Applicability of Interpretation II concerning the Insurance Law to the Limitation of Action with Regard to Subrogation Rights in Marine Insurance

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Abstract: Article 16 of Interpretation II of the Supreme People's Court on Several Issues concerning the Application of the Insurance Law of the People's Republic of China (hereinafter "Interpretation II") provides for the following: the time limitation for an insurer's subrogation right shall be calculated from the date when it acquires such a right. Currently, maritime jurisprudents and juridical practitioners are embroiled in controversy over the question of whether this provision may be applied to subrogation rights in marine insurance. That is, should the limitation of action by the insurer against the carrier based on the cargo transportation insurance contract start from the date when the insurer acquired its subrogation right, as stipulated in the juridical interpretation above, or from the day on which the goods were delivered or should have been delivered by the carrier (the starting time of limitation of action by the insured against the carrier)? The authors assert that the provisions of Interpretation II do not apply to the calculation of time limitation of subrogation claims for insurers in respect to carriage of goods by sea.

Key Words: Subrogation right; Limitation of action; Starting time; Carrier

On 7 June 2013, the Supreme People's Court promulgated Interpretation II of the Supreme People's Court on Several Issues concerning the Application of the Insurance Law of the People's Republic of China (hereinafter "Interpretation II").

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Article 16 of Interpretation II stipulates that the time limitation for an insurer's subrogation right shall be calculated from the date when it acquires such a right. This article has already significantly affected the settlement of insurance subrogation claims in practice. However, does this article apply to subrogation claims concerning marine insurance? Article 257 of the Maritime Law of the People's Republic of China (hereinafter "Maritime Law") provides that the limitation period for claims against the carrier with regard to the carriage of goods by sea is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier. In this connection, in disputes over claims for damage, loss or shortage of goods carried by sea, after the insurer obtains the subrogation right for his payment of insurance compensation, the limitation for claims against the carrier by the insurer should be one year. Yet, should this "one year" be calculated from the day on which the goods were delivered or should have been delivered by the carrier as specified in the Maritime Law, or from the day when the insurer acquired the subrogation right as provided for in the Interpretation II (usually the day when the insurer paid the insurance compensation)? The authors assert that the provisions of Interpretation II cannot be applied to subrogation claims by insurers in respect to carriage of goods by sea.

As to the question of when the limitation period for initiating subrogation claims by insurers should start, two different opinions were offered by jurisprudents and juridical practitioners prior to the promulgation of the Interpretation II. One opinion argued that the limitation period for lodging insurance subrogation claims should start from the day when the insurer acquired the subrogation right or the day when the insurer paid the insurance compensation. The other opinion asserted that after the insurer obtained the right of insurance subrogation, the limitation of action for the insurer should be the limitation period for the insured to claim indemnity against a third party. In other words, the limitation period for lodging insurance subrogation claims should start from the same day as the limitation period for the insured to exercise its right of obligatory claim against a third party begins.

Interpretation II clearly expresses its position regarding the question above in Article 16 of that document: the time limitation for an insurer's subrogation right shall be calculated from the date when it acquires such a right.

In the book titled *The Supreme People's Court's Understanding of the Interpretation II and Its Application*, the Supreme People's Court describes the controversy over the insurer's subrogation right and states its own position on the controversy. To be specific, it explicitly insists on the first opinion for the following

reasons:

(a) The actual operation of the insurance industry in China is greatly different from that of the insurance industry in foreign countries. In China, settlement of insurance claim may be delayed for a long time due to relevant assessment, actions, and other issues. Particularly, in cases of fire insurance claims and liability insurance claims caused by severe accidents, competent government authorities usually assume responsibility for determining accident and liability assessment, therefore, the insurer is incompetent to take control of the duration of settlement of insurance claims. If the second opinion is adopted, the limitation of action will expire quickly. However, we cannot ignore the fact that under most circumstances, the insurer should not be accountable for it. In order to protect the lawful rights and interests of the creditors, and encourage the insurers to exercise their legal rights of insurance subrogation, we have made a provision favorable to the insurers in respect of the starting time of the limitation of the insurer's subrogation right.

(b) When implemented, the actual effect of the limitation of action proposed in the first opinion differs little from the second opinion. If the second opinion is implemented, since the insurer's right of subrogation is formed by the transfer of the legal creditor's right, in accordance with Article 19 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Statute of Limitations during the Trial of Civil Cases, after the insurer obtains the right of subrogation, in case that the insurer or the insured has informed a third party, the limitation of action should be interrupted on the day when the notice is received by the third party. The legal effect of the interruption of limitation of action for one party is that the limitation of action for another party should be recalculated.

The authors contend that the reasons listed above by the Supreme People's Court are not applicable to subrogation actions filed by the insurer against the carrier concerning marine cargo insurance. If the time limitation for an insurer's subrogation right is calculated from the date when it acquires such a right, the system of limitation of action would be severely disrupted and the carrier would suffer great injustice. The following paragraphs will illustrate why Article 16 of Interpretation II should not be applied to subrogation actions filed by the insurer against the carrier when concerning marine cargo insurance in practice.

I. The Provisions of Interpretation II Render the Right of Subrogation to Become a New Right by Violating the Substance of Such a Right

Notwithstanding the fact that the insurer has a legal subrogation right in marine insurance, it is generally considered that the insurer's subrogation right, in nature, falls within the insured's right to make claims against a third party. In this connection, the third party's obligation to the insured will not be changed by the existence of the subrogation right. In line with the general principle of the transfer of creditor's rights in civil law, the insurer should not be superior to the insured; therefore, the allegations the third party employed to defend itself against the insured may also be used to defend itself against the insurer.

With regard to the system of limitation of action, in case of marine insurance, when the B/L holder or consignee (as the insured) files an action against the carrier regarding the loss or damage of goods beyond the time limitation of action (one year), the time limitation for the insurer to make claims against the carrier should accordingly expire, and the insurer's limitation of action should not be recalculated due to its acquisition of the subrogation right. In other words, the allegations the carrier employed to defend itself against the cargo owner (the insured) may also be used to defend itself against the insurer with the subrogation right.

In the book *Understanding and Application of Provisions of the Chapter Insurance Contract in the Insurance Law of the People's Republic of China*, the Supreme People's Court expresses a similar opinion by stating that, "the interests legally enjoyed by the offender due to the limitation of action should not be deprived due to the subrogation right exercised by the insurer. The third party may not claim that it should benefit from the insurance contract signed by the insured; nevertheless, the third party's interests should not be prejudiced by such contract."[1] If the time limitation for an insurer's subrogation right is calculated from the date when it acquires such a right, the original right of the insured would be undoubtedly expanded, and the interests enjoyed by the carrier due to the limitation of action would be damaged, implying that the subrogation right has become a new right. Hence, in line with legal principles, the time limitation of subrogation rights should

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1 Xi Xiaoming ed., *Understanding and Application of Provisions of the Chapter Insurance Contract in the Insurance Law of the People's Republic of China*, Beijing: China Legal Publishing House, 2010, p. 402. (in Chinese)

start from the same day as the limitation of action for the insured starts.

II. The Assertion That the Time Limitation of Subrogation Action Should Be Interrupted on the Day When the Notice concerning the Transfer of Right Is Received by the Third Party Is Not Applicable to the System of Limitation of Action under the Maritime Law

In accordance with Article 267 of the Maritime Law, the notice concerning the transfer of the creditor's right alone cannot cause the interruption of the limitation of action, which is different from the provisions in respect of general civil action in this regard. The condition causing the interruption of limitation of action under the Maritime Law is more demanding, therefore, the mere sending of a notice of claim may not interrupt the limitation of action. That is to say, in the field of marine insurance, the creation of subrogation rights may not lead to the recalculation of the limitation of action for the insured or the insurer. The legal effect of calculating the limitation of subrogation action from the day when the insurer acquires the subrogation right is totally different from that of calculating the same from the day when the limitation of action for the insured starts. Consequently, one of the reasons given by the Supreme People's Court is unfounded.

III. Calculating the Limitation of Action from the Day When the Insurer Acquires the Subrogation Right Is Inconsistent with the Legislative Purpose of Providing a One Year Limitation of Action under the Maritime Law

The system of limitation of action was established to maintain social transaction order, stabilize social relations and encourage the right holder to exercise his right in a timely manner. Prof. Wang Liming argues that:

> *The system of limitation of action was established to maintain social order. If the right holder cannot exercise his right for a considerable period of time, it will constitute a kind of de facto possession and further a de facto property order, and the property possessor may acquire some interest arising*

therefrom. Since the right holder fails to make any claim, the obligor may delay his performance of obligation for a long time and even obtain certain interest therefrom. If a certain fact exists for a considerable period of time, other parties may obtain some reliance interests. Therefore, in order to ensure transaction safety, and keep the order of property and life, the status of fact should be protected, leading to changes in legal rights. Thus, the system of limitation of action is required to determine the effect of a certain status of fact after a certain period of time.[2]

Therefore, whether or not the system of limitation of action, with regard to the subrogation right in marine insurance, is reasonable should also be affected by the origin and legislative purpose of the system of limitation of action itself: to stabilize social relations and maintain social transaction order. The establishment of the system of limitation of action helps to encourage the right holder to exercise his right in a timely manner. Otherwise, if the action is initiated after a lapse of time, evidence may have been lost during that time, which may add to the difficulties in trying cases, and make the obligor lose the opportunity to submit counter-evidence.

The limitation of action under the Maritime Law varies under different circumstances, including the limitation period for claims against carriage of goods by sea, carriage of passengers by sea, charter party, contract of sea towage, ship collisions, salvage at sea, general average contribution, oil pollution damage from ships, and marine insurance contract. However, cases over subrogation rights in marine insurance mainly involve the subrogation action filed by the insurer against the carrier after the insurer pays the compensation against the shortage or damages of goods to the insured.

Actually, marine insurance is quite unique due to its close connection to carriage by sea. The limitation period for claims against the carrier with regard to the carriage of goods by sea is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier. This provision is derived from the Hague Rules.[3] The General Principles of the Civil Law of

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2 Wang Liming, *A Study on the General Principles of the Civil Law*, Beijing: China Renmin University Press, 2003, p. 703. (in Chinese)

3 Yang Jingyu, then director of State Council Legislative Affairs Bureau of China, pointed out in the Statement about the Maritime Law of the People's Republic of China (Draft), that "the time limitation of action and its starting time, as specified in Chapter 13 of the Draft, are substantially determined in accordance with the relevant international conventions."

the People's Republic of China stipulates that the limitation of action regarding ordinary civil rights shall be two years, counting from the day when the right holder knew or should have known that his right has been damaged. Compared to the limitation of action regarding ordinary civil rights, the limitation of action regarding carriage of goods by sea is short.

The provision that the limitation period for claims against the carrier with regard to the carriage of goods by sea is one year under the Maritime Law is made after considering the specific historical background and realities concerning the carriage of goods by sea.

The authors will recount the legislative purpose of the one-year limitation of action under the Hague Rules in the following paragraphs. Sakurai Reiji, a Japanese scholar, stated in his book *Formulation of the Hamburg Rules and the Interpretation of Its Terms*, that the drafting of the Hamburg Rules involved the amendment to the one year limitation of action under the Hague Rules. According to Sakurai Reiji, the Working Group on International Legislation on Shipping convened its fifth session in the United Nations Headquarters in 1975 to discuss the amendments to the Hague Rules. Particularly, the Working Group disagreed on whether or not to keep the limitation of action for the carrier under the Hague Rules at one year or to extend it to two years. Nine countries contended that it should be kept at one year and six countries proposed that it should be extended to two years.[4]

The countries upholding the one year limitation of action asserted that "in order to guarantee the collection of evidence, the carrier needs the action to be filed promptly; with a short-term limitation of action, the carrier is required to sign an agreement for an extended term, or the cargo owner is requested to decide to file a lawsuit so as to terminate the transportation liability relationship in a timely manner, which is also expected in adjudications".[5]

The Hague Rules and the Maritime Law of China provide that the injured party should claim compensation against the carrier concerning damages to goods within one year due to the following considerations.

The first consideration is the protection given to the carrier due to the special

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4 Sakurai Reiji, translated by Zhang Jiyi et al., *Formulation of the Hamburg Rules and the Interpre-tation of Its Terms*, Beijing: Foreign Trade Education Press, 1985, p. 28. (in Chinese)

5 Sakurai Reiji, translated by Zhang Jiyi et al., *Formulation of the Hamburg Rules and the Interpre-tation of Its Terms*, Beijing: Foreign Trade Education Press, 1985, p. 29. (in Chinese)

risk involved in the carriage of goods by sea. The Maritime Law sets out a series of regimes protecting the carrier's interests, including the regime of limitation of liability for maritime claims, package limitation of liability, exception of nautical fault, and the one year limitation for the cargo owner to file an action against the carrier under the legal relationship of carriage of goods by sea.

The second consideration is that evidence relating to the carriage of goods by sea is easily lost. Compared to the carriage of goods by land, carriage by sea is more mobile, and the relevant evidence is more easily lost. For instance, in a case concerning damages to goods, if the goods had already been discharged for a considerable period of time, it would be difficult for the carrier to collect evidence since the incident scene would have already disappeared. Moreover, carriage of goods at sea involves complex legal relationships, such as the one in a charter party. If the cargo owner has delayed its claims against the carrier for a long time, the carrier may not charter the ship at the time during which the claims are lodged, and it would be quite demanding to collect the relevant documents from the ship owner. A typical example in this regard is time charter trip, where the charterer terminates its charter after a voyage is completed. In addition, the crew turnover rate is high, meaning that the crew members for different voyages are prone to change; therefore it would also be difficult to obtain evidence from the crew if the filing of a claim is delayed for a long time.

The background against which the cargo owner should file an action against the carrier within one year is described above. In practice, most goods carried by sea for export or import purpose are covered by insurance programs, and under most circumstances, the insured would be compensated by the insurer in case of damages or loss of goods. Therefore, the majority of cases concerning damages or loss of goods have become subrogation actions filed by the insurer against the carrier after the insurance indemnity is paid. If the time limitation for the marine insurer to file a lawsuit concerning carriage of goods by sea starts from a different day than the day when the limitation for the consignee to file a lawsuit against the carrier starts, then the provision that the limitation period for the cargo owner to lodge a lawsuit against the carrier is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier, may only be applied to a limited set of circumstances.

One should particularly note that if the limitation of subrogation action with regard to marine insurance is consistent with the relevant provisions contained in Interpretation II, not only the one year limitation of action favorable to the carrier

cannot be ensured, but also the time limitation of action against the carrier may often be longer than two years for ordinary civil actions. We have discussed this issue in our law firm. In case of a lawsuit between the insured and the insurer concerning insurance liability where the lawsuit is tried in the first or second instance, retried and implemented, the procedure, especially for lawsuits involving foreign parties, will usually last several years. Some fellows in our law firm even handled a lawsuit concerning an insurance contract that lasted eight years. Since the insurer often pays the insured several years after the incident, if the limitation of action filed by the insurer against the carrier starts from the day when compensation is paid, then the legislative purpose of the Maritime Law to protect the carrier is completely contravened. Furthermore, if the insurer has such a "silver bullet" to protect itself, it will, consciously or unconsciously, extend or delay the settlement of marine insurance claims, which is also unfavorable to the protection of the insured's interests.

To sum up, the one year limitation for the concerned party to claim against the carrier cannot be ignored or violated, even in cases where the insurer is exercising its subrogation right. By allowing insurers to file claims against carriers years after an incident has occurred, the protection offered by a carrier's right to a one year limitation of action would be severely undermined. The result would cause great hardship for carriers and serious disorder in the carriage of goods by sea.

IV. The Insurer May Request the Insured to Protect Its Subrogation Right Prior to the Expiry of Limitation of Action through Legal Provisions or Agreement; Hence, It Is Unnecessary to Tilt Balance in the Favor of the Insurer in Determining the Starting Time of Limitation of Action

First, prior to the expiry of limitation of action against a third party by the insured, the insured, in some cases, is obligated to initiate a lawsuit to protect its rights concerning the limitation of action.

Article 61(3) of the Insurance Law of China provides that "[i]f, due to the intentional or gross negligence of the insured, the insurer cannot subrogate the insured to exercise the right to claim for indemnities, the insurer shall reduce the payment of insurance money or require the insured to refund the insurance money

correspondingly."

The Maritime Law of China also contains such provisions. Article 236 of the Maritime Law stipulates that "[u]pon the occurrence of the peril insured against, the insured shall notify the insurer immediately and shall take necessary and reasonable measures to avoid or minimize the loss." Article 253 further provides that "[w]here the insured waives its right of a claim against the third party without the consent of the insurer or the insurer is unable to exercise the right of recourse due to the fault of the insured, the insurer may make a corresponding reduction from the amount of indemnity."

Prior to the expiry of limitation of action, and after the insured notifies the insurer of the peril insured against, if the insured fails to lodge a suit against the third party as required by the insurer with the legal expenses borne by the insured, normally, it can be deemed that the insured has committed "intentional or gross negligence."[6] In practice, in many cases concerning marine insurance, in order to preserve the limitation of action, prior to the insurer's payment of indemnity, the insurer usually appoints an attorney at its own cost to file a lawsuit against a third party on behalf of the insured. It certainly requires the assistance from the insured, for example, by providing the relevant documents and initiating an action against the carrier in its own name. If the insured refuses to provide such assistance, it will constitute "intentional or gross negligence". Otherwise, how else is the insured to "take necessary and reasonable measures" and "endeavour to assist the insurer in pursuing recovery from the third party"? Therefore, in order to comply with the legal provisions mentioned above, generally, the insured will cooperate with the insurer in protecting the one year limitation of action.

Secondly, if it is held that the legal provisions above are so unclear that it may cause controversies, the Supreme People's Court may make judicial interpretations to provide that the insured is obligated to help ensure that the claims against a third party are made within the limitation of action before it obtains its insurance

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6 For example, the lawyer Zheng Tianwei contends that "when the insured first lodges an action against the insurer for compensation, but the action in respect to the insurance contract cannot be easily settled in a short time, the insured should have a higher obligation to make a claim against the responsible third party during the proceeding, so as to preserve the limitation of action with regard to carriage contract; otherwise, the insurer may invoke the provision of Article 253 of the Maritime Law, 'where … the insurer is unable to exercise the right of recourse due to the fault of the insured, the insurer may make a corresponding reduction from the amount of indemnity'." Zheng Tianwei, Actions concerning the Subrogation Right in Marine Insurance, *Law Application*, No. 10, 2002. (in Chinese)

indemnity. In this way, before the insured obtains its insurance indemnity, it is obligated to initiate an action, enter arbitration, or apply for property preservation against a third party, as instructed by the insurer, with the legal costs borne by the insurer, as if it had not purchased the insurance policy; after obtaining its insurance indemnity, the insured should help the insurer to pursue recovery from the third party. Furthermore, the substantial rights of the insured will not be negatively affected if we explicitly state the insured's obligation to protect the limitation of action in law, and provide that when an insurance peril is determined to be covered by the insurance liability, the insurer should pay for reasonable legal costs arising from the insured's performance of its obligation to protect the limitation of action.

Thirdly, considering that it is not clear in the juridical practice of China whether the insured has the obligation to actively protect the limitation of subrogation action for the insurer, the insurer may stipulate in the insurance clauses contained in the policy that prior to the expiry of limitation of action by the insured against the carrier, the insured should file an action against the carrier, as instructed by the insurer, with the legal costs borne by the insurer, otherwise, the insurer could be entitled to refuse to pay compensation or reduce the total amount of compensation. Generally speaking, such a clause may not prejudice the interests of the insured, thus it should be deemed as lawful and effective, and the insured is not on reasonable grounds to refuse such a clause. After all, pursuing recovery from the carrier will do no harm to the insured, if the legal costs are paid by the insurer. The existing Institute Cargo Clauses (A) and Clauses on Hull and Cargo Insurance in China expressly stipulate that in order to protect the insurer's right of subrogation claims, the insured is obligated to initiate legal proceedings against the carrier.[7] Some argue that "the reasonableness of such stipulation demands discussion" and

7 Article 16 of the Institute Cargo Clauses (A) 2009 provides that: 16. Duty of the Insured – 16.2 To ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the insurers will, in addition to any loss recoverable hereunder, reimburse the insured for any charges properly and reasonably incurred in pursuance of these duties. Article 4(1) of the Marine Cargo Clauses of the PICC Property and Casualty Company Limited, 2009, also provides that the insured shall lodge a claim against any third party responsible in writing and, if necessary, obtain its confirmation of an extension of the time limit of validity of such claim. If the insured fails to perform the obligation above, the insurer will not be responsible for paying any loss. Article 8 of the Hull Insurance Clause of the PICC Property and Casualty Company Limited, 2009, stipulates that if any loss to the insured vessel is within the insurance coverage but should be compensated by a third party, the insured should lodge a claim against the third party. Where the third party refuses to pay the compensation, the insured should take all the necessary measures to preserve the limitation of action.

"it is obviously inconsistent with the insurance purchasing purpose of the insured".[8] Nevertheless, the cases concerning subrogation rights in carriage of goods by sea handled by the authors indicate that such arguments are groundless. That is because the insurer will appoint an attorney, at its own cost and expense to preserve the limitation of action prior to its payment of indemnity, and the insured only has to provide relevant documents and grant authorization to the attorney, which will not bring many additional burdens to the insured.

Fourthly, in accordance with Article 95 of the Special Maritime Procedure Law of the People's Republic of China (hereinafter "Special Maritime Procedure Law") and Article 67 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Special Maritime Procedure Law of the People's Republic of China, if the insured has filed an action and adopted property preservation measures prior to the expiration of the limitation of action, the insurer may continue such procedures. Article 15 of the Provisions of the Supreme People's Court on Several Issues about the Trial of Cases concerning Marine Insurance Disputes provides: "In case the insurer, after obtaining the right of subrogation to claim for compensations, claims for the interruption of the limitation of action for the reason that the insured has filed a lawsuit or arbitration against the third party or applied for the seizure of the vessel, or the third party has consented to perform its obligation, the People's Court shall support the claim." Therefore, the Special Maritime Procedure Law, along with its judicial interpretation, and the institutional stipulations of the Supreme People's Court ensure that the insured may file an action against the third party and the insurer may continue such procedure based on its subrogation right.

V. The Duration of the Settlement of Insurance Claims Does Not Affect the Limitation of Action for the Carrier

The legislative reasons stated in the above-mentioned book edited by the Supreme People's Court require further discussion and exploration for the following considerations:

First, the insurer may file an action against the carrier through the insured. In

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8 Chen Rui, *A Study on the Regime of the Right of Subrogation in Marine Insurance* (Master Dissertation), Beijing: China University of Political Science and Law, 2006, p. 23. (in Chinese)

the book *The Supreme People's Court's Understanding of the Interpretation II and Its Application*, the Supreme People's Court contends that:

> *In China, settlement of insurance claim may be delayed for a long time due to relevant assessment, actions, and other issues. Particularly, in cases of fire insurance claims and liability insurance claims caused by severe accidents, competent government authorities usually assume responsibility for determining accident and liability assessment, therefore, the insurer is incompetent to take control of the duration of settlement of insurance claims. If the second opinion is adopted, the limitation of action will expire quickly.*

This contention confuses the relationship concerning settlements of insurance claim with the one concerning contracts of carriage. As described above, even if the settlement of insurance claim endures for a considerable period of time, the insurer may still file an action against the carrier through the insured, so as to interrupt the limitation of action.

Second, if the insurer files an action against the carrier through the insured, it may apply to extend the time period for producing evidence. When an action is initiated within one year, generally only *prima facie* evidence is required. The party concerned has sufficient time to collect evidence from the day when the court officially accepts the case to the expiry of the time period for producing evidence. In accordance with Several Provisions of the Supreme People's Court on Evidence in Civil Procedures, if any party concerned intends to extend the time period for producing evidence, it may apply to extend such a period twice. Hence, in an action filed by the insured against the carrier, the insured may face few time-related difficulties in producing evidence.

Third, the authors find that the settlement of fire and severe accident insurance claims does not demand a considerable period of time. Therefore, the Supreme People's Court fails to base its contention that "in China, settlement of insurance claim may be delayed for a long time due to relevant assessment, actions, and other issues" on empirical research and investigation. In cases involving fire damage, Article 18 of the Provisions on the Investigation of Fire Accidents states that:

> *The fire department of the public security organ shall, within 30 days from the date of receipt of a fire alarm, make an assessment of the fire accident; under complicated and difficult circumstances, the aforesaid time limit may be*

extended for another 30 days with the approval of the fire department of the public security organ at a higher level. Where an inspection or identification is necessary in the investigation of a fire accident, the time of inspection or identification shall not be counted toward the time limit for the investigation.

That is to say, the time limit for the investigation of an ordinary fire accident is merely 30 days, and the time limit for a complicated accident is only 60 days. Even if inspection and identification is needed, the reasonable time required will not exceed three or four months. In cases involving traffic accidents at sea, pursuant to Article 8 of the Administrative Provisions on the Completion of Investigation on Traffic Accidents at Sea issued by the Maritime Safety Administration, Ministry of Transportation, People's Republic of China, the maritime safety authorities should complete the investigation of the accident within three months after the day it becomes aware of the occurrence of the accident. If the investigation involves the salvage of ships, assessment of damages in the accident, and other issues affecting the investigation of the accident causes or the determination of the severity of accident, it may extend the time period allowed for the investigation for three months, with the consent of the superior maritime safety authority. It can be seen clearly that investigations of a typical fire accident or traffic accident at sea may be completed within one year under most circumstances. Most importantly, the insurance company should assess the claims promptly and pay great emphasis on the time limitation for settlement of claims, instead of blindly delaying such assessment and settlement.

VI. Conclusion

The majority of articles exploring the starting time of limitation of action for the insurer with regard to subrogation right in marine insurance, as found by the authors, assert that the time limitation of subrogation right by the insurer should

be identical with the limitation of action by the insured against the third party.[9] The provisions concerning the starting time of limitation of subrogation right in Interpretation II have protected the insurer's interests in limitation of action, however, such provisions should not be applied to subrogation actions filed by the marine insurer; otherwise, it will deprive the carrier of its interests in this regard, and will undermine the long established system of one year limitation of action by the cargo owner against the carrier in carriage of goods by sea. As to the starting time of limitation of subrogation action for the insurer against the carrier with regard to carriage of goods by sea, considering the Maritime Law, as a special law, it is proposed that the Supreme People's Court should make reasonable and specific provisions in its Interpretation II concerning the starting time, so as not to disturb the judicial order in practice.

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9 For instance, Associate Professor Wu Qiong of Shanghai Normal University argues that "presently, in the arbitral and procedural practice regarding marine insurance claims by subrogation, most experts in the field of arbitration and action, and insurance lawyers believe that since it involves the transfer of creditor's right, the time limitation should be closely connected with creditor's right. The time limitation of subrogation claim by the insurer should be consistent with the time limitation for the insured. And the limitation should count from the day when the insured's rights are harmed by the third party." More exactly, it should be start from the day when the limitation of action by the insured against the third party begins. Wu Qiong, Legal Analysis of Marine Insurance Claim by Subrogation, *Social Scientist*, No. 6, 2006. (in Chinese)