

Compulsory Liability Insurance for Marine Drilling Platforms Pollution under Chinese Law

XU Tie¹ and ZHANG Pengfei²

1. Captain and Senior Lecturer in Merchant Marine College, Shanghai Maritime University, China

2. School of Maritime Science and Engineering, Southampton Solent University, UK

Abstract: Compulsory liability insurance has widely existed in the field of marine insurance. However, marine drilling platforms have always been excluded from this system in China. In view of the special legal nature of oil pollution compulsory liability insurance for marine drilling platforms, this paper analyzes a number of issues related to oil pollution compulsory liability insurance, elaborates on the necessity for China to implement the system and makes some suggestions about the implementation of that.

Key words: Marine drilling platforms, oil pollution, compulsory liability insurance.

1. Introduction

China has already experienced a high-incidence period of marine environment pollution which often causes great economic losses and ecological damage. In recent years, the environment damage compensation disputes have been in such a rapid rise that they have affected social stability. China's oil resource has been plundered. Meanwhile, the marine ecological environment has suffered successive disastrous destruction and received constant serious threats. One important reason for this situation is that the legal system in China to protect marine environment is not adequate. A lack of legal system and the dependence on foreign technology make foreign companies have nothing to fear. The oil leakage accident in the Gulf of Mexico in America and the oil leakage accident in the Bohai Sea in China have quickly attracted public attention to the issues of oil pollution from oil drilling platforms. Given the frequently occurring oil pollution of the sea, some experts hold the opinion that China should implement oil pollution compulsory liability insurance directed at marine drilling platforms as soon as possible. This

paper will start from the nature of the oil pollution compulsory liability insurance for marine drilling platforms, in comparison with the oil pollution compulsory liability insurance for ships to analyze the necessity and feasibility of the implementation of the oil pollution compulsory liability insurance aimed at marine drilling platforms in China and make related law-making suggestions.

2. The Nature of Oil Pollution Compulsory Liability Insurance for Marine Drilling Platforms

2.1 Marine Drilling Platform Is a Special Legal Object

First of all, marine drilling platform, as a tool for oil and gas extraction, is complex in structure with high technology content and expensive in cost; secondly, although it is movable property, it must be treated as immovable property like the vessel. The obtaining, setting, transfer and extinction of the ownership, the mortgage and even the charter of the marine drilling platform should be registered just like immovable property [1]. To a large extent, it is legally personified; thirdly, it is very dangerous to work on a marine drilling platform and there may exist special risks and

Corresponding author: ZHANG Pengfei, Dr., master mariner and lecturer, research fields: nautical science, maritime law, issuance law.

liability. When it undertakes drilling operation at sea, besides some usual marine risks, the marine drilling platform may also encounter such special impersonal risks as blowout and blast distinctive to drilling work. It is often very hard to handle these risks by ordinary civil law and even by the existing marine legal system; furthermore, once an accident happens to the marine drilling platform, the consequence is often extremely serious. Apart from the huge casualties and property losses, there will be disastrous environmental pollution [2].

2.2 Oil Pollution Compulsory Liability Insurance Is a Special Commercial Insurance

Oil pollution damage, as one kind of environmental pollution damage, belongs to a special tort, and the legal liability thus caused naturally belongs to civil tort liability. As for the damage, the responsible party should make compensation. According to the basic principle of the environment law “Polluters Pay Principle”, the proprietor and manager of the marine drilling platform should be responsible for the compensation. Due to the technical dependence on foreign large-scale petroleum companies, China’s marine oil industry is characterized by the adoption of a Chinese-foreign cooperation model by which China’s large-scale state-owned enterprises and foreign large-scale petroleum companies enjoy the joint ownership of the marine drilling platform while the latter monopolize the management and many peripheral projects are subcontracted by other contractors [3]. Therefore, the relations between ownership and management are relatively complicated so that it is difficult to determine the responsibility of all parties in the event of oil spill.

To increase the chance of the victims of oil pollution to get compensation, impel those responsible to take active precautions against marine oil pollution and protect marine environment, relevant international conventions have unanimously determined that the criterion of liability of marine oil pollution is principle

of no-fault liability. Paragraph 3 of Article 1 of *Liability Convention, 1969* makes it clear that the responsible person is the owner of the ship, formally determining the principle of “the one who causes the leakage is held responsible”, which reflects that the criterion of liability of oil pollution damage is principle of no-fault liability, placing the emphasis on the causative relationship between the oil pollution act and the damage consequence and ignoring whether the person concerned has fault or not. Paragraph 1 of Article 3 of *liability Convention, 1922* also regulates that the owner of the ship should be responsible for the compensation of all the pollution damage caused by the event. These conventions all unanimously stipulate the singleness of the civil responsible subject of the oil pollution, which is conducive to a prompt solution to the problem of oil pollution compensation and an early repair of the sea pollution as well as a timely compensation for the victims. Likewise, *General Principles of the Civil Law and Tort Liability Law* in China have also determined this principle [4].

Once a marine drilling platform blasts or spills oil, the subsequent consequences are normally very serious. The leakage of the crude oil will result in pollution of the sea, destruction of the ecological environment and extremely huge direct and indirect economic losses. The scope of the oil pollution damage compensation is also very complex. Firstly, the most important thing immediately after the oil pollution accident is to meet the emergency of dealing with and clearing away the pollution [5]. The money for this is usually paid advance by Maritime Safety Administration before the party responsible for oil pollution pay the compensation; secondly, State Oceanic Administration can demand compensation for the marine ecological damage on behalf of the state; thirdly, individual victim can claim indemnity for his direct and indirect property losses.

Compulsory liability insurance refers to such kind of liability insurance in which according to relevant national laws and regulations, some special sectors or

groups, because of certain special responsibility they may take, must be insured irrespective of their willingness. For example, third party liability insurance and employer's liability insurance of motor vehicles belong to such insurance. Compulsory liability insurance has widely existed in the field of marine insurance, for instance, 1992 *Civil Liability for Oil Pollution Damage*, 1996 *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea* (HNS), 2001 *Bunker Convention* and 2002 *Athens Convention* all formulate the compulsory liability insurance system [6]. Since in a certain sense, the compulsory liability insurance reflects the imposing of the state upon personal will, its range is strictly restricted. According to Paragraph 2 of Article 11 of *Insurance Law* published in 2009, only law and the rules of the State council, namely, law and administrative regulations can stipulate compulsory insurance.

2.3 Oil Pollution Compulsory Liability Insurance for Marine Drilling Platforms Refers to Such a Special Commercial Insurance in Which the Competent Administrative Agency, Directed at the Special Risks of Marine Drilling Platforms, Forces All Staff or the Operator of the Drilling Platform to Be Insured according to National Laws and Regulations

According to the fundamental principle of *Insurance Law*, oil pollution compulsory liability insurance for marine drilling platforms is a commercial insurance behaviour on the basis of environment pollution compensation liability. There are three parties concerned in the legal relationship of environment pollution liability insurance, namely, the owner or operator of the marine drilling platform (both the applicant and the insured), the insurer (insurance company) and the third party (including all the victims, the state included). When the marine drilling platform causes losses (including personal injuries, property losses and environmental damage)

for the third party, it shall take compensation liability in accordance with law. The oil pollution liability insurance mechanism for marine drilling platforms has become an effective tool in appropriately transferring and decentralizing the pollution compensation liability in order that the work of clearing away the pollution can be carried out sooner and more quickly and that the victims of the pollution can get timely compensation [7]. The so-called oil pollution compulsory liability insurance for marine drilling platforms is a compulsory insurance aimed at the rightly assumed compensation liability for the losses caused by the accidents of marine drilling platforms for the third party in accordance with the law.

3. The Regulations in Chinese Law about the Oil Pollution from Marine Drilling Platforms Are Not Complete

3.1 A Lack of Chinese Law Directly on Oil Pollution from Marine Drilling Platforms

Although there are disputes whether marine drilling platforms are ships, marine drilling platforms cause oil pollution normally during working process and the intrinsic nature of marine drilling platforms working at a fixed place reveals that they are apparently not ships. Therefore, it is impossible to apply the special regulations made by international conventions and related laws about oil pollution from ships to marine drilling platforms. China has made a series of laws and regulations for the prevention and cure of the oil pollution produced by ships. But with no exception, these laws and regulations all exclude marine fixed drilling platforms from ships [8].

The sixth and eighth chapters of *Marine Environment Protection Law of the People's Republic of China* are about the oil pollution from drilling platforms and the oil pollution from ships respectively. Comparatively speaking, the regulations in Chinese law about the oil pollution from ships are relatively sound and complete. Firstly, in the level of international conventions, Article 7 of *International*

Convention on Civil Liability for Oil Pollution Damage, 1969 in which China joins regulates that the owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security to cover his liability for pollution damage under this Convention. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. Paragraph 2 of Article 66 of *Marine Environment Protection Law* regulates that specific measures for the implementation of vessel-induced oil pollution insurance and oil pollution compensation fund system shall be formulated by the State Council. Then on March 1, 2010, the State Council enacts *Regulations of the People's Republic of China on the Prevention and Control of Marine Pollution from Ships*, pointing out that the owners of the Ship that sails within China territory waters shall subscribe for oil pollution civil liability insurance or obtain other financial security, which lays the legal foundation for China's oil pollution liability compulsory insurance system for ships [9]. As administrative regulations, *Regulations of the People's Republic of China on the Prevention and Control of Marine Pollution from Ships* first provides a legal basis for China's oil pollution liability compulsory insurance system for ships in a national legal level, formulates the basic framework of China's oil pollution liability compulsory insurance system for ships in combination with *Chinese Marine Code* and *International Convention on Civil Liability for Oil Pollution Damage, 1969/1992* and *International Convention on Civil Liability for Bunker Oil Pollution Damage 2001* in which China joins and perfects the regulations of oil pollution insurance system for ships regulated by *Marine Environment Protection Law of the People's Republic of China*. However, unfortunately, *Marine Environment Protection Law* does not cover the issue of oil pollution compulsory insurance for oil drilling

platforms and the State hammers out no relevant laws and regulations to complement it so that there is no legal basis for oil pollution compulsory insurance for oil drilling platforms [10].

Compared with the oil pollution produced by ships, once a marine drilling platform has an accident while working, the consequences are often more serious. Unfortunately, there are no relevant laws and regulations or codes in China to supplement *Marine Environment Protection Law*. Consequently, apart from a few laws and regulations which can be used for reference, there is almost no legal basis for oil pollution from drilling platforms. Fully realizing the weak point of Chinese law system, foreign petroleum companies plunder China's oil resources and meanwhile ignore the risks of serious destruction to China's marine environment.

3.2 The Mode of Oil Pollution Compulsory Liability Insurance in Developed Countries

The current mode of oil pollution liability insurance in developed countries can provide much experience for China. America is the representative of compulsory liability insurance. After the oil pollution produced by the oil tanker Exxon Valdez, America made and passed *Oil Pollution Act of 1990* with rapidity in a short period of one year and this act also takes offshore facilities (oil drilling platforms included) into its application scope. Sweden regulates in *Environment Protection Act* revised in 1995 that government or the agency appointed by government shall formulate insurance policy (environment damage insurance) in accordance with approved conditions. The environment damage insurance system is the supplement of the environment damage compensation system. Companies which are engaged in activities with pollution risks that require license and approval, oil drilling platforms included, shall pay annually certain amount of environment damage insurance money. If the obligor still does not pay insurance money within 30 days after the insurance company

gives the note to pay insurance money, the insurance company shall report this to environment supervision agency, which orders the obligor to pay insurance money and fines him [11]. The obligor has no right to sue. Article 19 of *Environmental Liability Act* that came into force as of 10 December, 1990 in German stipulates that the operators of facilities named in Appendix 2 shall ensure that they are able to fulfill their legal obligation to provide compensation for damages that arise from a person suffering death or injury to his body or health, or from property being damaged, as a result of an environmental impact that issues from the facility. The competent administrative agency may prohibit, in whole or in part, the operation of a facility named in Appendix 2 if the operator does not comply with his duty to provide for coverage and fails to prove, within a reasonable time to be set by the competent administrative agency, that coverage has been provided for. In the appendix of this act, the facilities that may present heavy environmental liability risks are listed and their operators must take liability guarantee measures, including liability insurance issued by an insurance company or an indemnity agreement or guarantee made by the Federal Government or by a state [12].

3.3 *The Status Quo of the Insurance of Marine Drilling Platforms*

As far as the insurance of marine drilling platforms is concerned, based on London Standard Drilling Barge Form—All Risks, short for L.S.D.B.F, all insurance companies set their own all risks terms for mobile drilling platforms. L.S.D.B.F is a term that covers all risks with a wide insurance coverage. Basically it can meet the need of petroleum companies for property risk control and cover material damage, rescue cost and collision liability, but the oil pollution liability insurance is not covered. Some Shipowners' Mutual Insurance Associations also formulate protection and indemnity insurance for mobile drilling platforms, for instance, Assuranceforeningen Gard

and Assuranceforeningen Skuld in Norway have oil pollution liability insurance. In 1970, more than 30 petroleum companies, as operators of marine drilling platforms, built mutual insurance companies at Bermuda and set protection and indemnity insurance for the oil pollution liability and other operation liability of the operators. On the contrary, the situation in China is that few companies buy such insurance, although insurance companies have long formulated environment pollution liability insurance. There are two major reasons for this:

First of all, according to the legislation in China, for the compensation of damage caused by environment pollution incidents, the regulations are not definite as to how and how much to compensate though such regulations do exist in law. Even compensation is given, it can be obtained usually through a long period of lawsuit. Consequently, many companies disregard the existing law and are unwilling to increase the spending for such incidents with little probability.

Secondly, there is a lack of a good environment to implement this insurance. Most companies are unwilling to buy environment liability insurance and only companies in a few sectors with high risks are willing to buy such insurance with the purpose of risk shearing. Since insurance companies cannot run such insurance products under the law of large numbers, it is difficult for them to keep balance between earnings and indemnity, which entails the difficulties to introduce perfect insurance products [13].

4. The Necessity of the Implementation of Oil Pollution Liability Compulsory Insurance for Marine Drilling Platforms

Compulsory liability insurance is the inevitable demand of the development of the strict liability system which exists because the State holds that it is necessary to give particular protection to special victim groups and impel producers to increase duty of care and take reasonable precautions to check and diminish damage in order to reduce social total cost

and improve social economic benefits. The main goal of compulsory liability insurance is to accommodate to the strict liability system, guarantee the effective implementation of the strict liability and help to strengthen the compensation function. As a typical strict liability, oil pollution liability needs the support of compulsory insurance system for oil pollution strict liability.

Oil pollution liability compulsory insurance can rationally balance fund obligation and the sustainable development of marine oil industry necessitates the implementation of oil pollution compulsory liability insurance for drilling platforms. The marine oil industry, up to now, has developed into a sector with high risks, high investment, high technical content and a long return cycle and it is difficult for ordinary civil laws and regulations to have thorough and comprehensive adjustments on this sector, whose huge economic value together with its special risk liability determines that an exclusive law is needed to conduct standardized adjustments. As marine drilling platforms appear in various areas in the world with more frequency, the offshore operation by the marine drilling platforms has become an important sector with a large scale and its economic and legal problems have become increasingly prominent [14]. When an accident happens to a marine drilling platform, there will be heavy oil pollution liability and a large sum of compensation liability. For such a project with a long return cycle, the heavy compensation liability will make the operator of the marine drilling platform feel overwhelmed and inevitably influence the healthy and sustainable development of petroleum companies as well as the development of the offshore oil industry. Therefore, objectively, insurance companies are needed to underwrite such risks in order to share the risks of petroleum companies.

Compared with oil pollution from ships, it is more urgent to implement oil pollution liability compulsory insurance on marine drilling platforms. First of all, when an oil pollution accident happens to a ship, the

victims can obtain compensation by the seizure or the auction of the ship involved or other ships of the owner of the ship involved and there is a set of complete legal procedures to ensure the appeal of the victims; however, when such an accident happens to a marine drilling platforms, it is unrealistic to seize or auction the drilling platform involved and there is no relevant legal way to support the seizure or the auction [15]. Secondly, during the operation of a ship, there is the supervision from the ship-owning company, the classification society, the port state, the flag state and the insurer; the ship usually has a strict managerial system and the crew are professionals drained and certificated by the competent administrative agency with a strong capability of handling oil pollution risks. This is not true for marine drilling platforms, which are only restricted to the management in a level of the platforms or companies at the present time.

The implementation of oil pollution compulsory liability insurance for marine oil drilling platforms can extend insurance products of insurance companies, which is conducive to the development of insurance industry. As section 2.3 of the present paper analyzes, the reason why it is difficult for insurance companies to introduce mature oil pollution liability insurance products is that few companies buy the insurance and that it is hard to keep balance between earnings and payment since insurance companies cannot run such products under the law of large numbers. If the compulsory pollution liability party insures the liability insurance under the direction of relevant law, the cardinal number of policyholders is enlarged and it is easier for insurance companies to balance earnings and payment and lower the rate of premium, thus reaching a win-win situation between the policyholder, the insurer, the third party and the government.

The insurer supervision mechanism can be introduced in the implementation of oil pollution compulsory liability insurance for marine drilling platforms. When assessing the clients who come to cover environment pollution liability insurance, the

insurance company should pay attention not only to the policy content itself and the rate of premium, but also to the ability and concept of the clients to guard against risks. In order to avoid its own risks and lower its indemnity rate, the insurance company will monitor the operational and managerial conditions of the insurance clients from time to time, bring in the third party inspection authority to evaluate the grade of the marine drilling platforms and then refuse to underwrite those substandard companies [16]. The companies refused by insurance companies will be kicked out of this industry and the entry criteria of offshore oil exploration will accordingly be raised. In this way, this sector can assume harmonious development.

5. Suggestions for the Legislation of the Implementation of Oil Pollution Compulsory Liability Insurance for China's Marine Drilling Platforms

If condition permits, *Marine Environment Protection Law of the People's Republic of China* should be revised as soon as possible, adding terms about oil pollution liability risks for drilling platforms and providing a legal basis for oil pollution compulsory liability insurance for drilling platforms. Alternatively, the State Council hammers out correspondent laws and regulations to perfect and complement *Marine Environment Protection Law*.

The oil pollution liability compulsory insurance system for marine drilling platforms together with relevant specific implementation measures should be made, including all risks for drilling platforms of all major insurance companies and protection and indemnity insurance of some shipowners mutual insurance societies. At the same time, the oil pollution damage compensation fund system for the drilling platforms industry should be made. The benefit orientation and compulsory means can be employed to improve the current situation in which drilling platform companies are unwilling to buy insurance so

that the business demand of insurance companies can be broadened and accordingly the underwriting amount can be increased and the rate of premium decreased with a full realization of the goal of oil pollution liability insurance for marine drilling platforms, thus a better allocation of the huge risks of marine drilling platforms [17].

A special system—direct action against the insurer shall be written into law so as to guide insurance companies to exercise the power of supervision. Classification societies and other inspection agencies entrusted by insurance companies carry out special inspection in strict accordance with “rules for classification and building of mobile offshore drilling platforms” in order to rightly determine the insurance coverage, underwriting amount and relevant premium rate. Meanwhile, classification societies or inspection agencies are responsible for the supervision of the environment during the operation of drilling platforms and the working of the safety monitoring system [18]. Furthermore, after an accident happens, together with insurance companies, they should even deal with subsequent damage identification and insurance compensation. In this way, the expertise of classification societies and inspection agencies can be brought into full play and their business area and range can be expanded. Besides, insurance companies can develop and expand this new insurance business with ration so that a special but round insurance system of insurance business in drilling platforms can be constructed to a greater extent.

Maritime Safety Administration of the Ministry of Communications should conduct safety check on marine drilling platforms occasionally or regularly. It should check whether the marine drilling platforms satisfy the rules for classification and building of mobile offshore drilling platforms and also check whether the drilling platforms hold the effective certificate of insured oil pollution compulsory liability risks and the correspondent financial guarantee certificate. Those who have no such certificates shall

be compelled to stop operation immediately and be fined as well; for those who conduct operation in violation with the rules for several times, their operation license shall be called in immediately and they shall be blacklisted. In this way, the companies with high potential of environmental pollution can be eliminated from this sector.

6. Conclusion

Oil pollution from marine drilling platforms poses great threats to the marine environment. Oil pollution compulsory liability insurance for marine drilling platforms, as a special commercial insurance, can introduce the insurer supervision mechanism to have risk control and management for marine oil drilling platforms, therefore decrease significantly the possibility of any accidents on the one hand. On the other hand after an oil pollution accident occurs, it can start an effective mechanism to obtain capital for carrying out cleaning work and guarantee that the victims can get compensation. In conclusion, it is an urgent need to construct the oil pollution compulsory liability insurance system for marine drilling platforms in China.

References

- [1] Si, Y. 2008. *Maritime Law*. Beijing: China Renmin University Publishing.
- [2] Si, Y. 2007. *Monograph on Maritime Law*. Beijing: China Renmin University Publishing.
- [3] Chu, B. 2004. *A Study on Marine Compulsory Liability*. Annual of China Maritime Law. Dalian: Dalian Maritime University Press.
- [4] Li, Y. *A Study on Legal Issues about Compensation of Drilling Platform Pollution Damage*. Dalian: Dalian Maritime University.
- [5] Ying, S. 2000. *Maritime Insurance*. Wu-Nan Book Company Ltd.
- [6] Su, F., and Xu, J. 2006. *Insurance*. Beijing: Tsinghua University Press.
- [7] Zou, H. 1999. *Study on Liability Insurance*. Beijing: Law Press.
- [8] Si, Y., Hu, Z., and Fu, T. 1999. *New Maritime Law*. Dalian: Dalian Maritime University Press.
- [9] Yang, L. 1999. *Admiralty Law*. Dalian: Dalian Maritime University Press.
- [10] Zhao, M. 1999. *International Admiralty Law*. Beijing: Peking University Press.
- [11] Peng, H., and Dou, J. 2003. *Insurance*. Guangzhou: Sun Yat-sen University Press.
- [12] Si, Y. 2002. *Study on Tendency of and Response to International Maritime Legislation*. Beijing: Law Press.
- [13] Lv, Z. 1997. *Environment Law*. Beijing: Law Press.
- [14] Xu, G. 2006. *Study on Compensation Legal System of Damage Caused by Oil Pollution from Ships*. Beijing: Peking University Press.
- [15] Ai, S. 2008. *Study on Legal Issues of Protection and Indemnity Insurance Contract*. Beijing: Law Press.
- [16] Zhang, X. 2002. *Maritime Insurance and Claims and Adjustments*. Beijing: The People's Court Press.
- [17] Wang, P. 2004. *Theory and Practice of Modern Maritime Insurance*. Dalian: Dalian Maritime University Press.
- [18] Yin, Z., and Xu, G. 2000. *Maritime Law*. Beijing: Yuanzhao Publishing Company.