

**How Instant Brands Went From Victim to Accused, According to  
Bankruptcy Trustee  
The Texas Lawbook  
Allen Pusey  
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A New York firm apparently victimized by questionable bookkeeping in an M&A deal was accused by a bankruptcy trustee last week of using that same questionable bookkeeping to pay \$345 million in dividends to itself and its investors from a fraudulently obtained loan.

In an unusual request for a bankruptcy-based jury trial, litigation trustee Alan Halperin is seeking \$400 million in a lawsuit against Cornell Capital LLC, its owner Henry Cornell, and 19 other defendants involved in the June 2023 bankruptcy of a kitchen products distributor in the Southern District of Texas.

In an 88-page petition, the trustee for Instant Brands, an investment platform of Cornell Capital, said Cornell paid \$615 million for its acquisition of a kitchen appliance manufacturer, only to discover its worth to be far less than its books had suggested. But rather than disclose the discrepancy, Cornell Capital concealed a multitude of problems and misrepresentations while raising \$450 million from lenders, which subsequently funded the \$345 million dividend.

Representing the litigation trustee are McKool Smith principals [Joshua Newcomer](#) of Houston and [Kyle Lonergan](#) and [James Smith](#) of the firm's New York office.

The allegations center on Cornell's March 2019 acquisition of Instant Brands Inc., whose primary product was a pressure cooker known as the "Instant Pot." The purchase was made by Cornell Capital through its investment platform, Corelle Brands. Most of the compensation came in the form of seller notes and equity in the combined companies, which assumed the name Instant Brands.

Within months after the transaction, however, Cornell Capital discovered that it had been duped to the tune of hundreds of millions of dollars. Threatened with a lawsuit over the apparent misrepresentations, the two companies entered into a February 2020 restructured agreement under which Cornell Capital released Instant Brands and its owners from any breach of their representations and warranties in exchange for a reduction in the equity commitment, a significant reduction in the sellers' notes and a waiver of the first \$200 million in any subsequent dividends.

In May 2020, Corelle Brands filed a claim against its representations and warranties policy, alleging a loss of \$268 million because of flagrant misrepresentations by Instant Brands while negotiating the deal. The claim was later settled for \$55 million.

To make matters worse, in September 2020, the Consumer Product Safety Commission launched an investigation into the Instant Pot after receiving reports that it "caught fire, melted, exploded and/or blew up, posing fire and burn hazards," according to the court document. In one of the cases, a 9-year-old had suffered burns on her face, shoulder, arm and torso; and in another, a mother lost the ability to breastfeed her child after sustaining significant burns to her chest and abdomen. Instant Brands had settled "numerous lawsuits for 6-digit sums."

According to the trustee, none of that was disclosed to potential lenders when, in March 2021, the merged iteration of Instant Brands went to the market to borrow money for a dividend recapitalization — a debt-based payout to investors. On April 12, 2021, the company secured a \$450 million term loan.

On April 21, just nine days later, Instant Brands issued a \$345 million dividend, \$200 million of which went to Cornell Capital and its co-investors, and \$105 million to the sellers and their management team, “leaving Instant Brands insolvent, and foisting Cornell Capital’s losses on the lenders,” the lawsuit says.

The dividend had been approved, according to court records, on March 21, a month earlier, but had to be re-approved because the company had not secured an independent fairness or solvency opinion. The company did so on April 14, 2021, based on a solvency memorandum — a memo created after the fact by company management that was, the trustee alleges, “wholly inadequate and fatally flawed.”

As related in the trustee’s petition, even the inventor of the “Instant Pot” — who stood to gain millions from the dividend — questioned the substance of the solvency memo, which projected a \$69 million of free cash flow for debt service based on a projection for 2021 of “more than 900 percent new product sales growth.” Instead, the company missed the projection by \$157 million — “burning \$87 million of cash,” according to the petition.

But the solvency memo also revealed that the acquisition of Instant Brands was even more problematic than originally thought. Of the \$615 million purchase price paid by Cornell Capital, more than 98 percent could be considered accounting fluff: \$365 million for intangible assets and \$242 million as goodwill.

By September 2022, less than 18 months after the \$345 million dividend was issued, Instant Brands management sought a capital infusion of \$50-\$55 million from Cornell Capital, according to the trustee. And in December 2022, company management began discussing bankruptcy.

In January 2023, Cornell Capital instructed Instant Brands to transfer substantially all of its assets out of the reach of creditors, pledging them to Cornell Capital Partners in return for a \$55 million loan in lieu of cash. On June 12, 2023, Instant Brands filed for bankruptcy.

In his petition, the trustee allows that Cornell Capital and Corelle Brands had been likely surprised by the weakness of the business they had acquired. But just days after the purchase closed, Justine Cheng, one of the partners at Cornell and a newly designated director at Instant Brands, wrote Instant Brands CEO Ken Wilks to ask: “Is there fraud going on???”

Wilks replied, describing Instant Brands as a company that “may be the most poorly operated ‘successful’ business on the planet.” Both Wilks and Cheng are listed as defendants.

A presentation to the board of directors two months later included a mock “Surgeon General’s Warning,” cautioning that the company’s accounting “may be harmful to an accurate understanding of the business.”

A later investigation by the R&W insurers showed that sales by Instant Brands had been wildly exaggerated through massive discounts and “channel stuffing” — sending sales outlets more inventory than they wanted or needed. As a result, sales of the company’s primary product, the “Instant Pot” had already saturated any reasonable market, deteriorating further any prospects for future revenue growth.

Moreover, Corelle Brands, the platform company that had acquired Instant Brands, had its own problems with deteriorating markets — a problem that had led to the acquisition of Instant Brands in the first place.

In May 2017, Cornell Capital acquired WKI Holding Company, known as World Kitchen, for \$435 million. World Kitchen sold household products under brands like Pyrex, Corelle, Corning Ware, Olfa and Chicago Cutlery. After the acquisition, World Kitchen was renamed Corelle Brands Holdings, but under Cornell Capital, company revenues declined in both 2017 and 2018, leading Cornell Capital to decide to use Corelle as a platform for growth through acquisition. The purchase of Instant Brands in March 2019 was its first move.

In January 2020, Olfa Corp, a Japanese manufacturer of utility knives, ended its 25-year relationship with World Kitchen/Corelle — representing a loss of \$40 million in annual revenue.

Despite the multitude of business setbacks, according to the trustee, Cornell Capital was determined to recoup its investments in the companies through a dividend recap for Instant Brands. The obvious problem, however, was that the company was burning, rather than generating, cash. And as early as July 2019, according to the trustee, Instant Brands began planning strategies to secure a dividend recapitalization loan.

The strategy that emerged, however, was to continue to represent that Instant Brands had been purchased for \$615 million — without mentioning the reduced pricing agreement, the questionable sales data, the irrational revenue projections, the \$268 million R&W insurance claim, the product liability settlements, the federal investigation or the lack of an independent opinion regarding fairness or solvency.

“These misrepresentations, omissions, obfuscation, and half-truths eventually

succeeded in achieving Cornell Capital’s plan to ‘dazzle’ and deceive the Assigned Lenders, and—in breach of the representations in the credit agreement that memorialized the loan—the \$450 million term loan financing closed on April 12, 2021,” reads the trustee’s complaint.

The complaints list eleven causes of action against the various defendants: three for fraudulent transfer, three for constructive fraudulent transfer and one each for illegal dividend, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, tortious interference with a contract and fraudulent inducement.

The SDTX case is Alan D. Halperin, as Litigation Trustee of the *Instant Brands Litigation Trust v. Cornell Capital LLC, et al.* No. 24-03232.

The bankruptcy is 23-90716 before Judge Marvin Isgur.