

# Proving Wrongful Death In Industrial Plant Accidents:

A GUIDE FOR FAMILIES



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Industrial plant accidents can be devastating, resulting in serious and fatal injuries to those involved in the accident and immense loss for family members.

Industrial plants are among the most dangerous workplaces in America and across the globe, involving hazardous work in plants, mills, and factories that manufacture a wide variety of goods that are ultimately used domestically or exported abroad.

Owners and employers at industrial plants have a duty to ensure that workers are not exposed to unreasonable risks on the job. Indeed, owners of dangerous factories, and employers at plants where hazardous materials and heavy machinery are present, should have to face the consequences of contributing to the death of any worker.

The following is a guide for families who have recently lost a loved one in an industrial plant accident and are considering a wrongful death lawsuit.

# WHAT YOU NEED TO KNOW ABOUT PROVING WRONGFUL DEATH

Nobody should ever have to file a wrongful death lawsuit because nobody should ever have to experience the loss of a loved one in an industrial plant accident or in another type of preventable incident. Yet avoidable and deadly workplace accidents happen more often than most of us would like to think about, and it is important to know about how these cases work, how you can protect your rights, and what type of information you will ultimately need in order to prove your case.

## What Can You Expect if You Have a Wrongful Death Case?

Every state has its own laws concerning wrongful death cases. Generally speaking, wrongful death law is an area of the law that allows another party to step into the shoes of the deceased to file a claim since the deceased person is no longer alive to file a claim themselves. In effect, wrongful death lawsuits are like personal injury lawsuits in which another person steps in to file the lawsuit on behalf of the person who suffered a fatal injury.

Since each state has its own wrongful death statute, it is critical to know which state's law will apply to your case. State law will determine what specific elements of the claim you must prove, who is eligible to file a wrongful death lawsuit, how much time a person has to file a wrongful death lawsuit, and what damages may be available.

## **How Do You Protect Your Rights?**

**To protect your rights after a wrongful death accident at an industrial plant, you should gather as much evidence as possible to support a wrongful death lawsuit later. Be sure that you obtain information from any healthcare providers who treated your injured loved one prior to their death, and keep notes of any contact you have with the owner of the industrial plant, a particular employer such as a boss or supervisor, any insurance agents, and anyone at the plant who witnessed the accident or its aftermath.**

**All of this information can be relevant for your case.**

You can also protect your rights by understanding how wrongful death law works in the state where your claim will be filed. You should learn about the statute of limitations for wrongful death lawsuits in your state, as well as any other relevant information that could ultimately affect your case. You will want to ensure that you take any necessary steps, while avoiding any mistakes, to have a successful outcome in your case.



## **TYPES OF INDUSTRIAL PLANT ACCIDENTS AND CAUSES?**

Deadly industrial plant accidents have been happening since the 19th century, and workers have sustained life-threatening and fatal injuries as a result of many different kinds of hazards. While industrial plants have become safer over the years, these worksites still pose many serious risks to employees. Given that there are many different kinds of industrial plants with so many different types of workers, the types of accidents that can occur are widely varied.

Moreover, since the types of accidents can range widely, the causes of these accidents and injuries will also vary. Some of the most common types of industrial plants in which accidents and injuries occur include but are not

limited to oil refineries, chemical plants, plastic manufacturing plants, and nuclear power plants. Common types of accidents can include, for instance, explosions, fires, leaks of hazardous materials, chemical spills, machinery defects and malfunctions, electrical failures, and general exposure to hazardous and toxic chemicals and other materials. Industrial plant accidents frequently occur as a result of improper ventilation, negligent safety practices, improper inspection and maintenance of plant equipment, negligent storage of hazardous materials, improper safety training for workers, design and manufacturing defects that occur in machinery at the plant, and improper use or supply of safety equipment.

## **WHO CAN FILE A WRONGFUL DEATH LAWSUIT AFTER AN INDUSTRIAL PLANT ACCIDENT?**

Each state will have its own laws concerning eligibility to file a wrongful death lawsuit. Some states allow only the personal representative of the deceased (i.e., the executor of the deceased's estate) to file a wrongful

death lawsuit even though that party can seek damages on behalf of the surviving family members. Other states permit certain surviving family members to file claims.

In both Georgia and South Carolina, for example, surviving family members can be eligible to file wrongful death lawsuits. However, the order in which surviving family members are permitted to file a claim can vary, as well.

**In Georgia, for example, the surviving spouse is first permitted to file a lawsuit. Then, if there is no surviving spouse, the surviving child or children of the deceased can be eligible to file a lawsuit. If there are no surviving children, then the surviving parents can be eligible, after which point the executor of the estate will need to file.**

**Georgia does not allow surviving siblings or other family members to file a wrongful death lawsuit. South Carolina, for instance, is different.**

**Which state law does begin with a surviving spouse or child's right to file a claim, followed by surviving parents. However, if the deceased has none of those survivors, other surviving heirs can be eligible to file a wrongful death lawsuit.**

# What is the Deadline for Family Members to File a Claim?

The statute of limitations in industrial plant wrongful death lawsuits is the amount of time a plaintiff has to file a wrongful death lawsuit. You should know that the statute of limitations is set by state law, so “clocks” for filing a claim will vary from state to state.

For example, under Georgia law, the statute of limitations for a wrongful death lawsuit is two years, while the statute of limitations in South Carolina is three years. In both cases, the “clock” will start ticking on the date of the deceased’s death.

If you do not file a claim within the time period set by the statute of limitations, your wrongful death lawsuit will become time-barred under state law. In some situations, the clock can be paused or “tolled,” but you should not plan on tolling the statute of limitations.

Rather, you should determine the time limit in your state and should ensure that you file your claim by the deadline.



## WHAT TYPE OF SETTLEMENT CAN YOU EXPECT?

The settlement or damages award in a wrongful death lawsuit following an industrial plant accident will depend upon a number of different factors. First, to estimate a possible settlement or payout, you will need to determine the losses for which you are seeking financial compensation.

In general, wrongful deaths can result in a variety of economic and non-economic losses, such as funeral expenses, burial expenses, medical bills of the deceased prior to death, the deceased's lost wages, loss of the deceased's care and companionship, and pain and suffering experienced by the deceased prior to death as well as by the family members left behind. All settlements or damages awards are based on the losses

suffered in a particular case.

**Next, it will be important to determine the types of damages that are available based on state law where you are filing the lawsuit. Some states do not permit surviving family members to seek compensation for their own pain and suffering, while other states do allow this form of compensation.**

Then, your payout will depend upon whether you are seeking to negotiate a settlement award from an insurance company or before a lawsuit reaches its conclusion, or you are planning to take your case all the way to a judge or jury in order to have a verdict.

**Generally speaking, negotiated settlements tend to be slightly less than a plaintiff would expect to receive from a verdict since the settlement is designed to expedite the case and get a payout to the plaintiff sooner than a verdict would. In recognition that both parties will save time, costs, and energy, a settlement will often be a negotiated amount that may be slightly less than the plaintiff's total losses.**

A verdict, differently, can provide a plaintiff with full compensation for economic and non-economic losses and can in some cases also award punitive damages if the defendant's actions or omissions were especially reckless or egregious.



## **WHAT DO YOU NEED TO KNOW ABOUT DEALING WITH PLANTS AND INSURANCE COMPANIES?**

When you are dealing with a party affiliated with the industrial plant, such as the plant owner or a supervisor at the plant, it is critical to keep detailed records of any interactions you might have so that you have all of the facts and have sufficient information in the event you need to rely on that information in follow-up negotiations or when you are moving forward with a wrongful death lawsuit.

In short, you should document everything. Moreover, when you are dealing

with representatives of the plant, or any insurance agents or representatives from the insurance company, it is essential for you to understand that none of these parties are on your side in the wrongful death case. Even though a plant representative or an insurance agent might sympathize with you and even tell you how sorry they are for your loss, you should remember that none of these parties will advocate for you in an insurance claim or wrongful death lawsuit.

**In fact, these parties are interested in their own bottom line and will want to take steps to limit any kind of settlement or payout to you within the bounds of the law.**

Given that plant representatives and insurance companies are not on the side of the family member of the deceased, you should avoid providing any kind of subjective information to these parties when you communicate over the phone, in person, or electronically.



## **STATE OF INDUSTRIAL PLANT ACCIDENT CASES TODAY DURING THIRD WAVE OF PANDEMIC**

During the start of the pandemic, many industrial plant workers had to report to work as essential employees. Even for those who may have been furloughed, most industrial plants have now reopened and workers have returned to their jobs.

Yet the COVID-19 pandemic continues to cause issues for court filings, and many people still want to know if they can move forward with a legal claim without going to a lawyer's office in-person or physically attending a court hearing.

**You might be wondering first if courts are still backlogged. When the pandemic began, many courts closed and shifted to virtual hearings but only for the most pressing cases—usually criminal matters or other hearings of immediate concern. As a result, many personal injury cases and wrongful death lawsuits were delayed, and court dates were pushed back. Now that courts have largely reopened in most states and are operating according to a “new normal” in the pandemic, we know that you need to know if you should expect delays. By and large, case backlogs have been cleared, and courts have returned to normal timelines of operation.** For many Americans, the prospect of going to court in-person or visiting a lawyer’s office in-person can still be concerning, especially for people who are immunocompromised or suffer from serious underlying conditions that could still lead to a severe COVID-19 infection despite vaccination. You can certainly still work with a lawyer over the phone or through video conferencing platforms like Zoom. Many law offices may permanently offer video conferencing as an alternative to in-person meetings with clients, so you should feel secure knowing that you can seek legal advice from the safety of your own home. Many courtrooms do have remote or virtual options, but it will be important to check with the specific courthouse to find out about policies. You can also visit the website for the court where your case will be heard to find out about videoconferencing and other virtual hearing possibilities, as well as to learn about COVID-19 safety protocols like cleaning procedures and masking indoors.



## **WRONGFUL DEATH CASE TIPS**

When you have lost a loved one in an industrial plant accident, you will want to ensure that you follow any helpful tips to get your wrongful death lawsuit filed in an appropriate and timely manner and to ensure that you protect your right to seek compensation. The following are some tips to guide you and the deceased's other surviving family members as you think ahead to filing a wrongful death lawsuit.

### **How Fault is Determined in an Accident**

You should understand how fault is determined in a wrongful death lawsuit to ensure that you have sufficient evidence to support your case. While the elements of each wrongful death lawsuit, and proving fault, will vary slightly based on the state law where you are filing your claim,

there are the general elements that you will need to prove in order to show that the defendant is at fault and accountable for damages:

- Defendant owed the deceased a duty of care, which can be proven in a variety of ways in an industrial plant accident;
- Defendant breached the duty of care owed by acting in a negligent manner, which can include many kinds of careless or reckless acts or omissions;
- Defendant's breach of the duty of care caused

**In some industrial plant accident cases, the claim will not be based on a theory of negligence as we discussed above, but rather will be a strict liability lawsuit.**

In cases relying on a legal theory of strict liability—which is usually applicable in industrial plant accidents involving defective machinery or equipment—the plaintiff will not need to prove all of the elements above. Instead, you will only need to prove:

- Defendant designed, manufactured, or marketed the defective machine or piece of equipment or one of the components;
- Defect caused the deceased's fatal injuries; and
- Damages resulted from the fatal injuries.



## **MISTAKES TO AVOID FOLLOWING A WRONGFUL DEATH ACCIDENT**

The following are mistakes to avoid in any wrongful death lawsuit:

- Offering subjective beliefs about the accident to a plant representative or insurance agent, which could be construed as an admission of fault;
- Apologizing for your deceased loved one's error that resulted in the accident;
- Failing to obtain evidence quickly;
- Speaking publicly, including posting on social media, about the accident;

- Accepting the first settlement offer; and
- Failing to file a wrongful death lawsuit before the statute of limitations runs out.

## **How to Ensure the Best Settlement:**

You can ensure the best settlement in your case by avoiding the mistakes we mentioned above, and by being prepared for your wrongful death lawsuit. You can prepare yourself by learning more about the laws in the state where your case will be filed, and making certain that you file your wrongful death lawsuit before the deadline set by the statute of limitations.

## **How the Legal Process Works and How to Get Through it as Fast and Stress-Free as Possible:**

**In some wrongful death cases, the process will begin with the surviving family members seeking compensation from an insurance company – through the state’s workers’ compensation system or through another insurer who may provide compensation for losses.**

The insurance process will usually begin with the surviving family members filing an insurance claim and negotiating with the insurer to seek a reasonable settlement offer. When an insurance company will not offer a reasonable settlement or cannot compensate the surviving family

members for the full amount of losses suffered, the surviving spouse, child, or other family members will typically move onto a wrongful death lawsuit.

In a wrongful death lawsuit, the legal process begins with a plaintiff filing a lawsuit. Accordingly, your wrongful death claim will start when you file a lawsuit in the appropriate court. Then, the defendant will have a certain period of time to file a response or answer, after which point the case will move into a phase known as discovery.

During discovery, both sides can request documents from the other side, and the parties can conduct depositions in which parties provide a form of testimony to be used as evidence in the case.

Following discovery, the case will move into one or more court hearings, and a judge or jury will hear from both sides. Ultimately, a judge or jury will issue a verdict in the case, finding for the plaintiff or the defendant.

**If the court finds for the plaintiff, the verdict will include a damages award that can provide compensation for both economic and non-economic compensatory damages, as well as punitive damages in some situations.**



## TYPES OF DAMAGES AND WHAT COULD AFFECT THE DAMAGES

Damages can include compensatory damages, which can provide compensation for both economic and non-economic losses. When the defendant's actions or omissions were grossly negligent, it may be possible to seek punitive damages, as well. Punitive damages are not designed to compensate for particular losses but to punish the defendant.

**Comparative fault, or contributory negligence, can affect a plaintiff's damages award. Depending upon specific state law, your damages award can be reduced based on your percentage of fault, or you could be barred from recovery based on your portion of fault.**

# SHOULD YOU GET AN ATTORNEY

**It is always advisable to have an attorney in any wrongful death lawsuit to ensure you follow the law and provide all necessary materials and evidence to support your case. Contact an Industrial Plant Accident Lawyer to File a Wrongful Death Lawsuit.**

To protect your rights, you need an experienced lawyer who will fight for you. Why use Nimmons Malchow Johnson? When a severe accident causes the death of one or more workers, it is critical to do everything you can to receive just compensation. In a fatal industrial plant accident, having good legal representation is essential. An experienced industrial plant accident attorney can help grieving family members to move forward with a wrongful death claim in a timely manner and to gather necessary evidence and expert witnesses to support the case. Families should know that they are not alone at this difficult time, and that it may be possible to hold one or more parties accountable for the excruciating pain they have caused. An aggressive wrongful death lawyer at our firm is here to help you. Contact Nimmons Malchow Johnson for more information about how we can assist your family.

# Get the legal advice you need to take the right next steps!

C O N T A C T   U S   T O D A Y



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