

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Order # TA 18-05)
In the Matter of Audit of)
Marsh USA Inc.)
_____)

FINDINGS OF FACT

1. An audit report of Marsh USA Inc., licensed in the State of Alaska, has been issued by the State of Alaska, Division of Insurance to Marsh USA Inc.
2. The audit report of Marsh USA Inc. (TA 18-05) has been transmitted to Sarah Ribbens, Compliance Officer, Marsh USA Inc. (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 Marsh USA Inc. (TA 18-05) 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 April 12, 2019.

Dated this 12th day of April, 2019 at Juneau, Alaska.



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

PREMIUM TAX AUDIT OF

**Marsh USA Inc.
New York, NY
Alaska License #7782**

TA 18-05

As of December 31, 2017

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



**FINAL REPORT:
April 12, 2019**

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April 12, 2019

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Lori K Wing-Heier
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Pursuant to Alaska Statute (AS) 21.06.120, the Alaska Division of Insurance performed a limited and targeted premium tax audit of Marsh USA Inc. The audit was conducted by Rebecca Nesheim, tax auditor for the Alaska Division of Insurance.

Marsh USA Inc.

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 third premium tax audit of Marsh USA Inc. conducted by the Alaska Division of Insurance (the division).

Subject Matters Audited

Marsh USA Inc. (the broker) is an Alaska licensed surplus lines broker based in New York, NY. 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, 2016 and December 31, 2017.

METHODOLOGY

The division sent the call letter and initial data requests to the broker's office in New York, NY. 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 157, from which a sample of 50 files was selected for audit.

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 a statement of exempt premiums was filed when appropriate.
 - (5) Verified the policy was included in the quarterly filing based upon the effective date of the policy.
 - (6) Verified the insured name, insurance company, policy type codes, producer names and license numbers were accurate on the forms filed.
 - (7) 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.
- 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 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.
- 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

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 two policies in the audit files. One did not include a company policy fee of \$20,000 and one did not include the full policy premium but the installment payment for the given year on a three year policy term. The quarterly reports will need to be amended to correct premium with additional tax and fees paid as necessary.

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 & 2 failed, error rate 4%)

Recommendations: It is recommended the broker create Alaska specific written procedures to ensure all fees are identified as taxable or nontaxable. Reviewing Bulletin 04-14 will help identify the different fees. In the written procedures, it is recommended the broker include the requirement of reporting the full gross premium in the quarterly reports on policies where an insured will be paying on an installment basis. The first premium payment should include the full amount of tax and filing fees for the full gross premium written.

The broker response: Marsh will amend the quarterly reports to include the untaxed \$20,000 policy fee and the three-year premium. We confirmed that the tax rules in our placement system are set to calculate surplus lines tax against Insurer Fees. We reviewed Bulletin B04-14 and amended and redistributed our written business procedures to specify which policy fees are taxable and confirmed that our Centralized Services team includes a process step to review the client invoice and evidence of insurance to check that policy fees are included in tax computations where required.

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 38 Report of Surplus Lines Transaction forms and Quarterly Reports filed with the division based upon the insured's files:

- Insured address incorrect – 3
- Location of risk – other states that were part of the risk were not identified – 17
- No description of subject – 20

- Company name incorrect – 2
- Lloyds syndicate information missing – 3
- Endorsement not filed – 1
- Filed on amended report – 5

Total accuracy errors: 51 within 38 distinct files

Results: Failed (12 files passed & 38 failed, error rate 76%)

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

The broker response: In response to this audit finding, Marsh created Alaska-specific written procedures on how to fill out the transaction report and reviewed them with the auditor. The procedures include instructions regarding what data is entered into each field. We prepared a chart of the various Location of Risk scenarios we encounter in our single- and multi-state transactions and reviewed it with the auditor. This chart has been added to our Surplus Lines Team’s written procedures.

Our Centralized Services team also increased oversight and Quality Control review of Alaska reports to strengthen accuracy and completeness. A Team Lead has been assigned responsibility for reporting Alaska transactions and processing payment of the tax and fee collected from the client. Our processes now call for a Supervisor to review the OPTins filing sheet monthly and for a Quality Assurance team member to review the OPTins filing sheet on the last work day of each month and report findings to the Surplus Lines Team Manager. The quarterly reports and tax return will be reviewed and signed by the Designated Responsible Producer.

**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**

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%)

**5. Verify tax and filing fees payments were made accurately
AS 21.34.180, 3 AAC 21.550 - .570**

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 affects the accuracy of the tax and fee payments. This flow-through finding is addressed in its own audit test.

Results: Passed (error rate 0%)

6. Verify the home state for insured is Alaska

AS 21.34.180

Comments: The broker writes some many multi-state policies. The home state of the insured was evaluated for all policies and the home state was correctly identified as Alaska.

Results: Passed (error rate 0%)

7. Review diligent search effort made to place insured with an admitted insurer

AS 21.34.020, 3 AAC 25.010 and .035

Comments: The broker has elected to use the Affidavit of Due Diligence for documenting the diligent search by the producers. Seven Affidavits had issues:

- Declinations used by the broker (also producer in transaction) were from companies who did not write the specific coverage the insured needed – 1
- No documentation in file – 5
- One admitted company was contacted after binding and the Affidavit was signed prior to the contact – 1

Results: Failed (43 files passed & 7 failed, error rate 14%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed to ensure the diligent search is completed prior to binding, the declinations are from admitted companies writing the coverage the insured requires, and documentation is maintained in the insured files.

The broker response: Marsh updated its Alaska training deck and distributed to relevant colleagues a supplement that includes an explanation of what constitutes a diligent search and the proper timing for completion. These documents were reviewed with the auditor. We used these documents to explain the process to the colleagues who worked on files that contained errors as well as their managers, operations leaders and their Division Compliance Officers. Our Alaska business process expert has added steps into her workflow to contact the client team during pre-renewal strategy planning and to check that the Affidavit of Due Diligence is properly and timely completed. Questions about the diligent effort will be raised to the Compliance Officer for immediate remediation.

8. Review prompt delivery of evidence of insurance

AS 21.34.100(a) and 3 AAC 25.060

Comments: Three files have documentation showing the first evidence of insurance was provided to the insured after the prompt delivery of 30 days of binding.

Results: Passed (47 files passed & 3 failed, error rate 6%)

Recommendations: It is recommended the broker modify their Alaska specific written procedures to include the 30 days from binding prompt delivery requirement for the first evidence of

insurance. If a binder will not be provided to the insured then the policy must be provided within the 30 days.

The broker response: Marsh's standard business process requires the broker to send the evidence of insurance to the insured before the coverage effective date, or in the event of late binding instructions from the client within 2 days of receiving the client's instructions to bind. We reminded the colleagues who worked on files containing the errors about Marsh's business process to send the client the evidence of insurance prior to the effective date. We reviewed the errors with the colleagues' managers, operations leaders and Division Compliance Officers. If our Alaska business process expert cannot confirm that the evidence of insurance was sent to the client prior to the effective date, the issue is to be escalated to the Compliance Officer for prompt remediation.

9. Review required material facts located on evidence of insurance

AS 21.34.100(a)

Comments: Ten 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 # – 4
- Binder missing broker name – 1
- Binder missing insured address – 4
- Binder missing premium tax amount – 2
- Binder missing location of subject – 1
- Binder missing general description of the coverages – 1
- Policy missing broker license # – 1
- Policy missing location of subject – 1

Total errors: 15 within 10 distinct files

Results: Failed (40 files passed & 10 failed, error rate 20%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed to include all material facts regarding the coverage, insured, insurer, and broker are on evidence of insurance.

The broker response: Marsh updated its Alaska training deck and distributed a supplement that reminds colleagues about the material facts that should appear on all binders as well as the Alaska-specific material facts. These documents were reviewed with the auditor. We also reviewed these documents with the colleagues who worked on files containing the errors, their managers, operations leaders and their Division Compliance Officers. Our Alaska business process expert has added a step to her workflow to review each binder to check that all material facts are present. Missing facts are to be brought to the client team's attention for prompt correction and any delays in responding to requests are to be escalated to the Compliance Officer for prompt remediation.

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

AS 21.34.100(e)

Comments: The broker uses a post-binding notice that includes the disclosure language and is attached on top of each evidence of insurance identifying the insured. Eight 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:

- No disclosure on binder – 5
- No disclosure on dec - 3
- No disclosure on endorsement – 2

Total disclosure errors: 10 within 8 distinct files

One post binding notice referenced an incorrect policy number as identified on the binder & dec but it's the only document attached to the binder and policy so will accept for this audit but more care needs to be taken with policy numbers.

Results: Failed (42 files passed & 8 failed, error rate 16%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed requiring all evidence of insurance have the required disclosure statement by using the post-binding notice.

The broker response: Marsh updated its Alaska training deck and distributed a supplement that reminds colleagues about proper use of our Post-Binding Notice. These were reviewed with the auditor. We also reviewed these documents with the colleagues who worked on files containing the errors, their managers, operations leaders and their Division Compliance Officers. Our business process expert will review each Notice to check that the policy number is correct. Missing or incorrect information will be promptly corrected. Delays in responding to requests are to be escalated to the Compliance Officer for prompt remediation. In addition, our business process expert will remind colleagues with in-force Alaska Home State surplus lines policies at regular intervals to add the Post-Binding Notice to all premium- and non-premium bearing endorsements that are subsequently issued and sent to the client.

11. Review notification for use of non-admitted insurer

AS 21.34.110

Comments: The broker uses a pre-binding notice that is attached to their proposals identifying the insured with the 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. However, nine files had problems with the notice:

- No notice in file – 7
- Notice provided at the same time as the policy instead of prior to binding – 1
- One notification, not a pre-binding notice, did not provide a clear indication which companies in the proposal were surplus lines versus admitted companies – 1

Results: Failed (41 files passed & 9 failed, error rate 18%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed to include the pre-binding notice with the proposal and to identify which companies are surplus lines.

The broker response: Marsh understands the importance of notifying the insured of the use of a non-admitted insurer prior to binding coverage. We updated our Alaska training deck and distributed a supplement that reminds colleagues about proper timing and use of our Pre-Binding Notice. These were reviewed with the auditor. We also reviewed these documents with the colleagues who worked on files containing the errors, their managers, operations leaders and their Division Compliance Officers. Our business process expert will review each Notice to confirm that it clearly identified the surplus lines insurer(s) and that it is provided timely.

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: Five policies did not include the Alaska Policyholder Notice of premium increase and nonrenewal or the notice was not in the required format.

Results: Failed (45 files passed & 5 failed, error rate 10%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed to ensure policies contain the Alaska Policyholder Notice or is provided with the policy. Bulletin 08-06 should be reviewed for the exact wording.

The broker response: Marsh reviewed Bulletin 08-06 to re-confirm our understanding of the correct wording. Our business process expert will take steps to confirm that the proper Policyholder Notice wording is included on all Alaska Home State policies and that the client team follows up with the underwriter for a policy with the correct wording. Delays in response from either the client team or the underwriter are to be escalated to the Compliance Officer for prompt remediation.

Additional broker response: Since the 2018 audit, Marsh has taken additional actions to strengthen compliance with Alaska's laws:

- Identified all clients with Alaska Home State surplus lines placements, including tax-exempt clients
- Added an additional quality assurance layer of review for relevant transactions and associated reports

- Instituted an escalation process to the Compliance Officer for issues requiring attention and prompt remediation
- Updated our training deck, distributed a supplement and re-trained colleagues with Alaska Home State placements
- Reminded the Managers, Operations leaders, and Division Compliance Officers about the importance of following Alaska surplus lines laws

SUMMARY AND SUBSEQUENT EVENTS

Summary

This was a premium tax audit of Marsh USA Inc. 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 consistently not accurate when filed.
- 2) The diligent search in the admitted market was not documented adequately
- 3) Material facts were missing from evidence of insurance in several of the files.
- 4) Several post-binding notices with the disclosure language were missing from the evidence of insurance.
- 5) Several pre-binding notices with the notification requirements were missing in the files.
- 6) The Alaska Policyholder Notice was missing in several files.

The auditor review the broker's revised procedures and they should help the broker in ensuring Alaska laws are correctly applied to surplus lines policies.

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 Marsh USA Inc. be re-audited within the next three years to ascertain compliance.

Submitted by:
Rebecca Nesheim, Tax Auditor

Affidavit

Marsh USA Inc.
As of December 31, 2017
TA 18-05

Juneau, Alaska)
April 12, 2019)
)
State of Alaska) ss.
First Judicial District)

I, being duly sworn, do verify that the report of premium tax audit as of December 31, 2017 of Marsh USA Inc. is true to the best of my knowledge and belief.



Rebecca Nesheim
Tax Auditor

SUBSCRIBED and SWORN to before me this 12th day of April, 2019





Notary Public in and for Alaska
My Commission Expires w/office