

Before the Arbiter for Financial Services

Case No. 033/2019

LL (the complainant/the insured)

vs

Building Block Insurance PCC Ltd. (C63128)

(the service provider/the insurance)

Sitting of the 27 December 2019

The Arbiter,

Having seen the complaint whereby the complainant states that:

His pet insurance refused to pay a claim he made for an accident suffered by his cat Kitty. The reason given by the service provider was that the medical condition was pre-existing even though medical evidence from his vet showed otherwise.

The vet read through the medical history of Kitty to make a proper diagnosis. The insurance company took the opening sentence of the medical history to base its refusal of the claim.

X-rays and medical investigation showed that the cat was suffering because of the accident it had and not because of any pre-existing condition.

The insurance company has completely ignored the medical notes after the first sentence, they have ignored his explanation of what had happened and ignored the testimony letter issued by the vet.

Although the service provider was given all the necessary medical proof and explanations, it did not honour the claim simply because it did not want to pay.

After his complaint, the insurer said they would launch a full investigation and would contact his vet for information, but the investigation was not carried out.

They have ignored the medical notes which clearly state that the operation and treatment were due to the accident and not due to a pre-existing condition.

The complainant is asking the Arbiter to order the service provider to pay his claim amounting to £2,899.33.

Having seen the reply filed by the service provider which states that:

The claim was declined because Kitty (complainant's cat) had a pre-existing condition.

Under the veterinary fees section of the policy, point number 5 of the policy exclusion list states that *'Any claim for illness or accidental injury that relates to a pre-existing condition that showed signs of existence before your policy start date'* is not insured.

Pre-existing condition is defined as follows:

'Any diagnosed or undiagnosed condition which occurred or existed or has shown signs and symptoms of existing in any form before the policy start date or within the waiting period in the first period of insurance. This also includes any diagnosis, or any clinical signs caused by or resulting from accidental injury or illness your pet had on an associated condition before the policy start date or within the waiting period in the first period of insurance.'

Condition is defined as:

'An illness or accidental injury suffered by your pet'.

Illness is defined as:

'Any change to your pet's normal healthy state including disease, infection and sickness which is not caused by accidental injury. This includes symptoms whether diagnosed or not.'

Accidental injury is defined as:

'A sudden and unforeseen event causing immediate physical damage to one or more parts of your pet's body, whether diagnosed or not'.

Kitty suffered an accidental injury within the terms of the insurance and consequently required veterinary treatment. The vet's clinical note dated 22 September 2018 which the service provider states that is relying on is the following:

'X-rays discussions revealed a problem with the breathing started about five years ago and the cough is really loud hacking when it happens? Ruptured diaphragm/also reports cat is an odd shape with very thin abdomen which could fit with working diagnosis of a ruptured diaphragm, may need a barium swallow.

On shaving the ventral abdomen there was a large long recent bruise linear and left lateral to the midline so this is a recent injury.'

On the 13 November 2018, a clinical note states:

'Chyle/white milky fluid and serum, a piece of ruptured liver removed from floating in the abdomen. Diaphragm checked and was intact. But laboured breathing.'

The pre-existing condition that Kitty suffered from prior to the policy start date of 21 March 2018 is chylothorax which is a disease that consists of the build-up of fluid (called chyle) within the chest cavity. Presence of chyle is evidenced in the clinical note dated 13 November 2018.

A clinical sign of chylothorax is respiratory distress (breathing problems). As the above clinical notes illustrate, Kitty's breathing problems started approximately 5 years ago. The definition of pre-existing condition includes an undiagnosed condition and includes clinical signs.

While the service provider understands that Kitty sustained bruising from the accidental injury, the bruising merely exasperated the pre-existing condition. The accident merely brought to light the presence of chylothorax (the pre-existing medical condition) and is refuting the claim on that basis.

Having seen all the document submitted and having asked the parties whether they had any additional submissions:

Considers

The service provider is refuting the payment of the claim on the basis that prior to 21 March 2018, the start date of the policy, Kitty had the condition called chylothorax and the accidental injury only exhibited this condition which pre-existed the start date of the policy. Since pre-existing conditions are not covered by the policy, hence, the refusal of the claim.

On his part, the claimant submits that the previous condition was feline asthma. This can be found in her medical notes dated 30/04/2012, 17/03/16 and 27/06/2017. Her records show that on these dates she was treated for asthma. She received no further treatment for this condition because it was considered to be mild. The letters from the vet dated 27/02/2019 and 2/04/2019 definitely state that Kitty had asthma and this condition is in no way related to the claim.

On the other hand, chylothorax is a serious and potentially fatal disease which involves a lot of cat's coughing and shows difficulties in breathing and normally the cat breathes from an open mouth to take enough oxygen. An animal with this condition needs continuous medication to survive and cannot live six years as Kitty did. Kitty did not show any of these symptoms and when treated for asthma it responded to the treatment.

Since Kitty suffered a massive injury to her chest, it ruptured her liver and chyle duct so the presence of chyle was due to the rupture and the findings were in correlation to the injury. It was after the accident that she developed chylothorax type symptoms, as can be seen from the medical records, and a surgical intervention was needed to give her a chance for survival. Unfortunately, the damage was so severe that she never recovered and developed a general oedema and so was euthanized.

As evidence, the Arbiter has the explanation given by the service provider and the explanation given by the complainant which is accompanied by letters from a professional person, namely, the vet. After the complainant filed his final submissions,¹ the service provider did not contest them and simply stated that it had nothing more to add to its reply to the complaint.

¹ A Fol. 104-105

So, the Arbiter examined carefully the medical clinical notes and the letters from the vet and came to the following conclusions:

1. In the claim form that was submitted by the complainant to the insurer it was stated that the injury took place on the 21 September 2018. This is not contested by the service provider. The start date of the policy was the 21 March 2018 and, therefore, the injury sustained by Kitty was covered by the insurance. However, the service provider refused the claim because it alleges that Kitty had breathing problems dating to the previous five years.
2. The Arbiter can establish that in the claim form it was stated that Kitty *'was struggling to breathe so took her to the vet's. On investigation it seemed that she had an accident/fall. So needed immediate surgery'*.² So it is clear that the complainant was attributing the difficulty in breathing to the accident which Kitty had and not the asthma condition which existed prior to the date of the policy. The existing condition was asthma and it was not related to the accident which happened on the 21 September 2018. The policy clearly states what is not insured under section 5 re Veterinary Fees.

It provides that:

*'Any claim for **Illness or Accidental Injury that relates**³ to a **Pre-existing Condition that showed signs of existence before Your Policy Start Date**'.*⁴

From the wording of the policy it is clear that not any pre-existing condition would apply but a pre-existing condition which is **related** to the illness or accidental injury being claimed.

3. The service provider relies on the clinical note dated the 22 September 2018 but the Arbiter notes that the service provider is being selective. Whilst it places the emphasis on the breathing problem which had been spotted 5 years previous to the accident, it fails to note the second paragraph of the same note which establishes the incident which caused

² A Fol. 31

³ Emphasis by the Arbiter

⁴ A Fol. 72

long 'recent' bruises. The chyle was noticed in the same note which was recorded the day AFTER the accident and not prior to the accident as the service provider tries to explain.

4. The letters sent by the vet, which are the only source of professional authority in this case make it clear that the chyle was not the result of the asthmatic condition that Kitty had prior to the date of the policy start date but the consequence of the accident that Kitty had on the 21 September 2018. The vet explains:

'... the breathing problems from previous times were of a chronic and non-fatal nature which had been managed and treated. The claim for the recent very acute problem was a new condition which was clearly due to an injury as there are huge bruising on the ventral aspect of the cat, plus damage to the chest and abdomen. The owner thought it was due to a fall which would have explained the accidental cause in this recent case and problems arising from it.

I therefore strongly suggest you pay this claim in accordance with the principles of accident and illness insurance. This was the result of an accident'.⁵

This was confirmed in another two letters dated 27 February 2019 and 2 April 2019. In the latter letter, the vet further explained:

'You appear to be arguing that this was all due to asthma. My clinical notes refer to a diagnosis or suspicion of feline asthma five years previously but that was for detailed information, and bore no relevance to the acute problem being dealt with at the time the cat was presented for serious breathing problems with obvious massive bruising. There is absolutely no possible way that the bruises seen and witnessed at the time of this recent incident could have been present 5 years previously and still relevant to these presenting signs.

The simplest explanation of the clinical situation the cat suffered in this latest incident is comparable to a human being run over by a bus. If the

⁵ A Fol. 19

patient had asthma previously that would not have affected what the bus did to the patient in any way in this case with specific clinical findings and evidence presented to you.⁶

The service provider did not present any expert contradictory statements to the above. It is clear that the presence of chyle was the direct result of the accident as evidenced by the vet's letters quoted above. The cat was euthanized due to the nexus between the accident and the fatality. Therefore, there is no correlation between asthma (the pre-existing condition) and the conditions suffered by Kitty due to the accident/fall.

The policy⁷ establishes a nexus between the pre-existing condition and the claim for illness or accident. A pre-condition alone does not suffice to repudiate the claim. The pre-existing condition and the claim for illness or accident must be related.

In this case, it is clear that there was no such correlation.

Therefore, the service provider could not rely on the pre-existing condition.

For the above-stated reasons, the Arbiter decides that the complaint is fair, equitable and reasonable in the particular circumstances of this case⁸ and is upholding it as long as it is compatible with this decision.

Compensation

The complainant is asking the Arbiter to be compensated for £2,899.33.

This amount is not being contested by the service provider.

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter is ordering Building Block Insurance PCC Ltd to pay the complainant the sum of £2,899.33.

With legal interest of 8% per annum from the date of this decision until the date of payment.

⁶ A Fol. 21

⁷ A Fol. 72

⁸ Cap. 555 of the Laws of Malta, Art. 19(3)(b)

The costs of these proceedings are to be borne by the service provider.

**Dr Reno Borg
Arbiter for Financial Services**