

## **Human Flotsam, Legal Fallout: Japan's Tsunami and Nuclear Meltdown\***

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After an earthquake, tsunami, and nuclear power plant accident of historic proportions, how can lawyers help sort out the mess? In July 2011, we conducted interviews in Fukushima Prefecture, Japan, the site of the world's most recent nuclear disaster, to make a first cut at answering that question. This Article is a report on that field research.

### I. WHAT HAPPENED

The earthquake and tsunami that hit northeast Japan on March 11, 2011, devastated 300 miles of coastline, inundated low-lying cities, towns, and villages, and knocked out the cooling systems of all six reactors in Fukushima No. 1 Nuclear Power Plant,

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operated by Tokyo Electric Power Company (TEPCO). The knockout of the cooling systems resulted in partial to total meltdowns in three of the reactor cores, and pressure soared within the containment vessels.<sup>1</sup> One reactor building exploded, others were severely damaged, and radioactive debris contaminated the atmosphere and surrounding region, extending to the Tokyo area and beyond.<sup>2</sup> By one expert estimate, the radiation that escaped into the atmosphere was twenty to thirty times that released by the atomic bomb over Hiroshima.<sup>3</sup>

At the time of this writing, the count of lives lost has mounted to more than 18,000: 15,870 confirmed dead and 2,684 confirmed missing.<sup>4</sup> These mortality figures represent only the beginning of the human toll.

Exodus follows disaster. The lands surrounding the crippled reactors emptied out. The central government decreed two concentric crescent-shaped zones: a mandatory evacuation zone and an “evacuation preparation zone.”<sup>5</sup> Within the half-moon-shaped inner crescent twenty kilometers (twelve miles) from the reactors, no one is allowed to live or visit without special permission until the government lifts the edict.<sup>6</sup> About 10,500 residents were ejected from their homes and businesses in this “no-go” evacuation zone.<sup>7</sup> In the outer crescent twenty to thirty kilometers (twelve to nineteen miles) from the meltdown, a swath affecting almost 60,000 people, residents were told to prepare for evacuation in case of emergency and to stay indoors as much as possible.<sup>8</sup>

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1 PHRED DVORAK, Reactor Team Let Pressure Soar, *Wall St. J.*, Apr. 22, 2011, at A1, available at <http://online.wsj.com/article/SB10001424052748703922504576273234110896182.html>.

2 *Id.*

3 TATSUHIKO KODAMA, Committee on Health, Welfare, and Labor, House of Representatives (July 27, 2011), available at [http://www.shugiintv.go.jp/jp/wmpdyna.aspx?deli\\_id=41163&media\\_type=wb&lang=j&spkid=21080&time=01:07:01.4](http://www.shugiintv.go.jp/jp/wmpdyna.aspx?deli_id=41163&media_type=wb&lang=j&spkid=21080&time=01:07:01.4) (estimating that the radioactivity release in Fukushima was 29.6 times the Hiroshima explosion calculated on a caloric (energy) base, and twenty times the Hiroshima explosion on a uranium base).

4 *Heisei 23-nen (2011) Tōhoku chihō taiheiyō-chū jishin no higai jōkyō to keisatsu sochi* [Damage from the 2011 Northeast Japan Earthquake and Police Response], Nat'l Police Agency (Sept. 12, 2012), <http://www.npa.go.jp/archive/keibi/biki/higaijokyo.pdf> (current figures on human toll and damage to manmade structures).

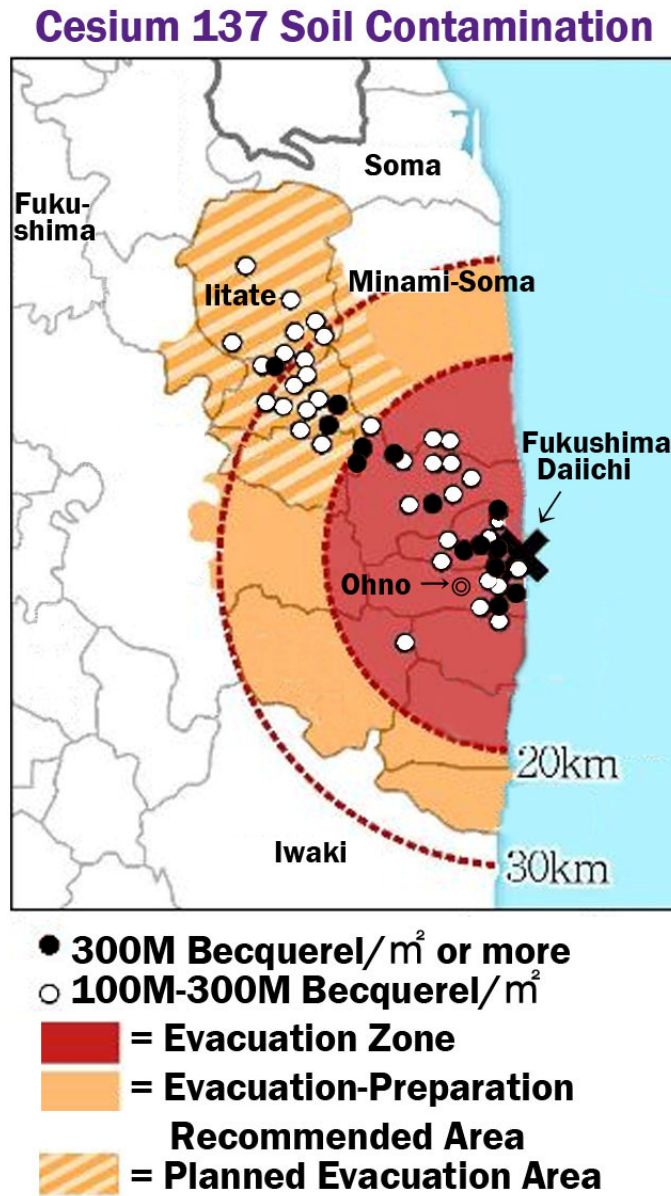
5 The scientific basis of these danger crescents has been attacked as arbitrary and not based on sound science. For example, the government's SPEEDI (System for Prediction of Environmental Emergency Dose Information) system apparently indicated early on that the radiation plume would endanger areas (to which children were being bussed) well outside the twelve-mile no-go area. In spite of the fact that this information was available, decision makers ignored SPEEDI in the days following the meltdown. NORIMITSU ONISHI & MARTIN FACKLER, *Japan Held Nuclear Data, Leaving Evacuees in Peril*, *N.Y. Times*, Aug. 9, 2011, at A1, available at <http://www.nytimes.com/2011/08/09/world/asia/09japan.html>. See fig.1 p. 73.

6 No-go Zone Easing May Be Moved Up, *Japan Times*, July 18, 2011, <http://www.japantimes.co.jp/text/nn20110718a1.html>.

7 *Id.*

8 *Id.* (noting that some “hot spot” areas outside the twenty kilometer evacuation zone, where measured radiation levels were high, were also designated as “planned evacuation areas”).

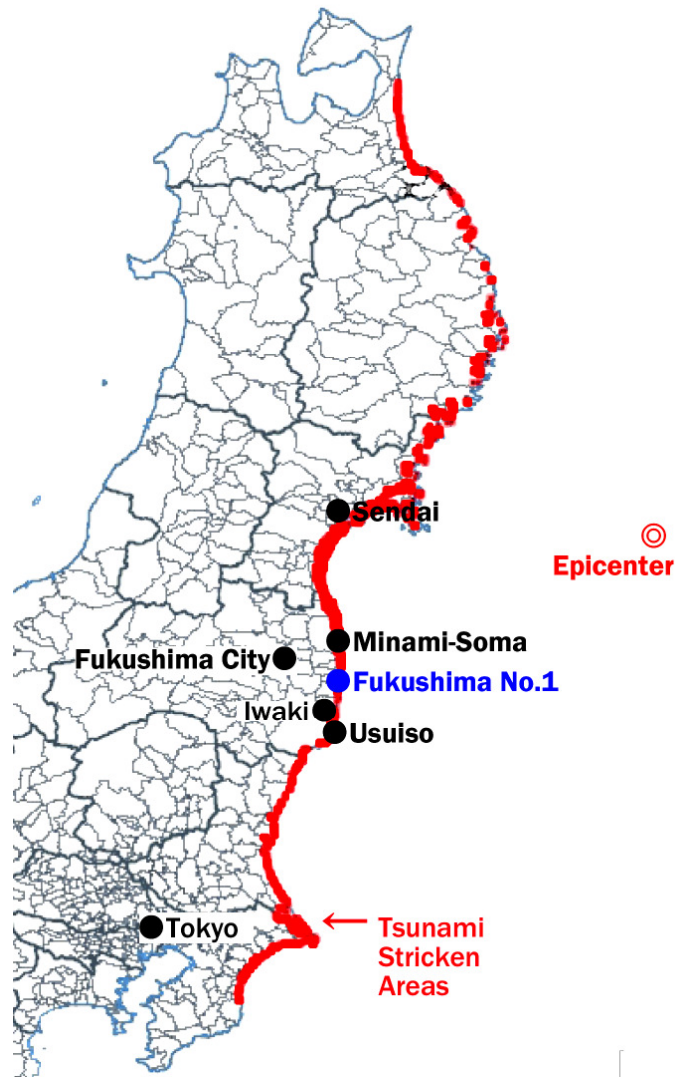
Figure 1 : Fallout plumes; evacuation zones<sup>9</sup>



<sup>9</sup> Map published in Yomiuri Shimbun (Tokyo), Aug. 30, 2011, available at <http://www.yomiuri.co.jp/zoom/20110829-OYT9I01197.htm> (translated and edited by Shozo Ota).

In these areas, and in other coastal areas devastated by the tsunami but further from the damaged reactors (see *Figure 2*, below), families scattered,<sup>10</sup> schools and businesses closed, and the twisted wreckage of homes, buildings, cars, fishing boats, and roads littered the countryside.

*Figure 2:* Tsunami-stricken areas<sup>11</sup>



10 The Vice Minister of Economy, Trade, and Industry reported to the Diet that the total number of evacuees was about 113,000. *Genpatsu jiko ni yoru hinansha-sū* [Number of Evacuees from Nuclear Accident], Akahata, June 17, 2011, <http://www.npa.go.jp/archive/keibi/biki/higaijokyo.pdf> (reporting Vice Minister's response to Rep. Shiokawa's question).

11 SHOZO OTA, Tsunami-Stricken Areas (Mar. 29, 2012) (unpublished figure) (on file with author).

Some residents remain in their homes outside the “no-go” zone,<sup>12</sup> but the lack of open schools, stores, medical care, and jobs makes life difficult. Farmers found their fields, orchards, and paddies ruined by seawater and contaminated by radiation.<sup>13</sup> Fishermen located their wrecked boats, swept inland by the tsunami, in fields a mile or more from the harbor. (A few fishermen had saved their craft by heeding the stories of old-timers and on hearing the tsunami warning, immediately taking their craft out to sea, breasting the enormous waves.)<sup>14</sup> Hospitals and clinics had their beds and instruments washed away. Seaside resorts saw bookings drop to zero. Property values plummeted. Towns became ghost towns.

Both TEPCO and the central government are targets of widespread and bitter criticism, both over their handling of the crisis and of their various failures to prepare adequately for such an event.<sup>15</sup> While an analysis of these failures is outside the scope of this Article, it is noteworthy that the resulting public distrust of these institutions is a key feature of the atmosphere in which the area’s legal professionals work.

TEPCO initially responded by providing a first round of partial provisional compensation payments to residents displaced by government orders from the “no-go” inner crescent: ¥1 million (US\$12,500) for households and ¥750,000 (US\$9,400) for individuals.<sup>16</sup> The compensation amount was recommended by the national government and paid by TEPCO.<sup>17</sup> Businesses were eligible for compensation for half their demonstrated losses up to ¥2.5 million (US\$31,000) upon submission of documentation.<sup>18</sup>

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12 Editorial, Create Environment for N-Evacuees’ Return, Daily Yomiuri (Tokyo), Aug. 13, 2011, at 2, available at <http://www.yomiuri.co.jp/dy/editorial/T110813002771.htm> (noting that of about 58,500 residents of the evacuation preparation zone, about 25,000 had evacuated).

13 See Fukushima Food Producers Protest, Daily Yomiuri (Tokyo), Aug. 13, 2011, at 1, available at <http://www.yomiuri.co.jp/dy/national/T110812005552.htm> (demonstration in Tokyo by farmers and fishermen seeking compensation for losses).

14 Devastated Towns Stuck in Limbo, Japan Times, Aug. 8, 2011, at 2, available at <http://www.japantimes.co.jp/text/nn20110808a3.html> (reporting how Choya Goto saved his fishing boat).

15 See, e.g., Fukushima Accident: Disaster Response Failed—Report, BBC News Asia, Dec. 26, 2011, <http://www.bbc.co.uk/news/world-asia-16334434> (noting that a blue-ribbon commission backed up widespread charges of industry and regulatory failings in a report issued in December 2011). See also YOICHI FUNABASHI & KAY KITAZAWA, Fukushima in Review: A Complex Disaster, A Disastrous Response, 68(2) Bull. of the Atomic Scientists 9 (Mar. 5, 2012), available at <http://bos.sagepub.com/content/68/2/9.full.pdf> (English-language version of summary chapter).

16 *Tōden, 4-gatsu-chū ni 100-man-en shiharai kaishi; Genpatsu hinan jūmin ni* [TEPCO to Begin Compensation to Nuclear Evacuees with ¥1 Million Initial Payments by End of April], Asahi Shimbun, Apr. 15, 2011, <http://www.asahi.com/national/update/0415/TKY201104150087.html>.

17 *Id.*

18 Press Release, TOKYO ELEC. POWER CO., *Genshiryoku jiko ni yoru songai ni tai-suru shiharai no torikumi jōkyō ni tsuite* [Handling of Payments for Damage Resulting from the Nuclear Power Accident] (May 31, 2011), available at <http://www.tepco.co.jp/cc/press/11053104-j.html>.

A second round of further compensation payments was announced August 4, 2011.<sup>19</sup> In a year-end supplementary decision, compensation became available both to voluntary evacuees and to people who chose to remain in devastated areas outside the “no-go” zone.<sup>20</sup>

When human needs are greatest, legal professionals sometimes step forward, moved by duty, conscience, circumstance, a quest for reputation, or the scent of profit. To construct an initial catalogue of the types of issues that Japanese legal professionals are grappling with after the disasters, in late July 2011 we interviewed attorneys employed in private practice and by *Hō Terasu*, Japan’s version of Legal Aid; *shihō shoshi*, members of a class of legal professionals handling small claims, real property recording and registration, and document submission to courts; and community leaders assisting distressed business owners negotiating compensation claims. This is what we learned.

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- 19 Under the guidelines (proposed by a government committee and accepted by TEPCO), in the second round of compensation payments beginning in October 2011, individuals are to receive ¥100,000 per month (US\$1250) for the first six months after the disaster, or ¥120,000 (US\$1500) in cases of severe hardship such as removal to evacuation shelters, plus other provable losses. For the next six months, the monthly payments are halved. Subsequent compensation is not addressed. The geographic scope of businesses eligible for compensation is also widened. The guidelines will form the basis of compensation negotiations between TEPCO and those claiming injury. See *Tokyo Denryoku K.K. Fukushima Dai-1, Dai-2 Hatsudensho jiko ni yoru genshiryoku songai no han’i no hantei-tō ni kansuru chūkan shishin* [Interim Guidelines on Findings of Damages from the Accident at TEPCO Fukushima Power Plants No. 1 & 2], GENSHIRYOKU SONGAI BAISHŌ FUNSŌ SHINGIKAI [Dispute Resolution Committee for Nuclear Damage Compensation] (Aug. 5, 2011), [http://www.mext.go.jp/b\\_menu/shingi/chousa/kaihatu/016/houkoku\\_icsFiles/afildfile/2011/08/08/1309452\\_1\\_1.pdf](http://www.mext.go.jp/b_menu/shingi/chousa/kaihatu/016/houkoku_icsFiles/afildfile/2011/08/08/1309452_1_1.pdf). See also *Official N-Crisis Compensation to Begin in Oct.*, The Daily Yomiuri (Tokyo), Aug. 7, 2011, <http://www.yomiuri.co.jp/dy/national/T110806003091.htm> (summarizing the guidelines).
- 20 See GENSHIRYOKU SONGAI BAISHŌ FUNSŌ SHINGIKAI [Dispute Resolution Committee for Nuclear Damage Compensation]; *Tokyo Denryoku K.K. Fukushima Dai-1, Dai-2 Hatsudensho jiko ni yoru genshiryoku songai no han’i no hantei-tō ni kansuru chūkan shishin tsuiho (Jishuteki hinan-tō ni kakaru songai ni tsuite* [Supplement to Interim Guidelines on Findings of Damages from the Accident at TEPCO Fukushima Power Plants No. 1 & 2 (Compensation of Voluntary Evacuees)] (Dec. 6, 2011), available at [http://www.mext.go.jp/b\\_menu/shingi/chousa/kaihatu/016/houkoku/1315180.htm](http://www.mext.go.jp/b_menu/shingi/chousa/kaihatu/016/houkoku/1315180.htm).

## II. LEGAL PROFESSIONALS AND THE PROBLEMS DISASTER VICTIMS FACE

The mountain of problems people face after a disaster is forbidding, and only some of the problems have legal handholds on which law professionals can offer some leverage. Disaster victims consulted our interviewees about the following problems:

- People cannot return to their homes, either because their homes were destroyed or because they are within the “no-go” evacuation zone. Human flotsam from the disaster, many of these citizens were lodged in temporary shelters with severe inconveniences and no privacy, sweltering in the summer heat. Others are scattered around the country where their lives and their children’s schooling have been disrupted.<sup>21</sup>
- People have business or personal debts coming due, but their employment was swept away, and they have no income available to fulfill their obligations. For some, their records of payments were destroyed in the tsunami. On top of these debts, they need cash to reconstruct their lives.
- Under stress, marriages broke up. Some people need divorces. Others, who found new partners, need to make new family arrangements.
- The almost 19,000 dead and missing have estates that need to be distributed. Who are the beneficiaries, and what are the assets? Often the wills and other records were destroyed by the tsunami.
- What long-term health impacts can be expected from radiation exposure? The government’s and TEPCO’s reassurances of minimal adverse health effects are widely distrusted.
- People whose homes were destroyed or rendered unlivable want to rebuild; can the mortgage on the old home be forgiven?
- What compensation will be available from TEPCO or the government for ruined property? Unsellable crops and livestock? Destroyed businesses? Lost wages? Displacement expenses? Thefts from abandoned homes and businesses?
- How can proof of damages be assembled? What qualifies as proof?
- When will the compensation be distributed? Under what process? How are adverse decisions to be appealed?

With a population of two million in an area slightly larger than Connecticut, Fukushima prefecture has only 155 attorneys<sup>22</sup> and 284 *shihō shoshi* (quasi-lawyers with limited

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21 87,000 Still in Limbo Five Months After Quake, Japan Times, Aug. 11, 2011, at 1, available at <http://www.japantimes.co.jp/text/nn20110812a1.html> (noting that as of late July 2011, about 87,000 evacuees from the three hardest-hit prefectures (Fukushima, Iwate, and Miyagi) were scattered around Japan).

22 JAPAN FEDERATION OF BAR ASSOCIATIONS, *Bengoshi-kai bekkaiin-sū* [Bar Association Membership by Prefecture] (Mar. 1, 2012), available at [http://www.nichibenren.or.jp/library/ja/jfba\\_info/membership/data/120301.pdf](http://www.nichibenren.or.jp/library/ja/jfba_info/membership/data/120301.pdf).

law licenses).<sup>23</sup> They were overwhelmed after the tsunami and meltdown by the enormous volume of questions such as those listed above. Rather than staying holed up in their offices, the legal professionals to whom we spoke organized forums in Fukushima City and in other towns outside the “no-go” evacuation zone to offer what assistance they could to evacuees and others damaged by the disasters. For the most part, they provided these consultations pro bono.<sup>24</sup>

Legal professionals, we learned, play a wide variety of roles in disaster recovery assistance, and the most effective are adept at all of them. The following are among the roles our interviewees mentioned:

- *listener* as disaster victims expressed their anxieties, uncertainties, and sense of helplessness;
- *general information provider* about the various facts of the disaster and outside perspectives on its causes and effects;
- *problem identifier* of issues (both legal and nonlegal) that disaster victims may not have recognized;
- *general counselor* regarding all sorts of issues in daily life, as well as access to administrative and charitable relief efforts and to political means of improving victims’ conditions;
- *legal counselor* regarding disaster victims’ rights and the processes of enforcing them;
- *advocate* on behalf of disaster victims in various forums and to various authorities, including legislators and politicians, national and prefectural bureaucrats, local public servants, TEPCO and other potentially responsible corporations, media, charitable organizations, and police;
- *coordinator* linking disaster victims’ identified needs to ameliorative resources provided by legal professionals, volunteers, various levels of government, and organizations (farmers’, fishermen’s, and merchants’ associations) that should represent disaster victims’ interests; and
- *planner* for the future—showing disaster victims the processes and agendas for future recovery, assuring the victims about the ways those processes will work, and helping them develop blueprints for their lives in the future.<sup>25</sup>

A few examples of our conversations with these legal professionals follow, illustrating significant or unusual aspects of their recent work and experiences.

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23 NIHON SHIHŌ SHOSHI RENGŌKAI [Japan Federation of Judicial Scriveners], *Zenkoku shihō shoshikai ichiran* [Directory of Japan Judicial Scriveners’ Associations] (Feb. 1, 2012), available at [http://www.shiho-shoshi.or.jp/association/shiho\\_shoshi\\_list.php](http://www.shiho-shoshi.or.jp/association/shiho_shoshi_list.php).

24 Interview with Mitsugi Araki, Attorney, Abukuma Law Office, in Fukushima Prefecture (July 29, 2011) (on file with author).

25 See *infra* Parts 1.–5.



1. *The Legal Aid Lawyers: Kabata and Yorikane*

Takayoshi Kabata and Daisuke Yorikane are idealistic young attorneys with the Fukushima office of *Hō Terasu*, Japan's government-funded legal aid organization.<sup>26</sup> Both went to work for *Hō Terasu* not long after becoming lawyers and started working in Fukushima several months before the disaster.<sup>27</sup> Both expressed satisfaction in having the freedom to choose to handle the cases and issues they think are most socially significant and important to their clientele, people of limited means.<sup>28</sup> As Kabata remarked:

Our work has totally changed since the disaster. It's usually a combination of civil, family, and criminal cases. Those continue, but on top of that, we have so many consultations in the disaster area and with the evacuees. Most of these people never thought that they might have legal issues to address or legal rights at stake—they're not used to consulting lawyers. So a lot of what we do is just listen to their problems. Some days I'll spend the entire day in Minami-Sōma, the town just north of the nuclear plant, and then drive back to Fukushima City to take care of the rest of the work at night. The frustrating thing is, people will ask us what compensation will be available, when it will be available, what they have to do to get it—but we can't give them a clear answer because the government hasn't worked it out yet. All we can do is suggest that they gather and preserve all the evidence of their losses, their whereabouts during the crisis, and other relevant facts. It's heart-wrenching.<sup>29</sup>

Kabata and Yorikane were able to report some problems as solved, or at least smoothed. For instance, insurance companies, attentive to matters of reputation and public opinion, have not been sticky about paying damage claims, even when proof of loss is imperfect.<sup>30</sup> As another example, local governments provided evacuees at emergency shelters with standard boxed meals—adequate for most, but hazardous to people with special dietary needs such as elderly kidney disease patients.<sup>31</sup> *Hō Terasu* submitted a petition to address the problem. “It took the government weeks to respond, but we finally got that fixed,” Kabata said.<sup>32</sup>

The provisional partial compensation from TEPCO allotted to evacuees and damaged businesses in the weeks after the disaster was insufficient for most recipients, and a new round of payments was offered under interim guidelines released by the central government in early August 2011 and agreed to by TEPCO.<sup>33</sup> Inevitably, disputes will arise about who is entitled to what amount. Kabata and Yorikane foresee three main

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26 *Hō Terasu* is officially rendered in English as “Japan Legal Support Center.”

27 Interview with TAKAYOSHI KABATA and DAISUKE YORIKANE, Fukushima *Hō Terasu* office, in Fukushima City (July 29, 2011) (on file with author).

28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 See Fukushima Food Producers Protest, *supra* note 13.

routes to resolution of the disputes. The first is for residents and businesses simply to accept the amounts specified in the interim guidelines.<sup>34</sup> The second is to enter a government-sponsored alternative dispute resolution (ADR) process and negotiate for more.<sup>35</sup> Third, disputes not settled through ADR will go to court.<sup>36</sup>

The ADR process was launched in September 2011. In the ensuing year, however, only a small minority of claims were resolved through ADR.<sup>37</sup> Issues that will inevitably arise in court, such as the extent to which cases will be tried individually or through mass litigation, remain to be resolved. Judicial and administrative precedents provide no clear answers.<sup>38</sup>

We expected to find some tension between *Hō Terasu* lawyers, who work for lower-income clients on a salaried basis, and the private bar, which will earn fees for client representation in ADR and court proceedings. We found examples of both cooperation and friction between *Hō Terasu* lawyers and the private bar.

When he first came to Fukushima, Kabata reported, there was concern among the local bar members that *Hō Terasu* might represent a competitive threat.<sup>39</sup> “But those days are long gone,” said Kabata. “There’s so much work that needs to be done that we’re all cooperating. The bar association here has been quite supportive.”<sup>40</sup>

This level of cooperation between local lawyers and *Hō Terasu*, however, is by no means universal, as the experience of neighboring Miyagi prefecture attests. At the time of our field research, not a single *Hō Terasu* attorney was stationed in Miyagi, one of the prefectures hit hardest by the earthquake and tsunami (see *Figure 2*, p. 74), due to local bar association resistance.<sup>41</sup>

34 KABATA & YORIKANE, *supra* note 27.

35 *Id.*

36 *Id.*

37 As of September 14, 2012, a total of 3,942 cases had been filed at the ADR Center. Among them, 583 cases were settled, 251 were withdrawn, and 171 ended without settlement. MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCE & TECHNOLOGY, *Genshiryoku songai baishō seido* [Nuclear Damage Compensation System], available at [http://www.mext.go.jp/a\\_menu/anzenkakuho/baisho/1310412.htm](http://www.mext.go.jp/a_menu/anzenkakuho/baisho/1310412.htm). The ADR Center had estimated in early 2012 that claimants might number as many as 1 million. *Genshiryoku songai baishō funsō kaiketsu senta katsudō jōkyō hōkoku-sho* [Nuclear Damage Compensation Dispute Resolution Center Report] 15 (Jan. 30, 2012), available at [http://www.mext.go.jp/component/a\\_menu/science/anzenkakuho/micro\\_detail/\\_icsFiles/afiedfile/2012/02/16/1316600\\_1\\_1\\_1.pdf](http://www.mext.go.jp/component/a_menu/science/anzenkakuho/micro_detail/_icsFiles/afiedfile/2012/02/16/1316600_1_1_1.pdf). It is apparent, however, that only a small proportion of potential claimants have brought claims.

38 See *Saiban-gai funsō kaiketsu tetsuzuki no riyō no sokushin ni kansuru hō* [ADR Promotion Law], Law No. 151 of 1994, art. 26 (Japan), <http://law.e-gov.go.jp/announce/H16HO151.html> (giving courts the authority to stay litigation when the same dispute is pending in an ADR proceeding).

39 KABATA & YORIKANE, *supra* note 27.

40 *Id.*

41 E-mail from Tetsuo Ōishi, Head of *Hō Terasu* Internal Audit Section, to Prof. Shozo Ota (Aug. 15, 2011) (on file with author) (also noting that *Hō Terasu* was slated to have a presence in Miyagi beginning in late 2011).

## 2. *The Limited-Practice Legal Professional: Suganami*

Yoshiko Suganami is a *shihō shoshi*, a type of limited-practice independent legal professional unique to Japan.<sup>42</sup> An outspoken redhead of about forty, her office was located in the town of Ohno, two and a half miles from the Fukushima No. 1 nuclear reactors. She was ordered to evacuate but could not for a week after the meltdown because no gasoline was available.<sup>43</sup> Without electricity, her home was uninhabitable, and she slept in her car that winter week.<sup>44</sup>

From her new office in Fukushima City, she deals with the wide range of problems facing evacuees. “So many families are torn apart,” she remarked.

The husband has to stay and work if he still has a job, and the wife and kids move away so the kids can go to school somewhere that radiation isn’t a concern. They argue about money—one wants to use TEPCO’s provisional compensation payment to pay off debts, and the other says living expenses are more important. There are a lot of divorces from all the tensions. Most people want to move back home, but they don’t know when they’ll be able to, or whether their houses are livable.<sup>45</sup>

Suganami reflected on a dilemma facing people who lost family members in the tsunami. “The Buddhist priests have all left the temples in the evacuation zone. Who will take care of the graves? I wouldn’t want my parent to be buried alone somewhere, away from the family gravesite.”<sup>46</sup>

## 3. *The Community Leaders in Minami-Sōma: Matsumoto and Araki*

Toshiyuki Matsumoto and Chieko Araki are community leaders in Minami-Sōma, a coastal town just north of the Fukushima No. 1 nuclear power plant (see *Figure 1*, p. 73). Part of the town is located within the twelve-mile “no-go” zone, but most is just outside it (our Geiger counter readings showed very low levels of radiation on July 30, 2011).<sup>47</sup> Minami-Sōma is perhaps unique among towns outside the “no-go” evacua-

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42 *Shihō shoshi*, members of a licensed class of quasi-lawyers, are permitted to handle small claims, real property recording and registration, and document submission to courts. Their profession is threatened by the recent relaxation of standards for bar exam passage since attorneys can perform all the tasks previously assigned to *shihō shoshi*. As a result, *shihō shoshi* are eager to demonstrate their *raison d’être* by pointing to their *pro bono* efforts on behalf of needy citizens such as disaster victims.

43 Interview with Yoshiko Suganami, Yu Haga, & Katsuteru Inoue, *shihō shoshi*, in Fukushima City (July 29, 2011) (on file with author).

44 *Id.*

45 *Id.*

46 *Id.*

47 See fig.1, p. 73.

tion zone in that it was directly hit by the full triple whammy of earthquake, tsunami, and meltdown.<sup>48</sup>

Matsumoto, a straightforward, no-nonsense man in his fifties, is head of the 400-member *Minshō* organization of local small business owners affiliated with the Japan Communist Party. Matsumoto assists local merchants in applying for TEPCO provisional compensation payments, gathering needed information for the applications (lost stock-in-trade and previous year's income) and filling out the TEPCO forms.<sup>49</sup> Araki, a slight, soft-spoken woman of similar age, is a city councilwoman. Both are members of the Communist Party, well versed in building up the party organization by responding effectively to local concerns—Matsumoto wears a red *Minshō* armband as he goes about his work. “TEPCO’s not fussy about paying, as long as you have the right paperwork,” Matsumoto explained.<sup>50</sup> Expressing a concern shared by all the disaster victims, however, he continued: “The question is, when we get past these partial payments and it comes time for TEPCO to pay the full amount of damages they owe, what kind of financial shape will TEPCO be in, and how much of what they owe will they be able to pay? A fifth? A tenth?”<sup>51</sup>

#### 4. *The Small-Town Lawyer in Minami-Sōma: Wakasugi*

Yūji Wakasugi is a small-town lawyer in his thirties who lives and practices in Minami-Sōma. He gives free legal consultations to residents there and in Sōma, the next town to the north.<sup>52</sup> He offered particular insights into the dilemmas the residents face.

“A large proportion of the houses in Sōma and Minami-Sōma were damaged by the earthquake or inundated by the tsunami,” Wakasugi explained.<sup>53</sup>

Lots of those homeowners had mortgages, and the payments are coming due. But how can a person be willing to pay the debt for a house that doesn’t exist any more? And consider rental housing that’s damaged but may still be habitable. The landlord wants it torn down so he doesn’t incur repair expenses, and maybe he can collect on earthquake insurance if he had any. The tenants don’t want to leave, since they don’t have any other place to go. Who’s going to decide? Those are the kinds of legal problems that are coming to light.<sup>54</sup>

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48 Interview with Toshiyuki Matsumoto and Chieko Araki, in Minami Sōma (July 30, 2011) (on file with author).

49 *Id.*

50 *Id.*

51 *Id.*

52 Interview with Yūji Wakasugi, in Minami-Sōma (July 30, 2011) (on file with author).

53 *Id.*

54 *Id.*

Farmers, too, face serious dilemmas, according to Wakasugi.

To receive compensation, people have to prove their fields, paddies, and orchards are contaminated by radioactive fallout. But that simultaneously brands their produce as unsellable. In other words, if they want to rebuild their lives here, they have to keep their mouths shut about radioactive contamination. But no evidence of contamination may mean no compensation. Neighbors end up on opposite sides. At one farm, they're wearing face masks when they go outside, fearing radioactive dust. At the next, they're getting ready to sell their rice or peaches on the market.<sup>55</sup>

Wakasugi recounted the story of an idealistic college friend who moved up to Minami-Sōma from the Tokyo area, borrowing money to open a restaurant serving only healthful organic food and working with local farmers to produce it. "With the nuclear disaster, that's all gone. He had to move away," Wakasugi said. "There's no compensation for lost dreams."<sup>56</sup>

##### 5. *The Iwaki City Lawyer: Watanabe*

Toshihiko Watanabe is a young private attorney in Iwaki, a city to which many evacuees fled, twenty-five miles south of the nuclear plant. His home, separated from the nearby ocean by a canal, was spared from the tsunami by the canal's dissipation of the waves' force.<sup>57</sup> He and his associates spent much of the months since the disaster counseling people whose lives were disrupted.<sup>58</sup> Based on those experiences, Watanabe offered some assessments of the efficacy of both the official and the volunteer responses to the disaster.

Of TEPCO's initial provisional compensation payment of ¥2.5 million (US\$31,000) to businesses in the "no-go" zone, Watanabe remarked:

There's nothing you can do but laugh. How can business people who have lost everything get going again with that? True, the Bank of Japan's policy is to encourage banks to make loans available on easy terms, with not much paperwork. But sooner or later, that principal has to be paid back. Restaurant owners, sport fishing outfitters—what good is a loan if there aren't any customers? They can't formulate a business plan. How are the farmers going to market their rice or fruit or beef or pork, when the "Fukushima produce" label is death to sales?<sup>59</sup>

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55 *Id.*

56 *Id.*

57 Interview with TOSHIHIKO WATANABE, Hamadōri Law Office, in Iwaki City (July 31, 2011).

58 *Id.*

59 *Id.*; see SHINSUKE ISHIGURO & YOMIURI SHIMBUN, Fukushima Farmers in a Jam / Fruit Growers See Orders Plunge Due to Fears over Radiation, Daily Yomiuri (Tokyo), Aug. 14, 2011, at 3, available at <http://www.yomiuri.co.jp/dy/national/T110813002913.htm>.

Watanabe also discussed the outpouring of volunteer assistance to victims of the earthquake, tsunami, and nuclear crisis. Students, office workers, legal and medical professionals, people from all walks of life came to Fukushima and the other devastated prefectures to help out. Watanabe's appreciative but trenchant assessment of those volunteer efforts will be familiar to veterans of Katrina.<sup>60</sup> "What's needed most is coordination—matching volunteers' skills with appropriate jobs. Especially people who are good with people! So much energy and effort could have been put to better use," said Watanabe.<sup>61</sup> As for the attorneys from around Japan who came to Fukushima to share the load,

they provided valuable services in a time of need. But I do wonder at some of them, charging ¥5000 (US\$60) for a half-hour consult, when we locals are doing the same thing better for free. I guess some of them were burnishing their reputations by coming up here to volunteer. Maybe a financial contribution might have been more useful.<sup>62</sup>

The sheer scale of the tragedy came home to us most forcefully when attorney Watanabe drove us to Usuiso, once a thriving beachfront community in Iwaki where, as a child, Watanabe used to go swimming with his friends. The town stands at the base of a line of hills, with a ten-foot seawall separating the buildings from the beach. Ten feet was nowhere near enough of a barrier. The wave overwhelmed it all. Now second- and third-story windows stand open to the sky, their glass washed away. It is a ghost town. Hundreds died there, including some of Watanabe's childhood friends. No one has returned to live.

### III. CONCLUSION

Japan's economy is sluggish, its public debt level (as a proportion of gross domestic product) far surpasses that of the United States,<sup>63</sup> its birthrate and population are declining,<sup>64</sup> and its politics are in shambles. The country is not in a position to recover

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60 WATANABE, *supra* note 57.

61 *Id.*

62 *Id.*

63 Country Comparisons: Public Debt, Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2186rank.html> (last visited Mar. 29, 2012) (indicating public debt/GDP ratios of 2.08 for Japan and 0.69 for United States).

64 *Nihon no shōrai suikei jinkō (Heisei 24-nen 1-gatsu suikei)* [Japan's Estimated Future Population], National Institute of Population & Social Security Research (Jan. 2011), available at [http://www.ipss.go.jp/syoushika/tohkei/newest04/h1\\_1.html](http://www.ipss.go.jp/syoushika/tohkei/newest04/h1_1.html) (official estimate of Japan's population of 128.1 million in 2010, declining to 127.5 million in 2012, 124 million in 2020, and 112 million in 2035).

easily from the knockdown blows of the earthquake, tsunami, and nuclear disaster of March 11, 2011.

Yet there is evident in the residents of Fukushima, and in Japan as a whole, a gritty spirit, a clear-eyed determination to set things right. Tokyo bureaucracy may be slow-moving and national politics riven with faction, but a general political and administrative consensus has formed that the nation's resources must be devoted to rebuilding the damaged region. Even more encouraging, after the tsunami, a counter-tide of passionate young people flooded into northeast Japan, committed to helping people whose lives are disrupted, using social media to inform, organize, and raise massive donations.<sup>65</sup> Shouldering past the inertia-ridden central government, local leaders in places such as Minami-Sōma are performing cleanups of debris and hot spots.<sup>66</sup> Bulldozers, backhoes, forklifts, and road graders are working everywhere.

Into the beach sand at Usuiso, next to a memorial to the tsunami's victims, is driven a post bearing an inscription of an old Japanese adage: *Nana korobi, ya oki* — "Fall seven times; rise eight."

#### ABSTRACT

*We report on our field research in Fukushima Prefecture in July 2011. We interviewed legal professionals and community leaders in Fukushima City and in towns inundated by the March 2011 tsunami and within a few kilometers of Fukushima No. 1 nuclear reactor.*

*We catalogued many of the extensive variety of problems faced by Fukushima residents, both evacuees and those who remained in their homes. Many of these problems, both legal and non-legal, arose from government actions as the disaster unfolded and afterwards, including the administration of the initial program for provisional compensation for disaster victims.*

*We learned that in the wake of disaster, legal professionals (attorneys and shihō shoshi, a class of professionals with limited licenses) play a wide variety of roles in disaster recovery assistance: as listeners, general information providers, problem identifiers, general counselors, legal counselors, advocates on behalf of disaster victims, coordinators in relief efforts, and planners for recovery measures. We give examples of each, drawing on our interviewees' experiences.*

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65 KENJI SHIBUYA ET AL., Future of Japan's System of Good Health at Low Cost with Equity: Beyond Universal Coverage, 378 *Lancet* 1265, 1271 (2011).

66 Minami-Soma to Clean Hot Spots in City, *Daily Yomiuri* (Tokyo), Aug. 8, 2011, at 1, available at <http://www.yomiuri.co.jp/dy/national/T110807002708.htm>.

## ZUSAMMENFASSUNG

*Die Autoren berichten über ihre Feldforschung im Juli 2011 in der Präfektur Fukushima. Sie haben dort praktizierende Juristen und kommunales Führungspersonal in der Stadt Fukushima und in Städten interviewt, die im März 2011 von dem Tsunami verwüstet wurden, sowie in Städten, die wenige Kilometer von dem Atomkraftwerk Fukushima Nr. 1 entfernt liegen.*

*Die Verfasser haben viele der zahlreichen Probleme dokumentiert, mit welchen sich die Einwohner Fukushimas konfrontiert sehen, gleich ob sie nun evakuiert wurden oder in ihren Häusern bleiben konnten. Etliche dieser Schwierigkeiten rechtlicher wie außerrechtlicher Natur sind das Ergebnis des staatlichen Handelns während und nach der Katastrophe; dies schließt auch die Verwaltung des ersten Programms für provisorischen Schadensersatz für die Opfer ein.*

*Die Autoren erfuhren, dass im unmittelbaren Anschluss an die Katastrophe praktizierende Juristen, namentlich Rechtsanwälte und Rechtsschreiber (shihô shoshi, Juristen mit eingeschränkter Zulassung), die unterschiedlichsten Aufgaben bei deren Bewältigung wahrgenommen haben: als Zuhörer, als allgemeine Informationsvermittler, als Experten bei der Spezifizierung von Problemen, als allgemeine Berater, Rechtsberater und Anwälte für die Opfer, als Koordinatoren in den Hilfsprogrammen und als Planer der Wiederaufbaumaßnahmen. Die Verfasser geben für alle diese Aktivitäten Beispiele, wobei sie sich auf ihre Erfahrungen als Interviewer stützen.*

*(Dt. Übers. durch d. Red.)*