Ankenævnet for Forsikring

Den 10. januar 2018 blev i sag nr. 90894:

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xxxxxxxxxxxxxxx

mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren havde basis rejseforsikring i Bupa Denmark Services A/S. Hun klager på vegne af sit mindreårige barn over selskabets afslag på at anerkende, at selskabet er ansvarlig for barnets forringede helbredstilstand. Hun har anført, at barnet blev født ca. 2 måneder for tidligt i udlandet, og at selskabet burde have evakueret dem til et andet behandlingssted tidligere, således at barnet kunne have modtaget korrekt behandling.

Selskabet har anført, at forsikringen ikke dækker barnets eventuelle varige mén. Selskabet afviser endvidere at være erstatningsansvarlig for en eventuel fejlbehandling af barnet. Selskabet har blandt andet anført, at det har fulgt de gængse procedurer, og at det iværksatte en flytning af moderen og barnet, straks efter, at det blev konstateret, at barnet tabte vægt. Selskabet har endvidere anført, at det ikke er godtgjort, at barnets lidelse er en følge af en eventuel fejlbehandling.

I klageskemaet af 30/5 2017 har klageren blandt andet anført:

> "I know that Bupa has disclaimed responsibility for my daughter's condition, periventricular leukomalacia, but I insist that they are indeed responsible. This is why;
> I gave birth to my daughter in [by] in [land 1], 2 months prematurely. I was insured by Bupa international at the time. I was totally unprepared for what happened and I almost gave birth in the taxi on the way to the health clinic. When at home I understood that something was wrong and that I might me in labour I called your emergency number for you to guide me on where I should go. After some time, you proposed a clinic where I went. My water

was pouring out in the taxi and I was in full labour. When we finally arrived to the proposed clinic they told me that they did not have a gynaecologist on duty that day. I had to take another taxi to try to find another clinic that could help me. (Ambulances are not a standard in [land 1].) I was suggested to go to [hospital 1], pretty close by and when I arrived there my baby's head was already fixated. I gave birth within 20 minutes and my baby screamed when [barn] came out. The whole scenario, from when I started to have stomach pain until I had given birth did not take more than three hours. My baby breathed on [barns] own but [barn] was put in an incubator (which fortunately was available in the clinic) and the first day [barn] was given oxygen support as a precaution. I was in a state of chock after having given birth. Calm but far from in a normal state of mind.

My family in [klagerens hjemland] helped me to contact you to report what had happened. [Familiemedlem] was the one in charge with the communication. She insisted on that we should be evacuated and transferred from the clinic from day one. After some days of investigating if the insurance was valid in my case and after having talked to your doctors on call, you decided that an evacuation was not necessary. You based your decision on your conversations with me and my answers to your questions which was basically that my baby seemed to be in good health, breathed on [barns] own from day one, that [barn] was given breastmilk in a tube from day three. Your doctors confirmed me that all seemed to be good and that we should just wait until my baby reached 2500 gram, then we could move [barn]. [Barn] was born with 1575 gram. You asked if I felt comfortable where we were and I said that in [by] I found that [hospital 1] had a good standard compared to many other clinics. But this statement need to be seen in the light of where I was, in [land 1] the health care infrastructure is very poor. We had one nurse with experience from working with neonatal babies coming looking at [barn] one hour a day. Except for that the other nurses in the clinic were to follow the instructions given by this nurse. No doctor examined my child, no vital signs were taken and no medical report of any kind was given to you at any time, so your decision to have us stay was solely based on my statement and calm. I state again that I was traumatised at the time and did hardly comprehend that I had even become a mother nor the severity of the situation. Considering the circumstances I was under this should definitely have been taken into account by your medical team. The fact that no medical reports were given to them should have been a clear indicator that the clinic was indeed not up to standard for a neonatal child of 32 weeks. [Familiemedlem] understood early the quality of care that we were given to us and she communicated this to Bupa staff on a daily basis, insisting on that we should be evacuated. She informed you that in the clinic the nurses did not even know what hand sanitizers were, when I presented it to them after having it bought myself in town.

I have later come to understand that Bupa International has a clinic in [by] where cases are referred to and assessments are done to decide if the patients should be evacuated or not. This clinic is called [klinik] and is located in the … in [by]. Why we were not referred to this clinic is a big mystery for me and why a doctor from this clinic were not sent out to assess me and my child an even bigger one. You did send a doctor from another organisation. He, like the doctors in [hospital 1], did not examine my child, nor touch [barn]. He looked at [barn] 30 second through the incubator glass. He also tried to get a medical report from the staff in the clinic but without success. The staff in [hospital 1] was telling me that everything was fine and your doctors were telling me that everything was fine. [Familiemedlem] arranged a telephone call with a neonatal specialist from [hospital 2] in [hjemland]. He asked some questions and told me the exact opposite from what your doctors had told me. He told me that my child was not given enough food and that I should try to get [barn] out of there as soon as possible. I was in shock! How could your doctors tell me that everything was fine and this one told me the exact opposite?

The day after my child was being weighed for the first time after birth. [Barn] was 1310 gram. [Barn] had lost almost 17 % of [barns] birthweight. When your doctors got this in-

formation they agreed on that we should be evacuated. From the time that you started the process to evacuating us till we were actually evacuated it took three days. First because you could not get the medical reports needed from [hospital 1]. You told us that you were to send a local partner to talk to the clinic but no one came. We communicated to you that the clinic would not give any reports before they were convinced that they would get paid. Being very stressed about the situation and wanting to get evacuated as soon as possible we borrowed money to pay the bills and I chased the doctors until they sat down with me and wrote the papers needed for our transfer. Then the ambulance that were to take us to the air ambulance did not come. Apparently you had tried to arrange with some local ambulance and they did not follow through. When one finally came, together with a doctor, the one from the clinic Bupa normally refers their patients to, he was very upset. He told me from where he was and that he could not understand why they had not been contacted the very first day. He told me that he would have immediately taken the decision to evacuate us from day one. And why they had not been contacted to do the transfer from the hospital to the plane was for him extremely strange. They had not been informed that my child was in an incubator and did not have one with them. [Hospital 1] did not agree to have their incubator travel in the ambulance. After many hours again the evacuating team from the plane finally arrived with a mobile incubator. My baby was in a very bad shape by now. Extremely dehydrated and the evacuating team had great difficulties to put an IV on [barn]. We almost did not make it out of the country because we did not have any travel documents for my child. Something not even brought up by you when preparing for the evacuation.
When we finally arrived in [land 2] the 13th of December my child was very ill. If we would have stayed just one more day at [hospital 1] [barn] would most probably not be alive today. It was in the very last moment we arrived in [land 2]. [Barn] had amongst other kidney failure due to the dehydration [barn] had endured. [Barn] was later diagnosed with periventricular leukomalacia by the neonatal specialists at [hospital 3] in [hjemland], this also due to the prolonged dehydration [barn] suffered in [hospital 1]. Worth mentioning is that I was never examined in [hospital 1] after giving birth and I was hospitalised almost upon arrival in [land 2], having developed a high fever and a very high blood pressure.
I claim that Bupa is responsible for the fact that my child acquired the handicap periventricular leukomalacia. This will stay with [barn] for the rest of [barns] life and I claim disability compensation for [barn]! [Barn] acquired periventricular leukomalacia due to the prolonged dehydration caused by the fact that Bupa did not take our case serious and did not evacuate us in time!

…

Hvad vil du konkret opnå hos selskabet?
I claim that Bupa are responsable to pay disability compensation for the invalidity [barn] suffers from."

Selskabet har i brev af 19/6 2017 til nævnet blandt andet oplyst:

"**<u>Forsikringen</u>**
Forsikringen er en Enkeltrejseforsikring, basisdækning, købt den 30.11.2015.
Forsikringsperioden er 1.12. – 13.12.2015.
Forsikrede er: [klageren] (herefter benævnt: Klager)
Forsikringsbetingelserne fremgår af Bilag1.

Selskabet gør indledningsvis opmærksom på, at Klagers [barn] (herefter benævnt: [barn]), <u>ikke</u> indgår som forsikret på policen.

<u>Klagers ønske</u>

Den 4. december 2015 gik Klager i akut og præmatur fødsel og i forlængelse heraf, fødte hun [sit barn] 2 måneder tidligere end forventet terminsdato. Fødslen foregik på [hospital 1].

Det er Klagers påstand, at forholdene på [hospital 1], [land 1] var mangelfulde i en udstrækning, at disse i sig selv har forårsaget, at hendes [barn] i dag har lidelsen periventricular leukomalacia (herefter benævnt: lidelse). Følgelig ønsker Klager, at Selskabet anerkender og udbetaler kompensation for varige mén, udledt af denne lidelse.

…

Sagsfremstilling

Den 4. december 2015 kontaktede Klager Selskabets alarmcentral i forbindelse med, at Klager viste tydelige tegn på at være gået i for tidlig fødsel og følgelig havde brug for akut lægehjælp. I forlængelse heraf blev Klager indlagt på [hospital 1] i [land 1], hvor hun samme dag fødte [sit barn].

Samme dag modtog Selskabet en mail fra Klagers mor, hvori bl.a. oplyses, citat: *'[klageren] har tecknat en retsförsäkring genom [andet forsikringsselskab] med fors.nr. XXXXXXX. Hun teknade även som tillägg en graviditetsförsikring hos er gällande från den 1/12 inför sin hemresa.',* citat slut.

Selskabet modtog tidligt i forløbet oplysning om, at Klager var udrejst fra sit hjemland allerede i april 2015 og idet Enkeltrejseforsikringen først blev købt den 30. november 2015, fandt Selskabet indledningsvis grund til at kontakte [andet forsikringsselskab] – Klagers andet forsikringsselskab – og undersøge de nærmere bestemmelser for Klagers rejseforsikring hos dem. [Andet forsikringsselskab] oplyste i den forbindelse, at Klagers backpacker forsikring hos dem undtager dækning, i forbindelse med graviditet efter 28. uge.

Sideløbende med at Selskabet ydede Klager en assistance, der nøjagtig fulgte Selskabets officielle guidelines, gældende for såvel sagstypen (præmatur fødsel) som det geografiske område ([land 1]), ønskede Selskabet at udelukke evt. tvivl om, hvorvidt Enkeltrejseforsikringens § 2.4 var opfyldt.

Til brug herfor modtog Selskabet en lægerapport fra [læge 1] (Bilag 6). Selskabet noterede sig særligt [læge 1s] kommentar, fremført i sidste linje af sin erklæring, dog uden efterfølgende at anmode lægen om en uddybende begrundelse for, hvad denne lagde til grund for sin faglige vurdering.

Klager og [barn] forblev indlagt på [hospital 1] henover perioden 4. – 13. december 2015. Med baggrund i en pludselig forværring af [barnets] tilstand, arrangerede Selskabet et ambulancefly, der den 13. december 2015 overførte Klager og [barn] til videre behandling på [hospital 4] i [land 2]. Klager og [barn] var indlagt på [hospital 4], indtil de påbegyndte hjemrejsen til [hjemland]. Således ankom de til … den 21. januar 2016.

Som det fremgår af mailkorrespondancen vedlagt Klagers bilag til ankeskemaet, anmodede …, ansat ved [rådgivningsfirma], på vegne af Klager, indledningsvis Selskabet om at anerkende erstatningspligten for så vidt Klagers påstand om, at [barn] var blevet påført en varig lidelse, som følge af indlæggelsen på [hospital 1].

Selskabet gør i denne forbindelse opmærksom på, at (i) erstatningskravet ikke suppleredes med dokumentation for hverken lidelses tilstedeværelse, omfang (ii) endsige, at den i givet fald alene kunne anses for at være opstået som følge af en behandlingsstandard lavere end hvad der måtte forventes af de tilstedeværende lægelige forhold i [udlandet], el-

ler (iii) at lidelsen ikke ville have været pådraget, hvis Selskabet havde evakueret tidligere i forløbet.

Selskabet meddelte efterfølgende [forsikringsrådgiver], at Klagers [barn] ikke var forsikret på policen og alene af den grund afvistes erstatningskravet. Selskabet afviste samtidig, at bære ansvar for eventuelle varige følger, der måtte være opstået som følge af behandlingen på [hospital 1].

Henover perioden maj 2016 og indtil maj 2017, foregik et korrespondanceforløb mellem Selskabet og Klager, idet Klager fastholdt sin påstand om, at Selskabets havde ageret ansvarspådragende i forbindelse med dets assistanceforløb henover perioden for indlæggelsen på [hospital 1].

I en mail af den 27. oktober 2016 – identisk med ordlyden i *'Sagsfremstilling'* i ankeskemaet, gav Klager en uddybende forklaring til sin fastholdelse af erstatningskravet.

Selskabet bekræftede pr. mail af den 28. oktober [2016] modtagelsen af Klagers uddybning af erstatningskravet (Bilag2).

Selskabet sendte den 6. april 2017 (Bilag3) en uddybende og opsummerende mail til forsikrede, hvori Selskabet samtidig fastholdt afvisning af erstatningsspørgsmålet. Forud for afsendelse af denne mail, havde Selskabet foretaget endnu en reevaluering, herunder en grundig analyse, af samtlige de forhold Selskabet havde været og burde være bekendt med henover assistanceforløbet.

Konklusion

Selskabet henviser indledningsvis til forsikringsbetingelserne § 1.2 og ønsker i den forbindelse at fremhæve, at Klagers [barn] ikke indgår som forsikret på forsikringspolicen. Alene af den grund fastholder Selskabet afvisning af det fremsatte erstatningskrav.

Subsidiært er det Selskabets påstand, at det har handlet på og ageret indenfor rammerne af de informationer som Selskabet efterspurgte og modtog fra såvel Klager, den lokale samarbejdspartner/ … (Bilag4-9) samt den lokalt behandlende læge, henover assistanceforløbet, 4. december 2015 – 21. januar 2016 (Bilag4-9).

Selskabets finder yderligere at have handlet og ageret indenfor officielle anbefalinger angående flyvemedicin – http://aeromedicalguidelines.com/kapitel15-gb.html i forbindelse med preterm sick newborns.

Selskabet ønsker afslutningsvis at fremhæve, at diverse standard procedurer og ditto krav i forbindelse med ambulanceflyvning, såvel indenrigs som udenrigsflyvning, ligger udenfor Selskabets påvirkning og ansvar. Ligeså afviser Selskabet at bære ansvar for handlinger og eventuelle fejl, begået af lokal behandlende læge/hospital.

Uagtet, at Selskabet har afvist erstatningskravet er det værd at bemærke, at Klager til dato ikke har fremlagt dokumentation for,

1. at [barn] lider af periventricular leukomalacia, der vil efterlade et varigt mén,

2. at tilstedeværelsen af en sådan lidelse alene kan henføres til en, i forhold til den lokale [udenlandske] hospitalsstandard, så mangelfuld behandling, at den i selv efter lokal standard kan betragtes som lægelig fejlbehandling,

3. at lidelsen kunne have været undgået, hvis Selskabet havde evakueret [barnet] tidligere i forløbet.

Med baggrund i ovenstående samt indholdet af Selskabets brev til Klager af 6. april 2017 fastholder Selskabet afvisning af erstatningskravet."

Klageren har i brev af 3/7 2017 til nævnet blandt andet bemærket:

"The Company states that [barn] is not included as insured under the insurance policy and that this is the only reason that the company maintains its refusal of the claim for my compensation made.
When I signed the insurance via [forsikringsrådgiver], I was told that:
Graviditetsförsäkringen täcker t o m graviditetsvecka 36 för akut sjukdom, olycka och förlossning (gäller även barnet) se § 20.1.f
and that
Om man föder för tidigt täcker försäkringen mamman och barnet upp till en månad,
Please see attachment 1. I therefore do not understand their statement that [barn] is not covered by their insurance policy.

Comments on the company's statement fact
The company writes: *Based on a sudden deterioration of [barns] condition, the Company arranged an air ambulance which on 13 December 2015 transferred the Complainant and her [barn] for further treatment at [hospital 4] in [land 2].*
This is false. There was not a sudden deterioration, the deterioration was slow each day and due to that [barn] received too little liquid, (only 10 ml every 3-4 hours). It was me, the mother, whom after having spoken with a specialist in neonatal care at [hospital 2] in … [hjemland], signalled to the company that we needed to be evacuated.
The doctors and specialist in the company (Bupa) that followed our case, gave me the advice to stay in [hospital 1] and that everything seemed just fine concerning the health of my child. I had several conversations with them when they asked questions concerning the care of [barn].

The 10th of December I contacted the neonatal ward in [hospital 2] by mail, with questions concerning [barns] health. Please see attachment 2 and 3. I was then contacted by the neonatal doctor … by phone. He asked some questions and then told me that he advised me to evacuate [barn] immediately. He told me that [barn] was given way too little liquid and that [barn] will have lost a lot of weight. He also asked about the hospitals ability to take care of [barn] if [barn] would to become in a critical condition. My answer was that I was not at all sure of the hospital's ability to care for [barn] if [barns] condition got worse. His advice to evacuate as soon as possible really shook me up. The doctors of the company had told me the opposite and I felt like the worst mother ever born. By chance I overcame the information about [barns] weight that corresponded with what [læge 2] had told me. This is when I urged the company to evacuate us.

The company write: *As it appears from the e-mail correspondence enclosed to the Complainant's appendices to the appeal form, [forsikringsrådgiver], employed by [rådgivningsfirma], on behalf of the Complainant initially requested the Company to acknowledge the liability to pay compensation as regards the Complainant's allegation that a permanent disorder had been inflicted on her [barn] as a result of the hospitalisation at [hospital 1]. In this connection, the Company points out that (i) the claim for compensation was not supplemented with documentation for neither the presence of the disorder, its extent, (ii) let*

alone that if relevant, it could only be seen to have arisen as a result of a treatment standard lower than what could be expected from the existing medical circumstances in [land 1], or (iii) that the disorder would not have been inflicted if the Company had evacuated earlier in the course of events.
On this note I would like to point out that I was never asked to provide any documentation to support my claim, not in any of my correspondence with the company. They only refused my claim so I did not understand that they wanted me to provide documentation. Since they are asking for this now I have contacted [barns] treating doctor … who diagnosed [barn] at [hospital 3] in …, [hjemland]. She will provide the documentation but is presently on vacation and will be back the 17th of July. In meantime she has written a letter with a confirmation that a medical certificate will be prepared, please see attachment 4. The medical certificate will be sent to you as soon as it has been prepared.

Concerning the company's claim that they acted on and within the frames of the information requested and received from the Complainant, the local partner/…(Appendices 4-9) and the locally treating doctor,
I refer to what I have stated in my earlier complains. There were no medical examinations of [barn], no medical data collected, and no medical reports written. How is it possible that this is within the frames of IHI Bupa? I claim that this is unprofessional conduct. On what basis and on what expertise did they take their decision to have us stay at [hospital 1]? When signing the insurance I got a leaflet with the following information: *Genom det försäkringsbolag vi samarbetar med garanterar vi att de sätter din hälsa före allt annat genom de globala nätverk av samarbetspartner och välrenommerade läkarkonsulter som finns upparbetade.* **Please see attachment 5**. I find that this is a statement far from the truth!

If any of my documentations or responses are not clear or sufficient please let me know."

Af selskabets brev af 28/7 2017 til nævnet fremgår det blandt andet:

"The Company maintains that the Complainant's [barn] (hereinafter: [barn]), is not included as insured on the insurance policy. Consequently, [barn] is not covered by the insurance, except for medical expenses covered according to section 20.1. f); *Sickness expenses for newborn children, for up to 1 month after the end of the insurance period*. For that reason alone, the Company maintains its refusal of the claim for compensation made.

The Company maintains that it has acted within official recommendations for aeromedical transports in connection with preterm and sick newborns, based on the information requested by the Company and received over the assistance process, 4 December 2015 – 21 January 2016.

Furthermore, the Company maintains that various standard procedures and requirements for aeromedical transports, both domestic and international flights, are outside the Company's influence and responsibility. Additionally, the Company maintains that it is not responsible for actions and/or any errors made by a local medical practitioner / hospital.

The Company has refrained from inviting the Complainant to provide evidence of the disorder – periventricular leukomalacia – for the sole reason that the Company rejects the claim for compensation made.

> Referring to the Company's letter to the Complainant dated 6 April 2017, as well as the Company's reply sent to the Insurance Complaints Board on 28 June 2017, the Company has no further comments."

Klageren har i mail af 2/8 2017 til nævnet fremsendt udtalelse af 25/7 2017 fra barnets læge i bopælslandet, og heraf fremgår det blandt andet:

> "The initial week [barn] was taken care of at a local hospital in [land 1]. During this period [barn] became severely dehydrated. [Barn] was fed with 10 ml of breastmilk/Formula every three hours which is far below recommended intake. Most preterm infants born in this week also needs intravenous solution to perform adequate fluid balance and enough nutrition. After about one week [barn] was transferred to [land 2], …
> At arrival there [barn] was diagnosed with-severe dehydration with extended affection on the kidneys. In … [barn] was treated with intravenous nutrition and oral nutrition.
> The developed complications on the kidneys led to high blood pressure in need of antihypertensive drugs. This is now corrected and [barn] has normal blood pressure.
> During the period at the hospital [barn] also has become a carrier of multi-resistent bacterias (ESBL-CARBA).
> During the hospitalization in [hjemland] from January 21 2016 to February 22 2016 the patient did not suffer by any more complications and [barn] started to be breastfed. Although ultrasound of the brain showed bilateral periventricular leukomalacia (PVL), more extended on the right side.
> PVL is a well known complication on preterm babies born before 32 weeks (around 5%) and more common the more premature the child is. Insufficient blood flow to the brain is the main reason to PVL.
> It seems obvious that the undernutrition and dehydration that [barn] suffered from during the period in [land 1] also led to insufficient circulation including braincirculation.
> I can not find any other particular reason for [barn] to develop PVL. (Other risk factors are extreme prematurity, severe infections, severe circulatory complications due to heart failure, severe lung complications or severe NEC (necrotizing enterocolitis) in need of operation).
>
> The exact prognosis for [barns] development cannot be predicted at this age. We know that PVL is one of the main reasons for motor impairment and it is also associated with visual impairment and problems with concentration and coordination.
> [Barn] will therefore be followed with investigations by pediatricians, fysiotherapeut and psychologist until [barn] starts school at 6 years of age.
>
> I hope this will answer the questions from the insurance company Bupa.
>
> Summary:
> [Barn] was born preterm in [land 1] and the first week of treatment at the local hospital in [land 1] was insufficient regarding nutrition and fluid balance. This led to severe dehydration, affection on the kidneys and circulatory problems. It seems most probable that the complication with periventricular leukomalacia could have been prevented with adequate caretaking from the start. Every day that the baby was undernutritioned and with negative fluid balance aggravated the situation for the general circulation including circulation to the brain."

Selskabet har i brev af 21/8 2017 til nævnet blandt andet anført:

"[Læge 3s] medical statement dated 25 July 2017 has been review by the Company's team of medical specialists and in continuation hereof the Company has the following comments.

The Company has not seen any documentation from the treating facility that can support the statements made in the letter from [læge 3] regarding the treatment that the Complainant's [barn] received during the first days after delivery.
From the Company's regular conversations with the attending neonatologist in [land 1], the Company was informed that the Complainant's [barn] was receiving both breast milk and feeding through nasal tubing. From the Company's specialist UK neonatologist review the decision to give IV fluids or not depends on the clinical condition as fluids overload can cause serious brains damage. It is not always needed for these cases. Neither the treating neonatologist, nor the Complainant raised any concerns when in conversation with the Company's clinical staff at the time.

After a week the Company learned that the recorded weight loss of the Complainant's [barn] was greater than normally accepted. Based on this new development, the Company immediately evacuated Complainant and her [barn] with Air Ambulance to [land 2].

According to Company's team of medical specialists it is not clear why PVL occurs. This area of the brain is very susceptible to injury, especially in premature babies whose brain tissues are fragile, and especially before 32 weeks of gestation. PVL may happen when the brain receives too little oxygen. However, it is not clear when the trigger for PVL occurs – before, during, or after birth. Some literature states that development is linked to uterine (womb) infections and early ruptures of the amniotic sac (water breaking) (see Appendix 1). This was the case for [barns] birth stated by the treating Obstetrician and, therefore, could be the cause for PVL development due to early rupture of membranes or in the first 24 hours post delivery. In this timespan evacuation would not have been possible. PVL has an incidence of 426% despite admittance to the highest grade of care in NICUs in United States (see Appendix 1). The Company had to consider the risk of air medical transport of Complainant's [barn] being weighed against having the [barn] staying at a neonatal intensive care unit where [barn] was receiving medical treatment.

Aeromedical guideline recommends not flying if possible for the first week after birth and especially not for premature babies.

As the reports in the first days showed a stable clinical situation and the onsite clinical review of the quality of care of the treating facility performed for the Company by [samarbejdspartner] concluded that the hospital was capable of providing treatment for the Complainant's [barn], the Company concluded that this was the safest option for Complainant's [barn] at that time. As soon as it was known that the Complainant's [barn] became unstable, the Company chose to evacuate.

Based on the above statement provided by the Company's team of medical specialists as well as the arguments put forward in the Company's letters dated 6 April 2017, June 28 2017 and 3 July 2017, sent to the Insurance Complaints Board, the Company maintain the rejection of the claim for compensation and has no further comments."

Klageren har i mail af 30/8 2017 til nævnet blandt andet oplyst:

> "Bupa writes that they have not seen any documentation from the treating facility that can support the statements made by [læge 3].
> **As I have stated many times before, there is an absolute lack of documentation from [hospital 1], which is one of my main complaints. It is therefore not strange that there are no documents supporting her statement.**
>
> They continue saying that they had regular conversations with the attending neonatologist in [land 1].
> **This is a false statement! There were NO neonatologist present at [hospital 1].**
>
> They write that the complaint did not raise any concerns about fluids when in contact with Bupa's clinical staff.
> **The complaint is me, I have no medical experience what so ever and no experience or knowledge on how neonatal children should be cared for. I had also just given birth in a very dramatic fashion and was not at all a person to refer to concerning the medical treatment of [barn]. I relied on their competence and for them to ask me the questions needed. Not once was I asked how much fluid [barn] was given!**
>
> Bupa writes that I had a uterine infection and an early rupture of the amniotic sac and that my obstetrician has stated this.
> **This is also a false statement! It has not been stated by my obstetrician. I did not have any infection and my water broke less than one hour before giving birth.**
> They write that they had to consider the risk of evacuating with air ambulance or having us stay at the neonatal intensive care unit.
> **In [hospital 1] there was NO such unit. There was the presence of one incubator and that is all. NO neonatologist, NO hygiene standard, NO vital signs taken, NOT an adequate care for a neonatal child.**
> They write that the reports stated that the clinical situation was stable.
> **As I have already stated many times, I have not yet seen any medical reports or records from [hospital 1] following the clinical situation of [barn]. The onsite clinical review that they refer to, I have already commented on in earlier communication.**
>
> I am going to give the opportunity to [barns] treating specialist [læge 3] to comment on the medical statements made by Bupa. This will be sent to you shortly."

Af selskabets svar af 15/9 2017 til nævnet fremgår det blandt andet:

> "It is a fact that the clinical evaluation from [læge 1] is solely based on the Complainant's statement and not supported by a direct dialogue with the local treating doctors during the Complainant's admission at [hospital 1]. This stands in contrast to the fact that the Company had regular conversations with the attending doctors in [land 1] as well as with the Complainant (Appendix 9 in the Company's letter sent to the Insurance Complaints Board on 16 June 2017).
>
> It is stated in the medical report from [læge 4] of 12 December 2015 that the Complainant's [barn] was promptly admitted to the neonatal department (Appendix 7 in the Company's letter sent to the Insurance Complaints Board on 16 June 2017).
>
> As mentioned in the Company's letter sent to the Insurance Complaints Board on 18 August some literature states that development of PVL is linked to uterine (womb) infections

and early ruptures of the amniotic sac (water breaking) (see also Appendix 1 to same letter). It is our understanding that the Complainant experienced an early rupture of the amniotic sac as she was only in week 30 when she gave birth and she had known severe cervical instability, documented by [læge 1] in his medical report of 9 December 2015 (Appendix 6 in the Company's letter sent to the Insurance Complaints Board on 16 June 2017). This could, thus, be a probable cause of the PVL."

I klagerens brev af 30/9 2017 til nævnet er det blandt andet anført:

"The medical statement from [læge 3] is based on the medical facts received from the treating doctors at [hospital 4] in …, [land 2]. This is where [barn] was transferred from [hospital 1] and the hospital that later referred [barn] to [læge 3] at [hospital 3] in [hjemland]. [Hospital 4] received [barn] severely dehydrated, with kidney failure and high blood pressure. Please see attachment 1 – a report made by the Paediatric Nephrologist caring for [barn] at [hospital 4]. Also see attachment 2 – a progress report asked for by Bupa through [samarbejdspartner] [land 2] shortly before transferring us to [hjemland]. So Bupa is well aware of this information. Unlike from [hospital 1] [hospital 4] had meticulous documentation of medical data concerning [barn] and this was available to the insurance company at all times. This is why this statement from Bupa is really surprising me. [Læge 3] had no reason what so ever to be in a dialog with [hospital 1] when we were admitted there. She was not involved until we were referred to the hospital in [hjemland].

Bupa continues to claim that they had regular contact with the local attending doctors at [hospital 1]. They present Appendix 9 from their letter sent the 16th of June 2017 as a proof of this. This is a timeline created by Bupa themselves. I have many times asked Bupa to show me a report with medical data on [barn] from [hospital 1], but that have failed to present this.

Interesting to mention is that in their timeline they do not once mention all the telephone calls from [familiemedlem]. She was desperately trying to get them to understand that we needed to be evacuated and that they could not use me as a reference of things, because I was not in a stable state of mind. Please see Appendix 3, it is the phone bill of [familiemedlem] for the period of our stay at [hospital 1], it shows that she talked to them for approximately 1, 5 hour. I have also attached the phone bill of my mother … for the same period (Appendix 4) that shows that she as well had close to 1, 5 hours of telephone communication with them. In Appendix 5 you find an e-mail from my mother expressing the concern of the standard of [hospital 1], four days after the birth of [barn]. These appendixes is to show that Bupa was informed on an early stage about my family's concern of the standard of care that we were receiving, as well as the fact that they kept using me as their main reference concerning the health of [barn]. I would like to make clear that if my family had not worked so hard to get us evacuated [barn] would have died in [hospital 1].

I have come to understand that it is utterly important to closely follow the flow of fluid (in and out) of a neonatal child, as well as measuring the vital signs several times a day. I did not know this when I had given birth to [barn]. If I would have known I would have reported this to Bupa and I would have understood much earlier that the care [barn] was given at [hospital 1] was substandard and dangerous for [barn]. I do claim that this was the responsibility of the medical team of Bupa to know and to ask me questions about. It is correct that we did speak several times and they asked a few questions each time. I thought that everything was fine. But I claim that they should have known better because they are the medical experts. They should have had access to data that supported this and if not

> they should have moved us! They should also have been asking me the vital questions which they did not. Instead Bupa continues to use me (the Complaint) as their reference and states that I never alarmed them about the situation and from the information they got from me all things seems to be ok. As a mother, who almost lost her child, who is now suffering from an irreversible condition that is going to affect [barn] [barnets] entire live, I am already full of guilt! I blame myself every day for not understanding earlier the severity of the situation. For not helping [barn] earlier and for not protecting [barn]! But when I try to put my emotions a bit aside and look at the situation more objectively, I do see that the responsibility could not have been mine. I was not in a clear set of mind and I am not medically trained!
>
> The only medical report that Bupa has to refer to is the one from [læge 4] from the 12th of December 2015. This is the medical report that was necessary for us to have to be able to be evacuated and transferred to another hospital. As you see there is very little information about [barn] in it. The only facts are [barns] date of birth and [barns] weight, which was dictated by me to the doctor. I wrote about this in earlier communication. The report was done by me sitting down with the doctor (after having chased the report for a long time). The doctor had no clue what to write and did not look at any medical journals, just asked me what he should right and wrote what I said. This report as well as the VHS form attached in Appendix 6 were required for us to be evacuated and before these were sent we could not leave. So I pushed for these and basically wrote them myself because my child's life depended on it. As you can see there are no medical data in them. In the space for vital signs in the VHS form no vital signs are put down, because none were ever taken! I would once again like to state that I did not have a premature rupture of the ammoniac sac. [Barn] was born shortly after my water broke. I did indeed have a preterm rupture of membrane, since I gave birth prematurely. The cervical instability referred to by [læge 4] in his medical report from the 9th of December 2015, is referring to the day of labour. I contacted him when I started to feel that something was not right. There were no signs of cervical instability before the day of labour.
>
> [Læge 3] has looked at the response to her medical statement from the medical specialist at Bupa and has given her comments on it in Appendix 7. To have a second opinion I asked [Læge 2], professor of Perinatal Neuroscience to also have look and give his professional opinion, please see Appendix 8."

Af en e-mail korrespondance mellem selskabet og en lokal samarbejdspartner fremgår det blandt andet:

> "**From**: WMA, Bupa Intl. Emergency Response Team [mailto:Emergency@ihi.com]
> **Sent**: 08 December 2015 04:03 PM
> **To**: [Samarbejdspartner]
> …
> Dear Team,
>
> Thank you for your e-mail.
>
> Could you please advise if [hospital 1] in [by] is a good place for neonatal, if member needs evacuation, where to take her and baby?
>
> We really appreciate your assistance.
> …

From: [Samarbejdspartner]
Received: 08/12/2015 16:28
To: Bupa Global Assistance
…
Kindly be advised that our [NGO] offices does not have a relationship with the provided Hospital. However we are working on getting a Medical report and they also recommended [sygehus i land 1] for this case

We will revert back to you with further information as it comes in.
…
From: WMA, Bupa Intl. Emergency Response Team [mailto:Emergency@ihi.com]
Sent: 09 December 2015 11:29 AM
To: [Samarbejdspartner]
…
Many thanks for the information and we look forward to receiving the report today.

Would you recommend moving the baby and the mother from the current hospital?

Please also contact the member's obstetrician, [læge 1] and ask the following:

When did he see the patient last time and how were mother and baby doing when he last saw the patient? How long has she been a patient of him?
Has she received fertility treatment?
…
From: WMA, Bupa Intl. Emergency Response Team [mailto:Emergency@ihi.com]
Sent: 09 December 2015 03:03 PM
To: [Samarbejdspartner]
…
Can you please advise if the current hospital is well-equipped and can provide treatment for the baby. Or do you recommend moving the baby?
…
From: [Samarbejdspartner]
Received: 09/12/2015 14:11
To: Bupa Global Assistance
…
Kindly note, as advised by our [NGO] offices yesterday. It was advised that the patients be moved to [sygehus].

Please advise if you want to have the patients transferred to the facility that was recommended.
…
From: WMA, Bupa Intl. Emergency Response Team [mailto:Emergency@ihi.com]
Sent: 09 December 2015 03:53 PM
To:[Samarbejdspartner]
…
We are not able to confirm anything until medical information has been received from the hospital and [læge 1]. Please ask them to urgently provide the requested information.
In addition to this, please prepare for moving the patient to [sygehus], but do not go ahead with anything before receiving confirmation from us.
…
From: [Samarbejdspartner]
Received: 09/12/2015 15:15

> **To**: Bupa Global Assistance
> …
> Kindly be advised that the hospital is well equipped and can provide treatment for the baby. The treating doctor promised to provide the medical report today before the end of the day.
> …
> **From**: WMA, Bupa Intl. Emergency Response Team [mailto:Emergency(aihi.com]
> **Sent**: 09 December 2015 04:42 PM
> **To**: [Samarbejdspartner]
> …
> Are you saying that the hospital [barn] is at is well-equipped or should we consider moving [barn]?
>
> Please be informed that we have reached out to [læge 1] so close that part of the case from your end.
>
> Kindly urgently request a medical report from hospital.
> …
> **From**: [local samarbejdspartner] e-mail
> **Received**: 09/12/2015 15:45
> **To**: Bupa Global Assistance
> …
> The hospital is well equipped.
>
> [Samarbejdspartner] does not have a contract with the hospital, so if you require us to settle accounts on your behalf, then a transfer should be considered."

I mail af 8/12 2015 fra klagerens familiemedlem til selskabet er det blandt andet anført:

> "Nu har det gått fyra dygn sedan min dotter födde [barn]. Vi önskar en återkoppling om vad som händer!? Förstår att hygienkraven for kuvösbarn inte alls ställer samma krav som hos oss. [Klageren] har inte heller fått någon återkoppling från er. Önskar mer information om vad som är på gång!"

Selskabet har i mail af 8/12 2015 til klageren blandt andet anført:

> "Så bra du hade tid att prata med mig idag. Jag har nu även pratat med din mamma och hon skulle informera [familiemedlem]också.
>
> Läkaren kommer ringa upp dig i eftermiddag så du kan få svar på dina frågor.
>
> Vi har varit i kontakt med Dr … flera gånger (via telefon och sms) som och vi har bett honom skicka oss en journal eller email adress så vi kan kommunicera med honom, men tyvärr har vi inte fått detta än. Han skulle titta förbi dig idag sa han och uppdatera os efteråt. Jag hoppas han gir det nu.
> …
> Jag förstår att allt är riktigt omtumlande nu och det viktigaste är ju faktiskt att du och [barn] mår bra. Men ju fortare vi har allt på plats, ju mer proaktivt kan vi agera när och om det behövs.

> Jag känner att vi också ska ha koll på närmaste ställe du kan evakueras till om det nu skulle bli nödvändigt. Och har därför varit i kontakt med vår lokala partner.
>
> Du ska alltid känna att du kan kontakta oss och vi är tillgängliga här dygnet runt. Vi år kanske inte alltid lika bra på att uppdatera men det betyder inte att vi inte har styr på vad som händer."

Af en mail fra klageren af 10/12 2015 til et sygehus i hjemlandet fremgår det blandt andet:

> "[Familiemedlem] har varit i kontakt med er och ordnat så att jag kan få ställa frågor angående min 2 månader for tidigt födda [barn]. Vi befinner oss nu på ett litet sjukhus i [by],[land 1] och inväntar att [barn] ska bli stark nog for att kunna resa hem. Här är mina frågor:
>
> - [Barn] föddes nästan 2 månader for tidigt och fyller en vecka i morgon. Utvecklingen har hittills vant bra. Andra dagen andades [barn] utan syrgas och [barn] blir sondmatad med 10 ml av min bröstmjölk var tredje/fjärde timme sedan två dagar tillbaka. [Barn] har inte kräkts en enda gång, bajsar, kissar och skriker när ngt inte är bra. [Barn] får extra tillskott av vitaminer och järn 3 ggr/dag och får antibiotika 2 ggr/dag (om jag inte missminner mig). Vad är det viktigaste för [barn] nu? Vad ska jag vara extra uppmärksammad på? Även om standarden här är bra med [udenlandsk] mått mätt så är den mil ifrån den [i hjemlandet] och förutsättningarna är MKT annorlunda. Vi köper själva handsprit och jagar syrror för regelbunden matning och elavbrott.
> - Läkarna har rekommenderar att [barn] väger minst 2,5 kg innan jag flyger hem [barn] ([barn] vägde 1575 gram vid födseln). Är det farligt för en för tidigt född bebis att flyga pga av förändringen i syrehalten i luften på planet? Bör man resa med [barn] i kuvös?
> - Jag står mellan valet att, då [barn] är stabil nog att lämna sjukhuset, ta hem [barnet] till vårt hem här i [undlandet] och låta [barn] växa till sig ännu några veckor innan vi reser, eller ta hem [barn] till [hjemland] direkt. Fördelen med att ta hem [barnet] till [hjemland] så fort [barn] är stark nog att resa är att det är mkt lättare att hålla hygienstandarden och att om ngt skulle tillstöta senare så finns det bra vård att få. Fördelen med att vänta skulle vara att [barn] blir starkare med tiden och bättre skulle klara en hemresa då [barn] är ngr veckor äldre. Vi har dock inget rinnande vatten hemma vilket gör att vi inte kommer att kunna upprätta samma hygien standard som hemma i [hjemland]. Vad råder du oss till att göra?
> - Är det farligt for [barn] att byta bakteriemiljö, dvs. komma for fort till [hjemland]?
> - Som jag har förstått är de första 15 dagarna de mest kritiska för en för tidigt född bebis men hur länge anses [barn] vara i högre risk an fullgånget födda barn? Vilka är riskerna? Vad ska jag vara uppmärksammad på och hur länge?
> - Vad bör vi göra när vi väl kommer hem till [hjemland]? Ska vi besöka er eller vanliga barnavården för kontroll?"

I en medicinsk rapport af 15/1 2016 fra hospitalet, hvor barnet blev flyttet til efter en uge, er det blandt andet noteret:

> "**Main problems**
>
> 1. Acute kidney injury – resolving
> 2. Hypertension – resolved

[Barn] was referred to me with a history of high urea and creatinine. At the time of consultation the measured urine output over 24 hours was 2.5 ml/kg/hour. [Barn] was delivered in [land 1] at 31 weeks gestation, weight 1.575 kg. According to the mother [barn] was on Nasal CPAP after delivery. No umbilical catheters inserted. No history of blood in urine. [Barn] was fed 3 hourly and each milk feed volume was 10m1 while in [land 1]. [Barn] was admitted to [hospital 4] on day 8 of life for further management. At the time of admission [barn] was dehydrated.

There is no history of oligohyramnios and the mother was healthy during pregnancy. The antenatal ultrasound was normal. No family history of kidney diseases or hearing impairment

…

Clinical examination 18/12/2015

[Barn] was well hydrated and did not have jaundice, pallor, or cyanosis. Hair and skin appeared normal. BP 88/63, BP was high in all limbs.

Abdominal, CVS, ENT, Respiratory, CNS and Musculoskeletal system examination: Normal.

…

Kidney ultrasound 15/12/2016: Dense kidneys with poor corticomedullary differentiation Sizes: Right 4.3 x 1.88 cm, Left 4 x 2 cm. Pelvi-calyceal system is normal. No stones, cysts or masses.

Follow up:

Kidney ultrasound 24/12/2016: enlarged kidneys with increased cortical density.
Sizes: Right 4.6 x 2.2 cm, Left 5.2 x 2.4 cm. Pelvi-calyceal system is normal. No stones, cysts or masses.
Resistance index 0.74 on the right renal artery and 0.78 on the left

Follow up:

The blood pressure continued to increase and on 24/12/2015 it was 116/69 right arm and 111/65 left arm. At that stage [barn] was on Amlodipine. Propanolol was added to [barns] treatment and his BP readings improved.
The urea and electrolytes continued to decrease and the blood pressure became easy to manage. Amlodipine and Propanolol were weaned and on 5/01/2016 [barn] received the last dose of Amlodipine.
When I saw [barn] on 8/01/2016 [barns] blood pressure was 59/46

Comments: The kidney function has improved significantly. Of note it took over 4 weeks for this patient's kidney function to improve. One can postulate that prolonged dehydration has led to Acute kidney injury."

Af selskabets brev af 6/4 2017 til klageren fremgår det blandt andet:

"**Assessment of the capabilities of [hospital 1]**

Throughout your stay at [hospital 1] in [land 1], the Clinical Team at Bupa Global was monitoring the care of [barn], mainly via direct contact with the treating doctor, who reported that he had no concerns with the nutritional, respiratory or neurological status of [barn] and described [barn] as stable and feeding without issues.

As per our standard procedure when having customers treated at clinics in remote areas, Bupa Global requested from [gruppe af internationale samarbejdspartnere] (in this case

[samarbejdspartner]) that an onsite clinical review of the facilities' capabilities be undertaken and a recommendation given as to whether an evacuation was required. [Samarbejdspartner] conducted the review and reported to us that 'the hospital [[hospital 1] in [land 1]] is well equipped and can provide treatment for the baby'.

Aeromedical guidelines recommend that premature and sick neonates should where possible be treated locally. Transportation in the neonatal period should only be made if the child's medical needs exceed local capabilities.
Bupa Global made every effort to clinically assess the capabilities and quality of [hospital 1], and based primarily on the contact with the treating doctor and the evaluation by [samarbejdspartner] and taking into account the risks of aeromedical transport of a preterm baby, Bupa Global reached the decision that it was safest for [barn] to wait to be evacuated until [barn] was clinically stable and [barns] weight had reached approximately 2,000g.

[Klinik]
You question why you were not referred to a clinic named [klinik], which you have understood to be a Bupa clinic in [by] which could have provided appropriate care. Please note that [klinik]:

a) is not a clinic within Bupa's network; and

b) specializes in medical care and assistance, with customers mainly in the oil and mining industry (not preterm neonatal care).

Given the above, and the welfare of [barn] as Bupa Global's top priority, Bupa Global did not consider it appropriate to refer you to [klinik] in the circumstances.

Evacuation of [barn]

Immediately upon Bupa Global learning that [barn] had lost 17% of [barns] body weight, Bupa Global took emergency action and made the decision to urgently evacuate [barn] and yourself via air ambulance ('AA') to …, [land 2]. In order to enable the AA to get clearance for the flight and fulfil the requirements from [udenlandske autoriteter] for any patients entering the country, a number of forms had to be completed by you, your husband and the treating doctor. This process is compulsory and unfortunately beyond our control. This is a prerequisite for any activation of an AA flying into [land 2]. We did activate the AA 18 minutes after having received the completed documents.

The total time from the decision to evacuate was made until you and [barn] arrived to the hospital in … was approximately 44 hours. This is not an unusual amount of time for an emergency evacuation out of [land 1] to [land 2] considering local regulatory requirements and infrastructure."

I en udtalelse af 18/9 2017 fra en læge i klagerens hjemland er det blandt andet oplyst:

"On request from [klageren], mother of [barn], I have reviewed this case. For the purpose I have read the 'Certificate' written by [læge 3] and the reply to this certificate from BUPA Travel Insurance company.

Initially I was contacted by [klageren] shortly after [barns] birth when she was still cared for at [hospital 1] in [land 1].

[Barn] was born at 32 weeks of gestational age. [Barns] birth weight according to the mother was 1.575 kg (due to a typo in [læge 3s] letter wrongly stated as 1.725 kg). [Barns] clinical status at the time of the initial contact was cardio-respiratory stable, but I was concerned about the much too limited volumes of fluid the infant was receiving, stated to be 10 ml every third hour.
Fluids are usually advanced much more rapidly, also in low resource settings.
Recommendations from NGOs (such as Medecins Sans Frontieres: 'Neonatal Guidelines') recommend much higher volumes (see Table).
For [barn], a total of 80 mL/day means [barn] by gavage feeding received appx 20 mL/kg/d, a volume definitely producing a severe dehydration. Calculating [barns] needs according to the Table, [barn] should have received at least 100m1 Day 1, 120 mL day 2. Considering [barns] birth weight of 1.575 kg and gestational age of 32 weeks [barn] also most probably qualifies as growth restricted (IUGR) in which case these volumes should be even higher (135 mL Day1, 180 ml Day 2 etc). Such a dehydration will most definitely result in a prerenal oliguria (too little urine output resulting in a risk for systemic hypoperfusion) and risk for later sequelae.
…
We know for certain that [barn] at [barns] arrival in [land 2] was severely dehydrated, and had lost 265 g (17% of [barns] BW, weights according to [barns] mother).

The medical experts of BUPA are correct, that the pathophysiology of periventricular leukomalacia is multifactorial. In the letter from BUPA it is stated that there was a PPROM (preterm premature rupture of the membranes), which is negated by [klageren] who states that the water broke in the taxi on the way to the hospital. Having said that, I disagree that the presence of one weak risk factor justifies neglecting other, and most probably stronger, risk factors, i.e. the risks of hypoperfusion to the kidneys, brain (and many other organs) caused by inadequate fluid therapy."

Af en udtalelse af 22/9 2017 fra en læge i klagerens hjemland fremgår det blandt andet:

"This certificate is a reply to the companies reply on my first certificate and medical statement dated 25 of July 2017.

There are some statements in this reply that I want to question.
1. It is said that the baby was receiving both breastmilk and feeding through nasal tubing. Although there is nothing said about how often and how much and this is essential to know when you are deciding whether the feeding was enough or not. Every day the neonatologist is supposed to decide about the babys fluid balance and also decide if [barn] is able to receive all nutrition enterally or if [barn] need to have parenteral nutrition. Every day babies are weighed and the fluid balance are evaluated and the new days nutrition are computed from all those values. Therefore I strongly question that it lasted until 7 days before the company learned that the recorded weight loss of the complainants [barn] was greater that normally accepted. This must have been developed during the whole first week of [barns] life and finally it was obvious that [barn] was seriously dehydrated transported to [land 2]. Here the insurance complaints board means that risk of a medicial transportation overweighed the risk of having [barn] staying at the neonatal intensive care unit where [barn] was receiving medical treatment. I there have to question what the treatment consisted of. It seems obvious that [barn] was quite healthy when [barn] was born considering [barns] prematurity but then [barn] became more and more ill and was severely dehydrated with severe kidney affection when [barn] arrived to [land 2]. In the appendix 1 it is referred to that it is not clear when the trigger for PVL occurs. It can be linked to uterine infections and early rupture of the amniotic sac but this was not the situa-

tion for the complainant. In appendix 1 it also says that hypotension could be one cause of PVL and this is something that we really know that the complainants [barn] suffered from. Severe dehydration resulting in insufficient bloodflow and secondary to this also kidney affection and hypertension. Also we can state that in [hjemland] preterm born babies are transported to Level III hospitals immediately after stabilisation and this is perfomed by specific neonatal transportation units. We do not wait until the babys health status is worsened and severe.
In summary there is one main complication for the complainants [barn] end this is severe dehydration. This could have been prevented with adequate fluid balance and dehydration is one main reason to develop PVL."

I forsikringsbetingelserne hedder det blandt andet:

"**§ 1 Godkendelse af forsikringen**
1.1: Hvem der kan tegne Enkeltrejse
Forsikrede skal være omfattet af Sundhedsloven i Danmark eller tilsvarende sundhedslove i Sverige eller Norge for at kunne tegne Enkeltrejse.

Forsikringen dækker endvidere, hvis forsikrede på grund af udlandsrejse i 6 til 12 måneder midlertidigt frameldes folkeregistret.

1.2: Hvem forsikringen omfatter
Forsikringen dækker de på forsikringskortet nævnte forsikrede.

1.3: Medforsikring af børn under to år
Gratis medforsikring af børn under to år forudsætter, at der sker tilmelding af barnet til Selskabet, og at en af de forsikrede har forældremyndighed over barnet.
…
2 Hvornår forsikringen træder i kraft
…
2.4: Hvis forsikringen tegnes efter afrejse
Hvis forsikringen tegnes efter at forsikrede har forladt sin bopæl/sit opholdssted i hjemlandet, indtræder retten til erstatning først tre dage (karensperiode) efter forsikringens ikrafttræden. Udgifter som følge af begivenheder opstået i karensperioden er aldrig omfattet af forsikringsdækningen.

Ved alvorlig tilskadekomst i forbindelse med et ulykkestilfælde indtræder retten til erstatning dog samtidig med forsikringens ikrafttræden.
…
§ 4 Sygeudgifter (Grunddækning)
4.1: Dækningsberettigede sygeudgifter
Selskabet bedømmer og afgør om udgifterne er rimelige og relevante for at få klarhed over om forsikrede lider af en sygdom, er i behov for behandling eller for at få kontrolleret en udført behandling.

Forsikringen omfatter følgende ydelser:

a) ubegrænset dækning til forsikredes sygeudgifter i tilfælde af akut opstået sygdom eller tilskadekomst,

b) lægeordineret og receptpligtig medicin,

c) nødvendig lokal sygetransport til nærmeste behandlingssted. Maks. DKK 1.000 pr. skadetilfælde.

…

§ 5 Transport (Grunddækning)

5.1: Dækningsberettiget syge- eller hjemtransport

Selskabet yder erstatning til rimelige ekstraordinære udgifter til forsikredes syge- og/ eller hjemtransport, inkl. ambulancetransport, i tilfælde af:

a) alvorlig sygdom eller

b) alvorlig tilskadekomst eller

c) død.

Forsikringen dækker kun for en hjemtransport i forbindelse med ét sygdomstilfælde/tilskadekomst.

5.2: Selskabets rettigheder ved transport til behandling

Selskabet har ret til at kræve forsikrede hjemtransporteret til behandling i bopælslandet og lade behandling afvente hjemkomsten.

Endvidere har Selskabet ret til at kræve forsikrede overført til andet egnet behandlingssted.

Selskabets lægekonsulent afgør, eventuelt i samråd med behandlende læge, om transporten er nødvendig og/eller forsvarlig.

…

§ 7 Evakuering (Grunddækning)

7.1: Dækningsberettiget evakuering

Selskabet yder erstatning i tilfælde af:

a) rejseselskabets konkurs, såfremt der ikke er tale om en pakkerejse eller lignende, hvor hjemrejsen er dækket af Rejsegarantifonden,

b) epidemi i det område hvor forsikrede opholder sig, såfremt det danske Udenrigsministerium, dansk ambassade eller lignende institution anbefaler evakuering, og hvor tilstanden er opstået efter forsikredes udrejsetidspunkt til området,

c) krig, borgerlige uroligheder, borgerkrig, terrorhandlinger, militær undtagelsestilstand, revolution eller anden lignende tilstand i det område, hvor forsikrede befinder sig, såfremt det danske Udenrigsministerium, dansk ambassade eller lignende institution anbefaler evakuering, og hvor tilstanden er opstået efter forsikredes udrejsetidspunkt til området,

d) naturkatastrofer hvor det danske Udenrigsministerium, dansk ambassade eller lignende institution anbefaler evakuering, og hvor tilstanden er opstået efter forsikredes udrejsetidspunkt til området.

7.2: Dækningsberettigede udgifter

Der ydes refusion til transport til nærmeste sikre destination eller til hjemlandet samt maks. DKK 750 pr. døgn til dokumenterede ekstraudgifter til hotelophold.

Selskabet afgør om forsikrede skal evakueres til nærmeste sikre destination eller til hjemlandet. Såfremt forsikrede er evakueret til nærmeste sikre destination, ydes erstatning til dokumenterede nødvendige ekstraudgifter til hjemrejse.

7.3: Specielt ved krig eller risiko for krig
Hvis forsikrede bliver tilbageholdt af myndighederne i et land som følge af krig eller risiko for krig, dækker forsikringen i op til tre måneder dokumenterede og afkrævede ekstraudgifter til ophold og fortæring med op til DKK 1.500 pr. døgn samt nødvendig lokal transport.

7.4: Danske Udenrigsministeriums anbefalinger
Det er en betingelse for dækning, at forsikrede ikke på et tidligere tidspunkt har undladt at følge det danske Udenrigsministeriums opfordring til evakuering.

7.5: Selskabets ansvar
Selskabet kan ikke holdes ansvarlig for, i hvilket omfang en transport/eftersøgning/redning kan foretages, men vil samarbejde med det danske Udenrigsministerium, dansk ambassade eller lignende institution i de tilfælde, hvor hjælp er nødvendig.
…
14 Ulykke og overfald (Udvidet Dækning)
14.1: Dækning ved ulykkestilfælde
Hvis der er tegnet Udvidet Dækning, omfatter forsikringen dækning for ulykke, og yder erstatning ved ulykkestilfælde, som direkte og uden indvirken af sygdom forårsager den forsikredes død eller bevirker en vedvarende invaliditet
…
14.3: Permanent invaliditet
Hvis et ulykkestilfælde har medført invaliditet svarende til en méngrad på mindst 5 %, udbetales ménerstatning.
…
§ 20 Undtagelser fra erstatning
20.1: Undtagelser
Selskabet udbetaler ikke erstatning ved ulykke samt sygdom/dødsfald, og betaler heller ikke udgifter, der vedrører, skyldes eller er opstået som følge af:
…
f) syge- og fødselshjælp, der opstår efter svangerskabets 8. måned (36. uge), dog for gravide som er fertilitetsbehandlede og/eller venter mere end ét barn efter 4. måne (18. uge), Enhver udgift, der vedrører graviditet og/eller fødsel, herunder også udgifter til nyfødte børn, er kun dækket i op til en måned efter forsikringsperiodens udløb. Herefter ophører dækningen."

Nævnet udtaler:

Klageren tegnede den 30/11 2015 en enkeltrejseforsikring i selskabet med dækning for perioden fra den 1/12 til den 13/12 2015. Klageren var gravid og befandt sig på tegningstidspunktet i et af verdens fattigste lande. Den 4/12 2015 gik hun i akut og præmatur fødsel, og hun fødte et barn 2 måneder forud for terminsdatoen. Barnet vejede 1575 gram ved fødslen. Det blev lagt i kuvøse og behandlet på et lokalt hospital. Efter ca. en

uge blev det konstateret, at barnets vægt var faldet til 1310 gram. Selskabet sørgede herefter for, at barnet og moderen blev overflyttet til et hospital i et andet land den 13/12 2015.

Klageren har anført, at barnet modtog utilstrækkelig behandling på det lokale hospital, og at selskabet burde have undersøgt forholdene bedre – henset til hospitalsstandarden i det pågældende land – og på denne baggrund have foranlediget overflytning på et tidligere tidspunkt. Hun har anført, at barnet som følge af den sene overflytning og mangelfulde behandling har pådraget sig lidelsen periventicular leukomalacia, der kan give varige neurologiske følger. Hun har anført, at selskabet er ansvarlig for forløbet og barnets helbredsgener, og hun kræver, at selskabet udbetaler kompensation.

Selskabet har afvist, at klagerens barn er berettiget til forsikringsydelser. Selskabet har henvist til, at klagerens barn ikke indgår på policen som forsikret, jf. forsikringsbetingelsernes § 1.2. For så vidt angår selskabets eventuelle ansvar, har det anført, at der er handlet indenfor rammerne af den information, som selskabet modtog fra klageren, den lokale samarbejdspartner og den behandlende læge. Selskabet har afvist, at det bærer ansvaret for en eventuel fejlbehandling på det lokale hospital og overholdelse af procedurer i forbindelse med ambulanceflyvning. Endvidere finder selskabet det ikke bevist, at barnets lidelse kunne være undgået, hvis barnet var blevet overflyttet tidligere.

Nævnet finder, at klageren eller klagerens barn ikke er berettiget til forsikringsydelser som følge af eventuelle helbredsskader, som barnet måtte have pådraget sig som følge af eventuel fejlbehandling. Nævnet har lagt vægt på, at klageren har tegnet en forsikring med basisdækning, og den eneste dækning, der giver adgang til dækning for varigt mén, er rejseulykkesforsikringen, som er en del af den udvidede dækning, som klageren ikke har tegnet.

Spørgsmålet er herefter om selskabet på erstatningsretligt grundlag er ansvarligt over for klageren og hendes barn ved ikke at have sørget for overflytning til et bedre hospital på et tidligere tidspunkt, og om klageren og hendes barn på dette grundlag har et krav mod selskabet. Nævnet bemærker i denne forbindelse, at selskabet ikke kan afvise et

eventuelt erstatningsansvar med henvisning til, at klagerens barn ikke er nævnt som forsikret på policen.

Nævnet betvivler ikke oplysningerne om, at behandlingen på hospitalet ikke levede op til den standard, som klageren måtte forvente af et hospital, som selskabet havde henvist klageren til at blive behandlet på. Nævnet har herved blandt andet lagt vægt på klagerens oplysninger om, at barnet ikke blev vejet frekvent, den utilstrækkelige journalføring mv. Nævnet finder, at selskabets håndtering af sagen – herunder de undersøgelser som selskabet har iværksat med henblik på, at kontrollere, at hospitalets standard var tilfredsstillende – giver indtryk af, at være utilstrækkelige.

Nævnet finder efter en gennemgang af sagen – herunder klagerens og selskabets forklaringer - og efter en samlet vurdering af sagens konkrete omstændigheder imidlertid ikke at kunne kritisere, at selskabet har afvist at yde kompensation til klageren og hendes barn.

Det er nævnets opfattelse, at klageren ikke har bevist, at selskabets håndtering af sagen har været så mangelfuld, at klageren og hendes barn er berettiget til kompensation, eller at selskabet i øvrigt har handlet ansvarspådragende over for klageren, så det kan begrunde et erstatningsansvar.

Nævnet har ved afgørelsen blandt andet lagt vægt på, at selskabet har baseret sin vurdering på de oplysninger, som det modtog fra henholdsvis klageren, samarbejdspartneren og hospitalet. Nævnet har i denne forbindelse lagt vægt på, at der er givet oplysninger om, at klagerens barn kunne trække vejret, og at det kunne indtage føde. Nævnet har også lagt vægt på, at korrespondancen mellem selskabet og samarbejdspartneren den 8/12 2015, hvor der spørges ind til behandlingsstandarden og et eventuelt behov for at flytte barnet til et andet behandlingssted. Nævnet har endelig lagt vægt på, at selskabet har reageret på de modtagne oplysninger, og at barnet blev flyttet, da der blev givet oplysninger om, at barnets vægt var faldet.

Nævnet finder, at selskabet ikke kan gøres ansvarlig for eventuel fejlbehandling foretaget af lægerne på behandlingsstedet, ligesom nævnet finder, at selskabet ikke bærer ansvaret for forværring, der måtte være opstået i forbindelse med overholdelse af nødvendige procedurer i forbindelse med transport i og ud af opholdslandet.

Nævnet har videre noteret, at lidelsen periventicular leukomalacia er kendt hos for tidligt fødte børn, og nævnet finder ikke med tilstrækkelig sikkerhed at kunne fastslå, at barnet ikke havde fået denne lidelse, såfremt overflytningen til et andet behandlingssted var sket på et tidligere tidspunkt.

Det forhold, at selskabet ikke modtog journalmateriale fra hospitalet i forbindelse med behandlingen af barnet, kan efter nævnets opfattelse ikke føre til andet resultat.

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Carsten Sennels