

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

IN THE MATTER OF THE SURPLUS LINES INSURANCE PRODUCER LICENSES OF THE MARSH USA, INC. BUSINESS ENTITIES, SUBSIDIARIES OF MARSH USA Inc.))	Case No. INS-2007-46 <u>CONSENT AGREEMENT</u> <u>AND FINAL ORDER</u>
Respondents.)	

The Commissioner of Securities and Insurance (Commissioner), Office of the State Auditor, and the Insurance Department (Department), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby make the following fact assertions and conclusions of law which justify and support disciplinary treatment:

FACT ASSERTIONS

1. At all times relevant hereto, Respondents Marsh USA Inc. and its affiliates (hereinafter “Marsh” or “Respondents”) held surplus lines insurance producer licenses issued by the Commissioner:

Marsh USA Inc. (Washington)
1301 Fifth Ave - Ste 1900
Seattle, WA 98101
[surplus lines producer license no. 211]

Marsh USA Inc. (Nevada)
7251 West Lake Mead Blvd Ste 401
Las Vegas, NV 89128
[surplus lines producer license no. 909008]

Marsh USA Inc. (Utah)
15 West South Temple Ste 700
Salt Lake City, UT 84101
[surplus lines producer license no. 912525]

Marsh USA Inc. (California)
777 So. Figueroa St 22nd Fl
Los Angeles, CA 90017
[surplus lines producer license no. 919186]

Marsh USA Inc. (California)
Three Embarcadero Center
San Francisco, CA 94111
[surplus lines producer license no. 922978]

Marsh USA Inc. (Pennsylvania)
Two Logan Square
Philadelphia, PA 19103
[surplus lines producer license no. 926990]

Marsh USA Inc. (Ohio)
200 Public Square Ste 1100
Cleveland, OH 44114
[surplus lines producer license no. 929643]

Marsh USA Inc. (Michigan)
One Woodward Avenue, Ste 1200
Detroit, MI 48226
[surplus lines producer license no. 930192]

Marsh USA Inc. (Massachusetts)
200 Clarendon St 38th Floor
Boston, MA 02116
[surplus lines producer license no. 934466]

Marsh USA Inc. (Missouri)
PO Box 419105
Kansas City, MO 64141-6105

[surplus lines producer license no. 943683]

Marsh USA Inc. (Texas)
1717 Main St Ste 4400
Dallas, TX 75201
[surplus lines producer license no. 947884]

Marsh USA Inc. (Minnesota)
333 South 7th St., Ste. 1600
Minneapolis, MN 55402
[surplus lines producer license no. 960096]

Marsh USA Inc. (Connecticut)
One State Street
Hartford, CA 06103
[surplus lines producer license no. 965729]

Marsh USA Inc. (Louisiana)
601 Poydras Street, Ste. 1850
New Orleans, LA 70130
[surplus lines producer license no. 967370]

Marsh USA Inc. (Alaska)
1031 W. 4th Ave., Suite 400
Anchorage, AK 99501
[surplus lines producer license no. 993622]

Marsh USA Inc. (Utah)
15 W. South Temple #700
Attn: Rachel
Salt Lake City, UT 84101
[surplus lines producer license no. 674132]

Marsh USA Inc. (Michigan)
600 Renaissance Center #2100
Detroit, MI 48243
[surplus lines producer license no. 680525]

2. Respondents placed surplus lines insurance policies on Montana risks between 2000 and 2006, but failed to file the surplus lines insurance submissions. Additionally, Respondents failed to remit the taxes and fees collected from the insureds in regard to these

surplus lines insurance transactions.

3. On or about January 31, 2007, Respondents self-reported to the Department that surplus lines insurance transactions between 2000 and 2006 had not been filed. Marsh provided a spreadsheet regarding the unreported surplus lines transactions and a check for payment of the associated taxes and fees. Department staff reviewed the information provided and subsequently determined that additional taxes and fees were due.

4. On or about December 7, 2011, Respondents self-reported to the Department that some surplus lines insurance transactions during 2007 and 2008 had not been filed. Marsh provided a spreadsheet regarding the unreported surplus lines transactions. Department staff reviewed the information and concurred with Respondents' tax calculations.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. § 2-15-1903.

2. The Insurance Department is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner shall administer the Department to protect insurance consumers. Mont. Code Ann. § 33-1-311.

4. A person or entity "may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be preformed in Montana without complying with the applicable provisions of this code [Montana Insurance Code]." Mont. Code Ann. § 33-1-102(1).

5. By failing to file the surplus lines insurance submissions and failing to remit the

premium taxes and stamping fees, Respondents are in violation of Mont. Code Ann. §§ 33-2-310, 33-2-311, and 33-2-321.

6. Pursuant to Mont. Code Ann. § 33-1-317, the Commissioner may impose an administrative fine of up to \$5,000.00 per each violation of Montana law.

AGREEMENT

The Department and Respondents hereby stipulate and agree to the following:

1. The Commissioner and Department have jurisdiction over the subject matter of the above-entitled proceeding.

2. Respondents acknowledge that they were advised of the right to be represented by legal counsel and if represented by legal counsel, that such legal representation was satisfactory.

3. Respondents acknowledge that their authorized representative signing this Consent Agreement has read and understands each term of this Consent Agreement and Final Order. Respondents acknowledge that they enters into this Consent Agreement voluntarily, and without reservation. Respondents acknowledge that this Consent Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent or representative of the Department to induce Respondents to enter into this Consent Agreement.

4. The Department contends as set forth in the preceding Fact Assertions and Conclusions of Law and Respondents admit the same. The Department and Respondents have elected to resolve these matters as follows:

(a) Respondents will pay the outstanding premium taxes of \$ 49,483.70 to the Department within 30 days following the signing of the Final Order in this matter.

(b) The Department agrees that no fire taxes are owed. The Department agrees to waive the outstanding stamping fees.

(c) The Department and Respondents agree that this Consent Agreement and Final Order shall resolve the matters set out herein, including the associated premium taxes, fire premium taxes, and stamping fees, with regard to the surplus lines insurance

policies listed in the spreadsheets provided and that no penalty or fine will be imposed on the delinquent taxes and stamping fees and that no license disciplinary action will be taken.

(d) Respondents are not required to file policy submission forms with the Department for any of the surplus lines insurance policies listed in the spreadsheets provided that were not previously filed; however, if any of these policies were renewed or extended, Respondents shall file the surplus lines insurance submission form with the Department and pay any associated taxes and stamping fees. (e)

Respondents specifically and affirmatively waive a contested case hearing and all rights to appeal under the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-101, *et seq.*, and elect to resolve this matter on the terms and conditions set forth herein.

(f) Respondents agree that compliance with this Consent Agreement and Final Order shall be a final compromise and settlement of the matters set forth herein.

(g) Respondents fully and forever release and discharge the Commissioner, Department, and all Department employees from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this Consent Agreement.

(h) The Department and Respondents agree that this Consent Agreement shall be incorporated and made a part of the attached Final Order issued by the Commissioner herein.

5. Respondents further understand that, upon the signing of the Final Order by the Commissioner or their authorized representative, this Consent Agreement and

Final Order will be an order of the Commissioner and failure to comply with the same may constitute separate violations of the Montana Insurance Code, pursuant to Mont. Code Ann. § 33-1-318 and/or other applicable statutes or rules, and may result in subsequent legal action by the Department.

6. Respondents understand that this Consent Agreement is not effective until such time as the following Final Order is signed.

7. Respondents understand that this Consent Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public. Respondents further understand that this Consent Agreement and Final Order will be reported the

National Association of Insurance Commissioners (NAIC) as required by the membership of the Montana State Auditor and Commissioner of Insurance in the NAIC.

ACCEPTED ON BEHALF OF ALL RESPONDENTS BY MARSH USA Inc.:

By: Barbara S. Zellner
Printed Name: BARBARA S. ZELNER
Title: Senior Litigation Counsel

ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

Jennifer Massman
Jennifer Massman, Staff Attorney

12-15-2011
Date

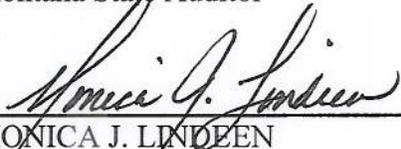
FINAL ORDER

Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, and upon review of the forgoing Consent Agreement and good cause appearing therefor,

IT IS ORDERED that the foregoing Consent Agreement between the Insurance Department and Respondents is hereby adopted as if set forth fully herein.

DATED this 16th day of December, 2011.

Commissioner of Securities and Insurance,
Montana State Auditor



MONICA J. LINDEEN

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of DECEMBER, 2011, I served a true and accurate copy of the foregoing Consent Agreement and Final Order upon the Respondents and Department, by mail, postage prepaid, or by hand-delivery at the following address:

Barbara Zellner
Marsh & McLennan Companies, Inc.
1166 Avenue of the Americas
New York, New York 10036
(Legal Counsel for Respondents)

Jennifer Massman
Staff Attorney
Insurance Department

