



APPEAL PANEL DECISION FORM

2014-581

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business [REDACTED]	First	Middle
Claimant ID	[REDACTED]	Claim ID	[REDACTED]
Claim Type	Start-Up 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.

<input type="checkbox"/> BP's Final Proposal	Compensation Amount	\$105,515.66
	Risk Transfer Premium	1.50
	Prior Payment Offset	\$142,076.23
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$105,515.66
	Risk Transfer Premium	2.50
	Prior Payment Offset	\$142,076.23

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.

Claim No. [REDACTED] – [REDACTED]

BP appeals the compensation award for this “Start-Up Business Economic Loss” claim on the basis that (1) the Settlement Program (“the SA”) erroneously classified claimant as a tourism business and (2) misclassified its “Shop Supplies” as a fixed, rather than variable, cost. Claimant is a boat membership club operating out of a facility at Orange Beach, Alabama (Zone A).

The Settlement Agreement defines “tourism” in Exhibit 2 to the Settlement Agreement as “businesses which provide services such as attracting, transporting, accommodating or catering to the needs or wants of persons traveling to, or staying in, places outside their home community.” Exhibit 2 also provides a list of specific NAICS codes that describe businesses that generally are covered by the tourism definition. On its original Claim Form, Claimant indicated that its NAICS code is 713930 (Marina). That NAICS code is not listed in Exhibit 2 and thus would not qualify Claimant as a tourism business. BP argues that because of that and because Claimant is a membership-only boat club that offers its members access to boats as an alternative to boat ownership, and does not rent boats to non-members, its business model is designed to cater primarily to local residents. CAO Final Policy 289 v.2 provides in pertinent part:

- (b) Exhibit 2 . . . provides a list of NAICS codes which qualify a claimant for inclusion in the Tourism category. The Claims Administrator finds that the list of NAICS codes is illustrative, not exhaustive.
- (c) If the most appropriate NAICS code for a claimant is one of the codes listed on Exhibit 2, that claimant will be considered to fall within the Tourism definition.
- (d) If the most appropriate NAICS code for a claimant is not one of the codes listed on Exhibit 2, that claimant may still be considered to fall within the Tourism definition if the Claims Administrator determines in his discretion that the claimant’s business meets the definition outlined in Subsection (a) above.
- (e) The Claims Administrator has established a specialized team to assess Tourism issues on a case-by-case basis.
- (f) Characterization of a claimant’s business as Tourism vs. Non-Tourism shall be based on the totality of circumstances, including consideration of the business’ activities during the Benchmark Period and the Class Period.

The Settlement Program determined that Claimant’s initial NAICS code submission was inaccurate and that the most appropriate NAICS code for it is NAICS Code 713990 (All Other Amusement and Recreation: “This industry comprises of . . . primarily engaged in providing

recreational and amusement services . . . (including boating clubs without marinas).”) Claimant does not operate docking and/or storage facilities for pleasure craft owners, which are activities central to the Marina classification. Claimant presented evidence that 85.5% of the club’s users at the [REDACTED] location are from out of the area, utilizing that facility as tourists.

The Claims Administrator acted properly in correcting Claimant’s NAICS Code, and determining factually that Claimant was appropriately classified as a tourism business on the merits.

As to the “Shop Supplies” issue, BP acknowledges that Exhibit 4D to the SA classifies “Supplies” as fixed, but argues that this category must “refer to fixed items such as office supplies,” whereas “it appears” to BP that “Shop Supplies” would involve variable expense items of a type “that are consumed as boats are used by the boat club members.” Therefore, according to BP, Shop Supplies should have been classified as consumable goods, a variable expense per Exhibit 4D. Claimant persuasively counters:

The “Shop Supplies” category actually refers to items purchased to supply the shop or mechanic with the supplies needed to work on the boats, such as tools, buffers, fittings, and tool boxes and are not consumable in nature, as BP suggests. Furthermore, the Shop Supplies do not change in relation to the level of sales, are not tied directly to output/services or to the level of sales revenue, and therefore, were properly classified as “Fixed” in nature.

The CA properly classified this expense item.

The “Award Amount” is upheld and the appeal is denied.