

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	\$11,484
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$28,414.18
	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)*:

Decision comment uploaded to portal

██████████

Claim ID: ██████████

This appeal involves a recurring issue with respect to the methodology used to analyze financial data used in the Business Economic Loss (“BEL”) framework in addressing the matching of revenue and variable expenses. Claimant is a realtor located in ██████████ FL (Zone D)

In making its determination, the Settlement Program applied the annual variable margin methodology (“AVM”) of Claims Policy 495.

BP asserts that the Settlement Program should have applied the Professional Services Methodology (“PSM”). It argues that CAO Policy 495 calls for application of the PSM, and that the AVM methodology, which the Settlement Program applied in its analysis, was not designed to address problems with the timing of revenue, as was manifested in this case.

An examination of the “Underlying Issues/Principles” CAO Policy 495, at 2 is instructive. It explains that in light of the rulings and instructions by the Court, the Claims Administrator, in conjunction with the CSSP Accounting Vendors, arrived at a number of conclusions with respect to the “matching” issues presented. Among the stated conclusions, those most notable for the purposes of this appeal are as follows:

1. Different industries tend to present different issues and require different methodologies in terms of trying to achieve sufficient “matching.”
2. It is not feasible in the context of a class-wide settlement involving thousands of different claims, with each claimant’s financial information potentially spanning a time period in excess of four years, to attempt to match specific expenses to specific revenues on an individual transaction by transaction basis. The time, effort and expense required under this approach would be prohibitive. Further, it is unlikely that such individualized matching of specific expenses to specific revenues would be possible based on information and documentation available to the claimants or the CSSP.
3. It is the CSSP’s considered assessment that, for the majority of claimants, sufficient “matching” of revenue and expenses will be best accomplished through an annual variable margin methodology (AVM) which totals variable expenses for each Fiscal Year and allocates them to each month on a pro-rata basis of monthly revenues for the same period. This approach reasonably accomplishes sufficient “matching” and is the most feasible methodology in the context of a class-wide settlement.
4. The operating characteristics of certain businesses will not lend themselves to the application of an annual variable margin methodology. The following industries in particular each warrant a customized methodology in order to achieve sufficient matching in a way that reasonably depicts economic reality for purposes of loss measurement: construction, agriculture, education and professional services.

5. Consideration of whether revenues and expenses are sufficiently matched necessarily involves an element of professional judgment. The CSSP recognizes and reserves the right of the CSSP Accounting Vendors to exercise such professional judgment to achieve sufficient matching as ordered by the Court.

6. It is the CSSP's considered assessment that, for the majority of claimants, sufficient "matching" of revenue and expenses will be best accomplished through an annual variable margin methodology which totals variable expenses for each Fiscal Year and allocates them to each month on a pro-rata basis of monthly revenues for the same period. This approach reasonably accomplishes sufficient "matching" and is the most feasible methodology in the context of a class-wide settlement.

CAO Policy 495, p 2-3

Determination of the applicable methodology is controlled by Attachment A to Policy 495, entitled "NAICS CODES ASSIGNED TO MATCHING FRAMEWORK." *Id.* at A1. The attachment lists the NAICS codes that fall into each of the special categories as set forth in paragraph 4 above.. Further, the attachment explains, "In identifying those NAICS codes that would most likely fall into each methodology there is a particular focus on the 'specialty' methodologies – Construction, Professional Services, Agriculture, and Educational Institutions – with all other NAICS codes defaulting to the Annual Variable Margin (Short Revenue Cycle) methodology." Policy 495 at A1.

Attachment A does not list any NAICS codes for real estate brokers and agents . It was certainly known to all parties that there were a significant number of claims filed by members of the real estate industry during the Policy developmental process. Had the Claims Administrator and CSSP Vendors felt this industry should be analyzed under the PSM methodology, they would have included the appropriate NAICS codes in Attachment A. They did not.

A review of the CAO's record regarding this claim reveal the Settlement Program's satisfaction that the Claimant's financials were "sufficiently matched" after implementation of the AVM method. The Settlement Program found no reason to deviate from CAO Policy 495's default provision at A1 in applying the AVM methodology.

The AVM methodology was appropriate for this claim and the Settlement Program's analysis should be affirmed. The Award is upheld, and Claimant's Final Proposal selected.