IN THE UNITED STATES BANKRUPCTY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT

IN RE: EL DORADO GAS & OIL, INC. — **CHAPTER 11**
NO. 23-51715-JAW

THOMAS L. SWAREK, Interested Party, Individually and derivatively on behalf of EL DORADO GAS & OIL, INC. Debtor — **PLAINTIFFS**

v. — **NO. ____________________**

MS FACILITIES, LLC — **DEFENDANT**

COMPLAINT FOR DAMAGES

COME NOW, Thomas L. Swarek, Interested Party, individually and derivatively on behalf of El Dorado Gas & Oil, Inc., and for his Complaint for Damages against MS Facilities, LLC, states the following:

1. El Dorado Gas & Oil, Inc. ("EDGO" or "the Corporation") is an Arkansas corporation in good standing and the Debtor in this matter.

2. EDGO was formed in 1979 and has conducted business since its inception.

3. Thomas L. Swarek, ("Swarek") as an adult resident citizen of Mississippi and was the sole shareholder and Chief Executive Officer of El Dorado Gas & Oil, Inc. at the time of the actions complained of here and remains the sole shareholder through the current time.

4. This is not a collusive action to confer jurisdiction that this Court would otherwise lack.

5. MS Facilities, LLC is a Delaware Limited Liability Company and may be served with process upon Agents and Corporations, Inc., its Registered Agent, at 1201 Orange Street, Suite 600, Once Commerce Center, Wilmington, Delaware 19801.

6. El Dorado Gas & Oil, Inc. is a Debtor in this Chapter 11 with an appointed Trustee and that Trustee is unwilling to assert or pursue this claim against MS Facilities, therefore Thomas L. Swarek, derivatively as shareholder has that ability under Rule 7023.1.

7. Swarek, through counsel, attempted to secure the agreement of the Trustee, but the Trustee would not agree, accordingly Swarek dismissed a prior filed action in the name of the Corporation.

8. Swarek as the sole shareholder fairly and adequately represents this interest of the Corporation.

9. On September 17, 2020, El Dorado Gas & Oil, Inc. ("EDGO") entered into the Mainstreet Loan in the amount of $50,000,000.00 with First Service Bank ("FSB") and MS Facilities, LLC ("MSF").

10. Prior to that time Swarek and EDGO had established a decades long relationship with FSB and had borrowed and repaid to FSB substantial prior loans.

11. MSF is the lender for 95% of that loan and FSB is the lender for 5% of that loan.

12. The purpose of the loan was to reinvigorate the company and rehire dismissed staff, amounting to 300 employees

13. In those Term Loan papers, MSF appointed FSB its administrative agent and FSB has acted as the administrative agent of MSF since the loan was made in 2020.

14. MSF is therefore responsible for the actions of FSB as its administrative agent.

15. Though the loan closed on September 17, 2020, it was not funded until October 22, 2020, but interest was charged on the entire amount beginning on September 17, 2020.

16. This loan was made as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

17. Those funds were placed in an account at FSB and FSB was the only party with control over the use of those funds in that account.

18. For reasons that are unknown to Plaintiff, FSB several times moved $5,000,000 between different accounts.

19. MSF and FSB intentionally and without justification interfered with the business of EDGO to the extent that EDGO was unable to comply with its obligations to Defendant.

20. From the commencement of the loan, MSF and FSB took control of the loan proceeds well in excess of their authority under the Use of Proceeds provisions of the Term Loan itself.

21. This at first caused delays in the operation of the business, but culminated in denying and returning previously approved payments, to the detriment of EDGO and Swarek.

22. FSB and MSF never provided any kind of account statement or detail of the draw that had been made against the loan proceeds.

23. MSF and FSB violated the terms and provisions of the August 3, 2020, directive from the Federal Reserve entitled "Joint Statement on Additional Loan Accommodations Related to COVID-19" regarding loan abatement and discriminated against EDGO in doing so.

24. These were conditions that applied, and they applied prior to execution of the Mainstreet Loan in September of 2020.

25. As an example, FSB, as agent of MSL, commenced an action to remove EDGO from the position of operator of oil wells in Texas, effectively forcing EDGO into a receivership.

26. In this way the MSL and FSB took literal control of EDGO away from its principal, Swarek, controlling not only its bank accounts, but its business activities.

27. This dramatic interruption to the largest cash flow of these companies led to the inability of EDGO to service the debt relating to the Mainstreet Loan.

28. FSB and MSF further took control of the bank account of EDGO and controlled spending out of that account in such a way that hampered the business of EDGO, including withholding and delaying certain advances and payments to the detriment of EDGO.

29. FSB and MSF failed to keep clear records regarding the loan and the account from EDGO, hiding the exorbitant expenses charged to the loan from EDGO.

30. FSB and MSF were required to designate one person who would be well versed in the details of the Mainstreet loan and other loans and options available to EDGO but failed to do this to the detriment of EDGO.

31. FSB and MSF charged unreasonable and exorbitant expenses to the loan, including private air travel.

32. FSB further promised, at the inception of the Mainstreet Loan, that restructuring, modification and interest credits would be made available, consistent with the provisions of the August 3, 2020, Joint Statement.

33. Rather than doing so, MSF and FSB refused these options and declared default, without valid justification and despite offering these same benefits to others.

34. All of this amounts to overreaching and taking an active role in micromanaging the decisions of EDGO to the dramatic detriment of EDGO and the value of Swarek's interest in EDGO.

35. In 2022, certain other parties and guarantors, including Swarek, were prepared to make payment in the amount of $15,000,000, a sum sufficient for all of these obligations to be brought current.

36. To facilitate this lump sum payment, Swarek and EDGO requested a subordination of Plaintiff's $4,000,000 secured position in certain equipment of EDGO.

37. This would have improved the collateral position of FSB and MSF.

38. FSB agreed to this action and confirmed that agreement in email communication, but then reversed position when Thomas Grumbles personally and abruptly cancelled that agreement.

39. MSF and FSB ultimately refused to do so and Swarek and EDGO lost access to that $15,000,000 and the ability to then come current on the Term Loan obligation.

40. FSB has sued Swarek and EDGO in two lawsuits in the United States District Court for the Southern District of Mississippi for $50,000,000 despite the fact that FBS holds only 5% of the Mainstreet Loan.

41. FSB, as agent of MSF also improperly threatened Swarek's wife with a $60,000,000.00 lawsuit leading to intense pressure on that marriage and a divorce, harassed and threatened Swarek with litigation and foreclosure in three states, Texas, Mississippi and Arkansas, rathern that reasonably work with Swarek regarding this debt. All of these actions amount to intentional or negligent infliction of emotional distress.

42. Plaintiff will specifically supplement this list of unlawful and illegal acts by FSB and MSF.

43. These actions amount to a breach of contract and entitle EDGO and Swarek to damages against MSF and damages to Swarek on account of the degradation of his ownership interest and intentional or negligent infliction of emotional distress.

44. These actions create lender liability for MSF.

45. These actions amount to intentional interference with the business of EDGO and the value of the ownership interest of Swarek.

46. These actions are discriminatory by the MSF and on information and belief, this discrimination was driven by the fact the EDGO is in the business of producing oil and gas.

47. Violating these assurances made by the FSB, and described in the August 3, 2020 Joint Statement, to EDGO and Swarek and which EDGO and Swarek reasonably and justifiably believed and relied upon directly led to the failure of EDGO and the liabilities asserted in this litigation and amount to fraud by FSB, attributable to MSF because FSB is the agent of MSF.

48. MSF breached the Term Loan by unreasonably and without notice allowing its agent FSB to sweep accounts, unreasonably and without notice allowing its agent FSB to refuse to offer reasonable forbearance, unreasonably and without justification allowing its agent FSB to charge exorbitant fees and interest, unreasonably and without justification refusing EDGO's offer to restructure the obligation owed under the Term Loan.

49. These actions, all attributable to MSF as principal of its agent FSB, also led to the loss by Swarek, not only of the value of his shareholder interest, but liability on his guarantee.

50. These actions amount to a misuse of federal funds and a failure to comply with regulatory requirements and practices.

51. These actions violate the covenant of good faith and fair dealing.

52. MSF acted in a willful manner or at least with gross negligence that could lead to the imposition of punitive damages.

THEREFORE, Thomas L. Swarek, individually and derivatively on behalf of El Dorado Gas & Oil, Inc. demand from Defendant MS Facilities, LLC damages in an amount necessary to compensate them for the wrongful and improper acts described above, including but not limited to compensatory, consequential and punitive damages and all of its attorney fees and expenses. Thomas L. Swarek, individually and derivatively on behalf of El Dorado Gas & Oil, Inc. asks for such other relief as this Court may find merited under the circumstances.

Respectfully submitted, this the 23rd day of April, 2025.

THOMAS L. SWAREK, INTERESTED PARTY,
INDIVIDUALLY AND DERIVATIVELY ON
BEHALF EL DORADO GAS & OIL, INC.

BY: *_/s/ Bradley T. Golmon_*
BRADLEY T. GOLMON, MSB #10261
Counsel for Defendants

OF COUNSEL:

HOLCOMB LAW GROUP
400 Enterprise Drive
Post Office Drawer 707
Oxford, Mississippi 38655
Phone: (662) 234-8775
Fax: (662) 238-7552

STATE OF Mississippi

COUNTY OF Harrison

Before me the undersigned authority in and for the aforesaid county and state, this day there personally appeared the within named **THOMAS L. SWAREK, INDIVIDUALLY AND AS SOLE SHAREHOLDER OF EL DORADO GAS & OIL, INC.**, who being duly sworn, on oath, that all of the matters, things and allegations contained in said COMPLAINT FOR DAMAGES are true and correct as therein stated and that any allegation made on information and belief, Affiant verily believes to be true.

By: Thomas L Swarek

THOMAS L. SWAREK, INDIVIDUALLY AND AS SOLE SHAREHOLDER OF EL DORADO GAS & OIL, INC.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, this the 17 day of April, 2025.

Lydia N. Moffett
Notary Public

My Commission Expires: 4-21-2028

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID# 471555
LYDIA N. MOFFETT
Commission Expires
April 21, 2028
HARRISON COUNTY