

# JUSTICE RISING

## Responses to Frequently Asked Questions Concerning Legal Representation For Gulf Coast Fishermen, Seafood Industry Workers, and Maritime Communities

The explosion of the Deepwater Horizon oil platform created a massive oil spill in the Gulf of Mexico. The oil slick made landfall in southern Louisiana on April 30th, and is expected to impact the shores of the entire Gulf Coast, from Texas to Florida. Individuals and businesses may incur damages related to the disaster, including:

- Real and personal property damages
- Loss of profits and earnings
- Loss of commercial use of natural resources

Commercial fisheries, dock and marina owners, waterfront property owners, commercial and private boat owners and city, county or state governments may face property damages and loss of income as a result of this spill. Oil is presently leaking into the Gulf of Mexico at a rate of more than 5,000 barrels a day, and will continue until the well is plugged, devastating the coastal areas of Louisiana, Mississippi, Alabama and potentially Florida for months to come.

The impact of this oil spill is unprecedented, directly impacting thousands of Gulf Coast residents and the commercial seafood industry, including shrimpers, oystermen, commercial fishermen, crew members, charter boat operators, and waterfront property owners. Gulf Coast property owners are predicted to suffer millions of dollars in income loss, property damage, as well as loss in property value. Marine life will be negatively impacted, leaving thousands of commercial shrimpers, fishermen and other sea-bound workers either without income or suffering from drastic cuts in wages.

**Louisiana Justice Institute is a non-profit legal advocacy organization and law firm. We foster and support social justice campaigns and actions for communities throughout Louisiana. Many of our partners, including Zion Travelers Cooperative Center and the Louisiana Oyster Fishermen's Association, and other members of the communities we serve have asked for advice concerning legal actions, and how to/whether to hire an attorney, and what types of claims are available. This publication may answer a few of your questions.**

## What Types of Claims are Available in this Case?

Many of the claims discussed so far have been made pursuant to the Oil Pollution Act, which is a federal law that was enacted after the Exxon Valdez spilled over 11 million gallons of oil into Prince William Sound in Alaska. The OPA created a comprehensive regime to prevent, respond to, and compensate for vessel and facility caused oil pollution. The law also provided for federal oversight of maritime oil transportation through increased environmental safeguards.

Title I of the OPA broadened the scope of damages for which polluters are liable and authorized up to \$1 billion for the Oil Spill Liability Trust Fund (OSLTF). The OSLTF can be used to pay for oil removal and damages that are left uncompensated after claims are made against the parties responsible for the spill (the limit of the fund was raised to \$2.7 billion with the passage of the Energy Policy Act of 2005) and is funded by an oil tax. The U.S. Coast Guard administers the OSLTF through the National Pollution Funds Center (NPFC).

The OSLTF can be used to make claims under a variety of parameters:

- **Compensate the public for the lost use of the affected natural resources.** This could entail compensation for the lost use of public lands that have been contaminated by the spill.
- **Pay the cost to remove, minimize, mitigate, or clean up an oil spill.** This means that if BP is unable to fully clean up the spill, the federal government has funds available to use to ensure areas are returned to pre-spill condition.
- **Pay the cost of economic loss that resulted from the destruction of real or personal property (although not personal injury).** Real property includes real estate and personal property includes any other property that may have been damaged in the spill.
- **Pay for injury or economic loss that resulted from damage to a boat.** If you own a boat that was in an affected area and is now damaged, you may be able to recover damages to repair or replace your boat.
- **Pay damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of property or natural resources.** If you own a business in an affected area and the business was forced to close temporarily or permanently you may be able to recover damages for the profits that would have been earned if the oil spill did not occur.
- **Pay damages to anyone who has lost profits or income, regardless of whether or not they owned the damaged property.** This may apply to someone that operates a business in an affected area but does not own property (maybe the business property is leased or the business does not involve the use of property). Owning damaged property is not a prerequisite for recovering damages.

In addition, individuals and businesses may make claims for negligence and personal injury against BP and the other culpable parties, which may ultimately award punitive damages (an assessment against BP and others to punish the companies for their wrongdoings) to the injured parties.

## What is a Class Action?

A class action is a case brought against a company whose actions have damaged a group of people in a similar way. A single person (class proponent) who has been injured may bring a class action on behalf of everyone who has been harmed. It is common, however, after the action has been started for many other injured people to join the class action lawsuit (become class members). If the case results in a successful recovery, (either through settlement or trial) all class members (named plaintiffs) receive their portion of the amount paid by the wrongdoers.

## What factors should I consider in choosing an attorney?

After the interviews, review your notes. Look at the strengths and weaknesses of each of the attorneys you interviewed. Decide what is most important to you. Factors to consider in choosing an attorney include:

- **Cost** \* Cost is rarely a deciding factor unless it is a simple case which will take little time and that is the only contact you plan to have with the attorney. However, it is always critical that you feel comfortable and knowledgeable about the financial arrangement. Disputes over fees are one of the most common conflicts between unhappy clients and attorneys.
- **Experience** \* Does the attorney have the necessary experience for the case you have? For a simple will a relatively new attorney may be a cost-effective choice. However, for a complex estate plan you are likely to prefer someone with more experience. The higher fee is likely to be balanced by not having to pay for the attorney to learn on the job.
- **Availability** \* Can the attorney accept the case immediately? Will the attorney be able to devote the time you want to the case? This is particularly important if you prefer a lot of interaction with your attorney.
- **Your Comfort Level/Mutual Respect** \* It is important not to choose an attorney simply because you share an interest in common or you are impressed by the firm's reputation. You should be satisfied with the expertise of the people actually working on your case. Will you trust them enough to tell them private matters (relevant to the case) that you may not have shared with others? Do you believe the attorney treats your ideas and opinions with respect?

## If I meet with an attorney, do I have to hire him?

**No.** Before your meeting, you should ask if there is a fee for an initial consultation. You will be obligated to pay that fee even if you do not hire the attorney. However, even if the consultation is free, you have every right to take some time to think before you hire the attorney, and you have every right to decide not to hire the attorney. Hiring an attorney is a big step, and there is nothing wrong with shopping around.

## What should I ask the attorney before I hire him?

The questions you should ask will vary with your case. Consider the following list to be a starting point:

- What are your areas of specialization?
- What is the cost of the initial consultation?
- Have you handled cases like mine before? How many? What was the outcome?
- Will you be the only attorney who works on the case? If not, who else will work on it?
- How long will it take for this case to be resolved?
- How much will my case cost? Can you take my case on a contingent fee basis?
- Can I do some of the work on the case to keep the cost down?
- Are there things I should do to improve my case, or to help you?
- How will you keep me informed about the progress of my case?

Please note that, as desirable as references may be, it is not always possible for attorneys to give references from past clients due to attorney-client confidentiality. However, you may wish to ask for references from other attorneys.

### **Should I ask for a written retainer agreement?**

**Yes.** A written retainer agreement is the best way to ensure that your rights are protected. Don't feel that you have to sign the agreement on the spot -- take the time to read it first, and ask questions about it. If you are looking at paying thousands of dollars in fees, you may even wish to have the agreement reviewed by another attorney before signing it. The retainer agreement should accurately describe the legal issues for which the attorney will represent you, the amount that you will pay the attorney, and any other terms you discuss.

### **What if I hire an attorney, and I don't like the work he does?**

**The attorney works for you.** You have the right to terminate your relationship with an attorney. Please note, however, that you must still pay the attorney for the services he has performed for you. If the attorney was representing you on a "contingent fee" basis, the attorney may be entitled to a portion of the proceeds of your case once it has been resolved.

Usually, before you fire your attorney, you will want to first talk to a different attorney. Sometimes the new attorney will tell you to try to work out your problems with your attorney. If you choose to hire the new attorney, the new attorney should be willing to work out the details relating to any fees you may owe to your prior attorney.

### **If I get involved in another legal case, or if I want to appeal my case, does my attorney have to represent me?**

**Generally not,** unless your retainer agreement requires your attorney to take on the additional matter. Your attorney will ordinarily only have to represent you on the matters specified in your retainer agreement, and has every right to charge an additional fee if new cases arise. Once a final judgment has been entered, your attorney ordinarily has no further responsibility to represent you or to appeal your case.

### **What if a dispute arises?**

In the event that a dispute arises between you and your attorney, the Louisiana State Bar Association offers dispute resolution services. These services can be of particular benefit in the event of fee disputes. If you feel that your attorney has acted in an unethical manner, Louisiana has a "grievance" procedure where you can file a complaint against your attorney and have your complaint investigated.