

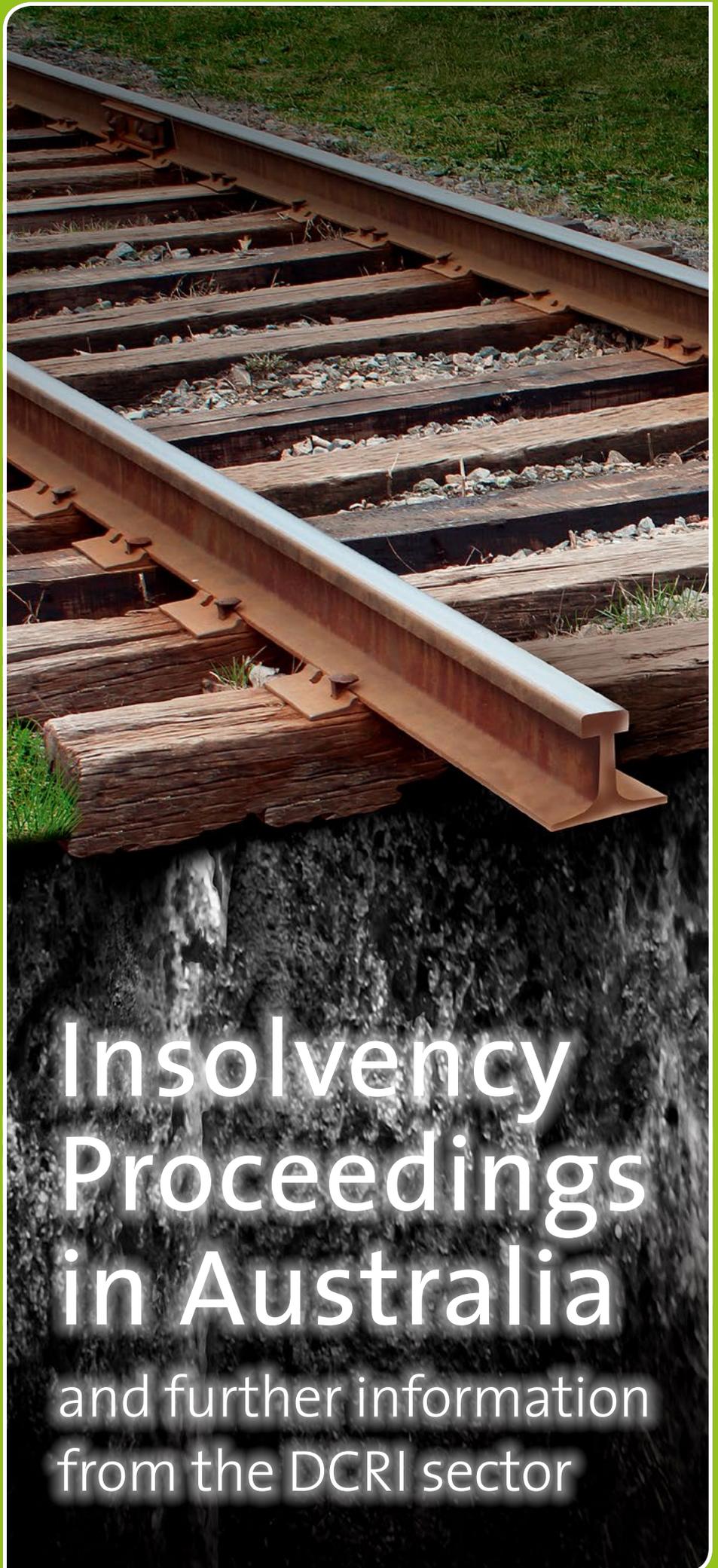


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Strategies for acquiring assets in U.S. bankruptcy cases

Changes in the law



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A key strategy in acquiring assets from a bankruptcy estate is by utilizing existing debt and liens to credit bid for the assets that may be in play. However, over the past few years the ability of secured creditors to evaluate this strategy in a case based upon the value of their lien position has been undercut by several developing areas of the law.

Two recent cases, *In re: Fisker Automotive Holdings Inc.*, No. 13-13087 (KG) 2014 and *The Free Lance-Star Publishing Co. of Fredricksburg Va.*, No. 14-30315 (KRH) 2014 have capped a creditor's right to credit bid. Noting that the right to credit bid is not absolute, these courts pointed to controlling actions by the secured creditors during the development of the bidding process to justify limiting the creditor's right to credit bid under Section 363(k) for "cause". Additionally, courts continue to remain split over as to the meaning of "aggregate value of all liens" under Section 363(f).

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Moritt Hock & Hamroff is a full-service commercial law firm providing a wide range of legal services to businesses, corporations and individuals worldwide. The firm has 19 practice areas and offices in Garden City (NY) and New York City.



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One group of decisions holds that a sale cannot be approved if the sale price is equal to or less than the aggregate amount of all claims held by creditors holding a lien in the property being sold, while other courts have held

that a sale satisfies Section 363(f) (3) if the sale price is equal to or greater than the aggregate economic value of the liens asserted against the collateral.

Combined these changes place

more uncertainty in this process than has existed for some time and perhaps may impact how strongly a creditor approaches the sale process to avoid having their rights under the Bankruptcy Code altered.