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 [redacted]	Middle
Claimant ID	[redacted]	**Claim ID**	[redacted]
Claim Type	Business Economic Loss		
Law Firm	[redacted]		

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 Decision Comment uploaded.

Claim No. [redacted] – [redacted]

Claimant [redacted] appeals the denial of its BEL claim. The Settlement Program ("the SP") determined [redacted] to be an excluded Real Estate Developer ("RED"). Section 2.2.4.7 of the Settlement Agreement defines REDs as any Natural Person or Entity who or which "develops commercial, residential or industrial properties," including, but specifically not limited to, "any Entity developing an entire subdivision (as defined by the law of the state in which the parcel is located) of Real Property, including condominiums with multiple residential units and/or a residential subdivision with contiguous home sites and homes." Policy 468 declares that "the Settlement Agreement provides no revenue threshold applicable to determining who is or is not a Real Estate Developer; rather, the Settlement Agreement takes a more subjective approach and leaves that determination to the sound discretion of the Claims Administrator." Included among the criteria Policy 468 lists for the Claims Administrator to consider are an Entity's business designation on its 2010 tax return, the classification of its revenue on that return, and certain types of expenses incurred during 2010 considered to be associated with Real Estate Development. The Policy declares that "[a]n Entity that expressly identified or described its business as real estate development on Schedule B (or elsewhere) on its 2010 Tax Return shall be presumed to be an Excluded Real Estate Developer." The Policy also states that "Any revenue from real property sales reported by the Entity on its 2010 Tax Return as ordinary income (other than depreciation recapture), rather than as capital gains income, typically shall be considered to be revenue associated with Real Estate Development Activity." Last, as also pertinent to this appeal, the Policy provides that among the 2010 expenses of an Entity that indicate Real Estate Development Activity are those for "civil engineering and surveying." On [redacted]'s 2010 federal tax return (and also no those for 2007, 2008, 2009 and 2011) it states its principal business as "Real Estate Sales & Development." It reported revenue from real estate sales on its 2010 tax returns as ordinary income rather than as capital gains income. [redacted] listed in its P&Ls for 2007-2011 expenses for "Surveys & Inspections." In 2008, it recorded the plat for [redacted] Unit No. 3, consisting of lots 83-110. In February of 2010, it recorded Protective Covenants for that subdivision, listing itself as the "Developer" and owner of all of the lots. In December of 2012, it filed similar covenants for Unit 4 of [redacted], again describing itself as Developer and owner of all of the lots. In its Claim Form it states its business to be "Real Estate Sales." [redacted]'s Notice of Appeal, acknowledges that it "engages in real estate sales, namely mobile home sales, but says it "had to sell the buyers land along with the mobile homes to secure favorable financing." In [redacted]'s Opening Memorandum to this appeal, it asserts that the land sales associated with mobile home sales occurred before 2007, and that "the business evolved and no longer involves sale of land." The record evidence is to the contrary. Also, in May of this year, [redacted] placed in the record a statement typed on stationary bearing the letterhead, "[redacted]" which declared: "[redacted] was incorporated . . . as a separate business. In the process of selling homes we had to sell land with them to get them financed, without land they are financed as a movable and the credit and terms are generally not workable for the general public. Although [redacted], funded the manufactured home business when needed, it was considered as a separate business."

In its Reply Brief (labeled "Opposition Memorandum"), [redacted] seems to abandon the stance taken in its Opening Memorandum, and makes instead the argument that Louisiana law defines a "Developer" in Louisiana Revised Statute 51:911.22(4)(a) as "any person, group of persons, firm, partnership, corporation, association, company, or legal entity who sells or offers for sale to the public a lot together with a manufactured home permanently installed and fixed on a foundation on the lot and designed as a single family residence…." [redacted] reasons that because it hasn't developed an entire subdivision of manufactured homes so installed and fixed, it can't be deemed a RED. This argument overlooks the facts that (1) the statute [redacted] cites is a part of Louisiana's "Uniform Standards Code for Manufactured Housing," so its definitions are limited to that context and have no general application to Real Estate Development; and (2) development of an entire subdivision is just an example given in Section 2.2.4.7 of RED activity, not an exclusive definition.

[redacted] has not shown that the Claims Administrator exceeded the sound discretion invested in him under Policy 468, and the record otherwise furnishes ample support for the Claims Administrator's determination that TPI is excluded as a Real Estate Developer. Appeal denied.