DEEPWATER HORIZON
CLAIMS CENTER
ECONOMIC & PROPERTY DAMAGE CLAIMS

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	Start-Up Business Economic Loss		
Law Firm	[redacted]		

II. DECISION

☐ **Denial Upheld**

☐ **Denial Overturned**

☒ **Remand to Claims Administrator**

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], a [redacted], real estate agent, appeals Settlement Program ("the SP") denial of his Start-Up Business Economic Loss claim. The SP denied the claim based on its conclusion that [redacted] was not doing business in the Gulf Coast Areas at the time of the April 20, 2010 Oil Spill. 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." (Emphasis supplied) 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.

On de novo review of the "totality of the circumstances" reflected by the record, the panelist concludes that there is substantial evidence showing that [redacted] satisfied both criteria "c" and "e" of the Policy 362 v.2. The undisputed chronological facts are these: [redacted], previously a [redacted], decided to become a real estate agent. On [redacted], he paid $299.00 to attend a real estate "Sales Associate" course conducted by [redacted] on [redacted]. (Doc. ID [redacted]) On February 18, 2010, he was billed $500.00 to have a web page formulated, paying that invoice with a check which cleared his checking account on March 15, 2010. (Id.) A statement of "Licensee Details" issued by the State of [redacted] on November 25, 2014, states that [redacted] then held a "current, active" license for "Real Estate Broker or Sales" and that his "Licensure Date" was "02/26/2010." (Doc. ID [redacted]) On March 24, 2010, [redacted] was invoiced $61.48 by [redacted] for business cards, and his check in payment was posted to his checking account on April 2, 2010. (Id.) Next, the Realtor Association of [redacted] issued [redacted] a receipt on April 1, 2010 acknowledging his payment by credit card of a total of $703.25 for various local, state and national association dues and fees, and his Realtor Application Fee, for all of which the Association had at least by that date invoiced him.

Once he became licensed, [redacted] went to work with [redacted], based in [redacted]. [redacted], identifying herself as the owner of [redacted] "at all times relevant to this affidavit," filed an affidavit on August 14, 2015 attesting, in pertinent part, "That [redacted] began working full time as a real estate agent on April 2nd, 2010 with [redacted]. That the expenses incurred prior to April 20th, 2010 for Association Dues, web page and business cards are the common expenses for any realtor in starting out. [redacted] completed a sale in June, 2010, which clearly demonstrates him working full time as a realtor at the beginning of April 2010, as before a sale takes place a realtor spends significant time cultivating clients and it takes additional time for a closing to occur." The relationship of [redacted] to Claimant is uncertain. From various documents in the file, the panelist has discerned that Claimant's wife is [redacted]; in 2009 and 2010 they

claimed "student" credits on their federal tax return for expenses of two daughters, [redacted] and [redacted]; the ownership of [redacted] was 33⅓% each for [redacted], [redacted] and [redacted] by June of 2013; and [redacted]'s driver's license shows her date of birth as [redacted]. Perhaps she is a third, older daughter. At any rate, [redacted], on behalf of [redacted] ([redacted]) applied to the [redacted] Secretary of State on July 16, 2009 to register the "fictitious name" of [redacted], and BP has raised no question but that [redacted]'s employment by [redacted] was completely legitimate and above board. What BP does argue in its "Opposition" is that "paying realtor dues on April 1, 2010, obtaining its license on February 26, 2010, paying $500 for webpage services on February 18, 2010, and buying business cards on March 24, 2010 . . . merely demonstrate that Claimant was incurring minor expenses in *preparation* to do business prior to the Oil Spill, not that it was doing so. Further, the Commission Report provided by Claimant shows that its first sale in 2010 occurred on June 3, 2010 -- *nearly two months after the Oil Spill*." (Italics in original) That [redacted]'s first commission ($[redacted]) was not received until June 3, 2010, is more supportive of his position in this appeal than oppositional. BP seems to forget that during the many months when the "matching/smoothing" debates were ongoing, it routinely argued that any commissions received by a real estate agent in a particular month should be reallocated retroactively over the preceding months when the agent was performing the services which generated the ultimately closed sale. In that regard, BP argued time and again that, in the absence of evidence showing the actual period of time over which the services leading to a particular commission had been performed, a "reasonable proxy" of four months should be employed. Applying that standard to the June 3, 2010 commission here involved, [redacted] should be viewed as having been working on that transaction beginning February 3, 2010 and continuing during March and April – a time "matching" his documented activities discussed earlier. The panelist does not agree with BP that [redacted]'s start-up expenses were minor, or that expenses incurred in "preparation" for doing business are to be disregarded. Policy 465 clearly recognizes that a business can be viewed as having begun "doing business or operating in the Gulf Coast Areas" once it "incur[s] substantial costs or expenses of a nature indicative of the actual start-up of business operations." BP does not argue that any of [redacted]'s expenses detailed above were not related to his planned, and soon commenced, career as a real estate agent, and he would not personally have had to pay for an office, or furniture, or equipment, given his employment with [redacted]. His P&Ls show expenses for "fuel" in excess of $400 each month of 2010, and that is a classic expense of a real estate agent. Whether [redacted]'s costs and expenses during January-April of 2010 were "substantial," as specified by Section II.e.) of Policy 362 v.2, must be viewed in the context of what outlay a new real estate agent would have to have. What other costs or expenses should [redacted] have incurred to start up his new career? It seems to the panelist that [redacted] paid for everything he needed to have in place to begin working as a real estate agent. [redacted] notes that "in 'Merriam-Webster' one of the full definitions of substantial is, '1a: consisting or illusory; real, true; c. important, essential.' " Likewise, in a standard dictionary consulted by the panelist, the first two preferred definitions are "1. Of, relating to, or having substance; material. 2. True or real; not imaginary." In context, [redacted]'s costs and expenses meet those tests. Moreover, as noted, [redacted]'s affidavit states categorically that Claimant began working "full time as a real estate agent on April 2nd, 2010 with [redacted]." Nothing in the record contradicts that sworn statement; rather, [redacted] having paid all of his real estate agent dues and fees on April 1, 2010, he was eligible to start working full time as an agent that next day.

There is no dispute that [redacted] is in the Gulf Coast Areas. Thus, and alternatively, [redacted] fully satisfies Section II. c of Policy 362 v.2, because as of the April 20, 2010 Spill, he was already performing his full time services while physically present in the Gulf Coast Areas.

For all of the reasons and considerations stated, the denial of [redacted]'s claim on the basis that he was not doing business or operating in the Gulf Coast Areas at the time of the April 20, 2010 Oil Spill, is overturned, and the claim remanded for the SP to analyze it as otherwise eligible for review as a Start-Up BEL claim. (BP asserts in its Opposition that [redacted]'s claim "should be denied for two additional reasons," relating to the allocation of a $38,250 commission booked in May 2011, and a "Customer Mix" analysis. Those issues were not addressed by the SP, it having stopped its review once the determination was made that [redacted] was not eligible for a Start-Up BEL claim consideration. Therefore, the panelist will not attempt to resolve them but, rather, leaves them for such attention as the SP deems appropriate on remand.