DEEPWATER HORIZON
CLAIMS CENTER
ECONOMIC & PROPERTY DAMAGE CLAIMS

# 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

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.

| | | |
|---|---|---|
| ☐ **BP's Final Proposal** | **Compensation Amount** | **$28,230** |
| | **Risk Transfer Premium** | **.25** |
| | **Prior Payment Offset** | **$0** |
| ☒ **Claimant's Final Proposal** | **Compensation Amount** | **$76,647.87** |
| | **Risk Transfer Premium** | **.25** |
| | **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 decision uploaded in the portal.

DWH: [redacted]

Claim ID: [redacted]

Written Reasons and Opinion:

This is a BP appeal of a Business Economic Loss award to a dental practice located in [redacted] Alabama. BP alleges error on the part of the Claims Administrator in (1) misapplying Policy 495 in analyzing the claim; (2) failing to properly account for year-end employee bonuses; and (3) erroneously adjusting Claimant's 2009 health insurance expenses.

In support of point (1), BP claims that, as a health care provider which receives at least some of its compensation from insurance carriers or third parties, there is a delay between the time that services are rendered and payment is received. Consequently, those entities which keep their books on a cash basis and record revenue upon receipt of payment generate profit and loss statements which do not accurately reflect when the actual earning activities associated with that revenue occurred. According to BP, that is precisely what this Claimant's profit and loss statements demonstrate. Although he determined that Claimant's revenue and expenses were not sufficiently matched, the Claims Administrator did not correctly apply Policy 495. He should have corrected the mismatches first and then applied the Professional Services Methodology as opposed to the Annual Variable Margin Methodology in order to most appropriately perform the matching exercise.

Claimant, of course, points to the fact that BP's Policy 495 position is not correct; that the Claims Administrator was first required to examine its P&L statements to determine whether or not they contained any errors such as duplicate entries, incorrect recordings or errors in calculation. Thereafter, unless in the professional judgment of the Claims Administrator there are factors that indicate revenues and expenses would be more sufficiently matched by an alternative methodology, the Annual Variable Margin Methodology should be utilized.

Claimant is correct. A thorough review of the record reveals that the Claims Administrator found, using the criteria established in Section 1 of Policy 495, that the claim was not sufficiently matched and, considering Claimant's business industry type (health care), evaluated it under the Annual Variable Margin Methodology set forth in Policy 495 Attachment B. None of the NAICS Codes attached to the matching framework and nothing about the business of this healthcare professional require application of the Professional Services Methodology. The record evidences extensive contact with and receipt of information from Claimant's representatives. That information was, in turn, utilized, as reflected in the Claims Administrator's compensation calculation schedules, in arriving at this award. This panelist finds no abuse of the broad discretion accorded the Claims Administrator in making this determination.

In response to BP's error assignment (2), Claimant submits that it has no written bonus plan in place for its employees; that any bonus it elects to pay is purely discretionary; that the decision whether to pay a bonus in whatever amount and when is entirely within its discretion; consequently, any such bonus can only be deducted in the period in which it is paid. The suggestion that such a bonus should be randomly accrued or applied to various time periods with no supporting reason or bonus formula is inconsistent with accounting standards and common sense. This panelist is in agreement.

BP's final error assignment is also insupportable. The Claims Administrator analyzed Claimant's health insurance and "created a contra-account to break out the owner portion." The expenses in question were then designated as "Fixed" so that they would not be included in the calculation of variable expenses. BP's conclusion that the adjustment led to an understatement of variable expenses is not correct—it was not part of the calculation at all.

For the foregoing reasons, this panelist has concluded that the award made by the Claims Administrator should be upheld and decision must be entered in favor of Claimant's final proposal.

Decision: October 8, 2014