

# **DO YOU THINK YOU MIGHT HAVE AN INSURANCE CLAIM FROM THE GULF OIL SPILL?**

by Insurance Coverage Litigation Committee  
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## **Slide 1: Introduction**

Following are some general guidelines for assessing whether you or your business have a potential property-loss insurance claim and what to do if you have had a spill-related loss. These tips are primarily applicable to losses related to damaged property and business-income loss.

Insurance may provide recompense for (i) losses to insured property owned by homeowners and businesses; and (ii) loss of business income. Both loss to insured property and loss of business income may be insured under a business's property insurance policies. A homeowner's policy includes coverage for loss to insured property.

## **Slide 2: First Things First**

1. Read your insurance policy from cover to cover and identify any potential coverage you may have for your loss. Read every policy that might provide coverage.
2. Notify your insurance company(ies) and your insurance broker(s) or agent immediately. The "Conditions" section of your insurance policy will have a notice provision in it. Read that provision carefully and comply with its requirements as much as possible.
3. Assess the scope of coverage and the limits of liability—how much your policy covers for property damage, business-income loss, and so forth.
4. Be on the lookout for possible exclusions from coverage. It is the insurance company's responsibility, however to prove that an exclusion applies to preclude coverage.
5. Make sure you understand any steps that must be completed in a certain timeframe: filing deadlines for a proof of loss, deadline for filing a suit, if necessary, and the deadline for invoking an appraisal provision, if the policy has one.

## **Slide 3: Document, Document, Document!**

6. Understand that the insured must be able to document the loss. Make an immediate effort to start collecting loss documentation and proof. This might include receipts for repairs and replacement of items, proof of prior income in the

event of a business-income loss, and photographs, videos, etc. The policy will contain some sort of “cooperation clause,” which says that you should “cooperate” with your insurance company. Providing support for your claim and timely responding to insurer inquiries are both part of your duty to cooperate.

7. Document conversations with your insurance company and/or its representative(s). Take notes of the dates and key points – the “who, what, where, and when” – of each of those conversations.
8. Be aware that almost every property-insurance policy, and the law requires that the insured take action to mitigate the damage. Are there things you can reasonably do to minimize the damage done to property and/or loss suffered by your business? If so, then take those steps, and document the reasonableness of these efforts.

#### **Slide 4: Consider Professional Claim-Assistance and Advice**

##### **All Claims:**

9. Consider obtaining assistance from outside experts, including property damage experts, insurance coverage counsel, and/or a claims specialist, such as a loss adjuster or forensic accountant. Some lawyers charge hourly rates. Others work on a contingency fee. The same is true of claims specialists—public adjusters typically work on a contingency fee, and forensic accountants usually charge an hourly fee.
10. Try to reach as accurate and realistic an assessment of your loss as possible. Overvaluing the loss can lead to delay and the expense of litigation. Undervaluing your loss means leaving money on the table.
11. Does your policy contain an appraisal provision? Many property policies do, and either the insured or the insurer can invoke this provision. When the insurer and insured disagree on the amount of the loss, an appraisal panel is created to determine the value. The insurer and insured each select their appraiser, and the umpire is jointly selected. Appraisals are often informal, but they are legally binding in most cases. Typically, each side pays its own appraiser’s fee and the umpire’s fee is shared equally. If your insurance company invokes the policy’s appraisal provision, consider seeking legal advice. Insurance companies are very familiar with this process, but most insureds have never been through an appraisal and this can create a disadvantage.

##### **Business Claims – Lost Income**

12. If you suffered a business-income loss, understand how your insurance policy measures business-income loss and what sort of documentary support you will be asked to provide. Claims for business-income loss can be one of the more difficult elements to quantify because the claim requires proof of the business income you would have realized but for the loss, which involves a degree of uncertainty.

**Slide 5: Last, But Not Least**

13. Above all else, when in doubt, seek the advice of a qualified professional – whether an insurance-coverage lawyer, an accountant with claims-quantification experience, and/or your insurance broker – to make sure you are getting the best guidance possible and to ensure you get the full benefit of the insurance you purchased for this type of event.

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