

**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)
: :
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**SUPPLEMENT TO DECLARATION OF JOHN DEMPSEY IN SUPPORT OF MOTION
OF 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**

John Dempsey hereby declares pursuant to section 1746 of title 28 of the United States Code:

1. I am a principal of Mercer Human Resource Consulting ("Mercer").

I have been consulting for over 20 years, advising corporations undergoing major financial transitions including reorganizations, IPOs, LBOs and acquisitions in matters relating to employment, employee benefits and executive compensation. I design employment agreements, change of control agreements, annual and multi-year incentive programs and retention programs. I joined Mercer in 1985 following my graduation from Yale University where I obtained a Bachelor of Arts degree. In 1992, I obtained a Master Degree in Business Administration (MBA) from The Ohio State University.

2. Recent bankruptcy-related clients that I worked for include Owens Corning, Kaiser Aluminum, Solutia, Oglebay Norton, Citation Corporation, Internet

Corporation, Venture Industries, Alterra, EaglePicher, Allied Holdings, Mesaba Aviation and FLAG Telecom. I have also worked on restructuring issues with Nortel Networks, Barrick Gold, Manulife, CareMark Rx, Archipelago and Sky Financial. I have provided expert testimony representing the debtor in the following chapter 11 cases: Owens Corning, Citation Corporation, Internet Corporation, Venture Industries and Allied Holdings.

3. On June 29, 2006, Dana Corporation ("Dana") filed 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 (Docket No. 1601) (the "Motion").¹ Also on June 29, 2006, Dana filed my Declaration in support of the Motion (Docket No. 1603), as well as the Declaration of Richard B. Priory (Docket No. 1602) in support of the Motion.

4. By the Motion, Dana sought an order pursuant to sections 363(b), 365 and 105(a) of the Bankruptcy Code authorizing Dana to: (a) enter into employment agreements with Michael J. Burns, its President, Chairman of the Board and Chief Executive Officer ("CEO") (the "Burns Agreement") and the following five senior executives of Mr. Burns' core management team: Messrs. Miller, Stone, Stanage, DeBacker and Goettel (collectively with Mr. Burns, the "Senior Executives" and their proposed employment agreements, together with the Burns Agreement, the "Original Agreements"); and (b) assume certain change of control agreements with three of the Senior Executives, as amended. On August 4, 2006, Dana filed a

¹ All terms not otherwise defined herein have the meanings ascribed to them in the Supplement or Motion.

supplement to the Motion (Docket No. 2696) (the "Supplement"). I submit this Supplemental Declaration in support of the Motion, as modified by the Supplement.

5. I am aware of the facts and circumstances relating to the Motion and the Supplement, and unless otherwise stated herein, I have personal knowledge of the facts set forth herein.

6. As discussed in detail in the Motion, the Original Agreements were the culmination of careful review and study by Dana, led by Richard B. Priory ("Mr. Priory") in his capacity as Lead Director of Dana's Board of Directors and Chairman of its Compensation Committee.

7. Subsequent to the filing of the Motion, at the request of Dana, I met with the advisors to the Official Committee of Unsecured Creditors ("Creditors' Committee") regarding the Creditors' Committee's concerns with respect to certain terms of the Original Agreements, in particular the compensation of Mr. Burns and the terms under which Completion Bonuses would be earned. In addition, Mr. Priory relayed to me similar concerns expressed directly to him by the Co-Chairs of the Creditors' Committee. Following these conversations, I recommended to Mr. Priory a number of modifications to the Original Agreements (as modified, the "Modified Agreements"),² in order to address the concerns raised by the Creditors' Committee.

The Completion Bonus

8. As described more fully in the Supplement, the completion bonus program contemplated by the Modified Agreements (the "Modified Completion Bonus Program") establishes as performance metrics (a) the Debtors' emergence from chapter 11 and (b) the

² Term sheets for the Modified Agreements are attached to the Supplement as Exhibit A.

Debtors' total enterprise value (the "TEV") six months post-emergence (the "Valuation Date"). Under the Modified Completion Bonus Program, the Senior Executives that are employed by Dana on the effective date (the "Effective Date") of any plan of reorganization (a "Plan") will be entitled to a minimum Completion Bonus in the aggregate amount of \$5,600,000 (the "Minimum Completion Bonus") and may be entitled a larger Completion Bonus based on the Debtors' TEV on the Valuation Date (the "Valuation Date TEV").

9. I believe that the Minimum Completion Bonus is appropriate and integral to the Debtors' successful reorganization because, among other things, (a) emergence from bankruptcy, which is a prerequisite to the Minimum Completion Bonus, is a substantial accomplishment involving countless hours of work and (b) the Minimum Completion Bonus preserves the independence of the Senior Executives when balancing the interests of the Debtors' various stakeholders.

10. I also believe that the variable component of the Modified Completion Bonus Program is similarly important to the Debtors' successful reorganization. That is, the variable portion of the Completion Bonus conforms to the Debtors' long-term goals of value maximization and preservation of the estate. Under the Modified Agreements, if the Debtors achieve a Valuation Date TEV of \$2 billion, the Senior Executives will be eligible for a Completion Bonus in the aggregate amount of \$7,013,000.00 (the "Threshold Completion Bonus"), which is equal to two-thirds of the Target Completion Bonus, as defined below.³ If the Debtors have a Valuation Date TEV of \$2.6 billion, the Senior Executives will be eligible for a Completion Bonus in the aggregate amount of \$10,520,000.00 (the "Target Completion Bonus").

³ Valuations provided by Miller Buckfire (see Exhibit B of the Supplement).

Finally, if the Valuation Date TEV is greater than \$2.6 billion, the Senior Executives will be eligible for 0.50% of the incremental value.⁴

11. I believe that varying the Senior Executives' total compensation based on the Debtors' enterprise value aligns the interests of the Senior Executives with the interests of all of the Debtors' stakeholders and will motivate the Senior Executives to maximize the value of the Debtors' estates. Value maximization is consistent with the long-term equity incentive arrangements commonly offered to senior executives outside bankruptcy and, therefore, should be readily understood and accepted by participants and stakeholders. Moreover, value maximization is not only in the interest of the Debtors' financial stakeholders, but also in the interest of the Debtors' employees -- a financially healthy Dana is necessary to support compensation and benefit programs. As such, a Completion Bonus that varies payout with corporate performance and establishes minimum, threshold, and target levels of corporate performance to gauge individual accomplishment will benefit all of the Debtors' stakeholders.

12. In sum, I believe the arrangement outlined above is favorable to all of the Debtors' stakeholders. The variable component of the Completion Bonus incentivizes the Senior Executives to maximize and sustain the enterprise value of the Debtors beyond the Effective Date of a Plan. As a result, this requirement of sustained value, along with the Minimum Completion Bonus, encourages the Senior Executives to seek long-term solutions to the Debtors' present difficulties for the benefit of all of the Debtors' stakeholders.⁵

⁴ While the Senior Executives could earn substantially more than the Target Completion Bonus if the Valuation Date TEV is greater than \$2.6 billion, other stakeholders would share 99.5% of any incremental value.

⁵ I discussed with Dana the alternative of capping payouts under the Modified Completion Bonus Program, but recommended against including a cap because it could encourage the deferring of implementing operating improvements until after the Effective Date.

Form of Payment

13. Like the modification to the Completion Bonus, changes to the form of the Completion Bonuses' payment resulted from the Debtors' discussions with the Creditors' Committee. The Original Agreements provided for payment of the Completion Bonuses in cash, while the Creditors' Committee favored the payment of the Completion Bonuses in equity of reorganized Dana. The Modified Agreements represent a compromise between these positions and provide that the Minimum Completion Bonus will be paid in cash and amounts in excess of the Minimum Completion Bonus, if any, will be paid in common stock of reorganized Dana (subject to certain conditions as set forth in the Supplement).

14. In my opinion, payment of a portion of the Completion Bonus in equity could, in certain circumstances, benefit Dana and its stakeholders. After the Effective Date, it is likely that new shareholders, and very likely, a new Board of Directors, will control Dana and, as a result, it is unclear whether the Senior Executives will continue to manage the Debtors. Accordingly, while at least a partial cash payout is required to sufficiently protect the interests and independence of the Senior Executives, the payment of a portion of the Completion Bonus in reorganized Dana's common stock creates an incentive to turn the reorganized Dana over to any new management team well positioned for the future. Moreover, if the post-emergence Board of Directors elects to retain some, or all, of the Senior Executives, payment in equity will help establish an ownership stake by the Senior Executives in reorganized Dana.

Timing of the Payment

15. Under the Modified Agreements, the timing of the payout of the Completion Bonus has been changed to reflect the changes described above. Under the Original Agreements, 50% of the Completion Bonus was payable on the Effective Date of a Plan and the remainder was payable six months later. Under the Modified Agreements, the Minimum

Completion Bonus is paid on the Effective Date of a Plan with the remainder (if any) paid six months later.

16. This revised payment schedule is consistent with the intent underlying the other changes in the Modified Agreements. That is, because the Minimum Completion Bonus provides an incentive to complete the restructuring of the Debtors, its payment occurs on the Effective Date of a Plan. By contrast, the deferral of the variable portion of the Completion Bonus (a) ties the Senior Executives' ultimate compensation to sustained corporate performance, (b) gives the relevant markets sufficient time to accurately establish Dana's post-reorganization value and (c) provides the Senior Executives with an incentive to maintain value after the Effective Date of a Plan.

Termination without Cause

17. The Original Agreements specified that Completion Bonuses would be paid to the Senior Executives on a pro rata basis in the event of the following termination events (collectively, the "Termination Events"): death, disability, involuntary termination without cause or, solely with respect to Mr. Burns, voluntary termination with good reason. The Creditors' Committee requested that this provision be modified to incentivize the Senior Executives to present a detailed business plan as soon as possible.

18. To accommodate the Creditors' Committee's request, the Modified Agreements now provide that (a) no portion of the Completion Bonus will be paid to any Senior Executive who is terminated or voluntarily leaves Dana prior to the completion of the Debtors' business plan; (b) a pro rata portion of the Completion Bonus will be paid to any Senior Executive who experiences a Termination Event after the completion of the business plan but prior to the Effective Date of a Plan; and (c) the full amount of the Completion Bonus will be

paid to any Senior Executive who experiences a Termination Event after the Effective Date of a Plan.

19. As noted above, this change reflects a concession by the Debtors to the Creditors' Committee. Nonetheless, since completion of the business plan is an essential first step in the process of reorganizing the Debtors, I believe this provision is reasonable and support its adoption.

Other Modifications to the Employment Agreements

20. **Term.** The Original Agreements provided for a two year term with a six month evergreen renewal. The Creditors' Committee requested that the Debtors modify this provision to provide reorganized Dana with the flexibility to negotiate new agreements, if it chooses to do so, with the Senior Executives. In an effort to accommodate the Creditors' Committee on this issue, the Modified Agreements now expire on the Effective Date of the Plan. This change provides the Board of Directors of reorganized Dana with flexibility to negotiate with the Senior Executives or recruit a new leadership team if it chooses to do so.

21. **Non-Competition/Non-Solicitation Provisions.** In the event of (a) involuntary termination without cause, (b) voluntary termination for good reason (with respect to Mr. Burns) or (c) failure of Dana and the Senior Executives to complete a replacement employment agreement upon expiration of the applicable Original Agreements prior to the Effective Date of a Plan, the Original Agreements provided for liquidated damages in exchange for covenants from the Senior Executives not to compete with, or solicit employees or customers of, the Debtors. After discussions with the Creditors' Committee, the liquidated damages provisions have been deleted from the Modified Agreements. Nonetheless, given the fluidity of the automotive industry's job market, as demonstrated by, among other things, Mr. Burns' recent recruitment of Messrs. Miller, Stone, and Stanage from competitors of Dana, the Compensation

Committee believes that a non-competition/non-solicitation agreement from each of the Senior Executives is essential to preserve the core management team and estate assets.

22. In particular, Mr. Priory expressed a concern to me that, should Mr. Burns join a competitor, Dana would be vulnerable to poaching which could devastate Dana's top management ranks. Therefore, Dana desired an enforceable non-competition/non-solicitation agreement with the Senior Executives. Absent, however, the liquidated damages provision, I am advised that the restrictive covenants were unlikely to be enforceable because of lack of consideration. Therefore, I concluded that consideration for the non-competition/non-solicitation provisions included in the Modified Agreements would be necessary.

23. In determining the amount of such consideration, I considered the economic impact of turnover at the top management level and the opportunity costs resulting from the Senior Executives' compliance with the non-competition provision. Unwanted turnover is extremely expensive for employers and the cost of hiring replacement workers is substantial:

- Executive search consultants typically charge between 30% and 35% of the annual compensation package⁶ to find a new candidate;
- Signing bonuses are sometimes required to hire top quality candidates. These bonuses are generally buy-outs of unvested benefits and incentives from the candidate's employer. Cash retention bonuses range from 30% to 136% of initial salary;⁷
- Organizations often have to pay a premium to their typical pay positioning for external hires. Mercer often sees employers pay at the 75th or even 90th percentile in order to attract a fully qualified candidate from another organization.

⁶ Based on Mercer's general experience; this view was confirmed recently based on discussions with one of the four leading executive search firms which is a client of Mercer.

⁷ Based on a study of 30 signing bonuses disclosed in 2003 and 2004 proxy statements for large public companies tracked by Mercer. (This sample is referred to as the *Wall Street Journal* 350 because it is used by that publication for its annual survey of executive compensation each spring.) 30% is the 25th percentile and 136% is the 75th percentile. The 50th percentile is 55%. If equity based grants are included, the median increases to 193% of salary based on 47 cases.

In addition to these direct costs, organizations bear intangible costs associated with unwanted turnover. The resignation of one Senior Executive could precipitate the departure of other key employees. In fact, Mercer turnover studies frequently identify executive resignation as a strong predictor of larger scale turnover.⁸

24. In structuring the non-competition provision, I also considered how the Senior Executives would value their lost opportunities under the non-competition provision, given that this provision is likely to substantially delay any Senior Executive from beginning a new job in the automotive industry. That is, because Messrs. Burns, Miller, Stone, Stange, DeBacker, and Goettel have worked in the automotive industry for many years, all potentially could find the non-competition agreement to be a substantial obstacle to finding new employment. I concluded that one year of compensation would be reasonable compensation for an eighteen month non-compete.

25. If any Senior Executive is terminated for cause or, in the case of Mr. Burns, resigns without good reason, such Senior Executive will be subject to the restrictive covenants discussed above. Under such circumstances, the consideration for such restrictive covenants will be the applicable Modified Agreement in its entirety and no additional payment will be made to the Senior Executive.

26. **Severance.** The Original Agreements provided for severance of two years of salary and bonus in the event of involuntary termination after the Effective Date. The Modified Agreements do not include this provision. Post-emergence employment issues will be deferred until later in the restructuring when more information will be available to all parties regarding the reorganized Dana.

⁸ Mercer's turnover studies are customized for each client. Mercer has not undertaken an analysis for Dana.

27. **Change of Control Agreements.** The Original Agreements provided for assumption of certain pre-petition change of control agreements between Dana and three of the Senior Executives on the Effective Date of a Plan. The Modified Agreements do not include this provision. Post-emergence employment issues will be deferred until later in the restructuring when more information will be available to all parties regarding the reorganized Dana.

28. **SERP Benefits.** The Original Agreements did not address assumption of the Senior Executives' benefits under certain prepetition supplemental executive retirement plans ("SERP Benefits"). The Modified Agreements provide for the assumption of SERP Benefits upon the earlier of involuntary termination without cause, with good reason (with respect to Mr. Burns), death, or disability. I support this modification. Uncertainty regarding the future value of these benefits is a significant personal concern for the Senior Executives (with the exception of Mr. Goettel who does not have such an arrangement). As noted above, the liquidated damages, post-emergence employment and change of control components of the Original Agreements have not been included in the Modified Agreements. As such, the Modified Agreements represent a substantial reduction in compensation in the event that any Senior Executive is terminated. As such, assumption of the Senior Executives' SERP Benefits provide the Senior Executives with greater financial security and provides additional incentive to the Senior Executives to maximize the value of the Debtors' estates for the benefit of all stakeholders.

Summary

29. The overall competitiveness of the pay packages in the Modified Agreements will be the same as the analyses presented in the Original Agreements if Valuation Date TEV is \$2.6 billion. As set forth on the chart below, if the Target Completion Bonuses are earned, the aggregate compensation of the Senior Executives will be 39% below the median

when compared to the Peer Group.⁹ If Threshold Completion Bonuses are earned, the aggregate compensation of the Senior Executives will be 47% below median. If the Minimum Completion Bonuses are earned, the aggregate compensation of the Senior Executives will be 52% below median.

Executive	Annualized Compensation Including Completion Bonus			Percentage Difference From Peer Group Median		
	Minimum	Threshold	Target	Minimum	Threshold	Target
Burns	\$4,655	\$5,172	\$6,205	-49%	-43%	-32%
Miller	\$1,105	\$1,198	\$1,385	-42%	-37%	-27%
Stone	\$1,168	\$1,235	\$1,368	-59%	-57%	-52%
DeBacker	\$1,091	\$1,158	\$1,291	-62%	-59%	-55%
Goettel	\$970	\$1,037	\$1,170	-49%	-45%	-38%
Stanage	\$872	\$939	\$1,072	-54%	-50%	-43%
Total / Average	\$9,861	\$10,738	\$12,491	-52%	-47%	-39%

Dollars in Thousands

Similarly, the chart below shows that aggregate annualized compensation for the Senior Executives, including any Completion Bonus, will be below market median relative to chapter 11 debtors if the Minimum Completion Bonus or Threshold Completion Bonus is earned.

Executive	Annualized Compensation Including Completion Bonus			Percentage Difference From Chapter 11 Median		
	Minimum	Threshold	Target	Minimum	Threshold	Target
Burns	\$4,655	\$5,172	\$6,205	-8%	2%	23%
Miller	\$1,105	\$1,198	\$1,385	-14%	-6%	8%
Stone	\$1,168	\$1,235	\$1,368	-26%	-22%	-14%
DeBacker	\$1,091	\$1,158	\$1,291	-31%	-27%	-18%
Goettel	\$970	\$1,037	\$1,170	-24%	-19%	-9%
Stanage	\$872	\$939	\$1,072	-32%	-27%	-16%
Total / Average	\$9,861	\$10,738	\$12,491	-18%	-11%	4%

Dollars in Thousands

30. In fact, even if the Target Completion 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.¹⁰ In the event Mr. Burns earns a Target Completion Bonus he will not be overcompensated. As

⁹ Information the peer group pay comparisons were presented in my June 29 Declaration.

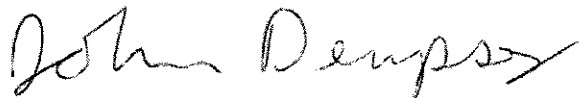
¹⁰ While it is possible that the Senior Executives could earn more than the Target Completion Bonus, the value of reorganized Dana would have to increase and, if it did, other stakeholders would receive 99.5% of the incremental value.

described in my June 29 Declaration, and illustrated in the chart attached hereto as Exhibit A, Mr. Burns' annual remuneration, regardless of whether he earns a Minimum, Threshold or Target Completion 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). Accordingly, I believe that the compensation to be paid to Mr. Burns under his Modified Agreement is fair and reasonable.

31. Overall, the Modified Agreements are consistent with market practice and are fair, responsible, and reasonable. They are consistent with the packages put in place by other chapter 11 debtors and are substantially less in total value than the median of Dana's peer group. When Dana's size is considered, the Modified Agreements position Dana in the middle of the market if the Target Completion Bonuses are earned.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

Dated: August 9, 2006
Chicago, Illinois



John Dempsey

EXHIBIT A

[Annual Remuneration Provided to CEOs of Manufacturing Companies
in Chapter 11 with Annual Sales in Excess of \$3.5 Billion]

