



## Spencer Fane Team Discusses U.S. Bankruptcy Code Section 365 in ABI Publication

Spencer Fane attorneys [McKay Holley](#) and [Mark Bogdanowicz](#) authored an article – True Lease, Or Something Else? Navigating § 365 and Lessee Rights – for the February 2026 issue of the *American Bankruptcy Institute Journal*.

In the piece, the team provides background information and practical considerations on U.S. Bankruptcy Code Section 365(h)(1), which allows bankruptcy debtors and trustees to keep or reject leases. McKay and Mark discuss the factors that help courts to determine if an agreement is a “true lease” and also outlines elements that affect lessees who wish to keep possession of a real property when potentially facing a rejected lease under § 365.

“Because the Bankruptcy Code looks beyond labels and examines the economic substance of the arrangement, parties should evaluate the structure and purpose of long-term, prepaid or atypical leases with particular care,” the team concludes. “By identifying potential characterization risks early and developing a strategy grounded in both state law property concepts and § 365 jurisprudence, lessees can better protect their rights when a debtor seeks to reject a lease and reclaim property through the bankruptcy process.”

At Spencer Fane, which serves as a Capital Partner for the ABI, McKay and Mark both add significant value to the firm’s Bankruptcy, Restructuring, and Creditors’ Rights practice group. The team adeptly navigates clients through all sides of bankruptcy and insolvency matters to maximize recoveries and advance business objectives.

Read the team’s full *ABI Journal* article [here](#).