

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 15-06 )  
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 15-06) 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

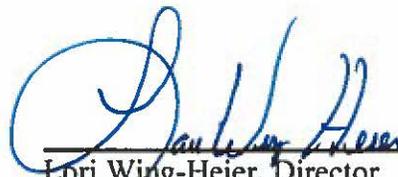
IT IS ORDERED

1. Pursuant to AS 21.06.150(b)(1), the audit report of Marsh & McLennan Agency LLC (TA 15-06) 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 20<sup>th</sup>, 2016.

Dated this 20<sup>th</sup> day of April, 2016 at Juneau, 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 15-06**

**As of September 30, 2015**

**Issued by**

**DIVISION OF INSURANCE**

**DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC**

**DEVELOPMENT**

**STATE OF ALASKA**



**FINAL REPORT:**

**April 20, 2016**

## TABLE OF CONTENTS

	PAGE
1) TABLE OF CONTENTS.....	2
2) SALUTATION.....	3
3) SCOPE OF AUDIT.....	3
4) METHODOLOGY .....	4
5) PREMIUM TAX AUDIT .....	6
6) SUMMARY AND SUBSEQUENT EVENTS.....	13
7) AFFIDAVIT .....	14



April 20, 2016

Lori K Wing-Heier, CIC, CRM  
Director, Division of Insurance  
Department of Commerce, Community and Economic Development  
550 West 7<sup>th</sup> 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 & McLennan Agency LLC on January 11, 2016 through January 15, 2016, in the broker's Anchorage, Alaska office. 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 and the premium tax regulations 3 AAC 21.550 – 570. This is the second 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, Alaska. 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 this broker's surplus lines business for the years October 1, 2013 through September 30, 2015.

## **METHODOLOGY**

The division sent the call letter and initial data requests to the broker's office in Anchorage, Alaska. 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 142, from which a sample of 50 files was selected for audit. While onsite for the audit, one selected file turned out to be one in which the broker was only the producer in the transaction and not the broker so it should not have been filed with the Alaska Division of Insurance as another broker filed it. This reduced the audit list to 49. Subsequent to the fieldwork, it was noted two of the insureds on the selected list were actually multiple insureds on the same policy and would be combined into one file instead of two as identified in the original list from the broker; thus, the audit list was further reduced to 48 files.

### *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, and policy type codes were accurate on the forms filed.
    - (7) Verified the locations of risk were identified on the reports
- 4) 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.
- 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
    - (2) For effective dates beginning 9/4/14, verified the documentation was received within 15 days of binding with the actual search completed prior to binding.
- 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
- 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) 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

- |   |
|---|
| <b>1. Verify that quarterly reports and accompanying forms were filed on time</b><br><b style="text-align: right;">AS 21.34.080 and .170, 3 AAC 25.090 and .100</b> |
|---|

*Comments:* The eight original quarterly reports with accompanying forms and the two unauthorized insurers tax forms were filed on time.

*Results:* Passed (error rate 0%)

- |  |
|--|
| <b>2. Verify the accuracy of the premium calculation</b><br><b style="text-align: right;">AS 21.34.180</b> |
|--|

*Comments:* The premium was calculated correctly for all policies in audit.

*Results:* Passed (error rate 0%)

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

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

- Two policies were filed on amended quarterly reports received after the due date
- Four policies identified the incorrect insured name
- One policy should not have been filed as they were acting as the producer in the transaction and not the surplus lines broker. Another broker filed the policy as well.

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 in the audit, the other states were not identified on the reports 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. This can include either listing each state involved or a complete spreadsheet of all separate address locations or something in between.

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

*Recommendations:* It is recommended that the broker create written procedures to correctly identify the insured's name as required by Alaska law as well as locations of risk when the policy has risk located in multiple states. It is also recommended that the broker include in the procedures the due dates for when the quarterly reports are due and to consider a cutoff date for when to provide documentation to central office so the reports can be filed with all transactions for a given quarter thus reducing penalties.

*The broker's response:* Thank you for the detailed information provided in regards to the files that did not pass. This has provided us with additional training areas that have already been communicated to all colleagues.

- **Two policies were filed on amended quarterly reports received after the due date.**  
Based on information provided during the audit, we confirmed that the transaction reports were completed on time here in Anchorage and then transmitted to our centralized Affidavit Filing Group (AFG) in Austin, Texas. The AFG unfortunately did not meet the timeframe requirements for submission to the Alaska Division of Insurance and this has been brought to their attention. The filing group has committed to working to ensure that all policies are filed in the proper reporting periods.
- **Four policies identified the incorrect insured name.**  
We have confirmed that in all four cases, the name on the transaction form matched information concerning the "Parent Company" name. Typically, policies, invoices, certificates of insurance, and correspondence are all done in the parent company name. The policies in question were all project specific / exposure policies that were done in the name of a parent company's subsidiary. Colleagues automatically processed the transaction forms to match the entity billed rather than the entity shown on the declarations page. None of the policies had an "incorrect" client shown on the transaction report, but they did not reference the subsidiary name on the transaction report. All MMA Anchorage colleagues have since been advised of this finding as well as the naming requirement. We will incorporate this in our new written procedures going forward.
- **One policy should not have been filed as they were acting as the producer in the transaction and not the surplus lines broker.**  
One Anchorage colleague did not fully understand the surplus lines placement procedures and re-stamped a policy document which covered an exposure that was exempt. The transaction report submitted showed nothing owing for taxes and fees. AFG would not have received information indicating to them that the placement was actually made through a wholesaler since both the invoicing and transaction fee reflected zero. Therefore, the placement was included in the quarterly filing in error. We have discussed this error with the colleague so that he/she fully understands the correct stamping and reporting procedures.

In addition to the findings in this section, we have communicated the requirement for identifying the locations of risk outside Alaska to our colleagues. We have provided a sample transaction form to colleagues and have educated them accordingly. MMA Alaska will work towards creation of 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 provide colleagues with cut off dates to provide the required documentation.

<b>4. Verify the home state for insured is Alaska</b>
---

<b>AS 21.34.180</b>
---------------------

*Comments:* Alaska was accurately determined to be the home state for all insureds on the audit policies.

*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:* Four payments were made late for which a late payment penalty was assessed prior to the audit. All payments were made by ACH.

Late were:

- 4<sup>th</sup> Quarter 2013: due 3/3/14, received 3/10/14
- Amended 4<sup>th</sup> Quarter 2013: due 6/2/14, received 6/4/14
- Annual Unauthorized Insurer's Tax Form for wet marine and transportation policies: due 3/3/14, received 3/10/14
- 1<sup>st</sup> Quarter 2014: due 6/2/14, received 6/4/14

*Results:* Failed (7 payments passed & 4 failed, error rate 36%)

*Recommendations:* It is recommended the broker create written procedures that include due dates for when the payments of premium tax and filing fees are due to the Alaska Division of Insurance.

*The broker's response:* Thank you for providing specific information on the payments that were considered late. This allowed us the opportunity to request information from the AFG in regards to the payments. We have confirmed that in all 4 instances, the transaction forms, invoicing and client payments were all submitted by Anchorage in a timely manner. Payment to the State was requested from finance prior to the due date as well. Unfortunately, there was a delay in treasury which resulted in late payment. We have confirmed that there are new procedures in place that allow the centralized Affidavit Filing Group (AFG) to request payment from finance 2 weeks prior to the payment being due to the State. MMA Alaska will include due dates for when the payment of premium tax and filing fees are due to the Alaska Division of Insurance in the new written guidelines.

**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.

*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. Two files have problems with that documentation by not having completed documentation of the admitted market search prior to binding. Since the broker is also the producer in the transaction, the requirement of documenting prior to binding continues even after the 9/4/14 regulation change allowing the documentation to be provided to the broker within 15

days of binding. In addition, the description of risk as listed on the placement list must be accurate by identifying the class of business, type of risk and line of coverage. The form should be signed when either the placement list is reviewed or declinations completed.

*Results:* Passed (46 files passed & 2 failed, error rate 4%)

*Recommendations:* It is recommended that the broker create written procedures to ensure all Affidavits of Due Diligence are created prior to binding including those with risks located on the placement list as required by Alaska law. If another form of documentation is maintained, there must be clear indications that the declinations were done before binding or an accurate description of how the risk is qualified on the placement list.

*The broker's response:* This test "passed", although 2 out of 48 files did not. In an effort to be as compliant as possible, we have discussed the Due Diligence process with each business unit. With reminders sent out that this needs to be conducted, documented, signed and saved electronically prior to binding – not just prior to inception date. We will include due diligence requirements in the new written guidelines.

**8. Review prompt delivery of evidence of insurance**

**AS 21.34.100(a) and 3 AAC 25.060**

*Comments:* Two files have documentation showing the evidence of insurance was not provided to the insured within the 30 days of bind date or effective date, whichever comes first

*Results:* Passed (46 files passed & 2 failed, error rate 4%)

*Recommendations:* It is recommended the broker create written procedures to include the requirements of prompt delivery of the policy or, if the policy is not available, a cover note, binder, or other evidence of insurance.

*The broker's response:* This test "passed", although 2 out of 48 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 include delivery requirements in the new written guidelines.

**9. Review required material facts located on evidence of insurance**

**AS 21.34.100(a)**

*Comments:* Four files did not include all required material facts on evidence of insurance.

- No tax on binder – 2
- Missing general description of coverages on binder – 2

*Results:* Passed (44 files passed & 4 failed, error rate 8%)

*Recommendations:* It is recommended the broker create written procedures to include what material facts regarding the coverage, insured, insurer, and broker must be on evidence of insurance. Review statute for details.

*The broker's response:* This test "passed", although 4 out of 48 files did not. We will include an outline of material facts that must be shown on every evidence of insurance in the new written guidelines.

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

**AS 21.34.100(e) and .100(f)**

*Comments:* Twenty files demonstrated a problem with the required disclosure stamp on the evidence of insurance. Since the insured's copy is unavailable, auditor relied upon the broker copy. Here are all the different problems found in the files:

- No stamp on dec - 2
- No stamp on binder – 10
- No stamp on endorsement – 4
- No stamp on certificates – 9
- Stamp illegible on dec – 1
- Stamp illegible on binder – 1
- Stamp illegible on endorsement - 1
- Broker name not on dec – 5
- Broker name not on binder – 3

Total disclosure errors: 35 within 20 distinct files

*Results:* Failed (28 files passed & 20 failed, error rate 42%)

*Recommendations:* It is recommended that the broker create written procedures that all evidence of insurance have the required disclosure stamp wording and is legible. The stamp should be located on the first page of the declaration so the insured will not miss it, when possible. It should not be stamped over other language thus making it illegible. It is also recommended to include in the procedures the requirement the broker's name must be included on all evidence of insurance.

*The broker's response:* Thank you for the time and attention given to this particular test. We also appreciate your flexibility in allowing us to assist in locating many of these items while you were here and then in follow up after the audit. Several of the items originally noted as "fail" were subsequently reversed. Following the audit, we met with each colleague and reviewed each file individually. We have developed electronic stamps and we recently provided new physical stamps to each group. As many of the files audited were from 2013 and 2014, it is possible that "old" versions of the stamp(s) were used in some cases. We believe that this issue has now been resolved. We will be conducting additional training as well as including the disclosure requirements in the new written guidelines.

**11. Review notification for use of non-admitted insurer**

**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 in their proposal and binding letter prior to invoicing. However, there is no consistency on the language presented to the

insured in the proposal and on some the direct tie from the nonadmitted insurer to the notification was missing. There were four files with problems regarding the notification to the insured:

- No Alaska notification in proposal or binding letter or no document at all in file – 1
- Not sufficient information provided to meet statute requirements – 3

*Results:* Passed (44 files passed & 4 failed, error rate 8%)

*Recommendations:* It is recommended that the broker create written procedures to include Alaska notification language in the proposal to the insured describing the surplus lines insurance company as required by statute. The information should include 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. There needs to be a better link between which companies the notification applies to in the proposal.

*The broker's response:* This test "passed" although 4 out of 48 files did not. We met with each business unit to review proposals and notification wording. All proposals have been updated with standard wording which includes reference to the correct statute. Proposals have been updated to reference "non-admitted / surplus lines" on each applicable placement so that there is a direct tie-in to the proposal wording. We will be conducting additional training as well as including the notification requirements in the new written guidelines.

**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:* On 9/4/14, Alaska law changed requiring the surplus lines broker ensure the Alaska Policyholder Notice of nonrenewal and premium increase is part of the policy. One policy effective after 9/4/14 did not have the required notice and there is no evidence the broker requested it from the company.

*Advisory –* of the policies effective prior to 9/4/14, there were two policies missing the form and two policies that included an old version of the form.

*Results:* Passed (47 files passed & 1 failed, error rate 2%)

*Recommendations:* It is recommended that the broker create written procedures to include a step in the processing of evidence of insurance to ensure the notice is included from the insurance company. If the notice is outdated or missing, the broker should contact the insurance company to replace the notice. A step on a checklist is one way to ensure this document is reviewed.

*The broker's response:* This test "passed" although 1 out of 48 files did not. We will include instruction regarding the Alaska Policyholder Notice in the new written guidelines.

*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:

- In house training conducted by a State Auditor date to be determined
- Development of new self-check lists which cover each step of the process
- Written procedures to address each requirement
- 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 quarter 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 compliance officer and staff were very cooperative during the audit. The tax auditor appreciated this attitude and enjoyed working with the broker's management and staff.

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

- 1) Several of the quarterly reports were inaccurate when filed with the division.
- 2) Several tax and filing payments were late, subjecting the broker to penalties.
- 3) Many of the disclosure stamps were missing or illegible on the evidence of insurance.

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 & 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 September 30, 2015  
TA 15-06

Juneau, Alaska )  
April 20, 2016 )  
State of Alaska ) ss.  
First Judicial District )

I, being duly sworn, do verify that the report of premium tax audit as of September 30, 2015, of Marsh & McLennan Agency LLC is true to the best of my knowledge and belief.

  
\_\_\_\_\_  
Rebecca Nesheim  
Tax Auditor

SUBSCRIBED and SWORN to before me this 21 day of April, 2016



  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires office