

# Saks' Post-M&A Bankruptcy Illustrates Current Market Risks

By **Ben Thompson** (February 13, 2026)

In the current M&A environment, deal outcomes are being shaped less by strategic vision than by capital structure discipline. That is not a new lesson, but it is one the market is being forced to relearn as higher financing costs, tighter credit condition and limited refinancing windows replace the assumptions that governed dealmaking for much of the past decade.



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What has changed is not the business logic behind these deals, but the speed with which legal and contractual constraints now govern their outcomes when conditions deteriorate.

Recent high-profile transactions have reinforced a reality experienced dealmakers understand well but are often pressured to discount during expansion cycles: Structure governs outcomes when leverage is high and liquidity tight. When distress emerges, those outcomes are determined by bankruptcy law, capital hierarchy and the enforceability of contractual rights, not strategic intent or commercial importance.

Saks Fifth Avenue LLC's bankruptcy — filed in the U.S. Bankruptcy Court for the Southern District of Texas on Jan. 14 — followed the retailer's July 4 acquisition of The Neiman Marcus Group LLC, and has become an early illustration of how modern deal structures behave under stress.

The transaction was supported by sophisticated investors, layered commercial relationships and a coherent strategic rationale. None of those factors ultimately displaced the legal and financial mechanics that determine recoveries in distress.

The takeaway is not that the deal was ill-conceived. It is that capital structure, not concept, dictates resilience when conditions turn.

## **Strategic Capital Does Not Change Waterfall**

When Saks acquired Neiman Marcus in 2024, the deal drew attention in part because of the identity of its investors. Public reporting confirmed that Amazon.com Inc. invested approximately \$475 million in equity, alongside commercial arrangements tied to a virtual Saks storefront on Amazon's platform.

From a board perspective, this form of strategic capital is often viewed as inherently stabilizing. It combines financing with commercial integration and long-term alignment. In favorable markets, that perception is rarely tested. Indeed, the deal basis predicted roughly \$500 million in cost synergies.

In distress, however, strategic alignment does not alter the statutory order of priority. Under the Bankruptcy Code, recoveries are determined by liens, claims status and contractual subordination, not by the identity or commercial value of a particular investor.

Bankruptcy law enforces contracts, liens and capital hierarchy. It does not account for the perceived importance of a partner or the commercial logic that justified an investment.

Equity remains equity, regardless of who holds it. For deal and counsel boards, this distinction is not theoretical: it is the difference between optionality and obliteration when liquidity tightens.

### **When Counterparties Wear Too Many Hats**

What makes the Saks transaction particularly instructive is not the presence of strategic capital, but the number of roles occupied by key counterparties. Investor, platform partner, supplier and commercial counterparty are distinct relationships governed by different agreements and risk allocations.

When a company is performing, those roles can reinforce one another. When liquidity tightens, they often fracture.

Under the Bankruptcy Code, commercial agreements may be rejected or renegotiated. Equity interests are typically wiped out. Claims assumed to be protected by strategic importance are reduced to whatever contractual rights survive insolvency scrutiny.

This outcome is neither surprising nor novel. It is the predictable result of layered relationships that have not been fully stress-tested against downside scenarios.

Strategic capital frequently accepts equity or subordinated exposure in exchange for commercial upside. When that upside disappears, recovery is dictated by structure, not partnership. In this case, the capital stack requirements suffocated vendor payments and there was no real flexibility to respond to unexpected market dynamics in time.

### **Leverage, Not Market Narrative, Drives Speed of Failure**

Postmortem commentary on retail bankruptcies often focuses on macroeconomic forces or shifting consumer behavior. Those factors matter, but they rarely explain the speed at which distress unfolds.

What accelerates failure is often leverage combined with limited flexibility.

Public reporting indicates Saks emerged from the Neiman Marcus acquisition with substantial debt and a capital structure that left little room to absorb volatility as financing conditions tightened.

As interest rates remained elevated and consumer demand softened, the company's ability to refinance or recalibrate narrowed. Once liquidity constraints became acute, the structure itself became the binding constraint.

This distinction is critical for boards and sponsors. A business strategy can be directionally sound and still fail if the capital structure cannot tolerate modest deviations from the plan.

### **When Strategic Capital Is More Exposed Than It Appears**

A persistent misconception in dealmaking is that strategic capital is safer than financial capital. In practice, it is often more vulnerable.

Strategic investors frequently prioritize commercial upside over structural protection. They accept equity exposure or subordinated positions because they expect long-term platform value or operational leverage. That trade-off works only as long as the company remains

solvent.

Once it does not, those same features can magnify risk. Commercial leverage does not translate into priority in bankruptcy. Platform dependence can complicate restructurings. Interlocking agreements may become subject to rejection or renegotiation at precisely the moment certainty is most valuable, and conflicts of interest can arise where multiple roles are serviced by one group of affiliates.

The Saks bankruptcy illustrates this dynamic. Investors with layered commercial arrangements are nonetheless subject to recovery outcomes dictated by statutory priority, not strategic intent.

### **A Shift in Deal Conversations**

The broader M&A market is already internalizing these lessons. Boards are demanding more rigorous downside modeling. Sponsors are focusing on covenant flexibility, intercreditor dynamics and capital hierarchy rather than headline valuation alone. Hybrid structures are being evaluated not just for upside potential, but for how they perform in failure.

In sectors facing cyclical or secular pressure, including retail and consumer goods, these questions are increasingly central. Elevated leverage combined with operational complexity leaves little margin for structural error.

Strategic capital has not disappeared from the market. What has changed, or perhaps resumed, is the scrutiny applied to whether strategic features meaningfully alter downside risk or simply create the appearance of insulation.

### **Looking Ahead**

As dealmaking moves deeper into 2026, these dynamics are increasingly shaping how transactions are structured at the outset. Boards are pushing for clearer downside waterfalls; sponsors are modeling failed refinancings rather than modest earnings before income, taxes, amortization and appreciation misses; and strategic investors are being pressed to define precisely where their capital sits when conditions deteriorate.

Intercreditor agreements, covenant headroom and liquidity runways are receiving the same scrutiny once reserved for growth projections. In a market where capital is no longer abundant and refinancing is no longer assumed, resilience is being priced directly into deal terms, not deferred to optimism.

### **Case Study Resonates Beyond Retail**

The Saks-Neiman transaction will remain a reference point not because it was uniquely flawed, but because it reflects how contemporary deal structures behave under stress. Sophisticated parties. A rational strategic narrative. A legal and capital structure that left little room for error once market conditions shifted.

For founders, boards and investors, the lesson is not to retreat from ambition or innovation. It is to remember that optimism lives in the business plan, but risk lives in the structure.

For deal lawyers, the lesson is to conceive of, and then assert, the pressure points of strategic customization and identify the most effective ways to mitigate the consequences in the event that the strategic initiatives are compromised. Structure is ultimately enforced

through law — through contracts, priority rules and bankruptcy outcomes that do not bend to strategic intent.

When markets turn, structure determines who has leverage, who has options and who absorbs the loss.

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