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	Middle
Claimant ID	[redacted]	**Claim ID**	[redacted]
Claim Type	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)*:

Claimant, a commercial office landlord, Appeals the denial of its BEL claim, said denial based upon Claimant's alleged failure to meet any of the applicable causation tests contained in the Settlement Agreement. Claimant argues quite forcefully that it has at all relevant times been on the cash accounting basis, and that no errors were ever reported on its method of accounting. Some months in its P and L's showed no recordation of revenues, whereas other months showed relatively higher revenues recorded based upon late receipt of rents. Claimant argues that this experience is simply the natural offshoot of a cash accounting basis. It argues that the Program vendors impermissibly took it upon themselves to shift reported revenues to adjacent months and to smooth out assessments over the years they were received, all in violation of the Fifth Circuit decision on point and specifically in violation of Policy 495. Under said Policy, the only correction a Program accountant can make as a first step in analyzing Claimant's P&Ls is to "errors" as defined therein. Significantly, in that very definition, the Policy provides that the vendors are to "...analyze the P&Ls under the basis (eg, accrual, cash...etc.) of accounting used by the Claimant in the normal course of business and reflected in the contemporaneous P&Ls."

It seems to this panelist that under Policy 495, a methodology (usually the AVM as a default) is warranted to sufficiently smooth a Claimant's finances only when one of the seven factors contained in the Policy are triggered. Short of such triggers, a Program accountant is not empowered to essentially convert an accurate cash basis set of financials into an accrual basis, and certainly not as a first step in its analysis, as apparently occurred herein. As such, and ever mindful of the discretion allowed to the Program accountants, this panelist must nevertheless remand this matter with instructions that the financials be examined on a cash basis, susceptible to use of an appropriate smoothing methodology only if one of the seven initial factors of Policy 495 are triggered, and thereby reanalyze whether Claimant merits an award under the various causation tests of Exhibit 4B.