Ankenævnet *for* Forsikring

Den 3. juni 2019 blev i sag nr. 93351:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Bupa Denmark, filial af Bupa Insurance Limited, England
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har en rejseforsikring. I brev af 18/1 2019 vedlagt klageskema af 22/1 2019 har klageren bl.a. anført:

> "The crux of the matter revolves around the date I took out the Insurance Policy June 12, 2017 and the date we became aware that my mother-in-law was terminally ill. My mother-in-law although aged was in relatively good health. Her Doctor ('GP' (General practitioner)) had determined that she was suffering from a urinary infection and should go to hospital and she was admitted on June 2, 2017. At no time did The GP or the family think we think that her condition was critical. I discussed her condition with my wife and she was comfortable going on the trip which we had booked for August with two of our [children] and I needed to insure the trip which was a condition of the travel.
>
> Bupa has maintained incorrectly that I took out the insurance policy out on June 12, 2017 knowing that mother-in-law was terminally ill, the implication being that I acted in an inappropriate and dishonest manner and ultimately the claim was rejected.
>
> I asked my brother-in-law, … who was dealing with my mother-in-law's illness and is an executer of her estate to review Bupa's final letter. He also believes that Bupa's interpretation was inaccurate. He has provided me with the following files which I also attach:
> 1. The GP records of [mother-in-law]
> 2. The Outpatient Letter re [mother-in-law]
> 3. The [hospitals] Discharge Letter
>
> [brother-in-law] has further indicated the following:

1. The GP file reveals that there was no mention whatsoever of lymphoma (the terminal illness) in connection to her symptoms until the CT scan (dated 17 June 2017 which is 5 days after the policy was taken out).

2. Results were discussed with the family on the 20 June 2017. It is interesting to note that the entry dated 5 July 2017 on the GP file describes the lymphoma problem as 'new'. The scan attachments referred to in the entry dated 2 June 2017 in the GP file are included as the 4 pages numbered 4 to 7 in the GP file. The scan attachments referred to in the entry dated 23 June 2017 in the GP file are included as the 2 pages numbered 8 to 9 in the GP file. These two pages are also included in the separate [hospital] discharge letter PDF which is much more readable.

3. The [hospital] discharge letter lines up well with what we knew and when we knew it. The first 3 paragraphs talk only of Urinary Tract Infection (UTI) and Lower Respiratory Tract Infection (LRTI) in addition to the anaemia that was the cause of admission. Paragraph 2 shows that the medical staff themselves were unaware of the lymphoma otherwise they would not have given a blood transfusion. Paragraph 4 clearly reveals that they had exhausted all non-invasive means of discovering the cause of the anaemia. Only then was the CT scan requested.

4. We were made aware that a scan was happening a few days before the 17th (I think on the 14th) but not given any specific objective for it other than to see if they can see anything that might give a clue as to the cause of the Anaemia.

5. The first time we became aware that the condition was anything other than a treatable anaemia, UTI or LRTI was when the 'likely recurrence' of the lymphoma was revealed to us on 20th June.

The evidence above would indicate that … family (and her doctors) only became aware the her condition was terminal on June 20, 2017 whilst this is only 8 days after the policy was taken out the fact remains that the policy was taken out before that date and accordingly the claim should not have been rejected.
…
I am happy to provide an affidavit from [brother-in-law] and notarized copies of the documents referred to above and or any other documents which you may require.
I feel quite strongly about this matter as a matter of principal and have already approached my attorneys who concur with my 'thinking'."

Selskabet har den 22/2 2019 bl.a. redegjort for sagsforløbet og afgørelsen således:

"**Forsikringen**
Forsikringen købt: 12.6.2017, online via WorldNomads.com
Forsikringen: World Nomads Explorer Plan - Appendix1 - Insurance Conditions – World Nomads 2017
Forsikringsperioden: 29.7.2017 - 11.8.2017
Forsikrede: Klager og medforsikrede hustru

Klagers krav
Klager ønsker udbetaling af USD UDS 1,977.50, i forbindelse med afbestilling af en planlagt rejse.

Selskabets svar
Den 15.8.2017 modtog Selskabet Klagers erstatningskrav, idet Klager og hustru havde afbestilt deres deltagelse i en planlagt rejse, Appendix2 - Rejsebevis af 16.3.2017. Som begrundelse for afbestillingen var Klagers svigermors forudgående sygdomsforløb.

Efter gennemgang af de understøttende bilag til kravet, meddelte Selskabet den 6.9.2017 Klager afslag på dækning, Appendix3 - korrespondance af 6.9.2017. Afvisningen blev begrundet med, at svigermoren havde været hospitalsindlagt siden den 10.6.2017 [RED; 2/6] og forsikringen først blev købt 10 dage senere, den 12.6.2017. Selskabet uddybede videre afslaget med en henvisning forsikringsbetingelsernes Section 6.1 samt 13.1, Appendix1 - Insurance Conditions – World Nomads 2017.
…
Specifikt ift. Section 6.1 begrundede Selskabet dets afslag med, at fordi svigermoren, allerede 10 dage inden forsikringen blev købt, var blevet hospitalsindlagt til behandling for sine symptomer, faldt kravet inden for undtagelsesbestemmelserne i Section 6.1.
…
Specifikt henvistes også til, at de lægelige oplysninger dokumenterer, at kravet falder udenfor Sections 13.1's forudsætning om; It is a condition for cover that the death, acute serious illness (including any symptoms) or acute serious injury was unexpected and occurs after the Insured booked and/or paid the trip and after the Insured purchased the insurance.

I forlængelse af Selskabets afslag på dækning den 6.9.2017, Appendix3 – mail-korrespondance af 6.9.2017, sendte Klager senere samme dato uddybende oplysninger til sagen (indeholdt i Appendix3). Af uddybningen fremgik, at forsikringen blev købt specifikt for det tilfælde, at Klager og hustru måtte blive forhindret i at rejse, grundet svigermorens helbredsstilstand.:
The Trip was booked well before any diagnosis and part of the trips condition was to purchase travel insurance. This was purchased it the event that we might not be able to go because of my wife's mothers condition. The travel company has had no expense relating to our travel and accordingly the claim should be paid.

I perioden 07.09.2017 og frem til Selskabets endelige klagesvar – Appendix4 - Final Complaint Response af 12.7.2018 - modtog Selskabet løbende supplerende lægelige oplysninger til sagen.

Baseret på indholdet af de samlede lægelige oplysninger finder Selskabet det dokumenteret, at svigermoren igennem en længere periode, både forud for og under indlæggelsen, havde symptomer på sygdom. Specifikt i forhold til, at svigermoren allerede var hospitalsindlagt til udredning og behandling for sine sygdomssymptomer, da forsikringen blev købt den 12.6.2017, fastholder Selskabet derfor, at kravet falder uden for dækning.

Konklusion
Til klagers anbringende om, at han føler Selskabet har tiltænkt ham en bevidst og uærlig adfærd, mener Selskabet ikke at det givet udtryk for et sådan motiv. Til trods herfor beklager Selskabet, hvis vores formulering har givet ham anledning til en sådan tolkning.

Pr. standard forudsætter dækning af et erstatningskrav, at kravet falder inden for forsikringsbetingelserne positivt nævnte forudsætninger for dækning. Samtidig hermed forudsættes, at et erstatningskrav falder uden for forsikringens undtagelsesbestemmelser.

Med henvisning til ovenstående redegørelse, samt den uddybende redegørelse der fremgår af Appendix4 - Final Complaint Response af 12.07.2018, finder Selskabet ikke, at de lægelige oplysninger opfylder disse forudsætninger, hvorfor vi fastholder afvisning af erstatningskravet."

Klageren har den 15/3 2019 bl.a. anført:

"The insurance company state that they rely on 'Acute serious illness (including any symptoms)'.
It is unreasonable for them to rely on this clause as it was NOT known, and medical experts DID NOT suspect, that there was a 'SERIOUS' cause for my mothers in law's malaise until AFTER the insurance had been purchased. It would be different if we had taken the insurance out after we'd been told the results of the CT scan but, we were still thinking UTI or low iron levels or some such minor ailment when the insurance was purchased."

Af klagerens svigermors lægejournal fremgår bl.a.:

"24-May-2017
… very concerned – deterioration in recent week or two. struggle to manages usual activities dressing etc. very concerned. eyes sunken. memory poor.
…

02-jun-2017
… Feels ongoing deterioration, hasn't picked up with antibiotics. Poor oral intake, weaker, nil more specific has evolved.
…

02-jun-2017
…
continues to get weaker and struggling to get to loo/get into bed, looks paler than prev and lightheaded at times… pale – looks anaemic."

Af klagerens svigermors hospitalsjournal fremgår bl.a.:

"02/06/2017
Admitted with Anaemia Hgb=77. … Currently treated for UTI on Nitrofurantion tablet. Alert and orientated. Mobilisng with zimmer frame but appears very tired. Encouraged to use commode at bedside overnight. For Lying /standing BP but unable to obtain standing BP as … feels dizzy
…
03/06/2017
Assisted out to sit on chair at bedside with help of two this morning. Feeling lethargic. Had breakfast in chair then assisted back to bed immediately atter. S/B SHO - for one unit of blood today. Blood ordered from blood bank. Pink venflon insitu in left arm. Using commode at bedside on request. Moderate amount of mucousy brownish/red stools passed - unable to obtain sample.
MSSU sent. Observations stable.
…
05/06/2017
… complaining of beeing very stift and uncomfortable on my arrival therefore assisted out to sit at edge of bed for short time, used commode and assisted back into bed. Primo ordered as skin marking. Medications administered as per kardex including paracetamol for temperture. At 22.00

NEWS 4 pulse 109, temp 382 and spo2 93%, blood cultures sent. At 1.30 when rechecked news 1 blood pressure 109/60. 1020mls oral intake. No new issues.
…
05/06/2017
… year old lady
new admission
fatigue and weak over last few weeks
noted to have low HB - transfused two units
no weight loss noted (was 9 stone)
no cough, no urinary symptoms

mobilise independently, occasionally with zimmerframe
lives alone at home - no carers
help on Thursday with washing and cleaning
news 1 - apyrexic
pale conjunctiva
chest: clear
HS 1+ 2
abdomen: soft, non tender, BS

plan:
1. chest x-ray
2.repeat bloods including FBC
3. USS abdomen
4. welght
5. discuss with patient and family ? further GI investigation as OP
…
07-06-2017
… [Family member] states … was very independent before this admission. Was independent of ADLs, lived alone, no carers until 3 weeks prior to admission. Began having dizzy, faint episodes and fell a few times. Family were concerned then regarding safety so organised carers to come in however patient was then shortly admitted to hospital. Discussed reasons for admission including low blood count, urine and chest infection. [Family member] concerned regarding cause of low haemoglobin. Explained one of the reasons may be due to folate deficiency however other causes cannot be ruled out. Asked opinion regarding futher investigations including endoscopy and colonoscopy. [Family member] and patient would consider these investigations however require more time to think about it. I explained that these tests would be quite invasive and if we were to find something we may not consider operating. We are currently transfusing if hb low. [Family member] states concerned that … has had such an acute deterioration that without finding cause of bleeding she would not be able to go home and live alone again. Explained that infections can also be contributing to weakness and fatigue. We can review once these have been treated if patient making improvements. Will rediscuss with family in coming few days.
…
14/06/2017
… is very frail and not making progress despite strong ab. We are concerned that she is deteriorating and also there may be underlying serious condition (?recurrence of previous lymphoma). Plan is to do CT scan - likely not fit for any treatment but to guide a palliative approach. Outlook at pre-

sent is not good. … I have said that really it could be very likely that … does not get out of hospital given frailty and lack of progress."

Af brev af 13/10 2017 fra behandlende hospital fremgår det bl.a.:

"This lady was on ward 17 admitted on 2nd June 2017, discharged on the 23rd June 2017. During her time she underwent a CT scan of her chest abdomen and pelvis which was highly suggestive of recurrence of this lady's Hodgkin's Lymphoma. This scan took place on 17th June 2017 and on the 20th June 2017 the results of the scan were discussed with [the family]…. They explained that the scan results had shown very likely lymphoma."

Af forsikringsbetingelserne fremgår bl.a.:

"**Glossary**
Pre-existing medical condition/pre-existing condition: a pre-existing medical condition/pre-existing condition is defined as:
a. An ongoing, chronic or recurring illness or disorder, injury or physical disability, medical or dental condition of which you are aware, or
related to a complication you have, or the symptoms of which you are aware prior to the commencement date;
b. A medical or dental condition that is currently being, or has been, investigated or treated by a health professional (including dentist or chiropractor) at any time in the past, prior to the commencement date;
c. Any condition for which you take or have taken prescribed medicine;
d. Any condition for which you have had surgery; or
e. Any condition for which you see or have seen a general practitioner or a medical specialist.
This definition applies to you, your travelling companion or a close relative.

Commencement date: the nominated start date indicated on the Certificate of Insurance or the date you depart your country of permanent residence to begin your trip where this date is later than the date indicated in the Certificate of Insurance."

Section 6.1. WHAT IS NOT COVERED BY THE INSURANCE (GENERAL EXCLUSIONS): We are not liable to pay for expenses, which arise from:
a) any illness, disorder or injury, effects thereof and /or effects of any (related) treatment/medication suffered by you, your fellow traveller or a close relative, which has come into existence, or has shown symptoms, or has been diagnosed before the commencement date.

Any pre-existing medical condition suffered by you, your fellow traveller or a close relative prior to the commencement date where you, your fellow traveller or a close relative:
i. have been hospitalized,
ii. have been treated by a physician (routine check-ups excepted), or iii. have had a change of medication…

Section 13 PRE TRIP CANCELLATION

13.1 It is a condition for cover that the death, acute serious illness (including any symptoms) or acute serious injury was unexpected and occurs after the Insured booked and/or paid the trip and after the Insured purchased the insurance."

Nævnet udtaler:

Klageren købte den 26/3 2017 en rejse for 4 personer med afrejse den 31/7 2017. Klageren købte en rejseforsikring den 12/6 2017. Forsikringen var tegnet for perioden fra den 29/7 2017 til den 11/8 2017. Klageren måtte afbestille rejsen, da klagerens svigermor, som er født i 1920'erne, fik konstateret Hodgkin lymfom (lymfeknudekræft) den 20/6 2017.

Selskabet har afvist at yde dækning med henvisning til, at der ikke er tale om en uventet sygdom i forsikringsbetingelsernes forstand, da klagerens svigermor allerede var blevet indlagt og fortsat var under udredning, da forsikringen blev tegnet.

Klageren har anført, at der ved indlæggelse var mistanke om blærebetændelse eller lungebetændelse, og at det først var efter, at forsikringen blev købt, at der blev konstateret en alvorlig sygdom.

Det fremgår af svigermorens lægejournal, at lægen den 24/5 2017 har noteret, "very concerned – deterioration in recent week or two. struggle to manages usual activities dressing etc. very concerned. eyes sunken. memory poor", den 2/6 2017 har noteret, "Feels ongoing deterioration, hasn't picked up with antibiotics. Poor oral intake, weaker, nil more specific has evolved, … continues to get weaker and struggling to get to loo/get into bed, looks paler than prev and lightheaded at times… pale – looks anaemic".

Det fremgår af svigermorens hospitalsjournal, at lægerne den 14/6 2017 var "concerned that she is deteriorating and also there may be underlying serious condition (?recurrence of previous lymphoma)." Lægen anførte herefter: "I have said that really it could be very likely that … does not get out of hospital given frailty and lack of progress."

Af forsikringsbetingelserne punkt 6.1 fremgår det, at forsikringen ikke dækker "any illness, disorder or injury, effects thereof and/or effects of any (related) treatment/medication suffered by you, your fellow traveller or a close relative, which has come into existence, or has shown symptoms, or has been diagnosed before the commencement date… Any pre-existing medical condition suffered by you, your fellow traveller or a close relative prior to the commencement date where you, your fellow traveller or a close relative: i. have been hospitalized". Det fremgår videre af punkt 13, at det ved afbestilling stilles krav om, at "the death, acute serious illness (including any symptoms) or acute serious injury was unexpected and occurs after the Insured booked and/or paid the trip and after the Insured purchased the insurance."

Efter en gennemgang af sagen kan nævnet ikke kritisere selskabets afgørelse.

Nævnet har blandt andet lagt vægt på, at klagerens svigermor blev indlagt blev indlagt den 2/6 2017, og at egen læge forud herfor havde noteret, at der gennem noget tid var sket forværringer, at svigermoren fortsatte med at blive svagere, og at antibiotikaen ikke havde den fornødne virkning. Nævnet bemærker, at svigermoren blev indlagt med anæmi (blodmangel), hvilket blandt andet kan være et af symptomerne på lymfeknudekræft.

Nævnet har også lagt vægt på, at forværringen af svigermoderens tilstand fortsatte, mens hun var indlagt, at lægerne den 7/6 2017 har noteret, at hun "has had such an acute deterioration that without finding cause of bleeding she would not be able to go home and live alone again", og at forsikringen blev tegnet den 12/6 2017. Nævnet bemærker, at rejsen blev bestilt allerede den 26/3 2017.

Det af klageren anførte – herunder at diagnosen først blev stillet efter, at forsikringen var blevet købt – kan under de foreliggende omstændigheder ikke føre til andet resultat.

9. 93351

Som følge heraf

b e s t e m m e s :

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Klageren får ikke medhold.

Svend Bjerg Hansen