Jim's Perspective…

NAIC Auto Loss Ratios

First, let me explain. It was a cold, rainy day. I am a property and casualty insurance guy. I did not have much going on that day, so I visited the NAIC website. Over the years, I occasionally look at data on this website. There is interesting statistical data compiled nationally, and it can be useful to compare Nebraska data with that of other states. And so, I looked at auto bodily injury (BI) loss ratios in all states.[1] The data collected was from the voluntary business market, so there was nothing related to assigned risk programs or other auto loss data related to people who couldn't get coverage in the private marketplace.

Nebraska's auto BI loss ratio for 2018 was 63.98. That's very good. Historically, auto insurers try to maintain a BI loss ratio below 70, and then maintain an expense ratio of about 25 so that there is an underwriting profit for the year of 3 to 5 per cent. Below are the 2018 loss ratios for neighboring states:

Colorado.	77.99
Iowa.	61.69
Kansas	73.18
Missouri.	69.81
South Dakota.	54.17
Wyoming.	62.32

As I am sure you can appreciate, BI loss data in every state can be significantly affected by the type of tort negligence liability system in effect in a state. Most states now have some form of "comparative negligence." So in some states if you are *more than* 50% at fault (51% rule) you are barred from recovering any damages for your bodily injury claim. In other states you are barred from recovering on your claim if your negligence is *more than* 49% (50% rule). Finally, some states have "pure comparative negligence" which means an injured person recovers a percentage of bodily injury damages minus their individual percentage of fault. So if you run a stop sign and have an accident with a driver with the right of way, and a jury determines you are 80% at fault, you recover 20% of your damages (pure rule).

Missouri's loss ratio does not surprise me. It has the pure rule, it also has unlimited punitive damages, and its judges are elected, not appointed by the governor. In contrast, Nebraska has the conservative 50% rule (passed in Nebraska Legislature, 1992), no punitive damages and judges appointed by the Governor. Note too, that 45 states provide for punitive damages in civil actions. Nebraska is in the extreme minority on this issue by not providing for punitive damages. There are always bills in the Legislature to provide for punitive damages, but they have never gone anywhere.

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[1] An NAIC press release dated January 31, 2022 contained the 2018-2019 Auto Insurance Database Report. The latest year included in the report for auto bodily injury liability loss ratio information was 2018. For some reason the report includes limited data related to auto insurance in 2019, but bodily injury loss ratio information only went to 2018.

Another factor to consider is that theoretically, an auto insurer will have BI loss data over a long period of years, and through an actuarial analysis, it should be able to adjust rates higher if needed to lower the loss ratio. You would think that the loss ratio of all states would be similar, but premiums charged would vary depending on the form of comparative negligence. Nevertheless, as you look at Missouri's loss ratio for 2018, it is interesting to note that the loss ratio for 2017 was 74.57, and for 2016 it was 82.32. So the actuaries are moving the auto loss ratio to a better place, but it takes time.

I was always very careful with auto BI litigation in Missouri. It was much better to pay a little more auto insurance benefits to settle a claim, than risk having a trial on a claim. The reinsurers I worked with felt the same way. Don't fool around with anything in Missouri! There always seemed to be some auto BI claims pending in the Kansas City, Missouri area.

South Dakota's loss ratio is very good from the insurer's standpoint, but I suppose South Dakota auto insurance consumers might argue that the cost of auto insurance ought to go down. Also, South Dakota has a very unique form of comparative negligence. A plaintiff may only recover if his negligence is not more than slight.

Colorado has the 51% rule for comparative negligence. It also provides for punitive damages, but the facts must show "beyond a reasonable doubt" that punitive damages should be awarded by a jury. Colorado's auto loss ratio for 2016 was 87.08. Oh my! The "take away" from all of this is that Nebraska sits in a good spot when it comes to auto insurance. It has a reasonable loss ratio, and, really, it always has. The loss ratio was 62.05 for 2017 and 67.66 for 2016. It is why the auto insurance marketplace in Nebraska is very competitive and many auto insurers want to do business here.

Iowa's 61.99 is a little surprising, however, in 2016 the loss ratio was 73.64. Iowa has punitive damages. I always had some cases pending in Council Bluffs and Sioux City.

A few other state loss ratios.

District of Columbia.	86.95
New York.	89.21
Arizona.	78.73
Massachusetts.	53.73
Hawaii.	51.83

Finally, a long, long time ago, in the 1960's, many states had civil tort law which provided that no recovery was allowed if the injured person was guilty of any contributory negligence. So if you were even determined to be 1% at fault, you could recover nothing. This civil tort rule of law was first adopted by an English court in Butterfield v. Forrester, 11 East 60, 103 Eng. Rep. 926 (KB 1809). It was part of the common law of all states until1909 when Mississippi adopted a form of pure comparative negligence. With the increased usage of automobiles, and the increased number of accidents in the 1960's, the plaintiff's bar began a legislative campaign to adopt comparative fault laws across America. Comparative fault was a significant financial benefit for plaintiff's lawyers working to recover damages based upon a contingent fee arrangement in which the lawyer recovered a percentage of whatever damages were recovered by the client. Only three states still use the contributory negligence standard. With no seat belts and no crash avoidance or crash resistant technology, there were a lot of auto BI claims and lawsuits in the old days. Granted, there was the contributory negligence standard at that time, but it was still a significant market for civil litigation. My uncle was a lawyer in Saint Louis in the 1960's. His law office was downtown. He was very successful in the auto BI litigation system. He had season tickets to Saint Louis Cardinals baseball games. I went to some of those games in his brand new 1964 Ford Thunderbird Convertible along with his four kids, all boys! His auto BI litigation experienced a big change, when, in 1983, the Missouri Supreme Court abolished the contributory negligence standard and began a pure comparative negligence analysis subsequent to the 1983 case.[2]

Alas, during the pandemic, it has been reported that the frequency and severity of auto BI claims are increasing. Experts say the more reckless behavior on the roads is due to widespread feelings of isolation, loneliness and depression. One more reason why I want this pandemic to be gone! It will be interesting to see the NAIC loss ratio statistics for 2020/2021.

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[2] Gustafson v. Benda, 661 S.W.2d 11, (Mo. 1983)