Ankenævnet for Forsikring

Den 1. februar 2017 blev i sag nr. 89701:

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 sundhedsforsikring i Bupa Denmark Services A/S. Han klager over selskabets afvisning af at yde forsikringsdækning for tand- og mundbehandling.

Klageren, der er bosat i Sydamerika anmeldte, at han den 8/8 2015 faldt og slog hovedet ned i sit natbord. Han har fremsat krav om betaling af i alt $52.600,78 i behandlingsudgifter. Selskabet har udbetalt $201,64 men har afvist yderligere dækning med henvisning til, at klagerens øvrige krav ikke opfylder betingelserne for udbetaling.

Klageren har i klageskemaet underskrevet den 27/7 2016 blandt andet anført:

> "1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed
>
> **On August 8th, around 10:30 p.m , I was walking in the hallway towards my bed, and I tripped on a rug and piece of a blanket that was in the floor near my bed, and slid and fell head on; hitting myself hard on my night table, right on my upper lip and bone,damaging both plus 6 upper frontal teeth. I bled terribly but managed to stop the bleeding. For security reasons and in order to get to the right Medical Doctor, I waited until next the day, where I was taken to the Hospital to a plastic surgeon,to sew the wound,and to avoid infections.On august 10th, the next day, I went to my dentist [læge], who sent me to make a panoramic x-rays of my mouth. It was a very serious accident,that damaged the bone and three teeth and also broke three other teeth.I began a process of going to a root canal specialist, [læge 2] and the specialist of implants, [læge 3],and then finally went back to [læge] to get the crowns and bridges necessary to have my teeth reconstructed. This process took 6-7 months,and my insurance broker … and Bupa were informed from the beginning and continuously about all Medical procedures.**

2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?

I want them to fulfill their commitment by reimbursing the amount of money I paid to the Doctors for my treatment caused by a serious accident that could have been much worse, whose consequences included having to restore six (6) teeth. The invoices are as follows:
1- Claim # … paid(invoices attached) +x-rays panoramic(2) + Photo
2- Claim # …-Sep 21,2015- [læge 2] amount [udenlandsk valuta] 870,000 $ 4,352.57 Not Paid
3- Claim # …-Sep 24,2015- [læge 3] amount [udenlandsk valuta] 1,824,000 $ 9,120 Not paid
4- Claim # …-Oct. 10,2015 [læge] amount [udenlandsk valuta] 7,723,500 $ 38,617.50 Not Paid
Total [udenlandsk valuta] 10,417,500 $ At (1 $= 200 [udenlandsk valuta]) total $ 52,090.07"

Selskabet har i brev af 6/10 2016 til nævnet heroverfor bl.a. bemærket:

"[Klageren] (hereinafter the 'complainant') obtained a Bupa (hereinafter called the Company) Insurance Limited Premier 1 Gold Plan (please see Plan document attached; hereinafter the 'Policy') on April 1, 1998. The reason for this complaint stems from the complainant's accident on August 8, 2015. The complainant claims that he had serious dental injuries as the result of a slip and fall accident in his home. The complainant was not subsequently hospitalized due to such accident.

Pursuant to the Policy's terms and conditions, the complainant would have coverage for '**Acute emergency dental treatment due to serious accident up to 30 days after discharge from hospital.**' *(Premier 1 Gold Policy guide attached hereto.)*

The complainant's policy further defines a **serious accident** as 'any unforeseen trauma occurring without the insured's intention, which implies a sudden external cause and violent impact on the body, resulting in demonstrable bodily injury that **requires immediate in-patient hospitalization overnight within the next few hours after the occurrence of the severe injury to avoid loss of life or physical integrity.** Severe injury shall be determined to exist upon agreement by both the treating physician and the company's medical consultant, after review of the triage notes, emergency room and hospital admission medical records.' *(Premier 1 Gold Policy guide attached hereto.)*

Moreover, the complainant's policy defines **serious injury** as 'A serious injury **requires immediate inpatient hospitalization for twenty-four (24) hours or more within the next few hours after the occurrence of the serious injury to avoid loss of life or physical integrity.** It shall be determined to exist upon agreement by both the treating physician and the company's medical consultants after review of the triage notes and the emergency room and hospital admission medical records.' *(Premier 1 Gold Policy guide attached hereto.)*

Based on the Policy's terms and conditions, the Company covered all of the customer's dental claims thirty days after his accident (despite there not being hospitalization) in good faith. However, there are two main reasons for Bupa's denials of the complainant's claims. First, it is clear that the complainant's injury does not meet the requirements of a 'serious

accident' or 'serious injury' as defined by his policy. The complainant did not require ***immediate hospitalization for treatment.*** Second, any claims that were submitted ***after the 30 day period*** from the accident are not covered based on the policy's terms and conditions. Therefore, due to the circumstances of the complainant's accident and treatment, he did not meet the criteria for insurance coverage of subsequent dental treatment.

Based on the denials for subsequent dental treatment, the complainant requested a re-evaluation by the Bupa Appeals Committee of his denied claims. All of the customer's medical records and documents were presented to the Appeals Committee on March 15, 2016 for review. *(A copy of the Appeals Committee EXB packet is attached hereto).*

The complainant presented claims totaling $52,600.78 USD. Pursuant to the policy terms and conditions, the Company paid approximately $201.64 USD to the customer. Those payments were for claims involving the following providers: [læge 4] and [læge 5] Those paid claim numbers, date of submittal and amounts are as follows:

- … - Dos: 8/8/2015 - $151.12 – [læge 4] -Minor surgery upper lip
- … - Dos: 8/10/2015 - $16.51 – [læge 5] -panoramic Xrays
- … - Dos: 8/17/2015 - $10.00 – [læge 4] -Plastic and reconstructive surgeon - Maxilofacial surgeon - removal of stitches
- … - Dos: 9/21/2015 - $24.01 – [læge 5] -Periapical completo digital

Starting forty four (44) days after the accident, the complainant continued to send additional claims totaling approximately USD $52,399.14. Those claims were all denied and include the following claim numbers, date of submittal, amounts and providers as follows:

- 44 days after the accident --…- Dos: 09/21/2015 - $4,352.37 – [læge 2] dentist specialized in endodontics.
- 47 days after the accident -- … - Dos: 09/24/2015 - $9,209.92 – [læge 3] - Periodontist, implant specialist
- 63 days after accident -- … -Dos: 10/10/2015 - $38,836.85 – [læge] - Implant specialist, dentist

The decision was to uphold the denial of dental treatment coverage past the 30 days of the accident. The decision was based on Policy terms and conditions clearly stating that emergency dental treatment is covered when there is a (1) 'serious accident' and (2) up to 30 days after discharge from hospital. According to policy condition a serious accident requires immediate in-patient hospitalization to avoid loss of life or physical integrity. It is clear that the complainant's accident did not meet the criteria for dental coverage on the claims submitted.

The Company believes that the Company's conduct in connection with the complainant's complaint cannot be criticized."

Klageren har i mail af 11/10 2016 til nævnet heroverfor bl.a. anført:

"They consider not a serious accident,as I was not Hospitalized.
If I had gone to a Hospital at 10:30 p.m. on Saturday August 8,2015,most probably I will have been Hospitalized,but the risk in [by] at that hour is greater than the benefit.
In the next 12 hours I did go to a Hospital,to the right Surgeon but although the Dr. suggested that I could stay one day,

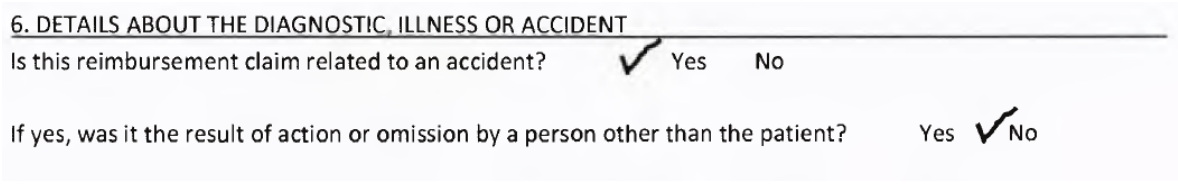
I refused as it was basically a enormous trauma in the mouthy upper bone where they had to replace 6 tooth's.
Same argument for not a serious Injury,I do not agree,it was a tremendous serious accident,where I was very lucky of the results.
The most demagogue argument of BUPA is claims where submitted AFTER 30 day's.
When I went to my Dentist [læge],I had the X-ray(Panoramic) of my mouth,August 10,2015.
At that time he told me,I so I did report to …,my insurance broker,and also sent,what Bupa actually paid immediately.
The Dental treatment took 8 months,root canal,implants,bridges,temporary crowns,definitively crowns,I tried to sent as soon as possible the cost and payment,but you can't rush this type of treatment.
Last but not least;
BUPA could have told me,right away,with the first Invoices,what they are telling now,and not let pass 8 months, asking many time for invoices,prove of payment,even in Christmas's time,to again have all invoices one more time?
Definitely a serious Company became not serious."

Selskabet har i brev af 31/10 2016 til nævnet til dette bl.a. bemærket:

"The complainant is mistaken in his interpretation of Bupa's response letter to his complaint. His accident may have been severe, but it did not rise to the level of 'serious accident' or 'serious injury' as defined by his Bupa Insurance Limited Premier 1 Gold Plan (hereinafter the 'Policy'). The claims submitted by the complainant are governed by the terms of the policy. Dental treatment would only be covered due to a serious accident up to 30 days after discharge from hospital. Again, the complainant's accident did not result in hospitalization nor did the claims he disputes occur within the 30 day period required by the policy. His accident did not meet the contractual criteria for the claims to be covered for such treatment.

Additionally, the complainant admits that this treatment took an extended period of time which may in fact be justified. However, the fact remain that the contractual obligation of Bupa is to pay dental claims up to 30 days only. Any further treatment beyond such time is the sole obligation of the customer. The complainant knew the terms of this contract (the 'Policy') and agreed to the terms. Bupa is not denying the fact that the treatment may have been necessary, but rather that Bupa is not obligated to pay pursuant to the terms of the policy. The complainant's policy is not a dental policy. Bupa has always been transparent with the complainant, and the policy clearly states the requirements to obtain dental coverage under the Policy. The Policy specifically limits any dental treatment to a specific set of circumstances, as explained in our previous letter, to which the complainant did not meet."

Af skadesanmeldelse underskrevet den 10/6 2015 fremgår bl.a.:


6. DETAILS ABOUT THE DIAGNOSTIC, ILLNESS OR ACCIDENT

Is this reimbursement claim related to an accident? ✓ Yes No

If yes, was it the result of action or omission by a person other than the patient? Yes ✓ No

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Place where the accident occurred Car ✓ Home Work Other

Diagnostic, nature of illness or type of accident: *Fall from own feet, hitting the bedside table*

Date of first symptom or accident: *8/8/15*

Date of first medical consultation related to the diagnostic: *8/8/15*

Have you ever had similar symptoms? Yes ✓ No When?

7. IN CASE OF ADMITTION TO HOSPITAL

Name of hospital

Admitted From Until

...

9. DETAILS OF TREATMENT ADMINISTERED

Date of service	Name of provider	Description of service (hand-written)	Currency	Charge
09/21/2015	LÆGE 2	professional fees	B&F	870,000.00
09/21/2015	LÆGE 5	Rx	B&F	4,800.00
08/17/2015	BUTIK	Medicine	USD	43.19

Total	B&F	870,000.00
Amount paid by policyholder	USD	43.19
Amount paid by insurance company		
Balance to be paid to medical provider		

I udskrifter fra læger og tandlæger hedder det bl.a.:

"I, [læge 3], have received from [klageren] the amount of one million eight hundred twenty four thousand [udenlandsk valuta] by concept of dental treatment which consisted in placing the three osseointegrated implants for accident of [klageren] on August 8th, 2015.

I note that the invoice of my medical fees is fully paid.

Sincerely,
…
Dr. …
Oral Diagnosis – Periodontics – implants
…
[patient i 70'erne] suffered an accident earlier today, when he fell from his feet directly to the floor, resulting in a complex injury on his upper lip.

The patient underwent surgery on the same day, resulting in a reconstruction of the upper lip and flap reposition procedure.

This medical report was written by request of the patient on August 8th 2015.

Sincerely,
…
Dr. …

Reconstructive and Maxillofacial Surgery
…
August 17th, 2015
…
The patient [klageren], attended to my office on August 17th, 2015, presenting trauma in upper maxillary more specifically at the level of the upper incisors, clinically coronal fracture at level 11, 12 and 21 with lateral displacement of the 21 was observed. As plan of treatment was decided the extraction of the 11, 12 and 21 and immediate placement of implants.

Characteristics of the implants

Brand	MIS SEVEN
11	3.75X13mm
12	3.3x13mm
21	3.75x13mm

…
Dr. …
Oral Diagnosis – Periodontics – Implants
…
September 10th 2015
…
Evaluation:

The patient was referred by [læge] for endodontic evaluation of anterosuperior area, as a result of trauma reported by the patient as a result of an accident occurred on August 8th 2015. The clinical, radiographic and tomographic evaluations show damage to the support structures as consequence of endodontic condition in right maxillary canine, left maxillary lateral incisor and left maxillary canine.

Diagnostic means:

Digital Panoramic Radiograph.
Digital Volumetric Tomography of anterosuperior area. Clinical evaluation.

Diagnostic:

Type Ill Pulpar Pathology in right maxillary canine, left maxillary lateral incisor and left maxillary canine.

Procedures applied:

- Cleaning, conformation and sealing of the radicular conduct systems of right maxillary canine, left maxillary lateral incisor and left maxillary canine.

Professional Fees:

- 870,000.00 … . (Eight hundred seventy thousand [udenlandsk valuta]).

…

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October 10, 2015

TO WHOM IT MAY CONCERN

Hereby I stated that [klageren], I.D. …, was attended because of an emergency in this Center on Monday, August 10th, 2015; presenting a strong trauma in the anterior region of the face with multiple tooth fractures; as well as a full dislocation of the upper left central incisor.

At the time of the consultation, the upper lip had already been sutured and are only extracted several fragments of the fractured teeth (right lateral incisor and right central incisor), the dislocated upper left central incisor is repositioned considering a very unfavorable prognosis for the same due to the great loss of the periodontal ligament and tissues of support.

An Analgesic and anti-inflammatory medications are prescribed to [klageren] to control the pain and edema. He was referred to [læge 2] (Specialist in Endodontics) and to [læge 3] (Oral Implantologist) for the respective treatments of root canal and dental implants so as to restore the missing teeth.

Once the root canal treatments were completed and the fractured roots were extracted the patient was indicated to complete the following restorative -prosthetic treatment:

1. A six (6) units front upper fixed Prosthesis …… [udenlandsk valuta] 1,335,000

2. Final crowns on dental implants of three units in the teeth 12, 11 and 22 … [udenlandsk valuta] 4,161,000

3. Individual crowns on natural teeth 13, 22 and 23 …….. [udenlandsk valuta] 2,227,500

Total Professional Fees

Provisional and Definitive Restorative Treatment …… [udenlandsk valuta] 7,723,500

…

I have received from KLAGEREN

The amount of Seven Millions seven hundred twenty three thousand five hundred

for dental treatment performed to: KLAGEREN

…

October 10, 2015

Selskabet ses ikke at have givet et udtrykkeligt dækningstilsagn. I et bilag benævnt "explanation om benefits" og dateret den 11/9 2015 er der i skemaform angivet, hvad selskabet har erstattet og med hvilke beløb. Der er ikke erstattet tandlægeudgifter og samlet viser opgørelsen, at der er erstattet 200,14 USD.

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Af forsikringsbetingelserne fremgår bl.a.:

TABLE OF BENEFITS

Maximum coverage per person, per policy year	US$1.5 million

…

Acute emergency dental treatment due to serious accident up to 30 days after discharge from hospital. In case of doubt, the decision will be left with the company's dental consultant.	100%

…

Out-patient benefits and limitations	
Doctors, specialists and/or psychiatrists, max. 30 consultations per policy year	100% coverage in Latin America (excl. Mexico) 80% coverage in the rest of the world
Surgical intervention	
Laboratory test, x-ray, endoscopy (gastroscopy, colonoscopy, cystoscopy), electrocardiogram, echocardiography, biopsy and ultrasound MRI, CAT and PET scans	
Therapy, including consultations and treatment (Physiotherapy, chiropractic treatment, osteopathy, acupuncture, homeopathic treatment, occupational therapy and medically prescribed short term speech therapy in connection with an illness or injury). Max. 60 consultations per policy year.	
Prescribed dietetic guidance by an authorized dietician, max. 4 consultations per policy year.	
Health check-up, all-inclusive, max. per policy year.	US$300

…

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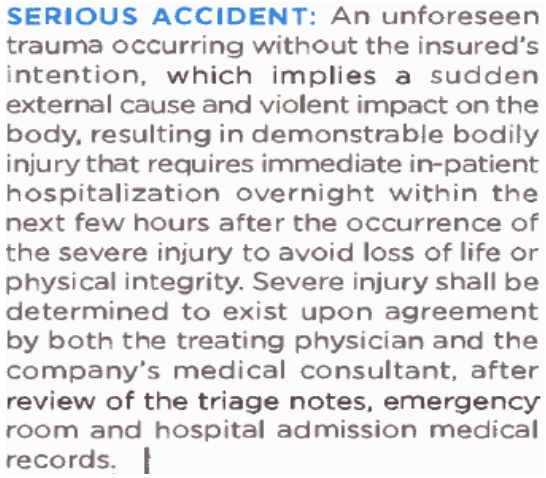
SERIOUS ACCIDENT: An unforeseen trauma occurring without the insured's intention, which implies a sudden external cause and violent impact on the body, resulting in demonstrable bodily injury that requires immediate in-patient hospitalization overnight within the next few hours after the occurrence of the severe injury to avoid loss of life or physical integrity. Severe injury shall be determined to exist upon agreement by both the treating physician and the company's medical consultant, after review of the triage notes, emergency room and hospital admission medical records.

Nævnet udtaler:

Klageren, der er bosat i Sydamerika, anmeldte den 6/10 2015, at han den 8/8 2015 faldt og slog hovedet mod sit sengebord. Selskabet har udbetalt $201,64 for blandt andet læbekirurgisk behandling, plastikkirurgisk behandling og røntgenundersøgelse. Han har fremsat et krav på yderligere $52.399,14 for tand- og mundbehandling, herunder blandt andet udskiftning af seks tænder. Selskabet har imidlertid afvist kravet med henvisning til, at klageren ikke opfylder betingelserne for dækning, i henhold til hvilke, der ydes dækning for "Acute emergency dental treatment due to serious accident up to 30 days after discharge from hospital. In case of doubt, the decision will be left with the company's dental consultant."

Ved "Serious Accident" forstås endvidere "An unforeseen trauma occurring without the insured's intention, which implies a sudden external cause and violent impact on the body, resulting in demonstrable bodily injury that requires immediate in-patient hospitalization overnight within the next few hours after the occurrence of the severe injury to avoid loss of life or physical integrity."

"Severe injury" skal desuden "be determined to exist upon agreement by both the treating physician and the company's medical consultant, after review of the triage notes, emergency room and hospital admission medical records."

Selskabet har blandt andet henvist til, at klageren ikke har været udsat for en "serious accident", der har påført ham "serious injury", at der ikke var behov for hospitalsindlæggelse, og at dele af kravet blev fremsat mere end 30 dage efter uheldet.

Klageren har heroverfor blandt andet anført, at han efter uheldet blødte voldsomt, men at det lykkedes ham at standse blødningen selv. Han har endvidere anført, at det er forbundet med stor fare at færdes i hans hjemby kl. 22:30, hvor uheldet indtraf, at han inden for 12 timer opsøgte et hospital, men at han ikke ønskede indlæggelse, og at tandbehandlingen i alt varede 8 måneder. Han har endvidere bemærket, at selskabet først efter 8 måneder gjorde ham opmærksom på, at tandbehandlingen ikke var dækket af forsikringen, selv om han løbende havde orienteret selskabet om behandlingen.

Nævnet lægger til grund, at behandlingsudgifterne som selskabet har betalt til klageren, der alle vedrører anden behandling end tandskader, er omfattet af forsikringens dækningsomfang. Nævnet finder på denne baggrund, at selskabets anerkendelse af at dække disse udgifter ikke i sig selv har givet klageren en berettiget forventning om, at selskabet også ville dække udgifterne forbundet med tandbehandlingen, da reguleringen af hvilke tandbehandlingsudgifter, der dækkes af forsikringen, fremgår af en særskilt dækningsbestemmelse.

Efter en gennemgang af sagen finder nævnet, at klageren ikke er berettiget til yderligere dækning. Nævnet har blandt andet lagt vægt på, at klageren ikke har været hospitalsindlagt, hvilket er et krav for at opnå dækning for tandskadebehandlingsudgifter. Nævnet bemærker endvidere, at hovedparten af de krav, som han har fremsat, vedrører behandling, der er udført mere end 30 dage efter faldtraumet den 8/8 2015 og derfor tillige af undtaget dækning, da forsikringen alene dækker tandskadebehandlingsudgifter, der er udført inden 30 dage efter et "serious accident".

Det forhold, at klageren ikke opsøgte hospital umiddelbart efter hændelsen på grund af faren ved udendørs færdsel på det pågældende tidspunkt og det forhold, at selskabet først på et sent tidspunkt orienterede klageren om, at det ikke dækkede tandbehand-

lingsudgifterne, finder nævnet på det foreliggende grundlag ikke kan føre til andet resultat

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Peter Thønnings