

## 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**

**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)*:

The issue on this appeal is whether the Claimant can satisfy the Decline - Only Revenue Pattern test of Exhibit 4B. The Claims Administrator found that the Claimant had not provided sufficient documentation and this decision was unchanged on reconsideration and re-review. The Claimant now appeals arguing, *inter alia*, that it provided documentation of competitors that entered its market in 2011 sufficient to satisfy the second prong of the Decline - Only test.

Claimant operates a hair salon in ██████████ (Zone C). When the claim was initially denied and again on reconsideration and re-review, the Administrator merely recited the requirements for causation under Exhibit 4B. Each time, the Claimant submitted additional documentation which was again found to be insufficient. On appeal, Claimant submitted still more documentation related to the asserted decline in revenue from its non-local customers in 2010 compared to 2009. Claimant argues that it satisfies the Decline - Only Revenue test and that the denial was in error. BP counters that Claimant's documentation remains wanting and that the newly presented data is uncorroborated.

The Decline - Only Revenue test requires a Claimant to provide the following in order to satisfy causation under Exhibit 4B:

1. Demonstrate a decline of an aggregate of 8.5% or more in revenue in the Compensation Period as compared to the Benchmark Period;
2. Provide "specific documentation identifying factors outside the control of the Claimant that prevented the recovery of revenues in 2011;" and
3. Provide proof of a decline of 10% in the share of total revenue generated by non-local customers/customers in Zones A-C during the Compensation Period as compared to the Benchmark Period, i.e., the "Customer Mix Test."

BP mounts no challenge to Claimant's ability to satisfy the first prong of the Decline - Only test. With regard to the second prong, BP's argument is that Claimant's documentation regarding the entry of competitors is uncorroborated and fails to satisfy the "objective, third-party documentation" requirement of Policy 474. Claimant's data identified three rival salons by name and described the competitive services each provides. These competitors were located within .25 miles, .75 miles and 1.0 miles, respectively, from Claimant's location. Interestingly, BP cites a Lexis-Nexis search showing that only two of the three competitors entered the market in 2011. The reference to the Lexis-Nexis data, adds objectivity to the competitor information submitted by the Claimant. On this issue, BP is hoisted on its own petard.

With regard to the third prong, Claimant submitted its appointment book which includes dates and times of customer appointments that facially appear to provide Customer Mix data for local and non-local customers. As to this prong, BP merely comments in a footnote that it was unable to determine whether Claimant's documentation was contemporaneous or complete, quoting a statement by the Claimant that it could not differentiate local and out-of-area customers. However, it does not appear that this data was analyzed by the Administrator because the basis of the denial was the second prong of the Decline - Only test.

On *de novo* review, it is the conclusion of this panelist that the Lexis-Nexis documentation of the two competitors satisfies the second prong by the thinnest of margins. Although this information was not submitted by the Claimant, the claimant friendly nature of the Settlement Agreement is sufficient to tip the scales ever so slightly in favor of its acceptance. Because the Administrator never got to the Customer Mix test, it is necessary that this claim be remanded with instructions that the second prong of the Decline - Only test has been met and to assess the Claimant's Customer Mix data under Exhibit 4B.