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THE EARLIEST INSURANCE CONTRACT— A NEW DISCOVERY

HUMBERT O. NELLI

ABSTRACT

On a recent research trip to Genoa, Italy the writer learned of the discovery of a marine policy dated February 13, 1343. This antedates by four and a half years the policy of October 23, 1347 which for over a half century has been generally accepted as the oldest recorded true insurance contract.

These two contracts although worded fictitiously are significant in that they mark the first known break from the *Mutuum Nauticum* or marine loan. The marine loans which had been adequate in ancient and early medieval times could not fill the needs of the "sedentary merchants" during the "Commercial Revolution."

The fictitious wording was due to the need to cloak these contracts with the formulas and phraseology of Roman Law because insurance contracts *per se* had no legal existence or standing during this period. The clerical usury law and prohibitions further complicated the work of the notaries and lawyers in devising ways in which insurance transactions (and premium payments) could be carried out and recorded.

A document dated October 23, 1347 found in the state archives of Genoa, Italy, has been generally accepted as the oldest recorded contract of insurance. A recent event has changed this.

In a recent European trip to follow up previous research and study of medieval historical documents in Genoa, the writer learned that Professor Federigo Melis of the University of Florence in his extensive researches for his forthcoming book on *Insurance in Italy*¹ has recently discovered the following document which antedates the 1347 contract by four and a half years.²

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¹ This study is to be published under the sponsorship of the Istituto Nazionale delle Assicurazioni domiciled in Rome, Italy.

² The discovery was announced in a pamphlet authored by Gioffre', Demenico, with an introduction by Dr. Giorgio Costamagna of the Ar-

Policy of February 13, 1343³

In the name of God, Amen. I, Amigueto Pinello, free son, I swear, of Johannus (Giovanni) Pinello, do promise to you, Tomaso Grillo, agent and with the title of agent for Aveducto Guillelmo, citizen and merchant of Panormo (concerning which agency there is agreement in public document written at Pisa by the hand of a citizen of Pisa and notary on the bank of the Arno, Henry, the son of a certain Bonincontro, on Saturday the 13th of February, in the year of our Lord, 1343 eleventh year of the indictio)* that I have and have received from you with mutual favor and

chivio di Stato di Genova, titled, *Mostra Storica del Documento Assicurativo XIV/XVI Secolo*, and published by the Centro di Cultura e Tecnica Assicurativa, Camera di Commercio Industria Artigianato Agricoltura/Genova 1969.

³ Translated from the Latin by Rebecca Barnwell, M. A. from the original in the State Archives of Genoa, Notary Thomas de Casanova, Chartulary (Cartolare) of 1343, Folio 67v.

* Translator's Note 1: *Indictio* is a census of sort, composed of fifteen successive years. It passed from the Latin in Med. Lat. and Italian with that specific meaning.

love—you giving and sharing in the said name of agent—680 gold florins of money, the money, you swear, of the said Aveducto.

Renouncing acceptance of the said 680 gold florins for the said case from you under the said agency as above if they were not held, received and counted in accordance with all law; and these very 680 gold florins, or their equivalent with all the same power of money, I promise and agree with you, with the said title of agent, to receive under solemn contract, and furthermore, I promise to give, pay, return and restore them to you under the said title of agent, or to the said Aveductus or to his sure agent or messenger at your good pleasure under the title of agent and whensoever it might please you; and I acknowledge this completely, that if Nicolao Pinello or other for him will have given, handed over, and consigned to the said Aveductus or other lawful person for him in any part inhabited of the island Sicily ten bales of woollens of the said Aveductus which he promised to have transported and to see that they were transported from the port of Pisa to the said island Sicily on a galley called *Santa Catalina* whose lord and master is Valentino Pinello, son of the said Nicolao, and if he will have taken care and seen to on behalf of the said Aveducto that the ten bales are safe on land, each and every one, which he promised to do, and further which he promised to the said same Aveducto according to the form of public document written at Pisa by the hand of Henry, son of Bonincontro, citizen of Pisa and notary on the bank of the Arno on Saturday, February 13, in the year of our Lord, 1343, the eleventh year of the indictio, according to the use and custom of the people of Pisa—if he does this: then, and in that case the present document is null and of no force as if it had never been made, if the said Nicolao see to and takes care of the aforesaid, in the aforesaid manner contained in the said document.

Otherwise, I, the said Amigueto do promise to give and pay to you, the said Tomaso, under the said title of agent receiving, a penalty double the said amount of 680 gold florins, with restitution of damages and loss which might be incurred additionally, or lawsuits, or in accordance with the terms remaining as pre-

viously said.† And to thus observe this, I bind over as a pledge to you, receiving under the title of agent, all my goods that I have and will have.

Done as above *in toto*.

On the 18th of March, Amigueto Pinello presented to me, Tomaso, a certain public document of quitclaim made to the aforesaid Nicolao Pinello through (by) Aveducto Guillelmo in the hand of Rustici de (son of?) Rustico, notary of Pisa, in the year of our Lord's incarnation 1343 . . . (lacuna) . . . it appears that the lord Aveducto has and has received from the said Nicolao in Panormo woollens . . . (lacuna) . . . in a galley by way of Pisa to the island Sicily for the said Aveductus. (in margin) This document and other document following in which Amigueto Pinello was bound have been placed in this place of this repository for public documents . . . (lacuna) because (?) they ought to be placed according to the order of this repository on the document (numbered) five where there is such a sign: the Greek letter PHI

Significance of These Contracts

The significance of these two mid-14th century contracts and their importance in the history of insurance lies in the fact that they are the first tangible evidence of the legal and structural break with the old, long established *Mutuuum Nauticum* or marine loan contract.

Most authorities look upon marine insurance as the forerunner and progenitor of true insurance but they also hold that there are important and basic differences between the two and that premium insurance, which gradually became the special province of entrepreneurs who made a business of the assumption of risk, did not exist before the 14th Century. The main purpose of marine loans was to supply funds, often on a partnership profit-sharing basis to help finance a trade venture, usually a single voyage or a

† Translator's Note 2: This last phrase is not clear to me entirely—the prepositions and conjunctions in Med. Latin are sometimes superfluous.

round trip. The assumption of the risk of "the sea and of people" by the creditor was incidental. In insurance the main purpose is to transfer the risk of financial loss from the original risk bearer to others.

The *Mutuum Nauticum*

The history of marine loans (*Mutuum*) has its roots in the trade and commercial activities of ancient Babylonia about 2,000 B.C. Through the Phoenicians, a sea faring people who refined the technique, it was transmitted to the Greeks and then to the Romans. Demosthenes' orations furnish us an excellent example of a marine loan contract.⁴

The Romans used marine loans and incorporated them in their law especially in the Theodosian and Justinian codes. It was these Roman laws which were in part instrumental in hampering the development of true insurance when the need for it arose in the early middle ages.

Ambiguous Wording of Contracts

The two contracts, dated 1343 and 1347, are ambiguously worded and at first glance bear little relationship to the modern or even later middle age insurance contract. (The 1347 contract,⁵ in translation, is footnoted below for comparison.)⁶ A close study, however, reveals that the intent of the contract language in spite of its circumlocution was indeed to

insure and in its effect it was similar to present-day contracts.

The phrase "Renouncing acceptance of the said money not held, received, and counted in accordance with all the law in the said case," at the end of the first paragraph of the 1347 contract and in a slightly differing wording in the beginning of the second paragraph of the 1343 contract, indicates that no loan had actually been made. The accepted procedure at the time for a creditor demand-

History of Reinsurance with Sidelights on Insurance, 1927, London, Appendix A and p. 12, "First Known Insurance Policy," *Insurance Flash*, October, 1970, San Francisco, California, p. 32, and Prudential Insurance Company of America *Documentary History of Insurance* 1000 B.C., 1875 A.D., 1915.

Translated from the Latin by Rebecca Barnwell, M.A. from the original in the State Archives of Genoa. Notary Thomas de Casanova. Chartulary (Cartolare) of 1346 Folio 333v.

⁶ Policy of 1347.

1347, 23 October

In the name of God, Amen. I, Georgius Lecavelus citizen of Genoa, say to you, Bartolomeo Basso, son of Bartolomeo, that I have and have received from you with mutual love and favor 107 Lire Genoa. Renouncing acceptance of the said money not held, received, and counted in accordance with all law in the said case.

Which 107 Lire Genoa or the equivalent amount of money in place of it, I agree and promise to you with solemn stipulation to render and restore to you or your sure agent through myself or my sure agent . . . (lacuna)

(lacuna) . . . for the extent of the next six months I save and preserve and I wholly agree to this as follows: if your ship of two decks and one rudder, called the Santa Clara, which is now in the port of Genoa ready, God willing, to go and sail presently to Majorca, will have gone and sailed in direct voyage from the port of Genoa to Majorca, and there, whole and safe, will have landed its cargo, that then and in that case the present document be null and void as if it has not been made. Taking on myself all risk and danger to the said amount of money until the said ship will have unloaded its cargo at Majorca, sailing in a direct voyage as above. And also, if the said ship will be safe and whole in another area for the period of the said six months, in like manner the present document be null and void as if it had not been made. And in like manner, if the said ship should change its

⁴ Demosthenes—Private Orations XXVII-XL, Vol. IV. Translated by Murray S. T., 1946, Harvard University Press, Cambridge, p. 285. See also Calhoun, George M. "Risk in Sea Loans in Ancient Athens," *Journal of Economic and Business History*, Vol. II, No. 4, August 1930, pp. 561-584. George M. Calhoun discusses Marine Loans in Ancient Athens and their cost for interest and riskbearing in the 4th Century B.C.

⁵ This contract was first published in Bensa, Enrico, *Il Contratto Di Assicurazione Nel Medio Evo*, 1884 Tipografia Marittima Editrice, Genoa, Italy, p. 192.

It has been often translated and English translations differing only slightly from the one below have been published in many publications on marine law and insurance. Three examples of these translations can be found in Golding, C.E.,

ing repayment of a loan was to prove under oath that the money had been actually delivered to, and counted by the debtor. The waiving of this provision indicates that such proof could not be given.

“. . . I agree and promise to you with solemn stipulation to render and restore to you . . .”, in paragraph two of the 1347 contract contains the promise to pay if the cargo, (ten bales of woolen in the 1343 contract) and the ship in the 1347 contract do not arrive safely at their assigned destination. It will be noted that unlike marine loans where the insured was the debtor if there was no loss, in these two contracts, as in the modern insurance contract, the insured is the creditor if there is a loss.

The statement “. . . with mutual love and favor,” *mutuo gratis et amore*, in the first paragraph of both contracts might indicate an interest free loan or an insurance contract without prepayment of premium, but such was not the case. Due to the usury laws the charging of interest was common but was concealed. In addition there is evidence to show that it was the practice of the place and period to pay freightage and insurance in advance. Florence Edler de Roover believes that in

course the said document be null and void as if it has not been made.

Under the said manner and the said conditions, I promise to you to make the said release of funds; in other wise, I promise to give and release in payment to you stipulating, a penalty of double the said amount of money, with restitution of losses and expenses which might happen from this, or lawcases to be sustained, or other things, with the rates written above remaining, and under pledge and bond of my goods that I have or will have.

Done in Genoa in the Bank at the corner of the house of Carlo and Boniface Ususmaris, brothers, in the year of our Lord 1347, the fifteenth year of the indictio following the reckoning of Genoa, on the thirteenth day of October around vespers. Witnesses Nicolo de Tacio, Clothier, and Johannes de Recho, son of Bonantus, citizens of Genoa.

these and similar contracts the premium has already been received by the debtor (insurer) and therefore there was no need to include it in the contract.⁷

While the modern insurance contract stresses the insured's rights and benefits in case of loss and is silent about the non-occurrence of loss, these medieval contracts specifically provide that the contract was void if there was no loss. The results in both are the same.

Why the Subterfuge?

The insurance contract *per se* had no legal standing before 1350 A.D. The weight of custom and the governmental decrees finally legitimized insurance.⁸ Roman law covered the matter of marine loans (*Foenus Nauticum* or *Pecunia Nautica* or *Pecunia Trojectitia*). These loans proved adequate for the mercantile ventures prior to the latter part of the 13th Century. To the absence of legal authority, except for the Roman Laws, was added the Church's prohibition of the taking of interest. The Church laws on usury prevented the inclusion of the charge for interest and risk-taking as had been the custom in ancient and early medieval time. The subterfuge of using the term *Gratis et Amore* sufficed for a time but when in 1250 A.D. Pope Gregory issued an edict against the *Mutuuum Nau-*

⁷ De Roover, Florence Edler, "Early Examples of Marine Insurance," *Journal of Economic History*, Vol. 2, 1945, pp. 172-200. Her conclusions are based in part on the books of Del Bene e Compagni of Florence published in Bensa, Enrico, *Il Contratto Di Assicurazione Nel Medio Evo*, Genoa, 1884, pp. 183-189.

⁸ See the decree of the Duke of Genoa 22 October 1369. The Statute of the Ufficio di Mercanzia di Firenze Sull'Assicurazione, 1393. Decree of the Counsels of the Calleghe of Genoa, 2 February 1401 and others from Bensa *Contratto di Assicurazione*, *op. cit.*, and Lopez, Robert S. and Irving W. Raymond, *Medieval Trade in the Mediterranean World*, 1955, Columbia University Press, New York, for these and other instances.

ticum the exchange and straight loan types of contract were resorted to.

The legists of the era endeavored to fit the needs of the new breed of merchants (sedentary merchants⁹) of the Commercial Revolution into the straight-jacket of Roman law and procedure. The effect was confusion; that it was not chaos was due to the good sense of the merchant class which evolved new methods to meet the need. Many oral insurance contracts were entered into and fulfilled even though Roman law held that contracts in *Apodisia* (that is, without a notarial act or the intervention of a notary) were *non valent nec tenent* (without value or effect).¹⁰

The Commercial Revolution¹¹

"The Commercial Revolution" created the need for bills of exchange, expanded commercial organization, partnership (*commenda*) for longer periods than one journey or one venture, better and more sophisticated methods of account keeping and last but not least, for a true system of risk transference through insurance.

Evidence of efforts and means devised to meet these needs abound in the many documents and records which are still in existence. For example, double entry bookkeeping, called the "Italian's method"

⁹ The term applied to the Italian merchant-bankers of the Middle Ages by Gras, N.S.B. who stated that he was, ". . . a merchant too wise, too occupied, too economical to travel," in a selection "Capitalism-Concepts and History" in *Enterprise and Secular Change*, edited by Lane, Frederic C. et al., 1953, Richard D. Irwin, Inc., Homewood, Illinois.

¹⁰ *Mostra Storica, op. cit.*, p. 44.

¹¹ See Gras, N.S.B. and De Roover, Raymond, in *Enterprise and Secular Change, op. cit.*, pp. 67-85, who hold that the "Commercial Revolution" began during the 13th Century. Other historians, among them Robert S. Lopez and Irving W. Raymond hold that the Commercial Revolution began around the tenth century, A.D. and that the 13th Century marked the last phase of its expansion. See their work, *Medieval Trade in the Mediterranean World, op. cit.*, p. 50.

in that day, was developed during the period from about 1270 to 1350. A simpler bill of exchange, similar to our present checks, is said to have been devised by Francesco Datini of Avignon and Prato. Professors N. S. B. Gras, Raymond De Roover, Federigo Melis, and others testify to the many modern banking and business practices which had their inception with these early merchant-bankers.

It is unfortunate that in spite of the wealth of documents in the archives of many of these medieval towns, time, wars, fires, etc. have left many gaps. It is not possible to pinpoint the exact date in time when true premium insurance, aside from marine loans had its inception. Florence De Roover says that it may be as early as sometime between 1275 and 1325. Nevertheless she states, it is pointless to rehash the lengthy arguments and expositions of both medieval and modern scholars in Europe and in America on the definition of insurance, the real meaning of such medieval words as "securare", and whether or not certain entries in merchants books on the payment or receipt of certain sums for "freightage and insurance" and records of litigations or claim settlements did or did not constitute valid and acceptable evidence as to the existence of true insurance before the Mid-14th Century. In any event the contracts of 1343 and 1347 stand as the first tangible proof of the break away from the marine loans.

In some Italian cities the contract was less ambiguous and formal than in others and this seems to have been due to the customs and usages prevailing in those cities. In Palermo, although the language generally used was Latin as in Genoa, the purpose was not hidden but explicitly stated as insurance on a ship or merchandise for a stated amount and receipt of the premium and the amount was acknowledged. Florence De Roover quotes two Palermo policies mentioned by Zeno,

both dated March 15, 1350.¹² Tuscany not only wrote its insurance contracts in Italian; it also dispensed with notarial records of these contracts and wrote them plainly and with the acknowledgement of prepayment of the premium and the amount. Evidently they disregarded the clerical laws against usury.

Original insurance contracts are rarely found except in the private archives of individuals. The best example is the collection of the private business papers and records of Francesco Datini of Prato, who, at his death, left his voluminous collection to his native city, and which now makes up the state archives of Prato.¹³ The Datini collection contains about four

hundred original insurance contracts,¹⁴ the first dated the 13 of April 1379.¹⁵

Summary

The discovery of a contract of insurance dated 1343, similar in format and wording to the previously acknowledged oldest insurance policy, pushes back the date on which there is tangible evidence of the break-away of the true insurance device from the previous one of marine loans.

These marine loans were supported by the Roman Law on *Pecunia Nautica* or *Foenus Nauticum*.

The Commercial Revolution beginning in the 13th Century highlighted the need for a system of true insurance.

The lack of legal standing or recognition of an insurance contract *per se* together with the clerical law against usury hampered the development of a true insurance contract. It led to a recourse of fictitious wording and enveloped the contract in the ambiguities of Roman Law. Mercantile customs and the good sense and enlightened self-interest of merchants and bankers gradually solved the problem.

¹² De Roover, Florence Edler, *op. cit.*, p. 183, quoting from Zeno, Riniero *Document per la storia del diritto marittimo nei secoli XII e XIV*, Turin 1936. One of these contracts is translated from the Latin in Lopez and Raymond's *Medieval Trade in the Mediterranean*, *op. cit.*, p. 260, Document 136, and they also note that the insurers in this Sicilian contract are Genoese and that away from Genoa these, ". . . Genoese underwriters abroad drafted unconcealed insurance contracts . . ." p. 256.

¹³ See the report of the dedication of Francesco Datini, International Centre for Advanced Economic History Studies and a description of the archives in Nelli, H. O. "Spotlight on the Middle Ages," *Atlanta Economic Review*, Vol. XIX, No. 6, June, 1969, pp. 20-21.

¹⁴ Melis, Federigo, *Aspetti della Vita Economica Medievale*, 1964, Leo S. Olschki, Firenze pp. 10 and 12.

¹⁵ Archivio di Stato Francesco Datini, Prato, Italy. Book No. 1158, Folio 3.