

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
MONTGOMERY, ALABAMA

REPORT OF EXAMINATION

OF

**ATTORNEYS INSURANCE MUTUAL
OF ALABAMA, INC.**

BIRMINGHAM, ALABAMA

AS OF

DECEMBER 31, 2005

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STATE OF ALABAMA

COUNTY OF BALDWIN

Anne L. Ward, being first duly sworn, upon her oath deposes and says:

THAT she is an examiner appointed by the Commissioner of Insurance for the State of Alabama;

THAT an examination was made of the affairs and financial condition of *ATTORNEYS INSURANCE MUTUAL OF ALABAMA, INC.*, Birmingham, Alabama, for the period of January 1, 2001 through December 31, 2005;

THAT the following 43 pages constitute the report thereon to the Commissioner of Insurance of the State of Alabama;

AND THAT the statements, exhibits and data therein contained are true and correct to the best of her knowledge and belief.



Anne L. Ward, CFE
(Examiner-in-Charge)

Subscribed and sworn to before the undersigned authority this 8th day of September 2008.



(Signature of Notary Public)

Laura A. Gilbert

(Print Name)

Notary Public

in and for the State of Alabama

My Commission expires My Commission Expires 09/07/10



BOB RILEY
GOVERNOR

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March 26, 2007

Honorable Walter A. Bell
Commissioner of Insurance
State of Alabama Department of Insurance
201 Monroe Street, Suite 1700
Montgomery, AL 36104

Dear Commissioner:

Pursuant to your authorization and in compliance with the statutory requirements of the State of Alabama and the resolutions adopted by the National Association of Insurance Commissioners, a full scope financial and market conduct examination as of December 31, 2005, has been made of the affairs and financial condition of

ATTORNEYS INSURANCE MUTUAL OF ALABAMA, INC.

at its home office located at 200 Inverness Parkway, Birmingham, Alabama 35242-4813. The report of examination is submitted herewith.

Where the description "Company" or "AIM" appears herein, without qualification, it will be understood to indicate *Attorneys Insurance Mutual of Alabama, Inc.*

SCOPE OF EXAMINATION

The Company was last examined for the five-year period ended December 31, 2000, by examiners from Alabama representing the National Association of Insurance Commissioners (NAIC). The current examination covers the intervening period from the date of the last examination through December 31, 2005, and was conducted by examiners from the Alabama Department of Insurance (ALDOI).

A combined financial and market conduct examination was authorized pursuant to the instructions of the Alabama Insurance Commissioner and in accordance with the statutory requirements of the *Alabama Insurance Code* and the ALDOI's regulations and bulletins; in accordance with the applicable guidelines and procedures promulgated by the NAIC; and in accordance with generally accepted examination standards and practices in connection with the verification of assets and determination of liabilities.

The examination included an inspection of corporate records, test checks of recorded income and disbursement items for selected periods, a general review of records and files pertaining to operations, administrative practices, and compliance with statutes and regulations. Assets were verified and valued and all known liabilities were established or estimated as of December 31, 2005, as shown in the financial statements contained herein. However, the discussion of specific assets or liabilities contained in this report is confined to those items where a change was made by the examiners, or which indicated violation of the *Alabama Insurance Code* and the ALDOI's rules and regulations or other insurance laws or rules, or which were deemed by the examiners to require comments or recommendations.

A copy of the filed Annual Statement for the year 2005 was compared with or reconciled to account balances with respect to ledger items.

The market conduct review consisted of a review of the Company's territory, plan of operation, complaint handling, marketing and sales, compliance to agents' licensing requirements, policyholder services, underwriting and rating practices, claim handling practices, and privacy policy and practices.

The Company's accounts were audited by Hardman, Frost & Cummings, P.C. (formerly Hardman, Guess, Frost & Cummings), Certified Public Accountants (CPAs), for each of the five years under examination. Audit reports and workpapers were made available to the examiners and were used where deemed appropriate in the completion of this examination.

A signed certificate of representation was obtained during the course of the examination. In this certificate, management attested to having valid title to all assets and to the non-existence of unrecorded liabilities as of December 31, 2005.

ORGANIZATION AND HISTORY

The Company was formed as the result of a feasibility study by the Insurance Programs Committee of the Alabama State Bar, begun in 1986. An organizational effort by members of the State Bar followed, and the Company was formed for the purpose of writing professional liability insurance for attorneys who are residents of, and practice law in, the State of Alabama.

The Company was incorporated as a mutual insurance corporation under the laws of the State of Alabama, and the *Articles of Incorporation* were filed for record in the office of the Judge of Probate of Jefferson County on May 19, 1988. Business commenced on July 1, 1989. According to the articles, the object and primary purpose for which the corporation was organized was “To engage in the business of writing casualty insurance, including, without limitation, ‘malpractice’ insurance as defined in Section 27-5-6(a)(10) of the Alabama Insurance Code, as amended, and such other types or lines of insurance as the Corporation may from time to time be legally authorized to write...”

On July 25, 1988, pursuant to the provisions of § 72 of the *Alabama Business Corporations Act*, as set forth in ALA. CODE § 10-2A-113 (1975), the Company amended the Fifth Article of its *Articles of Incorporation* as follows:

“(b) The corporation shall be without shares of capital stock. The corporation shall accumulate and maintain such surplus as shall be required by sound actuarial practices and applicable law in accordance with the limits of liability set forth in the insurance policies issued by the corporation to its Members and the aggregate coverage offered to all Members from time to time, which such surplus shall in no event be less than four hundred thousand dollars (\$400,000).”

The Company’s initial capital was obtained by issuing 8% Series Subordinated Surplus Debentures (Debentures) to its policyholders. Investment in the surplus debentures was required of all policyholders until May 15, 2000, at which time the requirement was suspended due to the Company’s favorable gross written premium to surplus ratio. The Debentures have no fixed maturity date and bear interest on a non-cumulative basis at the rate of eight percent per annum. Payment of interest requires the approval of the Alabama Insurance Commissioner until the earned surplus of the Company at the end of any calendar year equals at least \$10,000,000. Effective April 15, 2005, by

agreement with the Commissioner, the Company has permission and discretion to buy back Debentures provided certain financial ratios stated in the agreement are maintained.

At the December 31, 2005 examination date, the Company's Annual Statement reflected policyholders surplus of \$8,555,803, which consisted of *Surplus notes* of \$1,914,000, *Gross paid in and contributed surplus* of \$1,101,694, and \$5,540,109 in *Unassigned funds (surplus)*.

MANAGEMENT AND CONTROL

Policyholders

The Company operates under the mutual plan and is under the ultimate control of its policyholders. All of the Company's policyholders are attorneys and members of the Alabama State Bar, as is required for policy issue. As of December 31, 2005, they numbered approximately 2,191, under 1,131 active policies.

Board of Directors

The Company's By-Laws, as amended, stipulate that its business and affairs shall be managed and controlled by a Board of Directors (Board), who shall be elected by the policyholders. Article III of the By-Laws set the number of directors at "no less than eleven, and no more than fifteen." At least two-thirds of the directors must be bona fide residents of the State of Alabama. The terms of the directors are staggered so that approximately one third expire each year.

The following thirteen directors were elected by the policyholders in accordance with Article II, Section 2 of the By-Laws and were serving at the December 31, 2005 examination date:

Director/Residence

Principal Occupation

Claire Alexander Black
Tuscaloosa, Alabama

Attorney-at-Law

Thomas Edwin Drake
Cullman, Alabama

Attorney-at-Law
Drake & Drake

Reginald Turner Hamner
Montgomery, Alabama

Attorney-at-Law
U.S. Government

Ben Harte Harris, Jr. Mobile, Alabama	Attorney-at-Law Johnston, Adams, Bailey, Gordon & Harris, LLC
Paul Richard Hartley Greenville, Alabama	Attorney-at-Law Hartley & Hickman
Henry Thomas Henzel Birmingham, Alabama	President of the Company/ Attorney-at-Law
Lucien Tennent Lee, III Huntsville, Alabama	Attorney-at-Law – Retired
Charles Howard Moses, III Birmingham, Alabama	Attorney-at-Law Moses & Moses, PC
Jere Coe Segrest Dothan, Alabama	Attorney-at-Law Hardwick, Hause, Segrest & Walding
Harold Layman Speake Moulton, Alabama	Attorney-at-Law
Phillip Edward Stano Washington, D.C.	Attorney-at-Law Jordan Burt
Norborne Clarke Stone, Jr. Bay Minette, Alabama	Attorney-at-Law – Retired Stone, Granade, Crosby
Sharon Donaldson Stuart Birmingham, Alabama	Attorney-at-Law Christian & Small

Officers

Officers elected at the Seventeenth Annual Board of Directors meeting on July 21, 2005, and serving at the examination date were as follows:

<u>Officer</u>	<u>Title</u>
Ben Harte Harris, Jr.	Chairman of the Board
Henry Thomas Henzel	Vice Chairman/President
Charles Howard Moses, III	Secretary/Treasurer

Pecuniary interest violation

During the course of the examination, it was noted that Mr. Charles H. Moses, III, a director and officer with AIM, received a retainer for doing legal work while also serving in the capacity of an officer. The Company's corporate minutes disclosed that Mr. Moses was directly involved in discovering and resolving a problem with the custody agreement required by the Alabama Department of Insurance (ALDOI), worked with the CLE seminar, provided expertise in real estate and probate problems, assisted as Claims Counsel in a claim where the President had recused himself, and was active in general areas of finance, accounting, and investment.

ALA. CODE § 27-27-26 (1975) states:

“(a) Any officer, or director, or any member of a committee or any employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds shall not deposit or invest such funds except in the insurer's corporate name; except, that such insurer may for its convenience hold any equity investment in a street name or in the name of a nominee; shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan, pledge or deposit, security, investment, sale, purchase, exchange, reinsurance or other similar transaction or property of such insurer except as a stockholder or member and shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, any such transaction made by, or on behalf of, such insurer.”

Section (c) of the referenced statute specifies that:

“This section shall not prohibit such a director, or officer, or member of a committee or employee from becoming a policyholder of the insurer and enjoying the usual rights so provided for its policyholders, nor shall it prohibit any such officer, director, or member of a committee or employee from participating as beneficiary in any pension trust, deferred compensation plan, profit-sharing plan or stock option plan authorized by the insurer and to which he may be eligible, **nor shall it prohibit any director or member of a committee from receiving a reasonable fee for legal services actually rendered to such insurer**” (emphasis added).

The latter paragraph does not specifically include “officer.” In addition to being a director, Mr. Moses is also an officer of the corporation but not an employee. Because this officer accepted fees for his services, which he does in the form of an annual retainer, there is a violation of ALA. CODE § 27-27-26 (1975).

When this matter was discussed with the Company, management stated that “the compensation paid to Mr. Moses for legal services rendered in his capacity as secretary, treasurer and as counsel for the Company are not in violation of the Alabama Insurance Code or the Alabama Business Corporations Act whether or not he continues to serve as a director of the Company.”

In accordance with the ALDOI Bulletin, dated February 11, 1992, the examiners provided the Department’s Legal Division with these examination findings. Because an officer is not included in the permissible exception in ALA. CODE § 27-27-26(c) (1975) for receiving a fee for legal services, the Company must require that Mr. Moses do one of the following:

- (1) do no work for the Company;
- (2) receive no fee for any work he does;
- (3) become a part-time employee and officer who will be paid as same; or
- (4) resign as an officer of the Company and do only his work as a director on retainer.

Committees

On July 21, 2005, the Board of Directors established the following committees, the members of which were serving at December 31, 2005:

Executive Committee:

- Chair, Henry Thomas Henzel
- Reginald Turner Hamner
- Paul Richard Hartley
- Lucien Tennent Lee, III
- Charles Howard Moses, III
- Sharon Donaldson Stuart

It was noted that the Executive Committee did not meet during the five-year examination period.

Investment/Audit Committee:

- Chair, Charles Howard Moses, III
- Thomas Edwin Drake
- Reginald Turner Hamner
- Harold Layman Speake

- Norborne Clarke Stone, Jr.

Claims Committee:

- Chair, Lucien Tennent Lee, III
- Claire Alexander Black
- Ben Harte Harris, Jr.
- Paul Richard Hartley
- Jere Coe Segrest

The previous examination report noted that the Company did not have records of the actions of its claims committee. The Company explained that the committee met by teleconference, and actions taken as a result of the meetings were entered directly into the claims files. The review of claims files did not reveal any records of actions of the claims committee that could be identified as such. The examiners recommended that the Company “keep records of the actions taken by its claims committee, in compliance with Section 10-2B-16.01(a), *Code of Alabama*, 1975.” That section of the *Alabama Business Corporation Act* states, in pertinent part:

“(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.”

In response to the examiners’ inquiries, the Company stated that the claims bordereaux that were printed each time the claims committee met were to be considered the committee’s minutes. Management indicated that this arrangement was discussed with the Alabama Department of Insurance (ALDOI) during the previous examination, and it was agreed upon at that time that these bordereaux with the changes in reserves be accepted as minutes of the claims committee meetings. Minutes of these meetings were not provided previously, nor during this five-year examination period, as management considers the contents to be confidential and privileged “covered by the attorney-client, work product doctrine, and related privileges. These ‘records’ exist but due to their privileged nature were not produced...”

The examiners requested documentation of the agreement between the Company and the ALDOI. Correspondence between the Company’s President and the ALDOI’s Legal Division’s Associate Counsel was provided. In his August 9, 2002 letter, the President stated:

“Accordingly, I propose a compromise whereby, in the future, AIM will maintain records of the claims committee’s activities so that a record will exist, showing changes in reserves (both loss adjustment expenses and indemnity) in the aggregate for all claims considered by the committee, by date, but without reference to subject matter discussed or identification of the individual claim. This will allow the examiners to check the weekly re-setting of our stated case reserves (both loss adjustment expense and indemnity) against the existing weekly accounting records. Hopefully this will satisfy the examiners by providing them with mathematical check on the development of the reserves.”

The ALDOI accepted the President’s proposal with regard to the maintenance of records of the claims committee’s activities in a letter dated, August 26, 2002.

Underwriting Committee:

- Chair, Phillip Edward Stano
- Henry Thomas Henzel
- Charles Howard Moses, III
- Jere Coe Segrest
- Sharon Donaldson Stuart

Personnel Committee:

- Chair, Claire Alexander Black
- Henry Thomas Henzel
- Charles Howard Moses, III
- Harold Layman Speake
- Sharon Donaldson Stuart

Marketing Committee:

- Chair, Harold Layman Speake
- Reginald Turner Hamner
- Paul Richard Hartley
- Henry Thomas Henzel
- Lucien Tennent Lee, III
- Charles Howard Moses, III
- Sharon Donaldson Stuart

Legislation Committee:

- Chair, Paul Richard Hartley
- Thomas Edwin Drake
- Reginald Turner Hamner

- Henry Thomas Henzel

Conflict of Interest

Item #15 of the 2005 Annual Statement's *General Interrogatories* reported that the Company has an established procedure for disclosure to the Board of Directors of any material interest or affiliation on the part of its officers, directors, trustees or responsible employees. A written "Conflict of Interest Policy" was approved by the Board of Directors on December 6, 2002. Conflict of interest statements are circulated annually to officers and directors before the independent audit of the previous year. A review of executed statements indicated that all officers and directors signed statements during the five-year examination period.

It was noted, however, that other personnel who handle Company funds have not signed conflict of interest statements, either during the examination period, or subsequent to it. A recommendation to do so was made in the previous examination report. See additional commentary in the COMPLIANCE WITH PREVIOUS RECOMMENDATIONS section, under the "Management and Control (Conflict of Interest)" caption on page 36.

CORPORATE RECORDS

The Company's Articles of Incorporation, By-Laws and amendments thereto were inspected during the course of the examination and appeared to provide for the operation of the Company in accordance with usual corporate practice and applicable statutes and regulations. There were no amendments during the five-year examination period.

Minutes of the meetings of the members, Board of Directors and various committees were reviewed for the period under examination. The minutes appear to be complete with regard to actions taken on matters before the respective bodies for deliberation and action, except as noted otherwise in this report.

HOLDING COMPANY AND AFFILIATE MATTERS

Holding Company Registration

The Company was organized under the mutual plan and has not been affiliated with any other organization since inception. It is, therefore, not subject to the *Alabama Insurance Holding Company System Regulatory Act*, as defined in ALA. CODE § 27-29-1 (1975).

FIDELITY BONDS AND OTHER INSURANCE

At December 31, 2005, the Company maintained a *Financial Institution Bond for Insurance Companies*, issued by St. Paul Fire & Marine Insurance Company. The fidelity bond provided coverage for losses “resulting directly from any dishonest or fraudulent act(s) committed by an Employee acting alone or in collusion with others. Such dishonest or fraudulent act(s) must be committed by the Employee with the manifest intent to: (a) cause the Insured to sustain such loss, and (b) obtain financial benefit for the Employee or other person or entity.” The single loss limit liability of the bond maintained was not sufficient to meet the minimum requirements for fidelity coverages as defined by the NAIC’s Financial Condition Examiners Handbook.

In October 2006, the Company voluntarily increased its fidelity coverage to an amount which exceeded the suggested NAIC minimum requirements. This action was initiated by the Company subsequent to the examination date and prior to the exception noted by the examiners.

As of December 31, 2005, the Company also maintained the following policies:

- Directors and Officers Liability
- Business Liability, including:
 - Liability and Medical Expenses
 - Personal and Advertising Injury
 - Damages to Premises
 - Employment Practices, and
 - Auto Liability
- Office Contents
- Building Liability
- Business Personal Property
- Workers’ Compensation
- Employers’ Liability.

The types, coverages, and maximum limits indicated for each occurrence appear to have been adequate in order to cover the Company from the liabilities arising from employees’ injuries and other hazards to which it might be exposed. The coverages and limits carried by the Company were assessed during the course of the examination and appeared to realistically protect the Company’s interests at the examination date.

EMPLOYEE AND AGENTS WELFARE

The Company provided the following benefits for its employees during the five-year examination period:

- Paid vacation and sick leave
- Paid holidays
- Medical and dental plan.

At the examination date, the Company had two defined contribution plans for its employees:

- Cash or deferred arrangement under Section 401(k) of the Internal Revenue Code – Under the terms of this Plan, all employees who have attained the age of 21 with one year of service are eligible to become participants of the Plan. As participants, employees may contribute to the Plan up to ten percent of their gross annual wages, and the Company will make matching contributions of 50% of each participant's contribution. The Company's contributions vest to the Plan's participants 33 1/3% each full year of employee service until 100% vesting is attained after three years of service.
- Money Purchase Pension Plan – The Company makes contributions to this Plan equal to eight percent of eligible participants' annual compensation. Employees who are 21 years of age and have completed one year of service with the Company are eligible to participate in the Plan. Company contributions vest to the Plan participants 33 1/3% each full year of employee service until 100% vesting is attained after three full years of employment.

The Company also provides compensation for accrued absences.

Compliance with ALA. ADMIN. CODE 482-1-121 (2003)

The Company is required to comply with the Violent Crime Control and Law Enforcement Act of 1994, US Code, Title 18, Section 1033 (e)(1)(A), which, in part, prohibits individuals who have been convicted of specified criminal activity from engaging in the business of insurance without the written consent from the Commissioner of Insurance.

Most of the Company's employees that are hired are referred by a temporary employment agency. The Company requires a resume, will interview and then work the individual for ninety days under the temporary agency assignment. The agency and the Company both check references. Prospective employees are screened for legal problems, civil, criminal and felony convictions prior to hiring. According to management, the Company does not hire anyone with a felony conviction.

The Company does not have a formal policy for monitoring current employees. Management indicated that due to the small size of the Company's staffing, current employees are not monitored, but if situations exist or arise to cause concern, those employees would be monitored and reviewed. ALA. ADMIN. CODE 482-1-121 (2003), Guideline 1, states that "failure to initiate a screening process in an attempt to identify prohibited persons in current or prospective employment relationships may be a factor in determining if a violation of this statute has occurred." The Company needs to determine if any of its employees have any kind of criminal record and monitor all of its employees, on an ongoing basis, for illegal activity.

SPECIAL DEPOSITS

In order to comply with the statutory requirements for doing business in the state in which it is licensed, the Company had the following securities on deposit with the Alabama State Treasurer at the December 31, 2005 examination date:

<u>Description</u>	<u>Par Value</u>	<u>Statement Value</u>	<u>Market Value</u>
2.8689% Certificate of Deposit, with Regions Bank, Birmingham, Alabama; dated 08/09/2004; due 08/09/2006	\$100,000	\$100,000	\$100,000
Total Deposit	\$100,000	\$100,000	\$100,000

Confirmation of this deposit was obtained directly from the issuer and the Alabama Department of Insurance.

FINANCIAL CONDITION/GROWTH OF THE COMPANY

The following table sets forth the significant items indicating the growth and financial condition of the Company for the period under review:

	<u>Admitted Assets</u>	<u>Liabilities</u>	<u>Capital and Surplus</u>	<u>Premiums Earned</u>	<u>Losses and Loss Expenses Incurred</u>	<u>Percentage Losses and Loss Expenses Incurred to Premiums Earned</u>
2005*	\$17,789,746	\$9,233,943	\$8,555,803	\$3,130,029	\$1,957,374	62.54%
2004	17,219,676	9,057,920	8,161,756	2,984,183	1,852,072	62.06%
2003	16,621,965	8,497,698	8,124,267	2,833,346	1,147,879	40.51%
2002	15,210,096	8,104,990	7,105,106	2,895,784	1,390,503	48.02%
2001	14,240,534	7,525,580	6,714,954	2,436,390	1,080,423	44.35%
2000 *	13,415,487	7,070,376	6,345,111	1,762,164	955,027	54.20%

* Per Examination

MARKET CONDUCT ACTIVITIES

Territory

The Company was licensed to transact business only in the State of Alabama. The Certificate of Authority is perpetual, renewed annually by the Alabama Department of Insurance. The certificate and relevant documentation was inspected for the five-year examination period and found to be in order. Authorized lines were compared with the lines of business shown in the *Underwriting and Investment Exhibits* of the 2005 Annual Statement, and no discrepancies were noted.

No license applications were pending at the December 31, 2005 examination date or at the date of this report.

Business in Force – By States

<u>ALABAMA</u>	<u>2005</u>	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>
<i>Liability Lines:</i>					
Gross Premiums Written	\$4,039,090	\$4,033,933	\$3,679,602	\$3,303,120	\$3,030,622
Net Premiums Written	3,155,465	3,045,725	2,939,118	3,009,738	2,484,828
Direct Premiums Earned	3,997,687	3,944,256	3,534,231	3,142,413	2,969,577

Plan of Operation

As discussed previously in the ORGANIZATION AND HISTORY section, the Company was organized for the purpose of writing malpractice insurance for attorneys practicing law in the State of Alabama.

According to the Company's President, AIM's mission is to provide in state members of the Alabama State Bar with a continuously stable and affordable source of malpractice insurance and in doing so, to give unsurpassed claims handling and underwriting to its insureds. As a mutual insurer, management stipulated that the Company is not operated for profit but for services to its members. It is not the Company's intention to be the largest writer of insurance or to enter other states or lines of business. By adhering to its mission, AIM benefits not only its member insureds, but most practicing attorneys in Alabama by providing a source of continual competition for commercial insurers writing lawyers' malpractice insurance. The Company maintains direct contact with its insureds and does not market through independent agents to better insure timeliness and quality of service to applicants and insureds.

At present, management considers market conditions to be soft, which presents AIM with limited underwriting growth. The Company does not attempt to compete with commercial carriers for business. AIM's strategy is to maintain a quality book of business by insuring those attorneys and firms who are skilled and competent practitioners. By utilizing this underwriting methodology, the Company maintains a book of business with insureds who consistently remain from year-to-year, reduces underwriting costs of acquiring new, unstable business, and facilitates better claims handling by diminishing the frequency of claims committed under prior carrier's policies but reported under the Company's.

Long term, AIM's management is dedicated to continuing its mission of serving in state Alabama attorneys with quality insurance coverage and professional service in claims handling and underwriting. The Company is determined to maintain conservative and consistent underwriting practices in order to survive the periodic swings in the commercial insurance market. AIM seeks to achieve surplus growth through its investments, gradual growth in its book of business, and careful claims handling to minimize losses and preserve assets.

Complaint Handling

During the five-year examination period, no complaints against the Company were recorded by the Consumer's Division of the Alabama Department of Insurance.

The Company does not have a manual that details AIM's complaint procedures. Since very few complaints have ever been received by the Company, management determined that formal procedures are not necessary. When a complaint is received, it is given to

the Company's underwriter or President for review and investigation, and then a written response is furnished to the complainant.

During the examination period, the Company maintained a *Complaint Log*, which evidenced eight entries from three complainants. All were received and resolved at the company level. Files, documentation, and correspondence relating to the complaints, which were provided by management, indicated that the Company fully addressed the issues raised.

Marketing and Sales

The Company does not have a formal advertising/marketing strategy but implements various marketing plans each year. Marketing brochures are mailed to attorneys within Alabama who are not policyholders. Mass mailings are sent to new admittees who have passed the bar exams, and to previous applicants whom the Company has solicited but that have not taken coverage. Several times a year, the Company produces a newsletter, titled *Attorneys Insurance Mutual of Alabama, Inc. Newsletter*. Printed advertisements are often placed on the inside cover of the Alabama Lawyer, Alabama Defense Lawyers Journal, and Birmingham Bar Journal publications.

In order to better market the Company, each year management attends, as a vendor, several continuing legal education seminars, including the Alabama State Bar convention, the Young Lawyers seminar, and the Trial Lawyers seminar. Name recognition give-aways, such as beach towels, coolers, tote bags, coffee cups, etc., are often provided at these events.

Since the Company does not have producers or marketing agents, there are no producer training materials. AIM is a direct writer of professional liability insurance, and all marketing/underwriting functions are performed by one underwriter, who is also the Company's only licensed agent.

The Company has an internet website (www.attysinsmut.com), but it is not used for the mass marketing of its product. The home page identified the Company, its location/ mailing address, telephone and FAX numbers, and line of business.

According to the NAIC's Market Conduct Examiners Handbook, the Company "is required to have procedures in place to establish and at all times maintain a system of control over the content, form and method of dissemination of all of its advertisements." A review of the advertising materials provided by management indicated that these items were truthful and not misleading in fact or by implication.

Compliance with Agents' Licensing Requirements

An inspection of the Company's records was conducted in order to determine that producers representing the Company were appropriately appointed. A register of licensed agents was obtained from the Agents' Licensing Division of the Alabama Department of Insurance and compared to a current list of agents provided by the Company.

During the five-year examination period, the Company licensed only one producer, who was also the Company's Vice President of Underwriting. A review of the provided documentation determined that the agent was properly licensed and appointed by the Company. The Company did not pay commissions to its agent or to any other individual or organization during the period under review.

Policyholder Service

A review of policyholders' standards, as defined in the NAIC's Market Conduct Examiners Handbook, was conducted to determine the adequacy and level of policyholder service provided by the Company.

The Company's policy renewal procedures were reviewed. Sixty days prior to the expiration of a policy, the files are pulled and a replacement letter is prepared and signed by the underwriter. The letter is then mailed certified along with the application. Policies are not actually renewed as a new application is completed for each policy period. Upon receipt of the executed application and an underwriting review, a premium quote is prepared and mailed to the policyholder. If the application is not received, follow up notices are FAXed and phoned at thirty and fourteen day intervals.

In accordance with the sampling methods in the NAIC's Market Conduct Examiners Handbook, sample sizes were limited to fifty and 100 items, contingent on the population of specific files. Because all field sizes were less than 5,000, all samples consisted of fifty items, unless otherwise documented, for the purposes of this examination. Policy files were reviewed to determine if the Company was issuing policies in a timely manner, insured-requested cancellations were handled appropriately and timely, and correspondence from insureds was responded to in a timely manner. No problems were identified during these reviews.

Policy Forms and Underwriting Practices

The Company's only policy form, "Lawyers Professional Liability Policy," was filed with and approved by the Alabama Department of Insurance (ALDOI). The *Rate Page*

utilized during the five-year examination period was approved by the ALDOI on May 23, 1997, effective June 1, 1997.

The policy provides professional liability (malpractice) insurance to attorneys who reside in and practice law in Alabama. Membership in the Alabama State Bar is a prerequisite to the issuance of a policy with the Company. Currently, the Company is authorized to underwrite policy limits from \$100,000 to \$10,000,000.

Installment payments

The Company's policy premiums are due annually based on the effective date of the policy; however, in some cases for premiums \$1,000 and over, the Company's underwriter has allowed installment payments normally current, thirty and sixty days. Since the Company did not allow each insured with premiums over \$1,000 the option to pay in installments nor has it had this installment practice approved by the Commissioner, it was not in compliance with ALA. CODE §§ 27-12-14, and 27-14-8(a) (1975). According to ALA. CODE § 27-12-14 (1975):

“(a) No property, casualty or surety insurer, or any employee thereof, and no broker, agent or solicitor shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon or any valuable consideration or inducement whatever not specified in the policy except to the extent provided for in rating systems filed with the commissioner by, or on behalf of, the insurer and approved by the commissioner.”

ALA. CODE § 27-14-8 (a) (1975) states:

“No basic insurance policy or annuity contract form or application form where written application is required and is to be made a part of the policy, or contract, or printed rider, or endorsement form or form of renewal certificate shall be delivered or issued for delivery in this state unless the form has been filed with, and approved by, the commissioner.”

Also, the Company's policies should contain the basis and rates upon which the premium is to be determined and paid in accordance with ALA. CODE § 27-12-14(b) (1975), which states:

“If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.”

Subsequent to the examination date, the Company provided the examiners with a draft endorsement regarding installments that it proposes to file with the Alabama Department of Insurance.

Declined applications

For the examination period, a sample of fifty declined applications was selected from a population of 100, in order to determine if the Company uses valid reasons for rejection/declination and documents these reasons.

The Company did not provide two of the fifty applications, which is not in accordance with ALA. CODE § 27-27-29(a) (1975), which requires:

“Every domestic insurer shall have, and maintain, its principle place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted.”

For the 48 applications provided, the reasons for rejection or declination were determined to be valid and were documented appropriately.

Claims Handling Practices

A selected number of open, closed, denied, and closed-without-payment claims files were reviewed in order to evaluate the Company’s compliance with policy provisions, timeliness of payment, adequacy of documentation and reserving. In accordance with the sampling methods in the NAIC’s Market Conduct Examiners Handbook, sample sizes were limited to fifty and 100 items, contingent on the population of specific files. Since the Company commenced business in 1989, a total of 598 claims had been reported at December 31, 2005. Because the field size was less than 5,000, all sample sizes were fifty claims, unless otherwise documented, for the purposes of this examination.

Timeliness of payment was difficult to evaluate due to the nature of the Company’s business. Because the Company writes only malpractice insurance for attorneys, virtually all of the Company’s claims are litigated, and settlements are often protracted. The best evidence that the Company’s claims were settled in a timely manner and in accordance with policy provision was the absence of complaints by claimants or others during the five-year examination period.

Privacy Policies and Practices

[Compliance with ALA. ADMIN. CODE 482-1-122 (2001), formerly known as Alabama Department of Insurance *Regulation No. 122.*]

ALA. ADMIN. CODE 482-1-122 (2001), the *Privacy of Nonpublic Personal Financial Information* regulation, governs the treatment of nonpublic personal and financial information about individuals by all licensees of the Alabama Department of Insurance. This regulation requires a licensee to provide “a clear and conspicuous notice” to individuals about its privacy policies and practices; describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated parties; and provides methods for individuals to prevent a licensee from disclosing that information.

Management was asked to provide the Company’s policies, practices and procedures, along with a copy of its privacy notice, regarding the protection and disclosure of nonpublic personal information of its consumers, customers and former customers. During the five-year examination period, the Company did not send out any privacy notices. The Company’s Vice President of Underwriting stated that:

“AIM sells a product and services to individuals or firms for business and commercial purposes. In the selling of our insurance product we do not obtain nonpublic personal financial information. Under “Scope B” it states that the Regulation does not apply to information about companies or individuals who obtain or seek to obtain products or services for business, commercial purposes. Therefore, AIM is exempt from this regulation.”

Consequently, in accordance with the aforementioned regulation, the Company is not required to maintain privacy policies and procedures or send out privacy notices.

REINSURANCE

Reinsurance Assumed

The Company has not assumed any reinsurance since inception.

Reinsurance Ceded

The Company’s ceded reinsurance program was administered by an intermediary, Willis Re, Inc., Nashville, Tennessee. Reinsurance coverage was provided, on a claims-made basis, for new and renewal policies classified as attorneys professional liability. The contracts in force at December 31, 2005, were as follows:

- Casualty Excess of Loss (Working Layer contract);
- First Casualty Excess Cession (\$1 million in excess of \$1 million);
- Second Casualty Excess Cession (\$3 million in excess of \$2 million); and
- Casualty Excess Cession Reinsurance (\$5 million in excess of \$5 million).

All of these contracts were on an annual term with the exception of the Casualty Excess of Loss treaty, which was on a three year continuous basis. The reinsurance contracts contained acceptable intermediary and insolvency clauses. With the exception of the changes in retention, limits, premium amounts, and subscribing reinsurers, the contracts were very similar.

Descriptions of reinsurance coverages and participating reinsurers under the Company's reinsurance contracts, in force at December 31, 2005, are as follows:

Casualty Excess of Loss (Working Layer) Contract

The coverage for this contract was 100% of the difference between 1 million ultimate net loss each claim, each policy and \$125,000 ultimate net loss each claim, each policy.

Participating Reinsurers	Federal ID Number/ NAIC Code	Percent Participation
Hannover Ruckversicherungs	AA-1340125	24.50%
Lloyds Syndicate: SJC #2003	AA-1128003	14.00%
HAR #2000	AA-1128000	16.50%
MAP #2791	AA-1128791	25.00%
		55.50%
Converium Limited	AA-1464100	10.00%
Catlin Insurance	AA-3194161	10.00%
Total Participation		100.00%

First Casualty Excess Cession Contract

The coverage for this contract was \$1 million ultimate net loss each policy, each and every claim in the aggregate for any one original policy period in excess of \$1 million ultimate net loss each policy, each and every claim and in the aggregate for any one original policy period.

Participating Reinsurers	Federal ID Number/ NAIC Code	Percent Participation
Hannover Ruckversicherungs	AA-1340125	20.00%
Lloyds Syndicate:		

FDY #435	AA-1126435	10.00%
SJC #2003	AA-1128003	10.00%
HAR #2000	AA-1128000	18.50%
MAP #2791	AA-1128721	<u>25.00%</u>
		63.50%
Converium Limited	AA-1464100	10.00%
Catlin Insurance	AA-3194161	6.50%
Total Participation		100.00%

Second Casualty Excess Sessions Contract

The coverage for this contract was \$3 million ultimate net loss each policy, each and every claim in the aggregate for any one original policy period in excess of \$2 million ultimate net loss each policy, each and every claim and in the aggregate for any one original policy period.

Participating Reinsurers	Federal ID Number/ NAIC Code	Percent Participation
Hannover Ruckversicherungs	AA-1340125	20.00%
Lloyds Syndicate:		
FDY #435	AA-1126435	10.00%
SJC #2003	AA-1128003	10.00%
HAR #2000	AA-1128000	18.60%
MAP #2791	AA-1128791	<u>25.00%</u>
		63.50%
Converium Limited	AA-1464100	10.00%
Catlin Insurance	AA-3194161	6.50%
Total Participation		100.00%

Casualty Excess Cession Reinsurance Contract

The coverage for this contract was for losses incurred under policies written or renewed during the terms of the contract for \$5 million ultimate net loss each and/or in the aggregate in excess of \$5 million ultimate net loss each claim and/or in the aggregate.

Participating Reinsurers	Federal ID Number/ NAIC Code	Percent Participation
Aspen Insurance UK Limited	AA-1120337	17.93%
Lloyds Syndicate:		
FDY #435	AA-1126435	17.93%
ATR #570	AA-1126570	3.58%
AFB #623	AA-1126623	3.23%
CSL #1084	AA-1127084	3.58%
SJC #2003	AA-1128003	7.17%

AFB #2623	AA-1122000	7.53%
MAP #2791	AA-1128791	14.34%
LIB #4472	AA-1126006	8.96%
		66.32%
Converium Limited	AA-1464100	5.00%
QBE International Insurance Limited	AA-3194161	10.75%
Total Participation		100.00%

ACCOUNTS AND RECORDS

The Company's internal controls and information systems were evaluated by observation, by interviewing Company personnel, and by reviewing the NAIC's Examination Planning and Information Systems questionnaires completed by management.

As of December 31, 2005, the Company had seven full time employees, and five other part-time individuals or companies retained on a consulting basis. This small number of personnel did not allow for the proper segregation of duties and did not facilitate proper internal or information system controls. Controls were not relied upon for any phase of this examination.

The Company's principal accounting records were primarily maintained by electronic data processing equipment. Peachtree software is utilized to maintain the Company's general ledger and make cash disbursements. The "AllInOne" database program was implemented in September 2002, on a limited basis. For this database, certain areas, including historical claims information, were not complete at the examination date; therefore, the Company maintained certain of its accounts and reports manually via electronic spreadsheets and in manual journals. Company management and personnel performed the daily record-keeping functions.

The independent certified public accounting (CPA) firm of Hardman, Guess and Cummings, P.C., Birmingham, Alabama, conducted the Company's annual audits for the five-year examination period. The audit workpapers for the consulting CPA firm were made available for review and were tested and utilized in this examination where deemed appropriate. No management letters were issued by the CPAs during the period covered by this examination.

The actuarial consulting firm of Merlinos & Associates, Inc., Norcross, Georgia, was appointed and retained by the Company to prepare the Statement of Actuarial Opinion.

Mr. Matthew P. Merlino, FCAS, MAAA, FCA, certified the reserve calculations for 2001 – 2005.

The previous examination noted that the external auditors did not audit loss reserves and qualified their opinion on the adequacy of the loss reserves, citing the Company's lack of loss history. The examiners recommended that the Company require its external auditors to include an audit of loss/loss adjustment expenses reserves in their future audits of the Company.

In general, the accounting records appeared to reflect the operations during the period under review and the conditions of the Company at the date of examination, unless otherwise commented upon under appropriate captions, elsewhere in this report.

FINANCIAL STATEMENT INDEX

The Financial Statements included in this report were prepared on the basis of the Company's records and the valuations and determinations made during the course of the examination for the year 2005. Amounts shown in the comparative statements for the years 2001, 2002, 2003, and 2004 were compiled from Company copies of filed Annual Statements. The statements are presented in the following order:

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Statement of Assets, Liabilities, Surplus and Other Funds.....	26
Statement of Income	28
Capital and Surplus Account.....	28

THE NOTES IMMEDIATELY FOLLOWING THE FINANCIAL STATEMENTS IN THIS REPORT ARE AN INTEGRAL PART THEREOF.

ATTORNEYS INSURANCE MUTUAL OF ALABAMA, INC.
STATEMENT OF ASSETS, LIABILITIES, SURPLUS AND OTHER FUNDS
For the Year Ended December 31, 2005

<u>ASSETS</u>	<u>Assets</u>	<u>Nonadmitted Assets</u>	<u>Net Admitted Assets</u>
Bonds	\$12,730,384		\$12,730,384
Common stocks	2,667,230		2,667,230
Real estate:			
Properties occupied by the company (Note 1)	973,150		973,150
Cash, cash equivalents and short-term investments	<u>770,408</u>		<u>770,408</u>
Subtotals, cash and invested assets	\$17,141,172		\$17,141,172
Investment income due and accrued	170,670		170,670
Premiums and considerations:			
Uncollected premiums and agents' balances in course of collection	89,635	\$ 1,759	87,876
Reinsurance:			
Amounts recoverable from reinsurers (Note 2)	87,942	87,942	
Other amounts receivable under reinsurance contracts (Note 2)	57,536	57,536	
Current federal and foreign income tax recoverable and interest thereon	82,336		82,336
Net deferred tax asset	324,400	29,600	294,800
Electronic data processing equipment and software	9,606		9,606
Furniture and equipment	57,393	57,393	
Aggregate write-ins for other than invested assets:			
Due from Insureds (Note 3)	5,006	1,720	3,286
Utility Deposit	1,000	1,000	
Prepaid insurance	<u>9,703</u>	<u>9,703</u>	<u>0</u>
Total assets	<u>\$18,036,399</u>	<u>\$246,653</u>	<u>\$17,789,746</u>

THE NOTES TO THE FINANCIAL STATEMENTS ARE AN INTEGRAL PART THEREOF.

ATTORNEYS INSURANCE MUTUAL OF ALABAMA, INC.
STATEMENT OF ASSETS, LIABILITIES, SURPLUS AND OTHER FUNDS

(continued)

For the Year Ended December 31, 2005

LIABILITIES

Losses (Note 4)	\$3,238,000
Loss adjustment expenses (Note 4)	3,877,000
Other expenses	198,558
Taxes, licenses and fees	35,067
Unearned premiums	1,337,612
Advance premium	166,285
Ceded reinsurance premiums payable	208,976
Amounts withheld or retained by company for account of others	4,445
Provision for reinsurance (Note 5)	168,000
Aggregate write-ins for liabilities:	
Retrospective reinsurance premiums payable (Note 6)	<u> 0</u>
Total liabilities	<u>\$9,233,943</u>

CAPITAL AND SURPLUS

Surplus notes	\$ 1,914,000
Gross paid in and contributed surplus	1,101,694
Unassigned funds (surplus) (Note 7)	9,453,851
Surplus as regards policyholders	<u>8,555,803</u>
Totals	<u>\$17,789,746</u>

THE NOTES TO THE FINANCIAL STATEMENTS ARE AN INTEGRAL PART THEREOF.

ATTORNEYS INSURANCE MUTUAL OF ALABAMA, INC.
STATEMENT OF INCOME
For the Years Ended December 31, 2005, 2004, 2003, 2002 and 2001

	<u>2005</u>	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>
<u>UNDERWRITING INCOME</u>					
Premiums earned	\$ 3,130,029	\$2,984,183	\$2,833,346	\$2,895,784	\$2,436,390
Deductions:					
Losses incurred	813,742	775,563	438,055	573,168	409,003
Loss expenses incurred	1,143,632	1,076,509	709,824	817,335	671,420
Other underwriting expenses incurred	<u>1,164,902</u>	<u>1,100,528</u>	<u>1,006,546</u>	<u>1,010,558</u>	<u>922,244</u>
Total underwriting deductions	<u>\$3,122,276</u>	<u>2,952,600</u>	<u>2,154,425</u>	<u>2,401,061</u>	<u>2,002,667</u>
Net underwriting gain (loss)	<u>\$ 7,753</u>	<u>\$ 31,583</u>	<u>\$ 678,921</u>	<u>\$ 494,723</u>	<u>\$ 433,723</u>
<u>INVESTMENT INCOME</u>					
Net investment income earned	\$ 489,683	\$ 538,697	\$ 537,627	\$ 586,895	\$ 617,861
Net realized capital gains (losses)	<u>5,381</u>	<u>4,011</u>	<u>5,955</u>	<u>34,702</u>	<u>-36,404</u>
Net investment gain (loss)	<u>\$ 495,064</u>	<u>\$ 542,708</u>	<u>\$ 543,582</u>	<u>\$ 621,597</u>	<u>\$ 581,457</u>
<u>OTHER INCOME</u>					
Net income after dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes	\$ 502,817	574,291	1,222,503	1,116,320	1,015,180
Federal and foreign income taxes incurred	<u>75,277</u>	<u>167,386</u>	<u>383,911</u>	<u>357,451</u>	<u>334,528</u>
Net income	<u>\$ 427,540</u>	<u>\$ 406,905</u>	<u>\$ 838,592</u>	<u>\$ 758,869</u>	<u>\$ 680,652</u>
<u>CAPITAL AND SURPLUS ACCOUNT</u>					
Surplus as regards policyholders, December 31, prior year	<u>\$8,161,756</u>	<u>\$8,124,267</u>	<u>\$7,105,106</u>	<u>\$6,714,954</u>	<u>\$6,345,111</u>
<u>GAINS AND (LOSSES) IN SURPLUS</u>					
Net income	<u>\$ 427,540</u>	<u>\$ 406,905</u>	<u>\$ 838,592</u>	<u>\$ 758,869</u>	<u>\$ 680,652</u>
Change in net unrealized capital gains or (losses) less capital gains tax	143,864	216,823	335,876	-320,763	-173,333
Change in net deferred income tax	-56,300	-73,600	-116,200	130,200	132,300
Change in nonadmitted assets	27,821	83,105	105,893	-55,154	-265,426
Change in provision for reinsurance	19,000	-66,000	-94,000	-19,000	41,000
Change in surplus notes	-168,000	-530,000	-51,000	-104,000	
Cumulative effect of changes in accounting principles					20,300
Surplus adjustments: Paid in	122	256			-229,350
Beginning Balance of Non-Admitted Net Deferred Tax Asset	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>163,700</u>
Change in surplus as regards policyholders for the year	<u>\$ 394,047</u>	<u>\$ 37,489</u>	<u>\$1,019,161</u>	<u>\$ 390,152</u>	<u>\$ 369,843</u>
Surplus as regards policyholders for the year	<u>\$8,555,803</u>	<u>\$8,161,756</u>	<u>\$8,124,267</u>	<u>\$7,105,106</u>	<u>\$6,714,954</u>

THE NOTES TO THE FINANCIAL STATEMENTS ARE AN INTEGRAL PART THEREOF.

NOTES TO FINANCIAL STATEMENTS

Note 1 – Real estate: Properties occupied by the company \$973,150

The captioned amount is the same as reported by the Company in its 2005 Annual Statement. During the five-year examination period, the Company owned one piece of property, which was reported on asset line 4.1, of the balance sheet as *Properties occupied by the company*.

At December 31, 2005, the Company reported the \$973,150 as both its book value and fair market value (columns 9 and 10, of *Schedule A – Part 1*, respectively). The Company is carrying this home office property at depreciated cost in accordance with *SSAP No. 40*, paragraph 9, of the NAIC's Accounting Practices and Procedures Manual, which states that:

“Properties occupied by the company...shall be carried at depreciated cost less encumbrances unless events or circumstances indicate that the carrying amount of the asset...may not be recoverable.

ALA. CODE § 27-41-34(f) (1975) also requires that:

“Real estate permitted to be carried as an admitted asset of the insurer under this section shall be so carried at an amount equal to its cost at the time of acquisition together with the actual cost of improvements made thereon, less encumbrances and less depreciation where applicable.”

The NAIC's Annual Statement Instructions stipulate that the admitted value “for properties occupied by the company (home office real estate) must not exceed actual cost, plus capitalized improvements, less normal depreciation.”

ALA. CODE § 27-37-7(b) (1975) states that:

“Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than three years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.”

In 1997, the Company's property was appraised prior to acquisition; therefore, the appraisal is not current. Without a current appraisal, fair value at the examination date was not determined accurately, and accordingly, the carrying value may not have been reported appropriately in accordance with the aforementioned section of the *Alabama Insurance Code*. If “fair value as determine by a recent appraisal” indicated that the

property was worth less than depreciated cost, then the Company should have reduced the carrying value to the lesser amount. Consequently, the examiners could not determine if this property warranted “impairment loss” treatment in accordance with paragraph 9, of *SSAP No. 40*, of the NAIC’s Accounting Practices and Procedures Manual.

Utilizing the above guidelines, the Company’s real estate property did not evidence a current appraisal, and accordingly, fair value was not determinable. In view of that, impairment loss, measured as the amount by which the individual carrying amounts exceed the fair value of the properties occupied by the Company, could not be determined. The examiners have no reason to believe that the property has depreciated excessively or that the carrying value is unreasonable. However, the Company should obtain an appraisal in order to determine current fair value in accordance with the relevant sections of the above mentioned regulatory authorities.

Subsequent to the examination period, the Company obtained a new appraisal, as of December 31, 2006. The reconciled market value, per the February 12, 2007 appraisal report, was \$1,000,000, which is \$26,850 more than the \$973,150 amount reported by the Company in *Schedule A*, column 10 (Fair Value Less Encumbrances), of the 2005 Annual Statement. The amount of the difference was not material, and the amount reported by the Company at year-end 2005 was deemed reasonable for examination purposes.

<u>Note 2 – Amounts recoverable from reinsurers</u>	<u>\$ -0-</u>
<u>Other amounts receivable under reinsurance contracts</u>	<u>\$ -0-</u>

The captioned amounts are the same as reported by the Company in its 2005 Annual Statement.

At December 31, 2005, the general ledger amounts for these two assets totaled \$145,478. The Company nonadmitted these recoverables from reinsurers because the amounts were over ninety 90 days past due. The Company, however, did not complete its 2003 through 2005 *Schedule F – Part 7* (Provision for Overdue Reinsurance as of December 31, Current Year) in accordance with the NAIC’s Annual Statement Instructions. *SSAP No. 62*, paragraph 17, of the NAIC’s Accounting Practices and Procedures Manual states, in pertinent part:

“Reinsurance assets meet the definition of assets as defined by *SSAP No. 4 – Assets and Nonadmitted Assets* and are admitted to the extent they conform to the requirements of this statement.”

SSAP No. 62, paragraph 19, states:

“Reinsurance recoverable on loss payments is an admitted asset. Notwithstanding the fact that reinsurance recoverables on paid losses may meet the criteria for offsetting under the provisions of *SSAP No. 64 – Offsetting and Netting of Assets and Liabilities (SSAP No. 64)*, reinsurance recoverables on paid losses shall be reported as an asset without any available offset. Unauthorized reinsurance is included in this asset and reflected separately as a liability to the extent required. Penalty for overdue authorized reinsurance shall be reflected as a liability.”

These recoverables should not have been nonadmitted and a “Provision for Overdue Reinsurance” should have been established in accordance with *SSAP No. 62*, paragraphs 17 and 19, of the NAIC’s Accounting Practices and Procedures Manual. This action would have no effect on the Company’s surplus at December 31, 2005; therefore, no changes were made to the financial statements for the purposes of this examination.

Subsequent to the examination date, the Company collected \$117,865 of the \$145,478 that was outstanding at December 31, 2005. The remaining balance of \$27,613 was due from Reliance Insurance Company (Reliance), which is in liquidation. The claim for this money owed was filed in December 2003. According to *SSAP No. 4*, paragraph 2, of the NAIC’s Accounting Practices and Procedure Manual:

“For purposes of statutory accounting, an asset shall be defined as: probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events.”

Per paragraph 4, of *SSAP No. 4*:

“Transactions which do not give rise to assets as defined in paragraph 2 shall be charged to operations...”

Based on the information provided by the Company, the examiners have no reason to believe that the Company will collect this asset from Reliance; consequently, this recoverable was determined to have no future economic benefit. The \$27,613 balance should be written-off and charged against operations. Due to the immateriality of the latter amount, changes were not made to the Company’s financial statements for the purposes of this examination.

Note 3 – Due From Insureds

\$3,286

The reference amount is the same as reported by the Company in its 2005 Annual Statement. The \$5,006 asset consisted of the deductible amounts from six claims that were to be paid to the Company by the insureds, of which \$1,720 was not admitted as the receivables were in excess of ninety days old.

Management indicated that the Company listed claims deductibles on the Annual Statement as admitted assets because they will be eventually collected as cash. Anything over ninety days is nonadmitted. Paragraph 2, of *SSAP No. 4*, of the NAIC's Accounting Practices and Procedures Manual requires an evaluation to determine if the assets are admitted. Paragraph 3, of that SSAP states:

“For purposes of statutory accounting principles, a nonadmitted asset shall be defined as an asset meeting the criteria in paragraph 2 above, which is accorded limited or no value in statutory reporting, and is one which is:

- a. Specifically identified within the Accounting Practices and Procedures Manual as a nonadmitted asset; or
- b. Not specifically identified as an admitted asset within the Accounting Practices and Procedures Manual.

If an asset meets one of these criteria, the asset shall be reported as a nonadmitted asset and charged against surplus unless otherwise specifically addressed within the Accounting Practices and Procedures Manual.”

In addition, *SSAP No. 21* (Other Admitted Assets) does not specifically address claims deductibles as admitted assets; therefore, in accordance with the above mentioned SSAPs, the Company should not admit these assets on the balance sheet. Because the amount was not material, no changes were made to the financial statements for the purposes of this report.

Note 4 – Losses

\$3,238,000

Loss adjustment expenses

\$3,877,000

The referenced liabilities for losses and loss adjustment expenses (LAE) are the same as the amounts reported by the Company in its 2005 Annual Statement.

The Company uses a loss ratio method to establish loss and LAE reserves that were booked in the 2005 Annual Statement. The ratios are judgmentally selected by management, with consideration of the opining actuary's estimated range of reserves.

In the reserve opinion, the actuary characterized the Company's 2005 reserves as reasonable. The booked reserves were within the appointed actuary's range.

The examination found that the reserves established by the Company at year-end 2005, were redundant. However, the booked reserves were established on a consistent basis with past practices. The runoff of previously established reserves has consistently been favorable. The examining actuary's independent reserve estimates are significantly less than those recorded by the Company and those estimated by the appointed actuary. It is the actuarial examiners' opinion that the Company's recorded reserves were redundant.

During the course of the examination, the actuarial examiners and the appointed actuary discussed the appointed actuary's methods and assumptions and selection process. They also discussed concerns raised by the actuarial examiners regarding some of the methods and assumptions used and the weights given the various methods in the reserve selection process. The appointed actuary has agreed to address these concerns in future actuarial reports and opinions. Because the appointed actuary has agreed to address these concerns, and given that reserves were conservatively recorded consistent with past practices, no adjustments to reserves were made in this examination report.

The Company did not allocate any LAE reserves to adjusting and other (A&O) expenses.

As was discussed previously in this report under the "Claims Committee" (see page 8) and "Claims Handling Practices" (see page 19) captions, Company management asserted attorney-client privilege and did not provide claims committee minutes. In addition, certain documentation was removed from claims files requested by the examiners. The full extent of missing documentation could not be determined. Because of the redaction, the examiners were not able to determine if the Company was adjusting case reserves appropriately. However, based on ultimate payout history, the Company's case reserves have historically been adequate, on average.

The Company included unpaid loss adjustment expense claim amounts at year-end 2002, 2003, 2004, and 2005, in the "Other expenses" liability line item instead of in the "Loss adjustment expense" liability item, and also included these unpaid claim amounts as being paid within *Schedule P* at the respective year-ends when these payments were not actually disbursed until January of the following calendar year. These items were incorrectly classified in the wrong liability account as being paid within *Schedule P*, which was not in accordance with the NAIC's Annual Statement Instructions. The amount at December 31, 2005, was \$821, which was deemed immaterial, and therefore,

constituted no changes to the Company's financial statements in this examination report.

Note 5 – Provision for reinsurance

\$168,000

The captioned amount is the same as recorded by the Company in its 2005 Annual Statement.

The Company reported "NONE" and did not complete *Schedule F – Part 6* (Provision for Overdue Authorized Reinsurance As of December 31, Current Year) in its 2003 – 2005 Annual Statements. According to the NAIC's Annual Statement Instructions, the referenced schedule "should be completed for all authorized reinsurers having paid loss and LAE recoverable balance more than 90 days overdue as reported on Schedule F, Part 4." The Company did not complete *Schedule F – Part 4* (Aging of Ceded Reinsurance As of December 31, Current Year) for 2003 through 2005. The NAIC's Annual Statement Instructions state: "Include in this schedule only companies for which balances are shown in Schedule F, Part 3, Columns 7 and/or 8." The Company reported no balances in columns seven or eight within its *Schedule F – Part 3*, for 2003 or 2005; however, there were amounts reported in these columns for 2004. The Company should correctly complete *Schedule F – Part 4*, and *Schedule F – Part 6*, if amounts are reported within columns seven and/or eight of *Schedule F – Part 3*, in accordance with NAIC instructions thereto. See "Note 2" on page 30 in this section of the report for further discussion on this matter.

Note 6 – Retrospective reinsurance premiums payable

\$ 0

The Company did not recognize retrospective premium adjustments during the accounting period in which such adjustments are incurred, as instructed by *SSAP No. 62*, paragraph 47, of the NAIC's Accounting Practices and Procedures Manual. Rather than book the anticipated retrospective premium adjustment, the Company disclosed the maximum premium payable as a contingent liability in Note #14, of the 2005 Annual Statement's *Notes to Financial Statements*.

The liability is easily determined and directly relates to losses incurred prior to the accounting date. The liability for *Retrospective reinsurance premiums payable* relating to the examination independent reserve analysis was calculated to be \$401,788. The liability relating to ceded payments and reserves booked in the 2005 Annual Statement is approximately \$977,000. Since this issue relates to loss and LAE reserves, and no reduction to loss and LAE reserves is recommended, the examination does not include an increase in the related retrospective reinsurance premiums payable liability.

Note 7 – Unassigned funds (surplus)

\$5,540,109

Unassigned funds (surplus), as determined by this examination, was the same as the referenced amount reported by the Company in its 2005 Annual Statement.

CONTINGENT LIABILITIES AND PENDING LITIGATION

The review of contingent liabilities and pending litigation included an inspection of representations made by Company management, a review of CPA workpapers concerning legal inquiries, and a general review of the Company's records and files conducted during the examination, including a review of claims.

The Company reported that there was no pending litigation at year-end 2005. Management was not aware of any material contingent liabilities at the examination date and had committed no reserves to cover such liabilities. It was noted that the Company disclosed the following contingency in its Notes to Financial Statements of the 2005 Annual Statement:

“Subject to the provisions of its casualty excess of loss reinsurance agreements, the Company has a maximum contingent liability to reinsurers of approximately \$1,700,000 at December 31, 2005. This liability is contingent upon the amount of claims paid by reinsurers within the terms of the reinsurance agreement.”

The examiners were able to determine a liability amount that should have been established at December 31, 2005, regarding this disclosure. A more detailed discussion on this matter may be found in “Note 5 – Retrospective reinsurance premiums payable” on page 34 of this report.

The referenced reviews did not disclose any additional items that would have a material effect on the Company's financial condition in the event of an adverse outcome.

COMPLIANCE WITH PREVIOUS RECOMMENDATIONS

A review was conducted during the current examination with regard to the Company's compliance with the recommendations made in the previous examination report. This review indicated that the Company had satisfactorily complied with the prior recommendations, with the exception of certain items listed below.

Management and Control (Committees) – The previous examination report noted that the Company did not have records of the actions of its claims committee and recommended that the Company keep such records in accordance with Section 10-2B-16.01(a), *Code of Alabama*, 1975. Although the Company indicated that these committee minutes exist, none were provided for the current five-year examination period. A more detailed discussion on this matter may be found elsewhere in this report under the “Claims Committee” caption of MANAGEMENT AND CONTROL on page 8.

Management and Control (Conflict of Interest) – The previous examination recommended that the Company obtain conflict of interest statements from all officers, directors and other personnel who handle Company funds. A review of the statements executed during the five-year examination period indicated that all officers and directors complied with the annual requirement. It was noted, however, that “other personnel who handle Company funds” have not signed conflict of interest statements, either during the examination period, or subsequent to it. Consequently, the Company did not comply with this recommendation in its entirety.

COMMENTS AND RECOMMENDATIONS

The following summary presents the comments and recommendations that are made in the current *Report of Examination*.

Pecuniary interest violation – Page 6

It is recommended that the Company comply with the provisions of ALA. CODE § 27-27-26 (1975), by requiring Mr. Charles H. Moses, III, as an officer of the Company, to do one of the following:

- (1) do no work for the Company;
- (2) receive no fee for any work he does;
- (3) become a part-time employee and officer who will be paid as same; or
- (4) resign as an officer of the Company and do only his work as a director on retainer.

Conflict of Interest – Page 10

It is recommended that the Company obtain signed conflict of interest statements from all officers, directors, trustees or responsible employees who handle the Company’s funds. A similar recommendation was made in the previous examination report.

Compliance with ALA. ADMIN. CODE 482-1-121 (2003) – Page 12

It is recommended that the Company require all current employees and agents to sign an affidavit concerning the Violent Crime and Law Enforcement Act of 1994 on an annual basis in order to ensure compliance with US Code, Title 18, Section 1033 (e)(1)(A) and ALA. ADMIN. CODE 482-1-121 (2003). Guideline 1, of the referenced regulation states that “failure to initiate a screening process in an attempt to identify prohibited persons in current or prospective employment relationships may be a factor in determining if a violation of this statute has occurred.”

Policy Forms and Underwriting Practices – Installment payments – Page 18

It is recommended that the Company cease allowing insureds to pay their annual premiums in installments.

If the Company wants to continue to allow insureds to pay their annual premiums in installments, **it is recommended** that the installment premium practice be submitted to the Commissioner for approval in accordance with ALA. CODE §§ 27-12-14 and 27-14-8 (1975). According to ALA. CODE § 27-12-14 (1975), “(a) No property, casualty or surety insurer, or any employee thereof, and no broker, agent or solicitor shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon or any valuable consideration or inducement whatever not specified in the policy except to the extent provided for in rating systems filed with the commissioner by, or on behalf of, the insurer and approved by the commissioner.” ALA. CODE § 27-14-8(a) (1975) states: “No basic insurance policy or annuity contract form or application form where written application is required and is to be made a part of the policy, or contract, or printed rider, or endorsement form or form of renewal certificate shall be delivered or issued for delivery in this state unless the form has been filed with, and approved by, the commissioner.”

It is further recommended that the Company’s policies contain the basis and rates upon which the premium is to be determined and paid in accordance with ALA. CODE § 27-12-14(b) (1975), which states: “If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.”

Policy Forms and Underwriting Practices – Declined applications – Page 19

It is recommended that the Company maintain all declined applications and documentation detailing the reasons for rejection or declination in accordance with ALA. CODE § 27-27-29(a) (1975), which requires that “Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds, of insurance transacted.”

Real estate: Properties occupied by the company – Page 29

It is recommended that the Company maintain a current appraisal on its home office property in order to determine fair market value in accordance with ALA. CODE § 27-37-7(b) (1975), which states that: “Other real property held by an insurer shall not be valued in an amount in excess of fair value as determined by a recent appraisal. If valuation is based on an appraisal more than three years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.”

Amounts recoverable from reinsurers – Page 30

Other amounts receivable under reinsurance contracts – Page 30

It is recommended that if the Company has reinsurance recoverables overdue, *Schedule F – Part 7*, should be completed in accordance with the NAIC’s Annual Statement Instructions.

It is further recommended that the Company not nonadmit reinsurance recoverables overdue, and establish a “Provision for Overdue Reinsurance” in accordance with *SSAP No. 62*, paragraphs 17 and 19, of the NAIC’s Accounting Practices and Procedures Manual. According to paragraph 17, “Reinsurance assets meet the definition of assets as defined by *SSAP No. 4 – Assets and Nonadmitted Assets* and are admitted to the extent they conform to the requirements of this statement.” Paragraph 19 states: “Reinsurance recoverables on loss payments is an admitted asset. Notwithstanding the fact that reinsurance recoverables on paid losses may meet the criteria for offsetting under the provisions of *SSAP No. 64 – Offsetting and Netting of Assets and Liabilities* (SSAP No. 64), reinsurance recoverables on paid losses shall be reported as an asset without any available offset. Unauthorized reinsurance is included in this asset and reflected separately as a liability to the extent required. Penalty for overdue authorized reinsurance shall be reflected as a liability.”

It is recommended that the Company write-off the balance due from Reliance Insurance Company and charge the amount against operations because there is no probable future economic benefit, which is defined in *SSAP No. 4*, paragraphs 2 and 4, of the NAIC's Accounting Practices and Procedures Manual. According to paragraph 2, "For purposes of statutory accounting, an asset shall be defined as: probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events." Paragraph 4 states: "Transactions which do not give rise to assets as defined in paragraph 2 shall be charged to operations..."

Due From Insureds – Page 32

It is recommended that the Company not admit claims deductibles in accordance with *SSAP No. 4*, and *SSAP No. 21*, as claims deductibles are "[n]ot specifically identified as an admitted asset within the Accounting Practices and Procedures Manual..." and "...shall be reported as a nonadmitted asset and charges against surplus..."

Losses and Loss adjustment expenses – Page 32

It is recommended that the Company classify all unpaid loss adjustment claims expenses in the *Loss adjustment expense* liability and not consider these as paid, but as unpaid, within *Schedule P* until a disbursement is actually made in accordance with the NAIC's Annual Statement Instructions.

Provision for reinsurance – Page 34

It is recommended that the Company complete *Schedule F – Part 4*, and *Schedule F – Part 6*, if amounts are recorded within columns seven and/or eight of *Schedule F – Part 3*, in accordance with the NAIC's Annual Statement Instructions.

Retrospective reinsurance premiums payable – Page 39

It is recommended that the Company accrue for retrospective premium adjustments in future Annual Statements in accordance with *SSAP No. 62*, paragraph 47, of the NAIC's Accounting Practices and Procedures Manual.

SUBSEQUENT EVENTS

The review of events subsequent to the December 31, 2005 examination date indicated the following:

Surplus Debentures

At the date of this report, the Company had reduced its *Surplus notes* from \$1,914,000, at December 31, 2005, to \$0, by the redemption of its 8% Series A Subordinated Surplus Debentures.

CONCLUSION

Acknowledgement is hereby made of the courteous cooperation extended by all persons representing the Company during the course of the examination.

The customary insurance examination procedures, as recommended by the National Association of Insurance Commissioners, have been followed to the extent appropriate in connection with the verification and evaluation of assets and the determination of liabilities.

In addition to the undersigned, Rhonda B. Ball, Examiner; and R. Glenn Taylor, ACAS, MAAA and Randall D. Ross, ACAS, MAAA, Consulting Actuarial Examiners; all representing the Alabama Department of Insurance, participated in this examination of *Attorneys Insurance Mutual of Alabama, Inc.*

Respectfully submitted,



Anne L. Ward, CFE
Examiner-in-Charge
State of Alabama
Department of Insurance

March 26, 2007

(Amended September 8, 2008, in accordance with the Commissioner's Order, CASE NO.C-2008-48EB, dated August 28, 2008)