



The anti-therapeutic effects of workers' compensation in China: The case of seafarers



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ABSTRACT

Workplace injuries are a serious public health problem, potentially leading to loss of earnings, medical expenses, disability and even death for working people. Maritime transport workers – seafarers – are exposed to higher risks of workplace injuries than is the general land-based workforce. China has the world's largest population of international seafarers. Under Chinese law, as elsewhere, losses from workplace accidents are compensated in the form of financial entitlements. However, Chinese seafarers face tremendous challenges in the workers' compensation claim process.

This paper investigates the experiences of Chinese seafarers in claiming this compensation, in order to assess the protective capacity of Chinese workers' compensation, known as the Work-Related Injury Insurance System. Drawing on therapeutic jurisprudence, it explores the anti-therapeutic effects that Chinese seafarers confront in the claims process. Based on an analysis of regulatory documents and interview data with the informants – including seafarers, their family members and managerial professionals in the shipping industry – the findings suggest that current work-related injury insurance is unable to provide sufficient assistance for Chinese seafarers. Instead of obtaining effective therapeutic remedies following accidental trauma, Chinese seafarers (and their families) are indeed likely to suffer additional harm in the process of claiming compensation. The paper suggests that further measures should be adopted to improve work-related injury insurance coverage among seafarers, and that efficient sanctions should be strengthened against infringements of seafarers' rights.

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1. Introduction

This article aims to examine the protective and therapeutic effectiveness of Chinese work-related injury insurance for mobile transport workers, seafarers. Workplace injuries are a serious public health problem, which may lead to loss of earnings, medical expenses, disability and even death for working people. Maritime transport workers – seafarers – are exposed to greater risk of workplace injuries than is the general land-based workforce. A transnational study (Jenson et al., 2004) shows that 8.5% of seafarers suffered an injury during their most recent tour of duty, while a Danish study (Hansen, Nielsen, & Frydenberg, 2002) finds that the fatal accident rate in merchant shipping is ten times that in shore-based industries.

Seafarers are the epitome of mobile workers in precarious, flexible and fragmented employment relationships. They work on “very long, generally temporary, contracts and can be hired and fired at will” (Sampson, 2013; Walters & Bailey, 2013). Recruiting Chinese seafarers has become a preferred strategy for ship operators worldwide to reduce crew costs (Zhao & Amante, 2005). Thus there is rapid and continuous growth in the number of seafarers in China (Alderton, 2004; Wu, Lai,

& Cheng, 2006). By the end of 2015, China had 638,990 seafarers – the world's largest national group (Ministry of Transport of the People's Republic of China, 2016; Zhang & Zhao, 2015).

Workplace injuries and fatalities have profound impacts on the lives and welfare of workers and their families. The injury produces a loss of physical integrity and a decline in labour capacity, and may lead to significant medical expenses that deplete the finances of households (Lippel, Lefebvre, Schmidt, & Caron, 2007). Meanwhile, the victims suffer pain, stress, insecurity and anxiety. Workplace fatalities are highly damaging to the social, financial and health conditions of surviving families (Matthews, Bohle, Quinlan, & Rawlings-Way, 2012). In the past, under the tort system, employers could deny liability for compensation to workers if the latter were partially responsible for their injuries (Cane & Atiyah, 2006). This legal context produced exacerbated industrial tension. In recognition of the suffering of injured workers, and to placate socialist movements, by the late nineteenth century various remedies had been introduced in countries such as Germany and the United Kingdom, heralding modern social welfare systems (Cane & Atiyah, 2006; Clayton, 1997).

Workers' compensation systems have become a core element of the modern social security regime, aiming to provide effective and reasonable financial compensation for injured workers and their families.

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Access to this social protection is now regarded as a fundamental human right under the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in 1966. The state shall ensure that workers or surviving families are entitled to receive financial remedies following workplace accidents. The Maritime Labour Convention, 2006, reaffirms that every seafarer has an equal right to social security and welfare measures, and each member State shall ensure seafarers' social rights.¹

Under the planned economy in China prior to the 1980s, the expectation was that all workers would be employed throughout their working lives by state or collectively owned enterprises. Publicly owned enterprises were obliged to continue paying workers' salaries or living allowances if they became incapacitated. However, private enterprises have come into existence since the introduction of the "open and reform" policies in the late 1970s and early 1980s (Zhu, 2002). How to protect injured workers' rights in these privately owned enterprises has become a regulatory issue. After more than 20 years of experimentation at regional level, in 2004 the State Council promulgated the Work-Related Injury Insurance Regulation, establishing a national compensation standard for injured workers, with social security for all Chinese working people. Since then, work-related injury insurance has become the major workers' compensation scheme for Chinese working people. The funding source is secured by local governments collecting social insurance premiums from employers.

However, in practice obtaining work-related injury insurance compensation is still difficult for many working people – such as construction workers from rural areas – due to their status as migrants in informal employment (Sun & Liu, 2014). Similarly, Chinese seafarers involved in a globalized labour market and exposed to hazardous maritime work confront tremendous challenges in seeking remedies following workplace accidents (International Labour Organization, 2012). Given their status as mobile international workers, the obtaining of work-related injury insurance to protect seafarers may be further complicated in comparison to protection of workers domestically. Several studies identify the challenge to enforcement of occupational health and safety regulations among transport workers arising from work-related mobility (Bhattacharya, 2009; Dacanay & Walters, 2011; Walters & Bailey, 2013; Xue, 2012). A Chinese survey shows that work-related injury insurance covers only 41.55% of Chinese seafarers (Chen, Zhu, & Hao, 2014). Many seafarers are employed by labour supply companies/crewing agencies, or are hired as freelancers, and then sent to vessels owned by domestic or foreign corporations (Wu et al., 2006; Zhao & Amante, 2005). In the context of this indirect employment, work-related injury insurance is no longer compulsory for shipping companies, since they can avoid the status of "employers" as defined by the Work-Related Injury Insurance Regulation (2003 and 2011). However, there is little empirical research on the problems experienced by Chinese seafarers and/or their families in this context. This article addresses this gap by exploring Chinese seafarers' experiences in the compensation application process, and identifies and examines the challenges they confront.

This research adopted qualitative methods to evaluate the protective and therapeutic effects of the work-related injury insurance schemes on Chinese seafarers. This article argues that work-related injury insurance fails to provide sufficient and timely remedies for maritime transportation workers following workplace accidents. Moreover, many adverse effects for the protection of seafarers' rights have occurred in the process of workplace injury compensation. This research finds that Chinese seafarers are exposed to additional harm during the claim process, due to weak application of work-related injury insurance in the maritime sector and the failure to control and reduce adversarial relationships between companies and seafarers.

Section 2 below explains the conceptual framework – therapeutic jurisprudence – that underpins examination of the protective capacity of work-related injury insurance. The third section presents the research findings in two subsections, the first of which identifies the intrinsic weaknesses of work-related injury insurance and how they have caused anti-therapeutic effects on seafarers' rights. The second lays out the tensions and conflicts between seafarers and companies, within the context of a weak workers' compensation system, and the harms to seafarers and their families caused by this tension and conflict.

2. Therapeutic jurisprudence and anti-therapeutic effects of workers' compensation systems

"Therapeutic jurisprudence" is an interdisciplinary approach to evaluating the effects of law on physical and psychosocial well-being. It proposes that where appropriate the law should be directed to minimizing adverse effects and promoting positive effects on the welfare of claimants (King, Freiberg, Batagol, & Hyams, 2014). Workers' compensation is the oldest of the social security institutions, directed to remedying the physical and financial suffering of employees injured in the process of employment, based on the no-fault principle (Gundersen & Hyatt, 2000). Accordingly, the core spirit of the workers' compensation system is to provide therapeutic effects for the victims of industrial injuries.

According to Wexler and Winick (1991, p. 19), there are four areas of inquiry in therapeutic jurisprudence: "(1) the role of the law in producing psychological dysfunction, (2) therapeutic aspects of legal rules, (3) therapeutic aspects of legal procedures, and (4) therapeutic aspects of judicial and legal roles". We apply the above four areas to understand the function of the workers' compensation system. Firstly, the fundamental aim of the system is to reduce the psychological trauma caused by the traditional adversarial tort law system, including malingering, "secondary gain"² and compensation neurosis (Butler, 2002; Lippel, 1999). Secondly, the legal rules need to be designed to produce therapeutic effects rather than harmful effects. Therefore the workers' compensation system ascribes compensation liability to the third party consisting of a social insurance fund, instead of to employers, in order to avoid direct conflicts between employers and workers. Thirdly, the procedures for workers' compensation are supposed to provide timely and sufficient remedies for injured workers. These procedures are conducted mainly between claimants and the social insurance fund, so as to avoid tension between companies and employees. Fourthly, instead of being impartial and passive judges, the judicial and legal functions of the workers' compensation system should be active, in order to support claimants in successfully establishing compensation claims.

Previous studies show that the therapeutic effects of workers' compensation systems fail to be realized in practice, due to both intrinsic and extrinsic factors. The former are the failures to produce the therapeutic consequences of the rules, legal procedures and regulatory functions. The extrinsic factors are linked to employers, who inherently play an adversarial role against workers in the compensation claim process (Quinlan, Bohle, & Lamm, 2010). If the workers' compensation system fails to protect workers from suppression of claims by companies, the therapeutic effects of a no-fault compensation system will be limited, and the compensation process will be similar to that set out in adversarial tort litigation.

Drawing on claimants' experiences, American, Canadian and Australian scholars find that anti-therapeutic effects originating from the intrinsic defects of workers' compensation systems lead to harmful effects on applicants' finances and health (Lippel, 2003; Roberts-Yates, 2003; Sager & James, 2005; Storey, 2008; Strunin & Boden, 2004). They point out that compensation standards, waiting periods for the

¹ See Maritime Labour Convention, 2006, Article IV

² Secondary gain is a phenomenon that may have a crucial effect on the outcome of treatment and recovery, whereby the patient unconsciously utilizes neurotic illness to obtain gain or advantage from the external environment, such as gratification of dependency needs and the potential attraction of greater concern, pity and attention than normal.

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