



APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business [REDACTED]	First	Middle
Claimant ID	[REDACTED]	Claim ID	[REDACTED]
Claim Type	Business Economic Loss		
Law Firm	[REDACTED]		

II. DECISION

Denial Upheld

Denial Overturned

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.

Claim should have been excluded.

Claim should have been denied.

Claim should not have been excluded.

Claim should not have been denied.

No error.

Comment (optional):

Written reasons uploaded

CLAIMANT:
CLAIM ID:



The Claimant filed a BEL claim. The Claims Administrator determined that the claim was excluded under Section 2.2.4.7 of the Settlement Agreement because Claimant is a Real Estate Developer. Claimant appeals asserting it is, in fact, a home builder.

Unlike many exclusions in the Settlement Agreement, the Real Estate Developer exclusion (Sec. 2.2.4.7) does not reference an Exhibit to the Settlement Agreement which lists myriad NAICS Codes which describe excluded entities under the exclusion. Thus, by its terms, the Settlement Agreement excludes:

“Real Estate Developers, including any Natural Person or Entity that develops commercial, residential or industrial properties. This includes, but is not limited to, any Entity developing an entire subdivision (as defined by the law of the state in which the parcel is located) of Real Property, including condominiums with multiple residential units and/or a residential subdivision with contiguous home sites and homes . . .” (Section 2.2.4.7 in pertinent part).

Given the paucity of criteria in the Settlement Agreement to determine if an entity qualifies as a Real Estate Developer, the Claims Administrator issued Policy 299. The original version of Policy 299 was approved by the Parties and thus the Policy is binding on Claimants, the Parties, the Claims Administrator and Appeals Panelists. The Policy was subsequently revised by the Claims Administrator to allow a Claimant to rebut certain business designations on Tax Returns. Both versions contain the concluding paragraph (f) which states:

“Construction Contractors. Notwithstanding the foregoing, an Entity engaged in construction that also acquires land for the purposes of erecting residential dwellings for sale on a dwelling by dwelling basis, rather than as part of a subdivision or other development by the Entity, will not be considered to be an Excluded Real Estate Developer.”

It is apparent to this Panelist that the Claims Administrator excluded the Claim based upon the fact that some of the material it reviewed, under Policy 299, indicated that the Claimant was a Real Estate Developer. However, when looking at the sworn affidavits of the owner, the general counsel and the outside CPA for the Claimant, and the arguments put forth by Claimant and BP, it is apparent to this Panelist that Claimant meets the definition of a Construction Contractor under paragraph (f) of Claims Administrator’s Approved Policy 299. That is, Claimant is a home builder that buys land from a Real Estate Developer upon which Claimant builds houses and offers them for sale. Accordingly, Claimant is not a Real Estate Developer and this Claim should not have been excluded.