Ankenævnet for Forsikring

Den 15. marts 2017 blev i sag nr. 90153:

xxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

Forsikringstageren har forsikring mod "Accident & Sickness (Disability)" hos Alpha Insurance A/S. Han klager over selskabets afslag på at yde dækning for "disability" efter en operation i venstre hæl.

Selskabet har i sit afslag henvist til, at forsikringen ikke dækker krav, der har forbindelse til forudbestående lidelser.

I klagerens skadeanmeldelse af 15/10 2016 er det bl.a. anført:

Date disability commenced: 4/10/16

...

Reason for disability? HEEL OPERATION

...

SECTION 2A – DISABILITY - To be completed by Yourself

What is the nature of your illness/injury? Tendon detachment + debridement + Haglunds deformity resection + Reattachment

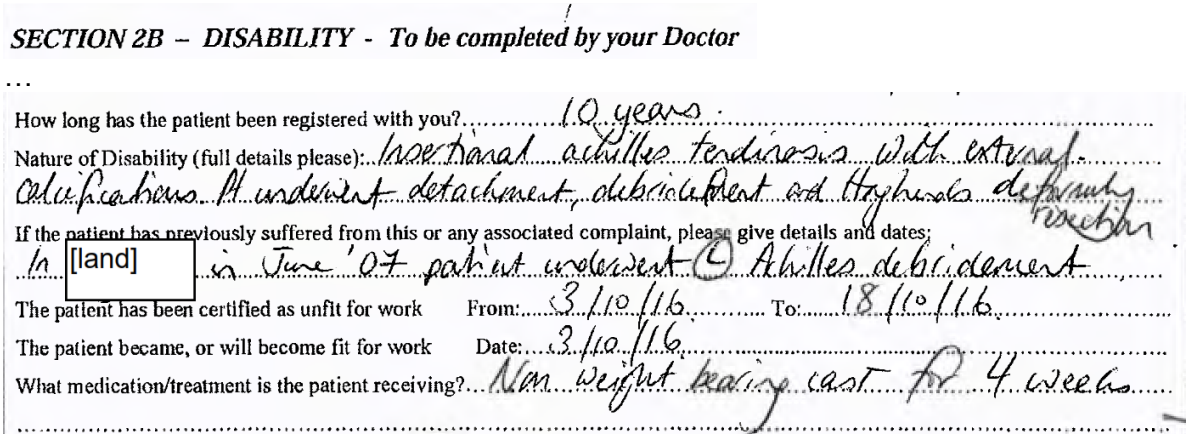
On what date did symptoms first appear? 8 years ago and recent heavy unbearable pain

Have you ever suffered from this complaint before? YES/NO (if Yes, state when): 8 years ago

If an injury, state the date of accident and describe how it occurred:

...

2. 90153



SECTION 2B – DISABILITY - To be completed by your Doctor

...

How long has the patient been registered with you? 10 years.

Nature of Disability (full details please): Insertional achilles tendinosis with external calcifications. Pt underwent detachment, debridement and Haghunds deformity resection

If the patient has previously suffered from this or any associated complaint, please give details and dates:

In [land] in June '07 patient underwent (L) Achilles debridement

The patient has been certified as unfit for work From: 3/10/16 To: 18/10/16

The patient became, or will become fit for work Date: 3/10/16

What medication/treatment is the patient receiving? Non weight bearing cast for 4 weeks

Selskabet afviste klagerens krav i brev af 3/11 2016 hvoraf det bl.a. fremgår:

> "Thank you for your claim form and supporting documents submitted in respect of the above referenced claim.
>
> We have now received further information submitted by your Doctor and having looked carefully at all the information provided, we regretfully cannot accept liability for your recent claim as your condition is pre-existing to the start date.
>
> You submitted your claim in regards to your left Achillies Tendon detachment and debridement however, having looked at your medical notes, you have suffered from on-going problems with your left Achillies Tendon since 26th August 2015. A referral was made for this condition on 11th September 2015 and the Consultant Orthopaedic Surgeon confirmed on the clinic date of 20th January 2016 that you had had recurrent painful swelling around the posterior aspect of the heel of your left foot. As your policy commenced on the 21St January 2016, you have therefore been suffering from symptoms relating to your current condition prior to the start date of your policy."

I klagerens brev af 9/11 2016 til selskabet hedder det bl.a.:

> "As i have received a letter dated 3/11/2016 rejecting my claim and couple more emails regarding the same issue that i have tried to explain several times, I do not feel satisfied with the services provided from your company and will contact the Financial Ombudsman to resolve the issue as it seems that you do not understand my point of view and the nature of the condition I was previously before surgery and the decision of the surgery. Several times i have tried to explain the situation and you didn't take notice of the facts. My injury was diagnosed and treated 10 years ago in [land] but the results were not very satisfying that's why i have seek further help in [andet land] the Spring of 2008 and have MRI Scan (provided to you already) and Specialist appointment at the time, but because it was to recent the intervention on the ankle they have declined any treatment and we have been looking alternative methods of help such as different shoes,low stress activities etc. so as you can see this is not a recent injury that you have tried to established in your letters and emails regarding your T&C. I have tried to explain to you that the issue with this problem is that the pain goes on and off all the time as it's getting inflamed and as soon as it's better has stops, so it's difficult to actually keep the track of it as it doesn't occur every moment, that's why i didn't mentioned it when i took the policy as i never knew how bad it was until we spoke with the surgeon beginning of May/2016 and consider that is the only option, would like to say that when we spoke initially on the 20/01/2016 the consideration

was to see how will i get it on and to see if the things will not improve in the spring, so there is no surgery involved, also he have offered the surgery but I haven't accept it as you can see from the letter. Then beginning of May 2016 i visit him again, the operation was confirmed as the condition didn't really improved. So regardless of what you have trying to establish in your letters and emails about my condition, I'm the one who knows everything about it and how i feel at the time of taking this policy and would like to make clear once again that i did take the policy due to that I'm working in the Construction Industry as a [håndværker], not for anything else and recent condition have forced me to make a claim which you rejecting for no reason. I'm awaiting your official consideration and hope you will see the facts more clearly, If not I have no other option but will have to report it to the Financial Ombudsman."

I selskabets brev af 10/11 2016 til klageren er det bl.a. anført:

"In your complaint letter of, 9th November 2016, you write 'I never knew how bad it was until we spoke with the surgeon beginning of May 2016'. What you clearly do not understand is that it is not important when you came to know how bad your condition was.

Under the terms and conditions of your policy, you are not covered for any claim for accident or sickness that results from any condition, which came about as a result of a Pre-Existing Condition (but this condition will not apply to a Pre-Existing Condition if you have been free from its symptoms and have not consulted any Doctor nor received any treatment for or in connection with it, for a two year period prior to your claim).

Your treatment was in relation to a problem with your ankle that you had consulted a doctor for within 2 years of the inception of your policy. In fact you policy start date is 21st January 2016 and from your medical records we can see that you had a consultation one day prior to taking out the policy. Clearly you are asking the Insurers to cover a pre-existing condition which is excluded.

…

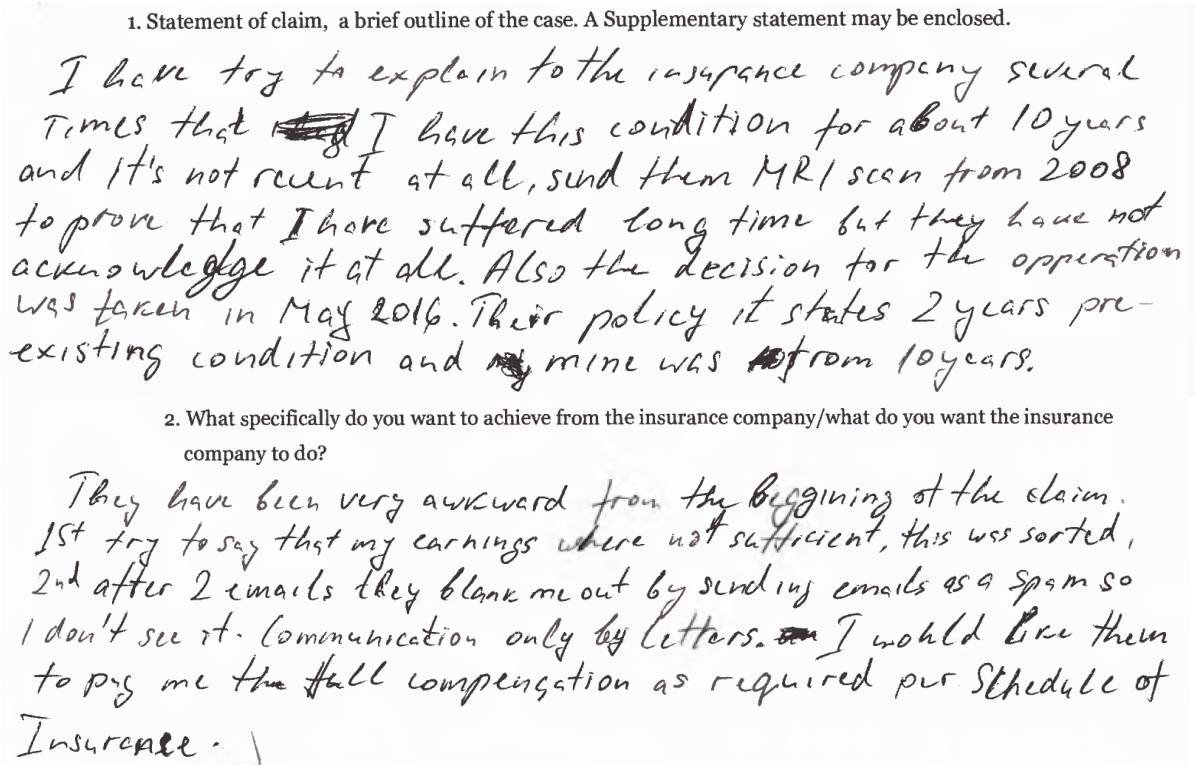
As mentioned previously we note that on 20th January 2016, you had a Consultation with Mr …, Consultant Orthopaedic Surgeon and specialist in foot and ankle surgery, following a referral by your GP in September 2015. Both dates are within the 2 years exclusion period prior to your claim.

At the Consultation on 20th January 2016, Mr … diagnosed a calcification posterior to your Archilles tendon and a sharp Haglund deformity and offered you surgery. You confirmed that you wished to consider surgery in the summer and that you would discuss it later in the year. (Please find copy letter enclosed).

You underwent surgery on 3rd October 2016 and are now claiming for post operative recovery.

I am therefore satisfied that your recent surgery relates to a Pre-Existing Condition as per the policy wording and no coverage can be provided to you for this."

I klageskema af 21/11 2016 til nævnet hedder det bl.a.:



1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.

I have try to explain to the insurance company several times that I have this condition for about 10 years and it's not recent at all, send them MRI scan from 2008 to prove that I have suffered long time but they have not acknowledge it at all. Also the decision for the operation was taken in May 2016. Their policy it states 2 years pre-existing condition and mine was from 10 years.

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

They have been very awkward from the biggining of the claim. 1st try to say that my earnings where not sufficient, this was sorted, 2nd after 2 emails they blank me out by sending emails as a spam so I don't see it. Communication only by letters. I would like them to pay me the full compensation as required per Schedule of Insurance.

I selskabets brev af 20/12 2016 til nævnet hedder det bl.a.:

> "Having reviewed the file together with the medical information provided, we conclude that Trent has assessed the claim correctly based on the policy wording that was issued at the policy inception date.
>
> We appreciate that [klageren] has a long standing history of problems with his ankle, however, regardless of when the problem first began, it is deemed to be Pre-Existing to the policy start date, as it is a condition that [klageren] has suffered from symptoms of and has consulted a General Practitioner and Consultant in relation to within the 12 month period prior to the policy start date. In fact the policy start date is 21st January 2016 and from the medical records we can see that [klageren] had a medical consultation only one day prior to taking out the policy and the condition is therefore Pre-Existing.
>
> A Pre-Existing Condition means any medical Condition for which you have suffered from symptoms, received treatment, medication or advice (including regular or routine examinations or consultations to monitor the Condition) from a Doctor or Consultant in the 12 month period immediately prior to the certificate Start Date.
>
> Furthermore, [klageren] has not been symptom free for a two year period prior to his claim. This is also a requirement when you claim for coverage under the policy. An insurance policy will not cover a condition that you suffer from prior to the policy start date. It is not important whether this is a condition that has just appeared or if it is a condition that appeared several years before inception of the policy.

Based on the above circumstances we therefore uphold our decision to decline the claim and have no further comments."

I klagerens mail af 6/1 2017 til nævnet er det bl.a. bemærket:

"Thank you for the information send to me, as i have already stated in all my correspondance with the insurance company and you the facts stated in there letter where regardless as i had suffer from the same problem for nearly a decade and the meaning of pre existing condition prior to taking the insurance of 2 years should not affect it at all as i had suffer this problem for a lot longher than that, since 2008. Would kindly wait for the decision of the board. Thank you in advance"

I patientjournal af 9/6 2008 er det bl.a. anført:

"Exam Requested: MRI Ankle It Requesting Physician: HANDE HR
…
Date of Exam: 2008.06.09
…
Radiological Report : MRI Ankle Lt :
1. Thickening and increased signal in the distal 25 mm of the Achilles tendon is associated with reactive marrow oedema in the calcaneum beneath the insertion and a little fluid in the retrocalcaneal bursa.
Appearances are consistent with insertional tendinosis.
There is prominence of the posterosuperolateral margin of the calcaneus which shows a small erosion. Appearances are in keeping with a prominent Haglund deformity.
2. Normal appearances of the medial and lateral ligaments and tendons.
3. No osteochondral injury or other marrow abnormality."

I brev af 29/1 2016 fra læge i ortopædkirurgi hedder det bl.a.:

"Typed: 29 January 2016
Dictated: 20 January 2016
Clinic: 20 January 2016
…
Diagnosis: External calcification insertion of left Achilles tendon

Thank you for asking me to see this … year old [håndværker] who enjoys playing football and who has had a good reconstruction of his ACL ligament. He has recurrent painful swelling around the posterior aspect of the heel of his dominant left foot.

Ten years ago in [land] he explained he had debridement but thought they did not remove any of the underlying bone.

On examination he stands with normal hind foot alignment with a good medial arch. He has a very large bony thickening in the posterior aspect of his heel with overlying inflammation. His tendo-Achilles is in continuity and very strong.

His lateral foot Xray shows very impressive calcification posterior to his Achilles tendon as well as a sharp Haglund deformity.

I have offered to perform open debridement of this superficial calcification and then removal of the Haglund's tendon. There is likely to be a very thin edge of remaining tendinous attachment, therefore I will attach this with the Arthrex suture bridge. He wishes to consider surgery in the summer and we will discuss this further, later in the spring."

I patientjournal af 3/10 2016 er det bl.a. anført:

"**Diagnosis and other information from this Admission**

Reason for Admission:
Elective admission for Lt.Achilles Tendon detachment +debridement + Haglund's deformity resection + reattachment

Primary Diagnosis on Discharge:
Left insertional Achilles Tendinopathy

Significant in-hospital procedures:
Lt.Achilles Tendon detachment +debridement + Haglund's deformity resection + reattachment by Mr. … & Mr. …
…
Overall plan for care:
NWB Cast for 4 weeks. Discharged on Fragmin for 4 weeks .Change to airstep boot after 4 weeks

Is a hospital follow up required?
Yes"

I policen er det bl.a. anført:

"Schedule of Insurance
…

Start Date	21/01/2016
Review Date	20/01/2017

…
Cover Details
Accident & Sickness (Disability) to cover

Homeowner/Income Benefit	…
Monthly Direct Debit Premium	…

…
Policy Conditions

Waiting Period	30 days
Maximum Benefit Period	12 months
Excess Period	0 days
Initial Exclusion Period	120 days

IMPORTANT INFORMATION
Any Pre-Existing condition will not be covered under this policy"

Af forsikringsbetingelserne fremgår det bl.a.:

"**3. WHAT THE WORDS MEAN**

Some of the words and phrases **We** use in these **Policy** terms and conditions have special meanings and these are shown below in bold type with their meanings alongside them. Except where the context otherwise requires, the masculine shall include the feminine, the singular shall include the plural and vice versa as appropriate.

Accident & Sickness	Means **You** have a medical **Condition** certified by a **Doctor** or **Consultant** as preventing **You** from doing **Your** normal **Work** or any similar **Work** which **You** are reasonably able to do given **Your** experience, education and/or training and **You** are not doing any other **Work** for payment or reward.

…

Pre-Existing Condition	Means any medical **Condition** for which **You** have suffered from symptoms, received treatment, medication or advice (including regular or routine examinations or consultations to monitor the **Condition**) from a **Doctor** or **Consultant** in the 12 month period immediately prior to the **certificate Start Date**.

…

9. ACCIDENT & SICKNESS EXCLUSIONS

No **Monthly Benefit** will be payable to **You** if:

…

- **Your Accident or Sickness** results from any **Condition** which came about as a result of a **Pre-Existing Condition** or **Chronic Condition** (but this exclusion will not apply to a **Pre-Existing Condition** if **You** have been free from its symptoms, and have not consulted any **Doctor** nor received any treatment for or in connection with it, for a two year period prior to **Your** claim); …"

Nævnet udtaler:

Det er oplyst, at klageren blev indtegnet i selskabet pr. 21/1 2016 med dækning for "Accident, Sickness & Unemployment".

Klageren har den 15/10 2016 anmeldt et krav til selskabet for "post operative recovery", efter en operation den 3/10 2016 i venstre hæl.

Selskabet har afvist klagerens krav med henvisning til, at klageren allerede før indtegning havde kendskab til den lidelse, han blev opereret for, og at han kort før indtegning søgte læge herfor.

Ifølge lægebrev af 29/1 2016 var klageren den 20/1 2016 hos en læge med en "painfull sweilling around the posterior aspect of the heel of his dominant left foot". Videre

fremgår det, at lægen har "offered to perform open debridement of this superficial calcification and then removal of the Haglund's tendon".

Efter betingelsernes punkt 3 er Pre-Existing Condition beskrevet som "Any medical Condition for which you have suffered from symptoms, received treatment, medication or advice (including regular or routine examinations or consultations to monitor the Condition) from a Doctor or Consultant in the 12 month period immediately prior to the certificate Start Date".

Efter betingelsernes punkt 9 ydes der ikke dækning, hvis klagerens "Accident or Sickness results from any Condition which came about as a result of a Pre-Existing Condition". Videre fremgår det af bestemmelsen, at denne undtagelse ikke finder anvendelse på en forudbestående lidelse, såfremt "you have been free from its symptoms, and have not consulted any Doctor nor received any treatment for or in connection with it, for a two year period prior to Your claim". Efter en gennemgang af sagen finder nævnet ikke grundlag for at kritisere selskabets afslag på at yde dækning for klagerens krav efter operationen i venstre hæl.

Nævnet har lagt vægt på, at klageren den 20/1 2016 søgte læge for smerter omkring venstre hæl og blev tilbudt en operation. Nævnet lægger herefter til grund, at klageren har en Pre-Existing Condition som beskrevet i betingelsernes punkt 3 vedrørende venstre hæl, som han efter det oplyste blev opereret for i oktober 2016 og efterfølgende har rettet krav for mod selskabet. Da forsikringen ikke dækker Pre-Existing Condition, jf. betingelsernes punkt 9, og da klageren har konsulteret læge inden for en periode på to år før anmeldelsen, kan nævnet ikke pålægges selskabet at anerkende kravet.

Det forhold, at klageren først efter købet af forsikringen blev bekendt med, at der var tale om et alvorligere forhold, kan - som betingelserne er formuleret - ikke føre til andet resultat.

9. 90153

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Peter Thønnings