Court: Instant Brands Bankruptcy Estate Lodges USD 400M Suit, Alleging Former Equity Owner Cornell Capital 'Plundered' Company in Run up to Chapter 11 Filing
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[Link**]**

- Suit targets dividend recapitalization, unrestricted subsidiary deals
- Trustee suing on behalf of both secured lenders and unsecured creditors
- Company confirmed Chapter 11 plan in February

The litigation trustee installed under Instant Brands' Chapter 11 plan has filed a USD 400m lawsuit alleging that former majority equity holder Cornell Capital "plundered" Instant's business and drove it into a state of insolvency.

The trustee, Alan Halperin of Halperin Bataglia Benzija, lodged an adversary complaint against Cornell, its founder Henry Cornell, and a slew of former officers and directors in the US Bankruptcy Court for the Southern District of Texas on Wednesday (13 November).

In the suit, the trustee seeks damages of at least USD 400m to recoup funds that were allegedly transferred away from Instant Brands fraudulently in connection with a 2021 financing and dividend recapitalization transaction and a January 2023 financing deal involving unrestricted subsidiaries. Halperin said he would "seek redress" for both the claims of Instant Brand's creditors harmed by the alleged fraudulent transfers, and the claims of secured lenders who were allegedly misled while agreeing to provide loans. The lenders' claims were assigned to the litigation trust under Instant Brands' confirmed Chapter 11 plan, which provides that 85% of the trust's proceeds go to the lenders and 15% to the company's general unsecured creditors.

"This case is about how Henry Cornell, and his eponymous private equity fund . . . plundered their portfolio company Instant Brands, leaving it insolvent and unable to repay its creditors," the trustee asserted in his complaint.

The lawsuit then traces the roots of Cornell's ties to Instant Brands, starting with the investment firm's acquisition of a predecessor to Correlle Brands, the entity that in 2019 acquired Instant Brands. On the other side of that deal were the inventor of the Instant Pot and the co-founders of his company. Cornell, however, later renegotiated the price after discovering accounting issues and determining that it overpaid by about USD 270m to acquire Instant Brands.

According to Halperin's lawsuit, Cornell and Instant Brands' management while Cornell held the majority of the company's equity never disclosed any of those details while obtaining a loan for Instant Brands in March 2021. That USD 450m term loan financing went, in part, toward funding a USD 345m shareholder dividend, "almost all of which went to enrich Cornell Capital and its co-investors," the trustee alleged.

Following that dividend, after a "predictable decline in sales," Instant Brands began finding itself "strapped for cash" and by January 2023, had effectively no money left, the trustee said. At that time, Cornell offered a USD 55m liquidity infusion but required Instant Brands to put its tangible assets into unrestricted subsidiaries, out of the reach of existing creditors under the term loan.

That "UnSub" deal put Instant Brands at odds with its term lenders, who believed it constituted a breach of their credit agreement, and ultimately served as the company's "death knell" as it triggered negative press and ratings downgrades. The company filed for Chapter 11 in June 2023, half-a-year after the UnSub transaction. The litigation trustee alleges in the complaint that Cornell knew Instant Brands would be violating its credit agreement with the term loan lenders by stripping away collateral.

Instant Brands filed for Chapter 11 in June 2023 to sell its assets, with USD 512.3m in funded debt. The consumer lifestyle brands company sold its assets in October 2023 to vehicles of private equity firm Centre Lane Partners for USD 350.8m. At the time of that deal getting approval, the company announced an agreement with its unsecured creditors committee and term loan lenders to create a litigation trust.

Instant Brands Acquisition Holdings, Inc Capital Structure			
(USD m)	**Maturity**	**Coupon**	**Approximate Principal Amount Outstanding**
Prepetition ABL Credit Facility[1]	Various	Various	121.4
Prepetition Term Loan Credit Facility[2]	12-Apr-28	E+ 5%	390.9
Total Funded Debt			**512.3**

Sources: Bankruptcy filings

Notes

1. On the Petition Date, the Prepetition ABL Credit Facility had USD 121.4m of principal outstanding, and USD 22.3m of undrawn Letters of Credit issued and outstanding. The ABL is subject to the same guarantees and security as the Prepetition Term Loan Credit Facility, except that the obligations under the Prepetition ABL Credit Facility are secured on a first-priority basis with respect to the ABL Priority Collateral and on a second lien basis with respect to all other collateral (other than any real property) securing the Prepetition Term Loan Credit Facility. The Prepetition ABL Credit Agreement was amended to include two new "first in, last out" incremental tranches of debt within the Prepetition ABL Credit Facility. These incremental "Tranche B Revolving Loans" allowed the Debtors to increase liquidity and availability under the Prepetition ABL Credit Facility by effectively increasing the aggregate advance rates for borrowings against certain borrowing base assets under the Prepetition ABL Credit Facility. The stated maturity for the Tranche B-1 revolver is 13 November 2023 with the Tranche B-2 revolver maturing at the earlier of 13 August 2023 and the date on which the ABL Backstop LC Termination conditions are satisfied and Cornell requests termination and return of the ABL Backstop LC. The Tranche A Revolving Loans (i.e., the revolving loans other than the "first-in, last-out" Tranche B Revolving Loans) outstanding under the Prepetition ABL Credit Facility have a stated maturity of 30 June 2026.

2.The Prepetition Term Loan Credit Facility obligations are guaranteed by Intermediate Holdings and each of its direct and indirect wholly-owned U.S. and Canadian subsidiaries (other than the UnSubs and other limited exceptions) and secured by substantially all of the assets of such entities, including on a first-priority basis with respect to machinery, equipment, real property and other assets constituting collateral and not constituting ABL Priority Collateral, and on a second-priority basis with respect to the ABL Priority Collateral. The interest rate is either the Eurocurrency Rate plus 5% or the Base Rate plus 4%.