



U.S. Department of Justice

Criminal Division

Fraud Section

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1400 New York Ave., N.W.
Washington, D.C. 20005*

August 30, 2011

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Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
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Michael Y. Scudder, Jr.
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Chicago, IL 60606

Re: CSK Auto Corporation

Dear Counsel:

On the understandings specified below, the United States Department of Justice, Criminal Division, Fraud Section (Fraud Section) will not criminally prosecute CSK Auto Corporation (CSK) or its parent, O'Reilly Automotive, Inc. (O'Reilly), for any crimes (except for criminal tax violations, as to which the Fraud Section cannot and does not make any agreement) related to CSK's violations of federal laws arising from accounting improprieties from 2001 through 2006 with regard to vendor allowances. O'Reilly acquired CSK after the accounting improprieties were uncovered and disclosed to the government. O'Reilly is a party to this Agreement by virtue of its acquisition of CSK, and the conduct set forth in Appendix A occurred prior to that acquisition.

The Fraud Section acknowledges the extensive cooperation and assistance of O'Reilly in its investigation of CSK's pre-acquisition conduct, including providing numerous substantive briefings, responding timely to requests for documents, and facilitating employee interviews. The Fraud Section further acknowledges O'Reilly's extensive remedial efforts pertaining to CSK, including implementing a training program, establishing a remediation committee, and improving reporting systems, corporate governance, and internal audit controls. The Fraud Section has taken O'Reilly's cooperation and remedial efforts into account for purposes of this Agreement and agrees that the rights and protections conferred upon CSK as set forth in this Agreement extend equally to the benefit of O'Reilly. O'Reilly will cause the full performance by CSK of CSK's obligations under this Agreement and further agrees that CSK shall remain a separate legal entity that will continue to operate approximately 1,300 stores and two distribution centers through employees of CSK and will be subject to investigation and prosecution for so long as this Agreement remains in effect.

The Fraud Section enters into this Agreement based, in part, on the following factors: (a) CSK's timely, voluntary, and complete disclosure of the facts described in Appendix A; (b) CSK's and O'Reilly's thorough, real-time cooperation with the Fraud Section and the U.S. Securities and Exchange Commission (SEC); (c) the extensive remedial efforts already undertaken and to be undertaken by CSK and O'Reilly; and (d) the fact that O'Reilly acquired CSK after the accounting improprieties had taken place and been discovered and disclosed to the government.

It is understood that CSK admits, accepts, and acknowledges responsibility for the conduct set forth in Appendix A, and CSK and O'Reilly agree not to make any public statement contradicting Appendix A.

This Agreement does not provide any protection against prosecution for any crimes except as set forth above and applies only to CSK and O'Reilly and not to any other entities or to any individuals. CSK and O'Reilly expressly understand that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or successor formally adopts and executes this Agreement.

This Agreement shall have a term of two years from the date of this Agreement, except as specifically provided in the following paragraph. It is understood that for the two-year term of this Agreement: (a) CSK shall commit no violations of federal securities laws, including but not limited to accounting and financial reporting violations; (b) CSK and O'Reilly shall truthfully and completely disclose non-privileged information with respect to the activities of CSK, its officers and employees, and others concerning all matters about which the Fraud Section inquires of CSK, which information can be used for any purpose, except as otherwise limited in this Agreement; (c) CSK and O'Reilly shall bring to the Fraud Section's attention all criminal conduct violative of the federal securities laws by CSK or any of its employees, including but not limited to accounting and financial reporting violations; and (d) CSK and O'Reilly shall bring to the Fraud Section's attention all criminal investigations of CSK or any of its employees concerning conduct violative of the federal securities laws, as well as any administrative proceeding or civil action brought by any governmental authority that alleges violations of the federal securities laws that comes to the attention of senior management of CSK or O'Reilly.

Until the date upon which all investigations and prosecutions arising out of the wrongful acts described in this Agreement are concluded, whether or not they are concluded within the two-year term specified in the preceding paragraph, CSK and O'Reilly shall, for purposes of matters arising out of the conduct described in this Agreement: (a) cooperate fully with the Fraud Section and any other law enforcement agency designated by the Fraud Section; (b) assist the Fraud Section in any investigation or prosecution by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use their best efforts promptly to secure the attendance and truthful statements or testimony of any officer, agent, or employee at any meeting or interview or before the grand jury or at any trial or other court proceeding; and (d) provide the Fraud Section, upon request, all non-privileged information, documents, records, or other tangible evidence about which the Fraud Section or

any designated law enforcement agency inquires.

It is understood that, if the Fraud Section determines in its sole discretion that CSK has committed any violations of the federal securities laws, including but not limited to accounting and financial reporting violations, subsequent to the date of signing of this Agreement, or should it be determined that CSK or O'Reilly has given false, incomplete, or misleading testimony or information at any time, or should CSK or O'Reilly otherwise violate any provision of this Agreement, CSK and O'Reilly shall thereafter be subject to prosecution for any violation of federal law of which the Fraud Section has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against O'Reilly and/or CSK, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of the term of this Agreement plus one year. Thus, by signing this Agreement, CSK and O'Reilly agree that the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed shall be tolled for the term of this Agreement plus one year.

It is understood that, if the Fraud Section determines that CSK has committed any violations of the federal securities laws, including but not limited to accounting and financial reporting violations, after signing this Agreement, or that CSK or O'Reilly has given false, incomplete, or misleading testimony or information, or has otherwise violated any provision of this Agreement: (a) all statements made by CSK, O'Reilly, or any of their employees to the Fraud Section or other designated law enforcement agents, including Appendix A hereto, and any testimony given by CSK, O'Reilly, or any of their employees before a grand jury or other tribunal, whether prior or subsequent to the signing of this Agreement, and any leads from such statements or testimony, shall be admissible in evidence in any criminal proceeding brought against CSK or O'Reilly; and (b) CSK and O'Reilly shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom are inadmissible or should be suppressed. By signing this Agreement, CSK and O'Reilly waive all rights in the foregoing respects.

The decision whether any public statement contradicted Appendix A and whether it shall be imputed to CSK or O'Reilly for the purpose of determining whether CSK or O'Reilly has breached this Agreement shall be in the sole discretion of the Fraud Section. If the Fraud Section determines that a public statement contradicts in whole or in part a statement contained in Appendix A, the Fraud Section shall so notify CSK or O'Reilly, and CSK and O'Reilly may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. This paragraph is not intended to apply to any statement made by any former CSK or O'Reilly officers, directors or employees. Further, nothing in this paragraph precludes CSK or O'Reilly from taking good faith positions in litigation involving a private party that are not inconsistent with Appendix A. As for any other breach of this Agreement, the Fraud Section shall provide written notice to CSK or O'Reilly of any such alleged breach, and CSK and O'Reilly shall then have fifteen (15) days from the date of receipt of such notice in which to make a presentation to the Fraud Section to demonstrate that no such breach has occurred; to the

extent relevant, that such breach was cured; or that the Fraud Section should neither revoke the Agreement nor prosecute CSK and/or O'Reilly. CSK and O'Reilly further understand and agree that the Fraud Section's exercise of discretion in determining whether a breach of this Agreement has occurred is not subject to review in any court or tribunal outside the Department of Justice.

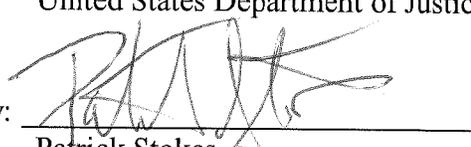
It is understood that CSK agrees to pay a monetary penalty of \$20,900,000. CSK agrees to pay this sum to the United States Treasury within ten (10) days of executing this Agreement. CSK and O'Reilly acknowledge that no tax deduction may be sought in connection with this payment.

It is further understood that this Agreement does not bind any federal, state, local, or foreign prosecuting authority other than the Fraud Section. The Fraud Section will, however, bring the cooperation of CSK and O'Reilly to the attention of other prosecuting and investigative offices, if requested by CSK or O'Reilly.

It is further understood that CSK, O'Reilly and the Fraud Section may disclose this Agreement to the public.

With respect to this matter, from the date of execution of this Agreement forward, this Agreement supersedes all prior, if any, understandings, promises, and/or conditions between the Fraud Section, CSK, and O'Reilly. No additional promises, agreements, or conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

Sincerely,
DENIS J. McINERNEY
Chief
Criminal Division, Fraud Section
United States Department of Justice

By: 

Patrick Stokes
Deputy Chief
Andrew H. Warren
Trial Attorney

AGREED AND CONSENTED TO:

O'Reilly Automotive, Inc. and CSK Auto Corporation

By:  8/31/11
JEFFREY L. GROVES Date
General Counsel, O'Reilly Automotive, Inc. and CSK Auto Corporation

By: _____
COLLEEN P. MAHONEY Date
Skadden, Arps, Slate, Meagher & Flom LLP
Attorney for O'Reilly Automotive, Inc. and CSK Auto Corporation

By:  8-31-11
MICHAEL Y. SCUDDER, JR. Date
Skadden, Arps, Slate, Meagher & Flom LLP
Attorney for O'Reilly Automotive, Inc. and CSK Auto Corporation

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JEFFREY L. GROVES Date
General Counsel, O'Reilly Automotive, Inc. and CSK Auto Corporation

By: Colleen P. Mahoney _____
COLLEEN P. MAHONEY Date
Skadden, Arps, Slate, Meagher & Flom LLP
Attorney for O'Reilly Automotive, Inc. and CSK Auto Corporation

By: _____
MICHAEL Y. SCUDDER, JR. Date
Skadden, Arps, Slate, Meagher & Flom LLP
Attorney for O'Reilly Automotive, Inc. and CSK Auto Corporation

APPENDIX A

STATEMENT OF FACTS

This Statement of Facts is incorporated by reference as part of the non-prosecution agreement, dated August 30, 2011, between the United States Department of Justice, Criminal Division, Fraud Section, CSK Auto Corporation (CSK), and O'Reilly Automotive, Inc. (O'Reilly). The United States, CSK, and O'Reilly (on the basis of information provided to it) agree that the following facts are true and correct:

1. CSK is a Delaware corporation headquartered in Phoenix, Arizona. Prior to being acquired by O'Reilly, CSK was a publicly traded company, and its stock was registered with the U.S. Securities and Exchange Commission (SEC) pursuant to Section 12(b) of the Securities Exchange Act of 1934. Its stock traded under the symbol CAO on the New York Stock Exchange, a national securities exchange. CSK was a specialty retailer of automotive parts and accessories. Prior to the acquisition, CSK operated over 1,100 stores in the Western United States under three brand names: Checker Auto Parts, Schucks Auto Supply, and Kragen Auto Parts.

2. From in or about January 2001 through in or about October 2006, CSK purchased hundreds of millions of dollars worth of automotive parts and accessories every year from vendors. CSK entered into agreements with numerous vendors to receive discounts, or allowances, for products CSK purchased from the vendors. These allowances were intended to cover, among other things, CSK's costs associated with marketing vendors' products for sale in CSK's stores. Among the different types of vendor allowances CSK received, the Let's Work Together (LWT) vendor allowance program was the largest and most lucrative for CSK. For

example, in 2004 CSK earned more than \$100 million in LWT allowances. LWT allowances reduced CSK's expenses and thereby increased its pre-tax income.

3. CSK typically entered into one-year LWT agreements with vendors, and each year was designated a "program year." CSK recognized LWT allowances ratably over a program year based on anticipated purchases from vendors. CSK recognized these LWT allowances based on anticipated purchases by, in part, increasing its receivable balance for LWT allowances for that particular program year. Recognizing these allowances also caused a reduction in CSK's expenses, thereby increasing its pre-tax income. Periodically, CSK would seek to "collect" the LWT allowances it had recognized and thereby reduce its receivable balance for that particular program year. One of the means by which CSK "collected" LWT allowances from vendors was through debit memos. By issuing (and delivering by U.S. mail) a debit memo to a vendor, CSK alerted the vendor that it was deducting the amount of the LWT allowance from the amount CSK owed the vendor for the purchase of its products.

4. From in or about January 2001 through in or about October 2006, certain CSK senior executives and employees (Conspirators) willfully manipulated CSK's earnings, primarily by hiding the fact that certain of the LWT allowances that CSK had recognized could not be collected. CSK was unable to collect some LWT allowances it had recognized for a number of reasons, including because it did not in fact make sufficient purchases from vendors to support the level of allowances CSK had recognized based on anticipated purchases. Conspirators concealed these uncollectible LWT receivable balances in a particular program year by, among other things, applying LWT allowance collections from subsequent program years to cover the shortfalls in collections from prior program years. Conspirators also concealed these

uncollectible balances by, effectively, moving uncollectible LWT receivable balances to subsequent year LWT receivable accounts. By doing so, Conspirators intended to give the false appearance that prior year LWT receivables had been collected in full and that CSK had in fact earned all of the LWT allowances it had recognized.

5. As a result of these wrongful acts, Conspirators willfully caused CSK to conceal uncollectible LWT receivables that should have been written off, including approximately \$10 million for fiscal year 2002; approximately \$23 million for fiscal year 2003; and approximately \$19 million for fiscal year 2004. By failing to write off these amounts, CSK overstated its pre-tax income.

6. In approximately July 2005, Conspirators willfully caused CSK to issue debit memos to vendors to collect outstanding LWT receivable balances. Those debit memos sought to collect approximately \$30 million in outstanding LWT receivables, approximately \$15 million of which Conspirators knew vendors did not, in fact, owe CSK.

7. CSK accrued warranty reserves to cover returned items from customers. CSK failed to record sufficient warranty reserves. Conspirators willfully caused CSK not to recognize additional warranty expenses to correct this, which would have decreased pre-tax income. Conspirators also willfully caused CSK to recognize income that CSK had not in fact earned, including that related to a Boys & Girls Club charity program.

8. Throughout the period of the fraud scheme, Conspirators willfully caused CSK to provide materially false and misleading information to CSK's independent auditor to further conceal its accounting improprieties.

9. Conspirators also willfully caused CSK to file with the SEC materially false and misleading Forms 10-K and Forms 10-Q related to fiscal years 2002, 2003, and 2004 that misstated CSK's practice with regard to uncollectible receivables, its receivable balances, and its pre-tax income.

10. CSK acknowledges that the wrongful acts taken by the Conspirators in furtherance of the scheme were within the scope of their employment at CSK. Further, CSK acknowledges that part of the goal of the scheme was to inflate CSK's pre-tax income and that the Conspirators intended, at least in part, to benefit CSK through their fraudulent actions.

11. O'Reilly is a Missouri corporation headquartered in Springfield, Missouri. O'Reilly is a specialty retailer of automotive parts and accessories, operating over 3,400 stores in the United States.

12. On or about July 11, 2008, O'Reilly acquired CSK, and is now the parent company of CSK.