UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	
	:	
JOSEPH MARION NEILL and	:	Case No. 90-0327-D
MICKEY MARY NEILL,	:	Chapter 13
	:	
Debtors.	:	
	:	

- - - - - - - - - - - - - - -

RULING ON 1) MOTION TO DISMISS; 2) MOTION FOR RELIEF FROM STAY; 3) OBJECTION TO CLAIMS; AND 4) OBJECTION TO CONFIRMATION OF PLAN

A hearing was held on May 9, 1990, on the United States' motions to dismiss and for relief from stay. Walter Conlon appeared on behalf of Debtors, and Kevin R. Query, appeared on behalf of the United States. A hearing was held on July 26, 1990, on Debtors' objections to claims and the creditors' objections to confirmation of the plan. The following counsel appeared: John Waters on behalf of the Trustee; Walter Conlon on behalf of Debtors; Bruce Buckrop on behalf of creditor Albert R. Hoecker; and Kevin Query on behalf of the United States. The Court has taken the matters under advisement and now considers them fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) (A)(B)(G) and (L). The Court, upon review of the motions, Debtors' resistance, the briefs submitted and the arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Debtors filed a voluntary Chapter 13 petition on February 8, 1990.

2. Debtors' Chapter 13 statement reveals unsecured claims of $143,335.32, of which Debtors admit liability for only $90,142.74.

3. On March 2, 1990, the United States of America on behalf of the Small Business Administration filed a motion for relief from stay.

4. On March 9, 1990, Debtors filed a resistance to the motion for relief from stay.

5. On April 6, 1990, the United States of America on behalf of the Small Business Administration and the Internal Revenue Service filed a motion to dismiss. The motion alleged Debtors were ineligible for Chapter 13 relief because their unsecured debts exceeded $100,000.00.

6. On April 12, 1990, Debtors filed a resistance to the motion to dismiss.

7. On April 30, 1990, the Internal Revenue Service, the Small Business Administration, and creditors Albert R. Hoecker and Security State Bank of Hamilton filed objections to confirmation of the plan.

8. On May 4, 1990, the Trustee filed an objection to confirmation of the plan.

9. On May 24, 1990, Debtors filed an objection to

numerous claims filed by their creditors.

CONCLUSIONS OF LAW

Eligibility for Chapter 13 relief is governed by 11 U.S.C. §109(e) which provides in relevant part:

> Only an ... individual with regular income and such individual's spouse ... that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $100,000.00 and non-contingent, liquidated, secured debts of less than $350,000 may be a debtor under Chapter 13 of this title.

The core of §109(e) is directed toward the establishment of monetary amounts which determine eligibility for Chapter 13 relief. 2 Collier on Bankruptcy ¶109.05 (15 ed. 1990). The $100,000.00 limitation on noncontingent liquidated debts functions to ensure that the excess monthly income of Chapter 13 debtors is not wildly out of proportion to the debts they seek to repay. Matter of Brown, 7 B.R. 529, 532 (Bankr. S.D.N.Y. 1980).

The dollar limitations set forth in §109(e) are juris-dictional. In re Kelsey, 6 B.R. 114, 117 (Bankr. S.D. Tex. 1980). If a debtor's obligations exceed the limits of §109(e), then a court does not have the power to confirm the debtor's plan or to otherwise enable the debtor to obtain relief under Chapter 13. Id.

The limiting provisions of §109(e) are to be strictly

interpreted, and debtors who exceed the debt limitations do not qualify for Chapter 13 relief. In re Cronkleton, 18 B.R. 792, 793 (Bankr. S.D. Ohio 1982); see also In re Norman, 32 B.R. 562, 565 (Bankr. W.D. Mo. 1983). The burden of proof in establishing eligibility for bankruptcy relief is on the party filing the petition. In re Snider, 99 B.R. 374, 377 (Bankr. S.D. Ohio 1989); Matter of Morgan Strawberry Farm, 98 B.R. 584, 585 (Bankr. M.D. Fla. 1989).

At issue in this case is whether the claims which Debtors dispute or against which they hold affirmative defenses or counterclaims are counted for the purpose of determining Chapter 13 eligibility. The majority view holds that debtors seeking Chapter 13 relief are required by §109(e) to include disputed debts in their eligibility computations. See In re Lamar, 111 B.R. 327, 329 (D. Nev. 1990); In re Teague, 101 B.R. 57, 59 (Bankr. W.D. Ark. 1989); In re McMonagle, 30 B.R. 899, 903 (Bankr. D.S.D. 1983); Matter of DeBrunner, 22 B.R. 36, 37 (Bankr. D. Neb. 1982). The fact that a debtor disputes a debt, or has defenses or counterclaims, does not render the debt contingent or unliquidated. Teague, 101 B.R. at 59. "No debtor can be permitted to 'shoehorn' himself into Chapter 13 by merely disputing unsecured debt." Id.

Courts following the majority view note that unlike §101(4) or §303(b), the language in §109(e) does not specifically refer to or exclude disputed debts or claims.

Teague, 101 B.R. at 59, DeBrunner, 22 B.R. at 36. Had Congress wished to exclude disputed debts from Chapter 13 eligibility computations, it could have included such a limitation when it enacted §109(e).

Courts adhering to the majority view have held proofs of claim need not be timely filed, Lamar, 111 B.R. at 330, or even filed, In re Edwards, 51 B.R. 790, 791 (Bankr. D.N.M. 1985) when determining if a debtor's debts exceed the limits of §109(e). Similarly, Debtor's argument that they did not receive timely notification of the bulk of the filed claims has no effect upon this Court's determination as to whether the Debtors are eligible for Ch. 13 relief.

A minority of courts hold a disputed claim is an unliquidated debt and should not be considered in determining Chapter 13 eligibility. See In re Lambert, 43 B.R. 913, 921 (Bankr. D. Utah 1984); In re King, 9 B.R. 376, 379 (Bankr. D. Or. 1981). These courts tend to focus on the inclusion of the term "debts" rather than "claims" in §109(e), Lambert, 43 B.R. at 918; King, 9 B.R. at 378, and upon liberally interpreting §109(e) so as not to unnecessarily obstruct the eligibility of debtors desiring relief under Chapter 13. Lambert, 43 B.R. at 919.

The Eighth Circuit has held undersecured debts are counted as unsecured debts for the purpose of determining Chapter 13 eligibility. Miller v. United States, 907 F.2d 80,

82 (8th Cir. 1990). It has not yet addressed whether disputed debts are counted when ascertaining a debtor's eligibility for Chapter 13 relief. The court's decision in Miller, however, was predicated to some extent on its concern about whether "a debtor could easily circumvent the debt limitations of §109(e)." Id. This concern is equally important in determining what effect disputed debts have upon Chapter 13 eligibility.

After reviewing the reasoning underlying both the majority and minority positions, this court adopts the majority view and holds debtors seeking Chapter 13 relief are required to include disputed debts in their eligibility computations. When a review of a debtor's schedules show "on their face" that unsecured debts exceed $100,000.00, the debtor is not eligible for Chapter 13 relief. Matter of Martin, 78 B.R. 928, 930 (Bankr. S.D. Iowa 1987). In this case, Debtors' Chapter 13 statement reveals the existence of $143,335.32 in unsecured debt. Debtors are not eligible for Chapter 13 relief; and, accordingly, the United States motion to dismiss must be granted. The Court's decision regarding the motion to dismiss renders moot the motion for relief from stay, the objections to claims and the objections to confirmation of the plan.

ORDER

IT IS HEREBY ORDERED:

1) Debtors are not eligible for Chapter 13 relief and the United States' motion to dismiss is granted.

2) This Court's ruling on the motion to dismiss renders moot the motion for relief from stay, the objection to claims and the objections to confirmation of the plan.

Dated this _____ day of October, 1990.

_____

Russell J. Hill
U.S. Bankruptcy Judge