

New Brunswick Insurance Board

DECISION

IN THE MATTER:

Of a rate revision application for TD Home and Auto Insurance Company

With respect to automobile insurance rates for

Private Passenger Vehicles

Written hearing date: February 22, 2017

Electronic hearing for cross-examination date: February 23, 2017

Heard at Saint John, New Brunswick

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| Board: | Mr. Brad Woodside | Panel Chair |
| | Mr. Georges Leger | Member |
| | Mr. Jim Jessop | Member |

Appearances:

Applicant: **TD Home and Auto Insurance Compar**

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| Ms. Mary Vacirca | AVP Rating and Classification |
| Ms. You-Im Sim | Manager Rating and Classification |
| Mr. Cedric Pilon | Senior Manager Rating and Classification |

Formal Interveners:

Office of the Attorney General

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| Mr. Michael Hynes | Solicitor |
| Ms. Maya Hamou | Solicitor |
| Ms. Paula Elliott | Consulting Actuary |

Consumer Advocate for Insurance

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| Mr. Ronald Godin | Director - Office of the Consumer Advocate |
| Ms. Michele Pelletier | Consumer Advocate |

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| Date of Written Hearing: | February 22, 2017 |
| Date of electronic hearing for Cross-examination: | February 23, 2017 |
| Decision Rendered: | March 30, 2017 |

Summary

[1] Pursuant to subsection 267.5(1) of the *Insurance Act*, R.S.N.B., 1973 c. I-12, the New Brunswick Insurance Board (the “Board”) convened a Panel of the Board to conduct a written hearing on February 22, 2017 at the offices of the Board, Saint John. Further, the Panel continued the hearing by teleconference call on February 23, 2017 for the limited purposes of allowing cross-examination of the actuarial witnesses. The purpose of the hearing was to consider the rate revision application (the “Filing”) submitted by TD Home and Auto Insurance Company (the "Applicant" or "TDHA") with respect to automobile insurance rates for private passenger vehicles in New Brunswick. The Applicant is an insurance company duly licensed to write automobile insurance in New Brunswick.

[2] By agreement, this hearing was combined with the hearings for Primum Insurance Company and Security National Insurance Company as all three insurers are affiliated and collectively are known as the “TDI Group.”

- [3] In compliance with subsection 19.71(3) of the *Insurance Act*, the Board provided to the Office of the Attorney General (“OAG”), all documents relevant to the hearing. Pursuant to subsection 19.71(4) of the *Insurance Act*, the OAG intervened, made representations to the Panel, questioned the Applicant by way of written interrogatories and cross-examined the Applicant’s witness during the teleconference portion of the hearing. The Consumer Advocate for Insurance (“CAI”) intervened as well, adopting the position of the OAG, and not actively participating in the questioning or development of evidence.
- [4] During the hearing process the Panel accepted the following exhibits from the Applicant and the OAG as part of the record as shown below:

| EXHIBIT | DESCRIPTION | DATE |
|-------------------------|---|------------------------------|
| 1 | TD Home and Auto Private Passenger Original Rate Filing | Sep 15, 2016 |
| 2 | TD Group Questions from KPMG | Sep 28, 2016 |
| 3 | TD Group Response to Questions from KPMG | Oct 04, 2016 |
| 4 | TDHA Question from NBIB | Oct 04, 2016 |
| 5 | TDHA Response to Questions from NBIB | Oct 07, 2016 |
| 6 | TD Group Follow up Questions | Oct 11, 2016 |
| 7 | TD Group Response to Questions from KPMG | Oct 17, 2016 |
| 8 | TD Group Follow Up Questions | Oct 26, 2016 |
| 9 | TD Group Response to Questions from KPMG | Nov 04, 2016 |
| 10 | TD Group Follow up Questions from KPMG | Nov 09, 2016 |
| 11 | TD Group Response to Questions from KPMG | Nov 11, 2016 |
| 12 | TD Group KPMG Summary | Nov 15, 2016 |
| 13 | TDHA Questions from NBIB | Nov 18, 2016 |
| 14 | TD Group Response to Questions from NBIB | Nov 23, 2016 |
| 15 | TDHA Round I Questions from OAG | Jan 06, 2017 |
| 16 16R | TDHA Response to OAG Round I TD Group Revised information regarding ULAE | Jan 20, 2017 Feb 14, 2017 |
| 17 | TD Group Questions from OAG Round II | Jan 26, 2017 |
| 18 | TD Group Response to Questions from OAG Round II | Feb 3, 2017 |

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| 19 | TD Group Final Submission | Feb 17, 2017 |
| 20 | OW Final Submission | Feb 17, 2017 |
| 21 | OW Final Submission (missing attachment) | Feb 18, 2017 |

[5] The Panel, after examining the evidence and submissions made by the parties, and after consideration of the testimony provided by witnesses during the cross-examination, determines that the rates proposed by the Applicant must be modified as set out below.

[6] On March 2, 2017 following the hearing, the Panel ordered the Applicant to provide revised overall indications for the impact of the following four changes combined, as well as the expected impact of each individual change if they were implemented separately:

- 1) Changing expense provision from 31.5% to 26.8%
- 2) Changing the ULAE expense from 12.9% to 10.2%
- 3) Changing the MIR factor from 1.242 to 1.286
- 4) Changing the premium tax rate from 3.4% to 3.0%

[7] The impact of these changes will lower overall rate indications from an average increase of +31.2% to an average increase of +21.6%. The Applicant had proposed an average increase of +3.70% (before the impact of capping).

[8] The Applicant is ordered to incorporate changes to the rate application as noted in paragraph [6] above and is **approved to adopt the average rate change of +3.70% as proposed.**

[9] The approved rates will be effective on July 15, 2017 for new and renewal business.

1. Introduction

[10] The Board is charged by the Legislature with the general supervision of automobile insurance rates in the Province of New Brunswick. In order to fulfill that mandate, the Board exercises the powers provided by the *Insurance Act*. One key responsibility for the Board is to ensure that rates charged or proposed to be charged are just and reasonable. Under the *Act*, each insurer carrying on the business of automobile insurance in the province must file with the Board the rates it proposes to charge once every 12 months from the date of its last filing. If the proposed rates reflect an average increase greater than 3% or if the insurer files rates more than twice in a period of twelve months, the insurer must appear before the Board.

PROCEDURAL HISTORY

[11] Following the filing of the rate revision application on September 15, 2016, the Board issued a Notice of Hearing on November 25, 2016 and convened a Panel of the Board to conduct a written hearing on the matter. The Office of the Attorney General and the Office of the Consumer Advocate for Insurance each provided notice of their respective intention to intervene in the rate hearing.

[12] Prior to the hearing, the OAG and the Applicant participated in a process for two sets of written interrogatory questions to be exchanged, in addition to written submissions.

[13] The Applicant made a number of revisions to the September 15, 2016 rate filing, with a final revised filing submitted dated November 4, 2016.

[14] The Panel allowed oral cross-examination of actuarial witnesses by the parties during an electronic hearing by teleconference call on February 23, 2017. Mary Vacirca testified as a witness for TDHA and Paula Elliott appeared as a witness for the OAG. No other witnesses were questioned.

[15] In addition to the written submissions received from the OAG and the Applicant, the Panel heard brief oral submissions following the cross examinations. The CAI attended the cross examinations, but did not participate actively in the questioning of witnesses. The CAI adopts the position of the OAG in relation to the Filing.

2. Evidence and Positions of the Parties

TD Home and Auto Insurance Company

[16] The Applicant's Filing forms the main portion of its submission and the evidence before the Panel. The Board's consulting actuaries reviewed the Filing for material errors, and conducted an analysis of the methodology utilized by the Applicant along with the assumptions made, to ensure compliance with accepted actuarial principles. This review indicated that the revised Filing was free of material error and contained no significant unresolved issues. The Board must then look further to determine whether the proposed rates are “just and reasonable” in all of the circumstances.

[17] TDHA presented a Filing to the Board with an overall indication of +31.2% and proposed to select a +3.7% average rate change, or +3.4% after consideration of a +15% rate cap. The Applicant indicated that the Filing was based on the latest statistical information for private passenger automobiles and proposed the following changes to existing rates by coverage:

| | |
|---------------------------------------|---------|
| Bodily Injury | +4.1% |
| Property Damage – PD | +3.1% |
| Property Damage – Direct Compensation | +3.6% |
| Accident Benefits | +3.5% |
| Collision | +3.5% |
| Comprehensive | +4.6% |
| Uninsured Automobile | +3.7% |
| Underinsured Motorist – SEF44 | 0.0% |
| Total | + 3.70% |

[18] The revised rates contained in the Filing are produced assuming a target return on equity of 12% and a 2:1 premium to surplus ratio. Proposed average rates would rise to approximately \$840 from the current average of approximately \$810.

[19] The Applicant argues that the Filing was prepared utilizing sound actuarial methods and practices, that the assumptions contained therein are reasonable and that the Filing has been prepared in accordance with the filing guidelines issued by the Board.

Office of the Attorney General

[20] The OAG was provided with the Filing and all related documents. The OAG was also given the opportunity to further query the Applicant through a written interrogatory process which provided for two rounds of interrogatory questions and answers. At the conclusion of the interrogatory process, the OAG made a final written submission to the Board summarizing its position. Finally the OAG was provided an opportunity for oral cross-examination of the witness for the Applicant.

[21] In its final written submission (Exhibit 20) the OAG, through a report by consulting actuary Oliver Wyman (OW), challenged the Applicant's position on the following issues as summarized at page 22 of Exhibit 20:

[22] "It is our opinion that in determining whether the private passenger automobile rates proposed by TD H&A are just and reasonable, the Board should give consideration to the reasonableness of alternate assumptions and adjustments to TD H&A's rate level indication calculations that we discuss in this report. Absent any additional information provided by TD H&A:

[23] 1) We find that TD H&A's selected expense provision of 31.5% based on Canada-wide all lines of business to be high and a provision of 41.9% based on New Brunswick private passenger automobile experience to be supported, although high. This change, and no other changes in assumptions, would increase the overall rate level indication by approximately 13 percentage points.

[24] 2) We find that TD H&A's selected ULAE provision of 12.9% based on Canada-wide experience to be high and a provision of 7.1% based on New Brunswick private passenger automobile experience to be more reasonable. This change, and no other changes in assumptions, would reduce the overall rate level indication by approximately 5 percentage points.

[25] 3) We find TD H&A's selected trend rates to be different than what we would select. Substituting our selected trend rates and MIR values with those of TD H&A, and no other changes in assumptions, would reduce the overall rate level indication by approximately 3 percentage points.

[26] 4) We find TD H&A's treatment of its Health Levy provision as a variable cost (instead of a fixed cost) to overstate its rate level change need. This change, and no other changes in assumptions, would reduce the overall rate level indication by approximately 3 percentage points.

[27] 5) We do not accept TD H&A's use of the difference between its prior approved rate change (+2.5%) and its prior estimate of its rate level change need (+10.7%) as the basis for its complement of credibility because we would likely have similar concerns with respect to the expense provision, ULAE provision, and treatment of the Health levy. As well we find the use of TD Group data and not TD H&A data is not in keeping with the stated Board Guidelines that company data should be used to the extent credible (not sister company data). We find the use of TD H&A data to the extent credible, with the net trend for the complement to be more reasonable. This change, and no other changes in assumptions, reduces the overall rate level indication by approximately 14 percentage points.

[28] We estimate that combing (sic) the first four changes listed above (expense, ULAE, loss trend, and Health Levy), would increase TD H&A's rate level indication from +31.2% to +34.3%; an approximate increase of 3 percentage points. Combining these four changes with the fifth change (use of TD H&A data, not TD Group data, and no adjustment for prior perceived rate inadequacy) could reduce the +34.3% by up to an additional 14 percentage points – which, overall is higher than TD H&A's proposed overall rate level change (although there would be larger differences by coverage).

[29] Should the Board approve TD H&A's proposed rate change of +3.7% (3.4% after capping), we suggest that the Board consider requiring TD H&A to update (and amend) its estimate of its indicated rate level change need based on this issues we have raised, as any difference between the approved rate change and indicated rate change may be carried over by TD H&A to its filing next year.

[30] Lastly, we note that also lowering TD H&A's profit provision assumptions to FSCO's Guidelines would further reduce TD H&A's rate level indication.”

3. Analysis and Reasons

[31] The Panel has reviewed all of the evidence before it, along with the arguments and submissions of the parties.

[32] Under cross-examination, the witnesses for both parties answered questions challenging their reasoning for why certain choices in terms, assumptions and actuarial methodologies were more or less appropriate given the facts and data available in this rate application.

[33] As is often the case with rate application hearings, the decision of the Panel must take into account an analysis of opinion testimony provided by expert witnesses trained in the actuarial sciences.

[34] The Panel, in this instance, determines that is it appropriate for TDHA to adjust certain assumptions, calculations or methodology within the Filing and the company was ordered to provide the Board with the calculated impact of those adjustments on March 2. The Panel addresses these issues below:

1) The combination of related companies' data

[35] TDHA is one of three companies which form the TD Group of Insurance Companies. The other two companies are Primmum Insurance Company and Security National Insurance Company. TDHA submitted its own rate application to the Board but its method of analyzing rate needs used the combined data from all three companies of the TD Group.

[36] It is the position of the OAG that such an approach is a contravention of the Rate Filing Guidelines. With respect, this Panel disagrees.

[37] The OAG refers to Rate Filing Guideline “RFG-1”, 4.b (sic):

“the insurer’s own data must be used to the extent credible.”

[38] The OAG acknowledges that the rates and rating plans of the three insurers are identical, and notes the wide variances in written premiums among the three companies:

Security National – \$112.6 million in written premium

Primmum – \$41.5 million in written premium

TDHA – \$2.9 million in written premium

[39] It is true, as stated by the OAG, that section 4.b requires the use of an insurer’s own data to the extent that is credible. That section is subsequently modified, however. For instance, section 4.b.1 states:

“should the insurer find it necessary to rely on outside data or a different source of internal data (such as affiliated company data), identify the source of the data and provide an explanation of its applicability.”

[40] Similar cautions are made in sections 4.b.2, 4.d, 4.e.2, 4.f.1, 4.f.2, 4.l.2, 4.m.2, and 4.n.2.

[41] The Applicant has provided the necessary explanation, both in its written materials and during cross examination. TDHA acknowledges that there are three different insurers within the TD Group, including TDHA, but responds that the three operate under a similar business model, same rating structures, rating factors and marketing. The companies within the TD Group agree that a combined loss experience is used in their filings. Key to the determination on this issue re the words “to the extent credible”. This Panel is interested in credible and accurate projections, to the extent that those are capable of being made.

[42] Though the Guidelines are drafted with the intention that they be reasonably complied, the Board as an administrative tribunal must be flexible enough to deal with all parties fairly and consider each case on its merits. Any alleged non-compliance is therefore not necessarily fatal to the Applicant’s position in every circumstance.

[43] Each of the three companies complied with the Guidelines to the extent that three separate filings were submitted. TDHA's position is that, individually, the data is not sufficiently credible and the Board should therefore consider the combined experience.

[44] Considering the purpose of the requirement for insurer-specific data, and being satisfied that the data utilized by TDHA is reasonable in all of the circumstances, the Panel concludes that it is an appropriate case to exercise its discretion to accept the data as presented for the purposes of the analysis of whether the proposed rates are just and reasonable.

2) The Applicant's Expense Provision

[45] Initially, the Applicant selected an expense provision of 31.5%.

[46] In addition to concerns about using combined expense data, which has been addressed previously in this decision, the OAG also points out that TDHA has used a Canada wide approach to this data.

[47] TDHA responds that this approach of using Canada-wide data is appropriate in the circumstances because expenses incurred in other provinces provide services to New Brunswick consumers. Similarly, TDHA has a large number of employees and expenses incurred in New Brunswick which service other markets. As a result, allocation is difficult and not truly reflective of real costs.

[48] The OAG points to the GISA reported expense ratios which were less than the 31.5 %. This Panel accepts the response from TDHA that GISA calculations are done for different purposes, by different professionals (perhaps not actuaries) and using different methodologies than accepted rate indicating methods. TDHA's submission directed the Panel to the disclaimer found in the GISA report :

"Where allocation of a data element was required, it is understood that reporting companies have used their own company-specific allocation methodology, if available, or have developed an allocation method based on the company's business. Users should be aware that such methodologies may vary from company to company, and from year to year. "

[49] In any event, during the oral cross examination portion of the hearing, TDHA conceded that a lower expense provision was more appropriate and agreed that 26.8 % (as provided in Exhibit 16 – Response to Answer 4 (chart), Expenses as a % of NEP – Canada-wide, 2015) was a more appropriate expense provision. The Panel accepts this revision to expense ratio as suggested by the OAG and accepted by TDHA.

[50] It is noteworthy that the combination of the TD Group's data benefits the consumer of this insurer in this instance, as the OAG calculates the appropriate expense provision for TDHA specific data would be 41.9 %.

3) Unallocated Loss Adjustment Expense (ULAE)

[51] For this calculation also, the OAG objects to the use of combined group data; this issue has been determined by the Panel previously in this decision.

[52] TDHA selected a 12.9 % provision based on a comparison of paid ULAE costs to paid losses. The OAG points to the use of GISA reported data, and stresses that NB data is appropriate leading to a factor of 7.1%.

[53] Like the expense provision above, the Panel is satisfied that the use of Canada-wide data is appropriate and most accurate in all of the circumstances.

[54] The Panel also accepts that the 7.1% ULAE factor suggested by the OAG is not reasonable, in that it is based upon allocations and could contribute to volatile and unrealistic rates.

[55] The Panel accepts the appropriate ULAE factor should be 10.2 % based upon a three year average of Canada- wide data for TD Group as provided in the TDHA Final Submission dated February 17th, 2017.

4) MIR Factor

[56] TDHA initially proposed a MIR factor of 1.242 to measure the impact on bodily injury claim costs following the reform to the Minor Injury Regulation, citing the lack of data and need for consistency.

[57] During the hearing, TDHA conceded to the OAG's suggestion that 1.286 was a reasonable figure and agreed to amend its filing accordingly. The Panel accepts that 1.286 is a just and reasonable factor, as agreed upon between the parties.

5) **Selected Trend Rates**

[58] The selection of loss trend rates requires analysis of past data and the application of professional judgement in order to select trend rates that represent past experience and future expected results.

[59] Both the OAG and TDHA differ in the time frames for data analysis pre and post the minor injury reform. The OAG suggests that the Applicant's use of annual data rather than half year data is in error.

[60] The Panel accepts that both approaches are acceptable models, and that each depends on the application of professional actuarial judgment and practice.

[61] It is the Panel's view that TDHA's approach, which cites future trend analysis commencing in 2015 is a good reflection of reality of the post-reform changes. The OAG's cut-off date of 2013, while a reasonable approach, is not adopted by the Panel for this filing.

[62] Adopting TDHA's time periods, the TDHA trend rates chosen are a good statistical fit in the Panel's view, and are just and reasonable in all of the circumstances.

[63] TDHA's approach for loss trends is accepted by the Panel.

6) **Health Levy**

[64] During the hearing, and throughout the submissions, the parties maintained a difference of opinion surrounding the characterization of the health levy and specifically whether it is a fixed or a variable expense. In the view of this Panel, where the levy is collected based upon a percentage of the premium, it will be treated as a variable expense.

7) **The Applicant's assumed pre-tax return on investment rate**

[65] The process of developing rates which are just and reasonable requires rate applications to account for the revenue received from sources other than directly from policyholders. One source of these funds is investment income that is received on surplus funds held by insurers. Generally these surplus funds are from two sources: short-term cash flow and accumulated equity (surplus) and are invested using different approaches, i.e. short-term and long-term respectively. Generally, the higher the overall investment return, the lower the overall rate indications.

[66] The Applicant prepared its Filing by selecting a pre-tax return on investments of 0.58% for cash flow and 2.24% for surplus.

[67] In its submission, the OAG points to a profit selection permitted in the Province of Ontario pursuant to that legislative and administrative scheme. This Panel places no weight on those submissions and did not allow questioning on that point during the electronic hearing. The Ontario regime is not before this Panel.

[68] To date, the board has not yet revisited the issue of profit provisions or target ROE rates. This Panel would welcome a review of those issues by the full Board at the appropriate time.

[69] At this time, the Panel finds that the selected investment rates are reasonable in the current investment market. The Panel accepts the methodology utilized by the Applicant for purposes of calculating its pre-tax return on investment rate.

8) **Complement of Credibility**

[70] The OAG raises a concern regarding credibility insofar as TDHA uses an approved filing from last year with a complement of credibility. TDHA's prior filing was not subject to a hearing and this Panel will not revisit a prior approved filing. The Panel accepts that this

approach to credibility is common and follows accepted actuarial principles. As such, the Panel accepts TDHA's approach to credibility as reasonable.

9) Premium Tax Rate

[71] This Panel noted another concern in the Applicant's filing, specifically regarding a premium tax rate. TDHA used 3.4 % when in New Brunswick, 3.0% is the appropriate factor. This must be revised by the Applicant.

4. Decision

[72] The Board has considered all of the written evidence presented, the interrogatory questions and answers, the submission of the parties as well as the oral cross-examination testimony.

[73] For the reasons set out above, the Board finds that the Applicant's Filing not to be just and reasonable in its entirety and requires the following changes to be made:

- 1) The Applicant is ordered to modify its expense provision from 31.5% to 26.8%
- 2) The Applicant is ordered to modify its provision for Unallocated Loss Adjustment Expenses from 12.9% to 10.2%
- 3) The Applicant is ordered to modify the MIR factor from 1.242 to 1.286
- 4) The Applicant is ordered to change the premium tax rate from 3.4% to 3.0%

[74] The impact of these changes will be to lower overall rate indications from an average increase of +31.2 to an average increase of 21.6%.

[75] The Applicant is ordered to incorporate changes to the rate application as noted in paragraph [71] above and is **approved to adopt the average rate change of +3.70% (before the impact of capping) as proposed.**

[76] The approved rates will be effective on July 15, 2017 for new business and renewal business.

Dated at Saint John, NB March 30, 2017

Brad Woodside, Panel Chair
Vice-Chairman, New Brunswick Insurance Board

WE CONCUR:

Georges Leger

Jim Jessop