SPC Guiding Case No. 258: Jinan Municipal People’s Procuratorate, Shandong Province v. Jinan [X] Tumor Hospital Co., Ltd. et al. (Environmental Pollution Civil Public Interest Litigation)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on May 26, 2025.

Keywords

Civil / environmental pollution civil public interest litigation / omission / joint and several liability / prohibition order / advance execution

Holding

1. Where an environmental protection competent authority, in the course of performing its duties, discovers pollution or ecological damage that carries a major risk of harming the social public interest and transfers the relevant leads to a people's procuratorate for it to institute an environmental civil public interest lawsuit, and the requirements of Article 58 of the Civil Procedure Law of the People's Republic of China and other provisions are satisfied, the people's court shall accept the case in accordance with the law.

2. Where two or more civil subjects each bearing the statutory obligation to eliminate the risk of environmental pollution all fail to perform their respective obligations, thereby creating a major risk of harming the social public interest, and a state authority prescribed by law or an organization prescribed by law requests, in accordance with Article 1171 of the Civil Code of the People's Republic of China, that the civil subjects bear joint and several liability for the expenses of eliminating the danger, the people's court shall support the request in accordance with the law.

3. In order to prevent the occurrence or expansion of ecological environment damage, the people's court may, based on the circumstances of the case, adopt measures such as a prohibition order and advance execution to eliminate the risk of environmental pollution in a timely manner.

Basic Facts

In May 2005, a people's hospital in Jinan, Shandong Province (“the People's Hospital”) cooperated with an investment group company to establish Jinan [X] Tumor Hospital Co., Ltd. (“the Tumor Hospital”). In December 2008, the Tumor Hospital imported from abroad a set of gamma-knife medical equipment, and obtained a radiation safety license on July 19, 2010. In 2013, the People's Hospital entered into a Medical Equipment Lease Agreement with Ji'nan [X] Hospital in Jinan, Shandong Province (“Ji [X] Hospital”), agreeing to lease the medical equipment involved to Ji [X] Hospital for a term of five years (from May 1, 2013 to April 30, 2018). Ji [X] Hospital received income based on the gross revenue of the leased equipment, did not share costs, and the remainder of the gross revenue belonged to the People's Hospital. The People's Hospital bore the relevant expenses and operating costs of the leased equipment and was responsible for handling the licenses and permits relating to the use, environmental impact assessment and protection of the equipment. On July 27, 2016, Ji [X] Hospital and the People's Hospital entered into a Termination Agreement for the Medical Equipment Lease Agreement, under which both parties agreed to terminate the performance of the lease agreement early with effect from July 31, 2016, and the People's Hospital was to remove the medical equipment involved within two months after termination. During the cooperation period, the People's Hospital failed to handle, as agreed, the relevant licenses and permits for the use, environmental impact assessment and protection of the equipment, and Ji [X] Hospital likewise did not handle the relevant licenses

and permits. Ji [X] Hospital paid the People's Hospital a revenue-sharing amount of RMB 1,982,533.10 (same currency hereinafter). After the cooperation was terminated, none of the parties disposed of the medical equipment involved in accordance with the law, and it remained idle at Ji [X] Hospital. The Tumor Hospital had ceased operations for many years and lacked the capacity to bear the disposal costs, and it had disputes with the actual users — the People's Hospital and Ji [X] Hospital — over the responsibility for disposal, resulting in the medical equipment involved not being disposed of in accordance with the law and presenting a risk of environmental pollution.

In December 2021, the Ecology and Environment Bureau of Jinan, Shandong Province transferred the leads of the above case to the People's Procuratorate of Jinan, Shandong Province. Upon examination, the Jinan Municipal People's Procuratorate held that the medical equipment involved had not been disposed of in accordance with the law in a timely manner, creating a hidden environmental safety hazard and harming the social public interest. On May 30, 2022, it brought an environmental pollution civil public interest lawsuit with the Jinan Intermediate People's Court, requesting an order that the Tumor Hospital, the People's Hospital and Ji [X] Hospital bear the disposal costs of the medical equipment involved in the amount of RMB 2.9 million, and that the Tumor Hospital perform the obligation of handling the disposal procedures. Because environmental and resource cases in the locality were subject to cross-regional jurisdiction, the Jinan Intermediate People's Court transferred the case to the Jinan Railway Transport Intermediate Court. After accepting the case, the Jinan Railway Transport Intermediate Court, in order to prevent pollution caused by improper disposal of the medical equipment involved, lawfully issued an ecological environment protection prohibition order, ordering the Tumor Hospital, the People's Hospital and Ji [X] Hospital not to dispose of the medical equipment involved without authorization and without the permission of the court and the competent ecology and environment authority.

Judgment

On December 30, 2022, the Jinan Railway Transport Intermediate Court rendered Civil Judgment (2022) Lu 71 Min Chu No. 64: (1) Jinan [X] Tumor Hospital Co., Ltd., the People's Hospital in Jinan, Shandong Province and Ji [X] Hospital in Jinan, Shandong Province shall jointly pay RMB 2.9 million as the disposal costs of the medical equipment involved, to be paid into the account designated by the court within ten days of the effective date of the judgment; and (2) Jinan [X] Tumor Hospital Co., Ltd. shall perform the obligation of handling the disposal procedures within ten days of the effective date of the judgment. After the judgment was pronounced, Jinan [X] Tumor Hospital Co., Ltd. and Ji [X] Hospital in Jinan, Shandong Province were dissatisfied and appealed. In the second instance, the Shandong Provincial High People's Court ruled to advance-execute the disposal costs of the medical equipment involved, and RMB 2.9 million was advance-executed from the People's Hospital in Jinan, Shandong Province. That amount was used in full for the decommissioning and disposal of the equipment involved, which was disposed of in accordance with the law before the case was concluded, thereby eliminating the risk of environmental pollution. On June 30, 2023, the Shandong Provincial High People's Court rendered Civil Judgment (2023) Lu Min Zhong No. 143, affirming item (2) of the first-instance judgment, namely that Jinan [X] Tumor Hospital Co., Ltd. shall perform the obligation of handling the disposal procedures within ten days of the effective date of the judgment; and modifying item (1) to clarify that Jinan [X] Tumor Hospital Co., Ltd., the People's Hospital in Jinan, Shandong Province and Ji [X] Hospital in Jinan, Shandong Province shall bear joint and several liability for the RMB 2.9 million in disposal costs of the medical equipment involved.

Reasoning

The focus of the dispute in this case was: how the responsibility for eliminating the risk of environmental pollution from the medical equipment involved should be allocated.

Article 1171 of the Civil Code provides: “Where two or more persons each commit a tortious act causing the same damage, and the tortious act of each person is sufficient on its own to cause the entire damage, the actors shall bear joint and several liability.” The “damage” in that article includes not only damage that has

already occurred, but also a present risk of causing damage. Article 179 of the Civil Code provides for elimination of danger as a form of civil liability. Article 18 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases (Fa Shi [2015] No. 1, amended in 2020) provides: “For acts of polluting the environment or damaging the ecology that have already harmed the social public interest or that carry a major risk of harming the social public interest, the plaintiff may request that the defendant bear civil liability such as ceasing the infringement, removing the obstruction, eliminating the danger, restoring the ecological environment, compensating for losses and making an apology.” In this case, the Tumor Hospital, the People's Hospital and Ji [X] Hospital failed to perform their risk-control obligations, and each tortious act was sufficient to cause the occurrence of the environmental pollution danger; they should therefore bear joint and several liability in accordance with the above provisions of the Civil Code.

First, from the perspective of the tortious acts, the medical equipment involved had been idle for a long time and, in accordance with the relevant legal provisions, should have been returned to the original exporter or delivered to a unit specializing in the storage and disposal of such solid waste, and could not simply be left unmanaged. The Tumor Hospital, as the user of the medical equipment involved licensed by the competent authority, bore the statutory obligation of safety protection and disposal of the idle equipment. The People's Hospital and Ji [X] Hospital failed to handle, in accordance with the law, the procedures for changing the license for use, and used the medical equipment involved without authorization; as the actual users, they likewise bore the obligation to eliminate the danger of environmental pollution that might arise from the idle equipment. The acts of these subjects in failing to dispose of the medical equipment involved were independent of one another, each was at fault, and they constituted tortious acts of separately failing to perform statutory obligations.

Second, from the perspective of the consequences of damage, the failure of the Tumor Hospital, the People's Hospital and Ji [X] Hospital to dispose of the medical equipment involved in accordance with the law created a major environmental pollution risk, which was a situation of causing the same present danger. In particular, the environmental pollution and ecological damage risks involved had the characteristics of suddenness, instantaneity and irreversibility, and the harmful consequences had the characteristics of hysteresis, long duration and difficulty of restoration. On this basis, effective relief should be granted while the infringement is ongoing or before the actual damage consequences finally occur. In this case, the failure to dispose of the special medical equipment involved in a timely and lawful manner could be found to constitute a “major risk of harming the social public interest” as provided in Article 18 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases.

Third, from the perspective of causation, if any one of the infringers — the Tumor Hospital, the People's Hospital or Ji [X] Hospital — had actively performed its obligation to dispose of the medical equipment involved, the occurrence of the environmental pollution danger could have been avoided. Conversely, each of their tortious acts of failing to dispose of the equipment in accordance with the law was sufficient to cause the consequence of the medical equipment involved creating an environmental pollution danger.

In summary, the RMB 2.9 million in expenses for eliminating the potential danger of the medical equipment involved should, in accordance with Article 1171 of the Civil Code, be borne jointly and severally by the Tumor Hospital, the People's Hospital and Ji [X] Hospital.

In addition, given the hazardousness of the risk of the medical equipment involved and in accordance with the principle of “priority to protection and prevention first” prescribed by the Environmental Protection Law of the People's Republic of China, the people's court, based on the specific circumstances of the case, adopted a prohibition order preservation measure in a timely manner to prevent the occurrence or expansion of ecological environment damage, and in the second-instance trial ruled to advance-execute the disposal costs, thereby eliminating the risk of environmental pollution in a timely manner.

Source: https://www.danyoungcpa.com/spc-guiding-case-258-china/

Relevant Legal Provisions

Article 179 and Article 1171 of the Civil Code of the People's Republic of China

Article 58 and Article 109 of the Civil Procedure Law of the People's Republic of China

Articles 1 and 18 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases (Fa Shi [2015] No. 1, amended in 2020)

Article 1 of the Several Provisions of the Supreme People's Court on the Application of Prohibition Order Preservation Measures in Ecological Environment Tort Cases (Fa Shi [2021] No. 22)

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