Ankenævnet for Forsikring

903/12

Den 26. november 2012 blev i sag nr. 82.113:

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xxxxxxxxxx
xxxxxx xxxxxxxx
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 dækning for sin hunds knælidelse (patellaluksation).

Klageren anmeldte til det indklagede selskabs irske forsikringsagent Petinsure, at knæskallen på hans hund var gået af led og anmodede om dækning for behandling heraf. Selskabet afviste dækning med henvisning til, at hundens lidelse var til stede, før karenstidens udløb.

Klageren har i brev af den 22/8 2011 til Petinsure bl.a. anført:

> "I hereby state the following:
>
> There was no history of intermittent skipping as quoted by your vet. This was a once off incident whilst playing with a ball. When the incident was noticed, she was taken to the veterinary clinic, …, of which you have a record. Thereafter to … Pet Hospital.
>
> If there had been a history of this problem, the two clinics which she attended would have known about the problem as during her previous visits she was given a full examination by each respective Vet.
>
> I am of the opinion that your veterinary expert placed too much emphasis on the developmental issue, instead of looking at the traumatic perspective of the incident.

Your Vet, … is well knowledgeable in his profession as he has 14 years experience. Therefore I feel he should have done proper research as … did.

On a personal level, I have done my own research on the matter pertaining to Patella Luxation and I agree with … confirming the fact that there are no absolute scenarios proving developmental problems as the only cause. I have spoken to several vets in Ireland and each one states that it was traumatic, otherwise lameness would have set in long before her 2nd year.

Therefore I feel your consulting Vet did not have all the facts at his disposal, thus the error in judgement.

I therefore ask that the decision of denial of the claim be reversed, and the claim be paid."

Petinsure har i brev af den 26/8 2011 til klageren heroverfor bl.a. anført:

"The key facts relating to Claim No's … and … are as follows:

1. The Inception Date for Policy No: … is 20 July 2010
2. The Stand-down Period for this policy expired on 02 August 2010
3. …'s age on the Inception Date was 2 years and 2 months
4. … was diagnosed with Luxating Patella on 03 May 2011

You submitted Claim No's: … and … to cover the treatment for the condition. These claims were declined and you were notified of these declinatures by letter, dated 12 July 2011.

The two claims were declined on the basis that the condition of Luxating Patella was deemed to be a Pre-existing condition. A Pre-existing condition is specifically listed as an exclusion in your Careplus insurance policy. A Pre-existing condition is defined as 'a condition that is the same as, or has the same diagnosis or clinical signs as an illness, injury or clinical signs your pet had before the Start Date or during the Standdown Period or 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'.

In support of that declinature, we included the following opinion from our Expert Veterinary Surgeon:

'Patellar luxation is the result of a developmental problem involving the entire pelvic limb which can produce distal femoral and proximal tibial varus as well as proximal tibial torsion [L'Eplattenier & Montavon 2002]. The inciting anatomical changes occur early in life as the dog grows and is recognized in many terrier breeds. Unfortunately as … was initially insured as a two year old dog and had stopped growing at this stage the condition was present at the time of the inception of the policy and is not covered under the terms and conditions of the policy. The history of intermittent skipping, the bilateral nature of the condition in this dog and the necessity to perform a trochloeplasty to deepen the groove support the position that the initial cause was developmental in nature'.

L'Eplattenier H, Montavon P. Patellar Luxation in Dogs and Cats: Pathogenesis and Diagnosis. Compend Contin Educ Pract Vet. 2002;24(3):234-240.

As both yourself and … has challenged this opinion advanced by our Expert Veterinary Surgeon, we have asked him to provide a brief introduction to the concept and pathogenesis of the condition. This is set out below:

'The patella is a sesamoid bone that develops inside the tendon of the of the quadriceps muscle. It lies along the extensor axis of the quadriceps muscle, that is the vector result of the traction force of the 4 muscles that compose the quadriceps muscle unit (the rectus femoris, the vastus medialis, the vastus lateralis and the vastus intermedius). The rectus femoris inserts distally on the apex of the tibial tuberosity and proximally from the eminentia ileopubica. The vastus medialis muscle arises in the craniomedial surface of the proximal fifth of the femur. Vastus intermedius and vastus lateralis arise from the craniolateral part of the proximal fourth of the femur. Patella is always along the origin and the distal insertion of the quadriceps muscles. For this reason, in a normal dog, the trochlear sulcus is always on the same sagittal plane of the distal anatomical axis of the femur. **During the growing period, because of the traction that these muscles exert, the patella generates a depression on the metaphyseal curvature of the distal femur, the femoral trochlea. Any modification to the femur, to the proximal tibia and to the relationship between the femur and the tibia and a combination of the above mentioned variation bring to a subluxation or to a luxation of the distal portion of the femur relative to the patella.** In general, varus of the distal metaphysis of the femur brings to the 'so called' medial luxation of the patella as well as the external torsion of the femur. **This is generally the result of an abnormal meta/epiphyseal development or secondary to an abnormal physeal growth during the developping period or secondary to a bone fracture or to a malunion.** (Petazzoni M 2011)'

'Medial patellar luxation is the most common congenital abnormality in dogs, affecting > 7% of pups in 1 study.- (Ruble 1993).
Medial patellar luxation occurs most frequently in small-breed dogs (Priester 1972)
Approximately fifty percent of the time they are bilateral (Arthurs 2006, Gibbons 2006).

The above references are in relation to medial patellar luxation as a developmental condition.'

As noted earlier, Claim No's: 3434 and 3534 was declined on the basis that the condition was developmental and that it was pre-existing on the Inception Date when … was aged two years and two months.

… challenges this point in his letter where he quoted from a textbook which was published in 1993 - 'The pathogenesis is complex and poorly understood (Roush 1993)'.

Our opinion is that while this may have been the case at the time of the writing of the referenced article our understanding of the manner of development of this disease has progressed in more recent years. Excessive femoral varus conformation has been implicated in the pathogenesis of medial patellar luxation- (Dudley 2006, Piermatti 2006), this is generally the result of an abnormal meta/epiphyseal development or secondary to an abnormal physeal growth during the developing period or secondary to a bone fracture or to a malunion - (Petazzoni M 2011).
The range of closure of the distal femoral physes in dogs is between 136 and 392 days with a mean of 330 days. Given that the condition occurs due to abnormal physeal growth during this period, the physical deformity of the femur leading to this condition occur over this period. This means that the condition had to have been present prior to the inception of the

policy at two years and two months. This equates to 790 days, almost 2.5 times the mean time for closure of the distal femoral physes in gods, as quoted above.

… then suggests in his letter that the condition was caused by a traumatic event. He wrote 'The problem, while often developmental is also known to be traumatic in cases (Denny 2000)'. This reference was sited to identify that a traumatic cause is possible, while we do not contend that traumatic causes of patellar luxations occur, it needs to be noted that it is very rare and requires **a significant trauma** to lead to luxation of a normal patella.

In a study by Gibbons in 2006, a developmental cause was identified in all 70 cases studied (Gibbons 2006). She also notes that it is primarily a developmental condition, with traumatic luxations being less common (Gibbons 2006). A heritable basis for the disease has been suggested and is supported by the over-representation of certain breeds and the high prevalence of bilateral cases (LaFond 2002). …'s states that 'The lameness can be directly related to an incident while out playing ball, which caused a twist and a yelp from the dog, which in turn, was the cause of the original visit to the clinic'. This is not supported by the clinical notes by the referring practice (… Clinic) which includes the following Clinical Notes on 29 April 2011 - 'dog was presented with intermittent lameness of the right hind leg and skipping'. These Clinical Notes also directly contradict a key point in your letter of 22 August 2011 when you state that 'there is no history of intermittent skipping as quoted by your vet'.

The notes do not record significant treatment for pain which we would expect if a trauma of sufficient force occurred to damage the supporting structures and luxate not just one but both patellae. As stated above, the clinical history, the bilateral nature and the breed support our assertion that the cause of this pathology in this dog is developmental. This point directly rebuts the comment in your letter that Your veterinary expert placed too much emphasis on the developmental issue, instead of looking at the traumatic perspective of the incident'.

The point made out by our Expert Veterinary Surgeon in the previous two paragraphs also directly rebuts the comment in your letter that 'I have spoken to several vets (none of whom, I presume, had clinically examined …) in Ireland and each one states that it was traumatic'.

… then discusses the association of the clinical signs with 'bony abnormalities which result later in life'. This is in reference with secondary changes associated with cartilage wear and the progression of osteoarthritis which occurs in this condition. Unfortunately, while this case was referred to … we have not received a surgical report or radiographic description detailing the surgery, pertinent abnormalities and radiographic abnormalities in this case. Due to the lack of these we cannot comment of the presence of, or consequence of cartilage wear and osteoarthritis.

… discussed 'increased weight gain' as 'recognised complication in orthopaedic disease'. As I have previously noted, it is not the weight of the animal that is significant but abnormal forces on the growth plates as the dog is growing that lead to the development of this condition. Excessive weight has been associated with the progression of osteoarthritis in the hip and elbow dysplastic dogs over their life time but not in association with patellar luxation (Huck 2009, Smith 2006).

… says 'you also quote that it is recognised in many terrier breeds, however, due to the fact that the dog in question here is not on the list of uninsurable dogs, that is surely not a mitigating factor' As we have advised in our previous correspondence had this dog been insured as younger dog when this condition had not developed then he would have been

covered. But as the condition was present as outlined above prior to the inception of the policy he was not covered in this case.

… makes the following point in his letter '… had been examined upon two previous occasions for vaccinations, her owner had reported no history of lameness .....there is no history of illness or injury and prior to this complaint … was clinically well'. Based on the Clinical Notes made available to Petinsure.ie, we only have evidence of one occasion when … was examined by a Veterinary Surgeon prior to the diagnosis of Luxating Patella and was in 2010. Given the lack of records we can only assume that full examinations were not performed.

… quotes three references in his correspondence one of which is not in his reference list and has eight references in the reference list but not all are cited in his text. It is not clear how these are to be used in support of his case as information in most of these are quite broad in scope and could be used to support our assertions of this as a developmental condition in this case. For this reason, we are not commenting on these references in this response.

In summary, we believe that due to …'s age at inception, breed, bilateral nature, lack of significant reported trauma and the large body of literature reporting developmental causes being present in the majority of cases, we feel this condition in this dog is developmental in nature.

Taking all of the above into account we regret to inform you that your appeal has been declined."

Klageren rettede efterfølgende henvendelse til det indklagede selskab. Selskabet har i brev af den 23/11 2011 til klageren bl.a. anført:

"Alpha Insurance A/S has been provided with a summary of the key facts in relation to the handling of your claims as follows:

a) Claim No: … was submitted to Petinsure on 31 May 2011
b) Claim No: … was submitted to Petinsure on 27 Jun 2011
c) You were advised by letter on 12 July 2011 that both claims were declined
d) You submitted an appeal on 22 Aug 2011 to the 12 Jul 2011 decision
e) Petinsure advised you by letter, dated 26 Aug 2011, that your appeal was declined.

Claims Nos: … and … were submitted by you for treatment of a condition of Luxating Patella in your pet - ... Both claims were denied since the condition was deemed to be a 'pre-existing condition'. A detailed rationale for this decision from Petinsure's Expert Veterinary Consultant was included in the letter to you of 26 August 2011.

In summary, there were two key reasons why both claims were denied. Firstly, Luxating Patella can result from either a development condition or, less commonly, may result from a traumatic incident. Where Luxating Patella is the result of a development condition, it occurs early in life as the dog grows. … was two years and two months old on the Inception Date of your Petinsure policy. Based on the medical science available, such a condition will usually be manifest at approximately 11 months, at the latest. In view of this information, if …'s condition was developmental, then it must have been manifest long before the Inception Date.

Secondly, Luxating Patella may result from a traumatic incident. The clinical notes presented by the referring practice - … Clinic … show that your pet had a history of 'intermittent lameness of the right hind leg and skipping'. These notes prove that … was suffering from a pre-existing condition prior to presentation at … Clinic. This directly contradicts the assertion by you and, your vet …, that … was suffering from a condition of Luxating Patella which was caused by a traumatic incident rather than a developmental condition.

You have raised a number of points in the material you provided to Alpha Insurance A/S and we have asked Petinsure to comment on these. The response received is as follows:

Points raised in the letter by … of 07 Nov 2011 addressed to the Financial Services Ombudsman's Bureau.

1. [Klageren] asserts that the economic situation in the country had changed the Insurance Industry and, as a result, his claims were denied. This is not true. [Klagerens] claims were denied because he submitted an insurance claim for a developmental condition that, based on all known scientific evidence, was manifest in … more than one year before the Inception Date of his policy. For that reason, his claim was declined.
2. [Klageren] claims that call recordings were denied to him. His complaint on this point to the Data Protection Commissioner was rejected. In his response, the Information Officer noted that [klageren] was provided with the recordings of 59 phone calls, all relating to these two claims.
3. [Klageren] claims that '… stated to me that the … were 60% to blame for their decision'. Firstly, this statement is not true. Secondly, we do not understand what point [klageren] is making here or what the relevance of this point is. [Klagerens] claims were denied, partly due to the clinical notes provided by the … which has noted (we assume correctly) that … had been suffering from a preexisting condition of lameness when she was brought to the clinic on 29 Apr 2011.
4. [Klageren] states that 'there are too many indications that this company had no intention of paying for this claim'. When all the evidence made available by [klageren] to Petinsure was reviewed by the Claims Handling Team, a decision was made to decline for the reasons set out in No 1 above. Petinsure has paid out on claims relating to the condition of Luxating Patella prior to [klagerens] claims and since then.
5. [Klageren] made the case that Petinsure should have pre-screened … because Luxating Patella is a common problem in small breeds. As noted in Point 1 above, Luxating Patella Is a development condition which typically is manifest in dogs at aged 11 months. Where claims are submitted for dogs aged Iess than 12 months, Petinsure will normally accept such claims. In the case of …, Petinsure believes that the condition was manifest prior to the Inception Date. The Clinical Notes from … support this view.
6. [Klageren] makes the case that Petinsure should have contacted him or his vet more quickly after the first claim was submitted on 31 May 2011 to advise him that his claim would be declined. The decision to decline both claims was made when all the relevant information was available and reviewed by Petinsure on 12 July 2011. As soon as that decision was made, [klageren] was advised of the outcome of the claim review.
7. [Klageren] complained that … was the only person dealing with his claim. This point is not relevant since his two claims were fully and properly processed. … made the original decision to decline his claims. When [klageren] appealed the original decision, his claims were reviewed by … who reached the same decision as ...

…

> Alpha Insurance AIS is in agreement with the decision to decline your claims. This is our final position and, for the sake of good order, we need to bring the correct complaints procedure to your attention. Alpha Insurance A/S is EEA Authorised to provide cross-border insurance services in Ireland (Ref. no. ...)."

Klageren indbragte efterfølgende sagen for nævnet. I redegørelse af den 20/2 2012 vedlagt klageskemaet har klageren bl.a. bemærket:

> "Reply to question 1:
>
> Pet Insure indicated that I asserted that the economic situation had changed the Insurance Industry. I was only repeating what I was told by …, Director of Pet Insure, which is now being denied. They are implying that the condition had manifested in our dog more than 1 year before inception date of the policy. They are basing their argument on the … report. They disregarded a fully explanatory letter from … (.MVB) from said clinic.
>
> Reply question 2:
>
> Pet Insure did send me 59 recordings, but the main conversations were missing:
>
> 1. …'s conversation of 45 minutes with …, from … Hospital.
>
> 2. Five conversations with myself.
>
> Although I complained to the Data Protection Commissioner, my complaint was rejected, as it was a case of …'s word against mine. Unfortunately, the missing calls would have substantuated my case.
>
> Reply to question 3:
>
> Regardless of their denial on the question that …'s report was 60% to blame for the decision, we stand by our opinion that the explanation from … was absolutely true, yet disregarded.
>
> Reply to question 4:
>
> One year prior to inception of policy, our dog showed no signs of having any problem regarding Luxation of the Patella.
>
> Reply to question 5:
>
> As Pet Insure was aware that this condition is very common in small breeds, they should demand prescreening and not accept clients without prior examination.
>
> Reply to question 6:
>
> Both myself and … telephoned for authorisation before the first and second operation, not at any given time was there any indication of problems with payment. Even at this stage Pet Insure did not ask for prescreening."

Selskabet har i brev den af 8/3 2012 til nævnet heroverfor bl.a. bemærket:

8. 82.113

"In this complaint [klageren] refers once again to 'missing' recordings of telephone conversations. Please find enclosed a copy of a letter from the Data Protection Commissioner (Attachment 1) confirming that he has been provided with copies of 59 phone calls. It is admitted that one telephone conversation was not recorded, but we do not agree that if a recording of the missing telephone call had been available it would in any way have substantiated [klagerens] case or changed our decision on the claims. The rejection of the claims is fully explained in Alpha's letter of 23rd November 2011 and is based on expert evidence.

Secondly [klageren] seems to suggest that he or his vet were given verbal prior authorisation for the operations carried out on ... This is denied. No verbal pre-authorisation was given for these operations. The Conditions of Cover in the insurance policy (Attachment 2) clearly set out the proper method of making a claim and state that prior authorisation is not available: 'We will not give prior approval of Your claim. You must send Us a claim form that has been properly filled in and You must have paid the Vet. We will then write to You with Our decision.'

As stated in our letter to … from 23rd November 2011, we uphold the decision to decline the claims and we will look forward to receiving the decision of Ankenævnet for Forsikring in due course."

Klageren har i brev af den 22/3 2012 til nævnet til dette bl.a. anført:

"Alpha Insurance insist on referring to the Data Protection Commissioners letter. this one call was not the only call missing. If I may name the calls missing.

…' s conversation with my Vet whereby he … told him that the Company policy had changed regarding Luxating Patella operations, a call lasting 45 minutes.

A call with myself regarding my Insurance Policy to establish if all was in order for me to take my dog for the operation.

… made the same call to get the go ahead for the operations.

The conversation with … regarding the report from … admitting 60% of their decision was based on that report.

These are the most important calls I can remember. There where others, but during the 8 month of battle, the above mentioned are the most important. If they were made available it would have substantiated my claims.

Alpha Insurance based their decision on …'s report not withstanding the fact that … gave an explanation as to why she used the term Intermittent skipping. Alpha Insurance refuse to acknowledge this fact.

Alpha Insurance state that our Vet … was not given prior permission to continue with the operation, quoting their conditions on this matter. This is one of the missing recordings. How can Alpha Insurance say that the missing calls would not have substantiated my case.

As Alpha Insurance are situated in Denmark and they cannot speak about all the finer details of Pet Insure.ie quality of work in Ireland, I would like to state that, as far as I am concerned, Alpha Insurance acted in a unprofessional and unsatisfactory manner with my claims."

Selskabet har i brev af den 18/4 2012 til nævnet heroverfor bl.a. anført:

"We have introduced the evidence of the Data Board to demonstrate that recordings of no less than 59 telephone conversations have been provided to this claimant. There is no onus on our agent to record telephone conversations, but where they are recorded, naturally [klageren] can receive a copy of the recording and this has been provided to him.

We have acknowledged that one phone call was not recorded, but we totally disagree with his comment that this or any other 'missing' conversation would in any way change our manner of dealing with his claims.

We have already confirmed that pre-authorisation of these claims was never sought and was certainly not provided. Company policy is such that verbal pre-authorisation of treatment is never provided in any event. We have not entered into a verbal contract with [klageren], our contract with him is in writing and we and our agents have abided by the terms of our written contract in dealing with his claims. It is perhaps important to point out here that as both procedures had been completed by the time the first procedure was declined, it is impossible for pre-authorisation for the second operation to have been sought or obtained."

Klageren har i brev af den 3/5 2012 til nævnet heroverfor bl.a. bemærket:

"On Tuesday 18 October 2011, I received an email from Interaction (…) Advising me that …, IT manager has enclosed a explanation regarding the Missing call of 6 September 2011. I regret I received no letter of explanation, only A printout of which I don't understand. I once again mention, very unprofessional. I have spoken to employees at Interaction who assured me that all calls are recorded.

Alpha Insurance refuse to understand the Data Commissioner acknowledges the letter from Pet Insure that I received 59 recordings, no one is disputing this fact. however, the main calls are missing which I have mentioned before. Alpha refuses to admit that the missing calls would make a difference to their decision regarding my claims, maybe not to them, but it would be easier to prove to the Insurance Complaints Board, how this matter has been handled."

Selskabet har i brev af den 21/5 2012 til nævnet til dette bl.a. anført:

"**Petinsure did not provide the recordings of all calls with [klageren]**

[Klageren] claims that call recordings were denied to him. His complaint on this point to the Data Protection Commissioner was rejected. In his response, the Information Officer noted that [klageren] was provided with the recordings of 59 phone calls, all relating to these two claims. Of the three recordings which have not been provided, a detailed explanation for one is provided with this letter. The other two calls were made to a mobile phone where there was no commitment by Petinsure to record such calls.

It must also be noted here that the two claims that have been rejected relate to operations performed on 5th May and 9th June 2011 and the missing recording is from 6th September 2011, after the rejection of the claim by our agent Petinsure.

Petinsure did not provide [klageren] with an explanation for the non-recording of one call on 6th September 2012.
The explanation for the inadvertent non-recording of this call was sent to [klageren] on 18th October 2011. This explanation, which is attached to this letter as Attachment … and the CDR Report, Recording List and Recording Status reports referred to therein, was attached to a letter which was sent to [klageren] on that date. Our assumption is that the full attachment must have been mis-laid by [klageren], since he clearly received CDR Report which was sent with the letter.

The explanation clearly shows that the non-recording of the telephone call was an inadvertent error and we maintain that the contents of the telephone call would not alter our decision on the claims, which had already been rejected.

Petinsure is denying that the above numbered claims were the subject of a verbal pre-authorisation

Petinsure does not now and has never had a procedure by which claims could be pre-authorised verbally. The Petinsure procedure in relation to a request to pre-authorise claims is to reply to the policyholder in writing with confirmation that such requests are either granted or denied. In the case of a denial, an explanation for the reason for the denial is included in the letter. In the case of an acceptance, Petinsure generally includes some detail on the terms on which the pre-authorisation is granted.

A decision to grant a pre-authorisation is made on the same basis as the actual decision on the claim. Based on the clinical history of … which was supplied to Petinsure, it is not conceivable that Petinsure would have granted pre-authorisation for these two claims, due to the clear evidence in the clinical history that the condition of Luxating Patella was pre-existing the inception of the Petinsure policy.

We realise that this information is in direct contradiction to the letter provided by the vetinary surgeon in this matter, but we maintain that no pre-authorisation was requested or provided. In the letter dated 24^{1h} April 2012 written by … we note that he writes that he confirmed the diagnosis of … on 5th May 2011 and that he actually proceeded with the first surgery on that very same day. It is simply impossible for Petinsure to have provided any authorisation for the surgery that fast.

We must point out that there is, in addition, no record of any such telephone call or of any subsequent call approving the claims. If approval had been given at any time, the suggestion that the vetinary surgeon should submit an appeal letter would not have been necessary. We can only conclude that the vetinary surgeon is mistaken in his recollection of events."

Klageren har i brev af den 5/6 2012 til nævnet heroverfor bl.a. anført:

"Alpha Group claims there was clear evidence of a pre-existing condition of Luxating atella in our dog. I include 2 copies of our dogs clinical history, one is from … Hospital and the other is from … I request that Alpha Group please examine both reports in depth. They will find that only the clinical report from … mentions that she was presented with intermittent lameness and skipping. Nowhere in either report is there any mention of a history of this problem, or of a pre-existing condition. I implore them to please read both reports properly. They will find there is no 'clear evidence' of a pre-existing condition.

On the 5th of may, … proceeded with the surgery, after the examination, that is true. However, here I would like to point out, I phoned for authorisation on the 29th of April 2011, after the 1st examination by ... Please note, Petinsure had 4 working days to respond with a negative, they did not do so. Enclosed please find both clinical reports and again a copy of the explanatory letter from … There are no telephone recordings to substantiate our claim, as is the case with many other unrecorded calls.

I enclose a copy of a letter received from Alpha Group.

Point 3, Alpha Group states, in our claim, that … stated that their decision to deny our claim was 60% based on the … report is not true. In the next sentence, Alpha Group actually confirms that our claim was partly denied because of the clinical notes provided by ...

Relevance of this point is, Petinsure's expert on the matter of Luxating patella did not examine my dog. Examinations can not be done by telephone or letter, therefore the … report is being used to justify a refusal for payment.

Enclosed please find a copy of an email received from … He refers to a conversation with ... … states, they have become stricter in they're inforcement of 'non payment' for Luxating Patella. As … stated in one of the missing recordings, 'this was the easiest case for them to decide on'. My question is, was the deciding factor based on what … said?"

Selskabet har i brev af den 25/6 2012 til nævnet til dette bl.a. bemærket:

"[Klagerens] letter of 5th June 2012 does not address the decision to decline his claim, except for the letter which he included from … from the ... In this letter, which has never been provided to Petinsure before now, … attempts to explain that his Clinical Notes in relation to his examination of … on 29th April 2011 have a meaning totally in conflict with the normal meaning of the words used. Despite …'s letter, which should have been submitted by [klageren] to Petinsure in a timely manner, Petinsure continues to hold to the view that the text of the Clinical Notes which state 'dog was presented with intermittent lameness of the right hind leg and skipping' means that … suffered from intermittent lameness over a period of time and not just during the examination.

In any event, the reference to 'intermittent lameness' rules out a condition of Luxating Patella caused by a traumatic event. This being the case, … could only have suffered from a developmental condition. The letter of 26th August 2011 eliminates any possibility that … suffered from a development condition in April of 2011 which was not already present prior to the inception of the insurance policy.

[Klageren] makes two conflicting claims in his letter of 5th June 2012. He states that … and myself, 'maintain our position ... that pre-authorisation was given prior to the operations'.

Later in the same letter he status that 'Petinsure had four working days to respond with a negative, they did not do so'.

Our response to both claims is that Petinsure does not now have, nor has it ever had, a procedure by which claims could be pre-authorised verbally. The Petinsure procedure in relation to a request to pre-authorise claims is to reply to the policyholder in writing with confirmation that such requests are either granted or denied. In the case of a denial, an explanation for the reason for the denial is included in the letter. In the case of an

acceptance, Petinsure generally includes some detail on the terms on which the pre-authorisation is granted.

A decision to grant a pre-authorisation is made on the same basis as the actual decision on the claim. Based on the clinical history of … which was supplied to Petinsure, it is not conceivable that Petinsure would have granted pre-authorisation for the two claims due to the clear evidence in the clinical history that the condition of Luxating Patella was pre-existing the inception of the Petinsure policy."

Klageren har i brev af den 9/7 2012 til nævnet heroverfor bl.a. anført:

"Alpha can reject as much as they wish regarding all statements made by myself and two professional people. We fully understand that they are only protecting their interests. My only complaint about this is the unprofessional manner this matter has been handled.

(1) Denials by Alpha Insurance about missing calls.
(2) Missing correspondence not received.
(3) Correspondence from Pet Insure with no legible signatures.
(4) Documents cancelling the policy were sent to Pet Insure after a verbal cancellation to … and a written letter."

Af forsikringsbetingelserne fremgår bl.a.:

"**What We Will Pay**

- The cost of Vet Fees for Treatment Your pet has received during the Period of Insurance for an Event.

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:

Nævnet finder efter en samlet bedømmelse af det forelagte, at Alpha Insurance A/S har godtgjort, at det er overvejende sandsynligt, at hundens lidelse er forudbestående.

Nævnet finder, at klageren ikke har bevist, at selskabet har givet mundtligt tilsagn om dækning.

Derfor

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Henning Jønsson