

Exercise Caution When Making Oil Spill Compensation Decisions

Since the explosion of BP's Deepwater Horizon oil rig, massive amounts of oil have entered the Gulf of Mexico and Gulf Coast residents have been the targets of aggressive advertising campaigns by law firms seeking clients for oil spill-related litigation. Many Gulf Coast residents have suffered significant losses in the wake of the Deepwater Horizon explosion and are entitled to compensation from BP and other responsible parties. Residents and businesses, however, need to exercise caution in the aftermath of this disaster to ensure that their initial actions do not affect their future legal rights.

THINGS EVERY ALABAMA RESIDENT SHOULD KNOW

SOLICITATION

A lawyer, or his representative, may not contact you to solicit employment in person or by telephone or e-mail, unless you have previously contacted the law firm. Licensed attorneys may advertise on television and radio and may contact potential clients in writing if communication is clearly marked "solicitation material." Also, only attorneys licensed in Alabama may file lawsuits in Alabama. If you need immediate legal advice, seek attorney referrals from trusted individuals or you can call the Mobile Bar Association Lawyer Referral Service at (251) 433-1032 or Alabama State Bar Lawyer Referral Service at (800) 392-5660 for the names of lawyers who can assist you. If you believe you have been improperly solicited by a lawyer, you should report it immediately to the Office of General Counsel of the Alabama State Bar at (334) 269-1515.

FILING CLAIMS WITH BP

You may choose to seek compensation directly from BP. Claims may be filed online (www.bp.com/claims) or by phone (1-800-440-0858). BP has 90 days to respond to your claim. If BP fails to process your claim within 90 days or BP denies your claim or you are unsatisfied by BP's financial offer, you have a right to seek payment from the Oil Spill Liability Trust Fund. Accepting payment from BP before the full extent of your damage is known may prevent you from filing lawsuits seeking compensation in the future. Be cautious and exercise judgment when signing documents. It is advisable that an attorney of your choosing reviews all documents prior to signature.

FILING CLAIMS WITH THE NATIONAL POLLUTION FUNDS CENTER

Congress created the Oil Spill Liability Trust Fund after the *Exxon Valdez* spill to cover removal costs or damages when responsible parties are unknown or refuse to pay. Claims must be submitted to the Coast Guard's National Pollution Funds Center (<http://www.uscg.mil/npfc/Claims/default.asp>). The trust fund is currently financed by a tax of eight cents per barrel of crude oil and petroleum products. There is a \$1-billion cap on expenditures from the trust fund per incident and the NPFC processes claims in the order they are received. You have three years from the incident to file a claim with the trust fund. If you accept money from the trust fund, you cannot later file a lawsuit against any party to recover costs or damages which were the subject of the compensated claim. If payment is received from another source, you must reimburse the fund.

FILING DEADLINE FOR LAWSUITS

You have two years to file a lawsuit based on negligence and similar state law claims in Alabama. You do not have to retain a lawyer or file a lawsuit immediately. You may choose to wait weeks or a few months until you can compile your records, document losses, and learn more about your situation and your legal rights. Joining a class-action lawsuit against BP may prevent you from receiving short-term compensation from BP. BP is unlikely to consider your claim if you are a party in litigation against them and the NPFC will not consider a claim that is the subject of a lawsuit.

SBA LOANS

The U.S. Small Business Administration is making low-interest loans available to Alabama small businesses near the Gulf of Mexico suffering financial losses following the Deepwater Horizon oil spill. These loans are likely to provide vital economic assistance during this difficult time. Keep in mind, however, that borrowers receiving money from BP may have to use their claim payments to repay the loans.

PUNITIVE DAMAGE AWARDS

If an injured party wins a lawsuit, the defendant is usually required to compensate the plaintiff for her actual damages or losses. In cases involving particularly outrageous conduct, punitive damages may be imposed as well. Unlike compensatory damages, which are intended to simply replace the loss suffered by the plaintiff, punitive damages are intended to punish the defendant or set an example for future wrongdoers.

You may hear a lot about the \$2.5 billion in punitive damages a jury awarded to injured parties following the *Exxon Valdez* spill. That verdict, however, did not stand. Last year, the U.S. Supreme Court ruled that punitive damage awards in maritime cases could not exceed the amount of compensatory damages awarded. That ruling reduced the *Exxon Valdez* award to \$507.5 million. While this is obviously still a very large punitive damage award, Exxon did not begin writing checks until 20 years after the spill in November 2009, and some of the plaintiffs received less than \$100 in punitive damages.

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