



APPEAL PANEL DECISION FORM

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

Denial Upheld

Denial Overturned

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.

Claim should have been excluded.

Claim should have been denied.

Claim should not have been excluded.

Claim should not have been denied.

No error.

Comment (optional):

See Reasons for Partial Decision AND Remand submitted to Appeals Coordinator.

Reasons for Partial Decision AND Remand

Appeal # [REDACTED]

November 10, 2014

Background

Claimant is part owner of land throughout Louisiana and Texas. This land is leased out for timber production, mineral exploration, and agricultural uses. Claimant's tax return uses the NAICS Code 211111 – Crude Petroleum and Natural Gas Extraction – which is listed on Exhibit 17 of the Settlement Agreement as an excluded Oil and Gas activity. Apparently based on this excluded NAICS Code, and in light of the fact that a portion of Claimant's revenue is derived from oil and gas mineral royalties, the Settlement Program denied the Claim.

Claimant acknowledges that NAICS Code 211111 is an excluded Code. However, Claimant contends that this Code does not accurately reflect the true nature of Claimant's business and that a more appropriate – and eligible – Code should have been assigned to Claimant.

BP argues that the Settlement Program's denial was correct for two reasons. First, BP argues that Claimant is engaged in the Oil and Gas business and should be excluded. Second, and in the alternative, BP contends that Claimant is a Texas company located outside any Economic Class Zone.

For reasons set forth below, the Appeal Panelist finds that Claimant is NOT engaged in the Oil and Gas business and thus should not have been excluded on that basis. However, this matter is remanded for a determination as to whether or not Claimant is located in any Economic Class Zone, and if so, what amount of compensation is due the Claimant.

Oil and Gas Exclusion

Policy 480 v. 2, which this Appeal Panelist finds is a reasonable guide, states that “[t]he NAICS Code used on the 2010 tax return . . . will not be considered conclusive, and the Claims Administrator will not apply any presumptions regarding the selection of the NAICS Code to classify the entity properly.” Instead, [t]he appropriate NAICS Code for an Entity shall be the NAICS Code that most accurately describes the Entity's primary business activities” during the relevant years.

This Appeal Panelist agrees with Claimant that NAICS Code 211111 does not accurately describe Claimant's primary business activity during the relevant time periods. Claimant does not operate and/or develop oil and gas field properties, nor does it explore, drill, complete or equip wells for petroleum and natural gas, nor does it operate oil and gas wells on its own account or for others on a contract or fee basis. Further, this Appeal Panelist has examined all of the NAICS Codes listed on Exhibit 17 and is of the opinion that the Claimant does not perform any of the activities listed under any of those Codes.

BP offers minimal support for its position that NAICS Code 211111 is appropriate. First, BP cites the designation on the federal tax return. But Policy 480 v. 2 states that the Code on the tax return is not controlling.

Second, BP argues that the fact that Claimant derives revenue from oil and gas royalties puts Claimant in the oil and gas business. But the focus under 480 v. 2 is not on the customer base but rather on the activities of the Claimant. For instance, a caterer who only caters to off shore rigs or platforms is not in the oil and gas business, but rather in the catering business. A building owner who leases his building to a bank is not in the excluded banking business. A landowner who leases his land to a third party farmer is not in the agriculture business. A landowner who leases his land to a third party paper company who grows and harvests timber from the land is not in paper business. Likewise, a landowner who leases his land to oil companies who in turn extract petroleum or natural gas from the sub surface is not in the excluded oil and gas business, but rather in the land leasing business.

Third, BP cites Claimants 1946 Certificate of Incorporation and a 1949 permit both of which show that the company was formed to prospect for, explore for, drill for, discover, extract and produce petroleum products. This Appeal Panelist agrees that if these were the activities Claimant was engaging in during the relevant years, Claimant would be in the oil and gas business. But no evidence was offered suggesting that Claimant engaged in any of these activities during the Benchmark and/or Compensation periods.

Based on the activity – leasing land – that Claimant was involved in during the relevant periods, this Appeal Panelist finds that the appropriate NAICS Code for Claimant is 531190 (Lessors of Real Estate). This Code is not listed on Exhibit 17 as an excluded Oil and Gas business. As such, this Claim should not have been excluded on this basis.

Economic Class Zone

BP's second basis for denying this Claim is the argument that Claimant is not located in any Economic Class Zone. Because the Settlement Program found that Claimant was in the excluded Oil and Gas business, this Economic Class Zone issue does not appear to have been addressed by the Settlement Program. Although the parties both briefed this issue, this Appeal Panelist is of the opinion that this issue should first be reviewed by the Settlement Program.

Conclusion

The determination by the Settlement Program that the Claimant is an excluded Oil and Gas business is overturned. However, this matter is remanded to determine if Claimant is located in any Economic Class Zone, and if so, what amount of compensation is owed.