

REINSTATEMENT

Reinstatement

Renewal of debt that can occur if the only default on a particular creditor is the act of filing for bankruptcy

Debtor must demonstrate that the plan conforms to the bankruptcy code and to the absolute priority rule

The claims of senior creditors should take precedence over shareholders' or junior creditors' claims

Courts also have to assess the viability of the plan and whether the plan would create events of default before senior lenders are paid in full

Cram Up

Occurs when junior creditors try to force a plan on more senior creditors by reinstating their debt

Spectrum Brands Bankruptcy

Debtors tried to reinstate their \$1.4B senior secured term loan

Senior lenders mounted a two-pronged challenge to the plan:

The equitization of the subordinated debt created non-curable defaults under the credit agreement provisions concerning permitted refi and CoC

The plan was not feasible because the debtors would be unable to comply prospectively with the loan's senior leverage ratio covenant

Eventually settled after a five-day contested confirmation hearing:

Debtors and lenders agreed to leave the term loan in place but with significantly enhanced terms for the lenders

A 250 bps increase in interest rate spreads

Addition of a 1.50% LIBOR floor

Shortening of the maturity by 9 months

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 or 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 or of a kind that Section 365 (b)(2) expressly does not require to be cured;**

(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 or such applicable law;

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate nonresidential real property lease subject to Section 365 (b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

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

Section 365(b)(2). Executory Contracts and Unexpired Leases

Paragraph (b)(1) provides for assumption of contracts or leases

(b)(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to --

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title;

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or

(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease

