Guest Editorial

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This issue contains the papers resulting from a conference organised jointly by The Geneva Association and the European Association for Law and Economics (EALE) that was held in June 2013 at the Institute of European and Comparative Private Law of the University of Girona (Spain). The Geneva Association and the EALE started this collaboration in 1986 by organising conferences every two years devoted to current topics related to liability and insurance. The collaboration between the EALE and The Geneva Association provides a unique opportunity for combining the economic analysis of accident law, on which the scholars within the EALE have expertise, and the more practice and policy-oriented approach within The Geneva Association. Traditionally, a selection of the papers that were presented at the conference are published in a volume of *The Geneva Papers on Risk and Insurance—Issues and Practice*.

This time, four papers were selected related to interesting topics in the domain of accident law, liability and insurance. The first paper, by Jef De Mot and Michael Faure, discusses special insurance systems for motor vehicle liability, in particular specific facilities that have been created either by policymakers or by insurers to cover risks that are very difficult to insure or even considered uninsurable on the ordinary market. They provide an overview of these special schemes in Europe, and discuss in more detail two specific schemes as they exist in Belgium and the Netherlands. They more particularly argue that, to the extent that the special schemes do not charge risk-dependent premiums, the incentives of car drivers could be reduced and social costs could be increased. The authors also argue that one of the main goals of these systems is to reduce the number of uninsured drivers, but that it is in fact doubtful whether the systems actually succeed in doing so.

The second paper is by Niels Philipsen and deals with auditor liability. Philipsen shows that there currently is, *inter alia* as a result of many mergers, a lack of competition in the market for audits of large and quoted companies. Philipsen then discusses the remarkable Commission Recommendation 2008/437. The Recommendation had as its goal to provide options to limit auditors' liability. The Recommendation came as a reaction to various accounting scandals that potentially exposed auditing firms to very large liabilities. Philipsen asserts that the European Commission provides various options to limit liability,

but basically leaves the choice between those instruments to the Member States. Philipsen also examines to what extent limiting liability may have a positive effect on insurability and shows that there is in fact no empirical evidence that this would be the case.

The third paper of this special issue is by Donatella Porrini and deals with the Italian motor insurance market. She discusses recent interventions by the regulator and questions to what extent this could solve efficiently problems that occurred in the past. Porrini argues that Italy has always been one of the countries with the highest frequency of accidents and, moreover, very high average costs of damages. She provides empirical evidence concerning the dynamics of the motor insurance markets and the evolution of premiums in Italy over the past years. A serious problem, as she shows, is related to fraudulent claims. Various regulatory efforts are designed to remedy the information asymmetry between insurer and the insured, but Porrini strongly doubts the effectiveness of some of those interventions. Besides the problems related to interventions by the regulator, the insurance market in Italy suffers from a lack of adequate competition, which obviously drives up premiums.

Finally, Jef De Mot and Louis Visscher discuss the case of custodian's liability in the Netherlands and Belgium in the light of case law in both countries. They relate this to insurance problems as a result of a limitation on insurers' right of recourse. They show the different treatments of custodian's liability for the victim (who can rely on strict liability) and the insurer (who, in the Netherlands, has to rely on negligence). They discuss the practical reasons behind the limitations on the right of recourse of subrogated insurers and equally provide an economic analysis of the right of recourse in general, and of the subrogated insurer more specifically. They conclude that limiting the insurer's right of recourse may create welfare losses with respect to insurance, deterrence and the administration of litigation.

In sum, the four papers included in this volume once more show the potential of applying economic analysis to accident law. Moreover, several of the papers equally show the relationship between regulation, the structure of the insurance market, the efficiency of liability rules and insurance. The good functioning of insurance and insurance markets, hence, is—as becomes clear from the papers—dependent upon a variety of factors, an important one being, of course, the degree of competition of the market. However, especially when it concerns liability insurance, the efficient structure of the liability regime equally will have an important bearing on the obligations of the insurer as well as on its ability to contribute to increasing social welfare. The papers thus take account of the crucial interdependencies between regulation, competition, liability rules and insurance, and show how an optimal mix between these instruments can guarantee that insurance can fulfil a social-welfare-improving role by providing cover, giving incentives for accident prevention and reducing litigation costs.