

APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business ████████████████████ ████████████████████	First ██████████	Middle ██████████
Claimant ID	██████████	Claim ID	██████████
Claim Type	Business Economic Loss		
Law Firm	██		

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	\$161,264
	Risk Transfer Premium	1.50
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$166,370.37
	Risk Transfer Premium	1.50
	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 into the portal.

DWH: [REDACTED]

Claim ID: [REDACTED]

Written Reasons and Opinion:

The only issue raised by BP in this appeal of a Business Economic Loss award to a general contractor located in [REDACTED] [REDACTED] (Zone A) is the classification by the Claims Administrator of Claimant's "Automobile Expense" as an entirely fixed cost. BP claims the record suggests otherwise.

BP argues that although Claimant's summaries of its profit and loss statements contain a line item for Fuel Expense, Claimant did not record any amounts under that heading for four consecutive years. Given the nature of Claimant's business, BP speculates that it "likely includes using a fleet of vehicles to drive to work sites." It then posits that "it is reasonable to presume that a portion of the Claimant's 'Automobile Expense' includes variable expenses, 'such as repairs, fuel costs, parking and tolls.'" Moreover, BP asserts that Claimant's expense fluctuates in a manner inconsistent with being an entirely fixed cost and appears to vary with Claimant's income. For that reason, the Claims Administrator erred in not further investigating this expense. Accordingly, it submits Claimant's "Automobile Expense" should be allocated as 50% fixed and 50% variable in the same fashion that Settlement Agreement Exhibit 4D allocates Maintenance and Repair costs. It cites a single, prior Appeal Panel Decision so holding.

Claimant's response is clear and concise:

BP further argues it is appropriate to classify this expense as 50% fixed and 50% variable. This is a misrepresentation of the Settlement Agreement. Exhibit 4D does not allow the Claims Administrator to blindly classify automobile expenses as 50% fixed and variable. Exhibit 4D only states that where "Claimant's . . . books . . . do not separately identify Maintenance costs and Repair costs, claimant shall allocate costs associated with Repairs and Maintenance 50% to Fixed Costs and 50% to Variable Costs." *See* Exhibit 4D. Per the plain language of Exhibit 4D, this note **only** applies to Repair and Maintenance Costs. This is not merely an example to apply to other expenses. If BP wanted a similar rule to apply to Auto and Fuel costs (or any other expense line item) they should have negotiated that into their agreement. They did not; therefore, they must abide by the clear terms of the agreement for which they did agree to, which is that "Auto" costs are 100% fixed expenses and "Fuel" costs are 100% variable expenses.

Claimant attaches and cites five prior Panel Decisions, including one authored by this panelist, in support of its position.

Settlement Agreement Exhibit 4C squarely states that for purposes of the two-step BEL calculation, the parties have agreed to a defined list of fixed and variable expenses which are reflected in Exhibit 4D Attachment "A." As Claimant correctly asserts, "Auto Expense" is found in the fixed category. As it also asserts, Maintenance is declared to be fixed while Repairs (excluding maintenance) is declared to be variable. In that vein, Attachment "A" contains the following footnote:

If claimant's financial statements, books and/or records do not separately identify Maintenance costs and Repair costs, claimant shall allocate costs associated with Repairs and Maintenance 50% to Fixed Costs and 50% to Variable Costs.

That footnote deals exclusively with Maintenance and Repair costs and no others.

After careful consideration, this panelist has concluded that Claimant's position is well taken. The Claims Administrator committed no error in according the expense in question the classification stipulated by the parties in Exhibit 4D.

For the foregoing reasons, this BP appeal is denied. Claimant's Final Proposal is hereby selected.

Decision: October 28, 2015