Ankenævnet for Forsikring

922/13

Den 9. september 2013 blev i sag nr. 83.979:

xxxxxxx xx xxxxx xxxxxx
xxxxxxxxx xxxx
xxxxxxxx
xxx xxxxxx
xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstagerne, der er bosiddende i Irland, har via PetInsure tegnet forsikring (CarePlus) for to hunde i Alpha Insurance A/S. De klager over, at selskabet har afvist at dække udgiften til dyrlægebehandling af en beskadiget tand. Endvidere klages der over, at selskabet har afgivet uoverensstemmende oplysninger om selvrisikoen.

Selskabet har afvist at dække dyrlægeudgiften med henvisning til, at det ikke findes godtgjort, at tandbehandlingen var nødvendiggjort af et ulykkestilfælde, hvilket er en dækningsbetingelse i henhold til forsikringsvilkårene. Det er desuden selskabets opfattelse, at de afgivne oplysninger om selvrisikoen er i overensstemmelse med forsikringsaftalen.

Nævnet har fra klagerne modtaget brev af 4/2 2013, hvoraf fremgår:

> "We have been a customer of Pet Insure for the last 3 years. We have however cancelled our Insurance policy with you as we are very upset with the service provided by Mr … who went so far as to call …[klageren] a liar.
>
> We have written to the Financial Ombudsman in Ireland who has directed that we write to you with our complaint. Please see attached paperwork setting out in full detail the chain of events with a letter from our Vet showing existence of cracked tooth for our dog '…'. We feel very much that on requesting a letter from our Vet and subsequently receiving same Mr …

moved the goal posts and put more obstacles in the way to prevent us receiving monies due. We rang your office in Cork on several occasions and not once would Mr … take our call. We find this a disgraceful faceless service and wish to advise strongly that this behavior does not do your company any favours, in our case you have lost a customer. We also wish to advise that we received a letter from your office dated 21/11/12 showing policy excess to be €90.00 and a second letter on 28/11/12 showing excess as €55.00; this does not make any sense to us.

We await your response to our issues and have been advised by the Irish Financial Ombudsman to keep them abreast of developments."

Vedlagt ovennævnte brev har nævnet bl.a. modtaget den klageformular, som klagerne oprindelig sendte til Financial Services Ombudsman i Irland. Af den udfyldte formular fremgår bl.a.:

"**Section C: Your complaint**

Please describe the complaint in **your own words** (*you may use bullet points, or a separate sheet if necessary).*

Paid Pet Insure for insurance on 2 dogs. Have been with them for last 3 year. Claimed for dental for 1 dog - see attached bill. € 334.16 Pet Insure requested letter from vet, as our dog in accident which caused problem … crack to tooth but did not need treatment at this time … 11/06/12 - needed 40 stitches to leg - Pet Insure now claiming not relevant details on notes - despite a letter of proof from vet - no details on original notes as no treatment at this time - hoping condition would not disimprove.

How do you want the Financial Service Provider to put things right?
If you are seeking payment of a sum of money please provide any relevant calculations.

€ 334.16 to be paid Re: Bill € 100. To cover phone calls … lost time following up something we are entitled to. Goal posts moved by Pet Insure to suit non payment of ligetimate claim.

Note also - claimint 2 different policy excess see documents attached."

Heroverfor har selskabet i brev af 28/2 2013 til nævnet anført:

"In replying to the complain raised, it seems to make best sense to address some of the comments made by the Policy Holder, [klageren], in relation to this matter. We will quote the relevant comments in red that we wish to address, and offer our response below.

Paragraph One

'We have however cancelled our Insurance Policy with you as we are very upset with the service provided by Mr. … who went so far as to call [klageren] a liar.

We would like to advise Ankenaevnet for Forsikring, that we are informed by our agent Petinsure.ie that at no point did anyone call [klageren] a liar. We do not know where this impression has been derived from, as it was not stated in any correspondence issued to the Policy Holder. The Policy Holder has already supplied copies of letters from 19th July 2012

and 25th September 2012, copies of the remainder of correspondence with the Policy Holder in connection with this claim are enclosed for your records.

Paragraph Two

'We feel very much that on requesting a letter from our Vet and subsequently received same, Mr … moved the goal posts and put more obstacles in the way to prevent us receiving monies due.'

In response to this statement, we would like to advise that the declinature reason for claim 7688 has not changed. As per the Policy Terms and Conditions, we do not cover any dental procedure unless it is remedial treatment of teeth following an accident. Please see the Terms and Conditions under Vet Fees, attached.

What we will not pay:

'The cost of dentistry and dental related procedures (including gums) except for the remedial treatment of teeth following an accident. A vet must have checked your Pet's teeth within 12 months prior to the onset of a claim.'

Claim 7688 was declined, since no evidence had been provided to our Claims Team that the dental treatment was due to a condition that resulted from an accident. In the absence of such evidence, the only logical adjudication that our Claims Team could make was to decline the claim, based on the extract from the terms and conditions, quoted above. The rationale for our decision to decline this claim was set out in a letter to the Policy Holder, dated 19 July 2012 (supplied with the complaint).

The claimant's pet was involved in an accident on 11 June 2012 and presented to … Veterinary Clinic on that date for treatment. The pet attended the same clinic for follow-up treatment on 13 June 2012. The Clinical Notes (attached) relating to both visits are comprehensive and very clear in relation to the pet's leg condition, which was treated, but there is absolutely no reference to the presence of any injuries to the pet's teeth or to any treatment administered to the pet's teeth.

Based on the Clinical Notes provided to our Claims Team, the only possible decision that we could make for Claim 7688 was to decline the claim, since the evidence presented demonstrated conclusively that the teeth-related condition was not caused following an accident. The Policy Holder was advised of his entitlement to appeal the decision to decline his claim and he exercised his right to do so.

The Policy Holder's case for an appeal was made entirely on the submission of a letter from … Veterinary Clinic dated 14th September 2012, enclosed with the complaint. In this letter, the Policy Holder's veterinary practice writes that the teeth-related condition resulted from the same accident which caused the leg condition which was treated on 11th and 13th June of the previous year. In this letter, the veterinary practice also states that the teeth-related condition was treated during both visits. However, there is no explanation for the absence of this information in the Clinical Notes for both visits.

In advising the Policy Holder of the decision to uphold the original decision to decline Claim 7688, Petinsure drew his attention to the direct conflict between the veterinary practice's Clinical Notes and the later letter. In his submission to Ankenaevnet for Forsikring, the Policy Holder has not provided any explanation for this direct and material conflict of evidence.

We find it surprising that [klageren] is advising on his FSOB Complaint Form Section C that his Pet did not receive treatment for teeth injuries on the 11th June 2011, when he has also produced the letter from his Vet advising that his Pet was treated for teeth injuries on the 11th June 2011 and subsequently treated over time for teeth injuries.

We also find it surprising that [klagerens] Vet omitted any reference on the original clinical record regarding treatment to the teeth on the 11th June 2011 and that he did not charge for any treatment administered. In addition, we have not been provided with any records of the conservative treatment that we have been advised took place after the 11th June 2011.

To summarise, in September of 2012, following the extraction of the dog's tooth in July of 2012, [klagerens] Vet wrote a letter advising that an injury to the dog's teeth occurred on the 11th June 2011 and was treated over time. However, [klageren] states on his complaint form FSOB Section C that his pet was not treated for teeth injuries on the 11th June 2011.

We have no evidence on the clinical notes provided, and presumably prepared contemporaneously with the actual visits to the veterinary clinic, that [klagerens hund] was treated for teeth injuries on the 11th June 2011, nor is there any mention that she was treated for any persistent problems since that date. Please see the attached Vetinary Record for verification on these points.

As Petinsure have already advised the Policy Holder in the appeal declinature letter dated 25th September 2012, in cases where we have been furnished with conflicting information to that which was supplied with the original claim, we revert to the documentation that was submitted with the original claim as the base of our decision. Based on that information and the contemporaneous clinical notes prepared by the Vetinary Clinic, we maintain that the declinature of this claim is in accordance with the terms and conditions of the insurance policy.

We have set out here, the many contradictions in the information provided to us by the Policy Holder in relation to Claim 7866.

In reality the crux of the matter is that either the damage to the dog's teeth was not connected to an accident, in which case it falls outside the coverage provided under this insurance policy, or, while the dog did damage its teeth in connection with the accident on 11th June 2011, this was not properly recorded by the Vet, resulting in an incomplete Clinical History.

On Page 8 of the insurance policy, under 'Claims Requirements/Special Conditions', the following is written: 'Please send us ...The full Clinical History of Your Pet. Failure to provide this will result in the declinature of Your claim'. In the definition section of the policy on Page 4, 'Clinical History' is defined as, 'A complete chronological record (computer print out or photocopy) of the original clinical notes as made by the Vet at the time of all consultations by any and all treating Vets.'

In order for the dental treatment to be properly connected to the accident, it would have had to be noted on the clinical notes 'made by the Vet at the time of consultation' and no letter from the Vet written some fifteen months later can rectify the original omission. If the clinical notes are incomplete, they do not constitute a 'full Clinical History' and the claim has been properly declined.

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Paragraph 3
'We also wish to advise that we received a letter from your office dated 21/11/2012 showing policy excess to be €90.00 and a second letter on the 28/11/2012 showing excess as €55.00; this does not make any sense to us'

The above is in relation to claims 8709 and 8252 which both relate to the condition of Incontinence. We do not see the relevance regarding this complaint for claim 7688 however, in the interest of clarity; we are naturally happy to explain the workings of the policy excess to the Policy Holder.

Claim 8252 was a claim for €35.00. The policy excess for the CarePlus Policy is €90.00 which is applicable per illness or injury, per policy year. As we cannot deduct the full €90.00 excess from a claim for €35.00, no payment is due, but the €35.00 is noted, leaving an excess of €55.00 to be carried forward to the next claim relating to the same illness. Claim 8709 was for €38.00 so the reduced excess of €55.00 was applied to this claim. Again no payment was due as the total amount claimed is still within the excess, but the excess carried forward would therefore be just €17.00 for any further claim."

Nævnet har fået forelagt de bilag, parterne har fremlagt, herunder journaludskrift og erklæring fra klagernes dyrlæge.

Af journaludskriften fra dyrlægen fremgår bl.a.:

"11/06/11 - Presented with laceration to cranial elbow received whilst out walking in coole. Sedsted end flushed. Stitched. Sent home in a plint.
On Mavoslaw and Carprodyl.

13/06/11- Re-presented. Leg was hot and swollen, tender to the touch. She had been licking but now they had the buster collar on. Discharge at top of the incision. The sides of incision lokked ok. Left splint off, told to keep confined. Changed antibiotic to 80mg Marbocyl (½ day), 100mg carprodyl (¼ am + pm).

02/07/2012

Remark
Admit for tooth removal (premolar right lower jaw) - referred to Afk for remocal. Ear infection at ear drum. SHO OEphacare 250 mg BID x 25 days. To come back in 3 weeks for check ears ? prolong antibiotic bt."

Af dyrlægeerklæring dateret 14/9 2012 fremgår:

"[Den forsikrede hund] presented at this clinic on the 11/06/2011 following an accident while walking in Coole Park.

She was treated for elbow and mouth/teeth injuries.

A cracked right lower premolar was treated conservatively but over time caused persistent problems.

She was referred to ... Veterinary Clinic for removal on 02/07/2012."

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Det fremgår af klagernes forsikringspolice, at forsikringen er tegnet med en årlig selvrisiko på 90 € ”for each condition”.

Af "PetInsure.ie Terms of Business" fremgår bl.a.:

"**Applicable Law:** We can both choose the law which will apply to the contract. Unless we agree otherwise with you Irish law will apply."

Af forsikringsbetingelserne - "Policy Terms and Conditions" - fremgår bl.a.:

"**Definitions**

...

• **Clinical History** - A complete chronological record (computer printout or photocopy)of the original clinical notes as made by the **Vet** at the time of all consultations by any and all treating **Vets.**

…

Vet Fees

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

…

• The cost of dentistry and dental related procedures (including gums) except for remedial **Treatment** of teeth following an accident. A **Vet** must have checked **Your Pet's** teeth within 12 months prior to the onset of a claim.

…

CLAIMS REQUIREMENTS/SPECIAL CONDITIONS

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. You must** fill in all policy holder sections of the claim form and ask **Your Vet** to fill in the **Treatment** section. **We** will not pay for the supply of this information.

Please note that if the claim form is not fully completed it will be returned.

Please send Us

• The claim form fully completed.
• The detailed invoices setting out the specific costs, charges and professional fees involved.
• In the case of claims for referral **Vets** please ensure that Petinsure has received a claim form from the original treating **Vet.**
• The full **Clinical History** of **Your Pet.** Failure to provide this will result in the declinature of **Your** claim."

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Nævnet udtaler:
Den fremlagte journaludskrift fra dyrlægen indeholder ikke nogen oplysninger om en tandskade i forbindelse med hændelsen den 11/6 2011. De oplysninger, som dyrlægen i øvrigt har angivet i sin erklæring af 14/9 2012, ses desuden ikke at harmonere med de oplysninger, som klagerne har anført i klagen til nævnet.

På det foreliggende grundlag finder nævnet det herefter ikke godtgjort, at tandbehandlingen var nødvendiggjort af et ulykkestilfælde. Henset til ordlyden af de gældende forsikringsbetingelser kan nævnet herefter ikke kritisere, at selskabet som sket har afvist at yde forsikringsdækning.

Det, som selskabet har anført vedrørende selvrisikoen, findes at være i overensstemmelse med den indgåede forsikringsaftale.

Som følge af det anførte, og idet det bemærkes, at sagen er afgjort efter dansk ret,

b e s t e m m e s :

Klagerne får ikke medhold.

Marianne Højgaard Pedersen
formand