



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 attached opinion uploaded in the portal.

DWH: [REDACTED]

Claim ID: [REDACTED]

Written Reasons and Opinion:

Claimant, a [REDACTED] Florida, based auto body repair shop, appeals the denial of a Business Economic Loss claim made on its behalf. It argues that the Claims Administrator erred in concluding that it failed to meet the causation requirements contained in Settlement Agreement Exhibit 4 B. Its requests for Re-Review and Reconsideration were rejected for the same reason.

In its Opening Memorandum, Claimant contends that its claim should be given further consideration under the Exhibit B Decline Only Causation Test, asserting that it provided “third party documentation identifying factors outside the control of the Claimant that prevented recovery of revenues in 2011.” That documentation consists of Articles of Incorporation for an enterprise named [REDACTED], together with a Google map showing it to be located five miles from Claimant’s address. According to the Florida Secretary of State, the effective date of that corporation was January 7, 2011. Claimant argues that this constitutes third party documentation of the entry of a competitor in 2011 as a factor other than the Spill which prevented recovery of its revenues in that year. These documents were not presented to the Claims Administrator during his review of this claim.

The record reflects that Claimant has not been consistent on this issue. For example, its BEL claim form reflects that it denied, in response to the Question B.20 that specific market changes outside its control, unrelated to the Spill, and occurring after April 20, 2010, prevented its business from earning revenues in 2011 that were comparable to pre-Spill Periods. Then, following denial of its claim, Claimant did an about-face and sought Re-Review and Reconsideration contending that it had identified two factors outside its control that were critical to the amount of revenue generated in 2011; namely, the weather and the regular seasonal and holiday tourist populations. It reported that as an automotive body repair shop located on a main highway in central Florida, it is a weather and seasonal population driven business. When weather is good (sunny, warm, with no rain), many northern long-term visitors to the area will have much needed paint and body work done here as the weather is much more accommodating.

Claimant further submits that the conversion rate of the Canadian dollar dropped more than two percent against the U.S. dollar during that time and resulted in a reduction of the number of tourists present during the start of the holiday season and continuing through most of December. That impacted winter break business for the entire Industry.

According to Claimant, both weather and the Canadian dollar exchange rates directly affect its ability to bring in customers and, consequently, revenue. Both these factors are out of its control and have undeniably impacted the revenue generated by it.

In a succinct rejoinder, BP submits that the Claims Administrator was justified in rejecting this claim because of Claimant’s original denial that market changes outside its control had anything to do with its revenue generation efforts in 2011.

This panelist finds the inconsistent positions taken by the Claimant and documented in this record to be very troubling indeed. Its answer to Question B.20 which gives examples of acceptable market changes, is crystal clear. The answer was “No.” The CA Contact Notes report reflects that Claimant’s CPA had extensive telephone conversations and email exchanges with various claims analysts and was advised, in some detail, the information and documentation which was required to demonstrate causation under the Decline Only Test. Claimant then asserted that its revenue recovery effort was adversely affected by the weather and the tourist population. After that failed to pass muster, and following further conversation with a claims analyst, the new competitor argument was raised in this appeal and was supported by the two bare-bones documents referenced above. Those documents, standing alone, do not, in this panelist’s view, constitute the kind of third party documentation necessary to satisfy this causation requirement. There is no objective, third party statement, affidavit or other evidence which gives this factor credence. See Approved Policy 474:

B. Documentation to Identify Factors Outside the Control of the Claimant that Prevented the Recovery of Revenues in 2011.

2. Claimant Must Submit Objective, Third Party Documentation.

The Claims Administrator takes the position that to satisfy the second prong of the Decline-Only Causation Test, the claimant must submit objective, third-party documentation that identifies factors outside the control of the claimant that prevented the recovery of revenues in 2011. A document prepared by the claimant, the claimant’s accountant or the claimant’s attorney is not sufficient on its own to satisfy this requirement; however, the claimant may use a document prepared by the claimant, the claimant’s accountant or the claimant’s attorney to supplement or corroborate the objective, third-party documentation.

After de novo review, this panelist has concluded that Claimant has failed to meet the Settlement Agreement Exhibit 4B causation requirement and its appeal cannot be sustained. Accordingly, decision must be entered herein upholding denial of this claim.

Decision: December 4, 2014