Hearing Date and Time: September 5, 2006 at 11:00 a.m.
Objection Deadline: August 14, 2006

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 11
DANA CORPORATION, *et al.,*	)	
	)	06-10354 (BRL)
Debtors.	)	(Jointly Administered)
	)	

SUPPLEMENTAL JOINT OBJECTION AND MEMORANDUM OF UAW AND USW IN OPPOSITION TO SUPPLEMENT TO 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

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "USW") (collectively, the "Unions"), by their undersigned counsel, jointly object as follows to Supplement to 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 (the "Supplemental Motion"):[1]

Introductory Statement

1. In its initial motion, Dana Corporation ("Dana" or "Debtors") sought authority to immediately enter into six employment agreements (the "Original Agreements") with its President and Chief Executive Officer, and five key executives. Among other provisions, the Original Agreements provided for annual base salaries ranging from $336,000 to $1,035,000, annual "incentive bonuses" ranging from $336,000 to over $2,000,000, and "completion bonuses" ranging from $800,000 to over $6,000,000. In addition, Dana sought to have the Court adopt a definition of "insider," presumably for future use in setting up executive compensation programs. (Mot. 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

[1] The instant Joint Objection by the Unions supplements the July 12, 2006 Joint Objection and Memorandum of UAW and USW in Opposition to Debtors' Motion For an Order Authorizing Debtors 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. The Unions' Supplemental Objection only addresses Dana's Supplemental Motion, and the Unions continue to assert all of the objections set forth in their initial Joint Objection.

Five Key Executives of His Core Management Team, and (B) Assume Certain Change of Control Agreements, as Amended [the "Original Motion"]).

2. The Unions objected to the Original Motion on the grounds that Dana failed to establish that the Original Agreements satisfied the limitations of Section 503(c) on retention and severance payments, or, alternatively, to the extent that the payments could be characterized as something other than retention and severance payments, they were nonetheless impermissible under Section 503(c)(3)'s provision restricting transfers outside the ordinary course of business.

3. In response to concerns raised by the Official Committee of Unsecured Creditors (the "Creditors Committee"), Dana has made several modifications to the Original Agreements. (The modifications are set forth in Dana's Supplemental Motion, and the Original Agreements, as modified, are referred to herein as the "Revised Agreements.") As explained below, however, the changes are more superficial than substantive. Like the Original Agreements, the Revised Agreements do not withstand scrutiny under Section 503(c). Moreover, the total value of the proposed bonuses has not diminished due to the modifications. In fact, because the Revised Agreements, unlike the Original Agreements, assume the Executives' supplemental retirement arrangements and remove any cap on the completion bonuses, the Executives potentially fare even better under the Revised Agreements. For all of these reasons, as well as reasons in their initial Joint Objection, the Unions continue to object to the proposed bonuses.

<u>The Changes Under The Modified Agreements Do Not Correct The Section 503(c) Violations</u>

4. Although Dana refuses to concede the applicability of Section 503(c) to the proposed payments, it nonetheless summarily suggests – without making any effort to

establish compliance with Section 503(c)'s limitations – that the modifications to the Original Agreements address any concerns by any parties in interest that the proposed payments violate Section 503(c). (Supplemental Mot. ¶ 10, at 9). This contention is inaccurate.

5. As an initial matter, although Dana suggests that the Revised Agreements now comply with Section 503(c), it presents no facts that would permit the Court to determine whether the payments satisfy the statutory requirements of Section 503(c). Simply stated, the Revised Agreements do not comply with Section 503(c).

6. The Original Agreements provided for "completion bonuses" to each of the Executives ranging from $800,000 to over $6,000,000 to be paid merely for remaining employed until the consummation of a reorganization plan. The Unions previously showed that these so-called completion bonuses are actually retention payments since the bonuses vest upon approval of the employment agreements, and the only requirement for eligibility is that the Executive refrain from quitting.

7. The Revised Agreements leave the size of the completion bonuses intact. And, although a portion of the completions bonuses is purportedly performance-based under the Revised Agreements, fifty percent of the completion bonuses (ranging from $560,000 to over $3,000,000) is payable to each Executive merely for remaining employed until the consummation of a reorganization plan.

8. Under the Revised Agreements, the payment of the remaining 50% of the completion bonus is based upon the attainment of certain levels of "Total Enterprise Value" ("TEV").[2] In order for the Executive to receive a full two-thirds of the completion bonus, the

[2] Dana's Original Motion was supported by a declaration of John Dempsey, a principal of Mercer Human Resources Consulting ("Mercer"), in which Dempsey explained that Mercer disapproved of incentive plans that reward for increasing enterprise value because such an approach "might align the interests of management with financial stakeholders at the expense of customers, employees and suppliers, since the way to maximize enterprise

TEV need only remain at the March 2, 2006 TEV, and, in order for the Executive to receive 100% of the completion bonus, the TEV need only remain at the July 13, 2006 TEV. Thus, all that is required is preservation of the current TEV, and, indeed, substantial completion bonuses are payable even if TEV decreases from the July 13, 2006 TEV.

9. Targets based on TEV, particularly at this early stage of the case, only serve to embroil the case in a pointless exercise in financial prognostication for the benefit of a select few. Moreover, the targets underscore the Unions' objections to the program as an effort to bypass the strictures of Section 503(c).

10. Indeed, even if it could be demonstrated that the performance metrics under the Revised Agreements were not set so as to virtually guarantee full payment of the completion bonuses to the Executives, a genuine incentive component of the Revised Agreements still would not remove the Revised Agreements from the purview of Section 503(c)(1)'s restrictions on retention payments because the fact remains that the payments are clearly designed to induce the six individuals to remain with Dana. *See, e.g.*, Decl. of John Dempsey dated Aug. 9, 2006, ¶ 22, at 9 (discussing Dana's concern about the effects of Burns joining a competitor and Dana's vulnerability to "poaching" if that were to happen). In any event, however, and as discussed in the Unions' initial Joint Objection, nothing in Section 503(c)(1) categorically excludes performance-based retention payments from scrutiny.

11. Moreover, Dana's asserted need for additional "incentive" payments overlooks that the Executives are all currently eligible for the existing Annual Incentive Plan (the

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value is to raise prices while reducing costs." (Decl. of John Dempsey dated June 29, 2006 ¶17, at 10). As reflected in the Supplemental Motion, Dempsey is apparently no longer bothered by this concern as he now concludes that "value maximization is not only in the interest of the Debtors' financial stakeholders, but also in the interest of the Debtors' employees." (Decl. of John Dempsey dated Aug. 9, 2006 ¶ 11, at 5). Mr. Dempsey offers no explanation for his about-face on this issue.

"AIP").[3] The bonuses payable to the executives under the AIP are quite substantial, with CEO Burns eligible for a bonus of 200% of his salary.

12. Although one would expect the Revised Agreements to provide for more "conservative" payouts to the Executives, the Revised Agreements appear to have the likely effect of putting the Executives in an even better position than they were under the Original Agreements.

13. Dana's Original Motion placed great emphasis on the loss of the Executives' benefits under the Supplemental Executive Retirement Plans ("SERPs") as a basis for entering into the Original Agreements. *See* June 29, 2006 Dempsey Decl. ¶ 11, at 7 ("The status of top executive [SERPs] as unsecured prepetition claims in the chapter 11 represents a significant reduction in the executive's financial security. Dana attracted Mr. Burns, Mr. Miller, Mr. Stanage and Mr. Stone in part by offering supplemental retirement arrangements. These SERPs had five year service based vesting attached to the benefits. Because the value of benefits is uncertain as a result of the bankruptcy, there may be a significant loss to these executives. Each of the executives has a substantial amount of retirement to accumulate just to replace value he thought was largely assured."); Original Mot. ¶ 27, at 15 (noting that the Original Agreements do not include certain retirement benefits) ("As a result of the chapter 11 filing, none of the six senior executives will receive prior unqualified retirement benefits, but, rather, they have only general unsecured prepetition claims against Dana for these benefits.").

14. Under the Revised Agreements, the SERPs would be assumed upon the earlier of termination, confirmation of a plan, death or disability. Thus, for just a few largely superficial adjustments to the compensation packages, the Revised Agreements restore SERPs,

[3] As reflected on Dana's February 28, 2006 Form 8-K, the referenced AIP was approved by Dana's Board of Directors on February 28, 2006, only three days prior to Dana's March 3, 2006 filing of a bankruptcy petition. (A copy of the referenced Form 8-K, without exhibits, is attached hereto as an appendix.)

the loss of which was touted on the Original Motion as one of the primary reasons for requiring such generous bonuses. Additionally, under the variable payout provision of the Revised Agreements, the Executives may earn even larger completion bonuses than under the Original Agreements depending on the TEV. In sum, it appears that the Revised Agreements present an even better deal for the Executives.

15. Since the time of the Dana's initial motion, Dana has sought and obtained approval for the appointment of a Section 1114 committee to represent the non-union retirees. *See* Aug. 9, 2006 Order Pursuant to Section 1114(d) of the Bankruptcy Code, Directing the Appointment of a Committee of Non-Union Retired Employees. Thus, the timing of Dana's efforts to lock in lucrative bonus payments for its top executives only underscores the Unions' concern that Dana is oblivious to the counterproductive effects of implementing the emergence program now. Locking in a generous bonus and severance program for top management at the same time that Dana's unionized workers and retirees face great uncertainty and trepidation about their futures in light of Dana's reorganization needlessly complicates the prospects for negotiated solutions with the Unions. *See generally In re Geneva Steel Co.*, 236 B.R. 770, 773-74 (Bankr. D. Utah 1999) (declining to approve incentive and severance benefits and noting that the program would jeopardize union support for reorganization). Adding "insult to injury," the new target measurement based upon "TEV" that Dana has built into the Revised Agreements could create the perverse consequence that executives' rewards will be linked to cuts in retiree health benefits, a result that is simply unacceptable. Simply stated, Dana's effort to insulate the Executives from any adverse consequences of Dana's restructuring – and to reward them at the expense of hourly workers and retirees – should not be countenanced as a matter of equity and cannot be permitted as a matter of law under Section 503(c).

Conclusion

For the foregoing reasons and for the reasons stated in the Unions' initial Joint Objection, the Debtors' Original and Supplemental Motions should be denied.

Dated: August 14, 2006

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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	1-1063	34-4361040
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

4500 Dorr Street, Toledo, Ohio	43615
(Address of principal executive offices)	(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

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http://www.sec.gov/Archives/edgar/data/26780/000095015206001735/l18987ae8vk.htm 8/13/2006