Den 3. september 2012 blev i sag nr. 81.611:

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xxxxxxxx xxxxx xxxxxxxx
xxxxxx xx
xxxxxxx

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. Han klager over selskabets afvisning af at yde forsikringsdækning for en syg hund.

Klageren anmeldte, at hans hund var blevet diagnosticeret med allergilidelsen atopisk dermatitis. Selskabet dækkede udgifterne til tre behandlinger hos dyrlæge, men afviste yderligere dækning med henvisning til, at sygdommen var til stede, før forsikringen blev tegnet.

Klageren indbragte derpå sagen for Financial Services Ombudsman's Bureau i Irland. I klagen af 21/10 2011 anførte klageren bl.a.:

> "Please see enclosed documents. These relate to the non payment of legitimate claims which in my view could be seen as 'Sharp practice' by Pet Insure.
> You will notice that although the first two claims were 'successful' (Pet Insure term, not mine), there appears to have a been a contradiction with Claim 990, dated 23/10/2010, where Pet Insure said it had been successful but did not pay against it, then subsequent claims were turned down on re-examination due to the Atopic Dermatitis being determined as having been a 'Pre-existing condition'. This not only confused me but the Vet too as they had stated with Claim 443 on 22/07/2009 that the claim was being denied.
> I have spoken with …'s Vet, …, … regarding this stated fact have and been advised that this could not be determined with any degree of certainty.
> Should you wish to contact her, I attach for your information, details of her practice in … Shopping Centre.

> A brief history of the dog we call … - he is a Border terrier cross and a 'Rescue dog' and we 'adopted' him from the DSPCA on the 16th of June 2009.
> He had been 'snipped' and inoculated and a given clean bill of health by the DSPCA vet, I enclose a copy of the certificate. As he was a little overweight, we were advised that walks and plenty of exercise were on the cards for him.
> I feel that I have been let down badly by Pet Insure, who have failed to honour their agreement by looking for and using a loophole that does not exist according to the Vet.
> As I have had no satisfaction in verbal communication with Pet Insure, I would be very grateful if you could give this situation the benefit of your judgement and in my estimation have Pet Insure see that they have been wrong in denying these claims."

Financial Services Ombudsman's Bureau (FSO) afviste sagen med henvisning til, at Petinsure ikke var forsikringsgiver, men forsikringsformidler. Forsikringsgiver er det indklagede danske forsikringsselskab Alpha Insurance A/S, som ikke er omfattet af FSO's kompetence. Klagerens advokat har efterfølgende indbragt sagen for Ankenævnet for Forsikring.

Selskabet har i brev af 9/1 2012 til nævnet heroverfor bl.a. anført:

> "The Inception Date for the Policy in question (Policy number 14146) was 16th August 009 and the Stand-down period for this policy of fourteen days from inception therefore expired on 30th August 2009.
>
> … was presented to … on 8th September 2009 with clinical signs that were consistent with the disease Canine Atopic Dermatitis.
>
> Several claims have been presented to Petinsure for … for the condition of Canine Atopic Dermatitis. The initial three claims were accepted and paid in error, but upon undertaking a review of the case, claim number … presented on 23 March 2010, claim number … presented on 18 May 2011 and claim number … presented on 17 June 2011 have been declined.
>
> This is because it is our opinion that … suffered from the pre-existing condition of Atopic Dermatitis when he was taken to the Vet on 8 Sep 2009, which date was just nine days after the policys Stand-down period.
>
> The PetInsure.ie policy (copy attached hereto) does not cover payment for the following:
>
> **. 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 dog … was 'adopted' by [klageren] on 16th June 2009 from the Dublin Society for the Prevention of Cruelty to Animals (DSPCA), which is an animal shelter. In general it is a condition of coverage under the Policy that: 'Before your Pet is treated, you must make sure

that the Vet Is prepared to complete the Treatment section of our claim form and provide detailed invoices and full clinical history of your Pet if requested by us. We also reserve the right to speak with any previous Veterinary Practices which your Pet has attended and these details must be supplied by you'.

On our request [klageren] was understandably unable to provide a full Clinical History for his dog … prior to 8th September 2009. However, he did write in his complaint letter, dated 21 Oct 2011 and supplied to Ankenævnet for Forsikring, that … 'was given a clean bill of health by the DSPCA vet' on 16th June 2009.

No documentary evidence of this clinical information was provided directly to PetInsure, but we have noted that with the copy complaint received by Alpha Insurance A/S from Ankenævnet for Forsikring a copy of a receipt from the DSPCA and a free charity cover document from the insurance company Allianz were enclosed. In that Free Charity Cover Document the following appears:

'I certify that today I examined the above animal. In my opinion the animal is in good health and is free from any physical defect or infirmity other than as listed above.' There is nothing listed above.

Clearly, from his comments [klageren] is attempting to rely upon the Free Charity Cover Document as being a reliable source of clinical history for … Unfortunately that document does not meet a number of the criteria we set as for qualification as a credible source because:

a) there is no evidence that it was signed by a Vet
b) there is no stamp of a Vetinary Practice
c) there is no signature from the Proposer

Therefore, even if [klageren] had produced this document to us previously, it would have been rejected as worthless.

The following information has been provided to Petinsure by our Expert Veterinary Consultant in relation to …'s condition:

'The American College of Veterinary Dermatology Atopic Dermatitis Task Force (2001) defined Canine Atopic dermatitis (CAD) as a genetically predisposed inflammatory and pruritic allergic skin disease with characteristic clinical features. It is associated most commonly with IgE antibodies to environmental allergens. It is characterized by chronicity, pruritus, typical lesion distribution and a familial history. The involved allergens are dust mites, pollens, mold spores, danders, insects, and other miscellaneous allergens.

CAD is the most common canine allergic skin disease. Typically, clinical signs are first noted between 6 months and 3 years of age. Dogs rarely develop CAD when they are older. Adult onset CAD is usually associated with geographical relocation'.

The term 'geographical relocation' in this context is used to describe the movement of an animal from one country to another and generally one climate to another. It cannot be used to cover the movement of the dog from one address to another, which is the extent of the relocation that is relevant in …'s case.

> Based on the Expert's information above, it is simply not credible that … (aged 5 to 6 years) did not suffer from the pre-existing condition of Atopic Dermatitis on 8th Sep 2011 when he presented to ... The following Clinical Notes were recorded during this visit: 'otitis externa in right ear .... Also skin all along rump is quite inflamed - and licks right hind'. In our opinion, these notes refer to the condition of Atopic Dermatitis and can only be interpreted as meaning that the condition was wellestablished on 8th Sep 2009 and to claim that this condition was not present in … on 30th Aug 2009, the last day of the Stand-down period, is simply not an option.
>
> We appreciate that …'s vet, … stated that the Petinsure opinion 'could not be determined to any degree of certainty'. Based on all known information about the condition of Atopic Dermatitis, this statement is not accurate when referring to a pet which was then aged between 5 and 6 years old, when the expert medical view is that the condition rarely develops in dogs that are more than 3 years old.
>
> As noted above, three claims were accepted and paid for … in relation to treatment for the Atopic Dermatitis condition. After reviewing the reports in 2011 we have become aware of the fact that the disease was pre-existing and we believe that it is our right to stop the payments for the medical treatment, as treatment for this condition does not meet the Policy Terms and Conditions.
>
> In light of the above, we maintain our refusal to cover the medical expenses and the claims continue to be denied."

Nævnet udtaler:

Det kan som ubestridt lægges til grund, at klagerens hund lider af atopisk dermatitis.

Det fremgår af forsikringsbetingelserne, at forsikringen ikke dækker, hvis sygdommen eller symptomer på sygdommen var til stede før karensperiodens udløb.

Nævnet finder, at selskabet ikke har bevist, at hunden på tidspunktet for karensperiodens udløb den 30/8 2009 led af sygdommen. Selskabet har derfor ikke været berettiget til at afvise skaden.

Nævnet bemærker, at det forhold, at lidelsen ifølge den veterinære litteratur må antages at være til stede allerede inden 3 års alderen, ikke findes at udgøre et tilstrækkeligt bevis i sagen.

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 han herefter har krav på, med tillæg af renter i henhold til forsikringsaftalelovens § 24, stk. 2.

Poul Sørensen