

- 10.14.14 Whilst the copying would have been done by Clelia, the files were prepared under Darren's direct supervision.
- 10.14.15 It has never been alleged that Darren attended at Court on the 3 March 2010. Gina and Clelia, who had been fully involved in the preparation of this matter for trial were dispatched to assist Advocate Zidel and all the attendances reflected in the note did occur as is confirmed by Mrs Graham herself.
- 10.14.16 In paragraph 114 the allegations of file notes being created to ramp up RBP's attendances are made and the reason put forward is "to create the impression – that Darren – a professional – was personally involved in Matthews matter".
- 10.14.17 Who, one wonders would Mrs Graham/ Van Niekerk suggest worked up this complicated and problematic matter. Would they suggest it was a secretary or perhaps a member of RBP's admin staff?
- 10.14.18 Darren Bobroff accepted instructions from Mrs Graham on the 6 September 2006 and thereafter every single step reflected in the voluminous 6 lever arch files of documentation comprising this matter was occasioned by him personally or under his direct instructions on supervision of other RBP professional staff members.

## 11. THE PARTY AND PARTY BILL

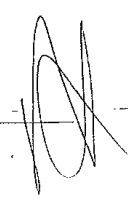
- 11.1 Van Niekerk alleges that Mr. Joubert admitted to him, inserting fictional attendances into the party and party bill.
- 11.2 RBP entrusts all its party and party bills in all litigation matters to its cost consultants all of whom are senior and experienced individuals with impeccable credentials. We have never in over three decades of practice had complaints from Defendant's or taxing masters as to the content of these bills. Mr. Joubert's CV includes 5 years as taxing master at the Johannesburg High Court and 11 years as the Road Accident Fund's in house senior cost consultant is attached hereto marked "RBP10".

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- 11.3 No certificate was requested or signed certifying the correctness of the bill in the Graham matter and the Bill was never submitted to RBP for verification prior to settlement of taxation.
- 11.4 Save to note Mr. Joubert's denial of what Mr. van Niekerk's attributes to him in respect of the alleged fictional attendances, we are unable to comment further and refer to Mr. Joubert's statement attached hereto.
- 11.5 We point out that the RAF also employed a Cost Consultant who settled the bill of costs with Joubert.

12. REASONS FOR THE DELAY IN MAKING THE FILE AVAILABLE TO VAN NIEKERK

- 12.1 On receipt of Mr. van Niekerk's letter dated 9<sup>th</sup> March 2011, RBP was immediately, and as subsequent events have proved, justifiably suspicious as to how or whether Mr. van Niekerk was indeed directly instructed by the Graham's and the other clients mentioned.
- 12.2 As has now become clear, Van Niekerk was never so instructed. What did occur is that Katz, having no doubt successfully placed duress on those 5 client's into "co-operating" with him, in the same way as he had unsuccessfully sought to do with Almeida, Hajibey and Bellon, instructed Van Niekerk, at Discovery's cost.
- 12.3 In truth Van Niekerk's real client is Discovery/Katz, whose motives are clearly wholly unconnected with anything other, than seeking to intimidate and/or discredit Ronald Bobroff and RBP. We submit it is very clear that the five clients are simply pawns in Discovery's game.
- 12.4 None of these clients, least of all the Grahams, as far as we are aware would ever have had any business with Edward Nathan given their reputed fee levels and the unlikelihood that they would accept instructions on contingency. Even less would they seek to engage an attorney who practices in Cape Town whilst they all reside in Gauteng.

T.G. 



Legal Billing Systems  
Your Costs Are Our Concern

10 August 2011

Mr Graham and Discovery Health

Dear Mr Bobroff,

There are various aspects that I would like to respond to.

**1. Certificate estimating work done in the matter (paragraph 145, 145)**

- 1.1. I hold an LLB degree and have more than 20 years of experience in the legal costs field. My practical experience include 4,5 years at the Pretoria High court with the majority of time as Taxingmaster, ten years of several of the Legal Costs departments of the RAF with the majority as Manager and as Legal Costs Consultant acting for plaintiff and defendant attorneys specializing in Road Accident Fund matters.
- 1.2. The aforementioned experience and knowledge makes me well placed to make a reasonable estimate of the professional time reasonably spent in the matter. There are two ways in which I would achieve this.
- 1.3. I would either, draw a comprehensive attorney and own client bill of costs, alternatively and where a rough estimate is required for the guidance of the Attorney I would scan through the file documents reflecting the actual work done.
- 1.4. In the Graham matter I scanned through the six lever arch files comprising the file in this High Court personal injury claim, involving 13 expert reports, a full set of pleadings, financial material and reports and which was settled on the day of trial for just under R 2 million rand.
- 1.5. I have also noted an increasing trend since the advent of charges based on percentage fees agreements that there has been a decline in adequate note keeping in matters and attorneys in general are keeping fewer and fewer file-notes. I therefore place much value on the actual documentation in a file as factual evidence of work done when doing this rough tally of time spent over the duration of the matter.

**2 Re Allegations in paragraph 154 of the complaint.**

- 2.1 I deny the allegation by Mr Van Niekerk in paragraph 154 and where else it may appear to the effect that I told him that the consultations listed in paragraph 154 did not occur.

1 | Page

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Fax sent by :

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2.2 As it is clear from Adv Zide's account and as admitted in paragraph 52 of the complaint the clients confirmed that there were indeed consultations with Ronald Bobroff and Partner professional staff and counsel relating to the expert reports. Counsel notes four hours whereas only two hours were allowed in the party and party bill of costs for such consultations.

2.3 It is therefore clear that no undue amount was recovered in the party and party bill from the Defendant, the contrary rather being the case.

### 3 File notes of Ronald Bobroff and Partners (annexure JG 33 – JG 50)

3.1 It is alleged that the attendances in such notes would have been included in the party and party bill of costs. The allegation indicates a lack of understanding as the difference between party and party costs on the one hand and attorney and client costs on the other hand.


3.2 A perusal of the party and party bill of costs indicates that the work reflected in file-notes JG33, JG35, JG42, JG 43 JG45 and JG 47 were recovered in other areas of the party and party bill of costs.

3.3 The work recorded in notes JG34, JG36, JG37, JG38, JG39, JG 41, JG44, JG46, JG 48, JG 50 are of an attorney and own client nature and should not be included in the bill of costs.

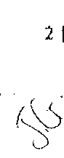
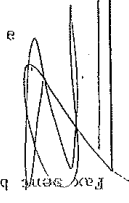
3.4 The work recorded in note JG40 relates to the discovery affidavit, and is reflected at item 1 on page 6 in the party and party bill of costs.

3.5 The work done in note JG49 relating to trial preparation is recorded in item 202 on page 17 of the party and party bill of costs.

Signed at Midrand this 10<sup>th</sup> day of August 2011.

  
Jerry Joubert

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## CERTIFICATE OF TIME SPENT

To : Messrs Ronald Bobroff and Partners  
In the matter of Graham MJ / Ref: D BOBROFF/9946  
Date : 03 March 2010

Kindly find below my estimation of the time spent in the matter. It is possible to do a more specified evaluation which would be at a fee of 15% of the value of the detailed attorney and own client bill of costs.

estimate that not less than 500 hours of professional time would reasonably have been spent on the matter.

This estimation is based on a combination of the following items as it relates to this particular matter:

- the file contents in the matter,
- the File Notes made that are reflected on and in the file,
- the Fees Agreement entered into with the client,
- the Work-process and - practice, as explained to me by your office, in dealing with matters of this nature,
- the Principles of Attorney and Own client work done by an attorney in a matter,
- Past experience in drawing, taxing, or opposing bills of costs.
  - Experience:
    - Taxingmaster of The High Court for 4,5 years from the period of August 1990 to January 1995,
    - Legal Costs Officer with the RAF for a period of 1,5 years from February 1995 to July 1996,
    - Senior Legal Costs officer with the RAF for 1 year from August 1996 to July 1997,
    - Manager of the Legal costs department of the Pretoria, Johannesburg and East London branches of the RAF for 7,5 years from August 1997 to February 2005,
    - Costs consultant drawing both Party and Party as well as Attorney and own client Bills of costs for period since March 2005 onwards.

y Joubert

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J.G.  
J.G.