Uninsured Motorists in New Mexico

Final Report

Insurance and Financial Services Center Study

New Mexico State University

Submitted to the

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Insurance Division

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SECTION ONE

Measuring Uninsured Motorists in New Mexico

SECTION TWO

Ratemaking Issues and Uninsured Motorists

SECTION ONE

Measuring Uninsured Motorists in New Mexico

I. Introduction

This study was performed on behalf of a Memorandum of Agreement between the Insurance Division of the State of New Mexico's Public Regulation Commission and New Mexico State University. The parties mutually agreed upon the following:

The Contractor shall perform a study to measure the level of uninsured motorist activity in New Mexico and the United States as a whole. The study shall cover the time-period from 2000 to 2007. As part of this measurement, the study shall answer the following questions:

1. What percentage of vehicles registered in New Mexico is uninsured?
2. What percentage of vehicles registered in United States is uninsured?
3. What percentage of vehicles driven in New Mexico is uninsured?
4. What percentage of vehicles driven in United States is uninsured?
5. If a vehicle driven in New Mexico is struck by another vehicle, what is the likelihood that the other vehicle is uninsured?
6. If a vehicle driven in United States is struck by another vehicle, what is the likelihood that the other vehicle is uninsured?

The study shall provide separate answers for New Mexico and the United States for each year data is available from 2000 to 2007. The study shall explain, as best as possible, discrepancies and differences between the answers to each of these questions. In performing the study, the Contractor examined and interviewed relevant sources of information, including but not limited to initiatives, studies, and experts from various organizations, including: (1) New Mexico Motor Vehicle Division; (2) New Mexico Department of Transportation; (3) National Association of Insurance Commissioners; (4) Division of Insurance – state of New Mexico; and

(5) Insurance Research Council. We also conducted a literature review of prior studies covering various areas of uninsured motorists and interviewed a variety of professionals with divergent interests in the issue. In addition, we examined a variety of factors and their direct or indirect effect on insurance ratemaking as it relates to the Uninsured Motorist component of the automobile insurance policy.

Uninsured motorist coverage, designated Part C in the Personal Automobile Policy (PAP), is designed to protect the insured and his or her family for injuries sustained as a result of being struck by an uninsured or hit-and-run driver or a driver whose insurance company has become insolvent. Uninsured motorist coverage was originally designed to cover bodily injury only. In many states, however, it has been extended to cover property damage. Insurers must offer Uninsured Motorist Property Damage (UMPD) in New Mexico, among other states. Insureds purchase uninsured motorist insurance to protect themselves against other drivers. Most policies define an uninsured motor vehicle as a land motor vehicle or trailer of any type with the following specifications:

1. One to which no bodily injury liability bond or policy applies at the time of the accident.
2. One to which a bodily injury liability bond or policy applies at the time of the accident, but with a limit for liability less than the minimum limit specified by the financial responsibility law of the state in which your covered auto is principally garaged.
3. One that is a hit-and-run vehicle whose operator or owner cannot be identified and that hits you or any family member, a vehicle occupied by your or any family member, or your covered auto.
4. One to which a bodily injury bond or policy applies at the time of the accident but that is covered by a bonding or insuring company that denies coverage or becomes insolvent.

The definition of Insured under uninsured motorist coverage includes three classes of persons: (1) the named insured and any family member, (2) any other person occupying the insured's covered auto, and (3) any person for damages that person is entitled to recover because of injury to a person described in (1) or (2). The named insured and family members are covered even when they are not occupying an auto and could recover if injured by an uninsured motorist as a pedestrian or, say, on a bicycle. Other persons are covered only if injured while occupying the insured's covered auto. The insurer has the right to collect from the negligent uninsured motorist for any damages paid to the insured motorist, in the unlikely case that the uninsured driver has the assets to pay.

The dilemma of the uninsured motorist has a nearly century-long history. In the 1920s, car ownership had spread beyond the affluent with the assets to pay for any harm caused by their negligence. For many low-income families with little property that could be seized to pay for damages they caused, liability insurance seemed to offer the only solution. While about half the states had introduced compulsory insurance bills in the 1920s, none were to be enacted for another 30 years. Massachusetts was the first state to enact such legislation in 1927. Instead of requiring all motorists to carry liability insurance, the approach most other states took was to require motorists who were in an accident show they had the financial means to compensate their victims. Finally, in 1956 and 1957, compulsory insurance systems were established in New York and North Carolina, respectively. New Mexico introduced compulsory insurance laws in 1984. Today there are 48 compulsory insurance states.[1]

Why are there uninsured motorists? There are potentially several factors that may explain why motorists drive without insurance. According to Khazzoom (2000), most uninsured

[1] New Hampshire and Wisconsin do not have compulsory auto insurance liability laws, but have financial responsibility laws.

motorists live in inner cities, which generally have the highest insurance rates. Insurance pricing is designed to require mandatory insurance to be acquired in one block, and is not tied to any affordable increments such as the extent of car use, for example. A 1999 IRC survey found that 41 percent of respondents owning an uninsured vehicle said they were not insured because premiums were too high. Law enforcement can also influence UM percentages. For example, if the fine for driving without insurance is $100, and the probability of being caught driving with no insurance is 0.05, the expected cost of driving without insurance is only $5. Penalties for driving without insurance such as impounding the car and/or revoking the driver's license have generally been more successful -- when consistently enforced -- in reducing the number of uninsured motorists. Other factors may include unavailability of public transportation, lack of awareness of mandatory laws, and transitional factors (vehicle not in operating condition, vehicle runs but is not being used, vehicle will soon be sold, etc.).

The study is organized into two major sections. Section One addresses the complexities associated with the measurement of the uninsured motorists' percentage in New Mexico and the United States. Generally this Section focuses on two major sources of data from the Motor Vehicle Division and the Insurance Research Council.

Section Two looks at additional criteria that may affect ratemaking issues pertaining to uninsured motorists and the automobile insurance premium in general. These include direct and indirect factors that may play a role in ratemaking procedures.

II. Factors Influencing the Occurrence of Uninsured Motorist Claims

Various aspects of uninsured motorists have been studied by academics and industry professionals for at least four decades. In 1967, the Journal of Risk and Insurance published a paper by Sajjad Hasmi titled, "The Problem of the Uninsured Motorist." Prior research studies have examined a number of factors critical to the level of uninsured motorists, including the effectiveness of enforcement, computer matching databases, and compulsory insurance laws. In an empirical model tested on pooled cross-section and time-series data covering 50 states and the District of Columbia, Ma and Schmit (2000) addressed the effect of enforcement mechanisms for purchase of required insurance on the degree to which drivers choose not to insure. Their results indicate that higher levels of enforcement stringency relate to lower levels of uninsured drivers.[2] In addition, lower levels of poverty and populations living in metropolitan areas are also related to lower levels of uninsured drivers, while no-fault states are associated with higher levels of uninsured motorists.

In a study of penalties for driving without insurance for the period 1995 to 1997, Cole, et al. (2002) find that fines are the most common penalty, used by more than 86 percent of states. States also use fines as penalties for fraud and failure to comply with request to surrender license and/or registration. Seventeen states use jail sentences as penalties for noncompliance, although it is questionable whether these penalties are enforced. The results of their study found that the presence of a compulsory-insurance law and the level of average fine were negatively related to the uninsured motorist rate. The study also found that jail time was positively related to the uninsured motorist rate, which may be evidence that if motorists do not feel this penalty will be enforced, it does not act as a deterrent to noncompliance.

[2] As an extreme international example of enforcement, legislation was introduced in 2005 by the Labour Party which would have given British police the power to seize and destroy the vehicles of uninsured drivers.

According to an August 2008 report by the Insurance Information Institute, 24 states required proof of insurance at registration, 34 states required proof of insurance at the time of an accident, and 35 states required proof at all times in the vehicle. In New Mexico, Section 66-5-205, Paragraph A & B require that the owner or a vehicle and the driver of a vehicle both have a responsibility to have proof of insurance in that vehicle at any time that it is being operated on public roads. That is the basis for tickets given in the road block actions taken by police. Section 66-5-205.1 requires proof of insurance at the scene of any vehicle accident involving the vehicle and authorizes the police to take the plate off of the vehicle if no proof of insurance is available. Section 66-5-206 requires proof of insurance on registration of a vehicle but 66-5-234 requires only "affirmation" of insurance coverage for renewal of registration.

An important question involving uninsured motorists is whether they drive more cautiously or less carefully. Reasonable arguments have been made on both sides, and the limited amount of research in this area has had conflicting results. In a nationwide study of compulsory insurance regulation for the 1970-1998 time period, Cohen and Dehejia (2004) find that while compulsory insurance rules result in a significant reduction in the incidence of uninsured motorists, there is also an unintended effect. Traffic fatalities increased two percent for each percentage-point drop in uninsured motorists, suggesting that uncovered motorists drive more carefully. Kuan and Peck (1981) summarized in a study of California drivers that "compared to the average California driver, the financially irresponsible driver was found to have a much worst prior accident record."

The success of insurance data reporting programs appears to be mixed in earlier years, with results improving over time, based on the conclusions of two studies. The American Association of Motor Vehicle Administrators (AAMVA) states in their 2002 AAMVA Financial

Responsibility and Insurance Resource Guide that in general, no correlation exists between compulsory insurance and the number of uninsured motor vehicles on the highway. They also contend there is the same absence of correlation of insurance data reporting programs. Based on IRC studies between 1989 and 1999, of the 18 states reporting programs in place for 5 years or more, 12 showed an increase in uninsured motorists and 6 experienced improvements. AAMVA acknowledges that other factors may be involved, such as the level of enforcement and consistency of penalties. However, in a more recent survey of the 27 states that operate some type of database reporting system, a task force for the Texas Department of insurance found that the average pre-implementation uninsured motorists rate (UMR) was 25.85 percent, and the average post-implementation UMR was 9.39 percent which is a reduction of nearly 64 percent (Texas Department of Insurance, 2005).

Socioeconomic characteristics of uninsured motorists have also been an area of interest to researchers. The All Industry Research Advisory Council (AIRAC)[3] conducted a survey and found the highest number of uninsured motorists in metropolitan areas, and that the city tends to have a higher concentration of uninsured motorists than the remainder of the metropolitan area.[4] According to the 2000 U.S. Census Bureau, 75.0% of New Mexico's state population lives in metropolitan areas. This compares with a range of 38.2% in Vermont and 94.3% in New Jersey. AIRAC data also indicated that rural areas generally have a relatively small proportion of uninsured motorists. Table 1 on the next page provides further demographic profiles from the AIRAC survey.

[3] The AIRAC changed its name to the Insurance Research Council (IRC) in 1990.
[4] There is agreement with these results in the 2006 IRC Study. For example, the UM/BI claim frequency ratio in Philadelphia was nearly three times higher than in other locations measured in Pennsylvania. In Illinois the ratio in Chicago was more than twice the ratio in other parts of the state.

Table 1-1

Profile of Uninsured Motorists

Age: **Young**	Motorists between 18-29 own 28% of registered vehicles and account for 52% of uninsured vehicles. Motorists 45 and over own 39% of registered vehicles and account for 13% of uninsured vehicles.
Education: **Low**	Motorists with less than a high school education own 17% of registered vehicles and account for 33% of uninsured vehicles. College grad or post grads own 23% of registered vehicles and account for 11% of uninsured vehicles.
Residence: **Rent**	Motorist renting residence own 26% of registered vehicles and account for 50% of uninsured vehicles. Motorists owning residence own 68% of registered vehicles, and account for 40% of uninsured vehicles.
Job Status: **Unemployed/** **Part-time**	Unemployed motorists own 17% of registered vehicles and account for 33% of uninsured vehicles. Retired motorists own 14% of registered vehicles, and account for 5% of uninsured vehicles.
Personal **Income:** **Low**	Motorists with less than $7,500 own 23% of registered vehicles and account for 40% of uninsured vehicles. Motorists with $20,000 or more own 34% of registered vehicles and account for 16% of uninsured vehicles.

Source: All Industry Research Advisory Council (AIRAC) 1989 Survey

III. Calculating the Percentage of Uninsured Motorists

Numerous estimates of uninsured motorists have been provided by various organizations for some time. Most of these estimates are fragmentary, and for most the methods used in deriving them are elusive. To illustrate the challenge in estimating uninsured motorists, consider that during the 1980s, the National Association of Insurance Commissioners reported the uninsured motorist rate at 60 percent in New Mexico, while the rates for the same general period were estimated at 21 percent and 50 percent by the All Industry Research Advisory Council and the Insurance Information Institute, respectively.

The AAMVA Uninsured Motor Vehicle Rate Working Group has identified four methods to calculate the Uninsured Motorist Rate: (1) Database Method – available in New Mexico and used in this study, (2) Random Sampling Method – of greater use to states without a database tracking system, with mixed results, (3) Law Enforcement Method – perhaps the simplest method and not the most accurate, (4) Crash Statistics Method – basically the IRC methodology, and included in this study. (AAMVA, 2002)

Technically it is the vehicle, not the motorist, which is insured. In its simplest terms an uninsured motorist means a motorist who owns an uninsured vehicle. However, there is no one-to-one correspondence between "uninsured motorist" and "uninsured vehicle." When car owners own more than one vehicle, this simple one-to-one correspondence no longer holds, even when the intermingling of car owner and car driver continues to hold. Suppose there are fifty car owners each owning two vehicles – one of which is insured, the other not insured. In this example, there are fifty out of fifty auto owners who failed to insure their vehicles, yielding 100 percent uninsured motorists. However, there are only 50 uninsured vehicles out of 100, yielding a 50 percent uninsured vehicle rate (Khazzoom, 2000). There are also differences in the

definition of an uninsured motorist at the state level, which creates inefficiencies in cross-state comparisons.

Technicalities such as these add a level of complexity to the calculation and analysis of the percentage of uninsured motorists. The only sources of data we found within the time frame in question, 2000 to 2007, are from the Insurance Research Council and the New Mexico Motor Vehicles Division IIDB database. The Insurance Research Council study is focused on the uninsured motorist rather than the uninsured vehicle, and supposedly factors in the complexity of determining the uninsured motorist. The New Mexico Motor Vehicle Department, using the Insurance Identification Database (IIDB), focuses on uninsured vehicles and estimates the number of uninsured vehicles as the difference between the number of registered vehicles and the number of insured vehicles.

IV. Insurance Identification Databases

The movement toward insurance verification reporting began in the 1970s, picked up momentum in the 1980s, and is continuing today. Each generation of reporting requirements seeks to accomplish what the previous failed to do – reduce or eliminate uninsured drivers. About half of the compulsory insurance states require some type of data reporting. Part of the motivation behind the use of insurance verification databases is to mitigate attempts by millions of motorists nationwide to skirt compulsory insurance laws. These included using counterfeit proof-of-insurance cards or obtaining a month's coverage of insurance to get an ID card, only to cancel the policy once they get their licenses renewed or their vehicles inspected.

According to the Insurance Information Institute, as of January 2009 there were 22 states with a computer data law. Insurers must submit an entire list of insurance in effect, which may

be compared with registration at a state agency. This law also includes cases where insurers are required to report new issues and/or renewals. In an additional 25 states without the computer data law, insurers must notify the Department of Motor Vehicles or another state agency of cancellation or nonrenewal of policies, and/or verify randomly selected insurance policies upon request.

In a comparison of the 22 states using a computer data law with recent IRC uninsured motorists accident data, only two of the ten states with the lowest UM percentages have the computer data law and five of the ten states with the highest UM percentages have enacted the law. Eleven states had UM rates above the national average and the other half had rates below the national average. However, it is difficult to draw any meaningful conclusions from this information as the Insurance Information Institute does not provide starting dates on when the various states initiated the computer data law. Also, there may be more urgency among states with higher UM percentages to "do something" in an attempt to control the UM rate, thus skewing the results toward higher UM numbers.

In New Mexico, effective July 1, 2001 House Bill 847 required insurance companies to report cancelled, terminated and newly issued motor vehicle insurance policies each month to the Motor Vehicle Division. Senate Bill 438 provided funding to enforce the Mandatory Financial Responsibility Act by imposing an additional $2.00 registration fee for every vehicle less than 26,000 pounds. Vehicles that do not have the minimum liability insurance are subject to having their vehicle registration suspended. Effective October 9, 2002 registration of vehicle(s) could be denied or delayed until insurance is obtained. The first letters to uninsured motorists were mailed out on December 9, 2002. All insurance companies licensed to sell in New Mexico report insured vehicles monthly, and can report as often as daily. MVD registration data is

matched with insurance data daily. After 60 days without insurance on the IIDB database the vehicle's owner will receive a warning letter. After receiving this notification the owner can: (1) check the VIN on the policy and the registration for accuracy, (2) contact their insurance company to update the IIDB if they have insurance, (3) buy insurance if applicable, or (4) request an Administrative Hearing. After an additional 30 days without insurance on the IIDB database, the owner will receive a second letter informing that vehicle's registration will be suspended within 20 days if the IIDB does not receive required insurance information. One problem with the existing system in New Mexico is that it effectively gives people at least 90 free days to go without insurance. Given the improvement in data information this could probably easily be shortened, as under the current system there is no real penalty[5].

As noted earlier, insurance companies are responsible for updating vehicles they insure at least once a month and can report as frequently as daily. For Personal Auto Policies, insurance information is matched to registered vehicles primarily based on the Vehicle Identification Number (VIN) reported by insurance companies. Insurance information for Fleet/Commercial Policies is matched to registered vehicles by the name and address combination submitted by the insurance company. Insurance agents/companies are able to add additional owners to policies previously submitted to ensure that all vehicles covered under the policy are identified as insured. On November 11, 2002 this insurance information was made available to be fed into police vehicle monitors.

There are also other required instances of reporting. For example, companies that are self-insured are required to provide a certificate of self insurance to the Financial Responsibility

[5] At the time of this study, there was sponsorship and gubernatorial support for a proposed bill in the New Mexico legislature to increase the reinstatement penalty from $25 to $100 in an effort to crack down on uninsured drivers in the state.

Section of the MVD. Out-of-state drivers with in-state registrations (such as students or someone in the military) that have insurance issued in another state need to submit affidavits every time their policy renews. If drivers plan to drop their insurance on vehicles that are registered and not operated, they must submit non-use affidavits.

Accuracy of data was by far the leading cause of ineffective auto insurance verification systems when they were first implemented. Several states currently employing systems experienced accuracy issues where at least 20 percent of the data reported contained errors (NAIC, 2007). For example, erroneous input of Vehicle Identification Numbers (VIN) resulted in numerous inaccuracies within the data. The early mismatches appear to have been minimized appreciably with experience.

Other considerations regarding the MVD data may influence the true number of uninsured motorists to a certain degree as well. For example, there may be vehicles on New Mexico roads that are not only uninsured, but are not registered either. Part of the difference in the conclusions of the MVD and IRC may be attributable to the exclusion of unregistered vehicles in the MVD numbers. We have compared the ratio of registered vehicles to the population of New Mexico for the time period of the study, and provide the results in Table 1-2 on the following page. It is arguable that increased efforts to enforce insurance requirements may have led to a subsequent increase in the number of vehicles that are not registered.

Table 1-2

Ratio of Registered Vehicles to Estimated Population – New Mexico

	2007	2006	2005	2004	2003	2002
* Population Estimates	1,969,915	1,942,302	1,916,331	1,892,182	1,870,113	1,850,562
** Total Registered Vehicles	1,692,008	1,656,136	1,669,162	1,627,917	1,569,231	1,589,920
Ratio of Registered Vehicles to Population	85.89%	85.27%	87.10%	86.03%	83.91%	85.92%

** Source: United States Census Bureau*

*** Source: Motor Vehicle Division, State of New Mexico*

Another issue involves commercial vehicles. Insurance companies frequently do not use VIN's. If you are using a symbol 1, VIN's are not needed.[6] If the insurance companies are not supplying data on business vehicles, then the MVD data only applies to non-commercial vehicles. According to the New Mexico Motor Vehicle Division, the electronic reporting of commercial polices from insurance carriers to the New Mexico (NM) Insurance Identification Database (IIDB) is reported in one of two ways depending on whether it is a VIN specific policy (as identified primarily by VIN and vehicle specific information) or a non-specific policy of which no vehicle information is reported. Reporting is required of NM licensed carriers for all vehicles rated at 26,000 lbs. GVW and under unless exempted under the provisions of the NM Mandatory Financial Responsibility Act, 66-5-201.

For a commercial policy (the name given due to its commercial/business status and may include many vehicles) reporting in which the policy is a Vehicle Specific Policy, the insurance carriers capture all vehicle information for which it provides coverage. The insurance company will then electronically report the policy information for <u>each</u> vehicle to include the name of the

[6] If symbol 1 is entered for a coverage, that coverage is provided for any auto, including autos owned by the named insured, autos the named insured hires or borrows from others, and other nonowned autos used in the insured's business. Ordinarily this symbol is used for liability coverage only.

carrier, the insured, policy number, effective date and the specific vehicle information with the VIN being the primary identifier. This includes the reporting of both additions and cancellations.

Non-Specific commercial policy reporting consists of only the reporting of the name of insurance company, policy information (i.e. number and effective date) and name and address of insured. The important thing here is that if the carrier provides coverage under the same policy for multiple names and addresses for their insured, each of these must also be reported as matches are done based on exact name and address reported. Again this includes reporting of both additions and cancellations.

On both of the above methods of reporting, the information from the IIDB is then matched to the NM Motor Vehicle registration database and the record is updated with the appropriate insurance status.

V. Estimating Uninsured Vehicles Using the UM/BI Ratio

One approach to estimating the size of the uninsured motorists population is by comparing the injury portion of the UM coverage with bodily injury liability (BI) coverage. The Insurance Research Council (IRC) study collected frequency data for uninsured motorists (UM) injury claims and bodily injury (BI) liability claims for the years 1999 through 2004. According to the IRC, the ratio of UM to BI claim frequencies produces a reasonable estimate of the proportion of injury accidents caused by uninsured or hit-and-run motorists. In other words, the ratio of UM to BI claim frequencies provides an estimate of the probability than an at-fault driver in an accident was uninsured or unable to meet the liability for someone else's injuries caused by the accident (IRC, 2006).

Implicitly, the IRC's calculation makes two basic assumptions. One is that the propensity to get involved in accidents is the same for insured and uninsured motorists. Another is the percentage of accidents that involve an insured and an uninsured motorist, where the uninsured motorist is at fault, is the same as the percentage of uninsured motorists. IRC gives no empirical evidence to support the plausibility of these assumptions, nor does it make any *a priori* argument to support them. There are other limitations of the UM to BI ratio. For example, the UM claim frequency also includes injury claims from hit-and-run accidents, and it is not known under those circumstances whether or not the at-fault driver had insurance.[7] Also, any potential underlying differences in claiming behavior between injured parties deciding to make a BI claim versus a UM claim could affect the ratio's underlying frequencies. Those vehicles that are not insured, but also not driven on the road, are not factored into the UM/BI ratio.

According to Khazzoom (2000) there are additional concerns with the IRC methodology. The reasoning behind IRC's method rests on a simple example which rules out multiple ownerships of vehicles and relies on the assumption of interlocking of car owner and car driver. IRC reports annual ratios calculated from data collected by three separate agencies: the National Association of Independent Insurers, the Insurance Service Office, and the National Independent Statistical Service. This limits the usefulness of these estimates in any inferential work, as the variance of the estimates and the size of the sample used in calculating these estimates are not provided by the IRC.

[7] In 1996, the California Highway Patrol (CHP) reported 21,496 hit-and-run injury accidents in California. This reflects 11 percent of all injury and fatal accidents reported in 1996. Unfortunately, by the very nature of a hit-and-run accident, it is not possible to tell much about the vehicle fleeing the scene. It is not known whether uninsured vehicles or insured vehicles are more likely to flee after causing an accident, all other things equal. With greater exposure to personal liability, the uninsured driver would seemingly have a greater incentive to flee. However, the decision to flee may not be an entirely rational one. Insured drivers could fear legal involvement and higher insurance costs. Also, there is a much higher percentage of insured vehicles on-the-road (Hunstad, 1999).

IRC's calculations are likely to overstate the percentage of uninsured motorists in many states, but the range of the overestimate is unknown. Reasons for the bias include the accident proneness of the uninsured motorists. There is evidence that suggests, at least in some states, uninsured motorists tend to be disproportionately involved in accidents.[8] The disparity in the nature and disposition of uninsured motorist claims and bodily-injury claims may also be a factor. Insurance companies may be relatively less forceful and more liberal in dealing with uninsured motorist claimants than they are in dealing with other claimants, including bodily injury claimants. In the case of an uninsured motorist claimant, the insurer is dealing with its own client or policyholder, one whom the company has a business relationship with and does not want to lose. A more lenient treatment of uninsured motorist claims may encourage fraud, which included in the number of uninsured motorist claims, would exacerbate the upward bias in the estimate of the percentage of uninsured motorists.

In a paper examining the assumptions involved in using the ratio of the frequency of UM claims to the frequency of BI claims as an estimate of the uninsured vehicle rate, Hunstad (1999) found a number of possible biases. As seen in Table 1-3 below, while it appears that some of the biases may act to cancel each other out, the overall bias inherent in the UM/BI ratio is to overstate the uninsured vehicle rate.

[8] If the propensity of uninsured motorists to get involved in an at-fault injury accident is at a rate of 7 percent (as opposed to 5 percent for the insured motorist), then we get a ratio of UM/BI = 0.14 instead of 0.10, which is a 40 percent *overestimate* of the true proportion of uninsured motorist in the population.

Table 1-3

Potential Biases Contained in the UM/BI ratio

Source of Bias	Effect on the Estimated Uninsured Vehicle (UV) Rate
Including not operated vehicles in the UV rate	Unknown
Including hit-and-run accidents in UM claims	Increase
Different rate of UM fraud	Unknown
Those with UM coverage not representative of those without	Unknown
Higher accident rate of uninsured drivers	Increase
Higher likelihood of filing a claim and having it paid for UM claims	Increase
Including Property Damage Only (PDO) accidents in the UM claim frequency	Increase

Source: Hunstad (1999)

VI. Results of the New Mexico Insurance Identification Database

The New Mexico IIDB Program data are from the program inception in 2002 to 2008. There are basically three steps used in computing what the Motor Vehicle Division refers to as the True Uninsured Rate.

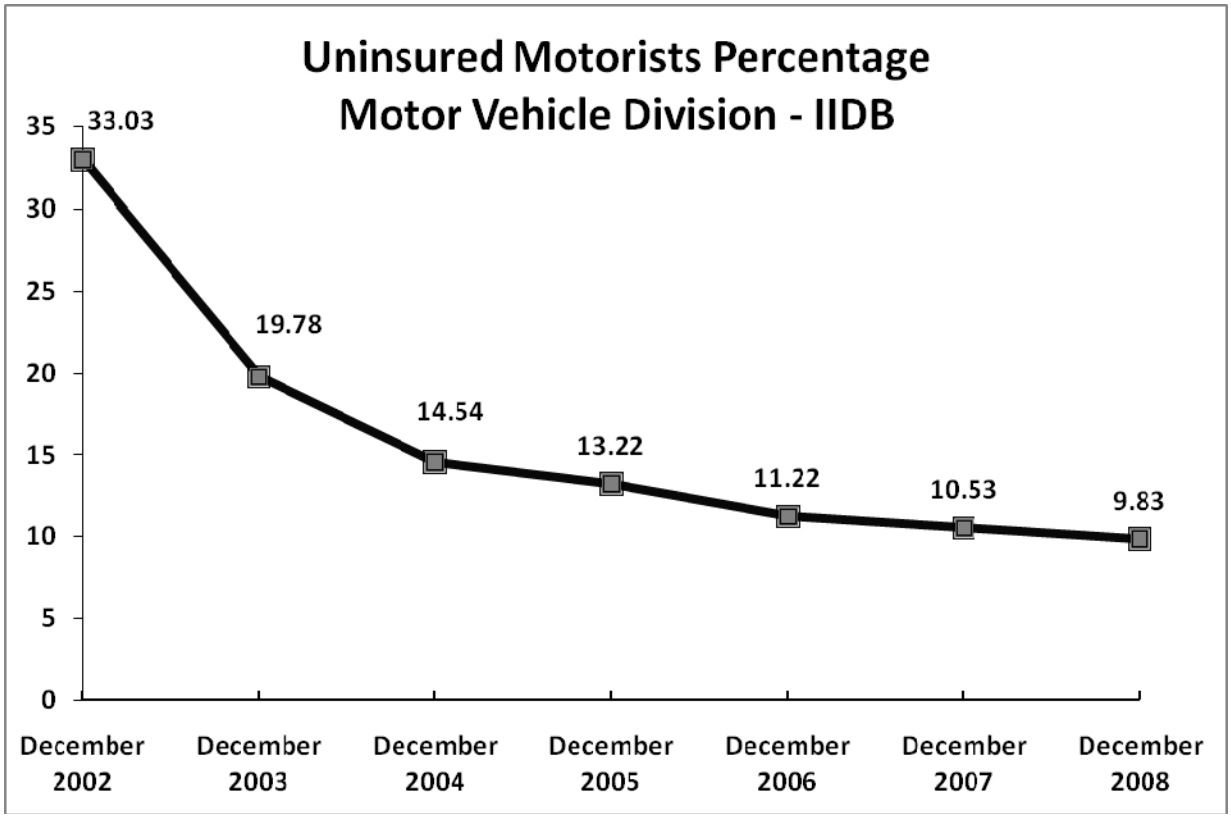
Step One: Insurance Vehicles Matched are divided by the Total Registered Vehicles (TRV) to get the Vehicles Insured Rate (VIR).

Step Two: 1 – (VIR) provides us with the Vehicles Uninsured Rate (VUR). This can also be computed by dividing the Vehicles Unknown by the Total Registered Vehicles.

Step Three: The VUR percentage less the Non-Use Rate percentage provides the net, or True Uninsured Rate.

They found that from the program inception to June 2, 2008, there was an increase in registered vehicles of 5.54 percent, and an increase of vehicles received from insurance companies of 35.25 percent. Insurance vehicles matched increased 41.51 percent, vehicles unknown dropped 67.37 percent, and their numbers show the uninsured rate dropping by 22.82 percent. From inception through December of 2008 the uninsured rate had dropped over 23 percentage points.

Graph 1-1



Source: Motor Vehicle Division, State of New Mexico. December 2003 was actually measured in January 2004.

VII. Results of the Insurance Research Council Study

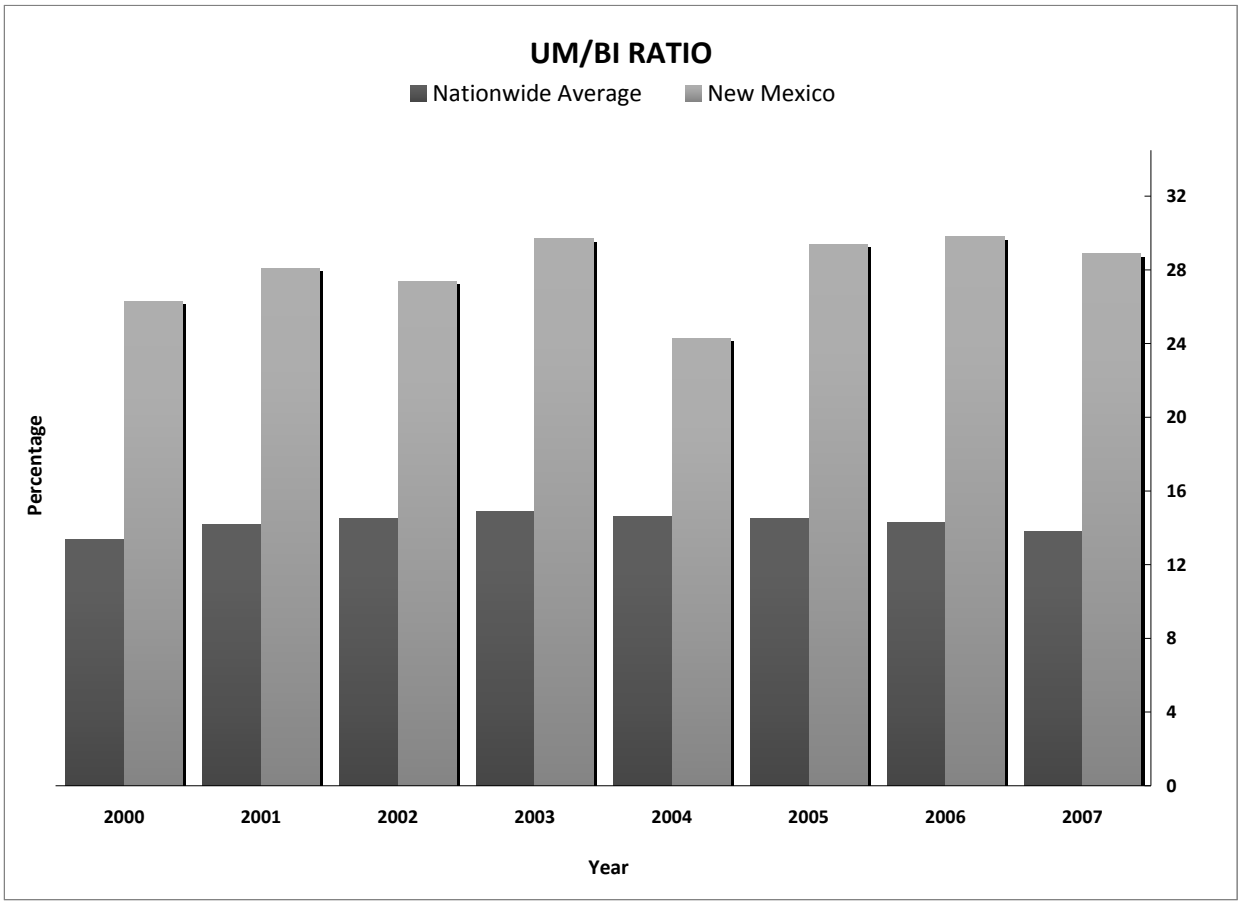
The 2008 IRC Study estimated the percentage of uninsured drivers across the United States, including differences by state, from 2000 to 2007, using auto injury claim frequency data collected from eleven insurers representing about 50 percent of the private passenger automobile insurance market. The size of the uninsured motorists population was estimated by comparing the injury portion of the UM coverage with bodily injury liability (BI). If an insured has injuries from an auto accident caused by an at-fault motorist, he or she files BI liability claim against the at-fault driver and seeks compensation for injuries from the accident. However, if the at-fault driver does not have liability insurance or the injured person is a victim of a hit-and-run driver, then the injured party relies on his or her own UM coverage to pay for the injury costs and property damage incurred. Claim frequencies measure the number of insurance claims per number of insured cars, often expressed as the number of claims per hundred insured vehicles. A ratio of the UM claim frequency to the BI claim frequency produces an estimate of the percentage chance that if someone is injured in an auto accident, then the at-fault driver was uninsured.[9] This UM to BI claim frequency ratio yields an estimate for the percentage of uninsured drivers. The ratio of UM to BI frequencies overcomes potential differences in claims frequencies by generating a measure of relative frequency, allowing comparisons across states.

As seen from Graph 1-2 below, the ratio of UM to BI claim frequencies nationwide steadily increased from 13.4 percent in 2000 to a peak of 14.9 in 2003, before experiencing a

[9] An example of the calculations involved is provided by the IRC. Suppose that in a group of 10,000 vehicle owners, 1,000 (10 percent) do not have auto liability insurance. If accidents involving injuries occurred at a frequency of 5 percent, then 500 auto accidents with an injury would occur, of which fifty uninsured drivers (10 percent X 500) would be at fault for an auto injury in a year. Five of the fifty accidents (10 percent) would involve another uninsured motorist, while forty-five of the accidents would involve insured motorists as the injured parties. As a result, these forty-five injured parties would make UM claims with their own insurers, generating a claim frequency of 0.005 (45 UM claims for 9,000 insured vehicles). Meanwhile, there would be 450 BI claims for 9,000 insured vehicles, producing a BI claim frequency of 0.05. The ratio of UM to BI claim frequencies would be 0.10 or 10 percent (0.005/0.05). The ratio of UM to BI claim frequencies produces a measure of the probability that an injury to an insured car occupant is the fault of an uninsured driver.

four-year decline down to 13.8 percent in 2007. Part of this was due to a greater drop in the BI claim frequency, while the UM claim frequency fell at a lower rate. In New Mexico, the rate in 2000 was 26.3, peaking at 29.8 in 2006, with a minimal decrease to 28.9 in 2007.

Graph 1-2

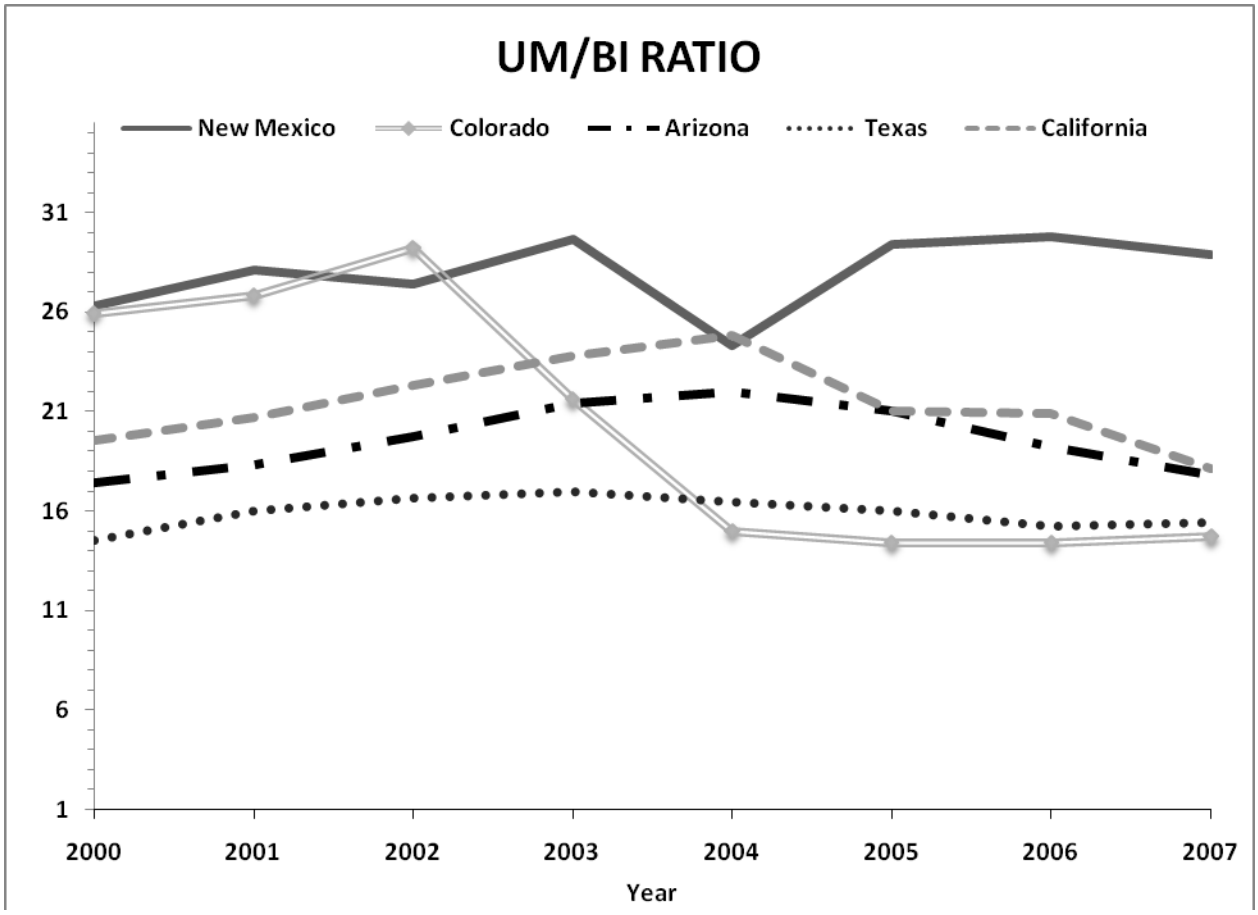


Source: Insurance Research Council, Uninsured Motorists Study, 2008 Edition

To provide a better scale as to the direction of the uninsured motorists percentage in New Mexico, Graph 1-3 below provides the IRC ratios for New Mexico along with some neighboring states and California. Any individual state is expected to have more volatility in their numbers versus a 50-state average, and that is the case here. Among this group, New Mexico had the

second most successful reduction in uninsured motorists involved in accidents from 2000-2004, but saw the rate increase in the subsequent three years.

Graph 1-3



Source: Insurance Research Council, Uninsured Motorists Study, 2008 Edition

We contacted the Colorado Department of Regulatory Agencies, Division of Insurance in an attempt to garner more insight into the reasons behind the significant drop in uninsured motorists in that state. They offered some possible reasons for these results, which follow. In 1999 the Colorado legislature enacted a law that required insurers to report all of their insured

vehicles to the Department of Motor Vehicles. If a policy was canceled the insurer had to report this as well and the consumer would receive a letter indicating the coverage was lapsed and failure to insure the vehicle would result in penalties. In 2003 Colorado's no-fault law sunset making Colorado a tort state. Subsequently the overall premium decreased which may have impacted the ability to purchase insurance. The 2004 legislature passed an Act increasing the fines for driving without insurance. On January 1, 2005 the fines were nearly quadrupled.

The two percentage point drop from 2005 to 2007 in California, according to the IRC, is possibly due to new insurance-related laws and programs. In 2004 the state Legislature required insurance companies to send lists of auto insurance policyholders to the California Department of Motor Vehicles. By the end of 2006, California had sent notices to more than 180,000 uninsured vehicle owners. That same year the state announced a new Low Cost Automobile Insurance Program, which became available to low-income drivers with good driving records in selected counties.

VIII. Comparison of IRC and IIDB Results

As discussed earlier, differences were expected in the results of the two studies, primarily due to a divergence in methodologies. Because of inherent biases that on balance are expected to overestimate the percentage of uninsured motorists in the IRC study, we expected to see higher numbers across the board in those percentages compared to the IIDB numbers. However, it was also reasonable to anticipate similarities in the trend of uninsured motorists in both measures. The MVD IIDB results show a steep decline in the UM percentage during the first three years of database implementation, and a continuing albeit flattening decline in the percentage through the end of 2008. There was a significant drop in the UM percentage for 2004 using the IRC accident

data, but the last three years have increased and maintained a level of uninsured motorists that is equal to or above the UM percentage levels prior to full implementation of the database.

Some possible explanations for this divergence in results include:

- Many uninsured cars involved in accidents are also unregistered, so they would appear in the IRC method but not the MVD's.[10]
- The measures provided by the New Mexico MVD are focused on vehicles registered in New Mexico only, and do not factor in out-of-state automobiles that may be uninsured.
- Car-miles on the road driven by young drivers are disproportionately more uninsured than car-miles in general because premiums are higher for these cars. Because accident involvements per million miles are 30 at age 17 and decline (rapidly) to 5 at age 30 where they stay for adult drivers, cars used by younger drivers are over-sampled on the road relative to the overall proportion of car miles driven (Williams, 1999). This age predisposition would bias upward the UM/BI percentage used by IRC as sampling total car-miles driven.
- The nine insurers who participated in the IRC study represent approximately 50 percent of the private passenger auto liability insurance premiums within the United States. Seven of the nine insurers were writing private passenger auto liability premiums in the state of New Mexico in 2007 (the most recent year available), representing an aggregate 53 percent of the market within the state.
- The NM data includes UMPD which is mandatory in NM.
- There may be an issue related to Underinsured Motorists coverage (UIM). While the Insurance Research Council explicitly requested that underinsured motorist claims be excluded from their data collection, we have no way of knowing if that is the case. This could potentially skew results for two reasons. It is likely that NM has a higher percentage of drivers with low liability limits due to lower income levels. This would contribute to more UIM claims. In addition, the representative companies included in the IRC study generally insure standard risks. Companies that specialize in non-standard risks – which would be more likely to carry minimum limits – are not represented in the IRC data.

[10] A study published in 2004 found by checking 89,000 cars at shopping malls that 3.4% were unregistered vs. a California DMV estimate of about 7% (Younglove, et al., 2004).

IX. Summary and Conclusion of Section One

Due to the complexities of uninsured vehicle versus uninsured driver and especially to the significant differences in methodologies, we suggest that neither study's results provide a "true" measure of uninsured motorists in New Mexico. Intuitively, one would expect improvements in the tracking of vehicles that are registered but not insured would be accompanied by a significant decrease in the percentage of uninsured motorists in the state.

Below we answer succinctly and to the best of our ability, given the data collected, the six questions specifically presented to us by the Insurance Division of the state of New Mexico's Public Regulation Commission:

1. What percentage of vehicles registered in New Mexico is uninsured?

   Estimates of uninsured registered vehicles in New Mexico began in 2002. Based on data provided by the Motor Vehicle Division, which now collects auto insurance information from Insurance Identification Databases, the percentage of uninsured registered vehicles is estimated to be slightly below 10 percent as of December 2008. This may be significantly different from the percentage of uninsured motorists driving on the roads in New Mexico, however.

2. What percentage of vehicles registered in the United States is uninsured?

   We were unable to obtain national figures on the percentage of vehicles registered in the United States that are uninsured. As an admittedly crude proxy, we looked at uninsured rate computations published by the Department of Insurance in the state of California for 2004, the latest year available. Their estimate of uninsured registered vehicles at that time was 14.4 percent. It is our understanding that there has been an attempt to coordinate state databases, but to our knowledge no such national information is currently available.

3. What percentage of vehicles driven in New Mexico is uninsured?

There is no readily available data that delineates uninsured vehicles driven from uninsured registered vehicles. In addition, there is little information on the percentage of cars driven or miles driven in New Mexico from other states, or for that matter, other countries such as Canada and Mexico. The insurance industry convention is that claims incurred anywhere are assigned to the car owner's home address territory. It has been a goal for state MV or DPS administrators to track accidents and violations in other states by state-licensed drivers for decades.

Generally, a best approximation would be somewhere between the estimates provided by the NM MVD and the IRC, in other words somewhere in the range of 10-29 percent, as the number of unregistered vehicles is difficult to estimate.

4. What percentage of vehicles driven in the United States is uninsured?

There is a scarcity of data available measuring the percentage of uninsured vehicles driven in the United States. There is no known national database that provides such information.

5. If a vehicle driven in New Mexico is struck by another vehicle, what is the likelihood that the other vehicle is uninsured?

Estimates of the percentage of accidents involving uninsured motorists are provided through the Insurance Research Council study using auto injury claim frequency data. Based on this representative information, we estimate the likelihood of being struck by an uninsured vehicle to be approximately 29 percent in 2007, the latest year of data availability.

6. If a vehicle driven in United States is struck by another vehicle, what is the likelihood that the other vehicle is uninsured?

Using data from the same Insurance Research Council study, we estimate that the likelihood a vehicle driven in the United States is struck by an uninsured vehicle is approximately 14 percent in 2007, the latest year of data availability.

SECTION TWO

Ratemaking Issues and Uninsured Motorists

In Section Two, a variety of dynamics that may influence UM/UIM ratemaking are discussed. Since the Insurance Division did a data call in 2008, we refer to that information to get a general estimation of average premiums and claim costs per vehicle.[11]

On the next page we see average premiums and loss costs for UM/UIM coverage based on the Insurance Division's data calls and the Auto Insurance Database Report published by the National Association of Insurance Commissioners (NAIC). Although we would have expected to see some drop, the ratio of claim frequency for UM BI to Liability BI did not change. The UM claim frequency did decline, but so did Liability frequency. UM declined a little more, but the decline was insignificant. UM loss costs are stable, with frequency down but severity up. Average premiums are up during the period, but this was an unprofitable line in 2001-2004. So it appears the premiums have merely caught up to where they should have been.

Average premiums increased a little in 2002, yet increased more significantly in 2003 and 2004. Rates have dropped moderately in 2005 and 2006, with 2006 average premiums just slightly above the levels of 2003. Loss costs for UM/UIM have bounced around somewhat, peaking in 2004 and then dropping in 2006 to levels below 2001. Observing the Avg Premium/Loss Cost Ratio, we see that loss costs have dropped more significantly than premiums have over 2001-2006 time frame.

[11] Since UM coverage is commonly bundled with UIM coverage with a combined charge for both coverages, these statistics are based on a combined UM/UIM basis.

UM/UIM Average Premiums and Loss Costs in New Mexico

From DATA CALL	2001	2002	2003	2004	2005	2006
Avg Premium:	$ 85	$ 88	$ 96	$ 103	$ 100	$ 97
Loss Cost:	$ 69	$ 74	$ 72	$ 80	$ 74	$ 68
Ratio:	123%	119%	133%	129%	135%	143%
NAIC Auto Insurance Database Report						
Avg Premium:	$ 108	$ 112	$ 121	$ 130	N/A	N/A
Loss Cost:	$ 72	$ 94	$ 93	$ 96	N/A	N/A
Ratio:	151%	119%	131%	135%	N/A	N/A

More recent information on the national average of automobile insurance rates is mixed. Insurance.com's RateWatch found an annual increase of 8 percent in 2008 for an average annual cost of $1,954. It should be noted that this is the first yearly increase it has recorded since 2003. This is in contrast to the 2.5 percent increase in the cost of automobile insurance in 2008 published by the U.S. Department of Labor, which was less than the overall Consumer Price Index increase of 3.8 percent for the year. According to Insurance.com, the difference comes from the way information is collected in the surveys. The C.P.I. comes from a wide-ranging survey of a variety of drivers, including many who aren't shopping for insurance, and includes many drivers who have held the same policy for years, which sometimes earns customers discounts. Insurance.com's survey is comprised of customers who are actively shopping for a new price quote (Kuykendall, 2009).

The rest of this Section addresses some of the factors, in addition to the percentage of uninsured motorists, which may influence ratemaking as applied to Uninsured Motorists Coverage.

I. Claims Expenses

Perhaps the most important factor influencing rate changes involves claims-related expenditures. One cannot automatically conclude that a reduced level of uninsured motorists on New Mexico roads and highways will result in a subsequent drop in UM claims costs.[12]

According to the Insurance Information Institute, in 2007 claims accounted for $70 of every $100 earned in private passenger auto insurance premiums in the United States. Lawyers' fees accounted for $11 out of every $100 in premiums -- half of the fees went to plaintiffs' attorneys and the remainder to defendants' attorneys.

While the number of claims, or claim frequency, has dropped over the last few years due to a variety of factors such as increased safety measures, the average dollar amount of each claim, or claim severity continued to rise. According to the Insurance Information Institute, from 1998 to 2007 claim frequency fell 20.6 percent for bodily injury liability claims and 10.8 percent for property damage liability claims. During the same time frame claim severity for liability coverages rose 30.3 percent for bodily injury claims and 28.1 percent for property damage claims. Table 2-1 on the next page compares the Consumer Price Index to the rate of inflation for automobile insurance and items that affect claims.

[12] As an analogy, consider the effect of rising gas prices on the level of claims. In a 2008 analysis by the Property Casualty Insurers Association of America (PCI), it was determined that while the number of claims reflecting vehicle damages has been reduced, it is more costly to repair vehicles today. Average claim costs in New York, for example, have increased by nearly one-third since 2000. New research from the Insurance Research Council also found that crashes involving lighter vehicles (more popular with rising gas prices) generate more expensive auto injury claims, and said the finding could offset accident frequency declines linked to rising gasoline prices. IRC found the average auto injury claim payment in accidents involving lighter-weight vehicles was 14.3 percent greater than the average payment in accidents involving heavy vehicles, or $5,554 compared with $4,859. IRC found additional evidence confirming the greater seriousness of injuries involving lighter-weight vehicles.

Table 2-1

ANNUAL RATES OF CONSUMER PRICE CHANGES FOR INSURANCE AND RELATED ITEMS, 2000-2007

Year	Cost of Living (all items)	Motor Vehicle Insurance	Medical Care Items	Physicians' Services	Hospital Services	Motor Vehicle Body Work	Legal Services
2000	3.4	1.1	4.1	3.7	6.0	3.1	5.2
2001	2.8	4.4	4.6	3.6	6.6	3.8	5.4
2002	1.6	8.8	4.7	2.8	9.0	2.4	5.8
2003	2.3	7.8	4.0	2.7	7.4	1.7	5.0
2004	2.7	2.8	4.4	4.0	6.0	2.6	4.8
2005	3.4	2.1	4.2	3.3	5.3	3.3	4.1
2006	3.2	0.6	4.0	1.5	6.5	4.6	3.4
2007	2.8	0.4	4.4	3.9	6.7	3.3	4.1
2008	3.8	2.5	3.7	2.7	7.4	3.2	4.0
Percent Change 2000-2007	**25.0%**	**33.0%**	**39.6%**	**27.2%**	**70.1%**	**27.6%**	**43.0%**

Source: Insurance Information Institute

II. Ratemaking and Regulatory Changes: An Actuarial Perspective

In order to understand better the process used by insurers to develop their premium rates, we surveyed some representative actuarial professionals. These experienced property-casualty actuaries provided some background into the procedure used to evaluate the risk exposure environment for ratemaking purposes.

From an Actuary at a national insurance company

The "lag time" between changes in the auto environment and when rates will begin to reflect such a change is driven largely by the type of change and how accurately an actuary can estimate future losses resulting from that change.

The sooner we can measure how a law change or environmental change will impact losses moving forward with a degree of certainty we are comfortable with, the sooner we can attempt to reflect that change in the rates. As an example, take the situation where a state removes stacking for Uninsured/Underinsured Motorist coverage. An actuary could look at past paid losses, calculate how much less would have been paid out assuming that stacking did not apply, and reflect this difference in rates with a high degree of certainty. The rates could then be lowered for that particular coverage.

In cases where it's difficult to measure either the change itself or what impact that change may have in the payment of future losses, the decision to try to estimate such impacts must be weighed against the possibility of estimate being wrong. The actuary would want to avoid the case where an adjustment is made to data, a very different outcome is observed, and the data needs to be adjusted a second time. In these situations, an actuary will typically let the change work its way into the underlying data – reflecting the change as losses are paid in the new

environment. As an example, a state may decide that it is going to implement a mandatory seat belt law. The expectation in this case may be that insurance losses will decrease in the future as a result of this new law. Since it would be difficult to measure both the increase in seat belt use in the state as a result of the law and the loss savings that may be associated with that increased seat belt use, the actuary would not have accurate data to be able to make an immediate adjustment to the data. Instead, the rates would reflect the change only to the extent that the actual loss data changes (perhaps improves) in the coming months and years.

The main difference in the two ways of handling the change in the auto environment is how confident we are in projected estimates. Once an actuary can accurately measure the impact that a change will have, he can make an adjustment to the data and recognize the change. In cases where the impact is either unknown or difficult to measure, it may be prudent to let it be reflected in losses as they occur. The time period that one must wait before a change will be fully reflected in losses differs by the type of change. For example, claims settlement changes for longer-tailed coverages (such as Bodily Injury coverage, where losses take longer to settle) may take longer to work their way into the underlying data than for shorter-tailed coverages (such as Collision coverage where losses settle quickly). However, for auto insurance at our Company, most of these changes probably would be recognized within two to three years of the date of occurrence.

Please note that regulatory and market conditions can affect the speed and extent to which indicated rates can be taken.

From the Executive Director of a major actuarial consulting firm

If measures are taken to reduce the number of uninsured motorists within a state, the impact on an insurer's losses would be immediate. However, the measures that are taken to reduce uninsured motorists will generally not be immediate and the losses reduced over time as the number of uninsured motorists is reduced over time.

What will cause a true lag is the fact that it is difficult to project ultimate losses for uninsured motorist coverage due to its inherent variability. Insurers will generally use multiple years of data in order to gain an understanding of overall loss costs since a single year will often lack credibility. Thus, it may take a number of years before an insurer believes that improving loss costs are "real."

From an Actuary of a leading property-casualty insurer

In my opinion and based on my experience, the potential lag time is directly related to the confidence in the expectation from any modification and its ultimate reflection in the resulting loss experience. The greater the likelihood and confidence in the desired result, this will reduce the lag time for the rates to reflect a change. The greater the expected impact from the change, it is also likely to be reflected sooner, at least partially. Competition in the marketplace will likely expedite the reflection of positive changes. Ultimately, the result of any change is reflected in the loss experience.

It is important to note that while increasing the insured motorist population is a positive step, it will cause the underinsured motorist portion of the UM rates to increase as more parties will likely be underinsured in auto accidents. However, the benefit in the uninsured motorist portion of the UM coverage will more than offset the increase in cost for the underinsured motorist portion.

III. Uncertainty Surrounding the Stacking Issue

"Stacking" refers to the right of an insured to aggregate the coverage under two or more UM policies (interpolicy stacking), or under one UM policy covering more than one automobile (intrapolicy stacking), until all the damages of the insured are satisfied or until the limits of the applicable policies are exhausted. In either case, the objective is to provide greater reimbursement to the accident victim. "Policy stacking" refers to stacked UM coverage which is granted by the express terms of the policy itself. "Judicial stacking" refers to stacked UM coverage which results from a rule of construction applied to the policy by the courts on grounds of public policy. In states where this practice is permitted by law, courts may allow policyholders who have several cars insured under a single policy, or multiple vehicles insured under different policies, to add up the limit of liability available for each vehicle.

Example 1

You own an auto insurance policy under which two or more cars are insured with UM/UIM coverage. When you're hit by an uninsured or underinsured driver, you collect the limits of your UM/UIM coverage under as many vehicles as necessary to receive full payment for your damages. For example, if you have a two-car policy with $50,000 worth of bodily injury UM/UIM coverage per person on each car, you can collect up to $100,000.

Example 2

You own more than one auto insurance policy with UM/UIM coverage. (The policies could be with the same insurer or two different insurers.) To collect all of the damages, you could make a claim under the UM/UIM coverage of each of the insurance policies you own. For example, if you have one policy with $50,000 worth of UM/UIM bodily injury coverage per person and another policy with $25,000 worth of UM/UIM bodily injury coverage, you can collect up to $75,000 for any injury you suffer as a result of a collision with an uninsured or underinsured motorist.

Stacking provisions are not always clear, since coverages are continually being restructured by court decisions and legislative changes. The categorization of states is sometimes ambiguous due to the language employed by those drafting the statutes, hence requiring an interpretation by insurers of the extent of coverage or what coverage is required by law. Furthermore, there may be conflicting judicial interpretations that add to the confusion.

In a January 2007 analysis comparing the loss experience of stacking and non-stacking states, the Property Casualty Insurers Association of America (PCI) found that the 15 states permitting both intra-policy and inter-policy stacking (New Mexico is included in this group) incur the highest losses compensated to accident victims. The combined UM/UIM (BI) loss cost of this group is 70 percent greater than the group of 27 states that do not permit stacking of limits at all. As seen in Table 2-2 below, states allowing both intra- and inter-policy stacking has a significantly higher UM/UIM (BI) loss cost, claim frequency and claim severity than the group of states that do not allow stacking at all. Obviously stacking is very expensive to the consumer and the increased cost increases the number of people who do not carry insurance.

Table 2-2

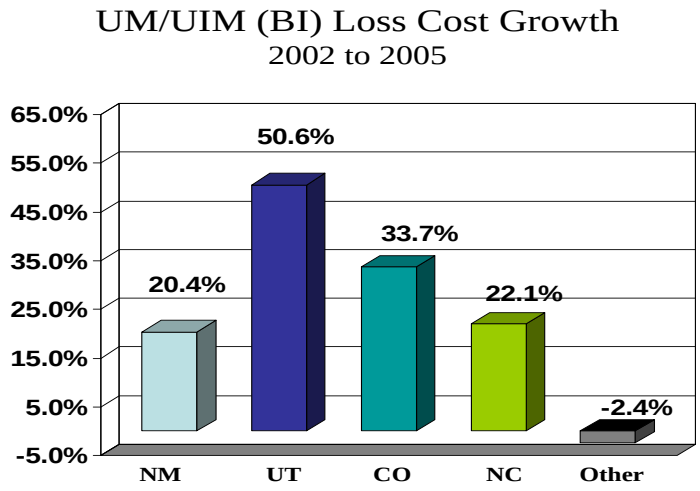
Personal Auto UM/UIM (BI) Loss Experience
Intra- and Inter-Policy Stacking States vs. Non-Stacking States

	Claim Frequency (per 100 insured cars)	Claim Severity	Loss Cost
Both Intra- and Inter-Policy Stacking Permitted (15 states)	0.23	$ 23,922	$ 54.05
No Stacking (27 states)	0.19	$ 16,716	$ 31.86

Source: PCI, using General Reinsurance's UM/UIM report and 2005 NAIC experience (excl. TX)

Although PCI acknowledges some limitations in attempting an individual state-by-state assessment due to insufficient claims data for some states, it is noteworthy that the growth rate in UM/UIM (BI) loss costs over the last few years in New Mexico is fourth highest among states permitting both types of stacking. From 2002 to 2005, New Mexico's loss cost has increased 20.4 percent. Table 2-3 below illustrates that for comparative purposes, the remaining group of states that permit stacking (excluding UT, CO, NC, and NM) had an overall *decrease* in loss cost growth of 2.4 percent from 2002 to 2005.

Table 2-3



Source: ***Property Casualty Insurers Association of America (PCI)***

IV. Legal Challenges to the Uninsured Motorist Contract

Another factor that may keep upward pressure on automobile insurance premiums is the myriad of legal challenges involving various aspects of uninsured motorist coverage. Uninsured motorist development and stacking issues in New Mexico have become so complex that the door has been opened to plaintiff attorneys to assert "bad faith" at opportune times. It has become increasingly difficult for even the most deliberate and cautious insurance companies to prevent the appearance of an error under this environment. Listed below are a representative sampling of court cases involving UM/UIM. The list is not comprehensive, and in some cases the Court's decision was in the insurer's favor. We are not making a statement regarding the merits of each individual case. The point made here is that there are constant legal challenges intended to broaden the coverage or limits provided under the UM/UIM portion of the automobile insurance policy.

A recent case addressed the question as to whether Child suffered "bodily injury" as defined in policies of uninsured motorist (UM) insurance issued to Child's parents, after she was subjected to inappropriate sexual touching in an uninsured motor vehicle. Under the undisputed facts, the Court concluded that Child's injuries did not constitute "bodily injury" as defined by the policies *(Michael F. Hart, as Guardian ad Litem and Next Friend of Minor A.E. v. State Farm Mutual Automobile Insurance Company, 2008).*

Uninsured motorist coverage applies to accidents involving government-owned vehicles even when insurance policies specifically exclude such coverage, the State Supreme Court ruled in 2007. The state Legislature intended uninsured motorist coverage to place a policyholder who is injured by an uninsured driver in the same position as she would have been if the driver at fault had been properly insured. It shouldn't matter that the vehicle involved was a government

vehicle driven by a public employee, according to Justice Pamela Minzer *(Christina Boradiansky v. State Farm Mutual Automobile Insurance Company, 2007).*

In 2006 the Court of Appeals of the State of New Mexico stated that the law in New Mexico is clear that "when an injured insured is the beneficiary of a policy and either the insured or another has paid premiums for the benefit of the injured insured, then all policy coverages under which [the injured insured] is a beneficiary may be stacked." The term "coverage" in the UIM statute is liberally construed to include coverage from one or more policies purchased for the injured insured's benefit, including Class I policies, and the Class II policy on the car in which the insured was a passenger.[13] Thus, the amount of coverage available to an injured insured is determined by the aggregate of their Class II and Class I coverage *(State Farm Mutual Automobile Insurance Company v. Mary Beth Jones, 2006).*

Another 2006 case concerned an unmarried man and woman, Charles Cline and Judith Davis. After Davis was involved in an automobile accident, she made a claim for underinsured motorist benefits as a Class I insurance under insurance contracts issued only to Cline as the named insured. Both Hartford and Interstate denied the claim for underinsured motorist benefits, asserting that Davis was neither a named insured nor a family member under their respective policies. She was, however, listed as a driver along with Cline on the declaration page of the Hartford policy. A federal judge held that Davis was not entitled to underinsured motorist benefits under either policy because "New Mexico does not recognize the doctrine of common

[13] There are generally five types of Class of Use in car insurance. Class 1A use is for Social, Domestic and Pleasure purposes only. Class 1B use is for Social, Domestic and Pleasure purposes with restricted business use. This must be specifically requested. Class 1C use is for Social, Domestic and Pleasure purposes with restricted business use for publicans, guesthouse owners etc. Class 2 use is for Social, Domestic and Pleasure purposes with some business use. This includes carriage of goods and samples. Goods and samples are not covered under the policy. However, use of the car while carrying goods and samples is covered. Class 3 use is for Social, Domestic, Pleasure purposes and for Business/Professional purposes including Commercial Travelling or Soliciting Orders but excluding Racing, Pace-Making, Speed-Testing and the Carriage of Passengers for hire or reward.

law marriage" and therefore Class I insurance does not extend to domestic partners *(Hartford Insurance Company of the Midwest and Interstate Indemnity Insurance Company v. Charles D. Cline and Judith E. Davis, 2006).*

In another case the court held that to be truly unambiguous, an insurance contract should, among other things, "plainly notify the insured that only one premium has been charged for one insurance coverage." This case also established the requirement that insurance companies in future cases obtain written rejections of stacking on accordance with this opinion in order to eliminate ambiguity and to effectively limit their liability *(John Montano v. Allstate Indemnity Company, 2004)* .

At a tailgate party at the University of New Mexico, Sedillo (the defendant) got into an altercation with two passengers and the driver of a truck that had sped through a row of cars and parked nearby. Sedillo suffered substantial personal injuries, and by the time the police arrived, the driver and truck were gone. Sedillo filed a claim for the damages under his uninsured motorists coverage. The district court granted summary judgment in favor of Farmers, ruling that the applicable policies of insurance did not provide uninsured motorist coverage under the circumstances in which Sedillo was injured *(Farmers Insurance Company of Arizona v. Zeke C. Sedillo, 2000).*

In one more case, the plaintiff was injured in an accident while occupying an automobile owned by her parents and operated by her mother. The plaintiff attempted to stack the UM coverage of four trucks owned by a corporation which employed her father. The State Supreme Court affirmed the district court order granting summary judgment to the insurer, because the plaintiff was not insured under the unambiguous language of the commercial policy issued to the corporation *(Herrerra v. Mountain States Mutual Casualty Co., 1993).*

Other cases have brought into question the duties of an agent, even in situations where an insured signed an acknowledgment that he understood he could buy higher limits, for instance. From these few examples it is apparent that the legal expenditures incurred by the insurance industry can be potentially substantial. According to the Insurance Research Council, in 2004-2005 there were lawsuits filed in about 11 percent of UM/UIM claims nationwide.

V. The Current Economic Environment

Two trends that are reinforcing each other in a troubling spiral are a falling economy and increasing auto insurance rates. The combination of these factors is driving more consumers to let their automobile insurance policies lapse. For most individuals this only exacerbates the problem in the long run, as insurers also penalize customers who let their policies lapse and drive without insurance for a few months. Those who decide to reinstate their coverage are likely to get an unpleasant surprise in the form of an even bigger price hike – the new insurance quote could be 25-50 percent over the price they paid before.

As the economy falters and unemployment continues to rise, consumers will seek additional ways to curb spending. The 2008 IRC study examines the correlation between the unemployment rate and the rate of uninsured motorists (using their own accident methodology). Nationwide, they find an especially strong correlation between the two measures from 1989 to 2007. In other words, as more people lose their jobs, there is a greater tendency to drive without insurance coverage. Based on their statistical results, for every one point percentage increase in the unemployment rate, the UM rate can be expected to increase three-quarters of a percentage point. Using projected unemployment rates for 2009 and 2010 by Moody's, the IRC forecasts that the national UM percentage will increase from 13.8 percent in 2007 to around 16 percent in 2010.

VI. Other Considerations

Market Competitiveness and Regulation

The Consumer Federation of America claims that states with less regulation tend to be less competitive. Using the Herfindahl-Hirshman Index (HHI) as a measure of competitiveness, CFA produces index values for each state ranging from a low of 603 in Maine to a high of 1548 for Alaska.[14] However, the following important points suggest that auto insurance markets are, in fact, highly competitive:

The majority of states (27 out of 50) have HHI values under 1000, which is considered to be competitive by the U.S. Department of Justice (DOJ). The remaining 23 states have values between 1000 and 1548, which the DOJ considers to be "moderately concentrated." Most major US industries fit into this latter category. Only when the HHI exceeds 1800 does DOJ consider the market to be concentrated. In the CFA study, New Mexico had an HHI of 1036, which is at the low end of the moderately concentrated range and slightly above the level considered competitive (Insurance Information Institute).

Consequences of driving without a license range from a fine in some states to being required to post a cash bond. Some states penalize uninsured drivers with penalty points on their license equivalent to being found guilty of a serious driving offense, such as driving under the influence of alcohol. Beginning January 1, 2009 the Dallas, Texas Police Department began enforcing the Uninsured Motorist Ordinance. Under this ordinance drivers stopped for a traffic violation who cannot show proof of auto insurance meeting state requirements will be issued a citation and will have his or her vehicle towed at the owner's expense. Dallas already tows the vehicles of uninsured motorists involved in traffic accidents.

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[14] The HHI is calculated by squaring the market share of each market participant and then summing those market shares. The higher the value of the HHI, the more concentrated the market.

Cultural Issues

Around 9 percent of the population of New Mexico consists of Native Americans. From its earliest days, the United States has recognized the sovereign status of Indian tribes as domestic dependent nations. If there is a non-tribal member involved in an accident on a state or federal road, then the jurisdiction belongs to the highway patrol or state police. If the incident wholly involves tribal members, then the jurisdiction belongs to the tribe or the Bureau of Indian affairs if the tribe does not practice self-determination.

In 2006 there were 639 automobile crashes that resulted in 33 fatalities and 393 injuries on the state's 22 Pueblos and Reservations (NMDOT). According to the NMDOT, 42 percent of all fatal crashes in 2006 involved alcohol. The Fatality Analysis Reporting System – a Government census of all fatal U.S. automobile crashes – reported that more than 70 percent of all traffic-related fatalities in American Indian communities involve the use of alcohol.

New Mexico is also one of 10 states that do not require proof of lawful presence from those applying for a driver's license, and the expiration of the license is not tied to a temporary visa. Proponents of this liberal policy argue that illegal aliens are going to drive no matter what, so issuing those licenses will improve the safety of our roads by ensuring that they have passed a driving test and purchased automobile insurance. Those who oppose this policy counter that most illegal aliens are low-wage workers who send a significant portion of their earnings to their home countries in the form of remittances, have little incentive to spend their wages on car insurance, and even less incentive to wait for the police to arrive after an accident, since contact with law enforcement authorities could result in deportation.

As a border state, there may be issues related to Mexican nationals driving to the U.S. It is not unusual to see a number of vehicles with Mexican license plates in southern New Mexico, or even other parts of the state at any given time. The biometric border crossing card (BCC) is a laminated, credit card-style document with many security features and ten-year validity. Called a "laser visa," the card is both a BCC and a B1/B2 visitor's visa. Most Mexican visitors to the U.S., whether traveling to the border region or beyond, receive a laser visa.

According to a telephone interview with an insurance broker in Juarez, Mexico, automobile insurance in Mexico is primarily regulated at the state level. In the state of Chihuahua, which borders New Mexico, there is a combined limit of around $50,000-$60,000, depending on the exchange rate. It is indexed to the minimum wage, and there is a small fine (less than $100) if cited for not having insurance. There is no proof of insurance required for registration purposes, and the uninsured motorist laws are not enforced often. There is a tendency for accidents to turn from civil actions to criminal cases relatively quickly, so that is implicitly used as motivation to obtain automobile insurance. About 1 ½ years ago major insurers operating in Mexico began offering U.S. Tourist Liability, with some providing coverage equal to the minimum limits required in each state traveled to in the U.S. More insurers are now offering this option on Mexican automobile insurance policies.

While these cultural issues may have an indirect influence on uninsured motorists' claims, it should be noted that they are not explicitly considered in insurer's ratemaking models. As stated by the representative of a leading automobile insurance company operating in New Mexico, "we do not track our UM loss data according to whether the car has Mexican license plates. Rather, UM rates are based on the actual loss experience produced from claims involving uninsured and underinsured motorists. We employ actuarial methods in using that loss

experience to predict future UM risk." In response to the sovereignty of Native American tribes, the same representative responded that, "we do not gather or consider that type of information in any aspect of our operations."

Automobile and Highway Data

Traffic density is calculated both as the number of vehicle miles traveled per mile of roadway, and as the number of vehicle miles traveled per registered vehicle. We attempted to draw some inferences from this information, but found no conclusive evidence that traffic density significantly affected the percentage of uninsured motorists for the time frame available.

Table 2-4

Traffic Conditions 1999 – 2004

Traffic Density							
	1999	2000	2001	2002	2003	2004	2005
Vehicle Miles Per Highway Mile	373,241	379,795	387,950	371,247	357,200	374,070	375,884
Vehicle Miles Per Registered Vehicle	13,914	14,617	15,948	14,490	14,816	15,160	15,111
* Ratio of Vehicle Miles Per Hwy Mile to Vehicle Miles Per Reg. Vehicle	26.8	26.0	24.3	25.6	24.1	24.7	24.9

Source: National Association of Insurance Commissioners
** Calculated by Study Authors*

Recall that one specified definition of Uninsured Motorist is a hit-and-run vehicle whose operator or owner cannot be identified and that hits you or any family member, a vehicle occupied by your or any family member, or your covered auto. Listed in Table 2-5 is the number of hit and run crashes in the state from 2002-2006. The number of hit-and-run crashes increased by nearly 50 percent from the period 2002 to 2006. In addition, 84 percent of all hit-and-run crashes involved property damage only, compared to the 69 percent of all crashes which involved property damage only.

Table 2-5

Hit and Run Crashes in New Mexico, 2002-2006

Year	Crashes	Fatalities	Injuries
2006	7,228	7	1,610
2005	7,094	9	1,822
2004	5,883	4	1,413
2003	5,206	9	1,261
2002	4,825	17	1,704

Source: New Mexico Department of Transportation

VII. Summary and Conclusion of Section Two

There are a number of factors that are considered in determining appropriately competitive and equitable insurance premiums. Claims data are direct drivers of the UM portion of the automobile insurance premium. In New Mexico, unresolved issues surrounding the "stacking" of policy limits as well as continued attempts to broaden the definition of uninsured motorist coverage through the New Mexico court system have created a level of uncertainty that potentially increases the risk exposure of property-liability insurers. According to the Insurance Research Council (2008), about 7 percent of UM claimants file a lawsuit nationwide.

From an actuarial perspective, there is a lag component to premium adjustments in response to changes in the automobile risk exposure environment. Actuaries will typically use multiple years of data in order to gain an understanding of overall loss costs, as a single year will frequently lack credibility. Other potential factors that may indirectly influence the level of uninsured motorists in New Mexico include the licensing of illegal immigrants, an increasing number of hit-and-run accidents, traffic patterns and a growing population, and issues related to a shared border with Mexico.

Given the results of accident data provided by the Insurance Research Council, coupled with the likely increase in uninsured motorists associated with the rising unemployment rate, we would not expect to see a decrease in the UM component of the automobile insurance policy in the foreseeable future. Of course, circumstances continually change and if the economy rebounds more quickly and robustly than expected, together with continuing efforts to improve tracking of and meaningful penalties for uninsured motorists, the percentage of uninsured motorists would be expected to decline.

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END OF REPORT