

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 19-02)
In the Matter of Audit of)
Marsh & McLennan Agency LLC)
_____)

FINDINGS OF FACT

1. An audit report of Marsh & McLennan Agency LLC, licensed in the State of Alaska, has been issued by the State of Alaska, Division of Insurance to Marsh & McLennan Agency LLC.
2. The audit report of Marsh & McLennan Agency LLC (TA 19-02) has been transmitted to Jamie Esquivel, Compliance Officer, Marsh & McLennan Agency LLC (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 & McLennan Agency LLC (TA 19-02) 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 July 17th, 2019.

Dated this 17th day of July, 2019 at Anchorage, Alaska.



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

PREMIUM TAX AUDIT OF

Marsh & McLennan Agency LLC

Anchorage, AK

Alaska License # 82353

TA 19-02

As of December 31, 2018

Issued by

DIVISION OF INSURANCE

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC

DEVELOPMENT

STATE OF ALASKA



FINAL REPORT:
July 17 2019

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July 17, 2019

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Lori K Wing-Heier
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Department of Commerce, Community and Economic Development
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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 & McLennan Agency LLC. The audit was conducted by Rebecca Nesheim, tax auditor for the Alaska Division of Insurance.

Marsh & McLennan Agency LLC

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 & McLennan Agency LLC conducted by the Alaska Division of Insurance (the division).

Subject Matters Audited

Marsh & McLennan Agency LLC (the broker) is an Alaska licensed surplus lines broker based in Anchorage, AK. 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 non-admitted business for policy effective dates occurring between January 1, 2017 and December 31, 2018.

METHODOLOGY

The division sent the call letter and initial data requests to the broker's office in Anchorage, AK. 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 208, from which a sample of 50 files was selected for audit. During the audit, two policies were replaced with two other policies due to one being a duplicate and one where Marsh & McLennan Agency LLC was not the surplus lines broker in the transaction.

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 one policy in the audit files. Premium did not include a company policy fee of \$150. The policy has not yet expired so the broker will need to bill the insured for the additional tax and fees and amend the quarterly report to correct the premium.

This error affects two additional audit tests:

1. Accuracy of the 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 Alaska specific written procedures are followed regarding which fees are identified as taxable or nontaxable.

The broker's response: Premium did not include a company policy fee of \$150. There were several fees on the policy and the \$150 kept by the carrier was missed in the premium calculation. As the policy has not yet expired, we have notified the insured, created a billing for the applicable taxes and fees. In addition, we have notified the Central Services Group that the quarterly report will need to be amended, and a revised Report of Surplus Lines Transaction form has been completed.

The Division response: An amended report was received and the additional taxes and fees were paid.

- | | |
|--|---|
| 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 – 5
- Policy # incorrect – 1
- Insured address incomplete – 3
- Location of risk – other states that were part of the risk were not identified – 3
- Insurance company incorrect – 2

- Missing description of subject – 1
- Lloyd’s syndicates missing or incorrect – 2

Total accuracy errors: 17 within 14 distinct files

One endorsement was filed using a date other than the invoice date but both dates were within the same quarter. There is no effect on the quarterly report or the taxes and fees so will not be considered an error for this audit but this will need to be fixed for future reports so as not to cause a filing made to the wrong quarter report.

Results: Failed (36 files passed & 14 failed, error rate 28%)

Recommendations: It is recommended the broker amend their Alaska specific written procedures to include additional instructions on how to fill out the transaction report and ensuring the errors found in this audit are included. 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: We have immediately communicated these results to all colleagues, with additional review by the teams that had accuracy errors. In addition, we will implement changes to our written procedures and training process.

- In coordination and in agreement with Centralized Services, MMA will implement a new procedure of attaching a dec page from a quote, binder or policy with the RSLT form when submitting it to Centralized Services. Name, address and policy number will be reviewed before the Quarterly Report is completed
- Written procedures and training will be amended to include detailed instruction on how to complete the RSLT and what data is to be entered in each field. Specific instruction will focus on the correct completion of the “location of risk” section. In some instances this line item was being completed to verify Home State. For risks with exposure in numerous states, a location schedule will be included with the RSLT
- Lloyd’s syndicate lists are to be submitted with the RSLT and dec page
- Written procedures will be amended to require that documents prepared for Centralized Services be reviewed by a second colleague for accuracy prior to being submitted

MMA Alaska will work towards updating of the written procedures that identify the requirement to state the correct entity name on transaction reports, identify the location of risk on the transaction reports and to provide colleagues with training in regards to the documentation that should be submitted with the RSLT form.

**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%)

The broker's response: MMA Alaska was pleased to see that procedures put in to place following the previous audit have resulted in all payments being made on or before the required quarterly due date.

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 error 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 respective audit test.

Results: Passed (error rate 0%)

6. Verify the home state for insured is Alaska

AS 21.34.180

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

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 or using an exempt commercial purchaser's agreement form where appropriate. All diligent search was documented within the required time frame and maintained for each policy file.

Results: Passed (error rate 0%)

The broker's response: Audit results indicate that all diligent search was documented correctly within the required time frame and maintained for each policy file. We are pleased with the improvement over the previous audit to achieve an error rate of 0.

8. Review prompt delivery of evidence of insurance

AS 21.34.100(a) & (c) and 3 AAC 25.060

Comments: Three files have documentation showing the initial evidence of insurance was not provided to the insured within 30 days of binding. One additional file showed a change to the insurance company after binding and this change was not provided to the insured within 30 days from receipt.

Results: Passed (46 files passed & 4 failed, error rate 8%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed regarding the 30 days from binding requirement. In addition, it is recommended to amend the procedures to include the prompt delivery requirement if there is a change to the insurer or other material changes to the policy.

The broker's response: This test “passed”, although 4 out of 50 files did not. In an effort to ensure outstanding service to our clients as well as to be as compliant as possible, we have discussed the delivery requirements with each business unit. We will readdress this area with the updated written procedures.

9. Review required material facts located on evidence of insurance

AS 21.34.100(a)

Comments: Thirteen files included a lack of required material facts on binders. 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 on their binders:

- Missing broker license # - 11
- Missing insured address – 3
- Missing premium tax amount - 2
- Missing broker name – 2
- Missing location of subject – 1
- Missing description of coverages – 1

Total errors: 20 within 13 distinct files

Results: Failed (37 files passed & 13 failed, error rate 26%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed for evidence of insurance to have the required material facts.

The broker's response: The audit notes that this test did not pass. Several instances were documented, most notably that the electronic broker stamp was missing the broker number. A new version of the broker stamp has been provided and each business unit / colleague has been instructed to make the correction. In addition, a reminder has been sent instructing all colleagues that certain material facts must be included on binders when received from the carrier. If these are not shown, corrections must be requested.

MMA Alaska will update the written procedures to provide additional instruction on the items that are required to be included as material facts on binders.

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

AS 21.34.100(e)

Comments: Eighteen files included 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 – 2
- No disclosure on dec - 9
- No disclosure on endorsement – 9
- No disclosure on certificate of insurance – 3

Total disclosure errors: 23 within 18 distinct files

Results: Failed (32 files passed & 17 failed, error rate 34%)

Recommendations: It is recommended the broker ensure their Alaska specific written procedures are followed that all evidence of insurance, including non-premium bearing endorsements, have the required disclosure statement.

The broker's response: Several files were noted as not having the required disclosure statement on the evidence of insurance. This included review of binders, policy declarations pages, endorsements (both premium bearing and non-monetary) and certificates of insurance.

MMA Alaska has recently implemented new procedures for policy checking and transmittal. Policies and other binding documents will be reviewed by two team members prior to being transmitted to the insured. In addition, the office is investing a significant amount of capital in new technology platform that will be rolled out later this year. This new operating system will provide enhanced controls while offering automation to certain processes. New procedures and training will be implemented in the next few months in terms of document review, retention and transmittal. We believe that this will provide another level of quality control in this area.

11. Review notification for use of non-admitted insurer

AS 21.34.110

Comments: The broker provides the notification that 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 in all their proposals to the insured.

Results: Passed (error rate 0%)

The broker's response: MMA Alaska notes that this test passed with no errors. The additional information provided by the auditor in terms of two corrections that should be made to ensure complete accuracy is appreciated and these changes have been implemented across all business groups.

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: Seven policies did not include the Alaska Policyholder Notice of premium increase and nonrenewal.

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

Recommendations: It is recommended the broker modify their written procedures to include a step to ensure policies contain the Alaska Policyholder Notice or is provided with the policy.

The broker's response: Seven policies did not include the Alaska Policyholder Notice of premium increase and nonrenewal. We will highlight the instruction regarding the Alaska Policyholder Notice in the updated written guidelines. Information on the Alaska Policyholder Notice has been communicated to all colleagues with a reminder that if it is not part of the policy as issued by the carrier, a separate notice may be sent with the policy when transmitted. Regardless of delivery method, the Notice must accompany the policy.

Additional broker response: In addition to the recommendations acknowledged in each specific area above, it is our intent to provide our colleagues with the tools needed to properly assist clients in the placement of coverage in the Surplus Lines marketplace. Including but not limited to:

- Update of the written procedures handbook that addresses each requirement
- Distribution and overview of the updated handbook to all colleagues
- Development of new two person review of the Report of Surplus Lines Transaction Form
- Training and education for new colleagues – including licensing requirements
- On-going support, education and training for all colleagues involved in surplus lines placement
- Work with the auditor in regards to development and implementation of new and revised procedures

SUMMARY AND SUBSEQUENT EVENTS

Summary

This was a premium tax audit of Marsh & McLennan Agency LLC. 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 reviewed 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 not accurate when filed.
- 2) The material facts were sometimes not on the evidence of insurance.
- 3) The disclosure language was missing from quite a few evidence of insurance.
- 4) The Alaska Policyholder Notice was missing from several policies.

The auditor has reviewed the revised procedures and has determined if they are followed by staff working in surplus lines, the issues identified in the audit should no longer be issues.

Re-Audit

In closing, the auditor's recommended actions and the revised procedures should help the broker correct the problems encountered. It is recommended that Marsh & McLennan Agency LLC be re-audited within the next three years to ascertain compliance.

Submitted by:
Rebecca Nesheim
Tax Auditor

Affidavit

Marsh & McLennan Agency LLC
As of December 31, 2018
TA 19-02

Juneau, Alaska)
July 17, 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, 2018 of Marsh & McLennan Agency LLC is true to the best of my knowledge and belief.

Rebecca Nesheim
Rebecca Nesheim
Tax Auditor

SUBSCRIBED and SWORN to before me this 17th day of July, 2019



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