HUDSON COOK

West Virginia Supreme Court asked to Address Liability in Case Involving Debit Card Processing Fees

October 30th, 2026 | and Clayton C. Swears

A federal district court in West Virginia recently certified the following question to the state's Supreme Court:

Can a "debt collector" be liable for engaging, "directly or indirectly," in "unfair or unconscionable means" of debt collection under W. Va. Code § 46A-2-128 based on its use of a third-party vendor, absent an agency relationship or other basis for vicarious liability between the debt collector and the vendor?

What is not immediately obvious from this question is that the case could have significant implications for creditors and servicers that allow consumers to make payments through third-party payment processors.

The case involves a consumer who purchased a vehicle under a retail installment contract. A finance company subsequently acquired the servicing rights to the contract. The finance company allowed the consumer to make payments by debit card through a third-party processor's platform. The processor charged a $2.75 fee for those payments.

The consumer sued the finance company under the West Virginia Consumer Credit and Protection Act (CCPA). The CCPA prohibits debt collectors from using unfair or unconscionable means to collect debts. Importantly, the CCPA's definition of a debt collector includes persons engaging directly or indirectly in debt collection. As a result, unlike under the federal Fair Debt Collection Practices Act, creditors collecting their own debts may be subject to the CCPA's debt collection restrictions.

What is most troubling about this opinion is that it never clearly addresses how the fee is unlawful or what the theory of liability is with respect to the finance company. That lack of clarity is concerning, particularly given the breadth of the certified question and the potential implications of the Supreme Court's response.

A review of the underlying complaint provides a little more detail about the consumer's case. The consumer alleged, without explanation, that a finance company cannot collect processing fees unless explicitly authorized by both the retail installment contract and a statute. Leaving aside whether there is any legal basis for that claim, it ignores the fact the finance company apparently did not collect or receive any part of the fee, which the court notes in its opinion. Instead, the consumer seems to have pivoted to arguing that the finance company might be liable for "designing, promoting, and/or directing consumers to [the] third-party processor." The consumer

also seems to have argued that the finance company may have benefited from the arrangement even if it did not receive that specific fee, alleging that the finance company had an agreement with the payment processor to market and promote the services. Ultimately, though, it's just not clear what exactly is being alleged as the unlawful conduct, which is the problem.

Creditors and servicers commonly offer consumers the option of making payments through independent third-party processors that charge convenience or processing fees. A ruling permitting liability under these circumstances could expose creditors and servicers to claims arising from those fees, even when the fees are imposed and retained entirely by the processor.

The West Virginia Supreme Court has a history of issuing decisions with far-reaching implications for consumer financial services compliance. This will be a case to watch.

Dye v. Santander Consumer USA Inc., No. 1:23-CV-045, 2026 WL 2924513 (N.D.W. Va. Sept. 29, 2026).