Ankenævnet for Forsikring

Den 10. januar 2018 blev i sag nr. 90747:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren havde rejseforsikring i Bupa Denmark Services A/S. Hun klager ved sin datter over selskabets sagsbehandling i forbindelse med en akut opstået sygdom på rejsedestinationen.

Selskabet ville hjemtransportere klageren, og hun kræver erstatning for den stress og angst, som selskabets håndtering af sagen har medført for hende og hendes datter. Hun klager endvidere over, at selskabet har kontaktet de behandlende læger på rejsedestinationen, før hun underskrev en samtykkeerklæring.

Selskabet har anført, at det ifølge forsikringsbetingelserne er berettiget til at hjemtransportere, og at dette er normal procedure på en rejseforsikring ved alvorlig sygdom. Selskabet har endvidere anført, at det ifølge forsikringsbetingelserne har ret til at kontakte hospitaler, læger og andre, som behandler eller har behandlet den forsikrede. Selskabet har beklaget, at klageren fandt mængden af opkald og e-mails fra selskabet psykisk belastende, men at dette var nødvendigt for at koordinere en hjemrejse på bedst mulig måde for alle parter. Selskabet har udbetalt et beløb svarende til udgiften for hjemtransporten i kontanterstatning til klageren.

I klageskema af 8/6 2017 til nævnet samt i en supplerende redegørelse har klagerens datter bl.a. anført:

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

compensate us for the distress and anxiety they caused to us . We also felt that they kept us pressurising to send my mother back to [hjemlandet] when [læge 1] clearly stated in his letter dated 21/12/16 that she is not fit to fly (letter attached) . They also breached confidentiality by approaching [læge 1] and [læge 2] to know what is going on before my mother signed the letter to approach doctors on 11th dec 2017.
…
Please see my complaint letter to BUPA and their Reply. I have been asked to write to yourself.

I remain extremely dissatisfied with the reply I have received from BUPA.

I am unable to provide the evidence for the stress and anxiety BUPA have created in my life during that period. I am upset that they have not taken the responsibility.

I feel that their reply is in BUPA's Favour. They have completely ignored the Humane aspect of the claims handling. I feel that some of the information they have provided in the letter is contrary to what I was made to believe.

My 1st point to raise would be **unsuitability of my mother to travel** which I have been reiterating to call handlers but they kept on saying the same thing that my mother needs to be repatriated. How come BUPA decided that she is fit to travel on 23rd December 2016 and informed me that they have made all necessary arrangement for my mother to be picked up by Ambulance on 23rd Dec. On the contrary, [læge 1] Clearly stated in his attached letter dated 20th Dec that she is not fit to fly. I consider this as complete lack of knowledge about my mother general health and lack of kindness shown in dealing with my claim. I feel that they did not have any concrete plans about my mother repatriation and they were just pressurising me to accept their plans to repatriate my mother. I personally feel that they did not contact anybody in [hjemlandet] to enquire about the hand over process. I find it very hard to believe that they made all the plans for repatriation but doesn't have any evidence.

Secondly, My mother gave **consent to contact her doctor** in [hjemlandet] on 12/12/216. BUPA has been in touch with [læge 1] and [læge 2] before 12/12/2016 and BUPA have confirmed that they approached [læge 1] at [hospital 1] and [læge 2] at [hospital 2] before my mother was shifted to [hospital 2]. To me this is breach of confidentiality.

I deciced to keep my mother back in [rejsedestinationen] as she was **not fit to fly** and I am glad that I made that decision. My mother is still In [rejsedestinationen] and she is well in herself . She will be completing her stay in [rejsedestinationen] and will be returning to [hjemlandet] soon. If BUPA would have shown a bit of sympathy and dealt with my mother as per instructions from her treating doctor then I would have avoided harassment, stress, anxiety.

I strongly feel that BUPA should be hold responsible and should be made compensate for the mishandling of the claim."

Selskabet har i brev af 27/7 2017 til nævnet bl.a. anført:

"Den tegnede forsikring er en international rejseforsikring tegnet med dækning på rejser i hele verden undtagen i Klagers hjemland, … Forsikringen er tegnet den 13. november 2016 og trådte i kraft d. 14. november 2016 med udløb d. 24. april 2017.

Tvisten omhandler forsikringstagerens ønske om kompensation for stress og angst pga. Selskabets håndtering af sagen og Selskabets ønske om at hjemtransportere forsikringstageren. Ydermere mener Klager, at Selskabet har kontaktet behandlende og Klagers egen læge uden Klagers samtykke.

Sagsfremstilling:

…
Selskabet modtog den 4. december 2017 en henvendelse fra Klagers datter, idet forsikringstageren var blevet indlagt med smerter i maveregionen på et hospital i [hospital 1]. Som det er standard i denne type sager udbad vi os medicinske oplysninger fra behandlende læge samt kontaktinformation til Klagers egen læge i [hjemlandet] for at kunne undersøge om sygdommen var præeksisterende.

Da det efterfølgende viste sig ved undersøgelse og scanning d. 7. december 2016, modtaget fra kunden d. 9. december, at der var tale om en formodet alvorlig sygdom af et længere forløb i form af enten kronisk betændelse af [organ] eller [organ] cancer blev det besluttet af Selskabets læger, at Klager skulle hjemtransporteres, når dette var medicinsk forsvarligt, således at Klager kunne fortsætte behandling i hjemlandet. For at kunne arrangere dette krævede det en lang række opkald med Klagers datter samt andre parter, da det involverede en medrejsende sygeplejerske, afklaring af forsikringstagers helbredstilstand, indhentning af rejserute samt overlevering i hjemlandet mm.

Grundet dette blev der gentagne gange ringet til datteren, der som det ses i klagen fandt det psykisk belastende med mængden af opkald og e-mails. Dette beklager Selskabet, idet det bestemt ikke var hensigten. Imidlertid skal det dog her nævnes, at dette er nødvendigt for at kunne koordinere en sådan hjemrejse på bedst mulig måde for alle parter. Ydermere skal det her påpeges at selskabet er berettiget til at hjemtransportere, og at dette er normal procedure på en rejseforsikring i forbindelse med alvorlig sygdom.
…
Det er også vigtigt her at understrege, at vi altid i denne type sager indsamler medicinske oplysninger for at kunne vurdere sagen. Vi er berettiget til at hente disse i henhold til betingelserne.
…
Når en kunde tegner forsikringen skal denne bekræfte at have læst og forstået betingelserne. Derfor var Selskabet berettiget til at kontakte Klagers behandlende læge samt Klagers egen læge. I visse tilfælde kræver lægen at have dette på skrift. Vi kan derfor til tider bede forsikringstageren udfylde en fuldmagt, men dette er ikke et krav. Selskabet mener derfor ikke at have handlet uden Klagers samtykke.

Som nævnt ovenfor er Selskabet berettiget til at hjemtransportere forsikringstageren, men dette kræver i visse tilfælde at forsikringstageren hurtigt transporteres hjem til viderebehandling ellers kan forsikringstagerens tilstand forværres og hindre en hjemtransport. Det kræver derfor en del korrespondance med familie, læger, flyselskaber mm. I forbindelse med sagen blev Klager tilbudt at enten blive hjemtransporteret, så snart vores læger vurderede hun var i stand til at flyve, ledsaget af en sygeplejerske med de nødvendige kundskaber i forhold til smertestillende medicin, eller alternativt ville Selskabet dække et beløb af forsikringstagerens behandling i [rejsedestinationen] svarende til prisen på en hjemtransport af Klager til [hjemlandet] med en sygeplejerske, men det ville også betyde at al

dækning ophørte efter denne dato, hvor Klager ellers havde været transporteret til sit hjemland.

Idet Klager foretrak at fortsætte behandlingen i [rejsedestinationen] fremfor at blive hjemtransporteret, blev et beløb på USD 12.000 udbetalt d. 28. december 2016. Dækningen stoppede d. 26. december, som er den dato, hvor Selskabet vurderede at ville have foretaget hjemtransporten. Det blev vurderet, efter samtale mellem Selskabets læge og behandlende læge, [læge 1] d. 20. december, at hjemtransporten kunne gennemføres, men idet Klager valgte at fortsætte behandlingen i [rejsedestinationen] blev den endelige evakuering som nævnt aldrig gennemført. Klager har vedlagt en medicinsk udtalelse fra behandlende læge fra d. 21. december [læge 1]. Denne udtalelse er dog ikke modtaget af Selskabet før forsikringstageren klagede til selskabet lang tid senere, og Selskabets beslutning er truffet på baggrund af samme samtale, hvor vores læger vurderede at det var nødvendigt, at Klager havde en sygeplejerske med sig under hele turen, der kunne give Klager smertestillende medicin. …

Alle medicinske regninger for Klagers behandling frem til d. 26. december 2016 er blevet dækket af forsikringen. Ligeledes har forsikringen dækket tilbagebetaling af forsikringstagers præmie for perioden efter endt dækning d. 26. december. Ydermere har selskabet dækket Klagers datters transport til og fra hospitalet.

Konklusion:

Vi er kede af at Klager har følt sig stresset af sagsforløbet. Dette har på ingen måde været hensigten. Selskabet mener at have håndteret sagen i henhold til vores procedurer og betingelser, og at Klager er blevet dækket i henhold til disse. Selskabet mener også som beskrevet ovenfor at have henholdt sig til sine betingelser i forhold til at have kontaktet Klagers egen og behandlende læge. Ydermere har vores læger, som allerede nævnt vurderet at en evakuering var mulig ved brug af en ledsagende sygeplejerske, der kunne give Klager den nødvendige medicin på trods af det til klagen vedhæftede brev, som Selskabet ikke havde modtaget på givne tidspunkt. Desuden skal det så igen påpeges at hjemrejsen aldrig blev foretaget, idet der blev lavet en anden aftale med Klager."

Klagerens datter har i mail af 11/7 2017 til nævnet bl.a. anført:

"I am not satisfied by the BUPA response letter.
I would like the complaint board to review the recordings of the telephone calls made between BUPA and myself. I am sure after hearing the recordings it will become very clear that there was no words of sympathy from BUPA and they were pressurising me to send my mother back to [hjemlandet] when it was clear from [læge 1] letter that she was not fit to Fly (I have attached [læge 1's] letter) .
I was made to feel that BUPA only cares about themselves and doesn't care about How I felt which is unacceptable as a client. I was so much pressurised and stressed by Bupa that I could not think straight and I one day avoided a car collision during one of the phone conversation with BUPA.

They also claimed that everything was arranged to send my mother back to [hjemlandet] on 26th Decemeber 2016. I have asked BUPA for the evidence of flight and nurse details regarding this arrangement but they have failed to provided me one.

I would like complaint board to review the email messages, my complaint letter and voice recordings between BUPA and myself before reaching any conclusion. I would then ac-

cept the decision made by complaint board regarding the ways my mother insurance claims was handled."

Selskabet har i mail af 28/7 2017 til nævnet hertil bl.a. anført:

"Selskabet har ikke yderligere uddybende kommentarer andet end til kundens kommentarer om ikke at have set den endelige rejseplan. Dette er sandt idet de sidste detaljer ikke var på plads, da aftalen med kunden d. 22.12.16 blev opnået, om at Skadelidte forblev i [rejsedestinationen]. Der var fra Selskabets side fundet en sygeplejerske, og de endelige flybilletter var booket, men ikke købt. Da aftalen var lavet blev der ikke arrangeret yderligere. Det skal dog her påpeges at vores alarmcentral dagligt og med kort varsel arrangerer disse repatrieringer og at det derfor var vores vurdering at dette ville kunne være på plads til d. 26.12.16."

Nævnet har fået forelagt bilag fra sagen, herunder en e-mail korrespondance mellem selskabet og klagerens datter. Selskabet har ikke fremsendt lydfiler af telefonsamtalerne med klagerens datter.

Af selskabets mailkorrespondance med klagerens datter fremgår bl.a.:

"**Sent:** 22 December 2016 13:49:12
To: [Klagerens datter]
…
We are happy to confirm that Bupa is willing to offer your mother a payout of an amount equalling the price of a repatriation to [hjemlandet], i. e. USD 12000 (twelve thousand)

In order to enter this agreement, Bupa will need to underline the following:

- Under the policy conditions, it is the right of Bupa to ask a member to be repatriated. Please see the following article: 6.8: The Company has the right to demand that the insured be repatriated to the country of permanent residence, if the Company's medical consultant and the treating physician agree that the insured is medically fit to be transferred to his/her country of permanent residence. In case of disagreement, the decision of the Company's medical consultant shall prevail.
- A medical repatriation requested by Bupa will be covered under the insurance and arranged by Bupa.
- Usually, Bupa will not compensate a member by paying out a specific amount thus compensating for a medical repatriation

After evaluation of your mother's case within Bupa Global Travel, it was decided, however, to make an exception from the standard procedures and offer your mother a cash payout as an extraordinary benefit.

Consequently, Bupa has made a cost estimate obtaining prices for flight tickets, hotels and nurses fees, all of which are part of the arrangements for a medical repatriation:
…

Sent: 21 December 2016 21:47:57
To: WMA, Bupa Intl. Emergency Response Team
…
Thanks for your answer to my question 1 and 3.

You have still not answered my question 2, 4, 5, 6, and I am not going to repeat the questions. It looks like you have decided not to answer those questions and have made your mind up to send my mother back to [hjemlandet]:
…
I am not prepeared to send my mother because your doctors are saying she is fit to go back. They have not even seen her. So I dont know how they have decided. I have to rely on information of the doctors who have seen my mother. [Læge 1] said she is not fit to fly and he is waiting for medical information from [læge 2] to make further decisons about her further treatment. We already have an appointment with [læge 2] on 23/12/16.

I am not going to argue with you any more beacause I feel you are not helpful at all and you are not answering my questions to satisfy myself. If you dont want to answer my question 2, 4, 5, 6 then its up to you. I will take up this matters later with my legal advisor with all the email correspondence I have had with BUPA Global so far and the insurance policy.

You keep harassing me to agree to send my mother back to [hjemlandet] without knowing what her diagnosis is and what further treatment she needs. If you claim that your doctors know everything about my mothers condition then please ask your doctors to let me know the investigation reports, diagnosis and further necessary treatment in writing.

To stop this harrassment, and allow me to concentrate on my mother, I would like to make a request to BUPA global – 'If you agree to pay me the entire cost of her transfer back to [hjemlandet] as suggested by yourself, then I will take responsibilty for my mother health and future treatment in [rejsedestinationen] if needed. When she is fit to travel and when I get all the information from doctors (Investigation reports, diagnosis and further necessary treatment), then I will make my own arrangements to transfer her to [hjemlandet] with a Doctor escort.'
…
Sent: 21 December 2016 19:22:27
To: [Klageren]
…
thank you for your email.
Pleae let us know the outcome of your mother's consultation with [læge 1] this evening, and if he has changed the medication as indicated?
Please also give us the precise adress where your mother is staying (your adress?)

To answer your question regarding the repatriation of your mother, please be informed of the following articles of your mother's travel policy:

6.8: The Company has the right to demand
that the insured be repatriated to the country of permanent residence, if the Company's medical consultant and the treating physician agree that the insured is medically fit to be transferred to his/her country of permanent residence. In case of disagreement, the decision of the Company's medical consultan shall prevail.

Further:

7.2: The insurance shall provide cover subject
o the treating physician and the Company's medical consultant agreeing on the necessity of transferring the insured and agreeing on whether the insured should be transferred to his/her country of permanent residence or to another place of treatment. In case of disagreement, the decision of the Company's medical consultant shall prevail.

As previously informed you have, of course, every right to decide not to repatriate your mother to [hjemlandet], but the cover for medical expenses in [rejsedestinationen] will no longer be covered.
…
From: [Klageren]
Received: 21/12/2016 19:36
…
Every email of yours is about sending her back to [hjemlandet]. I feel you are trying to get rid of my mother and send her back to [hjemlandet] without knowing exactly what is going on with her acute illness. This is very Disappointing.

It looks like your doctors knows everything about her. Please request your doctors to send me the information in writing which I have been requesting so that i can make a decision about her going back to [hjemlandet].

1. If my mother doesn't need **fit to fly certificate** then why your previous email stated that I need to request [læge 1] to issue fit to fly certificate,

2. You have not attached the **Doctors Medical summary** (investigation reports, diagnosis and further treatment plan form [læge 2]), so that it could be handed over to doctors in [hjemlandet] for further treatment. This is very crucial information before transfer takes place. I do not want my mother to land up in the hands of another doctor who wouldnt know what to do next with my mother.

3. What are the **reasons** why your doctors have concluded that she is fit to fly when [læge 1] said she is not fit to fly.

4. Why the **cover period** has been shortened when I have paid for this insurance to cover for 6 months. I need to know the reasons.

5. Could you please tell me which hospital/ doctor she would be **handed over to in [hjemlandet]?**.

6. What happens to her return flight ticket.

I am again requesting If you could provide the requested information in writing at your earliest then I would be able to make further plans for my mother.

I am not happy to send my mother on Friday without above information and I feel its confusing and risky to send her back to [hjemlandet] without above information. You emailing me every time about her return to [hjemlandet] has been stressing me out so much. I will take this matter up with BUPA later. I have asked for complaints procedure followed in BUPA and i have not receieved any forms to fill in yet.

I hope you understand my anxiety and worries.
…
Sent: 21 December 2016 13:41:22
To: [Klageren]
…
Please be advised that we so not have a fit to fly certificate from [læge 1]. However, our doctor spoke to him yesterday and there is no suggesting that she is not fit to fly. The nurse escort is very experienced and your mother will be in good hands. However, he mentioned that she needs a change in the pain medication. This needs to be taken care of before Friday in preparation for the trip. Kindly ask [læge 1] today to prescribe the necessary medication. As the BUPA doctor has declared your mother fit to fly, BUPA will be held responsible for the trip.
You are welcome to speak to our doctor for clarification.
In relation to cover period we refer to previous e-mails from us explaining the conditions for a travel policy.
As previously informed, the return trip has been planned for Friday and this is our offer. If you do not accept our offer, we are sorry to inform you that we will no longer cover for the medical expenses in the [rejsedestinationen].
…
Sent: 21 December 2016 08:30:42
To: [Klageren]
…
It would be useful if we had the opportunity to speak with you on the phone in order to explain. Please let us know if we can call you?
Our doctor spoke to [læge 1] yesterday. Your mother is fit to fly but needs an adjustment in medication. Because she is not well, we have arranged for a nurse escort to follow her all the way and assist her with everything. You are very welcome to call and speak with our doctor about this so he can explain.
We have arranged everything for Friday and therefore it is important that your mother sees a doctor today to change the medication accordingly. This is what needs to happen according to [læge 1] yesterday.
In regards to shortening the cover, please be advised that on a travel policy our doctor makes the decision wether to send member back to their home country when serious illness occurs. And as explained by my colleague yesterday **'A travel policy covers her for acute and unforeseen illness which cannot await until she arrives in her home country. (Please see Art 6 and 7 in her insurance policy)'**
Please arrange for your mother to see a doctor today so we can confirm travel arrangements for Friday.
…
Sent: 20 December 2016 19:48:02
To: [Klageren]
…
In relation to the consultation with [læge 1] today, we have had a conference call with our doctor in order to find out the best way to get your mother home.
We understand that this is a very stressful and confusing time for you and in this perspective we do apologise if our prompt action made you feel worse. This was absolutely not our intent. We want nothing more to assist both you and your mother, but we have to bear in mind that she is travelling. A travel policy covers her for acute and unforeseen illness which cannot await until she arrives in her home country.(Please see Art 6 and 7 in her insurance policy) We also want to inform you that our doctors are specialised in air medicin and have strongly advised that she return home to [hjemlandet] and get adequate treatment and further biopises.

We are aware that the situation is extremely delicate and that there are a lot of emotions involved, but we, as her insurance company, have to inform you what we can and cannot do to assist.
So the plan and recommendation, from a medical and insurance point of view, is to take her home as soon as possible. (And we do know for sure that she is fit to fly)
In this relation we have arranged and booked a flight on Business class for your mother (on Friday 23/12 in the afternoon, departing from …) - together with an escort nurse to manage her pain accordingly. She will be in good hands all the way home to [hjemlandet].
Your mother is in much pain an has to receive mor painkillers in order to manage the trip. We will try to assist with a booking an appointment for this tomorrow early.
Kindly be informed that if you do not accept our offer to assist with the travek arrangements hom on friday we need to let you know that any further treatment will not be preapproved nor reimbursed.
Please let us know now if you: 1) Wish that your mother stays with you in the [rejsedestinationen] with no more treatment cover or if you: 2) Are happy to let her travel on Friday with the nurse.
If you want us to assist you with the
Have a nice evening, We look forward to hearing from you again.
…
Sent: 19 December 2016 10:53:33
To: [Klageren]
…
Tomorrow when you have the consultation with [læge 2] please be sure to ask him some questions that we need to proceed:

1) Is [klageren] Fit to fly home. (We can arrange that she is flying Business class and if necessary with an escort (family or nurse) depending which help she need during her flight home)

2) Does her medication (morphine need to be reevaluated/altered and maybe given as Intravenous during the trip)

3) Call us as soon as you have been to the visit, and ask [læge 2] to call us after the visit as well so we can arrange doc to doc call. …

It would be nice if you could confirm this email so we know that you have gotten this information. Please understand that we need to evacuate your mother and that every day is crucial and therefore we need for you to cooperate as much as you possible can in order for us to do the best for your mother.
…
Sent: 17 December 2016 14:49:38
To: [Klageren]
…
thank you very much for your reply. We are sorry to put pressure on you, but we had not managed to get any information from the doctors who have seen your mother, so we really needed an update.
I have just spoken to [læge 1] and he was off duty in the weekend, but he explained to me that he has not managed to get in touch with [læge 2] yesterday, friday, so he could not give us any updated information
We also tried ourselves to get in touch with [læge 2] bote yesterday and today, but he did not answer his phone despite many calls to him.
The results of the biopsy have not arrived yet.

Our doctor has looked into your mother's case again today, and t would be very important that your mother is seen by a doctor, in order to find out how she can travel back to [hjemlandet] and if she needs an escort (which could be a family member).
In this regard it would be preferred that she travels as soon as possible, in order to recieve further treatment in her home country. Of course she needs to be fit for flying as it is a long flight.
We have agreed with [læge 1] that we speak again on monday, and we will also try to get information from [læge 2] on monday.
If you have any questions, please do not hesitate to contact us.
…
Sent: 17 December 2016 10:38:29
To: [Klageren]
…
We are eager to know if you have received our email?
If you wish our assistance with repatriating your mother we wil be happy to assist with this.
In this relation we kindly ask you to contact us asap or provide us with a contact number so we can reach you.
Please note that we can no longer cover for any treatment locally in the [rejsedestinationen] as your mother is holding a Travel policy. Our doctors have recommended that [klageren] is to be repatriated home for further treatment.
If you decide to let her stay in the [rejsedestinationen] for further treatment please understand that this is at your own expense
Kindly let us understand your plan so we can assist the best way possible.
…
Received: 16/12/2016 16:48
To: [Klagerens datter]
…
please be advised that we have not been able to reach [læge 2] yet, so we do not have any updates. How is your mother doing? Has she been seen by any doctor in the last few days? We really need some updated information about her situation, so it would be very helpful if you could send us some information. Do you have a phone number where we can call you to discuss the situation?
…
Received: 15/12/2016 19:32
To: [Klageren]
…
I have just spoken to [læge 1], and he said that he did not have any updated information about your mother's condition, and for an update we need to speak to [læge 2].
We need to know exactely how your mother is doing if we are to arrange her repatriation to [hjemlandet]. If you have any medical update from the last few dates, we kindly ask you to send it to us.
We will in any case contact [læge 2] tomorrow morning to ask for an update, in order for us to proceed with arranging her return to [hjemlandet]. Or, if your mother has been seen by another doctor in the last fewdays, please send us the name and contact details to this doctor.
We will also need to know from the doctor if she can travel alone or if she needs an escort, and whom this might be.
We will keep you updated as soon as we have more information.

With regards to the pre-authorization for the treatment and examinations your mother has been given or submitted since she fell ill, we kindly ask for you assistance in obtaining the last medical report including contact information for the treating doctor and clinic.

…
Sent: 04 December 2016 17:55
To: [Klagerens datter]
…
We are sorry to hear, about your mother feeling unwell.

In order for us to confirm cover for the treatment received so far, as well as any upcoming treatment needed, we will have to receive a medical report from the treating physian. We will also need a copy of her flight tickets from [hjemlandet] and back, as well as the name and contact details of her doctor back there.

We will proceed, once we have this information."

Af et lægebrev af 21/12 2016 fra den behandlende læge 1 til en anden læge fremgår bl.a.:

"**Out-Patient Summary**
…
Today specifically, they have asked me about the fitness to fly. I do not think she is in a fit state to fly with all the Morphine that she is requiring. Once we have bit more information on what we are dealing with and after getting reasonable pain control, we should be able to let her fly home but at this point of time, this is not the case."

Af forsikringsbetingelserne fremgår det bl.a.:

"**Art. 6**
Medical expenses
6.1: The insurance shall cover the medical expenses incurred by the insured in case of acute illness and injury.
…
6.8: The Company has the right to demand that the insured be repatriated to the country of permanent residence, if the Company's medical consultant and the treating physician agree that the insured is medically fit to be transferred to his/her country of permanent residence. In case of disagreement, the decision of the Company's medical consultant shall prevail.

Art. 7
Medical evacuation/repatriation
7.1: Compensation shall be paid for reasonable additional expenses incurred for the insured's medical evacuation/repatriation in the event of an acute serious illness (cf however Art. 6.6), serious injury or death.

7.2: The insurance shall provide cover subject to the treating physician and the Company's medical consultant agreeing on the necessity of transferring the insured and agreeing on whether the insured should be transferred to his/her country of permanent residence or to another place of treatment. In case of disagreement, the decision of the Company's medical consultant shall prevail.
…

Art. 27
Necessary information to the Company
…
27.2: The policyholder and/or the insured shall also be under the obligation to notify the Company of and provide the Company with all obtainable information required for the Company's handling of the policyholder's and/ or the insured's claims against the Company, including provision of original bills upon request from the Company.

27.3: In addition, the Company is entitled to seek information about the insured's state of health and to contact any hospital, physician, etc who is treating or has been treating the insured for physical or mental illnesses or disorders.

Furthermore, the Company is entitled to obtain any medical records or other written reports and statements concerning the insured's state of health."

Nævnet udtaler:

Klageren blev akut syg under et udenlandsophold hos sin datter, og selskabet ville hjemtransportere hende.

Klageren klager over selskabets sagsbehandling og kræver erstatning for den stress og angst, som selskabets håndtering af sagen har medført for hende og hendes datter. Klageren har anført, at den behandlende læge den 20/12 2016 har vurderet, at hun ikke var "fit to fly" med al den morfin, som hun fik. Hun klager endvidere over, at selskabet kontaktede de behandlende læger på rejsedestinationen, før hun underskrev en samtykkeerklæring.

Selskabet har anført, at det ifølge forsikringsbetingelserne er berettiget til at hjemtransportere, og at dette er normal procedure på en rejseforsikring ved alvorlig sygdom. Selskabet har endvidere anført, at det ifølge forsikringsbetingelserne har ret til at kontakte hospitaler, læger og andre, som behandler eller har behandlet den forsikrede. Selskabet har beklaget, at klageren fandt mængden af opkald og e-mails fra selskabet psykisk belastende, men at dette var nødvendigt for at koordinere en hjemrejse på bedst mulig måde for alle parter.

Det fremgår af sagen, at selskabet accepterede klagerens forslag om at få udbetalt et beløb svarende til udgiften for hjemtransporten som en kontanterstatning, og at klage-

ren herefter selv ville dække sine behandlingsudgifter på rejsedestinationen samt tilbagerejsen. Selskabet har udbetalt en kontanterstatning på USD 12.000, dækkende klagerens behandlingsudgifter frem til den 26/12 2016 og tilbagebetalt præmie for den tegnede forsikring fra den 26/12 2016 og frem til udløb den 2/4 2017. Selskabet har endvidere dækket klagerens datters transport til og fra hospitalet, mens klageren var indlagt.

Nævnet bemærker indledningsvist, at en rejseforsikring dækker akut opstået sygdom på rejsedestinationen, og at selskabet ifølge betingelserne har ret til at hjemtransportere forsikrede til videre behandling, og at selskabets vurdering har forrang i tilfælde af uenighed mellem selskabets lægekonsulent og den behandlende læge, om hjemtransport er medicinsk forsvarlig.

Efter en gennemgang af sagen kan nævnet ikke kritisere, at selskabet vurderede, at det var medicinsk forsvarligt at hjemtransportere klageren den 23/12 eller 26/12 2016. Nævnet har blandt andet lagt vægt på, at klageren var ambulant patient, mens man afventede prøveresultaterne. Nævnet har endvidere lagt vægt på, at selskabet den 8/12 2016 modtog journalnotater fra det behandlende hospital med oplysning om, hvad klageren blev udredt for, og at selskabets lægekonsulent var i kontakt med den behandlende læge den 20/12 2016 og på baggrund af den samtale vurderede, at det var medicinsk forsvarligt at lade klageren flyve med en ændring af den smertestillende medicin. Nævnet har også lagt vægt på, at klageren ville blive ledsaget af en sygeplejerske.

Nævnet finder imidlertid anledning til at kritisere selskabets e-mail kommunikation med klagerens datter fra den 14/12 2016 og frem. Nævnet har blandt andet lagt vægt på, at det var kritisabelt, at selskabet den 17/12 2016, hvor selskabet ikke havde en opdatering om klagerens tilstand til at kunne vurdere, om hjemtransport var medicinsk forsvarlig, meddelte klageren, at yderligere behandlinger på rejsedestinationen ikke ville blive dækket, hvis hun afslog hjemtransport og valgte at blive. Nævnet har endvidere lagt vægt på, at selskabet har lagt et konstant pres på klagerens datter for at skaffe opdateringer om klagerens tilstand, da selskabet ikke kunne komme i kontakt med de behandlende læger. Nævnet har også lagt vægt på, at selskabet ikke svarede specifikt på klagerens datters spørgsmål.

Nævnet finder endvidere, at selskabet burde have ventet med at kontakte de behandlende læger, indtil det havde modtaget den underskrevne samtykkeerklæring fra klageren den 12/12 2016. Nævnet har blandt andet lagt vægt på, at der er tale om personfølsomme oplysninger, og at den generelle bestemmelse i forsikringsbetingelsernes punkt 27.3 om, at selskabet har ret til at kontakte hospitaler, læger og andre, som behandler eller har behandlet den forsikrede, efter nævnets opfattelse ikke kan erstatte et specifikt samtykke fra den forsikrede til indhentelse af lægelige oplysninger om vedkommende.

Nævnet finder, at klageren ikke har bevist, at hun som følge af selskabets sagsbehandling og opsigelse af forsikringen har lidt et økonomisk tab, der overstiger de beløb, som hun allerede har fået i erstatning fra selskabet. Nævnet kan derfor ikke pålægge selskabet at betale yderligere kompensation til klageren på erstatningsretligt grundlag.

Nævnet har noteret sig, at selskabet har beklaget, at klageren har følt sig psykisk belastet af mængden af selskabets opkald og e-mails, og at selskabet vil evaluere forløbet internt med henblik på at drage læring af sagen.

Med denne bemærkning

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Carsten Sennels