

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: September 5, 2006
HEARING TIME: 10:00 a.m.

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

**OBJECTION OF THE UNITED STATES TRUSTEE TO MOTION
OF DANA CORPORATION TO: (A) ENTER INTO EMPLOYMENT
AGREEMENTS WITH MICHAEL BURNS, ITS PRESIDENT AND CHIEF
EXECUTIVE OFFICER, AND FIVE KEY EXECUTIVES OF HIS CORE
MANAGEMENT TEAM, AND (B) ASSUME CERTAIN CHANGE IN CONTROL
AGREEMENTS, AS AMENDED**

TO THE HONORABLE BURTON R. LIFLAND, BANKRUPTCY JUDGE:

Diana G. Adams, the Acting United States Trustee for Region 2 (the “United States Trustee”), hereby files her objection to the Debtors’ motion under 11 U.S.C. §§ 105, 363 and 365 for an order authorizing Dana Corporation to enter into employment agreements with Michael Burns and five key executives (“Executives”) of his core management team (the “Motion”) and the Debtors’ supplement (the “Supplement”), [Docket nos. 1601 and 2926], on the following grounds:

SUMMARY

1. The Motion presents an important policy issue under BAPCPA: Can the Debtors circumvent the restrictions and evidentiary burdens enacted by Congress in sections 503(c)(1) and 503(c)(2) – provisions designed specifically to limit and restrict lavish insider retention and severance bonuses – by avoiding the mere mention of the

statute and transparently recharacterizing these payments as “incentive” payments?

2. As four major constituencies have observed in their objections to the Motion, section 503(c) clearly applies. Also, Mr. Richard Priory, a member of the Debtors’ board of directors and the Chairman of the Debtors’ Compensation Committee, recently described under oath the central reason for the Debtor’s proposed compensation scheme: “If you can’t pay an individual a fair wage, and they’re in the middle of a Chapter 11 under tremendous pressure, it seems only logical that they would begin looking around.”¹

3. As section 503 applies, it is patently clear that the Motion should be denied. Because Dana has neither moved for authority under section 503, nor fulfilled its burden of presenting any evidence that would permit the Court to determine whether the payments satisfy the statutory requisites, nor set forth any grounds why section 503(c) does not apply, the proposed payments are prohibited.

4. At an absolute minimum, the fixed component of the “Completion Bonus” acts as an ordinary retention bonus. The Debtors propose to pay the Executives approximately \$5.6 million for simply remaining with the Debtors through the effective date of a chapter 11 plan or until the sale of the Debtors. A consensus has emerged among the major constituencies that there is likely to be a confirmed plan with a

¹ Richard Priory Deposition on August 23, 2006 (the “Priory Deposition”) at p. 74. Relevant pages of the transcript are annexed hereto as Exhibit A.

substantial distribution to unsecured creditors, and perhaps a return to equity. Hence, the Completion Bonus cannot be characterized fairly as an “incentive” payment.

5. At a time when the Debtors’ workforce faces great uncertainty and angst, the Motion proposes to substantially insulate the six Executives. It is exactly this type of managerial overreaching that led to the recent enactment of section 503(c), and exactly this type of insulation the statute is designed to prevent.

STATEMENT OF FACTS

6. On June 28, 2006, the Debtors filed the Motion seeking, among other things, authority to enter into employment agreements with the six senior Executives. As set forth in the Motion, the Debtors originally proposed that the Executives would receive compensation composed of: (a) an annual base salary, (b) the annual bonus, and (c) a completion bonus. The completion bonus of \$10,525,000 for all six of the Executives collectively was to be earned upon the Debtors’ emergence from bankruptcy.

7. The Motion also included proposed severance arrangements under which the Executives would receive between 18 months and two years of base salary and an annual bonus, as well as a pro-rata portion of the completion bonus if terminated before the Debtors’ emergence from chapter 11. In addition, the Executives were to receive twice their base salary, the annual bonus and completion bonuses if terminated after an emergence from Chapter 11.

8. On August 4, 2006, apparently to address the concerns of certain major constituencies, the Debtors filed the Supplement to the Motion proposing certain

modifications to the employment agreements and compensation scheme. The Debtors' modifications, however, do not fix the basic problems with the Motion. For example, the completion bonus still contains a fixed minimum component, which each Executive would earn by simply remaining employed with the Debtors during the lives of the bankruptcy cases. These include payments aggregating approximately \$5.6 million, as further set forth below.

DISCUSSION

A. Bankruptcy Code Section 503(c) Prohibits the Proposed Bonuses

9. Section 503(c) is an entirely new provision to the Bankruptcy Code. The intent of this law is to "...**limit** the scope of 'key employee retention plans' and other programs providing incentives to management of the debtor as a means of inducing management to remain employed by the debtor." 4 Collier on Bankruptcy, p. 503-80 (15th ed. rev. 2005)(emphasis added).

10. The enactment of Section 503(c) was a result of increasing public sentiment against the practice of executives of bankrupt companies generously rewarding themselves during restructuring at the same time that rank and file workers were suffering tremendous economic blows as a result of the bankruptcy. See generally In re U.S. Airways, Inc., 329 B.R. 793, 797 (Bankr. E.D. Va. 2005).

11. For purposes of section 503, the Debtors acknowledge that the Executives are "insiders." Motion, at ¶ 38. All other major constituencies already have concluded

that the Motion does not otherwise meet the requirements of section 503, as outlined below:

(A) The Union Objection [Docket no. 1791]: The unions have stated that “there can be no hiding that the proposed payments are retention payments and severance payments to insiders and, thus, subject to Sections 503(c)(1) and (2).” Union Objection, at ¶ 18.

The unions also have observed that “the Motion describes three executives (Miller, Stone and Stanage) as ‘sought-after individuals’ who have ‘multiple employment opportunities elsewhere’ and repeatedly cites Dana’s need for ‘assurance that it will have its executive team in place to work’ through the restructuring process as reason to make the payments. (Mot. ¶¶ 13, 19, at 6, 10.)” Union Objection, at ¶ 19.

(B) The Objection of the Ad Hoc Committee of Bondholders [Docket no. 2906]: The bondholders have characterized the compensation packages as “part of a thinly-veiled effort to induce the Executives to remain with the Debtors.” The Debtors have failed to proffer “evidence that certain of the payments – which, in substance, constitute retention bonuses, severance payments or otherwise outside the ordinary course of the Debtors’ businesses – satisfy the standards set forth in section 503(c) of the Bankruptcy Code.” Ad Hoc Committee Objection, at ¶ 2.

(C) The Creditors’ Committee Objection [Docket no. 2908]. The Creditors’ Committee has stated: “Because the Debtors have failed to even attempt to meet the statutory burden, the Motion should be denied.” Creditors’ Committee Objection, at ¶ 13.

“The Motion itself admits that the relief sought is necessary to reduce the post filing attrition rate, see Motion at ¶ 40, by ensuring that the ‘management team will be sufficiently protected so that the members can dedicate themselves . . . without distraction from the imminent risk to their futures.’ ” Id. at ¶ 19. The stated objectives of the Motion are ‘assuring Dana of an effective management team,’ by ‘providing to each of the key executives sufficient certainty and security . . .’ and ‘providing transition services to any successor board of directors.’ Id. at ¶ 22.” Creditors’ Committee Objection, at ¶ 18.

(D) The Equity Committee Objection [Docket no. 2932]: The

Debtors are “asking this Court to approve a key employee retention plan that is prohibited under section 503(c) of the Bankruptcy Code and a severance plan prohibited under section 503(c)(2) of the Bankruptcy Code.” Equity Committee Objection, at ¶ 2. The incentive portion of “the Debtors’ compensation program is not tied to any meaningful performance levels.” Equity Committee Objection, at ¶ 3.

12. The United States Trustee concurs with, and restates, the position of these constituencies.

13. Indeed, the Debtors admit that the desire to retain the Executives was, at the very least, an integral reason for their new compensation scheme. Mr. Richard Priory has been on the Board of Directors of the Debtors since 1996. He is currently a member of the Compensation Committee and its chairman. (Priory Deposition, p.10).

14. The following are relevant questions and answers at the deposition of Mr. Priory on August 23, 2006:

Q. Okay. When was the first time that Mr. Burns informed you that there was angst in the organization concerning executive compensation?

A. I don’t – I certainly didn’t record the date but it was certainly on a couple of occasions during this period. Probably at least once I can recall him making the comment to the board as well. The board would continually ask him – we look at attrition data and we saw lots of attrition spikes. We were losing a lot of people. We’d have dialogue about every senior person we lost. And then we’d end up in a discussion about, well, I mean, what’s the story here. How bad is it, how bad is the angst. Are we likely to continue to lose a lot of senior people. If so, what do we need to do, et cetera.

And Mike would always give an update on that basically. He would say, sure, there’s lots of angst in the organization. But if we can start making some progress, if we start to see some results, the angst will begin

to go away. If we can deal with some of these salary issues, compensation issues, that will lessen the angst. And the whole issue is to keep them all focused on building value in the company. Remove – we’re trying to remove the distractions and move them forward to build value in the company.

Q: When you say that Mr. Burns made statements – these statements concerning angst in the organization, I think you said during this period, what period were you referring to?

A: It was during the period of March 3rd to August – what’s the date today?

Q: 23rd.

A: 23rd. So probably during the entire period of time.

Priory Deposition, at pp. 71-72.

15. The Motion squarely raises the threshold and dispositive issue of the applicability of Bankruptcy Code section 503. "Where ... the statutory language clearly expresses the congressional intent, a court may not read another meaning into the statute in order to arrive at a result which the court deems preferable." In re Bodin Apparel, Inc., 46 B.R. 555, 558 (Bankr. S.D.N.Y. 1985) *citing* In re Flagstaff Foodservice Corp., 739 F.2d 73, 75 (2d Cir.1984).

16. To summarize, the Motion seeks to: (a) retain insiders (as admitted by the Debtors), (b) for the purpose of inducing such insiders to remain with the debtor’s business. Thus, section 503 clearly applies. *See* Lamie v. United States Trustee, 540 U.S. 526, 538 (2004) (“Our unwillingness to soften the import of Congress’ chosen words even if we believe the words lead to a harsh outcome is longstanding.”). Because the Debtors

have not moved for authority under section 503, much less even discussed why it does not apply, and have moved under sections 363 and 365, the Motion must be denied.

17. At the very least, this Court must reject the payment of “minimum completion bonus” segment of the compensation scheme, as described in the deposition of Mr. Priory:

Q: Okay. And what is the amount of the compensation payable -

A: \$5.6 million.

Q: And that’s also 50 percent of the target completion bonus; is that right?

A: Yes.

Q: When is the minimum completion bonus payable?

A: It would be paid upon the effective date of the plan.

Q: And what requirements, if any, do the modified agreements impose on the plan that must become effective before the minimum completion bonus is payable?

A: It must have been successfully negotiated, approved by the courts, and be a viable plan for the emergence of bankruptcy for Dana Corporation.

Priory Deposition, pp.116-17.

18. According to the major constituencies, and by all appearances, there is likely to be a confirmed plan in these reorganization cases. Furthermore, the United States Trustee is informed that unsecured debt is trading at over 50 cents on the dollar. Therefore, pegging a bonus on the confirmation of a plan is not an “incentive” for better

performance. Instead, the bonus is simply a tenure-based reward for lasting until the end of the bankruptcy cases.²

B. The Debtors Have Not Established That the Executives Are the Only “Insiders”.

19. The Motion and the Supplement seek a determination from this Court that, on a post-petition basis, the term “insider,” as defined in section 101(31) of the Bankruptcy Code, applies only to the Executives. As pointed out by the objecting parties, such a ruling would be an inappropriate advisory opinion. In the absence of a cognizable case or controversy, this Bankruptcy Court, like any other Federal court, lacks the constitutional power to decide abstract, academic or purely hypothetical questions. In re FedPak Systems, Inc., 80 F.3d 207, 212 (7th Cir. 1996); U.S. CONST. art. 3, § 2, cl. 1.

C. Appointment of an Examiner.

20. The United States Trustee has grave concerns about the manner in which the Debtors’ Motion has been presented to the Court, and the factual and legal issues

² The United States Trustee has insisted that financial advisors in chapter 11 cases be subject to a “reasonableness” review standard when their “completion” fees have been tied to the confirmation of a plan or the sale of substantially all of the Debtors’ assets. The United States Trustee submits that some similar check on the Executives is appropriate.

On another matter, the United States Trustee submits that section 503(c)(3) does not apply here. Within the text of its prohibitions, section 503(c)(3) expressly references payments made to or for “the benefit of managers, officers or consultants hired after the date of the filing of the petition.” 11 U.S.C. § 503(c)(3). The Debtors did not hire any of the Executives after the petition date. Nonetheless, to the extent section 503(c)(3) is deemed applicable, the United States Trustee concurs with the arguments of the objecting parties with respect thereto.

raised. These concerns, which implicate no less than the Debtors' fiduciary duties, have led her to conclude that the appointment of an examiner may be warranted.

21. To begin with, it appears that the Debtors have not adequately consulted the objecting constituencies with respect to their proposed executive compensation scheme. See Equity Committee Objection, at ¶ 4 (“[t]he Debtors have unilaterally devised a compensation scheme that encourages retention, mediocrity and the status quo.”) Furthermore, the Debtors’ wholesale failure to even mention section 503(c) as a basis for the relief requested – an increasingly common ploy in nation-wide executive compensation litigation in the new BAPCPA era – should not be countenanced.

22. The Motion comes at a time when the Debtors reportedly are considering reducing or eliminating retiree health benefits. Yet, various features of the proposed compensation scheme appear extravagant. The scheme also appears hopelessly vague, rendering the total estimated payments to the Executives virtually incapable of calculation. *See, e.g.*, Ad Hoc Committee Objection, at ¶¶ 24-33. In this sense, it must be recalled that litigation alleging that the Debtors manipulated their reporting to conceal the extent of rising pre-petition costs has dogged the Debtors, resulting in a loss of general creditor confidence.

23. The recent enactment of section 503(c) has dramatically changed the executive compensation landscape in chapter 11. Now, in executive compensation matters, no less than the integrity of the bankruptcy process is at issue. Under the circumstances, the Debtors should be proposing a modest, readily-calculable

compensation scheme in which all the parties interest should have confidence. Instead, the Debtors' regrettably distorted Motion, which has drawn virtually universal opposition, appears to fall short of the integrity required for this Court's approval.

24. For these reasons, the United States Trustee is considering moving for the appointment of an independent examiner to report to the Court. The purpose of the appointment would be to enable a complete investigation into the Debtors' proposed executive compensation scheme, the manner in which both it and the Motion have been crafted, conformance with section 503(c), and related issues. The appointment of an examiner for these matters would achieve time and administrative expense savings for this collateral compensation matter, at a time when discrete issues far more central to the Debtors' financial restructuring and bankruptcy reorganization ought to be consuming the resources of all concerned.

CONCLUSION

25. The recent enactment into the Bankruptcy Code of Section 503(c) places prohibitions and limitations upon the making of payments to insiders not in the ordinary course of business, except in compliance with the statute. To the extent that section 503(c)'s new provisions are inconsistent with pre-BAPCPA practice, based primarily upon exercise of the "business judgement rule," the newer statutory provisions supplant prior practice. Notwithstanding the semantics of the Motion, it is clear the Debtors seek the payment of retention bonuses to the Executives. The Debtors have produced no

evidence that would satisfy the requirements of new section 503(c). Rather, the Debtors ignore the provision altogether. Accordingly, the Motion should be denied.

WHEREFORE the United States Trustee requests that this Court issue an order denying the Motion and granting such other relief that this Court deems appropriate.

Dated: New York, New York
August 29, 2006

Respectfully submitted,

DIANA G. ADAMS
ACTING UNITED STATES TRUSTEE

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1 R. PRIORY
 2 **Q. When did he inform you of that?**
 3 A. And I might add the Human
 4 Resources guy who really keeps his finger to
 5 the pulse is constantly reminding me of the
 6 angst in the organization.
 7 **Q. And who is that?**
 8 A. Rich Spriggle. He's the guy who's
 9 supposed to really keep his thumb on it in
 10 terms of what the organization's doing in
 11 terms of all of this. Is the angst level
 12 going up or down, is it undermining Mike or is
 13 it not undermining Mike. And Rich reports
 14 back to me. And all he can tell me is, you
 15 know, we got problems. There's angst.
 16 Big-time angst. And we just got to get it
 17 solved. He's just pushing forward to try to
 18 get this problem solved.
 19 **Q. Okay. When was the first time**
 20 **that Mr. Burns informed you that there was**
 21 **angst in the organization concerning the**
 22 **executive compensation?**
 23 A. I don't -- I certainly didn't
 24 record the date but it was certainly on a
 25 couple of occasions during this period.

1 R. PRIORY
 2 Probably at least once I can recall him making
 3 the comment to the board as well. The board
 4 would continually ask him -- we look at
 5 attrition data and we saw lots of attrition
 6 spikes. We were losing a lot of people. We'd
 7 have dialogue about every senior person we
 8 lost. And then we'd end up in a discussion
 9 about, well, I mean, what's the story here.
 10 How bad is it, how bad is the angst. Are we
 11 likely to continue to lose a lot of senior
 12 people. If so, what do we need to do, et
 13 cetera.
 14 And Mike would always give an
 15 update on that basically. He would say, sure,
 16 there's lots of angst in the organization.
 17 But if we can start making some progress, if
 18 we start to see some results, that angst will
 19 begin to go away. If we can deal with some of
 20 these salary issues, compensation issues, that
 21 will lessen the angst. And the whole issue is
 22 keep them all focused on building value in the
 23 company. Remove -- we're trying to remove the
 24 distractions and move them forward to build
 25 value in the company.

1 R. PRIORY
 2 **Q. When you say that Mr. Burns made**
 3 **statements -- these statements concerning**
 4 **angst in the organization, I think you said**
 5 **during this period, what period were you**
 6 **referring to?**
 7 A. It was during the period of March
 8 3rd to August -- what's the date today?
 9 **Q. 23rd.**
 10 MR. MANNING: 23rd.
 11 A. 23rd. So probably during the
 12 entire period of time.
 13 **Q. Okay. But beginning in March of**
 14 **2006; is that right?**
 15 A. Yeah.
 16 **Q. I think you also indicated that**
 17 **Mr. Burns expressed concern that he might lose**
 18 **certain specific individuals; is that right?**
 19 A. That's correct.
 20 **Q. Who was he referring to?**
 21 MR. MANNING: Go ahead and answer.
 22 A. The most prominent one is a guy
 23 named Paul Miller.
 24 **Q. Is he one of the senior executives**
 25 **who was receiving an employment agreement?**

1 R. PRIORY
 2 A. Yes.
 3 **Q. And is Mr. Miller one of the**
 4 **executives who -- that the debtors are seeking**
 5 **authority to enter into an employment**
 6 **agreement with pursuant to this motion?**
 7 A. Yes.
 8 **Q. Anyone besides Mr. Miller?**
 9 A. Yes. There's been discussion of
 10 several of the key people.
 11 **Q. And when you say the key people**
 12 **are we referring to the senior executives?**
 13 A. Yes.
 14 **Q. Which ones in particular?**
 15 A. Mr. Stanage, Mr. Stone.
 16 **Q. And you indicated that Mr. Burns**
 17 **said that he -- I think you said he didn't**
 18 **want to lose anybody by mistake. Do you**
 19 **recall that?**
 20 A. Um-hum.
 21 **Q. What did you understand Mr. Burns**
 22 **to mean?**
 23 A. By our own inaction or inability
 24 to put into place rational and fair
 25 compensation. Like I said -- that's the way I

1 R. PRIORY
 2 would characterize it. If you can't pay an
 3 individual a fair wage, and they're in the
 4 middle of a Chapter 11 under tremendous
 5 pressure, it seems only logical that they
 6 would begin looking around. And that's a
 7 thing that generally CEOs under that
 8 circumstance don't -- they'd do anything to
 9 prevent their people from looking around
 10 because once the looking starts then the
 11 leaving follows soon thereafter. So general
 12 concern that they're potential targets. And
 13 as you're probably aware in these
 14 circumstances, certainly every headhunter in
 15 the country hovers around Chapter 11s to try
 16 to pick off the good people. And employees
 17 are often in positions where things will tend
 18 to look greener on the other side given how
 19 brown the dirt is on their side.

20 Q. And Mr. Burns expressed to you
 21 his -- this concern about the -- potentially
 22 Dan losing Mr. Miller, Mr. Stange and Mr.
 23 Stone beginning in March of 2006; is that
 24 right?

25 A. Yeah. I think that's about the
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1 R. PRIORY
 2 time frame that that dialogue began. We were
 3 spending time looking at the attrition curves.
 4 The attrition curves had spiked up rather
 5 dramatically around the filing time. We
 6 didn't know whether they were going to come
 7 back down or what was going to happen. And
 8 then invariably the board dialogue would drift
 9 to very quickly -- actually, it wouldn't
 10 drift -- it would go like a laser shot -- to
 11 how about the senior team. What have you done
 12 to ensure us that the senior team are focused
 13 on what they're supposed to be focused on and
 14 are driving the value and leading the CEO.

15 And that's when Mike said they're
 16 doing that. I think I've got them focused.
 17 They're headed in the right direction. But
 18 there are some concerns. And then he began to
 19 dialogue on some of the concerns that are out
 20 there. And those are the ones I just
 21 described to you.

22 Q. Did you share Mr. Burns' concern
 23 that certain of the senior executives might
 24 leave if their employment agreements were not
 25 modified?

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1 R. PRIORY
 2 A. Share that with who?
 3 Q. I didn't mean -- I'll rephrase it.
 4 A. Okay.
 5 Q. Did you have the same concern that
 6 Mr. Burns expressed to you that certain of the
 7 senior executives might leave if their
 8 employment agreements were not modified?

9 A. Yes. Absolutely, yes.

10 Q. And, to your knowledge, did other
 11 members of the board have the same concern as
 12 Mr. Burns that certain of the senior
 13 executives might leave Dana if their
 14 employment agreements were not modified?

15 A. Now, I can't speak for what they
 16 believe. I can simply address the comments
 17 they had made. The comments they had made
 18 certainly suggested considerable concern.
 19 What's in their minds I really don't know.

20 (Priory Exhibit 3, document
 21 bearing production numbers DNC 000472
 22 through DNC 000474, marked for
 23 identification as of this date.)

24 BY MR. O'NEILL:
 25 Q. Mr. Priory you're looking at

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1 R. PRIORY
 2 Priory Exhibit 3. Do you recognize that
 3 document?

4 A. Yes, I do.

5 Q. What is it?

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

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

12 A. Um-hum.
 13 (Pause on the record.)

14 A. Okay.
 15 Q. What occurred at the meeting
 16 described in Exhibit 3 relating to the
 17 modification of the senior executives'
 18 employment compensation?

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

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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 **Q. All right. Let's talk about the
3 terms of the modified agreements. As I
4 understand it, there are sort of two
5 components to the completion bonus under the
6 modified agreement; is that right?**

7 A. Right.

8 **Q. One is a minimum completion bonus
9 and the other is a variable compensation
10 component; is that right?**

11 A. Well, there's a minimum. Then
12 there's a threshold number. And then there's
13 the variable component.

14 **Q. Okay. What is the aggregate
15 amount that's payable to the senior executives
16 under the minimum completion bonus?**

17 A. \$3 million. To Mr. Burns.
18 Aggregate for the group, I do not know. But
19 I'm sure it's in the filings.

20 Must be about 12.

21 (Priory Exhibit 6, Supplement to
22 Motion of Debtor Dana Corporation, marked
23 for identification as of this date.)
24

25 BY MR. O'NEILL:

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1 R. PRIORY

2 **Q. You're looking, Mr. Priory, at
3 what's been marked as Priory Exhibit 6 which
4 I'll represent to you is the supplement to the
5 motion at issue here and I'll direct your
6 attention to paragraph 7. And the chart on
7 paragraph 7. I'm going to ask you if that
8 refreshes your recollection as to the
9 amount -- the aggregate amount of the minimum
10 completion bonus payable to the senior
11 executives.**

12 A. No. It didn't tell me much.

13 **Q. Flip over to the next page.**

14 A. Oh. Here we go. Yes. My memory
15 is refreshed.

16 **Q. Okay. And what is the amount of
17 the compensation payable --**

18 A. \$5.6 million.

19 **Q. And that's also 50 percent of the
20 target completion bonus; is that right?**

21 A. Yes.

22 **Q. When is the minimum completion
23 bonus payable?**

24 A. It would be paid upon the
25 effective date of the plan.

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1 R. PRIORY

2 **Q. And what requirements, if any, do
3 the modified agreements impose on the plan
4 that must become effective before the minimum
5 completion bonus is payable?**

6 A. It must have been successfully
7 negotiated, approved by the courts, and be a
8 viable plan for the emergence of bankruptcy
9 for Dana Corporation.

10 **Q. But other than that there are no
11 requirements?**

12 A. Other than that. No.

13 **Q. How was it determined that
14 confirmation -- or rather effectiveness of a
15 plan for reorganization would become the
16 trigger for payment of the minimum completion
17 bonus?**

18 A. That was the collective advice
19 that the committee received from probably a
20 number of parties. I'm not sure specifically
21 which ones. But certainly there was legal
22 input and there was compensation expert input
23 as to what a rational date was that we were
24 certain that we had a plan. There was an
25 agreement. We'd run through the entire

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