



**AMENDED
MARKET CONDUCT EXAMINATION REPORT**

of

ATTORNEY'S LIABILITY PROTECTION SOCIETY, INC.

MISSOULA, MONTANA

as of December 31, 2008

TABLE OF CONTENTS

Scope of Examination	1
Operations and Management	1
Complaint Handling	6
Marketing and Sales	6
Producer Licensing	6
Policyholder Service	7
Underwriting and Rating	10
Claims	10
Summary of Significant Findings	10
Conclusion.....	11

SCOPE OF EXAMINATION

The Montana Insurance Department conducted a market conduct examination of Attorney's Liability Protection Society, Inc., a Risk Retention Group, also hereinafter referred to as the "Company." The examination covered a four-year period from January 1, 2005, through December 31, 2008.

The examination was conducted pursuant to the provisions of Mont. Code Ann. § 33-1-401, *et seq.*, § 33-11-101, *et seq.*, § 33-14-101, *et seq.*, the federal Liability Risk Retention Act of 1986 (LRRRA) and in accordance with the procedures and guidelines outlined in the Market Conduct Examiners Handbook as adopted by the National Association of Insurance Commissioners and the Montana Commissioner of Securities and Insurance, Office of the State Auditor (hereafter referred to as the "CSI").

OPERATIONS AND MANAGEMENT

The Company was incorporated under the laws of the State of Nevada on May 5, 1987, as a mutual casualty insurance company, qualifying as a risk retention group under the federal Liability Risk Retention Act of 1986 under the name Attorney's Liability Protection Society, a Mutual Risk Retention Group.

The Company re-domesticated to the State of Montana on January 1, 1991. The Company converted from a mutual corporation to a stock corporation on January 1, 2001, pursuant to the provisions of Mont. Code Ann. § 33-3-216. At this time the name of the Company was changed to Attorneys Liability Protection Society Inc., a Risk Retention Group.

Effective July 1, 2002, the Company became a wholly-owned subsidiary of its parent company, ALPS Corporation.

The Company was granted a Certificate of Authority by the CSI to conduct business as a Premium Finance Company effective December 22, 2005. The premium finance company's operation is limited to providing financing for the policies issued by the Company.

The Company's primary purpose is to provide casualty insurance as a risk retention group. In addition to Montana, the Company is authorized to transact business as a registered risk retention group in 41 other jurisdictions during the time frame of the examination.

The Company and ALPS Corporation had separate boards of directors who met independently of each other until the Company board meeting on January 26, 2006, and the ALPS Corporation board meeting on February 9, 2006, when it was decided to align the membership of the two boards.

The Directors, their primary occupation and term(s) of service for **ALPS Corporation** as of January 1, 2005, are as follows:

<u>Director Name</u>	<u>Principal Occupation</u>	<u>Elected to Board</u>	<u>Term Expiring</u>
Dan Callaghan	Attorney	1986	2007
David Grundy	Attorney	1998	2008
Jack Knight	Consultant	2002	2007
Charles Lay	Attorney	1986	2008
Kimberly McGuire-Browne	CFO	2000	2005
Ron McLean	Attorney	1996	2008
Diane Minnich	ID State Bar Exec	2000	2009
Robert W. Minto Jr.	President & CEO	1986	ex-officio member
Charles Steilen	Retired Ins. Exec.	1995	2006
Jeff Whittle	Attorney	1995	2008
Jeff Sveen	Attorney	2001	2009
Joe Josephson	Retired Ins. Exec.	2006	2008

*Robert W. Minto, Jr., served as Board Chairman throughout 2005 and in 2006 until the May 2006 meeting of the joint boards.

The Directors, their principal occupation and term(s) of service for **the Company**, as of January 1, 2005, are as follows:

<u>Director Name</u>	<u>Principal Occupation</u>	<u>Elected to Board</u>	<u>Term Expiring</u>
Gary H. Barnes	Attorney	2002	2008
Keith E. Brown	Attorney	1993	2006

Kimberly McGuire-Browne	Treasurer	2000	2008
Michael A. Glasser	Attorney	2004	2007
Natalma "Tami" McKnew	Attorney	2002	2007
Ronald McLean	Attorney	1996	2008
Glenn E. Smith	Attorney	1986	2008
Robert W. Minto, Jr.*	President and CEO	1986	2008
Robert D. Reis	Executive VP and COO of ALPS RRG	2002	2005

Robert W. Minto, Jr., served as Board Chairman throughout 2005 and in 2006 until the May 2006 meeting of the joint boards.

The annual meeting of the shareholders of ALPS Corporation was held immediately prior to a joint meeting of the boards on May 23 through 24, 2006. As a result of the shareholders' meeting, additional directors were elected and seated upon the board of ALPS Corporation.

During the ensuing meeting of the joint boards, Mr. Minto, acting as President of ALPS Corporation, announced that ALPS Corporation voted 100 percent of the issued and outstanding shares of ALPS RRG to elect and appoint new directors to the board of the Company. Each of the newly elected directors was selected to serve a three-year term.

These elections effectively duplicated the membership of the boards of ALPS Corporation and the Company; however, the term of service for an individual director may differ between the two boards.

The two boards meet jointly with the meeting minutes reflecting any action specifically affecting the Company or ALPS Corporation. ALPS Corporation provides accounting, marketing, legal, regulatory, human resource services, information technology support, claims, underwriting and other miscellaneous services to the Company through management contracts or service agreements.

The Directors of **ALPS Corporation** following the shareholders' meeting of May 23, 2006, are as follows:

<u>Director Name</u>	<u>Principal Occupation</u>	<u>Elected to Board</u>	<u>Term Expiring</u>
Dan Callaghan	Attorney	1986	reelected in 2007 to expire 2010
David Grundy*	Attorney	1998	reelected in 2007 to expire 2010
Jack Knight	Consultant	2002	reelected in 2007 to expire 2010
Charles Lay**	Attorney	1986	2008
Ron McLean	Attorney	1996	reelected in 2008 to expire 2011
Diane Minnich	ID State Bar Exec.	2000	2009
Robert W. Minto Jr.	President & CEO	1986	ex-officio member
Charles Steilen	Retired Ins. Exec.	1995	2009
Jeff Whittle	Attorney	1995	2009
Jeff Sveen	Attorney	2001	2009
Joe Josephson***	Retired Ins. Exec.	2006	2008
Gary Barnes****	Attorney	2006	2009
Keith E. Brown	Attorney	2006	2009
Michael Glasser	Attorney	2006	2009
Tami McKnew	Attorney	2006	2009
Glenn E. Smith*****	Attorney	2006	2009

*David Grundy's term was adjusted from 2010 to 2008 to balance out the rotation schedule of directors. He was then reelected until 2011.

**Charles Lay retired following the November 2007 board meeting.

***Joe Josephson resigned effective following the May 2007 board meeting.

****Gary Barnes resigned effective March 6, 2008.

*****Glenn E. Smith's term was adjusted to expire in 2008 to balance out the three-year rotation schedule of directors per the amended By-Laws.

The Directors of the Company, following the May 23, 2006 shareholders' meeting are as follows:

<u>Director Name</u>	<u>Principal Occupation</u>	<u>Elected to Board</u>	<u>Term Expiring</u>
Gary H. Barnes*	Attorney	2002	2008
Kimberly McGuire-Browne**	Treasurer	2000	2008
Michael A. Glasser	Attorney	2004	reelected in 2007 to expire 2010
Natalma "Tami" McKnew	Attorney	2002	reelected in 2007 to expire 2010
Ronald McLean	Attorney	1996	reelected in 2008 to expire 2011
Glenn E. Smith	Attorney	1986	reelected in 2008 to expire 2011
Robert W. Minto, Jr.***	President and CEO	1986	
Dan Callaghan	Attorney	2006	2009
David Grundy	Attorney	2006	2009
Joe Josephson****	Retired Ins. Exec.	2006	2009
Jack Knight	Consultant	2006	2009
Diane Minnich	ID State Bar Exec.	2006	2009
Charles Steilen	Retired Ins.Exec.	2006	2009
Jeff Sveen	Attorney	2006	2009
Jeff Whittle	Attorney	2006	2009

*Gary Barnes resigned effective March 6, 2008.

**Kimberly McGuire Browne resigned effective December 31, 2006.

***Robert W. Minto, Jr. became an ex-officio director

****Joe Josephson resigned effective following the May 2007 board meeting.

Director Ronald McLean served as Chair of the joint boards beginning May 23, 2006.

Director David Grundy was elected to Chair of the joint boards in 2007 and 2008.

The Governance Committee was the only active committee of the Board(s) of Directors as of January 1, 2005. Three additional committees were created in July 2006. These committees were the Audit Committee, Compensation Committee and Investment Committee. The

Compensation Committee and Investment Committee were combined and renamed in July of 2008 resulting in the Finance Committee.

COMPLAINT HANDLING

The complaint record as maintained by the Company during the time period covered by the examination lacked a consumer complaint filed with the CSI. The record failed to accurately reflect the total number of complaints, the nature of each complaint, the disposition of the complaints and the time it took to process each complaint in violation of Mont. Code Ann. § 33-18-1001.

MARKETING AND SALES

The Company entered into a marketing services agreement with ALPS Corporation doing business as ALPS Enterprise Marketing (AEM). Through the terms of the agreement, AEM designs, provides and initiates marketing strategies and advertising materials subject to approval by the Company. AEM is responsible for new sales, retention of existing business, customer service to policyholders, and the training of producers/account service representatives. AEM reaches its target market through information provided on the ALPS website, direct solicitation, and attendance at appropriate venues such as bar conventions. The bar associations of some states endorse particular professional liability insurers. The criteria necessary to obtain an endorsement varies from state to state. The Company has been recognized as the carrier of choice by the bar associations of numerous jurisdictions where the Company is registered to act as a risk retention group.

The examiners reviewed the advertising materials used by the Company during the time frame covered by the examination. No exceptions were noted as to the content or application of the Company's advertising.

PRODUCER LICENSING

ALPS Corporation, doing business as ALPS Enterprise Marketing (AEM) was licensed to conduct business as a property casualty insurance agency in Montana effective November 4, 2004. During the time period covered by the exam, AEM has held an appointment from the insurer, the Company, in compliance with Mont. Code Ann. § 33-17-231. Employees of AEM who are engaged in the sales, solicitation, and negotiation of insurance have been licensed as producers pursuant to Mont. Code Ann. § 33-17-201.

POLICYHOLDER SERVICE

The insurance contracts issued by the Company for use in Montana during the time frame covered by the examination contain a policy declarations page providing for an annual policy period. The policy number assigned at initial policy inception continues with each successive policy period. It is differentiated by the use of a numeral indicating the number of years the policy has been in force.

The declarations page referred to as ALPSDECREN (02/2003) which was in use during the time period covered by the examination contains the heading, POLICY RENEWAL ENDORSEMENT – DECLARATIONS FOR POLICY NO. ALPS####. The final paragraph on this declarations page states, “[t]his renewal endorsement, including all endorsements listed herein, is incorporated in and made a part of the policy to which it applies. It entirely replaces any Declarations page previously issued in connection with any earlier policy year. All initial application forms and all renewal application forms submitted to the Company are made a part of these Declarations and of the policy.”

Declarations pages referred to as ALPSDECREN (Rev 8/15/2005), ALPSDECREN (11/01/06) and ALPSDECREN (02/15/07) were also in use during the time period covered by the examination. These renewal declarations forms contain the heading, RENEWAL DECLARATIONS FOR POLICY NO. ALPS####. The final paragraph on these declarations pages states, “All initial application forms and all renewal application forms submitted to the Company are made a part of the policy. The Named Insured may obtain a copy of all application forms by submitting a written request to the Company.”

The policies issued to Montana insureds during the time period covered by the examination are not expressly designated as nonrenewable. The MONTANA CANCELLATION AND NONRENEWAL ENDORSEMENT forms contained in the policies issued by the Company to Montana insureds contain a provision which states, “The Company may non-renew the policy for any reason. If the Company non-renews the policy, the Company will mail to the **Named Insured** a written notice of nonrenewal not less than forty-five (45) days prior to the policy’s Expiration date.” It is the practice of the Company to require policyholders to submit a renewal application each year in order to receive a new policy that will continue coverage from one policy period to the next successive policy period thereby affording continuous coverage for exposure to prior acts.

During the time period covered by the examination the application forms used by the Company to re-underwrite a policy after the initial policy period are identified as forms PLA 07-04, PLA 08/01/06 and SF APP 09-01-2008 which bear the heading *ALPS RENEWAL APPLICATION*. The cover letter accompanying the renewal application to multiple attorney firms contains the statement, “RE: Alps Renewal Application.” The letter also makes several references to “the renewal process.”

The Company has also developed and placed into use a *SOLO RENEWAL APPLICATION* (Form SRA 07-04). The application contains several references to “renewal.” The cover letter

provided with this application contains multiple references to “renewal application”; “renewal process”; and “renewal quotation.”

During the time period covered by the examination the Company delivered a cover letter and “renewal application” forms to insured firms that were determined to be desirable for renewal. These materials were delivered to the insured firm approximately sixty (60), seventy-five (75) or ninety (90) days prior to the expiration date of an existing policy depending upon the underwriting guidelines in place at the time. The application format is primarily dependent upon the number of attorneys practicing within an insured firm. Upon receipt of the completed “renewal application” the Company promptly begins to re-underwrite the risk. This process results in a decision by the Company to either decline to continue to insure the risk or to provide a “renewal quotation.” “Renewal quotation” is a term used by the Company to refer to the terms and conditions under which the Company is willing to extend an offer to continue to insure a risk for a successive annual policy period.

The “renewal quotation” and instructional cover letter are delivered to an insured firm along with “Acceptance Papers” which are to be returned to the Company in order to expedite issuance of the new policy. “Acceptance Papers” contain a grid of coverage limits, available endorsements and deductible selections with corresponding premium from which the insured is instructed to circle those desired. The “Acceptance Papers” also advise the amount of premium to be submitted, which is dependent in part upon coverage and limits selected, available payment terms and any other items which are a “precondition” to the renewal offer. “Precondition” and “Acceptance Papers” are terms used by the Company. “Preconditions” include, but are not limited to, the Company’s receipt of an insured’s signature verifying there has been no claim activity since the time the renewal offer was communicated to the insured firm.

The “renewal process” becomes problematic when an insured firm fails to submit completed application form(s) to the Company in the time frame necessary for the Company to make an underwriting decision and provide the insured with the appropriate notice in compliance with contract language and the provisions of Mont. Code Ann. § 33-15, Part 11. The “renewal process” is further complicated when, upon receipt and review of the application form(s) the Company finds it necessary to request additional information from the insured. Pending receipt of the requested information the Company’s underwriting decision may be delayed beyond the time frame necessary for the Company to provide the insured with the appropriate notice in compliance with contract language and the provisions of Mont. Code Ann. § 33-15, Part 11.

The Company provides a reminder notice to an insured when the Company has not received the application and or additional information requested which is necessary to proceed with the “renewal process.” This communication is referred to as a “35 day letter.” The timing of this letter, approximately 35 days prior to the policy expiration date, is such that the Company cannot possibly provide the insured with the resultant decision and necessary notice(s) in a timely manner in compliance with contract language and the provisions of Mont. Code Ann. § 33-15, Part 11.

When a “renewal quotation” is provided to an insured, the terms of which are contingent upon the Company’s receipt of a “precondition”, the insured does not always return the “precondition” to the Company in time to allow the Company to be provide notice to the insured that is in compliance with contract language and the provisions of Mont. Code Ann. § 33-15, Part 11, given that the Company may find it necessary to re-underwrite, re-rate or non-renew on the basis of the information provided in the precondition or non-renew in the event the insured fails to submit the “precondition”.

When the “renewal process” cannot be accomplished in time to provide insured firms with notice in compliance with the provisions of the contract and Mont. Code Ann. § 33-15-1105(1), the practice of the Company is to extend the policy period. Montana’s legislature amended Mont. Code Ann. § 33-15-1105(1) in 1997, effectively eliminating the insurance industry practice of extending a policy period in order to comply with statutory notice requirements.

A sample of 47 policies representing approximately 13 percent of the Company’s book of business on the basis of the average number of policies in force in Montana for each year within the time frame of the examination were reviewed . The sample of 47 policies contained a total of 95 exceptions to Mont. Code Ann. § 33-15-1105(2), **Nonrenewal-renewal premium**. Seventy-five of the 95 exceptions were the result of the insurer giving notice of premium due less than 30 days before the due date of the renewal premium. The remaining 20 exceptions occurred when the insurer gave notice of premium due more than 60 days before the date a renewal premium was due.

The Company, by failing to provide the insured with notice of non-renewal at least 45 days prior to the expiration date of the policy, is essentially purporting to renew. The sample of 47 policies yielded 85 exceptions to Mont. Code Ann. § 33-15-1106(1). **Renewal with altered terms.**

The examiners conducted a review of all policies non-renewed by the Company during the time frame of the exam. Three of the 14 insured firms non-renewed during the time frame of the exam were not provided with timely notice of non-renewal pursuant to the Company’s contract language and the provisions of Mont. Code Ann. § 33-15-1105(1).

When, upon receipt of a non-renewal notice, an insured firm appeals to the Company and the Company agrees to renewal, it is contingent upon the insured’s acceptance of terms and or conditions less favorable than those contained in the expiring policy.

The contract terms that may be altered include, but are not limited to, the deductible provision, coverage limits and endorsements providing enhanced coverage provisions. The altered offer of renewal may be subject to further “preconditions” that provide the Company with yet another opportunity to re-underwrite and re-rate. The altered renewal offer is delivered to the insured only days before premium payment is required. This entire process occurs beyond the initial expiration date of the policy in violation of Mont. Code Ann. §§ 33-15-1106 and 33-15-1105(2).

UNDERWRITING AND RATING

The Company's underwriting practices relevant to selection of risks appears non-discriminatory. Rates are applied commensurate with the Company's rate filings in place during the time period covered by the exam. Credits/debits that are consistently applied include *RETRO DATE*, *CLE*, *FIRM SIZE*, *RATIO OF ATTORNEYS TO NON-ATTORNEYS AND CLAIM SURCHARGE*. *AREA OF PRACTICE* surcharges or discounts appear to be applied and adjusted on a non-discriminatory basis and the methodology is well documented.

The Company's application of *scheduled* credits/debits as set forth in their rate filing is inconsistent. *Scheduled* credits/debits such as *CONTINUOUS RENEWAL* and/or *CONTINUITY OF FIRM* which are established by measurable criteria are not applied consistently between firms representing these same measurable risk characteristics. This practice violates Mont. Code Ann. § 33-18-210(3).

The Company has no definitive criteria in place to determine when *REPUTATION CREDIT* is to be applied. Underwriting records lack documentation to support the methodology surrounding when the credit is to be applied and on what basis it is established. This practice violates Mont. Code Ann. § 33-18-210(3).

The Company, acting in combination as an Insurer and Premium Finance Company, granted an insured firm a four percent reduction in the usual premium finance interest rate that was being offered to all other insured firms in order to retain the business of that insured firm when placed in a competitive situation. This is a violation of Mont. Code Ann. § 33-18-210 (1), (c).

CLAIMS

The examiners conducted a review of the 76 claims reported in Montana during the time frame of the exam. The Company utilizes in-house attorneys to handle claims. Outside counsel is retained in the event a claim proceeds to litigation. Each claim was opened and an investigation initiated by the assigned claim handler within 24 hours upon receipt of the claim. Claim correspondence is answered in a timely manner and claim files are meticulously documented.

SUMMARY OF SIGNIFICANT FINDINGS

The Company did not maintain a complaint log consistent with the provisions of Mont. Code Ann. § 33-18-1001.

The Company's business practices relative to premium notice, renewal with altered terms and non-renewal are not in compliance with the provisions of Mont. Code Ann. § 33-15-1105 and § 33-15-1106.

The Company does not consistently apply scheduled rating debits and credits between insureds bearing the same risk characteristics which are established by measurable criteria in conflict with the provisions of Mont. Code Ann. § 33-18-210(3).

The Company was unable to demonstrate compliance with Mont. Code Ann. § 33-18-210(3) relative to its use of a subjective rating credit.

A representative of the Company allowed an insured firm a four percent reduction in the usual premium finance interest rate than that being offered to other insured firms who had elected the same length of repayment. This is a violation of Mont. Code Ann. § 33-18-210, (1), (c).

CONCLUSION

The Market Conduct Examination Report of Attorney's Liability Protection Society, Inc., a Risk Retention Group is respectfully submitted to the Honorable Monica J. Lindeen, State Auditor and Commissioner of Securities and Insurance of the state of Montana.

The examiners wish to express their appreciation for the courteous and prompt cooperation and assistance of the officers and employees of the Company during the course of the examination.

AFFIDAVIT OF EXAMINERS

STATE OF MONTANA)
) ss.
COUNTY OF LEWIS AND CLARK)

David Drynan, AIE, MCM and Kimberlee Hewitt, CIE, MCM, being first duly sworn, depose and say:

That they are examiners representing the State Auditor and Commissioner of Securities and Insurance, state of Montana; that pursuant to authority vested in them by the Commissioner, they examined the market conduct of Attorney’s Liability Protection Society, Inc. of Missoula, Montana, for the period from January 1, 2005, to December 31, 2008.

That to the best of their information, knowledge and belief, the attached report of the examination is a true and correct amended report of the market conduct affairs and operations of Attorney’s Liability Protection Society, Inc. as of December 31, 2008.

DATED this 2nd day of September, 2010.


David Drynan, AIE, MCM


Kimberlee Hewitt, CIE, MCM

SUBSCRIBED AND SWORN to before me this 2nd day of September, 2010.



