
The “Absolute Priority Rule” and Other “Rules” of “Priority” in Bankruptcy

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Phil Anker, in this article published by DailyDAC's *Commercial Bankruptcy Alternatives*, explores the “Absolute Priority Rule” and other “Rules” of “Priority” in bankruptcy, and if they really are “absolute,” if they really are “rules,” and if they always provide “priority” to some claimants over others.

Excerpt: At its core, corporate bankruptcy addresses the problem of the “inadequate pie.” While occasionally the debtor will be solvent, in most cases, the debtor will, for lack of a better term, be “bankrupt”—that is, it won't have enough money or other assets to pay its creditors all they are owed. The Bankruptcy Code includes a number of provisions designed to help the bankruptcy estate maximize its value so that the creditor body can recover as much as possible. For example, it allows the debtor to be reorganized in Chapter 11, rather than liquidated in Chapter 7, where the debtor is worth more reorganized than liquidated; provides an “automatic stay” against creditor collection efforts, so as to give the trustee or debtor-in-possession a breathing spell to marshal the debtor's assets and organize the debtor's affairs; and it permits the trustee or debtor-in-possession to “reject” most burdensome executory contracts and unexpired leases. But, even after the exercise of all these powers, most debtors remain insolvent. The Bankruptcy Code therefore also needs to establish rules for the distribution of the inadequate pie—how big a slice does each claimant receive, and in what order of priority does it receive that slice, before the pie disappears? [Read the article.](#)

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