Chapter 5: Belgium

A. Non-marine insurance

By *Dirk Heirbaut*[*]

Whereas the history of marine insurance in Belgium/the Southern Netherlands has been well studied, non-marine insurance is a different matter. Historians have researched several aspects, but they never brought all these together to come to a general history of insurance. Sometimes companies commissioned a work on

[*] The author would like to thank Gerard Sinnaeve, Matthias Van der Haegen, and Amélie Verfaillie for their remarks.

their own history. Examples are AG (Fortis),[1] ASLK,[2] *Securitas*,[3] *Les Propriétaires réunis*[4] and P & V.[5] Some of these works are of a high quality, and their authors enjoyed the advantage of a unique access to a company's archives, which, however, also means that they did not enjoy complete freedom[6] and that their names may not even be mentioned. Another problem is that these books do not cover insurance on land in Belgium before the second half of the 18th century.[7] Insurance lawyers in their handbooks and in a small book on insurance history[8] may pay more attention to insurance before 1800, but their references are mostly to events in other countries.[9] It is not always clear whether these authors are aware that Belgium did not necessarily follow trends in other countries. Thus, some authors even find forms of insurance which did not exist in the Southern Netherlands, e.g. dowry insurance by the mounts of piety,[10] thereby forgetting that, in the Southern Netherlands, the latter were very different from their Italian counterparts.[11] In addition, Belgian authors have been unaware of foreign literature, which expressly dealt with their country, like Ernst Holthöfer's remarks on 19th century Belgian legislation on insurance.[12] Charles Trenerry awarded a central role in his *Origin and early history of insurance* to insurance in Belgium during the High Middle Ages.[13] In his opinion, there was already a well-developed system of insurance in Belgium at a very early date, which also influenced England.[14] Although Trenerry saw Belgium as a cradle of early insurance, Belgian historians and lawyers did not notice his research. Finally, whether

---

[1] *René Brion* and *Jean-Louis Moreau*, Van AG tot Fortis. 175 jaar verzekering in België (1999).

[2] Gedenkboek 1865–1965 van de Algemene Spaar- en Lijfrentekas van België (1965).

[3] *Juul Hannes*, Securitas: honderdvijftigste verjaardag, 1819–1969 (1969).

[4] P.R. 150 ans d'assurances. 1821–1971 (1971).

[5] *Luc Peiren*, *Eric Geerkens*, *Anne Vincent* and *Hubert Van Humbeeck*, Honderd jaar P & V. 1907–2007. Het unieke verhaal van een coöperatieve verzekeringsmaatschappij (2007).

[6] *Brion* and *Moreau* made a profession out of it, as they wrote several books on companies belonging to the same network as AG (see n. 1).

[7] E.g. *Brion* and *Moreau* (n. 1), 12–13.

[8] *Jan Van de Ryck*, De geschiedenis van het verzekeren (1978), a book which can only be useful for a very ignorant reader.

[9] E.g. *Luc Schuermans* and *Caroline Van Schoubroeck*, Grondslagen van het Belgische verzekeringsrecht (2015), 3–9; *Marcel Fontaine*, Verzekeringsrecht (2011), 29–33.

[10] *Félix Monette*, *Albert De Villé* and *Robert André*, Traité des assurances terrestres, vol. 1/1 (1949), 27.

[11] *Paul Soetaert*, De Bergen van Barmhartigheid in de Spaanse, de Oostenrijkse en de Franse Nederlanden (1618–1795) (1986).

[12] *Ernst Holthöfer*, Handelsrecht: Belgien, in: Helmut Coing (ed.), Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte, vol. 3/3 (1986), 3276–3395, 3324–3326.

[13] *Charles Trenerry*, The origin and early history of insurance (1926), 243–278.

[14] *Trenerry* (n. 13), 1–2, 244.

Belgian or foreign, specialists are unaware of some documents which shed a new light on the history of fire insurance in Europe, not just in Belgium.[15] As many issues still remain unexplored, this article can only be a first foray into a largely uncharted territory, and it will pay more attention to the pre-1800 period, which has been the most neglected.[16]

I. Mutual assistance

1. The older mechanisms of mutual assistance

What is now Belgium used to be the heartland of the Carolingian Empire. In 779 Charlemagne issued the capitulary of Herstal. One of its regulations dealt with the oath, a key concept of his government.[17] Charlemagne wanted to reserve the oath for obligations towards him or the church. Therefore, he forbade the formation of guilds by oaths, but he did not object to his subjects forming unions for assistance in the event of fire or a shipwreck.[18] As more details are lacking, we cannot know who the members of these guilds were and what their rights and obligations consisted of,[19] but some kind of mutual insurance was present.

A few charters from the 12th century offer more details, but by then so much time had passed that one cannot say to what extent they remained faithful to older practices. An 1188 charter by Philip of Alsace, Count of Flanders, for the burgesses of Aire,[20] confirms the law granted to their 'Friendship', i.e. their commune, by his predecessors Count Robert II and Countess Clemence around 1100.[21] This charter is somewhat of an anomaly, as Philip did not like autonomous cities and had curtailed their power. Looking at the obligations of the commune's members, one also has the impression that the form of insurance they mention had become outdated. The citizens of the commune had to help one another like brothers. When someone's house burnt down or he was imprisoned,

---

[15] See below, 106–109.

[16] See, however, *Philippe Godding*, Le droit privé dans les Pays-Bas méridionaux du 12e au 18e siècle (1987), 492–495 with the usual sharp insights of the author.

[17] *Owen Phelan*, The formation of Christian Europe. The Carolingians, baptism and the imperium christianum (2014), 32.

[18] Alfred Boretius (ed.), Capitularia regum francorum (1883), no. 20, 46–51, c. 16.

[19] *Hans-Werner Goetz*, Social and military institutions, in: Rosamond McKitterick (ed.), The New Cambridge Medieval History, vol. 2 (1995), 451–480, 477–478.

[20] On Aire, see *Paul Bertin*, Aire-sur-la-Lys des origines au XVIme siècle. Une commune flamande-artésienne (1946).

[21] *Thérèse de Hemptine, Adriaan Verhulst* and *Lieve De Mey*, De oorkonden der graven van Vlaanderen (juli 1128–september 1191), vol. 2/3 (2009), no. 740, 308–311 (DiBe ID 5552; the DiBe ID refers to the number of this charter in the online database of Belgian charters up to 1250, to be found at: www.diplomata-belgica.be).

every member of the commune had to give the impoverished friend one penny. To help to put this into perspective, Philip had introduced in Flanders 60 pounds fines and one pound was 240 pennies.[22] The case of imprisonment also appears in the charter of the count of Hainaut for the fraternity of the Lower Hall of Valenciennes,[23] though not in the charter itself, but in additional articles added in the early 12th century.[24] They make clear that the members of the fraternity only paid for someone whose goods or person had been taken without any fault of his own. This allows us to interpret the reference to imprisonment in the Aire charter. The Aire charter did not provide for hostages taken in battle, but addressed a problem of collective liability.[25] If a burgess from Aire had not fulfilled his obligations in another city, any other member of the commune who went there could be arrested and held until the payment of the debt. In this case, the members of the commune showed their solidarity towards one of their own, who would not have been imprisoned had he not been a member of the commune. Trenerry refers to the Aire and Valenciennes charters,[26] but he did not truly understand that the forms of insurance they mention very soon thereafter disappeared from the cities in the Southern Netherlands.[27]

Mutual assistance in case of damage by fire survived a little longer in the Flemish countryside, together with livestock 'insurance'. Both its tenacity in the countryside and the link with damage to animals indicate that they were relics from the past, rather than pioneers of a new future. Trenerry offers an overview of 13th and early 14th century documents referring to fire insurance.[28] However, he did not wonder why they only concern the countryside and only the western part of Flanders. 13th century Flanders was home to the biggest concentration of large cities north of the Alps. This meant a lot of fire hazards and, yet, fire insurance did not exist here, as the Flemish cities relied on preventive measures.[29] In the countryside of Western Flanders the problem was not fire as such, but arson.

---

[22] *Raoul Van Caenegem*, Geschiedenis van het strafrecht in Vlaanderen van de XIe tot de XIVe eeuw (1954), 216–219.

[23] *Henri Caffiaux*, La charte de la halle basse à Valenciennes, in: Coutumes du pays et du comté de Hainaut, vol. 3 (1878), 311–325, 315–325 (DiBe ID 9977).

[24] *Henri Caffiaux*, Mémoire sur la charte de la frairie de la halle basse de Valenciennes (XIe et XIIe siècles) (1877), 1–41, 23; *Henri Platelle*, Histoire de Valenciennes (1984), 25–28.

[25] Cf. *Godding* (n. 16), 492.

[26] *Trenerry* (n. 13), 252-253.

[27] Even charters shortly after 1188 no longer refer to this mutual assistance: e.g. *Louis Gilliodts-Van Severen*, Coutumes des petites villes et seigneuries enclavées, vol. 1 (1890), no. 2, 534–526 (DiBe ID 8071).

[28] *Trenerry* (n. 13), 253–256. In my analysis of Trenerry's work, I will leave aside minor details such as his errors in dating charters.

[29] See e.g. *Albert Janssens*, Over brand, blussen en brandpreventie in Brugge tijdens de laatbourgondische tijd (1450–1500) (2010), 219–238.

That part of Flanders seems to have been crime-ridden, though one must see this in context. Reports of crime in high medieval Flanders do not reflect a growing crime rate, but rather a growing intolerance of crime.[30] By 1164, the already mentioned count Philip had brought unheard peace to his lands.[31] A tough nut to crack had been Western Flanders, where his father even had to establish special courts of so-called *coratores* (lords of the charter) in the castellanies of Veurne, Bourbourg, and Bergues Saint-Winoc.[32] By 1240, the situation had become normal and Philip's successors could declare that henceforth the aldermen of the castellany would also serve as *coratores*.[33] Arson during the night remained a problem. The 1240 charter for Veurne declared that if the arsonist could be found, the damage would be paid from his goods. If not, the whole village had to indemnify the victim.[34] The rationale behind this was mutual assistance, but it had been twisted into an incentive for the community to betray the arsonist. This could have developed into a kind of premium insurance as events one year later show. In return for contributing in proportion to its possessions, the Saint Nicolas abbey of Veurne acquired a right to claim the same compensation as lay victims for fires which had 'secretly' happened.[35] Already one generation later, this mutual assistance was no longer attractive to abbeys. At Hazebrouck, also in Western Flanders, the 1327 law of a meeting of local benches of aldermen still made the whole village pay for fire from outside.[36] A preparatory document explains that mutual assistance was only a remedy after it had become clear that the arsonist could not be identified.[37] Even more interesting is a 1277 privilege for the abbey of Meesen that it no longer had to contribute to compensation for damage by fire

---

[30] See for an example *Paulo Charruadas*, Principauté territoriale, reliques et Paix de Dieux. Le comté de Flandre et l'abbaye de Lobbes à travers les Miracula S. Ursmari in itinere per Flandriam facta (vers 1060), 2007 Revue du Nord, 703–728.

[31] *Lambert of Wattrelos*, Annales Cameracenses (ed. Georg Pertz), in: Monumenta Germaniae Historica, vol. 16 (1859), 509–555, 536.

[32] *Anton Koch*, De rechterlijke organisatie van het graafschap Vlaanderen tot in de 13e eeuw (1952), 87–94.

[33] *Mina Martens*, Recueil de textes d'histoire urbaine belge des origines au milieu du XIIIe siècle, in: Elenchus fontium historiae urbanae, vol. 1 (1967), 279–404, no. 65, 397–404 (DiBe ID 21440).

[34] See n. 33.

[35] *Ferdinand Van de Putte* and *Charles Carton*, Chronicon et cartularium abbatiae Sancti Nicolaï Furnensis (1849), 97–99 (DiBe ID 21728) and 195 (DiBe ID 21736); confirmed in 1277 ibid., 106–109.

[36] *Paul Verbraeken*, De Hoop van Hazebroek, 1327. Kritische uitgave en commentaar, vol. 2 (unpublished licentiate thesis 1978), § 55, 36; *Edmond de Coussemaker*, Sources du droit public et coutumier de la Flandre maritime, Annales du Comité flamand de France 1873, 183–290, no. 4, § 55, 262–263.

[37] *Verbraeken* (n. 36), vol. 2, Annex 1, § 1, 48; *De Coussemaker* (n. 36), no. 3, § 1, 234–235.

in the Hazebrouck area.[38] Not surprisingly, after the 14th century this fire insurance disappeared.[39] The same also happened with the crime of 'hamelinghe', the mutilation of someone's animals.[40] In 1292 the aldermen of Furnes castellany declared that it had been an old custom that everyone would have to contribute to the owner's compensation. However, in 1292 the local population no longer seems to have been satisfied with this rule.[41] Once again, this kind of insurance disappeared. Hamelinghe remained a crime, but only the criminals themselves had to pay for the damage they caused.[42] In short, the fire insurance and livestock insurance mentioned by Trenerry were evolutionary dead-ends, not progenitors of modern insurance.

Trenerry also erred in finding non-mutual insurance in the Low Countries. Some great lords and ladies took merchants and their goods under their protection in return for paying certain taxes. Trenerry interpreted their obligation to render justice as an insurance; the persons under protection would be indemnified for their losses.[43] However, the texts only say that the lords or ladies concerned would see justice done.[44] They promised only that they would make others pay. There was no further obligation if they failed to do so.[45] In that case the risk still remained with the other party.

2. Mutual assistance within the craft guilds

Mutual assistance in the Southern Low Countries was very important within the craft guilds, but Belgian jurists do not refer to it, whereas historians have not thought of bringing their research to the jurists' attention. Research into the his-

---

[38] *Ignace de Coussemaker*, Documents inédits relatifs à la ville de Bailleul en Flandre, vol. 1 (1877), 20.

[39] *Verbraeken* (n. 36), vol. 1, 120.

[40] On this word, see *Victor Gaillard*, Hamelinghe, Verslagen en mededelingen van de Koninklijke Vlaamse Academie voor Taal- en Letterkunde (1911), 726.

[41] *Van de Putte* and *Carton* (n. 35), 195–196.

[42] See, e.g., *de Coussemaker* (n. 38), vol. 3, no. 35, 57. See already in the 13th century, *Louis Gilliodts-Van Severen*, Coutumes des petites villes et seigneuries enclavées, vol. 3 (1891), no. 11, 56–59, art. 24.

[43] *Trenerry* (n. 13), 261-263.

[44] In one 1228 charter even within three days (*Leopold August Warnkönig* and *Albert Gheldolf*, Histoire de la Flandre et de ses institutions civiles et politiques, jusqu'à l'année 1305, vol. 5 (1864), no. 21, 347–351 (DiBe ID 18278)), which merchants will have appreciated.

[45] Cf. *Konstantin Höhlbaum*, Hansisches Urkundenbuch, vol. 1 (1874), no. 282, 285–286 (DiBe ID 24070).

tory of craft guilds in Belgium was important in the early 20th century, but revived only in the 1990s.[46] The renaissance of craft guild studies has, so far, not led to great new studies on their mutual assistance.[47] Some articles are excellent, but they are too short to go beyond the basics. Apart from older individual case studies, e.g. for Brussels by Guillaume Des Marez (1870–1931),[48] the main literature consists of a student's thesis (albeit a very good one) on solidarity within some 18th century craft guilds[49] and a more general book by Emiel Huys from 1926.[50] The latter is not just outdated, but also partisan. Huys has naive ideas of the craft guilds as paragons of Catholic charity, which his book reflects (for example on p. 63: 'Let us cheer the craft guilds'). One can only hope that someone will pick up this subject in earnest.

Offering a general survey of mutual assistance within the craft guilds is not easy. Every guild had its own regulations, which also evolved over time, making it impossible to offer a full picture of the historical complexity.[51] The following pages can only hope to offer a broad overview of some general tendencies. A specific problem is that research, so far, has been mainly on Flanders and Brabant. This means that the important principality of Liège is left out of the picture. Liège, a clerical principality, did not take part in the unification of the Low Countries under the dukes of Burgundy and the Habsburgs. It was held directly from the Holy Roman Empire, and the craft guilds of the city of Liège played an important role in its administration. A comparative analysis of their mechanisms for mutual assistance would be interesting, as it may reveal other patterns than in Flanders and Brabant.[52]

A key element of the guilds' system of social security was its exclusivity. The guilds did not practice charity. They looked after a 'targeted public' and only helped their own members and relatives and left others out in the cold.[53] Only

---

[46] *Catharina Lis* and *Hugo Soly*, Voorwoord, in: idem (eds.), Werelden van verschil. Ambachtsgilden in de Lage Landen (1997), 7–9, 7.

[47] Cf. *Harald Deceulaer*, Pluriforme patronen en een verschillende snit. Sociaal-economische, institutionele en culturele transformaties in de kledingsector in Antwerpen, Brussel en Gent, ca. 1585 – ca. 1800 (2001), 364.

[48] *Guillaume Des Marez*, L'organisation du travail à Bruxelles au XVe siècle (1904).

[49] *Cilia Willem*, Ambachtelijke zekerheid. Sociale voorzieningen bij negen ambachten in het achttiende-eeuwse Gent (unpublished licentiate thesis 1995).

[50] *Emiel Huys*, Duizend jaar mutualiteit bij de Vlaamsche gilden (1926).

[51] *Catharina Lis* and *Hugo Soly*, Ambachtsgilden in vergelijkend perspectief: de Noordelijke en de Zuidelijke Nederlanden, 15de–18de eeuw, in: idem (n. 46), 11–42, 11.

[52] On the Liège craft guilds, see *Emilie Toussaint*, Métiers, in: Sébastien Dubois et al. (eds.), Les institutions publiques de la principauté de Liège (980–1794), vol. 2 (2012), 846–867.

[53] *Jelle Haemers* and *Wouter Ryckbosch*, A targeted public: public services in fifteenth-century Ghent and Bruges, 2010 Stadsgeschiedenis 203–225, 220–221.

those who had contributed profited from the guild's mutual assistance. To avoid free riders, regulations could stipulate that assistance only became possible after a waiting period.[54] Guild members who did not pay their membership dues could not call upon mutual assistance,[55] or were even banned from the profession.[56] In short, a guild member could count on his peers if he had already shown himself to be deserving of their help. Guild solidarity did not just want to protect the members against risks of disease, old age, and poverty, but also to keep a distance between guild members who had fallen upon hard times and the lower classes. Thanks to guild solidarity an impoverished member of the middle class was still better off than the truly poor. This was even more appreciated from the end of the Middle Ages when poverty became more important as a social problem. Guild assistance helped the 'shamefaced poor'[57] guild members to still keep their heads high, and it protected the social standing of their guild in general.[58] Therefore, accepting the guild's help barred guild members from engaging in activities which would have demeaned them and their guild, like begging, accepting alms from poor relief, or any other form of scandalous behaviour.[59] Whereas the guilds wanted to draw a sharp line between their members and outsiders, there was a tendency to avoid this within the guild. Guild members who reproached a colleague for accepting guild help could be fined.[60] In some guilds, recipients of payments remained anonymous, so that it would be impossible to know who was actually calling in the guild's help.[61] Other guilds paid all members who could no longer work, even those who were rich enough that they could easily do without guild assistance.[62] In these guilds mutual assistance was not meant for poor relief, but rather as a pension and disabilities fund.[63] Thus, guild members could show a common front towards the outside world, which helped to strengthen their shared identity as guild members.[64]

---

[54] *Hadewych Masure*, 'Eerlycke huisarmen' of 'ledichgangers'? Amrenzorg en gemeenschapsvorming in Brussel, 1300–1640, 2012 Stadsgeschiedenis 1–21, 8.

[55] *Des Marez* (n. 48), 449.

[56] *Deceulaer* (n. 47), 367.

[57] On this and other terms to distinguish the 'deserving' poor from others, see *Katherine Lynch*, Individuals, families and communities in Europe, 1200–1800. The urban foundations of Western society (2003), 104–105.

[58] Cf. *Masure* (n. 54), 8–9.

[59] *Huys* (n. 50), 61; *Deceulaer* (n. 47), 367.

[60] *Des Marez* (n. 48), 446.

[61] *Willem* (n. 49), 90.

[62] Cf. *Masure* (n. 54), 8.

[63] *Willem* (n. 49), 150.

[64] Which was, of course, strengthened if the guild had its own hospices and chapels (cf. *Thibault Jacobs*, Des hôpitaux de métiers à Bruxelles? Nouvelles perspectives sur la

Mutual assistance within the guild could take two forms: the guild hospice on the one hand, and material and financial support on the other. Rich and/or big guilds could afford to establish their retirement homes. The first of the guild hospices appears already in the first half of the 13th century.[65] They provided retired guild members with housing, care, clothes, meals, and other services.[66] Although the guests of the guild hospices were called 'poor', one should not take this at face value. First of all, the hospices accepted only masters, and entrance required handing over all one's possessions to the hospice[67] or other payments.[68] In return, the benefits the guests received thereafter put them in a relatively comfortable position.[69] Given the waiting lists for entering the hospices, the latter could turn away persons who could not offer them enough. Though there were always a few persons who beat the odds and remained in the hospice for decades, most of its guests survived only a few years. Thus, the guild hospice was a retirement home for masters who gambled that they would survive long enough to make their initial investment worth the trouble. Remarkable is that the guild hospices accepted only men. Their wives and children could not join them. However, in that case the new guest's property would not completely go to the hospice, as his wife and children would receive a share.[70]

Guilds could also support their members by providing for monetary and material help. Originally the guild coffers themselves funded guild solidarity. However, this posed a problem for local authorities in the 13th and 14th centuries when craft guilds broke through. The guild coffers could easily serve as a 'strike fund', financing political and social unrest. Therefore, official recognition of the craft guilds seems to have gone hand in hand with a growing control by local authorities.[71] The next step was a separate box for mutual assistance within the guild with its own administrators, finances, and regulations. By the 16th century this separation of the assistance box from the guilds' finances had become well established,[72] though some guilds would still not have a specialized administration for guild solidarity in the 18th century.[73] The separate boxes were not necessarily

---

charité et la bienfaisance en milieu urbain à la fin du Moyen Age, 2013 Revue belge de philologie et d'histoire 215–255).

[65] *Carlos Wyffels*, De oorsprong der ambachten in Vlaanderen en Brabant (1951), 133.

[66] E.g. *Willem* (n. 49), 58.

[67] E.g. *Willem* (n. 49), 87.

[68] *A.M. De Vocht*, Het Gentse antwoord op de armoede: de sociale instellingen van wevers en volders te Gent in de middeleeuwen, Annalen van de Belgische vereniging voor hospitaalgeschiedenis (1982), 3–32, 15.

[69] Cf. *De Vocht* (n. 68), 31–32.

[70] *Willem* (n. 49), 62.

[71] *Wyffels* (n. 65), 97–99, 142.

[72] *Willem* (n. 49), 31.

[73] *Willem* (n. 49), 69.

established by guild officers; they could also be the result of a spontaneous initiative, later taken over by the guild.[74] The boxes financed themselves in different ways. The most frequent contribution was a regular payment by the guild members, though a box could also have an income from entrance fees, annuities and rents, gifts, and special taxes.[75] As one may expect, many guild members were unwilling to contribute to the boxes, so that contributions had to become obligatory with sanctions for guild members who did not pay their dues. All this meant that the guilds had to call in local authorities to approve and enforce their boxes' regulations.[76] The help from the box could consist of a weekly allowance, a delivery of food, drink or fuel, or payment for housing and sick care.[77] The box intervened in several situations, mainly illness, accidents, and old age. One can summarize these situations as the inability to continue to work.[78] In general, the allowance from the box did not provide a full income but still left the guild member in a better position than outsiders facing similar difficulties.[79] The box could also pay for the funeral of poorer members.[80]

Unlike the hospices,[81] the boxes also helped women, though sometimes indirectly. Married men could receive more because the box took their family situation into account.[82] Some boxes paid wives directly, though sometimes only because separate contributions to the box had previously been made in their name.[83] Widows were, of course, the largest group of women to receive guild assistance.[84] Two elements ensured that not all widows had to call upon the box. First of all, a general principle of private law in the Southern Netherlands was a favourable treatment of surviving spouses. Exceptionally, they would receive all of the couple's property; though most commonly the survivor would have a usufruct in the predeceased's goods.[85] In line with this, craft guilds allowed widows to continue their husband's business.[86] Although law-books may give another impression, a craftsman's enterprise completely involved his wife,[87] which made

---

[74] *Masure* (n. 54), 12–14.

[75] See, e.g., *Huys* (n. 50), 30, 34, 39, 42, 47, 52.

[76] *Des Marez* (n. 48), 409–410, 443.

[77] *Willem* (n. 49), 164.

[78] *Des Marez* (n. 48), 450–452.

[79] *Deceulaer* (n. 47), 367.

[80] E.g., *Huys* (n. 50), 46, 62.

[81] E.g., *Willem* (n. 49), 50.

[82] *Willem* (n. 49), 154–155, 164.

[83] *Deceulaer* (n. 47), 367.

[84] *Willem* (n. 49), 158.

[85] *Godding* (n. 16), 259–314.

[86] *Marianne Danneel*, Weduwen en wezen in het laat-middeleeuwse Gent (1995), 349–353.

[87] *Kaat Cappelle*, 'In de macht, plicht en momboorije van heuren man'. De rechtspositie van de getrouwde vrouw in Antwerpen en Leuven (16de eeuw), (2016) 18

it easier for her to continue running it after his death. Moreover, guilds allowed widows to have journeymen do the actual work.[88] Widows who had trouble making ends meet could sometimes also count on the guild to hire and pay them for small jobs.[89] Nevertheless, the widow was somewhat of an anomaly. As soon as she remarried she lost her rights towards the guild and its box.[90]

The guilds of the Southern Low Countries did not take care of orphans. The box regulations did not provide for them. At best, the right for the widow to continue the business may have helped the children of a deceased craftsman, because this would guarantee that they would find an ongoing business when they reached majority.[91] An apprenticeship had to be paid for, which could eat up an orphan's inheritance, if he had one. Parents or guardians putting an apprentice with a master had to negotiate for compensation in the event of accidents.[92] In fact, as the apprentices sometimes paid fees to the guild box,[93] orphans were more likely to be a source of income than a source of expenditure for the guild box.

Journeymen were a special case. At first, they also benefited from the guild's assistance, but in the 16th century the masters managed to exclude the journeymen from the boxes' benefits.[94] In response, the journeymen in some professions managed to establish their own boxes.[95] Their original intention was to help in case of illness, but in the 17th and 18th centuries journeymen boxes also served as strike funds.[96] Notorious were the journeymen hatters who almost acquired a stranglehold on their profession. By 1786 journeyman boxes had become such a force to reckon with that the Austrian emperor Joseph II, as prince of the Southern Netherlands, would forbid them, though to no avail.[97]

As already indicated, mutual assistance within the guild depended on local circumstances. In general, the craft guilds in the Southern Netherlands lagged

---

Pro memorie 48–68; *Shennan Hutton*, Women and economic activities in late medieval Ghent (2011), 60.

[88] *Marc Jacobs*, De ambachten in Brabant en Mechelen (12de eeuw – 1795), in: Raymond Van Uytven et al. (eds.), De gewestelijke en lokale overheidsinstellingen in Vlaanderen en Brabant, vol. 2 (2000), 558–624, 594.

[89] *Willem* (n. 49), 93.

[90] *Danneel* (n. 86), 353.

[91] *Danneel* (n. 86), 349–350.

[92] *Danneel* (n. 86), 72–85.

[93] *Deceulaer* (n. 47), 364.

[94] Cf. *Masure* (n. 54), 14.

[95] *Huys* (n. 50), 85–108.

[96] *Huys* (n. 50), 85–86, 93.

[97] *Catharina Lis* and *Hugo Soly*, 'An irresistible phalanx': journeymen associations in Western Europe, 1300–1800, in: Catharina Lis et al. (eds.), Before the unions. Wage earners and collective action in Europe, 1300–1850 (1994), 11–52, 48.

behind their counterparts in neighbouring countries as far as mutual assistance is concerned.[98] Not only were mechanisms of mutual assistance less common, the number of people actually receiving help could be quite low.[99] Two factors seem to have been responsible for this. The Habsburgs Netherlands remained Catholic, meaning that their guilds spent a lot of money on churches which could have gone to mutual assistance.[100] Moreover, craft guilds had been the driving force behind social unrest in the Late Middle Ages and the 16th century. Central and local authorities retaliated. They confiscated guilds' possessions and abolished their mutual assistance,[101] but this could backfire if it led to larger demands on public poor relief.[102]

In 1795 the French annexed the Southern Netherlands and introduced the legislation of the Revolution there, including the *d'Allarde* decree which abolished the guilds and the *Le Chapelier* law which forbade new coalitions. Belgian legislators did not lift this prohibition until 1867. However, mutual assistance amongst workers continued to exist.[103] It is not clear as to how far these mutual benefit societies were based on and perpetuated older organizations. Exceptionally, some local organizations survived in spite of abolitionary legislation.[104] The organization amongst the hatters also showed remarkable resilience.[105] The authorities feared that the mutual societies were strike funds in disguise, though that was mainly a problem in big factories, not in smaller enterprises.[106] Factory owners in Wallonia took a more positive approach. They established factory funds to help their workers. In the mid-19th century the Belgian government enacted some major changes. An 1851 act awarded legal personality to mutual societies in return for control by local authorities. One year earlier the government had also established a state pension fund to encourage workers to put money aside for their old age.[107] In 1894 the policy changed completely. Henceforth, the

---

[98] For a comparison with the (Northern) Netherlands, see *Sandra Bos*, A tradition of giving and receiving: mutual aid within the guild system, in: Maarten Prak et al. (eds.), Craft guilds in the early modern Low Countries. Work, power and representation (2006), 174–193.

[99] See, e.g., *Deceulaer* (n. 47), 366.

[100] *Bos* (n. 98), 189.

[101] *Huys* (n. 50), 44–45. See also *Marc Boone*, Gent en het Bourgondische staatsvormingsproces, ca. 1385 – ca. 1453, vol. 1 (unpublished PhD-thesis 1988).

[102] *Johan Dambruyne*, Corporatieve middengroepen. Aspiraties, relaties en transformaties in de 16de-eeuwse Gentse ambachtswereld (2002), 143.

[103] *Dirk Heirbaut*, Een beknopte geschiedenis van het sociaal, het economisch en het fiscaal recht in België (2013), 29–31, 59.

[104] For examples, see *Huys* (n. 50), 63–66, 106.

[105] *Lis* and *Soly* (n. 97), 48.

[106] *Kathlijn Pittomvills*, De Gentse maatschappijen van onderlinge bijstand in de eerste helft van de negentiende eeuw. Solidariteit, staking en segmentering?, 1994–1995 Belgisch tijdschrift voor nieuwste geschiedenis 433–479, 444–457.

[107] *Heirbaut* (n. 103), 59–69.

government stimulated mutual assistance funds, but this would only bear fruit in the following century.[108] In the end, the guilds' mutual assistance came back with a vengeance as a general social security.[109]

II. Offshoots of marine insurance

1. Insurance covering transport over land

In the 16th century, two types of insurance appear which have their origin in marine insurance. As transport over land (including transport over rivers) also entails risk, inevitably insurance covering it followed in the slipstream of marine insurance. A 1537 statute of Charles V also mentions insurance for non-marine transport risks.[110] Its importance must have been negligible, as the next insurance statutes remained silent about it.[111] It was only from 1570 forward that non-marine transport insurance returned in the statutes and the Antwerp customs.[112] Legislators did not make any special effort and largely left contracting parties free to do as pleased them, because the risks on land were smaller than at sea (premiums were indeed lower for transport over land.)[113] Merchants saw no need to be very creative. Insurance policies show that merchants largely copied the standard contract imposed for marine insurance with some necessary amendments, given the difference between sea and land.[114] Even in the late 19th century, given the lack of a separate statute on insurance for transport over land, many parties opted for applying the rules of marine insurance.[115]

2. Life insurance

Life insurance was another offshoot of marine insurance. Mediterranean merchants brought this kind of insurance to Antwerp in the 16th century. A merchant

---

[108] *Hendrik Moeys*, Subsidiary social provision before the welfare state. Political theory and social policy in nineteenth-century Belgium (PhD thesis KU Leuven).

[109] On the further history of Belgian social security, see *Heirbaut* (n. 103), 60–80.

[110] Ordinance of Emperor Charles V of 25 May 1537 (Jules Lameere and Henri Simont (eds.), Recueil des ordonnances des Pays-Bas, second series, vol. 4 (1907), 34–35).

[111] *Xavier Mullens*, Verzekeren in de tijd van Rubens (1977), 99.

[112] *Mullens* (n. 111), 99.

[113] *Johan Van Niekerk*, The development of principles of insurance law in the Netherlands from 1500–1800, vol. 1 (1998), 420–421; *Mullens* (n. 111), 100.

[114] *Henry De Groote*, Onuitgegeven zestiende-eeuwse Antwerpse polissen, 1974 Bijdragen tot de geschiedenis inzonderheid van het oud hertogdom Brabant 153–170, 154.

[115] 'Assurances maritimes', in: Edmond Picard and Napoléon d'Hoffschmidt (eds.), Pandectes belges. Encyclopédie de législation, de doctrine et de jurisprudence belges, vol. 10 (1883), 688–879, 706.

could insure himself for his voyage overseas, paying a premium proportionate to his fortune.[116] Life insurance is already hinted at in a 1563 statute,[117] and at least one new company planned to sell life insurance.[118] A life insurance policy became possible also without a voyage.[119] Unfortunately, Antwerp notaries very soon became aware that this new market without much oversight created possibilities for fraud and crime. Elderly or sick people were presented as young and healthy to prospective insurers. In a few cases notaries took insurance on someone's life and then killed him, so that they could make their claims. Nevertheless, the local authorities did not react.[120] When the Spanish governor, the duke of Alba, temporarily banned all insurance contracts in 1569,[121] fraud in the life insurance sector played an important role. Nevertheless, when the city of Antwerp wrote its new customs in 1570, it inserted a title on insurance contracts which expressly mentioned life insurance.[122] Given that the victims of fraud had been mostly poor people (as insured) or foreigners (as insurers),[123] the city magistrates did not care that much.[124] The central authorities, however, had another opinion.[125] They had lifted the ban on transport insurance by either sea or land already in 1570, but they did not do so for life insurance[126] even though the practice seems to have continued for some years.[127] The 1582 customs of Antwerp, almost a codification,[128] repeated the earlier defence of life insurance.[129] Interestingly,

---

[116] *Jan Goris*, Études sur les colonies marchandes méridionales (portugais, espagnols, italiens) à Anvers de 1488 à 1567 (1925), 385.

[117] *Charles Reatz*, Ordonnances sur les assurances maritimes de 1569, 1570, 1571 (1877), 29.

[118] *De Groote* (n. 114), 163–164.

[119] *Goris* (n. 116), 386, 392.

[120] *Goris* (n. 116), 385–392.

[121] *Reatz* (n. 117), Annexes, no. 1, 43–51.

[122] Title 29 of the Antiquae (*Guillaume De Longé*, Coutumes de la ville d'Anvers (1870–1874), vol. 1, 598–605).

[123] Cf. *De Groote* (n. 114), 164 f.

[124] *Goris* (n. 116), 392.

[125] It may also be that they were more open to lobbying for centralized brokering, which exaggerated reports of fraud to advance its own case (cf. *Dave De ruysscher*, Antwerp 1490–1590. Insurance and speculation, in: Adrian Leonard (ed.), Marine insurance. Origins and institutions, 1300–1850 (2016), 96).

[126] *Reatz* (n. 117), Annexes, no. 2, 51–67, art. 33; see also no. 3, 68–80, art. 32.

[127] Cf. *De Groote* (n. 114), 165.

[128] *Johan Van Niekerk*, The law and customs of marine insurance in Antwerp and London at the end of the sixteenth century, in: Caroline Van Schoubroeck et. al. (eds.), Over grenzen: liber amicorum Herman Cousy (2011), 301–314, 305.

[129] Art. 3 of Title 54 of the Impressae (*De Longé* (n. 122), vol. 2, 400–401).

the Antwerp city magistrates at that time were Calvinists,[130] fighting their Spanish overlords, whereas previous loyal Catholic magistrates had allowed life insurance. This proves that Catholicism as such was not necessarily irreconcilable with life insurance contracts. In the last Antwerp customs (1608) the ban on life insurance was well entrenched,[131] though with one exception. In case of a long voyage, a merchant could take out a policy against captivity, so that the ransom and other costs could be paid.[132] In order to avoid a moral hazard, the insured would still have to cover one-third himself, so that he would have an incentive to escape.[133] Thus, life insurance still survived, but only in this small niche.

The local population had not embraced life insurance because it had enough alternatives. Perpetuities were a very popular form of investment. Cities and estates sold life annuities with an even higher yield.[134] The tontine was already known in the Southern Netherlands in the 1670s,[135] but it did not catch on in the 17th and 18th centuries because investors did not trust this mechanism. Authorities therefore had to offer conditions which were to their disadvantage. Thus, the estates of Flanders had to alter a 1747 tontine because its instalments had become too costly.[136] Private issuers of tontines appear from 1769,[137] but the government did not like tontine societies,[138] whereas jurists remained uninterested in this phenomenon.[139]

In the meantime people had come to see life insurance as contrary to the Catholic religion. In 1815, a new era in Belgium's history started, which also led to a

---

[130] *Dave De ruysscher*, 'Naer het Romeinsch recht alsmede den stiel mercantiel'. Handel en recht in de Antwerpse rechtbank (16–17de eeuw) (2009), 56–57.

[131] Compilatae, Title 11, art. 316 (*De Longé* (n. 122), vol. 4, 330–331).

[132] Compilatae, Title 11, art. 317 (*De Longé* (n. 122), vol. 4, 330–331).

[133] Compilatae, Title 11, art. 318 (*De Longé* (n. 122), vol. 4, 330–331).

[134] *Godding* (n. 16), 480–485; *Nicolas De Vijlder* and *Michael Limberger*, Als een goede huisvader beleggen in stedelijke schuld te Antwerpen (16de–18de eeuw), in: Jaco Zuijderduijn and Dries Raeymaekers (eds.), Publieke financiën in de Lage Landen (2015), 87–109.

[135] *Nicolas De Vijlder*, Voor vorst, voor vrijheid en voor recht. Een comparatieve analyse van het stedelijke fiscale en financiële beleid in de zeventiende eeuw, 2012 Tijdschrift voor sociale en economische geschiedenis 47–73, 65.

[136] *Claude Bruneel*, La tontine émise par les États de Flandre en 1747, in: Erik Aerts et al. (eds.), Studia historica oeconomica. Liber amicorum Herman Van der Wee (1993), 75–92.

[137] *Bruneel* (n. 136), 91–92.

[138] *Evelyn Willemse*, Het ontstaan en de ontwikkeling van het Belgische verzekeringswezen. 1819–1873 (unpublished licentiate thesis from 1974), 11, 20–24.

[139] An indication is the number of columns in the Pandectes Belges, an encyclopaedia on Belgian law published around 1900. The terms tontine and société tontinière received a little more than four columns of text (Pandectes belges, vol. 101 (1911), 356–358; vol. 108 (1913), 897 f.), which is nothing in this giant undertaking of almost 200,000 columns.

breakthrough for the insurance contract. Belgium and the Netherlands found themselves bound together in the United Kingdom of the Netherlands.[140] King William I actively stimulated insurance, in which he had taken up a personal interest thanks to a long stay in England.[141] However, life insurance still met too much resistance, because religious and moral objections remained strong. Moreover, insurance contracts were not always that advantageous to subscribers, a fact which also helps to explain their lack of success. Life insurance existed in two forms: insurance for the risk of death and insurance for the risk of survival. The former was mainly meant for gentlemen, who made their living by their own work and not by the revenue of their properties. The insurance had to provide for their widow and children in case of a premature death. Given that Napoleon's Civil Code had abolished the rights of the surviving widow in the estate of her deceased husband, the insurance contract could, for them, mean the difference between destitution and a comfortable life. The other variant of the life insurance covered the case of survival. It had to ensure that the insured would have an income if he reached such an old age that he could no longer work. However, both forms of the life insurance contract had in common that all accumulated capital was forfeited if the risk did not occur. Thus, if one survived until a certain age in the case of the insurance against the risk of death or died prematurely in the case of its counterpart, the insurance company gained everything.[142]

Changes in life insurance contracts finally enabled a greater popularity in the second half of the 19th century. Beginning in 1853 an insurance company offered mixed insurance, covering both survival and death. The insurer henceforth always paid monetary benefits either to the insured himself when he was still alive, or to his family if he died. Other companies had to follow and the older forms of life insurance disappeared. Nevertheless, the public at large still hesitated. The turning point was an 1889 Act of Parliament, which made it possible for labourers who had taken a mortgage loan to finance the construction of their house to take out life insurance with the Belgian state's General Savings and Pensions Bank. This finally broke the dam and insurance became popular, with the General Savings and Pensions Bank for the common man and private insurance companies for the well to do.[143] By then, the Catholic Church had changed its opinion.

---

[140] Companies established between 1815 and 1830 still dominated the Belgian insurance market in the 20th century (*Jules Hannes*, Het verzekeringswezen in België 1819–1914, een inleiding, 1991 NEHA-Bulletin 85–95, 85–86).

[141] The king was by far the biggest investor in the new insurance companies (*Hannes* (n. 140), 87).

[142] *Brion* and *Moreau* (n. 1), 104–117.

[143] *Heirbaut* (n. 103), 138; *Brion* and *Moreau* (n. 1), 130 f.

Belgium's Archbishop de Méan had even enthusiastically endorsed life insurance.[144]

Due to its late popularity, Belgian legislators were originally not very active in the field of insurance. As Napoleon's 1807 Commercial Code only dealt with maritime insurance, insurers had to apply the rules of maritime insurance by analogy[145] and also looked to foreign countries for inspiration, especially England.[146] This was helped by the great number of foreign companies[147] and foreigners active in Belgian companies.[148] Insurance companies also had their own agreements on tariffs and other elements of insurance contracts.[149] Parliament, however, for a long time failed to enact legislation on insurance, even though in 1841 a commission had been charged with, inter alia, preparing a statute on insurance.[150] Belgium, the second country in the world to industrialize, completely revised its commercial legislation in the second half of the 19th century in order to stimulate its economy.[151] Insurance law was caught up in this and Parliament enacted the first legislation for non-maritime insurance in 1874.[152] The new title on non-maritime insurance in the Commercial Code was not innovative. It mainly codified existing practices in Belgium (and France), though at times it also followed Dutch and German legislation.[153] Its central idea was the autonomy of the contractual partners, who were seen as equals. In reality, this amounted to putting the interests of the insurers before those of their customers. Thus, the 1874 Act crusaded against fraud by the insured parties and paid a lot of attention to the problem of suicide, distinguishing intentional suicide from suicide that was non-intentional (e.g. due to mental illness).[154] Until the end of the 20th century,

---

[144] *Brion* and *Moreau* (n. 1), 103.

[145] *Gabriël Ballon*, Landverzekering in de 19e eeuw tussen de Code de commerce en de wet van 11 juni 1874, in: Caroline van Schoubroeck et al. (eds.), Over grenzen: liber amicorum Herman Cousy (2011), 349–358, 353–358.

[146] *Heirbaut* (n. 103), 138.

[147] From 1821 until 1830, however, foreign companies were banned from the market: *Hannes* (n. 140), 87, 92.

[148] *Jules Hannes* and *Julienne Laureyssens*, De verzekeringsmaatschappijen en hun beheerders te Antwerpen (1819-1873), 1966 Bijdragen tot de geschiedenis 95–136, 106.

[149] *Hannes* (n. 140), 87, 92; *Willemse* (n. 138), 118-136.

[150] *Dirk Heirbaut*, Het 'civiel beleid': een stiefkind van de ministers van Justitie, in: Margo De Koster et al. (eds.), Tweehonderd jaar justitie. Historische encyclopedie van de Belgische justitie (2015), 164–189, 171.

[151] *Heirbaut* (n. 150), 172–173.

[152] *Holthöfer* (n. 12), 3324–3326. Somehow, François Laurent, Belgium's greatest law professor of the era, missed the 1874 statute, as he wrote three years later that Belgium still did not have a statute for fire and other types of insurance: *François Laurent*, Principes de droit civil (1877), 210.

[153] *Holthöfer* (n. 12), 3326.

[154] *Heirbaut* (n. 103), 138.

the main goal of new legislation was not to protect the customer, but rather to serve big insurance companies by eliminating alternatives (e.g. the traditional tontine, which was forbidden in 1930),[155] hindering the growth of smaller Belgian competitors, and closing off the market for foreign intruders. Only from 1992 would the legislator truly become interested in protecting the insured.[156]

3. Fire insurance

The history of fire insurance in the Southern Netherlands after the 14th century is still largely unclear. Jan Van de Ryck mentions fire guilds from the Late Middle Ages, but all of their examples concern foreign countries,[157] whereas no sources from the Southern Netherlands themselves indicate that this kind of association had been active there. It seems that after the old mutual solidarity in case of arson disappeared from the Southern Netherlands, it took some time for fire insurance to make a comeback. The new fire insurance was linked to Antwerp, so that one can consider it to be an offshoot of marine insurance. This does not necessarily mean that the new fire insurance was just an adaptation of marine insurance, but rather that Antwerp already had experts who could easily extend their operations to fire insurance.

Already in the first half of the 17th century, an Antwerp broker, Jérôme Pichille,[158] came up with a plan to establish a system of fire insurance for the city of Antwerp. Although the sources concerning his and another proposal have been published,[159] they have largely gone unnoticed so far, in spite of their undeniable importance for the history of fire insurance in Europe. Pichille's plan did not lack in ambition. In his scheme, damage by fire would be insured whatever its cause.[160] On the other hand, the insurance would only cover the damage to buildings, not the furniture or other valuables.[161] Pichille assumed in his proposal that thousands of Antwerp citizens would take out insurance.[162] That may well have

---

[155] Art. 8, 2° of the Statute of 25 June 1930 on the control of life insurance companies (Moniteur belge, 18 July 1930). The tontine is currently still common in Belgium for purchases of real property by couples, see e.g. *Dirk Michiels*, Overzicht van rechtspraak tontine en aanwas (2006).

[156] *Heirbaut* (n. 103), 138–139.

[157] *Van de Ryck* (n. 8), 46–47.

[158] On him and the other Antwerp brokers, see *Emile Dilis*, Les courtiers anversois sous l'ancien régime (1910).

[159] *Emile Dilis*, La question des assurances contre incendie à Anvers au XVIIe siècle, 1911 Annales de l'Académie royale d'archéologie de Belgique 67–114, 82–114.

[160] *Dilis* (n. 159), no. A/I, 83 § 2.

[161] Cf. *Dilis* (n. 159), no. A/I, 83 § 2.

[162] *Dilis* (n. 159), no. A/IV, 93.

been possible given the conditions he envisioned. The victim of fire would receive compensation already on the next day,[163] and the premium was only one per cent of the value of the buildings insured. The premium had to be paid at once, and the insurer would even make a refund after 25 years, whereas the insurance would still continue.[164] Pichille calculated that in those first 25 years the capital of the premium would have accrued so much interest that the latter would suffice to fund the insurance system on its own.[165] To the modern reader, his proposal sounds too optimistic, also because Pichille wanted to fund other plans, abolish the taxes for fire-fighting,[166] make payments for other damage,[167] and engage all kinds of staff who would also have to be paid.[168] Nevertheless, in spite of some initial doubts,[169] the central authorities were not unfavourable towards Pichille's plans, but because of wars they could not put up the money for an initial investment.[170] In 1637, Cornelis van Wassenaer, a Dutchman, put forward another proposal, which was more realistic, featuring an annual premium, conditions to prevent fraud, and exclusions of certain risks, like war.[171] Yet van Wassenaer did not lack in ambition either, as he did not think just of Antwerp but, from the start, of the whole Southern Netherlands.[172] Pichille, who heard of van Wassenaer's plan, accused him of having copied his proposal,[173] but that seems unlikely given the many differences between the two proposals. Harder to believe, however, are van Wassenaer's protests that what he planned was unrelated to projects in neighbouring countries.[174] Whatever the truth of that, once again, a proposal for a fire insurance did not become reality.

In the 18th century fire insurance resurfaced thanks to English immigrants. When James Dormer (1708–1758) founded the *Chambre impériale et royale d'assurance aux Pays-Bas* (Royal and Imperial Chamber of Insurance) in 1754, the government privilege concerned both marine and fire insurance. For marine insurance the company's monopoly was limited: it only extended to the province of Brabant and did not exclude private initiatives. For fire insurance, however,

---

[163] *Dilis* (n. 159), no. A/I, § 2, 83.

[164] *Dilis* (n. 159), no. A/I, §§ 3-4, 83; §§ 8–10, 85.

[165] *Dilis* (n. 159), no. A/III, 92; no. A/IV, 93.

[166] *Dilis* (n. 159), no. A/I, §§ 13–14, 86; no. A/IV, 93–94.

[167] *Dilis* (n. 159), no. A/IV, 94.

[168] *Dilis* (n. 159), no. A/I, §§ 6–7, 84; no. A/IV, 94.

[169] Cf. *Dilis* (n. 159), no. A/II, 88–90; cf. no. A/III, 91–92.

[170] *Dilis* (n. 159), no. B/I, 95–96.

[171] *Dilis* (n. 159), no. B/VII, 105–107.

[172] *Dilis* (n. 159), no. B/III, 99; no. B/V, 102; no. B/VII, 105. Pichille had plans for the rest of the country only in a second stage: *Dilis* (n. 159), no. A/I, § 11, 85–86.

[173] *Dilis* (n. 159), no. B/I, 95–96.

[174] *Dilis* (n. 159), no. B/VIII, iv, 111–114.

the new company's monopoly was total and covered the whole Southern Netherlands.[175] This was only possible because there were no existing competitors who could have made objections. However, in 1782 the government awarded a new company, the *Compagnie d'assurance de la Flandre Autrichienne*, the right to sell fire insurance policies too. Once again, the new company's driving force was an Englishman.[176] Both in 1754 and in 1782 the example of their homeland and not a demand in the Southern Netherlands explains the attention given to fire insurance. Thus, it does not come as a surprise that fire insurance did not immediately become popular.[177]

The breakthrough of insurance on land in the 19th century also included fire insurance. The names of a few new companies expressly mentioned fire insurance.[178] As early as 1821 a banker required buildings and machines serving as collateral to be protected by insurance.[179] Soon the Belgian government turned greedy eyes to the fire insurance market. Under French influence the Belgian Parliament seriously started to debate a state monopoly on fire insurance. The insured would gain, as the state would be a more reliable insurer than private companies. The state on the other hand, would, thanks to the profits of its insurance business, levy lower taxes. The government appointed a commission to prepare the nationalization of fire insurance, but the commissioners' lack of expertise led to an unclear text. By 1848 a state monopoly on fire insurance was no longer seen as feasible.[180]

4. Other types of insurance

Once the principle of premium insurance has taken hold, one can apply it to anything one wishes, provided the demand is present or can be created. The 1874 statute singles out fire and life insurance, but also harvest insurance.[181] Farmers

---

[175] *Ludo Couvreur*, De eerste zeeverzekeringscompagnie ten Antwerpen (1754–1793?), 1936 Tijdschrift voor economie en sociologie 146–174; *idem*, De Antwerpsche verzekeringsbeurs in de 18e eeuw, 1936 Beknopte handelingen van het Vlaams philologencongres, 37–40; *Erika Meel*, De firma James Dormer tussen traditie en vernieuwing: een 'Englishman abroad' in het achttiende-eeuwse handelskapitalisme te Antwerpen (unpublished licentiaat thesis 1986).

[176] *Ludo Couvreur*, De zeeverzekeringsmarkt der Oostenrijkse Nederlanden op het einde van de 18de eeuw, 1937 Handelingen van het genootschap Société d'Émulation 58–86; *Meel*, (n. 175).

[177] *Couvreur*, De eerste zeeverzekeringscompagnie (n. 175), 169.

[178] *Hannes* and *Laureyssens* (n. 148), 113–115.

[179] *Hannes* (n. 140), 87.

[180] *Hannes* (n. 140), 88–89.

[181] *Evelyn Willemse*, Het ontstaan en de pogingen tot monopolisering van het verzekeringswezen in België (1830–1850), 1976–1977 Rechtskundig weekblad, 2637–2652.

had been forming cooperatives to insure their risks, but these forms of insurance only took off in earnest from the end of the 19th century, thanks to the Farmers Association, which was established in 1890. Inspired by the Rhineland, the Farmers Association and the government stimulated local mutual organizations for livestock insurance. For other types of insurance, the Farmers Association acted as an agent of French, German, and British companies.[182] A popular insurance from the first half of the 19th century was draft insurance. Parents could during the first 20 years of their son's life pay premiums for this insurance. If their child was drafted, the insurer paid for a substitute who would serve in the army.[183] This type of insurance was no longer useful from 1909 when Belgium imposed personal military service.[184] The industrial revolution should have stimulated the growth of liability insurance, but prevailing doctrine stood in the way. The famous Art. 1382 of the Napoleonic Civil Code had pronounced the principle of fault liability in tort. An insurance against liability led to a moral hazard, which was deemed to be contrary to this sacred principle. It would shift the burden of an indemnity from the insured to the insurance company, so that the insured would no longer be stimulated to act cautiously. The French court of cassation led the way for a paradigm shift with an 1845 judgment, which influenced Belgium's 1874 new insurance law, though lawmakers still excluded liability insurance for gross negligence.[185] In 1903 legislators imposed obligatory insurance for workplace accidents.[186]

III. Non-marine insurance in Belgium: a conclusion

Non-marine insurance in Belgium is, to some extent, a history of missed opportunities. In the 12th to 14th centuries early forms of mutual assistance could have become the starting point for modern fire (and livestock) insurance, but instead they turned into evolutionary dead ends in the history of insurance. In the 16th century the central authorities nipped life insurance in the bud, and they failed to stimulate fire insurance in the following century. Only in the second half of the 18th century was fire insurance revived and then only as a secondary activity for companies specialized in maritime insurance. Fire and life insurance only broke through in the 19th century, and the main impetus came from the Dutch

---

[182] *Leen Van Molle,* Ieder voor allen. De Belgische Boerenbond 1890–1990 (1990), 76–78, 110–111.

[183] *Brion* and *Moreau* (n. 1), 119.

[184] On military service in Belgium, see *Luc Devos*, Het effectief van de Belgische krijgsmacht en de militiewetgeving, 1830–1914 (1985).

[185] *Heirbaut* (n. 103), 140 f.

[186] See *Bruno Debaenst*, Een proces van bloed, zweet en tranen! Juridisering van arbeidsongevallen in de negentiende eeuw in België (2011).

during the 1815–1830 United Kingdom of the Netherlands. The Dutch legacy proved so strong that companies founded in that era remained the most profitable Belgian insurance companies for a long time.

B. Marine insurance

By *Dave De ruysscher*

The history of marine insurance in the Southern Netherlands, later Belgium, has been the subject of many studies. Economic historians such as Jan Goris (1899–1984), Wilfrid Brulez (born 1927), Henry De Groote (1900–1986), and Eddy Stols (born 1938) have paid much attention to the development of marine insurance as a mercantile technique, mapping insurance practices in 15th-century Bruges and – foremost – 16th-century Antwerp.[1] Already in the later 19th century, some in-depth publications on 16th-century Antwerp marine insurance saw the light of day.[2] Since the middle of the 20th century, legal historians, too, have studied the marine insurance of the Southern Netherlands in the early modern period, and they have published legal texts that have remained unknown.[3] In 1998, Johan van Niekerk wrote a voluminous – now standard – monograph on insurance law in the Low Countries, which mainly addresses marine insurance.[4] Marine insurance, as it was in use in Antwerp during the 1500s, has continued to yield studies from both economic and legal historians.[5]

---

[1] *Wilfrid Brulez*, De firma della Faille en de internationale handel van Vlaamse firma's in de 16de eeuw (1959); *Henry L.V. De Groote*, De zeeassurantie te Antwerpen en te Brugge in de zestiende eeuw (1975); *Jan Goris*, Études sur les colonies marchandes méridionales (portugais, espagnols, italiens) à Anvers de 1488 à 1567 (1925); *Eddy Stols*, De Spaanse Brabanders of de handelsbetrekkingen der Zuidelijke Nederlanden met de Iberische wereld, 1596–1648, 2 vol. (1971).

[2] *Charles Reatz*, Ordonnances sur les assurances maritimes de 1569, 1570, 1571 (1877); *Pierre Génard*, Jean-Baptiste Ferrufini et les assurances maritimes à Anvers au XVIe siècle, (1882) 7 Bulletin de la Société de Géographie d'Anvers 193–268.

[3] *Charles Verlinden*, Code d'assurances maritimes selon la coutume d'Anvers, promulgué par le consulat espagnol de Bruges en 1569, (1949) 16 Bulletin de la Commission royale des anciennes lois et ordonnances de Belgique 38–142.

[4] *Johan Van Niekerk*, The development of principles of insurance law in the Netherlands from 1500–1800, 2 vol. (1998).

[5] *Santos Manuel Coronas González*, Carlos V, asegurador: una propuesta original de los comerciales de Amberes (1551), in: Aquilino Iglesia Ferreirós and Sixto Sánchez-Lauro Pérez (eds.), Centralismo, Autonomismo en los Siglos XVI–XVII. Homenaje al Professore Jesús Lalinde Abadía (1989), 121–130; *Henry De Groote*, Onuitgegeven zestiende-eeuwse Antwerpse polissen, 1974 Bijdragen tot de geschiedenis inzonderheid van het oud hertogdom Brabant 153–170; *Dave De ruysscher*, Antwerp 1490–1590: Insurance and Speculation, in: Adrian B. Leonard (ed.), Marine Insurance: Origins and Institutions, 1300–1850 (2016), 78–105; *idem*, Normative Hybridity in Antwerp Marine Insurance (c.

However, in spite of a wealth of material, historiography on the topic still suffers from gaps, which concern both the economic and legal history. Antwerp was the focal point of marine insurance in the Southern Netherlands from the 16th century onwards, and remains so even until the present day, and therefore this city has been studied the most. Yet, in the 1500s, 1600s, 1700s, and 1800s, marine insurance was also practised elsewhere in the Southern Netherlands, for example in Ghent, Mechelen, and Brussels, but this remains obscure.[6] But even for Antwerp, some periods have not been examined fully. Developments during the 17th and 18th centuries can only partly be inferred from monographic studies of Antwerp merchant houses, some of which continued to engage in marine insurance long after the city's Golden Age.[7] Dutch scholars studying the history of

---

1650 – c. 1700), in: Sean Donlan and Dirk Heirbaut (eds.), The Law's Many Bodies. Studies in legal hybridity and jurisdictional complexity c1600 – 1900 (2015), 145–168; *idem* and *Jeroen Puttevils*, In Search for the Political in Political Economy. Legislative Talks for Marine Insurance Institutions in Antwerp (c. 1550 – c. 1570), (2015) 130/3 BMGN-Low Countries Historical Review 25–49; *Emile Dilis*, La question des assurances contre incendie à Anvers au XVIIe siècle, 1911 Annales de l'Académie royale d'archéologie de Belgique 67–114; *Xavier Mullens*, Verzekeren in de tijd van Rubens (1977); *Guido Rossi*, Insurance in Elizabethan London. The London Book of Order (2016); *Louis Sicking*, Les marchands espagnols et portugais aux Pays-Bas et la navigation à l'époque de Charles Quint: gestion de risques et législation, in: Jean-Marie Cauchies (ed.), Diplomates, voyageurs, artistes, pèlerins, marchands entre pays bourguignons et Espagne aux XVe et XVIe siècles (2011), 253–274; *idem*, Los grupos de intereses marítimos de la Peninsula Ibérica en la ciudad de Amberes: la gestión de riesgos y la navegación en el siglo XVI, in: Jésus Ángel Solórzano Telechea et al. (eds.), Gentes de mar en la ciudad atlántica medieval (2012), 167–199; *idem*, Stratégies de réduction de risque dans le transport maritime des Pays-Bas au XVIe siècle, in: Simonetta Cavaciocchi (ed.), Ricchezza del mare, ricchezza dal mare, secc. XIII-XVIII (2006), 795–808; *Fred Stevens*, The Contribution of Antwerp to the Development of Marine Insurance in the 16th Century, in: Marc Huybrechts (ed.), Marine Insurance at the Turn of the Millennium, vol. 2 (2000), 15–20; *Johan P. van Niekerk*, The Law and Customs of Marine Insurance in Antwerp and London at the End of the Sixteenth Century: Preliminary Thoughts on the Background to and some of the Sources for a Comparative Investigation, (2011) 17 Fundamina 144–163; *idem*, Law and customs (n. 128); *Carlos Wyffels*, Een Antwerpse zeeverzekeringspolis uit het jaar 1557, (1948) 113 Bulletin de la Commission royale d'Histoire 95–103.

[6] Some hints: in 1844, Ghent had thirteen brokers, two of which dealt in insurance. See Rapport sur l'administration et la situation de la ville de Gand (1844), 132. For a glimpse of marine insurance as being applied in 16th-century Mechelen, see *J. Briels*, De emigratie uit Mechelen naar de Noordelijke Nederlanden omstreeks 1572–1630, (1985) 89 Handelingen van de Koninklijke Kring voor Oudheidkunde, Letteren en Kunst van Mechelen 67.

[7] For example, *Helma Houtman-De Smedt*, Charles Proli. Antwerps zakenman en bankier, 1723–1786 (1983). Most merchant houses were only occasionally involved in marine insurance. However, some merchants were main underwriters and some of them have been given much attention. See, e.g., *Ludo Couvreur*, James Dormer (1708–1758), (1937) 28 Bijdragen tot de geschiedenis, bijzonderlijk van het aloude hertogdom Brabant 11–46, and largely building on this study, *idem*, De zeeverzekeringsmarkt der Oostenrijkse Nederlanden op het einde van de 18de eeuw, 1937 Handelingen van het genootschap Société d'Émulation 58–86; *idem*, Recht en zeeverzekeringspractijk in de

maritime law and marine insurance for these periods have analysed only the North.[8] Comprehensive studies on marine insurance in the Southern Netherlands of the 1700s, which are available for the Northern Netherlands,[9] are lacking.

A major lacuna concerns the 19th century. Historical observations on marine insurance law and practice during the French occupation (1795-1815) and under the Dutch (1815-1830) and Belgian regimes (1830) are dispersed across contributions and articles of limited scope. Moreover, most attention has been paid to marine insurance as an economic activity, in particular to the establishing, financing of, and the return yielded by marine insurance corporations.[10] Analyses of lawyers have focused on the legal contents of the 1807 Commercial Code and 19th-century standard marine insurance policies without taking context into account.[11] Maritime histories sometimes contain relevant information, but they remain – quite understandably – rather general about the subject of marine insurance. Marine insurance practice in the 1800s is a black box. It is as of yet not clear to what extent commercial custom, judicial approaches, or the contents of the Commercial Code were applied in lawsuits on marine insurance that were brought in the commercial courts. The mentioned bias towards Antwerp also concerns the 19th century but is for that period rather one-sided given a context of marine insurance companies that were active in many ports and had an international customer base. Moreover, as is the case for non-marine insurance, some

---

17de en 18de eeuwen, (1938) 16 Tijdschrift voor Rechtsgeschiedenis 184–214. See also *Erika Meel*, De firma James Dormer tussen traditie en vernieuwing: een 'Englishman abroad' in het achttiende-eeuwse handelskapitalisme te Antwerpen (unpublished licentiaat thesis 1986).

[8] *Marin Theodor Goutsmit*, Geschiedenis van het Nederlandsche zeerecht (1882); *Jan Pieter Vergouwen*, De geschiedenis der makelaardij in assurantiën hier te lande tot 1813 (1945).

[9] *Sabine Go*, Marine insurance in the Netherlands, 1600–1870. A Comparative Institutional Approach (2009); *Frank Spooner*, Risks at Sea. Amsterdam Insurance and Maritime Europe, 1766–1780 (2002).

[10] *Jules Hannes*, Het verzekeringswezen in België 1819-1914, een inleiding, 1991 NEHA-Bulletin 85–95; *idem*, Verzekeringen en economische groei. Antwerpen 1819–1831, in: idem (ed.), Economie in veelvoud. Huldeboek Piet Frantzen (1991), 259–272; *idem* and *Julienne Laureyssens*, De verzekeringsmaatschappijen en hun beheerders te Antwerpen (1819-1873), 1966 Bijdragen tot de geschiedenis 95–136; *Lucien Van Acker*, De Westvlaamse zeeverzekeringsmaatschappijen. Laatste jaren en likwidatie 1807–1812, (1966) 67 De Biekorf 257–265; *Karel Veraghtert*, Zeeverzekeringen te Antwerpen (1814–1860), (1995) 14 Tijdschrift voor Zeegeschiedenis 9–22; *Evelyn Willemse*, Het ontstaan en de ontwikkeling van het Belgische verzekeringswezen. 1819–1873 (unpublished licentiate thesis from 1974); *idem*, Het ontstaan en de pogingen tot monopolisering van het verzekeringswezen in België (1830–1850), 1976–1977 Rechtskundig weekblad, 2637–2652.

[11] *Pierre Hollenfeltz du Treux*, Portrait d'une très grande dame, restée jeune et séduisante malgré son âge: la police maritime d'Anvers de 1859, in: J. Blockx et al. (eds.), Liber amicorum Tricot (1988), 293–323.

studies concern the history of individual insurance companies[12] and not the interactions existing between different corporations. For all these gaps mentioned, this text offers explorative notes at best, and hopefully more research will follow from it.

I. General average, risk allocation, and the dispersal of premium insurance (14th to early 16th century)

The first traces of premium insurance of freights in Bruges date back to 1369.[13] Merchants transferred portions of the risks of marine transport to multiple underwriters, men who were not involved in the trade that was insured. During the 15th century, leading resident Genoese and Castilian merchants, as well as Florentines, Catalans, Venetians, and Portuguese trading in Bruges, often insured the cargo they shipped to and from the Low Countries by this method.[14] Premium insurance was a mercantile transplant. It had developed in Italian cities in the first half of the 14th century, and after some time it came to be applied in mercantile ports across the continent. Even in these early stages, insurance of cross risks was common. Marine insurance was signed at locations which were not on the route of the vessel carrying the insured merchandise. As a result, Genoese merchants insured freights travelling to Bruges-dependent ports, such as Sluis, in Genoa.[15] It is possible that in the beginning of the 14th century a Chamber of Insurance existed in Bruges. However, the only source mentioning this institution, the *Chronycke van Vlaenderen* by Nicolas Despars (1522–1597) (written c. 1562 – c. 1592), has not been corroborated by other evidence, thus making it unlikely that such a Chamber existed.[16] It is generally difficult to tell to what extent mutual insurance techniques for maritime transports applied in Bruges before premium insurance became ubiquitous. It seems that early premium insurance still bore some mutualistic characteristics, at least among the Genoese. Engaging in marine insurance, one time as insured and another time as underwriter,

---

[12] *Juul Hannes*, Securitas: honderdvijftigste verjaardag, 1819–1969 (1969).

[13] *De Groote* (n. 1), 9.

[14] *De Groote* (n. 1), 13–18; *Bart Lambert*, De Genuese aanwezigheid in laatmid-deleeuws Brugge. Een laboratorium voor de studie van instellingen en hun rol in de econo-mische geschiedenis (unpublished doctoral dissertation Ghent University 2011), 124–129.

[15] See the many examples in *Léone Liagre-De Sturler*, Les relations commerciales entre Gênes, la Belgique et l'Outremont d'après les archives notariales génoises (1320–1400) (1969), for example vol. 2, 654–655 (no 499, 2 Jan. 1388), 825 (no 623, 8 Oct. 1398), and also in *Renée Doehaerd* and *Charles Kerremans*, Les relations commerciales entre Gênes, la Belgique et l'Outremont d'après les archives notariales génoises (1400–1440) (1952).

[16] *van Niekerk* (n. 4), vol. 1, 201.

was considered a fraternal duty of compatriots, all of whom were member of the same nation.[17]

The rules of general average (gross average) allowed for some sharing of risk before premium insurance came in use. If the captain had been forced to jettison cargo to save the vessel, the merchants who had suffered losses on their freight could claim compensation from all those participating in the transport and from the captain as well. General average had been developed in the High Middle Ages. Recent research by Edda Frankot has demonstrated how in the later Middle Ages basic rules relating to jettison migrated along the Western European shores, but also how their concrete implementation differed from one place to the next. The enactment of brief written rules made them vulnerable to copying mistakes. Some manuscripts containing both the *Vonnisse van Damme* (late 13th to early 14th century), which was a compilation of maritime rules that were applied in Bruges and its dependent ports (for example Sluis and Damme), and the *Ordonnantie* (mid-14th century), which served for other Dutch ports,[18] mention that the captain had to contribute in the damages by way of general average, with 'ship and freight'.[19] This was clearly a copyist's slip; the rules of the *Rôles d'Oléron* (before 1286), which had served as basis for both the *Vonnisse* and the *Ordonnantie*, held that the captain chose whether the value of his ship or the freight received would be added to the mass of value from which the compensation for damages was to be derived. Later on, it became customary that the choice between freightage and the value of the ship was made by the merchants, and not by the captain.[20] Moreover, many of such changes were due to developments in naval transport. At first, merchants commonly had proprietary interests in the ship that was used to carry their merchandise; the captain was considered a representative or their peer. But following the intensification of over-sea traffic during the 13th century, the interests of ship-owners, skippers, and merchants started to diverge. The shift towards the contribution of the captain for general average, which up to that time had been a risk for merchants only, is a case in point.[21] Discussions about risk allocation among the parties mentioned would continue long after the 16th century.

The legal history of premium marine insurance in late medieval Bruges remains to a large extent unclear, which is mostly due to the available sources.

---

[17] *Lambert* (n. 14), 124 f.

[18] On both compilations, see *Goutsmit* (n. 8), 52–96; *Dirk Van den Auweele*, Het Brugse zeerecht, schakel in een supranationaal geheel, in: Valentin Vermeersch (ed.), Brugge en de zee (1982), 145–155.

[19] *Edda Frankot*, 'Of Laws of Ships and Shipmen'. Medieval Maritime Law and its Practice in Urban Northern Europe (2012), 40 n. 90.

[20] *Frankot* (n. 19), 39–41.

[21] *Frankot* (n. 19), 7 f.

Traces of marine insurance can be found in ledgers of judgments of the Bruges Municipal Court of Aldermen, dating mostly from the 15th century. Such references are usually not explicit as to the contents of insurance contracts, and often not even as to the rules that were imposed when disputes were being settled. It is probable, though, that marine insurance in Bruges was subject to a myriad of rules during its first stages. When marine insurance was first in use in Bruges in the later decades of the 14th century, each sea-faring nation of merchants that frequently applied this mercantile technique, in particular the Florentine, Genoese, and Castilian nations, may have upheld 'customs' of their own. This was the case, apparently, in 15th-century England as well.[22] But over time it seems that there was some convergence. In the first decades of the 15th century, the Florentine style of drawing up insurance contracts became the most dominant. This style was straightforward in stipulating risks, and it did not aim at circumventing usury prohibitions by means of opaque formulations, as was the case in other contracts.[23] At the same time, differing rules that were applied found a common ground in a set of basic principles. These principles were shared among the Italian merchants that were active in the Bruges market, and they were imposed by the Bruges municipal government. The process of modest convergence had ended by the third quarter of the 15th century. Indications thereof are lawsuits before the court of Bruges aldermen in which insurance underwriters of several Italian nationalities were involved, and which did not concern the rules to be applied.[24] One exception was the Castilian nation, which managed to keep a set of rules that were slightly different from the 'common' Bruges insurance law.[25] Besides the municipal authorities, princely institutions were equally important. In February 1459, Duke Philip of Burgundy imposed that for any appeal against judgments of the Bruges aldermanic court before the Council of Flanders, when concerning marine insurance, the sums due had to be deposited in the court before the start of the trial.[26]

---

[22] *Rossi* (n. 5), in manuscript, 12–15.

[23] Typical for the Florentine policies were exhaustive, yet concise, provisions such as 'the ship may call at any place and sail forward, backward, rightward and leftward at the discretion of the shipmaster' and insurance against 'all perils of the sea'. See *Rossi* (n. 5), in manuscript, 65–67.

[24] For example, *Louis Gilliodts-Van Severen*, Cartulaire de l'ancienne Estaple de Bruges, vol. 2 (1904), 92 (no. 1016, 2 June 1459, mentioning Michele Arnolfini (Lucchese), Carlo Lomelino (Genoese) and Angelo Tori (Florentine) as insurers).

[25] *Louis Gilliodts-Van Severen*, Cartulaire de l'ancien consulat d'Espagne à Bruges: Recueil de documents concernant le commerce maritime et intérieur, le droit des gens public et privé, et l'histoire économique de la Flandre, vol. 1 (1901), 111 (23 March 1472). This concerned a dispute on average adjustment, in which Castilians invoked a different rule than their opponents, Genoese merchants.

[26] *Gilliodts-Van Severen* (n. 25), 88–90 (15 February 1459 (n.s.)).

When from around 1490 members of the Bruges merchant community increasingly transferred their commercial activities to Antwerp, they brought with them their expertise in marine insurance. However, in Antwerp premium insurance was not immediately widely offered or embraced. This followed from path dependence in practices of naval transport in that city and from a relative lack of facilitating practices, foremost being broking. In the first two decades of the 16th century, Antwerp merchants trading back and forth between Arnemuiden (Middelburg) or Flushing (Vlissingen), both of which were Antwerp-dependent ports, on the one hand, and Iberian or French destinations on the other, typically allocated marine risks through provisions in the charter or carriage contract. Ship owners, charterers, and masters could use these contracts to transfer to the counterparties the financial risk of cargo losses arising from wreck, capture, or arrest. To further manage risk, convoys with other ships were sometimes organized.[27]

In the early 1500s disputes in Antwerp that related to freight damaged during naval transport were often framed in terms of general average or the captain's liability. According to the rules that were imposed by the Antwerp aldermen, general average applied when losses had been inflicted deliberately in order to save a vessel (such as by cutting away an anchor or when cargo was jettisoned).[28] If only merchants of one nationality were owners of the merchandise, then the consuls of their nation administered the case. Adjusters calculated the mass and distributed the damages rateably among the merchants and the skipper. However, if the owners were of different nationalities, the Antwerp Municipal Court of Aldermen resorted to experts for average calculations.[29] Particular average was applied when losses were accidental or weather-related. Rather than dividing the cost, in that case the owners of the lost or damaged cargo received no compensation, unless the loss could be attributed to the conduct of the captain.[30] For cargo owners, risk transfer clauses in contracts of charter or carriage could ensure more cover for their risks. In the first two decades of the 16th century, this was commonly done for transits to and from the Scheldt estuary. Moreover, many shipments to the Low Countries, even though they were delivered to or sent from Antwerp, were still insured by underwriters of Southern-European origins in Bruges.[31] The transition from Bruges to Antwerp, which started around 1490, was a gradual one; even in the third quarter of the 16th century, Bruges residents had a part in the maritime trade that was directed towards Antwerp as well as in

---

[27] For references to archival sources: *De ruysscher*, Antwerp 1490–1590 (n. 5), 80 f.

[28] *De ruysscher*, Antwerp 1490–1590 (n. 5), 80.

[29] *De ruysscher*, Antwerp 1490–1590 (n. 5), 80.

[30] *De ruysscher*, Antwerp 1490–1590 (n. 5), 80 f.

[31] *De Groote* (n. 1), 17.

the marine insurance in that city.[32] Insurance was also taken out abroad: in the 1490s and 1500s, alum shipped from Mazarrón and Cartagena to Antwerp was commonly insured in Burgos, as were cargoes of wool and wood that were shipped from Bilbao and Bordeaux, respectively, to ports in the Southern Netherlands.[33]

These developments persisted until around 1530. Conventional insurance underwriting remained very exceptional in Antwerp. Traders with roots in southern Europe acquired premium insurance in Bruges, also in Burgos, and most probably in Italian cities as well. By contrast, French, Dutch, and German merchants continued to rely on the contractual liability of charterers and shipmasters.[34] Furthermore, also structural factors had their part. In the 1500s in Antwerp, trade at fairs and overland imports had been dominant. Still in the 1510s and 1520s, and for a long time thereafter, merchants trading in Antwerp mostly relied on shipmasters from other cities, often Dutch, and they rented ships rather than owning them.[35]

Yet, mostly from around 1530, premium insurance started to gain more attention in Antwerp. This went together with the concentration of commerce at a new Bourse building (*Beurs*) and with the opening up of broking.[36] In the 1530s and 1540s, the slow spreading of the technique of premium insurance was mostly restricted to groups of immigrant Southern-European merchants. Netherlanders occasionally bought insurance, but they did not act as underwriters. Moreover, the profile of these Southern-European underwriters was that of successful businessmen, being involved in prominent merchant houses.[37] The Florentine style of writing contracts was copied from Bruges, but some differences in contents remained among contracts that were drawn up in Antwerp. For example, of the few Antwerp contracts that were made in the 1540s, 1550s, and 1560s and which have been preserved, some include barratry (insurance of damage-inducing conduct by the skipper and crew) and/or negligence as risks covered, others did not.[38]

---

[32] For example, in the later 1550s and in the 1560s Antonio del Rio was involved in the debates surrounding the Ferrufini proposal in Antwerp. He was active as marine underwriter in Antwerp and was consul of the Castilian nation in Bruges. See *De ruysscher* and *Puttevils* (n. 5), 37, 42; *Verlinden* (n. 3), 43. Another example is Juan Henricquez, Antwerp's leading marine insurance broker in the early 1560s, who was born and lived for a long time in Bruges. See *De Groote* (n. 1), 152–154.

[33] *Hilario Casado Alonso,* Comercio internacional y seguros marítimos en Burgos en la época de los Reyes Católicos, in Bartolomeo Dias e a sua época (1989), 606–608.

[34] *De ruysscher*, Antwerp 1490–1590 (n. 5), 82.

[35] *De ruysscher*, Antwerp 1490–1590 (n. 5), 82.

[36] *De ruysscher*, Antwerp 1490–1590 (n. 5), 82 f.

[37] *De ruysscher* and *Puttevils* (n. 5), 31 f.; *Adolf Hofmeister,* Eine Hansische Seeversicherung aus dem Jahre 1531, (1886) 5 Hansische Geschichtsblätter 169–177.

[38] *De Groote* (n. 1), 129 f.

Due to a lack of sources produced by merchant nations, it is not possible to tell whether such differences reflected differences in customs or rules upheld within nations.

II. Dispersal, standardization, and professionalization (16th to 18th centuries)

When marine insurance became popular in Antwerp, the Antwerp judges were confronted with more and more cases in which underwriters invoked fraud by the insured. The judges responded by devising basic rules, mostly of a procedural nature, and sometimes concerning the contents of the insurance contracts as well. Procedural norms related to the prescribed terms of compensation payment by the underwriters (e.g., two months or one year). A rare rule on the contents of insurance policies stated that insurance after loss was legitimate only if the insured had been unaware of the loss.[39] Interventions from the princely government were, as they had been in Bruges, aimed at avoiding protraction of lawsuits. In 1537, the prince, Emperor Charles V, imposed that any trial on marine insurance had to be preceded by deposit of the claimed amounts in the court.[40] But in spite of this core set of rules, certain confusion remained as to which provisions of contract were lawful. When in the 1560s the Castilian nation of Bruges advocated their own ordinance for marine insurance, its leaders emphasized that no one knew what the marine insurance customs of Antwerp were,[41] this notwithstanding the fact that at around that time Antwerp insurance contracts more commonly referred to the 'customs of the Antwerp Bourse'. However, this formula did not refer to an elaborate or exhaustive set of customs, but rather to some generalized insurance practices, say the Florentine style of drawing up policies, and to the few rules imposed by the Antwerp Municipal Court.[42] Most often, the phrase was accompanied with a reference to the customs of the London Strada (Bourse).[43] Some convergence had developed, but as mentioned, as to some provisions of contract differences remained in practice and in views regarding their legal force.

Around the end of the 1540s, the situation became urgent. Starting in the middle of 1547 there was a steep rise in lawsuits brought in the Antwerp courtrooms concerning marine insurance. This followed from attacks of Scottish and French

---

[39] *De ruysscher* and *Puttevils* (n. 5), 39, n. 41.

[40] Charles Laurent et al. (eds.), Recueil des Ordonnances des Pays-Bas, 2nd series, vol. 4 (1893), 34 f. (princely ordinance, 25 May 1537); *Oskar De Smedt*, De keizerlijke verordeningen van 1537 en 1539 op de obligaties en wisselbrieven. Eenige kanttekeningen, (1940) 3 Nederlandsche Historiebladen 15–21.

[41] *Coronas González* (n. 5), 390, n. 18; *Verlinden* (n. 3), 60.

[42] *De ruysscher* and *Puttevils* (n. 5), 40, n. 43.

[43] *De Groote* (n. 1), 126–129.

privateers, which increased the number of claims for insurance compensation. In response, underwriters chose to filibuster the trials, as they had done so often before. The princely government decided to step in and to issue new legislation on marine insurance. In 1549, it invited merchants residing in Antwerp – but also in Bruges – as well as captains and seamen of different ports in the Low Countries for their views, and they commented on draft ordinances.[44] In January 1550, a princely law was enacted that pursued a policy of convoys. The arming of ships received more attention than insurance. It was even thought that insured ships were less armed and thus more prone to capture. Nevertheless, rules determining the contents of marine insurance contracts were imposed as well. For example, any marine insurance of cargo encompassed a maximum of nine-tenths its value.[45] It seems that opinions of consulted merchants had been taken into account. A draft version of the law, dating from June 1549, had limited the portion of merchandise that could be insured to one-third for ships that did not sail to the Mediterranean and it had also ruled out hull insurances, both of which the 1550 law allowed under certain conditions.[46]

The ordinance did not solve the crisis that had begun at the end of the 1540s, and the problems lasted well into the 1550s. They were caused by a sudden shock in naval trade, but underlying deficiencies were more fundamental. Since the 1530s, many more merchants had been willing to take out insurance on their freight. Because marine insurance became a common product that was offered at the Antwerp Bourse, the vital exchange of information among the parties concerned was often flawed. Antwerp marine insurance had speculative features. Underwriters wagered on the premium, whereas insurance buyers only insured small portions of their merchandise, just in case. It can be assumed that around the middle of the 16th century most parties to marine insurance contracts were not well versed in risk calculation. Yet this did not prevent a profusion of underwriting. Marine insurance became popular, and in this period of the middle of the 1500s, Netherlanders and local merchants were more frequently signing marine insurance contracts as insurer as well.[47]

---

[44] *Sicking*, Los grupos de intereses marítimos (n. 5), 169 and 177.

[45] For the ordinance, see: Jean Lameere (ed.), Recueil des Ordonnances des Pays-Bas, 2nd series, vol. 6 (1922), 3–13 (19 January 1550 n.s.). On the history of this ordinance, see additionally *Sicking*, Los grupos de intereses marítimos (n. 5), also *idem*, Stratégies de réduction de risque (n. 5), 797 f. and *Jan Craeybeckx*, De organisatie en de konvooiering van de koopvaardijvloot op het einde van de regering van Karel V: bijdrage tot de geschiedenis van de scheepvaart en de admiraliteit, (1949) 3 Bijdragen voor de geschiedenis der Nederlanden 188–193.

[46] *Sicking*, Los grupos de intereses marítimos (n. 5), 197.

[47] *Goris* (n. 1), 641 f. (August 1543, mentioning Jacques de Cordes, Balthazar de Cordes, and Aert Nieulant)

The 1550 princely ordinance, and another one dating from 1551 which was drafted along similar lines,[48] did not tackle the questions as to which provisions in marine insurance contracts were valid. The Florentine style was generally embraced in practice. Insurance contracts were therefore concise, and risks were described broadly and in general terms, but questions remained. For example, it was not clear as to whether merchandise such as victuals, leaky goods, weapons, and valuable cargo had to be made explicit in the contract; the same was true as to the name of the ship and the skipper. It also remained unsure – as was mentioned – whether barratry and/or negligence were insurable. Some of these questions concerned differences in insurance practices among groups/nations of foreign merchants. Barratry, for example, was considered a risk that could be addressed in insurance among Dutch, French, and Florentine merchants. However, most Spanish traders were reluctant in this regard.[49]

Starting from 1555, almost 17 years were spent debating how the Antwerp insurance market, and its rules regarding marine insurance, were to be organized. In October 1555, Giovanni Battista Ferrufini (died around 1562) proposed to eradicate the then-daily discussions and lawsuits in Antwerp concerning marine insurance by way of making broking centralized and mandatory. Ferrufini was a merchant who had probably come from Piedmont but who by that time resided in Antwerp. According to him, all marine insurance contracts had to be drawn up by one official broker in the 'best form possible'. Ferrufini was most probably an outsider to the insurance business, and he sought to create an office for himself, while conflating practices and rules on marine insurance that were practised in other merchant cities. He pretended that his proposal would end the practices of brokers inventing contract provisions and presenting them as customs. In 1557, when Ferrufini's proposal seemed to stall, he presented a draft standard insurance policy.

Ferrufini's aim of centralizing the Antwerp insurance market triggered resistance from within large groups of traders. From October 1557 onwards, different nations of merchants were involved in the strife. Italian nations urged the appointment of several brokers, representatives of the nations, and they later advocated freedom of choice of broker. Ferrufini also proposed to draw up a new ordinance for the Antwerp insurance market, and several nations tried to ascertain that they would have a say in its contents. All merchants were in favour of regulation, but they were equally anxious of being confronted with rules that were not congruent with practice or with their convictions as to what were appropriate contract provisions. Ferrufini exaggerated the existence of a 'common style' of insurance and proposed strict rules on controversial provisions, which

[48] Recueil des Ordonnances des Pays-Bas (n. 45), 163–177 (19 July 1551).

[49] *Rossi* (n. 5), in manuscript, 173–176.

added to the opposition. A compromise text, which was presented in 1558 and which had been written under the supervision of four representative merchants, softened Ferrufini's strict approaches, which had been revealed in his standard policy of the preceding year. Insurance after loss was acknowledged, for example, and in spite of Ferrufini's plan to prohibit it. A new draft ordinance was formulated in 1559, and even though it confirmed the more lenient stances of the previous year, it was still met with opposition, and therefore it was not issued as law.[50]

When Ferrufini retreated or passed away, around 1562, the princely government took the initiative of promulgating a law that did not take into consideration what had been drawn up as compromises in the years before. Insurance after loss, as well as barratry, were banned. The law imposed the use of a standard insurance policy that was attached to the law, and it inhibited both interpretation beyond its contents as well as the addition of new provisions.[51] After a temporary princely ban of all insurance in March 1569,[52] which with regard to marine insurance was nonetheless ignored in mercantile practice, the Antwerp aldermen submitted to the princely councils a project of municipal legislation. In this draft, many parts of the 1558 compromise were included.[53] It seems that this text influenced the officials in Brussels. In January 1571 a new princely law on marine insurance was issued that mostly followed the views of the Antwerp administrators.[54] This ordinance was never revoked or changed thereafter, and it would in general remain the legal backbone for marine insurance in Antwerp and the Low Countries for more than two centuries.[55]

In 1582 a new compilation of Antwerp municipal law was made, this time under the Calvinist and anti-Spanish regime within the city, and it confirmed the 1571 rules. Even though it did not gain princely support, not even after the 1585 re-integration of Antwerp in the Spanish empire, it was a prolific law book that served as reference to Antwerp law until the end of the 18th century. The 1582 compilation was very popular and was applauded for its quality, but it was not

---

[50] *De ruysscher* and *Puttevils* (n. 5), 41–45.

[51] *Ordonnantien … Placcaerten van Vlaenderen*, vol. 2, Antwerp 1662, 307–334 (princely law 31 October 1563).

[52] *Reatz* (n. 2), Annexes, no 1, 43–51.

[53] *Guillaume De Longé*, Coutumes de la ville d'Anvers (1870–1874), vol. 1, 429–705. The text of the compilation was submitted in July 1570; the ban on insurances lasted until October of that year. See for a detailed analysis *Dave De ruysscher*, 'Naer het Romeinsch recht alsmede den stiel mercnatiel'. Handel en recht in de Antwerpse rechtbank (16–17de eeuw) (2009), 51–55.

[54] Jean-Marie Pardessus (ed.), Collection de lois maritimes antérieures au XVIIIe siècle, vol. 4 (1838), 103–119 (princely law, 20 January 1571 n.s.).

[55] *Charles Verlinden*, De zeeverzekeringen der Spaanse kooplui in de Nederlanden gedurende de XVIe eeuw, (1948) 2 Bijdragen voor de Geschiedenis der Nederlanden 199.

homologated as princely law.[56] The 1582 rules on marine insurance received approval from the community of merchants.[57]

Summarizing all of the above, it can be stated that the 1571 princely law was the first consistent marine insurance law in the Low Countries, which also addressed the contents of contracts. However, in Bruges some corporatist tendencies remained, and it is unsure whether the city maintained a separate position with regard to marine insurance after the 1570s. In 1551 the Castilian nation of Bruges attempted to establish a sister-nation in Antwerp as well. The Castilians in Bruges received support for their claims from the Antwerp magistrate of aldermen, but the city government of Bruges vehemently opposed the plan. With the support of the Estates of Flanders, Governess Mary of Hungary was pressured into rejecting the proposal in 1565.[58] But in spite of this setback, the consuls of the Castilian nation in Bruges managed to extend their jurisdiction over maritime affairs considerably, and even to the detriment of the Antwerp Municipal Court and other merchant nations in Antwerp. In January 1569, the Castilian nation of Bruges obtained princely acknowledgement for an ordinance containing rules on marine insurance (106 articles) that were signed by its members and also by others who submitted themselves to the nation's authority. To the ordinance five insurance forms were added. Even though the ordinance stipulated that it applied to insurance that was taken out in Bruges, it seems that any marine insurance contract signed by a member of the Castilian nation – even in Antwerp, and also when non-Castilians were involved – would fall under the nation's jurisdiction.[59] Registration of the insurance contract by consular officials was imposed as mandatory.[60] The Castilian ordinance was enforced within the Bruges nation, at least early in the 1570s,[61] but it is unsure whether it was perceived as legally applicable outside the nation. The ordinance was granted in January 1569 and was projected as entering into force beginning in 1570, but two months later, in March 1569, all types of insurance were outlawed by a princely law. When in October 1570 the ban was revoked, a new ordinance containing rules on marine insurance contracts was adopted, for the entire Low Countries, without formal exception for the Bruges' Castilians.[62]

As for its contents, the Castilian ordinance reflects a considerable influence of legislation enacted in Burgos in 1538 and, to some extent, legislation issued in

---

[56] *De ruysscher* (n. 53), 55–68.
[57] *De ruysscher* and *Puttevils* (n. 5), 46.
[58] *Goris* (n. 1), 65 f.; *Verlinden* (n. 3), 40.
[59] *Coronas González* (n. 5), 388. Contra: *De Groote* (n. 1), 54.
[60] *Verlinden* (n. 3), 59.
[61] *Coronas González* (n. 5), 398.
[62] *De Groote* (n. 1), 56 f.

Seville in 1556.[63] This notwithstanding, and even though the ordinance established separate jurisdiction, the ordinance demonstrates high similarities with Antwerp rules as they had been devised in the 1558 and 1559 compromises. This does not necessarily betray direct influence from Antwerp as it may also be due to a general convergence of rules that were more or less following the Florentine example.[64]

In Antwerp, the most concrete result of the new princely and municipal laws was that the standard policy that was attached to the princely ordinance of 1571 was quickly adopted among merchants. Before 1560, marine insurance contracts had usually been written in notarial deeds. But already by 1590, printed insurance policies, which contained the 1571 form, served as a basis for almost every Antwerp marine insurance contract. However, in spite of the use of printed contracts, it remained customary to add clauses in writing below the printed provisions of the contract forms, and these handwritten parts of the insurance policy still reflected negotiations between the insured (or his agent) on the one hand and the underwriters of the contract on the other.[65]

In the meanwhile, starting in the early 1580s, the river Scheldt was sealed off from the sea, first by the Spanish and thereafter by the rebellious Northern state which had gained control of the Scheldt estuary. In spite of a truce between the North and the South in 1609, and the end of the conflict in 1648, this situation remained the same until the later years of the 18th century. Marine insurance continued to be practised in Antwerp in the 1590s, but it declined steadily from the first decades of the 17th century onwards.[66]

In a new effort to obtain the princely stamp, a new version of the Antwerp municipal law was drafted, which was finished in 1608. It contained no less than 323 articles on insurance, most of them dealing with marine insurance. However, in sharp contrast to the 1582 law book, the Antwerp municipal law version of 1608 imposed more formalistic requirements and compulsory mentions onto marine insurance contracts. In so doing, the Antwerp aldermen separated mercantile practice and the official law of the city. The 1608 text was generally imbued with

---

[63] *Coronas González* (n. 5) 395; *De Groote* (n. 1), 46 f.; *Henry L.V. De Groote*, Zeeverzekering, in Maritieme geschiedenis der Nederlanden, vol. 1 (1976), 207; *Rossi* (n. 5), in manuscript, xix and 79.

[64] Telling is the inclusion of barratry for cargo policies. This was denounced in all Spanish territories until the middle of the 1500s. In 1546 Burgos allowed it. However, many Spanish cities stuck to the old position well after Burgos's shift of policy (e.g. Seville, Bilbao). Florence and Venice acknowledged barratry, but Genoa did not. The 1569 Bruges ordinance allowed barratry, as did the 1558 and 1559 Antwerp compromise texts. See *Rossi* (n. 5), in manuscript, 173–175.

[65] See *De ruysscher*, Normative Hybridity (n. 5), 153 for references to insurance forms.

[66] *De ruysscher*, Normative Hybridity (n. 5), 151–153.

distrust towards marine insurance. The new law stated, for example, that when bringing a lawsuit regarding marine insurance, the insured had to confirm his good faith. The insured had to acknowledge that the terms and data mentioned in the insurance contract were correct and that no other agreement had been made for insuring the same ship or merchandise.[67] Fraud in insurance was prosecuted as theft, which was a capital offence,[68] and notaries and brokers who drew up insurance contracts containing forbidden clauses were fined.[69] As a result of all this, and also because the 1608 law compilation was not well-known – and even though it received princely approval to have its mercantile sections printed – the new rules received little support from merchants remaining in Antwerp. As a result, provisions in insurance policies that were signed in Antwerp after 1608 did not differ from those that had been made before that time.[70]

But marine insurance in Antwerp had dwindled in the meanwhile. However, after 1650, when the Munster Treaty ensured more security at sea than before, marine insurance in Antwerp regained some traction. As had already been the case in the first half of the 16th century, naval traffic could be insured even when the route did not concern the place where the contract was drafted and signed. The closing off of the river Scheldt thus did not pose a problem in that regard. In the second half of the 17th century, the practice of using printed insurance contract forms continued as did the use of handwritten additions, but the latter became increasingly stereotyped. This went together with a hollowing-out of insurance obligations, especially with regard to the disclosure of information between the insured and the underwriter(s).[71]

The structural deficiencies of the 1608 Antwerp insurance law became problematic in this period. When a dispute arose over pay out of an insurance contract, sections of the 1608 compilation could provide arguments in the Antwerp municipal court against pleas for compensation. This was the more so because most insurance policies had moved away from the official norms by that time, and even from provisions in the 1571 princely law and the 1582 municipal Antwerp compilation, which had been accepted as fair when they had been imposed. Merchants anticipated confrontation with the official law in their contracts by providing that no law could be held against the contract and by inserting mandatory mediation by peers as a provision in the insurance policy.[72] The Antwerp aldermen-judges, when being confronted with the new style of drawing up insurance

---

[67] Compilatae, Title 11, s. 266 (*De Longé* (n. 53), vol. 4, 310).
[68] Compilatae, Title 11, s. 24 and 97 (*De Longé* (n. 53), vol. 4, 208 and 240).
[69] Compilatae, Title 11, s. 58 (*De Longé* (n. 53), vol. 4, 224).
[70] *De ruysscher*, Normative Hybridity (n. 5), 152 f.
[71] *De ruysscher*, Normative Hybridity (n. 5), 157–161.
[72] *De ruysscher*, Normative Hybridity (n. 5), 161–163.

contracts, pushed the boundaries of the law further. For example, in the first decade of the 18th century, they accepted that a general clause 'perishable or not perishable', covering transports of valuables, even of gold and silver, was sufficient to hold the underwriters accountable.[73] Insurance after loss, as well, was broadened. In 1571, the princely law had imposed as a presumption that any loss that had occurred before the contract was signed rendered the contract null and void if news of the loss could have reached Antwerp when the contract was being signed. In order to fix the date as to when tidings had arrived, it was held as a rule that news travelled at the speed of one and a half mile per hour. In the 1660s and 1670s, the Antwerp Municipal Court decided not to adhere to this calculation, but instead to impose an oath of abjuration on the claimant (the insured) that he had not been aware of the loss when signing the contract. [74]

During the Early Modern period, jurisdiction over marine insurance was vested in the courts and in the bylaws of municipal governments, to the extent that the prince did not intervene. Princely laws were deemed possible and were in fact – as mentioned – issued, most probably because naval trade was considered *de regalibus*. Because marine insurance was a subject that until the later 1540s did not receive much attention from government officials in Mechelen, after 1531 Brussels admiralty courts at the princely level of government most probably did not decide disputes in marine insurance cases. Since 1540, the admiral of the princely fleet had jurisdiction. Because his tasks were broadly defined in the abovementioned princely laws of 1550 and 1551, jurisdiction over marine insurance contracts would have been possible, but this opportunity seems not to have been seized upon. This judgment is based foremost on an absence of references in 16th-century Antwerp and princely source materials to such a jurisdiction. However, because no records of the admiralty courts predating 1596 have been preserved and because little research has been devoted to the matter, it remains difficult to be sure.[75] In 16th- and 17th-century France, occasionally the admiralty courts, and sometimes the commercial courts, heard cases of marine insurance.[76]

In the middle of the 18th century, when the Southern Low Countries were under Austrian rule, and notwithstanding the closed-off Scheldt, some merchant

---

[73] *De ruysscher*, Normative Hybridity (n. 5), 164.

[74] *De ruysscher*, Normative Hybridity (n. 5), 165–167.

[75] On the jurisdiction and archives of admiralty courts, see *Gustaaf Asaert*, Admiraliteiten (tweede helft 14de eeuw – 1794), in: Erik Aerts et al. (eds.), De centrale overheidsinstellingen van de Habsburgse Nederlanden (1482–1795) (1994), 486–494; *Jacques Bolsée*, Inventaire des archives des Conseils et Sièges d'amirauté (1932), 6–22.

[76] *Pardessus* (n. 54), vol. 4 (1837), 226 (Rouen, juridiction consulaire, 1550s); *Alexandre Saint-Léger*, La Flandre maritime et Dunkerque sous la domination française (1659–1789) (1900), 148–149 (Admiralty of Dunkercque, since 1671).

houses in Antwerp still ventured in marine insurance. However, the volume of contracts that were taken out was nothing compared to when marine insurance had been at its heyday in the city, between 1550 and 1600. As was mentioned above, in 1754 James Dormer established a Royal and Imperial Chamber of Insurance. In the 1720s the Bruges Chamber of Commerce had already recommended the establishment of such a national company.[77] Among other types of insurance, Dormer's corporation handled marine insurance. It was active in the Duchy of Brabant and operated from Antwerp. It was in fact a corporation, which received a monopoly for its business.[78] Some of the contracts that were handed out have been preserved, and they show large continuity with the contractual style of the 16th and 17th centuries.[79] The *Compagnie d'assurance de la Flandre Autrichienne*, which as mentioned was established in 1782, was a corporation comparable to Dormer's. It seems that these insurance companies were now involved in actuarial activities. They weighed the premium on the basis of a careful consideration of risks,[80] and this was a novelty compared to the standardized insurance contracts of the second half of the 17th century. The more conscientious approach towards risk explains why such companies were more viable than they had been in the 16th century. An Antwerp-based partnership, established and re-established by Christopher Pruynen (died around 1568) in 1553, 1559, and 1563 went bust in 1564. It had minimal leverage capital and was quickly drained by the compensation claims of insured.[81] By contrast, the mentioned 18th-century corporations raised stock capital on shares and had a broad geographical scope, with directors and commissioners signing contracts in different locations.[82]

---

[77] *Meel*, (n. 7), 424.

[78] On the Chamber, see *Ludo Couvreur*, De eerste zeeverzekeringscompagnie ten Antwerpen (1754–1793?), 1936 Tijdschrift voor economie en sociologie 146–174; *Meel*, (n. 7), 416–469; *Houtman-De Smedt* (n. 7), 61–68.

[79] *Couvreur*, Recht en zeeverzekeringspractijk (n. 7), 212–214.

[80] *Couvreur*, Recht en zeeverzekeringspractijk (n. 7), 213 (exclusion of victuals); *idem*, De eerste zeeverzekeringscompagnie (n. 78), 170 (premiums of 30–40%); Journal de commerce: journal de commerce et d'agriculture, Brussels, September 1760, 178: 'Mais il se présente souvent dans le Commerce des risques extraordinaires pour lesquels il est heureux que les Négocians puissent avoir recours à des Compagnies d'Assurance. La Chambre d'Anvers calcule cette sorte de risque, & les accepte, pourvu que la prime soit proportionnée au danger. …'; *Meel*, (n. 7), 439–441.

[81] *De Groote* (n. 1), 164–167.

[82] *Couvreur*, De eerste zeeverzekeringscompagnie (n. 78), 163–165, 166.

III. Codification of marine insurance and standardization of practice (1795 to *c.* 1850)

The French occupation of the Southern Low Countries had a profound impact on its insurance markets. Following the consolidation of the new French rule in 1795, the river Scheldt was reopened. However, for some time this was mere principle. Protectionist measures hampered the re-development of the Antwerp port. Moreover, at the end of the first decade of the 1800s, the English-French war resulted in a complete breakdown of the still hesitant naval traffic going to and from Antwerp.[83] The imprint of the French regime on 'Belgian' marine insurance concerned foremost the issuance of new legislation. In January 1808, the new *Code de commerce* was imposed on all parts of the French Empire, including the Southern Netherlands.

It was through a strange twist of history that many of the rules that had applied in Antwerp in 1571 and 1582 were now brought back to its port, under the guise of French law. In fact, many of the maritime sections of the *Code de commerce* had been copied from the 1681 French *Ordonnance de la marine*. The drafters of this latter ordinance had closely followed many of the European maritime and insurance regulations of their day. As a result, they had drawn on Dutch municipal bylaws and treatises written by Dutch authors. It seems that in 1679 there even were contacts between a delegate of the French compilation committee and the Dutchman Adriaan Verwer (1655–1717), who was the author of a well-known monograph on average.[84] The Dutch ideas were in fact for a large part older than the 17th century, and many of them can be traced back to the mentioned 1571 and 1582 laws regulating the Antwerp insurance market. A clear example is the clause 'on good and bad tidings', which had developed in Antwerp by the 1580s. It served to avoid discussions on insurance after loss even if the 'two hours three miles' test – which had been imposed in the 1571 princely law – failed. If the mentioned provision had been inserted into the insurance contract, the underwriter could only have the insurance contract annulled if he was able to

---

[83] *Karel Veraghtert*, De havenbeweging te Antwerpen tijdens de 19de eeuw: een kwantitatieve benadering, vol. 1 (unpublished PhD-dissertation KU Leuven 1977) 9 and annex 25.

[84] *Bernard H.D. Hermesdorf*, Adriaen Verwer (1655–1717) en de Ordonnance de la Marine (1681), Rotterdams Jaarboekje 7th series, vol. 5 (1967), 227–261; *Olav Moorman van Kappen*, L'interpénétration historique des droits maritimes de la France et de la Hollande: l'exemple de l'ordonnance de la Marine, in: Willem Frijhoff (ed.), Les Pays-Bas et la France des guerres de religion à la création de la République Batave (1993), 105–113; *Margarita Serna Vallejo*, La ordenanza francesa de la marina de 1681: unificación, refundición y fraccionamiento del derecho Marítimo en europa, (2008–2009) 78–79 Anuario de historia del derecho español 248–249; *René Warlomont*, Les sources néerlandaises de l'ordonnance maritime de Colbert (1681), (1955) 33 Revue belge de philologie et d'histoire 333–344.

prove that the insured had heard about the damage at the time when he engaged in the insurance contract.[85] It was this rule that migrated to the North from the later 16th century onwards,[86] and it was then later copied into the *Ordonnance sur la marine* (book 3, ch. 6, s. 40-41).

The compilers of the *Code de commerce* had revised rules of commercial law that had been laid down in late-17th-century French laws. Occasionally they deviated from the contents of the 1673 *Ordonnance sur le commerce*, but with regard to maritime affairs they copied the mentioned *Ordonnance sur la marine* almost verbatim. As had been the case in 16th-century Antwerp, therefore, the Commercial Code provided general cover for 'tous accidents et fortunes de mer' (s. 350). The Code stated that victuals could be insured, provided that – as had been the case in the 16th century – they were mentioned in detail in the insurance contract (s. 365). Moreover, the Commercial Code imposed that the provision 'on good and bad tidings' rebuked the presumption of fraud in case the 'two hours three miles' test failed (s. 365–367). Therefore, all in all, there were minor differences with the marine insurance rules that had been applied in late 16th-century Antwerp. But, in some instances, both the *Ordonnance sur la marine* and the *Code de commerce* were conservative: barratry for example was excluded, at least if no express provision of contract included it as covered risk (s. 353).

One may suspect that this legislative framework was welcomed in the Southern Netherlands. However, it is not possible to be sure about this. Mercantile practice, and how it responded to the new French legislation, has received little scholarly attention, unfortunately. Moreover, it seems that insurance contracts for the French period have scarcely been preserved. Still, there are indications that the reopening of the river Scheldt had the effect of substantively re-launching marine insurance in Antwerp. However, this was only after the French had left and when in 1815 the Southern Low Countries had become re-united with the North after some 330 years of separation. In the years leading up to Napoleon's defeat, Antwerp's marine insurance business struggled, and foreign marine insurance companies stepped into the void that was left by Antwerp merchants that retreated from insuring freight and vessels.[87] In 1812, two official marine insurance brokers were appointed, but to little avail.[88]

Under the United Kingdom of the Netherlands (1815–1830), the Scheldt no longer crossed borders as had been the case for centuries. At first, foreign marine insurance companies tried to occupy the Antwerp market further. But in January

---

[85] Compilatae, Title 11, s. 13–22 (*De Longé* (n. 53), vol. 4, 204–208); *De ruysscher*, Normative Hybridity (n. 5), 159 f.

[86] *van Niekerk* (n. 4), vol. 2, 867–878.

[87] *Hannes* and *Laureyssens* (n. 10), 98; *Veraghtert* (n. 10), 10.

[88] *Hannes* and *Laureyssens* (n. 10), 98; *Veraghtert* (n. 10), 10

1821 the offices of foreign insurers were closed, in order to stimulate local initiatives.[89] King William I sought to promote trade as much as possible. State-controlled universal banks such as the *Société Générale* acquired substantial equity and board positions in the companies in which they invested. Many of these firms acquired the status of a corporation after government approval, and a large share of them were marine insurance corporations.[90] More than half of the corporations in the southern part of the United Kingdom that between 1815 and 1830 received official acknowledgment were insurance companies, most of them being specialized in marine insurance.[91] The strong ties existing between national governments and these marine insurance corporations did not prevent them from attracting clients from neighbouring countries; most of them had agents signing insurance policies on their behalf in all major neighbouring ports.[92] But, even with Antwerp's lift-off, the Dutch government favoured taking out marine insurance in Amsterdam, where some 28 marine insurance corporations were active in 1828.[93]

Belgian independence (1830) ended this unfavourable policy. Even though in 1831 the river Scheldt was again closed with tax barriers, by 1840 around 10 corporations were selling marine insurance in Antwerp. Not all of them lasted long, but the oldest managed to survive well into the 20th century.[94] In the 19th century, when Belgium was considered as being the most dense in insurance companies of all European countries,[95] this was foremost due to its marine insurance industry. Antwerp remained the focal point within the country and was internationally considered as one of the leading marine insurance centres in the world. However, in Brussels as well some general insurance companies were involved in marine insurance, among other types of insurance, through agents working in Antwerp and in other ports (i.e. *Compagnie de l'Union belge et étrangère* (1824), *Compagnie d'assurances réunies* (1830)).[96]

---

[89] *Willemse*, Het ontstaan en de ontwikkeling (n. 10), 27 f.

[90] *Willemse*, Het ontstaan en de ontwikkeling (n. 10), 31.

[91] *Hannes* and *Laureyssens* (n. 10), 98; *Willemse*, Het ontstaan en de ontwikkeling (n. 10), 31 f.

[92] *Raymond-Balthasar Maiseau*, Annuaire du commerce maritime. Manuel du négociant, de l'armateur et du capitaine, vol. 2 (1834), 523–524.

[93] *Willemse*, Het ontstaan en de ontwikkeling (n. 10), 44–47, 48–50.

[94] *Hannes*, Het verzekeringswezen in België (n. 10), 85–86.

[95] *Peter Borscheid*, Europe: overview, in: *idem* and *Niels Viggo Haueter* (eds.), World Insurance. The Evolution of a Global Risk Network (2012), 37–66, 39.

[96] *Julienne Laureyssens*, De naamloze vennootschappen en de ontwikkeling van het kapitalisme in België (unpublished PhD-dissertation Ghent University 1970), 25; *Willemse*, Het ontstaan en de ontwikkeling (n. 10), 33. Laureyssens states that only one (Belgian) company established in Brussels was involved in marine insurance (i.e. the Compagnie d'assurances réunies), but in fact also Union belge insured against naval risks. See

Beginning in the 1820s, insurance brokers and underwriters in Antwerp started to join efforts, and the different corporations that sold insurance in 1824 drafted a communal general marine insurance policy for the Antwerp harbour.[97] This standard contract filled a legislative gap: the *Code de commerce* did no more than provide a basic blueprint for marine insurance. With hundreds of contracts being signed, it became lucrative to use a policy form. The Antwerp 1824 policy addressed issues that had not been detailed in the Commercial Code (it excluded insurance for contraband for example), but it also sought to deviate from the Code's sections. A clear example is abandonment (*délaissement*). Upon presumed loss, or when upon an incident the extent of damages was still uncertain, the insured could forfeit his ownership rights in cargo in order to swiftly claim compensation. According to the Napoleonic Commercial Code, this was possible irrespective of which portion of the shipped merchandise was lost (s. 369). However, the 1824 policy restricted abandonment to a minimum loss of three-fourths in certain cases (s. 4).[98] Yet in other regards, the 1824 policy was more lenient than the law. For example, the 1824 policy was 'on good and bad tidings' (s. 13), whereas the Commercial Code considered this an optional term (s. 367).[99]

In 1828, insurance broker August Morel (1803–1865) established *Veritas* (later *Bureau Veritas*) in Antwerp. In doing so, he followed the example of the London bureau and insurance association Lloyd's. At Lloyd's, objective information as to the state of ships was registered and disclosed. *Bureau Veritas* was more ambitious than Lloyd's in that it also provided data on ships sailing all across Europe, and not just those in the British territories. Moreover, *Veritas* made public information on marine insurance premiums elsewhere, and in its first years received commission for insurance policies sold on behalf of foreign underwriters.[100] Morel also established several marine insurance companies himself, which however quickly went bankrupt.[101] It is unclear how *Bureau Veritas* interacted with the Nautical Committee, which was a body of experts assessing

---

Louis François Bernard Trioen, Collection des statuts de toutes les sociétés anonymes et en commandite par actions de la Belgique. Recueilles et mis en ordre d'après les renseignements fournis par les sociétés elles-mêmes; suivies de tableaux synoptiques et d'une notice sur les emprunts et les fonds publiques cotés dans toutes les bourses de l'Europe, vol. 1 (1839), 173.

[97] *Gabriel Lafond de Lurcy*, Guide de l'assureur et de l'assuré en matière d'assurances maritimes (1837), 97–101.

[98] *Victor Jacobs*, Étude sur les assurances maritimes et les avaries faite en vue du Congrès de Droit commercial d'Anvers (1885), 48 f.

[99] *Jacobs* (n. 98), 30.

[100] *Hannes*, Het verzekeringswezen in België (n. 10), 88; *Willemse*, Het ontstaan en de ontwikkeling (n. 10), 58, 61.

[101] *Hannes* (n. 12), 30 f.; *Willemse*, Het ontstaan en de ontwikkeling (n. 10), 65–77.

the state of ships and which was linked to the Antwerp commercial court.[102] All in all, the aura of Antwerp marine insurance did not suffer from the regular bankruptcies of insurance corporations. The 1824 policy was regularly applied, and also elsewhere, for example in French ports.[103] Authors commenting on marine insurance in the middle of 19th century, even foreign ones, commonly referred to its provisions.[104] In 1844, 1859, and 1867, the Antwerp policy was updated, to a limited extent. The 1859 policy remained the core version, and this was so even late in the 20th century, when it was still in use.[105]

As was mentioned in the first part on non-marine insurance, in 1874 Belgian legislation on insurance was issued. This concerned insurance in general, not marine insurance in particular, even though it applied as well to marine insurance in the absence of more specific laws. In 1879, the sections on maritime affairs in the *Code de commerce*, which had remained in force under the Belgian regime, were revised, as well as its paragraphs on marine insurance.[106] The 1879 lawmakers refined some of the articles of the *Code de commerce* but also copied a great many of them. As a result, many of these 'new' articles of law can be traced back to the 16th century (e.g. the rule stating that 'victuals have to be mentioned in the contract': s. 208). Moreover, the new Belgian law had been influenced by the Antwerp policies. A remarkable change – as compared to the 1807 *Code de commerce* but in accord with a change in the Antwerp policy in 1859 – was that the risk of war became optional, and not assumed,[107] as had been the case throughout the history of marine insurance to that point. The history of the 1879

---

[102] *Louis Baudez*, Ontstaan van de Nautische Commissie bij de Rechtbank van Koophandel te Antwerpen, in: Liber amicorum Tricot (n. 11), 51–60.

[103] Encyclopédie du commerçant. Dictionnaire du commerce et des marchandises …, vol. 1 (1839), 155 'Nous transcrivons la formule de la police d'Anvers, qui est suivie dans beaucoup de nos ports français …'.

[104] For an English version, see *J. Vaucher*, A Guide to Marine Insurances Containing the Policies of the Principal Commercial Towns in the World (1834), 16–20.

[105] 'Assurances maritimes' (n. 115), 850, nos 592–593; *Robert De Smet*, Les assurances maritimes. Traité théorique et pratique de droit comparé (1934), 727–734; *Alfred Goemaere*, Place d'Anvers. Assurances maritimes. Guide pratique pour le négociant contenant le résumé des conditions d'Anvers (1882), 2–7; *Hollenfeltz du Treux* (n. 11), 293; *Erik Van Hooydonk*, Transportverzekering in historisch perspectief, in: Marc De Decker et al. (eds.), Handboek Transportverzekeringen. Karakteristieken, wettelijk kader en documenten (1995), 1.1.5/2, 55.

[106] *Ernst Holthöfer*, Handelsrecht: Belgien, in: Helmut Coing (ed.), Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte, vol. 3/3 (1986), 3276–3395, 3324–3332.

[107] 'Assurances maritimes', in: Edmond Picard and Napoléon d'Hoffschmidt (eds.), Pandectes belges. Encyclopédie de législation, de doctrine et de jurisprudence belges, vol. 10 (1883), 688–879, 854 no 607; *Jacobs* (n. 98) 32.

law has yet to be studied, and the question of how marine insurance practice was a factor in the debates leading up to the legislative reform remains open.

The same questions regard general average, which saw a similar private ordering as marine insurance, but of more international scope. Starting from 1860, efforts were made to draw up rules regarding general average that would be implemented across the world. In 1864, the so-called 'York Rules' were drawn up, and in 1877 the project was revised at a conference held in Antwerp. Since 1881 bills of lading, charter parties, and insurance contracts have been referred to as the York-Antwerp Rules.[108] Again, to what extent the Antwerp practices contributed to these rules, and how their crafting related to the contemporary efforts to revise the Belgian legislation, needs to be studied further.

IV. Marine insurance in Belgium: a conclusion

The history of marine insurance in the Southern Netherlands, later Belgium, is a theme that needs further study. Antwerp was most certainly the most important centre of marine insurance, from around 1530 until the present day. What marine insurance looked like in other places in the Southern Netherlands is mostly unknown. Moreover, the interactions between different sources of insurance law have not fully been explored, but all available evidence points to complex relations. Hints found throughout secondary literature yield arguments for tensions between insurance practice and legislation, foremost in the 17th and 19th centuries. Moreover, there was partial convergence of rules and provisions that were used in wider markets, but also in combination with corporatist and protectionist tendencies. It is evident that not only laws but also practice, and in particular the contents of contracts, must be studied in order to come to a full understanding of how marine insurance functioned in the past.

---

[108] *Geoffrey N. Hudson* and *Michael D. Harvey*, The York-Antwerp Rules: The Principles and Practice of General Average (2010), 2.01–2.05.