

[Apple Supplier's Mystery Ch. 11 Will Test Secrecy Pact](#)

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Summary

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The manufacturer, which was supposed to supply scratch-resistant sapphire for [Apple](#)'s smartphones, sought court protection out of the blue this week and said it couldn't reveal why because of an airtight confidentiality agreement between the two. Investors and creditors are expected to put the pact to the test in their search for answers, leaving GT's bankruptcy judge with the task of sorting out what information should be made public and what should stay sealed.

Fights over access could pit [Apple](#) against GT's creditors or the debtor itself, especially if it tries to avert a liquidation and reorganize as a going concern. Whether the confidentiality agreement holds up is of great concern to [Apple](#), which is known for fiercely guarding its dealings with suppliers.

"I can't think of any other companies that have gone through a case that had the extent of confidentiality issues that it looks like this one is going to," said Austin McMullen of Bradley Arant Boult Cummings LLP. "You're going to have creditors or finance people or somebody who is going to want information and probably is going to get it somehow or another, and that's something the judge is going to have to decide."

GT's bankruptcy took Wall Street by surprise on Monday and wiped out \$1.5 billion in shareholder value, fueling wild speculation about whether a \$578 million supply agreement with [Apple](#) was to blame. Under the deal, [Apple](#) bankrolled a refitted sapphire production facility in Arizona on the condition that GT hit certain operational targets.

The deal called for GT to repay the debt over five years starting in 2015, and [Apple](#) was expected to make the last \$139 million payment by the end of the month. No details have trickled out since the bankruptcy about what exactly went wrong.

In court papers filed Friday, GT sought to reject its contract with Apple and wind down all its sapphire manufacturing facilities, saying it needed to exit the business immediately to stop an "ongoing cash burn" and refocus on its other, more profitable ventures. The debtor said it had claims against Apple under the "oppressive and burdensome" contract that it would pursue later.

Assuming U.S. Bankruptcy Judge Henry Boroff lets GT terminate the deal, any confidentiality provision within the agreements will likely remain in place, according to Derek Baker of Reed Smith LLP, who said the court would maintain the status quo in the case until the debtor had developed a game plan. GT could face a \$50 million penalty if it breaches the nondisclosure pact.

What information ultimately stays sealed depends on how far Apple can push Section 107 of the U.S. Bankruptcy Code, which allows parties-in-interest to hold back trade secrets or other commercial data. Other stakeholders are eager for details and will push to shrink the universe of information that stays hidden, Baker said.

GT's first-day hearing on Thursday underscored the highly unusual nature of the case. Lawyers made no mention of what caused GT's liquidity crisis, and after a series of routine motions Judge Boroff huddled with counsel for GT, Apple and the U.S. Trustee's office in chambers to sort out requests to seal a handful of case documents. GT called one of them, a motion to file under seal a separate motion to seal, "perhaps unprecedented."

The judge emerged hours later with an order compelling GT to file certain records publicly but shielding any information about its relationship with Apple, at least temporarily.

"I would be surprised if that ended up being the way the whole case works," Baker said. "Ultimately, the judge is probably going to lean on both the parties and say, 'Look guys, we can't do this whole thing behind closed doors, so somebody is going to have to agree ... to be reasonable and let at least some part of the contract out there.'"

The process might not turn ugly if GT simply elects to wind down its operations, McMullen said. But if it tries to restructure and emerge from court protection, it will need bankruptcy financing and cash injections that require outside parties to conduct due diligence on what got it into Chapter 11 and its future prospects.

If Apple then tries to limit any disclosures, it will have to show a concrete risk to its proprietary information, with investors and possibly GT itself arguing for greater access. So far, Apple and GT have taken similar positions on what information should remain sealed, but that could change if GT concludes that it needs financing or wants to submit a reorganization plan to creditors.

"All of a sudden, you could get GT moving to the other side from Apple," McMullen said. "Especially if GT is in a position where they're trying to carry on their business and they see that having to keep everything so confidential to please Apple is causing them harm."

It remains to be seen whether GT can execute a reorganization plan without divulging the details of the underlying contract. Under Section 1125 of the Bankruptcy Code, stakeholders voting on a turnaround plan are entitled only to the information necessary for making an investment decision in a company. GT's sapphire business appears dead, but it has polysilicon and photovoltaic solar operations that made up nearly 40 percent of its revenue.

"You have to temper what stakeholders want with what stakeholders are entitled to," Baker said. "What stakeholders want is a perfect information picture, but that's not what they're entitled to."

Trade secrets will be easier for Apple to protect than contract terms that may be common to all of its suppliers. Apple will also have to contend with the U.S. trustee's office, which is required to push back against sealing requests and is expected to be especially active in the case.

The ultimate decisions lie with Judge Boroff, who has given Apple a three-day window to review and object to any proposed disclosure. A creditors committee will be formed in the coming days, and a protective order could allow for greater information flow among the parties. But McMullen said the judge could end up having to analyze disclosure requests on a case-by-case basis to parse out Apple's concerns.

A reorganization plan would complicate matters because the committee would have to inform its constituents about the plan in a way that doesn't jeopardize Apple's business, according to according to Ralph Mabey of Kirton McConkie PC. While the judge will be mindful of stakeholders' desire for information, Mabey expects the judge to respect Apple's desire for secrecy if it he determines that doing so would help the estate generate value for creditors.

"There's no more practical venue than a bankruptcy court," Mabey said. "The bankruptcy judge is going to be focused on doing what is practical under the circumstances - how to preserve the value in the estate while doing the public's business in public as much as practicable."

GT is represented by Luc Despins, James Grogan and Andrew Tenzer of Paul Hastings LLP and Holly Barcroft and Daniel W. Sklar of Nixon Peabody LLP.

Apple is represented by Christopher R. Mirick of Pillsbury Winthrop Shaw Pittman LLP and Gregory A. Moffett and John M. Sullivan of Preti Flaherty Beliveau & Pachios Chtd. LLP.

The case is In re: GT Advanced Technologies Inc., case number 1:14-bk-11916, in the U.S. Bankruptcy Court for the District of New Hampshire.

--Editing by Kat Laskowski and Katherine Rautenberg.