德宝海运有限公司(TURBO MARITIME LIMITED)、美亚财产保险有限公司广东分公司、审被告美国总统轮船私人有限公司(APL CO.PTE LTD)、狮威集装箱航运公司(SCANWELLCONTAINER LINE LIMITED)海上货物运输合同纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	海上货物运输合同纠纷
案号：	（2011）粤高法民四终字第 116 号
上诉人（原审被告）：	德保海运有限公司（TURBO MARITIMELIMITED)
被上诉人（原审原告）：	美亚财产保险有限公司广东分公司
原审被告：	美国总统轮船私人有限公司（APL CO.PTE LTD)、狮威集装箱航运公司（SCANWELL CONTAINER LINELIMITED)
出判时间：	2011.12.12

案件事实（主要为台风因素）

本案货物损坏是因受“黑格比”台风和风暴潮的影响，造成江水上涨并倒灌进入莲花山港码头淹没货物所致，本案讨论此损失是否可以援用“不可抗力”进行减责或免责抗辩。

二、争议焦点

本案是否由不可抗力造成并免责。

三、法院观点

（一）案涉“威马逊”台风是否构成不可抗力。

法院认为“不可抗力”是指不能预见不能避免并不能克服的客观情况。

1. 不能预见

就本案而言，台风本身属于不可抗力的范畴，即使在气象部门对台风的登陆已作出提前预报的情况下，承运人德宝公司也不可能提前预知台风发生的实际强度和对涉案货物带来的实际影响，且现有证据材料证实“黑格比”台风的实际强度比预报的强度大，故德宝公司上诉认为“有预报不等于有预见”的抗辩意见有一定的道理。

2.不能避免和克服

本案事实表明，货损发生的原因并不是由台风直接造成的，而是由于受“黑格比”台风和风暴潮的影响，江水上涨并倒灌进入莲花山港码头，淹没堆放在码头底层的集装箱货物所致。

而在本案“黑格比”台风登陆前，气象部门发布了台风警报，海洋部门发布了海浪警报和风暴潮警报，对“黑格比”台风及风暴潮的强度和可能造成的危害程度进行预报，已预报广东省汕尾沿海至雷州半岛沿海将发生 80 至 200 厘米的风暴潮增水，其中珠江口至阳江沿岸为严重岸段，沿岸验潮站的最高水位将超过当地防潮警戒水位。

法院认为，作为专业的货运公司，在看到上述预报后，即使无法预见到台风实际发生的强度，也应当做好防御台风的准备，并时刻关注天气的变化，及时采取有效的防护措施避免损失的发生。然而，德宝公司提供的会议纪要却证实，其只在台风发生之前召开了一个防台会议，除此之外，再没有其他证据材料证其为避免损失采取了哪些措施。德宝公司称其未能采取有效的防护措施主要还是由于对台风的强度无法预见，且码头存放的货物数量巨大，无法在短时间内普遍采取搬运或垫高等抢险措施，表明德宝公司在台风发生之时怠于行使妥善保管货物的法定义务，主观上存在一定的过错，也说明本案的货损并不是不可避免和不可克服的。

因此，德宝公司关于本案货损是由不可抗力造成的上诉理由不能成立，不予支持。

综上，涉案“威马逊”台风不符合构成不可抗力的构成要件。

四、小结

本案中的争议焦点为本案是否由不可抗力造成并免责。

关于不可抗力最高院从“不能预见”和“不可避免和克服”两个方面论证。有关“不能预见”的论述中，最高院首先对台风认定为“不可抗力的范畴”；但是，法院认为货损发生的原因并不是由台风直接造成的，而是由于受“黑格比”台风和风暴潮的影响，江水上涨并倒灌进入莲花山港码头，淹没堆放在码头底层的集装箱货物所致，因此“威马逊”不构成不可抗力。

有关“不可避免和克服”的论述中，法院认为作为专业的货运公司，在看到天气预报后，即使无法预见到台风实际发生的强度，也应当做好防御台风的准备，并时刻关注天气的变化，及时采取有效的防护措施避免损失的发生，然而，德宝公司提供的会议纪要却证实，其只在台风发生之前召开了一个防台会议，除此之外，再没有其他证据材料证其为避免损失采取了哪些措施。德宝公司称其未能采取有效的防护措施主要还是由于对台风的强度无法预见，且码头存放的货物数量巨大，无法在短时间内普遍采取搬运或垫高等抢险措施，表明德宝公司在台风发生之时怠于行使妥善保管货物的法定义务，主观上存在一定的过错，也说明本案的货损并不是不可避免和不可克服的。

案例提供者：任雁冰
符丽勤
责任编辑：杨伟

Case Summary Of Turbo Maritime Limited, AIGA Property & Casualty Insurance Company Limited, Guangdong Branch vs American President Lines Pte Ltd and Scanwell Container Line Limited, in the contract of carriage of goods by sea Dispute

I. Case Information

1. Background Information

Causes for action:	Dispute over contract of carriage of goods by sea
Case Number:	（2011）粤高法民四终字第 116 号
Defendants:	Turbo Maritime Limited
Plaintiff:	AIG China Guangdong Branch
Trial Defendants:	American President Lines Pte Ltd and Scanwell Container Line Limited
Time of First Trial:	December, 12. 2012

2. Case Facts (The Typhoon)

The damage to the goods was caused by the Typhoon Hagupit and storm surge, which resulted in the rise of water level, flowing into the Lianhuashan Passenger Terminal, to flood the goods. This case discusses whether this loss can be invoked as "force majeure" to reduce liability or defense.

I. Dispute Focus

Whether force majeure applies in this case and excludes liability.

III. Court's View

1. Whether the case of Typhoon Rammasun constitutes force majeure.

The court held that "force majeure" refers to objective circumstances that cannot be foreseen, avoided or overcome.

a. Unforeseen

In this case, the typhoon itself belongs to the category of force majeure. Although the Meteorological Department forecasted its landing in advance, it was still impossible for the carrier Turbo Maritime Limited (Turbo) to foresee the intensity of the typhoon and the likely impact on the goods involved. Existing evidence confirms that the actual intensity of Typhoon Hagupi is greater than predicted, so the Turbo defense of "forecasting is not equal to foreseeing" has its reason.

b. Cannot be avoided and overcome

Facts of this case show that the damage was not directly caused by the typhoon, but due to the typhoon Hagupit and storm surge, which caused the rise in the river water flowing into Lianhuashan Port Terminal, resulting in the submergence of container goods stacked at the bottom of the terminal.

Before the typhoon Hagupit, the Meteorological Department issued a typhoon warning, and the Marine Department likewise issued a wave warning and a storm surge warning, forecasting the intensity and possible damage caused by the typhoon and storm surge. They forecasted a 80 to 200 cm storm surge water for Shanwei Coast to Leizhou, including the Pearl River mouth to Yangjiang coast.The highest water level of coastal tide stations would exceed the local tidal warning level.

The court held that, as a professional freight company, upon seeing the above forecast, even if it could not foresee the intensity of the actual occurrence of the typhoon, it should be prepared to defend against the typhoon and always pay attention to the changes of the weather to take effective protective measures so as to avoid losses in a timely manner. However, the minutes of the meeting provided by Turbo confirmed that it only held a meeting on typhoon prevention before the typhoon occurred; there

was no other evidence to prove what measures it took to avoid losses. Turbo claimed that its failure to take effective protective measures was its inability to foresee the strength of the typhoon and the huge amount of goods stored at the terminal, which made it impossible to take rescue measures such as handling or padding within a short period of time. Such a position is an indication that Turbo was negligent in exercising its legal obligation to properly store the goods at the time of the typhoon and was subjectively at fault, which also showed that the damage in this case was not inevitable and insurmountable. Hence, Turbo's claim that the goods damaged in this case is inevitable and insurmountable could not be legitimate. Consequently, the appeal reasoned that loss of goods was caused by force majeure is invalid and will not be supported.

In conclusion, the case of Typhoon Rammasun does not meet the elements of force majeure.

II. Summary

The controversy in this case is whether the case is caused by force majeure.As to the application of force majeure, the Supreme Court argued from two aspects: "unforeseeable" and "unavoidable and overcome". In the discussion of the former, the Supreme Court first identified the typhoon as "the category of force majeure". However, the Court held that the damage was not directly caused by the typhoon, but by the Hagupit and storm surge, which caused the river water to rise, flowing into the Lianhuashan Passenger Terminal which flooded the container cargo stacked at the bottom of the terminal. Therefore, "Typhoon Rammasun" did not constitute force majeure.

About the "unavoidable and overcome" in discussion, the court held that as a professional freight company, upon seeing the weather forecast, even if it cannot foresee the height of the typhoon, it should be prepared to defend against the typhoon., Again, it must always pay attention to changes in the weather, and timely take effective protective measures to avoid losses, but the minutes of the meeting provided by Turbo confirmed that it only held a meeting on typhoon prevention before it occurred. There was no other evidence to prove what measures it took to avoid losses. Turbo claimed that its failure to take effective protective measures was mainly due to its inability to foresee the height of the typhoon and the huge amount of goods stored at the terminal, which made it impossible to take emergency measures such as handling or padding within a short period of time. It indicated that Turbo was negligent in exercising its legal obligation to properly store the goods at the time of the typhoon and was subjectively at fault, which also showed that the damage in this case was not inevitable and insurmountable. It also shows that the cargo damage in this case was not inevitable and insurmountable.

Case-collectors: REN Yanbing
FU Liqin
Translator: DENG Chifei
Editor (English): Evans Tetteh
Executive editor: YANG Wei

广东红土地物流有限公司因、中国平安财产保险股份有限公司广东分公司、海口南青集装箱班轮有限公司湛江分公司、海口南青集装箱班轮有限公司多式联运合同纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	多式联运合同纠纷
案号：	（2016）粤民终 1527 号
上诉人（原审被告）：	广东红土地物流有限公司
被上诉人（原审原告）	中国平安财产保险股份有限公司广东分公司、海口南青集装箱班轮有限公司湛江分公司、海口南青集装箱班轮有限公司
出判时间：	2017.6.14

（二）案件事实（主要为台风因素）

2014 年 5 月 8 日，红土地公司与信威公司签订运输合同，运货船名“金轮 9 号”。

7 月 16 日，国家海洋环境预报中心网页登载的“威马逊”迅速逼近，南海中部将出现狂浪到狂涛区的报告称，国家海洋预报台 16 日上午 8 时发布海洋橙色警报；同日登载的“威马逊”进入南海，向海南沿海逼迫的报道称，国家海洋预报台 16 日 16 时发布海浪橙色警报:受台风“威马逊”影响，预计 7 月 16 日夜间到 17 日白天，南海中部将出现 7 到 10 米的狂浪到狂涛区，广东、海南东部沿岸海域将出现 2 到 3 米的中浪到大浪，注意防范风暴潮可能引发的次生灾害。

7 月 17 日，“雷神”发威，南海掀狂浪的报道称，国家海洋预报台 17 日上午继续发布海浪橙色预警，受“威马逊”影响，预计 7 月 17 日中午到 18 日中午，南海中北部将出现 7 到 11 米的狂浪到狂涛区，广东西部、海南东部沿岸海域将出现 3 至 5 米的大浪到巨浪。同时也针对广东珠江口以西至雷州半岛东岸及海南岛东北部沿海发布风暴潮蓝色预警。7 月 18 日国家海洋局网页上登载的国家海洋局部署“威马逊”风暴潮和海浪灾害防御工作的报道称，国家海洋预报台于 17 日 14 时将海浪预警级别提升为红色，同时还将风暴潮的警报级别提升为橙色。

7 月 15 日，海口南青湛江分公司将涉案两个集装箱运往海口港等待中转。

7 月 20 日，海口码头公司出具证明函给海口南青公司称该公司在港重箱处于底层有 243 自然箱（178 小柜、65 大柜），因特大台风影响，堆场地面有不同程度积水（雨水及海水倒灌），可能存在箱内货物损失。

在海口码头公司所附受影响集装箱列表中包括了涉案两个集装箱。

8 月 4 日，涉案两个集装箱运抵目的地上海嘉定，发现集装箱内货物水湿受损，信威公司随

即向平安保险公司报案。

二、争议焦点：

红土地公否应对涉案货物损失承担责任。

三、法院观点：

红土地公司主张水湿系因台风“威马逊”所致，属不可抗力。

承运人依据不可抗力主张免责，需证明货损系因不能预见、不能避免且不能克服的客观情况所致，其作为承运人已经合理、谨慎、勤勉地照顾货物仍不能避免损害的发生；在涉案货物已经交付给其他人实际承运或保管的情况下，承运人亦应证明其受托人已尽谨慎义务仍不能避免损害的发生，而不能以其本身无法作为作为抗辩。

气象部门已于 2014 年 7 月 14 日发布台风预报，作为承运人的红土地公司应对此有所预见，并积极采取措施，避免损害的发生，但没有证据显示红土地公司对台风天气的到来采取了相关的防御措施。本案中，红土地公司仅举证证明涉案货物运输过程中出现台风天气，但未提供证据证明其或其受托人已经积极管理货物而不能避免货损发生，故对其援引不可抗力免责的主张不予支持。

红土地公司另主张涉案货损是因托运人的过错造成，涉案货物在海口秀英港码头堆放时，红土地公司已经通知信威公司涉案货物可能受水浸，但信威公司未对涉案货柜开箱检验或采取施救措施，造成货物进一步扩大受损，信威公司存在过错。对此，本院认为，本案货损系因承运人未尽合理管货义务，货物遭受水湿所致，红土地公司作为承运人在接到货物可能受损的通知后，亦没有积极采取施救措施，要求信威公司配合开箱检验，现以此为由主张免责缺乏依据，不能成立。

四、小结：

本案有关台风的争议焦点仍为是否能够构成不可抗力从而使当事人主张免责。

法院主要论证了红土地公司作为承运人没有对台风天气的到来采取相关的防御措施，承运人应证明已尽谨慎义务但是却不能仍不能避免损害的发生，而不能以其本身无法作为提出抗辩条件。

红土地公司不能证明自身或者其受托人已经积极管理货物而不能避免货损发生，所以不能构成不可抗力中的“不能避免、不能克服”条件，也就不能因此免责。

案例提供者：任雁冰
符丽勤
责任编辑：杨伟

Guangdong Hongtudi Logistics Co., Ltd. v. Guangdong Branch of China Pingan Property Insurance Co., Ltd, Zhanjiang Branch of Haikou Nanqing Container Liner Co., Haikou Nanqing Container Liner Co.(jurisdictional objection in dispute over multimodal transport contract)

Case Brief

I. Case Summery

(I) Basic information

Case	Multimodal Transport Contract Dispute
Case No.	(2016) Yue MinZhong No. 1527
Appellant (original defendant)	Guangdong Hongtudi Logistics Co., Ltd.
Appellee (original plaintiff)	Guangdong Branch of China Pingan Property Insurance Co., Ltd, Zhanjiang Branch of Haikou Nanqing Container Lines Co., Haikou Nanqing Container Lines Co.
Date of Adjudication	June 14, 2017

(II) Facts (mainly because of typhoon)

On May 8, 2014, Guangdong Hongtudi Logistics Co., Ltd. signed a contract of carriage with Beijing Xinwei Telecom Technology Inc., with "Jinglun 9" as the named shipping vessel.

On July 16, the website of the National Marine Environmental Forecasting Center published a report titled *Typhoon Rammasunis rapidly approaching, the middle of the South China Sea will appear strong waves*. The report said the National Marine Environmental Forecasting Center issued an orange alert at 8:00 am on the 16th. On the same day, *Typhoon Rammasun entered the South China Sea and forced its way to the coast of Hainan* was published. According to the report, the National Marine Environmental Forecasting Center issued an orange wave alert at 16:00 on the 16th, stating that being affected by Rammasun, there will be 7 to 10 meters of rough waves in the middle of the South China Sea during the night of July 16 to the daytime of July 17. Coastal waters in Guangdong and Eastern Hainan would be affected by2 to 3 meters of moderate to huge waves. The report further alerted: Pay attention to prevent secondary disasters caused by storm surge.

On July 17, a report titled *Thunder god's wrath caused raging waves in the South China Sea* said that the National Marine Environmental Forecasting Center continued to issue an orange sea wave warning on the morning of the 17th. Affected by Rammasun, 7 to 11 meters of rough waves would appear at the north-central South China Sea during July 17 noon to 18 noon. Big waves of 3 to 5 meters will appear in the coastal waters of western Guangdong and eastern Hainan. A blue alert was also issued for west of Pearl River Delta, Guangdong, as well as the eastern coast of Leizhou Peninsula and the northeastern coast of Hainan Island. On July 18, a report titled *State Oceanic Administration has deployed storm surge and wave disaster prevention work for Typhoon Rammasun*was posted on the State Oceanic Administration website, in which the National Marine Environmental Forecasting Center raised the wave warning level to red at 14:00 on the 17th, and also raised the storm surge warning level to orange.

On July 15, Zhanjiang Branch of Haikou Nanqing Container Lines Co. shipped the two containers in question to Haikou Port for transshipment.

On July 20, Haikou Port Container Terminal Co. Ltd issued a certificate letter to Zhanjiang Branch

of Haikou Nanqing Container Lines Co. stating that the company had 243 natural containers (178 small containers and 65 large containers) at the bottom of the port, and due to the impact of the mega typhoon, there were different degrees of water accumulation on the ground of the yard (rainwater and seawater), and there might be loss of goods in the containers.

The two containers in question were included in the list of affected containers attached by Haikou Port Container Terminal Co. Ltd.

On August 4, the two containers involved in the case arrived at their destination in Jiading District, Shanghai, where the contents were found to have been damaged by water. Beijing Xinwei Telecom Technology Inc. reported to China Pingan Property Insurance Co., Ltd immediately.

II. Issue

Should Guangdong Hongtudi Logistics Co., Ltd be responsible for the loss of the goods involved?

III. Rationale & Holding

Guangdong Hongtudi Logistics Co., Ltd claimed the water in the container was caused by Typhoon Rammasun and was force majeure.

When claiming exemption for force majeure, the carrier is required to prove that the damage was caused by objective circumstances that could not have been foreseen, avoided or overcome, that is, damage cannot be avoided even though the carrier has taken reasonable, prudent and diligent care of the goods. Where the goods in question have been delivered to another person for actual carriage or safekeeping, the carrier shall also prove that its trustee's duty of care cannot prevent the damage from occurring and cannot use its own inability to act as a defense.

Since the Meteorological Department has issued the typhoon forecast on July 14, 2014, the Guangdong Hongtudi Logistics Co., Ltd as the carrier should have anticipated the typhoon weather and taken active measures to avoid the damage. But there is no evidence that Guangdong Hongtudi Logistics Co., Ltd have taken any precautions in response to the typhoon. In this case, the Guangdong Hongtudi Logistics Co., Ltd only proved that typhoon weather occurred during the transportation of the goods involved, but did not provide evidence that it or its trustee had actively managed the goods but could not avoid the damage. The court therefore did not support its claim to invoke the force majeure.

The Guangdong Hongtudi Logistics Co., Ltd also claimed that the damage was caused by the shipper's fault. While the goods were being stored at the Xiuying Terminal in Haikou, the Guangdong Hongtudi Logistics Co., Ltd had informed Beijing Xinwei Telecom Technology Inc. of the possible flooding of the goods. But the company did not open the case of container inspection or take rescue measures, resulting in further damage to the goods, so the company is at fault. In response, the court held that the damage in this case was caused by the carrier's failure to exercise reasonable control over the goods and the fact that the goods were wet. The Guangdong Hongtudi Logistics Co., Ltd, as the carrier, did not take active measures to rescue the goods after receiving the notice of possible damage and requested a prestigious company to open the case for inspection. Therefore, this claim has no basis and cannot be established.

IV. Summary

At issue in this case is whether the typhoon could have constituted a force majeure, thereby exempting the parties from liability.

The court mainly argued that the Guangdong Hongtudi Logistics Co., Ltd as the carrier did not take relevant precautions against the arrival of the typhoon weather. The carrier should prove that the duty of care had been exercised but that harm could not be avoided, rather than relying on its own inability to raise defences.

The Guangdong Hongtudi Logistics Co., Ltd cannot prove that it or its trustee has actively

managed the goods, but still cannot avoid the damage, so it cannot constitute the "cannot avoid, cannot overcome" condition in the force majeure, and therefore cannot be exempted from liability.

Case-collectors: REN Yanbing
FU Liqin
Translator: CHEN Ze
Editor (English): Evans Tetteh
Executive editor: YANG Wei

中国人民财产保险股份有限公司北京市分公司与湛江港（集团）股份有限公司第一分公司、湛江港（集团）股份有限公司港口作业纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	港口作业合同纠纷
案号：	(2018)粤 72 民初 89 号
原告：	中国人民财产保险股份有限公司北京市分公司
被告：	湛江港（集团）股份有限公司第一分公司、湛江港（集团）股份有限公司
出判时间：	2018.07.11

（二）案件事实（主要为台风因素）

在“海鸥台风”的影响下，中粮公司与湛江港公司签订的货物港口作业合同发生了货物损失。中国人民财产保险股份有限公司北京市分公司作为本案海上货物运输的保险人，在货物发生保险事故后，基于已向被保险人中粮公司支付了货物损失的保险赔款而取得了代位求偿权，进而有权在保险赔偿范围内向造成货物损失的责任人请求赔偿损失。法院围绕就原告提出的货物港口作业协议书中免责条款是否有效进行讨论。

二、争议焦点

货物港口作业协议书中免责条款是否有效。

三、法院观点

据本案查明的事实，本案货物系由台风引起暴风雨，海水倒灌导致水湿损失。货物港口作业协议书约定如货物在湛江港港区内遇上台风、暴风雨所造成货物损失，湛江港公司可免责。对于恶意串通行为的认定，应当分析合同双方当事人是否具有主观恶意，并全面分析订立合同时的具体情况、合同约定内容以及合同的履行情况，在此基础上加以综合判定。根据保险单条款约定，在保险事故发生后原告对被保险人中粮公司应当承担保险赔偿责任，以保护中粮公司的正当利益。中粮公司与湛江港公司在货物水湿后订立台风免责条款，但双方并非为了获取非法利益，中粮公司的损失本应得到赔偿，并未损害原告利益。本案证据不足以证明中粮公司与湛江港公司主观上具有获取非法利益的目的。台风免责条款订立之后，原告才向中粮公司支付保险赔偿款，如果原告认为该台风免责条款损害其利益，原告本可拒付保险赔偿款。故原告主张中粮公司与两被告主观恶意串通，损害原告合法利益的依据不足，不予支持。原告还主张两被告对本案货物损失存在重大过失。对于中粮公司存放在湛江港一分公司仓库的货物，两被告负有妥善保管的责任。

湛江港一分公司在台风造成货损的两天之前，向中粮公司告知台风信息并已按既定程序启动

防台预案，防台工作完成情况记录和照片显示湛江港一分对18号仓大门进行封门、压包等防台加固。由此可见，湛江港一分公司并未对货物安全弃之不顾，在台风来临前为避免货损的发生对仓库采取了必要的、谨慎的防范措施。故原告主张两被告对于货物水湿损失的发生存在重大过失依据不足，不予支持。

四、小结

本案中，货物港口作业协议书中的免责条款并非是中粮公司与湛江港公司恶意串通签订并损害原告利益，两被告对本案货物损失不存在重大过失，免责条款有效，故湛江港公司对本案损失不承担赔偿责任。

由于本案现有证据不能证明货物港口作业协议书中的免责条款无效，湛江港公司对原告所称货损不应承担赔偿责任，原告请求两被告承担赔偿责任的诉讼请求亦不能得到支持，故法院对包括是否因不可抗力造成本案货物损失、本案货物损失金额的确定以及中粮公司减损是否适当等问题不再审查。

案例提供者：任雁冰
姚旭
责任编辑：杨伟

Beijing Branch of PICC Property and Casualty Company Limited v. First Branch of Zhanjiang Port (Group) Co., Limited, Zhanjiang Port (Group) Co., Limited (dispute over port operation)

Case Brief

I. Case Information

(I) Basic information

Case	Port operation contract dispute
Case No.	(2018) Yue 72 Min Chu No. 89
Plaintiff	Beijing Branch of PICC Property and Casualty Company Limited
Defendant	First Branch of Zhanjiang Port (Group) Co., Limited, , Zhanjiang Port (Group) Co., Limited
Date of Adjudication	July 11, 2018

(II) Facts (mainly because of typhoon)

Under the influence of Typhoon Kalmaegi, the cargo port operation contract signed by China Oil and Foodstuffs Corporation and Zhanjiang Port (Group) Co., Limited suffered cargo loss. Beijing Branch of PICC Property and Casualty Company Limited, as the insurer of the carriage of goods by sea in this case, has obtained the right of subrogation on the basis of the payment of the insurance indemnity for the loss of the goods made to the insured China Oil and Foodstuffs Corporation after the insurance accident of the goods occurred, in turn, it has the right to claim compensation from the person responsible for the loss of the goods within the scope of insurance compensation. The court debated the validity of the exemption clause in the Port Operation Agreement for the goods proposed by the plaintiff.

II. Issue

The validity of the exclusion clause in the cargo port operation agreement.

III. Rationale & Holding

According to the facts ascertained, the goods in this case were dampened by the typhoon. According to the cargo port operation agreement, if the cargo is damaged by typhoon or storm in Zhanjiang port area, A Zhanjiang port company can be exempted from liability. For the determination of malicious collusion, it is necessary to analyze whether the two parties of the contract have subjective malice, and analyze the specific circumstances of the conclusion of the contract, the content of the

contract and the performance of the contract, to make a comprehensive judgment. According to the provisions of the insurance policy, after the occurrence of the insured accident, the plaintiff shall bear the liability of insurance to the insured China Oil and Foodstuffs Corporation to protect the legitimate interests of China Oil and Foodstuffs Corporation. China Oil and Foodstuffs Corporation and Zhanjiang Port (Group) Co., Limited entered into typhoon exemption clauses after the cargo was wet, but neither party intended to obtain illegal benefits. China Oil and Foodstuffs Corporation's losses should have been compensated and did not harm the plaintiff's interests.

The evidence in this case is insufficient to prove that China Oil and Foodstuffs Corporation and Zhanjiang Port (Group) Co., Limited have the objective of obtaining illegal benefits subjectively. The plaintiff will not pay the insurance indemnity to China Oil and Foodstuffs Corporation until the typhoon exemption clause is concluded. The plaintiff could have refused to pay the insurance indemnity if he had considered the typhoon exemption clause to be detrimental to his interests. Therefore, the plaintiff's claim that China Oil and Foodstuffs Corporation and Zhanjiang Port (Group) Co., Limited intentionally colluded with each other to damage the plaintiff's legitimate interests is not supported by insufficient basis. The plaintiffs also claim that the two defendants were grossly negligent in the loss of the goods. For the goods stored by China Oil and Foodstuffs Corporation in the warehouse of a branch in Zhanjiang Port, the two defendants are responsible for proper safekeeping.

Zhanjiang Port (Group) Co., Limited informed China Oil and Foodstuffs Corporation of the typhoon information two days before the cargo damage caused by the typhoon and started the typhoon prevention plan according to the established procedures. The records and photos of the typhoon protection work show that Zhanjiang Port (Group) Co., Limited reinforced the gate of No. 18 warehouse by sealing the door and pilin sand bags. It can be seen that Zhanjiang Port (Group) Co., Limited did not abandon the safety of the goods, but took necessary and prudent precautionary measures for the warehouse before the typhoon to avoid the damage to goods. Therefore, the plaintiff's claim that the two defendants have acted in gross negligence leading to the loss of the goods, is not sufficiently supported and lacks basis.

IV. Summary

In this case, the disclaimer clause in the cargo port operation agreement does not mean that China Oil and Foodstuffs Corporation and Zhanjiang Port (Group) Co., Limited signed in malicious collusion to damage the plaintiff's interests. The two defendants have no gross negligence for the loss of goods in this case. The disclaimer clause is valid, so Zhanjiang Port (Group) Co., Limited shall not be liable for the loss.

Since the existing evidence in this case cannot prove that the disclaimer clause in the cargo port operation agreement is invalid, Zhanjiang Port (Group) Co., Limited shall not be liable for the damage of the goods claimed by the plaintiff. The plaintiff's claim for the two defendants to bear the liability for compensation could not be supported, so the court no longer examined the issues including whether the loss of the goods in this case was caused by force majeure, the determination of the amount of the loss of the goods, and whether the loss of China Oil and Foodstuffs Corporation was appropriate.

Case-collectors: REN Yanbing
YAO Xu
Translator: CHEN Ze
Editor (English): Evans Tetteh
Executive editor: YANG Wei

阳江市镁某刀具实业有限公司诉上海忻某物流有限公司等海上货物运输合同纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	涉外海上货物运输合同纠纷
案号：	(2009)广海法初字第 537 号
原告：	阳江市镁某刀具实业有限公司
被告：	上海忻某物流有限公司、东某国际货运代理（深圳）有限公司广州分公司、广州保税区玮某国际贸易有限公司和广州玮某物流服务有限公司
出判时间：	2009.12.14

（二）案件事实（主要为台风因素）

在强台风“黑格比”以及因此引发的风暴潮的影响下，阳江市镁某刀具实业有限公司发生损失，本案讨论此损失是否可以援用“不可抗力”进行减责或免责抗辩。

二、争议焦点

案涉强台风“黑格比”以及因此导致的风暴潮是否构成不可抗力。

三、法院观点

法院认为，涉案货物受损是由于强台风“黑格比”导致的风暴潮进而引发洪水浸入玮某物流公司的仓库所致。由于涉案货损的发生具有可预见性和可避免性，忻某公司提供的证据不足以证明“黑格比”台风与涉案货损之间存在直接的因果关系，因此，涉案货损不是由于《海商法》第五十一条规定的承运人不负赔偿责任的原因所造成。忻某公司、玮某贸易公司和玮某物流公司主张涉案货损是由不可抗力所致没有事实依据，不予支持。

法院认为忻某公司和玮某物流公司应当有更高的预见能力。关于“黑格比”强台风对广州的影响，新闻媒体及气象部门在台风到来之前已经大量预报，对于该次台风可能造成的影响，作为专业的仓储公司和物流公司，忻某公司和玮某物流公司应当比一般市场主体具有更专业的预见能力，因此，忻某公司和玮某物流公司可以采取提前投保、转移物品等必要措施避免和减少损失发

生，但忻某公司没有履行《海商法》第四十八条关于“承运人应当妥善地、谨慎地装载、搬移、积载、运输、保管、照料和卸载所运货物”的义务。

四、小结

除了原告与各被告之间的法律关系的梳理，本案中的争议焦点集中于案涉强台风“黑格比”以及因此导致的风暴潮是否构成不可抗力。

由于涉案货损的发生具有可预见性和可避免性，被告可以采取必要措施避免和减少损失发生，但却没有履行相应义务进而导致了损害的发生。

案例提供者：任雁冰
姚旭
责任编辑：杨伟

Maritime Cargo Contract Dispute Case Brief: Yangjiang Meimou Knife Industry Co. v. Shanghai Xinmou Logistics Co., Ltd.

I. Case Information

1. Background Information

Causes for action:	Disputes over contracts of carriage of goods by sea involving foreign parties
Case Number:	(2009)广海法初字第 537 号
Defendants:	Yangjiang Meimou Knife Industry Co.
Trial Defendants:	Shanghai Xinmou Logistics Co.，Dongmou International Freight Forwarding (Shenzhen) Co., Ltd. Guangzhou Branch, Guangzhou Free Trade Zone Wei Mou International Trade Co.
Time of First Trial:	December 12, 2009

2. Case Facts（The Typhoon）

Under the influence of typhoon Hagupit and storm surge, Yangjiang Magnesium Cutlery Industrial Co., Ltd. incurred losses. This case discusses whether this loss can invoke "force majeure" to reduce or exclude liability defense.

II. Dispute Focus

Whether force majeure applies in this case and excludes liability.

III. Court's View

The court held that the damage to the goods was caused by the storm surge that resulted from the strong typhoon Hagupit, which led to flooding of the warehouse of Wei Mou Logistics Company. Since the occurrence of the damage was predictable and avoidable, the evidence provided by Xinmou was not sufficient to prove that there was a relationship between Typhoon Hagupit and the damage. Therefore, the damage could not belong to the items of Article 51 of *the Maritime Code of the People's Republic of China*. Xinmou, WeiMou Trading Company and WeiMou Logistics Company claimed that the damage was caused by force majeure, which was not supported by the facts.

The court held that Xinmou and WeiMou logistics companies should have higher sense of foreseeability. About the impact of the Hagupit on Guangzhou, the news media and meteorological departments forecasted the impacts that the typhoon might cause to the companies. As professional storage and logistics companies, Xinmou and WeiMou should have more professional foresight and taken the appropriate measures. Accordingly, Xinmou did not fulfill the obligation under Article 48 of the *Maritime Code of the People's Republic of China* that "The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried".

IV. Summary

In addition to the legal relationship between the plaintiff and the defendants, dispute in this case is whether the Hagupit and its storm surge constitute force majeure or not.

Since the damage was foreseeable and avoidable, the defendant could have taken the necessary measures to avoid and reduce them. But they failed to fulfill the corresponding obligations, which resulted in the damage.

Source Text	Target Text	Source
《中华人民共和国海商法》	Maritime Code of the People's Republic of China	http://blog.sina.com.cn/s/blog_60dd02210101q8tq.html

Case-collectors: REN Yanbing
YAO Xu
Translator: DENG Chifei
Editor (English): Evans Tetteh
Executive editor: YANG Wei

中国太平洋财产保险股份有限公司珠海中心支公司与海口港集装箱码头有限公司港口货物保管合同纠纷上诉案案例摘要

一、案件信息

（一）基本信息

案由：	港口货物保管合同纠纷
案号：	(2017)琼民终 142 号
原告：	中国太平洋财产保险股份有限公司珠海中心支公司
被告：	海口港集装箱码头有限公司
出判时间：	2017.05.19

（二）案件事实（主要为台风因素）

在“威马逊”台风的影响下，海马公司保管在海口港集装箱码头有限公司的货物发生损失。中国太平洋财产保险股份有限公司珠海中心支公司作为承保人与海马公司就此次货损签订了保险理赔协议并进行了赔付。

二、争议焦点

（一）海口集装箱公司主体资格是否适格；

（二）应否适用不可抗力作为海口集装箱公司的免责事由；

（三）海口集装箱公司是否存在过错。

三、法院观点

（一）关于海口集装箱公司主体资格是否适格问题。

法院认为，海马公司货物存放在海口集装箱公司港口堆场，海马公司与海口集装箱公司之间存在事实上的港口货物保管合同关系，涉案集装箱、货物在港口因台风发生损失后，太保珠海公司已依约向被保险人海马公司支付保险赔偿并取得相关权益，其有权就涉案损失向海口集装箱公司主张代位求偿权，故海口集装箱公司作为被告的主体适格。

（二）关于应否适用不可抗力作为海口集装箱公司的免责事由问题。

法院认为，首先，从台风实际登陆的情况来看，此次台风的强度远超过预报的强度，引起海水倒灌的因素之一正是来自大风带来的风暴潮。加之预报时间与台风登录的时间间距极为短暂，无论是“威马逊”台风的威力或在其风力影响下的潮高及海水倒灌的灾难性后果均不能预见。其次，海口集装箱公司的集装箱堆场排水设施符合国家建设标准，但“威马逊”台风引发的潮高已

实际超过该公司集装箱堆场码头前沿顶面标高，台风带来的密集降水导致堆场货物因水淹发生货损不可避免且不能克服。

（三）关于海口集装箱公司是否存在过错问题。

法院认为，本案海口集装箱公司作为专业的港口经营人，对于如何堆放集装箱及防台、防水浸均有一定经验。海口集装箱公司在台风登录前召开紧急会议进行防台部署，将堆场内的集装箱按重箱与空箱分类堆放绑扎，重箱平铺摆放，确保港区内排水通畅，系基于其专业判断进行的防台作业，尽到足够谨慎的货物保管义务，不存在保管不善及过错之情形。

四、小结

本案的争议焦点为海口集装箱公司主体资格是否适格，“不可抗力”能否作为海口集装箱公司的免责事由，海口集装箱公司是否存在过错。

关于海口集装箱公司主体资格是否适格问题，法院认为，中国太平洋财产保险股份有限公司珠海中心支公司有权就涉案损失向海口集装箱公司主张代位求偿权，因此，海口集装箱公司作为被告的主体适格。

关于“不可抗力”，法院从“不能预见”和“不可避免”两个方面论证。在有关“不能预见”的论述中，法院从“威马逊”台风实际登录的强度和预报时间与台风登录的时间的短暂间距，说明了“威马逊”台风对货物造成的巨大损失是不能预见的。在“不可避免且不可克服”的论述中，法院认为，“威马逊”台风引发的潮高已实际超过该公司集装箱堆场码头前沿顶面标高，台风带来的密集降水导致堆场货物因水淹发生货损不可避免且不能克服。

关于海口集装箱公司是否存在过错的问题，法院认为，海口集装箱公司已在台风登录前进行了相应防台措施，尽到足够谨慎的货物保管义务，因此，海口集装箱公司不存在保管不善及过错之情形。

案例提供者：任雁冰
白艳
责任编辑：杨伟

Contract Dispute Appeal: Case Summary

China Pacific Property & Casualty Insurance Company Limited Zhuhai Central Branch Company V. Haikou Port Container Terminal Company Limited Port Cargo Custody

I. Case Information

1. Background Information

Causes for action:	Port Cargo Custody Contract Dispute
Case Number:	(2017)琼民终 142 号
Defendants:	China Pacific Property and Casualty Insurance Company Limited Zhuhai Central Branch
Plaintiff:	Haikou Port Container Terminal Co.
Time of First Tri	May 19, 2017

2. Case Facts（The Typhoon）

Under the influence of typhoon Rammasun, the cargo of Haima Company was lost in Haikou Port Container Terminal Co. (hereinafter as the Haikou Port Container).As the insurer, China Pacific Property Insurance Co., Ltd. Zhuhai Central Branch (Zhuhai Branch) signed an insurance claim agreement with Haima Company and paid for the loss of goods.

II. Dispute Focus

A. whether the subject qualification of Haikou Container Company is appropriate;
B. whether force majeure should be applied as the exemption of Haikou Container Company;
C. whether the Haikou Container Company is at fault.

III. Court's View

(A) Is Haikou Container Company qualified for the subject?

The court held that, regarding the goods belonging to Haima Company stored in the Haikou Container Company port yard, a de facto contractual relationship of port cargo custody existed between Haima Company and Haikou Container Company. After the loss of the container and cargo in the port due to the typhoon, Zhuhai Branch paid the insurance compensation to the insured, Haima Company, and obtained the relevant rights and interests. Therefore, Zhuhai Branch has the right to claim the subrogation to Haikou Container Company for the loss involved in the case, so Haikou Container Company as the defendant's subject is suitable.

(B) Whether force majeure should be applied as a cause of exclusion of Haikou Container Company.

The court held that; first of all, the height of the typhoon far exceeded the forecasted, and one of the factors that caused the seawater to back up was the storm surge brought by the high wind. In addition, the interval between the forecast and the typhoon landing was extremely short.Neither the power of the typhoon nor the tidal height under and the disastrous consequences of the seawater backup could be foreseen. Secondly, the container yard drainage facilities of Haikou Container Company conformed to the national construction standards, but the tidal height caused by typhoon Rammasun had actually exceeded the top elevation of the front of the company's container yard terminal, and the intensive precipitation caused inevitable and insurmountable damage to the goods in the yard.

(C) The question of whether the Haikou container company is at fault.

The court believes that Haikou Container Company as a professional port operator must be experienced in stack containers and typhoon-prevention measures and water flooding. Haikou Container Company held an emergency meeting for the typhoon deployment that the container in the yard according to the heavy box and empty box classification stacked tied.Heavy boxes laid flat to ensure that the port drainage, based on its professional judgment of the typhoon operations, to be prudent enough to keep the goods. There is no poor storage and fault of the situation.

IV. Summary

The focus of the controversy in this case is the subject qualification of Haikou Container Company "force majeure" can be used as the exemption of Haikou Container Company, whether there is fault in Haikou Container Company.

On the question of whether the subject qualification of Haikou Container Company is appropriate, the court held that Zhuhai Branch Company has the right to claim subrogation to the Haikou Container Company for the loss involved. Thus, the subject of Haikou Container Company as the defendant is eligible.

Regarding "force majeure", the court argued from two aspects, "unforeseeable" and "unavoidable". In the aspect of "unforeseeable", the court explained the height of typhoon and the short interval between the forecast time and the time of the typhoon's landing from the Rammasun. The typhoon's huge damage to goods could not have been foreseen. In the discussion of "unavoidable and insurmountable", the court held that the tidal height caused by Typhoon Rammasun had actually exceeded the top elevation of the front of the company's container yard terminal, and the intensive precipitation brought by the typhoon led to inevitable damage to the goods in the yard due to flooding, and cannot be overcome.

On the question of whether the Haikou container company is at fault, the court held that, before the typhoon landed, Haikou Container Company had carried out corresponding measures to prevent the typhoon, fulfilling its duty to keep the goods with good care. Hence, Haikou Container Company is not at fault for improper storage.

Case-collectors: REN Yanbing
BAI Yan
Translator: DENG Chifei
Editor (English): Evans Tetteh
Executive editor: YANG Wei

中国人民财产保险股份有限公司泉州市分公司、海口港集装箱码头有限公司港口货物保管合同纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	货物保管合同纠纷
案号：	（2017）最高法民申 3252 号
原告：	中国人民财产保险股份有限公司泉州市分公司
被告：	海口港集装箱码头有限公司
出判时间：	2017.09.20

（二）案件事实（主要为台风因素）

在“威马逊”台风的影响下，中国人民财产保险股份有限公司泉州市分公司保管在海口集装箱码头有限公司的货物发生损失，本案讨论此损失是否可以援用“不可抗力”进行减责或免责抗辩。

二、争议焦点

案涉“威马逊”台风是否构成不可抗力；

海口集装箱公司是否履行了谨慎的管货义务，是否应赔偿部分经济损失。

三、法院观点

案涉“威马逊”台风是否构成不可抗力；

法院认为“不可抗力”为通常依据现有技术水平和一般人的认知而不可能预知为不能预见。对于台风而言，目前无法无法准确、及时预见其发生的确切时间、地点、延续时间、影响范围等。

不能预见：

预见的范围包括客观情况的发生及其影响程度，而本案中的损害结果正是由于无法准确预见的台风影响范围及影响程度所造成的。

法院认为，台风“威马逊”直接引起天文潮和风暴潮叠加，随之发生的海水倒灌是引发本案货损的直接原因。在台风“威马逊”发生前，海南省以及海口市新闻媒体对台风登陆时间和最大风力进行预报，但法院认为这并非实际情况的准确反映，而且作为货物损失最直接的原因——海水倒灌并未在预报中有所体现。

不能避免且不能克服：

海口市潮水位高达 3.83 米，在海口市大面积内涝积水的情况下，海口集装箱公司码头集装箱堆场被淹没在所难免。同时，申请人提出如果将货物层数增加到五层，将会减少 40%的货物损失，但其并无证据证明通过增加层高减少底层箱量的方案可以降低台风造成的损失。法院认为申请人提出在时间紧迫及全城被淹的情况下，要求海口集装箱公司将重箱转移到更为安全的地方并

不现实。

本案中，海口集装箱公司堆场呈平面结构且面积达到28万㎡，采用堆放沙包等防水措施并不现实，即使采取上述措施，海水仍可通过排水管道以及市内河渠等涌进集装箱堆场，因此，本案台风引起的海水倒灌实属不能避免、不能克服。

在本案台风发生前，海口集装箱公司及时通知货主、船运公司提货以降低损失，同时还召开紧急会议，明确防台方案为重箱区域施行平铺，层高不能超过三层，并将堆场内的集装箱按重箱与空箱分类堆放绑扎。防台重在防风，该方案符合港口经营人防台抗台的惯常做法。

综上，涉案“威马逊”台风符合不可抗力的构成要件。

海口集装箱公司是否履行了谨慎的管货义务，是否应赔偿部分经济损失。

在认定台风“威马逊”已经构成不可抗力的前提下，应当审查在不可抗力因素之外，是否因海口集装箱公司的过错导致损害结果的扩大。

法院认为,海口集装箱公司采取了对集装箱挪箱堆放以及绑扎、督促货主将货物提箱离港等实质性措施且其集装箱堆场排水设施符合国家建设标准。

综上，可以认定海口集装箱公司已尽到了合理的货物管理义务。

四、小结

本案中的争议焦点为台风是否构成不可抗力和海口集装箱公司的货物管理义务认定。

关于不可抗力最高院从“不能预见”和“不可避免且不能克服”两个方面论证。

有关“不能预见”的论述中，最高院首先对预见范围做了解释，将“影响程度”也作为预见范围纳入不可抗力认定中；此外，法院认为最直接导致损失的海水倒灌媒体报道并没有预见，因此“亚马逊”构成不可抗力。

有关“不可避免且不能克服”的论述中，法院首先驳回了申请人主张的“货物层数增加到五层，将会减少40%的货物损失”和 “要求被申请人将重箱转移到更为安全的地方”两项主张。理由为申请人无法证明通过增加层高减少底层箱量的方案可以降低台风造成的损失，并且在时间紧迫及全城被淹的情况下，转移方案并不现实。

同时，法院认为被申请人有“实质性举动”即：取了对集装箱挪箱堆放以及绑扎、督促货主将货物提箱离港等；同时通过认定集装箱堆场排水设施符合国家建设标准认为海口集装箱公司已尽到合理的管货义务。

案例提供者：任雁冰
韩淑越
责任编辑：杨伟

Case of Dispute over a Contract for the Custody of Cargoes at the Port between Quanzhou Branch of People's Insurance Company of China Limited and Haikou Port Container Terminal Company Limited

Case Summary

I. Case Information

(1) Basic information

Cause:	Dispute over Port Cargo Custody Contract
Case Number:	No.3252 [2017] Petition, Civil Division, SPC
Plaintiff:	Quanzhou Branch of the PICC
Defendant:	Haikou Port Container Terminal Co., Ltd.
Judgment Time:	September 20, 2017

(2) Case facts (mainly due to typhoon factors)

Under the influence of Typhoon "Rammasun", the goods of Quanzhou Branch of People's Insurance Company of China Limited (hereinafter referred to as PICC) kept in Haikou Port Container Terminal Company, Limited (hereinafter referred to as the Haikou Company) suffered losses. This case discusses whether "force majeure" can be invoked for liability reduction or exemption defense.

II. Controversial Focus

(1) Whether the Typhoon Rammasun involved in the case is "force majeure".

(2) Whether the Haikou Company has fulfilled its obligation of prudent cargo management and whether it should compensate for some economic losses.

III. The Supreme People's Court's Opinion

(1) Whether the Typhoon Rammasun involved in the case is "force majeure"

The Supreme People's Court (hereinafter referred to as the Court) believed that "force majeure" is usually unpredictable based on the current technical level and ordinary People's cognition. For typhoons, it is currently impossible to accurately and timely predict the exact time, location, duration, and scope of their occurrence.

1. Unpredictable:

The foreseeable scope includes the occurrence of objective circumstances and the extent of its impact, and the damage in this case is precisely caused by the unpredictable scope and extent of the impact of the typhoon.

The Court held that Typhoon "Rammasun" directly caused the superposition of astronomical tide and storm surge, and the subsequent seawater intrusion was the direct cause of the damage in this case. Before the typhoon "Rammasun" occurred, the news media in Hainan Province and its City, Haikou, predicted the landing time and maximum wind force of the typhoon, but the Court believed that this was not an accurate reflection of the actual situation, and as the most direct cause of the loss of goods, seawater intrusion was not reflected in the forecast.

2. Unavoidable and insurmountable.

The tide level in Haikou city was as high as 3.83 meters, and it was inevitable that the container yard of the Haikou Company at the terminal would be flooded under the situation of waterlogging in a

large area of Haikou city. At the same time, the applicant proposed that if the number of layers of goods was increased to five layers, it would reduce the loss of goods by 40%, but there is no evidence to prove that by increasing the height of the layer and reducing the amount of containers on the bottom layer, the loss caused by the typhoon could be reduced. The Court held that it was unrealistic for the applicant to ask the Haikou Company to transfer heavy containers to a safer place, considering the limited time against the fact that the whole city was flooded.

In this case, the storage yard of the Haikou Company has a plane structure with an area of 280,000 m2. It is unrealistic to adopt waterproof measures such as stacking sandbags. Even if the above measures are taken, seawater can still flood into the container storage yard through drainage pipelines and canals in the city. Therefore, the backward flow of seawater caused by the typhoon in this case is unavoidable and insurmountable.

Before the occurrence of the typhoon in this case, the Haikou Company promptly notified the owner and shipping company to pick up the cargo to reduce losses. At the same time, it also believed an emergency meeting was held to clarify that the typhoon prevention plan should be tiled in the heavy container area, and the number of the layers should not exceed three. The containers are stacked and lashed according to heavy and empty containers. Anti-typhoon focuses on wind protection, and this plan is in line with the usual practice of port operators for air defense and typhoon resistance.

To sum up, the typhoon "Rammasun" involved in the case meets the constitutive requirements of force majeure.

(2) Whether the Haikou Company has fulfilled its obligation of prudent cargo management and whether it should compensate for some economic losses.

On the premise that Typhoon "Rammasun" has constituted force majeure, it should be examined whether the resulting damage is expanded due to the fault of the Haikou Company besides the force majeure factor.

The Court held that the Haikou Company had taken substantive measures such as moving containers, stacking and binding them, urging shippers to carry the goods out of the port, and its drainage facilities met the national construction standards.

To sum up, it can be concluded that the Haikou Company has fulfilled its reasonable cargo management obligations.

IV. Summary

The focus of the dispute in this case is whether the typhoon is force majeure, and the identification of the Haikou Company's cargo management obligations.

The Court demonstrated "force majeure" from two aspects: "unforeseeable", "inevitable and insurmountable".

In the discussion of "unforeseeable", the SPC first explained the scope of foresight and included "degree of influence" as the scope of foresight in the identification of force majeure. In addition, the Court believed that the media report of seawater intrusion, which directly caused the loss, was not foreseeable, so Typhoon "Rammasun" is force majeure.

In the discussion of the "inevitable and insurmountable" argument, the Court first rejected the applicant's two claims of "increasing the number of layers of goods to five will reduce the loss of goods by 40%" and "requiring the respondent to transfer the heavy containers to a safer place". The reason is that the applicant cannot prove that the plan to reduce the number of bottom boxes by increasing the floor height can reduce the losses caused by typhoons. Moreover, the transfer plan is unrealistic when time is short and the whole city is flooded.

At the same time, the Court held that the respondent had "substantial actions", which is, taking the containers, stacking and binding them, and urging the shippers to carry the goods out of the port. Meanwhile, the Haikou Company has fulfilled its reasonable obligation to manage goods by confirming that the drainage facilities of the container yard meet the national construction standards.

Case-collectors: REN Yanbing
HAN Shuyue
Translator: YUE Shan
Editor (English): Evans Tetteh
Executive editor: YANG Wei

中捷缝纫机股份有限公司与宁波经济技术开发区远亚仓储有限公司保管合同纠纷上诉案

案例摘要

一、案件信息

（一）基本信息

案由：	保管合同纠纷
案号：	(2006)浙民三终字第142号
原告：	中捷缝纫机股份有限公司
被告：	宁波经济技术开发区远亚仓储有限公司
出判时间：	2006.08.18

（二）案件事实（主要为台风因素）

在“麦莎”台风的影响下，中捷缝纫机股份有限公司保管在宁波经济技术开发区远亚仓储有限公司货物发生损失。

二、争议焦点

（一）台风等恶劣气候所致的货物损失是否构成履行合同的不可抗力。

（二）对于不可抗力发生后因未采取减损措施所产生的货物扩大损失，如何确定损害赔偿责任？

三、法院观点

（一）台风等恶劣气候所致的货物损失是否构成履行合同的不可抗力。

法院认为，涉案的中捷公司的货物受损系由于“麦莎”台风所致，关于“麦莎”台风对宁波的影响，虽然新闻媒体进行过大量预报，但此次台风的实际强度已超过预期。对于“麦莎”台风的初步预报，并不等同于当事人对于“麦莎”台风将给北仑区乃至中捷公司的仓储货物带来灾难性的后果具有现实的可预见性。并且宁波经济技术开发区远亚仓储有限公司对仓库采取了沙包堵水等抗台措施，但未能避免仓库全面进水。因此，本次台风给中捷公司的仓储货物所造成的损害是当事人所不能预见、不能避免并不能克服的客观情况，当属不可抗力。

（二）对于不可抗力发生后因未采取减损措施所产生的货物扩大损失，如何确定损害赔偿责任？

法院认为，关于受损货物在台风灾害后，由于双方当事人均未采取任何减损措施，放任货物继续存放所造成损失扩大，双方均有过错，应平均负担该部分损失。

四、小结

本案的争议焦点为台风等恶劣气候所致的货物损失是否构成履行合同的不可抗力，对于不可抗力发生后因未采取减损措施所产生的货物扩大损失，如何确定损害赔偿责任？

关于“不可抗力”，法院从“不能预见”和“不能避免且不能克服”两方面进行论证。

在“不能预见”的论述中，法院认为，“麦莎”台风的实际强度已超过预期，对于台风的初步预报并不等同于当事人对于“麦莎”台风将给北仑区乃至中捷公司的仓储货物带来灾难性的后果具有现实的可预见性。因此，台风造成的损失是宁波经济技术开发区远亚仓储有限公司所不能预见。

在“不能避免、不能克服”的论述中，法院认为，由于此次台风的实际强度已超过预期，虽然宁波经济技术开发区远亚仓储有限公司对仓库采取了沙包堵水等抗台措施，对其保管的货物已尽到足够谨慎的抗台义务，但未能避免仓库全面进水，因此，台风造成的损失是宁波经济技术开发区远亚仓储有限公司所不能避免、不能克服的。

对于不可抗力发生后因未采取减损措施所产生的货物扩大损失的损害赔偿责任问题。法院认为，在台风灾害后，由于双方当事人均未采取任何减损措施，放任货物继续存放所造成损失扩大，双方均有过错，应平均负担该部分损失。

案例提供者：任雁冰
白艳
责任编辑：杨伟

Appeal Case of Dispute over a Custody Contract between ZOJE Sewing Machine Company Limited and Yuanya Warehousing Co., Ltd. in Ningbo Economic and Technical Development Zone

Case Summary

I. Case Information

(1) Basic information

Cause:	Dispute over a Custody Contract
Case Number:	No.142 [2006] the Third Civil Tribunal of the Higher People's Court of Zhejiang Province
Plaintiff:	ZOJE Sewing Machine Company Limited
Defendant:	Yuanya Warehousing Co., Ltd. in Ningbo Economic and Technical Development Zone
Judgment Time:	August 18, 2006

(2) Case facts (mainly due to typhoon factors)

Under the influence of Typhoon "Matsa", the goods kept by ZOJE Sewing Machine Co., Ltd. in Yuanya Warehousing Co., Ltd. (hereinafter referred to as the ZOJE Company) in Ningbo Economic and Technical Development Zone (hereinafter referred to as the Yuanya Company) suffered losses.

II. Focus of Dispute

(1) Whether the loss of cargoes caused by severe weather such as typhoons is an event of force majeure for the performance of the contract.

(2) How to ascertain the compensation liabilities for the enlarged loss of goods caused by failure to take mitigation measures after the occurrence of force majeure.

III. Opinions of the Higher People's Court of Zhejiang Province

(1) Whether the loss of cargo caused by severe weather such as typhoon is an event of force majeure for the performance of the contract.

The Higher People's Court of Zhejiang Province (hereinafter referred as to the Court) held that the damage to the cargo of the ZOJE Company involved in the case was caused by Typhoon Matsa. Regarding the impact of the Typhoon on Ningbo, although the news media had made series of forecasts, the actual intensity had exceeded what was forecasted. The preliminary forecast of Typhoon "Matsa" does not mean that the plaintiff has realistic predictability that Typhoon "Matsa" will bring disastrous consequences to Beilun District, and even ZOJE's stored goods. In addition, the Yuanya Company has adopted anti-typhoon measures such as sandbags to block water in the warehouse, but failed to prevent the warehouse from flooding. Therefore, the damage caused by the typhoon to the warehoused goods of the ZOJE Company is an event of force majeure that cannot be foreseen, avoided and overcome by the plaintiff.

(2) How to ascertain the compensation liabilities for the enlarged loss of goods caused by failure to take mitigation measures after the occurrence of force majeure.

The Court held that after the typhoon disaster, both parties did not take any mitigation measures, increasing the losses caused by allowing the goods to remain in storage.Therefore both parties were at fault and should bear the loss equally.

IV. Summary

The dispute areas of focus in this case are, firstly, whether the loss of cargo caused by severe weather such as typhoon is an event of force majeure for the performance of the contract. Secondly, how to ascertain the compensation liabilities for the enlarged loss of goods caused by failure to take mitigation measures after the occurrence of force majeure.

The Court demonstrated "force majeure" from two aspects: "unforeseeable", "inevitable and insurmountable".

In the "unforeseeable" argument, the Court held that the actual intensity of Typhoon Matsa had exceeded the expectations, and the preliminary forecast of the typhoon did not mean that the parties had realistic predictability that the Typhoon would bring disastrous consequences to Beilun District and even the ZOJE Company's stored goods. Therefore, the losses caused by the typhoon could not be foreseen by the Yuanya Company.

In the "unavoidable and insurmountable"argument, according to the Court, since the actual intensity of the typhoon has exceeded expectations, although the Yuanya Company has taken anti-typhoon measures such as sandbags to block water in its warehouses, fulfilled its duty to resist the typhoon with sufficient caution for the goods in its custody, it still could not prevent the full flooding of the warehouse.Therefore, the losses caused by the typhoon cannot be avoided and overcome by the Yuanya Company.

As for the compensation liabilities for the enlarged loss of goods caused by failure to take any mitigation measure after the occurrence of force majeure, the Court judged that after the typhoon disaster, both parties did not take any mitigation measure, hence, the losses caused by allowing the goods to remain in storage had increased. Therefore both parties were at fault and should bear the loss equally.

Case-collectors: REN Yanbing
BAI Yan
Translator: YUE Shan
Editor (English): Evans Tetteh
Executive editor: YANG Wei

台州市太平海运有限公司与中国平安财产保险股份有限公司张家港支公司水路货物运输合同纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	货物运输合同纠纷
案号：	(2011)民申字第448号
再审申请人：	台州市太平海运有限公司
再审被申请人：	中国平安财产保险股份有限公司张家港支公司
出判时间：	2011.05.13

（二）案件事实（主要为台风因素）

二审法院认定，2007年8月16日在大麦屿“太平山5”知道台风“圣帕”将要登录，“太平山5”轮便在大麦屿抛锚避风。

8月19日台风登陆，有部分海水进入船舱。

8月20日重新开船后遇到东南风，浪较大，进入船舱海水较多，风浪把前舱盖上的篷布吹开，海水从前舱盖与前舱舱体之间的缝隙进入。船员发现后又去重新盖好篷布，因为风浪太大，篷布又被吹开。海水在篷布被吹开后到重新盖好之间浸入船舱。

8月29日，到广州五矿码头后打开前舱卸货时发现螺纹钢表面有锈蚀现象，舱底有海水，大约10厘米深。

二、争议焦点

平保公司张家港支公司的诉讼主体资格、损失认定及责任承担。

三、法院观点

二审法院：尽管承运船舶在运输途中遭遇台风，但台风登陆前已有预报，太平公司应做好相应的准备。运输途中由于篷布捆扎不牢致使篷布被吹开海水进入船舱，且船上人员直至卸货时才发现船舱进水，致使涉案钢材锈蚀。本案货损的发生与遭遇台风并无必然因果关系。太平公司关于本案货损因不可抗力发生故可免责的主张，依据不足，亦不予支持。

最高院：尽管承运船舶在运输途中遭遇台风，但台风登陆前已有预报，太平公司应做好相应的准备。因篷布捆扎不牢被吹开导致海水进入船舱，同时船员没有及时检查船舱进水情况并立即排水，而是在台风于2007年8月19日登陆后，直至8月29日在船舶靠码头卸货时才发现船舱进水、钢材锈蚀，然后排水。

就本案货损而言，太平公司有明显的管货过失；台风不属于《中华人民共和国民法通则》第一百五十三条规定的“不能预见、不能避免并不能克服的客观情况”，即不构成不可抗力。原审法院依照《中华人民共和国合同法》第三百一十一条的规定，判决太平公司承担货损赔偿责任，事实和法律依据充分，本院予以维持。太平公司以货物锈蚀系不可抗力所致为由主张免责，没有

事实和法律依据，本院不予支持。

四、小结

最高院认为，本案中由于台风导致的船舱进水不属于不可抗力，不能依据不可抗力主张免责或者减责。最高院理由如下：

首先，台风登陆前有预报，太平公司应做好相应的准备。

其次，“篷布捆扎不牢”加“船员没有及时检查船舱进水情况并立即排水”，构成明显的管货过失，不能以不可抗力主张免责。

总体来说，最高院实质在论证台风导致的船舱进水不构成不可抗力。首先为不可预见，最高院理由为台风有相关预报，应当预见；其次为不能避免并不能克服，最高院认定船舱进水为太平公司的明显管货过失，属于本应避免却由于过失没有避免情况，不构成不可抗力的认定要件。

综上，本案中台风不属于不可抗力，太平公司不能因此减责或免责。

案例提供者：任雁冰
韩淑越
责任编辑：杨伟

Case of Dispute over a Waterway Cargo Transport Contract between Taiping Shipping Company Limited in Taizhou City and Zhangjiagang Branch of Ping An Property & Casualty Insurance Company of China, Ltd.
Case Summary

I. Case Information

(1) Basic information

Cause:	Dispute over a Waterway Cargo Transport Contract
Case Number:	No.448 [2011] Petition, Civil Division, SPC
Retrial Applicant:	台州市太平海运有限公司
Retrial Respondent:	中国平安财产保险股份有限公司张家港支公司
Judgment Time:	March 22, 2021

(2) Case facts (mainly due to typhoon factors)

The Court of Second Instance judged that the vessel "Taipingshan No.5" anchored in Damaiyu Port to take shelter knowing Typhoon "Sepat" was about to land.

The typhoon landed on August 19 and some seawater entered the cabin.

After re-sailing on August 20th, it encountered southeast wind, with strong waves and more seawater entering the cabin. The wind and waves blew open the tarpaulin on the front hatch cover, and seawater entered the gap between the front hatch cover and the front hatch body. When the crew found out, they went to cover the tarpaulin again, because the wind and waves were too strong, the tarpaulin was blown open again. Seawater soaks into the cabin between the tarpaulin being blown open and the tarpaulin being re-covered.

On August 29, when opening the front cabin for unloading after arriving at Wukuang Wharf in Guangzhou, it was found that the surface of the rebar and seawater had corroded about 10cm deep on the bilge.

II. Dispute Focus

Issues concerning the qualifications of the litigation subject, the determination of losses and the assumption of liabilities of Zhangjiagang Branch of Ping An Property & Casualty Insurance Company of China, Ltd..

III. Opinions of the Courts

The Court of Second Instance: Although the carrier ship encountered a typhoon in transit, it was predicted before the typhoon landed, and Taiping Shipping Company Limited in Taizhou City (hereinafter referred to as the Taiping Company) should make corresponding preparations. During transportation, the tarpaulin was blown open and seawater entered the cabin due to the poor binding of the tarpaulin, and the personnel on board did not find water in the cabin until unloading, resulting in corrosion of the steel involved. There is no necessary causal relationship between the occurrence of cargo damage in this case and the typhoon. The Taiping Company's claim that the damage to the goods in this case can be exempted due to force majeure is not based on sufficient evidence and will not be

supported.

The Supreme People's Court (hereinafter referred to as the SPC): Although the carrier ship encountered a typhoon during transportation, it was predicted before the typhoon landed, and Taiping Company should make corresponding preparations. Seawater entered the cabin because the tarpaulin was not tightly tied and blown away. At the same time, the crew did not check the water inflow in the cabin in time to drain it immediately. Instead, after the typhoon landed on August 19, 2007, it was not until August 29 when the ship was unloaded at the dock that water inflow and steel corrosion were found in the cabin and then drained.

As far as the damage in this case is concerned, the Taiping Company has obviously faulted in managing the goods; typhoon does not belong to the "unforeseeable, unavoidable and insurmountable objective situation" stipulated in Article 153 of the General Principles of the Civil Law of the People's Republic of China, that is, it is not force majeure. In accordance with the provisions of Article 311 of the Contract Law of the People's Republic of China, the Court of First Instance ruled that the Taiping Company should bear the liability for compensation for damage to the goods. The factual and legal basis was sufficient and the Court upheld it. The Taiping Company claimed exemption on the grounds that the corrosion of goods was caused by force majeure. There was no factual or legal basis and the Court did not support it.

IV. Summary

The SPC held that the water inflow in the cabin caused by typhoon in this case was not an event of force majeure, and could not claim exemption or reduction of liability according to force majeure. The reasons are as follows:

First of all, there is a forecast before the typhoon lands, and the Taiping Company should make corresponding preparations.

Secondly, the fact that "the tarpaulin is not tied firmly" and "the crew failed to check the water inflow in the cabin in time and drain the water immediately" constitutes obvious fault in cargo management, which cannot be allowed exemption by force majeure.

Generally speaking, the SPC is actually demonstrating that the water inflow in the cabin caused by the typhoon was not force majeure. First of all, regarding the aspect of being unforeseeable; There are some relevant forecast about the typhoon, so it should be foreseen. Secondly, for the aspect of being unavoidable and insurmountable. The SPC decided that the water inflow in the cabin was the Taiping Company's obvious fault in managing the goods, a situation that should have been avoided but was not due to their fault, hence, did not constitute an element of force majeure.

To sum up, the typhoon in this case is not force majeure, and the Taiping Company cannot reduce or exempt from liability.

Case-collectors: REN Yanbing
HAN Shuyue
Translator: YUE Shan
Editor (English): Evans Tetteh
Executive editor: YANG Wei

北京康利石材有限公司与厦门中远国际货运有限公司、厦门中远国际货运有限公司泉州分公司水路货物运输合同纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	多式联运合同纠纷
案号：	(2014)民申字第577号
再审申请人：	北京康利石材有限公司
被申请人：	厦门中远国际货运有限公司、厦门中远国际货运有限公司泉州分公司、泉州市中阳货运代理有限公司
出判时间：	2014.06．27

（二）案件事实（主要为台风因素）

涉案货物由康利公司在工厂提货，由厦门中货泉州分公司委托中联公司空箱拖至工厂，重箱拖至泉州石湖港，水路运输由泛亚公司承运至天津港，厦门中货泉州分公司的天津港代理委托颖辉公司于天津港码头提箱运至康利公司工厂。

泛亚公司在承运期间遭遇了恶劣天气，分别为台风“天秤”和“布拉万”期间货物遭受了损失。根据航海日志的记载，涉案船舶开航时海况为5级风4级浪，并且此时台风“天秤”的移动方向与船舶航向相反。8月26日17：05时在天气为6级风5级浪情况下，涉案船舶在渔山列岛西侧抛锚避让另一台风“布拉万”，8月27日22：00时起锚开船。

二、争议焦点

涉案货损发生的原因是否由台风导致。

三、法院观点

根据航海日志的记载，涉案船舶开航时海况为5级风4级浪，并且此时台风“天秤”的移动方向与船舶航向相反。8月26日17：05时在天气为6级风5级浪情况下，涉案船舶在渔山列岛西侧抛锚避让另一台风“布拉万”，8月27日22：00时起锚开船。

结合航海日志分析，检验报告中关于船舶遭受恶劣天气导致货损的这一认定，缺乏事实依据，二审法院对其不予采纳并无不当。同时法院认为，检验人在检验报告和一审开庭中均陈述，检验报告中提出船舶遭受恶劣天气系基于康利公司和泛亚公司的介绍，检验人并未实际查看航海日志，两份检验报告均属于分析、推测，并未明确确定事故原因。

同时法院认为，康利公司对该航海日志提出异议，但未提供相反证据证明。康利公司主张二

审法院对涉案货损发生的原因认定错误，缺乏充分的事实依据和法律依据。

四、小结

本案中法院认定货损并非由台风导致的主要原因是缺乏事实依据，所以法院对提供的检测报告中的关于船舶遭受恶劣天气导致货损的分析不予采纳。

本案属无法证明是由于台风天气导致的货架移位还是由于承运人管货义务履行不当所导致的没有防震措施、货物间有一定的空隙、绑扎系固不当所导致的损害。根据航海日志和检测分析报告，法院以检测分析报告检验人并未实际查看航海日志，均属于分析、推测，并未明确确定事故原因等理由不予采纳。而仅根据航海日志又没有充分依据，所以法院对于船舶遭受恶劣天气导致货损不予认定。

案例提供者：任雁冰
韩淑越
责任编辑：杨伟

Case of Dispute over Waterway Cargo Transport Contract between Beijing Kangli Stone Co., Ltd., Xiamen, Zhongyuan International Freighting Co., Ltd., and Quanzhou Branch of Xiamen Zhongyuan International Freighting Co., Ltd

Case Briefing

I.Case Information

A. Basic Information

Cause of Action:	Dispute over A Multimodal Transport Contract
Case Number:	No. 577 [2014], Civil Petition
Retrial Petitioner:	Beijing Kangli Stone Co., Ltd..
Respondents:	Xiamen Zhongyuan International Freighting Co., Ltd., Quanzhou Branch of Xiamen Zhongyuan International Freighting Co., Ltd., Quanzhou Zhongyang Freight Forwarding Agency Co., Ltd..
Judgment Time:	2014.06.27

B. Case Facts (Typhoon is the main factor)

The cargoes involved in the case were picked up by Beijing Kangli Stone Co., Ltd. (hereinafter referred to as "Kangli Company") at the factory, and Quanzhou Zhongyang Freight Forwarding Agency Co., Ltd. (hereinafter referred to as "Quanzhou Branch") entrusted Shishi Zhonglian Transport Co., Ltd. (hereinafter referred to as "Zhonglian Company") to tow the empty boxes to the factory and the heavy boxes to Shihu Port, Quanzhou. The waterway was to be shipped to Tianjin Port by Shanghai PAN-ASIA Shipping Co.,Ltd. (hereinafter referred to as "Pan-Asia Company").The Tianjin Port Agent of Quanzhou Branch entrusted Tianjin Yinghui Freight Forwarding Co., Ltd (hereinafter referred to as "Yinghui Company") to pick up the cases at the Tianjin Port and deliver them to the factory of Kangli Company.

Pan-Asia Company was hit by bad weather, typhoon Tembin and Blaven, during the shipment damaging the cargoes. According to the log records, the sea condition was fresh breeze and moderate sea when the ship involved set sail, and the direction of typhoon Tembin at that time was opposite to the ship's course. At 17:05 on August 26, the ship involved cast anchor on the west side of Yushan Island to avoid another typhoon Blaven under strong breeze and rough sea. At 22:00 on August 27, the ship lifted anchor and set sail.

II. Dispute Focus

Whether the damage to the involved cargoes was caused by the typhoon.

III. The Court's Opinion

According to the log records, the sea condition was fresh breeze and moderate sea when the ship involved set sail, and the direction of typhoon Tembin at that time was opposite to the ship's course. At 17:05 on August 26, the ship involved cast anchor on the west side of Yushan Island to avoid another typhoon Blaven under strong breeze and rough sea. At 22:00 on August 27, the ship lifted anchor and set sail.

Combined with the log analysis, the identification that the ship suffered from bad weather caused the damage in the inspection report lacks factual basis.It is not justified for the court of second instance not to adopt it.At the same time, the court held that the surveyor stated both in the survey report and in the first instance court that, the record stating that the ship suffered from bad weather was based on the introduction of Kangli Company and Pan-Asia Company, as the surveyor did not actually check the ship log. Both survey reports were analysis and speculation, and the cause of the accident was not clearly determined.

The court also found that Kangli Company raised an objection about the log without providing evidence to the contrary.Kangli Company claimed that the court of second instance had wrongly identified the causes of the damage to the involved cargoes in the case and lacked sufficient factual and legal basis.

IV. Summary

In this case, the court determined that the main reason for the damage to the cargoes to have been caused by the typhoon lacks factual basis. Therefore, the court did not accept the analysis of damage caused by bad weather on the ship in the provided inspection report.

In this case, it is impossible to prove whether the damage is caused by the shift of shelves because of typhoon or by the improper performance of the carrier's cargo responsibility, which resulted in the absence of anti-shock measures, certain gaps between the goods, and binding and fastening. The court did not adopt the inspection analysis report because the surveyor did not actually check the log, which were all analysis and speculation, and the cause of the accident was not clearly determined. Therefore, information only according to the ship log was not sufficient evidence, as a result of which the court didn't identify the ship to have suffered damage due to the bad weather.

Case-collectors: REN Yanbing
HAN Shuyue
Translator: BAI Xue
Editor (English): Evans Tetteh
Executive editor: YANG Wei

威马逊台风-广东红土地物流有限公司、平安广东分公司合同纠纷

案例摘要

一、案件信息

（一）基本信息

案由：	合同纠纷
案号：	(2018)最高法民申 3910 号
原告：	中国平安财产保险股份有限公司广东分公司
被告：	广东红土地物流有限公司、海口南青集装箱班轮有限公司湛江分公司、海口南青集装箱班轮有限公司
出判时间：	2018.10.16

（二）案件事实（主要为台风因素）

红土地公司与广东信威家具发展有限公司签订运输合同，约定由红土地公司负责将涉案货物从湛江市宝满码头运到上海市嘉定区兴华公路 2369 号，红土地公司与信威公司之间成立多式联运合同关系。在运输期间，涉案货物因遭遇风暴潮发生毁损，红土地公司主张不承担责任。

二、争议焦点

（一）本案的风暴潮是否属于不可抗力，以及红土地公司是否承担相关举证责任；

（二）涉案《公估报告》是否具有足够证明力且能够作为定案依据，红土地公司能否据此内容免除赔偿责任。

三、法院观点

（一）本案的风暴潮是否属于不可抗力，以及红土地公司是否承担相关举证责任

根据《中华人民共和国合同法》第三百一十一条的规定，承运人对运输过程中货物的毁损、灭失承担损害赔偿责任，但承运人证明货物的毁损、灭失是因不可抗力、货物本身的自然性质或者合理损耗以及托运人、收货人的过错造成的，不承担损害赔偿责任。涉案货物在运输期间发生毁损，货物毁损系因遭遇不可预测、不可避免且不可克服的风暴潮造成。

国家海洋预报台在风暴潮来临前已经提醒注意防范风暴潮可能引发的次生灾害，且在之后将海浪预警级别提升为红色、风暴潮的警报级别提升为橙色。在案涉事故发生前，气象部门已经多次提醒并对风暴潮的来临进行了预报，红土地公司关于风暴潮不可预测的主张没有事实依据，也

不能举证证明其采取了必要措施应对风暴潮。

综上，本案涉及的风暴潮是否属于不可抗力，红土地公司应就此举证予以证明。

（二）涉案《公估报告》是否具有足够证明力且能够作为定案依据，红土地公司能否据此内容免除赔偿责任。

根据《最高人民法院关于民事诉讼证据的若干规定》第六十四条的规定，审判人员应当依照法定程序，全面、客观地审核证据，依据法律的规定，运用逻辑推理和日常生活经验，对证据有无证明力和证明力大小进行判断。上海恒量保险公估有限公司接受平安保险公司委托，对受损货物进行查勘，并形成涉案《公估报告》。《公估报告》附有查勘记录，可以证明公估从业人员进行了查勘。即便存在只有一名保险公估从业人员签名、保险公估从业人员未按规定进行执业登记等瑕疵，《公估报告》反映出的查勘结果、货物受损情况等内容，对本案相关事实仍具有一定的证明力。

《公估报告》中关于”本次事故系自然灾害造成货物水湿受损，仅保单原因不存在第三责任方”的表述，系保险公估人作出的结论，而非托运人免除承运人赔偿责任的意思表示，也不能免除红土地公司对存在不可抗力免责事由的举证义务。红土地公司据此主张免除赔偿责任，没有法律依据。

综上，《公估报告》具有一定证明力，能够作为定案依据，红土地公司不能根据《公估报告》免除赔偿责任。

四、小结

依照《中华人民共和国合同法》第三百一十七条的规定，红土地公司为多式联运经营人，对全程运输负责。根据《中华人民共和国合同法》第三百一十一条的规定，承运人对运输过程中货物的毁损、灭失承担损害赔偿责任，但承运人证明货物的毁损、灭失是因不可抗力、货物本身的自然性质或者合理损耗以及托运人、收货人的过错造成的，不承担损害赔偿责任。

国家海洋预报台于风暴潮来临前发布的海浪橙色警报中，已经提醒注意防范风暴潮可能引发的次生灾害，且在之后将海浪预警级别提升为红色、风暴潮的警报级别提升为橙色。在案涉事故发生前，气象部门已经多次提醒并对风暴潮的来临进行了预报，红土地公司关于风暴潮不可预测的主张没有事实依据，也不能举证证明其采取了必要措施应对风暴潮。

涉案《公估报告》的形成符合法定程序，仅存在部分瑕疵，不影响《公估报告》内容的准确性，且其中的结论性话语也不能免除红土地公司的举证义务。

案例提供者：任雁冰
辜韧佳
李庆霖
责任编辑：杨伟

Typhoon Rammasun - Summary of Contract Disputes Case about Zhanjiang Hongtudi Logistics Co., Ltd. and China Ping'an Property Insurance Co.,Ltd. Guangdong Branch

I. Case Information

A. Basic Information

Cause of Action:	Contract disputes
Case Number:	No. 3910 [2018], Civil Division, of the Supreme People's Court
Plaintiffs:	China Ping'an Property Insurance Co., Ltd. Guangdong Branch
Defendants:	**Zhanjiang Hongtudi Logistics Co., Ltd., Zhanjiang Branch** Nanqing Container Lines Co., Ltd. and Haikou Nantsing Container Lines Co., Ltd.
Judgment Time:	2018.10.16

B. Case Facts (Typhoon is the main factor)

Zhanjiang Hongtudi Logistics Co., Ltd.(hereinafter referred to as "Hongtudi Company") and Guangdong Xinwei Domestic Industry Group Co.,Ltd. (hereinafter referred to as "Xinwei Company") have signed a transport contract, which stipulates that Hongtudi Company shall be responsible for transporting the cargoes involved from Baoman Wharf, Zhanjiangto No. 2369, Xinghua Road, Jiading District, Shanghai. Hongtudi Company and Xinwei Company established a multimodal transport contract relationship. During the transportation, the cargoes involved in the storm surge were damaged, Hongtudi Company claims not to bear liability.

II. Dispute Focus

A. Whether the storm surge in this case is force majeure, and whether Hongtudi Company bears the relevant burden of proof

B. Whether the "Assessment Report" involved in the case has enough proof and can be used as the basis for the conclusion of the case, and whether Hongtudi Company can be exempted from compensation liability according to the content of "Assessment report"

III. The Court's Opinion

A. Whether the storm surge in this case is force majeure, and whether Hongtudi Company bears the relevant burden of proof

According to the provisions of Article 311 of the Contract Law of the People's Republic of China, the carrier is liable in case of damage to or loss of the cargoes in the course of carriage, and further provided that it is not liable for damages if it proves that such damage to or loss of the cargoes is caused by force majeure, the intrinsic characteristics of the cargoes reasonable depletion,or the fault of the consignor or consignee.The cargoes were damaged during transportation due to the unpredictable, unavoidable and insurmountable storm surge.

The National Oceanic Forecast Office had warned of possible secondary disasters caused by storm surges in advance, and later raised the wave alert to red and the storm surge alert to orange. Before the accident happened, the Meteorological Department had warned and forecasted the storm surge for many times. There is no factual basis for Hongtudi Company to claim that the storm surge was unpredictable, and no evidence that the company did what was necessary to deal with them.

To sum up, Hongtudi Company shall provide evidence to prove whether the storm surge involved is force majeure.

B. Whether the "Assessment Report" of the case has enough proof and can be used as the basis for the conclusion of the case, and whether Hongtudi Company can be exempted from compensation liability according to the content of "Assessment Report"

According to Article 64 of the Provisions of Supreme People's Court on Evidence in Civil Procedures, the judges shall verify the evidences according to the legal procedures all-roundly and objectively, shall observe the provisions of law, follow the professional ethics of judges, use logic reasoning and daily life experience to make independent judgments concerning the validity and forcefulness of the evidences.Shanghai High levels Surveying Co., Ltd. was entrusted by China Ping'an Property Insurance Co.,Ltd. Guangdong Branch (hereinafter referred to as Ping'an Company) to survey the damaged goods and form the "Assessment Report". "Assessment Report" is attached to the appraisal report, which can prove that the appraisal practitioners have surveyed. Even if there is only one signature of the insurance valuation practitioner and the insurance valuation practitioner did not register as required, the survey results and the damage of the goods reflected in the "Assessment Report" still have certain power of proof for the relevant facts of the case.

The statement in the "Assessment Report" about "this accident is caused by natural disaster, and there is no third party responsible for affirmative covenant" was the conclusion made by the insurance assessor, not by that implying that the shipper exempts the carrier from the liability. This did not exempt Hongtudi Company from the obligation to prove the cause of exoneration of force majeure. Accordingly, Hongtudi Company claiming to be exempt from liability for compensation, had no legal basis.

To sum up, the "Assessment Report" has certain power of proof and can be used as the basis for the conclusion of the case. Therefore, Hongtudi Company cannot be exempted from compensation liability according to the "Assessment Report".

IV. Summary

In accordance with the provisions of Article 317 of the Contract Law of the People's Republic of China, Hongtudi Company is the multi-modal transport operator responsible for the whole transport. According to the provisions of Article 311 of the Contract Law of the People's Republic of China, the carrier is liable for damages in case of damage to or loss of the cargoes in the course of carriage, provided that it is not liable for damages if it proves that such damages to or loss of the cargoes is caused by force majeure, the intrinsic characteristic of the cargoes, reasonable depletion, or the fault of the consignor or consignee.

The National Oceanic Forecast Office had warned of possible secondary disasters caused by storm surges in advance, and later raised the wave alert to red and the storm surge alert to orange. Before the accident happened, the Meteorological Department had warned and forecasted the storm surge for many times. There is no factual basis for Hongtudi Company to claim that the storm surge was unpredictable, and no evidence that the company did what was necessary to deal with them.

Although there are some defects in the "Assessment Report" of the case, its formation conforms to the legal procedures, so it does not affect the accuracy of the content, and its conclusion cannot exempt Hongtudi Company from the burden of proof.

Case-collectors: REN Yanbing
GU Renjia
LI Qinglin
Translator: BAI Xue
Editor (English): Evans Tetteh
Executive editor: YANG Wei

广东奥科特新材料科技股份有限公司诉广东中外运国际货代有限公司，金星轮船有限公司(GOLD STAR LINE LIMITED)，广州南沙海港集装箱码头有限公司海上货运代理合同纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	海上货运代理合同纠纷
案号：	(2018)粤 72 民初 261 号
原告：	广东奥科特新材料科技股份有限公司
被告：	广东中外运国际货代有限公司，金星轮船有限公司(GOLD STAR LINE LIMITED)，广州南沙海港集装箱码头有限公司
出判时间：	2019．05．07

（二）案件事实（主要为台风因素）

奥科特公司与中外运公司签订有出口货物运输代理服务合同。甲方以星公司、金星公司，乙方广州港股份有限公司和丙方南沙港公司签订有外贸班轮港口作业合同。8 月 3 日，奥科特公司根据中外运公司的安排，将 1651 箱电子灯具交金星公司从中山市小榄镇运至尼日利亚廷坎岛(Tin Can Island)。8 月 23 日，金星公司将货物存放在南沙港公司集装箱堆场，并因台风“天鸽”影响导致货物产生损失。

二、争议焦点

本案中“天鸽”台风是否构成不可抗力。

三、法院观点

根据《中华人民共和国民法总则》第一百八十条第二款的规定，“不可抗力”是指不能预见、不能避免且不能克服的客观情况。依据现有技术水平和一般人的认知而不可能预知为不能预见。

对于台风而言，根据现有技术手段，人类虽可能在一定程度上提前预知，但是无法准确、及时预见其发生的确切时间、地点、延续时间、影响范围及程度。虽然在台风“天鸽”发生前，气象部门、新闻媒体等对台风“天鸽”登陆时间和风力进行了预报，但该台风带来的风、雨、浪、湖产生的叠加效果以及珠江口多个站点均超历史最高潮位并未在预报中有所体现。本案中的损害结果正是由于无法准确预见的台风影响范围及影响程度所造成的。

不能避免且不能克服，表明某一事件的发生具有客观必然性。不能避免，指当事人尽了最大的努力，仍然不能避免事件的发生。不能克服，指当事人在事件发生后，尽了最大的努力，仍然不能克服事件造成的损害后果。客观情况，是指独立于当事人行为之外的客观情况。台风“天鸽”直接带来风、雨、浪、潮等灾害，叠加产生的潮水漫灌是引发本案货损的直接原因。

本案已查明，广州南沙潮水位高达 3.13 米(超警戒潮位 123 厘米)，超历史实测最高潮位，南沙港公司集装箱堆场遭受水淹在所难免。集装箱堆场呈平面结构，采用堆放沙包等防水措施并不现实，即使采取上述措施，潮水仍可通过排水管道以及市内河渠等涌进集装箱堆场，因此，本案台风引起的水淹实属不能避免。南沙港公司制定有防风防台、防讯专项应急预案。

在本案台风发生前，南沙港公司及时通知了货主、船运公司防台，并采取对堆场内的集装箱进行绑扎加固等措施。防台重在防风，该措施符合港口经营人防合抗台的惯常做法。奥科特公司主张南沙港公司没有采取合理的保管措施导致货损，与本案调查的事实不符，法院不予支持。

综上所述，法院认为对存放本案货物的南沙港公司而言，“天鸽”台风符合不可抗力构成要件，构成不可抗力。

四、小结

《中华人民共和国海商法》第五十一条第一款第三项规定：“在责任期间货物发生的灭失或者损坏是由于下列原因之一造成的承运人不负赔偿责任：……(三)天灾，海上或者其他可航水域的危险或者意外事故……”。

天灾是指足以直接造成货损的自然现象。本案货物在南沙港公司集装箱堆场存放期间因遭受“天鸽”台风影响被水浸泡导致货损，属于天灾的范畴，且该天灾属于承运人或其受托方采取了合理措施后仍不能抵御和防止的。在托运人未举证证明承运人因其他违约行为造成本案货损的情况下，承运人金星公司对因天灾“天鸽”台风造成的货物损坏不承担赔偿责任。

案例提供者：任雁冰
辜韧佳
李庆霖
责任编辑：杨伟

Case of Dispute over A Maritime Freight Forwarding Contract Between Guangdong Aokete New Material Technology Share Holding Co., Ltd. V. Guangdong Sinotrans International Freight Forwarding Co., Ltd., Gold Star Line Limited, and Guangzhou South China Oceangate Container Terminal Co., Ltd.

Case Summary

I. Case Information

A. Basic Information

Cause of Action:	Dispute over A Maritime Freight Forwarding Contract
Case Number:	No. 261 [2018], First, Civil Division, 72, of the Guangzhou Maritime Court, Guangdong
The plaintiff:	Guangdong Aokete New Material Technology Share Holding Co., Ltd.
Defendants:	Guangdong Sinotrans International Freight Forwarding Co., Ltd., Gold Star Line Limited, Guangzhou South China Oceangate Container Terminal Co., Ltd.
Judgment Time:	2019. 05. 07

B. Case Facts(Typhoon is the main factor)

Guangdong Aokete New Material Technology Share Holding Co., Ltd. (hereinafter referred to as "Aokete Company") and Guangdong Sinotrans International Freight Forwarding Co., Ltd.(hereinafter referred to as "Sinotrans Company) have signed the contract of forwarding agent service for export goods. Party A (Zim Integrated Shipping Services (China) Ltd., Gold Star Line Limited (hereinafter referred to as Gold Star Company)), Party B (Guangzhou Port Company Limited) and Party C (Guangzhou South China Oceangate Container Terminal Co., Ltd. (hereinafter referred to as Nansha Company)) have signed a port operation contract for foreign trade liners. According to the arrangement of Sinotrans Company, Aokete Company delivered 1,651 cases of electronic lamps to Gold Star Company from Xiaolan Town, Zhongshan City to Tin Can Island, Nigeria on August 3, 2017. Gold Star Company deposited the goods in the containerized yard of Nansha Company, and the goods suffered losses due to typhoon Hato.

II. Dispute Focus

Whether "Hato" typhoon constitutes force majeure in this case.

III. The Court's Opinion

According to paragraph 2 of Article 180 of General Provisions of the Civil Law of the People's Republic of China, "Force Majeure" means unforeseeable, unavoidable and unconquerable objective situations. "Unforeseeable" means that it is impossible to predict with the current state of technology and ordinary People's understanding.

For typhoons, whilst human beings may predict in advance to some extent by experiment, they cannot predict the exact time, place, duration, impact range and extent of their occurrence accurately and timely. Although the Meteorological Department and news media had forecasted the landing time and wind power of Typhoon Hato before it hit, the multiple effect of wind, rain, wave and lake brought by Typhoon Hato and the surpassing of the highest water level in history at several stations in the Pearl River Estuary were not reflected in the forecast. The damage in this case was caused by the extent and magnitude of the impact of the typhoon, which could not be accurately predicted.

"Inevitable and insurmountable" indicates that the occurrence of an event is objectively inevitable. "Inevitable" refers to the fact that an event cannot be avoided despite the best efforts of the person involved. "Insurmountable" refers to the fact that the persons involved tried their possible best after the occurrence of the event, but still could not overcome the damage caused by the event. An objective situation is one that is independent of the actions of the persons involved. Typhoon Hato directly brought wind, rain, waves, tides and other disasters, and the tidal flooding caused by these disasters was the direct cause of the cargo damage in this case.

The case has been found out that the tidal level in Nansha, Guangzhou is as high as 3.13 meters (123 centimeters above the warning tide level), exceeding the highest tidal level measured before. Therefore, it is inevitable that the container yard of Nansha Company will be flooded. The container yard is a plane structure, so it is not practical to adopt waterproof measures such as stacking sandbags. Even if sandbags are stacked, the tide can still flow into the container yard through sewers and city canals. Therefore, the flooding caused by typhoon in this case is unavoidable. Nansha Company has formulated a special emergency plan for wind and typhoon prevention and communication prevention.

Before the typhoon of this case, Nansha Port Company informed the shipper and shipping company to prevent the typhoon timely, and took measures such as binding and strengthening the containers in the yard.

The key point of typhoon prevention is to prevent wind. The practice of Nansha Company was in line with the usual practice of typhoon prevention of port operators. Aokete Company claimed that the damage was caused by the failure of the Nansha Company to take reasonable safekeeping measures. The claim was inconsistent with the facts under investigation in this case, so the court did not support it.

To sum up, the court holds that for the Nansha Company which stored the goods in this case, Typhoon Hato met the constitutive requirements of force majeure. Therefore Hato is force majeure.

IV. Summary

Article 51, paragraph 1 (3) of the Maritime Law of the People's Republic of China stipulates: "The carrier shall not be liable for the loss of or damage to the goods occurred during the period of carrier's responsibility arising or resulting from any of the following causes... (3) Force majeure and perils, dangers and accidents of the sea or other navigable waters... ".

Force majeure and peril is a natural phenomenon that directly causes damage to the cargo. During storage in the container yard of Nansha Company, the goods in this case were soaked in water due to typhoon Hato. The incident falls under the category of force majeure and peril. The force majeure and peril belongs to the carrier or its trustee after taking reasonable measures still unable to resist and prevent. Since the shipper has not proved that the carrier has caused the damage to the goods in this case by any other breach of contract, the carrier Gold Star Company shall not be liable for the damage caused by typhoon "Hato".

Case-collectors: REN Yanbing
GU Renjia
LI Qinglin
Translator: BAI Xue
Editor (English): Evans Tetteh
Executive editor: YANG Wei

美亚财产保险有限公司广东分公司与广东卓志跨境电商供应链服务有限公司、德宝海运有限公司多式联运合同纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	多式联运合同纠纷
案号：	(2019)粤 72 民初 2222 号
原告：	美亚财产保险有限公司广东分公司
被告：	德宝海运有限公司 (TURBO MARITIME LIMITED)
出判时间：	2020.10.29

（二）案件事实（主要为台风因素）

卓志公司根据百德沃公司的指定，委托被告将前述家用电器自香港运输到南沙。被告同意承运并于 2018 年 9 月 14 日出具了 4101 号提单副本，载明托运人为百德沃公司，收货人和通知人为卓志公司，装货港为香港，卸货港为南沙新港，运输条款为“门到港”，9 月 15 日前述货物被卸载于南沙二期码头，同日德宝海运有限公司通知卓志公司可换单清关。

由于台风“山竹”与天文大潮、大浪、暴雨叠加，涌浪通过码头排水管倒灌进入港区，台风期间的强暴雨也导致珠江潮水倒灌入南沙二期码头集装箱堆场，致使集装箱堆场被水浸。9 月 16 日水浸时间超过 10 个小时。南沙二期码头重箱堆场水浸深度约 0.5 米，底层集装箱遭受水浸。

二、争议焦点

（一）原告是否享有合法的代位求偿权；

（二）涉案货损是否发生于被告责任期间及其合理数额；

（三）被告是否无需承担赔偿责任。

三、法院观点

（一）原告是否享有合法的代位求偿权

关于原告是否享有保险代位求偿权问题。百德沃公司是与被告成立多式联运合同关系的托运人，如果被告存在违约行为且需要承担赔偿义务，作为多式联运合同的相对方，百德沃公司依法享有对被告的索赔请求权。被告关于百德沃公司没有实际损失不享有向被告索赔权的抗辩，并无法律依据，原告作为依法取得代位百德沃公司的主体，享有对被告的索赔权。

综上，原告享有合法的求偿权。

（二）涉案货损是否发生于被告责任期间及其合理数额

涉案货损是否发生于被告责任期间及其合理数额。被告作为多式联运经营人的责任期间自接

收涉案货物的 2018 年 9 月 14 日起至将涉案货物交付于百德沃公司的代理人卓志公司 2019 年 9 月 19 日止。在原告未提交其他证据证明百德沃公司存在其他合理损失的情况下，如被告需向原告赔偿涉案货损损失，人民币 84436.38 元是其赔偿责任上限。

综上，涉案货损发生于被告责任期间，赔偿数额应不超过人民币 84436.38 元。

（三）被告是否无需承担赔偿责任

关于被告是否无需承担赔偿贵任。虽然涉案 80 台厨师机在被告责任期间因水浸事件发生损坏，但造成厨师机损坏的唯一原因是超强台风“山竹”与大雨、大浪、天文大潮叠加产生的潮水倒灌，前述情形属于天灾。被告已尽合理、妥善、谨慎的管货义务且不存在其他违约行为，对天灾原因造成的货物损坏不负赔偿贵任。

综上，被告不需承担赔偿责任。

四、小结

本案的争议点在于：原告是否享有合法的代位求偿权、涉案货损是否发生于被告责任期间及其合理数额，以及被告是否无需承担赔偿责任。

卓志公司的前述行为源于百德沃公司的指示，百德沃公司作为托运人对作为多式联运经营人的被告享有实体索赔权，原告作为依法取得代位百德沃公司的主体，享有对被告的索赔权。

根据海商法第一百零三条“多式联运经营人对多式联运货物的责任期间，自接收货物时起至交付货物时止”的规定，被告作为多式联运经营人的责任期间自接收涉案货物的 2018 年 9 月 14 日起至将涉案货物交付于百德沃公司的代理人卓志公司 2019 年 9 月 19 日止。百德沃公司和其代理人卓志公司未及时以书面形式通知被告涉案货物遭受湿损，仅构成涉案货物状况良好的初步证据而不是最终证据。在原告未提交其他证据证明百德沃公司存在其他合理损失的情况下，如被告需向原告赔偿涉案货损损失，人民币 84436.38 元是其赔偿责任上限。

对于台风而言，根据现有技术手段，人类虽可能在一定程度上提前预知，但仍无法准确、及时预见其发生的确切时间、地点、延续时间、影响范围及程度。在台风“山竹”登陆前，气象部门对台风的登陆时间和风力进行了预报，但该台风带来的风、浪、潮产生的叠加效果以及涌浪可能将潮水倒灌漫入涉案集装箱堆场等并未在预报中有所体现。台风“山竹”登陆期间，被告对堆存于南沙二期码头的涉案货物已尽到妥善、谨慎的管货义务。对于天灾造成的货物损坏，被告可以不负赔偿责任。关于被告是否存在其他违约行为。虽然涉案货物存放在南沙二期码头期间因遭受天灾受损，但被告也仅能就该天灾事件造成的直接损失不负赔偿责任。

案例提供者：任雁冰
辜韧佳
李庆霖
责任编辑：杨伟

Case of Dispute over Multimodal Transport Contract between Guangdong Branch of AIG Insurance Company China Limited, Guangdong Top Ideal Cross-border E-commerce SCM Service Co., Ltd., and Turbo Maritime Limited
Case Briefing

I. Case Information

A. Basic Information

Cause of Action:	Dispute over A Multimodal Transport Contract
Case Number:	No. 2222 [2019], First, Civil Division, 72, of the Guangzhou Maritime Court, Guangdong
The Plaintiff	Guangdong Branch of AIG Insurance Company China Limited
The Defendant:	TURBO MARITIME LIMITED
Judgment Time:	2020.10.29

B. Case Facts(Typhoon is the main factor)

Guangdong Top Ideal Cross-border E-commerce SCM Service Co., Ltd.(hereinafter referred to as Top Ideal Company), as appointed by BUY THE WORLD CO., LIMITED(hereinafter referred to as BUY THE WORLD COMPANY), entrusted the defendant TURBO MARITIME LIMITED to transport the household electrical appliances from Hong Kong to Nansha.The Defendant agreed to undertake and delivered a copy of Bill of Lading No. 4101on the 14th of September 2018,indicating that the shipper is BUY THE WORLD COMPANY, the consignee and the notifier is Top Ideal Company, the loading port is Hong Kong, the discharging port is Nansha New Port, and the carriage clause is "Door to Port". On September 15th, the goods were unloaded at Nansha Phase II Port. On the same day, TURBO MARITIME LIMITED informed Top Ideal Company that they could switch bills of ladingfor customs clearance.

As Typhoon Mankhut and astronomical tide, big waves, heavy rain occurred together, the surge through the dock drainage piped into the port. The heavy rainstorm during the typhoon also caused the Pearl River tidal water to flow backward into the container yard of Nansha Phase II Terminal, which caused the container yard to be flooded.The flood lasted more than 10 hours on September 16. The depth of water flooding in the heavy container storage yard of Nansha Phase II port was about 0.5 meters, even the bottom container was flooded.

II. Dispute Focus

A. Whether the plaintiff has a legal right of subrogation.

B. Whether the goods damage involved occurred during the period for which the defendant is liable and what is a reasonable amount of compensation.

C. Whether the defendant is not liable for compensation.

III. The Court's Opinion

A. Whether the plaintiff has a legal right of subrogation.

BUY THE WORLD COMPANY is a shipper under a multimodal transport contract with the defendant. Therefore, if the defendant breaches the contract and needs to undertake the obligation of compensation, BUY THE WORLD COMPANY, as the other party of the multimodal transport contract, has the right to claim for compensation against the defendant according to law.

To sum up, the plaintiff has a legal right of subrogation.

B. Whether the damage to goods involved occurred during the period for which the defendant is liable and what is a reasonable amount of compensation.

The defendant's liability period as the multimodal transport operator began on September 14, 2018, when the cargoes involved were received, and ended on September 19, 2019, when the cargoes were delivered to Top Ideal Company. In the absence of other evidence by the plaintiff to prove that BUY THE WORLD COMPANY suffered other reasonable losses, if the defendant is required to compensate the plaintiff for the loss of the goods involved in the case, the maximum compensation amount shall be RMB 84,436.38.

To sum up, the damage to cargo involved occurred during the period of liability of the defendant, and the amount of compensation should not exceed RMB 84,436.38.

C. Whether the defendant is not liable for compensation.

Although the 80 cooking machines involved were damaged due to flooding during the period of responsibility of the defendant,the only reason for the damage of the cooking machines was the back flooding caused by Typhoon Mangkhut, heavy rain, big waves and astronomical tides. This is force majeure. The Defendant performed reasonable, proper and prudent duties in the care of the cargoes and had no other breach of contract. The Defendant shall not be liable for any damages to the cargoes caused by force majeure.

To sum up, the defendant does not need to bear the liability for compensation.

IV. Summary

The controversial points of this case are: whether the plaintiff has a legal right of subrogation; whether the damage to the goods occurred during the period for which the defendant is liable and what is a reasonable amount of compensation;and whether the defendant is not liable for compensation.

The foregoing actions of Top Ideal Company are based on the instructions of BUY THE WORLD COMPANY. As the shipper, BUY THE WORLD COMPANY has an entity right of claim against the defendant as the operator of the multimodal transport. As the subject of subrogation of BUY THE WORLD COMPANY, the plaintiff has the right to claim against the defendant.

According to Article 103 of Maritime Law of the People's Republic of China "The responsibility of the multimodal transport operator with respect to the goods under multimodal transport contract covers the period from the time he takes the goods in his charge to the time of their delivery.", the defendant's liability period as the multimodal transport operator began on September 14, 2018, when the cargoes involved were received, and ended on September 19, 2019, when the cargoes were delivered to Top Ideal Company. BUY THE WORLD COMPANY and its agent, Top Ideal Company, did not timely notify the defendant in writing of the wet damage to the cargoes involved, so it is only preliminary evidence rather than final evidence that the cargoes involved are in good condition.In the absence of other evidence by the plaintiff to prove that BUY THE WORLD COMPANY suffered other reasonable losses, if the defendant is required to compensate the plaintiff for the loss of the goods involved in the case, the maximum compensation amount shall be RMB 84,436.38.

For typhoons, whilst human beings may predict them in advance to some extent by experiment, they cannot predict the exact time, place, duration, impact range and extent of their occurrence accurately and timely. Although the Meteorological Department and news media had forecasted the landing time and wind power of Typhoon Mangkhut before it hit, the multiple effect of wind, rain, wave and lake brought by Typhoon Mangkhutand the possibility surge flooding the tide backward into the container yard were not reflected in the forecast. The defendant may not be liable for damage caused by natural disasters. Lastly, as to whether there is any other breach of contract by the defendant. Although the cargoes involved were damaged by the natural disaster when they were stored at the Nansha Phase II Port, the defendant shall not be liable for the direct losses caused by the natural disasters.

Case-collectors: REN Yanbing
GU Renjia
LI Qinglin

Translator: BAI Xue
Editor (English): Evans Tetteh
Executive editor: YANG Wei

中国人民财产保险股份有限公司泉州市分公司诉广州港股份有限公司、广州港股份有限公司南沙集装箱码头分公司港口作业纠纷案

案例摘要

一、案件信息

（一）基本信息

案由：	港口作业纠纷
案号：	（2019）粤 72 民初 2314 号
原告：	中国人民财产保险股份有限公司泉州市分公司
被告：	广州港股份有限公司、广州港股份有限公司南沙集装箱码头分公司
出判时间：	2019.12.26

（二）案件事实（主要为台风因素）

2018 年 8 月，亚太森博（山东）浆纸有限公司（以下简称森博山东公司）委托泉州安通物流有限公司（以下简称安通公司）运输货物，安通公司作为承运人签发了运单，并将货物由日照经南沙港中转运往新会亚太，安通公司作为被保险人向原告投保了水路货物运输险。8 月 31 日，安通公司运输货物抵达南沙港，货物被卸至被告广州港股份有限公司南沙集装箱码头分公司（以下简称广州港南沙分公司）堆场中转、等待安排下一程运输的过程中，由于受台风“山竹”影响，堆场水淹导致货损。事故后，安通公司向原告申请保险理赔。

二、争议焦点

1.台风“山竹”是否构成不可抗力；

2.被告是否保管货物不当。

三、法院观点

1.关于台风“山竹”是否构成不可抗力的问题

根据《中华人民共和国民法总则》第一百八十条第二款的规定，“不可抗力”是指不能预见、不能避免且不能克服的客观情况。依据现有技术水平和一般人的认知而不可能预知为不能预见。对于台风而言，根据现有技术手段，人类虽可能在一定程度上提前预知，但是无法准确、及时预见其发生的确切时间、地点、延续时间、影响范围及程度。不能避免，指当事人尽了最大的努力，仍然不能避免事件的发生。不能克服，指当事人在事件发生后，尽了最大的努力，仍然不能克服事件造成的损害后果。不能避免且不能克服，表明某一事件的发生具有客观必然性。台风“山竹”直接带来风、雨、浪、潮等灾害，叠加产生的海水倒灌是引发本案货损的直接原因。被告广州港

南沙分公司制定有防风防汛专项应急预案，在本案台风发生前，被告广州港南沙分公司及时通知了货主、船运公司提货，并采取对堆场内的集装箱进行绑扎加固等措施。防台重在防风，该措施符合港口经营人防台抗台的惯常做法，要求被告广州港南沙分公司额外采取措施防止海水倒灌不符合实际情况。据此，可以认定本案台风引起的水淹实属不能避免和不可克服，台风“山竹”符合不可抗力的构成要件，构成不可抗力。

2.关于两被告是否保管货物不当的问题

根据《中华人民共和国合同法》第一百一十七条的规定，因不可抗力不能履行合同的，根据不可抗力的影响，部分或者全部免除责任，但法律另有规定的除外。本案在认定台风“山竹”作为不可抗力对于货物损失之原因力的基础上，还应认定台风“山竹”对于本案货物损失的影响有多少，或者说在不可抗力因素之外，是否因两被告的过错导致损害结果的扩大。在台风登陆前，被告已采取通知货主提货、召开防台会议、部署防台方案等措施，并在收到安通公司邮件通知后根据实际情况积极回应。台风过境后，被告广州港南沙分公司召开应急抢救工作会议，及时通知货物受损情况，催促提货。据此，在原告没有提交充分证据证明两被告采取防台措施和减损措施不当的情况下，可以认定两被告已尽到合理谨慎的货物保管义务。

四、小结

人类现有技术手段无法预报台风“山竹”带来的风、雨、浪、潮产生的叠加效果以及潮水最高水位可能超过码头高度，港口经营人已经采取了各项必要合理措施后，仍然不能避免事件的发生，不能克服事件造成的损害后果，对港口经营人而言，台风“山竹”构成不可抗力。先前发生的偶发事件不能阻却后发事件的不可预见性。在台风来临前和过境后，港口经营人已经尽到合理谨慎的货物保管义务，就不应承担货损的责任。

案例提供者：任雁冰
辜韧佳
李庆霖
责任编辑：杨伟

Quanzhou Branch of PICC Property and Casualty Company Limited v. Guangzhou Port Group Co., Nansha Container Terminal Branch of Guangzhou Port Group Co. (dispute over port operation)

Case Brief

I. Case Summery

(I) Basic information

Case	Dispute over port operation
Case No.	(2019) Yue 72 Min Chu No. 2314
Plaintiff	Quanzhou Branch of PICC Property and Casualty Company Limited
Defendant	Guangzhou Port Group Co., Nansha Container Terminal Branch of Guangzhou Port Group Co.
Date of Adjudication	December 26, 2019

(II) Facts (mainly because of typhoon)

In August 2018, Asia Symbol (Shandong) Pulp & Paper Co., Ltd.(hereafter referred to as Symbol Shandong) entrusted Quanzhou Antong Logistics Co. Ltd (hereafter referred to as Antong) to transport goods. Antong, as the carrier, issued the waybill and transferred the goods from Rizhao, Shangdong to Xinhui Asia Symbol, Guangdong via Nansha Port. Antong, as the insured, insured against the plaintiff's Waterway Transportation Cargo Insurance. On August 31, Antong transported the goods to Nansha Port, and the goods were unloaded to Defendant Nansha Container Terminal Branch of Guangzhou Port Group Co.'s storage yard for transit. While waiting for the next transportation, the cargo was damaged due to the flooding of the storage yard from to the impact of Typhoon Mangkhut. After the accident, Antong applied to the plaintiff for insurance settlement.

II.Issues

(I) Whether Typhoon Mangkhut constitutes force majeure.

(II) Whether the defendant improperly stored the goods.

III.Rationale& Holding

(I) On whether Typhoon Mangkhut constitutes force majeure

According to Article One Hundred and Eighty, paragraph 2, of the general principles of the Civil Law of the People's Republic of China, Force Majeure means an objective situation which cannot be foreseen, avoided or overcome.

Unforseeability means that it is impossible to predict according to the current level of technology and common People's cognition. For typhoons, according to the existing technical means, although human beings can predict in advance to a certain extent, they cannot accurately and timely predict the exact time, place, duration, scope and extent of impact.

Unavoidability means that the party concerned has made his best efforts, but still cannot avoid the occurrence of the incident. Inability to overcome means that the party concerned, after the event has occurred, has tried their best, but still cannot overcome the consequences of the damage caused by the event. The fact that an event cannot be avoided and cannot be overcome shows that it is objectively inevitable.

Typhoon Mangkhut directly brought wind, rain, wave, tide and other disasters, the direct cause of the cargo damage in this case is the overlying sea water.

Defendant Nansha Container Terminal Branch of Guangzhou Port Group Co. made a special contingency plan for preventing wind and flood. In the case, before the typhoon the defendant Nansha Container Terminal Branch of Guangzhou Port Group Co. timely notified the owners and shipping companies to pick up the goods, and the container yard binding reinforced.

This measure is in line with the usual practice of port operation of civil defense. It is not factually correct to require defendant Nansha Container Terminal Branch of Guangzhou Port Group Co. to take additional measures to prevent seawater intrusion. Therefore, it can be concluded that the flooding caused by typhoon in this case is unavoidable and insurmountable, and that, Typhoon Mangkhut meets the constitutive requirements of the force majeure, hence, constitutes a force majeure.

(II) On the question of whether the two defendants improperly stored the goods

In accordance with Article 117 of the Contract Law of the People's Republic of China, a party who was unable to perform a contract due to force majeure is exempted from liability in part or in whole in light of the impact of the event of force majeure, except otherwise provided bylaw.

On the basis of determining that Typhoon Mangkhut caused the loss of goods as force majeure, this case should also determine how much Typhoon Mangkhut affected the loss of goods in question, or whether the damage was aggravated due to the fault of the two defendants in addition to the force majeure factor.

Before the typhoon landed, the defendant had taken such measures as notifying the shipper to take delivery of the goods, holding a typhoon prevention meeting, and deploying the typhoon prevention plan. After receiving the notification by email from Antong, the defendant responded positively according to the actual situation. After the typhoon passed through, Defendant Nansha Container Terminal Branch of Guangzhou Port Group Co. held an emergency rescue work meeting to timely notify on the extent of damage of the goods, and urge the delivery of the goods.

Accordingly, in the case that the plaintiff did not submit sufficient evidence to prove that the two defendants had taken improper measures to prevent the typhoon and reduce the damage, the two defendants could be determined to have fulfilled the duty of keeping the goods with reasonable care.

IV. Summary

The existing technical means of human beings cannot predict the superposition effect of wind, rain, wave and tide brought by Typhoon Mangkhut, and the possibility that the highest tide level may exceed the height of the wharf. The port operator has taken all necessary and reasonable measures, but still cannot avoid the occurrence of the incident and overcome the consequences of damage from the incident. For port operators, Typhoon Mangkhut constitutes force majeure. Previous contingencies cannot prevent the unpredictability of subsequent events. The port operator shall not be liable for damage to the goods if he has performed his duty of reasonable care for the care of the goods before and after the typhoon.

Case-collectors: REN Yanbing
GU Renjia
LI Qinglin
Translator: CHEN Ze
Editor (English): Evans Tetteh
Executive editor: YANG Wei