Den 1. februar 2017 blev i sag nr. 89802:

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mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Nu afdøde forsikringstager havde sundhedsforsikring i Bupa Denmark Services A/S. Forsikringstagerens datter klager over selskabets refusionsopgørelser vedrørende helbredsudgifter afholdt af forsikringstageren.

Forsikringstageren var bosat i Venezuela og modtog i 2015 en række lægebehandlinger, som han blev faktureret for i venezuelanske bolívar (VEF). Selskabet har anerkendt at yde forsikringsdækning for de fakturaer, som forsikringstageren har indsendt, og selskabet har refunderet udgifterne i amerikanske dollars (USD).

Tvisten angår valutaomregningen i selskabets refusionsopgørelser for to fakturaer af henholdsvis 13/12 2015 og 16/12 2015. Klageren er utilfreds med, at selskabet uden varsel er overgået til at anvende SIMADI-kurs i stedet for som ved tidligere refusionsopgørelser at anvende SICAD-kurs. Hun har anført, at selskabet derved kun har refunderet mindre end 5 % af udgifterne vedrørende disse to fakturaer.

Klageren har i klageskemaet modtaget af nævnet den 2/9 2016 bl.a. anført:

> **"1. Statement of claim, a brief outline of the case. …**
> My father, …, bough and insurance with Bupa the end of 2011. The annual payment of around $8,000 Us and the coverege was for one million dollar. My father got sick and sadly he pass away. At the moment of his illness he was leaving in Venezuela. For more then 4 years we did not have any issue with Bupa. In 4 years with Bupa only last year we received some reimbursement, wich where less than 5% of the total coverage. But when my

father illness where getting worst and his entries to the hospital where more frecuents, Bupa decided to change with out previous notifications the rules for the exchange rates. Venezuela at the moment when my father got sick had 3 different exchange rates:

1) Tipo de Cambio Oficial. BsF. 6.30. Is the oficial rate for the exchange of National currency against foreign Currencies (Dollar) which is applicable for priorities types, including health, medicines and food.

2) SICAD exchange is 12.00Bs which covers exchange rate for certain strategic areas of the economy and for quotas Traveler and Electronic Quotas for operations with foreign suppliers, resulting auction foreign currency, under the guidance of the Central Bank of Venezuela (BCV).

3) Tipo de Cambio $ Dolar SIMADI. Is for all other transactions and which in less then one year has change extremly from 174 Bs per dollar in february 2015 to 270 Bs per dolla at the end of march 2015.

2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?
We would like to be pay for the proper amount of money that should be around $50,000 Us. We have two claims one dated 13/12/15 and another 16/12/15. Attached I'm sending you the proof of all previous payments under SICAD rate that was 12.00 Bs per Us Dollar. The last reimbursment we received was with that SICAD rate and was 27/11/15. Within 2 weeks of difference they decides to change the rate to SIMADI, with no previous notice and they pay us 3 month later. You can see on their statement for 13/12/16, that the converted amount showed in $48,648.15 Us and the adjustment for the reinbursement is $2,867.29. Also the statement for 16/12/15 the converted amount is $7,600.87 and they paid 448.32.

Is not fair from the insurance company to change the rules to their benefit when they want and at the exchange rate that they deciced it works for them with out previous notification. We as a client do not have a voice. My family and me appreciate your help."

I brev af 22/9 2016 fra selskabet til nævnet hedder det bl.a.:

"The Complainant has been insured with the Company under an individual health insurance, the International Health and Hospital Plan which was concluded between the Company and Complainant in the period from 01.06.2012 to 17.12.2015 (see Annex 1 – Brochure /policy conditions).

The Complainant has complained, because the Company has changed the exchange rate from Sicad to Simadi in the two last reimbursement statements processed on respectively 03.03.2016 and 31.03.2016. The two reimbursement statements were included as annexes in the Complainant's original complaint.

These two last reimbursements under the above mentioned policy were paid out using the official exchange, Simadi, published by the Central Bank of Venezuela.

Currency exchange legislation in Venezuela was amended in February 2015 to create a new currency named Simadi. Bupa's product terms do not entitle customers to reimbursement at any specific exchange rate, the Company is legally entitled to use the Si-

madi exchange rate. The Simadi exchange rate can thus be used for operations inherent in the insurance industry.

For all of the Complainant's reimbursements during 2015 – except the last two above mentioned reimbursements, the Sicad exchange rate has been used. The Company could have chosen to introduce the exchange rate Simadi at a much earlier stage as seven other reimbursements were reimbursed to a value of USD 42.527,56 using the Sicad exchange rate after the introduction of the Simadi exchange rate.

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

Nævnets sekretariat har kontaktet Det Danske Generalkonsulat i Venezuela med henblik på at afklare valutakursomstændighederne i Venezuela.

Af mail af 25/11 2016 fra nævnets sekretariat til Det Danske Generalkonsulat i Venezuela fremgår bl.a.:

"1) Hvilken kurs (SIMADI, SICAD eller andet?) kan man forvente konkret at få i en bank i Venezuela, hvis man skal veksle USD til VEF, f.eks. 5.000 USD?
2) Gør det nogen forskel, om man har USD i kontanter eller ved bankoverførsel fra en konto?
3) Gør det nogen forskel, hvis man må oplyse til banken, at pengene stammer fra en forsikringsudbetaling vedrørende en hospitalsregning?"

Af mail af 29/11 2016 fra Det Danske Generalkonsulat i Venezuela til nævnets sekretariat fremgår bl.a.:

"Nedenstående kurser har jeg kopieret fra en af vore situations rapporter, derfor er teksten på engelsk.

1. CENCOEX (preferential exchange rate) for priority sectors like food and health: December 31st, 2015 - VEB 6.30 per USD
2. SICAD (controlled auctions) for other selected sectors: December 31st, 2015 - VEB 13.50 per USD
3. SIMADI ('free floating' exchange rate): December 31st, 2015 - VEB 198.70 per USD

Disse var de 3 officielle kurser ved udgangen af December måned 2015. Hverken CENCOEX eller SICAD systemerne var tilgængelige for den almindelige befolkning, og jeg mener derfor, at SIMADI er den korrekte kurs at anvende, men inden jeg givet et endeligt svar vil jeg lige checke bekendtgørelsen, der var gyldig på det tidspunkt."

Af mail af 1/12 2016 fra Det Danske Generalkonsulat i Venezuela til nævnets sekretariat fremgår bl.a.:

"Det er desværre ikke lykkedes at finde en bekendtgørelse, hvor det fremgår hvilken kurs, der specifikt bør anvendes i jeres sag. Imidlertid er eksperter på området alle enige om, at det altid vil være den 'højeste officielle kurs på tidspunktet', dvs. SIMADI som ved udgangen af december måned 2015 lå på VEB 198.70 pr. USD.

SIMADI er den kurs der blev anvendt til omregning af forbrug med eller kontante forskud på internationale kreditkort samt veksling af fremmed valuta for turister."

Klageren har i mail af 5/12 2016 til nævnet bl.a. bemærket:

"As the Venezuela's Consulate told you, they can't tell you officially what rate to use. Bupa was using for many years the Sicad rate as well as most of the international insurance who works with Venezuela. I'm assuming they used that previous rate with government consultations.

Is not rational to have an international insurance that cost approximately 8000.00 Us dollars a year if the cost of the medical bill will be less then that amount. It would be much cheaper for us to have an insurance in Venezuela with local currency. My father was a Bupa client for approximately 4 years and only last year we had bills reimbursement (complains).

We were not playing with my father's health. As I say before, sadly my father passed away. We would prefer not to used and insurance never.

Bupa change the rate when the thought that my father will have more frequent visits to the hospital and when the bill was much higher also. In a gap of less then a month of a previous complain, they decide to change the rate.

It can't be that an insurance change their rates with no previous notification and just when it was more convenient for them. If I'm not wrong I sent you all the previous complains with bupa.

I hope you will take in consideration the rates Bupa used before and how they decides to tell us about the change two months later then the last complaint. (They told us they were studying the case). I know that insurance always will find the way for not to pay or pay less but this is very dishonest from them."

I brev af 15/12 2016 fra selskabet til nævnet hedder det bl.a.:

"The purpose of an insurance is to reimburse the cost that the insured has had, and this complaint concerns the insured's last two claims for his hospital admittance. Bupa has reimbursed the costs, and this has been done to the exchange rate that was valid at the time of the reimbursement."

5. 89802

Klageren har i mail af 19/12 2016 til nævnet bl.a. anført:

> "I know Venezuela's exchange rates is very complicated and not clear. SIMADI exits since February 2015, before SIMADI it was something called SICAD II, witch was also the higher rate in the market at that time.
>
> BUPA always calculated their rate with SICAD I, (Actually named simple SICAD).
>
> My point with BUPA is why they did not sent a notification with their decision to change rates. And why they decided to change the rate exactly when the bill was for a high amount. and when my father stared to have more frequents visits to the hospital.
>
> As I told you before, there is a period of approximately 3 weeks between two claims. One with SICAD rate and the last one with SIMADI. (This last one took them 3 month to pay, because they were analyzing the claim). We paid for an insurance hoping that we were not going to need it. And it was a very expensive one, $8,000.00 per year. The crazy changes in Venezuela about their exchange rate are not our fault. And if the insurance company decided to change the way they were calculating their rates, the should at least sent a notification to their clients, so we could decided if were convenient or not for us to stay with them.
>
> The way BUPA handle our last two claims were not fair. Is not about money anymore, it is about how an insurances will find always the way for them no to lose."

Et uddrag af sagens øvrige bilag gengives i det følgende.

Af brev af 1/12 2015 fra selskabet til forsikringstageren fremgår bl.a.:

> "We acknowledge receipt of the medical bill, which we have now reimbursed according to the valid reimbursement rates.
>
> The reimbursed amount of USD 10.765,58 has been transferred to your bank account as per your request and will be at your disposal within a few days. Enclosed please find the reimbursement statement.
>
> …

Page 1 of 1

Reimbursement Statement
Health Insurance

[redacted]

Cover: Hospital Plan
Claim type: Hospital
Service: Med. treatment,lab. and x-rays

Date	Units/Days	Invoice amount	Exchange rate	Converted amount	Maximum	Applied to Deductible	Co-Insurance	Reim-bursement
17.11.2015		VEF 133.575,56	USD 8,0595450	USD 10.765,58		USD 0,00	USD 0,00	USD 10.765,58
Total USD				**10.765,58**		**0,00**	**0,00**	**10.765,58**

[redacted]: The deductible for the period 01.06.2015 - 01.06.2016 is now USD 0,00.

Amount: USD 10.765,58
Exchange rate: 100,0000000
Date of settlement: 01.12.2015

"

Klageren har fremlagt en række tilsvarende "Reimbursement Statements" vedrørende helbredsregninger af 18-24/3 2015, 18/9 2015, 28/10 2015 og 27/11 2015, hvoraf det fremgår, at selskabet har ydet refusioner til en varierende kurs på ca. 11,5-13 VEF pr. USD. Refusionerne udgjorde hver især mellem 3.000 og 10.000 USD.

Vedrørende refusionen for den ene omtvistede helbredsregning af 13/12 2015 har selskabet i brev af 3/3 2016 til forsikringstageren bl.a. anført:

> "First of all we apologize for the delay in processing your medical bill regarding your hospitalization at … during the period 05.12.15 - 13.12.15. The bill has now been reimbursed according to the valid reimbursement rates.
>
> Please note that Bupa Global uses the Simadi exchange rate when reimbursing medical expenses in Venezuelan Bolívar.
>
> The reimbursed amount of USD 2.867,29 Has been transferred to your bank account as per your request and will be at your disposal within a few days. Enclosed please find the reimbursement statement.
> …

Page 1 of 1

Reimbursement Statement
Health Insurance

[redacted]

Cover: Hospital Plan
Claim type: Hospital
Service: Med. treatment,lab. and x-rays

Date	Units/Days	Invoice amount	Exchange rate	Converted amount	Maximum	Applied to Deductible	Co-Insurance	Reim-bursement
13.12.2015		VEF 570.304,33	USD 8,5302083	USD 48.648,15	Adjusted	USD 0,00	USD 0,00	USD 2.867,29
Total USD				**48.648,15**		**0,00**	**0,00**	**2.867,29**

[redacted] The deductible for the period 01.06.2015 - 01.06.2016 is now USD 0,00.

Amount: USD 2.867,29
Exchange rate: 100,0000000
Date of settlement: 03.03.2016

"

Af den anden omtvistede "Reimbursement Statement" af 31/3 2016 fremgår, at forsikringstagerens helbredsregning af 16/12 2015 på 89.105,31 VEF er blevet refunderet af selskabet med 448,22 USD.

7. 89802

Klageren har i mail af 8/3 2016 til selskabet bl.a. anført:

> "I'm writing to you to kindly ask for your reconsideration of the insurance reimbursment.
>
> With all do respect to you, our family feels that the reimbursement is not fair to say the least, and honestly we feel cheated and insulted. We don't understand why after more then 4 years with recognizing a payment with SICAD rates, now suddenly the trates and rules have changed without prior notice.
>
> Any hospitalization in USA or Europe would have cost 10-folds what you are suggesting. Although hospitalization was in Venezuela, there are different rates for different types of coverage. My father's insurance coverage is for 1 million dollar. In four years with your company, only the last year we received some reimbursement. Those reimbursements were less than 5% of the total coverage.
>
> We have credit card debts to pay for hospitalization. If we proceed through the hospital, the official exchange rate is 6.30Bs. Our friends and families have insurances with other companies and they do not apply SIMADI rates.
>
> We are not agree with your adjustment and we don't not accept it."

I brev af 2/5 2016 fra selskabet til klageren hedder det bl.a.:

> "We can inform you that any payments or reimbursements for medical services in Venezuela in Venezuelan Bolívars will be paid in US dollars using the exchange rate determined by Bupa Insurance Limited based on the types of official exchange rates published by the Central Bank of Venezuela and/or any other competent and free public information entity in force for the date of the respective medical services.
>
> The purpose of your International private medical insurance policy is to reimburse the actual cost of medical expenses. The SIMADI exchange rate used in our reimbursement of 03.03.16 best reflects these actual costs.
>
> In conclusion, we therefore maintain our decision to use the SIMADI exchange rate in connection with our reimbursements of 03.03.2016 and 05.04.16."

Af policen fremgår bl.a.:

> **"Product:** IHHP USD [International Health and Hospital Plan]
> …
> **Current premium** USD 8.021
> **Payment terms** Annual"

Forsikringsbetingelserne indeholder følgende bestemmelse:

> **"Art. 6**
> **What is covered by the insurance?**
> 6.1: The *insurance* shall cover the medical expenses incurred by the *insured* in accordance with the cover chosen and the applicable List of Reimbursements.
> …"

8. 89802

Nævnet udtaler:

Nu afdøde forsikringstager var bosat i Venezuela og modtog i 2015 en række lægebehandlinger i Venezuela. Nævnet lægger på baggrund af de fremlagte "Reimbursement Statements" til grund, at forsikringstageren blev faktureret og betalte for lægebehandlingerne i venezuelanske bolívar (VEF). Selskabet har anerkendt at yde forsikringsdækning for de fakturaer, som forsikringstageren har indsendt, og selskabet har refunderet udgifterne i amerikanske dollars (USD).

Tvisten angår valutaomregningen i selskabets refusionsopgørelser for to fakturaer af 13/12 2015 og 16/12 2015 på henholdsvis 570.304,33 VEF og 89.105,31 VEF. Klageren er utilfreds med, at selskabet uden varsel er overgået til at anvende SIMADI-kurs (ca. 200 VEF pr. USD på daværende tidspunkt) i stedet for – som ved tidligere refusionsopgørelser – at anvende SICAD-kurs (ca. 12 VEF pr. USD på daværende tidspunkt).

Forsikringen dækker i henhold til artikel 6 i forsikringsbetingelserne refusion af helbredsudgifter, som forsikringstageren har afholdt. Klageren og selskabet er enige om, at refusioner skal ske i USD, og forsikringsbetingelserne indeholder ikke bestemmelser om, hvilken valutakurs der i den forbindelse skal anvendes.

Klageren har oplyst, at der i Venezuela i den omhandlede periode fandtes tre lovfastsatte valutakurser. Den officielle fastkurs samt SICAD-kurs, som anvendtes ved visse prioriterede valutaomvekslinger, og SIMADI-kurs, som anvendtes ved andre transaktioner.

Selskabet har oplyst, at SIMADI-kurs er nyindført ved lov i februar 2015, og at den aktuelle kurs løbende bekendtgøres af Central Bank of Venezuela. Selskabet har anført, at SIMADI-kurs bedst reflekterer forsikringstagerens reelle udgifter, og at selskabet egentlig havde været berettiget til at overgå til SIMADI-kurs allerede på et tidligere tidspunkt end sket.

Det Danske Generalkonsulat har i en mail af 1/12 2016 til nævnet på nævnets sekretariats forespørgsel bl.a. anført, at "eksperter på området" alle er enige om, at der i sagen bør anvendes den højeste officielle kurs på tidspunktet, dvs. SIMADI, og at SIMADI er den kurs, der blev anvendt til omregning af forbrug med eller kontante forskud på internationale kreditkort samt veksling af valuta for turister.

Nævnet finder, at selskabet ikke er forpligtet til at udrede større erstatning, end hvad der kræves for at dække forsikringstagerens konkrete og reelle helbredsudgifter, jf. herved også forsikringsaftalelovens § 39, stk. 1.

Efter en gennemgang af sagen finder nævnet, at klageren ikke har bevist, at de refusioner beregnet ved SIMADI-kurs, som selskabet har ydet vedrørende fakturaer af 13/12 2015 og 16/12 2015, er utilstrækkelige til dække de helbredsudgifter, som forsikringstageren konkret og reelt har haft. Nævnet finder det ikke godtgjort, at de af selskabet udbetalte USD-beløb ikke ved omveksling til VEF ville kunne dække de behandlingsudgifter, som forsikringstageren er blevet faktureret. Dette støttes også af de oplysninger om valutasituationen i Venezuela, som nævnets sekretariat har indhentet fra Det Danske Generalkonsulat i Venezuela.

Uanset at selskabet tidligere har refunderet forsikringstagerens helbredsudgifter under anvendelse af SICAD-kurs, og at selskabet ikke har varslet over for forsikringstageren, at man overgår til at anvende SIMADI-kurs, finder nævnet, at forsikringstageren ikke kan have en berettiget forventning om at modtage refusioner, der overstiger, hvad der reelt kræves til dækning for de konkrete helbredsudgifter, der er afholdt. Selskabet er derfor ikke bundet til også at skulle anvende SICAD-kurs ved efterfølgende refusioner.

Nævnet kan herefter ikke pålægge selskabet at udbetale yderligere erstatning. Det, som klageren i øvrigt har anført, kan ikke føre til andet resultat.

10. 89802

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Peter Thønnings