

**APPEAL PANEL DECISION FORM**

**I. CLAIMANT AND CLAIM INFORMATION**

<b>Claimant Name</b>	Last/Name of Business ██████████	First	Middle
<b>Claimant ID</b>	██████████	<b>Claim ID</b>	██████
<b>Claim Type</b>	Start-Up Business Economic Loss		
<b>Law Firm</b>	██████████		

**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 Decision Comment uploaded.

Claim No. [REDACTED] – [REDACTED]

Claimant [REDACTED] appeals the denial of its Start-Up Business Economic Loss claim. The denial was based on the Claims Administrator's determination (all the way through Post-Reconsideration Denial) that [REDACTED]'s submitted documentation indicated that its operating history commenced on or after April 20, 2010. Exhibit 7 to the Settlement Agreement defines a "Start-Up Business" as "a claimant with less than eighteen months of operating history at the time of the DWH Spill." Policy 362 v.2, as applicable to the facts of this claim, states that the SP will determine a claimant's operating history based on when it began doing business or operating in the Gulf Coast Areas, looking to the totality of the circumstances, including "a focus on when the business began to a) sell products in the Gulf Coast Areas . . . c) perform its full time services while physically present in the Gulf Coast areas . . . or e) incur substantial costs or expense of a nature indicative of the actual start-up of business operations." Only claimants that can establish an operating history in accordance with that analysis, commenced before April 20, 2010, are eligible for this category of claim.

[REDACTED] is a planner and events organizer for weddings, concerts, and other social occasions, located in [REDACTED] (Zone C). The Contact Notes Report reflects that [REDACTED] originally filed a standard BEL claim but, because its accompanying documentation reflected that it was incorporated on April 29, 2010, the claim was reclassified as a Start-Up BEL claim. (It is undisputed that [REDACTED] was chartered as an LLC on April 29, 2010.) The principal of [REDACTED] is [REDACTED]. Prior to its formal incorporation, he already owned several other entities involved in the [REDACTED] industry, including one named [REDACTED]. In initially contesting the reclassification of the claim from BEL to Start-Up BEL, [REDACTED]'s accountant advised the Claims Administrator that "the two companies are the same . . . he transferred legal entity status but it was a continuation of business income." ([REDACTED]) That was apparently a reference to the Inc., but nothing else in the record cited by either party, or which the appeal panelist has otherwise discovered, explains whether, why or how a transition from the Inc. to the LLC was undertaken. Certainly, Claimant has not suggested in any way that a merger of the Inc. into the LLC was involved, or that some similar legal conversion took place. [REDACTED] has submitted three "Engagement Contracts" entered into by Mr. [REDACTED] [REDACTED] purportedly on behalf of the LLC, but it did not legally exist on those dates. Likewise, [REDACTED] has submitted various emails to and from Mr. [REDACTED], during April of 2010, relating to possible engagements for some of the [REDACTED] or [REDACTED] he represented, all involving private functions such as [REDACTED] on several of the ones he sent, he designated himself as acting on behalf of [REDACTED] although, again, it had not legally been created as of the dates in question. Mr. [REDACTED] used an email address of [REDACTED], which is affiliated with [REDACTED] when sending these emails. Based on a WHOIS Search performed by BP, the website [REDACTED] was created on December 28, 2005, 5 years before [REDACTED] was established. The [REDACTED] Website also appears to be the current website for [REDACTED]

█ the LLC, proffered to the Claims Administrator copies of various checks written by the Inc. in March and April 2010, on its account at █, which the LLC claims were “relating to” it. Included among them is a March 31, 2010 check to █ for \$1,253.00 for the “Quarterly Maintenance Fee” for a condo unit. █ says “this cost assumed by Claimant.” No further explanation is given for why that should be recognized as a pre-Spill expense of an LLC not created until a month later. █ also provides copies of two invoices to “Client: █” from a law firm, one for services rendered from 2/22/10 to 3/24/10 and the other for services rendered 3/25/10 to 4/25/10, each of which had appended a form the client could use to pay by credit card. The only subject matter referenced on either invoice is █. Mr. █ signed for a \$3,309.96 payment to be made by the █ card held in █ name. █ now asserts that this payment to the law firm “for March and April 2010” was “assumed by Claimant.” No explanation is given for why Mr. █’s payment for legal services associated with a dispute or lawsuit between him and another individual, should qualify for recognition as an expense of the LLC not legally in existence during the time frame of the rendition of those services. █ says (in Doc. ID █, duplicated at Doc. ID █) it has submitted among the check copies one numbered █, “dated █ in the amount of █. Filing fee for █.” It cites to its Doc. ID █ as the location of that check. That document indeed has attached two pages of █ “Statement of Account,” on each of which are reproduced the face of ten checks. Each was written on the Inc. account, and they span check numbers █, on account statement pages █. No copy of a check No. █ is included. Given that the last check reproduced on page █ is █, a check numbered █ would presumably have appeared on page █; but it is not in the record; the appeal panelist has accessed every document in the record in an attempt to locate check No. █, all to no avail. █ has submitted two one-page █ statements of account for separate checking accounts it opened in the LLC name on May 27, 2010, one to serve as an operating account and the other as an █ account. No transactions occurred in either account in the five days of May, 2010 during which they existed, other than the “corporate deposit” made to fund each of them. Finally, █ tenders a █ invoice from █ to █ for a “█ bond” effective May 18, 2010. That would suggest the LLC was not able to function as a properly bonded entity until May 18, 2010.

The panelist is mindful that the determination of the commencement of a claimant’s operating history is to be based on a “totality of the circumstances,” and has attempted to consider and weigh every circumstance cited by █, or otherwise appearing in the record. The burden is on a Start-Up BEL claimant to submit documentation and explanation sufficient to establish an operating history that preceded the April 20, 2010 Spill. What █ has submitted is inconclusive, at best, and in many instances contradicts the notion of material pre-Spill activity. Claim analyses must generally proceed on an entity basis and level, and █ the LLC has simply not shown that it, chartered nine days after the Spill, had a presence and record of activity attributable to itself as a discrete business venture, sufficient to constitute the requisite “operating history.” The denial is upheld and the appeal denied.