

APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	<small>Last/Name of Business</small> ████████████████████	<small>First</small> ██████████	<small>Middle</small> ██████████
Claimant ID	██████████	Claim ID	██████████
Claim Type	Business Economic Loss		
Law Firm	██		

II. DECISION

Select the Compensation Amount set forth in either BP's Final Proposal or the Claimant's Final Proposal as the final outcome on the claim and check the appropriate box to signify your decision.

<input type="checkbox"/> BP's Final Proposal	Compensation Amount	\$0
	Risk Transfer Premium	2.00
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$27,929.27
	Risk Transfer Premium	2.00
	Prior Payment Offset	\$0

III. PRIMARY BASIS FOR PANELIST DECISION

Please select the primary basis for your decision. You may also write a comment describing the basis for your decision.

- Error in documentation review.**
- Error in calculation.**
- Error in RTP multiplier.**
- Error in Prior Spill-Related Payment Amount.**
- No error.**

Comment *(optional)*:

See attached opinion uploaded in the portal.

DWH: [REDACTED]

Claim ID: [REDACTED]

Written Reasons and Opinion:

BP appeals this Business Economic Loss award to a [REDACTED] Texas, limited service restaurant operator, alleging error on the part of the Claims Administrator in failing to investigate variances between revenue reported on Claimant's monthly Sales and Use Tax Records, on the one hand, and its profit and loss statements, on the other hand. BP does not take issue with the Claims Administrator's application of Approved Policy 495 and selection of the Annual Variable Margin Methodology in calculating this award.

More specifically, BP points to discrepancies during the months of September, October and December of 2008. The month of September is not included in Claimant's Benchmark Period. October and December are, though, and BP points to revenue reporting discrepancies during those months of plus 15% and minus 18% respectively.

Settlement Agreement Exhibit 4A is entitled Documentation Requirements for Business Economic Loss Claims and provides, in part, in paragraph 4, that if there is a discrepancy between amounts reflected in a tax return and comparable items reflected in a profit and loss statement for the same period, the Claims Administrator may request the Claimant to provide additional information or documentation. In that vein, the Claims Administrator's Approved Policy 274, entitled Reconciliation of Financial Information, provides as follows:

Pursuant to Section 4 of Exhibit 4A to the Settlement Agreement, the Claims Administrator may, in his discretion, request additional information or documentation to address discrepancies between amounts reflected in a tax return and comparable items in a profit and loss statement for the same period. Reconciliation of tax returns and profit and loss statements may be performed as deemed most appropriate by the reviewing accountants in the exercise of their professional judgment and given the circumstances of any particular claim, whether at the revenue level only or otherwise. The Settlement Program will perform a reconciliation of (i) revenue and (ii) total expenses in the claimant's P&Ls and tax returns. Where such reconciliation reveals a material discrepancy between the claimant's P&Ls and tax return, the Claims Administrator will seek to resolve the discrepancy.

The record reflects that the analyst who reviewed this claim did examine Claimant's Sales and Use Tax Returns and compared them with the revenues reported on its profit and loss statements. His Calculation Notes contain the following entry:

Claimant provided Sales and Use Tax Returns that have slight monthly revenue variances from the P&Ls. However, at year-end the variances are less than 1%. Accountant did not request any further information regarding this variance.

In response, Claimant's counsel simply argues that the Settlement Agreement and Approved Policy grant the claims analyst broad discretion in the exercise of his professional judgment in reconciling such issues; that the record clearly reflects the exercise of his judgment and that his determination should not be disturbed.

This panelist spent an inordinate amount of time going back and forth on this issue and finally concluded that Claimant is correct. There is no evidence of an abuse of discretion here.

For the foregoing reasons, this BP appeal cannot be sustained. Decision is hereby entered in favor of Claimant's Final Proposal, upholding the determination of the Claims Administrator.

Decision: December 8, 2014