MEMORANDUM

To: Attorneys Practicing in the Middle District of Georgia
From: William E. Tanner, Clerk of Court
Subject: Co-Debtor Relief from Stay Under 11 U.S.C. Section 1301 April 30, 2010

The following is a practice suggestion that I highly recommend you consider adopting for all orders prepared regarding motions for relief from the co-debtor stay under Section 1301. Many attorneys file separate motions for relief under Section 362 and simultaneously seek relief under Section 1301. In most instances, no response is filed to the motion for co-debtor relief under Section 1301, and orders are submitted lifting the co-debtor stay. However, it has been discovered that many orders provide that the stay afforded by 11 U.S.C. Section 1301 be and hereby is lifted as to a named co-debtor but then goes on to authorize the creditor to take possession of collateral or to otherwise exercise state rights or contract rights. Such orders may be appropriate when the debtor's stay under Section 362 is lifted simultaneously with the co-debtor stay. However, frequently, the debtor stay under Section 362 is dealt with by way of consent orders with strict compliance or the request is conditionally denied and so forth. When those orders are entered and then the court is presented with a co-debtor order that authorizes the creditor to take possession of the collateral, the docket contains inconsistent orders.

Therefore, it is highly recommended in the future that regardless of the circumstances relief from co-debtor stay under Section 1301 orders should state if granted that the co-debtor stay is lifted as to a named co-debtor and leave off any other additional relief such as authorizing the creditor to repossess collateral. If in fact collateral is being free for re-possession, that authority can be stated under the 362 portion of the relief litigation and is really not necessary to be listed under the Section 1301 litigation. It would be to everyone's benefit to make this adjustment in your orders to prevent any delay in the entry of those Section 1301 orders.

Please direct any questions to me concerning this suggestion.

WET/kp