

Chapter 6: Netherlands

By *Phillip Hellwege*

A. Maritime insurance	133
B. Fire insurance	137
C. Life insurance, funeral insurance, and health insurance	144
D. The Dutch history of insurance law in a European context	147

It proved impossible to find a Dutch colleague who was willing to cover the (Northern) Netherlands in the present volume. The reason is simple: there is the monumental work titled ‘The Development of the Principles of Insurance Law in the Netherlands from 1500 to 1800’ by the South African scholar Johan P. van Niekerk, spanning over two volumes and more than 1,500 pages.¹ In my introductory chapter I have claimed that the history of insurance law in Europe is in need of being re-told and that there is hardly any detailed doctrinal analysis of the history of insurance law; instead, we find, for example, histories of the idea and institution of insurance and a rich body of historical literature on single insurance companies. For the Netherlands, van Niekerk presents a doctrinal history of insurance law which is missing for other European countries. Thus, the Dutch history of insurance law is, *prima facie*, not in need of being re-told. Furthermore, one could argue that van Niekerk’s two volumes could be the proper starting point for a comparative legal history of insurance law in Europe. In all, it is obvious that a critical assessment of the state of research on the history of Dutch insurance (law) has to start with van Niekerk’s monograph.

A. Maritime insurance

Van Niekerk primarily focuses on one particular yet very important aspect of the history of insurance law: the history of the law of maritime insurance. To point out the limited scope of his work is not to criticise him. Van Niekerk himself explains the particular focus of his study:²

Researching the history of the insurance contract, its practice and law, is a completist’s nightmare. Emerging in its modern form in the thirteenth century in Italy, but having

¹ *Johan P. van Niekerk, The Development of the Principles of Insurance Law in the Netherlands from 1500 to 1800*, 2 vol. (1998).

² *Van Niekerk* (n. 1), vol. 1, xxix.

even older roots, the development of the insurance contract, and with it insurance law, spans many centuries and occurred in many different countries in parallel and largely analogous, but by no means identical, fashion. The history of that development, *in completo*, has yet to be written. I had often wondered why the work of Reatz on the history of the European law of marine insurance, never proceeded beyond volume 1 ... Now I know. The study of the history of the law of insurance indeed demands the dogged perseverance of a long-distance runner.

Van Niekerk thus saw the necessity to limit his research and the scope of his book. His focus is on a specific time frame: 1500–1800. And he limits himself to maritime insurance and premium insurance, as well as to private insurance law and, more specifically, insurance contract law.³

The type of insurance with which this work is concerned, was largely determined by the period it investigates. The main form of insurance which occurred in the Netherlands prior to the end of the eighteenth century was insurance for profit, and more specifically marine insurance. I have concentrated, furthermore, on private insurance law and on insurance contract law.

He adds that he largely excludes the historical development of insurance regulation and mutual insurance, and that he only briefly touches upon fire insurance. The way how van Niekerk explains why he limits his study to the history of maritime insurance law reveals a clear understanding of how insurance as an institution and insurance law has developed: from 1500 to 1800 maritime insurance was the predominant insurance transaction in the Netherlands. By contrast, mutual insurance, fire insurance, and all other forms of non-maritime insurance were of only little relevance. Van Niekerk stresses that insurance arrived in the Netherlands only by the middle of the 15th century, and its legal development started in the 16th century.⁴

[T]he development of insurance law in the Netherlands occupies ... a central position in the historical development of European ... insurance law. ... [T]his development ... was arguably one of the most important and influential in the history of insurance generally. The development of insurance law in Europe passed through the Netherlands and there, especially but not only in the seventeenth and eighteenth centuries, the fundamental principles which had evolved before were settled and refined, and from there

³ *Van Niekerk* (n. 1), vol. 1, xxxi.

⁴ *Van Niekerk* (n. 1), vol. 1, xxxv. Most authors, however, claim that the first insurance contract in Bruges in the Southern Netherlands dates back to 1369/70: see above *De ruyscher*, 113; *Thomas Dreyer*, Die ‘Assecuranz- und Haverrey-Ordnung’ der Freien und Hansestadt Hamburg von 1731 (1990), 21; *G. Arnold Kiesselbach*, Die wirtschafts- und rechtsgeschichtliche Entwicklung der Seeversicherung in Hamburg (1901), 3; *Friedrich Plafß* and *Friedrich Robert Ehlers*, Geschichte der Assecuranz und der hanseatischen Seeversicherungs-Börsen (1902), 26; *Willem L.P.A. Molengraaff*, Leidraad bij de beoefening van het Nederlandse Handelsrecht, vol. 3 (9th edn. 1955), 603.

they were taken over in other systems and in turn in different ways influenced the subsequent position elsewhere.⁵

At the outset Dutch insurance law was influenced by Mediterranean customs, and its evolution was connected especially with the development of insurance law in England and Hamburg. Finally, van Niekerk explains the geographical coverage of his monograph:⁶

The geographical terms and description employed in this work require some explanation. The 'Netherlands' or the 'Low Countries' include, in the period under investigation, the southern Netherlands (comprising first the Burgundian principalities, then the Southern Provinces, and then the present Belgium) and the northern Netherlands (the present Netherlands or Holland). The northern part was comprised of the seven provinces which seceded from the Southern Provinces and declared their independence from Spain in 1581 and which combined ... to form the Republic of the United (Northern Provinces of the) Netherlands ... In this work the accent is on the legal position up to the end of the sixteenth century, in the undivided Netherlands, and on the position thereafter in the northern provinces and, more specifically, in the more important maritime centres.

On the basis of this – geographical, temporal and in terms of subject matter – circumscription of his work, van Niekerk unravels the development of insurance contract law in the Netherlands: he discusses the genesis of the insurance contract, its classification in the Roman system of contracts, its relation to the phenomena of gaming and wagering, questions concerning the chambers of insurance, and the numerous legal details concerning the insurance contract.

With its focus on maritime insurance – which Van Niekerk regards to be the foundation for the development of insurance (law) as a whole – and with the work's ideas on the development of the history of maritime insurance, Van Niekerk's monograph is firmly rooted in the historiography on the development of maritime insurance (law) of the Netherlands.⁷ Furthermore, there is rich literature by economic historians on the development of maritime insurance in the

⁵ *Van Niekerk* (n. 1), vol. 1, xxxiii. See also *idem*, Sources of Insurance Law, in: Robert Feenstra and Reinhard Zimmermann (eds.), *Das römisch-holländische Recht. Fortschritte des Zivilrechts im 17. und 18. Jahrhundert* (1992), 305–327, 306.

⁶ *Van Niekerk* (n. 1), vol. 1, xxxiii f.

⁷ In addition to the literature cited by *De ruysscher*, 110–132, see from the rich literature the accounts of *Violet Barbour*, *Marine Risks and Insurance in the Seventeenth Century*, (1928) 1 *Journal of Economic and Business History* 561–596; *Tjalling J. Dorhout Mees*, *Schadeverzekeringsrecht* (4th edn. 1967), 10–29; *J. Witkop*, *De ontwikkeling van het Verzekeringswezen*, in: E.O.H.M Ruempol (ed.), 1328–1928. *Gedenkboek uitgeven ter gelegenheid van het 600-jarig bestaan van de stad Rotterdam* (1928), 335–370; *Ludo Couvreur*, *Recht en zeeverzekeringspraktijk in de 17de en 18de eeuwen*, (1939) 16 *Tijdschrift voor Rechtsgeschiedenis* 184–214; *Charles Verlinden*, *De zeeverzekeringen der Spaanse kooplui in der Nederlanden gedurende de XVIe eeuw*, 1948 *Bijdragen voor de geschiedenis der Nederlanden* 191–216; *Johannes Petrus Vergouwen*, *De geschiedenis der Makelaardij in Assurantiën hier te lande tot 1813* (1945); *W.H.A. Elink Schuurman*, *Korte aantekeningen betreffende verzekering in de dagen der Republiek*, (1917) 3

Netherlands.⁸ Finally, the legislation on maritime insurance, which van Niekerk analyses, is well documented.⁹

The geographical delimitation applied in the present volume differs from that used by van Niekerk. Above, Dirk Heirbaut and Dave De ruysscher cover those areas of the Southern Netherlands which today belong to Belgium. The present chapter covers those areas which today belong to the Netherlands and which historically comprised the Northern Netherlands. Consequently, for the time until 1581 I can refer the reader to Dave De ruysscher's analysis of the development of maritime insurance in the Southern Netherlands.¹⁰

For the time thereafter, De ruysscher's critical assessment of the state of research for the Southern Netherlands is, in parts, equally valid for the Northern Netherlands: the research has primarily focused on the two centres of maritime insurance in the Northern Netherlands, Rotterdam and Amsterdam. Furthermore, apart from van Niekerk's account, legal developments have largely been neglected. Finally, the research has thus far focused primarily on premium insurance. However, maritime insurance did appear also in the form of mutual insurance. Examples are found in the first half of the 17th century in Groningen and in

Economisch-Historisch Jaarboek. Bijdragen tot de Economische Geschiedenis van Nederland 107–123; *P.J. Blok*, Het plan tot oprichting eener compagnie van assurantie, 1900 Bijdragen voor vaderlandsche geschiedenis en oudheidkunde 1–41; *Den Dooren de Jong*, De practijk der Amsterdamsche zeeverzekering in de 17e eeuw, (1927) 8 Het Verzekeerings-archief 1–22; *F.W. Stapel* and *Den Dooren de Jong*, Bijdragen tot de geschiedenis der zeeverzekering, (1928) 9 Het Verzekeerings-archief 81–108; *Karel Davids*, Zekerheidsregelingen in de scheepvaart en het landtransport. 1500–1800, in: Jacques van Gerwen and Marco H.D. Leeuwen (eds.), Studies over Zekerheidsarrangementen. Risico's, risicobestrijding en verzekeringen in Nederland vanaf de Middeleeuwen (1998), 183–202; *Siegbert Lammel*, Die Gesetzgebung des Handelsrechts, in: Helmut Coing (ed.), Handbuch der Quellen und Literatur der Neueren Europäischen Privatrechtsgeschichte, vol. 2/2 (1976), 571–1083, 772–776, 786 f.; *Fritz Kracht*, Die Rotterdamer Seeversicherungs-Börse (1922), 1–75; *Dreyer* (n. 4), 20–24; *Winfried M. Hammacher*, Die Grundzüge des allgemeinen Seeversicherungsrechts in der deutschen Gesetzgebung des 18. Jahrhunderts vor dem Hintergrund der älteren europäischen Seeversicherungsgesetzgebung (1982), 17–30; *Markus A. Denzel*, Die Seeversicherung als kommerzielle Innovation im Mittelmeerraum und in Nordwesteuropa vom Mittelalter bis zum 18. Jahrhundert, in: Simonetta Cavaciocchi (ed.), *Ricchezza del mare – ricchezza dal mare* (2006), 575–609, 592–599; *Harold E. Raynes*, A History of British Insurance (2nd edn. 1964), 16–37; *Molengraaff* (n. 4), 602–608.

⁸ In addition to the references in n. 4 and n. 7 *Frank C. Spooner*, Risks at Sea: Amsterdam insurance and maritime Europe. 1766–1780 (1983); *Sabine Go*, Marine Insurance in the Netherlands 1600–1870. A comparative institutional approach (2009); *idem*, Amsterdam 1585–1790: Emergence, Dominance, and Decline, in: A.B. Leonard (ed.), *Marine Insurance. Origins and Institutions, 1300–1850* (2016), 107–129.

⁹ *M.Th. Goudsmit*, Geschiedenis van het Nederlandsche zeerecht, vol. 1 (1882), 313–359, 392–403, 452–454; *van Niekerk* (n. 5), 311–314; *Lammel* (n. 7), 772, 786; *Kracht* (n. 7), 11–28; *Dreyer* (n. 4), 21–24; *Hammacher* (n. 7), 40–50.

¹⁰ See above *De ruysscher*, 113–127.

the second half of the 17th century in the area of the river Zaan (Zaanstreek). Both examples, however, have only been studied as independent and isolated phenomena and have not been put into a greater context.¹¹

B. Fire insurance

In my introductory chapter I have pointed out that authors writing on insurance history often use different concepts of insurance: some focus on the history of mercantile insurance and do not take into account forms of cooperative protection by guilds or early forms of state-run insurance as neither were operated on a commercial basis. These scholars write a different history than those authors who do include such forms of protection. Both van Niekerk and the Dutch historiography are firmly rooted in this tradition: they focus on premium insurance and neglect other forms of protection. Consequently, they understand premium life insurance and premium fire insurance as simple spin-offs or by-products of maritime insurance.¹²

With respect to fire insurance, van Niekerk claims that it first appeared in the 17th century.¹³ He refers to a scheme of the 1640s under which a Rotterdam brewer sought insurance against fire, and he identifies this transaction to be an individual fire insurance contract. Mutual fire insurance contracts between the owners of oil-mills existed, according to van Niekerk, traceable in the area of the river Zaan (Zaanstreek) in the province of Noord-Holland as early as 1663. The 18th century then saw the first insurance companies engaging in fire insurance for a premium, with the Rotterdam *Maatschappij van Assurantie* (Insurance Company) taking the lead in 1720, even though the main focus of this company was on maritime insurance.¹⁴ Other authors see the beginning of fire insurance in the 18th century, without even mentioning the earlier forms of fire insurance.¹⁵ It was not until the end of the 18th century that fire insurance became established

¹¹ See the text corresponding to n. 31 and n. 57, below, as well as the cited references.

¹² See, e.g., *M.H. Pimentel*, *Zur Geschichte der Feuerversicherung in den Niederlanden*, 1883 *Mitteilungen für die öffentlichen Feuerversicherungs-Anstalten* 9–13 (a German translation of an article by a Dutch author). See also the text corresponding to n. 17 and n. 22, below.

¹³ *Van Niekerk* (n. 1), vol. 1, 423 f. See also *Dorhout Mees* (n. 7), 24; *Vergouwen* (n. 7), 68 f.; *Hendrik Gerrit Schuddebeurs*, *Onderlinge Brandverzekeringsinstellingen in Nederland van 1663 tot 1948* (1948), 1 (who provides a list of fire insurance schemes between 1663 and 1948).

¹⁴ A list of insurance companies founded between 1720 and 1926 is provided by *Hendrik Gerrit Schuddebeurs*, *Het Nederlandsche verzekeringsbedrijf gedurende de laatste twee eeuwen*, (1928) 14 *Economisch-Historisch Jaarboek. Bijdragen tot de Economisch Geschiedenis van Nederland* 1–178.

¹⁵ See, e.g., *Vergouwen* (n. 7), 68 f.

on a large scale with the establishment of insurance companies specializing in fire insurance.¹⁶ With respect to the law regulating fire insurance it is believed that it was largely shaped by the legal rules on maritime insurance.¹⁷ Finally, with respect to insurance legislation, fire insurance was briefly mentioned in Art. 18 of the *Amsterdam Ordonnantie van Assurantie en Avaryen* (Ordinance on Assurance and Average)¹⁸ of 1744.¹⁹

From an external perspective, this account of the development of fire insurance (law) raises doubts. The British author Charles F. Trenerry claimed that fire insurance schemes existed in the Southern Netherlands, more specifically in Flanders, as early as the 13th century, developing from earlier forms of guilds and continuing to exist until the late Middle Ages.²⁰ It was not a premium insurance. Rather, the loss was apportioned among the members of the community, or each had to pay a fixed sum in case of loss. However, in the preceding chapter on developments in Belgium, Dirk Heirbaut shows that Trenerry erred in some of his assertions and, more importantly, that the ‘fire insurance and livestock insurance mentioned by Trenerry were evolutionary dead-ends, not progenitors of modern insurance’.²¹ Heirbaut concludes that it took some time before fire insurance made a comeback in the 17th century following its disappearance subsequent to the 14th century. Finally, Heirbaut believes that in the Southern Netherlands ‘one can consider it [the new fire insurance] to be an offshoot of marine insurance’ without implying that it ‘was just an adaptation of marine insurance’.²²

The orthodox account of the development of fire insurance raises doubts also from a German perspective: the German literature has, again and again, discussed the question whether the fire guilds in Schleswig-Holstein were based on the fire guilds of Flanders and whether the *Feuerkontrakte* (fire contracts) in the city of Hamburg emerging in 1591 were similarly based on the fire guilds in Flanders

¹⁶ *Van Niekerk* (n. 1), vol. 1, 424 f. See also *Kracht* (n. 7), 57, 66; *Spooner* (n. 8), 40 f. On the mutual fire insurance scheme in the area of the river Zaan see also *Go* (n. 8), 51; *Karel Davids*, *The Transformation of an Old Industrial District: Firms, Family, and Mutuality in the Zaanstreek between 1840 and 1920*, (2006) 7 *Enterprise & Society* 550–580, 562.

¹⁷ *Jean Gédéon Lambertus Nolst Trenité*, *Nederlandsch Assurantie-Recht. Brandverzekering* (1902), 88; *Lammel* (n. 7), 772.

¹⁸ Reproduced in: *Nicolaus Magens*, *Versuch über Assecuranzen, Havereyen und Bodmereyen* (Hamburg, 1753), 620–666.

¹⁹ *Pimentel* (n. 12), 10 (‘Until 1744 there is no trace of fire insurance in this country.’); *Lammel* (n. 7), 775.

²⁰ *Charles Farley Trenerry*, *The Origin and Early History of Insurance Including the Contract of Bottomry* (1926), 252–260.

²¹ See above *Heirbaut*, 94.

²² See above *Heirbaut*, 106.

or on similar Dutch contracts.²³ The predominant view holds such influence to be unlikely and stresses that fire contracts similar to those in Hamburg have never been proven to have existed in the Netherlands.²⁴ For the fire guilds in Flanders the German literature relies exclusively on the research of Trenerry.²⁵ And the German literature assumes that with respect to fire insurance there is a time gap between, on the one hand, the remnants which are identified by Trenerry for the 13th and 14th centuries and, on the other, the newly established Dutch insurance companies of the 18th century that engaged in the fire insurance business,²⁶ a time gap which makes it unlikely that in the 16th century the people of Schleswig-Holstein and the people of Hamburg resorted to these older examples.

However, are the mutual fire insurance contracts between the owners of oil-mills in the Zaanstreek starting in 1663 and the scheme under which a Rotterdam brewer sought insurance against fire in the 1640s evidence of a missing link? The mutual fire insurance schemes in the Zaanstreek are referred to as *brandcontract* (fire contracts).²⁷ The practice of concluding such fire contracts was continued up into the 19th century, and these contracts went through a considerable development.²⁸ The first of these contracts was concluded in 1663 between the owners of eight oil mills, with the notarial deed having the following text:²⁹

Op Huyden den 21 May Ao 1663 Comprd voor Cornelis Dircxsz Kleyn tot Sanerdam, present de oderen getuygen,

Ende bekennen end verclaren de voorsz. Comparanten mitsdesen met malkanderen ingegaen te sijn contract van adsistentie van schade die in de Coopmanschappen bij ende ande voorsz. Molens berustende sal mogen vallen, Ende dat in manieren ende op condition hier naer volgt:

Te weten

²³ *Wilhelm Ebel*, Die Hamburger Feuerkontrakte und die Anfänge des deutschen Feuerversicherungsrechts (1936), 31–33; *Wilhelm Schaefer*, Urkundliche Beiträge und Forschungen zur Geschichte der Feuerversicherung in Deutschland, vol 1 (1911), 163; *Georg Helmer*, Entstehung und Entwicklung der öffentlich-rechtlichen Brandversicherungsanstalten in Deutschland (1936), 10–18; *idem*, Die Geschichte der privaten Feuerversicherung in den Herzogtümern Schleswig und Holstein, vol. 1 (1925), 193–203; *Ludwig Maas*, Die Brandgilden insbesondere in Schleswig-Holstein (1909), 16; *Dorhout Mees* (n. 7), 24. On these fire guilds and these fire contracts see below, *Hellwege*, 175–178.

²⁴ *W. Ebel* (n. 23), 31–33. See also *Cornel Zwierlein*, Der gezähmte Prometheus. Feuer und Sicherheit zwischen Früher Neuzeit und Moderne (2011), 35.

²⁵ *W. Ebel* (n. 23), 31–33; *Helmer*, Entstehung und Entwicklung (n. 23), 10–18; *Hans Knoll*, Aus der Entwicklungsgeschichte des Versicherungswesens von den Anfängen bis zur Gegenwart (1934), 9 f.

²⁶ *Helmer*, Entstehung und Entwicklung (n. 23), 12; *idem*, Geschichte (n. 23), 193 f.

²⁷ *Dauids* (n. 16), 562.

²⁸ *Dauids* (n. 16), 564–569.

²⁹ A transcript of the contract is prepared by *Schuddebeurs* (n. 13), 2.

Off 't gebeurde ('t welck God almachtich gelieve te verhoeden) Dat een of meer van de bovenbenoemde Olymoolens by ongeluck van hun eijgen vuyr ofte van vreemt vuyr, ofte door aenstekinge van blixem en donderslagen ofte op eenige andere manieren quame te verbranden, bij welck ongeluck eenige schade mocht sijn gefallen in 't Slachsæt Oly ende koecken bij deselve berustende (zaeijzaet exempt) dat alsdann in sulcken cas, elx van voorsz. Comp. Ten gehouden sullen sijn tot adsistentie ende vergoedinge van schade te dragen, ende uyt te reijcken ter somme van tweehondert ene vijftich gul.

Doch de schade minder bedragende als tweeduysent gul. Sal van elx portie de minderinge pro rate afgeslagen werden, in sulker voegen dat elx van hun comparanten niet meer als de gerechte achtste part in soodanige schade sal hebben te dragen.

Maer de schade meerder begragende als twee duysent gul. Sullen alsdan elx van den Comparanten evenwel niet meer tot vergoedinge van dien betalen as 250 gu: - ende sal in 't voorsz. Cas d'Äoverige schade gelden werden alleen bij diegene die sodanich ongeluck sal hebben geraeckt.

Welverstaende nochtans dat het verongeluckte Zaet oly ende koecken een van hun comparanten met hun jegenw consorten sal toebehoren.

Maer so bij yemants Olymolen mocht quamen to verongelucken eenigh Zaet Oly off koecken dat yemant anders het sij in 't geheel in comp.e met den Eijgenaer of huyrder van moeln was aengaen, sullen in 't selve cas den comp. Ten in 't minste niet gehouden sijn saeraen eenige adsistentie ofte schadeboet to doen.

Verders is in desen besproocken ende expressel. Bevoorwaert Of 't gebeurde dat yemant van comparanten sijne bovengenoemde molen quam te verkoopen, veraliereneren ofte van de huyr aff te staen Ende een ander in plaetse van dien te koopen ofte te huyren, dat alsdan soodanige verkochte veralieneerde ofte te huyr afgetane molen hier aff sal sijn exempt ende buyten gehouden,

Ende sal de op nieuw gekochte ende gehuyrde Molen in plaetse van affgetane in dit jedenwoordich contract sijn ingesloten.

Item bij aldien tusschen Comparanten nopende de taxatie van geledene schade ofte anderssints eenige differente ofte geschille mogt komen te rijssen, soo is versproocken dat soodanigh different ende geschil sal werden gestelt in de uytspreecke van vier neutrale ende onpartijdige Mannen hun geaprobeert ende van volkomen waerden gehouden sonder yemant sich sal mogen adresseren aen eenich recht of rechteren om den anderen voor deselve te betrecken.

Tgunt voorsz. Staet hebben de Comp. Ten belooft ende aengenommen ende belooven mits desen in alle sijne clausulen ende pointen te onderhouden ende naer to komen sonder ter contrarie ijts te doen ofte gedogen gedaen te worden directel. off indirectel. in geenerhande manieren.

Let us in a first step compare this contract to the policies and practices in the maritime insurance business of the same time. What becomes obvious is the use of a different language. Whereas maritime insurance policies³⁰ explicitly speak of insurance ('verseecken', 'geasseureerde') and risk and peril ('resicque',

³⁰ See, e.g., an Amsterdam policy of 1672 reproduced in *van Niekerk* (n. 1), vol. 2, 1425.

‘perijckel’), the fire contract of 1663 speaks of assistance (‘adsistentie’) and misfortune (‘ongeluck’). What is, however, similar is the insertion of the phrase that God shall prevent the misfortune or risk from eventuating (‘t welck God al-machtich gelieve te verhoeden’).

Furthermore, there are differences in substance. Foremost, the fire contract of 1663 is a mutual insurance. Van Niekerk observes that there were other examples of mutual insurance in the Netherlands. He mentions mutual maritime insurance for whalers – again especially in the Zaanstreek. The oldest surviving exemplar of these contracts dates back to 1677. And van Niekerk claims that this example of mutual insurance was based on the mutual insurance practice in the oil mill industry.³¹

The fact that the mutual fire insurance of 1663 was for a specific insured sum finds its parallel in maritime insurance: so-called valued policies.³² And maritime insurance, too, addressed the problems of partial loss and cases where the real damage was lower than the insured sum.³³ However, in the context of the fire contract of 1663, stipulating a fixed insured sum seems to be based rather on the principle of mutuality: each contracting partner was obliged to contribute the same sum and, consequently, each contracting partner should be entitled to the same maximum amount.

Furthermore, what is notable is that the contract partner who suffered the misfortune had to carry his portion of the damage himself: the contract was formed between eight owners of oil mills, the insured value was stipulated at 2,000 gulden, and each owner had to pay 250 gulden in case of fire. And if the real damage was below 2,000 gulden, each contracting party was obliged to pay one-eighth of the damage. Thus, the contract partner who suffered the misfortune was not indemnified for the full loss, instead having to carry one-eighth of the loss himself. This aspect, which carries the idea of mutuality to an extreme, does not find its parallel in maritime insurance even though one could argue that this kind of contribution of the person who suffered the misfortune is a transposition of compulsory under-insurance and the prohibition of full-value insurance³⁴ into the language of mutuality.

Finally, disputes were settled by four impartial men. In the context of maritime insurance, insurance matters were decided by insurance chambers that, in the

³¹ *Van Niekerk* (n. 1), vol. 1, 637. See also the text corresponding to n. 11, above, and to n. 57, below. And see *Den Dooren De Jong* and *S. Lootsma*, *Bijdragen tot de geschiedenis der zeeverzekering*, (1935) 16 *Het Verzeekerings-archief* 5–40, 14.

³² *Van Niekerk* (n. 1), vol. 2, 1032–1156.

³³ *Van Niekerk* (n. 1), vol. 2, 1166–1174.

³⁴ See on compulsory under-insurance in the context of maritime insurance *van Niekerk* (n. 1), vol. 2, 1231–1252.

middle of the 17th century, consisted of three, and not four, commissioners.³⁵ However, the clause in the fire contract of 1663 does, loosely, remind one of the arbitration clauses which were common in insurance contracts throughout the 17th century.³⁶

In conclusion, the different language of the fire contract of 1663 in comparison to the maritime insurance policies from the same time suggests that the fire contract was not simply a by-product of premium maritime insurance. The different language suggests that the parallels between the fire contract of 1663 and the practices of the maritime insurance business cannot be explained on the basis of a simple borrowing by the former from the latter. The fire contract of 1663 instead seems to be based on a different tradition. However, it seems that soon after 1663 the language in the fire contracts of the Zaanstreek assimilated to that of the maritime insurance business. A fire contract of 1727 speaks explicitly of a ‘Contract van assurantie’.³⁷

Van Niekerk claims that the fire contracts from the Zaanstreek followed the example of the well-known fire contracts in the city of Hamburg³⁸ which were first concluded in the year of 1591 between 100 brewers and which became common in Hamburg throughout the 17th century until the first public fire insurance scheme was initiated in 1676: the *General Feur-Cassa*.³⁹ The chronology of the contracts – Hamburg: 1591; Zaanstreek: 1663 – supports van Niekerk’s assertion. Furthermore, the fact that both are mutual fire insurance schemes among members of a certain profession supports this assumption.

However, if we compare the contract of 1663 from the Zaanstreek with a fire contract from Hamburg from about the same time, we observe that the Hamburg contract is far more sophisticated:⁴⁰ a contract from the year 1664 was no longer restricted to brewers and was, instead, open to all landowners. The contract was concluded between 105 landowners. It contained 15 lengthy articles. In case of fire each member had to pay 10 imperial taler. The aggrieved was to receive 1,000 taler. The remainder was to be used for settling further expenditures. Each member had to pay the 10 taler within one month. The concept that each member had to pay a fixed sum and the concept that the aggrieved party was to receive a

³⁵ *Van Niekerk* (n. 1), vol. 1, 209, 220.

³⁶ *Van Niekerk* (n. 1), vol. 1, 230–233.

³⁷ The contract is reproduced in *A.B. van der Vies*, *Bijdragen voor de Geschiedenis der Verzekering in Nederland voornamelijk de Brandverzekering* (1904), 3–10. See also those contracts which are reproduced in Jan Adriaan Laan et al. (eds.), *Gedenkboek van het olieslagers-contract (contract van verzekering tegen brandschade aan oliemolens en derzelver ladingen aan de Zaan). 1727-1912* (1912).

³⁸ *Van Niekerk* (n. 1), vol. 1, 636.

³⁹ On these fire contracts and the Cassa see, below *Hellwege*, 175–181.

⁴⁰ The contract is reproduced in *Schaefer* (n. 23), vol. 1, 210–217.

fixed sum correlates with the contract of 1663 from the Zaanstreek. However, the contract of 1664 from Hamburg does not suggest that the aggrieved party, too, was burdened with an equal share of the damage worth 10 taler. Furthermore, the contract contained provisions on fire prevention, provisions that are missing in the contract of 1663 from the Zaanstreek. Finally, the mutual fire insurance scheme was run by five elected members. It was their task to collect payments and to oversee compliance with the contract. Here again, equivalent provisions are missing in the contract of 1663 from the Zaanstreek.

The Dutch contract of 1663 in fact recalls – albeit very loosely – the Hamburg contract 1591.⁴¹ The two contracts have a similar structure: both start out with rules on full loss, both stipulate the value of the loss, and both then contain provisions on partial loss. Further, both contracts are restricted to the members of a certain profession, even though the number of contracting partners was in the case of the Hamburg contract of 1591 much higher.

The second example mentioned by van Niekerk – that of the fire insurance involving a brewer in Rotterdam in the 1640s – is less fruitful. It is evidence of a scheme under which the Rotterdam brewer sought insurance against fire in the 1640s (which in itself is important) but nothing more. A protocol of the Rotterdam notary Balthasar Bazius dating from 8 and 9 January 1646 records the details of a conflict between the merchant Olivier Couwijn and the brewer Adriaen France Pieck without describing the details of the insurance scheme.⁴²

In conclusion, both examples prove that fire insurance was not simply re-introduced to the Northern Netherlands in the early 18th century, but that fire insurance existed in the Northern Netherlands already in the 17th century. If we consider the fact that fire insurance is said to have been ‘in the air’ throughout Europe in the 17th century, these findings are of little surprise. However, it is unlikely that the mutual fire contract from the Zaanstreek of 1663 is a spin-off of maritime insurance contracts. Furthermore, it is unlikely that the mutual fire contract from the Zaanstreek of 1663 is based on the fire contracts of the same time from the city of Hamburg. As observed above, the Dutch contract of 1663 loosely recalls the Hamburg contract of 1591. However, why should the oil-millers in the Zaanstreek have fallen back on a contract which had been concluded more than 70 years earlier instead of taking inspiration from a more sophisticated contract as had developed in Hamburg by the 1660s? A possible answer is that the

⁴¹ The contract is reproduced in *Schäfer* (n. 23), 202–205 and in *W. Ebel* (n. 23), 66–68.

⁴² Stadsarchief Rotterdam: 18 Notarissen te Rotterdam en daarin opgegaane gemeenten (ONA – Oude Natariële Archief), Inventarisnummer 438, Balthasar Bazius te Rotterdam, 01-Jan-1646 t/m 27-Okt-1648, folio 27 t/m 28. A transcript of the the protocol is prepared by *Witkop* (n. 8), 341.

Dutch contract of 1663 is not the first contract of its kind but instead evidence of a much older tradition in the Zaanstreek.

Mutual fire insurance schemes in the Netherlands need further research. However, such research is dependent on relevant archival materials, which seem to be lacking. Furthermore, the proposition that the law regulating fire insurance was largely shaped by the legal rules on maritime insurance (a mono-causal explanation for the evolution of the law regulating fire insurance) is one needing further research – research which again has to take notice of mutual fire insurance schemes, their practice and customs, and their impact on later developments.

C. Life insurance, funeral insurance, and health insurance

In 1571 life insurance was forbidden in the Southern Netherlands, in particular in Antwerp. Trenerry stresses that this prohibition is a clear sign that life insurance was common and, in addition, he also refers to the so-called *Antiquis*⁴³ of 1570.⁴⁴ The beginning of its Title 29 states:⁴⁵

Men is, naer costuyme hier van allen ouden tyden geobserveert, gewoonelyck contracten van assureantien op schepen, coopmanschap ter zee ofte lande gesonden wordende, ende oock leven vande personen, te maecken ende aen te gaene, ende op alsulcke contracten doet men recht.

It is, according to custom observed since all ancient times, common to contract for insurance on ships, goods sent by sea or by land, and on the lives of persons, and such contracts are done legally.

Art. 32 of the *Ordonnantie ... op 't feyt vande Contracten vande Assurantien ende verseeckerings in dese Nederlanden* (Ordinance ... on Assurance Contracts and Insurance in the Netherlands)⁴⁶ of 1570 then prohibited life insurance contracts with reference to ‘abuysen, frauden, bedroch ende crimen’ (‘abuse, fraud, swindle, and crime’) and with reference to ‘weddingen van reysen oft voyagien, ende dierghelijcke inventien’ (‘wagering on voyages and similar events’).⁴⁷ The prohibition was repeated in Art. 2 of Title 54 of the *Impressae* of

⁴³ Costumen van Antwerpen die men noempt in Antiquis/Coutumes d’Anvers dites in Antiquis (The Custom of Antwerp called Antiquis), Coutumes du Pays et Duché de Brabant. Quartier d’Anvers, vol. 1 (1870), 438–705, 598.

⁴⁴ Trenerry (n. 20), 276 f. See also *Kracht* (n. 7), 17 f.

⁴⁵ Coutumes (n. 43), 598 and 600.

⁴⁶ Groot Placaet-Boeck, Vervattende de Placaten, Ordonnantien ende Edicten, vol. 1 (Graven-Hage 1658), 828–841, 836.

⁴⁷ *Van Niekerk* (n. 1), vol. 1, 111; *Kracht* (n. 7), 17 f., 26; *Lammel* (n. 7), 774.

1582.⁴⁸ Article 24 of the Amsterdam *Ordonnantie op 't stuck vande Asseurantie* (Ordinance on Assurance) of 1598⁴⁹ and legislation in Rotterdam contained similar provisions.⁵⁰ It was only in 1744 that Arts. 14–16 of the Amsterdam *Ordonnantie van Assurantie en Avaryen* (Ordinance on Assurance and Average)⁵¹ again expressly allowed, in the narrow context of maritime insurance, taking out life insurance for seamen and passengers.⁵² Building upon this narrative van Niekerk concludes:⁵³

Legislative reaction to wagers of this kind was so sweeping that for a very long time it prevented and stifled the undisguised development of life insurance in Roman-Dutch law.

Thus, life insurance seems to have developed relatively late in the Netherlands.⁵⁴ However, this narrative, again, seems to neglect phenomena which, for a modern commentator, belong to the development of insurance and insurance law even though they do not count as premium insurance contracts. Mutual funds which assisted their members especially in the case of ill health but which also paid out money on death are said to have existed in the forms of guilds since the 15th century.⁵⁵ Otto Pringsheim, who discusses the development of craft guilds in the Netherlands and Holland, mentions these functions. He also notes that for those workmen who were not organized in a craft guild, local authorities set up – starting in the early 17th century, but especially in the 18th century – obligatory funds to support them. Other funds could be joined voluntarily.⁵⁶ In a similar

⁴⁸ Coutumes de la Ville d'Anvers dites Impressae (The Custom of the City of Antwerp called Impressae), Coutumes du Pays et Duché de Brabant. Quartier d'Anvers, vol. 2 (1871), 2–597, 400. See also *Lammel* (n. 7), 775.

⁴⁹ Groot Pacaet-Boeck (n. 46), 846–859, 852.

⁵⁰ *Van Niekerk* (n. 1), vol. 1, 123–125, 169–172; *Trenerry*, 156, 276 f.; *Kracht* (n. 7), 36; *Terence O'Donnell*, History of Life Insurance in its Formative Years (1936), 89.

⁵¹ Reproduced in: *Magens* (n. 18), 620–666, 628 f.

⁵² *Lammel* (n. 7), 775.

⁵³ *Van Niekerk* (n. 1), vol. 1, 111.

⁵⁴ See also *G.L. Janssen Perio*, Het Levensverzekeringsbedrijf te Rotterdam, in: Ruempol (ed.), Gedenkboek Rotterdam (n. 7), 371–375; *Dorhout Mees* (n. 7), 24 f.

⁵⁵ *Hendrik Gerrit Schuddebeurs*, Onderlinge Levensverzekeringsinstellingen in Nederland (1950), 7–12 (who provides a list of 1,298 guilds, funds, mutual societies etc. which functioned as, in a wide sense, life insurance and which were founded between 1550 and 1948); *Heinrich Braun*, Geschichte der Lebensversicherung und der Lebensversicherungstechnik (2nd edn. 1963), 197. And see especially *Sandra Bos*, 'Uyt liefde tot malcander'. Onderlinge hulpverlening binnen de Noord-Nederlandse gilden in internationaal perspectief (1570–1820) (1998). Most recently see *Marco H.D. van Leeuwen*, Mutual Insurance 1550–2015. From Guild Welfare and Friendly Societies to Contemporary Micro-Insurers (2016), 17–82.

⁵⁶ *Otto Pringsheim*, Beiträge zur wirtschaftlichen Entwicklungsgeschichte der vereinigten Niederlande im 17. und 18. Jahrhundert (1890), 40–59, especially at 57–59. See

vein, Sabine Go briefly mentions mutual marine insurance in the form of guilds in the province of Groningen in the early 17th century which covered not only the risk of the loss of a ship (and thus predating the mutual maritime insurance in the Zaanstreek), but which also assisted its members in ill health as well as the widows and orphans of its members.⁵⁷

Life annuities, tontines, and widow assurances were common in the Netherlands.⁵⁸ A life annuity was, for the annuitant, an early form of a pension scheme, and the issuer could utilize them to raise capital; tontines could be employed for similar purposes. In the 16th and 17th centuries the life annuity business for the purpose of public funding reached its apex in Holland before it was replaced by tontines.⁵⁹ An important result of the dominant life annuity business was advances in the calculation of annuity values in the 17th and 18th centuries⁶⁰ – findings which were discussed throughout Europe.

Furthermore, in the 18th century funeral funds became widespread, which usually operated only in a local setting. The German author Heinrich Braun (1878–1949) identifies the 1724 *Vrijwillige Dood-bos* in Haarlem, Noord-Holland, as the first of such funeral funds, but there were earlier examples.⁶¹ And, here again, guilds which supported their members in case of ill health also supported widows of their members so as to provide for funeral costs.⁶²

Widow assurances seem to have existed in Holland at least since 1638: in a 1776 essay on widow assurances, the German author Christian Jacob Baumann

also *Albert Buursma*, 'Dese Bekommerlijke Tijden'. Armenzorg, armen en armoede in de stad Groningen 1594–1795 (2009), 304–307.

⁵⁷ *Go* (n. 8), 36–60. See also the text corresponding to n. 11 and n. 31, above.

⁵⁸ *Richard Ehrenberg*, *Das Zeitalter der Fugger. Geldkapital und Creditverkehr im 16. Jahrhundert*, vol. 2 (1963), 282; *Werner Ogris*, *Der Mittelalterliche Leibrentenvertrag. Ein Beitrag zur Geschichte des deutschen Privatrechts* (1961), 132; *Étienne Laspeyres*, *Geschichte der volkswirtschaftlichen Anschauungen der Niederländer und ihrer Literatur zur Zeit der Republik* (1863), 248–256; *Gerald Schöpfer*, *Sozialer Schutz im 16.–18. Jahrhundert* (1976), 144; *Janssen Perio* (n. 54), 372; *D. Houtzager*, *Enkele perioden uit de geschiedenis der levensverzekering*, (1959) 36 *Het Verzekerings-archief* 178–204 (drawing on parallels to Antiquity); *Buursma* (n. 56), 307–312.

⁵⁹ *Braun* (n. 55), 51–53, 81–92, 197–200; *Vergouwen* (n. 7), 70. Compare also *Directie van de Algemeene Maatschappij van Levensverzekering in Lijfrente* (ed.), *Bouwstoffen voor de geschiedenis van de levensverzekeringen en lijfrenten in Nederland* (1897), 264–281.

⁶⁰ *J. van Schevichaven*, *Vom Leben und Sterben. Das Gestern und Heute der Lebensversicherung* (1898), 14–16, 20–22 (a German translation of a monograph by a Dutch author); *Braun* (n. 59), 193–196; *idem*, *Vom Rentenwesen im Mittelalter bis zur Berechnung des Rentenbarwertes*, (1921) 2 *Het Verzekerings-archief* 209–237.

⁶¹ *Braun* (n. 55), 197 f. See also *Dorhout Mees* (n. 7), 25; *van Schevichaven* (n. 60), 182 f.

⁶² *Pringsheim* (n. 56), 59.

mentions an assurance of 360 preachers in Holland founded in 1638.⁶³ In the 18th century they became as popular as in Germany.⁶⁴ Like in Germany, they were founded for certain professions in local settings, and they were promoted, initiated, supervised, or even run by local authorities. They were operated on a similar basis as the earlier life annuities, yet with the difference that the insured did not have to make a single payment but had to pay annual premiums.⁶⁵

The first life insurance companies operating on a commercial basis were founded in the early 19th century, with the *Societeit van Levensverzekeringen* of 1807 making the start.

In summary, Dirk Heirbaut's summary on the state of research in the field of mutual assistance within guilds in the Southern Netherlands holds equally true for the Northern Netherlands: '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.'⁶⁶ And similarly, the impact of the practice of life annuities, tontines as well as widow and orphan assurances on the development of life insurance (law) remains to be assessed.

D. The Dutch history of insurance law in a European context

The purpose of the present volume is to identify possible points of interaction between the national developments of insurance law. In the context of maritime insurance the narrative acknowledges that such interactions have taken place:⁶⁷

The development of insurance law in Europe passed through the Netherlands and there, especially but not only in the seventeenth and eighteenth centuries, the fundamental principles which had evolved before were settled and refined, and from there they were taken over in other systems and in turn in different ways influenced the subsequent position elsewhere.

⁶³ *Christian Jacob Baumann*, Abhandlung von Wittwenverpflegungs-Gesellschaften, in: Johann Peter Süßmilch, Die göttliche Ordnung in den Veränderungen des menschlichen Geschlechts, aus der Geburt, dem Tode und der Fortpflanzung desselben, vol. 3 (4th edn. prepared by Christian Jacob Baumann, Berlin 1776), 432–619, 434. See also *H.A. Poelman*, Een onderling weduwenfonds in de zeventiende eeuw, (1918) Groningsche volksalmanak 60–63. *H.T. Hoven*, Het waarborg-genootschap voor weduwen onder directie van J. Te Winkel en H.J. Rietveld, (1921) 2 Het Verzekerings-archief 23–43, dates the first widow assurance to the 18th century.

⁶⁴ *Braun* (n. 55), 220–222, 294.

⁶⁵ *Braun* (n. 55), 197–200.

⁶⁶ See above *Heirbaut*, 94.

⁶⁷ *Van Niekerk* (n. 1), vol. 1, xxxiii.

It is generally accepted that the Dutch practices and customs influenced the development of insurance law in England and Germany. However, it seems as if the Dutch literature has, as yet, not gone beyond this assertion and has, as yet, not analysed in detail the lasting impact which Dutch maritime insurance law had on developments elsewhere. Furthermore the mutual protection provided by guilds, life annuities, mutual fire insurance schemes in the 17th century, tontines, widow assurances, and funeral funds are all phenomena which have occurred in other countries in the same timeframes and it would, thus, be worthwhile to study them from the perspective of comparative legal history. Furthermore, the French influence in the early 19th century goes without saying. Finally Dirk Heirbaut points out for the Southern Netherlands that in ‘the 18th century fire insurance resurfaced thanks to English immigrants’.⁶⁸ A similar, but not identical development occurred in Germany in the early 19th century:⁶⁹ the founders of German fire and life insurance companies in the early 19th century had previously worked for English insurance competitors that were active on the German market. For Germany the question has been asked what impact this had on the development of the practice and customs of the newly founded German insurance companies: did they simply copy the standard contract terms, the policies, and the practices and customs of their English competitors? Considering that English fire and life insurance companies had been founded since the late 17th century, and then especially in the 18th century,⁷⁰ and considering that these English insurance companies thus preceded the foundation of such companies not only in Belgium and Germany but also in the Netherlands, the same questions should be asked with respect to the Netherlands.

⁶⁸ See above *Heirbaut*, 106–109.

⁶⁹ See below *Hellwege*, 197.

⁷⁰ See below *MacLeod*, 166–169.