

Hearing Date and Time: September 5, 2006 at 11:00 a.m.
Objection Deadline: July 12, 2006 at 4:00 p.m.
(extended until August 14, 2006 for the Creditors' Committee,
Ad Hoc Committee of Bondholders and Equity Committee)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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:
In re : Chapter 11
:
Dana Corporation, *et al.*, : Case No. 06-10354 (BRL)
:
Debtors. : (Jointly Administered)
:
-----X

**OMNIBUS REPLY TO OBJECTIONS TO MOTION OF DEBTOR
DANA CORPORATION, PURSUANT TO SECTIONS 363, 365 AND 105
OF THE BANKRUPTCY CODE, FOR AN ORDER AUTHORIZING DANA
CORPORATION TO ENTER INTO EMPLOYMENT AGREEMENTS
WITH MICHAEL J. BURNS, ITS PRESIDENT AND CHIEF EXECUTIVE
OFFICER, AND FIVE KEY EXECUTIVES OF HIS CORE MANAGEMENT TEAM**

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OFFICER, AND FIVE KEY EXECUTIVES OF HIS CORE MANAGEMENT TEAM**

Dana Corporation ("Dana"), one of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), hereby submits this reply (the "Reply") to (i) the joint objection and memorandum of the UAW¹ and USW² (D.I. 1791), as supplemented by the Unions' supplement to the Union Objection (D.I. 2909) (the "Union Objection"), (ii) the objection (D.I. 2908) (the "Creditors' Committee Objection") of the Official Committee of Unsecured Creditors (the "Creditors' Committee"), (iii) the objection (D.I. 2906) (the "Ad Hoc Committee Objection") of the Ad Hoc Committee of Dana Noteholders (the "Ad Hoc Committee"), (iv) the objection and memorandum (D.I. 2932) (the "Equity Committee Objection") of the Official Committee of Equity Security Holders (the "Equity Committee") and (v) the objection (D.I. 3245) (the "UST Objection") and together with the Union Objection, the Creditors' Committee Objection, the Ad Hoc Committee Objection and the Equity Committee Objection, the "Objections") of the United States Trustee (the "U.S. Trustee") and together with the Unions, the Creditors' Committee, the Ad Hoc Committee and the Equity Committee, the "Objecting Parties") filed in opposition to the Motion of Debtor Dana Corporation, Pursuant to Sections 363, 365 and 105 of the Bankruptcy Code, for an Order Authorizing Dana Corporation to (A) Enter into Employment Agreements with Michael J. Burns, Its President and Chief Executive Officer, and Five Key Executives of His Core Management Team, and (B) Assume Certain Change of Control Agreements, as Amended (D.I. 1601) (the "Motion"), as supplemented by Dana's

¹ International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW").

² United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "USW" and, together with the UAW, the "Unions").

supplement to the Motion (D.I. 2696) (the "Supplement").³ In support of this Reply, Dana respectfully represents as follows:⁴

PRELIMINARY STATEMENT

The relief sought by the Motion, as supplemented, was designed by Dana's Compensation Committee, with the input of experts and the Co-Chairs of the Creditors' Committee, to stabilize the Debtors and reasonably motivate and fairly compensate Dana's core management team to obtain the best possible outcome for all of the Debtors' stakeholders. In contrast, the Objections seek to short circuit the business judgment of Dana, replace that fully informed and careful judgment with their own parochial interests and serve as a bully pulpit to (i) advocate a dangerously expansive and unworkable interpretation of section 503(c) of the Bankruptcy Code, (ii) promote interim trading values of bonds and equity during the early pendency of these cases, rather than expert advice, as the litmus test for the exercise of sound business judgment under sections 363 and 365 of the Bankruptcy Code;⁵ and (iii) argue that near-term trading values, rather than the legal requirements of sections 363, 365, 1113, 1114 and 1129(a)(11) of the Bankruptcy Code and the judgment of this Court, should serve as the ultimate arbiter of whether actions proposed by these Debtors are in the best interest of *all* of their stakeholders and their estates.

³ The Debtors also received other formal and informal responses (collectively, the "Responses") to the Motion and believe this Reply addresses each of the Responses.

⁴ The facts relevant to this Reply are set forth in the Motion and are incorporated herein by reference. All terms not otherwise defined herein have the meanings given to them in the Motion.

⁵ See Deposition of Richard Priory, August 23, 2006 (the "Priory Deposition") at 167:15-19 ("Q: What was proposed by the Creditors Committee? A: It was a form of market value of just the holdings – the public holdings of the bondholders and the equity holders."). Copies of the relevant pages of the Priory Deposition cited throughout this Reply are attached hereto collectively as Exhibit A and are incorporated herein by reference.

While couched primarily as objections under section 503(c) of the Bankruptcy Code, a careful reading of the Objections reveals that the Objecting Parties' principal dispute with the Modified Agreements is not their stated purpose or their general terms, but rather the financial metrics that underlie the Long-Term Incentive (Emergence) Bonus.⁶ The Objecting Parties assess — and want management to assess — every business decision based upon (i) whether it converts existing contract and corporate obligations into general unsecured claims (the "dilution" argument) and (ii) the anticipated change in the trading values of those obligations from today (the "Trading Theory"). These Objections are self-serving statements designed to advance the goals of their particular constituencies in these chapter 11 cases at the expense of the long-term viability of the Debtors and the interests of the Debtors' other stakeholders. In effect, under the guise of acting on behalf of all of the Debtors' stakeholders, the Creditors' Committee and the Ad Hoc Committee seek to hijack the reorganization process.

There are two logical problems with the Trading Theory. First, the Trading Theory uses today's trading value of the Debtors' debt and equity as (i) a measure of the current enterprise value of the Debtors and (ii) a proxy for the minimum enterprise value of the Debtors upon emergence from bankruptcy. Second, inexplicably, the Objecting Parties submit that today's trading value (i) mandates avoiding any decision that will cause existing liabilities to be treated as general unsecured claims⁷ and (ii) demonstrates that the Debtors should emerge from chapter 11

⁶ In fact, the Equity Committee recognizes that, in order for the Debtors to successfully reorganize, the Debtors must have a management team that is appropriately incentivized to maximize the values of the Debtors' estates, while the Creditors' Committee concedes that "based upon the current proposal before the Court the Executives will be incentivized to increase the hypothetical TEV at all times." See Equity Committee Objection at ¶1; Creditors' Committee Objection at ¶28.

⁷ Ironically but certainly not coincidentally, the day after the filing of the Creditors' Committee Objection and its warnings against "diluting" trading-value inspired recoveries by increasing the claims pool in these cases, the Co-Chair of the Creditors' Committee — with whom these compensation packages were being negotiated — filed a motion to compel an early assumption or rejection of its multiple contracts with the Debtors, which result in hundreds of millions of dollars in transactions annually. That motion has since been

with such liabilities intact and unaffected by these chapter 11 cases. Earnings, cash flow and profitable operations are notoriously absent from the analysis. The Objecting Parties ignore that an increase in claims can be dwarfed by the increase in enterprise value generated by, for example, closing facilities, rejecting unprofitable contracts and the like.

The Trading Theory undermines the fundamental purpose of chapter 11. First, it would subordinate rehabilitation of distressed businesses and the viability analysis demanded by section 1129(a)(11) to promoting short-term returns on investments in liquidated prepetition claims. Second, the Trading Theory would eviscerate the Debtors' business judgment and impermissibly tie management's incentives to the target recoveries of a *single* constituency – usually dominated by bondholders – at the expense of other constituencies and the long-term viability of these enterprises.⁸ Third, the Trading Theory makes the filing of these cases futile – if the Debtors' management are to be punished for utilizing the many tools in chapter 11 that exist to restore these troubled companies to profitability simply to preserve current claims trading values, then these cases were filed in vain. Ironically, the trading values are not driven by fiduciaries working with experts on the Debtors' plan of reorganization, but by investors operating on limited information for their own benefit. Fortunately for these Debtors, none of the above can be true, for it all violates the very essence of chapter 11 and the ability of this Court to preside over a fair and open process for the benefit of *all* stakeholders. Any objections premised on this fundamentally perverse view of chapter 11 must fail.

(continued...)

denied. See Extract of Bench Ruling Denying Motion for Order Directing the Debtors To Assume or Reject Executory Contracts With Sypris and Granting Additional Relief (D.I. 3204).

⁸ It is troubling indeed that the Creditors' Committee, which is supposed to represent *all* unsecured creditors, would advocate for preserving only one constituency's (bondholder) recoveries by focusing on the trading values of the Debtors' bonds in the distressed market, to the detriment of other unsecured creditors. See Priority Deposition, Ex. 7, a copy of which is attached hereto as Exhibit B.

After advancing the Trading Theory as gospel and filing scurrilous and deliberately misleading objections to advance it, neither the Creditors' Committee nor the Ad Hoc Committee have offered *any evidence or intend to offer any expert testimony or affirmative admissible evidence* to support this theory and its application to these cases. Littered throughout both of these parties' objections are emphatic, unsupported statements regarding, among other things, the incentive thresholds being too low vis-à-vis current trading values and the current minimum unsecured claims pool as the key to creditor recoveries – statements that beg for either factual or expert testimony.⁹ The Debtors have been informed, however, that no expert testimony will be offered and no affirmative fact witness will be offered.¹⁰ Accordingly, these Objections should fail due to proof failures alone. There are, however, many other reasons, addressed below, that all of the Objections should fail.

⁹ For example, in paragraph 26 of the Creditors' Committee Objection, the Creditors' Committee asserts that "[t]he incentive targets are set so low that they are basically guaranteed." In paragraph 27, the Creditors' Committee states that "the proposed structure incentivizes the Executives to take actions that may be detrimental to their fiduciary duty to maximize recoveries for creditors." In paragraph 28, the Creditors' Committee opines that "the Executives will be incentivized to increase hypothetical TEV at all times. But an increased hypothetical TEV has no relationship to recovery to general unsecured creditors. To the contrary, creditors could suffer substantial harm." Similarly, in paragraph 4 of the Ad Hoc Committee Objection, the Ad Hoc Committee asserts that "Debtors' method of calculating 'Total Enterprise Value' for purposes of the Target Completion Bonus may actually inure to the detriment of general unsecured creditors," and "the proposed calculation actually rewards the Executives for rejecting contracts, generating potentially significant rejection claims, and diluting creditor recoveries." In paragraph 25, the Ad Hoc Committee states that "the Debtors' TEV targets do not incentivize management to improve performance and the Debtors' method of calculating TEV does not properly take into account the Debtors' fiduciary duty to creditors." In paragraph 26, the Ad Hoc Committee claims that "there is genuine concern by creditors that the Executives would be rewarded for rejecting contracts which would result in significant additional unsecured claims," and in paragraph 27, the Ad Hoc Committee opines that "the valuation targets set by Dana would not serve to incentivize the Executives to even maximize the value of the Debtors' estates." These examples, plus numerous others that are littered throughout the Creditors' Committee's and Ad Hoc Committee's Objections, constitute assertions of expert opinion, which cannot be sustained absent proper proffer of an expert.

¹⁰ The U.S. Trustee has also apparently chosen to engage in the practice of making assertions without an evidentiary basis, as displayed by the statement that "[a] consensus has emerged among the major constituencies that there is likely to be a confirmed plan with a substantial distribution to unsecured creditors, and perhaps a return to equity." U.S. Trustee Objection at ¶8. The Debtors dispute all aspects of this statement related to anticipated distributions in these cases. The U.S. Trustee has presented no evidence that the statement is accurate and, given, among other things, the objection of the Creditors' Committee to the formation of the Equity Committee, the Debtors doubt that the Creditors' Committee would agree with the U.S. Trustee's assumptions regarding "a return to equity."

In their zealous efforts to achieve their goal of protecting the expected recoveries of bondholders, both the Creditors' Committee and the Ad Hoc Committee have recklessly and irresponsibly mischaracterized the Debtors' executive compensation proposal and the Debtors' process, apparently with little, if any, regard to the facts or consequences of their public statements on the Debtors, their management and their workforce.¹¹ For example, while attributing bad motives to management in their Objection with respect to retiree healthcare, the Creditors' Committee Objection did not disclose that in an unpublicized discussion before the Bankruptcy Court, counsel for the Creditors' Committee suggested to this Court that it reserved the right to advance the position that the Debtors' retiree benefits are "terminable at will" and that this Court will be called upon to decide the issues of "what claims . . . may be created" thereby.¹²

Contrary to the parade of manufactured horrors posited by counsel throughout the Objections, the Motion, as supplemented, seeks approval of executive employment agreements that (i) confirm and continue the fair and competitive base salary and short term incentive arrangements in place prepetition, (ii) provide for an incentive-based emergence bonus plan to create an opportunity and motivation for the Senior Executives to earn long-term

¹¹ The tone of, and misleading statements displayed in, these Objecting Parties' papers make evident that the Creditors' Committee and the Ad Hoc Committee crafted these papers for widespread dissemination in an effort, through deliberate misrepresentation, to orchestrate fear and backlash in the Debtors' workforce and retiree population (by, among other things, despicably characterizing the Debtors' compensation program as a "reward" for management to "eliminate retiree benefits"), thereby disrupting the Debtors' operations, inculcably harming employee relations and prejudicing uninformed constituencies. These papers were also designed, successfully, to engender sensational and flawed media coverage, which would be (and has been) seen by the Debtors' customers and suppliers. See, e.g., Floyd Norris, *It's the Law, but Is the Law Meaningless*, N.Y. Times, Aug. 18, 2006, at C1. In addition to the false juxtapositions posited in these papers and the fact of the substantially funded nature of Dana's pension obligations (see Form 10-K, filed April 27, 2006, at 78-79), it is exceedingly ironic that, only days before the filing of its papers, counsel for the Creditors' Committee sought to utilize the concerns of the Debtors' retiree population to the Committee's advantage. Rather than engaging in demagoguery aimed at the Debtors' employees and retirees in the absence of any process or facts, both the Creditors' Committee and the Ad Hoc Committee should permit the process mandated by Congress in section 1114 of the Bankruptcy Code, with its protections and high legal hurdles, to commence and conclude under this Court's supervision in due course.

¹² See Transcript of August 9, 2006 Hearing, 7:5-21.

incentives, as is customary and competitive, (iii) leave to the new board of the reorganized Debtors all postconfirmation executive decisions and (iv) in order to protect reorganized Dana and its stakeholders in the future, obtain a reasonable set of restrictive covenants from each executive for 18 months in the event of termination of employment for the equivalent of a single year's salary and short term target bonus. In addition, the Motion seeks approval for the assumption of prepetition pension agreements with the newly-recruited executives who, to become part of Dana's new management team, gave up pensions at their former employ.¹³ Finally, the Motion seeks confirmation that, for purposes of implementing the Debtors' regular, company-wide severance plan and contractual arrangements, these six executives (and their replacements, if any) are the only individuals currently within the strictures of section 503(c)(2) of the Bankruptcy Code.

The evidence and proof will show that the executive compensation program that is the subject of the Motion, as supplemented, complies with section 503(c) of the Bankruptcy Code and is the result of a sound exercise of business judgment by the Compensation Committee and the Board of Directors of Dana. Similarly, assumption of (i) Mr. Burns' supplemental retirement benefits ("SRB") and (ii) the Supplemental Executive Retirement Plans (together with the SRB, the "SERP") for three of the recently recruited executives is not within the prohibition of section 503(c)(2) of the Bankruptcy Code and constitutes a sound exercise of business judgment of the Compensation Committee and the Board. Finally, obtaining a determination of the scope of section 503(c)(2) of the Bankruptcy Code as it applies to the Debtors' severance program is

¹³ Since the Petition Date, the Debtors have spent over \$16.6 million, and anticipate spending approximately \$10.7 million more this year, to maintain the pensions of the Debtors' current and former rank and file employees.

critical to morale, is an immediate and practical question and is consistent with section 503(c) of the Bankruptcy Code.

Status of These Chapter 11 Cases

These cases were commenced on March 3, 2006. At the commencement of these cases, Dana had five primary automotive customers, with Ford being the largest. It is beyond question that the domestic Original Equipment Manufacturers ("OEMs") are experiencing an historic financial crisis, which has only been exacerbated by sustained exceptionally high gasoline prices and the abrupt fall-off in demand for light-duty pick-up trucks and sport utility vehicles. Indeed, as evidence of this continuing malaise, in an unprecedented action, Ford has recently announced a 21% (or 168,000 vehicle) reduction in fourth quarter production in North America, largely in pick-up trucks and sport utility vehicles. Ford's announcement also noted that it is reducing its third quarter production by an additional 20,000 units.¹⁴ Similarly, Chrysler Group recently announced that it would cut fourth quarter production of certain sport utility vehicles and pick-up trucks.¹⁵ This cut augments Chrysler's previously announced intention to reduce its third quarter production by 10% (or 65,000 to 75,000 vehicles).¹⁶ Dana is a Tier One supplier for pick-up trucks and sport utility vehicles, including those affected by the Ford and Chrysler announcements; accordingly, Ford and Chrysler's announced cutbacks will likely require dramatic cutbacks by Dana.

¹⁴ See Press Release, "Ford Reduces North American Vehicle Production as Part of Accelerated 'Way Forward' Turnaround," Aug. 18, 2006, a copy of which is attached hereto as Exhibit C and is incorporated herein by reference.

¹⁵ John D. Stoll, Chrysler Maintains Plan to Cut Production as Inventory Rises, Wall St. J., Aug. 24, 2006, at A9.

¹⁶ Id.

Dana's 2005 financial results were announced in its 2005 Form 10-K filed on April 27, 2006. In 2005, Dana posted a loss of \$1.6 billion and had an EBITDAR¹⁷ of approximately \$217 million. During that year and since the filing of these cases, Dana suffered, and continues to suffer, substantial losses in its U.S. operations.¹⁸

As a result of all of these factors, fundamental change at Dana is required to withstand the deepening difficulties taking hold of the U.S. auto industry.¹⁹ Mr. Burns has stated consistently that Dana's recovery, and its restoration of competitive operating margins, requires improvement from all major customers in terms of price recovery, as well as improvement in every aspect of Dana's cost structure. Dana is burdened with substantial legacy obligations from closed and divested businesses, none of which are present management's doings, but are nevertheless their responsibility. To effect fundamental change, Dana has acted to consolidate and close production facilities, significantly reduce operating costs and rationalize its Mexican joint venture and benefit plans. That is not enough. Dana must also utilize the tools of chapter 11. It has begun the process to resolve the burdens imposed by retiree medical obligations. It has initiated negotiations on its critical customer contracts with the OEMs. The tasks ahead are

¹⁷ Earnings from continuing operations before interest, taxes, depreciation, amortization and restructuring and reorganization related costs, as defined in Dana's debtor-in-possession credit facility that was approved by the Court on March 29, 2006 (D.I. 721).

¹⁸ See Form 10-K, filed April 27, 2006, at 82 (setting forth a loss in 2005 before income taxes from continuing operations for the U.S. operations of: \$736 million; in 2004: \$445 million; and in 2003: \$200 million).

¹⁹ See Press Release, March 3, 2006 ("Dana Chairman and Chief Executive Officer Michael J. Burns said, 'The Chapter 11 process provides the company an opportunity to fix our business comprehensively – financially and operationally. This will be fundamental change, not just incremental improvement.'"), copy attached hereto as Exhibit D and incorporated herein by reference; see also Form 10-K, filed April 27, 2006, at 3, 18, 22, 102 ("We intend to proceed with previously announced divestiture and restructuring plans, which include the sale of several non-core businesses, the closure of certain facilities and the shift of production to lower-cost locations. In addition, we intend to take steps to reduce costs, increase efficiency and enhance productivity so that we emerge from bankruptcy as a stronger, more viable company. We intend to effect fundamental, not incremental, change to our business.").

daunting, but they must be achieved before the value of any reorganized enterprise can be established.

The Status of the Executive Agreements

By the Motion and the Supplement, Dana seeks authority to enter into employment agreements (collectively, the "Agreements" and, as modified by the Supplement, the "Modified Agreements") with the six senior executives that comprise Dana's, and thus the Debtors', core management team (collectively, the "Senior Executives"). Prior to the commencement of these cases, Mr. Burns, who was hired in March 2004 after 34 years at GM, had an employment agreement, a SERP agreement and a change of control agreement. Messrs. Stone, Stanage and Miller, who were hired for long-term employment, also had individual SERP agreements. The Debtors have not assumed Mr. Burns' employment agreement, change of control agreement or any of the SERP agreements or obligations owing to the Senior Executives. Due to the filing of these chapter 11 cases, the Debtors are unable to perform under Mr. Burns' and the other executives' agreements. In designing the compensation package described in the Motion and the Supplement, Dana, through its Compensation Committee and Board, had three objectives:

- Assuring the Debtors of a qualified, talented management team that the Board has determined is the appropriate team to lead these Debtors through emergence from chapter 11;
- Starting with the recently negotiated, competitive prepetition arrangements, designing a compensation package that would not enhance the executives' pay, but rather would fairly compensate the executives on a competitive basis with their peers, while conforming to the requirements of the Bankruptcy Code; and
- Leaving the new board of the reorganized Debtors unburdened and free to address executive decisions as it sees fit by ending the executives' compensation packages upon emergence and securing a reasonable set of covenants to protect the Debtors thereafter in the event the new board does not wish to continue the services of any one or more of the executives.

The Process

In arriving at the Modified Agreements, the Compensation Committee obtained industry comparables to determine "fair and competitive compensation"²⁰ for the Senior Executives, sought expert compensation advice and preserved an independent process in which neither Mr. Burns nor any of the other Senior Executives had any input into the Compensation Committee's development of their own compensation.²¹ Specifically, Mr. Priory, the Chair of Dana's Compensation Committee and the Lead Director of its Board of Directors, after the filing of these cases, requested a review of Mr. Burns' prepetition contract and the arrangements for the other Senior Executives.²² That review found that Dana could not perform its obligations with respect to "nearly 66%" of the Senior Executives' compensation,²³ as well as other key obligations owing to the Senior Executives. The results of the legal and compensation review caused a "considerable amount of concern,"²⁴ that Dana was at risk of losing its recently-hired core management team. Mr. Priory worked with both Frederic W. Cook & Co., Inc. ("F.W. Cook & Co."), the Board's independent compensation consultant, and Mercer, Dana's compensation consultant, to determine market and industry comparables. Mercer, working with Dana's head of Human Resources, created a "strawman" proposal in mid-April.²⁵ The Compensation Committee, after receiving advice from Mercer and its own independent consultant, F.W. Cook & Co.,

²⁰ See Priory Deposition at 11:15–18.

²¹ Id. at 36:16–25 ("And the person that was clearly absent in all cases was Mike Burns. I had set up a criteria from day one that basically said none of the professionals — not of the management of the company nor the other members of the Comp Committee should talk to Mike Burns about his compensation because he had a conflict in this.").

²² Id. at 15:23 – 16:8.

²³ Id. at 17:17.

²⁴ Id. at 16:10–11.

²⁵ Id. at 16:15 – 29:11 passim.

vigorously debated that proposal and crafted the term sheets,²⁶ reviewed those term sheets with Dana's Board of Directors and obtained authority to seek Court approval of the term sheets, which were presented in the Motion. Only after the approval of Mr. Burns' term sheet by the Compensation Committee was Mr. Burns advised of this proposal as to him and asked to determine whether any other executives should receive revised agreements and the appropriate levels of incentive compensation provided by such agreements.

Following the filing of the Motion and after significant back-and-forth with the Co-Chairs of the Creditors' Committee in an attempt to address their stated concerns, the Debtors filed the Supplement, which addressed all of the Creditors' Committee's legitimate concerns and further reduced value from a compensation package that was already at the low-end of the market.²⁷ To date, none of the Objecting Parties have come forth with any facts or expert opinion to establish or even suggest that the Modified Agreements are out-of-line with market precedent, are too generous or are flawed in some material respect.²⁸ In the absence of any contrary data, therefore, the Debtors bring before the Court the Modified Agreements, which, in their business

²⁶ Id. at 29:18 – 30:12 ("I think for the most part the Comp Committee itself actually created those [term sheets]. I had asked Spriggle and Mercer for input. Fred Cook for input. . . . And we actually went down the list and said we'll put this in, we'll take that out, we'll put this in, this doesn't make any sense to do this, we don't need this, and do this. We're going to reduce that. Boom. Here's basically the term sheet.").

²⁷ Id. at 114:22–24 ("In general, everything we were doing at that stage was really reducing – reducing value below where Fred [Cook, the Board's compensation expert,] had argued.").

²⁸ Id. at 152:10 – 153:8 ("I had ongoing dialogue with the co-chairs of the Unsecured Creditors Committee. It was clear in that dialogue that although we could reshape the program, there was belief expressed to me that some of the numbers were just too big and they had to be smaller. And, of course, our – considering our fiduciary duties, I'm sitting there with sets of experts who've independently determined that this is very rational, fair, consistent, et cetera, with what the industry practice is. And so I'm sort of in a fix at that point in time. I've got a party saying these numbers are just too high. I say why do you think they're too high. It's unclear exactly why they think they're too high. They're just too high. And I've got experts providing all kinds of data, enough to bury me, demonstrating that these are very reasonable numbers. And, in fact, are below the median in the industry, period.").

judgment, provide "fair and reasonable" compensation – at the lowest level reasonable under the circumstances.²⁹

The Modified Agreements

Since the Objections take particular exception with Mr. Burns' arrangement,³⁰ a review of the current status of Mr. Burns' prepetition agreement, his treatment by Dana during the pendency of these cases as a matter of its ordinary course business practices and his proposed replacement agreement follows:

Prepetition Executive Agreement	Post Petition Ordinary Course—Continuance Status during Pendency	Modified Agreement
Base Salary (\$1.035 million)	Continued Unchanged	Same Base Salary
Short term Incentive, also known as the Annual Incentive Plan - provides 2 times Base Salary at Target (2006 Target is EBITDAR³¹ of \$350 million) 1 times Base Salary at Threshold (2006 Threshold is EBITDAR of \$290 million)	Continued Unchanged, except that, to obtain assurance that all Dana executives in the Annual Incentive Program worldwide (roughly 1,450 people) receive their bonuses as scheduled on or about August 15, Mr. Burns voluntarily agreed to defer the payment of his bonus temporarily and provide the Creditors' Committee with	Confirms entitlement to same short term incentive or Annual Incentive Plan at two times base salary, with 2007 Target and Threshold to be determined by the Dana Board, in consultation with the Creditors' Committee, on or about February 15, 2007

²⁹ Id. at 120:3–19 ("I think the compensation package as a whole is essential to the executives. And we haven't tested the idea of pulling this one [particular provision] out or pulling that one out. Nor have we ever engaged in any negotiations with our executives. We're simply doing what we think is right and fair and is reasonable and we would hope that when this eventually gets to the executives they will look at it and find it logical, reasonable and sensible and sign the agreements.").

³⁰ This preoccupation with Mr. Burns' Modified Agreement is evident in the Objections. See, e.g., Creditors' Committee Objection at ¶3 ("In short, the proposed compensation scheme, especially for Mr. Burns, does not pass muster."); Ad Hoc Committee Objection at ¶12 (complaining only about Mr. Burns' compensation under the Modified Agreement). Accordingly, notwithstanding the Objections, the Objecting Parties' primary issue appears to be with Mr. Burns, not with the compensation scheme proposed for the five other Senior Executives. As a result, the blanket objections to the Modified Agreements should be viewed with skepticism. That is, it does not appear to be the Modified Agreements *per se* that the Objecting Parties find objectionable, just Mr. Burns' Modified Agreement. As such, a broad challenge to all of the Modified Agreements on statutory grounds appears disingenuous.

³¹ For the purposes of the Annual Incentive Plan, EBITDAR also includes earnings from discontinued operations to hold management responsible for discontinued operations.

Prepetition Executive Agreement	Post Petition Ordinary Course—Continuance Status during Pendency	Modified Agreement
• Payable semi annually on or about August 15 and February 15	notice of its intended payment absent a resolution of the Motion.	
Long Term Incentive was a series of equity based awards targeted to provide \$4 million annually	N/A	Long Term Incentive in form of Emergence Bonus Plan – payable in cash and equity • Bonus of \$3.1 million vests upon delivery of feasible business plan, although not payable until emergence and subject to proration if executive is involuntarily terminated without cause. • Bonus of approximately \$4 million if total enterprise value, measured six months following emergence as the market value of all debt and equity of the reorganized debtor ("Total Enterprise Value"), is \$2 billion. • Bonus of approximately \$6.2 million if Total Enterprise Value is \$2.6 billion. • 0.25% of any increment increase in Total Enterprise Value above \$2 billion • Emergence includes a sale of all or substantially all the assets in one or more sales.
Change of Control Provisions entitling executive to 3 years	N/A	N/A

Prepetition Executive Agreement	Post Petition Ordinary Course—Continuance Status during Pendency	Modified Agreement
of base pay and bonus (\$6+ million)		
Severance Provisions entitling executive to 2 years base pay and bonus (\$4+ million)	N/A	N/A
		Non compete for 18 months following termination, payable monthly over term (\$166,666.67/month), not to exceed \$3 million in aggregate, which is less than one year's salary plus Annual Incentive Plan bonus at target.
Prepetition SERP	Pendency/Ordinary Course Accruals	Modified Agreement
Retirement Benefit fully vesting in March of 2009 • Vesting schedule suggests value as of 3/3/06 is roughly \$6.1 million • Payable upon earlier of involuntary termination without cause, leaving with good cause or March 2009 • Forfeited upon voluntary departure without good reason	Accruals are being credited to the SERP account as administrative obligations of the Debtors	Assume upon the earlier of termination or emergence • Vesting schedule per original agreement, no change • Forfeited upon voluntary departure without good reason

Disputed Issues

With respect to the Modified Agreements, there are two areas that are different from the prepetition arrangements and that are the focus of the Motion and Supplement: the Long

Term Incentive (or Emergence) Bonus and the Noncompete Agreement.³² With respect to each of those provisions, the remaining two contested questions are:

- Are the terms of the Long Term Incentive (or Emergence) Bonus Plan and the Noncompete Agreement consistent with section 503(c) of the Bankruptcy Code? and
- If so, do these provisions represent a sound exercise of the Debtors' business judgment?

With respect to the proposed assumption of the SERP agreements for Messrs. Burns, Miller, Stone and Stanage, there are the same two questions: whether assuming a SERP agreement is consistent with section 503(c) of the Bankruptcy Code and, if so, does the assumption of the SERP agreements pursuant to section 365 of the Bankruptcy Code represent a sound exercise of the Debtors' business judgment?

Finally, Dana has made a proper request for a declaratory judgment with respect to the definition of "insider," which the Court has the authority to issue. Because Dana maintains a company-wide severance program for non-union hourly and salaried employees, it requires guidance as to how it may implement that policy within the new strictures of section 503(c)(2) of the Bankruptcy Code. Accordingly, Dana has presented the Court with a live issue.

REPLY

I. PROVIDING THE LONG-TERM INCENTIVE (OR EMERGENCE) BONUS AND THE NONCOMPETE AGREEMENTS AND ASSUMING THE SERP

³²

Given (a) the exhaustive process, described throughout this Reply, that the Debtors' Board of Directors engaged in to develop the Modified Agreements, including extensive negotiations with the Creditors' Committee, the Ad Hoc Committee and the Equity Committee and (b) the extensive discovery that has been conducted by parties in interest relating to the Motion, the comment by the U.S. Trustee that she would consider requesting the appointment of an examiner merits mention. See U.S. Trustee Objection at ¶¶20-24. Although this matter is not before the Court, the Debtors submit that the other Objecting Parties, which have an economic interest in these cases, have done everything that an examiner would do and that, therefore, the appointment of an examiner would merely duplicate efforts and add needless expense to these estates. Moreover, the U.S. Trustee makes these suggestions without having had the benefit of reading this Reply to the many misleading characterizations in the Objections. Given that the U.S. Trustee's Objection was filed long after the objection deadline for the Motion, the Debtors reserve the right to supplement this Reply with respect to the U.S. Trustee's Objection.

AGREEMENTS COMPLY WITH SECTION 503(c) OF THE BANKRUPTCY CODE.

A. Section 503(c) of the Bankruptcy Code Does Not Prohibit The Entry Into, or the Assumption of, These Agreements.

1. The Objecting Parties assert that Dana's entry into the Modified Agreements violates section 503(c)(1), (2) and (3) of the Bankruptcy Code. Section 503(c) was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") and, with the exception of subsection (c)(3), addresses certain payments made by a debtor to "insiders."³³ 11 U.S.C. § 503(c). Although the legislative history regarding BAPCPA provides little, if any, guidance regarding the meaning of the terms used in section 503(c) of the Bankruptcy Code,³⁴ the legislative history does not address, or exhibit an intent to regulate or otherwise limit, incentive compensation programs. See Kenneth N. Klee and Brendt C. Butler, The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 – Business Bankruptcy Amendments, ALI-ABA Course of Study Materials, SL051 ALI-ABA 305 (2005) (noting that section 503(c) of the Bankruptcy Code does not prohibit incentive plans and speculating that debtors will increasingly design compensation programs to include performance metrics and incentives).

2. BAPCPA went into effect on October 17, 2005 and few cases have analyzed executive compensation under section 503(c) of the Bankruptcy Code, as amended. The

³³ The term "insider" is defined in section 101(31) of the Bankruptcy Code.

³⁴ The legislative history of section 503(c) of the Bankruptcy Code provides:

Sec. 331. Limitation on Retention Bonuses, Severance Pay and Certain Other Payments. Section 331 amends Bankruptcy Code section 503 to prohibit the allowance or payment of certain transfers or obligations, unless otherwise authorized by the court. It applies to transfers made to or obligations incurred for the benefit of an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, unless the court makes certain specified findings. In addition, it prohibits a severance payment to an insider of a debtor, unless it satisfies certain criteria. Further, it prohibits the payment of other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

H.R. REP. NO. 109-31, 151, at 150 (2005).

cases that have analyzed executive compensation under section 503(c) of the Bankruptcy Code have not found it to be a barrier to the approval of incentive compensation. See, e.g., In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. May 15, 2006) (the debtors' entry into employment agreements with chief executive officer ("CEO") and chief financial officer/chief restructuring officer ("CFO/CRO") does not violate section 503(c)(3) of the Bankruptcy Code); In re Pliant Corp., Case No. 06-10001 (MFW) (Bankr. D. Del. Mar. 14, 2006) (the debtor's payment incentive compensation to eligible employees pursuant to incentive compensation plan does not implicate section 503(c) of the Bankruptcy Code); In re Musicland Holding Corp., Case No. 06-10064 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2006) (the debtor's continuing to provide incentive bonuses under management incentive plan does not violate section 503(c) of the Bankruptcy Code); In re Nobex Corp., Case No. 05-20050 (MFW) (Bankr. D. Del. Jan. 20, 2006) (program which ties executive compensation to the amount of proceeds from sale of the debtor's assets is not subject to section 503(c)(1), (c)(2), or (c)(3) analysis and is justified by the facts and circumstances of the chapter 11 cases).

3. In each of the cases above, the court considered the application of sections 503(c)(1), (c)(2) and (c)(3) of the Bankruptcy Code to executive compensation programs and held that section 503(c) of the Bankruptcy Code was not implicated by incentive compensation. These cases recognize that debtors maintain the right to establish, or continue, incentive compensation programs that tie executive pay to the accomplishment of corporate goals.³⁵ The Objecting Parties cite no case, nor can they, where a court has held that an incentive

³⁵ In fact, FTI Consulting, the Creditors' Committee's financial advisor, has recommended that, like under the Modified Agreements, incentive targets for insiders of debtors "should include measurable and identifiable milestones based on challenging but achievable financial, operational, or procedural benchmarks. Examples include, target based on earnings before interest, taxes, depreciation, and amortization (EBITDA); cash-flow reductions; process improvements; asset sales; and successful plan confirmation." See Ronald F. Greenspan, Senior Managing Director & Matthew Pakkala, Managing Director, FTI Consulting, KERPs Are Out, But

compensation program violates section 503(c) of the Bankruptcy Code. Because the components of the Modified Agreements that are the subject of the Objections are incentive payments, rather than retention or severance payments, made in the ordinary course of Dana's business, or otherwise justified by the facts and circumstances of these cases, section 503(c) of the Bankruptcy Code does not bar Dana's entry into the Modified Agreements or the payments contemplated thereunder.

1. The Long-Term Incentive (Emergence) Bonus Is Permissible Under Section 503(c)(1) of the Bankruptcy Code.

4. According to the Objecting Parties, virtually every payment provided for under the Modified Agreements would violate section 503(c) of the Bankruptcy Code because such payments induce the Senior Executives to remain with Dana. See, e.g., Creditors' Committee Objection at ¶17. The Objecting Parties misunderstand the purpose of section 503(c) of the Bankruptcy Code as well as the basic concept of compensation, which of necessity serves to attract, retain and motivate executives.

5. A basic tenet of compensation is that it is designed to fairly reward employees for their services and, in doing so, encourage them to remain with their current employer. The Objecting Parties' extreme view of section 503(c)(1) of the Bankruptcy Code — that every form of compensation paid to an "insider" (including basic salary) is retentive and would, therefore, violate section 503(c)(1) of the Bankruptcy Code — leads to a ridiculous result, i.e., don't pay management. Fortunately, as this Court has previously held, 503(c) of the Bankruptcy Code is not so broad.

(continued...)

Incentives Are In, 19 J. Corp. Renewal 18, 18 (2006) (the "FTI Article"). Not surprisingly, the FTI Article did not reference distressed debt trading values as an example of a "financial, operational, or procedural benchmark."

6. Section 503(c)(1) of the Bankruptcy Code only limits payments that are made to insiders *solely* for the purpose of inducing them to remain with a debtor. It does not (a) prevent a debtor from entering into, and performing its obligations under, postpetition employment agreements with management employees or (b) prohibit compensation programs that reward executives for superior performance or that incorporate specific short-term and long-term performance metrics. 11 U.S.C. § 503(c)(1).

7. The Modified Agreements contain two incentive payments, the Annual Bonus and Emergence Bonus, designed to motivate the Senior Executives to deliver superior performance and enhance Dana's worth. The Annual Bonus, as provided under the AIP, was authorized by Dana's Board of Directors on February 28, 2006 (at the time the AIP has been authorized every year) and provides performance-based incentives to key employees of Dana and its subsidiaries for 2006 and 2007. See Form 8-K, filed March 6, 2006.³⁶ Under the AIP, reward of an Annual Bonus is conditioned upon Dana's short-term financial performance and the size of that award depends on whether Dana meets threshold, target or superior performance goals established by Dana's Compensation Committee. Id. As the AIP was adopted in the normal course shortly before the filing of the chapter 11 petitions, applicable performance levels incorporate the Debtors' anticipated costs of reorganization.³⁷

³⁶ A copy of this Form 8-K is attached hereto as Exhibit E.

³⁷ For years, Dana has offered a short-term bonus tied to the achievement of specific financial goals for 1,500-2,000 employees, which bonus is approved annually by Dana at the same time and in the same manner. In 2006, the number of employees participating in this program was reduced to 1,368. The establishment of the 2006 AIP continues this practice and incorporates the costs and benefits of commencing these chapter 11 cases into the applicable performance metrics. Thus, Dana appropriately continued the AIP in the ordinary course of its business. See Priory Deposition, 17:22 – 18:15 ("[W]e dealt with only the first part which was the salary and the short-term incentive because that was critically necessary, had to be done immediately, and it was – actually, it was right on top of exactly when we would approve it each year."). The Creditors' Committee does not object to payments under the AIP to any executive or employee of the Debtors, other than payments to Mr. Burns. See Creditors' Committee Objection, fn 9.

8. Unlike the Annual Bonus, which rewards executives for the Debtors' short-term financial performance, the Emergence Bonus rewards the Senior Executives for the accomplishment of long-term corporate goals. As set forth in the Declaration of John Dempsey in support of the Motion (D.I. 1603) (the "Dempsey Declaration") and its supplement (D.I. 2810) (the "Dempsey Supplement"), the Modified Emergence Bonus Program was designed to motivate and incentivize the Senior Executives to lead the Debtors out of chapter 11 and to maximize the value of the Debtors' estate for all stakeholders. See Dempsey Supplement at ¶12. It does so by conditioning the Minimum Emergence Bonus upon the delivery of a feasible business plan and the Debtors' emergence and, concurrently, tying the remainder of the Emergence Bonus to Dana's post-emergence TEV.

9. If considered on an annual basis, the Emergence Bonus' operation is opposite to that of a retention payment. Retention payments generally are paid over set time periods during the bankruptcy case with the final payment on emergence. Thus, the longer a debtor stays in bankruptcy, the greater the aggregate retention bonus to be received. By contrast, the Emergence Bonus proposed here consists of one set fee to be paid in two installments *post-emergence* and, on an annual basis decreases the longer the Debtors are in chapter 11.³⁸ As a result, the Long-Term Incentive or Emergence Bonus will be paid out over a two- to three-year period, rather than on an annual lump sum basis.

10. By their very nature, retention programs condition eligibility for a bonus on the employee staying put. That is, if an employee merely remains in his or her job, he or she is eligible for a bonus. By contrast, as established above, in the Modified Agreements, the Debtors

³⁸ Speed to conclude this reorganization is, therefore, of the essence. For example, assuming the Debtors' TEV meets pre-established targets, Mr. Burns will receive a Emergence Bonus of \$6.2 million under his proposed Agreement. If Dana takes two years to reorganize, Mr. Burns' effective annual Emergence Bonus would be \$3.1 million. If, however, the reorganization is not completed until three years after the Petition Date, Mr. Burns' effective annual Emergence Bonus would be just over \$2 million.

establish incentive compensation conditioned on Dana's performance; Dana must meet specific long-term goals, including the delivery of a business plan, before any bonuses are awarded.

11. In In re Calpine Corp., this Court approved the debtor's entry into employment agreements with its CEO and CFO/CRO under section 503(c) of the Bankruptcy Code and its continuance of a management incentive plan as a sound exercise of the Debtors' business judgment. In re Calpine Corp., Case No. 05-60200 (Bankr. S.D.N.Y. May 15, 2006). The Calpine employment agreements provide for, in part, an annual cash performance bonus, a \$2 million signing bonus, a guaranteed success fee and a success fee consisting of a fixed component, to be received post-emergence, and a variable component based on Calpine's post-emergence enterprise value.³⁹ Id. Neither the award of a success fee nor the establishment of a short-term bonus program was held to implicate section 503(c)(1) of the Bankruptcy Code. Id.⁴⁰ Similarly, the bankruptcy court for the District of Delaware has ruled that an incentive program that tied executive compensation to proceeds from the sale of substantially all of the debtors' assets was not a retention plan. See Transcript from In re Nobex Corp. ("Nobex Transcript"), Case No. 05-20050, at 87:6-8 (Bankr. D. Del. Jan. 12, 2006); see also In re Pliant Corp., Case No.

³⁹ The variable component would fluctuate with Calpine's post-emergence market adjusted enterprise value ("Market AEV") and plan adjusted enterprise value ("Plan AEV"). If the Market AEV and Plan AEV did not reach certain financial performance targets, the executives would be ineligible to receive the variable component of their success fee. If, however, Calpine met both financial targets, further increases in the Market AEV above its targeted amount would result in increases to the success fee.

⁴⁰ See Transcript from In re Calpine Corp., No. 05-60200 (BRL), at 84:5 – 85:9 (Bankr. S.D.N.Y. May 15, 2006) ("Calpine Transcript") ("Further, the record before me validates that the focus of the plans and agreement is to maximize the value for all the estates; the plans are apparently designed as incentive plans as opposed to retention or KERP's. . . . I do find, based upon this record, that the prohibitions of Section 503 have, if not been avoided, are not applicable based upon the structure of these plans and the agreements. . . . In short, I do agree that these are incentive plans to bring enhanced value into the estate. They are not retention plans, although anyone can always make an argument that if people are made happier than they were before, then they are excited enough to stay with the company, but that's not the focus of these plans. And this would be clearly, based upon this record, not KERP's and they are not in violation of 503(c)."). Copies of the relevant pages of the Calpine Transcript cited throughout this Reply are attached hereto collectively as Exhibit F and are incorporated herein by reference.

06-10001 (Bankr. D. Del. March 14, 2006) (authorizing debtors to make certain payments pursuant to management incentive plan).⁴¹

2. Payment of a Pro-Rata Portion of The Long-Term Emergence Bonus Is Permissible Under Section 503(c)(2) of the Bankruptcy Code Because It Does Not Constitute Severance.

12. Similar to their broad brush and deliberately misleading approach to "retention" payments, the Objecting Parties ask that this Court find that any *pro rata* payment made to a Senior Executive after a Termination Event is severance, notwithstanding that such payment is compensation for the value of services provided to Dana by the Senior Executive prior to his termination. The standard proposed by the Objecting Parties would eviscerate *all* post-termination compensation arrangements with insiders, regardless of whether or not such payments are compensation for (a) previously provided services or (b) future obligations. The Objecting Parties again demonstrate a fundamental misunderstanding of section 503(c)(2) of the Bankruptcy Code.

13. Section 503(c)(2) of the Bankruptcy Code allows severance payments to be made to insiders if they are part of a generally applicable program and are less than "10 times the amount of the mean severance pay given to nonmanagement employees." 11 U.S.C. § 503(c)(2). The Second Circuit has defined "severance" as a form of "compensation for the termination of the employment relation, for reasons other than the displaced employees' misconduct, primarily to alleviate the consequent need for economic readjustment but also to recompense him for certain

⁴¹ Judge Walrath stated that "I think in this case it is clear . . . from [the] structure of the plan that this is not a retention plan. It is not providing payment to the employees or senior management solely for being retained, staying on the job. In fact, they can stay on the job all they want if the criteria are not meant [*sic*]. That is, [if] the sale does not produce sufficient funds, they will not get anything . . . So I see it as not a retention plan and therefore not subject to the (c)(1) strictures." Nobex Transcript, at 87. A copy of the relevant pages of the Nobex Transcript cited throughout this Reply are attached hereto collectively Exhibit G and are incorporated herein by reference.

losses attributable to the dismissal." Straus-Duparquet, Inc. v. Local Union No. 3, IBEW, 386 F.2d 649, 651 (2d Cir. 1967).⁴²

14. Although the Modified Agreements guarantee a Senior Executive who experiences a Termination Event payment of a *pro rata* Annual Bonus and, potentially, a *pro rata* Emergence Bonus, such payment is not severance. Instead, the payment of *pro rata* amounts compensates the Senior Executive for his *prior* contributions to the Debtors' restructuring and motivates the Senior Executive to deliver superior performance for the benefit of all the Debtors' stakeholders despite the possibility of termination.

15. In Calpine, this Court's analysis of the debtor's success fee highlights the difference between an incentive payment and a severance payment. Similar to Dana's agreement, the approved executive employment agreements in Calpine guarantee the CEO and CFO/CRO (a) a minimum success fee⁴³ if the executive is terminated without cause prior to emergence or resigns with good cause prior to emergence and (b) a full success fee if he is terminated without cause within twelve months of emergence. In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. May 15, 2006). This Court did not determine the success fee to be a retention payment subject to analysis under section 503(c)(1) or a severance payment subject to analysis under section 503(c)(2). See Calpine Transcript, at 85:16-19 (providing that "the prohibitions of

⁴² Importantly, one of the primary concerns that led to 503(c)(2) of the Bankruptcy Code's enactment (*i.e.*, executives getting significant administrative priority severance while employees' severance was pro-rated based on prepetition and postpetition service) was never an issue in the Second Circuit due to the administrative priority given to severance in this Circuit. Under the prepetition severance program generally applicable to Dana's non-union employees, such employees may now receive up to six months of severance pay, based on length of service. Section 503(c)(2) of the Bankruptcy Code does not impact the ability of Dana to pay severance to non-insider employees.

⁴³ In Calpine, the guaranteed minimum success fee was equal to the sum of the CEO's annual base salary and target annual bonus as of the earlier of (a) the end of his employment or (b) the plan effective date. The guaranteed minimum success fee was deemed earned as of the date the agreements were approved. A full success fee may be paid "if the [p]lan [e]ffective [d]ate occurs within 12 months after the date of termination" and must be reduced to the extent any guaranteed minimum success fee is paid.

Section 503 . . . are not applicable based upon the structure of [Calpine's] plans and the [CEO and CFO/CRO employment] agreements").

16. The Emergence Bonus, as proposed by the Debtors, compares favorably with its approved counterpart in Calpine. First, the Debtors' Emergence Bonus, unlike Calpine's success fee, is not guaranteed throughout the chapter 11 cases. As noted above, under the Calpine agreements, if the Calpine CEO is terminated without cause one day after he is hired, he is eligible for a minimum success fee. By contrast, under the Modified Agreements, payment of a *pro rata* Emergence Bonus in these cases may only be made after the delivery of a business plan, so a performance milestone must be met.

17. Moreover, the Debtors' Emergence Bonus better estimates management's contributions to the reorganization than Calpine's guaranteed minimum success fee. The Calpine debtors reward executives post-termination with either a guaranteed minimum success fee or the full success fee depending on the date of termination. By contrast, Dana's *pro rata* apportionment (a) only rewards the Senior Executives once the Debtors have shown definite progress towards the resolution of the chapter 11 cases, in the form of the delivery of a business plan, (b) then estimates the Senior Executive's contribution to the Debtors' emergence from chapter 11 based on date of termination and (c) rewards him accordingly. Thus, *pro rata* apportionment ties each Senior Executive's payment to his contribution, thereby encouraging him to work harder.

3. Payments Made as Consideration for Noncompete Agreements Are Permissible Under Section 503(c)(2) of the Bankruptcy Code Because They Are Not Severance.

18. In the Objections, the Objecting Parties protest the provisions of the Modified Agreements that provide the Senior Executives with post-termination payments in exchange for their ongoing compliance with non-compete and non-solicitation agreements on the

grounds that such payments are prohibited severance payments. See Creditors' Committee Objection at ¶22; Ad Hoc Committee Objection at ¶18; Equity Committee Objection at ¶¶21-22.

19. The Objecting Parties' interpretation of these payments as severance again displays a lack of understanding of both the strictures and purpose of section 503(c)(2) of the Bankruptcy Code. Section 503(c)(2) of the Bankruptcy Code addresses post-termination payments made to compensate insiders for lost wages. It does not prohibit debtors from making payments to former executives to ensure that such former executives do not *in the future* exploit contacts and information gained during their previous employment to the direct detriment of a debtor.

20. Dana's Compensation Committee considered it absolutely critical in the exercise of their fiduciary duties to obtain non-compete and non-solicitation agreements from the Senior Executives to protect the Debtors' businesses and, hence, all of their stakeholders.⁴⁴ To obtain non-compete/non-solicitation agreements from the Senior Executives, therefore, it is necessary that they receive consideration in addition to their existing compensation in exchange for these contractual restrictions. Because these payments are made in exchange for the Senior Executives' agreement to, among other things, refrain from competing with the Debtors, such payments cannot be considered severance.

⁴⁴ See Priory Deposition, 141:4 – 142:20 ("No. I don't believe they [the Creditors' Committee Co-Chairs] told me that they [the non-compete provisions] weren't appropriate. I believe they objected to paying out any money for a number of those things. I tried to explain to them as best I could the purpose for which they were in there. And, frankly, I thought we had a reasonable understanding that some level of that was warranted. . . . [R]eally the things we insisted upon which were we wanted noncompete, we wanted nonsolicitation with this group. Period. That's our fiduciary duty to protect all the stakeholders. We want that. . . . And the Credit[ors] Committee was having concerns about the amount of money. And so we said, okay, let's simplify it. Let's take it down to twelve months with an 18-month noncompete term on it. Let's have a nonsolicitation in there. And we'll throw in the kitchen sink to try to protect the company. But from our perspective that's a minimum for our fiduciary responsibility. And so that's how we ended up where we were on the revised proposal. Now, to my knowledge, I don't know whether they object to having a noncompete. . . . But I must tell you if they do I have no alternative as far as I'm concerned, I think our board has no alternative, but to go forward with those. . . . [F]or our fiduciary duties I think we have to do that.").

4. Assumption of the SERP Agreements Is Permissible.

21. Certain of the Objecting Parties have complained about the proposed assumption of certain of the Senior Executives' SERP agreements upon termination without cause or confirmation of a plan. *First, SERP benefits are retirement benefits, not retention or severance payments.* Accordingly, sections 503(c)(1) and 503(c)(2) of the Bankruptcy Code are not implicated. Second, the facts and circumstances of these cases justify the assumption of these agreements if certain conditions are met. Specifically, each of the Senior Executives entitled to SERP benefits has a significant amount of their retirement funds tied up in such programs and, in the case of Messrs. Burns, Miller, Stanage and Stone, SERP benefits were a key consideration in their decisions to leave their prior positions and their accrued pensions and work for Dana. In fact, in the case of Mr. Burns, his SERP benefits are his primary retirement funds. All other employees' pension benefits have been preserved in these cases, and the Debtors continue to make their required contributions to their pension plans.⁴⁵ Accordingly, the Objecting Parties' objection to the proposed assumption of the SERP agreements if certain conditions are met should be viewed as arbitrary and punitive.

22. Furthermore, as noted above, the Modified Agreements reduce substantially the compensation packages that the Compensation Committee thought to be fair and reasonable for each of the Senior Executives. Because the Debtors have acquiesced in so many areas to the Creditors' Committee's demand to reduce the compensation numbers because they were "too high" (without specifics), the Compensation Committee became concerned that the entire package was neither reasonable nor attractive for these managers as it was already "below

⁴⁵ See Order Approving Stipulation Among the Debtors and the Official Committee of Unsecured Creditors Regarding the Debtors' April 15, 2006 Pension Funding Payment (D.I. 860); Order Approving Stipulation Among the Debtors and the Official Committee of Unsecured Creditors Regarding the Debtors' July 15, 2006 Pension Funding Payment (D.I. 1569).

the median in the industry."⁴⁶ Accordingly, the Compensation Committee determined that permitting the assumption of these executive's retirement arrangements upon certain conditions would provide "some sufficient comfort and some safety net."⁴⁷ That business judgment rationale is more than justified by the facts and circumstances of these cases.

B. Dana's Entry into the Modified Agreements and Payment of Annual and Emergence Bonuses Do Not Implicate Section 503(c)(3) of the Bankruptcy Code.

23. Section 503(c)(3) of the Bankruptcy Code prohibits "other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition." 11 U.S.C. § 503(c)(3).

1. Dana's Entry Into the Modified Agreements Is in the Ordinary Course of Its Business.

24. As noted above, section 503(c)(3) of the Bankruptcy Code applies to payments made outside the ordinary course that also are not justified by the facts and circumstances of the case. By contrast, Dana's entry into the Modified Agreements with the Senior Executives, who were all hired *prior* to the Petition Date (thus, negating the applicability of section 503(c)(3) of the Bankruptcy Code), is a transaction in the ordinary course of business.

25. As set forth in the Motion and established by the cases cited therein, companies in chapter 11 routinely contract with their executives in the ordinary course of business under sections 363(c)(1) or 365 of the Bankruptcy Code without the need for Court approval. See In re Wil-Low Cafeterias, Inc., 111 F.2d 429, 431 (2d Cir. 1940) (providing that a

⁴⁶ See Priory Deposition, 153:7–8.

⁴⁷ Id. at 156:2–10.

debtor does not need to "apply to the court in order to make the simple and usual contracts of hiring necessary to the authorized conduct of the business"); In re Crystal Apparel, Inc., 220 B.R. 816, 833 (Bankr. S.D.N.Y. 1998) (holding that debtor's entry into an extension employment agreement that provided an increase in the executives' salaries by 11-12 1/2% was in the ordinary course of business and did not require court approval). Employment agreements benefit both the employer and the employee by ensuring the services of capable employees for a fixed period of time and, thus, are routinely entered into in the ordinary course of business. As such, the Debtors respectfully submit that section 503(c)(3) of the Bankruptcy Code does not apply to their entry into the Modified Agreements or the payments provided therein.

2. Dana's Entry Into the Modified Agreements Is Justified by the Facts and Circumstances of These Cases.

26. Even if this Court were to hold that Dana's entry into the Modified Agreements was not in the ordinary course and even if section 503(c)(3) of the Bankruptcy Code were applicable because the Senior Executives were hired postpetition (which they were not), contracting with the Senior Executives is clearly justified by the facts and circumstances of these chapter 11 cases. As set forth in the Motion, Dana has determined to enter into the Modified Agreements with Mr. Burns and the core team of highly qualified Senior Executives assembled by him after his arrival in March 2004. Although these Senior Executives have been, and will continue to be, the driving force behind the Debtors' restructuring, their original market-based compensation has decreased substantially as a result of the chapter 11 filings.

27. Over the past months, in an effort to best structure the Modified Agreements, Dana, through Mr. Priory and its Compensation Committee, has engaged, as described above, in an informed, deliberative process to understand Dana's needs, ascertain market data, determine the shortfall in the Senior Executives' previously established fair and

reasonable compensation resulting from the bankruptcy filing and develop a program with key executives to provide the motivation through fair and reasonable agreements. Dana's directors, through Mr. Priory, spent countless hours and consulted with experts in developing a rational program and then spent hours negotiating with the Creditors' Committee and the other parties to address their concerns, as described above. Dana believes the Modified Agreements, which are below competitive levels, do address the Objecting Parties' legitimate concerns, while still preserving sufficient incentives for the Senior Executives to strive for improved performance by these Debtors – incentives that are below market. The Modified Agreements align the Senior Executives' interests with those of other stakeholders and encourage the Debtors' management to effect as quick and efficient a reorganization as possible. Therefore, as discussed more fully below, the Modified Agreements are the result of a fully informed and deliberate exercise of the Debtors' business judgment. The Modified Agreements reflect the Senior Executives' current and future value to Dana's reorganization and incentivize the Senior Executives to deliver superior performance for all its stakeholders.

C. The Primary Purpose of Chapter 11 Is Rehabilitation of the Debtors' Businesses And Maximizing Value for All Stakeholders.

28. One of the Objecting Parties' primary complaints about the Modified Emergence Bonus Program is that the metrics underlying the program encourage the Senior Executives to reject contracts and convert contractual liabilities into claims in contravention of an alleged duty of the Senior Executives to "preserve" the recoveries of creditors based on today's debt-trading prices. The Objecting Parties misunderstand the purpose of chapter 11.

29. This Court has consistently held that the primary purpose of chapter 11 of the Bankruptcy Code is to rehabilitate companies and ensure their survival as viable going

concerns for the benefit of all stakeholders.⁴⁸ In fact, this Court has previously held that (a) the "paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor"⁴⁹ and (b) it is the "overarching duty [of debtors] to reorganize and maximize estate assets for the benefit of all creditors."⁵⁰

30. Chapter 11 does not exist to guarantee a group of distressed investors a particular return on their investment. In In re Ionosphere Clubs, this Court went to great lengths to demonstrate that the purpose of chapter 11 is the rehabilitation of the debtor (the "Bankruptcy Court's equitable power may be used to effectuate the purposes of Chapter 11, which includes the 'restructuring of a business' finances to enable it to operate productively, provide jobs for its employees, pay its creditors and produce a return for its stakeholders") (citing H.R. REP. NO. 95-595 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5763, 5977) (internal quotations in original).

⁴⁸ See, e.g., In re R.H. Macy & Co., 170 B.R. 69, 75 (Bankr. S.D.N.Y. 1994) (holding that debtor "has an affirmative, overarching duty to reorganize and maximize estate assets for the benefit of all creditors") (emphasis added) (citing NLRB v. Bildisco and Bildisco, 465 U.S. 513, 527 (1984) (holding that, because "the policy of Chapter 11 is to permit successful rehabilitation of debtors," rejection of a collective bargaining agreement should not be permitted without a finding that that policy would be served by such action)); In re Chateaugay Corp., 118 B.R. 19, 22 (Bankr. S.D.N.Y. 1990) (noting that the paramount policy and goal of Chapter 11, *to which all other bankruptcy policies are subordinated*, is the rehabilitation of the debtor") (emphasis added) (citing Bildisco, 465 U.S. at 527 ("[t]he fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources")); In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (holding that the payment of prepetition wage, salary, and medical benefit claims of debtors' active employees, did not, on the basis of equity, require payment of same claims to striking employees because the "policy of equality among creditors . . . may be of significance in liquidation cases under Chapter 7, however, the paramount policy and goal of Chapter 11, *to which all other bankruptcy policies are subordinated*, is the rehabilitation of the debtor," not one particular group of creditors) (emphasis added); see also Int'l Assoc. of Machinists and Aerospace Workers v. Eastern Airlines, Inc., 121 B.R. 428, 433 (S.D.N.Y. 1990) ("A paramount and important goal of Chapter 11 is the rehabilitation of the debtor by offering breathing space and an opportunity to rehabilitate its business and eventually generate revenue."); Kings Terrace Nursing Home and Health Related Facility v. New York State Dept. of Social Servs. (In re Kings Terrace Nursing Home and Health Related Facility), 184 B.R. 200, 203 (Bankr. S.D.N.Y. 1995) ("The object of Chapter 11 of the Code is to permit a potentially viable debtor to restructure and emerge from bankruptcy protection."); In re 312 W. 91st St. Co., Inc., 35 B.R. 346, 347 (Bankr. S.D.N.Y. 1983) ("The legislative purpose of Chapter 11 is the speedy rehabilitation of financial troubled businesses.").

⁴⁹ Chateaugay, 118 B.R. at 22.

⁵⁰ R.H. Macy, 170 B.R. at 75.

31. By the Trading Theory, the Ad Hoc Committee and the Creditors' Committee seek to replace this primary purpose with an insistence that Dana ensure that its senior managers are motivated to provide bondholders a recovery based on trading value today — even *before* the Debtors have utilized any tools provided by chapter 11 to rehabilitate their business and notwithstanding the impact of such a course of action on the long-term viability of Dana's business and Dana's other stakeholders. While Dana recognizes that it has a fiduciary duty to *all* of its creditors to maximize the *value* available to such creditors, Dana believes that this duty is best served by rehabilitating their business and ensuring long-term viability, rather than ensuring a particular threshold recovery for a specific group of creditors. Moreover, Dana has a responsibility to all of its creditors. Maximization of value does not necessarily equate to maximization of short-term ROI (return on investment) for certain creditors. Rather, maximization of value means the rehabilitation of a debtor's business such that management is not biased toward or incentivized to promote the interests of one particular constituency. The Creditors' Committee and the Ad Hoc Committee seem to dispute this fundamental premise of chapter 11.

D. Dana's Request For Authority to Enter into the Modified Agreements is Timely.

32. Dana strongly disagrees with the Unions' assertions that the Modified Agreements are "simply premature" and that the "Emergence Bonuses and change of control provisions should be considered in the context of plan negotiation when actual outcomes and the recipients' contributions can be evaluated." Union Objection at ¶29.⁵¹ As set forth in the

⁵¹ In support of the Union Objection, the Unions cite In re America West Airlines, 171 B.R. 674 (Bankr. D. Ariz. 1994) and In re U.S. Airways, Inc., 329 B.R. 793 (Bankr. E.D. Va. 2005). Both cases are easily distinguishable. In America West Airlines, after having confirmed a Plan, the debtors asked for the court's approval of a bonus program, which rewarded the CEO with restricted stock units and the chief operating officer with cash. In re America West Airlines, 171 B.R. at 676. The value of the restricted stock relied on

Declaration of Richard B. Priory in support of the Motion (D.I. 1602) (the "Priory Declaration"), Dana's Board of Directors believes that, during the chapter 11 process, the core management team of Senior Executives will be called upon to negotiate with multiple constituencies that will have, at times, conflicting interests and agendas for the reorganized Dana.⁵² The Modified Agreements ensure the Senior Executives' independence. For this reason, the Board has determined that Dana needs the assurance that it will have its executive team in place to work, independently, through this restructuring effort and that the Senior Executives must be sufficiently insulated from one constituency's parochial interests so that they can continue to dedicate themselves to maximizing values for *all* the Debtors' competing constituents and successfully transitioning Dana to any successor board of directors. Id. at ¶6.

33. Debtors routinely establish emergence bonuses far in advance of actual emergence or confirmation of a Plan. See, e.g., In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. May 15, 2006) (approving, among other things, establishment of "success fee" earned post-reorganization); In re Adelphia Commc'ns Corp., No. 02-41729 (REG) 2003 WL 22316543, at *35 (Bankr. S.D.N.Y. Mar. 4, 2003) (authorizing debtors to enter into contract with their CEO providing for, in part, an initial post-reorganization equity award valued at

(continued...)

the debtors' expected market capitalization and number of issued shares. As such, America West's equity emergence bonus was not an incentive payment but rewarded the CEO for results already achieved and was more appropriate at the end of the case when both the expected market capitalization and number of shares could be estimated. In contrast, Dana seeks to incentivize the Senior Executives to work toward the specific goal of completing the chapter 11 reorganization and maximizing the value of the Debtors' estate by implementing the Emergence Bonuses now. U.S. Airways requested severance payments in contemplation of a merger between U.S. Airways and America West that would be, nonetheless, still effective if the merger fell through, leaving the debtors with a sizeable administrative claim that could "preclude or limit the consideration of alternative reorganization plans to the merger proposal." U.S. Airways, 329 B.R. at 800. By contrast, the proposed Modified Agreements do not contain severance payments and do not limit the Debtors' reorganization alternatives.

⁵² See Priory Declaration at ¶5; Priory Deposition at 93:19-94:13.

\$10.2 million). For these reasons, approval of Dana's entry in the Modified Agreements is entirely appropriate at this stage of the Debtors' chapter 11 cases.

II. ENTRY INTO THE MODIFIED AGREEMENTS AND ASSUMPTION OF THE SERP AGREEMENTS REPRESENT A SOUND EXERCISE OF THE DEBTORS' BUSINESS JUDGMENT.

A. Standard of Review.

34. Courts have exhibited deference to a debtor's business judgment under section 503(c) of the Bankruptcy Code similar to that normally shown under section 363(b). This Court's decision in Calpine and Judge Walrath's decision in Nobex support the application of the business judgment standard to a section 503(c) analysis. See Calpine Transcript, at 84:3-8 ("it's certainly clear to the court that these plans and agreements are proposed in good faith and based upon appropriate business judgment. Further, the record before me validates that the focus of the plans and agreement[s] is to maximize value for all the estates"); Nobex Transcript, at 86-87 (the 503(c)(3) provision is a catchall provision and "nothing more than a reiteration of the standard under 363 . . . under which courts had previously authorized transfers outside the ordinary course of business and that is, based on the business judgment of the debtor, the court always considered the facts and circumstances of the case to determine whether it was justified.").

35. Furthermore, in large, complex chapter 11 cases in this district and elsewhere, courts have authorized a debtor's entry into and assumption of employment agreements for key members of managements as an exercise of such debtor's reasonable business judgment under sections 363 and 365 of the Bankruptcy Code. See e.g., In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. May 15, 2006); In re Footstar, Inc., Case No. 04-22350 (Bankr. S.D.N.Y. May 27, 2004); In re Adelphia Commc'ns Corp., Case No. 02-41729 (REG) (Bankr. S.D.N.Y. Mar. 7, 2003); In re WorldCom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Dec. 16, 2002); In re Global Crossing Ltd., et al., Case Nos. 02-40187 (REG) through

02-40241 (REG) (Bankr. S.D.N.Y. May 31, 2002); accord In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Feb. 21, 2003); In re KMart Corp., Case No. 02-B02474 (Bankr. N.D. Ill. Apr. 23, 2002). Even In re America West Airlines, a case cited by the Unions (Union Objection, at 12), approved a debtor's payment of a success bonus as a valid exercise of the debtor's business judgment. In re America West Airlines, 171 B.R. 674, 678 (Bankr. D. Ariz. 1994).

36. For these reasons, the Objecting Parties' attempt to ignore the statutory requirements of sections 503(c)(3) and 365 of the Bankruptcy Code and impose a "heightened scrutiny" standard under these Code sections do not find support within the language of the statute, are contrary to existing case law and should be denied.

B. The Process Followed by the Debtors Represented "Best Practices".

37. In the Union Objection, the Unions do not substantively object to Mercer's conclusions and recommendations. Instead, they merely question Mercer's independence and methodology and support these accusations with general articles critical of Mercer's industry as a whole. Notably, neither the Unions nor any other Objecting Party provide any expert evaluation of the executive compensation proposed by the Debtors. Furthermore, none of the Objecting Parties have recognized, or responded, to the fact, that Mr. Priory also obtained input from F.W. Cook & Co., the Compensation Committee's independent advisor, on the reasonableness of the terms of the Senior Executive's proposed employment agreements.

38. The Agreements and Modified Agreements resulted from market data and were established by Dana's Compensation Committee with the advice of multiple experts and input from the Co-Chairs of the Creditors' Committee as follows:

- Mr. Priory, in his capacity as Lead Director and Chair of the Compensation Committee, sought confirmation from Dana's Board of Directors that this management team, most of which was hired in the 18 months prior to the commencement of these cases to effect a restructuring of Dana, was the

Board's choice to lead Dana through its restructuring efforts.⁵³ Thereafter, the process was directed by Mr. Priory,⁵⁴ as the Chair of the Compensation Committee. He began the process by requesting a review of the prepetition contracts with the Senior Executives and the ability of the Debtors to perform their obligations thereunder.⁵⁵

- Mr. Priory then sought advice from Dana's head of Human Resources and Dana's compensation expert, Mercer, as to industry practice, the competitive market of peers, as well as chapter 11 practices and comparables.⁵⁶
- Mr. Priory took Mercer's inputs and reviewed them with Frederic Cook of F.W. Cook & Co., the Compensation Committee's independent compensation expert.⁵⁷
- Mr. Priory presented to the Compensation Committee Mercer's recommendations, Frederic Cook's advice and his own thoughts.⁵⁸ Following debate and discussion of the possible terms of employment agreements and various potential performance metrics, the Compensation Committee determined that emergence was the best metric and crafted the term sheet for Mr. Burns.⁵⁹
- Following that, Mr. Priory informed Mr. Burns of the structure of his term sheet and consulted with Mr. Burns regarding which other executives should receive similar agreements and, if so, the appropriate bonus levels for such executives. Mr. Burns then took on the responsibility for providing the Compensation Committee with recommendations for the bonus levels to be established for the other five executives.⁶⁰
- Thereafter, the term sheets that were the subject of the Motion were crafted, judged reasonable by F.W. Cook & Co., the Compensation Committee's independent expert, approved by the Compensation Committee and presented to Dana's Board of Directors.⁶¹ It was the

⁵³ See Priory Deposition at 88:17-89:23.

⁵⁴ Id. at 21:18-22:4.

⁵⁵ Id. at 25:14-17.

⁵⁶ Id. at 32:12 – 33:15. See also Dempsey Declaration at ¶9.

⁵⁷ See Priory Deposition at 41:16-21.

⁵⁸ Id. at 48:4 – 49:2.

⁵⁹ Id. at 34:19 – 36:8.

⁶⁰ Id. at 58:24 – 60:7.

⁶¹ Id. at 18:20 – 22:19; 77:19 – 78:20.

consensus of the Board that Dana should commence discussions with the Creditors' Committee about the term sheets,⁶² which discussions were commenced by Mr. Priory, and file the Motion.⁶³

- Neither Mr. Burns nor any of the Senior Executives were involved in the negotiation of their term sheets. Mr. Priory did not negotiate with Mr. Burns or any other Senior Executive. The term sheets were presented to the Senior Executives just prior to filing the Motion.⁶⁴
- Mr. Priory had numerous discussions with the Co-Chairs of the Creditors' Committee, Scott Hatton of Sypris Technologies, Inc. and Peter Faulkner of P. Shoenfeld Asset Management LLC.⁶⁵ These discussions were the direct cause of the Supplement.⁶⁶ In the course of these discussions, Mr. Hatton sent Mr. Priory a listing of important concerns of his constituents with the term sheets.⁶⁷ Thereafter, Mr. Hatton provided Mr. Priory with a summary of their discussions, annexed hereto as Exhibit B, which served as the basis for the Supplement.⁶⁸
- Because (a) Mr. Priory and the Compensation Committee had been advised by their experts that the compensation packages included in the term sheets that were the subject of the Motion were below the industry median and barely competitive and (b) Mr. Priory viewed the Supplement as a reduction in those compensation packages, Mr. Priory did not seek further advice from F.W. Cook & Co. and only limited advice from Mercer in making the reductions and changes effected by the Supplement.⁶⁹
- In responding to the request from certain of the Objecting Parties for additional metrics, Mr. Priory selected the method used in Calpine. In addition, upon review of the earnings required to justify and sustain such value, Mr. Priory was satisfied that the EBITDAR levels represented an achievable, but sufficiently difficult, task, as those levels required *doubling* the Debtors' pre-bankruptcy EBITDAR performance of 2005 and

⁶² Id. at 78:22-24.

⁶³ Id. at 23:10 – 24:23.

⁶⁴ Id. at 65:9 – 68:17

⁶⁵ Id. at 103:10-18.

⁶⁶ Id. at 109:20 – 114:10.

⁶⁷ A copy of this correspondence is attached hereto as Exhibit H.

⁶⁸ See Priory Deposition at 187:22 – 188:12.

⁶⁹ In particular, Mercer advised Mr. Priory on the appropriate value to assign to the non-compete component of the Modified Agreements. See Dempsey Supplement at ¶¶21-25.

substantially improving upon the 2006 EBITDAR Targets established by the AIP.⁷⁰

- Recent events, including increasing commodity costs and announced production cut backs by significant customers, have only served to enhance the level of difficulty to achieve the Target TEV proposed in the Supplement.

39. The data provided to Mr. Priory by Mercer included (a) a comparison of compensation at companies of similar size and complexity to Dana, (b) published survey data for companies similar to Dana, (c) a comparator group of six other manufacturing companies in chapter 11 with sales in excess of \$3.5 billion and (d) the Senior Executives' prepetition compensation.⁷¹ Considering the effect of the restructuring on the Senior Executives' compensation, Mercer concluded that if the Senior Executives' long-term incentive programs are not replaced with an earning opportunity, the aggregate total prepetition target compensation package of the Senior Executives would be 65% below the market median and 40% below their 2005 target levels. Mr. Burns, in particular, would receive a 49% reduction in target compensation.⁷² Dempsey Declaration at ¶7. With respect to the Modified Agreements, Mercer concluded that when the target Emergence Bonus is annualized over a two-year restructuring period, the Senior Executives' aggregate total compensation is still 41% below the peer group median and only 4% above the median when compared to similar chapter 11 debtors (as opposed

⁷⁰ See Priory Deposition at 126:10 – 128:16.

⁷¹ Dempsey Declaration at ¶9.

⁷² In its objection, the Ad Hoc Committee asserts that "even the Debtors admit, the CEO's 2006 target compensation is 23% greater than the chapter 11 median, even before taking into account the proposed Emergence Bonus or severance payments." Ad Hoc Committee Objection at ¶31. This is factually incorrect. The Dempsey Declaration, which the Ad Hoc Committee cites, but apparently misread, specifically states that aggregate compensation *includes* the Emergence Bonus annualized over a two-year restructuring period. Dempsey Declaration at ¶13.

to their full peer group).⁷³ Id. ¶13. No evidence has been presented to date by any of the Objecting Parties to challenge these conclusions.

C. Total Enterprise Value ("TEV") Is an Appropriate Performance Metric and the Targets for the Emergence Bonus Are Appropriate.

40. Use of value maximization as a performance metric preserves management's independence vis-à-vis the multiple constituencies in the Debtors' chapter 11 cases. See Dempsey Declaration at ¶17; Dempsey Supplement at ¶14. Tying management's compensation to one constituency's recovery (e.g., bondholder recovery) undermines that independence. After much analysis and deliberation in a robust and appropriate process, the Debtors have established an executive compensation program similar to Calpine's. Both Calpine and the Debtors use economic value post-emergence to drive compensation. In Calpine, the variable component of the success fee was tied to the debtor's post-emergence market adjusted enterprise value and plan adjusted enterprise value. Likewise, the Debtors link the variable component of the Emergence Bonus to Dana's TEV post-emergence. That method replicates the Calpine precedent, minimizes the distortion caused by distress traders and interim trading values and demands an EBITDAR performance that is challenging and represents a substantial improvement.⁷⁴

41. In determining the TEV targets for the Emergence Bonus, Dana, with the assistance of Miller Buckfire & Co. LLC ("Miller Buckfire"), the Debtors' financial advisors and

⁷³ In fact, even if the Target Emergence Bonus is earned, the aggregate annualized compensation of only two of the Senior Executives will exceed the Chapter 11 Median, with only Mr. Burns exceeding the Chapter 11 Median by a meaningful percentage. However, Mr. Burns' annual remuneration, regardless of whether he earns a Minimum, Threshold or Target Emergence Bonus, is within the mid-range of the annual remuneration provided to CEOs of manufacturing companies in chapter 11 with annual sales in excess of \$3.5 billion, without taking into consideration the signing bonuses provided to certain of such CEOs (\$2 million for the CEO of Calpine and \$856,537 for the CEO of Federal Mogul). Dempsey Supplement at ¶30.

⁷⁴ See Priory Deposition at 126:10-128:16.

investment bankers, has calculated the TEV of the Debtors on, among other dates, March 2, 2006 (the day before these cases filed) (\$2 billion) and July 13, 2006 (\$2.6 billion). Based on these calculations, as well as the Debtors' current and projected earnings from EBITDAR, Dana established \$2 billion as the threshold TEV (the "Threshold TEV") and \$2.6 billion as the target TEV (the "Target TEV") for the Emergence Bonus.

42. Certain of the Objecting Parties have objected to the Threshold TEV and Target TEV and asserted that the Senior Executives should not receive Emergence Bonuses for achieving the same TEVs that existed immediately prior to the commencement of these chapter 11 cases. These assertions reflect a fundamental misunderstanding of the TEV that must be reached before any amounts in excess of the Minimum Emergence Bonus can be paid.

43. In connection with the confirmation of any Plan, the Debtors' enterprise value will have to be determined. A common method of determining enterprise value is based on valuation multiples of comparable companies. Under this methodology, the enterprise value of the subject company can be estimated by applying trading multiples of public companies with similar lines of business and operating characteristics to certain financial metrics of the subject company. Comparable companies to the Debtors include American Axle, ArvinMeritor, Magna International and TRW (collectively, the "Comparable Companies"). The Comparable Companies currently trade in the range of a 4.5x to 5.5x multiple of LTM (last 12-months) and projected EBITDA.⁷⁵

44. The Debtors generated EBITDAR of approximately \$217 million in 2005. Using the Debtors' 2005 EBITDAR, the current EBITDA valuation multiples of the Comparable

⁷⁵ Earnings before interest, taxes, depreciation and amortization, adjusted for non-recurring charges. Due to the method by which EBITDAR is calculated, the terms EBITDAR and EBITDA as used herein are synonymous.

Companies (4.5x to 5.5x) imply the Debtors could have an enterprise value of approximately \$968 million to \$1.18 billion. At an enterprise valuation of \$2 billion and \$2.6 billion, Dana is valued between 9x and 12x 2005 EBITDAR, which is more than double the norm. This is hardly an easily achieved goal. For the Debtors to achieve the Threshold TEV of \$2 billion, using a multiple range of 4.5x to 5.5x EBITDAR, the Debtors would need to generate EBITDAR of approximately \$364 million to \$444 million, *or \$147 million to \$227 million over Dana's 2005 EBITDAR*. For the Debtors to achieve the Target TEV of \$2.6 billion, using a multiple range of 4.5x to 5.5x EBITDAR, the Debtors would need to generate EBITDAR of approximately \$473 million to \$578 million, *or \$256 million to \$361 million over Dana's 2005 EBITDAR*.⁷⁶ Accordingly, because the Debtors' achievement of either the Threshold TEV or the Target TEV would require a *significant* improvement in Dana's enterprise value, these targets, as selected by Dana, are appropriate and by no means assured.⁷⁷ Indeed, as Mr. Priory noted:

Remember that we're in a very deteriorating industry. Remember that Ford Motor Company, General Motors and others continue to cut their schedules, reduce the amount of product needed from this company. The company has a massive effort under way to try to restructure itself, reduce its cost of operation, reflecting the fact that it's going to lose a considerable amount of business.

Only last week — or this week I guess it was — Ford has announced another major cut that will directly hit Dana. I mean, so our perspective is we're climbing a mountain and at the top of that mountain, if it's 2.6, is a pretty good top of the mountain. And despite that it may be 2.6 reflected in the marketplace today, we have a sense of what EBITDA — what kind of earnings would be necessary — in cash generation would be necessary to achieve an enterprise value of 2.6. And our restructuring experts tell us it's a

⁷⁶ The difficulty in achieving any significant improvement in EBITDAR has only increased due to the announced cuts in production by Ford and Chrysler discussed above.

⁷⁷ The significant increase in EBITDAR required for the Senior Executives to achieve the Threshold TEV and Target TEV underscores (a) that there is no "magic bullet" to rehabilitate the Debtors and (b) the rejection of contracts or termination or modification of retiree healthcare benefits alone will not permit the Debtors to achieve Threshold TEV or Target TEV.

Herculean effort. And so it's based on that kind of input But the expert advice that we have received and looking at the Company's operation, looking at its current results, looking at the game plan that it has for going forward, commodity prices it faces, the inability to price in that marketplace and a deteriorating order set, it could be a Herculean effort for these gentlemen to achieve even the 2, let alone the 2.6.

If somebody could change our view and show us how it's very, very achievable, we'd be all ears. As a board we want them to go as high as they could possibly go. But their current target is \$350 million of EBITDAR on the annual basis and if we're talking 2.6 numbers you're probably talking about 460, \$470 million of EBITDAR. And the multiples are reducing in this industry. So that's at a 5 multiple. If the multiple is really a 4.6 it's even more EBITDAR that they have to produce to get to that level of 2.6.

And it's difficult. . . . they have difficult jobs to do. We want them to do it. We want to incentivize them to do it, but we don't want to make it impossible for them to be able to achieve.

Priory Deposition at 126:10 – 128:15; see also Deposition of Michael J. Burns, August 29, 2006 at 134:18 – 135:20 and 146:14 – 147:9 (discussing the challenges facing Dana due to, among other things cutbacks by customers, particularly Ford).

45. Finally, Dana's performance metrics, more so than Calpine's, motivate management to contribute to the company's long-term health. As noted above, under the Modified Agreements, Dana's TEV is measured at the Valuation Date, six months post-emergence. By contrast, Calpine's TEV is measured only 60 days post-emergence. As such, the Debtors' Emergence Bonus compels the Senior Executives not only to focus on the Debtors' emergence, but also to address long-term issues that threaten Dana's continued viability. Accordingly, regardless of whether reorganized Dana enters into additional employment agreements with the Senior Executives post-emergence, the Senior Executives are tied to the long-term health of the company and are properly incentivized to maximize that value.

D. Interim Trading Values for Claims Should Not Replace The Determination of a Disinterested Independent Board, Acting in Good Faith in the Honest Belief that the Proposed Action is in The Best Interest of the Debtors, Their Creditors and Their Estates, and in Reliance on Expert Advice.

46. Rather than utilizing the commonly-accepted TEV calculation put forth by Miller Buckfire, both the Creditors' Committee and the Ad Hoc Committee would have the Debtors tie the Senior Executives' compensation to the preservation of the bondholders' recoveries by tying such compensation to the maintenance of the current bond trading price. However, the dangers of tying any part of a debtor's rehabilitation to distressed trading values are well documented. See, e.g., Harvey R. Miller, Chapter 11 Reorganization Cases and the Delaware Myth, 55 Vand. L. Rev. 1987, 2016 (2002) ("distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments"). Specifically, commentators have cautioned:

Distressed debt trading and changing relationships as a result of globalization and technology have upset the symbiotic relationship of a debtor and its creditors. Traders purchase debt claims at a substantial discount, as they are concerned solely with the return on their investment. Worse yet, traders may purchase debt in order to obtain control of the debtor and dominate the administration of the reorganization case. **In either case, from the perspective of the distressed debt trader, time is of the essence in order to maximize the return on its investment. The sooner a trader or group of traders can force a debtor out of Chapter 11, the sooner they can monetize their claim and obtain a return on their speculation, without regard to any other factor, including whether or not the debtor had been fully rehabilitated when it was pushed out of Chapter 11. . . . To the extent they are able to, and in their efforts to maximize returns, distressed debt traders will impose constraints upon the debtor's management. Such a strategy limits the options a debtor may have enjoyed prior to the onset of large scale debt trading that became popular after the amendment to Bankruptcy Rule 3001(e) in 1991 facilitated the trading of claims and eliminated bankruptcy court oversight from claims trading. Unfortunately in some respects, distressed debt traders' entry into the reorganization paradigm has transformed Chapter 11 reorganizations from**

primarily rehabilitative processes to dual-purpose processes that stress maximum enhancement of creditor recovery in addition to rehabilitation of the debtor entity. The dual objectives are often in conflict as the debtor strives to rehabilitate its business while creditors seek a fast recovery on their claims irrespective of the debtor's need to reinvest in the business to make it viable. As a result, distressed debt trading may be a material cause of recidivism, forcing reorganized debtor entities to return to the bankruptcy court to pursue another Chapter 11 reorganization effort.

Harvey R. Miller & Shai Y. Waisman, Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?, 78 Am. Bankr. L.J. 153, 181-82 (2004)

(emphasis added); see also Hearing Tr., In re Delphi Corp., Case No. 05-44481 at 185:17-25 (Mar. 22, 2006) (expressing concern that the equity committee may take action to "artificially pump up the value of the current stock on a trading basis" rather than act in the best interests of its constituency) (copy of the relevant pages is attached hereto as Exhibit I).

47. That is the paradigm that the Creditors' Committee and the Ad Hoc Committee seek to promote. The Trading Theory paradigm cannot be further from the legislative purpose of chapter 11. Indeed, counsel to the Creditors' Committee seemed to recognize as much, at least when opposing the formation of the Equity Committee, when it wrote in a letter to the United States Trustee:

[H]istory has taught us time and time again that using the share price of a chapter 11 debtor is a very poor way to predict value that may ultimately be distributed to equity. Indeed, just last month in the Delphi bankruptcy case, Appaloosa argued that the trading price of the Debtors' stock (or debt) was irrelevant to determine whether a company was insolvent. . . . Appaloosa argued that the use of post-petition share price to indicate solvency was "utterly unreliable" methodology and that such an approach was "totally improper in our view and unreliable to determine . . . whether or not that equity will be in the money . . . " See In re Delphi Corp., Case No. 05-44481 (Bankr. S.D.N.Y.) Hearing Tr. March 22, 2006 at 75-6.

Letter from Thomas Moers Mayer to Diana G. Adams, dated May 1, 2006, at pp. 4-5 (opposing the appointment of an equity committee in these chapter 11 cases).

48. So the paradigm is rotten when applied to equity trading, but somehow gains acceptance when applied to debt trading. The Creditors' Committee cannot have it both ways. The simple fact is that the proper standard by which to judge the appropriateness of executive compensation is *not* by tying it to distressed bond trading values but, rather, by the business judgment of the Debtors and the Court's view that it complies with section 503(c) of the Bankruptcy Code.

E. A Focus on Artificial Creditor Recoveries Has No Place in a Discussion of Executive Compensation.

49. Although couched as objections to the Motion, the Objections of the Ad Hoc Committee and the Creditors' Committee are, in reality, an attempt to (a) impose their own judgment, designed to protect the interests of certain of Dana's creditors (*i.e.*, bondholders), in lieu of Dana's business judgment and (b) negotiate issues in the context of the Motion before the Court that are more properly addressed in the confirmation process.

50. The Ad Hoc Committee and the Creditors' Committee appear to believe that Dana has a duty to ensure a short-term rate of return for certain of Dana's creditors, even at the expense of Dana's long-term viability.⁷⁸ For example, both the Ad Hoc Committee and the

⁷⁸ None of the cases cited by the Ad Hoc Committee in opposition to the Dana's TEV calculation stand for the proposition, as suggested by the Ad Hoc Committee, that Debtors must maximize creditor recoveries at the expense of enterprise value or long-term viability. In re Ball, No. 03-14674, 2006 WL 2038641 at *3 (Bankr. D. Ariz., Apr. 5, 2006) (addressing debtor's request that court recuse itself); In re Bush Indus., Inc., 315 B.R. 292, 298-99 (Bankr. W.D.N.Y. 2004) (confirming plan of reorganization over equity committee's objection); Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery, 330 F.3d 548, 573 (3d Cir. 2003) (authorizing creditors' committees to pursue the debtor's avoidance actions); In re Accomazzo, 226 B.R. 426, 429 (D. Ariz. 1998) (holding that trustee's decision not to invest estate funds could be negligent); In re Big Rivers Elec. Corp., 213 B.R. 962, 965 (Bankr. W.D. Ky. 1997) (overruling motion requesting disqualification of bankruptcy judge); Lifemark Hosps. of Louisiana, Inc. v. Liljeberg Enters., Inc., 1998 WL 274256 (E.D. La. May 22, 1998) (affirming bankruptcy court's confirmation of plan of reorganization); Commodity Futures Trading Comm. v. Weintraub, 471 U.S. 343, 355 (1985) (allowing

Creditors' Committee complain that the proposed Emergence Bonus incentivizes the Senior Executives to reject contracts simply to increase the Debtors' bottom line and their own Emergence Bonuses. This proposition ignores the fact that the Debtors will be unable to reject any executory contract unless and until they can demonstrate that such rejection is a reasonable exercise of their business judgment and benefits their estates. Similarly, with respect to the retiree benefits, any attempt by the Debtors to modify such benefits under section 1114 of the Bankruptcy Code will have to satisfy that section's rigorous requirements, and the Debtors will have to demonstrate, among other things, that such modification or termination is necessary for the continuation of the Debtors' business.

51. The Debtors should not be prevented from (and the Senior Executives penalized for) taking actions to improve their long-term cost structure if they otherwise meet the applicable standards set forth in the Bankruptcy Code. Yet this is precisely what the Ad Hoc Committee and Creditors' Committee are positing should happen – even before any of these issues are legitimately before the Court. These Objections seek to put arbitrary and theoretical constraints on the Debtors, through the Senior Executives, that would prevent them from doing precisely what they are charged as fiduciaries with doing – "fixing the business" to provide

(continued...)

trustee to waive corporate attorney – client privilege). In fact, four of the seven cited cases cited by the Ad Hoc Committee hold that the debtor maintains a duty to maximize the value of the estate. In re Ball, 2006 WL 2038641 at *3 ("[a]ny timely motion must establish the benefit to the estate and creditors..."); Chinery, 330 F.3d at 573 ("[a]long with those powers, of course, comes the trustee's fiduciary duty to maximize the value of the bankruptcy estate"); In re Accomazzo, 226 B.R. at 429 ("[a]s representatives of the estate, a bankruptcy trustee owes a fiduciary duty to creditors of, and parties-in-interest to, a bankruptcy estate"); In re Big Rivers Elec. Corp., 213 B.R. at 965 (stating "[t]he most critical concern, however, was the question of whether Big Rivers was meeting the fiduciary duty incumbent upon it to maximize the value of the estate."). Moreover, one of the cases even holds that "[t]he premise of a reorganization is to ensure that the debtor emerges from bankruptcy as a viable concern." Chinery, 330 F.3d at 573. Accordingly, the Ad Hoc Committee is simply attempting to use select quotes out of context to advance their position at the expense of all of the Debtors' stakeholders.

long-term value to all stockholders.⁷⁹ In fact, based on the Objections, it appears that the Objecting Parties would prefer the Debtors to emerge from chapter 11 much as they went in, with the same debt load and institutional problems that drove them into chapter 11 in the first place. The Debtors, however, are unwilling to render futile these chapter 11 filings by refusing to exercise their business judgment to make the hard decisions required of any debtor that fulfills its fiduciary duties. It is simply inappropriate and antithetical to the Senior Executives' fiduciary duties for them to circumscribe their independence in favor of securing short-term gains for certain creditors.

III. THE DEBTORS ARE ENTITLED TO CLARIFICATION OF WHICH INDIVIDUALS ARE SUBJECT TO THE RESTRICTIONS SET FORTH IN SECTION 503(c)(2) OF THE BANKRUPTCY CODE.

A. The Debtors Maintain a Company-Wide Severance Policy.

52. The Debtors maintain a company-wide severance policy for non-union employees (the "Severance Plan").⁸⁰ Under this plan, eligible employees may receive severance benefits for up to six months if certain conditions are met. As a result of having this plan, and contrary to the Union's assertions otherwise, Dana does not seek an impermissible advisory opinion⁸¹ by requesting that this Court determine that, on a postpetition basis, the term "insider,"

⁷⁹ The other Objecting Parties are pursuing their own agendas. The Unions presumably would be content if the Debtors do not seek to modify their collective bargaining agreements or benefits for their retirees, while, the Equity Committee appears to advocate the payment of a Emergence Bonus only if the threshold that must be obtained for such a bonus provided equity with a recovery, notwithstanding the substantial unlikelihood of such an outcome.

⁸⁰ Severance benefits for unionized employees are determined by the applicable collective bargaining agreement.

⁸¹ The precise analytical contours of what constitutes an advisory opinion are unclear. In re McDonald, 205 F.3d 606, 608 (3d Cir. 2000). For example, Fed. R. Civ. P. 12(b)(6) allows a court to resolve certain legal disputes in advance of factual disputes. "Even though allowing discovery and conducting a hearing on the facts could provide an alternative, and perhaps in some sense narrower, ground for resolving the suit, a court can still consider a legal issue that, if decided in the defendant's favor, would be dispositive on a motion to dismiss for failure to state claim upon which relief may be granted." McDonald, 205 F.3d at 608.

as defined in section 101(31) of the Bankruptcy Code,⁸² applies only to (a) with respect to the Debtors' current employees, the Senior Executives, and (b) any person who serves as a director of a Debtor at the time of inquiry (each, an "Insider"). To the contrary, due to the dearth of applicable case law construing section 503(c) of the Bankruptcy Code, Dana merely seeks a ruling for the purpose of implementing, in the ordinary course of business, the Severance Plan and any other employment agreements providing for severance and other payments with employees that are neither Senior Executives nor directors of a Debtor. It would be inefficient and wasteful of judicial and estate resources for the Debtors to have to come to Court each time they wished to implement the Severance Plan for a manager. Accordingly, the Court clearly has the authority to entertain this request at this time.⁸³

B. The Relief Sought is Consistent with the Amended Bankruptcy Code.

53. With the exception of Messrs. Stone and Goettel, the remaining Senior Executives are officers for whom compensation was reported in the Debtors' filings with the Securities and Exchange Commission (the "SEC"), pursuant to SEC Regulation S-K, Item 402.

⁸² If the debtor is a corporation, section 101(31) of the Bankruptcy Code defines an insider to include, among other parties, a director or officer of the debtor, the person in control of the debtor, a relative of any of the foregoing and an insider of any affiliate of the debtor. 11 U.S.C. § 101(31).

⁸³ While federal courts are barred from rendering opinions with respect to "abstract, hypothetical, or contingent questions," *Alabama State Fed. of Labor v. McAdory*, 325 U.S. 450, 461 (1945), "the existence of a right to declaratory judgment type relief in a Bankruptcy Court is clear today." *In re Buckhardt*, 8 B.R. 327, 329 (Bankr. D.P.R. 1980) (holding that bank's request for advice on how it should proceed with respect to its collateral was a request for declaratory judgment, not an advisory opinion); see also *In re Shondel*, 950 F.2d 1301, 1309 (7th Cir. 1991) (bankruptcy court decision to reopen chapter 7 case to allow modification of post-discharge injunction and enable claimant to proceed in state court on wrongful death claim against debtor to determine debtor's liability for purpose of recovering from debtor's insurer was not unconstitutional advisory opinion because bankruptcy court gave actual relief by modifying injunction to allow claimant to proceed in state court).

Although a request for a declaratory judgment normally requires the institution of an adversary proceeding, a court has the power to entertain such a request through a motion when "[a]ll of the parties are before [the court]" because "the only effect of requiring the [party] to start over with a complaint would be to postpone the date on which this Court would be in condition to rule on the matter a condition which [the court should likely be able to] find [. . .] itself in today just as effectively as if the parties proceeded through the full adversary procedure route." *Buckhardt*, 8 B.R. at 330.

As such, of the Debtors' current employees, only the Senior Executives are officers, for SEC purposes, or persons in control of the Debtors, within the scope of section 101(31) of the Bankruptcy Code.

54. As noted above, in the ordinary course of its businesses, Dana maintains the Severance Plan and may find it necessary and appropriate to enter into retention and severance agreements with its non-"Insider" employees. Absent an order of the Court establishing which of Dana's employees are "Insiders," Dana would have to petition this Court each time it invoked the Severance Plan to ensure that compliance with section 503(c)(2) of the Bankruptcy Code was ensured and that retention or severance payments to Dana's non-Insider employees would not be subject to future challenge. A declaration by the Court that clarifies the meaning of the term "insiders" for the purposes of section 503(c) of the Bankruptcy Code would permit Dana to implement the Severance Plan and make payments to non-Insider employees without fear of a subsequent 503(c) objection to such payments. Therefore, Dana has presented the Court with a live issue with respect to its desire to enter into employment agreements with non-Insiders on which the Court can issue declaratory relief.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

CONCLUSION

For the reasons described above, in the Motion, in the Supplement and those that will be presented at the hearing on the Motion, the Objections should be overruled and the Motion should be granted.

Dated: August 31, 2006
New York, New York

Respectfully submitted,

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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

[Excerpts from Priory Deposition]

1

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

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5 In re:

Chapter 11

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Dana Corporation, et al.,

7

Case No.

8

06-10354 (BLR)

-----x (Jointly Administered)

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DEPOSITION OF RICHARD PRIORY

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New York, New York

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Wednesday, August 23, 2006

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23 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

24 JOB NO. 8379

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2 elected to chair that Compensation Committee
3 and I have ever since.

4 Q. What are your responsibilities as
5 the chairman of the Compensation Committee?

6 A. Well, there's a charter that we've
7 established which outlines the
8 responsibilities -- overall responsibilities
9 for the Compensation Committee. One of my
10 jobs is to ensure that we fulfill that
11 charter. That charter is published on the
12 website and a number of other locations.

13 And my job is to move the
14 organization along, achieve the objectives
15 that we have contained in that charter, assure
16 that we have fair and competitive
17 compensation, to assure that we provide fair
18 and competitive benefits to our employees.
19 And to recommend to the board changes
20 regarding CEO compensation or any of the real
21 senior executive compensation of the company.

22 Q. How many other members are there
23 on the Compensation Committee?

24 A. There are three other members
25 besides myself.

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1 R. PRIORY
2 to the board it would still be up to the board
3 to determine whether or not to approve them;
4 is that right?

5 A. Oh, yes. Right.
6 Now, let me step back. Certainly
7 in the case of the CEO. In the case of the
8 lower-level, I suspect our charter may say
9 that we have the right as the Compensation
10 Committee to make decisions on the lower
11 levels. Without the need for board approval.
12 They've delegated us that right. But for the
13 most part we just bring it all to the board.
14 It simplifies things so there aren't questions
15 later.

16 Q. What role, if any, did the
17 Compensation Committee have in the formulation
18 of the original agreements?

19 A. They directed it to be done.

20 Q. And whom did -- well, when you say
21 they directed it to be done, what did the
22 Compensation Committee direct?

23 A. Well, initially, it became evident
24 as we began to enter the zone of insolvency
25 and we began to see concerns with regard to

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1 R. PRIORY
2 liquidity, we asked the -- asked counsel that
3 we had available to us, to review the
4 contracts that we had under way with the
5 existing executives, determine those areas of
6 the contracts that we could perform on and
7 those areas of the contracts which we could no
8 longer perform on. If there was a Chapter 11.

9 It was those areas that we could
10 no longer perform on that gave us considerable
11 amount of concern. And so as a consequence
12 our job was to ferret out how we would fill
13 the gaps, if you will, with regard to those
14 kinds of contracts.

15 Q. Okay. And what -- having
16 identified issues -- the issues you've
17 mentioned, what did the Compensation Committee
18 determine to do?

19 A. We determined to attempt to fill
20 the gaps so that we could assure the
21 executives would have reasonable and fair
22 compensation for the work that they had to do
23 before them. And that we incentivized and
24 drove them to do the right kinds of things.

25 Q. And how did the Compensation

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2 Committee propose to do that?

3 A. Well, initially we have -- well,
4 there's a number of parts of components --
5 there are a number of components to the
6 compensation. First being base salary.
7 Second being an annual incentive plan that
8 drives them pretty much on the short term to
9 do key things. And one of which in this case
10 was to generate cash in the form of EBITDA.
11 And that was critically important to us as we
12 saw going forward. So we wanted to
13 incentivize them to create and drive and build
14 EBITDA.

15 And then there was a whole portion
16 of their compensation that, if you look back
17 at prior years, represented nearly 66 percent
18 of their compensation that had been delivered
19 in equity. Various forms of equity.

20 At that time we really had no
21 vehicle it was clear to us to be able to
22 deliver that value. So we dealt only with the
23 first part which was the salary and the
24 short-term incentive because that was
25 critically necessary, had to be done

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immediately, and it was -- actually, it was
3 right on top of exactly when we would approve
4 it each year.

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So we approved a plan that we felt
was appropriate for the time. And then we
figured out -- we basically said we'll take
the time to figure out what to do now with the
long-term compensation that's simply been
lost. Or has been made irrelevant basically
as a result of the filing so that we spent
that time trying to figure out how to replace
that gap, if you will, and the structure that
served the interest of all the stakeholders in
the company.

Q. Okay. Did the Compensation
Committee rely on any other people or entities
to assist it in the process -- in this process
you described?

A. Yes. The normal process we would
go through as a Compensation Committee would
be we have a Human Resources executive who
serves the committee and is also secretary of
the committee. And he's sort of the -- one of
the pins around which a number of things

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2 revolve within the company. It was his job to
3 go work with Mercer, the consulting firm,
4 compensation consulting firm, to ferret out
5 what looks like it will be a rational plan for
6 a company such as Dana in the conditions that
7 it's in, Chapter 11, what's competitive in the
8 marketplace for Chapter 11 companies, as well
9 as what's competitive purely in the
10 marketplace at this time.

11 Mercer always keeps a pretty close
12 tab on that. So it was Mr. Spriggle, the head
13 of the Human Resources, responsibility to work
14 with Mercer to bring back their ideas about
15 what could be done.

16 They brought back a strawman,
17 suggesting, in essence, here's the kind of
18 things that can be done. The Compensation
19 Committee itself has an independent consultant
20 by the name of Fred Cook who works with Fred
21 Cook Associates. Fred Cook and I work
22 together. He does not work with management,
23 does not work with Mercer. Works solely for
24 me. Has for as long as I've been a member of
25 the Compensation Committee. And he worked for

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2 the prior chairman of the Compensation
3 Committee as well.

4 I then took these ideas, and they
5 were nothing more than ideas, not necessarily
6 a plan, just a set of ideas about what needs
7 to be done, to Fred and said, Fred, utilize
8 the experience within your company with regard
9 to Chapter 11 companies, see what you think
10 with regard to some of the things that are
11 listed on this piece of paper.

12 Fred provided me then a couple of
13 phone conversations and some materials with
14 regards to what he thought seemed appropriate
15 in a Chapter 11 situation that we were faced
16 with.

17 And from that I went back then,
18 having taken both inputs and instructed the
19 head of Human Resources, here are the kinds of
20 things that makes sense to me, here are the
21 kinds of things that don't make sense to me.
22 What I want you to do is really craft up a
23 white paper that has these kinds of elements
24 in it, put these other issues over here so
25 that the Comp Committee members can all debate

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them as to whether they should be included or not, and then we'll come to a meeting and begin to decide how we want to frame this agreement and that we did just that. Brought the Compensation Committee together, showed them a strawman that had been developed, talked about the things that had been in, had been recommended but were taken out, why they were taken out and took them through the entire process. Listened to all their inputs. All of them on that Compensation Committee are seasoned CEOs. They know the systems very well. I think they know the industry pretty well. And so they were just right on top of the issues. And we ended up forming, in essence, a proposal going forward.

We took that, following that meeting -- and my job, as I recall, was to take all of the inputs, they were very good ones, readjust a few things and basically create a term sheet. And then from that term sheet we would circulate it amongst the Compensation Committee members. We would have another meeting by phone and we'd determine

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2 whether it actually captures the essence of
3 what we were trying to do to support the
4 company and move the management team along.
5 We had that telephone conference
6 call. We decided on a set of term --
7 basically a term sheet. We then made the
8 board aware of the term sheet and all of its
9 provisions, told them the basis and the logic
10 under which we thought it made sense. We told
11 the board that we would not ask for their --
12 I'm going a little bit here from memory and it
13 could be slightly vague but it should be all
14 in the minutes.

15 As I recall, we asked the board
16 not to approve these provisions, this term
17 sheet, because we wanted to have dialogue with
18 the UCC and other committees that may or may
19 not be available to us as we go down the pike.

20 Q. Okay. Let me stop you before you
21 go through discussion with each --

22 MR. MANNING: He hasn't finished
23 his answer. Let him finish his answer,
24 please.

25 Q. Please continue.

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1 R. PRIORY

2 A. Okay.

3 MR. O'NEILL: Before you do that
4 could you go back and read the question.

5 (Record read.)

6 A. I think I'm strictly trying to go
7 through the process and all the entities that
8 were involved.

9 Q. Go ahead.

10 A. We explained to the board that it
11 would require, we believed, considerable
12 discussion with the committees to ferret out
13 what their views were on these subjects. It
14 may lead to a renovation or modification of
15 these agreements, this term sheet, and so we
16 wanted to engage in that prior to bringing it
17 to the board for approval.

18 And, in fact, at that time we were
19 slightly unclear with regard to exactly how
20 that process was going to work, whether it
21 would go to the court before the board would
22 approve it, et cetera, et cetera.

23 So that's where we sort of left
24 it. And we began some dialogue I think
25 through the professionals with the UCC. And a

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2 motion was filed I think on January --

3 MR. MANNING: It would be June.

4 A. June. Excuse me. June 29th.

5 Containing that initial motion. Which
6 contained all the attributes basically of that
7 term sheet. Those attributes had been
8 converted --

9 Q. When you said the attributes of
10 that term sheet, which term sheet are you
11 referring to?

12 A. This is the one that was submitted
13 on June 29th. The original that we talked
14 about earlier.

15 Q. Okay.

16 A. Okay?

17 And the board had indicated their
18 comfort with that. They had no idea what the
19 outcome of the dialogue with the various
20 committees would be nor with the court. But
21 they were comfortable that that served the
22 purpose that they had intended when it was
23 placed in the motion and put forth.

24 Now, this story goes on if you'd
25 like me to go on. We made modifications and

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ended up with a supplement.

Q. I will get to that, I assure you.

A. Okay.

Q. You've given a lengthy response and I just want to make sure I understand all the individual pieces of it.

A. Okay.

Q. I think you indicated that the first thing the board did or the Compensation Committee did was instruct an HR executive, Mr. Spriggle, to formulate a proposal. Is that right?

A. Well, the first thing we did was to ask counsel to tell us where we could no longer perform on the contracts these gentlemen had in place.

Q. And counsel was --

A. We did that as an input to eventually crafting a term sheet that we thought would be satisfactory to the executives as well as satisfactory to all the stakeholders.

So we had to have that input. We had to know where it was we were going to come

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up short in terms of delivering this contract value.

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And then what we wanted to do was to take the term sheet, take the contract that we had with them and do as little damage, if you will, because it was a hard fought, hard negotiated contract with Mr. Burns who had representation at that time. And we wanted to stick as close as we could to the various definitions and things of that sort that were established a couple of years earlier when he was hired. And that way not opening up Pandora's box with a whole series of issues.

So we were just trying to deal with the gaps that were created by our availability to deliver on the product, if you will, or fulfill the contract.

We felt we were in breach. And we were going to come up with a way to remedy that breach.

Q. Okay. So you had counsel review the contracts first; is that right?

A. Yes.

Q. And counsel indicated to you areas

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1 R. PRIORY
2 in which it concluded that Dana could not
3 perform under the existing employment
4 agreements?

5 A. That's correct.

6 Q. And --

7 A. And also areas that we were
8 performing. We could perform.

9 Q. Okay. And you -- you, meaning the
10 Compensation Committee -- sought to remedy
11 those areas where Dana could not perform or
12 counsel advised Dana could not perform under
13 the existing employment agreements; is that
14 right?

15 A. That's correct.

16 Q. Okay. And what were those areas?

17 A. For instance, we could no longer
18 deliver a long-term incentive plan based on
19 equity compensation. Period. Restricted
20 stock, stock options and performance stocks.
21 For example. And that was probably the
22 biggest whopper of all. We simply couldn't
23 provide any compensation in that category that
24 was relevant at that time.

25 Q. When you say you couldn't provide

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1 R. PRIORY

2 compensation, do you mean you couldn't
3 actually give stock or the stock just wouldn't
4 be worth anything?

5 A. The stock wouldn't be worth
6 anything. That's right.

7 And that was -- I had -- and, in
8 fact, in the materials that were submitted to
9 you, there is a nice breakdown that counsel
10 had done which lists all of the things we were
11 unable to perform on. That was the most
12 significant in my mind. So when that
13 represented two-thirds of their compensation,
14 I considered that to be a fairly big issue
15 that I needed to focus on I must tell you.

16 Q. Okay. So counsel identified the
17 areas in which Dana couldn't perform under its
18 existing agreements. That's right?

19 A. Right.

20 Q. Once those issues had been
21 identified, what then did the Compensation
22 Committee do?

23 A. Well, we began looking at ways to
24 close the gap.

25 Q. Okay.

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1 R. PRIORY

2 A. We looked at the gap on the
3 compensation for the long-term incentive and
4 felt that we could reasonably size a
5 completion bonus that could fill that void if
6 they were successful in bringing the company
7 through bankruptcy and bring it out of
8 bankruptcy successfully. So we thought, well,
9 we could craft up a completion bonus
10 associated with that that would replace some
11 of it and we proceeded down that path.

12 Q. Mechanically you -- the company --
13 in order to address these perceived gaps in
14 the employment agreements, the Compensation
15 Committee instructed Mr. Spriggle to develop a
16 term sheet of additional items; is that
17 correct?

18 A. No. I think for the most part the
19 Comp Committee itself actually created those.
20 I had asked Spriggle and Mercer for input.
21 Fred Cook for input. And so we had a
22 mish-mash of information about the kinds of
23 things we ought to be doing.

24 And the Compensation Committee
25 basically said I think we need to do this, we

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1 R. PRIORY

2 answers back, then it became an issue for Rich
3 and Mercer to begin looking at those areas and
4 determine, you know, how they filled the gap.
5 Or is it necessary to fill the gap.

6 (Pause on the record.)

7 Q. What is your understanding of what
8 Mr. Spriggle and Mr. -- and Mercer undertook
9 in attempting to provide you with input? Or
10 the input the Compensation Committee
11 requested?

12 A. They provided us, as I recall,
13 information with regard to the kinds of things
14 that were done in similar circumstances in the
15 industry. What others had done. They
16 provided I believe a strawman with regard to
17 the kinds of things they thought we ought to
18 do, Mercer as a compensation expert. I know
19 they provided me that. That's the piece of
20 information that I sent on to Fred Cook to
21 have it reviewed independently by Fred.

22 And so that's what they were asked
23 to do.

24 Q. When you say a strawman, could you
25 tell me in a little more detail what you're

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1 R. PRIORY

2 referring to?

3 A. A draft of the kinds of things
4 who -- two-page, perhaps three-page draft, of
5 here are the kinds of things that we think,
6 you know, have been done in the industry --
7 look like they should be done in the industry,
8 to address this exact same issue, basically,
9 the gap, the long-term compensation gap. And
10 here's what competitive. That kind of
11 information. Probably typed -- I don't
12 really -- I can't really picture the express
13 format or anything of that sort. But it's
14 certainly in the Compensation Committee
15 materials in the data that was produced.

16 Q. Um-hum. So that --

17 A. They would typically come to us
18 with a nice little Powerpoint presentation
19 with all the stuff in there. And we would
20 sort of go through that and make a judgment
21 ourselves as to what needs to be done.

22 Q. So Mercer -- just so I understand,
23 Mercer and Mr. Spriggle provided an outline of
24 forms of compensation that might be provided
25 in the industry; is that right?

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1 R. PRIORY

2 A. Yes.

3 Q. Together with ranges of the
4 amounts of compensation that would be viewed
5 as competitive in the marketplace?

6 A. Yes.

7 Q. Did they do anything else? At
8 this point in time?

9 A. Than those two items?

10 Q. Yeah.

11 A. Yes. I think they told us what
12 had been done in other cases. We had
13 discussions with regard to metrics,
14 performance metrics. In an attempt to -- as
15 you might imagine a board is always excited
16 about getting good metrics to drive the
17 management team to a place where you want them
18 to go. It only makes sense.

19 So there certainly was dialogue
20 about what metrics were people using in
21 Chapter 11 that were relevant. Where were we
22 in the -- sort of in the -- given the time
23 frame where we were relative to being able to
24 define some of those metrics.

25 So we had dialogue about the

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R. PRIORY

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2 metrics. We ended up settling on successful
3 emergence as the key metric. We were going to
4 stay focused on cash for the short-term but
5 really focus on successful emergence for the
6 plan. A lot of questions about speed of
7 emergence. How do we get -- how do we get it
8 so -- a real success is when they get it done
9 really quick and really good and really do a
10 good job.

11 So there was lots of debate about
12 all those subjects. We ended up coming down
13 on the side of successful completion would be
14 a good trigger for the completion bonus
15 basically.

16 And I can't really recall as I'm
17 sitting here right at this moment the rest of
18 the conversation. But there was certainly a
19 lot of conversation about all kinds of issues
20 related to this.

21 Q. Just to get the time frame right,
22 this is approximately -- these conversations
23 with Mercer are occurring in March of 2006?

24 A. Yep. Latter March. Probably
25 early April time frame.

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Q. And people involved in the conversation -- who were the people who are involved in the conversations?

A. Typically it would be each member of the board of directors -- each member of the Compensation Committee of the board of directors. Excuse me.

It would be Rich Spriggle, the head of the Human Resources area. It would be typically either Peter Chingos or -- Peter was in in the beginning and had some heart difficulty. And then came along John Dempsey. I think John Cornell would be involved on occasion in some of those meetings. Or on the phone. From Jones Day. And the person that was clearly absent in all cases was Mike Burns.

I had set up a criteria from day one that basically said none of the professionals -- none of the management of the company nor the other members of the Comp Committee should talk to Mike Burns about his compensation because he had a conflict in this. And as a consequence we would remain

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R. PRIORY

1 Cook Associates to come in and they could
2 utilize Mercer to get data, industry data and
3 other data banks and what have you, but to
4 assist in the drafting of a contract to
5 attract Mike Burns to the company. So there's
6 an occasional thing like that I might ask Fred
7 to do which is beyond just Compensation
8 Committee consulting.
9

10 In that case he was deeply
11 involved in the process of crafting a contract
12 for Mr. Burns.

13 Q. Okay. When you provided the
14 strawman to Mr. Cook what if anything did you
15 ask him to do?

16 A. I asked him to review it from his
17 perspective. I asked him to make certain he
18 dragged together the knowledge that he had
19 within his firm associated with Chapter 11s
20 and include that sort of knowledge in the
21 review and give me his comments.

22 Q. I guess what if anything did Mr.
23 Cook tell you?

24 A. Mr. Cook and I had a telephone
25 conversation. He had a lot of issues. Quite

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1 R. PRIORY

2 you, Rick Priory, received input from Mr. Cook
3 what, if anything, did you do with that?

4 A. I reviewed it. Talked to Fred.
5 Began to make up my own mind I think at that
6 point in time, having the two sets of
7 information what would start to look
8 reasonable to me. Endeavored to provide
9 guidance to Mr. Spriggle that I want you to
10 create now a strawman that sounds like this.
11 And it's a two-year strawman, not a three-year
12 strawman. And it's a this and it's a that.
13 And you craft that up and that's what the
14 Compensation Committee will end up looking at
15 and making a determination as to what they
16 want to do. I'll make them aware of where
17 Mercer has made a recommendation and Fred has
18 disagreed with it and sees it a different way
19 so the company -- or the Compensation
20 Committee members would be aware of where the
21 changes occurred and why they occurred.

22 And then the Compensation
23 Committee can make whatever changes they want
24 to arrive at a final term sheet that the
25 committee was happy with. And that's what

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And then when that is done we have the five of them in terms of recommendations that we support, and the CEO supports, and then we have our own recommendation for the CEO. That's how it works.

Q. Okay. Just so I'm clear about what information the Compensation Committee solicited from Mr. Burns following the April 28th meeting, at the April 28th meeting the Compensation Committee decided on a compensation structure; is that fair?

A. Right.

Q. And you then subsequently went to Mr. Burns and asked him which other executives should participate in that additional compensation?

A. That was one question, yes.

Q. And what the amounts that they would receive as part of the structure would be?

A. That is correct.

Q. Anything else?

A. Well, yeah. I mean, first of all, Mike at that time doesn't know what this is

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R. PRIORY

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2 all about. So the first thing I've got to do
3 to trigger it is I have to sit down with Mike
4 and explain to Mike what the term sheet, how
5 it came about, how we structured it, that it
6 was industry competitive, why it was industry
7 competitive, et cetera.

8 Exactly how it was going to be
9 handled.

10 And then I say to Mike, now,
11 having said that, you can certainly record any
12 concerns you have with me and things of that
13 sort. But this is kind of what we think is
14 fair and what we think is logical for an
15 individual in your position.

16 Now, beyond that the five
17 gentlemen that report to you -- or the X
18 number of people that report to you -- and he
19 was doing -- deciding on who should be in that
20 group, they have to be set. And they also
21 have to be -- within this structure you'll
22 have to determine what the bonus levels should
23 be for each of the individuals and obviously
24 you'll have to have a logic, a very clear
25 logic. We can give you some ideas on logic

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1 R. PRIORY

2 but they better be clear because they just
3 don't fly if they're not solid logically.

4 And Mike said fine. And he took
5 that on as his responsibility to get that
6 information together, to make his decisions
7 and then get it back to me.

8 Q. Prior to April 28th, 2006 had you
9 had any discussions with Mr. Burns concerning
10 the modification of his employment agreement
11 or any of the other senior executives'
12 employment agreements?

13 A. Oh, yes. Mike had made me aware
14 of a considerable amount of angst in the
15 organization at senior levels. You know, and
16 it's always a person or two that he was very
17 concerned about. And that, you know, we had
18 to do something to address the fact that these
19 gentlemen have entered the year starting
20 January 1 of 2006 with the lion's share of
21 their compensation undefined.

22 And that was creating some angst
23 and he wanted to make certain he didn't lose
24 anybody by mistake, and is there anything I
25 can tell him. And the answer I would give

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R. PRIORY

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But I'm just trying to, as much we can, figure out when the little conversations occurred.

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A. Okay.

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Q. Did these little conversations occur before the Compensation Committee took up the issue of the modification of the executive agreement?

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A. No, no. First substantive conversation that I had with Mike Burns on the subject of compensation in the term sheet was just prior to filing of the motion. I called him up -- if I recall correctly it was a Saturday evening. I said I'm going to fax you something. And I want you to just sit down, relax a little bit. Don't call me back till Sunday afternoon. Think hard about it. It's been put together with best -- the best I can do. It's got logic in it. It makes sense to me. It's industry competitive. Da, da, da, da, da. And it is the term sheet that we intend to submit as the motion to the court for approval. Call me back tomorrow and let's talk about it and see what issues you have.

And that was the first substantive

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R. PRIORY

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dialogue that I had with Mike on that subject.

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And he said, Well, I've been

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waiting for this phone call. I said, Good.

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Take all the time in the world. We had a fine

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conversation on Sunday morning. He asked a

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million questions because if you just look at

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the term sheet and you're a smart individual

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there's all kinds of gaps in there. And how

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does this work, how does that work. So he had

11

an awful lot of questions about how would this

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work, how would that work, da, da, da, da.

13

And I tried to give him the best explanation I

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could. I said it's my understanding it would

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be this way, my understanding on that one it

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would work this way. And we got through that

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dialogue. And I said that's what we're going

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with. We think it's competitive. I said the

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biggest question probably, Mike, is what do

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you think with regard to your guys. Your

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team.

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And he said, as I recall, you

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know, I think that can work with our team but

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we just got to get it done. We got to get

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through this and get them focused on what

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R. PRIORY

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they're supposed to be doing and not concerned
3 about the health and well-being of their
4 family and the -- you know, et cetera, et
5 cetera.

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And that really concluded that
conversation. So at that point in time Mike
never agreed to anything. Mike never
indicated it was suitable to him. But he
never indicated it wasn't suitable to him.
And I thought that was an appropriate position
for him to have at that time.

Q. And that Sunday morning
conversation occurred shortly after the
Compensation Committee meeting that's
described -- on April 28th?

MR. MANNING: That's not what he
testified to. He said it was before the
motion was filed.

A. No, I -- just before the motion
was filed.

Q. Okay.

A. The motion was filed June 29th?

MR. MANNING: Late June.

A. Yeah. So there's a lot of time

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R. PRIORY

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that's -- yeah, there's a lot of time between
3 this point in time and when it was actually
4 filed.

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But it was the filing of the
motion that triggered the communication cycle.
And he had to then go out and communicate with
his guys because it was going to be public as
soon as the motion was released. So prior to
the motion being released not a lot of
substantive conversations at all on the term
sheets or anything of that sort. I think none
at all with Mike, for example. And none with
his guys. Other than the conversation about
we're working on things. We're moving it
along. We're making progress. To encourage
them that something was being done.

Q. Maybe I misunderstood. I thought
you had indicated that following the April
28th meeting you then reached out to Mr. Burns
to discuss the structure of the compensation
package.

A. No. It was actually prior to
sending out the motion because that was the
time it was going to become public.

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R. PRIORY

Priory Exhibit 3. Do you recognize that document?

A. Yes, I do.

Q. What is it?

A. It's the minutes of the Compensation Committee of the board of directors of Dana held at the Dana corporate offices on Tuesday, May 16th of 2006.

Q. Do you want to take a minute and review it?

A. Um-hum.

(Pause on the record.)

A. Okay.

Q. What occurred at the meeting described in Exhibit 3 relating to the modification of the senior executives' employment compensation?

A. I think this is the point where we have our strawman, if you will, and we had asked Burns to set appropriate -- we gave him industry information on what would make these gentlemen competitive in the marketplace, near median, for example. And said given that information, then, how would you set their

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R. PRIORY

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emergence bonuses. Some of them -- you know, you may want to monkey around with them and provide somebody with more incentive because they are able to creat more value versus the other individuals.

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And Mike had gone through an exercise of his own to determine how those bonuses should be sized. And then provided that back. And this is where we -- I think this is where we all discussed those numbers at that point in time.

I trust you get what I'm saying.

Q. Yeah. I understand.

And at the conclusion of this section of the Compensation Committee, the Compensation Committee expressed its support for the agreements as then formulated; is that right?

A. Yes.

Q. Okay.

A. I think that's the point where we authorized the company to begin the dialogue with the Unsecured Creditors Committee.

THE WITNESS: Is it appropriate

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1 R. PRIORY

2 once we identified the gaps that we had and
3 recognized that we had a compensation issue I
4 think we adopted a set of objectives
5 immediately at that point in time. Well, what
6 do we need to do. Well, he need to be fair
7 and reasonable in this. It's got to be
8 competitive. Da, da, da, da. You know.

9 Q. One of the objectives listed in
10 paragraph 9 is (a) in the hole: "Ensuring
11 Dana of an effective management team."

12 Do you see that?

13 A. Yes.

14 Q. What did you mean -- or what did
15 the Compensation Committee mean in setting
16 that as an objective?

17 A. All right. Very clearly what was
18 meant there was the board as well as the
19 members of the Comp Committee acting as part
20 of the whole board had determined that we
21 believed that Mike and his team that he had
22 been able to build through 2004 and 2005, were
23 undoubtedly in our mind the best alternative
24 that we had to take this company through
25 bankruptcy and emerge successfully.

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1 R. PRIORY

2 We had spent a lot of time
3 recruiting Mike Burns, nearly six months, and
4 we had numerous candidates. Mike was
5 unquestionably the top candidate of the list.
6 Bar none.

7 Mike had dealt with some of the
8 poor performance in the company and had
9 brought in key people from around the industry
10 which we really do respect and are capable of
11 doing the job. The team has really just come
12 together. And so our major objective was to
13 say, you know, do we go hire a mercenary to
14 take us through this. Do we take a member of
15 the board and put him in there or to take this
16 through bankruptcy. Or is this the management
17 team that ought to be running this company
18 through bankruptcy.

19 And it was unanimously felt by the
20 board that this was unquestionably the team
21 with Mike at the lead. And so we wanted to
22 make sure that effective management team
23 remained, period.

24 Q. You wanted to keep the management
25 team you had; is that right?

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1 R. PRIORY

2 constituents in Dana's bankruptcy case?

3 A. Meaning the various stakeholders?

4 Q. Yes.

5 A. Certainly not at that time.

6 Subsequent to the motion being submitted, yes,
7 I did.

8 Q. With whom did you have such
9 discussions?

10 A. I was contacted by an intermediary
11 on behalf of a Scott Hatton and Peter
12 Faulkner, the two co-chairs of the Unsecured
13 Creditors Committee indicating a desire to
14 talk to me. I called them immediately and we
15 engaged in a number of dialogues over a period
16 of weeks, actually, discussing the motion, and
17 the Unsecured Creditor Committee's view of the
18 motion. And as time went on the view of the
19 motion was apparently represented more than
20 the Unsecured Creditors Committee. There had
21 been meetings with the Ad Hocs and with
22 Equity. And I think at one time -- I don't
23 think -- I know that Scott had indicated as
24 well as Tyler -- Tyler Grief, who was another
25 party that participated who reports to Peter

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R. PRIORY

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2 things.

3 Q. And approximately when did that
4 occur?

5 A. I'm not being unresponsive. I'm
6 just trying to ferret through a few things to
7 see if I can triangulate.

8 I believe that was just prior to
9 the filing of the supplemental motion. So
10 that would have been just prior to April 4th.

11 August 4th. Excuse me.

12 Q. After your discussions with
13 representatives of the Creditors Committee,
14 did the debtor seek to modify the term sheets
15 for the proposed -- for the original
16 agreement?

17 A. Yes.

18 Q. Who at Dana was involved in that
19 process?

20 A. I was involved in the process. I
21 conveyed back to Rich Spriggle and the Mercer
22 people as well as I think John Cornell from
23 Jones Day, sort of the issues that I felt
24 having had my dialogue with members of the
25 Creditors Committee, what issues were burning

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1 R. PRIORY

2 for them. And what we could do about closing
3 the gap between them and us with regard to
4 each of these provisions in the contract.

5 And there were a number of things
6 that we could do. So we proceeded to modify
7 things as long as we retained the
8 competitiveness and the fairness of the
9 contracts, we were quite comfortable at
10 restructuring them a bit to satisfy the
11 desires of the members of the committee.

12 We began looking at a different
13 set of metrics. There was this very strong
14 desire to have equity tie in the metrics. We
15 began looking at a set of metrics, whether
16 they be the one that had originally been
17 recommended by a member of the Creditors
18 Committee or we just use EBITDAR. So that was
19 the same measure we were using for our annual
20 incentive plan, tax plan. We had a hard time
21 figuring out the logic of that. Having a
22 long-term plan with EBITDAR as a goal and a
23 the short-term plan with EBITDAR as a goal and
24 that sort of thing.

25 We then began looking at other

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1 R. PRIORY

2 metrics that had been used in other cases.

3 And there's very little amount of information

4 near term in recent cases.

5 We ended up settling in with the
6 use of our restructuring advisors, that being
7 Miller Buckfire, on total enterprise value.

8 We looked at that and felt, well, none of
9 these measures are perfect but total
10 enterprise value is one that I believe would
11 certainly serve the fiduciary responsibilities
12 of the board as an incentive measure. And
13 looked to us like as good as any.

14 Now, keep in mind we probably
15 prefer the emergence bonus but others liked a
16 set of metrics like that. So we ended up
17 restructuring the plan, reconfiguring it in a
18 way in which it was driven by total enterprise
19 value at different points in time at different
20 amounts of enterprise value.

21 And if you look in our -- and I'm
22 sure you have -- in our supplemental motion
23 it's just that kind of incentive plan. So we
24 converted that incentive plan for them.

25 There was grave concerns about the

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R. PRIORY

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liquidated damage portion of the contract. We finally decided if there's considerable concern about that, fine, let's strip it all down. Let's just deal with the issues that are absolutely critical to us then.

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What's critical to us is that we have a noncompete, nonsolicitation with each member of that executive team. So that -- I mean, it should -- I think it's pretty obvious but it depends on which direction you're coming from as to whether it's obvious to you.

Clearly the board doesn't want to be in a position where we might lose one executive and they'd be free to solicit the other executives and then we'd lose a group of executives. If we lose one of those executives for whatever reason, we want them on the bench in this industry. This is a stressed industry. There's not a lot of flexibility -- certainly not a lot of flexibility for sharing competitive information without it seriously potentially hurting the company.

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1 R. PRIORY

2 So as part of our fiduciary
3 responsibility to the board we believe it's
4 necessary to negotiate something wherein at
5 least we place these guys on the bench for the
6 auto industry for a reasonable period of time.
7 And we compensate them accordingly so that
8 they remain on that bench. That was
9 critically important to us.

10 Things that weren't so important
11 to us were we had tried to provide attrition
12 for the new successor board. So that the
13 management team would be required to work
14 right on through this transition period such
15 that the successor board could come in, assess
16 the circumstance, figure out what they wanted
17 to do, and if they wanted to eliminate that
18 management team, they could just eliminate the
19 management team on their time versus the
20 management team exiting for one reason or
21 another. And then they'd be left with a giant
22 recruiting effort, mercenaries and everything
23 else.

24 So we tried to provide a
25 transition to present to the Creditors

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1 R. PRIORY

2 Committee and that was really of no interest
3 to them. So we just -- because it was
4 complicated we removed that. Took it all out.
5 And made it simpler. And the simpler we can
6 get this thing, the better in terms of trying
7 to get it resolved.

8 So there were a number of changes
9 we made which we believe were quite responsive
10 to the concerns of the Creditors Committee.

11 Q. Was anyone other than Mercer and
12 Miller Buckfire involved -- and you --
13 involved in the process of modifying the
14 original agreement?

15 A. I think John Cornell was involved.
16 I believe clearly Mercer was involved. Miller
17 Buckfire was involved. I was involved. Rich
18 Spriggle was involved. I think beyond that,
19 that's about it.

20 Q. Fred Cook?

21 A. No. Fred Cook was not involved.
22 In general, everything we were doing at that
23 stage was really reducing -- reducing value
24 below where Fred had argued. So I didn't use
25 Fred on that.

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1 R. PRIORY

2 retention of the senior executives?

3 A. I think the compensation package
4 as a whole is essential to the executives.
5 That's one component of it. Which part you
6 can pull out and still retain the executive, I
7 have no idea. But I would simply say it's a
8 compensation package that's designed on the
9 whole to be sufficiently attractive to the
10 executives that they would stay with the
11 company. And we haven't tested the idea of
12 pulling this one out or pulling that out one
13 out. Nor have we ever engaged in any
14 negotiation with our executives. We're simply
15 doing what we think is right and is fair and
16 is reasonable and we would hope that when this
17 eventually gets to the executives they will
18 look at it and find it logical, reasonable and
19 sensible and sign the agreements. I have no
20 assurance that they'll do that. But that's
21 the way I would describe it.

22 Q. Do any of the senior executives
23 have a bona fide job offer from another
24 business at the same or greater rate of
25 compensation than they now receive?

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R. PRIORY

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A. That's correct. Thus they would be fully replaced for the two years' worth of long-term incentive that they have lost the opportunity to get.

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Q. And they would receive that compensation for maintaining the debtor's total enterprise value at the same level it was at in mid July of 2006; is that right?

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A. Well, I'm not sure about the term maintaining. Remember that we're in a very deteriorating industry. Remember that Ford Motor Company, General Motors and others continue to cut their schedules, reduce the amount of product needed from this company. The company has a massive effort under way to try to restructure itself, reduce its cost of operation, reflecting the fact that it's going to lose a considerable amount of business.

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Only last week -- or this week I guess it was -- Ford has announced another major cut that will directly hit Dana. I mean, so our perspective is we're climbing a mountain and at the top of that mountain, if it's 2.6, is a pretty good top of the

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R. PRIORY

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mountain. And the despite the fact that it

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may be 2.6 reflected in the marketplace today,

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we have a sense of what EBITDA -- what kind of

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earnings would be necessary -- in cash

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generation would be necessary to achieve an

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enterprise value of 2.6. And our

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restructuring experts tell us it's a Herculean

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effort. And so it's based on that kind of

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input is where we have based our judgments.

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And that's just the straight shot. There are

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others that may feel very different about

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that. But the expert advice that we have

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received and looking at the company's

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operation, looking at its current results,

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looking at the game plan it has going forward,

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commodity prices it faces, the inability to

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price in that marketplace and a deteriorating

19

order set, it could be a Herculean effort for

20

these gentlemen to achieve even the 2, let

21

alone the 2.6. And I think that's our view at

22

this stage of the game.

23

If somebody could change our view

24

and show us how it's very, very achievable,

25

we'd be all ears. As a board we want them to

00128

1 R. PRIORY

2 go as high as they could possibly go. But
3 their current target is \$350 million of
4 EBITDAR on the annual basis. And if we're
5 talking 2.6 numbers you're probably talking
6 about 460, \$470 million of EBITDAR. And the
7 multiples are reducing in this industry. So
8 that's at a 5 multiple. If the multiple is
9 really 4.6 it's even more EBITDAR that they
10 have to produce to get to that level of 2.6.

11 And it's difficult. I mean it's
12 a -- they have difficult jobs to do. We want
13 them to do it. We want to incentivize them to
14 do it. But we don't want to make it
15 impossible for them to be able to achieve. So
16 that's kind of our mindset on that subject.

17 Q. You indicated that you had
18 received expert advice concerning the expected
19 TEV levels of the debtors.

20 A. Yes.

21 Q. Who did you receive that from?

22 A. Miller Buckfire.

23 Q. Anyone else?

24 A. No. Miller Buckfire. They've
25 done analyses of the art of the possible, if

00141

1

R. PRIORY

2

A. Oh, on liquidated damages?

3

Q. Yeah.

4

5

6

7

8

9

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11

12

13

14

15

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21

22

23

24

25

A. No. I don't believe they told me that they weren't appropriate. I believe they objected to paying out any money for a number of those things. I tried to explain to them as best I could the purpose for which they were in there. And, frankly, I thought we had a reasonable understanding that some level of that was warranted. In fact, in the revised proposal we pulled out the things that we thought they would understand and really the things we insisted upon which were we wanted noncompete, we wanted nonsolicitation with this group. Period. That's our fiduciary duty to protect all the stakeholders. We want that.

Well, we could live without the other stuff such as damage to the individual and things of that sort. And the Credit Committee was having concerns about the amount of money. And so we said, okay, let's simplify it. Let's take it down to twelve months with an 18-month noncompete term on it.

00142

1 R. PRIORY

2 Let's have a nonsolicitation in there. And
3 we'll throw in the kitchen sink to try to
4 protect the company. But from our perspective
5 that's a minimum for our fiduciary
6 responsibility. And so that's how we ended up
7 where we were on the revised proposal.

8 Now, to my knowledge, I don't know
9 whether they object to having a noncompete.
10 Sometimes the conversations were not that
11 specific. Or whether they object to having a
12 nonsolicitation and things of that sort. But
13 I must tell you if they do I have no
14 alternative as far as I'm concerned, I think
15 our board has no alternative, but to go
16 forward with those. And if it's disputed the
17 judge can make a determination whether to take
18 that risk or not. It's fine with us. But for
19 our fiduciary duties I think we have to do
20 that.

21 Q. So as a result of your discussions
22 with the Creditors Committee, the debtors
23 modified the liquidated damages provisions of
24 the original agreement, right?

25 A. We stripped out of the liquidated

00152

1 R. PRIORY

2 A. Why do they provide. Because we
3 think it would be good practice to include
4 those to provide a sound safety net for those
5 executives.

6 Q. And why...

7 (Pause on the record.)

8 Q. What is the reason for that change
9 in the terms of the agreements?

10 A. As I mentioned earlier, I had
11 ongoing dialogue with the co-chairs of the
12 Unsecured Creditors Committee. It was clear
13 in that dialogue that although we could
14 reshape the program, there was belief
15 expressed to me that some of the numbers were
16 just too big and they had to be smaller.

17 And, of course, our -- considering
18 our fiduciary duties, I'm sitting there with
19 sets of experts who've independently
20 determined that this is very rational, fair,
21 consistent, et cetera, with what the industry
22 practice is. And so I'm sort of in a fix at
23 that point in time. I've got a party saying
24 these numbers are just too high. I say why do
25 you think they're too high. It's unclear

00153

1

R. PRIORY

2

exactly why they think they're too high.

3

They're just too high.

4

5

And I've got experts providing all kinds of data, enough to bury me,

6

demonstrating that these are very reasonable

7

numbers. And, in fact, are below the median

8

in the industry, period. And so I'm looking

9

in these conversations for some way to close

10

the gap.

11

12

And part of the dialogue that we had left me with the filing that the unsecured

13

creditors co-chairs really felt that the SERP

14

was a sort of a fait accompli. I mean, they're

15

going to get 80 percent of it. In fact, there

16

was even dialogue that, well, heck, if we

17

allowed it, they could go monetize it now and

18

get 80 percent of the -- in the case of Mr.

19

Burns it was \$5.9 million that he brought over

20

from GM basically. And we could monetize it

21

right now. He wouldn't get 80 percent

22

necessarily but he'd get a big number. So

23

that's in his pocket already.

24

I knew that Mike's view of that

25

was that it's probably gone. He doesn't

00156

1 R. PRIORY

2 then include the SERP. Raise the likelihood
3 that Mr. Burns and the other members would
4 receive their SERPs at the end of this
5 process. And hopefully that would give them
6 some sufficient comfort and some safety net so
7 that they could see that the comp may not be
8 even near the median. But considering the
9 fact that the SERP plays into this as a, you
10 know, a more comfortable arrangement.

11 Was I clear? I hope I've been
12 clear on that.

13 Q. Let me try to digest it.

14 I think you indicated that the
15 subject of the treatment of the senior
16 executives' SERPs was covered in your
17 discussions with representatives of the
18 Creditors Committee following the filing of
19 the motion in June; is that right?

20 A. That's correct.

21 Q. And in your view the
22 representatives of the Creditors Committee
23 believed that the senior executives' claims in
24 respect of the SERPs were worth 80 cents,
25 approximately.

00167

1

R. PRIORY

2

about everything we could think of. And
3 arrived at total enterprise value as the one
4 that we thought best fulfilled our obligations
5 to our stakeholders. But certainly we did
6 look at other metric, EBITDA, EBITDAR.

7

Frankly, didn't fully understand -- I didn't
8 fully understand the recommendation that we
9 saw from the Creditors Committee but we looked
10 at it nonetheless to make sure we understood
11 all the dynamic associated with that and I
12 don't profess to understand all of the dynamic
13 but I think there were people and advisors who
14 did.

10

11

12

13

14

15

Q. What was proposed by the Creditors
16 Committee?

16

17

A. It was a form of market value of
18 just the holdings -- the public holdings of
19 the bondholders and the equity holders. And
20 now we've gone as far as my expertise goes on
21 that particular subject.

20

21

22

Q. We had marked earlier and you were
23 shown as Exhibit 1, 2, and 3, some minutes
24 from the Compensation Committee.

24

25

A. Yes.

00187

1 R. PRIORY

2 BY MR. O'NEILL:

3 Q. Do you recognize what's been
4 marked as Exhibit 7, Priory 7?

5 A. Yes, I do.

6 Q. And is the counterproposal or at
7 least the proposal or suggestion of the
8 Creditors Committee in the right-hand column?

9 A. Yes.

10 Q. Okay.

11 MR. MANNING: I have no further
12 questions.

13 EXAMINATION BY

14 MR. O'NEILL:

15 Q. I have or a question about
16 Exhibit 7.

17 Tell me in what context -- or you
18 received Exhibit 7?

19 A. That's correct.

20 Q. And how would you characterize the
21 circumstances under which you received it?

22 A. We had had considerable dialogue
23 going back and forth through several meetings.
24 And I suggested to everyone that it's a very
25 difficult thing to continue to track the

00188

1

R. PRIORY

2

rhetoric and wouldn't it be terribly valuable

3

for us if we could just get something written

4

down. And Scott agreed with that and I'm sure

5

the others agreed.

6

MR. MANNING: Scott Hatton.

7

A. Scott Hatton. And he was kind

8

enough to take the initiative to get something

9

written down. And the effect of that is we

10

were able to move things quite considerably

11

from where we had been. So my hat's off to

12

him for getting something written down.

13

Q. And was it your understanding that

14

Exhibit 7 was provided to you as part of an

15

effort to resolve a potential objection to the

16

motion that was filed on June the 29th?

17

A. It was my understanding that they

18

looked at it carefully. They had gone back

19

and had joint meetings with the committees.

20

And I presumed at that time, and I think they

21

explained to me it was Ad Hoc, Equity as well

22

as Creditors Committee, they were having some

23

lengthy dialogues. And out of all that came

24

this collective view. And so I saw this as

25

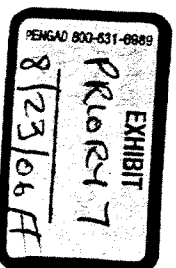
the collective view of those parties at that

EXHIBIT B

[Exhibit 7 to Priory Deposition Transcript]

ISSUE		07/16 DEBTOR PROPOSAL	07/19 CO-CHAIR COUNTER
Term		Terminates upon consummation of plan / 363 sale	Terminates upon consummation of plan / 363 sale
Completion Bonus Amount for Burns		\$4.1 mm minimum cash, subject to increase	\$4.1 mm (50% in cash, 50% in stock) if PF Public Securities MV is equal to Threshold Public Securities MV (see below) 2 months after Effective Date. 100% of remaining bonus paid in stock to extent PF Public Securities MV exceeds Threshold Public Securities MV
Completion Bonus Metric for All 6		Minimum payment guaranteed, subject to increase by .5% of increase in TEV six months after Effective Date.	Threshold Public Securities MV: Current market value of publicly traded securities (eg. Dana bonds and equity - July 11/7, 2006). PF Public Securities MV: Market value of consideration received by publicly traded securities 2 months after Effective Date.
Completion Bonus Form of Consideration for All 6		\$7.01 mm cash on Effective Date Remainder in stock 6 months Post-Effective Date	50% in cash, 50% in stock if PF Public Securities MV is equal to or less than Threshold Public Securities MV 2 months after Effective Date. 100% of remaining bonus paid in stock to extent PF Public Securities MV exceeds Threshold Public Securities MV All payable 6 months after the Effective Date in accordance with formula set forth above. Amounts shall be adjusted based on a sliding scale from depending from \$0 to a maximum of 2X target depending on the PF Public Securities MV \$3 mm non compete consideration paid at end of 18-month period.
Severance		No "severance" per se, but \$3 mm paid for 18-month covenant not to compete paid in lump sum. Also get pro rata Completion Bonus.	
Change of Control		\$0	\$0
AIP Semiannual Payment		Semiannual payments for all executives	No Semiannual for Burns
AIP Threshold Payment		Semiannual payments for all executives	No Threshold for Burns
SERP		Allowed Claim	Will not object to an unsecured claim

K123456789



TELE 800-631-8888

EXHIBIT C

[Ford Press Release, August 18, 2006]

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FORD REDUCES NORTH AMERICAN VEHICLE PRODUCTION AS PART OF ACCELERATED 'WAY FORWARD' TURNAROUND

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- 21 percent fourth-quarter reduction is part of aggressive realignment of North American production – laying the groundwork for Ford's accelerated Way Forward turnaround.
- Bill Ford: "We know this decision will have a dramatic impact on our employees, as well as our suppliers. This is, however, the right call for our customers, our dealers and our long-term future."
- Further actions aimed at accelerating Ford's turnaround will be announced in September.

DEARBORN, Mich., Aug. 18, 2006 – Ford Motor Company [NYSE: F] announced an aggressive reduction of North American production as part of its broader efforts to accelerate the pace of its Way Forward turnaround.

The company said it is reducing North American fourth-quarter production by 21 percent – or 168,000 units – compared with the fourth quarter a year ago. The revised plan also reduces the company's previously announced third-quarter plan by 20,000 units.

Bill Ford, the company's chairman and CEO, outlined the decision to cut production in a note to employees, explaining the decision is part of broader efforts to accelerate the company's North American turnaround and saying full details of additional actions will be announced in September.

"We know this decision will have a dramatic impact on our employees, as well as our suppliers," Bill Ford told employees. "This is, however, the right call for our customers, our dealers and our long-term future."

For full-year 2006, Ford now plans to produce 3.048 million vehicles at its North American assembly plants – 1.134 million cars and 1.914 million trucks – a 9 percent reduction from 2005.

The revised production plan is expected to sharply reduce the supply of several models and reduce pressure on sales incentives and dealer inventory carrying costs. The plan also reflects expectations for lower industry sales of light trucks and truck-based sport utility vehicles, as high gasoline prices are expected to continue to encourage demand for more fuel-efficient passenger cars and crossovers.

Mark Fields, executive vice president and Ford's president of The Americas, said the "tough-but-important" reduction in production plans underscores the seriousness with which the company is approaching its North American turnaround.

"We are basing our business plans on the customer, and we are determined to match production and inventories with consumer demand," Fields said. "In doing so, we'll reduce incentive spending and inventory carrying costs for our dealers – with the intent to improve residual values for our customers and stabilize operating patterns for our plants and our suppliers."

The revised 2006 production plan is summarized in the table below:

	2006 Production			Over/(Under) 2005		
	Cars	Trucks	Total	Cars	Trucks	Total
	(000)	(000)	(000)	(000)	(000)	(000)
First Quarter	316	560	876	52	(84)	(32)
Second Quarter	328	569	897	34	(42)	(8)
Third Quarter	255	395	650 *	45	(123)	(78)
Fourth Quarter	235	390	625	(13)	(155)	(168)
Full Year	1,134	1,914	3,048	118	(404)	(286)

*The previously announced third-quarter plan was 670,000 vehicles (255,000 cars and 415,000 trucks).

The new production plan will result in downtime at several assembly plants between now and the end of the year, including: St. Thomas, Ontario (Ford Crown Victoria and Mercury Grand Marquis), Chicago (Ford Five Hundred and Freestyle and Mercury Montego), Wixom, Mich. (Lincoln Town Car), Louisville, Ky. (Ford Explorer and Mercury Mountaineer), Michigan Truck in Wayne, Mich. (Ford Expedition and Lincoln Navigator), Twin Cities, Minn. (Ford Ranger) and all F-Series truck plants (Kansas City, Mo.; Norfolk, Va., Dearborn and Kentucky Truck in Louisville).

The following plants are expected to operate on straight time or overtime based on consumer demand: Hermosillo, Mexico (Ford Fusion, Mercury Milan and Lincoln MKZ), AutoAlliance International in Flat Rock, Mich. (Ford Mustang), Oakville, Ontario (Ford Edge, Lincoln MKX and Ford Freestar), Wayne, Mich. (Ford Focus), Kansas City, Mo. (Ford Escape and Mercury Mariner), Ohio Assembly in Avon Lake, Ohio (Ford Econoline) and Atlanta (Ford Taurus).

Ford Motor Company, a global automotive industry leader based in Dearborn, Mich., manufactures and distributes automobiles in 200 markets across six continents. With about 300,000 employees and more than 100 plants worldwide, the company's core and affiliated automotive brands include Aston Martin, Ford, Jaguar, Land Rover, Lincoln, Mazda, Mercury and Volvo. Its automotive-related services include Ford Motor Credit Company.

More Press Releases on Manufacturing

LOCALLY PRODUCED VOLVO S40 LAUNCHED IN CHINA
(July 17, 2006)

Mazda's Hofu Plant Tops Seven Million Units of Production
(July 06, 2006)

FORD MOTOR COMPANY, STATE OF NEW YORK ANNOUNCE INVESTMENT AT BUFFALO STAMPING
(June 29, 2006)

FORD CONFIRMS INTENT TO INVEST IN MEXICAN FACILITIES; PLAN STRENGTHENS 81-YEAR MANUFACTURING PRESENCE
(June 16, 2006)

FORD RUSSIA
(June 13, 2006)

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EXHIBIT D

[Dana Corporation Press Release, March 6, 2006]

News Release**Dana Corporation's U.S. Operations File for Chapter 11 Reorganization to Address Financial and Operational Challenges****All Dana Facilities Open, Normal Operations Continue; Company Obtains \$1.45 Billion DIP Financing Commitment from Bank Group**

TOLEDO, Ohio, March 3 /PRNewswire-FirstCall/ -- Dana Corporation (NYSE: DCN) announced today that in order to address financial and operational challenges that have hampered its performance, the company and 40 of its U.S. subsidiaries have filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Dana's European, South American, Asia-Pacific, Canadian and Mexican subsidiaries are not included in the Chapter 11 filing and are operating as normal. The filings were made today in the U.S. Bankruptcy Court for the Southern District of New York.

(Logo: <http://www.newscom.com/cgi-bin/prnh/19990903/DANA>)

Company Obtains \$1.45 Billion DIP Financing Commitment

To fund its continuing operations during the restructuring, Dana has secured a \$1.45 billion debtor-in-possession (DIP) financing facility from Citigroup, Bank of America, N.A., and JP Morgan Chase Bank, N.A. Subject to court approval, the DIP credit facility, which replaces the company's previous \$400 million revolving credit facility and \$275 million receivables securitization facility, will be used for the company's normal working capital requirements, including employee wages and benefits, supplier payments, and other operating expenses during the reorganization process.

Dana has faced a continued decline in revenues resulting from the decreasing market share and production levels of its largest domestic customers, along with sharp increases in commodity and energy prices that have outpaced the cost savings Dana has been able to achieve. The general financial condition of the industry, together with Dana's inability to renew or expand its credit facilities in a timely manner, has significantly constrained Dana's liquidity.

As a result, the company concluded, after thorough consultation with its advisors, that its interests and the interests of its creditors, employees, customers, suppliers, and the communities in which it operates would be best served by reorganizing under Chapter 11 of the U.S. Bankruptcy Code.

A Necessary and Responsible Step to Achieve a Stable and Profitable Future

Dana Chairman and Chief Executive Officer Michael J. Burns said, "The Chapter 11 process provides the company an opportunity to fix our business comprehensively -- financially and operationally. This will be fundamental change, not just incremental improvement. The Chapter 11 process allows us to continue normal business operations, while we restructure our debt and other obligations and enhance performance.

"We want to assure everyone -- our customers, suppliers, our people and our communities -- that Dana is open for business as usual," he added. "And, to this end, our customers can continue to rely on Dana for quality products -- delivered on time and to best-in-class specification.

"This is an extremely difficult, but necessary and responsible decision that will provide us with the time and opportunity to strengthen our performance and achieve a sustained turnaround at Dana."

Mr. Burns said Dana intends to proceed with its previously announced divestiture and restructuring plans, which include the sale of several non-core businesses and the closure of several facilities and shift of production to lower-cost locations. In addition, Dana will continue to take steps to reduce costs, increase efficiency, and

enhance productivity, he said.

Company Files First-Day Motions to Support Key Stakeholders

Dana has filed "First-Day Motions" in the Bankruptcy Court in New York designed to ensure that the company's business continues to function without disruption. The court filings are intended to ensure that the company can continue to pay its employees and suppliers and maintain uninterrupted delivery of products and services to its customers.

Further Information

Dana reported total assets of approximately \$7.9 billion and total liabilities of approximately \$4.7 billion, on a consolidated basis, as of September 30, 2005.

Dana's legal advisor in the Chapter 11 filing is Jones Day. The company's financial advisor is Miller Buckfire and restructuring advisor is AlixPartners.

More information about Dana's filings is available on the company's Web site at: <http://www.dana.com/>.

About Dana Corporation

Dana people design and manufacture products for every major vehicle producer in the world. Dana is focused on being an essential partner to automotive, commercial, and off-highway vehicle customers, which collectively produce more than 60 million vehicles annually. A leading supplier of drivetrain, chassis, structural, and engine technologies, Dana employs 46,000 people in 28 countries. Based in Toledo, Ohio, the company reported sales of \$9 billion in 2004. Dana's Internet address is: <http://www.dana.com/>.

Forward-Looking Statements

Statements in this release which are not entirely historical constitute "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements represent Dana's expectations based on our current information and assumptions. However, forward-looking statements are inherently subject to risks and uncertainties. Dana's actual results could differ materially from those expressed or implied in such statements due to a number of factors. These factors include Dana's ability to continue as a going concern, operate pursuant to the terms of the debtor-in-possession ("DIP") facility, obtain court approval with respect to motions in the Chapter 11 proceeding from time to time, and develop and implement a plan of reorganization under Chapter 11; Dana's ability to obtain and maintain normal terms with vendors and service providers and maintain contracts that are critical to its operations; the potential adverse impact of the Chapter 11 cases on Dana's liquidity or results of operations; Dana's ability to fund and execute its business plan and its ability to attract, motivate and/or retain key employees; Dana's ability to attract and retain customers; and other risk factors set out in our public filings with the Securities and Exchange Commission. Dana does not undertake to update any forward-looking statements in this release.

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Web site: <http://www.dana.com/>

Company News On-Call: <http://www.prnewswire.com/comp/226839.html>

EXHIBIT E

[Dana Corporation Form 8-K, March 6, 2006]



FORM 8-K

DANA CORP – DCNAQ

Filed: March 06, 2006 (period: February 28, 2006)

Report of unscheduled material events or corporate changes.

Table of Contents

<u>Item 1.01.</u>	<u>Entry into a Material Definitive Agreement.</u>
<u>Item 1.03.</u>	<u>Bankruptcy or Receivership.</u>
<u>Item 5.02.</u>	<u>Departure of Directors or Principal Officers: Election of Directors: Appointment of Princ</u>
<u>Item 9.01.</u>	<u>Financial Statements and Exhibits.</u>

Signatures

Exhibit Index

EX-99.1 (Exhibits not specifically designated by another number and by investment
companies)

EX-99.2 (Exhibits not specifically designated by another number and by investment
companies)

EX-99.3 (Exhibits not specifically designated by another number and by investment
companies)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 28, 2006

Dana Corporation

(Exact name of registrant as specified in its charter)

Virginia

(State or other jurisdiction
of incorporation)

1-1063

(Commission File Number)

34-4361040

(IRS Employer
Identification Number)

4500 Dorr Street, Toledo, Ohio

(Address of principal executive offices)

43615

(Zip Code)

Registrant's telephone number, including area code: (419) 535-4500

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Item 1.01. Entry into a Material Definitive Agreement.

(a) On February 28, 2006, the Board of Directors (the Board) of Dana Corporation (Dana) approved the Dana Corporation Annual Incentive Plan (the Plan), which is designed to provide performance-based incentives to key employees of Dana and its subsidiaries for 2006 and 2007. Award opportunities under the Plan are available to three groups of employees: "Critical Leaders" designated by the Compensation Committee (the Committee) of the Board, "Key Leaders" designated by the Committee, and "Dana Leaders" designated by the Chief Executive Officer (CEO). Among others, the Committee has designated the CEO and two other executive officers as Critical Leaders and one other executive officer as a Key Leader.

The award opportunities for all participants are based on performance measures and goals established by the Committee for awards at threshold, target and superior performance levels. For 2006, all participants have corporate financial performance goals. Key Leaders and Dana Leaders with product responsibilities also have product group financial performance goals.

The amount of the award payments will vary depending on the extent to which the performance goals are achieved. Payments under the Plan for achievement at the target performance level will range from 15% to 200% of the participants' annual base salaries as of March 1, 2006, depending upon their responsibilities. At this level, the payment to the CEO will be 200% of his salary and the payments to the other three executive officers will range from 80% to 120% of their salaries. Payments at the threshold performance level will be 50% of the target payouts and payments for superior performance will be 200% of the target payouts. There will be no payments to any participants if Dana fails to achieve the threshold corporate financial performance goal(s) established by the Committee.

Awards will be calculated and paid semi-annually. Payments for the first six months will be based on performance in that period and capped at 100% of the target payout. Payments for the full year will be based on full-year performance and capped at 200% of the target payout, less amounts previously paid for six-month performance, but in no event less than zero. The Committee may make discretionary adjustments to the full-year payments based on the achievement of individual management objectives, provided that such adjustments in the aggregate net to zero. All awards will be paid in cash.

(b) On March 1, 2006, Dana entered into a Consulting Agreement (the Agreement) with Robert C. Richter in connection with his retirement from Dana, which is discussed below in Item 5.02. The Agreement provides that Mr. Richter will function in an advisory and consulting capacity to Dana for twelve months, with an option for Dana to extend the term for two additional six-month periods. During the term of the Agreement, Dana will pay Mr. Richter a consulting fee of \$35,000 per month, plus additional hourly fees if the services requested by Dana exceed 100 hours per month, and will reimburse his out-of-pocket business expenses. Under the Agreement, Mr. Richter has agreed to certain confidentiality, non-disclosure, non-competition, non-disparagement and cooperation obligations. A copy of the Agreement is set out in the attached Exhibit 99.1.

Item 1.03. Bankruptcy or Receivership.

On March 3, 2006, Dana and forty of its domestic subsidiaries (the Debtors) filed voluntary petitions for reorganization under chapter 11 of the United States Bankruptcy Code (the Bankruptcy Code) in the United States Bankruptcy Court, Southern District of New York (the Court) (Case No. 06-10354). The Debtors will continue to operate their businesses as "debtors-in-possession" under the jurisdiction of the Court and in accordance with applicable provisions of the Bankruptcy Code and orders of the Court. The text of the news release announcing the filings is attached as Exhibit 99.2.

Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.

Robert C. Richter, former Chief Financial Officer, retired from Dana on March 1, 2006. Mr. Richter was also a Vice President of Dana and the Chairman of Dana Credit Corporation. He will continue to serve Dana in an advisory and consulting capacity.

8.01. Other Events.

On March 1, 2006, Dana issued a news release announcing that it would not make the March 1, 2006 interest payments on its 7% Senior Notes due March 1, 2029 and its 6-1/2% Senior Notes due March 1, 2009. The text of the news release is set out in the attached Exhibit 99.3.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits

- 99.1 Consulting Agreement dated March 1, 2006, between Dana Corporation and Robert C. Richter
- 99.2 Text of Dana Corporation news release dated March 3, 2006
- 99.3 Text of Dana Corporation news release dated March 1, 2006

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dana Corporation

(Registrant)

Date: March 6, 2006

By: /s/ Michael L. DeBacker

Michael L. DeBacker

Vice President, General Counsel and Secretary

Exhibit Index

- 99.1 Consulting Agreement dated March 1, 2006, between Dana Corporation and Robert C. Richter
- 99.2 Text of Dana Corporation news release dated March 3, 2006
- 99.3 Text of Dana Corporation news release dated March 1, 2006

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is made and entered into as of March 1, 2006 (the "Effective Date"), between Dana Corporation, a Virginia corporation (the "Company"), and Robert C. Richter ("Consultant").

RECITALS

A. Consultant was an employee of the Company and served as Vice President and Chief Financial Officer of the Company through the Effective Date (the "Prior Service").

B. The Company and Consultant have determined that Consultant will retire as Vice President and Chief Financial Officer, and no longer be an employee of the Company, effective on the Effective Date.

C. The Company desire to retain Consultant as an independent consultant, and Consultant desires to provide services to the Company as an independent consultant, subject to the terms and conditions of this Agreement.

AGREEMENT

In consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the receipt of which is mutually acknowledged, the Company and Consultant agree as follows:

1. EFFECTIVE DATE; RESIGNATION; RETIREMENT BENEFITS; INDEMNIFICATION

- 1.1 Effective Date of Agreement. This Agreement is effective as of the Effective Date.
- 1.2 Resignations. Consultant hereby resigns as Vice President and Chief Financial Officer of the Company and as a director, officer, employee, fiduciary or agent of the Company and all of its Subsidiaries (as defined below) and Affiliates (as defined below). The Company hereby accepts said resignations. "Subsidiary" means any legal entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Company. "Affiliate" means, with respect to any legal entity, any other legal entity directly or indirectly controlling, controlled by, or under common control with such legal entity.
- 1.3 Retirement Benefits. The Company shall make or cause to be made all lump sum payments under the CashPlus Plan, Excess Benefit Plan and Supplemental Benefits Plan (collectively, the "Retirement Plans") to which Consultant is entitled under the terms of such Retirement Plans at the dates and in the amounts as specified in such Retirement Plans to the fullest extent allowed by law. Consultant shall also be entitled to all retirement benefits, including health, medical and life insurance, in each case as such benefits are provided to similarly situated employees who have retired in accordance with the provisions of each specific applicable plan.

- 1.4 Indemnification. The Company agrees that it shall continue to indemnify Consultant, to the maximum extent allowed by law, with respect to his Prior Service in accordance with its Articles of Incorporation and By-laws. In addition, the Company agrees that it will not take any action to cause the carriers of its directors and officers liability insurance policies not to consider Consultant as an insured under such policies with respect to his Prior Service. The Company agrees to indemnify, hold harmless and defend Consultant from and against all claims, liabilities, losses, expenses and damages ("Losses") claimed by third persons and relating to the services provided by Consultant under this Agreement, except to the extent that such Losses arise from the gross negligence or willful misconduct of Consultant.

2. CONSULTING SERVICES

- 2.1 Term. Subject to the provisions and conditions of this Agreement, Consultant will provide the Company with consulting services beginning on the Effective Date and ending on the twelve month anniversary of the Effective Date or such other earlier date as otherwise provided in this Agreement (the "Initial Term"). The Company shall have the option to extend the Initial Term for two (2) extension periods of six (6) months each (each, an "Extension Term" and, together with the Initial Term, the "Term") by notifying Consultant in writing at least thirty (30) days prior to the end of the Initial Term or the first Extension Term that the Company has elected to exercise its option to extend the Term. Notwithstanding anything in this Agreement to the contrary, Consultant may terminate this Agreement at any time upon thirty (30) days prior written notice to the Company and the Monthly Fee (as defined below) shall be prorated for the month in which such termination occurs.

2.2 Duties.

- (A) During the Term, Consultant will function in an advisory and consulting capacity and perform such advisory and consulting responsibilities and duties as may be assigned to him from time to time by the Chief Executive Officer of the Company (the "CEO") or his designee and will report to the CEO or his designee. Such consulting services may include, without limitation, transition services and assistance with financial preparation and analysis. Consultant will perform his services hereunder during the Term as an independent contractor and not as an employee of the Company.
- (B) During the Term, Consultant will render consulting services to the Company during normal business hours upon reasonable notice given to Consultant by the CEO or his designee and perform such consulting duties hereunder at such locations in the greater Toledo, Ohio area as the CEO or his designee may direct, or such other locations as Consultant and the Company agree in writing.
- (C) During the Term, the Company shall provide Consultant with offices, secretarial and other support, phone and computer access, and other amenities comparable to those Consultant was entitled to receive during his employment with the Company.

3. COMPENSATION

- 3.1 Monthly Fee. During the Term, Consultant shall receive a monthly fee (the "Monthly Fee") in the amount of \$35,000 per month for providing consulting services to the Company pursuant to this Agreement for up to 100 hours per month (the "Working Hours"). If, at the Company's request, in any given month Consultant provides consulting services under this Agreement in excess of the Working Hours, the Company shall pay Consultant \$500 per hour for each hour of consulting services provided in excess of the Working Hours for such month (the "Overtime Fees" and, collectively with the Monthly Fee, the "Fees"). All Fees earned by Consultant during any given month shall be paid by the Company to Consultant on the first business day of the month following the month in which the Fees were earned.
- 3.2 Expense Reimbursement. The Company will reimburse Consultant for all reasonable out-of-pocket business expenses incurred and paid by Consultant in providing consulting services hereunder upon submission to the Company of reasonable substantiating documentation and consistent with the expense reimbursement policies of the Company in effect from time to time.

4. NON-COMPETITION; NON-DISPARAGEMENT

- 4.1 Non-Competition. During the Term, Consultant will not, directly or indirectly, engage or maintain any interest in, or provide or arrange financing for, any person or legal entity (whether as a director, officer, employee, agent, representative, security holder, equity owner, partner, member, consultant or otherwise) engaged in any business that is the same or similar to the business of the Company and its Affiliates (a "Competing Business"); provided, however, that Consultant may own not more than five percent (5%) of any class of publicly-traded securities of any legal entity engaged in a Competing Business.
- 4.2 Non-Disparagement. Consultant will not directly or indirectly, make any oral or written statement or publication with respect to the Company or any Subsidiary or any of their stockholders, directors, officers, employees, lenders or their respective Affiliates which disparages or denigrates, or could reasonably be interpreted as, disparaging or denigrating, the Company or any Subsidiaries or any of their stockholders, directors, officers, employees, lenders or their respective Affiliates. The Company will not, and will cause its Affiliates and Subsidiaries not to, directly or indirectly, make any oral or written statement or publication with respect to Consultant which disparages or denigrates, or could reasonably be interpreted as, disparaging or denigrating Consultant. For the avoidance of doubt, this Section 4.2 shall not apply to testimony given under oath in any legal or administrative proceeding.

5. CONFIDENTIAL INFORMATION

- 5.1 Definition. In the performance of Consultant's duties as an officer and employee of the Company, Consultant was brought into frequent contact with, had or may have had access to, and/or became informed of confidential and proprietary information of the

Company and/or information which is a trade secret of the Company (collectively, "Confidential Information"). Consultant acknowledges and agrees that the Confidential Information was or will be developed by and/or for the Company through substantial expenditure of time, effort and money and constitutes valuable and unique property of the Company.

- 5.2 Obligation to Keep Confidential. Commencing on the Effective Date, Consultant will keep in strict confidence, and will not, directly or indirectly, at any time, disclose, furnish, disseminate, make available, use or suffer to be used in any manner any Confidential Information of the Company without limitation as to when or how Consultant may have acquired such Confidential Information; provided, however, that the foregoing shall not preclude Consultant's disclosure of Confidential Information pursuant to or as required by law, subpoena, judicial process or to any governmental agency in connection with any investigation or proceeding of such agency. Consultant specifically acknowledges that Confidential Information includes any and all information, whether reduced to writing (or in a form from which information can be obtained, translated or derived into reasonably usable form), or maintained in the mind or memory of Consultant and whether compiled or created by the Company, which derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from the disclosure or use of such information, that reasonable efforts have been put forth by the Company to maintain the secrecy of Confidential Information, that such Confidential Information is and will remain the sole property of the Company, and that any retention or use by Consultant of Confidential Information after the termination of Consultant's employment by or consultancy to the Company will constitute a misappropriation of the Company's Confidential Information.
- 5.3 Obligations Survive. Consultant's obligation of confidentiality under this Article V will survive, regardless of any termination or other breach of this Agreement or any other agreement, by any party hereto, until and unless such Confidential Information of the Company has become, through no fault of Consultant, generally known to the public or Consultant is required by law (after providing the Company with notice and opportunity to contest such requirement) to make disclosure. Consultant's obligations under this Article V are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which Consultant may have to the Company under the Company's policies, general legal or equitable principles or statutes and which will remain in full force and effect following the Effective Date.
- 5.4 Disclosure of this Agreement. Consultant will maintain this Agreement in strict confidence and make no disclosure of the terms of this Agreement to any third party, except that nothing herein will prohibit Consultant from disclosing the terms of this Agreement as may be required by law, regulation or any judicial or administrative proceeding or to Consultant's attorneys, financial advisors and agents. The Company will maintain this Agreement in strict confidence and make no disclosure of the terms of this Agreement to any third party, except that nothing herein will prohibit the Company from disclosing the terms of this Agreement as may be required by law, regulation or any judicial or administrative proceeding or to the Company's attorneys, financial advisors and agents.

6. CONTINUED AVAILABILITY AND COOPERATION

- 6.1 Cooperation. During the Term, Consultant will cooperate fully with the Company and its counsel in connection with any present and future actual or threatened litigation or administrative proceeding involving the Company that relates to events, occurrences or conduct occurring (or claimed to have occurred) during the period of Consultant's employment by the Company. This cooperation by Consultant will include (i) making himself reasonably available for interviews and discussions with the Company's counsel as well as for depositions and trial testimony; (ii) if depositions or trial testimony are to occur, making himself reasonably available and cooperating in the preparation therefor as and to the extent that the Company or the Company's counsel reasonably requests; (iii) refraining from impeding in any way the Company's prosecution or defense of such litigation or administrative proceeding; and (iv) cooperating fully in the development and presentation of the Company's prosecution or defense of such litigation or administrative proceeding.
- 6.2 Expense Reimbursement. The Company will reimburse Consultant for reasonable travel, lodging, telephone and similar expenses, as well as reasonable attorneys' fees (if independent legal counsel is necessary), incurred in connection with any cooperation, consultation and advice rendered under this Agreement. Consultant will not unreasonably withhold Consultant's availability for such cooperation, consultation and advice.

7. MISCELLANEOUS

- 7.1 Equitable Remedies. Consultant acknowledges and agrees that the remedy at law available to the Company for breach by Consultant of any of Consultant's obligations under Article V of this Agreement would be inadequate and that damages flowing from such a breach would not readily be susceptible to being measured in monetary terms. In addition to any other rights or remedies which the Company may have at law, in equity or under this Agreement, upon adequate proof of Consultant's violation of any provision of Article V of this Agreement, the Company will be entitled to immediate injunctive relief and may obtain a temporary order restraining any threatened or further breach, without the necessity of proof of actual damage.
- 7.2 Successors and Binding Agreement.
- (A) This Agreement will be binding upon and inure to the benefit of the Company and any successor of or to the Company, including any persons or legal entities acquiring directly or indirectly all or substantially all of the business and/or assets of the Company whether by purchase, merger, consolidation, reorganization or otherwise.
 - (B) This Agreement will inure to the benefit of and be enforceable by Consultant's personal or legal representatives, executors, administrators, successors, heirs, distributees and/or legatees. The death or disability (temporary or permanent) of

Consultant following the execution and delivery of this Agreement will not affect or revoke this Agreement or excuse any of the obligations of the parties hereto.

- (C) This Agreement is intended to be for the exclusive benefit of the parties hereto, and except as provided in Sections 7.2(A) and (B), no third party will have any rights hereunder.

7.3 Notices. All notices required or permitted pursuant to this Agreement will be in writing and will be deemed to be properly given when actually received by the person or legal entity entitled to receive the notice at the address stated below, or at such other address as a party may provide by notice to the other:

If to the Company:

Dana Corporation
4500 Dorr Street
Toledo, Ohio 43615
Attention: Chief Executive Officer
Facsimile: [Number]

If to Consultant:

Robert C. Richter
[Address]
[Address]
Facsimile: [Number]

- 7.4 Taxes, Certain Other Payment Matters. Consultant will be responsible for Consultant's share of any and all federal, state and/or local taxes applicable to the payments made to Consultant pursuant to this Agreement. The payments to Consultant pursuant to this Agreement will be made by check or direct deposit to an account designated by Consultant in writing and will be reduced by any applicable federal, state and local tax or other required withholding.
- 7.5 Amendment and Waiver. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by Consultant and the Company. No waiver by either party hereto at any time of any breach by the other party hereto or compliance with any condition or provision of this Agreement to be performed by such other party will be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.
- 7.6 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matters covered by this Agreement and will supersede all prior verbal or written agreements, covenants, communications, understandings, commitments, policies, representations or warranties, whether oral or written, by any party hereto or any of its representatives pertaining to such subject matter.
- 7.7 Governing Law; Jurisdiction; Venue. The validity, interpretation, construction and performance of this Agreement will be governed by and construed in accordance with the

substantive laws of the State of Ohio, without giving effect to the principles of conflict of laws of such State. The parties agree that the state and federal courts located in the State of Ohio will have exclusive jurisdiction in any action, suit or proceeding against Consultant based on or arising out of this Agreement and the parties hereby: (a) submit to the personal jurisdiction of such courts; (b) consent to service of process in connection with any action, suit or proceeding against Consultant; and (c) waive any other requirement (whether imposed by statute, rule of court or otherwise) with respect to personal jurisdiction, venue or service of process.

- 7.8 Severability. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement which will nevertheless remain in full force and effect.
- 7.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same Agreement.
- 7.10 Further Assurances. Each party hereto will execute such additional documents, and do such additional things, as may reasonably be requested by the other party to effectuate the purposes and provisions of this Agreement.
- 7.11 Interpretation. When a reference is made in this Agreement to Articles or Sections, such reference will be to an Article or Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Unless the context otherwise requires, (i) "or" is disjunctive but not necessarily exclusive, (ii) words in the singular include the plural and vice versa and (iii) the use in this Agreement of a pronoun in reference to a party hereto includes the masculine, feminine or neuter, as the context may require.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth above.

DANA CORPORATION

By: Michael L. DeBacker

Name: Michael L. DeBacker

Title: Vice President

CONSULTANT

Robert C. Richter

Robert C. Richter

**Dana Corporation's U.S. Operations File for Chapter 11 Reorganization
to Address Financial and Operational Challenges**

***All Dana Facilities Open, Normal Operations Continue;
Company Obtains \$1.45 Billion DIP Financing Commitment from Bank Group***

TOLEDO, Ohio — March 3, 2006 — Dana Corporation (NYSE: DCN) announced today that in order to address financial and operational challenges that have hampered its performance, the company and 40 of its U.S. subsidiaries have filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Dana's European, South American, Asian-Pacific, Canadian and Mexican subsidiaries are not included in the Chapter 11 filing and are operating as normal. The filings were made today in the U.S. Bankruptcy Court for the Southern District of New York.

Company Obtains \$1.45 Billion DIP Financing Commitment

To fund its continuing operations during the restructuring, Dana has secured a \$1.45 billion debtor-in-possession (DIP) financing facility from Citigroup, Bank of America, N.A., and JP Morgan Chase Bank, N.A. Subject to court approval, the DIP credit facility, which replaces the company's previous \$400 million revolving credit facility and \$275 million receivables securitization facility, will be used for the company's normal working capital requirements, including employee wages and benefits, supplier payments, and other operating expenses during the reorganization process.

Dana has faced a continued decline in revenues resulting from the decreasing market share and production levels of its largest domestic customers, along with sharp increases in commodity and energy prices that have outpaced the cost savings Dana has been able to achieve. The general financial condition of the industry, together with Dana's inability to renew or expand its credit facilities in a timely manner, has significantly constrained Dana's liquidity.

As a result, the company concluded, after thorough consultation with its advisors, that its interests and the interests of its creditors, employees, customers, suppliers, and the communities in which it operates would be best served by reorganizing under Chapter 11 of the U.S. Bankruptcy Code.

A Necessary and Responsible Step to Achieve a Stable and Profitable Future

Dana Chairman and Chief Executive Officer Michael J. Burns said, "The Chapter 11 process provides the company an opportunity to fix our business comprehensively — financially and operationally. This will be fundamental change, not just incremental improvement. The Chapter 11 process allows us to continue normal business operations, while we restructure our debt and other obligations and enhance performance.

"We want to assure everyone — our customers, suppliers, our people and our communities — that Dana is open for business as usual," he added. "And, to this end, our customers can continue to rely on Dana for quality products — delivered on time and to best-in-class specification.

"This is an extremely difficult, but necessary and responsible decision that will provide us with the time and opportunity to strengthen our performance and achieve a sustained turnaround at Dana."

Mr. Burns said Dana intends to proceed with its previously announced divestiture and restructuring plans, which include the sale of several non-core businesses and the closure of several facilities and shift of production to lower-cost locations. In addition, Dana will continue to take steps to reduce costs, increase efficiency, and enhance productivity, he said.

Company Files First-Day Motions to Support Key Stakeholders

Dana has filed "First-Day Motions" in the Bankruptcy Court in New York designed to ensure that the company's business continues to function without disruption. The court filings are intended to ensure that the company can continue to pay its employees and suppliers and maintain uninterrupted delivery of products and services to its customers.

Further Information

Dana reported total assets of approximately \$7.9 billion and total liabilities of approximately \$4.7 billion, on a consolidated basis, as of September 30, 2005.

Dana's legal advisor in the Chapter 11 filing is Jones Day. The company's financial advisor is Miller Buckfire and restructuring advisor is AlixPartners.

More information about Dana's filings is available on the company's Web site at: <http://www.dana.com>.

About Dana Corporation

Dana people design and manufacture products for every major vehicle producer in the world. Dana is focused on being an essential partner to automotive, commercial, and off-highway vehicle customers, which collectively produce more than 60 million vehicles annually. A leading supplier of drivetrain, chassis, structural, and engine technologies, Dana employs 46,000 people in 28 countries. Based in Toledo, Ohio, the company reported sales of \$9 billion in 2004. Dana's Internet address is: <http://www.dana.com/>.

Forward-Looking Statements

Statements in this release which are not entirely historical constitute "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements represent Dana's expectations based on our current information and assumptions. However, forward-looking statements are inherently subject to risks and uncertainties. Dana's actual results could differ materially from those expressed or implied in such statements due to a number of factors. These factors include Dana's ability to continue as a going concern, operate pursuant to the terms of the debtor-in-possession ("DIP") facility, obtain court approval with respect to motions in the Chapter 11 proceeding from time to time, and develop and implement a plan of reorganization under Chapter 11; Dana's ability to obtain and maintain normal terms with vendors and service providers and maintain contracts that are critical to its operations; the potential adverse impact of the Chapter 11 cases on Dana's liquidity or results of operations; Dana's ability to fund and execute its business plan and its ability to attract, motivate and/or retain key employees; Dana's ability to attract and retain customers; and other risk factors set out in our public filings with the Securities and Exchange Commission. Dana does not undertake to update any forward-looking statements in this release.

Dana Corporation Announcement on Bond Interest Payments

TOLEDO, Ohio — March 1, 2006 — Dana Corporation (NYSE: DCN) announced today that the company did not make the March 1, 2006 interest payments on its 7% Senior Notes due March 1, 2029 and its 6-1/2% Senior Notes due March 1, 2009. The aggregate amount of these interest payments is approximately \$21 million. There is a 30-day grace period with respect to these interest payments.

Failure to make the interest payments by March 31, 2006 would constitute an event of default under the indenture for the Notes that would permit the indenture trustee or holders of 25% or more of the Notes to accelerate the maturity of the Notes. An acceleration of the Notes would result in a cross-acceleration of other debt instruments of the company.

About Dana Corporation

Dana people design and manufacture products for every major vehicle producer in the world. Dana is focused on being an essential partner to automotive, commercial, and off-highway vehicle customers, which collectively produce more than 60 million vehicles annually. A leading supplier of drivetrain, chassis, structural, and engine technologies, Dana employs 46,000 people in 28 countries. Based in Toledo, Ohio, the company reported sales of \$9 billion in 2004. Dana's Internet address is: www.dana.com.

Forward-Looking Statements

Statements in this release which are not entirely historical constitute "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements represent Dana's expectations based on our current information and assumptions. However, forward-looking statements are inherently subject to risks and uncertainties. Dana does not undertake to update any forward-looking statements in this release.

EXHIBIT F

[Transcript from In re Calpine Corp.]

1

1

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In the Matter of

6 Case No.
05-60200

7 CALPINE CORPORATION, et al.,

8 Debtors.

9 -----x

10 April 26, 2006
11 United States Custom House
12 One Bowling Green
13 New York, New York 10004

13

14 Hearing Pursuant to Agenda of Matters.

15

16

17

18

B E F O R E:

19

20 HON. BURTON R. LIFLAND,

21 U.S. Bankruptcy
22 Judge

23

24

25

25

2

1

2

A P P E A R A N C E S:

3

7 MR. CANTOR: Yes. I can read the
8 remainder of them. The companies' failure to
9 timely renew agreement. There is a renewal period,
10 I think it's 100 or 150 days near the end. The
11 companies breach of any material term of the
12 agreement that is not corrected within 10 days of
13 delivery or service of notice, or the failure of
14 the company to obtain the assumption in writing of
15 this agreement by any successor or acquirer of all
16 the substantial assets. And there's a limitation
17 on even that says for purposes of the definition,
18 none of the actions described in clauses A through
19 F, what I just describe, shall constitute good
20 reason with respect to the executive, if it was an
21 isolated, an inadvertent action, not taken in bad
22 faith by the company, and if it is remedied within
23 10 days after the receipt of notice.

24 THE COURT: Does anyone else want to
25 be heard?

84

1 CALPINE CORPORATION
2 Well, based upon this record, and
3 it's certainly clear to the court that these plans
4 and agreements are proposed in good faith and based
5 upon appropriate business judgment. Further, the
6 record before me validates that the focus of the
7 plans and agreement is to maximize value for all
8 the estates; the plans are apparently designed as
9 incentive plans as opposed to retention or KERP's.
10 The argument that you were going to
11 make under Section 503, if you want to make it, you

12 can. If you want me to rule, I can.

13 MR. CANTOR: Your Honor, I pass on
14 the argument.

15 THE COURT: I do find, based upon
16 this record, that the prohibitions of Section 503
17 have, if not been avoided, are not applicable based
18 upon the structure of these plans and the
19 agreements. To the one area where there might be
20 potentially an argument to be made that 503(c)
21 would be applicable, that would be in the
22 supplemental plan, but that does not involve
23 insiders, and I think 503(c)(3) is appropriately
24 analyzed to agree with that.

25 In short, I do agree that these are

85

1 CALPINE CORPORATION
2 incentive plans to bring enhanced value into the
3 estate. They are not retention plans, although
4 anyone can always make an argument that if people
5 are made happier than they were before, then they
6 are excited enough to stay with the company, but
7 that's not the focus of these plans. And this
8 would be clearly, based upon this record, not
9 KERP's and they are not in violation of 503(c).
10 And I will approve the appropriate orders submitted
11 to the court and according to this record.

12 MR. CANTOR: Thank you, your Honor.
13 We will submit an order. Have we prepared an
14 order?

15 MR. STAMER: Yes.

16 MR. CANTOR: Thank you.

EXHIBIT G

[Transcript from In re Nobex Corp.]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 05-20050
. .
NOBEX CORPORATION, .
. .
Debtor. . 824 Market Street
. . Wilmington, Delaware 19801
. .
. . January 12, 2006
. . 2:05 p.m.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE MARY F. WALRATH, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:

Morris, Nichols, Arsht & Tunnell
By: DEREK C. ABBOTT, ESQ.
ALICIA B. DAVIS, ESQ.
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899

Moore & Van Allen PLLC
By: W. B. HAWFIELD, JR., ESQ.
DOUGLAS R. GHIDINA, ESQ.
100 North Tryon Street
Suite 4700
Charlotte, NC 28202

Audio Operator:

Danielle R. Gadson

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268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

1 THE COURT: And you are satisfied with the structure?

2 MR. CARICKHOFF: Yes, we are, Your Honor.

3 THE COURT: Thank you.

4 Well, let me first deal with the legal issue raised
5 by the United States Trustee's objection. I guess I can agree
6 with everybody that the language is not that clear, but this is
7 my take on it.

8 I agree with the debtor that (c)(1) was meant to
9 impose specific standards and criteria for a retention program.
10 (c)(2) was meant to provide similar guidance with respect to a
11 severance program. And (c)(3) was meant to provide a standard,
12 albeit not as clear, for any other transfers or obligations
13 outside the ordinary course of business.

14 I agree that the including transfers made to
15 officers, managers or consultants hired after the petition date
16 is not exclusive. That's clear from other provisions in the
17 Bankruptcy Code.

18 So I do read (c)(3) to be the catch-all and the
19 standard under (c)(3) for any transfers or obligations made
20 outside the ordinary course of business are those that are
21 justified by the facts and circumstances of the case. Nothing
22 more -- no further guidance being provided to the Court by
23 Congress, I find it quite frankly nothing more than a
24 reiteration of the standard under 363 and -- well, 363 under
25 which courts had previously authorized transfers outside the

1 ordinary course of business and that is, based on the business
2 judgement of the debtor, the court always considered the facts
3 and circumstances of the case to determine whether it was
4 justified. And I'll do the same in this case.

5 I think in this case it is clear that from structure
6 of the plan that this is not a retention plan. It is not
7 providing payment to the employees or senior management solely
8 for being retained, staying on the job. In fact, they can stay
9 on the job all they want if the criteria are not meant. That
10 is, the sale does not produce sufficient funds, they will not
11 get anything.

12 Similarly, they can leave the day after the sale and
13 get the incentive if in fact the sale produces more than the
14 minimums required under this. So I see it as not a retention
15 plan and therefore not subject to the (c)(1) strictures.

16 The question is whether or not, based on the evidence
17 that was presented, whether this incentive plan or the
18 transfers contemplated by it are justified by the facts and
19 circumstances of the case. And I think that burden has been
20 met here.

21 I do place great weight in the fact that the plan has
22 been presented and negotiated with the creditors committee,
23 who, as well as the debtor, has a fiduciary duty to all
24 creditors, but has a particular interest in assuring that
25 general unsecured creditors get some recovery.

EXHIBIT H

[Hatton Correspondence]

Rick—

We offer these thoughts to facilitate a direct discussion of the salient points around executive compensation. This is not a complete set of comments, but does represent those requiring immediate attention if we are to agree on a path forward. Please be aware that we represent the interest of the committee, but ultimately the larger committee will have to approve any new structure we may jointly conclude – any agreement with the co-chairs will be non-binding until a full committee vote.

We look forward to discussing this matter with you as soon as possible. Peter Faulkner and I are available to review these items today between Noon and 2PM EST. Let me know your availability and I can arrange a dial-in for all of us.

Scott Hatton

XL22455772

Executive Compensation Discussion Points

- Exit Bonus for Michael Burns reduced to \$4 million
- Exit Bonus for all 6 Executives paid in form of equity to be issued under plan of reorganization ("Plan") to be valued at [Plan value / when issued trading price]
- ½ stock issued to 6 Executives 1 month after effective date of Plan and remaining ½ stock issued 6 months after effective date
- If executive[s] enter into contract with reorganized Debtor, executive[s] may be required to hold stock for a period of time.
- No double counting on Severance, Exit Bonus, or Change of Control Bonus for any Executives.
- Necessary Metric: Dana must reach AIP Target for 100% of Exit Bonus to be Paid, decreasing []% for each []% EBITDAR shortfall.

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EXHIBIT I

[Transcript from In re Delphi Corp.]

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 05-44481
DELPHI CORPORATION, et al, . New York, New York
Debtors. . Wednesday, March 22, 2006
2:18 p.m.
.

TRANSCRIPT OF SECTION 1102(a)(2) EVIDENTIARY HEARING
BEFORE THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: John Wm. Butler, Jr., Esq.
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(Appearances continued)

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1 issue process.

2 They should be able, however, again, to communicate
3 their views to the debtor and be able to be reasonably
4 informed as to the process so that they can make a
5 determination as to whether to oppose or support it whenever
6 an agreement is brought to the Court.

7 It's very clear that one function of a committee may
8 require the committee at times to take an adversarial role in
9 a case. However, I believe that consistent with all the case
10 law that I've just cited, it is not proper for an equity
11 committee to view its job as one to create leverage by being
12 a thorn in everyone's side.

13 If the equity committee is not engaged in a two-way
14 dialogue with the debtor, I will believe, and I will act on a
15 motion that contends that, the committee is dysfunctional and
16 disband it.

17 I will also look very closely, and I know that the
18 United States Trustee will look very closely, at any
19 suggestion that the equity committee is taking action in
20 court or otherwise not to maximize recoveries for all
21 committee constituents, but instead to artificially pump up
22 the value of the current stock on a trading basis.

23 I am very concerned about the potential that that
24 has already happened in this case--not by an official
25 committee and obviously not by an equity committee, because