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Den 25. juni 2012 blev i sag nr. 80.877:

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mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren har husdyrforsikring i Alpha Insurance A/S. Hun klager over selskabets afvisning af at yde forsikringsdækning for en sygdom hos hendes hund.

Det fremgår af sagen, at klageren den 29/11 2010 tegnede en forsikring for sin ni måneder gamle hund. Ifølge forsikringspolicen er der fra ikrafttrædelsen af forsikringen en karensperiode på 14 dage i forbindelse med sygdomssymptomer.

Klageren bemærkede i midten af januar 2011, at hunden havde vanskeligheder ved at rejse sig og vægrede sig imod at gå ture. Hun opsøgte derfor den 14/1 2011 en dyrlæge, der konstaterede, at hunden led af hoftedysplasi. Selskabet har afvist dækning med henvisning til, at sygdommen var til stede før udløbet af karensperioden.

Klageren har i klageskemaet bl.a. anført:

> "I purchased my dog, a Labrador in June of last year and had been to the vet, … Clinic, … to have her vaccinated, neutered etc (I have enclosed her full clinical records). My vet told me to make sure to get her insured as quickly as possible and I asked around to friends who did not have their pets insured so I presumed it was something I did not require. [Klagers hund] was neutered in September 2010 and still continued to have ear mites regularly. Around early November I started to look into pet insurance again as I was getting quite tired of paying

veterinary bills, I shopped around online and found that insurance wasn't as expensive as I had first anticipated. I found Pet Insure to be the cheapest at €175 per year but shopped around for a further few weeks getting different quotes, I was in no rush to get insurance as to my knowledge and our vets [klagers hund] was a perfectly healthy puppy and she was only 7 months old. On the 29th November 2010, I finally settled on Pet Insure.

On the week of the 10th of January 2011 my family and I began to notice that [klagers hund] was more stiff than usual on getting up after been lying down, she was also very reluctant to go for her usual walks and when we did bring her, on even short walks she began to lie down and cry. It got to the point where we thought maybe she was sick or something had hurt her paw so we rang the vet who recommended x-rays to see if she had damaged anything. We agreed and brought her along to the vet on the 14th of January where she had x-rays carried out. When we went to collect her, our vet, Dr. … told us that having done x-rays of [klagers hunds] hips it appeared she was suffering with severe hip dysplasia on both her hips; she was only 9months at this stage. We were shocked but relieved we had insured her when we had as the medical costs would have been very expensive. [Klagers hund] was put on anti inflammatory medication and as I am unemployed (I am 22, finished college and unable to find work) my older sister and mother helped cover the costs. I put in a claim a few weeks later to Pet Insure, both the vet and I assuming there would be no problem. However, on the 24th of March I received a letter from Pet Insure saying they would not be covering [klagers hunds] hip dysplasia as it was present at the time we insured her at 7 months, and they do not cover pre existing conditions. I was fully aware that they don't cover pre existing conditions when I insured [klagers hund] but according to our vet and I this was a new condition she was presenting with and there was no indication that she had this condition when we insured her. I realize it is a developmental condition and can be inherited but what our vet and I do not agree with is that there was no evidence to suggest that [klagers hund] had this condition when she was born or even up until she first presented with it. Whereas Pet Insure seems quite definite that she had, even without any evidence.

I appealed the decision not to cover [klagers hund] pretty quickly and our vet agreed with me completely, I even rang Pet Insure to ask what process to go through to appeal where a woman working there said to 'appeal as they should cover it and will always try not to, so if they don't cover it I should contact the ombudsman'. My vet also suggested that I include in the letter that I may take legal action; I included this in the letter even though I would never actually consider taking legal action due to the cost. On the 6th of May I was confused when I received 3 letters from Pet Insure in the post. All three letters looked to be signed differently and are all slightly different letters but all sum up the same thing, they are still refusing to cover the condition. I have enclosed these letters but am very confused on why I received three different letters from Pet Insure on the same day, to me it looks very unprofessional and leaves me wondering what I was thinking when I insured [klagers hund] with Pet Insure.

I am extremely unhappy with how I have been dealt with by this company, any time I have phoned them they have been very unhelpful and abrupt, not at all what they claim to be on their website 'When you're a Pet Insure customer you can rely on us to be there when you need us most - at claim time'. Looking at the website now makes me think everything they claim to be is not so. …

2. What specifically is it you want the insurance company to do?
… The only outcome I am looking for is for [klagers hund] to be covered by Pet Insure (Alpha Insurance) against hip dysplasia."

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Selskabet har i brev af 7/9 2011 til nævnet heroverfor bl.a. anført:

"The insured, [klager] purchased a PetInsure policy which incepted on 29t[h] November 2010, with cover for vetinary fees commencing, after the stand-down period and a copy of the relevant insurance policy was supplied by [klager] with her complaint.

The key facts of this case are as follows:

1. The Inception Date of this policy is 29 November 2010.
2. The age of the animal ([klagers hund]) on the Inception Date was 7 months.
3. The Stand-down Period of 14 days expired on 13 December 2010.
4. [Klagers hund] showed clinical signs of Canine Hip Dysplasia during the week of the 10[th] of January 2011
5. An x-ray carried out on 14 January 2011 confirmed Canine Hip Dysplasia (CHD).

[Klager] submitted Claim No: ...44 in the amount of €238.75 to recover the costs incurred in addressing the CHD condition.

Alpha Insurance A/S declined this claim on the basis that [klagers hund] suffered from a pre-existing condition prior to the expiration of the Stand-down Period, which was only 4 weeks prior to the date on which the x-ray was carried out. A pre-existing condition is a specific exclusion of the Careplus Policy and is defined as:

'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.'

We appreciate that no evidence has been furnished to Alpha Insurance A/S to indicate that [klagers hund] suffered from CHD prior to 13 December 2010. However, we think that it is perverse for [klager] to try to make the case that CHD could be diagnosed on 14 January 2011 and yet, the condition was not manifest on 13 December 2010.

Prior to making a decision on Claim No: …44, Alpha Insurance A/S referred this claim to our Expert Veterinary Surgeon. Based on his advice, we believe that CHD must have been manifest prior to the expiration of the Stand-down Period.

From a pathological standpoint, Canine hip dysplasia (CHD) is a complex, multifactorial, progressive disease that develops during postnatal skeletal growth. Affected animals have a normal hip at birth but the development of the supporting soft tissues fails to keep pace with skeletal growth and leads to loss of congruity between the femoral head and the acetabulum (Todhunter 2003).

First indications of hip pain occur at about 5 months of age, radiographs at this stage confirm some degree of subluxation, although the conformation of the femoral heads appears normal (Denny 2004).

Given the known information about the pathogenesis of this condition coupled with the time frame between the expiration of the Stand-down Period and presentation to the veterinary surgeon with vague signs of stiffness, we believe that the only rational conclusion is that the condition was clinically apparent at the expiration of the Stand-down Period. In our view, the developmental condition of CHD was manifest one month prior to diagnosis.

References

Todhunter RJ, Lust G. Hip dysplasia: pathogenesis. In Slater D ed. Textbook of Small Animal Surgery. 3rd ed. Philadelphia: WB Saunders Co, 2003;2009-2017.

Denny H R. Management of Hip Dysplasia World Small Animal Veterinary Association Conference proceedings. 2004

Based on the advice of our Expert Veterinary Surgeon, as set out above, Alpha Insurance A/S, via our agents PetInsure.ie declined Claim No: …44 at the initial review stage and at the appeal stage.

We would also like to address the points made [klager] in relation to her call to the Pet insure Customer Service Line when she called to seek information in relation to the Appeals Process. We have listened carefully to the recording of that call which was made at 0903 on 28 March 2011. [Klager] claimed, in her letter of 06 July 2011 that she was advised by the Customer Service Representative (CSR) that she should 'appeal as they should cover it and will always try not to, so if they don't cover it I should contact the ombudsman'.

This quotation is absolutely untrue and inaccurate. During the call, the CSR explained the Appeals Process to [klager], including an explanation that the Appeal Process entailed a total review of the claim. She also advised [klager], in line with standard practice, of her entitlement to appeal to the Financial Ombudsman in the event that she was unsuccessful in her appeal to Alpha Insurance A/S. The CSR did not make any comments that could, in any way, be honestly construed by [klager] to match the quotation produced in her letter of 06 July 2011.

In her letter of 06 July 2011, [klager] complained about the fact that she received three letters from Petinsure.ie advising her of the rejection of her appeal. These letters were dated 06 May 2011. Petinsure.ie would like to apologies to [klager] for this administrative error, on their part. They have revised their processes since that date and have assured Alpha Insurance A/S that such an administrative error will not be made in the future.

In her letter of 06 July 2011, [klager] complained that any time she has phoned our representatives, Petinsure.ie, she has received a service which she felt was 'very unhelpful and abrupt'. We have listened to the recordings of the calls between Petinsure.ie's personnel and [klager]. There is no evidence on these recordings to support the complaint made in this connection.

We firmly believe that the claim and complaint has been dealt with in a proper and professional manner and we maintain that [klager] is not entitled to coverage for vetinary fees connected to her dog's hip dysplasia."

Af forsikringspolicen fremgår det bl.a.:

"**Certain conditions apply to all our plans**

…

- The cover always excludes Pre-existing Condition, pregnancy, neutering, vaccinations and cosmetic weight reduction

…

- 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"

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Af forsikringsbetingelserne fremgår det bl.a.:

"**DEFINITIONS**

…

Stand-Down - there is no cover under this policy for, any illness or injury, death from illness or holiday cancellation costs, which occur within 14 days of the inception date of the Period of Insurance.

…

What We Will Not Pay

…

• 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."

Nævnet udtaler:

Nævnet finder som ubestridt at lægge til grund, at klagerens hund lider af hoftedysplasi. Det fremgår af forsikringsbetingelserne, at forsikringen ikke dækker, hvis sygdommen eller symptomer på sygdommen var til stede før karensperiodens udløb. Nævnet finder ikke, at selskabet har bevist, at hunden på tidspunktet for karensperiodens udløb den 13/12 2010 led af eller havde symptomer på hoftedysplasi. Selskabet har derfor ikke været berettiget til at afvise skaden.

At lidelsen ifølge den veterinære litteratur må antages at være til stede allerede ved 5 måneders alderen, finder nævnet ikke udgør et tilstrækkeligt bevis.

Som følge heraf

b e s t e m m e s :

Selskabet, Alpha Insurance A/S, skal anerkende, at klagerens hunds sygdom er dækningsberettigende, og skal på den baggrund genoptage sagen og udbetale klageren de ydelser, som hun herefter har krav på, med tillæg af renter i henhold til forsikringsaftalelovens § 24, stk. 2.

6. 80.877

Marianne Højgaard Pedersen
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