



# AIRB Annual Review

Alberta Insurance Rate Board

08.15.2019

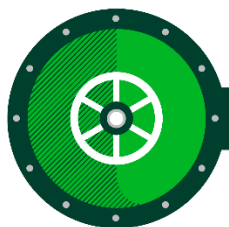
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# TDI is part of the TD Bank Group



## TD is...



- A trusted brand in Canadian and American markets:
  - Named the safest bank in the world (Global Finance 2018)
  - Most trusted Bank/Trust Company (Reader's Digest 2019)
  - Best bank in Canada (Euromoney Magazine 2019)



- Committed to providing legendary experience:
  - First among Big 5 for "Customer Service Excellence" (Ipsos 2017 and 2018 Best Banking Awards)
  - Named Best Bank for Seniors by Money Magazine



- A great place to work:
  - 13 years in a row -- one of the Best workplaces in Canada (Great Place to Work Institute)
  - Ranked first on 2018 LinkedIn Where Canada Wants to Work list

# TDI is part of the TD Bank Group



## TD is...



- The 6<sup>th</sup> largest bank in North America by branches, and employs more than 85,000 people worldwide.



- Focused on executing a strategy that consists of:
  - Customer-centric experiences
  - Operational excellence
  - Strong risk culture
  - Unique and inclusive employee culture
  - The Ready Commitment
  - Innovative solutions for evolving customer needs

# TD Insurance Overview



- Member of TD Bank Group, the second largest financial services organization in Canada
- Largest direct response home and auto insurer in Canada
  - 2.2 million policies and more than \$3.1 Billion in written premiums
- National leader in group insurance



**280,000**

Customers

Second largest Automobile insurer  
in Alberta



**3,900**

TD Insurance

Employees in Canada with offices in Alberta,  
Ontario, Quebec, Nova Scotia and New Brunswick



**15.5%**

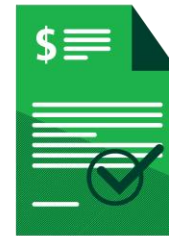
Market Share

Since 2016

# Well Documented Observations...



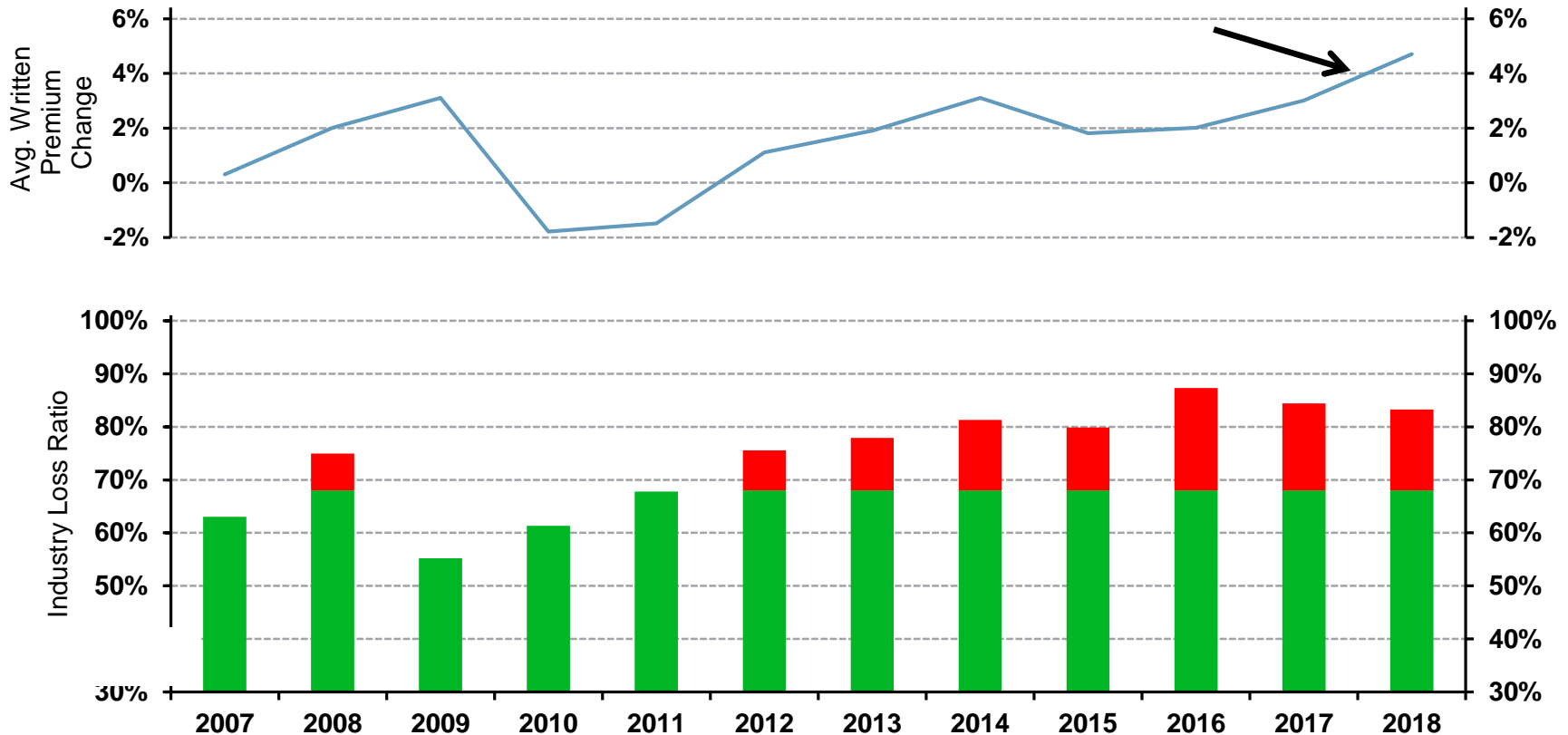
- More severe winters and more frequent extreme weather events
- Continued pressure from erosion of the Minor Injury Cap
- Judicial process is impacting the adjudication of claims
- Alberta remains in a slow recovering economic period
- Ministerial Order to cap rate change approvals at 5%



# Historical Industry Return

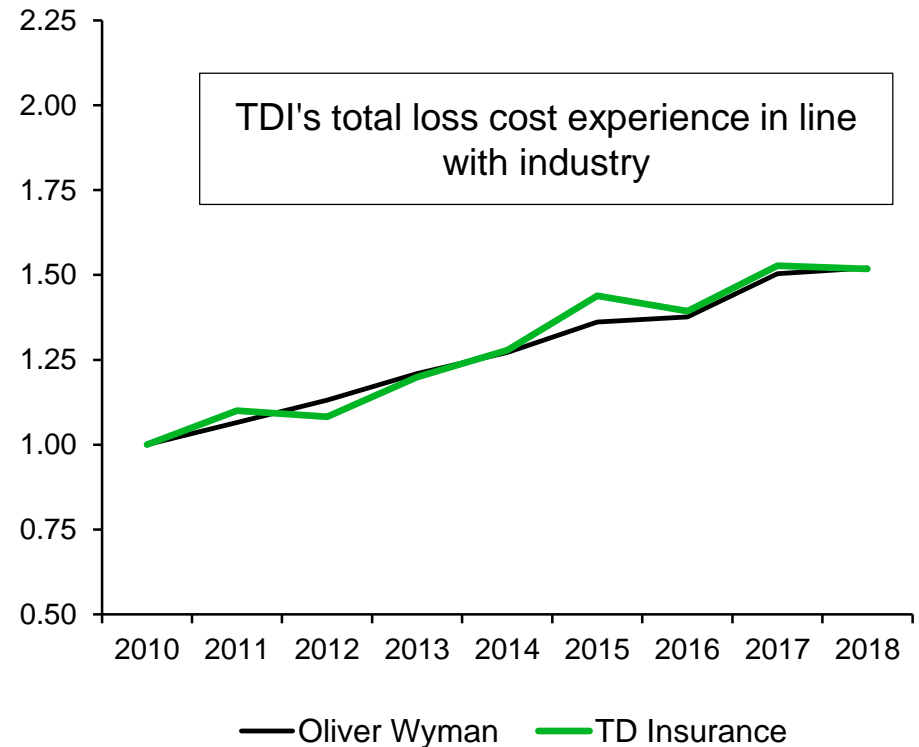
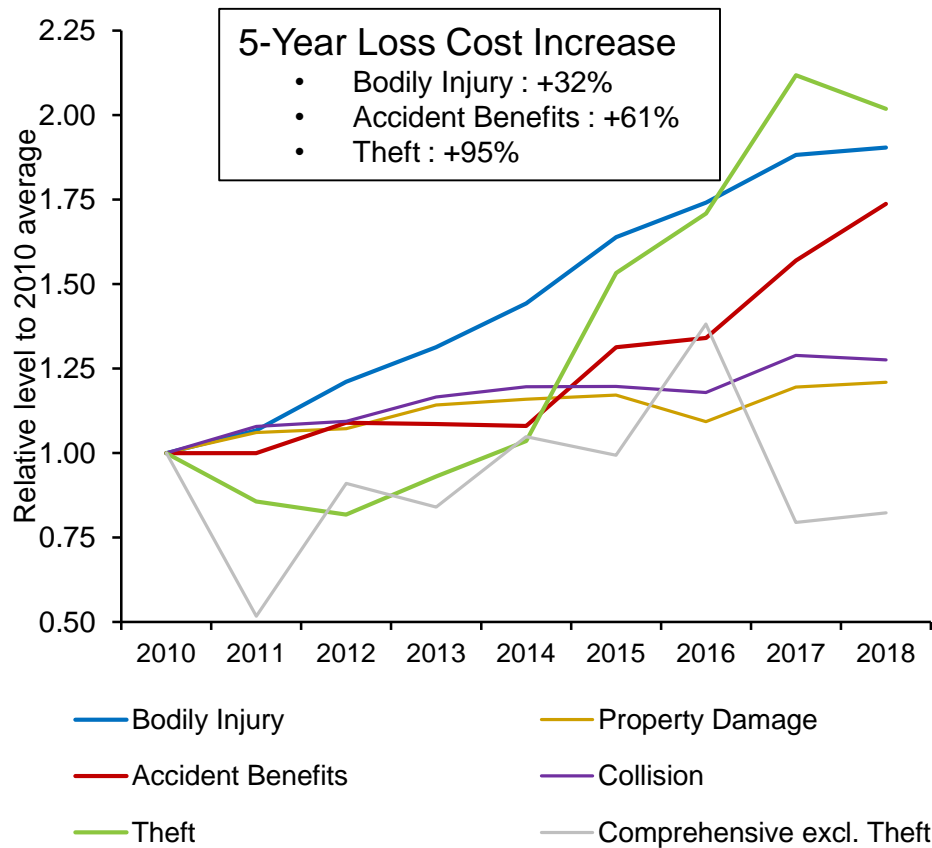


- 7 years in a row of inadequate profit margins
- Would require significant rate increases for adequate return



\* Industry loss ratio from MSA

# Understanding Cost Increases



\*Data from Oliver Wyman's report

# TDI's & Oliver Wyman's Loss Trends



- Both Oliver Wyman's industry analysis and TDI's internal data clearly show positive loss trends for all coverages
- General agreement on required changes to better control cost increases

Coverage	TDI's Trends	OW's Trends
Bodily Injury	7.3%	7.5%
Property Damage	1.0%	2.0%
Third Party Liability	5.4%	6.0%
Accident Benefits	10.0%	9.5%
Collision	1.0%	2.5%
Comprehensive	5.4%	8.5%



# Following Rate Cap Expiry



- **Rate adjustment** is required to limit underwriting losses
- Our **Guiding Principles** for any rate change  
*Availability, Affordability, Fairness & Stability*
- We understand premium adequacy **will not** be reached solely from rate increases
- TDI supports stakeholders in identifying **short to long term solutions** for a *healthier insurance market*

# Factors Contributing to Cost Pressures

## ■ Erosion of the Minor Injury Regulation

- Further to the *Sparrowhawk v Zapoltinsky* decision in 2012, Temporomandibular Joint Disorder ("TMJ") was determined not to be a "minor injury" and thus began the erosion of the minor injury definition. Erosion continued through other decisions such as *Jones v Stepanenko* and *McLean v Parmar*.
  - Led to a significant increase in claims involving alleged TMJ injuries and the continued erosion of the definition regarding other conditions related to soft tissue injuries such as psychological sequela.
  - This is a pattern that we have seen in other provinces, including Ontario.
  - After definition erosion, the response is typically to review applicable legislation and attempt to tighten or clarify the minor injury definition through legislative amendment.
- The minor injury definition was revisited and clarified to specifically include TMJ in its definition assuming there is no damage to bone, disc or teeth. It was also amended to include physical or psychological conditions that arise from a soft tissue injury. The expected downstream impact to this amendment is **two-fold**:
  - Increase in frequency of claims for both TMJ injuries with bone and/or teeth damage and psychological injuries that are claimed to be distinct from the underlying soft tissue injury.
  - As observed in other provinces, we have seen more claims of chronic pain, psychological impairment and brain injury which will attract higher general damage awards on non-minor injury claims. We also anticipate after a few years, we will once again start to see erosion of the amended definition through Court interpretation.

# Factors Contributing to Cost Pressures

## ■ Erosion of the Minor Injury Regulation (cont'd)

- Damages continue to increase overall.
  - WAD II with chronic pain general damages \$75,000 reduced to \$60,000 for failure to mitigate, *Stevenson v. Thompson*, 2017 A.J. No.765.
  - Housekeeping is awarded as a lump sum in addition to general damages, *Jones v. Stepanenko*, 2016 A.J. No.559.
  - Loss of earning capacity is awarded in almost every case and is often an award of one to two years gross income. Loss of earning capacity has been awarded in addition to an award for loss of competitive advantage, *Chisholm v. Lindsay*, 2012 ABQB 81.
- General damages have even increased in instances where the plaintiff's credibility was questioned.
  - *Petz v. Duguay*, 2017 A.J. ABQB 90, the Court concluded that Ms. Petz was not credible yet awarded general damages in the amount of \$50,000.
  - *Bumstead v Dufresne*, 2015 ABQB 787, the Court noted that the plaintiff's credibility had been seriously compromised and concluded that the plaintiff was not credible, yet awarded general damages of \$50,000.

# Factors Contributing to Cost Pressures

## ■ Observations Pertaining to the Judiciary Process

- In Alberta, there appears to be a lack of judicial resources available to conduct civil trials, resulting in trials being scheduled three or more years out from trial date selection.
  - There is a lack of justices in the province (new appointments are only keeping pace with attrition rather than adding needed net new justices), creating delay, which is exacerbated by criminal and family law cases necessarily taking precedence over civil cases.
  - There is a lack of physical space with Edmonton, Grande Prairie and Fort McMurray all which are in need of new courthouses.
  - This lack of resources also hinders all parties' ability to obtain a timely JDR (Judicial Dispute resolution), which can be of great assistance in resolving litigation short of trial.
- Alberta courts assign fixed trial dates rather than holding trial sittings.
  - Trial sittings allow jurisdictions to place many pending cases on a running list to be heard at certain set times or "sittings" during the year. This system avoids long waits for trial dates and promotes earlier resolution of cases by providing access to justice in a timely manner. This also promotes effective use of judicial resources by avoiding set court dates going unused when cases resolve just prior to trial. Trial sittings have been effective in many Ontario jurisdictions for years.

# Factors Contributing to Cost Pressures

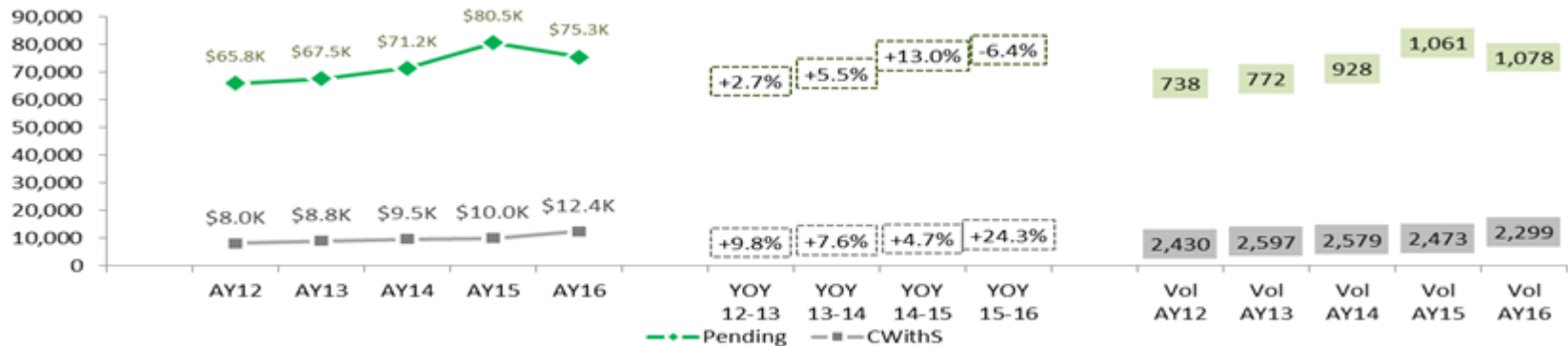
## ■ Observations Pertaining to the Judiciary Process (cont'd)

- **Disbursements** – Alberta is an outlier among other provinces in terms of very significant expenditures being paid out to professional experts as legal disbursements in personal injury cases.
  - Personal injury cases in Alberta present significant disbursements when compared to similar cases in other jurisdictions. In some instances bills of costs are 4 to 5 times what is seen in other jurisdictions for like cases. It is not uncommon to see \$200k-300k in plaintiff reimbursements.
  - Insurers have had little success in challenging these significant disbursements before the Assessment Officer. These insurance payments are not going to accident victims but to professional experts who are profiting greatly from the current system while at times delivering questionable value to the court in their duty to provide "impartial" testimony.
- The current system forces plaintiff and defense lawyers to obtain their own expert witnesses rather than allowing for the appointment of a truly independent expert to provide assistance to the court.
  - This results in a fundamental inequity in favor of plaintiffs in terms of availability of expert testimony. Plaintiffs' lawyers may obtain as many experts as they wish at almost any time leading up to trial.
  - In addition, there is rarely an opportunity for the defense to obtain a follow-up examination as trial approaches. This inequity is exacerbated by the aforementioned excessive delay in trial dates. If the defense obtains its medical examinations in a timely manner in order to facilitate early resolution of the case, the reports will be stale dated and thus open to collateral attack on that basis by plaintiffs' counsel at trial.

# Factors Contributing to Cost Pressures

- All of the aforementioned factors contribute to longer file cycle times and increased claims costs, to the detriment of accident victims, who are not getting the treatment and compensation for their injuries in a timely manner
- TDI has seen that the trend in BI claims closed with settlement is increasing, in line with the increase we are seeing in pending claims. The most recent accident year 2016 (at 32 months of development) is seeing the highest increase in average claims settlements. This is true with and without legal representation.

Alberta - Bodily Injuries: at 32 Months



Note: above graph shows Average Incurred (Case Reserve + Indemnity - Recovery + ALAE), Gross of RSP and excluding ULAE and IBNR Includes PPA, Motorcycle and other recreational vehicles

# Conclusion



- Opportunity to explore jurisprudence and judiciary process, in addition to product reform, to complement any future needed rate changes
- TDI supports a balanced approach to changes in premium levels with an opportunity to further innovate automobile insurance.
- A gradual approach to rate increases is easier on the consumer and would align with public policy goals of keeping auto insurance broadly available and affordable
- Additional rate increases are required to keep rates aligned with the continuing increase in claims costs, however this remains a temporary measure in the absence of any fundamental reform changes.