

The Long March

*Survey and Case Studies of Work Injuries
in the Pearl River Delta Region*

China Labor Watch

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*Attachment 1: GP products available in the United States.

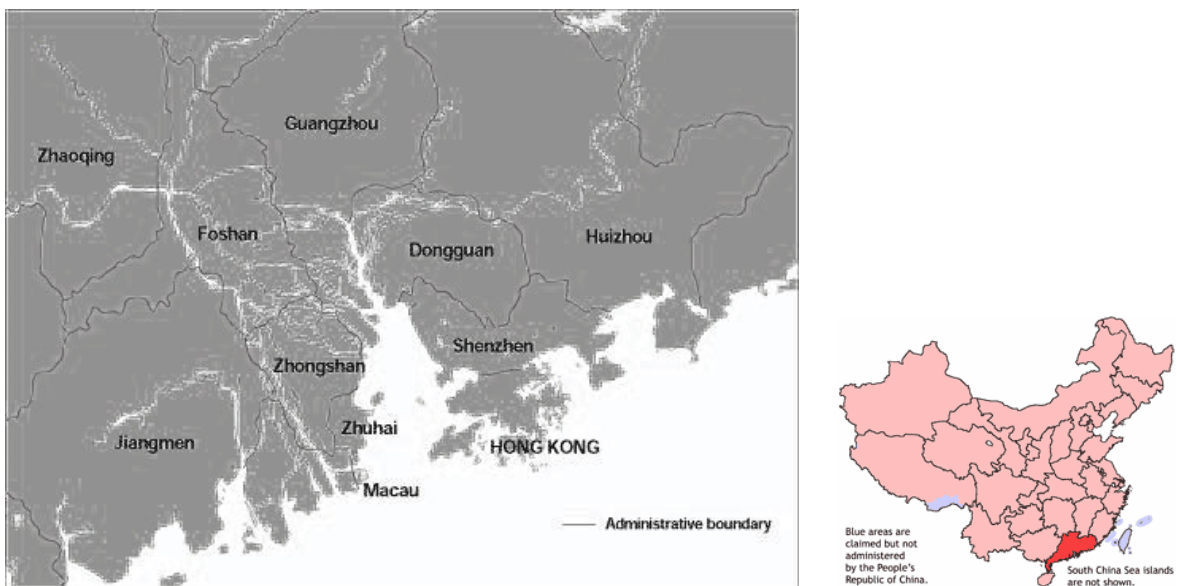
*Attachment 2: GP brand Ni-Cd battery still on sale in China as the time of this report (source: business website in China).

*Attachment 3: Letters to multinational corporations involved

I. INTRODUCTION

As the title “the world’s manufacturing plant” (世界工厂) suggests, China is the largest producer and processor in the world today. It manufactures 75% of the toys, over 50% of the shoes, and 60% of the LCD (liquid crystal display) panel in the global market. By the end of 2006, Guangdong Province had a total number of 841,000 registered enterprises, the greatest number in China, which included 551,000 private enterprises.¹ Dongguan City alone (a manufacturing center located in the Pearl River Delta region, Guangdong Province) has over 15,000 firms manufacturing everything from textiles to furniture to high-tech products such as finger print identifier. Most of these products are made by migrant workers, who come from the inner and rural parts of China to work in factories in cities temporarily. According to the Chinese official statistics, China’s migrant population has reached 150 million in 2005, which constitutes 11.5% of the total population. Most migrants are 15-39 years olds, with 75.3% of all female workers and 69.2% of all male workers in the age group (National Bureau of Statistics, 2005). About half of all migrant workers are women.

Image 1: Map of the Pearl River Delta Region and Guangdong Province, China



In China’s unprecedented economic boom in the past two decades, migrant workers contributed more than 20% of the GDP growth. Yet most of them were not awarded commensurate benefits, and for the limited financial gains they did receive, they paid a very high price. The Ministry of Labor and Social Security of China revealed that the number of deaths caused by industrial accidents had increased from 100,000 in 2000 to

¹ Bureau of Commerce and Business Administration, Guangdong Province, Nanfang Network, January 30, 2007, <http://www.southcn.com/news/gdnews/sd/200701300829.htm>.

136,000 in 2004.² Most of them are found in private enterprises (founded by local or foreign capital), township and village enterprises. Among the three high-risk industries (mining, construction and occupations exposed to dangerous chemicals), migrant workers constitute over 80% of the total injury and death number.³ About 5000 Chinese mine workers die of industrial accidents every year. That number is roughly 4/5 of the world's total, while China only produces 1/3 of the world's coal output.

In the Peal River Delta region (where manufacturing cities like Guangzhou, Shenzhen, Dongguan, Zhongshan and Zhuhai are located), about 40,000 fingers are severed due to industrial accidents a year. However, the work injury complaint filing, deciding and enforcing process takes up to 1,070 days on average, which is an unaffordable high price for most migrant workers who usually have no source of income during the long waiting period.⁴ Due to the complexity and long process of applying for and receiving legal compensation, most workers choose to reach a private settlement with the employer, which results in significantly lower amount of actual compensation. The rate and seriousness of work injuries and the various difficulties associated with the compensation application process have become one of the greatest plagues migrant workers are facing today.⁵

Aware of the fact that little systematic documentation and research have been done on work injury-related matters, China Labor Watch conducted a large survey study in the Pearl River Delta region and issued a report in September 2005. In that report, "Crushed: A Survey of Work Injuries and Treatment in the Pearl River Delta," the data was taken in interviews with 177 workers in fourteen hospitals in the Dongguan and Shenzhen metropolitan areas. It provided some initial probing into the correlation between fatigue and the occurrence of work injuries.

This report, "The Long March: Survey and Case Studies of Work Injuries in the Pearl River Delta Region," is an extended research project following the 2005 one. It has two key components. The first part is a similar survey study based on interviews with 260 injured workers from the Shenzhen metropolitan area between May and November 2006. The purpose of this part is to identify some common characteristics shared by these work injury cases and injury victims. The second part is case studies that document and analyze the procedures to claim and receive work injury compensation based on actual cases that China Labor Watch's field staff was involved with directly or provided legal assistance through collaboration with lawyers. The purpose of this part is to study a few typical work injury cases under a microscope in order to unearth common institutional and practical barriers migrant workers encounter in their complaint filing journey and to discuss possible and effective measures to address them. The length and difficulty of that process has given this report its title.

² Dale Wen, "Reform that Profited A Few" (Shi Shao Shu Ren Fu Qi Lai de Gai Ge), International Forum on Globalization.

³ China Youth Daily, June 19, 2004.

⁴ Dale Wen, *ibid.*

⁵ The complexity of the application process is illustrated in this report on page 22.

II. SURVEY DATA ANALYSIS

Background and Methodology

The data in this part of the report was collected between May and October 2006 from 260 workers in fifteen hospitals in the Shenzhen metropolitan area. Shenzhen is a sub-provincial city of Guangdong Province in southern China. It is located at the border with the Hong Kong Special Administrative Region. It is a center of foreign investment and has been one of the fastest growing cities in the world since the late 1970s. In the past two decades, over \$30 billion has been invested in Shenzhen to build factories and form joint ventures. Since the establishment of the Special Economic Zone⁶, Shenzhen's economy has boomed rapidly. Its GDP totaled 492.69 billion RMB (US\$61.6 billion) in 2005, up by 15% from the previous year.⁷ Shenzhen is a major manufacturing center in China. Its import and export volumes have been the first among mainland Chinese cities for the last nine consecutive years. It also comes the third in the actual foreign capital inflow.

All the hospital visits involved in this research project were unannounced; dates and individual interview subjects were chosen at random, so that it should most likely reflect an accurate profile of the overall injured worker population in Shenzhen. All the survey interviews were conducted without any hospital or factory officials present, so that workers could speak honestly and without fear of retaliation. The interviews covered 246 factories that employ over 199,105 workers in total. It is reasonable to assume that the conditions reported in these interviews reflect the general and typical conditions of work injury victims and the employing factories in Shenzhen, as well as the Pearl River Delta region.

Attributes of Injured Workers

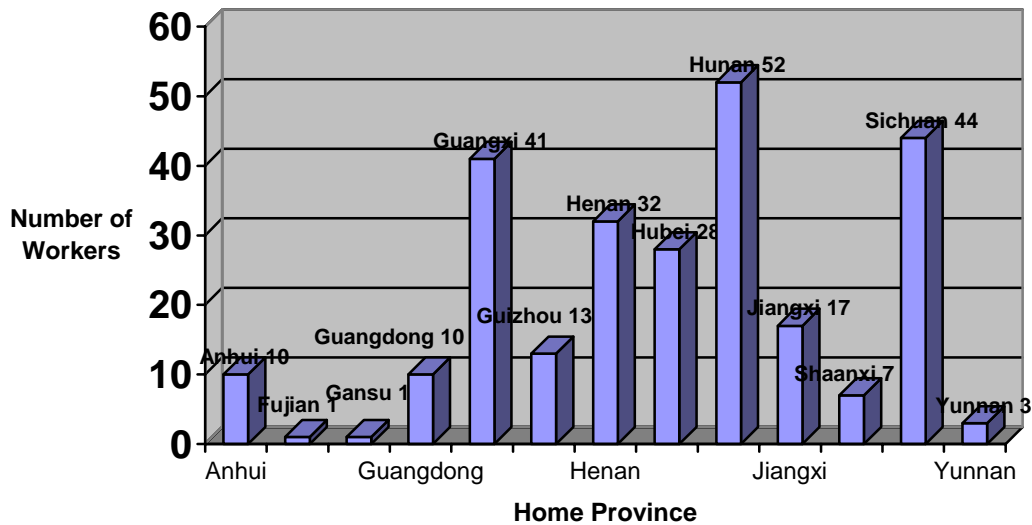
Place of Origin. Most interviewed workers are from central and inner provinces in China. Of 260 interviewed workers, Hunan Province is the place of origin for most workers: 52 of them come from Hunan. The top five provinces, Hunan, Sichuan, Guangxi, Henan and Hubei, together are the places of origin for 197 workers (76.1% of total workers). Only 10 workers are from Guangdong Province. Migrant workers constitute 96.1% of injured workers. This is in fact one of the root causes for workers' health issues in southern China. Because China has a strict household registration system ("Hukou" or "户口") that identifies a person as of either urban residence or rural residence, the rural identification puts migrants in a much disadvantaged position in urban society. The Hukou system has been somewhat loosened in recent years but continues to be a barrier for the free movement of migrant workers. Better job opportunity and more income in cities keep bringing workers into the Pearl River Delta region, despite the often poor working and living conditions and little access to public health services. The marginalization of rural

⁶ The Special Economic Zone comprises Luohu, Futian, Nanshan, and Yantian districts, but not Bao'an and Longgang districts.

⁷ Guoying Zeng, "The Urban Segmentation Problem of Shenzhen," 42nd ISoCaRP Congress 2006, http://www.isocarp.net/Data/case_studies/832.pdf.

migrants has been one of the most troubling issues in the process of urbanization in China. It is also the larger background picture of this work injury research report.

Image 2: Illustration of Place of Origin Distribution



Age, Sex, and Marital Status. The average age of injured workers was 26 years old. The median age was 24. Only eight workers, 3% of all workers interviewed, were women. The rest 97% workers were men. This largely reflects the gender distribution among different sectors: more men work on heavier and more dangerous posts while more women work in the service and light industries.⁸ As Image 3 demonstrates, injured workers tend to be very young and single. There are 179 (69%) workers under the age of 30 and 162 (91%) of whom are single. It is to be noted that two of the interviewed workers were 15, which is below the legal age required to be employed. The Chinese labor law stipulates no employer or company shall hire employees under the age of 16. This is an evident violation of law. Of all workers interviewed, 64% were single and 34% were married.

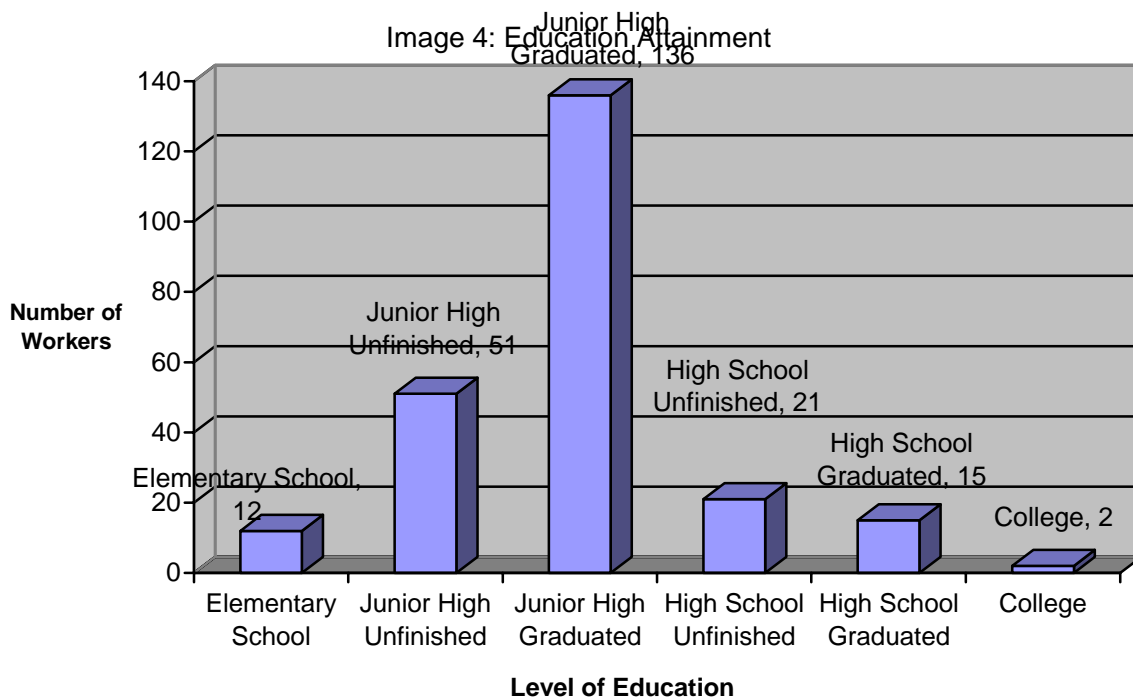
Image 3: Age and Sex of Injured workers

Age	Sex		Marital Status	
	Male	Female	Single	Married
15-19	57	1	58	0
20-29	116	5	104	17
30-39	53	2	3	52

⁸ Another possible reason was because our investigators were mostly male, they had greater access to male injured workers.

40-49	25	0	1	24
50-59	1	0	0	1
Total	252	8	166	94
Total %	97%	3%	64%	36%

Education Levels and Knowledge of Labor Law. The education levels of injured workers are relatively low. Only 38 workers (16%) attended school beyond the legally required nine years of compulsory education and two workers (0.8%) received education beyond high school. In contrast, 63 workers (26%) did not complete the free compulsory education program. Injured workers possessed very little to no knowledge regarding their rights and entitled compensation when injured at work. Among 241 workers who responded to the question, 218 of them (90%) said they had no knowledge of labor law whatsoever and 23 (9.5%) said they knew “a little.” In the sources of legal knowledge given by workers, “legal pamphlets” (6), “friends” (5) and “consulting lawyers” (3) were mostly cited. Other workers acquired legal knowledge from “books,” “television,” or “previous injury.”



*Total number is 240. Twenty case data were unavailable in this question.

Work Conditions Surrounding Work Injury Cases

Labor Contract and Work Injury Insurance. Among all workers who answered the questions (251), 163 (65%) of them had labor contract and 87 (35%) did not. Meanwhile,

179 out of 246 workers (73%) had work injury insurance and 67 (27%) workers did not. These numbers mark significant improvement from an independent research in 2003 (61.7% of the injured workers did not have labor contract⁹) and CLW's 2005 report ("only half of workers surveyed reported any work-injury insurance."¹⁰ However, being insured does not guarantee workers' receiving lawful compensation. In practice, employers often have a special relationship with the hospitals they send injured workers to, who would withhold workers' medical documents, so that workers cannot apply for work injury certificate and evaluation timely. In return, employers will keep sending injured workers to such hospitals. Employers, on the other hand, often deny the employment relationship with injured workers or refuse to produce necessary documentation for filing claims. Another common practice is that, in many factories, employers purchase work injury insurance for a fraction of total workers in order to save money. Then they would have injured workers to claim compensation under the insured workers' names, which often cause delay and complication of compensation claiming or denial.

Work Hours. Surveyed workers on average worked 10.7 hours a day (11 hours a day in the 2005 CLW report). Only 12 out of 255 workers worked 8 hours a day, the legal daily work hours. Sixty-two workers reported that they did not have one day off in a month; 20 workers had one rest day every other week; 148 workers had one rest day every week; and only 10 workers had two rest days every week, which is the legal mandate. However, under the Chinese labor law, workers shall not work overtime more than three hours a day, 36 hours a month. As we can see, the violation of maximum work hours is a common practice in the manufacturing factories in the Pearl Delta River region.

Income. The average income, including overtime, of surveyed workers was 1205 RMB (US\$154) per month, which is significantly higher than the 2005 CLW report (804 RMB, US\$99). This can be explained by the recently increased minimum wage in Guangdong Province and the higher income level in Shenzhen than Dongguan. Thirty-one workers were paid less than the minimum wage standard in Shenzhen (710 RMB per month within the Special Economic Zone, 690 RMB outside; 810 and 710 RMB from July 1, 2006), while a few dozen barely surpassed the minimum. However, the minimum wage standard is based on the work schedule of 8 hours a day, 5 days a week. With this consideration in mind, a much greater number of workers are paid at minimum wage rate or below. In fact, when calculated by hourly rate, only 34 out of 232 workers were paid more than 4.3 RMB or 5.1 RMB (on and after July 1, 2006) per hour (hourly rate under the minimum wage standard). Over 85% of surveyed workers were paid less than the hourly minimum wage.

According to other research, over 60% migrant workers in Guangdong Province receive 500-1000 RMB monthly income, which is only 20-30% of the average income of the local Guangdong residents. Monthly living expenses in Guangdong Province are about 400-500 RMB at minimum. More than half of the migrant workers have to work 10-16 hours a day

⁹ Dale Wen, *ibid.*

¹⁰ China Labor Watch, "Crushed: A Survey of Work Injuries and Treatment in the Pearl River Delta," September 2005.

in the peak season to compensate for the low income.¹¹ The majority of the enterprises do not pay legal overtime compensation.¹²

Employer and Factory Information. Among the 250 respondents, 129 workers (51.6%) work for locally invested factories (registered by mainland investors). Fifty-three factory owners are from Taiwan, 46 from Hong Kong, 9 from EU/US, and 13 from other places. The total number of employees of involved companies is 199,105, with 64 companies employing less than 100 workers, 110 companies employing 100-499 workers, 32 companies employing 500-999 workers, 36 companies employing 1,000-8,000 workers, and 4 companies employing over 10,000 workers (total company number is 246).

Injury-related Information

Type of Injuries. Among 259 responding workers, 210 reported finger injuries, 23 reported hand or wrist injuries, 11 reported arm injuries, with the rest being leg, foot, ankle or other injuries. Ninety percent of all injuries were of victims' hands or arms, with severity ranging from cuts and burns to severe nerve damage, permanent paralysis and the loss of entire digits and limbs. The most common injuries reported were broken or severed fingers on the dominant hand. This finding is consistent with other independent research that indicated there are about 40,000 fingers severed every year in the Pearl River Delta region.¹³ It is said that there were about 300 clinics in Kai County, Sichuan Province, specializing in reattach severed fingers and arms for returned migrants.¹⁴

Image 5: Workers with hand injuries from Kai Si Factory (Kaiser), Guangzhou, Guangdong Province



¹¹ Monica Wong, "Overview of the Occupational Safety and Health Conditions in Foreign Invested Enterprises in China," Hong Kong Christian Industrial Committee, April 2005.

¹² Under the Chinese labor law, weekday overtime shall receive compensation 1.5 time regular wage; weekend overtime shall receive 2 times regular wage; overtime during national holidays shall receive 3 times regular wage.

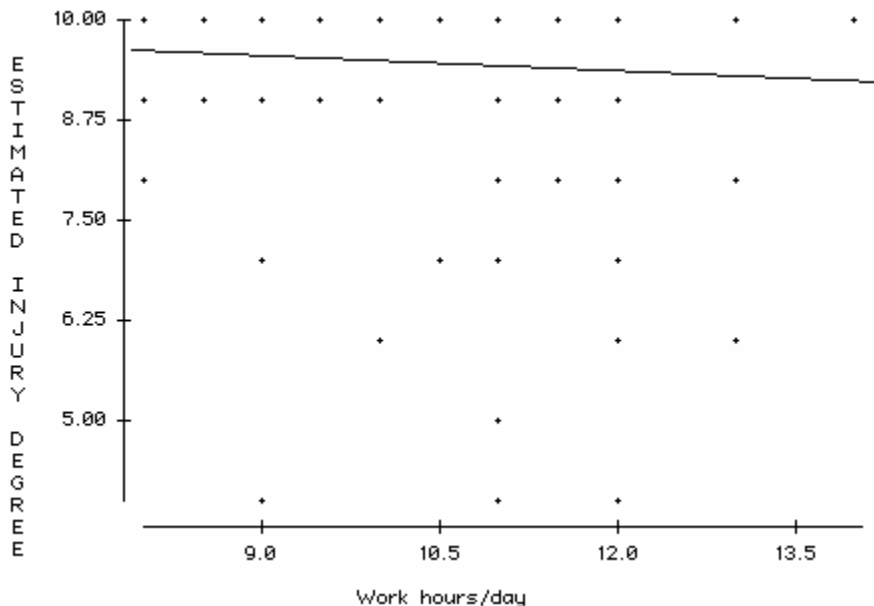
¹³ Dale Wen, *ibid.*

¹⁴ Xiang Biao, "Migration and Health in China: Problems, Obstacles and Solutions," National University of Singapore.

Typical Causes of Injuries. The most frequently cited causes of injuries were “carelessness,” “fatigue,” “machine malfunction” and “lack of training.” Yet in work places where most new workers do not receive any operational or safety training and merely learn from watching senior workers operate, “carelessness” should better be interpreted as “inexperience” or the same as “lack of training.” According to a recent report, most work injury victims are injured within the first three months of employment.¹⁵ One worker surveyed in this report was injured on the second day of his employment! The data in this research suggest that the high injury rate is a result of the lack of safety training and protective measures.

Fatigue is another major cause of work-related injuries. From the work hours survey we have known that over 95% injured workers worked overtime, and often as many as 12 hours a day (the highest number surveyed was 14 hours a day). It is not hard to imagine that over-exhausted workers are more likely to doze off or make operational mistakes, and therefore are more susceptible to work injuries. Furthermore, as the regression test shows below, the length of work hours and injury severity are negatively correlated, which means the longer workers work, the more severe their injuries tend to be. It suggests fatigue is not only related to the frequency of work injury but also the severity, although such correlation will require further studies and more findings to be conclusive.

Image 6: Work Hours and Injury Severity Regression Analysis



¹⁵ Public Interest Times (Gong Yi Shi Bao), “Migrant Worker Work Injury Surveys in the Pearl River Delta Region,” February 5, 2006.

Dependent variable is: **ESTIMATED INJURY LEVEL**
 No Selector
 259 total cases of which 46 are missing
 R squared = 0.4% R squared (adjusted) = -0.1%
 s = 1.188 with 213 - 2 = 211 degrees of freedom

Source	Sum of Squares	df	Mean Square	F-ratio
Regression	1.16077	1	1.16077	0.823
Residual	297.666	211	1.41074	

Variable	Coefficient	s.e. of Coeff	t-ratio	prob
Constant	10.1423	0.7616	13.3	≤ 0.0001
Work hours/...	-0.063657	0.07018	-0.907	0.3654

Finding: Injury = 10.1423 – 0.063657 * Work hours/day

Salary Payment While During Hospitalization, Post-Treatment Plans and Need of Legal Aid. Among 248 respondents, only 33 of them were paid full salary during hospitalization (13%), which is required by the law. In other words, 87% of the employers did not comply with this section of the labor law. A total of 158 workers were only paid base salary (normally 15-30 RMB/ US\$1.9-3.8 a day). Seven workers were not paid at all. Fifty workers had other arrangement or did not know whether or how much they were paid. Living stipend during hospitalization ranged between 0 and 30 RMB (US\$0-3.8) per day, with the overwhelming majority of workers received 15 RMB (US\$1.9) per day for food and other non-medical expenses.

When asked of their “post-treatment plans,” 153 out of 247 workers answered they would “return to the factory.” Five workers said they would “negotiate with the employer” to see how to resolve the work injury matter. Six workers were determined to “file a work injury complaint.” Twenty-one workers said they would “quit and find a job in another factory.” Another 21 workers said they would “return to hometown.” Forty-one workers chose “do not know” as the answer. Except for workers who planned to “negotiate with the employer” or “file a work injury complaint,” who can be categorized as “action-takers” and made up only 4% of the total, all the rest workers planned to make more or less passive responses to their injuries. Such attitudes reflect both the lack of information and distrust migrant workers have for the legal system and labor law and the powerless position they are at in the employment relationship as well as in society at large.

When asked whether they need legal aid, 194 out of 246 workers replied “yes” (79%), while 35 workers chose “not at the moment/yes, when dispute arises,” and 17 workers replied “no.” This demonstrated that the need for legal consultation and legal aid is broad and urgent.

Summary

The current report shows consistent findings with CLW's 2005 report albeit with variations. The similarities include the great majority of injured workers are migrant workers from central and inner provinces in China. They are very young and single (with two underage workers), and their education levels are relatively low (16% of surveyed workers attended school beyond the legally compulsory education). Ninety per cent of surveyed workers had zero knowledge of labor law, while 79% of them needed legal aid. Injured workers worked 10.7 hours a day on average and 95% workers worked overtime regularly. Ninety per cent surveyed workers incurred finger or hand injuries. The most common causes of injuries provided by workers were "carelessness," "fatigue," "machine malfunction" and "lack of training."

The variations from 2005 are 35% of surveyed workers did not have a labor contract (as opposed to "over half" in 2005) and 27% of them did not have work injury insurance (as opposed to "only half" in 2005). However, most workers do not know the terms of the contract or the insurance. The average monthly income (including overtime) of surveyed workers was 1,205 RMB (US\$154) as opposed to 804 RMB (US\$99) in 2005, which can be explained by the recently increased minimum wage in Guangdong Province and the higher income level in Shenzhen than Dongguan. Still, over 85% of surveyed workers were paid below the hourly minimum wage deducted from the legally mandated monthly minimum wage and work hour limits.

III. CASE STUDY

The Winbo Industrial Co. Ltd. Case

Image 7: Winbo Industrial Co. Ltd. Exterior



Case Background. Guangzhou Winbo Industrial Co., Ltd. is located in the Shenshan Industrial District, Baiyun District, Guangzhou City, Guangdong Province. It is a domestically funded company that specializes in developing and manufacturing fashionable writing utensils, gifts, household products, bags, etc. Their products are exported to the United States, Europe, Japan and other Asian countries and regions. Besides OBM (Original Brand Manufacturing) and ODM (Original Design Manufacturing) production, the Winbo company also takes OEM (Original Equipment Manufacturing) orders from domestic or international famous brands and products such as McDonald's, Coca-Cola, Pepsi, Disney, Hello Kitty, Snoopy, Sesame Street, Garfield, Harry Potter, Barbie Dolls, Haier, Hooligan Rabbit, Hard Rock, Carlsberg, Grants, Tarzan, etc. The company has more than 800 employees. Most of its products are supplied to large retailers in China and abroad, such as Wal-Mart, Good & Abundant (Hao You Duo) and Carrefour.¹⁶

Worker H¹⁷ was from Hubei Province. He joined in the Winbo company in October 2000 to work in its stamping workshop. On December 7, 2005, 8:30 a.m., unaware of H's repairing the molds on the stamping machine, another worker started the machine and it severed half of H's right hand. H was sent to the Guangzhou Baiyunshan Hospital for treatment. However, his hand lost most of its functions. Although the company paid for H's medical bills, it did not apply for work injury certificate for H, nor did it compensate H's work injury as required by the law. H came to CLW field staff to ask for help in

¹⁶ For a comprehensive report on labor conditions in the Winbo factory, see the CLW-ILRF joint report here: <http://www.laborrights.org/projects/corporate/walmart/China%20Walmart%20Report102506.pdf>.

¹⁷ For the confidentiality of workers' identities and CLW staff's security, all workers' real names are omitted in this report.

February 2006. In preparing documents to apply for the work injury certificate, CLW staff found out that H did not have the required “proof of diagnosis” from the hospital. When H went to the hospital to ask for it, the hospital had given all his medical documents to the company to hinder him from filing the work injury complaint (hospitals do this to please their corporate clients, who would keep sending their injured workers to the contracted hospitals). CLW staff helped H negotiate with the hospital and file a complaint with the District Public Health Bureau. After two months’ negotiation and urging and many trips, H finally got his diagnosis paper in April 2006. His injury was certified as “work-related injury” by the Guangzhou City Baiyun District Labor and Social Welfare Bureau.

The next step was to obtain the “work injury evaluation” from the Municipal Work Ability Evaluation Committee. On July 18, 2006, H’s work injury was evaluated as the eighth degree.¹⁸ CLW staff believed that his injury should be the seventh degree¹⁹ and encouraged him to apply for reevaluation (7th degree is more serious than 8th degree and will receive more compensation accordingly). However, after two rounds of reevaluation (the third one was determined by the provincial level committee and deemed final), on November 13, 2006, H’s injury was still determined as the eighth degree and the medical treatment termination date was recorded as March 7, 2006. This result was final. Although it was unfortunate that H’s injury was not evaluated as the seventh degree, as it should be, H told CLW staff that he had no regret, because he had tried his best to defend his rights. Also since he had learned relevant laws and regulations in the process, he would be able to help other workers in the future.

H came to CLW staff to file his arbitration complaint after he received his provincial work ability evaluation. According to the Guangdong Province Work Injury Compensation Regulations (Article 23, 26, 29, 55 and 57), H is entitled to one-time compensation of 48,764 RMB (\$6,252), which consists of the following:

- 1) One-time injury & disability compensation: $10 \text{ mo} \times 2585^{20} \times 60\% = 15,510 \text{ RMB}$;
- 2) One-time injury & disability employment stipend: $15 \text{ mo} \times 2585 \times 60\% = 23,265 \text{ RMB}$;
- 3) One-time injury & disability medical stipend: $4 \text{ mo} \times 2585 \times 60\% = 6204 \text{ RMB}$;
- 4) Lost wages during medical treatment: $3 \text{ mo} \times 1185^{21} = 3555 \text{ RMB}$;
- 5) Transportation expenses: 220 RMB;
- 6) Evaluation fee: 545 RMB;

It has been more than a year since H was injured and he has not received a single penny of what is owed to him. While this report is being written, H has submitted his complaint to the Baiyun District Labor Dispute Arbitration Committee and is waiting for the arbitration

¹⁸ In the work injury evaluation system, injuries are evaluated in a 1-10 scale with 1 being the most serious and 10 the least serious.

¹⁹ Under the work injury evaluation guidelines, “loss of muscle function at 3rd degree in one hand” or “loss of 2-3 fingers other than thumb” can be categorized as 7th degree work injury.

²⁰ Average monthly income in three months prior to injury.

²¹ Monthly salary without overtime.

decision to be made. It may take another one to two years for H to be awarded the lawful compensation. But even then we do not know how much he will actually receive from the employer.

Case Analysis. H's story is very typical among injured migrant workers. Workers do not have a labor contract, or if they do, they do not have a copy of it nor do they know what the terms are. Their monthly salary is subject to various deductions that sometimes include insurance. However, workers are not clear what insurances they have and what benefits they should receive. Once workers are injured, their fate is completely at the hands of the employer, who decides at will how much they will be paid during hospitalization and for compensation. In H's case, he only received 10 RMB (US\$1.3) per day when he was hospitalized (in other cases, workers received 8 RMB (US\$1) per day). Yet under the law, as has been noted, he should receive full salary until he is discharged from the hospital. The employer uses connections or bribery to prevent workers from getting just compensation. In one case, the employer bribed the evaluating doctor to rate the worker's injury as 9th degree. When the worker applied for reevaluation, his injury was evaluated as 7th degree in the same hospital. The employer also attempts to persuade or coerce workers to make private settlements instead of paying the legal compensation. One employer told an injured worker blatantly, "I would rather spend 10,000 RMB on dinner with friends, not 1,000 RMB on your injury compensation!" Under these unfavorable and even hostile circumstances, whether a worker can receive compensation or not often depends on the employer's "conscience."

In the process of this research, at least four workers from the Winbo company came to CLW staff to seek for help. However, due to the fear of the long and difficult process, half of them chose to settle privately with the employer.

The GP Battery International Ltd. Case

Work-related health problems include work-related injury and work-related illness. Far more prevalent but also more difficult to identify than work injuries are chronic diseases acquired from work. Besides the high treatment costs, victims of chronic diseases often develop symptoms only after leaving the workplace. Together with the high mobility of migrant workers as well as the limitation of medical knowledge to determine causal or correlational connection between work conditions and particular diseases, workers bear an exceptionally high burden in work-related illness claims. In 2001, 13,218 cases of occupational diseases were reported in China, a 30% rise from 2000.²²

Chemical poisoning is the most prominent occupational hazard that constitutes 56.7% of China's total occupational disease cases. Benzene poisoning is one of the most common diseases, particularly found among female workers, especially in garment, shoes or suitcase factories, which often use cheap glue with high compositions of benzene. According to a study conducted by the Hong Kong Christian Industrial Committee in 2005,

²² *Ibid.*, Monica Wong.

85% of the occupational poisoning cases are found in industries such as electronics, printing, footwear, plastic and rubber, wood products. The mortality rate of occupational poisoning is 56.7% (Guangdong Province Health Ministry statistics, 2004).²³

Case Background. The GP Battery case is a chemical element poisoning case. Since its establishment under the Gold Peak Group in Hong Kong, the GP Battery International Ltd. (GP Battery thereafter) has rapidly expanded to become one of the world's major suppliers of primary and rechargeable batteries. The company is one of the world's top 10 battery manufacturers and the no. 1 battery manufacturer in Asia outside Japan. It supplies an extensive range of battery products to original equipment manufacturers (OEM) (including Toshiba and HP), leading battery companies as well as consumer retail markets under its own GP brand name.²⁴ GP Battery's production facilities are located in Hong Kong, China, Singapore, Taiwan, and Malaysia, supported by marketing and trading offices in Singapore, Hong Kong, Taiwan, China, South Korea, Malaysia, Thailand, Poland, Denmark, Germany, Italy, Sweden, the Netherlands, the UK, Canada and the US. The Group currently employs over 13,000 people worldwide and occupies a total floor area of approximately 250,000 square meters.²⁵

Image 8: Chao Ba Battery Co. Ltd.



Source: Jin Ri Shuo Fa, CCTV International

In early 2004, about 50 workers from the assembly department of the Chao Ba Battery Factory (a subsidiary of GP Battery, located in Huizhou, Guangdong Province) paid out of their own pocket to have a physical examination. Most of them found above normal cadmium (Cd) element²⁶ in blood. GP Battery denied the finding and rejected workers'

²³ *Id.*

²⁴ See Attachment 1 for GP batteries on sale in Amazon, BestBuy and B&H's online stores.

²⁵ Information sources are GP's official website and other online corporate profiles.

²⁶ Cadmium, a soft, bluish-white metallic element occurring primarily in zinc, copper, and lead ores, that is easily cut with a knife and is used in low-friction, fatigue-resistant alloys, solders, dental amalgams, nickel-

request for an all-factory health examination. After workers' collective strike and complaint, the factory arranged for about 121 workers to have urine tests but publicly denied workers' charges. In July 2004, over 400 workers from the Xian Jin Battery Factory (also a GP Battery subsidiary and located in Huizhou) were found above normal Cd element in blood test. After rounds of testing, it was confirmed by the Guangdong Provincial Occupational Disease Prevention and Treatment Center that 177 workers were found Cd-intoxication and two Cd-poisoning. CLW staff learned about this case during routine work injury visitations and referred it to a prominent work injury lawyer in Guangdong.

Cadmium was used to produce Ni-Cd batteries at GP Battery.²⁷ Excessive exposure to cadmium can cause severe lung damage, which in some cases may even lead to death. Other health effects that can be caused by cadmium include damage to the renal function, the central nervous system and the immune system; diarrhea; stomach pains and severe vomiting; bone fracture; reproductive failure and possibly even infertility; psychological disorders and possibly DNA damage or cancer development.²⁸ Cadmium poisoning is a slow process. The incubation period is at shortest 2-8 years and normally 15-20 years. At present, there is no effective medicine that can remove cadmium from human body.²⁹

The core controversies in this case are 1) the causal relationship between contaminated work environment in the GP Battery factories and workers' various health problems and diseases; 2) how to distinguish the concepts of excessive cadmium consumption, cadmium intoxication and cadmium poisoning legally; which qualifies as occupational disease under the law; and what corresponding legal responsibilities the employer should bear.

On the first issue, an investigation by the official Chinese Central Television Station (CCTV) revealed that at least three young female workers who used to work at the Chao Ba and Xian Jin factories had died of kidney-related diseases³⁰. One of them, Fu Hongqin's disease was discovered in the aftermath of Cd-poisoning scare and hence her medical records were relatively well documented (she died in January 2006). In other cases, because migrant workers usually return to hometowns upon becoming sick, where they cannot receive quality treatment, it is very difficult to keep track of their cases and they often lose the opportunity to receive legal protection and compensation.

On the second issue, although a series of work injury and occupational disease laws are in place in China, they are far from comprehensive and easily interpretable. In the court opinion on appeal in the first class action filed by workers in December 2004, the judge

cadmium storage batteries, nuclear reactor shields, and in rustproof electroplating . Atomic number 48—
American Heritage Dictionary

²⁷ See Attachment 2: GP Ni-Cd battery product is still available from its Shenzhen distributor (circled item) today, more than two years after the case was exposed.

²⁸ LennTech, <http://www.lennotech.com/Periodic-chart-elements/Cd-en.htm>

²⁹ Beijing Youth Daily/Chongqing Morning Daily, "Migrant Workers' Cadmium Poisoning Trial Began," March 20, 2005, http://news.xinhuanet.com/legal/2005-03/20/content_2719084.htm

³⁰ "Lethal Batteries," Economics 30 Minutes, CCTV, December 10, 2006.

states that excessive cadmium consumption has not reached the level recognized as cadmium intoxication or poisoning under the work injury laws. Hence, it cannot be deemed occupational disease. Accordingly, victims cannot receive work injury treatment. The court also denied the request for advance payment for future medical check-ups and related transportation fees. Furthermore, the court denied the plaintiffs' compensation request for their severe emotional distress as a result of the cadmium poisoning scare, on the basis that such claims are not clearly stipulated in the law. The worker plaintiffs lost the case in both the trial court and the appellant court.

One defense raised by the battery factory was that it has paid workers one-time compensation and terminated its employment relationship with them in 2004. Therefore, the defendant has fulfilled its legal responsibilities except for future medical examination and treatment costs. This has to backtrack to 2004, when the Huizhou municipal government, GP Battery and the provincial Occupational Disease Prevention and Treatment Center jointly held a press conference on the GP Battery case. On that conference, the then vice mayor of the Huizhou City, Xu Guang, said the government would monitor the company to be responsible to workers' treatment no matter how many years it would take. One of the four agreements reached between the local government and GP Battery was that the factory shall not terminate labor contracts with workers, but workers may opt to do so in exchange for appropriate amount of compensation. GP Battery announced that this offer could be withdrawn unilaterally by the company and workers must decide within 15 days. Most workers were afraid to return to the factory due to the fear of further damage of their health at that time. They were also afraid if they did not accept the offer, they might end up not receiving any compensation. Therefore, most of them chose to accept the offer.

Female worker Tan Ling incurred cadmium intoxication and a 6th degree arm injury from her job at the Chao Ba factory. According to the labor law, the employer shall not be discharged from the labor contract in such a case even if the employee consents. In other words, the employer's legal responsibilities are non-waivable in Tan's case. In order to make sure of this, Tan even signed a private agreement with the factory that states, "no one shall terminate the labor contract between the two parties prior to the recovery of (Tan's) arm injury." Tan thought she was protected by three safeguards: the labor law, a governmental agreement and a private agreement. However, in May 2006, when her kidney illness became serious, the Chao Ba factory unilaterally terminated the employment with the excuse of "absence from work with no cause." Tan filed for labor arbitration, but it ruled that the termination of contract was effective. Tan felt that even legal aid counselors are reluctant to provide her assistance now, because the GP Battery case is such a tough one. Although the Chao Ba factory deposited 50,000 RMB (\$6,410) into her bank account, Tan did not dare to cash any of the money for lack of explanation of its purpose. Tan feared cashing the deposit would affect her future compensation.³¹ Other Chao Ba workers encountered difficulty in re-employment, because employers do not want to hire employees involved in labor lawsuits and they are worried about these workers' health

³¹ *Id.* Economics 30 minutes, CCTV.

status. In November 2006, 146 female workers filed another class action lawsuit against GP Battery with the help of a legal expert, Professor Lu Ying at the Zhongshan University.

Image 9: Female workers in the lawsuit against GP Battery



Source: Chongqing Morning Daily, March 19, 2005³²

Case Analysis. One of the core controversies in the latest litigation against GP Battery is who should arrange the annual medical check-up for infected workers. Workers do not trust examinations arranged by the factory, because the results contradicted their self-paid examinations and were normal or even better than normal. They suspect that the factory manipulated the results, while the factory claiming that workers' suspicion was unreasonable and they were intentionally uncooperative. As Professor Lu said in an interview, "The law has granted workers such rights (right to annual medical check-ups). Yet they have to obtain them through litigation. Even if we win the case, I will not feel a sense of achievement. I think in our society, if employers can comply with the law and workers can raise their legal awareness, we will have a lot fewer such lawsuits."³³

In regard of the substance of the law, GP Battery case raised several statutory interpretation and legislative issues. First, the court rejected workers' compensation claim partly because most workers' cadmium intoxication level did not reach the state standard for cadmium poisoning. However, medical studies show that cadmium intoxication itself can damage human body and cause various diseases. This has been noted by medical experts and is supported by the symptoms some of the workers already developed. Moreover, cadmium poisoning can have 10-25 years of incubation period. If the case cannot be established now and workers are dismissed from the factory, how will it be possible for workers to litigate again if that they develop related diseases in 10 years from now, leave alone the likely bar by statutory limitations? If it is not clearly stated in the law and the exact future medical treatment costs are unknown now, why cannot the court rely on expert opinion and estimation based on past cases and probability analysis to grant worker victims a reasonable amount of compensation? In addition, in order to set a precedent for similar cases in the future, the government should establish a monitoring and research committee, which will conduct a comprehensive study of the GP Battery case and make recommendations to relevant government agencies and the legislation.

³² http://cq61.com/2005-03/19/content_3904109.htm

³³ *Ibid.* n 19.

Secondly, the court ruled that future medical costs cannot be paid in advance. However, the defendant factory is a high-risk enterprise in its business nature. It may go bankrupt or merge with companies at any time. It will be unreasonable to have plaintiffs bear such business risks with the defendant. The court should require the factory to set up an escrow account or a trust fund for infected workers, so that their future medical expenses can be secured.

Thirdly, compensation for emotional distress has not been recognized in work injury cases in Chinese law (there has been no precedents). However, in cases like this one, workers will face unusual psychological pressure for as long as 25 years, as well as the fear of damage to their future generation. The level of emotional distress is far beyond normal work injury cases and the victims may very likely need necessary treatment or counseling. Interestingly enough, the court did not say that such compensation is not recognized by the law, but the “damage” is unclear.” If that is the case, it should arrange psychiatric evaluation to determine the necessity and amount of financial compensation for workers.

IV. DISCUSSION: PROBLEMS, CAUSES AND RECOMMENDATIONS

Typical Violations

From the work injury cases CLW collected, typical noncompliances by employers are:

- i. No or partial salary payment when injured workers are hospitalized;
- ii. Withholding workers' medical records with the assistance of the hospital;
- iii. Denial of employment relationship with injured workers;
- iv. No work injury insurance or partial insurance (by insuring a small number of workers in the factory and having uninsured injured workers file insurance complaints under insured uninjured workers' names);
- v. Settling with workers by private agreement instead of full compensation under the law (that allows employers to pay significantly less);
- vi. Other intentional delay of the arbitration or payment advancement process;
- vii. Unilateral termination of employment after workers are injured.

Socioeconomic Factors Contributing to the Violations

The overemphasis on economic growth further twists the unbalanced power relationship between the government, the employer and migrant workers. In order to keep investors and capital inflow and to enhance general revenue income, which is not only an important fiscal source but also a key evaluation criterion for political performance by the higher and central authorities, local governments seldom put migrant workers' interest before investors'. To them, enforcing labor laws and regulations will increase labor cost and deter future investment, and will accordingly hurt their own political interest. Therefore, they would rather keep one eye closed for unlawful employers. On the other hand, profit-driven employers try every way they can to maximize the output/input ratio, regardless if workers' safety and welfare are being threatened or laws are broken. As early as 1996, China Woman's News reported that private and foreign-invested shoe factories in Putian, Fujian Province, earned billions of RMB since the 1980s from female migrant workers' labor. Yet they were unwilling to spend even 1% of their profit to improve the working conditions that had destroyed thousands of workers' health.³⁴ Migrant workers, deprived of protection from an impartial judiciary system and local government, without a truly representative and functional labor union, caught between urban and rural lives, are utterly powerless and vulnerable. All of these contribute to migrant workers' work injury plague.

Action and Policy Recommendations

Educating Workers. First and foremost, workers must know of what rights they are entitled to. In regard of what information will be most helpful to workers, CLW staff and researcher find that they should be informed of the following:

³⁴ China Woman's News, January 6, 1996, cited in Xiang Biao, *supra*.

- i. What rights and compensation injured workers are entitled to under the law;
- ii. What documentation they need in order to file a work injury complaint;
- iii. Where they can receive legal consultation free of charge or retain lawyers at reasonable cost;
- iv. How to negotiate with the employer in case the employer tries to evade the legal responsibilities;
- v. What are their legal options;
- vi. How other workers in similar situations successfully protected their lawful rights.

The Chinese labor law in fact provides fairly comprehensive protections for workers. For example, under the Occupational Sanitary Prevention and Treatment Law, employers shall provide workers with work environment and conditions that meet the national occupational sanitary standards and requirements; purchase work injury social insurance for workers and truthfully report occupational disease threats, accidents and test results to relevant sanitation administrative agencies; provide effective occupational disease prevention facilities and safety protection gears to workers, etc. Workers are entitled to the right to occupational sanitary education and training; the right to occupational health examination, diagnosis, treatment and recovery service; the right to know work conditions and safety preventive measures; the right to work in a healthy environment; the right to report and litigate; the right to refuse to work in violation of safety regulations; the right to democratic management of occupational sanitation related affairs; and the right to compensation. Workers must know their rights and the employer's responsibilities under the law, so that they can protect themselves through legal channels.

Government Supervision and Law Enforcement. Due to the low frequency and effectiveness of inspection, factory owners tend to bet on the chance whether their violations will be caught. As a result, high occurrence of work injuries is not only found in private enterprises, township enterprises, private mines, but also joint ventures. These work places are often contaminated by powder dust, poisonous chemicals, noise, heat, radiation and other risk factors, which are direct causes to work-related accidents. Government agencies must strengthen factory inspections and enforce labor regulations. Because China does not have an independence judiciary system, law enforcement is often inseparable from government entities. In order to secure foreign investment, local government administrators have strong incentives to favor factory owners over workers. The fundamental rectification is to effectuate the real "rule of law", so that law enforcement will be able to hold employers accountable for their violations, as well as corrupt government officials. Media and public pressure can also force office holders to give higher priority to key cases, as we have seen in the GP Battery case. Nevertheless, the government cannot be the direct responsibility bearer (which ought be the corporate employer). It can at most monitor and pressure companies to live up to their legal and moral responsibilities.

The ACFTU (All-China Federation of Trade Unions), the official and only lawful trade union in China, should step up its role of defending workers' rights. In a recent press conference, Liu Jichen, the Legal Work Department Director of ACFTU, acknowledged that workers in many places often cannot afford to pay the high lawsuit costs and have to wait for a very long period for a verdict. Liu said that by the end of 2005 trade unions at various levels had added 866 legal aid institutions to the existing 2,990 to serve the workers.³⁵ However, divided by 150 million migrant workers, each legal aid institution will serve 38,900 workers. Needless to say, this is far from enough. Although it is unclear how the ACFTU will achieve its goal to "reduce workers' legal expenses and shorten the litigation period," expanding its legal education and aid programs and funding special programs for migrant workers seem to be the right place to start.

Legislative Reform. The current legal procedure for filing a work injury claim is complicated and circuitous. Together with the large amount of fees required, they hinder workers from receiving adequate compensation. Workers often settle for less because they are pressured by employers or because they simply cannot afford the legal fees or up to two or three years of filing process to pursue their cases. On top of that, the amount of compensation workers receive can barely meet workers' short-term and long-term financial needs for recovery and living stipend. According to state-run media, through labor arbitration workers usually only receive work injury compensation 20,000-30,000 RMB (\$2,500-3,700).³⁶ Private settlement leads to even less compensation, often several hundreds up to 5,000 RMB (\$100-640) for a severed finger.³⁷ Such meager amounts are far from just compensation and cannot guarantee injured workers' basic living needs. Therefore, a reevaluation of the compensation calculation method should be conducted. Alternatively, the legislation can propose and ratify an adjustment based on the constantly increasing living expenses and workers' short-term and long-term actual needs. Moreover, the legislation should enact a more accessible and less expensive filing procedure by which injured workers can sue unsafe employers and receive just compensation. These measures will not only uphold justice, but also effectively deter employers from disregarding workers' safety for fear of large compensation suits.

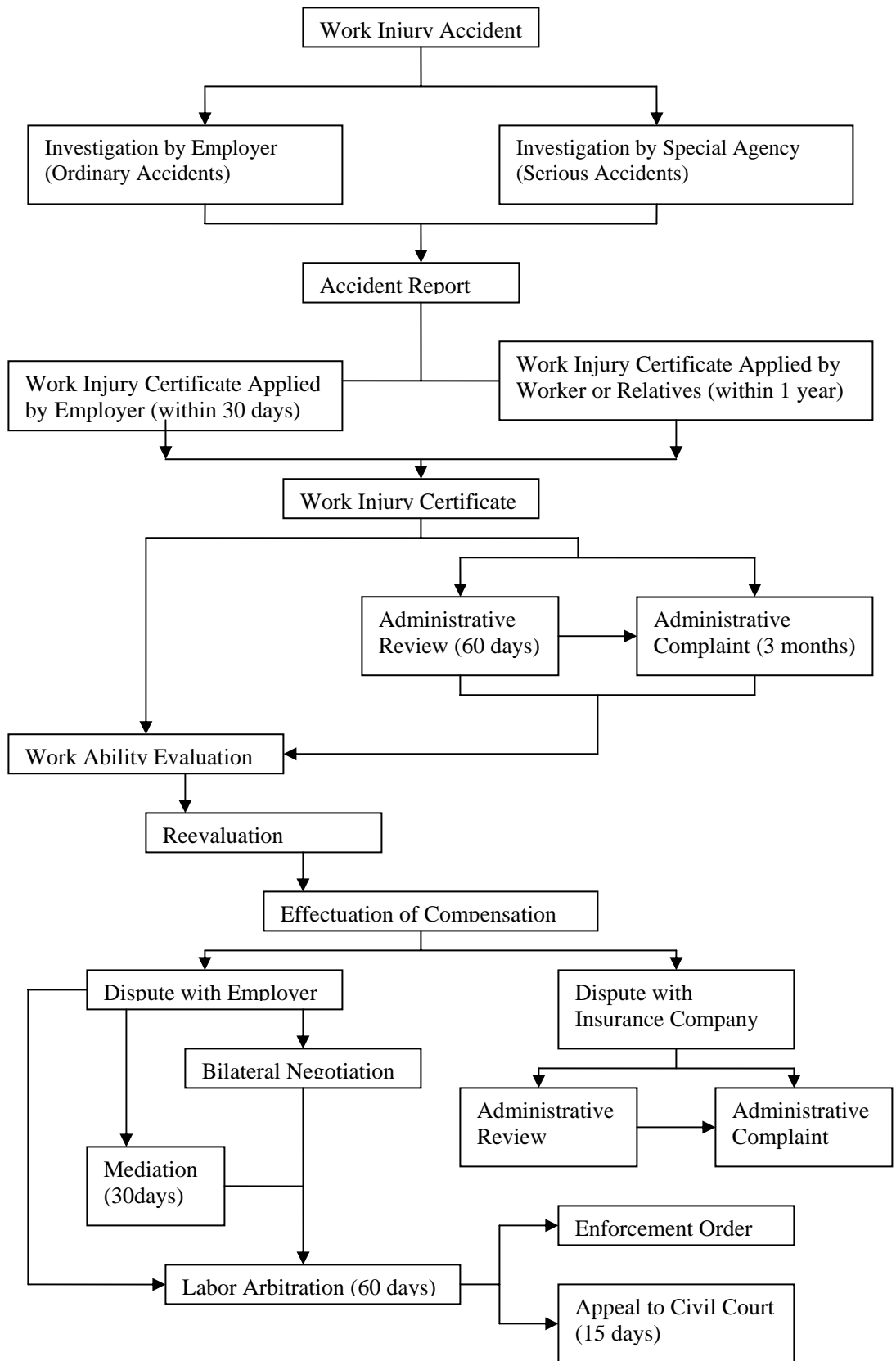
Image 10: The Long March: Work Injury Complaint Filing Procedure Illustration

(Reference: Work Injury Insurance: Core Regulations and Cases)

³⁵ China Daily, "Labor Disputes Threaten Stability," January 30, 2007

³⁶ China Youth Daily, "珠江三角洲农民工生存状况调查" (Zhujiang sanjiaozhou nongminggong shengcun zhuangkuang diaocha), January 2, 2005.

³⁷ Public Interest Times (Gong Yi Shi Bao), "Migrant Worker Work Injury Surveys in the Pearl River Delta Region," February 5, 2006.



Pressuring and Engaging Multinational Corporations. Some companies attempt to shift responsibilities by contributing problems to “historical reasons” or locality. For example, in the GP Battery case, the factory claimed that it only realized the threat of cadmium in recent years and workers should also bear partial responsibilities for lack of sanitary habits on their part. Clearly, these excuses do not stand up. Cadmium was listed among the “severely poisonous and harmful chemicals involved in production” provided by PRC’s Ministry of Chemical Industry as early as 1981. The Chao Ba factory was established in 1994 and GP Battery has been in business for decades. “Cadmium poisoning” may be an unfamiliar term to the general public, but it is not new at all to battery producers. The factory claimed that workers did not pay enough attention to sanitation and safety protection themselves. However, the factory had not provided any production safety training until 2001, while most infected workers had worked at Chao Ba for 7-8 years or even a decade. When asked why cadmium intoxication was not detected earlier, the factory spokesperson admitted that factory organized medical examinations only focused on infectious diseases, hepatitis and such in the past. There had been no cadmium intoxication examination.³⁸

Given the advantages they have in global production and trade, multinational corporations should accordingly bear greater instead of less responsibility in protecting workers’ rights. They have the information advantage that they know better about safety hazards involved in production. They have the financial advantage that they can invest in research to most effectively prevent work-related injuries. They also have the management advantage that they can implement such measures on the production floor and provide workers relevant training. When injuries occur, multinational corporations must not shift their responsibilities to the local subsidiary or supplying factories. Brand manufacturers still bear moral if not legal obligations (contractual relationship vs. ownership) to ensure workers’ basic rights are guaranteed regardless of their nationalities and geographic locations.

Multinational corporations should make it public where their products are manufactured and assembled, which includes not only the “first-tier” suppliers (factories that primarily produce for such brands) but also the second and third-tier suppliers (factories that take smaller production orders from such brands or their middle-men). In addition to direct monitoring and training, they should also work with independent third-party NGOs or monitoring groups to conduct unannounced factory inspections and confidential worker interviews in order to defeat “double booking” and other falsification tricks supplying factories often employ. Employing companies must insure workers and provide injured workers with one-time compensation under relevant labor laws and regulations.

Supporting and Empowering Local NGOs. Local NGOs have first-hand knowledge of work conditions on the factory floor and extensive experience in working with workers. They conduct investigations, provide legal aid and advocate for workers’ rights. However,

³⁸ CCTV International, “Legal Discussion Today,” August 11, 2004. Transcripts in Chinese are available at www.cctv.com/news/society/20040811/101495.shtml.

in China grassroots NGOs' activities and funding are strictly monitored and restricted. Most of them have to struggle between maintaining normal operation and organizational survival. Governments at different levels ought to understand that nonprofits are a mechanism to utilize civil resources to adjust societal relationships, ease social tension, help the disadvantaged and serve equity, equality and justice. The civic sector is an essential component of a "harmonious society," which President Hu Jintao called on all Chinese to build together. Hence, the government should not only give labor NGOs room to develop, but also encourage them to become more active in the effort of improving work conditions and protecting labor rights.

Labor NGOs can also provide a channel for workers to voice their opinions and demands. In March 2006, a Shenzhen labor NGO CLW has been working with organized a public petition to call for the legislation to reform the current labor arbitration law, which charges a filing fee that keeps most migrant workers out of the door (500 RMB: \$64). Although the petition did not receive immediate result, it was a good experiment to educate workers to influence law-making through collective lobbying and self-empowerment.

Image 11: Workers Signing Up for the Public Petition;



Content of the Public Petition: Respect workers' rights, reduce expense of protecting workers' rights, improve labor law. Which has been signed by more than 10,000 workers and delivered to Shenzhen's government.

Shenzhen, Guangdong Province, 2006

V. CONCLUSION

The findings in this report are stunning. Every year tens of thousands of workers in the Pearl River Delta region suffer from work injuries due to the lack of safety inspection, poor operational training and chronic fatigue, which could have been avoided if only labor laws are respected and enforced. According to a study on labor relations in the non-state-owned sector in Guangdong Province conducted by the Provincial Committee of CPPCC (Chinese People's Political and Consultative Conference),³⁹ in 2005 of all the labor dispute cases occurred in the non-state-owned sector, 40% were over delay or docking of wage payment; 26% were over unlawful labor contract or breach of contract (by the employer); 19% were over excessive overtime. Companies, in order to lower production cost, often misreport number of employees and wage standard. Most of the workers on the production line do not have social insurances. The above report reveals that of over 22 million migrant workers in Guangdong Province, only 22% had pension; 14% had medical insurance; 15% had unemployment insurance; 27% had work injury insurance; and 1.6% had reproductive health insurance by the first quarter of 2005.⁴⁰ At the government level, officials must strengthen factory inspection and urge employers to comply with the labor law, as well as providing alternative legal and health services for migrant workers.

Even though the ACFTU is the official trade union in China, it encountered resistance from many private and foreign companies and could not reach to the majority of migrant workers. According to the CPPCC report, in Guangdong Province, only 23% of the non-state-owned enterprises had labor unions. The central government set the goal of unionizing 60% of the foreign and joint ventures in the near future. In addition, the Guangdong Province aims at having labor unions in 80% of all enterprises. If these goals can be achieved, the ACFTU will become a much stronger player in the labor relations game. In the new 2001 Trade Union Law, Articles 23 to 26 significantly increased the ACFTU's powers with respect to occupational safety and health, with a mandatory role in investigating accidents and infringements on workers' other rights. With the new power, the ACFTU could live up to being a guardian of workers' rights, conditioned that it can transform itself institutionally and truly stand for workers, and not the investor or the government.

In order to improve work conditions and improve occupational safety and health, legislative and administrative efforts are not enough. Another crucial party and the root of the problem is the corporate employer. Most of the manufacturing factories in Guangdong Province are for export. At the same time, most multinational corporations who place orders in China vow to comply with international industry labor standards and/or have their own Code of Conduct. However, multinationals have difficulty enforcing these Codes of Conduct, since they lack ownership control over the factories manufacturing their

³⁹ Committee on Economics, General Office of Guangdong Provincial Committee of CPPCC, "Guan Yu Fei Gong You Zhi Jing Ji Ling Yu Lao Dong Guan Xi de Diao Cha," June 2006, <http://www.gdzb.gov.cn/works/content.jsp?catid=47&id=1267>.

⁴⁰ *Id.*

products, particularly subcontractors one or two steps removed from direct contractual relationships. Chinese law is also ineffective at controlling the behavior of multinationals. Nonetheless, multinationals must be held responsible for providing a decent working and living environment for workers. These workers contribute to their brand and profits through hard work, and have equal rights under the law as well as universal human rights principles. Only when the government, the labor union and the employer work together, can the work injury epidemic be eradicated and workers' rights respected.