

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

**Studien zur vergleichenden Geschichte
des Versicherungsrechts**

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Fire and Life Insurance in the Dutch Republic

Development and legal aspects

By

Delphine Sirks



Duncker & Humblot · Berlin

DELPHINE SIRKS

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Preface

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Chapter 1

Introduction

During the late sixteenth century and the early seventeenth century, a period of economic growth began for the young Dutch Republic and in particular for the provinces of Holland and Zeeland. One of the most important pillars of their welfare was the maritime trade with notable ports in Amsterdam and Rotterdam, but also in Middelburg, Vlissingen and Dordrecht. Such an increase in global trade did not come without risk, and it is well known that in the Dutch Republic, too, a marine insurance practice was established.

Insurance law in the Dutch Republic was governed by various ordinances. In 1598, Amsterdam was the first city of the Dutch Republic to publish an ordinance on insurance. This example was followed in 1600 by Middelburg and in 1604 by Rotterdam. It must be noted that these ordinances dealt with marine insurance.¹ Insurance ordinances were amplified regularly. Furthermore, Rotterdam completely renewed its insurance ordinance in 1721, followed by Amsterdam in 1744 and 1775. Insurance and maritime law ordinances of 1563, 1570 and 1571 by Philip II of Spain played an important role in the insurance law of the Dutch Republic as well. All in all, concerning marine insurance,² there was a vast framework of regulation.

These ordinances already imply that the contract of insurance was acknowledged and recognised in the Dutch Republic. In this way, Hugo de Groot (1583–1645) discussed the concept of insurance within the law of contracts in his *Inleidinge*, which deals with the Roman-Dutch law. De Groot defined the insurance contract as a contract in which the insurer took upon himself an uncertain risk that might await the insured party, for which the insured party in return pays the insurer a premium (*Verzekering is een overkoming, waer door iemand op hem neemt het onzeecker gevaer dat een ander had te verwachten: den welcke wederom hem daer voor gehouden is loon te geven*).³ Although this definition of insurance is broad and might therefore comprise non-marine insurance as well, from the further paragraphs on insurance it becomes clear that De Groot treated marine insurance exclusively. The fact that De Groot discussed the concept of insurance in title 24, after he had already discussed other marine-related concepts such as the admiralty (*amiraelschap*) in title 22 and joint ship-ownership (*mede-rederschap*) in title 23, indicates this too.

¹ With the exception of insurance of transport over land (e. g., by horse or carriage).

² Or perhaps better (or more modernly) put: concerning transport insurance.

³ *De Groot/Van Apeldoorn* (1926), 173, nr. 3, 24, 1.

The definition of insurance by De Groot further entails that he only considered premium insurance; that is, insurance based on profit. There was also mutual insurance, which was based on mutuality. The parties to a mutual insurance contract insured one another and therefore were simultaneously insurer and insured party. Mutual insurance, however, was not dealt with statutorily or by jurists, even though in practice several mutual marine insurance schemes were established in the Dutch Republic.

Thus, it may come as no surprise that the comprehensive study of the history of Dutch insurance law by J. P. van Niekerk called *The Development of the Principles of Insurance Law in the Netherlands from 1500 to 1800* treats mostly marine insurance based on profit; thus, premium marine insurance. This type of insurance was most prevalent in the Netherlands between 1500 and 1800:

“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.”⁴

Mutual insurance and non-marine insurance were not the focus of Van Niekerk’s work. Yet the economic growth of the Dutch Republic also led to an expanding industrialisation which was based on wind energy. Hundreds of windmills were built and used in the Dutch Republic. These mills were made of wood and therefore at risk of fire. From the mid-seventeenth century onwards, mutual fire insurance schemes emerged in those areas for the insurance of mills and commodities. Around the same time, the first instances of premium fire insurance emerged as well. However, concerning non-marine insurance, Van Niekerk informs us that:

“various forms of non-marine insurance, that is, insurances of non-marine objects of risk as well as insurances of objects against non-marine risks, were known and practised very soon after the emergence of the marine insurance contract in its modern form. Not surprisingly, the law relating to such non-marine insurances developed largely with reference to, and was greatly influenced by, the law of marine insurance. Insurance law evolved naturally by an extension of existing principles to new forms of insurance. In short, the principles of non-marine insurance emerged by analogy to those of marine insurance.”⁵

It would appear that Van Niekerk considers marine insurance to have been the starting point for the development of other forms of insurance and insurance law in the Dutch Republic,⁶ as he further noted that the principles, rules, concepts and doctrines set out in his work are inherent to insurance law in general.⁷ In other

⁴ Van Niekerk, vol. 1 (1998), xxxi.

⁵ Van Niekerk, vol. 1 (1998), 273.

⁶ Cf. Hellwege (2018), 135. Please note that Van Niekerk treats the principles of insurance law between 1500 and 1800, thereby including Antwerp insurance law and insurance law by Philip II of Spain, and thus going beyond the scope of the Dutch Republic.

⁷ Van Niekerk, vol. 1 (1998), xxx.

words, the traditional narrative treats (premium) fire and life insurance as simply an offspring of marine insurance.⁸

However, recently this narrative of a “single-rooted” development of insurance law has been questioned,⁹ as known instances of (mutual) fire and life insurances appear not to have been a by-product of premium marine insurance. This appears to be especially so in the case of instances of mutual insurance. For example, Hellwege noted that whereas a mutual fire insurance contract of 1663 of the Zaanstreek spoke of “assistance” (*adсистentie*) and “misfortune” (*ongeluck*), marine insurance policies used terms such as “insurance” (*verseekeren*; *geasseureerde*) and “risk” and “peril” (*resicque*; *perijckel*),¹⁰ concluding that, based on the terminology, such a mutual fire insurance contract is unlikely to have been an offspring of the marine insurance practice.¹¹ Observations of this kind require us to revisit and, where necessary, to revise, the traditional narrative regarding the history of Dutch fire and life insurance.

The present study, therefore, focuses on the influence of marine insurance law on the development of fire and life insurance law in the Dutch Republic. It considers instances of (mutual) fire and life insurances. The restriction to the Dutch Republic implies that, as such, the research is geographically limited to the northern Netherlands, as well as in time, limited to the period between roughly 1581 and 1795. However, where necessary, the present study goes beyond these limitations. Additionally, although this study is conducted primarily from a legal-historic perspective, it is embedded in the socio-economic background of the insurance practice in a broad sense and of its actors.

Furthermore, the present study reviews those sources which were already known and available to Van Niekerk, but the research also led to the discovery of new sources. Some of these sources are reproduced as transcriptions in the appendices. It may be noted that translations and transcriptions are by my hand unless otherwise indicated. These new sources shine a different light on the history and development of fire and life insurance. As most of these sources consist of fire and life insurance contracts, the research deals with insurance contract law in particular. These contracts were concluded throughout the Dutch Republic at different times by varying parties. For example, a Rotterdam private partnership which included insurance clauses of 1663 did not resemble the Amsterdam model fire insurance policy of 1775, although these were both instances of premium fire insurance. One can therefore not speak of *the* fire insurance law or *the* life insurance law of the Dutch Republic. Thus, instead of resorting to a uniform and doctrinal approach, the present study takes on a casuistic approach. Instances of fire and life insurance are treated on a case-by-case basis within their own relevant circumstances.

⁸ Hellwege (2018), 136.

⁹ See Hellwege (2018), 133–148.

¹⁰ Hellwege (2018), 140–141.

¹¹ Hellwege (2018), 142.