

# High People's Court of Jiangsu Province

## Civil Judgement

(2016) Su Min Zhong No. 1357

Appellant (defendant in the original trial): Xuzhou Hongshun Paper Co., Ltd. Address: Zhaozhuang Village, Liuxin Town, Tongshan District, Xuzhou City, Jiangsu Province. Legal representative: Shang Aiping, Manager of Xuzhou Hongshun Paper Co., Ltd. Agent ad litem: Zhou Xiaotian, staff of Xuzhou Hongshun Paper Co., Ltd. Agent ad litem: Meng Qiu, lawyer of Jiangsu Huaihai Zhengda Law Firm.

Appellee (plaintiff in the original trial): People's Procuratorate of Xuzhou City, Jiangsu Province. Address: No. 128, South Xi'an Road, Xuzhou City. Legal representative: Han Xiaoyun, Chief Procurator of the People's Procuratorate of Xuzhou City, Jiangsu Province.

Unsatisfied with the Civil Judgement (2015) Xu Huan Gong Min Chu Zi No. 6 made by the Intermediate People's Court of Xuzhou City, Jiangsu Province on the environmental pollution damages dispute with the appellee People's Procuratorate of Xuzhou City, Jiangsu Province, the appellant Xuzhou Hongshun Paper Co., Ltd. (hereinafter referred to as Hongshun Company) appealed to this court. A collegial panel was formed under the law after the case was filed on November 7, 2016. Since the parties involved did not submit new facts, evidence or reasons, the collegial panel held that there was no need for the court to hear the case. The case was not publicly heard in accordance with Article 169 (1) of the *Civil Procedure Law of the People's Republic of China*. Now the case has been closed.

The appellant Hongshun Company requested that the first-instance judgement be cancelled and the claim by the public prosecutor be dismissed or the payment for ecological restoration be reduced to CYN 450,000.

Facts and reasons:

(1) The claim of the public prosecutor did not meet the conditions for acceptance and should be dismissed; the court of the first instance rendered a judgement irrelevant to the public prosecutor's claim and the trial procedure should be deemed illegal. The amount of tort damages claimed by the public prosecutor to Hongshun Company was three to five times the baseline of CYN 269,100, which was a round number. The claim was unclear and should be dismissed according to the law. The original judgement's decision on the payment for ecological restoration, which was not claimed by the public prosecutor in the original trial, was irrelevant to the claim. Therefore, the trial procedure should be deemed illegal.

(2) Hongshun Company should not bear the cost of ecological restoration. Despite the fact that Hongshun Company illegally discharged the wastewater, the contents of the

discharged wastes were mainly organics, lignin and cellulose and there were very few toxic and hazardous substances such as heavy metals. Since the water body could purify itself, the water quality of the Subeidi River was barely affected and the discharge of wastewater caused no ecological damages.

(3) The coefficient of 2.035 times used to decide the damages of environmental damages in the original judgement was too high. Hongshun Company reused waste paper to produce the corrugated paper. The wastewater generated during the manufacturing process was mainly from pulping, filtration, flotation and papermaking, different from that from de-inking or bleaching which had much higher pollutant load. Therefore, the ecological restoration should be relatively easy in this case. Therefore, the court should have taken the coefficient 1.5 times within the range of 1.5 times-3 times for ecological damages compensation stipulated in the Virtual Treatment Cost Method to decide the environmental damages.

(4) The court of first instance took 3 to 5 times the base of CYN 264,550 to calculate the cost for ecological restoration fee and loss of ecological service, which lacked legal basis. The identification of losses of ecological service lacked factual basis. With the ability of self-purification as a result of the fluidity of water, the water quality of Subeidi River has already been recovered, thus no loss of the ecological function has incurred.

(5) In the original judgement, no deduction of the payment for restoration and service function losses was considered, though Hongshun Company had paid a fine of CYN 150,000 before. The Environmental Protection Bureau of Tongshan District had imposed a fine on Hongshun Company under the *Water Pollution Prevention and Control Act*. The legislative purpose of the Act was to prevent and control water pollution and to protect and improve the environment. The fine paid by the Company should be used to improve the environment, which was consistent with the purpose the claims of compensation in this case. The amount of the fine already paid by the Company should be deducted from the compensation fee.

The appellee, Xuzhou Municipal People's Procuratorate, did not submit a written reply after receiving the petition for appeal.

Xuzhou Municipal People's Procuratorate instituted an action to the court of first instance to request that Hongshun Company restore the environment of the Subeidi River to the original condition and compensate for the interim losses of ecological service function during the restoration; if Hongshun Company failed to restore the environment to the original condition, the procuratorate would request an order that the Company pay directly three to five times the base of CYN 269,100 in compensation under the Advisory Opinion on the Environmental Pollution Damage. Besides, the consulting fee of the expert advisor in this case, which was CYN 3,000 in total, should be borne by the Company.

The action was instituted based on the facts and reasons as follows: (1) Hongshun Company released untreated wastewater into the river through a hidden outfall

respectively on April 27, 2013, April 5-6, 2014, and February 24-25, 2015. It was 2,600 tons of wastewater that was released without permission from April 5 to 6, 2014 and February 24 to 25, 2015. Hongshun Company polluted the environment and should therefore pay for the ecological restoration and the loss of ecological service functions. (2) The Company should bear the tort liability by paying for the restoration and ecological service function losses in the amount determined by the Virtual Treatment Cost Method. (3) The Company laid a hidden outfall to discharge untreated wastewater from industrial activities for three consecutive years with the volume increasing each year. It was reasonable to assume due to the dysfunction of the pollution prevention and control equipment from 2013 to 2015, volume of wastewater discharged should be far over 2,600 tons. A cost of CYN 269,100 for restoring environment damaged by 2,600 tons of wastewater should be used as a base and should be multiplied by 3 to 5 to determine the ecological and environmental damages.

Hongshun Company argued in the first instance that as a civil welfare enterprise dedicated to the recycling of the waste materials, Hongshun Company was willing to pay for the ecological damages it had caused. However, it held that: (1) the sample taken from the Subeidi River showed that the pollutants discharged did not exceed the limit too much, hence very limited influence on irrigation. With the capacity of the self-purification, the water quality of Subeidi River had reached the V-class quality standard, so the Company should not bear the responsibility for restoring it to original condition. (2) Hongshun Company agreed to determine the restoration fee in accordance with the "Virtual Treatment Cost Method" and also agreed that restoration expenses should be determined between 1.5 to 3 times the virtual treatment cost. Since the contents of the wastewater discharged by Hongshun Company were mainly organic matters and there were very few toxic and hazardous substances such as heavy metals. The ecological damage it caused was limited and restoration was relatively easy. Therefore, the coefficient used to determine the ecological restoration cost should be 1.5. In addition, there was no analysis on the quality of the 600 tons of wastewater discharged by the Company in 2014. Considering that the customer's price was lower then, the calculation coefficient should be lower than that in 2015. (3) The public prosecutor's request that Hongshun Company be liable for a cost of ecological restoration three to five times the base CYN 269,100 should be deemed groundless; the service function loss claimed by the public prosecutor should not be supported due to the lack of concrete evidence. (4) Hongshun Company had already paid a total of CYN 150,000 in two administrative penalties, which should be used for environmental treatment and be deducted from the amount of damages for ecological restoration.

The court of first instance held that:

On August 20, 2008, Xuzhou Municipal Environmental Protection Bureau issued the *Reply on the Environmental Impact Report for the High-strength Corrugated Paper*

*Technology Improvement with an Annual Production of 60,000 Tons Project of Hongshun Paper Mill in Tongshan County* (X. H. X. [2008] No. 75) (hereinafter referred to as the Technology Improvement Project Report). In December 2014, Jiangsu Provincial Environmental Protection Department issued a pollutant discharge permit to Hongshun Company, requiring the Company to implement the discharge standard for “enterprises of the joint production of pulp and paper” as stipulated in the Table 2 of the *Discharge Standard of Water Pollutants in Pulp and Paper Industry* (GB3544-2008). The limit of discharged wastewater was 195,000 tons per year, and the wastewater can only be reused for recycling or irrigation and cannot be discharged into surface water. From 2013 to 2015, Hongshun Company's technical improvement project of 60,000-ton high-strength corrugated paper was running as planned.

On April 27, 2013, Liuxin Environmental Inspection Detachment of the Environmental Protection Bureau of Tongshan District, Xuzhou City, found that in the project of annual production of 60,000-ton high-strength corrugated paper, Hongshun Company laid a hidden outfall to release untreated wastewater and its sewage treatment equipment was dysfunctional.

From April 5 to 6, 2014, Hongshun Company laid a hidden outfall to release 600 tons of untreated wastewater into the Subeidi River. On April 18, 2014, Environmental Protection Bureau of Tongshan District of Xuzhou City issued the *Tong Huan Ze Gai Zi [2014] No. 21 Decision on Correcting Environmental Violations* to order the Company to dismantle the hidden outfall immediately. On May 12, 2014, Environmental Protection Bureau of Tongshan District of Xuzhou City issued the *Tong Huan Fa Zi [2014] No. 25 Administrative Penalty Decision* and imposed a fine of CYN 50,000 on Hongshun Company. On August 14, 2014, Hongshun Company paid the fine of CYN 50,000.

From February 24 to 25, 2015, Hongshun Company laid a temporary iron outfall of 20 centimeters in diameter to discharge the untreated wastewater into the Subeidi River from the south of the Company's sewage treatment plant. There was a total of 2,000 tons of wastewater released. On February 25, 2015, the Environmental Monitoring Station of Tongshan District of Xuzhou City took samples from the wastewater and found that “the chemical oxygen demand (COD) was 1180mg/L, ammonia nitrogen 28.2mg/L, and total phosphorus 1.60mg/L”, which were 12.1 times, 2.5 times, and 1 time respectively higher than the limits set out in the *Discharge Standard of Water Pollutants in Pulp and Paper Industry* (GB3544-2008). On March 12, 2015, the Environmental Protection Bureau of Tongshan District of Xuzhou City made the *Tong Huan Fa Zi [2015] No. 6 Administrative Penalty Decision*, imposing a fine of CYN 100,000 on Hongshun Company. On April 27, 2015, Hongshun Company paid a fine of 100,000 yuan.

The Subeidi River enters the Bulao Section of the Beijing-Hangzhou Canal via Shundi River. The Canal is one of the main rivers for irrigation and drainage. The

public prosecutor paid an expert consultation fee of CYN 3,000 for evidence collection.

The court of first instance held that:

(1) Hongshun Company should bear the tort liability for restoration. Hongshun Company violated the *Water Pollution Prevention and Control Law of the People's Republic of China* and other laws and regulations by illegally discharging wastewater in 2013, 2014 and 2015. The untreated wastewater in 2014 and 2015 was released into the Subeidi River, causing environmental pollution. Hongshun Company should bear the liabilities according to the law. Though the effluent discharged by Hongshun Company was gradually diluted, it could not be considered that it only caused very limited or no damages to the environment. As the river flows, the pollution spreads downstream. The improvement of the water quality at the discharging point could not serve as an indicator of the restoration of the regional water ecological environment and the ecological environment was still in dire need of restoration. Even though the water quality of Subeidi River had reached the standard, alternative schemes were still needed to restore the regional ecological environment, a liability Hongshun Company should assume. Given that Hongshun Company explicitly stated it was beyond its capability to restore the environment or even propose a restoration scheme, according to Article 20 of the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations*, Hongshun Company should bear the ecological restoration cost as an alternative to restoring the ecology and environment to the original condition.

(2) The technical experts from both the public prosecutor and Hongshun Company agreed that the ecological restoration cost of this case could be determined as per the Virtual Treatment Cost Method in accordance with the *Opinions on the Environmental Pollution Damage Assessment and Evaluation* (H. F. [2011] No. 60) and the *Recommended Methods for Environmental Damage Identification and Evaluation* (Second Edition) (hereinafter referred to as the "Recommended Methods") of the Ministry of Environmental Protection; both parties agreed on the price of CYN 50 per ton for the treatment of wastewater in 2014 and 2015. Having had taken into account factors such as the content of pollutants and severity of ecological damage, the court decided to take the mean value of the coefficient suggested by the technical experts of both parties, which was 2.035 times. Since the production techniques and the gravity of environmental pollution caused by Hongshun Company in 2014 were not vastly different from those in 2015, plus, Hongshun Company failed to prove that there was a substantial difference between the two discharges, therefore, the approach applied to determine the value of damages of ecological environment caused by the discharge of 600 tons of wastewater in 2014 should be the same with that in 2015. In 2014 and 2015, Hongshun Company illegally discharged 2,600 tons of wastewater, so the total ecological restoration cost should be  $2600 \times 50 \times 2.035 = 264550$  (yuan) according to Virtual Treatment Cost Method.

(3) Hongshun Company's environmental impact report of the project and the environmental protection acceptance application forms upon the completion of the construction indicated that each day the production equipment in operation could generate up to 960 tons of wastewater, leading to the annual discharge volume as high as 195,000 tons. After the court made an explicit explanation, Hongshun Company failed to provide evidence regarding recent years' output, annual volume of the discharged wastewater and installment and operation of pollutant prevention and control equipment to prove that its illegal wastewater discharge did not exceed 2,600 tons. According to Article 108 the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations*, it is highly probable that the actual volume of wastewater discharged by Hongshun Company was way above the 2,600 tons. The operating cost of pollution prevention and treatment facilities, which was CYN 50 per ton of wastewater, meant that the Company could harvest hefty ill-gotten gains from illegal discharges. Hongshun Company was found guilty of illegally discharging pollutants through a hidden outfall three times for three consecutive years. It continued and even ramped up wastewater discharge after receiving inspection advice from the environmental protection department and being fined, the Company's subjective fault was evident. Since the environmental tort and its implications are complicated, persistent, hard to identify and migrating to wider areas, behavior will have damaging and expansive impact, making it hard to fix evidence, it was not enough to determine Hongshun Company's liability for the damages only based on the fact that it discharged 2,600 tons of wastewater. The facts of the case and related impact should be taken into consideration as appropriate to determine the cost of ecological environment restoration.

According to Article 21 of the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations*, where the plaintiff requests the defendant to pay expenses for the loss of service functions from the period when the ecological environment is damaged to the restoration thereof, the people's court may support such a request in accordance with law. The technical experts whose appearance in court was applied by the public prosecutor suggested that the inflow of wastewater with high concentration of pollutants into the river would cause the water quality to drop below the irrigation standard and further impact the water quality of the Beijing-Hangzhou Grand Canal. In view of the complexity of the polluted environment and the diversity of its ecological functions in this case, the objective existence of the loss of service function should be factored in when determining the liability for damages even though it was hard to calculate the loss accurately.

Based on the found pollution facts, the severity of violation of the law and subjective faults, the operating costs of pollution prevention and control equipment, the operation of Hongshun Company, the illicit gain from discharging wastewater without

permit, the range the environment polluted and the gravity, the difficulty of restoring the ecological environment, and the loss of ecological service function, etc., the court determined, as appropriate, that the ecological environment restoration costs and the interim loss of service function during restoration totaling CYN 1,058,200 together with the experts cost CYN 3,000 paid by the public prosecutor, should be borne by Hongshun Company.

(4) The fact that Hongshun Company was punished by the administrative organ due to violation of administrative law should not affect the assumption of the civil liabilities thereof. Hongshun Company's proposal of deducting the fines already paid from the damages lacked legal basis. However, in determining Hongshun Company's liability for environmental damage caused by pollution incidents, the fact that it has paid an administrative fine of CYN 150,000 should be taken into account as appropriate.

In accordance with Articles 15 (5), (6) and 65 of the *Tort Liability Law of the People's Republic of China*, Articles 13, 15, 20, 21, 22 and 23 of the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations*, Articles 2, 3 and 4 of the *Measures for the Implementation of the Pilot Program of Trial by People's Courts of Public Interest Litigation Cases Instituted by People's Procuratorates*, and Article 108 of the *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*, the court of first instance rendered a judgement that: 1. within 30 days after the decision takes effect, Hongshun Company should pay a total of CYN 1,058,200 for the restoration of ecological environment and the interim loss of service function during the restoration. The payment should go to the special account of Xuzhou Public Welfare Fund for Environmental Protection; 2. within 10 days after the decision takes effect, Hongshun Company should pay the public persecutor CYN 3,000, a reasonable expense in the case. The case acceptance fee of CYN 14,324 should be borne by Hongshun Company.

This court holds that the appeal of Hongshun Company shall be rejected on grounds that:

(1) The claim of the Xuzhou Municipal People's Procuratorate is clear, and the original judgement is made with regard to the public prosecutor's claim. As stipulated in Article 23 of the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations*: "Where it is hard to determine the expenses for restoring the ecological environment or the identification expenses for determining the specific amount is evidently too high, the people's court may reasonably determine the aforesaid expenses in light of the extent and degree of environmental pollution and ecological destruction, the scarcity of the ecological environment, the difficulty to restore the ecological environment, the operating cost of pollution prevention and

control equipment, the benefits obtained by the defendant out of the tortious act, the extent of fault, and other factors, and may refer to the opinions of the department assuming environmental protection supervision and administration functions, and expert opinions, among others." Usually it is hard to find the discharge of wastewater and it takes time to show the consequences. But according to the article above, the judge shall make discretionary decisions about the cost of ecological environment restoration. In exercising discretion, the judge shall determine a number within appropriate range after weighing both subjective and objective factors in the case. The public prosecutor requested that Hongshun Company should pay three to five times the base of CYN 269,100 in compensation. The starting and ending points are clear and specific and the request by nature is to ask for discretionary decisions with regard to the claim filed by the procuratorate. If Hongshun Company holds that the request shall be dismissed, it is allowed to produce evidence to suggest otherwise during the trial. The claim made by Xuzhou Municipal People's Procuratorate is in accordance with Article 119(3) of the *Civil Procedure Law of the People's Republic of China*.

Xuzhou Municipal People's Procuratorate filed an EPIL to request Hongshun Company to restore the environment of Subeidi River it polluted back to the original condition and compensate for the interim loss of ecological service functions during the trial. Since Hongshun Company clearly stated in the trial of the first instance that it was unable to restore the environment nor could it work out a restoration scheme, the court of first instance directly ruled in accordance with Article 20 of the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations* that Hongshun Company should assume the expenses for restoring the ecological environment, an alternative to performing the obligation of environmental restoration. The judgement was made regarding the claims filed by Xuzhou Municipal People's Procuratorate.

(2) The fact that quality of environment at the discharge point has met the standard cannot serve as an argument against bearing the cost of ecological environment restoration. Because the wastewater related to Hongshun Company's production activities, once discharged in large volume, would have hazardous impacts on the environment, the Jiangsu Provincial Environmental Protection Department explicitly prohibited Hongshun Company from discharging production wastewater into the surface water when issuing permit after environment impact assessment. However, Hongshun Company still laid a hidden outfall to release the wastewater in which the chemical oxygen demand (COD), ammonia nitrogen, and total phosphorus were 12.1 times, 2.5 times, and 1 time respectively higher than limits. It was found guilty of discharging 2,600 tons of wastewater in 2014 and 2015 alone. The above behavior of Hongshun Company certainly has caused pollution to Subeidi River.

Since river flows, the quality of water at the pollution discharge points may improve as a result of pollution migration. But that also means the pollution was bound to

reach the downstream area and spread farther. The pollutants still exist in the ecological system which is still in need of restoration. Even the ecosystem can purify itself and the total amount of pollutants may decrease or even disappear altogether as time elapses, the overall quality of the environment has dropped during self-purification, hence undermining the carrying capacity of the ecological environment. During self-purification, the declining quality of water for irrigation will take a toll on agricultural production, damage the water ecology downstream, and cause losses of ecological service function. According to Article 65 of the *Tort Liability Law of the People's Republic of China*, Hongshun Company should be liable for the infringement damages, and shall restore the damaged ecological environment or find an alternative to restoration, and compensate for the loss of service functions.

(3) The court of first instance's decision to take 2.035 times virtual treatment cost to determine the expenses for restoring the ecological environment was not inappropriate. The pollutants spread as the river flows, making it impossible to calculate the actual cost of restoration. The Virtual Treatment Cost Method in the *Recommended Methods for Environmental Damage Identification and Evaluation* (Second Edition) by the Ministry of Environmental Protection shall be applied to determine the expenses of ecological restoration. In the first trial of this case, both Hongshun Company and Xuzhou Municipal People's Procuratorate agreed on using the said method to determine the ecological restoration cost and on the virtual treatment cost of CYN 50 for each ton of wastewater, hence taking 1.5 times to 3 times virtual treatment cost to determine the expenses for restoring the ecological environment.

As stipulated in Article 23 of the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations*, if it is hard to determine the expenses for restoring the ecological environment, the people's court may reasonably determine the aforesaid expenses in light of the extent and degree of environmental pollution and ecological destruction, the scarcity of the ecological environment, the difficulty to restore the ecological environment, the operating cost of pollution prevention and control equipment, the benefits obtained by the defendant out of the tortious act, the extent of fault, and other factors, and may refer to the opinions of the department undertaking environmental protection supervision and administration functions, and expert opinions, etc. In this case, factors such as the consequences of pollution, the polluter's extent of subjective fault, etc. should be considered in determining the coefficient. The Subeidi River flows into the Beijing-Hangzhou Grand Canal via the Shundi River, which flows through the main river for irrigation and drainage. The water quality of Subeidi River will not only affect that of the Beijing-Hangzhou Canal as a whole but also the water quality for agricultural irrigation. The wastewater discharged by Hongshun Company into Subeidi River has evidently hazardous impacts on the ecological environment. Hongshun Company has repeatedly discharged wastewater through a hidden outfall, making it hard to discern. The subjective fault was serious as the Company continued with the discharge after being caught and punished by the

environmental protection authorities. It would cost Hongshun Company CYN 50 to treat 1 ton of wastewater, so the Company benefited significantly from the illegal discharge act. The court of first instance, considering the contents of the wastewater discharged by Hongshun Company were mostly degradable organics, took 2.035 times the virtual treatment cost, a number within the range of 1.5 to 3, to calculate the ecological environment restoration cost of 2,600 tons of wastewater. The coefficient was selected within a reasonable range and there was no evidence suggesting the coefficient was set too high. Hongshun Company's claim of taking 1.5 times to determine the cost of ecological environment restoration lacks factual basis. Thus, this court will not grant support.

(4) Taking four times the amount of wastewater discharged by Hongshun Company to calculate the cost of ecological environment restoration has factual and legal basis. Xuzhou Municipal People's Procuratorate claimed that CYN 269,100 should be used as a basis and multiplied by a coefficient between 3 to 5 times to determine the Company's liabilities for damages of ecological environment and losses of ecological service functions on grounds that the actual amount of wastewater discharged by the Company must have exceeded 2,600 tons as Hongshun Company illegally discharged wastewater multiple times under the pretext of failure of pollution prevention and control equipment. Hongshun Company could generate up to 960 tons of wastewater per day and the dysfunction of pollution prevention and treatment equipment could date back to 2013. The Company was found to have discharged wastewater through a hidden outfall for three consecutive years, with the amount of wastewater discharged increasing each year. The above facts are sufficient to prove that the claim by the Xuzhou Municipal People's Procuratorate is highly probable.

Hongshun Company is capable of proving the actual volume of discharge wastewater. As stipulated in Article 42 (3) of the *Environmental Protection Law of the People's Republic of China*, pollutant discharging entities under intensified supervision shall install and use monitoring equipment in accordance with the relevant provisions of the state and the monitoring norms, ensure the normal functioning of monitoring equipment, and preserve the original monitoring records. As a key discharger, Hongshun Company installed the pollutant discharge monitoring device as early as September 2009. It is fully capable of proving the actual volume of wastewater related to its production activities and providing financial evidence on the actual cost of purifying the wastewater. Moreover, discharging pollutants is undertaken solely and stealthily by the enterprise, Hongshun Company shall assume the burden of proving the actual volume of wastewater discharged by the Company and bear the legal consequences of incapability of adducing evidence. After the court of first instance made relevant explanation, Hongshun Company was still unable to submit relevant evidence to overturn the claim of Xuzhou Municipal People's Procuratorate. According to Article 13 of the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations*, Xuzhou Municipal People's Procuratorate's claim of

taking 3 to 5 times the found 2,600 tons of wastewater to determine the actual volume of wastewater discharged by Hongshun Company should be supported. It was not inappropriate for the court of the first instance to affirm 4 times the found 2,600 tons of wastewater discharged to calculate the tort damages.

(5) The fines that Hongshun Company already paid shall not be deducted from the cost of ecological restoration. According to Article 4 of the *Tort Liability Law of the People's Republic of China*, where a tortfeasor shall assume administrative liability or criminal liability for the same conduct, it will not prejudice the tort liability that the tortfeasor shall legally assume. The penalty imposed by the environmental law enforcement organ on Hongshun Company is the liability the Company shall bear for violating the administrative law. The penalty was imposed to punish Hongshun Company's behavior of illegally discharging wastewater and prevent any attempt at violating the environmental law. The procuratorate's claim for the payment of ecological restoration cost against Hongshun Company is to require the Company to bear the responsibility for restoring the environment it damaged, which falls into the category of civil tort liability. The functions of the two legal liabilities are completely different. Hongshun Company's application for deducting the infringement compensation lacks legal basis.

Hongshun Company shall assume the liability for ecological restoration after illegally discharging wastewater related to production activities and for polluting the Subeidi River. The ecological restoration cost determined in the original judgement was well-grounded and the calculation method is legal and appropriate; the claim filed by the public prosecutor is clear and specific, and the trial procedure of the original trial is legal.

In view of the above, the appeal request of Hongshun Company shall not be supported and shall be rejected. The facts ascertained in the original judgement are clear and the application of laws is correct, which shall be upheld. In accordance with Article 170.1.1 of the *Civil Procedure Law of the People's Republic of China*, it is ordered that:

The appeal be dismissed and the original judgement sustained.

The case acceptance fee of CYN 14,324 of the second instance shall be borne by Hongshun Company.

This judgement is final.

Presiding judge: Chen Ying  
Judge: Zang Jing  
Judge: Zhao Li

December 23, 2016

Court Clerk: Yu Lu