APPEAL PANEL DECISION FORM

2014-576

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business ███████████	First	Middle

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.

☐ **BP's Final Proposal**	**Compensation Amount**	$0
	Risk Transfer Premium	.25
	Prior Payment Offset	$0
☒ **Claimant's Final Proposal**	**Compensation Amount**	$70,179.86
	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.

BP principally argues in its appeal of the BEL Claim Compensation Amount awarded a real estate broker which keeps its books on a cash basis, that the Claims Administrator erred in its application of the analyses due under Policy 495. In particular, BP contends that the CA, in selecting an industry-appropriate methodology to correct for insufficient matching of revenue and variable expenses, was wrong to utilize the Annual Variable Margin Methodology (the AVMM) rather than the Professional Services Methodology (PSM). Policy 495 explains that the AVMM is "otherwise referred to as Short Revenue Cycle methodology," and the CA is apparently applying AVMM to real estate agents and brokers on a consistent basis, deeming the PSP not to be better suited to that class of claimants. Attachment A to Policy 495, at page A5, lists nine types of NAICS codes that are assigned to the PSM, and none of them relate to real estate brokers or agents. Footnote 9 on that page explains, however,

> A claimant with a given NAICS code will not automatically be assigned to a given methodology by virtue of the NAICS code if, in the judgment of the Claims Administrator's office, there are factors that indicate that revenues and expenses would be more sufficiently matched by applying an alternative methodology. As a result, some businesses within a certain three-digit NAICS Subsector may be treated under a different methodology from others within the same Subsector

Page A1 includes this statement:

> "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."

There are no NAICS codes listed for the AVMM, and it is to "be applied to adjust a claimant's contemporaneous P&Ls that have been deemed not to be 'sufficiently matched'." (Policy 495, Attachment B, p. B1) The CA identified this BEL claim not to be sufficiently matched, and in the explanation provided at page 6 of the "Eligibility Notice," stated, "[b]ased on your business's industry type, the Claims Administrator has evaluated your claim under the Annual Variable Margin Methodology."

This panelist cannot say, given the "judgment" Policy 495 allows the CA to exercise in assigning claimants to a methodology, that assignment of this Claimant to the AVMM was in error. Certainly Real Estate transactions generally have a shorter revenue cycle than the nine listed categories of Professional Services, e.g., legal services; accounting, tax preparation bookkeeping, and payroll services; architectural, engineering, and related services; etc.

There being no error in the CA's choice of methodology to apply, and BP's Final Proposal, in the event a remand is not ordered, being "$0," Claimant's Final Proposal of $70,149.86 is selected.