Den 3. august 2016 blev i sag nr. 89192:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har rejseforsikring hos Bupa Denmark Services A/S. Han klager over selskabets erstatningsopgørelse for en kuffert, der blev beskadiget under en rejse til udlandet.

Selskabet har udbetalt i alt 630 euro for den beskadigede kuffert samt en jakke, der bortkom under transporten, og afviser at udbetale yderligere med henvisning til forsikringsbetingelsernes § 21, hvorefter forsikringen maksimalt dækker med et beløb på 350 euro pr. stykke bagage.

I klageskema af 19/2 2016 har klageren bl.a. anført:

> "ON 11 SEPTEMBER 2015 I TRAVELLED FROM WARSAW TO ISTANBUL AND CHECKED IN ONE PIECE OF LUGGAGE. UPON ARRIVAL IN ISTANBUL I NOTICED A SERIOUS DAMAGE TO MY SUITCASE (OVERALL DAMAGE PLUS THE SUITCASE BEING WIDE OPEN) AND A MISSING JACKET. I REPORTED THE CASE TO THE AIRLINE AND INSURANCE COMPANY, SINCE THE AIRLINE DID NOT RESPOND AT ALL, I CONTINUED WITH A CLAIM WITH THE INSURANCE COMPANY. THE MISSING JACKET WAS NEVER FOUND AND THE PRODUCER OF THE SUITCASE CONFIRMED THAT THE SCOPE OF DAMAGE WAS SO HUGE THAT IT WAS IMPOSSIBLE TO BE REPAIRED.
> MY POLICY STATED THE OVERALL LIABILITY LIMIT IN CASE OF LOSS OR DAMAGE OF THE LUGGAGE AT 2,500 EUROS. THE VALUE OF THE SUITCASE WAS REASONABLY HIGH (OVER 3,000 USD) AND THE PRICE OF THE JACKET WAS 2,100 PLN (ALLTOGETHER AMOUNTING TO APPROX. 3,000 EUROS).
> THE DECISION ISSUED BY THE INSURANCE COMPANY SAID THAT I WOULD BE COMPENSATED THE AMOUNT OF 700 EUROS, AS THERE IS A SINGLE ITEM LIMIT

IN THE AMOUNT OF 350 EUROS - THE COMPENSATION WAS BASED ON 2 ITEMS, 350 EUROS EACH.
I APPEALED TO THE INSURANCE COMPANY CLAIMING THAT THE SINGLE ITEM LIMIT, IN MY OPINION, DID NOT APPLY TO THE DAMAGE OF THE SUITCASE AND AS SUCH THE INSURANCE IN TOTAL AMOUNT OF 2,500 EUROS SHOULD BE PAID (AS THE DAMAGE OF THE SUITCASE SHOULD NOT BE LIMITED TO THE AMOUNT OF 350 EUROS).
ACCORDING TO THE REPLY I RECEIVED FROM THE INSURER THEY COULD NOT REPLY TO MY REQUEST IN A POSITIVE MANNER, AS ACCORDINT TO THEM, A 350 EUROS SINGLE ITEM LIMIT APPLIED ALSO TO THE DAMAGE OF THE SUITCASE.
GENERALLY THE INSURANCE COMPANY ACCEPTED THE CLAIM BOTH AS A LOST ITEM AND DAMAGED LUGGAGE. THE SUBJECT OF THE CLAIM IS ONLY WHETHER ACCORDING TO THE POLICY THE COMPENSATION AMOUNT MAY BE LIMITED USING THE SINGLE ITEM LIMIT SET FORTH IN THE POLICY.

2. What specifically is it you want the insurance company to do?

I REQUIRED THAT THE COMPENSATION AMOUNT BE CHANGED TO REFLECT THE OVERALL INDEMNITY LIMIT - 2,500 EUROS, WITHOUT APPLYING THE SINGLE ITEM LIMIT TO THE DAMAGED SUITCASE, AS IN MY OPINION, IT DOES NOT APPLY.

Section 21.1 of the policy reads: 'We will pay for your baggage and personal items up to the limits shown on the List of Benefits (including baggage, clothing, electronic equipment, jewellery, laptops, cameras, mobile phones or other items you bring or buy on your trip), if your belongings are (...) lost by a common carrier, ... or (...) damaged by a common carrier.

The List of Benefits, found at the beginning of the policy bears the following subtitles:
Baggage or personal effects - overall maximum cover EUR 2,500 (Theft of baggage, Loss or damage to checked in baggage, Loss or damage by fire or natural disaster)
- Delayed baggage
- Baggage and personal items EUR 350 single item limit.

It may be misleading why the 'single item limit' has not been added to the 'Baggage or personal effects' headline but appears two lines beneath (clearly divided by the 'delayed luggage' subsection).
Besides, the general provision forming the very first sentence of the 'List of Benefits' section says that: The List of Benefits below provides a **summary of the cover only** and the insurance limits per person.
As it provides the summary of the cover only, one must seek more detailed provisions of the cover in the specific sections of the policy.
Section 21.4 of the policy provides for more detailed and specific limits (being a detailed outcome of a general List of benefits).

As far as the loss/damage is concerned, Section 21.4 provides that the 350 Euro single item limit applies to **'Theft of baggage**, clothing, jewellery and other personal belongings (not including electronic devices listed below)' or **'Loss or damage of sporting equipment** by a common carrier or sporting equipment stolen while you are travelling'.
Section 21.4 clearly **does not mention that the EUR 350 single item limit also applies to damage of baggage**. The limit may be applied to damage but only as far as sporting equipment is concerned.

3. 89192

AS MY LUGGAGE WAS NOT A SPORTING EQIPMENT, THE DAMAGE OF THE LUGGAGE DOES NOT FALL UNDER THE LIST TO WHICH THE SINGLE ITEM LIMIT APPLIES. THEREFORE FOR THE DAMAGE OF THE LUGAGGE, THE OVERALL POLICY LIMIT APPLIES, WHICH IS 2,500 EUROS".

I brev af 30/3 2016 til nævnet har selskabet bl.a. bemærket:

"Den tegnede forsikring er en international rejseforsikring tegnet gennem World Nomads med dækning på rejser i hele verden undtagen i Klagers hjemland Polen. Forsikringen er tegnet den d. 10. september 2015 og trådte i kraft 11. september 2015 gældende til d.1 3. september 2015.

Tvisten omhandler dækning af Klagers beskadigede kuffert under en rejse til Tyrkiet.

Sagsfremstilling:

Selskabet modtog den 5. november 2015 klagers skade og udbetalte d. 2. december EUR 630, dvs. EUR 350 pr. stykke bagage fratrukket EUR 70 for selvrisiko. Kunden klagede 8. december over refusionen med henvisning til argumenterne indsendt med denne klage til Ankenævnet. Den 9. december 2016 sender Selskabet en anerkendelse af modtagelse af klagen og d. 5. februar afsendes det endelige svar, hvor Selskabet afviser Klagers yderligere krav på refusion.

Klageren mener, at den angivne maksimale sum pr. stykke bagage ikke omfatter dennes beskadigede kuffert, idet han finder det uklart beskrevet i dækningsoversigten samt i § 21 i betingelserne.

De overordnede dækninger af baggage er beskrevet i dækningsoversigten, der ser ud som nedenfor på World Nomads hjemmeside. Skillelinjer fremgår ikke af Klagers kopi.

Baggage and personal effects			
Baggage and personal effects - overall maximum cover	€1,700	€2,500	€70
- Theft of baggage			
- Loss or damage to checked in baggage			
- Loss or damage by fire or natural disaster			
- Delayed baggage	€300 (€100 / 24hrs up to 3 days)	€500 (€100 / 24hrs up to 5 days)	€70
- Baggage and personal items	€350 single item limit	€350 single item limit	€70
- Laptop computers, mobile and handheld electronic devices	€350 single item limit	€500 single item limit	€70

4. 89192

- Digital and video cameras	€350 single item limit	€500 single item limit	€70
- Digital storage devices	€35 single item limit	€70 single item limit	€70
- Cash	Not Included	€200	€70
- Loss or theft of passport, credit cards and travel documents	€350	€700	€70
- Theft of sporting equipment or damage to checked in sporting equipment	Not Included	€350	€70

Af oversigten fremgår det, at der er et overordnet maksimalt dækningsbeløb på EUR 2.500 i tilfælde af tyveri af baggage, mistet/beskadiget baggage, der er indregistreret, samt baggage der er mistet i tilfælde af brand eller naturkatastrofer. Herunder fremgår der forskellige begrænsninger bl.a., at man er dækket op til EUR 350 for hvert stykke baggage.

I vores ordliste i betingelserne lige efter dækningsoversigten (s. 15 af Klagers dokument til Ankenævnet) står der nogle eksempler på, hvad bagage kunne være, bl.a. kufferter.

> **Baggage: suitcases, clothing, toiletries, books, photo equipment, mobile phones and laptops, which you bring or buy on your trip.**

Selskabet mener derfor, at det burde stå klart på baggrund af ovenstående, at Klagers kuffert er omfattet af - Baggage and personal items i dækningsoversigten med EUR 350

I § 21. findes der en nærmere beskrivelse og uddybelse af flere af de i dækningsoversigten nævnte punkter. Det er desværre ikke muligt at få dækningsoversigten til at indeholde alle dele fra betingelserne. Klageren mener, at § 21.4 gør det tydeligt at den maksimale dækningssum ikke omfatter beskadiget bagage. Der er dog intet i § 21.4, der modstrider indholdet af dækningsoversigten, eller ville kunne betyde at disse ikke gælder for beskadiget bagage. Der nævnes i § 21.4 et beløb specifikt for sportsudstyr, men en kuffert vil normalt ikke være at definere som sportsudstyr. Sportsudstyr nævnes specifikt, fordi der ingen dækning er, hvis man har valgt Standard-dækningen og ikke Explorer.

Til gengæld nævnes beskadiget bagage allerede i § 21 .1 .f. Her gøres det tydeligt, at dækningen er i henhold til dækningsoversigten (se nedenfor § 21 .1 og 21 .1 .f).

SECTION 21 BAGGAGE BACK TO TOP ^

21.1 We will pay for **your baggage** and personal items up to the limits shown on the List of Benefits (including **baggage**, clothing, electronic equipment, jewellery, laptops, cameras, mobile phones or other items **you** bring or buy on **your** trip), if **your** belongings are:

a. lost or damaged by fire or other natural disaster if locked in **your** accommodation **abroad** or a locked safety box;
b. stolen from locked accommodation **abroad** or from a locked safety box or locker, where there are visible signs of forced entry;
c. stolen from **you** while **you** are carrying them, when the theft is observed;
d. stolen from a locked boot or locked and concealed baggage compartment separate from the passenger compartment of a locked motorised vehicle or boat. There must be visible signs of forced entry into the boat or vehicle (however, see Section 21.3b); or
e. lost by a **common carrier**, accommodation or baggage storage provider while registered or checked in as **baggage** (written evidence/property irregularity report (P.I.R.) must be submitted) (however, see Section 21.3a);
f. damaged by a **common carrier**, accommodation or baggage storage provider while registered or checked in as **baggage** (damage report/property irregularity report (P.I.R.) must be submitted) (however, see Section 21.3a).

Selskabet mener derfor ikke, at Klageren kan påberåbe sig at dækningsoversigten ikke gælder for dennes beskadigede kuffert på baggrund af §21.

Det er værd ydermere at påpege, at ingen andre kunder har beklaget sig over opsætningen af vores dækningsoversigt. Ikke desto mindre vil en klage som denne naturligvis altid vil få os til at overveje om det kan gøres endnu mere hensigtsmæssigt fremadrettet.

Konklusion:

Selskabet vurderer, at det bør være tydeligt for Klageren, at dennes kuffert også er omfattet af dækningsoversigtens begrænsninger og at skaden derfor er refunderet korrekt.

På baggrund af ovenstående fastholder Selskabet sin afvisning af dækning af yderligere kompensation i denne klagesag".

Heroverfor har klageren i mail af 31/5 2016 til nævnet bl.a. anført:

"I fully support my earlier claim and oppose the denial by the Insurer to pay the full insurance amount. I would like to clearly stress out that according to Section 21.4 of the Insurance conditions, the single item limit applies to 'Theft of baggage, clothing, jewellery and other personal belongings (not including electronic devices listed below)' or 'Loss or damage of sporting equipment by a common carrier or sporting equipment stolen while you are travelling'.

Section 21.4 clearly does not mention that the EUR 350 single item limit also applies to damage of baggage. The limit may be applied to damage but only as far as sporting equipment is concerned. And the list set forth in Section 21.4 may not be construed as not being exhaustive, as you claim. Quite on the contrary, it should be understood and construed exactly what derives from this Section.

The Insurer points out that the single limit (350 Euros) should derive from the general conditions of the Insurance. However, if this was the intention of the Insurer, section 21.4 should clearly add 'damage of baggage' just as it does mention the damage of sporting equipment.

Therefore, I claim that the damage of the luggage (suitcase) does not constitute one of these examples in which the single item limit applies, but the overall policy limit applies, being EUR 2,500".

Af forsikringsbetingelserne fremgår bl.a.:

LIST OF BENEFITS

BACK TO TOP ^

The List of Benefits below provides a summary of the cover only and the **insurance** limits per person. This List of Benefits forms part of the **Policy Conditions**.

Excess is the amount which **you** are required to pay for each **claim** arising from any one **event**.

Benefits and limits of Insurance	WorldNomads.com Standard Plan (EUR€)	WorldNomads.com Explorer Plan(EUR€)	Excess per person per event (EUR€)

…

6. 89192

Baggage and personal effects			
Baggage and personal effects - overall maximum cover	€1,700	€2,500	€70
- Theft of baggage			
- Loss or damage to checked in baggage			
- Loss or damage by fire or natural disaster			
- Delayed baggage	€300 (€100 / 24hrs up to 3 days)	€500 (€100 / 24hrs up to 5 days)	€70
- Baggage and personal items	€350 single item limit	€350 single item limit	€70
- Laptop computers, mobile and handheld electronic devices	€350 single item limit	€500 single item limit	€70
- Digital and video cameras	€350 single item limit	€500 single item limit	€70
- Digital storage devices	€35 single item limit	€70 single item limit	€70
- Cash	Not Included	€200	€70
- Loss or theft of passport, credit cards and travel documents	€350	€700	€70
- Theft of sporting equipment or damage to checked in sporting equipment	Not Included	€350	€70
Personal Liability			

…

Glossary

Words found in bold throughout the policy document have special meanings. These form part of the **Policy Conditions:**

…

Baggage: suitcases, clothing, toiletries, books, photo equipment, mobile phones and laptops, which you bring or buy on your trip.

…

Common Carrier: a transport company that is licensed to carry passengers on land, water or in the air for a fee, not including taxis or rental vehicle companies.

…

SECTION 21 BAGGAGE

21.1: **We** will pay for **your baggage** and personal items up to the limits shown on the List of Benefits (including **baggage**, clothing, electronic equipment, jewellery, laptops, cameras, mobile phones or other items **you** bring or buy on your trip), if your belongings are:

a. lost or damaged by fire or other natural disaster if locked in your accommodation **abroad** or a locked safety box;
b. stolen from locked accommodation abroad or from a locked safety box or locker, where there are visible signs of forced entry;
c. stolen from you while you are carrying them, when the theft is observed;

d. stolen from a locked boot or locked and concealed baggage compartment separate from the passenger compartment of a locked motorised vehicle or boat. There must be visible signs of forced entry into the boat or vehicle (however, see Section 21.3b); or
e. lost by a common carrier, accommodation or baggage storage provider while registered or checked in as baggage (written evidence/property irregularity report (P.I.R.) must be submitted) (however, see Section 21.3a);
f. damaged by a common carrier, accommodation or baggage storage provider while registered or checked in as baggage (damage report/property irregularity report (P.I.R.) must be submitted) (however, see Section 21.3a).

…

21.3 **We** will not cover or pay for:

a. damage to, loss or theft of jewellery, computers, cameras, hand-held and mobile devices or other electronic equipment and any high value specified items if checked in with a **common carrier** in **your baggage**;
b. theft of computers, cameras, hand-held and mobile devices or other electronic equipment and any high value specified items from a boat or motor vehicle;
c. minor damage to the exterior of the **baggage** (e.g. scratches, stains, dents);
d. forgotten, lost or mislaid items;
e. stolen items, where they are **not effectively supervised** or where **you** do not take reasonable care for the safety, security or condition of **your** belongings;
f. theft from any non-lockable or visible part of a passenger compartment of a locked boat or motor vehicle;
g. theft of sporting equipment which is not effectively supervised in a public place, where they are in public view, even if locked to an immovable object;
h. theft from a motor vehicle, boat, trailer, accommodation, home or safety box that bear no visible signs of forced entry;
i. damage to **baggage** caused by food, bottles, glass, etc. packed in **your baggage**;
j. loss in connection with abuse of credit card or traveller's cheques;
k. loss of or damage to **baggage** freighted or sent separately; l.
l. **indirect loss**;
m. **simple theft**, where **you** do not observe the theft occurring;
n. eye glasses or sunglasses, contact lenses, dentures or hearing aids;
o. items of any nature for commercial use, including travellers' samples, dealers' stock and collections;
p. mechanical or electrical breakdown or malfunction;
q. bicycles and bicycle accessories;
r. breakage or damage to sporting equipment over three years old;
s. any loss or damage where **you** can claim from any other source,
t. cash, unless **you** have purchased the WorldNomads.com Explorer Plan (according to Section 21.1 and List of Benefits),
u. sporting equipment, unless **you** have purchased the WorldNomads.com Explorer Plan (according to Section 21.1 and List of Benefits)

8. 89192

21.4: The following limits apply as shown on the List of Benefits:

Cause/Item	WorldNomads.com Standard Plan (EUR€)	WorldNomads.com Explorer Plan (EUR€)
Loss or theft of passport and travel documents	€350	€700
Theft of baggage, clothing, jewellery and other personal belongings (not including electronic devices listed below)	€350 single item limit	€350 single item limit
Theft of Laptop Computers, Mobile and other hand held electronic devices	€350 single item limit	€500 single item limit
Theft of Digital & Video cameras	€350 single item limit	€500 single item limit
Theft of digital storage devices such as external hard drives, USB sticks, CDs, DVDs and memory cards. (limited to the cost of raw materials)	€35 single item limit	€70 single item limit
Theft of cash	Not covered	€200
Loss or damage of sporting equipment by a common carrier or sporting equipment stolen while you are travelling. Does not cover sporting equipment damaged while in use.	Not covered	€350

Nævnet udtaler:

Klageren kræver, at selskabet betaler forsikringens dækningsmaksimum på 2500 euro for en beskadiget kuffert og en forsvunden jakke. Han har til støtte herfor anført, at den angivne maksimale sum pr. stykke bagage ikke omfatter hans skade, idet han finder, at begrænsningen er uklart beskrevet i dækningsoversigten samt i § 21 i forsikringsbetingelserne.

Klageren har over for nævnet anført, at kufferten har kostet over 3.000 US Dollars.

Selskabet har udbetalt i alt 630 euro, svarende til 350 euro pr. stykke bagage fratrukket klagerens selvrisiko på 70 euro, for den beskadigede kuffert og jakken, og afviser at udbetale yderligere under henvisning til, at der gælder en "single item limit", hvorefter forsikringen maksimalt dækker med et beløb på 350 euro pr. stykke bagage.

Af forsikringsbetingelserne for rejseforsikring fremgår af det indledende afsnit, s. 4-6, en såkaldt "List of benefits", der beskriver de overordnede dækninger, herunder hvilke skadetyper, de forskellige forsikringstyper dækker og med hvilke beløb. Det er anført, at

oversigten "provides a summary of the cover only and the insurance limits per person", og at oversigten er en del af vilkårene. Af dækningsoversigten fremgår blandt andet, at der for bagage og personlige ejendele gælder et dækningsmaksimum på 2.500 euro, og at forsikringen dækker ved tyveri, tab, beskadigelse og forsinkelse af bagagen. Der gælder endvidere en maksimum sum pr. stykke bagage på 350 euro.

I henhold til forsikringsbetingelsernes § 21, dækker forsikringen bagage og personlige ejendele med det maksimum, der følger af dækningsoversigten på s. 4-6. I forsikringsbetingelsernes punkt 21.4 står det anført, at der for så vidt angår tyveri af bagage gælder en maksimal sum på 350 euro pr. stykke bagage. Samme maksimum gør sig gældende for tab eller beskadigelse af sportsudstyr.

Efter en gennemgang af sagen, herunder de ovenfor citerede forsikringsbetingelser, finder nævnet, at dækningsoversigten samt de tilhørende forsikringsbetingelser kunne være formuleret klarere og mere præcist. Da det af dækningsoversigten, som er en del af aftalevilkårene, fremgår, at der, for så vidt angår bagage og andre personlige ejendele, gælder en maksimumsum pr. stykke bagage på 350 euro, og da det ikke står anført, at dette dækningsmaksimum ikke gælder tilfælde, hvor bagagen beskadiges, finder nævnet dog efter en samlet vurdering ikke anledning til at kritisere selskabets afgørelse.

Det, som klageren i øvrigt har anført, kan ikke føre til andet resultat.

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Carsten Sennels