



AMERICAN
BANKRUPTCY
INSTITUTE

2022 Winter Leadership Conference

150 Days in the Life of a Subchapter V Bankruptcy

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150 Days in the Life of a Subchapter V Reorganization



Standard Chapter 11 v. Subchapter V

Standard 11	Subchapter V
Any business can file.	Person must be “engaged in business” and have business debts of \$7.5M or less.
After 4 months, any party in interest can file a plan and solicit creditor support.	Only the debtor can file a plan. Ever.
Owner lose equity unless they contribute “new value” to the reorganization or creditors are paid in full.	Equity stays in place even if creditors are not paid in full.
At least one class of impaired creditors must support plan.	Court can confirm plan without creditor support.
UST appoints creditors’ committee.	UST appoints subchapter V trustee.



Case Study: Alpha Corp.

2005	2018	2020	2021
<ul style="list-style-type: none">• Alpha Corp. founded.• Alpha produces the Sensor4, a fourth-generation continuous radon monitor for household and commercial use.	<ul style="list-style-type: none">• Acquisition Co. acquires Alpha for \$2 million.• Alpha's owner Dr. James Bentley receives \$1M in cash and a \$1M note payable by Alpha and secured by its assets.	<ul style="list-style-type: none">• Alpha defaults on its note to Bentley.• Bentley obtains a judgment against Alpha in state court.	<ul style="list-style-type: none">• Alpha files for chapter 11 bankruptcy.• Alpha elects to proceed under Subchapter V.



Pre Filing Considerations

- Eligibility
- Goals of Reorganization
- Creditor Risks With Subchapter V
- Creditor Goals in Reorganization



MARCH 15, 2021

Petition Date



Alpha Corp. Balance Sheet

ALPHA Corp. Balance Sheet as of March 2021			
Assets		Liabilities and Equity	
Current Assets		Current Liabilities	
Deposit Accounts	\$165,768	Trade	\$493,912
Accounts Receivable	\$84,094	PPP Loans	\$320,000
Fixed Assets		Long Term Liabilities	
Inventory (parts, raw material, finished goods)	\$65,034	Funded Debt (Bank)	\$110,223
Other Assets		Bentley Secured Judgment	\$1,258,141
Furniture and Equipment	\$24,966	Total Liabilities	\$2,182,276
		Equity	(-\$1,813,914)
Total Assets	\$339,862	Total Liabilities and Equity	\$339,862



MARCH 17, 2021
Petition Date + 2

Subchapter V Trustee Appointed and Cash
Collateral Hearing



MARCH 19, 2021
Petition Date + 4

Initial Debtor Interview
With United States Trustee



APRIL 1, 2021
Petition Date + 17

Trustee Meets With Bentley



April 8, 2021
Petition Date + 24

Section 341 Meeting With Creditors



APRIL 30, 2021
Petition Date + 46

Debtor Files Status Report



May 14, 2021
Petition Date + 60

Status Conference



JUNE 13, 2021 Petition Date + 90

Debtor Files Plan



Original Plan

Creditor Class	Proposed Treatment
1: Bank (Impaired)	Debtor will repay \$110k in loans according to the loan agreement; bank retains its security interests.
2: Bentley (Impaired)	Bentley will have a secured claim of \$75,000 payable at 4.25% over 5 years.
3: Convenience Class (Impaired)	Pro rata share of \$15,000 on the Effective Date.
4: Bentley (Impaired)	Unsecured claim of \$1,184,141 to receive \$50,000 over 3 years in quarterly installments of \$4,167. A 4% recovery.
5: PPP Loan	To be forgiven in the ordinary course under Paycheck Protection Program.



Projected Disposable Income

	2021	2022	2023	Total
Cash Receipts (Sales)	\$1,995,281	\$2,095,045	\$2,199,797	\$6,290,123
Operating Disbursements				
Cost of Goods Sold	(\$800,101)	(\$840,106)	(\$882,111)	
Payroll	(\$727,791)	(\$756,853)	(\$787,178)	
Marketing	(\$3,377)	(\$7,000)	(\$15,000)	
Rent	(\$70,763)	(\$81,363)	(\$85,908)	
... other expenses				
Operating Cash Flow	\$126,473	\$134,565	\$145,210	\$406,248
CapEx (New Product Development)	(\$28,000)	(\$70,000)	(\$70,000)	(\$168,000)
Non-Operating Disbursements				
Secured Loan Repayments	(\$62,280)	(\$62,280)	(\$62,280)	(\$186,840)
Cash Flow/Disposable Income	\$36,193	\$2,285	\$12,930	\$51,408



JULY 4, 2021

Petition Date + 111 Days

Bentley Objects to Plan Challenging the
Valuation of the Company and Bifurcation of
its Claim



JULY 12, 2021

Petition Date + 119

Court holds pre-trial confirmation hearing



JULY 15, 2021

Petition Date + 122

Trustee Conducts “Mediation” Between
Alpha and Bentley



JULY 22, 2021

Petition Date + 129

Confirmation Hearing “Battle of the Experts”



Court Accepts Debtor's Valuation

- ☐ Court rejected Bentley's valuation based on “cost approach” to valuing the business.
 - Based on this appraisal, Bentley claimed that Alpha's intellectual property was worth \$800,000 because that is what it spent on R&D over previous 3 years.
- ☐ Court accepts Alpha's valuation of \$163,000 to \$188,00 measured by its “reorganization value.”
 - Reorganization value considers what a buyer would pay for the reorganized business based on its future projected “free” cash flow net of post-bankruptcy liabilities and disbursements to creditors under plan.
 - Debtor's expert uses the “income approach” to valuing the business based on a discounted cash flow method.
- ☐ Court found that Bentley's secured claim should be allowed at \$75,000 and that the Class 2 treatment complied with the Code.



Court Holds Debtor Did Not Satisfy 1191(b)

- ❑ Court found that Alpha's investment in R&D in years 2-3 of the plan channeled money towards the post-plan future of the company to the benefit of the owners and at the expense of unsecured creditors.
 - Section 1191(b) says the plan must be "fair and equitable" to rejecting creditor.
 - "Fair and equitable" means, with respect to unsecured creditors, that the debtor must provide that all projected disposable income to make payments under the plan "in the 3-year period, or such longer period not to exceed 5 years as the court may fix."
 - Section 1191(d) defines "disposable income" as income not reasonably necessary for the "continuation, preservation, or operation of the business of the debtor."



JULY 29, 2021
Petition Date + 136

Alpha proposes increased projected
disposable income to Bentley



Modified Projected Disposable Income

	2022	2023	2024	2025	2026	Total
Cash Receipts (Sales)	\$2,095,045	\$2,220,748	\$2,331,785	\$2,401,739	\$2,473,791	\$11,523,108
Operating Disbursements						
Cost of Goods Sold	(\$846,824)	(\$889,165)	(\$931,375)	(\$959,316)	(\$995,280)	
Payroll	(\$788,491)	(\$827,915)	(\$861,031)	(\$886,863)	(\$913,468)	
Marketing	(\$10,131)	(\$20,262)	(\$20,000)	(\$20,600)	(\$21,218)	
Rent	(\$81,363)	(\$85,908)	(\$90,203)	(\$92,909)	(\$95,697)	
... other expenses						
Operating Cash Flow	\$77,991	\$194,573	\$130,679	\$137,808	\$134,757	\$675,808
CapEx (New Product Development)	(\$40,000)	(\$40,000)	(\$80,000)	(\$96,000)	(\$82,500)	(\$338,500)
Non-Operating Disbursements						
Secured Loan Repayments	(\$62,280)	(\$62,280)	(\$39,480)	(\$16,680)	(\$16,680)	
Cash Flow/Disposable Income	(\$24,289)	\$92,293	\$11,199	\$25,128	\$35,577	\$164,197



Modified Plan Terms

Creditor Class	Proposed Treatment
1: Bank (Unimpaired)	Debtor will repay \$110k in loans according to the loan agreement; bank retains its security interests.
2: Bentley (Impaired)	Bentley will have a secured claim of \$75,000 payable at 4.25% over 5 years.
3: Convenience Class (Impaired)	Pro rata share of \$15,000 on the Effective Date
4: Bentley (Impaired)	Unsecured claim of \$1,184,141 to receive \$160,000 over 5 years in quarterly installments of \$8,000. A 13.5% recovery.
5: PPP Loan	To be forgiven in the ordinary course under Paycheck Protection Program.



Bentley Objections to Modified Plan Terms

- Alpha is channeling free cash into increased payroll.
- Alpha should use excess cash to increase disbursements to Bentley rather than putting the money into new product development.



August 5, 2021
Petition Date + 143

Debtor and Bentley Reach Agreement and
Debtor Files First Amended Plan



Modified Plan Treatment

Creditor Class	Proposed Treatment
1: Bank (Unimpaired)	Debtor will repay \$110k in loans according to the loan agreement; bank retains its security interests.
2: Bentley (Impaired)	Bentley will have a secured claim of \$75,000 payable at 4.25% over 5 years.
3: Convenience Class (Impaired)	Pro rata share of \$15,000 on the Effective Date.
4: Bentley (Impaired)	Unsecured claim of \$1,184,141 to receive \$320,000 over 5 years in quarterly installments of \$8,000 plus five annual payments of \$32,000. A 27% recovery.
5: PPP Loan	To be forgiven in the ordinary course under Paycheck Protection Program.



AUGUST 12, 2021
Petition Date + 150 Days

Consensual Confirmation Hearing and Court
Approves Amended Plan



Questions?

Faculty

Melissa Davis, CPA, CIRA, CFE is a partner with KapilaMukamal in Fort Lauderdale, Fla., where she concentrates her practice on providing insolvency, litigation and forensic investigation services to fiduciaries, debtors and creditors. She has assisted bankruptcy trustees and has acted as CRO for a variety of companies in chapter 11 bankruptcy, and she is experienced in 363 sales and liquidating chapter 11 plans. Her experience in insolvency matters also encompasses investigating fraudulent and preferential transfers and related defense and solvency analyses. Ms. Davis has assisted clients in bankruptcy-related financial reporting, claims review and litigation support in adversary proceedings. She has also provided litigation support and damage calculations through forensic financial investigations in a variety of industries, and has assisted with the investigation of securities fraud, corporate business conduct and Ponzi schemes. Ms. Davis has worked in conjunction with the Securities and Exchange Commission, the Federal Bureau of Investigation and the U.S. Attorney's Office. She has also served as a court-appointed assignee in assignment for the benefit of creditors matters and has served as a post-confirmation liquidating plan trustee. Ms. Davis has authored several articles that have been published in the *ABI Journal* and the journal for the Bankruptcy Bar Association of the Southern District of Florida. She received her B.B.A. in accounting from Florida Atlantic University.

Kellie W. Fisher is an attorney with Drummond Woodsum in Portland, Maine, and a member of the firm's Bankruptcy and Creditors' Rights practice. She focuses her practice on bankruptcy matters, commercial litigation and transactions involving distressed companies. Ms. Fisher routinely represents financial institutions, secured and unsecured creditors (including official and ad hoc committees), lenders, debtors, equityholders, chapter 7 trustees, and liquidating and litigation trustees. She has substantial bankruptcy and litigation experience in New England and around the country and advises clients on all aspects of the restructuring and bankruptcy process, including DIP lending and cash-collateral issues, plan negotiation and drafting, § 363 sales, adversary proceedings, contested matters, and fraudulent conveyance and preference litigation. She also routinely represents parties in out-of-court debt restructurings, Article 9 and real estate foreclosures, receiverships, and other debtor/creditor litigation. Recent examples of Ms. Fisher's representations include the senior secured lenders in numerous subchapter V cases, the official committee of unsecured creditors in the Calais Regional Hospital bankruptcy case, and the largest creditor in a contested sale trial in the IDL Development, Inc. chapter 11 bankruptcy case. She also successfully represented a Vermont-based textile firm as the debtor in its chapter 11 bankruptcy case and restructured millions of dollars in debt in the process. Ms. Fisher is recognized as "One to Watch" in Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law in *The Best Lawyers in America*, and she co-chairs the board of the New England chapter of the International Women's Insolvency & Restructuring Confederation (IWIRC). She is also an active member of ABI, and she has spoken at the ABI Northeast Bankruptcy Conference and as well as published articles for ABI. Prior to joining Drummond Woodsum, Ms. Fisher was a restructuring attorney at an international law firm in Boston. She received her B.A. in 2012 from Colby College and her J.D. in 2015 from Boston College School of Law.

Eve H. Karasik is a partner at Levene, Neale, Bender, Yoo & Golubchik L.L.P. in Los Angeles and focuses her practice on corporate restructuring and bankruptcy, including the representation

of chapter 11 debtors, unsecured creditor and equity committees, trustees, secured and unsecured creditors, and parties involved in bankruptcy litigation and appeals. Her prior debtor engagements include Valley Economic Development Corp. Marshall Broadcasting, Inc., Cornerstone Apparel, Inc., Anna's Linens, Inc., Associated Third Party Administrators and Allied Fund Administrators LLC, Imperial Capital Bancorp, Inc., Utah 7000, LLC, Falcon Products, Inc., Clark Retail Group and U.S. Aggregates, Inc. Her creditor and equity committee cases include PHI, Inc., New Meatco Provisions, LLC, Circus and Eldorado Joint Venture, Riviera Holdings Corporation, Eurofresh, Inc., USA Capital First Trust Deed Fund, Aladdin Gaming, Inc. and Amerco. Ms. Karasik has represented clients in state and federal receiverships, and assignments for the benefit of creditors. She served as trustee's counsel in SIPA liquidations (W.S. Clearing, Inc.), examiner's counsel in Fontainebleau Las Vegas Holdings, LLC and counsel to Bankruptcy Code § 524(g) settlement trusts. Ms. Karasik is an American College of Bankruptcy Fellow and is ranked in *Chambers USA* as a Band 3 Bankruptcy and Restructuring attorney. She received the Century City Bankruptcy Attorney of the Year (2015) and the Turnaround Management Association's "2007 Large Company Transaction of the Year" award. Ms. Karasik serves as ABI's Vice President-Diversity & Inclusion, is the incoming president of the Los Angeles Bankruptcy Forum, and is a member of several other professional organizations. She received her B.A. with high honors from the University of California, Berkeley in 1984 and her J.D. from the University of Southern California in 1991, where she was a member of the Order of the Coif.

David A. Mawhinney is an associate at Bowditch & Dewey LLP in Framingham, Mass., and advises clients in areas of restructuring and insolvency, employment and labor, and commercial litigation. He has represented regional and international companies, secured lenders, critical vendors, and equity sponsors in bankruptcy proceedings throughout the U.S. Representing management, Mr. Mawhinney provides employment advice, negotiates employment and separation agreements, and advises clients in resolving "corporate divorces." He also frequently serves as the trustee in small business cases proceeding under subchapter V. In 2019, Mr. Mawhinney was honored as one of ABI's "40 Under 40." He was also named one of *Super Lawyers'* 2020 and 2021 "Rising Stars" for Bankruptcy: Business. Previously, Mr. Mawhinney worked in both the commercial litigation and restructuring and insolvency groups for six years. Prior to that, he clerked for Hon. Frank J. Bailey of the U.S. Bankruptcy Court for the District of Massachusetts, during which time he helped develop what has become an annual program for the district and appeals court clerks of the First Circuit called, "Introduction to Bankruptcy Law and the Bankruptcy System," which provides a general overview of bankruptcy law, procedure and jurisdiction, and features insolvency practitioners and bankruptcy judges. Prior to entering law school, Mr. Mawhinney worked as a professional actor in New York City. He is a graduate of the American Repertory Theater Institute in Cambridge, Mass., and holds an M.F.A. from the Moscow Art Theater in Russia.