#383

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re	)	
	)	
DOUG TURNER FEEDLOT, INC.,	)	Bankruptcy Case No. 94C-25491
	)	
Debtor.	)	Chapter 7
	)	
	)	
In re	)	
	)	
DOUGLAS F. TURNER,	)	Bankruptcy Case No. 94C-25492
	)	
Debtor.	)	Chapter 7
	)	
	)	(Substantively Consolidated Under
	)	Case No. 94C-25491)
	)	
	)	
	)	ORDER DENYING APPLICATION FOR
	)	FEES AND COSTS

The application for compensation of McDowell & Gillman, P.C., came on before the court on the 11th day of January, 1996. Duane H. Gillman and Leslie J. Randolph appeared for the applicant and R. Kimball Mosier and Katherine S. Gregory appeared in behalf of the trustee. After considering argument of counsel and reviewing the pleadings, the court makes the following ruling:

Applicant, as debtor's counsel, seeks fees of $2,946.50 and reimbursement of costs of $499.31 for a total of $3,445.81. The objection filed by the trustee argues that because the Bankruptcy Reform Act of 1994 ("1994 Act") specifically deleted the phrase "debtor's attorney" from those entitled to compensation from the estate, that applicant has failed to provide any statutory authority for allowance of its professional fees. Applicant argues that the deletion of the term "debtor's attorney" from § 330(a)(1) was unintentional and should not be a basis for denying compensation to debtor's counsel in chapter 7 cases absent a clear showing of intent to do so in the legislative history. At issue is the interpretation of § 224 of the 1994 Act which amended the code to delete the phrase "debtor's attorney" from the list of parties to whom the court may award compensation pursuant to § 330(a)(1). This chapter 7 bankruptcy case was filed on October 28, 1994, and is subject to the changes implemented by the 1994 Act which became effective for all cases filed after October 22, 1994.

The starting point in analyzing this issue must be the language of the statute. If the language is clear and unambiguous, judicial inquiry is at an end in all but the most extraordinary circumstances. Unless the literal application of the statute will produce a result demonstrably at

odds with the intention of its drafters, the plain meaning of the legislation should be conclusive, and the court must give effect to the meaning of the statute as written. *United States v. Ron Pair Enterprises*, 489 U.S. 235, 241-42, 109 S.Ct. 1026, 1030-31 (1989). While this court is reluctant to accept arguments that would effect major changes in the law that are not the subject of at least some discussion in the legislative history, where statutory language is unambiguous, silence in the legislative history cannot be controlling. *Dewsnup v. Timm*, 502 U.S. 410, 419-20, 112 S.Ct. 773, 779 (1992). The mere existence of a dispute over the interpretation of a statute, in the absence of an ambiguity, should not give rise to an analysis of its legislative history. *In re George Rodman, Inc.*, 792 F.2d 125 (10th Cir. 1986).

The changes found in § 330(a) are plain in their meaning and can be read without the need to resort to legislative history. The changes include the deletion of "debtor's attorney" from § 330(a)(1) and the insertion of references to chapters 12 and 13 in the newly-written § 330(a)(4)(B) with the notable absence of any reference to chapter 7 in the newly-written § 330(a)(4)(B). Two other courts have considered this issue, *In re Kinnemore*, 181 B.R. 520 (Bkrtcy.D.Idaho 1995) and *In re Friedland*, 182 B.R. 576 (Bkrtcy.D.Colo. 1995). Both courts ruled because there is no longer any basis in the code for payment of debtor's lawyers from property of the estate, the court is without authority to award payment of fees to debtor's chapter 7 counsel from the estate.

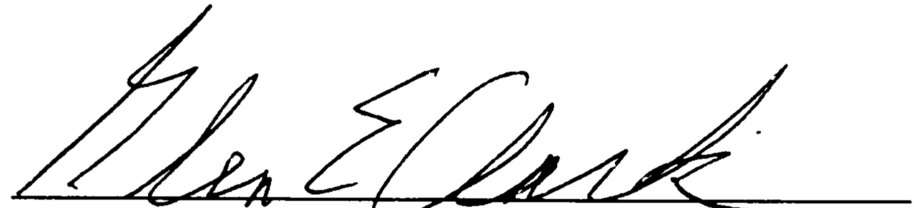
It is this court's opinion that the 1994 amendment to § 330(a) can be read plainly and simply to mean that chapter 7 debtor's counsel is no longer entitled to an award of fees pursuant to § 330 of the code. For that reason, it is hereby ORDERED that:

The application of McDowell & Gillman for fees and costs pursuant to § 330 of the code is denied; and it is further ORDERED that:

The court makes no ruling on the § 503(b) portion of the application until such time as the "evidence to be offered at the fee hearing" described in applicant's response is presented to the court.

DATED this 15 day of February, 1996.

BY THE COURT:



GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT