THE RISE OF THE MERCHANT CASH ADVANCE

and how a small business merchant can rise with it

By James J. DeCristofaro, Esq.

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By New York Business Attorney
James J. DeCristofaro, Esq.

For more information, please contact:

The Lawyer James J. DeCristofaro, Esq., P.C.
485 Madison Ave Floor 7
New York, NY 10022
Office telephone (24 hours): (212) 500-1891
Email: james@thelawyerjames.com

Dedication

To my daughter, Oakley.

At the risk of sounding cliché, words are insufficient to describe how special Oakley is to me.

This eBook pocket guide is designed to serve as a vehicle to fund and lead a charity with Oakley so that we can work together as adults, to make great strides in this world, and to complement the time we spent together when she was a child. At the time of publication, she will soon be 19 years old.

Now the real work is to be done.

The mission of the charity – or, in Napoleon Hill's terms – the chief aim and definite purpose of the charity – is to free humanity from many debilitating maladies, including the shackles of debt and lack of financial education, addiction, confusion, clutter, and dysfunction. What that looks like is yet to be written.

Oakley and I now have a blank canvas to go to work on.

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Introduction

Cash flow is the lifeblood of a small business. A business can be profitable on paper and still fail because its cash arrives too late. Payroll, rent, inventory, insurance, taxes, repairs, and marketing do not wait for a customer to pay an invoice. When a merchant needs money now, the merchant cash advance—commonly called an MCA—can look like oxygen.

I am a New York business attorney. I resolve business disputes through negotiation, mediation, arbitration, and litigation, and have helped address more than $100 million in disputes. I founded ClearMCA to bring transparency, financial education, and practical analysis to small-business funding.

An MCA is generally structured as a purchase of a specified amount of future receivables. The funding company pays a purchase price today. The merchant then delivers an agreed percentage of future receipts, often through daily or weekly remittances, until the purchased amount has been delivered. The documents may use terms such as purchase price, purchased amount, specified percentage, remittance, reconciliation, and performance guaranty. Those words matter, but the way the transaction actually operates matters too.

The industry rose because it solved a real problem: traditional capital can be slow, documentation-heavy, or unavailable. A qualified merchant may be able to complete a simple application in minutes and receive funds within a day. That speed and convenience have value. They also have a cost, and the cost can be substantial when annualized or when the remittance consumes the cash needed to run the business.

This guide is not an attack on MCAs and it is not a sales pitch for them. It is a practical guide for the merchant who wants to understand the product, avoid common traps, know the legal framework, and use capital only when the expected business result justifies the burden. For readability, this guide sometimes uses familiar words such as "pay," "payoff," or "repurchase." Your agreement may characterize the transaction differently, and the legal characterization depends on the contract and the facts.

THE POINT: An MCA can be a powerful tool or an expensive delay. The difference is information, planning, and execution.

Why the MCA Industry Has a Bad Rap

The bad reputation is not a mystery. Many merchants enter the market when they are under pressure. They need payroll by Friday, inventory for a large order, a repair before the weekend, or enough cash to survive a slow season. Urgency makes a merchant easier to sell and harder to educate. Add brokers who may be paid only when a deal closes, and the incentives can become badly misaligned.

The ClearMCA Merchant Cash Advance Playbook identifies three common moves that can cause real harm. They should be treated as warning signs, not promises.

Trick #1: The SBA Bait

The broker says: "Take this MCA now and in 45 days you will qualify for an SBA loan." That statement is not something the broker can guarantee. An MCA does not itself create SBA eligibility. A later bank or SBA lender will perform its own underwriting and may view the new daily or weekly obligation as additional leverage. Ask for the identity of the supposed lender, the actual underwriting criteria, and the promise in writing. If none can be produced, assume it is bait.

Trick #2: The $10,000 Hustle

The broker says: "Take a small $10,000 position, pay it quickly, and I will get you much more." The merchant accepts expensive money to build a relationship that may not exist. The broker may disappear, the promised second funding may never arrive, and the merchant must begin again—now with another obligation showing in the bank statements. A small bad deal is still a bad deal.

Trick #3: The Interest-Only Credit-Line Hook

The broker calls or texts before speaking with the merchant or underwriting the file and announces an "approval" for an interest-only credit line. Think about that. How could a funding company approve a product without reviewing revenue, bank activity, existing obligations, industry, and payment history? Often the supposed line is only a hook to start the conversation and sell a different product.

The Hidden Problem: The Merchant Does Not Know the Cost

A factor rate is not an interest rate. If a merchant receives a $50,000 purchase price and must deliver a $70,000 purchased amount, the dollar cost begins at $20,000 before considering withheld fees. If the merchant receives only $46,000 after fees but must still deliver $70,000, the economic cost is higher. If the expected delivery period is short, the annualized cost can be much higher than the factor rate suggests.

For covered sales-based commercial financing, subject to statutory exemptions, New York now requires specific offer disclosures. Financial Services Law § 803 requires disclosure of the financing and disbursement amounts, the finance charge, the total repayment amount, the estimated term, payment amounts, fees, prepayment information, collateral requirements, and an estimated annual percentage rate using the words "annual percentage rate" or "APR." The APR disclosure is a comparison tool; it does not, by itself, turn a purchase of receivables into a loan.

> **ACTION ITEM:** Before signing, demand the gross purchase price, net cash to your account, purchased amount, all fees, expected term, estimated APR where applicable, remittance, reconciliation procedure, and the legal names of the broker and funder.

Where the MCA Has Value

Small businesses do not all have the same access to capital. A merchant may have limited operating history, uneven revenue, weak collateral, a thin credit file, prior defaults, tax issues, a seasonal model, or a need that is too immediate for a bank process. Other merchants may qualify for slower or cheaper financing but still choose an MCA because speed and simplicity create business value. The right question is not merely, "Is the MCA expensive?" The right question is, "Will the capital create more reliable value than it costs, without choking the business before that value arrives?"

Benefit #1: A Simple Application Process

The initial application can often be completed in less than ten minutes. Underwriting is commonly driven by recent business bank statements and may consider deposit volume, average balances, negative days, existing leverage or MCA positions, payment history, chargebacks, industry risk, time in business, and the identity of the owners. The process is not documentation-free, but it is often far lighter than a traditional commercial loan application.

Benefit #2: Fast Funding for Qualified Merchants

A qualified merchant can sometimes receive funds within 24 hours after a complete file is approved and the agreement is signed. That is not a guarantee, but it can matter when a merchant has a time-sensitive opportunity: discounted inventory, emergency equipment, a short marketing window, or labor needed to perform a profitable contract. Speed has value when the opportunity has a deadline.

Benefit #3: Renewals

A renewal is new financing before the existing transaction has been fully delivered. Commonly, part of the new purchase price pays the remaining balance and the merchant receives the net difference. A renewal may add working capital or adjust the remittance, but it can also produce "double dipping" if unpaid finance charges or fees are carried into the new transaction. New York Financial Services Law § 808 requires specified renewal disclosures for covered transactions, including the amount used to pay unpaid finance charges or fees and the reduction in the new disbursement. Focus on net new money—not the headline amount.

Three Analogies

First, convenience. You can walk to a store and buy a sandwich for $10, or order it online and have it delivered to your door for $20. You are not paying double because the sandwich became better. You are paying for speed, convenience, and immediate access. An MCA can work the same way. The premium is only rational if the convenience is worth more than the extra cost.

Second, the car. Imagine your business is a car worth $100,000. You receive $65,000 now and continue to own and operate the car while a portion of the money the car produces is delivered to the purchaser. You keep the asset and its upside. But if the remittance drains the cash needed for fuel, insurance, maintenance, and drivers, the car is sidelined. Keeping the car only helps if it can keep moving.

Third, the bridge. An MCA can be an expensive bridge across a temporary cash-flow gap. A bridge is valuable only if it reaches solid ground: a contracted receivable, a predictable inventory turn, a proven marketing campaign, or another identifiable source of cash. If the bridge ends in midair, the advance does not solve the problem. It only delays the fall and adds a new remittance on the way down.

THE POINT: Use premium-priced capital for a specific, measurable, time-sensitive purpose—not to cover a permanently broken business model.

Why MCAs Are Not Considered Usurious Loans Under New York Law

The precise answer is: a properly structured and actually performed purchase of future receivables is not a loan, so New York usury law does not apply. But the label "MCA" is not magic. A court looks at the transaction in its totality and judges its real character, not merely the title of the agreement.

New York courts begin with a basic rule: usury requires a loan or forbearance. If there is no loan, there can be no usury, even if the contract is expensive. The central question is whether the funding company is absolutely entitled to repayment under all circumstances. If the principal advanced must be repaid no matter what happens to the merchant's receipts, the transaction looks like a loan. If repayment is genuinely contingent on the merchant generating receivables, it looks like a purchase.

The Three Factors New York Courts Usually Weigh

1. Reconciliation. Can the merchant obtain a real adjustment of the remittance upward or downward based on actual receipts? A provision that exists only on paper, is controlled by the funder's sole discretion, or is routinely denied may be treated as illusory.

2. No finite term. If payments truly vary with receipts, the transaction does not end on a fixed date. A lower-revenue period extends the time needed to deliver the purchased amount; higher revenue shortens it.

3. Funder risk if the business fails or enters bankruptcy. A true purchaser assumes the risk that receivables may decline or disappear through no prohibited conduct by the merchant. If bankruptcy, a legitimate shutdown, or an ordinary downturn automatically accelerates the entire balance and triggers recourse, the transaction looks more loan-like.

Recent Appellate Decisions Confirm Both Sides of the Rule

In NewCo Capital Group LLC v. SPE Trading, Inc. (Fourth Department, June 26, 2026), the court held that the agreement was a revenue purchase rather than a usurious loan. The agreement required retroactive and prospective reconciliation upon request, had no finite term, and stated that bankruptcy, a slowdown, or delay in collecting receivables was not itself a breach. Spin Capital, LLC v. Bridgelink Engineering, LLC (Second Department 2026) applied the same framework and reached the same result.

People v. Richmond Capital Group LLC (First Department 2026) shows the other side. Although the documents were styled as MCAs, the court upheld the finding that they were loans where reconciliation was not performed in practice, fixed daily payments were not good-faith estimates of receivables, requests were subject to discretion or denied, and default provisions made the full balance and guaranties enforceable after bankruptcy, nonpayment, or interruption of the business.

The lesson for merchants and funding companies is the same: substance and performance control. A real reconciliation process, a genuinely variable term, and meaningful downside risk to the purchaser support sale treatment. Fixed repayment dressed in purchase language can be recharacterized as a loan, and then usury and other lending rules may become relevant. Separate doctrines—fraud, unconscionability, deceptive practices, breach of contract, and statutory disclosure duties—can also apply even when a transaction is not a loan.

LEGAL CAUTION: This is a general summary, not a legal opinion on any agreement. Small drafting differences and actual conduct can change the result.

The Importance of Financial Education

The best protection is not a clever contract argument after the business is already in distress. It is financial education before the money is accepted. The merchant should know the numbers well enough to explain where cash comes from, where it goes, when it moves, and what will happen if sales are late or low. Use these 25 questions as a written pre-funding checklist.

1. How much unrestricted cash do I have today? **Answer:** Count money that can actually be used. Exclude payroll taxes, sales taxes, customer deposits, escrowed funds, and checks that have not cleared.

2. What was my average daily bank balance during the last 90 days? **Answer:** Use the statements, not memory. Low balances, frequent overdrafts, and negative days reveal how little room exists for another remittance.

3. What are my average monthly gross deposits? **Answer:** Average at least three months and preferably twelve. Remove transfers, owner injections, loan proceeds, and other deposits that are not operating revenue.

4. What is my true monthly operating cash inflow? **Answer:** Start with genuine customer receipts, then subtract refunds, chargebacks, pass-through taxes, and other cash that does not belong to the business.

5. What are my fixed monthly expenses? **Answer:** List rent, base payroll, insurance, software, leases, utilities, minimum debt payments, and every other obligation that continues even when sales fall.

6. What are my variable costs? Answer: Calculate direct costs that move with sales: inventory, materials, commissions, card fees, delivery, and hourly labor. Express them in dollars and as a percentage of revenue.

7. What is my break-even revenue? Answer: Determine the monthly sales needed to cover fixed costs, variable costs, taxes, and existing debt service. Add the proposed MCA remittance and calculate again.

8. What is my gross margin? Answer: Gross margin is revenue minus direct costs, divided by revenue. It shows how much of each sales dollar remains to pay overhead and financing.

9. What is my net cash margin? Answer: Measure actual cash left after operating outflows and taxes. A business can report profit yet have no cash available for daily or weekly remittances.

10. When do customers actually pay? Answer: Review receivables aging and the normal collection cycle. An invoice is not cash; the timing of collection must match the timing of the remittance.

11. How concentrated are my sales? Answer: Calculate the percentage from the largest five customers, locations, products, or platforms. Losing one concentrated source can change the entire forecast.

12. How seasonal or volatile is revenue? Answer: Compare month by month for at least one full year. Underwrite the obligation to an ordinary or low month, not the best month in the file.

13. What does my 13-week cash-flow forecast show? Answer: For each week, list opening cash, expected receipts, operating payments, taxes, debt service, and ending cash. Update it every week.

14. What financing obligations already exist? Answer: List each lender or funder, balance, remittance, maturity or expected term, lien, guaranty, default provision, and reconciliation right.

15. What is my total daily or weekly remittance burden? Answer: Add all positions and convert them into a monthly number. The combined withdrawal—not one agreement viewed alone—is the real cash-flow burden.

16. How much cash remains after all existing obligations? Answer: Calculate the cushion after operating costs and current financing. If it is already negative or razor thin, new money may make the problem worse.

17. Are payroll, taxes, rent, and insurance current? Answer: Treat payroll taxes, sales taxes, rent, insurance, and critical vendor obligations as priority items. Do not mistake money reserved for them as free cash.

18. What large expenses are due in the next 90 days? Answer: Include tax deposits, annual premiums, inventory orders, equipment repairs, renewals, bonuses, legal expenses, and any known one-time payment.

19. How much operating reserve do I have? Answer: Divide unrestricted reserves by average monthly operating outflow. The long-term goal should be enough to cover roughly three months of operations.

20. Exactly how will I use the proceeds? Answer: Create a line-item budget before funding. "Working capital" is not a plan. Assign every dollar to inventory, equipment, marketing, labor, or another specific use.

21. What measurable revenue or savings will that use create? Answer: Estimate incremental gross profit—not merely gross sales. The expected profit or savings should exceed the full dollar cost of the capital with room for error.

22. How quickly will the use of funds turn back into cash? Answer: Map the cash-conversion cycle from spending to sale to collection. The business must receive cash before or while the remittances come due.

23. What happens if revenue is 25% lower or cash is delayed 30 days? Answer: Stress-test the 13-week forecast. Identify the week cash turns negative and decide in advance what expenses can be cut and when reconciliation will be requested.

24. What is the cost of capital in dollars and as an estimated APR? Answer: Compare net cash received with the purchased amount, all fees, and the expected delivery period. Review the statutory disclosure when applicable and ask questions until it is clear.

25. What is my exit and repurchase plan? Answer: Identify the receivables that will fund delivery, the expected completion date, whether a renewal is prohibited or limited, the reserve target, and the stop-loss triggers if the plan misses.

THE POINT: If you cannot answer these questions with real numbers, pause. The fastest capital in the world cannot fix a plan that has not been calculated.

How a Small Business Merchant Can Rise with the MCA

The merchant rises with an MCA by treating it as a disciplined business transaction, not as rescue money. There are three essential steps.

First: Pay Attention and Know What You Are Getting Into

Read the agreement and the disclosure. Know the gross purchase price, the net amount deposited, the purchased amount, every fee, the expected term, the estimated APR where applicable, the specified percentage, the daily or weekly remittance, and the reconciliation procedure. Identify the broker, the actual funding company, the servicer, and the bank account that will be debited. Review events of default, personal guaranties, security interests, forum-selection clauses, and attorney-fee provisions. Do not sign because someone says the offer expires in an hour.

Second: Have a Plan to Repurchase the Receivables Before Accepting the Funds

The plan must explain how the money will generate the receipts needed to complete the transaction. If the money buys inventory, identify the unit cost, selling price, gross margin, sales cycle, and collection date. If it funds marketing, use a channel with measured acquisition cost and conversion history. If it pays old debt, show exactly how the transaction reduces total cash outflow and what new revenue will prevent the same debt from returning. Paying yesterday's bills without changing tomorrow's cash flow is not a plan.

Third: Build a Long-Term Cash-Flow Plan

Maintain a rolling 13-week forecast and a twelve-month operating budget. Set aside reserves before owner distributions. Account for seasonality, a major customer loss, repairs, taxes, chargebacks, and other unexpected expenses. Create trigger points: when ending cash falls below a stated amount, cut discretionary spending, pause expansion, contact the funder, and request reconciliation if the agreement and facts support it. The ideal reserve is approximately three months of operating expenses, built gradually if it does not exist today.

Finally, review the plan every week. Compare actual receipts and expenses to the forecast, explain every material variance, and correct course early. The objective is not merely to survive the next withdrawal. It is to emerge with stronger revenue, better records, lower dependence on emergency capital, and more financing options than you had before.

ACTION ITEM: No funding without a written use-of-funds budget, a 13-week forecast, a downside case, and a named person responsible for monitoring the plan each week.

The Small Business Merchant LIFELINE - the Reconciliation Provision

The reconciliation provision may be the most important clause in an MCA agreement. It is the small business merchant's lifeline when actual receivables fall below the estimate used to set daily or weekly remittances. Yet it may be buried, treated as an afterthought, or not emphasized during the sale - read: swept beneath the rug. A merchant who cannot explain reconciliation may not understand the transaction.

What Reconciliation Does

An MCA ordinarily states a specified percentage of future receivables and an estimated remittance. Suppose the purchased percentage is 10%, estimated weekly receipts are $20,000, and the remittance is $2,000. If actual receipts fall to $10,000, the remittance should fall to $1,000. Some agreements provide a prospective adjustment, some a retroactive credit or refund, and some both. The exact language controls. Reconciliation compares the estimate with actual receipts and conforms collection to the purchased percentage.

Why It Is a Hallmark of a Receivables Purchase

A true receivables purchase transfers a slice of what the business actually generates; it does not create an absolute promise to repay a fixed principal in every circumstance. New York courts examine whether reconciliation is real, whether the term changes with receipts, and whether the funder bears ordinary business-failure risk. In NewCo Capital Group LLC v. SPE Trading, Inc., proper reconciliation required the funder to modify remittances to actual receipts. A genuine decline lowers payments and extends the term. A fixed obligation looks more like a loan.

The Two-Way Bargain

Here is the deal in plain English: if the transaction is a true receivables purchase, the funding company may receive a high commercial return without the transaction being subject to loan-usury rules. But it must accept the downside that makes the deal a purchase. If receipts decline through an ordinary slowdown, the funder's periodic entitlement should decline. It cannot claim the upside of a purchase and the certainty of a loan. The risk runs both ways.

When the Lifeline Is Swept Beneath the Rug

Some funding companies resist reconciliation, bury the instructions, impose technical hurdles, delay, claim discretion, demand catch-up payments at the original level, or otherwise play games. Not every denial is improper; the merchant must follow the agreement. But a paper-only provision is no lifeline. In People v. Richmond Capital Group LLC, mandatory language did not save transactions where reconciliation was not performed in practice and requests were denied. Substance and conduct matter.

Use the Lifeline Before It Is Too Late

Before signing, mark the exact email address, deadline, required documents, lookback period, calculation, and whether relief is prospective, retroactive, or both. At the first sustained decline, follow the procedure exactly: send a written request to the specified address, quote the section, attach the required statements and reports, show the calculation, request a written effective date, and preserve proof. Do not rely only on calls or texts with a broker. Appellate decisions caution that a merchant who never invokes the procedure may later be unable to attack it. Obtain legal advice before stopping ACH withdrawals or changing an account.

BEWARE: The Personal Guaranty

There is also typically a personal guaranty. New York courts examine its actual language, and the MCA forms commonly litigated are often guaranties of performance, not unconditional guaranties of payment or collection. The guarantor may promise that the merchant will deposit receipts into the designated account, keep the account open, provide records, refrain from changing processors or diverting receipts, avoid blocking authorized debits, and comply with other performance covenants.

If receivables genuinely dry up because the business slows or fails, and there is no prohibited conduct, a true purchaser ordinarily bears that risk to the extent the agreement says so.

But conduct can change the case. If funds are diverted, accounts are closed, processors are changed, debits are blocked, records are withheld, or another act disrupts payment, a court could find the merchant and guarantor liable for a performance breach even though receivables later disappeared. Business failure and interference with collection are not the same. Use reconciliation promptly, keep receipts in the required account, maintain records, communicate in writing, and obtain advice before taking self-help.

> **LIFELINE RULE:** If receipts fall, do not disappear, divert deposits, or close the account. Follow the written reconciliation procedure exactly, document the decline, preserve every communication, and obtain advice before acting.

Conclusion

The merchant cash advance rose because small businesses needed something the traditional market did not always provide: a simple application, rapid underwriting, and fast access to capital tied to business receipts. Those benefits are real. So are the costs and the risks.

The industry earns a bad reputation when brokers use bait, merchants do not understand the cost, reconciliation exists only on paper, or new money is used to postpone a problem instead of produce revenue. The industry rises when offers are transparent, agreements operate as written, and merchants are educated before they sign.

A small business merchant rises with the MCA by knowing the numbers, understanding the agreement, using the proceeds for a measurable purpose, and building reserves so that the next decision is made from strength rather than panic. It uses reconciliation promptly when receipts decline and treats the personal guaranty as a warning against diversion or self-help. An MCA is not inherently good or bad. It is a tool. Use it only when the plan is stronger than the pressure to take the money.

If you have questions about an MCA agreement, a reconciliation request, a funding dispute, or a business relationship, call:

The Lawyer James J. DeCristofaro, Esq., P.C. at (212) 500-1891 or email james@thelawyerjames.com. Office telephone coverage is available 24 hours.

Thank you for reading and GOOD LUCK!

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For questions, call:
The Lawyer James J. DeCristofaro, Esq., P.C.
at (212) 500-1891
or email james@thelawyerjames.com.