Editorial

Introduction

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This half special issue of *The Geneva Papers on Risk and Insurance* is devoted to the 13th Joint Seminar of the International Association for the Study of Insurance Economics (The Geneva Association) and the European Association of Law and Economics (EALE) that was held in Milan, Italy, at the Department of Law “Angelo Sraffa” of Bocconi University, on 11–12 May 2009.

This introduction is aimed at offering a concise overview of the topics covered during the Seminar and at providing some insights into the issues that are not addressed by the contributions selected for publication in this half special issue.

Reviving a long-standing tradition, scholars interested in the economic analysis of risk and insurance gathered from all over the world to present new ideas and discuss critical issues in a number of topics selected by an international scientific board,¹ including the governance of emerging catastrophic risks; the development and interdependency of corporate liability risks and the insurance system; environmental liability and accident prevention; the impact of directors’ and officers’ (D&O) liability insurance and the insurance coverage of risks arising out of extraordinary corporate transactions (mergers, acquisitions and initial public offerings (IPOs)) on corporate governance, securities regulation, accountability, transparency and investors’ protection; innovative insurance tools and alternative risk transfer solutions; and the changing institutional role of the international reinsurance sector.

The closing session of the Seminar hosted a round table discussion with major European and international private sector players—including insurance/reinsurance companies and brokers, risk managers and corporate lawyers—to address some of the key questions raised during the academic part of the Seminar from a practical and operational viewpoint. The discussion among key participants in the D&O and transactional (M&A) insurance business in Europe and the United States focused on critical issues at the crossroads between corporate governance, extraordinary corporate transactions and innovative insurance solutions.

Transactional insurance solutions, in particular, emerged as a relatively new concept in continental Europe. They have been developed in the United States and in the

¹ Composed of Tom Baker (University of Pennsylvania), Christophe Courbage (The Geneva Association), Michael Faure (EALE and University of Maastricht) and the author of this editorial.

United Kingdom during the past decades to provide innovative risk transfer tools to the parties entering into extraordinary corporate transactions, such as mergers, acquisitions and initial public offerings.

Taylor-made transactional insurance products—such as buyer-side warranty and indemnity (W&I) policies—have also been offered on the market to provide a competitive advantage to participants in tender offer procedures. When the seller is a venture capitalist or a private equity firm, moreover, W&I insurance may facilitate a clean exit and enable the seller to avoid a reserve on the sale proceeds for contingent liabilities associated with a breach, as the seller's liability is capped at a relatively small amount. The insurance may also reduce the amount of money the buyer requires to be held in escrow to support the seller's indemnity. With a W&I policy, in fact, the insurance company takes on the contingent liability associated with a breach of representation and warranty, subject to the seller's retention of a stipulated amount of liability for such a breach. In this way, the private equity firm or venture capitalist can structure the deal with a relatively modest indemnity as the first source of recovery for a breach with the insurance product as a layer on top of the indemnity. W&I insurance, therefore, becomes a cost-effective way to free up capital for distribution to the seller's shareholders or limited partners, or for redeployment into another investment. Another innovative insurance product, known as *litigation buyout insurance* was developed to provide clients with a customised strategy to manage certain litigation risks that may otherwise obstruct the deal.

Transactional insurance has now become an increasingly common feature of M&A transactions in the United States and in the United Kingdom. The round table discussion revealed that the situation in continental Europe, however, is quite different. Some of the impediments to the development of the above mentioned insurance solutions in a number of countries have been identified in the lack of specialised knowledge and expertise; others, however, appear to be determined by the existence, in many jurisdictions, of mandatory rules aimed at limiting the scope of insurable risks.

But this is just one of the several topics addressed by the participants. The contributions selected for publication in this half special issue constitute an excellent sample of the quality of the discussions carried during the whole Seminar.

The guest editorial by Kenneth S. Abraham, one of the world's leading scholars in the fields of tort and insurance law, offers a lucid analysis of the history of corporate liability insurance in the United States, by comparing the manner in which insurance problems and challenges developed in the past to what is happening in the current financial turmoil.

The paper by Onno Hoffmeister and Reimund Schwarze investigates the impact of the German Environmental Liability Law of 1991 on accident prevention, based on an empirical analysis of annual data on the number of environmental accidents per year, reported to the monitoring agency ZEMA, and the risk premium imposed by a large German insurer on environmental liability insurance.

Véronique Bruggeman, Michael G. Faure and Karine Fiore, in turn, address in their contribution the relationship between public initiatives and private market solutions for the compensation of losses sustained by the victims of catastrophes. By looking at various forms of public-private partnerships actually implemented in California,

France, the Netherlands and the U.S. federal system, they identify and discuss five main conditions that would have to be fulfilled to make government intervention efficient in this field.

Finally, the paper by Giuliano Castellano takes an innovative governance perspective on the financial management of emerging catastrophic risks, suggesting possible ways to design policy strategies—involving the private and the public sectors—able to effectively cope at the same time with generalised uncertainty and large-scale losses.