



APPEAL PANEL DECISION FORM

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	\$36,712.43
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$36,712.43
	Risk Transfer Premium	2.00
	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:

The sole issue raised in this BP appeal of a Business Economic Loss award is whether the Claims Administrator properly designated Claimant as a business in the Tourism category. There is no dispute about the amount of the award or whether Policy 495 was properly applied in calculating it.

BP asserts that Claimant designs, creates, sells and repairs fine jewelry and that such enterprises are not included within the definition of Tourism contained in the Settlement Agreement nor is its NAICS Code found on the approved list of such businesses. It cites a number of redacted, prior Appeal Panel Decisions which have so held. As an Economic Zone C business, it says, Claimant's RTP should be .25 instead of 2.00.

In response, Claimant cites CAO Approved Policy 289 version 2 dated May 12, 2014, and argues that while the Settlement Agreement provides a list of NAICS Codes which qualify a Claimant for inclusion in the Tourism category, the Claims Administrator also has declared that list to be "illustrative, not exhaustive" and that if the most appropriate code for a Claimant is not one of those listed on Settlement Agreement 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 fits the definition of Tourism. To that end, the Claims Administrator has established a specialized team to assess Tourism Industry issues on a case by case basis and that characterization of a Claimant's business as Tourism v. Non-Tourism shall be based on the totality of circumstances, including consideration of the business's activities during the Benchmark Period and the Class Period.

The record reflects that Claimant is a fine jewelry retailer located in downtown [REDACTED], Florida, near the heart of that city's commercial tourist district. It files monthly sales tax reports with the Florida Department of Revenue. Sales transactions with customers who are not residents of Florida are exempt from paying the tax if the customer chooses to have the merchandise sent to his or her out-of-state address. That information is contained in the sales tax report that Claimant submitted to the Claims Administrator. The report defines "Gross Sales" as well as "Exempt Sales" and lists the monthly dollar amounts in each category. Using that information, the Claims Administrator was able to assess a percentage of "Gross Sales" that were exempt from sales tax and therefore made by tourists. For 2009, the Benchmark Period, Claimant's sales tax report shows that 54.99% of all sales transactions were made by tourists. The report reflects that tourist purchases dropped to 11.51% in 2010.

Claimant further notes that there are three different categories of tourists: (1) the out-of-state tourists who order merchandise and have it shipped to their homes in order to avoid paying sales tax; (2) the out-of-state tourists that purchase merchandise and desire to have it immediately, so they pay sales tax; and (3) the in-state tourists who visit the [REDACTED] area, make a purchase and do pay sales tax. Claimant argues that the sales tax records submitted with its claim do not include the second and third types of tourists and that it is highly likely that well over 55% of its 2009 Gross Sales were derived from tourism.

After a careful review of all of the relevant documentation, it is clear to this panelist that the Claims Administrator's tourism team had more than ample evidence upon which to base its conclusion that Claimant's business satisfied the Settlement Agreement Tourism definition. There is no error. This BP appeal cannot be sustained and decision must be entered in favor of Claimant's Final Proposal.

Decision: November 6, 2014