Ankenævnet *for* Forsikring

Den 18. maj 2022 blev i sag nr. 95183:

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 rejseforsikring. Korrespondancen gengives i uddrag i det følgende. I klageskema af 27/4 2020 til nævnet samt i vedlagte bilag har klageren bl.a. anført:

> "What specifically do you want to achieve from the insurance company/ what do you want the insurance company to do?
>
> Immediate payment of amount owing.
> The total is comprised of medical costs and related costs as appropriate under the policy, such as hospital daily benefit, accommodation, local travel and food during the relevant period for myself and accompaniment.
>
> Medical Expenses subtotal
> $128,965.11
> Related Expenses subtotal
> $8,505.73
> Total
> $137,470.84
> …
> '**Statement of claim**
> 1. In 2018, I was in America and had taken out a BUPA policy which was in effect (A11).
>
> **Acute illness**
> 2. On 21 February 2018, I attended the emergency department at [hospital 1] with severe abdominal pain. I was diagnosed with midgut volvulus with associated compromised intestinal blood supply and intestinal obstruction (A1). Midgut volvulus and compromised intestinal blood supply were new diagnoses.

3. [Doctor 1] and [doctor 2] advised me of the seriousness of my condition and recommended immediate surgery. [Doctor 1] stated: 'I have encouraged him not to take any long trips, as he could have a volvulus which does not spontaneously reduce and lose his entire small intestine' (A2).

4. On 24 February 2018, I was again admitted to the emergency room at [hospital 2] due to a recurrence of severe abdominal pain associated with this diagnosis (A3).

Approval of coverage
5. On 31 March 2018 BUPA approved its cover under the Policy (A4).

Denial of coverage
6. On 6 April 2018, based on no new medical circumstances, no new appraisals and no new examinations from health professionals, BUPA reversed its approval (A5).

7. BUPA's stated reasoning was (A5):
Since the surgeon you have chosen is not available until the autumn, and your treating doctor means you can await this date, then the situation is not considered acute anymore.

8. This assessment is incorrect. No health professional, neither the surgeon who performed my surgery ([doctor 4]) nor my initial physician ([doctor 1]), ever advised that surgery could wait. The referenced autumn wait time was communicated to me as being the *typical* wait time by [doctor 4]'s secretary on the phone, *prior* to their receipt of my medical records. However, upon reviewing my medical records, [doctor 4] determined my condition to be urgent and impelled I come the next day for urgent consultation.

Evaluation of safety of [overseas] flight to the [home country]
9. As per Bupa's instructions in A5 to obtain medical advice as to whether it was safe for me to fly overseas to the [home country], I ultimately obtained four assessments from four senior surgeons (A2, A6, A8, A9). All four evaluations were consistent: I was advised not to undertake long travel overseas, where time proximity to hospitals doesn't allow for prompt intervention, until appropriate surgery could be performed.

10. 'I have encouraged him not to take any long trips, as he could have a volvulus which does not spontaneously reduce and lose his entire small intestine' (A2)

11. 'Such a potential risk could be exacerbated by flying across the [ocean] with the lack of prompt medical and surgical intervention' (A8)

12. Despite these expert impartial determinations, BUPA refused to accept each evaluation, consecutively demanding additional statements each time.

13. On 15 April 2018, I had a telephone conversation with … (the case manager assigned to my file), and [BUPA doctor 1] (the BUPA doctor assigned to my case). [BUPA doctor 1] demonstrated an alarming lack of understanding of my condition of midgut volvulus and compromised intestinal blood supply, conflating it with bowel obstruction (which was not the relevant acute diagnosis requiring urgent surgery). However, [BUPA doctor 1] ultimately accepted that he would accept the

assessment of the specialist I was due to see, [doctor 4]. [BUPA doctor 1] stated that BUPA would just need a written statement from the specialist and would adhere to his evaluation.

Specialist assessment and conclusion of severity of condition
14. [Doctor 4] is a specialist in midgut volvulus with intestinal ischemia (obstruction of blood supply).

15. [Doctor 4] is highly respected for developing and refining the surgical methods for:
a. correction of intestinal and vascular malrotation (thus resolving vascular obstruction/kinks, thereby preventing the local death of the intestines); and
b. intestinal transplantation (entailing significantly shortened life expectancy. The best case scenario if vascular obstruction is not resolved in time).

16. He is therefore uniquely qualified to discern what does and what does not constitute urgency in cases of this condition, as well as being intimately familiar with the consequences of failing to do so.
…
17. I attended his clinic on 16 April 2018. His appraisal of my condition was clear (A8):

18. 'The full clinical history and physical examination are very concerning'

19. 'The enclosed CT images demonstrate a partial kink of the superior mesenteric vein with reversed position in relation to the superior mesenteric artery. It also demonstrated massive intestinal wall edema with radiologic evidence of partial ischemia'

20. 'He is in urgent need of surgery due to the high risk of volvulus and intestinal ischaemia, which would result in the loss of his entire small intestine'.

Proceeding with urgent surgery with support of crowdfunding and loan funding
21. As a result of the severity of my condition and the urgent need for surgical intervention, friends and family initiated crowd-funding campaigns and provided me with loans at crippling personal cost. Repaying these loans also places me in a precarious financial position, likely for the rest of my life.

22. I proceeded with surgery on 1 May 2018 as soon as sufficient funds were obtained. The total costs incurred by me personally were USD$137,470.84.

23. During the surgery, the appraisal of urgency given by every consulted surgeon was confirmed, as the superior mesenteric vein (SMV) was indeed dilated and kinked (A10): “the superior mesenteric vein was abnormally large and kinked'

24. This further conclusively demonstrated the acuteness of my condition.

25. Due to the surgical intervention which was urgently performed despite BUPA's denial of coverage, the correct positioning of the SMV and SMA was achieved and the acute kinkage of the SMV successfully resolved (A10):
'After completion of the gut remodelling, the main stem of the superior mesenteric vein was to the right of the superior mesenteric artery. With complete repositioning of the duodenum, the

distal branches of the superior mesenteric artery and vein continued to run a spiral course with no potential risk of vascular compromise'

Steps post surgery
26. On 25 June 2019, after spending months recovering from the condition and the life-saving surgery, I filed a complaint against BUPA for its denial of coverage (A12).

Claim for costs
27. The seriously dangerous obstruction of the blood supply to the intestines, caused by a kink in the superior mesenteric vein, was unquestionably acute. The medical costs therefore should have been covered as per the policy: 'Art 6.1 The insurance shall cover the medical expenses incurred by the insured in case of acute illness and injury'.

28. I submit that BUPA is contractually obliged to pay the amount outstanding under the Policy, being the sum of USD$137,470.84."

Selskabet har i brev af 15/5 2020 til nævnet bl.a. redegjort for sagsforløbet og afgørelsen således:

"**The Insurance**

- The insurance: Single Trip + non-medical cover
- The insurance was purchased on: 22.12.2017
- The insurance period covers: 29.1.2018 – 28.4.2018
- Insurance coverage area: Worldwide
- The Insured and Claimant are identical.

Brief introduction
During a visit to the USA, the Claimant was hospitalised during the period from 20-23 February 2018 to be examined for symptoms in the abdominal region. The Company's chief medical officer's initial assessment was that emergency treatment was required and the Company consequently approved coverage for an operation to be performed locally. When the Company subsequently learned that an operation could have been postponed for several months and could have been carried out in the future – and after the insurance period had expired – the Company withdrew its approval, referring to the fact that the need for treatment was not acute. The Company then sought the Claimant's cooperation in obtaining further clarification in order to be able to help the Claimant make adequate arrangements for the journey home to …, the country of residence. The Company, however, did not receive a satisfactory response to their request for cooperation and the Claimant chose, on his own initiative, to have surgery on 1.5.2018 knowing full well that this was without the consent of the Company, and that the date of the operation was after the insurance coverage had expired.

Claimant´s allegations
The Claimant wants the Company to pay $ 137,470. 84 to cover: *medical costs and related costs as appropriate under the policy, such as hospital daily benefit, accommodation, local travel and food during the relevant period for myself and accompanyment*.

To set the record straight, it should be mentioned that:

1. The Company has paid expenses incurred in connection with the Claimant's first hospitalisation from 20.2.2018 to 23.2.2018, as well as for medical examinations carried out on 27.4.2018,
2. The Claimant has not provided documentation that supports and specifies that he and a companion have a valid claim for the refund of expenses in connection with accommodation, meals and local transportation for a specified period.
3. After having reviewed the pay-outs made in the case, the Company can confirm that, unfortunately, it has not paid out compensation – cf. Paragraph 20 Hospital Daily Benefit – for the period of hospitalisation from 20-23.2.2018. The company will request details of the claimant´s bank account as soon as possible in order to make this payment, cf. paragraph 20.

Statement of claim

During his stay in the USA, the Claimant was insured, cf. Terms and conditions of insurance **(posted on the portal by the Claimant on 30.4.2020, Bupa Policy Conditions, Appendix 11).** On the night of 21.2.2018, the Claimant contacted the Company´s emergency services centre (hereafter referred to as BGA) as he was experiencing pain and had a gum infection, possibly as the result of a recent root canal filling. The Claimant was not sure whether his symptoms were related to the penicillin he was on for the infection or whether they could be a possible 'bowel obstruction'. The Claimant was transferred to the Company's medical officer to talk to him about it. The Claimant told the medical officer that in addition to the mouth infection, he also had severe abdominal pain and had, earlier on in his life, been treated for a congenital intestinal disorder. The medical officer recommended that the Claimant undergo a closer examination at an Emergency Room. Later the same day, BGA received a call from the Claimant's friend informing them that the Claimant had been admitted for a CT scan and further pain assessment.

After having been hospitalised in [state 1] during the period 20.2.18 – 23.2.2018, the Claimant was discharged without the need for surgery or any further treatment, as the problem had disappeared on its own, cf. the discharge summary.

On 23.3.2018, the Claimant contacted BGA and informed them that local doctors had recommended that he have surgery for his intestinal disorder before he returned to [country of residence]. In a mail of 31.3.2018, the Company confirmed coverage for the emergency treatment required.

In a subsequent mail dated 5.4.2018, the Claimant, who was still in [state 1], informed us that the waiting time to see [doctor 4], a specialist in [state 2], was several months and therefore the surgery would probably not take place before the autumn. In an e-mail sent to the Claimant on 6.4.2018, the Company pointed out that, cf. Paragraph 6.1 of the terms and conditions of the insurance, the coverage was only for the need for immediate treatment. The Company then informed the Claimant that they wanted to receive his contribution in order to be able to establish his 'Fit for Flight' status, in connection with his transport home to his country of residence. While the Company was waiting for the Claimant´s contribution, the Company had a local company it collaborated with start looking for a local specialist in [state 1] who could clarify whether the Claimant's condition would allow him to fly. Thus, the Company wanted the Claimant to undergo a physical examination by a specialist in gastro-intestinal diseases in order to establish a 'Fit for Flight' status.

In an e-mail dated 14.4.2018, the Claimant stated that he was in an ongoing dialogue with [doctor 4], who wanted to see him on the following Monday. On 15.4.2018, in an e-mail to the Claimant, the Company insisted that the Claimant make an appointment with a local specialist (i.e. in [state 1]) regarding a 'Fit for Flight' status. Instead of complying with the Company's request to obtain a 'Fit for Flight' status, the Claimant chose, on his own initiative, to take a scheduled flight from [state 1] to [state 2] (a 6-hour flight), to be examined by [doctor 4]. This not only supported the Company's medical officer's evaluation that the Claimant was 'Fit for Flight', it also demonstrated that the Company had not at any point in the proceedings received any medical information that contradicted this.

The company arranged for and provided a payment guarantee to cover an examination – a CT scan, ultrasound, barium passage through the gastrointestinal tract as well as other tests – planned to be carried out at a gastroenterologist, [doctor 5], on 25.4.2018.

In the meantime, on 23.4.2018, the Company received an enquiry concerning a claims appeal from a Danish attorney on behalf of the Claimant. BGA replied to it on 24.4.2018, emphasizing that the Company could not confirm coverage for an operation that was primarily based on: examinations carried out during hospitalization that took place two months previously (20. – 23.2.2018), that the Claimant's condition had not necessitated hospitalization in the meantime, and that the Claimant had chosen to take a flight from [state 1] to [state 2].

Based on [doctor 5] report of 26.4.2018, the Company's medical officer concluded that [doctor 5] did not substantiate that the condition of the Claimant´s health necessitated immediate hospitalization and surgery. It should be noted that the report did not include any supporting medical documentation either, such as the CT scan, ultrasound images, barium passage or similar test results which could confirm the necessity of immediate hospitalization and surgery. As a result of this, in an e-mail dated 30.4.2018, the Company notified the Claimant´s attorney that the Company denied coverage which would cover the cost of an operation. **(Appendix 1: Correspondance btw. the Company and attorney … 23 -30 April 2018).**

On 25.6.2019, the Company received an e-mail from the Claimant in which he stated that he wished to appeal against the Company´s refusal to cover the operation on 1.5.2018. **(posted on the portal by the Claimant on 30.4.2020 Appendix 12)**. After thoroughly reviewing the information available, on 26.8.2019 the Company sent a detailed explanation of why a re-evaulation would not result in a different outcome **(posted on the portal by the Claimant on 30.4.2020 Appendix 13)**

Conclusion

According to the insurance contract, each claim shall be assessed in relation to the insurance terms and conditions that apply.

Cf. Under Paragraph 6.1 of the terms and conditions of the insurance, the insurance covers in the case of 'acute illness and injury'. It goes on to specify on page 23 of the terms and conditions *Glossary*, that the company defines an 'acute serious illness' as a 'sudden and unexpected illness that requires immediate treatment'.

The company maintains that supporting medical information has not been provided for an acute serious illness that required immediate hospitalization and surgery, within the period covered by

the insurance. To support this, the Company refer to the Company's in-depth argumentation which was sent to the Claimant's attorney **(Appendix 1: Correspondance btw. the Company and attorney … 23 -30 April 2018)** and the response to the claim dated 26.8.2019. **(posted by the Claimant on the portal on 30.4.2020 Appendix 13).**
To conclude, the Company refers to the Insurance Complaints Board's previous rulings: 92900, 85182, 81651 and 79430."

Klageren har i brev af 29/6 2020 til nævnet bl.a. anført:

"The following responds to representations made by BUPA which are incomplete, inaccurate or misleading.

Surgeons continued to Urge Surgery
Due to being generally reluctant/averse to surgery and unfamiliar with the condition of intestinal ischemia/vascular compromise secondary to midgut volvulus and its danger, I declined surgery at [hospital 1], that [doctor 1] and [doctor 2] continued to urge me to undertake (A2).

Despite my personal concerns about surgery, due to continual significant symptoms after being diagnosed with midgut volvulus, including a night spent in ER at [hospital 2] (A3), ongoingly tolerating only liquid/baby food consistency diet and frequently being unable to eat at all some days, I succumbed to medical advice. Confirmation of cover was again given by BUPA on 27.03.18 (A15), nevertheless, to be absolutely certain, I arranged a 3rd surgeon's opinion as to the need for surgery on 28.03.18 (A16). Upon … ([hospital 2]) confirmation that surgery was needed, I set about arranging this ASAP in cooperation with BUPA (A15).

Contact made with surgeon of choice upon reconfirmation of cover from BUPA
On 31.03.18, BUPA reconfirmed cover for surgery and confirmed that I had a free choice of surgeons (A4). Upon inquiring with [doctor 1], [doctor 2] and … as to their experience, they each informed me that they had never performed surgery on this condition before, and did not know of any local surgeon who had. They explained that intestinal malrotation is an extremely rare condition to present in adults, and that incidents of midgut volvulus with associated intestinal ischemia are rarer still. 'It has been reported that the incidence of malrotation in adults is approximately between 0.00001% and 0.19%. True incidence is very difficult to measure, as many cases remain asymptomatic' (…, 2013). Therefore, I researched online to try to find a specialist. I made contact with [doctor 4]'s department by telephone. During this conversation with [doctor 4]'s department's secretary, she informed me that the typical processing and waiting time was six months. I notified BUPA of this. BUPA continue to misrepresent this circumstance as being advice from a doctor that surgery could wait, despite multiple clarifications at the time and since that this was simply the secretary informing me of the typical waiting period. On 06.04.18, BUPA denied its cover on this erroneous basis (A5). There was no ongoing dialogue with [doctor 4] – see paragraphs 6, 7 & 8 of the statement of claim. The typical processing and waiting time of 6 months I was informed of was further demonstrated not to have been relevant to my case, when immediately upon receiving and reviewing my medical records, [doctor 4]'s clinic placed me on an urgent schedule for consultation 16.04.18, and then surgery 2 days after that on 18.04.18. In relevance to this, BUPA state that treatment being required within a week demonstrates an acute condition (A17)

Full Cooperation with BUPA

BUPA allege non-cooperation.

As per BUPA's request on 06.04.18, I arranged and sent a 'fitness to fly' appraisal from a local gastric surgeon as quickly as possible on 12.04.18. The corresponding email thread (A17) demonstrates my full cooperation with this request.
BUPA instructed me to see a specialist in Malrotation.
'Please book a time with a doctor to ensure this ASAP, not with [doctor 2] but with an Abdominal Surgeon that is specialised in malrotation' (A5)
Neither BUPA nor myself were able to locate one in [state 1], or anywhere else other than at [state 2] Clinic (A17):
[Claimant]: 'I would love to have a consultation with an abdominal surgeon that specialises in correcting malrotation in adults as you suggest – do you know of any? I would love your help to find such a person/people – as I said the only person I have found is [doctor 4] at [clinic].'
BUPA: 'We have realized that there are not many doctors specialized in correcting malrotation in adults'
Further, BUPA's [BUPA doctor 1] stated, during our telephone conversation (A7, A7a):
'That's why we want a specialist to look at it'
'we would very much like this specialist [doctor 4] to just make a short signed statement on paper'
The domestic travel to see the specialist was 4.5 hours (A18), where an emergency landing is possible with hospitals throughout the country. This is not analogous to a long-haul flight of 10/11 hours over the … ocean, where there is no possibility of emergency landing and prompt access to the appropriate treatment.
In order to get proper assessment and treatment from a specialist, [doctor 4] at the Centre for Gut Rehabilitation and Transplantation at [state 2] Clinic was my nearest and only choice. This was confirmed by their subsequent statements (A8) 'Accordingly, [the claimant] is in urgent need for surgical correction of the malrotation with complete repositioning of the foregut and midgut anatomy including correction of the vascular malrotation' 'We are the only hospital with extensive experience in repairing intestinal malrotation, so he is not able to have this surgery in the [country of residence].
The corresponding email thread including and related to the email BUPA referenced in their portal submission, from 15.4.18, demonstrates the full mutual cooperation in response to the specialist advising urgent consultation (A19). Advice which, prudently, I took heed of.

BUPA Conflated Chronic Adhesions with Acute Intestinal Vascular Compromise Secondary to Midgut Volvulus

BUPA referenced past medical records in their correspondence with the lawyer, … (A20):
…
As BUPA did not submit these records, they are all attached (A21). They are irrelevant to the condition for which the claim was being made, namely, acute intestinal vascular compromise secondary to midgut volvulus.

These records are all concerning chronic 'adhesions', which were the result of gastroschisis surgery on the day after birth, the only GI related surgery I had had prior to the BUPA claim. The last time hospitalization/treatment had been required for adhesions related symptoms was for colic/bowel obstruction as a teenager in 2004, 14 years prior to taking out the insurance policy with BUPA. As an adult my health was stable and I had undertaken 3 month visits to the US most years since 2009 with no medical events/claims. The last time any examination/consultation took place was in 2012, 6 years prior to taking out the insurance policy with BUPA . My chronic adhesions

were covered under the policy regardless. Nevertheless, chronic adhesions were *not* the cause of the intestinal vascular compromise/ischemia, for which the claim was being made. The cause of this was the first ever episode of midgut volvulus.

In the reports of two GI follow through tests, in 2009 & 2012, whose purpose was to monitor the effects of adhesions, malrotation was incidentally. It was noted with no related concern, no associated symptoms, and no cause for any consultation or rendering of medical advice on the part of the doctors. Like many with malrotation, I was asymptomatic: 'True incidence is very difficult to measure, as many cases remain asymptomatic' (…, 2013). Only chronic adhesions were ever discussed with me by my doctors during consultations. Hence why I didn't know what malrotation was, and was given literature on it, along with literature on midgut volvulus, by [doctor 1] after being diagnosed at [hospital 1]. 'I gave him literature on the diagnosis that he has' (A2a).

With regard to the sudden and unexpected conditions of midgut volvulus and secondary ongoing partial bowel obstruction and acute intestinal vascular compromise, for which the claim was being made, I had neither ever suffered from midgut volvulus and vascular compromise/intestinal ischemia, nor had I even ever heard of these conditions prior to diagnosis at [hospital 1], … Hence BUPA have not, and cannot, provide any evidence showing any incidence, concern, suspicion or even any mention of midgut volvulus and intestinal vascular compromise in any of my past medical records.

[BUPA doctor 1], who was one of BUPA's advising dr's in my case, also demonstrated a critical lack of comprehension of the condition in question. On our 16.04.18 phone call, he repeatedly made a false equivalence between:
- Chronic adhesions associated bowel obstruction as a teenager
&
- Acute intestinal vascular compromise secondary to the only ever incidence of midgut volvulus.
For example (A7):
'But, you have a chronic problem with your stomach and it is not new, and even though, you travelled to the US. And, now we think you can go home and do this/let this be done in your home country.'
'as it was presented to us, with a chronic abdominal condition and you travelled even though, you travelled to the US.'
[BUPA doctor 1] was also still under the erroneous impression that a medical professional had advised that surgery could wait until the autumn, despite my having sent multiple clarifications that this was incorrect.
'H: But why should you then wait until after summer for a new surgery.'
'S: No, no, no. This has been a misunderstanding the whole time. No Doctor has said that. This was just an estimate of the waiting time, a standard estimate, that the assistant gave me.'
He also appeared unaware of the unanimous local doctors' advice as to the prohibitive danger of flying home across the [ocean]:
'H: But you took a travel insurance and you have been in the US for a long time, and you have this situation, why didn't you then go home when you had a stable situation when you are on a travel policy'
'S: I've just explained that to you, and I was recommended not to travel and this was stated in the medical notes every time, and stated in every letter that you asked for since. So again, I don't know how this can be unclear.'

It appeared that the presentation of the important details of the case to [BUPA doctor 1] was ineffective, rendering him unequipped to give appropriate advice to BUPA concerning the handling of my case.
I request that BUPA submit all internal communication between the caseworkers and [BUPA doctor 1].

Diagnostic Process
The consulted Doctors, including [doctor 4], the world's leading specialist, comfortably reached their professional conclusions as to the urgent need of treatment and prohibitive danger of flying across the [ocean], based on

- The recent and first ever episode of midgut volvulus, diagnosed at [hospital 1].
- The resulting continued acute intestinal vascular compromise and partial bowel obstruction
- confirmed by CT imaging showing the superior mesenteric artery (herein 'SMA') and (superior mesenteric vein) (herein 'SMV'') in reversed position, a kinked and highly dilated SMV, with intestinal edema and partial ischemia.
- An additional associated admittance in [hospital 2] ER in the meantime
- Correlating significant symptomatology post-midgut volvulus which were far from my habitual state of health. Including, among others (A7, A15, A17, A20, A22):
- Pain when eating, to the extent that every few days I was unable to eat for stretches of 12-36 hours
- When able to eat, tolerating only liquid/pureed food
- Painful defecation
- Continual Weight Loss

Despite the above strongly indicative evidence, BUPA stated on 26.04.18 (A20): “We do acknowledge that [the claimant] is in risk of volvulus and complications of intestinal ischemia due to his intestinal malrotation, however, we have seen no evidence so far that this risk has increased when compared to his habitual state of health'
This therefore implies that BUPA are taking the extraordinary position that my SMV was not kinked, despite its confirmation by the CT scan and reconfirmation during the surgery itself. I note that in relation to all of the aforementioned medical evidence and unanimous medical opinion indicating the acute presence of the kink in the SMV, BUPA have not produced any attached medical evidence to the contrary.

The acute vascular compromise was confirmed beyond debate during surgery & recent CT scan, and therefore would have been detected by further diagnostic imaging had it been carried out, corresponding also with all received medical advice, including the world's leading specialist, symptoms, additional ER admittance, and recent midgut volvulus.
Being aware that I was intending to have surgery ASAP regardless (A20), the lack of imaging immediately prior to the operation was convenient to BUPA, being the only basis upon which they could continue denying coverage. In their correspondence BUPA gave the impression of wanting me to have tests done, yet their actions indicated otherwise – failing in this regard to act effectively or in accordance with the urgency of the matter (A23), ultimately taking a full nine days after the consultation with the specialist on 16.04.18, to arrange their insisted upon 4th assessment with [doctor 5] on 25.04.18.
At the time, in reference to a telephone conversation with …, BUPA medical assistance provider on the morning of 19.04.18, I asked 'you asked me to get the third opinion from a malrotation specialist, which I have gone to great lengths to do. After receiving that opinion, were you always

planning to then ask a 4th opinion, from an additional doctor who does not specialise in malrotation and volvulus? Please provide me with a reasonable explanation for this.' (A23). I received no explanation.
Nevertheless, [doctor 5] assessment, arranged by BUPA on 25.04.18, was clear (A9) '[the claimant] should be scheduled for pre-op testing and surgery as soon as possible at the [state 2] Clinic. It would be unsafe for him to travel without having this surgery'
Further, BUPA's planning an air ambulance for my return demonstrates that their ostensible opinion that I was in an 'habitual state of health' was clearly not genuine

Unanimous advice of consulted surgeons proved accurate and sound
In reference to the consultation with the specialist [doctor 4] (A8), BUPA's [BUPA doctor 1] stated (A7)
'It's up to him of course to evaluate what has to be done now and they are bedside and specialist, so we will of course be listening to what they say. Of course we will.'
'We will listen to what they say, of course we will, absolutely.'
'We would very much like this specialist [doctor 4] [to make] just some short statement on paper. You know it's OK with a phone call and so on, but you know how it is – Documentation and so on (inaudible), when it's on paper with a signed statement then it's more valuable.'
Upon [doctor 4]'s corresponding clear assessment (A8), I was in full reasonable expectation of coverage to be forthcoming in accordance with the specialist's conclusions and plan, as per BUPA's doctors unequivocal assurance (A7).

According to the perspective of every health professional consulted, including the world's leading specialist, the sudden and unexpected illness, outlined below:
'The imaging studies declared partial volvulus', 'a partial kink of the superior mesenteric vein with reversed position in relation to the superior mesenteric artery. It also demonstrated massive intestinal wall edema with radiologic evidence of partial ischemia' 'The full clinical history and physical examination are very concerning for the persistence of partial twist of the intestine' (A8)
1. Required surgery urgently.
'He is in urgent need of surgery due to the high risk of volvulus and intestinal ischemia, which would result in the loss of his entire small intestine' (A8).
2. Precluded me from safely taking a long haul [overseas] flight.
'I have encouraged him not to plan any long trips, as he could have a volvulus that does not spontaneously reduce and lose his entire small intestine' (A2a) 'Such a potential risk could be exacerbated by flying across the [ocean] with the lack of prompt medical and surgical intervention' (A8)

It was profoundly frightening that BUPA was pressuring me to ignore all medical advice as to the prohibitive danger of flying back to the [country of residence] before corrective surgery regardless of BUPA's plan of an air ambulance, onboard which the appropriate surgical intervention could not anyway be performed in flight, and an emergency landing to a hospital is equally impossible over the ocean. BUPA's pressure to fly home was also in contradiction to the subsequent advice of my [country of residence] GI specialist himself, who stated 'I certainly would have advised against a [overseas] flight' (A24). I was forced to decline BUPA's urging me to risk my life/long term health, and make the appropriate, and now vindicated, actions for my acute health condition in accordance with expert medical advice, especially given that BUPA's advising doctor demonstrated a lack of understanding of midgut volvulus and secondary vascular compromise (A7).

In their portal submission on 18.05.20, BUPA argued that the surgery, on 01.05.18, ultimately occurred 3 days after the cover period had ended. In relation to which, on 31.03.18, BUPA stated:
'According to your policy conditions, if you are not able to safely fly after the 28th of April due to this condition, then your medical coverage will be extended after the end of your planned travel period until you are fit to fly.' (A4)
Further, the acute phase of the dangerous kink in the SMV was during the cover period and should therefore have been covered. BUPA's coverage of the consultations and physical examinations by [doctor 4] on 16.04.18, and [doctor 5] on 25.04.18, also confirms BUPA's general consent to pay the medical fees.

The correctness of every consulted surgeons' diagnosis and corresponding advice, [doctor 1], [doctor 2], [doctor 4], [doctor 5], and subsequently, [doctor 6] (A2, A6, A8, A9, A22), as to the acuteness and urgency was entirely confirmed when during the surgery on 01.05.18, it was reconfirmed that the SMV had indeed been acutely dilated and kinked.
'There was a reversed position of the superior mesenteric artery and vein with a spiral course along the root of the mesentery' 'The superior mesenteric vein was abnormally large and kinked' (A10)
The acute kink in the SMV, according to unanimous medical advice, was objectively a condition which called for urgent surgery, due to the 'prohibitive risk of massive intestinal infarction'
'which would result in the loss of his entire intestine' (A8).
Further, my GI specialist in the [country of residence], [doctor 6], also subsequently stated in relation to this 'I understand their diagnosis of partial volvulus in the intestine and CT findings of significant intestinal wall edema with partial occlusion of superior mesenteric vein. I would consider these indications for urgent surgery' (A24).
Thankfully, the surgery was successful in resolving the acute kink in the SMV, and dangerously compromised intestinal blood supply (A10):
'The root of the mesentery was then sutured to the retroperitoneal fascia in an anatomical fashion along the mesenteric axis. The case was extremely difficult to achieve proper alignment of the mesenteric vein and artery. After completion of the gut remodeling, the main stem of the superior mesenteric vein was to the right of the superior mesenteric artery. With complete repositioning of the duodenum, the distal branches of the superior mesenteric artery and vein continued to run a spiral course with no potential risk of vascular compromise' 'Such a complicated vascular anatomy required careful repositioning of the duodenum and mesentery to avoid any kink or compromise to the vascular blood supply'

Referenced past Cases
I refer to case 77537.
Regarding BUPA's referenced cases, I note:
79430. The condition did not indicate urgent surgery and was not impacting the patient's ability to safely fly home.
81651. The patient's condition did not impact his ability to safely fly home. The acute phase of the disease was over.
85182. The patient's condition was priorly known and pre-existing, it was not a sudden and unexpected condition requiring urgent treatment.
92900. The patient's condition was priorly known and pre-existing, it was not a sudden and unexpected condition requiring urgent treatment.
Further, in none of these cases:
- Did the insurance confirm, 3 separate times, that they would cover in the first place.

- Was the patient's condition unanimously considered to require urgent treatment that prohibited prior travel home, by 5 different doctors, including my [country of residence] GI specialist.
- Did the patient receive consultation with a world leading specialist
- Was the patient's diagnosis of a very rare illness regarding which expertise is sparse outside of a single clinic."

Selskabet har i brev af 17/7 2020 til nævnet bl.a. anført:

"When the Company confirmed coverage of surgery in March 2018, it was on the understanding that it was still a case of a condition that fulfilled the prerequisites under the terms and conditions of the insurance on 'Acute Serious Illness', defined in the terms and conditions as: '*An acute serious illness' is a sudden an unexpected illness that requires immediate treatment.*

The company apologies for any confusion that may have arisen during the period 27.-31-3.2018, when based on what were, at the time, incomplete medical grounds, the Claimant was given the impression that coverage was possible.

In an e-mail dated 5.4.2018, the Claimant states that surgery probably cannot be performed before the autumn. In an e-mail dated 6.4.2018, the Company then informs the Claimant that, cf. Section 6.1 of the insurance terms and conditions, coverage is provided only in the case of a need for acute treatment, and thus the insurance only covers operations for acute, serious illnesses that require immediate treatment.

Based on the subsequent correspondence and medical documentation provided, the Company refuses coverage for surgery, as no supporting documentation is provided to show it is an acute medical condition requiring immediate surgery within the insured period.

In support of its refusal to provide coverage, the Company would also like to emphasize the following:

- That despite the Claimant's description of symptoms during the period after being discharged from [hospital 1] until 7.4.2018. no hospitalization and/or surgery was required – see also Appendix 7, submitted on the portal by the Claimant on 29.6.2020 "*I feel an increased and constant kinking in that area since being in [hospital 1], and every few days feel the beginnings of an obstruction that then resolves – I never want to be out of relatively close time proximity to a hospital until the risk of an obstruction/volvulus is corrected. If it occurred on the plane across the [ocean] – this would be a nightmare.*
- That despite the Claimant's information that since being discharged in February 2018, he has lived on liquids and baby food and has been extremely afraid that his malrotation could flare up at any time, his state of health has not required him to be admitted to hospital immediately and/or undergo surgery – see in addition Appendix 17, submitted to the portal by the Claimant on 29.6.2020
- That both [doctor 1]'s and [doctor 2]'s (27.3.2018) as well as [doctor 3]'s (28.3.2018) evaluations are based on tests carried out during hospitalization at [hospital 1] in February 2018
- On 15.4.2018, on his own initiative, the Claimant takes a scheduled flight from [state 1] to [state 2] in order to be examined by [doctor 4], despite the Company having requested a Fit

for Flight (FFF) Declaration in advance in order to establish whether or not the Claimant's condition is medically compatible with flying.

- [Doctor 4]'s evaluation of 16.4.2018 is based on the results of examinations carried out during the hospitalisation in February 2018 (Appendix 8a, submitted to the portal by the Claimant on 29.6.2020)
- [Doctor 4]'s evaluation of 18.4.2018 is based on the results of examinations carried out during the hospitalisation in February 2018 (Appendix 8b, submitted to the portal by the Claimant on 29.6.2020)

The Company feels it is important to emphasise here that the Claimant´s condition did not necessitate immediate surgery before the insurance expired, as he was not admitted for treatment during the period from when he was discharged from [hospital 1] in February 2018 until when the surgery was carried out on 1.5.2018.

Hence, the Company maintains its rejection of the compensation claim.

With reference to previous Appeals Tribunal decisions:
The Claimant refers to Decision 77.537: The Company does not find this decision relevant to this particular case as, in the current case, no updated results of medical examinations are available that clarify that the Claimant´s condition required acute surgery within the insurance period. As far as the Appeals Tribunal is aware, there was some dissent and the decision in question was decided by a majority vote (2-1).

Comment on Decision 79.430:
The Company refers to the closing argument and decision of the Appeals Tribunal, and draws the parallel that, in this particular case, no evidence has been presented to illustrate that acute surgery was required within the insured period. Furthermore, the Company draws attention to the fact that on 15.4.2018 the Claimant flies from [state 1] to [state 2] at the same time as the Company is actually arranging for him to have a medical examination in connection with an FFF Declaration that could verify the Claimant's information that he has been advised not to fly.

Comment on Decision 81.651:
The Company refers to the closing argument and decision of the Appeals Tribunal. In the current case, it should be noted that the discharge summary in connection with the Claimant's hospitalisation at [hospital 1] in February 2018, shows he is discharged without any need for acute surgery or any further treatment as the acute problem has resolved itself. During the period from when he was discharged in February 2018 until the last e-mail from the Company dated 30.4.2018, no new, updated test results have been provided that confirm that the condition has worsened to the degree that acute and immediate surgery is required within the insured period.
Likewise, no updated, supporting test results are provided that indicate that a return trip to his home country by, for example, air ambulance would be inadvisable.

Comment on Decision 85.182:
Fully aware that the Company is refusing to provide coverage for it, the Claimant choses to go through with the planned surgery in the USA, instead of waiting for the Company´s request for an FFF Declaration, supported by new test results that would clarify the question regarding returning to his home country. In doing so, not only is the Company denied the opportunity of getting clarification on the situation regarding a return to the home country, it also means that the Claimant's

decision to undergo surgery in the USA results in a compensation claim that involves a significantly larger expense than the price of a safe method of repatriation would have.

Comment on Decision 92.900:
The Company refers to the argument and decision of the Appeals Tribunal.

The Company refers to the fact that during the period from the discharge in February 2018 until the insurance expiry date, there are no new, updated test results that confirm that the Claimant's condition has worsened to the degree that an acute and immediate surgery is required."

Klageren har i brev af 8/9 2020 til nævnet bl.a. anført:

"**Points already addressed**
BUPA's 17.7.20 submission repeats multiple misrepresentations and points from their prior statements, and again with no supporting evidence. These areas have already been addressed and are represented honestly in my 29.06.20 submission, and demonstrated by the referenced attached documents therein.
…
Delays and Lack of Additional Scans Caused by BUPA
The consultation with the specialist, [doctor 4], at [state 2] Clinic occured on 16.04.18. The specialist's conclusion was that urgent surgery was necessary (A8). BUPA denied coverage insisting that further diagnostic imaging was necessary. Only on 20.04.18, four days later, did BUPA provide confirmation of cover to the specialist team at [state 2] Clinic for further diagnostic imaging (A20, 26.04.18). Bizarrely, on the same day, BUPA informed [state 2] Clinic that they had arranged for tests to be carried out at a different hospital ([doctor 5], … Hospital) 5 days later on 25.04.18, and that they would not give coverage prior to this. ('*Global Assistance has also informed [state 2] Clinic on 20 April 2018 and 23 April 2018 that we are unable to confirm coverage of the surgery prior to the second opinion on 25 April 2018*' (A20, 24.04.18)). Therefore, in good faith and cooperation, the specialist team at [state 2] Clinic awaited BUPA's arranged consultation and supposed diagnostic imaging with [doctor 5] on the 25.04.18. From the original consultation with [doctor 4] on 16.04.18, with 12 days remaining of the cover period, this amounted to a 9 day delay. Upon attending the 25.04.18 consultation with [doctor 5] (A9), I was dismayed to find that the scans which I had waited for on the insistence of BUPA, had in fact not been arranged. Conveniently, BUPA could therefore continue to argue against their liability on that basis that there were no additional scans, and I was denied the opportunity to add further diagnostic imaging to the already plentiful evidence demonstrating the acute kink in the SMV, which was confirmed 100% during surgery. This was further addressed by my lawyer in their 28.04.18 letter to BUPA (A20).

Given the specialist's assessment of the urgent need for surgery on 16.04.18 (A8), and my significant symptoms at the time, if BUPA insisted on additional diagnostic imaging they should have immediately made arrangements and given confirmation of coverage for these diagnostic scans the same day. Then surgery could then have taken place on 18.04.18, the date on which it was originally scheduled, or on several subsequent surgery dates that were scheduled within the cover period.

Bedside Doctors' Clear Advice
[Doctor 4] and [doctor 5] themselves saw no need for further testing to unhesitantly conclude that urgent surgery was necessary and that a flight home across the [ocean] was unsafe (A8, A9), given the recency of the midgut volvulus and the severity of the SMV dilation in my case, as seen on the CT scan. The nature of the condition is such that once the kink has been caused by the

midgut volvulus, there is an unpredictable and high risk of complete occlusion of the SMV at any moment, resulting in swift death of the bowels, which may or may not be saved in time with a reactive rather than proactive urgent surgery.

It was [doctor 4] that developed the procedure now used around the world for intestinal transplantation. He performed the first ever successful one in 1990. More recently he also developed and performed the first ever successful surgery to rearrange the anatomy in patients of my condition such that acute partial occlusion of the root intestinal blood vessel is resolved and the risk of re-kinking, and the need for transplantation, averted. Being the world's authority on both surgeries, he is the most qualified doctor in the world to ascertain which cases are urgent and at high risk of necrotic bowel, as well as intimately familiar with the serious consequences of failing to do so.

Prohibitive risk of [overseas] Flight Before Treatment
If there is no proximity to hospital, such as during a flight over the … ocean, then certainly there is no possibility to avoid necrotic bowel and possible fatality with any spontaneous increase in the SMV kink. In such a case of necrotic bowel, the only option then is intestinal transplantation. Assuming survival until arrival at a hospital and a successful procurement of a graft, the average 5 year mortality rate after intestinal transplantation is 43%.
'*At one year post-transplant, 81% of transplanted patients were alive, while at five years post-transplant, the overall survival rate is 57%*.' (… Annual Report on Intestine Transplantation, data derived from all intestinal transplantations performed by the [country of residence] … between 2007-2017)

Breach of Contract
The Hippocratic Oath of Doctors, including BUPA's doctors, is concerned with employing sincere discernment as to the appropriate care of patients' life and health.
…
Pressuring a client to undertake an entirely medically unnecessary flight home at prohibitive risk to their life prior to urgently required treatment, against the advice of 5 *impartial* doctors, to save BUPA a 'larger expense', is an indefensible transgression from this oath as well as the insurance contract. For BUPA to consider this conduct defensible requires a disingenuous misinterpretation of the contract, I hope my holding BUPA accountable will go some small way to disincentive them from this conduct in the future. BUPA have provided no evidence that any means of flying across the [ocean] was safe. Every consulted doctor advised that doing so represented a very significant risk of loss of my intestine or even death, regardless of an air ambulance, onboard which the appropriate surgical intervention is not possible and an emergency landing to a hospital is equally impossible over the ocean. My research and correspondence with air ambulance practice standards associations also confirms that from the perspective of an air ambulance service, the legal responsibility for the patient and the medical order for an air ambulance always lies with the treating local doctor. The job of the Air ambulance is to carry out the plan and medical orders of the local treating physician. Therefore, the legitimacy of an air ambulance service carrying out instructions from an insurance company to repatriate a patient in sharp contradiction to the orders and consent of the legally responsible local treating surgeons is very questionable. I would be happy to provide these correspondences if requested.

To consider an analogy: When someone is newly in the 'condition' of being stranded on a dangerous road, proactive urgent intervention is required to avert the high and unpredictable risk of suf-

fering a collision. Requiring proactive urgent intervention, the condition is therefore by definition 'acute'. To suggest that such an intervention to bring them to safety is 'elective' and not urgently required until after a collision has already taken place is nonsensical. Due to the kink in the Superior Mesenteric Vein, caused by the recent episode of midgut volvulus, proactive, urgently surgery was required to avert the high risk of unpredictable increased occlusion of the SMV at any moment, leading to swift necrotic bowel and a best case scenario of 57% chance of living beyond 5 years.

Surgery Payment
Meanwhile, by 23.04.18, with the incredible support of several hundred friends and family, sufficient funds had been obtained via loans and donations to pay for the surgery. I sent payment straight away prior to the 25.04.18 consultation with [doctor 5] (received by [state 2] Clinic on 27.04.18, during the cover period), in order that there would be no further unnecessary delay – having tactfully been given 'the run around'' by BUPA up to that point. Had I not been so fortunate to be able to pay, it is unclear how many more than the five obtained doctors' fit for flight assessments (A2, A6, A8, A9, A25) BUPA would have consecutively insisted upon, presumably hoping for one that supported their position. As previously stated, had this been an 'elective' surgery, the processing and wait time for [doctor 4] would have been 6 months after payment, not days, as was the case for this urgent surgery.

Requested Documents
I note that BUPA have chosen not to submit the correspondence between their case worker and their [BUPA doctor 1] as requested. This might have shone some light on why their doctor. misunderstood what the condition in question was – an acute kink in the SMV. He conflated this with chronic adhesions, an entirely distinct condition, and was therefore advising BUPA on that erroneous basis (A7).

<u>Sequence of Key Events Summary</u>
1. Cover twice unambiguously confirmed by BUPA (A15)
2. I learned that no local doctors had performed surgery on the condition before.
3. I identified the only specialist in the world in ..., [doctor 4]. I called the department, the secretary requested my medical records and informed me that the typical wait time was 6 months. I informed BUPA of this.
4. BUPA revoked cover, falsely claiming that doctors had advised that surgery could wait 6 months. BUPA requested a fit for flight assessment from a specialist (A5), I arranged and sent assessments from two doctors (A2, A6). The assessments concluded I was not fit to fly home across the [ocean] prior to surgery.
5. The specialist, [doctor 4], received and reviewed my medical records on 14.04.18. and advised urgent consultation.
6. In cooperation with BUPA, I travelled to the urgent consultation with the specialist, with BUPA's consent & cover of consultation fees (A19). BUPA's [BUPA doctor 1] stated *'It's up to him of course, to evaluate what has to be done now and they are bedside and specialist, so we will of course be listening to what they say'* (A7)
7. I attended consultation with the specialist on 16.04.18 (A8). The specialist concluded Surgery was required urgently and that flying home across the [ocean] prior to surgery was a prohibitive danger. [Doctor 4] scheduled me for surgery on 18.04.18, I began pre-op prep on 17.04.18.

8. With 12 days remaining of the coverage period, BUPA denied coverage and stated they would not give coverage prior to their arranged additional consultation and scans with [doctor 5], 9 days later. BUPA stated that if the consultation with [doctor 5] confirmed the need for urgent treatment, they would confirm coverage (A20)
9. I attended the consultation with [doctor 5] on 25.04.18. He concluded urgent surgery was required and that flying home prior to surgery was too dangerous (A9). No scans had been arranged. BUPA denied coverage.
10. The fundraising campaign and urgent loans reached the required figure, I sent payment for surgery straight away. Payment received by [state 2] Clinic on 27.04.18, within the cover period (29.01.18 – 28.04.18).
11. From 27.04.18 pre-surgery tests (echocardiogram, blood tests etc.) and pre-op prep (fasting, bowel evacuation etc.) took place on the lead up to surgery
12. 01.05.18: Surgery was carried out. (A10)

Summary of Key Points

Acute Kink of the SMV During Cover Period

- BUPA confirmed coverage for surgery multiple times (A15)
- BUPA's basis for revoking coverage was knowingly false.
- Foremost, it should be emphasized that there is no debate as to whether or not there was an acute illness, as this was irrefutably confirmed during surgery (A10)
- If further diagnostic imaging were to have been carried out they would have shown this, correlating with the additional plentiful evidence:
    1. Unanimous medical opinion from 4 senior bedside surgeons, including the world's leading specialist. (A2, A6, A8, A9)
    2. Subsequently, with the benefit of hindsight and post surgery follow up, my [country of residence] GI consultant expressed his agreement with the approach and assessment of the bedside surgeons at the time (A25)
    3. The recent and first ever episode of midgut volvulus, diagnosed at [hospital 1] (A1)
    4. The resulting continued acute intestinal vascular compromise and partial bowel obstruction confirmed by CT imaging showing the superior mesenteric artery and (superior mesenteric vein) in reversed position, a kinked and highly dilated SMV, with intestinal edema and partial ischemia.(A8)
    5. An additional associated admittance in [hospital 2] ER in the meantime (A3)
    6. Doctors' physical examinations (A22)
    7. Correlating significant symptomatology post-midgut volvulus which were far from my habitual state of health. Including, among others (A7, A15, A17, A20, A22):
        - Pain when eating, to the extent that every few days I was unable to eat for stretches of 12-36 hours
        - When able to eat, tolerating only liquid/pureed food
        - Painful defecation
        - Continual Weight Loss
- On instruction from BUPA, I awaited their arranged scans, which transpired not to have been arranged.
- BUPA's supposed basis for denying coverage i.e. their assertion that I was in an 'habitual state of health', was in contradiction with all of the medical evidence and advice. BUPA's planning of an air ambulance clearly demonstrated that they in fact did not genuinely believe me to be in an 'habitual state of health'.

19. 95183

Fitness for [overseas] Flight Home

- Fitness for Flight assessments unanimously conclude it was not safe to fly home prior to Treatment (A2, A6, A8, A9, A25)
- BUPA stated '*According to your policy conditions, if you are not able to safely fly after the 28th of April due to this condition, then your medical coverage will be extended after the end of your planned travel period until you are fit to fly*.' (A4)

Conclusion

As per the glossary of the policy, 'Acute Illness' is defined as:
'A sudden and unexpected illness...'

The condition was sudden and unexpected. I had never before heard of nor suffered from the illness in question – a severely kinked and dilated SMV secondary to midgut volvulus, causing partial intestinal ischaemia.
' *...that requires immediate treatment*'

This condition is objectively one which requires urgent proactive treatment, according to unanimous and plentiful medical advice obtained during the cover period, including from the world's leading specialist, and subsequently confirmed with the benefit of hindsight and post surgical follow up by my [home country] GI consultant.
'*He is in urgent need of surgery due to the high risk of volvulus and intestinal ischemia, which would result in the loss of his entire small intestine'* (A8)

As per paragraph 6.1 of the policy
'*The insurance shall cover the medical expenses incurred by the insured in case of acute illness and injury.'*

Since during the cover period there was an irrefutably confirmed case of acute illness for which urgent surgery was strongly and unanimously advised by four surgeons; according to the agreed terms and definitions of the policy, BUPA were and are clearly liable to pay for the relevant expenses.

Furthermore, it was not safe to fly home prior to treatment."

Selskabet har i brev af 9/10 2020 til nævnet bl.a. anført:

"The insurance Worldwide Travel Options, Single Trip, covers acute illness and injury, cf. section 6. Acute illness is defined in the glossary (insurance conditions p. 23) as an illness that occurs suddenly and unexpectedly and which requires immediate treatment.
'acute serious illness' is a sudden and unexpected illness that requires immediate treatment.'

When the Complainant first contacted the Company, Bupa Global Assistance accepted to cover hospitalization and diagnostic examinations in the period 21.02.1018-25.02.2018.

Cf. §6.6 the insurance excludes expenses for control, treatment and medication in connection with stabilization and regulation of an existing, chronic or recurrent illness / disorder, just as the insurance does not cover a treatment need that was expected before departure.
…

It appears from the medical record from this hospitalization that the Complainant was known with intestinal disorder since birth:
…
The diagnosis 'malrotation' is also mentioned in a medical record from a radiological examination carried out in the Complainant's home country in 2009 (Appendix 21 MR 2009). Nevertheless, the Complainant denied knowledge of this diagnosis in conversation with [BUPA doctor 1] d.16.04.2018 (Appendix 7.a).

The Complainant was discharged in stable condition on 23.02.2018, as the condition had resolved on its own. He returned briefly to the emergency department on 24.02.2020, where follow-up tests were performed.

After this, the Company does not hear from the Complainant until a month later, on 23.03.2018, when he again contacts Bupa Global Assistance. He has meanwhile consulted [doctor 1], who in the discharge summary recommended surgery and advised against longer trips. Bupa accepts to cover surgery on the premise that there is an urgent need for treatment, cf. section 6. However, when the Complainant indicates that he wishes to have surgery by [doctor 4] in ..., [state 2], and that the operation may not be performed until several months later, the criterion for acute illness requiring immediate treatment is no longer met.
…
Bupa Global Assistance now focuses on exploring options for medical repatriation. Booking i.a. a consultation in [state 1] for FFF status. However, the appointment must eventually be canceled as it comes to the Company's knowledge that the Complainant has instead chosen to fly to ... [state 2] to enroll for surgery with [doctor 4].

In 'Submission no. 3' the Complainant states' that the Company tried to pressure him to be transported home against the recommendation of 5 doctors. The company emphasizes that none of the doctors in question have carried out new diagnostic examinations of the Complainant, whereas they assessed the Complainant's condition on the basis of examinations carried out during the hospitalization in February about one and a half – two months prior. …
…
It is clear from the course of the case that the Company's intention was to clarify the Complainant's current clinical condition on the basis of new diagnostic examinations, including the possibility that the Complainant could be transported home. It should be added here that the case was assessed by several of the Company's affiliated specialists, including specialists in gastroenterology and aviation medicine, who assessed that medical repatriation was possible.
…
<u>Conclusion</u>
Despite the Company's insistence that new diagnostic tests be performed with the purpose of exploring the possibilities and terms of repatriation, the Complainant first chose to fly to [state 2] against the Company's instructions and then underwent surgery without prior acceptance of cover by the Company.

The attending physician, [doctor 4], based his reasoning for surgery on examinations that were several months old. A note from a consultation with the same doctor on 16.04, states that the Complainant on a pain scale of 1-10 was at 3 and at rest 1. Since no new test results or scans were available, we must assume that the Complainant's condition at the time of surgery was thus unchanged since he was discharged in stable condition back in February.

Thus, the conditions for coverage are not met, as the Complainant's condition does not meet the criterion for 'acute illness', defined as illness that occurs suddenly and unexpectedly, and which requires immediate treatment, just as the operation in May did not require immediate treatment."

Klageren har i brev af 17/11 2020 til nævnet bl.a. anført:

"**Pre-existing Conditions**
As clarified above the claim was not for a preexisting condition, However, in the event that it had been for a pre-existing condition, it would nevertheless have been covered anyway under the policy:
…
My health status was stable for considerably longer than the 6 months prior to my trip. In fact, for chronic adhesions, there had been no need for treatment for the 14 years prior, and no need for consultation or even routine checkup of any kind for the 6 years prior. Malrotation was asymptomatic my whole life, there had never been a need for any kind of treatment or even consultation, hence why it was noted only incidentally in my medical records whose focus was chronic adhesions, but not mentioned or advised upon directly with me by my doctors. It is only, for example, in the occurrence of a midgut volvulus that treatment can be required, such as if the intestinal blood supply is consequently compromised as was the case for me. …

Acute Serious Illness: Indicative Symptoms
Due to the degree of pain during the episode of midgut volvulus, I was on the verge of losing consciousness and I was shaking involuntarily. This was the most intense pain I have ever experienced. In the context of a pain scale on which 10/10 was this episode of midgut volvulus, 30% of this pain (3/10) constituted a stomachache bad enough to require me to stop eating for half a day or a day.
Despite initially and naively assuming I would simply recover back to normal after discharge from [hospital 1], I never did. Rather, I felt that I was always teetering on the edge of a complete midgut volvulus occurring again (A7, A15, A17, A20, A25, A26), representing a danger of losing my intestines with any furtherance of the occlusion to the superior mesenteric vessels. I was in continuous discomfort, and having bad stomach aches every few days. The recurring stomach aches were in the same specific location, of the same recognisable and distinctive quality, and similarly progessive in intensity over time, as had been the case on both occasions which led to hospitalization at [hospital 1] and [hospital 2] (A1, A2, A3). Therefore, I was deeply concerned by this untenable situation. Once it was confirmed by a third surgeon that surgery was needed (A16) and BUPA confirmed their cover (A4), I was anxious to find a specialist, consult with them, and follow their advised treatment as quickly as possible. [Doctor 4] was the only specialist BUPA and I could find.
These distinctive symptoms were not there before hospitalization at [hospital 1], during which the condition was confirmed on CT scans. They continued from that point until the surgery, during which it was once again confirmed that my SMV was acutely kinked. After corrective surgery these symptoms ceased.
BUPA's claim that I was in a '*habitual state of health*' (A20) appears to be made entirely in the abstract, and in willful ignorance of the irrefutable evidence of the CT scan and findings during surgery, and the correlating and strongly indicative symptoms in between. Please see the following attached testimonies I have obtained by those who I was living with at the time and saw first hand the condition I was in (A25a, A25b, A25c).

Full Co-operation
I cooperated fully with BUPA's requests for a fit for flight assessment (A2a, A2b, A6, A8, A9, A24). This is demonstrated by (A17)
I followed the specialist's advice to come for urgent consultation not just with BUPA's consent, but also their confirmation of cover of the consultation. This is demonstrated by (A19)."

Selskabet har i brev af 2/1 2021 til nævnet bl.a. anført:

"With reference to our substantiated responses of 15.07.20, 17.07.20 and 09.10.20 respectively, we maintain that no new diagnostic examinations were performed prior to the surgery on 01.05.18, which substantiate that the Complainant's health condition had changed, since he was discharged from the [hospital 1]. Likewise, it is our position that a 'Fit for Flight' status cannot be based on examinations that not only dated several months back in time, but – just as important – were the same examinations based on which the Complainant was discharged in stable condition and without further treatment needs.
Based on the Complainant's most recently presented experience of the course of events, we also find it relevant to comment on the Complainant's *section 6 under 'Key Events Summary*'. The reason is that we disagree with the Complainant's assertion that we, including our medical consultant, should have given consent to the Complainant's choice to fly from [state 1] to [state 2] in order to consult [doctor 4] without having complied with our prior request and precaution for a 'Fit for Flight' status on suspicion of serious illness.

In cooperation with BUPA, I traveled to the urgent consultation with the specialist, with BUPA's consent & cover of consultation fees (A19). BUPA's [BUPA doctor 1] stated 'It's up to him of course, to evaluate what has to be done now and they are bedside and specialist, so we will of course be listening to what they say' (A7)

It is correct that we accepted the Complainant's choice of [doctor 4] because the insured, cf. the insurance conditions, has the right to choose a local authorized doctor himself.

However, because the Complainant's claim is precisely based on the assertion that an acute and treatment requiring change in his state of health had occurred after he was discharged from his most recent admission at the [hospital 1] 24.02.18 in stable good condition and without further treatment needs, we needed to establish his general 'Fit for Flight' status. Partly to get an updated medical assessment of the state of health described to us by the Complainant, but just as much to ensure that the Complainant did not board a plane with a health condition that spoke against this mode of transport. In this connection, we refer to our emails of 06.04.18 and 15.04.18, respectively, in which the Complainant is encouraged to both a medical assessment of his current state of health and the doctor's assessment of the Complainant's 'Fit for Flight' status prior to a flight from [state 1] to [state 2]."

Klageren har i brev af 22/1 2021 til nævnet bl.a. anført:

"**BUPA's failure to act reasonably and in good faith: Danish Contracts Act (*Aftalelov)***
Regarding Art 6.8 of the insurance policy (A11)
'The Company has the right to demand that the insured be repatriated to the country of permanent residence, if the Company's medical consultant and the treating physician agree that the in-

> *sured is medically fit to be transferred to his/her country of permanent residence. In case of disagreement, the decision of the Company's medical consultant shall prevail .'*
> I draw attention to provision 36 of the Danish Contracts Act, '*Aftalelov'* (A27)
> …
> In relation to which, I maintain that BUPA failed to act reasonably and in good faith by insisting that I was in a 'habitual state of health' and fit to fly home in willful ignorance of the contrary evidence, including the unanimous assessments by four surgeons (A28 provides overview), CT scan and indicative symptomatology. This is especially unreasonable in retrospect given that during the surgery the unanimous assessment of all four consulted surgeons was proved correct, when it was found that my SMV was indeed acutely and dangerously occluded. With the benefit of hindsight, my [country of residence] GI specialist subsequently confirmed the assessments of the 4 consulted surgeons at the time,
> …
> Further, after the specialist consultation on 16.04.18 (A8), BUPA informed the specialist team at [state 2] Clinic that confirmation of cover could not be given before BUPA's arranged further tests, nonsensically stipulating that these tests '*should not be from [state 2] Clinic*' (A26a). Despite the urgency, BUPA arranged these tests for nine days later, on 25.04.18, with 12 days remaining of the cover period. Despite my full cooperation and attendance to BUPA's arranged tests on 25.04.18, which only BUPA claimed to see a need for, to my exasperation, it transpired that BUPA in fact had failed to arrange said tests.
> It is therefore additionally unreasonable and in bad faith for BUPA to deny coverage based on the lack of additional tests, especially since the acute condition in question was in any case subsequently confirmed during the surgery (A10), but also given that it was BUPA themselves that were responsible for the lack of additional tests."

Selskabet har i brev af 12/2 2021 til nævnet bl.a. anført:

> "Based on the appendices submitted by the Complainant to support his claim for compensation, we have asked our Medical Team for a reassessment of the case.
>
> Our Medical Team confirms that the diagnosis 'intestinal malrotation with acute volvulus' is not common in an adult. In addition, our Medical Team emphasizes that an adult with the said diagnosis has an acute and immediate need for surgery (laparotomy). The diagnosis is thus acutely life threatening, and the attending physician will need to immediately ensure the patient's transfer to an operating room, including being prepared for the likelihood of a possible need for resuscitation.
>
> Following the clinical reassessment, it is our continued position that the operation on 01.05.2018 – i.e. more than 2 months after discharge from the [hospital 1] – aimed to minimize the risks of a potential volvulus, by placing the intestine in a rotation-free position.
>
> We note that after admission and examinations at [hospital 1] in February 2018, the Complainant was discharged in stable condition and without further treatment needs.
>
> It is also our continued position that the Complainant has not documented that the operation on 01.05.2018 fulfills the insurance conditions' premise of an 'acute serious illness that requires immediate treatment'. Assuming the Complainant at any given time within the insurance period had

had an acute case of volvulus (in addition to his congenital intestinal malrotation), it would thus have required an immediate laparotomy to remove it (volvulus).

The fact that the Complainant's state of health over the period 23.03.2018, where he resumed contact with our emergency department, and until 01.05.2018 did not require actual medical treatment, new diagnostic tests or surgery, thus speaks against the presence of an 'acute serious illness that requires immediate treatment' within the insurance period.

In addition, as already mentioned, our Medical Teams' position is that a case of acute volvulus (in addition to congenital intestinal malrotation) is directly incompatible with any type of flight – including the Complainant's domestic flight from [state 1] to [state 2] to be supervised by [doctor 4].

With regards to the Complainant's reference to the submitted medical opinions (cf. Appendices 2a, 2b, 6, 8a, 8b and A9), we find it relevant to emphasize that none of these are based on updated test results from clinical tests performed after the Complainant was discharged from [hospital 1] 25.02.2018.

When the Company in March 2018 confirmed coverage for surgery, it was based on the understanding of the Complainant's description, that since his discharge from [hospital 1] an unexpected and acute condition requiring immediate treatment had arisen that met the insurance conditions' premise for the presence of 'an acute serious illness that requires immediate treatment'. There was thus no general confirmation of coverage of any subsequent surgical expenses. Regardless of whether the operation 01.05.2018 may be for the benefit of the Complainant, we highlight the crucial fact that from discharge from the [hospital 1] until the day of operation 01.05.2018, a period of more than 2 months, he did not develop symptoms of a nature that necessitated 'immediate treatment' in the form of emergency surgery or other immediate treatment. We also find a lack of supporting medical evidence for the Complainant's claim, that he within the insurance period developed an 'acute serious illness that requires immediate treatment', indisputable.

In his most recent post to the Board, Submission 6, the Complainant refers to the nature of the insurance conditions' section 6.8 and section 36 of the Danish Contracts Act. It follows from section 36 (1) of the Danish Contracts Act. 1 that an agreement may be amended or overridden in whole or in part if it would be unreasonable or contrary to fair conduct to enforce it.

To this the Company's comment is, firstly, that our insurance conditions – including section 6.8 – are not unusual for the industry. Secondly, we believe that the question of section 6.8, which the Complainant now brings up, is outside the essence of this case. Finally, we note that Karnov's commentary on section 36 of the Danish Contracts Act states 'The courts can, in general, probably manage the great freedom that section 36 gives them, but others cannot necessarily'. Last but not least, however, we also draw the Complainants' attention to the fact that the rule in section 36 of the Danish Contracts Act – also according to Karnov – in the context of protection, should be seen as a supplement to the Marketing Act and other laws with consumer protection purposes. Here, on the basis of a lex specialis principle, we draw the Complainant's attention to the Danish Insurance Contracts Act and the associated good practice executive order.

In his most recent post, the Complainant refers to the Complaints Board's decision no. 77,537. The Company points out that the decision states the treating physicians performed clinical examinations, and that it was a course of three days (10-13 June) with specialist consultation on 10 June, examination on 11 June, referral to Professor PC for examination 12 June and surgery 13 June. We further note that the majority of the Complaints Board in the decision refers to the opinion of Professor P.C.'s study on 12 June, in which he states 'On balance I thought it safer to proceed immediately because of the problems with…' and that the operation took place the following day. It was thus a completely different clinical course, where the operation took place the day after Professor P.C.'s examination – and it must also be noted in conclusion that the decision states that the Complaints Board's minority did not find that there was an indication for surgery."

Klageren har i brev af 12/4 2021 til nævnet bl.a. anført:

"• BUPA argue that I did not have a complete midgut volvulus post-hospitalization at [hospital 1]. This is a straw man argument, since this is not what I'm claiming. As has been repeatedly stated, the condition in question was the **acutely occluded Superior Mesenteric Vein, compromising the intestinal blood flow**, caused by the midgut volvulus at [hospital 1]**.**

…

According to unanimous medical advice (A28), this condition called for urgent surgery and rendered an 11 hour flight home over the ocean with no possibility of surgical intervention or emergency landing, unsafe without prior surgical intervention.

…

It was again confirmed during surgery.

…

Thankfully, the surgery was successful in resolving the acute kink in the SMV, and correcting the dangerously compromised intestinal blood flow (A10):

…

• I quote the board's decision on case 77,537.

…

Case 77,537 is analogous to my case, except my case involved a total of 4 senior surgeons at the time advising the need for urgent surgery and vehemently advising against the prohibitive danger of a long haul flight across the … ocean prior to treatment; due to the risk of any increase in the intestinal vascular compromise, which would result in the loss of the entire intestine. This included [doctor 5], the GI specialist whose consultation BUPA themselves arranged, and [doctor 4], the world's leading specialist for this rare condition. Subsequently a fifth GI specialist, my [country of residence] consultant, who with the benefit of hindsight also confirmed the appropriate medical advice given at the time. See A28 for an overview of the medical advice I received. Further analogous is that once [doctor 4] received my medical records on 14.04.18 the consultation was arranged urgently for 16.04.18, after which [doctor 4] scheduled me for surgery on 18.04.18, and I had already begun pre-op prep (fasting etc.) on 17.04.18.

BUPA make the point that case 77537 was a majority decision, however case 77537 was a more marginal case than my own. While the risk in that case was infection due to prolonged catheterization, the risk in my case was swift occurrence of necrotic bowel and potential death. Hence, I was not able to safely fly home across the … ocean.

…

• Coverage of my surgery was unambiguously confirmed by BUPA, twice, on 27.03.18 & 31.03.18. (A15)

…

• Throughout the Terms and Conditions there are references to the need for agreement between doctor and company, although in the event of conflict the company reserves the right to have its consultant's opinion prevail. Used capriciously, this clause could be used to deny coverage in all cases – BUPA simply need to have their consultant disagree with the treating doctor and their decision will prevail. This contractual term needs to be read in the context of provision 36 of the Danish Contracts Act, and in accordance with reason and principles of good faith. In a niche area, where several medical assessments have already been sought (including one by the world's leading expert) and have proven unanimous in their medical advice, the opinion of a medical consultant who demonstrates a poor understanding of the condition in question should not be permitted to prevail over the uniform medical advice of several surgeons. By allowing [BUPA doctor 1]'s opinion to override those of [doctor 4], [doctor 5], [doctor 1], [doctor 2], and [doctor 6], the company is failing to act reasonably and in keeping with the principles of good faith, in accordance with provision 36 of Aftelov.

…

BUPA pressures flight home against overwhelming medical advice

This correspondence confirms that it was BUPA's express premeditated intention to pressure me to fly home, against the overwhelming medical advice I had received and also regardless of the outcome of the upcoming consultation with [doctor 5] on 25.04.18, who subsequently also advised of the prohibitive danger of flying across the [ocean] prior to surgery (A9). An insurance company should be in the business of making an honest decision based on an impartial appraisal of the client's circumstances; they should not be in the business of giving their clients 'ultimatums'.

…

Expertise

I would expect as an absolute bare minimum that an insurance company would be extremely careful to ensure that they correctly understand their client's condition and circumstances, before making a decision that, if based on an incorrect understanding, could risk their client's life. As it was, this reckless approach was taken based on a truly alarming lack of comprehension of the condition in question. Their doctor misunderstood what the condition in question was – an acute kink in the SMV, compromising the intestinal blood supply. He conflated this with complications due to chronic adhesions from my distant medical history (14 years prior), an entirely distinct condition. (A7):

…

[BUPA doctor 1] was therefore advising BUPA that it was safe for me to fly home on the erroneous assumption that the acutely occluded Superior Mesenteric Vein, dangerously restricting the intestinal blood supply, which I had never had before, was 'the same' as the complications I had had as a child and teenager due to chronic adhesions (A7).

[BUPA doctor 1] also bizarrely ponders the question of why I had travelled to the US at all, when BUPA's policy conditions are quite clear that the client's pre-existing conditions must have been stable for six months prior. Mine had been stable for 14 years, during which I had taken 3 month trips to the US almost every year, never once having a medical event.

I note that BUPA have not provided proof that their advising doctors on my case at the time, [BUPA doctor 1], [BUPA doctor 2] and [BUPA doctor 3], are even Gastrointestinal specialists, much less specialists in the specific rare condition in question.

…

The center for gut rehabilitation and transplantation at [state 2] Clinic, directed by [doctor 4], is the only one with extensive experience in the condition of intestinal vascular compromise caused

by midgut volvulus, as well as the consequences of failing to treat it in time – necrotic bowel and need for intestinal transplant. [Doctor 4] is internationally recognised as the leading specialist as well as for his clinical and technical contributions to the field of transplantation, having developed clinical intestinal and multivisceral transplantation in 1990, giving rise to its subsequent approval … and more recently having developed the procedure performed on me to resolve the acute intestinal vascular congestion caused by midgut volvulus. As a professor, his academic contributions are also widely acknowledged. He has authored more than 400 original peer reviewed scientific publications which have been cited more than 20,000 times. He is an active member of 13 prominent professional and scientific societies and served as the president of the Intestinal Transplant Association and founded the Transplant and Gut Foundation. In the transplantation field, intestinal transplants are particularly demanding, and only 3000-4000 intestinal transplants have taken place worldwide, with approximately ⅓ of those having been performed by [doctor 4] and his team at [state 2] Clinic, and priorly at …. Aside from his specialisation in intestinal transplantation, which entails intimate knowledge of the implications of the status of the abdominal visceral vascular structures including the patency (degree of openness vs obstruction) of the superior mesenteric vessels …, he has also made global contributions to the field of surgery relating to the portal vein (of which the superior mesenteric vein is the main branch). [doctor 4] and his team are therefore the leading experts.

On the other hand, BUPA do not have any specialists for the specific rare condition in question and are not qualified to deny, especially on the basis of erroneous understanding, the assessment of the bedside specialist. Just prior to the specialist consultation, BUPA's [BUPA doctor 1] himself stated '[Doctor 4] is bedside and specialist, therefore we will be listening to what they say' (A7). Despite this, after the specialist medical advice, and that of every other consulted doctor, and the CT scan showing the severe dilation and occlusion to the superior mesenteric vein, BUPA inexplicably continued to claim '[the claimant] is currently in habitual state and his risk of volvulus resulting in secondary ischemia has not increased since his departure from [country of residence]' (A20) During the surgery it was further confirmed that my superior mesenteric vein had indeed been dangerously kinked and dilated and therefore BUPA's basis for denial of coverage, that the risk of ischemia (compromised blood flow) had not increased since leaving the [country of residence], was definitely proven incorrect (A10).

[BUPA doctor 1] also falsely accuses me of lying about my lack of knowledge of my intestinal malrotation prior to hospitalisation at [hospital 1], which anyway is not the acute condition for which this claim was being made. [BUPA doctor 1]'s flippant accusation is demonstrated as being false in (A2), and this is further addressed in Submissions 2 and 4. This reveals their internal culture of partiality – presumptuously interpreting circumstances through the lens of their allegiance to the company rather than the companies responsibilities as per the contract. Given the context of profound concern, illness and urgency involved at the time, this lack of impartiality and false accusations is more than disconcerting.

I have lived on a low income for all of my adult life, and my parents have lived on low income for most of theirs. If we were not acting genuinely, in accordance with the overwhelming and now vindicated medical advice being received of the need for urgent surgery, we would not have acted as we did. My Father would not have sent me the majority of his life savings, with which he was about to finally buy his first home, provided by social housing, just before retirement, which he can not now do. My Mother would not have sent me her entire life savings. I would not have taken on crippling loans in order to be able to promptly follow the doctors' advice. BUPA left me

stranded and desperately unwell in a foreign country with no way out except for the profound effort of loved ones, coordinating an urgent campaign to collect generous donations and loans.
Insured people should not have to endure the profound anxiety, stress and injustice of an insurance company's cunning mishandling of a case, especially at a time when their health is severely compromised. I am compelled to stand against this kind of conduct so that it is not repeated with future clients. What else does BUPA expect their clients to do but to prudently follow overwhelming and specialist medical advice? In light of the confirmation that the intestinal vascular system had indeed been acutely compromised (A10), the medical advice we received was proved correct, leaving no reasonable way for BUPA to argue against the claim."

Selskabet har i brev af 29/4 2021 til nævnet bl.a. anført:

"[BUPA doctor 1] is a surgeon with many years of experience in gastro surgery, and [BUPA doctor 3] is an anaesthesiologist with many years of experience as an intensive care physician. We also draw attention to the fact that Bupa internally as well as externally has a wide network of doctors with whom the Clinical Team in Copenhagen can confer clinical scenarios.

For the sake of good order, we find it relevant to mention that cf. information available on the internet [doctor 4] is a trained surgeon and works in 'clinical and multivisceral transplantation'. [doctor 4] does not carry the title gastroenterologist, nor does [doctor 2], or [doctor 1] whom the Complainant visited in the United States before the operation.

…
Appendix 31 Clinical Team's decision for a gastroenterologist documents that our gastro surgical medical consultant, [BUPA doctor 4] … experienced in aviation medicine – on 13.4.2018 called for a second opinion from a gastroenterologist.

A second opinion from a specialist – in this case gastroenterologist [doctor 5] – is not only common but often necessary and vital on suspicion of a complex medical diagnosis, as in this case. [Doctor 4] is not a gastroenterologist and i.a. because he agreed to the Complainant's desire and ability to carry out the flight from [state 1] to [state 2] on 15.4.2018 – despite a simultaneous demand for emergency surgery and the claim that the Complainant could not be repatriated to his home country – we requested a diagnostic examination, incl. updated tests, performed by a trained gastroenterologist.

The appointment with gastroenterologist [doctor 5] should also be seen in the light of the fact that within the period from the Complainant's first consultation at [state 2] Clinic on 16.4.2018 – where the Complainant was assessed on a pain scale from 1-10 to 3 and at rest to 1 – until the operation 1.5.2018, [doctor 4] did not conduct new tests to support an unequivocal need for emergency surgery or that the Complainant's condition at the time was demonstrably incompatible with a repatriation to his home country at the given time.

Appendix 2 [doctor 1] Discharge
Summary does not contain information that changes the fact that the Complainant was discharged from [hospital 1] in stable condition and without a need for immediate treatment, including immediate surgery.
…

As already mentioned in previous responses, we do not doubt that the Complainant could benefit from an operation. Our position is simply that no updated test results have been presented to support the presence of an acute condition that required immediate treatment within the insurance period after discharge from [hospital 1].

The general assumption is that when you buy insurance, it is in the hope that you will never need it. For those of our customers who do need to report an insurance claim, we are aware that a specific claim for compensation can have a financial scope - regardless of large or small - that may be challenging for the individual customer to pay when the incident falls outside the objective requirements for insurance coverage.

Although it does not affect the question of compensation, we acknowledge and feel sympathy for the consequences the operation on 1.5.2018 has had for the Complainant and his family.

The Company has no further comment on the Complainant's remarks regarding section 36 of the Contracts Act. We maintain that we have acted within the framework of good practice, cf. section 43 (1) of the Financial Business Act. 1 and Executive Order on good practice for insurance distributors, cf. FIL § 43 para. 2."

Nævnets sekretariat har den 27/9 2021 bedt selskabet uddybe sine oprindelige dækningstilsagn, og selskabet har i brev af 26/10 2021 til nævnet bl.a. anført:

"The Company has reviewed the following clarifying questions presented on the portal by the Board
27.09.2021.

It appears from e-mails from you of 27/3, 28/3 and 31/3 2018 submitted by the other party that you had approved an operation in February, and that on 31/3 2018 you again approved the operation. We would like you to inform:
1. Why did you confirm and reaffirm coverage for surgery?
2. What medical documents were you in possession of? We kindly request you to submit the material.

Please find our answers below.
Re: 1)
The Complainant first contacted Bupa Global Assistance on 21.02.2018, when he was admitted via the Emergency Department at [hospital 1] in [state 1] due to abdominal and pelvic pain. Based on information from ER and the admission documents, it was assessed that this was an acute illness that required immediate diagnosing and treatment. Preauthorization was therefore given for hospitalization for four days from 21.02.2018-25.02.2018 as well as X-ray and CT scan (Admission including X-rays and CT-Scan) – (Appendix Payment guarantee). The company did not receive a request for guarantee of payment for surgery, as the Complainant's condition eventually self-resolved. Therefore, NO payment guarantee was issued for operation.

30. 95183

On 24.02.2018, Bupa Global Assistance was contacted by the Complainant's girlfriend, as he was in the emergency reception again for some examinations after having been discharged. It was agreed that they should contact us if he needed to be hospitalized.

After this, we did not hear from the Complainant again until a month later on 23.03.2018.

Medical records from the admission in February were received on the same day. In an email from Bupa Global Assistance on 27.03.2018, the case agent asks if a new need for treatment has arisen. The Complainant responds that it is the same diagnosis that still requires surgery.

On 30.03.2018 Bupa Global Assistance confirms that the insurance covers extra expenses for airfare and accommodation if the Complainant is medically unfit to travel home as planned and at the same time asks for new medical records for approval of further treatment. On 31.03.2018 the Complainant sends statements from 3 different doctors, one of whom, [doctor 2], recommends surgery as soon as possible. When the Company in an e-mail to the Complainant subsequently confirms coverage for surgery, it is in response to the information that this is an acute treatment-requiring condition that meets the insurance conditions' of the presence of 'an acute serious illness that requires immediate treatment.' This understanding is based on the Complainant's own interpretation of the situation and the medical opinions received. The company asks the Complainant to state the date of operation and name of the hospital in e-mail correspondence on 30.03.2018-01.04.2018. No guarantee of payment for surgery is issued to the hospital at any time, as the case is awaiting this information.

On 03.04.2018, the Complainant informs that he passed on consent form and insurance information to the hospital so that they can contact us.

In an email dated 05.04.2018, the Complainant asks if the Company has heard from [state 2] Clinic. The e-mail reveals that he has been in dialogue with the … Clinic in [state 2] regarding surgery, which is not scheduled to take place until the fall. The Complainant writes that he is willing to wait several months for the surgery and plans to stay with some friends until he has to fly to [state 2].

It then becomes clear that this is not an urgent need for treatment, but rather a planned treatment, which among other things implies that the Complainant must fly from [state 1] to [state 2]. At the same time, it appears that the Complainant is not in great pain, as was the case in February. Thus, in his statement [doctor 3] describes 'mild abdominal discomfort.' Our doctors therefore assess that the Complainant's condition is unchanged since he was discharged in stable condition from [hospital 1] a month earlier, and that this is an elective planned treatment that falls outside the scope of the travel insurance."

Klageren har i brev af 9/1 2022 til nævnet bl.a. anført:

"To reiterate, the email dated 05.04.18 was written after calling and speaking with the secretary of the center for gut rehabilitation. They were literally the only option available to me to get appropriate specialist treatment for such a rare condition. Since I contacted them with no Dr.'s referral and since they had no knowledge of my circumstance and did not have my medical records, by default, they began processing the case as an elective surgery. Nevertheless, as soon as the specialist department doctors received and reviewed my medical records, they deemed my case to be urgent and cleared space in the schedule for immediate consultation and appraisal (A8,

> A8a), for which BUPA gave their consent and confirmation of cover (A19). Primary importance can reasonably be given to what the medical professionals advised, overviewed in my prior submission. Further, their advising of the need for urgent surgery and of the prohibitive risk of flying home prior to treatment was vindicated by the medical confirmation (CT scan and surgery) that my SMV had indeed been acutely and dangerously kinked & severely dilated (A10)
> ….
> I went back and found the call with BUPA that is mentioned in the email of 05.04.18, and I include a transcript of the relevant part of the conversation below as well as the audio file itself attached (A32).
> Please note, this call also took place before the specialist department doctors' received & reviewed my medical documents and immediately began making arrangements for urgent consultation and appraisal."

Selskabet har i brev af 27/1 2022 til nævnet bl.a. anført:

> "The Company has reviewed the Complainant's latest post on the portal, including a phone conversation with our Emergency Department on 02.04.2018 recorded by the Complainant.
>
> In the conversation, the Complainant requests coverage for an operation that may have waiting time and may take place in another US state, where the Complainant himself has found a specialist in the field. The interview supports the Company's assessment that there is no urgent need for treatment.
>
> The Company points out that the preliminary confirmation of coverage was withdrawn just a few days later on 06.04.2018 (Appendix 5 – Bupa Denial), because the Company became aware that the Complainant's condition did not meet the travel insurance's criterion for an acute condition that required immediate treatment. A payment guarantee had not yet been issued at this time, as the Company was awaiting further details in the case, including the time and place of the surgery.
>
> The Company then wanted to get a clinical assessment of the Complainant's condition in the form of new medical examinations with a view to clarifying options for repatriation. However, the Complainant chose to fly to ... [state 2] against the Company's directions, where he underwent surgery without preauthorization of coverage."

Nævnet har fået forelagt korrespondancen og bilag fra sagen, og nævnets sekretariat har aflyttet de indsendte lydfiler. Uddrag af bilagene gengives nedenfor.

Af selskabets mail af 27/3 2018 til klageren fremgår bl.a.:

> "Our Clinical Team has evaluated the medical documents and their decision is necessary and medi-cally indicated.
>
> I see, that we had approved the surgery back in February and sent a guarantee of payment to the hospital.

I am not very sure (and apologize for it), if you have some new procedure, for which you wish to have a new pre-authorisation?"

Af klagerens mail af 27/3 2018 til selskabet fremgår bl.a.:

"It will take a few emails to send you everything. 19 files in total."

Af læge 1's journalnotat af 21/2 2018 vedlagt klagerens mail af 27/3 2018 fremgår bl.a.:

"Date of Admission: 02/21/2018
Date of service: 02/21/2018
ADMISSION DIAGNOSIS: Bowel obstruction.

HISTORY OF PRESENT ILLNESS: This [in his thirties] gentleman, who came into the hospital with a 24-hour history of abdominal pain and some nausea and vomiting. The patient states he has had episodes like this in the past. He had a gastroschisis as a child and had surgery. He subsequently has had 4 episodes of bowel obstruction, which all resolved with NG tube decompression.
…
CT of the abdomen demonstrates intestinal malrotation with midgut volvulus associated with small-bowel obstruction. There is an interloop free fluid suggestive of venous congestion and compromise. He does have splenomegaly with accessory spleen. He also appears to have an annular pancreas.

IMPRESSION A [in his thirties] gentleman with a history of gastroschisis likely malrotation at birth, now with a bowl obstruction and evidence of possible venous congestion secondary to volvulus could progress to ischemic and necrotic bowel. At this point, the patient is relatively stable. I plan on a laparoscopic exploration. If his bowel all looks viable, we will likely that has resolved with NG tube decompression. However, resection. I discussed this with the patient including the risk of infection, risk of bleeding, and possibility of an ostomy- the patient understands. We will get him on the schedule soon."

Af CT-skanning af 21/2 2018 vedlagt klagerens mail af 27/3 2018 fremgår bl.a.:

"Findings of intestinal malrotation/nonrotation with associated midgut volvulus with small obstruction seen with dilated loops of small bowel to 4.3 cm in diameter. There is associated free interloop fluid which raises concern for venolymphatic vascular compromise, but there are no late signs of bowel ischemia such as hypoenhancement, pneumatosis, free intraperitoneal air or portal venous gas."

Af læge 1's journalnotat af 22/2 2018 vedlagt klagerens mail af 27/3 2018 fremgår bl.a.:

"SUBJECTIVE: The patient is feeling better. His pain now is minimal. He was started on liquids. He has not had a bowel movement.
…
IMPRESSION: Overall, the patient is stable. I strongly encouraged him to consider surgery. I do believe, he was fortunate enough to have his midgut volvulus reduced itself spontaneously. I suspect this has been having in him intermittently over the last several years. I gave him literature

on the diagnosis that he has. I have encouraged him not to plan any long trips, as he could have a volvulus that does not spontaneously reduce and loosing his entire small intestine. He is going to consider this. Once again, my advice to him is to have surgery. He will need to decide whether or not this is something he is interested in doing. I will advance his diet, stop his IV fluid.
…
Date of Admission: 02/21/2018
Date of service: 02/22/2018
ADMISSION DIAGNOSIS: Abdominal pain.
DISCHARGE DIAGNOSIS: Intestinal malrotation and midgut volvulus.
HOSPITAL COURSE: This [in his thirties] gentleman was admittted to the hospital early in the morn-ing of 02/21/2018. The patient was noted to have a midgut volvulus on his CAT scan as well as intes-tinal malrotation. He had a past history of surgery as a child for gastroschisis. The patient tells me that he has had several episodes of severe abdominal pain where he has been admitted to another hospital. This is elevated resolve with NG tube decompression, although and some-times it is taken several days. I was struck by the amount of abdominal pain he was initially having consistent with volvulus. When I suggested surgery, the patient wanted second opinion. He is seen later in the day by second surgeon and surprisingly get started passing some flatus. So the patient felt like his bowel obstruction has resolved and he did not need surgery. I want him very clearly that he was fortunate that he has been able to avoid surgery for this many years but the malrotation as the midgut volvu-lus is a very common scenario that occurs but usually in children. It has known sometimes to resent in adults, but what was more shocking to me was that he had been in the hospital several times be-fore and nobody had bothered to tell him, 'oh by the way, you have malrotation of your intestines on the wrong side.' He has cecum in the left lower quad-rants and his stomach is in the right side. He has likely an annular pancreas and accessary splay-ing. I did send him off information on intestinal malrotation and midgut volvulus from up to dates and also gave him a report of his CAT scan which showed that his CAT scan report is identical to what you expect from a malrotation midgut volvulus. It is very clear to me that the patient under-stands there is actually very serious medical problem that he requires surgery and he is willing for surgery at this time. At the time of discharge, the patient is tolerating a diet. He has not had a bowel movement. His abdominal pain has some-what subsided and I suspected that his volvulus is probably reduced itself spontaneously. Regardless, he needs surgery in the future to avoid any sort of intestinal capacity and I was very clear within him about that prior to discharge. I will be happy to see him in followup. My hope is that he will get this care, he is from [country of resi-dence] and I am not sure what studies he has had, but once again I was quite shocked that he had no idea that he has had this serious medical problem after having several trips to the hospital in the past. He is not taking any medicines. His discharge MAR shows that he has no medicines that he discharged."

Af selskabets mail af 28/3 2018 til klageren fremgår bl.a.:

"First of all, I would like to confirm that you do have a free choice of doctors and hospitals.

Our doctors have reviewed the medical reports that were sent to us yesterday. However, they will need some updated information in order for us to answer your coverage questions. Have you seen a doctors since the end of February?"

Af læge 1's journalnotat af 15/3 2018 modtaget af selskabet 31/3 2018 fremgår bl.a.:

"**Chief Complaint**
Pt has questions and concerns about surgery

History of Present Illness
Date. 03/15/2018 The patient returns to general surgery clinic to review his history. He has malrotation of the intestine and came into the hospital with a midgut volvulus. Fortunately this resolved on its own. At the time he said he had no previous understanding of malrotation. He subsequently has obtain records from previous admissions in the [country of residence] and not surprising to me they discuss that he had malrotation. We spent considerable time this morning again reviewing the consequences of doing nothing versus a Ladd's procedure. I have encouraged him to seek a 2nd opinion. He apparently tried to get an appointment at [hospital 2] but was unable to get into their system. I will attempt to contact a colleague at [hospital 2] to see if they can evaluate the patient."

Af lægebrev af 27/3 2018 fra læge 2 modtaget af selskabet 31/3 2018 fremgår bl.a.:

"This letter is written on the behalf of the above-named patient who asked for a second opinion consultation which I performed on February 21, 2018. At that time the patient was seen by [doctor 1], M. D. and admitted for a bowel obstruction, who recommend that the patient have an ostomy. I am also in agreement with [doctor 1]'s opinion and I also recommended that the patient proceed with the ostomy as soon as possible before flying to his home in the [country of residence]. It is my opinion delaying this procedure any further until he is able to fly home, considering the length of the flight to cross North America and then the … Ocean in my opinion would be detrimental to the patients' health and could cause further complications and prolonged healing.

If the procedure was done here prior to his return home, he would need several weeks for postoperative recovery time before attempting to return to the [home country] and this too should be covered by the patient's medical insurance."

Af læge 3's journalnotat af 28/3 2018 modtaget af selskabet 31/3 2018 fremgår bl.a.:

"Thank you for referring [the claimant] to [hospital 2] for evaluation of congenital intestinal malrotation and associated bowl obstruction

HISTORY OF PRESENT ILLNESS:
This is a [in his thirties] man who was born with gastroschisis. He had immediate reduction of the intestinal contents with primary closure of his abdominal wall at birth. He was in hospital about 3 weeks total and was on the ventilator for 3 days. He then had a normal childhood but before the age of 18, he was hospitalized 4 times with intestinal obstruction. Every time, it was managed nonoperatively.

He has lived with mild intestinal obstructive symptoms throughout his entire adult life. He tells me he develops midepigastric pain consistent with intestinal colic and will switch to a liquid diet for a few days and gradually the pain subsides.

The patient lives in [country of residence]. While he was here visiting, he developed acute small bowel obstruction and was hospitalized at [hospital 1]. CT scan at that time showed intestinal malrotation with a swirl sign of the SMA and SMV. Small bowel was dilated to 4.3 cm and there

was mild associated free fluid. The duodenum never sweeps under the SMA. The colon is malrotated. Surgery was recommended but the patient had early improvement in his symptoms and deferred surgery. He came in for an opinion on management.

That was about a month ago. He tells me he has continued ongoing mild abdominal discomfort and has been living on a full liquid diet. He plans to return to [country of residence] next month."

Af læge 3's undersøgelse af 28/3 2018 bilagt klagerens brev af 29/6 2020 til nævnet fremgår bl.a.:

"Abdominal: Soft. He exhibits no distension and no mass. There is no tenderness. There is no rebound and no guarding. No hernia.
…
Musculoskeletal: Normal range of motion. He exhibits no edema.
…
Studies: had the CT digitized and reviewed.
Assessment and Plan:
This is a [in his thirties] man with congenital intestinal malrotation and recent associated small bowel obstruction. He continues to have persistent symptoms. I recommend a attempt laparoscopic Ladd's procedure, with the possibility of this being converted to open if the adhesions proved to be too tenacious. Today in the office I described the operational the risks, benefits, and alternatives. Informed consent was obtained."

Af selskabets mail af 31/3 2018 til klageren fremgår bl.a.:

"We have approved the surgery and will be happy to send a guarantee of payment for a new date. According to your policy conditions, if you are not able to safely fly after the 28th of April due to this condition, then your medical coverage will be extended after the end of your planned travel period until you are fit to fly. However, this will be evaluated when the date approaches.

What exactly does the hospital require from us to set a date for the surgery? If you have contact details to a relevant hospital representative and provide them with a signed consent form (see attached) we will be happy to contact them directly"

Af klagerens afskrift af lydfil fra telefonsamtale med selskabet den 2/4 2018 fremgår bl.a.:

"[The claimant (hereafter C)]: They've told me over email that I can choose which hospital and doctor that I have the surgery with//
[Bupa Emergency Service Center (hereafter BGA)]: Exactly, exactly. That's what we're waiting on, because it has been approved, yeah, as my colleague has written to you.
[C]: Yeah, yeah. So, basically, one option, the surgery looks like it will be a much better solution for
my condition, but it looks like the waiting time could be quite long, so that's why I want to call to find out if that still works with the policy or not. I need//
[BGA]: Yeah, that's//

[C]: to have one or the other surgery, but, yeah, it looks like the one that looks that's better for me has potentially a very long wait. So.
[BGA]: Right then how long wait is that?
[C]: They said it could be months, but it might be they don't understand how urgent it is.
[BGA]: Exactly, yeah.
[C]: And also I haven't been referred there from a doctor, I just met many people online and found that this is the only guy in the world who specializes in treating//
[BGA]: mm hmm
[C]: people like me. It would just mean that I would have to travel there from where I am. It's in a different state.//
[BGA]: Okay.
[C]: And the second option is in the state that I'm in
[BGA]: You're in the states for the moment, yeah?
[C]: Yeah, exactly. Yeah.
[BGA]: Well, it's a bit up to you, so, maybe you should find out if you can have an appointment, if it really takes these months?//
[C]: mm hmm
[BGA]: because the treatment has been approved by us. We just need to have the date of the procedure from you//
[C]: mm hmm
[BGA]: in order for us to place a letter of guarantee.
[C]: Okay. So, if it's a long wait, it doesn't make any difference?//
[BGA]: That's absolutely no problem, that's no problem, sir. Nope. Nope.
[C]: And also//
[BGA]: That's no problem.
[C]: Okay, and also, that I haven't actually been referred there, I've just contacted them myself to ask. And that's not a problem either?
[BGA]: That's not a problem for us. Not a problem at all.

Af klagerens mail af 5/4 2018 til selskabet fremgår bl.a.:

"Did you hear from [state 2] Clinic? They are moving ahead with beginning the whole process after hearing that I have pre-authorization for the surgery. Is there anything else you need from me at this point?

They have informed me now that the waiting time is several months and that the surgery may end up being in the fall. Recovery is 6-8 weeks. I am willing to wait for it because [doctor 4] is the only specialist in correcting malrotation in adults in the whole country, and his unique surgery leaves less chance for recurring complications such as bowel obstruction/volvulus moving forwards post-
surgery. This obviously also entails staying beyond the 90 day visa waiver allowance. I plan to stay with friends until the time comes to travel to [state 2]. Then as soon as I am able to after surgery, I would fly home.

I checked with one of your colleagues over the phone, and she informed me that the above, such as the longer wait time, make no difference to your cover of the surgery, but I also want to confirm that here also."

37. 95183

Af selskabets mail af 6/4 2018 til klageren fremgår bl.a.:

> "Thank you for your email and for clarifying what is going on right now with your condition. Kindly allow me to explain your policy conditions, what you are covered for and what we are able to assist you with.
>
> You hold a Single Trip Travel insurance, which covers you for acute and unforeseen diagnosis/accidents that cannot await treatment until your return to your home country.
>
> Since the surgeon you have chosen is not available until in the autumn, and your treating doctor means you can await this date, then the situation is not considered acute anymore and treatment you need is therefore NOT covered by your travel insurance.
>
> We wish to help you the best way no matter what scenario you might be in, and in order to do so we therefore urge you to:
> 1) go and see a doctor to get **a fit to fly statement** to see if you can or cannot travel back to the [country of residence] in a medically safe way. **Please book at time with a doctor to ensure this asap – not with [doctor 2] but with an Abdominal Surgeon that is specialised in Malrotation.** (we will assist with the direct payment just advise what day you booked and what provider you will use).
> 2) After this consultation, kindly forward the documentation to us so we can advise on how and when you should travel back to the [country of residence] for surgery
> 3) In case surgery is indeed needed before your flight home, because it is not medically safe to fly in your condition, we will find another provider/doctor that can assist you immediately with in the next days."

Af klagerens mail af 7/4 2018 til selskabet fremgår bl.a.:

> "Everyone has been kind and helpful at your company, yet it has wasted time and energy that I was told differently to the below on the phone on Monday.
>
> Since you told me I can choose which doctor/hospital to have surgery, I enquired with [state 2] clinic independently, not on the advice of [doctor 1] or any other doctor I have seen, as [doctor 4] at [clinic] is the only specialist I can find. [Clinic] did not review my case or records, they said they would only do so after 12-14 weeks. Therefor there has been no new review of my fitness to travel home since I last sent you all information from dr. consultations, where you concluded I wasn't fit to fly.
>
> I would love to have a consultation with an abdominal surgeon that specialises in correcting malro-tation in adults as you suggest – do you know of any? I would love your help to find such a person/people – as I said the only person I have found is [doctor 4] at [clinic].
>
> There is no way to know when an intestinal obstruction/midgut volvulus may take place, and no way to make sure it doesn't happen despite my taking great care to attempt this. I feel an increased and constant kinking in that area since being in [hospital 1], and every few days feel the beginnings of an obstruction that then resolves – I never want to be out of relatively close time

> proximity to a hospital until the risk of an obstruction/volvulus is corrected. If it occurred on the plane across the [ocean] – this would be a nightmare."

Af selskabets mail af 7/4 2018 til klageren fremgår bl.a.:

> "As far as we understand, you are in [state 1] nearby [hospital 1] in …. As a starting point we locate doctors in your own area.
>
> We have realized that there are not many doctors specialized in correcting malrotation in adults, however, the purpose of the current consultation is not to prepare for surgery, but to estimate your Fit For Flight status asap. If a surgery is medically indicated; from the point of view of the insurance; it should be acute and thus performed within a week. At this moment we are getting ready to repat-riate you to [country of residence] as soon as possible.
>
> At [hospital 1] in [state 1] there are following doctors, whom we kindly suggest you contact."

Af lægebrev af 12/4 2018 fra læge 1 fremgår bl.a.:

> "This letter is for [the claimant], …. [The claimant] was seen at [hospital 1] 2/21/18 for severe stomach/ intestinal issues. I told [the claimant] that surgery is needed to correct his intestine complications. It is my strong opinion that [the claimant]'s condition can change from stable to needing emergency care if these episodes continue. For that reason I am restricting [the claimant] not to fly over the [ocean] and or to the [country of residence] until he receives the surgery that is needed to correct said problems."

Af klagerens mail af 15/4 2018 til selskabet fremgår bl.a.:

> "I have already sent you opinion from two surgeons that surgery is needed before flying home – in-cluding a re-assesment upon your request last Thursday.
>
> The six month waiting time was the standard estimate from the Dr.s assistant given before any doc-tor had reviewed information on my case. It was not the opinion of any doctor that surgery could wait until fall.
>
> Yesterday, [doctor 4] received info about my case for the first time. Due to my recent episode of volvulus, he said to go there straight away to see him Monday and wants confirmation of your cover of surgery on an urgent basis prior to that meeting.
>
> Once again, please give confirmation of your cover of surgery on an urgent basis, and relevant out-patient appointments and tests."

Af lægebrev af 16/4 2018 fra læge 4 fremgår bl.a.:

"[The claimant] was diagnosed with intestinal malrotation in February 2018 while in [state 1]. He was seen in at the [state 2] Clinic Center for Gut Rehabilitation and Transplantation as an outpatient today, where we confirmed the diagnosis. He is in urgent need of surgery due to the high risk of volvulus and intestinal ischemia which would result in the loss of his entire small intestine, which would then require intestinal transplant. He is at risk of developing this at any time, and flying makes him at increased risk for twisting the intestine, portal vein, and superior mesenteric artery which would block the blood supply to the intestine.

He needs to be scheduled for surgery as soon as possible. We are the only hospital with extensive experience in repairing intestinal malrotation, so he is not able to have this surgery done in the [country of residence].

We are asking for your financial approval to proceed with the pre-operative evaluation and the surgery."

Af lægebrev af 18/4 2018 fra læge 4 fremgår bl.a.:

"Our mutual patient, [the claimant] was admitted at [hospital 1] in …, [state 1] on February 21, 2018 because of severe abdominal pain and acute bowel obstruction. The imaging studies declared partial volvulus with unequivocal diagnosis of complete congenital malrotation. Fortunately, the patient partially responded to conservative medical management after a few days including gut decompression and bowel rest. The patient had gastroschisis at birth which is a common association with congenital malrotation. On April 16, 2018m [the claimant] was seen at the [state 2] Clinic Center for Gut Rehabilitation and Transplantation as an outpatient. The full clinical history and physical examination are very concerning for the persistence of partial twist of the intestine as clearly demonstrated in the abdominal CT scan with IV and oral contrast on February 21, 2018. The enclosed CT images demonstrated a partial kink of the superior mesenteric vein with reversed position in relation to the superior mesenteric artery. It also demonstrated massive intestinal wall edema with radiologic evidence of partial ischemia.

Accordingly, [the claimant] is in urgent need for surgical correction of the malrotation with complete repositioning of the foregut and mid gut anatomy including correction of the vascular malrotation. Any unnecessarily delay carries a prohibitive risk of massive mid gut volvulus and intestinal infarction. The current lack of complete bowel obstruction would not exclude the imminent possibility of recurrent volvulus. Such a potential risk could be exacerbated by flying across the [ocean] with the lack of prompt medical and surgical intervention.

We kindly request your approval to rescue [the claimant's] native gut and eliminate the prohibitive risk of massive infarction with the future need for intestinal transplantation. Your positive response will definitely save the life of such a young productive … citizen. The pertinent medical records and CT studies are included for your review."

Af lægebrev af 25/4 2018 fra læge 5 fremgår bl.a.:

"[The claimant] was diagnosed with intestinal malrotation in February 2018 while in [state 1]. He was seen at the [state 2] Clinic as an outpatient where they confirmed the diagnosis. He is in urgent need of surgery due to the high risk of volvulus and intestinal ischemia which would result in the loss of his entire small intestine.

> I agree that [the claimant] should be scheduled for pre-op testing and surgery as soon as possible at the [state 2] Clinic. It would be unsafe for him to travel without having this surgery."

Af operationsnotat af 1/5 2018 fremgår bl.a.:

> "PREOPERATIVE DIAGNOSIS: Congenital malrotation with recent episode of volvulus and bowel obstruction.
>
> POSTOPERATIVE DIAGNOSIS: Severe case of complete malrotation with extensive adhesions due to previous repair of gastroschisis.
> …
> A midline incision was made and abdominal cavity was entered. There were extensive adhesions because of the previous gastroschisis that required careful meticulous dissection. There was a two loops of bowel which shared the same serosal coverage that required dissection and serosal separation with primary serosal repair with 4-0 silk sutures. The entire small bowel and duodenum were in the right subhepatic space. The cecum was located in the left abdomen. Omentectomy was performed to facilitate the anatomic dissection and correction of the malrotation. The gallbladder was inflamed and cholecystectomy was performed in a standard fashion with individual ligation and interruption of the cystic duet and artery. There were an enlarged mesenteric lymph node that was resected for histopathologic examination. The superior mesenteric vein was abnormally large and kinked. There was a reversed position of the superior mesenteric artery and vein with a spiral course along the root of the mesentery. Such a complicated vascular anatomy required careful repositioning of the duodenum and mesentery to avoid any kink or compromise to the vascular blood supply. The transverse colon was very redundant and was looping that required complete mobilization of the transverse and descending colon. A transverse colonic resection was performed with a side-to-side colocolonic anastomosis hand-sewn in 2 layers. The mesocolon was then closed using interrupted 4-0 silk sutures. The duodenopexy was performed for the 1st, 2nd, 3rd, and 4th part of the duodenum. The cecopexy was then performed in the right lower abdomen. Appendectomy was performed in a standard fashion to avoid future misdiagnosis. The root of the mesentery was then sutured to the retroperitoneal fascia in an anatomical fashion along the mesenteric axis. The case was extremely difficult to achieve proper alignment of the mesenteric vein and artery. After completion of the gut remodeling, the main stem of the superior mesenteric vein was to the right of the superior mesenteric artery. With complete repositioning of the duodenum, the distal branches of the superior mesenteric artery and vein continued to run a spiral course with no potential risk of vascular compromise."

Af lægebrev af 2/6 2020 fra læge 6 fremgår bl.a.:

> "I have been asked to write a supporting statement with regards to a claim on travel insurance for his operation in May 2018. Whilst I was not involved in his care at this time he has been seen in my clinic since then for follow-up and I have seen correspondence from the specialists in America at the time of his surgery. I understand their diagnosis of partial volvulus in the intestine and CT findings of significant intestinal wall edema with partial occlusion of superior mesenteric vein. I would consider these indications for urgent surgery and that probably would have been our recommendation if he had presented here in the [country of residence]. I certainly would have advised against a [overseas] flight whilst he was still symptomatic from these findings."

41. 95183

Af forsikringsbetingelserne fremgår bl.a.:

> **"Art. 4 Where is cover provided?**
> 4.1: The *insurance* shall provide worldwide cover, cf. however Art. 23.1-27
>
> 4.2:
> The *insurance* does not provide cover within the *insured's country of permanent residence*. This also applies even if the illness/injury has occurred abroad.
>
> **Art. 5 What is covered by the insurance?**
> 5.1: The *insurance* shall cover expenses incurred by the *insured* in the *insurance* period in accordance with the applicable benefits listed on page 16-18.
> …
> **Art. 6 Medical expenses**
> 6.1: The *insurance* shall cover the medical expenses incurred by the *insured* in case of acute illness and injury.
> …
> 6.6: The *insurance* shall not cover expenses for treatment of pre-existing, chronic or recurrent illnesses and disorders if the *insured*:
> 1) has been hospitalised within six months prior to commencement of the trip or, if Annual Travel has been chosen, prior to each departure from the *country of permanent residence*,
> 2) has been treated by a physician (routine check-ups excepted) within six months prior to commencement of the trip or, if Annual Travel has been chosen, prior to each departure from the *country of permanent residence*,
> 3) has had a change of medication within six months prior to commencement of the trip or, if Annual Travel has been chosen, prior to each departure from the *country of permanent residence*,
> …
> 6.8: The *Company* has the right to demand that the *insured* be repatriated to the *country of permanent residence*, if the *Company*'s medical consultant and the treating physician agree that the *insured* is medically fit to be transferred to his/her *country of permanent residence*. In case of disagreement, the decision of the *Company*'s medical consultant shall prevail.
> …
> This Glossary with definitions is part of the *Policy Conditions*.
>
Defined term	Description
Acute serious illness:	An '*acute serious illness*' is a sudden and unexpected illness that requires immediate treatment."

<u>Nævnet udtaler:</u>

Klageren, der bor i Europa, rejste til USA og havde tegnet rejseforsikring fra 29/1 2018 til 28/4 2018. Den 20/2 2018 blev han indlagt på hospital med stærke mavesmerter. En CT-skanning påviste volvulus af mellemtarmen og malrotation af tarmene. Klagerens tilstand bedredes spontant, og han blev udskrevet den 23/2 2018. Han blev kraftigt tilrådet operation, og han ønskede betænkningstid og en anden lægelig vurdering. Den 24/2 2018 var han på akutmodta-

gelsen på et andet hospital og fik lavet undersøgelser. Klageren havde været i kontakt med rejseforsikringen i forbindelse med sine indlæggelser, og han henvendte sig igen til selskabet den 23/3 2018. Efter modtagelse af nyt lægeligt materiale fra klageren bekræftede selskabet dækning for operation den 31/3 2018. Klageren havde en telefonsamtale med selskabets alarmcentral den 2/4 2018, hvor han oplyste, at han ønskede en bestemt form for operation, som kun blev udført på en klinik i en anden stat, og at der kunne være flere måneders ventetid på operationen. Han fik at vide, at det ikke udgjorde et problem. I en mail af 5/4 2018 til selskabet forespurgte klageren, om selskabet havde hørt fra klinikken, og han oplyste, at han nok først kunne opereres i efteråret, og at han var indstillet på at vente. Selskabet tilbagekaldte dækningstilsagnet til operation den 6/4 2018 og bad klageren konsultere en læge med henblik på, om han kunne få en "fit to fly statement". Efter at lægen på klinikken i den anden stat havde set klagerens journal, fik han en hastetid til konsultation den 16/4 2018 og operation den 18/4 2018, og klageren fløj til den anden stat. Operationen blev udskudt og først foretaget den 1/5 2018, hvor klageren ved optagelse af lån og donationerne fra familie, venner og ved indsamling selv kunne stille betalingsgarantien. Den 25/4 2018 var klageren hos en gastroenterolog valgt af selskabet, som vurderede, at det ville være forbundet med usikkerhed for klageren at flyve uden at have fået foretaget operationen.
Klageren ønsker dækning for sine udgifter til operation og afledte udgifter til transport, forplejning m.v.

Han har anført, at "The consulted Doctors, including [operating doctor], the world's leading specialist, comfortably reached their professional conclusions as to the urgent need of treatment and prohibitive danger of flying across the [ocean], based on - The recent and first ever episode of midgut volvulus, diagnosed at [hospital 1] - The resulting continued acute intestinal vascular compromise and partial bowel obstruction - confirmed by CT imaging showing the superior mesenteric artery (herein 'SMA') and (superior mesenteric vein) (herein 'SMV') in reversed position, a kinked and highly dilated SMV, with intestinal edema and partial ischemia. - An additional associated admittance in [hospital 2] in the meantime - Correlating significant symptomatology post-midgut volvulus which were far from my habitual state of health. Including, among others …: - Pain when eating, to the extent that every few days I was unable to eat

for stretches of 12-36 hours - When able to eat, tolerating only liquid/pureed food - Painful defecation - Continual Weight Loss".

Klageren har videre anført, at det var klinikkens sekretær, der fortalte ham, at den normale ventetid på en operation var seks måneder, og at han fik en hastetid for konsultation den 16/4 2018 og operation den 18/4 2018, da lægen havde læst hans journal. Han har med hensyn til "fit to fly" anført, at han foretog en indenrigsflyvning på 4,5 time, som ikke kan sammenlignes med en 10/11 timers flyvning over åbent hav, hvor der ikke er mulighed for nødlanding og overførsel til hospital.

Selskabet har betalt udgifterne ved klagerens indlæggelse den 20/2-23/2 2018 og til undersøgelsen den 25/4 2018. Selskabet har under sagens behandling ved nævnet betalt kompensation, jf. forsikringsbetingelsernes § 20 Hospital Daily Benefit, ved indlæggelsen 20/2-23/2 2018. Selskabet har afvist at dække klagerens udgifter til operation. Selskabet har anført, at dækningstilsagnet er afgivet ud fra de modtagne oplysninger om, at der var tale om en akut behandlingskrævende tilstand. Af klagerens mail af 5/4 2018 blev det klart, at der var tale om planlagt behandling, som indebar, at klageren skulle flyve fra stat 1 til stat 2. Klageren var endvidere ikke plaget af store smerter mere. Selskabets læger vurderede derfor, at klagerens tilstand var uændret, siden han blev udskrevet i stabil tilstand fra hospitalet en måned tidligere, og at der var tale om en elektiv planlagt behandling, der faldt uden for rejseforsikringens dækningsomfang.

Nævnet bemærker indledningsvis, at klagerens rejseforsikring dækker "acute serious illness" defineret som "a sudden and unexpected illness that requires immediate treatment".

Nævnets flertal udtaler:
Efter en gennemgang af sagen finder flertallet, at klageren blev indlagt med akut opstående mavesmerter den 21/2 2018, at en CT-skanning viste en operationskrævende tilstand ved tarmene og at klageren ikke har været "fit to fly" til sit bopælsland.

Flertallet har blandt andet lagt vægt på hospitalsjournalen af 22/2 2021, hvor det fremgår, at "I strongly encouraged him to consider surgery … I have encouraged him not to plan any long trips, as he could have a volvulus that does not spontaneously reduce and loosing his entire small intestine".

Flertallet har videre lagt vægt på, at den operation, som klageren valgte at få foretaget på en klinik i en anden stat, blev fremskyndet i forhold til klinikkens sædvanlige ventetid på flere måneder på grund af klagerens tilstand.

Flertallet har også lagt vægt på, at selskabet henviste klageren til en gastroenterolog for vurdering af, om han var "fit to fly", og at lægen den 25/4 2018 har udtalt, at "It would be unsafe for him to travel without this surgery".

Selskabet gav den 31/3 2018 – på et tidspunkt, hvor klagerens helbredstilstand havde været påvirket siden 21/2 2018 – dækningstilsagn over for klageren til en operation, og flertallet bemærker, at selskabet på det tidspunkt havde lægejournaler, der viste, at klageren var udskrevet den 23/2 2018, og at der ikke var blevet fastsat en dato for operation i den nærmeste fremtid. Flertallet bemærker videre, at selskabet i telefonsamtalen den 2/4 2018 med klageren tilkendegav, at det ikke var et problem, at han ønskede en anden form for operation end tilbudt ham, og at der kunne være ventetid på flere måneder på den anden operation, der blev udført på en klinik i en anden stat.

Flertallet finder på den baggrund, at selskabet har været uberettiget til den 6/4 2018 at tilbagekalde sit dækningstilsagn med den begrundelse, at situationen ikke længere var akut.

Flertallet lægger til grund, at klageren kunne have været opereret allerede den 18/4 2018, hvilket er inden for forsikringsperioden, og nævnet finder, at selskabet skal genoptage sagsbehandlingen og opgøre forsikringserstatning i henhold til forsikringsbetingelserne. Flertallet har efter de foreliggende oplysninger – herunder om finansieringen af klagerens udgifter – ikke grundlag for at fastsætte forsikringserstatningen.

45. 95183

Nævnets mindretal udtaler:
Efter en gennemgang af sagen finder mindretallet, at klageren ikke har bevist, at han har haft et akut behov for operation, og at han ikke var "fit to fly" til sit bopælsland for at blive opereret.

Mindretallet har blandt andet lagt vægt på, at klagerens tarmslyng bedrede sig spontant, og at der gik mere end en måned efter udskrivelsen fra hospitalet, før han besluttede sig for operation. Mindretallet har videre lagt vægt på, at klageren var indstillet på at vente i flere måneder på en bestemt form for operation, som kun blev udført på en klinik i en anden amerikansk stat og ikke i hans bopælsland. Mindretallet har også lagt vægt på, at klageren følte sig i stand til at flyve til den anden stat for konsultation og efterfølgende operation. Mindretallet finder, at klageren med sine udsagn og handlinger har bragt sig i en bevismæssig vanskelig position, og at de efterfølgende lægeerklæringer om, at han ikke kunne anses for "fit to fly", ikke kan tillægges afgørende selvstændig betydning.

Mindretallet finder, at selskabets dækningstilsagn over for klageren den 31/3 2018 til operation er afgivet under den forudsætning, at han skulle opereres umiddelbart derefter, og at det må have stået klageren klart. Selskabets oplysninger til klageren i telefonsamtalen af 2/4 2018 har været forkerte, men har ikke påført klageren udgifter, inden selskabet tilbagekaldte dækningstilsagnet den 6/4 2018. Mindretallet finder herefter, at selskabet har været berettiget til at tilbagekalde dækningstilsagnet efter de almindelige obligationsretlige regler om bristende forudsætninger.

Det, som klageren har anført, kan ikke føre et andet resultat.

Der træffes afgørelse efter stemmeflertallet.

Som følge heraf

b e s t e m m e s :

Ankenævnet *for* Forsikring

46. 95183

Selskabet, Bupa Denmark, filial af Bupa Insurance Limited, England, skal anerkende, at det har været uberettiget til at tilbagekalde sit tilsagn om dækning af udgifterne til en operation. Selskabet skal genoptage sagsbehandlingen og opgøre forsikringserstatning for klagerens tab i henhold til forsikringsbetingelserne. Erstatningsbeløbet skal forrentes efter forsikringsaftalelovens § 24.

Klagegebyret tilbagebetales.

Peter Thønnings