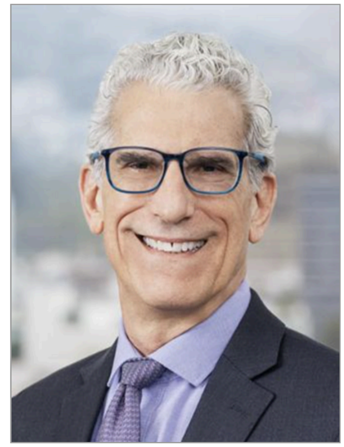
Q&A

Saul Ewing Retail Pro Sees 'Tug-Of-War' At Negotiating Tables

By **Charlie Innis** · August 17, 2026, 2:32 PM EDT · Listen to article

Open-air shopping centers with big-name brands are driving demand in the retail sector, leading to a dynamic where heavyweight tenants are calling more shots on leasing terms, according to a Saul Ewing LLP real estate partner.



Glenn Sherman

Successful retail landlords in the market are securing leases with major retailers that have strong financial profiles, known as "credit tenants," for their outdoor shopping centers, as those tenants can help draw people to neighboring stores and foster a lively environment that lifts all the shops on the strip.

That dynamic, coupled with the country's limited supply of new open-air shopping centers, makes negotiations between landlords and big-name retailer tenants especially critical, said Glenn Sherman of Saul Ewing.

Institutional investors funneled $15 billion into retail assets in the first quarter of 2026, a 5% increase from the same period the year prior, according to a JLL report published in the spring on quarterly market dynamics in the sector.

Grocery-anchored shopping centers, in particular, are positioned to outperform this year compared to other kinds of retail properties in rent growth and occupancy, CBRE noted in January.

Sherman talked to Law360 Real Estate Authority about the "tug-of-war" he's seeing play out at the negotiating table between landlords of shopping centers and retailers. The conversation has been edited for brevity and clarity.

I've heard institutional investors have been putting more capital into retail, but they're mostly interested in power centers and grocery-anchored outdoor shopping malls. From your vantage point, what are you noticing in your practice in terms of deal activity? Who are the winners and the losers?

Credit is really the key. Credit and draw. That's the mindset of retail. Everybody wants to be in a location-oriented shopping center because of customers, and so power centers are very strong, and grocery-anchored are very strong. The reason is they're bringing people. Malls are having trouble. Of course, there are exceptions to the rule. Century City mall is thriving, but it's an outdoor mall in a beautiful setting with great climate. Fashion Island in Newport Beach is similar. You're seeing some of those kinds of things thriving. That probably is less of what I'm doing myself. I tend to represent developers and investors in shopping centers that are primarily grocery, neighborhood-type centers with big boxes and credit. It's a recognition of, "Build it, and they will come."

You've got these developers that are trying to entice capital. How are they getting capital? Consistent performance of rents and net operating income. That consistency comes from the credit of the tenants. It's not mom-and-pops that are exciting to institutional lenders and investors because of the vacancy factor, because of the unwillingness in many to pay the kind of rents that they're getting.

You mention you represent developers. What are you seeing in terms of development activity in the last few years?

It's an active part of my practice. I do a lot of construction contracts and development deals tied to leasing, tied to acquisitions of infill projects. I'm seeing a lot of attention, though, that developers are giving to pre-leasing. They want to take the speculation out of the deal, so they're tying up properties with long lead times so they can get their entitlements, so they can get the leases pre-negotiated and signed, so that when they are ready to close on the purchase, they've already got their credit lined up. They've got their lenders ready to proceed. And taking as much of the risk out as they can.

I'm seeing projects that are in the shadow of successful retailers. Those shadow projects are things that are perhaps adjacent to a Costco or a Walmart or a Lowe's Home Improvement Center, something like that, or a Meijer in the Midwest. And what are they doing? They're doing it because that retailer is going to be bringing people. So then they can lease to a grocer, but it's going to have to be a different kind of grocer than a Costco grocer. So it might be a Whole Foods or an ethnic grocer. They're doing big-box projects next door, so that might mean a Burlington, a Ross Dress for Less, Marshalls. Projects like that wind up having great credit and the draw.

Interestingly, gyms are favored now more so than before in retail, because in the past, of course, nobody liked gyms because they took up so much parking and people were leaving sweaty and not really wanting to shop. But that's changed because they're drawing people, and the people are those customer accounts, [which] are what the credit tenants are striving for.

With these kinds of centers where one tenant has a big draw, how are co-tenancy and exclusivity and other provisions changing in lease agreements?

They're becoming more critical for retailers. The retailers that have the credit that are really the draw, themselves, they're demanding those very issues.

What is a co-tenancy provision looking like? Usually, they'll identify a named tenant that they will want to make sure is operating. So, let's say it's Walmart, and they'll probably want a percentage of occupancy in the rest of the shopping center. So maybe it's 50%, 60% occupancy somewhere. Those are the types of things that I'm seeing. But as a developer, you can't just agree to that without having an option to replace those tenants, if you can. As an example, I had a project that was recently acquired by a client of mine, and there were some retailers that had co-tenancy provisions that would never be satisfied because a Walmart closed within the project. If Walmart closes, you're probably not getting another competitor to go in. For Walmart to close is very unique. So when that happens, you're not likely to get a replacement.

So, what do you do? We try to carve out. We don't have to replace the Walmart with another tenant of equal size. We might have to break up that space into three or four or five 20,000-square-foot spaces, things such as that. But it's not an easy space to carve up because it's so deep, and retailers want more street presence. They don't want the depth. It makes them look small. It doesn't give them enough pizzazz. So, it's a challenge.

Sometimes, that's where these gyms come in and will take the back end, and it'll also help the retailers because the parking will be on the back end, so not taking up frontage parking. So, it's easier to do it that way, but it's a big challenge. When Kmart closed on one of my projects, I think it was in Anaheim, it was a very tough alternative use to find.

So, those are the challenges. But co-tenancy is key. Exclusives are important, but, bluntly, most of these tenants would probably go in against a competitor if the competitor was already there and it was a market that they wanted to be in. It's not being in a ghost town of a shopping center — that is the real problem.

What are landlords doing to try to protect themselves against distress or closures such as that?

You got to have some strong credit behind. So, in the event the tenant is defaulting, you've got an out. There are landlord recapture provisions that a landlord is going to have.

Credit tenants are going to force the landlord to accept the fact that they may not operate always. They may close. They'll pay the dark rent, but if the operation isn't working, they're going to want the right to close their store and not have liability for a default. They'll still pay the rent, like I said. But what they're doing is giving a landlord angst because the landlord now has these co-tenancy provisions. He's got to do something, so he's probably going to want to recapture that space, and that anchor tenant may be wanting to try and sublet the space to regain some of their investment, so there's a little tug-of-war going on between landlord and tenant as to how to fix the problem of the vacancy.

You mentioned earlier that development is an active part of your practice, though I've heard that not a lot of new open-air shopping centers are being built. Can you talk more about where and what kind of development activity you're seeing?

I'm seeing a number of infill projects; there's a lot of retail already around it. Maybe there's a repositioning of the center, maybe there's an adjacent property that's being annexed or developed independently, and I am seeing those kinds of projects where developers are anxiously doing development. Those are locations where they're already pre-leased, so these developers, when they're out actively contacting me to do the construction contracts, they've already got a tenant chosen; plans [are] probably in the works or almost completed, so they're in for city permits; and they want to hit the ground running.

Is there anything new that you're seeing in the retail space that you haven't seen before in the last six months to a year?

I've been seeing more medical-oriented projects filling in space that is hard to lease. If you're in an elbow of a shopping center, where you're tucked in a corner, and it's not easy to lease that space to a retailer because it doesn't have the visibility, projects like that. How do I fill in that difficult-to-lease space?

I must say that my clients aren't doing it, but it wouldn't surprise me that cannabis winds up being possibly a use for that tucked-in space, because it's got its own draw. A gym might be a good tenant to put in that back-end space.

I've been doing some things with elderly care in probably a 20,000- to 25,000-square-foot space, where it's in a tough neighborhood, very blue-collar, perhaps, not high-end, so you're not getting the big credit that's going in there. But it's a good use, because the neighborhood and the area could really use that type of use, and so a landlord is converting what might be a tough space to lease in today's world into something like that.

Residential, I hear talked about when you've got projects that are challenged. Residential is a tough switch, though, for a whole lot of reasons. I'm not seeing conversion to residential as much as I am seeing just total demolition and rebuilding. Hard to convert an old Kmart into residential.

--Editing by Daniel King.