

# A Guide to Oil Slick Litigation

**Provided By:**

**GREGORY M. FRIEDLANDER & ASSOCIATES, P.C.**

*Attorneys at Law*

If you are reading this you believe you have a claim and may be looking for additional information. We here at GMFPC.com are ready to help.

BP has already offered that they will compensate those injured by this tragic accident. There may be others liable also. It is important to note that while much of the cost will be passed onto the public, that the system is well designed to spread this harm broadly so that the victims who need to be compensated the most do not burden those others.

The most important thing to remember is that the failure to act immediately can compromise your rights. Our focus is to put you with the right attorney and define the key issues as soon as possible and to work with you to determine the applicable statute of limitations, a time limit beyond which you lose your right to recovery.

Below, you will find some very basic questions which we need to focus on along with some common claims which may arise.

Who are some claimants? Those in the fishing industry (commercial and sport). Those who have property which is impacted directly or indirectly by the loss. This includes homeowners, condominium owners, those in the retail-tourist industry and others. Those who have business interests tied directly to these industries, such as realtors, etc.

Not all damages are compensable. One reason to consult with attorneys early is to establish 'proximate cause'. Proximate cause is proof that the damage was caused with sufficient certainty by the wrongful acts of the defendant.

Consulting with counsel allows us to work together to establish the extent and amount of damages. An initial worksheet is given below to assist you in this regard.

This publication is provided as a courtesy by Gregory M. Friedlander & Associates, P. C., Attorneys at Law. Our offices are conveniently located at 11 S. Florida Street, Mobile Alabama.

Our office devotes its time and financial resources to protecting the rights of individuals, including representing personal injury victims and people who have been victimized as a result of wrongful acts of other people.

In particular, we have a strong emphasis on referring clients to the appropriate counsel for their type of case. For more information on this, please feel free to call for an appointment or send an email at the email address given for the firm.

### **PRESERVING EVIDENCE:**

**One of the keys to recovery is making sure that you can prove your damages, that you can prove all aspects of your case. The defendant, even where they agree to pay for damages, is not responsible for proving your damages.**

**You should immediately start listing and tracking your damages. The type of chart and list below is meant to be exemplary, not exclusive.**

<b>Type of damage</b>	<b>Loss</b>	<b>Dates of loss</b>	<b>comments</b>
<b>Physical damage to property</b>	<b>If a specific amount can be shown, it should be done here</b>	<b>(comment-multiple dates may be relevant as well as ranges.)</b>	<b>Always include comments that may be relevant to a later understanding</b>
<b>Lost income</b>	<b>Past income may be significant to proving future losses</b>	<b>Ranges as well as multiple specific dates</b>	<b>Notes on the specific loss should be included</b>
<b>Lost Value</b>	<b>Indirect damages as well as direct lost value</b>		<b>May be temporary or permanent</b>
<b>Lost opportunity</b>	<b>This could be the opportunity to sell property, to rent it, etc</b>		<b>All damages must be subject to non-speculative proof</b>
<b>Evidence</b>	<b>For each type of loss list the evidence you have</b>	<b>Date all evidence</b>	<b>Make sure where possible to scan the evidence or bring to us for scanning so it becomes a permanent part of your record.</b>

#### **I. Potential Claims**

**A. Property Damage-**This may be indirect as where the property loses value or rental income is lost.

**B. Business Interruption.** Indemnification for losses incurred because an ongoing business has been interrupted. An alternative claim may be made against an insurer. Often times physical damage must be suffered to start coverage, but counsel should review denied coverages to see if the insurer is acting in good faith.

Business Income may be gross or net income, but typically the net income is the more normal number. Indirect damages may be from employees who are paid even though they cannot work.

C.Contingent Business Interruption. Contingent business interruption coverage is for lost profits resulting from an interruption of business to a customer or supplier's property, either specified or blanket. The damages result where the damage to a third party prevents the insured's supplier of goods and/or services from rendering its goods and/or services, a receiver of the insured's goods and/or services from accepting the insured's goods and/or services. A gasoline company that cannot sell fuel to fishing boats may suffer these losses and tracking losses compared to previous months (or comparable results from prior years) is the type of evidence that must be preserved.

Like business interruption claims, recovery for contingent business interruption requires extensive documentation and analysis.

Record or preserve evidence of the property damage, photographs are important, but so are videos and even inspection reports, often time improved by a third party. Where appropriate, giving the liable party an opportunity to view the property may make sense.

We want to be a part of your team. Policies vary greatly. Counsel are one element, as are engineers, independent fact witnesses, public adjusters and accountants. Again, this list is not exhaustive.

The company's books and records, financial statements, and other financial reports. The actual information needed depends on the nature of the industry or business.

## **LITIGATION SERVICES**

We represent individuals and businesses in a wide variety of cases, but this letter does not engage us as your representative so please contact us as soon as possible so we can get started protecting your rights and working to secure evidence. Representation only occurs when we sign a fee agreement with you after your visit to our office. We represent or refer cases to attorneys appropriate for the case. Examples of cases where we refer or handle cases:

### **1) PRODUCT LIABILITY**

#### Examples Include:

- Vehicle Rollover
- Tire Cases
- Faulty Equipment
- Injuries at Work
- Crane Cases
- Unsafe Products
- Defective Products

### **2) AUTOMOBILE ACCIDENTS**

- Commercial
- Non-Commercial
- Serious Injury

### **3) MALPRACTICE**

- All Areas

### **4) WRONGFUL DEATH AND SERIOUS INJURY**

- Resulting from Negligence
- Resulting from Unsafe Working Conditions
- Resulting from Unsafe Work Practices

**5) DANGEROUS MEDICAL PRODUCTS**

**6) UNSAFE FOOD PRODUCTS**

**7) Environmental Claims**

These are only representative of the types of matters which we can help with. For more information, you can contact us by providing the information requested below or calling to make an appointment.

If the case is one where we cannot handle it or do not have the expertise to represent someone, we act as referral counsel to make sure that you obtain the best counsel available. If you are in a jurisdiction where we cannot represent you, we will do our best to find excellent counsel in your area to represent you on your case.

Please feel free to call for an appointment on any new matters. Please call us for an appointment if you wish to sign a fee agreement and pursue any case through our office.

**Please be aware that all causes of action have statutes of limitations. These may be 30 days or less from the date when the action accrued. Typically, in tort cases there is at least a 12 month statute of limitations, but some cases, such as workman’s compensation cases, may require notices be sent in 5 days!!! We have no opinion as to cut off date for any actions which you may have based on our limited information and you should contact counsel immediately in order to preserve any statutory periods which apply.**

To start protecting yourself now, we would need the following information:

**CLIENT INFORMATION**

YOUR NAME: \_\_\_\_\_

THE NAMES OF THE INJURED PERSON \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX NUMBER \_\_\_\_\_

E-MAIL ADDRESSES \_\_\_\_\_

EMPLOYER: \_\_\_\_\_

OPPOSING PARTIES: \_\_\_\_\_

NAMES \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE \_\_\_\_\_

**EMERGENCY CONTACT:** (it is essential that we have a secondary source)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

**OTHER ATTORNEYS WHO MAY HAVE INFORMATION ABOUT THE CASE**

**FACTS**

**A brief description of the facts leading up to the claim including:**

- Names of people involved
- Their relationship to you
- Dates
- Witnesses
- Locations (include city, state, county)
- What occurred
- When (time)
- Where (location)
- How event are relevant to your case

**WHAT YOU CONSIDER TO BE THE REASON WHY A SPECIFIC PERSON OR COMPANY IDENTIFIED ABOVE IS LIABLE:**

**WHAT DEFENSES YOU THINK WOULD BE AVAILABLE:**

**A SHORT STATEMENT OF INJURIES INCLUDING:**

**WHAT PROPERTY IS AFFECTED**

**The value of the property affected**

**INCOME LOST**

**What income has been lost so far**

**What income do you expect to lose in the future**

**PLEASE SEE OUR QUESTIONNAIRE TO OBTAIN NOTES ON HOW TO PRESERVE INFORMATION REALTED TO YOUR LOSS.**

**MEDICAL QUESTIONNAIRE**

Please give the following medical information:

1. Date of Injury\_\_\_\_\_

2. Date of first medical Treatment\_\_\_\_\_

3. Names and addresses of treating physicians (please indicate if the physician was a consulting physician).  
Give the dates of treatment if you know them.

A. \_\_\_\_\_ B. \_\_\_\_\_

C. \_\_\_\_\_ D. \_\_\_\_\_

4. Names and locations of hospitals where treatment was rendered:\_\_\_\_\_

5. Who do you consider your treating physician to be?\_\_\_\_\_

6. What do you consider to be your primary complaint?\_\_\_\_\_

7. What are the other symptoms or injuries you feel you suffer from (please do not exclude any condition merely because you feel it to be minor at this time).

8. State what doctors have previously treated you for any condition or any check up at any time prior to this injury. For each noted treatment, state when you were treated (approximately) and what condition you were treated for (Note that in discovery, this information may be obtained by the opposing side).

A. \_\_\_\_\_ B. \_\_\_\_\_

C. \_\_\_\_\_ D. \_\_\_\_\_

9. State what prior work you have performed.

\_\_\_\_\_  
\_\_\_\_\_

10. State how your injury affects your ability to perform any of the prior employment.

\_\_\_\_\_

11. State what your opinion is of your impairment in your own words.

\_\_\_\_\_

12. What special injuries have you suffered:

Have you or your loved one lost work?\_\_\_\_\_

Have you or your loved one lost the ability to do certain work\_\_\_\_\_

Have you or your loved one lost a limb\_\_\_\_\_

Do you or your loved one have pain? \_\_\_\_\_

Do you or your loved one have permanent disfigurement \_\_\_\_\_

What other damages do you have which can be itemized (for example lost one year of work at 24,000 per year). \_\_\_\_\_

\_\_\_\_\_

13. What injuries have occurred to others, what have others lost as a result of the injury which you have suffered? \_\_\_\_\_

To represent you adequately we may need to obtain personal records. To get permission we would need a medical release such as the one below:

\_\_\_\_\_

In order to win an action, there are numerous causes of action which are too lengthy in order to list here. There are specialized laws that protect people in areas such as intellectual property, civil rights, personal injury and wrongful action by the government and non-government entities.

The basic theories of recoveries are negligence, which is the failure to use reasonable care to prevent harm to oneself or others; wrongful death for any act, admission of negligence of one person, product liability where a defect in a product approximately causes injury, as well as actions which result in absolute liability such as dramshop liability for selling intoxicating beverages in contravention of the law, copyright and patent infringement and liability of a principal by actions of his agent, whereby a company, for example, might be liable for the actions of an employee notwithstanding the fact that a corporation is only able to act through its employees.

There are also many defenses to a cause of action and it is important that you be mindful that just because someone is injured they don't always have a right to recover under the laws of the state of Alabama.

The principal one of these which you need to initially be concerned with is the statute of limitations, which states that in every case an action must be brought within a certain period of time or it is lost.

Since this statute of limitations can be as short as six months for certain causes of action, it is important that if you have been injured or wronged in any way that you act immediately in order to protect your rights.

**GREGORY M. FRIEDLANDER & ASSOCIATES, P.C.**

**Attorneys at Law**

11 South Florida Street

Mobile, Alabama 36606-1934

Phone (251) 470-0303

Fax (251) 470-0305

MOBILE, ALABAMA

Date: May 3, 2010

**AUTHORIZATION FOR PERSONAL INFORMATION**

This form, or any photostatic copy hereof, authorizes all accounts clerks, courts, business records offices, physicians, hospitals and medical attendants to furnish my attorneys, **Gregory M. Friedlander or Gregory M. Friedlander & Associates, P.C.**, their associates and representatives, the full and complete information relating to the accounts, business records, care, treatment, outpatient care or hospitalization at any time or times for any condition or conditions, including psychological or psychiatric impairment, drug abuse and/or alcoholism, or sickle cell anemia, or Acquired Immunodeficiency Syndrome (AIDS), or tests for or infection with Human Immunodeficiency Virus (HIV), information about how my impairment affects my ability to complete tasks and activities of daily living and information about \_\_\_\_\_  
SS#\_\_\_\_\_ including injuries.

This authority includes the right to the examination of all X-rays and records of any kind and the right to receive full and complete information pertaining thereto, including copies of all such records, and to review same. This authority includes the right to obtain credit reports, personal records and the like.

All prior authorization is hereby canceled.

May 3, 2010

\_\_\_\_\_  
Legal Representative: Signature

\_\_\_\_\_  
Patient/Client-Print Name

\_\_\_\_\_  
Signature

SS#\_\_\_\_\_

## TESTIFYING IN YOUR CASE

Make sure not to make a statement before consulting with counsel. If you have already made a statement, try to remember what was said and to whom and prepare a written copy of your recollection. Aside from personal medical information, you may have to answer questions about your case. If you are required to do so, you should always have counsel present if possible. Some of the things you will want to consider in testifying in court and these are also applicable to a large extent in testifying at depositions:

First, one aspect of every case is getting the jury to identify with the plaintiff.

In order to identify with you they have to understand your problem as you experienced it.

In order to do that we have to elicit what is often difficult testimony.

In order to do that if you have specific examples of the affect that your condition had and in particular if you have a calendar where you tracked where the condition affected your life and your ability to get the full enjoyment of it then those specific instances can bring life to otherwise fairly general testimony.

Answer the questions truthfully and as if you were in your own living room. Don't try to convince the jury, just listen to the question and give the answer and tell your story.

Don't try to control the feelings of anger or sadness which are brought on by the tragic event but at the same time don't try to exaggerate those either.

Don't use adjective such as "terrible" and "worse" describe what has happened because that often makes it sound like it is being exaggerated. Rather just stress the specific circumstances which show the affect that the suffering which you had or experienced had on you as a person.

We will need for you to describe the physical sensation associated with feelings.

Asking how you feel or how you felt or what physical sensations you experienced and describing how it makes you feel is going to be very important in your trial.

Its had an affect on you which results in a desire to withdraw from social activities or a sense of depersonalization it is very important that you communicate that to us ahead of trial so that we can cover those issues.

The amount of time you spent thinking about the event a distraction of the thoughts or even flashbacks are something which is particularly traumatic can be important.

Always tell the truth. Answer only the question asked. Don't volunteer information. Fully answer every question, however.

If it is necessary explain an answer but only when its necessary to explain the answer to the question asked.

Think about every question that is asked of you don't feel that you're in any hurry to answer them particularly during a deposition or cross examination.

If you've reached a plateau in your condition then when you're asked if you're better now than you were

during another period of time the answer would be "yes" but you should also point out that you are not getting better and what happens when the injury or bad feelings occur.

Make sure that you have a basis for every answer because it may be necessary that you explain that basis.

For example if you say that you feel great pain you may need to explain what that pain is like such as a bee sting or soreness like having a foreign object inserted into an area.

Don't use specific dates unless you are absolutely sure of the specific date, just say when it was approximately.

Don't ever guess at an answer.

Don't make generalizations such as "never" or "always".

Don't try to intimidate but at the same time don't be intimidated by anything you see in a deposition or in the courtroom.

Always the person asking the question finish asking it before you attempt to answer it and in the event that there is any objection wait until the objection is ruled on before giving an answer and then only if you are directed to.

Don't ever look to the attorney for advice during the trial but instead look to yourself for what the truth is.

If you are not sure of an answer then if you don't understand the question make sure that you ask that it be rephrased don't try to answer a question that you don't understand.

If you just don't know the answer then answer that you don't know but always try to emphasize that if you don't understand the question then say that you don't understand it or ask it to be rephrased in a way that you can answer it.

Always be polite. Always say "yes, sir" or "no, ma'am".

This should be done even in the event that the person asking the questions is being rude.

Don't look at the lawyer who is asking the question except as he asks the question then look at the jurors and talk to them. Try to overcome being nervous and shy and speak to the members of the jury as if they were neighbors or friends. In fact the jury pool is from people who are your neighbors and friends and you shouldn't worry so much about trying to impress them as much as you should worry about being honest and open with them and acting like yourself. There is nothing more important when it comes to being in trial than being yourself and being forthright and honest.

Wear the clothing that you normally wear, don't go out and get something special just for trial.

**IN THE EVENT THAT SOMEONE HAS DIED AS A RESULT OF ANOTHER'S FAULT, IT MAY BE NECESSARY THAT YOU ACT AS ADMINISTRATOR FOR THEM.**

Your duties as administrator are as follows:

1. Collection and Preservation of the Assets of the Estate;

(a) Determining All Possible Sources of Payments and Insurance

- (i) Credit Card Policies
- (ii) Life/Health/Retirement Plans
- (iii) Homeowner's/Auto Insurance
- (iv) Third Party liability
- (v) Real Estate (Whether Local or Foreign)
- (vi) Personal Property
  - (A) All Savings and Investment Accounts  
-these may also have insurance attributes
  - (B) Cash
  - (C) Material Possessions (cars, furniture, etc)

2. Preparing and accounting of each and every item coming into the estate and each and every item going out of the estate;

3. Preparing, prior to a probate of the will, a list of the assets in the estate for purposes of determining the appropriate level of a bond which would need to be posted;

4. The determination as to whether any insurance is necessary on any of the property;

5. The payment of any such insurance;

6. The payment of any and all mortgage payments;

7. The determination of who will be the beneficiaries of the estate.

A family allowance can be paid to the family members of up to \$6,000.00 per year (\$500.00 per month for one year).

There is also a homestead allowance of \$600.00 for each minor or dependent child, of which I do not believe there are any at the present time.

In addition, all of the creditors of the estate need to be determined, and each one needs to be given a notice of the opening of the estate (43-2-60).

After the personal representative (you) has been issued letters testamentary or, in this case, letters of administration, you should open a banking account for the estate in such a capacity.

All expenses of administration and distribution should be paid from, and all receipts paid into this account.

You should maintain evidence of the amount, purpose, and payment of all expenses, particularly reimbursements. Never commingle funds of the estate with personal funds if it is possible.

A Federal Employer Identification Number should be obtained (Federal Form SS-4). This should only be important if the estate continues to obtain income.

Credit cards and utilities which are not to be maintained should be canceled.

Any Medicare and insurance claims should be filed as soon as possible. A claim for life insurance or other benefits should be made even if it is uncertain as to the certainty of such benefits.

There is a priority of claims that need to be paid, and a discussion of how these are to be paid, but basically funeral expenses, then fees and charges of administration, then expenses of the last illness, then taxes assessed on the estate prior to the death of the decedent, then debts due to employees, then all other debts is the schedule of payment.

An initial full inventory should be helpful in connection with this.

I strongly recommend that, if there is any litigation which you may need to begin for the estate, that you consider hiring counsel as soon as possible to explore statutes of limitation.

On closing the estate, a petition is made to pay the costs of administration, which include the attorney's fees. The judge of Probate Court will then determine what are appropriate attorney's fees.

In addition, the administrator's fees, which are USUALLY a percentage of the assets coming into the estate and of those going out, can also be paid.

As a litigant, you are a part of the case whether you are representing yourself or someone else. Some of the things remember about your case are included in the following timetable:

## **TRIAL PREPARATION CHECKLIST:**

### **1. DOCKET DATES**

\_\_\_ Initial investigation: At the time you are supplying the information requested, you are helping to prepare for everything which follows. The importance of being prepared in obtaining a quick a favorable resolution of your case cannot be underestimated.

If this is complete, we can prepare settlement brochures and better evaluate your case to obtain the optimum result whether we file suit or resolve your case by settlement.

\_\_\_\_\_ complaint: This must be filed before the statute of limitations runs out. Often time, arbitration may be a required substitute by virtue of contractual obligations and recent case law.

\_\_\_\_\_ interrogatories

\_\_\_\_\_ response to interrogatories

\_\_\_\_\_ admissions

\_\_\_\_\_ response to admissions

\_\_\_\_\_ discovery cutoff: This is the date after which no further work may be done to obtain facts relative to your case.

\_\_\_\_\_ depositions

\_\_\_\_\_ doctors depositions

\_\_\_\_\_ obtaining experts needed

\_\_\_\_\_ responses to answer/counterclaim

\_\_\_\_\_ jury demand

\_\_\_\_\_ pretrial compliance

\_\_\_\_\_ trial date

\_\_\_\_\_ prove validity of documents

- \_\_\_\_\_ subpoenas for trial witnesses
- \_\_\_\_\_ medical records-certified
- \_\_\_\_\_ voir dire
- \_\_\_\_\_ opening
- \_\_\_\_\_ closing
- \_\_\_\_\_ cross examination
- \_\_\_\_\_ theme of case
- \_\_\_\_\_ research all issues

- evidence
- causes of action
- issues raised

Should you have any questions concerning this please let us know.