

The Legal Regulation of Malicious Prosecution Tort

Nan Wu

Beijing 100875, School of Law, Beijing Normal University China

Abstract

In order to protect people's legitimate civil rights and protect the legitimate rights and interests of the parties, civil litigation has been specially established in the legal system. Therefore, litigation has become the main judicial channel for the public to seek help. However, it is undeniable that "rights is a double-edged sword". While the law gives people the right to appeal, some lawless elements are also using the right of action to seek illegitimate interests in order to achieve their illegal purposes. At present, China has not made clear and specific provisions on civil malicious litigation. It can be said that this is a "blank" in the formulation of our laws. How to regulate civil malice has become a difficult problem in the process of legal construction in China.

Keywords

Malicious prosecution; Tort; Legal regulatio.

1. Introduction

Because our country is in the transition period of socialist market economy, social disputes will not be reduced because people have more rights. At the same time, our judicial resources are limited. Therefore, how to alleviate the contradiction between the two has become an urgent problem to be solved. In the process of solving this problem, civil malicious litigation has become an obvious obstacle. In order to safeguard judicial authority, ensure judicial justice and promote the process of legal system, it is necessary to take some measures to regulate Malicious Civil litigation. Looking at all kinds of Malicious Civil Lawsuits in China, the author puts forward the following two classic cases as a comparison.

Case 1: On December 18, 2007, the Beijing Second Intermediate People's Court heard a case concerning compensation for damages in intellectual property disputes. The plaintiff claimed that he and the defendant were competitors in the same industry. Before that, the defendant applied for patents for products such as "fuse disconnecter" and obtained patent authorization from the National Patent Commission. In March 2005, the defendant sued the Beijing Second Intermediate People's Court for infringement of his patents. Now the State Patent Re-examination Commission has declared invalid four appearance patents related to this case. The Plaintiff alleged that the defendant maliciously brought a lawsuit to the court in order to cause him economic losses and applied to the court for freezing the bank accounts of his company. After trial, the court found that this case, which was granted a patent by the State Intellectual Property Office, had a legitimate external form. The reason why these patents are invalidated is that the defendant has made the design public in his product publicity, instead of applying for design patents from the State Patent Office for other designs that have been freely recognized by the public, so it cannot be judged that the defendant maliciously applies for these design patents from the Patent Office. Therefore, the defendant's tort action is justified, and the collegial panel therefore decided to reject the original complaint. [1]

Case 2: On August 5, 2003, Li sued the court, accusing Chen Mou, chairman of Zhongshi Tongfa Company, of infringing his patent rights. After court investigation, it was found that the patent "fire ball valve" involved in the case was to apply for utility model patent to the Patent Office according to the long-publicized standards of the state, but the patent was invalidated by the National Patent Re-examination Board, so Chen sued Li Mou in court for malicious action. After trial, the court found that Li Mou, as a professional, should be familiar with the industry's national standards. Although he

applied for utility model patents, these patents were already fully disclosed in the national standards, indicating that they were subjectively lack of integrity. His purpose was to "intentionally damage the interests of others. The reason why he filed patent infringement lawsuits was that he believed Tongfa maliciously monopolized the state. The interest Bureau applied for the patent of the standard already disclosed. This lawsuit was malicious. Finally, the court decided that the winning party was the plaintiff Chen Mou. [2]

Case one is the first malicious lawsuit concerning intellectual property in Beijing, and case two is the first malicious lawsuit concerning intellectual property in China. Although both cases belong to malicious litigation, the situation is very similar, but the final judgment of the court is very different, case one plaintiff's prosecution was rejected, case two plaintiff won. The main reason is that there are few provisions on this issue in the substantive law, such as the Constitution, Tort Liability Law and other relevant substantive laws. At the same time, in the content of the former law, the newly revised Civil Procedure Law in 2012 has increased the principle of good faith, the withdrawal of the third party's lawsuit and the punishment of malicious collusion. In the judicial aspect, because of the blank of the current law, judges often do not know what to do when hearing these cases. For example, how to make up for the victims 'damaged legitimate rights and interests or how to punish the perpetrators of civil malicious litigation, there is no specific legal provisions for reference. Therefore, how to reasonably prevent and control civil malicious litigation has become an unavoidable problem in the process of legal construction in China.

2. General investigation of civil malicious litigation

2.1 The concept of civil malicious litigation

Malicious litigation is a legal concept originating from Anglo-American legal system. Abuse of law litigation is a kind of tort, which stipulates that in American tort law, it can constitute an independent tort liability. In Britain, malicious lawsuit means that the plaintiff takes a form of malicious lawsuit without proper or legitimate reasons, so that the defendant is deeply involved in criminal or civil lawsuit, but the result of the lawsuit is often in favor of the plaintiff. The defendant has suffered some losses because of the plaintiff's lawsuit. Under the circumstances, the defendant can obtain compensation for the plaintiff's malicious lawsuit by filing a tort lawsuit in the court. [3]

2.2 Distinguish between civil malicious action and abuse of right of action

Only by understanding the right of action can we know how to distinguish the civil malice action from the abuse of the right of action. Generally speaking, China adopts the theory of dual right of action. The content of the right of action has the following two aspects: the first is the right of action on the substantive level, that is, when the dispute occurs, the parties can exercise their civil rights by filing a lawsuit. The second is the litigation right on the procedural level, that is, the civil procedure law endows the parties with the basic rights of litigation, such as the right to Sue, the right to counterclaim, the right to appeal and the right to apply for retrial. Therefore, the abuse of the right of action is to point out the intentional or gross negligence, the illegal use of litigation rights, the other party's rights and interests.

The abuse of the right to appeal and the civil malice itself are very difficult to distinguish, but there are still some differences between the two:

First, the premise is different: the premise of the abuse of the right of action is that the actor himself enjoys the right of action, while the malicious action includes both the actor's improper exercise of the right of action and the condition that the actor does not have the right of action.

Second, the subject is different: the subject of abuse of the right of action is not only the parties to the case, the translator, the third party, the expert, the witness, etc. The subject of malicious lawsuit only refers to both parties.

Third, the subjective aspect: the abuse of the right of action subjectively both intentional and gross negligence, and malicious litigation subjective is only intentional.

Fourth, they have different institutional backgrounds and legal meanings. The concept of abuse of right of action is interpreted from the perspective of misuse of right, while malicious action is interpreted from the perspective of infringement.

2.3 Distinguish between civil malicious litigation and litigation fraud

Litigation fraud refers to "the litigation participants maliciously collude with others, construct false facts and civil law departments. The apparent form of litigation is in accordance with legal procedures. The court is confused by this appearance and makes a wrong judgment. The purpose is to an illegal act that damages the legitimate rights and interests of others and obtains improper benefits." [4] Like civil malicious litigation, subjectively malicious, all construct false facts and legal relationships, using forged evidence, Illegal means such as false statements. But there is still a big difference between the two:

(1) The purpose of the two is different

The parties to a civil malicious suit take the form of litigation in order to satisfy their illegal attempts. The perpetrator of litigation fraud wants to use the form of fooling the court to damage the relative interests of the people.

(2) The subjective form of the two is different

The civil malicious lawsuit not only refers to the plaintiff's malicious lawsuit, but also the original defendant's prior collusion and re-indictment to obtain illegal benefits. The lawsuit fraud must have the intention of collusion. Only one party is subjectively malicious, and it cannot constitute litigation fraud.

(3) The behavioral subjects of the two are different

The subject of civil malicious proceedings refers to the plaintiff and the defendant. The subject of litigation fraud is not limited to parties including litigants such as third parties and litigation agents.

3. The constitutive elements of tort liability in civil malicious action

3.1 Subjective aspects of civil malicious litigation

The "maliciousness" in civil malicious litigation should include two levels of motivation and understanding. The motive of the perpetrator is to damage the legitimate rights and interests of others, and realize that the act has no legal basis or justification. Maliciousness is the subjective state of the agent, and it is the result of its active pursuit. The civil malicious lawsuit is different from the general infringement. The subjective requirement should be that the lawsuit should still be filed only if it is known that there is no legal basis. Professor Zhang Xinbao believes that "in addition to the need to have such a subjective element of deliberateness, it must also meet the following special requirements: first, it must be direct intentional; second, the perpetrator clearly knows that his behavior is illegal, no Legitimacy, still intentionally made such behavior." [5] From the words of Professor Zhang Xinbao, we can know that the "intentional" in "malicious" should be direct intentional. Because the perpetrator conducts civil malice proceedings in order to harm the rights and interests of others and obtain illegal benefits, showing that the perpetrators are not only laissez-faire, but also actively promote the formation of consequences. Therefore, negligence cannot be the subjective element of civil malice, because the negligent activist does not deliberately damage the legitimate rights and interests of others, but only causes damage due to improper exercise of rights. In the act of negligence, the perpetrator should foresee and not foresee the occurrence of the damage result, or have foreseen but can believe that it can be avoided. This is the main difference between "negligent" and "intentional". Therefore, "negligence" cannot be included in the subjective aspect of civil malicious litigation. Only in this way can we truly understand the civil malicious litigation correctly, in order to better prevent civil malicious litigation and effectively protect the rights of the parties.

3.2 Objective Damage

One of the elements of tort establishment should also have illegal acts, so in addition to the subjective "malicious" of the parties, civil malicious litigation should also objectively implement litigation, and such litigation must be illegal. Mainly reflected in two aspects:

First, litigation should have external manifestations, not limited to inner thoughts or oral expressions. Civil malicious litigation should not be confined to inner thoughts or oral expressions, but should also be litigated. For example: A newspaper learned through investigation that the illegal discharge of pollutants in the production process of factory B caused environmental pollution, and reported on this matter. The factory learned that if the newspaper did not change its edition to clarify, it would sue the court on the grounds that the newspaper was not true. If the newspaper did not change its edition, it would sue the court and ask the newspaper to pay a huge amount of compensation, which caused the newspaper to receive a lot of negative comments and the sales fell sharply.

Second, the lawsuit is illegal. Civil malicious litigants still intentionally prosecute for lack of legitimate reasons and factual basis. At the same time, the violation of procedural law and substantive law should be regulated by law. Roman law classifies the parties 'illegal actions into three types: firstly, the claim of malicious claims is untrue; secondly, it violates the provisions of the law but requests the court to protect its rights and interests, or to defend it with its own actions; thirdly, the actor's claim is true, or otherwise. Achieved the court's approval, but its real intention is to delay litigation or disrupt the judicial order, so that the truth is buried.[6] In substantive law, civil malicious litigation does not follow the principle of good faith in the General Principles of Civil Law, which stipulates that judges, plaintiffs and participants in litigation should be honest and good faith. In civil malicious litigation, the perpetrator infringes on the legitimate rights and interests of others by making use of court judgments in order to achieve illegal intentions, and violates the litigation behavior should be required in good faith and honesty.

In procedural law, the actor, knowing that he lacks legitimate reasons or legal basis, still sues the court or abuses the procedure, which violates the purpose of dispute resolution and rights protection required by the procedure itself.

3.3 Damage results

"The law will only relieve those who have lost their own interests because of the actions of others. The perpetrator will compensate others for their losses because of their own improper actions or the damage caused by the goods under his control." [7] Damage result is one of the basic elements of tort. In civil malicious litigation, it is also a necessary element of civil malicious litigation that the rights and interests of human rights are damaged by illegal prosecution.

The tort of civil malicious action is different from the ordinary tort, the ordinary tort usually harms the object to have the oneness, but the object of civil malicious action infringes is often more complex and varied. According to the different nature of the objects harmed by civil malicious action, it can be divided into property loss and non-property loss. Property damage is behavior person malicious prosecution, forcing others to get involved in litigation, the resulting costs associated with: 1, the lawsuit costs 2, responding to produce delays, poor travelling expenses 3, collect evidence, and obtain evidence of a word, communications and the print copy materials 5, the victim responses to have to ask a lawyer, the lawyer fees. Non-property damage includes mental loss and loss of personality interest. Mental loss, such as in civil malicious lawsuit, the victim suffers huge pressure of public opinion, censure and discrimination from others. The loss of personality interests refers to the decline of the victim's social evaluation and the damage of goodwill, etc. The specific rights and interests that suffer from the injury include the right of portrait of natural person, right of reputation, right of privacy and the reputation of enterprise legal person, etc.

Therefore, in order to better prevent and cure malicious litigation and make up for the victims, the analysis of the adverse consequences caused by litigation cannot be limited to some specific forms. The basic concept of tort law is that no harm, no compensation, therefore, the result of damage is an important component of the establishment of civil malicious action.

3.4 Causal relationship between civil malicious litigation and damage results

It is precisely because of the civil malicious litigation that the consequences of harm will occur, so the link between civil malicious litigation and the result of damage is objective. The civil malicious litigant attempts to infringe on the rights and interests of others through the trial of the court, because it is hidden by the use of the court's judicial power, so it is difficult to find that the civil malicious litigation is the cause of the infringement. Therefore, we should identify the causal relationship between the civil malicious action and the infringement result should apply the principle of causality. "Without this behavior, although it is not necessary to have this damage, if there is such behavior, it is usually enough to cause such damage, it is for causality. If there is no such behavior, such damage will not occur. If there is such a behavior, there is usually no such damage, that is, there is no causal relationship." [8] In other words, according to the social experience and cognitive standards of normal people, if civil malicious litigation does cause damage and do have corresponding adverse consequences, then there is a causal link between the two. Only in this way, according to the general experience to determine whether there is a causal relationship, the judge's subjective judgment can be avoided, the legitimate rights and interests of the parties can be protected, and a certain degree of relief can be obtained.

4. The Current Situation of Legal Regulation of Malicious Civil Procedure in China

4.1 Legislative Status of Civil Malicious Litigation

The term "civil malicious lawsuit" has not yet appeared in the legal provisions of our country, and there is no clear substantive law to regulate civil malicious lawsuit. Although there are some principled provisions, there are few such provisions.

For example, Article 51 of the Constitution embodies a highly abstract summary of the principle of abuse of power, which is the legal basis for regulating Malicious Civil litigation. However, this principled provision can only act on judicial practice and can not be the direct basis for judges to determine torts in Malicious Civil litigation.

Although the tort liability law of our country has been considered many times in the legislative process, the civil malicious action is not regulated as a tort in the law. But in the field of tort in our country, the scholars about the study of the theory of the civil action has never interrupted, and the theoretical results, some very theoretical foundations of scholars in their submission of tort liability law amended, clearly put forward their own opinions, such as professor wang liming think regulation of civil action should be on the tort liability act specified in the following section "the first: The intention of the doer is to cause the interests of others to suffer losses. The facts and reasons put forward by the doer are without legal basis. The actor maliciously files a civil lawsuit, which causes the other party to damage its own interests as a result of the lawsuit, and the doer shall be liable for the losses of others. The loss referred to in this article refers to the attorney's agency fee paid by the counterpart in the civil malicious litigation, including various material losses related to his own interests during the litigation. Article 2: there is no legal basis or factual basis for an actor to inform on others about illegal crimes. The purpose is to harm the interests of others, and such behavior should be punished." [9] unfortunately, as China's legal system construction has not been improved, there is still no clear legal basis for regulating civil malicious litigation. This has led to the emergence of civil malicious litigation in China. This point deserves our country legislator to think deeply. China's procedural law also has no specific provisions to regulate civil malicious litigation, only some sporadic provisions in principle. In addition, there is article 4 of the general principles of the civil law, which provides for the common nature of civil malicious action. In the law, civil malicious action is not remedied as a tort. The lack of specific provisions of the law makes it quite troublesome for judges to apply the law when solving cases.

Although the new civil procedure law provides for the relief of the rights of a third party when two parties maliciously collude to damage the rights and interests of a third party, it still lacks the

supervision system of civil malice litigation. In order to achieve the purpose of harming the legitimate interests of the other party, the party of civil malicious action intentionally brings a lawsuit to the court. The litigation procedure is just a tool they use to achieve their illegal purposes. In most cases, they settle the case by means of mediation, and the court will make a mediation statement according to the mediation agreement between the two parties. According to the Supreme Court's response to the protest, the prosecutor's office is unable to lodge a protest in such cases, so the prosecutor's office cannot correct the civil malicious lawsuit through inspection and supervision.

It can be seen that neither substantive law nor procedural law has improved the regulation of civil malicious litigation, and there is no clear judgment standard. As a result, it is still difficult for the victim to get legal relief and the infringer does not have to bear the corresponding responsibility, which is one of the main reasons why China's civil malicious litigation cannot be effectively controlled.

4.2 Judicial Practice of Civil Malicious Litigation

In China, the main basis of judges' trials is the enactment of laws. Because of the lack of specific provisions for Malicious Civil Litigation in substantive and procedural laws, and even the lack of a specific definition of Malicious Civil litigation, judges' judgments are frequently troubled. In judicial practice, it mainly embodies in the following three aspects.

(1) lack of identification standards

China's law has not yet established the system, concept, characteristics and types of civil malicious action, which leads to the inability to accurately identify a certain action as civil malicious action in judicial practice. However, the types of civil malicious action in real life are various, judges can not judge the civil malicious action in the absence of specific legal conditions.

(2) difficulty in judging "malice"

The identification of the subjective state of the actor is a difficult link and the key to judge the civil malicious action. However, the malicious actor disguises the essence of his pursuit of illegal purpose by virtue of the judicial power of the judge, which makes it difficult to determine whether the actor is "malicious" subjectively.

(3) the victim is unable to obtain compensation

China has not yet established the tort compensation system of civil malicious litigation, so the current situation is that the compensation for direct property is very little, and other indirect property loss and personality interest loss are not even compensated. All this prevents victims from getting compensation for their losses.

5. Legal Regulation of Tort in Civil Malicious Litigation

5.1 Basic Principles of Civil Malicious Litigation Regulation

Due to the lack of systematic provisions and effective regulatory measures for Malicious Civil Litigation in China's law, Malicious Civil Litigation often becomes a tool for the perpetrators to pursue illegal purposes and damage the legitimate rights and interests of others. If not regulated by law in time, it will inevitably lead to low social credit, the legitimate rights and interests of individuals can not be guaranteed, it will also disrupt the judicial order, waste judicial resources, and bring a huge threat to the stability and harmony of the country. However, in improving the regulatory system, it should be appropriate. I believe that the regulation of malicious civil litigation should follow the following three basic principles:

5.1.1 Effectively Implementing the Principles of Good Faith and Due Process

Implementing the principle of good faith has become a general consensus in building a society of good faith. Implementing the principle of good faith requires that people not only actively fulfill their obligations, but also keep their promises when carrying out litigation activities. The new Civil Procedure Law not only theoretically stipulates that the principle of good faith should be observed, but also formulates detailed clauses prohibiting Malicious Civil litigation, and establishes the third

party's revocation action, which concretely embodies the principle of good faith, which is also a major manifestation of introducing the principle of good faith in civil substantive law into procedural law. Establishing the principle of good faith in procedural law can better regulate civil malicious litigation and prevent abuse of power, which also becomes the basis for the judges to discretion. For example, A filed a lawsuit in court in retaliation against B. A made false statements and fabricated evidence in the lawsuit. The law has no specific method to regulate such acts, but such acts are not enough to constitute the crime of false accusation and framing, thus forming a legal gap. At this time, judges can make up for it by discretion in accordance with the principle of good faith.

In civil trial procedure, due process principle requires the court to treat both parties equally. As equal subjects in civil trial procedure, both parties have equal or equal rights. This principle undoubtedly becomes a procedural guarantee for victims to receive judicial assistance. The principle of due process tends to guarantee the equivalence of rights between the parties and to ensure judicial justice to the maximum extent. In the civil malicious lawsuit, the parties 'legitimate litigation rights will be damaged, and affect the fair trial of the court. Therefore, the principle of due process is also an important principle to rectify civil malicious litigation.

5.1.2 Emphasis on both substantive and procedural law

Substantive law mainly stipulates rights and obligations, while procedural law mainly guarantees the implementation of substantive law. Both of them perform their respective functions and have different effects. Therefore, the remediation of civil malicious litigation should start from two aspects. The advantages of substantive law and procedural law should be brought into full play within the scope permitted by our country's law. On the one hand, procedural law should set up some "defensive mechanisms" to prevent malicious civil litigation from entering the trial, curb its origin and deprive it of procedural interests. On the other hand, in substantive law, the damaged person is given the opportunity to claim compensation. The protection of procedural law is a kind of defense in advance. The protection of substantive law tends to remedy after the event. Without substantive law, procedural law will lack the root cause. Without procedural law, substantive law will lack the guarantee of implementation. Only the combination of substantive law and procedural law can effectively rectify civil malicious litigation.

5.1.3 Coordination of Judicial Initiative and Judicial Restraint

Judicial initiative requires judicial organs to give full play to their autonomy in exercising their functions and powers and deal with social contradictions reasonably. Judicial restraint refers to adhering to the principle of "not giving up" and being in a neutral position. Both of them are the basic attributes of justice. They complement each other and need to achieve internal unity in order to achieve judicial justice and ensure neutrality. Although justice can be guaranteed, excessive pursuit of neutrality will give malicious actors a chance. The rigidity of judicial restraint affects the effect of preventing malicious civil litigation. Integrating judicial initiative and judicial restraint is an important means to regulate Malicious Civil litigation. Under the premise of judicial restraint, to ensure judicial initiative, in the process of establishing the system of regulating civil malicious litigation, we should not only avoid the excessive discretion power of the court and affect the initiative of litigation, but also restrict litigants and reduce the incidence of Malicious Civil litigation.

5.2 Supporting Measures to Regulate Civil Malicious Litigation

5.2.1 Strengthen the personal quality and professional level of judges

Judges should be in a neutral position in the trial. An unfair judgment of a judge will lead to the loss of more people's interests. The perpetrator's civil malicious lawsuit only dirty the water flow, but unfair judgment pollutes the source of the water. In order to effectively reduce unfair judgments, it is necessary to continuously improve the personal quality and professional level of judges. Through strengthening professional training, the ability of judges to distinguish truth from falsehood, judge independently and resolve contradictions can be improved. Because civil malicious litigation is "concealed", judges should always maintain a sense of responsibility, strictly examine, carefully

screen out civil malicious litigation, constantly accumulate case handling experience, sensitive detection and use of the law to stop such litigation.

5.2.2 Establishing Litigation Credit Mechanism

Although the law is the most effective means to solve disputes, the law has not yet been able to cover all aspects. In the history of human civilization, morality and law complement each other. Eliminate the idea of malicious lawsuit from people's thoughts, establish self-discipline consciousness, and guide people to form a healthy concept of honesty and credit. Although the principle of good faith has been established in China's law, it is only an abstract concept in the articles. How to make this principle penetrate into people's thinking and effectively regulate Malicious Civil litigation, the most important thing is to establish litigation credit mechanism. The court should carefully verify the suspicious cases of Malicious Civil Litigation found at the filing and trial stages. On the basis of detailed investigation, the results of verification should be attached to the file. To determine a true case, the information of the case and the specific actor shall be made into a litigation credit file. Record within the court system and upload it to the national system to facilitate inquiries between courts, so that judges can pay attention to similar cases in the future. If the perpetrator persists in his teaching and carries out lawsuits of bad nature for many times, he should publish them to the society in time and severely punish them. He should establish a correct honesty orientation, curb such acts of Malicious Civil lawsuits, and establish correct social values.

6. Conclusion

Civil litigation is one of the important ways for the parties to seek remedies for their damaged rights and interests. It is also an important guarantee for our country to safeguard judicial authority and promote social harmony.

However, some people use malicious civil litigation to achieve their illegal purposes and abuse their litigation rights, and this phenomenon is becoming more and more serious. It not only destroys the dignity of the law, infringes on the legitimate rights and interests of others, but also becomes a social disharmony factor.

Therefore, any problems concerning Malicious Civil Litigation encountered in the process of enacting laws in our country should be taken seriously, the causes of these problems should be deeply excavated, and reasonable legal measures should be formulated to deal with them.

This paper focuses on combining theory with practice, recognizing clearly the connotation of "malicious intent", distinguishing strictly from negligence, and analyzing the relationship between illegal acts and damage results by using the theory of "equivalent causality" with full understanding of the concept and constituent elements of Malicious Civil litigation. This paper focuses on the current situation of Malicious Civil Litigation in China, and analyses the "difficulties" in preventing malicious civil litigation from the perspective of legislation and judicial practice. Therefore, three principles are extracted to guide the prevention of Malicious Civil litigation. Only with the guidance of principles, can we better guide the regulation of Malicious Civil litigation.

Finally, from the substantive law and procedural law level, the basic principles and supporting measures of regulation are discussed.

Although there is no specific legal regulation on Malicious Civil Litigation in China, this issue has attracted the attention of many jurists. I believe that with the continuous improvement of legislation and judicial level and the continuous improvement of citizen quality, China will be able to curb Malicious Civil Litigation in an all-round way and build a perfect regulatory system.

References

- [1] China Court Network. Beijing Second Intermediate Court concluded the first case involving intellectual property malicious litigation compensation [DB/OL]. <http://www.chinacourt.org/html/article/200804/01/294539.html>, 2014-05-12

- [2] Xinhua. Want to make money through lawsuits, a malicious lawsuit ends one's life [DB/OL].[http:// www.ha.xinhuanet.Com/add/wssf/2007-03/26/content-9609264.html](http://www.ha.xinhuanet.com/add/wssf/2007-03/26/content-9609264.html), 2014-05-11.
- [3] Xu Aiguo. Tort Liability of "Abuse of Lawsuit" in Anglo-American Law [J]. *Jurist*, 2000,2:117.
- [4] Liu Rongjun. The Application of the Principle of Good Faith in Civil Procedure [J]. *Legal Research*, 1998, 7:126-133.
- [5] Zhang Xinbao. Study on the Constitutive Elements of Tort Liability [M]. Beijing: Law Press, 2007:443.
- [6] Liu Rongjun. The Application of the Principle of Good Faith in Civil Procedure [J]. *Legal Research*, 1998, 7:126-133.
- [7] Wang liming. Research on tort law [M]. Beijing: China renmin university press, 2004:349.
- [8] Wang zejian. Law of tort [M]. Beijing: China university of political science and law press, 2001:204.
- [9] Wang liming. Proposed draft civil code of the People's Republic of China and legislative reasons [M]. Beijing: law press,2005:75-77.