任分配问题的回避态度,导致了世界各国对于适航的举证责任分配采取不同的方式[4]。我国海诉法遵循"谁主张、谁举证"的一般诉讼原则，这在很大程度上给一些处于弱势的受害人带来不利。由于海上情况非常复杂，大部分证据仅凭受害人无法取得，如在承运人迟延交付的举证责任与对《海商法》第50条[5]规定的理解上；对是否适航的举证责任的分配上；对不可抗力免责事由的举证责任和无单放货的举证责任的分配等，都是会产生争议的方面。因此，完善海运货损索赔的举证责任分配,对是否适航等的举证责任加以明确规定,以改善司法实践中不统一、不规范的举证责任分配[6]，应是当务之急。实践中对海诉法所明确的举证责任的适用正确与否，是否应该适用举证倒置是检察机关审查的重点之一。

2.审理中适用特别程序依据不足

[4]司玉琢，"海牙规则"与"汉堡规则"浅析[J].大连海运学院学报,1978,(2)。
[5]海商法第五十条第一款规定：“货物未能在明确约定的时间内，在约定的卸货港交付的，为迟延交付。”
[6]莫伟刚.刍议几种海商事案件实行举证责任倒置[J].广西政法管理干部学院学报,2004(4):106-107,114。

从司法实践看，海事法院适用特别程序是否依法规范是检察机关审查的重点，主要反映在以下几方面：一是登记与受偿、催告和公告程序和赔偿责任程序的适用。二是海事请求保全、海事强制令、海事证据保全涉及的担保程序是否适合。三是设立海事赔偿责任限制基金和先予执行等程序是否正当。四是海事请求保全扣押船载货物的期限以及是否与其债权数额相当。五是拍卖程序是否合法，如竞买人之间是否属于恶意串通，否则拍卖无效。六是海诉法第 21 条规定的可以申请扣押船舶的 22 中情形和第 23 条规定的海事法院可以扣押当事船舶的五种情形是否正确适用。

3. 优先受偿顺位分配不平衡

因为海商法的特殊性以及海诉法的特别程序规定了船舶优先权与其他船舶担保物权间的优先顺位关系。检察机关在审查中要重点审查对船舶优先权担保的受偿顺位分配是否合理。《海商法》规定船舶优先权较船舶抵押权具有更高的优先受偿顺位，船舶留置权后于船舶优先权得到受偿，但对于海损事故后为继续航行所必须的修船费用请求是否应当具有更高的受偿顺位是一个需要斟酌的问题，也可以作为检察机关抗诉的要点。其次，船舶优先权制度与海事赔偿责任限制制度间的优先顺位关系。船舶优先权担保的限制性债权和非限制性债权是否都应设置在责任限制基金的顺位之

前，是否有所区别[7]，包括在破产程序中船舶优先权的及时实现[8]。此外，船舶扣押、先予执行中是否符合海诉法第21条22中情形也是需要关注和审查的重点。

4.同类案件不同判

近年来,司法实践中出现了越来越多的"同案不同判"现象,海商事的判决也有同样问题。如下面这个案件是否存在同案不同判和程序违法的问题值得探讨：2014年4月1日，浙江某纺织印染有限公司向宁波海事法院递交了五份民事起诉状，被告均为绍兴某国际货运代理有限公司。宁波海事法院审理此同一个原告、同一个被告的五个海上货运代理合同纠纷案后，对其中一个案子做出判决，对其余四个案子裁定中止诉讼，理由是这四个案子需以那个案件的审理结果为依据。但随后在那个案子还未审结的情况下，近日又表示要对四个案子恢复诉讼开庭审理。此类案件对于我国法律统一实施是否会产生消极影响固然不能持完全肯定，但程序上的瑕疵应该不言而喻。司法实践中法官自由裁量权的恣意运用一直是被广为诟病的问题，加上海商事相关判例指导制度现实基础薄弱和与国际公约的冲突，检察机关应该充分重视对此类案件的监督探索，重点对海事法院适用相关诉讼程序的

[7]张丽英.船舶优先权法律性质若干学说析[J].比较法研究,2004,(4)。
[8]李璐玲.对《海商法》船舶留置权界定的反思[J].法学,2009,(2)。

合法性和合理性作出审查，除此之外对审判人员是否违法是否枉法裁判作出调查[9]。

（三）实践探索

宁波海事法院舟山法庭审理的案件涉及海商事纠纷的占比非常高。因此笔者以浙江省舟山市和嘉兴市检察机关的探索为例，特别是对近年来舟山市区两级检察机关主动参与宁波海事法院舟山法庭虚假诉讼查处、案件线索移送、联合开展调解和生态放流、民事公益诉讼，不断探索海商事检察监督的触角的做法进行总结。

1.通过探索提炼监督点

重点关注船舶优先权的适用和民营企业的营商环境以及船员利益保护。如我国《海商法》有关船舶优先权的规定借鉴了国际公约，但并没有对建造中船舶的优先权问题进行规定。《海商法》的修订征求意见稿的船舶物权一章，除了将“在船舶营运中”一词改为“在船舶作业中”，还专门增加了建造中船舶一节，规定建造中船舶在试航过程中产生船员工资、人身伤亡赔偿请求、海难救助报酬给付请求、侵权产生的财产赔偿请求，适用有关船舶优先权的规定。为此针对沿海城市在建船舶纠纷多的特点，检察机关通过接受当事人举报和申诉，了解船舶纠纷案件的因果关系，在对个案中船舶拍卖环节进行监督的同时，着重做好矛盾化解和息诉服

[9]冯伟祥，浙江法治在线，2015.11.6。

判工作。一是配合海事法院调查虚假诉讼案件[10]。二是联合开展海洋保护和生态修复，如2019年浙江省舟山市人民检察院向宁波海事法院依法提起海龟系列民事公益诉讼案，同时启动生态修复赔偿机制，成为全国首例向海事法院起诉的案件，取得了良好社会效果。三是做好息诉罢访。如2019年舟山市定海区检察院受理了一起船舶纠纷案件的申诉，反映申诉人（船东王某）前几年在经营海运期间因经营不善破产，欠下很多债务，包括船员工资和遣返费及社保，因债务众多，其在运营中的两艘船尚不够抵债，海事法院把其与他人合作建造当时尚在建造中的另一艘船也列入拍卖行列，认为海事法院可能存在枉法裁判的可能。该院向海事法院详细了解情况后，多次不厌其烦做好释法说理工作，细心解释船舶优先权的适用范围，终于打消了申诉人的继续申诉上访念头，如期支付了相关船员的工资。

2.通过论证进行逻辑类推

检察机关应将必要性标准列入监督标准，兼顾监督的法定性标准与监督社会效果，特别是在海商事裁判案件中，应当根据案件做出裁判时的司法政策、国际惯例、社会背景等因素对监督的必要性进行充分审查，对相关因素综合考量后

[10] 原告舟山市定海某船厂（以下简称船厂）诉被告舟山某船务有限公司（以下简称船务公司）拖欠船舶修理费380万元，，请求宁波海事法院自由贸易港区海事法庭支持起诉上述修理费、违约金、码头停靠费、安全费，并主张其享有留置权。审理期间，自贸区法庭发现原、被告诉称事实与法院查明事实不符，存在恶意串通情形，遂将该线索移送至舟山市定海区人民检察院。舟山市定海区人民检察院经调查发现原被告均无异议的《船舶修理合同》、《修理项目完工验收单》与航海日志记载相互矛盾，航海日志记载的原被告认可的船舶进坞修理期间船舶系停泊在外锚地。检察院的介入和调查对自贸区法庭查清虚假诉讼起到了关键作用，该案最后得到正确判决。

再做出是否予以监督的决定。例如，对于终审判决在认定事实或者使用法律方面存在一定错误，但实体判决结果正确或者相对公正，以及终审判决存在程序瑕疵，但未影响实体判决结果的，应该作出论证和评估，一般不宜抗诉。但可以以检察建议的形式向审理法院提出，帮助其完善审判活动，维护审判活动的有序运行；又如合同法第三百零八条是否适用于海上货物运输合同，一直是理论研究与审判实务中争议很大的问题，也是当事人容易申诉的热点。如甲公司因货物运错目的地要求改港或者退运，造成承运人乙公司相应的损失而向一审海事法院提起起诉，一审法院认为甲公司明知目的港无人提货而未采取措施处理，致使货物被海关拍卖，其举证也不足以证明乙公司未尽到谨慎管货义务，因此判决乙公司不承担责任。二审法院未审慎核实船舶抵押人身份，改判甲公司承担50%的相关损失，后被最高人民法院改判，再审改判支持了一审法院和外方当事人乙公司的抗辩，认为二审判决缺乏事实依据，适用法律不当，应予纠正。此类纠纷发案率很高，适用法律和证据采信都会有错误，虽然至目前还没有成功监督的案例，但今后也是检察机关需要关注的重点。

3.通过参与典型案例办理提升监督效力

2020年3月18日，宁波海事法院审监庭通过“云上法庭”公开开庭审理一起双方当事人均为外国主体、涉及纠纷

标的额约 2.18 亿元人民币的船舶碰撞索赔案件，该案因涉及船舶漏油污染海洋环境而备受关注。这个案例是浙江省嘉兴检察机关介入对一起重大涉外涉油污船舶碰撞案件的司法实践，正是因为检察机关的介入，此案从一件船舶碰撞损害赔偿责任纠纷案牵扯出海洋环境损害索赔等多起诉讼。案件既涉及原诉中的海事赔偿责任限制基金，也涉及到反诉中的油污损害赔偿责任限制基金能否适用的问题，在审理和检察监督中，嘉兴市人民检察院和法院共同启动专家咨询制度，船舶保赔协会、中国油污理赔基金中心及有关海洋、渔业、生态资源职能部门及其他国内外机构及行业广泛参入，由于证据到位，该案设立油污基金案件成为全国首例涉外油污损害赔偿责任限制基金案件，同时宁波海事法院并案审理与此案相关联的船舶碰撞损害赔偿责任纠纷、船载货物损害赔偿纠纷、油污清防污费用索赔、海洋环境损害索赔的 6 起案件，涉案标的超 5 亿元人民币[11]。嘉兴检察机关的介入有效提升了检察机关的监督影响力。

4. 通过听证和调解尝试检察保障

从宁波海事法院近几年的审判实践看，典型海上保险合同纠纷占 46%，这类纠纷较大部分能够以调解方式结案。如保险公司参与诉讼的形式，较多表现为理赔后取代被保险人的法律地位，以自己的名义向法院提起诉讼，向违约方或事

[11]中国长安网,涉案 2.18 亿元！宁波海事法院“云上法庭”审理涉外涉油污船舶碰撞案,2020-4-3。

故责任方索赔，即保险人代位求偿纠纷。主要的基础案由是海上货物运输合同纠纷和船舶碰撞、触碰损害责任纠纷，且审理难度较高，近五成案件需要以判决结案，判决案件的三成因上诉进入二审。海上保险有其特殊性，由于海上风险的多样性与复杂性，加上证据固定困难，保险公司与被保险人对海上保险合同条款及特殊用语在理解上存在差异，从裁判结果看，保险公司完全胜诉的比例并不高[12]。因此这类案件也是检察机关以中立的角度参与联合调解的很好的视角，检察机关可以充分利用线上线下多种途径，能动司法，有效化解矛盾，切实体现检察机关的海事司法服务和保障。舟山市定海区检察院与海事、生态环境、自然资源和规划局、港航局等行政部门会签文件，联合成立了“护渔、护海、护岛”的“三护”平台。近日该平台将计划扩至海事法庭，平台的运行除了监督海事行政外，很大一部分功能是参与社会矛盾联合化解，构建检察机关与各行政部门联合参与涉海、涉渔、涉岛案件矛盾纠纷化解和船员利益保护，具有很好的现实意义。

三、海商事民事监督的重点和难点

（一）海商事民事监督的重点

1.海上纠纷类案件的主要争议点。重点在过错程度的确定、船舶碰撞责任比例划分等方面予以审查；对海上保险产

[12]宁波海事法院，宁波海事法院发布近五年海上保险纠纷审判情况，海商法资讯 2018-11-07。

生的推定全损、委付、“无论损坏与否”等特殊制度的适用和认定，以及共同海损、海难救助是否构成、保险人行使代位请求权的审查[13]；对于海事赔偿责任限制重点要审查其中的适用匹配度，如与海相通并在海域与内河通行的内河船是否适用海事赔偿责任限制、船舶经营人的范围界定、国内油污损害海事请求的法律适用；船员劳务合同纠纷案中要重点审查是否存在错误扣押，以及船员是否恶意串通，代理人是否参与虚假诉讼等[14]。

2.船舶碰撞过失责任的认定。《海商法》规定，对于因船长和船员明知可能发生碰撞而轻率作为或不作为所引起的，不影响船舶所有人等责任主体享有责任限制的权利。因此检察机关审查重点是对船舶所有人过失责任的界定。按照海商法规定，在有实际经营人的情况下，船舶所有人已将船舶的占有权让渡给实际经营人，不再对船舶行使实际管理和控制，就不应该对船舶碰撞损害承担赔偿责任，除非在此过程中其有过失责任，且其过失与损害结果之间有因果关系，如交船前船舶没能提供适航船舶因存在潜在缺陷而致相撞，或在其对船舶管理和控制期间，因船长、船员驾驶和管理上的过失导致碰撞，或系沉船导致碰撞。如果排除了这些，船舶所有人就没有过失责任，就可享受责任限制的权利[15]。

[13]司玉琢，海商法专论，中国人大学出版社，2018.5，第36页。
[14]司玉琢，海商法专论，中国人大学出版社，2018.5，第35-38页。
[15]上海海事法院，上海海事法院精品案例选，2019年10月，第264-390页。

3.船舶融资租赁责任主体的认定。船舶融资租赁的主要目的在于融资，鉴于租赁船舶及出卖人均系根据自己需要自主选定，如果船舶存在瑕疵或不符合约定的使用目的，出租人不承担任何保证责任。因此审查的重点是船舶融资租赁人为碰撞责任主体时是否承担责任，甄别点是，融资租赁合同非以是否登记为界，登记与否并不影响碰撞责任主体的认定[16]。如果船舶融资租赁人对船舶处于占有、使用、经营期间，就应该按照《合同法》第246条之规定承担责任。

4.光船租赁合同的效力认定。最高人民法院《关于审理船舶碰撞纠纷案件若干问题的规定》第4条规定船舶碰撞系在光船租赁期间并经依法登记的，由光船租赁人承担赔偿责任。光租租赁权通过登记，被法律赋予了物权的对世性、排他性和优先性，不仅可以对抗光船出租人即船舶所有人，而且还可以对抗合同之外的第三人。因此我们要把对光租船舶是否经过登记作为审查重点，正视对出租人将船舶所有权转让于第三人的情形的关注，以“买卖不破租赁”的原则认定原光船租赁合同的效力。光船租赁经登记对抗的是第三人对其租赁权的侵犯，对于船舶碰撞中遭受损害的受害人不具有对抗力，这是我们在监督中必须厘清的。

5.越权代理的责任认定。近年来随着大型和超大型集装箱的出现，以及冷藏、灌状、开顶等特种货物专用箱的大量

[16]上海海事法院，上海海事法院精品案例选，2019年10月，第279—282页。

增长，船舶营运业租赁业、海运经纪人、船舶代理人、货运代理人应运而生。因此我们要关注是否存在越权代理的问题，如果存在越权代理，被代理人对代理行为不承担责任。此外还要查清货物代理人是纯粹受委托人的委托从事货物代理，还是以货物代理人名义自己承运，如果是后者，其身份就类似于无主承运人，而不是货物代理人，相关责任认定就完全不一样[17]。

（二）海商事民事监督的难点

1.责任限制的认定与鉴别

责任人在何种情形下享有或者丧失海事赔偿责任限制权利，直接决定了海事赔偿责任限制制度能否适用，是海事司法实践中涉及责任限制案件中不可回避的核心问题。《海商法》第59条关于发生不合理绕航的情况，承运人往往会丧失责任限制的权利。实践中，沿海小型船只超航区、超载，甚至实施其他更为严重的违法航行行为屡见不鲜，而其责任限额却往往较低，远远无法弥补发生事故后造成的实际损失，而实际严重违法航行行为的责任人从违法航行经营中非法牟利[18]。因此，有效识别责任限制的前提和条件就显得非常重要。实践中我们应关注以下几个方面：一是同一事故的多方就各自船舶分别设立海事赔偿责任基金时，各基金下债权人的债权金额及该债权能否在基金下受偿；二是各方在碰

[17]胡美芬、王义源，远洋运输业务，第四版，人民交通出版社，2005.12，第5页。
[18]上海海事法院，上海海事法院精品案例选，2019年10月，第16页。

撞事故中过错比例与货损案件债务人是否有权限制赔偿责任，以及是否适用“先抵销，再限制”原则[19]；三是连环碰撞中是一次事故还是两次（或以上）事故，过错比例如何，因果关系是否中断[20]。实践中应该抓住三点，即：责任人本人重大主观过错、违法航行中的船舶所有人、经营人是否具有重大主观过错、严重违法航行行为的责任方丧失海事赔偿责任限制权利是否能促进未来航行安全。

2.连带责任的认定与鉴别

审查连带责任问题时，我们要关注到两点，一是法律的适用，二是举证责任。连带责任的认定既牵涉到特别法和普通法的适用，又牵涉到海商法与国际公约的竞合，只有海商法就同一事项没有规定的，才产生普通法补充的问题，这里的普通法主要指民法典和侵权责任法。如船舶所有人与光船承租人是否承担连带责任，关键要看双方是否构成共同侵权，必须是法律明确的才能适用（《民法通则》第130条）[21]。又如实际承运人未经承运人委托，私自无单放货，就要承担连带责任[22]。如2013年3月19日“浙嵊97506”轮开往舟山嵊泗途中与毛某实际出资、所有经营的未经海事主管登记，无检验证书、船员无适任证书的“三无”砂石船“台联海18”轮发生碰撞，造成“台联海18”轮沉没、船6人死亡、2人

[19]根据《中华人民共和国海商法》的规定，享受责任限制的人就同一事故向请求人提出反请求的，双方的请求金额应当相互抵消，赔偿限额仅适用于两个请求金额之间的差额。
[20]上海海事法院，上海海事法院精品案例选，2019年10月，第205—215页。
[21]上海海事法院，上海海事法院精品案例选，2019年10月，第272—278页，
[22]司玉琢，海商法专论，中国人民大学出版社，第125—133页。

失踪的重大事故。“浙嵊97506”轮船籍港舟山，登记有船舶所有人为陈某，船舶经营人为江山公司。经海事、渔监主管机关核查，该轮在涉案事故航次从未在嵊泗海事处办理过船舶进出港签证手续、船员配备和持证情况严重不满足《船舶最低安全配员证书》要求。江山公司仅系登记的船舶经营人，而非实际经营人。上海海事法院经审理认为，作为“浙嵊97506”轮依法登记、对外公示的船舶经营人，江山公司未尽到安全管理职责，应与船舶所有人陈伟承担70%连带赔偿责任[23]。

3.法律意义上因果关系的认定与鉴别

课题组所在的宁波舟山港海域岛礁、航门众多，是我国沿海南北航运的必经之地，商渔船交会概率高，各类水上交通事故高发多发，在全国占有较大比例。因此两类案件多发，一是船舶碰撞案件，二是运输合同案件，在此两类案件中船舶的适航性和船长船员是否尽到瞭望和合理避碰，以及鉴别这几者与碰撞结果之间的因果关系非常重要。特别是在多船碰撞案件中，要区分前后碰撞是否存在必然的因果关系、多船会遇局面下连环碰撞船舶间是否存在直接避让关系。主要争议焦点是两次碰撞之间是否存在法律意义上的因果关系，不仅要求前次碰撞是后次碰撞发生的原因，还要求这种原因具有法律上的可归责任[24]。包括如何认定各方应当承担的责

[23]上海海事法院，上海海事法院精品案例选，2019年10月，第12-14页。
[24]上海海事法院，上海海事法院精品案例选，2019年10月，第29-31页。

任比例，以及因果关系是否发生中断，如若未中断，则不管发生几次连续碰撞，都视为一次事故。又如，对于航运市场的“套约”[25]行为需要以与船公司签署运输协议的大客户的名义出运货物，这样就有了擅自修改提单内容的可能，从而产生货物所有权归属的争议问题。在此，我们要仔细审查其中的因果关系，“套约”提单不影响对承运人无单放货的责任认定，只要授权打印提单的公司确认实际货主的身份，且实际货主仍持有一式三份正本提单，那么该实际货主虽然在船公司的内部系统中未被记载为托运人，其仍有权就无单放货向作为承运人的船公司主张权利[26]。

4.对免责抗辩效力的认定与鉴别

对于承运人滥用“合同自由”原则的现象，英美法通过一系列判决创造了“原始首要义务原则”，即：谨慎照管货物的义务和航程开始时提供适航船舶的义务，承运人违反这两项义务并造成损失的发生，将不再适用相关免责规定。我国海商法47、48、51条对适航义务、管货义务和免责事项作出了规定。如对于“天灾、海难”免责抗辩的审查，我们要根据《海商法》中关于“天灾、海难”免责抗辩的相关规定，与船舶适航性、管货义务及管理和驾驶船舶过失等因素

[25]随着航运市场竞争日益激烈，为了获得大客户的承运权，船公司往往会与这些大客户签订运输协议，承诺给予更优惠的运价，而没有协议运价的出口商或货代则无法取得如此优惠的报价。实践中随之出现了“套约”行为，即在系统中将“托运人”栏中的托运人修改成与船公司有特别优惠运价协议的公司，以享受该公司与船公司之间的协议运价，提单生成之后，再将“托运人”信息改为真实的托运人。“套约”的做法会使船公司系统中显示的某次运输的托运人与客户手中持有的正本提单上记载的托运人不一样。

[26]上海海事法院，上海海事法院精品案例选，法律出版社，2019.10，第39-42页。

有机联系、合并分析，对海况是否构成“天灾、海难”以及事故与海况之间的因果关系，审查造成货损的决定性原因是“天灾、海难”，还是承运人可免责的过失或不可免责的过失。在多种原因共同作用的情况下，按照各原因力的比例判定责任承担。

5.无单放货纠纷中责任认定与鉴别

在海上货物运输合同关系中，承运人的基本义务就是在卸货港完好地向正本提单持有人交付全部承运货物。承运人无正本提单交货，构成违约。因此，我们审查的重点是收货人是否先付清货款再取得货物。如果承运人在未收回正本提单的情况下向收货人放行货物再收回货物并擅自回运，既损害了提单的可靠性，破坏了国际贸易规则，使托运人订立的国际贸易合同和海上货物运输合同的目的全部落空，正本提单持有人的合法权益将得不到保护，那么，就应该认定承运人承担违约责任，以此制止该类情况的发生，形成维护航运秩序的司法导向[27]。

四、海商事民事监督的路径探索

(一)个案监督：以不服法院判决的申诉和执行异议为入口

在当前立法尚未授权的情况下，检察机关可以尝试通过受理当事人不服法院判决的申诉和执行异议为突破口展开

[27]上海海事法院，上海海事法院精品案例选，法律出版社，2019.10，第58-67页。

个案监督。如在船舶碰撞案件中直接造成的损害后果可能有很多，包括碰撞船舶自身的损害、船载货物的损害、碰撞船舶之外财产的损害以及人身的伤亡，还可能造成一艘或者两艘碰撞船舶出现漏油，因漏油而产生了污染损害。对于碰撞直接造成财产或人身损害并同时造成油污时的责任，在目前法律制度下，通常涉及两种侵权责任：一是船舶碰撞双方（或多方）的碰撞侵权责任；二是漏油方对油污受害方的污染侵权责任。对船舶碰撞致漏油污染损害的责任性质以及船舶碰撞致漏油污染侵权行为与船舶碰撞侵权行为关系的认识，实践中莫衷一是。“东海209”轮与“闽燃供2”轮在珠江伶仃洋水域发生碰撞，造成“闽燃供2”轮的船体破裂，船上所载的重油发生泄漏，进而对部分水域和海岸造成污染。该案一审判决认定属环境污染纠纷，污染是由“闽燃供2”轮所载重油泄漏所致，故其所有人为环境污染的责任人，应对油污损害承担赔偿责任。由于油污不是来自“东海209”轮，故其所有人东海公司不承担油污损害赔偿责任[28]。根据该判决，可以理解法院认为船舶碰撞致漏油污染侵权行为与船舶碰撞侵权行为是两个不同的侵权行为。二审则认为本案污染损害系由双方船舶互有过失碰撞所致，故两船的所有人均为海洋环境污染损害的责任人，应按其各自应承担的责任比例对船舶碰撞所造成的油污损害承担赔偿责任。根据该判决，

[28]“闽燃供2”轮责任限制案，（1991）广海法事字151号，广州海事法院。

可以理解法院认为当事方承担的碰撞致漏油污染损害的责任仍属于船舶碰撞侵权行为的责任，按照船舶碰撞侵权法律确定。

此类型案件一旦提出监督意见具有重要的指导意义，从归责原则来看，船舶碰撞侵权行为的侵权责任适用过错责任原则，漏油污染环境的侵权行为的侵权责任适用无过错责任原则。对船舶碰撞造成漏油污染而发生的侵权，适用于相关国际公约时，公约已经明确只有在完全是因为第三方的原因造成的漏油污染外，污染侵权责任就由漏油的船舶承担100%的污染侵权责任，而不能适用《海商法》关于船舶碰撞造成第三方财产损失责任承担的规定，即不能按照碰撞过错比例来承担油污责任。

对于此类案件，检察机关开展监督时还应关注因污染引起的后续生态修复，因为从该类案件的判例看，海事法院较少有启动海洋环境污染损害赔偿的案例，检察机关介入后以法院作出损害赔偿责任认定为前提，必要时与公益诉讼监督部门联合，启动生态修复程序。

(二)类案监督：从判例看同案不同判问题

司法实践中，我们要树立类案监督的理念，对在案件审查中发现存在以下情形的，应当提出监督意见。一是生效裁判之间存在法律适用分歧的；二是在审案件作出的裁判结果可能与最高人民法院生效裁判确定的法律适用原则或者标

准存在分歧的；三是与《最高人民法院关于建立法律适用分歧解决机制的实施办法》有原则性冲突的。检察机关在对海商事诉讼监督的探索阶段，可以根据地方法治环境和与海事法院的工作对接情况，按照最高人民法院实施办法的意见精神，同步跟进，与海事法院建立信息报备制度。

(三)程序性监督：探索海商事法律监督特别程序

《海事诉讼特别程序法》要求对海商事案件的审理根据特别程序，如《海商法》第 11 章对海事赔偿责任限制规定了配套程序，但仅对设立海事赔偿责任限制基金程序，包括债权登记、债权确权诉讼、基金分配和受偿程序做出规定，却未对责任限制权利的确认程序作出规定，1999 年施行的《海事诉讼特别程序法》也仅规定责任限制基金程序而没有规定责任限制权利确认程序，而是留待法院实体审理时解决该问题，致使各法院审查责任限制权利的程序极不统一。这些问题在“静水泉”轮沉没引发的系列案件中得到了集中显现。三峰船务公司与青岛海运公司（系“静水泉”轮所有人）合作经营大连到广州的沿海运输，“静水泉”轮在山东水域沉没，青岛海运公司在青岛海事法院申请并设立了责任限制基金。由于运单是由三峰船务公司签发的，部分货主又分别在大连海事法院和广州海事法院对三峰船务公司提起水路货物运输合同下的货损索赔[29]。就海事赔偿责任限制问题，

[29]“静水泉”轮责任限制案，（2001）青海法海事初字第 49 号，青岛海事法院。

三家海事法院均认定三峰船务公司有权享受责任限制，但是，行使终审权的三家高级法院却都以无管辖权为由不受理三峰船务公司责任限制请求。在该系列案中，三家海事法院和三家高级人民法院对于责任限制程序问题所表明的不同观点，导致同一当事人受到“相互矛盾的生效判决约束”，一定程度上损害了法律的威严和司法的权威性。2003 年 6 月 9 日，最高人民法院关于在答复山东省高级人民法院“关于招远市玲珑电池有限公司与烟台集洋集装箱货运有限公司海事赔偿责任限制申请一案请示的复函”〔(2002）民四他字第 38 号〕，“根据我国《海商法》和《海事诉讼特别程序法》规定，申请建立海事赔偿责任限制基金可以在诉讼中或诉讼前提出海事赔偿责任限制属于当事人的抗辩权，申请限制海事赔偿责任，应当以海事请求人在诉讼中向责任人提出海事请求为前提，不能构成独立的诉讼请求。”[30]。这类案件应该也是我们监督的重点。

(四)融合性监督：监督中保障和保障中监督

从宁波海事法院相关工作数据显示：2018 年一审审结海事海商事案件调解撤诉率 53.1%，民事调解案件自动履行率 11.77%，同比分别下降 11.94%和 7.48%[31]。从以上数据可以发现，调解和撤诉率非常之高，从而说明当前民事诉讼从对抗走向调解。检察机关在进行监督的时候，更多是为了保障

[30]最高人民法院关于招远市玲珑电池有限公司与烟台集洋集装箱货运有限公司海事赔偿责任限制申请一案请示的复函〔(2002）民四他字第 38 号〕。
[31]宁波海事法院，宁波海事法院 2018 年白皮书。

法律的统一实施，正是监督理念的转变，检察机关的民事监督体现的更多是“协同型”监督，而非传统意义上的“对立型”监督。检察机关的监督并不是为了阻碍当事人诉权的自由行使，也不是为了破坏审判权的独立性，而是为了对当事人权利予以救济、维护审判活动的有序运行。因此要有依法监督、善于监督的理念，以保障诉讼参与人合理有序行使诉权、避免出现审判权运行脱轨为目标，同时充分尊重法官自由裁量权。对行使过程中有合理依据，但在比例分配方面稍有偏差的案件，一般不宜过度干涉和进行监督，以维护法院裁判的稳定性。对于那些超出必要限度、明显违反公平原则的案件依法开展监督。

Procuratorial supervision and research of maritime and commercial litigation

—— takes the judicial practice in Ningbo-Zhoushan Port

Qian Hanfei and Zhou Lujing[1]

Abstract: The lack of the legislation of the procuratorial supervision system of maritime and commercial litigation leads to the absence of the procuratorial supervision system in the field of maritime and commercial litigation, and it is urgent for the procuratorial organs to establish a comprehensive and systematic supervision mode. The author collected the national maritime court judicial judgment cases, summarizes the high incidence, to establish three-dimensional procuratorial supervision point, and in ningbo maritime court and procuratorial benign interaction, practice exploration, as the breakthrough point, based on the focus and difficulties, discuss in the civil and commercial law system into the value of procuratorial supervision, explore the procuratorial organs in the field of commercial civil litigation how to carry out the new path of rational supervision and scientific

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supervision.

Key words: maritime and commercial litigation procuratorial supervision of false litigation ship collision

With the rapid development of Marine economy, maritime business presents the characteristics of diversified business models and diversified ship business entities. Those attached to the ship is no longer one or two simple subjects, but gradually becomes a large interest group, and the maritime business litigation continues to remain high. Take Ningbo-Zhoushan Port as an example, all kinds of international cargo ships entering and leaving frequently, busy fishing operations, heavy cargo and fishing boats, frequent typhoons, frequent accidents, personal and property damage disputes and complicated legal relationship.For the annual maritime and commercial cases with an increasing trend, China's civil legal supervision over the maritime and commercial field has been in a blank. In the current situation that maritime and commercial legal supervision organs have not been clear, we need to

further clarify and improve relevant laws, but also need procuratorial organs to correctly understand the role of the transition stage, coastal procuratorial organs should not only boldly explore the first, but also adhere to the concept of judicial humility and standardize supervision.

First, the current judicial context of the dilemma of the sea commercial litigation supervision system

(1) The blank of theory brings about the dilemma of judicial practice exploration

Although the revised Civil Procedure Law and the Rules for Civil Procedure Supervision of the People's Procuratorate give the procuratorial organs a clear procuratorial supervision power. However, the Civil Procedure Law does not make special provisions on the supervision of maritime and commercial litigation. From the focus of sea commercial law trial and the special procedure of sea litigation, the scope of maritime procuratorial supervision, way, procedures, burden of proof, so the current civil procedure law draws the outline of the procuratorial supervision system and sea commercial litigation procuratorial

supervision system is not fully integrated, to the legal system design level of correction and perfect.

(2) The guiding case system has not yet been formed in judicial practice

From the national perspective, the current procuratorial supervision of maritime and commercial litigation only stays on individual cases, or only one of the litigation links, and a comprehensive and systematic supervision mode has not yet been formed. Since the supervised climate has not yet been formed, the supervised space is relatively narrow. The origin of commercial law in Shanghai includes not only the Maritime Business Law, but also the international conventions and conventions that China has joined, which challenges the ability of procuratorial supervision.

(3) Noncorrespondence in jurisdiction and conflict with the system of integrating three trials

Maritime courts belong to special courts, and at the same level as the intermediate people's courts, and there is no grass-roots maritime court below. At the case level, the provisions concerning the jurisdiction

of the Civil Procedure Law are not coordinated with the institutional establishment of the procuratorial organs. The establishment of Chinese procuratorial organs is divided according to administrative regions, while maritime courts are established across regions, usually to exercise jurisdiction in time, but China's Civil Procedure Law does not stipulate the supervision of grass-roots procuratorates over the dispatched courts. The incorrespondence of jurisdiction objectively leads to the poor play of legal supervision power, and also blocks the appeal channels of the parties.

(4) The special setting of maritime and commercial proceedings challenges the procuratorial supervision

Maritime and commercial litigation applies to the maritime litigation special procedures, whether the procuratorial supervision needs to establish the corresponding special procedures for maritime and commercial litigation legal supervision, is a problem worthy of paying attention to and exploring.

Second, the practice of maritime and commercial litigation supervision

(1) Judicial practice in the Ningbo-Zhoushan Port area

[1]Taking the cases heard by Ningbo Maritime Court as the main reference object, the basic situation of case handling of Ningbo Maritime Court in recent years: from January 2012 to December 2018, the number of maritime cases accepted by Ningbo Maritime Court ranged from low to high, which reached the peak in 2015, and gradually leveled off in recent years. Among them, in 2018,4,620 cases, the amount of 4.589 billion yuan, a total of 4,703 cases, and the amount of 4.096 billion yuan. When 1,693 new execution cases were collected, the actual enforcement rate of the first execution cases was 68.95%, the final execution rate was 14.05%, the actual implementation rate was 31.12%, 192 ships were seized, and 37 ships were sold. Among them, three dispatched maritime courts accepted 2,308 cases, and 2,379 cases were tried (handled), accounting for 49.96% and 50.58% of the total cases collected and concluded by the whole court respectively. Among the three maritime courts, Zhoushan Court has the highest acceptance rate,

[1]Ningbo Maritime Court, 2018 Zhejiang Maritime Trial Report, China Bankruptcy Law Forum 2019-03-1.

accounting for about 60%. Because at present, the maritime courts are basically handling maritime cases in the exploration stage of the integration system, which shows that the maritime court has undertaken the main task of handling maritime affairs.

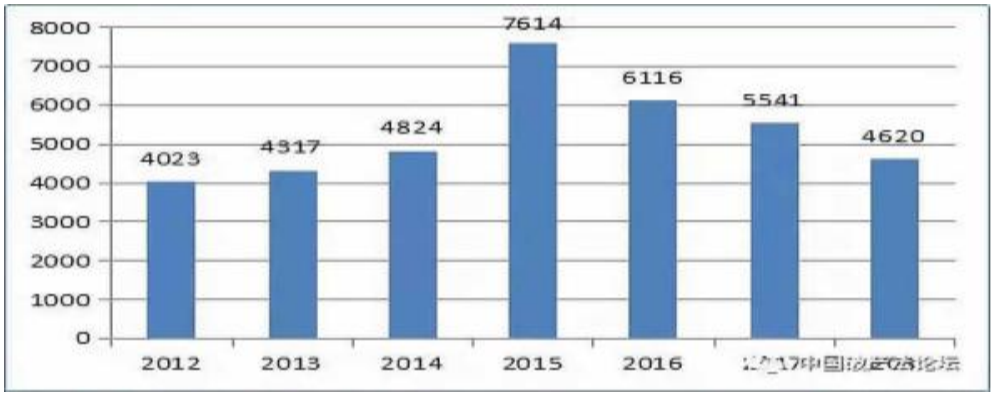
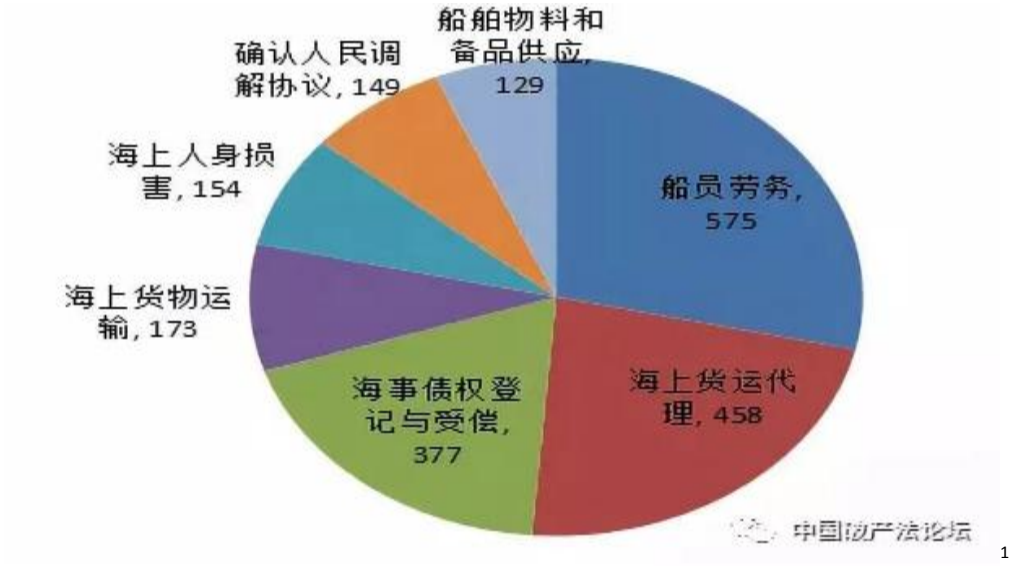


Figure 1: Number of cases received of Ningbo Maritime Court from 2012-2018



[1]

Figure 2: Cake chart of over 100 cases accepted by Ningbo Maritime Court in 2018

[1]Ningbo Maritime Court, 2018 Zhejiang Maritime Trial Report, China Bankruptcy Law Forum, 2019-03-1.

To sum up in the two pictures, the number of maritime and commercial cases shows a trend of increasing year by year, but accordingly, the civil legal supervision of the maritime and commercial field has been in a blank. According to the original legislative intention of China's Constitution and the Civil Procedure Law, the procuratorial organs, as legal supervision organs, and their supervision scope covers all areas of litigation, including each litigation link closely linked to the litigation process. The revised Civil Procedure Law has reconstructed the civil procuratorial system, and on the premise of solving the civil disputes between the parties to the maximum extent, further clarifies the legal supervision of the civil judicial power by the procuratorial organs.

(2) Problems existing in maritime commercial litigation

The author consulted the total of 600 cases in 10 maritime courts involving maritime business law and nearly 50 cases through the judicial judgment network. The cause and nature of the cases involved basically cover most of the types of cases in the field of maritime

business law. Compared with ordinary civil cases, these cases showed the characteristics of large targets, long trial cycle and many extended cases. Among which 22 were remanded for retrial, 18 first instance cases were changed, 3 cases in the second instance were changed by the Supreme People's Court, and 6 were changed through trial supervision procedures. These reflect four problems:

1. assigns a different burden of proof

[1]Many of the participating countries in the Hague Rules are shipping powers, and their avoidance attitude towards the distribution of the burden of proof of airworthiness has led to different ways for the distribution of the burden of proof in the world. Our Hai Law follows the general litigation principle of "who claims and who provides", which is brings detrimental to some vulnerable victims. Because the maritime situation is very complex, most of the evidence cannot be obtained by the victim alone, such as the burden of proof of the carrier's delay in delivery and the Maritime Law, the distribution of the

[1]Si Yuzhuo, "Hague Rules" and "Hamburg Rules" [J]. Journal of Dalian Maritime Shipping Institute, 1978, (2).

burden of proof of airworthiness; the burden of proof of force majeure exemption and the distribution of the burden of proof. Therefore, it should be urgent to improve the distribution of the burden of proof of maritime cargo damage claims and clearly stipulate the burden of proof of airworthiness, so as to improve the distribution of inconsistent and non-standard burden of proof in judicial practice. In practice, the application of the clear burden of proof stipulated in the Hai v Law is correct, and whether the inversion of proof is one of the priorities of the procuratorial organs.[12]

Insufficient basis for applying the special procedure in the 2. trial

From the perspective of judicial practice, whether the application of special procedures in accordance with the law is the focus of the examination of procuratorial organs, mainly reflected in the following aspects: First, the application of registration and compensation, notice and announcement

[1]Paragraph 1 of Article 50 of the Maritime Law stipulates: "For the delivery at the agreed port of unloading within the clearly agreed time, the goods shall be a delay in delivery."
[2]Mo Weigang. Pour the burden of proof on several maritime cases [J]. Journal of Guangxi Research Institute of Political Science and Law Management Cadres, 2004 (4): 106-107,114.

procedures and the procedures for compensation liability. Second, whether the guarantee procedures involved in maritime claims preservation, maritime injunction and maritime evidence preservation are suitable. Third, whether the establishment of the limitation of maritime compensation liability fund and advance enforcement procedures are justified. Fourth, the time limit for detaining the goods on board under maritime claims preservation and whether they are equivalent to the amount of the ship's claims. Five is whether the auction procedure is legal, such as whether the bidders are malicious collusion, otherwise the auction is invalid. Sixth, whether the circumstances in Article 22 of Article 21 of the Maritime Procedure Law and the five circumstances where the maritime court can detain the ship concerned as stipulated in Article 23 are correctly applicable.

3. is unbalanced

Because of the particularity of the maritime law and the special procedure of the maritime law stipulate the priority preference relationship between ship liens and the security rights of other ships. The

procuratorial organ, in the examination, should focus on examining whether the surplus distribution of the maritime priority guarantee is reasonable. The Maritime Law stipulates that the ship priority has a higher priority than the ship mortgage, after the ship lien is compensated, but whether the request for the repair fee necessary to continue sailing after the sea damage accident should have a higher priority is a problem, and can also be used as the main point of the protest of the procuratorial organ. Secondly, the priority alignment relationship between the ship priority system and the restriction system of maritime compensation liability. Whether both restrictive and non-restrictive claims guaranteed by ship liens should be set prior to the alignment of the liability limitation fund are different, including the timely realization of maritime liens in insolvency proceedings. In addition, whether the seizure and prior execution of a ship meets the situation in article 21, article 22 of the law is also the focus of attention and review.[12]

[1]Zhang Liying. Analysis of the legal nature of maritime lien [J]. A Comparative Method Study, 2004, (4).
[2]Li Luling. Reflections on the definition of a ship lien under the Maritime Act [J]. Law, 2009, (2).

4. similar cases

In recent years, there have been more and more "different identical judgments" in judicial practice, along with the same problems. For example, the following case is worth discussing whether different judgments and procedures of the same case: on April 1,2014, Zhejiang textile printing and dyeing Co., Ltd. submitted five civil complaints to Ningbo Maritime Court, all of the defendants are an international freight forwarding Co., Ltd. The Ningbo maritime court heard the dispute case of the five maritime freight forwarding agent contracts between the same plaintiff and the same defendant, made a judgment on one of the cases and suspended the lawsuit on the other four cases, on the reason that the four cases should be based on the trial results of that case. But then in the case has not been concluded, recently said to resume the four cases. Such cases can not have a negative impact on the unified implementation of laws in China, but the procedural defects should be self-evident. Judicial practice of judge discretion has been widely criticized, plus Shanghai commercial case guidance system reality

weak foundation and conflict with international conventions, procuratorial organs should pay full attention to the supervision of such cases, focus on the maritime court apply the legality and rationality of relevant proceedings, in addition to the judges whether the illegal or judicial investigation.[1]

(3) Practical exploration

Ningbo Maritime Court Zhoushan Court heard cases involving maritime and commercial disputes accounted for a very high proportion of cases. So the author explore zhoushan and jiaxing organs of zhejiang province, for example, especially in recent years, zhoushan district two levels of procuratorial organs take the initiative to participate in ningbo maritime court zhoushan court false litigation, case clues transfer, joint mediation and ecological release, civil public interest litigation, constantly explore the maritime and commercial tentacles of procuratorial supervision.

1. refined supervisory points through exploration

[1]Feng Weixiang, Zhejiang Legal Online, November 11,2015.

[1]Emphasis will be placed on the application of ship priorities and the business environment of private enterprises and the protection of crew interests. For example, the provisions on maritime priority draw from international conventions, but does not stipulate on the priority of ships under construction. The revision of the draft of the maritime property chapter, in addition to the word "in ship operation" to "in ship operation", also specially added the construction ship section, stipulated that the construction ship in the trial process of crew wages, personal injury compensation request, maritime relief compensation request, infringement of property compensation request, the provisions on maritime priority. To this end, in view of the characteristics of many ship disputes under construction in coastal cities, the procuratorial organs understand the causal relationship of the ship dispute cases through accepting the reports and appeals

[1]The plaintiff Zhoushan Dinghai a shipyard (hereinafter referred to as the shipyard) v. the defendant Zhoushan a Shipping Co., Ltd. (hereinafter referred to as the shipping company) in arrears of ship repair fees 3.8 million yuan, request ningbo maritime court free trade port maritime court to support the repair fees, liquidated damages, dock fees, safety fees, and claims that it has a lien. During the trial, the court of the Free Trade Zone found that the original and was told that the facts were inconsistent with the facts identified by the court and there were malicious collusion, so it transferred the clue to the Dinghai District People's Procuratorate of Zhoushan City. After investigation, the People's Procuratorate of Dinghai District of Zhoushan City found that the Ship Repair Contract and Repair Project Completion Acceptance Form of the original defendant were inconsistent with the log, and the ship approved by the original defendant was at the outer anchor during the repair. The intervention and investigation of the procuratorate played a key role in the free trade zone court to identify the false litigation, and the case was correctly decided.

of the parties, supervise the ship auction link in the cases, and focus on the work of resolving conflicts and interest litigation and judgment. First, cooperate with the maritime court to investigate false litigation cases. Second, Marine protection and ecological restoration. For example, in 2019, Zhoushan People's Procuratorate of Zhejiang Province filed a series of civil public interest lawsuits to the maritime court of Ningbo. At the same time, the ecological restoration compensation mechanism was launched, becoming the first case to Sue against a maritime court in China, which has achieved good social results. Third, do a good job of interest litigation to stop the visit. Such as in 2019 Zhoushan Dinghai district procuratorate accepted a ship dispute case complaint, reflects the complainant (ship owner wang mou) a few years ago due to poor management during shipping bankruptcy, owe a lot of debt, including crew wages and repatriation fees and social security, because of the debt, the two ships are not enough in debt, the maritime court put its cooperation with others to build another ship in construction also included in the auction, think the

maritime court may waste law. After understanding the situation to the maritime court about the situation, the court took many pains to make interpretation, carefully explained the scope of application of maritime priority, and finally eliminated the complainant's idea of continuing to appeal and paid the salary of the relevant crew as scheduled.

2. makes a logical analogy through arguments

Procuratorial organs should include the necessity standard in the supervision standard, take into account the legal standards and supervision social effect, especially in maritime and commercial judgment cases, should according to the case of judicial policy, international practice, social background factors to fully review the necessity of supervision, the relevant factors after comprehensive consideration to make whether to supervision. For example, if the final judgment has certain mistakes in the determination of facts or the use of the law, but the entity judgment results are correct or relatively fair, and the final judgment has procedural defects, but does not affect the entity judgment results, it should be argued and

evaluated, and it is generally inappropriate to protest. However, it can be proposed to the trial court in the form of procuratorial suggestions to help them improve the trial activities and maintain the orderly operation of the trial activities. For example, whether Article 308 of the Contract Law is applicable to the maritime goods transport contract has always been a controversial issue in theoretical research and trial practice, and a hot spot for the parties easy to appeal. If the company required to change port or return the wrong destination, causing the carrier B corresponding losses to the maritime court in the first instance, the first instance court that the company knows the port and failed to handle, the goods auctioned by the customs, the proof is not enough to prove that B did not care to manage the obligation of goods, so judgment B is not liable. The court of second instance did not carefully verify the identity of the ship mortgagor, and changed the judgment of Company A to bear 50% of the relevant losses, which was changed by the Supreme People's Court. The retrial supported the defense of the court of first instance and the foreign party Company B, and believed

that the judgment of the second trial lacked factual basis and the law was improper and should be corrected. The incidence rate of such disputes is very high, and there will be mistakes in the application of law and evidence collection. Although there is no successful supervision case, it will also be the focus that the procuratorial organs need to pay attention to in the future.

3. improves the effectiveness of supervision by participating in typical case handling

On March 18,2020, the Trial Supervision Court of Ningbo Maritime Court heard a ship collision claim case of foreign subjects involving both parties and the subject matter of about 218 million yuan in the dispute, which attracted much attention for the ship oil leakage pollution of the Marine environment. This case is the judicial practice of Jiaxing procuratorial organs in Zhejiang Province to intervene in a major foreign-related case involving oil pollution ship collision. Because of the intervention of the procuratorial organs, this case involved many lawsuits involving a ship collision damage claims for Marine

environmental damage. The case involves both the limitation fund for maritime compensation liability in the original lawsuit, It also involves the applicability of the oil pollution damage liability limitation fund in the counterclaim, In the trial and prosecutorial supervision, Jiaxing Municipal People's Procuratorate and the court jointly launched the expert consultation system, Marine Insurance and Compensation Association, China Oil Pollution Settlement Fund Center and related functional departments of Marine, fishery, ecological resources and other domestic and foreign institutions and industries have extensively participated in the competition, As the evidence was in place, The case of the establishment of oil pollution fund became the first case of limitation fund in China, At the same time, Ningbo Maritime Court jointly tried 6 cases involving the liability dispute over ship collision damage compensation, ship cargo damage compensation dispute, oil pollution cleaning and pollution damage cost claim, and Marine environmental damage claim related to this case, The target involved exceeded 500 million yuan. The intervention of the

Jiaxing procuratorial organs has effectively enhanced the supervision influence of the procuratorial organs.[1]

The 4. attempts prosecutorial security through a hearing and mediation

According to the trial practice of Ningbo Maritime Court in recent years, typical maritime insurance contract disputes account for 46%, and most of such disputes can be settled through mediation. If the insurance company participates in the lawsuit, it is more manifested as replacing the legal status of the insured after settling the claim, filing a lawsuit to the court in its own name, and claiming against the breaching party or the accident responsible party, that is, the subrogation dispute of the insurer. The main basic cases are disputes over maritime cargo transport contract and disputes over ship collision and touch damage liability, and it is relatively difficult to hear. Nearly 50% of the cases need to be concluded by the judgment, and the three causes of the judgment case enter the second instance. Maritime insurance has its particularity. Due to the diversity and complexity of

[1]China Chang'an network, involved in 218 million yuan! Ningbo Maritime Court "Yunshang Court" heard foreign collisions involving oil-related ships, 2020-4-3.

maritime risks and the difficulty of fixed evidence, the understanding between the insurance company and the insured of the terms and special terms of the maritime insurance contract is different. From the judgment results, the proportion of the insurance company is not high. Therefore, such kind of cases are also a good perspective for the procuratorial organs to participate in joint mediation from a neutral perspective. The procuratorial organs can make full use of online and offline channels, move the judiciary, effectively resolve conflicts, and effectively reflect the maritime judicial services and guarantee of the procuratorial organs. The Dinghai District Procuratorate of Zhoushan City signed documents with the Maritime, Ecological Environment, Natural Resources and Planning Bureau, Port and Navigation Bureau and other administrative departments, and jointly established the "three protection" platform of "protecting fishing, sea and island". Recently, the platform plans to expand to maritime courts. In addition to supervising maritime administration, a large part of its functions are to participate in the

joint resolution of social contradictions, and to build the joint participation of procuratorial organs and various administrative departments in the resolution of conflicts and disputes and the protection of crew interests related to sea, fishing and island cases, which is of good practical significance.[1]

III. Key points and difficulties of maritime and commercial civil supervision

(1) Focus of civil supervision over maritime commerce

[2]1. The main points of dispute in maritime dispute cases. Focus on the determination of the degree of fault and the proportion of ship collision liability; Application and identification of special systems such as constructive total damage, commission, or damage caused by maritime insurance, And the examination of whether joint average and maritime assistance constitute, and the exercise of the insurer's claim for subrogation; The limitation of maritime compensation liability shall be examined for the applicable degree of matching, For example, whether the inland river ship

[1]Ningbo Maritime Court, Ningbo Maritime Court issued the recent five years of maritime insurance dispute trial, the Maritime Law information 2018-11-07.
[2]Si Yuzhuo, Maritime Law, Chinese University Press, 2018, p. 36.

connected with the sea and passing in the inland river applies to the limitation of maritime compensation liability, the scope of the ship operator, and the laws of domestic maritime claims for oil pollution damage; Crew labor contract dispute cases should focus on examining whether there is a wrong detention, And whether the crew had maliciously colluded, Whether the agent participates in false litigation, etc.[1]

2. finding of liability for negligence in collision. The Maritime Code provides that the rights of the part of the owner of the knowledge of a possible collision. Therefore, the focus of the procuratorial organs is on the definition of the fault responsibility of the shipowner. According to the Maritime Law, if the owner has transferred the possession to the actual operator and ceased actual management and control over the ship, he shall not be liable for collision damage to the ship unless in the process and there is a causal relationship between the fault and the result of the failure of the ship to provide a collision because of potential defects or during the course of the management and

[1]Si Yuzhuo, Maritime Law monograph, Chinese University Press, 2018, p. 35-38.

control of the ship. If these are excluded, the ship owner is not liable for negligence and entitled to the limitation of liability.[1]

Recognition of 3. subjects responsible for ship financial leasing. The main purpose of the ship financial lease is financing. Since the person of the leased ship and the seller are independently selected according to their own needs, if the ship, the shipowner shall not bear any surety liability. Therefore, the focus of the review is whether the ship financial leasing is responsible when the subject responsible for collision. The screening point is that the financial leasing contract is not bounded by whether the registration, and whether the registration does not affect the determination of the subject responsible for collision. If the financial lessor of the ship is in the possession, use and operation of the ship, it shall be liable in accordance with Article 246 of the Contract Law.[2]

Recognition of the validity of the 4. bareboat lease contract. Article 4 of the Provisions of the

[1]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, October 2019, p. 264-390.
[2]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, October 2019, pages 279-282.

Supreme People's Court Concerning Several Issues Concerning the Trial of Cases of Ship Crash Disputes stipulates that if a ship collision is during the bareboat charter period and has been registered according to law, the bareboat shipowner shall be liable for compensation. The light lease, through registration, is granted the reciprocity, exclusivity and priority of real right, can be not only against the light lessor, the owner, but also against a third person outside the contract. Therefore, we should take the review of whether the light charter ship has been registered as the focus, face up to the attention of the situation that the lessor transfers the ownership of the ship to a third party, and determine the effectiveness of the original light boat charter contract with the principle of "sale does not break the lease". The bareboat lease is registered against a third person violating its lease right, which is not antagonistic against the victims of the damage suffered in the ship collision, which we must clarify in the supervision.

5.'s determination of liability for ultra vires agency. In the recent years, with the emergence of large and super large containers, and the large growth of special cargo containers for refrigeration, filling, roof opening, shipping operation leasing, shipping brokers, shipping agents, freight agents. We therefore look to the question whether there is ultra vires agency, and if ultra vires exists, the principal is not liable for the acts of the agent. In addition, it is necessary to be found whether the cargo agent is purely entrusted by the principal to engage in the cargo agent, or in the name of the cargo agent. If the latter, its identity is similar to the master carrier, rather than the cargo agent, and the determination of liability is completely different.[1]

(2) Difficulties in civil supervision over maritime and commercial affairs

Recognition and identification of the 1. limitation of liability

Under the circumstances that the responsible person enjoys or loses the right of limitation of

[1]Hu Meifen, Wang Yiyuan, Ocean Shipping Business, Fourth Edition, People's Transportation Press, No.12,2005, p. 5.

maritime compensation liability directly determines whether the maritime compensation liability restriction system is applicable, which is the core problem unavoidable in cases involving limitation of liability in the maritime judicial practice. In Article 59 of the Maritime Code, concerning the occurrence of unreasonable detours, the carrier often loses the limitation of liability. In practice, it is common for small coastal ships to exceed the navigation areas, overload, and even implement other more serious illegal navigation behaviors, but their responsibility limit is often low, far from making up for the actual losses caused by the accident, and the person responsible for the actual serious illegal navigation behavior makes illegal profits from the illegal navigation operation. Therefore, it is very important to effectively identify the premise and conditions of responsibility restrictions. In practice, we should pay attention to the following aspects: first, when the same accident set up a maritime compensation liability fund, the amount and whether the creditors under the fund under the fund can be paid under the fund; second, whether

the debtor has the right to limit the liability, and whether the principle of "set-off first, then limit" is applicable; third, the collision is an accident or two (or more) accidents in the collision, and whether the causal relationship is interrupted. In practice, we should grasp three points, namely: whether the responsible person's major subjective fault, whether the shipowner and the operator, and whether the loss of the limitation right of maritime compensation liability can promote the safety of future navigation.[123]

2. identification and identification of joint and several liability

[45]When reviewing the issue of joint and several liability, we should pay attention to two points, one is the application of the law, the other is the burden of proof. The determination of joint and several liability involves not only the application of special and common law, but also the competition of Maritime

[1]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, October 2019, p. 16.
[2]According to the Maritime Law of the People's Republic of China, if the person enjoying the limitation of liability makes a counterclaim to the claimant for the same accident, the requested amount of the two parties shall be offset against each other, and the limit of compensation shall be only applicable to the difference between the two claimed amounts.
[3]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, October 2019, pages 205-215.
[4]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, October 2019, pages 272-278,
[5]Si Yuzhuo, Maritime Law, Renmin University of China, 125-133.

law and international conventions. Only if the Maritime Law does not stipulate on the same matter can the common law supplementary problem arise. The common law here mainly refers to the Civil Code and Tort Liability Law. If the shipowner and the bareboat charterer bear joint and several liability, the key depends on whether the parties constitute a joint tort, which must be clear law to apply (Article 130 of the General Principles of the Civil Law). If the actual carrier puts the goods without permission and without its commission, it shall bear joint and several liability. For example, on March 19,2013, "Zhejiang Shengzhou 97506" wheel to Zhoushan Shengsi collided with Mao actual investment, all maritime directors registered, the "three no" sand ship "Tianhai 18" with no inspection certificate and crew without fitness certificate, resulting in a major accident of "Tianhai 18" sinking, the death of 6 people and the loss of 2 people missing. "Zhejiang Sheng 97506" ship port Zhoushan, the registered ship owner is Chen, the ship owner is Jiangshan Company. After verification by the competent maritime and fishery supervision authorities, the ship had never handled the visa

procedures of the Shengsi Maritime Office, the crew allocation and the certificate seriously did not meet the requirements of the "Ship Minimum Safety Allocation Certificate". Jiangshan Company is only a registered ship operator, not the actual operator. After hearing, the Shanghai Maritime Court held that as the ship operator registered in the "Zhejiang Sheng 97506" round and publicized, Jiangshan Company did not fulfill its safety management responsibilities and should bear 70% joint and several liability for compensation with the ship owner Chen Wei.[1]

Recognition and identification of causation in the legal sense of 3.

The research group is located in many islands and reefs of Ningbo Zhoushan Port, which are the only place for north-south shipping in China. The high probability of commercial and fishing boats and the high incidence of all kinds of water traffic accidents, which occupies a large proportion in the country. Therefore, two types of cases are frequently, one is ship collision cases, the other is transportation contract cases. In the two

[1]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, October 2019, p. 12-14.

types of cases, the seaworthiness of the ship and whether the captain's crew fulfill expectations and reasonably avoid the collision, as well as identifying the causal relationship between these people and the result of the collision is very important. Especially in the case of multi-ship collision, it is necessary to distinguish whether there is an inevitable causal relationship between before and after the collision, and whether there is a direct avoidance relationship between the ships when the multi-ship collision will encounter the situation. The main dispute is whether there is a legal causal relationship in the sense between the two collisions, requiring not only that the previous collision be the cause of the subsequent collision, but also that such cause be legally attributable. Including how to identify the proportion of responsibilities to the parties, and whether the causal relationship is interrupted, then it is regarded as an accident, regardless of several consecutive collisions. For another example, the "contract" of the shipping market needs to ship the goods in the name of the big customers who signed the transportation

agreement with the ship company, which has the possibility of modifying the contents of the bill of lading without authorization, thus disputes the ownership of the goods. Here, we should carefully examine the causality, "contract" bill of lading does not affect the carrier without single responsibility, as long as the company authorized the bill of lading to confirm the identity of the actual owner, and the actual shipper still hold three original bill of lading, so the actual owner is not recorded as shipper in the internal system, it still has the right to the ship company as the carrier.[123]

4.'s identification and identification of the validity of disclaimer

For the carrier's abuse of the principle of "freedom of contract", the "original primary obligation principle" through a series of judgments, that is, the carrier's obligation to take care over the

[1]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, October 2019, p. 29-31.
[2]As the shipping market is increasingly competitive, in order to obtain carrier rights from large customers, shipping companies tend to sign transport agreements with these large customers promising to give more favorable rates, while exporters or forwarders without agreement rates cannot obtain such a favorable offer. In practice, the "contract" behavior occurs, that is, in the system, the "shipper in the" shipper "column is modified to a company with a special preferential tariff agreement with the ship company to enjoy the agreed tariff between the company and the ship company. After the bill of lading is generated, then change the" shipper " information to the true shipper. The practice of the engagement would separate the shipper of a shipment shown in the ship company system from the shipper recorded in the original bill of lading held in the hands of the customer.
[3]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, Law Press, Feb. 10,2019, p. 39-42.

goods and the obligation to provide the airworthiness ship at the beginning of the voyage, and the loss will no longer apply. Article 47,48 and 51 of China's Maritime Commerce Law stipulate the airworthiness obligations, goods management obligations and exemptions. Such as for the "disaster, shipwreck" exemption defense review, we should according to the maritime law on the "disaster, shipwreck" exemption defense, relevant regulations, and ship airworthiness, cargo obligations and management and driving fault factors organic contact, combined analysis, whether the sea condition constitutes "natural disaster, shipwreck" and the causal relationship between the disaster and sea condition, the decisive cause of the cargo damage is "disaster, shipwreck", or the carrier can be exempted from fault or inliability fault. In the case of multiple causes acting together, the responsibility shall be determined according to the proportion of each cause force.

5. Responsibility identification and identification in unrelease disputes

In the contractual transport of goods at sea, the

basic obligation of the carrier is to deliver all the goods to the holder of the original bill of lading at the port of lading. Delivery by the carrier without an original bill of lading constitutes a breach of contract. Therefore, the focus of our review is whether the consignee pays the payment before obtaining the goods. If the carrier releases the goods to the consignee and returns the bill of lading without recovering the original, which damages the reliability of the bill of lading, destroys the international trade rules, defeats the purpose of the international trade contract concluded by the shipper, and the legitimate rights and interests of the holder of the original bill of lading will not be protected, then the carrier should be deemed to bear the carrier liable for breach of contract to stop such situation and form a judicial direction to maintain the shipping order.[1]

IV. Exploring the path of maritime and commercial civil supervision

(1) The case supervision: take the appeal and execution objection not satisfied with the judgment of

[1]Shanghai Maritime Court, Shanghai Maritime Court Boutique Case Selection, Law Press, Feb. 10,2019, p. 58-67.

the court as the entrance

When the current legislation has not been authorized, the procuratorial organ can try to carry out case supervision by accepting the appeal that the parties refuse to accept the court judgment and the execution objections as a breakthrough point.For example, there may be many damage consequences directly caused in ship collision cases, including damage to the collision ship itself, damage to the goods on board, damage to property outside the collision ship and personal casualties, it may also cause oil leakage in one or two ships in collision, and pollution damage caused by oil leakage. For the liability of the collision when directly causing property or personal damage and simultaneously causing oil pollution, two tort liabilities are usually involved under the current legal system: one is the collision tort liability of both parties (or more parties) of the ship collision; the other is the pollution infringement liability of the oil leakage party to the oil pollution injured party. To understand the liability nature of the oil leakage pollution damage caused by the ship collision and the

relationship between the ship collision and the oil leakage pollution infringement behavior, one is indifferent in practice. The "East China Sea 209" wheel and the "Fujian Fuel Supply 2" wheel collided in the Lingdingyang waters of the Pearl River, breaking the hull of the "Fujian Fire Supply 2" ship and leaking the heavy oil contained on the ship, thus causing pollution to some of the water and coast.The first instance of the case was determined to be an environmental pollution dispute. The pollution is caused by the leakage of the load oil in the "Fujian Fuel Supply 2" wheel, so the person responsible for the environmental pollution, and shall be liable for compensation for the oil pollution damage. Because the oil pollution is not from the "Donghai Sea 209" wheel, its owner Donghai Company is not liable for oil pollution damage. Under the judgment, it is understood that the court held that the tort of oil leakage pollution caused by ship collision is two different acts from the tort of ship collision. In the second instance, it is believed that the pollution damage in this case is caused by the negligent collision of the ships between both parties,

so all of the two ships are the persons responsible for the Marine environment pollution damage, and shall be liable for the oil pollution damage caused by the collision of the ship according to the proportion of their respective responsibilities. Under the judgment, it is understood that the court held that the liability for oil leakage pollution damage caused by the collision is still the responsibility of the tort of ship collision, and is determined in accordance with the law of ship collision infringement.[1]

Once this type of case puts forward supervision opinions, it is of important guiding significance. From the perspective of the return responsibility principle, the tort liability of the tort of ship collision applies to the principle of fault liability, and the tort liability of oil leakage pollution applies to the principle of no-fault liability. The infringement of oil leakage caused by ship collision, is applicable to the relevant international convention, the convention is clear only because of the third party leakage pollution, the pollution tort liability will bear 100%

[1]"MinRan Supply 2" round of liability restriction case, (1991) Guanghai Legal Zi No.151, Guangzhou Maritime Court.

of pollution infringement liability, and cannot apply to the maritime law on the collision property loss of the third party liability, that is, according to the proportion of collision fault to bear oil pollution liability.

For such cases, the procuratorial organs should also pay attention to the subsequent ecological restoration caused by pollution, because from the jurisprudence of such cases, maritime court rarely start Marine environmental pollution damage cases, the procuratorial organs intervene on the premise, when necessary with public interest litigation supervision department, start the ecological restoration procedures.

(2) Supervision of class cases: the different judgments from the same case

In judicial practice, we should establish the concept of class case supervision, and put forward supervision opinions on the following circumstances found in the examination of the case. First, there are legal application differences between the effective judges; second, the result of the judgment made in the

case may be different from the principles or standards determined by the effective judgment of the Supreme People's Court; third, the Implementation Measures of the Supreme People's Court on Establishing a Resolution Mechanism for the Application of Legal differences. In the exploration stage of the supervision of maritime commercial litigation, the procuratorial organs may follow up in accordance with the local legal environment and the docking with the maritime courts, in accordance with the spirit of the implementation measures of the Supreme People's Court, and establish an information reporting system with the maritime courts.

(3) Procedural supervision: to explore the special procedures for maritime and commercial legal supervision

The Maritime Litigation Special Procedure Act requires the trial of maritime and commercial cases according to the special proceedings, If Chapter 11 of the Maritime Law provides supporting procedures for the limitation of maritime compensation liability, However, only for the establishment of a limitation fund for

maritime compensation liability, Including the registration of creditor's rights, the confirmation of creditor's rights, fund distribution and repayment procedures, It does not stipulate the confirmation procedure of the right of limitation of liability, The Maritime Litigation Special Procedure Act, which came into force in 1999, also provides only Limitation Fund procedures and no procedures for limitation of liability, But pending the trial of the court entity, The procedure for the courts to review the limitation of liability is extremely inconsistent. These problems were concentrated in a series of cases triggered by the sinking of the Stillwater Spring wheel. Sanfeng Shipping Company and Qingdao Shipping Company (the owner of the "Stillwater Spring" wheel) jointly operate the coastal transportation from Dalian to Guangzhou. The "Stillwater Spring" wheel sank in Shandong waters. Qingdao Shipping Company applied for and set up a liability restriction fund in Qingdao Maritime Court. Since the waybill was issued by Sanfeng Shipping Company, some cargo owners filed claims for cargo damage under the waterway cargo transport contract

against Sanfeng Shipping Company in Dalian Maritime Court and Guangzhou Maritime Court respectively. On the issue of the limitation of maritime compensation liability, the three maritime courts determined that Sanfeng Shipping Company was entitled to the limitation of liability, however, the three senior courts exercising the right of final adjudication did not accept the limitation of liability request on the grounds that they had no jurisdiction. In this series of cases, the different views expressed by the three maritime courts and the three superior people's courts on the issue of liability limitations procedures left the same party subject to "conflicting effective judgments" and somewhat impaired the majesty and judicial authority of the law. On June 9th, 2003, The Supreme People's Court on the reply to the request of Shandong Higher People's Court on Zhaoyuan Linglong Battery Co., Ltd. and Yantai Jiyang Container Freight Co., Ltd. " [(2002) No.38], "Under the provisions of our Maritime Commerce Law and the Maritime Litigation Special Procedure Act, Application for the establishment of a limitation fund for maritime

compensation liability may bring the limitation of maritime compensation liability to the right of defense in or before the lawsuit, Application for the limitation of maritime compensation liability, Provided that the maritime claimant makes a maritime claim to the person responsible in the litigation, It cannot constitute a separate claim. ". This type of cases should also be the focus of our supervision.[12]

(4) Integrated supervision: supervision in guarantee and guarantee in supervision

[3]According to the relevant work data of Ningbo Maritime Court, the 2018 mediation and withdrawal rate of maritime commercial cases concluded in 2018 was 53.1%, and the automatic performance rate of civil mediation cases was 11.77%, down 11.94% and 7.48% year-on-year, respectively. It can be found from the above data that the mediation and withdrawal rate is very high, which shows that the current civil litigation moves from confrontation to mediation. When the procuratorial organs conduct supervision, it is more to ensure the

[1]"Stillwater Spring" round of liability restriction case, (2001) Qinghai Fa Maritime Chuzi No.49, Qingdao Maritime Court.
[2]Reply ((2002) Application of Zhaoyuan Linglong Battery Co., Ltd. and Yantai Jiyang Container Freight Co., Ltd. No.38].
[3]Ningbo Maritime Court, Ningbo Maritime Court 2018 White Paper.

unified implementation of the law. It is the change of the supervision concept. The civil supervision of the procuratorial organs reflects more of the "collaborative" supervision than the "opposite" supervision in the traditional sense. The supervision of the procuratorial organs is not to hinder the free exercise of the parties' right of action, nor to destroy the independence of the judicial right, but to remedy the rights of the parties and maintain the orderly operation of the trial activities. Therefore, we should have the concept of supervision according to law and good at supervision, to ensure that the participants in the reasonable and orderly exercise of the right of action and avoid the derailment of the trial power, and fully respect the discretion of the judge. In cases with reasonable basis in the process of exercise, but there is a slight deviation in the proportion distribution, it is generally not appropriate for excessive interference and supervision to maintain the stability of the court referee. Supervision over those cases that exceed the necessary limits and obviously violate the principle of fairness according to law.