

# The Disclosure Statement

A publication of the U.S. Bankruptcy Court, Northern District of Florida

## ***Adjustment of Certain Dollar Amounts Applicable to Bankruptcy Cases Effective April 1, 2025***

Pursuant to Section 104 of the Code requiring the Judicial Conference to make automatic adjustments to dollar amounts stated in various provisions of the Bankruptcy Code, one provision in Title 28, and many official and director's forms which include dollar amounts, adjustments were made and are applicable to cases filed on or after April 1, 2025. For more information, including a full list of affected forms, please visit [www.uscourts.gov/forms-rules/pending-rules-and-forms-amendment/pending-or-recent-changes-bankruptcy-forms](http://www.uscourts.gov/forms-rules/pending-rules-and-forms-amendment/pending-or-recent-changes-bankruptcy-forms). Please be aware that these changes may require that you update your bankruptcy software, if used.

## ***Apple iOS 18.2 May Impact CM/ECF Notifications***

The December 2024 Apple iOS 18.2 software update may affect your receipt of the Court's Notices of Electronic Filing. Among its changes is the inclusion of Mail Categories to every iPhone's Mail app. These categories were intended to assist users in prioritizing their email messages. Users have conveyed to the Court that emails sent via CM/ECF were automatically categorized as Updates and thereby filtered out of their Inboxes. This categorization could result in the unintentional overlooking of important case-related notifications.

Users may modify their automatic categories or disable the categorization all together. For more information on the software update and steps for overriding this new feature, please see this article from [CNet](#).

### ***In this issue:***

|  |                    |
|--|--------------------|
| News & Views from the Bench .....  | <a href="#">2</a>  |
| FSU Pro Bono Clinic.....   | <a href="#">3</a>  |
| Upcoming Seminars .....  | <a href="#">4</a>  |
| The Clerk's Corner .....   | <a href="#">4</a>  |
| Tech Tips: MFA Coming to CM/ECF & PACER.....   | <a href="#">5</a>  |
| FLNB Mile Markers.....   | <a href="#">5</a>  |
| News from the U.S. Courts.....   | <a href="#">5</a>  |
| Merchant Cash Advance Claims in Bankruptcy<br>Caitlyn Coates and Michael Markham, Guest Contributors ..... | <a href="#">6</a>  |
| QC Cues.....   | <a href="#">10</a> |
| Severe Weather Preparedness .....  | <a href="#">10</a> |
| FLNB Employment Opportunity .....  | <a href="#">10</a> |
| FLNB Caseload Activity.....  | <a href="#">11</a> |
| Contact Information.....   | <a href="#">12</a> |
| Holiday Closures.....  | <a href="#">12</a> |

### **Chief Judge Walker Announces End of Term**

Chief Judge Mark Walker announces that on June 22, 2025, his seven-year term as Chief Judge of the U.S. District Court for the Northern District of Florida will expire. Pursuant to 28 U.S.C. § 136 (a), Judge Allen Winsor, as the next eligible district judge, will assume the position as Chief Judge on June 23, 2025.

Chief Judge Walker wishes Judge Winsor well and knows the Northern District of Florida will flourish under his leadership.

## News & Views from the Bench

Honorable Karen K. Specie, Chief Bankruptcy Judge

### SCOTT MANION RECEIVES THE NDFLBBA LIFETIME PRO BONO SERVICE AWARD!

Congratulations to Scott Manion! At the NDFLBBA Annual Seminar on March 14, 2025, it was my pleasure to present Scott Manion with the Northern District of Florida Bankruptcy Bar Association's Lifetime Pro Bono Service Award. Among other things, in 2022 Scott Manion sued the Tallahassee Housing Authority ("THA") in federal district court on behalf of former tenants that had been forced out of their apartments due to redevelopment. The suit resulted in a watershed settlement that provided former tenants accommodations in THA's new structure, including accommodations for residents with disabilities and other types of financial relief. Over the many years of his practice in the Northern District, Scott Manion has assisted needy debtors with bankruptcy relief, underprivileged persons displaced from housing after major hurricanes, and many, many other individuals, with compassion and empathy. Scott Manion is indeed deserving of this prestigious award.



### PROUD OF PRO BONO AND RAP

**We are grateful to all the attorneys who have volunteered by taking *pro bono* cases and participating in the RAP ("Reaffirmation Assistance Program"):**

These attorneys have handled, or are handling, cases or matters *pro bono* so far this year: **Robert Bruner, India Footman, Robert McDaniel, Sharon Sperling, Trey Wright, and the Student Attorneys of the Bankruptcy Pro Bono Clinic at the FSU College of Law, Cate Coates, Seth Johnsen, Nathaniel Lazor, and Britania Whyte.**

These attorneys have volunteered for RAP, sponsored by the NDFLBBA: **Samantha Kelley and Mike Niles.**

Please join me in thanking these attorneys - they help each and every one of us!

**FLNB PRO BONO INITIATIVE NEEDS YOU!** EVERY ATTORNEY WHO PRACTICES IN OUR DISTRICT should provide *pro bono* services, either by handling a case or adversary proceeding, participating in RAP, and now by volunteering to be a Supervising Attorney for the FSU Bankruptcy Pro Bono Clinic.

**To volunteer for the *Pro Bono* Initiative, visit**  
<https://www.flnb.uscourts.gov/ndflbba-pro-bono-initiative>

### IMPORTANT REMINDERS & NOTICES

**MOTIONS FOR RELIEF FROM STAY: UPDATE YOUR FORM MOTIONS AND ORDERS:** Fed. R. Bank. P. 4001 was amended effective December 1, 2024. The 14-day stay of an order granting relief from the automatic stay is now contained in Bankruptcy Rule 4001(a)(4). If you are requesting a waiver of that stay, you must refer to the correct rule. Despite the rule change, parties continue to file motions and submit orders that incorrectly reference Rule 4001(a)(3). The Court posted an updated version of our form Order Granting Motion for Relief from Stay that includes the correct rule reference on the Court's website (<https://www.flnb.uscourts.gov/forms#sampleOrd>).

*News & Views from the Bench Continued on Page 3*

**DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR (Official Form B 2030): MUST BE PROPERLY COMPLETED AND SUPPLEMENTED.** Do not leave the amounts on this form blank or enter \$0 in any case in which the attorney has received or will receive compensation, including compensation to be paid through a Chapter 13 plan.

**DISMISSAL FOR FAILURE TO PAY FILING FEES: THE COURT WILL SOON BEGIN DISMISSING CASES FOR WHICH THE FILING FEE IS NOT RECEIVED WITH THE PETITION OR WITHIN SEVEN (7) DAYS THEREAFTER.** Every bankruptcy petition MUST be accompanied by the filing fee, unless the petition is filed with an Application to Pay the Filing Fee in Installments (or in Chapter 7 cases, an Application to Have the Chapter 7 Filing Fee Waived). Fed. R. Bank. P. 1006(a)–(c). The Court has been permitting parties to comply with Rule 1006 within fourteen (14) days of filing the petition if the petition is filed without the filing fee or appropriate application. The Court is in the process of reducing this time from 14 to 7 days.

**PROPOSED CHANGE TO PROCEDURES re PAY ADVICES: DEBTORS WILL NO LONGER BE REQUIRED TO FILE PAY ADVICES/STATEMENTS OF NO EMPLOYMENT INCOME WITH THE COURT.** Expect to soon see an administrative order that deletes the requirement for debtors to file Pay Advices/Statements of No Employment Income with the Court. See 11 U.S.C. § 521(a)(1)(B)(iv). **Debtors will still have to provide Pay Advices/Statements of No Employment Income to any trustee appointed in their case and provide copies to the U.S. Trustee upon request.** Debtors and their counsel will still have a filing event in CM/ECF with which to file Pay Advices/Statements of No Employment Income, but the failure to do so will no longer result in dismissal of the case. The Court intends to follow the administrative order with an amendment to N.D. Fla. LBR 1007-1(A)(3) and (B)(4).

### **PROPOSED ORDERS**

#### **ORDERS GRANTING ADEQUATE PROTECTION AND PROVIDING STAY RELIEF UPON DEFAULT:**

Agreed Orders that grant adequate protection and provide for stay relief if the debtor defaults must require the creditor to file a motion for final stay relief upon default and submit an order. The Court will no longer enter stay relief orders upon the filing of only an affidavit of default. No filing fee will be due for the motion. Parties are encouraged to use the following language in agreed adequate protection orders:

In the event of a default that is not cured within the time specified, Creditor may file a Motion for Final Stay Relief Upon Default with an affidavit of default and submit a proposed order lifting the automatic stay.

### **SO, YOU WANT TO BE "THE" BANKRUPTCY JUDGE? JUDICIAL VACANCY COMING IN JULY OF 2026**

It is hard to believe that my 14-year term as “the” Bankruptcy Judge for the Northern District of Florida expires July 24, 2026. As I announced at the NDFLBBA Annual Seminar, I do not intend to seek reappointment. Instead, I look forward to spending more time with family and traveling. The Eleventh Circuit will likely advertise my position this fall. If you have ever thought you might want to be a bankruptcy judge, it is time to start polishing your resume and researching what information you will need for the application - which is a lot!

### **FSU Pro Bono Clinic**

For more information regarding the Florida State University College of Law Bankruptcy Pro Bono Clinic ("FSU Pro Bono Clinic"), including links to the FLNB administrative orders certifying the program and how to become a supervising attorney in this program, visit our website at

<https://www.flnb.uscourts.gov/florida-state-university-college-law-bankruptcy-pro-bono-clinic>.

## Upcoming Seminars

*Please plan to attend the following upcoming seminars and meetings, if you are able:*

- **37th Annual Bankruptcy at the Beach Seminar** (Alabama State Bar Bankruptcy & Commercial Law Section)  
May 30-31, 2025 at The Henderson Beach Resort & Spa, Destin, FL  
<https://www.alabar.org/about/sections/bankruptcy-and-commercial-law/>
- **Annual Florida Bar Convention and Business Law Section Meeting**  
June 25-28, 2025 at The Boca Raton, Boca Raton, FL  
<https://www.floridabar.org/news/meetings/meetings001>  
<https://flabizlaw.org/calendar/#!event/2025/6/25/florida-bar-annual-convention>

**The  
Clerk's Corner**  
Traci E. Abrams,  
Clerk of Court

## Fiscal Year 2025 Budget News

On March 15, 2025, President Donald Trump signed the “Full-Year Continuing Appropriations and Extensions Act 2025” (P.L. 119-4). This legislation funds the federal government through the end of the Fiscal Year (FY) on September 30, 2025. A continuing resolution means that the Executive, Legislative, and Judicial branches of the federal government must operate at a funding level equal to the FY 2024 appropriation. As a result of this legislation, the Judiciary is readjusting its internal financial plan to ensure that expenses that naturally escalate outside of the Judiciary’s control from fiscal year to fiscal year (e.g., rent, utility payments, supplies, etc.) are paid.

Like the federal budget as a whole, the Judiciary’s budget is segregated into mandatory and discretionary spending. Discretionary spending is adjusted downward each fiscal year to bolster mandatory spending availability. Through a budget decentralization program, the Administrative Office of the U.S. Courts (AO) provides discretionary allotments to court and other types of operational units. Allotments are based on work measurement and other formulas designed to calculate expected fiscal year expenses per operational unit. Discretionary operational units of the Judiciary include, but are not limited to, appellate, district, and bankruptcy court clerk’s offices. Given that the FY 2025 funding legislation caps the Judiciary at FY 2024 levels, units like the U.S. Bankruptcy Court for the Northern District of Florida’s (FLNB) Clerk’s Office are expecting a 10-12 percent reduction in funding.

FLNB’s funding allotment is segregated into mandatory and discretionary spending, just like the federal and Judiciary budgets. To absorb a 12 percent funding reduction without negatively impacting our constituents – the people who count on Clerk’s Office staff to provide them with technical support, administrative assistance, the development of efficiencies, improvement of forms, case monitoring, etc. – the Clerk’s Office must forego all but critical expenditures. Fortunately, FLNB has planned ahead for lean budgets as best as possible by taking advantage of national Judiciary-hosted services like cloud computing to contain local IT costs. We also continuously streamline our case management work to ensure that case administrators have time to devote to customer service, including personally answering the phone when you call. Our goal is to give you the information you need so that your work can continue without delay. If you have a question about your case, you may contact a case administrator at the numbers listed in the [Contact Us](#) section of this newsletter.

There is no such thing as work-life balance—it is all life. The balance has to be within you.



# TECHTIPS

## Coming Soon: Multifactor Authentication for CM/ECF and PACER

In mid-May, the Administrative Office of the U.S. Courts (AO) will begin implementing Multi Factor Authentication (MFA) to enhance system security for Case Management/Electronic Case Files (CM/ECF) and Public Access to Court Electronic Records (PACER). MFA significantly reduces the risk of unauthorized access to accounts by adding a layer of security that protects against cyberattacks that steal passwords.

After implementation, all CM/ECF users with filing and/or other types of CM/ECF-level access will be required to enroll in MFA. Users with PACER-only access will have the option to enroll.

From mid-May to the end of 2025, users with any type of CM/ECF-level access who do not voluntarily enroll will be randomly selected to do so. These randomly selected CM/ECF users will be notified of the MFA requirement during login.

Visit the PACER website at <https://pacer.uscourts.gov> for more information.

**We take great pleasure in recognizing the following who have cause to celebrate a milestone in their Judiciary careers:**



### Latonia Isom

#### Operations Team Leader - Tallahassee



Latonia began her career with the judiciary in January, 2000 as a Case Manager in the Tallahassee office, assigned a caseload for the Tallahassee and Gainesville divisions. Currently our district's Operations Team Leader, she handles a district-wide caseload while also serving as the "right hand" to the Director of Operations, handling special projects, conducting research, and being the "go to" person for Case Administrators who have procedural questions. Latonia is getting married next month so watch for a name change!

### Janet Weems-Cainion

#### Courtroom Deputy - Tallahassee



Janet joined our court in April, 2000 as Courtroom Deputy to the Honorable Lewis M. Killian, Jr. (Ret.). As a courtroom deputy in the pre-ECF days, Janet clocked hundreds of miles every month across and up and down I-10 and I-75, lugging boxes and boxes (and sometimes even suitcases!) of hard-copy case files to each of our four divisions for court. While CM/ECF and the ability to hold court by video has made her life a little less *manual-labor*-intensive, she is no less busy as the Courtroom Deputy and Calendaring Clerk for the Honorable Karen K. Specie. Janet's calm demeanor, mindfulness, and thorough job knowledge are the grease that keeps the courtroom wheels turning smoothly.

## Bankruptcy Filings Rise 14.2 Percent for Period Ending December 31, 2024

The Administrative Office of the U.S. Courts announced in February that total bankruptcy filings rose 14.2 percent, with increases in both business and non-business bankruptcies, in the twelve-month period ending Dec. 31, 2024. This continues an ongoing rebound in filings after more than a decade of sharply dropping totals. Read the full article on the website of the [United States Courts](https://www.uscourts.gov).

## **Merchant Cash Advance Claims in Bankruptcy**

*By Caitlyn Coates and Michael Markham,<sup>1</sup> Guest Contributors\**

Merchant cash advances may provide a seemingly immediate fix for a small business struggling with cash flow and who may not qualify for a traditional loan. But is this immediate fix truly a blessing for a struggling business that may not have anywhere else to turn, or is it a more nefarious scheme hiding behind the allure of receiving cash now?

### *What is a Merchant Cash Advance?*

Merchant cash advances are an alternative to traditional financing and are often marketed to small businesses.<sup>2</sup> Typically, a merchant cash advance company will provide a small business with a lump-sum cash payment in exchange for purchasing a percentage of the business's future receivables. In this type of transaction, the business becomes the "seller" or merchant, and the merchant cash advance company becomes the "purchaser." Dissimilar to the hallmark of traditional loans where repayments are made in fixed installments, the basic terms of these agreements provide that the purchaser withdraws a pre-determined amount directly from the seller's account as sales are made and receivables are collected. These pre-determined amounts may be a percentage of sales or a fixed dollar amount. In some agreements, repayment takes the form of automatic ACH withdrawals, giving the purchaser direct access to the seller's bank account. Often, withdrawals are daily or weekly. Consequently, the projected repayment periods are quite short. These short repayment periods can come laden with fees and effectively high interest rates, the high cost of which the seller may not fully realize at the outset of the agreement. Far too often, this rapid rate of payback becomes too much for a small or medium business to sustain, leading it to seek out yet another merchant cash advance to cover its first one.<sup>3</sup> In some cases, this cycle may repeat more than once.

Despite the unsavory repayment terms of these agreements, merchant cash advances have steadily increased in popularity in recent years due to their quick approval process and accessibility.<sup>4</sup> Business owners are usually approved to receive funds from a merchant cash advance company within one or two days. Once approved, the advance is often immediately delivered to the seller. Thus, this alternative to traditional financing provides a fast solution to cash flow or other financing problems a business may have without subjecting it to an extensive approval process.

### *How is a Merchant Cash Advance Transaction Characterized in a Bankruptcy Case?*

Merchant cash advance transactions are no strangers to the bankruptcy world. In recent years, it seems that most small business debtors under Subchapter V of Chapter 11 have at least one merchant cash advance creditor. Their characterization, along with the determination of the interests of merchant cash advance companies in bankruptcy cases have been the subject of much legal and scholarly discussion.<sup>5</sup> In fact, the issue can arise very quickly in many Chapter 11 cases under the guise of a motion to use cash collateral. Because most MCA Creditors file a UCC financing statement asserting an interest in receivables or other forms of cash collateral, Chapter 11 debtors must often file motions to use the collateral that allegedly secures the merchant cash advance transaction.

### *What is a Creditor's Interest in a Debtor's Pre-Petition Accounts Receivable?*

For a creditor to have an interest in a debtor's pre-petition receivables, the debtor must have receivables as of the petition date. A merchant cash advance company's interest, if any, is subject to competing claims such as those by another creditor of a prior secured debt, like a bank with a blanket UCC lien or an IRS lien.

Bankruptcy Code § 506(a) provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such al-

*Continued on Page 7*

\*Guest contributions published in *The Disclosure Statement* newsletter are intended to be for informational purposes only and do not constitute professional or legal advice from this Court. The views and opinions expressed are solely those of the author(s). The Court accepts no liability for the content of this article or the for consequences of actions taken on the basis of the information provided. To submit a guest contribution, please contact Julie Gibson at [Julie\\_Gibson@flnb.uscourts.gov](mailto:Julie_Gibson@flnb.uscourts.gov).

lowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

Under § 506(a) of the Bankruptcy Code, where a debtor has little or no receivables (like a restaurant or retail business), there is no value in which an MCA Creditor can assert an allowable secured claim. In a case where a debtor had a significant amount of prior secured debt and petition date receivables of minimal value, the court found the MCA Creditor did not have a secured claim.<sup>6</sup> "There [wa]s no value in the pre-petition receivables to create any allowable secured claim for Creditor."<sup>7</sup> As such, when a debtor has little to no receivables of value to which a security interest can attach, an MCA Creditor likely has no interest in a debtor's pre-petition accounts receivable. Furthermore, even if a debtor does have value in its pre-petition receivables, the MCA Creditor purchased the "future receivables," and arguably still has no secured interest in the pre-petition receivables. Because the MCA Creditor purchased a percentage of future receivables, and typically the pre-determined daily amount is automatically taken from the business' accounts, the buyer has already received its portion of whatever pre-petition receivables the business had.

*What is a Creditor's Interest in a Debtor's Post-Petition Accounts Receivable?*

In a bankruptcy case, an MCA Creditor may assert that it has a secured claim in a debtor's post-petition accounts receivable. The MCA Creditor would contend that it acquired, pre-petition, the debtor's post-petition accounts receivable. Essentially, the MCA Creditor would be asking the court to rule that the debtor, pre-petition, had the ability to sell an interest in accounts receivable that may or may not come into existence, and if they do, not until post-petition. But if a "[s]ale is the transfer to the buyer of that which is being purchased,"<sup>8</sup> how can a debtor transfer future rights to payment to the MCA Creditor? It simply cannot. Until the rights to a payment arise, there is nothing tangible to be sold. Contemplating this in a practical sense, this is not a present transfer of property. There is nothing presently to transfer in exchange for the cash advance because the debtor does not own the receivables. They do not yet exist.

Article 9 of the Uniform Commercial Code bolsters and supports this argument. Under U.C.C. § 9-203(b)(2), for a security interest to attach, it is required that a debtor have "rights in the collateral or the power to transfer rights in the collateral."<sup>9</sup> Although U.C.C. § 9-204 permits parties to create a security interest in after-acquired or existing collateral, as the Official Comments to this section explain, § 9-204 "adopts the principle of a 'continuing general lien' or 'floating lien.' It validates a security interest in the debtor's existing and (*upon acquisition*) future assets, even though the debtor has liberty to use or dispose of collateral without being required to account for proceeds or substitute new collateral."<sup>10</sup> Accordingly, until rights to receivables are acquired, an MCA Creditor has nothing more than an unattached security interest.<sup>11</sup> In other words, a merchant cash advance agreement cannot effect a pre-petition transfer or sale of post-petition receivables that were not in existence pre-petition.<sup>12</sup>

The logical next question posited in such a situation is whether, by grant of a security interest or sale, a debtor can effect a post-petition transfer of any interest in post-petition receivables.<sup>13</sup> If a debtor's post-petition receivables are not "proceeds" of pre-petition collateral, the answer is "no." "Proceeds" are defined in U.C.C. § 9-102(64) as: "(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral; (B) whatever is collected on, or distributed on account of, collateral; (C) rights arising out of collateral."<sup>14</sup> Moreover, such proceeds must be identifiable.<sup>15</sup> Therefore, if a debtor's proceeds arise from a service performed post-petition, those proceeds cannot effect a post-petition transfer of an interest in post-petition receivables. If there is no pre-petition perfected interest in collateral, as arguably in any case involving an MCA Creditor, post-petition proceeds cannot be identifiable proceeds of pre-petition collateral.

*Is a Merchant Cash Advance Transaction a Loan or True Sale?*

Merchant cash advance agreements are products of careful and clever drafting on the MCA Creditor's part in an effort to avoid characterization as usurious loans. Hence, an issue courts are frequently presented with is whether

an agreement is a loan in disguise or an actual sale of accounts receivable. The same issue arises in the context of leases disguised as financing arrangements.

It is important to note that the characterization of this type of transaction is a question of state law, as neither the Bankruptcy Code nor federal statute prescribe means for distinguishing between a loan and a true sale.<sup>16</sup> “The deciding factor in the ‘sale’ versus ‘loan’ dispute is generally the transfer of risk—if the ‘buyer’ is absolutely entitled to repayment under all circumstances, then the risk remains with the ‘seller’ and the transaction is considered a loan.”<sup>17</sup> Thus, the economic substance of an agreement rather than its form or terminology, controls this decision.<sup>18</sup>

Courts typically look to three factors in determining whether repayment is contingent or absolute.<sup>19</sup> Such factors are, “(1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the merchant declare bankruptcy.”<sup>20</sup> As is the case with many multi-factor analyses, any one factor alone rarely mandates a certain treatment.<sup>21</sup>

The inclusion of a reconciliation provision in an agreement and the occurrence of actual reconciliations by the debtor typically tip the analysis in favor of finding a true purchase of receivables.<sup>22</sup> This is so because of the flexibility a debtor is afforded in its ability to adjust the amount of its daily payment obligation in consideration of actual sales. For example, performing this function is akin to a company adjusting its accounts receivable for uncollected receipts from a sale of merchandise to a customer. Yet, because MCA Creditors can structure their agreements in ways that benefit themselves and push the risk on debtors, the presence of a reconciliation provision in an agreement does not always tilt the scale in favor of finding a true purchase. In *LG Funding, LLC v. United Senior Properties of Olathe, LLC*, a reconciliation contained language articulating that the MCA Creditor could adjust the amounts due “at [its] sole discretion and as it deems appropriate.” The MCA Creditor retained complete discretion over payment adjustments, and thus, did not assume any risk that it would yield lower revenues than anticipated.

The ability of the debtor to adjust payments does shed light on the second factor. If a debtor can and does adjust the amount of a payment, then the agreement does not have a finite term. The term period changes upon an adjustment of the amount being paid to the MCA Creditor. Fixed terms are a characteristic of loans; whereas indefinite terms suggest the MCA Creditor has assumed the risk of uncollectible receivables.<sup>25</sup>

The third factor focuses on the risk associated with the seller’s non-payment. In a true sale, the purchaser bears this risk. Whereas, in the context of a loan, the obligation to repay is absolute. Provisions within these agreements dictating that the debtor’s bankruptcy triggers default place a finger on the scale in favor of finding the agreement is in fact a loan. These agreements almost always include one or more personal guarantees that business owners must sign, likewise pointing towards classification as a loan.<sup>26</sup> Provisions such as these suggest that the MCA Creditor has not assumed the risk of loss; rather, the MCA Creditor is absolutely entitled to repayment. It is this very concept of entitlement to absolute repayment that drives the characterization of a merchant cash advance transaction.

Characterizing a transaction as a loan in which a debtor granted a security interest in receivables would not be without problems for an MCA Creditor. Under 11 U.S.C. § 552(a), “property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.” In essence, the Bankruptcy Code does not allow a pre-petition interest to extend to property acquired by the debtor post-petition.<sup>27</sup> There is, however, a narrow exception to this general rule in § 552(b) if the buyer demonstrates a connection between pre-petition and post-petition property.<sup>28</sup> As discussed above, a connection is unlikely, for instance, in a case where a debtor provides services.

If the factors weigh in favor of a true sale, any intended transfers of post-petition receivables must have been in accordance with 11 U.S.C. § 363. If any such transfer were made without comporting with the Bankruptcy Code, it would be deemed an unauthorized transfer. Such unauthorized transfers are avoidable according to 11 U.S.C. § 549.<sup>29</sup>



*What are the Other Considerations for a Debtor Engaging in a Merchant Cash Advance Transaction?*

A bankruptcy court's characterization of a merchant cash advance transaction can be a threshold issue for state law usury claims that could take the form of an objection to a claim or an adversary proceeding in a bankruptcy case. If a transaction is considered a true sale, it is not subject to usury laws.<sup>30</sup> However, if a transaction is considered a loan, then State usury laws are implicated. Depending on the repayment percentage or fixed monthly remittance amount, the interest rates in a merchant cash advance transaction can skyrocket quite readily, far surpassing a State's maximum simple interest per annum. For example, the maximum simple interest rate in Florida for transactions under \$500,000 is 18 percent.<sup>31</sup> Therefore, once a court characterizes a transaction as a loan, a debtor may bring a usury claim.<sup>32</sup> Additionally, claims objections may be pertinent. If an MCA Creditor files a proof of claim, a debtor may object to such filing and seek to redesignate the transaction as a loan.<sup>33</sup> Be that as it may, many MCA Creditors do not file proofs of claim to avoid the jurisdiction of the Bankruptcy Court.

Tax law, accounting standards, and regulatory agencies may provide useful insight to courts for characterizing merchant cash advance transactions. From an accounting standpoint, a traditional loan is recorded on a recipient's books as an increase to cash and the creation of a corresponding loan payable (liability). In a basic sense, as the recipient pays back the loan, it will decrease its cash and the corresponding loan payable, and record interest expense. Alternatively, when a sale occurs, the seller records revenue and the receipt of cash, or if cash was not received, an increase to its accounts receivable. Interestingly, contemplating a merchant cash advance transaction in combination with these two rudimentary concepts, it appears that a merchant cash advance transaction is more akin to a traditional loan transaction.

Yet much of accounting is anything but dealing with rudimentary transactions. An area that the Financial Accounting Standards Board ("FASB") has contemplated is the balance sheet treatment of transferred accounts receivable. Financial Accounting Standards Board Statement 77 ("FASB 77"), "clarif[ies] the circumstances under which a transfer of receivables with recourse should be recognized by the transferor as a loan or, alternatively, as a sale."<sup>34</sup> For a transaction to receive sale treatment, the transferor must "surrender[] control of the future economic benefits embodied in the receivables" to the point where the transferor does not have the option to repurchase the receivables at a later date.<sup>35</sup> In addition, FASB 77 requires that the transferor's obligation under the recourse provisions be reasonably estimable, and it prohibits the transferee from requiring the transferor to repurchase the receivables except pursuant to the recourse provisions.<sup>36</sup> FASB's focus appears to be on determining whether there has been a transfer of the benefits of ownership and predicting actual recourse exposure.<sup>37</sup> Inherently, the accounting profession is concerned with companies' recordkeeping and accurate reflection of their financial positions. Nevertheless, its position on classifications may be a source of support for courts in reaching their own legal determinations on the character of a merchant cash advance transaction.

*Takeaways: Risks Potential Sellers Should be Aware of Before Entering into a Merchant Cash Advance Agreement*

As merchant cash advance companies continue to rise in popularity and general economic conditions deteriorate, those contemplating entering into an agreement with one would be advised to carefully perform their due diligence. Before turning to a merchant cash advance company for funding, prospective sellers should verse themselves in the other available financing options (or a bankruptcy filing). If, upon performing due diligence on other financing avenues, a merchant cash advance company prevails as the most appealing source of funding, it is crucial that a prospective seller review a tentative agreement with the utmost scrutiny. Remember that merchant cash advance companies often masquerade as nothing more than simple funders of cash up front with reasonable repayment terms. Indeed, this may occasionally prove to be the case, but more frequently, these agreements are laden with harsh and unforgiving terms that may take more of a toll on a business than a traditional loan. In any event, dealing with MCA Creditors can be challenging; nonetheless, a bankruptcy filing will permit a business to more effectively manage merchant cash advance claims within the confines of the Bankruptcy Code.

***This article, with footnotes, is available on our website under the new "Guest Contributions" section at <https://www.flnb.uscourts.gov/newsletter>.***

## QC Cues

### *Friendly Reminders from the Case Administrators*

- **Schedules G & H:** When filing or amending schedules G or H, please remember to add the name(s) of the party(ies) to the case so they are included on the mailing matrix.
- **Searching for Debtor Names when Filing a Case:** The Clerk's Office will no longer change the capitalization of names of debtors when the filer selects a previously existing party from CM/ECF whose full name is capitalized. If your client is already in our system, please select their name when searching instead of adding them a second time.
- **Adding New Parties to CM/ECF:** When adding a new party to CM/ECF, please use proper capitalization—avoid using ALL CAPS.

## Severe Weather Preparedness

Weather in north Florida can be quite challenging. This past winter we had snow - *real snow* - in some parts of the state (and many of us didn't know how to drive in it!). Spring definitely "came in like a lion" with floods and tornadoes across the southeast and we're waiting with fingers crossed on the "out like a lamb" part. Now, the news reports that weather forecasters predict 17 named storms in the 2025 Atlantic hurricane season.

The geographic area of the Northern District of Florida is comprised of hundreds of miles of coastline, and thousands of acres of flood-prone and very rural areas. We must be prepared to adapt and change course quickly, both in our personal lives and where the court may be concerned.

We want to remind you that, should we need to close one or more offices or reschedule or relocate court due to severe weather, you will be advised through messages on our phone lines, notifications via *Court Announcements & News* posted to the Court's website, and/or mass email to all registered users of our CM/ECF system using GovDelivery. For situations affecting court hearings, a notice rescheduling or relocating those hearings will also be docketed as quickly as possible.

To ensure that you receive all notifications from our office:

- Sign up for the RSS Feed on the home page of our website to receive instant notification of Announcements.
- Ensure that the "uscourts.gov" and "public.govdelivery.com" domains are listed as a "safe" domains with your email and/or internet service provider to prevent emails from being rejected as junk mail or "spam."

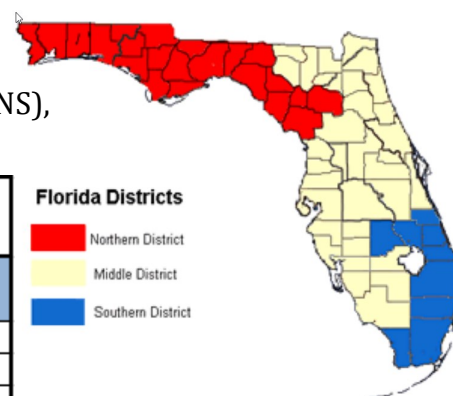
During periods of inclement weather, call before visiting or attending court to ensure the courthouse is open. You may reach us at (850) 521-5002 (Tallahassee local calling area) or (866) 639-4615 (toll free) or by email at [CMECF\\_HelpDesk@flnb.uscourts.gov](mailto:CMECF_HelpDesk@flnb.uscourts.gov).

## Exciting IT Career Opportunity: Applications Administrator I

The U.S. Bankruptcy Court, Northern District of Florida is seeking an Applications Administrator I to join our IT team in Tallahassee. This key technical support role offers the chance to work on critical systems and contribute to the Court's technology operations. To learn more, visit <https://www.flnb.uscourts.gov/employment>.

## U.S. Bankruptcy Court for the Northern District of Florida 2025 Caseload Activity as of March 31

The U.S. Bankruptcy Court for the Northern District of Florida is comprised of 23 counties in the panhandle and "big bend" region of the state, separated into four divisions: Gainesville (GVL), Pensacola (PNS), Tallahassee (TLH), and Panama City (PCY).



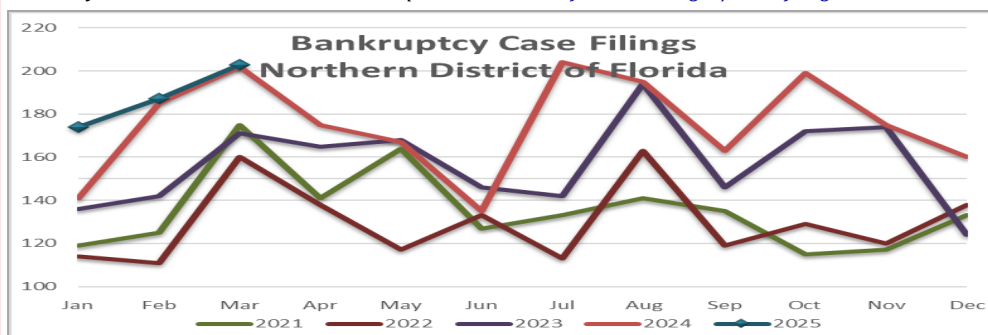
Florida Districts

■ Northern District  
■ Middle District  
■ Southern District

| Northern District of Florida<br>2025 Caseload Activity through March 31 |           |            |            |           |            |
|---|-----------|------------|------------|-----------|------------|
| Bankruptcy Case Openings  | GVL       | PNS        | TLH        | PCY       | TOTAL      |
| Ch 7  | 54        | 219        | 109        | 34        | 416        |
| Ch 11   | 4         | 5          | 2          | 2         | 13         |
| Ch 12   | 0         | 0          | 0          | 0         | 0          |
| Ch 13   | 18        | 57         | 34         | 26        | 135        |
| Ch 15   | 0         | 0          | 0          | 0         | 0          |
| <b>Total</b>  | <b>76</b> | <b>281</b> | <b>145</b> | <b>62</b> | <b>564</b> |
| Bankruptcy Case Activity  | GVL       | PNS        | TLH        | PCY       | TOTAL      |
| Reopenings  | 0         | 0          | 1          | 0         | 1          |
| Split Cases   | 0         | 0          | 0          | 0         | 0          |
| Interdistrict Transfer Cases  | 0         | 0          | 1          | 1         | 2          |
| Intradistrict Transfer Cases  | 0         | 0          | 0          | 0         | 0          |
| Conversions   | 0         | 3          | 2          | 1         | 6          |
| Stay Motions  | 10        | 49         | 29         | 17        | 105        |
| Bankruptcy Case Closings  | GVL       | PNS        | TLH        | PCY       | TOTAL      |
| Ch 7  | 40        | 208        | 89         | 26        | 363        |
| Ch 11   | 1         | 1          | 3          | 4         | 9          |
| Ch 12   | 0         | 0          | 0          | 0         | 0          |
| Ch 13   | 17        | 47         | 44         | 9         | 117        |
| Ch 15   | 0         | 0          | 0          | 0         | 0          |
| <b>Total</b>  | <b>58</b> | <b>256</b> | <b>136</b> | <b>39</b> | <b>489</b> |
| Adversary Case Openings   | GVL       | PNS        | TLH        | PCY       | TOTAL      |
|   | 0         | 1          | 2          | 4         | 7          |
| Adversary Case Closings   | GVL       | PNS        | TLH        | PCY       | TOTAL      |
|   | 1         | 5          | 2          | 1         | 9          |
| Pro se Cases Filed:   | GVL       | PNS        | TLH        | PCY       | Total      |
| Ch 7  | 2         | 9          | 29         | 4         | 44         |
| Ch 11   | 0         | 0          | 0          | 0         | 0          |
| Ch 12   | 0         | 0          | 0          | 0         | 0          |
| Ch 13   | 7         | 7          | 4          | 2         | 20         |
| Ch 15   | 0         | 0          | 0          | 0         | 0          |
| <b>Total</b>  | <b>9</b>  | <b>16</b>  | <b>33</b>  | <b>6</b>  | <b>64</b>  |

| FLNB County          | YTD        |
|----------------------|------------|
| Alachua              | 52         |
| Bay                  | 31         |
| Calhoun              | 2          |
| Dixie                | 5          |
| Escambia             | 142        |
| Franklin             | 1          |
| Gadsden              | 20         |
| Gilchrist            | 5          |
| Gulf                 | 4          |
| Holmes               | 3          |
| Jackson              | 20         |
| Jefferson            | 4          |
| Lafayette            | 1          |
| Leon                 | 84         |
| Levy                 | 13         |
| Liberty              | 4          |
| Madison              | 3          |
| Okaloosa             | 54         |
| Santa Rosa           | 61         |
| Taylor               | 9          |
| Wakulla              | 19         |
| Walton               | 24         |
| Washington           | 2          |
| Outside District     | 0          |
| Outside Florida      | 1          |
| Outside U.S.         | 0          |
| <b>Total Filings</b> | <b>564</b> |
| Gainesville Div.     | 76         |
| Pensacola Div.       | 281        |
| Tallahassee Div.     | 144        |
| Panama City Div.     | 63         |

Monthly and annual caseload statistics are published at [www.flnb.uscourts.gov/court-filing-statistics](http://www.flnb.uscourts.gov/court-filing-statistics).





## U.S. Bankruptcy Court Northern District of Florida

Chief Bankruptcy Judge Karen K. Specie  
Traci E. Abrams, Clerk of Court  
110 East Park Avenue, Suite 100  
Tallahassee, Florida 32301  
(850) 521-5001 / (866) 639-4615

Please direct questions or comments about this  
newsletter to [Julie.Gibson@flnb.uscourts.gov](mailto:Julie.Gibson@flnb.uscourts.gov).

### Upcoming Federal Holidays

The Court and Clerk's Office will be closed  
on the dates listed below in observance of the  
following national holidays:\*

|             |                               |
|-------------|-------------------------------|
| May 26      | Memorial Day                  |
| June 19     | Juneteenth Nat'l Indep. Day   |
| July 4      | Independence Day              |
| September 1 | Labor Day                     |
| October 13  | Columbus Day                  |
| November 11 | Veteran's Day                 |
| November 27 | Thanksgiving Day              |
| December 25 | Christmas Day                 |
| January 1   | New Year's Day                |
| January 19  | Martin Luther King, Jr. B'day |
| February 16 | Washington's Birthday         |

*\*Observance of a holiday that falls on a Saturday  
or Sunday pursuant to 5 U.S.C. 6103(b) and/or Exec.  
Ord. 11582, Feb. 11, 1971.*

*Keep your face  
to the sun and  
you will never  
see the shadows*

HELEN KELLER

### Contact Us

Audrey Thurman, Case Administrator .....(850) 470-3061  
Carolyn Romine, Case Administrator .....(850) 470-3062  
Janet Weems-Cainion, Courtroom Deputy & Calendar Clerk .....(850) 521-5009  
Jestin Hawkins, Case Administrator.....(850) 521-5016  
Latonia Isom, Operations Team Leader.....(850) 521-5012  
Sloane Akinsanya, Case Administrator .....(850) 521-5010  
Tammi Boswell, Director of Operations .....(850) 521-5011  
Clerk's Office Main Line.....(850) 521-5001  
Help Desk ..... (850) 521-5001 or (866) 639-4615  
Help Desk Email.....[CMECF\\_HelpDesk@flnb.uscourts.gov](mailto:CMECF_HelpDesk@flnb.uscourts.gov)

*Clerk's Office phones are answered 9:00 a.m. to 4:00 p.m., Monday through Friday, except on federal holidays or other days the court is closed. Case Administrators may assist with procedural or CM/ECF questions only. **We are not permitted to answer legal questions or to provide guidance as to the content or types of documents that may be required.***