

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

MICHAEL ANTHONY THELEN)
SARAH ELIZABETH THELEN,)

DEBTORS)

CASE NO. BK80-399

APPEARANCES: Kenneth E. Shreves, Trustee
802 Grain Exchange Bldg.
Omaha, Ne. 68102

Clay M. Rogers, Attorney for debtor
One Merrill Lynch Plaza
10330 Regency Parkway Drive
Omaha, Ne. 68114

MEMORANDUM

The issue in this case is the effect of an order of confirmation in a Chapter 13 and the filing by creditors of claims which are at variance with that order.

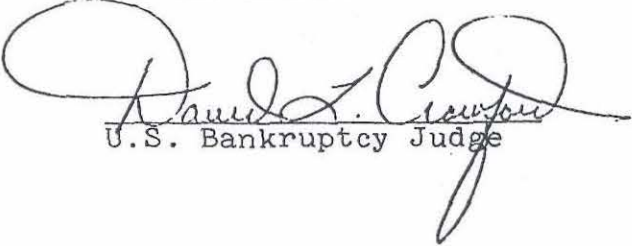
Section 1322 sets forth the provisions of a Chapter 13 plan which may modify rights of creditors. Section 502 provides that claims are to be allowed unless objection is made thereto by a party in interest. Section 502 applies in Chapter 13 through Section 103. The conflict arises when the debtor's plan and the order of confirmation determine the rights of creditors and a claim is on file which is at variance with the plan and the order of confirmation. The practice of the trustee has been to file a motion for allowance of claims as filed and give the debtor an opportunity to object. This causes confusion for the debtor. He has previously provided for the treatment of various claims in his plan and believes that further objection to the claims is unnecessary when the court has confirmed the plan as he originally provided. The trustee's position is that the claims are to be allowed unless objection is made and that he is not at liberty to vary the claim in his treatment of it.

The two provisions are compatible in my view, since the claim as filed may be allowed as filed, subject, however, to the order of confirmation. In the future, it will be my practice to enter no order allowing claims as filed unless that order specifically provides that the order of allowance is subject to the provisions of the order of confirmation.

A separate problem arises when the court has made a ruling determining a claim to be unsecured when it is filed as secured. In some instances, the trustee has filed a motion to allow the claim as filed, namely, as secured, despite the fact that this court has previously determined in litigation that the claim is to be allowed only as unsecured. Disregard by the trustee of the previous order of this court is not compatible with the efficient operation of the Chapter 13 proceeding and should be discontinued.

DATED: December 15, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to interested attorneys.