



APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

| | | | |
|----------------------|-------------------------------------|---------------------|------------|
| Claimant Name | Last/Name of Business [REDACTED] | First [REDACTED] | 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.

| | | |
|--|------------------------------|--------------------|
| <input type="checkbox"/> BP's Final Proposal | Compensation Amount | \$32,726 |
| | Risk Transfer Premium | .25 |
| | Prior Payment Offset | \$0 |
| <input checked="" type="checkbox"/> Claimant's Final Proposal | Compensation Amount | \$41,554.56 |
| | 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)*:

See attached opinion uploaded in the portal.

DWH: [REDACTED]

Claim ID: [REDACTED]

Written Reasons and Opinion:

In this appeal of a Business Economic Loss award to a [REDACTED] Louisiana based real estate agent, BP asserts that the Claims Administrator did not properly apply Approved Policy 495 in his analysis of Claimant's financial records. Specifically, BP argues that, after determining the financial data contained in Claimant's profit and loss statements was not sufficiently matched, he erred by failing first to correct a misattribution of revenue and then, second, by selecting an inappropriate methodology to resolve the matching issue.

Examination of the record discloses that, employing the criteria contained in Section 1 of Policy 495, the Claims Administrator determined that the financial data was not sufficiently matched and proceeded to analyze the claim utilizing the Annual Variable Margin Methodology set forth in Policy Attachment B. BP contends that methodology fails to solve the problem because it only redistributes expenses and not revenues. It argues that the Professional Services Methodology should have been utilized, instead.

In response, Claimant argues that BP's analysis is faulty and that the Policy was, in fact, properly applied. Claimant is correct. The claims analyst's first task is to review the P&L statements for obvious errors; if any are found, they are corrected and then subjected to the seven criteria contained in Policy 495 in order to determine whether or not the recorded revenues and expenses are sufficiently matched. If not, the analyst then determines, based upon Claimant's business industry type, which methodology should be utilized for the purpose of achieving sufficient matching. Here, he selected the AVM Methodology.

Policy 495 Attachment A lists the Business Industry Codes which are assigned to each of the special matching categories enumerated therein, including that of Professional Services. None of the NAICS Codes for real estate agents or brokers are found on the list of such codes which are assigned to the Professional Services Industry. The Policy does note, however, 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, there are factors that indicate that revenues and expenses would be more sufficiently matched by applying an alternative methodology. As a result, it states, some businesses within a certain three digit NAICS Subsector may be treated under a different methodology from others within the same Subsector.

In this case, the claims analyst applied the AVM methodology which is found in Attachment B. That was entirely appropriate. The introductory paragraphs of Policy 495 record the history of the parties' intensive negotiations and the considerations which led to its creation. It plainly

seeks to achieve sufficient matching, not exact matching, of expenses to revenues. This policy was submitted to the court for review and was subsequently approved in its entirety.

This panelist is persuaded, after careful review, that the Claims Administrator committed no error in analyzing this claim. Accordingly, this BP appeal cannot be sustained and decision is entered herein in favor of Claimant's Final Proposal.

Decision: December 10, 2014.