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**Third Parties  
(Rights Against  
Insurers) Act 2010**

**Creditors claiming directly from the  
debtor's insurers**

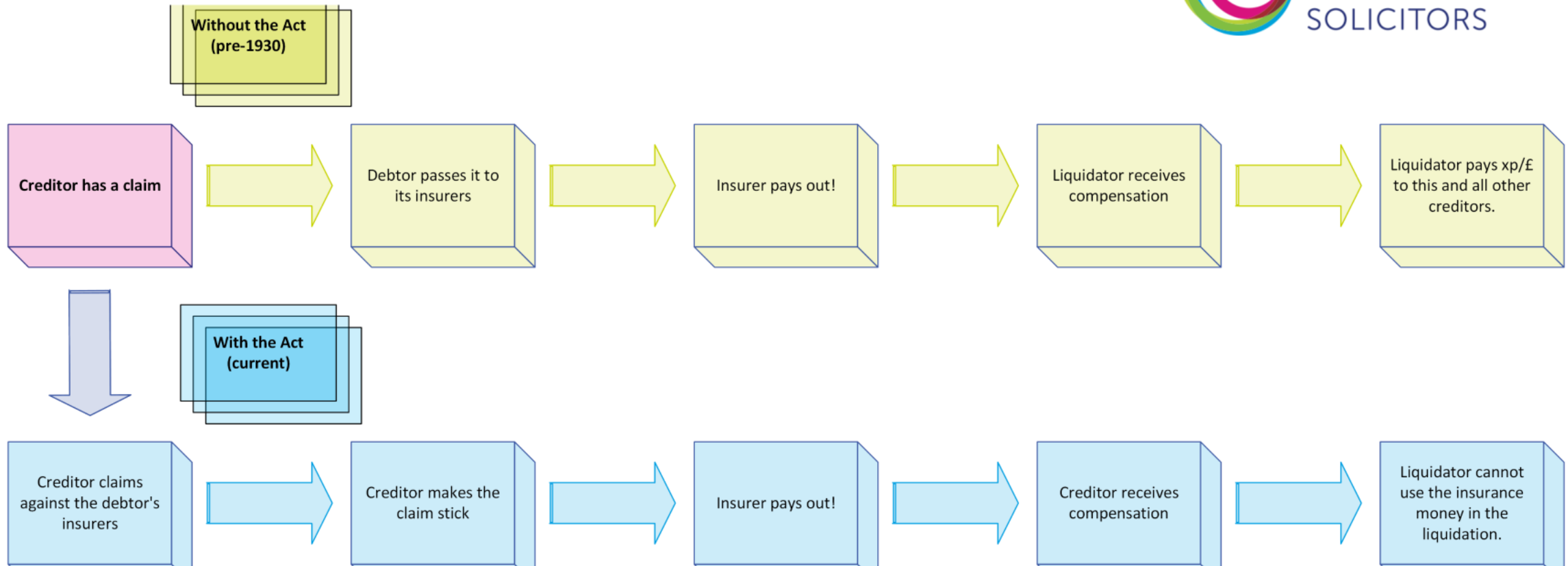
# Why?

The reason for the legislation.

# It diverts insurance payouts

## Without it:

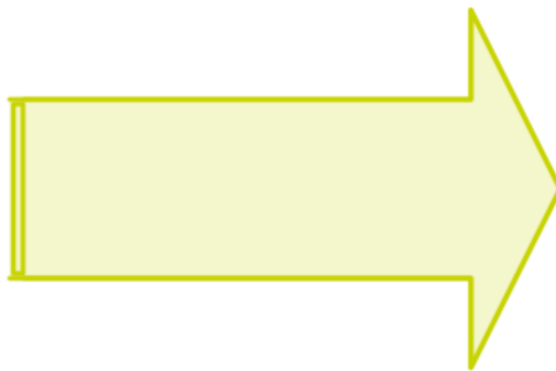
- **unsecured creditors get a windfall; and**
- **the claimant is only an unsecured creditor.**



**Without the Act  
(pre-1930)**

**Creditor has a claim**

Debtor passes it to  
its insurers

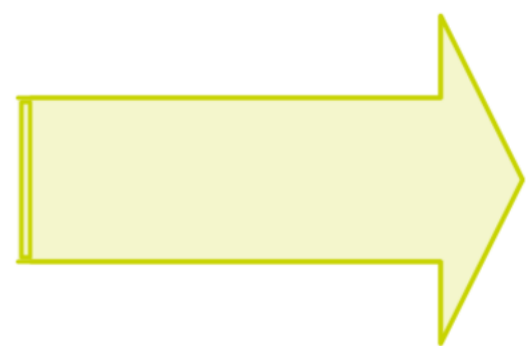


Debtor passes it to  
its insurers

Insurer pays out!



Insurer pays out!



Liquidator receives compensation





# SOLICITORS



Liquidator receives compensation



Liquidator pays xp/£ to this and all other creditors.



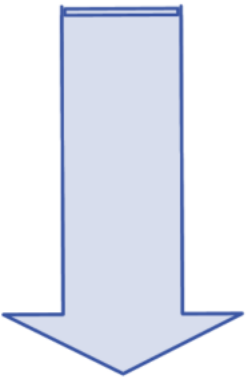
**Creditor has a claim**



Debtor passes it to its insurers



Insu

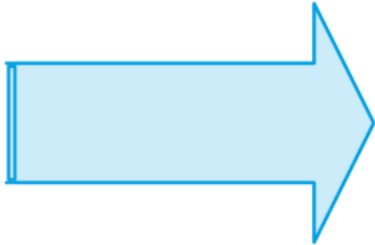


**With the Act (current)**

Creditor claims against the debtor's insurers



Creditor makes the claim stick



Insu

```
graph LR; A[Creditor makes the claim stick] --> B[Insurer pays out!];
```

Creditor makes the  
claim stick

Insurer pays out!

```
graph LR; A[Insurer pays out!] --> B[Creditor receives compensation];
```

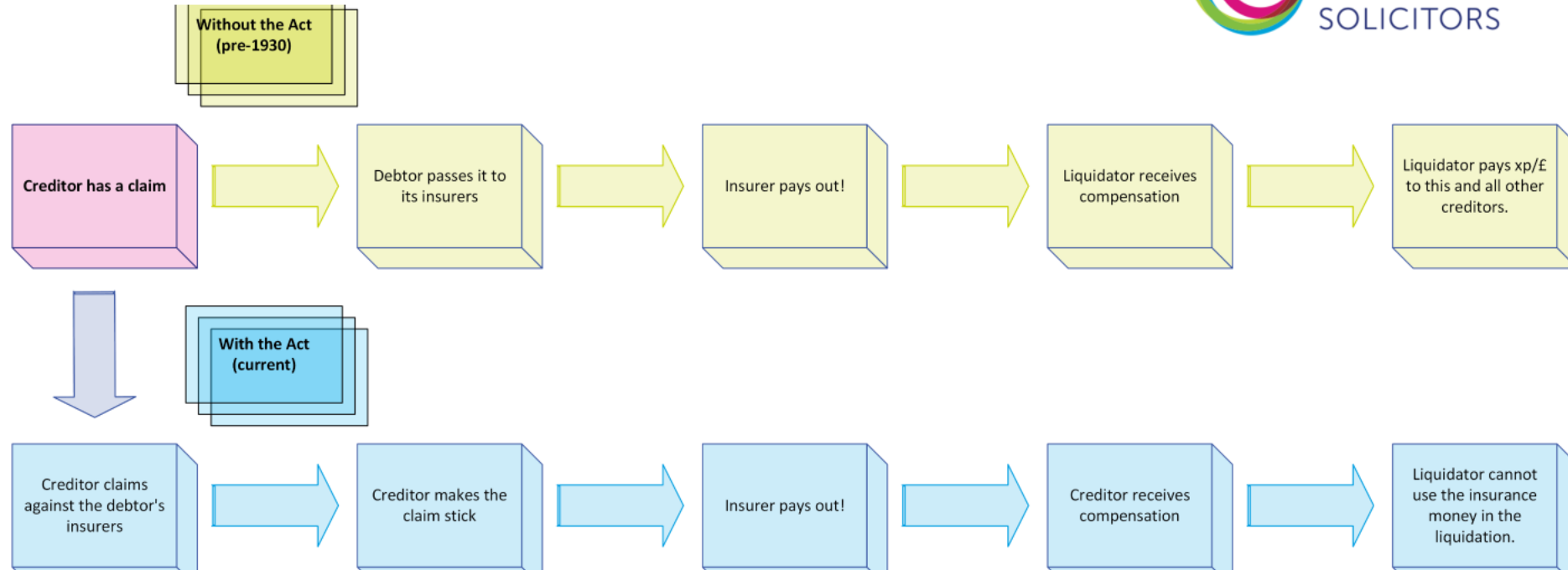
Insurer pays out!

Creditor receives  
compensation

```
graph LR; A[Creditor receives compensation] --> B[Liquidator cannot use the insurance money in the liquidation.];
```

Creditor receives compensation

Liquidator cannot use the insurance money in the liquidation.



# Why?

The reason for the legislation.

	<h2>Why?</h2> <p>The reason for the legislation.</p>		<h2>Rights!</h2> <p>The statutory rights that creditors have</p>
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# Rights!

The statutory rights that  
creditors have





The debtor's rights against the insurer are transferred to the creditor, either:

- On appointment (if the claim existed then); or
- When the liability arises (if after appointment).

## **The effect of the transfer is:**

- The 'third party' (creditor) remains a creditor only for its shortfall; and
- The debtor (BustCo) cannot also claim against the insurer (even if it has its own losses to recover).

The creditor does not get rights that are any better than the rights BustCo had.

- The creditor's contributory negligence may reduce its claim.
- Pre-transfer set-off may reduce the claim (unpaid premiums, for example).
- The insurer might avoid cover (if entitled to do so).
  - (But cannot do so because of the insolvency alone; there are anti-avoidance rules in TP(RAI)A 2010.)

# Rights!

The statutory rights that  
creditors have



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# Enforcement?

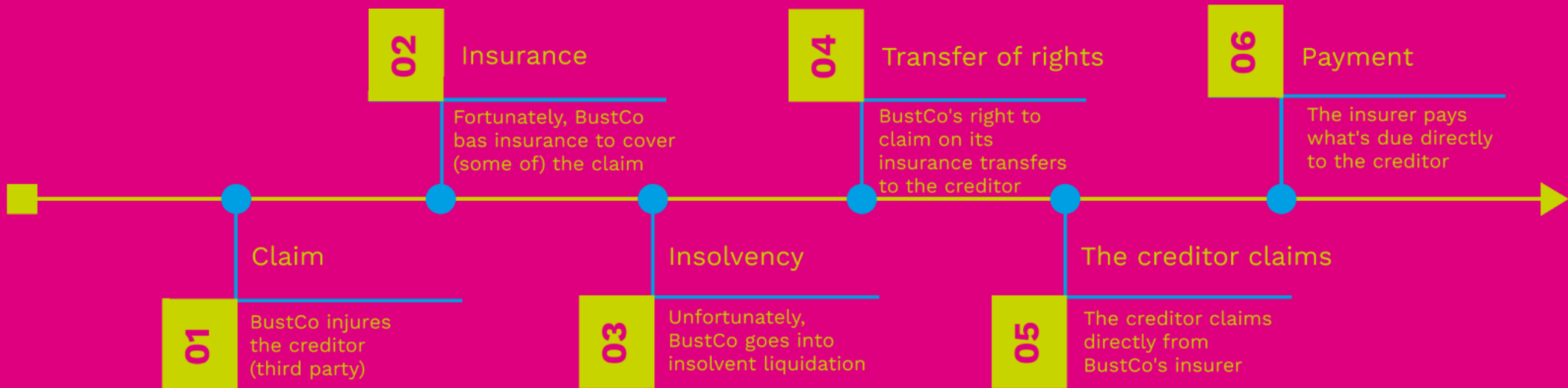
What must the creditor do to use their rights?



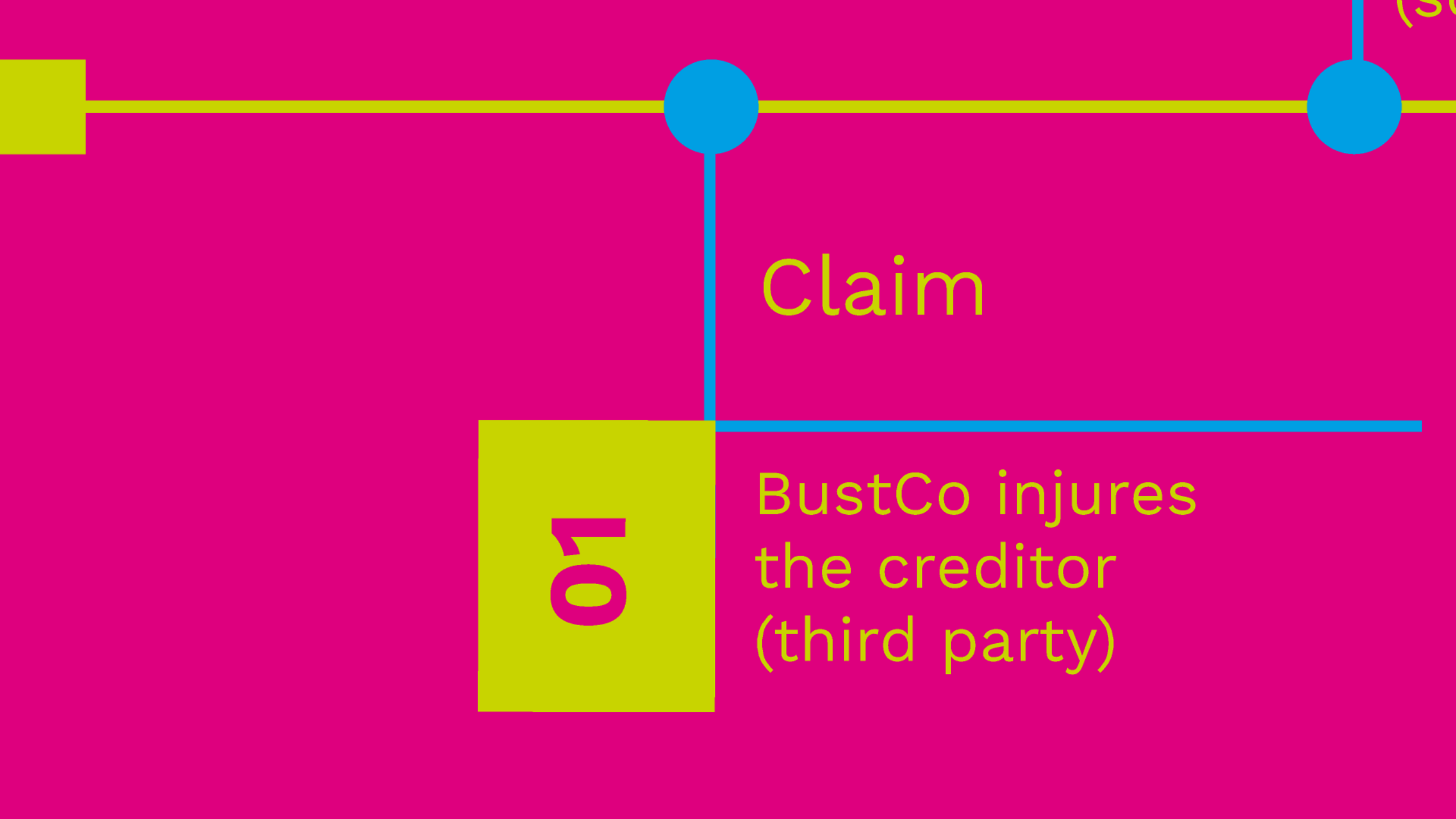
The creditor (third party) may enforce their rights by:

- Suing the insurer.
- Demanding information about the debtor's (BustCo's) insurance policies.
  - Necessary to bring a claim.
- Doing stuff the debtor is supposed to do.
  - For example; they may give notices needed under the policy.

## Timeline







01

Claim

BustCo injures  
the creditor  
(third party)

02

## Insurance

Fortunately, BustCo has insurance to cover (some of) the claim

# Insolvency

03

Unfortunately,  
BustCo goes into  
insolvent liquidation

04

## Transfer of rights

BustCo's right to  
claim on its  
insurance transfers  
to the creditor

05

# The creditor claims

The creditor claims  
directly from  
BustCo's insurer

06

## Payment

The insurer pays  
what's due directly  
to the creditor



# Boscolo Limited

## Wood v Desai (24 July 2024)



- The company was contracted to redesign the interior of an apartment.
- Its customer claimed breach of contract.
- The company was insured for £250k. The claim was over £700k.
- First, the insurers simply paid £250k to the company and closed their file.
- Then, the company went into CVL. Begbies held the payment.
- The customer (creditor) claimed a trust over the money.

### **The decision:**

- The company's rights against the insurer had ended pre-liquidation.
- So the TP(RAI)A 2010 transferred nothing to the creditor.
- The insurance payout was a realisation in the liquidation.

# Enforcement?

What must the creditor do to use their rights?





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# Procedures?

Which insolvency procedures trigger those rights?

# Companies, etc; partnerships, etc

## Most procedures:

- Liquidations
  - **MVLs**
  - CVLs
  - Compulsory
  - Provisional liquidations
- Administrations
  - Special administration regimes
- Receivers (not court-appointed receivers)
- VAs
- Restructuring Plans (part 26A)
- Schemes and rearrangements (part 26)

# Companies, etc; partnerships, etc

Most procedures:

- Liquidations
  - MVLs
  - CVLs
  - Compulsory
  - Provisional liquidations
- Administrations
  - Special administration regimes
- Receivers (not court-appointed receivers)
- VAs
- Restructuring Plans (part 26A)
- Schemes and rearrangements (part 26)

**Moratoriums**  
are not on the list

# Individuals

Most procedures:

- Bankruptcy
- IVA
- DRO
- Deceaseds' estates under an administration order
- County Court administration orders
- County Court enforcement restriction orders\*

\*Not (yet) brought into force.

# Procedures?

Which insolvency procedures trigger those rights?



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# Duties?

What are your duties to the creditor?



The main duty is:

- to give information about the insurance.

Because:

- the office-holder has information about the debtor's insurance,
- the creditor (third party) has a statutory right to demand it.

(s11 and schedule 1 of the Third Parties (Rights Against Insurers) Act 2010)

## You must reply within 28 days, with either

- The statutory information (if you have it); or
- The reasons why you can't supply it; and
  - If you can't supply it because someone else now has it:
  - Who they are, and what they've got.

The creditor can get a court order if you don't comply.

## The information you give them should include:

- If the debtor has **insurance** (that may cover the claim).
- Who the **insurer** is.
- A copy of the **policy**.
- Whether the insurer has **declined cover**.
- Whether there is any **litigation**
  - (with the insurer over the policy).
- How much of the **cap** on the cover is still left.
- Whether there is a fixed **charge** on any payments from the policy.

Remember:

They can seek a court order if you don't do what you should.

# When does a creditor have these rights?

A third party can ask for this information when they think:

- They have a claim against the debtor.
- The debtor is insured against their claim.
- The debtor's rights (against the insurer) have been transferred to them.
  - (In other words; you're the debtor's office-holder)
- You can tell them what they're entitled to know about the insurance.

# Duties?

What are your duties to the creditor?

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# Suggestions

My thoughts on how to deal with threatened claims under this legislation.

# Practical implications

Situations when you might meet this legislation  
- and how you might deal with it

Requests  
for more

Requests for  
information

MVLs



# MVLs

What if a claim comes into an MVL?

**Don't  
start  
from  
there!**

But, if it  
happens...

You wouldn't want  
to open an MVL  
with a known  
creditor - even if  
covered by  
insurance

# MVLs

What if a claim comes into an MVL?

**Don't  
start  
from  
there!**

But, if it  
happens...

# The effects of a claim:

- The MVL transfers the rights to the insurance.
  - (That's automatic. No opting out.)
- So the policy is no longer an asset in the MVL.
- The creditor will deal directly with the insurer.
  - (This may, or may not, be a Good Thing.)
  - (A quick settlement may become More Difficult.)
  - (It may prolong the MVL.)
- The creditor will have a claim in the MVL.
  - But only to the extent that they are not covered by insurance.
  - You may be able to broker a settlement on that.

# MVLs

What if a claim comes into an MVL?

**Don't  
start  
from  
there!**

But, if it  
happens...

# Practical implications

Situations when you might meet this legislation  
- and how you might deal with it

Requests  
for more

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MVLs

# Requests for information

- Take them seriously!
  - There's the risk of a court order.
  - Costs might be awarded against you.
- You have only 28 days to deal with it.
  - Ask for an extension, if you think you need it.
  - Deliver what you can, even if it's not everything.
- Ask for your time-costs...
  - But only if you have to.
  - Supplying the basic information normally should not be very difficult.
- Don't destroy your file!
  - (Even if you were going to shred it tomorrow.)

# Practical implications

Situations when you might meet this legislation  
- and how you might deal with it

Requests  
for more

Requests for  
information

MVLs



# Requests for more than the statutory minimum

## This is a balance.

- Insurers may be able to void the policy for failure to co-operate.
- The creditor (third party) might expect you to work for free.
  - Is there a risk of liability for you, if you cause the insurer to avoid the policy?
- Suggestion:
  - Offer to help.
  - But only if your time and expenses are paid in full.
- Disclosure of documents might be an issue.
  - You certainly want to get your costs covered, if drawn into that.

# Practical implications

Situations when you might meet this legislation  
- and how you might deal with it

Requests  
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MVLs

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# Suggestions

My thoughts on how to deal with threatened claims under this legislation.

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