This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: December 13, 2007

C. Kathryn Preston
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS

In re:	:	
	:	Case No. 07-50262
Richard J. Blair,	:	Chapter 13
	:	Judge Preston
Debtor.	:	
	:	

	:	
	:	
	:	
In re:	:	
	:	Case No. 07-50540
Rowell B. Fernandez,	:	Chapter 13
	:	Judge Preston
Debtor.	:	
	:	

MEMORANDUM OPINION AND ORDER ON MOTIONS OF THIRD STREET PROPERTIES AND DOWNTOWN PROPERTIES TO DISMISS CHAPTER 13 CASES

I. Introduction

This cause came on for hearing on May 17, 2007 to consider: (i) the joint motions (Case No. 07-50262, Doc. # 44; Case No. 07-50540, Doc. # 35) of Third Street Properties and Downtown

Properties (collectively, the "Lessors") to dismiss the Chapter 13 cases of Richard J. Blair and Rowell B. Fernandez (collectively, the "Debtors" or, individually, "Debtor" or "Mr. Blair"or "Mr. Fernandez"); and (ii) the Debtors' responses thereto (Case No. 07-50262, Doc. # 51; Case No. 07-50540, Doc. # 42). Present at the hearing were the Debtors and their counsel, Robert E. Bardwell, and counsel for the Lessors, Geoffrey J. Peters. The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334 and the general order of reference entered in this district. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

The Lessors have moved to dismiss the Chapter 13 case of each Debtor pursuant to § 109(e) of the Bankruptcy Code, asserting that each Debtor owed at the inception of his case noncontingent, liquidated, unsecured debts in excess of $307,675, which was the unsecured debt limitation imposed by § 109(e) at the time each bankruptcy case was commenced. Each Debtor maintains that he is eligible for Chapter 13 relief, asserting that the debts he owed to the Lessors were contingent and unliquidated and that the aggregate amount of his noncontingent, liquidated, unsecured debts was less than $307,675.

For the reasons explained below, the Court concludes that each Debtor is ineligible for Chapter 13 relief because each Debtor owed, as of his respective filing date, noncontingent, liquidated, unsecured debts in excess of $307,675.

II. Facts

Based on the evidence adduced at the hearing and the stipulations of the parties, the Court finds as follows:

The Debtors are two of the three equal shareholders of Tri-Source Title Agency, Inc. ("Tri-Source"), a company incorporated in Ohio in 2001 to provide real estate title and escrow

closing services to the public.[1] From 2001 to 2003, Tri-Source grew to include three offices in Ohio and one in Colorado. To fund its growth and operate its business, Tri-Source incurred bank debt as well as debt to lessors of real property and personal property. As new business owners often do, the Debtors and Mr. Abrams guaranteed a substantial portion of their company's debt. In particular, the Debtors gave the Lessors written guarantees of Tri-Source's obligations under its nonresidential real property leases with the Lessors. These guarantees were guarantees of payment. Under the guarantees, before pursuing any one of the guarantors for payment, the Lessors were not required to exhaust their remedies against Tri-Source or the other two guarantors. In addition, Tri-Source also incurred, and the Debtors also guaranteed, among other debts, relatively large prepetition debts to U.S. Bank and equipment lessor IKON.

Tri-Source experienced financial difficulties, which the principals attempted to address by closing Tri-Source's Colorado location and consolidating its three Ohio locations into a single location in Franklin County, Ohio. Tri-Source vacated the premises leased from each of the Lessors and ceased paying rent, resulting in default. On or about October 19, 2006, Third Street obtained a judgment against the Debtors from the Franklin County Common Pleas Court in the amount of $157,989.92 on account of the Debtors' guarantees of Tri-Source's obligations under its lease with Third Street. On January 20, 2007, Tri-Source filed a petition for relief under Chapter 11 of the Bankruptcy Code (Case No. 07-50377). On January 16, 2007 and January 26, 2007 (collectively, the "Petition Dates"), respectively, Mr. Blair and Mr. Fernandez filed petitions for relief under Chapter 13 of the Bankruptcy Code.

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[1]The third shareholder of Tri-Source, Russell P. Abrams, is also a Chapter 13 debtor before this Court (Case No 07-53074). The Lessors have filed a motion to dismiss his case, which has not yet been heard.

Each Debtor filed his original schedules of assets and liabilities (collectively, the "Original Schedules") on his Petition Date. Thereafter, on April 1, 2007 and May 15, 2007, respectively, Mr. Blair and Mr. Fernandez filed amended schedules of assets and liabilities (the "Amended Schedules").[2] On the Original Schedules and on the Amended Schedules, the Debtors listed claims arising from, among other guarantees, the guarantees issued in favor of U.S. Bank, IKON, and the Lessors.

On Schedule D of the Original Schedules (listing creditors holding secured claims) each Debtor listed a claim of Third Street in the amount of $157,989.92 arising from the payment guarantee that the Debtors issued to Third Street. The guarantee, which was admitted into evidence during the hearing, is entitled "Unconditional and Continuing Guarantee" and provides that each guarantor "absolutely and unconditionally guarantees the prompt and punctual payment" of any debt to Third Street. On the Original Schedules, the Debtors characterized the claim of Third Street as contingent but did not characterize the claim as unliquidated. On the Amended Schedules, each Debtor again included the guarantee claim of Third Street on Schedule D in the amount of $157,989.92, but re-characterized the claim as both contingent and unliquidated. Although Schedule D purports to be a list of secured claimants, each Debtor described the claim as entirely unsecured. Moreover, Third Street filed a proof of claim as an unsecured nonpriority claim in its entirety.

On Schedule F of the Original Schedules (listing creditors holding unsecured nonpriority claims) each Debtor listed Downtown Properties, with a claim in the amount of $129,711.49, arising from the payment guarantee that the Debtors issued to Downtown Properties. The guarantee, which

[2]On July 17, 2007, the Debtors each filed an additional set of amended schedules, but those amended schedules are not relevant to the Court's analysis here.

was admitted into evidence during the hearing, is substantially similar to the guarantee that the Debtors issued to Third Street. The guarantee is entitled "Unconditional and Continuing Guarantee" and provides that each of the guarantors "absolutely and unconditionally guarantees the prompt and punctual payment"of the claims of Downtown Properties.[3] In their objection to dismissal, the Debtors calculate the amount owing under the Downtown Properties lease for periods prior to the Petition Dates as follows: "A review of the lease attached to DT's claim reveals that the sum of $136,281.33 [sic] was due under the lease between January of 2005 and January of 2007 (5 mos. @ $5,186.37, 12 mos. @ $5,430.76 and 8 ms. @ $5,639.63 = $136,218.33." On the Original Schedules the Debtors characterized the debt to Downtown Properties as contingent but not unliquidated. On the Amended Schedules, the Debtors again included the claim of Downtown Properties on Schedule F in the amount of $129,711.49, but re-characterized the claim as both contingent and unliquidated. Downtown Properties has filed a proof of claim in each case, asserting an entirely unsecured nonpriority claim against each Debtor.

On Schedule F of the Original Schedules and of the Amended Schedules, the Debtors scheduled other claims on account of their guarantees of Tri-Source debt. U.S. Bank and IKON hold the largest of these claims. On Schedule F, each Debtor listed a claim of U.S. Bank in the amount of $100,000, and a claim of IKON in the amount of $209,480.78. U.S. Bank and IKON attached to

[3]Like Third Street, Downtown Properties commenced an action against the Debtors on account of the guarantee but, unlike Third Street, did not obtain a judgment prior to the Petition Date of either Debtor, at which time the action was stayed by the automatic stay. 11 U.S.C. § 362(a).

their proofs of claim the guarantees issued to them by the Debtors.[4] The guaranty issued to U.S. Bank is entitled a "Continuing Guaranty (Unlimited)" and provides that the guarantor "hereby absolutely and unconditionally jointly and severally guarantees prompt payment" of the debt. Each guarantee issued to IKON also is a guaranty of payment. On the Original Schedules the Debtors characterized the claims of U.S. Bank and IKON as contingent but did not characterize the claims as unliquidated. On Schedule F of the Amended Schedules, the Debtors again included the claims of U.S. Bank and IKON in the amounts of $100,000 and $209,480.76, respectively, but re-characterized the claims as contingent and unliquidated. The Debtors scheduled the claims of U.S. Bank and IKON as unsecured, and U.S. Bank and IKON asserted that their claims are entirely unsecured in their proofs of claim.

III. Discussion

A. Eligibility for Chapter 13 Relief

As of each Petition Date, § 109(e) provides as follows:

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $307,675 and noncontingent, liquidated, secured debts of less than $922,975 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $307,675 and noncontingent, liquidated, secured debts of less than $922,975 may be a debtor under chapter 13 of this title.

[4]By its proof of claim, IKON asserted a claim in the amount of $136,138.55, presumably reflecting a reduction from the $209,480.78 amount scheduled by the Debtors based on Tri-Source's return of the equipment to IKON, to which Mr. Blair testified during the hearing. Because the Court would reach the same result using either figure, the Court need not decide whether it is appropriate under the circumstances present here to use the scheduled amount or the filed amount for purposes of § 109(e). For purposes of this Memorandum Opinion only, the Court will use the lesser amount.

11 U.S.C. § 109(e).[5]

The purpose of the limits set forth in § 109(e) is "[t]o ensure that only relatively small debtors invoke the protections of Chapter 13," *Glance v. Carroll (In re Glance)*, 487 F.3d 317, 319-20 (6th Cir. 2007), and "to separate those small [business owners] who should have the benefit of Chapter 13 from those larger businesses who should not." *Comprehensive Accounting Corp. v. Pearson (In re Pearson)*, 773 F.2d 751, 753-54 (6th Cir. 1985).

Applying § 109(e) is a straightforward process. "Chapter 13 eligibility should normally be determined by the debtor's schedules checking only to see if the schedules were made in good faith." *Pearson*, 773 F.2d at 757; *see also Glance*, 487 F.3d at 321; *In re Smith*, 365 B.R. 770, 780 (Bankr. S.D. Ohio 2007). However, even schedules filed in good faith are "not dispositive of a debtor's eligibility for Chapter 13 relief[,]"and the court is not bound by the schedules. *Smith*, 365 B.R. at 780. *See also In re Stern*, 266 B.R. 322, 326 (Bankr. D. Md. 2001) (holding that "[a] debtor's designation of debt as 'unliquidated' does not settle the question"). To hold otherwise would give debtors "exclusive control over the accessibility to Chapter 13" and invite them to "circumvent its debt ceilings by the artful manipulation of the information contained in the bankruptcy filings." *In re McGovern*, 122 B.R. 712, 714 (Bankr. N.D. Ind. 1989). Instead, a bankruptcy court has the authority to determine whether claims scheduled by a debtor as contingent or unliquidated truly were contingent or unliquidated as of the bankruptcy filing date. If a debtor is ineligible for Chapter 13

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[5]Pursuant to § 104(b), the debt limits change "at each 3-year interval ending on April 1" based on "the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1." 11 U.S.C. § 104(b). As of April 1, 2007, the debt limits are $336,900 and $1,010,650, respectively. Because the Debtors filed their petitions prior to April 1, 2007, the $307,675 and $922,975 amounts apply in these cases.

relief, a court may dismiss or convert the case to another chapter of the Bankruptcy Code. *Smith*, 365 B.R. at 780.

B. Characterization of Debts

Central to the eligibility analysis is the proper characterization of debts as either contingent or noncontingent, liquidated or unliquidated.

1. Determining Whether the Debt Is Contingent or Noncontingent

A debt is contingent "if it does not become an obligation until the occurrence of a future event, but is noncontingent when all of the events giving rise to liability for the debt occurred prior to the debtor's filing for bankruptcy." *Smith*, 365 B.R. at 781 (internal quotation marks omitted). Consistent with this standard, some courts have held that a guarantee of payment "represents a contingent debt until the principal obligor defaults[,]" *Glance*, 487 F.3d at 322, at which point the debt is no longer contingent. *See, e.g.*, *Connecticut Gen. Life Ins. Co. v. Punia*, 884 F. Supp. 148, 153 (D. N.J. 1995) ("[I]n a guaranty of payment, the guaranty is absolute, not contingent upon first resort to another source."); *In re F.B.F. Indus., Inc.,* 165 B.R. 544, 548-49 (Bankr. E.D. Pa. 1994) ("The law is clear that a guaranty or surety claim is not contingent after a default by the primary obligor has occurred. . . . because default is the sole extrinsic event which triggers liability of the debtor to the creditor."); *In re Pulliam*, 90 B.R. 241, 243 (Bankr. N.D. Tex.1988) ("An absolute guaranty [i.e., a guaranty of payment] ceases to be contingent upon the principal obligor's default.").

2. Determining Whether the Debt is Liquidated or Unliquidated

The Sixth Circuit has described the process for determining whether a debt is liquidated or unliquidated as follows:

> The concept of liquidation has been variously expressed. The common thread throughout the cases, however, has been ready determination and precision in computation of the amount due. . . . [A] liquidated debt [is] one that can be determined by mathematical computation. Some cases have stated the test as whether the amount due is capable of ascertainment by reference to an agreement or by simple computation.

Pearson, 773 F.2d at 754. "Since *Pearson*, courts applying § 109(e)'s eligibility standard have uniformly held that ready determinability is the touchstone for distinguishing between liquidated and unliquidated debts." *Smith*, 365 B.R. at 782. *See also De Jounghe v. Mender (In re De Jounghe)*, 334 B.R. 760, 769 (B.A.P. 1st Cir. 2005) ("[C]ourts have generally held that a debt is 'liquidated'. . . where the claim is determinable by reference to an agreement or by a simple computation."); *In re Newman*, 259 B.R. 914, 918 (Bankr. M.D. Fla. 2001) ("Mathematical computation is the basis for a liquidated debt, where opinion, discretion, and exercise of judgment are not relevant for computation of the amount of the debt.").

Applying the "readily determinable" standard, courts have held that a "guaranty is a type of contract that is inherently liquidated when it is used to guarantee a promissory note because the amount owed can be determined from the promissory note and supporting documents." *Pulliam*, 90 B.R. at 246. The existence of other possibly liable parties does not make a claim unliquidated. For example, in *Fostvedt v. Dow (In re Fostvedt)*, 823 F.2d 305, 306 (9th Cir. 1987), the Chapter 13 debtor was jointly and severally liable with co-obligors on two promissory notes. The debtor argued that his liability on account of the notes was unliquidated for purposes of § 109(e) because his co-obligors might have the ability to pay some of the debt. The Ninth Circuit rejected this argument, holding that the debtor's liability was liquidated despite the existence of his co-obligors because "no further act or extrinsic event was needed to trigger Fostvedt's liability on the two notes." *Fostvedt*,

823 F.2d at 307. Indeed, an obligee that receives a guarantee of payment from multiple guarantors may elect to proceed against and recover the full amount due from any one of the guarantors alone. *See, e.g.*, *In re Bahara*, 219 B.R. 77, 80 (M.D. Pa. 1998) (bank that was issued guarantee of payment "could proceed against one or more of the guarantors separately, or all of them together, at the [b]ank's option, for the entire amount due and owing"); *Faherty v. Garrihy*, 1994 WL 97063 at *3 (S.D.N.Y. Mar. 23, 1994) (party that was issued guarantee by two parties could sue one or both of two guarantors for the full amount due).

"[A]n unsecured debt becomes 'liquidated' in amount once reduced to judgment . . ." *Elliott v. Papatones (In re Papatones)*, 143 F.3d 623, 626 (1st Cir. 1998); *see also In re Wiencko*, 275 B.R. 772, 779 (Bankr. W.D. Va. 2002) ("It is clear that litigation in the state court has defined the amount of the debt; therefore, the debt appears to be liquidated under both the 'readily determinable' and 'readily ascertainable' standards.").

C. The Debtors are Ineligible for Chapter 13 Relief

Applying the principles discussed above to the undisputed facts of these Chapter 13 cases, the Court concludes that, as of each Debtor's respective Petition Date, each of the debts he owed to U.S. Bank, IKON, Third Street, and Downtown Properties was noncontingent, liquidated, and unsecured. In addition, the Court concludes that each Debtor's debts aggregate in excess of $307,675. Accordingly, each Debtor is ineligible for relief under Chapter 13 of the Bankruptcy Code.

1. The Debts Owed to U.S. Bank and IKON

The claims of U.S. Bank and IKON are in the amounts of $100,000 and $136,138.55, respectively.[6] The guarantees that the Debtors provided to U.S. Bank and to IKON were guarantees of payment, and the primary obligor, Tri-Source, defaulted prior to the Petition Dates. Therefore, the debts owed to U.S. Bank and IKON were noncontingent as of the Petition Dates. Moreover, in the Original Schedules, the Debtors did not schedule the claims of U.S. Bank or the claim of IKON as unliquidated, and no evidence was introduced at the hearing in support of the Debtors' attempts in the Amended Schedules to re-characterize the debts as unliquidated. To the contrary, during the hearing Mr. Blair testified that the scheduled amounts were owed to U.S. Bank and to IKON. The claim amounts, therefore, were "readily determinable" and thus liquidated. In addition, the Debtors included the claims of U.S. Bank and IKON on Schedule F, the schedule of unsecured claims, and there is no dispute that the claims of U.S. Bank and IKON are unsecured. Accordingly, the aggregate amount of the noncontingent, liquidated, unsecured debts owed to U.S. Bank and IKON for purposes of § 109(e) totals $236,138.55.

2. The Debt Owed to Downtown Properties

The guarantee that the Debtors provided to Downtown Properties was a guarantee of payment, and the primary obligor, Tri-Source, defaulted prior to the Petition Dates. The debts owed to Downtown Properties, therefore, were noncontingent as of the Petition Dates. Each Debtor listed a claim of Downtown Properties in the amount of $129,711.49 on the Original Schedules and on the

[6]The Debtors assert that the Court should limit its independent review of the proper characterization of their debts to the debts owed to Third Street and Downtown Properties and should accept without review the Debtors' characterization of their other debts. The Debtors, however, provide no case law or other authority for this assertion, and the Court is unaware of any such authority. In fact, such an approach is unwarranted and erroneous in the face of contrary testimony elicited at trial.

Amended Schedules. The Debtors also provided a detailed calculation of the scheduled amount, within a few thousand dollars, in their post-hearing briefs. The amount of Downtown Properties' claim, therefore, is readily determinable and unliquidated. Finally, there is no dispute that the debt owed to Downtown Properties is unsecured. Accordingly, as of the Petition Dates, the claim of Downtown Properties against each of the Debtors was noncontingent, liquidated, and unsecured. When the $129,711.49 amount of Downtown Properties claim is added to the $236,138.55 aggregate amount of the U.S. Bank and IKON claims, the amount of the noncontingent, liquidated, unsecured debts of each Debtor stands at $365,850.04, which exceeds the § 109(e) cap.

3. The Debt Owed to Third Street

Similarly, the guarantee that the Debtors provided to Third Street was a guarantee of payment, and the primary obligor, Tri-Source, defaulted prior to the Petition Dates. The debts owed to Downtown Properties, therefore, were noncontingent as of the Petition Dates. Each Debtor listed a claim of Third Street in the amount of $157,989.92 on his schedules. Furthermore, this amount was as liquidated by the Franklin County Common Pleas Court in a judgment entry entered prior to the Petition Dates. As a result, the amount of Third Street's claim is readily determinable and, therefore, unliquidated. Finally, despite the judgment lien and the inclusion of Third Street's claim on the schedule of secured claims, both Debtors identified the unsecured portion of the claim as the entire $157, 989.92 amount, the parties stipulated that the entire amount is unsecured, and Third Street filed

its proof of claim as entirely unsecured.[7] Accordingly, as of the Petition Dates, each debt owed to Third Street was noncontingent, liquidated, and unsecured. When the $157,989.92 amount of this debt is added to the $365,850.04 aggregate amount of the debt owed to U.S. Bank, IKON and Downtown Properties, the amount of the noncontingent, liquidated, unsecured debts of each Debtor stands at $523,839.96, which far exceeds the § 109(e) cap.

4. The Purportedly Speculative Nature of Third Street's Claim.

The Debtors argue that the debt owed to Third Street on account of the state court judgment is speculative and thus unliquidated because the judgment was in large part for accelerated charges under the lease with Third Street and because Third Street might be able to relet the premises or otherwise mitigate its damages. This argument has no merit. As discussed above, an otherwise unliquidated debt becomes liquidated once reduced to judgment.

The Debtors also argue that approximately $80,481.11 of the total amount of Downtown Properties' claim ($216,699.44) is for accelerated charges and that the total claim, therefore, is unliquidated. This argument also is without merit. A claim is not unliquidated merely because it is on account of accelerated charges. Indeed, "bankruptcy operates as the acceleration of the principal

[7]There are, of course, cases in which the debtor characterizes a claim as unsecured in whole or part on the schedules but the creditor contends that the claim is secured in an amount greater than the amount scheduled by the debtor. In those cases, absent a settlement, the allowed amount of the creditor's claim ultimately will be determined by reference to section 506(a) of the Bankruptcy Code, which provides in part that "[a]n allowed claim of a creditor secured by a lien on property . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . ." The courts are split on the issue of whether, for purposes of § 109(e), a claim should be deemed wholly secured or whether it should be bifurcated under § 506(a). *Compare In re McClaskie*, 92 B.R. 285, 287 (Bankr. S.D. Ohio 1988) (holding that bifurcation was appropriate where undersecurity was certain "from the face of the schedules"), *with In re Morton*, 43 B.R. 215, 219 (Bankr. E.D.N.Y. 1984) (holding that the court should not bifurcate claims for purposes of determining § 109(e) eligibility). The Court need not decide this issue because the parties agree that Third Street's claim is unsecured in its entirety.

amount of all claims against the debtor[,]" *In re Oakwood Homes Corp.*, 449 F.3d 588, 600 (3d Cir. 2006) (quoting H.R. Rep. No. 95-595, at 352-54 (1977)), but acceleration does not make the claims unliquidated. Furthermore, for purposes of this Memorandum Opinion and the amount due Downtown Properties, the Court is using the amount calculated by the Debtors themselves of $129,711.49, which does not include accelerated charges.

5. Section 502(b)(6) of the Bankruptcy Code Does Not Change the Result.

The Debtors argue that the amounts, if any, of the debts owed to Third Street and Downtown Properties that should be included in the § 109(e) calculation are $57,960 and $63,947.17, respectively, or $121,907.17 in the aggregate. These amounts reflect the Debtors' application of the cap on lease claims imposed by § 502(b)(6) of the Bankruptcy Code whenever a claim is asserted by a lessor for damages resulting from the termination of a lease of real property.

The Debtors' argument in this regard is unavailing. First, the argument is incorrect. By its terms, § 109(e) does not eliminate disputed claims from the calculation, and a court, therefore, will not reduce the amount of a claim based solely upon an actual claims dispute, let alone a potential claim objection. *See In re Redburn*, 193 B.R. 249, 257 (Bankr. W.D. Mich. 1996) ("For purposes of determining eligibility under section 109(e), it is immaterial whether or not the debt is 'disputed.'"); *McGovern*, 122 B.R. at 717 ("[D]isputes, defenses, and counterclaims concerning a debt are not relevant to the question of eligibility for relief under Chapter 13."). The Debtors' reliance on *In re Thompson*, 116 B.R. 610 (Bankr. S.D. Ohio 1990), is misplaced. The *Thompson* court referenced but made no ruling under § 109(e). *Thompson*, therefore, in no way supports the Debtors' argument. Indeed, § 502(b)(6) was not designed to determine eligibility for bankruptcy relief, but instead sets a limit on certain claims for purposes of allowance and distribution from the

bankruptcy estate. As the *Thompson* Court stated, § 502(b)(6) "was designed to compensate a landlord for his loss due to breach of a lease, yet preclude a claim so large as to prevent other general unsecured creditors from recovering a reasonable dividend from the estate." *Thompson*, 116 B.R. at 612.

Moreover, even if the Debtors' argument based on § 502(b)(6) had any merit, which it does not, the argument would be unavailing on the facts present here. The Debtors themselves calculate the Lessors' claims, as reduced by application of § 502(b)(6), to be $121,907.17. When this amount is added to the $236,138.55 amount of the U.S. Bank and IKON claims, the result is $358,045.72, which still well exceeds the § 109(e) cap.

IV. Conclusion

In light of the foregoing, the Court finds that the Debtors are ineligible for Chapter 13 relief. Each Debtor shall have 10 days from the date of the entry of this Memorandum Opinion to file a motion to convert his bankruptcy case to a chapter of the Bankruptcy Code under which he is eligible. If no motion to convert is filed on behalf of a Debtor within the 10-day period, then counsel for the Lessors shall upload a proposed order dismissing that Debtor's chapter 13 case.

IT IS SO ORDERED.

Copies to:

Robert E. Bardwell, Esq. (Electronic Service)
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Assistant United States Trustee (Electronic Service)

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