

# Canada Casualty

Nicholas De Palma, CAS Seminar on Reinsurance, May 21, 2014

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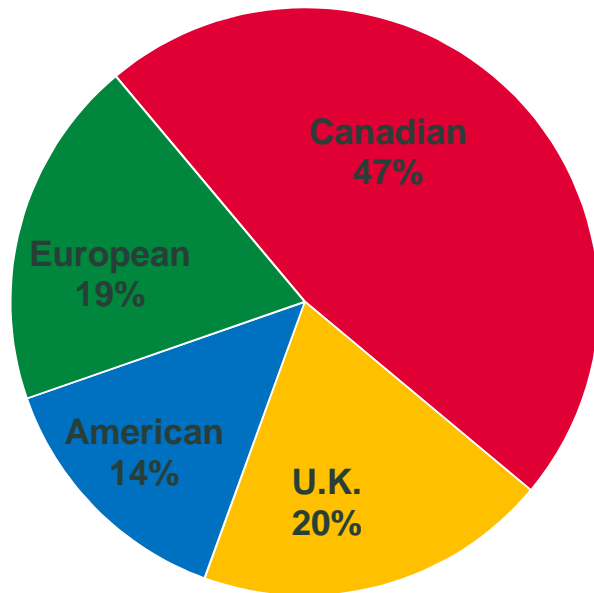
- Market Overview
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# Market Overview

# Canadian P&C primary market still fragmented, but consolidating

## Top 15 Canadian primary companies by market share

CAD Millions



Note: Graphical representation of all insurers

Company	Ownership	2012 NPW	2012 Mkt share of NPW	2012 Combined Ratio	2012 ROE
1 Intact	Canadian	6,290	15.1%	93.5%	10.4%
2 Aviva	U.K.	3,438	8.2%	95.1%	16.9%
3 TD General	Canadian	2,646	6.4%	106.0%	-0.2%
4 Royal & Sun Alliance	U.K.	2,507	6.0%	96.9%	9.6%
5 Lloyds	U.K.	2,094	5.0%	78.0%	27.1%
6 Wawanesa	Canadian	2,083	5.0%	103.4%	9.0%
7 Co-operators	Canadian	2,023	4.9%	97.4%	17.4%
8 Desjardins *	Canadian	1,945	4.7%	94.2%	20.9%
9 State Farm *	American	1,842	4.4%	123.9%	10.1%
10 Economical	Canadian	1,724	4.2%	97.1%	11.1%
11 Dominion **	Canadian	1,207	2.9%	107.0%	7.9%
12 Allstate	American	1,041	2.5%	91.0%	21.9%
13 Northbridge (part of Fairfax)	Canadian	950	2.3%	112.6%	-5.2%
14 Zurich	European	642	1.5%	96.8%	10.0%
15 Chubb	American	605	1.5%	80.0%	18.2%
Remainder		9,109	23.3%	n/a	n/a
<b>Total</b>		<b>40,146</b>	<b>100.0%</b>	<b>95.9%</b>	<b>11%</b>

Source: Canadian Underwriter, June 2013

### Comments

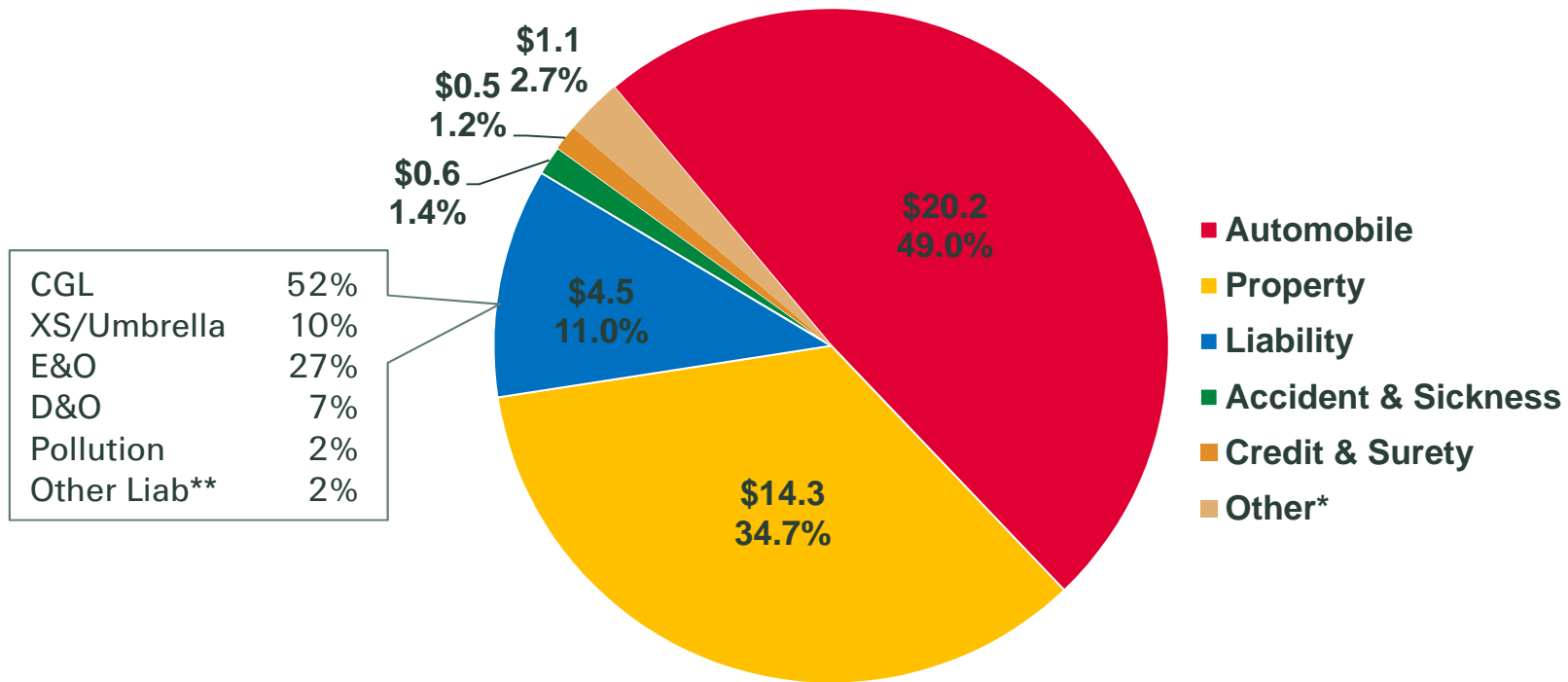
- Top 10 players = 64% of market in 2012 (2011: 62%)
- Canadian firms well represented
- Limited US presence
- Important market for Lloyds

\* - Acquisition by Desjardins announced in 2014

\*\* - Acquisition by Travelers closed Q4 2013

# Canada Line of Business Split

2012 NPE (CAD Billions)



Source: Commercial Liability Stat Plan, Ontario only

Source: Canadian Underwriter, June 2013

\*Other Lines includes: Boiler & Machinery, Marine, Title, Mortgage, etc.

\*\*Other Liability includes: Wrap-Ups, Employers Liability and Tenants Legal Liability

# Key LoB Differences

- Workers Compensation
- Medical Malpractice
- Government Automobile
- Ontario Automobile

# Workers' Compensation

- Not covered by Private Insurers – similar to monopolistic state funds
- Canada's first social program, introduced in Ontario in 1915
- Workers' Compensation Boards (WCB) are provincially/territorially regulated
- WCBs operate at arms length from provincial governments
- As with US, some industries are exempt (e.g. dentistry, banking, insurance)
- Rules may vary by province, but all provide no-fault compensation
- Premiums funded by employers, not by the government
  - Assessment Rates vary by industry/class, experience mods/retrospective rating
  - Certain employers self-insure (e.g. Federal and Provincial Gov't) and don't pay assessment rates, but rather pay WCB through reimbursement or deposit account
  - Primary driver of costs is wage loss benefits, not medical as in the US
- Some WCBs also have a preventative role promoting workplace safety

# Medical Malpractice

- Physicians - Independent practitioners, not employed by hospitals, but have 'privileges'
- CMPA – Canadian Medical Protective Association
  - Funded by membership fees, which are largely reimbursed by provincial gov'ts
  - Provides legal defence, indemnification, risk management, educational programs, publications, general advice
  - Occurrence based coverage, whereas most commercial insurance is claims made
  - CMPA is very aggressive in defending lawsuits
  - No public record of settlements – non-disclosure agreements
  - CNPS (Nurses) – est. 1988 due to rising insurance costs
- Hospitals – non-profit organizations
  - vicarious liability doesn't apply for physicians, as "control" test is not met
  - less clear for interns, residents, specialists, nurses, or other full-time personnel
- Private insurance generally for LTC facilities, midwives, pharmacists, etc.



# Automobile Systems vary by Province

- Public (4 Provs) vs. Private (6 Provs, 3 Terrs)
  - Private insurers can compete in Public provinces for optional coverage
- Every province has some degree of no-fault insurance
  - Sask. drivers can opt for Tort (< 1%)
- Ontario has a no-fault system with restricted tort access



# Ontario Automobile – History of Reforms

- No-fault system with restricted tort access → introduced to stabilize premiums

Date	System	Benefits
Pre-1990	Pre-OMPP	Full Tort system
June 22, 1990	OMPP	No-Fault with injury threshold for BI
Jan 1, 1994	Bill 164	Higher no-fault benefits, more restricted tort
Nov. 1, 1996	Bill 59	Reduced benefits, increased admin/forms
Oct 1, 2003	Bill 198	Similar benefits, changes to admin/procedure
Mar 1, 2006	amendment	Leasing/rental companies, AB procedures
Nov 1, 2010	Bill 36/34	Reduced benefits, more optional add-ons

# Ontario Automobile – Tort Damages

System	Non-pecuniary threshold	Deductible	Pecuniary loss	Deductible
Full Tort	Recovery based on common law rules	n/a	Recovery based on common law rules	Collateral benefits not deductible... double recovery
OMPP	No recovery unless: death, permanent serious disfigurement, or permanent serious impairment of important bodily function that is <b>physical</b>	n/a	Same as non-pecuniary	Collateral benefits are deductible
Bill 164	No recovery unless: death, <del>permanent</del> serious disfigurement, or <del>permanent</del> serious impairment of important <b>physical, mental or psychological</b>	\$10K (\$5K FLA)	No right to recovery	n/a
Bill 59	No recovery unless: death, permanent serious disfigurement, or permanent serious impairment of important <b>physical, mental or psychological</b>	\$15K (\$7.5K FLA)	-Right to sue restored -DI restricted to 80% of Net -Health care recoverable only when <b>catastrophic impairment</b>	Collateral sources incl. SABS
Bill 198	defines "permanent serious impairment..." and governs evidence required to prove impairment	\$30K/ (\$15K FLA)	Health care recoverable when meet same verbal threshold, o/w no change	No change
Bill 36	No change	\$30K/ (\$15K FLA) <b>\$20K Option</b>	DI restricted to 70% of Net o/w no change	No change

# Ontario Automobile – Accident Benefits (SABS)

System	IRB / week	Medical/Rehab	Attendant Care	CAT Impairment
Full Tort	n/a	n/a	n/a	n/a
OMPP	\$600 max, 80% Gross 156 wks: own/any occ.	\$500,000 max for 10 years or 20 minus age	\$3,000/mth max \$500,000 max	n/a
Bill 164	\$1,000 max, 90% Net 104 wks: LECB DAC – neutral opinion	\$1,000,000 max	Max of \$3K, \$6K or \$10K per month, <b>no lifetime max</b>	n/a
Bill 59	\$400 max, 80% Net 104 wks: own/any occ.	\$1,000,000 Catastrophic \$100,000 Non-Cat (<10 yrs)	\$6K/mth, \$1M max – CAT \$3K/mth, \$72K max – non-Cat	insured applies, insurer decides, can dispute to DAC
Bill 198	PAF I & PAF II for WAD Mediation/arbitration DAC for PAF eligibility	No change, other than PAF. Limited access for PAF I & II (i.e. WAD I & II),	none for WAD I Otherwise, no change	Def'n amended
2006 amendment	DAC eliminated Can only terminate if s.42 assessment	DAC eliminated Can only terminate if s.42 assessment	Various procedural changes	CAT DAC eliminated s.42 to deny CAT
Bill 34	\$400 max, 70% Gross  Options to buy \$1,000	MIG \$3,500 (replaces PAF) Non-Cat reduced to \$50K Catastrophic remains \$1M Option to buy \$100K/\$2M*	Non-CAT reduced to \$36K Catastrophic remains \$1M Option to buy \$72K/\$2M*	Definition expanded, Assessments limited (practitioners & cost)

Note: benefits are per claimant, SABS benefits follow the insured, not the vehicle  
other benefits include caregiver, non-earner, education, housekeeping, funeral & death

# Ontario Automobile – Summary

- Complicated product – not just for consumers, but industry as well
- Previous reforms have been ineffective in controlling costs
  - higher benefits → higher costs → higher premiums
  - political issue – mandatory rate roll back
- Abuse/Fraud: strict procedural rules, adjusters bombarded with paperwork
  - IBC May 2009 – "For every dollar spent on therapy, another 60 cents goes to providers conducting assessments"
  - July 2011 - Anti-Fraud taskforce
- Generous benefit system
  - Catastrophic awards often reach \$2.5M+ per claimant
  - However claims inflation largely driven by non-cat claims, GTA
  - Loss transfer balances costs between classes (e.g. PPA vs. Heavy Commercial)
  - Reinsurance – Stacking of claimants/policies

# Tort Environment

- Why are personal injury awards generally lower in Canada?
- Trend toward higher awards driven by future care
- Recent developments

# Tort Awards are generally lower in Canada

- Universal Health Care – lessens need to litigate, at least for medical costs
- Judges are appointed, not elected
- Trials - Bench trials are more common than Jury trials
- Legal fees - generally based on Law Society tariffs, not contingency basis, although trend is shifting
- Costs – loser pay system - reduces risk of frivolous suits
- Discovery – oral discovery is more limited than in US
  - e.g. many provinces only allow one corporate representative to be examined
- General Damages - trilogy (\$100K cap by SCC in 1978), indexed to ~\$350K today
- Punitive Damages - rarely awarded by courts (exception, not rule) - strict legal tests
  - Whitten v. Pilot Insurance Co., 2002 SCC, \$1,000,000 award = largest to date
- Products Liability – must prove negligence - strict liability doesn't usually apply

## Trend Towards Higher Awards - Future Care

- Given cap on general and punitive damages, plaintiffs need to argue for specific damages → increases in future care are driving up awards
- Examples of recent high damage awards in Ontario
  - Marcoccia v. Gill, Purba Furniture Ltd. and Ford Credit Canada  
\$16.9M awarded by jury in 2009 (2000 loss) – Auto, head-injury
  - Sandhu v. Wellington Place Apartments  
\$14.2M awarded by jury in 2008 (1997 loss) – CGL, head-injury
  - Gordon & Morrison v. Greig  
\$23.7M (\$11.4M + \$12.3M) awarded by jury in 2008 (2003 loss) – Auto, paraplegia and head-injury
  - MacNeil v. Bryan  
\$18.4M awarded in 2009 (2002 loss) – Auto, head-injury
- TPL limits generally \$1M (PPA), so plaintiff lawyers look to add additional defendants ("deep pockets") to extend limits available – joint & several liab.



# Recent Developments in Tort

- Vicarious Liability for Rental/Leasing Companies - Ontario
  - Ontario's HTA makes the vehicle owner strictly liable with the driver
    - lessors insulated in other provinces via conditional sale agreements
  - Several large awards mid-2000s lead to lessors contributing majority of damages despite absence of any negligence on part of lessors
  - Bill 18 (March 1, 2006) – Limits vicarious liability of lessors to \$1M less any insurance provided by the lessee
- Cyber Liability
  - Cyber-Safety Act, 2013 – Nova Scotia
    - establishes cyberbullying behaviour as a tort
  - The tort of intrusion upon seclusion
    - Jones v. Tsige, 2012 ONCA 32 (CanLII)
    - invasion of privacy - need not suffer financial loss or economic harm
  - Canadian Anti-Spam Legislation (CASL) – the worlds toughest anti-spam law
    - Takes effect July 1, 2014, Penalties up to \$10M
    - Bans harvesting of email / phone #s for spamming purposes and other electronic threats (malware/adware) without express consent

# Reinsurance Regulatory Changes

- OSFI Guideline B-3 – Sound Reinsurance Practices and Procedures
- Part XIII of the Insurance Companies Act

# OSFI Guideline B-3

## Sound Reinsurance Practices and Procedures

- Move from rules-based to principles-based approach:
    1. must have sound comprehensive reinsurance risk management plan
    2. must perform sufficient on-going due diligence on reinsurance counterparties
    3. T&Cs of reinsurance contracts should provide clarity on reinsurance coverage
    4. ceding company, policyholders, creditors should not be adversely affected
  - Elimination of 25% rule for unregistered reinsurance and 75% fronting limit
  - Capital Implications for unlicensed reinsurance
    - Collateral: 115% of outstanding losses and UPR, otherwise capital hit
    - LoCs limited to 30% of OS losses and UPR
    - additional capital charges on all forms of collateral in MCT
  - Reinsurance Security Agreements (RSA) – replace old trust agreements
    - cedent now requires legal opinion on RSA agreement to qualify for capital relief
    - collateral vested with custodian, physically held in Canada
    - fees to maintain RSA and additional admin to maintain assets in RSA by reinsurer
    - cedent to submit monthly reporting to regulator on assets held by custodian
- significant advantages to placing reinsurance through a licensed/registered carrier in Canada

# Part XIII of the Insurance Companies Act

## OSFI Advisory (2007-01) "Insurance in Canada of Risks"

- Changes regulatory focus from physical location of risk (old interpretation) to location of insurance business activities (new rule)
- Compliance Indicia
  - a) Promotion of insurer or insurance products (Canadian medium of communication)
  - b) Direct incitement of a person located in Canada to request insurance coverage
  - c) Receives in Canada a request for insurance coverage from policyholder
  - d) Negotiates from Canada the terms and conditions of coverage
  - e) Decides in Canada to bind the insurer
  - f) Communicates from Canada offer to provide insurance or acceptance of request for insurance coverage from policyholder
  - g) Receives in Canada acceptance of foreign insurer's offer to provide insurance
  - h) Receives in Canada payment for insurance coverage
  - i) Interacts in Canada with policyholder in provision of services related to insurance coverage
- OSFI considers that a foreign insurer is insuring a risk in Canada if it meets one of the following scenarios
  - Scenario 1: Two or more of the activities in (b) – (h)
  - Scenario 2: Any one of the activities in (b) – (h) and both of the activities in (a) and (i)
  - Scenario 3: Reaching an agreement, actual or in principle, on most or all of the material terms and conditions in the course of negotiations in Canada
- OSFI considers that the foreign insurer is not insuring (non registered) in Canada a risk if its business model encompasses no more than one of the activities referred to in the indicia.



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