DEEPWATER HORIZON
CLAIMS CENTER
ECONOMIC & PROPERTY DAMAGE CLAIMS

APPEAL PANEL DECISION FORM

2014-813

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

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**	**$36,685**
	Risk Transfer Premium	**1.25**
	Prior Payment Offset	**$0**
☒ **Claimant's Final Proposal**	**Compensation Amount**	**$54,342.04**
	Risk Transfer Premium	**1.25**
	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)*:

[redacted] - Claim ID [redacted]

BP appeals the BEL award to a *pro se* urology practice in Zone B. The Claims Administrator awarded $54,342.04, pre-RTP after applying the Annual Variable Margin methodology to the Claimant's financials. Nevertheless, BP complains on appeal that the Claims Administrator failed to properly restate Claimant's revenue and expenses to achieve sufficient matching. Because Claimant's cash basis accounting and heavy reliance on insurance payments creates regular revenue spikes, BP urges that the only way matching can be achieved is by application of the Professional Services methodology. A review of the record discloses that the accounting vendor vetted the financials through the seven criteria of Policy 495 resulting in two of them being triggered. The AVM methodology was then utilized to restate the revenue and expenses.

BP forcefully argues that the AVM methodology only reallocates expenses, not revenue, thereby failing to correct the variances between the revenue spikes and the timing of the underlying services. On this point, BP adopts a new approach in lobbying for more widespread use of the PSM. BP argues that use of the AVM methodology is not designed to reallocate revenue, only expenses. Because the PSM does reallocate revenue, BP sees it as the only methodology in Policy 495 that will correct revenue timing problems resulting from cash basis accounting. BP quotes language from 495 that it interprets as an invitation to the Claims Administrator to use accounting judgment regardless of the Claimant's NAICS code:

> "[I]t is important to note that 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." Policy 495 at A1.

The problem with BP's argument is that the PSM specifies the NAICS codes to which it applies. Medical practices are not included among the NAICS codes that require use of the

Professional Services Methodology. Here, the accounting vendor appropriately applied the AVM. Policy 495 was adopted after extensive negotiations and was adopted by the District Court. Further, the AVM methodology does, in fact, achieve sufficient matching because it moves expenses to match revenue. I find that the Claims Administrator correctly applied this methodology which requires that BP's appeal be denied and the award affirmed.