

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 11-01 )  
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 11-01) 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

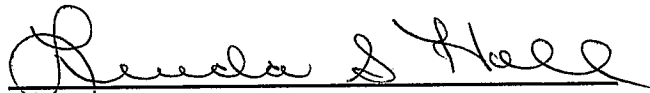
IT IS ORDERED

1. Pursuant to AS 21.06.150(b)(1), the audit report of Marsh & McLennan Agency LLC (TA 11-01) 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 JANUARY 18, 2012.

Dated this 18<sup>th</sup> day of JANUARY, 2012 at Juneau, Alaska.



Linda S. Hall, Director

State of Alaska

Division of Insurance

**PREMIUM TAX AUDIT OF**

**Marsh & McLennan Agency LLC  
Anchorage, AK**

**TA 11-01**

**As of December 31, 2010**

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



**FINAL REPORT:  
January 18, 2012**

**TABLE OF CONTENTS**

PAGE

1) TABLE OF CONTENTS.....2

2) SALUTATION .....3

3) SCOPE OF AUDIT.....3

4) METHODOLOGY .....4

5) PREMIUM TAX AUDIT .....5

6) SUMMARY AND SUBSEQUENT EVENTS .....12

7) AFFIDAVIT .....14



DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Insurance

*Sean Parnell, Governor*  
*Susan K. Bell, Commissioner*  
*Linda S. Hall, Director*

January 18, 2012

Linda S. Hall, CPCU  
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 (the broker) on May 2, 2011 through May 6, 2011, in the broker's Anchorage, AK 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 first premium tax audit of Marsh & McLennan Agency LLC conducted by the Alaska Division of Insurance.

**Subject Matters Audited**

Marsh & McLennan Agency LLC is an Alaska licensed surplus lines broker based in Anchorage, AK. The license became active 10/15/2009 with no business written until January 1, 2010. The Division elected to audit their monthly filings, premium taxes paid, and filing fees paid, for accuracy and timeliness as well as required due diligence and disclosures to the insured.

**Time Frame**

The audit covered this broker's surplus lines business for the year January 1, 2010 through December 31, 2010.

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## METHODOLOGY

The tax auditor sent the call letter and initial data requests to Marsh & McLennan Agency LLC's office in Anchorage, AK. A list of all Alaska business transactions with nonadmitted insurers was requested for the period to be audited. Marsh & McLennan Agency LLC complied on a timely basis with all data requests. The number of policies and endorsements written during the audit period was 127, from which a sample of 50 files was selected for audit.

### *The following are the procedures steps for the audit:*

- 1) Verify that monthly premium reports and accompanying forms were filed on time.
  - i) Audit steps taken:
    - (1) Reviewed the monthly files sent to the Alaska Division of Insurance and verified the reports were filed by the due date.
- 2) Verify the accuracy of the premium calculation
  - i) Audit steps taken:
    - (1) Reviewed policy, declaration page, 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 all monthly reports filed.
  - i) Audit steps taken:
    - (1) Reviewed the policy, declaration, and endorsement pages in each file.
    - (2) If the effective date did not match the monthly 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 effective date may be a month or more prior to the actual book date or invoice date. In this case, the invoice date determined in which month the endorsement is required to be filed.
    - (3) Verified the monthly 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 monthly filing based upon the effective date of the policy.
- 4) If the placement is a multi-state placement, check the calculation and reasonableness of the methodology to allocate.
  - i) Audit steps taken:
    - (1) Verified the allocation of premium for each state is reasonable and the calculation is accurate.
    - (2) Verified the multi-state allocation form was filed when appropriate
- 5) Verify quarterly and annual premium tax reports were filed on time.
  - i) Audit steps taken:
    - (1) Confirmed when the quarterly and annual premium tax reports were sent to the Alaska Division of Insurance.
- 6) Verify the accuracy of the quarterly and annual premium tax reports
  - i) Audit steps taken:

- (1) Verified the quarterly and annual premium tax reports as filed with the division were accurately filled out to reflect the correct premiums, taxes and fees.
- 7) 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 to the Alaska Division of Insurance and the payment method
- 8) Verify tax and filing fees payments were made accurately
  - i) Audit steps taken:
    - (1) Confirmed if the tax and fee payments matched the tax reports as filed.
- 9) 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
- 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 white lists 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 in each file there was a policyholder notice regarding nonrenewal and premium increase included with the policy or other evidence of insurance.

**Acceptable Error Rate:**

The Broker's acceptable error rate for the above referenced standards and tests must be less than 10%. During the audit, two policies did not include any Alaska risk and were taken out of the error rate calculation for procedure steps nine through 13.

**PREMIUM TAX AUDIT**

1. Verify that monthly premium reports and accompanying forms were filed on time  
 AS 21.34.080 and .170, 3 AAC 25.090 and .100

*Comments:* All 12 original monthly premium reports and 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 four policies in the audit files. Premium for three policies included company fees that were not part of the calculation of the tax and fees due to the Division. Amended monthly reports and annual tax report will be required to adjust for the missing fees. Additional tax and fees will be due on the company fees. One policy's premium amount on the declaration page did not match the premium reported to the Division but the insured was exempt so there is no affect to taxes and fees.

These errors affect three additional audit tests:

1. Accuracy of the Monthly Reports
2. Accuracy of Tax Reports
3. Accuracy of Tax and Fee Payments

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

*Recommendations:* It is recommended the broker create written procedures to ensure all company fees are included in the calculation of premium tax and filing fees. The broker should read bulletin 04-14 to reinforce their understanding of what fees are to be included in premium and what are not. A second individual reviewing documents before submission could reduce the number of errors received by the Division.

*Marsh & McLennan Agency Response 12/7/2011:* Surplus Lines Training was presented to the colleagues in August 2011 which addressed this concern and several additional items identified in this audit. Local office management has implemented steps to continue Surplus Lines awareness within each team. This specific situation has been addressed during numerous client team meetings to ensure there is no misunderstanding of how tax calculations should be done. Correction of the taxes for the three policies will be completed by year end 2011.

*Alaska Division of Insurance:* The premiums for the three policies were corrected December 16, 2011.

**3. Verify the accuracy of all monthly reports filed**

**AS 21.34.080 and .170, 3 AAC 25.090 and .100**

*Comments:* Eleven late monthly reports were filed before the audit after the original reports were filed on time. These 11 reports included at least one new transaction that had not previously been filed. Every late transaction was assessed a penalty which was paid prior to the audit.

Of the 50 audit policy files, 16 transactions were not filed in the original monthly report. Three of the 16 were endorsements that were not filed at all but as the insured is exempt there is no additional tax and fees on those endorsements. One policy showed the wrong insurance company on the forms submitted to the Division. The broker needs to amend prior monthly



reports and annual tax report to include the endorsements not previously reported and to fix the company name.

Total accuracy errors: 17 within 14 distinct files

As the broker was not required to file or pay quarterly for 2010, there is no effect to the accuracy of the tax reports or payments as all the late monthly reports were filed prior to the due date for the annual tax report and payments.

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

*Recommendations:* It is recommended that the broker revise written procedures for when initial or renewal policies as well as endorsements are to be reported to the Alaska Division of Insurance. Statute and regulation dates should be included in these procedures. A second individual reviewing documents before submission could reduce the number of errors received by the Division. The broker should consider utilizing email capabilities for transferring paperwork between offices including the Division as that will reduce the filing time.

*Marsh & McLennan Agency Response 12/7/2011:* Completion of the accurate transaction form has been addressed with the client teams. These forms are provided to the Surplus Lines Coordinator to complete the monthly reports. The information on the monthly reports will not be accurate if the client team does not supply accurate transaction forms to the Coordinator. The agency immediately implemented email capabilities to transfer the monthly reports to the State. These corrected monthly reports will be submitted by year end 2011.

*Alaska Division of Insurance:* The amended reports were received December 16, 2011.

**4. Verify the multi-state placements are filed correctly**

**AS 21.34.180**

*Comments:* The broker writes some multi-state policies. Two policies had no Alaska risk and should not have been filed in Alaska at all. Five policies for insureds based in Alaska were reported to the Division as 100% Alaska premium yet the risks were both country and worldwide and not just in Alaska.

The monthly report in which there are two policies with no Alaska risk will need to be amended. The five with an allocated portion of Alaska risk would normally also be required to be amended. However, to go back and amend the taxes on a policy that has already expired and try to file the taxes in another state may be difficult at this late date so we will anticipate that the allocation will be handled accurately going forward.

This error affects four additional audit tests:

1. Accuracy of Premium
2. Accuracy of Monthly Reports
3. Accuracy of Tax Reports
4. Accuracy of Tax and Fee Payments

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

*Recommendations:* It is recommended the broker revise their written procedures for determining allocation between multiple states and countries involved in policies to reflect the new Alaska statute for policies where Alaska is the home state of the insured. Those multi-state policies where Alaska is the home state of the insured that need premium allocated for the tax calculation should be reported to Alaska as soon as the initial allocation is completed since these may take longer to determine. If the initial allocation is modified after additional information is obtained, then the policy transaction information should be amended with the Division. No penalty will be assessed on a transaction that was previously filed on time but a subsequent adjustment needs to be made.

*Marsh & McLennan Agency Response 12/7/2011:* Training was completed with the colleagues regarding the NRRA rules. The office will follow the NRRA rules and the NIMA requirement that apply as per Alaska. In regards to the two policies where there was no Alaska risk, a correction will be made on the policy where there was no US exposure by year end 2011.

*Alaska Division of Insurance:* The two policies were deleted from the monthly reports on December 16, 2011.

**5. Verify quarterly and annual premium tax reports were filed on time**

**AS 21.34.180, 3 AAC 21**

*Comments:* The broker was not required to file quarterly tax reports for the audit year. The two annual premium tax reports for regular premium tax and wet marine and transportation tax were filed on time.

*Results:* Passed (error rate 0%)

**6. Verify the accuracy of the quarterly and annual premium tax reports**

**AS 21.34.180, 3 AAC 21**

*Comments:* The broker was not required to file quarterly tax reports for the audit year. The errors found during the audit in the premium calculation and multi-state premium affects the accuracy of the annual tax report. These flow-through findings are addressed in their respective audit tests.

*Results:* Passed (error rate 0%)

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

**AS 21.34.180, 3 AAC 21**

*Comments:* Although the broker was not required to pay quarterly tax and fees during 2010, they chose to make quarterly payments of both tax and fees. All payments were made on or before the required due date for the annual payments and made by ACH.

*Results:* Passed (error rate 0%)

**8. Verify tax and filing fees payments were made accurately**

**AS 21.34.180, 3 AAC 21**

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

Due to the company fees not included in premium, the broker owes additional tax and fees of \$17.55 and \$6.50 respectively. The two deleted policies for no Alaska risk results in a refund of tax and fees to the broker of (\$549.45) and (\$203.50). The net result is a refund to the broker for tax and fees of (\$531.90) and (\$197.00).

*Results:* Passed (error rate 0%)

*Marsh & McLennan Agency Response 12/7/2011:* As addressed in item #2, the three policies that were not calculated accurately due to the policy fee not being included in the calculation, will be corrected by year-end 2011 and amended monthly reports will be submitted to the state.

**9. Review effort made to place insured with an admitted insurer**

**AS 21.34.020, 3 AAC 25.030 and .035**

*Comments:* The broker has elected to use the Affidavit of Due Diligence for documenting the diligent search. Twelve files have problems with that documentation:

- No documentation in file – 7
- Affidavits provided were created during audit so effectively no documentation in file – 5
- Affidavit showed placement list but risk was not on placement list at the time the policy was bound; declinations not done - 2

Total errors: 14 within 12 distinct files

Nineteen additional files show the coverage was on the placement list but the Affidavit of Due Diligence was created and signed after the bound date. Since the broker is also the producer and would know the coverage was on the placement list, the Division will allow this practice in this audit even though the Affidavit was signed after the bound date. In addition, the description of risk as listed on the placement list must be accurate as a description of the insured is not adequate. The form should be signed when this form of documentation is used.

*Results:* Failed (36 files passed & 12 failed, error rate 25%)

*Recommendations:* It is recommended that the broker create written procedures to ensure all Affidavits of Due Diligence are received or 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.

*Marsh & McLennan Agency Response 12/7/2011:* The due diligence requirements for the State of Alaska have been addressed in Surplus Lines Training. This continues to be reinforced during office meetings and client team meetings on a regular basis.

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

**AS 21.34.100(e)**

*Comments:* Twenty-eight files demonstrated a problem with the required disclosure stamp on the evidence of insurance. Many stamps are really faded and several words can barely be made out. Since the insured's copy is unavailable, auditor relied upon the broker copy. Here are the different problems found in the files:

- No stamp on binder – 6
- No stamp on endorsement – 1
- Stamp illegible on dec – 5
- Stamp illegible on binder – 8
- Broker name not on dec – 12
- Broker name not on binder – 11
- Stamp on dec but clearly done while preparing for audit and not while organizing the documents for insured – 1

Total disclosure errors: 44 within 28 distinct files

Nine additional files had the name of Marsh USA or another Marsh office instead of the broker's name on the evidence of insurance. Since the broker is a subsidiary of Marsh USA, the Division will allow this practice in this audit even though the name is not truly reflecting the accurate broker. The stamp includes extraneous wording which makes it larger than many locations available on the documents.

*Results:* Failed (20 files passed & 28 failed, error rate 58%)

*Recommendations:* It is recommended that the broker ensure written procedures are followed 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. 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, and not just the abbreviation MMA, is included on all evidence of insurance.

*Marsh & McLennan Agency Response 12/7/2011:* This was corrected immediately upon completion of the audit. New stamps with updated wording have been distributed to the colleagues. Through office meetings and client team meetings, the stamping language requirements have been reinforced with the colleagues. Colleagues have been reminded to include the stamping language on all premium bearing and non-premium bearing endorsements in addition to policies and binders.

In January 2010, the Anchorage office changed to Marsh & McLennan Agency. As many of the policies are renewed with the same insuring carriers, the agency name often remained the same

as the expiring policy which was Marsh USA. Client teams have been instructed to confirm the name of the agency show Marsh & McLennan Agency on all evidence of insurance documents. It has been further communicated that the full agency name should be used instead of "MMA".

**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 were six files with problems regarding the notification to the insured:

- No Alaska notification in proposal or binding letter or no document at all in file – 4
- Notification after binding – 2

Eight files included a description in the proposal of admitted vs nonadmitted. However, the information about the non-admitted company implies but does not clearly state that the Division of Insurance does not authorize the company and it is not regulated by the Division. Seven files had the information on the binder letter that was dated around the same time as the invoice.

*Results:* Failed (42 files passed & 6 failed, error rate 13%)

*Recommendations:* It is recommended that the broker revise their 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. The insured should not have to guess what is being implied in the current proposal.

*Marsh & McLennan Agency Response 12/7/2011:* This was corrected immediately upon completion of the audit. The insurance proposal has been corrected to include the correct Alaska notification language. The notification language does include the three required points: 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.

**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 files did not have evidence of the required Alaska Policyholder Notice of nonrenewal and premium increase being sent to the insured. Thirteen files included the notice but it was an older version than required.

*Results:* Failed (41 files passed & 7 failed, error rate 15%)

*Recommendations:* It is recommended that the broker revise their 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.

*Marsh & McLennan Agency Response 12/7/2011:* The policy checklist has been revised to include a review of the Alaska Policyholder Notice confirming that it is in fact attached to the policy and it is the most current version.

#### **File Documentation**

1. In one file, all the communication with the insured listed a company the policy was not written with although the policy itself was accurate.
2. Two files showed an inaccurate policy number was entered in the computer system.

## **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 monthly and annual tax reports and the subsequent payment of premium taxes and filing fees as well as due diligence and notification requirements for using a non-admitted insurer.

The compliance officer and staff were cooperative during the audit. The tax auditor appreciated this attitude and enjoyed working with Marsh & McLennan Agency LLC'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) The monthly reports are consistently not accurate when filed. Numerous transactions are filed late, subjecting the broker to penalties.
- 2) Multi-state risks were reported as 100% Alaska risk resulting in more tax and fees collected in Alaska and none for other states as should have been allocated.

- 3) The diligent search in the admitted market was not documented in many of the files or some were created after binding.
- 4) Many of the disclosure stamps were illegible or missing from the evidence of insurance.
- 5) The required notification to the insured regarding the use of a nonadmitted insurer was not found in some files
- 6) The Alaska Policyholder Notice was missing from several files.

**Re-Audit**

In closing, the auditor's recommended actions 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, 2010  
TA 11-01

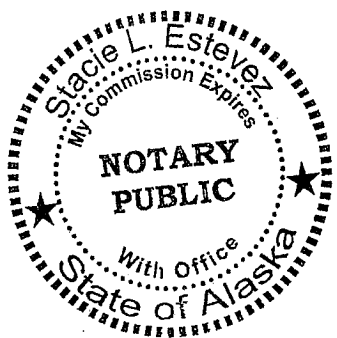
Juneau, Alaska            )  
January 18, 2012        )  
                                      )  
State of Alaska         ) ss.  
First Judicial District )

I, being duly sworn, do verify that the report of premium tax audit as of December 31, 2010 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 18<sup>th</sup> day of January, 2012



Stacie Estevez  
Notary Public in and for Alaska

My Commission Expires with office