The Hudson Cook Usury Monitor – A Publication of Recent Usury and Finance Charge Cases – Winter 2025

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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. Assuming the courts stay busy, please look for our next edition towards the end of spring.

California/Commercial Loan – Usury – In a California case involving three commercial loans secured by vehicles, the court applied Illinois law pursuant to a choice-of-law provision. The court found that a provision in the loan agreement allowing 1.5% monthly interest upon acceleration was permitted. Because the loan was a business loan, it was excluded from the Illinois 9% usury limit. BMO Bank, N.A, 2026 WL 292583 (E.D. Cal. Feb. 4, 2026)

- This case was not particularly notable, but it serves as a good reminder how low the Illinois usury rate is if an exclusion does not apply.

California/Consumer Loan – Unconscionability – The appellate court upheld a lower court's finding of unconscionability related to a class action brought in connection with high interest loans. The appeals court declined to follow the lender's arguments for finding the lower court judgment erroneous. Eduardo De La Torre, 2026 WL 551024 (Cal. Ct. App. Feb. 27, 2026).

- The appellate court was fairly dismissive of the lender's arguments, which sought to connect the high rates with the high cost of lending to subprime borrowers.

Georgia/Commercial Revenue Purchase – No Recharacterization/Reconciliation – The Georgia appellate court reversed a lower court's finding that a revenue purchase agreement was a usurious loan. Applying New York law, the appeals court found there was an effective reconciliation provision, no fixed term, and protection for the merchant in the event of bankruptcy. The lower court's finding was contrary to the language of the agreement as well as the actual payment history. Copeland, 2026 WL 236137 (Ga. Ct. App. Jan. 29, 2026).

- This was a practical, common-sense ruling by the appeals court.

Idaho/Commercial Revenue Purchase – Recharacterization/Excessive Protections – This bankruptcy case involved a merchant that entered into a revenue purchase agreement with a funder. Two years after paying the agreement in full, the merchant's bankruptcy trustee sought to declare the transaction void under New York law. The court denied the funder's motion to dismiss, allowing the trustee to proceed with a claim that the transaction was a usurious loan. While the agreement included a mandatory reconciliation provision, the court was troubled by some of the

rights granted to the funder in the case of a breach. The court found that the agreement could functionally be a loan because it provided the funder with recourse beyond the receivables. In re: HMH Construction, LLC, 2026 WL 171515 (Bankr. D. Idaho Jan. 21, 2026)

- There are also some interesting bankruptcy related issues in the case, including using criminal usury as a defense in bankruptcy and voidable transfers.

Michigan/Commercial Revenue Purchase – Affirmative Usury Claim – This Michigan bankruptcy case involved a merchant who entered into several agreements for the sale of its future receipts. After declaring bankruptcy, the merchant sought to have the agreements declared usurious loans based on New York law. The court dismissed the merchant's criminal usury claim, finding that criminal usury may not be asserted as an affirmative claim by a corporation under New York law. The court also found that the transaction size fell outside of the criminal usury limit. In re: Heritage Collegiate Apparel, Inc., 2026 WL 166928 (Bankr. E.D. Mich. Jan. 20, 2026)

- The court provides an interesting discussion of bankruptcy issues connected to revenue-purchase transactions, choice of law provisions, criminal usury under Michigan law, and corporate alter-ego fraud claims.

Michigan/Commercial Revenue Purchase – Affirmative Usury Claim – In another bankruptcy case involving the same merchant, but a different funder, the merchant sought to have the revenue purchase agreements characterized as loans. Similar to the case above, the court dismissed the merchant's criminal usury claim, finding that it was asserted as an affirmative claim. However, the court noted that in this case, the merchant could refile a more limited claim structured as an objection to the funder's proof of claim. In re: Heritage Collegiate Apparel, Inc., 2026 WL 159535 (Bankr. E.D. Mich. Jan. 20, 2026)

- This was the same bankruptcy issue, but the opposite outcome because of the transaction size. The court indicated that New York's criminal usury law may apply and the merchant may assert it as a defense to the funder's claim in bankruptcy.

Missouri/Commercial Revenue Purchase – No Recharacterization/Reconciliation – In a Missouri case involving Florida law, a merchant sued a commercial financing provider, alleging that the parties' revenue purchase transaction was actually a disguised loan with an annual interest rate of up to 846%. The court dismissed the claim, finding the merchant failed to show the transaction was a loan. The court found there was an effective reconciliation provision, bankruptcy was not an event of default, and the merchant failed to show that it retained the risk in the transaction. In re: JLK Constr., LLC, 2025 WL 3681827 (Bankr. W.D. Mo. Dec. 18, 2025).

- The court noted that under Florida law, a usury allegation requires the existence of a loan, an understanding that money lent is to be returned, an agreement to pay interest exceeding the usury limit, and a corrupt intent.

New York/Commercial Revenue Purchase – No Recharacterization/Reconciliation – A merchant sued a revenue purchase provider alleging that the transaction was a usurious loan. As an initial matter, the trial court seemed to agree, taking issue with the optional nature of the agreement's reconciliation provision and language providing that bankruptcy would be an event of default. However, relying on recent appellate court law, the court ultimately denied the merchant's motion for summary judgment. The court found that the merchant did not sufficiently prove that the reconciliation provision was illusory because there was no evidence the merchant attempted

reconciliation. Also, the merchant did not allege a default despite bankruptcy. Surfside Cap., 87 Misc. 3d 1258(A), 245 N.Y.S.3d 917 (N.Y. Sup. Ct. 2025)

- The trial court appeared inclined to rule in favor of the merchant and it is interesting how hesitant the court was to apply appellate law favoring the provider.

New York/ Commercial Revenue Purchase – Recharacterization – A merchant entered into revenue purchase agreements with several funders. After filing for bankruptcy, the funders submitted claims against the bankruptcy estate. The court considered a number of loan recharacterization claims related to usury in bankruptcy, generally allowing the claims to continue. However, not all of the funders sought to dismiss the claims at this stage, so the court's findings were limited. In re Greenwich Retail Group LLC, 2026 WL 482170 (Bankr. S.D.N.Y. Feb. 20, 2026)

- There's an interesting discussion of criminal usury asserted in connection with obligations that have already been paid and whether the failure to assert usury is grounds for a fraudulent transfer claim.

New York/Commercial Merchant Cash Advance – Recharacterization – The attorney general brought an action on behalf of the people of New York against a merchant cash advance provider, claiming that it funded thousands of usurious disguised loans. In a 2024 action, the court awarded a significant monetary judgment against the provider, finding the MCA transactions were properly characterized as loans. In this appeal, the court found that further determinations were required with respect to the monetary judgment amount. People, 2026 WL 467552, at *2 (N.Y. App. Div. Feb. 19, 2026)

- While this case only dealt with damages, the court harshly reiterated some of the findings with respect to recharacterization of the MCA transactions as loans.

New York/Commercial Note – Criminal Usury – In a brief New York appellate ruling, the court found that a promissory note was void for criminal usury where the effective rate was 36%. Although a corporation and its guarantor cannot raise civil usury as a defense, the court found that limit does not apply to the state's 25% criminal usury rate. Although the borrower in this case apparently drafted the note, the court found that was not a basis for eliminating the usury defense. 27-21 27th Street Sponsors, LLC, 2026 WL 615834 (N.Y. App. Div. Mar. 5, 2026)

- The court noted that in limited circumstances a borrower may be prohibited from raising usury if the borrower had a duty to disclose the illegal rate and failed to do so.

New York/Commercial Loan – Choice of Law – In a RICO case involving a claim of criminal usury, the court applied Nevada law pursuant to a choice-of-law provision. The court found that applying Nevada law would not violate New York's public policy. Darkpulse, Inc., 2026 WL 696787, at *8 (S.D.N.Y. Mar. 12, 2026).

- The court noted that the state's public policy favors applying New York usury law in consumer transactions, but that different considerations apply to corporations conducting business transactions.

New York/Consumer Vehicle Finance – Bank Exportation – A New York trial court found that a national bank in Texas could charge interest in excess of New York's 16% rate limit. The court noted that the National Bank Act permits national banks to charge interest at the rate allowed by

the laws of the state where the bank is located. Jovanni Guiseppe Whyte-Bey, 2026 WL 674345 (E.D.N.Y. Mar. 10, 2026).

- The consumer's claims were poorly developed and the court appropriately made short work of them. Oddly, the court did not address the fact the transaction was a retail installment contract, rather than a loan, but it ultimately wouldn't have made a difference given that retail installment sales are not subject to New York's civil usury rate.

New York/Consumer Earned Wage Access – Finance Charge – Servicemembers sued an earned wage access provider, alleging the wage advance was credit. The provider moved to dismiss the case. The court denied the motion, finding the consumers sufficiently alleged that the advance was credit and the transaction fees (including an expedited payment fee and a tip) were finance charges. Lowe, 2026 WL 654719 (S.D.N.Y. Mar. 9, 2026).

- Disregarding the contractual provisions stating there was no obligation to repay, the court noted the transactions were structured in such a manner that there was essentially no risk to the provider. With regard to fees, the court noted that they were present in the overwhelming majority of advances and were finance charges.

North Carolina/Commercial Revenue Purchase – Usury – In a North Carolina case involving New York law, the trial court allowed a merchant's usury claim to survive a motion to dismiss. The merchant, who received financing under a revenue purchase agreement, sued the provider, arguing that the transaction was a usurious loan. The court found that distinguishing a loan from a sale was not appropriate at the motion-to-dismiss stage. In re: Black Pearl Vision, LLC, 2025 WL 3778452 (Bankr. W.D.N.C. Dec. 31, 2025).

- The court acknowledged that it was early in the case and the court might still find the transaction was a sale. Notably, the court explained that the merchant could not use criminal usury as an affirmative claim, as "corporations may only use the criminal usury statute as shield, and not a sword."

Texas/Consumer Title Loan – Usury Public Policy – Although a Texas case, this ruling primarily relates to Pennsylvania law. The Pennsylvania Department of Banking and Securities had a long-running investigation against a title lender and various affiliated companies. When the Department sought a $52 million sanction, one of the affiliated companies sued, claiming the Department failed to show it engaged in any lending or wrongdoing. The appellate court affirmed dismissal of the company's suit on procedural grounds. Spicher, 2026 WL 74504 (5th Cir. Jan. 9, 2026)

- Although decided based on procedural issues, the court acknowledged Pennsylvania's important state interest in enforcing usury laws. The court also ruled against a Dormant Commerce Clause argument, which is sometimes used to try to override state compliance obligations.

Texas/Commercial Revenue Purchase – Recharacterization/Default Rights – Another bankruptcy case, this time involving a Texas court applying New York law. After reviewing the merchant cash agreement, the court allowed the trustee's usury claims to proceed. The court found several factors indicating the transaction could be a loan, including the ability to debit 100% of the merchant's income upon default, a confession of judgment, and a security interest in the merchant's assets. In re: Anadrill Directional Services Inc., 2026 WL 234908 (Bankr. S.D. Tex.

Jan. 28, 2026).

- The court’s opinion was light on details, so it is hard to tell if there were actual issues with the transaction or if the court’s findings were just conclusory. One hopes for a different outcome as the case progresses.
- A similar case involving the same merchant was decided shortly after, with similar results. In re: Anadrill Directional Services Inc., 2026 WL 305023 (Bankr. S.D. Tex. Feb. 4, 2026).