**Ankenævnet for Forsikring**

908/13

Den 4. februar 2013 blev i sag nr. 82.766:

xxxxxxxxxx xxxxxx
xxx xxxxx xxxxxxxx xxxx
xxxxxxxxxx xxxxxxx
xxxxx
xxxxxx xxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

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Forsikringstageren har hesteforsikring i Alpha Insurance A/S. Hun klager over, at selskabet har afvist at yde forsikringsdækning for en anmeldt skade på den forsikrede hests ene forben, der skete den 24/6 2011.

I skadeanmeldelsesblanket af 15/8 2011 har klagerens dyrlæge oplyst den forsikrede hests diagnose til at være: "Tendonitis SFT (Super Flexor Tendon) LF following trauma".

Selskabet har afvist at yde forsikringsdækning med henvisning til, at den anmeldte skade er undtaget dækning som følge af en klausul i klagerens police. Af klagerens police af 20/8 2010 fremgår bl.a.:

"**Exclusions & Special Conditions**

Excluding all losses arising directly or indirectly from or attributable to the tendons and ligaments of both front legs and conditions associated with the lameness, sustained 22/09/09."

Det fremgår af sagen, at klausulen blev indsat i klagerens police efter en tidligere skade, der skete den 22/9 2009.

I brev af 6/7 2012 til klageren fra selskabet fremgår bl.a.:

> "The Schedule to your insurance policy for the relevant period when this injury occurred contains an exclusion covering 'all losses arising directly or indirectly from or attributable to the tendons and ligaments of both front legs and conditions associated with the lameness, sustained 22/09/09' and the treatment for which you are seeking coverage is tendonitis of the superficial flexor tendon and associated lameness of the left fore and this treatment is therefore excluded from coverage."

I en supplerende redegørelse af 2/8 2012 vedlagt klageskema har klageren bl.a. anført:

> "At renewal of the insurance in August 2010 the schedule of exclusions included a clause relating to injury of the two front legs. This clause is ambiguous and was challenged. I renewed the insurance on the basis of a verbal assurance by EIS that the exclusion applied only to further injury arising from the September 2009 injury and NOT to both front legs. This was not confirmed in writing.
>
> Alpha now refuse payment for the 2011 injury on the basis of total exclusion of both front legs and do not accept my interpretation that only injury arising from the 2009 injury is excluded.
>
> I contend that the Alpha interpretation is incorrect in relation to the grammar of the clause and they have demonstrated by subsequent correspondence, and by issue of revised terms for the current 2011-12 insurance, that the correct interpretation was for exclusion only of injury arising from the September 2009 injury.
>
> [Hesten] has now been treated successfully for the injury and is competing at a high level.
>
> **2 Required Action by Alpha**
>
> I want Alpha to recognise the validity of my claim and reimburse me for the legitimate expenses incurred as a result of the injury to [hesten] of 24th June 2011.
>
> **3 SUPPLEMENTARY STATEMENT**
>
> This supplementary statement addresses the issue of ambiguity of the exclusion clause in the 2010-11 Schedule of Insurance, as quoted below - ( see Attachment I to letter 18th June 2012 to Alpha Insurance.
>
> ***'Excluding all losses arising directly or indirectly from or attributable to the tendons and ligaments of both front legs and conditions associated with the lameness, sustained 22/09/2009'***
>
> This can be read as either-
>
> a general exclusion of both front legs (although the OSF had not been injured)
>
> **OR** an exclusion of conditions associated with the lameness, sustained 22/09/2009.

I could not accept the first interpretation as it is completely unjustified to exclude a sound limb without reason. I could however accept that any condition arising from the September 2009 lameness was reasonable excluded. I therefore pointed out the ambiguity in this clause by phone to EIS who advised that the second interpretation was correct. EIS have acknowledged that such an issue was raised but did not issue a clarification. The only written record of the telephone conversation is the **(unverified)** note by EIS (see Attachment …).

If the first interpretation was intentional on the part of Alpha then it was not necessary for them to make any reference to the September 2009 injury. The inclusion of that part of the clause supports my contention that only injury associated with the lameness sustained in 2009 was excluded by the clause.

I believe also that the correct grammatical reading of the clause is controlled by the part of the clause after the comma, again reinforcing the view that the second interpretation is the correct one.

Alpha Insurance use the total exclusion phrase as the basis for their final refusal of my claim in their letter dated 6 July 2012.

Following the earlier refusal by EIS to accept my claim I had sought clarification on their interpretation of the exclusion clause as contained in the renewal schedule for 2011-12, since that schedule showed exactly the same wording as the 2010-11 Schedule. The correspondence in attachments N, 0, T and EIS subsequent letter dated 20th June 2012 (copy attached here as attachment U) shows the confusion within the insurers which resulted in a clear statement that is compatible with my own interpretation of the original exclusion clause 2010-11. They have now chosen to use the word **tendonitis,** which is a global description."

Dertil har selskabet i brev af 22/8 2012 til nævnet bl.a. bemærket:

"We disagree completely with [klagerens] position. We find that the grammar of the exclusion clause, 'Excluding all losses arising directly or indirectly from or attributable to the tendons and ligaments of both front legs and conditions associated with the lameness, sustained 22/09/09', to be clear.

We find that this exclusion relates to both front legs of the horse and we find this position to have been maintained throughout our and our agent's dealing with this claim.

The correspondence between [klageren] and EIS also deals fully with the actual injury, categorised by the attending vet as 'tendonitis' (see Loss of Use form supplied by [klageren]) but by [klageren] as the tendon sheath. Please refer to the letters supplied and marked M and K.

We find the removal of the exclusion for part of the 2011/12 period, confirmed in the EIS letter from 20th June 2012 which [klageren] has also supplied to Ankenævnet for Forsikring, to be completely in keeping with the telephone notes recorded by EIS (Attachment Q to the complaint), which mention a possible review of the exclusion at renewal.

The later alteration to the exclusion by no means changes the fact that the injury from 27th June 2011 was excluded at the date of loss. We do not agree that any confusion has been demonstrated.

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**Conclusion**

As explained above and in our letter dated 6th July 2012, we consider the exclusion contained in [klagerens] Schedule to be perfectly clear and fair and consequently the injury to her horse from June 2011 is excluded from coverage.

Nævnet udtaler:
Således som sagen foreligger oplyst, finder nævnet, at klageren ikke har bevist, at selskabet – eller nogen selskabet må tåle identifikation med - gav tilsagn om, at klausulen alene vedrørte forhold associeret med skaden, der skete den 22/9 2009.

Det er endvidere nævnets opfattelse, at klausulen på klagerens police undtager dækning for både "losses arising directly or indirectly from or attributable to the tendons and ligaments of both front legs" og for "condititions associated with the lameness, sustained 22/09/09." Nævnet finder således, at klausulen ikke kan fortolkes som angivet af klageren.

På denne baggrund, og da nævnet finder, at den anmeldte skade er omfattet af den ovenfor gengivne klausul, har nævnet ikke mulighed for at pålægge selskabet at yde forsikringsdækning.

Som følge heraf

b e s t e m m e s :

_____

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

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Henning Jønsson