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The Dark Side of Sale Leasebacks: Overly Rosy and Sparring for a Fight

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Table of Contents

I	BACKGROUND AND OBJECTIVES	5
II	SALE-LEASEBACK AND THE BANKRUPTCY CODE	8
III	SALE-LEASEBACK: LITIGATION CONTEXT	17
IV	SALE-LEASEBACK: A CORPORATE FINANCE PERSPECTIVE	28
V	INTERNAL REVENUE SERVICE GUIDANCE	47
VI	TREASURY REGULATION	52
VII	ACCOUNTING TREATMENT: US GAAP – ASC 842, PWC LEASES GUIDE	61
VIII	ACCOUNTING TREATMENT: IFRS 16, KPMG SALE AND LEASEBACK GUIDE	66
IX	APPENDIX	70
X	PANELISTS	71
XI	Q&A	76



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Description and Learning Objectives:

- Sale leaseback transactions are often marketed as a win-win—unlocking capital while allowing companies to retain operational control of critical assets. But beneath the surface, these structures can carry significant and sometimes underestimated risks. This panel takes a hard look at the “dark side” of sale-leasebacks, exploring how transactions that appear overly rosy at inception can later become the focal point of financial distress and legal battles.
- Panelists will examine the operational ramifications of sale-leasebacks, including constraints on flexibility, long-term cost burdens, and impacts on liquidity and capital adequacy. The discussion will also address litigation risks, particularly claims tied to solvency, ability to pay debts, and allegations of fraudulent conveyance or improper capitalization. As sale-leasebacks continue to gain traction—especially in capital-intensive and distressed environments—the panel will explore why this structure remains attractive and how it is reflected on a company’s financial statements from an accounting and disclosure perspective.
- Drawing on real-world case studies, the session will highlight how sale-leaseback transactions have been challenged in court and how judges have ultimately resolved these disputes, offering practical lessons for executives, investors, and advisors alike.

5



Learning Objectives:

- What is a Sale Lease Back?
- Legal Battles Related to Sale Lease Backs
- Litigation Matters Associated with Lease Backs
- Role of Sale Lease Backs in Bankruptcy
- Financial Aspects and Implications of Sale Lease Backs

6



What is a Sale-Leaseback?

“In a sale and leaseback transaction, one party (the seller-lessee) sells an asset it owns to another party (the buyer-lessor) and simultaneously leases back all or a portion of the same asset for all, or part of, the asset’s remaining economic life. The seller-lessee transfers legal ownership of the asset to the buyer-lessor in exchange for consideration, and then makes periodic rental payments to the buyer-lessor to retain the use of the asset.”

Leaseback
[lēs 'bak]

An arrangement in which the company that sells an asset can lease back that same asset from the purchaser.

Investopedia

Source: Imagine - Investopedia Editors. "Leaseback." Investopedia; Quotes - PwC. (2024). Sale and leaseback transactions: Introduction (ASC 842). PwC Viewpoint.

7



Sale-Leaseback and the Bankruptcy Code

8



Sale-Leaseback and the Bankruptcy Code

- Several sections of the Bankruptcy Code are implicated when a sale-leaseback involving nonresidential real property occurs prior to a bankruptcy filing.
- Section 365(d)(3) of the Bankruptcy Code requires timely performance of all the obligations of the debtor arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1). “The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the order for relief, but the time for performance shall not be extended beyond such 60-day period.” 11 U.S.C. § 365(d)(3).
- Section 365(d)(4)(A) of the Bankruptcy Code provides that an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected unless the lease is assumed “by the earlier of (i) the date that is 120 days after the date of the order for relief; or (ii) the date of the entry of an order confirming a plan.” The Court may extend the period for an additional 90 days upon motion of the trustee or lessor for cause and may grant subsequent extensions of time only with the prior written consent of the lessor. 11 U.S.C. § 365(d)(4)(B)(i)-(ii).
- Section 502(b)(6) of the Bankruptcy Code limits the claims for damages by a lessor of real property to:
 - A. “[T]he rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of — (i) the date of the filing of the petition; and (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus,
 - B. [A]ny unpaid rent due under such lease, without acceleration, on the earlier of such dates.” 11 U.S.C. § 502(b)(6)(A)-(B).

9



The § 365(d)(4) True Lease Doctrine — Legal Roadmap

THE FOUNDATION	EXTENDS & CONSIDERS EQUITIES	MULTI-FACTOR TEST	SYNTHESIS
<p>804 F.2d 193 (2d Cir. 1986)</p> <p>In re PCH Assocs.</p> <ul style="list-style-type: none"> • Establishes the economic substance test to determine existence of a “true lease” • § 365(d)(4) applies only to bona fide leases — not financing schemes labeled as leases • Informs analysis by reference to § 502 <p>“Mindful that the structure of the transaction was based on the tax considerations and the investment requirements of both parties, and viewing the transaction as a whole, we hold that the Ground Lease and Sale-Leaseback Agreement do not constitute a true lease. Therefore section 365(d)(3), (4) of the Bankruptcy Code has no application here. Whether these contracts create a joint venture, a security agreement, or some other form of investment vehicle need not be decided here.” <i>PCH</i>, 804 F.2d at 201.</p>	<p>852 F.2d 1179n (9th Cir. 1988)</p> <p>In re Moreggia & Sons, Inc.</p> <ul style="list-style-type: none"> • Adopts PCH economic substance test in the 9th Circuit • Adds that simply meeting the state law definition of a lease does not determine whether § 365 applies; bankruptcy court has equitable powers to look through the form to the substance of the transaction • Equitable considerations (in this case, the ‘prepaid right of possession’ and forfeiture) may inform the outcome <p>“[A] forfeiture of the ... property interest, after full performance and payment, merely for failure to assume would be grossly inequitable.” <i>Moreggia & Sons</i>, 852 F.2d at 1186</p>	<p>936 F.2d 744 (2d Cir. 1990)</p> <p>Int’l Trade Admin. v. RPI</p> <ul style="list-style-type: none"> • Refines PCH “economic substance” test: no single factor is dispositive • Economic substance = totality analysis • Rejects parties’ intent in entering into the lease removes it from § 365 analysis • Affirms relevance of equitable considerations <p>“We reject...the Bank’s argument that the lease is not a bona fide lease for the purposes of [§ 365] because RPI entered the lease for educational, rather than commercial or profit-oriented goals.” <i>Int’l Trade Admin.</i>, 936 F.2d at 749.</p>	<p>155 B.R. 824 (Bankr. N.D.N.Y. 1993)</p> <p>In re Hotel Syracuse, Inc.</p> <ul style="list-style-type: none"> • Applies PCH/Moreggia/RPI to IDA conduit financing • Rejects estoppel and res judicata bars • Confirms § 365 exclusivity • Synthesizes relevant factors into consolidated list <p>“[T]he proper focus in determining whether Code § 365 is applicable to a particular agreement is whether the parties intended to impose obligations and confer rights significantly different from those arising from the ordinary landlord/tenant relationship. In making this determination a court is not constrained by the labels placed upon the transaction by the parties. Rather, the court must look to the economic substance of the transaction to determine whether it is in fact a “true” lease.” <i>Hotel Syracuse</i>, 155 B.R. at 838.</p>

10



How the Cases Differ — Comparative Analysis

VALCON 2026 · § 365(D)(4) TRUE LEASE DOCTRINE — EVOLUTION

Dimension	PCH Associates (2d Cir. 1986)	In re Moreggia (9th Cir. 1988)	RPI / Kubar (2d Cir. 1991)	Hotel Syracuse (Bankr. 1993)
Transaction Type	Classic private sale-leaseback (land only; hotel retained)	Municipal relocation 'use rights' — not a true sale-leaseback	99-yr prepaid ground lease; manufacturing build-out	IDA conduit bond financing; full hotel title transfer + leaseback
Primary Motivation	Tax benefits + guaranteed investor return (12% ROI)	City legal obligation to relocate displaced businesses	Educational objectives + manufacturing near campus	Tax-exempt bond financing for hotel renovation/expansion
Key 'Not True Lease' Factors	Rent = investor ROI; price ≠ land value; lessee bore all ownership risk	No future rent obligation; de minimis remaining duties; prepaid possession	99-yr term + fully prepaid rent in yr 1-3; economic substance = sale for term of years	Rent = bond amortization; \$100 buyback; all ownership obligations on debtor; tax-structured
Unique Legal Issue	Foundational 'true lease' standard; court declines to label the transaction	Recognizes equitable considerations are relevant to analysis; state law standards do not govern outcome under § 365	Affirms that no single factor is dispositive; triple-net caveat; parties' intent or purpose for entering into lease not relevant	Res judicata / estoppel considerations from state court litigation of limited effect for § 365 analysis in bankruptcy; synthesis of doctrine and governing factors

11



In re PCH Assocs., 604 F.2d 193 (2d Cir. 1986)

- There was a sale-leaseback arrangement between Liona Corporation, N.V. (“Liona”) and PCH Associates (“PCH”) whereby the land owned by PCH, upon which there was a hotel, was sold to Purchase Estates, Ltd. and leased back to PCH.¹ Purchase Estates, Ltd. assigned its ownership interest in the land to Liona. The hotel was owned and managed by PCH. A ground release (“Ground Lease”) was also entered into by Liona and PCH. PCH filed for Chapter 11.
- Liona sought to enforce PCH’s obligations under sections §§ 365(d)(3) and (4) of the Bankruptcy Code by filing an application seeking an order directing PCH to continue paying rent to Liona. PCH commenced a declaratory judgment action seeking a determination that the Ground Lease was not an unexpired nonresidential lease but was a joint venture or a subordinate financing scheme.
- The Bankruptcy Court found for PCH, finding that the arrangement was that of a joint venture and therefore no landlord/tenant relationship existed. The decision was affirmed by the District Court. The Second Circuit held that these sections of the Bankruptcy Code only apply to a “true” or “bona fide” lease and that the Ground Lease was not a true lease.
- The Second Circuit noted that there is little evidence as to what Congress envisioned by the term lease of nonresidential real property.² The Court noted that it must consider the economic substance of the transaction and not its form.
- The Court held that “[t]he transaction was structured as a ground lease to accomplish a trade-off between tax benefits for PCH and a higher guaranteed return, without management concerns, for Liona.”³ The rent was not calculated to compensate Liona for the use of the property but to insure Liona’s return on its investment. The Court also held that the “purchase price” was not based on market rate for the land but was calculated as the amount necessary to finance the transaction. The Court also noted that PCH assumed many of the obligations associated with ownership of the land, including paying property taxes and insurance.
- The Court affirmed the District Court’s decision although it did not determine that the agreement was a joint venture.⁴

(1) In re PCH Assocs., 604 F.2d 193, 195-200 (2d Cir. 1986); (2) *Id.* at 199; (3) *Id.* at 200; (4) *Id.*

12



In re Moreggia & Sons, Inc., 852 F.2d 1179 (9th Cir. 1988)

- The City of San Francisco Market Corporation (the “Market Corporation”) is an organization established to provide help relocating businesses displaced by the City’s Golden Gate Redevelopment Project.⁵ Moreggia & Sons, Inc. (“Moreggia”) was a displaced business which entered into an agreement in 1962 with the Market Corporation for two store units in the Produce Terminal for a total term of 50 years. On February 2, 1984, Moreggia assigned its rights to American Poultry and American Poultry assigned its rights to two other store units in the Produce Terminal.
- The rent was \$275 per month for each store unit. The rent was calculated to provide the funds necessary to retire the bonds issued by the Market Corporation. The obligation to pay rent ceased upon the retirement of the Market Corporation’s bonded indebtedness.
- The agreement provided for Moreggia to pay for parking, utility charges and a share of any possessory interest taxes assessed against the Market Corporation. If the Produce Terminal’s costs exceeded the combined value of revenues and reserves, the lessee was required to pay its pro-rata share of the excess costs.⁶
- Moreggia filed for Chapter 11 in 1985. The case was then converted to a Chapter 7 proceeding. The trustee filed a motion to sell the lease and to assume (if necessary) and assign the lease. The Market Corporation sought reconsideration of the Bankruptcy Court’s order extending the time for the trustee to assume or reject the lease. The Bankruptcy Court approved the sale of the lease, denied the reconsideration motion, and held that if Section 365(d)(4) applied, the Market Corporation had waived it. The District Court affirmed the Bankruptcy Court’s conclusion that the lease is not an unexpired lease or executory contract subject to Section 365(d)(4).
- The Market Corporation appealed to the Ninth Circuit. The Market Corporation asserted that state law determines whether an agreement is a true lease.⁷ The Ninth Circuit determined that the fact that the agreement would qualify as a lease under applicable state law (California law) was not dispositive and that the Court must conduct an analysis of the economic substance of the transaction to determine if a true lease exists for purposes of the Bankruptcy Code.⁸
- The Ninth Circuit found that no true landlord tenant relationship was ever intended or created by the agreement.⁹ The Court cited to the fact that the “basic rent” was set at \$275 per produce stall until the bonds sold to finance the project were paid in full. The bond indebtedness had been retired and there was no longer the requirement to pay fixed monthly rent. The Court also found that the agreement was not an executory contract.

(5) *In re Moreggia & Sons, Inc.*, 852 F.2d 1179, 1180 (9th Cir. 1988); (6) *Id.* at 1181; (7) *Id.* at 1182; (8) *Id.* at 1183; (9) *Id.* at 1184.



In re International Trade Admin. v. Rensselaer Polytechnic Inst., 936 F.2d 744 (2d Cir. 1991)

- Pacamor Bearings, Inc. (“Pacamor”) entered into a ground lease for property belonging to Rensselaer Polytechnic Institute (“RPI”).¹⁰ Pacamor planned to construct a ball-bearing manufacturing facility on the land. Pacamor assigned its rights under the lease to Kubar Bearings, Inc. (“Kubar” or the “debtor”), which RPI consented to.
- The ground lease was for 99 years with a base rent of \$97,830 for the whole term, to be paid in three installments within the first three years of the lease. Under the lease, the tenant was also required to pay all taxes, assessments, water and sewer charges, vault license fees or rentals, levies, license and permit fees, and all other governmental impositions and charges.
- RPI retained the right to approve leasehold improvements and assignments. Upon expiration or earlier termination of the lease, all improvements which the tenant constructed on the land became property of RPI.
- In 1986, Kubar and Pacamor filed for Chapter 11. The case was converted to a Chapter 7 case in 1989. In 1990, the trustee sought an extension of time in which to assume or reject the ground lease. The Bankruptcy Court denied the motion. The District Court affirmed the denial on appeal.
- The Second Circuit held that Section 365(d)(4) of the Bankruptcy Code did not apply to the lease in question and reversed the District Court.¹¹ The Court found that the lower courts erred in holding that the lease qualifies as a “true” or “bona fide” lease for purposes of Section 365(d) (4) of the Bankruptcy Code. The Court focused on the 99-year term of the lease and the payment of all of the rent for the term of the lease in the first three years. The Court held that the lease was a hybrid or an amalgam containing characteristics of both a lease and a sale of property.

(10) *In re International Trade Admin. v. Rensselaer Polytechnic Inst.*, 936 F.2d 744, 746 (2d Cir. 1991); (11) *Id.* at 748.



***In re International Trade Admin.*, 936 F.2d 744 (2d Cir. 1991)**

- The Court analyzed the lease in the context of the legislative history of Section 502(b), which held that sales of property disguised as leases should not be given the preferential treatment given to leases under Section 502(b). The legislative history indicated that “the fact that the lessee assumes and discharges substantially all the risks and obligations ordinarily attributed to outright ownership of the property is more indicative of a financing transaction than of a true lease.”¹²
- The Court noted that although the indicia of ownership in the lessee was a factor in their decision, it should not be viewed in isolation because of the common use of triple net leases.¹³ The Court noted that the prepayment of the lease in the first three years is why it is different than a triple net lease. That factor along with the lengthy term and the allocation of responsibilities between landlord and tenant lead the Court to conclude that “the economic substance was closer to a sale for a term of years than a lease.”¹⁴

(12) *Id.* at 750; (13) *Id.* at 751; (14) *Id.*



***In re Hotel Syracuse, Inc.*, 155 B.R. 824 (Bankr. N.D.N.Y. 1993)**

- Hotel Syracuse, Inc. (the “Debtor”) filed Chapter 11 on October 26, 1990. The Debtor operated a 725-room hotel complex comprised of a 200-room Hilton hotel annex and the original Hotel Syracuse.¹⁵
- The City of Syracuse Industrial Development Agency (“SIDA”) and Syracuse Economic Development Corporation (“SEDCO”) sought a determination as to whether a lease agreement dated May 2, 1981, constituted a “true lease” for purposes of Section 365(d)(4) in the form of summary judgment.
- The Northern District of New York Bankruptcy Court held that the fact that the lease is a rental agreement to use real property, the state definition of a lease, is not in and of itself sufficient to establish the applicability of Section 365(d)(4). “Merely meeting the state definition of a lease does not mandate the unthinking application of §365(d)(4).”¹⁶ The Court then examined whether the parties intended to impose obligations and confer rights significantly different than the ordinary landlord/tenant relationship.
- The Court applied the economic substance test to the lease and held that the lease was not a “true lease.”¹⁷

(15) *In re Hotel Syracuse, Inc.*, 155 B.R. 824, 828 (Bankr. N.D.N.Y. 1993); (16) *Id.* at 838; (17) *Id.*



Sale-Leaseback: Litigation Context

17



Why This Matters Now

SALE-LEASEBACK IS A GROWING LIQUIDITY TOOL — AND THE LITIGATION FOLLOWS THE VOLUME

THE MARKET ENVIRONMENT

- Sale-leaseback has become an increasingly prominent liquidity tool across capital-intensive sectors — retail, healthcare, industrials, hospitality — as companies look to monetize owned real estate without relinquishing operational control
 - In higher-rate, tighter-credit environments, sale-leaseback is frequently marketed as an alternative to traditional debt financing — particularly for companies with significant real property assets
 - Private credit funds and net-lease REITs have become active counterparties in these transactions — a structural shift from traditional bank-led financing
 - Operating models that depend heavily on leased core assets carry long-term fixed cost obligations that may not be visible on the income statement until financial stress arrives
 - IDA and municipal conduit financing structures — the Hotel Syracuse model — continue to be used in economic development contexts; the legal risks examined here are not historical relics
- [Sale Leaseback Market Gains Momentum in 2025 as M&A Activity Returns](#)
[Sale Leaseback Activity Surges in 2025 - CRE Daily](#)
[Sale-Leaseback Activity Expected to Grow as Capital Conditions Improve in 2026 | W. P. Carey](#)
[Sale-Leaseback Offers Compelling Alternative | Publications | Kirkland & Ellis LLP](#)

WHEN THE DEAL GOES WRONG

- At inception, sale-leaseback looks like a win-win — seller unlocks capital, buyer gets a long-term tenant. In distress, that calculus inverts sharply
 - The lessee’s long-term rent obligation becomes a fixed cost burden that accelerates insolvency — lease payments continue even when revenue collapses
 - In bankruptcy, the central fight is whether the “lease” is a true lease under § 365(d)(4) or something else (like a secured financing)
 - If it is a true lease, the debtor must assume or reject within the applicable statutory timeframe, often a forcing function that decides the restructuring
 - If it is NOT a true lease, the structure is recharacterized as a financing — the “lessor” becomes an unsecured or secured creditor, not a landlord with termination rights
 - Fraudulent conveyance, solvency, and improper capitalization claims shadow every distressed sale-leaseback — particularly where the transaction occurred near insolvency
- [Simply Speaking \(December 2019\) — Recharacterization - Sale-Leaseback Transactions - Seward & Kissel LLP](#)
[Sale Leaseback Transactions – https://www.paulweiss.com/media/5e1b5eg4/23feb15_nyli.pdf](#)
[https://www.clearygottlieb.com/news-and-insights/publication-listing/sale-leasebacks-a-tool-for-the-times#:~:text=Whether%20the%20debt%20and%20lien,treated%20as%20a%20secured%20lender.https://ilj.law.indiana.edu/articles/61/61_4_Hodge.pdf](#)

18



How Bankruptcy Affects Treatment

Bankruptcy Treatment if True Lease

- **Assumption or Rejection Under § 365.** The debtor-in-possession (or trustee) has the right to **assume or reject** the lease, subject to court approval. Assumption allows the debtor to continue operating at the leased premises on the existing lease terms; rejection is treated as a prepetition breach.
- **The § 365(d)(4) Clock for Nonresidential Real Property.** If the debtor is the lessee under an unexpired lease of **nonresidential real property**, § 365(d)(4) imposes a strict deadline: the lease must be assumed within **120 days** after the order for relief (extendable by 90 days for cause, and further only with lessor consent). Failure to assume on time results in **deemed rejection**, and the debtor must **immediately surrender** the property.
- **Timely Performance of Postpetition Obligations § 365(d)(3).** Until a nonresidential real property lease is assumed or rejected, § 365(d)(3) requires the trustee/debtor to **timely perform** all obligations arising after the order for relief, including paying rent on schedule.
- **Cure and Adequate Assurance on Assumption — § 365(b).** To assume, the debtor must (i) cure defaults (or provide adequate assurance of prompt cure), (ii) **compensate** the lessor for actual pecuniary loss, and (iii) provide **adequate assurance of future performance**.
- **Rejection Damages — § 502(b)(6) Cap.** If the lease is rejected, the lessor has a prepetition unsecured claim for damages. For leases of **real property**, § 502(b)(6) **caps** the lessor's claim at the greater of (a) one year's rent or (b) 15% of the remaining lease term (not to exceed three years), plus any unpaid rent due as of the filing date.

Bankruptcy Treatment if Recharacterized as "Something Else"

- **No § 365(d)(4) deemed-rejection clock** — the debtor is not forced to surrender the property on a statutory timetable.
- **No § 365(d)(3) "timely perform" obligation** — the debtor's postpetition payment obligation is governed by adequate protection (§§ 361, 363) rather than the lease's rent schedule.
- **§ 506 bifurcation** — the "lessor's" claim may be split into a secured claim (to the extent of collateral value) and an unsecured deficiency claim for any shortfall .
- **Automatic stay governs** — the counterparty cannot foreclose or repossess; it must seek stay relief under § 362(d).
- **§ 502(b)(6) landlord damages cap likely inapplicable** — the counterparty may assert the full debt amount, though recovery is still constrained by collateral value for the secured portion.
- **Plan treatment as secured debt** — the debtor can propose to restructure the obligation through a Chapter 11 plan, subject to the cramdown and confirmation standards of §§ 1129(a) and (b).

19



Sale-Lease Backs in Bankruptcy: True Lease or Something Else?

	True Lease	Recharacterized as Financing or Something Else
Debtor/Lessee	<ul style="list-style-type: none"> ▪ Must assume or reject on § 365(d)(4) timetable ▪ Must pay rent currently under § 365(d)(3) ▪ Rejection = surrender of property but damages are capped under § 502(b)(6) 	<ul style="list-style-type: none"> ▪ Keeps the property (subject to stay/adequate protection) ▪ Can restructure the debt through a plan ▪ Adequate protection payments may be less than contractual "rent"
Counterparty/"Lessor"	<ul style="list-style-type: none"> ▪ Powerful leverage via § 365(d)(4) deemed rejection and surrender ▪ Entitled to current rent under § 365(d)(3) ▪ If rejected, has a capped unsecured claim 	<ul style="list-style-type: none"> ▪ Loses landlord leverage ▪ Treated as a secured lender whose recovery is driven by collateral value ▪ Must litigate adequate protection and stay relief rather than invoke § 365 lease protections

20



Sale Leaseback Litigation: Proving the Case

- The evidentiary record of many cases on recharacterization include expert testimony on the commonality of the particular lease provisions as well as an analysis of the overall structure of the particular lease in question. *In re PCH Assocs.* was resolved after a three-day trial on the merits, including extensive expert testimony.¹⁸
 - See *In re Barney's, Inc.*, 206 B.R. 328, 335 (Bankr. S.D.N.Y. 1997) (discussing the defendant's affidavit of an expert in real estate and appraisal consulting who opined that various terms in the agreements were not uncommon in retail lease transactions)
 - *In re LATAM Airlines Grp. S.A.*, 2022 WL 272167, at *23 (Bankr. S.D.N.Y. Jan. 28, 2022) (discussing the potential success of a recharacterization claim of a lease and comparing expert testimony provided by opposing parties)
- Testimony from principals, by itself, likely does not suffice

(18) *In re PCH Assocs.*, 55 B.R. 273, 280 (S.D.N.Y. 1985).



Sale Leaseback Litigation: Expert Testimony

- Real Estate Appraisers and Valuation Experts
 - Fair market value of the property
- Accounting and Financial Experts
 - How the transaction was characterized on the parties' books, the tax treatment of the arrangement, or the financial impact of the deal (e.g., the classification of a lease can determine whether a transaction is treated as a sale or a financing for financial reporting purposes)
 - An accounting expert might opine on the economic substance of the transaction
- Commercial Real Estate Brokers and Market Experts
 - Prevailing market conditions, including comparable lease rates, capitalization rates, and the marketing process (or lack thereof) used to consummate the deal
 - Industry specific practices may be relevant (e.g., data centers versus senior housing)
- Damages Experts
 - Quantify the harm suffered by a party
 - In a breach-of-contract action arising from a sale-leaseback, a damages expert might calculate the present value of lost rental income, the cost of re-leasing the property, or the diminution in the property's value caused by the tenant's failure to maintain the premises
 - In a fraudulent transfer action, a damages expert might calculate the difference between the price paid and the property's fair market value to establish the amount recoverable by the estate
- Forensic Accounting
 - Identify use of sale leaseback transactions to manipulate financial statements, overstate earnings, or otherwise misstate financial health of a company (e.g., where sale leaseback transactions may have supported a Ponzi scheme)



Case Study 1: Red Lobster and the Constraints of Master Lease Structures

- Red Lobster's recent restructuring highlights how legacy master lease arrangements can materially constrain an operator's ability to rationalize its real estate footprint. Many of the company's restaurant locations are governed by master leases executed more than a decade ago, bundling multiple properties under a single contractual framework. As Red Lobster sought to close underperforming stores, both during and after its 2024 Chapter 11 filing, these master leases emerged as a central obstacle. Unlike standalone leases, master leases typically limit a tenant's ability to selectively exit individual locations without landlord consent, effectively tying the economic fate of profitable and unprofitable sites together.
- The case underscores the tension between Section 365 of the Bankruptcy Code, which allows a debtor to assume or reject executory contracts and leases, and state law principles governing contract severability. Bankruptcy law generally requires assumption or rejection of an entire lease, not cherry-picking favorable terms. Whether a master lease can be "broken apart" therefore turns on state law and, critically, on the parties' intent as reflected in the lease language. Courts have reached different outcomes in prior restaurant bankruptcies: in *Buffets Holdings*,¹⁹ master leases were deemed indivisible due to provisions such as joint and several rent obligations and economic interdependence among locations; in *Cafeteria Operators*, by contrast, the Bankruptcy Court for the Northern District of Texas found the master lease divisible where rent, terms, and surrender obligations were allocated on a property-by-property basis.²⁰
- For Red Lobster and similarly situated operators, this legal uncertainty has practical negotiating consequences even outside of bankruptcy. The risk that a court could later deem a master lease severable may incentivize landlords to negotiate modifications rather than test unfavorable precedent in a future Chapter 11. Conversely, the inability to shed loss-making locations under a master lease can depress enterprise value and complicate turnaround or sale strategies. The Red Lobster situation illustrates a broader lesson for both tenants and landlords: master lease structures may provide perceived stability at inception, but in distress scenarios they can become a focal point of value erosion, litigation risk, and leverage in restructuring negotiations.

Source: Red Lobster's master lease dilemma presents legal implications that could cut both ways – Legal Analysis - ION Analytics. <https://ionanalytics.com/insights/debtwire/red-lobsters-master-lease-dilemma-presents-legal-implications-that-could-cut-both-ways-legal-analysis/>
 (19) *In re Buffets Holdings, Inc.*, 387 B.R. 115, 123-24 (Bankr. D. Del. 2008)
 (20) *In re California Operators, L.P.*, 299 B.R. 384, 390-91 (Bankr. N.D. Tex. 2003)

23



Sale Leaseback Litigation: Case Study 2 - *Steward Health Care Sys., LLC, et al.*, Case No. 4:24-bk-90213 (Bankr. N.D. Tex. 2024)

- Steward was the **largest private, physician-owned health care network** in the United States, providing care to more than two million patients annually, and employing a workforce of nearly 30,000.
 - It filed chapter 11 on May 6, 2024, in the Bankruptcy Court for the Southern District of Texas before Honorable Christopher M. Lopez.²¹
 - The sale-leaseback dispute in the Steward Health Care System LLC chapter 11 cases was one of the most contentious and central issues throughout the proceedings.
- First Day Hearing (May 7, 2024)**
 - The dispute was raised at the first day hearing on May 7, 2024, in objections to the structure of the proposed \$300 million DIP financing from Medical Properties Trust (MPT) — Steward's landlord for certain but not all of its locations. The prepetition ABL lenders filed a limited DIP objection arguing that MPT was attempting to "slip" in a provision that would predetermine the allocation of future hospital sale proceeds in MPT's favor.²²
 - MPT argued that Steward's 31 hospitals were subject to one of two MPT master leases, and the unitary lease structure meant a location "can't be severed without MPT's consent."²³ MPT described the question of how and under what circumstances MPT would consent to severance of a facility in the context of a sale as a "Gordian knot."²⁴
 - Judge Lopez approved the DIP on an interim basis after debtors' counsel assured him that no sales would close before the final hearing, with the judge remarking:

*"I'm comfortable with ... all we're doing is preserving status quo. It's an interim order. And a representation on an interim basis. But this provision isn't going to get implicated ... No, that's what I needed to know ... we're going to cross this bridge when we get to a final."*²⁵

(21) See *Steward Health Care Sys., LLC, et al.*, Case No. 4:24-bk-90213 (Bankr. N.D. Tex. 2024), Dkt. 1; (22) See Dkt. 71; (23) Dkt. 146, at 123:3-4 (transcript of May 6, 2024 hearing before Lopez, C.); (24) *Id.* at 123:3-8; (25) *Id.* at 119:24-120:8.

24



Sale Leaseback Litigation: Case Study 2 - Steward Health Care Sys., LLC, et al., Case No. 4:24-bk-90213 (Bankr. N.D. Tex. 2024)

- **Mediation Motion (June 12, 2024)**
 - The Steward filed a motion requesting court-directed mediation of the allocation disputes among the debtors, MPT, the ABL lenders, the FILO lenders, and the official committee of unsecured creditors.²⁶ The debtors argued that a global resolution was “critical” given the “far-reaching implications of this issue on the sale process and recoveries to all stakeholders.”²⁷
 - The Honorable Judge Marvin Isgur was proposed to conduct the mediation, with a proposed start date of June 19, 2024.²⁸ The UCC also signaled its intent to examine whether the master leases were truly leases or should be recharacterized as financings.
- **Master Lease Rejection and Allocation Disputes (July–August 2024)**
 - Judge Lopez approved the rejection of “Master Lease II” — governing MPT’s Massachusetts hospital real estate — to facilitate the going-concern sale of six hospitals and the closure of two others.²⁹
 - The motion for rejection was uncontested *after* Steward and MPT agreed to defer their dispute over the effective date of the rejection to a future hearing. MPT also pointed out that Steward needed its consent to sever the master lease to allow for partial disposition of properties.
 - The UCC was expected to challenge whether the master leases were true leases or “disguised financings.” The debtors noted that if the master leases were recharacterized as financings, “all of the value of sale transactions will inure to the benefit of the Debtors’ estates and MPT would simply be a claimant to that value in accordance with the applicable priority scheme.” The debtors also reserved rights to seek equitable subordination of MPT’s claims.

(26) Dkt. 776 (debtors’ mediation motion); (27) *Id.*; (28) Dkt. 829 (Order granting mediation); (29) See Dkt. 1782.



Sale Leaseback Litigation: Case Study 2 - Steward Health Care Sys., LLC, et al., Case No. 4:24-bk-90213 (Bankr. N.D. Tex. 2024)

- **Adversary Complaint Against MPT (August 19, 2024)**
 - On August 19, 2024, Steward filed an adversary complaint directly against MPT and its lessor affiliates, seeking declaratory judgments to resolve disputes over the allocation of value between real estate and hospital operations.²⁹
 - The complaint alleged that MPT had interfered with the bidding and sales process by communicating directly with bidders without Steward’s consent, directing bidders to allocate all value to MPT’s real estate, and pressuring Steward to accede to its demands. Steward alleged MPT’s actions caused at least one potential bidder to rescind its bid and resulted in bids allocating little to no value to hospital operations.
- **Global Settlement (September 2024)**
 - After mediation overseen by Judge Marvin Isgur and weeks of intense negotiations, the parties reached a fully consensual global settlement, which Judge Lopez approved on an interim basis at a hearing on September 11, 2024, characterizing it as “nothing short of remarkable.”³⁰
 - Debtors described getting to the settlement as “extraordinarily difficult” and said it ensured the debtors would have the necessary liquidity and stability to begin negotiating a plan of reorganization.³¹
 - Key elements of the settlement included:
 - Resolution of the threat of lease recharacterization litigation against MPT
 - Delivery of \$395 million of net proceeds from the debtors’ “Space Coast” hospitals sale
 - MPT’s waiver of billions of dollars of claims against the estates

(29) Dkt. 2031; (30) Dkt. 2643, at 53:22-23 (transcript of September 11, 2024 hearing before Lopez, C.); (31) *Id.* at 51:19-20.



Sale Leaseback Litigation: Case Study 2 - *Steward Health Care Sys., LLC, et al.*, Case No. 4:24-bk-90213 (Bankr. N.D. Tex. 2024)

▪ Ongoing Litigation Claims Against MPT Post-Settlement

- The global settlement resolved numerous disputes among the parties, including regarding the disposition and allocation of value of the Debtors' hospitals in Pennsylvania, Ohio, Louisiana, Arkansas, Arizona, Texas, and Florida (the "Master Lease I Hospitals") and the Creditors' Committee's Challenges. The Court approved the settlement on a final basis on September 18, 2024.³²
- MPT remained a target of the estates' litigation efforts. It was listed among the non-released parties under the debtors' confirmed plan, alongside former CEO, the equity sponsor, and a captive insurer, preserving the estates' ability to pursue these claims through the litigation trust.³³
- The investigation subcommittee identified MPT as a non-released party under the plan, with the debtors alleging that MPT participated in a series of transactions that constituted fraudulent conveyances.³⁴
- These included MPT arranging \$1.25 billion in contributions to Steward Health Care System (SHCS) in exchange for hospitals, mortgages, or leaseback of properties and equity, with the "lion's share of the proceeds" ultimately paid out to insiders, among other challenged transactions.³⁵
- The debtors also alleged that by 2019, Steward operated while insolvent and undercapitalized "only with the substantial assistance of MPT" through a series of sale-leaseback transactions.³⁶

(32) See Dkt. 2610 (September 18, 2024 Final Order Approving Global Settlement); (33) Dkt. 5021; (34) Dkt. 5220 (Carr declaration in support of Chapter 11 plan); Dkt. 5023 (Disclosure Statement for joint Chapter 11 plan, Exh. 8 to Plan); (35) Dkt. 5220; (36) Dkt. 5690 (Steward complaint versus De la Torre and others)



Sale-Leaseback: A Corporate Finance Perspective



The Corporate Finance Perspective: Why SLBs? Value-Creating Rationales



CAPITAL EFFICIENCY



OPERATIONAL FOCUS



STRATEGIC GROWTH



TAX & ACCOUNTING BENEFITS



MARKET TIMING



BALANCE SHEET OPTIMIZATION

Source: Smith, Clifford W., Jr., and L. MacDonald Wakeman. "Determinants of Corporate Leasing Policy." *The Journal of Finance* 40, no. 3 (July 1985): 695-906.

29



The Corporate Finance Perspective: Why SLBs? Value-Extracting Rationales



CASH EXTRACTION



LEVERAGE MASKING



VALUATION ARBITRAGE



FINANCIAL STATEMENT MANIPULATION



ACQUISITION & EXIT FINANCING



SELECTIVE PAYOFFS

Sources: Froud and Williams, "Private Equity and the Culture of Value Extraction," *New Political Economy* (2007); Appelbaum and Batt, *Private Equity at Work* (2014); Batt and Appelbaum, "The Role of Public REITs in Financialization and Industry Restructuring," INET Working Paper No. 189 (2022).

30



The Corporate Finance Perspective: Why SLBs? The Gray Zone

A SLB transaction can be value-creating or value-extracting, depending on context. The transaction structure alone doesn't tell you which. Context is everything.

Value-Creating	Value-Extracting
\$100M at FMV SLB, proceeds fund new investment	\$120M above FMV SLB, proceeds fund dividend
Rent = 8% of revenue, 2.5x coverage	Rent = 15% of revenue, 0.9x coverage
10-year hold, growing EBITDA	2 years post-LBO, declining EBITDA
MAI appraisal, board approval	Sponsor-set pricing, no independent review

31



The Corporate Finance Perspective: Why SLBs? Key Diagnostic Questions

1. **Where do the proceeds go?** Reinvested vs. distributed
2. **What's the rent coverage under stress?** Sustainable vs. burdensome
3. **What's the company's trajectory?** Growing/stable vs. declining
4. **Who controls the transaction?** Arm's length vs. conflicted insiders
5. **Is there independent valuation?** MAI appraisal vs. sponsor-set pricing
6. **What's the hold period horizon?** Long-term owner vs. quick flip



32



The Corporate Finance Perspective: SLB's Balance Sheet Impact

	Before SLB	After SLB (Pre-ASC 842)	After SLB (Post-ASC 842)
Assets	Physical asset on books	Asset removed	ROU asset recorded
Liabilities	Debt on books	Proceeds received; lease off-balance sheet	Lease liability recorded
Net Effect	Full transparency	Commitment hidden	Commitment visible again

33



The Corporate Finance Perspective: SLB's Income Statement Impact

	Before SLB	After SLB (Pre-ASC 842)	After SLB (Post-ASC 842)
Expense Recognition	Depreciation + Interest	Single straight-line rent expense	Single straight-line rent expense
EBIT Impact	Higher (interest below the line)	Lower (implicit interest above the line)	Lower (no change from pre-842)

Note: Assumes operating lease classification in the post-ASC 842 regime.

34



The Corporate Finance Perspective: SLB's Free Cash Flow Impact

	Before SLB	After SLB (Pre-ASC 842)	After SLB (Post-ASC 842)
Interest Add-Back	Yes, interest added back to FCF	No, entire payment is operating outflow	No, still operating outflow
Reported FCF	Higher	Lower	Lower (no change)

Note: Assumes operating lease classification in the post-ASC 842 regime.



The Corporate Finance Perspective: SLB's Impact on Key Financial Ratios

	Before SLB	After SLB (Pre-ASC 842)	After SLB (Post-ASC 842)
Debt Ratio	Reflects actual leverage	Artificially low (debt vanishes)	Normalized (lease liability added)
Return on Capital	Reflects full asset base	Artificially high (asset base shrinks)	Normalized (ROU asset restores base)



The Corporate Finance Perspective: SLB's Impact on Solvency

How Extractive SLBs Can Cause Failure

Balance Sheet	Proceeds distributed, not retained; equity shrinks
Cash Flow	Rent burden reduces cash available for debt service
Capital Adequacy	Unreasonably small capital left after extraction



37



The Corporate Finance Perspective: From SLB to Insolvency: The Progression

1. **Collateral Gone** secured creditors lose recovery cushion
2. **Fixed Costs Up** inflexible lease payments
3. **Cash Flow Squeezed** less room to absorb revenue decline or margin compression
4. **Covenant Pressure** fixed charge coverage ratios deteriorate
5. **Refinancing Options Blocked** fewer assets to pledge and limited options for new capital
6. **Restructuring or Liquidation** creditors bear the loss



38



The Corporate Finance Perspective: SLB Case Study - STEWARD HEALTH CARE (2016)

Operating trajectory	Never profitable
Financial health	Negative equity
Transaction structure	\$1.25B transaction with Medical Properties Trust, including \$600 million from SLB of 5 acute-care facilities
Use of proceeds	Over \$700 million in dividends to PE ownership
Rent burden created	>\$150M/year system-wide rent; annual escalators indexed to inflation
Sponsor de-risking	Cerberus recouped investment; invested no new capital after SLB
Outcome	Chapter 11 in 2024. Largest hospital bankruptcy in U.S. history; \$9.2B liabilities; 5 hospitals closed



FILE - A closed sign is posted on a glass door at an entrance to a building on grounds of the closed Carney Hospital, Thursday, Sept. 19, 2024, in the Dorchester neighborhood of Boston.
Steven Senne / AP

Sources: Private Equity Stakeholder Project, "The Pillaging of Steward Health Care" (May 2025); Brookings Institution, "The Long, Twisting Tale of Steward Health Care: A Timeline" (2026); Cerberus Capital Management, "Cerberus Provides Additional Background Related to Steward Health Care" (September 2024).



The Corporate Finance Perspective: SLB Case Study - RED LOBSTER (2014)

Operating trajectory	Same-store sales down 8.8%; traffic down 11.9% YoY
Financial health	Declining brand; Darden divesting as "non-core"
Transaction structure	\$1.5B SLB = 71% of \$2.1B acquisition price
Use of proceeds	Funded Golden Gate's leveraged buyout
Rent burden created	From owned properties to triple-net leases; 2% annual contractual rent escalations
Sponsor de-risking	Golden Gate nearly made whole at closing
Outcome	Chapter 11 in 2024, rent reached \$200M/year (10% of revenue)



Sources: ARCP Form 8-K (July 28, 2014); Darden Restaurants Form 8-K (May 16, 2014); Red Lobster Management LLC, Case No. 6:24-bk-02486 (Bankr. M.D. Fla., 2024).



The Corporate Finance Perspective: SLB Case Study - SHOPKO (2006)

Operating trajectory	Facing competitive pressure from dollar stores and Walmart
Financial health	\$1B+ debt loaded via 2005 LBO
Transaction structure	\$815M SLB of 178 properties
Use of proceeds	Funded acquisition; \$179.5M in dividends extracted
Rent burden created	Base rents of ~\$74M per year, escalation every three years
Sponsor de-risking	Sun Capital recouped investment immediately; charged 1% fees on dividends
Outcome	Liquidation 2019, 360 stores closed



Sources: SKO Group Holding Corp. SEC Filing (February 2007); Primack, "How Workers Suffered from Shopko's Bankruptcy While Sun Capital Made Money," Axios (June 11, 2019); Americans for Financial Reform, "Sun Capital: A Case Study in Private Equity Looting" (October 2020).



The Corporate Finance Perspective: SLB Case Study - HCR MANORCARE (2007 LBO / 2011 SLB)

Operating trajectory	Reeling from Medicare reimbursement cuts
Financial health	Billions in debt from 2007 LBO still on books
Transaction structure	\$6.1B SLB, the entire real estate portfolio (338 facilities)
Use of proceeds	\$1.3B extracted for Carlyle and investors
Rent burden created	Facilities unable to cover rent within ~1 year
Sponsor de-risking	Carlyle fully recouped equity investment
Outcome	Chapter 11 in 2018, \$446M unpaid rent; health violations up 26%.



Sources: HCP, Inc. / Carlyle Group Press Release (December 2010); HCP Form 8-K (April 8, 2011); Rucinski, "HCR ManorCare Files for Bankruptcy," Reuters (March 5, 2018); Whoriskey and Keating, "Overdoses, Bedsores, Broken Bones," Washington Post (November 25, 2018).



The Corporate Finance Perspective: SLB Case Study - SEARS (2015)

Operating trajectory	Years of declining sales; stores closing annually
Financial health	Already bleeding cash; reliant on asset sales to fund operations
Transaction structure	\$2.7B SLB to Seritage REIT (266 premier stores)
Use of proceeds	Funded operations; Lampert's hedge fund bought 43.5% of Seritage
Rent burden created	\$349M rent + \$45M termination fees paid to Seritage by 2017
Sponsor de-risking	Lampert controlled both Sears and Seritage; conflicts alleged
Outcome	Chapter 11 in 2018, \$175 million settlement for asset-stripping and self-dealing claims



Sources: Seritage Growth Properties Form 8-K (July 7, 2015); Dayen, "How Sears Was Gutted By Its Own CEO," The American Prospect (October 15, 2018); "Sears Holdings Reaches \$175M Settlement," Retail Dive (August 11, 2022).

43



The Corporate Finance Perspective: SLB Case Study - ART VAN FURNITURE (2017)

Operating trajectory	Mature regional retailer; facing online competition and margin pressure
Financial health	Debt-free and generating cash prior to sale
Transaction structure	SLB funded 70% of \$621M deal; real estate sold to REITs at closing
Use of proceeds	Paid selling shareholders; THL's equity at risk: \$70M (11%) of \$621M deal
Rent burden created	Now paying rent on ~40 formerly owned stores; plus \$254M new debt
Sponsor de-risking	THL de-risked at closing; most of deal funded by SLB and debt, not equity
Outcome	Liquidation March 2020 (already in distress before the pandemic)



Sources: Art Van Furniture LLC, Ch. 7 Trustee Complaint (Bankr. D. Del. 2022); Felton, "Art Van Bankruptcy Lawsuit Seeks More Than \$105 Million," Crain's Detroit Business (March 22, 2022); Gallagher, "How Art Van Went from a Retail Juggernaut to a House Afire," Crain's Detroit Business (March 8, 2020).

44



The Corporate Finance Perspective: SLB Case Study - MARSH SUPERMARKETS (2006)

Operating trajectory	Struggling; losses from "grocery wars" of 2005; negative free cash flow
Financial health	Real estate worth \$100-150M more than stated on financials (hidden value)
Transaction structure	\$260M SLB of RE; HQ sold with 20-year lease (\$2.8M/year, 7% escalator)
Use of proceeds	Tens of millions to Sun Capital; remainder to fund operations
Rent burden created	Now paying rent on formerly owned stores and headquarters
Sponsor de-risking	Sun Capital recovered investment via SLB; charged \$1M/year management fee
Outcome	Chapter 11 May 2017; unsecured creditors recovered <1%



Sources: Schoettle, "Experts: Marsh Purchase Doomed from Start," Indianapolis Business Journal (May 18, 2017); Whoriskey, "As a Grocery Chain Is Dismantled," Washington Post (December 28, 2018); Americans for Financial Reform, "Sun Capital: A Case Study in Private Equity Looting" (October 2020); Batt and Appelbaum, "Private Equity Pillage: Grocery Stores and Workers At Risk," The American Prospect (Fall 2018).



The Corporate Finance Perspective: KEY TAKEAWAYS

1. **Intent determines outcome:** The same SLB can create value or extract it; the difference is where proceeds go, whether lease payments are sustainable, and who bears the risk.
2. **Accounting changed the optics, not the economics:** ASC 842 restored balance sheet transparency but reported FCF is lower post-SLB and pre-842 ratios were misleading.
3. **Extractive SLBs follow a predictable path:** Multiple cases, one pattern - sponsor de-risks at closing, company bears the rent, creditors bear the loss.
4. **Red flags are visible ex-ante:** Declining operations, proceeds to dividends, unsustainable lease payment burdens, and lack of independent FMV analysis signal elevated insolvency risk; a solvency opinion, an independent board review, or a creditor committee could have identified and challenged.



Internal Revenue Service Guidance

47



IRS Tax Considerations In A Sale Lease Back Transaction

- For U.S. federal income tax purposes, a transaction is generally treated as a sale once the economic benefits and burdens of ownership have transferred to another party, without regard to whether legal title has formally passed or the transactional form reflected in the governing documents. In *Grodt & McKay Realty, Inc. v. Commissioner*, the Tax Court articulated eight nonexclusive factors that may be considered in determining whether a sale has occurred, including:
 - Whether legal title to the property is transferred;
 - The manner in which the parties characterize and treat the transaction;
 - Whether the purported purchaser acquires an equity interest in the property;
 - Whether the agreement imposes a present obligation on the seller to convey title and a corresponding present obligation on the buyer to make payments;
 - Whether possession of the property is vested in the buyer;
 - Which party is responsible for payment of property taxes;
 - Which party bears the risk of loss or damage to the property; and
 - Which party is entitled to the profits generated from the operation or disposition of the property.

Source: *Grodt & McKay Realty, Inc. v. Commissioner of Internal Revenue*, 77 T.C. 1221 (U.S. Tax Ct. 1981)

48



IRS Sale-Leaseback Technical Advice Memorandum re. Communications Technology & Media, LMSB, July 9, 2003

Background

- For U.S. federal income tax purposes, the proper characterization of a sale-leaseback transaction turns on whether the transaction effects a genuine transfer of the economic benefits and burdens of ownership, rather than on the formal allocation of legal title or the labels used by the parties. In the IRS Technical Advice Memorandum addressing Communications Technology & Media, LMSB (July 9, 2003), the Internal Revenue Service analyzed a complex, multiparty sale-leaseback of a newly constructed corporate headquarters that was structured to raise capital while allowing the taxpayer to retain uninterrupted use of the property. Although the taxpayer reported the transaction as a taxable sale for federal income tax purposes—generating a substantial loss—while treating it as a financing for financial accounting purposes, the IRS emphasized that tax characterization depends on substance over form.
- The IRS focused on whether the transaction truly transferred the benefits and burdens of ownership to the purported purchaser, with particular scrutiny given to the pricing and structure of the taxpayer’s multiple repurchase options relative to fair market value. In evaluating the arrangement, the IRS examined whether the alleged buyer bore meaningful equity risk, whether the taxpayer retained effective control over the property, and whether the economics of the transaction were consistent with a sale rather than a secured financing. The analysis also addressed whether the taxpayer’s reported loss properly reflected the full amount realized, including any embedded bargain leaseback component, and whether the transaction might avoid loss recognition under the like-kind exchange rules.
- Ultimately, the Technical Advice Memorandum reaffirmed that a sale-leaseback will be respected as a true sale for federal income tax purposes only if the structure and economics demonstrate a real transfer of ownership attributes. Where repurchase rights, lease terms, and risk allocations effectively insulate the taxpayer from the burdens of ownership and preserve the upside of the property, the transaction may be recharacterized as a financing arrangement notwithstanding its formal documentation or tax reporting treatment.

Source: IRS, National Office Technical Advice Memorandum re. Communications Technology & Media, LMSB, Number 200346007, July 9, 2003



Mapping of the IRS Sale-Leaseback TAM to the Grodt & McKay Factors

In evaluating whether the Communications Technology & Media sale-leaseback should be respected as a true sale, the IRS’s Technical Advice Memorandum effectively applied the Grodt & McKay Realty, Inc. v. Commissioner framework by analyzing where the economic benefits and burdens of ownership resided under the transaction’s structure and economics:

- **Whether legal title to the property is transferred:** While legal title was formally conveyed to a trustee structure as part of the sale-leaseback arrangement, the IRS emphasized that the transfer of title was not determinative. Instead, the analysis focused on whether the title transfer carried substantive ownership consequences or merely functioned as collateral within a financing arrangement.
- **The manner in which the parties characterize and treat the transaction:** The taxpayer reported the transaction as a taxable sale for federal income tax purposes but treated it as a financing for financial accounting purposes. The IRS viewed this inconsistency as relevant, noting that the parties’ divergent treatment raised questions as to whether the transaction’s substance aligned with its purported tax characterization.
- **Whether the purported purchaser acquires an equity interest in the property:** The IRS examined whether the equity participant bore meaningful upside and downside risk associated with property ownership. The presence of fixed returns, non-recourse financing, and structural limitations on economic exposure suggested that the purported purchaser’s interest resembled that of a lender rather than a true equity owner.
- **Whether the agreement imposes a present obligation on the seller to transfer title and a corresponding present obligation on the buyer to make payments:** Although the transaction documents reflected a sale and leaseback, the IRS focused on whether the payment obligations and economic flows functioned like debt service rather than purchase price consideration, particularly given the taxpayer’s ongoing lease payments and retained control over exit outcomes.
- **Whether possession of the property is vested in the buyer:** The taxpayer retained uninterrupted possession and use of the property throughout the transaction term. The IRS viewed the absence of any meaningful possessory rights in the purported buyer as indicative that ownership benefits had not substantively shifted.

Source: IRS, National Office Technical Advice Memorandum re. Communications Technology & Media, LMSB, Number 200346007, July 9, 2003



Mapping of the IRS Sale-Leaseback TAM to the Grodt & McKay Factors (Cont'd.)

- **Which party is responsible for payment of property taxes:** Responsibility for property taxes and other ownership-level expenses remained effectively with the taxpayer under the leaseback arrangement. This allocation weighed against a finding that ownership burdens had transferred to the buyer.
- **Which party bears the risk of loss or damage to the property:** The IRS noted that the taxpayer continued to bear the economic risk of loss through insurance obligations, maintenance responsibilities, and structural protections insulating the investor group from property-level downside risk.
- **Which party is entitled to the profits generated from the operation or disposition of the property:** The TAM placed particular emphasis on the taxpayer's multiple repurchase options, which were priced with reference to predetermined formulas rather than true fair market value. The IRS viewed these options as effectively allowing the taxpayer to retain the property's residual value and appreciation potential, thereby preserving core ownership benefits notwithstanding the formal sale.

Consistent with Grodt & McKay, the IRS concluded that the decisive inquiry was whether the benefits and burdens of ownership genuinely transferred. The alignment of possession, risk, residual value, and economic control with the taxpayer—especially through below-market or non-FMV-based repurchase options—supported recharacterization of the sale-leaseback as a financing arrangement rather than a true sale for federal income tax purposes.

Source: IRS, National Office Technical Advice Memorandum re. Communications Technology & Media, LMSB, Number 200346007, July 9, 2003

51



Benefits and Burdens Framework for True Sale Analysis Under Treas. Reg. § 1.1001-1

Lease Component Under Treas. Reg. § 1.467-1

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis

52



Treas. Reg. § 1.1001 1 as a Benefits and Burdens Framework for True Sale Analysis

- Although Treas. Reg. § 1.1001 1 does not enumerate a formal “true sale” test, its realization rules are built around the same economic attributes of ownership that courts evaluate when determining whether a transaction constitutes a sale in substance rather than merely in form. The regulation repeatedly conditions gain or loss recognition on whether the taxpayer has economically divested itself of property and received economically substantive consideration, thereby aligning directly with judicial benefits and burdens analysis.

Transfer of Risk of Loss

- A central benefits and burdens factor in case law is whether the transferee has assumed the risk of loss associated with the property. Treas. Reg. § 1.1001 1 reflects this principle by tying realization to events that fix the taxpayer’s inability to recover adjusted basis.
- The regulation expressly provides that loss is not ordinarily sustained prior to a sale or other disposition, because until such an identifiable event occurs, the taxpayer retains the possibility of recovering its basis. This rule reflects the understanding that retention of downside risk—the risk that the property’s value may decline or fail to generate sufficient returns—signals continued ownership in substance. Only when a transaction conclusively shifts that risk, such that basis recovery is no longer possible, does the regulation permit loss recognition.
- Similarly, where receipts or distributions applied against basis exceed the remaining adjusted basis, the regulation treats the excess as realized gain even absent a formal sale. In economic terms, this reflects that the taxpayer has extracted all downside protected investment from the property and now bears no remaining capital risk. Thus, § 1.1001 1 aligns realization with the economic transfer or exhaustion of risk of loss, not with formal title alone.

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001 1 as a Benefits and Burdens Framework for True Sale Analysis



Treas. Reg. § 1.1001 1 as a Benefits and Burdens Framework for True Sale Analysis (Cont’d.)

Control and Dominion Over the Property

- Courts routinely examine who retains control, dominion, and decision-making authority over the property following a purported sale. Treas. Reg. § 1.1001 1 reflects this consideration through its insistence that a realization event involves an exchange for property “differing materially either in kind or in extent.”
- This language presupposes that the taxpayer has surrendered meaningful dominion over the original property. Transactions that merely reshuffle legal rights without materially altering the taxpayer’s economic position do not satisfy this standard. The regulation’s treatment of term interests is particularly instructive: the sale of a life estate, term of years interest, or income interest is treated differently from the sale of the entire property precisely because the transferor has not relinquished full control over the underlying asset. By limiting basis recovery in such cases, the regulation implicitly recognizes that partial retention of control and reversionary rights is inconsistent with a full economic sale.
- The exception for transactions in which the entire interest in the property is transferred in a single transaction reinforces this point. Only when all interests—and thus all control rights—are conveyed does the regulation permit full recognition of gain or loss.

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001 1 as a Benefits and Burdens Framework for True Sale Analysis



Treas. Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis (Cont'd.)

Transfer of Upside Potential

- Another core benefits and burdens factor is who retains the upside potential—the right to benefit from future appreciation or income generated by the property. Treas. Reg. § 1.1001-1 addresses this implicitly through its rules governing basis recovery and fair market value measurement.
- Gain under the regulation is realized only after the taxpayer's adjusted basis has been fully restored, meaning that appreciation beyond invested capital must accrue to the transferee for a transaction to function as a sale. Where the taxpayer continues to participate in future appreciation—such as through retained interests, contingent rights, or partial dispositions—the regulation restricts basis recovery and defers or limits recognition. This is particularly evident in the treatment of term interests, where the regulation denies recovery of basis attributable to the adjusted uniform basis of the entire property, reflecting that future appreciation and residual value remain with other interest holders.
- In this way, § 1.1001-1 mirrors case law's focus on whether the transferor has truly surrendered the upside of ownership or merely monetized a portion of expected cash flows while retaining residual economic benefits.

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis

55



Treas. Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis (Cont'd.)

Right to Economic Return and Consideration of Fair Market Value

- Courts also examine whether the transferor has received fixed, economically substantive consideration consistent with a sale, as opposed to contingent or illusory consideration that leaves economic ownership unchanged. Treas. Reg. § 1.1001-1 places substantial emphasis on fair market value as the benchmark for determining whether a transaction produces realized gain or loss.
- The regulation defines the amount realized as the sum of money received plus the fair market value of non-cash property received and emphasizes that property will be treated as having no fair market value only in rare and extraordinary cases. This insistence on ascertainable value reflects the principle that a true sale requires receipt of economically meaningful consideration, not merely formal or nominal payment.
- The rules governing debt instruments issued in exchange for property further reinforce this point. The regulation measures the amount realized by reference to the issue price of the debt, adjusted for unstated interest and, in appropriate cases, the fair market value of contingent payments. By requiring inclusion of contingent payments unless their value is not reasonably ascertainable, the regulation ensures that the amount realized reflects the full expected economic return transferred to the seller, consistent with a substantive sale analysis.

Allocation of Economic Burdens (Taxes and Liabilities)

- The regulation's treatment of real estate taxes and liabilities provides a direct analogue to judicial analysis of who bears the ongoing economic burdens of ownership. In allocating real property taxes between buyer and seller, § 1.1001-1 looks not to contractual labels but to who is treated as bearing the tax burden under the Code. Amounts economically attributable to the purchaser are excluded from the seller's amount realized, even if reimbursed, while amounts economically borne by the seller increase the amount realized regardless of contractual form.
- This approach mirrors case law's focus on whether the transferee has assumed the ongoing costs and burdens associated with ownership, a hallmark of a true sale.

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis

56



Synthesis: § 1.1001-1 as a Regulatory Expression of the Benefits and Burdens Test

- Viewed holistically, Treas. Reg. § 1.1001-1 operationalizes the same inquiry courts apply in true sale cases: whether the transaction effects a substantive shift in the economic benefits and burdens of ownership. The regulation conditions realization on the transfer of downside risk, surrender of control, loss of upside potential, receipt of economically substantive consideration, and reallocation of ownership burdens. Transactions that leave these attributes substantially with the transferor are treated as incomplete or partial dispositions, while transactions that transfer them in full are respected as sales for federal income tax purposes.

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis



Lease Component Under Treas. Reg. § 1.467-1

- Treas. Reg. § 1.467-1 establishes a comprehensive framework governing the federal income tax treatment of certain rental agreements involving tangible property, with particular emphasis on leases that feature uneven rent streams, deferred or prepaid rent, or other characteristics that implicate time value of money concerns. The regulation requires lessors and lessees, when applicable, to accrue rent and interest in a manner that clearly reflects income, often overriding the parties' stated payment schedules. Although the regulation does not determine whether an arrangement is a lease for tax purposes, it reflects the IRS's broader approach to lease characterization by re allocating rent and imputing interest where necessary to prevent tax deferral or acceleration. In this way, section 467 functions as a corrective overlay to the general leasing rules, ensuring consistent treatment of rent and interest and guarding against arrangements that distort taxable income.

Role of Section 467 Within the General Leasing Rules

- Treas. Reg. § 1.467-1 operates within, rather than in place of, the general federal income tax rules governing leases of tangible property. The regulation expressly provides that no inference should be drawn from its provisions as to whether an arrangement constitutes a lease for federal tax purposes or whether a particular obligation constitutes rent. Instead, section 467 assumes that a lease exists and then prescribes specialized timing and characterization rules for rent and interest when certain features are present. This structure reflects the IRS's view that even bona fide leases may require recharacterization of cash flows to ensure a clear reflection of income.
- At the same time, the regulation preserves the Commissioner's ability to rely on other authorities—such as section 446(b), section 482, and substance over form principles—to adjust income and expense where necessary. This reinforces the notion that section 467 is part of a broader analytical toolkit used to police lease structures that may otherwise comply with formal leasing requirements but produce inappropriate tax results.

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis



Lease Component Under Treas. Reg. § 1.467 1 (Cont'd.)

Threshold Determination: Whether a Lease Is a "Section 467 Rental Agreement"

- A central consideration under the regulation is whether a lease qualifies as a "section 467 rental agreement." Only such agreements are subject to the specialized accrual and interest rules. A lease falls within section 467 if it contains either increasing or decreasing rent or deferred or prepaid rent, subject to certain exceptions. Leases with level rent payable in the same or adjacent calendar years, or with total rents not reasonably expected to exceed \$250,000, are excluded from section 467 treatment.
- The regulation's detailed definitions of increasing or decreasing rent, deferred rent, and prepaid rent demonstrate the IRS's concern with leases that front load or back load economic benefits. Even where total rent over the lease term is fixed, the timing of rent accrual and payment can trigger section 467 if the cumulative allocation of rent and the cumulative payment of rent diverge across calendar years.

Allocation of Rent and the Time Value of Money Principle

- Once a lease is classified as a section 467 rental agreement, the regulation requires both lessor and lessee to take into account "section 467 rent" and "section 467 interest" for each taxable year. Rent is allocated to rental periods either according to a specific allocation in the lease or, if none exists, based on amounts payable during each period. Interest is then computed to reflect the time value of money inherent in deferred or prepaid rent.
- This framework reflects a core IRS concern: that rent deferral or prepayment without adequate stated interest can operate as a disguised financing arrangement. By deeming a loan between the parties (the "section 467 loan") and imputing interest accordingly, the regulation ensures that the economic substance of the lease is respected for tax purposes, even if the form of the agreement suggests otherwise.

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis

59



Lease Component Under Treas. Reg. § 1.467 1 (Cont'd.)

Constant Rental Accrual and Disqualified Lease Structures

- In certain cases—most notably disqualified leasebacks or long-term agreements—the regulation requires the use of the constant rental accrual method. Under this method, rent is treated as accruing ratably over the entire lease term, regardless of the stated rent schedule. This approach reflects heightened IRS scrutiny of lease structures perceived to have significant tax avoidance potential, particularly where related parties or long-term arrangements are involved.
- The availability of proportional rental accrual for other section 467 leases further illustrates the IRS's graduated approach: leases are not uniformly recharacterized, but instead are analyzed based on the presence and severity of deferral, prepayment, or inadequate interest.

Treatment of Modifications and Ongoing Lease Characterization

- Treas. Reg. § 1.467 1 devotes substantial attention to lease modifications, recognizing that changes in rent, term, or other economic rights can fundamentally alter the tax profile of a lease. A substantial modification is generally treated as the creation of a new lease for section 467 purposes, potentially triggering retesting under the section 467 criteria and altering the applicable accrual method.
- This treatment underscores the IRS's dynamic view of lease characterization: compliance with section 467 is not determined solely at inception but must be reassessed when economically significant changes occur. The inclusion of safe harbors and anti avoidance provisions further reflects the IRS's intent to balance administrability with protection against manipulation.

Broader Implications for Lease Characterization

- Although section 467 does not itself decide whether an arrangement is a lease, its detailed rules reveal how the IRS evaluates lease economics. The emphasis on fixed versus contingent rent, the treatment of rent holidays, the scrutiny of related party transactions, and the imputation of interest all point to an underlying concern with aligning tax results with economic reality. In this sense, Treas. Reg. § 1.467 1 reflects the IRS's broader approach to lease characterization under the general leasing rules: form alone is insufficient, and rent streams must be tested for economic substance and appropriate timing.

Source: Government Publishing Office – Internal Revenue Service, Treasury – Reg. § 1.1001-1 as a Benefits and Burdens Framework for True Sale Analysis

60



Accounting Treatment: US GAAP – ASC 842, PwC Leases Guide

61



PwC Leases Guide (ASC 842)

The PwC Leases Guide (partially updated through December 2024) provides a comprehensive framework for applying ASC 842 to lease arrangements, addressing both lessee and lessor accounting. The guide explains the foundational principle that nearly all leases create a right of use asset and a corresponding lease liability, replacing prior off balance sheet treatment for operating leases under ASC 840. It walks through lease identification, classification, measurement, modification, and disclosure, with extensive interpretive guidance and examples. The December 2024 updates focus primarily on lease commencement payments, initial direct costs, shipping and installation costs, and expanded treatment of sale and leaseback transactions, including failed sales, partial leasebacks, and off market terms. The guide emphasizes the judgment required under ASC 842’s control-based model and highlights important distinctions between US GAAP and IFRS 16, making it a central reference for preparers, auditors, and advisors evaluating complex lease transactions.

Background and Core Principles

- The leases standard (ASC 842) is grounded in the premise that a lease gives rise to both an asset (the right to control the use of an identified asset) and a liability (the unavoidable obligation to make lease payments). This represents a fundamental shift from ASC 840, under which operating leases were predominantly off-balance sheet. Under ASC 842, nearly all leases must be recognized on the balance sheet, regardless of classification, with classification affecting only the timing and presentation of expense and income.
- A dual model applies under US GAAP: lessees classify leases as either finance or operating leases, while lessors classify leases as sales type, direct financing, or operating leases. This dual model differs from IFRS 16, which applies a single lessee accounting model.

Source: Leases, partially updated December 2024, PwC National Office

62



PwC Leases Guide (ASC 842) (Cont'd.)

Scope and Identification of a Lease

- A contract is (or contains) a lease if it conveys the right to control the use of an identified asset for a period of time in exchange for consideration. Determining whether an asset is "identified" requires evaluating whether it is explicitly or implicitly specified, physically distinct, and not subject to substantive substitution rights by the supplier. Even arrangements structured as service or supply contracts may contain embedded leases if the customer controls the use of an asset.
- Control exists only if the customer both (1) obtains substantially all of the economic benefits from use of the asset and (2) has the right to direct how and for what purpose the asset is used. The guide emphasizes that this assessment is highly fact specific and frequently judgmental, particularly in contracts involving shared use, dispatch rights, or highly automated assets.
- Certain arrangements fall outside the scope of ASC 842, including leases of intangibles, inventory, construction in progress, biological assets, and certain natural resource arrangements. Lessees may also elect a short-term lease exemption for leases with terms of 12 months or less, provided no purchase option reasonably certain of exercise exists.

Lease and Non-Lease Components

- Contracts often contain both lease and non-lease components, such as services, maintenance, or common area upkeep. ASC 842 requires identification of separate components and allocation of consideration based on relative standalone prices. The guide provides detailed direction on distinguishing lease components from executory or non-component items, such as property taxes or insurance reimbursements, which do not represent the transfer of goods or services.
- Both lessees and lessors may elect practical expedients to combine lease and non-lease components, though the consequences differ. For lessees, combining components increases the lease liability and may affect lease classification. For lessors, combining components is permitted only when the timing and pattern of transfer are the same and the lease would otherwise be classified as an operating lease.

Source: Leases, partially updated December 2024, PwC National Office

63



PwC Leases Guide (ASC 842) (Cont'd.)

Lease Classification

- Lease classification hinges on whether the arrangement effectively transfers control of the underlying asset. For lessees, a lease is classified as a finance lease if any one of five criteria is met, including transfer of ownership, presence of a purchase option reasonably certain of exercise, lease term covering a major portion of economic life, lease payments approximating substantially all of fair value, or the asset being specialized in nature.
- For lessors, similar criteria apply, though collectability and residual value considerations introduce additional complexity. Variable lease payment structures can complicate classification and may result in day one losses, which led to the issuance of ASU 2021 05, requiring certain leases to be classified as operating leases to avoid immediate losses.

Initial and Subsequent Measurement

- At lease commencement, lessees recognize a right of use asset and lease liability measured at the present value of lease payments. Payments included in measurement include fixed payments, in substance fixed payments, and payments based on an index or rate (measured using the index or rate at commencement). Variable payments not based on an index or rate are excluded from initial measurement and recognized as incurred.
- Initial direct costs are narrowly defined under ASC 842 as incremental costs that would not have been incurred but for obtaining the lease. The December 2024 updates clarify treatment of payments made at or before commencement and costs related to shipping, delivery, and installation for both lessees and lessors.
- Subsequent measurement differs by classification. Finance leases result in separate interest and amortization expense, while operating leases produce a single straight line lease expense. Lessors account for sales type and direct financing leases as net investments and operating leases with ongoing depreciation of the underlying asset.

Source: Leases, partially updated December 2024, PwC National Office

64



PwC Leases Guide (ASC 842) (Cont'd.)

Modifications, Remeasurement, and Termination

- Lease modifications require careful analysis to determine whether they constitute a separate new lease or a remeasurement of the existing lease. Changes in lease term, purchase options, or variable payments previously excluded from measurement may trigger remeasurement. Partial or full terminations require derecognition of a portion of the right of use asset and lease liability, with gains or losses recognized accordingly.
- The guide emphasizes that reassessment is required only upon specified triggering events and not for general changes in market conditions.

Sale and Leaseback Transactions

- ASC 842 significantly revised sale and leaseback accounting by tying sale recognition to ASC 606. A transaction qualifies as a sale only if control transfers and the leaseback is not a finance lease for the seller lessee or a sales type lease for the buyer lessor. The December 2024 updates expand and clarify guidance in this area, covering construction period options, off market terms, deferred leaseback commencement, partial leasebacks, and accounting for failed sale-leaseback transactions, which are treated as financings.

Subleases, Leveraged Leases, and Other Topics

- Intermediate lessors must classify subleases by reference to the underlying asset rather than the right of use asset. Leveraged leases are no longer permitted under ASC 842, though existing arrangements entered into under ASC 840 are grandfathered if unmodified.
- Other topics addressed include impairment of right of use assets, application of CECL to lease receivables, accounting for leasehold improvements (including new guidance for common control arrangements), and specialized transactions such as free rent or bundled equipment arrangements.

Transition, Presentation, and Disclosure

- Entities adopt ASC 842 using a modified retrospective approach, with several practical expedients available to ease transition. Disclosure requirements are extensive and designed to provide users with transparency into lease obligations, judgments, and cash flows.

Source: Leases, partially updated December 2024, PwC National Office



Accounting Treatment: IFRS 16, KPMG Sale and Leaseback Guide



KPMG, Sale and Leaseback - IFRS 16

This handbook explains how sale and leaseback transactions are accounted for under IFRS 16, emphasizing that such transactions are no longer a means of off balance sheet financing. The central determination is whether the initial transfer of an asset qualifies as a “sale” under IFRS 15, based on whether control of the asset passes to the buyer lessor. If a sale occurs, the seller lessee recognizes only a partial gain reflecting the rights transferred and records a right of use asset for the portion retained. If the transfer fails the sale test, the transaction is treated as a financing under IFRS 9. The handbook also addresses complex issues such as off market terms, variable lease payments, unit of account questions, and the impact of amendments effective from 1 January 2024, which refine the measurement of lease liabilities to prevent recognition of gains on retained rights. Overall, the document highlights the judgment intensive nature of sale and leaseback accounting and the importance of aligning accounting outcomes with the economic substance of the transaction.

Nature of a Sale and Leaseback Transaction

- A sale and leaseback transaction involves an entity (the seller lessee) transferring an asset to another party (the buyer lessor) and leasing the same asset back for a period of time. IFRS 16 fundamentally changed the accounting outcome of such transactions by eliminating their historical use as off balance sheet financing mechanisms. Instead, the accounting now focuses on faithfully representing the transfer of rights and the continuing use of the asset.

Determining Whether a Sale Has Occurred

- The threshold question is whether the transfer of the asset qualifies as a sale under IFRS 15. This requires an assessment of whether control of the asset has passed to the buyer lessor. Substantive repurchase options held by the seller lessee, renewal options that effectively extend use over substantially all of the asset’s economic life, or other arrangements that indicate retention of control will generally preclude sale accounting. If the transfer is not a sale, the entire arrangement is accounted for as a financing, with the seller lessee retaining the asset and recognizing a financial liability for the proceeds received.

Source: Sale and Leaseback, for Lessees and Lessors, IFRS 16, KPMG, February 2023

67



KPMG, Sale and Leaseback - IFRS 16 (Cont’d.)

Unit of Account and Asset Identification

- The handbook highlights that identifying the appropriate unit of account is critical. In some cases, land and buildings must be assessed separately, particularly when they were previously accounted for as distinct assets. In other situations, such as investment property measured at fair value, the asset may be treated as a single unit of account. Additional complexity arises when only part of an asset is leased back, when portfolios of assets are involved, or when assets are fungible, such as commodities or certain digital assets.

Lessee Accounting When a Sale Occurs

- When the transfer qualifies as a sale, the seller lessee derecognizes the underlying asset and recognizes a right of use asset for the portion of the asset retained through the leaseback. Importantly, the seller lessee recognizes only the portion of the gain or loss that relates to the rights transferred to the buyer lessor; any gain attributable to retained rights is deferred through the measurement of the right of use asset. Lease liabilities are recognized in accordance with IFRS 16, subject to adjustments for off market terms.

Adjustments for Off Market Terms

- Because the sale price and lease payments are typically negotiated together, IFRS 16 requires adjustments when either component is not at market rates. Sale proceeds are recognized at fair value, with any excess treated as additional financing and any shortfall treated as prepaid lease payments. This ensures that gains, lease liabilities, right of use assets, and interest expense reflect economic reality rather than contractual form.

Variable Lease Payments

- The document devotes significant attention to leasebacks with variable payments, which have been a source of practical difficulty. Even when lease payments are fully variable, the seller lessee is required to recognize a right of use asset based on the proportion of rights retained. Amendments issued in September 2022 clarify that the related obligation is a lease liability and introduce measurement approaches designed to prevent recognition of gains on retained rights through subsequent remeasurement.

Source: Sale and Leaseback, for Lessees and Lessors, IFRS 16, KPMG, February 2023

68



KPMG, Sale and Leaseback - IFRS 16 (Cont'd.)

Lessor Accounting

- For the buyer lessor, accounting depends on whether the transfer qualifies as a sale. If it does, the buyer lessor recognizes the acquired asset and applies the IFRS 16 lessor model, classifying the leaseback as either an operating or finance lease based on its terms. Off market elements are similarly adjusted to ensure that asset values and lease income are measured appropriately. If the transfer is not a sale, the buyer lessor recognizes a financial asset rather than the underlying property.

Failed Sales and Financing Accounting

- When a transfer fails the IFRS 15 sale test, the arrangement is accounted for as a financing by both parties under IFRS 9. The seller lessee continues to recognize the asset and records a financial liability equal to the proceeds received, with no gain recognized at inception. Subsequent measurement focuses on effective interest and expected cash flows, which may require significant judgment, particularly when repurchase options exist.

Source: Sale and Leaseback, for Lessees and Lessors, IFRS 16, KPMG, February 2023



Appendix



Panelists

71



HON. LISA G. BECKERMAN (SDNY)



LISA G. BECKERMAN
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BACKGROUND

Lisa G. Beckerman was sworn in as a United States Bankruptcy Judge for the Southern District of New York on February 26, 2021.

Judge Beckerman received an A.B. from University of Chicago in 1984, an M.B.A. from University of Texas in 1986 and a J.D. from Boston University in 1989. From May 1999 until she was appointed to the bench, she was a partner in the financial restructuring group at Akin Gump Strauss Hauer & Feld LLP. From September 1989 until May 1999, she was an associate and then a partner in the bankruptcy group at Stroock & Stroock & Lavan LLP.

Prior to her appointment, she served as a co-chair of the Executive Committee of UJA-Federation of New York's Bankruptcy and Reorganization Group, a co-chair and as a member of the Advisory Board of the American Bankruptcy Institute's New York City Bankruptcy Conference, and a member of the Board of Directors of the American Bankruptcy Institute from 2013 through 2019.

Judge Beckerman is a Fellow, the Chair of the Freshman Fellows Committee, and was a Member of the Board of Directors of the American College of Bankruptcy from 2021-2025. She is a member of the National Conference of Bankruptcy Judges (NCBJ), the Chair of the Behind the Bench Committee, was a member of the Elections Committee and a member of the 2021 NCBJ Education Committee. She is a member of the Dean's Advisory Board for Boston University School of Law. She is a member of the Board of Directors of Tina's Wish.

72



MANISH KUMAR – PROVINCE



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BUSINESS ADVISORY BACKGROUND

Manish Kumar, CVA, CFE, has more than 30 years of experience providing valuation, solvency, damages, financial forensics, and other complex financial analyses in high stakes corporate matters. He is a trusted advisor in complex litigation and restructuring engagements and has served as an expert in numerous bankruptcy proceedings, valuation disputes, and forensic investigations. His deep technical expertise and extensive litigation experience have positioned him as a key contributor in some of the most challenging corporate cases.

Mr. Kumar has advised debtors, creditors, financial institutions, and private equity sponsors across a broad range of restructuring, litigation, and advisory matters. He is frequently retained as an expert witness and has provided deposition and trial testimony on issues including damages, solvency, and valuation in significant corporate disputes. His work has included defending against fraudulent conveyance claims, evaluating the reasonableness of financial projections, leading forensic investigations, and analyzing complex transactions.

Mr. Kumar holds a B.S. with honors from Sri Ram College of Commerce at Delhi University and an M.B.A. in finance and operations management from NYU Stern School of Business. He is a Certified Valuation Analyst and a Certified Fraud Examiner, and his professional experience spans numerous industries, including chemicals, home products, media, semiconductors, residential mortgages, financial services, and energy.



CLAUDIA TOBLER – SELENDY GAY



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BACKGROUND

Claudia Tobler is a corporate restructuring attorney with extensive experience in all aspects of bankruptcy, restructuring, and bankruptcy-adjacent mandates, including debtor, creditor, ad hoc committee, litigation, and transactional representations. Claudia’s practice includes company-side representations in some of the largest bankruptcy cases and restructuring proceedings in the U.S. and Canada. She has also represented creditors in matters involving billions of dollars of debt.

Prior to recently joining Selendy Gay, Claudia was a leader in the Corporate Restructuring and Bankruptcy practice at Paul, Weiss, Rifkind, Wharton & Garrison, LLP, where her clients included Fortune 500 companies, private equity firms, and multinational corporations. Her notable matters include:

- The Special Committee of the Board of Directors of Marelli Holdings Co., Ltd. and its affiliated debtors in the chapter 11 restructuring of Marelli, a “Tier 1” automotive supplier and one of the largest automotive components suppliers in the world, in Delaware Bankruptcy Court.
- Revlon’s post-confirmation bankruptcy estates in claims resolution, including reconciliation of asbestos-related talc and other personal injury claims in accordance with confirmed chapter 11 plan.
- Ad hoc committee of noteholders in the chapter 11 cases of Mallinckrodt plc, a leading global pharmaceutical company and first opioid manufacturer facing mass tort liability to file chapter 11 with a restructuring support agreement supported by substantially all opioid claimants.
- Ad hoc committee of first lien, second lien, and unsecured noteholders holding approximately \$3.2 billion (nearly 40%) of specialty pharmaceutical company Endo Pharmaceutical’s funded debt in its chapter 11 restructuring addressing opioid liabilities and other litigation claims.
- Derivative litigation on behalf of plaintiffs and minority shareholders comprising many of ICON Aircraft’s former directors, officers and Company founders, including former Chairman and CEO of Boeing, in connection with claims against majority shareholder alleging illegal expropriation of ICON’s intellectual property to China in ICON Aircraft’s chapter 11 cases.



NARINDER WALIA – KROLL



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BACKGROUND

Narinder Walia is a Senior Director in Kroll's Expert Services practice, based in Century City, Los Angeles.

With over 20 years of experience in financial advisory and complex litigation consulting, he advises corporate, government, and regulatory clients. He primarily focuses on matters involving business valuation, corporate governance, mergers and acquisitions (M&A), and securities litigation.

Narinder has led numerous engagements centered on loss causation, the quantification of economic damages, and class certification. He has specific experience analyzing claims brought under Sections 10(b) and 11 cases, and he has served as a damages expert on behalf of both plaintiffs and defendants.

His professional background is supported by a Master of Business Administration (MBA) from the University of Rochester, a Post Graduate Diploma in Management from the Indian Institute of Management, and a bachelor's degree in electronics and telecommunications engineering from the University of Mumbai. Additionally, Narinder is a Chartered Financial Analyst (CFA) charterholder and holds the Accredited in Business Valuation (ABV) designation.



Q&A

Faculty

Hon. Lisa G. Beckerman is a U.S. Bankruptcy Judge for the Southern District of New York in New York, sworn in on Feb. 26, 2021. From May 1999 until she was appointed to the bench, she was a partner in the financial restructuring group at Akin Gump Strauss Hauer & Feld LLP. From September 1989 until May 1999, she was an associate and then a partner in the bankruptcy group at Stroock & Stroock & Lavan LLP. Prior to her appointment, Judge Beckerman served as a co-chair of the Executive Committee of UJA-Federation of New York's Bankruptcy and Reorganization Group, as co-chair and as a member of the Advisory Board of ABI's New York City Bankruptcy Conference, and as a member of ABI's Board of Directors of from 2013-19. She is a Fellow and a member of the board of directors of the American College of Bankruptcy, as well as a member of the National Conference of Bankruptcy Judges (NCBJ) and the 2021 NCBJ Education Committee. She also is a member of the Dean's Advisory Board for Boston University School of Law. Judge Beckerman received her A.B. from University of Chicago in 1984, her M.B.A. from the University of Texas in 1986 and her J.D. from Boston University in 1989.

Manish Kumar, CVA is a managing director with Province, LLC in New York and has more than 30 years of diverse experience in financial forensics, damages, valuation, solvency and related analyses. He regularly engages in forensic investigations, evaluating business processes and cash flows, reviewing projections for reasonableness, analyzing the ability to pay debts, evaluating capital-adequacy and identifying voidable transfers. Mr. Kumar has provided expert testimony on damages, valuation, exchange of reasonably equivalent value, and solvency-related disputes in a variety of engagements. He has estimated the value of tort claims and liabilities associated with sexual abuse allegations. Additionally, he has advised debtors, banks, senior lenders, unsecured creditors and private-equity sponsors on matters spanning a wide range of industries. This includes advising counsel to senior lenders in defending against fraudulent conveyance claims; analyzing reasonableness of projections and evaluating solvency; leading forensic investigations; and conducting analyses of transactions. Before joining Province, Mr. Kumar was a managing director at Teneo and a senior director at Goldin Associates. He has also worked as a vice president at Citibank and has held various positions at Sumitomo Bank and Bank of America. Mr. Kumar received his B.S. with honors from the Sri Ram College of Commerce at Delhi University and his M.B.A. in finance and operations management from NYU Stern School of Business.

Claudia R. Tobler is special counsel with Selendy Gay PLLC in New York and has experience in all aspects of bankruptcy, restructuring and bankruptcy-adjacent mandates, including debtor, creditor, ad hoc committee, litigation and transactional representations. Her practice includes company-side representations in some of the largest bankruptcy cases and restructuring proceedings in the U.S. and Canada. She has also represented creditors in matters involving billions of dollars of debt. Prior to joining Selendy Gay, Ms. Tobler was a leader in the Corporate Restructuring and Bankruptcy practice at Paul, Weiss, Rifkind, Wharton & Garrison, LLP, where her clients included Fortune 500 companies, private-equity firms, and multinational corporations. Her notable matters include Mallinckrodt, Endo Pharmaceuticals, Bumble Bee Foods, Checkers Restaurants, Cumulus Media, Neiman Marcus, Enron, and WorldCom. Ms. Tobler assisted ABI and INSOL International with the launch of a new database focused on developments under chapter 15 of the Bankruptcy Code, www.Globalinsol-

vency.com/chapter15. She has also authored numerous articles on a variety of restructuring topics, and co-authored the U.S. chapter in the 2013 edition of *Getting the Deal Through: Restructuring and Insolvency 2013*. In addition, she was a panelist at the International Insolvency Conference hosted by the Instituto Argentino de Derecho Comercial, discussing claim subordination in Argentina and the U.S., and has spoken at ABI's International Caribbean Insolvency Symposium, where she discussed the foreign implications of resolution planning under Dodd-Frank and the laws governing individual chapter 11 cases. A member of the International Insolvency Institute NextGen, Ms. Tobler's practice also includes important *pro bono* and public policy litigation. In *District of Columbia v. Proud Boys Int'l, LLC*, she advised a litigation team representing the District of Columbia in its civil case prosecuting the Proud Boys, the Oath Keepers, and certain individual members and affiliates for conspiring to commit acts of violence and attack the U.S. Capitol on Jan. 6, 2021, in connection with a defendant's individual bankruptcy filing. She also partnered with the Veterans Consortium Pro Bono Program in the U.S. Court of Appeals for Veterans to successfully represent veterans who received denials from the Board of Veterans Appeals on benefit claims. Ms. Tobler received her B.A. *magna cum laude* from Boston University in 1992 and her J.D. *magna cum laude* from Boston College Law School in 1999.

Narinder Walia, CFA, ABV is senior director of Expert Services at Kroll, LLC in Los Angeles and has more than 25 years of experience in financial advisory and complex litigation. He has experience working with large, complex datasets spanning market, transactional and corporate records, and he leverages advanced analytics to support valuation, corporate governance, M&A and securities litigation matters. Mr. Walia has led numerous engagements focused on loss causation, damages and class certification in Sections 10(b) and 11 cases, and he has served as the damages expert on behalf of Monster Energy Co. He holds a Bachelor's in electronics and telecommunications engineering from the University of Mumbai, an M.B.A. from the University of Rochester, and a Post-Graduate Diploma in Management from the Indian Institute of Management.