

APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	<small>Last/Name of Business</small> [REDACTED]	<small>First</small>	<small>Middle</small>
Claimant ID	[REDACTED]	Claim ID	[REDACTED]
Claim Type	Failed Business Economic Loss		
Law Firm	[REDACTED]		

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	\$0
	Risk Transfer Premium	0
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$92,107.71
	Risk Transfer Premium	0
	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:

This is a BP appeal of a Failed Business Economic Loss award to a concrete and block foundation construction company located in [REDACTED] (Zone C), upon the assertion that Claimant failed to establish causation for its loss.

More specifically, BP argues that Claimant initially filed a Business Economic Loss claim and submitted a letter to the Claims Administrator advising that the reason its business ceased generating revenue in 2011 was due to the declining health of Claimant's principal.

The record reflects that, following further review, the Claims Administrator reclassified the claim to a Failed Business Economic Loss award and then denied it for lack of documentation sufficient to establish that the loss was the result of the Spill in accordance with Settlement Agreement Exhibit 6. Thereafter, Claimant's counsel submitted a sworn written statement from the operator of a maintenance and remodeling company who attested to the fact that Claimant was his primary concrete pouring subcontractor for more than five years prior to the Spill. He stated that his company received most of its contracts from the [REDACTED] and [REDACTED] areas and that after the Spill, all of his contracts were affected as owners canceled contracts and called off projects that had been planned. Therefore, as each of his contracts were canceled, those he had with Claimant likewise were canceled. He stated, in conclusion:

Regretfully, we had to completely stop retaining his company for work because we had no contracts after the oil spill. These post spill effects lasted at least through the end of 2010. This business in the Gulf Coast region never resumed for my business, and therefore, for [REDACTED].

This documentation prompted the Claims Administrator to conclude, following re-review, that the claim passed causation but remained incomplete for lack of financial projections and a 2011 federal tax return. That resulted in another Denial Notice.

Claimant's counsel promptly responded that the Settlement Agreement does not require financial projections in order to establish causation for a Failed Business Economic Loss in Zone C as would be the case if this were a Failed Start-Up BEL claim in that zone. Further, that Claimant did not file a federal income tax return in 2011 because the very low revenue which it generated that year did not meet the minimum threshold for doing so. The Claims Administrator was convinced and issued the Eligibility Notice which prompted this appeal.

BP does not dispute that Claimant's revenue meets the requisite percentage of decline during the months for which it operated. Instead, as above noted, it argues that the health of Claimant's principal, as opposed to loss of business, was in fact the cause of the revenue decline. According

to BP, these “inconsistent and conflicting statements” merited further investigation by the Claims Administrator and for that reason this claim should be remanded for that purpose. Alternatively, it submits a zero dollar Final Proposal.

Following de novo review, this panelist has concluded that the Claims Administrator committed no error in his evaluation of this claim. BP’s argument is one of alternate causation which has been rejected many times by the court and fellow panelists. Its appeal cannot be sustained. Claimant’s Final Proposal is hereby selected.

Decision: November 23, 2015