



## Dana Robbins Reviews Ruling on Absolute-Priority Rule in American Bankruptcy Institute Journal

Articles / Publications

*American Bankruptcy Institute Journal*

02.08.2024

Burr & Forman creditors' rights and bankruptcy attorney, Dana Robbins, co-authored an article for the American Bankruptcy Institute Journal's February 2024 issue examining the "absolute-priority" rule in individual Chapter 11 cases. Robbins' co-author was Edward Comey, judicial clerk with the U.S. Bankruptcy Court for the Middle District of Florida.

The absolute-priority rule was established by the U.S. Supreme Court in the early 20th century and provided "that a dissenting class of unsecured debtors must be provided for in full before any junior class can receive or retain any property (under a reorganization) plan."

In addition to providing an overview of the rule and its evolution through the years, the article highlighted a 2023 ruling *In re Joseffy* that confronted two long-standing splits of authority over the rule's scope. Those splits were related to whether the absolute-priority rule applies in individual Chapter 11 cases, and whether an individual debtor who does not pay unsecured creditors violates the rule by retaining exempt property.

In this case, the *Joseffy* court concluded that the absolute-priority rule is still alive and well and that an individual Chapter 11 debtor "may only retain three categories of property under §1129(b) if unsecured creditors are not paid in full:

1.

### RELATED PROFESSIONALS

Dana L. Robbins

### RELATED CAPABILITIES

Creditors' Rights and Bankruptcy

# Dana Robbins Reviews Ruling on Absolute-Priority Rule in American Bankruptcy Institute Journal

Exempt property;

2.

Property of a kind specified in §541 that (has been) acquired post-petition; and,

3.

Earnings from post-petition services.”

The full article is available online [here](#), and American Bankruptcy Institute (ABI) members may also access the article [here](#).