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.	§	**Jointly Administered**
	§	
	§	Re: D.I. 243, 310, 393, and 417

EAGLE FORD GATHERING LLC AND COPANO ENERGY SERVICES/UPPER GULF COAST LLC OBJECTION TO DEBTORS' JOINT PLAN OF REOGRANIZATION

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Eagle Ford Gathering LLC and Copano Energy Services/Upper Gulf Coast LLC (collectively referred to herein as "EFG") object to confirmation of the Debtors' Joint Plan of Reorganization ("Plan") and in support of its objection, EFG states as follows:

1. Eagle Ford Gathering LLC is a party to a gas services agreement with Debtor Swift Energy Operating, LLC dated June 1, 2012, as amended (referred to herein as the "GSA"). Copano Energy Services/Upper Gulf Coast LLC is a party to an energy marketing contract with Debtor Swift Energy Operating, LLC dated June 1, 2012 (referred to herein as the "Copano Contract"). On March 9, 2016 [D.I. 393], the Debtors filed a notice of exhibits to the Plan, in which it indicated it is rejecting the GSA and the Copano Contract. [1]

2. Pursuant to the terms of the Plan, rejection damage claims are in a separate class from other unsecured claims. See, Article 3 B.4 and B.5 of the proposed plan. Unlike the general unsecured claims in Class 5, rejection damage claims in Class 4 are impaired. See

[1] Eagle Ford Gathering LLC and Debtor Swift Energy Operating LLC are attempting to resolve all issues and to amend the GSA. To the extent a resolution is reached, EFG will withdraw this Objection, which is being filed in order to reserve all rights.

Disclosure Statement, Article II B. General unsecured claims will recover 100% of their claims. No justification is giving for discriminating against rejection claims.

a. THE PLAN UNFAIRLY DISCRIMINATES AGAINST EFG'S REJECTION CLAIM.

3. EFG objects to the Plan in that the Plan unfairly discriminates against the class of rejection claims. Rejection claims should be included with other general unsecured claims. Similarly situated claims (unsecured, administrative, etc.) must be treated consistently. *Corestates Bank, N.A. v. United Chem. Techs., Inc.*, 202 B.R. 33, 47 (E.D. Pa. 1996) (quoting 5 *Collier on Bankruptcy*, § 1129.03[3][b] (15th ed. 1991).

4. The Debtor bears the burden of proving compliance with each of the requirements of 11 U.S.C. § 1129(a). *In re Fur Creations by Varriale, Ltd.*, 188 B.R. 754, 760 (Bankr. S.D.N.Y. 1995) (citations omitted). The Debtor must satisfy this burden by a preponderance of the evidence. *In re Exide Techs.*, 303 B.R. 48, 58 (Bankr. D. Del. 2003). A chapter 11 plan that unfairly discriminates against a dissenting class cannot be confirmed. *In re Lernout & Hauspie Speech Prods.*, 301 B.R. 651, 656 (Bankr. Del. 2003).

5. Unfair discrimination among similarly situated claims is determined by addressing "whether there is a reasonable basis for the discrimination and whether the debtor can confirm and consummate a plan without the proposed discrimination." *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 611 (Bankr. D. Del. 2001), app. dismissed, 280 B.R. 339 (D. Del. 2002). Under the applicable test, a rebuttable presumption of unfair discrimination exists when there is:

> "(1) a dissenting class; (2) another class of the same priority; and (3) a difference in the plan's treatment of the two classes that results in either (a) a materially lower percentage recovery for the dissenting class (measured in terms of the net present value of all payments), or (b) regardless of percentage recovery, an allocation under the plan of materially greater risk to the dissenting class in

> connection with its proposed distribution." If there is an allocation of a materially lower percentage recovery, the presumption can be rebutted by "showing that, outside of bankruptcy, the dissenting class would similarly receive less than the class receiving a greater recovery, or that the alleged preferred class had infused new value into the reorganization which offset its gain."

In re Armstrong World Indus. Inc., 348 B.R. 111, 121 (D. Del. 2006)(citing In re Dow Corning Corp., 244 B.R. 696, 702 (Bankr. E.D. Mich. 1999)). Other courts have not allowed unfair discrimination among similar claims if the court finds the discrimination was based on an improper purpose. *See, e.g., In re Woodbrook Assocs*, 19 F.3d 312, 321 (7th Cir. 1994) (holding that plan discriminated unfairly with a distribution of 5% for the government's claim while insiders' unsecured claims were paid in full.). Applying these principles to the facts at hand, the discrimination of EFG's rejection claim is unfair and violates section 1129 (b). Accordingly, the Plan cannot be confirmed.

WHEREFORE, EFG respectfully requests that as a condition precedent to confirmation of the Plan, rejection claims be treated in *pari passu* with all other unsecured claims and for such further relief as may be just under the premises.

Dated: March 23, 2016
Wilmington, DE

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CERTIFICATE OF SERVICE

I, Thomas F. Driscoll III, hereby certify that on this 23rd day of March, 2016, a copy of the foregoing *Eagle Ford Gathering LLC and Copano Energy Services/Upper Gulf Coast LLC Objection to Debtors' Joint Plan of Reorganization* was caused to be served on the following via CM/ECF and first class mail:

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