

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
PO BOX 110805
JUNEAU, AK 99811-0805

Order # TA 23-02)
In the Matter of Audit of)
Burns & Wilcox LTD)
_____)

FINDINGS OF FACT

1. An audit report of Burns & Wilcox LTD, licensed in the State of Alaska, has been issued by the State of Alaska, Division of Insurance to Burns & Wilcox LTD.
2. The audit report of Burns & Wilcox LTD (TA 23-02) has been transmitted to Samuel Carson, Compliance Officer, Burns & Wilcox LTD (Auditee), and Auditee has been accorded at least 30 days' opportunity to review and comment on this audit report.
3. The director of the Division of Insurance has fully considered and reviewed the report and any relevant portions of the auditor's work papers to the extent she considered necessary.

CONCLUSIONS OF LAW

1. The written audit report referred to in Finding of Fact No. 1 was issued in accordance with Alaska Statute (AS) 21.06.150(b).
2. The actions set forth in finding of Fact No. 2 were conducted in accordance with AS 21.06.150(b).
3. The director of the Division of Insurance has reviewed the audit report and any other relevant work papers as set forth in Finding of Fact No. 3 to the extent she considered necessary in accordance with AS 21.06.150(b).

ORDER

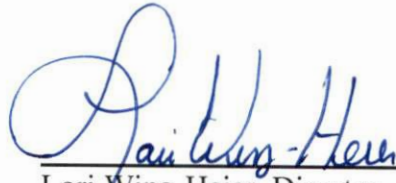
IT IS ORDERED

1. Pursuant to AS 21.06.150(b)(1), the audit report of Burns & Wilcox LTD (TA 23-02) is approved as filed.

2. Pursuant to AS 21.06.060, the audit report shall be kept in the office of the director of the Division of Insurance and be open to public inspection.

This order is effective November 14th, 2023.

Dated this 14th day of November, 2023 at Anchorage, Alaska.

A handwritten signature in blue ink, appearing to read "Lori Wing-Heier", written over a horizontal line.

Lori Wing-Heier, Director
State of Alaska
Division of Insurance

PREMIUM TAX AUDIT OF

**Burns & Wilcox LTD
Farmington Hills, MI
Alaska License #18812**

TA 23-02

As of December 31, 2022

**Issued by
DIVISION OF INSURANCE
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC
DEVELOPMENT
STATE OF ALASKA**



**FINAL REPORT:
November 13, 2023**

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November 13, 2023

Lori K Wing-Heier
Director, Division of Insurance
Department of Commerce, Community and Economic Development
550 West 7th Avenue, Suite 1560
Anchorage, AK 99501-3567

Pursuant to Alaska Statute (AS) 21.06.120, the Alaska Division of Insurance performed a limited and targeted premium tax audit of Burns & Wilcox LTD. The audit was conducted by Rebecca Nesheim, tax auditor for the Alaska Division of Insurance.

Burns & Wilcox LTD

SCOPE OF AUDIT

This premium tax audit was called to review compliance with the surplus lines statutes AS 21.34, and regulations 3 AAC 25, the premium tax regulations 3 AAC 21.550 – 570 and licensing statutes AS 21.27.350 and 21.27.810. This is the first premium tax audit of Burns & Wilcox LTD conducted by the Alaska Division of Insurance (the division).

Subject Matters Audited

Burns & Wilcox LTD (the broker) is an Alaska licensed surplus lines broker based in Farmington Hills, MI. The division elected to audit their quarterly filings, premium taxes and filing fees paid for accuracy and timeliness as well as required diligent search efforts, disclosures, notifications, and prompt delivery of material facts in evidence of insurance to the insured.

Time Frame

The audit covered the broker's surplus lines business for policy effective dates occurring between January 1, 2021 and December 31, 2022.

METHODOLOGY

The division sent the call letter and initial data requests to the broker's office in Farmington Hills, MI. A list of all Alaska business transactions with nonadmitted insurers was requested for the period to be audited. The broker complied on a timely basis with all data requests. The number of policies written during the audit period was 279, from which a sample of 50 files was selected for audit. One policy's home state was determined to not be Alaska. Other than the home state accuracy audit test, the remaining audit tests did not include this file.

The following are the procedure steps for the audit:

- 1) Verify that quarterly reports and accompanying forms were filed on time.
 - i) Audit steps taken:
 - (1) Reviewed the quarterly reports sent to the Alaska Division of Insurance and verified they were filed by the due date.
- 2) Verify the accuracy of the premium calculation.
 - i) Audit steps taken:
 - (1) Reviewed policy, binders, and invoices to determine how taxable premium was calculated.
 - (2) Verified the correct premium was reported on the reports as filed.
- 3) Verify the accuracy of quarterly reports filed.
 - i) Audit steps taken:
 - (1) Reviewed the policy, binder, and endorsement pages in each file.
 - (2) If the effective date did not match the quarterly filing, reviewed the correspondence to ensure the documentation in the file matched when the policy was booked. Most of these occurred with endorsements that often require additional information and sometimes company approval before it can be added to the policy. The invoice date determines in which quarter the endorsement is required to be filed.
 - (3) Verified the quarterly reports as filed with the division were accurately filled out to reflect the correct effective date, premiums, taxes and fees based upon the information in the files.
 - (4) Verified the policy was included in the quarterly filing based upon the effective date of the policy.
 - (5) Verified the insured name, insured address, insurance company, producer names and license numbers were accurate on the forms filed.
 - (6) Verified the descriptions of the subject and locations of risk were identified on the reports.
- 4) Verify if tax and filing fee payments were made on time and by ACH.
 - i) Audit steps taken:
 - (1) Confirmed when the payments were received by the Alaska Division of Insurance and the payment method.
- 5) Verify tax and filing fee payments were made accurately.
 - i) Audit steps taken:
 - (1) Confirmed if the tax and fee payments matched the quarterly reports as filed.
- 6) Confirm Alaska is the home state of the insured.
 - i) Audit steps taken:

- (1) Verified where the principal place of business or residence of the insured is located.
- (2) Verified at least partial risk is located in Alaska or the highest % of premium in Alaska if headquarters not in Alaska with no risk in the headquarters state or in the case of individuals, the residence state.
- 7) Review effort made to place insured with an admitted insurer.
 - i) Audit steps taken:
 - (1) Verified the diligent search was documented prior to binding and received within 15 days from binding. If there were no declinations due to risk on the placement list, the list effective at the time of placement was reviewed to ensure the risk was on the list
- 8) Review prompt delivery of evidence of insurance AS 21.34.100(a) and 3 AAC 25.060.
 - i) Audit steps taken:
 - (1) Reviewed dates of binding and forwarding of evidence of insurance to insured.
- 9) Review required material facts are located on evidence of insurance AS 21.34.100(a).
 - i) Audit steps taken:
 - (1) Reviewed documents to confirm required material facts were located on the evidence of insurance when policy not available within 30 days of binding.
- 10) Review disclosures for use of non-admitted insurer.
 - i) Audit steps taken:
 - (1) Reviewed the evidence of insurance to ensure the broker's name and language required by statute AS 21.34.100(e) is present and legible and at least 10-point type.
- 11) Review notifications for use of non-admitted insurer.
 - i) Audit steps taken:
 - (1) Reviewed the correspondence and other documentation in the files to find a copy of the notification sent to the insured that meets the requirement in AS 21.34.110
- 12) Confirm coverage is placed with an eligible non-admitted insurer.
 - i) Audit steps taken:
 - (1) Reviewed the Alaska published white lists and NAIC Quarterly Listings of Alien Insurers to ensure the company was eligible at the time of placement.
- 13) Review notice regarding nonrenewal and premium increase
 - i) Audit steps taken:
 - (1) Verified there was an Alaska Policyholder Notice regarding nonrenewal and premium increase included with the policy in the format approved by the Director of the Alaska Division of Insurance.
- 14) Other issues not previously identified as a procedure step were included when not in compliance with Alaska laws.
 - i) Audit steps taken:
 - (1) Reviewed documents to ensure other surplus lines statutes and regulations requirements were met.

Acceptable Error Rate:

The Broker's acceptable error rate for the above referenced standards and tests must be less than 10%.

PREMIUM TAX AUDIT

- | |
|---|
| 1. Verify quarterly reports and accompanying forms were filed on time
AS 21.34.080 and .170, 3 AAC 25.090 and .100 |
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Comments: The eight original quarterly reports with accompanying forms were filed on time.

Results: Passed (error rate 0%)

- | |
|---|
| 2. Verify the accuracy of the premium calculation
AS 21.34.180 |
|---|

Comments: The premium was calculated incorrectly for one policy in the audit files when filed with the division by not including the inspection fees. The insured had been charged taxes and fees on the inspection fee; therefore, the broker was asked to amend the quarterly report to report the fee.

The broker charges a broker fee on some accounts but they use the term “policy fee,” which is generally associated with an insurance company fee. This terminology is used for both taxable company fees and nontaxable broker fees and is easy to confuse both by the broker staff and by the insured.

These errors affect two additional audit tests:

1. Accuracy of the Quarterly Reports
2. Accuracy of Tax and Fee Payments

Results: Passed (48 files passed & 1 failed, error rate 2%)

Recommendations: It is recommended the broker ensure Alaska specific written procedures are followed to ensure all fees identified as taxable are included in premium. It is also recommended the broker rename their “policy fee” to “broker fee” or similar in order for the insured to know what the fee is actually for and to ensure the correct fee is included in premium. Reviewing Bulletin 04-14 will help identify the different fees.

The broker’s response: The inspection fee issue identified in the audit occurred during 1st Quarter 2021. During 2nd Quarter 2021, our filing guidelines and procedures were updated resulting in this issue being resolved prior to the completion of this audit. “Broker Fee” is to be used in lieu of “Policy Fee” on Burns & Wilcox generated invoices. We will request carriers also label “Broker Fee” on policy documents; however, we cannot guarantee the actions of a third party.

- | |
|---|
| 3. Verify the accuracy of all quarterly reports filed
AS 21.34.080 and .170, 3 AAC 25.090 and .100 |
|---|

Comments: Multiple errors were noted on the Report of Surplus Lines Transaction forms and Quarterly Reports filed with the division:

- Insured name incorrect – 12
- Address incorrect – 4
- Location of risk missing all states involved in risk – 1
- Subscription policy not all insurers provided – 2
- Combined initial & endorsement instead of two transactions – 1
- Policy end date incorrect – 1
- Policy # incorrect – 1

Total accuracy errors: 22 within 19 distinct files

Results: Failed (30 files passed & 19 failed, error rate 39%)

Recommendations: It is recommended the broker modify Alaska specific written procedures to include detailed instructions on how to fill out the transaction report section of the quarterly report. Procedures should include what data is entered into each field. A second individual reviewing documents before submission should reduce the number of errors received by the division.

The broker's response: Filings were previously completed using report data. The filing procedure has been updated to reference the report as a production source only. The accuracy and completeness of the information will be confirmed by directly referencing policy documents.

<p>4. Verify if tax and filing fee payments were made on time and by ACH AS 21.34.180, AS 21.34.190, 3 AAC 21.550 - .570</p>

Comments: All payments were made on or before the required due date for the quarterly payments and made by ACH.

Results: Passed (error rate 0%)

<p>5. Verify tax and filing fees payments were made accurately AS 21.34.180, 3 AAC 21.550 - .570</p>

Comments: All tax and fee payments made by the broker were accurate based upon the quarterly reports as filed. The errors found during the audit in the premium calculation and home state of the insured affects the accuracy of the tax and fee payments. These flow-through findings are addressed in their respective audit tests.

Results: Passed (error rate 0%)

<p>6. Verify the home state for insured is Alaska AS 21.34.180</p>

Comments: The broker writes some multi-state policies. The home state of the insured was evaluated for all policies. One policy had the insured based in Canada with several US locations. Alaska did not have the largest premium of the US locations; thus, per the NRRA (Nonadmitted and Reinsurance Reform Act of 2010), AS 21.34.900(8) and AS 21.34.180, Alaska was not the

home state for this policy. The broker has already amended the quarterly report to remove the transaction.

This error affects two additional audit tests:

1. Accuracy of Quarterly Reports
2. Accuracy of Tax and Fee Payments

Results: Passed (49 files passed & 1 failed, error rate 2%)

Recommendations: It is recommended the broker ensure their written procedures are followed for how to determine the home state of the insured. When the headquarters of the insured is based outside of Alaska, as long as 100% of the risk is located out of the state in which the headquarters reside and the largest percentage of taxable premium is allocated to Alaska then Alaska is considered the home state for that policy. Or in the case of a foreign insured, as long as Alaska has the largest percentage of taxable premium then Alaska is the home state for that policy.

The broker's response: The home state determination guide is to be used by all individuals producing AK business to correctly determine a risk's home state.

<p>7. Review diligent search effort made to place insured with an admitted insurer AS 21.34.020, 3 AAC 25.010 and .035</p>
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Comments: The broker has elected to use the Affidavit of Due Diligence for documenting the diligent search by the producers. Four Affidavits were received from producers after 15 days from binding or there was no documentation in maintained in the file.

Results: Passed (45 files passed & 4 failed, error rate 8%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed ensuring all Affidavits of Due Diligence are received no later than 15 days from binding. The broker can require the documentation prior to binding or before providing evidence of insurance to encourage the producers to provide the documentation on time.

The broker's response: All Affidavits of Due Diligence are to be on file no later than 15 days from binding. Production teams should either not bind until receipt of the diligent effort, or not release evidence of coverage until received.

<p>8. Review prompt delivery of evidence of insurance AS 21.34.100(a) and 3 AAC 25.060</p>
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Comments: All files have documentation showing the evidence of insurance was provided to the insured within the 30 days of binding.

Results: Passed (error rate 0%)

9. Review required material facts located on evidence of insurance

AS 21.34.100(a)

Comments: The majority of the files included a lack of required material facts on binders and policies. If the binder was missing facts, the policy sent within the 30 days from binding was evaluated.

Here are the different issues that the broker is not compliant with regarding this statute:

- Binder missing broker license number – 29
- Policy missing broker license number – 35
- Binder missing tax – 6
- Policy missing tax – 4
- Binder missing insured address – 1

Total errors: 75 within 40 distinct files

Results: Failed (9 files passed & 40 failed, error rate 82%)

Recommendations: It is recommended the broker modify Alaska specific written procedures to include what material facts regarding the coverage, insured, insurer, and broker must be on evidence of insurance. Review statute for details. If a quote will be referenced in the binder, it is recommended the broker include the following language: Quote Number _____, dated _____ is incorporated by reference and is part of this binder as though fully set forth herein.

The broker's response: All material facts are required on the binder and policy. These material facts include: the description and location of the risk, a general description of the coverages of the insurance, the premium and taxes to be collected from the insured, the name and address of the insured, the name of each surplus lines insurer and the percentage of participation of each, the name of the surplus lines broker, and the license number of the surplus lines broker. The existing AK state stamp has been updated to include our filing license number and this updated version of the stamp is required.

If the quote is being referenced in the binder or is attached to the binder, then the following language is to be included on the binder:

Quote Number _____, dated _____ is incorporated by reference and is part of this binder as though fully set forth herein.

10. Review disclosures on evidence of insurance for use of non-admitted insurer

AS 21.34.100(e)

Comments: Twenty-two files had problems with the required disclosure statement on the evidence of insurance. Where the insured's copy was unavailable, auditor relied upon the broker copy. Here are the different problems found in the files:

- Binder missing disclosure – 19
- Policy missing disclosure – 1
- Endorsement missing disclosure – 6
- Binder missing one word in disclosure – 1

- Policy missing one word in disclosure – 3

Total disclosure errors: 30 within 22 distinct files

Results: Failed (27 files passed & 22 failed, error rate 45%)

Recommendations: It is recommended the broker ensure written procedures are followed that all evidence of insurance have the required disclosure statement. The disclosure statement should be located on the first page of the evidence of insurance so the insured will not miss it. It is further recommended to revise the written procedures to include the disclosure statement on all premium bearing and non-premium bearing endorsements as they are also evidence of insurance.

The broker's response: The disclosure statement must be located on the first page of the evidence of insurance including all policies, binders, premium bearing, and non-premium bearing endorsements.

11. Review notification for use of non-admitted insurer
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AS 21.34.110

Comments: The broker does not provide the notification to the insured. All 49 files did not have the required three points of the notification: the company does not have a certificate of authority, they are not regulated by the Alaska Division of Insurance and in the event of insolvency losses will not be covered by the Alaska Insurance Guaranty Association Act.

Results: Failed (49 failed, error rate 100%)

Recommendations: It is recommended the broker modify Alaska specific written procedures to include Alaska notification language in the quote or at the same time as the quote to the insured describing the surplus lines insurance company as required by statute. For those processes that are completed solely online, a radio button or similar with the notification will need to be included that the insured/retailer must check prior to binding.

The broker's response: The notification for use of non-admitted insurers must be on quotes. Our IT department is working to automatically attach this notice to any non-admitted quote generated by our system. It is also being added by IT to our existing AK forms merge document within our system for ease of use.

12. Confirm coverage is placed with an eligible non-admitted insurer

AS 21.34.050

Comments: All policies in the audit were placed with eligible surplus lines companies.

Results: Passed (error rate 0%)

13. Review notice regarding nonrenewal and premium increase

3 AAC 25.050

Comments: Sixteen policies did not include the Alaska Policyholder Notice of premium increase and nonrenewal. Five policies had the notice but it was outdated and the companies had not requested a form filing to modify the required notice.

Results: Failed (28 files passed & 21 failed, error rate 43%)

Recommendations: It is recommended the broker modify Alaska specific written procedures to include a step to ensure policies contain the Alaska Policyholder Notice. Bulletin 08-06 should be reviewed for the exact wording. The broker should contact the insurance company to include the notice when it is missing or incorrect.

The broker's response: Alaska Policyholder Notice regarding non-renewal to be attached to each policy. It will be reiterated to production that the most current version of this notice is available to them through our invoicing system as well as the surplus line tax matrix resource. Production is to advise compliance team if the required, updated notice is not included on carrier documents.

SUMMARY AND SUBSEQUENT EVENTS

Summary

This was a premium tax audit of Burns & Wilcox LTD. The auditor tested 13 standards focusing on the broker's filing of quarterly reports and the subsequent payment of premium taxes and filing fees as well as diligent search efforts, disclosure and notification requirements for using a non-admitted insurer, and prompt delivery of material facts to insured.

The audit was conducted in the auditor's office as she received electronic versions of the broker's files under audit. The broker responded quickly to all requests for additional information. The auditor appreciated this behavior.

Several significant issues did arise during the audit that affects the service to the insured and compliance with Alaska statutes and regulations.

- 1) The quarterly reports are sometimes not accurate when initially filed.
- 2) The material facts are not provided to the insured at the time of binding in the majority of files.
- 3) Many of the disclosure stamps were missing or incorrect on the evidence of insurance.
- 4) The required notification to the insured regarding the use of a nonadmitted insurer was not found in any file.
- 5) The Alaska Policyholder Notice was missing from many policies.

The auditor would like to review any new or revised procedures to help the broker ensure all problems identified in the audit were captured accurately.

Re-Audit

In closing, the auditor's recommended actions and review of the procedures should help the broker correct the problems encountered. It is recommended that Burns & Wilcox LTD be re-audited within the next three years to ascertain compliance.

Submitted by:
Rebecca Nesheim
Tax Auditor

Affidavit

Burns & Wilcox LTD
As of December 31, 2022
TA 23-02

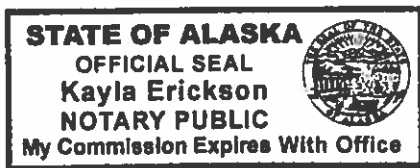
Juneau, Alaska)
November 13, 2023)
State of Alaska) ss.
First Judicial District)

I, being duly sworn, do verify that the report of premium tax audit as of December 31, 2022 of Burns & Wilcox LTD is true to the best of my knowledge and belief.

Rebecca Nesheim

Rebecca Nesheim
Tax Auditor

SUBSCRIBED and SWORN to before me this 15 day of November, 2023



[Handwritten Signature]

Notary Public in and for Alaska

My Commission Expires with office