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Annual Review

Introduction

With roots dating back to 1949, TD Insurance (“TDI”) is a member of TD Bank Group (“TDBG”), the second largest financial service organization in Canada. TDI offers a wide range of insurance products, including credit protection, life, health, travel, home and automobile.

TDI is the largest direct response insurer, in Canada, with more than 2.1 million policies, and more than \$3.3 billion in written premiums. TDI employs more than 3,900 people across Canada, with offices in Alberta, Ontario, Québec, Nova Scotia and New Brunswick.

Our home and auto insurance products are underwritten by wholly owned insurance companies: Security National Insurance Company, TD General Insurance Company, TD Home and Auto Insurance Company, and Primum Insurance Company.

The TDI business model is direct response, meaning service is provided directly to clients, without using third-party intermediaries. As a result of our position as the largest direct response insurer in Canada, no one talks to more Canadians about automobile insurance than we do. The processes and technology that we use allow us to provide quality service in a timely and efficient manner.

TDI is the second largest automobile insurer in the province with offices in Calgary and Edmonton. Our automobile market share in the province is 16.1%.

TDI conducts its business across a variety of jurisdictions and we are pleased to draw upon our expertise and share our experience in operating with a variety of models. We are committed to working with the government to maintain a healthy auto insurance environment that is efficient, affordable, cost effective and sustainable to meet the needs of Albertans.

TDI appreciates the opportunity to present comments and recommendations to the Alberta Automobile Insurance Rate Board (“The Board”) as it undertakes its consultation to review Alberta industry loss experience for private passenger vehicles to establish industry benchmarks to be used in the review of insurers' PPV filings for basic and additional coverage.

COVID-19

TD Insurance is working tirelessly to help ensure Albertans remain better protected and their insurance coverage is uninterrupted during this unprecedented time. As many Albertans experienced financial hardship as a result of the pandemic, TDI has undertaken measures to provide financial relief to its customers. As the situation continues to evolve, TDI continues to review these relief measures.

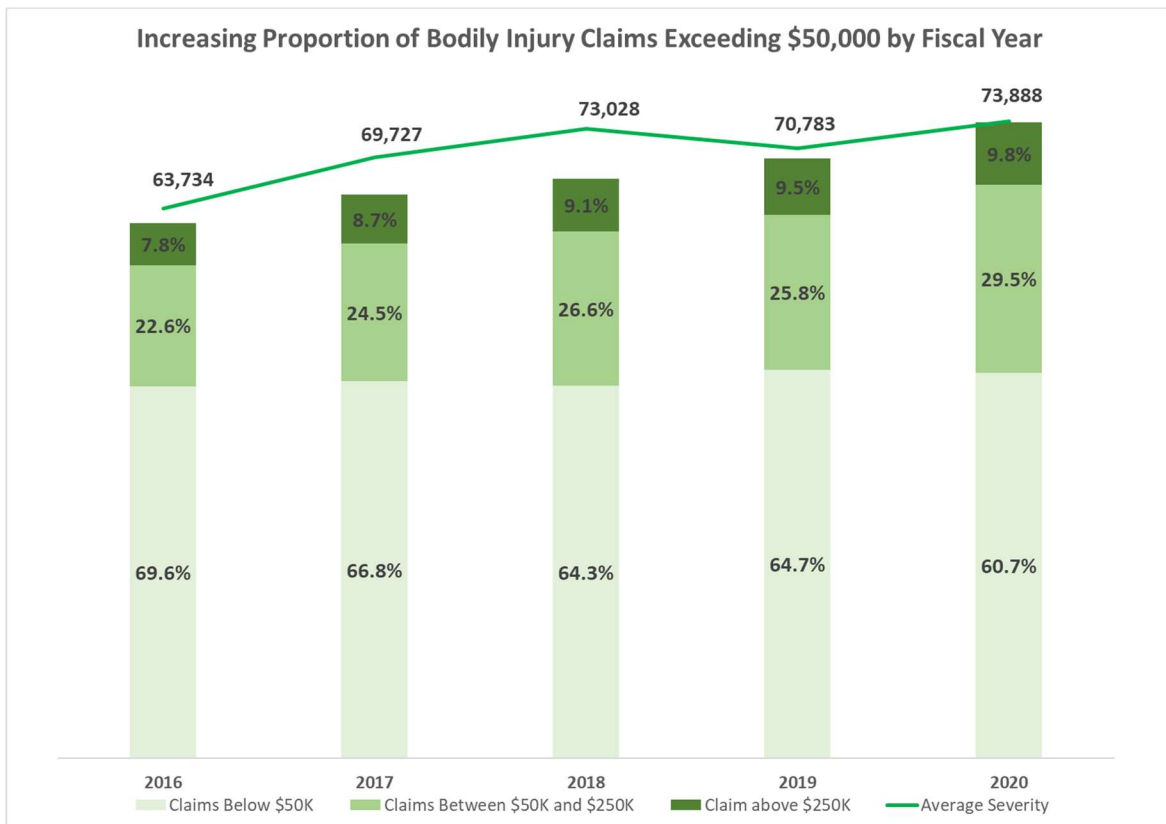
To help keep customers, colleagues and communities safe, TDI has actively shifted as many colleagues as possible to work remotely. We remain committed to the safety of our employees so that they can be there for our customers when they need us.

Loss Trends

TDI continues to observe increasing loss cost trends for all coverages; similar to those selected by Oliver Wyman. The future loss cost trends for all coverage combined is approximately +5%. Additional rate increases to keep up with increasing claims costs are a temporary measure in the absence of any fundamental reform changes.

Bodily Injury

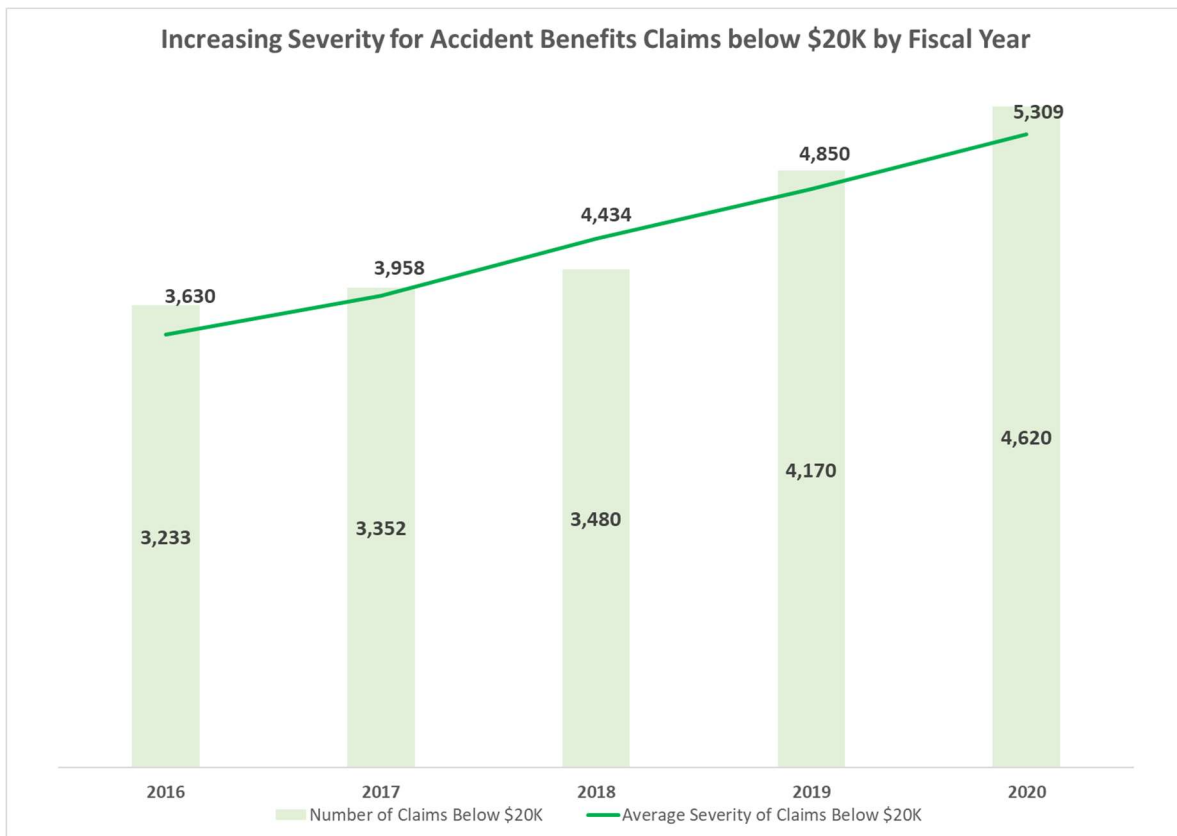
Bodily Injury is the main driver of upward claims costs in Alberta. TDI selected trend for Bodily Injury is in line with Oliver Wyman's selection. TDI has observed an increased in the number of claims for which the severity exceeds \$50,000 as well as for the number of claims in excess of \$250,000. The graph below compares severity and number of claims by Fiscal Year and is excluding claims from Accident Year 2020. As illustrated, the proportion of claims exceeding \$50,000 increased from 30% in 2016 to almost 40% in 2020.



We believe that the erosion of the Minor Injury Regulation and the lack of judicial resources are contributing factors of increasing Bodily Injury claims cost.

Accident Benefits

For Accident Benefits, we continue to observe high loss trends which is consistent with the findings in the Oliver Wyman report. Similar to Bodily Injury, we have observed an increased proportion of higher losses. The graph below compares severity and number of claims by Fiscal Year and is excluding claims from Accident Year 2020. As illustrated, claims in excess of \$20,000 increased from 4.5% to 8% from 2015 to 2020. Furthermore, we are also observing increasing severity of smaller losses.



Continued Erosion of the Minor Injury Regulation

The erosion of the minor injury definition has continued. through other decisions such as *Jones v Stepanenko* and *McLean v Parmar*.

Claims of chronic pain, psychological impairment and alleged mild to moderate brain injury which attract higher general damage awards on non-minor injury claims, continue to increase. We also continue to see erosion of the MIR through Court interpretation and increased general damages, housekeeping and loss of earning capacity.

Increasing Damages

Damages continue to increase at a dramatic pace. General damages at trial and JDR (Judicial Dispute resolutions or mini trials) continue to increase with increased emphasis by plaintiff counsel, with increased expert involvement, on chronic pain and psychological components as well as greatly increased emphasis on other heads of damage such as housekeeping and loss of earning capacity.¹ Even in the instance of an unrepresented plaintiff the damages awards are high.²

Loss of earning capacity is awarded in almost every case and is often an award of one to two years gross income. In some cases. loss of earning capacity has been awarded in addition to an award for loss of competitive advantage.³

General damages have even increased in instances where the plaintiff's credibility was questioned.⁴

¹ *Mason v. Thompson*, [2020] A.J. No. 217

² *Balogun v. Pandher*, [2020] A.J. No. 721

³ *Chisholm v. Lindsay*, [2012] ABQB 81

⁴ *Petz v. Duguay*, [2017] A.J. ABQB 90 and *Bumstead v Dufresne*, [2015] ABQB 787

Costs and Disbursements Continue to Increase

Costs and disbursements paid in Alberta as part of the civil trial process are excessive and continue to increase with Plaintiff counsel frequently engaging multiple experts, even in the same or overlapping disciplines. This adds to the cost of litigation and extends the time it takes to litigate a matter significantly. These costs must be brought under control.

Alberta is an outlier among other provinces in terms of exorbitant amounts being paid out to professional experts as legal disbursements in personal injury cases.

Plaintiffs' lawyers are running up excessive disbursements when compared to similar cases in other jurisdictions. Some members of the Plaintiffs' Bar in Alberta are delivering bills of costs at 4 to 5 times what we see in other jurisdictions for like cases. It is not uncommon to see \$200K to 300K in costs and disbursements being sought by plaintiff counsel prior to trial.⁵

Insurers have had little success in challenging these unreasonable amounts 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 assist 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 including multiple experts in the same discipline.

The opportunity for the defense to obtain a follow-up examination as trial approaches is limited. Given the delay in obtaining trial dates, even if the defense obtains its medical examinations in a timely manner in an attempt to facilitate early resolution of the case, the reports will be stale dated at trial and open to collateral attack on that basis by plaintiffs' counsel.

⁵ *Dirk v. Toews*, [2019] A.J. No.594, [2020] A.J. No.18 and [2020] A.J. No.669.

Lack of Judicial Resources

In Alberta, there continues to be a lack of judicial resources available to conduct civil trials. There are not enough Judges or courtrooms allocated to civil matters. Prior to COVID-19 trials were being scheduled three or more years out from trial date selection. This situation will only worsen as we emerge from COVID-19.

The July 2016 Supreme Court of Canada decision in *Jordan*, creating timelines for the hearing of criminal matters, has placed tremendous strain on the Alberta Courts. In Calgary in 2016 the average time for a civil case to be brought to trial was 92 weeks. As at March 2018 it was double that.⁶ Although we don't have current figures due to COVID-19, it is expected that the timelines will now be dramatically longer.

There remains a lack of justices and courtrooms in the province. New appointments are not even keeping pace with attrition adding to the delay, which is further exacerbated by criminal and family law cases necessarily taking precedence over civil cases.

Edmonton, Grande Prairie and Fort McMurray are all in immediate need of new courthouses and more courtrooms.

The lack of judicial resources also limits access to JDRs, which are great assistance in resolving litigation prior to trial. This is especially troubling given the renewed requirement in Alberta to complete ADR prior to setting a matter for trial.

Alberta courts also 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 sittings during the year. The trial sitting system avoids long waits for trial dates and promotes earlier resolution of cases by providing access to justice in a timely manner and 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.

Delays are equally prevalent and devastating to civil actions in the scheduling of hearings before Masters and Justices in Chambers to deal with interlocutory matters and dismissal applications.

Concluding Comments

We appreciate your consideration of our submission, and want to again, thank-you for the opportunity to provide input for the annual review.

⁶ CBC News, Carolyn Dunn, March 28, 2018.