

**RONALD BOBROFF  
& PARTNERS INC.**  
**THE MEDICAL MALPRACTICE AND  
PERSONAL INJURY CLAIM ATTORNEYS**  
Est. 1974

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OUR REF:- MR R BOBROFF/m  
YOUR REF:- MS P CLARK/mv

17 November 2010

MUNRO, FLOWERS & VERMAAK

BY TELEFAX: 011 327 6425

Dear Madam,

**RE: DISCOVERY HEALTH – SUNDRY MEMBERS / CLIENTS**

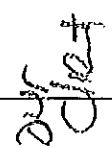
Your telefax dated 3 November 2010 referring to the members in the annexure hereto refers.

We wish to obtain generic clarity regarding the respective rights and obligations flowing between members of Discovery medical Aid schemes and our clients from time to time with respect to any obligation to reimburse Discovery health any medical costs which might be recovered in Road Accident Fund claims.

- 1 So as to enable us to advise our clients as to whether they are obliged to accede to any demands made by your clients for re-imbursement of road accident generated medical costs which may have been disbursed by Discovery Health in terms of medical aid insurance policies entered into between our clients and Discovery Health, we require the following documents/information:-

---

DIRECTORS: MANAGING - RONALD BOBROFF # B.A. LL.B (WITWATERSRAND), LAWYER - NSW, AUSTRALIA, ISRAELI  
BAR ADMISSION EXAM, STEPHEN BEZUIDENHOUT # B PROC (WITWATERSRAND);  
DARREN BOBROFF # B.A LL.B (WITWATERSRAND), LAWYER, NSW - AUSTRALIA, SOLICITOR - ENGLAND & WALES  
PROFESSIONALLY ASSISTED BY:  
VANESSA VALENTE # BA LLB (WITWATERSRAND); PHILIPPA JANE PARIJAJ # B.A. LLB (UN); CLELIA CARUSO # LLB (UJ);  
JACOB SERODI # LLB (UJ);  
\*SA'DIYAH SAMROD # B COMM LAW (UJ) LLB (UJ); \*ANANDA BOOYSEN # BA (HONS) LLB (UP);  
\*GINA TOGNOCCHI # BA LAW LLB (UJ); \*MALISSA ANTHONY; \*TANYA PRETORIUS  
\* CANDIDATE ATTORNEYS  
INTERNAL ACCOUNTANT: NATASCHIA DA COSTA  
# FORMER PRESIDENT / CURRENT COUNCILLOR LAW SOCIETY (LSNP/LSA)  
ESTABLISHED 1974



- 1.1 Copies of the original signed contract entered into between each ~~specific~~ client / member and Discovery Health; ✓
- 1.2 Copy of the original application form signed by each client seeking to enter into a medical aid insurance contract with Discovery Health; ✓
- 1.3 Advertising and promotional material made available by Discovery Health to its brokers and/or disseminated via the print and other media with respect to medical aid insurance policies being marketed by Discovery Health at the time of each member in question joining; ✓
- 1.4 Copies of any written variations to the medical aid insurance contracts entered into between Discovery Health and our clients as referred to, and relating to accident generated medical costs as also proof of agreement to such variations by our clients;
- 1.5 Do any of Discovery Health's medical aid policies provide lifetime unlimited health care to members who request such care consequent upon occurrences other than illness e.g. road accidents, hijackings, shootings and so on. If so, which categories of policies provide such cover?
- 1.6 Also please indicate any contractual terms which are contained in the original contracts of insurance with our clients which makes such cover subject to conditions and procedures. This is relevant to our clients as referred to in your letter mentioned above, given that all were under the impression that lifetime unlimited cover was provided as of right; ✓
- 1.7 Any notifications by Discovery Health to the Registrar of Medical Aids, informing the Registrar that Discovery Health medical aid policies do not provide unlimited life time medical care as of right to Discovery Health members, who may require medical care as a consequence of injuries sustained in a motor vehicle accident; ✓
- 1.8 Any correspondence from the Registrar of medical aids relating to Discovery Health and Road Accident Fund issues, including any of the matters referred to earlier on in this letter; ✓
- 1.9 Any other documentation which may be relevant to Discovery Health's Road Accident Fund generated medical costs claims by members, including the basis on which Discovery Health contracts with and remunerates its collection agents with respect to recovery of the aforesaid medical costs.
- 1.10 On receipt of the above we will advise our clients as to what their obligations to Discovery Health may be with respect to paying over to Discovery Health, any funds relating to medical cost recoveries.

2 We would also be obliged if you would obtain directly from your client, on their letterhead:

- 2.1 A statement of their attitude towards requests by members, that Discovery Health bears a pro rata portion of members' attorneys fees and disbursements, incurred in

the successful finalisation of a delictual claim, in which medical disbursements are recovered and which Discovery Health lays claim to.

- 2.2 In particular whether Discovery Health is agreeable to a flat 25% plus VAT deduction from such medical recoveries, given that the norm within the attorneys profession is to charge the client a contingency percentage fee which can range between 20% to 30%.

We await your client's response.

Sincerely



RONALD BOBROFF & PARTNERS INC

**UNDERTAKING TO DISCOVERY HEALTH**  
**IN RESPECT OF PAST HOSPITAL & MEDICAL EXPENSES**

**(To be completed by Claimant)**

I, the undersigned .....; Membership Number .....  
do hereby state and agree as follows :

1. I am aware of Discovery Health's Rule 15 & Annexure "C" Exclusion 1.1 pertaining to payment of medical and hospital costs ("costs") arising from any incident giving rise to a claim for which any other party may be liable.
2. I confirm that I have appointed the firm of attorneys ..... to institute and finalize a claim on my behalf. Should any other firm of attorneys subsequently be instructed by me, I undertake to notify Discovery Health and / or their representatives within 14 days of having changed attorneys.
3. I hereby irrevocably instruct my attorneys (and agree to instruct any other attorneys that I may appoint in future), to repay to Discovery Health any costs that Discovery Health may have paid in regard to injuries sustained by myself / my dependant in an accident that occurred on ..... and which have been recovered, subject to any apportionment that may be applied in terms of the Apportionment of Damages Act.
4. I have been informed that should I not undertake to reimburse Discovery Health or if I fail to honour my obligations in terms of this Undertaking for past hospital and medical expenses paid on my behalf for injuries sustained by me in the incident, any payments made by Discovery Health will be reversed and will be for my account. Furthermore, Discovery Health will disavow liability for payment of any future costs relating to the incident.
5. I confirm that no legal fees or disbursements will be deducted from the amount in respect of the costs payable to Discovery Health.
6. I further confirm having instructed my attorneys to repay the amount due as set out above, immediately upon receipt thereof from the party liable, whether payment is made by way of interim, staggered or final payment
7. In the event that payment of the aforesaid amount is made directly to myself by the liable party, I hereby personally irrevocably undertake to repay Discovery Health immediately with the full amount received in terms of paragraph 3 above.
8. I further confirm having instructed my attorneys to submit all invoices to the liable party in respect of costs paid by Discovery Health and to report on the progress of my claim on a quarterly basis or in response to a query by Discovery Health or its duly authorised representative.

9. Should my claim for any reason not be successful, I confirm having instructed my attorneys to advise Discovery Health or its duly authorised representative immediately and to provide them with the full details for the rejection of the claim.

SIGNED at ..... on .....200..

MEMBER : .....

I, Mr / Mrs ..... of Attorneys ..... confirm that the above instructions have been conveyed to me and that, as long as my mandate is valid, I will act accordingly.

ATTORNEY : .....

" C, "



Discovery  
Health

Dear Sir/Madam,

## REIMBURSEMENT OF MEDICAL EXPENSES RECOVERED FROM THE ROAD ACCIDENT FUND.

We trust that you are well on your way to recovery by now.

We have established that your claim against the Road Accident Fund was settled on 11 December 2003

We have further established that as part of your payment from the Road Accident Fund you received an amount of R 215 495.91 in respect of your past medical expenses ("the medical expenses").

If this is not correct please confirm the amount you in fact received as past medical expenses from the Road Accident Fund.

As you are no doubt aware the medical expenses were already paid by the Discovery Health Medical Scheme ("the medical scheme") on your behalf and subject to the terms regulating such payment.

In terms of your agreement with the medical scheme any award made by the Road Accident Fund in respect of medical expenses must by law be refunded to the medical scheme.

Accordingly we hereby request that you kindly pay to the medical scheme the sum of R 215 495.91 alternatively such sum as you contend was received in respect of your past medical expenses. This amount must be paid to the medical scheme within 10 (ten) days of receipt of this letter.

Should this amount (or any portion thereof) in respect of the medical expenses however have been deducted by your attorneys from any payout that was made to you kindly within the next 10 (ten) days:

- Advise us of your attorney's name
- Confirm how much was deducted by your attorney
- Confirm when this was deducted
- Furnish us with documentary proof of the amount deducted by your attorney
- Give us your written instructions to your attorney to pay the amount so deducted to the medical aid scheme.

16 In *Id.* at 1200, 1201 (quoting *Id.* at 1198, 1199 (quoting *Id.* at 1197, 1198 (quoting *Id.* at 1196, 1197 (quoting *Id.* at 1195, 1196 (quoting *Id.* at 1194, 1195 (quoting *Id.* at 1193, 1194 (quoting *Id.* at 1192, 1193 (quoting *Id.* at 1191, 1192 (quoting *Id.* at 1190, 1191 (quoting *Id.* at 1189, 1190 (quoting *Id.* at 1188, 1189 (quoting *Id.* at 1187, 1188 (quoting *Id.* at 1186, 1187 (quoting *Id.* at 1185, 1186 (quoting *Id.* at 1184, 1185 (quoting *Id.* at 1183, 1184 (quoting *Id.* at 1182, 1183 (quoting *Id.* at 1181, 1182 (quoting *Id.* at 1180, 1181 (quoting *Id.* at 1179, 1180 (quoting *Id.* at 1178, 1179 (quoting *Id.* at 1177, 1178 (quoting *Id.* at 1176, 1177 (quoting *Id.* at 1175, 1176 (quoting *Id.* at 1174, 1175 (quoting *Id.* at 1173, 1174 (quoting *Id.* at 1172, 1173 (quoting *Id.* at 1171, 1172 (quoting *Id.* at 1170, 1171 (quoting *Id.* at 1169, 1170 (quoting *Id.* at 1168, 1169 (quoting *Id.* at 1167, 1168 (quoting *Id.* at 1166, 1167 (quoting *Id.* at 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**Directors:** U. L. Pappas (Chairman), A. Gots (Group CEO), M. S. Pappas (V. CEO), Dr. R. A. Bink, J. F. Bolog, S. G. Eisman (USA), P. F. Harris, L. H. Rosenblatt, Dr. V. K. Kaphan, H. P. Lerner, A. P. Lerner, J. M. Richardson (CEO), S. E. Smith, L. B. Sutherland, J. V. Allen (Executive Secretary), L. J. Horvath

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Your failure to timely and satisfactorily demonstrate that the amount of past medical expenses has already been deducted by your attorney will confirm that you in fact received payment from your attorneys. In such event the medical scheme will continue to look to you for reimbursement of the said sum.

Should you have any queries or concerns please feel free to contact the writer.

Yours faithfully

  
Charmain le Grange  
Manager  
Legal Services

16 Fredman Drive, Sandton, PO Box 2879, Illovo 2196, 5140115 575 5092, Fax 2011/579 7501, [www.discovery.co.za](http://www.discovery.co.za)

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Primary Health Care (Pty) Ltd registration number: 1997/0349507  
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2009 (1)

1 February 2011



Dear Mr Haſſejee

YOUR RAF CLAIM, MEMBERSHIP NO. [REDACTED] 70

1. We refer to our letter to you of 29 December 2010. A similar letter was addressed to certain other members of the Scheme.
2. Some recipients, either personally or represented by attorneys, have disputed their liability to reimburse the Scheme in respect of past medical expenses for which they have been compensated both by the Scheme and by the Road Accident Fund. In case you have doubts in this regard, we write to clarify the Scheme's rights.
3. When applying for membership of the Scheme, each member undertakes in writing to familiarise himself or herself with the rules of the Scheme and also to abide by them. A medical scheme's rules are regulated by the Medical Schemes Act 131 of 1998 and must be approved and registered by the Registrar of Medical Schemes. Amendments to the benefits offered by a scheme and the terms and conditions on which such benefits are offered to members must themselves be approved and registered.
4. Since inception of the Scheme its registered rules have required members who are compensated for medical expenses arising out of injuries sustained in motor vehicle accidents to claim the relevant amounts from the RAF and to make over any RAF payments to the Scheme.

155 West Street, Sandton, PO Box 785722, Section 2140; Tel: 011 26 39 59 77 or 051 26 3277; E-mail: [info@nec.co.za](mailto:info@nec.co.za)  
Tel: 011 520 2888 (overseas); Fax: 011 520 2558 with a minimum of 20

**Directors:** M. H. Schwartz (Chairperson), A. Goren (General CEO), D. J. Rosenberg (CIO), G. E. Hunt, P. Cooper, J. J. Epstein, J. A. R. Farber, H. D. Kellner, R. S. Koppelman, D. J. Maguire, H. P. Mayne, J. Mahoney, A. J. O'Brien, A. Pollack, J. M. Robertson (CIO), S. E. Seidman, T. Shalton, B. Schwartzberg, D. F. M. Tibsh, S. V. Shvach (Executive Secretary), L. A. Holtz

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5. This obligation on the part of members is currently to be found in rule 15.6 of (read with exclusion 1.1 of annexe C to) the Scheme rules. (Section 32 of the Act renders the most recently registered version of a scheme's rules applicable to its members.) Relevant extracts from the rules are annexed for your ease of reference.
6. The rationale for the rule / exclusion begins with the fact that it is in the interests of all Discovery members that Scheme funds available to meet claims be maximised without unduly raising membership premiums. This means that where, as in the case of MVA claims, an alternative public funding mechanism exists and is available to members by virtue of the fuel levy, resort should be had to that source of compensation (ie the RAF). Should no compensation materialise, the Scheme bears the liability. However, in circumstances where the RAF reimburses amounts in respect of past medical expenses already paid by the Scheme, such amounts must be paid over to the Scheme. Were that not so, a member would receive and retain double compensation at the expense of the Scheme and all its members.
7. We are aware of an argument by at least one firm of attorneys to the effect that, at very least, an amount in respect of the member's litigation costs should be deducted from any such payment before the amount is made over to the Scheme. According to the argument, unless such a deduction is made, the member is effectively made to fund a claim against the RAF prosecuted by the member on the Scheme's behalf.
8. The argument is fallacious and self-serving. If an RAF claim fails, the member bears no obligation to make any payment to Discovery for past medical expenses, while a successful claim results in a separate RAF payment of compensation for the claimant's legal and related costs of litigation. So there is no need for any costs-related deduction from the past medical expenses amount paid by the RAF to the member and in turn by the member to the Scheme. The member is not left out of pocket.

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R Farber, R D Kallweit, R S Koppelman, Dr T A Madiba, H F Mager, Y Mofarnadi, A J Owen (UK), A Polakoff,  
J M Robertson (CFO), S E Schatta, T Stalbert, B Swartzberg, Dr F M Thiele, S V Thwaite (Executive), **Secretary:** M J Botha.

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9. This is especially so in circumstances where RAF claimants enter into contingency fee arrangements with their attorneys. In such circumstances, at least in principle, the claimant incurs no litigation costs unless the claim is successful. And, in the event of success, the attorneys are only – or ought only to be – entitled to the agreed share of the recoveries.
10. We say “ought” because we are aware of and are currently investigating practices on the part of certain firms of attorneys, including one in terms of which the attorneys – having concluded percentage based contingency fee arrangements – in fact appropriate as their fees a sum or sums substantially higher than the applicable share of recoveries which is then said to be calculated on the basis of time and attendances allegedly devoted to the claim. In such instances, the number of hours said to have been spent on the matter appears unreasonably – indeed impossibly – high.
11. Our ongoing investigation of these and similar practices on the part of certain personal injury lawyers indicates too that some recipients of our December letters did not receive payment from their attorneys of the amounts paid by the RAF in respect of past medical expenses, such amounts ostensibly having been retained by the attorneys.
12. In such instances we recognise that members cannot be held liable to make over amounts which they have not received. With the assistance of such members, and after further inquiry, we intend instituting proceedings to recover the relevant amounts from the attorneys themselves.

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R Farber\*, H D Kalner\*, M S Koopowitz\*, Dr T V Maphai, H P Mayers\*, V Mufamadi, A L Owen (UK), A Pollard\*,  
J M Robertson\* (CIO), S E Sebona, T Sleibson, B Swartzberg\* Dr P M Thabe, S V Zidwa (Executive) Secretary: M J Botha.

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13. Insofar as you may know or suspect that you fall into this category of RAF claimants, you are invited immediately to make contact with the writer so that the circumstances of your case may be discussed and investigated. Again, insofar as you have not received the benefit of any RAF payment in respect of your past medical expenses, we will not expect you to compensate the Scheme. In that event we will pursue the relevant amount in the hands of your attorneys.
14. However, if you have received any payment in respect of your past medical expenses, you are hereby afforded a final opportunity, within 5 (five) working days of the date of this letter, either to pay or to make written arrangements with us to pay the amount due by you to the Scheme. Should you fail to do so timeously, we intend pursuing all legal avenues available to us including instituting legal action for the recovery of the amount due, owing and payable to the Scheme.
15. We look forward to hearing from you.

Yours faithfully,



Jeff Katz  
Discovery Legal Services  
Tel no: 011 529 5143  
E-mail: [jeffreyk@discovery.co.za](mailto:jeffreyk@discovery.co.za)

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R Farber\*, H D Kainer\*, H S Koopowitz\*, Dr T V Maphai, H P Mayers\*, V Mufamadi, A L Owen (UK), A Polard\*,  
J M Robertson\* (CIO), S E Sebotsa, T Stubbart, B Swartzberg\*, Dr P M Tlhabi, S V Zibwa (Executive), Secretary: M J Botha.

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Rule 15.6 of the main body of the Rules of the Discovery Health Medical Scheme:

15.6. In the event that a member or dependant becomes entitled to any benefit for medical services rendered in the treatment of an injury sustained as a result of or arising out of the negligent driving of a motor vehicle by a person within the Republic of South Africa, the member or dependant shall:

15.6.1. be obliged to take all steps which are necessary to timeously submit to the Road Accident Fund ("RAF") established in terms Act 56 of 1996, a claim for compensation for the costs of any health care services performed and which in the future may be necessitated in connection with such injury; and

15.6.2. advise and keep the Scheme advised of the progress in relation to such claim for compensation; on admission of such claim by the RAF, advise the Scheme of the terms of such admission, including any terms relating to any undertaking by the RAF to make payments of the costs of any future medical expenses, in which event the Scheme shall be entitled to recover payment of any benefit in respect of health care services for which the RAF has undertaken to make payment.

Exclusion 1.1 of Annexure C to the Rules of the Discovery Health Medical Scheme:

1. EXCLUSIONS

With due regard to the prescribed minimum benefits and unless otherwise provided for or decided by the Board, expenses incurred in connection with clause 15.12 of the Main Body as well as any of the following, will not be paid by the Scheme:

- 1.1 All costs of whatsoever nature incurred for treatment of sickness, conditions or injuries sustained by a member or a dependant and for which any other party is liable. The member is entitled to such benefits as would have applied under normal conditions, irrespective of the lapse of time. The member will reimburse the scheme for medical expense on receipt of payment from the other party. In this regard, the amount due to the scheme will be congruent with the compensation awarded in respect of medical expenses;

Section 32 of the Medical Schemes' Act no. 131 of 1998:

32. Binding force of rules.—The rules of a medical scheme and any amendment thereof shall be binding on the medical scheme concerned, its members, officers and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming.

155 West Street, Sandton PO Box 786722, Sandton 2146; Tel 0860 59 58 77 or 083 123 5877 (toll free)  
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Directors: M I Hellenstein (Chairperson), A Gore (Group CEO), Dr J Broenberg (CEO), Dr B A Brink, P Cooper, S B Epstein (USA);  
R Farber, H D Kaliner, H S Koppowitz, Dr T V Masphal, H P Meyer, V Mufamadi, A L Ovan (UK), A Perlman,  
J M Robertson (CIO), S E Scholze, T Stabbert, P Swartzburg, Dr P M Thabo, S V Zikva (Executive Secretary); M J Bofha.

Discovery Health (Pty) Ltd registration number: 1997/013480/07  
An Authorised Financial Services Provider

## AFFIDAVIT

I, the undersigned,

MARK BELLON

do hereby make oath and state that:

1. I am an adult male businessman, Chartered Accountant and registered Auditor.
2. I was involved in a motor vehicle accident on the 26 July 2006 and instructed Ronald Bobroff & Partners Inc. to do my Road Accident Fund claim. I was represented by Darren Bobroff of that firm.
3. My claim was finalized in two stages, firstly on the 1 December 2008, (order attached hereto marked "A") when the merits were agreed on an apportioned basis whereby I would receive 55% of my agreed or proven damages.
4. The quantum of my claim was finalized at Court in my presence and with my full knowledge and consent on the 19 October 2010 (order attached hereto marked "B").
5. I was a member of Discovery Medical Scheme ("Discovery") under membership number 075770180 for many years.
6. Consequent upon life threatening injuries which I sustained in the accident I was admitted to an Intensive Care Unit and was unconscious and/or in a coma for some 5-6 weeks.
7. Within days my wife was contacted by one Charmaine Le Grange, an employee of Discovery, and who I have ascertained is instructed by and reports to Mr X Katz, another employee of Discovery and who apparently heads up their Legal Division.
8. Charmaine demanded that my wife immediately sign an undertaking requiring me to lodge a claim against the Road Accident Fund, impliedly at my own risk and cost, and to reimburse Discovery with any medical costs recovered out of the claim and which might have been paid by Discovery.
9. The demand was accompanied by a threat to immediately terminate medical cover to me and to reverse the cost of any treatment which I had already received due to the accident.
10. Further should she not sign the undertaking I would have to be transferred to a Provincial Hospital or come up with hundreds of thousands of rands to be paid to

afford so that I could remain in intensive care. We simply did not have that money available.

11. One will understand that my wife being placed under such unbearable and unconscionable duress was faced with little choice but to sign the undertaking even though she was not the principal member of Discovery.

12. Subsequently and whilst I was still suffering major physical disability and faced with a repeated threat to discontinue funding my treatment and to reclaim the cost of treatment already rendered, I was also forced to sign an undertaking as referred to above.

13. At no stage during many years membership of Discovery, including as recently as 2011, was I ever informed that my membership and my consequent right to receive medical care was subject to any exclusions or conditions relating to road accident generated medical care.

14. As I have now ascertained Discovery do have such exclusions and conditions in their Rules details or copies of which were never brought to my attention both at the time I applied to join Discovery or at any time thereafter. Discovery have flagrantly and deliberately ignored material provisions of the Medical Schemes Act specifically designed to ensure that Medical Scheme members such as I are informed prior to and during their membership of the terms of membership.

15. Notwithstanding that my claim had been finalized with a 45% apportionment against me and for a lump sum without the order of court indicating how the RAA's offer of settlement was made up Discovery's Collection Agents, Flowers Vermaak, have demanded payment in full of all amounts expended by Discovery in respect of treatment paid for by them and arising out of my accident.

16. Given that:

16.1 Discovery had unlawfully forced us into signing a reimbursement undertaking;

16.2 Discovery has wilfully and criminally in terms of Section 66 (1) of the Medical Schemes Act not complied with the numerous relevant provisions of the Medical Schemes Act aimed at informing members such as I of the very exclusions and conditions Discovery now sought to rely on;

16.3 My claim was settled on a 45% apportionment against me;

16.4 My claim was settled for a global and non-defined amount;

P12

- 16.5 I had to bear the entire risk and cost of lengthy litigation from which Discovery now sought to benefit without making any pro rata contribution to such cost.
17. I instructed my Attorneys to inform Discovery and their Debt Collectors that I disputed any liability to reimburse Discovery whatsoever.
18. As a result of my decisions aforesaid I received a letter of demand from Discovery on 17 August 2011 demanding payment of the FULL amount disbursed in respect of medical costs notwithstanding the 45% apportionment against me and the lump sum settlement and a copy of such letter is attached hereto. In such email I was again threatened with termination of my membership and also litigation against me for the FULL amount and a Credit blacklisting.
19. In mid during June 2011 I was called by Alan Jacobson, an acquaintance of my mine employed by Discovery who informed me that Jeff Katz ("Katz") wished to meet with me to discuss my unhappiness with Discovery. I thereafter received a subsequent communication from Katz via Jacobson as follows:
- 19.1 Katz stated that RBP were secretly retaining money in respect of medical costs without disclosing this to their clients and that they would do the same to me;
- 19.2 That Katz and Discovery were prepared to waive any claim against me with respect to an amount of approximately R500 000 which they had and were then demanding from me in respect of medical expenses disbursed by Discovery relating to my accident;
- 19.3 That the waiver of such claim was conditional upon me co-operating with Katz in what I clearly understand to be a campaign seeking to neutralize and discredit Ronald Bobroff who had, apparently advised other clients of Discovery in similar circumstances;
- 19.4 The impression I got during the discussion with Jacobson was that Katz was very emotionally involved and very concerned that it would become public knowledge that Discovery was not complying with the Medical Schemes Act and that the Registrar of the Medical Schemes Council would become aware of this fact or would become aware of increasing numbers of Discovery members who would be standing up for their rights in the face of Discovery's demands for reimbursement.
20. As a professional chartered accountant and auditor I believe that Katz's conduct in seeking to bribe me and/or buy me off into becoming his pawn to be used in a vendetta against Ronald Bobroff was wholly unprofessional and disgraceful.



conduct, unbefitting of an attorney and almost certainly a contravention of the Corruption Act.

21. I and my family have suffered intensely as a result of the life threatening injuries I sustain in the accident and that suffering has been greatly exacerbated by the ongoing harassment my wife and I have been subjected to at Katz's instance.

22. He has carried out the threat to terminate my membership to Discovery Health clearly because I refused to make myself a party to his illegal and disgraceful proposals. As the father of four young children I have had to face the frightening uncertainty of my family being unprotected by any Medical Aid cover for some time.

23. Katz has also had me blacklisted with Credit Bureaus for a false amount of approximately R900 000 when as an attorney he must be fully aware in terms of the Principles of Subrogation, that:

23.1 even assuming Discovery's Rules entitle it to the undertaking demanded of me;

23.2 that such undertaking was valid - which it clearly is not;

23.3 that it had complied with the Medical Schemes Act - which it certainly has not with respect to me;

23.4 there was a 45% apportionment against me;

23.5 my claim was settled for a global lump sum;

there can be no basis in law on which Discovery would be entitled to reimbursement of the full amount it may have disbursed relating to my accident and therefore blacklisting me for approximately R900 000 without advising the Agency that I dispute owing such or any amount to Discovery was entirely malicious and has caused me great hardship in obtaining credit card facilities.


24. I call upon the Law Society to take the strongest possible action against Katz in respect of which I, as a professional person, regard as very serious misconduct.

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DEPONENT

Thus signed and sworn before me on this the 1<sup>st</sup> day of November 2011, the deponent having acknowledged that he knows and understands the contents of this affidavit and has no objection to taking the prescribed oath which he considers binding on her conscience.

  
COMMISSIONER OF OATHS  
HUGH SIMMONS VAKILAL  
PRACTISING ATTORNEY  
COMMISSIONER OF OATHS EX  
OFFICIO  
1 THE AVENUE DEWHARDS  
JOHANNESBURG1  
ms

D2

**AFFIDAVIT**


I, the undersigned

**JODY BELLON**

do hereby make oath and say:

1. I have previously deposed to an affidavit on the 1 November 2011 confirming the content of an affidavit by my husband, at the time, as to his and my experience at the hands of Discovery Medical Aid.
2. I took up employment with the JNF in mid-April 2013. My duties relate to soliciting donations from members of the Jewish community in support of the Jewish National Fund and in this regard I have access to various lists of prospective donors.
3. On one of the lists was the name Jeffrey Katz and I decided in the normal course of my employment to call him with regard to soliciting a donation. This occurred during April 2013.
4. He agreed telephonically to donate R1,800.00 in respect of the planting of trees and requested me to email him an invoice which I duly did.
5. To my surprise as he had agreed to make the donation and I had sent him the invoice he emailed me requesting me to meet with him. I reasonably assumed that he was interested in making a larger donation or perhaps in the Discovery Group making a large donation.
6. I duly attended at Discovery's premises in Sandton on or about the 17 May 2013 and was fetched from reception by a lady who introduced herself as Bonnie.



7. She took me into a room which was identified by a sign outside the room as "Forensic Room" or words to that effect. I was immediately concerned as the room had no windows and given that the purpose of my visit was to solicit a donation, I was uncomfortable at being directed into what seemed to be an interrogation room.
  8. I expected Bonnie to leave the room but she remained with me and we were thereafter joined by a fair haired woman, who introduced herself as Charmaine, and thereafter Jeffrey Katz joined us.
  9.
    - 9.1 I commenced with the presentation with respect to the JNF's Walter Sisulu Environmental Project in Mamalodi, it being my intention to persuade Katz to bring Discovery aboard as also other corporates and donors. Katz cut me short and said he knew about the work which the JNF does and then he enquired from me "Do you know who I am?"
    - 9.2 He thereafter went on to say that I had signed affidavits against him and that what I had said was incorrect in that Discovery had never contacted me with demands that I sign Discovery's undertaking which would compel me and my husband to claim from the Road Accident Fund, at his own risk and cost and to reimburse Discovery in full any medical costs it had disbursed in respect of injuries he sustained in the accident.
  10. I am fully acquainted with such undertaking as I was indeed compelled to sign such an undertaking shortly after my husband was admitted to Milpark Hospital having suffered serious brain and other injuries in a motor vehicle accident in 2006. I had no choice as I was told at the time, and that in fact the document which I was forced to sign and which my husband was subsequently forced to sign approximately a year thereafter specifically states that should the Discovery member not sign the undertaking, Discovery would immediately terminate medical care to the accident victim and would reclaim the cost of care already provided.
  11. As a young wife with two children and pregnant with a third, and with my husband fighting for his life in hospital I was in no position to argue and signed. I was in desperate financial circumstances as I had no funds and my attorneys assisted me by bringing an urgent application to court appointing me as Curator Bonis so as to access my husband's bank accounts.
- 

12. Katz enquired as to whether I had already instructed Ronald Bobroff & Partners Inc at the time I was requested to sign Discovery's undertaking. I replied in the affirmative whereupon Katz said that it must have been my attorneys who requested me to sign the undertaking so that they could recover the medical expenses due to Discovery from the Road Accident Fund and steal the money for themselves or words to that effect.
13. I responded that that could not have been the case as I specifically recalled faxing the undertaking, which I had signed, to Discovery whose fax number was well known to me as I had worked at Discovery previously and was familiar with its numbers.
14. Katz then launched into a defensive tirade to the effect that people take out medical aid cover with Discovery especially to cover occurrences such as road accidents, and that Discovery would never refuse to pay a member's medical costs flowing from a road accident. I was astounded to hear this as my husband and I had been victims and experienced firsthand of Discovery doing to us precisely what Katz said Discovery would never do and I am aware of other Discovery members who were subjected to similar demands to that made of me and Mark i.e. that if we did not sign Discovery's standard undertaking as referred to above, medical care would be immediately terminated and the cost of care already rendered reclaimed.
15. I wish to emphasize that at that stage I felt very intimidated and angry, having been lured to Discovery's offices under false pretences in that the sole reason agreeing to meet with Katz was to market the JNF as my livelihood is dependent on donations received. I found myself virtually trapped in a windowless room confronted by Katz and two of his staff and subjected to what I can only describe as an interrogation designed to pressurize me into withdrawing the allegations I had made against Katz and which I am aware were made available to the Council for Medical Schemes as also to the Law Society of the Northern Provinces.
16. Katz also went on to say that Discovery would not have any knowledge of any of its members or their dependents being involved in road accidents and requiring medical care consequent thereto until approximately a year after the event. I did not accept this as I know I was contacted by Discovery within days of Mark's accident and I am also aware that one cannot be admitted to a private hospital, at the cost of a medical aid, until the hospital has obtained authorization to do so from the Discovery Medical Aid. I again mention that I was employed



by Discovery for some years and I am aware that Discovery requires hospitals to obtain pre-admission authorization.

17. Katz went on at length to try to persuade me that I would not have received the call and the demand to sign Discovery's undertaking from Bonnie or Charmaine but that it was probably done by Discovery Attorneys, Messrs Flowers Vermaak. I could not accept his suggestions as I specifically remember that I was contacted by a person from Discovery and that I did fax the signed undertaking to Discovery. Katz appeared very concerned to try and persuade me that the approach and the intimidation was from Flowers Vermaak and not from his staff.
18. I enquired from Katz why he was claiming the full amount of medical costs disbursed by Discovery in respect of Mark's accident when Mark's claim had been settled on the basis that he would only receive 55% of whatever damages were proven or of the amount at which the Defendant assessed the value of the claim. Katz's response was that Mark's attorneys were negligent in not explaining to Mark that the apportionment would not reduce Mark's obligation to refund Discovery in full.
19. Katz went on to repeat that Mark's attorneys, RBP Inc routinely recovered medical expenses due to Discovery, did not disclose this to their clients, and effectively stole the money.
20. Katz then told me that he was aware of financial problems which Mark was experiencing with Investec. I was astounded that he should be aware of this. He then went on to say that Discovery would persist in its claim against Mark and they would succeed.
21. By this time having been subjected to interrogation for almost an hour I was emotionally drained but made it clear to Katz that I would not change my story as it was the truth and I then left the meeting.

THUS SIGNED and SWORN to before me at JOHANNESBURG on this the 30th day of MAY 2013 the Deponent having acknowledged that he knows and understands the contents of this Affidavit.

\_\_\_\_\_  
COMMISSIONER OF OATHS

**GREG VERMAAK**  
Commissioner of Oaths  
Practising Attorney R.S.A.  
151 Oxford Road,  
Parkwood  
Tel: (011) 447-3690/3721/3968

"D3"

AFFIDAVIT

I the undersigned

DEAN ALMEIDA

do hereby make oath and state as follows:

1. My personal injury claim was attended to by Ronald Bobroff & Partners Inc. to my satisfaction.
2. At the time of the accident, I was a member of Discovery Health medical scheme but had never from the time I had originally joined until today ever received a copy of the Rules applicable to my membership nor any notification of any changes to such Rules.
3. I was never informed from the time of joining Discovery Health to date that there were any conditions or exclusions relating to motor vehicle accident medical care or that I would be obliged to make any claim against the Road Accident Fund and reimburse Discovery Health any medical costs recovered and previously paid by them.
4. Some two years after my claim was settled, I was contacted by Bonny of Discovery Health telephonically who informed me that I still owed Discovery Health money.
5. She invited me to meet with Mr. J Katz of Discovery Health and the meeting took place in due course. Katz informed me that there was still an outstanding amount due to Discovery Health arising out of the accident of APRIL 2006.
6. I enquired from him why I had to pay Discovery back anything when I paid premiums to cover what I believed to be all my medical expenses from whatever cause and that I had never been advised at the time of or any time prior to contracting with Discovery that there were exclusions or conditions relating to motor vehicle accident generated medical costs.
7. Katz responded "it's in your contract". I replied that no-one had ever told me and brushed off the comment again reverting to the fact that I owe Discovery money and that I am responsible for it.
8. He then interrogated me as to how I came to instruct my attorneys Ronald Bobroff & Partners Inc. I informed him that the firm had been contacted by my fiancé to come and see me as there were informative pamphlets and posters at the hospital offering advice to accident victims such as myself.
9. Katz then described the fact that my attorneys had seen me in hospital as "ambulance chasing". I told him I did not understand what that meant to which he replied "lawyers wait in hospital reception areas or get others to wait and recruit clients like that, and that this practice is

JH LWS


- common but illegal". I understood that he was referring to my attorneys as being ambulance chasers.
10. He enquired as to whether I had signed any documents to which I responded that I had and that my fiancé was present at the time and was assisting me and had received an explanation concerning all the documents which were required to be signed for the case.
  11. He went on and on trying to extract a statement from me that it was in fact the attorneys who had approached me and not the other way around. He was clearly hostile towards Ronald Bobroff & Partners Inc. and in my opinion, he was trying to twist my words.
  12. Eventually, I told him that I was very pleased that I had instructed Ronald Bobroff & Partners Inc., in particular, that Darren Bobroff had attended to my claim and that during the years I have worked with him, he was at all times courteous and helpful in every way. Further, that they had carried the cost of my case for years and had never requested any money.
  13. I concluded by informing Katz that in my opinion Ronald Bobroff & Partners Inc. was a great legal practice.
  14. At the end of the meeting, he asked me to forward him the awards document and the breakdown of who got what in the deal. I asked him if this would affect my Discovery claims in future, his response was "It won't affect it too much, just help us to help you". I did not know what that meant until the next phone call from him.
  15. Katz requested certain documentation from me which I did not have in my possession. I contacted my attorneys to provide me with such documentation. My attorneys advised that they had in fact already provided Discovery with the requested information. I in turn, contacted Katz to advise and question why he was requesting documentation from me which he already had in his possession and furnished by my attorneys. His response was "No, some of the documents are incomplete."
  16. Katz then requested I attend another meeting with their attorneys because he wanted to take Bobroff to Court as they had misled me. This meeting did not occur as I was not available.
  17. I then contacted my attorney to advise him of this and was advised not deal with Discovery Health directly but refer them to my attorney.
  18. I emailed Bonny and advised her to deal directly with my attorney. Shortly after she received my email, she contacted me telephonically and tried to convince me to come to the meeting saying that it was in my best interest. When I reiterated that she should deal with my attorneys, Katz got onto the phone, was rather aggressive saying "that the money is owed and that Bobroff and myself are responsible for this outstanding amount. It would be easier if I just cooperated with his department to straighten things out".
- JH LS



19. Katz and Bonny continually phoned me on several occasions in order to make arrangements to attend the meeting. I agreed simply to get him off my back. However, I never did attend the meeting as I lost my job and had to make certain adjustments.
20. I was then contacted again by Bonny and on the second occasion, Katz got onto the phone asking "what do you think you are doing, do you want to make this easy for yourself or hard?" He replied that "if you sit with us and our attorneys, you won't be responsible for the amount because you were misled".
21. I responded by saying that I thought it was Discovery Health who was misleading me and harassing me. I told them it was unfair them giving me an ultimatum like that to which Katz responded "Well you either helping us or you not". I told him I was not prepared to help him. He was rather aggressive and put the phone down.

  
DEAN ALMEIDA

Thus signed and sworn before me on this the 17<sup>th</sup> March day of 2011, the deponent having acknowledged that he knows and understands the contents of this Affidavit and has no objection to taking the prescribed oath which he/she considers binding on her conscience.

  
COMMISSIONER OF OATHS

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fax  
to Ronald Bobroff & Partners Inc.  
attention Ronald Bobroff  
fax number 011 880 6784  
pages two

G van Niekerk/0309785

our ref  
your ref

09 March 2011

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Dear Sir

MATTHEW JAMES GRAHAM - CASE NO 2008/33827  
YOUR REF: D BOBROFF/CC/9946

We confirm that we act on behalf of Matthew James Graham ("our client").

Our instructions are that our client submitted a claim to the Road Accident Fund ("RAF") and subsequently instituted legal proceedings against the RAF for damages suffered as a result of injuries sustained in motor vehicle accidents.

We are further instructed that you acted on behalf of our client in this matter.

Our instructions are to request the following information from you in respect of our client's matter:

1. the capital amount paid by the RAF in settlement of our client's claim including a breakdown of the various heads of damages. In the event that the RAF paid an aggregate amount, we require from you an indication of what amounts you claimed from the RAF on behalf of our client, as well as your allocation of the settlement amount received from the RAF for purposes of determining whether or not to recommend the settlement to our client;
2. the amount of legal fees recovered from the RAF;
3. the amount of disbursements recovered from the RAF;

directors, executives & consultants  
law / tax / forensics / IP / Africa  
M.M. Katz (chairman) P.C. Faber (chief executive) H. Mgudlwa (deputy chief executive) A. Aguirre Prof E.W. Alberici R.J. Alcock A.C. Alexander G.C. Badenhorst J. Ballin A. Bennett L.I. Blitchitz J.P. Blignaut L. Blignaut A. Bushoff A. Farazi J. Brodeur T. Buchler T. Calmeyer D.H. Carmichael V.O. Chaplin B.J. Crooke P.H. Cronin P.L. Dachs C. Daniels M.S. Daxat R. de la Harpe G.E. de Smit P. Desrosbieres L. Donaldson B. du Plessis I. du Plessis J.C. du Preez M.D. du Toit F. Duvhaine E. Ellis B. Faber H. Farand A.C. Feinstein M.J. Feinstein G.S. Feinman J.B. Ferraz J.S. Ferreira-Carvalho A.F.M. Ferreira J.R. Flax R.H. Gad K.E. Gagné D. Genasen M.J. Gordon C. Gelbart P.F.L. Garonnet K.N. Mbangela Gaba M.W. Gradijge C.L. Green S.W. Hanison J.T.P. Haydock S.B. Hayes L. Heiman J.D. Herbert G.R. Herholdt A.C. Horbea Prof D.B. Hutchison G.D. Hyde A.V. Ismail Prof A.J. Izakowitz D. Jeffe C.V. Johnson S. Kassen J. Katz L.C. Kazz G.P.J. Kellerman L. Kruger J.M. Langford P.J. Lategan I.B.W. Lawrence E.S. Le Grange S.C. Lederman J.C. Lee S.B. Levettan S.A. Lewis R. Lopes J.D. Looker L.E. Louw S.A. Mackay-Davison S. Mahlangi K.W. Makubela G.F. Malan K. Mariman M.W. Matlou S.L. Mbatima Y.A. Mendelsohn A. Mendes D. B. Messerschmidt M.D. Molepo C. Morgan J.C. Morrissey M.S. Morrison M.A.C. Murphy J.S. Nelson R.H. Nolan A.H. Norton C.M. Ntsha G.J. Oerfel J.T. Oosthuizen S.P. Osborne T.D. Papiez M. Parker S. Patel B.G. Patterson C.V. Piboon J.P. Pretorius M.V. Ralshimbikari P. Reburn J.D. Richards R.B. Rudolph M.L. Sarembek G.C. Scott R.A. Spott B.J. Serebro N. Smith H.M. Snyckers S.J. Spamer R.T. Stein M.T. Steyn V. Stillwell A.W. Symington M.S. Tucker J.M. Vainin V.L. van Coppenhagen L.M. van der Merwe M. van der Westhuizen K.J. van der Westhuizen C. van Loggerenberg A. van Niekerk G.M. van Niekerk J. Viviers E. Vogelstein L.P. Volschenk S.R. von Schirnding H. Wessels C.L. Woffschin J.M. Zief  
\* not attorney/not director, \* executive consultant, \* consultant, \* special IP counsel  
level 3 BBSF: AA: nling

1330  
2 184

4. an indication of any amounts retained in respect of payments due to creditors of our client;
5. a breakdown of the payment(s) to our client pursuant to the resolution of the matter;
6. an indication of your fees and disbursements charged to our client;
7. an indication of how your fees were arrived at. If your fees were determined with regards to hours spent we require an indication of the number of hours spent and the hourly rate, and if your fees were determined with reference to a percentage of the amount recovered we require an indication of the exact percentage;
8. copies of any written agreements and/or instructions from our client evidencing the agreement between you and our client in respect of the abovementioned matter.

We assume that your accounting records would reflect all monies received and disbursed on behalf of our client and that the information requested above would be readily available. We accordingly look forward to receiving the requested information shortly.

Kindly also make the file(s) relating to our client's claim against the RAF available for collection. We will send a representative to collect our client's files during the course of Friday, 11 March 2011.

Yours faithfully,

EDWARD NATHAN SONNENBERGS

Per: pp

A. Daubert

George van Niekerk

J.G.  
J.G.

"E2"

edward nathan sonnenbergs

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fax  
to Ronald Bobroff & Partners Inc.  
attention Mr S Bezuidenhout  
fax number 011 880 6784  
pages six

G van Niekerk/0309785  
Mr S Bezuidenhout/rs  
17 March 2011

URGENT

warning:

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Dear Sir

MATTHEW JAMES GRAHAM, SERENA MACPHERSON, CHRISTOPHER ASHFORD, MOHAMED  
SAEED RAZAK, ZARINA VAWDA

We refer to the above matters and acknowledge receipt of your letter of 10 March 2011.

Without admitting that you are entitled at this stage to demand powers of attorney in respect of our mandates from our clients, we enclose herewith the duly signed powers of attorney.

We accordingly request that you immediately make available the contents of our clients' files in order for us to collect same by no later than close of business today.

We have further been instructed to demand that you refrain from contacting our clients and that you should contact the writer if necessary.

Yours faithfully,

PP A. van Niekerk

George van Niekerk

law | tax | forensics | IP | africa  
directors, executives & consultants  
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\* not attorney/not director, \* executive consultant, \* consultant, \* special IP counsel  
level 3 BBBEE: AA rating

STATEMENT

I, the undersigned,

ZVAWDA

do hereby state under oath the following:

1. I am an adult female.
2. On 21 September 2002 I was involved in a motor vehicle accident and subsequently contacted attorneys Ronald Bobroff & Partners Inc to institute a claim against the Road Accident Fund on behalf of my husband, my son and myself.
3. At the initial consultation on 27 September 2002 my husband and I signed mandates authorising Ronald Bobroff & Partners Inc to act on our behalf and was also provided with a new client letter which provided an outline of the claim and in particular the basis of fees charged.
4. At the time of the accident my family and I were members of Discovery Health Medical Aid and believed at all times that we were covered for all medical and hospital treatment required in particular all trauma related costs.
5. At no stage was my husband or I ever informed about any exclusion clauses in Discovery's rules in particular that relating to excluding liability for all road accident generated medical costs.
6. At no stage was my husband or I ever provided with Discovery's rules and or a detailed summary of such rules. We were also never provided with any written notifications as to any proposed amendment to their rules.
7. Both my husband's and my claim finalised in September 2008 and at that stage we were still not aware of any exclusion clause in Discovery's rules relating to motor vehicle accident generated expenses.
8. Both my husband and I were extremely satisfied as to the service received from Ronald Bobroff & Partners Inc and in particular the result obtained.
9. Our attorney Pippa Farraj explained the fee options available and both my husband and I elected to be charged on a time basis so as to be guaranteed a net settlement amount taking into account the possible risks of not recovering



years later seeks to rely on them.

21. I believe this is a matter for the Council of Medical Schemes to investigate so as to prevent other members of Discovery from being victimised and taken advantage of.

DATED AT JOHANNESBURG THIS 29 DAY OF SEPTEMBER 2011



Z VAWDA



THE LAW SOCIETY  
OF THE  
NORTHERN PROVINCES



REPUBLIC OF SOUTH AFRICA  
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Ingelyf as die Prokureursorde van Transvaal

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**FASTFAX  
MATTERS BEFORE COUNCIL  
1 FEBRUARY 2011**

**URGENT NOTICE TO MEMBERS:**

**MEDICAL AIDS / ROAD ACCIDENT FUND CLAIMS**

1. The Council has become aware of pressure being applied on Claimant Attorneys by Medical Aids and/or Medical Aid Collection Attorneys, to furnish undertakings to the Medical Aids, to reimburse such Medical Aids out of the proceeds of Road Accident Fund claims and where the Medical Aid may have covered certain medical disbursements arising out of the accident.
2. Similar or greater pressure is being brought to bear on the Medical Aid Members themselves by Medical Aids and/or their Collection Agents, with threats being made by the Medical Aid/Collection Agents to reverse medical cost disbursements already made on behalf of the member, or to decline further benefits, unless and until the member and the member's Attorney furnish an unqualified undertaking to reimburse the Medical Aid in full any relevant amounts recovered.
- 2.2 The Council is not aware that the Medical Aids in question tender to bear a pro rata portion of the costs and/or risks involved in the litigation by their members and where such litigation is intended to also benefit the Medical Aid.
3. Members are cautioned against advising clients to agree to such undertakings or the Attorneys themselves signing such undertakings on behalf of their client, **IN THE ABSENCE OF PROOF THAT THERE IS A CLEAR CONTRACTUAL OBLIGATION ON THE MEDICAL AID MEMBER IN TERMS OF A WRITTEN CONTRACT OF MEMBERSHIP ENTERED INTO AT THE TIME THE MEMBER FIRST JOINED THE MEDICAL AID THAT THE MEDICAL AID MEMBER BE SO OBLIGED.**
- 3.2 Where the Medical Aid alleges that there was a variation to the initial written contract of Medical Aid Insurance, Attorneys should insist on a copy of such variation signed by the member **PRIOR** to the incident giving rise to a current claim, being provided to the Attorney and verified with the client.
4. An Attorney who advises their client to sign an undertaking in favour of the Medical Aid, or where the Attorney does so on behalf of the client in the absence of clear written proof of the client's obligation to do so, as referred to above, may well find himself/herself being liable to the client for a refund of all amounts paid to the Medical Aid and flowing from the Attorney's negligence in failing to properly protect the client's interests.
5. Members are encouraged to refer details of matters to the Council, where Attorneys acting on behalf of Medical Aids persist in pressurizing Attorneys and/or their clients in seeking to force the client and/or the Attorney to sign undertakings as referred to above, and where such Attorneys have failed and/or refused to provide adequate documentary evidence that the Attorney's client is in fact obliged to sign the undertaking in favour of the Medical Aid in question.

Mr S A Thobane  
President

THE LAW SOCIETY  
OF THE  
NORTHERN PROVINCES



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**FASTFAX  
MATTERS BEFORE COUNCIL  
15 APRIL 2011**

**MEDICAL AID SCHEMES / ROAD ACCIDENT FUND CLAIMS**

1. Attorneys are referred to the fastfax dated 1 February 2011 dealing with medical aid schemes and Road Accident Fund (RAF) claims.
2. The nature of the relationship between a medical aid scheme (a / the scheme) and its members is of importance and the following should also be noted:
  - 2.1 the relationship between a scheme and its members is not purely contractual in nature, but includes statutory, regulatory and contractual elements with its contractual terms set out in the scheme's rules as amended, approved and registered by the Registrar of Medical Schemes from time to time;
  - 2.2 the rules of some schemes oblige members, who undergo hospitalization and/or treatment in relation to injuries sustained in motor vehicle accidents and who claim and receive scheme benefits in respect of their medical expense, to claim compensation from the RAF and, if successful, to reimburse the scheme what it is paid to or on behalf of such members. Where the RAF rejects the claim the members bears no obligation to reimburse the scheme;
  - 2.3 withholding an amount due to a scheme by virtue of its rules may amount to a failure to repay a debt within the meaning of Section 29(2)(b) of the Medical Schemes Act, no. 131 of 1998 (the Act) and may entitle a scheme to reclaim what it has paid to or on behalf of such members and/or to terminate membership;
  - 2.4 the rules of a scheme must provide for advance written notice to members of any change in contributions, benefits etc. or any other condition affecting their membership (Section 20(1)(l) of the Act).
  - 2.5 Section 30(2) of the Act provides that a scheme is obliged to provide free of charge to every member, on admission, a detailed summary of the rules;
  - 2.6 a scheme may amend or rescind its rules or make additional rules and no such amendment, rescission or addition is valid unless it has been approved by the Registrar of Medical Schemes;
  - 2.7 the rules of a scheme are binding on the scheme, its members, its officers and any person who claims benefits under the rules or whose claim is derived from a person so claiming (Section 32 of the Act);
  - 2.8 a scheme is in terms of the provisions of Section 41(1) of the Act obliged to deliver to a member on demand and on payment to the scheme of the fee prescribed by the rules, its rules;



- 2.9 a member is entitled to inspect free of charge the scheme's rules at the scheme's registered office and to make extracts therefrom (Section 41(2));
- 2.10 Section 57(4) of the Act deals with the duties of the trustees of a scheme and includes that they are obliged to ensure that adequate and appropriate information is communicated to its members regarding their rights, benefits, contributions and duties in terms of the scheme's rules (sub-section (d)).
3. In the lastfax dated 1 February 2011 attorneys were cautioned against advising clients to agree to the furnishing of undertakings, or the attorney themselves signing such undertakings on behalf of their clients, in the absence of proof that there is a clear contractual obligation on the members in terms of a written contract of membership entered into at the time the member first joined the scheme that the member is so obliged. Attorneys who practise in this field of law are strongly encouraged to familiarize themselves with the provisions of the Act, the regulations thereto and the relevant scheme's rules when advising their clients regarding the reimbursements of medical expense amounts recovered from the Road Accident Fund.



S.A. THOBANE  
President

23 February 2011



Discovery  
Health

Mr S A Thobane  
THE LAW SOCIETY OF THE NORTHERN PROVINCES  
PO Box 1493  
PRETORIA  
0001

By E-mail: communications@lsnp.org.za; director@lsnp.org.za

Dear Mr Thobane

**MEDICAL AID / ROAD ACCIDENT FUND CLAIMS**

- 1 We refer to your "urgent notice to members" of 1 February 2011 (the LSSA notice), our 2 February 2011 request for information and a meeting (our request) and your response of 17 February 2011 (the LSSA rejection).
- 2 We respond at this time only to parts of the LSSA notice and rejection; whilst denying the others.
- 3 Discovery disputes the advice in and alleged motivation for the precipitous, damaging LSSA notice. Your belated; defensive rejection of our request – which avoids every Discovery Inquiry – reinforces the impression that something is amiss. The Society is again invited to dispel the impression by correcting its advice in the LSSA notice and by playing open cards about how it arose. In the interim all Discovery's rights are reserved.
- 4 It is evident from the LSSA notice that at the start of February 2011, when it gave urgent advice to attorneys without seeking medical scheme input, the Society confused ordinary contractual insurance with statutory / regulatory medical scheme membership. In particular, the Society was unaware or failed to inform attorneys:

155 West Street, Sandton, PO Box 786722, Sandton 2146; Tel 0860 99 88 77 or 033 123 8877 (Client Services); (011) 529 2888 (Switchboard); Fax (011) 533 2958; www.discovery.co.za

Directors: M H Hirschowitz (Chairperson), A Gore\* (Group CEO), Dr J Broomborg (CEO), Dr B A Brink, P Cooper, S B Epstein (USA), R Farber\*, H D Kellner\*, H S Kaspowitz\*, Dr T V Maphai, H P Mayers\*, V Mulamadi, A L Ozen (UK), A Nyland\*, J M Robertson\* (CIO), S E Seboga, T Slabbert, B Swartzberg\*, Dr P M Thabak, S V Zilwa (\*Executive), Secretary: M J Botha

Discovery Health (Pty) Ltd, registration number: 1997/01340007  
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25.2 Which members of the Society were involved in any way in the meeting(s) / deliberation(s) referred to in paragraph 25.1 above? And which members were involved in formulating and/or settling the LSSA rejection?

26. Should you remain of the view that Discovery is entitled to none of the information called for above, kindly provide us with your considered basis for this view so that we may address it in the PAIA notice / application which will follow.

27. Meanwhile we advise that Discovery is suffering ongoing, mounting harm as a result of the Society's failure to date either to withdraw or to correct the LSSA notice circulated at the start of the month. We confirm that, since the LSSA notice Discovery has recovered less than 25% of its usual recoveries of past medical expenses for a corresponding time period. Discovery knows of no other factor of significance that may account for this drop-off in recoveries and concludes that it is attributable to the LSSA notice. Indeed many firms of attorneys – including Ronald Bobroff & Partners – have in recent weeks relied on the LSSA notice as the basis on which they or their clients are withholding amounts due to the scheme. (In this regard we annex RBP's telefax dated 23 February 2011 addressed to clients who are members of Discovery.) Discovery's rights in regard to losses caused by the LSSA notice are reserved.

28. We look forward to your urgent response.

Yours faithfully,

Jeff Katz

Discovery

Tel no: 011 529 5143

Fax no: 011 539 5144

E-mail: jeffreyk@discovery.co.za

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Directors: M I H Kowitz (Chairperson), A Gore\* (Group CEO), Dr J Broomberg (CEO), Dr B A Brink, P Cooper, S B Epstein (USA), R Farber\*, H D Kalner\*, N S Koppowitz\*, Dr T V Maphal, H P Meyers\*, V Mufamadi, A L Owen (UK), A Polard\*, J M Robertson\* (CIO), S E Sebousa, T Slobbert, B Swartzberg\*, Dr P M Tlhaba, S V Zilwa (\*Executive). Secretary: M J Botha.

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" R B I "

# PERSONAL FINANCE

## Legal potholes when claiming from RAF

April 29 2012 at 12:25pm  
By Laura du Preez



Illustration: Colin Daniel

**Your medical scheme can ask you to claim the medical expenses related to the injuries you suffered in a road accident from the Road Accident Fund (RAF).**

The rules of most medical schemes impose this obligation on you. Although medical schemes are obliged to make you aware of their rules, many members are oblivious to their duty in terms of the scheme's rules to recover from the RAF or any other third party the expenses related to injuries caused by others.

The Council for Medical Schemes says the common law principle of subrogation enables your scheme to ask you to recover costs on its behalf, and should you recover the costs but fail to pay them over to your medical scheme, you will have unjustly enriched yourself by receiving double compensation for the same event.

Members should also know that they may be advised to engage an attorney to assist with an RAF claim on a no-win, no-fee (contingency) basis. Some lawyers charge contingency fees within the limits imposed by the law, whereas others, guided by a Law Society of the Northern Provinces directive, do not.

The law sets a maximum charge of 25 percent of the settlement you receive from the RAF. However, attorneys who follow the directive are taking up to 40 percent of the settlement to cover their legal fees and the cost of engaging experts to support an RAF claim.

The legality of the fees that exceed those laid down by law are likely to be determined in a court case or a complaint laid with the Law Society of the Northern Provinces against a prominent personal injury attorney, Ronald Bobroff.

The complaint includes a claim that Bobroff charged his client for more hours than he spent on the case (see "Attorney faces Law Society complaint over 'excessive' fees", below).

If you belong to a medical scheme, you need to be aware that your scheme may ask you to sign an undertaking to claim from the RAF and to reimburse the scheme whatever medical expenses you recover.

This undertaking may include a clause that binds you to repay the scheme without deducting legal fees from the amount that the RAF paid you for medical expenses.

Some lawyers do not charge contingency fees based on the medical expenses they claim on your behalf from the RAF, but others charge fees based on the full amount you are paid by the RAF. In addition to medical expenses, the RAF will pay claims for loss of earnings, dependants' loss of support and funeral expenses. If you are seriously injured as defined in the RAF Act, you can also claim for loss of amenities, disfigurement, and pain and suffering.

Dr Monwabisi Gantsho, Registrar of Medical Schemes, says the rules of many schemes oblige you to claim from the RAF, but there does not seem to be an agreed upon procedure that schemes can follow to force you to claim if you refuse to sign an undertaking.

Gantsho says he will be looking into this when medical schemes submit their rules to the council for approval or amendments.

The registrar says if you do not sign an undertaking to pursue a claim with the RAF, your scheme cannot refuse to pay for the medical treatment you require, subject to the provisions of the Medical Schemes Act and the scheme's rules.

Gantsho says schemes are expected to pay the medical bills, while a member may claim from the RAF. The two processes should be transparent, understood by all and well communicated so that "no one can be enriched unjustly", he says.

If a member does not, or is unable to, pursue a claim against a third-party insurer – including the RAF – the scheme is still obliged to pay the emergency-related medical claims, because these claims are covered by the prescribed minimum benefits, Gantsho says.

If you do claim successfully from the RAF, you are obliged to repay your scheme the medical expenses that you recoup (see "Scheme has the right to cancel membership if recovered expenses not paid over", below).

#### **ATTORNEY FACES LAW SOCIETY COMPLAINT OVER 'EXCESSIVE' FEES**

A member of Discovery Health Medical Scheme has, with legal backing paid for by the scheme's administrator, complained to the Law Society of the Northern Provinces about the allegedly "excessive fees" that Ronald Bobroff & Partners charged after settling the member's claim against the Road Accident Fund (RAF).

In particular, the member, Matthew Graham, accuses Bobroff & Partners of overreaching. The firm's time-based charge was based on the case having taken more than 394 professional hours. But Graham's attorney, George van Niekerk, of Edward Nathan Sonnenbergs, says internal file records show that fewer than 100 professional hours were spent on the matter.

The complaint also alleges that the agreement that Bobroff & Partners signed with the member's wife, Jennifer Graham, contravened the Contingency Fees Act, which governs fees for cases taken on a no-win, no-fee basis.

Lawyers are divided over whether the Act governs all legal work taken on a no-win, no-fee (contingency) basis.

The Law Society's investigating committee completed a provisional hearing and plans to hold a disciplinary inquiry into 11 charges of unprofessional conduct and breaches of ethical duties against Bobroff & Partners.

Discovery Health is paying the costs for the legal team that is working on the Grahams' complaint.

Discovery Health chief executive Dr Jonathan Broomberg says the scheme is supporting the case against Bobroff & Partners because "we have an obligation to assist and protect our members, particularly those that find themselves in a vulnerable position".

Discovery Health also believes it has a duty to defend the integrity of the third-party compensation system, Broomberg says.

Van Niekerk says Discovery Health is also paying his fees to investigate the cases of four other members who may have been overcharged by Bobroff & Partners, but no complaints in these cases have been laid yet.

Matthew Graham was injured in an accident, and in 2010 he received R1.9 million from the RAF.

Bobroff & Partners paid the Grahams just less than R1.2 million of the R1.9 million.

The law firm recovered an additional R300 000 from the RAF for fees, of which R230 000 was paid to expert witnesses and R70 000 was retained by the firm.

Van Niekerk says Bobroff & Partners entered into an agreement with Jennifer Graham that she understood to be a no-win, no-fee agreement that would result in the law firm earning 30 percent of any award from the RAF.

But, Van Niekerk says, there were, in fact, two very different fee arrangements. The first was the no-win, no-fee arrangement the Grahams understood they were entering into. The second was based on R1 500 an hour for each hour spent on the case, escalating at 15 percent a year as long as the fee remained unpaid, plus any expenses, compounded at prime plus three percent.

Ronald Bobroff, the founder of Bobroff & Partners, told Personal Finance that his firm's agreements contain two fee arrangements, as advised by the Law Society, in case there is a legal issue with the common law fee arrangement.

Van Niekerk says the agreement gave Bobroff & Partners the choice of which fee arrangement to apply at the end of the case.

When the RAF agreed to pay the Grahams the settlement of R1.9 million, Bobroff & Partners warned that the RAF had yet to settle the legal and other costs for the experts whose services were used in the case, and it did not know how much of these expenses would be recovered, he says.

Bobroff says the Grahams asked for a net settlement amount.

Bobroff & Partners then offered the Grahams a third fee alternative: a guaranteed 60 percent of the amount awarded by the RAF, or about R1.2 million, and the law firm would take the risk of recovering the costs of the experts involved, Van Niekerk says. The Grahams accepted this offer.

Van Niekerk says the original contingency fee arrangement offered to the Grahams – at 30 percent of the award – contravened the Contingency Fees Act, and he questions the offering of two different and contradictory fee agreements.

Bobroff alleges that a complaint has been laid against Discovery Health's lawyer, Jeff Katz, for intimidating members of the scheme who have used Bobroff & Partners' services to lodge claims with the RAF.

Bobroff says members who have used his firm to claim successfully from the RAF are contacted by Discovery Health and asked to pay the scheme immediately for the medical expenses related to their accident. These members are also advised that the lawyers may have retained some of the money that was recovered from the RAF, and they are invited to discuss the issue with Discovery Health.

In this way, Bobroff says, Discovery Health has used threats and enticement to force some of his firm's former clients into making unwarranted attacks on his firm.

Broomberg has denied these allegations. He says members who clearly do not have the money owed to Discovery Health are not being sued for the outstanding amounts, nor is the scheme terminating their membership. However, instead, members are being advised to seek independent legal advice to determine whether they have been overreached, with Discovery Health's administrator assisting to pay for the legal advice.

Van Niekerk says Bobroff is trying to avoid dealing with the central allegation that his firm defrauded its clients.

He adds that Bobroff had tried to delay and obstruct the disciplinary process of the Law Society of the Northern Provinces.

Bobroff appeared before the investigating committee of the Law Society in February but refused to answer to the charges against him, because, Bobroff said, the Law Society was biased against him.

Bobroff is a councillor and past president of the Law Society.

#### **SCHEME HAS THE RIGHT TO CANCEL MEMBERSHIP IF RECOVERED MEDICAL EXPENSES NOT PAID OVER**

The Council for Medical Schemes recently ruled that Discovery Health Medical Scheme was within its rights to terminate the membership of a member who failed to repay the scheme the medical expenses he recovered from the Road Accident Fund (RAF).

Mark Bellon, represented by Ronald Bobroff & Partners, laid a complaint with the council after Discovery Health terminated his membership because Bellon did not pay over to the scheme the R861 334 in medical expenses he allegedly recovered from the RAF.

Bobroff & Partners assisted Bellon to claim R5.5 million from the RAF. The law firm advised Bellon not to repay Discovery Health while it challenged both the scheme's right to be repaid in full without legal fees being deducted and whether Discovery Health had a right to claim any part of the payment, because it had not informed Bellon of his duty to repay the scheme.

Bellon's complaint to the Council for Medical Schemes followed a complaint laid with the Law Society against Bobroff & Partners on behalf of another Discovery Health member.

The Law Society has yet to deal with the matter, but the council ruled against Bellon and his lawyers.

Discovery Health terminated Bellon's membership more than a year after his final payment from the RAF in October 2010, after numerous requests to him to repay the scheme.

The Medical Schemes Act provides that a scheme can terminate your membership if you fail to repay a debt to it, the council's ruling says.

Discovery Health chief executive Dr Jonathan Broomberg says Bellon is the only person whose membership of the scheme has been terminated for failing to repay money recovered from the RAF.

Bellon has lodged an appeal against the ruling, which suspends the ruling until the appeal is heard.

In the appeal, Bellon argues that he was not informed of his duty to repay Discovery Health despite the scheme's obligation in terms of the Medical Schemes Act to provide members with a summary of the rules of the scheme when they join it. In its original ruling, the Council for Medical Schemes dismissed this aspect of Bellon's complaint, because it accepted that he had been provided with the necessary information.

Bobroff says numerous other Discovery Health members – both his clients and those of other attorneys – have lodged complaints with the council about being unaware of their duty to claim from the RAF. These complaints have yet to be heard.

Bobroff says he is standing by his clients in taking on the “big corporate”, and the complaint to the Law Society about his legal fees is “just a smokescreen”.

In his appeal, Bellon also argues that members have a right to deduct their legal costs from medical expenses recovered from the RAF.

The council says in its ruling that Discovery Health was not party to any other legal fee agreement that Bellon signed with Ronald Bobroff & Partners. The legal fees were presumably agreed before the scheme was approached, it says.

Including the claim for medical expenses in the claim to the RAF did not involve any additional risk for the member or the lawyer, because the medical expenses had already been proved, the ruling says. Legal costs were also recovered from the fund.

The council found that, despite allegations to the contrary by Bobroff & Partners, Discovery Health had not contravened any of the Medical Schemes Act’s requirements relating to the prescribed minimum benefits in Bellon’s case.

#### **DISCOVERY HEALTH DENIES HARASSING MEMBER TO CLAIM FROM RAF**

Discovery Health Medical Scheme has denied that it harassed one of its members and his wife into signing an undertaking to claim from the Road Accident Fund (RAF).

The allegation was made by Mark Bellon through his attorneys, Ronald Bobroff & Partners, in a complaint to the Council for Medical Schemes.

Bellon complained that when he was in a coma in intensive care in 2006, Discovery Health threatened his wife that it would stop paying his medical bills if she did not sign an undertaking to claim his medical expenses from the RAF and then reimburse the scheme.

Discovery Health chief executive officer Dr Jonathan Broomberg denies that Bellon’s wife was asked to sign such an undertaking.

Mark Bellon did sign the undertaking 15 months after his accident.

In Bellon’s complaint to the Council for Medical Schemes, Ronald Bobroff, the founder of Ronald Bobroff & Partners, alleges the undertaking was voidable, because it was signed under duress.

In its ruling, the Council for Medical Schemes says the allegation that the undertaking was signed under duress has to be adjudicated by a court, and the office of the Registrar of Medical Schemes does not have a mandate to test such an allegation.

The undertaking bound Bellon to repay Discovery Health the medical expenses he recouped from the RAF in full without deducting the legal costs he incurred. In signing the undertaking, Bellon acknowledged that Discovery Health had informed him that, if he did not repay the medical expenses, any expenses that Discovery had already paid would be reversed and the scheme would not pay any future costs related to his accident.

The undertaking also confirmed the appointment of attorneys to help Bellon claim from the RAF, and that Bellon had instructed the attorneys to repay Discovery Health the recouped medical costs.

Broomberg says Discovery Health asks its members to sign an undertaking only if the attorney who handles the claim to the RAF does not belong to a panel of attorneys with whom the scheme has an arrangement.

#### **GEMS WON’T CLAIM THE EXPENSES YOU RECOVER FROM RAF**



South Africa's largest restricted medical scheme, the Government Employees Medical Scheme (Gems), has decided that it will not pursue or lay claim to any medical expenses that its members who are involved in a motor vehicle accident recover from the Road Accident Fund (RAF).

Dr Eugene Watson, principal officer of the scheme, says where the scheme is obliged to pay claims – in the case of guaranteed benefits or prescribed minimum benefits – the issue of whether a member has a claim against a third party, such as the RAF or in terms of the Compensation for Occupational Injuries and Diseases Act (Coida), will not detract from the scheme's duty to pay.

Therefore Gems has removed those rules that oblige its members to recover their medical costs from the RAF or, in terms of Coida, from any other third party that is potentially liable for medical expenses, Watson says.

Gems does not think it is fair and equitable to recover monies from members who have third-party insurance – to varying degrees and with varying values – and who received treatment that Gems is in any case obliged to cover in terms of its benefits and the prescribed minimum benefits, Watson says.

The extent to which members would make use of legal services to recover medical expenses from third parties is not equitable and consistent, he says.

As is the case with Discovery Health Medical Scheme, the rules of Profmed, a medical scheme for professionals, and Pro Sano, an open medical scheme, exclude benefits for medical expenses arising from motor vehicle accidents that can be claimed from the RAF.

Both schemes will pay claims arising from such accidents if you give them an undertaking that once you have received compensation from the relevant third party, such funds will be reimbursed to the schemes, say Graham Anderson, principal officer of Profmed, and Aglaak Mahmood, principal officer of Pro Sano.

Anderson says Profmed does insist that members who need to claim from the RAF use the services of a lawyer, but the scheme will accept an RAF payment less the legal costs incurred.

Mahmood says Pro Sano does not insist that members appoint attorneys to assist with their claims, but recovered medical expenses must be repaid to the scheme in full without the deduction of legal fees.

He says Pro Sano's undertaking document enables a member to request that a specialised personal injury lawyer contact him or her and provide advice. (An undertaking document contains an agreement between a member and a medical scheme in which the member undertakes to claim from the RAF and repay the scheme.) The legal advice is free of charge and the member is under no obligation to make use of the specialist's services, Mahmood says.

Dr Jonathan Broomberg, chief executive of Discovery Health, says Discovery will deduct legal costs for medical claims recovered from the RAF for what the RAF Act defines as non-serious injuries, because the medical expenses often make up the bulk of these claims.

However, in the case of serious injuries as defined by the RAF Act, Discovery Health expects the medical costs to be repaid to it in full and the legal fees to be paid from the RAF's contribution towards the legal costs.

Discovery refers its members to a panel of lawyers with whom it has agreements and who do not charge fees based on medical expenses. Members who use the lawyers on this panel are not expected to sign the scheme's undertaking to claim from the RAF.

Broomberg says only a small amount of work is required when submitting claims for medical expenses to the RAF.

However, personal injury lawyer Ronald Bobroff says lawyers have to prove that an accident was not your fault before the RAF will pay out for any medical or other expenses.

Registrar of Medical Schemes Dr Monwabisi Gantsho says members do not have to incur legal fees to lodge a claim with the RAF.

An RAF spokesperson confirmed that you can lodge a claim without the services of an attorney, and you can ask the RAF for both guidance on how to claim and financial assistance to have your injuries assessed.

But Bobroff says it is "a pack of lies" to suggest you can submit a claim to the RAF and receive appropriate compensation at no risk or cost. In most cases, the RAF settles matters only when it is at the doors of the court, he says.

The RAF spokesperson confirmed that most claimants are assisted by attorneys.

Last year, Profmed received R1.1 million in recovered claims from the RAF and registered new cases to the value of R1.4 million with the fund, Anderson says.

"RB-J"

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# Discovery

## 1. Cover for motor vehicle accidents in claims against the Road Accident Fund

Discovery's position on Road Accident Fund ("RAF") claims is in accordance with the attached press release from the Council of Medical Schemes (Annexure A) and is summarised below:

- Discovery Health Medical Scheme ("the Scheme") does not differentiate between medical claims resulting from a motor vehicle accident and claims resulting from any other accident or illness.
- The Scheme always pays for the treatment of any member or dependant injured in a motor vehicle accident in accordance with the member's specific plan type, no questions asked.
- If a member or dependant subsequently becomes entitled to any benefit from the RAF, the member or dependant may submit a claim to the RAF for compensation and reimbursement of related medical expenses. The Scheme does not force members to claim from the RAF.
- If a member or dependant receives compensation from the RAF for medical expenses, the member must then refund those amounts previously paid by the Scheme for the member's medical expenses. This is to avoid the member being unjustly enriched at the expense of the Scheme by receiving double compensation for the same health event.
- If the member does not receive any compensation from the Road Accident Fund, the Scheme will remain liable for the costs of the treatment subject to the chosen plan type of the member, and will never require that the member repay these funds to the Scheme.
- Members can be assured that they will always have access to the necessary treatment in the event of a motor vehicle accident and that the Scheme's treatment of RAF claims is consistent with the provisions of the Medical Schemes Act.

## 2. Overreaching and other charges against Mr Bobroff

Recently, numerous court orders including some by the Supreme Court of Appeal and the Constitutional Court, have been made against Ronald Bobroff and Partners in respect of its excessive and unlawful fees charged to its clients. The impact of these unlawful fees has created severe repercussions for clients who have typically suffered significant injuries from motor vehicle accidents.

(Annexure B). Flowing from these charges, the Supreme Court of Appeal last week ordered an inspection of Ronald Bobroff and Partners business and trust accounts to determine the extent of its unlawful overcharging of clients.

Discovery Health has supported these cases against Ronald Bobroff and Partners because we believe that we have an obligation to assist and protect our members, particularly those that find themselves in a vulnerable position. We also believe that we have a duty to defend the integrity of the broader structures of our society, in this case the Road Accident Fund.

### 3. Unfounded claims from Mr Ronald Bobroff

In order to deflect attention from the numerous charges and court orders against him, Ronald Bobroff has made a number of unfounded claims including that:

- The Scheme does not adequately inform members of the Scheme rules and, as a result, has no right to be funded RAF claims in respect of medical costs incurred by the Scheme on behalf of the member.

The Council for Medical Schemes has ruled unequivocally on this issue in favour of the Scheme, concluding: the Scheme is entitled to claim reimbursement of medical expenses paid in respect of RAF matters in terms of its rules and in terms of common law principles. The Council also confirmed that Discovery adequately informs its members of these rules and obligations in terms of the Medical Schemes Act (Annexure C).

- Discovery Health members and their families are approached while in hospital and forced to sign undertakings to refund the Scheme in respect of RAF reimbursements.

No Discovery Health employee has ever approached a member in hospital in this regard. All Discovery Health members are guaranteed coverage in respect of their medical costs incurred as a result of a motor vehicle accident (as with all other benefits) in line with their plan choice and in terms of the Prescribed Minimum Benefits which all medical schemes cover. The Scheme has never failed to pay claims for medical expenses after a motor vehicle accident.

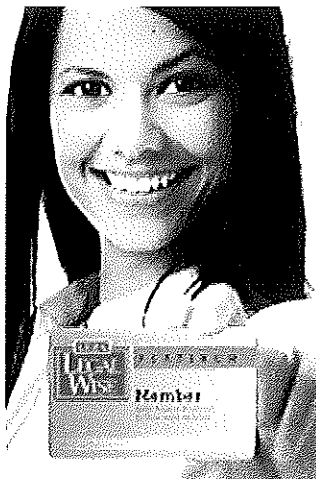
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PUBLISHED: 29 OCT 2012

## Discovery Holdings and Ronald Bobroff & Partners

ENS (Edward Nathan Sonnenbergs) was instructed by Discovery Holdings to assist a number of the members of the Discovery Health Medical Scheme, who were former clients of Ronald and Darren Bobroff of Ronald Bobroff & Partners Inc attorneys ("RBP"). Discovery was concerned about the professional fees charged by RBP, and the impact of these fees on the compensation received by its clients.

We engaged with Ronald Bobroff and he assured us that a perusal of the relevant files would confirm that nothing untoward had happened whatsoever.

After some considerable difficulty, we were eventually granted access to the files, and we discovered that RBP had in fact entered into various fee arrangements with these clients which are highly unusual, and which have now been definitively described as illegal, in a judgment delivered on 19 October 2012 by Judge Boruchowitz in the matter of Tjatji v Road Accident Fund in the South Gauteng High Court.

In all of these matters for Discovery members which we looked at, claims were instituted against the Road Accident Fund ("RAF") for damages arising from injuries sustained in motor vehicle accidents. We ascertained that RBP took a fee of 40% of the damages paid by the RAF to the client, and in addition RBP appropriated the legal costs which the RAF paid.

This is illegal, as it contravenes the Contingency Fees Act, No 66 of 1997, which limits the success fee which an attorney may charge to double the attorney's normal fee, or 25% of the damages, whichever is the lower amount.

We lodged a complaint on behalf of former clients, Mr & Mrs Graham, with the Law Society of the Northern Provinces ("LSNP"), that Ronald Bobroff and his son Darren of RBP had overreached their clients by charging fees substantially in excess of what is permissible or even legal.

The complaint by our clients against Ronald and Darren Bobroff was considered by an investigating committee of the LSNP on 28 February 2012, and it recommended a host of charges (22 in total) against Ronald and Darren Bobroff of, inter alia, over-reaching, falsifying file notes, and claiming for attendances which had not taken place.

Both Ronald Bobroff and his son Darren have strenuously avoided answering the complaint, and they have failed to allow a proper inspection of the firm's trust account or to provide access to material documents sought by our client. It is a time-honoured principle that an attorney is bound to assist his or her law society by cooperating fully in response to a complaint. Despite the fact that Ronald Bobroff, a councillor and former president of the LSNP, had never raised any objection to these procedures whilst they were applied to errant attorneys during his ten year tenure as councillor and president of the LSNP, unfortunately he and his son are now content to play possum in the face of the disciplinary process.

Furthermore, the LSNP has, at the behest of Ronald Bobroff, maintained for a number of years now that attorneys may charge fees in excess, and in violation, of the provisions of the Contingency Fees Act. This is a view which is not shared by the other provincial Law Societies.

In the circumstances our clients have a reasonable apprehension that their complaint may not be dealt with fairly by the LSNP or its council.

Accordingly Mr & Mrs Graham applied in the North Gauteng High Court in Pretoria on Thursday for an order to inspect the practice of RBP, and for the High Court to determine our clients' complaint against Ronald and Darren Bobroff.

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Rachelle Bricout: +27 82 339 4565 (*media liaison*)

COMPANIES & INVESTMENTS



## Unsettling Discovery

**W**hy is Discovery Health Medical Scheme (DHMS) paying a lot of money to have the practice of a well-known personal injury lawyer investigated for an alleged contingency fee irregularity?

Ronald Bobroff, ex-president of the Law Society of the Northern Provinces (LSNP), says Discovery is funding legal claims against his firm by a former client because his wife exposed "their longstanding and ongoing non-compliance with the Medical Schemes Act". Bobroff's allegations against Discovery centre on the medical aid's alleged habit of forcing members who have been injured in accidents to sign a document pledging that they will claim their costs from the Road Accident Fund (RAF), and if successful will refund Discovery.

"The way they force members or their families who have been injured in road accidents to sign an undertaking to claim from the road accident fund at the members' risk and cost, is unlawful," says Bobroff. "Discovery does this under threat of immediate termination of medical care, often when the member is in intensive care, unless the undertaking is

signed."

Bobroff claims that Discovery forces members to sue at their own risk and cost in order to avoid the lengthy and expensive process involved in trying to successfully claim for accident damages from the RAF.

Dr Jonathan Broomberg, CEO of Discovery Health, wrote in an email to *Finweek* that the medical aid places the onus on its members to make claims against the RAF.

"The rules of the DHMS (Discovery Health Medical Scheme) simply state that if members are involved in an accident leading to healthcare expenses paid by the scheme, the scheme requires from them to submit a claim to the Road Accident Fund (RAF) at no cost to the member, and should the RAF pay out medical expenses, that the member would then be required to refund these to the scheme."

Bobroff says Discovery is in breach of the Medical Schemes Act because the company does not inform its members that medical care for injuries sustained in road accidents may be terminated if they don't agree to claim from the RAF. This is despite the fact that the law requires

Discovery to inform its members that it does this.

"Apart from cheap gym contracts and movie tickets, were you, as a Discovery Health Member, told that if you're involved in a third party incident like a road accident, you are expected to sue the third party at your own cost and risk?" Bobroff asks. "This kind of litigation can be very expensive, risky and taxing especially if you're ill after an accident. If the claim fails, Discovery takes no responsibility for the costs and the member must bear the costs."

He says Discovery fails to inform members or prospective members of this liability until it's too late.

"Discovery in essence doesn't tell members this up-front and often (following an accident) the member or next of kin is threatened with immediate termination of medical care if the member or next of kin does not sign the indemnity declaring they will claim from the Road Accident Fund. Discovery effectively forces these people to litigate," says Bobroff.

Jeff Katz, Discovery's legal services head, rubbishes the claims. Katz says Discovery "will never force a member to sue any third party like the RAF".

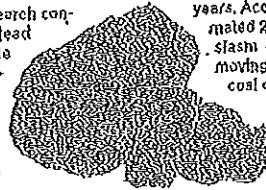
Katz says that Discovery's rules does make provision for taking the action against members.

4. I have been informed that should I not undertake to reimburse Discovery Health or if I fail to honour my obligations in terms of this Undertaking for past hospital and medical expenses paid on my behalf for injuries sustained by me in the incident, any payments made by Discovery Health will be reversed and will be for my account. Furthermore, Discovery Health will disallow liability for payment of any future costs relating to the incident.



## COMPANIES &amp; INVESTMENTS

**MORE OPPORTUNITIES IN MOZAMBIQUE** Research conducted by Rajat Kohli, Standard Bank's Global Head of Mining and Metals, suggests that Mozambique will need to invest \$5bn in the next five years to upgrade its infrastructure, with the economy expected to grow by around 8% in 2012 and another 9% in 2013. Kohli identifies the Moalza coal basin as being able to produce about 100m ton of coking coal per annum within the next five



years. According to the IMF, Moalza holds an estimated 2.5bn tons of coal. "There is a lot of enthusiasm about it, but the challenge relates to moving the coal. As mining in the basin expands, coal output will exceed railway capacity, even with further upgrading. Miners want to get the product out quickly and the Mozambican government wants development," concludes Kohli.

"But we don't enforce it. It's simply there in the event the medical scheme needs the ability to take action against a member."

The Medical Schemes Act makes specific reference to a medical aid's obligation to make full disclosure to prospective members and members on admission to the scheme of all relative terms and conditions. This includes that members must receive a detailed summary of the rules.

"Not one of our clients going back many years nor a single client of many SAAPIL (South African Association of Personal Injury Lawyers) attorneys, who are members of Discovery Medical Aid,

have reported that they were ever informed by Discovery's brokers or Discovery during often lengthy membership of any conditions applicable to road accident generated medical costs," says Bobroff.

He also says that numerous complaints have been made against Discovery by clients of SAAPIL to the Council for Medical Schemes (CMS).

Broomberg counters: "The CMS has unequivocally dismissed one complaint on the matter to date."

"The CMS confirmed that the scheme had informed the member adequately, and was within its rights to request the member to refund the expenses."

Discovery says it expects that the CMS "will dismiss all the complaints for the same reasons as it dismissed the first complaint".

When *Phinck* asked the CMS about matters relating to complaints against Discovery, we were referred to its annual report.

Bobroff says the complaint that has been dismissed is currently under appeal.

Broomberg points out through that members of DHMS are fully covered for any healthcare claims arising from a motor vehicle accident or any other injury, regardless of whether there is an element of third party insurance. He also says it's untrue that DHMS does not inform its members of the rules relating to third party claims.

"We indicate such in our benefit guides, on the Discovery website, and members can at any time obtain a full copy of the rules," says Broomberg.

When asked if Discovery brokers make it clear to members or prospective members that there are terms and conditions regarding road accident generated

medical cover, he replied that the medical aid did not give its brokers "scripts" telling them what to say, or what not to say.

"Discovery cannot therefore confirm or deny what was said by any particular broker to any particular prospective member," says Broomberg.

Discovery-funded attorneys have now lodged a complaint against Bobroff's firm (RB&P) with the Law Society of the Northern Provinces (LSNP) on behalf of an ex-client of the lawyer.

George van Nickerk, of Edward Nathan Sonnenberg, says the complaint against Bobroff centres on an allegation that he took up to 40% of a client's RAF payout, whereas the original agreement was that he would get 30%. Van Nickerk alleges that Bobroff claimed that he and his firm had worked 500 hours on the case: "It couldn't have been more than 132 hours on this case," says Van Nickerk.

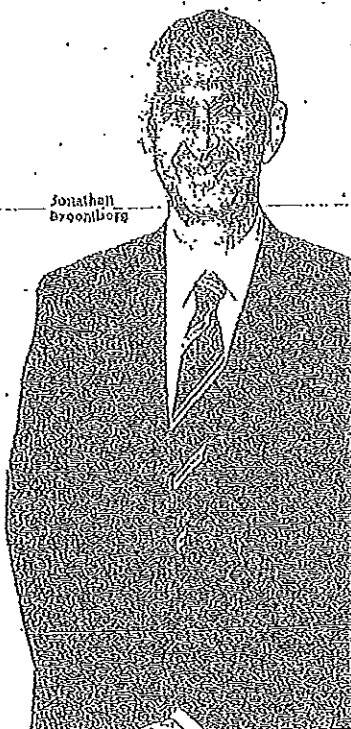
Bobroff denies the allegations.

"The relevant matter was very complex and very risky," he says. "The file contained more than six lever arch files and thousands of documents."

Bobroff told *Phinck* that the fee agreement was in line with common law contingency fee rules (following such agreements) set by the Law Society itself. He claims the complaint against him is a vendetta driven by Discovery.

"How else does an injured plumber afford three senior Edward Nathan Sonnenberg attorneys, two junior advocates and two senior counsel including Jeremy Gauntlett SC, to drive a complaint against my practice to the law society?" asks Bobroff.

Broomberg confirmed that Discovery was supporting the complainant's case against Bobroff.



Jonathan Broomberg

- 7.2 That Katz was prepared to have Discovery waive any claim against me with respect to the amount of approximately R500 000.00 they had, and were demanding from me in respect of medical expenses.
- 7.3 The impression I got was that Katz was very emotionally involved and wanted to "buy" me off so that I be used by him to neutralize Ronald Bobroff in his endeavours to protect his clients, as also the clients of other Attorneys, who had been and were being harassed for payment of monies by Discovery/Katz under circumstances the same as applied to me.

"We're doing it to ensure that our members' complaints are fully investigated," he says.

Affidavits that have been submitted to the Law Council alleges that Discovery's legal department has gone so far as to allegedly bribe Discovery members to participate in the action against Bobroff.

"Several members, who are clients of my practice, allege that the head of the Discovery legal department attempted to bribe them into assisting Discovery in the attack on my practice," Bobroff alleges. "In return for their assistance Discovery told them it would not claim

a refund of the medical costs it had paid on their behalf."

Finweek is in possession of copies of the affidavits lodged with the Law Society by these members. One of the affidavits by an ex-Discovery Health member who alleges that Jeff Katz told to bribe him by offering to waive the R500 000 in medical costs it was claiming from him in return for his help in "neutralising" Bobroff.

Katz denies all the charges and says this has never happened.

"This is all completely untrue. The facts are that Discovery, to protect our

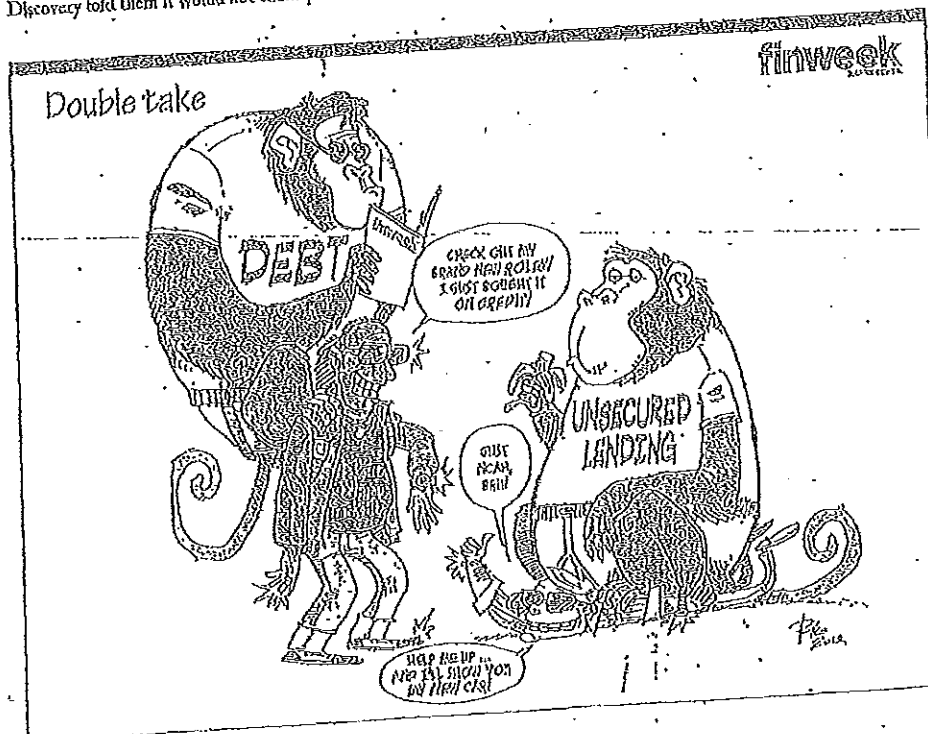
members, has made complaints against a person who has acted unlawfully. The result is that a number of ridiculous charges have now been made against Discovery and against me," said Katz.

A representative of the LSNR, confirmed to *Finweek* that the body is still investigating the complaint against Bobroff's practice.

"The matter is sub judice."

He also confirmed to *Finweek* that the Law Society is investigating complaints made against Katz.

James Styan  
James.styan@bosld.com



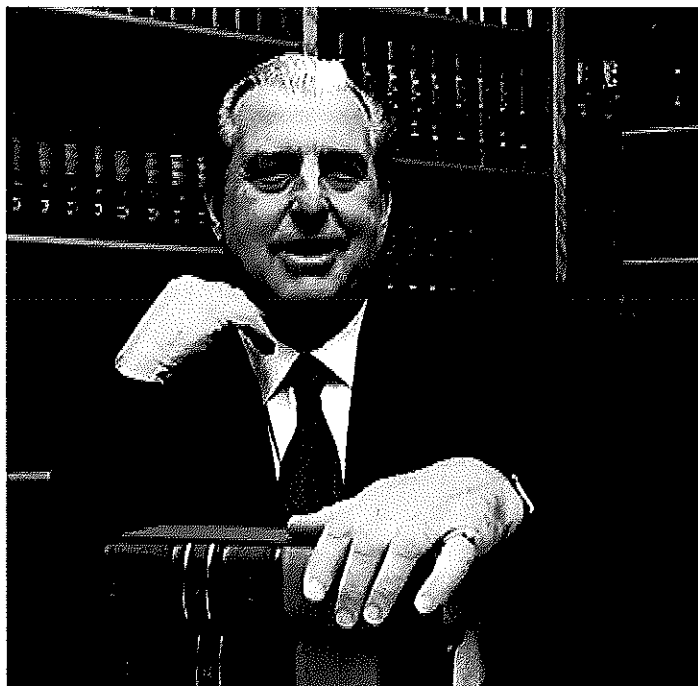
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South Africa

## D-Day for the Bobroffs, Law Society

Road accident lawyers hauled before court.

Tony Beamish | 27 January 2014 10:17



*Amendment:*

*In the article I made a statement that court papers reveal that Jennifer Graham received an unsolicited call from Darren Bobroff offering the services of Ronald Bobroff & Partners (RBP) on a no-win, no-fee basis.*

*This was not the case.*

*Jennifer Graham spoke to her Absa Insurance Broker and friend, Gail van Niekerk, shortly after her husband Matthew's accident. She told Jennifer that she knew of an attorney, Darren Bobroff, who specialised in motor vehicle accident claims and said that she would ask him to call Jennifer, which he then did.*

*I apologise to the Bobroffs for creating the impression with my use of the words "unsolicited call" that Darren Bobroff was involved in touting, which is a professional sin that attorneys may not commit.*

*This error is regretted.*

PRETORIA – Gauteng couple, Jennifer and Matthew Graham, are today asking the North Gauteng High Court (NGHC) to suspend their erstwhile attorneys, Ronald (pictured) and Darren Bobroff, from legal practice. This, they say, is an interim measure as they are seeking to have Bobroff senior- and junior's names struck off the Roll of Attorneys. They allege in court papers that the Bobroffs deceived, defrauded and overcharged them. The Bobroffs vehemently deny this.

Before the strike-off application can be brought, the Bobroffs conduct must still be properly investigated and, as Officers of the Court, they must answer the Graham's allegations against them under oath, which they have yet to do.

It is believed to be the first time that a private individual has applied to court to have an attorney suspended from practise. Most litigants who take on professionals do not enjoy equality of legal firepower. This case is the exception. All the litigants have retained eminent Senior Counsel. David Unterhalter SC represents the Grahams, Mike Hellens SC represents the Bobroffs, Wim Trengove SC represents the Law Society of the Northern Provinces (LSNP), and the Road Accident Fund (RAF) has retained Gilbert Marcus SC.

The Graham's case is being funded by their medical aid, Discovery Health.

In 2007 Matthew Graham, a plumbing contractor, was a passenger in a car that was involved in a head-on collision with a taxi. The driver died and Graham barely survived. He suffered frontal lobe damage, significant loss of sight and hearing, and broke his right shoulder.

Court papers reveal that Jennifer Graham received an unsolicited call from Darren Bobroff offering the services of Ronald Bobroff & Partners (RBP) on a no-win, no-fee basis. Darren had told her it would cost 30% of whatever RBF recovered from the RAF. Jennifer later signed a pile of documents presented to her by Darren, thereby giving RBP the go-ahead.

Once the Grahams received the proceeds of Matthew's RAF claim, Discovery Health contacted them in order to recover medical expenses that they had paid on Matthew's behalf. Only then did the Grahams learn that the RAF had also paid out Matthew's medical costs to RBP. Court papers state that Jennifer was unaware of the finer details of the mandate she had given to RBP other than there would be a 70:30 split of what was received from the RAF.

Edward Nathan Sonnenbergs (ENS), acting for the Grahams, scrutinised RBP's files and concluded that their clients had been "massively overreached" (overcharged) and that "the record and file notes had been tampered with since the Grahams first raised their concerns."

### **Law Society of the Northern Provinces**

In June 2011 ENS lodged the Graham's complaint with the LSNP, alleging that Jennifer had unknowingly signed two RBP mandates: the contingency fee mandate for a 70/30 split and an 'hourly fee' mandate. In these agreements the Bobroffs had reserved the right to decide at the conclusion of the matter which of the two mandates to rely on.

ENS told the LSNP that the Bobroffs had agreed to make Matthew's files available to them for inspection but had then dragged their heels. Furthermore, ENS said that they had identified a number of file notes that were simulated. "These files notes purport to record attendances which did not happen and could not have happened as alleged."

Court papers describe the conduct of both the LSNP and the Bobroffs as 'retaliatory'. The LSNP held an enquiry but the Bobroffs had walked out of it.

The Grahams allege that, "The LSNP has demonstrated an unwillingness, unbefitting of its statutory position, to expeditiously and diligently comply with its duty to investigate RBP's conduct." Furthermore, "The LSNP has singularly failed to be moved in the slightest by the evasive conduct of the Bobroffs – both during the complaint proceedings, and now before this court in response to the averments by the Grahams."

Read Law Society rubbishes ENS's Bobroff allegations (<http://mny.co.za/3yw>).

### **The Bobroffs**

The Bobroffs counsel told the Court, "The Grahams's application to Court is not motivated by a bona fide and genuine grievance, but is part of an agenda and vendetta by Discovery Health directed at the Bobroffs, with a view to controlling the LSNP's prosecution of them."

Read Ronald Bobroff hits back at Discovery claims (<http://mny.co.za/vr>).

The Bobroffs have several legs to their defence.

They told the court that ENS director, George van Niekerk, has all along attempted to 'control' the manner in which the LSNP has undertaken the disciplinary processes. Bobroff, a former President of the LSNP and presently a Councillor (committee member) of it, also accuses the LSNP of not following its own processes.

They are opposing the Graham's case but have chosen not to place an affidavit before court in which they state their defence to the allegations.

A year ago the Bobroffs lost a contingency fees case brought against them by former client Juanne de la Guerre. In her matter they had also chosen not to respond to her allegations under oath. Read the judgment here (<http://www.saflii.org/za/cases/ZAGPPHC/2013/33.html>).

Ronald Bobroff is a founder member and currently the President of the South African Association of Personal Injury Lawyers (<http://www.saapil.co.za/>)(SAAPIL). In late 2012, at the same time that the de la Guerre matter was argued before a full bench of the NGHC, SAAPIL simultaneously challenged the validity of the Contingency Fees Act ([http://www.saflii.org/za/legis/num\\_act/cfa1997170.pdf](http://www.saflii.org/za/legis/num_act/cfa1997170.pdf)), and lost. Read the judgment here (<http://www.saflii.org/za/cases/ZAGPPHC/2013/34.html>).

Read Did Ronald Bobroff cook the books (/moneyweb-special-investigations/did-ronald-bobroff-cook-the-books)?

### **Road Accident Fund (RAF)**

The RAF is not a party to this litigation but they wish to intervene and assist the court in reaching a just decision.

Advocate Gilbert Marcus SC, told Judge Billy Mothle, who is hearing the matter, that the RAF contends that:

- The common law contingency fee agreement used by the Bobroffs is unlawful.

· that a prima facie case of wrongdoing has already been established and that the LSNP has a duty to investigate the allegations properly.

· The Bobroffs as attorneys, and therefore officers of the court, have a duty to co-operate with the LSNP's investigations and these "disciplinary court processes"

The Grahams support the RAF's application to intervene and the LSNP have not opposed it. The Bobroffs are opposed to the RAF's intervention in this case.

Moneyweb will be reporting from court as the case progresses.

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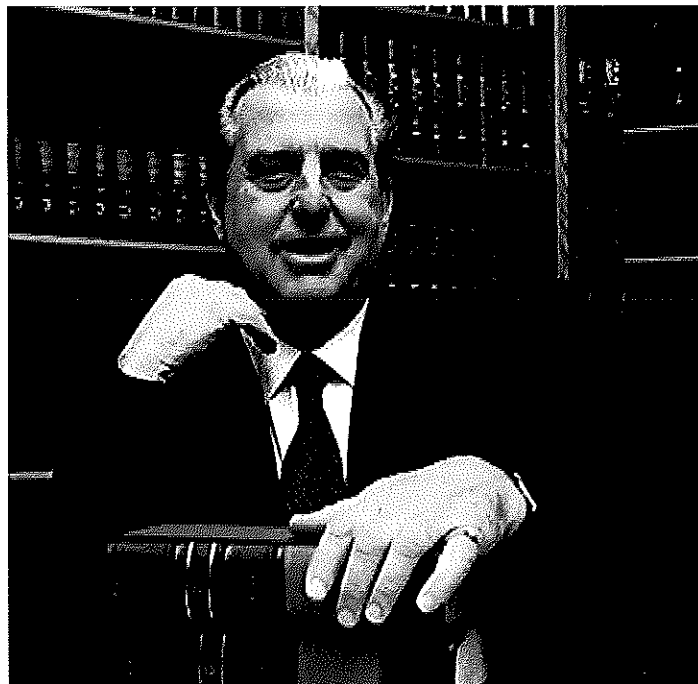
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South Africa

## Discovery-Bobroff fight turns to old clients

Discovery claims overcharging; Bobroff shouts 'vendetta'.

Tony Beamish | 19 May 2014 11:49



JOHANNESBURG – Discovery Health ignited a powder keg last week when it wrote to its members who are or were clients of personal injury law firm Ronald Bobroff & Partners (RBP), advising them that RBP may have severely overcharged them in their Road Accident Fund (RAF) claims.

Ronald Bobroff reacted aggressively with a letter of his own which he sent to all of his previous clients. In this letter he not only strongly denies the allegations, but claims that Discovery Health and this journalist are waging a vendetta against his firm.

These letters are the latest in the war of words between Discovery and the Bobroffs and follow several judicial findings that RBP's common law contingency fee agreements are unlawful.

### Discovery letter

Discovery Health's short one-page letter highlights the recent judgement of the Anthony de Pontes case where it was found that RBP's contingency fee agreement was unlawful and that the fee was severely inflated. According to the judgement the fee was eight times the fee RBP

was entitled to.

Discovery also included the judgment of this case with the letter, and suggested that the members approach RBP to obtain a detailed statement of account for work actually performed to be able to check if they were also overcharged.

[Read the full Discovery letter here. \(/mw/action/media/downloadFile?media\\_fileid=21891\)](/mw/action/media/downloadFile?media_fileid=21891)

### **Bobroff's reply**

In his explosive three-page response, Bobroff accuses several entities, including Discovery and this journalist as waging a vendetta against his firm.

Bobroff also defended his common law contingency fee agreements: "Our fee agreements have been fully compliant with rulings made by our regulatory body, the Law Society of the Northern Provinces (LSNP), which ruled in 2002 that its members be permitted to adopt the century old American system of No Win – No Fee percentage agreements. The two rulings by the Law Society as also its correspondence with the Deputy Judge President of the Pretoria High Court to this effect may be viewed on our website (<http://www.bobroff.co.za/>) under Discovery News."

Bobroff's letter does not contain any reference to the judgment in the de Pontes case, nor of the other highly publicised Juane de la Guerre ruling by the Constitutional Court, which also labelled his contingency fee agreements as unlawful.

Moneyweb is in possession of the letter Bobroff wrote and distributed to his clients. Apart from the denial that his fee regime is unlawful, he makes many defamatory statements about Discovery officials, competing attorneys and this journalist, which is not relevant as a response to Discovery's letter.

On legal advice, Moneyweb has decided not to publish this letter.

### **Judgements**

The war of words between Discovery and Bobroff follows judgments in two high-profile cases.

In the first case De la Guerre took RBP to court and in a groundbreaking Constitutional Court judgment (<http://www.saflii.org/za/cases/ZACC/2014/2.html>) handed down earlier this year, succeeded in having fee agreement declared unconstitutional and unlawful.

Read Bobroff's contingency regime unlawful.

The effect of the judgment was retrospective in that it declared every similar RBP fee agreement that had been entered into over the last thirteen years to be invalid.

This means that there could soon be a flood of litigation from all previous RBP clients questioning the lawfulness of the contingency fees that RBP charged for submitting and processing claims to the RAF. If the firm used a similar contingency fee agreement to what RBP used in the two cases described below, these clients may also have a strong case that fees may be returned to them.



in another scathing judgment handed down last month, involving former RBP client Anthony de Pontes, Judge Haseena Mayat also found that the fee agreement was unlawful and that Bobroff should have been aware of this since 1992.

Notwithstanding this assertion, RBP has applied for leave to appeal against the judgment, and a court order demanding an inspection of its books by the LSNP.

### **Legality of common law contingency fee agreements**

Bobroff has always maintained that his so-called common law contingency fee agreements were legal as they are based on legal determinations from the LSNP. These determinations were formulated by the LSNP after seeking legal opinions.

The LSNP sought these opinions shortly after the Contingency Fees Act (CFA) came into effect in 2001. The purpose of the CFA is to protect the client in circumstances where the attorney is charging more than the ordinary fee.

The CFA clearly states that the maximum contingency fee a firm may charge is 25% of capital, or double the ordinary fee, whichever is the lesser. RBP's contingency fee agreements charge 30% of the capital, while there is no provision for a lesser fee relating to the ordinary time based attorney fees referred to in the Act.

The LSNP sought its first legal opinion in 2002 when it approached Advocate Etienne Labuschagne. His opinion was that common law contingency fee agreements that charge more than the 25% of the capital would depend on the facts of each matter, and that reasonableness would remain the benchmark of the percentage charged.

Bobroff was vice president of the LSNP from November 2004 and its president from November 2005 to 2006. Thereafter he remained, until recently, on the LSNP's council and its management committee.

In 2004 and 2005 the LSNP sought the opinion of two well-respected advocates and legal minds, Gilbert Marcus and Wim Trengove. Both stated that so-called common law contingency fee agreements are unlawful.

Despite these legal opinions of Marcus and Trengove, the LSNP adopted the opinion of Labuschagne as its position.

### **Section 2 of the Contingency Fees Act, of 1997**

[http://www.saflii.org/za/legis/num\\_act/cfa1997170.pdf](http://www.saflii.org/za/legis/num_act/cfa1997170.pdf), did away with the common law prohibition that had until then existed in relation to contingency fee agreements, and created the only framework within which contingency fees could be charged. The LSNP could not have been unaware of this. It was the subject of Project 93 of the SA Law Commission in 1996 in which the attorneys profession was intimately involved. It gave birth to the Contingency Fees Act, as we know it.

In a response to a draft version of this article sent to RBP, Bobroff said he didn't understand the CFA to say that it excluded any other contingency fee regime. He said that around 2002 the LSNP's Court Practice Committee (CPC) advised the LSNP Council that a common law contingency fee regime should be allowed. "The LSNP Council comprising 24 senior and experience attorneys debated the matter extensively and resolved to adopt CPC's recommendations."

"RB P"

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# Discovery

## 1. Cover for motor vehicle accidents in claims against the Road Accident Fund

Discovery's position on Road Accident Fund ("RAF") claims is in accordance with the attached press release from the Council of Medical Schemes (Annexure A) and is summarised below:

- Discovery Health Medical Scheme ("the Scheme") does not differentiate between medical claims resulting from a motor vehicle accident and claims resulting from any other accident or illness.
- The Scheme always pays for the treatment of any member or dependant injured in a motor vehicle accident in accordance with the member's specific plan type, no questions asked.
- If a member or dependant subsequently becomes entitled to any benefit from the RAF, the member or dependant may submit a claim to the RAF for compensation and reimbursement of related medical expenses. The Scheme does not force members to claim from the RAF.
- If a member or dependant receives compensation from the RAF for medical expenses, the member must then refund those amounts previously paid by the Scheme for the member's medical expenses. This is to avoid the member being unjustly enriched at the expense of the Scheme by receiving double compensation for the same health event.
- If the member does not receive any compensation from the Road Accident Fund, the Scheme will remain liable for the costs of the treatment subject to the chosen plan type of the member, and will never require that the member repay these funds to the Scheme.
- Members can be assured that they will always have access to the necessary treatment in the event of a motor vehicle accident and that the Scheme's treatment of RAF claims is consistent with the provisions of the Medical Schemes Act.

## 2. Overreaching and other charges against Mr Bobroff

Recently, numerous court orders including some by the Supreme Court of Appeal and the Constitutional Court, have been made against Ronald Bobroff and Partners in respect of its excessive and unlawful fees charged to its clients. The impact of these unlawful fees has created severe repercussions for clients who have typically suffered significant injuries from motor vehicle accidents.

"RD & "

# FANEWS

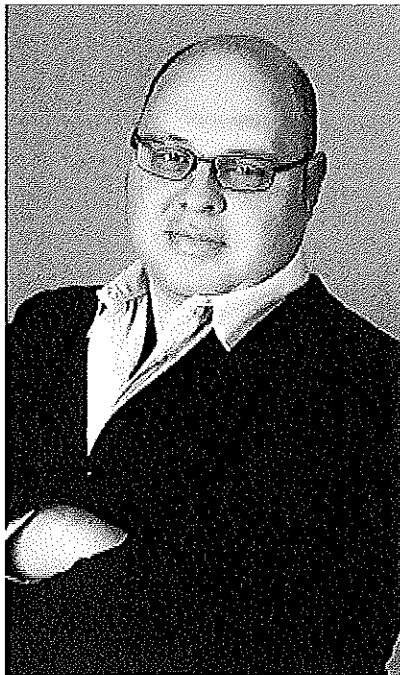
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## Ronald Bobroff silenced by the Constitutional Court

26 February 2014 Jonathan Faurie



Jonathan Faurie, FAnews Journalist

In a landmark ruling by the highest court in South Africa, the Constitutional Court has finally laid the issue of contingency fees to rest when they ruled against Ronald Bobroff & Partners and the South African Association of Personal Injury Lawyers (Saapil) on 20 February 2014.

The case was heard by the Constitutional Court after Ronald Bobroff and Saapil appealed two decisions which were handed down in 2012 by the North Gauteng High Court and the Supreme Court of Appeal.

The issue

Contingency fees are regulated by the *Contingency Fees Act of 1999* (The Act). The Act lays down the fees that an attorney can charge when entering into an agreement with a client to represent them in claiming money back from the Road Accident Fund (RAF). This is done on a no win, no fee basis.

The Act points out that if a client is successful in claiming money back from the RAF, the attorney representing the client will be entitled to a fee that is either equal to, or higher than his/her nominal fee. This entitlement comes with the provision that it will be awarded as long as the fee is not more than double the attorney's nominal fee or 25% of the amount claimed from the RAF, depending on which is the smaller amount of the two.

Certain attorneys, of whom Bobroff was one of the guilty parties, have been entering into what they label as common law contingency fee agreements where the fees agreed to exceed the parameters governed by The Act. These attorneys claim that they are entering into these agreements under the premise that the Law Society of Northern Provinces has given them permission to do so, provided that the fees agreed upon were fair and reasonable. It must be pointed out that Bobroff is a past President of the Law Society of Northern Provinces and is the current President of Saapil.

#### **Opening a can of worms**

Bobroff and Saapil were taken to the North Gauteng High Court over two cases of charging excessive contingency fees.

In the first case, Juanne de la Guerre was involved in a motor vehicle accident in 1995. She then approached Ronald Bobroff & Partners to reclaim money back from the RAF. The company entered into a contingency fee agreement with De La Guerre saying that she would be charged a fixed fee of 30% plus value added tax (VAT) of any damages recovered. She was handed this in a document which she signed, but was later told by another attorney that this agreement was invalid as it went against the principles of The Act, which she did not even know existed.

Matthew and Jennifer Graham were also clients of Ronald Bobroff & Partners and complained to the Law Society of the Northern Provinces about the firm's fees. After not having the complaint heard, the Graham's took to the North Gauteng High Court to have Bobroff and his son Darren Bobroff struck off the roll of attorneys.

The North Gauteng High Court ruled in favour of both parties saying that the common law contingency agreements were unlawful and that any agreements contrary to those outlined by The Act are unlawful.

Bobroff then appealed this decision with the Supreme Court of Appeal saying that these common law contingency agreements were being entered into with the knowledge and permission of the Law Society of Northern Provinces. Bobroff lost this appeal, after which he went to the Constitutional Court where he lost again.

#### **Effects on the medical schemes industry**

When a person is successful in claiming money back from the RAF, their medical scheme is entitled to a certain percentage of that payment in order to cover the medical expenses incurred by it during any hospitalisation or subsequent treatment.

By charging clients excessive contingency fees, attorneys are decreasing the pay outs that clients would receive from the RAF. This in essence would decrease the payment that medical schemes can recover from policyholders.

Discovery Health tried to recover such money from a policyholder after the policyholder did not reimburse the money that was owed. The policyholder was a client of Ronald Bobroff & Partners and Discovery was alerted to the fact that Bobroff may be charging his clients excessive contingency fees.

Discovery investigated the allegations surrounding Bobroff and found that he was charging excessive fees. It then paid for the legal fees of the Graham case in order that they can recover the excessive fees from Bobroff.

Discovery Health CEO Dr Jonathan Broomberg says that the Constitutional Court ruling has significant ramifications for the industry. "Discovery Health will endeavour to identify and contact all Discovery Health members who may be affected by this ruling. We would also encourage all brokers to contact any of their clients who may have claimed

from the RAF following a motor vehicle accident and who may potentially be affected by the Constitutional Court rulings."

#### **Effects on the industry**

The ruling is important for a number of other reasons.

Firstly, the ruling means that Ronald Bobroff & Partners may be liable to pay back all monies illegally misappropriated by the company through common law contingency agreements. The statement of intent by Discovery Health, if followed through, will result in Bobroff being liable to pay back what Broomberg describes as hundreds of millions of rands.

Secondly, it casts a bad light on certain areas of the legal fraternity. Ronald Bobroff & Partners was a leading firm when it came to claiming from the RAF. In his professional capacity, Bobroff is the President of Saapil and is a past President of the Law Society of Northern Provinces. So he is a prominent figure within the legal fraternity. One wonders how his reputation will be affected following this judgement.

Thirdly, there will now be clarity on the associated fees when claiming from the RAF.

#### **Editor's Thoughts:**

The house of cards that Ronald Bobroff built on shifting sands now has the potential to collapse in on him. Following Discovery's statement of intent that its policyholders should recover fees from Bobroff; will other medical schemes adopt a similar standpoint? Please comment below, interact with us on Twitter at [@fanews\\_online](#) or email me your thoughts [jonathan@fanews.co.za](mailto:jonathan@fanews.co.za).

RB5 "

**Rachelle Stein**

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**Sent:** 29 July 2014 12:47 AM  
**To:** Anthony Millar; Jeff Katz; George van Niekerk; Annemarie Joubert  
**Subject:** Please retweet Ryk  
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