



APPEAL PANEL DECISION FORM

2014-758

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business	First	Middle
	[REDACTED]		
Claimant ID	[REDACTED]	Claim ID	[REDACTED]
Claim Type	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	\$0
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$95,185.96
	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):

██████████ filed this Business Economic Loss claim under the Settlement Agreement. The Settlement Program awarded \$95,185.96, pre-RTP. BP appeals.

On appeal, BP contends the Settlement Program misapplied Policy 495 and urges that the Settlement Program should have applied the Professional Services Methodology set out in Policy 495, not the AVM approach used by the Settlement Program.

It is important to observe that Policy 495 is the result of various appellate opinions and has been approved by the supervising federal court. As such, it is binding upon the Settlement Program and upon the Appeals Panelists. Therefore, the issue is not whether Policy 495 is prudent but whether it was correctly applied.

As a threshold step, the Settlement Program determines whether revenue is substantially matched. If it is not, and it was not here, then Policy 495 is triggered fully.

The Settlement Program then applied the AVM methodology. BP complains of this and argues that the Professional Services Methodology should apply. This has superficial appeal because Claimant is a medical doctor operating a physician's clinic. Logically, doctors are professionals and BP concludes that the Professional Services Methodology should thus apply. There is a problem with this analysis, however. First, the Professional Services Methodology is inaptly named. It does not refer to all "Professional" categories. If it did, BP would be correct. Instead, the Professional Services Methodology applies to businesses with specific NAICS codes – and only those absent an exercise of discretion by the Settlement Program to recategorize a business. ██████████ NAICS code is not one of the codes covered by the Professional Services Methodology. The Settlement Program thus applied the AVM and it led to the Final Proposal submitted by Claimant.

Given that Policy 495 has been approved by the supervising court and the Settlement Program faithfully followed it, I cannot adopt BP's position here because it is inconsistent with Policy 495's specification of NAICS codes to which the Professional Services Methodology applies.

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