



AMERICAN  
BANKRUPTCY  
INSTITUTE

## Northeast Bankruptcy Conference and Consumer Forum

# 150 Days in the Life of a Subchapter V Reorganization

### **Hon. Peter G. Cary**

U.S. Bankruptcy Court (D. Maine) | Portland

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

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SAMOSET RESORT | ROCKPORT, MAINE | JULY 14-17, 2022



### Pre Filing Considerations

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

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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

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MARCH 19, 2021  
Petition Date + 4

Initial Debtor Interview  
With United States Trustee

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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



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May 14, 2021  
Petition Date + 60

Status Conference

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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

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JULY 4, 2021

Petition Date + 111 Days

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

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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 19, 2021  
Petition Date + 126

Alpha proposes modified plan terms and  
modified projected disposable income to  
Bentley

## NORTHEAST CONSUMER FORUM

SAMOSET RESORT | ROCKPORT, MAINE | JULY 14-17, 2022



## 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)	<b>(\$39,480)</b>	(\$16,680)	(\$16,680)	
Cash Flow/Disposable Income	<b>(\$24,289)</b>	\$92,293	\$11,199	\$25,128	\$35,577	\$164,197

## NORTHEAST CONSUMER FORUM

SAMOSET RESORT | ROCKPORT, MAINE | JULY 14-17, 2022



## 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.



## JULY 26, 2021 Petition Date + 133

Bentley informs Debtor that it will not support  
modified plan terms



### 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.

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# August 5, 2021

## Petition Date + 143

Debtor and Bentley Reach Agreement and  
Debtor Files First Amended Plan

## NORTHEAST CONSUMER FORUM

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### 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

**Hon. Peter G. Cary** is Chief Bankruptcy Judge for the U.S. Bankruptcy Court for the District of Maine in Portland, initially appointed in 2014. He also serves on the U.S. Bankruptcy Appellate Panel for the First Circuit. Previously, he clerked for one year for the Maine Superior Court and in 1988 joined the law firm of MittelAsen, LLC, where he practiced law until his appointment to the bankruptcy court. Judge Cary is the treasurer of the Maine State-Federal Judicial Council, an advisory director of the Nathan & Henry B. Cleaves Law Library and a member of the First Circuit Workplace Conduct Committee, and he is certified in both Consumer and Business Bankruptcy Law by the American Board of Certification. He also was an adjunct faculty member at the University of Maine School of Law. Judge Cary received his undergraduate degree *cum laude* and Phi Beta Kappa from the University of Massachusetts at Amherst in 1982 and his J.D. *cum laude* from Boston College Law School in 1987.

**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.

**Christopher J. Keach** is an attorney with the Molleur Law Office in Saco, Maine, which he joined in 2015. He focuses his practice on representing debtors in small business chapter 11 bankruptcy cases, specifically subchapter V cases. Prior to attending law school, Mr. Keach worked for several years for U.S. Senator Susan Collins as a member of the senator's Homeland Security and Governmental Affairs Committee staff. He received his B.A. in 2006 from Stonehill College and his J.D. *cum laude* in 2014 from Vermont Law School, where he was also an editor for the *Vermont Journal of Environmental Law*.

**David A. Mawhinney** is an attorney at Bowditch & Dewey LLP in Framingham, Mass., and a subchapter V trustee for Region 1. He advises clients in all manner of commercial disputes, restructuring and insolvency. Mr. Mawhinney previously clerked for Hon. Frank J. Bailey of the U.S. Bankruptcy Court for the District of Massachusetts. From 2013-20, he was an associate in the restructuring and insolvency group at K&L Gates LLP in Boston. Mr. Mawhinney has been repeatedly recognized by *Chambers USA* as a leading lawyer in Massachusetts for Bankruptcy and Restructuring. In 2019, he was named among ABI's "40 Under 40" insolvency professionals. He is also a member of the National Conference of Bankruptcy Judges 2018 Next Generation Program. Mr. Mawhinney is a board member of the National Association of Bankruptcy Trustees and chairs its Subchapter V Committee, and he is a member of the Boston Bar Association's Bankruptcy Section. He received his B.A. *summa cum laude* in 2002 from Boston College and his J.D. *cum laude* in 2011 from Boston College Law School, where he was editor-in-chief of the *Uniform Commercial Code Reporter-Digest*. He also 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.