

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

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 ██████████ appeals the denial of her BEL claim made on behalf of a hair styling and beauty salon she operated under the trade name ██████████ (" the ██████ "). ██████ had previously filed a Business Claimant claim with the Gulf Coast Claims Facility (the GCCF) on behalf of another business she individually operated under the trade name ██████████ filing as "Owner" and using her personal social security number, the same as she does in her BEL claim. She was paid by the GCCF for that claim and signed a comprehensive release in her individual name. The Settlement Program denied her BEL claim because she had filed that GCCF claim, been paid for it and had signed a general GCCF Release and Covenant Not to Sue. ██████ appeals contending that her paid GCCF claim for her loss d/b/a the ██████ should not bar her separate BEL claim predicated solely on her loss d/b/a the ██████. She points out that on all of her federal tax returns for the applicable years she filed separate Form 1040 Schedule Cs for the ██████ and the ██████ as is borne out by the IRS Tax Return Transcript in the record. In her Reply Brief (as far as the panelist can determine she did not file an Opening Memorandum)she argues that Section II(C) of Policy 276 v. 2 vindicates her position. She quotes Subdivision 1. of that provision, which reads: " A GCCF business claimant that submitted a claim in the GSSF, signed a GCCF Release and received full and final payment from the GCCF is excluded from pursuing a claim in the DWH Program. But such exclusion does not apply to a separate and



distinct Entity or a separate and distinct Natural Person, who may file a claim in the DWH Program." The first sentence of that provision would clearly bar ██████'s claim but she argues that the second sentence grants her clearance to file a claim for the ██████ because it "is a separate and distinct entity...." What she overlooks is that the Policy declares in Section II. B. that "[a]ll capitalized terms used in this policy defined in the Settlement Agreement shall have the meanings given to them in the Settlement Agreement," and the second sentence of Section II.C. on which she relies refers to "Entity", i.e., capitalized term which is not the same as the type of generic lower case term of "entity," which she would have the Settlement Program apply separately to her two "d/b/a" ventures. (Her tax return Schedule C listings show that for all the years in question she had a third sole proprietorship, whereby she did business as "████████████████████" a consignment shop. Her obvious industry is to be applauded but it does not serve to transform an "entity," in the sense of an individual doing business as a sole proprietorship under a business trade name, into an "Entity" as that term is defined in the Settlement Agreement.) Section 38.65 of the Settlement Agreement defines "Entity" in such a way that the term does not apply to an individual acting under an trade name, i.e., a d/b/a venture. Section 38.15 defines "Business Claimant" in such a way as to exactly cover ██████'s GCCF claim, i.e., "an Entity, or a self-employed Natural Person who filed a Form 1040 Schedule C, D or F...." Because ██████ filed her GCCF claim as a Business Claimant and her sole proprietorship d/b/a operation of the ██████ is not " a separate and distinct Entity," as required by the provision of Policy 276 v. 2 on which she relies , the denial of her claim was warranted. Appeal denied.