



APPEAL PANEL DECISION FORM

2014-240

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business [REDACTED]	First [REDACTED]	Middle
Claimant ID	[REDACTED]	Claim ID	[REDACTED]
Claim Type	Individual 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.

<input type="checkbox"/> BP's Final Proposal	Compensation Amount	\$0
	Risk Transfer Premium	2.50
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$25,642.19
	Risk Transfer Premium	2.50
	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:

In this appeal of an Individual Economic Loss award to an employee of an historic antiques business located in [REDACTED] BP assigns error to the Claims Administrator in (1) permitting recovery to an individual who is employed as Chief Financial Officer of that business enterprise; and, alternatively, (2) applying an Industry Growth Factor of 1.5% even though Claimant is not an hourly employee.

In support of issue (1), BP asserts that Claimant is an officer of the antiques business in question and that, as such, the terms of the Settlement Agreement, as implemented by Approved Policy 363, preclude Claimant from recovering for lost earnings related to that business where that business has already filed its own Business Economic Loss claim. In respect of issue (2), BP asserts that the record contains no evidence suggesting that Claimant is an hourly employee; consequently, it was a mistake to apply an Industry Growth Factor of 1.5% when calculating his award.

At the outset, Claimant does not contest issue (2) because he is indeed a salaried employee and not an hourly employee. For that reason, he acquiesces in elimination of the Industry Growth Factor and in his Final Proposal accepts the reduction in his award demanded by BP.

However, with respect to issue (1), Claimant contends that while he is employed as CFO of the business in question, he is not a partner nor does he hold an ownership interest in it as indicated on his Federal IRS Form 1040 Individual Income Tax Returns. Further, that as an employee, his compensation (salary and bonus) is routinely recorded as “6001-07 Salaries – Admin” and “6004-07 Bonus – Admin” and thus properly classified as “Payroll” by the Settlement Program when his employer’s Business Economic Loss Eligibility Notice was calculated. It is noted that the employer’s award has been appealed by BP and is on hold due to the injunction against further processing of such claims issued by the Fifth Circuit. As a result, argues Claimant, he would derive zero benefit from any recovery by his employer. For that reason, the double recovery sought to be prevented by Policy Decision 363 is not present. Alternatively, and only in the event that said policy does apply, Claimant submits that it also provides that any payment to him shall be offset from the award amount, if any, made to his employer.

After reviewing these issues and the many documents offered on behalf of the parties, this Panelist sought input from the Claims Administrator. He requested and, in due course, received, a Summary of Review which was provided to the parties. Following receipt of the Summary, BP sought and was granted an opportunity to reply. It did so. After reading it, this Panelist requested that Claimant file a response and it did so, as well.

The Summary of Review was very helpful. It notes that an “officer” position is not defined by the Settlement Agreement or Approved Policy 363, commonly referred to as the “Double Payment Policy.” The Double Payment Team generally assumes that the CFO is an officer position but the Claimant can rebut this presumption by providing evidence to show that he or she is not an “Owner/Officer” of the business and, therefore, not eligible for compensation under the Business Economic Loss framework. If the Claimant has no ownership stake in the company, the Program investigates how the employer recorded the Claimant’s salary in order to determine whether the Claimant is an “Owner/Officer” under the policy and therefore presents a risk of being compensated twice for the same losses.

In this case, the Claims Administrator determined that the employer did not list the Claimant among its 1120-S K-1 Shareholders; further, that an examination of the accountant workbooks submitted in support of the employer’s Business Economic Loss claim revealed that the Settlement Program did not compensate the Claimant as an Owner or Officer as an executive along with the partners. Therefore, he concluded, this Individual Economic Loss claim does not present a double payment risk.

BP, in its response to that summary, takes issue with the Claims Administrator’s finding and demands that he seek further documentation in the form of the W-2s for the officers of the business whose salaries were included as owners. BP states that it “would assume” that the amounts reported by the employer in its accounting records as officer compensation included that of the Claimant. There is nothing in the record which supports such an assumption.

Because of these arguments, this Panelist has examined and re-examined all of the documentation in question and has concluded that there is no basis to overturn the Claims Administrator’s well-reasoned decision on the main issue. The Claimant’s acceptance of the Industry Growth Factor reduction eliminates that issue. Accordingly, for the foregoing reasons, judgment must be entered herein in favor of Claimant’s Final Proposal and rejecting the appeal of BP.

It is so ordered.

Decision: March 26, 2014