



February 28, 2019

Automobile Insurance Rate Board  
2440 Canadian Western Bank Place  
10303 Jasper Avenue Edmonton AB T5J 3N6  
via email: [airb@gov.ab.ca](mailto:airb@gov.ab.ca)

Re: AIRB Annual Review

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 2.2 million policies, and more than \$3.1 billion in written premiums as of January 2019. 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 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.

Our submission will focus on the following topics:

1. Bodily Injury
2. Loss Trends

## **Bodily Injury**

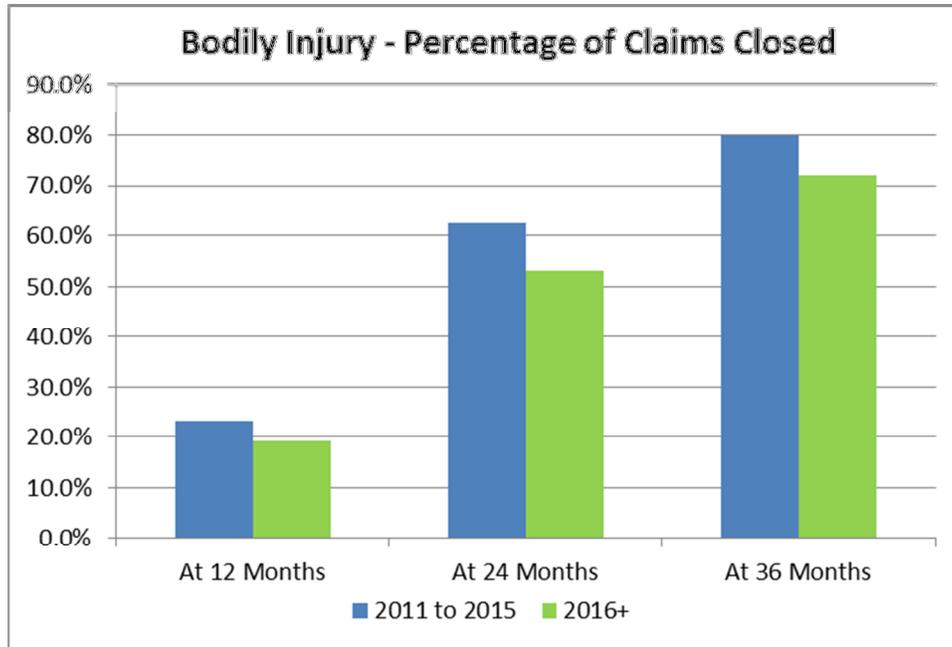
The industry continues to experience adverse development and increasing loss trends for the bodily injury coverage. Similarly, TDI has experienced a continued deterioration for the Bodily Injury coverage. Herein, we will provide our view on the potential causes that are contributing to the increase in claims costs. The key contributing factors are related to erosion of the Minor Injury Regulation, changes in case law and economic factors.

With the introduction of the Minor Injury Regulation in Alberta in October, 2004, it was assumed that the regulation would assist in controlling rising insurance costs by capping the damages of injuries deemed to be minor. At that time, it was the impression of insurers and insureds that the minor injury definition would capture almost all soft tissue related injuries. The regulation appeared to have its intended effect until the release of the Sparrowhawk v Zapoltinsky decision in 2012. In Sparrowhawk, Temporomandibular Joint Disorder ("TMJ") was determined not to be a "minor injury". This case has been viewed as the beginning of the erosion of the Alberta minor injury definition. Erosion continued through other decisions such as Jones v Stepanenko and McLean v Parmar. After the Sparrowhawk decision, there was 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.

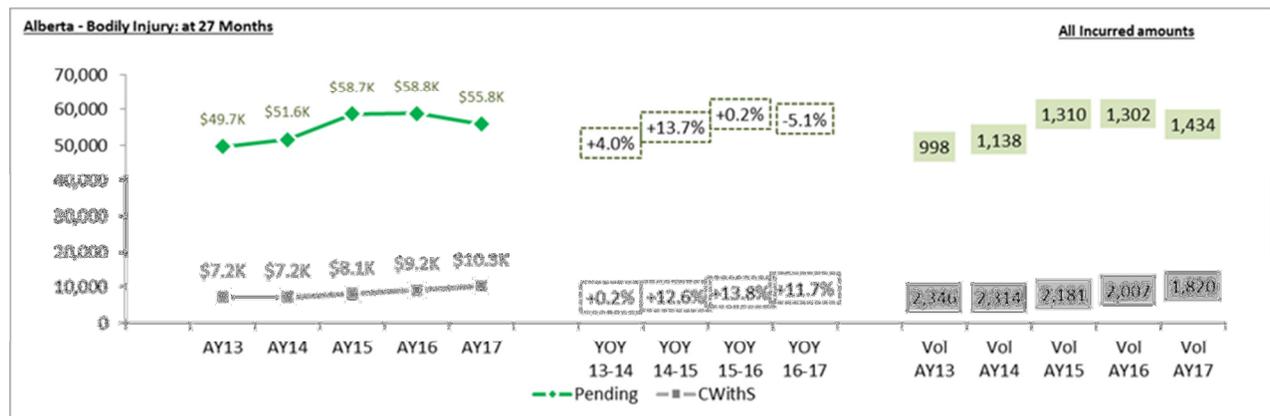
Over the years, the minor injury definition was revisited and clarified to specifically include TMJ in its definition assuming there is no damage to bone, disc or teeth. It was also amended to include physical or psychological conditions that arise from a soft tissue injury. The expected downstream impact to this amendment is twofold. It is anticipated that the 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 will increase. In addition, if Alberta follows the path that has been observed in other provinces subsequent to definition amendment, we will likely see more claims of Chronic Pain 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. As such, there is a need to further revisit the definition of the Minor Injury Regulation.

The economic climate in Alberta has also impacted personal injury litigation. With the downturn in the economy and in particular the oil industry, we have seen an influx of new lawyers into this area of law. This influx has changed the profile of litigation when we compare it to 7+ years ago. Arguably, litigation has become more complex and the quality of plaintiff representation has improved. These conditions continue to put upward pressure on overall claims costs.

Furthermore, we know that there is a correlation between bodily injury costs and file cycle time. Generally, costs increase with the age of a claim. To this end, as insurers we try to reduce cycle time on claims to help control costs. In Alberta, there is a significant backlog of court cases resulting in trials being scheduled two to three years out from trial date selection. As shown in the graph below, since 2016, TDI has observed a smaller proportion of claims being closed within the first 36 months. This indicates an increase in claims file cycle time, which will result in increased claims costs.



In addition, TDI has seen that the trend in claims closed with settlement (see graph below CWithS, at 27 months of development) continues to increase year over year, at a higher rate than the pending claims. There has been a significant increase in the last three accident years (at 27 months of development) in average claims settlements. This further suggests that all the above mentioned factors are putting pressure on claims settlements and it is not solely caused by more prudent case reserving practices. Note that we also observe that the increases are present for claims that involve legal representation as well as those that do not.



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

### Loss Trends

TDI observes increasing loss cost trends for all coverages; similar to those selected by Oliver Wyman.

For Bodily Injury, TDI observes similar increasing loss trends as those selected by Oliver Wyman. As shown above, TDI continues to see an upwards trend in the average incurred amount of the Bodily

Injury claims. A prudent approach to loss trend selection is necessary, in light of all the factors mentioned herein and the associated uncertainty, which continue to put pressure on this coverage.

For Accident Benefits, we continue to observe a steep increase in loss trends particularly since 2015 which is consistent with the findings in the Oliver Wyman report.

Like the industry, TDI also observes an upward trend in the comprehensive loss cost, mainly due to a sharp increase in the frequency of theft claims. This trend is continuing into 2018, which will put upward pressure on the comprehensive loss trends for the next years.

Thank you for the opportunity to provide these comments, and for taking the time to consider them. We welcome the opportunity to discuss them at your convenience. Please contact Lynn Whitehead with any questions ([lynn.whitehead@tdinsurance.com](mailto:lynn.whitehead@tdinsurance.com) or 416-484-3931).