

## IMPAIRMENT

### Section 1124. Impairment of Claims or Interests

Except as provided in section 1123 (a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan --

(1) leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default --

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision of such applicable law; and

(D) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Under Third Circuit precedent, the Bankruptcy Code creates a presumption of impairment to ensure that any creditor whose rights are altered by a plan is entitled to vote on acceptance of the plan. *In re PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 203 (3d Cir. 2003). The Third Circuit has further held that, if a plan does not leave a creditor's rights "*entirely unaltered*", the creditor's claim is impaired.

Even if the alteration of a creditor's rights under a plan enhances such rights, the creditor is still deemed to be impaired. See *In re L & J Anaheim Assocs.*, 995 F.2d 940, 942-943 (9th Cir. 1993) (holding that a creditor's rights were deemed impaired, entitling the creditor to vote on the plan, even though the plan enhanced the creditor's position); *In re Union Meeting Partners*, 160 B.R. 757, 771 (Bankr. E.D. Pa, 1991) (finding that "'impairment' is a term of art and includes virtually any alteration of a claimant's rights ... even where a creditor's rights are improved by a plan."); *In re Temple Zion*, 125 B.R. 910 (Bankr. E.D. Pa. 1991)

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