

**Comparative Studies  
in the History of Insurance Law**

---

**Studien zur vergleichenden Geschichte  
des Versicherungsrechts**

**Volume / Band 11**

## **Maritime Risk Management**

**Essays on the History of Marine Insurance,  
General Average and Sea Loan**

**Edited by**

**Phillip Hellwege and Guido Rossi**



**Duncker & Humblot · Berlin**

PHILLIP HELLWEGE AND GUIDO ROSSI (EDS.)

Maritime Risk Management

Comparative Studies  
in the History of Insurance Law

Studien zur vergleichenden Geschichte  
des Versicherungsrechts

Edited by / Herausgegeben von  
Prof. Dr. Phillip Hellwege

Volume / Band 11

# Maritime Risk Management

Essays on the History of Marine Insurance,  
General Average and Sea Loan

Edited by

Phillip Hellwege and Guido Rossi



Duncker & Humblot · Berlin

The project 'A Comparative History of Insurance Law in Europe' (grant agreement No. 647019) and the project 'AveTransRisk. Average – Transaction Costs and Risk Management during the First Globalization (Sixteenth-Eighteenth Centuries)' (grant agreement No. 724544) have received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme.



European Research Council  
Established by the European Commission

Bibliographic information of the German national library

The German national library registers this publication in the German national bibliography; specified bibliographic data are retrievable on the Internet about <http://dnb.d-nb.de>.

All rights reserved. No part of this book may be reproduced, translated, or utilized in any form or by any means, electronic or mechanical, without the expressed written consent of the publisher.

© 2021 Duncker & Humblot GmbH, Berlin  
Printing: CPI buchbücher.de GmbH, Birkach  
Printed in Germany

ISSN 2625-638X (Print) / ISSN 2625-6398 (Online)  
ISBN 978-3-428-18260-2 (Print)  
ISBN 978-3-428-58260-0 (E-Book)

Printed on no aging resistant (non-acid) paper  
according to ISO 9706 ☺

Internet: <http://www.duncker-humblot.de>

## Preface

The contributions to the present volume are based on papers presented at the conference ‘Risk and the Insurance Business in History’, held in June 2019 in Seville, Spain, and organized by Jerònia Pons Pons and Robin Pearson. Part of those papers were presented at the two panels organized by the editors of this volume. Phillip Hellwege organized a session as part of the research project ‘A Comparative History of Insurance Law in Europe’ (CHILE) which has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (grant agreement No. 647019). The session organized by Guido Rossi hosted, as speakers, a number of participants in the research project ‘Average – Transaction Costs and Risk Management during the First Globalization (Sixteenth-Eighteenth Centuries)’ (AveTransRisk), which has received funding from the ERC under the European Union’s Horizon 2020 research and innovation programme (grant agreement No. 724544). We would like to thank all peer reviewers for the time that they have invested and for their valuable reports, which have greatly improved this volume. Finally, we would like to thank Sarah Meaney for correcting the English.

Augsburg and Edinburgh, September 2020

*Phillip Hellwege*  
*Guido Rossi*



## Summary of Contents

<i>Phillip Hellwege and Guido Rossi</i> Maritime Risk Management: Marine Insurance, General Average, Sea Loan .....	9
<i>Grietjie Verhoef</i> Insurance and Wealth: The Historical Trajectory of Changing Markets and Strategies in Insurance .....	17
<i>Nikol Žiha</i> The Insurance Function of Roman Maritime Loan .....	35
<i>Ana María Rivera Medina</i> Maritime Risk Management Instruments in Medieval Castile (Thirteenth to Sixteenth Centuries).....	61
<i>Luisa Piccinno and Antonio Iodice</i> Managing Shipping Risk: General Average and Marine Insurance in Early Modern Genoa.....	83
<i>J.D. Ford</i> General Average in Scotland during the Sixteenth Century .....	111
<i>David Deroussin</i> The Ordonnance sur la marine on General Average.....	139
<i>Andrea Addobbati</i> War, Risks, and Speculation: The Accounts of a Small Livorno Insurer (1743–1748).....	161
<i>Jerònia Pons Pons</i> The Transformation of the Marine Insurance Market in the Seventeenth and Eighteenth Centuries in Spain .....	189
<i>Mallory Hope</i> Commercial Networks, Maritime Law, and Translation in a Spanish Insurance Claim on Trial in France, 1783–1791.....	209
<i>Sabine Go</i> Governance of General Average in the Netherlands in the Nineteenth Century: A Backward Development?.....	247
<i>Stephanie Plasschaert</i> Unions and Networks in Nineteenth-Century Antwerp Marine Insurance Industry	265
List of Contributors .....	297
Index.....	298



# **Maritime Risk Management: Marine Insurance, General Average, Sea Loan**

*By Phillip Hellwege and Guido Rossi*

A. Introduction.....	9
I. Insurance as a legal product .....	9
II. Insurance as an actuarial product.....	11
III. Insurance as a financial product .....	12
IV. Insurance as a risk management strategy .....	13
V. An interdisciplinary approach to studying insurance .....	13
B. Histories of insurance .....	14
C. The objective and structure of the present volume.....	15

## **A. Introduction**

### **I. Insurance as a legal product**

In 1991, the German legal scholar Meinrad Dreher described private insurance as a ‘legal product’ (‘Die Versicherung als Rechtsprodukt’).<sup>1</sup> Indeed, more so than other contracts and transactions, insurance is in many ways dependent on the law, its legal context and regulatory framework.

(1) It is, for instance, possible to identify a sale and to distinguish it from other transactions, by simply observing what the parties do: they exchange goods for money. In the case of a barter, they exchange goods for goods. And in the case of a donation, only one party will receive either goods or money, with the giving party acting solemnly and the recipient acting gratefully. By contrast, in the case of insurance, one party will give a sum of money, and later the same party may (or may not) receive back another sum of money. This other sum of money may (or may not) be greater than the sum that the recipient had previously given. Furthermore, there are other transactions where the parties seem to simply exchange money for money: loans and lotteries, to name just two. It is impossible to identify what kind of transaction the parties are carrying out and to distinguish insurance from, for example, lottery by simply observing what the two parties do. It

---

<sup>1</sup> *Meinrad Dreher, Die Versicherung als Rechtsprodukt. Die Privatversicherung und ihre rechtliche Gestaltung* (1991).

is only possible to identify what kind of transaction the parties execute by analysing the contract terms.

(2) However, a contract is not only necessary to assess whether the parties have entered into an insurance transaction. In fact, it is possible to envisage a sale without any refined contractual documentation. If the parties agree on the goods and the price, and if they perform their reciprocal obligations simultaneously, there is no need to put anything into writing. By contrast, it would be difficult to think of an insurance in practice without some sort of written documentation, even if literature stresses that no form needs to be observed in order to conclude an insurance contract.<sup>2</sup> The parties have to identify when and under what circumstances the insured has a right to an indemnity or the insured sum. As that event will occur in the future – if at all – the parties will define it explicitly in their contract in order to avoid problems of evidence.<sup>3</sup>

(3) Furthermore, a sale is not only conceivable without any written contract, it is also conceivable without any contract law providing default rules that apply if the parties have not agreed on specific terms. The potential buyer inspects the goods that he or she wants to buy in order to assess their quality and to identify any defects. The parties then agree on a price and simultaneously exchange the goods for money. If the buyer takes seriously the task to inspect the goods before buying them, there may be no need for a refined set of rules, solving the problem of what happens if the goods turn out to be defective. And if the parties exchange performance and counter-performance simultaneously, there may be no need for a refined regime of contract enforcement. By contrast, for a number of reasons, insurance is dependent on the existence of a legal framework: the parties, for example, do not exchange their performances simultaneously; insurance is therefore unthinkable without a legal regime of contract enforcement.

(4) More specifically, insurance is dependent on trust. On the one hand, the insurer must be certain that he or she will have the information necessary to assess the risk and, thus, to decide whether and on what terms he or she is willing to conclude the contract. Such information is usually in the hands of the insured. Furthermore, the insurer must be certain that the insured will not change his or her behaviour after the conclusion of the contract. Modern insurance literature speaks of the problems of information asymmetry, adverse selection, and moral hazard.<sup>4</sup> On the other hand, insurance is a long-term contract: the insured pays

---

<sup>2</sup> Cf., e.g., *Jürgen Basedow et al.* (eds.), *Principles of European Insurance Contract Law* (2009), 103–106 (Art. 2:301).

<sup>3</sup> Cf., e.g., *Nicholas Legh-Jones et al.* (eds.), *MacGillivray on Insurance Law* (11<sup>th</sup> edn., 2008), para. 3-002.

<sup>4</sup> From the rich literature see, e.g., *Giesela Rühl*, *Information Obligations (Insurance Contracts)*, in: *Jürgen Basedow et al.* (eds.), *The Max Planck Encyclopedia of European*

his or her premium, and he or she wants to be certain that the insurer is still able and willing to offer indemnity or to pay the insured sum once the covered risk eventuates in the future.<sup>5</sup> Of course, problems of information asymmetry, adverse selection and moral hazard are inherent in many, if not most, contractual relationships. Of course, the problem that one party may no longer be in the position or no longer willing to offer the counter-performance after having received the performance is inherent in all long-term contracts. Nevertheless, for insurance markets it is vital that these problems are solved, as insurance products cover risks. If there are no solutions to the problems of information asymmetry, adverse selection and moral hazard, we may observe not only a market failure, but also a market collapse. And as the insured seeks insurance especially against those risks that he or she is unable to shoulder himself or herself, we may observe a collapse on the side of the insured if it is not safeguarded that insurers are in the position to pay the insured sum once the covered risk eventuates. In principle, the measures taken to address these problems are legal measures.

(5) Finally, in the case of sale, the product is not dependent on any regulatory or legislative framework. If a seller offers to sell grain, the product will remain the same regardless of the market where he or she sells the grain and regardless of the regulatory framework of that market. Of course, in today's world producers must observe national product safety regulations and thus they have to modify their products to comply with the regulatory framework of each market. Nevertheless, in essence, these products remain the same. By contrast, insurance products are simply dependent on the regulatory framework of each national legal system. The regulatory framework will have an immediate effect on the design of the insurance product.<sup>6</sup>

In summary, insurance is unthinkable without a refined regulatory framework. And it is impossible to analyse insurance products without understanding this legal setting.

## II. Insurance as an actuarial product

However, despite the fact that modern insurance law scholars stress that insurance is a legal product, it is evident that insurance is, at the same time, an actuarial product.

---

Private Law, vol. 1 (2012), 876–880; *David Rowell and Luke B. Connelly*, A History of the Term 'Moral Hazard', (2012) 79 *The Journal of Risk and Insurance* 1051–1075.

<sup>5</sup> These problems are, e.g., addressed by the law of insurance regulation, see *Anton K. Schnyder and Christian Heierli*, Insurance Regulation, in: Basedow (n. 4), 921–926.

<sup>6</sup> Cf., e.g., *Helmut Heiss*, Introduction, in: Basedow (n. 2), xlix–lii.