

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

NOTICE OF MOTION

In re: Syntax-Brilliant Corporation, et al, Debtors

Case No. 08-11407

To: All PARTIES AND THEIR COUNSEL OF RECORD:

Ahmed Amr, Pro Se litigant, has filed an emergency motion to request that the Honorable Judge Brendan Shannon recuse himself from the Syntax-Brilliant case due to conflicts of interests and undeclared prior relationships with FTI and Silver Point.

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Dated: December 8, 2008
Seattle, Washington

2008 DEC 12 AM 10: 01
CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

FILED

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re: Syntax Brillian et-al
Case No. 08-11407-BLS

MOTION

Emergency motion to request the Honorable Judge Brendan Shannon to recuse himself from the Syntax-Brillian case due to conflicts of interests and undeclared prior relationships with FTI and Silver Point

BACKGROUND

1. This Court has jurisdiction to hear and determine this motion.
2. Syntax-Brillian Corporation (“SBC”) and its affiliated debtors (the “Debtors”) are “designers, developers and distributors of high-definition televisions.” See Declaration of Gregory F. Rayburn in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief (“Rayburn Declaration”) – docket 3.
3. On July 8th, 2008, the Debtors filed for bankruptcy before this court. The bankruptcy forms filed included a sworn affidavit by Gregory Rayburn, the interim CEO.
4. The Honorable Brendan Shannon currently presides over the case. Judge Shannon’s prior affiliations with Silver Point and FTI were not disclosed in the original filing or in any other documents, proceedings or motions with the possible exception of recent inquiries by this shareholder in the form of letters to the Judge and to the Debtors’ counsel at Greenberg Traurig.
5. According to reliable sources that have been presented to Greenberg Traurig and others, Judge Shannon was counsel to Silver Point and one of his engagements on behalf of Silver Point was aaiPharma, a company that was managed by FTI and Gregory Rayburn at the time it filed for bankruptcy. Before filing this motion, this shareholder made attempts to verify this information with Greenberg Traurig and the Judge. Suffice it to say, that no denial was forthcoming from either party.
6. In the “Rayburn Declaration”, Gregory Rayburn identified himself as a certified public accountant and a certified fraud examiner.
7. In the “Rayburn Declaration”, Gregory Rayburn asserted his knowledge and familiarity with the Debtors’ books and records and financial and operational affairs.
8. In the Executive Summary of the “Rayburn Declaration”, Gregory Rayburn asserted that the cause of the demise of Syntax-Brillian was that “the debtors’ cost of goods sold was simply too high for the business to make a sustainable margin and the debtors do not own or control their own technology, research and development. Gregory Rayburn

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identified these two issues as the primary reason for the failure of the business. He concluded that “these two issues resulted in the Debtors concluding that (a) a restructuring with the existing lender was not feasible and (b) the universe of possible purchasers was relatively small as any potential purchaser would have to be in a position to solve the two problems described above.”

9. On July 28, 2008, the Acting United States Trustee for Region Three, Roberta A. DeAngelis, filed a motion for the appointment of a Chapter 11 Examiner (docket 112). The Trustee’s argument for the appointment of an examiner was to “investigate the facts and circumstances surrounding the sudden decline in the Debtors’ assets or the value thereof; the bona fides and necessity of the proposed sale of substantially all of the Debtors’ assets to TCV; the relationships among and between the Debtors, TCV, Kolin, Digimedia and past and present principals, officers and directors of the Debtors and of those entities; and the ability and inclination of the Debtor’s current management to investigate and pursue potential claims and causes of action against the Debtors former officers and directors, including the directors who selected the Debtors’ current chief executive officer and chief financial officer.”

10. On July 29, 2008, The Debtors filed an objection to U.S. Trustee’s Motion for Entry of an Order Directing the Appointment of a Chapter 11 Examiner (docket 133). They asserted that the appointment of an examiner would only duplicate efforts already being undertaken by the Debtors.”

11. The Debtors objection to the appointment of a Chapter 11 Examiner (docket 133) also included the following assertions:

“The Debtors’ Chief Executive Officer and the person in charge of managing the Debtors’ bankruptcy process is Greg Rayburn, a certified fraud examiner and head of FTI’s interim management practice. If the court were to appoint an examiner, it would be fortunate to find someone with Mr. Rayburn’s credentials. Yet the Debtors already have Mr. Rayburn and FTI. It cannot be that it is necessary or appropriate for the debtors to hire another person to perform Mr. Rayburn’s tasks.”

12. As the US Trustee noted in the motion to appoint the examiner, the significant loss of the value in the Debtors’ enterprise was not explained in the Rayburn Declaration. Much of the loss of value happened under the management of Greg Rayburn, the current CEO. Gregory Rayburn has prior affiliations with Silver Point which, along with the prior management, had the final say in appointing him as COO and CEO.

13. Silver Point is a predatory hedge fund. Silver Point made a loan in the sum of 150 million dollars to Syntax-Brilliant on October 25, 2008. Silver Point has acknowledged doing substantial and rigorous due diligence prior to making the loan.

14. The stock of Syntax-Brilliant had a large naked short position and was on the REG

SHO list. Even prior to the bankruptcy filing, this shareholder provided the company's in-house counsel, Mister Michael Miller, with documented evidence that the company's shares were systematically manipulated and that the trading in the stock and that the associated derivative calls and puts was highly irregular. That information was also provided to the court and to the Trustee.

15. James Li, the ex-CEO, along with previous board members is currently a defendant in a number of cases alleging fraud, breach of fiduciary duties, mismanagement and outright embezzlement. Prior to the bankruptcy filing, James Li made an issue of the short selling and the company portrayed itself as a victim of unidentified short sellers. It now appears that a good portion of the excessive short selling of the stock originated in Taiwan and other overseas markets and that associates of James Li and Christopher Liu might have been involved in the short selling. There is no minimizing the implications of such illegal trading especially when it is combined with findings of the examiner that Syntax-Brilliant was run for the benefit Kolin, a Taiwan entity that was portrayed by Gregory Rayburn as an independent supplier. The illegal off-shore trading of this stock is, without doubt, a cause of action for shareholders. The parties shorting the stock heavily were not only aware of the fraud that plagued the company – they were participants in the scam to defraud shareholders.

16. By the time Gregory Rayburn came to the company, in March, 2008, a shadow board of independent directors was directing the affairs of the company. This fact was not known to shareholders and no SEC documents were filed to indicate that James Li, Christopher Liu and other Asian directors were operating under the supervision of this shadow board. James Li was retained as CEO until June of 2008 and continued to serve as a board member until a week before the filing.

17. In effect, sometime in the spring of 2008, Syntax-Brilliant evolved from an entity operated for the benefit of Kolin to an entity that operated for the benefit of Silver Point.

18. Silver Point has a history of shorting the stocks of the companies it loans money to. Silver point became familiar with the books and records of the company through the due diligence process prior to the filing. Silver Point became even more familiar with the company's books and the day-to-day operations of the company when it became involved in the affairs of the company after the loan ceased to perform in December, 2008.

19. Silver Point and its affiliates filed to sell nearly seven million shares shortly after making the loan. A Syntax-Brilliant prospectus to sell 10 million shares was filed on 12/11/2007. Silver Point Capital was listed as a seller that owned 5,082,006 shares and was registering to sell all 5,082,006 shares. So, within six weeks of providing financing for Syntax-Brilliant, Silver Point was selling all the shares it had acquired as payment for its services in arranging a Citibank loan for the Debtors. Another Silver Point fund, SPCP Group, registered to sell out its entire position of 1,593,278 shares. And yet another Silver Point affiliate, SPCP Group III LLC, filed to sell out its entire position of 192,293 shares.

According to the prospectus "SPCP GROUP, L.L.C. is owned by Silver Point Capital Fund, L.P. and Silver Point Capital Offshore Fund. Silver Point Capital, L.P. is the investment manager of the SPCP GROUP FUND and the Silver Point Capital Offshore Fund. Silver Point is controlled by Edward A Mule and Robert J. O'Shea. SPCP Group III LLC is an affiliate of Silver Point (via common ownership and is controlled by Messrs Mule and O'Shea.

20. According to Orenstein's report, Sales by certain unspecified officers and insiders of the company were not filed with the SEC.

21. On July 29, 2008, I filed an objection to the Debtors' objection to the appointment of a chapter 11 Examiner. In it, I requested a forensic study of any illegal trading activities by any parties with access to insider information, including Silver Point and current and former directors.

22. On September 3, 2008 I again appeared in court and made a case for a forensic study of the trading by Silver Point, TCV and other Far East affiliates.

22. When the court finally approved an independent examiner in the hearing of September 3, 2008 the scope of his investigation was narrower than the scope proposed in the original US Trustee motion to appoint an examiner. Specifically, the scope of his investigation did not extend to probing "the bona fides and necessity of the proposed sale of substantially all of the Debtors' assets to TCV" or "the ability and inclination of the Debtor's current management to investigate and pursue potential claims and causes of action against the Debtors former officers and directors, including the directors who selected the Debtors' current chief executive officer and chief financial officer." Moreover, the scope of the Examiner's mandate did not extend to a probe of illegal trading and naked shorting by Silver Point, TCV and others.

23. The examiner appointed on September 3, 2008 was Mister James Feltman of Mesrow Consulting, a firm represented by Greenberg Traurig. There was also a disclosure that Mister Feltman had worked with Gregory Rayburn at Arthur Andersen.

23. The examiner was given a limited budget, limited resources and a short two week period to conduct what was understood to be a preliminary probe. The examiner's findings were finally presented to the court on October 6, 2008 – three months after the case was filed. The presentation made by Mister Feltman was oral. The court did not allow a cross-examination of Mister Feltman and the court did not allow him to continue with his examination.

24. The examiner's findings and the report from John Orenstein revealed serious discrepancies and omissions that warrant amendments to the "Rayburn Declaration." Given the examiner's limited probe, it became evident that he uncovered the evidence of systematic fraud and embezzlement rather quickly – because the interim-management was already aware of the pervasive fraud that plagued the company. They just failed to

report it in their bankruptcy filings.

25. On October 21, 2008 I filed a motion to compel Gregory Rayburn, the interim CEO to amend the "Rayburn Declaration", the affidavit that accompanied the Bankruptcy filing on July 7, 2008. A hearing was held on November 17, 2008. The motion was denied even though Gregory Rayburn did not bother to appear in court to answer the motion. In my opinion, Judge Brendan Shannon acted as an advocate for Gregory Rayburn – which I found extraordinary for a judge as competent and talented as Judge Shannon.

26. The only relief I was seeking was a true, accurate and complete narrative of how fraud and embezzlement had contributed to the demise of the company – a glaring omission in the original declaration. I also wanted Gregory Rayburn to explain why he represented Asian entities as legitimate independent suppliers when in fact Syntax-Brilliant was run for the benefit of Kolin. Other Asian suppliers like Olevia Far East were Dummy Corporation with the sole function of siphoning cash from the coffers of Syntax-Brilliant. There was also the omission of the phantom sales and repurchase of phantom inventory from the South China House of Technology. Numerous other omissions were listed in the motion to compel Gregory Rayburn to amend his declaration (see docket 527 and docket 629).

27. Judge Shannon not only denied me the relief I was seeking, he took it upon himself to deny me relief that had not been sought in the motion - a court ordered deposition of Gregory Rayburn.

Argument

A. The honorable Judge Brendan Shannon has undisclosed prior associations with Silver Point and FTI.

B. These associations appear to have influenced these proceedings.

C. Specifically, the Judge's bias in these proceedings have had the effect of delaying and limiting discoveries, narrowing the scope of examinations and deferring to the obstructionism of the debtors and their counsel, Greenberg Traurig. The judge has not allowed the formation of a shareholders committee and has not authorized any probe into illegal trading.

D. Even when pervasive fraud was uncovered, the debtors and their CEO, Gregory Rayburn, have not been held accountable for their role in covering up the fraud. Gregory Rayburn's declaration was filed under oath. There is more than enough in the examiner's report and in the findings I have presented to the court to bring charges of perjury against Gregory Rayburn. If Gregory Rayburn has perjured himself, it is the court and the entire legal system that has been injured by his misrepresentations and it is they who should be seeking accountability.

E. The discrepancies and variations between the facts and circumstances as we know them today and the narrative presented in the "Rayburn Declaration" are not minor, incidental or insignificant. Given the facts presented in this motion, it is clear that the "Rayburn Declaration" that accompanied the filing of the bankruptcy on July 8, 2008 did not give an accurate and comprehensive account of the facts and circumstances surrounding the sudden decline in the Debtors' assets. Neither did it give an accurate portrayal of the relationships between the Debtors, Taiwan Kolin, Digimedia, SCHOT, Olevia Far EAST, Westech and TCV. And yet, the Honorable Judge Shannon saw no purpose to compelling Gregory Rayburn to explain the wide gap between his narrative and the true circumstances and events that led to the demise of Syntax-Brilliant.

F. The shocking lack of transparency and veracity is too blatant to ignore. Given the prior relationships of FTI, Greenberg Traurig and Silver Point with James Li, Christopher Li, Roger Kao and others who now stand accused of fraud and embezzlement and given the fictitious narrative presented in the Rayburn Declaration, it is all the more reason to expect Judge Shannon would be the first to demand that the debtors and Silver Point be more forthcoming. There is the distinct appearance here of a bankruptcy filing that was designed to conceal fraud.

G. The proceedings in this filing have largely been run for the benefit of Silver Point. On the question appointing a shareholder committee, both Silver Point and FTI have maintained that, even after litigation, the shareholders are unlikely to recover any monies. What the court has failed to take into account is that litigation might very well extend to FTI, Silver Point and Greenberg Traurig, a law firm that nursed this company prior to the merger and represented the discredited former officers.

H. Silver Point has just filed a law suit against the former directors and the auditors, Ernest and Young. If Silver Point, with all its sophistication and all its due diligence and access to insider records, has claims against the auditors, than shareholders certainly have claims against those very same auditors. In fact, the claim articulated in Silver Point's law suit gives further credence to the belief that both Silver Point and FTI were aware of the pervasive fraud long before the bankruptcy filing.

I. The value of this estate is in future litigation. That value can be enhanced by a full discovery process that extends to illegal insider trading and manipulation, probing the trading records of Silver Point, TCV and others. The court has been repeatedly asked to expand the work of the examiner into probing illegal trading and short selling.

J. Given the extent of the crimes committed against shareholders, one would have expected that the judge would have alerted law enforcement authorities to probe not only fraud and embezzlement but conspiracy and money laundering.

K. A review of the hearings in this case will reveal that Judge Shannon is an extraordinarily talented man with a sophisticated understanding of this case and familiarity with the minutest details. It is hard to grasp why he has not held Gregory

Rayburn, the debtors' counsel and Silver Point accountable for their deliberate and systematic attempts to obstruct discoveries that could pay off in litigation for the benefit of shareholders and other constituencies. The issue of the judge's bias towards Silver Point and FTI, to the point of granting them virtual immunity, can no longer be overlooked. That bias has a direct material effect on limiting discoveries and eliminating promising causes of actions that could help recover the losses of shareholders.

WHEREFORE, for the foregoing reasons, I respectfully request that Judge Shannon immediately recuse himself from this case.

Respectfully submitted,

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Dated: December 8, 2008

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DISTRICT OF DELAWARE**

In Re: Syntax Brilliant et-al
Case No. 08-11407-BLS

CERTIFICATE OF SERVICE

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