

Seafarers' Claims for Compensation following Workplace Injuries and Death in China

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This thesis is submitted to Cardiff University in fulfilment of the requirements for the Degree
of Doctor of Philosophy
January 2017

Dedication

To the loving memory of my father

Acknowledgement

First, I would like to express my most sincere gratitude to my supervisors Professor Helen Sampson and Professor David Walters for the continuous support of my Ph.D. study, for their patience, encouragement, and immense knowledge. Their guidance helped at all times during my research and writing of this thesis. This study would not have been possible without the scholarship from the Nippon Foundation. I am especially grateful for their generosity. My gratitude also goes to the Chinese Scholarship Council and the TK Foundation, for awarding me additional research funding.

I would like to thank Dr. Thomas Hall, the Head of SOCSI, for the great encouragement when my confidence was wavering. My sincere gratitude to the examiners, Professor Michael Quinlan and Professor Ian R Jones, for their inspiring comments. I would also like to thank my Progress Reviewer, Dr. Lijun Tang, for his kind advice on my work. My sincere thanks also go to Professor Caroline Lloyd, Dr. Finn Bowring, Dr. Sin Yi Cheung, and Dr. Nick Bailey, for providing me with support during this study. My sincere thanks also go to the administrative team at SIRC and SOCSI, especially to Ms. Louise Deeley, Ms. Corinda Perkins, and Ms. Jackie Swift.

I remain grateful to all the seafarers and their families for telling their stories. I am also thankful to the administrators of the online communities of seafarers, managers of the shipping and manning companies for their assistance, and maritime legal professionals for sharing their thoughts. For ethical reasons, however, I cannot name any of them here.

I also want to express my great sincere thanks to my colleagues at SIRC and my friends in the UK and China for being supportive and encouraging. I am especially thankful to Dr. Ngwatung Akamangwa, Professor Syamantak Bhattacharya, Associate Professor Gang Chen, Dr. Victor Gekara, Dr. Lin Li, Dr. Conghua Xue, Dr. Peidong Yang and Dr. Zhiwei Zhao for their invaluable advice to my research. I am also thankful to Mr. Li Rongcun, Miss Li Lan and Mr. Yang Dongayang from Wang Jing & Co. Xiamen Office, for their professional legal thoughts. Finally, I would like to thank my mother, Professor Yi Duan, for her unconditional love and tolerating my long absence during the past five years. To my husband, Kai Mao, for his love and patience throughout this study.

Desai Shan, Jan, 2017

Abstract

This research explores the experiences of Chinese seafarers and bereaved families in the process of claiming compensation following workplace accidents. For a long time, issues regarding seafarers' rights in such cases have failed to attract substantial public attention. International and Chinese studies indicate that seafarers may suffer higher risks of work-related injuries compared with land-based workers. Studies conducted in Australia, Canada and the United States show that claimants under workers' compensation system may suffer extra psychological harm when claiming damages. However, there is little attention, in academic discourse, paid to the struggles of Chinese seafarers and/or bereaved families in the processes of claiming compensation following work-related casualties.

This research aims to examine the procedures for compensation claims and to explore individual experiences of the claim process to determine whether Chinese seafarers suffer additional harm during claim processes. Two major qualitative research methods, documentary analysis and semi-structured interview, are applied in this research. The findings based on an analysis of legal claims process documents and records and interview data with the key informants, including claim handlers in shipping companies, maritime lawyers and maritime court judges in China, suggest that the compensation standards for occupational casualties of seafarers are chaotic and the current social welfare system does not provide effective assistance for the victims. The research results, therefore, show that Chinese seafarers and their families are most likely to suffer additional harm in the process, including intensive psychological pressures caused by the lack of procedural transparency and mental trauma resulting from claim suppression by their companies. Moreover, when resorting to public institutions, including labour administration and judicial authorities, Chinese seafarers are unlikely to receive timely and sufficient remedies.

Key words: Chinese seafarers, Compensation claims, Workplace injuries and death, Seafarers' rights

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Abbreviations

ACFTU	All-China Federation of Trade Unions
BIMCO	Baltic and International Maritime Council
CCP	Chinese Communist Party
CSR	Corporate Social Responsibility
DWT	Deadweight Tonnage
EU	European Union
FOC	Flags of Convenience
IBF	International Bargaining Forum
IGP&I	International Groups of Protection and Indemnity Clubs
IMO	International Maritime Organisation
ITF	International Transport Workers Federation
LAT	Labour Arbitration Tribunal
MLC	Maritime Labour Convention
MSA	Maritime Safety Administration
MOT	Ministry of Transport
NPC	National People's Congress
OHS	Occupational Health and Safety
P&I Club	Protection and Indemnity Club
POEA	Philippine Overseas Employment Administration

SEC	Standard Employment Contract
SPC	Supreme People's Court
WWII	World War II
WCAC	Work Capacity Assessment Committee
WC	Workers Compensation
WIIF	Work-related Injury Insurance Funds
WIIS	Work-related Injury Insurance System

Introduction

The aim of this research is to explore and understand the claim experiences of Chinese seafarers and their families following workplace accidents at sea. This research is a socio-legal study focusing on occupational health and safety in the shipping industry and the well-being of seafarer claimants in compensation processes. It intends (1) to identify the key players and socio-legal relationships involved in managing maritime workplace accidents and claims; (2) to explore the experiences of claimants have when interacting with employers and social institutions; and (3) to consider whether there are any particular interactions which are harmful for the seafarers and their families in compensation processes.

The research motivation is rooted in my experience of handling Chinese seafarers' claims. In one accident, a Panama-registered Bulk Carrier capsized and sank in the sea off southern Taiwan's Cape Eluanbi. One sailor died and twelve were missing. After six-months of negotiations, the surviving families reached agreements over the compensation amounts with the P&I Club correspondent. In observing the claim process, I felt that the surviving families had no better option than to accept the damages offered by the P&I club. This was because the surviving families could not afford the cost of lawsuits against the shipowner and interested parties. There were also limited precedents in which the court awards to claimants exceeded their awards. Accordingly, the claimants were unlikely to achieve damages significantly higher than the compensation offered by the P&I club via a process of litigation. I gradually realised it was a long, painful and disempowering process for the victims to claim damages in this legal environment.

Seafarers' compensation claims are a category of workers' compensation claim. In the process of workers' compensation claims, workers or their beneficiaries claim damages arising from work-related injuries and

deaths¹. The damages include compensation for medical expense, sick pay, compensation resulting from death, disability and mental trauma and other costs arising from necessary claim activities². In this compensation process, five groups of social actors interact: workers; employers; insurers; social security administrative institutions; and judicial institutions. Due to such interaction, compensation processes can be complicated. The adverse effects of compensation processes have been widely reported: the compensation system, instead of providing remedies, may exacerbate the harmful consequences of workplace injury, such as pain, insecurity, stress and anxiety (Lippel et al., 2007; Matthews et al., 2012). Most of these findings are from the studies focusing on land-based workers, such as construction, manufacturing and healthcare workers, but few studies concern the experiences of offshore workers. Moreover, these studies were mainly conducted in developed western countries, such as in Canada, Australia and the US. Less attention has been paid to workers from developing countries (Lippel, 2007; Roberts-Yates, 2003; Matthews et al., 2012; Quinlan and Mayhew, 1999). Therefore, to fill this gap, this study will explore the experiences of seafarers, who attempt to obtain compensation for occupational injuries, in the largest seafarer supply state China (Ministry of Transport of the People's Republic of China, 2016; Zhu, 2002).

The People's Republic of China declares itself as a socialist country, and the ruling class of this country is supposed to be the working class, instead of the capitalist class (Howell and Pearce, 2002). However, through the Open and Reform Policies advanced by Deng Xiaoping in the earlier 1980s and developed by his successor Jiang Zemin, market economic regimes with neo-liberal features have been established (Zhu and Dowling, 2002; Zhu, 2002; Zhu, 1996). The market economy regime has challenged the ruling class status of Chinese workers, and workers' rights are no longer completely

¹ The occurrence of occupational diseases can lead to workers' claims. Considering claims arising from occupational diseases are subject to different regulation system, this research does not cover occupational disease claims.

² For example, expenses arising from disability appraisal, traveling and accommodation.

ensured by the Party and the government but are subject to the market competition (Lu, 2001).

Referring to western social welfare regimes, Chinese legislators introduced a social security system, to provide social support for the workers in the relatively free market (Dimitrova and Blanpain, 2010). In 2004, a Chinese version of Workers' Compensation system, the Work-related Injury Insurance Systems (WIIS)³ and Labour Arbitration Tribunals (LAT) launched nationwide to provide remedies for the victims of workplace accidents. Concurrently, the tort liability system explicitly entitles these victims to remedies under civil law⁴. Therefore, Chinese seafarers' compensation claims are subject to these two legal regimes.

Following workplace accidents at sea, seafarers and their families become victims of physical and mental harm and financial loss. They are entitled to claim damages and obtain remedies either from employers and their private insurers or the Work-related Injury Insurance Funds (WIIF). Nevertheless, to obtain remedies, seafarers and their families have to initiate claims against employers and/or relevant institutions. The challenges and difficulties arising from this process are crucial considerations in both of the fields of industrial relations, labour law and maritime law.

Precarious workers are more vulnerable in the compensation claim process compared to permanent employees (Quinlan and Mayhew, 1999; Underhill et al., 2011). Seafarers are the epitome of mobile workers employed under precarious, flexible and fragmented conditions. Seafarers are employed on 'very long, generally temporary, contracts and can be hired and fired at will' (Sampson, 2013: 28). 46% of Chinese seafarers do not have long-term employment contracts and work on voyage-based contracts (Chen et al., 2014). With the advantage of cheap crew costs, Chinese seafarers have

³ Work-related Injury Insurance Funds were established according to the *Work-related Injury Insurance Regulation (2003)*

⁴ This entitlement was been explicitly confirmed by the *Interpretation of the Supreme People's Court of Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury (2004)*

become a significant labour force in the global maritime labour market (Zhao and Amante, 2005). Meanwhile, Chinese seafarers' claims are a type of migrant worker claim. Therefore, Chinese seafarer claimants may be subject to dual vulnerabilities of precarious workers and immigrants (Zhao, 2005; Sun and Liu, 2014; Fudge, 2012; Guthrie and Quinlan, 2005).

Exploring Chinese seafarers' compensation claim experiences has three potential outcomes. The first one is the expansion of knowledge of the effects of the Chinese Workers' Compensation System, which is at a relatively early stage of development but concerns the rights and welfare of the world's largest population of workers. Secondly, from the industrial study perspective, this research can contribute to understandings of workers' rights in a hazardous and adventurous sector, the shipping industry. Thirdly, Chinese seafarers are the epitome of precarious workers and therefore the social and legal impact of flexible employment and transnational labour relations can be analysed by considering their experience.

1. Objectives and Research Questions

The objectives of this thesis are: (1) to critically review the legal rights and entitlements of seafarers after workplace accidents in China; (2) to investigate the practice of management of workplace accidents and claims in the maritime industry; (3) to explore seafarers' experiences of defending their rights, dignities and compensation during claim processes.

The central research question of this thesis is *whether Chinese seafarers and surviving families suffer additional harm as a result of existing compensation processes*.

To answer this, the following sub-questions concerning different aspects of the question will be addressed:

- (1) What are the compensation entitlements available for seafarers according to the Chinese Law? Are these entitlements sufficient to cover loss arising from accidents?
- (2) How do companies manage workplace accidents and

compensation claims?

(3) What are the challenges for seafarers/surviving families when negotiate compensation with their companies?

(4) If the disputes cannot be solved within the organisational framework and the claims need to be addressed by the justice system, what are the challenges for seafarers/surviving families in seeking justice?

(5) What are the implications of the above challenges for the social and economic life of seafarers and their families?

2. The Outline of the Thesis

This thesis is organised into eight chapters. Chapter One and Two present the literature review. Chapter One examines the high occupational risks at sea and illustrates the necessity and significance of researching the compensation systems for seafarers' workplace injuries. Referring to the historical development of Workers' Compensation, the author identifies two approaches to addressing workers' claims: non-fault based compulsory Workers' compensation system, including public insurance and private liability insurance, and fault-based tort liability damages regime.

Chapter Two discusses workers' experiences of compensation claims following workplace accidents. The workers' compensation systems were firstly launched in western countries, and then widely adopted in many countries around the world. Empirical studies drawing on workers' experiences to assess the effectiveness of this system in western countries are abundant. From a theoretical perspective, there are two well-established theoretical frameworks: capital-labour conflict theory and therapeutic jurisprudence, which are widely used to assess the effectiveness of the compensational systems. The current studies have provided empirical evidence showing that in Western industrialised countries, workers suffer various additional harm physically, financially, and psychologically, due to the conflict between capital and labour, and the deficiencies of the workers' compensation systems.

Chapter Three explains and justifies the methodology of this exploratory study. It gives an outline of the different methods used in the fieldwork. The chapter provides a reflexive account of the fieldwork experience and highlights the ethical elements of the research. This research conducts interviews with Chinese seafarers and surviving families to understand the difficulties that they have met. Also, through interviews with the judges and legal professionals, the author examines the operation of the legal system in regulating seafarers' occupational injuries and death in practice. Thirdly, the current relevant Chinese legislation and regulation is critically evaluated.

Chapter Four introduces Chinese shipping industry reforms and current legal frameworks regulating seafarers' workplace injuries. This chapter identifies structural problems in relation to the civil tort law systems and maritime jurisdiction. These have increased the unpredictability and uncertainty of seafarers' claims.

Chapters Five, Six and Seven present an analysis of the empirical data collected during the fieldwork. Chapter Five presents the management practices of various organisational players in the shipping industry. This chapter examines pre-accident legal risk management and post-accident management of crew casualties by shipowners and crew agencies. It exhibits a variety of management strategies with regards to workplace accidents and seafarers' claims in the current changing legal and industrial environment.

Chapters Six and Seven present the claim activities of surviving families and injured seafarers. Chapter Six reveals the struggles of surviving families following those workplace accidents which resulted in the death of a seafarer. Chapter Seven addresses injured seafarers' personal ordeals following workplace injuries.

Chapter Eight synthesises the main findings that emerge from the three preceding chapters. It engages in a discussion to identify the main sociological and legislative contributing factors to the challenges and difficulties Chinese seafarers and surviving families confront during the claim process.

Lastly, the concluding chapter highlights the main findings from the study and their theoretical implications. It then presents the limitations of the study and makes policy recommendations and suggestions for future research.

Chapter One: Workplace Accidents at Sea and Compensation Systems

Introduction

This chapter is the first part of a literature review, examining studies of the occupational risks relating to seafaring jobs and of existing compensation systems. The purpose of this thesis is to explore seafarers' claim experiences in the context of current Chinese compensation schemes, so this chapter provides the industrial and institutional background to seafarers' claim activities. Seafarers' claims arise from workplace accidents at sea and may be subject to both general and special compensation systems.

The first section of the chapter presents the occupational risks faced by seafarers, and is based on a body of literature on maritime health and safety. The second section explores international studies of the remedies for industrial accident victims. Two approaches to workplace damages are identified: non-fault based workers' compensation systems and tort liability compensation system. To better understand the weaknesses and strengths of these two approaches, the historical origins and development of workers' compensation systems are discussed. Furthermore, the contemporary challenges for the compensation systems, including trends of privatisation and globalisation, are examined. The third section addresses the relationship between seafarers and Workers' Compensation Systems and special legal principles regarding maritime claims. In the fourth section, information about China and the development of the Chinese Workers' Compensation System is reviewed. The features of Chinese seafarers' claims are also examined.

1.1 Workplace accidents at sea

Seafarers' compensation claims arise from the losses caused by workplace accidents at sea, which include two types of accidents: maritime casualties and occupational accidents. Maritime casualty arises from the collision, fire/explosion, foundering and capsizing of a vessel due to poor weather and/or rough seas. This type of major disaster can lead to the loss of many lives (European Maritime Safety Agency, 2015; Bhattacharya, 2009).

Occupational accidents refer to an individual seafarer, or a group of seafarers involved in work tasks who suffer injuries or loss of life due to hazards in the working environment, including chemical risks and physical hazards (Baur et al., 2015; Borch et al., 2012; Poulsen et al., 2014). Occupational accidents cause the majority of seafarers' deaths (Roberts et al., 2014) (see Figure 1).

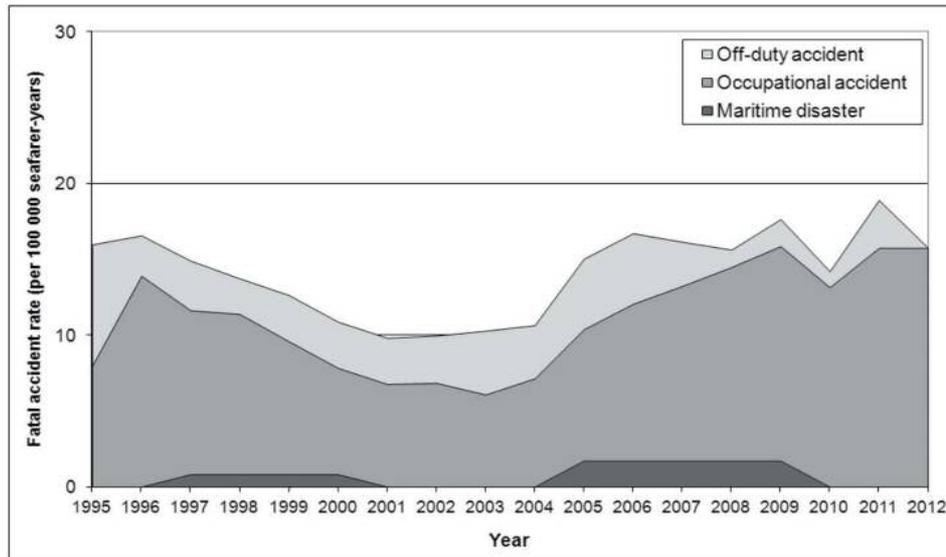


Figure 1. The Trend in the fatal accident rate in British shipping, 1995–2012.

Source: Roberts et al. (2014)

The occupation of seafaring remains one of the most dangerous forms of work (Walters and Bailey, 2013; Alderton et al., 2004; Bloor, 2011; Liu et al., 2007). The mortality rate at work in the shipping industry is significantly higher than in the general labour force. According to official statistics in the British merchant fleet (2003–12), the relative risk of workplace accidental fatalities (14.5 per 100 000) is 21 times greater than the general workforce, 4.7 times that of the construction industry and 13 times that of manufacturing industry (Roberts et al., 2014) (See Table 1). The surveillance of maritime fatalities in the Danish merchant navy (2002–2009) shows that seafarers are more than six times more likely to die from occupational accidents than workers ashore (Borch et al., 2012).

Table 1. Trends in the fatal accident rate in British merchant shipping, 1976–2012

TIME PERIOD	FATAL ACCIDENTS AT WORK	POPULATION AT RISK (SEAFARER-YEARS)	FATAL ACCIDENT RATE (PER 1000 SEAFARERS)	RELATIVE RISK SEAFARERS: GENERAL WORKFORCE
1976-1980	289	441,200	0.66	25.5
1981-1985	124	288,000	0.43	20.1
1986-1990	75	135,500	0.55	28.9
1991-1995	19	118,419	0.16	12.8
1996-2002	23	153,308	0.15	16.0
2003-2012	49	338,203	0.15	21.0

Source: (Adapted from Roberts and Marlow, 2005; Roberts et al., 2014)

There is considerable underreporting of maritime occupational injuries (Hansen et al. 2002; Ellis et al., 2010). According to Hansen et al (2002), one in five accidents causing permanent disabilities have not been reported to maritime safety authorities. Through investigating reports to insurers and maritime authorities, Hansen et al. (2002) estimate that the accident rate causing more than a 5% level of disabilities is 3.4 per 1000 seafarers/year, which is 1.56 times higher than the rate for all shore-based industrial workers, which is 2.2 per 1000 workers/year. Drawing on self-completed questionnaires, Jensen et al. (2004) investigate 7,000 seafarers in 11 countries and find that 9.1 % of seafarers suffered an injury during their most recent tour of duty. Chinese seafarers are identified as the group with the second highest rate of injuries (See Table 2).

Table 2. Prevalence of injury among seafarers during the latest tour of duty

NATIONALITY	ALL INJURIES		NO. OF SEAFARERS
	N	%	
CHINA	79	14.4	549
DENMARK	61	7.8	784
UK	54	9.7	554
INDONESIA	7	1.4	498
PHILIPPINES	123	8.2	1500
POLAND	20	6.6	302
RUSSIA	17	5.1	335
SOUTH AFRICA	25	14	178
SPAIN	111	15.9	699
UKRAINE	29	7.4	390
TOTAL	526	9.1	5789

Source: Jensen et al. (2004)

In China, studies regarding occupational fatalities and injuries among seafarers are far more limited, and available research is mainly conducted by state-owned enterprises, while nationwide surveys are not available. Zhang (2012) carried out a comparative study of work-related casualty rates in the shipping, logistics and shipbuilding sectors in a large Chinese enterprise in 2005. He found that the occupational casualty rate of 4.090 ‰ of the shipping sector was about four times higher than the rate of the shipbuilding sector (see Table 3).

Table 3. The work-related casualty rate of the shipping, logistics and shipbuilding sector of a Chinese Enterprise

	SHIPPING SECTOR	LOGISTICS SECTOR	SHIP BUILDING SECTOR
OCCUPATIONAL INJURIES (INJURIES AND DEATH)%₀	4.090	1.439	1.045
OCCUPATIONAL MORTALITY %₀	0.364	0	0.18

Source: (Zhang et al., 2012)

In addition, compared with the fatal accident rate of 0.15‰ of British Merchant Ships (2003-2012), the occupational fatality rate of 0.364 ‰ faced by Chinese seafarers is 2.4 times higher than the rate on British Fleets.

The above studies reveal that seafarers are exposed to higher occupational fatality and injury risks compared to shore-based workers. Among seafarers of different nationalities, the self-reported injury rate of Chinese seafarers is the second highest. The fatality risk exposure to Chinese seafarers on Chinese ships is estimated to be 2.4 times greater than in the British Merchant Fleet. Considering Chinese seafarers are exposed to a high workplace injury and fatality risk, examining whether their loss can be adequately remedied through the compensation system is crucial for the physical and financial well-beings of seafarers and their surviving families.

1.2 Workers' compensation systems

Workplace accidents cause considerable physical, emotional and economic damage and loss to workers and their families (Krause et al., 1998). To relieve these losses, legislators entitle victims to claim damages from liable parties. Compensation systems have two legal approaches. One is the Workers' compensation system whereby injured workers/beneficiaries can obtain limited non-fault based compensation from a public insurance fund or the

private insurers of their employers; the other is a tort liability system whereby victims are able to obtain full compensation from their employers if they can prove the accidents were caused by employer faults (Gunderson, 2000a; Cane and Atiyah, 2006; Gunderson, 2000b). However, in different countries, at different historical stages, these two systems have had different statuses and functions.

In the United Kingdom, before the introduction of workers' compensation system at the end of the 19th century, no specialised rules regulated work-related injuries. Under the traditional tort law, the courts rarely awarded damages to victims. In most cases, workers had to suffer the accidental loss without compensation, since employer liability was hard to prove (Epstein, 1981; Clayton, 1997; Cane and Atiyah, 2006). The first reason for this was that tort law provided strong defences for the employers to counterplead workers' claims, including (1) common employment, (2) contributory negligence and (3) assumption of risk. The second reason was rooted in the social environment at that time: the general living standard and social welfare were at a low level; and at the initial stage of the Industrial Revolution, employment was regarded as a type of favour by employers, as it provided workers and their families with relatively secure incomes (Cane and Atiyah 2006). Meanwhile, most members of society were living in poverty and suffering from diseases, injuries, accidents and other risks every day. Considering the 'ordinary' living conditions, judges seldom sustained workers' claims, unless the victims could demonstrate the existence of employers' faults successfully (Epstein, 1981). At the same time, in Germany, a traditional civil law country, the situation was different; should the worker die of work-related accidents, the employer was responsible for paying the *wergeld*⁵ (Perlin 1984). This was embodied in primitive Germanic law and could be considered as a shadow of the modern principle for caring for injured workers (Perlin, 1984). However, this traditional simplistic legal principle was far from sufficient to deal with the mass injuries that resulted from

⁵ *Wergeld* is a German law term, referring to amount of compensation paid by a person committing an offense to the injured party or, in case of death, to his/her family (See *Encyclopaedia Britannica*).

massive industrial production, and injured workers were rarely awarded damages under this legal and social environment (Perlin, 1984; Kleeberg, 2003-2004). In 1838, *Prussian Liability Law*, required railway companies to pay for the industrial injuries suffered by workers under a strict liability principle (Perlin, 1984; Kleeberg, 2003-2004). This was a trial in German law of a compensation model for mass injuries in modern industrial circumstances (Perlin, 1984). However, the scope of strict liability of employers was still limited, and traditional fault principles under tort law were still the main source used to ascertain liabilities in the case of industrial accidents. Thus before the 1880s, it was difficult for German workers to obtain adequate damages for industrial injuries (Perlin, 1984; Kleeberg, 2003-2004).

1.2.1 The origins of workers' compensation systems

Workers' compensation systems were first introduced in Britain and Germany (Watson and Valen, 1994; Clayton, 1997). The English *Employers' Liability Act* of 1880 was a breakthrough, as it imposed a qualified form of negligence liability on the employers to restrict the scope of the doctrine of common employment⁶ as a common law defence (Epstein, 1981). In this statute, the maximum amount of compensation was set to three years of the worker's wages (Cane and Atiyah, 2006; Epstein, 1981). Epstein comments: "it kept a general negligence standard and identified certain particular classes of injuries covered by the statute" (1981:797). The *Workmen's Compensation Act (1897)* came into force, which reformed the traditional tort law principle that fault was the prerequisite for the establishment of liability. The compensation due according to this Act was also different from the full compensation principle under tort law. The amount provided by this Act was roughly half of the loss suffered by injured workers (Cane and Atiyah 2006). However, this act had the following limitations: (1) it only applied to "personal injury by accident arising out of and in the course of employment" in the following industries: rail, factory, mining, quarry or engineering work and work that involved the construction of buildings; (2) the damages

⁶ According to "common employment", workers should bear the risks of being injured by their co-workers.

available for injured workers was low, about half of the total loss (Epstein 1981; Cane and Atiyah 2006). This legislation still entitled employees to bring claims against employers if injuries originated from the employers' fault (Epstein 1981; Cane and Atiyah 2006; Watson and Valen, 1994).

The English model was a 'historical compromise' between labour and capital: exempt from the burden of proving the employer negligence, the injured workers were entitled to claim damages from industrial injuries; while employers did not need to compensate for the entire loss suffered by workers. The English model of the workers' compensation system in this period complied with classical liberalism⁷. As such, the English model did not provide measures for accident prevention and rehabilitation. As Clayton (1997:3) comments: "*The English legislation was purely an amelioratory measure concerned with the provision of limited income support to compensate for wage loss as a result of industrial injury*". The English model has largely influenced the frameworks of Workers' Compensation Systems in the United States (excluding Washington and Ohio which follow the German model), Australia, and New Zealand (Epstein, 1981; Clayton, 1997; Gunderson and Hyatt, 2000).

Compared with the English model, the German model was a more comprehensive and independent regime including indemnity methods for work-related injuries and rehabilitation arrangements. *Bismarck's Imperial German Accident Law* was enacted on 6th July 1884 and came into force on 1st October 1885. The German model provided almost total support for workers suffering occupational injuries and diseases, and furthermore, it charged an extra 'danger tariff' to firms with poor records of industrial injuries, to achieve the aims of preventing occupational injuries and deaths and also promoting the social rehabilitation of injured workers (Clayton 1997). Employees were entitled to two-thirds of their salaries in indemnity or disability benefits with the disability conclusion made by doctors. Employers paid the costs of the workers' compensation system. Some European states

⁷ In the context of classical liberalism, government should refrain from the interference of free markets

adopted the German model including Austro-Hungarian Empire and Norway (Clayton 1997).

The basic mechanism of workers' compensation, as Gunderson and Hyatt (2000) note, is transferring money from capital to labour. In other words, employers need to contribute to mitigating the damages and losses suffered by employees caused by work-related injuries and occupational diseases (Cane and Atiyah 2006, p. 329). This distribution of liability between employers and employees on the damage of occupational injuries is a departure from the tort law principle that the liability must be based on fault (Cane and Atiyah, 2006). Rather than a natural development of the traditional civil law, the introduction of workers' compensation systems declared that traditional tort law approaches were no longer appropriate for mass industrial injuries (Cooney, 1984; Clayton, 1997; Gunderson and Hyatt, 2000), and that independent and special statutes should be passed to compensate workers suffering occupational injuries. Furthermore, the emergence of workers' compensation systems, both in Germany and in England, was a political compromise between labour and capital.

1.2.2 The development of the workers' compensation schemes after World War II

After World War II, social security systems were widely established in western countries, and workers' compensation systems were merged into the general social security system in some states (Williams, 1991). For example, in the United Kingdom, the workers compensation system, which was originally based on employers' liability and the commercial underwriting industry, transformed into a public welfare system: the Industrial Injuries Scheme. In addition, more than 100 countries have established national schemes based on the no-fault principle (Williams, 1991; Clayton, 1997). The United States, Canada and Australia have not adopted unitary national schemes of workers' compensation, but authorise state/provinces to constitute the legal frameworks for industrial injuries (Purse, 2009). This is because in these federal countries, it is the province or state which reserves legislative power regarding workers' compensation claims.

In terms of their financial structure, there are four types of workers' compensation schemes: (1) a unitary state fund providing indemnity for injured workers; (2) self-insurance, including industry funds, group self-insurance and individual self-insurance; (3) private insurance and mutual insurance, especially in shipping industries and (4) co-operative insurance between self-insurance and private insurance (Clayton 1997). National funds or funds operated by state/provinces are still the main basis of workers' compensation schemes. However, in some countries/regions, such as the Netherlands, Denmark, Finland, Singapore and Hong Kong, the private insurance industry has been involved in schemes (Clayton, 1997; Lippel, 2003b; Li, 2014). In the countries where public funds are the main component of workers' compensation schemes, private underwriting companies also act in supplementary roles.

Having established workers' compensation schemes, some countries, such as Germany and Canada, no longer entitle workers to sue employers under tort law (Hyatt and Law, 2000). While, in others, such as the United Kingdom, injured workers are still permitted to claim compensation under tort rules if they can prove the existence of negligence by employers (Haas, 1986-1987; Williams, 1991; Hyatt and Law, 2000).

In the UK, the post war integration of workers' compensation into the national social security system in 1946 has been a major achievement. Increasing the involvement of governments in workers' compensation schemes has improved their reliability and stability. For example, before the mid-twentieth century in England, employers and private insurers were the responsible parties for industrial injuries, and the workers' compensation claim processes were similar to the traditional tort litigations. Injured workers were still subject to enormous pressure from employers and therefore would accept employers' lump sum settlement offers since the imbalance between labour and capital was so severe at that time that workers could not afford to wait for the final judgement of lengthy procedures (Cane and Atiyah 2006). The introduction of the national social security scheme removed the direct adversarial characteristics of workers' claims, and injured workers could

obtain full benefits as defined by the statutes from the public fund, rather than directly from employers. As a result, the treatment of injured workers steadily improved in this period.

1.2.3 Privatisation reforms of workers' compensation systems

Private employers' liability insurance schemes are necessary components of workers' compensation systems, in some states of the USA and Australia. In Brazil, the worker's compensation system was originally operated by state-owned institutions, however, under pressure to implement neo-liberal reforms, the government also permit private companies' involvement in the workers' compensation systems (Clayton, 1997; Purse, 2009).

In terms of management of workers' compensation systems, privatisation trials have destabilised workers' rights to claim industrial injuries damages (Quinlan and Mayhew, 1999). Firstly, the introduction of free-market competition may cause the instability of workers' compensation systems. In order to gain one proportion of the market, private companies usually adopt discount strategies to attract more clients. However, these lower tariffs schemes cannot reflect the real risk level. Once insurance accidents occur, and insurers would increase tariffs accordingly, which makes the whole workers' compensation become unreliable and unpredictable. This happened in Australia and the United States in the 1980s, and the result was that private insurance companies either were bankrupted or refused to honour the compensation for workers' injuries (Clayton, 1997; Quinlan and Mayhew, 1999). Secondly, privatisation measures also increase administrative costs. For example, in order to lower the public administrative expense, workers' compensation claims are outsourced to private management companies. In fact, this trial has proved to be even more costly, since the ambiguous principal-agent relationship between public workers' compensation institutions and private insurance companies has caused more difficulties for workers during the claim process and created more tensions in the work-related injuries claims management system (Purse, 2009). Thirdly, as Lippel (2003b) argues, privatisation of workers' compensation systems is often related to the aggressive treatment of injured workers' claims, which has been

proved in the North American and Australian examples (Lippel, 2003b; Purse, 2009).

1.2.4 Challenges imposed by globalisation

Since the 1970s, globalisation has acted as a significant promoter for the spread of neo-liberal policies (Larner, 2000; Fourcade-Gourinchas and Babb, 2002). Both the globalised market and the neo-liberal policies, to a great extent, have reconstructed the global economy and brought great challenges for labour markets (Arthurs, 1996; Gunderson, 2000a; Overbeek, 2003). Investors are no longer restricted by national boundaries, and multinational/transnational corporations can extend business beyond (Arthurs 1996; Overbeek 2003). It is much easier for capital to escape from strict regulations from home countries and to seek a more “friendly” investment environment abroad with fewer obligations in terms of labour welfare and a low-cost labour force (Gunderson 2000; Overbeek 2003). Meanwhile, labour markets have also become globalised under the influence of international production (Overbeek 2003). A large amount of the low-cost labour force from developing countries have been involved in the global labour market (Frenkel and Peetz, 1998). As a result, the globalised market enables investment to become more mobile, which also helps employers avoid relatively strict labour regulations (Gunderson 2000). Meanwhile, neo-liberal policies in the last four decades have largely influenced the nature and forms of work, and flexible employment has become a trend weakening collective labour force (Arthurs 1996) and has brought new challenges to traditional workers’ compensation systems (Felstead and Jewson, 1999).

Due to the deregulation of the labour market, employment in the service sector has become precarious and flexible (Arthurs 1996), which is different from the traditional definition of employment under workers’ compensation (Quinlan and Mayhew 1999). This means that workers under flexible employment relationships may not be covered by existing workers’ compensation systems (Quinlan and Mayhew 1999) because the definition of workers was designed according to the characteristics of traditional directly employed permanent occupations (Arthurs 1996). In addition, considering

the limited financial budget and pressures originating from the capital escape, governments have become reluctant to include the new emerging flexible labour force into the workers' compensation systems and to improve compensation standards. Furthermore, to reduce expenditure in welfare, some governments have become stricter awarding benefits to injured workers (Gundersen and Hyatt, 2000; Lippel, 2003b). Furthermore, privatisation reforms of workers compensation systems have been recommended by neo-liberal economists in Brazil and Australia (Clayton 1997; Purse 2009)

These changes greatly increase the imbalance of power between labour and capital. As Guthrie et al. (2006: 62) comments,

The last two decades have witnessed increased conflict over workers' compensation policy, and the focus of this conflict has been the issue of who should pay for the rising costs associated with work-related injury.

The increasing adversarial features between capital and labour regarding the workers' compensation systems, at the legislation level, are embodied as the continuous decline of benefits that employees are entitled to and the introduction of more stringent examining procedures for work-related injuries (Watson and Valen, 1994). At the operational level, the increasingly adversarial features cause additional harm to injured workers during the claim process, and sometimes, workers even give up the opportunity to claim damages under the workers' compensation schemes altogether (Rosenman et al., 2000).

Through reviewing the origin and development of workers' compensation systems, it can be found that the emergence of these systems in the late 19th century was a result of the political strategy and historical compromise to reduce unrest in the working classes (Epstein, 1981; Clayton, 1997). With the establishment of the welfare state after World War II in the western world, compensation for industrial injuries became relatively stable and the adversarial features of systems were to some extent decreased (Williams, 1991). However, with the formation of the global labour market and

privatisation reforms, the polarity between labour and capital has increased greatly and generated pronounced challenges for the workers' compensation systems (Purse, 2000; Lippel, 2003a; Quinlan and Mayhew, 1999). As a consequence, workers' vulnerability has increased during the claim process, and it is harder to obtain compensation from the workers' compensation systems.

1.3 Seafarers and workers' compensation system

Historically, shipping and seamen were subject to maritime customs that were independent from land based legal frameworks. The earliest codification of written maritime customs is the *Rhodian Sea Code*, which was a Byzantine creation, probably written in the 8th century. Legal regulation of seafarers' injuries on board can be traced back to medieval maritime customs (Couper, 2005). However, the medieval independent sea code tradition did not give seafarers substantial rights following workplace accidents. Later, when labour law and workers' compensation developed in the 19th and 20th centuries, seafarers' rights were not properly included in legislative labour protection frameworks (Couper, 2005).

The use of Flags of Convenience has become pervasive, and maritime workers has been globally sourced since the 1970s. International seafarers' compensation claims are subject to multiple jurisdictions, including Flag States and Seafarer Supply States (DeSombre, 2006; Couper et al., 1999; Bloor et al., 2006; Sampson and Bloor, 2007). According to the territorial jurisdiction principle, Flag States can regulate ships as their 'floating islands' and govern seafarers' compensation claims. According to the passive personality principle of jurisdiction⁸, Seafarer Supply States can also regulate compensation claims raised by the seafarers of their own nationalities (Black, 2000; Mandaraka-Sheppard, 2009). In addition, seafarers' compensation claims can also be subject to a third state's jurisdiction, if the accident occurs

⁸ The passive personality principle allows states to claim jurisdiction to try a foreign national for offenses committed abroad that affect its own citizens. (See *Encyclopedia Britannica*)

in a third state's territorial seas. For example, if the accident occurs in the territorial seas of the US, seafarers' compensation claims can be subject to US admiralty jurisdiction and US law can be applicable.

The tradition that seafarers are subject to maritime code and excluded from labour law still has a strong influence on current seafarers' compensation claims. In some states, seafarers are excluded from social security laws for the general workforce. The United States is one example. Seafarers have a peculiar status in American law, and their workplace injuries are subject to a set of rules, Jones Act, 46 USC. SS 688, that are distinct from the general body of labour and tort law (Force et al., 2006; Norris, 1954). In this legislative context, seafarers' access to social security remedies is not recognised by law and they have to pursue their compensation claims through special admiralty jurisdiction.

In the late 20th century, some states made efforts to ensure seafarers' equal access to social security in the labour law frameworks. In the UK, following the *Social Security Act 1973* through special provisions, the non-fault based industrial injuries disablement benefits were extended to cover seafarers (Kitchen, 1980). In addition to the seafarers working on British Flag vessels, some British residents working on non-British vessels can also access the UK social security system⁹. British seafarers, who work in the UK or in any other EU country or Norway, once injured, are entitled to the industrial injuries disablement benefits from the UK National Insurance Fund¹⁰. In addition to the social security benefits, seafarers are still entitled to sue their shipowners, if they can establish fault-based compensation claims (Newdick, 2005).

⁹ UK residents work: on a ship registered outside the UK, but your employer is based in the UK and your contract was signed in the UK; on a ship registered in Bermuda and owned in Bermuda, but that calls regularly at UK ports in UK inshore waters or between UK ports (with no visits to a foreign port in-between) in the designated UK sector of the Continental Shelf on a ship engaged in exploration or exploitation of oil or gas. (<https://www.gov.uk/guidance/national-insurance-if-you-work-on-a-ship>)

¹⁰ Legislation (13) - SS C&B Act 1992 sec 117 and Legislation (14) - SSB (PA) Regs 1975 reg 10c & 11

Seafarers working on British vessels and British seafarers working on certain non-British vessels have equal access to the social security system.

Nowadays, in some regions and states, migrant seafarers have equal rights to local workers of the Flag states. For seafarers working on Hong Kong vessels, compensation claims are subject to the *Employees' Compensation Ordinance 1980* (Chapter 282), which is a no-fault, non-contributory employee compensation system for work injuries. As for other land-based Hong Kong workers, local and foreign seafarers working on Hong Kong vessels have equal rights to claim compensation from their employers (shipowners) following workplace accidents. In Singapore, seafarers' compensation claims are subject to the *Merchant Shipping (Maritime Labour Convention) Act (2014)* and *Work Injury Compensation Act 2009*. Through special provisions, local and migrant seafarers are able to claim non-fault based compensation from their employers in Singapore. Hong Kong and Singapore are two large flag states in the global shipping industry¹¹, and seafarers working on their fleets are entitled to non-fault based compensation according to the labour law. However, the workers' compensation systems in Hong Kong and Singapore largely rely on private liability insurance of employers and seafarers cannot claim compensation from a public fund. As discussed above, in the private insurance oriented. workers' compensation system, the relationship between employers and employees can be more adversarial compared to under the unitary state fund mode.

Although in the jurisdiction of some flag states, migrant seafarers are entitled to equal rights in labour law, for injured seafarers, to enforce their rights in a foreign country is highly challenging. Considering this, Seafarers Supply States has also developed legal instruments to protect their citizens' rights. In the Philippines, a major maritime labour supply country, overseas seafarers must be hired under the terms of the approved Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).

¹¹ Hong Kong ranks four and Singapore ranks six in terms of registered Dead Weight Tonnage (DWT).

This contract is negotiated through tripartite consultation involving the seafarers and the private sector (Gancayco, 2005). In the case of workplace injuries, Filipino seafarers can obtain non-fault based compensation from shipowners according to the standards stipulated by the POEA-SEC.

Compared to land-based workers, seafarers' compensation claims have special characteristics: (1) seafarers' compensation claims are subject to special admiralty law and jurisdiction in some countries; (2) the migrant status of seafarers renders compensation claims subject to various jurisdictions and different choices of applicable law. Therefore, seafarers may need to seek special admiralty and maritime legal service to enforce their rights in a certain jurisdiction, and they may also face complicated international private law issues before they proceed with their compensation claims. Special maritime jurisdiction and complicated choices in terms of applicable law increase the difficulties for seafarers in obtaining their remedies following workplace accidents.

1.4 Workers' Compensation System in China

1.4.1 Transition of industrial relations after the 1980s

The People's Republic of China, the biggest existing socialist state in the world, was established by the Chinese Communist Party in 1949. The Chinese Communist Party declared itself as a team of pioneers of the Chinese Working Class and the representative of the fundamental interests of the overwhelming majority of the people in China. From 1949 to 1979, both the political and economic regimes were socialist. The capitalist regime had been completely abolished and the working class became the ruling class in this country (Howell and Pearce, 2002; Taylor et al., 2003). Under the planned economy, all enterprises were state-owned or collective-owned, and usually urban residents were assigned permanent full-time jobs, i.e. the 'iron rice bowl' (Zhu and Dowling, 2002; Li, 2008). At that time, workers' welfare was provided by government regulations and ensured by enterprises. In this context, states provided unitary compensation standards for work-related injuries and illness in 1957, and enterprises were the compulsory contributors to the payment of industrial injuries damages. Civil justice and tort liability

systems were abolished, and state-owned/collective-owned enterprises were the decision makers regarding the benefits for injured workers (Mao and Zhang, 2007).

Under the planned economy, workers' welfare, including pensions, health care and compensation for occupational injuries and death, were supposed to be fully provided by state-owned or collective-owned enterprises according to the standards set by the government (Mao and Zhang, 2007). However, continuous political movements, especially the Cultural Revolution from 1966 – 1976, greatly disturbed the development of the economy, so that by the end of the 1970s most Chinese people lived in poverty (Yao, 2000). In 1978, as a decision of the Third Plenum of the Central Committee of the Chinese Communist Party, the Reform and Open policy was introduced (Zhu, 1996). In 1992, the concept of the socialist market economy with Chinese characteristics was implemented (Zhu, 2002). These policies have profoundly changed the direction of the country as privatised property and market businesses have gradually been restored.

The last three decades have witnessed the tremendous social and economic transformation of China: from a command economy to a relatively free market economy and from forbidding private business to encouraging private companies and foreign investment. At the same time, free workers and the labour market have come into existence, and traditional industrial relationships have changed greatly (Lu, 2001). The 'Iron rice bowl' is no longer the common employment form in the newly emerging labour market. Labour contracts are widely adopted to establish fixed-term employment relationships (Zhu, 2002). Enterprises can freely hire employees without too much intervention from central or local government in a relatively free labour market, and do not need to be completely responsible for the workers' pensions, health care and work-related injuries (Wu, 2008). Previous socialist workers' welfare rights protection regimes are no longer universally applied, and the new-born labour force, including migrant workers and college graduates, are not protected effectively by the previous welfare schemes (Mao and Zhang, 2007).

1.4.2 Introduction of the Western workers' compensation system

In the 1990s, labour welfare regimes in the socialist market economy had not been established, and contract workers' rights and welfare were very ambiguous. In this situation, within private sectors, workers suffering occupational injuries were extremely miserable (Sun and Zhu, 2009). Although some legal regulations provided standards for benefit entitlement for injured workers, there are no effective measures forcing private employers to meet their obligations (Mao and Zhang, 2007). However, civil legal rules in terms of tort litigation at that time were problematic as well. Injured workers could neither receive defined compensation under the workers' compensation system, nor could they claim sufficient damages through tort litigation. Furthermore, health care was paid from the patients' budget in China¹². In this circumstance, injured workers in the private sector became a huge burden on their families, since it was difficult for them to acquire compensation from employers or benefits from the social insurance fund (Sun and Zhu, 2009).

Economic and social transformation demands the improvement of legal frameworks to ensure the stability of society and the sustainability of development (Zhu, 2002). In order to regulate the employment relationship and protect workers' rights, the *Labour Law (1994)* was enacted and the *Labour Contract Law* was enacted in 2008 (Li 2008). In terms of occupational injuries, on 1st January, 2004, the *Work-Related Injury Insurance Regulation (2003)* came into force. This Regulation enlarges its application scope to include all categories of enterprises in mainland China and provides relevant procedural rules for the approval of occupational injuries, application for occupational injuries compensation, arbitration rules for labour disputes and appeal procedures (Mao and Zhang, 2007). According to this regulation, public occupational insurance funds have been established nationwide, and are managed by the provincial government (Li, 2008). Employers are obliged to purchase occupational injuries insurance for employees, while employees

¹² In China, the public medical care is not free and patients have to pay deposits before receiving any treatment.

do not need to pay the insurance tariff at all. If employers fail to purchase the occupational injuries insurance for employees, then in the event of work-related injury, employers need to pay the full amount of compensation according to the standards provided by the Regulation¹³.

1.4.3 Critics towards workers' compensation system in China

The *Work-related Injury Insurance Regulation (2003)* was legislated by the State Council as unified rules for work-related injuries throughout the country, apart from the two Special Administrative Regions, Hong Kong and Macao. However, enforcing this regulation and establishing the social insurance funds for workplace injuries in the thirty-two provinces of mainland China is a complicated task (Li, 2008). Although the Regulation provides unified standards for compensation amounts with regards to work-related injuries and deaths, the real power to award compensation to workers belongs to local governments. As a consequence of the imbalance in economic development, the coverage of work-related injuries and actual compensating standards are different in different regions.

In addition, migrant workers cannot secure efficient protection against occupational injuries (Zhao, 2005). Until now, China has pursued the relatively strict household registration regime to restrict domestic migration. Migrant workers cannot usually acquire citizen identity in the cities where they work. However, the workers' compensation system greatly depends on the regional budget, but the local government is not willing to spend extra money to protect the workers coming from another region. Therefore, a significant number of migrant workers in China cannot access the workers' compensation from the government in the locality of their workplaces (Zhao, 2005; Sun and Liu, 2014).

Another problem is insufficient supervision over employers in the private sector. The regulation demands that all employers shall purchase social insurance for their employees against occupation injuries¹⁴, otherwise

¹³ See the *Work-related Injury Insurance Regulation (2011)* Art. 62

¹⁴ See the *Work-related Injury Insurance Regulation (2011)*, Art 2.

employers are obliged to pay injured workers compensation equivalent to the amount which is supposed to be paid by the WIIF. This seems to be an effective measure to ensure workers' rights. However, in the Chinese market, with large amounts of surplus labour, private employers are able to use their positions of power to secure their own interests in order to exploit employees (Zhao, 2005; Sun and Liu, 2014; Sun and Zhu, 2009). Without effective supervision from the authorities, in an oversupplied labour market, it is extremely difficult for individual employees to gain access to the WIIF (Sun and Liu, 2014).

Moreover, the *Work-related Injury Insurance Regulation (2003)* identifies two types of compensation liability: one is the WIIF's liability to cover disability damages and medical expenses, and the other is employer's liabilities to cover workers' sick pay. Li (2014) criticises this regime as a mixed model of self-insurance and social security insurance, which reduces the compulsory feature of the Work-related Injury Insurance, since employers' motivations are decreased if contributing to the insurance cannot exempt their compensation liabilities. In addition, the WIIF intentionally limit their own liabilities, which weakens the function of social security of the Work-related Injury Insurance. As a result, this institutional design makes Chinese workers have to face two liable parties, and both are eager to reduce compensation liabilities.

Chinese trade unions are not active players in fighting for workers' rights and welfare in the workers' compensation system. As Chen (2003) argues, the All-China Federation of Trade Unions (ACFTU), the unique legal trade unions in China which are under the control of the Chinese Communist Party (CCP) cannot represent Chinese workers' interests and rights under the reformed market economy regime. As the official trade unions, the chief task of ACFTU is to support enforcement of the CCP's policies, rather than promoting workers' interests. Under this condition, little support can be provided by the Chinese official trade unions to assist workers in claiming damages for occupational injuries.

In the context of China, transiting from the planned economy to the market economy, the previous socialist workers' welfare regime has been terminated, and a western-like social security system has been recently introduced as a trial to ensure labour rights and well-being in the market economy. Work-related Injury Insurance is one of the core regimes of the new social security system. According to studies carried out in Western countries, the claims process for workers' compensation brings some additional negative outcomes for injured workers. It is therefore valuable to explore whether in the Chinese context the introduction of a similar workers' compensation scheme will cause additional harm to Chinese workers. So far, in the Chinese environment, the imbalance between regions, strict limits on domestic migration, and the lack of independent trade unions has already created considerable difficulties for the operation of this new workers' compensation system.

1.5 Chinese seafarers and workers' compensation system

This thesis will focus on seafarers' experiences of the current Chinese workers' compensation system. The special characteristics of the seafaring occupation are the main reasons why the author has selected seafarers' experiences in China to explore the Chinese workers' compensation system. The features of the seafaring occupation include the following: (1) the seafaring occupation is well recognized as a traditional adventurous and hazardous occupation (Bailey, 2003; Alderton et al., 2004; Liu et al., 2007; Bloor, 2011; Jensen, 2009; Jensen et al., 2004; Hansen et al., 2002; Roberts et al., 2014); (2) the common employment form of the shipping industry is precarious and insecure (Dacanay and Walters, 2011; Walters and Bailey, 2013; Sampson, 2013; Chen et al., 2014; Chen and Hao, 2012; Wang, 2009); (3) seamen's workplaces are usually outside their home countries' jurisdiction and their claims may be subject to multiple jurisdictions (Mensah, 2004; Couper, 2005; Dimitrova and Blanpain, 2010). Accordingly, seafarers are employed in an occupation with a high risk of injuries, while complex jurisdiction renders seafarers and their dependants even more vulnerable while they are making their claims for occupational injuries and death.

China is the major supplier of seafarers to the global shipping market. According to statistics from the Ministry of Transport of China, by the end of 2014, there were 638,990 seafarers and 470,512 of them were international seafarers. 168,478 seafarers were involved in coastal transport (Ministry of Transport of the People's Republic of China, 2016). Chinese seafarers are not only the main workforce for the Chinese domestic transport industry, they are also the main labour force in the global shipping industry.

In China, the compensation system for seafarers' workplace injuries has adopted a mixed mode. From 1992 to 2013, seafarers involved in foreign-related transport were subject to the *Specific Provisions for Trials on Foreign-related Personal Injuries and Deaths at Sea*. During this period, the seafarers' compensation system was independent from labour law and exclusively subject to maritime jurisdiction and admiralty law. *The Work-related Injury Insurance Regulation* came into force in 2004 and is applicable to all workers in the Chinese territory. Meanwhile, the *Interpretation of the Supreme People's Court of Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury (2004)*¹⁵ came into force in 2004, which confirms employers' liability for non-fault based compensation to precarious and temporary workers. Between 1992 and 2013, China provided different compensation regimes for seafarers involved in domestic transport and international transport. For seafarers involved in domestic transport, the *Work-related Injury Insurance Regulation* was applicable, as mobile workers in China, they also confront regional discrimination as other migrant workers mentioned above in China (Li 2008). Furthermore, seafarers working on non-Chinese flag vessels were not protected by the Chinese workers' compensation system, unless the employers purchased Work-related Injury Insurance voluntarily, which was rare in practice (Wu 2008). Therefore, Chinese seafarers involved in foreign-related transport had to claim their compensation from the ship-owners, managers, or operators under tort law. Compared with the workers' compensation system, this process was more

¹⁵ Hereinafter referred as *Judicial Interpretation on Personal Injury Damages (2004)*,

time-consuming and complicated (Zhang 2011). From July 1st, 2011, the Maritime Safety Administration required that all seafarers dispatched to foreign vessels must be covered by Work-related Injury Insurance. On January 1st, 2013, the *Specific Provisions for Trials on Foreign-related Personal Injuries and Deaths at Sea* was abolished. Therefore, Chinese seafarers' compensation is currently at a transitional stage having been excluded from the social security system and being slowly covered by the Work-related Injury Insurance.

As Mensah points out (2004: vi) “*the existence of international and national rules and regulations cannot, in and of itself, prevent serious maltreatment and abuse of seafarers.*” This critique also applies to the Chinese workers' compensation system for seafarers. According to the analysis above of the Chinese workers' compensation system, it could be found that this protection on paper is difficult to be implemented to protect the migrant workers due to the regional budget planning of the WIIF. One characteristic of labour in the shipping industry is its nationwide or even worldwide mobility. Therefore, under this system, the question arises of whether injured seafarers would be able to claim compensation. Regarding the dispatching of ocean-going seafarers, although the Maritime Safety Administration has recently made efforts to protect international seafarers equally to general workers¹⁶, the enforcement effects are still in question. In the transitional stage, there are still a large number of injured seafarers who have to rely on tort law rules to claim damages. Inevitably, the claim process based on tort law is much more complicated than the process under the workers' compensation system. Moreover, once foreign employers are involved, the duration of legal procedures is extended due to the special procedural rules for foreign-related lawsuits, such as compulsory notarization of certain evidence produced outside China.

Due to the mobile and international nature of seafaring jobs, seafarers' claims have particular characteristics. Firstly, seafarers' workplaces are off shore,

¹⁶ See the *Rules of Dispatching Chinese Seafarers on non-Chinese Vessels* (2011)

and usually outside their home countries' jurisdiction. If the accidents occur overseas, the seafarers' claims may be subject to foreign jurisdictions and legal systems (Black, 2000; Wu, 2008). Secondly, fragmented and flexible employment relationships may impede the stable and long-term participation of seafarers and shipowners in the workers' compensation system, which may weaken the coverage of social security for seafarers (Quinlan and Mayhew, 1999). Thirdly, the shipping labour market is highly globalised (Dimitrova and Blanpain, 2010). Shipowners¹⁷ and employees are commonly from different countries. Under this situation, seafarers need to claim against a foreign company in their countries of origin or bring lawsuits abroad. These foreign-related matters lead to the additional complexity of seafarers' claims, such as special maritime jurisdiction, lengthy legal proceedings, complicated private international legal issues and difficulties in executing judgement against a foreign company (Zhang, 2011). Compared to the general workforce in China, Chinese seafarers' claims can be further complicated due to the foreign-relatedness of their jobs and employment relations.

Summary

This chapter has reviewed the high occupational risks at sea and illustrates the necessity and significance of researching the compensation systems for seafarers' workplace injuries. Referring to the historical development of workers' compensation, the author identifies two approaches in addressing workers' claims: non-fault based compulsory workers' compensation systems, including public insurance and private liability insurance, and fault-based tort liability damages regimes. By reviewing the practices of different countries at the various stages, it can be noticed that Workers' compensation system is

¹⁷ Shipowner means the owner of the ship or another organisation or person, such as the manager, operator, agent or charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners (See the *Maritime Labour Convention (2006)* Art 2 (j) and the *Convention on Limitation of Liability for Maritime Claims (1976)*).

a product of the industrial revolution, seeking to remedy the physical and financial suffering of workers injured in the course of their employment, to provide protection for employees from costly litigation with potentially survival-threatening outcomes, and to achieve an amelioration of societal instability that might result without a coherent approach to addressing these problems (Gunderson and Hyatt, 2000: 1).

Workers' compensation systems are not simple legal frameworks regulating the award of benefits to the victims of industrial accidents. They constitute a legislative confirmation of political policies seeking to stabilise and harmonise industrial relations and to reduce the social antagonism between capital and labour.

The necessity and advantages of non-fault based Workers' compensation systems in reducing the difficulties for workers' claimants and harmonising industrial relations are proved at the regulatory level. As maritime workers, seafarers' access to the non-fault based workers' compensation systems and rights to obtain timely remedies should be secured. However, subject to special maritime jurisdiction and law, in some countries, seafarers are not able to enjoy parity with general workers. Meanwhile, workers from developing countries, such as Chinese seafarers, may be subject to newly established "transplanted" compensation system, with limited coverage for mobile workers. Transitional social, economic and regulatory factors may also create further uncertainties for workers' claim results and affect workers' rights following workplace accidents. As a group of precarious, mobile migrant¹⁸ workers, whether seafarers' rights can be well protected following workplace accidents is also a significant question to be considered by the international and Chinese societies nowadays.

China is undergoing a transition from the planned economy regime to the market economy regime, and job security has decreased sharply. With a

¹⁸ Migrant workers refer to both international seafarers and Chinese domestic seafarers working across provinces.

young labour market and newly introduced workers' compensation regimes from the west, the performance of the legal transplant is still open to doubt. Furthermore, Chinese local sources may also influence the effectiveness of this system. Chinese workers may receive benefits from this legal transplant, or may suffer similar or different troubles and harm during a claim process, when compared with their western counterparts. Therefore, it is interesting and valuable to explore Chinese workers' experiences of the relative western style workers' compensation System to evaluate whether this transplant is helpful or harmful in solving the occupational injuries indemnity problems among the world's largest population.

This research chooses Chinese seafarers as its focus, in order to explore the above questions. The first reason is that Chinese seafarers are involved in an insecure, temporary and precarious relationship with high mobile features offshore, which can make them even more vulnerable in the occupational injuries claims system. Secondly, the Chinese seafarers' compensation system is a mixed model: combining the newly established social security system with the civil law system that was gradually developed from the early 1990s. Through the literature review, it can be found that this mixed system is limited in many aspects, including in relation to the conflict between regional budgets and migrant workers, lack of protection for dispatching labour, and the difficulties in the application of complex legal rules; relatively time-consuming procedures on foreign-related work-related injuries, and the lack of adequate legal support from society. At the same time, this mixed mode could also provide the opportunity to compare civil legal indemnity and the social insurance protection. Under the internal and external difficulties, whether the seafarers suffer additional loss and damages during the claiming process is also a valuable issue worthy of examination.

However, through reviewing the literature, few studies are found that focus on the compensation system for workplace injuries in the shipping industry. Regarding Chinese Workers' Compensation system in the shipping industry, there are some studies conducted by Chinese scholars that focus on the issues of seafarers' claims. However, most of them are based on legal doctrinal

analysis, rather than empirical studies of the workers' experiences and real feelings about the compensation system and claiming process (Guo and Ma, 2002; Zhang, 2002a; Zhang and Chen, 2011; Chen et al., 2014).

Therefore, this research aims to fill this gap, to explore seafarers' experiences during the process of claiming work-related damages in China and to examine whether seafarers suffer additional harm during these procedures. The next chapter will review the studies on workers' experiences of the claim process in different countries and present the theoretical frameworks of capital-labour conflict and therapeutic jurisprudence in analysing workers' experiences.

Chapter Two: Workers' Experiences of Compensation Claims

Introduction

Chapter One reviewed high occupational risks associated with seafaring jobs, two approaches to addressing workers' compensation claims, and the integration of non-fault based workers' compensation systems into social security systems after World War II. It also discussed the development of workers' compensation in China and its relationship to Chinese seafarers.

The main research question for this thesis is whether Chinese seafarers suffer additional harm in pursuit of compensation for occupational injuries. This chapter constitutes the second part of the literature review, which describes the available empirical evidence of the additional harm that may be suffered by workers during the compensation claim process.

Non-fault based workers' compensation systems were introduced to ensure therapeutic effects for workers, timely payment of remedies, and to harmonise industrial relations. However, these systems are now subject to various challenges and pressures as a result of neo-liberalism privatisation and globalisation. Drawing on empirical studies of workers' experiences, this chapter will discuss the potential difficulties and challenges faced by victims during the claim process.

This Chapter firstly presents, the theoretical frameworks commonly drawn upon in analysing workers' experiences: capital-labour conflict theory and therapeutic jurisprudence. Secondly, drawing on the existing literature, different types of anti-therapeutic effects, i.e. harmful effects, arising from compensation claim processes are identified. Thirdly, a research gap regarding maritime workers is identified, and the value and significance of this research are discussed.

2.1 The capital-labour conflict theory and therapeutic jurisprudence

Regarding compensation for injury/death, the interests of workers/surviving families and employers differ: ‘injured workers’ interests lie in obtaining income security and rehabilitation, while employers’ interests lie with efficiency and lower costs for workers’ compensation overall’ (Quinlan et al., 2010: 397). Workers’ compensation systems exempt victims’ heavy burden of proof which is present under the tort liability system and they provide relatively quick remedies for workers. However, a non-fault based compensation system is not a panacea to cure all harm suffered by workers arising from work-related accidents. There are still unresolved conflicts between capital and workers embedded in the compensation scheme.

This classical antagonism is embedded both in the legislative and reform process of the workers’ compensation system and the application of the legal rules to actual incidents (Ison, 1986; Hyatt and Law, 2000; Lippel, 2003b). There is no doubt that capital and its agents impose considerable pressures on official budgets for workers compensation schemes to lessen the burden on commercial operations (Ison, 1986). Even their goals cannot be completely met in battles in congress or parliament, investors still have opportunities to seek other ‘ideal’ environment with fewer obligations to workers in the global market. However, both governments and workers are reluctant to see the flight of capital, which may cause recession and decrease employment (Gunderson, 2000b). Therefore, to promote the local economy, states are under pressure to provide ‘friendly’ commercial circumstances. As a result, injured workers’ interests may be sacrificed.

In addition to political conflicts at the institutional level, the conflicts between workers, employers and the workers’ compensation systems at the enforcement level have also attracted significant interest (Quinlan et al., 2010; Lippel et al., 2007). Therapeutic jurisprudence has been applied to analyse workers’ experiences of compensation claim process. Therapeutic jurisprudence is an interdisciplinary approach to explore the effects of the law on physical and psychological wellbeing (Wexler, 1997; Slobogin, 1995;

Wexler and Winick, 1996). From the perspective of therapeutic jurisprudence, the design and reform of law should aim at minimising adverse effects and promote positive effects on human wellbeing (King et al., 2014). The law is concerned with ordering human behaviour and should avoid potential harm arising from the process of legal activities (Winick, 1997). In the area of workers' compensation claims, the value of therapeutic jurisprudence is significant in promoting harmonised industrial relations. Through empirical research on workers' experiences, Lippel (1999) illustrated the anti-therapeutic consequences of workers' compensation systems on workers in Canada. Drawing on the spirit of 'should strive first to do no harm', the anti-therapeutic effects (additional harm) suffered by worker claimants during the compensation process have been identified as critical issue threatening the effectiveness of workers' compensation systems.

Workers' compensation systems have been shown to have the potential to cause negative outcomes or even further harm to the workers' rights and wellbeing (Kirsh and McKee, 2003; Lippel, 2007; MacEachen et al., 2010). Many workers report additional physical damage due to delays in treatment caused by the low efficiency of claim processes, mental pressures resulting from the distrust displayed by workers' compensation authorities, employers' lack of good will and misunderstandings from co-workers, friends and families.

Research on workers' compensation systems has concerned workers' dissatisfaction with both the claim procedures and the final amounts awarded by workers' compensation authorities. Storey (2008) found that the examination processes of the workers' claims were not transparent enough and that the workers were not able to appeal the decision made by the Workers' Compensation Board in Canada. If the workers' claims were not recognised as qualified workers' compensation claims, or the workers were not satisfied with the final amount awarded by the authority, the victims would not be able to appeal. This is partly because the Canadian workers' compensation system prevents workers from suing employers under tort law; workers' compensation has become the unique and final relief for damages suffered by

injured workers (Hyatt and Law 2000). If injured workers cannot obtain compensation under this social security system, it is highly probable that they will have to suffer the total loss on their own. Although injured workers could be treated under the Canadian national health system, in the absence of a right to appeal, injured workers may be unable to receive the compensation that they are entitled to.

Researchers also identified the ways in which injured workers were stigmatised as “malingers” and “welfare cheats”, thereby creating great mental distress for injured workers (Storey, 2008; Kirsh et al., 2012). This kind of systematic injustice resulted in a demonstration of around 3000 workers before the Ontario Legislature’s Standing Committee on Resources Development in Toronto in 1983 (Storey 2008). As Storey (2008) argues, workers are no longer suffering injustice individually, but successfully transforming their private problems into public issues of the entire society (Mills, 2000; Storey, 2008).

Various features of workers’ compensation systems result in worker dissatisfaction. The first one is rooted in the original purpose of these systems, which was not to provide complete and adequate damages for injured workers, but only to lessen their loss to some extent (Cane and Atiyah, 2006). The second reason is that the imbalance of power between the public authority of the workers’ compensation system and the individual claimants prevents workers from grasping the exact process of their claims, which causes them to mistrust the procedures under the workers’ compensation system (Kirsh and McKee, 2003; Kirsh et al., 2012; Storey, 2008). Thirdly, influenced by economic recessions from the 1970s, the government has become stricter in scrutinising workers’ claims to control the public budget, which makes it even harder for workers to acquire benefits under this system (Gunderson and Hyatt, 2000).

The conflicts between labour and capital has direct and profound influences on workers’ experiences and feelings. For employers, claim management can be used to reduce the number and cost of workers’ compensation claims, and research has shown that low-wage firms are more likely to cut costs through

more aggressive claim management (Thomason and Pozzebon, 2002). The pressures, suppression and assaults from the employers' claim management are significant sources of additional harm for workers during the compensation claim process. In Lippel's research (2003b) conducted in Canada, employers used private surveillance against injured employees to collect evidence secretly to defend against claims for occupational injury compensation. The Compensation Boards in some provinces not only permit the evidence collected by employers through illegal and secret surveillance, but the authorities themselves also employ private detectives to gather evidence which is used to reject workers' claims. This private surveillance is a violation of the basic human rights of injured workers and imposes huge psychological pressures on injured workers. Also, for fear of being recorded, injured workers have to restrict themselves at home and refrain from almost all activities, which is detrimental to their physical recovery (Lippel, 2003b).

In Australia, Roberts-Yates (2003) found that workers felt stigmatised and blamed if they had registered occupational injuries with *WorkCover*, the Australian workers' compensation scheme. Employees felt they were regarded by the employers as welfare cheaters, especially when injuries were invisible. With records of claiming occupational injuries, workers suffer discrimination when they are trying to find new jobs in the labour market (Purse, 2000). In the view of employers, claiming compensation for occupational injuries is regarded as a kind of 'criminal record' for job hunters. That sort of discrimination hinders workers' rehabilitation and extends the length of their unemployment, which also increases the possibility of losing self-esteem and the substantial deterioration of living standards for injured workers (Purse 2000).

After more than a century of development in the Western World, the workers' compensation system still falls short of honouring initial commitments to provide effective and efficient benefits to vulnerable injured workers. However, this development is still subject to capital-labour conflict.

2.2 Workers' claim process and secondary harm: the experiences of surviving families and injured workers

Workers' compensation systems and tort liability systems provide legal approaches for workers to claim damages and obtain remedies either from social security funds or from employers to attenuate the harm arising from industrial accidents, including physical damage, financial loss, and psychological distress (Lewis, 1987; Burton, 1988; Lippel, 1989; Butler, 2002; Oliphant and Wagner, 2012). Some harm is the direct or indirect result of injuries, and should be compensated, at least to some extent, by the workers' compensation system or the tort liability system. On the other hand, according to various studies conducted within the last two decades, secondary harm and/or additional damages occur to victims during the compensation claim process (Rosenman et al., 2000; Kirsh and McKee, 2003; Kirsh et al., 2012; Lippel, 2007; MacEachen et al., 2010; Matthews et al., 2012). The secondary harm refers to additional negative outcomes occurring to worker claimants during the compensation process. It includes further physical damage following the delay of treatment caused by obstacles existing in the claims process. The secondary harm can also be triggered by mental and psychological suffering originating from the distrust displayed by the workers' compensation authority, employers lack of good will, misunderstandings with co-workers, friends and families as well as potential future discrimination from the labour market (Lippel et al., 2007).

Compensation claims arise from workplace injuries and fatalities. However, due to the different identities of claimants, experiences can be quite different (Lippel, 2007; Matthews et al., 2012). In the next section, the literature regarding surviving families' experiences is reviewed, and injured workers' experiences are discussed.

2.2.1 Surviving families

Following workplace fatalities, surviving families are shown to be subject to secondary harm. The majority of the literature on traumatic bereavement address suicide, homicide and mass fatalities caused by war or terrorism. Few studies address work-related deaths directly (Matthews et al., 2012). A very

recent study regarding surviving families' experiences was conducted by a group of Australian scholars (Matthews et al., 2012; Matthews et al., 2014; Matthews et al., 2016; Quinlan et al., 2015). Their findings firstly indicate that traumatic workplace death can cause negative impacts on the health, social and financial lives of surviving families. The health consequences include symptoms of post-traumatic stress disorder, depression, anxiety, and complicated grief and sorrow. Behavioural problems, such as drug and alcohol use, are also identified. The social consequences are complicated, including learning to seek social support, adapting to social role change, for example, and parental role shifts. The financial consequences include immediate earnings loss, difficulties in accessing workers' compensation, and long-term pressure in maintaining mortgages (Matthews et al., 2012).

Matthew et al (2012) argue that costs associated with claims for compensation are mostly ignored by policy makers. In a study which explored Australian institutional responses to traumatic death at work, Matthew et al (2014) found that after accidents occurred, the families were not able to obtain adequate timely information regarding accident investigation, and that available social support is limited. The staff of the Australian authority identified themselves as 'regulators or enforcers, and not counsellors', so they did not regard assisting surviving families as part of their job. These studies highlight the tensions that exist between surviving families' needs and institutional responses (Matthews et al., 2016; Quinlan et al., 2015; Matthews et al., 2014).

A further problem for families is identified by Quinlan et al. (2015) who highlight the frustration of surviving families of deceased precarious workers. Self-employed workers are excluded from non-fault based workers' compensation systems, which imposes a significant burden on their surviving families. Quinlan et al. (2015) point out the huge procedural difficulties for surviving families in pursuing compensation using common law litigation, especially when surviving families' rights to information is not respected.

In some cases researchers have found that the long process of coronial investigation increases the financial difficulties and hardship for surviving families who are not eligible for non-fault based workers' compensation and

need coronial findings to claim alternative financial remedies from superannuation or life insurance companies (Matthews et al., 2016)

This accumulative body of evidence suggests that in addition to the direct earning loss arising from the fatality of a worker, social, financial and legal challenges exacerbate the loss and harm that families suffer following workplace accidents. The lack of information and institutional support prolongs grief and exacerbates mental pressures and financial difficulties.

2.2.2 Injured workers

Ineffective interactions between workers and the system

Many claimants have reported the low efficacy of their interaction with compensation systems (Strunin and Boden, 2004). MacEachen et al. (2006) argue that the implied assumption underlying workers' compensation procedural rules is that injured workers can understand legal statutes and follow legal procedures without difficulties. However, in practice, many workers cannot manage the claims on their own. For example, a qualitative study conducted in Wisconsin and Florida showed that claimants met two extreme situations, either not receiving any information about their claims or being provided with vast amounts of information which was beyond their understanding (Strunin and Boden 2004). Either scenario may negatively affect claim outcomes.

In addition, claim evaluations are not transparent enough in the view of claimants. The function of the administrative examination of the compensation claims is to assess eligibility, and evaluate the amounts to be awarded. However, authorities in charge of workers' compensation usually approve or reject claimant applications and decide on awards relying solely on the paperwork submitted by applicants. However, some injured workers complain the communication through paper instructions, telephone and letters is highly constrained, limiting opportunities to explain their situation fully (MacEachen et al. 2010). The inadequacy of communication causes unnecessary worries and psychological pressures for the injured workers.

Another problem for workers is the time taken to assess claims. Compensation claim assessments usually depend on medical decisions made by doctors, which are complicated and/or indeterminate (MacEachen et al. 2010). Therefore, the examination process can be prolonged. Sometimes delays in making compensation decisions also relate to bureaucracy (MacEachen et al. 2010). In the views of many authorities, these problems cannot be avoided. However, for injured workers, procedural delays cause enormous financial pressures. In such cases, delays in justice may well end up as justice denied.

Stigmatisation

Moffatt (1999) argues that neo-liberal policies have stigmatised social welfare beneficiaries and have led public institutions to view them as ‘welfare cheats’. This argument may be a little over-stated, since the stigmatisation of a particular group of people is usually caused by various factors, such as a pre-existing social preconception. Nevertheless, neo-liberal policies indeed intensify the conflict between labour and capital (Lippel, 2003b), and as a consequence, injured workers who have received benefits may be stigmatised by employers and government agencies in some countries. This harms the self-esteem of injured workers, and may also produce further physical harm to injured workers (Lippel 2007). For example, due to the fear of surveillance, which is used by employers to record and challenge the degree of disability, injured workers have been found to restrict their activities, which physically inhibits their recovery and rehabilitation (Lippel et al., 2007; Lippel, 2003b).

According to studies carried out in Ontario, Canada, around one-third of injured workers surveyed had a sensation of being punished during claim processes and among litigants, around half of them had the sensation of being punished (Kirsh and McKee, 2003). In another study conducted in Quebec, it was found that even workers who acquired compensation without argument felt they were being “treated like a criminal” or were uncomfortable with the imbalance of power in front of Workers’ Compensation Boards and also employers (Lippel, 2007). These experiences of being stigmatised have been reported in Australia and the United States (Roberts-Yates, 2003; Strunin and

Boden, 2004; Sager and James, 2005). Workers' compensation claimants are sometimes described as 'welfare cheats' or 'opportunists', especially when work-related injuries are not obviously visible (Lippel, 2007; Lippel et al., 2007; Lippel, 2003b).

Discrimination

Discrimination issues are crucial in the compensation claim process for injured workers (Guthrie and Quinlan, 2005; Lippel, 2003a; Storey, 2008). Forms of discrimination vary and are reported to include discrimination on the grounds of gender, ethnicity and nationality. Female claimants are not treated as equal to male applicants, for they are not regarded as the traditional main breadwinners (Lippel 2003a). Immigrant workers are not considered as equal to native applicants. For example, there was a blatantly implausible theory created by a Canadian doctor that Italian immigrants sustained injuries because Mediterranean people had weak backs (Storey 2008). Due to language and cultural barriers, immigrants usually cannot obtain effective access to the workers' compensation systems (Storey, 2008; Premji et al., 2010). It is also harder for precarious workers to be fairly treated during the compensation claim process, and blacks and non-union workers' claims are more likely to be contested or rejected (Quinlan et al., 2015; Underhill et al., 2011; Quinlan and Mayhew, 1999).

A more common problem for all workers with compensation claim records is when they try to re-enter the labour market they find that many employers are not willing to hire a worker's compensation claimant (Purse, 2000). This form of discrimination presents a significant obstacle to rehabilitation, which may also enlarge the loss suffered by injured workers.

The vulnerability of precarious workers

Deregulating the labour market and reducing the burden of labour welfare systems on enterprises are typically neo-liberal strategies for governments to promote domestic economies and to attract investment. In line with such strategies, traditional post-war 'standard' forms of employment in the western world have declined (Felstead and Jewson, 1999; Fudge, 2012; Underhill et al., 2011; Gottfried, 2009; Quinlan and Mayhew, 1999). Term contracts,

temporary jobs, agency jobs and self-employment have become the major features of the 'new world of work' (Gunderson, 2000b). In most developing countries, flexible employment relationships widely exist in the workplace and employers may lack occupational health and safety protection (Quinlan, 1999). Many studies have indicated that those in precarious forms of employment experience adverse outcomes in relation to occupational health and safety measures (Quinlan and Mayhew 1999; Gottfried 2009). Workers' compensation systems are not exempt from the impact of flexible trends in the labour market. This is because the growth of precarious labour has also brought new forms of employment beyond the original coverage of workers' compensation systems, and the flexible nature of employment has also increased the difficulties of administrative supervision (Quinlan and Mayhew, 1999).

Precarious forms of employment, especially in agency work, have created blind spots for the traditional workers' compensation administration. Research carried out in Sweden indicates that apparent improved performance in avoiding work-related injuries in the mining sector is actually the result of outsourcing strategies adopted by employers (Blank et al., 1995). Precarious employment helps to hide the real cost of occupational injuries and illness in some developed countries, which aids industry in avoiding paying the contribution they should make to the workers' compensation system (Purse, 1998). This imposes a heavier burden on taxpayers and employees.

According to a study carried out in Australia (Quinlan and Mayhew 1999), the growth in precarious employment restricts the Workers' Compensation Systems' coverage. For multi-job holders, it is difficult to identify which employer should be obligated to purchase occupational injuries insurance. For self-employed workers, the research shows they are more reliant on their own resources, including private insurance and public medical care (Quinlan and Mayhew 1999). According to this research, a high number of workers are not aware of their rights under the Workers' Compensation Schemes and do not exercise on their rights. Once work-related injuries occur, precarious workers

are more willing to seek help from public health services and other social security systems (Quinlan and Mayhew 1999).

In deregulated labour markets, precarious forms of employment have assisted employers in avoiding liabilities under workers' compensation systems. Furthermore, workers involved in precarious employment are usually confused about their legal rights and become unwilling to claim their rights for industrial injuries benefits, while they tend to rely more on their own resources (Quinlan and Mayhew 1999). In terms of workers in advanced industrialised countries, public health services and other social security systems may bear the brunt of the costs of industrial accidents. Although it may be regarded as unfair to require the taxpayers to bear this burden, workers in these countries can at least obtain access to health care of a reasonable standard. However, for precarious workers in developing countries without comprehensive health care systems, the victims of industrial accidents are more vulnerable (Zhao, 2005; Mao and Zhang, 2007; Sun and Liu, 2014). This is because injured workers in these countries may not be able to afford the expense of medical services.

According to the above discussion of extra harm experienced by workers during the process of compensation claims, it can be found that the origins of the harm are diversified (Lippel et al., 2007; Matthews et al., 2012; MacEachen et al., 2006). Influenced by neo-liberal policies, including privatisation reforms, it is argued that the adversarial features of the relationship between capital and labour are apparent in Workers' Compensation Systems (Arthurs, 1996). In Canada, employers are not willing to provide assistance for employees' application for occupational injuries benefits, and even create obstacles for injured workers (Lippel, 2003b). Considering the global economic situation and domestic cost-efficiency concerns, governments are reluctant to improve the benefits standards of workers' compensation for fear of capital flight. Workers' compensation authorities are also becoming stricter when scrutinising workers' claims, which makes the injured workers' situation even worse (Gunderson, 2000; Gunderson and Hyatt, 2000). The weakness of labour is also an important

factor contributing to a situation where workers suffer additional harm. Workers' lack of legal knowledge and misunderstandings of legal procedures result in them becoming passive in the claims process (Kirsh and McKee 2003).

2.3 Chinese workers' experiences of claim processes

The establishment of public insurance for occupational injuries is new and still at an experimental stage in China. The victims of industrial accidents are no longer protected by the workers' welfare regime of the planned economy era. This trial can be regarded as the "transplant" of Western models of workers' compensation systems into the Chinese environment (Cooney, 2007; Cooney et al., 2002). As discussed above (see 1.2.3 and 1.2.4), the effectiveness of workers' compensation systems in western countries seems unsatisfactory and in some circumstances, these systems create additional harm for workers. This raises questions about the institutional transplant of Western workers' compensation Systems to China, and its widely effectiveness.

Different political environments between countries may influence the actual outcome of institutional transplant. Political differences include ideological orientations, power distributions between institutions, and the relationship between power and other organized interests (Kahn-Freund, 1974). In these three aspects, China is different from western states. Although China currently adopts a market-oriented economic regime, it is still a totalitarian state. The power distribution between legislative power, judicial power and administrative power in China is divergent from the western check and balance structure (Diamant et al., 2005; Trevaskes et al., 2014). In China, the Chinese Communist Party is the actual leader of the country controlling the powers of legislation, jurisdiction and administration. Also, there is no judicial independence in a real sense in China, which means judicial departments can hardly act as supervisors for the administrative departments (Zhang, 2002b). Regarding the relationship between power and other organised interests in workers' compensation systems, trade unions are the

principal organised interests. However, there are no autonomous trade unions independently representing labour's interests in China (Chen, 2003).

In addition, the Chinese household registration regime and the traditional perspectives towards risks may also restrict the performance of the “transplant” of work-related injury insurance (Zhao, 2005; Luo, 2006; Li, 2008). Due to the household registration regime, migrant workers usually cannot be recognised as residents in the cities of their workplaces and therefore cannot be covered by local social security schemes. While the occupational injury insurance fund is operated at the provincial level, local governments have not previously been willing to include migrant workers into insurance schemes (Li 2008). Currently, some provinces try to provide Work-related Injury Insurances to migrant workers, but the enterprises have become unsatisfied with this policy and avoid paying the tariff by providing false human resource information (Luo 2006). This phenomenon reflects attitudes amongst some employers towards risk in China. From the perspective of some companies, work-related injury tariffs are an actual cost of the business, while compensation payments for workers' injuries may never be realised. Companies like to believe that workplace accidents will not occur and they act accordingly (Luo 2006). For workers, although they are exempt from payment for occupational injuries insurance, in practice, some employers may deduct the tariff they should pay from the workers' salaries (Luo 2006). This makes workers dissatisfied with the government arrangements.

According to research in Guangdong, migrant workers are not usually concerned about the Work-related Injury Insurance; they are more eager to earn certain amounts of money, and then return home to rural areas, and they regard their farmlands as their security protection (Zhao 2005). In an in-depth empirical study of migrant workers¹⁹ claim process, Sun and Liu (2014) found that instead of making formal claims based on the Work-related Injury Insurance Regulation, most injured workers adopted informal claim approaches, including bargaining, negotiation, threats and violence, to

¹⁹ Chinese migrant workers refers to rural residents who work in urban areas.

achieve compensation from employers. Their study revealed that only 21.8% of migrant workers were legally covered by workers' compensation insurance. Following workplace injuries, many migrant workers chose to return to rural hometowns and continued self-medication. This is first because Chinese hospitals offer little daily care, there is no catering service for patients and only in their hometowns, can injured migrant workers have their family members take care of them. Secondly, migrant workers have to pay for medical treatment upfront, and most of them cannot afford the medical costs in the cities. In the compensation claim process, migrant workers' status is entirely passive, considering all the insurance information is controlled by employers. In this situation, employers can conceal accidents and prevent workers from claiming compensation. Even if injured insured workers are aware of their legal rights, employers may aggressively suppress claims through bribing medical staff to delay the release of medical documents and also control the labour contracts and other relevant evidence that is necessary to establish workers' claims. Sun and Liu (2014: 905) criticised the Chinese Work-related Injury Insurance system as being an "ornamental institution", and suggested migrant workers seldom obtain compensation through formal claims. Many Chinese workers have to claim compensation through informal approaches such as bargaining with their employers, and payments can be delayed, may be significantly less than their entitlement or even denied.

Workers' compensation systems have existed for more than one hundred years in Western countries, and there have been many studies conducted examining the strengths and weakness of these systems and the relevant workers' experiences of these systems (Purse 2000; Roberts-Yates 2003; Lippel 2007). Compared with the studies in western countries, the scale of studies focusing on Chinese labour issues seems to be far smaller (Luo 2006; Mao and Zhang 2007; Wu 2008). In terms of Chinese workers' experiences of Chinese Workers' Compensation Systems, the studies are even more limited (Sun and Liu, 2014). However, the transplant of Western Workers' Compensation Schemes into China has significantly influenced the largest amount of workers in the world. Also, due to the social, political, economic, geographical and cultural background of western countries, Chinese workers'

experiences of the Workers' Compensation Systems are probably different from their counterparts in advanced industrialised nations. Chinese workers may suffer similar or different troubles and harm during the claim process for occupational injuries benefits. Therefore, it is necessary and important to explore Chinese workers' understandings and experiences of the relatively newly-introduced western style Workers' Compensation Systems.

2.4 Chinese seafarers: vulnerable migrant workers

2.4.1 The employment relation reform in the shipping industry

Before the enterprise reforms in the late 1980s, Chinese seafarers were permanently employed by shipping companies and were assigned to certain ships to carry out tasks (Zhao and Amante, 2005). Under the impact of market-oriented economic reforms, the employment basis for seafarers has become more varied. Traditional permanent forms of employment (*iron rice bowl*) have gradually decreased with the retirements of 'old seafarers' and the employment relationships for 'new seafarers' have become fixed-term, agent employed and free-lance (Wu and Beaverstock, 2013; Zhao, 2011; Wu, 2008; Zhao and Amante, 2005; Wu, 2004). Wu et al (2006: 36) divides Chinese seafarers into three types: state-owned enterprise employed seafarers, agency employed seafarers and "freemen". The latter two categories represent the major proportion of Chinese seafarers as the result of both competition in the global labour market and freight market and domestic economic transformation (Wu, 2008; Wu et al., 2006; Wu and Morris, 2006) .

According to a survey conducted by Chen et al. (2015), only 54.08% of Chinese seafarers have long-term employment contracts, and employers are inclined to recruit seafarers on voyage based labour contracts. Another tendency is for lower rank seafarers to be hired on voyage-based temporary contracts. The survey shows that 68.01% of officers have long-term labour contracts while only 43.91% of ratings have long term contracts. The survey also shows that 54.91% of seafarers' labour disputes are with their crew agencies.

Agency work relations usually create difficulties in Occupational Health and Safety regulation, such as (1) the overlapping responsibilities between agencies and principal employers cause confusion for the employees and make blame-shifting easier between two parties; (2) under pressure of litigation or prosecution, small agencies will probably close down and escape from liabilities (Johnstone and Quinlan 2006).

In China, these weaknesses are evident during seafarers claim process for work-related injuries. Only 41.55% seafarers are covered with Work-related Injury Insurance (Chen et al 2015). Although the *Labour Contract Law* (2008) provides that under agency employment relationships, both agencies and principal employers should bear joint liability for workers' compensation in practice, once seafarers are injured, agencies usually deny their liabilities and assert that they are not capable of providing the compensation (Wang, 1995; Zhang, 2011; Chen et al., 2014). This fragmented employment relationship makes it difficult for seafarers and surviving families identify the responsible parties following workplace accidents.

2.4.2 Vulnerable migrant workers

Fifty-eight percent of seafarers are not covered by the Work-related Injury Insurance of the social security system (Chen et al 2015, Wu 2008). In terms of work-related injuries, being excluded from Work-related Injury Insurance schemes means seafarers may have to collect evidence to prove the employers' negligence, file tort litigations in court, and wait for an extended period of time for a civil decision. Even when seafarers are awarded the judgement in their favour, if employers do not make payments accordingly, another set of complicated procedures of enforcement need to be initiated. This can be extremely challenging and time consuming for seafarers.

For seafarers employed by state-owned enterprises, employers may help them purchase social insurance, while for the agency-employed seafarers and freemen, the situations are entirely different (Wu, 2008). Regarding the seafarers serving on foreign vessels owned by foreign shipping companies, there are certain barriers to the direct application of the *Labour Contract Law* (2008) and the Work-related Injury Insurance Regulation (2003 and 2011).

Although governments require agencies to arrange Work-related Injury Insurance and purchase Chinese private life insurance for seafarers in these situations,²⁰ Chen et al (2014) shows that 58.45% seafarers are not covered by the Work-related Injury Insurance, and 45% seafarers are not covered by Chinese private life insurance purchased by agencies. Accordingly, there are a significant number of seafarers who are not covered by Chinese social security insurance or private life insurance. Once workplace accidents occur, many Chinese seafarers have to claim their compensation either through negotiation with employers or bringing tort, and/or foreign-related litigation.

Wu (2008) attributes seafarers' vulnerability to the Chinese two-tier labour market, which artificially creates different treatments between national and foreign sectors. Due to the prohibition of foreign companies' direct employment in mainland China, agencies have become another exploiter of Chinese "exported" seafarers. However, this explanation may not be entirely persuasive. Even if the two sectors were unified, transnational seafarers' employment relationships might still be difficult to be regulated in China. An alternative solution to this problem is to provide specific regulations for dispatched seafarers' workplace injury compensation (Zhang and Chen, 2011; Zhang, 2002a).

2.4.3 Ill-protected claimants in civil procedures

For seafarers involved in the domestic shipping trade, although there are certain practical obstacles for them to be covered by the Work-related Injury Insurance (see 1.4.3 on page 27), their legal entitlements are relatively clear. However, for the dispatching seafarers²¹, especially "freelancers", the situation is more ambiguous. This employment relationship is not fully covered by the Chinese domestic social security regime, and the legal

²⁰ See the *Rules of dispatching Chinese seafarers on non-Chinese Vessels (2011)*

²¹ Dispatching seafarers refer to Chinese seafarers involved in the international trade line and who serve on foreign vessels.

frameworks fail to ascertain alternative non-fault based remedies in China (Zhang, 2011).

The lack of legal rules makes the judges uncertain about judicial decisions in relation to the claims of dispatching seafarers (Zhang 2011). According to the civil principle of fairness²², seafarers suffer pain from work-related injuries and should be compensated; however, without clear legal instruments, Chinese judges are not entitled to make decisions purely at their own discretion (Chen and Xu, 2012). As a result, judges will often prefer to mediate the dispute between the seafarers, agents and the employers²³, and encourage them to reach an agreement. In the context of this judicial mediation culture, seafarers may be persuaded by judges to reduce certain compensation claims to achieve a settlement, which may have long-term adverse effects on workers' rights. In addition, judicial mediation may not be regarded as voluntary and in some cases workers accept mediation because they have no other choice (Chen and Xu, 2012). Moreover, the foreign-related factors make the judicial proceedings more complex, since more procedural requirements, such notarization of evidence collected overseas, become compulsory²⁴. Furthermore, in China, lawyers usually are not often willing to represent workers in labour disputes, for the capability of workers to pay legal fees is in doubt (Michelson, 2006).

Through reviewing the current literature, it could be concluded that, compared to other groups of industrial workers, Chinese seafarers have to face more challenges when they claim work-related injury damages due to the following: (1) difficulties in identifying liable employers due to the fragmented employment relationships; (2) the low coverage of the non-fault based Work-related Injury Insurance and private insurance; (3) disempowerment caused by the lack of explicit legal instruments, the judicial medication culture and the lack of legal assistance in the civil procedures

²² See the General Principles of Civil Law (1986) Art. 4

²³ In maritime litigation, the liability insurers of employers (shipowners), P&I Clubs, usually provide legal representative service for the employers.

²⁴ See the Civil Procedures (2012)

Although the current literature has presented these problems at the regulatory level, few empirical studies have been found of Chinese seafarers' experiences of work-related injuries compensation claims and it is this that I wish to focus upon in this thesis.

Summary

The first part of the literature review (Chapter one) discussed high occupational hazards in the shipping industry and emphasised the importance of compensation systems for seafarers' rights' protection. It presented the origin and development of the non-fault based workers' compensation systems, and discussed the advantages of workers' compensation systems in remedying workers' loss and harmonising industrial relations; and the challenges faced by the Workers' Compensation Systems from globalisation and neo-liberalism reform.

The second part of the literature review (Chapter Two) discussed workers' experiences of compensation claims following workplace accidents. Workers' compensation systems were firstly launched in western countries, and then widely adopted in many countries around the world. Empirical studies drawing on workers' experiences to assess the effectiveness of these systems in western countries are abundant. From a theoretical perspective, there are two well-established theoretical frameworks: the capital-labour conflict theory and therapeutic jurisprudence, which are widely used to assess the effectiveness of the compensation systems. Current studies have provided empirical evidence showing that in Western industrialised countries, workers suffer various additional harm physically, financially, and psychologically, due to the conflict between capital and labour, and the deficiencies of the Workers' Compensation systems.

However, similar empirical studies regarding the "transplant" of Workers' Compensation systems to developing countries are far more limited. Most existing studies focus on land-based workers. Mobile transport workers, especially seafarers are largely ignored. A significant research gap exists and empirical studies regarding workplace injury compensation claims in

developing countries and workers from the shipping industry are largely missing from the current research landscape. To fill this research gap, this research selects Chinese seafarers' experiences of workplace injury compensation claims to explore the research question of whether Chinese seafarers or surviving families have suffered additional harm in the compensation claim process following workplace accidents.

To study Chinese' seafarers' compensation claims experiences will firstly contribute to the empirical knowledge about the effectiveness of the compensation systems in China according to therapeutic jurisprudence. Secondly, exploring seafarers' interactions with employers can add to the knowledge of capital – labour conflict in the global/Chinese local shipping industry. Thirdly, through examining the challenges faced by Chinese seafarers in seeking remedies from public institutions, potential deficiencies of Chinese government can be identified.

In this research, a qualitative approach is adopted to explore Chinese seafarers' experiences of compensation claims. The reason why the author adopts a qualitative approach to explore these issues is based on the consideration of the nature and aim of this research which constitutes an exploratory empirical study of claimants' experiences. The qualitative interview research strategy is appropriate for this research, allowing the researcher to explore the behaviours, communication and interaction between different actors by observing, inquiring and listening carefully to the people involved in these issues (Rubin and Rubin 2005 :2). The research design of this study will be presented in the next chapter.

Chapter Three: Research Design and Methods

Introduction

The aim of this research is to explore and understand the claim experiences of Chinese seafarers and their families following workplace accidents at sea. The research question of this thesis is *whether Chinese seafarers and surviving families suffer additional harm during compensation processes*. There are three interrelated factors which need to be considered in addressing this question: the legal entitlements and rights available to victims, the management policies and practices of companies and the experiences of claim activities by seafarers and surviving families.

To fill the research gap on Chinese maritime workers' compensation claim experiences and to address the research question effectively, it is crucial to select and apply an appropriate methodological approach. In this Chapter, I will present the research design of this study.

3.1 Research Design

3.1.1 Research methods adopted in previous studies

Previous studies have tended to address workers' compensation claims from two perspectives: a legal doctrinal and historical analysis and the empirical analysis of claimants' experiences (Van Hoecke, 2011). From the legal doctrinal perspective, scholars examine the structures of compensation system and legal entitlements and rights of workers (Burton, 1988; Clayton, 1997; Butler, 2002; Dimitrova and Blanpain, 2010; Oliphant and Wagner, 2012; Lippel and Lötters, 2013; Quinlan et al., 2010) In terms of empirical work, researchers have usually explored the experiences of workers and have identified the negative and harmful outcomes of compensation systems (Lippel et al., 2007; Quinlan et al., 2015; Purse, 2000; Roberts-Yates, 2003; Sun and Zhu, 2009; Matthews et al., 2012).

Legal doctrinal research is concerned with the formulation of legal 'doctrines' through the analysis of legal rules, and through collecting normative and

authoritative sources²⁵ to build up a system of legal findings and theories (Chynoweth, 2008; Van Hoecke, 2011). One example is Clayton (1997): through comparing and analysing historical and contemporary legal sources from jurisdictions including England, Germany, Australia and the United States, he develops four models of Workers' Compensation Funds: state fund, self-insurance, co-operative fund and private insurance. Through further legal analysis, Clayton identifies the lack of inherent connection between the social insurance law and occupational health and safety law in the private insurance model, and then he argues this model of legislation is deficient in respect to injury prevention. Another example is an edited work by Oliphant and Wagener (2012): drawing on the legal sources from 13 states regarding the scopes, funding systems, administration and adjudication of claims and employers' liabilities, they criticise the two-layer model of workers' compensation and tort liability system as it imposes a double burden of administrative costs on society. On the contrary, drawing on Canadian legal sources, Hyatt and Law (2000) argues that the workers' compensation one-layer only system needs to be reformed to ensure and expand workers' rights to initiate tort actions. Legal doctrinal research usually addresses debates regarding weaknesses and strengths of a compensation system from a systematic perspective drawing on legal sources rather than empirical data based on participants' experiences.

Empirical studies of workers' claim experiences contribute to a critical sociological analysis of the effects of compensation systems in several developed countries. Lippel et al. (2007) conducted six collective interviews with injured workers' representatives and 85 individual interviews in Quebec and identified that additional harm occurred during the compensation system to workers' physical and mental health. This research also explored factors contributing to the harm, such as employers' surveillance and stigmatisation of welfare claimants and immigration status. Matthews et al. (2012) conducted in-depth interviews with seven surviving families of construction

²⁵ Normative sources refer to statutes, treaties, generally principles of law, customary law, binding precedents. Authoritative sources include cases law, if they are not binding precedents, and scholarly legal writings.

workers to explore the victims' families' experiences following traumatic workplace death in the construction industry. Drawing on the surviving families' accounts, Matthews et al. (2014) and Quinlan et al. (2015) claim that lack of support from authorities is a common problem for surviving families. Sun and Liu (2014) conducted 33 in-depth interviews with injured migrant workers and eight employers in China to critically assess the effects of the Work-related Injury Insurance in practice. Through this qualitative study, they made a claim that Chinese Work-related Injury Insurance is an ornamental institution, and migrant workers could barely obtain compensation through this insurance. Drawing on the recent empirical studies regarding workers' claim experiences, the qualitative interview is commonly used by the researchers (Lippel, 2003b; Lippel, 2007; Lippel et al., 2007; Strunin and Boden, 2004; Matthews et al., 2012; Matthews et al., 2014; Quinlan et al., 2015). Matthews et al. (2014) justify the use of qualitative methods by emphasising their value in exploring complex phenomena and providing insights into the experiences and views of people with different stakes and perspectives. Qualitative research methods also allow researchers to evaluate legal systems and public policies drawing on the experiences and viewpoints of those who are affected by specific public issues and policy (Sofaer, 1999; Ritchie and Spencer, 2002). Strunin and Boden (2004) justify the use of qualitative research methods by arguing that ethnographic interviews can provide in-depth details through narratives of situations, events and interactions. Also, they emphasise the socially constructed nature of reality and how social experience is created and given meaning (Needleman and Needleman, 1996; Denzin and Lincoln, 2003).

3.1.2 Research methods in this study

In this study, I will use qualitative research methods to explore the claim experiences of injured Chinese workers and surviving families following workplace accidents. With the advantages of the qualitative research methods, I will be able to explore the in-depth details of the claim activities including (1) the stages of a compensation claim process; (2) the stakeholders and key players in managing seafarers' claims (3) the feeling and experiences of victims during the claim process; (4) victims' opinions regarding their legal

rights and entitlements available from the compensation system, employers' claim management policies and practices and remedies from public institutions (Creswell, 2009). To address the research question *whether Chinese seafarers and surviving families suffer additional harm during compensation processes*, I will examine harm as a socially constructed concept and experience, and adopt victims' narratives of their experiences and feelings as a major source of data to identify whether they have suffered additional harm and what kinds of additional harm they have suffered.

As a socio-legal study, it is necessary here to consider the legal rights and entitlements available for injured seafarers and surviving families following workplace accidents, considering that many challenges during the claim process are caused by the insufficiency of legal rights and procedural supports. The compensation system, including statutes, regulations, the basic concepts, categories and meanings of legal procedures are constructed by the law (Cotterrell 2006). Therefore, I have conducted a legal doctrinal study to collect and analyse both normative and authoritative legal sources regarding the rights and entitlements of injured seafarers and surviving families and conduct a critical evaluation of the current Chinese compensation system (See 4.3).

Compensation claim activities, which are human behaviours and social phenomenon related to law, are more complex than ordinary daily social phenomenon (Cotterrell 2006; Dworkin 1998). Seafarers' claim activities have a particular structure, complex operation and application process, which usually involves professional assistance. There are various social actors involved in claim activities, including claimants (seafarers or surviving families), liable employers (shipowners and crew agencies), claim administrators of the Work-related Injury Insurance, adjudicators (judges or arbitrators), and relevant third parties (lawyers and representatives of liability insurers). Claim activities are also varied: in addition to litigation, informal negotiations are also widely reported as dispute resolution measures, which are subject to the socio-economic power difference between victims and employers (Sun and Liu, 2014; Engel 1994; Ross 1980). Even in the formal

legal action, socio-economic factors may influence the power of balance between claimants, employers and adjudicators, which cannot be described by numerical quantitative methods. Considering the complexity of claim activities, qualitative observation methods are appropriate to obtain data containing a richer picture of the whole process of seafarers' claims.

3.1.3 Secondary harm, human experience and qualitative research methods

Gert (2004) construes harms as pain, death, disability, loss of ability or freedom or loss of pleasure. Harm can also be broadly divided into physical and emotional harm. In the cases of seafarers' claims following workplace accidents, the primary harm is death or physical pain, while the additional harm seafarers might suffer during the claim process is secondary. This research aims to identify whether such additional harm occurs to victims during the claim process. Although this secondary harm is not recognised as loss and damages by law so far, it is proved to impose negative physical, emotional and financial effects on victims following workplace accidents (Best and Barnes, 2007). This additional harm may also involve different relationships, such as stigmatisation and discrimination, which damages the dignity, self-esteem and confidence of workers (Goffman, 2009; Lippel, 2003b; Lippel, 2007). These harmful relationships can be constructed during the interaction between injured workers, employers and public institutions. The capital-labour conflict is identified as a contributor to the harmful relationships of suppression, discrimination and stigmatisation (See 2.1) (Quinlan et al., 2010; Lippel, 2003b; Lippel et al., 2007).

According to Giddens (1984), human experience is the real material of social analysis. Accurate representation is the prerequisite to increasing people's knowledge (Smith and Hodkinson, 2005). To address the research question *whether Chinese seafarers and surviving families suffer additional harm during compensation processes*, qualitative research methods are selected as the primary research instruments. This is based on the selection criteria whether the research instrument can collect an accurate, comprehensive and

rich representation of the experiences seafarers have during the claim process. A quantitative survey is not suited when studying the experiences of injured seafarers and surviving families, as it is not able to provide insight into in-depth experiences of (Bryman, 2008; Creswell, 2009). Qualitative methods are more appropriate instrument helping me to collect data to address my research question (Bryman and Burgess, 1999; Coffey and Atkinson, 1996; Creswell, 2009; Denzin and Lincoln, 2008; Huberman and Miles, 2002; King, 1994; Rubin and Rubin, 2005). Referring to literature discussed in previous chapter, I have found most of the studies on injured workers adopted qualitative research methods, including interviews, focus group and participatory action research methods (Lippel et al., 2007; Purse, 2009; Matthews et al., 2012; Quinlan et al., 2015; Strunin and Boden, 2004) and quantitative research methods are rarely found.

In addition, considering the nature of a socio-legal study, legal doctrinal research is necessary to understand the entitlements and rights for injured seafarers and surviving families and then based on these legal findings, a critical analysis regarding law and policy can be achieved.

3.2 Data collection strategies

3.2.1 Semi-structured in-depth interviews

Qualitative methods include case studies, participant observation, life story interviews, visual methods, focus groups and semi-structured interviews (Denzin and Lincoln, 2008). Furthermore, there are various innovative technologies adopted by different institutions and researchers (Travers, 2009). Qualitative research methods are flexible instruments, each of which could be used separately or together, to assist researchers to record and explore real social life (Scott and Marshall, 2009).

I have adopted semi-structured in-depth interviews as the data collection methods in this study. As discussed in Chapter Two, the claim process is time-consuming, and takes months or years to complete. In contrast, an interview, as a conversation between a researcher and participants, can capture an understanding of a long claim process and focus on the difficulties, obstacles

and harm confronted by the seafarers. As a questions-led conversation, the interview is an intensive way to collect the appropriate information without interrupting victims' lives and claim processes too much. I have chosen one-to-one based interviews instead of group interviews or focus groups, because the interviewees live in different cities, and the confidentiality of a one-to-one interview is also easier to manage than group interviews.

3.2.2 Legal doctrinal research and documentary analysis

Legal doctrinal research is a kind of documentary analysis drawing on legal sources to obtain documentary evidence to support and validate statements (Fitzgerald, 2007). As discussed in 3.1, the author conducts legal research using normative and authoritative legal sources, including statutes, regulations, judicial interpretations of the law, administrative policies, judicial precedents and judges' commentaries. In carrying out the research for this thesis, I have collected statutes and regulations from the State Council the People's Republic of China website: www.gov.cn; judicial interpretations are collected from the website of Chinese Supreme People's Court: www.court.gov.cn; maritime judgements and judges' commentaries regarding seafarers claims from the website of Chinese Foreign-related Commercial and Maritime Trials: www.ccmt.org.cn and directly from maritime courts I visited. Administrative policies were gathered from the websites of ministries of state councils, in particular, the Ministry of Transport and the Ministry of Human Resource and Social Security. Based on these legal sources (legal documents), I have identified and critically analysed all the instruments available for injured seafarers and surviving families.

In addition, companies' organisational management policies, crew management agreements between crew agencies and shipowners, and the employment contracts of seafarers are all relevant documents stipulating when considering workplace injuries and fatalities. Claim files and records from insurance companies and law firms are also important documents recording the process and activities involved in seafarers' claims. With permission, I have collected these documents from shipping companies, crew

agencies, law firms, insurance companies and agencies, and seafarers by photocopying and photo-taking. These data have become valuable sources in studying the organisational management strategies of workplace accidents and seafarers' compensation claims.

3.2.3 Sampling strategy and participant recruitment

Research participants were recruited based on theoretical sampling strategy. Theoretical sampling is the process of choosing a research sample to extend and refine a theory, and this sampling strategy is driven by specified concepts and features (Auerbach and Silverstein, 2003; Corbin and Strauss 2008). The research question is *whether Chinese seafarers and surviving families suffer additional harm during compensation claim processes*. Accordingly, the characteristics of the population studied in this research are: (1) seafarers or families of seafarers, (2) victims of workplace accidents and (3) compensation claimants. Considering the population is a specific group affected by workplace accidents and relevant compensation systems, purposeful theoretical sampling is the most appropriate strategy.

Also, little is known about the nature of companies' responses to Chinese seafarers' claims and studies regarding judicial institutions' responses are also rare. Therefore, to explore these responses and their potential implications on seafarers, shipping company managers, and insurance claim handlers, maritime lawyers and maritime judges were also selected as research participants to explore the business and public management practices of seafarers' claims.

There are no official records regarding the identity information of the victims of workplace accidents at sea which was a significant barrier to participant recruitment and similar problem was also found by a previous study in the construction industry (Matthews et al., 2012). Matthews et al. (2012) sought help from several voluntary support groups composed of families of deceased workers and successfully recruited eight participants (surviving family members). With the benefit of a long cooperation with non-profit organisations advocating injured workers' rights, Lippel (2007) recruited 85 injured workers in Quebec. Referring to these two studies, to recruit injured

workers and families is extremely challenging. Furthermore, in China, there are no independent trade unions representing seafarers, which makes the participant recruitment further challenging, so I have developed multiple recruitment strategies to overcome this obstacle.

I firstly explored several cyber communities of seafarers in April 2013. As Tang et al. (2016) find, online rights defence has become a popular trend on the Chinese internet. Through web search, I have found five cases of death, disappearance and injury. Through replying to their posts and sending community messages, I obtained contacts with three family members of deceased and disappeared seafarers in June, 2013. Through searching for the key words on *Weibo* (Chinese twitter), I identified a colleague of a deceased seafarer but failed to obtain contact details of the family members. However, this colleague recommended another friend, who is also an injured seafarer. By the end of September 2013, the claimant of the last case replied to my message and I successfully recruited four interviewees through web search.

Secondly, I contacted the administrators of three cyber communities of seafarers. One administrator appointed me as their online legal counsel for seafarers on voluntary base. I posted my research information and recruitment notice with my E-mail and QQ²⁶ on the home page of the cyber community. Later on, many seafarers contacted me regarding their labour disputes. However, only four of them were injured seafarers and agreed to accept my interviews.

Thirdly, I visited four maritime courts. According to the records of the court, I mailed letters to 42 seafarers who filed claims, but only received one reply from an injured captain. I visited six law firms who have handled seafarers' claims before. With their references, I successfully recruited a further six interviewees.

Fourthly, I visited four shipping companies (owners and operators) and nine crew agencies. With their recommendation, 14 seafarers agreed to interviews.

²⁶One popular online instant messenger app in China

Fifthly, with assistance from two maritime colleges and informal support from my friends who are active marine insurance and management professionals, another 12 victims agreed to attend interviews.

Through the above five recruitment approaches, on one hand, I have successfully recruited a certain amount of participants and on the other hand, the bias of this sample was minimised. One methodological critique regarding recruiting worker participants only through employer gatekeepers is that the participants can be filtered by employers and then the findings could be affected, while in this research, participants were accessed through five different approaches, therefore the bias caused by gatekeepers' selection of participants has been minimised (Arcury and Quandt, 1999).

3.3 In the field

Phase 1: Pilot study (July 14th – September 16th, 2013)

After the ethical approval of this research was given by the School Ethical Committee on May 28th, 2013, and in order to test the feasibility of the research design, I undertook a two-month pilot study (Kim, 2011; Sampson, 2004; Van Teijlingen and Hundley, 2002). In the pilot study, I conducted three face-to-face interviews with injured seafarers, one interview with a surviving family member, and other interviews with a ship operating manager (offshore support vessels), a crew manager (manning company for ocean-going vessels), a claim handler of P&I Club correspondent agent, two maritime judges and two lawyers. Telephone appointments were made before meetings, and I travelled around Beijing, Tianjin, Hebei and Shandong provinces. Meeting points were usually at public tea houses or offices, with one exception at my hotel room with the widow of a deceased seafarer.

The pilot study was conducted and guided by five sets of semi-structured interview schedules designed for (1) the victims, (2) the shipping and crew managers, (3) the P&I Club claim handler, (4) maritime lawyers and (5) maritime judges. The interview schedule with the victims focused on their experiences of the accident, experiences of claim processes, and the impact on their social life and health. With my knowledge and expertise as an

assistant maritime lawyer, I designed the interview schedules for the professional interviewees according to their different roles in managing seafarers' claims. The schedules for professional interviews covered the major aspects of organisational policy, procedures of claim management and their responses to current Chinese compensation legal systems. With my professional knowledge, I was able to establish an effective conversation with my interviewees to explore their claim management practices in-depth. When I had finished an interview, I assigned myself 3-4 days transcribing, reflecting on the interview process, and revising the interview questions.

Through the pilot study, I obtained an understanding of both victims' experiences and the management of the workplace accidents and seafarers' claims (Denzin and Lincoln, 2003; Seidman, 1998). Through analysing and comparing three victims' interview accounts, I was gradually made aware of three potential stages in the claim process (see Figure 2), and a claim may either terminate at any stage or move on to next stage. Within the current legal framework, Stage 3 (judicial remedies) is the last resort for victims.

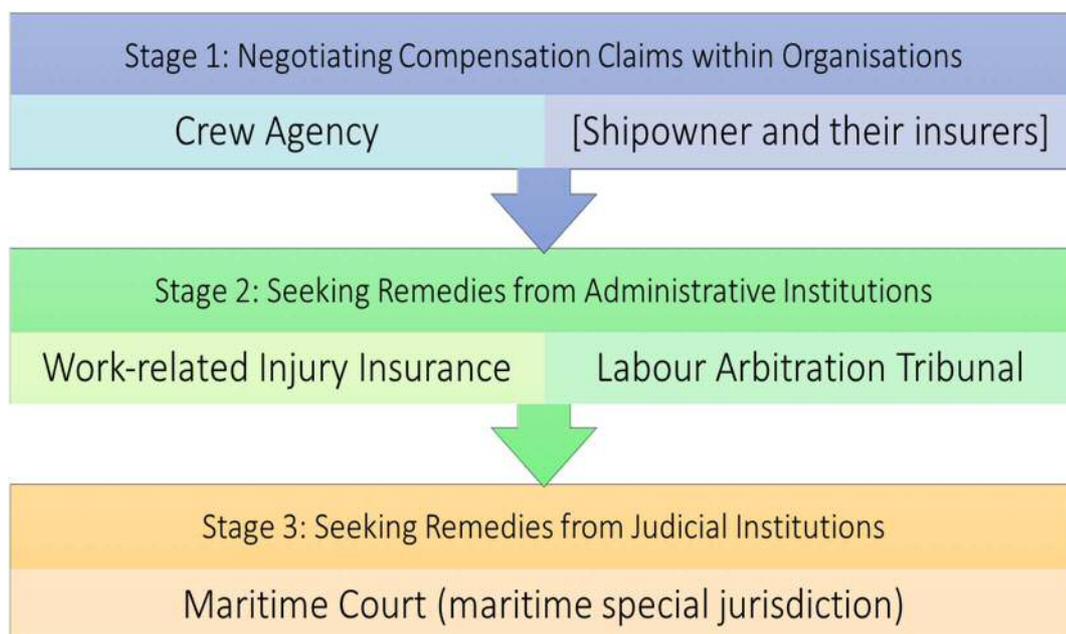


Figure 2: An overview of the claim process

In the previous literature, the majority of the discussion concerns victims' experiences of workers' compensation systems, which are equivalent to

seeking remedies from administrative institutions (Stage 2 in Figure 2). In the work by Chinese legal scholars, the focus is usually the discourse of maritime jurisdiction (Stage 3 in Figure 2). However, in the pilot interviews with victims, I found that large parts of their accounts were related to compensation negotiation with crew agencies, and one claimant did not file her claim to *any* public institutions. This type of worker claimant was excluded by previous studies since such cases are not recorded formally. In my research, I found several seafarers simply withdrew from the claiming process, because of obstacles they could not overcome and the results of claim were unpredictable. This is another important effect of the harm existing in claim procedures and is often ignored by legal scholars due to the silence and invisibility of these seafarers.

In addition, there is little literature discussing organisational management of seafarers' compensation claims. In the pilot study, I found this management process included (1) on-site management including mainly emergency medical service arranged by the shipowners' agents and (2) follow-up management including further treatment in the seafarers' home country, assessment of disability and compensation procedures. The following-up management stage usually involves four parties, seafarers or surviving families as claimants, manning companies as coordinators²⁷, shipowners as compensators and P&I Clubs as employers' liability insurers. According to the accounts of claim handlers, shipping and crew managers, most compensation claims are settled by negotiation and very few claims were finally filed to the court.

According to these findings in the pilot study, I made certain changes in my interview schedules: (1) in addition to the questions regarding formal claim experiences with public institutions of Work-related Injury Insurance and maritime courts, I added questions to provide more opportunities for victims

²⁷ Sometimes, seafarers regard manning companies as direct obligators for the compensation together with the shipowners. About the manning companies' status, there are many controversies in the context of China, which will be discussed in the next chapter.

to describe their negotiation experiences with their crew agencies and shipping companies; (2) considering the “waiving” experiences of victims, another interview question was added: why did they give up pursuing compensation.

At the end of my pilot, I refined my participant recruitment strategies. My initial plan was to access these seafarers using the records of law firm and maritime courts. This plan did work, but the performance was limited. Then I decided to apply five multiple strategies (see 3.2.4) to recruit my research participants, including establishing contacts with several administrators of seafarers’ cyber communities, contacting manning companies, and inquiring for injured seafarers’ information from my friends working in the shipping industry. The outcomes of a combined sampling strategy turned out to be satisfactory.

The acceptability of audio-recorded interviews to seafarers and surviving families was good. However, some claim handlers and managers refused the use of audio recording, which meant I had to take notes during and after the interview as soon as possible to minimise the loss of the data. Documentary collection requests, such as employment contracts and compensation agreements were acceptable by most seafarers during the pilot study. Some case files and legal judgements were collected based on my promise of confidentiality and anonymity. I applied computer assisted qualitative data analysis (CAQDA) with Atlas.ti software to process the pilot data.

The benefits of the pilot study were that: (1) semi-structured in-depth interviews were proved to be a feasible and efficient research instrument in this study; (2) I was able to tailor my interview guides to include victims’ experiences of negotiation with companies and why they decided to waive the claim; (3) through the pilot study, the participant recruitment strategies were improved significantly; (4) the pilot study also enhanced my confidence as a social science researcher, and improved my communication skills with seafarers and other shipping professionals

Phase 2: Fieldwork (Nov 16th, 2013- Jan 16th, 2014)

At Phase 2, I started my fieldwork in Fujian and Guangdong. I selected these two provinces because (1) Fujian, and Guangdong has large communities of seafarers, ranking in the top 4 and 5 places for seafarer supply provinces (Ministry of Transport of the People's Republic of China, 2016); (2) the two provinces have three world Top 20 ports, Shenzhen, Guangzhou and Xiamen, so crewing service businesses are active (World Shipping Council, 2016); (3) I worked in Fujian previously and established a good network with maritime law firms, maritime courts, and shipowners' liability insurance agents. These three factors enabled me to identify the organisations and research participants effectively. Furthermore, with my ex-colleagues' references, I successfully negotiated accesses with five local crew agencies, one shipowner company, two shipowners' liability insurers, two maritime courts, and three law firms. With access to the claim files, and the references of several managers, I contacted 13 injured seafarers, and 12 accepted my interview invitations. Based in Xiamen and Guangzhou, I travelled to Fuzhou, Quanzhou, Huian, Jimei, Quangan, and Zhaoqing to conduct interviews with injured seafarers. All meeting points were selected at public coffee shops, tea houses and restaurants.

In mid-December 2014, I travelled to Jiangsu via Hefei. In Hefei, I interviewed one victim I recruited online. In Jingsu, based in Nanjing and Nantong. I visited two crew agencies, one maritime college and one lawyer. With assistance from the maritime college, I conducted four interviews with injured seafarers on campus. By the end of 2013, in Xuzhou and Qingdao, through friends' who had handled seafarers' claims previously, I contacted another 10 victims and eight of them agreed to interviews. At this stage, I gradually found the sampling was being saturated since new data was rarely identified (Corbin and Strauss, 2008).

In total, I conducted 42 interviews with injured seafarers and surviving families and 33 interviews with ship and crew managers, claim handlers, maritime judges and lawyers (see Table 4 and 5). All interviews with victims were recorded, and the interview length ranged from 50 minutes to 4 hours,

with the average length about 90 minutes. The participants were from 18 cities in 12 provinces in China. Referring to past similar studies and general qualitative research recommendations, with 75 interviews, I felt my research should be persuasive (Guest et al., 2006; Gerson and Horowitz, 2002; Matthews et al., 2012; Lippel et al., 2007).

Table 4: List of participants (victims)

Surviving family members (N=8)	N=5 Seafarers were killed/disappeared on ocean-going vessels N=3 seafarers were killed/disappeared on coastal vessels
Injured seafarers (N=34)	N=20 ocean-going seafarers N=14 coastal seafarers

Table 5: List of Participants (professionals)

Sector	Representative
Shipping companies (n=4)	Senior managers and Claim managers
Crew agencies/manning companies (n=10)	Deputy directors, senior managers and junior managers
Shipowners' liabilities insurers (n=3)	Director, claim handlers
Maritime courts (n=9)	Maritime judges
Maritime law firms (n=7)	Maritime lawyers.

3.4 Data Processing and Analysis

All interviews were conducted in Chinese. Transcribing was undertaken in Chinese to ensure the speed and accuracy of the interview content. I transcribed half of the recorded interviews and then I found it was too time consuming and so I decided to hire transcribers. With a confidentiality

agreement, a professional transcribing company helped me to finish the transcribing of remaining audio recordings. I conducted a double check of their transcripts to correct errors and typos to ensure the quality of the transcripts for analysis. Through this assignment, I strengthened my understanding of the data by transcribing; and using a professional transcribing service helped to save lots of time for my analysis and writing up.

Coding was conducted in English to facilitate the English writing-up process. Regarding the translation of quotes, I have worked as translator previously. I decided to translate the quotes by myself: one reason is to maintain the accuracy and coherency of the translation with the consideration of the interview contexts. If I had employed several translators to help me conduct the translating work, different translation results may have caused confusion in the analysing and writing process. In addition, I have professional translating experience in legal-related areas, so I was confident that the translation work was of a reasonable quality. Another reason for me to conduct the translation myself is a common one among PhD students, a limited research budget.

I applied thematic analysis to the empirical data collected in the field to identify the challenges, difficulties and harm arising from different stages of their claim activities when they interacted with companies, insurers, lawyers, judges and staff of workers' compensation systems. I set up four CAQDA projects with both Atlas.ti.8 and Nvivo 10: one project for all legal sources, one for professional interviews and the other two for surviving family members and injured seafarers. The reason I applied two software programmes is because with Atlas.ti, I could conduct comparative analysis more easily since it has the function to show two or more transcripts together. However, the weakness of the Atlas.ti. is that it does not fully support the Chinese language, for example, I could not run a frequency count of certain themes, so I had to process data in Nvivo 10 when I needed certain functions, such as running a Chinese word frequency query. Initially, I processed all victims' transcripts in one project, but later I noticed that surviving family

members' experiences and injured seafarers' experiences had significant structural differences, so I decided to process them as two CAQDA projects.

3.5 Ethical consideration

The emotional distress which may be caused by qualitative interviews has been brought to the attention of social science researchers in recent years, especially regarding sensitive topics and the vulnerable participants (Corbin and Morse, 2003; Hewitt, 2007). Researchers have to be extremely careful to manage the potential harm on participants, in particular with sensitive issues. "Sensitive issues" are variously defined, and sometimes terms such as *emotive topics* and *participants with problem experiences* are used interchangeably. Sensitive research refers to "research which potentially poses a substantial threat or risk to those who are or have been involved in it" (Lee and Renzetti, 1993)

In this research, exploring the experience of compensation claims has the potential to cause some emotional distress as result of asking the participant to recall difficult memories. The participants were fully notified that they had free will to decide whether to answer my questions or not. In the recruitment process, there were several victims who did not agree to interviews and one withdrew half way due to her mental health situation. However, in the course of the fieldwork, due to the unsatisfactory results of their claims, I found some victims were willing to use websites to share their stories to obtain other people's concern and recognition. In these cases, I became an active listener to their concerns and recognised the difficulties and challenges they met (Smith et al., 2014)

I provided a detailed information sheet for participants clearly indicating this research needed them to recall their experiences and feelings during the claim process of occupational injuries, and if they felt uncomfortable with the conversation, they could stop and/or withdraw from the research at any time. Regarding the potential emotional pressure which may be caused by the interview, I considered providing psychological consulting service information for my participants. However, in China, professional

psychological consulting services are not usually accessible. Also, it still is not common for Chinese people to seek help from psychological services. Most people still think contacting a psychological consultant is shameful, especially in small cities and rural areas. It might be inappropriate for me to recommend psychological counselling services to my Chinese research participants. Accordingly, before I asked any question about their feeling of the claim process, I always emphasised that they could interrupt my question or stop talking at any time if they felt uncomfortable with the conversation, and they could withdraw from the research.

Self-protection strategies cannot be ignored in this research. As a junior qualitative researcher, I would not underestimate possible emotional and physical harm in this research. Although most Chinese people are friendly, I did a full risk assessment with my supervisors before my pilot study and fieldwork.

In order to protect the research participant's privacy and encourage them to provide information without hesitation, one-to-one interviews were adopted in this research. However, one-to-one interviews between a female researcher and a male participant could be risky to some extent, so I conducted all interviews with males in public areas, such as offices, coffee shops and restaurants to avoid unnecessary harm.

3.6 Summary

In this chapter, I have discussed several aspects of methodology and methods in this research, including my theoretical perspectives, the nature of the data I am aiming to collect to answer my research question, research design and research instruments. Then I presented the two phases of my data collection, my data processing strategies and ethical issues in this research. In this chapter, I firstly addressed how to select the right research method to collect the necessary data to answer my research question, and secondly I conducted some reflective thoughts regarding researching experiences in field work.

Chapter Four: Shipping Industry, Regulation and Seafarers' Rights in China

Introduction

In Chapters One and Two, workers' compensation systems and the challenges of neo-liberalism and pressures due to global competition were discussed. Similarly, I described the pervasive use of precarious employment contracts and their impacts on protection for workers. China is a nation state actively promoting neo-liberal reforms and participating in global competition. Industrial relations in the context of the Chinese shipping industry have been transformed. Alongside with the tremendous social and economic reforms, Chinese legal systems have reformed and developed rapidly. For example, a western style workers' compensation system, known as the Work-related Injury Insurance System, has been transplanted to China and civil law, maritime and judicial procedures have been restored to serve the development of the market economy. Accordingly, fleet ownership, crew management strategies, employers' liabilities (including both shipowners and crew agencies) and seafarers' rights have undergone substantial transformation since the late 1970s.

This chapter describes the current industrial and legal background to seafarers' compensation claims in China. It is organised into three sections. The first section addresses the reformed ownership of fleets in the Chinese shipping industry to identify different groups of seafarer employers. The second section addresses the current recruitment approaches and the operation of third party crew management practices in the shipping industry in China. Crew agencies are also identified as an independent party in employment relations. The third section reviews currently applicable regulations under Chinese law, for employers' liabilities and seafarers' rights following workplace accidents: one is the Work-related Injury Insurance System, the other is the civil tort liability system. The chapter describes the liable parties in connection with compensation claims as well as the scope and coverage of Work-related Injury Insurance compensation schemes. Drawing on the

empirical findings, the limitation of the Work-related Injury Insurance is analysed and discussed. The chapter also describes the civil tort liability system and the special maritime jurisdiction regarding workplace injuries at sea. It specifies the shipowners' liabilities, compensation standards, procedural entitlements of seafarers and special maritime jurisdiction and additional procedural issues regarding foreign-related cases. Drawing on the interviews with maritime judges, lawyers, claim handlers and seafarers, the current civil tort liability system is critically evaluated with particular focus on the liability regime and enforcement of maritime lien. By comparing legal entitlements of general workers and seafarers. The discussion at the end of the chapter draws attention to some key findings that will be further explored in Chapter Eight.

4.1 The employers in the shipping industry

In China, seafarers work for employers in three sectors: ocean-going trade, coastal trade, and river trade (Ministry of Transport of the People's Republic of China, 2016). During the planned economy era, employers were solely state-owned enterprises or collectively owned enterprises across these three sectors. However, following the enforcement of the Open and Reform policy in 1979, the shipping industry has undergone privatisation and fleet ownership has become diversified. Foreign shipping companies are permitted to compete in the ocean-going sector, and domestic private investors are encouraged to participate in all three sectors. In 2013, foreign shipping enterprises moved more than half of the goods transported in the ocean-going sector (Guo, 2013). Meanwhile, as a result of state-owned enterprise reform since the 1990s, private fleets have increased rapidly. To encourage further privatisation, in 2014, the State Council promulgated *Some Opinions regarding Promoting the Development of the Shipping Industry*, aiming to attract more private and foreign investment into the Chinese shipping industry.

The structure of shipping employment has reformed significantly. By the end of 2012, among the top ten ocean-going companies, there are three that are privately owned (see Table 6: Top 10 Chinese Ocean-going Fleets). In contrast with the industry monopoly of state-owned enterprises before 2000,

the increase in the private shipping capacity is significant. The employers of Chinese seafarers are no longer restricted to state-owned enterprises and foreign shipping companies as claimed by previous studies, Chinese private shipowners have become significant employers in the labour market. (Wu and Morris, 2006; Wu et al., 2006; Zhao, 2002; Zhao, 2011).

Table 6: Top 10 Chinese Ocean-going Fleets (2012)

Rank	Company	Ownership	Total Shipping capacity	
			No. of vessels	Dead Weight Tonnage (1000 tonnes)
1	China Ocean Shipping (Group) Company	State-owned	663	50,187
2	Sinotrans & CSC Holdings Co.,Ltd	State-owned	223	13,951
3	China Shipping (Group) Company	State-owned	134	12,878
4	Hebei Ocean Shipping (Group) Company	Private owned	39	6,511
5	Zhejiang Ocean Shipping Co., Ltd	State-owned	13	2,280
6	Fujian Guohang Ocean Shipping (Group) Company	Private owned	26	1,732
7	Fujian Guanhai Shipping Co., Ltd	Private owned	18	1,626
8	Shanghai Time Shipping Co., Ltd	State-owned	25	1,600
9	Guangdong Yuedian Shipping Co., Ltd	State-owned	20	1,443
10	Fujian Provincial Communication Transportation Group Co., Ltd	State-owned	33	1,121

Source: Adapted from Ministry of Transport of the People's Republic of China (2013) and Shanghai Shipping Exchange (2013)

In addition, many Chinese shipowners choose to flag out their vessels and thereby transform themselves into “foreign” employers. The size of Chinese-flagged fleet has gone down but the fleets size of Flags of Convenience controlled by Chinese owners has increased rapidly (CEIN, 2008). By 2013, more than half of Chinese-owned vessels were registered overseas (Quan, 2014; UNCTAD, 2014). The change of corporate “nationalities” produces artificially fragmented employment relationships. Chinese seafarers serving

on non-Chinese vessels, although controlled by Chinese enterprises, are treated as dispatched seafarers to foreign countries, and must be recruited through licensed crew agencies²⁸. The essential domestic direct employment relationship is transformed into a foreign-related fragmented employment relationship via third parties.

In the coastal trade, only Chinese flagged vessels are permitted to operate transport between domestic ports²⁹. These coastal vessels must be owned by Chinese enterprises, either state-owned or privately owned. Accordingly, state-owned enterprises and private companies are the two types of shipowner in the coastal shipping sector. The scale of private ownership in shipping has increased over the past ten years. Between 2001 and 2005, the central state-owned enterprises, China Ocean Shipping Group, China Shipping Group, and Sinotrans-CSC Holdings Co., Ltd, controlled over 50% of the coastal dry/bulk carrying capacity, but by the end of 2011, this percentage dropped to below 20% (Maritime Bureau, 2012). Private-owned shipping companies have become the core contributors to the increase in the coastal shipping business (Maritime Bureau, 2012). By 2012, nearly half of the top 15 coastal fleets were privately owned (See Table 7: Top 15 Chinese Coastal Trade Fleet). Consequently, more private shipowners have become employers of Chinese seafarers.

Traditional permanent employment relations between state-owned shipowners and seafarers are decreasing. Many seafarers serving on Chinese vessels have also become flexible workers in the free maritime labour market (Maritime Safety Administration, 2010). 45.92% Chinese seafarers do not have long-term employment relations, and more shipowners sign temporary voyage agreements with seafarers (Chen et al., 2014). Meanwhile, crew agencies have become important recruitment channels between Chinese shipowners and seafarers (Wang, 2009). Some crew agencies have gradually developed into specific third party labour supply companies. In the coastal

²⁸ See Rules of Dispatching Chinese Seafarers on non-Chinese Vessels (2011)

²⁹ See China Maritime Code (1992) Art 4.

shipping sector, employment relations are becoming agency-led, and more seafarers are becoming flexible workers.

Table 7: Top 15 Chinese Coastal Trade Fleet (2012)

Rank	Company	Ownership Regime	Total Shipping capacity	
			No. of vessels	Dead Weight Tonnage (1000 tonnes)
1	China Shipping (Group) Company	State-owned	264	12,001
2	China Ocean Shipping (Group) Company	State-owned	76	3075
3	Fujian Guohang Ocean Shipping (Group) Company	Private owned	43	2476
4	Shanghai Time Shipping Co., Ltd	Private owned	39	2183
5	Deqin (Group) Company	Private owned	91	1875
6	Sinotrans & CSC Holdings Co.,Ltd	State-owned	91	1580
7	Guangdong Yuedian Shipping Co., Ltd	State-owned	20	1405
8	Fujian Provincial Communication Transportation Group Co., Ltd	State-owned	52	1971
9	Guangdong Lanhai Shipping Co., Ltd	Private owned	19	1160
10	Ningbo Marine Co., Ltd	State-owned	34	1098
11	Shanghai North Sea Shipping Co., Ltd	China-Hong Kong Joint Venture	11	729
12	Jiangsu Huahai Shipping Co., Ltd	Private owned	52	693
13	Tianjin Changming Shipping (Group) Co., Ltd	Private owned	10	622
14	Hainan Fanyang Shipping Co., Ltd	Private owned	23	615
15	Shanghai Ruining Shipping Co., Ltd	State-owned Joint Venture	11	563

Source: Adapted from Ministry of Transport of the People's Republic of China (2013) and Shanghai Shipping Exchange (2013)

In the river trade, and as part of the continuous reform of state-owned enterprises, most state-owned river shipping enterprises have been privatised or reorganised (Li et al., 2009). As a result, permanent labour relationships between state-owned enterprises and seafarers has been dismantled. Chinese river seafarers today have become a flexible and individualised labour force (Li et al., 2009).

In previous studies, the Chinese shipping industry was shown to be dominated by state-owned enterprises, and the power of private companies was very limited (Zhao, 2011; Zhao, 2002; Wu et al., 2006). However, by reviewing industrial development in the three sectors, this research finds a rapid

privatisation trend. Unlike the traditional central planned economy, where seafarers were allocated to permanently secured jobs, now Chinese seafarers have become the human resources accessible to all kinds of shipping companies, regardless of nationality and ownership.

4.2 Crew management: the development of third party crew supply

Cost reduction is a key feature of the corporate drive to achieve competitive advantage. One associated corporate strategy is to set up specialised subsidiaries (Klikauer and Morris, 2003). Through this business division, crew recruitment and management is separated from other activities and “outsourced” but to companies that remain under the parent “umbrella”. An alternative measure is to contract with independent crew agency/manning businesses for the supply of labour from developing countries, which may be seen as a kind of “offshoring” (Sampson, 2013). Chinese state-owned shipowners usually take the first measure. With large fleets, the establishment of specialised crew management services can improve the management efficiency (Zhao, 2011). Foreign and private shipping companies usually take the second measure, which is a preferable practice when crewing needs do not reach a considerable size.

However, companies may also “hire out” their own seafarers and offer shipowners such third party seafarer supply helps shipowners avoid unnecessary human resource costs when they do not need seafarers on board. As a result, crew agencies have become an important institution in the employment relations of seafarers; and seafarers have become flexible labour force for shipowners.

The development of third party crew agencies produces multi-angled and fragmented employment relationships for seafarers as opposed to direct employment (Wang, 2009; Chen and Hao, 2012). The involvement of crew agencies facilitates business operation, but obligations and liabilities are rendered ambiguous in the current legal framework. This is addressed in the next section.

4.3 Chinese systems of compensation and liability

There are two legal instruments protecting seafarer victims of occupational accidents: one is the Work-related Injury Insurance System (WIIS), and the other is the tort compensation system.

The WIIS is a part of Chinese social security system, which is supposed to apply to workers with an employee identity. Under this system, crew agencies/manning companies who have signed a labour contract with seafarers are liable to contribute to the social security scheme but the shipowners who have recruited seafarers are not directly liable to pay social security insurance premiums. Once a workplace accident occurs, seafarers should be able to seek compensation from the Work-related Injury Insurance Fund, if they are insured by their crew agencies/manning companies.

The tort compensation system is part of the maritime legal system, which has a special jurisdiction over seafarers. Usually, this regime applies to any seafarer suffering workplace accidental loss. This legal system stipulates that the owners, managers and/or operators of ships are liable to any loss arising from personal injuries at sea. Therefore, seafarers without employee status, who cannot identify their employers, are entitled to seek compensation according to tort law.

4.3.1 Work-related Injury Insurance

The WIIS enables Chinese workers to claim no-fault based compensation from the Work-related Injury Insurance Fund and against their employers. Meanwhile, the WIIS also imposes obligations on all Chinese employers to pay the social insurance premium for their employees. This regulation came into force in 2004. In 2010, the National Congress Standing Committee further promulgated the *Social Insurance Law (2010)*, which has confirmed the Work-related Injury Insurance regime. In 2011, the Work-related Injury Insurance Regulation was revised to widen the coverage of workers to protect precarious labour, in particular migrant workers from rural areas.

In terms of seafarers, especially “agency seafarers” or “freelancers”, the application of WIIS has been controversial for many years. Many maritime

manning companies and/or crew agencies have argued that agency seafarers and freelance seafarers should not be categorized as employees under WIIS. In 2007, the State Council promulgated *the Regulation of Seamen (2007)*, stipulating that employers shall arrange social insurance, including Work-related Injury Insurance, for seafarers. But this Regulation failed to explicitly impose this obligation on manning companies and/or crew agencies towards the agency seafarers and freelancing seafarers serving on foreign ships. In 2011, the Chinese Ministry of Transport demanded that manning companies/crew agencies should ensure that seafarers they sent to serve on foreign vessel are protected by labour contracts in China. This means manning companies should make sure seafarers working abroad are covered by Chinese Work-related Injury Insurance³⁰. According to this regulation, Chinese seafarers, whether working on Chinese ships or foreign ships should be covered by the Work-related Injury Insurance.

**1. Scope of work-related injuries, compensation standards
and sources of payment**

According to the Work-related Injury Insurance Regulation (2011), in order to qualify for compensation, workers' injuries must fulfil one of the following three conditions. Firstly, in principle, the injury should be relevant to work content, including pre-work preparations, post-work conclusions, and business trips. Secondly, the injury should happening at the workplace or death should occur within a limited period due to a sudden disease. Thirdly, the injury is caused by protecting the public interest or during military service³¹. The following situations are clearly excluded from the scope of work-related injuries:

³⁰ The Rules of Dispatching Chinese Seafarers to Foreign Vessels (2011), Article 24.

³¹ Art. 14 and Art. 15 of *Work-related Injury Insurance Regulation (2011)*. The scope of workplace injuries:

- (1) Injuries suffered during work hours and within the workplace, when the worker is the victim of violence or suffers an unexpected injury whilst carrying out their duties

- 1) *Those incurred while the employee is drunk or under the influence of illegal drugs.*
- 2) *Those incurred while the employee is knowingly committing a crime.*
- 3) *Cases in which the employee deliberately self-harms or commits suicide.*³²

The definition of work-related injuries in WIIR is a broad concept. Unless the injuries are caused by workers' own illegal, criminal behaviour or purposeful self-harm, any injuries relevant to work and injuries occurring at the workplace or on the way to or from home qualify to be judged as work-related injuries under WIIR.

2. Compensation standards and sources of payment

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- (2) Accidental injuries suffered before or after formal work hours and within workplace, due to activity considered preparation for work or conclusion of work.
 - (3) Injuries suffered in an accident when the employee is on a business trip or assigned to work outside of the work place, including cases where the body cannot be found.
 - (4) Injuries suffered while on the way to or from work due to an accident that was not worker's fault.
 - (5) The onset of a sudden illness during work hours that leads to death within 48 hours.
 - (6) Injuries sustained while doing emergency or relief work, such as preparing for a flood or a storm, and injuries sustained while protecting the interests of the public or the country.
 - (7) The relapse or recurrence of injuries sustained during military service, providing that a military injury certificate has been obtained by the soldier concerned.

³² Art 16 of Work-related Injury Insurance Regulation (2011).

Once a workplace accidents occurs, the employer should immediately report the accident to the local Social Insurance Administration for an official record. Within 30 days, the employer should submit a workplace injury recognition application to a local Social Insurance Administration. If the employer fails to apply, then the Social Insurance Administration will reject Work-related Injury Insurance claims from the employer. In this situation, injured workers have to apply for workplace injury recognition on their own. This should be done within one year of the workplace accident to be compensated by the Work-related Injury Insurance Fund (WIIF).

a. Compensation for work-related injuries

Once workers' injuries have been recognised as work-related injuries by the local Social Insurance Administration, the employer, employee or his/her close relatives need to file an application for work capacity assessment to the Work Capacity Assessment Committee (WCAC). Within 90 days, the WCAC comes to a conclusion about the work capacity loss from Grade 10, the least severe, to Grade 1, the most severe. According to the work capacity assessment conclusion, the worker is entitled to a certain amount of compensation, from both WIIF and the employer, including payments for medical treatment and rehabilitation. If the injury is assessed as a disability, according to the degree, a lump sum disability payment, monthly disability allowance and/or nursing allowance should be paid by WIIF. For disability Grades 5 – 10, if the worker requests to terminate the employment contract, or for Grades 7 – 10, if the employment contract expires, the worker is entitled to a medical subsidy from the WIIF and disability employment subsidy from the employer. For disability Grades 1 – 4, the Work-related Injury Insurance Regulation (2011) entitles workers to withdraw from the position, and receive 70% - 90% salary from the WIIF until the time of workers' retirement. For disability Grades 5 – 6, employers are not allowed to terminate the employment relationship even if the fixed-term labour contract is expired. Under this circumstance, the employer is obliged to arrange another position for the injured worker. If the employer fails to arrange another position, the worker is still entitled to claim 60% - 70% salary from the employer every month. However, if the worker requests a termination of the employment

relationship, the worker has the right to claim a lump sum employment subsidy from the employer (see Tables 8 ~ 10).

Table 8: Payments for Medical Treatment and Rehabilitation

Costs	Standard for Payment Calculation	Schedule of Payment	Source of Payment
Fees for hospital registration, hospitalization, medical treatment and medicine	Work-injury Insurance Diagnosis and Treatment Catalogue of Fees	Reimbursed according to standard, as needed	Work-injury Insurance Fund
Transportation costs, including meals and housing	Same standard as cost reimbursements for business trips		Employer
Cost of meals while hospitalized	Same standard as cost reimbursements for business trips		
Prosthetics, Rehabilitation equipment (such as wheelchair/crutches), rehabilitation fees	National Regulations	Reimbursed according to standard, as needed	Work-injury Insurance Fund
Nursing during rehabilitation	As needed	As needed	Employer
Wages while undergoing treatment and rehabilitation	Workers' original wages and benefits	Monthly	

Source: China Labour Bulletin (2008) and the Work-related Injury Insurance Regulation (2011) Art. 30 to Art. 3

Table 9: Standards for Disability Payment

Payments for Disability			
Costs	Standard for Payment Calculation	Schedule of Payment	Source of Payment
<p>Disability Payment</p> <p>Grade 1: 27 month's salary Grade 2: 25 month's salary Grade 3: 23 month's salary Grade 4: 21 month's salary Grade 5: 18 month's salary Grade 6: 16 month's salary Grade 7: 13 month's salary Grade 8: 11 month's salary Grade 9: 9 month's salary Grade 10: 7 month's salary</p>	<p>For most workers: Average of previous 12 month's salary.</p> <p>If worker's salary was greater than 300% of average local salary, payment calculated based on 300% of average local salary.</p> <p>If worker's salary was less than 60% of average local salary, payment is calculated based on 60% of average local salary.</p>	Lump Sum	Work-Injury Insurance Funds
<p>Disability Allowance</p> <p>Grade 1: 90% salary Grade 2: 80% salary Grade 3: 75% salary Grade 4: 70% salary</p> <p>For Grades 5-6, if unable to arrange suitable work: Grade 5: 70% salary Grade 6: 60% salary</p>	Worker's Wage	Monthly	<p>Grades 1-4: Work-Injury Insurance Funds</p> <p>Grades 5-6: Employer</p>
<p>Nursing Allowance (If Applicable)</p> <p>Completely Unable to Care for Oneself: 50% Average Wage</p> <p>Mostly Unable to Care for Oneself: 40% Average Wage</p> <p>Partially Unable to Care for Oneself: 30% Average Wage</p>	Local Average Wage (Past Year)	Monthly	Work-Injury Insurance Funds

Source: China Labour Bulletin (2008) and the Work-related Injury Insurance Regulation (2010) Art. 34 to Art. 37

Table 10: Severance Payments for Employees

Severance Payments for Employees			
For Disability Grades 5-10, if worker requests termination of employment contract or (for Grades 7-10) if the employment contract expires			
Costs	Standard for Payment Calculation	Schedule of Payment	Source of Payment
Medical Subsidy Grade 5: 14 month's salary Grade 6: 12 month's salary Grade 7: 10 month's salary Grade 8: 8 month's salary Grade 9: 6 month's salary Grade 10: 4 month's salary	Local Average Wage (Past Year)	Lump Sum	Work-Injury Insurance Funds
Disability Employment Subsidy Grade 5: 60 month's salary Grade 6: 48 month's salary Grade 7: 26 month's salary Grade 8: 18 month's salary Grade 9: 10 month's salary Grade 10: 6 month's salary	Local Average Wage (Past Year)	Lump Sum	Employer

Source: China Labour Bulletin (2008) and the Work-related Injury Insurance Regulation (2011) Art. 38

Apart from the above payments for treatment, payments for rehabilitation, and disability payments, a worker who suffers a work-related injury is also entitled to a period of suspension of work but a continuation of salary for a maximum of 12 months, which should be paid by the worker's employer.

In addition to paying the Work-related Injury Insurance premium (0.5%-2% of workers' salary), Chinese employers also have to contribute to workers' medical treatment, rehabilitation cost, disability payments and severance payments to some extent. Therefore, Chinese employers, even having purchased the Work-related Injury Insurance, will still be reluctant to help their employees to claim social insurance compensation.

b. Compensation for work-related death

If an employee dies at work or from a work-related injury, his/her close relatives or dependants³³ can apply for a funeral subsidy, pension for dependants and death compensation (see Table 11). This compensation scheme also applies to the situation where a worker disappears due to an accident occurring during his/her business trip or when dealing with an emergency or natural disaster. Three months after the accident, his/her close relatives can apply for compensation according to the work-related death compensation scheme.

Table 11: Payments to close relative dependants of deceased workers in work-related accidents

Payments to Relatives of Employees Killed in a Work-related Accident			
Costs	Standard for Payment Calculation	Schedule of Payment	Source of Payment
Funeral Subsidy equal to 6 month's wages	Local Average Wage (Past Year)	Lump Sum	Work-Injury Insurance Funds
Pension for Dependants 40% of Wage for Spouse, Orphaned Child or Orphaned Elderly Parent 30% of Wage for Other Relatives	Worker's Actual Wage Recipients must be unable to work Total monthly payment cannot exceed worker's actual monthly wage	Monthly, until death or: Children start working or reach the age of 18 Spouses start working, remarry, or are taken in by relatives	Work-Injury Insurance Funds
Death Compensation	Payment Equivalent to 20 Times the National Average Wage of Urban Residents	Lump Sum	Work-Injury Insurance Funds

Source: China Labour Bulletin (2011 - 2014) and WIIR (2011) Art. 39 to 41

Work-related Injury Insurance *Regulation (2014)* provides specified and practical work-related injuries recognition requirements, compensation

³³ Referring to Chinese *Civil Procedures (2012)* and *Administrative Procedures (2014)*, close relative dependants refers to spouse, parents, children, siblings, grandparents, grandsons and other persons who has established civil support relationship with the deceased person.

standards, and claim approaches for victims of work-related accidents. If employers failed to arrange Work-related Injury Insurance for employees, employees are entitled to claim equivalent compensation amounts from employers. Furthermore, the *Social Insurance Law (2010)* stipulates that in situations when employers fail to arrange employees' work-related insurance and refuse to make the compensation payments, employees are entitled to apply to WIIF to make payments in advance. Then the WIIF has a right to claim the payment from the employer concerned³⁴.

3. Seafarers' rights under Work-related Injury Insurance System

Chinese Work-related Injury Insurance is criticised as “ornamental”, implying the regime does not adequately help workers suffering work-related injuries (Sun and Liu, 2014). In this research, the empirical data also shows that the protective capability of Work-related Injury Insurance is limited for Chinese seafarers in terms of insurance coverage, compensation standards, and enforcement of compensation payments.

Firstly, the Work-related Injury Insurance coverage rate is low among seafarers. 58.45% seafarers are not covered by Work-related Injury Insurance (Chen et al. 2015, Wu 2008). In the context of fragmented employment relationships, i.e. employment through crew agencies/manning companies, the Work-related Injury Insurance is not compulsory for shipowners. Shipowners of non-Chinese vessels can argue that they are not the “employers” as defined by *Work-related Injury Insurance Regulation (2003 and 2011)*. The manning companies/crew agencies, as the parties who employ/send seafarers to serve shipowners, should arrange Work-related Injury Insurance³⁵.

³⁴ There was a survey one year after the *Social Insurance Law (2010)* was introduced that showed the vast majority of local governments were refusing to issue advance payments. <http://www.clb.org.hk/.../local-governments-refuse...>

³⁵ See Rules of Dispatching Chinese Seafarers on Non-Chinese Vessels.

Work-related Injury Insurance (premium rate 0.5% - 2% of the wage) cannot be purchased separately, and must be purchased together with pension scheme, medical insurance, maternity insurance, and unemployment insurance, which means the company must pay an extra 30% - 40% of the employees' wages as a social insurance premium. In this research, some companies expressed great unwillingness to arrange Work-related Injury Insurance for seafarers and would only pay the social insurance premium based at the lowest level, which is 60% of the average local income (see 5.1.1).

Secondly, the inaccessibility and low compensation standards discourage seafarers' incentives to claim from the social insurance scheme. The Work-related Injury Insurance Funds are managed/coordinated at the city. That is the city of the domicile of the manning company, which usually is different from the seafarers' cities of domicile. This regulatory approach to social insurance funds has increased the difficulties for seafarers to claim benefits (see 7.2.2).

The disability payment and subsidies are calculated according to average local salary, not according to seafarers' actual wages (see Table 8, Table 9 and Table 10). As mentioned above, manning companies tend to pay the social insurance premiums based at the lowest level, which is 60% of the average local income, so the final compensation for seafarers from public funds is restricted. Taking a Second Engineer (SF_QZ_W) as an example, he lost his right thumb and index finger, which was assessed as a Grade 8 disability (30% work capacity loss). Based on the company's contribution for the insurance, he was entitled to claim about CNY 25,000 in disability payment from the public fund. At the time of his injury, in 2012, his monthly salary was USD 6600 (about CNY42, 240), which is much higher than the lump sum disability payment awarded by the WIIF. Had the company paid the social insurance premium according to the WIIR, at 300% of local average income (about CNY 11,516) for this Second Engineer (see Table 9), the disability payment awarded to this seafarer would be CNY 126,676, about five times of the disability payment he actually got paid, and equivalent to his wages of three months on board. Therefore, seafarers' income renders the

compensation standards set by the regulation insufficient to compensate seafarers for actual earnings loss. Furthermore, the manning company's underpayment of social insurance premiums makes the benefits available from public funds lower still.

Thirdly, the time bar of Work-related Injury Insurance claims is short. The regulation provides only a one-year time bar counting from the second day of the workplace accident, and this period cannot be extended for any reason. For seafarers who have been injured abroad, the time bar is tight, considering the repatriation, and further medical treatment in China. For some seafarers, when their situations become stable and they start to claim compensation, they just realise their claims are time-barred (see 7.3.2). The short time-bar regime makes seafarers' claims for Work-related Injury Insurance compensation even more challenging and encourages manning companies to use delaying strategies to escape their obligations. With the one-year time bar regime, the workers' compensation institution is also able to reject seafarers' compensation claims and reduce their payment liabilities.

Fourthly, when involved in legal disputes over workers' compensation, judicial opinions regarding the nature of seafarers' employment agreements and manning companies' obligations are vague and obscure, making seafarers' claims unlikely to be fully supported by the courts. Unlike other labour disputes under the jurisdiction of the Labour Arbitration Tribunals, seafarers' disputes are subject to the exclusive jurisdiction of Chinese Maritime Courts. Thus the opinions from judicial authorities can determine whether seafarers' claims are established. When disputes between seafarers and manning companies regarding Work-related Injury Insurance contribution and compensation enter into judicial review, due to the variety and flexibility of seafarers' recruitment approaches (Zhao and Amante, 2005, Wu, 2008, Wu and Beaverstock, 2013), the status of Chinese seafarers in Chinese law has been controversial. According to the *Work-related Injury Insurance Regulation (2003)*, enterprises must purchase work-related injury insurance

for all their employees or hired labourers³⁶. The employees refer to those who have entered into labour contracts or who are in an actual labour relationship with enterprises, companies or other organisations. However, regarding seafarers employed by manning companies/crewing agencies, their services on board are usually regulated by dual contractual relationships: one is the contract relationship with manning companies/crewing agencies, and the other is the voyage contract/agreement with shipowners/bareboat charterers³⁷. Under the contractual relationship with shipowners/bareboat charterers, shipowners/bareboat charterers are not recognised as employers according to the Chinese law, who are obligated to contribute or pay Work-related Injury Insurance for seafarers. Regarding the contractual relationship with crew agencies/manning companies, the Ministry of Transport has made some efforts to define this contractual relationship as a labour contract relationship, which means imposing the obligation of arranging social insurance for seafarers on manning companies/crew agencies³⁸. Nevertheless, in the industrial practice, many seafarers serving on vessels through ‘recommendation’ by crew agencies/manning companies are not entered into any labour contract, and not covered by Work-related Injury Insurance.

The issue of whether the labour contract relationship can be established or recognised between seafarers and manning companies/crew agencies has been debated extensively in judicial practice. For example, in 2011, the Supreme People’s Court provided a judicial reply to Tianjin Maritime Court’s query on the nature of the contract between a bosun and a Beijing manning

³⁶ Art.2 of Work-related Injury Insurance Regulation (2003)

³⁷ Bareboat charterer is a party hiring unmanned ship from the shipowner within an agreed period, and the charterer needs to employ/hire seafarers on its own.

³⁸ According to *The Rules of Dispatching Chinese Seafarers to Foreign Vessels* (2011) by Ministry of Transport and Communication stipulates that the licensed manning companies/crewing agencies to export seafarers on foreign vessels must ensure the seafarers sent to work on foreign vessels having labour contract with one of the following institutions: (1) the licensed manning company/crewing agency; (2) foreign shipowner; (3) Chinese shipping companies or other similar enterprises.

company. In this case, the bosun was sent to work on a vessel owned by an Israeli shipping company, and the bosun argued that the Beijing manning company should purchase his social insurance, but the Beijing manning company denied being the responsible employer and refused to pay the bosun social insurance premium. This dispute was firstly filed to Tianjin Maritime Court, and the Tribunal regarded the relationship between the bosun and the manning company as a factual labour relationship. In which case the manning company would be obliged to arrange social insurance for the bosun. However, the Supreme People's Court later overruled this decision and decided that the contract be subject to the freedom contract³⁹. Accordingly, there was no such clause stipulating the crew agencies' obligations to contribute to the seafarer's social security schemes, so the manning company was not liable to compensate the bosun.

At the administrative regulation level, the Ministry of Transport has made efforts to oblige manning companies/crew agencies to arrange social insurance for seafarers themselves or through other shipping companies. However, in the judicial review process, the Supreme People's Court's reply dismisses the obligation of manning companies/crew agencies as employers defined in Chinese labour law. As a consequence, the judicial opinion undermined protection from administrative regulations. Thus seafarers' rights as stipulated by the administrative rules are not enforceable in court proceedings.

This questionable legal status of Chinese seafarers is peculiar compared with other Chinese workers. In terms of land-based workers in the situation of agency employment, the *Labour Contract Law* stipulates that in cases of work-related injuries, agencies are jointly liable for compensation. If agencies and principal employers fail to sign written labour contracts and arrange social insurance for workers, once workplace injuries occur, agencies and companies must take joint liabilities for workers' compensation. This principle is strengthened by the *Interim Provisions on Labour Dispatch (2014)*

³⁹ See Yang Haishui v. Beijing Xinyusheng Shipping Management Company [the People's Supreme Court (2011) MSTZ No.4]

promulgated by the Ministry of Human Resources & Social Security, However, the *Interim Provisions on Labour Dispatch (2014)* explicitly exclude the application on seafarers. The seafarers' legal status rights and obligations of manning companies are still obscure, which increases the legal risks for seafarers' claims.

To sum up, the protective capacity of Work-related Injury Insurance for seafarers is extremely limited regarding coverage, compensation standards and procedural assistance. Chinese government departments, including the State Council and Ministry of Transport, make certain efforts through regulations and policies to increase the Work-related Injury Insurance coverage among seafarers. However, in industrial practice, considering the high expense of social insurance as a whole, manning companies are resistant to the social insurance, or just insure a few seafarers at the lowest insurance level. Thus, for many seafarers, Work-related Injury Insurance is just "ornamental". Also, once companies refuse to pay compensation, seafarers' claims are easily expired. The considerable legal risk due to the controversial opinions regarding the obligations of manning companies and/or shipowners is also another barrier for seafarers who seek remedies in the non-fault based workers' compensation system. The low compensation standards, short time-bar and uncertainty of judicial opinions are three impediments to Chinese seafarers' obtaining sufficient compensation in the context of the social security system.

4.3.2 Civil Tort Liability System

Aside from Work-related Injury Insurance, victims of workplace accidents at sea are entitled to claim compensation according to civil tort law. Claims are pursued through maritime courts. The burden of proof is stricter, and the procedure is more time-consuming, compared to the Work-related Injury Insurance System.

If an injured seafarer finds the contract either with the manning company/crew agency or shipping company is so ambiguous that s/he is unlikely to claim work-related injury insurance compensation successfully, the victim is entitled to seek compensation directly from the owner of the ship

he serves. Shipowners, regardless of nationality, are liable to compensate their crew for losses arising from workplace accidents, under civil tort liability.

The applicable legal instruments include (1) *Interpretation of the Supreme People's Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury (2004)* (hereinafter referred to as *Interpretation on Compensation for Personal Injury*) (2) *Tort Law (2010)* (3) *Specific Provisions of the Supreme People's Court for Trials on Foreign-related Personal Injuries and Death at Sea (1992-2012)*⁴⁰ (hereinafter referred to as *Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea*).

In relation to seafarers' compensation claims, the core legal issues are (1) how to establish the liability of shipowners; (2) what compensation standards should apply; (3) how to obtain financial security from shipowners to ensure future judgements are enforceable. Also, considering shipping is a globalised industry, foreign-related factors affect the procedural entitlements of both shipowners and seafarers.

1) Tort liabilities of the shipowner

Before 2010, according to the *Interpretation on Compensation for Personal Injury (2004)*, if a hired worker⁴¹ suffered injuries arising out of and in the course of service, the employer bore non-fault compensation liability. As a maritime judicial custom, injured seafarers were regarded as the hired

⁴⁰ This Supreme People's Court judicial interpretation has been abolished on January 1st, 2013, in the middle of this research, about 6 months before my data collection. Although it is no longer effective, considering its great influence on seafarers' injuries on foreign vessels during past 20 years, this thesis includes this legal instrument.

⁴¹ The worker defined in this judicial interpretation is different from the definition of employee in *Work-related Injury Insurance Regulation (2011)*, which refers to the flexible employment relationship and the employer and worker do not have stable and long-term employment relationship. This employer-worker relationship clearly excludes the employer-employee labour relationship regulated by the *Work-related Injury Insurance Regulation (2011)*.

workers by shipowners, and they were entitled to compensation regardless of shipowners' fault (Wu, 2014).

In 2010, *Tort Law* came into force, relating to hired workers' injuries incurred during service. The new law provides that hired workers and their employers should share the loss based on the extent of their negligence⁴². This challenges the no-fault liability principle stipulated in the *Interpretation on Compensation for Personal Injury (2004)*, since the *Tort Law (2010)* is a higher and later legal source than the *Interpretation on Compensation for Personal Injury (2004)*. As one maritime judge commented:

'Tort Law (2010) has become a barrier for us to apply non-fault liability for seafarers' compensation claims. Although there was a legislation gap regarding seafarers' injury compensation, by interpreting the Interpretation on Compensation for Personal Injury (2004) Art. 13, we were able to award non-fault based compensation to injured seafarers. However, now, we have to apply the Tort Law (2010) to apply fault-based liability. We know this increase the difficulties for claimants, but we cannot make judicial decisions against the law. (MJ_GZ_X)'

Unlike the situation before 2010, now the seafarer claimant must provide evidence to show that shipowners were at some fault in relation to workplace accidents. As a result, the burden of proof for seafarers has become heavier⁴³.

2) Compensation Standards

Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea (1992-2012) and *Interpretation on Compensation for Personal Injury (2004)* provide different compensation levels. *Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea (1992-2012)* provided compensation standards based on seafarers' actual incomes, while

⁴² Tort Law (2010) Art. 35

⁴³ In Ningbo Maritime Court, Justice Wu Shengshun has published an article appealing to exclude the application of the Art 35 of the Tort Law (2010) to the cases of workplace injuries of seafarers.

Interpretation on Compensation for Personal Injury (2004) sets the average income for the area of court as the base number.

Between 1992 - 2012, *Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea (1992-2012)* applied to workplace accidents of Chinese seafarers occurring on board in foreign territories, on foreign vessels, or caused by a collision with foreign ships. *Interpretation on Compensation for Personal Injury (2004)* applied to Chinese seafarers' casualties occurred on Chinese vessels, within Chinese territory, or casualties caused by a collision between Chinese ships. However, in judicial practice (see Table 12), the *Interpretation on Compensation for Personal Injury (2004)* was also applied to seafarers involved in foreign-related seafarers' casualties (see Table 13). This was mainly because the *Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea (1992-2012)* set up a limit for compensation liability of CNY 800,000 (about GBP 80,000). In some situations⁴⁴, medical costs exceeded this amount makes the limit of CNY 800,000 unfair.

⁴⁴ See *Yu Xiaohong VS Paris Spring (1999)* Ningbo Maritime Court. . In this case, the maritime court first broke the limit of CNY 800,000 in the case of personal injury at sea.

Table 12: Compensation Standards for Death according to Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea (1992-2012)⁴⁵

Items	Coverage	Calculation Formula
Earning loss caused by death	Loss of income caused by seafarers' death	$(70\% \sim 75\%)* X$ Annual income of seafarer X(Age of retirement** – Age of death) + Annual income after retirement*10 years
Medical fee	Costs of medical treatment and nursing (if there is any before death of seafarer)	Actual expense occurred
Funeral Expenses	Costs of corpse transport, cremation, ash box, and tomb	Actual expense but within the limit of 6 months incomes of deceased seafarers
Compensation for mental damage of close relatives	Not specified	Not specified
Other necessary costs	Costs of searching corpse, expenses of close relatives' travelling and accommodation, and their earning loss occurred during coping with seafarer's death.	Actual expense occurred

Notes:

* 20%~25% is deducted as seafarers' annual living cost

** Age of retirement in China is 60

*** The total compensation amount is limited to CNY 800,000.

Table 13: Compensation standards of Death in Interpretation on Compensation for Personal Injury (2004)

Heads	Coverage and calculation formula
Medical fee	Actual expense occurred, need to be evidenced by hospital's invoices
Funeral expectnses	Six months x local average employee's salary* of the area where the court entertaining the claim

⁴⁵ See Section 3 and Section 4 of Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea (1992)

Death Compensation	Urban Resident	20 years x annual disposable income per capita of the urban area where the court entertaining the claim	
	Rural Resident	20 years x pure annual income per capita of the rural area where the court entertaining the claim	
Dependent is living allowance ⁴⁶	Urban Resident	Dependant < 18 years old	Per capita urban consumption expenditure x (18 - actual age)
		Dependant > 18 years old, but with no Work Capacity and no income	Per capita urban consumption expenditure x 20 years ⁴⁷
	Rural Resident	Dependant < 18 years old	Per capita rural consumption expenditure x (18-actual age)
		Dependant is older than 18 years old but with no Work Capacity and no income	Per capita rural consumption expenditure x 20 years ⁴⁸
Damages for emotional distress	According to the situations of tort, local living expense and the compensation capacity of fault party, the judges' discretion, the amount is ascertained by judge's discretion.		
Other property damages	The amount is ascertained by judge's discretion according to evidences providing by claimant.		

Notes:

* Local employee's average salary is published by Local Statistics Bureau. Take Shanghai as an example, the average salary of 2012 is CNY 4,692 (about GBP 460).

** All the statistics for per capita disposable income, consumption expenditure is ascertained by the Local Statistics Bureau of the area where the court is entertaining the claim.

⁴⁶ If the dependant is able to be supported or raised by any other person, the obligor to compensation may only compensate the proportion that the victim shall bear in accordance with the law; if there are more than one dependant, the accumulative annual compensation amount in total shall not exceed the amount of per capita consumption expenditures of urban/rural residents of the last year

⁴⁷ If the dependant is older than 60, the formula is: Per capita urban consumption expenditure x [20 - (actual age - 60)]. If the dependant is older than 75, the formula is Per capita urban consumption expenditure X 5

⁴⁸ If the dependant is older than 60, the formula is: Per capita rural consumption expenditure x [20 - (actual age - 60)]. If the dependant is older than 75, the formula is Per capita rural consumption expenditure X 5

*** If the victim is a rural resident, but the claimant can prove that he/she has resided in the urban area for more than one year, the compensation amounts can be ascertained according to urban calculation standards.

Table 12 and Table 13 show the two sets of compensation standards for seafarers' work-place fatalities within the Chinese tort legal system between 1992 -2012. Aside from funeral expense, the compensation standards for injuries have similar items. Regarding workplace injury compensation, the injured seafarers are entitled to Earning loss caused by injuries/Disability compensation correspondingly. The calculation method is using the disability ratio⁴⁹ ascertained by Judicial Assessment Institution multiplies the Earning loss caused by Deaths/Death compensation. In 2013, considering the long-standing conflicts between the above two sets of compensation standards, the Supreme People's Court decided to abolish *Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea* (1992). From then on, the compensation standard in *Interpretation on Compensation for Personal Injury* (2004) has become the sole standard for seafarers' workplace casualties in Chinese tort law system.

3) Seafarers' claims and ship arrests

According to *Maritime Law* (1992), workplace accidents trigger seafarers' entitlements to maritime liens⁵⁰. With this legal privilege, seafarer claimants are entitled to apply to arrest the ship on which their accident occurred⁵¹. Shipowners are then requested to provide sufficient financial guarantees to cover with compensation claimed by seafarers before applying for ship release. However, in reviewing an application, the tribunal may order the seafarer claimant to provide financial security for the arrest⁵². The amount of

⁴⁹ Disability ratio is corresponding to disability grades: Grade 10 ~ 10%, Grade 9 ~ 20%... and Grade 1 and death ~100%.

⁵⁰ A maritime lien is the right of claimant to take priority in compensation against shipowners, bareboat charterers or ship operators with respect to the ship which gave rise to the claim.

⁵¹ Special Maritime Procedure law of P. R. China, Article 21.

⁵² In judicial practice, the amount of security is about two-week hire loss of the ship under arrest.

security is usually about two weeks loss hire for the ship involved, which is generally not affordable for seafarers. In 2015, the Supreme Court promulgated the *Interpretation of Some Issues Concerning the Application of Law for the arrest and auction of Ships (2015)*. In this interpretation, to remove the procedural barrier for workplace accident victims, Art 4 stipulates that the tribunal may exempt the financial security obligations of the victims. After entertaining seafarers' applications, within 48 hours, the court should make an order. If the order approves the application, then the court should arrest the involved ship forthwith. In the course of the arrest of a ship, if the shipowner/bareboat charterer fails to provide financial guarantees in 30 days, then the seafarer claimant is entitled to apply to auction the ship once the litigation proceeds in the maritime court.

To secure workplace injury compensation claims, applying for a ship arrest is the most straightforward and efficient method of imposing pressures on liable shipowners in the maritime jurisdiction. If claimants can find out which Chinese ports a ship is calling at, and submit an application to the maritime court with jurisdiction, then their claims would be successfully preserved. However, in practice, this approach is not frequently used by seafarers. Among the 42 cases involved in this study, in only one did, the victims apply and achieve the ship arrest. In this research, I interviewed maritime legal professionals to understand why ship arrest is so little used⁵³.

Before 2015 when the *Interpretation of Some Issues Concerning the Application of Law for the arrest and auction of Ships (2015)* came into force, there were some maritime judges with the opinion that seafarer claimants should provide security, which made this judicial procedure inaccessible to seafarers. One maritime judge explained her unwillingness to help seafarers arrest the ships:

'The value of the ship is very, very huge, so it is not reasonable to arrest or auction a ship just for one seafarer's injury claim. If a

⁵³ For seafarers' accounts, please see 6.3.4

seafarer applies to arrest the ship, then he must provide security.'
(MJ_TJ_L)

Based on his rich experience of handling seafarers' claims, a claim handler for a corresponding agent on behalf of P&I Clubs, explained the underutilisation of ship arrest among Chinese seafarers:

'In my opinion, 95 seafarers' claims in 100 are settled by negotiation. Is there any seafarer applying arrest of the ship? I think maybe 1 in 100. The legal cost of applying arrest of the ship, to be frank, is not high. However, firstly, seafarer claimants have no knowledge. Moreover, secondly, Chinese maritime lawyers may not be willing to arrest the ship on behalf of seafarers and then displease P&I clubs. If a seafarer claimant hires a labour lawyer, that lawyer will not know how to arrest ship through maritime court. Therefore, for seafarers, even with lawyers, it is still tough for them to arrest ships successfully.'
(CH_BJ_W)

This claim handler pointed to lack of legal knowledge and professional legal assistance as two barriers to seafarers' applications for ship arrests.

Judges' opinions and lawyers' skills may also influence the outcomes of ship arrest applications. A maritime lawyer explained that judges' sympathy for seafarers is crucial for arresting ships successfully:

'According to my experience, in some circumstances, the court will sympathise seafarers, and exempt security requests if seafarer has difficulties in preparing that money. However, it depends on, different courts, different judges hold different opinions. Last time, I applied arrest of the ship on behalf of a seafarer, the judge was not willing to approve and insisted that the seafarer needs to provide security, but I stayed there to try my best to persuade the judge. Finally, the judge issued the order in favour of the seafarer.' (ML_QD_C)

Another maritime judge explained their attitude towards seafarers' application for ship arrests as follows:

‘Previously, in our court, when seafarer came to claim salaries or workplace casualties’ compensation, we would approve the application for the exemption of security. However, just from last year, I noticed that my colleagues started request security in these cases. This is possibly because the recent depression of shipping industry and so many claims filed to our courts. We are not able to deal with that many ship arrest applications. (MJ_GZ_D)

Seafarers confront many uncertain factors in the civil tort liability system, including the burden of proof to establish shipowners’ fault liability, and the different opinions of maritime courts towards ship arrest applications. The litigation risks for seafarers are therefore high under tort law system.

4) Special jurisdiction over seafarers’ claims

In China, seafarers’ workplace injury claims are categorized as maritime claims. Maritime courts are special judicial authorities with jurisdiction over all maritime disputes. There are ten maritime courts in total in China⁵⁴. If seafarers need to resolve a work-place injury dispute through litigation, they have to bring their claims to the maritime court with jurisdiction, which could be a maritime court near their residence, the port where they signed on or signed off, or the port where the accident occurred. Selecting the proper maritime court is crucial, in that it could determine the success of claims and compensation amounts. In addition, compared to the simplified claim approach of WIIS, maritime litigation requires strong professional knowledge of litigation techniques, which means that, without a maritime lawyer’s help, seafarers cannot access justice by themselves. (see 7.3.3.3)

Seafarers are the only group of workers who are not subject to Labour Arbitration Tribunals and grassroots People’s Courts. The advantage of adopting this peculiar maritime jurisdiction is that alongside workplace injuries damages claims, seafarers are also able to arrest ships and impose

⁵⁴ Chinese Maritime courts are established in the following port cities: Dalian, Tianjin, Qingdao, Wuhan, Ningbo, Shanghai, Xiamen, Guangzhou, Beihai and Haikou.

pressure on shipowners through the maritime court. However, on the other hand, this peculiar jurisdiction makes the legal process too complicated for seafarers to understand and follow.

For maritime judges, it is challenging to entertain and hear seafarer workplace injury disputes efficiently. One deputy head judge of a maritime court suggested uniting the jurisdiction over seafarers and other workers:

'Seafarers' claims for workplace injuries damages, to be frank, would be better regulated by the Labour Arbitration Tribunals, which could provide workers' simple and quick claim approach. Twenty years ago, the claims brought to maritime courts were rare, so the Supreme People's Court put seafarers' claims under the maritime jurisdiction. But now, we have too many maritime commercial disputes to hear. Seafarers' claims involve vulnerable worker, which are not easy to address and increase the workload of our judges. We can entertain seafarers' claims today. Seafarers prefer to bring claims to us rather than to the Labour Arbitration Tribunals, since they may believe we are more professional. However, on the other hand, bringing claims to our court also means a long litigation process awaits seafarers. We also conducted many studies on how to improve the trial efficiency of these claims, and we do not want seafarers to suffer lengthy litigation. We believe it should be better to unify the jurisdiction over seafarers and other workers.' (MJ_GZ_Z)

The special jurisdiction on seafarers' claims for workplace injuries damages may provide a relatively professional trial, which may award fair and reasonable compensation for seafarers. Nevertheless, the lengthy and complicated procedure of litigation is a considerable barrier which should not be ignored. How to balance the professionalism of judicial review and convenient access for seafarers is a core question for jurisdiction reform regarding maritime labour disputes.

5) Special requirements for seafarers' claims with foreign-related factors

In the shipping industry, Flags of Convenience (FOC) are common, and Chinese shipowners nowadays are inclined to take advantage of flagging-out (see 4.1). As a result, more and more Chinese seafarers are now working on non-Chinese flag vessels. Once these seafarers have claims arising from workplace accidents, their disputes contain foreign-related facts, and special procedural requirements may apply regarding the service of litigation documents, a period of presenting evidence, forms of evidence, and a time limit of trials. These special requirements are designed to ensure the papers are served to the right overseas defendants accurately and protect these defendants' due procedural entitlements, but may create a tremendous challenge for seafarers (see 7.3.3.3).

Also, in foreign-related cases, the periods for submitting bills of defence and presenting evidence for defendants are twice as long as the periods in domestic cases, which are 30 days counting from the day the defendant is served with the plaintiff's bill of the claim⁵⁵. Furthermore, the defendant, the shipowner/manager, is entitled to apply for several extensions to prepare for litigation. Considering the defendant is abroad, power of attorney should be notarized overseas, and then be authenticated by the Chinese Embassy, so the maritime court usually approves defendants' extension applications⁵⁶. Meanwhile, the court may also require the evidence presented by the defendant to be notarized and authenticated. As a result of these combined litigation preparation periods, seafarer claimants may need to wait for months or even years. Unlike domestic judicial trials, foreign-related maritime trials are not subject to the time limit of the trial, which is six months. For one of my participants this resulted in a litigation in which started in 2010 and was still unfinished in 2013.

4.4 Summary

⁵⁵ Civil Procedures (2012) Art. 268.

⁵⁶ Civil Procedures (2012) Art. 264.

The Chinese shipping industry has been transformed as private owned and foreign shipping companies have become the employers of Chinese seafarers. Meanwhile, third party crew supply has become a common practice for shipowners. As a consequence, industrial relations in the Chinese shipping industry have changed and created new challenges for the law and regulation regarding employer liabilities. As a result of neoliberal reform, working opportunities have increased for Chinese seafarers, but jobs have become flexible and precarious. In the previously planned economy, workers' injury compensation schemes were all arranged by state-owned shipping enterprises. However, now, in the industrial context of the rapid growth of private and foreign shipping companies and crew agencies, research finds 45.92% Chinese seafarers do not have long-term labour contracts, and 58.05% are not covered by Work-related Injury Insurance schemes (Chen et al., 2014).

Alongside the rapid reform in the shipping industry, the Chinese legal system has been transformed as well. From 1992 when *Specific Provisions on Foreign-related Personal Injuries and Deaths at Sea (1992-2012)* came into force, the debate regarding seafarers' compensation claims has been ongoing. During this period, in 2004, the Work-related Injury Insurance system was introduced, and non-fault liability compensation for precarious workers was established through the *Interpretation on Compensation for Personal Injury (2004)*. Two legal approaches addressing seafarers' workplace casualties in China were gradually established: one is Work-related Injury Insurance Regime as a social security protection, and the other is civil tort law approach under maritime jurisdiction.

The relationship between seafarers and the Work-related Injury Insurance Regime is still being debated in legal spheres and judicial practice. The legal status of seafarers in this system is ambiguous. The coverage of this social insurance among seafarers is low: more than half of Chinese seafarers are not covered. Both crew agencies and seafarers do not find this social insurance is worth arranging. In the absence of Work-related Injury Insurance, seafarers' entitlements are largely different from other groups of workers. This

inequality between seafarers and other groups of workers will be further discussed in Chapter Eight.

Structural problems in civil tort law systems and maritime jurisdiction have also increased the unpredictability and uncertainty of seafarers' claims. First of all, the legislation regarding seafarers' claims for work-related casualties is unstable and has been continuously changing during the last twenty years, in particular, the *Tort Law (2010)*, which undermines the fundamental no-fault principle of seafarers' workplace injury claims. This makes it difficult for seafarers to understand their rights and follow proper legal procedures, which also increases the unpredictability of their claims. Secondly, compensation standards are over complicated. The maritime court is required to take a neutral position between the seafarer claimant and shipowner/ship manager/manning company. Therefore, if a seafarer cannot choose the right compensation standards him/herself, the court may dismiss the seafarer's compensation claim amounts. This presents seafarers with high risks. Thirdly, foreign-related factors complicate claims. Seafarers may suffer longer trials, more complicated procedures, and more unpredictable results.

It can be concluded that the protection of seafarers' rights under the current Chinese legal framework is difficult and complicated for seafarers. The following chapters will present empirical data regarding the organisational management of seafarers' claims. Seafarers' experiences of claims for workplace casualties' compensation will be further described to illustrate the difficulties, and even harm, suffered by seafarers during claim processes.

Chapter Five: The Organisational Management of Workplace Accidents and Seafarers' Claims

Introduction

The previous chapter showed the growth of non-state-owned shipowners and third party labour suppliers (crew agencies) in the shipping industry. Chapter 4 also explained employers' liabilities and Chinese seafarers' rights following workplace accidents according to Chinese law. It identified several barriers and challenges in this legal framework which may negatively affect seafarers in securing their rights.

Although the legislation and regulation have provided seafarers with certain entitlements and rights following workplace accidents, successful claims still depend on whether shipping companies fulfill their obligations. In terms of organisational management, shipping companies⁵⁷ are in charge of pre-accident management of workplace casualties, on-site rescue and emergent treatment and post-accident compensation claim handling. The companies' decisions in these three stages can considerably influence seafarers' health and safety, welfare and treatment during recovery periods. Therefore, companies' attitudes and choices in the management of workplace risk, accident and claims are important.

This chapter examines a range of corporate legal risk management strategies regarding liabilities to seafarers. The chapter draws on interview data collected from fieldwork conducted with 22 managers and organisational documents from six shipping companies, nine manning companies and two insurance companies.

The analysis will explore company practices in managing seafarers' workplace accidents and claims. The presentation of findings is organised in two parts. The first section 5.1 addresses management strategies relating to

⁵⁷ Shipping companies include owners, managers and operators of ships.

risk transfer through insurance. These measures aim to ensure that seafarers are insured against the risks of workplace accidents, on the one hand; and what the companies agree to do to mitigate the loss to seafarers and their dependents once an accident occurs, on the other hand. The analysis goes further to highlight the different types of cover which shipping companies can opt for by using a comparison of seafarers working on ocean-going vessels against their colleagues engaged on coastal ships as well as comparisons based on type of corporate ownership. Section 5.2 addresses management strategies after workplace accidents, including controlling and scrutinising medical costs, ascertaining disability degree, setting up damages caps in disputes and claim settlements. In the analysis, some seafarers' feedback and the IMO's Corporate Social Responsibility guideline will also be referred in order to evaluate the conduct of shipping companies in China.

5.1 Pre-accident legal risk management strategies

The pre-accident legal risk management practices discussed represent companies' responses to their potential liabilities arising from workplace accidents (Rose, 2012; Billah, 2014). The data from this research show that the strategies of different companies vary with ownership and business area. Ocean-going shipping companies and coastal shipping companies usually have different insurance coverage. In addition, shipping companies and crew agencies take different measures to control their liability, according to their different relationships with seafarers.

Variations in legal risk management strategies can affect the level and adequacy of compensation available to seafarers disproportionately when accidents happen. For example, shipping companies may have insured their liabilities differently, and if a workplace fatality occurs, the company with a higher level of cover is more likely to offer high compensation than the one with a lower insurance cover level. Another complexity raised in the analysis in this section is the assignment of liabilities between shipowners and crew agencies. This complexity arises because of the growth of recruitment through crew agencies (see 4.2). While shipowners are liable for seafarers' injuries primarily, crew agencies being third-party suppliers of crews, also

have certain responsibilities in managing legal risks, accidents and claims, including arranging social security and/or life insurance for seafarers, assisting seafarers' access to medical treatment, and collecting evidence of expenses to assist shipowners to claim compensation from insurers. But crew agencies are only one of several important intermediaries between shipowners and seafarers in matters of workplace accidents and compensation claims. The involvement of marine insurers may also add to the complexity of the claim management process. For example, marine insurers can control compensation amounts either by handling claims directly via their correspondents or control the reimbursable amount for shipowners. This section addresses the variety of legal risk management strategies and discusses different business actors' influences on the outcome of seafarers' claims. The management strategies of ocean-going shipping companies will be introduced and will be followed with a consideration of, coastal trade shipping companies and manning companies.

5.1.1 Ocean-going vessels' legal risk management practice: liability cover and P&I Club's memberships

The 13 member insurers of the International Group of P&I Clubs provide liability cover for approximately 90% of the world's ocean-going tonnage (IG P&I, 2016). Drawing on the interviews with the managers of ocean-going vessels, P&I Club liability cover is reported as a major measure to manage liabilities arising from crew injuries and fatalities.

P&I club liability cover

P&I insurance covers shipowner's liability for all deaths, personal injuries which occur on board, including death or injury to crew, passengers, stevedores, pilots and visitors to the ship (Skuld, 2015). This insurance cover includes hospital, medical, funeral and repatriation expenses in respect of injured crews (Caesar et al., 2015; Skuld, 2015; North of England P&I Association, 2012). P&I clubs do not only cover costs and compensation arising from crew injuries/claims risks (Arnould and Gilman, 2008), but also

provide overseas claim-handling services for shipowners (Hazelwood and Semark, 2010).

Unlike profitable insurance companies selling insurance products via contracts, P&I Clubs apply a member entry regime. Entry is effected once the name of the vessel is registered with the club (The Britannia Steam Ship Insurance Association Limited, 2015.; Hazelwood and Semark, 2010). All members share the loss arising from compensation liabilities to third parties by making an annual contribution (i.e. the calls) to the club fund (Hazelwood and Semark, 2010). When workplace accidents occur, the loss, compensation and relevant expenses to shipowners can be claimed from their clubs (Skuld, 2015; Gard AS, 2008).

With assistance from P&I Clubs' global offices, it is possible for shipowners to control their loss and liability reasonably (Hazelwood and Semark, 2010). A chief claim manager of a state-owned shipowner company explains the advantages of P&I liability cover for her company:

Most of our ocean-going vessels have been entered into the IG P&I Clubs. Firstly, the terms and conditions are humanistic. As long as we can justify our expenses for seafarers, they will recover our payments. Secondly, for our global lines, the worldwide P&I clubs' correspondents and lawyers can provide us excellent services in handling accidents and claims for us. Thirdly, the transport cost of corpse and family overseas visits are all covered. We find this liability insurance is reliable and humanistic and provides our seafarers additional security. (Ref: Shipowner_CA)

Accordingly, P&I Clubs not only provide financial insurance cover, but also assist shipowners in claim handling and litigation management with their insurance and legal experts.

Different liability insurance coverage of shipowners

The limits of coverage and deductible amounts for seafarers' casualties are various in different shipowners' P&I mutual insurance schemes. Shipowners

can establish different compensation standards for their seafarers in crew management rules with their crew management companies. Correspondingly, these standards are usually confirmed as primary insurance coverage in the individual agreements (certificates of entry) between the club and member shipowners. The table below is a comparison of different shipping companies' insurance schemes for their liabilities to seafarers (see Table 14)

Company Name	Responsibility period	Pre-accident insurance	Insurance amount limit	Coverage of medical treatment	Salary standard and limitation during medical treatment period	Exclusion
CA State-owned	Service period on board	Confirm all seafarers are covered by Work-related Injury Insurance Shipowner's liability insurance from P&I Clubs	CNY 539,100 (WIIR) (USD 87,374.4) CNY 1,000,000 (P&I) (USD 161,600) ⁵⁸	Until recovery or permanent disability ascertained	Average salary calculated according to 12 months' income before accident. Until recovery or permanent disability ascertained, usually cannot exceed 24 months	Injuries caused by 1) seamen's wilful criminal conducts; 2) abuse of alcohol and drugs; 3) suicide and wilful self-injury conducts.
SDX Non-state owned	Service period on board	Shipowner's liability insurance from P&I Clubs	USD 30,000 ~USD 60,000	Until recovery or permanent disability is ascertained, but cannot exceed 2 years	Basic wages until recovery or permanent disability ascertained but cannot exceed 365 days	Injuries caused by seafarers' negligence, including suicide, abuse of alcohol and drugs, fighting with others, disobeying orders and disciplines on board.
SB (SG-U) Foreign (Asian)	The duration of employment.	Work-related Injury Insurance for agent-employed officers and engineers; Shipowner's liability insurance from P&I Clubs	USD 140,000 for Master and C/E USD 125,000 for trainee master/CE, officers and engineers and cadets USD 100,000 for ratings	Until seafarer is declared fit or the degree of disability has been established but cannot exceed two years	Basic wages (Ranging from Ordinary Seaman USD 461 to Master USD 2087) Until recovery or permanent disability ascertained, but cannot exceed two years	1) injuries caused by wilful neglect, fault or misconduct; 2) chronic diseases contacted before the employment; 3) venereal diseases or AIDS
TC (TW-X) Foreign (Asian)	The duration of employment.	Shipowner's liability insurance from P&I Clubs	USD 89,100 (USD 17,820 for each child below 18, but four children at most)	Until the seafarers is recovered or the degree of permanent disability has been assessed by the company designated physician, but cannot exceed two years	Basic wages. Until the termination of medical treatment, but cannot exceed 2 years.	1) dental, optical appliances; 2) medical treatment for sexual disease, fighting, excessive consumption of alcohol and misuse of drugs

TD (TW-X2) Foreign (Asian)	The duration of employment.	Shipowner's liability insurance from P&I Clubs	USD 159,914 (Top 4) USD 127,932 (Other officers and engineers) USD 95,949 (Cadets and ratings)	Until the seafarers is recovered or the degree of permanent disability has been assessed, but cannot exceed one year.	Basic wages Until the termination of medical treatment, but cannot exceed 90 days.	(Data not available)
UE (UK-Z) Foreign shipowner (European)	Employment service period on board and traveling period from/to the gathering place and the vessel	Shipowner's liability insurance from P&I Clubs	USD 80,000 (Officers) USD 60,000 (ratings) Plus USD 5000 for a child up to the age of 21, but with the limit of three children.	Until the seafarers is declared fit for duties or permanent disability is declared and assessed	Basic wages. No more than 120 days from the date of sign-off the vessel.	(Data not available)
TF (TW-S) Foreign shipowner (Asian) *ITF-CBA	The duration of employment. 'Accident whilst in the employment of the company regardless of fault, including accidents occurring while traveling to or from the ship'	The shipowner should pay contributions to the ITF Seafarers' Assistance, Welfare and Protection fund. And Shipowner's liability insurance from reputable P&I Clubs	USD 159,914 (Senior Officers) USD 127,932 (Junior Officers) USD 93,154 (Ratings) Plus USD 19,190 To each dependent child (maximum 4 under the age of 18)	As long as such attention is required or until the seafarer is repatriated. For sickness, up to 130 days, company need to pay the medical attention after repatriation; for injury, as long as medical attention is required or permanent disability is determined.	The basic wages shall be paid until the injured seafarers has been cured or until a medical determination is made concerning permanent disability.	Permanent disability due to wilful acts

Table 14: The comparison of different ocean-going shipowners' insurance compensation schemes for seafarers' workplace injuries
Data Source: The crew management contracts collected by the author.

Different attitudes between state-owned and non-state-owned shipping companies

The interviews with managers reveal that insurance schemes provide shipowners with different levels of compensation for seafarers (see Table 13). A major difference between state-owned company CA and other companies can be identified, which is that CA requires all seafarers serving on their vessels to be covered by Work-related Injury Insurance. Although Company CA has subcontracted the crew management to its sibling company, and no longer directly employs seafarers, Company CA still requires their sibling manning company to arrange social security insurance for the seafarers working on their ships. In addition, the liability insurance limit is CNY 1,000,000 (USD 161,600), which is also the highest compared to all the other shipping companies' schemes as far as this research is concerned. According to the chief manager of CA's claim handling department, the current insurance scheme has recently been reformed. In this reform, not only was the liability insurance limit increased but also the changes also ensure that seafarers are protected by Work-related Injury Insurance according to the labour law. Her explanation for why the company decided to improve their financial risk management for seafarers' workplace casualties is:

As a state-owned company, we have to consider maintaining social stability as our political tasks. The previous CNY 200,000 standard for seafarers' death accidents is far from enough today. Victims' families will not accept that anymore, so we proposed a plan to increase our liability insurance limit to CNY 1,000,000 and then this standard was approved by our headquarters as a standard for all shipping companies in our group. About eight years ago, we hired a seafarer. His head was hit on board in Japan. As a result, he was reduced to a persistent vegetative state. He was not covered by social insurance and we could not find out which agency should be responsible for him. He was only 23. What a loss for his family! We had to take all the compensation liability eventually. Since then, we have been very strict about social security coverage of our seafarers

and will never accept any agency workers without social insurance, because none of us is able to take this huge liability for victims. Furthermore, once the headquarters start to investigate the accident, they would find we have not arranged the social insurance for seafarers. There would be an internal disciplinary punishment awaiting us. (Ref: Shipowner_CA)

According to this manager's account, the two major concerns for her company are 1) a political task for state-owned enterprise to maintain social stability; 2) to avoid their liabilities and potential disciplinary punishment because of breaking the *Work-related Injury Insurance Regulation*. In addition, safety production and social security law compliance are two crucial indices to evaluate state-owned enterprises' performance by the government⁵⁹. For non-state owned shipowners, there is not as much political obligation as State-owned enterprise in China, so their attitudes towards social insurance are different. A manager of a private shipping company explained their different concerns:

We are different from state-owned companies. They have to control the rate of accidents and claims and follow the law as a fine example because that is their political task. We do not need to worry about this kind of political task too much. We can report all of our seafarers' casualty claims to P&I Clubs. However, we cannot have Work-related Injury Insurance arranged for all seafarers due to the high cost, considering our profit margin is already very limited. As you know, the shipping economy has not recovered, our business is very difficult. To maintain our manning company's license, so we have to arrange this Insurance for 100 of our seafarers. But even for these 100 seafarers, we cannot pay the premium according to their wage as law required. We arrange the lowest social insurance premium for them, about 60% of the local average income. (Ref: Shipowner_SDH)

⁵⁹ Here refers to the State-owned Assets Supervision and Administration Commission and the Ministry of Human Resources and Social Security

According to this account, this private shipowner mainly relies on P&I Club liability insurance as a pre-accident financial risk management measure, and declines to arrange adequate Work-related Injury Insurance due to the cost. According to the two different accounts above, it can be found that the state-owned company's financial risk management considers political ramifications more, whereas the greater concern of the non-state owned company is about their costs and their motivation for arranging seafarers' insurance is mainly to maintain their license.

The challenges of enforcing different shipowners' compensation standards

For managers on behalf of shipowners, compensation standards established "pre-accident" should help their crew managers to settle claims with seafarers efficiently with fewer disputes. This can work well in some shipping companies, for example, Company CA. A crew manager on behalf of Company CA explains how this definite compensation standard helps his claim management work:

If a seafarer refuses our compensation offer. We could show him the company rules, and explain to him: "It is not necessary for me to cheat you, and I do not need to pay the money myself." If we did not have these internal standards, I would really worry how to settle these claims and it would be extremely hard to persuade seafarers to accept our compensation offer since they might not trust us. (Ref: Ship management CA)

For Company CA, with a large state-owned fleet, to enforce a definite compensation standard can be efficient and effective. However, for the crew managers in charge of Chinese seafarers working for different foreign shipowners, to enforce their shipowners' compensation standards can be challenging. According to the Table 13, foreign shipowners have different internal compensation standards. The insurance limits range from USD 60,000 to USD 159,914. The sick payment periods vary from 90 days to two years. The treatment period limits vary from one year, two years or until the

accidental injury is cured or a medical determination is made concerning permanent disability degree. Unlike the other four companies, the Company TF has not limited the medical treatment period for seafarers' accidental injuries, this is possibly because the Company TF applies an International Transport Workers Federation Collective Agreement for Chinese seafarers, while the other four companies have not incorporated the ITF version completely into their employment agreements with their Chinese seafarers.

Foreign shipowners need their crew agencies to execute their compensation standards with their Chinese seafarers. A manning company can have cooperation with several overseas shipping companies. To negotiate with their seafarers with different shipowners' standards can be problematic. A crew manager on behalf of Companies TC, TD and UE explains the problems of enforcing different shipowners' compensation standards to the seafarers:

This European company UE only provides USD 60,000 insurance limit for ratings, much lower than the two Asian companies TC and TE. We sent our seafarers to different shipowners, but they usually have different compensation standards. These different standards make it very hard for us to negotiate with our seafarers. Company TE only give 90 days of basic wages as sick pay, while TC can give at most two years. We have a seafarer now who feel the 90 days' sick pay limit is unfair because this is much lower than some other injured seafarers' welfare. He still refuses to sign the Receipt and Release with the Shipowner TE. Even though we have shown the crew management contract to him and informed him of all the information. However, he still cannot accept this standard. As a crew manager, I wish the compensation could be higher for the seafarer but the shipowner wouldn't agree. (Ref: Manning Company XH)

This manager's account indicates that it is difficult to enforce different shipowners' compensation standards, since their seafarers can compare different standards with their colleagues and reject the TE's lower standard.

Shipowners' insurance compensation schemes and Chinese legal compensation standards

It is a common strategy to employ P&I Clubs' liability insurance to cover shipowners' liabilities arising from seafarers' workplace injuries. Nevertheless, unlike the compulsory employers' liability insurance in some countries, such as the UK (Tyler, 2007), this liability insurance is not compulsory in China, so it is possible for shipowners not to adopt it. In this situation, without insurance cover, shipowners' compensation capability and motivation may be decreased and making it more difficult for seafarers to claim compensation.

Ocean shipping companies who enter their vessels into P&I clubs, can choose their compensation schemes for seafarers differently. Whether the compensation scheme shipowners have arranged pre-accident covers their highest legal liabilities to seafarers in China has become a crucial question. In this research, state-owned company CA had the highest insurance compensation amount among the eight companies, CNY 1,000,000 plus Work-related Injury Insurance. Among the other seven non-state owned companies, the TF Company had the highest insured amount, USD159,914 (CNY 987,253.07) for senior officers, according to the ITF version collective bargaining agreement. Company SDX had the lowest insurance limit, USD 30,000 (CNY 185,209.5), among the eight companies. In non-state owned companies, insurance compensation ranged from USD 30,000 (CNY 185,209.5) to USD 159,914 (CNY 987,253.07).

According to Chinese *Work-related Injury Insurance Regulation*, one-off domestic work-related death compensation (non-fault based) was CNY 539,100 (USD 87,374.4) in 2013 (See Chapter 4). According to 2003 Judicial Interpretation on Personal Injuries and Death, which is now regulating foreign-related seafarers' casualties, the highest death compensation can only be CNY 858,88060 (USD 139,202.6). According to Chinese law, shipowners'

⁶⁰ This is calculated according to Dongguan Per Capita Disposable Income, which ranks top in 2015.

compensation liability can be no less than USD 87,374.4 and for foreign shipowners, compensation liabilities can be even higher. Therefore, for Companies SDX and UE, their insurance coverage as stipulated in their crew management contracts is not sufficient to cover their liabilities in China. For Companies, TC, TD and SB, their contractual compensation schemes may not be able to cover their liabilities in some cases, if other expenses occur, including child supports, medical fee and funeral fee. In addition, TD Company's limit of sick pay period to 90 days is shorter than the Chinese statutory sick pay period for work-related injuries: 12 months to 24 months.

Consequently, some shipowners' P&I insurance scheme cover is lower than Chinese statutory compensation standards, so they cannot cover their liabilities to workplace injury victims comprehensively. In some cases, P&I Clubs promise a second level insurance coverage, i.e. the higher shipowners' liabilities arising from proper law rather than contractual crew compensation schemes. To break the primary contractual compensation schemes, the shipowners need to prove they are "legally bound to settle according to the law" (COE_B: a shipowner's certificate of entry issued by his P&I Club). In this case, in order to bind shipowners to settle according to the law, the victim seafarer usually needs to initiate formal legal negotiation with a maritime lawyer's help or initiate maritime litigation, and usually this is time consuming and costly.

5.1.2 Coastal vessels' financial risk management: liability insurance, personal life insurance and affiliation

According to Chinese *Labour Contract Law* (2008), all shipping enterprises should employ their seafarers with formal labour contracts and contribute to their social security insurance. If a shipping enterprise recruits seafarers through a crew agency, then it becomes the agency's liability to arrange social insurance for seafarers. If the crew agency fails to do so and workplace accidents occur, then shipping enterprises and crew agencies should take joint compensation liability for the victims. However, the legislative social security coverage for coastal seafarers cannot be fulfilled completely in practice. In many seafarers claims for occupational casualties, according to the maritime

courts' investigation, the victims are not covered by Work-related Injury Insurance (for example, maritime judgements: (2014) GHFCZ No. 819⁶¹, (2011) GHFCZ No. 480, (2008) GHFCZ No. 395 and (2008) GHFCZ No.457). Coastal shipowners' failure to arrange Work-related Injury Insurance has become a common trial issue by maritime courts (Ningbo Maritime Court, 2014). The Ningbo Maritime Court's Annual Judicial Report 2013 explains why seafarers' workplace injuries claims are often challenging for judicial trials:

The shipping market management is in disorder, and the crew bear greater risk. Regular shipping companies, to avoid the costs of training, pension, Work-related Injury Insurance, housing, are reluctant to employ long-term crew and turn to on-call precarious seafarers. [...] Correspondingly, the seafarers' security is not adequate, the regulation of crew agency is not satisfactory, and the seafarers' recruitment market is chaotic. Once the crew labour dispute occurs, crew agency often argues that they are intermediaries; there is no labour contract between them and their crew. (Ningbo Maritime Court, 2014)

According to the findings from judicial practice, this research finds that coastal shipping companies' financial risk management practice can deviate from employers' legal obligations. The question of how the coastal shipping companies manage their risks of crew workplace casualties needs to be further explored in the context of the Chinese shipping market.

(1) Liability insurance

There is a clear difference in the crew management contracts for ocean-going vessels and coastal vessels. Shipowners adopt different insurance strategies to control risks arising from workplace accidents, with owners of coastal vessels opting for commercial insurance rather than the P&I Club liability

⁶¹ <http://www.ccmt.org.cn/showws.php?id=9233>

cover that ocean going vessel owners select. For example, a clause in a Crew Management Contract for ocean going vessels provides:

The PRINCIPAL shall arrange for full Protection and Indemnity Coverage for all the SEAFARERS employed under this Agreement with a reputable P&I Club, particularly in regard to the payment of compensation for death or personal injury ...whilst serving on board or traveling from/to the gathering place and the vessel. (CMC_EMCC: Crew Management Contract for Ocean-going vessels)

In contrast, a crew management contract for coastal vessels stipulates:

Whilst the seafarers serve on board, the Party A (the shipping company) shall purchase commercial insurance for the seafarers supplied by Party B (the manning company), and the insurance coverage in regard to death compensation shall not be lower than CNY 550,000. (Ref: CMC_THS: Crew management contract for coastal vessels)

Joining IG P&I Clubs' mutual insurance scheme is not common for coastal shipping companies in the maritime industry (North of England P&I Association, 2012). One reason is the marine risks in coastal waters are usually lower than in deep-sea areas. For example, in the coastal area, piracy is not a concern for shipowners in China. Thus, IG P&I Clubs' comprehensive and expensive insurance coverage may not be appropriate for Chinese coastal vessels and they can choose fixed-rate commercial insurance to cover their liabilities arising from ship operation, including crew casualties. They also prefer commercial insurance to contributions to the Work-related Injury Insurance. A maritime lawyer on behalf of the coastal shipowner explains the reason why they decide to adopt liability insurance rather than Work-related Injury Insurance:

Coastal shipowners usually do not have the Work-related Injury Insurance for their seafarers. This is because to purchase it is more complicated than commercial liability insurance for the shipowner

and troublesome for seafarers as well. Seafarers are flexible and temporary workers and they may work for one ship for several months and then jump to another ship and another company. (Ref: Maritime Lawyer_GZ_L)

Another coastal shipping manager also verifies this arrangement:

We would like to arrange commercial liability insurance for the vessels under our management, because the liability insurance can reduce the risks for shipowners and us. For the private shipowners, usually there is no Work-related Injury Insurance for their seafarers and we usually think liability insurance will be enough to cover shipowners' compensation liabilities. (Ref: Ship Management Com_NJ_Y)

These accounts reveal the phenomenon that some coastal shipping companies replace the compulsory Work-related Injury Insurance with commercial liability insurance. However, such liability insurance is generally insufficient in terms of their potential liability for compensation arising from crew casualties? Unlike P&I Clubs' mutual insurance schemes, which have a second layer to cover shipowners' actual legal liabilities, commercial insurance coverage is capped with a one-layer limit, such as CNY 300,000 ~ CNY 550,000 (Ref: Insurance Contract_FJ, Insurance Contract_CS), which is lower than Chinese legal workplace death compensation standards (see Chapter 4). If a shipowner's negligence is deemed to cause crew casualties, then tort liability is constituted, and commercial insurance cannot cover the shipowners' liabilities comprehensively (see Chapter 4).

Commercial insurance against seafarers' injuries claims is not compulsory for coastal shipowners either by law or by commercial customs⁶². Therefore, to minimise the cost, some shipowners may choose not to arrange such

⁶² Although P&I Club liability insurance is not compulsory by law either, due to the strong awareness of maritime hazards for ocean-going vessels in the global shipping market, most prudent shipowners follow the commercial custom to obtain membership from P&I Clubs.

insurance. They may arrange low insurance cover to minimise the cost of premiums. As one coastal ship manager explained:

We usually help the private shipowners to arrange their hull and liability insurance. But they are not willing to pay the premium and would like save every penny. In one case, we recommended to them the insurance amount of CNY 600,000, but they reduced it to CNY 400,000. Eventually, the family of the victim would not accept it and as management company, we offered an extra CNY 250,000 to settle the claim. (SMC_NJ_Y)

A private shipowner SD_SO_X explains his unwillingness to purchase insurance as follows:

'we don't want to have the insurance anymore. The insurance company is not reliable and is always evading their compensation liabilities. They asked us to provide a lot of evidence, which was troublesome for us. I am one of the shipowners and the captain. I think that serious marine accidents are rare. Property loss occurs more frequently than personal injuries, so we do not worry too much about workplace injuries. The so-called social security insurance is usually useless for us. We are working at sea, so we cannot enjoy those benefits like those people staying at home.' (SD_SO_X)

According to the two accounts above of the shipping manager and the private shipowner, in the Chinese coastal shipping industry, in some cases, the private shipowners do not recognise the necessity of liability insurance and may reserve the risk on their own. Without insurance cover, the loss must be borne either by shipowners or victims seafarers, which exacerbates conflicts between shipowners and seafarers.

(2) Group life insurance

Coastal shipowners may purchase group personal life insurance instead of liability insurance to cover their compensation liabilities for seafarers' injuries (Ref: Manning Company_NJ_D, Maritime Lawyer_GZ_L).

According to Chinese law, this insurance cannot replace liability insurance and should be regarded as seafarers' extra welfare rather than the coverage of shipowners' liability, nevertheless, group life insurance is still widely adopted by coastal shipowners aiming to avoid their compensation liabilities. There is a concern with life insurance as a financial risk management measure. This concern relates to the need for seafarers to be personally named in order to be covered by the insurance. Therefore, in order to provide proper insurance coverage for all seafarers on duty, the shipowner must update the information held about the crew on board frequently; any delay can cause the insurance contract to be invalid. Taking a maritime casualty in 2013 as an example, 12 seafarers were killed when a coastal vessel sank. The shipowner had purchased personal life insurance for his 12 seafarers, but he failed to update the information relates to the seven seafarers who had recently signed on. As a consequence, the insurance company refused to pay the death compensation for these seven seafarers⁶³. The shipowner remained the direct legally liable party for the seafarers' death compensation even though the insurance company refused to make the payment. However, in this case, the shipowner's attitude towards compensation had become negative in the negotiation after realizing that the insurance company would not compensate for the death of his seven seafarers. As reported by a claimant, after communicating with the insurance company, the shipowner withdrew from the compensation negotiation with the victims' families (Ref: SF_HNNY_Y). This case illustrates that once the insurance company refuses to cover seafarers, their families may struggle to secure alternative compensation.

This improper arrangement may be caused by shipowners' misunderstanding of the two types of insurance. Coastal shipowners usually are not experts in marine insurance. The shipowner in the case above reported to the media:

⁶³http://www.yidianzixun.com/news_d965361fe18bd1f38a903a5340367037

When I purchased the insurance, the insurance company promised they would compensate me if an accident occurred, but never told me that it was necessary to update the crew list.⁶⁴

In the coastal shipping industry, such misunderstandings are common problem. A maritime lawyer who acted on behalf of Chinese coastal shipowners explains this problem as following:

Most of my clients cannot understand why the personal life insurance cannot cover their liabilities. They thought if they had not purchased the group life insurance for the seafarers, then the seafarer could not obtain the insurance compensation, so the insurance compensation should contradict their liabilities. However, according to the law, life and health is invaluable so there is no fixed financial insurance value limit for the death compensation. The shipowners misunderstood the nature of personal insurance and wrongly regarded it as liability insurance. If they want to cover their liabilities to crew claims, commercial liability insurance is the right type of insurance' (Ref: Maritime Lawyer_GZ_L).

Shipowners' misunderstanding of two types of insurance will cause not only legal risks and financial pressures for themselves but also increase the difficulty of negotiation for the victims since their claims are not secured by any kind of insurance.

(3) Coastal vessel's affiliation

Private shipping capital has contributed significantly to the increase in Chinese domestic fleet (See 4.1). However, this increase causes challenges for maritime safety administration. In 2001, the Ministry of Transport announced the *Notice Regarding Regulating and Standardising the Operation and Management of Ships Owned by Private Individuals (2001)*. This notice points out:

⁶⁴ http://www.ship.sh/news_detail.php?nid=11168

Due to the limited capability of private shipowners, and the lack of proper safety management measures, private transport vessels, in particular passenger ships and liquid chemical carriers, have become significant safety hazards. Meanwhile, to escape administration, private shipowners adopt the ‘affiliation’ management model, which causes obscurities in legal liabilities and unfair competition in the shipping market ⁶⁵.

In the shipping market, the reputation of private-owned ships is also a concern for suppliers of crews. A state-owned manning company manager commented on individual private coastal shipowners as follows:

We would never supply our seafarers to private coastal trade vessels. These shipowners, are not dedicated to safety management and our seafarers cannot obtain adequate insurance protection from this kind of vessels. One captain told me that he soon resigned from a private company, because there was no safety equipment on board at all. He learned the insurance for workplace death was only CNY 60,000 and he would not risk his life on these private-owned coastal vessels (Ref: Manning Company_QZ_S)

In judicial practice, coastal vessel affiliations have become a considerable challenge in ascertaining legal liabilities and executing effective judgements (Shanghai Maritime Court, 2011).

In the *Notice Regarding Regulating and Standardising the Operation and Management of Ships Owned by Private Individuals (2001)*, the Ministry of Transport requires that privately-owned vessels must entrust a licenced and qualified ship management company with the conduct of safety management on board. This ship management company must bear joint and several safety liability for the entrusted vessels. The purpose of this government measure is to require privately-owned vessels to operate under the effective safety

⁶⁵ http://www.moc.gov.cn/sj/shuiyij/shuiluysh_shyj/201412/t20141211_1741761.html

management of qualified shipping enterprises, in order to improve financial risk management. However, some management companies charge a management fee to private shipowners but do not conduct effective safety management supervision on affiliated vessels (Xu, 2013; Hu and Han, 2015). Although the Ministry of Transport and the People's Supreme Court require the management company and private shipowner to take joint liability in relation to safety accidents, management companies usually refuse to take this liability. The common defences by management companies in maritime court hearings are as follows: (1) the defendant is only the affiliated ship management company, so the private shipowners should be the only responsible parties; (2) according to the affiliation management agreement between the company and shipowners, the management company should not have any liability to injured/killed seafarers (Judgements (2006) YNMCHZ No.551, (2011) GHFCZ No. 287). Interviewees from ship management companies explained how it was improper for them to be regarded as liable in such situations, one explained that:

The private shipowner affiliated his vessel to our company, and we help him to arrange relevant insurance and help him to establish safety management according to National Safety Management System. But the daily management is in the control of the private shipowner. He recruited his seafarers on his own. We do not know whether he signed labour contracts with his seafarers or not. The sinking of the vessel was caused by the shipowner's order of overloading of sand, not caused by our fault. (Ref: SMC_NJ_Y)

These duplicate relationships between management companies and private shipowners have caused liability with regard to crew casualties to be controversial. If a workplace injury accident occurs on this type of vessel, the two parties are not willing to shoulder their responsibilities to victims. On one hand, private individual shipowner's compensation capability is limited, because the vessel involved is usually the only executable property, and it may be seriously damaged in the marine casualty (Shanghai Maritime Court, 2011). In some cases, private shipowners were themselves killed in the

marine casualty and were therefore not in a position to pay compensation. Obtaining compensation from deceased shipowners' beneficiaries is difficult, because the inherited property may not cover the shipowners' liabilities sufficiently (Zhang, 2008). On the other hand, management companies will reject any responsibility in court hearings because they were not involved with the ship's actual operation (Judgements: (2006)YNMCHZ No.551, (2011) GHFCZ No. 287) . Claims for damages by seafarers working on this type of ship can therefore be extremely difficult in both negotiation and litigation.

To sum up, insurance is a major financial risk management measure for shipping companies with regard to seafarer casualties. The contribution of insurance has improved shipowners' compensation capability. However, examination of the different financial risk management practices of ocean-going vessels and coastal vessels reveals that some problems still remain, including inadequate insurance coverage and improper insurance selection. In addition, in the Chinese coastal shipping market, the negative impact of privatisation reform cannot be overlooked. The affiliated management practices relating to privately-owned coastal vessels also increases the difficulty of securing compensation for seafarers in maritime courts.

5.1.3 The financial risk management of manning companies before accidents: Work-related Injury Insurance and personal life insurance

(1) Increasing risks encountered by manning companies

Unlike shipping companies, whose legal liabilities to seafarers are direct and obvious, manning companies' liabilities are more opaque and controversial as discussed in Chapter 4. When manning companies recruit seafarers on behalf of shipowners, then shipowners' insurance arrangements should cover their seafarers. In such cases, it should not be necessary for manning companies to have independent financial risk management strategies. In this research, most of the interviewees from manning companies held this opinion and insisted that they did not have any independent liability in the event of seafarer injury/death. However, the cost of living in China has been

increasing significantly, and more regulatory obligations have therefore been imposed on crew agency/manning companies in order to protect Chinese seafarers. For example, manning companies supplying seafarers on foreign vessels, according to the *Rules of Dispatching Chinese Seafarers to Foreign Vessels (2011)*, should formulate formal labour contract relationships with at least 100 seafarers and ensure that all seafarers supplied to foreign vessels are covered by social security insurance. In addition, they need to arrange extra commercial life insurance for the seafarers they supply abroad. According to *Labour Contract Law*, if crew agencies supplying seafarers on domestic vessels fail to contribute to seafarers' social security schemes, once workplace accidents occur, they must accept joint liability with shipowners. Because of this regulatory reform, crew agencies and manning companies now confront higher legal liabilities than before.

According to interviewees from manning companies, societal and economic change have considerably increased the needs of victims following an accident. The cost of living in urban areas has risen and created huge bubbles in the residential real estate market. However, increases in shipowners' liability insurance lags behind these rises. All manager interviewees described the pressure they are under due to the tremendous growth of living cost in China today. For example, a manager complained about the limitation of shipowners' liability insurance:

One of our shipowners only provides USD 60,000 at most for injury and death compensation, which is far from enough to persuade any victim's family to accept this amount. If the shipowner is unwilling to contribute more, the situation will be very embarrassing, because we have to cover the gap to fulfil the victims' claim. (Ref: MC_XM_L)

This concern indicates there is a gap between the shipowners' liability and the victim's increasing need. This gap presents manning companies with more pressure and greater risks from seafarers' claims. From the manning companies' perspective, another significant factor that increases victims' expectations is the increasing compensation standards in relation to public

safety accidents (e.g. Wenzhou Bullet Train Accident (2011) and Xiamen Bus Rapid Transit fire accident (2011)). In such accidents, compensation amounts paid to the surviving families can be as high as CNY 1,000,000. Therefore, victims' expectations from death and disability compensation have increased. However, the foreign shipowners' liability insurance cap is usually below this compensation amount, roughly between USD 60,000 (CNY 372,456) to USD 140,000 (CNY875, 063)⁶⁶. Thus, the compensation scheme provided by overseas shipowners cannot fulfil claimants' expectations, and victims regard the manning companies as another source of compensation. As said by another manning manager:

The seafarers cannot fight with the shipowner abroad, so they will come to fight with us. The shipowners' compensation standard is lower than that for the victims of Wenzhou Bullet Train Accident (2011) and Xiamen Bus Rapid Transit fire accident. The relatives of the victim felt it was unfair for them, so they kept fighting with us. They were very troublesome. To cater for them during the negotiation was very costly. Now it is hard for us to recruit a seafarer, and once an accident happens, it will cause us endless costs and trouble. (Ref: MC_XM_H)

Manning companies can still term themselves middle men instead of employers and argue with workplace accident victims that they should not be responsible for compensation. However, in reality, manning companies are on the frontline in negotiating compensation with victims. The accusation of irresponsibility by victims can result in confrontations and even attacks. The manning manager MC_XM_H described the negotiation situation like this:

Sometimes the relatives of seafarers can be mad at us, and they would never listen to any of our explanations. They may gather all their relatives, friends and fellows to occupy our office and even smash our computers and furniture. It has become more and more challenging

⁶⁶ Data source: crew management contracts collected in the fieldwork

for us to settle disputes, since the cost of living has risen so dramatically in recent years. Seafarers are more unwilling to accept solely shipowners' compensation schemes, gradually claiming more compensation from us, and therefore we are now encountering more liabilities. This kind of business has now become so difficult. (Ref: MC_XM_H)

Manning companies face direct pressures from the families of victims, and negotiations can get out of control when victims' families regard the compensation amount which is offered as partial or inadequate. Desperate and wrathful families may even resort to violent attacks on the property or staff of the manning company (see Chapter 6). As a result, manning companies are exposed to increasing risks arising from the disputes, especially with families of deceased seafarers.

In addition, the promulgation of the *Labour Contract Law (2008)* has increased Chinese labour's awareness of law and workers' rights. New graduates from maritime universities or navigation colleges have a stronger belief that their rights should be protected and they are more entitled to social insurance than other, land-based, workers (Ref: MC_QD_Y and MC_NJ_Z). Some of them have submitted arbitration applications to the local Labour Arbitration Committee to claim their rights in cases when the manning company refuses to contribute to their social insurance schemes (including Work-related Injury Insurance). This has created stress for manning companies. As one manager explained:

It is no longer news that we are sued at the Labour Arbitration Committee. The awareness of legal rights of seafarers, especially university graduates, has increased. As an enterprise, we have encountered an increasing amount of pressure from seafarers' requirement for social security." (MC_QD_Y).

With seafarers' growing awareness of rights, manning companies have had to reconsider their legal liabilities.

Therefore, the gap between shipowners' liability insurance and seafarers' growing financial need in mainland China, the increasing obligations imposed by the regulations, and the growing legal awareness of workers, have made manning companies realise the importance of taking independent financial risk control measures.

(2) Work-related Injury Insurance and life insurance

To control the aforementioned increasing risks, Chinese manning companies, in particular those who supply seafarers for foreign shipowners, have begun to adopt relevant financial risk management measures before workplace accidents. According to the interviewed managers' accounts, they have various insurance schemes for different types of seafarers. As the manager MC_QD_Y said:

We have purchased social insurance for university graduates who have formulated a long term labour contract relationship with us. For the freelancing seafarers sent to foreign vessels through our company, we will purchase a temporary life insurance policy. (MC_QD_Y)

The insurance coverage that is arranged is different for different types of seafarers. The manager MC_QD_Y added:

We have insurance coverage of CNY 350,000 for seafarers formally employed by us, considering they already have social insurance. For the freelancing seafarers, considering they don't have social security we have coverage of CNY 550,000. If the worst death accident happens, together with shipowners' P&I insurance coverage, we can have over CNY 1,000,000 for victims' families and this amount is acceptable in China so far.

Another manager MC_XM_L explained why they have different insurance arrangements for different ranks of seafarers as follow:

“For officers and engineers, they already have social security protection through our company, so we arrange the insurance

coverage of CNY 350,000 for them. For ratings who do not have social security protection, we arrange CNY 550,000 for them. In addition, the shipowners' P&I insurance schemes usually compensate officers higher than ratings, so we have to prove a higher life insurance coverage for our ratings to make the compensation offer much more acceptable to the rating victims and their families. We are trying to accumulate money from different sources to offer victims a more acceptable compensation amount, because shipowners' P&I club insurance coverage is no longer enough, especially in the case of workplace death." (MC_XM_L)

The two quotes above indicate that the manning companies apply social security insurance and commercial life insurance to their seafarers employed on a long-term basis, but for flexible/precarious seafarers, the companies apply commercial life insurance only. Nevertheless, to reduce the inequality between the employed seafarers and freelancing seafarers, especially in the case of death compensation, the manning companies insure freelancing seafarers and ratings at a higher level.

The combination of Work-related Injury Insurance and commercial life insurance is a compromise between governments, manning companies and seafarers. The compulsory social security insurance, as discussed in Chapter 4, has confronted strong resistance from manning companies because it increases the human resource cost. In addition, the bureaucratic atmosphere of the public administration institution makes both manning companies and seafarers frustrated and disappointed when they need to make a compensation claim. However, without this coverage of compulsory social insurance, manning companies are exposed to serious legal risks and pressures from the claimants. Therefore, to avoid a significant increase in the human resource cost and to provide higher compensation for seafarers, commercial life

insurance has become a compromise replacement for compulsory Work-related Injury Insurance⁶⁷.

(3) Evaluation of manning companies legal risk management strategies

As discussed above, manning companies' pre-accident legal risk management is diversified in the complicated social and legal environment. Applying work-related injury insurance and/or commercial life insurance, in addition to shipowners' P&I clubs' liability insurance, the manning company can provide another source of compensation for their seafarers after the accident. However, these financial risk management measures still have some weaknesses.

First, the coverage rate of Work-related Injury Insurance is insufficient. Due to the resistance from manning companies (see Chapter 4), the regulatory effort to make social security for seafarers compulsory turns out to be a compromise in practice, since manning companies are still able to categorise their seafarers as "on-call" workers. Many manning companies still regard themselves as the "middle men" for shipping companies. They insist that they have only signed contracts with seafarers on behalf of shipping companies rather than formed employment relationships with the seafarers. The manning companies believe the workplace for seafarers is not under their control, so they should not be liable for the purchase of social insurance for seafarers. The Ministry of Transport and Communication requires that manning companies must form employment relationships with at least 100 seafarers. Compared with the actual amount of seafarers, the number of seafarers who can benefit from this regulation is limited. Most of them are high ranking

⁶⁷ Taking Nanjing as an example, to cover a seafarer with Work-related Injury Insurance, the manning company need to pay at least CNY 851/month to the social security scheme (including pension, medical care, work-related injury, unemployment and maternity). But CNY 26/month is attributed to the Work-related Injury Insurance. In contrast, to cover a seafarer with commercial life insurance (CNY 500,000), the manning company only need to pay CNY 37.5/month.

officers and engineers, but ratings cannot usually enjoy these benefits. As a manager from a foreign-related manning company pointed out:

It is not financially realistic for us to formally employ all seafarers. It would dramatically increase our human resource cost and the employers' responsibilities are too strict. What we can do now is to just fulfil the minimum regulatory requirement: 100 employed seafarers at most. (Ref: MC_SH_W)

Although the government makes regulatory efforts to standardize seafarers' employment forms and regulates manning companies as domestic employers for seafarers, the effects of their efforts are insufficient in the face of companies' financial concerns.

Secondly, personal life insurance cannot be regarded as reliable security for victims. Manning companies have the decision-making power on whether to contribute to the life insurance, the insurance amount covered and the insurance period. However, seafarers cannot usually participate in this process. Since the aim of the insurance is to help the manning company to settle the compensation disputes more easily (Ref: MC_XM_L), manning companies can choose insurance schemes voluntarily, and they have no civil liability in law if they fail to arrange the insurance. In addition, manning companies can shift the cost of this insurance to their seafarers by requiring them to contribute to the insurance scheme. In this sense, the fact is that the seafarers contribute to their own insurance, but the manning company can take advantage of the insurance to cover their liabilities. Furthermore, seafarers cannot claim insurance compensation directly from the insurer because they do not have their own individual policies, and all they can do is rely on manning companies' assistance in compensation claims. If the manning companies refuse to assist seafarers to claim this compensation, the seafarers have no evidence at hand to prove the existence of any cover relating to them.

Thirdly, there is no punishment for manning companies if they fail to purchase commercial insurance for seafarers. Unlike public compulsory social insurance, commercial insurance is a profitable business. This means that if the insurance companies identify that seafarers' accident rates are higher than estimated, they can either increase the premium or refuse to renew insurance contracts. Therefore, whether commercial insurance can provide workplace accident victims with timely and stable compensation remains questionable.

To sum up, the manning company's insurance arrangement provides another source of compensation for seafarers, but the limited coverage of Work-related Injury Insurance, the unpredictability of life insurance for seafarers, and the lack of government supervision over manning companies' behaviour, altogether call the effects of manning companies' financial risk management into question.

5.2 Post-accident management of seafarers' casualties/claims

Managing crew casualties is challenging and costly for shipowners, especially because accidents can occur anywhere in the world, including in remote overseas ports or even on the high seas. In some regions of the world, medical treatment and resources may not be accessible or are limited so that the care for seafarers' injuries is unsatisfactory. Workplace accidents on Chinese coastal vessels are comparatively easy to manage, because in Chinese ports, medical treatment is much more accessible and seafarers have no communication difficulties in a Chinese hospital. However, for many Chinese seafarers working on ocean-going ships, the situation could be more complicated as language barriers can make communication with healthcare personnel attending them difficult.

This section will examine the management of workplace accidents and the management of claims. The ocean-going shipping companies' management process is selected as an example to explain shipowners' common management strategies. This is because the management process of ocean

shipping companies is more complex than that of coastal shipping companies. The discussion in this section considers management practices within ocean-going companies and then how this compares with practices in the coastal shipping sector. In analysing the different management practices, the discussion will highlight the nature and extent of additional harm suffered by seafarers and their dependents after an accident has occurred.

Once a workplace accident occurs to a Chinese seafarer, a prudent shipowner will usually inform their P&I Club immediately. Then the P&I Club will inform the nearest agent to assist the shipowner. This support normally includes arranging medical treatment and/or repatriation of the victim on behalf of the shipowner. After emergency medical treatment, if the seafarer is fit for a journey, the agent will repatriate the seafarer to China. In that case, the manning company will be informed to arrange further treatment for the seafarer after repatriation. Meanwhile, the personal injuries and death claims handling team of the P&I Club will be on standby to monitor the process and control treatment costs (see Figure 3).

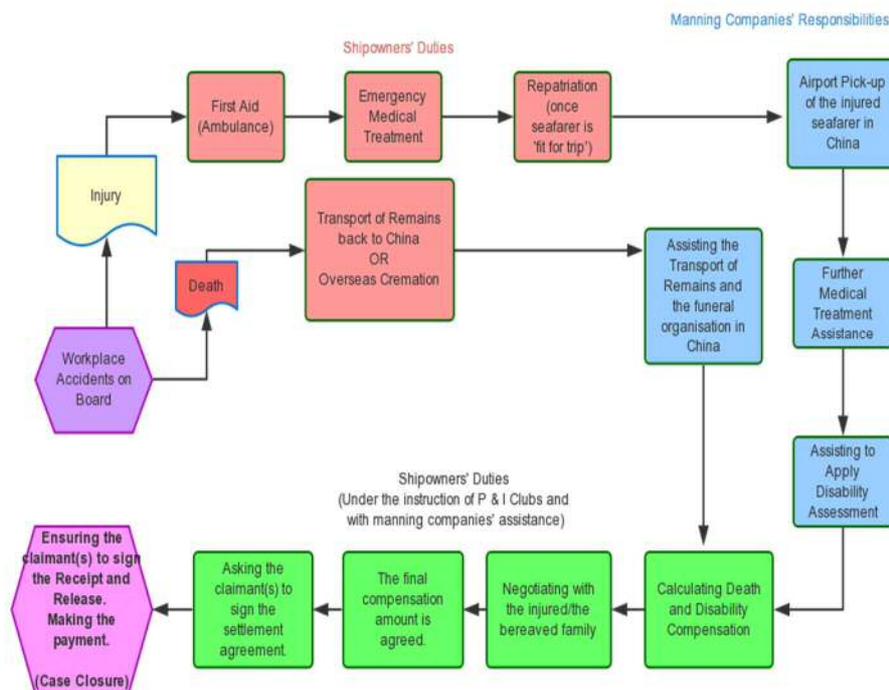


Figure 3: The management flow of workplace accidents at sea

In cases of injuries, first aid at sea, emergency treatment and repatriation are controlled by the shipping companies. As a principle, once the seafarer has been repatriated, the shipowner's responsibility pauses, and the manning companies start to arrange transport, medical treatment, and disability assessment (if necessary). Before repatriation, all the services needed for the injured seafarer should be arranged and paid for by shipowners and their agencies. After repatriation, manning companies, the Chinese P&I clubs' correspondence agents will be involved in following up seafarers' further medical treatment, to adjust the loss and compensation and eventually to settle the claim.

5.2.2 Managing the transport of remains after workplace fatalities

In the case of a seafarer's death, if the International Transport Workers Federation-International Bargaining Forum Collective Bargaining Agreement (ITF-IBF CBA) applies to the Chinese casualty, or where the shipowner has promised repatriation of the body in the crew management contract, the shipowner must transport the body to the seafarer's home at the families' request. Shipowners would pay the cost of transport and burial expenses (Ref: ITF-NCSU Collective Agreement 2012, EMC-Crew Management Contract). However, transport of the body is not always covered for all Chinese seafarers. For example, in the case of one Chinese state-owned shipping company, a "no body transport" policy applies:

The body of a seafarer should be cremated at the local port, and the company will not arrange bereaved families' international trips to attend the cremation ceremony. (Ref: QCS_Crew Management Rules)

Therefore, in terms of Chinese seafarers' death, the practice where shipowners deprive the seafarer's family of their human right to attend the cremation ceremony overseas may cause further psychological harm to the bereaved families (see 6.2.1).

According to crew managers in this study, the normal practice is to negotiate death compensation after the funeral (see Figure 3). One manning company's

chief manager XM_MC_S explained that the preference of many shipowners to enter into negotiations after the funeral is a result of a desire to prevent the cost implications arising from delays in transportation caused by seafarers' family:

Transport of the body can sometimes be a bargaining instrument. If the family is not satisfied with the compensation amount offered by the shipowner, they will refuse transport of the body, since they believe longer care of the body overseas may create extra cost for the shipowner.' (XM_MC_S)

However, the negotiation of death compensation claims can in fact begin prior to transport of the body and cremation. The bereaved wife SF_TJ_Z, whose husband worked for another shipowner, recounts: "*The manning company asked me to accept the compensation offer first. Otherwise, they would not transport my husband's body back.*" (SF_TJ_Z)

The contrast between the two accounts reveals that the process of handling seafarers' death and accident compensation claims is antagonistic. Transport of the body can have opposite implications in different negotiations; it can be used in the favour of the shipowner's party or of seafarers' families. However, for the bereaved family, it is often a desperate choice to refuse transport of the body or cremation. Another bereaved seafarer's wife SF_NJ_C explained that she used the refusal of cremation for her deceased husband to ask for more compensation in the interest of their daughter's welfare:

It sounds like I was brutal when I rejected the company's proposal to cremate my husband as soon as possible. But at that moment, thinking of the unsatisfactory compensation amount, thinking of the future life of my 5-year-old daughter, I had to fight with the company and that is the only way that I could put pressure on the company. My father advised me that if I gave up fighting for a higher compensation or just forgave the company, I would put the future of my daughter at a great financial risk." (SF_NJ_C)

In the case of a seafarers' death, cremation and the complexity of transporting the remains is a challenge for both the seafarer's family and their employer. Due to the different concerns of the different parties, the transport and cremation of the body can have complicated implications in the claims management process.

5.2.3 Management of medical treatment and compensation claims after seafarers' repatriation

Once an injured seafarer has been repatriated, manning companies and P&I Clubs' agents will help to arrange further medical treatment for them and consider any compensation claim arising from the accident. After the period of medical treatment has elapsed, the seafarer may be declared to have recovered or to be permanently disabled.

The role of P&I Clubs through their claims handlers is to assist the shipowner in determining their liability (amount payable) arising from the accident. Based on their investigation, claims handlers may offer a compensation amount to the injured seafarer according to the receipts submitted by the seafarer through their manning company. Claims for medical expenses and towards the cost of transportation will be reimbursed according to any receipts and invoices presented. The sick pay and disability compensation amount is usually calculated according to the seafarers' employment contract with the shipowner, the crew management contract between the manning company and shipowner and Chinese law. If the seafarer disagrees with the compensation offered, then the claim will become a dispute, which needs to be resolved by further negotiation or litigation. In this case, the P&I Club will usually recommend a maritime lawyer to handle the case on behalf of the shipowner.

P&I Clubs typically cover all the costs incurred as a result of the injury or death of crew members, including the expense of ambulance services at sea, expenses of body transport, necessary medical treatment costs, disability and death compensation to seafarers. Additionally, the Clubs cover seafarers' claim handling expenses, including lawyers' fees. In order to secure this

coverage, shipowners must obtain P&I Clubs' approval before making any payments to an injured seafarer. Accordingly, P&I Clubs have become dominant in the whole accident and claim handling process. The attitudes of P&I Clubs and their agents inevitably influence and may even determine the complexity of the compensation claims process and the final compensation amounts for ocean-going seafarers.

Interviewees identified four important steps in handling seafarers' claims after repatriation: (1) adopting a time limit for the medical treatment of seafarers, (2) scrutinising the medical costs and compensation claims, (3) choosing compensation standards most favourable for shipowners (Hazelwood and Semark, 2010), (4) settling the claim with proper legal techniques to avoid further liabilities.

1. Limitation of medical treatment period

To limit the duration of the medical treatment is a common approach to control expenses resulting from seafarers' medical needs. This limitation can also help P&I Clubs to close insurance claims down quickly and avoid the additional workload caused by lengthy medical treatment. Some employment contracts, in particular collective bargaining contracts approved by ITF⁶⁸, stipulate that if a seafarer is injured due to work-related reason, the shipowner is obliged to cover seafarers' sick pay and medical treatment until the seafarer is fully recovered. However, in practice, there is a claim-handling rule that no matter how serious the injury is, the treatment period should not exceed two years. Sometimes, there are no formal clauses in the crew management contracts indicating this rule, but many seafarers and manning companies are informed that any cost accrued after two years from the day of the workplace accident will not be reimbursed. In this research, P&I Clubs' representatives

⁶⁸ Although there is no Chinese seafarers' union is permitted by the government to be affiliated with ITF (International Transport Workers Federation), in some jurisdictions, including Hong Kong, Taiwan and Singapore, when Chinese seafarers work for shipowners from these area, the ITF approved Collective Bargaining Agreements can be applied to Chinese seafarers if their shipowners are required to apply CBA as standard recruitment contracts.

deny that they have implemented this rule to limit insurance compensation. Nevertheless, several manning companies admitted that their seafarers should be bound by this rule because their client, the shipowners, required this. According to several manning company managers' accounts (Ref: MC_XM_H, MC_XM_L, MC_QD_Y, MC_XM_A), the aim of this rule is to complete the claim management and discharge shipowners' liabilities relatively quickly, and the shipowners' insurers aim is to limit their liabilities. The manager MC_XM_L pointed out:

The longest medical treatment permit is two years. The shipowners informed us so, if the treatment is longer than two years, they would have trouble in claiming compensation from their insurers. Anyway, it is not reasonable for shipowners to wait more than two years for one seafarer's recovery. It is a kind of industrial custom and tradition according to my experience. (MC_XM_L)

However, from the perspective of seafarers, if they are not fully recovered within two years and require further treatment such as surgery, their situation will be difficult. An able seaman explained his dilemma caused by this rule:

I also wish to finish all the treatment within two years and would recover well. But the doctor said I needed further treatment. The shipowners have reimbursed my sick pay and medical fee occurring within the first two years. You see, I cannot work now, and I really need further medical treatment, but my manager said I could not ask for more money and I had to pay the medical treatment on my own (Ref: SF_ZZ_S).

Different workplace accidents cause different injuries and produce various medical needs for seafarers. However, in order to control the length of claims and amounts of compensation, shipowners and their insurers choose to limit their liabilities by imposing a time limit for medical treatment. This suggests that in situations where long-term care and follow-up medical treatment is required, seafarers may not be adequately compensated and have to deal with the extra burden of health care expenses and an undeclared incapacity to work.

2. Scrutinising medical costs and ascertaining the extent of disability

As liability insurers, P&I Clubs need to investigate the genuineness of shipboard accidents to avoid insurance fraud or other unjustified costs. To control medical costs closely, P&I Clubs usually supervise the medical treatment process. The following is a P&I Club's guideline relates to the monitoring of seafarers' medical treatment:

It is important that the medical condition and treatment of the crew member is monitored closely to make sure that the most effective care and attention is being given. The P&I clubs should also be kept informed so that any necessary action can be taken to protect the shipowner's legal interests and ensure that the seafarer receives the most professional and cost-effective treatment. Costs of specialist care are covered if required and confirmed by medical advice. An independent doctor appointed by the P&I club's local correspondent should preferably reconfirm such advice. Large hospital invoices should be submitted to the P&I club or its representative before being paid. In some countries there are companies which specialise in auditing such bills and if justified possibly reducing them. (North of England P&I Association, 2012: 54)

The above quote reveals that the P&I Club controls the seafarers' medical costs strictly and the club inclines not to trust the evidence without additional investigation: not only does the specialist care need to be doubly confirmed but all invoices need to be audited if possible.

In addition to medical costs, the establishment of degree of disability as the outcome of a seafarer's injury is another crucial element in determining seafarers' disability compensation. However, establishing disability following workplace accidents can be controversial due to the multiple standards enforced by different authorities. In China, two institutions are qualified to issue degree of disability assessments: one is the labour capability assessment committee and the other is the judicial assessment committee. The labour capability assessment committee specialises in ascertaining the degree

of disability degree caused by workplace injuries. The judicial assessment committee ascertains the degree of disability resulting from injuries covered by tort, such as disabilities caused by traffic accidents. Theoretically speaking, seafarers' workplace injuries should be assessed by the labour capability assessment committee according to the *Standards for Disability Degree caused by Work-related Injuries and Occupational Diseases* (GB/T 16180-2006). However, in many cases, seafarers cannot access this Work Capacity Assessment Committee, if they cannot provide evidence of an existing labour contractual relationship (see section 7.2.3). Furthermore, manning companies do not register freelancing seafarers for Work-related Injury Insurance Fund, since they have not purchased the Work-related Injury Insurance. The labour capability assessment committee operates strict time limits in order to control the amount of cases it deals with. If the workplace accident occurred longer than one year ago, then the committee will not assess the disability degree for the seafarer involved (Wu, 2008). In this situation, many seafarers must have their disabilities assessed by the judicial assessment committees under the standard Disability Appraisal for the Injured in Traffic Accidents (see Table 15). Shipowners' crew management contracts may also attach ITF-IBF standards for the appraisal of seafarers' injuries and disabilities. A P&I club claim executive provides a table to compare the difference between the three standards as follows:

Table 15: A Comparison on the Compensation Level for seafarers' Injuries

<i>Standards Injury Type</i>	<i>ITF standard</i>	<i>Disability Appraisal for the Injured in Traffic Accidents</i>	<i>Standards for Disability Degree caused by Work-related Injuries and Occupational Diseases</i>
<i>Loss of one eye</i>	20%	50%	60%
<i>Index finger fracture healed with hand dysfunction</i>	0%	0%	10%
<i>Loss of one leg</i>	65%	60%	70%

Source: (Ju, 2012)

Under the current system, the compensation level for one type of injury can have three results (see Table 15). This complicates the claim management process and different P&I clubs deal with the situation in different ways. One claim manager described how the procedure in her club was clearly established. She said:

The legal practice clearly shows that the assessment for the injury subject to the labour law contract should use the Work Capacity Assessment; and the claim against foreign Shipowners should use the Traffic Accident Injury Assessment. When a member as a foreign shipowner decides to have the Chinese crew evaluated in Chinese Judicial Expertise Centres, the member is advised to ask the manning company to assess the crew according to the Traffic Accident Injury Assessment as this is the right regime under Chinese law. (Ju 2012)

However, some other P&I claim executives had different opinions, and they insisted that seafarers' workplace accidents should be assessed using the work-related injury assessment. As another P&I correspondent claim manager BJ_CH_W commented:

Previously, one P&I Club wrote a paper, arguing that the claim against foreign shipowners should use the Traffic Accident Injury Assessment. But now when the seafarer applies disability assessment in a judicial assessment committee, the committee will also apply Work-related Injury Assessment to them, because they regard seafarers as workers. (Ref: BJ_CH_W)

The examination of court records indicates that some seafarers' claims are decided indeed according to Traffic Accident Injury Assessment, but some are decided according to Work Capacity Assessment. Without access to consistent disability assessment standards, seafarers suffering the same injuries may have different levels of compensation because of their claim handlers' different approaches. The application of double standards for disability compensation not only increases the claim handlers' workload, but may also result in different compensation outcomes for injured seafarers.

3. Addressing different compensation standards

As discussed in the first section of this chapter, there are two sets of compensation standards for seafarers' injuries. One is Chinese legal standards, and the other is shipowners' contractual compensation standards. Within each set, the compensation standards are complicated. In the claims handling process, claims handlers have to make choices between different compensation standards (Ju 2012). If seafarers are satisfied with shipowners' contractual compensation standards, then the compensation will be directly settled between shipowners and seafarers via manning companies. If seafarers have disputes with shipowners' standards, then the case will be referred to P&I Clubs' correspondent agents to handle. As one claim handler CH_XM_L said:

The normal situation is that a seafarer submits his claim to his shipowner via the manning company, then the shipowner report it to his P&I club, then the seafarer can obtain compensation. However, if disputes occur in this process, and the shipowner is overseas, then the P&I Club will forward the case to us to handle” (Ref: CH_XM_L)

Seafarers' employment contracts have to be approved by Clubs before liability insurance starts. However, shipowners may have different compensation limits and deduction agreements with their clubs and this information is not usually disclosed to seafarers due to the confidentiality of member agreements. The compensation available for seafarers from shipowners' liability insurers depends on shipowners' agreements with their Clubs. In the seafarers' contracts collected by the author, the compensation clause is ambiguously stipulated as “*all compensation standards must be subject to the agreement between shipowners and the P&I Club.*” (Ref: Contracts: SEC_XM_W, SEC_XM_H, SEC_HZ_C, SEC_QZ_L) However, these seafarers' contracts fail to include any detailed compensation standards and insurers' information. In this situation, seafarers do not have access to the so-called insurance compensation standards agreed between shipowners and their insurers. A claimant, who is the brother of a killed able seaman

explained the difficulty of obtaining insurance compensation standards in these circumstances. He said:

The shipowner and manning company never let us have a look at the insurance policy, so we didn't have any clue to calculate the damages. Until the end of the negotiation, we had no idea of the insurance compensation amounts at all. (Ref: SF_FJ_Z)

Another claimant, who was the wife of a killed chief officer reported a similar situation:

The manning company told me the compensation insurance is USD 120,000 at most. I was not satisfied with this offer, so I asked them to give me the insurance compensation standards in the contract, but the manning company did not permit me to have them, and they said the standards were commercial secrets. (Ref: SF_TJ_Z)

This practice was confirmed by a P&I Club claim handler's account:

If the seafarer or his family do not accept our compensation offer and raise a dispute, we will ask them to raise a compensation amount on their own. We truly have no obligations to disclose contractual insurance compensation standards to them, because we are working on behalf of shipowners' interests. (Ref: CH_XM_L)

In addition, a maritime lawyer described their similar practice in this situation:

Obviously, due to the conflict of interests, we cannot disclose any useful information to seafarers. If the seafarer is happy to accept the damages offered by us, we will select a lower standard for him from the legal standards or contractual standards. As you know, this is also the civil law's principle, it is the claimant's duty to justify his own claims, and as lawyers on behalf of shipowners, we are not permitted by our professional ethics to remind seafarers of their rights (Ref: ML_GZ_Y).

According to the accounts of the claim handler and lawyer on behalf of shipowners' interests, the insurance compensation standards are regarded as internal rules of the shipowners' interests group and should be secret from seafarers.

When seafarers have disagreements with the compensation amounts offered by shipowners, they have to raise a compensation amount themselves according to Chinese law. Usually, the claim handlers will further 'bargain' with the seafarers. As the P&I claim handler CH_BJ_W commented:

Seafarers are usually not familiar with the law and they may just raise a number, sometimes randomly. In any negotiation, we must prepare a bottom line and a cap beforehand and then bargain with the claimants. As the claim handler, we have calculated a range of compensation ourselves. If the seafarer asks for a lower amount than our expectation, then both the seafarer and our claim handlers can have a happy result. If they ask for a higher amount than our cap, then we will further bargain with them to achieve a settlement within our acceptable range."

In the claims management process after the accident, the existing different compensation standards make the management process complicated. The manager CH_XM_L explained how his team make the choice from different compensation standards:

To handle the dispute, we need to re-evaluate the different compensation standards, including Chinese civil law, the contractual compensation standards and sometimes even flag state law, for example, Hong Kong law or Panama law. We need to evaluate the compensation amount claimed by the seafarer according to different compensation standards. Chinese law is changing, so our strategy and advice for shipowners and Clubs are also flexible. There are no fixed rules and we need to handle the claims case by case, depending on our clients (P&I clubs) instructions.

The manager CH_BJ_W also emphasised the importance of negotiation skills in the management of seafarers' claims:

Seafarers' awareness of rights become stronger but their knowledge about law is limited, so the negotiation is not fully rooted in law. To handle seafarers' claims, negotiation skills and techniques are more important than professional legal knowledge sometimes.

The above accounts show that the process of handling claims is uncertain and unpredictable for both seafarers and shipowners' claim agents. Instead of legal knowledge, negotiation skills are more valued by the claim handlers. Although seafarers and claim agents may both confront uncertainties during the claim process, claim agents are at an advantage, because of their experience and knowledge. In contrast, injured seafarers or bereaved families, suffering traumatic harm or the loss of their loved ones, usually cannot be as calm and rational as their opponent claim handlers/lawyers. The lack of legal knowledge also limits seafarers', and their families', negotiation skills. At the inferior status of the negotiation, to achieve a favourable compensation amount is extremely difficult for seafarers and their families. If the negotiated compensation amount is less than their financial requirements for family maintenance, the rehabilitation of the seafarers and the future for the bereaved families will present considerable challenges.

4. Settlement of Claims

Following negotiation between the victim seafarers and shipowners and/or their claim agents, if they can achieve an agreement in terms of compensation standards and amounts, shipowners and their representatives will ask seafarers to sign an agreement of settlement and a confirmation of receipt and release.

According to the accounts of claim handlers and crew managers, medical fee and sick pay are usually paid after the settlement of claims, which means that during the treatment period seafarers cannot obtain a monthly income and/or reimbursement for their medical fees. The crew manager MC_XM_L explained:

Generally speaking, seafarers' workplace injuries compensation is a once-and-for-all lump sum payment. Seafarers cannot claim several payments during the treatment, and they can only raise the claim through us until they are fully recovered or their disability is ascertained. To obtain the compensation, the shipowners will ask the seafarer to sign a Receipt and Release confirmation, promising that he will not raise any relevant claim in the future. If the seafarer agrees to sign, then his medical fee, sick pay and disability compensation will be paid afterwards. In this situation, before the settlement of claims, seafarers may not access any formal benefits and medical cover from the shipowners and the P&I Clubs during the treatment period. Without timely medical payments, Chinese hospital can stop the treatment, which may cause permanent damage for the seafarers' health. (Ref: MC_XM_L)

In the settlement agreement, certain legal techniques will be adopted in order to release shipowners completely from further liability to seafarers. For example, the following quote is from a Receipt and Release adopted in the case of Chinese seafarers' death compensation:

In consideration of the above⁶⁹, the undersigned⁷⁰ irrevocably confirm that all the disputes of whatsoever nature between the persons or entities interested in M/V "ABC" (including the owner, manager and manning company.) arising from the accident mentioned in the Settlement Agreement have been finally and fully settled. In this regard, the undersigned hereby forever release and discharge you, M/V "ABC" and her owners, bareboat charterers, charterers, associated owners, operators, managers, insurers, P&I clubs of owners, agents, master, crew or other servants or any other persons or entities interested in M/V "ABC" (hereinafter collectively referred

⁶⁹ Referring to the facts of the workplace accidents, the loss arising from the accident, and the agreed contractual compensation standards.

⁷⁰ Referring to the claimant(s).

to as “persons or entities released from liabilities”, no matter their names are pointed out or not) and their predecessors and successors from any and all liabilities, claims, demands, actions and proceedings whatsoever arising from and/or in connection with the subject matter. Otherwise, the undersigned shall jointly and severally bear the liability for all the losses arising therefrom that are sustained by the persons or entities released from liabilities, including all of the costs incurred for defence. ”[Ref: Law Firm Case_XM 2012]

In 2001, in order to promote global shipping companies’ social responsibilities in seafarers’ compensation claims, IMO provided a model settlement agreement through the Resolution A.931 (22). In the exemplary Receipt and Release Form for Contractual Claims, the clauses are drafted rather differently as follows:

I, [Seafarer] [Seafarer's legal heir and/or dependant] hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of my/the Seafarer's employment and I hereby release the Shipowner from its obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to my/the Seafarer's legal heir and/or dependant's right to pursue any claim at law in respect of negligence, tort or any other legal redress available and arising out of the above incident.

Comparing the agreement clauses used to settle a Chinese seafarer’s death case and the recommended clauses by IMO, three differences can be observed. Firstly, the scope of liable parties is different. In the former Receipt and Release, the claimant is required to settle the claim with all persons who have or may have interests in the accident, including the owners, managers, insurers, crew agents, and claim agents. Once the seafarer signs the agreement, all these persons’ further liabilities should be exempted. The IMO version

only mentions the Shipowner's obligation under the employment contract is fulfilled and this payment cannot cover other liable parties' obligations. Secondly, the former forbids the seafarers' legal heirs and dependants to raise any further claim, no matter what the nature of the claim is. However, the IMO clauses inform the claimant they still have a potential right to pursue shipowners or other liable parties in respect of negligence and tort. Thirdly, the former clauses in the Chinese case imposed a punishment clause on the deceased seafarer's heirs, i.e., if they raise a further claim, against the shipowner or other interested parties, they have to compensate the shipowner the loss arising from their legal claims, including all costs incurred for defence.

The wording of the agreement [Ref: Law firm documents XM] is drafted completely in favour of the shipowner and aims to diminish all liabilities to the victims of workplace accidents. To strengthen this effect, the agreement also includes a punishment clause for the victims. If the victim raises a further claim for further legal entitlements, they are bound to compensate the shipowners.

From the perspective of claim handlers, the wording of the agreement [Ref: LFC_XM] is necessary. As the claim handler CH_BJ_W said:

At the end of the case, we need to sign the Receipt and Release with the seafarer claimant on behalf of the shipowner. In the Receipt and Release, we need to release all the liabilities of the shipowner, the P&I club, manning company and us, the claim agents. This may be inconsistent with law and theory, but this is current industrial practice (Ref: CH_BJ_W).

Accordingly, releasing all the liabilities of shipowners, manning companies and other agents is a common condition for victims obtaining compensation in China.

5. Manning companies' roles in the post-accident management of claims

When workplace accidents occur, some manning companies firstly inform seafarers and/or their families that they are not responsible for any compensation and all they can do for seafarers is to help them claim compensation from shipowners. This attitude by manning companies may create an adversarial atmosphere for seafarers and their families. The wife of a fatally injured chief engineer described her experience with the manning company as follows:

At the beginning, the manning company refused to negotiate compensation with me and told me they would not pay any compensation and the only damages I could seek was the shipowner's insurance for crew member's personal injury and death. I was irritated instantly. My husband was dispatched by your company and now you told me his death had nothing to do with your company. This is shameless! (SF_TJ_Z)

However, some manning companies argue that they are innocent in the disputes, as one manning company head manager explained:

We have signed the contract on behalf of shipowners only, and seafarers don't work for me. If there is any liability that we should take, it can only be that we need to assist seafarers to claim compensation from shipowners as a humanitarian obligation. (MC_QD_Y)

Another manager of a state-owned manning company said:

We can only help seafarers to collect and categorize the invoices of medical fee and other expense. Then we can transfer the evidence to the shipowner. It is the shipowner's insurer who should decide how much compensation the seafarer can receive." (MC_XM_L)

A private manning company's head manager denied his liability even more straightforwardly:

What we do is to provide work opportunities for seafarers and seafarers should be aware of their identities as freelancers. They should take care of themselves and purchase insurance themselves. The Ministry of Transport defines us as domestic employers for seafarers in the regulation, which is not fair for us, and the government just want to seize us to take liabilities.” (SF_TJ_C)

The two comments from the viewpoints of manning companies are consistent and they both refuse to admit they have direct liability for seafarers' workplace injuries. Although these opinions are not consistent with government regulation, they are commonly expressed by manning company managers. Such attitudes create an irresponsible image of manning companies in seafarers' eyes. Consequently, an adversarial relationship between seafarers and manning companies is formed, and may create an extra barrier for seafarer claimants. The brother of a killed able seaman verified this saying:

The most difficult and challenging part for our claimants is the irresponsible attitude of the manning company. They denied their responsibilities completely and refused to provide us any clues to claim the compensation.” (SF_FJ_Z)

Manning companies' self-recognition as agents can make the claim progress complicated and difficult for seafarers, in particular in relation to compensation for death.

However, it is important to recognise that in workplace injury cases, some manning companies can be supportive to seafarers, to some extent. As the crew manager MC_XM_L said:

If I have long term stable cooperation with the shipowner, in the workplace injury case, our company can lend seafarers some money

to cover their medical fee, since it is our responsibility to take care of these seafarers. We can only lend seafarers money according to the invoices of medical fee. The seafarers may also have other financial problems, but we cannot help with that. This is because the final compensation from the shipowner is fixed; we also need to deduct the amount we paid to seafarers from this fixed amount. If the seafarer finds the final compensation available for them is mostly deducted to pay their debts to our company, then he will probably refuse to sign the Receipt and Release. (MC_XM_L)

There are some manning companies that would like to support their seafarers during the treatment period. However, the availability of this support depends on the relationship between the manning company and the shipowners. In addition, the financial support from the manning company is usually only limited to medical fees, and sick pay is not usually covered.

Commodification of seafarers' claims is another problem in China. The management practice of Chinese seafarers' claims indicates that the compensation process is complicated and involves many parties, including shipowners, manning companies, P&I clubs, and their claim handlers. Seafarers cannot usually access the contractual compensation standards set up by shipowners, and almost all contact and enquiries must rely on manning companies' assistance. This information asymmetry between seafarers and shipping companies raises the possibility of manning companies actually making a profit from seafarers' injury claims.

In the research, the maritime lawyer ML_QD_C mentions that some manning agents purchase claims at a low price from seafarers who are unable to conduct claims themselves and then make money from the claims against shipowners. Some manning companies in China have a tradition to regard the compensation claims by Chinese seafarers against foreign shipowners as a profitable business. To solve this problem, the Ministry of Labour promulgated a notice to forbid manning companies withholding compensation to seafarers from foreign shipowners in 1992 (LXZ 1992,

No.16)⁷¹. This is because in earlier times the Chinese economy was undeveloped and the compensation offered by the foreign shipowners was much higher than the domestic workplace injuries compensation standards, so the manning company only wanted to pay the domestic standards for injured workers and bereaved families and the compensation difference was regarded as manning companies' profits. With the rising living cost in China, this kind of phenomenon has reduced because shipowners' compensation is no longer sufficient to fulfil victims' actual needs. However, this problem still exists today in some cases. In interviews with one seafarer and his manning agent (Ref: SF_NJ_LH and MC_NJ_D), this practice of deduction was apparent. The manning agent reported they had obtained CNY 70,000 from the insurer, but merely gave the seafarer CNY 40,000, because the manning agent believed the seafarer did not deserve the complete compensation and the seafarer should be partially responsible for his injury. The rationale of this deduction is that, from the manning company's perspective, their assistance for seafarers to claim insurance compensation should not be free, and their time and effort should be covered by the final compensation (Ref: MC_NJ_D).

5.2.4 Coastal trade shipping companies' management of workplace injury claims

Compared to ocean-going shipping companies, coastal trade shipping companies' management of seafarers' claims share the main steps mentioned earlier. Commercial insurance companies also establish a two-year limit for shipowners to submit the claim (Ref: Insurance Contract_GZ). Regarding the invoices of medical costs, transport costs and other expenses, the commercial insurance company also scrutinises invoices to deduct any expenses that do not seem reasonable to the insurance company. In terms of settlement of claims, shipowners will also ask victims to sign a receipt and release. Coastal

⁷¹*The Ministry of Labour's reply regarding the injury, disability and death of dispatched Chinese workers*

trade receipt and release documents also incorporates a clause to suppress further claims from victims:

The shipping Company CA has fulfilled all liabilities according to the Crew Hire Contract'. The seafarer promises: I, and all of my family members, shall not raise any further claim request against the Company CA in terms of the workplace injury accident mentioned above. (Ref: RR_GZ_CIC)

However, there are also some differences between coastal trade shipping companies' management of workplace injury claims and those of ocean-going shipping companies'.

Firstly, coastal trade shipping companies' management usually only involves domestic legal issues. Unlike foreign ocean-going shipowners, coastal trade companies are Chinese companies, so Chinese seafarers can have direct communication and negotiation with their Chinese shipowners. The foreign shipowners can have P&I clubs' claim agents and their manning companies as a protective screen, but domestic shipowners usually have to confront direct pressures from their seafarer claimants. As the manager of a domestic shipping company, SO_NJ_Y said,

When the marine casualty occurred on our company's vessel, we went to the site of the accident instantly. The families of the deceased seafarers attacked us violently, and my colleague's clothes were torn. The families called me day and night, and never stopped, asking us for a higher compensation offer. (Ref: SO_NJ_Y)

Unlike the P&I club, domestic shipowners' liability insurance companies are less active in directly participating into the claim handling process. As a manager of insurer, IC_GZ_K said,

In the claim handling process, the shipowner is at the frontline. Once they have achieved an agreement, the shipowner will report the compensation amounts to us and forward all the evidence of medical expense invoices and disability assessment. For serious marine

casualties, we will also send a representative or a lawyer to monitor. In most cases, it is the shipowner's responsibility to handle the claim at the frontline. (IC_GZ_K)

Thus it can be observed that in domestic workplace claim, unlike foreign shipowners, domestic shipowners usually have direct communication with their injured seafarers or bereaved families.

Secondly, compensation standards are relatively clear and definite. For foreign-related ocean-going shipping companies, the issue of how to deal with different compensation standards is controversial. P&I clubs' handlers and maritime lawyer have different opinions regarding how to select the appropriate disability assessment standards and legal compensation standards for the injured seafarer in the Chinese legal context. For domestic workplace accidents, *Standards for Disability Degree caused by Work-related Injuries and Occupational Diseases* (GB/T 16180-2006) is the widely accepted assessment standards for seafarers' disabilities. The *Work-related Injury Insurance Regulation* is also regarded as the appropriate compensation scheme for seafarers, shipowners and insurance companies. The Maritime Court's opinion is also explicit, if there is a genuine labour contract relationship between the shipowner and the seafarer when the accident occurs, then the *Work-related Injury Insurance Regulation* should be applied (MJ_GZ_W). Therefore, compared with foreign-related workplace accidents, the disability assessment standards and compensation standards are much easier to select and to understand offering greater consistency in practice.

Thirdly, although the relationship between injured victims and coastal shipping companies is direct and the compensation standards are relatively explicit, coastal shipping companies' post-accident management is not simpler or easier than ocean-going shipping companies'. The ship affiliation relationship may cause responsibility to be ambiguous in the post-accident management of seafarers' claims (see 5.1.2 (3)). These duplicate relationships between management companies and private shipowners have caused controversy in liabilities to crew casualties. On one hand, the private

individual shipowner's compensation capability is limited, because the vessel involved is usually the only executable property, and may be seriously damaged in the marine casualty (Wu, 2008; Zhang, 2008). On the other hand, the management company will reject any responsibility in the court hearing with the excuse that they were not involved with the ship's actual operation (Judgements: (2006) YNMCHZ No.551, (2011) GHFCZ No. 287).

Fourthly, seafarers' claims for injury damages occurring on coastal private-owned vessels can be difficult in both negotiation and litigation, according to the accounts of the victims (Ref: SF_HNNY_Y, SF_HB_L), maritime lawyers (Ref: ML_QD_C) and judges (Ref: MJ_GZ_W, MJ_XM_C). A difficult situation can be caused by the limited financial capability of coastal shipping companies after marine casualties. As the claimant, SF_HNNY_Y, reported:

My nephew died on the coastal vessel, but the company does not have enough money to compensate our bereaved families. Last Friday, the company told us, if you accept CNY 500,000 as the final offer, then we could sign the agreement. We refused, and today the company disappeared and abandoned our claimants at the hotel. (SF_HNNY_Y).

The maritime lawyer ML_QD_C explained the difficulty of a dispute between a seafarer and a coastal shipping company:

This coastal shipping company is bankrupt and no longer exists, so now there is no way for this seafarer to claim any compensation for his work-related disability.” (Ref: ML_QD_C).

The maritime judge MJ_GZ_W explained another problem regarding victims' disputes with coastal shipowners:

“Most of the disputes entertained by our court are with coastal ships. If it is a private-owned ship, the shipowner is probably the captain and killed in the casualty as well. It would be almost impossible in this

situation to ask the private shipowner's family to compensate the dependents of the killed hired seafarer” (Ref: MJ_GZ_W).

Fifthly, the insufficient compensation amount insured by private shipowners (see Section 5.1.2 (1) and (2)) may also increase the difficulties for post-accident claim settlement, especially in workplace death accidents. The commercial insurance coverage is capped with a one-layer limit, such as CNY 300,000 ~ CNY 550,000 (Ref: Insurance contracts: IC_FJ, IC_CS), which can be lower than the Chinese legal workplace death compensation standards (see Chapter 4). In the post-accident claim handling process, insufficient insurance is a significant barrier for both shipping companies and seafarers in settling claims. As the claimant, SF_HNNY_Y, said:

My nephew is just 25 this year and the only child of the family. His parents are unable to work due to disability and illness. The company told us the insurance compensation is CNY 500,000 at most. We either take it or leave. Considering living costs nowadays, this insurance compensation amount is far from enough to support his parents' future life. There is no possibility for us to accept this compensation amount. (SF_HNNY_Y)

To sum up, for coastal trade shipping companies' post-accident management, compared with ocean-going shipping companies, major problems exist in vessel affiliation relationships, limited compensation capability of some private shipowners, and insufficient insurance.

5.3 Summary

This chapter has examined pre-accident financial risk management by ocean-going and coastal shipowners. By analyzing the interviewees' accounts from the shipping industry, it is found that for ocean-going shipowners, P&I liability insurance is largely regarded as the financial risk management measure. Nevertheless, different shipping companies usually have different insurance coverage. Furthermore, some shipowners' P&I liability insurance scheme does not meet the increasing legal compensation standards for

workplace casualties, which means sole P&I liability insurance is no longer an effective financial risk management measure today in the Chinese context. Similarly, coastal shipowners' spontaneous financial risk management measures do not provide reliable financial security for the victims of maritime workplace accidents. The improper use of life insurance to cover shipowners' liabilities and the indistinct attribution of liability resulting from "affiliation management" practices are two prominent problems in the Chinese coastal shipping industry. Furthermore, the indefinite liabilities of manning companies in law and industrial practice render companies' financial risk management full of uncertainty.

In the post-accident management process of seafarers' casualties/claims, limiting the medical treatment period and scrutinizing medical costs are common claim management measures by shipowners' insurers to control and reduce costs and compensation arising from seafarers' workplace accidents. In addition, the inconsistencies of disability degree standards under Chinese law and ITF contracts, and the differences in compensation standards in Chinese law, in crew management agreements and in seafarers' employment contracts have made the claim handling process even more complex, which also makes it possible for the shipowners and their representatives to select a standard favourable to their interests but unfavourable for seafarers. Furthermore, with the existence of the IMO model contractual claim settlement agreement (2001), there are still many shipowners choosing to take advantage of terms and conditions to destroy the claim rights in civil law from Chinese seafarers. In addition, manning companies' practices, especially those which can be deemed as immoral, such as seizing or deducting seafarers' compensation, compromises the transparency and fairness of this claim management process.

The whole picture of managing seafarers' workplace accidents/claims is complex and complicated. The management of accidents/claims is not a simplified, linear process but involves multi-angled and multi-level activities. The parties involved are various: shipowners, manning companies, P&I Clubs and insurance companies are the prominent players. If their agents and

lawyers are also included, then victim claimants have to encounter a huge interest group, whose knowledge and business capability are much higher than their own.

In addition, the different management practices of ocean-going shipping companies and coastal trade shipping companies have confronted injured Chinese seafarers with a more complicated and complex scenario. Considering seafarers can be flexibly employed on different types of vessels, they may have different entitlements in law and encounter different treatment following workplace accidents. Therefore, there is no so-called fixed and unique compensation scheme for Chinese seafarers. What they encounter after workplace accidents is a variety of complex compensation schemes provided by different types of shipowners, manning agents and insurance companies.

The qualitative findings from this research have limitations and cannot be used to generalise about all management practices relating to workplace accidents and claims by different shipping companies. However, the issues and problems addressed in this chapter are representative, to some extent, in the context of Chinese law and business environment. The development of Chinese Work-related Injury Insurance and reform of maritime tort law has changed the landscape of liabilities between shipowners and manning companies in China. Different commercial participants, especially manning companies, are adjusting their financial risk management strategies in this changing legal environment. However, there are still some business principles that have not been shaken or changed by legal reforms. Ocean-going vessel owners are still adopting the traditional P&I liability insurance and some are reluctant to increase their liability insurance amounts or adopt extra risk control strategies, no matter how Chinese statutes are changed and compensation standards increased.

It appears that many shipping companies are not currently meeting their legal obligations or Corporate Social Responsibilities completely. In the next chapter, the experiences and stories of seafarers and their family members

will be presented to explore how these practices impact on the real victims of workplace accidents at sea.

Chapter Six: The Claimants' Experiences of Work-Related Death/Disappearance Compensation

6.1 Introduction

In the previous two chapters, seafarers' claims were examined in the context of the regulatory framework but also from a ship management perspective. The analysis of the legal framework in China found that current regulations fail to provide comprehensive and sufficient protection for seafarers who suffer workplace injuries. These difficulties are exacerbated by the management practices primarily concerned to reduce financial loss and control legal risks rather than seafarers' rights and welfare. This chapter sheds light on the experiences of claimants and explores bereaved seafarers' families' experiences following incidents of death or disappearance at sea. The accounts reported in this chapter are mainly based on the interviews with the bereaved family members in eight separate incidents of death or disappearance at sea.

The first section of the chapter looks at communication between companies and bereaved families after accidents have occurred. Section two examines the negotiation stage, and section three discusses the stage of settlement and payment. In each section, claimants' requests and company responses will be analysed to understand the conflicts between them and the implications of these conflicts for the bereaved families. The analysis also demonstrates how claimants addressed the conflicts with companies and how they sought help from online communities, from public institutions and organised activities. Finally, by drawing on the interviewees' reports, the impact of accidents and claims on their physical and mental health is considered.

6.2 Communication between companies and bereaved families after accidents

Workplace accidents at sea, including marine casualties, piracy attacks and traumatic workplace accidents on board, can result in the death or

disappearance of seafarers. The first stages of communication between companies and victims after workplace accidents happen, are crucial because they may fundamentally influence victims' emotions, psychological conditions and their attitudes towards the company during the negotiation process. In this section, communication between victims of workplace accidents and companies will be examined in cases of death and of disappearance.

6.2.1 Fatal Accidents

Families' requests to attend the site of accidents

Shipowners usually give notice of fatal accidents to seafarers' families through their manning companies/crew agents. Family members described how they usually found it difficult to believe the news that their loved one was dead. Naturally, they wished that they could attend the accident site to "say" a farewell to their loved one and they expected shipowners and crewing agencies would respect their requests and provide support for their journey. However, in many cases, shipowners and crewing agencies are unwilling to provide such support, leaving the families dissatisfied. One bereaved interviewee SF_TJ_Z gave the following account:

I requested the (manning) company to let me go abroad to take my husband's remains back. The company showed me a policy of the 1980s, and it said that families should not to go abroad to take the worker's body in principle. The company told me that if I wanted to go abroad yourself, they needed to be approved by a higher level manager. I trusted them. The company agreed at the beginning, but later told me I was not permitted to go abroad to take my husband's remains back. (SF_TJ_Z, a widow of a Chief Engineer who served on a Marshall ship)

Without the company's support, some families still want to go abroad to attend the accident sites at their cost. However, the families cannot obtain visas and travel on by themselves without supporting documentation from the company. The interviewee SF_TJ_Z explained this problem like this:

I determined to go to Poland even on my own. The Exit and Entry Administration staff was very kind and issue my passport just in two days. However, I had no clue how to obtain the visa. I called the Chinese embassy, and they told me that an invitation letter issued by the company was necessary to apply for the Polish Schengen visa. I was very disappointed then.

In the Chinese traditional culture, there is an important saying that ‘fallen leaves should return to the root’. This represents an important belief, which is that deceased people must be returned to their origins and buried with their ancestors. If a seafarer is killed overseas, in order to guide their souls to their journey home, close relatives must accompany the body. Bearing this traditional value in mind, to travel abroad and accompany their beloved home has significant meaning in Chinese culture. Therefore, grieving families were often left upset in situations where companies refuse to cooperate. SF_TJ_Z said,

I thought the company is a state-owned enterprise and would keep their promise, but they just broke their promise and never helped me to travel abroad. I was so disappointed with them.’

Preservation and transport of bodies

In China, proper preservation of a deceased seafarer’s body is important to the dignity of both the deceased and surviving relatives. A failure to preserve the body is considered disrespectful and humiliating. In this context, the interviewee SF_TJ_Z described how improper treatment of her husband’s body created psychological trauma for her:

My husband died in Poland in March, but at the end of September, the remains were returned. When I opened the coffin, my heart was like to be cut into pieces – the company failed to do any antiseptic treatment at all, and my husband was as black as the coal! [...] The rotten body of my husband made me extremely irritated and upset. I could not calm down at that time. What the company had done to my husband and me is cruel and unacceptable! I was so irritated that I

even determined to perish together with the manning company. I tried a lot of psychological self-counselling according to the book, but it did not help at all.

6.2.2 Disappearance of seafarers

Unlike many fatal shore-based accidents, the disappearance of seafarers is complicated by the fact that their bodies may be lost at sea. The facts of death are explicit if remains can be found, and families are entitled to death compensation. However, the facts of disappearance only indicate that whether the seafarer may be dead or alive. The “missing” status of the seafarer is difficult to accept for many families. Regarding the families’ requests to conduct an investigation with other seafarers alive on board, shipowners are unlikely to cooperate. An interviewee described his experience when his cousin disappeared at sea:

The company (manning company) said my cousin disappeared on board. We could not accept it at all. We requested to go on board to ask my cousin’s colleagues what had happened. The company did not agree and only told us there was no way to investigate at all. If we wanted to negotiate compensation, it would be okay, but never think about the investigation. We tried to seek help from the government, such as the Department of Foreign Affairs, Maritime Safety Administration, but they all ignored us. Finally, we gave up and ‘calmed down’ as expected by the company. (SF_NJ_C, the cousin of a third officer disappearing on a vessel of Panama)

If the seafarer disappeared in a marine casualty, due to the concerns of costs, shipowners are usually unwilling to conduct salvage works. The different attitudes towards salvage causes tension between shipowners and surviving families. One man explained how frustrated he was in this situation:

The ship sank in Taiwan Strait, and my brother’s body was missing. The manning company said it was not their business to salvage, and then referred us to staff from shipowner’s insurance company (a P&I Club’s correspondent). We requested that all the bodies should be

found, but he said it was expensive to do so, and it was almost impossible to find the body in the high sea. If we insisted that the bodies should be found, all the cost must be deducted from the final death compensation. As you already know, the death compensation is 800,000 at most, so we had to give up our requests. (SF_FJ_Z, a brother of an able seaman)

Under the threat to reduce the death compensation amount, the bereaved families had to give up their requests to search for remains. However, giving up these requests does not always mean that they can have access to death compensation. A much more complicated procedure of death declaration is the next problem for the families. The compensation entitlements cannot be established on the facts of a disappearance. Only after a judicial examination with no evidence of survival having emerged in the three months following the accident, will the court declare the presumed death of the seafarers. After this, families are entitled to claim death compensation. In this process, bereaved families reported confronting barriers from Chinese public institutions. The interviewee SF_NT_C explained how he overcame one such barrier:

The maritime court asked us to submit the statement of disappearance sealed by the police station, but the police station refused to give me this seal because they would not like to take any responsibilities. However, without this seal, the court would not make the declaration of death and the insurance company would not pay compensation. I had no other options, so I bought a fake seal. I understand it was illegal to do so, but both the court and the police station were shirking responsibilities so there was no other choice for us.'

It is a common problem in China that different public institutions shift responsibilities onto each other and request various proof letters that citizens have no way to obtain. In 2015 April, the Prime Minister Li Keqiang quoted a story that a citizen was asked to prove that 'his mother is his mother' at the Exit and Entry Authority. The Prime Minister used this story to criticise the

current administrative institutions as highly bureaucratic and placing a heavy burden on the citizenry (Song, 2015). In the case of seafarers' disappearance, the proof that there is no probability of survival is a crucial step for establishing declared death and ultimately enabling the dependants to claim compensation. However, the irresponsible attitudes of the police and maritime court can place a seafarer's family in a helpless situation.

6.3 Negotiating compensation

6.3.1 The initiation of negotiation

From the bereaved families' perspectives, negotiating compensation is not their priority, but a proper transport of remains or a thorough search of missing body following a maritime casualty and appropriate funerals are often their primary concerns. However, due to concerns of economic costs, shipowners are not usually willing to fulfil seafarers' requirements. Companies are keen to begin negotiations and persuade the surviving families to sign an agreement. Due to these conflicting interests, families' requests, including a desire to see the body of their deceased loved one, to take part in a search for a missing seafarer or to hold a memorial ceremony, are usually rejected. The daughter of a captain killed by the pirates in Africa described her despair:

We were too sorrow to eat and to sleep then, but the shipowner was trying to initiate negotiation through his insurance company. The place of negotiation was selected unilaterally by them in Shanghai. It was inhumane for them to start negotiation then. They completely ignored our grief and feelings and even asked us to travel to Shanghai. We were so offended by this proposal that we decided to ignore them.
(SF_NT_F)

A claim handler on behalf of the P & I club explained the common strategy to deal with the rejection of negotiation by the surviving families as following:

Usually, in the beginning, the family members are very agitated, and request to salvage of bodies, refuse to negotiate death compensation.

These requests are not realistic at all, and we can only negotiate the amount of damages. It is tough for us to calm them down, so we just leave them alone. Once they realise their requests cannot be fulfilled, they would come back to negotiate with us. (CH_XM_L)

The interviewee SF_FJ_Z explained how he changed the mind following this kind of stalemate:

We request the company to salvage the body, but they said it was not possible and then left us alone. We were at a standstill for many days, but I also had to take care of my business. I could not keep requesting to find the body. They are companies, who are much stronger than we are, so it is hard for me to stay in the stalemate for long. Then we agreed to start compensation negotiation and give up the request of finding the bodies.’ (SF_FJ_Z)

Shipowners and their representatives often ask surviving families to nominate one or two negotiation representatives. In the cases involved in this research, the representative can be the wife, brother, uncle, aunt, daughter or nephew of the deceased seafarer. Although uncle, aunt and nephew are not legal heirs, the bereaved family may entrust these relatives as their negotiation representatives. The reason, as explained by SF_FJ_Z, is the lack of abilities of the closer relatives, such as in his case. The deceased seafarer was divorced, and the parents were too old and the children too young to participate in the negotiation. The seafarer’s brother was selected as the representative. The common features of the chosen representatives in this study were that they were educated, middle-aged adults with rich social experience.

Professional legal representatives are formally nominated only in three cases. In the case of SF_GD_X, the victim decided to seek justice regardless of cost, so she selected a top maritime law firm. SF_TJ_Z hired a maritime lawyer at the beginning to collect evidence but then fired the lawyer because of his lack of knowledge in maritime law. The lawyer worked in the case of SF_NT_F was the classmate of the deceased captain and provided free legal service for the bereaved family. The families of the other five victims tried to seek help

from lawyers to some extent. Nevertheless, for various reasons, they decided not to hire lawyers to participate in negotiations on their behalf. The most common reason they mentioned is the cost of lawyer. However, they also described problems finding lawyers with specialist knowledge of maritime law. The third reason for lawyers not being appointed was that the lawyer concerned was not willing to accept the power of attorney. Through this phenomenon, it can be noted that Chinese people today realise the importance of a lawyer in the legal dispute, but both the cost and the lack of maritime lawyers in the market hinder them to hire a lawyer to protect their rights.

Shipowners and their representatives initiate negotiations, but it is rare for shipowners to attend negotiation. As discussed in the previous chapter, manning companies, P&I club correspondents and maritime lawyers usually represented shipowners. However, bereaved families found this arrangement unacceptable both emotionally and psychologically. This was because the seafarer was killed at a workplace, and they felt that the employer was morally responsible for sending a face-to-face condolence. The interviewee SF_NT_F expressed her anger at being ignored by the shipowner:

My father was killed in the pirate attack on his duty for the sake of the shipowner, but the shipowner had never appeared in the negotiation to express any sympathy. Our mentality was disturbed seriously. We received no condolence and solicitudes. The money negotiation and the mental loss are entirely two issues. They never treated us as human beings. They regarded my father as a tool. The shipowner would not care for the loss of a tool, so the shipowner asked his insurer to attend the negotiation. For the insurance company, we are just one of their business issues, and they did not care about our feelings at all. They were very impolite and offensive.'

The other interviewee SF_FJ_Z explained how his request to meet the shipowner was rejected by the manning company:

The manning company told us the shipowner was too busy to meet us, and they could not contact the shipowner. They just prohibited us from

contacting the shipowner, and never told us the name of the shipowner. We were enraged then and furious at that moment. My brother was dead in the casualty, but the manning company refused to tell any information of the shipowner. Even if I wanted to sue them, I had no idea who should be the defendant!'

The non-attendance of the shipowner in the negotiation was infuriating for bereaved families. They described receiving no message of sympathy, solicitude and condolence, which made them feel they were ignored by shipowners. Moreover, their requests to meet with shipowners in the negotiation were rejected, which created an additional mental harm for them. Not only were their feelings as humans ignored, but their rights to know which company owned the ship their loved one had served on was also disregarded by manning companies as well.

6.3.2 The negotiation of compensation amounts

As discussed in Chapters 4 and 5, compensation standards under Chinese law and the employment agreements of seafarers are inconsistent and even conflicting. It is also the case that different companies also have different internal standards. In this complicated situation, how the bereaved families approach negotiations for reasonable and acceptable compensation is crucial to the outcome of the claim. In any negotiation, not only do they have to suggest a compensation amount, but also they need to justify it and fight it.

1.How do bereaved families assess their compensation entitlement?

As discussed in Chapter 5, due to conflicts of interests, ocean-going shipowners' representatives usually do not disclose details of compensation standards. If family members disagree with the amount they are offered, they will be required to suggest an amount on their own. For the bereaved family, to find out a standard and justify it in law is their first task in the negotiation. The interviewee SF_TJ_Z described her experience of this problem:

The manning company told me the compensation is only the P&I insurance, about USD 100,000. We had a CNY 500,000 mortgage of our flat, so it was not enough for my daughter and me to survive in

the future. Even in China, the death compensation is more than USD 100,000 today. When I rejected this offer, the manning company asked me to raise an amount myself. I had no knowledge of the law. How could I raise that myself?

Then she explained further how she found clues of death compensation calculation:

Our whole family travelled to Beijing again and found the seafarer's union⁷². A staff told me that I could calculate my husband's wage and retirement age to calculate the death compensation. I could also consider the salary increase annually. She drew a table for me and listed a formula. I asked the lawyer to calculate according to this chart. To be honest, this lawyer knew little about this kind of case although he advertised that his expertise covered maritime claims. The result was more than CNY 8,000,000. I thought this could not be possible, and the manning company could not accept this amount, but I only knew this one calculation method. I told the company this result. The manager criticised my request is exorbitant. It was this manager who asked me to calculate the death compensation myself, and I used all my resources to learn this standard, but he blamed me for claiming too many damages later.

Another interviewee SF_FJ_Z described a similar experience. He explained:

I had no idea about how to calculate the compensation amount, and I was completely lost in the beginning. They wanted to compensate us according to the rural living cost standard, and the compensation was about CNY 200,000-300,000. Our parents and his son need his financial supports. This amount could not afford ten square meters flat in our hometown now. How could our family survive with so little compensation?'

⁷² The seafarers' union mentioned here is a government office not an independent trade union.

Then he described how he acquired the legal knowledge that enables him to claim a higher compensation:

Someone from another family argued that this case was foreign related. Some of our claimants were seafarers and they knew some legal knowledge about compensation. They told me that we should claim according to the foreign-related death compensation. Then I learned there was a law in 1992 entitles us death compensation of CNY 800,000.

Following coastal fatal accidents, bereaved families reported meeting even worse situations. The daughter of a captain, SF_GD_X shared her experience of raising claims:

After the accident, I was helpless and knew nothing. I had no idea how to claim compensation. The two shipowners were killed in the collision. Their sons and the shipping companies denied their liabilities. I had no other choice but to hire a lawyer in my town to sue them. However, even I hired the lawyer, he was not professional in maritime law and wasted me two years in a wrong judicial system. Until I met the maritime lawyer H and his colleagues in Guangzhou, about three years after the accident, I started to know the right compensation standard for my father as a captain and I should bring the litigation to the maritime court.

The aunt of an ordinary seaman, SF_NY_Y explained how she learned about compensation amount:

The shipowner came to negotiate with us. No matter how many dependents we have. They just said CNY 650,000 in total as a unified price. If we could accept, then they would sign an agreement with us. If we reject, then they leave us there to think twice. When we decided to agree on this amount, they would negotiate with us.'

As discussed above, it is not common for seafarers' families to nominate a lawyer as their negotiation representative due to the concern of costs involved.

Nevertheless, the accounts of interviewees demonstrate that even for those families who had hired a lawyer, the quality and professionalism of their legal representatives was far from satisfactory. SF_TJ_Z initially hired a lawyer, but she learned how to calculate due compensation from another source, the seafarers' union but not from her lawyer. The SF_GZ_X decided to sue the shipping company, but her lawyer misled her to a wrong jurisdiction, the grassroots civil court, which made her claim drag on for more than five years. In these circumstances, it may seem surprising that families are not represented by lawyers with better knowledge of the maritime context of claims. However, the research reveals that maritime lawyers are not always willing to represent family members as this would jeopardise their chances of future lucrative work from P&I Clubs and shipowners. A maritime lawyer (ML_QD_C) said:

We can represent bereaved families if there are no conflicts of interests, which means we are not representing the shipping company at the same time. However, as a professional maritime lawyer, to handle too many personal injuries on behalf of the bereaved will influence our firm's reputation in the circle. Anyway, the majority of our clients are P&I Clubs and shipowners and they can afford a stable and decent hourly-based lawyer fee. However, to represent the bereaved, the lawyer fee is a lump sum contingent fee. We cannot rely on these cases to maintain our business.'

This account clearly explains why professional maritime lawyers are not always available to assist seafarers' families. P & I Clubs and shipowners have something of a 'monopoly' over their services, and seafarers' families can only seek help from less experienced legal professional with little hope of making a successful claim.

In terms of death compensation, damages should ideally be calculated according to the proper law, which is challenging for surviving family members without legal expertise. An alternative approach is to calculate damages according to employment agreements and crew management

agreements. To achieve this, surviving family members require access to seafarers' contracts. These are not usually available however as one interviewee SF_FJ_Z described:

We did not have any written form evidence from the manning company. We were even worried that one day the manning company denied the fact that they sent my brother to this vessel. In that case, we would have no chance to obtain any compensation. Just today, I suddenly realised his wages were not paid, and we had no idea how much of that. He worked for a month on board, but who seized the salary? The shipowner did not pay or it was seized at the manning company. I had no idea!

The interviewee SF_TJ_Z explained her experience of asking for compensation standards from the company:

I asked the manning company for a copy of the crew management agreement. They replied that it was the commercial secret and could not show me. No matter what information I asked, it would be a commercial secret. It was extremely difficult and annoying which beyond your imagination. I had to hire a lawyer to send lawyer letters. Afterwards, they permitted me to read the agreement. I took a translator and a lawyer to help me understand the English crew management agreement. We had no knowledge of the crew management agreement. When the company gave us an incomplete agreement, we could not tell, so I failed to learn the compensation standards then. They did not provide us with the detailed appendices. No photocopying, photo taking and video recording were permitted. We had to copy it by handwriting. We did not obtain any useful information due to the company's obstruction.'

From these accounts, it is apparent that assessing the appropriate level of compensation is almost impossible for bereaved families because they do not have enough knowledge and access to professional legal assistance.

2. Disputing compensation standards in the negotiation

Since the bereaved do not usually have legal information and assistance, the compensation amounts raised by them can be challenged by shipowners and their representatives easily. As mentioned in Chapter 5, claim handlers often refuse to disclose compensation information to victims, but they nevertheless challenge the compensation amounts raised by victims. Claim handlers reported that seafarers' families were usually ignorant of the law and difficult to satisfy. One claim handler CH_BJ_W commented:

The victims [families] have no legal skills and they usually asked for a number without any proper legal basis. It is very common that they demand exorbitant price in death compensation negotiation.

A manning company chief manager MC_XM_S expressed a similar opinion arguing that seafarers' families were often reluctant to accept any offer made by the company:

The problem is not about the lack of standards. The bereaved family never accept our compensation calculated according to the shipowner's P&I insurance coverage and the law. They asked for a higher compensation than their legal entitlements.'

Another manning company manager MC_TJ_C described the bereaved families' claims as a means to make money: *'They just want to make money from the dead.'*

Once a claim for compensation has been raised by families, disputes and conflicts often escalated. Some bereaved families chose to conduct further legal research to support and justify the amount they claimed. One interviewee SF_TJ_Z approached justifying her compensation amount in this way:

I checked the law and regulation day and night on the internet. There was a regulation of Ministry of Transport said that the dispatched seafarer are entitled three securities: the work-related injury insurance, shipowner's P&I club insurance and commercial life

insurance. I used this to ask for work-related injury insurance and commercial life insurance from the manning company. I had no idea about the amount of the life insurance, so I went to a local insurance company to ask whether they had this insurance for international seafarers. They said yes and told me the insured amount was CNY 350,000. I claimed this amount and the manning company recognise it. Combining these three parts, I justified CNY 1,770,000 as my claim amount.

Among the claimants, SF_TJ_Z's capability and determination were outstanding: with her own efforts, she justified the legality of her compensation claim. However, the experience of other seafarers' family members was different. As one daughter (SF_NT_F) described she confronted a significant legal barrier in the negotiation, but managed to overcome this with advice from her deceased father's friends:

Considering my father was killed in the West Africa by pirates, we firstly asked for USD 400,000 according to the ITF agreement. But they argued that CNY 800,000 was the liability limitation for the shipowner. They insisted that the compensation should not be more than CNY 800,000. Through many efforts of my father's friends, we achieved an amount of CNY 1,500,000. It was a significant step from CNY 800,000 to 1,500,000. Without my fathers' classmates' help and encouragement, we could not be determined and confident enough to achieve this compensation. The CNY 800,000 limitation was set up in 1992. Now the shipowner still took advantage of it.

SF_NT_F's father had friends who were active Maritime lawyers and Maritime Safety officers in China. Following his death, the Maritime Safety Administration published the story and constructed a hero image of the deceased seafarer. The voice of public media provided considerable support for the seafarer's family and put pressure on the shipowner. However, the liability ceiling of CNY 800,000 was still a significant obstacle for the family to overcome. SF_NT_F's family would not have achieved a higher

compensation amount without support from the deceased seafarer's social network. As shown in the case files, an official of the Ministry of Transport had called the manning company to impose political pressure to urge the shipowners' interests to settle the compensation dispute responsibly. The lawyer also warned the foreign shipowner about a potential political risk for their future business in Chinese ports if they insisted on compensating the bereaved family with a lower amount.

However, other bereaved seafarer families were not so fortunate in receiving strong social and political support. In their cases, they were often compelled to accept the compensation offered by companies. One interviewee SF_NT_C described his experience of accepting the company's offer as follows:

We raised a compensation amount CNY 1,300,000 according to the law. However, they had better lawyers but our lawyer was not as dedicated and loyal as theirs was. In the negotiation, we could not achieve more and we just wanted to solve this quickly and did not want to immerse ourselves too much in this dispute and grief. We accepted the company's compensation of about CNY 800,000 eventually.'

3. The ordeal suffered by seafarers' families during negotiations

In claim processes, in addition to the uncooperative attitudes and behaviours of shipowners and their representatives, occasionally seafarers' families received attacks from companies. These attacks constitute a strategy to divide the seafarer's family members by stigmatising claimants and misusing law enforcement agencies to force the claimant to give up the further right of defence.

Discrimination against widows

Discriminating against widows' rights is commonplace in Chinese culture. In the early times, a husband's family could expel a widow and exploit her rights to inheritance. Although in modern China, a widow is in the first order of heirs, in many cases their rights are still not respected and are infringed by their husband's relatives.

It was frequently reported by the widow interviewees that their relatives (in-laws) attempted to split their rights to compensation. The parents of the deceased seafarers were easily incited to fight against their daughters-in-law. SF_NJ_C described her experience:

My sister-in-law urged my mother-in-law to ask for money from me. I was helpless then, so I cried and knelt down in front of my parents in law to beg them to have some mercy on my daughter and me.

Although she eventually obtained her right, she had to make a promise to her husband's family that all the compensation should be given to her daughter if she re-married.

The widow (SF_JN_X) without kids had to deal with an even harder situation. Her brother-in-law did not permit her to be involved in the compensation negotiations, and her parents-in-law refused to share the compensation with her. Online searches uncovered the relatively widespread nature of such issues. One widow's message on the MSA website read:

My husband was killed in the sink of M/V XLZ. I was pregnant then, but my sister and father in law attended the compensation negotiation. They kept the money and did not give me any. May I ask a payment evidence from the MSA so that I could claim my share?⁷³

This message indicates that the widow's rights to her husband's death compensation were infringed by her sister and father in law.

In this context of a cultural background where widow's rights are not respected, manning companies can incite domestic conflicts to reduce claimants' power with relative ease. The strategy to divide bereaved seafarer family members usually proves 'cost effective' for companies because it can

⁷³ www.msa.gov.cn/Message/LeaveMsgView/00000000-0000-0000-0000-040000000001/a/4c47be44-308e-4957-b1ce-de1babc2e4b5

reduce the power of the seafarer's family significantly. Another widow SF_TJ_Z described the harm caused by this strategy with regards to her claim:

My husband's brother did not help us in the right defence, but this time, he came. Once learning his identity, the manning company discussed with him secretly several times. When we negotiated about the payment method, the manager suddenly asked whether the money should be paid to two separate accounts. I kept silent and thought it would be okay. But the company then asked brother-in-law whether should he had CNY100,000. I was irritated. You see, my brother-in-law asked money for himself from me. That money should be the compensation for my father in law, about CNY 40,000. Now the company instigated him to ask more from me. I told my brother-in-law straight forward that he invaded my daughter's interests. I was so disappointed with my brother-in-law. He thought I would no longer be a member of their family, so he did so. The company was trying to create our internal conflicts. If we fought with each other, their pressures can be reduced. It is shameless of the company to incite my brother-in-law to ask compensation from me.'

Political Stigmatisation

Stigmatisation is another common attack strategy pursued by companies upon surviving families when families raise compensation claims. The following example illustrates this type of stigmatisation:

This (compensation) amount was advised by the 'Seafarers' Trade Union' (government subsidiary association), and I did not make up this. I sent it to him (the manning company's manager) and he replied 'you demand an exorbitant price as a greedy lion', and then hung up the phone rudely. [...] The police officer came to visit me before the 18th National Congress of the Party. At that time the negotiations were in a deadlock. The police officer's eyebrow was straight (truculent) and said 'I heard you are involved in dispute'. [...] Then the police

officer told me the company reported to them that I was a socially unstable element. (SF_TJ_Z)

The stigma of being a ‘socially unstable element’ relates to *Weiwen* (social stability maintenance) activity. In China, if a person defends his/her civil rights for a long time and tries to attract public attention to solve a problem, the government may label him/her as a socially unstable element threatening Chinese political stability. Therefore, in the case of SF_TJ_Z, the company took advantage of political stigmatisation pressures to force the widow to compromise during the negotiation. The company’s strategy can be dangerous for the family because in the current Chinese political environment those deemed as a ‘socially unstable element’ can be imprisoned in a Labour Re-education Camp without any judicial examination. Through this strategy, the seafarer’s family member may give up claiming damages, or just accept the compensation amount offered by the company to free themselves from stigma. Political stigma is dangerous. Being labelled as greedy does not involve the political power of the government, and the adverse effect on seafarers’ families is limited to economic loss and psychological pressures. On the other hand, political stigma involves the potential use of state power to punish seafarers’ family members. The political stigma of civil claimants is a special phenomenon of the Chinese social environment, which can threaten seafarer claimants’ freedom in civil compensation claim processes.

6.3.3 The petition, online defence and protests of claimants in negotiation

The bereaved families of deceased or missing seafarers are often in a vulnerable and weak position during negotiations, despite their knowledge, capability, time and finance. They are passive and even suppressed by shipowners’ representatives. Considerable grief and anger can build up in the negotiation process. To defend their rights and fight against the injustices and unfairness they are confronted with, some affected seafarers’ families choose to report offences or infringements to competent authorities.

SF_FJ_Z explained their experiences of petition:

The manning company just ignored our compensation claims, so we called the police. It was useless. The police said the marine casualty was beyond their jurisdiction. Then we went to the petition office of our provincial government. They sent a message to the manning company, and the company agreed to negotiate with us but it was not helpful. The so-called legal representative knew nothing and could not make any decision. All these measures were useless.'

SF_NT_C described how he used petition system to attract attention from the central government:

The police station said they could not help because my cousin disappeared not in China. We went to the whistleblowing office of the Ministry of Transport. They did not allow us to enter the gate. We went to the Ministry of Foreign Affairs. A civil servant told me quite straightforward: "your cousin's death was not a big deal that worthy to be solved by the Ministry of Foreign Affairs. We were grown up in the environment that the state and government never prioritise ordinary people's life. It is always like that. Our industry is developed with the price of pollution, and there is no so-called humanitarian spirit. Therefore, I could be angry, but I could not challenge the Party and society, right?"

SF_HN_Y described her experience when sought help from the local government:

The shipowners negotiated with us last week and told us to have the negotiation again on Saturday morning, but they cheated us and checked all the hotel rooms out. We asked help from the government investigation group, but they would not give us any information. Everybody is clear: the civil servants sat on the side of shipowners. They told us the shipowners would not come to the negotiation again.

Some interviewees reported resorting to the web to assist with claims. They wrote down their experiences on websites, such as Tianya, Sina Blog and

Weibo (China's equivalent of Twitter). In doing so, they hoped to attract mass media's attention to make their petitions known to the public so that the government would take their requests seriously and support their cases. SF_TJ_Z wrote posts on Tianya online community and Sina Blog. However, these posts were deleted three times by the website administrator. She said:

The manning company had the money to bribe the website administrator to delete my right defence posts online but unwilling to improve the compensation a little bit.

SF_HN_Y also tried to post comments on a news to attract public attention to her nephew's death on board:

There was news on the shipping website regarding the disputes between the shipowners and their insurance companies. I attached my nephew's story as a comment on that news, hoping more people can pay attention to it.

SF_NT_C wrote a post in a seamen's online community to seek help for his cousin's disappearance. However, these efforts did not assist any participants in this research with their claims.

Demonstrations, sit-down protests, and occupation protests were also reported by family members as the resistance to inadequate compensation offer and unfair treatment in negotiation. After the failure of one round of negotiation, SF_TJ_Z dressed in mourning and exhibited her banner in front of the manning company to register the company's unfair treatment of her family publicly. She purchased paper money and burned it to commemorate her husband in front of the company. The company called the police to stop her demonstration. SF_NJ_C adopted a sit-down protest at the manning company. She and her parents dressed in mourning and sat down quietly at the manning company. She said,

We just sat there quietly every day. No fight. No complaint and no noise. We did not disturb their business violently so they could not

call the police. All seafarers coming to the company would know our petition. We imposed immense pressure on the manager.

When driven into a corner, not all resistance was so calm and rational be adopted. Occupation protest was adopted in the case of SF_FJ_Z because 13 seafarers had been killed in the casualty. About 40 relatives of the seafarers gathered at the premises of the manning company. SF_FJ_Z described how these relatives became irritated occupants:

At the beginning we were trying to negotiate with the company calmly. However, they denied all their responsibilities and all knowledge of the shipowner, and always fooled us. The police and provincial government's efforts could not help much. Some of us were so mad that smashed the table and chair of their company. From my point of view, compared to the loss of 13 lives, this protest was reasonable.'

The analysis in Chapter 5 demonstrated that manning companies worried about attacks from the victims. Some managers regarded them as troublemakers. However, through analysing the accounts of victims, we can note that the victims tried to take so-called reasonable measures, including seeking help from police, local and central governments. Nevertheless, these public institutions were often either unwilling to intervene in their petitions or the assistance they provided was so limited that it could not help. Thus, conflicts with manning companies were escalated into demonstrations and protests.

These protests were helpful to the victims' right of defence to some extent. The victims in the case of SF_FJ_Z were able to access the P&I club claim handler after the occupation protest. However, their solidarity collapsed after it. The claim handler asked to change the negotiation venue to another city and asked them to keep the individual negotiation content and compensation offers secret. The families of the 13 seafarers were no longer able to protest together in the negotiations with the P&I club claims handler. SF_NJ_C claimed two million damages for his husband's death following the sit-down protests. The company agreed to pay CNY 1,990,000, that is 10,000 less the

amount of her claim. SF_NJ_C explained why the company made the deduction:

They accept my request generally, but they told me the seafarer's death compensation in the market cannot exceed two million now, so they deducted 10,000 on this purpose.

SF_TJ_Z's result of demonstrating was complicated. The company promised her that the compensation would be CNY1,770,000. Nevertheless, another manager broke this promise. Furthermore, the company reported to the police that she was a 'social unstable element' as mentioned earlier.

The effects of protests were limited due to the costs and time involved for family members, mostly time and financial means in some cases. The victims mentioned that they all had jobs or business to attend to so they could not continue the protest for long. SF_FJ_Z said:

One of our claimants is a business person and in those three days his manufacturing factory just stopped. He said he might lose a million because of this. I had a photography business with friends, but I could not take care of it, so I just sold it, which caused a considerable loss to me. We could not have unlimited occupation protests.

SF_TJ_Z's family members were the main contributors of her protest. They were farmers, so they had more time compared to urban citizens. Nevertheless, their protest was also terminated in the summer because all the family members had to harvest wheat. SF_FJ_Z commented on the cost of seafarers' family members' protests:

'No matter how big your family could be; you cannot sustain the protest. The company can always use delay strategy and forced you to accept their compensation offer. We had to continue our work and business. It was not possible for us to have unlimited time to resist their offer and fight for more damages. Once we were exhausted, we had to take their offer.'

Eventually, family members would stop their protests and decide to accept the compensation scheme offered by shipowners' interests, although they would do so grudgingly.

6.3.4 Litigation

Initiating litigation to claim compensation is challenging for victims. To secure their claims, surviving families need to apply ship arrests, but as mentioned by maritime legal consultants, successful applicants are rare. In this research, only one victim successfully arrested the ship to enforce the claim. She said:

It was not me who find the lawyer and apply the ship arrest. All these legal procedures were taken care by my father's maritime college classmates. I have no idea about the ship arrest. I was not able to do anything at moment when I lost my dad, not mention prepare a legal application. Without the supports of my father's friends, without this ship arrest, we could not obtain this compensation. (SF_NT_F)

This account reveals a barrier for seafarers to engage with litigation, the grief. Maritime litigation requires high skills and rational thoughts. However, it is almost impossible for victims to manage claims calmly. The design of maritime procedures overlooks the assistance victims' special needs.

In addition, special maritime jurisdiction creates another barrier for surviving families: the jurisdiction conflict between grassroots People's courts and maritime. Many judges from grassroots People's courts may not have special maritime law knowledge, so they may entertain seafarers' injury cases by mistake, which prolongs the litigation period and causes more financial and emotional pressures for victims. One victim said:

The local court in my hometown accepted my claim for my father's death compensation, and made a wrong judgment according to a wrong law, which caused me to waste years correcting it. The local court should have told me they could not deal with my claim at the first place. After receiving the final judgment from our city

intermediate court, I went to the high court of our province to apply for another review of my claim. No one replied. Finally, I found a maritime lawyer online, and he helped me to appeal previous judgments and re-submit my claim to the Maritime Court. If anybody had told me that the maritime court was the right place to go in the first place, I would not have been that desperate and helpless for these four years. (SF_ZQ_X)

6.4 Settlements and payments of compensation

Compensation settlements vary (see Chapter 5), compensation standards can be varied by shipowners. In the cases studied in this research, the settlement amounts were differentiated by year, by nationality of the vessel, and by the position of the deceased seafarer. Agreed compensation for seafarers killed on foreign vessels is higher than domestic vessels (see Table 15). This is because China flag vessels usually belong to coastal shipping companies with inadequate insurance.

The year 2012 is a turning point for the compensation claims. In two foreign-related cases before 2012, families were compensated with CNY 800,000, but after 2012, the compensation amount increased significantly. This was mainly attributed to the abolishment of the liability limit of CNY 800,000 in 2013 January. However, for the accidents happening in 2012, shipowners still attempted to limit their liabilities. In SF_NT_F's case, the piracy attack occurred in February 2012. Therefore, the shipowner argued that CNY 800,000 was the limit of liability, which increased the difficulty of claims for the bereaved families considerably. With assistance from friends, the family of the deceased seafarer applied to arrest⁷⁴ the vessel involved through a maritime court and requesting USD 500,000 or equivalent financial guarantee. SF_NT_F said if they did not arrest the ship, they would not receive the compensation.

⁷⁴ See Chapter 4.

Table 16: The settled compensation amounts of the eight cases

Name of claimant	Relationship with the deceased seafarer	Year of the death accident	Nationality of Vessel	Position of killed seafarer	Agreed compensation
SF_FJ_Z	Brother	2010	Panama	Able Seaman	CNY 800,000
SF_NT_C (Disappearance)	Cousin	2011	Liberia	Cadet	CNY 800,000
SF_NT_F	Daughter	2012	Panama	Captain	CNY 1,550,000
SF_TJ_Z	Wife	2012	Marshall Islands	Chief Engineer	CNY 1,770,000
SF_NJ_C	Wife	2012	FOC	C/E	CNY 1,990,000
SF_GD_X	Daughter	2005	China	Captain	CNY 280,000
SF_QD_W	Nephew	2010	China	Cook	CNY 600,000
SF_HN_Y	Aunt	2013	China	A/B	CNY 700,000-

Usually the compensation is paid in the form of a lump sum, but in the case of SF_QD_W, the compensation was paid by instalments. He said,

The total compensation for my aunt was CNY 600,000 and the first instalment of CNY 150,000 was paid instantly. Now two years passed, the compensation has not been paid completely.

The payment of compensation by instalment makes the performance of settlement unpredictable. Therefore, seafarers' family members may be prepared to sacrifice some compensation in exchange for instant lump sum payment, as SF_NJ_C said,

I could not trust the company, and undue delay may bring troubles. Therefore, even if they had promised a higher compensation by instalments, I would ask them to pay me cash instantly.

In Chapter 5, the analysis showed that the wording of settlement agreements was drafted in favour of shipowners' interests, with the sole aim of

minimizing any liabilities. SF_NT_C expressed her anger towards the settlement agreement:

The terms and conditions were unfair. They only wrote down things favourable for themselves and harmful to us. I was so angry that I did not want to sign it at all.'

SF_FJ_Z explained his feeling of helplessness when he signed the agreement:

It was a bullying agreement. However, if I did not sign it, we could not get the compensation, so I had no choice.

The practice whereby manning companies deduct their own expense from seafarers' compensation as demonstrated in the analysis in Chapter 4 causes further harm to the seafarer's family. Increasingly, manning companies have been reported to deduct their "expenses" from the claimant's death compensation leaving the seafarer's families short-changed. SF_FJ_Z said, 'after the deduction of the manning company, the CNY 800,000 became CNY 650,000. Is it enough to raise my brother's kid? It is impossible to pay the child education and support the parents. To save the money in the bank, the interest rate today cannot catch the inflation rate.'

This evidence suggests that even when agreeing compensation seafarers' family member have to deal with unfair terms and conditions and unexplained deductions from manning companies. Moreover, in situations where compensation is agreed to be settled in instalments, full payments may never be secured.

6.5 Impact on the health of claimants

The findings discussed in the preceding sections of this chapter show that the claim and negotiation process can be fraught with oppression and conflicts. As humans, the loss of a loved one causes one of the most serious sources of grief. Seafarers' family members are usually facing the hardest time of their lives following the news of death or disappearance of their loved one at sea. Moreover, families have to overcome the legal barriers, and other obstacles

set up by shipowners and/or their representatives, to defend their rights and to fight for a reasonable financial security for the seafarer's dependants. In this situation, the physical and mental health of family members making a compensation claim can be extremely fragile.

SF_TJ_Z described her physical change:

During that period, it was impossible for me to sleep at all. When thought of his corrupted remains, I just felt like that my skins were cut into pieces and my whole heart were fried in a pot. I felt myself were not a human at that time. My weight was reduced from 65 kg to 45 kg. You cannot imagine how I survived this period.

She further explained how the negotiation affected her families' health:

When our negotiation was in the deadlock, my sister's blood pressure was too high to be controlled. No medicine could help. Except my two young cousins, the whole family was ill and my father and my sisters were admitted to the hospital. Our family were constituted of the old and sick.'

SF_NT_C said that his aunt had a heart attack during the negotiation at the manning company. SF_NT_F just gave birth to a baby when her father was killed by the pirates. In the Chinese culture, she should be confined for a month to recover. However, she had to give up the recovering rest and started to negotiate with the shipowner. Her mother also refused to eat and drink, and the family had to call doctors to set up transfusion line at home to protect her health.

Long-term psychological effects on claimants were also reported. SF_NT_C said his mind was continuously disturbed by the disappearance of his cousin and the unsatisfied settlement. He said:

I felt my cousin should not be treated like that. No formal police investigation and no one was liable. I always think I should find the

crew on that vessel then to know the truth of my cousin's disappearance. Sometimes I just cannot calm myself from this thought.

SF_NT_F's mother, SF_NJ_C and SF_TJ_Z could not control their emotions and could not help crying during their interviews. Although at least two years passed following the incident, the psychological harm was still felt by this interviewee. SF_FJ_Z said until the day of the interview, he could not accept the facts that the rights of seafarer were extremely ill-protected in China. For several other claimants, who refused to participate in the research, the most common reason for their refusal was that the claim experience was so hurting and they did not want to mention it at all. One victim told me that he could give me all the materials of his brother's accident he had, but he just could not bear telling the experience.

No victims had received professional psychological counselling. Psychological harm was not valued and recognised properly both by shipowners and the Chinese law. SF_TJ_Z sought help for her psychological issues through self-counselling with books she purchased online. However, she said the psychology knowledge did help for the extent of harm she had suffered. Then she tried to seek peace through Buddhism, then converted to a Buddhist. She blamed all her misery on fate eventually:

'I have burned incense, prayed and mused for a long time. [...] My husband was dead in an accident, so he must go to the destiny of devil. I pray every day to accumulate charitable deeds for my husband to save his soul from the hell. [...] My fate is bad, and all these are determined by fate. My husband in his previous life might be a person with crime records, so he was killed at an early age. I might not be a good person in my previous life, so I have to experience the mistreatment and unfairness. Although I am not a bad person, the destiny led me to fight with the manning company and the shipowner for my rights. I never thought my marriage would be terminated like this. All these are determined and caused by my bad destiny.'

After experiencing the loss of their loved ones, the unfair treatment received by seafarers' families from shipowners' interests, and the inability of the affected families to access justice from public institutions, many family members suffered long-term health impacts. Their accounts reveal that how the physical ill-health and psychological stress arising from difficulties experienced by families while making a claim can cause further harm.

6.6 Summary

This chapter has explored the experiences of seafarers' families following the death or disappearance of their loved one working at sea. By analysing the nature of contact and rapport maintained between the companies and the seafarers' families after accidents, this chapter has highlighted that the requests of families based on Chinese tradition and culture are typically disrespected by shipowners and interested parties due to the concerns about cost. It is further evident from the analysis that in the negotiation of compensation amounts, the absence of shipowners in foreign-related accidents causes considerable resentment amongst victims.

The limited liabilities of shipowners suppressed family members' higher claims for compensation until a review was conducted in 2013. The rationale of liability limits was to protect the development of shipping industry. However, the limit of CNY 800,000 was set in 1992, and rapid inflation has subsequently diminished its value. The evidence of this chapter illustrate how weak the position of bereaved families is as compared to commercial organisations.

The weak protection offered to claimants provided by the Chinese government also encourages shipowners' interests act recklessly from the perspectives of victims. Without independent trade unions, voluntary organised resistance largely relies on relatives and friends. The power of this kind of informal resistance is too limited to create any significant continuous pressure and in many cases, it cannot be sustained because the lives of family members must go on. Although in some cases, through resistance, the

claimants obtained more compensation, which was still far from the loss they suffered.

The obvious power imbalance between shipowning interests and victims has infringed seafarers' rights and created significant and irrecoverable harm to their physical and mental health. Furthermore, the negative attitudes of the authorities in regulating and mediating these disputes enable the irresponsible shipowners' interests to erode the social justice.

Chapter Seven: The Seafarers' Experiences of Workplace Injury and Compensation Claims

Introduction

This chapter will move on from a consideration of compensation in cases of workplace fatal accidents to compensation made to injured seafarers. Unlike the claimants in fatal accident cases, who are the bereaved families, the claimants for injury damages are usually the injured seafarers themselves. This chapter begins by examining seafarers' experiences of first aid, emergency medical care and repatriation. It then goes further to look at the follow-up of medical care and sick pay. Afterwards, the problems and obstacles confronted by seafarers in the process of obtaining recognition of long term disability will be explored. In the final section, seafarers' experiences of compensation negotiation and dispute resolution, including litigation, will be discussed.

7.1 Medical care for seafarers after workplace accidents

Medical care for seafarers can develop in the following two stages: emergency port medical care, and further medical treatment after repatriation. Medical expenses constitute an important part of most compensation claims because payment or non-payment can determine whether occupational injuries are treated appropriately. The Maritime Labour Convention (2006) requires shipowners to provide timely medical assistance to injured seafarers. Regarding Chinese coastal vessels, where international conventions cannot be applied, the Chinese government requires shipowners to arrange medical care for injured seafarers in time⁷⁵.

7.1.1 Emergency medical services in ports: attitudes and practices of shipowners

⁷⁵ See the *Regulation of Seamen (2007)*.

Shipping companies' attitudes towards seafarers' medical needs are different. Some shipowners arrange medical care instantly. For example, when SF_TJ_L (ordinary seaman)'s foot was mutilated on board, his shipowner, a state-owned enterprise (oil drilling), helped to arrange prompt medical care for him. He said:

The captain called the company immediately after the accident and sent me to the nearest hospital immediately. He also gave me some money. In the hospital, I received surgery at the first time. When I woke up, three people came to enquire me about the details of the accident. One is from our shipping company; one is from my crew agency, and the other is from the oil company. Afterwards, I was transferred to a better hospital back to Tianjin, and our company arranged transport for me.'

Unlike the above state-owned shipowner, private coastal shipowners' can be irresponsible and negligent. Such is the case of SF_HH_W (Captain) who suffered a tailbone injury following an accident on a privately owned coastal vessel (200 tonnes). He explained how he was ignored and cheated by his shipowner:

I felt my back was hurt, so I called the shipowner and asked him to permit me to sign off from the vessel. There should be three seamen on this small ship, but the owner only employed me as a captain and another seaman. I could not leave the ship at that moment. I waited on board and called the owner many times. Three days later, the owner arranged me to go to the hospital in port. The shipowner cheated me that no fracture was diagnosed and asked me to go back to work for him on board. When I came back on board, I could not stand, so I went to the port hospital again, and they referred me to the hospital in town. Until then, I was permitted to sign off from the vessel.

By comparing two seafarers' experiences on Chinese coastal vessels, it can be noted that the seafarer working for the state-owned ship received emergency medical care in a timely fashion while the one working for a

privately-owned ship met additional barriers in accessing medical care. SF_HH_W was forced to work with his injury because his shipowner failed to find a replacement.

Seafarers working on international ships are not able to seek medical services abroad independently. Due to language barriers and immigration controls, the access to medical service is controlled by their shipowners. Such is the case of SF_FZ_L (Second Engineer) who suffered an injury to his ribs on an FOC vessel controlled by a Chinese private shipowner in Indonesia. He was forced to stay on board until the vessel called at a Chinese port in Hainan. He described the considerable obstacle he faced when he tried to access medical treatment abroad:

I asked the company to sign off and repatriate me back to China for medical care. But the company could not find a second engineer to replace me. Without my certificate, the ship could not navigate. You know, if we stayed in the port for another day, the company had to pay an extra USD10,000-20,000 to the port, so the company persuaded me to continue my duty. I understood the company's concern, so although I felt painful, I still kept working. [...] Later, when we called a port in Hainan, I finally could go to the hospital on my own. The doctor told me my fracture could be fatal. But the company said they could not find another person to replace me, and still asked me to keep working on board, so I had to work an extra 41 days after my accident. [...] It is a horrible feeling when I think about those days now. I think I was so lucky that I did not die on board.

SF_FZ_L's experience is similar to the account of SF_HH_W referred to earlier in this section. Both were not allowed to seek medical treatment because their shipowners were unable to find replacements for them. This problem highlights the crewing practices among private shipowners and across some sectors of the shipping industry, where voyage contracts are preferred. Because these companies do not retain seafarers as regular employees, they cannot replace their injured crew in time. Instead of

suspending vessel operations following a shipboard injury which affects staffing requirements, these shipowners prefer to persuade their injured crew members to continue with their duties until they can find a replacement to avoid incurring further costs.

Unlike privately-owned shipowners, state-owned companies appear to be more responsive to their seafarers' medical emergency needs following a workplace injury. SF_QZ_L's (Pump man) shin bone was broken on an FOC vessel controlled by a Hong Kong shipowner. He was recruited by a Chinese state-owned crew agency. His experience of accessing medical care was more satisfactory than SF_FZ_L. He said:

The captain took my injury very serious and immediately informed the shipowner and my crew agency. I was sent to a Guangzhou hospital soon after the accident and received surgery. I worked for a state-owned company, anyway. They were quite responsible and took me to hospital instantly. The shipowner sent a person to pay the entire medical fee and sent a message of sympathy and solicitude. I did not worry much then, and I knew both the shipowner and my crew agency had insurance for workplace accidents.

The experiences of ocean-going seafarers described above suggest that differences in company attitudes when responding to seafarers' injuries on board can be significant depending on whether the shipping company is privately owned or state-owned. One possible explanation is that private shipowners do not often have a stable reserve of seafarers and highly rely on the supply of freelance seafarers in the labour market. Meanwhile, the state-owned or large foreign-owned shipowners have their crewing agency providing a sustainable labour supply. Also, domestic private shipping companies in China have been in business for a shorter time when compared with their state and foreign-owned competitors who have greater reserves. However, by putting profit and other commercial considerations before the well-being of injured crew, shipping companies are undermining the health and safety of seafarers in their employment.

7.1.2 Attitudes towards following-up medical treatment of shipowners

When injured seafarers are fit to travel, they are usually repatriated. Although for injured seafarers, further medical care is still crucial and necessary, for the shipowners, repatriation means they are no longer responsible for paying medical expenses directly and only obliged to reimburse lump sum medical expenses afterwards. The lack of shipowners' direct payment becomes a financial pressure for seafarers. SF_QZ_L explained how they had to give up further medical treatment under this financial pressure:

The crew agency always delayed the medical payment. All three following up surgeries were paid by my family, and the crew agency failed to reimburse us a cent. This pressure was tremendous. My father did not get sick pay, so all the family had to support my dad's medical treatment. We had to work to make money, take care of my dad, and travel several hours to the company to negotiate medical expense reimbursement. Later, they refused to pay explicitly and told us after a certain time point, and the insurance company would not cover any further medical payment. But my father's eye could not be treated half-way. Without further medical fee reimbursement, my father decided to give up the treatment and his situation is still not stable and becoming worse.

In China, medical services are not free, and if patients fail to make payments, hospitals will stop medical services and discharge patients. If shipowners refuse to make timely payment for seafarers' medical treatment, seafarers have to give up their ongoing treatment, something which can result in a permanent disability.

7.1.3 Sick pay

Sick pay is another important part of the compensation package for seafarers. This research finds that seafarers' sick pay varied according to their employers and to their employment status. For example, SF_TJ_L, a seafarer serving on the state-owned supply vessel, who was employed through his crewing agency, received monthly sick pay. However, SF_XZ_Z, a mariner

serving on the state-owned vessel, who was not formally employed by his crew agency, did not receive regular sick pay. He said,

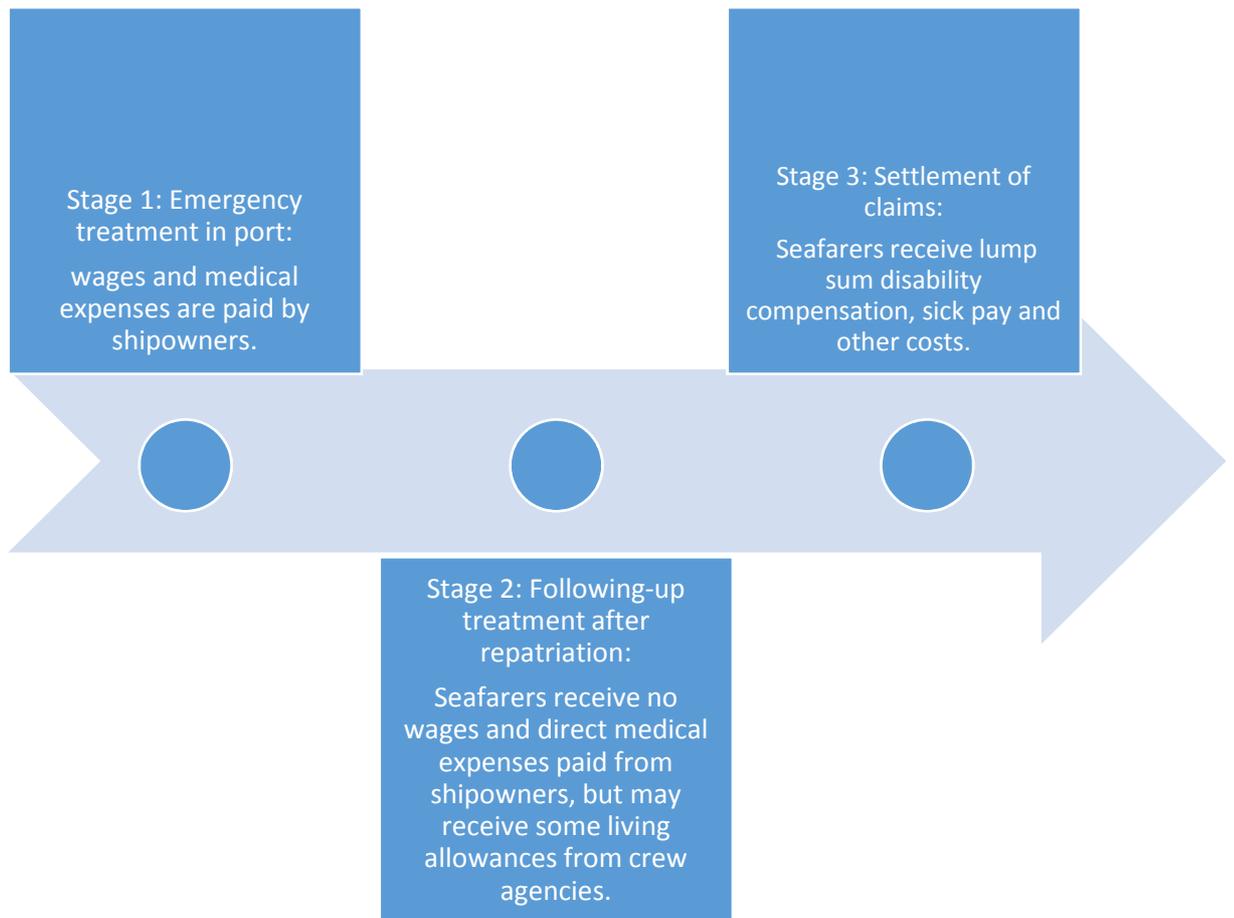
The crew agency told me they would pay me basic wages and once I recover, they would negotiate compensation with the state-owned enterprise for me. However, from Jan 14th, 2013, when I was injured, until now (Jan 2014), they only paid me four months' basic wages. They stopped my payments then. I asked the crew agency why I did not receive any money. They told me it was a long period after my injury so the shipowner decided to stop paying me. I felt so upset and cheated by the company. I am suffering work-related injury, but they refused to pay me a basic salary.

SF_NT_G, a third officer working on a private Chinese vessel reported a worse situation than the one of SF_XZ_Z that after his injury: the shipowner refused to pay any wages to him. His employment contract with his shipowner was only verbal. He said,

I find jobs through different agencies, but neither shipowner nor agency would sign a formal labour contract with me. They do not arrange any social insurance for me. Therefore, I had no sick pay at all.

In the Chinese coastal shipping industry, this precarious employment is not uncommon. These seafarers' entitlements to sick pay are ignored by their shipowners and crewing agencies. State-owned shipping companies are believed to be more responsible than their privately-owned counterparts in China. However, by comparing the aforementioned experiences of SF_XZ_Z (Able Seaman) and SF_TJ_G (Ordinary Seaman), it can be noted that although they both work for state-owned vessels, without formal labour contracts, SF_XZ_Z could not obtain timely sick pay. Seafarers in precarious employment, be it with state-owned or private-owned shipowners, are unlikely to receive adequate monthly sick pay than their colleagues in formal employment contracts.

Figure 4: The three liability stages of shipowners and crew agencies



Sick pay for international seafarers is even more complicated than it is for Chinese coastal seafarers. As discussed in Chapter 4, to work on an FOC vessels, Chinese seafarers are legally required to be placed by licensed crewing agencies. This means that Chinese seafarers cannot enter into a formal direct employment relationship with FOC shipowners in any way. Chinese labour laws are only enforceable to domestic crewing agencies but cannot bind foreign shipowners. As the analysis in Chapter 5 has shown, FOC shipowners and domestic crewing agencies jointly coordinate the management of workplace accidents. After the repatriation of injured crew members, the shipowners' responsibilities can be temporarily shifted to the local crewing agencies. Shipowners make lump sum sick payment when claims are settled; that is when the medical treatment is complete, disability degree conclusions have been issued and disability compensation amounts ascertained. Therefore, as indicated by the chart in Figure 4, there remains a gap of FOC shipowners' responsibilities of wages in the process, which is a

highlighted problem in Stage 2: many international seafarers report they have not received regular monthly sick pay from shipowners at Stage 2.

A Second Engineer SF_XM_W explained why he decided to terminate his medical treatment before it was complete in order to obtain his lump sum sick pay quickly. He said:

At the beginning, the manager told me there would be a sick pay for me, but never told me the standard and time limit. The manager just said I should not worry about that and focus on my recovery first. I received four surgeries after the accident. After each surgery, the doctor suggested that I should have a three-month recovery period. But I always urged the doctors to conduct next operation earlier because I was not sure how much the company payment would be. The longer I stayed at home, the more I worried about my future career. At my 30s, staying at home, employed but unpaid, it was stressing, disappointing and painful. After one year, I could not wait to claim my compensation. I told my manager that I would like to terminate my employment relationship, and then my manager agreed happily. He submitted my claim to the shipowner and then the P&I club paid me the medical cost, disability compensation and my wages. By then I was told my sick pay was USD 1000 per month. The company were quite happy to know that I would like to resign. I asked my manager why he did not tell me my sick pay amount. They explained in ambiguous words, but the main idea was because they fear that if I had been told the amount earlier, I would prolong the treatment period on purpose. Without monthly payment, the financial difficulty just accumulated day by day, and reaching a point that I could not bear. Then I had to terminate medical treatment in advance and resign from the company to claim compensation soon otherwise I could not continue my normal life. Now I am thinking maybe the crew agency retain my wages because they were trying to force me to resign.

SF_XM_W's account suggests that crew agencies may: (1) shorten medical treatment period to reduce sick pay; (2) delay compensation payments to encourage seafarers to resign 'voluntarily'. The crewing agency linked the sick pay, disability compensation and seafarer's 'voluntary' resignation together. SF_XM_W was a formal agency-employed seafarer, so when he was diagnosed as Grade Eight disability, the crew agency was forbidden to dismiss him by law unless he submitted 'voluntary' resignation (see Chapter 4). Nevertheless, for an international seafarer suffering a Grade Eight disability, it is impossible to pass a physical examination and continue his career at sea. Thus, it is not worth the crew agency retaining him. Being left employed but unpaid, SF_XM_W had no choice but to resign and then claim his compensation. In essence, the crew agency's strategy was constructive dismissal of SF_XM_W to avoid liability relating to rehabilitation.

For seafarers suffering workplace injuries, further medical treatment after repatriation may be necessary and crucial for their recovery and rehabilitation. However, they experience difficulty in obtaining the medical care and reasonable sick pay which they are entitled to. Chinese seafarers working on state-owned coastal vessels were in a better position in terms of access to assistance during medical treatment and regular monthly sick pay.

7.2 The recognition of work-related injury and disability assessment

7.2.1. Work-related Injury Recognition: crew agencies' attitudes

The recognition of work-related injury is the administrative precondition to obtaining Work-related Injury Insurance compensation. Once workplace accidents occur, the shipowner/crew agency involved should submit an "application of ascertainment" within 30 days to a local Labour Bureau. Once the seafarer's injury is recognised as a work-related injury, social insurance compensation can be claimed. However, if the company refuses to apply, then the seafarer cannot obtain payment from the Work-related Injury Insurance

Fund⁷⁶. In the shipping industry, seafarers may be “exchanged” among different crew agencies and shipowners. The company who has purchased Work-related Injury Insurance for the seafarer is usually different from the company which places the seafarer. In this scenario, both companies have opportunities to evade their obligations. For example, SF_HF_G, who is the wife of a cook, faced these difficulties in obtaining the official recognition of work-related injury for her husband. Her husband’s eardrum was burned following an engine room fire accident on an FOC vessel owned by a Hong Kong shipowner in South Africa. He was employed by a Nanjing crew agency (state-owned) then dispatched by a Shanghai crew agency (state-owned)⁷⁷. Regarding the ascertainment of his work-related injury, both companies managed to evade their liabilities. SF_HF_G described the experience of interacting with these two crew agencies:

We tried to contact the Shanghai Company to ask for the disability ascertainment certificate, but the HR manager told me that they were not liable for my husband’s workplace injury because my husband was employed by their Nanjing Company. They said they just borrowed my husband, just like borrowing a car, and now they have returned him back to Nanjing Company already. At the beginning, they promised that my husband’s injury was work-related, and they would help us to arrange all the following up procedures, but they just changed the tune completely after two years. Afterwards, I contacted Nanjing Company, but they said they had nothing to do with this accident and Shanghai should be liable for the injury. I was driven mad by their tricky excuses.

⁷⁶ An injured seafarer is entitled to apply the ascertainment on their own within one year after the accident, but the seafarer applicant may not be able to provide adequate evidence to establish a factual employment relationship.

⁷⁷ These two crew agencies are sibling state-owned companies. They exchange their seafarers when necessary. In this case, the seafarer signed labour contract with the Nanjing Company. The Shanghai Company ‘borrowed’ him to fill a position of cook for a voyage only.

From the above account, we learn that the Shanghai Company compared dispatching the seafarer to ‘borrowing a car’, indicating their rationale that seafarers are ‘commodities’ or ‘instruments’. When the ‘instrument’ was broken, the Shanghai Company just ‘returned’ it (i.e. the seafarer) to his employer and had no liabilities to the ‘broken tool’ (injured seafarer). The practice of ‘borrowing’ and ‘lending’ seafarers is common amongst Chinese crew agencies. In the event of a seafarer being injured on board, the ‘lending company’ and ‘borrowing company’ can both deny their liabilities. Although SF_HF_G had Work-related Injury Insurance, without the company’s assistance, her husband could not obtain compensation from Work-related Injury Insurance Fund.

7.2.2 Work-related injury recognition

When crew agencies refuse to apply for work-related injury recognition and compensation on behalf of seafarers, seafarers are entitled to seek remedies through labour authorities. Nevertheless, the mobile, precarious and international nature of seafarers’ employment relationships make it difficult for seafarers to access timely justice. The municipal government manage Work-related Injury Insurance and relevant disputes. Hence, seafarers can petition a local municipal Labour Bureau or government petition office. However, if workplace accidents occur overseas, then local government’s administrative jurisdiction may be challenged. Taking the case SF_HF_G’s husband as an example, when she tried to seek help from the Shanghai municipal government’s online whistleblowing system, the government replied they had no administrative jurisdiction over her petition because the injury was foreign-related and occurred abroad. SF_HF_G’s wife expressed her confusion of the government decision:

We could not understand the government’s reply and felt so disappointed. We have the dispute with the Shanghai Company, but how could it become a foreign-related dispute? The civil servant told me that they contacted the Shanghai Company. The company claimed that our dispute was foreign-related, and the Shanghai government had no power to intervene this dispute. The civil servant then told me

that I should settle this dispute with the company on my own. The government's suggestion was useless to me.

SF_SQ_Z also had a similar experience with SF_HF_G when he tried to seek help from local Labour Administrative Authority in Tianjin. He said:

The labour authorities were not helpful at all. When I tried to seek help from the labour arbitration tribunal, they referred me to the Labour Bureau. Then the Labour Bureau said my workplace injury dispute is foreign-related and asked me to go back to the arbitration tribunal. They just pushed me to each other and refused to accept my petition.

Jurisdiction is a fundamental issue in seeking any legal remedies. Without clearly established administrative jurisdiction, seafarers cannot be protected by Chinese labour law. The labour authorities may not recognise their responsibilities, which means they allow crew agencies to continue ignoring and infringing seafarers' rights. From the perspective of seafarers, their employment contracts are signed with Chinese crew agencies and it is the Chinese crew agencies who arranged social insurance (if any) for them. Therefore, they believe that their local labour authorities should protect their rights. However, when the administrative authorities denied their jurisdiction and ignored their claims, seafarers are exploited from the access to timely remedies from governmental authorities. This negative attitude of labour authorities serves to reinforce crew agencies' refusal to recognise seafarers' accidental injuries as Work-related injuries and unwillingness to assist seafarers when seeking Work-related Injury Insurance compensation.

7.2.3 Assessments of workplace injuries and disabilities

a. Work Capacity Assessment Committees

Appraisals of workplace injuries and disabilities are a core part of seafarers' claims because they determine disability compensation amounts. Therefore, assessments must be issued by certain authorities or licensed appraisal institutions. Work Capacity Assessment Committees are the public funded work-related disability appraisal agencies affiliated to local Labour Bureaus.

Their assessment conclusions have the highest legal effectiveness. However, without Work-related Injury Recognition, Work Capacity Assessment Committees refuse to assess disabilities for seafarers. For many seafarers, especially freelance seafarers, their requests for a workplace injury appraisal are usually rejected by Work Capacity Assessment Committees. An ordinary seaman SF_QD_H described his experience of being rejected by several Labour Appraisal institutions:

I tried many Work Capacity Assessment Committees, but all of them refused to assess my disability. I was introduced by a Beijing Company to a Dalian Company, which sent me to work on a Hong Kong Flag vessel. The accident occurred in Shanghai. I first went to an assessment institution in my hometown, but they said I was not in charge of their jurisdiction. Then I went to Dalian; they argued that I should go to Shanghai for the assessment because the accident occurred there. In Shanghai, they said I should go back to Dalian because the company was in Dalian. I was almost driven crazy. I was not fully recovered then, so my health situation did not permit me to travel across China. Later, I raised my courage again and tried another institution somewhere, but they still refused me because I did not have a proof letter issued by the company. I hired a lawyer and paid him CNY 1000 just wanted to obtain a disability assessment but the lawyer only took the money, and my disability is still not assessed. It is a hard time for me and I feel hopeless in making any progress in my compensation claim. Before you contacted me, I did not want to mention this to anyone. I just isolated myself in the village.'

SF_QD_H's account reflects a common but complicated problem confronted by freelance seafarers in China. They are not formally employed by any crew agency and the company is not willing to obtain Work-related Injury Recognition for them, because by doing so, the company admit they have a factual employment relationship with seafarers (See Chapter 5). In this situation, Work Capacity Assessment Committees refuse seafarers' disability appraisal requests, because these seafarers are not classified as employees.

Work Capacity Assessment Committees also refuse to assess any workplace injury which occurred more than one year ago. This strict limitation rule increases the difficulty for seafarers in obtaining their disability appraisal conclusions from public funded institutions. SF_QZ_Z explained why his disability appraisal request was rejected:

As suggested by my lawyer friend, I went to the Assessment Committee in Xiamen. When they found my accident occurred one year ago, they would not issue the disability appraisal conclusion for me. At that moment, I felt so disappointed with the government and somehow being cheated by my agency, who just did not disclose this time limitation rule to me on purpose.

Many seafarers' injuries are excluded from the scope of official 'work-related injury' (Figure 5). Only formally employed seafarers' workplace injuries can be recognised as Work-related Injuries by law. The workplace injuries of freelance seafarers are excluded and cannot be appraised by public funded Work Capacity Assessment. In addition, seafarers' injuries, which have occurred over one year, will not be accepted for appraisal by social insurance institutions.

For those seafarers whose crew agencies are willing to recognise their work-related injury status, their experiences with Work Capacity Assessment Committees can still be harmful. SF_XM_W complained about the Work Capacity Assessment Committee's practice:

They were terrible and unreasonable. The surgeon left a metal device into my hand to help my hand function well. But the assessment committee said that metal device inside they could not appraise my disability and asked me to take that out. I consulted my doctor, and the doctor said it would harm if the metal device were taken out. Then the assessment committee asked me to sign an agreement to promise if there were any further disputes regarding the disability degree, it would be purely my fault.

Another Chief Officer SF_XZ_H described the loneliness of seafarers at the assessment committee:

All the workers I met there were accompanied by the personnel of their companies. However, only our seafarers have to take care of ourselves without any colleagues to support us at the public committee. The committee staff were always asking for different documents. For those with their company representatives, the representatives can contact the company to prepare relevant documents in time. But our seafarers have to always 'commute' between our companies and the public committees to prepare and submit paperwork on our own.

These accounts indicate that obtaining disability assessments from the Work Capacity Assessment Committee can be challenging, and that interaction with the public assessment committee can be frustrating as well because of the lack of support from crew agencies. When seafarers' disability assessment requests are rejected by public committees, they have to have their disability appraised in a licensed private judicial assessment institution, which addresses all categories of disabilities arising from personal injury accidents.

b. Judicial Capacity Committees

Unlike public Work Capacity Assessment, the fee to obtain a disability assessment from Judicial Capacity Committees is usually charged to seafarers. The appraisal fee of Judicial Capacity Committees is much higher than by public Work Capacity Committees. For example, in Xiamen, the public assessment cost is CNY 320⁷⁸, but the private judicial assessment fee is CNY 800-1200⁷⁹. The latter one is 2.5 – 3.75 times of the former one. Some

⁷⁸ http://www.xm.gov.cn/bszn/bmfl/rlzyshbjj/srlzyshbjj/ggfwsx/201205/t20120507_492451.htm

⁷⁹ <http://zhengtai.ezweb1-3.35.com/fayilinchuangangfajiangdingshoufeibiaozhun-203380.html>

seafarers believe it is unfair for them to pay the assessment fee. SF_XM_H expressed his dissatisfaction towards this payment:

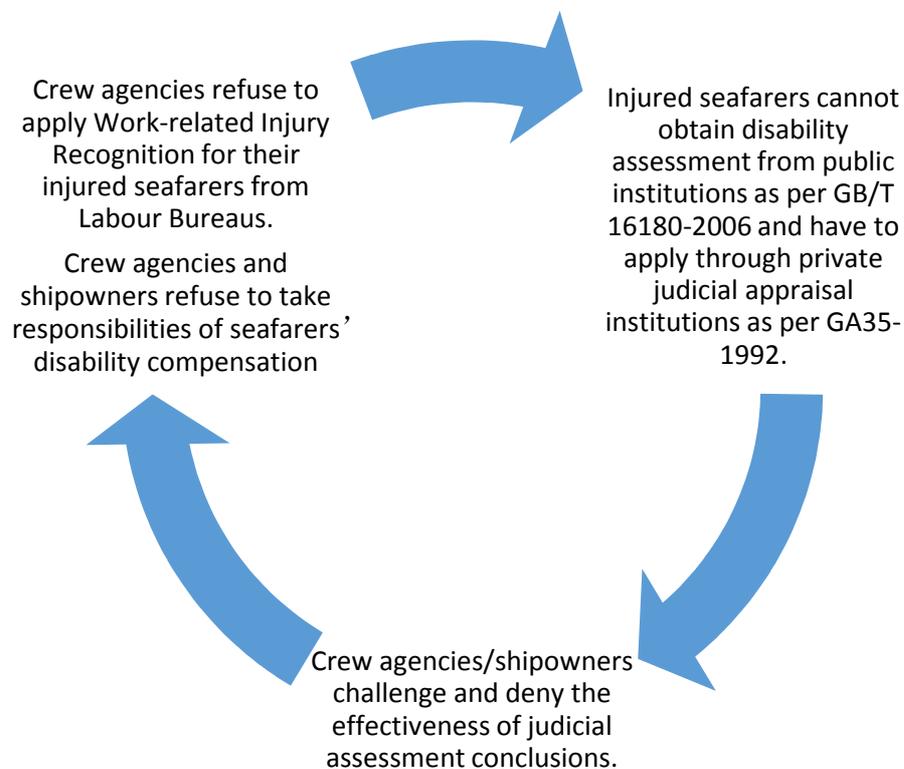
My crew agency gave me an address of the Judicial Capacity Committee and asked me to obtain a disability assessment there. [...] They did not issue any reference letter for me and told me that I should apply this application in my name and I had to pay the assessment fee. [...] I asked my agency why I should pay the assessment fee myself. They told me this was the insurance company's rule because the insurer would not cover the assessment fee. When I learned that the foreign shipowner requested that I should pay the disability assessment myself, I did swear and curse the company in my heart: how mean and unfair they were and even forced me to pay this fee myself.'

As discussed in Chapter 5, there are different disability standards (GB/T 16180-2006 and GA35-1992) applied in disability assessment. In some cases, interviewees reported they believed that they received a lower grade according to GA35-1992 (The Disability Appraisal Standards for the Injured in Traffic Accident) than according to GB/T 16180-2006 (The Standards for Disability Degree caused by Work-related Injuries and Occupational Diseases). SF_HF_G described her experience of obtaining the Judicial Appraisal Assessment for his husband:

'Our local labour bureau first told me that without the recognition certificate of Work-related injury, they would not assess my husband's disability. Then they said that we could only apply judicial appraisal according to the traffic accidental disabilities standards, but the grades would be less favourable for workers than the work-related injuries standards. We understood that we would suffer additional loss by applying judicial appraisal because of stricter traffic accident standard, but we had no other choices. Otherwise, we would not have enough evidence to claim the compensation.'

Judicial appraisal is regarded as less effective than Work Capacity Assessments, so crew agencies and shipowners frequently challenge judicial assessment conclusions to evade their compensation liabilities (This occurred in the cases of SF_HF_G and SF_FZ_L). This creates a vicious circle: crewing agencies' reluctance to obtain recognition of work-related injuries forces seafarers to arrange judicial disability appraisal for themselves, but then shipowners' representatives deny the legal effectiveness of a judicial disability appraisal; finally, seafarers' claims reach an impasse.

Figure 5: The vicious circle of interaction between seafarers, crew agencies, and shipowners regarding disability appraisal conclusion



For instance, SF_HF_G husband's crew agency challenged the effectiveness of his judicial disability assessment. She said:

The crew agencies challenged the effectiveness of my judicial disability assessment in the court hearing, which was shameless. We argued that because of their objection we were not able to obtain

Work Capacity Assessment. We had no other choice to have the judicial assessment as our evidence. Another seafarer SF_FZ_L shared a similar story: ‘the shipowner’s insurance company distrusted my judicial disability assessment result and asked me to be re-assessed by a committee they appointed. They just picked bones from the egg. What a trouble I had!’

7.3 Compensation, Disputes and Resolutions

7.3.1 The transparency of compensation standards and P&I Clubs’ approval

As discussed compensation standards for seafarers are varied and inconsistent. In many cases, the social insurance regime of the *Work-related Injury Insurance Regulation* is not enforced. In many instances, shipowners apply different compensation standards which are adopted by crew agencies. However, for seafarers, such agreements are not transparent. According to the employment agreements collected from the respondents in this research, only one agreement detailed the compensation scheme. Most compensation clauses are drafted as

During the duty on board, the shipowner will insure the Party B (seafarer). All workplace injury, disease or death will be compensated subject to the agreement between Party A (crew agency) and shipowner.

Most of the interviewed seafarers described how their crew agencies had not informed them about the compensation standards they applied beforehand. Some were only told which standards applied after they finished the medical treatment. For example, SF_XM_H explained how he was informed about the compensation standards:

My manager showed me a contract with compensation standards. My manager said this standard is legal and reasonable. But I did not know this agreement before because I had never signed this contract. The contract he showed to me was signed between the foreign

shipowner and my crew agency. It could be forged: he printed some standards and got some seals. I could not tell whether it was true or not because I had no idea when the contract was signed. I decided to accept this standard because I had no time and energy to argue with my agency.

Some seafarers were criticised when they tried to ask for details of compensation standards after their accidents. SF_QD_H explained his family's experiences:

'The doctor told us that surely I would have permanent disability due to this injury, so my elder sister worried about me and inquired the company about the compensation standards. The company was mad and said, she should concern my recovery only, and compensation was one-off. My sister told the company that I was the only son of the family, what if I had a permanent disability and later we could not find any liable person to claim damages. The company shout at my sister that it was our family's fault to allow me to work at sea. I worked hard on board but the company's attitudes deeply hurt me. I am so disappointed with shipping. The company's terrible attitudes cause a lot of mental harm and pressures for me, so now I fear to call them to ask for compensation. I cannot predict how the company will treat me, so I find it extremely challenging to communicate with them.'

Seeking compensation is stigmatised as 'extortion' by some companies. SF_SQ_Z told his story:

I have some basic knowledge of law and rights, and I know that they should pay me compensation. But the crew agency just wanted to evade his liability. Every time I asked for compensation, they blamed me that I was extorting them by my disability.

His crew agency chief manager SF_TJ_C made a comment in the interview:

The injured seafarers, if they were still willing to work at sea, they would not care about these damages because they can earn the money

back quickly at sea. Those who decide to quit the career at sea would always cause troubles for us and claim compensation aggressively because they wanted to make as much money as they could.'

The manager's adversarial attitudes towards seafarers' injuries and compensation claims are based on the assumption that seafarers' salaries at sea are significantly higher than on land, so seafarers should earn their loss themselves by working at sea. Holding this opinion, the manager stigmatised seafarer claimants as greedily extorting, lazy and unwilling to go back to work at sea. The manager's bias upgraded the dispute and irritated the seafarer. The SF_SQ_Z explained how he would respond to his manager's attitudes:

With my friend's support and encouragement, I decided to sue him. Not matter how much it will cost and how long it will take, I just want to obtain a fair and just treatment in my case.

P&I Club approval can be used as an excuse for shipowners to limit their liabilities in the contract: *'All benefits given are subject to the approval of P&I club of the vessel. The company shall endeavour to obtain approval from the P&I club.'* SF_FZ_L confronted this barrier in his claim process:

When I was discharged from the hospital, I had to collect all the invoices and medical records to report my medical fee. I had submitted all these evidence to my company and they would address the compensation with the insurance company (P&I Club). But the insurance company dawdled on my claim, and ignored me. We submitted all the evidence according to their requirements but the insurance company always refused to pay compensation. [...] My company and the insurance company could not achieve an agreement. [...] It was time-consuming and I had to stay at home and could not work. I asked my company whether they could pay me first. They said no and only the insurance company approve then I could be compensated.'

SF_FZ_L's account confirms the abovementioned clause in a seafarer contract that unless P&I clubs approve seafarers' claims, the shipowner will not pay seafarers damages accordingly. If the P&I Club and the shipowner have disputes, seafarers' claims will be delayed and obstructed.

7.3.2 Work-related Injury Insurance Compensation

The research findings regarding compensation standards in Chapter 4 and Chapter 5 show that the compensation amounts available to seafarers are influenced by their employment status or contract, so that seafarers with the same degree of disability may receive different compensation. Freelancing seafarers receive less compensation and lower welfare than employee seafarers do. SF_XM_H explained the damages that he received:

'China is not a developed country. I don't mean that our country is not developed enough, but our seafarers cannot have a humane and decent treatment. It is impossible for the company to provide me lifelong care. If an employee seafarer is injured, the company will provide them long term living allowance. However, for us, non-employed seafarers, they just compensate us lump sum shipowner's damages only. I consulted my manager why could not I have the long-term Work-related Injury Insurance benefits. He told me that because I was not a formal employee so I could not have that part of compensation.'

Although some freelancing seafarers have served the crew agency for a long time, they are still regarded as temporary workers. SF_QZ_Z expressed his discontent of this discriminatory treatment:

'I have worked for this company since the early 1990s. When Filipino seafarer refused to navigate to the Gulf, we were risking our lives to earn foreign currencies for the company. I always recognised myself as a formal employee. I was so dedicated to navigation and this company. However, when I was injured, I started to realise I was only compensated as a temporary worker. After 20 years' service, all I have received is a temporary worker's benefit standards, which is far

from enough to cover my loss. All staff regard me as a 'god of plague' when I visited the company to claim some more compensation. I am upset about the company.'

SF_QZ_Z is a carpenter who worked on a bulk carrier. In his company, ratings cannot have employee status, so they cannot obtain social insurance compensation.

Employee seafarers can obtain Work-related Injury insurance, but the premium paid by many crew agencies is a minimum standard (see Chapter 5). As a result, when employee seafarers claim their compensation from public social insurance funds, they are only entitled to the state minimum damages. SF_XM_W explained the limited compensation he obtained from social insurance:

'I only received CNY 10,000-20,000 from social insurance and it was low. I think the Chinese social insurance just provided a minimum and lowest welfare money. In my case, according to my company's contribution, they could only pay me according to the lowest standard. What was worse, the public Work Capacity assessment of my injury was just Grade 9. The bone of my finger is missing and my index finger loss largely reduces the function of my right hand. [...] It was unnecessary to go through this process for so little compensation, and it was completely up to the social insurance authority. This compensation amount is unreasonably low compared to my severe injury and my earning loss. I even felt I should not have contributed to this social insurance scheme at the beginning. I have paid this since 1998, but the compensation was too small to cover my loss.'

In addition to the problem of a minimum compensation, geographical barriers obstruct seafarers' social insurance claims. SF_XM_W complained about this issue:

A big problem of social insurance is the disconnection of different provinces. All the social insurance contribution the company and I

made in Guangzhou was useless, when I started to work in the Xiamen Company. Eight-year social insurance contribution suddenly became useless and I have to start again in Xiamen. It was said 3.8 million workers quite social insurance online. I guess these people are mobile workers as me because we cannot enjoy the benefits from the social insurance if we moved to another province. I would like to have a higher salary rather than the social insurance contribution.'

In this research, many employee seafarers are not the residents of the cities of their crew agencies. When they leave their current jobs, it is difficult for them to collect their social insurance savings. In addition, work-related injury compensation may be lower than P&I Club's insurance compensation. For example, in the case of SF_XM_W, the social insurance compensation was about CNY 20,000, but the P&I Club's compensation was about CNY 200,000. All his medical care expenses were covered by P&I Club's compensation, because these expenses could not be reimbursed completely by the social insurance fund. He explained this problem:

I had only one set of original invoices of medical expenses. If I submitted to the social insurance fund, their standards are stricter than P&I Clubs, so my manager said it is better to claim the medical expenses from the P&I Club. Overall, the compensation I received from social insurance is much less than from the P&I Club. Anyway, I did not have much confidence in the social insurance at the beginning, and it is no wonder their compensation is too small.
(SF_XM_W)

The issues regarding Work-related Injury Insurance claims are complicated and varied. The first issue is the inequality confronted by freelancers and employees. Crew agencies usually only arrange social insurance for their long-term high-ranking officers, and refuse to arrange social insurance for their ratings and temporary workers. These non-employee seafarers can be upset about such unequal treatment. Secondly, the mobile nature of seafarers' job opportunities can reduce the security effects of social insurance, because

their contribution cannot be continued when they move to another province to work for a new crew agency. Finally, due to the minimum contributions made by some crew agencies, the social insurance compensation available for seafarers is much lower than shipowner's liability insurance compensation, which may discourage seafarers from continuing their social insurance schemes.

7.3.3 Disputes and Resolution

1. Lawyers and dispute resolution

Most injured seafarers stated that they preferred to negotiate with their crew agencies than to bring their claims to local labour arbitration tribunals or maritime courts. This reluctance of seafarers is caused by various concerns. The first one is seafarers' uncertainty of a positive claim result and anxiety about judicial costs. SF_XM_H explained why he did not choose to employ a lawyer while seeking help from judicial institutions:

There were some lawyers tried to contact me but I thought in my case to hire a lawyer was not worthy. Our crew agency already has a so-called reasonable and legal standard. To hire a lawyer and sue the company might not improve the compensation so much, but I would have to pay extra service fee to the lawyer.

In some cases, seafarers hired lawyers and were ready for litigation, but were convinced by their crew agency managers to give it up. SF_SQ_Z explained how he was convinced to dismiss his lawyer:

When I returned home from the hospital, the company refused to send me sick pay. I hired a lawyer from Beijing. The lawyer tried to negotiate with my manager, but the company still refused to pay. This Lawyer was capable and he contacted ITF successfully and reported my case to ITF. I did not know how my lawyer achieved this, but it did create significant pressure on the company. The company contacted me urgently, agreed to give me sick pay, but the condition was to withdraw my claim from ITF and to dismiss my lawyer. [...] At that

moment, I did not want to get into difficulties with my companies so I trusted the company. But later on, the company broke their promise and still refused to pay me disability compensation. Seven years passed, I am still fighting for my compensation.

SF_SQ_Z was cheated by his crew agency. He trusted the crew agency and the shipowner so he dismissed his lawyer and withdrew his claim from ITF. However, the company's deception was unexpected. This kind of strategy employed by crew agencies is not unusual. SF_QD_H shared a similar experience:

'After receiving our lawyer letter, the company called me. The company first advised me that I should not hire a lawyer to address the dispute and the shipowner was offended got angry already. They said the shipowner would compensate me if I dismissed the lawyer and would consider offering me working opportunity in the future. Later, the company threatened me that if I continued to take legal approach, they would blacklist me, and no other crew agency would hire me in the future.'

Based on the accounts of SF_SQ_Z and SF_QD_H, when they determined to hire a lawyer to address their disputes, the first strategy of their crew agencies is to persuade and/or threaten them so that they dismiss their lawyers. Their crew agencies were happy to make a promise of compensation on condition that they dismissed their lawyers. However, such oral promises are not easy to substantiate and are frequently broken. If seafarers refused to dismiss their lawyers, some crew agencies refused to negotiate with them. SF_XZ_H explained this problem:

My company told me that they would not talk to my lawyer and would only negotiate the damages with me. I went to the company. They agreed to compensate me CNY 40,000 but paid me CNY 20,000 first. The rest would be paid half year later. I took this offer without consulting my lawyer's opinion because I wanted to work for my company so I just accept their offer.

The lawyer (ML_QD_C) advised that the final agreed compensation was lower than that which would have been awarded in the court. However, due to SF_XZ_H's desire to work for the company in the future, he gave up part of his compensation claim without consulting his lawyer in order to maintain a good 'relationship' with the company.

2. Rights defence activities

As discussed in Chapter 6, rights defence activities adopted by claimants for death compensation included petition, occupation and demonstration are. However, in the cases of injury damage claims, these resistance measures were not found. A major factor preventing seafarers from arguing too fiercely with management was fear of being 'blacklisted' by crew agencies. Seafarers' dependence on their crew agencies for working opportunities at sea discourages them from pursuing or going through with any legal action for their rights and entitlements.

However, sometimes, seafarers adopt an online defence strategy when claiming injury damages. Through online searching, this study found that many posts of injured seafarers are mainly aiming to obtain legal advice rather than accusing their crew agencies as harshly as the online petitions of death compensation. Online right defences by the bereaved are to attract public attention to creating pressures for crew agencies and shipowners through governments' intervention, while the online defences by the injured mainly seek advice from other netizens. SF_HF_G explained her purpose of publishing online rights defence posts:

The company was warm at the beginning but later completely changed the tune after two years, when they believed our claim were time-barred legally. The company ignored us, so I decided to post my stories online. Some people replied that the claim was time-barred, and I could just accept this bad luck. Some people suggested whistleblowing or reporting to media to attract more public attention and then the government would intervene our claim. Although I would like to draw more public attention to make my claim become an online

incident, this is not realistic considering my capability so I continued to seek advice on different websites, including gate websites and legal service websites.

After noting her post, one professional “posts-manipulating” company contacted her to offer a commercial ‘online activism’ service. SF_HF_G described why she refused the idea of ‘online activism’:

I only receive a few replies to my posts and no replies at all in some seafarers’ online communities. It was frustrating, but later a person contacted me and informed that they could initiate an online activism for me at the price of thousands Yuan. They would post my stories on the most influential website, such as Tengxun and Weibo to create a large impact on cyberspace and to put the company to shame. I thought this idea over and over. My husband is injured and his one ear cannot hear, but should I initiate an online activism to discredit the company? My husband has worked for this company for years, and I do not want to ruin the company’s reputation, so I told that person even if I needed an online activism service, I would only tell my real story. The person replied, unless I agreed to discredit the company with exaggeration, the online activism would not succeed. Therefore, I refused their offer, because I just want to solve the problem of compensation, and I do not want to stigmatise the companies. So far, I have not disclosed the companies’ names online.’

The account of SF_HF_G indicates the struggle of seafarer claimants; on one hand, they are eager to seek their injury compensation, but on the other hand, although they are treated unfairly by their crew agencies. They are not willing to take a revenge by attacking their companies online because of their conscience. Even though SF_HF_G realised the companies cheated her husband, she held fast to her moral standards and would not stigmatise the companies. Their previous employment relationship hinders injured seafarers in defending their rights. Loyalty and dedication to their crew agencies may not disappear automatically following companies’ unfair treatment of them.

This mental state prevents many seafarers from taking full advantage of online right defence strategies.

3. Judicial litigation

a. Low persecution rate and obstacles to initiating judicial litigation for seafarers

Judicial litigation is the last resort for seafarer claimants. Among the cases of injuries studied in this research, only five interviewees eventually raised lawsuits against crew agencies and shipowners. The past employment relationship with crew agencies may reduce seafarers' determination to take legal activity against their companies, which may explain the lower rate of litigation. SF_QZ_Z described his psychological struggle when he gave up litigation:

I have a close friend who is a lawyer. When he heard how the company treated me unfairly in compensation, he drafted all the legal documents for me and encouraged me to sue them. We collected all the evidence and just one-step from submitting the litigation to the court. But I changed my mind. I had worked for the company about twenty years as a rating. Although the company did not regard me as an employee in the compensation standards, I identified myself as a member of the company. Emotionally I did not want to sue them. Because of my giving up, my friend was extremely disappointed with me. He said how you could bear this unfair treatment: no sick pay, limited compensation lower than national minimum standards. He said no workplace injury victim on land would suffer this silently as you.

SF_QZ_Z was torn between fighting for his rights and maintaining his loyalty to the company. In arriving at the decision to take legal action for injury compensation, seafarers face two difficult choices; to proceed with litigation and damage their reputation with their employer or to refrain from any court proceedings and trade their entitlements for good relations and the hope of future employment with the shipowner or crewing agency. Faced with this

dilemma, if maintaining loyalty to the company is more valuable to the seafarer, they have to suppress their legitimate rights and entitlement to compensation (see Figure 7).

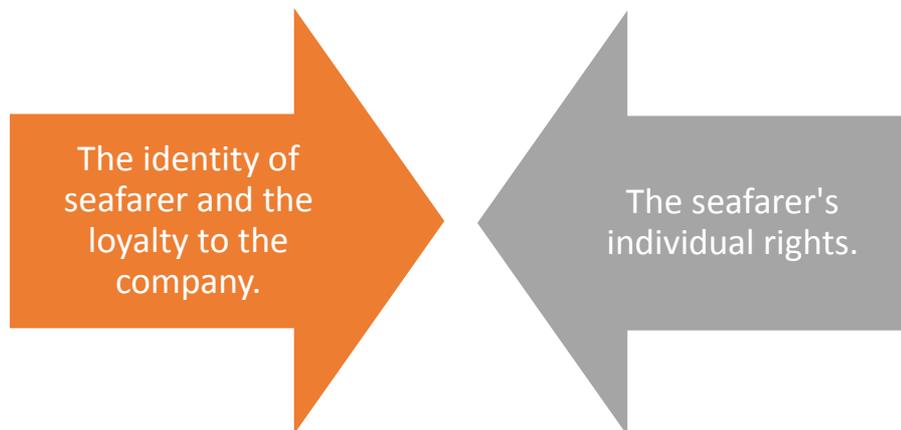


Figure 6: The conflict between loyalty and right defence

Fear of the cost of litigation is another reason when seafarers sometimes choose not to sue their companies. Litigation costs depend on the claim selected; that is a claim for work-related injury or personal injury. The former is cheaper (CNY 5-10), but the latter may result in higher awards of compensation. SF_HF_G explained how she overcame the unnecessary fear of litigation costs:

In the beginning, nobody told me about the litigation cost and I borrowed some money from parents-in-law to prepare the lawsuits. Someone replied my post online told me to be brave to sue the company, and the litigation fee was only CNY 5 (50p). I heard many people complained the litigation was not affordable for our average citizens. When we heard this complaint, we dared not to visit the court. It was CNY 5, which was shockingly cheap. Then I started to sue the company. Without this information online about litigation fee, I would not dare to submit the lawsuit. The maritime court indeed only charged me CNY 5.

SF_HF_G was encouraged by an anonymous person online to sue the company for a work-related injury. Currently, in the maritime courts the cost to the seafarer of initiating this kind of labour dispute is CNY 10 (GBP 1). However, if the seafarer sues the company for personal injury, the litigation fee will be calculated according to the claim amounts. For example, SF_XZ_Z claimed CNY 160,000 for his injury, and he was charged CNY 1,300 according to personal injury litigation fee standards⁸⁰. Freelance seafarers without any evidence of their employment have to pay higher litigation fee to begin legal proceedings against their companies than seafarers with formal contracts. Accordingly, it is more difficult financially for freelancing seafarers to sue their companies.

b. The aids and supports to seafarers' litigation

Loyalty to companies and worries about lawsuit cost are two obstacles for injured seafarers seeking legal remedies against their companies. On the other hand, some factors encourage seafarers to sue their companies. Access to professional legal knowledge and external assistance was available to all five seafarers who resort to legal remedies. SF_SQ_Z and SF_HH_W hired their own lawyers to initiate litigation against their companies. SF_HF_G and SF_XZ_Z used the online community to seek help. SF_HF_G met an anonymous legal consultant online, who turned out to be a maritime judge. With this consultant's advice, she successfully submitted her litigation. SF_XZ_Z sought help through a seafarers' online community and found a professional maritime lawyer to help him and obtain his damages through judicial mediation. In one case, the company agreed to pay damages to a claimant within the scope of liability insurance, but the P&I Club refused the company's reimbursement for compensation claims. To obtain compensation from the insurer, he was encouraged by his company to sue the company itself. With a judicial decision, the P&I Club had to honour the insurance

⁸⁰ The current litigation fee standards for personal injuries are: CNY 100-500 for the claim of damages less than CNY 5,000; if the damages claimed more than CNY 50,000 less than CNY 100,000, 1% extra litigation fee will apply, if the damages claimed more than CNY 100,000, additional 0.5% litigation fee will be added.

compensation to the shipowner. With his company's approval, he found a public legal assistant as his attorney to initiate the litigation.

Table 17: The litigation results of the seafarers' claims

Name	Injury/ Disability	The type/position of seafarer	Legal assistance	Forum for jurisdiction	Results
SF_SQ_Z	Grade 10	International (Engine mechanic)	Professional lawyer	Tianjin	Settlement through judicial mediation
SF_HH_W	Grade 10	Costal (Captain)	Professional Lawyer	Tianjin	Settlement through judicial mediation
SF_FZ_L	Grade 8	International (Second Engineer)	Public legal assistance	Xiamen	Settlement through judicial mediation
SF_HF_G	Grade 10	International (Cook)	Online legal assistance	Wuhan	No longer prosecute the matter
SF_XZ_Z	Grade 10	Coastal (Able Seaman)	Online legal assistance/reference	Xiamen	Settlement through judicial mediation

Through comparing these five seafarers' experiences, it can be noted that external professional legal assistance is important in the decision to initiate litigation. This assistance can be obtained from professional lawyers, online rights defence activities, or public legal aid.

c. Challenges during the litigation

Chapter 4 described some of the procedural challenges of litigation for seafarers. These challenges are rooted in the design of Chinese civil procedures. They add to many non-procedural challenges for seafarers, such

as verbal/emotional attacks from defendants, insurers' intervention, difficulties in producing evidence, and the judicial culture of mediation.

An injured seafarer's wife reported that her problem in seeking justice was due to the lack of awareness of special maritime jurisdiction:

When the manning company refused to pay my husband's medical fee, I had no idea where to go to seek help. My husband was sent to a Hong Kong vessel through a Shanghai company, but all his contracts were signed with a Nanjing company. I wanted to sue them, but I didn't know which court I could go to. Local courts and Work-related Injuries Committees in Shanghai and Nanjing were not willing to accept our claims, but they didn't tell me where I could seek help. (SF_HF_G)

In the case where the owner and/or manager of the ship is/are registered abroad, the service of papers to the defendant is usually very challenging. One seafarer reported:

After several rounds of negotiation with the manning company, I finally decided to bring my claim to the maritime court. However, the court told me that they need time to serve the shipowner, which is in Taiwan. They did not say how long that would take. I have waited almost two years now and have not got any update information. (SF_SQ_Z, a seafarer suffering fracture of thighbone on a vessel flagging Hong Kong flag owned by a Taiwanese company).

Verbal and emotional attacks from defendants during court hearings do not challenge seafarers' claims and evidence substantively but provoke and insult seafarer plaintiffs. Taking SF_HF_G's experiences of court hearing as an example:

The manning companies' attitudes were still hostile in the court. All their attacks were oral but not evidence. They insulted us with some ridiculous blames and it became a kind of fight or quarrel in the court. They blamed that we delayed my husband's treatment and then

argued we should not use a medicine liquid. We rebutted that it was doctor's prescription. Most of these attacks were nonsense. Because of his hearing loss, my husband's emotion is not very stable and easy to be irritated. We just tried to ignore the companies' nonsense.

Another attorney ML_QD_C reported a similar situation he faced in the court in the case of one seafarer:

The defendant lawyer was aggressive and blamed my client was injured due to his fault. He argued that the shipowner should not compensate my client and on the contrary my client should compensate all the medical expenses to the shipowner. My client just got mad in the court. The defendant lawyer's strategy was to make my client out of control, although the tribunal would accept none of these arguments.

Through the accounts of SF_HF_G and ML_QD_C, it can be noted that some defendants (shipowners and crew agencies) devise strategies to attack seafarer plaintiffs during court hearings, with the sole aim of irritating plaintiffs and causing them to react and misbehave.

Seafarer's litigation against crew agencies and shipowners usually involves P&I Clubs' interests as well. As per the business custom, shipowners' attorneys are recommended by P&I Clubs and attorney fees are paid by P&I Clubs rather than shipowners. As a result, the attorney is responsible to the P&I Club's instruction. In this situation, seafarer plaintiffs and their attorneys have to confront the crew agency, shipowner, and P&I club together in the litigation. These three parties' opinions may not be entirely consistent, which increases the complexity of the litigation. In the case of SF_FZ_L, his shipowner agreed to compensate. However, because the P&I Club would not approve the shipowner's compensation plan, this seafarer had to sue the shipowner to obtain his compensation. In the litigation process, a key piece of evidence (judicial disability appraisal conclusion) was challenged by an attorney who had been appointed by the P&I Club. He explained the difficulties he faced with the attorney:

The insurance company (P&I Club) created a lot of troubles for me. In the beginning, the insurance company ignored me and never communicated with us. The superintendent of my company suggested me to hire a lawyer to have a litigation. [...] The insurance company found an expert to challenge my recovery period and refused to pay me five-month sick pay. Their expert insisted I should be recovered in one month, but I had stayed in the hospital for more than one month. The insurance company also challenged my disability appraisal and asked me to do that again in another institution appointed by them. The insurance company's expert was ridiculous and according to his opinion the insurance company should compensate me nothing. They never trusted me and argued all my evidence were forged.

In this case, the shipowner and his P&I club had a dispute regarding the compensation reimbursement. P&I Club's strict control of seafarers' personal injuries compensation is commercially motivated; that is to protect the interests of member shipowners affiliated to the Club. Even though one shipowner may agree to compensate his seafarer, P&I Clubs still conduct an independent examination of seafarers' claims. As a result, the seafarer's claim in this particular case was investigated repeatedly and stringently. Due to a lack of trust, the Club's attitude regarding the seafarer's evidence was hostile, placing him in a difficult position.

The production of effective and adequate evidence is a major challenge for seafarers in the cases of litigation. With limited access to their records of work, a major challenge is to prove their employment relationship with their crew agency and shipowner. This is particularly the case for coastal seafarers who have not signed a written contract with their shipowners. In court, without evidence of employment relationship, a tribunal cannot recognise their employee status. Indirect evidence may be provided in the form of service records (seamen's books), which can attest to seafarers' periods of duty on board. However, some agencies retain seamen's books to reduce their seafarer turnover. In this situation, it is extremely challenging to prove past service on board. The estimate of future medical expenses is another

challenge for seafarers in court. SF_HF_G explained the difficulties of establishing future medical fees:

Because my husband still needs further medical treatment so we have to calculate an amount of the medical expense we claimed. However, the time of the surgery is unpredictable and how much following-up treatment would be needed is uncertain. I sought help from many hospitals to ask could they estimate a possible future medical cost for us but the doctors said they could not help.

Without a doctor's statement of future medical expenses as evidence, seafarers' compensation claims for medical treatment yet to be undertaken cannot be fully supported by the court. There are also difficulties in establishing degrees of disability, which increases of the cost of maritime litigation for seafarers as well. SF_HF_G explained the problem she faced:

'The judge told me I should invite the experts who issued the disability appraisal conclusion as witnesses to answer defendants' queries during the hearing. These experts were in Xuancheng, Anhui, but the maritime court is at Wuhan, Hubei. I had to pay all the travelling and accommodation expense to two experts. The experts agreed to present at the tribunal first because they thought the court was nearby. When they learned the court was in Wuhan, they were unwilling to travel, because it is a long journey.⁸¹ Producing evidence was the most challenging part for me in the litigation, to be frank.'

Producing adequate evidence is crucial to establish a compensation claim for seafarers. With limited financial resources and capability, providing evidence is a significant challenge for seafarer plaintiffs.

As shown in the table above, four of five court cases were settled during the hearing. Most injury claims are not solved by judgements. The long established mediation culture in Chinese courts has complicated effects on

⁸¹ It takes more than 8 hours by coach from Xuancheng, Anhui, to Wuhan, Hubei.

seafarers' rights protection. The mediation culture refers to Chinese judge's preference of mediating disputes rather than making a judgement, which is a special judicial culture formed in an unstable and changing social and legal environment. As discussed in Chapter 4, there are conflicting legislative and judicial rules regarding seafarers' injury compensation. Furthermore, seafarers' ability to produce evidence is limited. To settle the dispute through judicial mediation is a practical compromise considering the legal context, judicial practice and seafarers' needs. The advantages of mediation include shortening the litigation timeframe, reducing financial and mental pressures caused by litigation to seafarer plaintiffs and avoiding risks confronted by judges in relation to judgements. However, the settlement of disputes through judicial mediation normally means that seafarer plaintiffs have to sacrifice part of their compensation in compromise. SF_HH_W explained his experience of being persuaded by the judge to reduce the amount of his claim:

The judge told me that my shipowner's son was involved in another traffic accident. The shipowner was also under considerable financial pressure, so the judge suggested me to consider the shipowner's difficulties to reduce my compensation amount. I thought although my shipowner harmed me deeply but I would not hurt him. His son injured another person in the car accident also was a punishment for him. But I still reckon the judge has some special relationship with my shipowner, otherwise why he always tried to persuade me to claim fewer damages?

SF_HH_W's account indicates a clear disadvantage of judicial mediation. It is possible that shipowners bribe judges to achieve a result. The application of judicial mediation in seafarers' injury litigation may reduce the reliability of maritime courts. On the one hand, this means that judicial precedents are not open to the public and this increases the difficulty for seafarers in predicting their litigation results in advance. On the other hand, the increased use of mediation also undermines motivation to promulgate unified and definite laws and regulations to determine seafarers' entitlements. The likely outcomes from litigation become less transparent and more unpredictable

because they are subject to mediation rather than an officially promulgated compensation standard.

The lack of formal judicial judgements is a result of the conflicts in Chinese law regarding seafarers' workplace injury compensation (see Chapter 4) and the judicial preferences for mediation over judgement. In most cases, seafarer plaintiffs and company defendants are able to achieve agreement, and tribunals issue an enforceable judicial document to ensure both parties honour their promises. However, in some cases, the defendant company does not accept mediation because of their P&I Clubs' requirements. SF_HF_G described why they could not achieve a settlement of the dispute through judicial mediation:

The maritime judge was friendly and tried to settle our dispute through mediation. But the manning company was not cooperative, and they said their insurers would not accept judicial mediation. Only a court judgement can be taken. The judge would like to have a mediation but the company refused, so my claim now is still pending.

As discussed above, seafarer plaintiffs' ability to collect evidence is much weaker than crew agencies and shipowners. So in many cases, the evidence provided by seafarers is not sufficient to establish their claims. It is risky for a tribunal to base their judgement on inadequate evidence, because once a party appeals, then the first-trial judges' competence may be called into question.

If a defendant company refuses to accept mediation, and the seafarer plaintiff cannot produce sufficient evidence of his service on board, the cause-effect relationship between his injury and his service cannot be established. As a consequence, the tribunal would not support the plaintiff's claims. In the case of SF_HF_G, because she could not establish a claim of personal injury in tort with insufficient evidence, the judge suggested that her claim was withdrawn and reintroduced when sufficient evidence became available.

Maritime judicial litigation is the last resort for seafarer victims of workplace accident in claiming compensation. This approach is challenging in relation to requirements for legal knowledge and evidence. Judicial mediation is a compromise approach to providing seafarers, the vulnerable party, some remedies considering their loss and their limited capability to produce evidence. However, such processes carry a risk of judicial corruption. Moreover, the overuse of mediation in seafarers' injury claims makes standards of compensation more difficult to establish. The transparency and uniformity of seafarers' rights in law are thereby further eroded.

Summary

This chapter has examined the problems, challenges and difficulties for seafarers when they seek medical treatment following a work-related accident. Specifically, the discussion has explored the experience of injured Chinese seafarers involved in compensation claims. The analysis has further highlighted the obstacles faced when seafarers negotiate legal recognition of their injuries and while seeking legal remedies or compensation through labour administrative authorities and maritime courts. The analysis of different seafarers' experiences indicates that differences in ownership and differences in seafarers' contracts, can significantly influence entitlements to compensation when workplace accidents arise. Large scale state-owned shipowners can provide seafarers with timely and efficient assistance in obtaining medical care, while small scale private shipowners are more likely to compromise their seafarers' well-being to ensure the operation of a ship if they cannot find a replacement when injuries occur. In the Chinese shipping market, some shipowners and crew agencies prefer flexible and precarious employment forms when engaging seafarers. In this way, employers can control their human resource costs. However, the research findings suggest that, such employment practices affect injured seafarers' well-being negatively. In practice, the replacement of an injured seafarer takes longer under this regime and profitability may be prioritised over the welfare of individual crew members. With no stable reserve of seafarers, the shipowner will highly probably risk their crew's life to ensure their business profits.

Formally employed seafarers generally have better compensation schemes than freelancers without formal employment contracts. Seafarers with a formal employment contract can be supported by their crew agencies in obtaining compensation from the social insurance fund. Meanwhile, freelancing seafarers do not receive equivalent support. Ratings are usually in this category because they are regarded as freelancers by companies no matter how long they have served, which puts them in a vulnerable position throughout their career.

When seafarers cannot achieve their rights through negotiations with their companies and after seeking help from administrative authorities, the results are usually unsatisfactory. According to seafarers' accounts, local governmental authorities are not interested in regulating shipowners and crew agencies, due to their largely foreign ownership structure. Local administrative authorities can easily use 'foreign-ownership' to avoid jurisdiction over seafarers' claims and frequently fail to refer seafarers to the correct court; that is either the Maritime Safety Administration or Maritime Courts. The negative attitude of local administrative authorities towards seafarers' claims does not only frustrate and discourage seafarers' motivation to pursue rights defence but also it constitutes a waste of seafarers' precious time and money. Without an explicit instruction provided to seafarers seeking help from competent authorities, local administrative authorities create extra difficulties for seafarer claimants. Moreover, the publicly funded Work Capacity Assessment Committees refused to appraise disability for seafarers if their companies do not endorse the application. This also places seafarers in a disempowered position. This institutional regime strengthens companies' power and weakens seafarers' power in obtaining core evidence for work-related injury compensation.

As a last resort for injured seafarers, maritime judicial litigation, is a difficult and challenging approach. Without standardised and unified legislative and judicial opinion, their claims are mostly settled by court mediation on a case by case basis. Furthermore, their claims can be delayed if shipowners' representatives employ tactics to frustrate the proceedings. Maritime

litigation regimes are designed with the rationale that plaintiffs and defendant are of equal status so they should have equivalent procedural rights. However, as this evidence shows individuals are generally weaker than corporations, and in such case, they are substantially disadvantaged.

Chapter Eight: Discussion

Introduction

In order to answer the research question which asks *whether Chinese seafarers and surviving families suffer additional harm as a result of existing compensation processes*, the thesis has explored experiences of Chinese seafarers or surviving families making claims for compensation following workplace accidents. Three key findings emerge from the research examining this experience detailed in the previous chapters. First, it demonstrates that Chinese seafarers are not entitled to equal rights as ‘workers’ in Chinese labour law framework. Secondly, different shipping companies (ocean-going and coastal; state-owned and non-state owned) have adopted different organisational policies, with many companies failing to cover their legal liabilities. This leads to the third key finding which indicates that as a result, seafarers and their surviving families suffer considerable additional harm when negotiating for compensation with shipping companies or when resorting to administrative and judicial remedies.

This research reveals that at every stage of the claim process, the majority of the interactions injured seafarers/surviving families have with employers, workers’ compensation institutions and maritime courts are negative. The experiences of Chinese seafarers support the previous argument that workers have demeaning, humiliating and shameful experiences when claiming compensation following workplace accidents (Strunin and Boden, 2004; Kilgour et al., 2015; Lippel, 2007; Lippel, 1999; Matthews et al., 2012; Matthews et al., 2016). Drawing on empirical evidence, this study supports the thesis that the additional harm suffered by victims of workplace accidents during claim processes is an international problem, caused by structural deficiencies of compensation systems. Chinese seafarers reported their experiences of mistrust, disrespect, stigmatisation, claim suppression, and payment delays. These experiences are similar to the workers’ experiences identified by studies conducted in Canada, Australia and the United States.

Furthermore, the experiences of Chinese seafarers are related to structural issues in corporate management and the Chinese legal framework.

This chapter discusses the main results of the research. The findings are interpreted under four themes related the secondary harm suffered by Chinese seafarers: inequality; exclusion from organisational management; marginalisation from public law remedies; and isolation. The contribution of these findings to the knowledge of experiences of victims in making compensation claims will be discussed. The deficiencies of the Chinese compensation systems, management of shipping companies and Chinese public governance are critically evaluated at the end of the chapter.

8.1 Inequality

The harm suffered by Chinese seafarers has distinctive features compared to land based workers. This distinctiveness is related to their incomplete workers' rights in law. Discrimination in legal entitlements exists between foreign-related seafarers and land-based workers. In addition, different groups of seafarers are exposed to diverse extents of harm. The different extents of harm are related to the ownership of their companies, their rank and the nature of their employment contracts. Arguably, this complex structure of inequality faced by Chinese seafarers makes their claim experiences even more damaging than the experiences of migrant and precarious workers reported in previous studies (Sun and Liu, 2014, Sampson, 2013a, Premji et al., 2010, Underhill et al., 2011, Dacanay and Walters, 2011, Quinlan and Mayhew, 1999). .

8.1.1 Inequalities between seafarers and other workers under Chinese law

This research finds that Chinese seafarers' access to Work-related Injury Insurance is more restricted than that of other Chinese workers. More than half of Chinese seafarers are not covered by the Work-related Injury Insurance (Chen et al. 2014). Most of the participants in the study reported that they did not receive any compensation from Work-related Injury

Insurance Funds. As a result of this insufficient coverage, seafarers have limited institutional supports in their claim process.

No-fault based workers' compensation is widely believed to be more 'therapeutic' in addressing the harm caused by industrial accidents than fault-based tort compensation (Wexler, 1990, Lippel, 2007, Clayton, 1997b, Purse, 1998, Kiselica et al., 2004). No-fault based social insurance compensation can increase the chance of success for injured workers to achieve tort law damages by providing basic maintenance for victims (Lewis et al., 2006). Correspondingly, without the access to no-fault based workers' compensation, workers are unlikely to receive timely remedies following workplace accidents. As shown by this study and previous research (Chen et al. 2014), a majority of seafarers are unable to obtain no-fault based compensation following the accidents, since their employers refused to contribute to the social insurance scheme. Compared to the workers covered by social security schemes, physical pains and financial losses are more likely to be suffered by these seafarers.

It is a common problem in China that employers refuse to insure their workers against work-related injuries. However, as I outline below, the distinctive vulnerability of seafarers is a legally constructed discrimination, which was confirmed by a Supreme Court Judicial Reply with binding effects nationwide (see also Chapter 4). In the situation where an employer refuses to contribute the work-related injury insurance, seafarers have to bear the risk by themselves while other workers are still entitled to claim compensation either from their employers or the social insurance fund. This is a unique problem suffered by Chinese seafarers from other workers examined by earlier studies.

Previous studies show that gender, race and nationality are contributing factors for workers to be treated discriminatively by social insurance institutions (Storey, 2008; Premji et al., 2010; Lippel, 2007), while occupation-based discrimination constructed by law is rarely noticed. Under Chinese law, employers are able to exercise substantial control over seafarers.

The Supreme Court Judicial Reply [(2011) MSTZ No. 4] confirmed that when there is no express labour contract between a crew agency and a seafarer and the seafarer is dispatched to a foreign vessel, the seafarer is not entitled to worker's rights under Chinese labour law. The relationship between the seafarer and the manning company is regarded as a 'civil agreement'. In this relationship, seafarers are no longer recognised as workers protected by Chinese labour law, but instead, they are considered to be an 'equal party' with shipowner and manning company, who should not claim entitlement to social security benefits. In contrast, if a land-based worker is in a similar situation, he/she will still have an independent approach to seek compensation and the social insurance fund will cover the payment first and then claim it back from employers by exercising the right of subrogation (See Table 17).

Table 18: Work-related Injury Insurance Treatment for seafarers and land-based workers

	The nature of employment	Compensation entitlements of WIIR	Liabile parties to WIIR compensation	Dispute resolution approaches	Burden of proof
Seafarers covered by WRII	Labour contract	Apply	WIIR Fund	Labour Arbitration Committees and Maritime Courts	The facts of work-related injuries, medical expenses ⁸² , and disability degrees
Land workers covered by WRII	Labour contract	Apply	WIIR Fund	Labour Arbitration Committees and Civil Courts	The facts of work-related injuries, medical expenses, and disability degrees
Seafarers not covered by WRII	Presumed civil contract	Not apply	Not apply	Maritime Courts	The existence of working activities on a specific vessel; the work-relatedness of the injury; the loss (including medical fee and disability degrees); whether the injury is caused by the negligence of shipowners or third parties.
Land workers not covered by WRII	Presumed labour contract	Presumably apply	The employers, manpower agencies, and the Social Insurance Fund	Labour Arbitration Committees and Civil Courts	The existence of labour relationships, The facts of work-related injuries, medical expenses, and disability degrees.

8.1.2 Inequalities among seafarers

(1) Coastal Seafarers and International Seafarers

Chinese legal scholars tend to categorise Chinese coastal seafarers as ‘domestic workers’ and do not recognise problems with their compensation claims (Chen and Hao, 2012; Wang, 2009). However, this study shows that coastal seafarers may in fact confront a worse situation than international seafarers in claim processes. Subject to different crew management styles,

⁸² In practice, usually the medical expenses of seafarers are covered by shipowners’ liability insurers, because the WIIR fund’s coverage standards are low.

coastal seafarers' employment is more informal and less regulated than international seafarers. One-third of coastal seafarer claimants do not have a written employment contract. In contrast, as required by the Maritime Labour Convention (2006), the majority of international seafarers have written agreements (Chen et al. 2014). With regards to personal accident insurance, 82% of international seafarers are covered while only 55% of coastal seafarers are insured (Chen et al. 2014). Coastal shipowners are less likely to arrange Work-related Injury Insurance for their seafarers than international ship managers. The liability insurance coverage arranged by coastal shipowners is much lower than by international shipowners. As a result, coastal seafarers receive much lower compensation than international seafarers (see Table 17).

Consistent with the argument by Lewis and Morris (2012) that the availability and coverage of liability insurance determine whether and the extent to which victims can be compensated, the low compensation amounts for coastal seafarers results from insufficient insurance coverages. In addition, ambiguous liability assignment between shipowners and managers of same nationalities indicates an inadequate inspection in the Chinese coastal shipping sector. Coastal seafarers still have to face the uncertainty of compensation liability caused by the 'affiliation' management practice (see 5.1.2.3). Furthermore, working in their home labour market, the low coverage of Work-related Injury Insurance among coastal seafarers reflects a fact that the enforcement of workers' compensation in coastal shipping sector is inadequate.

(2) Seafarers working for state-owned and non-state owned shipowners

The extent to which seafarers can be compensated is related to the ownership of their employers. In this research, Chinese State-owned shipowners insured their seafarers with both Work-related Injury Insurance and P &I liability insurance, which could ensure their seafarers to receive sufficient damages (see 5.1.1). However, most of the foreign shipowners that were included in the study could not cover their maximum liabilities with P &I liability

insurance. The insurance coverage of Chinese private shipowners was the lowest, which was far below their liabilities. Therefore, seafarers working for Chinese state-owned companies are more likely to have sufficient insurance cover than seafarers working for non-state owned shipowners.

This inequality is a result of the privatisation reforms: the 'iron rice bowl' (permanent full-time jobs) was 'broken', and seafarers became 'free workers' in the labour market (Zhao, 2002). The monopoly of state-owned enterprises ended. Private and foreign shipowners became employers (Zhao, 2011). The reform was highly praised, with some scholars predicting that the number of Chinese seafarers working on foreign vessels would increase tremendously (Wu, 2004; Wu et al., 2006). However, this research reveals that working for non-state owned shipowners, Chinese seafarers are more likely to receive lower and less secure compensation payments following workplace accidents than their counterparts working for state-owned shipowners.

This inequality experienced by Chinese seafarers is related to different attitudes of employers towards their responsibilities to workplace accident victims. It is well-known that as a result of neo-liberal reform in China, Chinese seafarers are subject to complex and diverse employment standards (Wu et al. 2006), but the resulting inequality among workers serving employers of different ownerships has been underestimated in previous empirical studies. Indeed perceptions among Chinese seafarers regarding such inequality, including fears of being under compensated following an accident, may be one reason why many Chinese seafarers are unwilling to work on foreign vessels. This also might contribute to the explanation of why the volume of Chinese seafarers working on foreign ships is much lower than was expected by the global shipping industry (Zhao et al., 2016; Tang et al., 2015). Limited English proficiency, low compatibility with foreign corporate norms, and the semi-closeness of Chinese market have all been previously identified as common reasons why Chinese seafarers' participation in the global market is limited, and the retention rate is low. However, foreign shipowners' management strategies over Chinese seafarers were rarely critically examined. This study indicates that insufficient insurance cover of

foreign shipowners may decrease Chinese seafarers' interests in working for foreign shipowners.

(3) The hierarchy in compensation schemes

Occupational hierarchy is another factor contributing to seafarers' unequal compensation. This study shows that, foreign shipowners differentiated compensation standards according to rank (see 5.1.1). The higher the rank is, the more compensation will be available, which is consistent with the hierarchy culture on board (Sampson, 2013b, Alderton et al., 2004). Interestingly, this research has not noticed this type of inequality in Chinese shipping companies, including both state-owned and privately owned. The disability compensation schemes of Chinese shipowners is completely determined by the disability degree and available insurance compensation.

As a result of the foreign shipowners' hierarchical compensation schemes, junior officers and ratings are likely to be undercompensated. Drawing on the low insurance schemes established by the companies, the legal entitlements of ratings and junior officers are more likely to be infringed compared to captains and senior offices. (see 5.1.1). In this research, many ratings working for foreign employers reported not obtaining adequate compensation and sick pay. They expressed their resentments against unequal treatments (e.g. SF_QZ_Z).

Chinese law adopts national average wage to ascertain death compensation rather than considering the actual income of the deceased. Since the law does not differentiate compensation standards according to victims' identities, Chinese shipowners do not establish their compensation schemes according to the rank of the seafarer. Additionally, '*same compensation amounts for death in one accident*' is a Chinese distinct judicial culture and confirmed by *Tort Law* (2010), and Chinese victims resist the imposition of hierarchical compensation schemes. In the case of SF_FJ_Z, where 13 crew were killed in one marine casualty, regardless of seafarers' ranks, many bereaved families wished to achieve '*same compensation amounts for death in one accident*'

and to resist the attempt to impose differential amounts of compensation for junior and senior officers according to the manning agreement.

(4) Rural and Urban seafarers

The inequality in law between rural seafarers and urban seafarers has been a lengthy discussion in the Chinese legal commentary. In the dispute resolution process, the legal inequality between rural and urban seafarers can have considerable influence on their final compensation results. As mentioned above, the initiation of the *same compensation amounts for death in one accident* is challenging the discrimination against rural residents in tort cases. Nevertheless, different compensation standards for rural and urban identities still exist. When a rural seafarer suffers a similar disability as an urban seafarer, they are entitled to lower damages (see Chapter 4, Table 13). From this perspective, the legal compensation standards provide less favourable results for rural seafarers than urban ones. This also reflects wider Chinese discrimination against rural residents (Li, 2008).

8.2 Exclusion from organisational management

The sufferings experienced by Chinese seafarers are associated with the lack of worker participation in management. In safety management literature, workers representation in the management have been found to be a significant element of effective safety management (Bhattacharya, 2009, Clarke, 2013). Other forms of workers representation, including collective bargaining in welfare and rights negotiation, are important ways of ensuring workers' rights. This research noticed that Chinese seafarers were not well represented in management process and decision making regarding their welfare and rights following workplace accidents. In fact, they were excluded from organisational management. Moreover, the research participants reported that their rights to information were not respected by their managers.

Chapter 5 showed that Chinese seafarers' interests were not represented in the negotiation of compensation standards. As previous studies show, if workers are represented by a union, firms are required to accept collective bargaining, which gives employees a mechanism to affect some corporate

actions (John et al., 2015; Kuruvilla et al., 2002). However, this study indicated, in the case of foreign-related placement of seafarers, the insurance coverage, medical period, disability and death compensation standards are subject to negotiations between manning companies and shipowners, in which seafarers are not involved. Although many crew managers (MC_XM_L, MC_XM_S, MC_QD_Z) expressed their support of higher compensation standards for their seafarers, they also reported that if they insisted on higher standards of damages, they would lose their potential clients to their competitors. As a result, seafarers do not have any control over their work-related injury treatment and their needs are likely to be sacrificed to ensure the profit of manning companies. This supports the argument that seafarers are made vulnerable workers by the ‘prioritisation of profit over safety by the actors that engage and control their labour’ and by “their weakness as collective actors in relation to capital” (Walters and Bailey, 2013: , p 216)

Many seafarers said that they were not informed of their rights and compensation schemes before the accident and in some cases, after the accident. Their employers refused to disclose any information about compensation schemes. The analysis of seafarers’ employment contracts in this study shows that most of the contracts did not contain any details of compensation schemes (see 7.4.1). Although the regulatory framework confirmed that seafarers are entitled to know this information, in this research, some managers refused to provide it. Even when accidents happen, some crew managers use the excuse of ‘commercial secrets’ to reject bereaved families’ access to information about compensation schemes (see 5.2.3). This problem is rooted in the lack of worker representation in Chinese manning companies.

Seafarers’ needs are largely ignored by management teams. The analysis in Chapter 5 demonstrated that the organisational management was widely established for risk control, but seafarers’ needs in relation to harm sustained as the result of injury or ill-health suffered when such controls fail were ignored. For example, seafarers working on non-state-owned ships, have to

pay medical expenses by themselves first and then claim reimbursement (see section 5.2.2). The research participants criticised this practice as it forced them to give up necessary medical treatment under financial pressures. The practice of limiting medical period is another example in which seafarers' health needs are ignored. By imposing a liability period of between three months to two years, shipowners and their insurers can effectively avoid liabilities to victims' long-term medical expenses. In some cases, the injured seafarers suffered permanent disability caused by the early termination of medical care.

The 'black box' claim handling practice causes mistrust between seafarers and companies. In some companies, seafarers' request for information about injury compensation for workplace accidents met with intimidation from managers. Not only were seafarers not informed about their rights, but also they were unable to track the status of their claims. It is shipowners and their insurers who decide the results of claims, and manning companies are in charge of communicating the progress and outcome with seafarers. An earlier study shows that insurers replace claim handlers frequently to avoid any sympathy for injured workers (Lippel, 2007). In China, the division of claims management of decision making and communication has a similar effect to estranging seafarers from the decision-making processes regarding their claims. All 42 seafarer interviewees complained about the lack of information supports in the claim handling process.

In the United States, Strunin and Boden (2004) found that claimants were either not receiving any information or being provided too much information beyond their understanding. However, the most common problem for Chinese seafarers was that they could not access enough information from their organisation. Storey (2008) points out that between 1970 and 1985, a great number of Canadian workers complained that 'the entire claim and appeal was blanketed in secrecy, as injured workers were not permitted to see their files' (p.105). Chinese seafarers confront similar problems within their organisations. Storey (2008) and Strunin and Boden (2004) focus more on workers covered by public workers' compensation system, but this research

finds that many Chinese seafarers had to obtain compensation through their shipowners' liability insurance schemes, which was controlled by private companies rather than public insurance funds. As a result, the information Chinese seafarers can access is far more limited than western workers, since these private companies can refuse to open this information.

The lack of transparency faced by Chinese seafarers, when compared to the experience of Canadian workers, is more complicated. Canadian workers are aware of the institutions in charge of their claims (Lippel, 2007). However, many Chinese seafarers were not aware which institution was handling their compensation claim (see 6.3.2). Some interviewees 'had no idea who should be the defendant' (see 6.3.1). This difference indicates that Chinese seafarers face a fragmented management chain of their claims, which is rooted in their fragmented employment relationship (see 4.2). Within a fragmented management chain, this research identifies the problem that crew agencies misappropriate the insurance payment (see 5.2.3.5). Compared to Canadian workers' direct interaction with Workers' Compensation Boards, Chinese seafarers experience more conflicts with different managers and even deception by some crew agencies (see 7.3.3).

In welfare states, when precarious workers cannot obtain remedies from workers' compensation system, the medical costs may be 'shifted' from employers' burden to taxpayers' burden (national health service) (Quinlan and Mayhew, 1999). However, in the cases of Chinese seafarers, they have to cover their medical expenses themselves, because there is no free health service in China and the national health insurance refuse to cover any treatment for work-related injuries. Unlike precarious workers in the West, injured Chinese seafarers have to suffer tremendous financial pressures of medical expenses. Thus, they are more fragile compared to workers in welfare states.

The above comparisons of American, Canadian and Australian land-based workers as highlighted by the findings of earlier research suggests that Chinese workers in the shipping industry are experiencing more difficulties

and have fewer rights in their claim process. Furthermore, as previous studies show, in the no-fault based workers' compensation system, companies conducted private policing, stigmatisation and claim suppression to reduce or avoid compensation payment (Kirsh and McKee, 2003; Lippel, 2007; Strunin and Boden, 2004; Sager and James 2005). Chinese seafarers' experiences reveal a similar capital and labour conflict as in previous studies (see Chapter 6 and 7). However, in Chinese shipping sector, the information source is mainly controlled by companies (see 5.2.3) while in the cases of Western workers, the information is controlled by public institutions. This difference means Chinese seafarers are subject to a stronger control by their employers than the Western workers in previous studies. This explains why interviewees in this research reported more resentments towards their companies than public institutions (see Chapter 6 and 7), while for Western workers, a majority of complaints are about public institutions.

8.3 Marginalisation from administrative and judicial remedies

8.3.1 Marginalisation from administrative remedies

Accident victims in this study reported that some public institutions (such as Labour Bureaus) refused to accept and hear their workplace injury disputes. There are three possible contributing factors to this problem. The first one is the law does not clarify the administrative jurisdiction over maritime workplace accidents. Some labour authorities insisted that Work-related Injury Insurance should not apply to workplace injuries occurring outside Chinese territories, in particular when the shipowner was a foreign company, such as the case of SF_SQ_Z, in which both the Labour administration and labour arbitration committee refused to accept and hear his compensation claim.

Secondly, the current evidence rules do not consider the working conditions in the shipping industry. In this research, many seafarers could not provide the evidence requested by the Work-related Injury Insurance Regulation, so the administrative authorities refused to accept their cases. For example, the

evidence to prove the existence of a labour relationship is necessary to obtain the recognition of work-related injuries, but many coastal seafarers do not have written labour contracts with their shipowners/ship managers. Therefore, they cannot prove the existence of labour relationships. The precariousness of seafarers' employment relationships has increased the difficulties for Chinese seafarers to apply for Work-related Injury Insurance.

A third possible explanation is that the one-year time bar of work-related injury recognition is too short. Unlike most land-based workers whose workplace is often within a reasonable radius of their homes and labour bureaus, the location of seafarers' workplace accident, the city of shipping company/manning company and the city of seafarers' residence are in different locations. To submit the applications, some seafarers have to travel several thousand miles to the labour administrative authority with jurisdiction. This geographical distance prolongs the claim process and increases financial pressures suffered by victims. Additionally, considering the 'black box' management of some companies, a one-year time bar can be used in favour of companies to avoid being inspected by administrative authorities.

Many scholars have argued that Chinese seafarers should be entitled to claim Work-related Injury Insurance (Zhang, 2002, Wang, 1995), but in practice, their rights cannot be enforced due to the lack of institutional supports. Chinese seafarers become marginalised claimants in the workers' compensation systems. The additional harm suffered by Chinese seafarers is exacerbated by this problem. The marginalisation of seafarers in workers' compensation have not been reported by previous studies, and this problem is connected with the historical ignorance of seafarers relationship with labour law. Although in some states, seafarers are gradually covered by the social security system, such as in the UK, the experiences of Chinese seafarers indicate that further policy supports are necessary to provide seafarers equal remedies under labour law.

8.3.2 Challenges in judicial proceedings

Maritime litigation is the last resort to solve the labour disputes of seafarers. In China, maritime courts are the only reliable institutions for seafarers to seek justice. However, in the maritime legal proceedings, Chinese seafarers suffer additional harm caused by the procedural challenges.

Traditional judicial procedures based on tort law failed to ensure justice and welfare for victims of workplace accidents (Clayton, 1997a, Cane and Atiyah, 2006). However, for many Chinese seafarers, maritime litigation is still their last resort to obtain compensation and restore justice. The victims in the West usually worry about how to obtain sufficient compensation and supports from public workers' compensation funds (Hackler et al., 2010, Lippel, 2007, Strunin and Boden, 2004). However, Chinese seafarers still have to resort to litigation as the only means of the compensation. Chinese maritime courts would not follow the notorious 'unholy trinity' to deny seafarers' rights to compensation, and adopt a friendly presumed negligence principle to help seafarers to establish their claims. Nevertheless, judicial procedures cannot be simplified for seafarers as workers' compensation system. When seeking justice through maritime courts, seafarers still have to face series of challenges.

Firstly, maritime legal professionalism preventing seafarers' access to justice. From many seafarers' perception, professional maritime legal service is not accessible. In this research, when asked about seeking professional lawyers' service, seafarers usually had two concerns. One group worried that lawyers' fees would be too expensive to afford, so they dared not to initiate litigation. The other group, who tried to initiate litigation, complained about the difficulty with hiring a competent maritime lawyer (see 7.4.3). The latter problem reflects the imbalance between shipowners and seafarers. As maritime lawyers reported, conflicts of interests was an obstacle for them to represent seafarers in judicial procedures. This means that if a maritime law firm is representing another case for the seafarer's shipowner, the lawyers of that firm cannot represent the seafarer. Considering the significant influence of P&I clubs and shipowners on maritime law firms' business and seafarers'

limited ability to afford the associated legal fees, professional maritime lawyers are frequently reluctant to represent seafarers.

Secondly, additional pressures are reported by seafarers during the litigation proceedings. The procedural issues, such as overseas service, prolong the time length of litigation (see 4.3.2). The foreign company is also entitled to apply for an extension to prepare notarized and legalised documents and evidence. Domestic civil litigations must be closed within six months, but foreign-related ones are not subject to this time limit. Inevitably, Chinese international seafarers have to face even more prolonged legal procedures if compared to domestic claimants, which means they have to suffer longer term of mental pressures than domestic claimants.

Thirdly, the inconsistency of litigation thresholds is another challenge for seafarers. There are two approaches for seafarers to launch maritime litigation: one is to claim work-related injury compensation, and the other is to claim tort law compensation. However, different courts have different standards in deciding whether to accept certain cases. The Shanghai Maritime Court refused to accept seafarers' claims based on work-related injury compensation, but only accept personal injury claims based on tort. Ningbo, Wuhan, and Guangzhou all have accepted claims based on work-related injuries. Although the fact of the accident is same, the proof requirements are completely different, the chaotic case management system has meant some seafarers unable to proceed their cases. Taking SF_HF_G's case as an example, in the absence of a maritime lawyer's instructions, the claimant failed to differentiate two approaches, and the judge suggested that the claim should be withdrawn and re-submitted, which caused extra financial pressure and mental distress for the claimant.

Corresponding to the studies in the West, one of the prominent problem for Chinese seafarers is their marginalised status when seeking remedies from public institutions. In the studies of Canadian land-based workers, the workers' compensation is criticised due to its lack of transparency, failure to hear workers' needs and opinions, discrimination against women workers

and/workers from ethnic minorities (Premji et al., 2010; Lippel, 2007; Lippel et al., 2007). But Chinese seafarers are a group of workers subject to foreign-relatedness, agency recruitment and job insecurity, and are not treated equally as ‘workers’ in labour law. Unlike Canadian workers’ experiences of injury compensation claims, most Chinese seafarers struggle to find a public institution to accept and hear their claims. Being largely excluded from no-fault based public workers’ compensation system, maritime courts have become the last resort for Chinese seafarers. Subject to maritime law procedures, which are designed for equal parties involved such as commercial disputes between companies, with limited legal knowledge and financial resources seafarers cannot sustain the prolonged waiting time associated with these proceedings. Unlike American lawyers’ motivation to ‘chase the ambulance’ to claim penalty damages for their clients on a ‘no win, no fee’ principle, Chinese maritime lawyers do not have strong interests to work for injured seafarers because of the concerns about creating conflicts of interests with shipowners and their P&I clubs with whom many law firms are already associated. Compared to tort law claimants, who are usually viewed as more vulnerable groups than workers’ compensation claimants, Chinese seafarers receive fewer support than tort claimants in obtaining professional legal service. Chinese seafarers have fewer institutional protection than Western and even Chinese domestic workers, which explains why they have to face more challenges than other groups of workers.

8.4 Isolation

The poor experiences seafarer claimants have is also connected with their isolated social status. The isolation of seafarers has been well documented in academia, including the isolation of working environment and the isolation of their communities from society (Oldenburg et al., 2010, Sampson and Thomas, 2003). Sampson (2013) points out how the transmigrant seafarers in Northern Germany were subject to both exclusions from places of work and exclusion from social space as a result of poverty and fear of harassment. The isolation of Chinese seafarers in their homeland is different from the isolation confronted by transmigrant workers in Germany. The isolation of seafarers in

China are caused by the legally constructed discrimination. Furthermore, independent trade unions are not permitted in Chinese political environment, which further reduce the possibility for seafarers to formulate a collective power to defend their rights. The limitation of seafarers' freedom of association, and unequal treatments in law make Chinese seafarers isolated and discriminated in their homeland after they left the isolated working environment at sea.

In addition to the reality of social and legal isolation of seafarers, isolating strategies can be used intentionally by companies to disempower seafarers. This isolating strategy adopted by companies can be explained from two angles. The first is attaching a political stigma of 'social unstable element' to evoke police interest and subsequent control over claimants' behaviour. (see 6.3.2). The second strategy is to divide the collective power of the surviving families, in particular, the killed seafarer's parents and spouses (SF_TJ_Z, SF_NJ_C and SF_JN_X). In the second situation, the rights of widows and children is further threatened by their internal family tensions. These claim suppression practices have not been identified by previous studies. This research reveals the immoral and unethical conducts of companies can happen when management becomes the sole power to control workers' claims.

Working in an isolated environment at sea with limited internet access (Sampson and Ellis, 2015), seafarers' access to legal knowledge is limited. Being disconnected from society, it is also difficult for seafarers to maintain and develop their social networks and accumulate social capital. Many seafarers reported that, after having their claims being rejected by their companies, they had no idea where they could submit a complaint or how to go about seeking redress. They have tried several administrative institutions and were rejected, including local government petition letter office, Labour administration institution, and maritime safety administration. Afterwards, they could not afford to pursue any further compensation claim-related efforts.

Long term isolation from society limits seafarers' knowledge, their social network development and social capital accumulation. As a result, compared

to land-based workers, the power of imbalance between seafarers and companies are more prominent. In the cases of Chinese seafarers, as reported by victims, the isolating strategies of companies makes them further vulnerable. From this perspective, this research illustrates the negative impact of the isolation of seafarers for their rights protection, which proves that special regulatory efforts are necessary to ensure an equitable protection of maritime transport workers.

Summary

Compared to workers' experiences of claiming compensation for workplace trauma in developed countries, Chinese seafarers are far more disempowered. Firstly, mental trauma caused by confronting death, injury, peril and environmental stress is recognised as workers' compensation coverage in Australia and North America (Lippel 1989, Des Butler 2002, Lippel et al. 2010). However, mental trauma is not recognised as damage in Chinese law and Chinese seafarers are still struggling to seek compensation for their work-related physical trauma. Secondly, rehabilitation has been established as an essential part of workers' compensation system in Australia, Canada and some regions of the United States (Purse 2000, Roberts-Yates 2003, Roberts-Yates 2006). In contrast, there is no rehabilitation regime for Chinese seafarers. For many seafarers, injury and disability mean the termination of their career at sea since they are not able to pass the occupational health examination. The rehabilitation tasks, including career track change, are regarded as victims' individual responsibilities. Thirdly, how to preserve workers' dignity during compensation process (Lippel 2012, Lippel 1999) and how to identify and respect victims' needs (Quinlan et al. 2015), through academic studies, have attracted attentions from policy makers and the public. In China, many seafarers' compensation claims are accepted by government institutions and these labour disputes are still relying on direct individual negotiations with companies. Inevitably, the adversarial nature of this negotiation is more severe than in workers' compensation application process in the West. Fourthly, female gender, migrant status and ethnic backgrounds are known to impact negatively on workers' ability to access to compensation

(Lippel 1999, Lippel 2003b, Storey 2008, Premji et al. 2010, Quinlan and Mayhew 1999). The analysis of the findings in this study showed that Chinese seafarers, due to their occupational characteristics of mobility and foreign-related employment, have been excluded and discriminated in the current Chinese legal frameworks. Through legal research, it is found that Chinese seafarers cannot have equal legal entitlements as other workers. This occupation-based legal discrimination has created considerable difficulties for seafarers to access a proper institution to seek justice or recourse. Fifthly, the growth of precarious and flexible employment in labour markets has been criticised as eroding current workers' compensation systems by downgrading flexible/precarious workers' rights. The findings of Chinese seafarers' experiences of claims activities can support this argument. As voyage-based, agency-led, temporary and precarious workers, Chinese seafarers' experiences illustrate how precarious workers are ignored in legal frameworks, excluded from companies' compensation claims management practices and further marginalised even in their home countries.

Conclusion

This concluding chapter summarises the main findings from the study and highlights how this research contributes to the understanding of seafarers' workplace injury compensation claims both in China and in the shipping industry. This chapter revisits the research question which this thesis has sought to address, identifies the theoretical contributions of this study and acknowledges some of the limitations of the research process. The final section discusses the policy implications of the research and suggests how further research is essential for a better understanding of this topic.

Workplace injuries are the result of modern industrial risks. In the shipping industry, seafarers are exposed to higher levels of work-related risks. Thus seafarers' compensation is a crucial issue for a large group of maritime transport workers. Traditionally, to alleviate the physical and financial suffering of working people, publicly funded non-fault based compensation systems were established to cover medical expenses and provide financial supports for workers and their families. With the tax-form contribution from employers or the compulsory employer liability insurance, this system aims to mitigate the tension between capital and labour caused by disputes arising from compensation liabilities (Cane and Atiyah, 2006, Clayton, 1997). Tort-liability based compensation is not eliminated for workers in many countries and is still regarded as a complementary remedy approach for the victims. Workers' compensation and tort liability based compensation constitute two primary remedies for workplace accident victims. However, despite these two remedies, there are still on-going criticisms of the limited nature of remedies and the anti-therapeutic effects of the procedures in current institutions. Critics in many parts of the world question the effectiveness and efficiency of compensation systems and identify the anti-therapeutic effects (additional harm) arising from the claim process. In addition to internal deficiencies, external social changes, including those relating to globalisation, privatisation reforms and neo-liberal deregulation and the growth of precarious employment, have brought new challenges for workers' compensation programmes.

Seafarers are the epitome of global working people and toil under precarious, flexible and fragmented employment relationships. They can be said to be frequently marginalised by national labour protection regimes. Chinese seafarers' claims activities occur in the context of both a globalised shipping industry and national legal protection systems. Thus their experiences, to a large extent, can reflect both the impacts of globalisation and neo-liberal reform on state regulatory power and social justice. While previous studies have attempted to investigate the effectiveness of workers' compensation against the background of neo-liberal deregulation reform through examining claimants' experiences, little attention has been paid to workers in the global maritime transport industry who are mostly citizens of developing countries.

In this context, this research was initiated to examine Chinese seafarers' compensation claim activities following workplace accidents. The research question this thesis has addressed is whether Chinese seafarers have suffered additional harm from the compensation claim process following workplace accidents. The literature review, drawing mainly on studies on shore-based workers' experiences of compensation claims following workplace accidents, revealed that workers' needs are usually unmet by compensation systems and workers frequently suffer additional harm from compensation claim process. It further highlighted how employers' adversarial attitudes, lack of transparency of administrative process, and social stigma exacerbate the vulnerabilities of claimants (Storey, 2008, Kirsh et al., 2012, Lippel, 2003b). Precarious and flexible employment relationships erode the protective coverage of workers' compensation (Underhill et al., 2011, Quinlan and Mayhew, 1999). These arguments guided this study to investigate Chinese seafarers' experiences of compensation claims to analyse potential additional harm suffered by Chinese seafarers.

Key findings

This section presents the main findings from the study and the theoretical contribution of these findings. The findings show that Chinese seafarers/surviving families suffer significant additional harm during the claim process. Chapter 4 introduced and critically evaluated current Chinese

legislative frameworks regarding workplace injuries and the claims of seafarers. The main empirical findings chapters 5-7 addressed the research question from three perspectives the organisational management of workplace injuries/claims of seafarers, surviving families' experiences of work-related death/disappearance compensation claims; and injured seafarers' experiences of compensation claims. This section will synthesize the empirical findings to address the research question of whether Chinese seafarers have suffered additional harm from the compensation claim process following workplace accidents from three angles: (1) additional harm rooted in organisational management policies and practices; (2) whether surviving families/injured seafarers find the legal instruments adequate and friendly to use or not; (3) whether surviving families/injured seafarers suffer additional difficulties and harm from the negotiation and other dispute resolution process.

Claim Suppression from organisational management

In the interaction between victims and corporate management: seafarers/surviving families' humanitarian requests were not respected in the claim management process. In the context of third party crew management, seafarers and families shared similar experiences of being ignored by shipowners and crew agencies. In post-accident communication, families were deeply hurt by the arrogant and self-centred attitudes of some shipowners' representatives: neither did they receive condolence or sympathy from the shipowner directly, nor did they receive sufficient assistance in body salvage, preserving and transporting remains.

An additional obstacle for claimants was caused by the unwillingness of crew agencies to disclose the identity of shipowners for fear of losing clients, which gave rise to highly adversarial situations. Being continuously rebuffed by the crew agency, surviving families sometimes became so irritated that they developed violent resistance to crew managers. Inevitably, this caused them greater distress.

The imbalance of legal knowledge and professional information disempowers surviving families in the process of negotiation. Due to a lack of legal information and professional assistance, families are often not able to effectively defend their compensation claims against shipowners' challenges. Furthermore, in the context of power imbalance, surviving families are more likely to be mistreated, and stigmatised. Financially, some have to accept instalments of compensation instead of lump sum payments and to sign agreements to release shipowners from future liabilities. Widows' rights are also sometimes infringed by their in-laws, and some crew agencies are good at inciting family conflicts to weaken the solidarity amongst claimants.

As a result of the ordeal suffered during the claim processes, surviving families describe having experienced many mental and physical health problems, including insomnia, long-term depression, weight loss, high blood pressure and heart attack caused/intensified by the anger resulting from the neglect and ill-treatment by shipowners' representatives.

In cases where seafarers had been injured, treatment was subject to support from shipowners and crew agencies. Many seafarers said that their medical care was delayed by shipowners, that treatment periods were limited, and that they had to pay for the treatment themselves. As a result, some seafarers reported giving up treatment early and were left with permanent disabilities. Therefore, their careers at sea were terminated. Seafarers working for domestic private shipowners are more likely to suffer poor medical supports, and seafarers working for state-owned shipowners were more likely to receive higher and more comprehensive medical supports.

In the process of claiming disability compensation, seafarers suffered unfair treatment from their shipowners and crew agencies. Most frequently, their employers refused to assist with the recognition of disabilities as work-related by the labour bureaus and thus their rights to Work-related Injury Insurance were not realised. In disputes, seafarers reported being blamed for their injuries by crew agencies and were accused of causing trouble and financial loss for their shipowners. Being cheated by crew agencies was also reported

as when companies pretended to offer compensation, but simply acted to delay the claim for over a year to make it time-barred for action.

Shipowners reported crew injury as a significant financial risk to their operation which could be transferred through insurance. However, the fragmented nature of ship ownership and management produced a situation where shipowners, managers and crew agents all sought to avoid liability and hold each other responsible for compensation payments to victims of industrial accidents.

The lack of workers' participation in the formulation of the rights, treatment and compensation standards is one reason that seafarers find it challenging to secure their rights. When shipping companies and manning companies negotiate workplace accidental loss management strategies, seafarers are excluded from the process thus the insurance coverage and amount are usually not disclosed to seafarers in advance. The lack of transparency breaks the mutual trust between seafarers and managers, which leaves seafarers in a further vulnerable position.

Insufficient legal protection

Legally speaking, there are two approaches for seafarers in claiming their damages after workplace accidents: one is to seek compensation from Work-related Injury Insurance Fund, and the other is to claim damages from their shipowners by tort law. The empirical findings of Chapters 5, 6 and 7 prove the insufficiencies and limitedness of these two legal protective approaches.

One core problem is the insufficient coverage of the Work-related Injury Insurance over seafarers. In foreign and private shipping companies, managers reported that due to human resource costs, they only arranged social insurance for some seafarers. Once workplace accidents occurred, seafarers who were not covered by the Work-related Injury Insurance, could not obtain the no-fault based workers' compensation. Moreover, their permanent workplace injuries were not recognised as work-related disability and were not appraised according to work-related disability standards from labour authorities. In the absence of such appraisal, tort litigation was difficult. The

insufficient coverage of Work-related Injury Insurance among seafarers not only infringed seafarers' rights to access social insurance compensation but also obstructed the establishment of effective compensation claims through tort law.

In relation to compensation claims pursued via tort law, a major inadequacy relates to the ceiling of a compensation that may be awarded (CNY 800,000). With rapid economic growth and increases in living expenses, seafarer earnings have increased. CNY 800,000 no longer corresponds with the earning losses suffered by many seafarers when their maritime careers are terminated due to accidental trauma. In 2013, this limitation of liability was abolished⁸³, however, the permanent harm caused by this disreputable regime to the seafarers and surviving families could never be recovered.

Due to the complexities of the system in China, the difficulties in obtaining information and the lack of available legal advice and support relating to which jurisdictions apply, the one-year time-bar for workplace injury claims is too short. The short time-bar becomes a legal barrier leading to many seafarers' claims being excluded. Due to the lack of the legal knowledge and the limitation of mobility during their medical treatment, many research participants had failed to initiate their complaints in front of the labour bureaus and/or maritime courts before their claims had expired. Furthermore, shipowners and crew agencies did not offer seafarers advice relating to time limits, since their liabilities would be reduced or diminished if seafarers' claims expired. The findings presented here show that this regime further exacerbated the vulnerability of seafarers following workplace accidents (see 7.3.3).

In foreign-related maritime tort litigation procedures, seafarer victims confronted more procedural obstacles than domestic workers. They have faced new problems in the globalisation era: where to find their overseas

⁸³ The limitation of liability CNY 800,000 was abolished on January 1st, 2013, when I conducted my fieldwork but most of my interviewees were subject to this ceiling because their accidents occurred before 2013.

employers and how to ensure the “presence” of defendants in maritime litigation. Participants revealed that they might wait more than two years for overseas service of legal papers to liable shipowners (see 4.3.2.4.b). Unlike domestic tort trials subject to a six-month time limit, foreign-related tort litigation is not subject to any time limits (see 4.3.2.4.b). However, this can be disadvantageous to seafarers as their claims may drag on for years.

Drawing on seafarers’ experiences and the accounts of managers, the limited enforcement of the Work-related Injury Insurance has caused significant inconvenience and impediments for seafarers in obtaining recognition and appraisal of their work-related disability. Furthermore, to protect the development of the shipping industry which brings benefits to China, certain legal regimes seem inclined to protect shipowners and limit claimants’ rights. The design of foreign-related civil procedures increased the uncertainty faced by the seafarers in litigation. Accordingly, for Chinese seafarers, substantive legal protection is limited, and the design of civil procedures is not very user-friendly for claimants.

Anti-therapeutic effects (additional harm) rooted in administrative and judicial procedures

Seafarers were found to be largely marginalised from administrative and judicial remedies, which exacerbated the additional damage they suffered in the claim process. In theory, administrative and judicial remedies should act to resort social justice to victims of workplace accidents. As the agencies of a state, public institutions can and arguably should serve as a ‘mediator’ between workers and capital to ensure industrial conflict is controlled and resolved. However, drawing on the experiences of the claimants in this study, it would appear that Chinese public institutions fail to achieve to mediate industrial conflicts and ensure social justice for the seafarer victims of workplace accidents.

Seafarers and surviving families commonly reported the disappointment about the administrative authorities’ refusal to accept seafarers’ claims. Drawing on seafarers’ accounts, it seems that governmental institutions,

including Labour Bureaus, Maritime Safety Authorities, Municipal and Provincial Petition Offices and Ministry of Foreign Affairs, are not willing to accept compensation claims or provide instruction and assistance for injured seafarers or surviving families in making such claims. Furthermore, some authorities with jurisdiction, such as local Labour Bureaus and Petition Offices, use the excuse that seafarers' claims are foreign-related to evade their responsibilities.

It was clear from the findings from the research that the adversarial procedures of maritime litigation are a major source of additional harm in China. In the adversarial court hearings, victims experienced verbal abuse attacking their integrity and victim blaming strategies designed to irritate victims and make them react negatively during court hearings and undermine their chances of success. Continuously challenging the authenticity of disability appraisals was another strategy adopted by shipowners and their insurers. Such challenges are permitted in civil procedures, but for victims, this increased the length of a dispute and caused implications for costs and time.

The research evidence that has been presented shows how administrative and judicial remedies have become further ordeals full of disappointments and suffering for claimants. These results may explain the low litigation rate among claimants of 42 cases of fatalities and injuries, only six claimants resorted to maritime litigations. Moreover, none of the claimants reported that they had received substantial assistance from administrative authorities in their dispute resolution, while the frequent feedback from those seeking assistance from the governments was that they were 'unhelpful' or 'useless'. Some claimants simply never received a response from government officials or arrogant replies, such as 'your cousin's death was not a big deal.' Instead of providing remedies for claimants, such representatives from the administrative authorities created further disappointment and suffering for seafarers.

Theoretical implications

It has been argued that workers' compensation should be extended to all working people and all societies that regard themselves to be civilised (Quinlan and Mayhew 1999). This research revealed the significant restrictions to workers' compensation in China. The ordeals that research participants suffered during the compensation claim processes indicates that currently the rights of working people are not secured, and that formal social institutions frequently fail to adequately compensate their loss and pain (Sun and Liu 2014).

The empirical findings support the earlier theoretical argument that the established conflict between capital and labour demonstrated elsewhere also imposes adversarial tendencies on the workers' compensation claim processes in contemporary China. Chinese seafarers and their families suffer complicated, diverse and severe harm and pain, which is not limited to the loss and damages arising from injuries and disabilities. The corporate management regimes and hostile attitudes to claimants suppress and infringe victims' rights to know about and to obtain reasonable and timely damages. This places additional psychological problems and a range of other difficulties on seafarers, such as irreversible disability and financial loss. This study has explicitly exposed the links between compensation payments and corporate ownership and a transnational justice stage as China moves from a planned economy to market economy. State-owned shipowners have relatively sound compensation schemes for their workers, while non-state-owned enterprises usually fail to fulfil their legal obligations towards injured workers and surviving families. Different forms of capital-labour conflict indicate a policy dilemma faced by China: to continue the privatisation reform is a long-term policy, but this policy may create more market players may not honour obligations under labour law.

The empirical findings show how the lack of regulation of corporate conduct by public institutions exacerbates this problem, which creates secondary harm for the victims. This supports the arguments in the existing literature regarding the anti-therapeutic effects of workers' compensation. Meanwhile,

this study extends the reach of this theory by analysing the practical consequences of the transplant of workers' compensation from the West to China. The research suggests this “transplant” is currently unsatisfactory and legal assistance for injured workers is insufficient. As a result, the anti-therapeutic effects widely exist in claimants' interaction with both administrative and judicial institutions.

Previous studies show that precarious workers and immigrants are subject to second rate treatment in OHS Management and workers' compensation (Quinlan and Mayhew, 1999, Lippel, 2007). The experiences of Chinese seafarers and families further supports this argument. Drawing on seafarers' experiences, this research reveals that precarious workers' rights cannot be ensured through the traditional workers' compensation system in China. Furthermore, seafarers suffer significant extra harm as the result of the attitude of their crew agencies and employers. In the absence of adequate legal protection, the imbalance in power between workers and employers is further exacerbated. The risk assignment between employers and working people can be argued to be unfair in this situation.

To sum up, the study has generated some significant empirical findings at different levels. The results show that following workplace accidents, Chinese seafarers or their surviving families suffer considerable secondary harm in the compensation claim process. Compared to the experiences of western workers addressed by previous studies, Chinese seafarers' experiences seem even more complicated and arduous. This is primarily a result of the lack of social insurance coverage in fragmented and casual employment relations and claim suppression by management (shipowners and crew agencies). Furthermore, the state is not effective in regulating the convert foreign-related employment relationship of many seafarers, and it fails to adequately protect the victims of industrial accidents rights to justice.

Limitation of this study

As with most doctoral studies, this research is not free from limitations. Limited time, financial resources and human resources have inevitably

restricted the scope and depth of the study. This section will explore some associated limitations.

I conducted the study in two stages: July 14th to September 16th, 2013, 64 days, and November 27th, 2013 to January 16th, 2014, 50 days. To identify potential interviewees, I contacted various stakeholder groups, including shipping companies, manning companies, maritime courts, seamen cyber communities, maritime law firms, marine insurers, P&I Club correspondents, maritime colleges, Maritime Safety Administrations, public legal aid departments and official trade unions. Regarding geographical scope, I travelled across 12 of China's 14 provinces covering 18 cities in total. 42 interviews were conducted with seafarers and their family members, and 33 interviews were conducted with informants from the shipping industry and public institutions. The 114-day field work generated rich qualitative data. In addition to collecting data through interviews and institutional documents, I was lucky to have had the rare opportunity to observe a negotiation between a seafarer's surviving family members, their shipowners and their lawyers. Travel costs were one of my major constraints in conducting the fieldwork. With limited funding, I was not able to go to more Chinese cities or to stay longer and explore more seafarers' experiences in the towns I visited. At the end of my fieldwork, I had to give up two interviews with widows in Shandong due to budgetary limitations. I communicated with them through telephone and online chat instead, but compared to face to face interviews, the data generated through phone and online chat were found to be limited.

In addressing the research question, I have involved different "players" in my research. However, I was unable to interview a trade union representative. Unlike western trade unions, Chinese trade unions are government sponsored and are rarely involved in handling claims on the frontline and their roles are more similar to that of a policy maker, so in some respects the impact of this omission is limited. Due to my identity as a PhD student from a western university, some officials, in particular, those from governments, refused to accept my research invitation which restricted the data scope. Trade unions and public legal aid departments rejected my research request because they

believed that my research could harm the image of China in international society. The Chinese Seamen and Construction Workers' Union drafted a collective bargaining agreement for seafarers aiming to unify the occupational injury compensation standards. It would undoubtedly have been useful to analyse this document.

Compensation claim activities are prolonged and complicated and they involve the activities of different stakeholders. Due to the limited resources I was able to allocate in the fieldwork, some interviewees' claim activities might have further developed after my data collection was complete and these experiences would not have been captured as a result.

Finally, I need to acknowledge the impact of limitations regarding sampling. Due to the restricted access to injured seafarers and their surviving families, I had to adopt a purposive theoretical sampling strategy to recruit research participants. The selection of manning and shipping companies was also based on convenience. For many companies, information on organisational policies concerning workplace injuries is of a sensitive nature so my choice of companies was very limited. I endeavoured to cover coastal and international shipping companies and corporations with different ownership: foreign-invested, Chinese state-owned and privately owned. Although some companies were reluctant to provide complete information about their organisational policies, I gained unrestricted access from one P&I club correspondent, one law firm and one shipping company. However, the conclusion regarding corporate management drawn upon cases from a limited number of companies and therefore presents a partial picture, which may not be representative of other companies.

It is reasonable to say the findings of this study have demonstrated the characteristics of Chinese seafarers' experiences of compensation claims and revealed the general factors influencing seafarers' compensation claim results following workplace accidents under the current legal and industrial contexts in China. However, bearing in mind the limitations of this research, it is

possible that other seafarers may be facing additional challenges which are not reflected in this study.

Policy Implications and Further Research Agenda

This research was conducted between 2012 and 2016, a fast-changing period regarding seafarers' rights protection legislation. The Maritime Labour Convention (2006), an international legal instrument aiming to achieve global governance over seafarers' rights protection came into force in 2013. China ratified it in 2015, and it will be enforced on 12th November 2016. This convention should be expected to have some impacts on the issues discussed in this research.

The research revealed a series of regulatory deficiencies that exist in addressing seafarers' compensation claims in China. Drawing on the findings from the thesis, further policy development should be considered (1) to establish explicit jurisdiction over seafarers' compensation claims; (2) to ascertain precise and reasonable compensation standards for the work disabilities and fatalities of seafarers with the consideration of seafarers' actual income level; (3) simplify the claim procedures and reduce claimants' burden of proof; (4) to reduce the adversarial nature of the dispute resolution process; (5) to clarify the obligations of employers, including shipping and manning companies; and (6) to ensure adequate regulatory power over companies' hostile conduct in the negotiation process. Regarding how to introduce new legal policy instruments, further studies have to be carried out to decide the extent of the reform or change. The effects and risks of the reform measure would also need to be carefully examined.

Furthermore, the future contribution of the Maritime Labour Convention (2006) to the protection of seafarers following workplace accidents remains unknown. The Convention reasserts existing standards, working conditions and rights for international seafarers. Regarding seafarers' rights following workplace accidents, the Convention re-states it is the shipowners who bear the liability for expenses relating to workplace accidents. The flag state shall adopt law and regulations to ensure seafarers are entitled to no less than 16

weeks' medical care as well as partial or whole wages of no less than 16 weeks following the accident (Regulation 4.2). However, the Convention fails to regulate over the issues regarding seafarers' earning loss arising from disability or surviving families' living maintenance following the death of seafarers. Therefore, the enforcement of the Maritime Labour Convention might not substantially improve seafarers' entitlements and rights following workplace accidents according to Chinese law.

Nevertheless, the Maritime Labour Convention has adopted certain technical measures to improve seafarers' rights to knowledge. The Maritime Labour Convention provides that all seafarers should have access to an efficient, adequate and accountable system for finding employment on board. From the perspective of evidence collection, this measure should ensure seafarers' rights to full disclosure of their contractual rights following workplace accidents. To a certain extent, this action may reduce the problems for seafarers in securing compensation according to employment agreements. Further studies are necessary to explore the effectiveness of this measure regarding seafarers' rights protection following workplace accidents.

In Regulation 4.5 of the MLC, the Convention provides that each member state should ensure that all seafarers and, to the extent provided for in its national law, their dependants have access to social security protection no less favourable than shore-based workers and to establish fair and efficient procedures for the settlement of disputes. As the supply state of seafarers, this research shows that the lack of equitable and efficient dispute resolution in China has created a significant obstacle to justice. To enforce the Convention, whether the Chinese authority should introduce new dispute resolution regimes or conduct reforms on current maritime judicial and administrative system remains in question. If there are changes to the remedial system, then further studies would be necessary to evaluate the effectiveness of the relevant institutional changes.

In addition to China, many South-East Asian countries and Eastern European countries such as the Philippines, India and Poland are important suppliers of

seafarers. However, injured seafarers' experiences in these countries are still largely unknown. Further studies looking at the major supply states are necessary because this knowledge can inform the next stages of the development of global governance in order to promote the sustainable and responsible development of the global shipping industry.

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Appendices

Appendix A Legal Instruments

Regulation on Work-Related Injury Insurance (2010 Revision)[Effective] 工伤保险条例(2010 修订) [现行有效]

Issuing authority:	State Council	Document Number:	Order No.375 of the State Council of the People's Republic of China
Date issued:	12-20-2010	Level of Authority:	Administrative Regulations
Area of law:	Trade Unions		

Regulation on Work-Related Injury Insurance (Promulgated by Order No.375 of the State Council of the People's Republic of China on April 27, 2003, amended according to the Decision of the State Council on Amending the Regulation on Work-Related Injury Insurance on December 20, 2010)

工伤保险条例
(2003年4月27日中华人民共和国国务院令第375号公布 根据2010年12月20日《国务院关于修改〈工伤保险条例〉的决定》修订)

Chapter I General Provisions

第一章 总 则

Article 1 This Regulation is formulated to guaranteeing the employees who are injured from accidents arising from work or who suffer from occupational diseases to obtain medical care and economic compensation, promoting the prevention and occupational recovery from work-related injuries, and dispersing the work-related injury risks of employers.

第一条 为了保障因工作遭受事故伤害或者患职业病的职工获得医疗救治和经济补偿,促进工伤预防和职业康复,分散用人单位的工伤风险,制定本条例。

Article 2 Enterprises, public institutions, social organizations, private non-enterprise entities, foundations, law firms, accounting firms, and other organizations as well as individual industrial and commercial households hiring laborers (hereinafter referred to as "employers") within the territory of the People's Republic of China shall, in accordance with this Regulation, purchase work-related injury insurance, paying work-related injury insurance premiums for all their employees or hired laborers (hereinafter

第二条 中华人民共和国境内的企业、事业单位、社会团体、民办非企业单位、基金会、律师事务所、会计师事务所等组织和有雇工的个体工商户(以下称用人单位)应当依照本条例规定参加工伤保险,为本单位全部职工或者雇工(以下称职工)缴纳工伤保险费。

referred to as “employees”). Employees of enterprises, public institutions, social organizations, private non-enterprise entities, foundations, law firms, and other organizations as well as laborers hired by individual industrial and commercial households within the territory of the People’s Republic of China shall have the right to enjoy the work-related injury insurance benefits in accordance with this Regulation.

Article 3 The work-related injury insurance premiums shall be collected and paid in accordance with the provisions in the “Interim Regulation on the Collection and Payment of Social Insurance Premiums” regarding the collection and payment of basic pension insurance premiums, basic medical insurance premiums, and unemployment insurance premiums.

Article 4 The employers shall announce the relevant information on buying work-related injury insurance within the scope of the entity. The employers and the employees shall abide by the relevant laws and regulations on safe production and prevention and treatment of occupational diseases, implement the rules and standards on safety and health care, prevent work-related injury accidents, avoid and reduce harms from occupational diseases. When an employees from a work-related injury, the employers shall take measure to have the injured employee cured in time.

Article 5 The social insurance administrative department under the State Council shall be responsible for the work of nationwide work-related injury insurances. The social insurance administrative department of each local people’s government at or above the county level shall be responsible for the work of work-related injury insurance within its own jurisdiction. The social insurance handling institutions (hereinafter referred to as handling institutions) established by the social insurance administrative department under the State Council in accordance with the relevant provisions shall specifically undertake the affairs in respect of work-related injury insurances.

Article 6 the social insurance administrative department and other departments shall, if formulating policies or standards concerning work-related injury insurances, solicit opinions from the representatives of the trade union organizations and employers.

中华人民共和国境内的企业、事业单位、社会团体、民办非企业单位、基金会、律师事务所、会计师事务所等组织的职工和个体工商户的雇工，均有依照本条例的规定享受工伤保险待遇的权利。

第三条 工伤保险费的征缴按照《社会保险费征缴暂行条例》关于基本养老保险费、基本医疗保险费、失业保险费的征缴规定执行。

第四条 用人单位应当将参加工伤保险的有关情况在本单位内公示。用人单位和职工应当遵守有关安全生产和职业病防治的法律法规，执行安全卫生规程和标准，预防工伤事故发生，避免和减少职业病危害。职工发生工伤时，用人单位应当采取措施使工伤职工得到及时救治。

第五条 国务院社会保险行政部门负责全国的工伤保险工作。县级以上地方各级人民政府社会保险行政部门负责本行政区域内的工伤保险工作。社会保险行政部门按照国务院有关规定设立的社会保险经办机构（以下称经办机构）具体承办工伤保险事务。

第六条 社会保险行政部门等部门制定工伤保险的政策、标准，应当征求工会组织、用人单位代表的意见。

Article 7 The work-related injury insurance fund shall be composed of the work-related injury insurance premiums paid by the employers, the interest on the work-related injury insurance fund and other funds legally included in the work-related injury insurance fund.

第七条 工伤保险基金由用人单位缴纳的工伤保险费、工伤保险基金的利息和依法纳入工伤保险基金的其他资金构成。

Article 8 The rate of the work-related injury insurance premiums shall be determined in compliance with the principles of basing collection on expenditure and balancing the income and expenditure. The state shall determine differential premium rates for different industries in light of their respective likelihood of work-related injuries, and set forth a number of different premium rates for each industry in light of the use of the work-related injury insurance premiums, occurrence rate of work-related injuries, etc. The differential premium rates for different industries and the different premium rates within each industry shall be decided by the social insurance administrative department under the State Council, and be subject to the approval of the State Council before promulgation and implementation.

第八条 工伤保险费根据以支定收、收支平衡的原则，确定费率。国家根据不同行业的工伤风险程度确定行业的差别费率，并根据工伤保险费使用、工伤发生率等情况在每个行业内确定若干费率档次。行业差别费率及行业内费率档次由国务院社会保险行政部门制定，报国务院批准后公布施行。统筹地区经办机构根据用人单位工伤保险费使用、工伤发生率等情况，适用所属行业内相应的费率档次确定单位缴费费率。

The handling institution in a region subject to overall planning shall, in light of the information on the employers' use of work-related injury insurance premiums and the occurrence rate of work-related injuries, etc., apply the corresponding grade of premium rate for the industry to determine the premium rate of the employers.

Article 9 The social insurance administrative department under the State Council shall have regular knowledge of the revenue and expenditures of the work-related injury insurance funds in all overall planning areas throughout the country, and shall put forward a timely plan for adjustment of the differential premium rates for different industries and the different premium rates within each industry, which shall be subject to the approval of the State Council before promulgation and implementation.

第九条 国务院社会保险行政部门应当定期了解全国各统筹地区工伤保险基金收支情况，及时提出调整行业差别费率及行业内费率档次的方案，报国务院批准后公布施行。

Article 10 The employers shall pay work-related injury insurance premiums on time, and individual employees do not have to pay the work-related injury insurance premiums. The amount of work-related injury insurance premiums paid by the employers shall be the product of multiplying the total amount of wages of the employees in the employers by the premiums rate of the employers. For any industry which has difficulty in paying work-related injury insurance premiums on the basis of the total wages, the specific methods for paying

第十条 用人单位应当按时缴纳工伤保险费。职工个人不缴纳工伤保险费。用人单位缴纳工伤保险费的数额为本单位职工工资总额乘以单位缴费费率之积。对难以按照工资总额缴纳工伤保险费的

work-related injury insurance premiums shall be prescribed by the social insurance administrative department under the State Council.

Article 11 Work-related injury insurance funds shall be gradually managed under provincial overall planning. For trans-regional industries and industries with large production mobility, the employers may buy work-related injury insurances in region subject to overall planning by a relatively concentrative means. The specific measures shall be formulated by the social insurance administrative department under the State Council jointly with the competent departments of the relevant industries.

Article 12 Work-related injury insurance funds shall be deposited into a designated financial account of social security fund, and shall be used to pay work-related injury insurance benefits, work ability appraisal fees, fees for publicity and training with respect to work-related injury prevention and other fees as prescribed in this Regulation, as well as other expenses used for work-related injury insurance as prescribed in laws and regulations. The social insurance administrative department under the State Council shall, jointly with the departments of public finance, health administration, production safety supervision and administration, etc. under the State Council, formulate specific measures for the drawing ratio, use and administration of work-related injury prevention fees. No entity or individual may use work-related injury insurance funds to make investment operations, build or rebuild office places, or grant bonuses, or misappropriate such funds for other purposes.

Article 13 A certain proportion of reserve among the work-related injury insurance fund shall be remained for the paying of the treatment of work-related injury insurances on major accidents in the regions subject to overall planning; if the reserve is not enough to pay the said treatment, the people's government of the region subject to overall planning shall pay the remaining sum. The specific proportion of the reserve among the total amount of the fund and the measures on using the reserve shall be provided for by the people's government of the province, autonomous region, or municipality directly under the Central Government.

Chapter III Determination of Work-Related Injuries

Article 14 A employees shall be ascertained to have suffered from work-related injury if:

行业，其缴纳工伤保险费的具体方式，由国务院社会保险行政部门规定。

第十一条 工伤保险基金逐步实行省级统筹。跨地区、生产流动性较大的行业，可以采取相对集中的方式异地参加统筹地区的工伤保险。具体办法由国务院社会保险行政部门会同有关行业的主管部门制定。

第十二条 工伤保险基金存入社会保障基金财政专户，用于本条例规定的工伤保险待遇，劳动能力鉴定，工伤预防的宣传、培训等费用，以及法律、法规规定的用于工伤保险的其他费用的支付。工伤预防费用的提取比例、使用和管理的具体办法，由国务院社会保险行政部门会同国务院财政、卫生行政、安全生产监督管理等部门规定。任何单位或者个人不得将工伤保险基金用于投资运营、兴建或者改建办公场所、发放奖金，或者挪作其他用途。

第十三条 工伤保险基金应当留有一定比例的储备金，用于统筹地区重大事故的工伤保险待遇支付；储备金不足支付的，由统筹地区的人民政府垫付。储备金占基金总额的具体比例和储备金的使用办法，由省、自治区、直辖市人民政府规定。

第三章 工伤认定

第十四条 职工有下列情形之一的，应当认定为工伤：

1.he is injured from an accident within the working hours and the working place due to his work;

(一) 在工作时间和工作场所内，因工作原因受到事故伤害的；

2.he is injured from an accident within the working place before or after the working hours for doing preparatory or finishing work related to his job;

(二) 工作时间前后在工作场所内，从事与工作有关的预备性或者收尾性工作受到事故伤害的；

3.he suffers from violence or other unexpected injury within the working hours and working place due to implementation of his duties;

(三) 在工作时间和工作场所内，因履行工作职责受到暴力等意外伤害的；

4.he suffers from an occupational disease;

(四) 患职业病的；

5.his whereabouts are unknown due to his injury or accident during his trip for performing his duties;

(五) 因工外出期间，由于工作原因受到伤害或者发生事故下落不明的；

6.he is injured in traffic accident for which he is not principally responsible or in an urban rail transit, passenger ferry or train accident on his way to or back from work;

(六) 在上下班途中，受到非本人主要责任的交通事故或者城市轨道交通、客运轮渡、火车事故伤害的；

7.other circumstances provided for in laws and administrative regulations under which work-related injuries shall be ascertained.

(七) 法律、行政法规规定应当认定为工伤的其他情形。

Article 15 An employee shall be regarded to have suffered from the work-related injury if:

第十五条 职工有下列情形之一的，视同工伤：

1.during the working hours and on the post, he dies from a sudden disease or dies within 48 hours due to ineffective rescue;

(一) 在工作时间和工作岗位，突发疾病死亡或者在 48 小时之内经抢救无效死亡的；

2.he is injured when dealing with an emergency or providing disaster relief or in other activity for maintaining the state benefits or public benefits; or

(二) 在抢险救灾等维护国家利益、公共利益活动中受到伤害的；

3.he served in the army and became disabled due to war or duties, and has obtained the certificate of revolutionary disabled armyman, but recrudesces from the past injury after working in the employing entity. Where an employee is under the circumstance in Item (a) or (b) of the preceding paragraph, he may enjoy the treatment of work-related injury insurances in accordance with the relevant provisions of the present regulation; where an employee is under the circumstance in Item (c) of the

(三) 职工原在军队服役，因战、因公负伤致残，已取得革命伤残军人证，到用人单位后旧伤复发的。职工有前款第(一)项、第(二)项情形的，按照本条例的有关规定享受工伤保险待遇；职工有前款第(三)项情形

preceding paragraph, he may enjoy the treatment of work-related injury insurances other than the lump-sum disability subsidy in accordance with the relevant provisions in the present regulation.

Article 16 An employee who conforms to the provisions of Article 14 or Article 15 of this Regulation shall neither be determined nor be regarded to have suffered a work-related injury if:

1. He intentionally commits a crime;
2. He is under the influence of alcohol or drugs; or
3. He injures himself or commits suicide.

Article 17 where an employee is injured from an accident or is diagnosed or assessed in accordance with the Law on Prevention and Treatment of Occupational Diseases to have an occupational disease, the employers shall, within 30 days as of the day when the accident injury is occurred or when he is diagnosed or assessed to have contracted the occupational disease, file an application for ascertainment of the work-related injury to the social insurance administrative department in the region subject to overall planning. Under special circumstances, the time limit for application may be properly extended, subject to the approval of the social insurance administrative department.

Where an employers fails to file an application for ascertainment of a work-related injury in accordance with the preceding paragraph, the worker who suffered from the injury or his close relative, or the trade union organization may, within one year as of the day when the accident injury is occurred or when the employee is diagnosed or assessed to have the occupational disease, directly file the application for ascertainment of the work-related injury to the social insurance administrative department of the region subject to overall planning where the employers is located. The matter for which the work-related injuries shall be ascertained by the social insurance administrative department at the provincial level as provided for in Paragraph 1 of the present article, shall be handled by the social insurance administrative department at the level of city divided into districts at the locality of the employers in compliance with the principle of territory.

Where an employers fails to file an application for ascertainment of a work-related injury within the time limit provided for in Paragraph 1 of the present

的，按照本条例的有关规定享受除一次性伤残补助金以外的工伤保险待遇。

第十六条 职工符合本条例第十四条、第十五条的规定，但是有下列情形之一的，不得认定为工伤或者视同工伤：

- (一) 故意犯罪的；
- (二) 醉酒或者吸毒的；
- (三) 自残或者自杀的。

第十七条 职工发生事故伤害或者按照职业病防治法规定被诊断、鉴定为职业病，所在单位应当自事故伤害发生之日或者被诊断、鉴定为职业病之日起30日内，向统筹地区社会保险行政部门提出工伤认定申请。遇有特殊情况，经报社会保险行政部门同意，申请时限可以适当延长。用人单位未按前款规定提出工伤认定申请的，工伤职工或者其近亲属、工会组织在事故伤害发生之日或者被诊断、鉴定为职业病之日起1年内，可以直接向用人单位所在地统筹地区社会保险行政部门提出工伤认定申请。按照本条第一款规定应当由省级社会保险行政部门进行工伤认定的事项，根据属地原则由用人单位所在地的设区的市级社会保险行政部门办理。用人单位未在本条第一款规定的时限内提交工伤认定申请，在此期间发生符合本条例规定的工伤待遇等有关费用由该用人单位负担。

article, the expenses for the treatment of the injury, etc. during this period, which conform to the present regulation, shall be borne by the employers.

Article 18 Whoever files an application for ascertainment of a work-related injury shall submit the following documents:

1. the application form for ascertainment of the work-related injury;
2. the documents proving the existence of the labor relation (including de facto labor relation) with the employers; and

3.the certificate of medical diagnosis or the certificate of diagnosis of the occupational disease (or the assessment report on diagnosis of the occupational disease).

The application form for ascertainment of a work-related injury shall include such basic information as the time, place, reason of the accident, and extent of the employee's injury, etc.. Where the applicant for ascertainment of a work-related injury fails to provide complete documents, the social insurance administrative department shall notify the application in writing in one time of all the documents needed to be supplemented for the ascertainment of the work-related injury. The social insurance administrative department shall accept the application after the applicant has supplemented the documents as required by the written notification.

Article 19 The social insurance administrative department may, after accepting an application for ascertainment of a work-related injury, investigate and verify the accident injury upon the needs in examination, while the employers, the employees, the trade union organization, the medical treatment institution and other relevant departments shall provide assistance. The occupational disease shall be diagnosed and the diagnosis dispute shall be assessed in accordance with the relevant provisions in the Law on Prevention and Treatment of Occupational Diseases. With respect to the certificate of diagnosis of the occupational disease or the assessment report on diagnosis of the occupational disease which is obtained in accordance with the law, the social insurance administrative department for labor security shall no longer investigate or verify it. Where an employee or his relative believes that an injury is work-related, while the employer does not believe so, the latter shall bear the burden of proof.

第十八条 提出工伤认定申请应当提交下列材料:

- (一) 工伤认定申请表;
- (二) 与用人单位存在劳动关系(包括事实劳动关系)的证明材料;

(三) 医疗诊断证明或者职业病诊断证明书(或者职业病诊断鉴定书)。工伤认定申请表应当包括事故发生的时间、地点、原因以及职工伤害程度等基本情况。工伤认定申请人提供材料不完整的,社会保险行政部门应当一次性书面告知工伤认定申请人需要补正的全部材料。申请人按照书面告知要求补正材料后,社会保险行政部门应当受理。

第十九条 社会保险行政部门受理工伤认定申请后,根据审核需要可以对事故伤害进行调查核实,用人单位、职工、工会组织、医疗机构以及有关部门应当予以协助。职业病诊断和诊断争议的鉴定,依照职业病防治法的有关规定执行。对依法取得职业病诊断证明书或者职业病诊断鉴定书的,社会保险行政部门不再进行调查核实。职工或者其近亲属认为是工伤,用人单位不认为是工伤的,由用人单位承担举证责任。

Article 20 The social insurance administrative department shall, within 60 days upon acceptance of an application for determination of a work-related injury, make a decision on determination of the work-related injury and notify the employee applying for determination of a work-related injury or his close relative and his employer in writing. For an accepted application for determination of a work-related injury which has clear facts and explicit obligations and rights, the social insurance administrative department shall make a decision on determination of the work-related injury within 15 days. Where a decision on determination of a work-related injury needs to be made on the basis of the conclusion of a judicial organ or relevant competent administrative department, the time limit for making a decision on determination of a work-related injury shall be suspended during the period in which the judicial organ or relevant competent administrative department has not yet made a conclusion. Where a functionary of the social insurance administrative department has any interest relationship with the applicant for determination of a work-related injury, he shall withdraw.

Chapter IV Work Capability Assessment

Article 21 Where an employee who suffered from a work-related injury becomes disabled and his work capability is impacted after he has been cured to be comparatively stable with his injury, his work capability shall be assessed.

Article 22 Work capability assessment shall refer to the assessment by grade of the extent of work capability obstruction and of self-care obstruction.

The work capability obstruction is divided into ten disability grades, with Grade 1 to be the severest, and Grade 10 the most lenient. The self-care obstruction is divided into three grades: complete inability to self-care, most inability to self-care and partial inability to self-care. The standards for work capability assessment shall be made by the social insurance administrative department under the State Council jointly with the administrative department for health and other departments under the State Council.

Article 23 The application for work capability assessment shall be filed by the employers, the employee who suffered from the work-related injury or his close relative to the work capability assessment committee at the level of city divided into districts, accompanied by the decision on ascertainment

第二十条 社会保险行政部门应当自受理工伤认定申请之日起 60 日内作出工伤认定的决定，并书面通知申请工伤认定的职工或者其近亲属和该职工所在单位。社会保险行政部门对受理的事实清楚、权利义务明确的工伤认定申请，应当在 15 日内作出工伤认定的决定。作出工伤认定决定需要以司法机关或者有关行政主管部门的结论为依据的，在司法机关或者有关行政主管部门尚未作出结论期间，作出工伤认定决定的时限中止。社会保险行政部门工作人员与工伤认定申请人有利害关系的，应当回避。

第四章 劳动能力鉴定

第二十一条 职工发生工伤，经治疗伤情相对稳定后存在残疾、影响劳动能力的，应当进行劳动能力鉴定。

第二十二条 劳动能力鉴定是指劳动功能障碍程度和生活自理障碍程度的等级鉴定。劳动功能障碍分为十个伤残等级，最重的为一级，最轻的为十级。生活自理障碍分为三个等级：生活完全不能自理、生活大部分不能自理和生活部分不能自理。劳动能力鉴定标准由国务院社会保险行政部门会同国务院卫生行政部门等部门制定。

第二十三条 劳动能力鉴定由用人单位、工伤职工或者其近亲属向设区的市级劳动能力鉴定委员会提出申请，并

of the work-related injury and the relevant documents on medical treatment of the employee's work-related injury.

Article 24 The work capability assessment committee of a province, autonomous region, or municipality directly under the central Government or the work capability assessment committee at the level of city divided into districts shall be composed of the representatives from the social insurance administrative department, the administrative department for health, the trade union organization, the handling institution of the province, autonomous region, or municipality directly under the Central Government or those at the level of city divided into districts and the representatives from employers.

The work capability assessment committee shall set up a database of medical and sanitary experts. The medical and sanitary professionals listed in the database shall meet the following conditions:

1. have the qualification to hold senior professional medical and sanitary post;
2. grasp the relevant knowledge on work capability assessment; and
3. have good professional moralities.

Article 25 The work capability assessment committee at the level of city divided into districts shall, after receipt of the application for work capability assessment, randomly take out 3 or 5 relevant experts from the database of medical and sanitary experts to form an expert group, which shall give assessment opinions. The work capability assessment committee at the level of city divided into districts shall upon the assessment opinions of the expert group, make a conclusion of work capability assessment on the workers suffering from work-related injuries; and may, if necessary, entrust a qualified medical treatment institution to assist in the relevant diagnosis. The work capability assessment committee at the level of city divided into districts shall, within 60 days as of receipt of the application for work capability assessment, make a conclusion on the work capability assessment. If necessary, the time limit for making the conclusion of work capability assessment may be extended by 30 days. The conclusion of work capability assessment shall be timely served to the entity and individual applying for assessment.

提供工伤认定决定和职工工伤医疗的有关资料。

第二十四条 省、自治区、直辖市劳动能力鉴定委员会和设区的市级劳动能力鉴定委员会分别由省、自治区、直辖市和设区的市级社会保险行政部门、卫生行政部门、工会组织、经办机构代表以及用人单位代表组成。劳动能力鉴定委员会建立医疗卫生专家库。列入专家库的医疗卫生专业技术人员应当具备下列条件:

- (一) 具有医疗卫生高级专业技术职务任职资格;
- (二) 掌握劳动能力鉴定的相关知识;
- (三) 具有良好的职业品德。

第二十五条 设区的市级劳动能力鉴定委员会收到劳动能力鉴定申请后,应当从其建立的医疗卫生专家库中随机抽取3名或者5名相关专家组成专家组,由专家组提出鉴定意见。设区的市级劳动能力鉴定委员会根据专家组的鉴定意见作出工伤职工劳动能力鉴定结论;必要时,可以委托具备资格的医疗机构协助进行有关的诊断。设区的市级劳动能力鉴定委员会应当自收到劳动能力鉴定申请之日起60日内作出劳动能力鉴定结论,必要时,作出劳动能力鉴定结论的期限可以延长30日。劳动能力鉴定结论应当及时送达申请鉴定的单位和个人。

Article 26 Where an employers or individual who applies for assessment refuses to accept the assessment conclusion made by work capability assessment committee at the level of city divided into districts, it/he may, within 15days as of receipt of the assessment conclusion, apply to the work capability assessment committee of the province, autonomous region, or municipality directly under the Central Government for a second assessment. The conclusion of work capability assessment made by the work capability assessment committee of the province, autonomous region, or municipality directly under the Central Government shall be final.

Article 27 The work capability assessment shall be carried out objectively and impartially. If any member of the work capability assessment committee or any expert participating in the assessment has an interest in any party concerned, he shall withdraw.

Article 28 If, after 1 year as of the day when the conclusion of work capability assessment is made, an employee who suffered from a work-related injury or his close relative, the employers or the handling institution considers the disability is changed, any of them may apply for re-examination and re-assessment of the work capability.

Article 29 The time limit for the work ability appraisal committee to make re-appraisal or review the appraisal in accordance with Articles 26 and 28 of this Regulation shall be governed by Paragraph 2 of Article 25 of this Regulation.

Chapter V Treatment of Work-Related Injury Insurances

Article 30 Where an employee is injured from an accident or suffers from an occupational disease due to his work and needs to be treated, he may enjoy the medical treatment of work-related injuries. An employee having his work-related injury treated shall see the doctor in a medical treatment institution that has entered into a service agreement with the employers, and may in case of emergency, first go to a nearby medical treatment institution for emergency treatment. If the expenses needed in treating a work-related injury conform to the catalogue of the diagnosis and treatment items for insured work-related injury, the medicine catalogue for insured work-related injuries and the standards of hospitalization service for insured work-related injuries, such expenses shall be paid from the work-related injury insurance fund. The catalogue of the diagnosis and treatment items for insured work-related

第二十六条 申请鉴定的单位或者个人对设区的市级劳动能力鉴定委员会作出的鉴定结论不服的，可以在收到该鉴定结论之日起 15 日内向省、自治区、直辖市劳动能力鉴定委员会提出再次鉴定申请。省、自治区、直辖市劳动能力鉴定委员会作出的劳动能力鉴定结论为最终结论。

第二十七条 劳动能力鉴定工作应当客观、公正。劳动能力鉴定委员会组成人员或者参加鉴定的专家与当事人有利害关系的，应当回避。

第二十八条 自劳动能力鉴定结论作出之日起 1 年后，工伤职工或者其近亲属、所在单位或者经办机构认为伤残情况发生变化的，可以申请劳动能力复查鉴定。

第二十九条 劳动能力鉴定委员会依照本条例第二十六条和第二十八条的规定进行再次鉴定和复查鉴定的期限，依照本条例第二十五条第二款的规定执行。

第五章 工伤保险待遇

第三十条 职工因工作遭受事故伤害或者患职业病进行治疗，享受工伤医疗待遇。职工治疗工伤应当在签订服务协议的医疗机构就医，情况紧急时可以先到就近的医疗机构急救。治疗工伤所需费用符合工伤保险诊疗项目目录、工伤保险药品目录、工伤保险住院服务标准的，从工伤保险基金支付。工伤保险诊疗项目目录、工伤保险药品目录、工伤保险住院服务标准，由国务院社会保险行政部门会同国务院卫生行政部门、食品药品监督管理部门等

injuries, the medicine catalogue for insured work-related injuries, and the standards of hospitalization service for insured work-related injuries shall be provided by the social insurance administrative department under the State Council jointly with the administrative department for health, the administrative department for drug supervision, etc. under the State Council.

Food subsidies for an employee who is hospitalized for a work-related injury and the travel, lodging and board expenses required for an employee who suffered a work-related injury to seek medical treatment outside an overall planning area with the attestation issued by a medical treatment institution and upon approval of the handling institution shall be paid out of the work-related injury insurance funds, and the specific standards for the payment from funds shall be prescribed by the people's governments in the overall planning areas.

An employee who suffered from a work-related injury shall not enjoy the medical treatment of work-related injuries if he has a disease from non-work-related injury treated, but shall comply with the measures on basic medical insurances.

The expenses for an employee who suffered a work-related injury to go to a medical treatment institution which has entered into a service agreement with his employer for rehabilitation from the work-related injury shall, if meeting the relevant provisions, be paid from the work-related injury insurance funds.

Article 31 Where an administrative reconsideration or administrative lawsuit occurs after the social insurance administrative department makes a decision on determination of a work-related injury, the payment of medical expenses to the employee who suffered a work-related injury for medical treatment of the work-related injury shall not be suspended during the period of administrative reconsideration or administrative lawsuit.

Article 32 An employee who suffered from a work-related injury may, if in the need of daily life or employment, be installed with artificial limb, orthopedic device, artificial eye, false tooth or equipped with wheelchair or other auxiliary devices upon confirmation by the work capability assessment committee. The necessary expenses shall be paid from the work-related injury insurance fund according to the standards provided for by the state.

Article 33 Where an employee is injured from an accident or suffers from an occupational disease due to his work or needs to suspend his work for medical treatment of the work-related injury, his original remuneration of wages and welfares shall, during the period of suspension of work but

部 门 规 定 。
职工住院治疗工伤的伙食补助费，以及经医疗机构出具证明，报经办机构同意，工伤职工到统筹地区以外就医所需的交通、食宿费用从工伤保险基金支付，基金支付的具体标准由统筹地区人民政府规定。
工伤职工治疗非工伤引发的疾病，不享受工伤医疗待遇，按照基本医疗保险办法处理。
工伤职工到签订服务协议的医疗机构进行工伤康复的费用，符合规定的，从工伤保险基金支付。

第三十一条 社会保险行政部门作出认定为工伤的决定后发生行政复议、行政诉讼的，行政复议和行政诉讼期间不停止支付工伤职工治疗工伤的医疗费用。

第三十二条 工伤职工因日常生活或者就业需要，经劳动能力鉴定委员会确认，可以安装假肢、矫形器、假眼、假牙和配置轮椅等辅助器具，所需费用按照国家规定的标准从工伤保险基金支付。

第三十三条 职工因工作遭受事故伤害或者患职业病需要暂停工作接受工伤医疗的，在停工留薪期内，原工资福利待遇不变，由所在单位按月支付。

reservation of salary, remain unchanged and be paid on a monthly basis by the entity that employs him. The period of suspension of work but reservation of salary shall usually not exceed 12 month. If the injury is heavy or the case is particular, the said period may be properly extended upon confirmation by the work capability assessment committee at the level of city divided into districts, provided that the extended period shall not exceed 12months. After the disability of a worker who suffered from a work-related injury is graded, his original remuneration shall be suspended from payment, and he shall enjoy the disability treatment in accordance with the relevant provisions of the present chapter. If the worker still needs to be treated after the expiry of the period of suspension of work but reservation of salary, he shall continue enjoying the medical treatment for work-related injury. Where an employee who suffered from a work-related injury but is unable to care himself needs to be cared during the period of suspension of work but reservation of salary, the responsibility shall remain with the entity that employs him.

Article 34 Where the disability of an employee who suffered from a work-related injury has been graded and his life is confirmed by the work capability assessment committee to be in need of care, the fee for taking care of his life shall be paid by month from the work-related injury insurance fund.

The fee for care of life shall be paid by 3 different grades, namely, complete inability to self-care, most inability to self-care and partial inability to self-care, with the standards of which to be separately 50%, 40% or 30% of the monthly average wages of each employee in the region subject to overall planning in the preceding year.

Article 35 Where an Employee's disability due to his work is assessed to fall in Grade 1 to 4, the labor relation shall be retained, and he shall withdraw from his post and enjoy the following treatments:

1. A lump-sum disability subsidy shall be paid from the work-related injury insurance funds according to the disability grade at the following rates: for an employee at the first grade of disability, 27 months of his own wage shall be paid; for an employee at the second grade of disability, 25 months of his own wage; for an employee at the third grade of disability, 23 months of his own wage; and for an employee at the fourth grade of disability, 21 months of his own wage;

停工留薪期一般不超过 12 个月。伤情严重或者情况特殊，经设区的市级劳动能力鉴定委员会确认，可以适当延长，但延长不得超过 12 个月。工伤职工评定伤残等级后，停发原待遇，按照本章的有关规定享受伤残待遇。工伤职工在停工留薪期满后仍需治疗的，继续享受工伤医疗待遇。生活不能自理的工伤职工在停工留薪期需要护理的，由所在单位负责。

第三十四条 工伤职工已经评定伤残等级并经劳动能力鉴定委员会确认需要生活护理的，从工伤保险基金按月支付生活护理费。生活护理费按照生活完全不能自理、生活大部分不能自理或者生活部分不能自理 3 个不同等级支付，其标准分别为统筹地区上年度职工月平均工资的 50%、40%或者 30%。

第三十五条 职工因工致残被鉴定为一级至四级伤残的，保留劳动关系，退出工作岗位，享受以下待遇：

（一）从工伤保险基金按伤残等级支付一次性伤残补助金，标准为：一级伤残为 27 个月的本人工资，二级伤残为 25 个月的本人工资，三级伤残为 23 个月的本人工资，四级伤残为 21 个月的本人工资；

2. The disability allowance shall be paid by month from the work-related injury insurance fund at the following rated: for the first grade of disability, 90% of his own wage shall be paid; for the second grade of disability, 85% of his own wage shall be paid; for the third grade of disability, 80% of his own wage shall be paid; and for the fourth grade of disability, 75% of his own wage shall be paid. If the actual amount of the disability allowance is lower than the lowest local wage rate, the difference shall be supplemented from the work-related injury insurance fund.

3. If an employee who suffered a work-related injury has reached the retirement age and has gone through the retirement formalities, he shall be suspended from being paid the disability allowance, and shall enjoy the basic endowment insurance benefits in accordance with the relevant provisions of the state. If the basic endowment insurance benefits are lower than the disability allowance, the difference shall be made up from the work-related injury insurance funds. Where an employee's disability due to work is assessed to fall in Grade 1 to 4, the employer and the individual worker shall, based on the disability allowance, pay the basic medical insurance premium.

Article 36 Where an employee's disability due to work is assessed to fall in Grade 5 or 6, he shall enjoy the following treatments:

1. A lump-sum disability subsidy shall be paid from the work-related injury insurance funds according to the disability grade at any of the following rates: for an employee at the fifth grade of disability, 18 months of his own wage shall be paid; and for an employee at the sixth grade of disability, 16 months of his own wage shall be paid;

2. His labor relation with the employer shall be reserved, and the employer shall arrange a proper post for him. If the post is difficult to be arranged, the employer shall pay the disability allowance by month at the following rates: for the fifth grade of disability, 70% of his own wage shall be paid; for the sixth grade of disability, 60% of his own wage shall be paid, and the employer shall pay all social insurance premiums payable in accordance with the provisions. If the actual amount of disability allowance is lower than the lowest local wage rate, the difference shall be supplemented by the employer.

Upon the request of an employee who suffered a work-related injury, the employment relationship between the employee and his employer may be rescinded or terminated, a lump-sum work-related injury medical subsidy shall be paid out of the work-related injury insurance funds, and the

(二) 从工伤保险基金按月支付伤残津贴, 标准为: 一级伤残为本人工资的 90%, 二级伤残为本人工资的 85%, 三级伤残为本人工资的 80%, 四级伤残为本人工资的 75%。伤残津贴实际金额低于当地最低工资标准的, 由工伤保险基金补足差额;

(三) 工伤职工达到退休年龄并办理退休手续后, 停发伤残津贴, 按照国家有关规定享受基本养老保险待遇。基本养老保险待遇低于伤残津贴的, 由工伤保险基金补足差额。职工因工致残被鉴定为一级至四级伤残的, 由用人单位和职工个人以伤残津贴为基数, 缴纳基本医疗保险费。

第三十六条 职工因工致残被鉴定为五级、六级伤残的, 享受以下待遇:

(一) 从工伤保险基金按伤残等级支付一次性伤残补助金, 标准为: 五级伤残为 18 个月的本人工资, 六级伤残为 16 个月的本人工资;

(二) 保留与用人单位的劳动关系, 由用人单位安排适当工作。难以安排工作的, 由用人单位按月发给伤残津贴, 标准为: 五级伤残为本人工资的 70%, 六级伤残为本人工资的 60%, 并由用人单位按照规定为其缴纳应缴纳的各项社会保险费。伤残津贴实际金额低于当地最低工资标准的, 由用人单位补足差额。经工伤职工本人提出, 该职工可以与用人单位解除或者终止劳动关系, 由工伤保险基金支付一次性工伤医疗补助金, 由用人单位支付一次性伤残就业补助金。一次性工伤医疗补助金和一次性伤

employer shall pay a lump-sum disability employment subsidy. The specific standards for the lump-sum work-related injury medical subsidy and the lump-sum disability employment subsidy shall be prescribed by the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government.

Article 37 Where an employee's disability due to work is assessed to fall in Grade 7 to 10, the employee shall enjoy the following benefits:

1. A lump-sum disability subsidy shall be paid to him from the work-related injury insurance funds according to the disability grade at the following rates: for an employee at the seventh grade of disability, 13 months of his own wage shall be paid; for an employee at the eighth grade of disability, 11 months of his own wage; for an employee at the ninth grade of disability, 9 months of his own wage; and for an employee at the tenth grade of disability, 7 months of his own wage;

2. If a labor or employment contract is terminated upon expiry, or an employee himself requests for rescinding the labor or employment contract, a lump-sum work-related injury medical subsidy shall be paid to the employee from the work-related injury insurance funds, and the employer shall pay to the employee a lump-sum disability employment subsidy. The specific standards for the lump-sum work-related injury medical subsidy and the lump-sum disability employment subsidy shall be provided by the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government.

Article 38 Where an employee who suffered from a work-related injury but recrudesces from the past injury, and is confirmed to be in need of cure, he shall enjoy the treatment of work-related injuries provided for in Articles 30, 32 and 33 of the present regulation.

Article 39 If an employee dies from work, his close relative may, in accordance with the following provisions, draw from the work-related injury insurance fund the funeral subsidy, the pension for supporting the relatives and the lump-sum subsidy for death from work:

1. The funeral subsidy shall be 6 months of the average monthly wage of the employee in the preceding year in the region subject to overall planning.

残就业补助金的具体标准由省、自治区、直辖市人民政府规定。

第三十七条 职工因工致残被鉴定为七级至十级伤残的，享受以下待遇：

（一）从工伤保险基金按伤残等级支付一次性伤残补助金，标准为：七级伤残为13个月的本人工资，八级伤残为11个月的本人工资，九级伤残为9个月的本人工资，十级伤残为7个月的本人工资；

（二）劳动、聘用合同期满终止，或者职工本人提出解除劳动合同、聘用合同的，由工伤保险基金支付一次性工伤医疗补助金，由用人单位支付一次性伤残就业补助金。一次性工伤医疗补助金和一次性伤残就业补助金的具体标准由省、自治区、直辖市人民政府规定。

第三十八条 工伤职工工伤复发，确认需要治疗的，享受本条例第三十条、第三十二条和第三十三条规定的工伤待遇。

第三十九条 职工因工死亡，其近亲属按照下列规定从工伤保险基金领取丧葬补助金、供养亲属抚恤金和一次性工亡补助金：

（一）丧葬补助金为6个月的统筹地区上年度职工月平均工资；

2. The pension for supporting the relatives shall be paid at a certain proportion of the employee's wage to the relatives who has no work capabilities and whose main living expenses came from the employee who died from work, with the rates to be as follows: 40% per month for the spouse, 30% per month for other relatives, and 10% per month per person in addition for the lone aged or orphans. The verified sum of pensions for supporting the relatives shall not be more than the wage of the employee who died from work. The specific scope of the supported relatives shall be provided for by the social insurance administration department under the State Council;

3. The rate for the lump-sum subsidy for death from work shall be 20 times the average per capita disposable income of national urban residents in the previous calendar year. Where a disabled employee dies from a work-related injury within the period of suspension of work but reservation of salary, his close relatives may enjoy the treatments provided for in Paragraph 1 of the present article. Where an employee of the firsts to fourth grade of disability dies after the expiry of the period of suspension of work but reservation of salary, his close relatives may enjoy the treatments provided for in Items (1) and (2) of Paragraph 1 of the present article.

Article 40 The disability allowance, the pension for supporting the relatives, and the fee for care of life shall be adjusted from time to time by the social insurance administrative department of the region subject to overall planning in light of the situation of the average wages of the employees and change in living expenses, etc.. The adjustment measures shall be provided for by the people's government of the province, autonomous region or municipality directly under the Central Government.

Article 41 Where an employee's whereabouts are known due to an accident during his trip for performing his duties or due to his dealing with an emergency or providing disaster relief, he shall still be paid the wages within 3 months as of the month in which the accident occurred, and be suspended from payment of wages as of the fourth month, instead, his relatives supported by him shall be paid the pension for supporting the relatives by month from the work-related injury insurance fund. He who is straitened in life may be prepaid 50% of the lump-sum subsidy for death from work. If the employee is declared by the people's court to have died, the matter shall be dealt with in accordance with the provisions in Article 37 of the present regulation on death of employee of work.

(二) 供养亲属抚恤金按照职工本人工资的一定比例发给由因工死亡职工生前提供主要生活来源、无劳动能力的亲属。标准为：配偶每月 40%，其他亲属每人每月 30%，孤寡老人或者孤儿每人每月在上述标准的基础上增加 10%。核定的各供养亲属的抚恤金之和不应高于因工死亡职工生前的工资。供养亲属的具体范围由国务院社会保险行政部门规定；

(三) 一次性工亡补助金标准为上一年度全国城镇居民人均可支配收入的 20 倍。伤残职工在停工留薪期内因工伤导致死亡的，其近亲属享受本条第一款规定的待遇。一级至四级伤残职工在停工留薪期满后死亡的，其近亲属可以享受本条第一款第（一）项、第（二）项规定的待遇。

第四十条 伤残津贴、供养亲属抚恤金、生活护理费由统筹地区社会保险行政部门根据职工平均工资和生活费用变化等情况适时调整。调整办法由省、自治区、直辖市人民政府规定。

第四十一条 职工因工外出期间发生事故或者在抢险救灾中下落不明的，从事故发生当月起 3 个月内照发工资，从第 4 个月起停发工资，由工伤保险基金向其供养亲属按月支付供养亲属抚恤金。生活有困难的，可以预支一次性工亡补助金的 50%。职工被人民法院宣告死亡的，按照本条例第三十九条职工因工死亡的规定处理。

Article 42 Where an employee who suffered from a work-related injury is under any of the following circumstances, he shall be suspended from enjoying the treatment of work-related injury insurances:

- 1.he has lost the conditions to enjoy the treatment;
- 2.he refuses to accept the work capability assessment; or
- 3.he refuses to be cured; or

Article 43 Where an employer is divided, merged or transferred, the succeeding entity shall bear the original employer's liability for the work-related injury insurances; if the original employer has bought the work-related injury insurances, the succeeding entity shall make the registration of modification on work-related injury insurances in the local handling institution.

Where an employer applies contracted management, the liability for the work-related injury insurances shall be borne by the entity with which the employee has a labor relation. Where an employee who is temporarily transferred is injury from a work accident, the original employer shall bear the liability for work-related injury insurances, but may stipulate with the entity in temporary need of the employee on the compensation measure. Where an enterprise is bankrupt, the expenses for work-related injury insurances benefits which should be paid by the entity shall be allotted and paid in accordance with the law at the time of bankruptcy liquidation.

Article 44 Where an employee who is sent abroad for work is required by the law of the destination country or region to buy the local work-related injury insurances, such local work-related injury insurances shall be bought, and his domestic relation of work-related injury insurances shall be suspended; while if the local work-related injury insurances cannot be bought, his domestic relation on work-related injury insurance shall not be suspended.

Article 45 Where an employee suffers from a second work-related injury, he shall enjoy the treatment of disability allowance in light of the newly ascertained disability grade if he is entitled by the provisions to enjoy the disability allowance.

第四十二条 工伤职工有下列情形之一的，停止享受工伤保险待遇：

- (一) 丧失享受待遇条件的；
- (二) 拒不接受劳动能力鉴定的；
- (三) 拒绝治疗的。

第四十三条 用人单位分立、合并、转让的，承继单位应当承担原用人单位的工伤保险责任；原用人单位已经参加工伤保险的，承继单位应当到当地经办机构办理工伤保险变更登记。用人单位实行承包经营的，工伤保险责任由职工劳动关系所在单位承担。职工被借调期间受到工伤事故伤害的，由原用人单位承担工伤保险责任，但原用人单位与借调单位可以约定补偿办法。企业破产的，在破产清算时依法拨付应当由单位支付的工伤保险待遇费用。

第四十四条 职工被派遣出境工作，依据前往国家或者地区的法律应当参加当地工伤保险的，参加当地工伤保险，其国内工伤保险关系中止；不能参加当地工伤保险的，其国内工伤保险关系不中止。

第四十五条 职工再次发生工伤，根据规定应当享受伤残津贴的，按照新认定的伤残等级享受伤残津贴待遇。

Article 46 The handling institution shall, when specifically undertaking the affairs on work-related injury insurance, implement the following duties:

1. to collect work-related injury insurance premiums in accordance with the provision of the people's government of the province, autonomous region, or municipality directly under the Central Government;
2. to check the total amount of the wages of the employers and the number of the employees, to make registration of work-related injury insurances, and to be responsible for preserving the records of the employers' payment of fees and the employees' enjoying the treatment of work-related injury insurances;
3. to carry out investigations and statistics of the work-related injury insurances;
4. to manage the expenditure of the work-related injury insurance fund in accordance with the provisions;
5. to verify the treatment of work-related injury insurances in accordance with the provisions; and
6. to provide the employees who suffered from work-related injuries or their close relatives with consulting service gratuitously.

Article 47 The handling institution shall conclude service agreement with the medical treatment institutions and the auxiliary devices supply institutions upon equal negotiation, and shall announce the name list of the medical treatment institutions and auxiliary devices supply institutions with which it has concluded service agreements. The specific measures shall be formulated by the social insurance administrative department under the State Council separately with the administration department for health under the State Council or the department of civil affairs under the State Council, etc..

Article 48 The handling institutions shall, pursuant to the agreements and the relevant catalogues and standards of the state, check the use of the

第四十六条 经办机构具体承办工伤保险事务，履行下列职责：

- （一）根据省、自治区、直辖市人民政府规定，征收工伤保险费；
- （二）核查用人单位的工资总额和职工人数，办理工伤保险登记，并负责保存用人单位缴费和职工享受工伤保险待遇情况的记录；
- （三）进行工伤保险的调查、统计；
- （四）按照规定管理工伤保险基金的支出；
- （五）按照规定核定工伤保险待遇；
- （六）为工伤职工或者其近亲属免费提供咨询服务。

第四十七条 经办机构与医疗机构、辅助器具配置机构在平等协商的基础上签订服务协议，并公布签订服务协议的医疗机构、辅助器具配置机构的名单。具体办法由国务院社会保险行政部门分别会同国务院卫生行政部门、民政部门等部门制定。

第四十八条 经办机构按照协议和国家有关目录、标准对工伤职工医疗费

medical expenses, recovery expenses and auxiliary device expenses of the workers who suffered from work-related injuries, and shall settle the expenses in full amount on time.

Article 49 The handling institution shall regularly announce the information on income and expenditure of the work-related injury insurance fund, and timely propose suggestions to the social insurance administrative department regarding the adjustment of the premium rates.

Article 50 The social insurance administrative department and the handling institution shall regularly consult the opinions from the employees who suffered from work-related injuries, the medical treatment institutions, the auxiliary devices supply institutions, and all walks of life so as to improve the work of work-related injury insurances.

Article 51 The social insurance administrative department shall supervise and inspect in accordance with the law the collection and payment of work-related injury insurance premiums as well as the payment of the work-related injury insurance fund. The financial department and the auditing organ shall supervise in accordance with the law the income and expenditure and management of the work-related injury insurance fund.

Article 52 Any organization or individual has the right to report the illegal acts related to work-related injury insurances. The social insurance administrative department shall timely investigate the offense reports, deal with them in accordance with the provisions, and keep confidential for the offense reports.

Article 53 The trade union organization shall maintain in accordance with the law the lawful rights and interests of the employees who suffered from work-related injuries, and supervise the employers' work of work-related injury insurances.

Article 54 Where an employee and the employer is in dispute over the treatment of work-related injuries, the dispute shall be settled in accordance with the relevant provisions on settling labor disputes.

Article 55 Under any of the following circumstances, the relevant entity or individual may apply for administrative reconsideration in accordance with

用、康复费用、辅助器具费用的使用情况进行核查，并按时足额结算费用。

第四十九条 经办机构应当定期公布工伤保险基金的收支情况，及时向社会保险行政部门提出调整费率的建议。

第五十条 社会保险行政部门、经办机构应当定期听取工伤职工、医疗机构、辅助器具配置机构以及社会各界对改进工伤保险工作的意见。

第五十一条 社会保险行政部门依法对工伤保险费的征缴和工伤保险基金的支付情况进行监督检查。财政部门和审计机关依法对工伤保险基金的收支、管理情况进行监督。

第五十二条 任何组织和个人对有关工伤保险的违法行为，有权举报。社会保险行政部门对举报应当及时调查，按照规定处理，并为举报人保密。

第五十三条 工会组织依法维护工伤职工的合法权益，对用人单位的工伤保险工作实行监督。

第五十四条 职工与用人单位发生工伤待遇方面的争议，按照处理劳动争议的有关规定处理。

第五十五条 有下列情形之一的，有关单位或者个人可以依法申请行政复

the law or initiate an administrative lawsuit before the people's court in accordance with the law:

1. An employee, his close relative or his employer that applies for determination of a work-related injury refuses to accept the decision not to accept the application for determination of a work-related injury;
2. An employee, his close relative or his employer that applies for determination of a work-related injury refuses to accept the conclusion on work-related injury determination;
3. An employer refuses to accept the rate for payment of premiums as determined by the handling institution;
4. A medical treatment institution or an assisting device supply institution that has entered into a service agreement with an employer considers that the handling institution fails to perform the relevant agreement or provisions; or
5. An employee who suffered a work-related injury or his close relative has any objection against the work-related injury insurance benefits verified by the handling institution.

Chapter VII Legal Liabilities

Article 56 Where any entity or individual violates Article 12 of the present regulation by misappropriating the work-related injury insurance fund, and a crime is constituted, it/he shall be subject to criminal liabilities in accordance with the law; if no crime is constituted, it/he shall be imposed upon administrative sanctions or disciplinary sanctions in accordance with the law. The misappropriated fund shall be recovered by the social insurance administrative department, and be included in the work-related injury insurance fund; the confiscate illegal proceeds shall be turned in to the state treasury in accordance with the law.

Article 57 Where any functionary of the social insurance administrative department is under any of the following circumstances, he shall be imposed upon administrative sanctions in accordance with the law; if the

议,也可以依法向人民法院提起行政诉讼:

- (一) 申请工伤认定的职工或者其近亲属、该职工所在单位对工伤认定申请不予受理的决定不服的;
- (二) 申请工伤认定的职工或者其近亲属、该职工所在单位对工伤认定结论不服的;
- (三) 用人单位对经办机构确定的单位缴费费率不服的;
- (四) 签订服务协议医疗机构、辅助器具配置机构认为经办机构未履行有关协议或者规定的;
- (五) 工伤职工或者其近亲属对经办机构核定的工伤保险待遇有异议的。

第七章 法律责任

第五十六条 单位或者个人违反本条例第十二条规定挪用工伤保险基金,构成犯罪的,依法追究刑事责任;尚不构成犯罪的,依法给予处分或者纪律处分。被挪用的基金由社会保险行政部门追回,并入工伤保险基金;没收的违法所得依法上缴国库。

第五十七条 社会保险行政部门工作人员有下列情形之一的,依法给予处分;情节严重,构成犯罪的,依法追究刑事责任:

case is serious enough to constitute a crime, the offender shall be subject to criminal liabilities in accordance with the law:

1. He refuse to accept an application for ascertainment of a work-related injury without any justifiable reason, or practices fraud to ascertain unqualified persons of work-related injury as workers of work-related injury;

2. He fails to appropriately take custody of the evidential materials in application for ascertainment of work-related injuries, thus causing the relevant evidence lost; or

3. He takes properties from a party concerned.

Article 58 Where a handling institution has any of the following acts, the social insurance administrative department shall order it to put right, and impose disciplinary sanctions in accordance with the law upon the directly responsible persons in charge and other liable persons; if the case is serious enough to constitute a crime, the offender shall be subject to criminal liabilities according to law; if the handling institution causes any economic loss to a party concerned, it shall bear the liability for compensation in accordance with the law:

1.It fails to preserve in accordance with the provisions the records of the employers' payment of fees and the employees' enjoying the treatment of work-related injury insurances;

2.It does not verify the treatment of work-related injury insurances in accordance with the provisions; or

3.It takes properties from a party concerned.

Article 59 Where a medical treatment institution or an auxiliary devices supply institution does not provide services pursuant to the service agreement, the handling institution may rescind the service agreement. Where a handling institution does not settle the expense in full amount on time, it shall be ordered by the social insurance administrative department to get right; the medical treatment institution and the auxiliary devices supply institution may rescind the service agreement.

(一) 无正当理由不受理工伤认定申请, 或者弄虚作假将不符合工伤条件的人员认定为工伤职工的;

(二) 未妥善保管申请工伤认定的证据材料, 致使有关证据灭失的;

(三) 收受当事人财物的。

第五十八条 经办机构有下列行为之一的, 由社会保险行政部门责令改正, 对直接负责的主管人员和其他责任人员依法给予纪律处分; 情节严重, 构成犯罪的, 依法追究刑事责任; 造成当事人经济损失的, 由经办机构依法承担赔偿责任:

(一) 未按规定保存用人单位缴费和职工享受工伤保险待遇情况记录的;

(二) 未按规定核定工伤保险待遇的;

(三) 收受当事人财物的。

第五十九条 医疗机构、辅助器具配置机构不按服务协议提供服务的, 经办机构可以解除服务协议。经办机构不按时足额结算费用的, 由社会保险行政部门责令改正; 医疗机构、辅助器具配置机构可以解除服务协议。

Article 60 Where an employer, or an employee who suffered a work-related injury or his close relative fraudulently obtains work-related injury insurance benefits, or a medical treatment institution or an assisting device supply institution fraudulently obtains the expenditure of the work-related injury insurance funds, the social insurance administrative department shall order it or him to refund the money, and impose a fine of two up to five times the sum fraudulently obtained; if the circumstances are serious and a crime is constituted, the violator shall be subject to criminal liabilities according to law.

Article 61 Where an organization or individual engaging in work capability assessment is under any of the following circumstances, it/he shall be ordered by the administrative department for labor security to get right, and be imposed upon a fine of not less than 2000 yuan but not more than 10000 yuan; if the case is serious enough to constitute a crime, the offender shall be subject to criminal liabilities according to law:

- 1.it/he provides false assessment opinions;
- 2.it/he provides a false certificate of diagnosis; or
- 3.it/he takes properties from a party concerned.

Article 62 Where an employer which should purchase work-related injury insurance according to this Regulation fails to do so, the social insurance administrative department shall order it to purchase within a prescribed time limit and pay work-related injury insurance premiums payable, and impose a daily late fee at the rate of 0.05% of the outstanding amount; and if the employer fails to pay the premiums within the time limit, a fine of one up to three times the outstanding amount shall be imposed upon it. If any employee of an employer which should purchase work-related injury insurance according to this Regulation fails to do so suffers a work-related injury, the employer shall pay the expenses according to the items and rates of work-related injury insurance benefits as provided for in this Regulation.

After the employer has purchased work-related injury insurance and made up the work-related injury insurance premiums and late fees payable, the expenses newly incurred shall be paid from the work-related insurance funds and by the employer in accordance with this Regulation.

第六十条 用人单位、工伤职工或者其近亲属骗取工伤保险待遇，医疗机构、辅助器具配置机构骗取工伤保险基金支出的，由社会保险行政部门责令退还，处骗取金额 2 倍以上 5 倍以下的罚款；情节严重，构成犯罪的，依法追究刑事责任。

第六十一条 从事劳动能力鉴定的组织或者个人有下列情形之一的，由社会保险行政部门责令改正，处 2000 元以上 1 万元以下的罚款；情节严重，构成犯罪的，依法追究刑事责任：

- (一) 提供虚假鉴定意见的；
- (二) 提供虚假诊断证明的；
- (三) 收受当事人财物的。

第六十二条 用人单位依照本条例规定应当参加工伤保险而未参加的，由社会保险行政部门责令限期参加，补缴应当缴纳的工伤保险费，并自欠缴之日起，按日加收万分之五的滞纳金；逾期仍不缴纳的，处欠缴数额 1 倍以上 3 倍以下的罚款。依照本条例规定应当参加工伤保险而未参加工伤保险的用人单位职工发生工伤的，由该用人单位按照本条例规定的工伤保险待遇项目和标准支付费用。用人单位参加工伤保险并补缴应当缴纳的工伤保险费、滞纳金后，由工伤保险基金和用人单位依照本条例的规定支付新发生的费用。

Article 63 Where, as in violation of Article 19 of this Regulation, an employer refuses to assist the social insurance administrative department in investigating and verifying an accident, the social insurance administrative department shall order it to make rectifications and impose a fine of 2,000 up to 20,000 yuan upon it.

Chapter VIII Supplementary Provisions

Article 64 The total amount of wages as mentioned in the present regulation shall refer to the total amount of labor remuneration directly paid by an employer to all its employees. Someone's own wage as mentioned in the present regulation shall refer to the average monthly wage of a worker of work-related injury during the 12 months before he is injured from an accident or suffers from an occupational disease. If someone's own wage is higher than 300% of the average wage of each worker in a region subject to overall planning, his wage shall be calculated as 300% of the said average wage; while if someone's own wage is lower than 60% of the average wage of each worker in a region subject to overall planning, his wage shall be calculated as 60% of the said average wage.

Article 65 Where a civil servant, or a staff member of a public institution or a social organization which is governed analogically by the Civil Servant Law is injured in an accident due to work or suffers an occupational disease, his employer shall pay the expenses. The specific measures shall be prescribed by the social insurance administrative department under the State Council jointly with the public finance department under the State Council.

Article 66 Where a worker in an entity without business license or having not been registered or recorded in accordance with the law or if an entity whose business license has been revoked in accordance with the law or which is revoked from registration or record is injured from an accident or suffers from an occupational disease, the entity shall pay compensation in a lump sum to the close relatives of the disabled or died worker, with the rate of compensation not lower than the treatment of work-related injury insurances provided for in the present regulation. The employing entity shall not use child labor. Where an employing entity uses any child laborer and causes injury or death thereto, it shall pay compensation in a lump sum to the child laborer or his close relative, with the rate of compensation not lower than the treatment of work-related injury insurances provided for in the present regulation. The specific measures shall be provided for by the

第六十三条 用人单位违反本条例第十九条的规定，拒不协助社会保险行政部门对事故进行调查核实的，由社会保险行政部门责令改正，处 2000 元以上 2 万元以下的罚款。

第八章 附 则

第六十四条 本条例所称工资总额，是指用人单位直接支付给本单位全部职工的劳动报酬总额。本条例所称本人工资，是指工伤职工因工作遭受事故伤害或者患职业病前 12 个月平均月缴费工资。本人工资高于统筹地区职工平均工资 300% 的，按照统筹地区职工平均工资的 300% 计算；本人工资低于统筹地区职工平均工资 60% 的，按照统筹地区职工平均工资的 60% 计算。

第六十五条 公务员和参照公务员法管理的事业单位、社会团体的工作人员因工作遭受事故伤害或者患职业病的，由所在单位支付费用。具体办法由国务院社会保险行政部门会同国务院财政部门规定。

第六十六条 无营业执照或者未经依法登记、备案的单位以及被依法吊销营业执照或者撤销登记、备案的单位的职工受到事故伤害或者患职业病的，由该单位向伤残职工或者死亡职工的近亲属给予一次性赔偿，赔偿标准不得低于本条例规定的工伤保险待遇；用人单位不得使用童工，用人单位使用童工造成童工伤残、死亡的，由该单位向童工或者童工的近亲属给予一次性赔偿，赔偿标准不得低于本条例规定的工伤保险待遇。具体办法由国务院社会保险行政部门 规 定 。

administrative department for labor security under the State Council. Where the close relative of a disabled or died worker provided for in the preceding paragraph, or a child laborer provided for in the preceding paragraph or his close relative is in dispute with the employing entity over the compensation amount, the dispute shall be settled in accordance with the relevant provisions on settling labor disputes.

Article 67 The present regulation shall come into force on January 1, 2004. If the workers who are injured from accidents or suffer from occupational diseases prior to the enforcement of the present regulation have still not finished the ascertainment of work-related injuries, they shall comply with the present regulation.

前款规定的伤残职工或者死亡职工的近亲属就赔偿数额与单位发生争议的，以及前款规定的童工或者童工的近亲属就赔偿数额与单位发生争议的，按照处理劳动争议的有关规定处理。

第六十七条 本条例自 2004 年 1 月 1 日起施行。本条例施行前已受到事故伤害或者患职业病的职工尚未完成工伤认定的，按照本条例的规定执行。

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Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury[Effective]
最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释 [现行有效]

Issuing authority: Supreme People's Court

Date issued: 12-26-2003

Level of Authority: Judicial Interpretation

Area of law: Civil Litigation

Announcement of the Supreme People's Court of the People's Republic of China

The "Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury", which was adopted at the 1299th meeting of the Judicial Committee of the Supreme People's Court on December 4, 2003, is hereby promulgated, and shall come into force on May 1, 2004.

中华人民共和国最高人民法院公告

《最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释》已于 2003 年 12 月 4 日由最高人民法院审判委员会第 1299 次会议通过。现予公布，自 2004 年 5 月 1 日起施行。

December 26, 2003
Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury

(Adopted at the 1299th meeting of the Judicial Committee of the Supreme People's Court on December 4, 2003; Interpretation No. 20 [2003] of the Supreme People's Court)

In order to correctly try the cases on compensation for personal injury, lawfully protect the legitimate rights and interests of the parties, we hereby give our interpretation as follows regarding the relevant issues concerning the application of law in accordance with the "General Principles of Civil Law of the People's Republic of China" (hereinafter referred to as the General Principles of Civil Law) and the "Civil Litigation Law of the People's Republic of China" (hereinafter referred to as the Civil Litigation Law) and other relevant laws:

Article 1 Where an obligee to compensation brings a lawsuit due to an injury to his life, health or body, claiming compensation for property losses or psychological injuries against the obligor to compensation, the people's court shall accept the lawsuit. An "obligee to compensation" mentioned in the present Article means a victim who directly suffers from personal injury due to a tort or any other cause of injury, or a person in need of maintenance and upbringing for which the victim is obligated in accordance with law, or a close relative of the deceased victim. An "obligor to compensation" mentioned in the present Article means a natural person, legal person or other organization that shall bear civil liabilities in accordance with the law for the tort or any other cause of injury committed by himself/itself or by any other person.

Article 2 Where a victim has any intent or negligence for the occurrence or enlargement of the same injury, the liabilities of the obligor to compensation may be mitigated or exempted in accordance with Article 131 of the General Principles of Civil Law. However, if the tortfeasor causes injury to another person by intent or major negligence, while the victim only has generic negligence, the liabilities of the obligor to compensation shall not be mitigated.

If, when Paragraph 3 of Article 106 of the General Principles of Civil Law is applied to determine the liabilities of an obligor to compensation, the victim is found to have any major negligence, the liabilities of the obligor to compensation may be mitigated.

二〇〇三年十二月二十六日
最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释
(2003年12月4日最高人民法院审判委员会第1299次会议通过 法释[2003]20号)
为正确审理人身损害赔偿案件,依法保护当事人的合法权益,根据《中华人民共和国民事诉讼法》以下简称民法通则、《中华人民共和国民事诉讼法》以下简称民事诉讼法等有关规定,结合审判实践,就有关适用法律的问题作如下解释:

第一条 因生命、健康、身体遭受侵害,赔偿权利人起诉请求赔偿义务人赔偿财产损失和精神损害的,人民法院应予受理。
本条所称“赔偿权利人”,是指因侵权行为或者其他致害原因直接遭受人身损害的受害人、依法由受害人承担扶养义务的被扶养人以及死亡受害人的近亲属。
本条所称“赔偿义务人”,是指因自己或者他人的侵权行为以及其他致害原因依法应当承担民事责任的自然人、法人或者其他组织。

第二条 受害人对同一损害的发生或者扩大有故意、过失的,依照民法通则第一百三十一条的规定,可以减轻或者免除赔偿义务人的赔偿责任。但侵权人因故意或者重大过失致人损害,受害人只有一般过失的,不减轻赔偿义务人的赔偿责任。
适用民法通则第一百零六条第三款规定确定赔偿义务人的赔偿责任时,受害人有重大过失的,可以减轻赔偿义务人的赔偿责任。

Article 3 Where two or more persons cause an injury to others by joint intent or joint negligence, or their injurious acts are directly combined and result in the same injury consequence even if there is no joint intent or joint negligence, a joint tort shall be constituted, and the tortfeasors shall bear joint liabilities in accordance with Article 130 of the General Principles of Civil Law. Where two or more persons have no joint intent or joint negligence, but separately commit several acts that are indirectly combined and result in the same injury consequence, they shall bear corresponding compensation liabilities respectively in appropriate proportions upon the extent of their faults or the reasons of such injury.

Article 4 Where two or more persons jointly commit any act endangering the personal safety of any other person and result in any injury, they shall bear joint liabilities in accordance with Article 130 of the General Principles of Civil Law in the case that the actual injuring person is unable to be determined. Where anyone who is suspected to have caused the joint danger can prove that the injury consequence is not caused from his act, he shall bear no compensation liabilities.

Article 5 Where an obligee to compensation brings a lawsuit against some of the joint tortfeasors, the people's court shall add other joint tortfeasors as joint defendants. Where the obligee to compensation abandons his litigation claims against some of the joint tortfeasors in the process of litigation, other joint tortfeasors shall not bear joint liabilities for the share of compensation that ought to be previously borne by the defendants against whom the abandoned litigation claims were proposed. If the scope of liabilities is difficult to be determined, all the joint tortfeasors shall be putatively deemed to bear equal liabilities. The people's court shall inform the obligee to compensation of the legal consequence of his abandonment of the litigation claims, and shall state such abandonment in the legal documents.

Article 6 Where a natural person, legal person or any other organization who engages in the business of hotel, catering or entertainment, etc. or carries out other social activities, fails to perform the security guaranty obligation within a reasonable scope, and thus causes any other person to suffer from a personal injury, and the obligee to compensation claims against the obligor for bearing corresponding compensation liabilities, the people's court shall support such claim. Where a third person's tort results in an injury, he shall bear the

第三条 二人以上共同故意或者共同过失致人损害，或者虽无共同故意、共同过失，但其侵害行为直接结合发生同一损害后果的，构成共同侵权，应当依照民法通则第一百三十条规定承担连带责任。二人以上没有共同故意或者共同过失，但其分别实施的数个行为间接结合发生同一损害后果的，应当根据过失大小或者原因力比例各自承担相应的赔偿责任。

第四条 二人以上共同实施危及他人人身安全的行为并造成损害后果，不能确定实际侵害行为人的，应当依照民法通则第一百三十条规定承担连带责任。共同危险行为人能够证明损害后果不是由其行为造成的，不承担赔偿责任。

第五条 赔偿权利人起诉部分共同侵权人的，人民法院应当追加其他共同侵权人作为共同被告。赔偿权利人在诉讼中放弃对部分共同侵权人的诉讼请求的，其他共同侵权人对被放弃诉讼请求的被告应当承担的赔偿份额不承担连带责任。责任范围难以确定的，推定各共同侵权人承担同等责任。人民法院应当将放弃诉讼请求的法律后果告知赔偿权利人，并将放弃诉讼请求的情况在法律文书中叙明。

第六条 从事住宿、餐饮、娱乐等经营活动或者其他社会活动的自然人、法人、其他组织，未尽合理限度范围内的安全保障义务致使他人遭受人身损害，赔偿权利人请求其承担相应赔偿责任的，人民法院应予支持。因第三人侵权导致损害结果发生的，由实施侵权行为的第三人承担赔偿责任。

compensation liabilities. If the obligor for security guaranty has any fault, he shall bear corresponding supplementary compensation liabilities within a scope of his capacity to prevent or stop such injury. The obligor for security guaranty may, after bearing the liabilities, claim compensation from the third person. If the obligee to compensation brings a lawsuit against the obligor for security guaranty, he shall regard the third person as a joint defendant, unless the third person is unable to be determined.

Article 7 Where a school, kindergarten or other educational institution lawfully obligated for educating, managing and protecting minors fails to perform the relevant obligations within the scope of its duties, and thus causes a minor to suffer from a personal injury, or causes a personal injury to any other person via the minor, it shall bear compensation liabilities matching its fault. Where a third person's tort causes a minor to suffer from a personal injury, he shall bear the compensation liabilities. If the school, kindergarten or other educational institution has any fault, it shall bear corresponding supplementary compensation liabilities.

Article 8 Where the legal representative, responsible person or any employee of a legal person or any other organization causes an injury to others in his implementation of duties, the said legal person or organization shall bear the civil liabilities in accordance with Article 121 of the General Principles of Civil Law. If any of the aforementioned persons commits an act irrelevant to his duties, and thus causes an injury to others, he himself shall bear the compensation liabilities. The causes of compensation governed by the "State Compensation Law" shall be handled in accordance with the "State Compensation Law".

Article 9 Where an employee causes an injury to others when carrying out an employment activity, the employer shall bear the compensation liabilities; if the employee causes the injury due to his intent or major negligence, he shall bear joint compensation liabilities along with the employer. The employer may, when bearing the joint compensation liabilities, claim compensation from the employee. "Carrying out an employment activity" as mentioned in the preceding paragraph means carrying out a production or business activity or any other labor service activity within a scope of authorization or instructions of the employer. If the employee's act exceeds the scope of authorization, but is embodied in a form of performing duties or is internally relating to the

安全保障义务人有过错的，应当在其能够防止或者制止损害的范围内承担相应的补充赔偿责任。安全保障义务人承担责任后，可以向第三人追偿。赔偿权利人起诉安全保障义务人的，应当将第三人作为共同被告，但第三人不能确定的除外。

第七条 对未成年人依法负有教育、管理、保护义务的学校、幼儿园或者其他教育机构，未尽职责范围内的相关义务致使未成年人遭受人身损害，或者未成年人致他人人身损害的，应当承担与其过错相应的赔偿责任。第三人侵权致未成年人遭受人身损害的，应当承担赔偿责任。学校、幼儿园等教育机构有过错的，应当承担相应的补充赔偿责任。

第八条 法人或者其他组织的法定代表人、负责人以及工作人员，在执行职务中致人损害的，依照民法通则第一百二十一条的规定，由该法人或者其他组织承担民事责任。上述人员实施与职务无关的行为致人损害的，应当由行为人承担赔偿责任。属于《国家赔偿法》赔偿事由的，依照《国家赔偿法》的规定处理。

第九条 雇员在从事雇佣活动中致人损害的，雇主应当承担赔偿责任；雇员因故意或者重大过失致人损害的，应当与雇主承担连带赔偿责任。雇主承担连带赔偿责任的，可以向雇员追偿。前款所称“从事雇佣活动”，是指从事雇主授权或者指示范围内的生产经营活动或者其他劳务活动。雇员的行为超出授权范围，但其表现形式是履行职务或者与履行职务有内在联系的，应当认定为“从

performance of duties, it shall be ascertained as "carrying out an employment activity".

Article 10 Where an undertaker causes an injury to a third person or to himself when completing certain work, the hirer shall bear no compensation liability. However, if the hirer has any negligence on his order, instruction or selection, he shall bear corresponding compensation liabilities.

Article 11 Where an employee suffers from a personal injury when carrying out an employment activity, the employer shall bear the compensation liabilities. If a third person out of the employment relationship causes a personal injury to the employee, the obligee to compensation may claim against either the third person or the employer for bearing the compensation liabilities. The employer may, after bearing the compensation liabilities, claim compensation from the third person. Where an employee suffers from a personal injury due to an accident on safety production when carrying out an employment activity, and the contract letting party or the subcontract letting party knows or ought to know that the employer undertaking the contract or subcontract has no corresponding qualifications or safety production conditions, the contract letting party or the subcontract letting party shall bear joint and several compensation liabilities with the employer. The present Article shall not apply to the labor relationships or work-related injury insurances which should be governed by the "Regulation on Work-Related Injury Insurance".

Article 12 Where a laborer of an employing entity which is required by law to be under the overall planning on work-related injury insurance, suffers from a personal injury due to a work-related injury accident, and the laborer or his close relative brings a lawsuit to the people's court claiming against the employing entity for bearing civil compensation liabilities, he shall be informed to handle the matter in accordance with the "Regulation on Work-Related Injury Insurance". Where a laborer suffers from a personal injury due to the tort of a third person other than the employing entity, and the obligee to compensation claims against the third person for bearing the civil compensation liabilities, the people's court shall support such claim.

Article 13 Where a helper provides another person with labor services gratuitously, and causes an injury to others when carrying out the work, the

事 雇 佣 活 动 ” 。

第十条 承揽人在完成工作过程中对第三人造成损害或者造成自身损害的，定作人不承担赔偿责任。但定作人对定作、指示或者选任有过失的，应当承担相应的赔偿责任。

第十一条 雇员在从事雇佣活动中遭受人身损害，雇主应当承担赔偿责任。雇佣关系以外的第三人造成雇员人身损害的，赔偿权利人可以请求第三人承担赔偿责任，也可以请求雇主承担赔偿责任。雇主承担赔偿责任后，可以向第三人追偿。雇员在从事雇佣活动中因安全生产事故遭受人身损害，发包人、分包人知道或者应当知道接受发包或者分包业务的雇主没有相应资质或者安全生产条件的，应当与雇主承担连带赔偿责任。属于《工伤保险条例》调整的劳动关系和工伤保险范围的，不适用本条规定。

第十二条 依法应当参加工伤保险统筹的用人单位的劳动者，因工伤事故遭受人身损害，劳动者或者其近亲属向人民法院起诉请求用人单位承担民事赔偿责任的，告知其按《工伤保险条例》的规定处理。因用人单位以外的第三人侵权造成劳动者人身损害，赔偿权利人请求第三人承担民事赔偿责任的，人民法院应予支持。

第十三条 为他人无偿提供劳务的帮工人，在从事帮工活动中致人损害

helped party shall bear the compensation liabilities. If the helped party clearly refuses the work, he shall bear no compensation liability. While if the helper has any intent or major negligence, and the obligee to compensation claims against the helper or the helped party to bear joint liabilities, the people's court shall support such claim.

Article 14 Where a helper suffers from a personal injury due to the work, the helped party shall bear compensation liabilities. If the helped party clearly refuses the work, he shall bear no compensation liability; but may be required to make supplementary payments within the scope of his benefits.

Where a helper suffers from a personal injury due to the tort of a third person, the third person shall bear the compensation liabilities. If the third person cannot be determined or has no capacity of compensation, the helped party may be required to make appropriate supplementary payments.

Article 15 Where any obligee to compensation who suffers from a personal injury for the purpose of maintaining the legitimate rights and interests of the state, collectivity or any other person claims against the beneficiary for making appropriate supplementary payments within the scope of his benefits due to the fact that there is no tortfeasor, the tortfeasor cannot be determined or the tortfeasor has no capacity of compensation, the people's court shall support such claim.

Article 16 Under any of the following circumstances, Article 126 of the General Principles of Civil Law shall apply, and the owner or caretaker shall bear the compensation liabilities, unless he can prove that he has no fault:

(1) a road, bridge, tunnel or any other artificial building injures someone due to a blemish in maintenance or management;

(2) a piled-up article rolls or slides down or collapses, and injures someone;

(3) a tree falls down or is broken or a fruit drops, and injures someone. Where, in the event of a circumstance in Item (1) of the preceding paragraph, an injury occurs due to a defect in design or construction, the

的，被帮工人应当承担赔偿责任。被帮工人明确拒绝帮工的，不承担赔偿责任。帮工人存在故意或者重大过失，赔偿权利人请求帮工人和被帮工人承担连带责任的，人民法院应予支持。

第十四条 帮工人因帮工活动遭受人身损害的，被帮工人应当承担赔偿责任。被帮工人明确拒绝帮工的，不承担赔偿责任；但可以在受益范围内予以适当补偿。帮工人因第三人侵权遭受人身损害的，由第三人承担赔偿责任。第三人不能确定或者没有赔偿能力的，可以由被帮工人予以适当补偿。

第十五条 为维护国家、集体或者他人的合法权益而使自己受到人身损害，因没有侵权人、不能确定侵权人或者侵权人没有赔偿能力，赔偿权利人请求受益人在受益范围内予以适当补偿的，人民法院应予支持。

第十六条 下列情形，适用民法通则第一百二十六条的规定，由所有人或者管理人承担赔偿责任，但能够证明自己没有过错的除外：

（一）道路、桥梁、隧道等人工建造的构筑物因维护、管理瑕疵致人损害的；

（二）堆放物品滚落、滑落或者堆放物倒塌致人损害的；

（三）树木倾倒、折断或者果实坠落致人损害的。前款第（一）项情形，因设计、施工缺陷造成损害的，由所有人、管理人与设

owner and the caretaker shall bear joint liabilities together with the designer or constructor.

Article 17 All expenses paid by a victim suffering from a personal injury for medical treatment and his income loss due to missed working time, including the medical expenses, the loss in income due to missed working time, the nursing expenses, the traffic expenses, the accommodation expenses, the board expenses in hospital, and necessary expenses for nutrition, shall be compensated by the obligor to compensation. Where the victim becomes disabled due to an injury, the necessary expenses he has paid for additional needs in his living and his income loss due to his inability to work, including the compensation for disability, the expenses of aid for disability, the living expenses of the persons in need of his maintenance and upbringing, the necessary healing expenses that actually occurred for healing and nursing, continuing treatment, the nursing expenses, and the follow-up treatment expenses, shall also be compensated by the obligor to compensation. Where the victim has died, the obligor to compensation shall, in addition to compensating the relevant expenses prescribed in Paragraph 1 of the present Article according to the facts of rescue and treatment, compensate the funeral expenses, the living expenses of the persons in need of the victim's maintenance and upbringing, the death compensation expenses, the traffic expenses and accommodation expenses paid by the victim's relatives for funeral matters and their income loss due to missed working time, as well as other reasonable expenses.

Article 18 Where the victim or a close relative of the decedent suffers from a psychological injury, and the obligee to compensation claims to the people's court for consolation money for psychological injury, the "Interpretation of the Supreme People's Court of Some Issues concerning Determining the Compensation Liabilities for Psychological Injury Due to Civil Tort" shall apply in the determination. The right to request consolation money for the psychological injury shall not be transferred or succeeded, unless the obligor to compensation has promised in writing to make money compensation, or the obligee to compensation has brought a lawsuit to the people's court.

Article 19 The medical expenses shall be determined on the basis of the vouchers issued by the medical institution on medicine expenses and hospital expenses, etc., as well as in combination with the medical records, the diagnose proof and other relevant evidence. Where the obligor to compensation has any dissent on the necessity or rationality of the treatment, it shall assume the corresponding obligation for providing

计、施工者承担连带责任。

第十七条 受害人遭受人身损害，因就医治疗支出的各项费用以及因误工减少的收入，包括医疗费、误工费、护理费、交通费、住宿费、住院伙食补助费、必要的营养费，赔偿义务人应当予以赔偿。受害人因伤致残的，其因增加生活上需要所支出的必要费用以及因丧失劳动能力导致的收入损失，包括残疾赔偿金、残疾辅助器具费、被扶养人生活费，以及因康复护理、继续治疗实际发生的必要的康复费、护理费、后续治疗费，赔偿义务人也应当予以赔偿。受害人死亡的，赔偿义务人除应当根据抢救治疗情况赔偿本条第一款规定的相关费用外，还应当赔偿丧葬费、被扶养人生活费、死亡补偿费以及受害人亲属办理丧葬事宜支出的交通费、住宿费和误工损失等其他合理费用。

第十八条 受害人或者死者近亲属遭受精神损害，赔偿权利人向人民法院请求赔偿精神损害抚慰金的，适用《最高人民法院关于确定民事侵权精神损害赔偿责任若干问题的解释》予以确定。精神损害抚慰金的请求权，不得让与或者继承。但赔偿义务人已经以书面方式承诺给予金钱赔偿，或者赔偿权利人已经向人民法院起诉的除外。

第十九条 医疗费根据医疗机构出具的医药费、住院费等收款凭证，结合病历和诊断证明等相关证据确定。赔偿义务人对治疗的必要性和合理性有异议的，应当承担相应的举证责任。医疗费的赔偿数额，按照一审法庭辩论

evidence.

The compensation amount of medical expenses shall be determined on the basis of the actual amount up to the end of debate in the court of the first instance. With regard to the necessary healing expenses for recovering the functions of the injured human organ through exercises, the appropriate face-lifting expenses and other follow-up treatment expenses, the obligee to compensation may bring a lawsuit separately after they have actually occurred. However, the inevitable expenses determined on the basis of the medical proof or expert conclusion may be compensated along with the medical expenses that have occurred.

Article 20 The loss in income due to missed working time shall be determined in light of the victim's missed working time and his usual income.

The missed working time shall be determined on the basis of the proof issued by the medical institution where the victim is treated. If the victim misses his working time continuously due to disability caused by an injury, the missed working time may be calculated up to the day before the disability is determined. Where the victim has fixed income, his loss in income due to missed working time shall be calculated according to the income actually reduced. However, if the victim has no fixed income, his loss in income due to missed working time shall be calculated on the basis of his average income during the latest three years. If the victim is unable to provide evidence to prove his average income during the latest three years, his loss in income due to missed working time may be calculated by referring to the average wages of the employees in the same or similar industry at the locality of the case-accepting court of the last year.

Article 21 The nursing expenses shall be determined in light of the usual income of the nursing personnel, the number of nursing personnel and the nursing period.

Where the nursing personnel have any income, their income shall be calculated by referring to the provisions on the loss in income due to missed working time. If the nursing personnel have no income or any nurse is employed, the said income shall be calculated by referring to the remuneration rates of the local nurses engaging in the labor services of the same class of nursing. There shall be one nursing person in principle. But if there are clear opinions of the medical institution or appraisal institution, they may be regarded as the reference to determine the number of nursing personnel.

The nursing period shall be calculated up to the time when the victim has recovered his capability of taking care of himself. If the victim is unable to

终结前实际发生的数额确定。器官功能恢复训练所必要的康复费、适当的整容费以及其他后续治疗费，赔偿权利人可以待实际发生后另行起诉。但根据医疗证明或者鉴定结论确定必然发生的费用，可以与已经发生的医疗费一并予以赔偿。

第二十条 误工费根据受害人的误工时间和收入状况确定。误工时间根据受害人接受治疗的医疗机构出具的证明确定。受害人因伤致残持续误工的，误工时间可以计算至定残日前一天。受害人有固定收入的，误工费按照实际减少的收入计算。受害人无固定收入的，按照其最近三年的平均收入计算；受害人不能举证证明其最近三年的平均收入状况的，可以参照受诉法院所在地相同或者相近行业上一年度职工的平均工资计算。

第二十一条 护理费根据护理人员的收入状况和护理人数、护理期限确定。护理人员有收入的，参照误工费的规定计算；护理人员没有收入或者雇佣护工的，参照当地护工从事同等级别护理的劳务报酬标准计算。护理人员原则上为一人，但医疗机构或者鉴定机构有明确意见的，可以参照确定护理人员人数。护理期限应计算至受害人恢复生活自理能力时止。受害人因残疾不能恢复生活自理能力的，可以根据其年龄、健康状况等因素确定合理的护理期限，但最长不超过二十年。

recover his capability of taking care of himself due to disability, a reasonable nursing period may be determined in light of such factors as his age and health, etc., provided that the period shall not exceed 20 years. Where the victim needs to be nursed after determination of his disability, the nursing class shall be determined in light of the extent of his dependence on the nursing and in combination with the equipment of aid for disability.

Article 22 The traffic expenses shall be calculated on the basis of the expenses that actually occurred to the victim and his necessary accompanying carers due to medical treatment or due to hospitalization in another hospital. The traffic expenses shall be proved with formal tickets, and the relevant documents shall conform with the place, time and frequency of medical treatment, and the number of persons, as well.

Article 23 The board expenses in hospital may be determined by referring to the rates of board subsidies for business trip for ordinary functionaries of local state organs. Where it is indeed necessary for a victim to be treated in another place of the country, or the victim is unable to be in hospital due to any objective reason, the reasonable proportion of the accommodation expenses and board expenses that actually occurred to the victim himself and his accompanying carers shall be compensated.

Article 24 The expenses for nutrition shall be determined in light of the victim's situation of injury or disability and with reference to the opinions of the medical institution.

Article 25 The compensation for disability shall be calculated on the basis of the extent of the victim's inability to work or the grade of injury or disability, in light of the per capita disposable income of the urban residents or the per capita net income of the rural residents at the locality of the case-accepting court of the last year, for a period of 20 years as of the day when the disability is determined. However, if the victim is at the age of 60 or over, the period shall be deducted by one year for each year of age added. If the victim is at the age of 75 or over, the period shall be calculated as 5 years. Where the victim becomes disabled due to an injury but his actual income is not reduced, or the grade of his injury or disability is not heavy but his employment is affected due to occupational impediments, the compensation for disability may be adjusted accordingly.

受害人定残后的护理，应当根据其护理依赖程度并结合配制残疾辅助器具的情况确定护理级别。

第二十二條 交通費根據受害人及其必要的陪護人員因就醫或者轉院治療實際發生的費用計算。交通費應當以正式票據為憑；有關憑據應當與就醫地點、時間、人數、次數相符合。

第二十三條 住院伙食補助費可以參照當地國家機關一般工作人員的出差伙食補助標準予以確定。受害人確有必要到外地治療，因客觀原因不能住院，受害人本人及其陪護人員實際發生的住宿費和伙食費，其合理部分應予賠償。

第二十四條 營養費根據受害人傷殘情況參照醫療機構的意見確定。

第二十五條 殘疾賠償金根據受害人喪失勞動能力程度或者傷殘等級，按照受訴法院所在地上一年度城镇居民人均可支配收入或者农村居民人均純收入標準，自定殘之日起按二十年計算。但六十周歲以上的，年齡每增加一歲減少一年；七十五周歲以上的，按五年計算。受害人因傷致殘但實際收入沒有減少，或者傷殘等級較輕但造成職業妨害嚴重影響其勞動就業的，可以對殘疾賠償金作相應調整。

Article 26 The expenses for aid for disability shall be calculated in light of the reasonable expense rates of common applicable devices. If it is required particularly by the condition of injury, the corresponding reasonable expense rates may be determined by referring to the opinions of the aid-equipping institution. The period of using the aid before change and the time limit for compensation may be determined by referring to the opinions of the aid-equipping institution.

Article 27 The funeral expenses shall be calculated in light of the per capita monthly average wage of the employees at the locality of the case-accepting court of the last year, and at the total amount of six months of such wage.

Article 28 The living expenses for a person in need of maintenance and upbringing shall be calculated on the basis of the extent of the victim's inability to work, and in light of the per capita consumption expenditures of the urban residents and the per capita annual living consumption expenditures of the rural residents at the locality of the case-accepting court of the last year. If the person in need of maintenance and upbringing is a minor, the period shall be calculated up to the age of 18. If the person in need of maintenance and upbringing has no ability to work or no other source of income, the period shall be calculated as 20 years. However, if the victim is at the age of 60 or over, the period shall be deducted by one year for each year of age added. If the victim is at the age of 75 or over, the period shall be calculated as 5 years. A person in need of maintenance and upbringing means a minor to whom the victim is lawfully obligated for maintenance and upbringing, or an adult close relative of the victim, who has lost the ability to work and has no other source of income. If the person in need of maintenance and upbringing may be maintained and brought up by any other person, the obligor to compensation may only compensate the proportion that the victim shall bear in accordance with the law. Where there are more than one person in need of maintenance and upbringing, the accumulative annual compensation amount in total shall not exceed the amount of per capita consumption expenditures of urban residents of the last year or the amount of per capita annual living consumption expenditures of rural residents of the last year.

Article 29 The compensation for death shall be calculated for 20 years in light of the per capita disposable income of the urban residents or the per capita net income of the rural residents at the locality of the case-accepting court of the last year. However, if the victim is at the age of 60 or over, the

第二十六条 残疾辅助器具费按照普通适用器具的合理费用标准计算。伤情有特殊需要的，可以参照辅助器具配制机构的意见确定相应的合理费用标准。辅助器具的更换周期和赔偿期限参照配制机构的意见确定。

第二十七条 丧葬费按照受诉法院所在地上一年度职工月平均工资标准，以六个月总额计算。

第二十八条 被扶养人生活费根据扶养人丧失劳动能力程度，按照受诉法院所在地上一年度城镇居民人均消费性支出和农村居民人均年生活消费支出标准计算。被扶养人为未成年人的，计算至十八周岁；被扶养人无劳动能力又无其他生活来源的，计算二十年。但六十周岁以上的，年龄每增加一岁减少一年；七十五周岁以上的，按五年计算。被扶养人是指受害人依法应当承担扶养义务的未成年人或者丧失劳动能力又无其他生活来源的成年近亲属。被扶养人还有其他扶养人的，赔偿义务人只赔偿受害人依法应当负担的部分。被扶养人有数人的，年赔偿总额累计不超过上一年度城镇居民人均消费性支出额或者农村居民人均年生活消费支出额。

第二十九条 死亡赔偿金按照受诉法院所在地上一年度城镇居民人均可支配收入或者农村居民人均纯收入标准，按二十年计算。但六十周岁以上的，年

period shall be deducted by one year for each year of age added; if the victim is at the age of 75 or over, the period shall be calculated as 5 years.

Article 30 Where the obligee to compensation provides evidence to prove that the per capita disposable income of the urban residents or per capita net income of the rural residents at his domicile or habitual residence is higher than the rates at the locality of the case-accepting court, the compensation for disability or death may be calculated in light of the relevant rates at his domicile or habitual residence. The relevant rates for calculating the living expenses of the person in need of maintenance and upbringing shall be determined pursuant to the principles in the preceding paragraph.

Article 31 The people's court shall, in accordance with Article 131 of the General Principles of Civil Law and Article 2 of the present Interpretation, determine the actual amount of compensation for all property losses in Article 19 through Article 29. The compensation for material injury as determined in the preceding paragraph and the consolation money for psychological injury as determined in accordance with Paragraph 1 of Article 18 shall be paid in a lump sum in principle.

Article 32 If, in excess of the determined nursing period, the duration for payment of expenses for aid or payment of compensation for disability, the obligee to compensation brings a lawsuit to the people's court requesting continuing payment of nursing expenses, expenses for aid or compensation for disability, the people's court shall accept the case. If the obligee to compensation indeed needs to continue to be nursed or be equipped with the aid, or has no ability to work or no source of income, the people's court shall rule that the obligor to compensation continue paying the relevant expenses for 5 to 10 years.

Article 33 Where an obligor to compensation requests the compensation for disability, the living expenses for the person in need of maintenance and upbringing, or the expenses of aid for disability by means of regular payment, it shall provide corresponding guaranty. The people's court may, in light of the capacity of the obligor to compensation to make payment and the guaranty he provides, determine the relevant expenses to be paid at regular intervals. However, the expenses that have occurred prior to the end of the debate in the court of the first instance, the compensation for

龄每增加一岁减少一年；七十五周岁以上的，按五年计算。

第三十条 赔偿权利人举证证明其住所地或者经常居住地城镇居民人均可支配收入或者农村居民人均纯收入高于受诉法院所在地标准的，残疾赔偿金或者死亡赔偿金可以按照其住所地或者经常居住地的相关标准计算。被扶养人生活费的相关计算标准，依照前款原则确定。

第三十一条 人民法院应当按照民法通则第一百三十一条以及本解释第二条的规定，确定第十九条至第二十九条各项财产损失的实际赔偿金额。前款确定的物质损害赔偿金与按照第十八条第一款规定确定的精神损害抚慰金，原则上应当一次性给付。

第三十二条 超过确定的护理期限、辅助器具费给付年限或者残疾赔偿金给付年限，赔偿权利人向人民法院起诉请求继续给付护理费、辅助器具费或者残疾赔偿金的，人民法院应予受理。赔偿权利人确需继续护理、配制辅助器具，或者没有劳动能力和生活来源的，人民法院应当判令赔偿义务人继续给付相关费用五至十年。

第三十三条 赔偿义务人请求以定期金方式给付残疾赔偿金、被扶养人生活费、残疾辅助器具费的，应当提供相应的担保。人民法院可以根据赔偿义务人的给付能力和提供担保的情况，确定以定期金方式给付相关费用。但一审法庭辩论终结前已经发生的费用、死亡赔偿金以及精神损害抚慰金，应当一次性

death and the consolation money for psychological injury, shall be paid in a lump sum.

Article 34 The people's court shall clarify in the legal documents the time and method of regular payment, and the rates of each installment. If the relevant statistical datum is changed during the period of execution, the amount to be paid shall be adjusted accordingly. The regular payment shall be made in light of the actual duration when the obligee to compensation is living, and shall not be limited by the relevant time limit for compensation as mentioned in the present Interpretation.

Article 35 The "per capita disposal income of urban residents", "per capita net income of rural residents", "per capita consumption expenditures of urban residents", "per capita annual living consumption expenditures of rural residents", and "average wages of employees" mentioned in the present Interpretation, shall be determined according to the relevant statistical data of the province, autonomous region, municipality directly under the Central Government, special economic zone, or city directly under state planning of the last year, which were promulgated by the government statistical department. "The last year" means the last statistical year prior to the end of debate in the court of first instance.

Article 36 The present Interpretation shall come into force on May 1, 2004. The cases of the first instance on compensation for personal injury, which were accepted after May 1, 2004, shall be governed by the present Interpretation. The cases on compensation for personal injury, for which the effective rulings have been made and which are retried in accordance with the law, shall not be governed by the present Interpretation. In case any content in a judicial interpretation that came into force prior to the present Interpretation's promulgation and entry into force is inconsistent with the present Interpretation, the present Interpretation shall prevail.

给 付 。

第三十四条 人民法院应当在法律文书中明确定期金的给付时间、方式以及每期给付标准。执行期间有关统计数据发生变化的, 给付金额应当适时进行相应调整。定期金按照赔偿权利人的实际生存年限给付, 不受本解释有关赔偿期限的限制。

第三十五条 本解释所称“城镇居民人均可支配收入”、“农村居民人均纯收入”、“城镇居民人均消费性支出”、“农村居民人均年生活消费支出”、“职工平均工资”, 按照政府统计部门公布的各省、自治区、直辖市以及经济特区和计划单列市上一年度相关统计数据确定。“上一年度”, 是指一审法院辩论终结时的上一统计年度。

第三十六条 本解释自2004年5月1日起施行。2004年5月1日后新受理的一审人身损害赔偿案件, 适用本解释的规定。已经作出生效裁判的人身损害赔偿案件依法再审的, 不适用本解释的规定。在本解释公布施行之前已经生效施行的司法解释, 其内容与本解释不一致的, 以本解释为准。

Appendix B: Ethics Approval Letter

Cardiff School of Social Sciences
Director Professor Malcolm Williams
Ysgol Gwyddorau Cymdeithasol Caerdydd
Cyfarwyddwr Yr Athro Malcolm Williams



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28th May 2013

Our ref: SREC/1060

Desai Shan
PhD Programme
SOCSI (SIRC)

Dear Desai

Your project entitled "*Seafarers' occupational injuries and death compensation system and reform suggestions in the context of China*" has now been approved by the School of Social Sciences Research Ethics Committee of Cardiff University and you can now commence the project.

Please note that since your project involves data collection abroad you may need approval from a competent body in the relevant jurisdiction.

If you make any substantial changes with ethical implications to the project as it progresses you need to inform the SREC about the nature of these changes. Such changes could be: 1) changes in the type of participants recruited (e.g. inclusion of a group of potentially vulnerable participants), 2) changes to questionnaires, interview guides etc. (e.g. including new questions on sensitive issues), 3) changes to the way data are handled (e.g. sharing of non-anonymised data with other researchers).

In addition, if anything occurs in your project from which you think the SREC might usefully learn, then please do share this information with us.

All ongoing projects will be monitored every 12 months and it is a condition of continued approval that you complete the monitoring form.

Please inform the SREC when the project has ended.

Please use the SREC's project reference number above in any future correspondence.

Yours sincerely

Professor Tom Horlick-Jones
Chair of the School of Social Sciences Research Ethics Committee

cc: E Renton / Supervisors: H Sampson & D Walters

Mae Prifysgol Caerdydd yn elusen gofrestrdedig, rhif 1136855

Appendix C: Research Access and Reference Letter

Seafarers International Research Centre
Director Professor Helen Sampson



July 2013

Reference Letter

To whom it may concern,

I am writing to introduce Desai Shan who is conducting the fieldwork for a Doctoral thesis titled *Seafarers' Occupational Injuries and Death Compensation System and Practice in the Context of China* at your company. Ms Shan is currently registered to do her thesis at the Seafarers International Research Centre, Cardiff University. In this context we would be very grateful for any support that you would be able to provide her with.

The Seafarers International Research Centre (SIRC) is part of the Cardiff University School of Social Science. SIRC was established in 1995 with a view to conducting research on seafarers. We aim to produce independent, high quality, research relating to seafarers' lives, develop work in relation to contemporary social debates (for example debates around globalisation), disseminate findings widely across the maritime and academic community and stimulate greater interest and understanding of seafarers and their lives. SIRC has long-term funding from the Lloyd's Register Foundation to support the Lloyd's Register Foundation research unit. The Centre has also been funded/commissioned by a variety of external bodies to undertake research including: the European Commission, the Economic and Social Research Council, the International Labour Office, the International Maritime Organisation, the International Transport Workers' Federation, the UK Government's Maritime and Coastguard Agency, the European Maritime Safety Agency, the Professional Yachtsmen's Association and Allianz.

In relation to her research with your company Ms Shan would be grateful for any assistance you can provide regarding: 1. The review of files and documents relating to seafarers' occupational injuries and death compensation; 2. Interviews with professionals in charge of seafarers' compensation claims; 3. Interviews with the parties involved with seafarers' compensation cases, for example, seafarer claimants and seafarers' family members.

We very much appreciate the assistance that you are providing to Ms Shan. I would like to thank you for your kind support.

Yours faithfully

Professor Helen Sampson
Director, Seafarers International Research Centre
Cardiff University



Appendix D: Research Information Sheet and Consent Form



Research Funding Information

This Research is funded by the Nippon Foundation at the Seafarers International Research Centre (SIRC), Cardiff University.

You can get in touch with me by the following contacts information at any time:

Name of the Researcher: Desai Shan

Mobile Number: 07712660445

Email address: ShanD@cf.ac.uk

Address: SIRC, Cardiff University, 52 Park Place, Cardiff, Wales, CF10 3AT

Thank you very much!



Participant Information Sheet

Seafarers' occupational injuries compensation system and reform suggestions in the context of China

Dear Sir or Madam,

I am Desai Shan, a PhD student from Cardiff University, Seafarers International Research Centre. Now I am sincerely invite you to take part in a research project regarding seafarers' compensation system for work-related injuries in China, which is funded by the Nippon Foundation and Cardiff University. Before you decide to join, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Please ask me if there is something unclear or if you like to learn more information. Thank you very much for reading the following information.

1. The purpose of this research

The aim of this research is to find how Chinese seafarers claim compensation for their work-related injuries and to explore their actual experiences of the claiming process in China. This research include several aspects: how much compensation amount the seafarers and their families can actually get after the occupational injuries happening, how long and how many procedures need to be processed before the final compensation being paid, and what are

their actual experiences of the claiming process and the compensation amount and. In this research, the difficulties and problems confronted by Chinese seafarers during compensation claims will be studied and analysed. Through academic publishing, this research may encourage more people to concern about seafarers' occupational welfare improvement in China and worldwide.

2. Do I have to participate in this research?

Taking part in this research is completely voluntary, and refusal to take part will involve no penalty or loss of benefits for you. If you decide to take part, please read this information sheet carefully and you will be asked to sign a consent form. Even you have decided participate in this research, you are still free to withdraw at any time, without penalty or loss of benefits, and without providing a reason.

3. What will happen if I participate in this research?

You will receive an interview about your experience of claiming compensation for occupational injuries about one hour. Any problems or difficulties you met in the legal procedures and daily life changes after the work-related injuries accidents happen can be discussed if you are willing to. Please be kindly reminded that some of the interview questions require you to recall the stressful claim experience. If you feel uncomfortable to talk about it, please feel free to stop me at any time. With your permission the conversation will be recorded and be transcribed later. The information recorded will not include any of your personal information.

4. Will my participation in this research be kept confidential?

All information collected from you will be kept strictly confidential. Any information about you will have your name and address removed so that you cannot be recognized from it. Audio and audio transcripts of the interviews will only be accessible to me and my supervisors in this research. The audio and audio transcripts will be used for academic research, including my PhD thesis and further studies which may be published as academic works. They will not be used for any other non-academic purpose. With your consent, *the*

anonymized transcripts of interviews will also be accessible for relevant researchers for genuine academic research purposes in the future. You will be offered a draft of the interview transcript and you will have an opportunity to revise it if you wish.

5. Further contact information

If you feel necessary, you can contact me or my supervisor after the interview through the following contact information:

Name of the Researcher: Desai Shan

Mobile Number: 44 (0)7712660445

Email address: ShanD@cf.ac.uk

Address: SIRC, Cardiff University, 52 Park Place, Cardiff, Wales, CF10 3AT

Name of the Supervisor: Prof. Helen Sampson

Email address: SampsonH@cf.ac.uk

Tel +44 (0)29 2087 4475 / 4620

Address: SIRC, Cardiff University, 52 Park Place, Cardiff, Wales, CF10 3AT

Thank you very much for your participation in this research!



Research Consent Form

**Seafarers' occupational injuries compensation system
and
reform suggestions in the context of China**

Please tick to confirm

- 1) I confirm that I have read and understand the information sheet for the above study.
- 2) I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
- 3) I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason, without my legal rights being affected.
- 4) I understand that relevant information collected from will be kept strictly confidential and only for academic use.
- 5) I agree to participate in the above research study.

Name of Participant_____

Date_____Signature_____

Name of researcher_____

Date_____Signature_____

When complete, 1 copy is for the participant; 1 copy is for researcher use.



调研信息简介

中国海员工伤赔偿法律实践及改革建议

尊敬的先生 / 女士，

您好！

本人，单德赛，系英国卡迪夫大学国际海员研究中心的博士研究生，现特别邀请您参与一项有关中国海员工伤赔偿法律实践方面的研究，本项研究旨在了解中国海员工伤赔偿事宜的组织与处理，以及海员及家属在工伤赔偿过程中的实际境遇，并基于此对现有问题提出相应的学者建议。英国卡迪夫大学与日本财团为本项研究的赞助方。在您决定是否参加本研究之前，请您仔细阅读以下信息，了解本项研究的目的以及可能涉及的内容。如果您认为需要，可以和其他人商量讨论。如果您需要了解更多的信息，或者说明有任何您觉得不清楚的地方，您可以随时询问我。

非常感谢您的合作！

1. 本项研究的目的

本研究旨在了解中国海员进行工伤赔偿过程的组织与运作，探讨中国海员在工伤赔偿过程中实际经历。研究问题主要包括如下几个方面：出现海员因工受伤事件后，赔偿流程会涉及哪些利益相关方，赔偿流程如何组织运作，海员或其家人在工伤事故发生后实际得到的工伤待遇；海员或其家人在得到最终赔款之前所经历了多少程序，经历了多长时间；海员或其家人对于索赔过程的实际体会与感受如何。在本项研究中，将会中国海员在索赔过程中经历的实际问题进行研究与分析。通过学术发表，本研究可能鼓励更多的人致力于在中国乃至世界范围内探讨如何提高海员因工受伤赔偿案件的处理效率，减少在此过程中可能出现的矛盾冲突，促进海员权利以及福利的切实保障与提高。

2. 我必须参与本项研究吗？

参与本项研究是在完全自愿的前提下进行的，拒绝参与本项研究不会对您带来任何的不利影响。如果您决定参与本项研究，请仔细阅读本简介，您也需要签署一份参与研究的同意书。即使您已经决定参与本研究，您依然有权利在任何时间撤回您的同意，退出本研究，这不会给您带来任何的损失或者不利，而且您退出研究也不需要提供任何理由。

3. 如果我决定参与研究，会经历什么程序呢？

您将会接受一个为时一小时左右的关于海员工伤赔偿实践问题的访谈。如果您愿意，任何在您所了解的有关（1）处理海员工伤事宜的流程组织，（2）您在处理海员工伤案件中的感受与经历，（3）在处理海员工伤赔偿过程中遇到的问题和困难都可以进行讨论。请特别注意的是，有一些访谈问题涉及到的海员索赔经历，可能对于您来说，会带来压力和不适，如果对讨论这些话题感觉不舒服，您可以随时打断我。在您的许可下，我们的谈话将被录音，录音内容将不会涉及您任何的个人信息。

4. 我参与本次研究是否将进行保密？

在研究中，所有从您这里采集的信息都将采取严格的保密。任何涉及到您姓名与地址的信息都将会从记录中移除，确保您的身份不会在本研究中被识别。在本项研究中，只有本人与本人的两位导师可以接触访谈录音以及录音文稿。录音与录音文稿仅限于学术目的使用，包括本人的博士论文写作，或者将来可能发表的学术论文。所有访谈录音不会被用于非学术研究目的。在您的许可下，秉承真正学术目的的研究人员也将可以接触音频文稿（文稿中全部使用匿名或者化名，不会有任何涉及您身份的信息），从事相关的科学研究。您也可以审阅访谈录音文稿的初稿，并且如果您愿意，也可以在文稿上进行相应的修改。

6. 联络信息

如果您认为有需要，在访谈结束之后，您可以通过以下方式联系本人与本人导师：

研究生姓名：单德赛

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导师姓名：Prof. Helen Sampson 海伦辛普森 教授

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电话号码：+44 (0)29 2087 4475 / 4620

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Wales, CF10 3AT

非常感谢您对于本次研究的参与！





Research Consent Form

参与研究同意书

中国海员工伤赔偿法律实践及改革建议

Please tick to confirm 请在方框中打勾确认

- 1) I confirm that I have read and understand the information sheet for the above study.
本人确认已经阅读并了解上述调研信息简介中的内容。
- 2) I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
本人获得了考虑上述信息，询问问题的机会，并且相关问题得到了满意的答复。
- 3) I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason, without my legal rights being affected.
本人获悉参与本项研究是完全自愿的，并且本人有权在任何时候，无须提供任何理由撤出该项研究，并且撤回参与不会影响本人任何的法律权利。
- 4) I understand that relevant information collected from me will be kept strictly confidential and only for academic use.
本人获悉所有从本人出收集的信息都将严格保密，并仅用于学术研究目的。
- 5) I agree to participate in the above research study.
本人同意参与该项研究。

(研究参与者姓名) (日期) (签名)

(研究人员签名) (日期) (签名)

本同意书一式两份，一份研究参与者留存，一份研究人员留存。

Appendix E: Interview Schedules

Injured seafarers and surviving families

Part I: Personal Background Information

1. Can you briefly talk about yourself, where are you from?
2. How long have you (or your husband/father/brother) worked as a seafarer?
3. Can you talk about your (or your husband/father/brothers) education/training backgrounds?
4. What is your position (the position of your husband/father/brother) on board?
 - a. Recruitment approach
 - b. The ownership of the company
 - c. The type of the contract (permanent, fixed-term, voyage-based or no written agreement)
 - d. Whether social security, work-related injury insurance, safety training and equipment are provided by the company?

Part II: Experiences of the accident

5. Could you talk about the accident (the accident of your husband/father/brother)?
 - a. When and where did it happen, on board/on land/at the harbour; Chinese territorial sea/high sea/foreign territorial area
 - b. the name, flag, type of the vessel
 - c. the working tasks are undertaken before the accident occurred
6. (Injured seafarers) Could you talk about the first aid/emergency treatment received following the accident?
 - a. The responses of captain, shipowner, and colleagues
 - b. Who arranged and paid for the medical treatment
 - c. Any replacement arranged or you had to keep working on board
 - d. Any repatriation arranged?

- e. When you were in the hospital, were there anyone taking care you?
 - f. How do you find these treatments, helpful, supportive or not?
 - g. Could you describe the feeling then?
7. (surviving family members) Could you talk about the situation after the accident?
- a. Who noticed you about the accident?
 - b. Any search or rescue arranged?
 - c. Were you permitted to attend the accident site?
 - d. Body transport/ash transport
 - e. Did the company help with the funeral?
 - f. Do you find the company supportive and helpful or not, and why?
 - g. Could you describe the feeling then, in particular about the company's attitudes and supports?
8. Would you like to give a comment about the supports provided by your company after the accident?
9. Could you tell me some changes happened to you after the accident?

Part III: Experiences of Claim Processes

10. Could you tell me about the claim process?
- a. Did you have compensation standards in your contract? If no, how did you find out a compensation standard?
 - b. When did you start to claim and how did you make this decision?
 - c. Who did you choose to claim against?
 - i. Crew agencies or shipowners?
 - d. How did they respond?
 - i. Did you have any difficulties in communicating about your damages?
 - ii. Did you obtain the information and supports you need?
 - iii. Could you describe your feeling when negotiating with the company?

11. Did you receive disability appraisal and could you briefly talk about this experience?

- i. When and where?
- ii. Who arranged it for you?
- iii. Who paid for it?
- iv. Are you satisfied with the result or not, and why?

12. Did you claim work-related injury insurance compensation?

- i. If yes, can you talk about your experiences of this claim?
- ii. Are you satisfied with the final payment from Work-related Injury Insurance Fund?

13. Did the company purchase any commercial insurance for you?

- a. If yes, can you tell me how do you claim the compensation from the insurers? (time consumed of insurance claim, amounts of actual payment, insurer's service)

14. Have the P&I Clubs contacted you to negotiate the compensation?

- a. If yes, can you tell me the experience of negotiating with them?
- b. Was it helpful to have them to solve your dispute?

15. For victims who launched litigations:

- a. What was the primary reason for you to decide to initiate the lawsuit?
- b. Did you choose the maritime court or civil court?
- c. How much litigation fee do you need to pay for the claim to the court?
- d. Did you find the litigation affordable or not?
- e. How did you feel about the efficiency of the legal process?
- f. Was there any opportunity for you to consider mediation by the court, if yes, did you find the medication result is fair or not?

16. For victims who quitted their claims:

- a. What was the main barrier for you to continue your claim?
- b. Could you tell me your feeling after you quit the claim?
- c. Were there any further challenges/difficulties you met?

- d. How did you overcome them?
17. How much compensation amount did you get in total?
- a. Do you know how the amount was calculated?
 - b. Were you paid by P&I Clubs directly or by your employer?
 - c. Was the payment in time?
18. Are you satisfied with this outcome? Do you think the further legal action is necessary or not?
19. About supports received:
- a. Did you hire a lawyer? Why or why not?
 - b. How much do you need to pay for the lawyers' service?
 - c. How did you feel about the lawyers' service?
 - d. Did they explain the questions you concerned about?
 - e. Do you satisfied with their explanations?
 - f. How do you feel about these prices, affordable or not, worthy or not?
 - g. Did you apply legal aid from the government? If yes, did you find them supportive and helpful?
20. Could you tell something about the influence of the claim on your life?
- a. Do your family members support your decision to file the claim to the labour arbitration committee/courts?
 - b. How did you cope with your finance?
 - c. Did you suffer any mental or physical pains caused by negotiation with companies and litigation? (encourage elaboration)

Part IV Other issues

21. Did you know there are two sets of the Chinese compensation systems for seafarers' injuries? Tort liability compensation and Work-related Injury Insurance (Introduce briefly).
- a. How do you feel about this kind of difference?
 - b. And if you can choose, which one do you prefer?

22. Did you think about other ways to claim the money besides the litigation, such as labour arbitration, negotiation with companies, or reporting this accident to the local government or newspapers?
23. Finally, do you have any comments for the improvement of this whole claim process and legal procedures, do you want to get any particular kind of assistance, or do you have any comments on the current legal regulations?
24. Any questions or comments for me?

Crew Managers

1. What kind of manning service does your company mainly focus?
 - a. Directly employ seafarers or playing as the agent for shipowners only?
 - b. For Chinese shipowners/foreign shipowners?
 - c. For ocean-going vessels/coastal vessels?
2. How many contracts/agreements are involved to supply a seafarer on board
 - a. With shipowners/ship operators
 - b. With seafarers
3. What kind(s) of contract(s) do you use when employ/hire a seafarer?
 - a. Labour contract or service contract?
 - b. Voyage employment agreement/long-term employment agreement
 - c. Which contract/agreement contain the compensation standards?
4. How do you manage the risk of seafarers' occupational casualties' compensation in advance?
 - a. Work-related injury insurance (social security), commercial life insurance
 - b. shipowners' liability insurance according to the manning agent agreement

- c. any differences between seafarers on Chinese vessels and foreign vessels
- 5. Are there any different treatments towards to seafarers?
 - a. Any difference between self-employed seafarers and seafarers on hire?
 - b. Any difference between seafarers dispatched on foreign vessels and seafarers sent on Chinese ships?
- 6. Are there any commercial pressures caused by the recent legal requirements of arranging social insurance for seafarers? How do you deal with the cost increase?
- 7. Once the casualties accidents happen, how do you deal with the accident?
 - a. At what stage will you be involved and what roles do you play?
 - b. How did you manage the accident?
 - i. emergency medical service, and who pay it
 - ii. arrange further medical treatment
 - iii. arrange disability assessment (judicial assessment or labour assessment)
 - iv. salary payment during the treatment period
 - v. anything else
 - c. any different arrangements regarding seafarers on foreign vessels and Chinese vessels
- 8. Can you tell me when will the claim process formally start? What are the procedures?
 - a. How to decide whether a claim is qualified to be compensated?
 - b. Disability appraisal (work capacity assessment committee or judicial appraisal committee)
 - c. Calculation standards: if there are conflicts between different criteria, which one to choose and why?

- d. The responsible parties involved in negotiations (e.g. Shipowner, P&I clubs, wrongdoers (such as the opposite shipowner in collision), lawyers)
 - e. Manning agent's roles during the claim process
 - f. Common conflicts between seafarers claimants and the responsible parties
9. How did you manage the conflicts with seafarers?
 - a. Can you give me some examples?
 - b. Can you share some challenges you have met?
 10. How long would the claim process take generally?
 - a. Any difference between severe injuries/slight wounds; injuries/deaths
 11. What is your opinion about current legal provision regarding workplace injuries of seafarers?
 12. Any comments or questions?

Interview Schedules: P&I managers of Shipowners

1. Can you please tell me about the business scope of your company
 - a. international transport/coastal transport,
 - b. the nationality of your fleet (Chinese or FOC, why choose FOC),
 - c. the size of your fleet and crew?
2. How do you manage the relationship with seafarers?
 - a. any agreement with your crew?
 - b. any safety management liabilities to seafarers?
 - c. any insurance arrangement to seafarers
3. In terms of workplace injuries, what would you address accidents/claims?
 - a. how to assign responsibilities to your manning companies/crew agencies? (Work-related injury insurance, commercial insurance and P&I liability)
 - b. how to ascertain compensation standards
4. Can you describe your work following workplace accident?
 - a. medical service
 - b. repatriation

- c. sick pay
 - d. insurance claim management
5. Do you need to confront seafarers in the accident/claim management process?
 6. How did you manage the conflicts with seafarers, if there are any?
 - d. Can you give me some examples?
 - e. Can you share some challenges you have met?
 7. How long would the claim process take generally?
 - f. Any difference with severe injuries/slight wounds; injuries/deaths
 8. What is your opinion about current legal provision regarding workplace injuries of seafarers?
 9. Any comments or questions?

Maritime Lawyers

1. Can you briefly introduce the types of seafarers' claims you have handled before?
 - a. Any difference in the application of law regarding foreign related and domestic seafarers
 - b. How do you manage this difference?
2. What are the parties involved in the claim dispute?
 - a. what are their attitudes?
 - b. what are the common conflicts in the dispute?
3. Which side do you usually represent?
 - a. what are the advantages/disadvantages to representing seafarers
4. What kinds of claims are frequently raised by the seafarer?
 - a. if represent shipowners, how would you respond their claims
 - b. if represent seafarers, what would you do to support their claims
5. What is your opinion about current legal rules and regulation?
 - a. Can you describe the impact of the abolition of the Specific Provisions of the Supreme People's Court for Trials on Foreign-related Personal Injuries and Death at Sea (1992-2012)
6. How do you deal with the application of different legal rules in calculating the compensation (when representing seafarers/shipowners)?

- a. Work-related Injury Insurance Regulation (2011)
 - b. The Supreme People's Court of Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury (2004)
7. How do you address different disability appraisal approaches (when representing seafarers/shipowners)?
- a. Work Capacity Assessment
 - b. Judicial assessment committees
8. What is the common method to solve this dispute?
9. According to your past experiences, how long would the claim last?
- a. by negotiation
 - b. by litigation
10. What is your opinion about current legal provision regarding workplace injuries of seafarers?
11. Any comments or questions?

P&I Club Correspondents

1. Can you briefly introduce the types of seafarers' claims you have handled before?
2. What are the parties involved in the claim dispute?
- a. what are their attitudes?
 - b. what are the common conflicts in the dispute?
3. What kinds of claims are usually raised by the seafarer, and how do you respond their claims
4. What is your opinion about current legal rules and regulation?
- a. Can you describe the impact of the abolition of the Specific Provisions of the Supreme People's Court for Trials on Foreign-related Personal Injuries and Death at Sea (1992-2012) on shipowners?
5. How do you deal with the application of different legal rules in calculating the compensation?
- a. Work-related Injury Insurance Regulation (2011)
 - b. The Supreme People's Court of Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury (2004)

6. How do you address different disability appraisal results provided by seafarers?

a. Work Capacity Assessment

b. Judicial assessment committees

7. What is the common method to solve this dispute?

8. How did you manage the conflicts with seafarers, if there are any?

Can you give me some examples?

Can you share some challenges you have met?

9. What is your opinion about current legal provision regarding workplace injuries of seafarers?

10. Any comments or questions?

Maritime Judges

In terms of workplace injury cases at sea, do you have any working categories, and what would be standard for the categorisation?

Domestic or foreign related

The parties involved in the litigation (who would the seafarers sue):

Manning company

Shipowners

Ship managers

3. Who would be termed as 'employer' in the case of seafarers' claims, in your opinion?

a. manning company

b. shipowners

c. any differences between foreign-related cases and domestic cases

4. According to your opinion, what are applicable law and regulations to seafarers' workplace injury claims?

a. in history, how many legal changes have occurred and what are the impacts of them?

b. Can you describe the impact of the abolition of the Specific Provisions of the Supreme People's Court for Trials on Foreign-related Personal Injuries and Death at Sea (1992-2012) on your trial practices (discuss separately in cases of death, slight wounds and severe injuries)?

c. After the Maritime Labour Convention (2006) came into force, do you think this convention will cause any changes for the trial of seafarers' claims?

d. from your point of view, are there any improvement could be made to reform the current legal framework and why?

Is there a concurrence of tort claim and work-related injury insurance claim?

How do you differentiate these two claims?

How do you ascertain whether there is a 'labour relationship/employment relationship' to establish the work-related injury insurance claim?

What are the requirements for seafarers/surviving families to initiate a claim at your court?

To initiate a work-related injury insurance claim?

To start a tort claim?

5. According to your observation, what are the common challenges for seafarers when starting the claim?

6. In term of the evidence criteria, are there any different in establishing tort claim and work-related injury claim?

7. According to your opinion, which assessment is suitable for the disability appraisal of seafarers?

a. Work Capacity Assessment

b. Judicial assessment committees

8. Can you introduce the compensation standards you have used in the trials of seafarers' claims?

a. In the tort claim, how to ascertain the income loss of seafarers (by basic wages or actual wages)?

b. How to determine mental damages in seafarers' claims?

9. Would you like to share some experiences of judging seafarers' claims?

a. Challenges in communicating with plaintiffs and defendants

b. Organising mediation

c. Saerving legal papers to foreign shipowners

10. Do you have some advice for seafarers or surviving families?

11. Any other suggestions for seafarers' protection, legislation, social supports or other aspects?

12. Any other questions or comments

Appendix F: Lists of Research Participants

Seafarer Interviewees

No.	ID	Gender	Position	Types of seafarers	Disability level/situation
1	SF-TJ-Z(widow)	Female	C/E	Foreign shipowner, FOC	Death
2	SF-TJ-G	Male	AB	State-owned enterprise, Chinese flag	Grade 9 (ankle bone broken)
3	SF-SQ-Z	Male	AB	Foreign shipowner, FOC	Grade 10 (leg bone broken)
4	SF-QD-H	Male	OS	Actual Chinese shipowner, FOC	Grade 10 (skull broken)
5	SF-XM-H	Male	Fitter	Foreign shipowner, FOC	Grade 7 (loss of an eye)
6	SF-XM-W	Male	C/E	Foreign shipowner, FOC	Grade 8 (loss thumb + index finger)
7	SF-XM-L	Male	S/E	Actual Chinese Shipowner, FOC	Grade 10 rib broken
8	SF-CQ-H	Male	S/E	Private enterprise, Chinese flag	leg bone broken
9	SF-HZ-C	Male	T/O cadet	Foreign shipowner, FOC	Grade 10 loss of partial finger
10	SF-DL-S	Male	Chef	Actual Chinese shipowner, FOC	hip bone broken
11	SF-CZ-W	Male	captain	private enterprise, Chinese flag	radius broken
12	SF-SD-D (uncle)	Male	Seaman	private enterprise, Chinese flag	death (ship sinking)
13	SF-XMJM-Z	Male	C/O	Foreign shipowner, FOC	carpus broken
14	SF-FZ-Q	Male	C/O	Chinese shipowner, Chinese flag	carpus broken
15	SF-GD-X(daughter)	Female	Captain	Private enterprise, Chinese flag	Death (ship sinking)
16	SF-QZ-L	Male	Oiler	Foreign shipowner, HK flag	Grade 9
17	SF-QZ-L (son)	Male	Chef	Foreign shipowner, FOC	Grade 7 (detachment of retina)
18	SF-HNZZ-S	Male	Bosun	Foreign shipowner, FOC	leg bone broken
19	SF-FJ-Z (bother)	Male	AB	Foreign shipowner (Singapore), FOC	death

20	SF-QZ-L	Male	AB	State-owned enterprise, Chinese flag	Grade 7
21	SF-LN-L	Male	cadet	private enterprise, Chinese flag	leg bone broken
22	SF-QZ-Z	Male	carpenter	Foreign shipowner, FOC	Grade 7,hand bone and lumbar vertebra broken
23	SF-QZ-J	Male	C/O	Actual Chinese shipowner, FOC	Foe loss
24	SF-HF-G(wife)	female	chef	Foreign shipowner, FOC	Deaf
25	SF-NT-C(cousin)	male	T/O	Foreign shipowner, FOC	disappearance on board
26	SF-NT-W	male	C/O	Private enterprise, Chinese flag	Grade 10 foe loss
27	SF-NT-G	male	T/O	Private enterprise, Chinese flag	shinbone broken
28	SF-NT-F(daughter)	male	Captain	Foreign shipowner, FOC	death (shot by pirates)
29	SF-HN-Y(aunt)	Female	AB	Private enterprise, Chinese flag	death (ship sinking)
30	SF-JS-H	male	C/E	State-owned enterprise employee	poisoning sulfuretted hydrogen
31	SF-NT-Y(wife)	female	S/E	Foreign shipowner, FOC	Grade 10 ring finger loss
32	SF-NT-X	male	Cadet	State-owned enterprise, Chinese flag	head hurt
33	SF-NT-Y	male	S/E	HK shipowner, FOC	Grade 9 index finger loss
34	SF-NJ-H	male	C/O	Foreign shipowner, FOC	Grade 10 loss of four teeth
35	SF-NJ-C(widow)	female	C/E	Actual Chinese shipowner, FOC	death (during crane operation)
36	SF-QG-L	male	AB	HK shipowner, FOC	leg bone broken
37	SF-XZ-Z	male	OS	private enterprise, Chinese flag	shinbone broken
38	SF-XZ-T	male	S/O	Foreign shipowner, FOC	ulna broken
39	SF-XZ-H	male	C/O	Foreign shipowner, FOC	Grade 9
40	SF-NJ-X	male	T/E	Private enterprise, Chinese flag	shinbone broken
41	SF-QD-W(nephew)	male	OS	private enterprise, Chinese flag	Death (ship sinking)
42	SF-HB_L	Male	OS	Private enterprise, Chinese flag	Shinbone broken

Professional Interviewees			
No.	ID	Institution	Position
1	CH_BJ_W	Marine Insurance Broker	P&I correspondent
2	CH_GZ_K	Marine insurance company	Manager of claims handling sector
3	CH_XM_L	Marine Insurance Broker	General manager (P&I correspondent)
4	MC_GZ_P	Ship management company	HR manager
5	MC_QD_Y	Manning company (joint venture)	Deputy manager
6	MC_QZ_S	State-owned manning company	Deputy General Manager
7	MC_TJ_C	Private Manning Agency	Manager
8	MC_XM_H	State Owned manning company	Deputy General Manager
9	MC_XM_L	State owned manning company	Crew Manager
10	MC_XM_LX	State Owned manning company	Crew Manager
11	MC_NJ_Z	Private Manning Agency	Crew Manager (legal counsel)
12	MC_NJ_D	Private Manning Agency	General Manager
13	MC_XM_S	Private manning company	General Manager
14	MJ_TJ_L	Maritime Court	Registration Branch
15	MJ_GZ_W	Maritime Court	Admiralty tribunal
16	MJ_GZ_X	Maritime Court	Admiralty tribunal
17	MJ_GZ_Y	Maritime Court	Admiralty tribunal
18	MJ_GZ_Z	Maritime Court	Admiralty tribunal
19	MJ_QD_Z	Maritime Court	Admiralty tribunal
20	MJ_XM_C	Maritime court	Admiralty tribunal
21	MJ_XM_H	Maritime court	Admiralty tribunal
22	MJ_XM_Y	Maritime court	Admiralty tribunal
23	ML_GZ_C	Maritime Lawyer	Attorney (Partner)
24	ML_GZ_L	Maritime Lawyer	Attorney
25	ML_GZ_Z	Maritime Lawyer	Attorney
26	ML_GZ-S	Maritime Lawyer	Attorney
27	ML_QD_C	Maritime Lawyer	Attorney
28	ML_XM_L	Maritime Lawyer	Attorney (Partner)
29	ML_XM_Y	Maritime Lawyer	Attorney
30	SM_NJ_Y	Private shipping management company	Shipping manager
31	SO_GZ_H	Shipping company (owners)	Chief of the P&I claim department
32	SO_DH_W	Private shipowner	Deputy General Manager
33	SO_TJ_W	Oil industry Shipping Company	HR manager