



APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business [REDACTED]	First [REDACTED]	Middle [REDACTED]
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 Decision Comment uploaded.

Claim No. [REDACTED] – [REDACTED]

Claimant [REDACTED] appeals the denial of its BEL claim. [REDACTED] argues that it satisfied all three “prongs” of the Decline Only Revenue Patter causation test set out in Exhibit 4B to the Settlement Agreement. Two different versions of that test are set out in Exhibit 4B, as Sections II.C. and III.C., depending on whether the Claimant is in Zones B or C, or in Zone D. The differences between the two versions of the test include the fact that the first “prong” for Zones B and C claimants require proof of an 8.5% or more decline in revenue over specified months, whereas a 10% decline is required for Zone D claimants. Also, the second prong for Zones B and C claims requires submission of

“Specific documentation identifying factors outside the control of the claimant that prevented the recovery of revenues in 2011, such as:

- The entry of a competitor in 2011
- Bankruptcy of a significant customer in 2011
- Nearby road closures affecting the business
- Unanticipated interruption resulting in closure of the business
- Product/Service replacement by Customer
- Loss of financing and/or reasonable terms of renewal;”

but for Zone D claimants, although the second prong is otherwise phrased the same, the phrase “such as” is omitted.

[REDACTED] is located in Zone D, and the Settlement Program (“the SP”) concluded that [REDACTED] had not submitted the necessary documentation to substantiate one of the six second prong qualifying factors. [REDACTED] points to Policy 474, and interpretation therein of the “such as” phrase, in framing its argument. That policy notes in its “Introduction” the two versions of the “Decline-Only Causation Test” set out in Sections II.C. and III.C. and undertakes to explain the implication of the use of “such as” in the Section II.C. version. The policy states at Paragraph II.B that “The Claims Administrator interprets the inclusion of the phrase “such as” in Section II.C to mean that the list of factors is not an exhaustive list. Claimants may demonstrate other factors outside their control that prevented their recovery of revenue in 2011.” [REDACTED] attempts to exploit that application of the Exhibit 4B, Section II.C. “such as” phrase, in its arguments on appeal, contending that it has submitted documentation of factors that are “a result of and/or related to” the second prong factor of both Section II.C. and III.C., “Loss of financing and/or reasonable terms of renewal.” [REDACTED] first argues that in [REDACTED] a long term debt it had with [REDACTED] corporation, related to an aircraft loan, was “prematurely” required to be paid in two installments for a total of approximately \$280,000. The documentation it cites in support of that contention (Doc. ID [REDACTED]), consists solely of three pages of [REDACTED]’s “Accounts Payable Register,” reflecting payments to [REDACTED] commencing in [REDACTED] 2004 and, for 2010, payments of [REDACTED] each in January-April, followed by a May 10 payment in that amount and a May 11 payment in the amount of \$[REDACTED]. Handwritten on that page is the notation “[REDACTED].” Although [REDACTED] asserts in its Reply Brief that it “had no control over the lender accelerating the payments as it did. This was not a factor [REDACTED] could have foreseen or prevented,” no factual explanation is given for the May 11, 2010

payment, i.e., why it was “premature,” or how or why █████ could or did require that payment. Was the payment/payoff built into the loan payment terms, or did some event trigger a loan document provision allowing █████ to “accelerate” the payments? █████ offers no details, has not included in its submission any of the █████ loan documents, and has provided no documentation from █████ or any other third party explaining any aspect of the May 11th loan payment. Paragraph II.B.2 of Policy 474 provides: “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.” In the final analysis, █████ has not carried its burden under Section III.C. of Exhibit 4B and Policy 474 (which policy it endorses in its argument) to provide third-party documentation that it experienced the factor of “Loss of financing and/or reasonable terms of renewal.”

█████ also argues that the reduction in the line-of-credit borrowing ability experienced by a “sister company,” the █████ which was also one of █████’s customers, caused a reduction in the revenue █████ received from █████ in 2011. █████’s submissions show that █████ had a █████ line of credit until the Summer of 2010, when it suffered a substantial decline in revenue projects, persuading its lender to reduce the line of credit to █████, to require a “paydown” to that level, and to impose certain restrictions. (Doc. ID █████) █████ emphasizes that █████ and █████ are “two separate and distinct entities” but says the terms of █████’s █████ line of credit (executed █████) required █████ to guaranty the loan. However, the loan documents for that transaction in the file reflect that the only guarantor was █████, the owner of both █████ and █████. Thus, █████, as the claimant entity in this appeal, was not a guarantor of the █████ loan. █████’s attempt now to bootstrap █████’s reduction in borrowing authority, occasioned by its lender’s reaction to its reduction in revenue, and the financial strain on █████ of having to pay down the \$█████ loan to that reduced limit, causing it to cut back on the level of business it transacted with █████, into proof of the “loss of financing, etc.” factor, requires too big a stretch. █████’s loss of its level of financing doesn’t translate to a loss of financing by █████.

Finally, █████ says that the financial burdens imposed on it by the two circumstances discussed above, caused its working capital to be so severely restricted that it couldn’t purchase needed new equipment and was forced instead to refurbish/rebuild existing equipment. That, in turn, it asserts, caused that equipment to be taken offline from March to June of 2011, with a concomitant loss of revenue. Additionally, █████ says it had greatly increased labor costs for that process, from having to hire skilled labor from █████. █████ sums up its argument about this third “factor” by stating █████’s inability to purchase new equipment and alternatively conducting a refurbish/rebuild was outside its control as it was related to the aforementioned repayment of debt and line of credit issues. With its income generating equipment taken offline for four months in 2011 for refurbish/rebuild, █████ was not able to operate at full capacity which prevented recovery of revenues in 2011.”

Because the panelist has found those first two “factors” to be unsubstantiated, he similarly rejects this supposedly derivative third one. Moreover, and independently, the connection is just too tenuous to relate this third circumstance to “loss of financing.”

The denial of this claim is upheld and the appeal denied.