

**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>	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):**

Claimant, from ██████████, self-describes itself in its 2010 Annual Report as an entity engaged in "motorsports themed entertainment." It appeals the Program's thrice-denied BEL claim, the grounds for which were that it is an excluded entity under the terms of Section 2.2.4.3 and Exhibit 18 of the Agreement. In a very close decision, Claimant argues persuasively that the spirit of the Agreement was to exclude gaming establishments such as casinos and horse racetracks, and avers that it has never engaged in gaming. Specifically, it represents that almost 90% of its revenue comes from ██████████ racing events, and that these events do not involve gaming. In its Claim form, Claimant provided a NAICS code of 713990 ("All other amusement and recreation industries"), the equivalent to a Business Activity Code of 713900, which it has consistently used in its tax returns. The problem for Claimant is that NAICS Code 713990 is used for activities such as amusement rides, miniature golf courses, billiard pool parlors and dance halls. It would be a rational leap of faith to include a motor racetrack within the ambit of said NAICS code. The Program chose a NAICS code of 711212, one which under Exhibit 18 is denied participation in the Program. That code specifically includes in its illustrations automobile racetracks, speedways and stock car racetracks. Under no circumstance can this panelist, under Section 4.4.7.1 of the Agreement or under Policy 480v2 interpreting it, undermine the Program's selection of this NAICS code as the appropriate one under the circumstances. Once that selection is justified, this panelist



feels that it has no discretion in denying this entity participation based upon its having an excluded NAICS code. While Claimant may argue, and this panelist might agree, that the NAICS codes in Exhibit 18 are overbroad in excluding entities not engaged in gaming, this panelist feels constrained to apply the terms of an Agreement that were very elaborately negotiated to a conclusion. Claimant was properly denied participation in the Program under the terms of the Agreement. In this regard, this panelist takes note that a recent panel decision, Claim ID [REDACTED], made a similar finding involving a similar motor recetrack.