

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 14-03)
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 14-03) has been transmitted to Richard May, 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

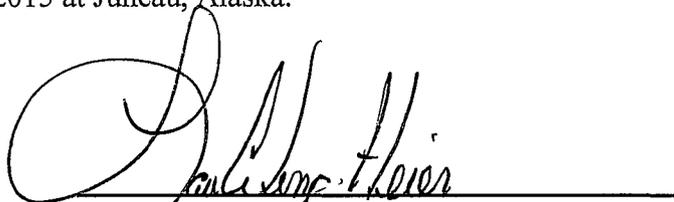
IT IS ORDERED

1. Pursuant to AS 21.06.150(b)(1), the audit report of Marsh USA Inc. (TA 14-03) 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 March 10th, 2015.

Dated this 10th day of March, 2015 at Juneau, Alaska.

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

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

PREMIUM TAX AUDIT OF

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

TA 14-03

As of June 30, 2014

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



**FINAL REPORT:
March 10, 2015**

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THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

**Department of Commerce, Community,
and Economic Development**

DIVISION OF INSURANCE

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March 10, 2015

Lori K Wing-Heier, CIC, CRM
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) 21.06.130, the Alaska Division of Insurance performed a limited and targeted premium tax audit of Marsh USA Inc (the broker) on November 17, 2014 through November 21, 2014, in the broker's Seattle, WA office. 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 and the premium tax regulations 3 AAC 21.550 – 570. This is the second premium tax audit of Marsh USA Inc. conducted by the Alaska Division of Insurance. The first audit was completed September 27, 2011.

Subject Matters Audited

Marsh USA Inc. is an Alaska licensed surplus lines broker headquartered in New York, NY with offices all over the country. 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 and notifications to the insured.

Time Frame

The audit covered this broker's surplus lines business for the period July 1, 2012 through June 30, 2014.

METHODOLOGY

The tax auditor sent the call letter and initial data requests to the broker's New York, NY office. 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 99, 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 locations of risk were identified on the reports
- 4) If the placement is a multi-state placement, 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
- 5) 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
- 6) 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.
- 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 the declinations completed. If 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 evidence of insurance receipt/creation and forwarding 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
- 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 stamp 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 that quarterly reports and accompanying forms were filed on time
<b style="text-align: right;">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
<b style="text-align: right;">AS 21.34.180 |
|--|

Comments: The premium was calculated correctly for all policies.

Results: Passed (error rate 0%)

- | |
|--|
| 3. Verify the accuracy of all quarterly reports filed
<b style="text-align: right;">AS 21.34.080 and .170, 3 AAC 25.090 and .100 |
|--|

Comments: During the two audit years, 11 amended quarterly reports were filed with 63 additional transactions not previously filed. Every late transaction was penalized when filed. When an invoice is created, the broker knows whether a transaction will need to be filed; however, current procedures are to wait until additional paperwork is received before filing the transactions. This often results in the late filing of transactions subjecting them to penalties.

Of the 50 audit policy files, 14 transactions were not filed in the original quarterly report but in one of the amended reports. Three transactions for one entity should have been identified as exempt from taxes and fees on the quarterly report. These two errors affect the accuracy of the premium tax and filing fee payments. In addition, there were two transactions with incorrect policy numbers reported, the original transaction and the endorsement.

Total errors: 19 within 17 distinct files

After July 21, 2011, there was some confusion with multi-state risk transactions if the location of risk was still required to be reported when the insured's home state was Alaska with 100% of the premium reported to Alaska. Locations of risk are still required to be reported per statute AS 21.34.080(a)(3). For many of the multi-state policies, the other states were not identified on the report as filed to the Division. This will not be a finding in this audit but all future reports need to have locations of risk accurately identified.

Results: Failed (33 files passed & 17 failed, error rate 34%)

Recommendations: It is recommended that the broker revise written procedures for when initial or renewal policies are to be reported to the Alaska Division of Insurance. Statute and regulation dates should be included in these procedures. As the invoice includes all information needed to file a transaction, it is recommended to not wait for backup documentation before filing the transaction in the correct quarterly report in order to have no penalties assessed. Make

corrections to a transaction if it turns out to be incorrect based upon the backup documentation received at a later date.

Marsh USA Inc. Response: Marsh has revised its written procedures to complete surplus lines filings with the information available from the invoice and related systems. Additionally, when the placement has multistate exposures, the risk section of each transaction report will include the other states in which risk is located.

4. Verify the home state for insured is Alaska on multi-state placements

AS 21.34.180

Comments: The broker writes many multi-state policies. The home state was correctly identified as Alaska and thus 100% of the premium was filed in Alaska for all of the audit policies. The failure of identifying all states in a transaction was discussed in prior procedure.

Results: Passed (error rate 0%)

5. Verify if tax and filing fee payments were made on time and by ACH

AS 21.34.180, 3 AAC 21.550 - .570

Comments: During the two year audit period, there were 16 payments due as a result of the original and amended reports filed. Eight of the payments were made late. Penalties were assessed at the time the payments were received. All payments were made by ACH. Payments made late:

- 1st Qtr 2013 amendment: due 6/2/14, received 6/3/14
- 2nd Qtr 2013 original: due 9/3/13, received 9/5/13
- 2nd Qtr 2013 3rd amendment: due 3/3/14, received 3/10/14
- 2nd Qtr 2013 4th amendment: due 6/2/14, received 6/3/14
- 3rd Qtr 2013 amendment: due 6/2/14, received 6/3/14
- 4th Qtr 2013 original: due 3/3/14, received 3/10/14
- 4th Qtr 2013 amendment: due 6/2/14, received 6/3/14
- 1st Qtr 2014 original: due 6/2/14, received 6/3/14

Results: Failed (8 payments passed & 8 failed, error rate 50%)

Recommendations: It is recommended the broker modify their written procedures to show the correct due dates. In addition, the broker needs to identify where the breakdown is occurring for why the payments are being made late and modify procedures in order for payments to be made on time.

Marsh USA Inc. Response: Marsh has analyzed the reasons for these late payments. The majority of these late payments were related to one-time changes in a Finance system and a Treasury process and are non-recurring issues. Marsh has also amended its internal processes to correct the other issues that caused the late payments. Nevertheless, Marsh continues to monitor its surplus lines processes in order to eliminate potential issues that could cause filings and/or payments to be late.

6. 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 with the accuracy of the quarterly reports affect the accuracy of the tax and fee payments. This flow-through finding is addressed in the originating audit test.

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 unless there is an insured exempt commercial purchaser then the broker has a separate document the insured signs. Ten files have problems with the diligent search documentation:

- Affidavit signed after binding; coverage on placement list - 5
- Declinations done prior to binding, affidavit signed after binding - 1
- Phone call declinations not properly documented per regulation and affidavit signed after binding – 1
- One declination received after binding, affidavit signed after binding, but marked as coverage on placement list – 1
- Exempt commercial purchaser form signed after binding – 2

As noted in prior audit, those on the placement list signed after binding are considered findings in this audit.

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

Recommendations: It is recommended that the broker modify their written procedures to ensure all Affidavits of Due Diligence and exempt commercial purchaser documentation are received or created prior to binding including those with risks located on the placement list as required by Alaska law. Regulations changed effective 9/4/2014 that the documentation can be provided to the surplus lines broker up to 15 days after binding; however, the actual declinations and determination of the placement list risks must be done prior to binding. As the broker is also the producer, they need to create the documentation prior to binding. Another change in regulation is to correctly identify the kind of insurance to determine whether insurance coverage is available in the admitted market to cover the kind of insurance.

Marsh USA Inc. Response: Marsh has updated its written procedures to address this finding. Marsh will also train colleagues involved in Alaska placements to reinforce these requirements. Marsh's procedures include instructions to correctly identify the kind of insurance to determine whether coverage for that kind of insurance is available in the admitted market.

8. Review prompt delivery of evidence of insurance

AS 21.34.100(a) and 3 AAC 25.060

Comments: All files have documentation showing the evidence of insurance was provided to the insured within the 30 days of bind date or effective date, whichever comes first.

Results: Passed (error rate 0%)

9. Review required elements located on evidence of insurance

AS 21.34.100(a)

Comments: All 50 files contained a lack of required material facts on most binders and policies. The cover note, binder, or other evidence of insurance for the named insured shall be executed by the surplus lines broker and must contain a summary of all material facts that would regularly be included in the policy, the description and location of the subject of insurance, a general description of the coverages of the insurance, the premium and rate charged 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 the entire risk assumed by each, the name of the surplus lines broker, and the license number of the surplus lines broker.

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

- Policy missing tax amount - 48
- Policy missing broker license # - 44
- Binder missing tax amount - 47
- Binder missing broker license # - 39

Total errors: 178 within 50 distinct files

Results: Failed (error rate 100%)

Recommendations: It is recommended the broker revise their written procedures to include material facts regarding the coverage, insured, insurer, and broker that must be on the evidence of insurance.

Marsh USA Inc. Response: Marsh has revised its written procedures and other documentation to enable the material facts regarding tax amounts and broker license numbers to appear on the evidence of insurance. Marsh will also train colleagues involved in Alaska placements to reinforce these requirements.

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

AS 21.34.100(e)

Comments: Forty-nine files demonstrated a problem with the required disclosure stamp and broker name on the evidence of insurance. The broker's current procedure is to provide a post binding notification to the insured as the required disclosure; however, it is actually the notification as required by Alaska statute 21.34.110 and thus, the required statement per AS

21.34.100(e) was not provided to the insured by the broker. In the few instances where the correct disclosure stamp was located on the evidence of insurance, it was included by the insurance company. Since the insured's copy is unavailable, auditor relied upon the broker copy. Here are the different problems found in the files:

1. Dec missing disclosure stamp – 34
2. Dec wrong wording in disclosure stamp – 1
3. Dec missing broker name – 15
4. Binder missing disclosure stamp– 46
5. Binder missing broker name – 1
6. Endorsement (premium bearing) missing disclosure stamp – 6
7. Endorsement (premium bearing) missing broker name – 5
8. Endorsement (non-premium bearing) – none were provided during the audit so unsure how many are applicable to the audit policies; however, based upon discussions with broker none of these endorsements would have included the disclosure stamp.

Total errors: 108 within 49 distinct files (not including non-premium bearing endorsements)

Results: Failed (1 file passed & 49 failed, error rate 98%)

Recommendations: It is recommended that the broker modify their post binding notice that is provided to the insured with the accurate disclosure wording. It is further recommended to revise the written procedures to include the stamp requirement on all premium bearing and non-premium bearing endorsements as they are also evidence of insurance. One last recommendation is to ensure the broker's name is included on all evidence of insurance, which is required in two sections of the statute. If a separate notice with the disclosure statement and other material items will be used, it must be identified as part of the evidence of insurance for the specific insured and be attached. A loose document will not meet the intent of statute.

Marsh USA Inc. Response: Marsh has revised its written procedures so that the Post-Binding Notice includes accurate disclosure wording, is attached to each premium-bearing and non-premium-bearing endorsement, includes the broker's name and license number, and is identified as part of, and attached to, the evidence of insurance for the specific insured. Marsh will also train colleagues involved in Alaska placements to reinforce these requirements.

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

Comments: The broker generally includes the notification that the insurance is being placed with a company that is not regulated by the Alaska Division of Insurance as a post-binding notice and therefore often not in a timely manner that would meet statute requirements. Statute does not require it be done prior to binding but it does require it before the insured is subject to premium or the contract is binding upon the insured. There were 23 files with problems regarding the notification to the insured:

1. Notice created before effective date but no evidence of when sent to insured – 12
2. Notice created after effective date and no evidence of when sent to insured – 11

Results: Failed (27 files passed & 23 failed, error rate 46%)

Recommendations: It is recommended that the broker revise their written procedures to include the Alaska notification language in the proposal or quote provided to the insured describing the surplus lines insurance company as required by statute. The insurance company to which this notification applies must be identified.

Marsh USA Inc. Response: Marsh has revised its written procedures to include the Alaska notification language in the quotes/proposal sent to the insured. Marsh will also train colleagues involved in Alaska placements to reinforce these requirements.

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: Twenty-one files did not have the required Alaska Policyholder Notice of nonrenewal and premium increase as part of the policy.

Results: Failed (29 files passed & 21 failed, error rate 42%)

Recommendations: It is recommended that the broker revise their written procedures to include a step in the processing of the policy to ensure the notice is included from the insurance company. If the notice is missing, the broker should contact the insurance company to include the notice. A step on a checklist is one way to ensure this document is identified and reviewed. Regulations changed effective 9/4/2014 identifying the broker as responsible for ensuring this notice is part of each policy. The regulations also deleted the requirement for the notice to be part of a binder or cover note.

Marsh USA Inc. Response: Marsh has revised its written procedures to instruct colleagues to request the notice from the surplus lines insurer when coverage is bound and to check the policy to see if the notice is included in the policy when it is issued. Marsh will also train colleagues involved in Alaska placements to reinforce these requirements.

14. Other issues

Comments: In one file, the policy forms were all related to Texas. As this policy for the insured is an Alaska home state risk, forms related to Alaska should have been used.

Recommendation: It is recommended the broker confirm the forms used are accurate for the home state of the insured when reviewing a policy for accuracy. The broker should have contacted the company to replace the Texas forms with Alaska forms.

Marsh USA Inc. Response: Marsh understands that when Alaska is the home state, no other state notices should be included in the policy. Marsh will monitor Alaska placements to confirm that only the Alaska notices are included.

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 broker's staff was cooperative during the audit. The broker responded quickly to all requests for additional information. The tax auditor appreciated this attitude and enjoyed working with Marsh USA Inc.'s staff.

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

- 1) The quarterly reports are consistently not accurate when filed. Numerous transactions are filed late, subjecting the broker to penalties.
- 2) Half of the quarterly tax and fee payments were made late, subjecting the broker to large monetary penalties.
- 3) The diligent search efforts were not documented prior to binding in many of the files.
- 4) Material facts regarding the policies were not included on the majority of the evidence of insurance
- 5) The broker did not include the disclosure language on any evidence of insurance.
- 6) The required notification to the insured regarding the use of a nonadmitted insurer was not found in many files
- 7) The Alaska Policyholder Notice was missing from many files.

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

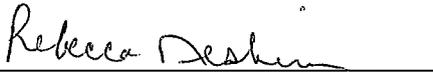
Submitted by:
Rebecca Nesheim
Tax Auditor

Affidavit

Marsh USA Inc.
As of June 30, 2014
TA 14-03

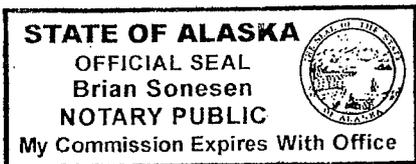
Juneau, Alaska)
March 10, 2015)
)
State of Alaska) ss.
First Judicial District)

I, being duly sworn, do verify that the report of premium tax audit as of June 30, 2014 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 11 day of March, 2015





Notary Public in and for Alaska
My Commission Expires office