

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

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In re	:	Chapter 11
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GT ADVANCED TECHNOLOGIES INC., <i>et al.</i> ,	:	Case No. 14-11916-HJB
Debtors. <sup>1</sup>	:	Jointly Administered
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**APPLE’S LIMITED OBJECTION  
TO THE DEBTORS’ MOTION SEEKING APPROVAL  
OF POSTPETITION FINANCING AND RELATED RELIEF**

Apple Inc., on behalf of itself and its wholly owned subsidiary, Platypus Development LLC (“Apple”), each being a party to certain contracts with GT Advanced Technologies Inc. and its affiliated debtors as debtors in possession in the above-captioned chapter 11 cases (collectively, “GTAT” or the “Debtors”), by and through Apple’s undersigned counsel, hereby submits this limited objection (this “Objection”) to the Debtors’ motion seeking approval of postpetition financing and related relief (ECF No. 1997) (the “Motion”). In support of this Objection, Apple respectfully represents as follows:

1. Apple is supportive of the Debtors’ efforts to obtain debtor-in-possession financing that will assist the Debtors’ reorganization and efforts to sell ASF Furnaces.<sup>2</sup>

However, the *Senior Secured Superpriority Debtor-in-Possession Credit Agreement* (the “Proposed DIP Facility”) (ECF No. 1997) contains certain provisions related to insurance that

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<sup>1</sup> The Debtors are: GT Advanced Technologies Inc., GTAT Corporation (“GTAT”), GT Advanced Equipment Holding LLC (“GT Equipment”), GT Equipment Holdings, Inc., Lindbergh Acquisition Corp., GT Sapphire Systems Holding LLC, GT Advanced Cz LLC, GT Sapphire Systems Group LLC, and GT Advanced Technologies Limited.

<sup>2</sup> Capitalized terms used herein but not otherwise defined will have the definitions ascribed to them in the *Amended and Restated Adequate Protection and Settlement Agreement*, dated December 15, 2014 (the “Apple Settlement Agreement”), ECF No. 819.

may put the Debtors in default of the Proposed DIP Facility immediately after execution.

Specifically, the Proposed DIP Facility provides: (1) it is an event of default if the insurers do not pay for any damage to the ASF Furnaces caused by the fire in the Mesa Facility, (2) terms that are contradictory to Apple's rights in the Apple Settlement Agreement, and (3) an overly broad representation regarding insurance coverage for the ASF Furnaces. Accordingly, the Motion should not be approved unless these provisions are struck or modified.

2. Insurance Event of Default. Section 8.01(o) of the Proposed DIP Facility provides that it is an Event of Default if “[t]he Borrower fails to receive cash insurance proceeds sufficient to remediate the loss, damage or repair necessary for the ASF Furnaces as a result of the May 26, 2015 fire at the Debtor’s Mesa Facility.”

3. The Debtors have indicated that the damage, if any, relating to the fire at the Mesa facility is minimal: “damage to ASF units appears highly unlikely,” and “residue on ASF crystal growing equipment similar to residue from process—no likely effect on operability.” *See* GT Advanced Technologies Inc. Form 8-K, Ex. 99.2 (July 7, 2015). Therefore, the cost to remediate any damage should be minimal.

4. The Proposed DIP Lenders should not be able to demand immediate repayment or foreclose on the Mesa ASF Furnaces solely because the insurance carrier refuses to pay what could be an insignificant amount for remediation of any damage. Moreover, this provision fails to account for any deductible or self-insured amounts that may be payable by the Debtors pursuant to the Debtors’ insurance policies. The inclusion of this event of default gives the Potential DIP Lenders too much leverage if the insurance company refuses coverage, including for legitimate reasons, and puts the Debtors’ estates at risk of a technical default under the Potential DIP Facility.

5. Certain Provisions Conflict with Apple Settlement. The Debtors cannot perform under the Proposed DIP Facility without violating the Apple Settlement Agreement, and thus, will be forced to choose between defaulting on the Proposed DIP Facility or the Apple Settlement Agreement. Section 6.07(c) of the Proposed DIP Facility provides in relevant part that the Debtors shall:

use or commit to use such insurance proceeds to remediate any such loss, damage or repair with respect to ASF Furnaces as a result of the May 26, 2015 fire at the Debtor's Mesa Facility.

Further, clause (e) of the definition of "Net Cash Proceeds" provides that:

any such portion of the insurance proceeds that are intended to be applied (or are applied) to remediate or repair the ASF Furnaces damaged by the May 26, 2015 fire at the Debtor's Mesa Facility shall not be deemed Net Cash Proceeds for purposes of Section 2.05(b).

And section 7.17(h) provides that the Debtors shall not:

apply any insurance proceeds relating to the May 26, 2015 fire at the Debtors' Mesa Facility received in connection with any loss, damage or repair to any ASF Furnace that has not suffered a total loss to pay the Apple Repayment Amount.

These provisions are in direct conflict with the highly negotiated and Court approved Apple Settlement Agreement pursuant to which the Debtors must turn over insurance proceeds related to the Mesa ASF Furnaces to Apple. Apple is amenable to allowing the Debtors to use the insurance proceeds to repair any damage to the ASF Furnaces and is currently in discussions with the Debtors regarding the parameters of such a concession. In the meantime, Apple should not be forced to change the terms of the Apple Settlement Agreement to avoid an immediate default under the Proposed DIP Facility.

6. Overly Broad Insurance Representation. Under section 5.27 of the Proposed DIP Facility, the Debtors represent as follows:

Mesa Fire Insurance Proceeds. Any loss or damage incurred to, and the repair necessary for, the ASF Furnaces as a result of the May 26, 2015 fire at the

Debtor's Mesa Facility *is fully* insured and *will be fully covered* by the cash insurance proceeds from financially sound and reputable insurance companies which are not Affiliates of the Borrower.

It is unclear whether the Debtors have filed a claim with the insurance carrier and whether that claim has been acknowledged and approved such that the insurance carrier will cover any and all losses and damages to the Mesa ASF Furnaces relating to the fire. This provision should be struck to avoid a potential event of default under the Proposed DIP Facility.

7. Section 364 of the Bankruptcy Code does not give debtors *carte blanche* to enter into financing transactions that are adverse to their estates. *See In re Tenney Village Co., Inc.*, 104 B.R. 562, 568, 570 (Bankr. D.N.H. 1989) (denying motion to authorize DIP financing that would “place the Debtor in bondage working for the Bank, seize control of the reins of reorganization, and . . . pervert the reorganizational process”); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990) (DIP financing was approved only after the removal of certain events of default that concerned the court).

8. For the reasons set forth above, unless the Proposed DIP Facility is modified, Apple respectfully requests that the Court deny the Motion and grant such other relief as would be just and appropriate.

Respectfully submitted,

Dated: July 16, 2015  
Manchester, New Hampshire

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**CERTIFICATE OF SERVICE**

I, John M. Sullivan, Esquire, hereby certify that on this 16<sup>th</sup> day of July, 2015, a copy of the *Apple's Limited Objection to the Debtors' Motion Seeking Approval of Postpetition Financing and Related Relief* has been served on all persons and entities named on the CM/ECF Electronic Service List by causing it to be filed electronically via the CM/ECF filing system.

By: /s/ John M. Sullivan  
John M. Sullivan (BNH # 01456)