

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

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	\$5,519.68
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$5,519.68
	Risk Transfer Premium	2.00
	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 Separate Decision

████████████████████
Claim ID ██████████

████████████████████ files this appeal after receiving an award of \$5,519.68 with an RTP of .25. Appellant does not take exception with the compensation amount but argues it should have qualified as a Tourism business and therefore be entitled to the corresponding RTP multiplier.

The Settlement Program applied the NAICS code for Travel Agencies (561510) to claimant which encompasses "establishments primarily engaged in acting as agents in selling travel, tour and accommodation services to the general public and commercial clients ". Exhibit 2 which sets forth the parameters for Tourism claimants does not include this NAICS code in the list of qualifying industries. Additionally, on its 2010 tax return, ██████████ lists its business code as 561500, Travel Arrangements and Reservations. This NAICS code is also not amongst those listed in Exhibit 2. Therefore, BP suggests, unless the totality of circumstances indicate otherwise, claimant does not qualify for a Tourism designation.

██████████ argues its primary business activity is that of a Tour Operator which is covered by NAICS Code 561520 and which is included as a Tourism business under Exhibit 2. Additionally, claimant argues that, even if the Tour Operator designation is not appropriate, it should still qualify for the Tourism Designation. ██████████ contends, as a "travel tour " company, it clearly "accommodates and caters" to the needs of persons traveling to, or staying in places outside their home community.

Even though a colorable case can be made that travel agents are catering to the needs of individuals traveling outside of their home community, Exhibit 2 seems to affirmatively exclude them. In listing the various covered industries, the Settlement Agreement references NAICS # 561599 "All Other Travel Arrangement and Reservation Services: This U.S. Industry comprises establishments(except travel agencies, tour operators...) primarily engaged in providing travel arrangements and reservation services". Since "travel agencies" are specifically excluded within Exhibit 2, it is not appropriate to include this claimant as a Tourism business if it qualifies as a "Travel Agency" that arguably "caters" to the needs of persons traveling outside their home community.

However, now the analysis becomes considerably more tangled. Claimant's additional contention is that it operates primarily as a "Tour Operator". As noted above, Tour Operators, just as travel agencies, seem to be specifically excluded under Exhibit 2 wherein it describes "All Other Travel Arrangement and Reservation Services". Nevertheless, in the preceding NAICS code describing businesses that are to be included as Tourism businesses, it lists NAICS code 561520 Tour Operators. There is a seeming contradiction between the express exclusion of "Tour Operators" in one paragraph and their seeming inclusion in the next listed category. This Panelist takes the position that, since Tour Operators are specifically referenced for inclusion as a Tourism business and they are seemingly excluded only within the context of "Other Travel Arrangement and Reservation Services", if this claimant is found to be a Tour Operator, it should qualify for a Tourism designation.

In this case, ██████ asserts that a majority of its income was generated from the sale of tours it arranged. More specifically, claimant submitted documentation indicating that, between 2007 and 2010, a majority of its revenues came from the sale of tours claimant arranged, assembled and sold to customers. (Claimant made the same contention with respect to 2011 but this period is less germane than the other years) ██████ also sells tours that are prepackaged by outside vendors but, according to the revenue breakdown, this does not constitute a majority of claimant's business.

BP did raise valid questions regarding when and how these figures were compiled. Nevertheless, there is a finding herein that ██████ adequately fits within the category of "Tour Operator", which is described in the Settlement Agreement as an "establishment primarily engaged in arranging and assembling tours". Therefore, as an enumerated business under Exhibit 2, it is held that claimant is entitled to a Tourism designation pursuant to the dictates of the Settlement.

Accordingly, there is a ruling in favor of claimant's final proposal which includes the RTP corresponding to a Tourism business.