

**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):**

See reasons submitted to Appeals Coordinator.

## Reasons for Decision

Appeal # [REDACTED]

November 17, 2015

Claimant appeals the denial of its BEL claim, which was denied on the grounds that it did not meet the applicable causation test.

Claimant is in the lawn spraying business. It owns a parcel of land in [REDACTED]. Located on this parcel are three physical structures. The Claimant occupies one of these structures. The other two buildings are occupied by other businesses who pay rent to Claimant.

Claimant initially filed as a single facility. Upon learning that the inclusion of rental income from the two buildings that Claimant was renting to others might be effecting Claimant's causation, Claimant attempted to change its claim to a Multi-Facility Business claim.

**Single v. Multi-Facility Business.** The threshold question in this appeal is whether or not Claimant qualifies as a Multi-Facility Business. Policy 467, Part II (C) reads as follows:

Exhibit 5 to the Settlement Agreement sets out the compensation framework for Multi-Facility Businesses. Section I of Exhibit 5 defines a Multi-Facility Business as a "business entity that, during the period April 1, 2010 through December 31, 2010, maintained **Facilities** in more than one location and had at least one **Facility** within the Gulf Coast Areas." Section I then provides the only definition of "Facility" in the Settlement Agreement:

**Facility:** A separate and distinct physical location of a **Multi-Facility Business** at which it performs or manages its operations.

The Claims Administrator must determine whether a business has "separate and distinct physical location[s]" at which it "performs or manages its operations" to assess whether it may proceed with a Multi-Facility claim."

Based on the above definition, it would not appear that Claimant's two buildings which are rented out to others qualifies as Facilities. First, they arguably are not separate and distinct physical locations, as they are located on the same parcel. Second, Claimant does not perform or manage its operations from either of these two buildings. Claimant does not have any employees located at these other two buildings. Rather, other businesses occupy these two buildings.

Having concluded that this is a single-facility claim, two additional issues raised by Claimant on appeal must be addressed.

**Rental Income.** Claimant contends that rental income received on the other two buildings located on Claimant's parcel should not be counted as revenue for causation purposes. Policy 373 provides that regular recurring income should be counted as revenue. The fact that it does not come from Claimant's primary business is of no moment. Hence, Claimant's rental income was properly included in its revenue.

**Reallocation of Revenue.** Claimant contends that certain revenue was improperly reallocated prior to applying the AVM methodology. Specifically, some of Claimant's customers chose to pre-pay in January or February monthly lawn spraying charges for the entire year. (Customers were offered a 10% discount for pre-paying.) The Settlement Program used its discretion and spread out this pre-pay revenue over the entire year in order to better match expenses with revenue.

Claimant argues that under Policy 495, adjusting of P&L's prior to the application of a matching methodology is limited to accounting errors. However, Policy 495 also permits the Settlement Program to utilize their professional judgment regarding indicia that the claim may not be sufficiently matched.

In light of the above, the denial of this claim is upheld.

[It should be noted that in the Summary of Review, the Claims Administrator seemed to indicate that even if rental income was excluded and the pre-pays not reallocated, Claimant would still fail the applicable causation test.]