
IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c.I.8, as amended (the “Act”), in particular sections 441 and 441.1.

AND IN THE MATTER OF 1843538 Ontario Inc., carrying on business as McLaren Collision, Fady Rony Warda, Rony Amanuel Warda, and Michael Wetzel

NOTICE OF PROPOSAL TO IMPOSE A CEASE AND DESIST ORDER

TO: 1843538 Ontario Inc., carrying on business as McLaren Collision
1095 Fewster Drive
Mississauga, Ontario
L4W 1A2

AND TO: Fady Rony Warda
683 Best Road
Milton, Ontario
L9T 8M6

AND TO: Rony Amanuel Warda
5392 Eight Line
Milton, Ontario
L9E 1A6

4804 Dovehouse Drive
Mississauga, Ontario
L5M 7I6

AND TO: Michael Wetzel
15 Whiteoak Court
Markham, Ontario
L3P 3Y2

TAKE NOTICE THAT pursuant to section 441 of the Act the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the “CEO”) has made a Report, attached as Schedule A, and proposes to impose a Cease and Desist Order on 1843538 Ontario Inc., carrying on business as McLaren Collision (“McLaren”) to immediately cease and desist from engaging in the business of insurance for a period of one year, and that **Fady Rony Warda, Rony Amanuel Warda, and Michael Wetzel** immediately cease and desist from engaging in the business of insurance for a period of six months, and that all parties named:

- a. Immediately cease and desist charging for any work performed if it is reasonable to expect that all or a portion of such charges will be directly or indirectly paid for by an insurer;
- b. Immediately cease and desist from accepting any fees, funds, or anything of value for any work performed if it is reasonable to expect that all or a portion of such fees, funds, or thing of value will be directly or indirectly paid for by an insurer;
- c. Immediately cease and desist from holding themselves out to consumers as being authorized to perform any work that will be directly or indirectly paid for by an insurer; and
- d. Immediately cease and desist from advertising, soliciting, or offering any services related to any work that that will be directly or indirectly paid for by an insurer.

TAKE NOTICE THAT YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL (THE “TRIBUNAL”) PURSUANT TO SECTION 441(8) OF THE ACT. A hearing by the Tribunal about this Notice of Proposal may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within fifteen (15) days after this Notice of Proposal is received by you. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal
14-5160 Yonge St
Toronto ON M2N 6L9

Attention: Registrar

Fax: 416-226-7750

Email: contact@fstontario.ca

AND TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within fifteen (15) days after this Notice of Proposal is received by you, orders will be issued as described in this Notice of Proposal. For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal’s website at www.fstontario.ca.

Completed Request for Hearing Forms must be received by the Tribunal within 15 days after this notice is received. They may be emailed, mailed, faxed or delivered.

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal, made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22. Those rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be

obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

At a hearing, your character, conduct and/or competence may be in issue. You may be furnished with further and or other particulars, including further or other grounds, to support this proposal.

SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS, veuillez nous envoyer votre demande par courriel immédiatement à: contactcentre@fsrao.ca.

NOTICE OF PROPOSAL TO IMPOSE ADMINISTRATIVE PENALTIES

AND TAKE NOTICE THAT pursuant to section 441.3 of the Act the CEO is proposing to impose administrative penalties in the amounts of \$100,000 for McLaren, \$25,000 for Fady Rony Warda, \$25,000 for Rony Amanuel Warda, and \$50,000 for Michael Wetzel for engaging in unfair or deceptive acts or practices contrary to section 439 of the Act and specifically for:

Charging an amount in consideration for the provision of goods or services to or for the benefit of a person who claims statutory accidents benefits or who otherwise claims payment under a contract of insurance, where the goods or services were not provided, in contravention of paragraph 1 of subsection 3(2) of O. Reg. 7/00,

AND TAKE NOTE THAT YOU ARE ENTITLED TO A HEARING BY THE TRIBUNAL PURSUANT TO SECTION 441.3(5) OF THE ACT. A hearing before the Tribunal about this Notice of Proposal may be requested by completing the enclosed Request for Hearing Form (Form 1) and submitting it to the Tribunal within 15 days after the Notice of Proposal is received by you. A copy of that form is included with this Notice of Proposal. The Form 1 must be mailed, delivered, faxed or emailed to:

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Completed Request for Hearing Forms must be received by the Tribunal within 15 days after this notice is received. They may be emailed, mailed, faxed or delivered.

TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within fifteen (15) days after this Notice of Proposal is received by you, an order will be issued as described in this Notice of Proposal. **TAKE FURTHER NOTICE** of the payment requirements in section 4 of Ontario Regulation 192/08, which state that the penalized person or entity shall pay the penalty within (thirty) 30 days after the person or entity is given notice of the order imposing the penalty, within thirty (30) days after the matter is finally determined if a hearing is requested or such longer time as may be specified in the order.

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* ("Rules") made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. The Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at (416) 590-7294, or toll free at 1-800-668-0128 extension 7294.

At a hearing, your character, conduct and/or competence may be in issue. You may be furnished with further and or other particulars, including further or other grounds, to support this proposal.

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SCHEDULE "A"

REPORT OF THE CEO

Background

1. The insurance industry in Ontario is one of the financial services sectors regulated by the CEO. The CEO has the legal responsibility under the *Financial Services Regulatory Authority of Ontario Act, 2016, S.O. 2016, c27, Sched. 8* to regulate the insurance industry, including service providers, in order to "*protect the public interest and enhance public confidence in the regulated sectors.*"
2. The Financial Services Regulatory Authority ("FSRA") has authority under certain parts of the Act and its regulations to enforce this legislation with regard to any person involved in the business of insurance.
3. Aviva Canada ("Aviva") is an insurance company that operates in Ontario and provides auto insurance to customers. In 2017, Aviva investigated possible fraudulent activity in the auto repair industry.
4. McLaren is an auto repair shop to which vehicles involved in accidents can be brought for repair. McLaren is the business name for 1843538 Ontario Inc.
5. Fady Rony Warda ("Fady Warda") and Rony Amanuel Warda ("Rony Warda") were employees of McLaren at the time of the investigation.
6. Michael Wetzel was an appraiser employed by Aviva at the time of the investigation.
7. Aviva gathered evidence that McLaren unfairly and deceptively charged Aviva for repairs relating to a contract of insurance on two separate occasions.
8. Aviva arranged to have two motor vehicles, a 2010 Ford Fusion and a 2016 Chrysler 200 damaged in a way that simulated a collision. The damage to each vehicle was appraised by a third party appraiser for the purpose of Aviva's investigation. The vehicles were equipped with hidden video cameras to capture video only. The vehicles were driven by private investigators ("driver") retained by Aviva to pre-arranged locations to stage collisions on May 8, 2017, and September 21, 2017, respectively.
9. In each of these two simulated collisions, the Ford Fusion and the Chrysler 200 were towed to McLaren.

10. Wally Clark (“Clark”), President and Owner of Niagara Appraisal Services, was retained by Aviva to appraise the damage on each vehicle both after the manufactured damage and after it was repaired by McLaren.

Ford Fusion

11. On May 8, 2017, Clark appraised the Ford Fusion, which had manufactured damage to appear as though it had been in a collision.

12. Clark estimated the damage to the Ford Fusion including parts and labour as: \$2,561.54. This was for:

- a. Replacement of the right fender
- b. Replacement of the right headlamp
- c. Repair to the right front wheel and alignment
- d. Paint and materials
- e. Labour – 20.5 hours

TOTAL: \$2,561.54

13. On May 8, 2017, Aviva arranged for the Ford Fusion and one other vehicle (both with simulated damage and investigators posing as drivers) to attend and stop in the area of Mavis Road and The Queensway West in Mississauga.

14. A tow truck attended, and took the Ford Fusion to McLaren. The other vehicle was dealt with by another tow company.

15. While at McLaren, the driver was approached by Rony Warda who asked the driver whether he wanted a cash quote or was going through insurance. The driver stated that he would be using his insurance company. Rony Warda estimated that the repair would be “a \$2,500 to \$3,500 job”, and that it would take two weeks to complete.

16. Aviva provided a fictitious Aviva claim number 33920039 to McLaren and assigned an Aviva staff appraiser, Michael Wetzler, to inspect the Ford Fusion.

17. The video recovered from inside the Ford Fusion revealed that:

- a. On May 9, 2017, at 8:34am, Fady Warda approached the Ford Fusion. The engine hood was up allowing for examination of the engine.
- b. At 9:00am, the Aviva staff appraiser, Michael Wetzler, arrived and had a conversation with Fady Warda before stepping out of the range of the video camera at 9:19am.
- c. At 9:22am, Fady Warda is seen repeatedly striking the area of the right front fender of the Ford Fusion with an object.

- d. At 9:24am, Fady Warda strikes the raised hood of the Ford Fusion with a large club or bat on the right side twice.
- e. At 9:36am, Michael Wetzler returned to the Ford Fusion where he spoke with Fady Warda and appeared to take photographs for his appraisal.

18. On May 9, 2017, Michael Wetzler uploaded his photographs and appraisal to Audatex. The total dollar value of the appraised repairs according to Michael Wetzler was \$4,880.32.

19. The appraisal by Michael Wetzler required repair or replacement of items that were not identified in the original Aviva appraisal done by Clark on May 8, 2017. These additional repairs or replacements were the following:

- a. Unibody frame - repair
- b. Front bumper cover – replace and refinish
- c. Front bumper reinforcement bar – replace and refinish
- d. Hood – repair and refinish
- e. Radiator support - replace
- f. Windshield washer reservoir – replace
- g. 4 – wheel alignment
- h. Paint and materials
- i. 30.6 hours labour

20. On May 16, 2017, Aviva received an invoice from McLaren in the amount of \$4,208.02, in addition to the \$1,000 deductible paid by the driver to McLaren directly. This total included Michael Wetzler's appraised amount of \$4,880.32.

21. The total amount paid by Aviva (including the deductible) to McLaren was \$4,880.32. However, Clark examined the Ford Fusion and found that the actual work completed was only valued at \$2,387.97 for a difference of \$2,492.35.

22. Further, Clark found that the McLaren invoice included repairs for items that were not damaged when he appraised the Ford Fusion on May 8, 2017, but appeared to be for additional damage done at McLaren, as follows:

- a. Frame set-up and repair
- b. 3 hours labour
- c. Upper grille moulding replacement - \$108.00 plus 0.2 hours labour

23. A report from DeBerardis Associates Inc., an engineering firm retained by Aviva, confirmed the findings of Clark as follows:

Based on our examination of the repaired Ford Fusion, it is our opinion that some of the observed and noted components and/or items listed herein, reported to have been repaired/replaced, were not found to have been repaired/replaced. This conclusion is supported by the observed evidence on the subject vehicle at the time of our examination, as per the listed and identified items on the vehicle repair estimate.

Chrysler 200

24. On September 21, 2017, Clark appraised the Chrysler 200, which had manufactured damage to appear as though it had been in a collision.

25. Clark estimated the damage to the Chrysler 200, including parts and labour, as \$3,484.36. This was for:

- a. Replace and refinish the front bumper cover
- b. Replace the right front headlamp
- c. Replace and refinish the front right fender
- d. Replace the right front wheel cover
- e. Paint and materials

TOTAL: \$ 3,484.36.

26. On September 21, 2017, Aviva arranged for the Chrysler 200 and one other vehicle (both with the simulated damage and investigators posing as drivers) to attend and stop in the area of Burnhamthorpe Road West and Central Parkway West, Mississauga.

27. Two tow trucks with "MC Auto and Storage" attended and both operators spoke with the driver. They recommended that the driver have the Chrysler 200 taken to McLaren.

28. The driver did not go to McLaren but agreed that the vehicle be towed there after a rental car was brought to him.

29. The camera placed in the Chrysler 200 showed that it was towed directly to McLaren.

30. Aviva provided a fictitious claim number 34028257 to McLaren and assigned Michael Wetzler to complete the appraisal of the Chrysler 200.

31. The video recovered from inside the Chrysler 200 revealed that:

- a. On September 25, 2017, shortly after 10:00am, Michael Wetzler attended at McLaren. The engine hood was up allowing for examination of the engine. Michael Wetzler can be clearly seen on the In-Car camera video.

- b. At 10:03am, Michael Wetzler is seen with paperwork in hand, standing in front of the Chrysler 200 inside the shop. The Chrysler 200 was being worked on by Fady Warda and Rony Warda. The video shows them “tearing down” the front section of the Chrysler 200. Approximately ten seconds later, Michael Wetzler walked out of the view of the camera.
- c. At 10:11am, Rony Warda is observed at the front passenger corner of the Chrysler. The hood was up at this time. Two males appear to be watching Rony Warda work on the Chrysler 200. Rony Warda, after taking an instrument from the cart nearby, is seen striking the front passenger side corner of the raised hood two times. All three persons then leave the view of the camera.
- d. At 10:12am, Rony Warda and another male returned to the front of the Chrysler 200 where Rony Warda using a marking pen, marked the hood area that he previously struck with the instrument.
- e. At 10:13am, Michael Wetzler returned to the camera view with paperwork in hand. Rony Warda pointed out the area of damage to the front bumper area. Michael Wetzler is seen at the front passenger corner of the vehicle taking photos. He then lowered the hood and took photos of the area of damage on the front passenger-side hood, previously caused by Rony Warda. Michael Wetzler continued to take photographs of the front of the vehicle.
- f. At 10:18am, Rony Warda leaned inside the front of the open hood and marked something on the inside grill area. Michael Wetzler then leaned into the front of the vehicle with Rony Warda, and took a photograph of that area.
- g. At 10:20am, both Rony Warda and Michael Wetzler leave the area of the vehicle.

32. On September 27, 2017 Michael Wetzler uploaded his photographs and appraisal to Audatex. The total dollar value of the appraised repairs according to Michael Wetzler was \$9,862.75.

33. The appraisal by Michael Wetzler required repair or replacement of items that were not identified in the original Aviva appraisal done by Clark on September 21, 2017. These additional repairs or replacements were the following:

- a. The unibody structure
- b. The front bumper reinforcement and energy absorber
- c. The grille
- d. A left headlamp assembly

- e. A rad support mounting panel
- f. An engine cooling fan assembly
- g. The right front inner fender skirt
- h. The air cleaner housing and intake duct
- i. A right front wheel bearing hub
- j. The entire right side of the vehicle including both doors and rear quarter panel

34. On October 24, 2017, the Chrysler 200's driver went to McLaren to pick up the repaired vehicle. The driver was provided with a copy of McLaren's invoice and advised that:

- a. Two headlamps and the front cover attaching to the hood were replaced.
- b. The front bumper was replaced.
- c. The fender on the right side was replaced.

35. The McLaren invoice for repairs was for \$9,862.75. However, Clark examined the Chrysler 200 and found that the actual work completed was only valued at 2,337.24, for a difference of \$7,525.51.

36. In particular, Clark found that the McLaren invoice included repair work not completed nor required, and parts not replaced as follows:

- a. A 5 hour repair allowance for damage to the unibody structure.
- b. Front bumper cover – not replaced but repaired.
- c. Front bumper reinforcement bar – not damaged.
- d. Right front energy absorber – minor damage - not sufficient for replacement of the part – not replaced.
- e. Grille assembly – not replaced.
- f. Left headlamp – not damaged – not replaced.
- g. Right headlamp – damaged – replaced with used part instead of new as represented.
- h. Repaired damage to hood – not damaged.
- i. Rad panel mounting bracket – not damaged initially – appears to have been damaged at body shop - not replaced.

- j. Electric engine cooling fan assembly – not damaged.
 - k. Right front inner fender skirt – not damaged – not replaced.
 - l. Air cleaner housing – not damaged and not replaced.
 - m. Lower air intake duct – not damaged and not replaced.
 - n. Right front wheel cover – was damaged previously – not replaced.
 - o. Right front wheel bearing hub – not replaced.
 - p. Right front door – not damaged.
 - q. Right rear door – not damaged.
 - r. Right rear quarter panel – not damaged.
 - s. Corrosion protection – not applied.
37. The work actually done by McLaren included the following:
- a. Front bumper cover – repaired and refinished.
 - b. Right headlamp – replaced with used part.
 - c. Front right fender – repaired and refinished.

38. The repairs that Clark found were not done include repairs to the right front door, right rear door, and right rear quarter panel of the Chrysler 200. The photographs Michael Wetzler submitted showed scuff marks on the vehicle that were not present when Clark first appraised the Chrysler 200 on September 21, 2017. After destructive testing was conducted on the area of the purported repair, Clark concluded that the right side of the vehicle had not been repaired or refinished and that the scuff marks were most likely applied with a water soluble product, such as a bar of soap, which when removed would leave no damage to the outer surface.

39. A report from DeBerardis Associates confirmed the findings of Clark and stated in part:

Based on our examination of the repaired 2016 Chrysler 200 vehicle, as well as our review of the photographs that were taken during the September 27, 2017, appraisal inspection, it is our opinion that many of the observed and noted components listed herein, which were reported to have been repaired/replaced, were found to not have been repaired/replaced.

40. On October 24, 2017, Aviva paid McLaren \$10,190.45.

Unfair or Deceptive Acts or Practices

41. The CEO is of the opinion that McLaren engaged in unfair or deceptive acts or practices on two occasions, once in regard to the Ford Fusion and once in regard to the Chrysler 200. McLaren did so by charging an amount in consideration for the provision of goods or services to or for the benefit of a person who claims payment under a contract of insurance, where the goods or services were not provided. In doing so McLaren was in contravention of paragraph 1 of subsection 3(2) of O. Reg. 7/00.

42. The CEO is of the opinion that Michael Wetzel pursued a course of conduct on two occasions, once in regard to the Ford Fusion and once in regard to the Chrysler 200, that was an unfair or deceptive act or practice or might reasonably have been expected to result in a state of affairs that would constitute an unfair or deceptive act or practice. Michael Wetzel did so by facilitating McLaren's over charging for services in relation to each vehicle by including the additional vehicle damage caused by Fady Warda and Rony Warda to his appraisals, even though he observed the vehicles in advance of the damage being done and knew or should have known that there was damage occasioned after the vehicles had been taken to the repair shop. In addition, Michael Wetzel facilitated McLaren's over charging by including items that were not required to be replaced or repaired in his appraisal. In doing so Michael Wetzel was in contravention of paragraph 1 of subsection 3(2) of O. Reg. 7/00.

43. The CEO is of the opinion that Fady Warda and Rony Warda separately pursued a course of conduct on one occasion each, in regard to of the Ford Fusion and the Chrysler 200 respectively, that was an unfair or deceptive act or practice or might reasonably have been expected to result in a state of affairs that would constitute an unfair or deceptive act or practice. They each did so by facilitating McLaren's over charging for services in relation to each vehicle by each separately causing additional damage to the Ford Fusion and Chrysler 200. In doing so Fady Warda and Rony Warda were each in contravention of paragraph 1 of subsection 3(2) of O. Reg. 7/00.

44. The CEO is of the opinion that McLaren, Michael Wetzel, Fady Warda, and Rony Warda committed one or more unfair or deceptive acts or practices by contravening paragraph 1 of subsection 3(2) of O. Reg. 7/00 as set out above. Accordingly, the CEO is also satisfied that McLaren, Michael Wetzel, Fady Warda, and Rony Warda contravened sections 438 and 439 of the Act.

45. As a result of these contraventions, the CEO is proposing to make an order against McLaren to immediately cease and desist from engaging in the business of insurance for a period of one year, and that Fady Rony Warda, Rony Amanuel Warda, and Michael

Wetzel immediately cease and desist from engaging in the business of insurance for a period of six months, and that all parties named:

- a. Immediately cease and desist charging for any work performed if it is reasonable to expect that all or a portion of such charges will be directly or indirectly paid for by an insurer;
- b. Immediately cease and desist from accepting any fees, funds, or anything of value for any work performed if it is reasonable to expect that all or a portion of such fees, funds, or thing of value will be directly or indirectly paid for by an insurer;
- c. Immediately cease and desist from holding itself out to consumers as being authorized to perform any work that will be directly or indirectly paid for by an insurer; and
- d. Immediately cease and desist from advertising, soliciting, or offering any services related to any work that that will be directly or indirectly paid for by an insurer.

SCHEDULE “B” – REASONS FOR PROPOSAL

Grounds for Cease and Desist Order

46. Section 438 of the Act defines a person as, among other things, an individual and a corporation. Section 438 also defines “unfair or deceptive acts or practices” as meaning any activity or failure to act that is prescribed as an unfair or deceptive act or practice.

47. Subsection 1(1) of O. Reg. 7/00 states that for the purposes of section 438 of the Act, the definition of “unfair or deceptive act or practice” includes the commission of any act prohibited under the Act or the regulations. Further, subsection 3(1) of O. Reg. 7/00 states that for the purposes of section 438 of the Act, the definition of “unfair or deceptive act or practice” includes each act and omission listed in subsection 3(2) of O. Reg. 7/00 if it is committed by or on behalf of a person with the expectation that a benefit will be received that is funded, directly or indirectly, out of the proceeds of insurance. Finally, subsection 3(2) of O. Reg. 7/00 provides a list of acts or omissions that constitute unfair or deceptive acts or practices for the purposes of subsection 3(1), which include: (1) Charging an amount in consideration for the provision of goods or services to or for the benefit of a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance, if the goods or services are not provided.

48. Section 439 of the Act provides that no person shall engage in any unfair or deceptive act or practice.

49. Subsection 440(1) of the Act authorizes the CEO to examine and investigate the affairs of every person engaged in the business of insurance in Ontario in order to determine whether such person has been, or is, engaged in any unfair or deceptive act or practice.

50. Subsection 440(5) of the Act authorizes the CEO to examine and investigate the affairs of every other person who, in the opinion of the CEO, may have engaged in any unfair or deceptive act or practice in order to determine whether the person has been, or is, engaged in any unfair or deceptive act or practice.

51. Subsection 441(1) of the Act requires the CEO to make a report if of the opinion that a person has committed or is committing any act, or has pursued or is pursuing any course of conduct, that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice.

52. Subsection 441(2) of the Act authorizes the CEO to give notice in writing, including the report, that the CEO intends to order the person:

- a. to cease or refrain from doing any act or pursuing any course of conduct identified by the CEO;
- b. to cease engaging in the business of insurance or any aspect of the business of insurance specified by the CEO; or
- c. to perform the acts that, in the opinion of the CEO, are necessary to remedy the situation. 1997, c. 28, s. 144; 2018, c. 8, Sched. 13, s. 22.

53. The CEO is of the opinion that McLaren, Michael Wetzel, Fady Warda, and Rony Warda each engaged in one or more unfair or deceptive acts or practices as set out in the CEO's report.

54. In particular, McLaren charged an amount in consideration for the provision of repair services that were not provided for the benefit of the drivers of the Ford Fusion and Chrysler 200 who claimed payment under a contract of insurance. This is contrary to subsection 3(1) and paragraph 1 of subsection 3(2) of O. Reg. 7/00. McLaren, through the actions of Fady Warda and Rony Warda, caused additional damage to the Ford Fusion and Chrysler 200 and billed Aviva for repairing this damage. McLaren also billed for replacement parts which were not replaced and for repairs that were not conducted.

55. Fady Warda and Rony Warda caused damage to the Ford Fusion and Chrysler 200, respectively, on behalf of McLaren with the expectation that McLaren would receive additional compensation from Aviva contrary to subsection 3(1) and paragraph 1 of subsection 3(2) of O. Reg. 7/00. McLaren did in fact receive such additional compensation from Aviva.

56. Michael Wetzel performed an appraisal of both the Ford Fusion and Chrysler 200 that supported McLaren charging Aviva an amount in consideration for the provision of services that were not provided. Michael Wetzel observed both vehicles before the additional damage was done by Fady Warda and Rony Warda but nevertheless included this additional damage in his appraisal. He also provided an appraisal that included amounts for replacement parts and repairs which were not required contrary to subsections 3(1) and paragraph 1 of (2) of O. Reg. 7/00.

57. McLaren, Michael Wetzel, Fady Warda, and Rony Warda committed unfair or deceptive acts or practices as described above. Their conduct, both individually and collectively, was shocking and egregious. This conduct undermines the integrity and reputation of the auto repair and insurance industry and harms both Aviva, as the insurer of the vehicles, and also consumers who ultimately pay increased insurance premiums for unnecessary costs to repair their vehicles. Therefore, the CEO is of the belief that

their actions constitute grounds for the CEO to make the cease and desist order identified in the Notice of Proposal and that the proposed order is required to remedy the situation.

Grounds for Administrative Penalties

58. Subsection 441.2(1) of the Act provides that an administrative penalty may be imposed under section 441.3 of the Act to promote compliance with the requirements established under the Act or to prevent a person from deriving, directly, or indirectly, any economic benefit as a result of contravening or failing to comply with a requirement established under the Act.

59. Subsection 441.3(1) of the Act provides that the CEO may impose an administrative penalty for contravention of a provision of the Act or the regulations as may be prescribed. O. Reg. 408/12 made under the Act sets out the contraventions for which an administrative penalty may be imposed, together with any applicable maximum amounts.

60. Subsection 3(1) and items 26 and 31 of Schedule 1 to O. Reg. 408/12 prescribe contraventions of section 439 of the Act and subsection 3(2)(1) of O. Reg. 7/00 as general administrative penalties. The maximum penalties that may be imposed under section 441.5(1) of the Act are \$100,000 for an individual and \$200,000 for any other person, including a corporation.

61. Pursuant to subsection 4(2) of O. Reg. 408/12, the CEO shall consider the following criteria when determining the amount of an administrative penalty under section 441.3 of the Act:

- a. The degree to which the contravention or failure was intentional, reckless or negligent;
- b. The extent of the harm or potential harm to other resulting from the contravention or failure;
- c. The extent to which the person tried to mitigate any loss or to take other remedial action;
- d. The extent to which the person derived or reasonably might have expected to derive, directly or indirectly, any economic benefit from the contravention or failure; and
- e. Any other contraventions of or failure to comply with a requirement established under the Act or with any other financial services legislation of Ontario or of any jurisdiction during the preceding five years by the person.

62. With respect to the **first criterion**, the CEO is of the opinion that the unfair or deceptive acts or practices of McLaren, Michael Wetzel, Fady Warda and Rony Warda were intentional. McLaren billed Aviva for: (i) damages caused by its own employees; (ii) replacement parts that were not replaced; and (iii) repairs that were not done. Michael Wetzel facilitated the overcharging by McLaren by providing an appraisal that included the damages caused by McLaren's employees (even though Michael Wetzel saw both of the vehicles before they were damaged) and by including items that did not need to be replaced or repaired in his appraisal. Fady Warda and Rony Warda damaged the Ford Fusion and Chrysler 200 respectively.

63. With respect to the **second criterion**, the actions of McLaren, Michael Wetzel, Fady Warda and Rony Warda caused direct financial harm to Aviva as Aviva was billed, and paid for, work that was done as a result of Fady Warda and Rony Warda damaging the Ford Fusion and Chrysler 200 respectively. In addition, McLaren billed, and Aviva paid for, replacement parts that were not replaced and repair work that was simply not done. The conduct of McLaren, Michael Wetzel, Fady Warda and Rony Warda, caused indirect harm to the public as the overcharging of Aviva is ultimately paid for by increases to premiums for all consumers of insurance.

64. With respect to the **third criterion**, the CEO is not aware of any effort by any of the parties to mitigate any loss or harm or of any remedial action.

65. With respect to the **fourth criterion**, McLaren derived an economic benefit of approximately \$10,000 from its contraventions. McLaren billed, and Aviva paid, for damages done to the vehicles by McLaren's employees Fady Warda and Rony Warda and also for replacement parts that were not replaced and repair work that was not done.

66. With respect to the **fifth criterion**, the CEO is not aware of any previously proven or admitted contraventions of the Act or other financial services legislation in the past 5 years by any of the parties.

67. Based on the foregoing considerations, the CEO is of the opinion that it is reasonable and appropriate to impose administrative penalties as follows:

- a. McLaren: \$50,000 in relation to the unfair or deceptive acts or practices in relation to the Ford Fusion and \$50,000 in relation to the unfair or deceptive acts or practices in relation to the Chrysler 200 for a total of \$100,000.
- b. Michael Wetzler: \$50,000 in relation to the unfair and deceptive acts or practices in relation to the Ford Fusion and the Chrysler 200.

- c. Fady Warda: \$25,000 in relation to the unfair or deceptive acts or practices in relation to the Ford Fusion.
- d. Rony Warda: \$25,000 in relation to the unfair or deceptive acts or practices in relation to the Chrysler 200.

68. It is the CEO's position that imposing these administrative penalties is necessary to promote compliance with the Act and to maintain the integrity of the automobile insurance product which relies upon the trust and honesty of those engaged in the business of insurance. It is the CEO's position that imposing these penalties will also reduce the economic benefit McLaren derived from its contraventions of the Act creating an appropriate disincentive from any further contraventions of the Act.

DATED at Toronto, Ontario, March 20th, 2020.

Mark White

Chief Executive Officer of the Financial Services Regulatory Authority of Ontario

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