

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

**BRENDAN LINEHAN SHANNON
JUDGE**



**824 N. MARKET STREET
WILMINGTON, DELAWARE
(302) 252-2915**

August 30, 2023

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Chapter 13 Trustee
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Re: In re: Kim Goodwyn
Case No. 21-10794 (BLS)

Dear Counsel:

This letter follows upon the hearing in the above matter that was held on August 29, 2023. The record reflects that the Debtor has passed away; her heirs wish to continue with the bankruptcy case and otherwise perform under the confirmed Chapter 13 Plan. At the hearing, counsel for the Debtor advised that she intended to modify the Debtor's Plan in order to make the obligations thereunder more manageable for the heirs. The Chapter 13 Trustee advises that he would object to any attempt to modify the confirmed Plan following the death of the Debtor.

Bankruptcy Rule 1016 provides guidance to courts and parties in dealing with issues raised by the death of a debtor while a bankruptcy case is pending. The Rule provides as follows:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties,

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the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

While Debtor's counsel is correct that Rule 1016 does not expressly forbid post-mortem modification of a plan, neither does it expressly permit the practice. Research reveals no reported cases authorizing a plan modification after the demise of a debtor.¹ Sound policy supports this result: the Bankruptcy Code contemplates that a plan confirmed by a debtor may be carried through to consummation notwithstanding the death of the debtor. There is, however, great mischief and uncertainty that could accrue by permitting the heirs, representatives, or successors of a debtor to modify a deceased debtor's plan and impact or modify the rights and expectations of that debtor's creditors for years to come.

The Court is aware that the parties are attempting to develop or negotiate a path forward, and the Court encourages the parties to continue those efforts. However, plan modification is not an available option in this case.

Very truly yours,



Brendan Linehan Shannon
United States Bankruptcy Judge

BLS/jmw

¹ See, e.g., *In re Shepherd*, 49 B.R. 338, 339 Bankr. N.D. Inc. 2013) (“But, only the debtor, the trustee, or an unsecured creditor may seek to modify a confirmed plan, 11 U.S.C. § 1329(a), and the debtor's heirs are none of these.”).