



APPEAL PANEL DECISION FORM

2014-318

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)*:

See attached opinion uploaded in the portal.

DWH: [REDACTED]

Claim ID: [REDACTED]

Written Reasons and Opinion:

This is an appeal by the owner of a Tampa, Florida, based real estate services company from the denial of a Business Economic Loss claim asserted on its behalf. After review, the Claims Administrator concluded that Claimant was a Real Estate Developer and thus excluded from the Class for that reason. Claimant requested Re-Review and, thereafter, Reconsideration, arguing that it did not develop commercial, industrial or residential properties or purchase raw land for development; rather, it is primarily engaged in property management, brokerage and consulting. Further, while it does provide support to other entities which are involved in property development, as an entity, it is a real estate services company which does not do any real estate development. Both requests were rejected by the Claims Administrator because (1) the business is an excluded Real Estate Developer; (2) it had expenses associated with real estate development activity; and (3) there are indications that it engaged in real estate development activity in 2010. Those general statements were not supported by citation to facts.

On appeal, Claimant argues that the Claims Administrator erred in so holding without specifically identifying the evidence or data upon which he was relying, contrary to the mandates of the Settlement Agreement. He points to the fact that the NAICS Business Code listed on his 2010 federal income tax return is that of "Lessors of Nonresidential Buildings (except mini-warehouses)"; and, further, that the affidavit submitted in support of Re-Review attested to the fact that, during all relevant periods, Claimant did not develop commercial, industrial or residential properties or purchase raw land for development; that it was primarily engaged in property management, brokerage and consulting.

In its opposition memorandum, BP points to a statement on Claimant's web site that [REDACTED]

[REDACTED] " Arguing that Claimant's 2010 financial data confirms its involvement in real estate development, BP notes an income line item for "[Work in Progress] – Pre-Development" and, on its 2010 profit and loss statements, a line item for "Development Fee Income."

Although represented by counsel, Claimant did not file a reply memorandum. Due to this obvious conflict, this Panelist requested that Claimant be instructed to respond and he did, in due course. In the meantime, and prior to that latest filing, the Claims Administrator issued Final Policy 468: Exclusions: Real Estate Developers which revises, consolidates and supercedes prior Policies 89, 299 and 377. This is now the governing policy on this issue.

In an excellent reply memorandum, Claimant's counsel meets and discusses each of the elements contained in this new policy and demonstrates that none of the issues and considerations raised or discussed therein are applicable to Claimant's business. Moreover, he asserts that the statement BP quoted from the 2014 web site material was utilized to advertise Claimant's services to other companies that may be involved in real estate development and employs the term "development" only to describe those tangential services. Again, he points to the affidavit of Claimant's CFO to the effect that, during all relevant periods, Claimant did not engage in any of the activities undertaken by real estate developers.

Shortly thereafter, BP filed a short Sur-Reply Memorandum wherein it repeated the substance of its original opposition and then added two new points. First, that the statements contained in Claimant's 2014 web site materials were also included in the 2010 version of Claimant's web site. Second, that Claimant has failed to address an alleged 2010 tax return liability entitled "Predevelopment Lines" in the amount of \$24,170.

Claimant's alert attorney immediately responded to these two new issues. As to the first, he submits nothing contained in the web site materials is inconsistent with Claimant's position that it provides tangential services to clients who may themselves be developers. As to the second, he argues that the single category of expense questioned by BP describes consulting services to developers and other real estate professionals and not any expenses associated with actual development as defined by the Settlement Agreement and Final Policy 468. What is important, he asserts, is that none of the expenses itemized by Final Policy 468 are found in Claimant's financial statements or tax returns.

After examination and re-examination of the documentation in question, the multiple briefs of the parties and Final Policy 468, this Panelist has concluded that Claimant was not sufficiently engaged in Real Estate Development Activity during 2010 such that it may reasonably be characterized as a Real Estate Developer. Consequently, Claimant's appeal must be sustained and the denial of his claim must be overturned.

Decision: May 9, 2014