HUDSON COOK

The Hudson Cook Usury Monitor – A Publication of Recent Usury and Finance Charge Cases – Summer 2026

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For those interested in all things "Interest" related, we provide a summary of recent state and federal court cases involving usury, finance charges, and interest rates, as they relate to the consumer and commercial credit industries. Please look for our next edition towards the end of fall.

Alaska/Consumer Loan – Tribal: A consumer obtained a loan from an online lender owned by a Native American tribe. The $600 loan had a 755% APR and a total repayment amount of $5,500. The consumer filed a class action claiming the loan violated state usury law. The tribe sought to arbitrate the dispute. The court agreed with the tribe, granting its motion to compel arbitration. James v. Lochen, 2026 WL 2279844 (D. Alaska Aug. 7, 2026).

California/Commercial Loan – Usury Damages: Following a foreclosure sale against rental property, the property owner had the sale set aside because the loan was usurious. The court also awarded the borrower treble damages for the usurious violation. The lender appealed, arguing that the calculation of treble damages was erroneous because it included interest that the borrower never actually paid. The appellate court disagreed, finding that the foreclosure sale price of the property included interest, which was equivalent to payment by the borrower. Contreras v. Melgar, 2026 WL 2039702 (Cal. Ct. App. July 15, 2026).

- The appeals court also discussed the real estate broker usury exemption, but found that it did not apply.

California/Commercial Loan – Constitutional Rate: One individual made a loan to another individual at a rate of 18%. There was some dispute over whether it was a commercial or consumer loan. The borrower alleged that the rate violated the 10% usury rate in the California constitution. The trial court found the borrower failed to prove usury – the maximum rate is 10% or a formula rate tied to a Federal Reserve rate of interest and the borrower did not offer evidence of the Federal Reserve rate. The appellate court agreed. Cooke v. Parton, 2026 WL 2529621 (Cal. Ct. App. Aug. 27, 2026).

- The court indicated the borrower could have readily established the maximum rate was 10%, but failed to do so until it was too late.

Idaho/Post-Judgment Interest: This case did not involve a credit transaction, but it addressed the time from which post-judgment interest runs. It largely dealt with procedural issues regarding the judgment. The court found that post-judgment interest ran from the date of the original judgment. Snap! Mobile v. Vertical Raise, 2026 WL 2671792 (Idaho Sept. 11, 2026).

Louisiana/Commercial – Usury Exception: In a brief procedural ruling involving a commercial transaction, the court found that a contractual provision providing for interest of 1.5% per month on late payments did not violate Louisiana's usury limit or the prohibition on the recovery of interest upon accrued interest. Commercial transactions were not subject to those limits. SRP Environmental v. Claremont Property, 2026 WL 1847531 (W.D. La. June 26, 2026).

Louisiana/MCA – Recharacterization: Several marine transport companies entered into merchant cash advance agreements with a number of providers. After filing for bankruptcy, the companies asked the court to find that the MCA transactions were disguised, usurious loans. As a result of a choice-of-law clause, the court considered the issue under New York law. Mentioning various tests used for recharacterization, the court focused on the transfer of risk – whether the funder or merchant bears the risk of customer nonpayment. The court found the MCA agreements effectively shielded the funder from all risk because of broad default rights, direct access to the company's bank account, and a personal guarantee from the owner. In re: Crosby Marine Transportation, 2026 WL 1782640 (Bankr. E.D. La. June 18, 2026).

- This case was disappointing. The court made a number of statements that are hard to fathom – including that the sale of future receipts (as opposed to existing receivables) always shifts the risk to the merchant; and that reconciliation might only be effective if it permanently reduces the amount due from the merchant.
- Several related cases involved other funders, all with similar rulings: 2026 WL 1781888; 2026 WL 1781893; 2026 WL 1781812; 2026 WL 1781871; 2026 WL 1781866; 2026 WL 1765197; 2026 WL 1781875; 2026 WL 1781879; 2026 WL 1781834.

Maryland/Credit Card – Agreement: A credit cardholder filed a class action, claiming that credit card interest charged by a national bank exceeded the rate permitted under Virginia law, in violation of the National Bank Act. Virginia law permits a bank to impose finance charges and other charges on an open-end credit plan at rates agreed to by the parties. The cardholder argued there was no valid agreement because the bank retained the right to unilaterally change the credit terms. The cardholder based that argument on prior cases finding that an arbitration agreement is unenforceable if it may be unilaterally changed. The court ruled in favor of the bank, finding that the credit agreement was supported by mutual consideration. Strange v. Capital One, 2026 WL 2085917 (D. Md. July 20, 2026).

- This was a pretty outlandish claim and the court provides an excellent discussion of why it failed.

Massachusetts/Commercial Real Estate Loan – Usury Limit: This case seems to have involved borrowers that financed the purchase of an apartment building with a commercial loan. The loan provided for a default rate of 25% or the maximum rate permitted by law, whichever was lower. After default and various court proceedings, a judge imposed a 20% interest rate, the maximum rate under Massachusetts law. The borrowers appealed, alleging that the lower court abused its discretion by not voiding the loan for usury. The appeals court rejected the borrowers' argument, finding that the alternative-rate language permitted reformation to the lawful 20% rate. However, the court remanded for recalculation of damages because the judgment improperly included default interest calculated at the unlawful 25% rate. E-Z Cashing v. Chery, 2026 WL 2318820 (Mass. App. Ct. Aug. 11, 2026).

Michigan/MCA – Criminal Usury: A merchant entered into a merchant cash advance agreement with a funding provider. After filing for bankruptcy, the merchant claimed the funding was actually

a disguised loan that violated state usury law. The court dismissed the usury claim, finding that criminal usury cannot be used for affirmative relief and the allegations did not otherwise support the merchant's bankruptcy claims. In re: Cloverleaf Electric, 2026 WL 1755869 (Bankr. E.D. Mich. June 16, 2026)

- This case was decided primarily on bankruptcy-related issues. However, the court provides an interesting discussion of unconscionability under New York law. There was also an odd claim by the merchant that the sale of receivables that do not yet exist is a "metaphysical and legal impossibility" – the court didn't rule on that one.

Missouri/Real Estate Loan – Default Judgment: A company made a loan to a long-time customer to finance a real estate opportunity in Michigan. The customer defaulted and the company moved for default judgment. The court denied the motion, requiring additional briefing on certain usury issues. Among the more interesting: does the Michigan usury exemption for a real estate secured loan apply where the borrower never acquires the real estate? Also, would an exemption for corporate borrowers apply to a loan where the natural person owner of the entity borrower is jointly liable? Security Equipment Supply v. Securatech, 2026 WL 2567580 (E.D. Mo. Aug. 31, 2026).

New York/MCA – No Recharacterization: This brief opinion addressed a merchant that entered into an agreement with a funder to sell the merchant's future receivables for a discounted price. The merchant defaulted and the parties entered into a stipulated settlement. The merchant failed to make payments required by the settlement and the funder moved for judgment. The trial court ruled in favor of the funder and the merchant appealed, alleging usury. The appeals court upheld the judgment in favor of the funder. The appeals court noted the agreement included a reconciliation provision, had an indefinite term, and did not make bankruptcy an event of default. Blade Funding v. Build Retail, 2026 WL 2728096 (N.Y. App. Div. Sept. 16, 2026).

- There was not much analysis in the opinion, but the holding was welcome.

New York/MCA – Recharacterization: This case involved a bankrupt law firm that had entered into multiple merchant cash advance agreements. The bankruptcy trustee alleged the transactions were disguised loans. Characterizing the issue as evolving and significant, the court noted that an increasing number of recent cases have found these transactions to be loans. The court likewise found the transaction was, in substance, a loan because the transaction was structured to require a daily payment sweep, no matter what. Reconciliation was in the funder's discretion, with any changes to the payment applying only prospectively. The funder had sweeping default remedies. Also, while bankruptcy was not an event of default, a bankruptcy also did not necessarily result in a termination of the daily payments. In re: Kossoff PLLC, 2026 WL 2168916 (Bankr. S.D.N.Y. July 27, 2026).

- We can definitely disagree with the result in this case, but the court at least explained its reasoning.
- The court provides a good overview of the recharacterization considerations to date.

New York/Litigation Funding – Recharacterization: A litigation funding provider entered into an agreement with one of the spouses in a divorce proceeding to fund the litigation in return for a portion of any recovery. The spouse then sued, claiming the litigation funding agreement was a usurious loan. The court agreed, finding the transaction had the characteristics of a loan, rather than an investment. The court focused on the provider's right to file a UCC financing statement before

any recovery; a requirement that the spouse's proceeds from the sale of the couple's home be placed in escrow; language in the agreement that there was a present "amount owed;" and a guaranteed repayment provision in the event the couple reconciled or one spouse died. Denemark v. New Chapter Capital, 2026 WL 2118554 (N.Y. App. Div. July 23, 2026).

- As the court acknowledged, a litigation funding agreement is not a loan where repayment is entirely contingent on the outcome of the proceeding. It's hard to argue with some of the provisions the court took issue with under that standard.
- More troubling are statements by the court that the recovery may not have been contingent because of the substantial assets involved in the case and the likelihood of recovery under New York equitable distribution laws. That type of "squishy" standard is unhelpful.

New York/Retail Installment Sale – Recharacterization: A sales finance company sued to recover a deficiency balance after the sale of a car subject to a retail installment contract. The trial court decided the transaction was actually a usurious loan because the retail installment contract contemplated assignment to the sales finance company immediately after origination. The court then concluded the transaction was usurious because late fees were assessed after default. The sales finance company appealed. The appellate court found the transaction was a retail installment contract and the late fees were not interest. Credit Acceptance Corp. v. Holgun, 2026 WL 1968599 (N.Y. Co. Ct. July 7, 2026).

- The trial court's ruling was difficult to square with longstanding law. The appeals court appropriately reversed, relying on both the retail installment sales law and the time-price doctrine and finding that assignment of the contract to a sales finance company did not transform the credit sale into a loan. Finding that a contingent late fee was not interest was also appropriate.

New York/MCA – Default Judgment in Bankruptcy: A merchant entered into an agreement for the sale of future receipts. The merchant later filed for bankruptcy and, as part of the bankruptcy case, alleged that the sale was actually a usurious loan. The funder, who had previously obtained a default judgment for the transaction, argued the prior case barred relitigation of the issue. The funder also argued the merchant was trying to assert criminal usury as an affirmative defense. The court found that the prior default judgment did not preclude the merchant from asserting claims in the bankruptcy case. However, the court agreed that criminal usury could not be asserted as an affirmative defense because the funder had not filed a proof of claim or otherwise sought to collect the debt. The court agreed that the merchant could rely on New York usury law for its bankruptcy-based claims. In re: Black Pearl Vision, 2026 WL 1836174 (Bankr. W.D.N.C. June 25, 2026).

- The funder's argument that the default judgment prevented relitigation of the issue was interesting but didn't make much headway.

New York/MCA – No Recharacterization: A merchant entered into a revenue purchase agreement. After default, the funder sued the merchant and guarantor. The court granted summary judgment to the funder and the merchant appealed. The merchant argued the agreement was actually a usurious and void loan. Relying on the LG Funding three-factor test, the appeals court found the agreement was not a loan. The agreement included a prospective and retroactive reconciliation provision, an indefinite term that would vary depending on reconciliation, and the agreement provided that bankruptcy was not an event of default. NewCo Capital Group v. SPE Trading, 250 A.D.3d 1641 (N.Y. App. Div. 2026).

- MCA recharacterization cases have gotten exceedingly convoluted recently, with different courts taking different approaches. This was a solid appellate-level holding that was straightforward and logical.

New York/Commercial Loan – Guarantor of Corporate Debt: This case involved a mortgage foreclosure on what appears to have been a commercial loan. There were very few facts and little analysis. We mention it merely for the court's statement that civil usury cannot be asserted by a corporation or LLC, or an individual guarantor of such an entity's debt. LF Collateral SPV IV v. Citadel NY, 2026 WL 1966237 (N.Y. App. Div. July 8, 2026).

New York/Commercial Loan – Default Interest: A real estate investment firm made a loan to an entity to refinance a manufacturing facility owned by the entity. The borrower failed to repay the loan and later filed for bankruptcy. The firm filed a secured claim. The borrower challenged the claim, alleging that it included usurious interest. The court found that the loan amount of $20 million took it outside of the New York usury limits. However, the court did find that some of the late fees that accrued merely duplicated the default interest and were, therefore, unenforceable penalties. In re: 1300 Desert Willow Rd., 2026 WL 2088511 (Bankr. S.D.N.Y. July 20, 2026).

- The court provides a good discussion of usury, liquidated damages, and forbearance fees under New York law.

New York/Commercial Loan – Voiding: An investment fund made a business loan to a medical device company. The fund eventually sued the company for failing to repay the loan. The company counterclaimed, alleging the loan was void because it contained a Massachusetts governing law provision and provided for default interest in excess of Massachusetts' 20% usury rate. The court found that the note provided for default interest of 54% per year, but that the appropriate remedy was to reform the provision to comply with the state's rate limit. The court found there was no misconduct by the fund and the note terms reflected the negotiation of both parties. Provident Healthcare Capital v. Revere Capital Advisors, 2026 WL 2098886 (S.D.N.Y. July 21, 2026).

- The court's holding was reasonable considering the borrower seems to have been involved in setting the loan terms.

New York/Commercial Loan – Contingent Payments: A company that purchases delinquent receivables was provided a commercial loan from another company. The agreement authorized the lender to receive additional payments as the receivables were collected. The lender eventually accused the borrower of defaulting and the borrower sued, claiming the loan violated the New York criminal usury rate. While the loan provided for a 15% rate, the borrower claimed that the additional payments for collected receivables could result in a rate exceeding 25%. The court concluded that contingent future payments may be treated as interest if the value can be reasonably determined at the time of contracting. The borrower, in turn, failed to provide such a reasonable determination, with the court finding the projections were no more than "hope, premise, or guess." Steel River Systems v. Variant Alternative Income Fund, 2026 WL 2529579 (2d Cir. Aug. 27, 2026).

Ohio/Commercial Loan – Usury: An individual received a $1.26 million business-purpose loan that was to be repaid in a single installment. The loan agreement provided for 30% interest, 40% default interest, and a 25% late fee. After the borrower defaulted, the lender sued for damages. The borrower argued that the 25% late fee was an unenforceable penalty and the interest was usurious.

The court enforced the 30% contract rate and 40% default rate, but agreed that the late fee was a penalty rather than liquidated damages and, as such, was unenforceable. However, the court found the loan was not subject to a usury limit under Ohio law, as the law provides exceptions for loans over $100,000 and single-payment loans. Nation Land Company v. Sander, 2026 WL 1758283 (N.D. Ohio June 18, 2026).

- Although the court did not address it, Ohio also includes an exemption for business-purpose loans.

Texas/Commercial Loan – Interest Calculation: A credit card processing company made a loan to another company in that space. The loan provided the lender with the right to obtain future residual payments from the borrower at specified prices. The borrower sued, claiming that the loan terms were usurious under Texas law. The trial court initially dismissed the claim. The Fifth Circuit Court of Appeals then remanded with instructions from the Texas Supreme Court regarding the calculation of interest under Texas law. Using that calculation, the trial court found the borrower sufficiently alleged usury to survive the lender's motion for judgment. American Pearl Group v. National Payment Systems, 2026 WL 2607613 (N.D. Tex. Sept. 2, 2026).

- The court provided a nice summary of Texas usury law, including the "spreading doctrine," which spreads interest across the life of the loan.
- We discussed the prior appellate ruling in our September 2025 rundown of cases.

Texas/Commercial Loan – Usury Exception: This case involved a commercial loan. In addition to periodic interest of 3% per month, the loan agreement provided for the borrower to sell the lender an equity interest in a real estate partnership. Later in the transaction, the borrower told the lender that the interest was usurious because it amounted to 36% per year, well in excess of the 18% Texas limit. The lender then sent the borrower a notice claiming to cure the usury issue by reducing the rate from the date of issuance. The borrower defaulted and the lender sued for judgment. The borrower claimed the loan was usurious because the initial rate exceeded the usury limit and because the equity sale constituted interest. The trial court ruled in favor of the lender and the appeals court agreed. The court found that the loan was a "qualified commercial loan" and that the lender's contractual right to acquire the equity interest fell within a statutory exclusion from "interest." The court also found that the lender effectively cured the potentially usurious stated interest rate. glendonTodd Capital v. Smith, 2026 WL 2657008 (Tex. App. Sept. 9, 2026).

- Texas usury law is never boring. The state's 18% limit, which applies broadly to most loans, does include some unique exceptions.