

# AUTO INSURANCE REPORT

The Authority on Insuring Personal and Commercial Vehicles

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### Gaffney Named Vermont's Chief Financial Regulator

Vermont Gov. **Phil Scott** this month named **Kevin Gaffney** to lead the state **Department of Financial Regulation (DFR)**, which oversees the insurance market. Gaffney succeeds **Michael Pieciak**, who stepped down in May to run for state treasurer.

Named interim DFR commissioner on May 5, Gaffney has worked at the department for more than 12 years, the last three as deputy insurance commissioner.

The governor also announced the appointment of **Emily Brown** as the department's deputy commissioner for insurance.

Brown most recently served as the director of insurance regulation at DFR, focusing on health care policy and insurance coverage issues. [AIR](#)

## Electric Vehicle Claims Trends Begin to Reveal Themselves

Nearly everyone who rides in a **Tesla Model S Plaid** compares the experience, with some surprise and awe, to a roller coaster. When the electric sports car launches forward in “drag strip” mode, the acceleration pins occupants to the back of their seats – and their eyes to the back of their heads – as the car reaches 60 mph in about two seconds.

Dazed passengers – like the insurance executives who enjoyed hair-raising Tesla rides during an electric vehicle summit in May – exit the car with a silly grin and an urgent need to understand exactly how electric vehicles could impact losses in the near future.

The Model S, equipped with Tesla's “Plaid” package of software and hardware upgrades, is the fastest accelerating car in production today. It represents an exaggeration of features common among most electric vehicles today: It's faster, heavier and more expensive to repair than the aver-

*Please see EV CLAIMS on Page 2*

## New Mexico, Land of Uninsured, Struggles With UM/UIM Coverage

As **New Mexico's** largest-ever wildfire erupted this year – turning a spotlight on prescribed burns in a warming climate and insurance gaps in vulnerable rural communities – a **New Mexico Supreme Court** decision has reignited long-smoldering issues in the state's auto insurance market.

The New Mexico Supreme Court last fall determined that uninsured/underinsured motorist coverage in minimum limits policies is “illusory,” reasoning that “it may mislead minimum UM/UIM policyholders to believe they will receive underinsured motorist benefits, when, in reality, they never receive such a benefit.” The problem stems from New Mexico laws that require insurers to offer UM/UIM limits no higher than bodily injury liability limits and that require insurers to offset UIM benefits by the amount recovered from the at-fault driver.

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age internal combustion engine car. It also has the latest advanced safety features – like automatic emergency braking – that reduce the frequency of claims but increase severity by adding cost and complexity to vehicle repairs.

Insurance executives who attended the meeting at the **Insurance Institute for Highway Safety** testing facility outside Charlottesville, **Virginia**, continue to gather data that will help them predict how inherent differences between electric and combustion engine vehicles will affect driver behavior, loss costs, and repairability as more EVs enter the fleet, and whether Tesla vehicle loss costs are useful for predicting the performance of other automakers' electric models in the future.

Given the opportunity, drivers take advantage

**A key factor in Tesla's lower claims frequency is automatic emergency braking, which is available on other vehicles.**

of the high-performance capabilities of Tesla's cars by accelerating and taking corners more quickly, according to research that telematics vendor **Cambridge Mobile Telematics (CMT)** presented for the first time at the EV meeting, which was co-hosted by *Auto Insurance Report*. CMT analyzed the behavior of drivers who own both a Tesla and other non-electric vehicles and found that the same driver accelerated quickly more often and turned corners faster in their Tesla than they did while driving other cars. But the same drivers spent less time using their phone and were in 91% fewer crashes per million kilometers while driving their Tesla compared to when they drove their other vehicles.

"People accelerate Teslas differently than they accelerate [internal combustion] vehicles," said **Ryan McMahon**, CMT vice president of strategy. "Is that [because] it's capable of doing that, or that they are driving it on wide open

roads? Once you start thinking about this, the opportunity to understand risk at a more granular level becomes fascinating."

Claims data presented by the **Highway Loss Data Institute (HLDI)** – the sibling organization to IIHS – added evidence that the most popular Tesla, the Model 3, has a lower frequency of claims compared to similar high-end luxury vehicles. However, across all cars, Teslas have higher crash frequency, severity and total loss costs, according to HLDI data.

"Despite the fact that these are screaming-fast machines ... the results look pretty darn good," said **Matt Moore**, HLDI senior vice president.

The collision claim frequency for Model 3s from 2018 and 2019 was about 5% lower than other vehicles in its class priced between \$35,000 and \$60,000. One reason Tesla performed better than other vehicles in its class could be its automatic emergency braking (AEB) features. There was no statistically significant difference in collision claims when Tesla was compared to other vehicles in the same price range that were also equipped with AEB, Moore said. The Model 3's property damage liability claims frequency was about 14% lower compared to others in its class in the same price range. But when HLDI controlled for AEB, it was just 6% lower. Its bodily injury liability claims frequency was about 34% lower compared to others in its class and price range, but when HLDI controlled for AEB, it was 24% lower.

A previous analysis from HLDI published in April showed that the Tesla Model 3 has higher claims frequency, severity and overall losses



**Ryan McMahon**  
Cambridge Mobile  
Telematics

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across all coverages than the average personal vehicle. But it had almost identical results to a broader selection of luxury vehicles that included cars like two-door convertibles and more similar four-door sedans.

Tesla Model 3s from 2019 to 2021 have about a 16% higher frequency of claims than the average car, which was 1 percentage point better than others in its luxury class. Its claim severity was 28% higher than the average car – 1 point higher than the class average – and total losses were 48% higher, which was the same as the class average.

Many non-Tesla EVs also have higher collision repair costs than other comparable vehicles in the same class, according to data from claims technology firm CCC. The higher repair costs are largely driven by the use of more original manufacturer parts and fewer aftermarket parts, as well as the costs associated with scanning and calibrating the advanced driver assistance systems (ADAS). The total cost of repairs for the electric midsize luxury SUVs studied by CCC were 53.3% higher than the non-EV models. The cost to repair small non-luxury EV models was also 26.6% higher than the non-EV models.

**Susanna Gotsch**, CCC senior director and industry analyst, cautioned that apples-to-apples comparisons between electric and conventional vehicles are often imperfect. Most electric vehicles in the U.S. today are made by Tesla, which does not make an internal combustion engine car for a direct comparison of loss costs. The newest electric vehicles from established automakers, like the **Ford** Mustang Mach-E SUV, are high-end performance vehicles with higher price tags than the average car, and they are chosen by buyers who don't represent the average consumer.

"It's been really hard to really understand what the long-term impact EVs are going to have on claims costs and frequency," Gotsch said.

Electric vehicle sales are also not distributed evenly across the country. Most are concentrated

in **California**, where they account for 14.8% of all new car sales, compared to 3.2% in the other 49 states, according to [Experian's Automotive Quarterly Briefing Report](#).

Predicting the impact of EVs on future losses is also complicated by the simultaneous introduction of advanced safety features and other new vehicle technology that is adding complexity to vehicles and driving severity upward across the industry.

"When you think about insuring an EV, you are thinking about insuring the most advanced ADAS vehicle that also happens to be electric,"

***Some add-ons in new EVs – like the camping kitchen in the Rivian pickup – have nothing to do with electrification.***

said **Andrew Rose**, president of **OnStar Insurance**, the auto insurance subsidiary of **General Motors**.

Many new EVs also showcase add-ons that don't have anything to do with electrification. The **Rivian** R1T pickup truck has an optional portable camping kitchen attachment that folds out of a side panel; the 2022 GMC Hummer EV has the ability to drive diagonally in "crab walk" mode. The options add to the complexity of the vehicle, Moore said. "Anytime we talk about adding complexity, the vehicle severities do often go up."

While they account for a small portion of insurance company policies today, EV sales are growing rapidly, improving the prospects for more predictive comparisons of claims costs.

The overall EV share of new vehicle registra-



**Andrew Rose**  
General Motors

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tions grew from 2.8% in the first quarter of 2021 to 5.1% in the first quarter of this year, according to Experian. Tesla still dominates the market, even as competitors have carved out market share: Tesla's share of new EV vehicle registrations sales fell to about 72.5% in 2021 from 78.5% in 2020, according to Experian.

GM expects to manufacture 1 million EVs annually by 2025, which would represent about 40% of its output, said Rose. **Ford** announced a goal to build 2 million EVs annually by 2026. Ambitious plans do not guarantee a tidal wave of electric vehicles: Startups Rivian and **Lucid** have delayed lofty production targets after supply chain disruptions and other challenges common to launching a new manufacturing operation.

As automakers like GM release more electric

**Insurance company teams are studying EV loss trends to help with pricing and claims procedures.**

versions of popular existing vehicles like the Silverado pickup, more apples-to-apples comparisons will be possible to understand the differences in insuring an electric vehicle compared to an internal combustion vehicle.

"That's going to be a really interesting development for us as insurers to figure out how those performance differences are going to translate to risk and cost," Rose said.

Product directors from large insurance carriers who spoke on background after the electric vehicle meeting say their companies are still collecting data and have not developed specific rating factors or other coverage changes tailored specifically for electric vehicles.

Some carriers have offered flat discounts to policyholders who drive a hybrid or electric vehicle, largely because many consumers expect a reward for making a "green" decision. But at least one company materially reduced that dis-

count when it became clear that it was not supported by loss experiences.

Some carriers already have permanent enterprise-wide teams studying EV trends, and others have launched short-term EV research groups.

Some carriers don't have a formal internal organization for communicating EV research across marketing, pricing and claims departments.

Carriers are closer to pricing specifically for the safety features in both electric vehicles and most new high-end conventional vehicles. Carriers that don't already purchase more detailed "build sheet" data products from vendors – which disclose exactly which advanced safety features a policyholder's car has – are evaluating them with plans to incorporate those factors into pricing in the near future. Carriers will use the data to offer discounts for features like automatic emergency braking that have been shown to prevent collisions.

In the near future, real-time data about which ADAS and comfort features drivers turn on and off while using the vehicle could be used for dynamic pricing. Insurers could, for example, charge higher rates for drivers who disable certain safety features. Pricing for safety features, product directors said, could more accurately match rate to risk for both high-tech electric vehicles and new conventional vehicles as well.

Insurers also must reckon with the repair challenges for the growing number of electric vehicles.

The collision repair industry – which is already facing a shortage of about 20,000 skilled technicians – will have to spend heavily on recruitment, training and new tooling to meet



Mike Chilton  
Chilton Auto

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automaker repair requirements. Many independent shops with owners near retirement simply won't make the investment, said **Mike Chilton**, owner of **Chilton Autobody**, the first collision repair center to fix Tesla vehicles.

Chilton said that the skills needed to repair EVs aren't necessarily more difficult, but they're different. A technician that is already trained to repair conventional vehicles needs about two weeks of full-time training to get up to speed on electric cars, he said.

"You're looking at around two weeks of non-productive time," he said. "If a technician produces \$50,000 of revenue a month – that's \$25,000 of lost revenue to a shop."

Technicians must be trained to properly disconnect the battery from the other electrical systems to prevent electrocution. Many of the new skills combine electrical knowledge and computer repair with body work.

"It is a different skill set, and it's not something that the industry has a lot of," said an executive at a large chain of body shops.

Upgrading a largely up-to-date collision repair center to meet Tesla certification would cost between \$50,000 and \$100,000, the executive said. Upgrading an independent shop that is further behind could cost about \$250,000.

EVs present other unique claims handling challenges, said **Zach Trent**, assistant vice president of claims at **Selective Insurance**, a super-regional carrier based in **New Jersey**. Policyholders who own electric vehicles expect an EV replacement rental, rather than an internal combustion car, he said. "And right now, with the availability and popularity of EVs, they don't really exist in the rental market," he said. "And if they do, it's on a very limited basis."

After a collision, EV batteries themselves present a liability risk and the potential to increase severity. About 50% of electric vehicles claims requiring battery replacement are tagged as a total loss, according to CCC data. The aver-

age battery replacement cost is about \$15,000, but prices can go much higher. A replacement battery for an electric 2020 Porsche Taycan costs nearly \$40,000.

Differences in how people drive electric vehicles could also force a change in how insurers think about driving behaviors that are predictive of loss.

EVs, for example, use "regenerative braking" systems that slow the car automatically and recharge its battery when the driver releases the accelerator. In many driving scenarios, drivers rarely touch the brake pedal. Regenerative braking has the potential to "change how we think about harsh braking and things that are predictive of frequency," said **Brett Shudak**, national product director at **USAA**.

In its study of the same drivers across different vehicles, CMT found that drivers had 1% fewer hard-braking instances per kilometer while driving their Tesla compared to driving their other vehicles. The same drivers also had 346% more moments of rapid acceleration per kilometer traveled and 76% more quick cornering in their Tesla, but 35% less phone distraction. The telematics platform measures distraction when a driver is actively using a cellphone to select music, navigation, texting or other applications. It cannot detect when they use the vehicle's in-dash display.

McMahon, with CMT, said future research will look to explain why drivers who accelerated quickly more often in their Tesla than their other vehicles were still in fewer crashes, and if the behaviors that are predictive of crashes in EVs are different than those in an internal combustion car.

"Is it the car," he asked, "or is it the driver?" [AIR](#)



**Zach Trent**  
Selective Insurance

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## State Market Focus: NEW MEXICO

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“A significant consequence of this rule is that, if injured persons purchased only the statutory minimum policy, the person’s policy will not cover losses for damages in excess of \$25,000,” the court said in its [opinion](#) in *Crutcher v. Liberty Mutual*. “Collection of UIM insurance is therefore practically impossible for minimally insured motorists, and collection is not possible in Mr. Crutcher’s case.”

The solution, the court determined, is to require “every insurer to adequately disclose the limitations of minimum limits UM/UIM policies in the form of an exclusion in its insurance

policy.”

Since the 2010 decision in *Jordan v. Allstate*, insurers have been required to provide policyholders a premium for every level of UM/UIM coverage available – so they can make an informed decision about how much to buy, if any at all. A decade later, in *Hart v. State Farm*, the court declared a waiver of full coverage invalid because some of the prices listed for UM/UIM coverage were inaccurate. Now, insurers are scrambling to update policy forms with disclosure and exclusion language to comply with *Crutcher*. They can use sample language

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## New Mexico Personal Auto Insurers

Groups Ranked by Total 2021 Direct Premium Written (000)

Group Name	2021 Premium	Mkt share 2021	Loss Ratio 2021	2020 Premium	Mkt share 2020	Loss Ratio 2020	2019 Premium	Mkt share 2019	Loss Ratio 2019
State Farm Mutual	\$301,504	19.1%	68.8%	\$296,910	19.4%	52.0%	\$298,873	19.3%	62.8%
Progressive Corp.	\$271,776	17.2%	60.5%	\$251,702	16.5%	44.9%	\$232,061	15.0%	58.5%
Berkshire Hathaway/GEICO	\$215,366	13.7%	68.2%	\$206,731	13.5%	49.8%	\$231,753	15.0%	67.9%
Farmers Insurance Group	\$154,342	9.8%	56.1%	\$151,489	9.9%	47.5%	\$159,270	10.3%	55.8%
USAA Insurance Group	\$148,997	9.4%	67.9%	\$151,318	9.9%	49.9%	\$146,099	9.4%	64.8%
Allstate Corp.	\$122,589	7.8%	53.0%	\$118,730	7.8%	43.1%	\$116,881	7.5%	52.4%
Liberty Mutual	\$69,217	4.4%	52.4%	\$66,505	4.3%	50.6%	\$65,120	4.2%	57.7%
Sentry Insurance Mutual	\$50,905	3.2%	49.7%	\$47,823	3.1%	47.0%	\$43,854	2.8%	50.9%
Auto Club Exchange Group (SoCal)	\$38,426	2.4%	59.1%	\$35,793	2.3%	47.8%	\$40,364	2.6%	58.7%
Farm Bureau Financial Services	\$34,880	2.2%	59.6%	\$32,854	2.2%	40.9%	\$33,953	2.2%	60.4%
Hartford Financial Services	\$30,183	1.9%	41.7%	\$31,486	2.1%	30.3%	\$35,094	2.3%	53.8%
Loya Insurance	\$24,515	1.6%	52.3%	\$23,923	1.6%	46.3%	\$24,511	1.6%	56.2%
Travelers Companies Inc.	\$22,333	1.4%	57.1%	\$20,759	1.4%	49.1%	\$20,663	1.3%	57.2%
Safeway Insurance	\$14,290	0.9%	63.0%	\$13,817	0.9%	41.8%	\$14,479	0.9%	59.8%
Root Insurance Co.	\$12,064	0.8%	92.7%	\$9,133	0.6%	75.8%	\$6,557	0.4%	88.4%
American Family Insurance Group	\$9,299	0.6%	53.0%	\$9,034	0.6%	51.5%	\$6,300	0.4%	58.7%
American National Insurance	\$8,053	0.5%	70.9%	\$8,825	0.6%	34.6%	\$9,643	0.6%	43.5%
Nationwide Mutual Group	\$7,217	0.5%	69.1%	\$8,430	0.6%	38.2%	\$9,306	0.6%	67.7%
Hallmark Financial Services	\$5,613	0.4%	71.5%	\$8,071	0.5%	60.4%	\$9,739	0.6%	76.5%
Amica Mutual Insurance Co.	\$4,812	0.3%	43.3%	\$4,891	0.3%	54.3%	\$5,324	0.3%	70.6%
Central Insurance Companies	\$4,302	0.3%	58.3%	\$4,643	0.3%	59.3%	\$5,104	0.3%	58.3%
<b>Statewide Totals</b>	<b>\$1,577,415</b>		<b>61.7%</b>	<b>\$1,530,491</b>		<b>47.9%</b>	<b>\$1,550,184</b>		<b>60.7%</b>

Source: S&P Global Market Intelligence and the *Auto Insurance Report* database.

Loss ratio = incurred losses/direct premium earned and does not include dividends or loss adjustment expense.

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included in a Nov. 9 [bulletin](#) issued by Insurance Superintendent **Russell Toal** or their own wording, subject to regulatory approval.

The latest shakeup comes as insurers are also raising rates to keep up with fast-rising losses. “What we’re seeing coming out right now are increases across the board,” from companies large and small, said **Jennifer Catechis**, deputy superintendent of insurance.

The most striking response is the group-wide 20.1% rate hike from **Geico**, erasing the 10% rate cut the company implemented early in 2021, according to RateWatch from **S&P Global Market Intelligence**. Geico is the state’s third-largest writer with 13.7% market share last year. **Progressive**, ranked No. 2 with 17.2% of state-wide premium, raised rates a groupwide average 11.1% in March, and No. 4 **Farmers** boosted rates an average 10.4%. The top 10 groups have increased rates an average 8.6% so far this year.

Catechis said insurers seeking higher rates point to the increase in driving in the wake of

the pandemic lockdowns and higher costs for repairs and replacement vehicles. The trends are not unique to New Mexico. Rates are rising nationwide, with insurers blaming the increase in driving, inflation, supply chain disruptions, labor shortages, higher tech vehicles, and more dangerous driving behaviors. While Catechis said insurers have not mentioned more risky driving behaviors in their New Mexico filings.

While rising rates are a concern for drivers everywhere, they are especially problematic in a state like New Mexico, where insurance is already unaffordable given the large population of people with low incomes. More than 16% of residents are in poverty, the third-highest rate in the country, according to census [data](#).

Though the average expenditure of \$933 in 2019 was lower than the national average of \$1,070, on our most recent PAIN Index, which compares 2019 premium to income, New Mexico ranks as the 14th least-affordable market.

Consequently, an estimated 22% of drivers

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<b>New Mexico</b>											
<b>Auto Insurance Profit Margins</b>											
<b>Ten-Year Summary, Percent of Direct Premiums Earned</b>											
<b>Line of Business</b>	2020 Total Profit	2019 Total Profit	2018 Total Profit	2017 Total Profit	2016 Total Profit	2015 Total Profit	2014 Total Profit	2013 Total Profit	2012 Total Profit	2011 Total Profit	Avg Total Profit
Personal Auto Liab	18.9	11.7	7.9	6.9	3.4	7.3	10.0	3.5	3.1	-3.1	6.9
Personal Auto Phys	17.8	8.7	6.3	0.8	1.8	-1.1	5.9	8.5	10.6	15.2	7.4
Personal Auto Total	18.5	10.5	7.3	4.6	2.8	4.2	8.5	5.3	5.9	3.9	7.2
Comm. Auto Liab	2.4	10.3	-3.3	12.9	-1.2	4.9	13.6	7.1	5.0	18.2	7.0
Comm. Auto Phys	22.7	11.7	9.4	-4.0	4.5	1.6	7.6	2.2	3.0	10.6	6.9
Comm. Auto Total	7.3	10.6	-0.1	8.6	0.3	4.0	12.1	5.9	4.6	16.3	7.0
<b>Total All Lines*</b>	<b>15.9</b>	<b>10.1</b>	<b>4.7</b>	<b>6.5</b>	<b>5.2</b>	<b>7.2</b>	<b>13.1</b>	<b>5.4</b>	<b>7.0</b>	<b>6.0</b>	<b>8.1</b>

\*Auto; Home, Farm & Commercial Multiperil; Fire; Allied; Inland Marine; Med Malpractice; Other Liability; Workers Comp; All Other

Note: Profit calculations are by *Auto Insurance Report* using data from the National Association of Insurance Commissioners. Calculations are estimates, some based on national averages.

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drive without insurance, and a large proportion of insured drivers – one executive estimated 40% – carry just the minimum required liability limits of \$25,000 per person and \$50,000 per accident.

With so many uninsured and underinsured drivers in a state with a challenging litigation environment, it's no wonder that UM/UIM premiums in New Mexico are very high. The most recent data from the **National Association of Insurance Commissioners** shows that in 2018, UM/UIM premiums represented 58.5% of BI premiums in New Mexico, more than twice the countrywide figure of 25.6%. The figure is even more astounding given the large proportion of drivers who reject UM/UIM coverage.

The New Mexico market has long been challenging for UM/UIM coverage because of legal interpretations that enable insureds to stack policies and trigger UM coverage without evidence of physical contact by another vehicle. The situation was exacerbated by court decisions begin-

ning in late 2010. In the first decision, *Progressive Northwestern v. Weed Warrior Services*, the court ruled that insurers must offer policyholders UM/UIM coverage equal to their liability limits and treat policyholders who buy lesser limits as if they rejected coverage entirely, which requires a written waiver attached to the policy.

In the second ruling on the consolidated cases of *Jordan v. Allstate*, *Romero v. Progressive Northwestern* and *Lucero v. Trujillo*, the court determined insurers did not give consumers enough information to make intelligent decisions about how much UM/UIM coverage to buy. The justices set new requirements, mandating that insurers inform customers of the cost associated with every level of UM/UIM coverage offered. A policy with invalid rejections entitles the insured to UM/UIM coverage equal to the policies' liability limits, even if no premium was collected for that coverage. The court's decision was retroactive for six years.

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## New Mexico Commercial Auto Insurers

Groups Ranked by Total 2021 Direct Premium Written (000)

Group Name	2021 Premium	Mkt share 2021	Loss Ratio 2021	2020 Premium	Mkt share 2020	Loss Ratio 2020	2019 Premium	Mkt share 2019	Loss Ratio 2019
Progressive Corp.	\$50,579	17.4%	62.7%	\$36,818	14.3%	51.2%	\$36,559	14.1%	51.8%
Travelers Companies Inc.	\$24,525	8.4%	35.6%	\$24,206	9.4%	71.1%	\$24,724	9.5%	54.5%
W. R. Berkley Corp.	\$12,769	4.4%	37.3%	\$10,951	4.2%	43.0%	\$10,173	3.9%	79.0%
Liberty Mutual	\$12,744	4.4%	58.0%	\$14,443	5.6%	60.9%	\$15,343	5.9%	80.7%
Zurich Insurance Group	\$12,604	4.3%	48.6%	\$13,343	5.2%	53.9%	\$9,838	3.8%	73.7%
Old Republic International Corp.	\$11,767	4.0%	71.0%	\$11,170	4.3%	87.2%	\$11,663	4.5%	70.1%
Donegal Insurance Group	\$10,344	3.6%	28.9%	\$10,061	3.9%	39.8%	\$8,947	3.4%	66.7%
Berkshire Hathaway Inc.	\$10,153	3.5%	9.5%	\$9,420	3.7%	49.3%	\$12,584	4.8%	25.1%
Acuity Mutual Insurance	\$9,602	3.3%	47.1%	\$8,101	3.1%	23.3%	\$6,759	2.6%	66.8%
Cincinnati Financial Corp.	\$8,084	2.8%	54.8%	\$8,428	3.3%	74.0%	\$7,608	2.9%	64.8%
Nationwide Mutual Group	\$7,832	2.7%	23.6%	\$7,738	3.0%	50.7%	\$7,260	2.8%	51.2%
Fairfax Financial Holdings	\$7,341	2.5%	51.2%	\$5,677	2.2%	43.8%	\$7,413	2.9%	67.0%
<b>Statewide Totals</b>	\$291,274		57.4%	\$258,157		63.4%	\$259,767		58.2%

Source: S&P Global Market Intelligence and the *Auto Insurance Report* database.

Loss ratio = incurred losses/direct premium earned and does not include dividends or loss adjustment expense.

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The recent state Supreme Court's opinion in *Crutcher* came in response to a question from the U.S. District Court for New Mexico, which is hearing the still-pending class action lawsuit. The federal court asked the New Mexico Supreme Court whether the coverage was illusory.

The court said that UIM coverage at minimum limits is illusory, but insurers can continue to charge premiums for the coverage if they disclose the limitation.

The OSI's suggested wording states, in part: "This automobile insurance policy excludes UIM coverage in the event of a loss from a motor vehicle accident in which the total reimbursement you receive from other parties' insurance policies is equal to or in excess of the UM/UIM coverage provided by this policy. This exclusion is in accordance with New Mexico law, as set forth in *Crutcher v. Liberty Mut. Ins. Co.*, decided on October 4, 2021."

Carriers are concerned that the opinion could unleash litigation seeking to reopen claims based on the court's determination that policyholders were misled. "It certainly can lead to additional litigation, though we haven't noticed a significant increase in litigation as of yet," an insurance company executive said.

As insurers start using new policy forms with the court-required disclosure, insurance defense lawyers expect that plaintiffs will file suits challenging their validity. While the OSI offered sample language, the court provided only general guidance that the disclosure fully inform a reasonably intelligent layperson that by choosing to purchase only the statutory minimum amount of UM/UIM insurance, the insured will never receive the benefits of the UIM coverage.

The language insurers are adding to their forms "hasn't been tested yet," said insurance defense attorney **Jill Collins**, who [wrote](#) about the *Crutcher* decision in November. "It's the hot

*Please see NEW MEXICO on Page 10*

### New Mexico Snapshot

**Regulator:** Superintendent Russell Toal

**Rate regulation:** file and use

**Size of personal auto market:** \$1.58 billion  
(2021DPW) Rank: 36th

**Average policy expenditure:** \$933 (2019)  
**Rank:** 28th

**Auto Insurance Report PAIN Index rank:**  
14th (2019)

**Property Insurance Report HURT Index rank:**  
17th (2019)

**Auto registrations:** 623,955 (2020)

**Truck registrations:** 1.1 million (2020)

**Vehicle miles traveled (VMT):** 23.76 billion (2020)

**Traffic fatalities:** 1.68 per 100 million VMT;  
U.S.: 1.34 (2020)

**Vehicle thefts:** 427.6 per 100,000 residents;  
Region: 331.8 (2020)

**Liability defense:** pure comparative fault

**Minimum Insurance Requirements:**

BI: \$25,000/\$50,000 • PD: \$10,000

**Safety Laws**

Ban on handheld cellphone use for novice drivers and texting for all drivers

Weak graduated licensing

Primary seat belt law

Motorcycle helmets required for riders under 18

**Demographics**

Population: 2.1 million (2021)

Change 2010-2020: 2.8%, U.S.: +7.4%

Median household income (avg. 2016-2020):  
\$51,243; U.S.: \$64,994

Population density: 17.5 per square mile;  
U.S.: 93.8 per square mile (2020)

*Sources: S&P Global Market Intelligence; NAIC; U.S. Dept. of Transportation; NAMIC; U.S. Census; Insurance Institute for Highway Safety; FBI; Matthiesen, Wickert & Lehrer*

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## Focus: NEW MEXICO

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issue, and there's going to be case law definitely within the next couple of years."

The question of illusory UIM coverage is not unique to New Mexico. The **Idaho Supreme Court** recently [ruled](#) in *Pena v. Viking* that UIM coverage at minimum limits is illusory, forcing the insurer to pay a claim it previously denied. Back in 2012, the **Michigan Supreme Court** [decided](#) otherwise. In some states, like **Missouri**, the offset doesn't apply to minimum limits policies; in those cases, UIM is paid in excess of what is recovered from the at-fault driver.

Some question if the court's solution will really change anything for consumers.

"We are putting this [disclosure] into the insurance policy," an executive said, "and 99% of people don't read their insurance policy."

The court's opinion in *Crutcher* implied that lawmakers could eliminate the problem by changing state law to provide for UIM payments in excess of what the at-fault driver pays, instead of applying the "gap theory of underinsurance coverage" that requires the offset.

"New Mexico lawmakers have purposefully chosen to adopt a gap theory of underinsurance coverage, and it is within their power to do so," the court wrote. "If they are so inclined, state lawmakers are also empowered to revisit the state's uninsured motorist coverage statutory scheme in light of the issues outlined by this case."

Changing the law to provide for excess coverage instead of the offset would surely lead to higher rates. There don't appear to be any rumblings about legislation of that kind – at least not so far – for the 2023 legislative session.

The next legislative session is more likely to be dominated with proposals concerning insurance underwriting and claims handling related to wildfires in the wake of record wildfires this year that were sparked by prescribed burns.

The OSI has already issued several bulletins

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in response to the raging wildfires, the [most recent](#) of which is a data call to assess the scope of the damage.

Several bulletins were issued under emergency powers that the New Mexico Legislature granted to the superintendent with [House Bill 235](#) in 2021. The law gives the superintendent the power to "take those actions necessary to ensure access to insurance and the stability of insurance markets" during an emergency declared by the governor, such as the Covid-19 public health emergency or the wildfire emergency.

During the short 2022 session, lawmakers took steps to toughen the law against auto theft. New Mexico tied with **California** for the highest auto theft rate in the country in 2020, after the **District of Columbia**. [HB 68](#), a wide-ranging crime bill, includes provisions that make operating a "chop shop" a third-degree felony. The [legislation](#) also requires additional documentation for a scrap dealer's purchase of a catalytic converter, a move taken to reduce rampant theft of the costly devices. [AIR](#)

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