



SO ORDERED,

**Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: February 7, 2025**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

EL DORADO GAS & OIL, INC., *et al.*,¹

CASE NO. 23-51715-JAW

DEBTORS.

CHAPTER 11

**ORDER DENYING WITHOUT PREJUDICE FIRST SERVICE BANK'S
MOTION FOR ENTRY OF AN ORDER (I) EXTENDING THE AUTOMATIC
STAY UNDER 11 U.S.C. § 362 AND (II) GRANTING RELATED RELIEF**

There came before the Court for hearing on January 28, 2025 (the “Hearing”), First Service Bank’s Motion for Entry of an Order (I) Extending the Automatic Stay under 11 U.S.C. § 362, and (II) Granting Related Relief (Dkt. #997)² filed by First Service Bank (“FSB”); the Response in Opposition to First Service Bank’s Motion for an Entry of an Order (I) Extending the Automatic Stay and (II) Granting Other Relief (Dkt. #1084) filed by Thomas L. Swarek (“Swarek”); and First Service Bank’s Rebuttal in Support of its Motion for Entry of an Order (I) Extending the Automatic

¹ Jointly administered with *In re Hugoton Operating Company, LLC*, Case No. 23-51139; *Bluestone Natural Resources II – South Texas, LLC*, Case No. 24-50223-JAW; and *In re World Aircraft, Inc.* Case No. 24-50224-JAW.

² Unless otherwise noted, citations to the docket are to the lead bankruptcy case commenced by El Dorado Gas & Oil, Inc, Case No. 23-51715-JAW.

Stay under 11 U.S.C. § 362, and (II) Granting Related Relief (Dkt. #1114) filed by FSB in the above referenced jointly administered bankruptcy cases.³

At the Hearing, John A. Crawford, Jr. and David L. Curry, Jr. represented FSB; Bradley T. Golmon represented Swarek; Katherine Hopkins, Nancy Lee Ribaud, and R. Michael Bolen represented Dawn M. Ragan; Timothy J. Anzenberger represented MetLife; and Abigail M. Marbury and Steven Usry represented the U.S. Trustee.

Two witnesses testified at the Hearing: Darla McJunkins and Dawn Ragan. Twenty-nine exhibits were introduced into evidence by stipulation; in addition, twelve exhibits were introduced by FSB, and five by Swarek.⁴

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(G). Notice of the Hearing was proper under the circumstances.

A. Procedural History of Jointly Administered Bankruptcy Cases & Facts⁵

On August 14, 2023, Hugoton Operating Company, Inc. (“Hugoton”) filed a chapter 11 petition for relief, Case No. 23-51139-JAW (the “Hugoton Case”) (FSB Ex. #45). Hugoton is a wholly owned subsidiary of El Dorado Gas & Oil, Inc. (“EDGO”).

³ Metropolitan Life Insurance Company (“MetLife”) filed the Response to Motion for Entry of an Order (I) Extending the Automatic Stay under 11 U.S.C. § 362, and (II) Granting Related Relief (Dkt. #1102). The parties reported that they had resolved MetLife’s limited objection by agreement before the Hearing.

⁴ Stipulated exhibits are cited as “(STP Ex. #)”; FSB’s exhibits, as “(FSB Ex. #)”; and Swarek’s exhibits, as “(Swarek Ex. #)”.

⁵ The following findings of fact and conclusions of law are made pursuant to Rules 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure.

After FSB froze EDGO's funded bank accounts, EDGO filed a chapter 11 petition for relief, Case No. 23-51715-JAW (the "EDGO Case") (FSB Ex. #7) on December 22, 2023. Swarek is EDGO's sole shareholder.

In separate motions filed only weeks apart, FSB asked the Court to appoint a chapter 11 trustee in both the Hugoton and EDGO Cases. (Hugoton Dkt. #147; Dkt. #73). The Court granted the motions and approved Dawn Ragan ("Ragan") as the chapter 11 in both the Hugoton and EDGO Cases. (Hugoton Dkt. #193, #196; Dkt. #193, #208).

Days before Ragan's chapter 11 appointment in the EDGO Case, EDGO filed a motion seeking to substantively consolidate its bankruptcy case with Hugoton's (the "EDGO-Hugoton Sub Con Motion") (Dkt. #152; Hugoton Dkt. #214). If granted, the EDGO-Hugoton Sub Con Motion would allow EDGO to reach Hugoton's assets for the satisfaction of its debts. *See Bergemann v. Babcock & Wilcox Co. (In re Babcock & Wilcox Co.)*, 250 F.3d 955, 958-59 n.5 (5th Cir. 2001) (noting that substantive consolidation "usually results in, *inter alia*, pooling the assets of, and claims against, the two entities; satisfying liabilities from the resultant common fund; eliminating inter-company claims; and combining the creditors of the two companies for the purposes of voting on reorganization plans") (quotation omitted). EDGO filed the EDGO-Hugoton Sub Con Motion while it was still operating as a debtor in possession ("DIP") under Swarek's management and control. After her appointment, Ragan agreed that substantive consolidation would likely be necessary, but she declined to take a position and asked the Court to continue the EDGO-Hugoton Sub Con Motion "until other priorities of the Debtors had been completed." (STP #2 at 17). The EDGO-Hugoton Sub Con Motion remains pending.⁶

⁶ Although no hearing has been set on the EDGO-Hugoton Sub Con Motion, several status conferences have been held. (Dkt. #180, #209, #273, #367, #967). Another status conference is set for March 25, 2025. (Dkt. #1019).

By joint motion, the Court authorized the joint administration of the Hugoton and EDGO Cases with the EDGO Case surviving as the lead case. (Dkt. #290).

Not long after her appointment, Ragan concluded from her examination of the relationship between Hugoton and EDGO and other related entities that the operations and management of EDGO and Hugoton were intertwined with two non-debtor affiliates: Bluestone Natural Resources II—South Texas, LLC (“Bluestone”) and World Aircraft, Inc. (“World Aircraft”). At Ragan’s recommendation, Swarek filed a chapter 11 petition for relief on behalf of Bluestone, Case 24-50223-JAW (the “Bluestone Case”) (FSB Ex. #35) and World Aircraft, Case 24-50224-JAW (the “World Aircraft Case”) (FSB Ex. #49) on the same date, February 22, 2024. (Hr’g at 3:21 (Jan. 28, 2025)).⁷

On May 1, 2024, EDGO, Hugoton, Bluestone, and World Aircraft (collectively, the “Debtors”) filed a joint motion asking the Court to authorize Ragan to act as Bluestone’s managing member and World Aircraft’s independent director. (Dkt. #369). On May 22, 2024, the Court granted the subsidiary motion, with modified relief, and in a separate order approved the joint administration of the Debtors’ bankruptcy cases with the EDGO Case (23-51715-JAW) surviving as the lead case. (Dkt. #455, #456).

B. Debtors

In general, the Debtors (Hugoton, EDGO, Bluestone, and World Aircraft) are engaged in the business of owning and/or operating oil and gas interests and related personal property and equipment. (STP #1-2). Oil and gas assets and leases are owned in the name of EDGO, Hugoton, and Bluestone. (STP #1-2). The operators of the leases are EDGO, Hugoton, and Dorado Drilling, a non-debtor affiliate. (STP #1-2).

⁷ The Hearing was not transcribed. Citations are to the timestamp of the audio recording.

C. Swarek

Swarek—either directly or indirectly—owns the Debtors and other affiliated entities. He and his companies obtained numerous loans from FSB. (Hr’g at 11:16). FSB’s loans are purportedly secured by real and/or personal property and are guaranteed by Swarek and entities owned or otherwise controlled by him. (Dkt. #997 at 5).

D. Pre-Petition \$50 Million Mainstreet Loan

On September 17, 2020, EDGO, as borrower; FSB as lender; and Hugoton, World Aircraft, and Swarek as guarantors, entered into a term loan credit agreement in the principal amount of \$50 million (the “Mainstreet Loan”). FSB alleges that the Mainstreet Loan is secured by liens on substantially all assets of EDGO, Hugoton, and World Aircraft. (Dkt. #997 at 5).

According to FSB’s proof of claim, EDGO owed FSB \$53,891,253.17 under the Mainstreet Loan as of December 22, 2023 (the date of EDGO’s bankruptcy petition). (Cl. #2). The Mainstreet Loan is not the only loan made by FSB to Swarek or one of his companies but is by far the largest. (Cl. #21-29, 31-32).

E. Post-Petition Financing

In December 2023 when FSB froze its accounts, EDGO did not have access to cash to meet its payroll and other obligations. (STP Ex. 1 at 6; Hr’g at 1:30-1:31). Many employees quit, and many wells had been shut in. (Hr’g at 1:30-1:31). Concluding that EDGO and Hugoton required significant funding to continue and restart operations, Ragan negotiated a post-petition \$7.5 million loan⁸ (and an additional \$1.25 million for lender reimbursements) with FSB and GrayStreet Credit, LLC. She then filed an emergency motion seeking approval to obtain the post-petition loan (the “Financing Motion”) (Dkt. #329). On May 24, 2024, the Court entered a final order approving

⁸ In her testimony, Ragan sometimes refers to this post-petition loan as the DIP loan.

the Financing Motion. (Dkt. #463). Initially, the post-petition loan matured on August 1, 2024. Later, the parties amended their agreement to extend the maturity date. (Dkt. #671, #677, #905).

F. World Ag

EDGO's present Motion involves World Ag Investment Inc. ("World Ag"), another non-debtor affiliate. FSB's interest in World Ag is understandable. World Ag and Swarek own about 9,000 acres of farmland in the Mississippi Delta with an appraised value of \$77 million. (Hr'g at 2:37-2:38; Dkt. #1102 at 2). World Ag and Swarek lease all or part of that land to third parties who farm it.

MetLife claims first-priority liens on some of the farmland arising from four loans obtained by World Ag and guaranteed by Swarek and EDGO. According to MetLife's proof of claim, World Ag owes MetLife \$25,952,735.90. (Cl. #147). If the appraisal of the property is correct,⁹ there is about \$52 million in equity in the farmland.

FSB asserts a lien on the stock of World Ag "in the amount that the value of FSB's collateral has diminished." (Dkt. #997). FSB claims that apart from the post-petition financing agreement, World Ag guaranteed the debts of EDGO and Swarek under other loans. (FSB Ex. #70).

According to FSB, Swarek has already sold a portion of World Ag's farmland valued at \$200,000 for only \$50,000 to pay interest to MetLife on World Ag's loan.¹⁰ (Hr'g at 12:16). In its Motion, FSB alleges that the sale wrongfully dissipated the assets and value of World Ag to the detriment of both EDGO and FSB. (Dkt. #997 at 10-12). FSB surmises that Swarek is currently attempting to sell all or most of World Ag's remaining farmland. (Dkt. #997 at 2-3).

⁹ This Court makes no finding as to the accuracy of the appraisal or the actual value of the farmland in this Order.

¹⁰ The Court makes no findings of fact or conclusions as to the validity of the sale.

On August 28, 2024, FSB filed a lawsuit against World Ag and Swarek in the U.S. District Court for the Southern District of Mississippi, Case No. 1:24-cv-00262-TBM-RPM. The lawsuit relates to eleven loans, not including the Mainstreet Loan,¹¹ made by FSB to Swarek and guaranteed by World Ag. FSB asks the District Court to enter an order establishing bidding procedures for a non-judicial foreclosure sale of 675 acres of World Ag's land. That District Court lawsuit remains pending.

G. FSB's Motion

In the present Motion, FSB asks the Court to enter an order pursuant to 11 U.S.C. § 105(a) and § 362 to extend the automatic stay to World Ag until the Court hears and rules on the EDGO-Hugoton Sub Con Motion. (Dkt. #997 at 12). At the Hearing, Ragan's counsel reported to the Court that Ragan has not yet adopted a position on the Motion; her time has understandably been consumed by recent sale motions. (Hr'g at 11:03-11:04).

Swarek opposes the Motion. He contends that FSB's argument "can only prevail if World Ag is actually owned by El Dorado" and that EDGO "does not own any shares in World Ag and has never owned any shares in World Ag." (Dkt. #1084 at 2). According to Swarek, he "was the owner and sole shareholder of World Ag, and he is the current President of World Ag," meaning that he controls the stock and, by extension, World Ag's farmland. (Dkt. #1084 at 1).

¹¹ On January 19, 2024, FSB filed a separate lawsuit against World Aircraft and Swarek in the District Court, Case No. 1:24cv-20-TBM-RPM, regarding the Mainstreet Loan. After World Aircraft filed bankruptcy, the lawsuit was stayed as to World Aircraft but continued against Swarek until he filed personal bankruptcy on September 30, 2024, at which time the action was stayed as to him as well as World Aircraft. *See In re Swarek*, Case No. 24-51388-JAW (Bankr. S.D. Miss. Sept. 30, 2024). When Swarek's personal bankruptcy case was dismissed, the District Court lifted the stay as to Swarek, and FSB subsequently obtained a \$54,928,751.83 default judgment against him.

Discussion

The automatic stay under 11 U.S.C. § 362(a) rises automatically when a debtor files for bankruptcy. 11 U.S.C. § 362. The stay applies to “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). The purpose of the stay is to “protect the debtor’s assets, provide temporary relief from creditors, and further equity of distribution among the creditors by forestalling a race to the courthouse.” *GATX Aircraft Corp. v. M/V Courtney Leigh*, 768 F.2d 711, 716 (5th Cir. 1985). “[T]he automatic stay has broad application.” *Brown v. Chesnut (In re Chesnut)*, 422 F.3d 298, 303 (5th Cir. 2005) (citation omitted).

The automatic stay does not apply “to actions not directed against the debtor or property of the debtor.” *Edge Petroleum Operating Co. v. GPR Holdings, LLC (In re TXNB Internal Case)*, 483 F.3d 292, 301 (5th Cir. 2007). The Fifth Circuit has recognized an exception that allows an extension of the stay to a non-debtor “where there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.” *Reliant Energy Servs., Inc. v. Enron Canada Corp.*, 349 F.3d 816, 825 (5th Cir. 2003). “This exception recognizes that, beyond the automatic stay provisions of section 362(a)(1) . . . the bankruptcy court may affirmatively stay proceedings pursuant to its broad discretion powers embodied in 11 U.S.C. § 105.” *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1146 n.3 (5th Cir. 1987). The party seeking an extension of the stay under 11 U.S.C. § 105 stay bears the burden of persuasion. *Id.*; see *Beran v. World Telemetry, Inc.*, 747 F. Supp. 2d 719, 723-24 (S.D. Tex. 2010); *Luppino v. York*, 562 B.R. 894, 898 (W.D. Tex. 2016) (“The party seeking to invoke the stay through this exception has the burden to show that it is applicable.”).

Unscrambling of Scrambled Eggs¹²

Swarek's argument in opposition to the Motion requires the Court to determine as a preliminary matter the ownership of World Ag's shares of stock. If Swarek (not EDGO) owns the stock, then Swarek controls its valuable farmland.¹³

Issues of title and ownership—which assets belong to which entity—have been a pervasive and extensive problem¹⁴ in every bankruptcy case commenced by Swarek.¹⁵ Ragan testified at the Hearing that there was no formal observance of corporate formalities. (Hr'g at 1:28). She discovered that vehicles and equipment purchased with funds from one entity were transported to another entity and titled in that entity's name. (Hr'g at 1:52-2:00). As to rental income from World Ag's farmland, any check made payable to World Ag was endorsed and deposited into EDGO's account or Swarek's personal account but not World Ag's. (Hr'g at 2:24). FSB's monthly bank statements show that from November 2018 to the present any farm rental income deposited into World Ag's account was quickly withdrawn and deposited into an account held by EDGO. (FSB Ex. #73; Hr'g at 11:34-11:36). This commingling of funds between World Ag's and EDGO's bank accounts shows that Swarek did what he pleased with World Ag and EDGO assets.¹⁶ (FSB Ex. #73; Hr'g

¹² Ragan used this expression in her first status report as did FSB's counsel at the hearing. (STP Ex. #1; Hr'g at 2:36).

¹³ Ragan testified that if the farmland were included in EDGO's estate, unsecured creditors would likely be paid. (Hr'g at 2:36)

¹⁴ In fact, before the Hearing, counsel for Ragan reported to the Court a forthcoming settlement resolving some title and ownership issues between EDGO and an affiliated debtor, Escambia Operating Company, LLC ("Escambia"). (Dkt. #833). These companies and others under Swarek's management and direction engaged in significant joint-utilization and commingling of assets.

¹⁵ Since April 2, 2023, Swarek has commenced eight bankruptcy cases: *In re Blue Diamond Energy, Inc.*, Case No. 23-50490-JAW; *In re Escambia Operating Company, LLC*, Case No. 23-50491-JAW; *In re Escambia Asset Company, LLC*, Case No. 23-50492-JAW; *In re Hugoton Operating Company, LLC*, Case No. 23-51139-JAW; *In re El Dorado Gas & Oil, Inc.*, Case No. 23-51715-JAW; *Bluestone Natural Resources II – South Texas, LLC*, Case No. 24-50223-JAW; *In re World Aircraft, Inc.* Case No. 24-50224-JAW; *In re Swarek*, Case No. 24-51388-JAW.

¹⁶ "Q. So he kind of ran the companies as one big happy family? A. I would say that." (Escambia, No. 23-50491-JAW, Dkt. #291 at 235)

at 11:21). Moreover, Ragan's search through boxes and boxes of corporate documents failed to uncover any record of inter-company accounting. (Hr'g at 1:31). She convincingly testified that given the number of entities involved and the extent of the commingling, it would require a significant forensic analysis to resolve all title/ownership issues at a cost that the estate could not afford. (Hr'g at 1:24-1:25). It has been, and continues to be a real problem in every case related to EDGO.

A. Who owns World Ag?

With some limited exceptions, the filing of a bankruptcy petition creates "an estate" that comprises "all legal or equitable interests of the debtor in property as of the commencement of a case." 11 U.S.C. § 541(a)(1). Although bankruptcy law defines the boundaries of EDGO's bankruptcy estate, state law determines its underlying property rights. *Croft v. Lowry (In re Croft)*, 737 F.3d 372, 374 (5th Cir. 2013).

1. Evidence of Swarek's Ownership of World Ag in 2004

According to the Mississippi Secretary of State's website, World Ag was formed by R. Murray on December 7, 2004, and Swarek was its sole officer. FED. R. EVID. 201; *Swindol v. Aurora Flight Sciences Corp.*, 805 F.3d 516, 519 (5th Cir. 2015) (taking judicial notice of Mississippi Secretary of State's website). World Ag's articles of incorporation authorized the company to issue 100 shares of common stock. As evidence of his ownership of the stock, Swarek presented a copy of a form document purportedly certifying World Ag's issuance of 100 shares of stock to Swarek on December 10, 2004 (the "Stock Certificate") (Swarek Ex. #8). The Stock Certificate, which was admitted into evidence without objection, is not a public record; and no testimony was offered to identify the individual who prepared it.

On the back of the Stock Certificate is a stamp assigning the 100 shares from Swarek to his wife, Emily Swarek, on March 1, 2021. The name of the attorney appointed to transfer the shares on World Ag's books is blank. In a notarized letter signed by "Emily Ann Lowery Swarek" on July 27, 2024 and addressed to Sterling Planet Investments LLC, Emily Swarek rejects "any attempted transfer, conveyance or gift of this stock to me by Tom Swarek."¹⁷ (FSB Ex. #60).

Swarek's possession of the Stock Certificate is evidence of his ownership of 100 shares of World Ag's stock in 2004 but is not dispositive. *See Seiden v. Southland Chenilles, Inc.*, 195 F.2d 899 (5th Cir. 1952). World Ag's shares of stock are property, but the Stock Certificate itself is not. The Stock Certificate appears to represent shares of stock. Swarek's possession of the Stock Certificate is neither conclusive proof of his ownership nor a prerequisite to establish EDGO's ownership. Moreover, the relevant date is the date of EDGO's bankruptcy filing in 2023, not 2004.

The Court looks to the facts and circumstances during the relevant time period to determine World Ag's ownership. As explained below, those facts show that even if Swarek owned World Ag in 2004, his ownership did not continue uninterrupted after that date but was transferred to EDGO by at least 2018.

2. Evidence of EDGO's Ownership of World Ag in 2023

As evidence of EDGO's ownership of World Ag, FSB relies on the following documents: EDGO's and Swarek's tax returns signed by Swarek under penalty of perjury; the Statement of Financial Affairs in EDGO's Case signed by Swarek under penalty of perjury; and corporate resolutions signed by Swarek.

¹⁷ The Court notes that Emily Swarek was present in the courtroom until FSB asked the Court to exclude her pursuant to Rule 615 of the Federal Rules of Evidence and that Swarek was present in the courtroom during the entire Hearing. Neither Swarek nor Emily Swarek testified in support of Swarek's claim of ownership.

a. EDGO's Tax Returns Signed by Swarek

FSB's strongest argument that EDGO owns World Ag rests on EDGO's income tax returns for the tax years 2019 through 2023.¹⁸ (FSB Exs. #24-#27). These returns show that Swarek reported to the Internal Revenue Service, under penalty of perjury, that EDGO owns World Ag. *See Robertson v. Dennis (In re Dennis)*, 330 F.3d 696, (5th Cir. 2003) (referring to income tax returns as "quintessential documents" in bankruptcy).

EDGO's filed single unified tax returns, meaning that EDGO and its subsidiaries reported income taxes as a consolidated group. 26 U.S.C. § 1501. Two salient representations appear in EDGO's tax returns. On Schedule O (Form 1120), EDGO is identified as the parent corporation of World Ag. On Form 851 (Affiliations Schedule), EDGO is again identified as World Ag's "common parent" corporation. On EDGO's returns, the bottom right-hand side of the second page of Form 851 shows that EDGO owns 100% of World Ag's shares of stock.

Ragan testified that a consolidated return may only be filed by an affiliated group of corporations when the parent company owns at least 50% of the stock of each subsidiary. (Hr'g at 3:28). Although she is not a certified public accountant, Ragan has a bachelor's degree in accounting and a master's degree in business administration and is familiar with generally accepted accounting principles and tax accounting. (Hr'g at 2:14).

EDGO returns were prepared by Culumber, Harvey & Associates, P.A, a tax and accounting firm. To confirm her understanding that World Ag filed a consolidated tax return, Ragan emailed EDGO's tax accountant, Nhung Scarbrough, inquiring "if a separate tax return has ever been prepared for World Ag." (FSB Ex. #56).

¹⁸ The tax returns are filed in the name of El Dorado Oil & Gas, Inc. ("EDOG"), not EDGO. They are the same entity. EDGO's bankruptcy petition identifies EDGO and EDOG as one debtor, and EDGO and EDOG share the same tax identification number. *Compare* FSB Ex. #27 (EDGO's 2022 Tax Return) with FSB Ex. #17 (EDOG's Request for Taxpayer Identification Number).

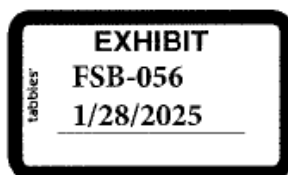
The tax accountant responded:

Dawn,

Our firm has not been engaged to prepare a tax return for World AG so we do not have a separate return. World AG has just been as a subsidiary on El Dorado with no income. I have only gotten income to report for El Dorado. If you are referring to the farm rent, I have a note in my file for 2021 that the land rent has been moved to El Dorado. Because the client mentioned that to me, there was no land rent reported on his personal return in 2021.

That is pretty much what I know about the land.

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Ragan testified that she was persuaded by EDGO's tax returns that EDGO (not Swarek) owned World Ag. (Hr'g at 3:25). She gave several reasons why she found them more persuasive than any other document (including the Stock Certificate). (Hr'g at 3:25-3:33). First, a tax accountant prepared the returns, Swarek signed them under penalty of perjury, and they were filed with the federal government. Second, the returns included World Ag's debt service and rental income from its farmland. Third, Schedule O (Form 1120) and Form 851 (Affiliations Schedule) show EDGO as World Ag's sole shareholder.

b. Swarek's Individual Tax Returns

Swarek's individual tax returns for the 2019-2021 tax years do not refer to World Ag. (FSB Exs. #30-32). Ragan testified that if Swarek owned World Ag, it would have been included on Swarek's tax returns. (Hr'g at 2:19).

c. EDGO's Statement of Financial Affairs Signed by Swarek

EDGO was asked in its Statement of Financial Affairs ("SOFA") to list "any business for which the debtor [EDGO] was an owner, partner, member, or otherwise a person in control within 6 years before filing this case." (Dkt. #114 at 88). In the SOFA signed by Swarek under penalty of

perjury on January 22, 2024, EDGO listed twenty-one entities, including World Ag as shown below:

25.20	World AG Investment, Inc. 1261 Pass Rd. Gulfport, MS 39501	Dormant	EIN: 20-1984644
			From-To

(Dkt. #114 at 88).

FSB argues in its Rebuttal that Swarek is estopped from asserting that he owns World Ag because EDGO's SOFA, which Swarek signed and filed, shows that EDGO owns 100% of World Ag.¹⁹ (Dkt. #1114 at 4). Although judicial estoppel is often applied to bankruptcy schedules in the context of undisclosed assets, the Court is not persuaded by FSB's argument. First, EDGO's Case is ongoing, and EDGO may amend the statement any time before its case is closed. *See* FED. R. BANKR. P. 1009(a)(1). Indeed, Ragan testified that amendments would likely be forthcoming to correct numerous mistakes in EDGO's schedules. (Hr'g at 3:21). Second, the first pages of the schedules include the following disclaimer:

While the Debtor's management has made reasonable efforts to ensure that Schedules and Statements are as accurate and complete as possible under the circumstances, based on information that was available at the time of preparation, inadvertent errors, inaccuracies, or omissions may have occurred or the Debtor may discover subsequent information that requires material changes to the Schedules and Statements. Because the Schedules and Statements contain unaudited information, which is subject to further review, verification, and potential adjustment, there can be no assurance that the Schedules and Statements are complete.

(Dkt. #114).

Even though Swarek is not judicially estopped from arguing that he owns EDGO, the statements in SOFA carry weight, especially when considering that the date of EDGO's bankruptcy

¹⁹ Swarek asserted in his written Response that he would testify at the Hearing that EDGO has never owned any shares in World Ag. (Dkt. #1084 at 2). Swarek, however, chose not to testify at the Hearing although he was present in the courtroom.

petition (December 22, 2023) and the date EDGO's tax year ended in its 2022 returns (November 30, 2023) are only thirty-nine days apart.

d. Corporate Resolutions Signed by Swarek

There are several corporate documents that support EDGO's ownership of World Ag. Swarek signed corporate resolutions in February and May of 2018 in connection with two loans obtained by World Ag from MetLife. World Ag's loans with MetLife total more than \$25 million but these resolutions concern two relatively minor loans. Apparently, World Ag's loans are secured by deeds of trust on World Ag's farmland. The first loan, in the amount of \$3.8 million, was obtained in February 2018. Swarek provided MetLife corporate resolutions from World Ag and EDGO certifying that World Ag's sole shareholder (EDGO) authorized the loan, that World Ag is a subsidiary of EDGO, and that Swarek is EDGO's sole shareholder. (STP #52-53). The same resolutions were signed in May 2018 in connection with a \$4.5 million loan. (STP #54-55).

3. Analysis

The Court finds that World Ag was owned by EDGO, not Swarek, at the time of EDGO's bankruptcy filing. Since 2004, the date of World Ag's formation, Swarek appears to have maneuvered its ownership based upon then-existing circumstances. From 2018 to 2023, Swarek represented to different entities that either he, EDGO, or his wife Emily Swarek, owned World Ag. The table below provides a timeline of these representations in relation to the date of EDGO's bankruptcy filing:

Exhibit	Date(s)	Document
STP Ex. #52	02/23/2018	Resolution of the Sole Shareholder and the Board of Directors of World Ag Investment, Inc. signed by EDGO
STP. Ex. #54	05/09/2018	Resolution of the Sole Shareholder and the Board of Directors of World Ag Investment, Inc. signed by EDGO

STP Ex. #24	12/01/2019- 11/30/2020 ²⁰	EDGO 2019 Tax Return: Schedule O (Form 1120) & Form 851 (Affiliations Schedule) identifying EDGO as World Ag's parent company
Swarek Ex. #7	06/04/2020	MetLife Certification of Ownership & Control of World Ag signed by Swarek
STP Ex. #25	12/1/2020- 11/30/2021 ²¹	EDGO 2020 Tax Return: Schedule O (Form 1120) & Form 851 (Affiliations Schedule) identifying EDGO as World Ag's parent company
Swarek Ex. #8	03/01/2021	Swarek's assignment of World Ag stock to his wife, Emily Swarek
STP Ex. #26	12/01/2021- 11/30/2022	EDGO 2021 Tax Return: Schedule O (Form 1120) & Form 851 (Affiliations Schedule) identifying EDGO as World Ag's parent company
FSB Ex. #76	03/31/2022	Re-Certification of Beneficial Ownership of Legal Entity Customer listing Swarek as World Ag's beneficial owner ²²
STP Ex. #27	12/01/2022- 11/30/2023 ²³	EDGO 2022 Tax Return: Schedule O (Form 1120) & Form 851 (Affiliations Schedule) identifying EDGO as World Ag's parent company
STP Ex. #7	12/22/2023	EDGO files chapter 11 bankruptcy petition
FSB Ex. #60	07/27/2024	Notarized letter signed by Emily Swarek rejecting any attempted transfer by Swarek of World's Ag's stock to her

In this timeline, there are two documents that could support Swarek's claim of ownership. On June 4, 2020, he signed a document certifying to MetLife his ownership and control of World Ag. The document is not signed under oath and is contradicted by EDGO's 2019 tax return. The second document is Swarek's purported assignment of World Ag's stock to his wife, Emily Swarek. Again, however, he reported EDGO as the World Ag's owner on EDGO's 2020 tax return for this same time period. Moreover, he continued reporting EDGO as World Ag's owner on EDGO's 2021 and 2022 tax returns. These documents, signed by Swarek, reveal that by 2018,

²⁰ These dates denote the tax year reported in the return.

²¹ These dates denote the tax year reported in the return.

²² As FSB points out, "beneficial" owner and "actual" owner are not the same. There is no dispute that Swarek was the "beneficial" owner of World Ag through his control of EDGO, but the actual owner was EDGO. In any event, if Swarek's assignment of the stock to Emily Swarek on March 1, 2021 were valid, Swarek could not have owned World Ag on March 31, 2022 when he signed the re-certification, could not have included World Ag on EDGO's 2021 and 2022 consolidated tax returns, and could not have listed World Ag as EDGO's subsidiary in SOFA.

²³ These dates denote the tax year reported in the return.

EDGO owned 100% of World Ag's stock and continued to own it through the date of EDGO's bankruptcy filing.

The Court is persuaded that World Ag is a wholly owned subsidiary of EDGO. EDGO's 2022 tax return, prepared by a tax accountant and signed by Swarek under penalty of perjury is the most recent document in time to EDGO's bankruptcy filing. Schedule O (Form 1120) and Form 851 (Affiliations Schedule) show that EDGO is World Ag's parent company. World Ag's rental income from the farmland and its debt to MetLife are included on EDGO's tax return. EDGO's 2019 through 2022 tax returns are the most consistent representation of World Ag's ownership.

Having adjudicated World Ag's ownership, the Court turns next to FSB's request that it extend the stay to World Ag, or more specifically, to World Ag's farmland.

B. Should the automatic stay be extended to World Ag?

The automatic stay that arises from EDGO's bankruptcy filing does not extend to World Ag or its assets unless the Court determines that circumstances justify its extension under 11 U.S.C. § 105. The Court declines to extend the stay at this time for the following reasons:

First, EDGO is under the control and management of Ragan as its chapter 11 trustee. EDGO's ownership of World Ag's stock grants Ragan the same authority over World Ag that EDGO had over World Ag before the bankruptcy filing. She can administer World Ag's assets and otherwise run it consistent with its organizational documents and applicable corporate governance law. A stay is simply not needed now that World Ag's ownership has been adjudicated.

Second, substantive consolidation of World Ag is not a foregone conclusion.²⁴ From a procedural standpoint, there is no pending motion to substantively consolidate World Ag; the only pending motion is the EDGO-Hugoton Sub Con Motion filed before Ragan's appointment. FSB

²⁴ The Court makes no adjudication of the merits of the EDGO Sub Con Motion in this Order.

assumes Ragan will amend the EDGO-Hugoton Sub Con Motion to include World Ag but at this time she has not taken a position on the EDGO-Hugoton Sub Con Motion even as it is now without any amendment. (Hr’g at 3:21); *Bank of New York Tr. Co. v. Official Unsecured Creditors’ Committee (In re Pacific Lumber Co.)*, 584 F.3d 229, 249 (5th Cir. 2009) (noting that substantive consolidation is an “extreme and unusual remedy” that should be used sparingly).

Conclusion

This Court simply does not believe that extending the stay to the farmland is necessary at this moment given the adjudication of World Ag’s ownership in favor of EDGO and the authority available to Ragan as EDGO’s chapter 11 trustee. For this reason, the Court denies the Motion, but the denial is without prejudice. If conditions should change, Ragan and/or FSB may renew the request for an extension of the stay.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied without prejudice.

##END OF ORDER##