

The American Punitive Damages Law System for Ecological and Environmental Damage and its Implications for China

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ABSTRACT

The punitive damages system is a significant feature of American private law. The primary reason for its widespread acceptance in the United States is that it imposes certain limitations on punishing malicious crimes and also promotes the civil public interest litigation system and the jury system. To better leverage the punitive and deterrent effects of the punitive damages system against malicious acts, states across the U.S. have imposed varying degrees of restrictions on application conditions, proof standards, judicial review, compensation amounts, and distribution of damages. In order to transcend the limitations of traditional judicial review, the U.S. Supreme Court has established a clear set of criteria for unconstitutional determinations in punitive damages cases. Although there are considerable differences between American legislation and case law and those in many other aspects, relevant laws and precedents provide valuable references for Chinas development.

KEYWORDS

Punitive Damages; Ecological and Environmental Damage; Compensatory Damages; Tort.

1. THE CURRENT SITUATION OF PUNITIVE COMPENSATION SYSTEM FOR ECOLOGICAL AND ENVIRONMENTAL DAMAGE IN CHINA

The punitive damages system originated in 18th-century Britain and has since been further developed in the United States, having traversed over 200 years. The legislation for punitive damages in our country started relatively late, with the earliest explicit provisions found in the Consumer Rights Protection Law enacted in 1994. Article 1232 of the Civil Code first incorporated punitive damages into the field of environmental torts, filling this gap and applying them to private interest litigation in environmental cases, thus expanding their scope of application. This has significant implications for promoting ecological civilization construction. However, due to the overly broad provisions in the Civil Code, there is ongoing debate regarding the scope and specific standards for the application of punitive damages in our country, which also hinders the smooth implementation of judicial practices. Therefore, further clarification and improvement are still needed for its application in the field of environmental protection.

To address the judicial challenges of applying punitive damages in Chinas environmental protection sector and to facilitate their reasonable application in judicial practice, the "Judicial Interpretation on Environmental Tort" (hereinafter referred to as the "Interpretation") was promulgated and implemented on January 20,2022, to resolve issues in environmental damage compensation in China. The Interpretation further clarifies and improves three aspects: First, it confirms the legality and propriety of the punitive damages system for environmental damage. Article 12 of the Interpretation stipulates: "Where an organ prescribed by the state or an organization prescribed by law acts as a representative of the aggrieved party and requests the court to order the tortfeasor to bear punitive damages, the peoples court may handle the case in accordance with the aforementioned provisions..."

Here, "an organ prescribed by the state or an organization prescribed by law" falls under the category of claimants for environmental damage compensation as defined in Articles 1234 and 1235 of the Civil Code. This indicates that claimants for environmental damage compensation can also refer to this judicial interpretation to request the tortfeasor to bear punitive damages. This suggests that the Interpretation has acknowledged the possibility of introducing punitive damages in the field of environmental damage compensation. However, from its wording, it is evident that courts still adopt a cautious approach in this issue in judicial practice. A cautious attitude is adopted. The author believes that when handling similar cases, appropriate application of punitive damages should be made based on the specifics of each case. Secondly, it further clarifies the elements constituting punitive damages. The Interpretation stipulates three conditions for applying punitive damages: "illegal act," "intentional misconduct," and "causal relationship." It also limits the scope of "intention" in the subjective element to ten scenarios. Thirdly, after determining the method for calculating punitive damages and considering various factors, the loss caused by permanent damage to ecological functions from the time of environmental harm until restoration is completed, as well as the permanent damage to ecological functions, is assessed. Based on this, the amount of punitive damages is determined according to multiple factors such as the degree of damage and the severity of its consequences.^[1]

The current ecological and environmental damage compensation system in our country has been widely recognized in practice. Currently, courts across the country are gradually introducing punitive damages in cases of ecological and environmental damage compensation. In Jiangxi, "the first civil public interest lawsuit for environmental pollution under the Civil Code" was initiated by the procuratorate according to law, and the court ruled that the defendant should pay corresponding ecological damage compensation. In Hunan, the Hunan Procuratorate filed a criminal civil public interest lawsuit against the defendant for illegal occupation of arable land. After the trial, the defendant was ordered to pay punitive damages.

Despite the affirmation from both our country's legislation and judiciary, there is still significant controversy regarding whether punitive damages can be included in cases involving ecological and environmental damage compensation. Our country has preliminarily established a system for punitive damages, but in specific judicial applications, terms such as "legal provisions," "intention," and "serious consequences" remain ambiguous in their meanings and extensions, requiring clarification. After clarifying their scope of application, further clarification is needed on the determination of punitive damages amounts. This article analyzes the principles of punitive damages clearly stipulated in the Civil Code and the content of judicial interpretations, combining the advantages of relevant systems in the United States, to explore the specific implementation of the punitive damages system in our country.

2. LEGISLATIVE EXAMINATION OF THE PUNITIVE COMPENSATION SYSTEM FOR ECOLOGICAL AND ENVIRONMENTAL DAMAGE ABROAD -- TAKING THE "EXXON CASE" IN THE UNITED STATES AS AN EXAMPLE

2.1. Brief Description of the Case

In 1989, a captain fell into a deep sleep after excessive drinking and failed to steer the ship in time, causing the Exxon Valdez to collide with a reef. This resulted in an oil spill of eleven million gallons, turning large areas of the waters off the coast of Britain and near Prince William Sound in the United States black. Following the oil spill, ExxonMobil and Exxon Shipping faced multiple charges from both the government and individuals. The settlement between the U.S. government and Alaska (Exxon Corp.) resulted in Exxon (Exxon) paying \$900 million in civil damages and nearly \$2.1 billion in cleanup costs. Additionally, residents of Alaska, fishermen, and landowners affected by pollution

filed claims against Exxon, seeking compensation for economic losses caused by the oil spill. The district court ruled that employers are liable for torts committed when employing employees with "management capacity." "Management capacity" means that employees are authorized to operate a specific business and are responsible for it. Ultimately, the jury awarded Exxon Petroleum \$5 billion in punitive damages. In 2001, Exxon filed a motion for \$5 billion in punitive damages in the Ninth Circuit Court. The Ninth Circuit Court, based on the principle of due process, granted the punitive damages. The award was raised to \$2.5 billion. The Supreme Court immediately ordered the transfer of the indictment and further reduced the punitive damages to \$50 million.

2.2. The Determination of Punitive Liability in the Exxon Case

In the "Exxon Case," the U.S. Supreme Court used the *BMW v. Gore* case as an example to mitigate Exxon's liability. In 1990, a doctor named Gore in Birmingham had his new BMW "repaired." Before selling it, he discovered that the car had undergone some localized repainting. Gore later learned that the car needed surface repairs because it was shipped from a German manufacturer through an American agent, which had been damaged by acid rain. However, the BMW dealership did not inform Gore that 14 units had already been sold in Alabama and around 1,000 in the United States. Gore sued BMW, claiming \$4,000 for actual damages and \$4 million in punitive damages. Punitive damages are economic compensation intended to punish malicious or intentional wrongdoing for its material loss or mental harm. The Alabama jury based its decision on Gore's punitive damages claim on two grounds: first, that Gore's concealment of the car's surface coating constituted fraud; second, that BMW had sold over a thousand similar cars in the United States, all new. Alabama Supreme Court The court ultimately ruled that BMW must pay two million dollars in damages. At the time, a BMW was priced around twenty thousand dollars, but BMW had to pay two million dollars just for a small patch of roof paint. Through severe penalties, U.S. car sales companies no longer conceal defects from customers regarding new and used vehicles, thereby better protecting consumers' right to know. The BMW case established more detailed liability standards by the U.S. Supreme Court, which are based on the culpability of actions, involving multiple aspects such as the degree of malice, the object of harm, and the nature of damage, allowing judges to conduct a comprehensive and thorough analysis of the defendant's fault.

The profound significance of this case lies in the three criteria for evaluating the legality of punitive damages proposed by the U.S. Supreme Court: First, the culpability (blamelessness) of the defendant's wrongful act, which is generally considered to involve a comprehensive assessment of the nature of the act, the perpetrator's motives and subjective state, as well as the consequences. Second, the difference between the actual or potential loss suffered by the plaintiff and the punitive damages (proportionality). Third, in similar cases, the differences between the punitive damages determined by the jury and those recognized or enforced civil penalties (comparison), to prevent excessive punishment of the defendant. This means that when determining the amount of punitive damages, existing criminal and civil penalties should be taken into account and appropriately deducted to achieve a balance among various values. The establishment of these three criteria aims to ensure that the legal system allows potential offenders to have a reasonable understanding of the economic consequences of significant misconduct, enabling them to make forward-looking judgments about their actions to avoid major adverse outcomes. The Supreme Court hopes that these three criteria will make the trial of punitive damages judgments by lower courts more objective and consistent. Although the law does not specify precise evaluation criteria, all three standards serve as guidelines.

The Exxon oil company case provides a relatively systematic and in-depth analysis of these three scenarios. First, the judge determined that the principle of proportionality was necessary to limit punitive damages and specified a certain proportionality ratio; if this ratio is imbalanced, the ruling would be unconstitutional. The principle of proportionality relies on relatively clear criteria for judgment; without such criteria, the application of punitive damages still depends on the arbitrariness

of the judge. The U.S. Supreme Court established the "proportionality rule" in its decision, stating that the scope of punitive damages cannot exceed the range of compensatory damages, and used this as a basis to determine whether it is unconstitutional. Second, in the "Exxon" case, the judge cited the BMW-Gore case to reduce the damages awarded to Exxon. In the "Gore" case, the U.S. Supreme Court proposed a more detailed standard for determining liability, based on the culpability of the act, which involves multiple aspects such as the degree of malice, the object of harm, and the nature of the damage, allowing judges to conduct a comprehensive and thorough analysis of the defendants fault. On this basis, reasonably defining the scope of compensation under Section 1232 of the Civil Code would undoubtedly make its legislation more precise. Ultimately, the judge in this case also approved Compare the written law punishment rules to achieve value equilibrium.

The U.S. Supreme Court ruled that Exxon should be held responsible. This is an employee tort case where a "capable" employee was harmed while performing their duties. In cases of employer liability, the employer has a duty to exercise due diligence in selecting and supervising employees. Therefore, the employer should bear punitive damages for the employee. Thus, the court ordered Exxon to pay punitive damages for the captains actions.

Secondly, in this case, relevant provisions can be drawn upon. The Clean Water Act does not explicitly provide that punitive damages are only applicable in cases of ocean pollution. Therefore, the Supreme Court held that the customary law provisions on the amount of punitive damages are also applicable in this case.

2.3. Determination of the Amount of Punitive Damages in the Exxon Case

Before the Exxon case, there was no upper limit on punitive damages in the United States. For example, in the BMW case, the jury ruled that U.S. BMW must compensate Gore \$4,000 as compensation and seek \$4 million in punitive damages from BMW based on the number of other customers, which is one to a thousand. In the BMW case, the defendant had to pay over a thousand times the amount of punitive damages. Can such a high proportion of compensation meet the principle of foreseeability?

The U.S. Supreme Court argued in the "Exxon case" that punitive damages should not exceed the scope of compensatory damages. Based on an examination of its development, the Supreme Court stated that punitive damages serve a dual purpose: compensating victims for their harm and deterring future acts of the same kind by the wrongdoer. If the amount of punitive damages exceeds the scope of compensatory damages, it becomes unpredictable and can harm the wrongdoer. Therefore, the amount of punitive damages must not exceed the limit of compensatory damages. Additionally, after reviewing past case data, the court determined that a 1:1 ratio is appropriate in such cases. According to this ratio, the final punitive damages would be reduced to \$50 million.

Professor Theodore Eisenberg from Cornell Law School and his colleagues used random sampling to select 46 out of the 75 most densely populated cities in the United States for statistical analysis, representing 33% of the U.S. population. The empirical results show that the standard deviation of the "compensation-punishment" binary ratio in the sample data is 12.66, indicating significant variability and uncertainty. The final ruling in the "Exxon" case reflects a shift in the U.S. legal community from an attitude of accepting punitive damages to a focus on limiting them. On this basis, reasonable definitions have been established to achieve effective utilization of the ecological environment, balancing environmental protection with the vitality of the market economy, and drawing on U.S. experience to prevent potential issues before they arise.

3. IMPROVEMENT OF SPECIFIC APPLICABLE RULES OF PUNITIVE DAMAGES IN THE FIELD OF ENVIRONMENTAL TORTS IN CHINA

3.1. Factors to Be Considered in the Determination of Liability

First, the consideration of punitive damages for ecological and environmental damage is closely related to the method of calculating compensation amounts, specific calculation bases, and multiples. It serves as a crucial foundation for determining the amount and is also an important basis for judges in judicial practice when setting compensation amounts. On this basis, this article proposes a new standard for ecological and environmental damage compensation. The U.S. Supreme Court established a relatively comprehensive set of criteria for assessing punitive damages in the BMW case, which Exxon Company and Exxon Petroleum Company have adopted, mainly including five aspects. The first issue is whether the nature of the loss is material or property-related; second, whether the perpetrators subjective intent was to disregard others lives and health; third, whether the tortious act has been repeated; fourth, the status of the victim; fifth, whether there were aggravating circumstances such as malice or fraud.

Article 10 of the Interpretation stipulates that the amount of punitive damages shall be determined according to the degree of malice of the tortfeasor, the severity of the damage, the profits caused by the tortfeasors environmental pollution and ecological damage, as well as the measures taken by the tortfeasor to restore the damage and its impact.

3.1.1. Degree of Subjective Fault

Exxon knew the captain was a drunk, yet it let him drive the tanker into such dangerous waters, which is why Exxon made that decision and why the jury agreed to the plaintiffs claim for punitive damages.

From Article 1232 of the Civil Code, it seems that the legislature only recognizes punitive damages for intentional acts; however, I believe that in cases where special responsibility is assumed by an actor, "indirect intent" can be included within the concept of "intention." In ordinary environmental tort cases, if the tortfeasor intentionally pollutes the environment causing bodily harm to others, but does not meet the criteria for minor injury under criminal law, they do not need to bear criminal responsibility and only have to pay a small amount of medical expenses or no compensation at all. This low cost of violation leads to widespread illegal behavior. In environmental tort cases, since polluting entities bear a higher duty of care regarding environmental pollution, they should be considered as individuals with special duties of care. For such subjects, if there is gross negligence and they adopt an indifferent attitude towards their legal obligations, this is essentially no different from intentional misconduct.^[2]

3.1.2. The Benefits Gained by the Infringer

In some cases, the potential perpetrator has a high degree of subjective malice, but the consequences are minimal, or due to the covert nature of environmental harm, its effects have not yet become apparent. In such situations, considering the interests of the perpetrator serves more as a punitive measure and deterrent rather than a compensatory one. In other environmental tort cases, the actor not only fails to benefit but may also suffer equivalent damage. For instance, in the Exxon oil spill incident, Exxon lost its ships and oil and spent billions of dollars on cleanup efforts. This shows that profit acquisition is not a mandatory condition for the defendant; it only becomes a violation if the defendant exhibits excessive subjective culpability or has other reasons.

3.1.3. Repetitiveness of Torts

Repetitive infringement is far more serious than occasional infringement, a fact fully reflected in the law of recidivism. The repeated pollution and destruction of the environment demonstrate the defendants disregard for ecological stability, environmental safety, and the health of others, which cannot be denied. The occurrence of repetitive infringement also indicates that compensatory

damages cannot effectively deter infringers; at such times, their deterrent effect should be fully utilized. For example, if a company fails to install pollution control facilities and continues to discharge pollutants despite multiple fines, it should be recognized that this element has been established.^[3]

3.2. Calculation of Punitive Damages

The U.S. Supreme Court analyzed the application of punitive damages in Exxon Corporation's case from three aspects: the culpability of the act, the proportion of liability, and relevant legal references, ultimately determining an equivalent form as compensatory damages. On this basis, the author advocates using the principle of proportionality to impose necessary limitations on punitive damages and stipulates "proportionality," which means setting a specific ratio of liability; when the proportion is imbalanced, the ruling would be unconstitutional. The U.S. Supreme Court established the "proportionality rule" in its judgment, holding that the scope of punitive damages cannot exceed the range of compensatory damages and using this as a basis to determine the degree of constitutional violation for punitive damages.

3.2.1. Base Determination

In determining the base for punitive damages in ecological and environmental damage compensation, according to Article 9 of the Interpretation, courts shall determine the amount of punitive damages based on the compensation for personal injury and property loss caused by environmental pollution and ecological destruction. According to Article 1235 of the Civil Code, the plaintiff in an environmental damage compensation lawsuit mainly requests compensation for losses and expenses from the infringer in five aspects: first, the loss due to the loss of service functions during the period from when the ecological environment is damaged until it is restored; second, the loss caused by permanent damage to ecological functions; third, the costs of investigation and appraisal of ecological damage; fourth, the costs of removing pollution and restoring the ecological environment; fifth, the reasonable expenses incurred to prevent the occurrence and expansion of damage. This article holds that pollution cleanup, ecological restoration, investigation, and appraisal of ecological damage compensation should all fall under the category of restoring the original condition. The base for calculating punitive damages for ecological and environmental damage is limited to the losses suffered by the ecological environment, specifically referring to the loss of service functions during the period of ecological restoration and the loss caused by permanent damage to ecological functions.

Ecological damage compensation is an extremely complex issue that requires enhanced cooperation to stimulate interaction among parties, responsible individuals, and all stakeholders. First, it is difficult to quantitatively evaluate the value of natural resources and their loss. This paradox manifests in two ways: to some extent, natural resources have immeasurable value, yet their valuation requires definition. Second, due to technological limitations, different evaluation methods and techniques yield varying conclusions. Third, the positions of victims and perpetrators are adversarial, which introduces uncertainty into the evaluation results. Fourth, the assessment process involves multiple professional fields, requiring participation from government officials, legal experts, and technical specialists. However, differences in professional backgrounds lead to significant variations in their thinking and actions. To address these issues, the United States has adopted a "cooperative assessment" approach, where trustees and responsible parties collaborate over one or more periods, with such collaboration being recognized and encouraged by law amendments. The Oil Pollution Act requires trustees to invite relevant personnel when evaluating losses to natural resources; the Comprehensive Environmental Response, Compensation, and Liability Act also expresses support for collaborative assessments based on the sequential nature of events.

3.2.2. Multiplication is Determined

In the mid-1980s, the punitive damages system passed in the United States led to the bankruptcy of many small and medium-sized enterprises. At the same time, large companies transferred these losses

to consumers, prompting U.S. legislation to set limits on punitive damages. On this basis, setting limits on the amount of punitive damages or combining them with compensatory damages can both curb the momentum of economic development and constrain judicial discretion, reducing uncertainty. After the "Exxon case," the United States established that punitive damages must not exceed compensatory damages and offered its own perspective on this matter. That is, the ratio of punitive damages to compensatory damages should be 1:1. However, whether this ratio can be applied in our country still needs discussion. In some cases, the perpetrators subjective malice is high, but the resulting harm is not severe, or due to time factors, environmental damage has not yet become apparent. In such situations, such a ratio cannot fully leverage the most significant punitive effect of punitive damages.

Regarding the calculation multiples for ecological and environmental damage compensation, both academic views and current judicial practices are feasible. On this issue, there are differing opinions in academia. Yang Lixin believes that when the perpetrator has acted with intent, they should be compensated at twice the amount plus the corresponding compensation. Zhong Ruidong and Yang Jing argue that if the ecological environment is violated, compensation can range from 1 to 3 times the actual damage. Some scholars suggest that the determination of multiples should be based on specific circumstances, with different multiples applied to various types of pollution, such as air pollution and land pollution, which should be determined according to their respective characteristics. As for how to correctly determine the range of calculation multiples, this can also be achieved through extensive research on actual cases. For example, the "first civil public interest lawsuit case under the Civil Code in Jiangxi," the "first labor substitution public interest lawsuit case for punitive damages due to ecological and environmental damage in Qingdao, Shandong," the first case in Zhejiang applying the provisions for punitive damages for environmental pollution, and the first criminal civil public interest lawsuit case in Hunan after the implementation of the Interpretation involving illegal occupation of agricultural land. ^[4]Through summarizing the opinions of scholars and judicial practices, it has been concluded that the calculation multiples for ecological and environmental damage compensation are 0.1 to 3 times. In view of the provisions of Article 10 of the Interpretation and the fact that most ecological and environmental damage compensation multiples have been less than two since the implementation of the Interpretation, "multiples" should not be higher than twice the above calculation basis, otherwise it will adversely affect the normal operation of developers. ^[5]

4. SUMMARY

The promulgation of the Civil Code and the judicial interpretation on ecological and environmental torts mark that China has for the first time made punitive damages an important institutional arrangement, filling the legislative gap in this field. In this regard, I believe that it is both a progress and a new challenge in judicial practice.

By examining the punitive damages system in the United States, we can gain a deeper understanding and grasp of its internal mechanisms from a comparative law perspective, providing insights and ideas for the construction and application of our countrys punitive damages system. Although the formation and development of Chinese civil law also exhibit characteristics of "pragmatism," under the guidance of the ideas and methods of codification, Chinese civil law is more grounded in a legal mindset that combines "idealism" with "functionalism." The socialist ideology and system centered on public ownership, along with American liberal thought, cannot develop in our country. Moreover, compared to U.S. law, Chinas legislation has established a broader administrative penalty (fine) system beyond criminal penalties. It can be said that whether in legislative philosophy, institutional arrangements, application methods, or litigation systems, both private and public law in China differ significantly from those in the United States. Therefore, even if we do not share the cautious attitude towards punitive damages as seen in traditional civil law codified countries in Europe, it is still necessary to

approach punitive damages with caution. The interpretative stance proposed in the "Interpretation" that "the application of punitive damages should be strictly prudent" is undoubtedly commendable.^[6]

In today's world where the number of punitive damages cases is on the rise, to protect the legitimate rights and interests of victims, a discussion has been held on whether a different standard of proof should be applied in punitive damages cases compared to ordinary civil litigation; to prevent victims from suffering substantial financial losses beyond compensatory damages, it is worth considering whether there should be moderate restrictions on the allocation of specific amounts of punitive damages. In summary, in terms of composition and application, punitive damages differ significantly from traditional damages. The punitive damages system in the United States holds great significance for our country.

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