884/12

Den 18. januar 2012 blev i sag nr. 80.599:

xxxxx xxxx
xxxxxxxxxx
xxxxxxxxx
xxx xxxxxxxxx
xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren har hundeforsikring i Alpha Insurance A/S. Hun klager over, at selskabet har afvist at yde forsikringsdækning for de udgifter, hun har afholdt til en operation af den forsikredes hunds højre forben.

Selskabet har afvist at yde forsikringsdækning med henvisning til, at lidelsen som hunden blev opereret for, bestod før forsikringens ikrafttræden og dermed er undtaget forsikringsdækning.

Af klagerens police fremgår bl.a.:

"Policy Start 06/07/2010
…
Certain conditions apply to all our plans
…

- There is no cover under this policy for any illness or injury, death from illness or holiday cancellation costs which occurs within 14 days of the inception date of the period of insurance
- For a full list of policy exclusions and terms, please read the terms and conditions carefully."

Af dyrlægejournal af 13/7 2009 fremgår bl.a.:

"**Problem:** RH lame

Report: meta inj, home on carp for 5 days, geta a rash under belly, not present at moment, retained canines, remove FR carpal distorted, no lameness was rehomed from ISPCA."

I skadeanmeldelse af 16/3 2011 har klagerens dyrlæge bl.a. oplyst:

"Front right leg is distorted in region of carpal joint.
This distortion was noted at first visit on 13/07/09.
At this time the distortion was mild and not causing any clinical signs.
Over time as the dog is getting heavier, the distortion is progressively getting more pronounced.
The dog was referred for a sudden onset right hind lameness to an orthopaedic surgeon, …
There it was recommended that a corrective reconstructive surgery on the front right be done as it is predicted that the deformity will likely worsen and cause lameness in the future."

I mail af 15/4 2011 til selskabet fra dyrlægen der foretog operationen, hedder det bl.a.:

"This dog presented with notable right forelimb gait abnormality and a more recent history of a right hindlimb lameness. A tentative diagnosis of a cruciate disease was made relating to the latter. The dog was referred for assessment and possible surgery.

On clinical examination, this dog was bright and alert and in excellent physical condition. He had notable congenital angulation of both forelimbs. The owners reported that the dog had recently started collapsing on the right forelimb. The referring veterinary surgeon noted carpal laxity with abnormel external rotation of the carpal joint.

The dog was admitted and radiographs of the forelimbs and right stifle joint were taken. These confirmed marked chondrodysplasia of both forelimbs and a joint effusion within the right stifle joint.
…
Options were discussed with the owners. We elected to performed a pancarpal arthrodesis on the right forelimb to stabilise the joint.
…
Regarding the stifle joint, I have advised the [owners] that this is likely to be related to Cruciate disease. I would suggest we manage this joint medically for the moment.
…
Report
Marked carpal deformity right forelimb. Back right hindlimb non wt bearing also."

Af faktura af 7/4 2011 vedrørende operationen af hundens højre forben fremgår bl.a.:

"Surgery carpal arthrodesis"

I brev af 3/6 2011 til nævnet har klageren bl.a. anført:

"In January 2011 my dog had a problem with his **RIGHT <u>HIND LEG.</u>** He was taken to our vets … who gave him some medicine to take for a week. This did not cure the problem and our vet advised us to go to see a specialist in Galway…
This we did and saw specialist …, who x-rayed the leg and was found to have a crutiate ligament problem.

The vet … was more concerned with the **RIGHT <u>FRONT</u> PAW.** He suggested we consider surgery on this paw as over time his paw may collapse and him being a young dog 2½ years old, may end up with him being put to sleep.
This was discussed in depth and we decided for the benefit of our pet we would go ahead with the procedure. [The vet] suggested that we take him to another specialist in Cork. … as he had performed more of this type of surgical procedures than himself. This we agreed to do.
…
<u>This is where we have to go back to 2009.</u>
We had taken our dog to the own local vet … in July 2009 with a slight lameness on his **RIGHT <u>REAR LEG,</u>** which an injection given by the vet cleared the problem and no further problems occurred until 2011. Do you think that we would leave our dog **<u>LAME</u>** for nearly 2 years?
At the same time our vet for some reason (we do not know why) our vet had made a note of our dogs **FRONT <u>RIGHT LEG (NOT PAW)</u>** being distorted, we had no knowledge of this until we went to get the pre-authorisation form completed.
We had never taken our dog to the vet with his **FRONT <u>RIGHT LEG,</u>** has he had never had any problems with the leg and yet for some reason unknown to us the vet decided to make a note of this.
So we went ahead got our vet to complete both forms which were sent to Pet Insure only to receive a call from … saying the policy does not cover pre - existing conditions.
How either of these can be pre-existing conditions is beyond me as we have only ever taken the dog to the vet once with his **REAR <u>RIGHT</u> LEG** and after an injection this was cured, I do not understand how this decision had been made especially as there had been no communication with any of the vets we visited at the time.
You should be made aware that my dog Buster had his surgical procedure and this was on his RIGHT **<u>FRONT PAW</u>** (not his leg)."

I klageskema af 3/6 2011 har klageren endvidere bl.a. anført:

"What specifically is it you want the insurance company to do?
I would like the insurance company to honor it's policy and pay the value of 1,680.78 euro for the surgical procedure on my dog Busters right front paw. This does not include the x-ray on his right rear leg of 80 euros.
To have to go through all of this process to claim for what should be covered is a very poor service."

Dertil har selskabet i brev af 4/7 2010 til nævnet bl.a. bemærket: [2,pkt,1,2,3+2a]

"The insured, … purchased a PetInsure policy which incepted on 6th July 2010 with cover for vetinary fees commencing, after the stand-down period, on 21st July 2010.
…
[The complainant] has submitted two claims under the policy. The first was for EUR 120 for the right cruciate partial rupture which was treated between 21st January and 7th February 2011. The second was a pre-authorisation for surgical repair of the right fore carpus.
…
Both claims have been declined as they are excluded from coverage, since the conditions to which they relate pre-existed the inception of the policy.

In the insurance policy under Vet Fees the following is written:
What we will not pay:

- ... Any amount if Your claim results from: A Condition that first showed clinical signs before the Start Date or during the Stand-down period.
- A pre-existing Condition, i.e. a Condition that is the same as, or has the same diagnosis or clinical signs as an illness, injury or clinical sign Your pet had before the Start Date or during the Stand-down period.
- A Condition that is caused by relates to or results from an illness, injury or clinical sign Your pet had before the Start Date, or during the Stand-down period …

The first claim for right hind lameness, diagnosed on this occasion as a 'right cruciate partial rupture' is not covered, since the dog, Buster, was previously reported, on the 13th July 2009, prior to the policy commencement date, as being lame on his Right Hind leg. Under the definition in the second point above, treatment for this condition is not covered because it relates to the same clinical sign as an illness or injury Buster had prior to the policy commencement date.

The second claim, for the surgical repair of the right fore carpus is not covered under the policy because at that same visit to the vet on 13th July 2009, the vet noted that Buster's 'FR Carpal' was 'distorted'. In the pre-authorisation form dated 16th March submitted to the insurers there is also a hand-written note on Page 3 confirming that this distortion was noted at the first visit to the vet on 13th July 2009.

'At this time the distortion was mild and not causing any clinical signs. Over time as the dog is getting heavier, the distortion is progressively getting more pronounced'.

Under the definition in the third point from the policy cited above, it is clear that the Carpus was already deformed at the policy commencement date, even though it may not have been causing any specific problems earlier, and the corrective surgery is therefore excluded from coverage under the policy.

In her letter dated 16th May 2011 to the Complaints Board [the complainant] makes a number of statements including the following:

'How either of these can be pre-existing conditions is beyond me as we have only ever taken the dog to the vet once with his rear RIGHT leg ...' and she goes on to write 'I informed [employee at the insurance company] that … Vetinary Hospital [the vet] who he knew, would be sending a report to him with details of the dog and also confirming this was not a pre-existing condition'.

The e-mail from [the vet] of … Vetinary Hospital to [the complainant] enclosed with the complaint and dated 15th April 2011 states as follows: 'This dog presented with notable right forelimb gait abnormality … he had notable congenital angulation of both forelimbs.' 'Regarding the stifle joint, I have advised [the complainant] that this is likely to be related to Cruciate disease'. Far from agreeing with [the complainant's] view of the situation, the vet's report confirms that both claims relate to conditions that are respectively 'notable' and 'congenital', thereby confirming that they are excluded from coverage under the insurance policy.

We firmly believe that the claims have been dealt with in a proper and professional manner and we maintain that [the complainant] is not entitled to coverage for either of these two claims."

Af forsikringsbetingelserne fremgår bl.a.:

"VET FEES
What We Will Pay

- The cost of the Fees Treatment Your pet has received during the period of Insurance for an Event.
- The Maximum Benefit for any one Event or in aggregate for one Period of Insurance will be shown on Your Policy Schedule.

…
What We Will Not Pay
…

- Any amount if Your claim results from:
  - A Condition that first showed clinical signs before the Start Date or during the Stand-down period.
  - A pre-existing Condition, i.e. a Condition that is the same as, or has the same diagnosis or clinical signs as an illness, injury or clinical sign Your pet had before the Start Date or during the Stand-down period.
  - A Condition that is caused by relates to or results from an illness, injury or clinical sign Your pet had before the Start Date, or during the Stand-down period."

Nævnet udtaler:

Efter sin gennemgang af sagen finder nævnet at kunne lægge til grund, at det anmeldte krav skyldes en lidelse, som bestod forud for forsikringens ikrafttræden. Nævnet finder på den baggrund, at selskabet i medfør af de gengivne forsikringsbetingelser, har været berettiget til at afvise dækning som sket.

Som følge heraf

b e s t e m m e s :

_____

Klageren får ikke medhold.

Marianne Højgaard Pedersen
formand

udskriften bekræftes

6. 80.599

Henning Jønsson