Docket #0460 Date Filed: 03/23/2016

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SWIFT ENERGY COMPANY, *et al*.,	)	Case No. 15-12670 (MFW)
Debtors.[1]	)	**Re: Docket No. 243**

OBJECTION OF MORRIS PROPP II TO
CONFIRMATION OF CHAPTER 11 PLAN

Comes now Morris Propp II, registered Bondholder, (hereinafter, the "Objector") on behalf of himself and Morris Propp II Family Foundation, Inc. and hereby objects to confirmation of the Proposed Plan of Reorganization (as amended, the "Plan") of Swift Energy USA, Inc., Swift Energy Company, Swift Energy International, Inc., Swift Energy Group, Inc., Swift Energy Alaska, Inc., Swift Energy Operating, LLC, GASRS LLC, SWNCO- Western, LLC, and Swift Energy Exploration Services, Inc., (collectively, the "Debtors"), and in support of such objections avers as follows:

1. Objector is a creditor of the Debtors in the above-captioned cases pending in the United States Bankruptcy Court of the District Court of Delaware. Objector's claim amounts to $1,070,000, an amount comprised of Swift Energy 7.125s 2017 bonds, collectively (the "Bonds"), that were purchased between November 12, 2014 and October 29, 2015. The bond prices ranged between from $29.95 to $93.03.

[1] The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.

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2. On December 31, 2015, (the "Petition Date") each of the Debtors filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Code"). The cases (collectively, the "Bankruptcy Cases") are pending jointly before the Honorable Mary F. Walrath in the United States Bankruptcy Court for the District of Delaware. Since this date, the Debtors have remained in possession of their assets and continue to operate and manage their business as debtors-in-possession pursuant to Sections 1107 and 1108 of the Code.

3. The Plan along with the filing of a Joint Disclosure Statement pursuant to section 1125 of the Code was filed by the Debtors on February 22, 2016.

4. The Plan outlines numerous classes of claims and interests, including, *inter alia*, Class 4, Senior Notes and Rejection Claims, and Class 5, General Unsecured Claims.

5. The Objector seeks the clarification of his status. If his holdings fall under Class 5, General Unsecured Claims, which the Plan classifies as unimpaired, he is owed the full value of his claims according to the terms of the Plan. If his holdings fall under Class 4, which the Plan classifies as impaired, the Objector's rights in the process to date have already been severely compromised.

6. In early February, the Objector learned from Akin Gump, Counsel for the Official Committee of Unsecured Creditors (the "Committee"), that members of the Committee were offered the opportunity to reinvest in the Debtor.

7. Objector was not offered this opportunity to participate. Given the timing of his phone conversation with counsel at Akin Gump, Objector was only notified when the opportunity was no longer available.

8. Having struck a deal with the Debtors, other Unsecured Creditors can no longer be considered to be similarly situated to the Objector. If the Objector is not similarly situated vis-à-vis other Note Holders, he cannot be in the same Class with them. Although Chapter 11 debtors are prohibited from separately classifying claims to gerrymander an affirmative vote on reorganization, claims may be classified separately if significant disparities exist between the legal rights of the holder that render the two claims not substantially similar. *In re GAC Storage Lansing, LLC*, 485 B.R. 174 (Bankr. N.D. Ill. 2013). In light of the above, this is the case here.

9. Objector should, therefore, be treated as a member of Class 5. As a general rule, classification in a plan should not do violence to any claimant's interest or arbitrarily classify or discriminate, unless the facts of the case justify it. See, e.g., *Matter of Le Blanc*, 622 F.2d 872 (5th Cir. 1980). Allowing the Plan to move forward leaves the Objector uniquely disadvantaged vis-à-vis other unsecured creditors who have reinvested in Swift unless the Objector is deemed to be a member of Class 5.

10. It is well-settled under the Code that the term "same treatment," as used in provision of Chapter 11, generally requires the same treatment for each claim or interest of a particular class, unless the holder of that particular claim or interest agrees to less favorable treatment, and the same opportunity for recovery. 11 U.S.C. § 1123(a)(4). *See, e.g., In re Energy Future Holding Corp*., 527 B.R. 157 (Bankr. D. Del. 2015).

11. The Objector never agreed to a less favorable treatment. He must have the same opportunity for recovery, and yet, under the terms of the Plan as is, he stands to lose more than 95% of his investment if his claims are classified as Class 4 claims. (The Debtors' own estimation puts the minimum value of recovery at 5%).

12. It is equally well settled that a creditors' committee owes a fiduciary obligation to its constituency. *See Shaw & Levine v. Gulf & Western Industries, Inc.* (*In the matter of Bohack Corp.),* 607 F.2d 258, 262 n. 4 (2d Cir.1979) ("[T]he committee owes a fiduciary duty to the creditors, and must guide its actions so as to safeguard as much as possible the rights of minority as well as majority creditors."); *Johns–Manville Sales Corp. v. Doan* (*In re Johns–Manville Corp.),* 26 B.R. 919, 925 (Bankr.S.D.N.Y.1983) ("Conflicts of interest on the part of the representative persons or committees are ... not to be tolerated.").*Mirant Americas Energy Mktg., L.P. v. Official Comm. of Unsecured Creditors of Enron Corp*., No. 02 CIV. 6274 (GBD), 2003 WL 22327118, at *4 (S.D.N.Y. Oct. 10, 2003). A conflict of interest appears evident when a membership on the Committee of Unsecured Creditors results in a different outcome for those who are on the Committee vis-à-vis those who were not a part of the Committee.

13. While "adequate representation exists through a single committee so long as the diverse interests of the various creditor groups are represented on and have participated in that committee," that is only predicated on the principle that the Committee represents the interests of its various constituents and allows the opportunity for all constituents it purports to represent to participate in form and in substance. *In re Sharon Steel Corp*., 100 B.R. 767, 777–78 (Bankr.W.D.Pa.1989). *In re Nutritional Sourcing Corp.,* 398 B.R. 816, 836 (Bankr. D. Del. 2008). Where, as here, that does not occur, it is eminently appropriate for the Court to fashion a remedy for the party, such as the Objector, whose interests have been so substantially compromised.

14. In sum, the proposed Chapter 11 Plan is simply not confirmable, where, as here, claims within the same class are not receiving the same treatment. 11 U.S.C. § 1123(a)(4). *In re New Century TRS Holdings, Inc*., 407 B.R. 576, (Bankr.D. Del. 2009).

15. In light of the foregoing, the Objector opposes confirmation of the Debtors' Plan.

Dated: March 23, 2016
Wilmington, Delaware

CROSS & SIMON, LLC

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CERTIFICATE OF SERVICE

I, Kevin S. Mann, hereby certify that on this 23rd day of March, 2016, I caused a true and correct copy of the *Objection of Morris Propp II to Confirmation of Chapter 11 Plan* to be served upon all interested parties via CM/ECF and upon the parties listed below by first class mail:

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