



APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business [REDACTED]	First	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):

[REDACTED] ("Claimant") is a lessor of real property. It owns several commercial buildings and filed individual multi-facility claims for certain of its buildings. This is an appeal of Claim ID [REDACTED] which concerns Claimant's building located at [REDACTED] ("the Facility"). Claimant's Facility is undisputedly located in Zone A. Claimant rented the Facility to various tenants from 2007 to 2010. In March of 2010, Claimant executed a lease with a new tenant and received a deposit of \$2,200. Id. In April 2010 the tenant defaulted on the lease and Claimant refunded half of the former tenant's deposit. Claimant's payment to its former tenant occurred May 21, 2010. During the Oil Spill which occurred April 20, 2010, the Facility was operating under an active lease. In May 2010 the Facility was placed on the rental market as "for rent." It was rented again in November 2010.. Claimant was operating its business, and was in fact "in business" with an active lease on the Facility during the time of the Oil Spill in April of 2010. Claimant continued to own its building and pay expenses thereafter associated with maintenance such as mowing expenses. Mowing was required so that the property would look attractive to prospective tenants. The Settlement Program denied this claim on the grounds that it was "unable to determine causation and/or calculate a compensation amount under the BEL frameworks because it was not doing business or operating in the Gulf Coast Areas or Specified Gulf Waters at the time of the Oil Spill, April 20, 2010."BP asserts that Claimant had not provided sufficient



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documentation to establish it incurred a loss in variable profit due to the oil spill. "The Claimant did not provide P&Ls for 2007, 2008, 2009, and 2011 or they are unavailable to BP. The 2010 P&Ls show the Claimant did not receive any rental revenue for the whole year of 2010. BP does acknowledge "the Claimant did provide copies of several lease agreements and what appear to be payment ledgers...." But it appeared the Program was unable to accept this documentation because "it is not in the format required by Settlement Agreement (i.e. P&Ls breaking down revenue and expenses)." Claimant replied it was irrelevant that it did not have a lease in place during the time of the oil spill. The Settlement Agreement does not require that a property leasing business have an active lease during the oil spill. The only requirement of the Settlement Agreement is that the claimant must meet the objective causation tests of the Agreement. This Facility was located in Zone A; thus, causation is presumed. All losses calculated under the Compensation Framework are presumed to have been caused by the Oil Spill. If Claimant had disposed of its Facility or not placed it on the rental market as available for rent, then the Settlement Program's determination would have been correct. However, because the Facility was at all times either rented, or available for rent, and was incurring expenses during the benchmark and compensation periods, it was operating and doing business for the purposes of the Settlement Agreement. Because Claimant never wound down its operations, liquidated its assets, experienced dissolution, or began insolvency proceedings, it continued in operation despite the fact that it was not receiving rent during certain periods. Under all of the relevant facts and circumstances, Claimant's operations continued. Under the Settlement Agreement Exhibit 4B, "If you are a business in Zone A, you are not required to provide any evidence of causation unless you fall into one of the exceptions agreed to by the parties. Footnote 1 identifies the exceptions as (1) Start up businesses; (ii) Failed Businesses; (iii) Entities, Individuals or Claims not included within the Economic Class definition; and (iv) Claims covered under the Seafood Program. Claimant does not fall within these stated exceptions. Accordingly, the denial of the claim is due to be reversed and remanded for further processing by which Claimant will be required to provide proof of damages in the appropriate format required by the Settlement Agreement.