

Comparative Research on Liability for Oil Pollution Between China and US

TANG Fei^{[a],*}

^[a]Law School, Yangtze University, Jingzhou, China.
*Corresponding author.

Received 7 February 2016; accepted 15 April 2016
Published online 26 May 2016

Abstract

This article discusses question about compensation for oil pollution in China and United states. Both China and US have law and regulations on liability for pollution resulted by oil spill, but the method of remedies of two countries is different, the difference lies in regulations, litigation procedure, trial court which to handle the cases of oil spill. The article will analyze the differences.

Key words: Compensation system; Oil spill; Compensation Fund; litigation.

Tang, F. (2016). Comparative Research on Liability for Oil Pollution Between China and US. *Canadian Social Science*, 12(5), 35-39. Available from: <http://www.cscanada.net/index.php/css/article/view/8480>
DOI: <http://dx.doi.org/10.3968/8480>

INTRODUCTION

On June 2nd, 2011, leaks and oil spill were found in drilling rig of dill platform in China's largest offshore oilfield Penglai19-3, which was co-developed by Conocophillips Corporation (Conoco) and China National Offshore Oil Corporation (CNOOC). Oil spills continue for months, more leaks were found. Three months after, on September 2nd, oil spill was still not under control. Then government ordered Conoco to stop oil production in the area related incidents. November 11th, the investigation penal made the conclusion that Conoco' was responsible for an oil spill which was judged as an accident. December 21th, Conoco advocated to compensate for damages resulted by the accident. No accurate figure of the volume of spilled oil of pollution was made public. Conoco claims there

were 3,320 barrels of oil spilled in to the sea. But scholars estimate exact volume of oil spill is far more than 3,320 barrels. Some say it should be more than 7,070 tons. Some even calculated the volume is about 10,000 tons.

No matter how much the definite figure is. That pollution to the environment is definitely a disaster. Fishermen from Liaoning province and Hebei province sued Conoco for damages to their fishery resources and properties. Governments planned to sue the oil company as well. After some negotiation between governments and companies, two agreements of compensation were reached. On January 25th 2012, first agreement between government and two oil companies was declared by China Agriculture Department. According to this agreement, Conoco and CNOOC set funds for 1.3billion RMB for compensation for damages to fishery industry as well as to recovery of fishery resources. Second agreement was reached in April 2012. On April 27th China State Oceanic Administration Bureau declared that Conoco and CNOOC will set the funds of 1.6 billion RMB for compensation for damages to oceanic ecology and take the responsibility to protect oceanic environment. All agreements were reached under the influence of administrative power, but there is not any progress in the judicial process, even victims have sued the oil company. Judicial process or litigation is an important method to solve the disputes of compensation. Do we need a judicial power in this kind of incident? What are strengths and weaknesses of different resolutions? We will discuss these problems as follows.

1. ANALYSIS OF LIABILITY AND DAMAGES IN OIL SPILL INCIDENT

1.1 Liability for Oil Caused Damages

After an oil spill occurred, much attention from society has been on this incident. Public claim that two oil

corporations should take liability, government should fine them for the environmental disaster brought by oil spill; the companies should compensate the damages to fishery resources, fishermen's properties, oceanic ecology and environmental damages. Compare with public's claims, on the very first stage. Government just fine companies about 200 thousands RMB. People were so unsatisfied with the light punishment. Finally two funds were set up, but what kind liability should be taken by oil companies was not clarified. If this problem goes through the judicial process we should know in China what kinds of liabilities should they take and according what kind of law.

1.1.1 Public Law Liability

In China, the law system can be divided in to public laws and private laws. Criminal law and administrative law are typical public laws. Liability imposed by these laws is public law liability. According to *China Oceanic Environment Protection Law*, individuals and entities that resulting in serious marine environmental damages at fault should assume liability of a fine. But the amount of the fine is limited in 200 thousands RMB. People complain about it for the tiny number of fine and compare it to 20 billion dollars funds set up by BP in Mexico Gulf oil spill. This comparison is not reasonable. In China law system, fine is a public law liability, the goal of fine is punishment and deterrence. It will be to warn lawbreakers and society to stop similar illegal activity in the future. The money of the fine goes to the treasury. However, as far as BP's 20 billion dollars funds are concerned it is to compensate damages of oil spill, the money mainly goes to victims who suffered damages of pollution. The figure of fine is meaningless for compensation. 200 thousands RMB of the fine might be too few to punish such an environmental disaster. It should be raised in the future. But more important work is to find acceptable methods of compensation for damages and to realize it. This mainly depends on private law liability.

1.1.2 Private Law Liability

Private law in China refers to civil law, commercial law and rules governing private relations with other laws. Compensation for damages is mainly regulated by *China Tort Liability Law* which is deemed as a crucial part of *China Civil Law*. In this law the liability for environmental pollution is ruled in the eighth chapter, but the rules are very simple with only three articles, which are Article 65 to Article 68. Article 65 prescribes "Where any harm is caused by environmental pollution, the polluter shall assume the tort liability". Article 66 prescribes

Where any dispute arises over an environmental pollution, the polluter shall assume the burden to prove that it should not be liable or its liability could be mitigated under certain circumstances as provided for by law or to prove that there is no causation between its conduct and the harm.

These two articles more like principles, but it provides the foundations for victims to get compensation for damages resulted by pollution. Article 66 is very important to protect victims. It requires polluters to put forward evidences to prove there is no relation between damages and pollutions, which is an obstacle to victims to get compensation. In pollution cases, it is always difficult for victims to prove causation owing to the hardness of finding harmful substance and lack condition of identification.

1.1.3 Claimants for Different Liability

Who has the right to take legal action against polluters for requiring them assumes liability. For different liabilities situations are different. Government starts the process of fining polluters to take public law liability. If an action is seeking for compensation, legal process is always started by individuals and entities who are victims of pollution. In Conoco Bohai Bay oil spill, we have seen two different agreements of compensation. But none of them were started by individuals and corporations, both of agreements were reached under the impact of government. This is a big change in tort compensation cases. Government tries a new efficient method to solve disputes in compensation in mass environmental damages.

1.2 Analysis on Compensable Damages

1.2.1 Compensable Damages Based on Civil Law

Tort liability law is the main resource dealing with compensation for damages, this compensation mainly for damages to properties and personal injuries. In Bohai bay oil spill, lots of fisherman claim for compensation for damages to their marine products and fishery resources. This type compensation is typically covered by civil liability (tort liability), but Chinese courts have not tried the cases yet. It seems that compensation agreements between China Agriculture Department and two oil companies have covered the claims of fishermen. But it does not mean the litigation right of fisherman was deprived for the reach of those agreements. According to *China Tort Liability Law* and *China Civil Procedural Law*, the damages to fishery resources and marine products are infringement to fishermen's properties. While suffering damages, fishermen can sue polluters for damages for themselves, courts should trial the case.

1.2.2 Compensable Damages Based on Environment Law

In accordance with *China Marine Environment Protection Law*, lawbreaker should compensate for damages to ocean ecology and the marine environment. According to the *China Constitution* and *China Property Law* state has exclusive ownership to mine, water and ocean. So pollutions in the ocean are damages to properties of state. Environment is a special property. The owner of

it is China. State is deemed as special civil subject in China Properties Law. He owns the ownership of state owned properties. When those properties get damages, government should sue the polluters in state's behalf.

2. ANALYSIS OF COMPENSATION METHODS FOR OIL SPILL POLLUTION

2.1 Effect of Litigation for Compensation for Pollution

2.1.1 Legislations for Litigation for Oil Spill Compensation

Laws governing oil pollutions of compensation are *China Marine Environment Protection Law (CMEPL)*, *China Offshore Oil Exploration and Development Environment Protection Regulations 1983 (COOEDEPR)*, *China Tort Liability Law (CTLL)*. CMEPL and COOEDEPR prescribe that polluters should assume liabilities of pollution, which resulted from offshore oil exploration and development. Valuable provisions of CMEPL are, as we discussed previously, that what kind damages are covered by compensation and who can start litigation. The contribution of CTLL is regulating the duty of proving causation is on polluters. However, problem that found in real cases, as Bohai Bay oil spill, is that rules govern compensation is not so specific to guide a case trial. On May 4th, China Supreme Court issued a judicial interpretation was named as *Regulations on Trialing Disputes of Compensation for Vessel Oil Spill Damages*. The judicial interpretation attempts to solve the problem of civil compensation. It broadens compensable damages. Types of damages that can get compensation were listed in Article 9. In light of judicial interpretation, compensable damages include costs of preventing or alleviating damages; property damages and related income loss resulted by oil spill incidents; income loss resulted from damages to environment; costs to the recovery of the environment. Individuals and entities who live on those marine environment or fishery resources have right to pursue damages.

2.1.2 Advantages of Pursue Damages Through Litigation

Although compensation funds with almost 3 billion were set up by Conoco and CNOOC, but litigation is still needed for reasons as follows:

(a) No limitation of compensation

Three billion RMB seems a huge amount of money. If it is a final solution that means all compensation should be allocated in this amount. The problem is the total damages can not be calculated currently, suppose the damages are more than 3 billion, victims might not get adequate compensation. For example, according to agreement between China Agriculture Department and two oil companies, fund for compensation to fishermen

is 1 billion RMB, but it is not enough for compensation. Some fishermen are planning to pursue damages through litigation.¹

(b) More types of victims can get compensation

Not only fishermen are the victims of oil spill pollution. Owners or employees of restaurants and hotels near the polluted area might get a loss of profit for less business opportunity, which resulted from the adverse impact of pollution. These people are eligible victims in accordance with a new judicial interpretation. But they might be not eligible under the compensation funds plan. Compensation through litigation can identify eligible victims case by case. Full consideration can be made depends on the specific situation. Judges are experienced in finding the damages and causation. Disclosure information from Media appears, compensation funds for victims are the fisherman. It did not refer to other possible victims.

2.1.3 Weaknesses of Litigation

In China, most tort claims are trialed case by case. Group litigation is absent in civil procedure. When be trialing mass tort cases, repetition of similar case trial would make litigation procedure heavy, trivial and tedious. No matter to parties in litigation or to judges, it is uneasy to go through the long procedure. Weaknesses of litigation of oil spill compensation cases are as follows:

(a) Difficulty of proving causation

To prove causation between damages and oil spill is not easy. Although CTLL rules polluters have a duty to prove there is no causation between damages and pollution, this causation mainly refers to proximate causation, victims have to prove the fact causation. For instance, if a fisherman wants to pursue damages of his fan shells he has to prove the spilled oil has invaded in his farm and that oil is from polluter, fan shells were damaged from the oil. In order to prove it an official test is needed. For owners of hotel or restaurant who loses profit for the pollution it is far more complicate than fisherman in proving causation. Furthermore, damages are also hard to be proven. Both damages and causation test are costly.

(b) Time consuming

Litigation is time consuming. Firstly, regular tort litigation addresses justice of procedure, it takes more time than administrative process. Secondly, for oil spill cases, there are large numbers of victims. More people always take more times. Thirdly, damages of oil pollution last long time. Some damages may be found after many years. Above factors make litigation tedious. Famous Exxon oil spill case trial lasted more than 20 years.

2.2 Effect of Funds for Compensation for Pollution

2.2.1 Funds in Mass Tort

In mass tort, using funds for compensation for damages has experienced a long time evolution. It was firstly set up in US as an alternative method to litigation. It also

called mass claims facility. Most claims facilities are designed to pay similar claims similarly, but they employ a number of different methodologies to achieve this goal. Some facility will define the conditions that are eligible for compensation. They divided the damages at a different level according to the features listed by them. Victims have the same features get the same compensation. Some mass claims facilities evaluate claims on a case by case basis and determine damages based on documentation of injury or loss. For example, the September 11th Victim Compensation Fund adjudicated individual claims based on general guidelines embodied in regulations issued by the US Department of Justice. Funds for mass tort have different types for structure. Funds creator, procedures for resolving claims. Both entities and government can set up funds. Well known fund set up by the government is September 11th VCF for compensation for victims of September 11th attack. BP fund for Mexican Gulf oil spill is a typical entity created fund.

2.2.2 Strengths of Mass Tort Funds

(a) Speedy process

Compare with a slow procedure of litigation, mass tort funds are more quickly in compensation. Some programs are developed in a matter of weeks. While it may take a significant amount of time for parties to develop the criteria and guidelines for an administrative program, once the program is established, the claims facility should be able to evaluate thousands or tens of thousands of claims in months.

(b) Consistently payment to claimants

Mass tort funds have ability to ensure that similar claims are paid similarly. Defining parameters that determine the value of claims promote consistency and fairness.

(c) A low cost

Claims are also resolved less expensively via funds than in litigation. A process that determines values based on defined parameters is inherently cheaper than an adversarial system that requires multiple-party input and emphasizes strategic behavior. The more that a fund standardizes the claims process, the lower the transaction costs will be.

2.2.3 Weaknesses of Tort Funds

Some claims may get lower recoveries. The purpose of fund is to compensate similarly situated claimants similarly regardless of personal conditions of claims. And less in finding the fact may make the funds not fully to evaluate the damages. Some claimants may get less compensation than damages which they suffered.

(a) Less discovery into underlying facts

Purpose of Funds is compensation. Much attention was on the object of compensation and how to allocate amounts of money. Causation or the facts that result in mass damages may be less discovered by and funds administration. However, disclosure of the underlying facts is helpful in exposing potential hazards or preventing or mitigating future catastrophes.

(b) Analysis of drawbacks compensation plan for Bohai bay oil spill

As we discussed previously, two compensation agreements of almost 3 billion RMB were reached between governments and polluters. It is a good solution to compensate damages, but there are still some issues to be resolved.

(c) Administrator of compensation funds

Funds for compensation were governed by China Agriculture Department and China Ocean Bureau. Billions RMB compensation can be deemed as a compensation fund. Although the compensation agreements were reached under the urgent of government, but administrator of funds is always undertaken by a neutral third party, which is non-governmental entity to assure the fairness of compensation. For instance funds for September 11th and BP are governed by lawyer Kenneth R Feinberg and his firm. Allocation of compensation money by government may result in corruption. If non-governmental entity serves as administrator it should be easier to be supervised.

(d) Non-disclosure of information of compensation

Currently, only news of reach of compensation agreements was published. Public can hardly access the crucial information of compensation such as, the management of funds, condition of eligible claimants, the procedure of compensation, distribution plan of money. Absent of these information will result in the doubt to fairness of the compensation system. Besides, for victims to pursue damages, they also need the information to help them get enough compensation.

CONCLUSION

Environmental disaster resulted by Conoco Corporation brought huge damages to individual property as well as ocean ecology. Set up reasonable compensation system can alleviate the suffering of victims. To maximize the compensation there should be more method to be chosen by victims. Owing to the weaknesses of mass tort funds, litigation is needed to be an option to victims. Compensation funds should be managed by a neutral third party to assure the fairness. Crucial information about compensation funds needs to be published in the interest of victims. Oil spill has long term impact on the ocean environment. Some damages may be found after years. Both litigation and compensation fund should consider and prepare for victims find in the future.

REFERECES

China Net News. (2011, August 26). *Ocean bureau seeks compensation for ecology damages in state's behalf*. Retrieved from http://news.china.com.cn/2011-08/26/content_23284821.htm

- Exxon Valdez Oil Spill. (n.d.). *From Wikipedia, the free encyclopedia*. Retrieved from http://en.wikipedia.org/wiki/Exxon_Valdez_oil_spill
- Feinberg, K. R., et al. (2004). *Final report of the special master for the September 11th victim compensation fund of 2001 at 4-5, 9*. Retrieved from http://www.justice.gov/final_report.pdf
- Greenspan, D. E., & Matthew, A. N. (2012). *Settle or sue, the use and structure of alternative compensation programs in the mass claims context* (p.101). 17 *Roger Williams University Law Review*.
- Li, Y., & Su, L. (2014). 1 billion not enough for compensation, February 14th. *China Economics Weekly*. Retrieved from <http://finance.ifeng.com/news/special/zhybhwly/20120214/5575651.shtml>