Den 7. marts 2018 blev i sag nr. 91552:

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mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstagerne har rejseforsikring i Bupa Denmark Services A/S. De klager over, at selskabet har afvist at yde dækning for afbestilling af en rejse på grund af sygdom.

Selskabet har afvist at yde dækning med henvisning til, at rejsen var påbegyndt, da forsikringen blev købt. Selskabet har henvist til, at rejsen blev begyndt, da klagerne forlod deres hjemland.

Klagerne har i klageskema af 15/11 2017 til nævnet blandt andet anført:

> "1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.
>
> My husband and I left [hjemland] on the 8th October 2016 for a year of travelling. While in [land 1], in March 2017 we decided to add a tour to [land 2] to our itinerary. As the tour company required proof of comprehensive insurance cover for the tour we searched the internet and found a Travel Insurance Co. (World Nomads, underwritten by Bupa Denmark) who advertised
> 'Explore your boundaries. Travel insurance for independent travellers. Buy, extend & claim online, even after you've left home.'
> 'Simple & flexible trip insurance for international or domestic travel. Buy & claim from anywhere in the world'.
> '3 day waiting period. If the insurance is purchased while travelling and after you have left your country of permanent residence, there is a waiting period of three days before the insurance coverage takes full efffect...
> 'Buy cover while traveling – if you're traveling and want to extend your trip, world nomads lets you buy more cover to keep you on the road'.
> We completed a very simple on-line form, which only asked for our home country and not where we were applying from, paid the $190.00 premium for cover commencing from our

flight to [land 2] from [land 3] on the 7th June and terminating on our return to [land 3] from [land 2] on the 22nd of June. (only full weeks offered so policy dates were 6th June to 26th June.)
My husband sustained a severe neck injury on about the 20th May 2017, and was receiving medical treatment from a neuro surgeon in [land 3], and was completely unable to travel. Bupa has rejected the claim as we had already left our home country ([hjemland]), and were not yet in [land 2] so the cancellation section of the trip did not apply. Copies of correspondence attached.

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

The insurance company should reimburse us for costs incurred for the cancelled tour to [land 2], return flights from [land 3] to [land 2], and extra hotel accommodation not included in the tour, which we were unable to recover when cancelling due to my husband's injury."

Selskabet har i brev af 12/12 2017 til nævnet blandt andet oplyst:

"**The insurance**
The insurance was purchased online on 23 March 2017 via Worldnomads.com.

Insurance period: 6-26 June 2017

The insured: [Klager 1] (hereinafter; the Complainant) and [klager 2]

Type of insurance: The insurance is a Couple/Duo insurance, covering two(2) people travelling together on the same itinerary, both under 66 years of age on the commencement date who are travelling together and from the same country of permanent residence.

The Complainant's request
The Complainant wants the Company to reimburse Complainant and co-insured husband … for costs incurred for the cancelled tour to [land 2], return flights from [land 3] to [land 2], and extra hotel accommodation not included in the tour, which they were unable to recover when cancelling their trip to [land 2], due to [klager 2s] injury.
…
Statement of the facts
On 8 October 2016, the Complainant and [klager 2] left their country of permanent residence, [hjemland], to embark on a long-term stay abroad.

On 7 November 2017, the Insurance Complaints Board received an email from the Complainant outlining the couple's intention to decide their travel destinations as they went along. In respect of the submitted claim for compensation in particular, the above-mentioned email also described that on 27 March 2017, while the couple were staying [in land 1], they purchased a trip to [land 2] as well as took out insurance via WorldNormads.com.

The trip to [land 2] consisted of two return tickets [land 3]-[land 2] with departure from [land 3] on 7 June 2017 and return from [land 2] on 22 June 2017. Moreover, the couple had also purchased an all-inclusive stay at … and a hotel stay in [land 3] on 22 June 2017. According to the Complainant, the travel insurance concerned was solely taken out for the trip to [land 2].

On 27 May 2017, while the Complainant and [klager 2] stayed in [land 3], they submitted a notification of claim (Appendix 2) to the Company. The reason for submitting the notification of claim was that the couple's planned trip to [land 2] had to be cancelled, since [klager 2], for medical reasons, had been prohibited from taking the trip to [land 2].

In an email dated 16 June 2017 (Appendix 3), the Company informed the Complainant that since the travel to [land 2] was not covered by Section 13 of the insurance conditions, the Company would not be able to accept liability for the claim.

In an email dated 17 June 2017, the Complainant informed the Company that she disagreed with the rejection based on the following point of view, quote, *'Although our home country is [hjemland], our place of residence at the time of purchase was [land 1], from where we went to … and the to [land 3], frem where we were supposed to fly to [land 2] on the 7th of June 2017*', end of quote.

In an email dated 19 June 2017, the Company informed the Complainant that under Section 13.1 of the insurance conditions, cover is provided for pre-trip cancellation 'in the event that you have to cancel or postpone your trip before you leave home.' Since the couple's country of permanent residence is [hjemland], the validity of the cover for pre-trip cancellation thus ceased the moment they left [hjemland] on 8 October 2016. Accordingly, the Company upheld its rejection.

In an email dated 23 June 2017, the Complainant informed the Company that she still disagreed with its decision. Among other things, she stated, quote, *'In any event, [hjemland] is our country of permanent residence but is not our home. We left there in October 2016, and our home at the time we took out was [land 1], so either way we are covered (this policy was for a tour booked from [land 1], complete independently of any other travelling we were planning and was to commence from a [land 3] departure as already explained).'*, end of quote.

In an email dated 27 June 2017, the Company informed the Complainant the following further arguments for upholding its rejection, quote: *'Your claim was rejected on the grounds that as you were in [land 3] at the time, you had already left your country of permanent residence, [hjemland], thus having already begun your travel. Section 13.1 of the Policy Conditions states that the insurance provides coverage in connection with the pre-trip cancellation 'if you have to cancel or postpone your trip before you leave home (...) 'home' being defined in the Glossary as your country of permanent residence. Please find attached a copy of the policy wording of your travel insurance for reference.'*, end of quote

Conclusion

It is a condition for taking out travel insurance at Worldnomads.com that the customer actively confirms 'I have read, understood & agree to the conditions in the Product Guide and agree to receive all policy documents electronically'.

Accordingly, it is the Company's contention that the Complainant cannot validly argue that the claim be settled by applying an interpretation other than that which follows from the Glossary of the insurance conditions:

- ***Home: Country of permanent residence***
- ***Country of permanent residence:*** *the country where* ***you*** *have* ***your*** *permanent* ***home*** *or principal establishment and to where* ***you*** *are absent,* ***you*** *intend to return.*

The insurance was purchased online via Worldnomads.com on 27 March 2017 while the Complainant and [klager 2] were staying [i land 1]. The Company therefore deems it indisputable that the insurance was purchased after the couple left their country of permanent residence, [hjemland], on 8 October 2016, meaning that the claim does not satisfy the provisions of Section 13."

I klagernes mail af 18/12 2017 er det blandt andet bemærket:

"The case is essentially as set out in their correspondence.

However, nowhere do they deal with or respond to the main issue raised, ie their highly misleading and/or fraudulent marketing, where they state repeatedly that insurance cover can be purchased while travelling.

In terms of their own insurance policy,

'Section 2
2.3: Cover for any pre-trip cancellation starts after a 3 day (72 hour) waiting period from the issue date shown on your Certificate of Insurance and ends an the commencement date noted on the Certificate of Insurance. Cover for all other benefits starts from the commencement date or when you leave your country of permanent residence and end when the expiry date expires or when you return to your country of permanent residence'

Our claim is therefore covered by that part of Section 2.3 in italics, as we had already left our home country at the time of purchasing the insurance.

In addition, they also state:

'In an email dated 19 June 2017, the Company informed the Complainant that under Section 13,1 of the insurance conditions, cover is provided for pre-trip cancellation 'in the event that you have to cancel or postpone your trip before you leave home.' Since the couple's country of permanent residence is [hjemland], the validity of the cover for pre-trip cancellation thus ceased the moment they left [hjemland] on the 8 October 2016. Accordingly, the Company upheld its rejection'

And

'The insurance was purchased online via Worldnomads.com on 27 March 2017 while the Complainant and [klager 2] were staying [i land 1]. The Company therefore deems it indisputable that the insurance was purchased after the couple left their country of permanent residence, [hjemland], on 8 October 2016, meaning that the claim does not satisfy the provisions of Section 13'.

These arguments are totally ridiculous, as it means that the validity of the cover for pre-trip cancellation creased 6 months before we purchased it.

Lastly, the claim for hotel accommodation on the 22nd June 2017 was in [land 2], and not [land 3] as incorrectly set out in their mail."

Af selskabets brev af 8/1 2018 fremgår det blandt andet:

"Regardless if an insurance is issued (purchased) before or after the insured leaves his/her **country of permanent residence**, the insurance shall provide cover when a claim falls within the positive wording stated in the policy conditions and provided that circumstances relating to the claim do not contradict the overall terms for cover mentioned in the policy conditions.

As pointed out in our previous correspondence Section, **13.1** clearly states that it is a prerequisite for cover that a cancellation or a postponement of the trip occurs before the insured leaves his/her **home**, referring to [hjemland], being the couple's **Country of permanent residence**. Thus in the event that cancellation of the trip occurs after the insured has left his/her **Country of permanent residence**, the insurance does not cover such cancellation.

Given that the dispute is due to the Complainant and her husband having cancelled a trip after the time they left [hjemland], the Company maintains its denial of the claim."

I en udtalelse af 26/5 2017 fra den behandlende læge er det blandt andet oplyst:

"Patient [klager 2] 2/25/1953 is currently under my care for cervicalgia. My recommendations are to continue Physical Therapy for at least one month and see Pain Management specialist Dr. …, as scheduled for 6/28/17. It is also my recommendation that the patient refrains from flying, lifting, pushing, pulling, overhead reaching, and remain in [land 3] while receiving treatment. If you have any questions please do not hesitate to call my office. Thank you."

Klagerne har i mail af 23/6 2017 til selskabet henvist til hjemmeside, hvor forsikringen blev købt, og hvor det blandt andet er anført:

'"Explore your boundaries
Travel insurance for independent travellers. Buy, extend & claim online, even after you've left home.'
As you go through the form it also clearly states:

'**3 day waiting period**
If the insurance is purchased while travelling and after you have left your country of permanent residence, there is a waiting period of three days before the insurance coverage takes full effect. If you suffer an acute serious injury or illness in due to an accident, then you are covered from the issue date of the insurance.'"

I forsikringsbetingelserne hedder det blandt andet:

"YOUR COVER OPTIONS

You can choose between the WorldNomads.com Standard Plan and the WorldNomads.com Explorer Plan, and the **insurance**policy will be issued in either [valuta 1] or [valuta 2] depending on your **country of permanent residence**. The insurance can be purchased with or without cover for travel in …

Your Certificate of Insurance will state which cover option **you** have purchased. Once **you** have chosen **your** plan and the **insurance** policy has started, **you** cannot change the

type of plan, the region of cover or make changes to any specified high value items with the following exception:

…

YOUR PLAN OPTIONS

…

Couple or Single Parent: Two people travelling together on the same itinerary, both under 66 years of age and from the same **country of permanent residence**. This option can also include a single parent travelling with one child.

…

POLICY CONDITIONS

Our Policy Conditions have been prepared in accordance with Danish Law and the Danish Insurance Contracts Act. Along with the **Certificate of Insurance**, these **Policy Conditions** outline all the terms, conditions, limitations and exclusions that apply to the cover **you** purchase.

Glossary

Words which are found in bold throughout the policy document have special meanings. These form part of the **Policy Conditions:**

Abroad (including overseas): Any country you travel to, outside your **country of permanent residence**.

…

Certificate of Insurance: the document issued to **you** confirming the type of **insurance** purchased and any special terms applying to **your insurance**.

…

Commencement date: the start date of the trip indicated in the **Certificate of Insurance**.

…

Country of permanent residence: the country where **you** have **your** permanent **home** or principal establishment and to where, whenever **you** are absent, **you** intend to return.

…

Home: **Your country of permanent residence**.

…

Start of the trip: means passing border control or embarking on an aircraft, a ship or a train.

…

SECTION 2 DURATION OF COVER AND EXTENSIONS

2.1: **You** are not covered until we have issued a **Certificate of Insurance** through WortdNomads.com. The duration of cover is shown on **your Certificate of Insurance**, which forms part of the **Policy Conditions**.

2.2 If the **insurance** is purchased while travelling and after you have left **your country of permanent residence**, there is a waiting period of three days (72 hours) before the **insurance** coverage takes full effect. If you suffer an **acute serious injury** due to an **accident**, then **you** are covered from the **commencement date** of the **insurance**.

2.3: Cover for any Pre-trip cancellation fees start after a 3 day waiting period from **the issue** date shown on **your Certificate of Insurance** and ends on the **commencement date** noted on the **Certificate of Insurance** and/or at **your start of the trip**. Cover for all other benefits start from the **commencement date** or when **you** leave **your country of permanent residence** and end when the **insurance policy** expires or when **you** return to **your country of permanent residence**. (However see section 16).

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PRE-TRIP CANCELLATION, TRIP INTERRUPTION AND TRAVEL DELAY

How we can help:
You can make a **claim** for pre-paid, non-refundable travel expenses, tuition/course fees and tours if:

- before **you** leave **home** (Section 13) or while **you** are travelling (Section 14) **you**, **your** fellow traveller or a **close relative** requires **hospitalisation** or dies due to an unexpected and serious illness or injury;
- white travelling, **your** travel service provider becomes insolvent (Section 14).

…
SECTION 13 PRE-TRIP CANCELLATION
13.1: **We** will pay for **your** non-refundable, pre-paid travel and accommodation expenses, tuition/course fees and tours (or, if not pre-paid, any such expenses which **you** are liable to pay) if **you** have to cancel or postpone **your** trip before **you** leave **home** for the following reasons:

a. **you**, **your** fellow traveller or a **close relative** is unexpectedly hospitalised or dies as a result of an **acute serious illness** or **acute serious injury**;
b. **you** are declared medically unfit to travel.

Furthermore, it is a condition for cover that the death, **acute serious illness** (including any symptoms) or **acute serious injury** was unexpected and occurs after **you** booked and/or paid for the trip and after **you** purchased the **insurance** or there is no possibility of a refund according to the conditions of the travel agency, airline or transportation company for the above mentioned fees or expenses
…
13.2: The right to compensation ends on the **commencement date** noted on **the Certificate of Insurance** and/or at **your start of the trip**. The **start of the trip** is defined as passing border control or embarking on an aircraft, a ship or a train.
…
13.3: **We** will not pay for trip cancellation or postponement expenses if:

a. the **acute serious illness** or **acute serious injury** or the cause of death has shown symptoms or was present when **you** booked and/or paid for your trip, or within the waiting period, and the need for treatment could therefore be expected before the start of the trip;
b. **you, your fellow traveller or your close relative** have not received medical treatment, have refused or given up treatment, even though **you**, **your fellow traveller** or **your close relative** should know that the illness or disorder ought to be treated, or has deteriorated;
c. cancellation takes place later than the scheduled time of departure;
d. **you** cancel only a part of the whole insured trip;
e. if the cancellation is due to a change of mind, disindination to travel, changed conditions at the destination, natural disaster, acts of terrorism, war, nuclear disaster or similar situations;
f. if the loss has occurred directly or indirectly due to **your** intentional actions, gross negligence or omissions, unless it can be proved that the loss has no connection to these actions.

…
SECTION 14 TRIP INTERRUPTION

14.1: **We** will **pay** for your non-refundable, pre-paid travel and accommodation expenses, change to itinerary fees and tuition/course fees if **your** trip is interrupted or **you** have to terminate **your** stay **abroad** prematurely due to:

a. **you, your** fellow traveller or a **close relative** is unexpectedly **hospitalised** or dies as a result of an **acute serious illness** or **acute serious injury**; or"

Nævnet udtaler:

Klagerne er utilfredse med, at selskabet har afvist at yde dækning for afbestilling af en delrejse i perioden fra 7/6 2017 til 22/6 2017.

Det fremgår af sagen, at klagerne rejste fra deres hjemland den 8/10 2016 med henblik på ca. et års rejse. De besluttede i marts 2017, at de ønskede at udvide rejsen med et ophold på en ny destination. Arrangøren af rejsen til denne destination krævede, at de havde en rejseforsikring. Klagerne tegnede herefter via en hjemmeside forsikringen hos selskabet den 23/3 2017 med forsikringsperiode fra den 6/6 2017 til den 26/6 2017.

Klagerne har anført, at selskabet på hjemmesiden markedsførte sig med, at blandt andet "Travel insurance for independant travellers. Buy, extend & claim online, even after you've left home", "Simple & flexible trip insurance for international or domestic travel. Buy & claim from anywhere in the world", "Buy cover while traveling – if you're traveling and want to extend your trip, world nomads lets you buy more cover to keep you on the road" og "3 day waiting period. If the insurance is purchased while travelling and after you have left your country of permanent residence, there is a waiting period of three days before the insurance coverage takes full effect".

Selskabet har afvist at yde dækning med henvisning til forsikringsbetingelsernes afsnit 13, hvoraf det fremgår, at forsikringen kun dækker afbestillinger, der sker inden den sikrede forlader sit hjem, hvor hjem er defineret som det land, hvor man har permanent bopæl. Selskabet har henvist til, at klagerne på tidspunktet for afbestillingen af rejsen allerede havde forladt deres hjemland. Selskabet har endvidere henvist til, at klagerne i forbindelse med købet af forsikringen på hjemmesiden aktivt bekræftede: "I have read,

understood & agree to the conditions in the Product Guide and agree to receive all policy documents electronically".

I forsikringsbetingelsernes afsnit 2 pkt. 2.2 er det anført, at hvis forsikringen er købt under en rejse, og efter man har forladt sit hjemland, er der en venteperiode på 3 dage, før forsikringens dækning træder i fuld kraft. I afsnit 13 punkt 13.1 er det anført, at der ydes dækning for ikke refunderbare udgifter, hvis det er nødvendigt – på grund af medicinske årsager – at udskyde eller afbestille en rejse før sikrede forlader sit hjem. I ordforklaringen er "hjem" betegnet som hjemlandet, hvilket er, hvor man har sit permanente hjem, og hvor man påregner at vende tilbage til.

Efter en gennemgang af sagen og efter en samlet vurdering finder nævnet, at selskabet har været uberettiget til at afvise dækning i henhold til forsikringens afbestillingsdækning for den del af rejsen, der skulle have fundet sted mellem den 7/6 og den 22/6 2017.

Nævnet har blandt andet lagt vægt på, at forsikringen klart giver indtryk af at henvende sig personer, der foretager længere rejser og foretager planlægning undervejs. Forsikringen indeholder således oplysninger om, at forsikringen er målrettet "uafhængige rejsende" og der er oplysninger om, at man kan købe, forlænge og gøre krav på dækning fra alle steder i verden – også når man har forladt sit hjem. Klagerne har derfor haft en berettiget forventning om, at forsikringen dækkede de særlige behov, sådanne rejsende sædvanligvis har, herunder at forsikringen omfattede afbestillingsdækning i en situation som den foreliggende, hvor den ene af klagernes tilskadekomst medførte, at de ikke kunne gennemføre delrejsen.

Nævnet finder, at selskabet på denne baggrund ved købet af forsikringen burde have rådgivet klagerne om, at der var væsentlige undtagelser i dækningsomfanget, herunder vedrørende afbestillingsdækningen, hvis købet fandt sted efter afrejsen fra hjemlandet. Nævnet lægger til grund, at selskabet ikke ydede en sådan rådgivning.

Nævnet har også lagt vægt på, at forsikringsbetingelsernes afsnit 2.2 om, at der er dækning efter en venteperiode på 3 dage, ikke specifikt undtager afbestillingsdækningen.

Herefter, og idet indholdet af forsikringsbetingelsernes afsnit 13 under de foreliggende omstændigheder ikke kan føre til andet resultat

b e s t e m m e s :

Selskabet, Bupa Denmark Services A/S, skal anerkende, at klagerne er omfattet af afbestillingsforsikringen og yde forsikringsdækning for den del af rejsen, der skulle have fundet sted mellem den 7/6 og den 22/6 2017 med tillæg af renter i henhold til forsikringsaftalelovens § 24.

Klagegebyret tilbagebetales.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Mette Eisenhardt