

## **MOTIONS SEEKING TO EXTEND THE AUTOMATIC STAY**

The Court has considered several motions to extend the automatic stay. The facts of these motions have thus far appeared to fall into the following categories:

1. Cases in which the previous case was voluntarily dismissed and there is no presumption of lack of good faith. The Court has granted each of these motions. In re Adams, C/A No. 05-45030-W (Bankr. D.S.C. Dec. 7, 2005); In re Floyd, C/A No. 05-45227-W (Bankr. D.S.C. Jan. 3, 2006); and In re Wallace, C/A No. 05-45119-W (Bankr. D.S.C. Dec. 19, 2005).
2. Cases in which the previous case was dismissed due to a failure to file or produce a document and debtor provided a substantial excuse for the failure. The Court has granted each of these motions. In re Andrews, C/A No. 05-44994-W (Bankr. D.S.C. Dec. 2, 2005); In re Davis, C/A No. 05-45232-W (Bankr. D.S.C. Jan. 3, 2005); and In re Wells, C/A No. 05-45311-W (Bankr. D.S.C. Jan. 3, 2006).
3. Cases in which the previous case was dismissed for a failure to pay or other reason for the presumption of a lack of good faith to arise. The disposition of these motions has depended upon the quality of evidence presented to meet debtor's burden of demonstrating by clear and convincing evidence that the case was filed in good faith. In re Bigby, C/A No. 05-45006-W (Bankr. D.S.C. Dec. 7, 2005) (Denying the motion); In re Goodwin, C/A No. 05-45110-W (Bankr. D.S.C. Dec. 19, 2005) (Denying the motion); In re Shields, C/A No. 05-45251-W (Bankr. D.S.C. Jan. 3, 2006) (Denying the motion); and In re Miller, C/A No. 05-45175-W (Bankr. D.S.C. Jan. 5, 2006) (Granting the motion). These opinions may be helpful to the bar in presenting such motions to the Court in the future.

Judge Waites requests that parties filing motions to extend or impose the automatic stay provide the following information in their motion:

1. If the moving party desires to extend the automatic stay as to all creditors, clearly state so in the motion and notice. If the moving party is moving to extend the stay to only certain creditors, state the names of the creditors in the motion and notice.
2. State the date on which the automatic stay expires. If the stay does not apply to the case before the Court, state that the stay does not apply to the action.
3. State the case number(s) for all bankruptcy actions involving the debtor and pending in any bankruptcy court within the previous year.
4. Describe the reason that debtor's previous bankruptcy was dismissed.
5. State whether debtor is presumed to not have filed the case at issue in good faith and the reason for the presumption.
6. State with particularity the substantial change of circumstances which occurred since the dismissal of the previous case.

If debtor is the moving party, Judge Waites also requests that debtor file the following with sufficient time for the Court and the trustee to review before the hearing on the motion:

1. Plan, with all necessary amendments;
2. Schedules and statements, with all necessary amendments and attachments;  
and
3. A certificate of service indicating that all creditors affected by the automatic stay, the case trustee, and the U.S. Trustee have been served.

A hearing on the motion will be necessary even if no party in interest objects to the motion. The scheduling of such motions are governed by SC LBR 4001-1. Failure to properly select a hearing date, or selection of a hearing date that is more than thirty (30) days following the filing of the case pursuant to 11 U.S.C. § 362(c)(3), may be considered a waiver. Motions to extend or impose the automatic stay in Chapter 13 cases are scheduled for the Dispute Calendar. The moving party is requested to bring to the hearing all necessary witnesses and documentary evidence, such as copies of pay stubs, state court domestic orders, medical records, or other documents which verify the substantial change of circumstance occurring since the dismissal of the previous case. The Court may condition imposing or extending the automatic stay on the condition that should debtor's current case be dismissed for any reason, the dismissal will be with prejudice for a time period of up to one (1) year as to Chapters 11, 12, or 13.